

# PINNACLE WEST CAPITAL CORP

## FORM 8-K (Current report filing)

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 8, 2004

## PINNACLE WEST CAPITAL CORPORATION

(Exact name of registrant as specified in its charter)

Arizona	1-8962	86-0512431
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(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

400 North Fifth Street, P.O. Box 53999, Phoenix, Arizona 85072-3999  
(Address of principal executive offices) (Zip Code)

(602) 250-1000  
(Registrant's telephone number, including area code)

NONE  
(Former name or former address, if changed since last report)

## ITEM 5. STATE REGULATORY MATTERS

On June 27, 2003, Arizona Public Service Company ("APS") filed a general rate case with the Arizona Corporation Commission ("ACC") and in August 2003 the ACC set April 7, 2004 as the date for the hearing on the rate case to begin. On December 19, 2003, an intervenor in the rate case representing certain merchant generators filed a motion requesting that the ACC (i) require APS to expand its pending request for proposals ("RFP") for long-term power supply resources to 2200 megawatts and (ii) delay the rate case hearing for four months to permit the results of the expanded RFP to be considered in the rate case or, in the alternative, bifurcate the rate case to separately consider issues regarding Pinnacle West Energy Corporation assets. APS issued the RFP in early December 2003 for the purchase of at least 500 megawatts of long-term power supply resources for delivery beginning June 1, 2007 to be used for APS' anticipated retail load.

On January 8, 2004, an ACC administrative law judge ("ALJ") issued a procedural order (the "Procedural Order") (i) revising the schedule for APS' pending general rate case to delay the hearing and other aspects of the procedural schedule by about three weeks, and (ii) requiring APS to provide certain information to potential bidders and to extend the bid response deadline by one week, but not to change the amount of resources requested in the RFP. The hearing is currently scheduled to begin on April 26, 2004. A copy of the Procedural Order is attached hereto as Exhibit 99.1.

Based on the revised schedule and existing ACC regulations, the ACC will be able to make a decision in this general rate case in 2004. For additional information regarding the rate case, see "APS General Rate Case and Retail Rate Adjustment Mechanisms" in Note 5 of Notes to Condensed Consolidated Financial Statements in Pinnacle West Capital Corporation's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2003.

## ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS

(c) Exhibits.

Exhibit No. ---	Description -----
99.1	ACC Procedural Order dated January 8, 2004

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**PINNACLE WEST CAPITAL CORPORATION**  
(Registrant)

*Dated: January 9, 2004*

*By: /s/ Barbara M. Gomez*

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*Barbara M. Gomez*  
*Treasurer*

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF ARIZONA  
PUBLIC SERVICE COMPANY FOR A HEARING TO  
DETERMINE THE FAIR VALUE OF THE UTILITY  
PROPERTY OF THE COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND REASONABLE RATE  
OF RETURN THEREON, TO APPROVE RATE SCHEDULES  
DESIGNED TO DEVELOP SUCH RETURN, AND FOR  
APPROVAL OF PURCHASED POWER CONTRACT.

DOCKET NO. E-01345A-03-0437

PROCEDURAL ORDER

**BY THE COMMISSION:**

On June 27, 2003, the Arizona Public Service Company ("APS") filed with the Arizona Corporation Commission ("Commission"), an application for a rate increase and for approval of a purchased power contract ("Rate Application").

On December 3, 2003, APS issued a Request for Proposals ("RFP") to acquire additional generating resources.

On December 19, 2003, the Arizona Competitive Power Alliance ("Alliance") filed a Motion to Revise the Procedural Schedule or, in the Alternative, to Bifurcate Rate Case to Exclude Issues Regarding PWEC Assets ("Motion"). On December 24, 2003, APS filed its Response in Opposition to the Motion, and the Residential Utility Consumers Office ("RUCO") filed its Response. On December 29, 2003, the Arizona Utility Investors Association ("AUIA") filed its Joinder in Support of APS' Opposition to Motion. On December 30, 2003, Arizonans for Electric Choice and Competition, Phelps Dodge Corporation and Phelps Dodge Mining Company ("AECC") filed its Response in support of the Motion and on January 2, 2004, Constellation NewEnergy, Inc. and Strategic Energy, L.L.C. joined in the Motion.

By Procedural Order issued December 30, 2003, a procedural conference was set for January 6, 2004, to hear oral arguments on the Motion.

The Procedural Conference was held on January 6, 2004, as scheduled. Oral arguments on the Motion were heard from the Alliance, APS, AECC, AUIA, Southwestern Power Group II, LLC, Mesquite Power and Bowie Power Station, Constellation NewEnergy, Inc. and Strategic Energy, L.L.C., RUCO, and the Commission's Utilities Division Staff ("Staff").

In its Motion, the Alliance asked the Commission to "(1) require that the scale of the RFP be expanded so that it will produce meaningful results that the Commission can use in evaluating the proposal in this case to rate base the PWEC generating assets, and (2) adjust the rate case schedule so that the RFP is not conducted in an environment where the outcome of the process potentially has prejudicial impacts in the rate proceeding." As an alternative, the Alliance proposed that if APS wants to maintain the current procedural schedule, issues related to the PWEC generating assets could be bifurcated for later consideration.

The Alliance believes that APS improperly defined the "need" to be satisfied by the RFP by including the PWEC generating assets in the load/resource balance. The Alliance wants the Commission to require APS to issue an expanded RFP in the amount of 2200 MW.<sup>1</sup> The Alliance argues that APS' rate case has raised the issue of the maturity and reliability of the Arizona competitive wholesale power market, and that the results of the RFP will provide evidence on that issue. Although the Alliance agrees with APS' decision to solicit the market to fill its resource needs, it believes that the scope and timing of the RFP may not produce meaningful results, and will prejudice the Alliance's participation in the rate case. Alliance proposed to extend the rate case schedule so that the results of an "expanded" RFP can be incorporated in a "fair and non-prejudicial way" in the rate case.

AECC, Constellation NewEnergy, Inc. and Strategic Energy, L.L.C, Southwestern Power Group II, LLC, Mesquite Power and Bowie Power Station, and RUCO argued in support of the Motion.

APS opposed the Motion, stating that the scope and timing of the RFP does not depend upon the ratemaking treatment of the PWEC assets, but are driven by customer needs and the present state

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(1) The RFP has a minimum of 500 MW, and without including the PWEC assets, the minimum would be 2200 MW.

of the merchant generation industry. APS asserts that the RFP is for a minimum of 500 MW with no maximum limit on the amount of resources that may be offered or accepted. APS agreed that Attachment 1 to the RFP included an "APS Existing Generation" amount that assumed PWEC Arizona power plants are transferred to APS, and during the Procedural Conference, offered to send potential bidders a revised attachment showing the APS Existing Generation amount without the PWEC plants. APS argued that it will have no more information about the wholesale market than will the Alliance's members who will be participating in the RFP. APS stated that it would be willing to provide "aggregate" or "composite" information about the bids in a manner that preserved any confidentiality. APS argued that the requested four month delay would irreparably damage it by delaying the collection of additional revenue and by being perceived and received very negatively in the financial community.

AUIA argued that a delay in the resolution of the rate case would cause irreparable damage to Pinnacle West shareholders.

Staff stated that it did not support the Motion. Staff is in the process of finalizing its testimony and does not think the results of the RFP are necessary to the presentation of its case. Staff suggested that the Commission prohibit the introduction of any testimony or evidence by any party concerning the results of the bid process. Staff recommended the Commission not require the RFP to have a minimum of 2200 MW because it would run a high risk of distorting the market impact and the bid prices.

In its pending rate case, APS has sought to include the PWEC assets in rate base. The Alliance's members, who are independent power producers, oppose rate basing those assets because they believe it would undermine the development of a competitive wholesale market in Arizona. They believe that the current timing and scope of the RFP limits their ability to present what they believe will be evidence of the status of the wholesale power market. As RUCO points out, in order to evaluate whether acquiring the PWEC assets at book cost is the most prudent way for APS to meet its capacity needs, the Commission needs to know what the market alternatives are and at what price. The bids that result from the RFP may provide some information relevant to this issue in the rate case. Therefore, all parties should have the opportunity to know the results of the initial bids prior to

filing their direct testimonies. However, it is not necessary to "expand" the scope of the RFP. By its terms, the RFP does not limit the amount to be offered, and APS has said that it will consider all bids. The RFP's limitation on the amount of the "need" contained in Attachment 1, however, should be revised to show no "assumption" that the PWEC assets will be transferred to APS. APS should provide a copy of a revised Attachment 1 to all potential bidders, and to the extent the RFP itself references this issue, a revised RFP. Further, although APS asserted that no potential bidder has said that it needs more time to submit a proposal, potential bidders should be allowed more time to prepare their proposals after receipt of the revised Attachment 1. Accordingly, APS should extend the time for submitting proposals by one week, to January 21, 2004. This will provide all bidders with an opportunity to consider the revised "need" and submit a fully informed proposal. No later than January 27, 2004, APS should file in this docket a summary of the proposals that contains information about the number and the terms of the bids in such a manner that does not disclose confidential information. With this filing, the parties and the Commission will know the results of the bid process and can evaluate its relevance to the issues in the rate case.

Accordingly, the dates for filing testimony and other procedural dates will need to be modified, and the timeclock extended accordingly.

Nothing in this Procedural Order finds that the RFP that APS has issued is or is not in compliance with the Commission's Track A order or any subsequent orders. Further, APS shall not discriminate in its RFP process against any bidder due to positions taken by the bidder during the course of the rate case proceeding.

IT IS THEREFORE ORDERED that the hearing in this matter is rescheduled to commence on APRIL 26, 2004, AT 10:00 A.M. or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Arizona 85007.

IT IS FURTHER ORDERED that the original date set for hearing, April 7, 2004, will be used for taking public comment, commencing at 10:00 a.m., at the Commission's Phoenix offices.

IT IS FURTHER ORDERED that a pre-hearing conference shall be held on APRIL 19, 2004, AT 10:00 A.M., at the Commission's Phoenix offices, for the purpose of scheduling witnesses and the conduct of the hearing.



IT IS FURTHER ORDERED that the Staff Report and/or any testimony and associated exhibits to be presented at hearing on behalf of Staff on all issues shall be reduced to writing and filed on or before FEBRUARY 3, 2004.

IT IS FURTHER ORDERED that any testimony and associated exhibits to be presented at hearing on behalf of intervenors on all issues shall be reduced to writing and filed on or before FEBRUARY 3, 2004.

IT IS FURTHER ORDERED that any rebuttal testimony and associated exhibits to be presented at hearing by APS on all issues shall be reduced to writing and filed on or before MARCH 9, 2004.

IT IS FURTHER ORDERED that any surrebuttal testimony and associated exhibits to be presented by the Staff or intervenors on all issues shall be reduced to writing and filed on or before APRIL 2, 2004.

IT IS FURTHER ORDERED that any rejoinder testimony and associated exhibits to be presented at the hearing on behalf of APS on all issues shall be reduced to writing and filed on or before NOON ON APRIL 16, 2004.

**IT IS FURTHER ORDERED that ALL FILINGS SHALL BE MADE BY 4:00 P.M. ON**

**THE DATE THE FILING IS DUE, UNLESS OTHERWISE INDICATED ABOVE.**

IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have been prefiled as of April 19, 2004, shall be made before or at the April 19, 2004 pre-hearing conference.

IT IS FURTHER ORDERED that APS shall provide a copy of a revised Attachment 1 and RFP, if necessary, to all potential bidders no later than Friday, January 9, 2004.

IT IS FURTHER ORDERED that APS shall extend the time for submitting proposals to the RFP to January 21, 2004.

IT IS FURTHER ORDERED that APS shall file in this docket a summary of the proposals that contains information about the number and the terms of the bids in such a manner that does not

disclose confidential information, no later than January 27, 2004.

IT IS FURTHER ORDERED that pursuant to A.A.C. R-14-2-103(B)(11)(e), the time period for issuing a final order in this matter shall be extended by nineteen days.

IT IS FURTHER ORDERED that APS shall not discriminate in its RFP process against any bidder due to positions taken by the bidder during the course of the rate case proceeding.

IT IS FURTHER ORDERED that all other provisions of the August 15, 2003 Procedural Order remain in effect.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

IT IS FURTHER ORDERED that the ex parte rule remains in effect.

**DATED this 8 day of January, 2004.**

*/s/ LYN FARMER*  
*LYN FARMER*  
*CHIEF ADMINISTRATIVE LAW JUDGE*

Copies of the foregoing mailed/delivered this 8 day of January, 2004 to:

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By: */s/ Molly Johnson*  
*Molly Johnson*  
*Secretary to Lyn Farmer*