

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Pinnacle West Capital Corporation

Docket Nos. ER00-2268-016  
EL05-10-007

ORDER GRANTING EMERGENCY MOTION FOR STAY

(Issued April 19, 2006)

1. In this order, the Commission grants the emergency motion of Pinnacle West Capital Corporation (PWCC) for a stay through and including May 3, 2006 of the revocation of PWCC's blanket authorization for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission's regulations.

**Background**

2. In an order issued on April 17, 2006,<sup>1</sup> the Commission revoked the market-based rate authority of the Pinnacle West Companies<sup>2</sup> in the APS control area. The Commission stated in the April 17 Order that, effective as of the date of that order, any waivers and authorizations previously granted in connection with that market-based rate authority are no longer applicable.<sup>3</sup> The applicable waivers previously granted to the Pinnacle West Companies include blanket authorization for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission's regulations.

---

<sup>1</sup> *Pinnacle West Capital Corp.*, 115 FERC ¶ 61,055 (2006) (April 17 Order).

<sup>2</sup> The Pinnacle West Companies consist of PWCC, Arizona Public Service Company (APS), Pinnacle West Energy Corporation (PWEC), and APS Energy Services Company, Inc. (APS Energy).

<sup>3</sup> April 17 Order, 115 FERC ¶ 61,055 at P 66.

### **Motion for Stay**

3. On April 19, 2006, PWCC filed an emergency motion for a stay through and including May 3, 2006 of the April 17 Order's revocation of PWCC's blanket authorization under Part 34 of the Commission's regulations. PWCC states that it is a holding company and the parent company of APS, PWEC, APS Energy, SunCor Development Company, and El Dorado Investment Company. It states that, unlike its subsidiary APS, PWCC's issuance of securities is not regulated by the Arizona Corporation Commission, and PWCC is therefore not exempt from the requirement for Commission approval of securities issuances and assumptions of liability under Part 34. PWCC states that, since the filing of its market-based rate tariff, it has relied on the blanket authorization contained in the order granting it market-based rate authorization.

4. PWCC states that the cessation of this authority in the April 17 Order has caused immediate problems for PWCC. It explains that it accesses the commercial paper market on a regular basis, and that its commercial paper is supported by a \$300 million credit facility that includes a representation that "[PWCC] has obtained blanket authority from [the Commission] under [s]ection 204 of the [Federal Power Act] to issue securities and assume liabilities, and such authorization remains in full force and effect." PWCC states that it can no longer make this representation and, therefore, can no longer issue commercial paper based on this credit facility, nor can it use this facility for any other purpose.

5. PWCC states that there is currently approximately \$6 million due to be rolled over on April 19, 2006, with additional amounts coming due in the following days and weeks. To avoid disruption in PWCC's access to this facility, PWCC states that it needs a transition period between the blanket authorization under market-based rate approvals and more formal applications under section 204 of the Federal Power Act (FPA) and Part 34 of the Commission's regulations.

6. PWCC accordingly seeks a two week stay of the revocation date to allow it to prepare and file by April 20, 2006 an application pursuant to Part 34 and to receive Commission approval to engage in such issuances of securities and assumptions of liability. PWCC states that this brief stay would allow it to avoid the adverse repercussions of an immediate cessation of these activities while it seeks a specific authorization under the FPA and the Commission's regulations. PWCC submits that such a transition period is necessary to avoid disruption in PWCC's access to credit facilities and other financial resources. PWCC further argues that such a transition period is particularly appropriate under the circumstances presented here, where PWCC is not subject to the statutory exemption for issuances regulated by the States, which protects other companies that have lost their market-based rate authority.<sup>4</sup> Further, PWCC

---

<sup>4</sup> 18 C.F.R. § 34.1(c)(1) (2006).

contends that a brief delay in the revocation of the blanket authorization will not adversely impact any party to the proceeding.

7. PWCC requests that the Commission grant its motion as soon as possible because this issue is highly time sensitive and already adversely affects PWCC's ability to access financial resources.

### **Discussion**

8. Under the standards of the Administrative Procedures Act, the Commission may stay its action "when justice so requires."<sup>5</sup> In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.<sup>6</sup> The Commission's general policy is to refrain from granting a stay of its orders, to assure definiteness and finality in Commission proceedings.<sup>7</sup> The key element in the inquiry is irreparable injury to the moving party.<sup>8</sup> However, the Commission may examine the other factors where appropriate.<sup>9</sup>

9. The Commission has considered PWCC's request for a stay in light of the legal standards described above. To avoid the potential adverse consequences described in the motion, the Commission concludes that justice requires the granting of a stay. While the Commission has held that purely economic consequences of enforcing an order do not justify a stay,<sup>10</sup> other considerations here warrant a stay. In particular, PWCC seeks a stay of limited duration (two weeks) for the limited purpose of allowing it to prepare and file with the Commission by April 20, 2006 an application for Commission approval

---

<sup>5</sup> 5 U.S.C. § 705 (2000).

<sup>6</sup> See, e.g., *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership*, 56 FERC ¶ 61,177 at 61,361 (1991), *aff'd sub nom. Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir.), *cert. denied*, 510 U.S. 990 (1993).

<sup>7</sup> *Id.* at 61,630. See also *Sea Robin Pipeline Company*, 92 FERC ¶ 61,217 (2000).

<sup>8</sup> *Id.* at 61,621.

<sup>9</sup> See *The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 85 FERC ¶ 61,400 at 62,535 (1998) (granting stay even without a finding of irreparable injury).

<sup>10</sup> See, e.g., *Boston Edison Company*, 81 FERC ¶ 61,102 (1997).

pursuant to Part 34. Moreover, granting the requested stay, and delaying the revocation of the blanket authorization for a two-week period, will not adversely impact other parties. Accordingly, under the circumstances presented here, we find that justice requires staying the revocation date in the April 17 Order of PWCC's blanket authorization under Part 34 through and including May 3, 2006 to allow PWCC to avoid the adverse impacts of an immediate cessation of issuances of securities and assumptions of liability while it seeks a specific authorization under the FPA and the Commission's regulations. Therefore, we will grant PWCC's motion.

10. In light of the time sensitive nature of PWCC's request, and the need for expedited Commission action, the Commission will act sua sponte in granting PWCC's motion.

The Commission orders:

PWCC's emergency motion for stay is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.