

ORIGINAL



0000036217

RECEIVED

2002 DEC 31 A 11: 25

AZ CORP COMMISSION  
DOCUMENT CONTROL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

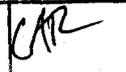
**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**DOCKETED**

DEC 31 2002

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED BY 

IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-02-0051  
PROCEEDING CONCERNING ELECTRIC )  
RESTRUCTURING ISSUES )

IN THE MATTER OF ARIZONA PUBLIC ) DOCKET NO. E-01345A-01-0822  
SERVICE COMPANY'S REQUEST FOR )  
VARIANCE OF CERTAIN REQUIREMENTS )  
OF A.A.C. R14-2-1606 )

IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-01-0630  
PROCEEDING CONCERNING THE ARIZONA )  
INDEPENDENT SCHEDULING )  
ADMINISTRATOR )

IN THE MATTER OF TUCSON ELECTRIC ) DOCKET NO. E-01933A-02-0069  
POWER COMPANY'S APPLICATION FOR A )  
VARIANCE OF CERTAIN ELECTRIC )  
COMPETITION RULES COMPLIANCE )  
DATES )

**NOTICE OF FILING REPLY POST-HEARING BRIEF OF  
WELLTON-MOHAWK GENERATING FACILITY**

Wellton-Mohawk Generating Facility, by and through its attorneys, hereby  
files its Reply Post-Hearing Brief.

...  
...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY submitted this 31st day of December, 2002.

MARTINEZ & CURTIS, P.C.

By Paul R. Michaud

Paul R. Michaud  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090  
Attorneys for Wellton-Mohawk  
Generating Facility

1 Original and nineteen (19) copies of the foregoing document filed this 31st day of December,  
2002 with:

2  
3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered this 31st day of December, 2002 to:

8 William A. Mundell, Chairman  
9 Arizona Corporation Commission  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

Ernest Johnson, Director  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

12 Jim Irvin, Commissioner  
13 Arizona Corporation Commission  
14 1200 West Washington Street  
15 Phoenix, Arizona 85007

Lyn Farmer  
Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

16 Marc Spitzer, Commissioner  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel  
Janet F. Wagner, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

20 Hercules Dellas  
21 Aide to Chairman Mundell  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

Jerry Smith  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

25 Kevin Barley  
26 Aide to Commissioner Irvin  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Brian McNeil, Executive Secretary  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Paul Walker  
Aide to Commissioner Spitzer  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Steve Olea, Asst. Director  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Copies of the foregoing mailed this 31st day of December, 2002 to:

2 Larry F. Eisenstat  
3 Frederick D. Ochsenhirt  
4 Michael R. Engleman  
5 Dickstein, Shapiro, Morin & Oshinsky, LLP  
6 2101 L Street, NW  
7 Washington, D.C. 20037  
8 [Eisenstat@dsmo.com](mailto:Eisenstat@dsmo.com)  
9 [Ochsenhirt@dsmo.com](mailto:Ochsenhirt@dsmo.com)  
10 For Panda Gila River, LP

11 Scott S. Wakefield, Chief Counsel  
12 Residential Utility Consumer Office  
13 1110 West Washington Street, Suite 220  
14 Phoenix, Arizona 85007  
15 [swakefield@azruco.com](mailto:swakefield@azruco.com)

16 Thomas L. Mumaw, Senior Attorney  
17 Karilee Ramaley  
18 Pinnacle West Corporation  
19 P.O. Box 53999 MS 8695  
20 Phoenix, Arizona 85072  
21 [Thomas.Mumaw@pinnaclewest.com](mailto:Thomas.Mumaw@pinnaclewest.com)  
22 For Arizona Public Service Company

23 Jeffrey B. Guldner  
24 Snell & Wilmer, LLP  
25 One Arizona Center  
26 400 East Van Buren Street  
Phoenix, Arizona 85004  
[jguldner@swlaw.com](mailto:jguldner@swlaw.com)  
For Arizona Public Service Company

Raymond S. Heyman  
Michael W. Patten  
Roshka Heyman & Dewulf PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
[Rheyman@rhd-law.com](mailto:Rheyman@rhd-law.com)  
For Tucson Electric Power Company

Lawrence V. Roberston, Jr.  
Munger Chadwick, PLC  
333 North Wilmot, Suite 300  
Tucson, Arizona 85711  
[Lvrobertson@mungerchadwick.com](mailto:Lvrobertson@mungerchadwick.com)  
For Sempra Energy Resources and Southwestern  
Power Group II



Theodore E. Roberts  
Sempra Energy  
101 Ash Street  
San Diego, California 92101  
[Troberts@sempra.com](mailto:Troberts@sempra.com)

Mr. Walter W. Meek, President  
Arizona Utility Investors Association  
2100 North Central Avenue, Suite 210  
Phoenix, Arizona 85004  
[meek@auiia.org](mailto:meek@auiia.org)

Roger K. Ferland  
Ms. Karen A. Potts  
Quarles & Brady Streich Lang, LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, Arizona 85004  
[Rferland@quarles.com](mailto:Rferland@quarles.com)  
For Harquahala Generating Company

Thomas Broderick, Director  
PG&E National Energy Group  
845 North Third Avenue  
Phoenix, Arizona 85003  
For Harquahala Generating Company

Rick Gilliam  
Eric C. Guidry  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302  
For Land and Water Fund of the Rockies

Jay I. Moyes  
Moyes Storey  
3003 North Central Avenue, Suite 1250  
Phoenix, Arizona 85012  
For PPL Southwest Generating Holdings, LLC;  
PPL Energy Plus, LLC; and PPL Sundance  
Energy, LLC  
[Jimoyes@lawms.com](mailto:Jimoyes@lawms.com)

Bob Linden  
Stirling Energy Systems  
2920 E. Camelback Rd., Suite 150  
Phoenix, Arizona 85016

1752/Track B/Pleadings/Briefs/notice of filing reply post-hearing brief.123102

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**WILLIAM A. MUNDELL  
COMMISSIONER - CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER**

**IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-02-0051  
PROCEEDING CONCERNING ELECTRIC )  
RESTRUCTURING ISSUES. )**

**IN THE MATTER OF ARIZONA PUBLIC ) DOCKET NO. E-01345A-01-0822  
SERVICE COMPANY'S REQUEST FOR A )  
VARIANCE OF CERTAIN REQUIREMENTS OF )  
A.A.C. R14-2-1606. )**

**IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-01-0630  
PROCEEDING CONCERNING THE ARIZONA )  
INDEPENDENT SCHEDULING )  
ADMINISTRATOR. )**

**IN THE MATTER OF TUCSON ELECTRIC ) DOCKET NO. E-01933A-02-0069  
POWER COMPANY'S APPLICATION FOR A )  
VARIANCE OF CERTAIN ELECTRIC )  
COMPETITION RULES COMPLIANCE DATES. )**

**REPLY POST-HEARING BRIEF OF  
WELLTON-MOHAWK GENERATING FACILITY**

As directed by the Administrative Law Judge, Wellton-Mohawk Generating Facility ("WMGF" or "Wellton-Mohawk") hereby files its Reply Post-Hearing Brief to the parties' Initial Post-Hearing Briefs, which were submitted on or about December 18, 2002.

**I. INTRODUCTION:**

The purpose of WMGF's Reply Post-Hearing Brief is to demonstrate that the record in this proceeding does not contain substantial evidence to support Arizona Public Service Company's ("APS") positions as set forth in its Initial Post-Hearing Brief that:

1 (1) utility-owned Reliability Must-Run ("RMR") capacity and energy should not be  
2 contestable; (2) generator proposals with a renewable component should not receive any  
3 recognition of the "added value" they admittedly provide the utilities; and (3) the  
4 Commission should not require the utilities to seriously consider a well-balanced mix of  
5 contracts, including long-term contracts, in the competitive solicitation. In fact, the record  
6 supports the opposite conclusions that: (1) RMR capacity and energy resources, including  
7 both utility-owned and non-utility owned resources, should be contestable in the competitive  
8 solicitation process to help resolve Arizona's load pocket problem in the most economical,  
9 efficient and environmentally friendly manner; (2) generators with a renewable resource  
10 component should be permitted to submit proposals in the competitive solicitation, and such  
11 proposals should receive appropriate credit in recognition of the "added value" they provide  
12 the utilities in meeting their renewable resource requirements under the Environmental  
13 Portfolio Standard ("EPS"), and the Commission should adopt WMGF's proposed method  
14 for calculating this credit; and (3) the Commission should require the utilities to seriously  
15 consider a well-balanced mixture of contracts, including long-term contracts, in the  
16 competitive solicitation to protect ratepayers from future upswings in power prices and to  
17 allow new and proposed generating projects the opportunity to meaningfully participate in  
18 the competitive solicitation process. WMGF urges the Commission to review the record and  
19 adopt these conclusions as part of its Opinion and Order.  
20  
21  
22

23 ...

24 ...

25 ...

26



1 APS then goes on to criticize “those merchant generators” who advocate an “RMR premium”  
2 for their power plants in the Yuma load pocket, due to the existence of operational flexibility  
3 in the area and “numerous future options” to serve area loads. (APS Initial Post-Hearing  
4 Brief, Page 21, Lines 21 – 25). APS then goes on to use the above-mentioned transmission  
5 scheduling capability as an example of its operational flexibility in the area. (APS Initial  
6 Post-Hearing Brief, Page 21 Line 22 through Page 22 Line 2). The conclusion that APS  
7 presumably wishes the Commission to draw from these arguments is that the RMR situation  
8 in the Yuma area is overstated and that APS should be allowed to evaluate any proposal  
9 received from the competitive solicitation against a yardstick having a very low or even near  
10 zero value. (See APS Initial Post-Hearing Brief, Page 21 Line 13 – 14 and Transcript  
11 Volume IV, Page 812, Lines 22 – 25). The Commission should reject both of these  
12 arguments for the reasons stated below.  
13  
14

15 First, WMGF has never argued, nor based on WMGF’s review of the record,  
16 has any other party in this proceeding argued for any sort of a “RMR premium.” Thus, it is  
17 disingenuous for APS to argue that the merchant generators have advocated the adoption of a  
18 RMR premium without APS providing any record evidence whatsoever to support its claim.  
19 Similarly, neither WMGF nor any party tried to overstate the RMR situation in the Yuma  
20 area and APS has provided no cites to the record supporting its argument. WMGF has  
21 merely pointed to the actual situation, as it exists in Yuma area. (See Direct and Rebuttal  
22 Testimony of Robert Kendall). On the other hand, APS was completely silent on the Yuma  
23 load pocket situation in its pre-filed direct testimony, and even attempted to exclude non-  
24 APS owned Yuma RMR generation from its unmet needs in an answer to a WMGF data  
25  
26

1 request (see Kendall Rebuttal Testimony, Pages 11 - 15). APS also argued at one point in its  
2 Initial Post-Hearing Brief that it is unlikely there are either new local generation or  
3 transmission options in its RMR areas (see APS Initial Post-Hearing Brief, Page 10 Lines 16  
4 - 19), while in another portion of its brief stated it has "numerous future options" (see APS  
5 Initial Post-Hearing Brief, Page 21 Lines 22 -25). The only reasonable conclusion that can  
6 be drawn from APS flip-flops on the subject is that in order to protect its own RMR  
7 resources from competition, it understates the situation in the Yuma load pocket.  
8

9           Second, as WMGF articulated in detail in its Initial Post-Hearing Brief, APS  
10 is playing a form of Russian roulette with its customers in the Yuma area by relying upon the  
11 use of transmission counter flows to free up space for APS to use to serve its customers.  
12 Specifically, APS admits to not paying for use of such transmission service. (WMGF Initial  
13 Post- Hearing Brief, Pages 9 - 11). Importantly, APS admits that it has no contracts with the  
14 two Yuma area generators that would require them to generate or sell power to California.  
15 (WMGF Initial Post-Hearing Brief, Page 10, Lines 2 - 18). APS also provides no evidence in  
16 the record to support that such transmission service will be available to APS when it is  
17 needed. Thus, APS's expectation that the Commission will rely on APS's "hope" that such  
18 service will be available for its use when needed and desire that the Commission accept  
19 APS's use of this zero cost option as the yardstick to measure competing proposals to supply  
20 its unmet RMR needs in the Yuma area are unfathomable. Since APS's customers have  
21 absolutely no assurance that such transmission service will be available when it is needed,  
22 the Commission should not allow such service to be a factor in the competitive proposal  
23 evaluation process.  
24  
25  
26

1           2.     **APS's Position That APS-Owned RMR Generation Should Not Be**  
2                   **Contestable In The Competitive Solicitation Should Be Rejected.**

3           APS opposes the inclusion of the APS-owned RMR generation resources as  
4     contestable load in the Track B competitive solicitation. (APS Initial Post-Hearing Brief,  
5     Page 9, Lines 1-2). APS attempts to support its position with a number of superficial and  
6     unsubstantiated claims, apparently intending to create complexity, when in reality, the issue  
7     is actually relatively simple. Specifically, APS argues that the inclusion of APS-owned  
8     RMR generation as contestable load in the competitive solicitation: (1) would be contrary to  
9     the Track A Order; (2) would be contrary to Staff's earlier position in the Track A  
10    proceeding; (3) would be unworkable because there may be too few potential bidders; (4)  
11    creates concern because pricing protocols for RMR solicitation are not known; and (5) runs  
12    the risk of ignoring benefits offered on APS-owned RMR units, such as spinning reserve and  
13    voltage support. (APS Reply Brief, Pages 4 – 10). As explained below, APS's rationale is  
14    spurious; there is actually substantial evidence in the record supporting the opposite  
15    conclusion, which is that APS-owned RMR generation should be included as contestable  
16    load in the competitive solicitation.  
17

18                   1.     APS incorrectly interprets the Track A Order to limit the amount of  
19                   contestable load in the Track B solicitation to only non-APS owned generation:  
20

21           In an apparent attempt to shield its significantly older, less efficient and less  
22    environmentally friendly RMR generation units from competitive proposals for power supply  
23    from new or proposed modern generation plants, APS incorrectly interprets the language of  
24    the Track A Order to support its claim that the Track A Order limits the amount of  
25    contestable power in the competitive solicitation to power provided by non-APS owned  
26

1 generation resources only. (APS Initial Post-Hearing Brief, Page 4 – 5). As explained in  
2 detail in both the Staff's and WMGF's Initial Post-Hearing Briefs (see Staff Initial Post-  
3 Hearing Brief, Page 4, Lines 1 – 20; WMGF Initial Post-Hearing Brief, Pages 12 – 13), the  
4 evidence in the record, however, supports the opposite conclusion, which is that the Track A  
5 Order merely sets a “minimum” starting point for the amount of contestable load in the  
6 competitive solicitation (Decision No. 65154, Page 33, Lines 6 – 14), with the total amount  
7 of contestable load, timing, and form of procurement, to be determined in the Track B  
8 proceeding. (Decision No. 65154, Page 23, Lines 19 - 25). The evidence in the record also  
9 supports the conclusion that the Track A Order specifically creates a placeholder for the  
10 addition of RMR generation to contestable load based upon the results of RMR studies also  
11 directed by Commission in the Track A Decision. (Decision No. 65154, Page 33, Lines 21 –  
12 23). The record shows that the RMR studies will be finalized and submitted to the  
13 Commission by the end of January 2003, which will be in time for inclusion in the Track B  
14 competitive solicitation. (Transcript, Volume II, Page 274, Line 15 through Page 276, Line  
15 16). Accordingly, APS's position that the Track A Order limits the amount of contestable  
16 power in the competitive solicitation to power that cannot be produced by APS's existing  
17 assets is contrary to the weight of the evidence in the record and the Track A Order itself.

18  
19  
20 2. APS's claim that Staff's alleged earlier position in the Track A  
21 proceeding supports the exclusion of existing APS generation from the Track B solicitation is  
22 baseless and irrelevant:  
23

24 APS contends that utility-owned RMR resources should not be contestable in  
25 the Track B competitive solicitation because Staff took that position in its testimony in the  
26

1 Track A proceeding. (APS Initial Post-Hearing Brief, Pages 9 – 10). This argument should  
2 be rejected because the evidence in the record does not support APS’s claim. In responding  
3 to APS’s questioning regarding Staff’s position in the Track A proceeding on this issue, Staff  
4 witness Smith testified that Staff witness Rowell’s Track A testimony was intended merely  
5 as “general Staff views” and that “specifics [of the contestability of RMR generation units]  
6 were left to Track B to resolve the contestability.” (Transcript, Volume II, Page 346, Lines 8  
7 – 12). Assuming arguendo that one member of Staff did hold the position in the Track A  
8 proceeding that existing utility owned generation should not be contestable, APS’s point in  
9 this regard is irrelevant because the Commission did not rule in the Track A as APS claims,  
10 as WMGF discussed above, and the record in this proceeding clearly shows that Staff’s  
11 position is that the inclusion of utility-owned RMR resources is consistent with the  
12 Commission’s Track A Decision. (Transcript, Volume II, Page 249, Lines 21 – 25 and Page  
13 250, Lines 1 – 8). Accordingly, the Commission should reject APS’s claim that utility-  
14 owned RMR resources should not be included in the competitive solicitation because this  
15 allegedly may have been Staff’s position in the Track A proceeding.  
16

17  
18 3. APS’s claim that the inclusion of APS-owned RMR generation in the  
19 competitive solicitation is unworkable because there may be too few potential bidders is not  
20 supported by the evidence in the record and should be rejected:  
21

22 APS argues that the horizon for the first solicitation is unlikely to provide  
23 much in the way of either new local generation or significant transmission projects. (APS  
24 Initial Post-Hearing Brief, Page 10). The only record support for this claim cited by APS is  
25 its cross-examination of Staff witness Smith, which involved a discussion about the status of  
26

1 two transmission lines contemplated to serve loads in the Phoenix load pocket. (See  
2 Transcript, Volume II, Pages 377 – 380) Neither this discussion nor anything else in the  
3 record supports APS's claim about new local generation being unavailable in the first  
4 solicitation's horizon. Furthermore, there is no record support whatsoever for any element of  
5 APS's claim as it relates to the Yuma load pocket. To the contrary, the evidence in the  
6 record shows that at least one power generation provider; namely the Wellton-Mohawk  
7 Generation Facility, does intend to submit a proposal to APS to supply RMR generation  
8 capacity and energy within a reasonable time horizon of the competitive solicitation. (See  
9 Kendall, Direct Testimony and Rebuttal Testimony). A successful proposal by the Wellton-  
10 Mohawk Generating Facility would substantially reduce or eliminate altogether the load  
11 pocket problem in Yuma. Furthermore, regarding new transmission projects, APS's own  
12 Ten-Year Transmission Plan cited in the *Second Biennial Transmission Assessment 2002-*  
13 *2011 (December 2002)* on page 89 includes a new 115-mile 230 kV transmission line from  
14 Gila Bend to Yuma proposed for a 2006 in service date, which is within the time horizon of  
15 the competitive solicitation. Accordingly, the Commission should reject APS's claim  
16 because it is contrary to the record.

17  
18  
19 4. APS's claim that the inclusion of APS-owned RMR generation in the  
20 competitive solicitation is unworkable because APS cannot bid its own units and pricing  
21 protocols for RMR solicitation are not known does not justify such exclusion.  
22

23 APS asserts that a competitive solicitation for APS-owned RMR generation is  
24 unworkable because pricing protocols are not known and APS does not know whether it can  
25 bid its own units at cost or market and it does not know what the market is for RMR  
26

1 generation. (APS Initial Post-Hearing Brief, Page 10). This argument is without merit and  
2 should be rejected by the Commission. First, the evidence in the record clearly supports APS  
3 bidding its own units at cost or market. Staff made this clear in response to questioning by  
4 both APS and TEP, and also in its Initial Post-Hearing Brief. (Transcript, Page 284 Lines 11  
5 through Page 286 Line 24; Transcript, Page 350 Line 25 through Page 351 Line 21; Staff  
6 Initial Post-Hearing Brief, Page 4 Lines 20-21). Second, regarding AISA protocols, the  
7 record shows that Staff's position is that the protocols are known and do apply, which limits  
8 the price for the utility to incremental cost until West Connect is operational, which would  
9 allow market prices. (Transcript, Volume II, Pages 350 - 352). Last, APS's argument that a  
10 RMR generation solicitation would be unworkable is unsupported by evidence in the record,  
11 makes no logical sense, and makes no difference because the "competitive solicitation  
12 process" itself, not APS, will determine market prices for all contestable power supply  
13 including RMR generation. Accordingly, APS's arguments that APS-owned RMR  
14 generation in the competitive solicitation is unworkable are contrary to the evidence in the  
15 record.  
16  
17

18 5. APS's argument that the inclusion of APS-owned RMR generation in  
19 the competitive solicitation is unworkable because it runs the risks of ignoring benefits  
20 offered on APS-owned RMR units, such as spinning reserve and voltage support is  
21 fundamentally flawed:  
22

23 APS argues that the inclusion of APS-owned RMR generation in the  
24 competitive solicitation is unworkable because it runs the risks of ignoring benefits offered  
25 on APS-owned RMR units, such as spinning reserve and voltage support. (APS Initial Brief,  
26

1 Page 10). This argument is fundamentally flawed for two reasons. First, the only support on  
2 the record for APS's claim is witness Wheeler's general statement pertaining to the above-  
3 mentioned services being provided by APS's generation located in the Phoenix area.  
4 (Transcript, Volume III, Page 505). The record does not include and APS provided no  
5 information on the amount of these services, their value, their availability or unavailability  
6 from other APS units, or whether such ancillary services are even provided by APS's units in  
7 the Yuma area. Second, even if the APS-owned RMR generation does provide ancillary  
8 services and such services are needed by APS, it can simply include these services in the  
9 solicitation request and consider their value during the proposal evaluation process. In short,  
10 whether the APS-owned RMR generation does or does not provide ancillary services is not a  
11 matter that affects whether such generation should be contestable in the competitive  
12 solicitation process.  
13  
14

15 **B. RENEWABLE ENERGY:**

16 **1. APS's Calculation Of Its Unmet EPS Renewable Energy Resource**  
17 **Requirement Should Be Accepted.**

18 APS states that its calculation of its EPS requirements was not disputed during  
19 the hearing, but does not identify the specific calculation in the record. (APS Initial Post-  
20 Hearing Brief, Page 9). The evidence in the record shows that no party to the proceeding  
21 disputes APS's year-to-year listing of its unmet EPS renewable resource requirements, which  
22 were provided by APS in response to a WMGF data request and admitted into the record.  
23 (See Transcript, Volume III, Pages 682 - 687 and WMGF Exhibit W-1). Thus, if the  
24 Commission requires each utility to solicit some or all of its unmet renewable resource  
25  
26

1 requirements under the EPS in the competitive solicitation as WMGF recommends, APS's  
2 unmet renewable resource figures are indisputably in the record as Exhibit W - 1.

3 **2. APS's Assertion That Its Outstanding Renewable Energy RFP Negates**  
4 **The Need For Its Unmet Renewable Energy Requirements To Be**  
5 **Included In The Competitive Solicitation Is Without Merit.**

6 APS claims that because it has a two-year old renewable energy RFP  
7 outstanding, it should not be required to include its unmet EPS renewable requirement under  
8 the EPS in the competitive solicitation. (APS Initial Post-Hearing Brief, Page 9, Lines 16 -  
9 19). This argument should be rejected because the substantial evidence in the record shows  
10 that the RFP, besides being outdated, was ineffective as a tool for APS to meet its renewable  
11 energy requirements under the EPS under the current EPS funding level. As explained in  
12 detail in WMGF's Initial Post-Hearing Brief, APS made clear that it was experiencing  
13 substantial shortfalls in meeting its solar electric resource requirements under the EPS.  
14 (WMGF's Initial Post-Hearing Brief, Pages 15 - 16). The evidence in the record and APS's  
15 own witness testimony also makes clear that APS expects to continue to have this substantial  
16 shortfall in meeting its unmet solar electric resource requirements through 2012 under its  
17 current funding levels. (Transcript, Volume III, Page 685, Lines 20 - 25 and WMGF Exhibit  
18 W-1). Thus, the competitive solicitation presents a meaningful opportunity for APS to revive  
19 its renewable energy RFP, to gain greater access the market for competitive proposals in a  
20 new way to fill this unmet EPS obligation and to encourage potential suppliers to propose  
21 innovative technologies to provide cost effective renewable resources. (Kendall, Direct  
22 Testimony, Page 17, Lines 6 - 17; Kendall, Rebuttal Testimony, Page 14 Line 20 through  
23 Page 15, Line 17). Accordingly, APS's argument that its renewable energy RFP negates the  
24  
25  
26

1 requirement for it to include renewable energy in the competitive solicitation is contrary to  
2 the weight of the evidence in the record.

3 **3. APS's Position that Proposals Containing Renewable Energy Resources**  
4 **Should Not Receive any Evaluation Preference in the Competitive**  
5 **Solicitation is Contrary to its Own Position on the Record and Should Be**  
6 **rejected.**

7 APS argues that proposals containing renewable energy resources should not  
8 receive any preference in the general procurement process. (APS Initial Post-Hearing Brief,  
9 Page 9). This is logically contrary to APS's own testimony in the record where APS admits  
10 that proposals containing a renewable energy component provide "added value" to the utility  
11 because they help satisfy the utility's renewable quotas under the EPS. (Carlson, Rebuttal  
12 Testimony, Page 21, Lines 22 - 25). Accordingly, APS's position stated in its Initial Post-  
13 Hearing Brief on this point should be rejected and the Commission should require the utilities  
14 to recognize in their proposal evaluation process the additional value provided by proposals  
15 containing renewable energy resources in helping the utilities comply with their EPS energy  
16 resource requirements.

17 **C. LONG-TERM CONTRACTS:**

18 **1. APS Should Seek to Procure a Well-Balanced Mixture of Contracts,**  
19 **Including Some Long-Term Contracts, in the Solicitation Process Using a**  
20 **Standard that Considers Ratepayer Benefits.**

21 APS's position in its Initial Post-Hearing Brief is unclear as to its willingness  
22 to procure a portfolio of contracts, including some long-term contracts, in the solicitation  
23 process and to evaluate all contracts on a fair and impartial basis based on the benefits they  
24 provide to ratepayers. On one hand, APS states, "this does not mean that APS will not  
25 consider long-term proposals" (APS Initial Post-Hearing Brief, Page 20, Lines 6 - 7), but on  
26

1 the other hand APS says that it will classify any long-term contract proposals as “non-  
2 conforming bids” (Carlson, Rebuttal Testimony, Page 20, Lines 3 – 5), and would impose  
3 additional conditions on such bid proposals (see Carlson, Rebuttal Testimony, Page 20, Lines  
4 3 – 22). These additional conditions on long-term contracts would place an unfair burden on  
5 power suppliers and is APS’s not-so-transparent attempt to eliminate long-term contracts  
6 from consideration. An example on the record of such an unfair condition is that APS would  
7 make a proposal for long-term power have to show:  
8

9                   how APS could be protected if it lost significant  
10                   parts of its retail load to direct access during the  
11                   term of the agreement.

12 (Carlson, Rebuttal Testimony, Page 20, Line 17 – 19). Forcing a power supplier to bear all  
13 of APS’s risk under retail electric competition is preposterous and APS does not provide a  
14 shred of evidence in support of such a burdensome condition. It is also interesting that  
15 nowhere in its Initial Post-Hearing Brief or in its testimony does APS acknowledge or even  
16 discuss the benefits to its ratepayers of a well-balanced portfolio of contracts and the  
17 potential benefits of long-term contracts to the Company and its ratepayers. Therefore, as  
18 explained in detail in WMGF’s Initial Post-Hearing Brief, if APS’s true intent is not to  
19 seriously consider long-term contract proposals, this would be contrary to the Commission’s  
20 stated Track B solicitation purposes of: (1) encouraging the development of a robust  
21 wholesale market for generation in Arizona; (2) allowing customers the benefits of new  
22 Arizona generation resources; and (3) protecting ratepayers from power price volatility.  
23 (WMGF, Initial Post-Hearing Brief, Pages 19 – 23).

24 ...  
25  
26

1                   1.     Long-term contracts benefit ratepayers by encouraging the  
2     development of a robust wholesale market for generation in Arizona:

3                   As explained in detail in WMGF's Initial Post-Hearing Brief, since one of the  
4     Commission's purposes of the Track B solicitation is to encourage the development of a  
5     robust wholesale market for generation in Arizona, then the best way to advance this purpose  
6     is to allow a broad base of generation projects the opportunity to compete in the solicitation.  
7     This would include new or proposed generation projects in addition to existing, older  
8     generating plants. Unlike the existing older generating plants, however, the new or proposed  
9     generation projects will be able to compete in the competitive solicitation process only if the  
10    utilities fairly and impartially evaluate long-term contract bids. Given the turmoil in the  
11    energy industry and financial markets, new generation projects need to obtain long-term  
12    contracts from a creditworthy entity before they can obtain non-recourse financing. Simply  
13    put, if long-term contracts are not available as part of the Track B process, it is virtually  
14    certain that few if any new generation projects will be developed in Arizona absent a radical  
15    change for the better in the energy industry and a significant infusion of confidence to  
16    lenders that financing new generation projects on any basis other than long-term contracts  
17    makes business sense.

18                   Accordingly, consistent with the Commission's stated purpose of the Track B  
19    solicitation to encourage the development of a robust wholesale market for generation in  
20    Arizona, WMGF recommends that the Commission's order in this proceeding include  
21    language requiring the utilities to specifically allow proposals of varying contract terms,  
22    including long-term contracts, and to evaluate all proposals on an equal basis. This would  
23    include long-term contracts, and to evaluate all proposals on an equal basis. This would  
24    include long-term contracts, and to evaluate all proposals on an equal basis. This would  
25    include long-term contracts, and to evaluate all proposals on an equal basis. This would  
26    include long-term contracts, and to evaluate all proposals on an equal basis. This would

1 allow new or proposed generation projects to compete with existing older generating plants  
2 on a level playing field, thereby advancing the development of a robust, wholesale market for  
3 generation in Arizona.

4 2. Long-term contracts would allow APS's customers the benefits of new  
5 Arizona generation resources:  
6

7 As explained in detail in WMGF's Initial Post-Hearing Brief, the acceptance  
8 and evaluation of proposals seeking long-term contracts on an equal basis with proposals  
9 seeking short-term contracts will allow new generation projects the opportunity to compete  
10 with the already existing older generating plants, and thus encourage the development of a  
11 robust wholesale market for generation in Arizona. Additionally, the existence of these new  
12 generation projects would advance the Commission's purpose of allowing the utilities and  
13 their customers the opportunity to obtain the benefits that can only be derived from new  
14 Arizona generation resources (Kendall, Direct Testimony, Page 9, Lines 11 -- 22). For  
15 example, as the record shows and as agreed by APS, new generation facilities are generally  
16 more efficient and more environmentally friendly than older existing generation due to lower  
17 heat rates and the ability to employ more easily the newest pollution control technologies.  
18 (Transcript, Volume III, Page 670, Lines 2 - 4, and Page 670, Line 23 through Page 671,  
19 Line 12). In addition, the record shows that new generation would add incremental power to  
20 the grid thereby increasing supply margins and improving reliability for Arizona electric  
21 consumers (Kendall, Direct Testimony, Page 9).  
22  
23

24 ...

25 ...

26

1                   3.     Long-term contracts would protect APS's ratepayers from power price  
2     volatility:

3                   As explained in WMGF's Initial Post-Hearing Brief, by developing a well-  
4     balanced portfolio of contracts, including some long-term contracts which would lock-in  
5     current low electricity prices, APS will further the Commission's purpose of protecting  
6     Arizona's ratepayers by shielding them from an uncertain future. Staff agreed with WMGF  
7     that the State of Arizona is currently experiencing low electricity prices due in part to  
8     reduced demand for electricity coupled with a surplus of generation. (Johnson, Rebuttal  
9     Testimony, Page 3, Line 10 and Transcript, Volume II, Page 250, Lines 13 - 21; and  
10    Transcript, Volume II, Page 251, Lines 7 - 12, Lines-23 - 25, and Page 252, Lines 1 - 23).  
11    Thus, assuming that the Commission agrees with the above assessment that Arizona is  
12    currently experiencing a "buyers' market" characterized by low electricity prices and that  
13    there is the likelihood that these low electricity prices will increase in the future when the  
14    economy improves and the energy surplus no longer exists, then the Commission should  
15    recognize that APS's ratepayers will best be protected from future price increases APS  
16    obtains a portion of its requirements from long-term contracts. Accordingly, the evidence in  
17    the record strongly supports the Commission requiring APS to seriously consider long-term  
18    contract proposals in addition to shorter term contract proposals and evaluating all proposals  
19    on an equal basis as being in the best interests of the utility's ratepayers.  
20  
21  
22

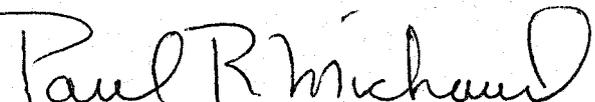
23     **III.    CONCLUSIONS AND RECOMMENDATIONS**

24                   WMGF has demonstrated that the arguments advanced by APS are not  
25     supported by substantial evidence in the record and do not in any way alter or under-cut  
26

1 WMGF's conclusions and recommendations presented in its Initial Post-Hearing Brief that in  
2 the Track B competitive solicitation: (1) RMR capacity and energy resources, including both  
3 utility-owned and non-utility owned resources, should be contestable in the competitive  
4 solicitation process to help resolve Arizona's load pocket problem in the most economical,  
5 efficient and environmentally friendly manner; (2) generators with a renewable resource  
6 component should be permitted to submit proposals in the competitive solicitation, and such  
7 proposals should receive appropriate credit in recognition of the "added value" they provide  
8 the utilities in meeting their renewable resource requirements under the EPS, and the  
9 Commission should adopt WMGF's proposed method for calculating this credit; and (3) the  
10 Commission should require the utilities to seriously consider obtaining a well-balanced  
11 mixture of contracts, including long-term contracts, in the competitive solicitation to protect  
12 ratepayers from future upswings in power prices and to allow new and proposed generating  
13 projects the opportunity to meaningfully participate in the competitive solicitation process.  
14

15  
16 RESPECTFULLY SUBMITTED this 31st day of December, 2002.

17 MARTINEZ & CURTIS, P.C.

18  
19 By 

20 Paul R. Michaud  
21 2712 North Seventh Street  
22 Phoenix, Arizona 85006-1090  
23 Attorneys for Wellton-Mohawk  
24 Generating Facility

25  
26 1752/Track B/Pleadings/Briefs/WMGF's Reply Post Hearing Brief.123102(FINAL)

Original and 19 copies of the foregoing filed with Docket Control, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007, on the 30th day of December 2002, and copies mailed to the following Track B parties:

Raymond S. Heyman  
Michael Patten  
Roshka Heyman & Dewulf  
400 E. Van Buren, Suite 800  
Phoenix, Arizona 85004

Thomas Mumaw  
Pinnacle West Capital Corp.  
400 N. 5<sup>th</sup> St., Station 8695  
Phoenix AZ 85504

Jeffrey B. Guldner  
Snell & Wilmer  
One Arizona Center  
Phoenix AZ 85004

Walter W. Meek, President  
Arizona Utility Investors Association  
2100 N. Central, Suite 210  
Phoenix AZ 85004

Roger K. Ferland  
Quarles & Brady Streich Lang  
Renaissance One  
Two North Central  
Phoenix AZ 85004-2391

Jay L. Shapiro  
Fennemore Craig  
3003 N. Central, Suite 2600  
Phoenix AZ 85012-2913

Scott S. Wakefield  
RUCO  
1110 W. Washington, Suite 220  
Phoenix AZ 85007

Christopher C. Kempley, Esq.  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix AZ 85007

Janet Wagner  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix AZ 85007

Paul R. Michaud  
Martinez & Curtis, P.C.  
2712 North 7th Street  
Phoenix Arizona 85006

Lawrence V. Robertson, Jr.  
Munger Chadwick, PLC  
National Bank Plaza  
333 North Wilmot, Suite 300  
Tucson AZ 85711

William P. Sullivan  
Martinez & Curtis, P.C.  
2712 North 7th Street  
Phoenix Arizona 85006

Michael R. Engleman  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street NW  
Washington DC 20037

Jay I. Moyes  
Moyes Storey  
3003 N. Central Ave., Suite 1250  
Phoenix Arizona 85012

Lori Glover  
Director of Industry Affairs  
Stirling Energy Systems  
2920 E. Camelback Rd. #150  
Phoenix AZ 85016

  
\_\_\_\_\_  
Penny Anderson