

# INTERVENTION



0000038363

OPEN MEETING AGENDA ITEM

**ORIGINAL**

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
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IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR AN EMERGENCY  
INTERIM RATE INCREASE AND FOR AN  
INTERIM AMENDMENT TO DECISION  
NO. 67744

DOCKET NO. E-01345A-06-0009

APPLICATION FOR

LEAVE TO INTERVENE

Pursuant to A.A.C. R14-3-105, Southwestern Power Group II, L.L.C, Mesquite Power, L.L.C. and Bowie Power Station, L.L.C. (collectively "SWPG/Mesquite/Bowie") hereby apply for leave to intervene in the above-captioned proceeding. In support of this Application, SWPG/Mesquite/Bowie submit the following information.

I.

IDENTITY OF APPLICANTS

SWPG/Mesquite/Bowie have actively participated in a number of proceedings before the Commission in recent years relating to the development and maintenance of a viable competitive wholesale power market within the State of Arizona. Several of those proceedings related directly to the desire and ability of SWPG/Mesquite/Bowie to compete for current and future

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2 opportunities to provide capacity and energy at wholesale to Arizona Public Service Company  
3 (“APS”) incident to the conduct of its operations as an electric public service corporation.  
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6 Included among those proceedings were (i) the Track “A” proceeding, (ii) the Track “B”  
7 proceeding, (iii) APS’s \$500 million financing proceeding, (iv) APS’s acquisition of the  
8 Sundance Generating Station assets, (v) APS’s 2003 rate case, and (vi) the 2005 Power Supply  
9 Adjuster/Surcharge proceeding.

10 II.

11 NATURE OF APPLICANTS’ INTEREST

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13 In the Track “A” and Track “B” proceedings, the Commission clearly indicated that one of  
14 its policy goals was to foster the development and maintenance of a viable competitive wholesale  
15 power market. That policy goal was reiterated, in effect, by the Commission in its approval in  
16 Decision No. 67744 of the Settlement Agreement that was negotiated by the parties in APS’s  
17 2003 rate proceeding.

18  
19 An essential ingredient in the existence of a viable competitive wholesale market is the  
20 presence of (investment grade quality) credit-worthy purchasers. On its face, the above-  
21 captioned proceeding appears to have the potential to directly and substantially impact that  
22 ingredient as it pertains to APS. More specifically, APS is the largest electric utility in the State  
23 of Arizona, and it constitutes the largest purchaser of capacity and energy from the competitive  
24 wholesale power market in Arizona. In its January 6, 2006 Application For Emergency Rate  
25 Increase and Interim Amendment to Decision No. 67744 (“Application”), APS has alleged that,  
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2 absent the emergency interim rate increase and interim amendment of Decision No. 67744 which  
3 it seeks, it faces the serious prospect of its securities being downgraded to “junk bond” status. In  
4 addition to increasing the borrowing cost(s) of its capital, APS states that such downgrading  
5 could also result in “operating expense implications” and affect “how APS conducts its power  
6 trading.” [Application at page 12, line 22-page 13, line 4] From the perspective of  
7 SWPG/Mesquite/Bowie, such a development could adversely affect their current or future ability  
8 to engage in power sale(s) transactions with APS. Thus, they have an interest which could be  
9 directly and substantially impacted by the Commission’s disposition of APS’s requests.  
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11 III.

12 APPLICANTS’ INTERVENTION WILL  
13 NOT UNDULY BROADEN THE ISSUES  
14 TO BE CONSIDERED

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16 As noted above, in its Application APS has already stated that a downgrade of its  
17 securities could result in “operating expense implications” which, in turn, could result in  
18 increased rates to its customers. Hence, APS has already brought into the picture that area of  
19 concern which is of primary interest to SWPG/Mesquite/Bowie, and their intervention and  
20 participation would not unduly broaden the issues to be considered.  
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22 IV.

23 ATTORNEY GENERAL OPINION  
24 NO. 71-17 DOES NOT PRECLUDE  
25 INTERVENTION BY APPLICANTS  
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2 As APS notes in its Application, Opinion No. 71-17 of the Arizona Attorney General states  
3 that the Commission has the discretion to determine whether intervention should be allowed in  
4 connection with the conduct of an emergency interim rate proceeding. [Application at page 16,  
5 lines 20-23] However, the rationale underlying Opinion No. 71-17 which would allow the  
6 Commission to preclude ratepayers from intervening in such a proceeding is inapplicable to  
7 SWPG/Mesquite/Bowie in the context of this proceeding. More specifically, the Commission  
8 can protect ratepayers from the prospect of an unwarranted permanent rate increase through the  
9 attachment of a possible refund obligation as an express condition to any interim rate relief it  
10 may grant. In addition, it may require that a bond be posted to assure that any refunds ultimately  
11 due be paid.  
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15 Conversely, the refund provision is not available to protect the legitimate interest of  
16 participants in Arizona's wholesale power market from seeing that the status of a regulated  
17 utility (such as APS) as an (investment grade quality) credit-worthy purchaser is maintained, or  
18 at least not subjected to unwarranted risk. In reality, there is nothing that can guarantee  
19 protection of that interest, but at least intervention allows participants such as  
20 SWPG/Mesquite/Bowie an opportunity to try to reduce the likelihood of occurrence of an  
21 unwarranted risk.  
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23 V.

24 CONCLUSION

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WHEREFORE, for the reasons discussed above, SWPG/Mesquite/Bowie hereby request that the Commission issue a Procedural Order in the above-captioned proceeding (i) granting their request(s) for intervention, and (ii) according them status and all rights as parties of record.

Dated this 13<sup>th</sup> day of January, 2006.

Respectfully submitted,

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And

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Original and 13 copies of the foregoing Application for Leave to Intervene were filed this 13<sup>th</sup> day of January, 2006 with:

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Copies of the foregoing Application for  
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