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October 3, 2002

Colleen Ryan, Supervisor  
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 Phoenix, AZ 85007

Arizona Corporation Commission  
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Re: Docket No. E-01345A-02-0707  
 In the matter of Application of Arizona Public Service Company

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and thirteen (13) copies of Southwestern Power Group, II., L.L.C. and Bowie Power Station L.L.C.'s Reply to Arizona Public Service Company's Response to Motions to Intervene. Also enclosed are two additional copies to be conformed and returned to our office.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

LVR:cl  
 enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCUMENT CONTROL

1 WILLIAM A. MUNDELL  
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4 JIM IRVIN  
5 COMMISSIONER

6 MARC SPITZER  
7 COMMISSIONER

8 IN THE MATTER OF THE )  
9 APPLICATION OF ARIZONA PUBLIC )  
10 SERVICE COMPANY FOR AN ORDER )  
11 OR ORDERS AUTHORIZING IT TO )  
12 ISSUE, INCUR, OR ASSUME )  
13 EVIDENCES OF LONG-TERM )  
14 INDEBTEDNESS; TO ACQUIRE A )  
15 FINANCIAL INTEREST OR INTERESTS )  
16 IN AN AFFILIATE OR AFFILIATES; TO )  
17 LEND MONEY TO AN AFFILIATES OR )  
18 AFFILIATES; AND TO GUARANTEE )  
19 THE OBLIGATIONS OF AN AFFILIATE )  
20 OR AFFILIATES )  
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Docket No. E-01345A-02-0707

**REPLY TO ARIZONA PUBLIC SERVICE  
COMPANY RESPONSE TO MOTIONS TO  
INTERVENE**

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INTRODUCTION

Pursuant to the Chief Administrative Law Judge's ("CALJ") September 24, 2002 oral procedural directive, Southwestern Power Group II, L.L. C. and Bowie Power Station, L.L.C. ("SWPG/ Bowie") submits its Reply to Arizona Public Service Company's ("APS") September 30, 2002 Response to Motions to Intervene ("Response").

In its Response, APS has argued an array of reasons why requests for intervention previously filed by SWPG/ Bowie and others should be denied. APS's Response was in large measure generic in nature. Thus, some of its arguments do not apply to the specific grounds upon which SWPG/ Bowie's September 26, 2002 Application for Leave to Intervene ("Application") was based. Further, as discussed below, APS' other arguments are without merit.

1 The CALJ is familiar with the pleadings filed to date in the above-captioned proceeding, as  
2 well as the background from which that proceeding emerged. Hence, SWPG/ Bowie's comments in  
3 this Reply will be brief.  
4

5 DISCUSSION

6 Argument No. 1:

7 APS asserts in its Response that

8 " . . . Track B Merchant Intervenors clearly are not affected, directly  
9 or indirectly, substantially or in-substantially (*sic*), by the mere act of  
10 APS borrowing money or providing a corporate guarantee. . ." [page  
11 3, lines 9-11] [emphasis added]

12 APS' assertion strains credulity for it ignores its own statements in its September 16, 2002  
13 Application as to why the financing approvals and authorizations in question are being sought. APS'  
14 goal is to strengthen (if not restore) the ability of its generation affiliate to compete in the  
15 competitive wholesale electric market by shoring up that affiliate's credit rating through the  
16 extension of a loan and/or financial guarantee from APS. APS asserts that such loan is critical in  
17 order to fend off the potential downgrade of the affiliate's credit rating by one or more Wall Street  
18 rating agencies. To focus on the act of borrowing or extending a financial guarantee without  
19 examining the underlying purpose and effect is to be disingenuous at best. Moreover, it ignores that  
20 portion of A.A.C. R14-3-105(A) cited by APS, which looks to those who may be "affected by the  
21 proceedings." Such effect is to be ascertained in this instance by examining exactly why APS seeks,  
22 and how it would use, the requested financing approvals and authorization. When examined in that  
23 light, SWPG/ Bowie clearly is "directly and substantially" affected by this proceeding.  
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Argument No.2:

APS further contends that there is “nothing in the APS Application that seeks to or could” adversely affect the competitive procurement process which is the subject of the Track “B” proceedings in the generic electric restructuring docket. [Response at page 3, lines 20-21] [emphasis added] What APS ignores is the fact that the competitive environment in which the results of the Track “B” process will unfold would be directly affected by implementation of the financing approvals and authorization APS seeks in this proceeding. Recent events in the energy industry have precipitated significant financial losses and added business risks on the part of non-utility market participants, resulting in an industrywide downgrading of credit ratings, the exact consequence APS and its affiliates seek to avoid by its Application. Such serendipitous propping up of APS’ affiliate in a time of general industry decline clearly would create a competitive advantage to an APS affiliate competing with these other market participants. Moreover, many of the merchant generators who will be competing with APS’ affiliates in Arizona do not have the ability to draw on the credit of affiliated utility companies to bolster their credit rating and reduce financing costs. Therefore, merchant intervenors have a clear interest in the amount and terms of financing supplied by APS to its affiliate and the impact of that financing on the creation of a level playing field. It is clearly in APS’ interest to elevate form over substance, and thereby overlook the aforementioned inter-relationship; but it should not be allowed to do so.

1 Argument No. 3:

2 At page 4, line 1 of its Response, APS chides one applicant for intervention for attempting  
3 “to assume the unfamiliar role of consumer advocate.” As an examination of SWPG/ Bowie’s  
4 Application discloses, SWPG/ Bowie has made no such assertion. Thus, APS’ argument is  
5 inapplicable as to SWPG/ Bowie.  
6

7 Argument No. 4:

8 At page 4, lines 10-13 of the Response, APS dismisses concerns expressed by some as to the  
9 effect of APS’s financing request on its creditworthiness as a purchaser in the competitive electric  
10 wholesale market. That ground for opposition is also inapplicable to SWPG/ Bowie’s intervention  
11 request.  
12

13 Argument No. 5:

14 At page 4, lines 14-19 of its Response, APS cavalierly endeavors to dismiss the concern  
15 expressed by some applicants for intervention that the requested financing approvals and  
16 authorization could “result in a ‘unfair competitive advantage’” for its generation affiliate. As noted  
17 above, APS continues to ignore statements in its own September 16, 2002 Application indicating  
18 that its purpose is to improve (if not restore) the competitive posture of PWEC. In that regard, in  
19 making the “de-minimis” argument it does at this point in its Response,<sup>1</sup> APS implicitly  
20 acknowledges the presence of an effect on the Track “B” competitive environment it attempts to  
21 deny in its argument numbers 1 and 2, as discussed above.  
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26 <sup>1</sup> See Response at page 4, lines 19-22.  
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1 Argument No. 6:

2 Beginning at page 5, line 8 of its Response, APS shifts to a different line of attack, arguing  
3 that the Track B Merchant Intervenor do not have an interest in the above-captioned proceeding  
4 which warrants protection. In addition to complaining about how poorly it has fared thus far in the  
5 Track "A" and Track "B" proceedings, presumably as a consequence in part of these same Merchant  
6 Intervenor participation in those proceedings, APS cites three (3) decisions from other jurisdictions  
7 in support of its opposition. However, APS' reliance is misplaced.  
8

9  
10 In Re Ohio Power Company appears to be distinguishable from the instant procedural  
11 setting. More specifically, here there is no other present or foreseeable future proceeding in which  
12 to address the propriety of APS' intended use of the financing approvals and authorizations which it  
13 seeks. Once APS' Application has been granted, it has received all the necessary clearance it needs  
14 from the Commission to proceed with its plan to financially buttress its generation affiliate, thereby  
15 improving (if not restoring) PWEC's competitive posture vis-a-vis SWPG/ Bowie and others.  
16

17 The GTE Northwest Incorporated decision also appears to be distinguishable from the  
18 present situation. In that case, the Intervenor were concerned that the requested accounting  
19 treatment might give the regulated utility a competitive advantage. Here, APS has indicated a  
20 specific purpose of its request is to improve the competitive posture of its unregulated generation  
21 affiliate.<sup>2</sup> More specifically, APS' own September 16, 2002 Application clearly states that the  
22 proceeds and guarantees of the requested financing approvals and authorization will be used to  
23 improve (if not restore) its generation affiliate's competitive posture. Thus, there is no need to  
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26 \_\_\_\_\_  
27 <sup>2</sup> Further, in the GTE situation, the utility was also subject to ongoing regulation by the Washington Commission.  
28 In this situation, APS' unregulated generation affiliate will not be subject to such scrutiny and control.

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1 speculate as to what the effect will be in an area where SWPG/ Bowie has a direct and substantial  
2 interest. PWEC's competitive posture in the Track "B" competitive procurement environment will  
3 be enhanced from what otherwise would have been the case.  
4

5 Finally, the Monsanto Company case also appears to be distinguishable. Here, the substantial  
6 interest of SWPG/ Bowie and other merchant applicants for intervention lies in the functional  
7 integrity of that competitive environment which the Commission desires to create, and into which  
8 the Track "B" competitive procurement process will be introduced. The interest here is one of a  
9 public policy nature, not just economic considerations.  
10

### 11 CONCLUSION

12 WHEREFORE, for all of the reasons discussed above, and those set forth in its September  
13 26, 2002 Application for Leave to Intervene, SWPG/ Bowie requests that its Application for Leave  
14 to Intervene be granted as prayed for and that APS's arguments in opposition thereto be rejected.  
15

16 DATED this 3<sup>rd</sup> day of October, 2002.

17 Respectfully submitted,

18  
19 By: Lawrence V. Robertson, Jr.

20 Lawrence V. Robertson, Jr.  
21 Munger Chadwick, P.L.C.

22 Attorneys for SWPG/ Bowie Energy  
23 Resources

24 The original and ten (13)  
25 copies of the above Application  
26 for Leave to Intervene was filed  
27 on October 3, 2002 with  
28 Docket Control

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