

**ORIGINAL**

BRIEF OF DISTRIBUTED ENERGY A  
DOCKET



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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Arizona Corporation Commission  
**DOCKETED**  
JAN 19 2007

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**IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR AUTHORIZATION TO  
ACQUIRE A POWER PLANT.**

**DOCKET NO. E-01345A-06-0464**

**POST-HEARING BRIEF OF  
DISTRIBUTED ENERGY  
ASSOCIATION OF ARIZONA**

The Distributed Energy Association of Arizona (the "DEAA") submits the following post hearing brief in connection with the above-referenced matter.

**I. Introduction.**

On July 13, 2006 Arizona Public Service Company ("APS") filed with the Arizona Corporation Commission ("Commission") an application for approval to purchase a new generation resource within the APS Yuma load pocket either through direct contracts with vendors or through a contract with a developer.

The Commission granted intervention to Mesquite Power LLC, Southwest Power Group LLC and Bowie Power Station LLC, Arizona Competitive Power Alliance, and the Distributed Generation Association of Arizona ("DEAA").

1 Procedural orders were issued August 22, 29, and October 16, 2006, and a pre-  
2 Hearing conference was held on November 16, 2006.

3 The DEAA participated in the proceeding and January 2007 hearing before  
4 the Commission.

5 **II. Discussion.**  
6  
7

8 This case relates to whether Arizona Public Service (APS) properly  
9 conducted an request for proposal (RFP) to add generation resources in the  
10 area known as the Yuma load pocket. There is a potential need for additional  
11 generation resources within the Yuma load pocket by the summer of 2008. APS  
12 conducted a Request for Proposal (RFP), seeking proposals for generation  
13 resources. APS received and reviewed 25 proposals. APS selected one of the  
14 third party bids, and thereafter, and only thereafter decided to develop its own  
15 self build (APS later called Direct-Build) proposal to compare with this "winning"  
16 third party proposal.

17 In Docket No. E-01345A-03-0437, Decision No. 67744 (hereafter Decision  
18 67744) in an Opinion and Order issued April 7, 2005, the Commission  
19 approved, with modifications, the Settlement Agreement related to APS' 2003  
20 Rate Proceeding Case.

21 The Settlement Agreement in Decision No 67744 established certain  
22 guidelines to follow in handling any such RFP's. DEAA Believes that APS  
23 handled the RFP process incorrectly and contrary to the requirements of  
24 Decision No. 67744.

1 DEAA's members are competitive suppliers of electric power intended to be  
2 benefited by the provisions of the APS rate case Settlement Agreement, which  
3 the Commission approved in Decision No. 67744. In that regard, Article IX of  
4 the Settlement Agreement provides that distributed generation entities shall be  
5 afforded the opportunity to participate in various competitive power  
6 procurements (or RFP's) to be conducted from 2005 forward. Accordingly  
7 DEAA and it's members are directly and substantially affected by proceedings  
8 in which the Commission interprets and applies the provisions of Article IX of  
9 the Settlement Agreement and related provisions of Decision No. 67744.

10 DEAA's members will be harmed by revision or reversal of the portion of the  
11 Settlement Agreement that directs APS not to self-build (direct-build) any power  
12 plant supplies until 2015. If the ACC were to grant APS their Application then  
13 the decision may act as a precedent for APS to request a reversal of other  
14 portions of the order. The Ross Labs' precedent for by-passing a DG supplier  
15 should not be allowed to occur again. It will freeze the DG industry. Next APS  
16 could also use the same tactic with the REST program as they are attempting  
17 to do with this Yuma issue. APS testified they would ask for third party RFP  
18 proposals and then later determine if APS could beat that price.

19 Finally The terms of the above ORDER is clear. It prohibits APS from self-  
20 building any unit for the Yuma project or any other relevant project until 2015.

21  
22  
23 The DEAA has members in the following businesses or allied supply  
24 businesses that offer the following services: Design of the plant or portions of it;

1 ownership of the plant; materials or land supply; natural gas services; finance of  
2 the entire plant or portions of the plant; design or supply of water saving  
3 techniques or equipment; and 7. Renewable energy systems or equipment

4  
5 The various categories of member interests include:

6  
7 1. CHP Systems Interests:

8  
9 If a third party supplier were to be hired, there becomes a future  
10 possibility of combined heat and power (CHP) being added to  
11 the plant. CHP systems have approximately twice the fuel  
12 efficiency as a normal APS plant. APS has shown little history  
13 of adding CHP to their existing plants. There is no incentive for  
14 APS to add CHP since they pass-on all the costs to the  
15 ratepayer with or without CHP.  
16

17 2. Finance:

18  
19 Our member that offers financing of projects could secure  
20 business with all or portions of the equipment or systems.  
21

22 3. Operation of plant:

23  
24 Our members that offer plant operation services could operate  
25 the third party plant.  
26

27 4. Renewable Energy Technology:

28  
29 Our members could add a low cost renewable technology into  
30 the plant such as solar heating / cooling or biogas fueled  
31 heating / cooling system thereby increasing the efficiency of the  
32 plant. There may be other associated renewable energy  
33 systems that are cost effective.  
34

35 5. Water usage:

36  
37 Our members could provide or operate or design or finance a  
38 closed condenser water cooling system for a third party plant  
39 that would save considerable water usage.  
40

41 6. Suppliers:

1                   Several of our members can supply portions of the third- party  
2                   supplied plant.

3  
4                   Approval of APS' course of conduct would signal to the industry to  
5                   discontinue any attempt to promote third party ownership of power plants. It  
6                   would be fruitless and unproductive for the industry to spend any time or effort  
7                   on this subject if APS could intervene at will into a decision-making process and  
8                   essentially take over the project for themselves. This would establish a  
9                   precedent very similar to the precedent that was set during the Ross Labs issue  
10                  of the 1990s.

11  
12                  In the Ross Labs case APS offered Ross Labs in Casa Grande their proposal  
13                  that equaled the value of third party Distributed Generation (Cogeneration at  
14                  that time) proposal that Ross Labs had previously approved. The APS offer  
15                  caused Ross Labs not to install DG recommended in their own Facility Report  
16                  that would have saved Ross Labs a great deal of money.

17                  When the ACC accepted the APS petition to approve the undercutting 'by-  
18                  pass' of the third party DG proposal by APS, most of the DG industry stopped  
19                  presenting offers to the industrial customers in Arizona. It became useless  
20                  and unproductive for parties to submit proposals that APS would simply use to  
21                  offer a competitive rate bargain. The Utility could always take the case to the  
22                  ACC that would match the deal. The customer would have no risk or operating  
23                  equipment while still managing to receive equivalent financial benefits.

24  
25                  DEAA believes that if the ACC allows a similar "utility bypass" to occur and  
26                  does nothing to curtail this improper use of third party data and undercutting of  
27                  third party suppliers by utilities, then there will be no major DG installations in  
28                  Arizona.

29

1 DEAA maintains that the ability of APS or indeed any Utility to know the terms  
2 of, and then meet or beat an offer to install DG by an interested third party or by  
3 the customer, it will undermine the entire DG industry and serve to stop DG  
4 project development.

5  
6 This Yuma issue represents a similar precedent. In fact if the Commission  
7 allows this reversal of the ORDER it will have a 'freezing effect' on the DG  
8 industry.

9  
10 The DEAA notes that subsection r. of the Opinion and Order in Decision No.  
11 67744, the Commission ordered that a Distributed Generation Workshop be  
12 conducted. In the Distribution Generation Workshop, Commission Docket No.  
13 E-00000A-99-0431 the specific problem caused by APS' behavior in this case  
14 will likely be addressed.

15  
16 On March 17, 2006 the last meeting of the Workshop Commission Staff handed  
17 out a Committee Draft Discussion Document. Section 2.7 deals with efforts by  
18 utilities to circumvent the distributed generation requirements. See:

19 <http://www.cc.state.az.us/utility/electric/DG-03-17-06min.pdf>

20  
21 The Commission noted in subsection r of Decision No 67744 that the  
22 Workshop should employ the Texas Distributed Generation standards as well  
23 as California CPUC Rule 21 in developing standards for Arizona.

24  
25 Subsection 25.211(j) of the Texas standards discusses and prohibits self  
26 dealing by utilities when handling distributed generation proposals:

27  
28 "A utility and its affiliates shall not use such knowledge of proposed distributed  
29 generation projects submitted to it for interconnection or study to prepare  
30 competing proposals to the customer that offer either discounted rates in return  
31 for not installing the distributed generation, or offer competing distributed  
32 generation projects."  
33

1       That is the Texas PUCT standards prohibit the sort of self dealing that  
2 occurred in the Ross labs case and might possibly have occurred here in the  
3 APS Yuma situation. Here where cross membership/pollination occurred  
4 between APS Committees which reviewed the third party generation proposals  
5 and also developed the APS proposal to compete with the same third party bid  
6 proposals.

7  
8       Application of a self dealing standards similar to Texas PUCT regulation  
9 25.211(j), and as is being considered in Section 2.7 of the Distributed  
10 Generation Workshop, should also be applied to the APS RFP process.

11  
12       In fact APS testified that APS intends to review and possibly direct-build DG  
13 capacity that will be required under the Renewable Energy Standards & Tariff  
14 (REST) Rules Decision 69127 in a fashion similar to the way that the Yuma  
15 RFP was handled.

16  
17       DEAA is reasonably concerned that if the ACC approves the APS Application,  
18 and allow APS to "direct-build" the Yuma plant under the circumstances of the  
19 case here, it will be an open invitation for APS to attempt to reverse the DG  
20 portion of Renewable Energy Standards and Tariff (REST) Rules Decision  
21 69127 that was passed in October 2006, and where DG represents 30% of the  
22 program.

23  
24       Mr. Dinkle of APS stated in his testimony that in complying with DG  
25 requirements of the REST program, that APS would similarly ask for third party  
26 proposals and later determine whether or not APS could beat that price. As  
27 DEAA witness Mr. Baltus noted, this is an APS Company policy that would  
28 undercut DG in the REST Program.

29  
30       This may allow APS to become the sole provider of renewable power in their  
31 territory and would remove the competitive nature of the REST program.

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2  
3 **The Decision No 67744 Settlement Agreement Prohibits APS from Direct-**  
4 **Building the Yuma Plant.**  
5

6  
7 Page 43 line 13 of the Opinion and Order states: "IT IS FURTHER  
8 ORDERED that APS shall comply with Findings of Fact No. 33 when  
9 acquiring a generating unit or an interest in one."

10  
11 Finding of Fact No. 33 reads: " We are modifying the definition of "self-build"  
12 to include the acquisition of a generating unit or interest in a generating unit  
13 from any merchant or utility generator, and we will require APS to obtain the  
14 Commission's expressed approval for APS acquisition of any generating facility  
15 pursuant to a RFP or other competitive solicitation issued before January 1,  
16 2015." (Page 38, line 25).

17  
18 The key phrase is " ... definition of "self-build" to include the acquisition of a  
19 generating unit or interest in a generating unit from any merchant or utility  
20 generator..." The DEAA believes the terms of the Opinion and Order in  
21 Decision No 67744 to be clear. It prohibits APS from self-building any unit for  
22 the Yuma project or any other relevant project until 2015.

23 **III Summary.**  
24

25 If the ACC grants APS' Application, then there may be precedent for APS to  
26 request a reversal of other portions of the order such as the REST Program.

27 The Ross Labs precedent for by-pass must not be allowed to occur again. It  
28 will freeze the DG industry.

29 APS could use the same tactical approach to handling DG RFP's under the  
30 REST program as they are attempting to do with this Yuma issue. APS

1 testified they would ask for third party RFP proposals and later determine at  
2 their leisure whether APS could beat that price.

3 Finally Decision No. 67744 is clear. It prohibits APS from self-building any unit  
4 for the Yuma project or any other relevant project until 2015.

5 **IV. Conclusion.**

6 We encourage the Commission to deny APS' request.

7  
8 Respectfully submitted this 19th day of January 2007.

9  
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19 The original and 13 copies  
20 of the foregoing have been filed  
21 as of January 19, 2007 with:

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23 Docket Control  
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25 1200 W. Washington  
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27  
28 Copies of the foregoing have  
29 been mailed, faxed, or trans-  
30 mitted electronically as of  
31 January 22, 2007 to:

32  
33 All parties of record

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