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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, Chairman
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BARRY WONG

AZ CORP COMMISSION
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IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY - APPLICATION FOR
AUTHORIZATION TO ACQUIRE POWER
PLANT

DOCKET NO. E-01345A-06-0464

REQUEST FOR PROCEDURAL
ORDER

INTRODUCTION

Arizona Public Service Company ("APS" or "Company") hereby files its Request for Procedural Order in the above-referenced docket to allow for the timely resolution of the Company's pending Application. The Company requests that the Administrative Law Judge ("ALJ") require the Arizona Corporation Commission ("Commission") Staff to file its report and recommendation regarding the Company's Application for authorization to acquire a power plant in this docket by November 21, 2006. APS also requests that the ALJ require the Merchant Intervenor¹ to file any report they wish to submit regarding their position on the APS Application by November 21, 2006.² Based on the Company's Application and

¹ The "Merchant Intervenor" include Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C., Bowie Power Station, L.L.C., and the Arizona Competitive Power Alliance. Although the Distributed Energy Association of Arizona ("DEAA") has been granted intervention, they have not filed any further pleadings in this docket. Because their application for intervention raises issues similar to those raised by the applications for intervention filed by the other Merchant Intervenor, however, APS includes them in the term Merchant Intervenor for purposes of this Request for Procedural Order.

² The Merchant Intervenor other than DEAA were granted intervention in this docket on August 29, 2006. Although more than two months have passed since then, the Merchant Intervenor have not yet requested any discovery from APS. As the Company indicated previously, however, APS stands ready to provide the Merchant Intervenor copies of all materials given to Staff in support of the APS Application subject to a Protective Order. APS would propose to execute a Protective Agreement similar to that entered into with the Merchants during the rate case proceeding that led to Decision No. 67744. Under that Protective Agreement, APS's confidential information relating to the RFP and the Company's analysis could be shared with the Merchant Intervenor's attorneys and a third party consultant who would not provide any support to the Merchant Intervenor in any future APS RFP or other solicitation.

1 supporting data, the Staff Report, and any filing by the Merchant Intervenors, the ALJ should
2 have a sufficient basis to determine whether APS's Application adequately addresses the
3 factors set forth in Paragraph 75 of the Settlement Agreement, as modified and approved in
4 Decision No. 67744 (April 7, 2005).

5 If the ALJ finds, based on the evidence provided by the parties that the APS
6 Application meets the requirements of the Settlement Agreement, APS requests that the ALJ
7 forward her Recommended Order, along with the Company's Application, the Staff Report
8 and any Merchant Intervenors filing, to the Commission without a hearing for consideration
9 at the Commission's December Open Meeting. If the ALJ determines based on the evidence
10 submitted by the parties that the matter must be set for hearing, APS requests that such
11 hearing be expedited and scheduled such that a Commission decision can be issued by no
12 later than January 2007.

13 DISCUSSION

14 In its July 13, 2006 Application in this docket, APS requested approval from the
15 Commission to pursue a "self-build" alternative for generation in Yuma, Arizona, as required
16 by the Company's 2005 rate case final order, Decision No. 67744. APS requested a decision
17 by the Commission by October 2006 in order to facilitate the summer 2008 in service date.
18 During the August 29, 2006 Procedural Conference, and throughout this proceeding, APS
19 explained that there is a need for a timely decision in this matter and that APS was concerned
20 that the complicated and unnecessary procedures proposed by the Merchant Intervenors
21 would unreasonably delay a decision on the Company's request for authorization. Under
22 Decision No. 67744, APS may not sign agreements, make payments, or make commitments
23 regarding the ownership of new generation facilities without the Commission's prior
24 approval. Thus, Commission approval of APS's Application is needed in order to allow the
25 Company to proceed and secure fixed pricing and the scheduling commitments from
26 equipment vendors and contractors necessary to ensure an in-service date by the summer of
27 2008. The competitive market for large equipment and services needed for power plant
28 construction is global and dynamic. Due to worldwide economic expansion and growth in

1 energy demand, there is currently significant demand for power resources. In such a market
2 environment, both price and scheduling are moving targets. Unless and until the Company
3 can secure firm contractual commitments fixing both prices and schedules, it and its
4 customers are at risk for potential cost escalation and schedule delays.

5 The Company's Application in this docket is a straightforward request for
6 authorization to acquire a power plant in the Yuma load pocket. The Company has not
7 requested cost recovery in its Application. The Company's request was based on the results
8 of a fair and open RFP process that provided the wholesale power market with more than
9 sufficient opportunity to provide APS and its customers with an economic resource to meet
10 the growing demand within the Yuma load pocket. In support of its Application, APS has
11 provided Staff with detailed documents showing that the power purchase agreements
12 ("PPAs") offered in response to the request for proposals ("RFP") were approximately \$20-
13 \$30 million more than the asset purchase proposals based on a 30-year net present value
14 revenue requirement. The Merchant Intervenors have not asserted any concerns with *how* the
15 Company conducted the RFP, but merely imply that because APS did not enter into a less
16 economic PPA and is proposing an asset acquisition (i.e., a "self-build"), it must be
17 presupposed that APS has circumvented the Settlement Agreement and that the Company's
18 Application must be subjected to an evidentiary hearing to address issues far beyond those
19 raised by the APS Application.³

20 It should be noted that neither the Settlement Agreement nor Decision No. 67744
21 contain an outright ban on supplying needed resources through "self-build" options.
22 However, they do identify specific factors that must be addressed in an application to secure
23 Commission authorization for self-build. APS's Application addresses each of those factors
24 and clearly identifies self-build as the most economic option based on the proposals it

25 ³ During the August 29, 2006 Procedural Conference and in their various pleadings, the Merchant Intervenors assured the
26 ALJ and the parties that granting their requests for intervention would *not* unduly broaden the issues to be consider in this
27 docket. Yet despite that assurance, Merchant Intervenors continue to propose a complicated and time-consuming process
28 and assert that the Commission must consider not just the Company's specific application but also determine a formal
process for how the Company conducts all future RFP processes. How the Merchant Intervenors can continue to assert
that such a position does not unduly broaden this proceeding is difficult to understand.

1 received in the RFP process. Neither the Settlement Agreement nor Decision No. 67744
2 suggest that a full evidentiary hearing process would be necessary to support any application
3 for self-build options. To dispel any doubt that might otherwise exist, however, Paragraph 76
4 of the Settlement confirms that nothing in the Settlement Agreement is intended to alter
5 APS's obligation to serve customers, a mandate APS is attempting to uphold through its
6 Application. The request by the Merchant Intervenors for an extensive, drawn-out
7 evidentiary process is unnecessary. By suggesting that there is some type of inconsistency or
8 ambiguity in the Settlement Agreement that must be resolved in this docket, or by seeking to
9 raise issues about how future resource needs will be decided by APS and this Commission,
10 Merchant Intervenors go well beyond the scope of the Company's Application and, contrary
11 to their commitment, will certainly extend the time and potentially increase the cost of
12 supplying a needed resource for APS customers.⁴ The requested procedural order ensures
13 that the Commission will have an appropriate opportunity to evaluate the Company's
14 application – Staff is fully capable of evaluating the Company's Application and making a
15 recommendation to the Commission and the Merchant Intervenors will have an ample
16 opportunity to provide the Commission with input on the Company's application without the
17 need for a full evidentiary hearing.⁵

18 The Company's request for a procedural order also is consistent with the Staff's Reply
19 to APS' September 22, 2006 Response. In that Reply, Staff reiterated that they do not believe
20 a hearing is required to allow Staff to present its case or process the APS Application. Staff
21 also noted that they do not believe an independent monitor is required to ensure a thorough
22 evaluation of APS's application. APS would strongly oppose any requirement that it, and its
23 customers, be required to pay any portion of a third party review of the APS Application.

24 ⁴ APS acknowledges that the decision in this proceeding does not necessarily create binding precedent for any future
25 applications submitted by the Company.

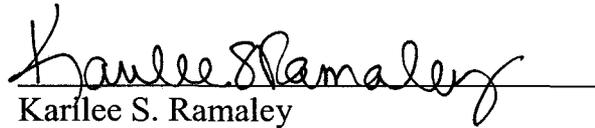
26 ⁵ The Merchant Intervenors were granted intervention based on assurances that they would not unduly broaden the issues
27 or delay the decision. Through the proposed process, the Merchant Intervenors will be able to prepare for and provide to
28 the Commission at an Open Meeting any concerns they have *with respect to the Company's request*. For those reasons,
APS respectfully disagrees with any implication that there would be due process concerns with proceeding directly to
Open Meeting as proposed in this Request for Procedural Order.

1 **CONCLUSION**

2 The Application submitted by APS is straightforward and fully supported by the
3 information provided to Staff. The Company therefore requests that the ALJ issue a
4 Procedural Order requiring Staff to file its recommendation on the Company's Application by
5 November 21, 2006, and order the Merchant Intervenors to file any comments on APS
6 Application by the same date. Based on the APS Application, the Staff report, and any filing
7 made by the Merchant Intervenors, the ALJ should have sufficient information to determine
8 whether to forward the Company's Application to the Commission for consideration at Open
9 Meeting or schedule an expedited hearing. Should the ALJ determine that a hearing should
10 be held, APS requests that such hearing be scheduled such that a Commission decision can be
11 issued no later than January 2007.

12 RESPECTFULLY SUBMITTED this 7th day of November, 2006.

13
14 PINNACLE WEST CAPITAL CORPORATION

15 

16 Karilee S. Ramaley
17 Thomas L. Mumaw

18 Attorneys for Arizona Public Service Company

19 The original and 13 copies of the foregoing were
20 filed this 7th day of November, 2006 with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25 A copy of the same served by email or
first class mail this same date to:

26 All Parties of Record

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