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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING
ELECTRIC RESTRUCTURING

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN
REQUIREMENTS OF A.A.C. 4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT
SCHEDULING ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON
ELECTRIC COMPANY'S APPLICATION
FOR A VARIANCE OF CERTAIN
ELECTRIC POWER COMPETITION
RULES COMPLIANCE DATES

E-00000A-02-0051
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TRACK B CLOSING BRIEF OF
PANDA GILA RIVER, L.P.

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1 I. INTRODUCTION
2

3 After months of significant effort by Commission Staff and multiple intervening
4 parties, Arizona stands poised to initiate a competitive solicitation process that is workable,
5 sustainable and capable of providing benefits to Arizona ratepayers that could not be
6 achieved through the current non-competitive power supply process.¹ The solicitation
7 process developed in the Track B workshops, with the additions described below, would
8 allow this Commission to do what the Commission envisioned when it started down the
9 path toward competitive power procurement; namely, to provide ratepayers with lower-cost
10 energy, from newer, cleaner, more efficient, and equally, if not more, reliable generating
11 facilities than those presently in operation.

12 This Commission's goal must be to stay the course in its continuing effort to
13 deploy the newer, cleaner and more efficient facilities that stand ready to serve Arizona's
14 load.² The Commission should not allow the incumbent utility to displace that utility's
15 older inefficient generation with affiliate-owned generation unless the prices the affiliate
16 proposes to charge have been market tested. Otherwise, Arizona ratepayers would not be
17 afforded the opportunity to determine, and to lock-in, any savings that could result from a
18 fully competitive procurement, and would remain exposed to and dependent upon the
19 vagaries of the market.

20 PGR outlines below how the Commission can continue its efforts to take
21 advantage of the developing Arizona wholesale markets while putting Arizona ratepayers

¹ The partners of Panda Gila River, L. P. ("PGR") were active participants in that development process, not simply through its legal counsel but rather through its business representatives who attended each and every workshop, along with industry experts retained by PGR.

² Tr. 37, line 11 to 40, line 13.

1 first. That vision is achieved first by adopting Staff's recommendation that incumbent
2 utilities conduct a solicitation for capacity and energy. For the initial solicitation for 2003-
3 2006, PGR urges the Commission to adopt Staff's determination of unmet capacity needs,
4 including capacity currently designated as RMR. Under Staff's calculation, the solicitation
5 would be for up to 2,950 MW for APS and 898 MW for TEP.³

6 The amount of energy subject to solicitation would be that amount of energy
7 that could not "economically" be obtained from APS's and TEP's existing units. APS has
8 argued that it should not be required to replace even the energy from its uneconomic units
9 through the Trade B solicitation process. It acknowledges, however, that thousands of
10 gigawatt hours ("GWh") of energy likely would be displaced by competitive resources were
11 the solicitation process to move forward. Based on numbers provided by APS and TEP,
12 Staff Exhibit S-5 determined the 2006 energy solicitation amount to be 8,680 GWh for
13 APS and 104 GWh for TEP.⁴

14 However, to fully achieve the Commission's goals, it is not sufficient for APS
15 and TEP simply to solicit that amount of capacity or energy required to satisfy their system
16 peak requirements; the solicitation must seek out products that allow the incumbent utility
17 to replace existing, inefficient and dirty generation over the long term. Hence, PGR
18 proposes that the Commission require APS to procure the majority of its unmet needs,
19 1,891 MW (1,644 MW plus 15% in 2006),⁵ in a RFP for asset-backed, dispatchable, unit

³ The numbers represent the MW subject to solicitation in 2006, the last year of the initial solicitation period.

⁴ The calculation for TEP was subject to change with the identification of certain units claimed to be RMR and the inclusion of the energy from those units for RMR hours.

⁵ These figures represent the amount of capacity from APS's affiliates' Redhawk and new West Phoenix's units. Based on numbers provided by APS during the Track B workshop, the energy production associated with that capacity would be expected to reflect a 38% to 41% capacity factor across the years 2003 to 2006. Exhibit APS-4 (Schedule PME-3R) (footnote continued on next page)

1 contingent bids. The remainder (1059 MW in 2006) would be solicited through an RFP
2 or auction and would be supplied through seasonal call options.

3 PGR's additions to the Staff proposal afford the Commission the opportunity to
4 achieve its vision at no risk to ratepayers. To help ensure, however, that ratepayers are
5 provided additional protections for the competitive procurement process, PGR proposes
6 that an Independent Party or Monitor conduct the initial solicitation (and be a full
7 participant in the selection of winning bids and products) if an affiliate of the incumbent
8 utility is going to bid in the solicitation. Such a process will ensure a transparent process
9 and reinforce its results, whether affiliates or non-affiliates prevail.

10 Finally, PGR outlines areas where the existing regulatory Code of Conduct
11 needs to be tightened to ensure that incumbent utility treat all potential suppliers on fair
12 and equal terms. The clarifications proposed herein, provide no preference to PGR in the
13 proposed solicitation. The changes do not, in fact, guarantee anything to PGR, or any
14 other merchant generator, other than the right to compete on a level playing field with the
15 affiliates of the incumbent utility. Put simply, under the PGR proposals, the ratepayers of
16 Arizona win and no potential supplier unfairly loses.

indicated that APS expected to displace 5,728 GWh of energy in 2003, 6,170 GWh in
2004 and 7,217 GWh in 2005 from other APS resources with generation from the
Redhawk, new West Phoenix and Saguaro facilities.

1 II. THE INITIAL 2003-2006 COMPETITIVE PROCUREMENT

2 A. The Staff Goal Of A Manageable Transition To A Competitive
3 Wholesale Power Market That Provides Economic Benefits To
4 Arizona Consumers Calls For A Solicitation Involving Significant
5 Amounts Of Capacity And Energy

6 On October 25, 2002, Staff filed its Staff Report⁶ outlining Staff's vision, based
7 on the six days of workshops, of the competitive procurement process and the minimum
8 amount of power to be solicited. While PGR agrees with most aspects of that report,
9 certain fundamental revisions need to be made if the report is to form the basis of a
10 Commission Order for Track B.⁷ For the Commission's convenience, attached hereto are
11 PGR's proposed modifications of that report, with citations to testimony or other
12 supporting material for each proposed change.⁸

13 During the course of the six days of workshops, the Track B participants agreed
14 on a large variety of matters surrounding the proposed competitive procurement.⁹ There
15 was no agreement, however, on the most fundamental issue to be determined through this
16 Track B proceeding, the "minimum amount of power"¹⁰ that APS will be required to solicit
17 and procure through the competitive procurement process.¹¹ To be sure, as noted by Staff

⁶ *STAFF REPORT ON TRACK B: COMPETITIVE SOLICITATION* DOCKET NOS. E-00000A-02-0051 ET AL." ("Staff Report").

⁷ Staff Report at 1, line 4-16.

⁸ In the black-line version of the Staff Report, attached hereto as Exhibit 1, PGR has eliminated everything after Section 5. The eliminated sections reflect Staff's position on unresolved issues (advocacy position) or a survey of other state's solicitation experience. PGR's revisions focus on the Sections of the Staff Report that could form the substantive part of a Commission-ordered solicitation process.

⁹ Those agreements are outlined in the Staff Report at 30-33.

¹⁰ On September 10, 2002, the Commission issued Decision No. 65154, holding that "[t]he minimum amount of power, the timing, and the form of procurement shall be determined in the Track B proceeding." Decision No. 65154 (the "Track A Order") at 33, lines 6-14 [emphasis added].

¹¹ The amount of TEP contestable load is not listed in the Staff Report as a remaining issue. Throughout the workshops, TEP acted constructively through knowledgeable
(footnote continued on next page)

1 Counsel, there is no “magic” amount of capacity and energy that should be procured
2 through the competitive procurement.¹² But it is equally obvious that the goal of
3 providing ratepayer benefit is only achieved by having a meaningful solicitation –
4 meaningful in both quantity and product types – and that, while Staff surely is correct that
5 the incumbent utility is not required to purchase, it is essential to achieving the goals
6 articulated by the Commission’s Track A Decision and Staff’s Report that the Track B
7 Order articulate clear expectations as to the circumstances under which the incumbent
8 utility will be expected to contract with bidders to the solicitation.

9 It is important to point out the difference between contestable load as that term
10 is used in the Staff Report to define the scale of the solicitation, and the minimum amount
11 of power that APS and TEP will in fact be required to purchase. The first refers to the
12 amount of APS load that may be more economically obtained from the competitive
13 market; the latter refers to the number of MWs and GWhs actually bid at prices that are
14 lower than those available from incumbent resources. The first number is defined in this
15 proceeding; the second by the bids received pursuant to the solicitation process ultimately
16 adopted.

17 In the Track A Order the Commission found that “requiring some power to be
18 purchased through the competitive procurement process developed in Track B will
19 encourage a phase-in to competition, encourage the development of a robust wholesale
20 market for generation, and obtain some of the benefits of the new Arizona generation

representatives. Indeed, its primary spokesperson at the workshops was its sole Track B witness.

¹² Tr. at 14, line 5. The parties were much closer to agreement on the amount of capacity subject to solicitation than the amount of energy.

1 resources, while at the same time protecting ratepayers.”¹³ Clearly, Arizona ratepayers
2 cannot benefit from anymore efficient resource unless the incumbent utility actually
3 purchases from that resource. This is why the Track A Order said that APS and TEP “shall
4 acquire” their unmet needs through a competitive solicitation, not simply that they shall
5 solicit.

6 Obviously, incumbent utilities should be able to reject all bids if that is truly in
7 the ratepayer, interest. By the same token, as Staff witness Alan Kessler testified, if the bids
8 are good, the incumbent utility can, and should, “lock in” ratepayer savings.¹⁴ The Track
9 B Order should make that mandate explicit.

10 **1. The Staff Report Correctly Identified the Amounts of**
11 **Capacity And Energy to be Solicited**

12 The Staff Report identified the primary goal of any solicitation to be
13 procurement of reliable power over the long term at prices that are reasonable.¹⁵ The
14 amount of power solicited, then, must be sufficient to achieve this result.¹⁶ The Staff Report
15 acknowledged this fact by identifying significant megawatts of contestable load rather than
16 simply applying a mathematical formula based on physical capabilities of incumbent owned
17 generation to arrive at “unmet needs.” In addition, recognizing the “reasonable price”
18 component of its goal, Staff included in its definition of unmet needs energy that cannot be
19 produced “economically” from the utility’s existing assets.¹⁷

¹³ Track A Order at 30, FOF 37 [emphasis added].

¹⁴ Tr. at 312, line 4-9.

¹⁵ Staff Report at 1, line 11-12.

¹⁶ Roach Direct at 2, line 4-26.

¹⁷ Kessler Rebuttal Testimony at 7, 13-16.

1 a. **Calculation Of APS And TEP Unmet Capacity Needs**

2 Unlike unmet energy needs, the calculation of unmet capacity needs garnered
3 less debate. The primary debate centered on whether to add reserves based on all APS load
4 or simply the load covered by APS units, and whether to include capacity designated as
5 RMR.¹⁸ PGR supports Staff's calculation of capacity needs as shown in Staff's Exhibit S-5.

6 Exhibit S-5 simply takes the unmet capacity need identified by APS of 1,400
7 MW and adjusts it by the 15% reserve requirement applicable to all APS load and adds back
8 capacity APS identified as RMR. PGR witness Dr. Roach concluded that reserves covering
9 all APS load should be included in APS's total capacity requirement.¹⁹ Staff witness Alan
10 Kessler concurred with Dr. Roach's inclusion of all reserve requirements.²⁰ Although
11 initially arguing that reserves should not be calculated on all load because merchant
12 capacity would bring its own reserves,²¹ APS witnesses ultimately acknowledged that the
13 inclusion of reserves on all load was appropriate.²²

14 In explaining why Staff included RMR requirements in the contestable load for
15 both APS and TEP, Staff witness Jerry Smith stated that the failure to include such
16 requirements "has the potential to diminish the benefits to be derived from competitive
17 bidding, and serve to encourage the utility to continue using generating plants within a

¹⁸ For purposes of this discussion the reference to RMR capacity or energy is used generically. PGR does not believe that it has yet been established that there presently should be either RMR capacity or energy requirements as there has been no tangible evidence that would justify such requirements. Regrettably, while certain RMR studies are underway, to date, merchant intervenors have been prohibited from participating in those studies. PGR respectfully requests that the Commission rectify this situation and order that merchant intervenors be allowed to participate and comment.

¹⁹ Roach Direct at 17, line 7 to 9.

²⁰ Kessler Rebuttal at 11, line 10-19.

²¹ Ewen Direct at 17, 18-26.

²² Ewen Rebuttal at 13, line 19-26 and 14, line 1-12.

1 constrained area, and not looking to meet system needs from cheaper and cleaner
2 sources.”²³ PGR agrees with Mr. Smith’s assessment, a position PGR has advocated for
3 some time, and agrees that previously designated RMR capacity should be subject to
4 competitive solicitation.

5 Based upon these two stated revisions to the capacity numbers supplied by APS,
6 Staff proposes a capacity solicitation for APS of 2,460 MW in 2003, 2,734 MW in 2004,
7 2,854 MW in 2005 and 2,950 MW in 2006. The capacity numbers for TEP, made up
8 primarily of TEP designated RMR requirements are 758 MW, 824 MW, 861 MW and 898
9 MW for 2003 – 2006 respectively. PGR supports Staff’s revised capacity numbers and
10 urges the Commission to require that this be the capacity amounts to be solicited.²⁴

11 **2. The Original Staff Report Correctly Identified The Level Of**
12 **Energy Needs Likely To Be More Economically Obtained**
13 **From The Competitive Market Rather Than From APS**

14 The amount of energy to be solicited was much more controversial both in the
15 workshops and in the pre-filed and hearing testimony. Interestingly, much of that debate
16 centered on the fact that APS went from proposing to acquire energy on the basis of a 38%
17 to 41% average annual capacity factor²⁵ to a 6% capacity factor. To its credit, APS
18 acknowledged that it reduced the capacity once it realized that it could not assure itself that
19 its affiliate’s merchant generation units would supply the energy.²⁶ The Commission must
20 ensure that the contestable load is large enough to attract sufficient competition among the
21 merchant generators.

²³ Smith Rebuttal at 3, line 13-14.

²⁴ The numbers for APS contained in Exhibit S-5 are consistent with the contestable capacity numbers identified by Dr. Roach on behalf of PGR, plus the RMR load.

²⁵ “Capacity Factor” is the percentage of hours a generating unit is actually in operation out of the hours it is available.

²⁶ Exhibit PME 3-R to Ewen Rebuttal Testimony; Tr. At 184 line 3 to 185, line 11.

1 In the Staff Report, Staff identified APS unmet energy needs as 6,567 GWh in
2 2003, growing to 9,754 GWh in 2006. Staff indicated that the calculation was from "data
3 provided by APS at the August Workshop."²⁷ Based on that data, Staff "assumes a 38.6%
4 average annual load factor for all contestable capacity."²⁸ In his hearing testimony, Ernest
5 Johnson testified that there would be no harm to ratepayers if the numbers reflected in the
6 Staff Report were the numbers used for the solicitation, with the understanding that APS
7 did not have to buy if there was not ratepayer benefit.²⁹

8 In Staff Exhibit S-5 Staff reduced its calculation of unmet energy needs in an
9 effort to move closer to resolution of the amounts of contestable load. While PGR believes
10 that Staff's original numbers are supportable and consistent with the evidence, as Staff
11 witness Alan Kessler points out, he:

12 would anticipate based on the amount of capacity and energy that is
13 available at this time that either size minimum solicitation would yield
14 bids for capacity and energy significantly in excess of either amount
15 that's currently in S-1 or in S-5, and the utility would then still have a
16 sufficient array of capacity products and energy products from which
17 to select so that it could make the right decision to meet whatever its
18 ultimately determined unmet needs are.³⁰

19 This being the case, PGR believes that the larger number should be the number used for
20 purposes of the APS solicitation. This is particularly true as the energy number reflected in
21 Staff Exhibit S-5 is substantially lower than the 5,728 GWh of energy APS estimated that

²⁷ Roach Direct, Exhibit CRR-1 (copy of the APS handout upon which Staff's calculations were based).

²⁸ As pointed out by Dr. Roach, APS had actually assumed a 41% capacity factor (load factor) for its affiliate's combined cycle, merchant generation in 2004. See Roach Direct at 15, line 11-15.

²⁹ Tr. at 171, lines 5-9.

³⁰ Tr. at 172, line 15-25 and 173, line 1-5.

1 its merchant affiliate would provide to fulfill unmet needs or displace less economic APS
2 assets.³¹

3 Despite its prior assertions as to the amount of energy it would acquire from
4 combined cycle generation, when APS filed its November 4, 2002 assessment of unmet
5 needs it assumed that it would fulfill its capacity and energy needs to the full physical
6 capacity of its existing generation assets.³² Recognizing, however, that it could not reliably
7 or economically serve its ratepayers that way, and that it had not historically done so, APS
8 asserted that it likely would acquire over 3,705 MW of energy through short term spot
9 purchases³³ Unfortunately, neither of the two APS witnesses offered to explain this sudden
10 reliance on the spot market had participated in any of the Commission sponsored
11 workshops prior to submission of their proposal,³⁴ nor had the proposal been previously
12 vetted at any of those workshops.³⁵ For this reason alone, the economy energy approach
13 proposed by APS at the 11th hour should be rejected by this Commission.

14 As both Dr. Roach and Alan Kessler testified, the solicitation and purchase of
15 capacity and dispatchable energy provides APS the opportunity to lock in ratepayer savings
16 while still taking advantage of opportunities to make those spot market purchases that
17 provide ratepayer benefits.³⁶

³¹ Exhibit PME 3-R.

³² Ewen Direct at 2, line 1 through 4, line 3. As APS witness Ewen acknowledged, this reversal in course occurred largely as a result of this Commission telling APS that it could not count its merchant affiliate's generation as being its own. Tr. at [cross of Ewen]

³³ Kessler at 178, line 4-12.

³⁴ Roach Direct at 14, line 14-16.

³⁵ *Id.* at 7, line 12-16.

³⁶ In an apparent effort to make its proposal to rely on the spot market something it is not, APS seems to have adopted a definition of "economy purchases" that is inconsistent with the industry definition of such purchases. Tr. at 757, 22-25 and Tr. at 493, line 21-25 and 494, line 1-24.

1 Based on the foregoing, PGR asks that the Commission require APS and TEP to
2 solicit capacity and energy in at least an amount consistent with Staff Exhibit S-5 and with
3 respect to APS, that the Commission require solicitation of energy in at least the amount
4 APS anticipated would be supplied by its merchant affiliate's combined cycle units.

5 **B. The Incumbent Utility Should Solicit Products Likely To Provide**
6 **Ratepayer Benefits**

7 To assure ratepayer benefits, it is not sufficient to simply solicit capacity and
8 energy. The product solicited must provide the appropriate portfolio of products to meet
9 the utility's actual load profile.³⁷

10 As Dr. Roach testified, when APS anticipated that its merchant affiliate's
11 combined cycle units would be supplying substantial energy, APS treated those units as
12 unit contingent dispatchable capacity and energy. In fact, though, as Dr. Roach further
13 explained, most utility portfolios consist of a number of generating units which operate on
14 a contingent basis based upon the estimated dispatch cost and availability of each unit.

15 PGR believes that APS, through the competitive procurement process, should be
16 attempting to recreate through competitive suppliers the essential elements of the existing
17 utility system. This system relies upon base load, mid-range and peaking units to reliably
18 supply consumer needs. As Staff witness Schlissel said long ago in his testimony regarding
19 the proposed APS affiliate Power Purchase Agreement (PPA), "APS could develop a fuel
20 diverse portfolio of baseload, intermediate and peaking resources using its own facilities and
21 the resources obtained through a competitive bid process."³⁸ There has been no assertion
22 that this make up of units is not reliable; the Competition Rules simply assume that the

³⁷ Roach Direct at 19, 5-23 through 20, line 1-13.

³⁸ Schlissel Direct in Consolidated Docket E-01345A-01-0822, at 19.

1 competitive market may be able to supply the incumbent utility's needs in each of these
2 areas at a lower price than the utilities existing units or portfolio of contracts. Interestingly,
3 APS does admit that the market can provide a more economic mix with respect to the
4 3,700 plus gigawatt hours of energy that APS wishes to purchase on an "economy" basis.³⁹

5 PGR requests that the Commission require APS, in its RFP, to meet the majority of
6 its unmet needs through asset-backed, dispatchable unit sales under traditional pay-for-
7 performance PPAs. Two reliability offers would be acceptable. The first would be a unit
8 contingent offer with an Availability Guarantee of 95%. The second would be a Firm LD
9 offer that would include a 100% Availability Guarantee and the requirement to pay for
10 replacement capacity and energy if the 100% guarantee is not met, i.e., the contract would
11 be backed up by liquidated damages.⁴⁰

12 The remaining amount of capacity to be procured through an RFP or auction
13 format should be met by seasonal Firm LD call options. Firm LD means the bidder
14 guarantees 100% availability backed by liquidated damages. Call options means that the
15 utility has the right (but not the obligation) to call on the bidder during the summer
16 months for either 16 peak hours in a day or in just 6 super-peak hours. All of the calls are
17 under day-ahead scheduling and once called to run, the unit would be guaranteed to run
18 for the full 16 or 6 hours depending upon the product.⁴¹ It is only through solicitation of
19 these products that APS and, therefore, Commission Staff can determine which portfolio of
20 products is in the best interest of APS rate payers.

³⁹ It is also noteworthy that when APS was asserting that its proposed affiliate PPA was in the best interest of its ratepayers, that Agreement anticipated the same unit contingent portfolio PGR is advocating here. Tr. at 630, line 20 to 632, line 17.

⁴⁰ Roach Direct at 24 lines 1 to 15; *See also* APS Variance Request.

⁴¹ Roach Direct at page 26 lines 7 to 14.

1 PGR's request that the Commission must require APS to solicit unit contingent
2 capacity and dispatchable energy is supported by APS' own acknowledgement that it will
3 give short shrift to bids that do not conform to the specific parameters of the products
4 solicited.⁴² As identified by Dr. Roach, APS is likely to get better bids at lower prices for a
5 direct solicitation for unit contingent capacity and dispatchable energy than it would get if
6 those bids were submitted as non-conforming bids in an RFP for other products.⁴³ The
7 benefit of unit contingent offers is that ratepayers will not pay for that energy if it is not
8 economic to do so. That is, APS can still utilize economy energy if the market price is less
9 than the energy bids procured in this solicitation.

10 **III. THE INDEPENDENT MONITOR SHOULD RUN THE**
11 **SOLICITATION AND HAVE A SIGNIFICANT ROLE IN THE**
12 **SELECTION OF WINNING BIDDERS**

13 The Staff Report provides that, in most instances, the incumbent utility will
14 conduct the solicitation and determine the winning portfolio of contracts and bidders.
15 PGR believes, however, that in order to ensure the transition to a competitive market, an
16 independent party must manage the APS solicitation and play a significant and, if necessary,
17 determinative role in evaluating and selecting the winning portfolio of contracts and
18 bidders. This procedure is necessary to ensure a transparent process and to support affiliate
19 transactions, should PWEC garner part of APS's load.

20 At a minimum, the Independent Monitor should be a member of the bid
21 evaluation team, consisting of the utility and Staff that will lead and conduct the
22 solicitation. Upon completion of solicitation, the Independent Monitor should submit a
23 report to the Commission with a headline statement concurring or disagreeing with the

⁴² Wheeler Direct at 5, line 5-13.

⁴³ Tr. at 893, line 7-25.

1 selection of winning bidders. In addition, that concurrence or lack thereof should be given
2 considerable weight when the Commission is judging the prudence of the solicitation.

3 At the end of the solicitation process, the Commission, weighing heavily the
4 Independent Monitor's report, should review the solicitation process and judge whether it
5 was conducted in a fair and equitable manner. If the Commission approves of the process
6 and deems that the contracts awarded as a result of the solicitation provide the best deal for
7 ratepayers given all known and knowable information, the Commission should deem the
8 contracts as prudent.

9 Interestingly, the testimony of Jack Davis in the proceeding to support APS'
10 proposed PPA indicated that the solicitation for the 270 MW would be conducted by an
11 independent party if Pinnacle West Capital Corp. were to be a bidder in that solicitation.⁴⁴
12 PGR is asking for no less in the proposed competitive procurement.

13 **A. APS's Affiliate Has Or Will Receive Inside Information That Will**
14 **Inappropriately Advantage The Affiliate In The Solicitation**

15 The contemplated participation of APS's merchant affiliate in the proposed
16 solicitation requires that an independent party run the solicitation and have the final say in
17 determining the acceptable products and winning bidders. Otherwise, it is not simply that
18 APS's affiliate would have information which will advantage it in whatever solicitation is
19 ultimately conducted, it has information that even APS has said would thwart attempts at a
20 successful solicitation.

⁴⁴ Davis Direct in Consolidated Docket E-01345A-01-0822 at 36, line 16-21.

1 1. **APS's Protective Order Would Require Information**
2 **Disclosure That Would Result In An Unfair Advantage To**
3 **PWCC**

4 In its Track B discovery, PGR initially sought certain costs and related data
5 relevant to APS's generating units in order to test APS's assertions regarding its economy
6 energy purchases. Although PGR ultimately withdrew the request following a more
7 thorough review of the economy energy proposal, before PGR did so, APS filed a Motion
8 for Protective Order. That motion contained the affidavit of Thomas J. Carlson, APS's
9 solicitation witness. In his Affidavit, Carlson asserts that disclosure of the requested
10 information would "adversely affect APS' ability to buy and sell power in the market,
11 including procurements in the Track B competitive solicitation."⁴⁵ Indeed, APS noted, the
12 Staff Report provides that "[p]rice and cost forecasts for power supplies and fuel costs
13 prepared by, or available to the utility, will not be made available to bidders,"⁴⁶ and the
14 release of the specified information to the merchant bidders could lead APS to pay higher
15 prices than it might otherwise pay in a competitive market. But such information is no less
16 sensitive in the hands of an APS affiliate, particularly where it would allow the affiliate to
17 know of APS's cost structure and thereby provide it with a competitive advantage over
18 other merchant bidders. In fact, PGR proposed that, pursuant to existing confidentiality
19 agreements, the information would be restricted to counsel and experts, not merchant
20 bidders. APS, however, thought the danger of the information being released to even this
21 small group was too high.

⁴⁵ Carlson Affidavit at paragraph 4.

⁴⁶ Staff Report at 13, line 12-14.

1 2. **APS Acknowledged That PWCC Has The Cost Information**

2 While seeking to prohibit other merchant interveners from discovering cost
3 information (even if legitimately needed in order to respond to APS assertions) APS
4 acknowledged that its merchant affiliate Pinnacle West Energy has the information.
5 Specifically, APS's merchant affiliate has all APS unit cost information as Pinnacle West has
6 been performing the dispatch for APS units.⁴⁷ Pinnacle West employees therefore know
7 exactly where its merchant generation fits in the APS dispatch order, what it can bid to
8 displace those units and when those units are likely to be displaced. In addition, Pinnacle
9 West has fuel information and other information regarding APS's procurement activities.⁴⁸
10 In addition, APS's new Code of Conduct, as described more fully below, provides that
11 Pinnacle West would continue to have access to such information and continue to perform
12 dispatch services through the "shared services" arrangement.⁴⁹ In addition, APS's
13 testimony indicates that Pinnacle West employees may be involved in the solicitation.⁵⁰

14 3. **APS' Refinancing Request Also Underscores the Need for an**
15 **Independent Evaluator**

16 APS's pending refinancing proposal also should lead the Commission to order
17 that an independent party run the current solicitation and ultimately decide which bids to
18 select. Under its proposal, APS would loan \$500,000,000 to its merchant affiliate and

⁴⁷ Tr. at 604, line 25 to 605, line 1.

⁴⁸ While APS has taken the position that Pinnacle West having such information is merely a function of APS's attempts to comply with the 1999 Settlement Agreement, such is clearly not the case. As set forth at the hearing, the Pinnacle West/APS structure is geared toward a marketing and trading company, not a distribution company with load serving obligations. Nothing in the structure that was established benefited APS and now stands to benefit only APS's affiliate.

⁴⁹ Tr. at 607, line 8 to 609, line 5.

⁵⁰ Wheeler Direct at 10, line 3-25.

1 obtain a business interest in that affiliate.⁵¹ As Thomas Broderick of PG&E National
2 Energy Group testified, the financing proposal, if approved, would provide a significant
3 competitive advantage to APS's merchant affiliate.⁵² In addition, with \$500,000,000
4 invested in its merchant affiliate, APS would have a substantial interest in assuring that the
5 merchant affiliate is successful in the competitive solicitation.

6 Additionally, the recent APS/Staff agreement indicates that APS intends to seek
7 rate-base treatment for some or all of its affiliate's merchant generation. APS witness
8 Carlson testified that APS has no need for year round capacity and energy and that it makes
9 no sense to solicit those products. Putting combined cycle units into rate base without an
10 open and fair competitive solicitation goes one step further and assures that APS ratepayers
11 will pay substantially more than they should.⁵³

12 The Commission accordingly, should find, as a matter of public policy, that an
13 independent party should run the initial solicitation. The independent monitor should
14 likewise play a significant, deciding, role in determining the products and winning bidders
15 arising out of the solicitation. The Staff Report (at page 37) states that the solicitation
16 should be conducted by the utility barring evidence of impropriety by the utility. PGR
17 respectfully submits that on the basis of the testimony, actions and filings by APS regarding
18 its affiliate, this showing has been made.

⁵¹ APS's request to loan its Affiliate \$500 million, currently pending in Docket No. E-01345A-02-0707.

⁵² Tr. at 920, 16-21.

⁵³ This fact is most clearly evidenced by the fact that the proposed PPA had an all in price of \$48 per megawatt hour; yet APS now asserts that it would make significant economy purchases well below that price.

1 IV. CODE OF CONDUCT ISSUES

2 A. A Stronger Connection Is Needed Between the Track B Standards of
3 Conduct And The Revised Code of Conduct Required Of APS and
4 TEP In The Track A Order

5 PGR believes that both the pre-filed and hearing testimony establish that not
6 only should an Independent Monitor conduct and evaluate the initial solicitation for APS,
7 but also that a stronger connection is needed between the Standards of Conduct required
8 in the Staff Report for Track B and the revised Code of Conduct required by the Track A
9 Order. In this regard, the load serving utilities must be required to treat affiliate generation
10 and merchant generation equally in all respects to ensure that Arizona ratepayers receive the
11 best deal, to prevent affiliate abuses and level the playing field for all market participants.

12 The Commission's Track A Order required APS and TEP to file a revised Code
13 of Conduct to address "modifications as recommended by Staff . . ." ⁵⁴ While those
14 revisions are still subject to "a hearing to be held as provided in A.A.C. R14-2-1616," ⁵⁵ it is
15 necessary as part of this Track B proceeding to ensure that adequate protections are written
16 into the Track B process and coordinated with the Code of Conduct.

17 As the Commission held in the track A Order, "requiring some power to be
18 purchased through the competitive procurement process developed in Track B will . . .
19 obtain some of the benefits of the new Arizona generation resources, while at the same
20 time protecting ratepayers." ⁵⁶ The Commission did not say only new Arizona affiliate
21 generation should be purchased. As Staff stated in the Staff Report, "[f]or the solicitation
22 to be successful all bidders must be treated equally . . ." ⁵⁷

⁵⁴ Track A Order at 30, paragraph 34.

⁵⁵ *Id.*

⁵⁶ Track A Order at 30, paragraph 37.

⁵⁷ Staff Report at 37.

1 Likewise, on page 1 of the Staff Report, Staff states “all bidders prepared to
2 provide power must be afforded the opportunity to compete for sales on equal and
3 unbiased terms.”⁵⁸ When asked if he agrees with Staff’s requirement for equal treatment

4 Mr. Wheeler states:

5 A. (BY Mr. Wheeler) It’s hard to quarrel with it as an abstract
6 statement. It’s a lot easier to discuss it with respect to what
7 specifically do you mean by saying that?

8 There are differences among competitors in terms of products they
9 have to offer, deliverability of places, creditworthy aspects and the like.
10 So it’s hard to say everybody should be treated equally if they don’t
11 have the same characteristics.

12 But in general, if people are in comparable situations, then they ought
13 to be treated comparably, all other things being equal. But
14 unfortunately, they’re not usually all equal.⁵⁹

15 For purposes of assuring that affiliated and non-affiliated generation are treated
16 equally, the revised Code of Conduct and the Track B order must combine to create the
17 structural comparability urged by Mr. Wheeler.

18 The Track B hearing clearly identified several areas of concern in which there
19 exists a real potential for affiliate abuses between APS and its merchant affiliate (PWEC)
20 which would be difficult to detect and police, and if left unremedied, would make it
21 impossible for a competitive wholesale merchant market to develop. To prevent such
22 harm, PGR believes that the Track B Standards of Conduct must, in coordination with
23 APS’s Code of Conduct, at a minimum, (1) eliminate all affiliate preferences, (2) require
24 APS to treat all suppliers, both affiliated and non-affiliated, in a non-discriminatory fashion,
25 (3) keep the utility and its affiliate completely separate during the solicitation process, and

⁵⁸ Staff Report at 1.

⁵⁹ Tr. at 603, line 24 to 604, line 11.

1 (4) contain effective enforcement and penalty provisions. These goals are consistent with
2 those recommended by Staff, and adopted by this Commission in the Track A Order.

3 I. Revised Code of Conduct Required by the Track A Order

4 The Track A Order required APS and TEP to modify their existing Code of
5 Conduct to “[a]t a minimum, . . . address the items identified by Staff, including: arm’s
6 length transactions; access to confidential information; cross-subsidization; preferential
7 treatment to affiliates; joint employment and employee transfer issues; sharing of office
8 space, equipment, and services; proprietary customer information; financing arrangements
9 with affiliates; and conflicts of interest.”⁶⁰ Specifically, the Commission found that the
10 existing “Codes of Conduct as adopted in Decision No. 62416 (April 3, 2000) and
11 Decision No. 62767 (August 2, 2000) must be revised in order to protect the public
12 interest.”⁶¹

13 On November 12, 2002, APS filed its revised Code of Conduct. Relevant
14 portions of the revised Code of Conduct were discussed at the Track B Hearing.⁶² Of most
15 relevance is Section III. D. which provides “APS shall act in accordance with the
16 Competitive Procurement Process and will not give preferential treatment to its
17 Competitive Electric Affiliates *in such process*.”⁶³ As the testimony of Dr. Roach established,
18 the definition of the Track B process or Competitive Procurement Process needs to be

⁶⁰ *Id.*

⁶¹ *Id.* at 32, line 14-16.

⁶² APS’s Modified Code of Conduct, filed November 12, 2002.

⁶³ *Id.* at 3 [emphasis added]. Of concern is APS’s definition of Competitive Procurement Process, which, in addition to stating that it means “the process approved by the Commission and required by Decision No. 65154” adds “by which APS will acquire power which cannot be produced from its own assets.” Obviously, the limitation of the last clause is intended to prejudge the issues in this proceeding as the amount APS is required to solicit. Nevertheless the clause can and should be more appropriately addressed in the hearing on the Code of Conduct.

1 appropriately broad to ensure that no preferential treatment given to an affiliate on a variety
2 of matters not directly part of the actual solicitation would provide the affiliate with an
3 advantage in the solicitation process.

4 2. **The ACC Presently Should Address The Equal Treatment Of**
5 **Affiliate And Merchant Generation For Purposes Of Arizona's**
6 **Competitive Procurement**

7 Rather than focus on the equal treatment of merchant and affiliate generation in
8 this Commission mandated solicitation proceeding, APS asserts that this matter is FERC
9 jurisdictional.⁶⁴ So that there is no mistake, PGR is not suggesting that this Commission
10 infringe on FERC jurisdictional matters. What is at issue here is this Commission's
11 jurisdiction to determine how competitive procurement will work in this state, and the basis
12 on which a utility affiliate may participate.

13 PGR's position is simple and straightforward and requires no great jurisdictional
14 disposition: if a incumbent utility's affiliate will bid in a Commission mandated competitive
15 solicitation, the incumbent utility must treat the affiliated and non-affiliated generation
16 equally, in all respects - - period. This concept is as simple in operation as it is to state. For
17 example, in the area of test energy the incumbent utility would simply publicly identify
18 (web site posting would be workable) the arrangement by which it accepted test energy
19 from its affiliate. Any merchant generation that so desired could provide test energy under
20 the same terms and conditions.⁶⁵

21 The structure for treating capacity, gas or electric transmission is no different. If
22 APS's affiliate is to bid in the solicitation, then APS must make gas capacity held by APS for

⁶⁴ Tr. at 617, 4-24.

⁶⁵ Obviously, this process would preclude any reliability-based factual differences from being taken into account.

1 the benefit of Arizona consumers available to any merchant bidder on the same terms as
2 would be available to APS's affiliate. APS has committed to do this with electric
3 transmission in the Track A proceeding. Gas capacity is no different.

4 The issue is if PWEC or any APS affiliate wishes to bid in the APS solicitation,
5 they only should be allowed to do so if comparable treatment has been accorded to other
6 non-affiliated merchant generation. Thus, before any affiliated entity could bid with gas
7 capacity belonging to APS, that capacity would be made available to all bidders on equal
8 terms. This could be done for example through a tolling arrangement.⁶⁶

9 While there are a myriad of ways in which a incumbent utility could provide
10 preferential treatment to affiliates, the Commission need only unequivocally require equal
11 treatment of all affiliate and non-affiliate generation. Any transactions between the
12 incumbent utility and the affiliate would be required to be posted on the utility web site
13 and made available to other merchant generation on equal terms, except for those
14 transactions entered into as part of a monitored competitive solicitation.

15 V. CONCLUSION

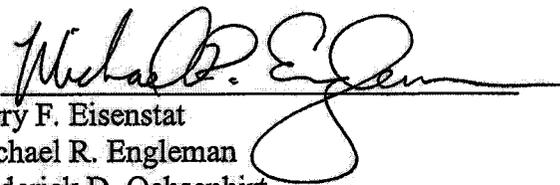
16 With the additions outlined above, and reflected in PGR's attached black-line,
17 the Staff Report provides an acceptable framework for a competitive solicitation process
18 that will allow Arizona ratepayers to benefit from the availability of low cost energy
19 supplies. To ensure that this benefit is achieved, the competitive solicitation should have
20 the following components. First, the procurement should be large enough to cover the
21 unmet capacity needs of the incumbent utility, as well as those energy needs that cannot
22 economically be supplied by its existing generation. Second, the procurement should
23 solicit asset-backed, dispatchable, unit contingent bids so as to permit the incumbent utility

⁶⁶ Tr. at 539, 13-22.

1 to replace existing, inefficient and dirty generation with newer, cleaner and more efficient
2 units.

3 Conducting the solicitation in the manner described herein will allow ratepayers
4 to benefit from the current market conditions without risk. To further ensure this
5 outcome, however, the Commission must require that the incumbent utility treat all
6 potential suppliers on fair and equal terms and in the same manner the incumbent utility
7 treats its affiliates.

8 Finally, in the case of APS, because its affiliate will be a competitor in the
9 solicitation, the Commission should require an independent party or monitor to conduct
10 the solicitation and bid evaluation. Only through such oversight can the Commission
11 ensure that ratepayer benefits are not displaced by affiliate preferences.

12
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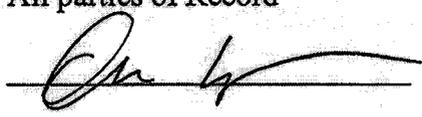
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2 foregoing hand-delivered for filing,
3 Wednesday, December 18, 2002;
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5 Docket Control
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29 Transmitted electronically,
30 Wednesday, December 18, 2002, to:
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32 All parties of Record
33
34 
35
36
37

EXHIBIT 1

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

AS REVISED BY PANDA GILA RIVER, L.P.

STAFF REPORT

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STAFF REPORT

1

2 1. Introduction

3

4 Staff's goal is to have a transparent process that results in cost savings for ratepayers. The
5 major benefit of a utility obtaining power through competitive solicitation is cost savings for
6 ratepayers. Competition can help to obtain the best deal for ratepayers. However, a solicitation
7 process needs to be designed in such a way as to ensure that benefits occur instead of pitfalls. In
8 order to facilitate a manageable transition to a competitive wholesale power market that provides
9 economic benefits to consumers in Arizona, the Staff believes that a transparent process, one that
10 is equitable and auditable, needs to be established. That process must be well developed, flexible,
11 and understood by all participants in the process. Furthermore, the process must result in reliable
12 power being available over the long term at prices that are reasonable. Finally, all bidders
13 prepared to provide power must be afforded the opportunity to compete for sales on equal and
14 unbiased terms. The following pages describe a set of steps and requirements that, if adopted,
15 will establish a process that encourages development of a wholesale market that benefits
16 consumers.

17 The process described herein is intended to be used by Arizona utilities, as applicable, in
18 the initial solicitation for competitive power to be commenced by March 1, 2003. Subsequent
19 solicitations may be conducted using this process. More likely, changes to the process will be
20 recommended based on lessons learned from the initial solicitation and changes in wholesale
21 market conditions as well as consideration of non-price factors.

22

23 2. Overview of Track B Proceeding

24 A. Background

25 On October 18, 2001, Arizona Public Service Company ("APS") filed a request for a
26 variance to A.A.C. R-14-2-1606(B) and Approval of a Purchase Power Agreement (Docket No.
27 E-01345A-01-0822). On January 22, 2002, by Procedural Order, a generic docket (Docket No. E-

1 00000A-02-0051) was opened to examine various electric restructuring issues. The
2 Commissioners, through a series of letters requested that the parties file responses to questions
3 regarding certain aspects of electric competition in the generic electric restructuring docket. On
4 January 28, 2002, Tucson Electric Power Company (“TEP”) filed a request for a variance to
5 A.A.C. R-14-2-1606(B). On April 25, 2002, the Arizona Corporation Commission
6 (“Commission”) held a Special Open Meeting, at which the Commission stayed APS’ Request for
7 a Variance, and directed that certain issues be addressed in the generic electric restructuring
8 docket. The Commission divided the issues to be addressed into two tracks, A and B. The Track
9 A issues identified are the transfer of assets and associated market power issues, code of conduct
10 issues, the Affiliated Interest rules, and jurisdictional issues. The Track B issue identified is the
11 development of a competitive solicitation process.

12 On September 10, 2002, in Decision No. 65154 the Commission issued its decision in the
13 Track A proceeding. In the Track A decision, the Commission stayed A.A.C. R-14-2-1606(B)
14 which required that 100 percent of power purchased for Standard Offer Service shall be acquired
15 from the competitive market, with at least 50 percent through competitive bid. However, the
16 decision directed APS and TEP to acquire, at a minimum, any required power that cannot be
17 produced from its own existing assets, through the competitive procurement process as developed
18 in the Track B proceeding. The Decision further ordered that the amount of power, timing, and
19 the form of procurement be determined in the Track B proceeding with the target date for a
20 competitive solicitation process taking place by March 1, ~~2002~~2003. [Decision 65154 at page 30
21 lines 15 to 17]

22 B. Participants

23 The parties that have participated in one or all of the Track B workshops are: APS, TEP,
24 ~~Pinnacle West Capital Corporation~~, [Glock hearing testimony at 593, line 14 – 594, line 7,
25 hereinafter “Tr. at _____”] Panda Gila River, L.P., Reliant Resources, Inc., PG&E National Energy
26 Group, Harquahala Generating Company, Sempra Energy Resources, Wellton Mohawk
27 Generating Facility, Duke Energy North America, LLC, Calpine Corporation, Southwestern
28 Power Group II, PPL Southwest Generation Holdings, LLC, PPL EnergyPlus, LLC, PPL

1 Sundance Energy LLC, El Paso Electric, Desert Energy, Public Service Company of New
2 Mexico, Citizens Utilities Company, Salt River Project, the Grand Canyon State Electric
3 Cooperative, Association, Inc., the Arizona Independent Scheduling Administrator Association,
4 the Arizona Competitive Power Alliance, the Arizona Utilities Investors Association, Arizonans
5 for Electric Choice in Competition, Arizona Transmission Dependent Utility Group, Arizona
6 Clean Energy Industries Alliance, the Land and Water Fund of the Rockies, the Residential
7 Utilities Consumer Office, NERA Economic Consulting, R.W. Beck, Inc., Industrial Power
8 Technology, the City of Scottsdale, the City of Tucson, and Staff.

9 **C. Collaborative Process**

10 The workshops were conducted on July 24 and 25, 2002, August 13 and 14, 2002, ~~and~~
11 September 26 and 27, 2002. On November 6, 2002 an additional workshop was held to address
12 APS and TEP's unmet needs assessment and accompanying testimony. [Kessler Rebuttal
13 Testimony at Tr. 5, line 8 - 9] Prior to each workshop, an agenda was sent electronically to the
14 distribution list and posted to the Utilities Division website. Staff developed a draft working
15 paper regarding the competitive solicitation process and parties were able to provide substantive
16 comment and make suggestions to Staff on the draft-solicitation process. A variety of issues
17 relating to competitive bidding were raised, and through the collaborative process, the parties
18 reached agreements in principal on several areas which are listed on page 34 of this report. One
19 area of disagreement was APS' needs assessment and its use of economy energy and that issue
20 was discussed during the November 6, 2002 workshop. Kessler Rebuttal at 10]

21

22 **3. The Solicitation Process**

23 **A. Specific Process Goals**

24

25 As more fully detailed in the following sections of this chapter, the Staff's goal in
26 proposing this process is to facilitate a manageable transition to a competitive wholesale power
27 market that provides economic benefits to consumers in Arizona. The proposed process has been

1 designed to be open to all bidders, flexible, understandable by all participants in the process, and
2 to result in reliable power being available over the long term at prices that are reasonable.

3 The process was developed with the view that prevailing wholesale market conditions are
4 dynamic and that the potentially favorable conditions for buyers today are subject to potentially
5 significant changes over time. Accordingly, the Staff has developed a process that aligns the
6 utilities' responsibilities for providing reliable service at reasonable rates with the authority to
7 manage their power supply portfolios in a prudent manner. The process also preserves all of the
8 Commission's ability to regulate the actions of its jurisdictional companies in a way that best
9 serves the public interest.

10 The process described below is intended to be used by Arizona utilities, as applicable, in
11 the initial solicitation for competitive power to be commenced by March 2003. If adopted, the
12 Track A requirement of beginning a competitive solicitation by March 2003 will be met.
13 Subsequent solicitations may be conducted using this process. More likely, changes to the
14 process will be recommended based on lessons learned from the initial solicitation and to reflect
15 changes in wholesale market conditions as well as to take into consideration non-price factors that
16 have not been incorporated into the process at this time.

17 **B. Assumptions Supporting the Proposed Process**

18
19 Basic assumptions were developed by the Staff in preparing this proposed Solicitation
20 Process, including the assumption that the process itself had to be flexible enough to allow
21 purchasing utilities and selling merchants the latitude to structure the terms and conditions under
22 which service would be provided in a manner that made economic, operational and regulatory
23 sense, and provided benefits to all affected parties. Accordingly, the Staff has assumed that this
24 process, if adopted, will be subject to changes based on the lessons learned during the initial
25 solicitation conducted by the utilities during 2003. To the extent that a utility has load
26 requirements, capacity or energy, not served economically [Kessler Rebuttal at page 12 lines 1 to
27 2] by generating capacity owned by the utility or through existing contracts for capacity or energy
28 or from sources from which the utility must purchase power as a result of law or regulation, that

1 unmet need will be acquired through a competitive solicitation. Short-term power and daily,
2 weekly or monthly power acquired to meet unplanned needs, would however continue to be
3 purchased in the normal course of business as it is today, however, this short-term power shall not
4 be considered as a utility resource and used to diminish the amount of its unmet needs. [Roach
5 Direct at page 32 lines 6 to 10; Kessler, Tr. at 66, line 17 – 67, line 9; See also, TR. at 756, line 5
6 – 757, line 18 (Mitchell Surrebuttal Testimony)]

7 The Staff assumed that all current regulatory standards would be maintained and that post
8 solicitation reviews of the manner in which the solicitations were conducted and the
9 appropriateness of the power supplies purchased would be reviewed by the Commission at
10 hearings to be scheduled by the Commission at such time as it deems proper.

11 In conducting the initial solicitation, the Staff assumed that an independent party would
12 monitor the process to provide assurances to all parties that the process was implemented as
13 proposed and that no bidder was afforded an undue advantage or disadvantage.

14 Finally, the Staff assumed that no RTO or ISO would be operational prior to July 2003
15 and that each utility would make available to all bidders transmission access on its system in an
16 unbiased fashion and that each utility would cooperate with all bidders in planning and scheduling
17 deliveries of power.

18 C. Alternative Approaches Considered

19
20 In developing the proposed solicitation process detailed in the following section of this
21 report, the Staff examined numerous alternative approaches to structuring the process. Among
22 those were proposals relating to the amount of power to be procured, restrictions on the ability of
23 the utility or any of its affiliated companies to participate in any solicitation, the type of
24 procurement mechanisms (e.g. auctions, RFP's, bilateral contract negotiations) to be employed
25 and the various roles and responsibilities to be assumed by the utility, the bidders, the Staff, the
26 Commission and other persons participating in the solicitation process. Additionally, the Staff
27 reviewed a myriad of potential terms and conditions that could be incorporated in any solicitation.

1 Many of those alternatives and potential terms and conditions were presented to the
2 participants in the Track B workshops for their comments and input. The testing of the alternative
3 approaches considered by the Staff and the terms and conditions reviewed has resulted in a
4 significant narrowing of the issues that initially existed between the parties to Track B and has in
5 the opinion of the Staff significantly contributed to the quality of the proposed process. In the
6 following section of this Report the Staff presents the detailed proposed Solicitation Process it
7 believes will best serve to meet the goals it set out above.

8

9 **D. Detailed Staff Proposed Solicitation Process**

10

11 **I. Scope Of 2003 Solicitation**

12

13 For 2003, the solicitation will be for all load and energy requirements not served
14 economically [Kessler Rebuttal at page 12 lines 1 to 2; Kessler, Tr. at 194, line 24 – 195, line 14]
15 by generation owned by the utility and included in the utility's rate base as of September 1, 2002.,
16 ~~except to the extent that such generation is providing RMR service during RMR hours [Smith~~
17 ~~Rebuttal at page 5 line 6]~~ or by power supplied pursuant to FERC or Commission approved
18 contracts with affiliated and non-affiliated suppliers entered into prior to September 1, 2002. To
19 the extent that affiliated suppliers provide service pursuant to contracts dated on or after
20 September 1, 2002, such service will be subject to competitive solicitation ~~except to the extent~~
21 ~~that such contract is to provide RMR service during RMR hours. [Smith Rebuttal at page 5 line~~
22 6] To the extent that load is served pursuant to capacity or energy contracts with Qualifying
23 Facilities or Environmental Portfolio Standard requirements, that load will also not be
24 contestable. Any generation capacity owned by a utility that has not been included in the utility's
25 rate base may be bid by the utility in the initial solicitation on the same terms and conditions as all
26 other bidders, including affiliated bidders. All demand-side management commitments in place
27 as of September 1, 2002, shall be considered in determining contestable load.

1 For solicitations during 2003, each utility may contract for energy and capacity deliveries
2 for differing time periods in order to test the efficiency of this process for acquiring short-term,
3 medium-term and long-term contracts. ~~While it is anticipated that during 2003 each utility will~~
4 ~~primarily require peaking capacity and energy with contract terms of one to three years, if~~ Roach
5 Direct at page 27 lines 1 to 3; Kessler, Tr. at 196, line 22 – 197, line 7] If, in the judgment of the
6 utility, or the bid evaluation team conducting the solicitation, [Roach Direct at page 27 lines 1 to
7 4] market conditions or economic opportunities dictate contract terms longer than three years, it
8 will be the responsibility of the utility to enter into such contracts as are reasonable. For resource
9 planning purposes each utility must demonstrate that its power supply portfolio contract durations
10 are adequately diversified and that its portfolio's structure mitigates both cost and reliability risks
11 appropriately.

1 Based on information available at this time, contestable loads for each utility for each year
2 through 2006 are estimated to be:

3 CAPACITY (MW)

	2003	2004	2005	2006
APS ¹	1951 <u>2,460</u>	2289 <u>2,734</u>	2628 <u>2,854</u>	2898 <u>2,950</u>
TEP ²	242 <u>758</u>	309 <u>824</u>	441 <u>861</u>	488 <u>898</u>

4

5 ENERGY (MWHGWH)

	2003	2004	2005	2006
APS ³	6,566,910	7,704,591	8,845,638	9,754,436
TEP ⁴	345,300 <u>50</u>	345,460 <u>46</u>	388,460 <u>120</u>	389,460 <u>104</u>

6 [Staff Exhibit S-5]

7 The above capacity numbers for APS were ~~provided~~ based upon its testimony and exhibits
8 dated November 4, 2002, and associated work papers by APS at the August workshop and were
9 used by Staff to derive the energy numbers. This unmet need for each of the next 4 years should
10 be the minimum amount that is included in the solicitations in 2003. [Tr. at 47, lines 13 – 17;
11 Original Staff Report dated October 25, 2002 at page 35 lines 7 to 8]

12 ~~Staff was subsequently informed by APS that the numbers provided at the August~~
13 ~~workshop required revision. In response to a data request from Staff, APS provided revised~~
14 ~~capacity and energy numbers on October 23, 2002. Staff has not had time to review and analyze~~
15 ~~these numbers for inclusion in the Staff report by the October 25, 2002 publication date. APS'~~
16 ~~response to Staff's data request is included in this report as Appendix Two. [Staff Revised~~
17 Contestable Loads Estimate dated November 21, 2002; Tr. at 197, lines 6 - 10]

¹ Source: Staff Revised Contestable Loads Estimate dated November 21, 2002 From data provided by APS at the August Workshop.

² Source: Staff Revised Contestable Loads Estimate dated November 21, 2002 From data provided by TEP at the August Workshop, plus 95 MW of combustion turbines that are not presently in rate base.

³ The energy estimates are based upon unmet energy needs and economy purchases, and RMR generation by the utility. Assumes 38.6% average annual load factor for all contestable capacity.

⁴ Exhibit 1, Track B Needs Assessment and Procurement Proposal, David Hutchins, November 4, 2002. From August data provided by TEP plus 95 MW combustion turbines at 40% average annual load factor.

1 Based on this table, in the initial solicitation APS would solicit a total of 2,950 MW of
2 capacity. The solicitation process should allocate the majority of the unmet needs, 1,891 MW
3 (1,644 MW plus 15% in 2006), which represents the amount of capacity from APS's affiliates'
4 Redhawk and new West Phoenix's units, to be procured through an RFP. The remaining amount
5 of capacity (1,059 MW in 2006) should be procured through an auction format that solicits
6 seasonal call options. [Roach Direct at page 32 line 23 to page 33 line 4 using Staff Revised
7 Contestable Loads Estimate dated November 21, 2002]

8

9 **II. Roles & Responsibilities**

10

11 **A. Utility**

12

13 Absent evidence of abuse or impropriety, the utility will be responsible for preparing the
14 solicitation and conducting the solicitation process. Given any evidence of abuse, if an affiliate of
15 the utility participates in the solicitation, an Independent Third Party must conduct the
16 solicitation. In addition, to ensure a fair and competitive solicitation, the affiliate and the utility
17 must be kept completely separate during the process, and under no circumstance should an
18 affiliate be involved in the bid evaluation. [Panda Gila River's Track B Brief, Section III and
19 testimony cited therein (hereinafter ("PGR Brief")); See also, Original Staff Report at 39, lines 4
20 through 14] Acquisition of energy and capacity to meet the needs of customers remains the
21 responsibility of the utility, and the utility shall use accepted business standards for acquiring
22 these resources, as it does when it buys all other products used in providing service.

23 **B. Bidders**

24

25 In order for the Solicitation to attract wide participation, the process must be accepted as
26 fair, open and transparent. To achieve this, prospective bidders, and interested persons who agree
27 to keep certain information confidential, will have the opportunity to review supporting data and
28 draft documents in advance of the solicitation being distributed to bidders. All bidders and other

1 interested persons may provide comments to the utility, the Independent Monitor or the Staff
2 regarding the completeness or quality of the information provided. Bidders and interested parties
3 may also provide comments to the utility, the Independent Monitor or the Staff regarding the
4 process being employed or the decisions made regarding execution of the solicitation process.

5 All bidders will be required to consent to use appropriate alternative dispute resolution
6 practices, specified by the utility and fully disclosed in the Solicitation materials if a dispute
7 arises.

8 Each bidder must agree to permit the Commission Staff to inspect any generating facility
9 the bidder owns or controls from which it proposes to provide capacity or energy to any Arizona
10 utility pursuant to any contract awarded as a result of this solicitation.

11 **1. Access to data**

12

13 Bidders will have the opportunity to review non-restricted information used by the utility
14 in preparation for the solicitation, as well as draft solicitation materials, before the solicitation is
15 released. Bidders may provide comments to the Staff and the Independent Monitor regarding the
16 materials at any time before the bidders' conference. If the utility affiliate participates in the
17 solicitation, the affiliate personnel involved with the bid submittal, shall not have (or within one
18 year have had) access to any and all data relating to the solicitation, which is not otherwise
19 provided to other bidders. This data may include, but is not limited to, energy risk management
20 reports and documents, and system dispatch information. [Roach Rebuttal at page 17 line 9 to
21 page 18 line 4]

22 **2. Opportunities to contribute & review**

23

24 To ensure that the 2003 competitive solicitation process reflects the needs and
25 requirements of all parties, the utility must to respond to the bidder's comments in a reasonable
26 and substantive manner within seven days. [Roach Direct at page 30 lines 16 to 17] To that end,
27 One-one or more bidders' conferences will be held so that all interested parties will have the
28 opportunity to ask questions directly of the utility as well as to identify any deficiencies in the

1 solicitation documents or supporting data. The bidders' conference will be held at least 10 days
2 before the release of the solicitation.

3 Each utility shall schedule at least one bidders' conference prior to the distribution of its
4 solicitation materials in final form to answer questions and to receive comments and suggestions
5 regarding the materials to be distributed from interested persons. The first bidders' conference
6 must occur no later than February 15, 2003.

7 Bidders will be invited to review non-proprietary materials produced by the utility and to
8 address comments or inquiries to the utility, Staff or the Independent Monitor regarding those
9 materials at any time between the release of reports, plans or drafts and the conclusion of the
10 bidders' conference.

11 **C. Independent Monitor**

12

13 **1. Overview**

14

15 To assist the Staff and to assure all parties to the Solicitation for power supplies that the
16 process employed is conducted in a transparent, effective, efficient and equitable manner, an
17 Independent Monitor will be appointed by the Staff of the Commission to oversee the conduct of
18 the Solicitation. The Independent Monitor will be selected by the Staff and will work at the
19 Staff's direction. Any person expecting to participate in the solicitation process may suggest to
20 the Staff any individual to serve as the Independent Monitor. The utility will retain the
21 Independent Monitor selected by the Staff and will be responsible for all related costs. The
22 Independent Monitor shall submit all invoices to the Staff for review. The Staff shall forward the
23 invoices to the utility with a recommendation as to payment.

24 The Independent Monitor will be responsible for:

- 25
- 26 • monitoring all communications regarding the solicitation by and among the utility
27 and any bidders or potential bidders, including affiliates [Original Staff Report dated October 25, 2002 at page 19 lines 15 to 19];

- 1 • performing the tasks and assessments outlined above if an affiliate of the utility or
2 the utility itself will be participating in any solicitation under the process outlined
3 herein; [PGR Brief]
- 4 • conducting the solicitation if an affiliate of the utility, or the utility itself, will be
5 participating in any of the solicitations contemplated under the process; Direct
6 Testimony of Jack E. Davis in consolidated Docket No. E-01345A-01-0822 at 36,
7 lines 16 – 21.
- 8 • evaluating the adequacy, accuracy and completeness of all solicitation materials,
9 and the quality of the evaluations conducted;
- 10 • monitoring any negotiations conducted by the utility and any bidder;
- 11 • ~~assisting the Staff in developing the “prices to beat” and such other tasks as required;~~
12 [Johnson Rebuttal Summary]
- 13 • monitoring any discussion, conversation or other correspondence between the
14 affiliate of the utility and the utility regarding the solicitation process [Original
15 Staff Report dated October 25, 2002 at page 19 lines 20 to 23];
- 16 • advising the Staff and the utility of any issue affecting the integrity of the
17 solicitation process and providing the utility an opportunity to remedy the defect
18 identified;
- 19 • periodically submitting status reports to the Commission and the Staff on the
20 solicitation being conducted, noting any deficiencies identified in the preparation
21 of solicitation materials, maintenance of records, communications with bidders, or
22 in evaluating or selecting bids;
- 23 • advising the Commission and the Staff of significant unresolved issues as they
24 arise;
- 25 • If the utility conducts the solicitation after bids have been selected, preparing and
26 submitting a report to the Commission detailing the Independent Monitor’s;
27 approval or disapproval of the selections of the winning bids [Roach Direct at page

1 | 31 lines 13 to 15]; observations and findings relating to the conduct of the
2 | solicitation; and any recommendations for improvements of the solicitation process
3 | employed in the initial solicitation;

- 4 | • if the Independent monitor conducts the solicitation, selection, along with the load
5 | servicing entity, of the winning bids; [PGR Brief] and
6 | • making all written status reports and the final reports to the Commission available
7 | to any person having an interest in the solicitation.

8 | The Independent Monitor shall have full access to all materials used in or relating to the
9 | Solicitation. The utility shall make its personnel available for consultation with the Independent
10 | Monitor as requested. The Independent Monitor shall attend, in person or telephonically, any
11 | negotiations conducted with bidders.

12 | Following the bidders conferences and before the distribution of the solicitation materials,
13 | the Independent Monitor shall submit a status report to the Commission and the Staff noting any
14 | unresolved issues that could impair the equity or appropriateness of the solicitation process.

15 |
16 | **2. Post Selection Requirements**
17 |

18 | Subsequent to the final bid selections and prior to announcing the selection of winning
19 | bids, the utility shall meet with the Staff and the Independent Monitor to review its bid
20 | evaluations and to explain the basis for its selections. Within 3 days of the selection of winning
21 | bids, the Independent Monitor will file with the Commission a status report identifying the
22 | winning bids and outlining any deficiencies noted in the solicitation process. The Commission
23 | should require the Independent Monitor to submit a report which includes a headline statement on
24 | whether or not the Monitor concurs with the ultimate selection of winners. Moreover, that
25 | concurrence or lack thereof should be given considerable weight in the Commission's approval or
26 | disapproval of the purchase contracts, which result from the solicitation. In addition, the
27 | Independent Monitor will have the right to ask the Commission to stop the solicitation process if
28 | the utility does not act in good faith. [Roach Rebuttal at page 31 lines 13 to 20]

1 The Independent Monitor will also file with the Commission a report on the fairness and
2 effectiveness of the solicitation within 14 days of the selection of winning bids. In that report, the
3 Independent Monitor will describe the process employed and will evaluate the utilities'
4 conformity with the process requirements. If the Independent Monitor finds that the utility
5 unfairly or erroneously conducted the solicitation, the report should so state. If the Independent
6 Monitor believes that the selection process was flawed, the report submitted should detail the
7 Independent Monitor's basis for such belief.

8 **D. Staff**

9

10 Throughout the solicitation process, the Staff and Independent Monitor will review data,
11 review draft solicitation materials, and monitor the solicitation process. The Staff will observe
12 the solicitation process, but will not approve any action or certify any aspect of the solicitation
13 activities. If any disagreement concerning the solicitation occurs, the Staff or the Independent
14 Monitor will promptly notify the utility of its concern and discuss the matter with the utility.

15 The Staff, in conjunction with the Independent Monitor, will be responsible for reviewing
16 the resource plans, the price and cost forecasts, and the network transmission assessment to
17 encourage the utility to develop comprehensive supporting data, and advise the Commission
18 should the utility fail to address the information needs of the solicitation process. Also, the Staff
19 and the Independent Monitor will review forecast data provided by interested parties and compare
20 it to the forecasts provided by the utility when assessing the system needs.

21 **E. Commission**

22

23 The Commission may upon request of the Independent Monitor or at such time or times as
24 it deems appropriate, suspend or terminate the Solicitation in order to remedy any defect in the
25 solicitation process identified by the Independent Monitor. The Commission may order the utility
26 conducting the Solicitation to make changes to the solicitation process it deems necessary to
27 promote effectiveness, reasonableness, and fairness.

1 In the event that the Independent Monitor finds that the utility failed to conduct the
2 solicitation in an equitable manner, the Commission, after notice and hearing, may, among other
3 things, disallow the recovery of costs of power incurred pursuant to contracts entered as a result
4 of this Solicitation as well as the costs of conducting the solicitation or bar any bidder inequitably
5 awarded a contract as a result of the solicitation from bidding in any subsequent solicitation. If
6 the Commission finds that the utility failed to conduct an appropriate solicitation, it may order
7 that a new solicitation, conducted by an independent party, be commenced forthwith.

8 The Commission should rule that the contracts are prudent if: (a) it finds that the process
9 (having given considerable weight to the Independent Monitor's Report) was done in a fair and
10 equitable manner and constitutes reasonable decision-making, and (b) it finds that the contracts
11 signed as part of the solicitation represent the best deal for consumers given all the facts known
12 and knowable at the time of the solicitation. [Roach Rebuttal at page 9 line 8 to page 10 line 2]

13

14 **III. Pre-Solicitation**

15

16 **A. Overview of process**

17

18 In order to be ready to conduct a solicitation by March 1, 2003, as required by the Track A
19 order, the utility must assemble information supporting the determination of products to be
20 solicited and the amount of each product that is needed. The utility must be prepared to evaluate,
21 without delay, all offers presented, including offers to deliver power to points that may differ
22 from the utility's requested points of interconnection. The required data typically collected in the
23 ordinary course of business will serve as the basis for all information to be provided to the Staff,
24 Independent Monitor and bidders, though some will need to be modified to be suitable for the
25 solicitation. To facilitate a timely solicitation, the utility should begin assembling the necessary
26 information without delay.

27 **B. Data Collection**

28

1 Prior to preparation of solicitation materials, supporting data shall be assembled by the
2 utility and provided to the Staff and the Independent Monitor for their review at the earliest date
3 practicable. These data shall include resource plans, load, price, and cost forecasts, and a network
4 transmission assessment containing such information and in formats acceptable to the Staff,
5 designed to facilitate the solicitation process. Once the Staff and the Independent Monitor have
6 completed their review, the following data shall be made available to bidders expressing intent to
7 bid and who have signed a confidentiality agreement: load forecasts, resource plans, needs
8 assessments, and transmission assessments, as appropriate. Price and cost forecasts for power
9 supplies and fuel costs prepared by, or available to the utility, will not be made available to
10 bidders including the affiliate personnel involved in bidding into the solicitation. [Roach Rebuttal
11 at page 3 line 21 to page 4 line 3] Bidders may provide comments to the Staff or Independent
12 Monitor on the quality or completeness of any information provided at any time.

13 In preparation for the solicitation, each utility, or the Independent Monitor conducting the
14 solicitation, [PGR Brief] shall prepare a list of potential bidders to whom bid materials will be
15 sent. That list should be as expansive as is reasonable. Once assembled, that list is to be provided
16 to the Staff and the Independent Monitor (if not conducting the solicitation) [PGR Brief] and
17 posted on the solicitation website. Identified potential bidders are to be contacted and invited to
18 submit a letter of intent to bid. Prospective bidders not identified by the utility will be added to
19 the bidders list by submitting a letter of intent to bid.

20 **C. Resource Plans**

21
22 Prior to the first solicitation, each utility that will solicit power during 2003 must provide
23 to the Staff and the Independent Monitor its current 10-year load and energy forecast and resource
24 plan. Utility personnel must be made available to discuss the load forecast and resource plans
25 with the Staff and the Independent Monitor.

26 The Resource Plan must describe all power sources currently employed to meet load
27 including: generation owned by the utility, existing power supply contracts with affiliated and
28 non-affiliated utilities, planned additions and retirements, contract expirations, loads to be met

1 through the use of demand side management and contracts to satisfy the Environmental Portfolio
2 Standard. The Resource Plan should identify RMR plants, the hours during which such plants are
3 RMR, and the criteria employed to determine RMR. Additionally, the Resource Plan should
4 detail the utility's planned outage schedule and any planned unavailability of power from contract
5 suppliers. Planned reserve requirements shall also be specifically identified.

6 The utility will review with the Staff and the Independent Monitor the adequacy of
7 resources committed to serve expected loads and the reliability of the resources planned to serve
8 that load.

9 Based on the utility's load and energy forecast and the resource plan, the utility will
10 develop a needs assessment. The needs assessment will be designed to identify specific capacity
11 and energy needs and such other services and/or facilities as may be needed over the term of the
12 load forecast.

13 The load forecast, resource plan and needs assessment will be reviewed with the Staff and
14 the Independent Monitor.

15 **D. Price & Cost Forecasts**

16

17 Each utility will provide to the Staff and the Independent Monitor its four-year forecast of
18 its power supply costs from its existing power sources.

19 Each utility shall provide to the Staff and the Independent Monitor the forecast of fuel
20 prices that the utility used in preparation of its power supply costs and all other fuel forecasts
21 relied on, or reviewed by, the utility.

22 Additionally, each utility shall provide to the Staff and the Independent Monitor a four-
23 year forecast of the prices of wholesale power products, including both capacity and energy
24 products by season and time period, in Western wholesale markets for delivery in Arizona
25 prepared by an independent source that makes such estimates available in the normal course of its
26 business. Each utility shall also provide to the Staff and the Independent Monitor copies of all
27 other forecasts of the prices of wholesale power supplies in Western wholesale markets for
28 delivery in Arizona in the possession of or reviewed by the utility. The utility shall identify the

1 source of each such forecast, and explain the strengths and weaknesses of each of the forecasts
2 supplied.

3 Potential bidders may also submit wholesale price forecasts to the Staff. Those forecasts
4 must clearly identify the source of the forecast and all assumptions relied on in preparing the
5 forecast.

6 All forecasts provided will remain confidential and will serve as the basis for certain
7 evaluative and review purposes as are discussed later in this document. During the reviews
8 described above, the Staff and the Independent Monitor will examine the assumptions relied on in
9 making the forecasts and assessments presented.

10 **E. Deliverability Qualifications**

11

12 The utility must provide Staff and the Independent Monitor with a listing of each
13 committed use of its transmission capacity for the period over which resources are to be solicited.

14 The utility will perform and submit for review by the Staff and the Independent Monitor a
15 network transmission assessment of the maximum resource capacity that can be physically and
16 reliably accommodated simultaneously at all technologically feasible interconnection and delivery
17 points. Such transmission limitations are to be used as a guide in the evaluation of deliverability
18 of specific combinations of bid resource capacity and energy.

19 Upon completion of this review, the utility will be responsible for preparing and
20 conducting a solicitation that encourages multiple bidders to respond to the solicitation. The
21 specifics of products to be solicited, contract terms and conditions, terms of the confidentiality
22 agreement, and the specific solicitation mechanics to be employed will be at the discretion of the
23 utility. In any event, the process must be designed to promote acquisition of reliable power at
24 reasonable costs over the long term.

25 **F. Identification of Products**

26

27 Each utility shall determine the specific products it will contract for in order to maintain
28 an appropriately structured power supply portfolio under the guidance of the Commission. [Third

1 Procedural Order for Track B and Decision No. 65154.] For 2003, utilities may request bids for
2 firm power (e.g. on peak and off peak, annual or seasonal, capacity and energy blocks), and unit
3 contingent supplies, as appropriate. APS shall allocate the majority of the unmet needs to be
4 procured through an RFP and to be met by asset-backed, dispatchable unit sales under traditional
5 pay-for-performance PPAs. Two reliability offers would be accepted. The first would be a unit
6 contingent offer with an Availability Guarantee of 95%. The second would be a Firm LD offer
7 that would include a 100% Availability Guarantee and the requirement to pay for replacement
8 capacity and energy if the 100% guarantee is not met. That is the contract is backed up by
9 liquidated damages. [Roach Direct at page 24 lines 1 to 15]

10 The remaining amount of capacity should be procured through an auction format to be met
11 by seasonal Firm LD call options. Firm LD means the bidder guarantees 100% availability
12 backed by liquidated damages. Call options means that the utility has the right (but not the
13 obligation) to call on the bidder during the summer months for either 16 peak hours in a day or
14 just in 6 super-peak hours. All of the calls are under day-ahead scheduling and once called to run,
15 the unit would be guaranteed to run for the full 16 or 6 hours depending upon the product.
16 [Roach Direct at page 26 lines 7 to 14]

17
18 Additionally, to the extent required, solicitations for ancillary services including, but not
19 limited to, load following or spinning reserves, may be undertaken. It is, anticipated that bidders
20 will provide all ancillary services required to support their bids. If the utility provides ancillary
21 services to any generating asset not in its rate base, the utility shall make those ancillary services
22 available to all bidders on the same terms and at the same price as available to those assets.
23 Furthermore, for unit contingent bids, bidders are not required to provide Ancillary Services
24 because if they are chosen as winners of the solicitation, they will be considered as part of the
25 utility's system, be accorded network service designation and be afforded reserves as would any
26 unit owned by the utility. Reserve formulas being used in this region are not appropriately
27 applied to single generator entities. [Panda Gila River's August 28, 2002 Strawdog at page 8,

1 | attached as Exhibit CRR-7 to Roach Direct Testimony; Original Staff Report dated October 25,
2 | 2002 at page 23 lines 14 to 15]

3
4 | In identifying the products to be contracted for, the utility will specifically define the
5 | capacity and energy sought on a time-differentiated basis and the periods for which services will
6 | be purchased. The solicitation materials will contain the terms and conditions proposed by the
7 | utility, or the Independent Monitor. The solicitation documents will includeing the right of the
8 | utility, or the Independent Monitor, [PGR Brief] to reject all bids and to amend the request for
9 | service without notice. The solicitation materials shall include a model contract.

10 | **IV. Preparation Of Initial Solicitation**

11 12 | **A. Overview**

13
14 | The materials to be provided to potential bidders shall be prepared by the utility and shall
15 | be developed in a manner that facilitates the preparation of responsive and competitive bids. The
16 | materials must be accurate and sufficiently detailed so that no bidder is afforded an undue
17 | advantage. The terms and conditions must be reasonable and commercially acceptable and must
18 | be reviewed by the Independent Monitor and the Staff.

19 | **B. Solicitation Material Content**

20
21 | The utility will have responsibility for preparing all solicitation materials. The materials
22 | will be prepared in a timely manner so that the Staff and the Independent Monitor will have time
23 | to review the documents and suggest changes, before they are provided to interested parties for
24 | comment.

25 | The utility will prepare bid packages that contain a description of the specific products to
26 | be acquired, the capacity and energy to be acquired, the bidding method to be employed (e.g.
27 | Request for Proposal or Descending Clock Auction), a copy of the contract to be executed, the
28 | preferred delivery points and/or network resource status [Original Staff Report dated October 25,

1 | 2002 at page 23 lines 14 to 15], the evaluation criteria to be used, bid fees (if any), credit
2 requirements, due dates and such other information as may be appropriate.

3 It will be the responsibility of the utility to prepare draft solicitation materials and to discuss
4 these drafts with the Staff and the Independent Monitor prior to distributing them in draft form to
5 potential bidders. These drafts will include but will not be limited to: the specific power supply
6 products sought, points of delivery, a model contract and confidentiality agreement, the bid
7 requirements, pre-qualification requirements, creditworthiness requirements, the solicitation
8 method to be employed, information describing the utility and its forecast load, and the evaluation
9 criteria to be used.

10 In the Solicitation materials the utility will describe in detail how it will conduct bidding,
11 such as how many rounds of bids will be accepted, Descending Clock Auction procedures, etc.
12 The utility may specify that bids must be firm and for how long bids must be open after the
13 auction is completed. If a Request for Proposal is used, a utility may specify that bids must be
14 valid for up to 30 days.

15 Price caps or auction reserve prices may be established by the utility. Any caps or auction
16 reserve prices established must be disclosed to and discussed with the Staff and the Independent
17 Monitor before the solicitation occurs. No limitations are to be placed on the maximum or
18 minimum capacity or energy that any bidder may bid for or provide.

19 The solicitation materials will also describe the criteria to be used to select winning bids
20 and the weighting, if any, to be placed on each criterion.

21 The following criteria may be used to evaluate bids:

- 22 - Delivered price
- 23 - Deliverability
- 24 - Reliability
- 25 - Risk to Ratepayers [Roach Direct at page 27 lines 1 to 3]
- 26 - Creditworthiness
- 27 - The source(s) of power for unit contingent products
- 28 - System benefits

- 1 - Exceptions to bid specifications and/or model contract terms and
- 2 conditions
- 3 - Other criteria as appropriate and made publicly available

4 | The bid package prepared by the utility or Independent Monitor [PGR Brief] should specify
5 preferred delivery points and, if available, equivalent delivery points and any incremental costs
6 the utility will incur if bidders deliver to those equivalent delivery points. The utility shall
7 disclose to the bidders the existence of the network transmission assessment previously provided
8 to the Staff and the Independent Monitor, and disclose that the assessment will be used in
9 evaluating equivalent delivery points. The solicitation materials will specify the process the utility
10 | or the utility and Independent Monitor [PGR Brief] will use to identify whether any constraints
11 would be created on its system as a result of deliveries to any alternative delivery point, how it
12 will estimate the cost and time required to relieve the constraint, and the costs a bidder will incur
13 to mitigate the constraint.

14 The bid materials will also describe the Supplier information to be provided and the dates
15 when such information is due. This requirement may include a demonstration of the bidder's
16 experience in providing services and evidence of the bidder's creditworthiness. Utilities shall
17 require bidders to provide a description of the sources of electricity they intend to use to supply
18 service.

19 The bid materials will specifically describe the credit support acceptable to the utility both
20 as to form and amount. However, bidders may provide alternative credit support arrangements
21 and, if equivalent to that specified, the utility must evaluate the proposal as it would a conforming
22 bid. Equivalent credit support arrangements may include, but will not be limited to, appropriate
23 parental or affiliate guarantees.

24 Bid materials will also include:

- 25 - A draft Confidentiality Agreement
- 26 - Identification of any pre-qualification requirements
- 27 - Identification of any bid fees

28 **C. Communications**

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Only those employees, officers, directors or contractors of the utility ~~or its affiliates~~ [Roach Rebuttal at page 3 line 21 to page 4 line 3] specifically assigned by January 1, 2003, to prepare the solicitation materials or to evaluate bids received, may participate in the preparation of solicitation materials or evaluation of bids. All persons assigned to the solicitation by the utility shall be subject to a standard of conduct established for the purpose of maintaining a separation between the utility and any affiliated entity or person. Persons who work for an affiliate, parent, or part of the utility involved in the sale or marketing of resources from generating assets owned by the utility shall not participate in the solicitation preparation or evaluation of bids, or have any contact regarding the solicitation with any personnel assigned to conduct the solicitation, except on the same terms as any other bidder. In addition, the Affiliate should not have access or have had access within one year of the solicitation to any information concerning the energy and capacity costs which it has refused to provide to other bidders. [Roach Rebuttal at page 6 lines 1 to 16; Kessler, Tr. at 201, lines 7 – 17; Carlson Affidavit attached to APS Motion for Protective Order]

A protocol shall be established for all communications between the utility and all prospective bidders, regardless of whether they are affiliates or third party bidders. The protocol must prohibit the dissemination of any data to an affiliated person that are not provided to all other interested persons on equal terms and at the same time. The utility will identify to the Staff and the Independent Monitor, the information it proposes to restrict access to by bidders and other interested persons, and identify whether that information has been available to an affiliate within one year of the solicitation. [PGR Brief at 15-20; Kessler, Tr. at 201, lines 7 – 17; Carlson Affidavit].

The Staff and the Independent Monitor will review all draft solicitation materials before they are released to the parties for their review.

Concurrently, the utility and/or the Independent Monitor [PGR Brief] will establish the procedures it will employ to communicate with all potential bidders. That communications plan must be designed to maintain confidentiality and to provide equal access to information to all. All

1 bidders, including utility affiliates, must be required to communicate with the utility on equal
2 terms through its website [Original Staff Report dated October 25, 2002 at page 20 lines 1 to 5].

3 The approach adopted must be shown to provide no undue advantage to any potential bidder.

4 By January 1, 2003, each utility shall establish and maintain a solicitation website as the
5 medium for communicating with bidders prior to the bid date, except for confidential exchanges
6 regarding pre-qualification and creditworthiness. Bidders will address all inquiries to the utility
7 on the website. Each inquiry and the utility response thereto shall be posted so that all bidders
8 have equal access to information. The website will also be used to provide timely access to data
9 and other information, such as the bidders list and the form letter of intent to bid that bidders may
10 use to be placed on the bidders list.

11 Pre-solicitation data shall be posted on the website as soon as it has been reviewed by
12 Staff and the Independent Monitor but in no case less than 5 days before the last bidders'
13 conference.

14 Bidder inquiries to the Independent Monitor may also be addressed using the solicitation
15 website. All bidder inquiries to the Independent Monitor and the response provided, regardless of
16 how the inquiry is made, will be posted on the solicitation website for review by all bidders.

17 As part of the communications protocols established by the utility, or independent
18 monitor, [PGR Brief] each utility shall establish a system for logging all contacts between utility
19 personnel and bidders and potential bidders although such communications should take place via
20 the website. [Original Staff Report dated October 25, 2002 at page 20 lines 1 to 5] That protocol
21 must, at a minimum, require recording the date and time of any conversation, whether telephonic
22 or in person, the substance of that discussion and whether the Independent Monitor participated in
23 the contact. The utility shall maintain copies of all e-mails exchanged between the utility and
24 bidders or potential bidders, copies of all correspondence, and all such other communications as
25 may occur regarding the solicitation, for the terms set forth below.

26 Each utility shall schedule one or more bidders' conferences to answer questions posed by
27 potential bidders and to take comments regarding the adequacy and quality of the information
28 provided to bidders. All bidders' conferences must be completed at least 10 days before the

1 | release of the final bid package. The utility shall make a substantive response to the bidder's
2 | comments within seven days of submission. [Roach Direct at page 30 lines 3 to 7]

3 Based on the comments received, the utility, after consultation with the Staff and the
4 Independent Monitor, shall make such changes, as it deems necessary and produce in final form
5 its solicitation materials.

6 **D. Pre-qualification**

7
8 Participation in pre-qualification shall be a prerequisite to having a bid accepted. The
9 utility shall begin pre-qualifying bidders at the same time it assembles the list of prospective
10 bidders. As bidders indicate their intent to submit a bid, the utility shall provide all necessary
11 documents to complete the pre-qualification and undertake the review of completed bidder
12 submissions as they are received.

13 Bidders shall be pre-qualified for:

- 14 • Creditworthiness
15 • Deliverability
16 • Reliability
17 • Business reputation and experience

18
19 The utility shall notify bidders of their pre-qualification status no less than 14 days before
20 bids are due. Any bidder that has not successfully pre-qualified by that date shall be afforded the
21 opportunity to submit pre-qualification materials or to cure any failure to pre-qualify before the
22 bid date.

23 The specific pre-qualification requirements are dependent on the products to be contracted
24 | for and will be established by the utility and/or the Independent Monitor. [PGR Brief] Standards
25 for pre-qualification, including minimum credit worthiness, shall be included in the solicitation
26 materials. Information provided by bidders as part of the pre-qualification process is to be
27 considered confidential.

1 **E. Solicitation Cost**

2

3 The cost of conducting each solicitation is a business expense to be borne by all bidders in
4 a fair and equitable manner. To that end, bid fees of up to \$10,000 per bidder will be permissible.
5 To the extent that bid fees collected exceed the incremental expenses incurred by the utility to
6 conduct the solicitation, such excess is to be refunded to all non-winning bidders pro rata up to
7 the amount of the bid fee actually paid by the bidder. Any costs incurred by the utility in excess
8 of bid fees collected may be considered in subsequent regulatory proceedings.

9 Any utility requiring the payment of bid fees will be responsible for their collection and, if
10 required, the refund of any amounts collected in excess of the costs incurred in conducting the
11 solicitation.

12 Once a solicitation is provided to potential bidders, the utility will employ the steps laid
13 out in the following section (V. Conducting the Solicitation) for each type of solicitation.

14 **V. Conducting The Solicitation**

15

16 **A. Overview**

17

18 In conducting the solicitation, whether by Request for Proposal or Descending Clock
19 Auction, the utility shall employ standard sets of requirements and evaluative tools, appropriate to
20 the type of solicitation conducted.

21 Bid evaluation will be conducted by a team of personnel including representatives of the
22 utility and the Independent Monitor. Personnel from the affiliates of the utility shall not
23 participate in the bid evaluation. [Roach Rebuttal at page 3 line 21 to page 4 line 3]. In evaluating
24 bids, the utility shall use a standard set of evaluative criteria, including a single fuel forecast for
25 each type of fuel. The utility and the Independent Monitor [PGR Brief] will also determine
26 creditworthiness and deliverability using criteria that are unbiased and allow differing means of
27 providing risk mitigation. Final bid selections will be at the sole discretion of the evaluation team
28 utility. [Roach Direct at page 27 lines 1 to 4]

1 During the solicitation process, the Independent Monitor will oversee the solicitation
2 process to ensure compliance with process requirements and to assure that evaluations are
3 conducted in an unbiased fashion. In addition, the Independent Monitor has the right to ask the
4 Commission to stop the solicitation process if the utility acts in bad faith. [Roach Direct at page
5 31 lines 13 to 20] The Staff may be present during bid evaluations and may observe the
6 solicitation process at its discretion.

7 **B. Bid Evaluation**

8
9 Bid evaluations should be conducted in three phases. The first should be to rank order the
10 bids by price using valuation methods that equalize volumetric and or duration differences on a
11 price basis. In the case of a Descending Clock Auction for firm power at fixed prices, only pre-
12 qualified bids will be rank ordered. In the case of unit contingent Requests for Proposals or for
13 non-conforming offers, approaches to valuing the bids that determine an equivalent per MWh net
14 present value of the cost of the bid to the utility by using approved annuity-based approaches may
15 be employed.

16 Phase Two should, to the extent not determined during pre-qualification, evaluate
17 deliverability using the network transmission assessment previously provided to the Staff and the
18 Independent Monitor. ~~To the extent practicable, network~~ Network resource status should be
19 assigned to appropriate bids. [Track A Hearing Testimony of Cary Deise, Tr. at 1106 et seq.]
20 Network service is to be provided pursuant to each utility's OATT. Bidders may propose
21 delivery to alternative points (i.e. points other than those specified). In such case, the utility shall
22 determine the deliverability of the capacity and energy bid using its best efforts. If a bid imposes
23 delivery costs on the utility, the bid price as evaluated should be adjusted to reflect those costs
24 and a new rank order established. If the bidder is prepared to mitigate those costs at its expense,
25 no such adjustment need be made. All assessments of alternative delivery points shall be
26 provided to the Staff and the Independent Monitor prior to the selection of winning bids.

1 During Phase Three all other factors not previously considered are to be evaluated. These
2 include evaluations of creditworthiness, experience and proposed exceptions to model contract
3 terms and/or conditions.

4 To the extent necessary, the utility in conjunction with the Independent Monitor [PGR
5 Brief] may conduct post bid negotiations with selected bidders to clarify bid terms or to resolve
6 issues relating to exceptions noted in submitted bids. Additionally, the utility may conduct final
7 negotiations with selected bidders to resolve any other issues that may arise. All such meetings
8 are to be attended, in person or telephonically, by the Independent Monitor to assure that no
9 undue advantage is afforded any bidder. Based on the evaluations conducted, the utility will,
10 after consultation with the Independent Monitor, and discussion with Staff, select the winning
11 bids.

12 **C. Request for Proposal Bid Evaluation Procedures**

13

14 Bids in response to a Request for Proposal are confidential and are to be submitted in
15 sealed envelopes to be opened simultaneously at the Commission in the presence of the utility's
16 bid evaluators, assigned Staff personnel, and the Independent Monitor. RUCO may also attend.
17 Bids submitted may not be withdrawn for up to 30 days or until rejected by the
18 utility/Independent Monitor. [Panda Gila River's Strawdog at page 2 Section II. E]

19 Bid evaluation will be conducted by a team of personnel including representatives of the
20 utility and the Independent Monitor. During the evaluations, the Staff may be present. ~~Final bid~~
21 ~~selections will be at the sole discretion of the utility.~~ [Panda Gila River's Strawdog at page 2
22 Section II. E]

23 If the utility determines that all bids submitted are to be rejected, it will notify all bidders
24 of its decision to reject all bids within 21 days of the day bids were opened.

25 **D. Descending Clock Auctions Bid Evaluation Procedures**

26

27 All bids are confidential and must be firm until the auction has been completed.
28 Electronically submitted bids must be secured and may not be reviewed except in the presence of

1 the Independent Monitor. If feasible, bids will be reviewed at the offices of the Commission.
2 The Staff and RUCO may also attend. However, no person selling or which may sell energy in
3 competitive markets may review the bids (except of course for utility personnel assigned to the
4 solicitation.)

5 **~~E. Terms Required for Staff Recommendation~~**

6
7 ~~Based on the utility's forecasts of its power supply cost, the submitted forecast of~~
8 ~~wholesale power supply in Arizona, and such other information as it deems appropriate, the Staff,~~
9 ~~assisted by the Independent Monitor, shall establish "prices to beat" for each product solicited for~~
10 ~~each utility. The "prices to beat" established by the Staff will be used for the purpose of~~
11 ~~determining whether the Staff will recommend without further analysis a finding that prices~~
12 ~~contained in any contract meeting the conditions outlined below are reasonable. For contracts not~~
13 ~~meeting the "prices to beat" conditions outlined below, the Staff will, after further analysis, make~~
14 ~~findings and recommendations relating to prudence, reasonableness and used and usefulness as~~
15 ~~appropriate in any subsequent proceedings as scheduled by the Commission.~~

16 ~~In any subsequent proceedings to recover the cost of power purchased pursuant to~~
17 ~~contracts entered as a result of the initial solicitation, the Staff will, without further analysis,~~
18 ~~recommend the Commission find the prices contained in such contracts are reasonable if the~~
19 ~~Monitor determines the solicitation was conducted appropriately and the following conditions are~~
20 ~~met:~~

21 ~~•For contracts with durations of three years or less, the Staff will recommend without~~
22 ~~further analysis approving contract prices when such prices in each year of the contract~~
23 ~~are less than the "prices to beat" established by the Staff and permit, at the utility's~~
24 ~~sole discretion, extension of the contract for the same number of years at comparable~~
25 ~~prices and on the same terms.~~

26 ~~•For contracts with durations longer than three years but less than eight years, the Staff~~
27 ~~will recommend without further analysis that the Commission find the prices~~
28 ~~contained in any contract reasonable when, in each year of the contract delivery~~

1 period, ~~prices for power are less than the “prices to beat” established by the Staff~~
2 ~~pursuant to the following schedule:~~

3 ~~-Contracts of 4 years if contract prices are less than the “prices to beat” by 4%~~
4 ~~or more during each year~~

5
6 ~~-Contracts of 5 or 6 years if contract prices are less than the “prices to beat” by~~
7 ~~6% or more during each year~~

8
9 ~~-Contracts of 7 years if contract prices are less than the “prices to beat” by 10%~~
10 ~~or more during each year.~~

11
12 ~~•For contracts not meeting the conditions outlined above, the Staff reserves the right to~~
13 ~~challenge the prudence, reasonableness or usefulness of the contract entered.~~

14 ~~The above described recommendations by the Staff do not constitute a finding by the Staff~~
15 ~~that any contract was prudent or that the utility’s power supply portfolio was prudently structured.~~
16 ~~The Staff reserves the right to contest the reasonableness of any recommended contract on its~~
17 ~~non price terms or the utility’s portfolio in its entirety in any future proceeding. Additionally,~~
18 ~~contracts not meeting the above stated standards will not automatically be viewed by Staff as~~
19 ~~unreasonable or imprudent. The reasonableness and prudence of contracts not meeting the above~~
20 ~~criteria will need to be evaluated by Staff in subsequent proceedings.~~

21 ~~The “prices to beat” set by the Staff will not be disclosed. After final bid selections are~~
22 ~~announced, the Staff will identify those winning bids that have met the conditions set forth above.~~

23 [Johnson Rebuttal Summary]

24 **VI. Post Selection Requirements**

25
26 Within 14 days of the selection of winning bids, the utility will submit to the Commission
27 a detailed report on the process employed to conduct the solicitation and an explanation of the

1 basis for selecting the winning bids. To the extent that confidential information is to be provided
2 it should be noted.

3
4 Within 3 days of the selection of winning bids the Independent Monitor will submit a
5 status report on the solicitation process employed by the utility to the Commission. Within 14
6 days of the completion of the solicitation, the Independent Monitor will submit to the
7 Commission the report described in Section II C 2 above.

8 Each utility shall maintain a complete record of all materials developed for, generated
9 during or used in conducting the solicitation for the life of the longest contract, plus 5 years. The
10 retained records shall include, but not be limited to, reports, internal and external
11 communications, analyses, contracts, forecasts, bids submitted, questions received from bidders
12 and the answers provided in response, and resource plans. These materials will be available to the
13 Staff. To the extent that the material is not subject to a confidentiality agreement, these materials
14 will be available to the bidders upon reasonable terms and conditions.

15 Sometime after the completion of each utility's initial solicitation, the Commission Staff
16 will commence a review of the utility's power supply portfolio to examine the prudence of that
17 utility's planning and procurement practices, and to determine the effectiveness and efficiency of
18 the solicitation process employed.

19 Also, sometime after the completion of the initial solicitation, the Commission Staff will
20 commence a proceeding to review the solicitation process described in this document and will
21 recommend such changes to the process as may be appropriate. Any refinements will be intended
22 to improve the process and to enhance the development of a robust wholesale energy market in
23 Arizona. Additionally, that proceeding will address the planning for future solicitations at such
24 time and for such amounts of capacity and energy as may be needed.

25 **E. Solicitation Timelines**

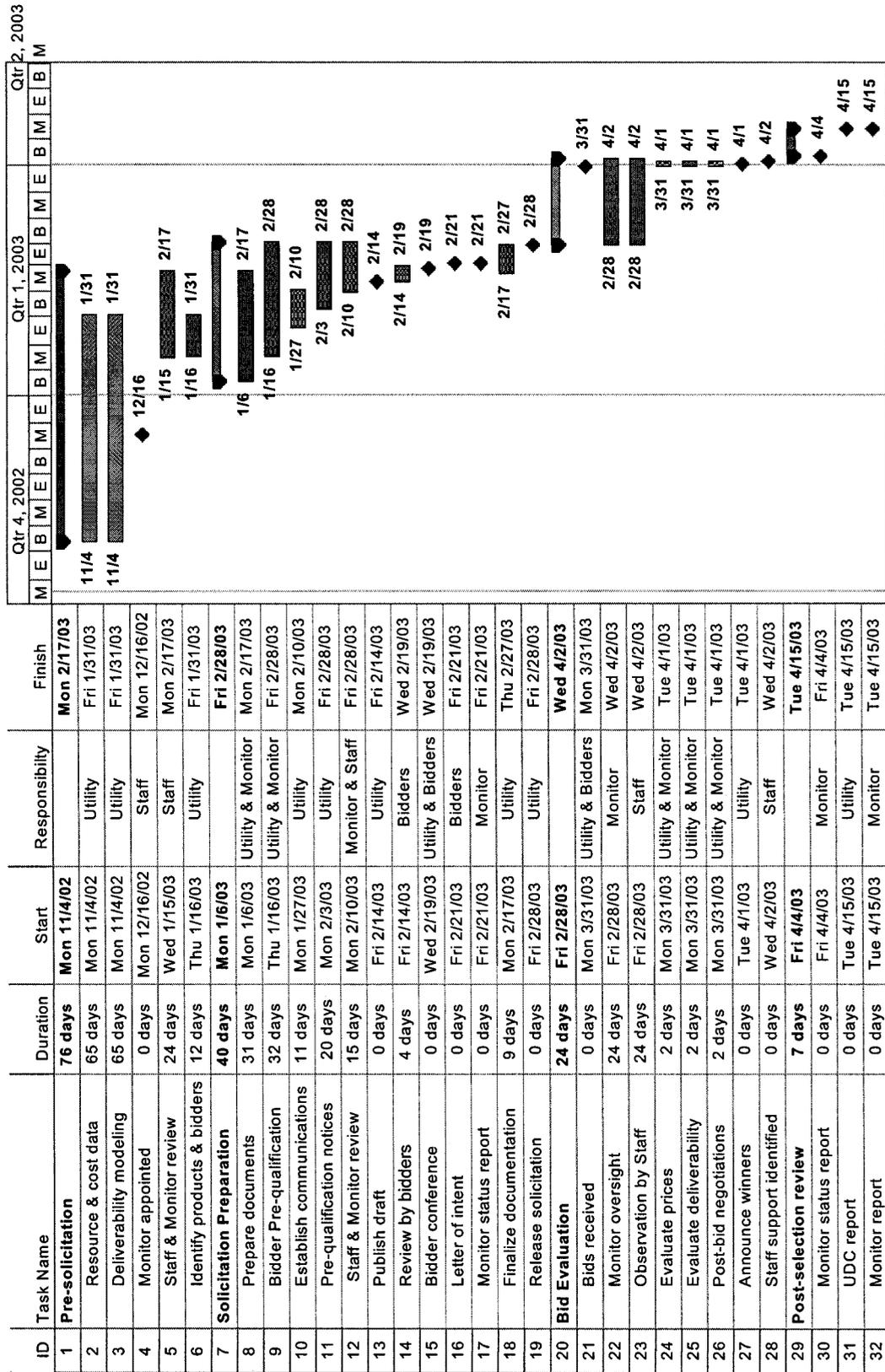
26

1 On the following pages we have presented Solicitation Timelines for the two primary
2 solicitation methodologies discussed at the workshops: The Descending Clock Auction (as
3 proposed by APS in its initial comments on Track B Issues) and a more traditional Request for
4 Proposals approach to power supply acquisitions. The timelines illustrate the time periods during
5 which various required tasks are expected to be completed in order to assure that adequate power
6 supplies are available by July 1, 2003.

7 The timelines were reviewed with the workshop participants and there was a general
8 consensus that they captured the major tasks that will need to be undertaken and that in the
9 aggregate the tasks could be completed within the allotted timeframes.

ELAPSED TIME
 Preparation – Monitor Recommendation: 67 Days
 Solicitation – Selection: 32 Days

Commission STAFF SOLICITATION TIME LINE FOR DESCENDING CLOCK AUCTION



1 **4. Consensus Issues Among Parties**

2 While there appeared to be few agreements among the participants to Track B when the
3 workshops began in July 2002 the vast majority of the issues that separated the parties at that time
4 were identified and discussed at the three workshops facilitated by the Staff. As a result of those
5 discussions, only seven issues remain to be resolved by the Commission. Those issues are
6 discussed in Section 5 of this Report.

7 During the workshops, the participants considered issues ranging from defining products
8 to be solicited through defining what will indicate that the solicitation failed. In reaching
9 consensus, the participants drew upon the experience of marketers who have participated in
10 competitive solicitations in other states and utility personnel responsible for meeting the needs of
11 consumers in Arizona. The Staff and its advisors directed the discussion through all necessary
12 areas, with special attention being paid to transmission access.

13 On the following pages we set forth a list of the major issues considered during the
14 workshop sessions and the agreements reached regarding those issues.

15

ISSUE	AGREEMENT IN PRINCIPLE
1. What is the appropriate way to structure the solicitation process?	1. Structure must be transparent 2. Structured to meet goals of: <ul style="list-style-type: none"> a. System reliability b. No increase in consumer risk c Reasonable prices to consumers d. Environmental standards met 3. Structure must be flexible <ul style="list-style-type: none"> a. Tailored to UDC b. Change over time c. Acquisition of multiple products from diverse generating sources should be encouraged. Multiple contracts from diverse suppliers are appropriate.
2. Are there power supplies that should be exempt from, or treated differently in, a competitive solicitation?	1. Exempt from competitive solicitation: <ul style="list-style-type: none"> a. Existing contracts b. Future QF contracts
3. What role should Least Cost Planning play in competitive markets?	1. UDC will continue to forecast load & develop supply portfolio 2. Least Cost Panning will not require self-build by UDC
4. Who should bear price risks?	1. Assigning risk to UDC increases UDC cost 2. Assigning risk to bidders will increase bid prices 3. Contract fuel adjustment mechanisms are appropriate 4. UDC will be free to seek cost recovery in future proceedings
5. Should there be a standard approach to competitive solicitations?	1. Process should accommodate all possible products 2. Same process should be used for all UDC's. 3. Load growth is contestable 4. Unmet needs are contestable 5. Contestable load will change over time 5. Affiliated suppliers may compete for load

ISSUE	AGREEMENT IN PRINCIPLE
6. How should UDC's meet the Environmental Portfolio Standards?	<ol style="list-style-type: none"> 1. Bidders should not be required to include EPS in each bid. 2. EPS, Renewables and DSM should be permitted to bid in first solicitation, but no mandated "bonus points" awarded in review process. 3. Any EPS not acquired through this solicitation should be acquired in a separate process.
7. How should a competitively procured power supply portfolio be structured?	<ol style="list-style-type: none"> 1. Current transmission allows some level of competitive solicitation 2. Must address load shape 4. Product diversity 5. Term diversity 6. Deliverability must be considered 7. Ancillary services are not to be solicited in the first solicitation as separate products. 8. Ancillary services should be phased in accordance with Standard Market Design. 9. Slice of system should not be bid in first solicitation. 10. Slice of system should not be included in the first solicitation. 11. Unit contingent bids may be used in 2003 Solicitation 12. Bids for multiple years should be considered in 2003 Solicitation
8. What are the acceptable pricing regimes?	<ol style="list-style-type: none"> 1. Bidders should have option to bid pricing structure. 2. UDC not required to accept a particular structure. 3. For first solicitation, UDC will use pricing structure and terms approved by Commission.
9. Does a competitive solicitation address market power concerns?	<ol style="list-style-type: none"> 1. Market power is mitigated by permitting bidders to identify equivalent transmission points 2. Deliverability of load must be verifiable 3. No preference to transmission should be given to UDC affiliates 4. Bidders' proposed transmission path cannot displace contract load or native load. 5. Through the use of equivalent delivery points, swaps should be permitted.

1

ISSUE	AGREEMENT IN PRINCIPLE
10. Who can participate in the solicitation?	1. Solicitation open to all bidders.
11. Are there requirements to qualify to bid?	1. Pre-qualification of bidders should be required 2. All pre-qualification requirements should be disclosed before bidding. 3. Amount of any bid fee imposed on bidders to be disclosed before bidding. 4. Minimum qualification should be demonstration to provide creditworthiness.
12. How should bids be evaluated?	1. Evaluation criteria disclosed with solicitation: a. Draft contract b. Review process c. Specific criteria d. Bidder & product requirements to close. 2. Commission Staff and Monitor should: a. Review solicitation before issuance b. Monitor bid review by UDC c. Monitor selection process d. Review bids and final selection(s) e. Assure fairness & arms-length review
13. Failure of the solicitation	1. Solicitation will be a failure if: a. No consumer benefit b. No power contract is signed d. Commission determines the process, as employed, was flawed e. Market power exacerbated f. Not enough capacity to meet load 2. If solicitation fails, Commission should require immediate new solicitation 3. UDC should retain solicitation records beyond life of contract

2

3