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BEFORE THE ARIZONA CORPORATION COMMISSION 2003 FEB 10 P 3:46

**COMMISSIONERS**

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

Arizona Corporation Commission

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FEB 10 2003

AZ CORP COMMISSION  
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IN THE MATTER OF THE GENERIC ) DOCKET NO. ~~E-00000A-02-0051~~  
PROCEEDING CONCERNING ELECTRIC )  
RESTRUCTURING ISSUES. )

IN THE MATTER OF ARIZONA PUBLIC ) DOCKET NO. E-01345A-01-0822  
SERVICE COMPANY'S REQUEST FOR A )  
VARIANCE OF CERTAIN REQUIREMENTS OF )  
A.A.C. R14-2-1606. )

IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-01-0630  
PROCEEDING CONCERNING THE ARIZONA )  
INDEPENDENT SCHEDULING )  
ADMINISTRATOR. )

IN THE MATTER OF TUCSON ELECTRIC ) DOCKET NO. E-01933A-02-0069  
POWER COMPANY'S APPLICATION FOR A )  
VARIANCE OF CERTAIN ELECTRIC )  
COMPETITION RULES COMPLIANCE DATES. )

**WMGF'S EXCEPTIONS AND PROPOSED LANGUAGE AMENDMENTS TO  
THE ALJ'S RECOMMENDED OPINION AND ORDER**

The Wellton-Mohawk Generating Facility ("WMGF") hereby submits its  
exceptions and recommended language amendments to the Administrative Law Judge's  
("ALJ") draft Recommended Opinion and Order ("Recommended Order") in the Track B  
(competitive solicitation) proceeding as follows:

**I. INTRODUCTION:**

WMGF believes that the ALJ did an admirable job weighing the large amount

1 of evidence presented by the parties during the five days of hearings, and believes that she  
2 presents a very thoughtful and thorough Recommended Order. WMGF, however, disagrees  
3 with three of the ALJ's conclusions or findings in the Recommended Order.

4 First, WMGF disagrees with the ALJ's Finding of Fact No. 37, which finds  
5 that the amount of RMR load contestable in the competitive solicitation shall be dependant  
6 upon the results of the utilities' RMR studies, and Staff's and the Independent Evaluator's  
7 review of the studies and the comments submitted by the parties on those study results. The  
8 record does not support this finding insofar as it leaves open the possibility that a party's due  
9 process rights may be overlooked in the event that the parties cannot agree on the contestable  
10 RMR generation amount in the load pocket.

11 Second, WMGF disagrees with the ALJ's conclusion that power supply  
12 proposals containing "renewable energy" should not be given any additional credit in the  
13 competitive solicitation bid evaluation at this time. This conclusion is contrary to the weight  
14 of the evidence in the record, and it would fail to optimize the meaningful opportunity for the  
15 Commission to promote the commercialization of renewable energy as a component of the  
16 utilities' total power supply portfolios.

17 Third, although WMGF agrees with the ALJ's conclusion that long-term  
18 contracts be seriously considered by the utilities in the competitive solicitation, WMGF  
19 believes that the Recommended Order should include additional language clarifying that  
20 long-term contracts are contracts of 15 years or more in length.

21 These exceptions and WMGF's recommended language amendments to the  
22 draft Track B order are discussed in detail below.  
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1       **II.    EXCEPTIONS AND RECOMMENDED LANGUAGE AMENDMENTS:**

2           **A.    THE ARIZONA CORPORATION COMMISSION (“COMMISSION”)**  
3           **SHOULD ENSURE THAT THE LEVEL AND NATURE OF**  
4           **RELIABILITY MUST-RUN GENERATION IN THE LOAD POCKETS**  
5           **IS FAIRLY APPLIED IN THE COMPETITIVE SOLICITATION.**

6           As thoroughly explained in WMGF’s Initial and Reply Briefs, substantial  
7           evidence was presented at the hearing that RMR capacity and energy resources, including  
8           both utility-owned and non-utility owned resources, should be contestable in the competitive  
9           solicitation process to help resolve Arizona’s load pocket problems in the most economical,  
10          efficient and environmentally-friendly manner and to facilitate the establishment of a  
11          competitive wholesale market in Arizona. WMGF strongly agrees with the ALJ who arrives  
12          at the same conclusion when in the Recommended Order she states:

13                   We find that it is reasonable and in the public interest that all  
14                   generators that can reliably deliver energy into the load  
15                   pockets, under the RMR conditions outlined by Staff, should be  
16                   allowed to compete in a fair and open manner to supply energy  
17                   and capacity to both APS and TEP. We will therefore require  
18                   that RMR capacity and energy resources, including both utility  
19                   owned and non-utility owned resources, be contestable in the  
20                   competitive solicitation process to help resolve Arizona’s load  
21                   pocket problems in the most economical, efficient and  
22                   environmentally friendly manner possible. [Emphasis  
23                   Supplied]

24          (ALJ’s Recommended Order, page 24, lines 5 - 12). WMGF also agrees with the ALJ’s  
25          conclusion that the weight of the evidence supports the concept that the same solicitation  
26          parameters for RMR capacity and energy should apply to APS for both the Yuma and  
27          Phoenix load pockets. (ALJ’s Recommended Order, page 28, lines 5 - 7).

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1 WMGF, however, disagrees with the ALJ's Finding of Fact No. 37, which  
2 finds that the amount of RMR load contestable in the competitive solicitation shall be  
3 dependant upon the results of the utilities' RMR studies, and Staff's and the Independent  
4 Evaluator's review of the studies and the comments submitted by the parties on those study  
5 results. (Finding of Fact No. 37, page 69). The record simply does not support this finding,  
6 and importantly, it leaves open the possibility that a party's due process rights may be  
7 overlooked in the event that the parties cannot agree on the amount of contestable RMR  
8 generation in the load pocket.  
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10 For example, WMGF and APS disagreed during the Track B proceedings on  
11 the components and method of determining the contestable amount of RMR generation in the  
12 Yuma load pocket and their post-hearing briefs devote several pages addressing this issue.  
13 As the load serving utility, APS's Yuma area RMR study was made available to the public on  
14 February 7, 2003. WMGF has preliminarily reviewed this study and the early indication is  
15 that WMGF and APS continue to disagree on the amount of contestable RMR generation in  
16 the Yuma load pocket. Although the ALJ recommends a review process where Staff and the  
17 Independent Evaluator may adjust the amount of contestable RMR generation in APS's  
18 Yuma load pocket study based upon comments received from WMGF and other parties, the  
19 unavoidable result will be that either APS or WMGF, or both, will be unhappy with Staff's  
20 final determination.<sup>1</sup>  
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23 Therefore, in order to afford the parties due process and fairly determine the  
24 amount of RMR generation contestable in the load pockets in the event the parties cannot  
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26 <sup>1</sup> The contestability of RMR generation in the Yuma load pocket is further complicated by  
the fact that the APS Yucca Units could conceivably be bid as Yuma RMR generation.

1 reach agreement, WMGF recommends that the language of the Recommended Order be  
2 amended to allow for an expedited "mini" evidentiary hearing before an Administrative Law  
3 Judge to take and weigh the evidence. Accordingly, WMGF recommends that the language  
4 of the Recommended Order be amended as follows:

5 **Page 69, Finding of Fact No. 37: ADD:**

6  
7 **37. It is reasonable for Staff and the Independent Evaluator to review the January,**  
8 **2003 RMR study results, and comments to those results, and to thereafter make**  
9 **necessary revisions to the RMR amounts appearing in Staff's contestable load estimates**  
10 **during the Pre-Solicitation process set forth in the Staff Report. If the amount of**  
11 **contestable RMR generation in the load pocket is disputed by one or more parties, such**  
12 **amount will be determined following an expedited "mini" evidentiary hearing before an**  
13 **Administrative Law Judge.**

14 **Page 28, Line 6.5: Yuma Area: ADD and DELETE:**

15 **A determination of whether RMR in the Yuma area is contestable will be dependant**  
16 **upon the results of the forthcoming RMR studies. If the amount of contestable RMR**  
17 **generation in the Yuma load pocket is disputed by one or more parties, such amount**  
18 **will be determined following an expedited "mini" evidentiary hearing before an**  
19 **Administrative Law Judge. ~~and Staff and the Independent Evaluator's review of~~**  
20 **~~comments filed on those results.~~**

21 **B. THE COMISSION SHOULD PROVIDE FOR THE MEANINGFUL**  
22 **INCLUSION OF RENEWABLE ENERGY IN THE COMPETITIVE**  
23 **SOLICITATION SO THAT THE UTILITIES MAY COMPLY WITH**  
24 **THE EPS MANDATE.**

25 WMGF presented substantial evidence on the record supporting the  
26 conclusion that because APS is experiencing substantial shortfalls in meeting its unmet solar  
electric resource requirements under the EPS, generators with a renewable resource  
component should be permitted to submit proposals in the competitive solicitation, and such  
proposals should receive appropriate credit in recognition of the "added value" they provide  
APS in meeting its renewable resource requirements under the EPS. WMGF also presented

1 substantial evidence demonstrating that the Commission should adopt WMGF's proposed  
2 method for calculating this credit. To this end, WMGF agrees with the ALJ's general  
3 conclusion that renewable energy should be included in the forthcoming competitive  
4 solicitation (Recommended Order, page 50). WMGF also agrees with the ALJ's conclusion  
5 that the utilities can choose to give a preference to bids containing environmentally friendly  
6 generation in the bid evaluation (Id.). WMGF, however, disagrees with the ALJ's conclusion  
7 that the utilities should not be required to assign appropriate value to power supply proposals  
8 containing renewable energy at this time. Not only is this conclusion contrary to the weight  
9 of the evidence in the record, it would fail to optimize a meaningful opportunity for the  
10 Commission to promote the commercialization of renewable energy as a component of the  
11 utilities' total power supply portfolios.  
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14 As explained in detail in WMGF's Initial Brief (pages 15 - 16), at its current  
15 funding level APS will have a substantial shortfall in meeting its unmet solar electric  
16 resource requirements under the EPS in every year of the EPS, which runs through 2012.  
17 (WMGF Initial Testimony, page 15, Transcript, Volume III, page 685 and APS discovery  
18 response as WMGF Exhibit W-1)). APS also testified that those generator proposals with a  
19 renewable energy component provide "added value" to the utility because they may assist the  
20 utility in satisfying its renewable quotas (shortfalls) under the EPS. (See Carlson, Rebuttal  
21 Testimony, page 21, lines 22 - 25). Although APS testified that it has a renewable energy  
22 Request for Proposals ("RFP") outstanding, it is WMGF's understanding that this RFP was  
23 released by the utility over two years ago and it had a due date which expired a few months  
24 after the RFP's release date. Thus, in light of the record evidence that APS has a short-fall in  
25 meeting its solar electric requirements under the EPS and the fact that APS admits that  
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1 renewable energy would provide “added value” to power supply proposals, it is fair and  
2 reasonable for the Commission to conclude that such proposals should receive appropriate  
3 credit in recognition of the “added value” they provide in meeting the utility’s renewable  
4 resource requirements under the EPS. An additional reason why generator proposals  
5 containing renewable energy should be assigned appropriate credit is the fact that this  
6 Commission recognizes that while most renewable resources at present are more expensive  
7 than fossil fuel resources, there are significant public interest benefits associated with the  
8 inclusion of clean renewable energy resources in the utilities’ total energy portfolios. (See  
9 WMGF Initial Brief, pages 16 – 18).  
10

11 If the Commission agrees that generators with a renewable resource  
12 component should be permitted to submit proposals in the competitive solicitation, and such  
13 proposals should receive appropriate credit in recognition of the “added value” they provide  
14 the utilities in meeting their renewable resource requirements under the EPS, WMGF  
15 believes that the record supports the Commission adopting WMGF’s proposed method for  
16 calculating this credit. As explained in detail in WMGF’s Initial Brief (pages 16 – 18), the  
17 Commission made the EPS a mandate and provided a funding mechanism through a special  
18 EPS surcharge on customer bills. Thus, the Commission has already in effect determined the  
19 reasonable “added value” of renewable energy is the amount of funds generated by the EPS  
20 surcharge. As the expert witness for WMGF testified, the goal should be for the utilities to  
21 procure as much renewable energy as possible to comply with the EPS mandate at the lowest  
22 reasonable prices. (Kendall, Direct Testimony, page 18). Thus, it follows that the most  
23 appropriate way of calculating the “added value” of a power supply proposal containing  
24 renewable resources is to simply add monies collected by the utility from its ratepayers under  
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1 the EPS surcharge and divide this amount by the total MW hours that the utility must  
2 purchase from renewable energy providers in compliance with the EPS. (See Kendall, Direct  
3 Testimony, pages 18 -19).

4 Accordingly, WMGF recommends that the language of the Recommended  
5 Order be amended as follows:

6  
7 **Page 50: Lines 5 – 8: ADD and DELETE:**

8 **We agree with WMGF that generators with a renewable resource component should be**  
9 **permitted to submit proposals in the competitive solicitation, and such proposals should**  
10 **receive appropriate credit in recognition of the “added value” they provide the utilities**  
11 **in meeting their renewable resource requirements under the EPS. The most**  
12 **appropriate way of calculating the “added value” of a power supply proposal**  
13 **containing renewable resources is to simply add monies collected by the utility from its**  
14 **ratepayers under the EPS surcharge and other EPS related surcharges and divide this**  
15 **amount by the total MW hours that the utility must purchase from renewable energy**  
16 **providers in compliance with the EPS. We agree with APS and Staff. While we are**  
17 **not opposed to the concept of a utility giving a preference to environmentally friendly**  
18 **generation in its bid evaluation, we do not believe at this time that the record in this**  
19 **proceeding supports that imposition of such a requirement.**

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C. THE COMMISSION SHOULD SPECIFICALLY DEFINE LONG-  
TERM CONTRACTS AS BEING 15 YEARS OR MORE IN LENGTH.

As explained in detail in WMGF's Initial Brief (pages 18 - 23) and Reply Brief  
(pages 13 - 17), substantial evidence was presented by Staff, WMGF and other parties  
showing that APS and TEP should be required to seriously consider a well-balanced mixture  
of contracts, including long-term contracts of 15 to 20 years, in the competitive solicitation to  
protect ratepayers from future upswings in power prices and to allow new and proposed  
generating projects the opportunity to meaningfully participate in the competitive solicitation  
process. In weighing the evidence, the ALJ in the Recommended Order arrives at the same  
conclusion, but does not specifically define the minimum length-of-term for long-term

1 contracts.

2 Accordingly, WMGF recommends that the language of the Recommended  
3 Order be amended slightly as follows:

4 **Page 42, Lines 25 -27: ADD:**

5  
6 **The evidence in the record in this proceeding supports a finding that both APS and**  
7 **TEP should seriously evaluate and consider a well-balanced mixture of contracts,**  
8 **including long-term contracts, in the competitive solicitation in order to protect**  
9 **ratepayers from future upswings in power prices. Long-term contracts shall be defined**  
10 **as contracts with terms of 15 years or more.**

11 **III. CONCLUSION:**

12 Based upon the exceptions presented above, as supported by the weight of the  
13 evidence in the record, WMGF requests that the Commission consider the exceptions and  
14 adopt the recommended language amendments to the draft Recommended Order, and  
15 approve the ALJ's Recommended Order, as amended, accordingly.

16 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of February, 2003.

17 MARTINEZ & CURTIS, P.C.

18  
19 By Paul R. Michaud

20 Paul R. Michaud  
21 2712 North Seventh Street  
22 Phoenix, Arizona 85006  
23 Attorneys for Wellton-Mohawk Generating  
24 Facility

25 **Original and Nineteen (19) copies**  
26 **of the foregoing filed this**  
27 **10<sup>th</sup> day of February, 2003 with:**

28 Docket Control  
29 Arizona Corporation Commission  
30 1200 West Washington  
31 Phoenix, Arizona 85007

1 **Copies of the foregoing hand-delivered**  
2 **this 10<sup>th</sup> day of February, 2003 to:**

3 Marc Spitzer, Chairman  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Jim Irvin, Commissioner  
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**Copies of the foregoing mailed  
this 10th day of February, 2003 to:**

All parties of record in docket E-00000A-02-0051, et al.  
(Track B Proceeding)

By: Kayla Christens

1752/pleadings/exceptions.FINAL.021003