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**Transcript Exhibit(s)**

Docket #(s): E-01345A-07-0420

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Exhibit #: MESQ1, MESQ2, EGAI, APS1, APS2  
RUCO1, RUCO2, S1, S2

Arizona Corporation Commission  
**DOCKETED**

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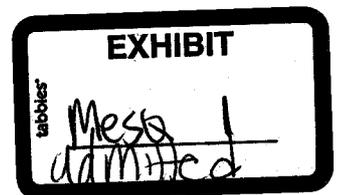
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**Rebuttal Testimony  
Of  
Theodore E. Roberts  
On behalf of  
Mesquite Power, L.L.C., Southwestern  
Power Group II, L.L.C. and Bowie Power  
Station, L.L.C.**

**Docket No. E-01345A-07-0420**

**Mesquite et al. Ex. #2  
February 20, 2008**



**REBUTTAL TESTIMONY  
OF  
THEODORE E. ROBERTS  
DOCKET NO. E-01345A-07-0420**

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4 **Q.1 Please state your name and business affiliation.**

5 A.1 My name is Theodore E. Roberts. I am employed by Sempra Energy as Senior  
6 Regulatory Counsel.

7  
8 **Q.2 On whose behalf are you testifying, and are you the same Theodore E. Roberts that  
9 sponsored Direct Testimony in this proceeding?**

10 A.2 Yes, I am. I am providing testimony on behalf of Mesquite Power, L.L.C., Southwestern  
11 Power Group II, L.L.C. and Bowie Power Station, L.L.C. ("Mesquite/SWPG/Bowie").

12 **Q.3 Please summarize the rebuttal testimony that you are providing on behalf of  
13 Mesquite/SWPG/Bowie in this proceeding?**

14 A.3 Mesquite/SWPG/Bowie are responding to the Direct Testimony filed by Patrick Dinkel  
15 on behalf of Arizona Public Service Company ("APS") and by Commission Staff witness  
16 Barbara Keene.

17 **Q.4 Please summarize your rebuttal testimony.**

18 A.4 The testimony of APS and Staff both appear to implicitly assume that the Recommended  
19 Best Practices for Procurement that were discussed in my direct testimony are applicable  
20 to APS' electric procurement during the period of the self-build moratorium, as I  
21 advocated in my direct testimony. In that regard, APS has requested that specified  
22 timelines apply to the Commission's consideration of any future request for authorization  
23 to self-build, subject to certain conditions, and APS' request seems reasonable. In  
24 addition, Staff acknowledged while utility compliance with its Recommended Best  
25 Practices for Procurement is currently voluntary, such compliance "could become  
26 mandatory" if the Recommended Best Practices were incorporated into the Commission's  
27 rulemaking on Resource Planning that is currently underway. Mesquite/Bowie/SWPG  
28 believe that the Recommended Best Practices should be made mandatory for APS for the  
duration of the self-build moratorium, and further believe that should be the case  
regardless of whether or not the same are also mandated for all utilities under future  
resource planning rules.

**Q.5 Why do Mesquite/SWPG/Bowie believe that APS's request for a specific timeline  
applicable to the Commission's consideration of any future request for authorization  
to self-build is reasonable?**

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2 A.5 As was demonstrated in the Commission's consideration of the APS self-build request in  
3 Docket No. E-01345A-06-0464, the passage of time adds uncertainty to the pricing of a  
4 proposed power purchase agreement or power plant acquisition because the supply of  
5 labor and materials is in a constant state of flux, particularly with items such as turbines  
6 for which there is a high demand and a long lead time. That uncertainty affects the price  
7 a bidder is willing to offer and ultimately directly impacts consumers in the prices that  
8 APS pays for resources. In order to provide consumers the greatest protection and for  
9 APS to have the greatest certainty in contracting, expeditious resolution of any self-build  
10 authorization request would be important. Of even greater importance to  
11 Mesquite/SWPG/Bowie, APS' direct testimony explicitly acknowledges and  
12 encompasses the right of "an intervening bidder" to challenge the fairness of APS'  
13 conduct of any solicitation that resulted in a self-build authorization request being  
14 presented to the Commission. Such recognition of rights goes a long way to addressing  
15 the concerns raised by Mesquite/SWPG/Bowie and other parties in Docket No. E-  
16 01345A-06-0464. However, Mesquite/SWPG/Bowie would add that, for the duration of  
17 the self-build moratorium, that recognition of rights should be extended to any party to  
18 the Settlement who has a legitimate concern with APS' adherence to the terms of the  
19 Settlement, and not be limited only to bidders in the solicitation. With that caveat,  
20 Mesquite/SWPG/Bowie believe that APS' request for a specific timetable is reasonable,  
21 and its proposed timetables appear reasonable, although we ultimately defer to the  
22 Commission as to the specific timeframe adopted.

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26 **Q.6 What is Mesquite/SWPG/Bowie's reaction to the Staff's position regarding the Best  
Practices for Utility Procurement?**

27 A.6 Mesquite/SWPG/Bowie believe, as stated in my direct testimony, that the Commission  
28 should go further than what the Staff testimony suggests. Specifically, Staff indicated  
that the Commission should make no changes to the Settlement or Decision No. 67744  
because APS' will be scrutinized in its procurement practices and may suffer in future  
prudence reviews if it does not follow the Recommended Best Practices. Without  
restating my direct testimony, for all of the reasons offered there, Mesquite/SWPG/Bowie  
believe that the Recommended Best Practices should be overlaid onto Paragraphs 75(b)  
and 75(d) of the Settlement and Decision No. 67744 so that they control APS'  
procurement practices. Such overlay would help to unify the Settlement and self-build  
moratorium with the procurement workshops and the ongoing Rulemaking on Resource  
Planning, if the Recommended Best Practices are also made mandatory there, as Staff  
alluded to in its testimony. Moreover, adopting Mesquite/SWPG/Bowie's  
recommendation in this manner will benefit APS by reducing its exposure to potential  
disallowance resulting from a subsequent prudence review.

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32 **Q.7 Do you have anything else to add?**

33 A.7 I would only add that Mesquite/SWPG/Bowie are pleased to see that Staff, APS and  
Mesquite/SWPG/Bowie seem to be largely in agreement as to the applicability of the  
Recommended Best Practices for Utility Procurement to APS's obligations under the self-

1 build moratorium provisions of the Settlement and Decision No. 67744. Explicit  
2 recognition of this agreement and integration of the Recommended Best Practices into the  
3 Settlement and Decision No. 67744 as we have advocated stands to benefit all parties.

4 **Q.8 Does that complete your Rebuttal Testimony?**

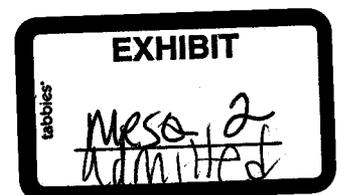
5 A.8 Yes, it does.  
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**Direct Testimony  
Of  
Theodore E. Roberts  
On behalf of  
Mesquite Power, L.L.C., Southwestern  
Power Group II, L.L.C. and Bowie Power  
Station, L.L.C.**

**Docket No. E-01345A-07-0420**

**Mesquite et al. Ex. #1  
February 20, 2008**



**PREPARED DIRECT TESTIMONY  
OF  
THEODORE E. ROBERTS  
DOCKET NO. E-01345A-07-0420**

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4 **Q.1 Please state your name and business affiliation.**

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6 A.1 My name is Theodore E. Roberts. I am employed by Sempra Energy as Senior  
7 Regulatory Counsel. In that regard, Appendix "A" to this testimony sets forth a summary  
8 of my education and professional experience.

9 **Q.2 Upon whose behalf are you testifying in this proceeding?**

10 A.2 I am providing testimony on behalf of Mesquite Power, L.L.C., Southwestern Power  
11 Group II, L.L.C. and Bowie Power Station, L.L.C. ("Mesquite/SWPG/Bowie").

12 **Q.3 What is the general nature of the direct testimony that you are providing on behalf  
13 of Mesquite/SWPG/Bowie in this proceeding?**

14 A.3 Mesquite/SWPG/Bowie are responding to the Commission's invitation to offer comment  
15 as to whether and how the self-build moratorium approved by the Commission in  
16 Decision No. 67744 should be modified.

17 **Q.4 What is the background to the "invitation" from the Commission to which you  
18 refer?**

19 A.4 In Decision No. 69663, issued on June 28, 2007 in APS' 2005 rate case, the Commission  
20 ordered that it's Hearing Division

21 "...conduct a proceeding pursuant to A.R.S. § 40-  
22 252 to consider modifying Decision No. 67744  
23 relating to the self-build option." [Decision No.  
24 69663, page 157, lines 13-14]

25 In Decision No. 67744, issued on April 7, 2005 in APS' 2003 rate case, the Commission  
26 had approved, with certain modification, the self-build moratorium that was the subject of  
27 an August 18, 2004 Settlement Agreement executed by parties to APS' 2003 rate case.

28 Thereafter, on July 10, 2007, the above docketed proceeding was established for the  
aforesaid purpose. On July 23, 2007, Mesquite/SWPG/Bowie filed a joint Application  
For Leave To Intervene in this proceeding. By means of a September 12, 2007  
Procedural Order the requests of Mesquite/SWPG/Bowie and several other parties for  
leave to intervene were granted.

1 On October 4, 2007, another Procedural Order was issued in this proceeding. Among  
2 other procedural matters, the Procedural Order provided that parties desiring to file direct  
3 testimony on the question of whether or not Decision No. 67744 and the self-build  
4 moratorium should be modified were to do so on or before 12:00 p.m. on Friday, January  
5 11, 2008. My direct testimony on behalf of Mesquite/SWPG/Bowie is being submitted in  
6 response to that directive.

7 **Q.5 Do Mesquite/SWPG/Bowie believe that Decision No. 67744 and the self-build**  
8 **moratorium should be modified?**

9 A.5 Yes, they do. In my direct testimony I will discuss both why and how they believe the  
10 self-build moratorium should be modified.

11 **Q.6 Why do Mesquite/SWPG/Bowie believe that a modification is necessary?**

12 A.6 In Decision No. 67744, the Commission reiterated its previously expressed support for  
13 competitive wholesale electricity markets, and it found the self-build moratorium to be  
14 consistent with that public policy objective. [Decision No. 67744, page 26, lines 8-9] In  
15 addition, the Commission stated that

16 "...we will require APS to obtain the Commission's  
17 expressed approval for APS' acquisition of any  
18 generating facility or interest in a generating facility  
19 pursuant to a RFP or other competitive  
20 solicitation<sup>35</sup> issued before January 1, 2015"  
21 [Decision No. 67744, page 25, lines 23-25]  
22 [emphasis supplied];

23 and, in Footnote 35, the Commission defined the phrase "competitive solicitation" to  
24 include"

25 "...a RFP issued pursuant to paragraph 78 of the  
26 Settlement Agreement or any solicitation issued by  
27 APS using its Secondary Procurement Protocol  
28 pursuant to paragraph 80 of the Settlement  
29 Agreement." [Decision No. 67744, page 25, lines  
30 27-28]

31 In Docket No. E-01345A-06-0464, the Commission had occasion to interpret and apply  
32 the provisions of the self-build moratorium and the applicable portions of Decision No.  
33 67744 for the first time. As the Commission is aware, there were sharp disagreements  
34 among representatives of APS, the Commission's Staff, the Arizona Competitive Power  
35 Alliance and Mesquite/SWPG/Bowie as to how various provisions of the Settlement  
36 Agreement and related portions of Decision No. 67744 were to be interpreted and applied.

1 I will not reiterate those disagreements. However, it became clear that certain provisions  
2 of the Settlement Agreement were subject to more than one interpretation, and that certain  
3 events, such as the exit of APS' affiliate, Pinnacle West Energy Corporation ("PWEC"),  
4 from the competitive generation business had superseded the factual and legal setting in  
5 which the Settlement was negotiated and adopted. In addition, Mesquite/SWPG/Bowie  
6 believe that the Commission's ultimate disposition of that matter in Decision No. 69400  
7 was, in reality, substantially influenced by external circumstances surrounding the  
8 proceeding, including the time constraint within which the Commission had to render a  
9 decision.

10 What Mesquite/SWPG/Bowie believe would be constructive in this proceeding is to  
11 address how the self-build moratorium and Decision No. 67744 should be modified in  
12 light of (i) the Commission's experience in Docket No. E-01345A-06-0464, and (ii)  
13 subsequent developments at the Commission relating to the competitive procurement of  
14 power and power resources by Arizona's electric utilities, especially Decision No. 70032  
15 and the Commission's adoption of the Recommended Best Practices For Utility  
16 Procurement.

17 **Q.7 Please describe how Mesquite/SWPG/Bowie believe that the self-build moratorium**  
18 **and related portions of Decision No. 67744 should be modified.**

19 A.7 Mesquite/SWPG/Bowie believe that (i) Decision No. 70032, as issued by the Commission  
20 on December 4, 2007 in Docket No. E-00000E-05-0431, and (ii) the Commission Staff's  
21 November 6, 2007 Recommended Best Practices For Procurement, as adopted in  
22 Decision No. 70032, should govern the Commission's re-examination of Article IX  
23 (Competitive Procurement of Power) of the Settlement Agreement and related portions of  
24 Decision No. 67744. As the Commission noted in Decision No. 70032,

25 "Commission Decision No. 67744 directed Staff to  
26 schedule workshops on resource planning issues.  
27 Additionally, as part of the Settlement Agreement  
28 of that case, it was agreed that the Commission  
Staff will schedule workshops on resource planning  
issues to focus on developing needed infrastructure  
and developing a flexible, timely, and fair  
competitive procurement process. (Paragraph 79,  
Settlement Agreement)."

The aforementioned Recommended Best Practices For Procurement represent the work  
product resulting from those workshops, and they establish specific standards and  
requirements for the intended competitive procurement process and infrastructure. Thus,  
the Recommended Best Practices For Procurement should be integrated into the  
Settlement Agreement and Decision No. 67744 in order to (i) provide greater clarity and  
unity, (ii) preserve the benefits of wholesale competition that the Commission found  
existed in its prior decisions, and (iii) fill in gaps that were exposed during the  
Commission's consideration of Docket No. E-01345A-06-0464.

1 More specifically, the Recommended Best Practices For Procurement should clarify the  
2 standard that APS must meet when seeking approval of any self-build, as well as the  
3 standard(s) by which the Commission will evaluate any self-build proposal put forth by  
4 APS. Accordingly, the Recommended Best Practices For Procurement should be  
5 followed by APS in seeking long-term generation resources under Paragraph 75(b) of the  
6 Settlement Agreement, and should also become the "applicable...competitive resource  
7 acquisition rules or orders resulting from the workshop/rulemaking proceeding described  
8 in paragraph 79" and called for in Paragraph 75(d) of the Settlement.

6 In addition to utilizing the Recommended Best Practices For Procurement in the way I  
7 have described, Paragraph 75(b) should be modified by striking the phrase "from the  
8 competitive wholesale market" so that the Paragraph would then read as follows:

8 "The Company's efforts to secure adequate and reasonably-priced long-term  
9 resources to meet these needs."

10 Such a change would make it clear that the procedures outlined in the Recommended Best  
11 Practices For Procurement, including reliance on a RFP process and an independent  
12 monitor, would be the primary means through which APS should seek to satisfy its long-  
13 term resource needs. It would also resolve the ambiguity surrounding the nature and  
14 scope of the competitive wholesale market that became an issue in Docket No. E-  
15 01345A-06-0464.

16 Moreover, following the Recommended Best Practices For Procurement would help to  
17 ensure that APS does rely principally on the competitive markets to meet its long-term  
18 resource needs, as contemplated by the language quoted above.

17 **Q.8 Why should the Recommended Best Practices For Procurement be mandatory for  
18 APS for the duration of the self-build moratorium, as contrasted with discretionary  
19 for other Arizona electric utilities subject to regulation by the Commission, such as  
20 Tucson Electric Power Company and the electric cooperatives?**

20 **A.8** There are at least two (2) reasons and they are related. First, APS agreed to the self-build  
21 moratorium in consideration of other parties in APS' 2003 rate case withdrawing their  
22 opposition to APS' request for authority to acquire the 1,700 megawatts of PWEC  
23 generating assets and include them in APS' rate base. In fact, in Decision No. 67744, the  
24 Commission expressly recognized that linkage when it stated

23 "We generally agree that the self-build moratorium  
24 proposed in the Agreement is useful for addressing  
25 the potentially anticompetitive effects that may be  
26 associated with rate-basing the PWEC assets."  
27 [Decision No. 67744, page 25, lines 13-15]

27 and further, where it stated

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“The self-build moratorium agreed to by APS is consistent with the Commission’s support for competitive wholesale electricity markets. [Decision No. 67744, page 26, lines 8-9]

Second, as the Commission itself noted in Decision No. 70032, the Recommended Best Practices For Procurement represent the resulting work product of those workshops provided for in Paragraph 79 of the Settlement Agreement. In that regard, Paragraph 79 expressly required that “the workshops will be open to all stakeholders and the public” [Settlement Agreement, page 18]; and, APS was an active participant in the workshops which resulted in the Recommended Best Practices For Procurement. Thus, APS cannot suggest that it has not had an opportunity for either presentation or consideration of its views upon competitive procurement matters.

**Q.9 You have not discussed as yet whether Mesquite/SWPG/Bowie believe that Paragraph 80 of the Settlement Agreement needs to be modified in order to incorporate the Recommended Best Practices For Procurement. What is their position in that regard?**

A.9 Paragraph 80 provides that

“APS will continue to use its Secondary Procurement Protocol except as modified by the express terms of this Agreement or unless the Commission authorizes otherwise.” [Settlement Agreement, page 18, emphasis supplied]

To the extent that the procurement requirements imposed upon APS by the Settlement Agreement and/or APS’ Secondary Procurement Protocol are in any degree less restrictive, inconsistent with, or less clear and specific than the Recommended Best Practices For Procurement, it is the position of Mesquite/SWPG/Bowie that the latter constitute an “overlay” on the former.

Stated differently, and within the context of Paragraph 80, it is both reasonable and appropriate to interpret the phrase “unless the Commission authorizes” as meaning “unless the Commission directs otherwise.” This interpretation is consistent with the language of Decision No. 67744 where it states that

APS will continue to use its Secondary Procurement Protocol except as modified by the Settlement Agreement or by Commission decision. [Decision No. 67744, page 26, lines 1-3, emphasis supplied]

In the view of Mesquite/SWP/Bowie, Commission Decision No. 70032 affected such a change to APS’ procurement procedures. Thus, to the extent that any inconsistency might exist between the provisions of APS’ Secondary Procurement Protocol and the

1 requirements of the Recommended Best Practices For Procurement, the latter would  
2 control.

3 **Q.10 Are there any specific provisions or specific language within Decision No. 67744 that**  
4 **must be modified, in order to accomplish the modification to which you have**  
5 **testified?**

6 A.10 Based upon my discussions with Mesquite/SWPG/Bowie's regulatory counsel in Arizona,  
7 I do not believe so.

8 A.R.S. § 40-252 provides that

9 "The Commission may at any time, upon notice to  
10 the corporation affected, and after opportunity to be  
11 heard or upon a complaint, rescind, alter or amend  
12 any decision made by it."

13 The statute on its face does not appear to prescribe the manner in which a prior decision is  
14 to be rescinded, altered or amended, as long as the requirements of notice and an  
15 opportunity to be heard are satisfied. Further, based upon my discussions with  
16 Mesquite/SWPG/Bowie's Arizona regulatory counsel, it is my understanding that  
17 Arizona case law does not prescribe any specific manner in which such rescission,  
18 alteration or amendment is to be accomplished. Rather, that is left to the discretion of the  
19 Commission in the circumstances then before it. In this instance, since the Commission  
20 made only one Finding of Fact [Finding of Fact No. 33] and no Conclusions of Law in  
21 Decision No. 67744 which specifically refer to the self-build moratorium, it would appear  
22 to have broad latitude in the decision to be issued in this proceeding as to how it desires to  
23 amend Decision No. 67744 in that regard.

24 **Q.11 Do Mesquite/SWPG/Bowie believe that the Commission has jurisdiction and**  
25 **authority to modify one or more of the provisions of Article IX (Competitive**  
26 **Procurement of Power) of the Settlement Agreement, as you have discussed and**  
27 **recommended in your testimony?**

28 A.11 Yes, based upon my discussions with Mesquite/SWPG/Bowie's Arizona regulatory  
counsel. In that regard, he has directed my attention to the July 13, 2007 Procedural  
Order which was issued in this proceeding. That Procedural Order expressly states that  
all parties to APS' 2003 rate case were being sent a copy of the Procedural Order, in order  
that they would have notice that the Commission was opening a new docket and  
instituting a new proceeding for the expressly stated purpose of considering whether to  
modify Decision No. 67744 as it relates to the self-build moratorium. Further, those  
parties to APS' 2003 rate case were advised of the need to request intervention, if they  
wished to participate in this proceeding.

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**Q.12 How does notice of the fact that the Commission is considering modifying Decision No. 67744 as it relates to the self-build moratorium authorize the Commission to consider modification of Article IX (Competitive Procurement of Power) of the Settlement Agreement itself?**

A.12 Based upon discussions with Mesquite/SWPG/Bowie's Arizona regulatory counsel, as well as my own familiarity with the Settlement Agreement, it is my understanding that the Settlement Agreement had no legal effect without approval of the same by the Commission. Moreover, Article XXI (Commission Evaluation of Proposed Settlement) of the Settlement Agreement contemplates the possibility that the Commission might modify various provisions in the Settlement Agreement incident to its review and approval of the same; and, in fact, certain changes were made by the Commission through the language of Decision No. 67744, including a very important one pertaining to the self-build moratorium.

Thus, against this background, it is the position of Mesquite/SWPG/Bowie that the Commission has the jurisdiction and authority to amend both Decision No. 67744 and the pertinent provisions of the Settlement Agreement in order to incorporate the Recommended Best Practices For Procurement as discussed in my testimony.

**Q.13 Does that complete your direct testimony on behalf of Mesquite/SWPG/Bowie?**

A.13 Yes.

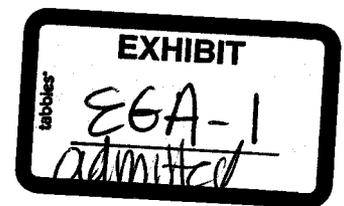
## QUALIFICATIONS OF THEODORE E. ROBERTS

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3 My name is Theodore E. Roberts, and I am employed as Senior Regulatory Counsel at  
4 Sempra Energy. Sempra Energy is a Fortune 500 energy services company based in San Diego,  
5 California, that develops energy infrastructure, operates utilities, and provides related products  
6 and services to more than 29 million consumers in the United States, Europe, Canada, Mexico,  
7 South America and Asia. Sempra Energy is the ultimate parent company of Mesquite Power,  
8 LLC.

9 My job responsibilities include providing legal counsel to Sempra Global, the parent of  
10 Sempra's electric generation, retail energy services, and other merchant businesses on regulatory  
11 compliance, participating in state and federal regulatory rulemaking and other proceedings, and  
12 managing outside counsel in regulatory proceedings, including matters before the Arizona  
13 Corporation Commission. I participated in both the Track A and Track B proceedings, and  
14 participated extensively in the negotiation of the APS 2003 Rate Case Settlement, the  
15 Commission proceedings adopting that Settlement, the Commissions' procurement workshops  
16 conducted pursuant to the Settlement, and in Docket No. E-01345A-06-0464, wherein the  
17 Commission had occasion to first interpret the provisions of the Settlement Agreement and  
18 Decision No. 67744 pertaining to the self-build moratorium.

19 Prior to assuming my current position, I served as Regulatory Counsel to the Sempra  
20 Energy utilities on a variety of matters including the licensing and permitting of transmission and  
21 substation facilities, FERC-jurisdictional transmission rates and various transmission-related  
22 proceedings, and on electric procurement matters before the California Public Utilities  
23 Commission.

24 I hold a Juris Doctor degree *cum laude* from California Western School of Law and a  
25 Master of Business Administration degree from National University. I also hold a Bachelor of  
26 Music degree *magna cum laude* from Ashland University in Ashland, Ohio. I am a member of  
27 the State Bar of California, the San Diego County Bar Association and the Conference of  
28 California Public Utility Counsel.



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**DIRECT TESTIMONY OF BEN C. TRAMMELL, JR.**  
**On behalf of Electric Generation Alliance**  
**In**  
**Docket No. E-01345A-07-0420**

**January 11, 2008**



1 energy industry, having worked prior to Dynegy for American National Power (a U.S.  
2 affiliate of the former National Power PLC, an international wholesale power generation  
3 company), Oglethorpe Power Corporation (a rural electric generation & transmission  
4 cooperative in Georgia), Southern Company, and the Georgia Tech Research Institute.  
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7 **Q-3 What is EGA, and why is it taking an interest in this proceeding?**

8 A-3 The Electric Generation Alliance, or "EGA", is an informal coalition consisting of  
9 Dynegy Arlington Valley, LLC; LS Power Associates, L.P.; and Harquahala Generating  
10 Company. Each of those entities and their respective affiliates are involved in merchant  
11 wholesale electric generation and the power development and marketing business in  
12 Arizona. As such, they have a direct interest in the Arizona Corporation Commission's  
13 regulatory activities affecting the wholesale electric procurement activities of major load-  
14 serving utilities, and specifically Arizona Public Service Company ("APS")  
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18 **Q-4 Please summarize your testimony:**

19 A-4 My testimony supports and affirms the direct testimony of Mr. Ted Roberts filed on behalf  
20 of Mesquite Power, L.L.C.; Southwestern Power Group II, L.L.C.; and Bowie Power  
21 Station, L.L.C.. It is our view, consistent with theirs, that the Commission and its Staff  
22 reached generally correct conclusions from the workshops that resulted in the recent  
23 adoption of the Recommended Best Practices for Procurement in Order 70032, and that  
24 those commendable provisions should be integrated into Order 67744, based upon the  
25 rationale set forth in and consistent with Mr. Roberts' testimony. It is our view that the  
26

1 Commission should reaffirm its commitment to the principles of inclusion, fairness,  
2 transparency, clarity and oversight in the competitive solicitation process.

3 EGA, however, also urges the Commission to make a few additional modifications to  
4 better ensure that APS' procurement activities conducted pursuant to Order 67744  
5 acquire supply resources on the most competitive terms and in a manner most beneficial  
6 to the interests of APS' ratepayers. . Those suggested modifications, simply stated, are as  
7 follows:  
8

9 (a) that the independent monitor should be hired by and report directly  
10 to the Commission, but paid by the Utility;

11 (b) that the independent monitor should function not only as a monitor  
12 but also as a bid evaluator;

13 (c) that bidding fees should be capped at a prescribed, nominal level;  
14 and  
15

16 (d) that a single bidder should be allowed to submit multiple bids  
17 under a single bid fee, so as to not discourage multiple, creative  
18 and innovative RFP responses "in the alternative" that may meet  
19 the needs of the utility and its ratepayers more efficiently than the  
20 precise resource response structure contemplated on the face of an  
21 RFP.  
22

23 (e) that the entire process of bid evaluation by the independent  
24 monitor be open by requiring that detailed information about the  
25 analysis used to evaluate bids, including the bid evaluation criteria  
26

1 and weightings, descriptions of the analytical approach of the  
2 evaluation, descriptions of modeling tools used in the evaluation,  
3 input data, non-quantitative considerations, and the scoring system  
4 for qualitative considerations be available to the public.  
5

6  
7 **Q-5 Why should the Commission be the contracting party with the independent monitor,**  
8 **instead of the utility?**

9 A-5 I understand that, under Order 70032, the Commission and, potentially, interested parties  
10 can have an advisory role in the selection of the independent monitor. The frank business  
11 reality remains, however, that if APS makes the final selection of, and contracts with, and  
12 compensates, the independent monitor, then there is risk that the true objectivity and  
13 independence of the selected entity can be compromised, despite the best intentions of the  
14 parties to that contract. Experience and human nature have shown that any party  
15 controlling the selection, the contracting and the purse strings is likely to be influential in  
16 the ultimate work product of the contractor, however independent the structure of the  
17 contract or the outward appearances of the parties' joint or separate conduct. The utility  
18 appropriately should reimburse the Commission for the costs of hiring the independent  
19 monitor, and should appropriately be authorized to recover those costs in rates; but, the  
20 Commission needs to select, hire and direct the independent monitor's activities. This  
21 concern is even more significant if the independent monitor is, as we urge, given a more  
22 substantive role as an evaluator of the bids.  
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1 **Q-6 Why are you urging an increased substantive role for the independent monitor?**

2 A-6 Again, my experience in different jurisdictions and various procurement structures is that,  
3 if the only duty of an independent monitor is to observe the process, but not question the  
4 input assumptions, data, and evaluative modeling tools used by the utility, then the value  
5 the monitor adds to the competitive procurement process is severely diminished. Simply  
6 monitoring how the utility follows its own, self-determined evaluation process, and having  
7 to take as unalterable "givens" all of the input assumptions, data and modeling techniques  
8 used by the utility, simply relegates the monitor to little more than a procedural observer.  
9 Only blatant process deviations by the utility from its own, self-determined evaluation  
10 process would be expected to be reasonably identifiable by the monitor. And any material  
11 substantive flaws in the input data, modeling techniques, etc. and, therefore, the ultimate  
12 evaluative conclusions, might go unidentified, unless the monitor functions as a truly  
13 independent evaluator. That evaluator's role entails having at its disposal all of the utility  
14 inputs, assumptions and models, and the ability to challenge and run variables against  
15 those, and to generally test the substance of the evaluation, not just the observable conduct  
16 of the process. A rough analogy might be to the high school teacher assigned as "study  
17 hall monitor". He can do a perfectly good job of observing all the students dutifully  
18 working away at their math homework assignments, sitting at the right desks, not having  
19 conversations, etc.; yet, the monitor has no clue whether the students are using the right  
20 assumptions, equations, tools and techniques to solve their homework problems, much  
21 less whether they are arriving at the correct answers. To be of true substantive value to  
22 the process of ensuring that the utility is doing the best job it can for its ratepayers, and  
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1 making the most economic and prudent resource selections, the monitor needs to be a  
2 substantive evaluator and produce a substantive product that tests the substance, not just  
3 the process, of the utility's evaluation of responsive resource proposals. This distinction  
4 becomes vitally important when, as in this instance, the utility's own "self build"  
5 alternative is an option being evaluated.  
6

7  
8 **Q-7 Why do you urge further Commission direction with respect to bidding fees?**

9 A-7 Order 70032 does provide that "reasonable" bidders' fees may be used to help offset the  
10 costs of using an independent monitor. In my experience in other jurisdictions, however,  
11 what is "reasonable" to the utility has come to cover a very wide range of dollars. If the  
12 utility is allowed to unilaterally set the bidding fees, and, in addition, to charge a separate  
13 full fee for each alternative bid that might be provided by a single responding entity in a  
14 single procurement, we have found that a chilling effect can occur that constrains the  
15 number of bona fide responses to an RFP. Importantly, a bidder should not be  
16 discouraged by prohibitively high aggregate "entry fees" against submitting multiple  
17 variations of responses to RFPs that suggest to the utility innovative and creative  
18 alternative approaches to meeting the resource need. Although such variations might  
19 deviate in innovative ways from the strict "four corners" of the RFP, such multiple bids in  
20 the alternative may nonetheless present unique and valuable opportunities for the utility  
21 and its ratepayers, if are not precluded by the respondents' bidding fee cost concerns. At a  
22 minimum, any bid fee structure should provide material discounts for such multiple  
23 responsive bids "in the alternative" from a single bidder.  
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1 **Q-8 Would an outright prohibition on utility self-build enhance the benefits to ratepayers**  
2 **of competitive bidding from wholesale generators?**

3 A-8 Yes, most definitely. When a utility is allowed to compete for a needed generation supply  
4 increment with its self-build proposal, and conduct a non-transparent bid  
5 evaluation/selection evaluation, history and past outcomes have generally taught the  
6 wholesale generation community that third-party competitive bids simply are used as  
7 stalking horses to set the price for the self-build. Wholesale generators are understandably  
8 reluctant to devote resources to compete in such a bid process when the outcome -- an  
9 award for the self-build proposal -- seems pre-determined. In contrast, when a definite  
10 need for new supply has been identified and authorized by the cognizant regulatory  
11 authority, and no self-build is allowed, by definition some third-party wholesale  
12 generation supplier is guaranteed an award. The uncertainty over award (and  
13 corresponding potential for waste of scarce resources) is lifted, true competition is created,  
14 and a fair outcome is assured. Wholesale generators by their nature thrive on this form of  
15 competition, and the benefits of lower cost generation supply (not to mention at-risk  
16 capital instead of rate-based cost recovery) accrue to the ratepayers and retail end users.  
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21 **Q-9 What risk factors should be considered in comparing a utility self-build project with**  
22 **an IPP project?**

23 A-9 In any analysis, it is important to evaluate how a particular risk is allocated between  
24 ratepayers, the utility and its shareholders, and the owner of the non-utility project?. What  
25 are the long-term consequences of the allocation of risks and benefits? What incentive  
26

1 does the party bearing the risk have to manage the risk and how strong is that incentive?  
2 What are the consequences for that party of a failure to manage the risk? When these  
3 questions are considered and effective comparisons are made, it is the opinion of the EGA  
4 that the net benefits for ratepayers of power purchase agreements (PPAs) or non- utility  
5 owned projects will clearly emerge. More important, however, is the principle that fair  
6 comparisons between utility-sponsored projects and independent power projects (IPPs)  
7 can and should be made as part of a fair, transparent, and competitive procurement  
8 process.  
9

10  
11 **Q-10 What are the risks and benefits of utility owned generation versus IPP owned**  
12 **generation with respect to ratepayers?**

13  
14 A-10 Cost-based rates are sometimes touted as a benefit for ratepayers. The argument in support  
15 of this idea is that ratepayers pay no more than the cost of service, while under PPAs the  
16 prices are not necessarily closely tied to actual costs. There are several flaws in this  
17 argument. First, IPP bids are necessarily closely related to costs. An IPP's bid will include  
18 a projection of certain costs, and once the bid is accepted, an IPP is highly incentivized to  
19 ensure that actual costs are kept within the projected range. At the same time, competitive  
20 market pressures force winning bidders to submit bids as low as possible. By contrast, if a  
21 utility-owned plant encounters higher than projected costs, the possibility exists that these  
22 higher costs may be passed through to ratepayers. Developers of projects supporting  
23 PPAs, on the other hand, have only their contract to fall back on. Any construction cost  
24 overruns for an IPP eat directly into its projected profits. IPP companies that fail to meet  
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1 profit projections will lose favor with investors, increasing the cost of raising capital and  
2 potentially leading to the demise of the company. Independent developers thus have a  
3 strong incentive to ensure that plants are completed at or below budget. Similarly, pass-  
4 throughs of operation and maintenance expenses and capital additions for utility-owned  
5 projects create back-end costs for ratepayers that are not typically present for PPAs.  
6

7  
8 **Q-11 What other risks and benefits of utility owned generation versus IPP owned**  
9 **generation with respect to ratepayers are important?**

10 A-11 For utility-owned plants, recovery of capital costs is not closely tied to performance. That  
11 is, if the plant has an extended outage, poor performance, or even early retirement, the  
12 possibility exists that the utility will be allowed recover unrecovered capital costs, in  
13 the absence of imprudent or unreasonable behavior. For PPAs, however, payment is  
14 typically tied to performance. Even contracts that have fixed capacity payments usually  
15 include provisions that suspend payments in the event of a sustained outage, premature  
16 retirement, or unavailability during times of peak demand. A failure to meet the contract's  
17 performance requirements can lead to the assessment of damages or in certain  
18 circumstances the termination of the contract. Owners of units under PPAs thus have a  
19 strong incentive to maintain the availability of their units.  
20

21  
22  
23 It is sometimes claimed that an advantage of utility build projects over IPPs is that utility  
24 owned plants offer ratepayers greater operational flexibility. They can be run at any time,  
25 whenever they are needed. PPAs, the argument continues, may have restrictions on the  
26

1 number of starts that can be made without further compensation. This argument is largely  
2 misleading. As part of the RFP definition, utilities can require as much (or as little)  
3 flexibility as they forecast that they need. Utilities can and do conduct RFPs for  
4 dispatchable capacity which can effectively put a plant under the complete control of the  
5 purchasing utility. Any cost per start or limitation on the number of starts contained in an  
6 offer should be considered as part of the bid evaluation process. Thus, the amount of  
7 operational flexibility does not depend on ownership, and the utility can specify the  
8 degree of operational flexibility it desires as part of the product definition for the RFP.  
9 The real difference between PPAs and utility ownership in this context is that ratepayers  
10 are forced to pay for unlimited flexibility for utility owned plants, whether complete  
11 flexibility is needed or not, whereas, for PPAs, the utility has the ability to specify in the  
12 RFP the level of flexibility (including unlimited flexibility) that it forecasts it will need,  
13 and ratepayers will pay only for that amount of flexibility. Thus, the "benefit" of  
14 unlimited operational flexibility for utility owned plants comes at a high cost, because  
15 ratepayers are forced to pay for operational flexibility beyond what is actually needed.  
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19 Another argument advanced in favor of utility ownership instead of IPP ownership is that  
20 ratepayers get back-end or terminal benefits because a plant's operating life may be longer  
21 than its useful life for accounting, tax, and ratemaking purposes. After the plant's capital  
22 costs are fully depreciated, this argument goes, the cost to ratepayers of running the plant  
23 are only the cost of operation and maintenance and fuel and other variable costs. Units  
24 subject to PPAs, on the other hand, typically revert to the owner at the end of the contract,  
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1 and ratepayers are then subjected to a need to find replacement power. This argument also  
2 ignores some of the downside of utility ownership. Any value a utility-owned plant has  
3 near the end of its useful life will depend on whether new technologies have left the plant  
4 uneconomic to operate. By way of analogy, the old AT&T at one point owned millions of  
5 rotary telephones; but, with the burst of innovation that came with the divestiture of  
6 AT&T and the introduction of competition into telecommunications, it is doubtful that  
7 there was much residual value to the utility's investment in these phones when they  
8 reached the end of their useful lives. Ratepayers' risk of technological obsolescence for  
9 PPAs (*i.e.*, that new technologies can produce power at a lower cost) is limited to the term  
10 of the contract. The IPP owner bears this risk after contract termination and as this risk  
11 increases in the later years of the plant's existence.  
12

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15 Moreover, generating plants eventually reach the end of their lives and have to be  
16 decommissioned. The costs of demolition, removal, and environmental remediation for  
17 utility owned plants rest on ratepayers, while those costs are borne by the owner of the IPP  
18 plant that supports a PPA. If history is any guide, these costs can be considerable.  
19 Ratepayers also must bear the cost of keeping these aging plants open during a time when  
20 they may not run very often. For an aging independent plant, the decision to continue  
21 running or to retire is simple: if the cost of keeping the plant available to run exceeds the  
22 expected revenues the plant can earn, either from a contract or through participation in the  
23 market, the plant will be retired. For utility-owned plants, cost-of-service ratemaking  
24 obscures the economics underlying this decision and can expose ratepayers to  
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unwarranted costs.

Finally, a well-structured competitive market will force PPA bidders to account in their bids for any projected residual value at contract expiration, minimizing costs for ratepayers during the term of the PPA.

**Q-12 Does that conclude your direct testimony?**

A-12 Yes.



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RE: ARIZONA PUBLIC SERVICE COMPANY - TO MODIFY DECISION NO 67744 RELATING TO THE SELF BUILD OPTION - DOCKET NO E-01345A-07-0420

Attached is the Direct Testimony of Arizona Public Service Company's witness Patrick Dinkel in the above referenced matter regarding the modification of Decision No 67744 relating to the self build option.

Sincerely,

Barbara Klemstine

BK/dst

Attachments

CC: Christopher Kempley  
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Janet Wagner  
Parties of Record

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**DIRECT TESTIMONY OF PATRICK DINKEL**  
**On Behalf of Arizona Public Service Company**  
**Docket No. E-01345A-07-0420**

January 11, 2008

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**DIRECT TESTIMONY OF PATRICK DINKEL  
ON BEHALF OF ARIZONA PUBLIC SERVICE COMPANY  
(Docket No. E-01345A-07-0420)**

**Q. PLEASE STATE YOUR NAME AND POSITION WITH APS.**

A. My name is Patrick Dinkel. I am the Director of Resource Acquisitions and Renewable Energy for Arizona Public Service Company ("APS" or "Company"). I lead the APS team responsible for conducting long-term power procurement for both renewable and conventional supply-side resources. It is my responsibility to ensure that the solicitation process is conducted in a fair and transparent manner, and that the negotiations result in the best resource to meet our customer's needs.

**Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?**

A. I received a Bachelors of Science degree from Marymount College and a Masters of Business Administration from Northern Arizona University. I joined APS in 1986. Before becoming Director of Resource Acquisitions and Renewable Energy, I was the Manager of Corporate Planning and the Manager of Business Unit Analysis and Reporting. Before that, I held various positions within APS and Pinnacle West Capital Corporation, primarily within the financial planning and budgeting areas.

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE ARIZONA CORPORATION COMMISSION ("COMMISSION")?**

A. Yes, I have. I testified in support of APS's requests to both acquire the Sundance generation assets (Docket No. E-01345A-04-0407), and to include those assets in rate base in APS's last general rate case (Docket No. E-01345A-05-0816). I also testified in support of APS's request for authorization to

1 acquire additional generation resources in Yuma, Arizona ("Yuma Assets") in  
2 Docket No. E-01345A-06-0464 ("Yuma Acquisition Docket"). The Yuma  
3 Acquisition Docket was the first time APS sought approval to acquire generation  
4 assets in accordance with the self-build provisions of Commission Decision No.  
5 67744. My testimony in the Yuma Acquisition Docket addressed the Yuma  
6 Request for Proposal ("RFP") and the evaluation process that resulted in the  
7 request for authorization to acquire the Yuma Assets.

8 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**  
9 **PROCEEDING?**

10 A. The key message of my testimony is to express APS's support for the self-build  
11 provisions of Commission Decision No. 67744 and the Settlement Agreement  
12 adopted by that Decision. These provisions were developed as part of the  
13 negotiations between the parties in the rate case proceeding that culminated in  
14 Decision No. 67744. In this proceeding, APS is only seeking to improve the  
15 efficiency of the approval process required by those provisions. To that end, the  
16 Company is requesting that the Commission adopt a timetable for self-build  
17 proceedings to facilitate certainty in the bidding process.

18 **Q. PLEASE EXPLAIN THE SELF-BUILD PROVISION INCLUDED IN**  
19 **COMMISSION DECISION NO. 67744.**

20 A. Paragraph 74 of the Settlement Agreement addressed "self-build" as follows:

21 APS will not pursue any self-build option having an in-service  
22 date prior to January 1, 2015, unless expressly authorized by  
23 the Commission. For purposes of this Agreement, "self-build"  
24 does not include the acquisition of a generating unit or interest  
25 in a generating unit from a non-affiliated merchant or utility  
26 generator, the acquisition of temporary - generation needed for  
system reliability, distributed generation of less than fifty MW  
per location, renewable resources, or the up-rating of APS

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generation, which up-rating shall not include the installation of new units.

In Decision No. 67744, the Commission modified the Settlement Agreement's definition of "self-build" to include "the acquisition of a generating unit or interest in a generating unit from any merchant or utility generator", and specified that self-build did not include the acquisition of temporary generation needed for system reliability, distributed generation of less than fifty MW per location, renewable resources, or up-rating of APS generation, which up-rating shall not include the installation of new units.<sup>1</sup> As a result of these modifications, "self-build" as defined by Decision No. 67744 can be generally translated to mean asset ownership, regardless of whether the facilities are constructed or acquired.

**Q. COMMISSION DECISION NO. 67744 SPECIFIED CERTAIN REQUIREMENTS THAT APS MUST MEET IF IT PROPOSES TO SELF-BUILD OR OWN GENERATION. WHAT ARE THESE REQUIREMENTS?**

A. Paragraph 75 of the Settlement Agreement addressed those requirements, as follows:

As part of any APS request for Commission authorization to self-build generation prior to 2015, APS will address:

- a. The Company's specific unmet needs for additional long-term resources.
- b. The Company's efforts to secure adequate and reasonably-priced long-term resources from the competitive wholesale market to meet these needs.
- c. The reasons why APS believes those efforts have been unsuccessful, either in whole or in part.

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<sup>1</sup> Commission Decision No. 67744, Page 25.

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- d. The extent to which the request to self-build generation is consistent with any applicable Company resource plans and competitive resource acquisition rules or orders resulting from the workshop/rulemaking proceeding described in paragraph 79.
- e. The anticipated life-cycle cost of the proposed self-build option in comparison with suitable alternatives available from the competitive market for a comparable period of time.

These provisions of the Settlement Agreement were not changed by the Commission in Decision No. 67744.

**Q. DOES APS BELIEVE THAT PROVISIONS IN COMMISSION DECISION NO. 67744 PROHIBIT APS FROM MEETING ITS FUTURE NEEDS THROUGH SELF-BUILD OR OWNERSHIP OPPORTUNITIES?**

A. No. The self-build provisions in Decision No. 67744 simply require APS to acquire the Commission's approval prior to acquiring new generation facilities that would be placed into service prior to January 1, 2015, but these provisions do not restrict APS's opportunities. In addition, Decision No. 67744 clearly affirmed the Company's obligation to meet its customers' energy needs. Paragraph 76 of the Settlement Agreement specifically states that APS has an obligation to prudently acquire generating resources, which includes seeking Commission authorization to self-build prior to 2015. The practical effect of the self-build provisions is to test the market to ascertain whether needed resources can be acquired through a competitive process. In those circumstances where the market is unable to provide reasonably priced generation, APS can pursue the acquisition of generating resources.

**Q. WHAT ARE THE CONCERNS THAT THE COMPANY HAS ABOUT THE TIMING OF COMMISSION AUTHORIZATIONS FOR SELF-BUILD PROCEEDINGS?**

1 A. The self-build provisions provide no timetable for Commission action, yet the  
2 timetable is a key factor in contracting for generation resources because it can  
3 materially affect the price of generation. The timing of all regulatory approvals  
4 must be factored into the bidder's proposal, particularly when the bid requires  
5 new construction. Additionally, if there is uncertainty about regulatory review,  
6 then APS and bidders must build extra time into the procurement and  
7 development schedule. An extended process requires APS to go to the market in  
8 advance of its preferred schedule, and in certain circumstances, requires it to  
9 make commitments earlier than it might otherwise prefer. In short, uncertainty  
10 regarding the timing of Commission action creates uncertainty that negatively  
11 affects bidders, APS, and ultimately, APS customers.

12 **Q. WHAT ARE THE RISKS TO THE BIDDER?**

13 A. Bidders proposing to construct new facilities generally will not make the  
14 significant investments needed to move forward with a project until regulatory  
15 approval is obtained. For instance, a bidder may not be able to obtain financing,  
16 secure a plant site, or order equipment until a fully binding contract is in place.  
17 If the contract is premised upon regulatory approval, as is required by the self-  
18 build provisions of Decision No. 67744, then the bidder must wait until APS has  
19 obtained final approval from the Commission. Currently, bidders must make  
20 assumptions about the timeframe for Commission approval in the proposals.  
21 They can either price premiums into their bids to cover the uncertainty, or, when  
22 the actual timeframe for Commission approval varies significantly from the  
23 expected timeframe, the bid provided to the Company may need to be refreshed  
24 due to fluctuations in commodity prices, labor prices, resource availability, or  
25 interest rates. This increased risk associated with unknown timeframes for  
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regulatory approval will ultimately be factored into the price paid by the Company, which in turn impacts the rates our customers pay.

When a bid is based upon an existing facility, whether a sale or a purchased power agreement, bidders are concerned about how the market value of their resources changes over time. Regardless of whether a bid is for an existing or new facility, the length of the procurement schedule is a fundamental factor affecting risk, because there is a greater exposure to such things as market changes, commodity price movements, and inflation as time goes on.

**Q. WHAT ARE THE IMPACTS TO THE COMPANY?**

A. The impacts to the Company are two-fold: APS is exposed to uncertainties in bidder pricing, as well as in the timing of resource additions. Certainty in the timing for the Commission approval process allows the Company to more efficiently manage the overall procurement process, and effectively take advantage of market opportunities so that it can acquire the most preferable generation resources. It also improves the efficiency of the planning and procurement process, which provides APS with greater price certainty.

**Q. THE COMMISSION RECENTLY APPROVED "BEST PRACTICES FOR PROCUREMENT" ("BEST PRACTICES"). DO THESE PRACTICES PROVIDE THE COMMISSION WITH CERTAIN ASSURANCES REGARDING THE INTEGRITY OF THE PROCUREMENT PROCESS?**

A. Yes. The Commission adopted Best Practices (Commission Decision No. 70032, issued December 4, 2007), which address the acceptable methods of procurement and the role of an Independent Monitor ("IM"). These procurement guidelines, as well as the use of an IM, will provide the Commission and stakeholders with assurances that the process for obtaining new resources is fair, transparent, and results in the most preferable resources being selected. With the

1           assurances provided by these Best Practices, APS is requesting that applications  
2           for approval of self-build opportunities should be approved in a defined  
3           timeframe.

4           **Q.    WHAT DOES APS PROPOSE IN REGARDS TO A TIMETABLE FOR**  
5           **SELF-BUILD PROCEEDINGS?**

6           A.    APS believes that the Commission should establish two paths with different  
7           timeframes for Commission approval of APS self-build or ownership  
8           applications in response to an RFP solicitation. The first path would stipulate a  
9           90-day timeframe for a Commission decision, and would apply to applications  
10          the Company files where APS has complied with Best Practices, and the  
11          application includes a written an acknowledgement of such compliance by the  
12          IM. In those cases, the Company would file for approval and provide the  
13          supporting documents, including the IM report, so an evidentiary hearing would  
14          not be necessary. The second path would adopt a 180-day timeframe. The 180-  
15          day timeframe would apply in the event that the IM or an intervening bidder  
16          identified material concerns regarding the fairness of the procurement process,  
17          or if an IM is not involved in the process. Under these circumstances, an  
18          evidentiary hearing may be necessary, making a 180-day timeframe for a  
19          decision more appropriate. To assure certainty for all interested parties, within  
20          thirty (30) days of the Company's filing, the Hearing Division should issue a  
21          procedural order that indicates which timeframe applies.

22          **Q.    DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

23          A.    Yes, it does.  
24  
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AZ CORP COMMISSION  
DOCKET CONTROL

February 4, 2008

Docket Control  
Arizona Corporation Commission  
1200 west Washington  
Phoenix, Arizona 85007

RE: ARIZONA PUBLIC SERVICE COMPANY – TO MODIFY DECISION NO 67744 RELATING TO THE SELF BUILD OPTION – DOCKET NO E-01345A-07-0420

Attached is the Rebuttal Testimony of Arizona Public Service Company's witness Patrick Dinkel in the above referenced matter regarding the modification of Decision No 67744 relating to the self build option.

Sincerely,

Barbara Klemstine

BK/dst

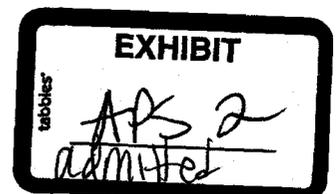
Attachments

CC: Christopher Kempley  
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Parties of Record

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FEB 04 2008

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**REBUTTAL TESTIMONY OF PATRICK DINKEL**

**On Behalf of Arizona Public Service Company**

**Docket No. E-01345A-07-0420**

**February 4, 2008**



1 Decision (the "Settlement") are necessary. The conditions associated with  
2 pursuing any self-build alternatives contained in the Settlement represents a  
3 reasonable and carefully balanced approach to allowing participants in the  
4 wholesale market an opportunity to compete, while maintaining the flexibility  
5 necessary to allow the Company to meet its mandate to acquire reliable, cost-  
6 effective resources for its customers. While APS is recommending that the  
7 Commission adopt a time frame for self-build proceedings, as a matter of  
8 commercial practicality, the Company believes that such a timetable does not  
9 need to actually modify Decision No. 67744. The proposals contained in Mr.  
10 Roberts' and Mr. Trammel's testimony would upset the balance achieved in the  
11 Settlement and unnecessarily limit the flexibility needed for prudent resource  
12 procurement. For those reasons, APS is opposed to their various  
13 recommendations to modify Decision No. 67744, including the  
14 recommendations to revise the recently approved procurement Best Practices, to  
15 empower an independent monitor to make procurement decisions, and to  
16 prohibit the Company from owning generation assets.

17 **Q. MR. ROBERTS CONTENDS THAT THERE WERE "SHARP**  
18 **DISAGREEMENTS" AMONG THE PARTIES AND THE COMMISSION**  
19 **DURING THE PROCEEDINGS IN DOCKET NO. E-01345A-06-0464**  
20 **(THE "YUMA PROCEEDING") CONCERNING THE**  
**INTERPRETATION AND APPLICATION OF DECISION NO. 67744**  
**WITH REGARD TO THE SELF-BUILD OPTION. DO YOU AGREE?**

21 **A.** No. First, I believe APS and the Commission Staff were in general agreement  
22 that APS's submission was consistent with the requirements of Decision No.  
23 67744. Second, much of the Merchant Intervenors' objections were based on  
24 the procedure APS followed in the RFP, not on an interpretation of Decision No.  
25 67744. Those objections were addressed in the Best Practices. APS, the  
26 Merchant Intervenors, and other stakeholders participated in the proceeding

1 leading to Decision No. 70032. That proceeding and the resulting Best Practices  
2 represent a reasonable and balanced approach to procurement practices for all  
3 Arizona electric utilities that are subject to regulation by the Commission.  
4 Third, notwithstanding his explanation, the basis for Mr. Roberts' request to  
5 delete the phrase "from the competitive wholesale market" is not entirely clear.  
6 However, any change in the language that would have a substantive effect would  
7 further undermine the balance agreed to in the Settlement and Decision No.  
8 67744, and accordingly, APS opposes any such unilateral attempt to do so.

9 **Q. WHAT WAS THE COMMISSION'S RESPONSE TO APS'S YUMA**  
10 **APPLICATION AND THE INTERVENORS' ISSUES?**

11 A. APS's application contained an analysis showing that the "self-build"  
12 alternatives were the least cost options and best met the need for resources in  
13 Yuma. After examination of this analysis, the Commission Staff agreed with  
14 APS's conclusions and supported its application. After a full evidentiary  
15 hearing, and based upon the evidence and testimony provided, the Commission  
16 authorized the Company to pursue asset ownership. Subsequent to that decision,  
17 the Commission held workshops with stakeholders and other interested parties,  
18 as ordered in Decision No. 67744. As Staff indicated in those workshops, the  
19 workshops were designed to consider procurement rules for all jurisdictional  
20 Arizona utilities. Those workshops resulted in the development of the  
21 Commission's procurement Best Practices. Among other things, the Best  
22 Practices provide for the appointment of an Independent Monitor ("IM") to  
23 oversee solicitations, whether or not an affiliate is a bidding participant in a  
24 Request for Proposal ("RFP"). I agree with Commission Staff that the Best  
25 Practices appropriately address any perceived issues raised by the intervenors in  
26 the Yuma proceeding.

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**Q. IS IT NECESSARY TO MODIFY DECISION NO. 67744 TO INCORPORATE THE BEST PRACTICES?**

A. Not at all. To begin with, APS fully supports the Best Practices as it provides meaningful guidance regarding procurement practices. Furthermore, APS understands, for the reasons Commission Staff discussed in its direct testimony, that it is in the Company's best interests to follow the Best Practices guidelines.

In addition, the purpose of the Commission workshops that resulted in the Best Practices was to address procurement practices that would be applicable to all jurisdictional electric utilities. Therefore, modifications to a Commission Decision that only addresses APS's requirements until 2015 do not accomplish that purpose. As Staff expressed in the workshops addressing competitive procurement practices, it was expected that those Best Practices would eventually be rolled into a formal Integrated Resource Planning ("IRP") rulemaking process. Commission Staff is currently holding a series of workshops where the development of IRP rules are under discussion. IRP rules are the appropriate place to address competitive procurement practices because resource procurement is the culmination of the planning process. In addition, the IRP rules will apply to all jurisdictional utilities, not just APS, as would be the case if the Best Practices were incorporated into the self-build provisions of Decision No. 67744.

A final consideration is the fact that the Best Practices were only recently approved, and giving everyone some time to see them in practice would be most beneficial.

For all of these reasons, there is no need for the Commission to modify Decision No. 67744 to include the Best Practices.

1 Q. DO YOU BELIEVE IT IS APPROPRIATE TO MODIFY THE  
2 COMMISSION'S BEST PRACTICES IN THIS PROCEEDING AS  
3 SUGGESTED BY MR. TRAMMEL?

4 A. No, I do not. It would not be appropriate to change recently approved  
5 procurement practices only for a single utility. Any changes to guidelines that  
6 were developed to apply to all jurisdictional utilities should also apply equally to  
7 all those utilities. In any event, each of the modifications proposed by Mr.  
8 Trammel was discussed in the workshops during which the Best Practices were  
9 crafted, and Mr. Trammel and his colleagues had an opportunity to participate in  
10 those workshops. The modifications listed in his testimony have already been  
11 adequately addressed through the workshop process and are reflected in the  
12 current Best Practices that were approved by the Commission.

13 Q. PLEASE BRIEFLY DISCUSS EACH OF MR. TRAMMEL'S  
14 PROPOSALS RELATING TO THE INDEPENDENT MONITOR AND  
15 BIDDERS' FEES.

16 A. Mr. Trammel's proposals are as follows:  
17 Independent monitor hired by, and reports to, the Commission. This option for  
18 the role of the IM was discussed at length in the Best Practices workshops.  
19 Commission Staff chose not to structure the position of the IM in this manner,  
20 and the Commission approved specific procedures for the selection of IM's and  
21 their independent reporting. The Company supports the Staff's choice and the  
22 Commission decision.

23 Independent monitor as bid evaluator. This option was also specifically  
24 discussed at the workshops, including that this dual role for the IM (*i.e.*, monitor  
25 and evaluator) was not justified because of the expected additional costs  
26 involved, and because the utility is in the best position to evaluate RFP bids in  
each individual circumstance. Furthermore, a bid evaluator would need to have

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full decision-making capability, and any final RFP award would necessarily have to carry with it a presumption of prudence.

Bidding fees capped. Bid fees were also discussed at the workshops. The current Best Practices guidelines place no restrictions on the imposition of bidders' fees, which is appropriate. Each solicitation is different and bidders' fees must be structured to meet the specific needs of each RFP. If bidders' fees are kept artificially low, any additional costs over and above the fees will ultimately be borne by the utility customer. It is ironic that Mr. Tramell has recommended significantly expanding the responsibilities of an IM, which would correspondingly result in higher IM fees, while also proposing that bid fees be capped at a prescribed, nominal level.

Single fee for multiple bids from one bidder. It is not necessary to restrict the solicitation process to one methodology of assigning bidding fees. In past RFPs, APS has chosen different fee structures to achieve the best response for each individual process. The Company has assessed a fixed fee per bidder, a fee per bidder per site, and, in some cases, no fee at all. Mandating specifics on bid fees is an unnecessary and unproductive step to micro-manage the utilities solicitations.

Open entire bid evaluation process to the public. This recommendation is generally anti-competitive and may limit the Company's ability to provide our customers with cost-effective generation. It ignores the fact that much of the data produced by the Company and received from bidders is competitively confidential. APS currently provides RFP bids and bid evaluation information to Staff pursuant to a confidentiality agreement, and, where appropriate, non-

1 confidential information is discussed in public forums. Mr. Trammel's  
2 suggestion that the information should be provided to and released by the IM  
3 puts a great burden on the monitor, considering that the IM already has  
4 established reporting responsibilities in the current Best Practices. As a result,  
5 such a requirement would increase the cost of bid evaluation significantly.

6 **Q. MR. TRAMMEL ALSO SUGGESTS THAT AN OUTRIGHT**  
7 **PROHIBITION OF UTILITY SELF-BUILD GENERATION PROJECTS**  
8 **WOULD ENHANCE CUSTOMER BENEFITS. DO YOU AGREE?**

9 **A.** Absolutely not. "Self-build," as defined by Decision No. 67744 is equivalent to  
10 any type of utility ownership. Mr. Trammel's recommendation is a blatant  
11 attempt to prohibit certain potential market competitors, namely developers,  
12 engineering/procurement/construction contractors, and owners of existing power  
13 plants, from participation. The Commission must guard against letting the  
14 pendulum swing so far as to give certain market participants the upper hand in  
15 procurement by limiting the ability of utilities to seek out the best commercial  
16 options. If any positive experience came out of California earlier in this decade,  
17 it is the knowledge that the market cannot be given unfettered ability to hold the  
18 public hostage to special interests. Prohibition of any option for utility  
19 procurement is inappropriately restrictive, outright anti-competitive, and as  
20 such, not in the best interest of our customers. This issue has been adequately  
21 discussed, and sufficiently resolved in Decision No. 67744, where the  
22 Commission directly stated that utilities must be permitted to pursue self-build  
23 generation projects if reasonably priced resources are not available in the  
24 wholesale market.

25 **Q. MR. TRAMMEL COMPARES THE RISKS AND BENEFITS OF**  
26 **UTILITY OWNED GENERATION AND INDEPENDENT POWER**  
**PROJECTS, AND IMPLIES THAT THE UTILITY CAN SIMPLY PASS**

1 **ON ANY COST OVERRUNS OR EXPENSES RELATED TO POOR**  
2 **PERFORMANCE ON TO THEIR CUSTOMERS. HOW DO YOU**  
3 **RESPOND TO THAT POSITION?**

4 A. Mr. Tramell's discussion overlooks the fact that utility-owned generation can  
5 include fixed price bids from developers, asset owners and EPC contractors.  
6 Also, whether a utility acquires a generation facility from one of these entities or  
7 if the utility was to build the plant, the Company has an obligation to act  
8 prudently to acquire resources for its customers. The Commission reviews the  
9 Company's costs and procurement activities and would not allow cost recovery  
10 for actions it determined were imprudent.

11 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

12 A. As a competitive business, one of the Merchant Intervenors primary goals is to  
13 maximize profits. They are not subject to the same regulatory oversight and  
14 obligation to serve, as are electric utilities. They do not plan for electric  
15 customers' needs and are not held accountable if those needs are not met in a  
16 reliable and reasonable economic manner. Neither the utilities, nor the  
17 regulators that oversee them, should hand over the reins of responsibility for  
18 securing energy to merchant entities. The self-build provisions of Decision No.  
19 67744, along with the recently adopted procurement Best Practices, provide  
20 constructive and appropriate requirements that give APS the flexibility it needs  
21 to make necessary resource acquisition decisions, as well as providing all market  
22 participants a fair chance to compete for the utility's needs. The wishes  
23 expressed by Mr. Trammel and Mr. Roberts are not new—Merchant Intervenors  
24 have aired these points in multiple recent proceedings, where they received  
25 careful consideration from the Commission. The Commission has made  
26 decisions that support responsible procurement, and it is time to shed these old

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arguments and move forward. Both the Staff witness and the RUCO witness recognize this fact; in their testimony each states that there is no need to modify the self-build provisions of Decision No. 67744. Additionally, the best forum in which to address modification or mandate of the Commission's Best Practices for procurement is in the IRP rulemaking proceeding, where proposed changes can be fully discussed among all stakeholders and interested parties.

In my direct testimony, I discussed the Company's proposed timetables for Commission action on regulatory approval of self-build applications to ensure that the Company is able to pursue cost effective procurement options while opportunities exist. I continue to recommend that the Commission establish timelines for the self-build procurement approval process for the reasons set forth in my direct testimony, which can be addressed without modifying Decision No. 67744.

**Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

**A.** Yes, it does.

**ARIZONA PUBLIC SERVICE COMPANY**

**DOCKET NO. E-01345A-07-0420**

**DIRECT TESTIMONY**

**OF**

**STEPHEN AHEARN**

**ON BEHALF OF**

**THE**

**RESIDENTIAL UTILITY CONSUMER OFFICE**

**JANUARY 11, 2008**

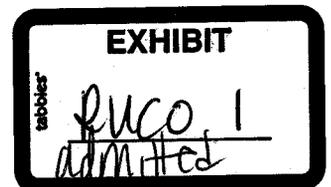


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5	RUCO IS NOT PROPOSING MODIFICATIONS .....	5

1 **INTRODUCTION**

2 Q. Please state your name and business address for the record.

3 A. My name is Stephen Ahearn. My business address is 1110 West Washington,  
4 Suite 220, Phoenix, Arizona 85007.

5  
6 Q. Please state your educational background and qualifications in the utility  
7 regulation field.

8 A. I have been employed by the state of Arizona as the Director of the Residential  
9 Utility Consumer Office ("RUCO") since January 2003. From 1998 through 1999,  
10 I was employed at the Arizona Corporation Commission in the capacity of  
11 Executive Consultant. From 1990 to 1998, I was actively involved with utility  
12 regulation at the Commission and utility policy-making at the Legislature in my  
13 role as the Manager of Planning and Policy at the Department of Commerce  
14 Energy Office. Additionally, I have had training in utility ratemaking and  
15 telecommunications policy conducted by NARUC and New Mexico State  
16 University, respectively. Finally, I have an MBA in Finance from UCLA.

17

18 **BACKGROUND**

19 Q. What is the self-build option of Decision No. 67744 to which the caption of this  
20 docket refers?

21 A. The Commission's Decision No. 67744 adopted, with modifications, a Settlement  
22 Agreement regarding a 2003 rate application by Arizona Public Service Company  
23 ("APS"). The Settlement Agreement included a partial restriction on APS putting

1 into service any self-built generation prior to January 1, 2015 without the prior  
2 approval of the Commission (the "Self-Build Moratorium").<sup>1</sup> The Settlement  
3 Agreement outlined what APS was to include in any application for such  
4 authorization to self-build,<sup>2</sup> and indicated that certain acquisitions by APS would  
5 not be considered "self-build" for purposes of the restriction.<sup>3</sup>

6  
7 Q. Why was the Self-Build Moratorium adopted?

8 A. The Settlement Agreement also included a term whereby APS was permitted to  
9 include in its rate base, at a significant discount from their construction costs,  
10 generation facilities that had been constructed by its affiliate Pinnacle West  
11 Energy Corporation ("PWEC").<sup>4</sup> According to Decision No. 67744, the Self-Build  
12 Moratorium was designed to address the potential anti-competitive effects that  
13 could be associated with including the PWEC assets in APS' rate base.<sup>5</sup>

14  
15 Q. Was the Self-Build Moratorium meant to be an absolute ban on APS constructing  
16 its own generation facilities through 2014?

17 A. No. First, as I noted above, there were a number of relatively narrow types of  
18 resources that were specifically excluded from the Moratorium (e.g., temporary  
19 resources for system reliability, renewable resources).<sup>6</sup> Second, the Settlement  
20 Agreement explicitly permitted APS to seek exceptions to the Moratorium. In

---

<sup>1</sup> Decision No. 67744, Settlement Agreement at ¶ 74.

<sup>2</sup> *Id.* at ¶ 75.

<sup>3</sup> *Id.* at ¶ 74. In adopting the Settlement Agreement, the Commission narrowed this exception slightly. See Decision No. 67744 at 25.

<sup>4</sup> Decision No. 67744, Settlement Agreement at ¶¶ 6, 7.

<sup>5</sup> Decision No. 67744 at 25.

<sup>6</sup> Decision No. 67744 at 25 and Settlement Agreement at ¶ 74.

1 the event the wholesale market did not develop adequately and that APS  
2 therefore wasn't able to meet its resource needs cost-effectively from that  
3 market, APS was given the opportunity to build its own generation resources.<sup>7</sup>  
4 Prior to any such efforts to self-build, however, APS was required to demonstrate  
5 to the Commission that the wholesale market had in fact failed to produce  
6 resources that were cost-effective when compared with APS' costs to self-build.  
7 The Settlement Agreement explicitly stated that the Moratorium "shall not be  
8 construed as relieving APS of its existing obligation to prudently acquire  
9 generating resources," including seeking the permitted authorization to self-  
10 build.<sup>8</sup>

11  
12 Q. Has APS sought authorization from the Commission to build generation assets  
13 when the competitive market was not able to produce a more cost-effective  
14 alternative?

15 A. Yes it has, and the Commission approved APS' application to do so. In Docket  
16 No. E-01345A-06-0464, APS sought Commission approval to purchase a new  
17 generation resource in APS' Yuma load pocket. The Commission held a hearing  
18 in January 2007 and granted approval of APS' request in Decision No. 69400  
19 (March 30, 2007). While the Commission did hold four days of hearing in that  
20 proceeding, it indicated in its Decision that an evidentiary hearing may not be  
21 necessary for every application for authority to self-build, and the Commission

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<sup>7</sup> See my Direct Testimony in support of the Settlement Agreement, filed September 27, 2004, at  
pg. 7, Docket No. E-01345A-03-0437.

<sup>8</sup> Decision No. 67744, Settlement Agreement at ¶ 76.

1 declined to impose specific procedural requirements for any future disputes  
2 regarding the requirements of the Settlement Agreement related to self-building  
3 of generation.<sup>9</sup>

4  
5 Q. Why is the Commission now considering whether to modify the self-build  
6 provisions of Decision No. 67744?

7 A. In 2005, after the Commission approved the Settlement Agreement in Decision  
8 No. 67744, APS filed another rate application. That application went to hearing  
9 in the Fall of 2006. While that hearing was underway, Commissioner Hatch-  
10 Miller issued a letter in that proceeding expressing concern that, because of the  
11 Self-Build Moratorium, APS may face challenges in procuring additional power  
12 supplies and that volatile natural gas prices and potential gas supply and delivery  
13 constraints might make competitive procurement problematic.<sup>10</sup>

14  
15 Between the conclusion of the 2005 rate case hearing in December 2006 and the  
16 Open Meeting to resolve it in June 2007, the Commission heard the Yuma self-  
17 build application and adopted Decision No. 69400. At the Open Meeting on the  
18 2005 rate case the Commission discussed an amendment to the Recommended  
19 Opinion and Order that would have streamlined the procedure by which APS  
20 could seek an exception to the Self-Build Moratorium. Ultimately, the  
21 Commission instead adopted an amendment that required its Hearing Division to  
22 initiate this proceeding. On its face Decision No. 69663 merely orders the

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<sup>9</sup> Decision No. 69400 at 18.

<sup>10</sup> October 24, 2006 Letter from Commissioner Hatch-Miller in Docket No. E-01345A-05-0816 *et al.*

1 Hearing Division to conduct a proceeding pursuant to A.R.S. § 40-252 to  
2 consider modifying Decision No. 67744 relating to the self-build option, but the  
3 Decision says nothing about why the Commission is requiring the proceeding.  
4 Based on the Commissioners' discussion that led to the amendment, however, it  
5 appears that the Commission envisions this proceeding as potentially involving  
6 more than just streamlining the process by which APS can seek an exemption  
7 from the Self-Build Moratorium.

8  
9 **RUCO IS NOT PROPOSING MODIFICATIONS**

10 Q. Does RUCO believe that the Self-Build Moratorium needs to be modified?

11 A. No. RUCO is not proposing any modifications to the Moratorium. I believe that  
12 the Settlement Agreement and Decision No. 67744 established an appropriate  
13 balance between reliance on the wholesale electric market and requiring APS to  
14 meet its load by using the most cost-effective resource—regardless of who owns  
15 those resources. RUCO strongly supports the Commission's statement in  
16 Decision No. 69400 that APS must be permitted to pursue self-building  
17 generation resources if that is the most prudent option.<sup>11</sup> I believe that the  
18 obligation that APS has to seek an exemption from the Self-Build Moratorium if  
19 reasonably priced resources are not available in the wholesale market is the key  
20 aspect of the Settlement Agreement that makes the Self-Build Moratorium, as a  
21 whole, appropriate.

22  

---

<sup>11</sup> See Decision No. 69400 at 17-18.

1           Since I don't know what other parties might be proposing in their testimony filed  
2           concurrently with mine, I will reserve judgment on any proposals others make  
3           until I see them, and I will offer any necessary response to them in my rebuttal  
4           testimony.

5

6   Q.    Does this conclude your testimony?

7   A.    Yes.

ARIZONA PUBLIC SERVICE COMPANY

DOCKET NO. E-01345A-07-0420

REBUTTAL TESTIMONY

OF

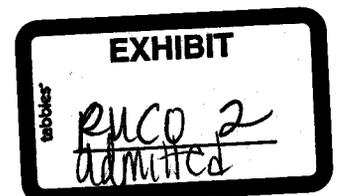
STEPHEN AHEARN

ON BEHALF OF

THE

RESIDENTIAL UTILITY CONSUMER OFFICE

FEBRUARY 4, 2008



1 **INTRODUCTION**

2 Q. Please state your name and business address for the record.

3 A. My name is Stephen Ahearn. My business address is 1110 West Washington,  
4 Suite 220, Phoenix, Arizona 85007.

5

6 Q. Have you previously filed testimony in this docket?

7

8 A. Yes, I filed direct testimony on January 11, 2008.

9

10 Q. What is the purpose of your rebuttal testimony?

11

12 A. I respond to elements of the testimonies provided by other parties filed on or after  
13 January 11. Specifically, I will address matters raised by the ACC Staff, Arizona  
14 Public Service ("Company") and intervenors Sempra and the Electric Generation  
15 Alliance.

16

17 Q. Please summarize your testimony.

18 A. As an active participant in the Settlement Agreement, RUCO would not support  
19 an outright prohibition on utility self-build of generation. That element of the  
20 Settlement Agreement was an important component in RUCO's decision to join  
21 as signatory to the agreement. As stated in my direct testimony, the Company is  
22 required to show that any proposal to self-build generation must meet a threshold  
23 of proof determined by the ACC staff before granting any exemption to the  
24 "Moratorium." That check-and-balance relationship rightly places responsibility on  
25 the two participants ultimately responsible for the self-build decision, and for  
26 dealing with its consequences—the ACC Staff and the Company. The existence

1 of a self-build option should be maintained, although this docket has presented  
2 an ample record of suggested procurement process improvement to achieve the  
3 desired result of a reliable, least cost generation system that is able to take  
4 advantage of markets where they are able to deliver lower prices.

5  
6 Q. What do other parties generally identify as shortcomings of the existing  
7 generation procurement system, and what remedies are the parties proposing?

8 A. Other parties identify weaknesses—real and/or perceived—in the existing  
9 bidding processes that could frustrate procurement success. Electric Generation  
10 Alliance witness Trammel suggests the process can only yield a truly competitive  
11 result if the incumbent is foreclosed from the possibility to self-build, in essence  
12 by removal of the utility opportunity to rig the outcome of the bid process.  
13 Trammel also raises the issue of risk transfer in the event of utility self-build cost  
14 overruns, and suggests several remedies to the perceived shortcomings of the  
15 existing role of Independent Monitors.

16  
17 ACC Staff proposes an administrative tightening of the RFP process through the  
18 utilization of a regime of Best Practices, with the backstop of cost disallowance in  
19 an after-the-fact prudence determination as the ultimate discipline to prevent  
20 utility self-dealing.

21

1           Sempra joins with Staff in suggesting the adoption of Best Practices, but goes  
2 further than Staff by proposing that they are made a mandatory element of the  
3 procurement process.

4  
5           Conversely, the Company does not acknowledge deficiencies in the existing  
6 process, instead suggesting timetables of varying lengths for approval of a self-  
7 build application, depending on the participation of an Independent Monitor.

8  
9 Q.       What is your response to the concerns of the other parties?

10 A.       Staff has chosen an appropriate remedy for the perceived problems that exist at  
11 *this time*. Mandating a Best Practices for this Company alone could be  
12 discriminatory, although RUCO would support the inclusion of the debate about  
13 whether the application of best procurement practices contributes to, and  
14 supports, the achievement of an Integrated Resource Plan in the IRP-related  
15 conversation taking place apart from this docket.

16  
17       If reliance on wholesale markets and independent generation can be proven to  
18 be consistent with, and flexible enough to accommodate, changing regulatory  
19 policy responding to new environmental and resource imperatives, then RUCO  
20 will be supportive of efforts to bolster the independent sector and will support  
21 strengthening of the procurement process—possibly including a more aggressive  
22 role of an independent monitor as envisioned by intervenor Electric Generation  
23 Alliance. However, this docket will not in itself answer this question, so RUCO

1 supports the intermediate position with respect to Best Practices proposed by the  
2 ACC Staff.

3

4 Q. Do you have any concluding comments?

5 A. The intervenors in the matter raise legitimate, intuitive concerns about the effect  
6 of the incumbent utility role in determining winning and losing bids. More can be  
7 done to assure the legitimacy of the bidding process, and a good place to begin  
8 is with the adoption of Best Practices and the assurance by the ACC Staff that its  
9 after-the-fact analysis of the bidding process itself will not allow the transfer of  
10 risk to the ratepayer identified by the Alliance.

11

12 Q. Does this conclude your testimony?

13 A. Yes.

14



BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
KRISTIN K. MAYES  
Commissioner  
GARY PIERCE  
Commissioner

IN THE MATTER OF THE CONSIDERATION, )  
PURSUANT TO A.R.S. § 40-252 TO MODIFY )  
DECISION NO. 67744 RELATING TO THE )  
SELF-BUILD OPTION. )

DOCKET NO. E-01345A-07-0420

DIRECT  
TESTIMONY  
OF  
BARBARA KEENE  
PUBLIC UTILITIES ANALYST MANAGER  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

JANUARY 11, 2008

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**APPENDIX**

Resume of Barbara Keene

**EXECUTIVE SUMMARY  
ARIZONA PUBLIC SERVICE COMPANY  
DOCKET NO. E-01345A-07-0420**

This testimony addresses Staff's position concerning the self-build option for Arizona Public Service Company ("APS") that was in the Settlement Agreement approved by Decision No. 67744.

Staff recommends that no modification to Decision No. 67744 be made at this time. The self-build provisions continue to encourage APS to obtain resources to serve its customers by seeking the best options.

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Barbara Keene. My business address is 1200 West Washington Street,  
4 Phoenix, Arizona 85007.

5  
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Utilities Division of the Arizona Corporation Commission as a  
8 Public Utilities Analyst Manager. My duties include supervising the energy portion of the  
9 Telecommunications and Energy Section. A copy of my résumé is provided in Appendix  
10 1.

11  
12 **Q. As part of your employment responsibilities, were you assigned to review matters  
13 contained in Docket No. E-01345A-07-0420?**

14 A. Yes.

15  
16 **Q. What is the subject matter of this testimony?**

17 A. This testimony will address Staff's position concerning the self-build option for Arizona  
18 Public Service Company ("APS") that was approved by Decision No. 67744.

19  
20 **DECISION NO. 67744 AND SETTLEMENT AGREEMENT**

21 **Q. Did Decision No. 67744 approve a settlement agreement for an APS rate case?**

22 A. Yes. Decision No. 67744 approved a settlement agreement ("Settlement Agreement")  
23 with modifications in Docket No. E-01345A-03-0437.

24  
25 **Q. Was Staff a party to the Settlement Agreement?**

26 A. Yes. Staff was a party to the Settlement Agreement, along with 21 other entities.

1 **Q. What does the Settlement Agreement contain concerning a self-build option?**

2 A. The Settlement Agreement contains the following paragraph:

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74. APS will not pursue any self-build option having an in-service date prior to January 1, 2015, unless expressly authorized by the Commission. For purposes of this Agreement, 'self-build' does not include the acquisition of a generating unit or interest in a generating unit from a non-affiliated merchant or utility generator, the acquisition of temporary generation needed for system reliability, distributed generation of less than fifty MW per location, renewable resources, or the up-rating of APS generation, which up-rating shall not include the installation of new units.

14 **Q. What else is in the Settlement Agreement concerning the self-build issue?**

15 A. APS can seek authorization from the Commission to self-build prior to 2015, if APS can  
16 show that an exception to the self-build moratorium is warranted. Paragraph 75 of the  
17 Settlement Agreement lists items that APS needs to address when requesting Commission  
18 authorization to self-build generation prior to 2015. Paragraph 76 reaffirms APS'  
19 obligation to prudently acquire generating resources in order to serve its customers.

21 In place of the self-build option, Paragraph 78 required APS to issue a Request for  
22 Proposals ("RFP") no later than the end of 2005 seeking long-term future resources of not  
23 less than 1,000 MW for 2007 and beyond. No APS affiliate was permitted to participate  
24 in that RFP. An independent monitor appointed by the Commission or Staff is required if  
25 any APS affiliate participates in any other competitive solicitation for long-term resources  
26 conducted by APS. In addition, Paragraph 79 provided for Staff to conduct a series of  
27 workshops on power procurement issues.

28

1 **Q. How did Decision No. 67744 modify the Settlement Agreement in regard to the self-**  
2 **build issue?**

3 A. Decision No. 67744 modified the definition of "self-build" to include the acquisition of a  
4 generating unit or interest in a generating unit from any merchant or utility generator. The  
5 Decision also requires APS to obtain the Commission's expressed approval for APS'  
6 acquisition of any generating facility or interest in a generating facility pursuant to an RFP  
7 or other competitive solicitation issued before January 1, 2015. That determination would  
8 not be construed as signaling the ultimate regulatory treatment accorded to such  
9 generating facility.

10

11 **Q. What are the merits of the provisions in the Settlement Agreement regarding the**  
12 **self-build moratorium?**

13 A. Various testimonies in Docket No. E-01345A-03-0437 addressed the merits of the  
14 Settlement Agreement's requirements for competitive procurement of power, including the  
15 self-build provisions. In summary, these include the following:

16

17 ● The competitive procurement provisions are consistent with the Commission's  
18 commitment to wholesale competition as expressed in its Track A and Track B  
19 orders (Decision Nos. 65154 and 65743).

20

21 ● The self-build moratorium provides a substantial opportunity for merchant  
22 generation to be an alternative to utility-constructed generation.

23

24 ● The pro-competitive provisions provide balance to the potentially anti-competitive  
25 effects of rate basing the affiliate assets and strike a balance between market and  
26 non-market approaches.

- 1           ●     The self-build moratorium does not apply to temporary generation needed for  
2                     system reliability.  
3  
4           ●     The self-build moratorium is subject to a safety mechanism that permits APS to  
5                     seek an exemption from the Commission if the wholesale market cannot cost-  
6                     effectively meet the needs of APS' customers.  
7  
8           ●     The self-build moratorium provisions provide the merchant community with an  
9                     opportunity to compete, while at the same time preserving APS' ability to maintain  
10                    reliable service.

11  
12   **Q.    Have any Commission activities involving procurement of resources occurred since**  
13   **Decision No. 67744?**

14   A.    Yes. There have been three Commission activities that are relevant to this discussion.  
15

16   **Q.    What was the first activity?**

17   A.    The first activity was APS' application for approval to purchase a power plant in the Yuma  
18           area (Docket No. E-01345A-06-0464).  
19

20   **Q.    Were issues concerning procurement raised during the proceeding?**

21   A.    Yes. Some of the intervenors raised issues regarding APS' conduct in its solicitation.  
22           They felt that an independent monitor should have been appointed to oversee the RFP  
23           process because APS had prepared its direct build alternative estimate during the course of  
24           the RFP. An APS employee who had access to confidential bids had prepared APS' direct  
25           build alternative estimate, and APS did not complete the estimate until after selection of  
26           the superior bid in the RFP process. APS then requested Commission authority to proceed

1 either with the superior bidder or with the APS direct build alternative. Although  
2 Paragraph 78 of the Settlement Agreement requires an independent monitor if an APS  
3 affiliate participates in a competitive solicitation, no APS affiliate had bid in the Yuma  
4 RFP.

5  
6 **Q. What was the second Commission activity relevant to this discussion?**

7 A. The second activity was the APS rate case that resulted in Decision No. 69663 (June 28,  
8 2007). Decision No. 69663 ordered that a new docket be opened to consider modifying  
9 Decision No. 67744 relating to the self-build option. This resulted in the opening of the  
10 current docket.

11  
12 **Q. What was the third Commission activity relevant to this discussion?**

13 A. The Commission recently issued Decision No. 70032 which adopted Recommended Best  
14 Practices for Procurement ("Best Practices").

15  
16 **Q. Are there any inconsistencies between the Settlement Agreement and the Best  
17 Practices?**

18 A. No. However, the Best Practices go beyond the Settlement Agreement in that the Best  
19 Practices include (1) a provision to have an independent monitor used for all RFP  
20 processes for procurement of new resources and (2) a provision for the utility to provide  
21 the independent monitor, one week prior to the bid submittal deadline, a copy of any bid  
22 proposal prepared by the utility or its affiliate, or any benchmark or reference cost the  
23 utility has developed against which to evaluate the bids. Staff believes that the Best  
24 Practices appropriately address the issues raised by the intervenors in the Yuma  
25 proceeding.

26

1 **Q. Is APS required to follow the Best Practices?**

2 A. No. The Best Practices are not prescriptive, but Staff believes that they provide a means  
3 by which procedures for obtaining new resources are fair, transparent, and result in the  
4 most economical resources being selected. It is Staff's expectation that APS would follow  
5 the Best Practices. Failure to do so could be considered in a prudence determination.  
6 Certainly, if APS were to follow the Best Practices, it might be able to avoid the issues  
7 that it faced in the Yuma proceeding. Although the Best Practices are not mandatory, they  
8 could become mandatory if they are incorporated in the rulemaking on Resource Planning  
9 that is currently underway.

10

11 **Q. Has anything changed that causes Staff to no longer support the Settlement  
12 Agreement in regard to the self-build provisions?**

13 A. No. Staff continues to support the Settlement Agreement. The self-build provisions  
14 continue to encourage APS to obtain resources to serve its customers by seeking the best  
15 options.

16

17 **Q. Does Staff recommend any changes to Decision No. 67744 in regard to the self-build  
18 issue?**

19 A. No. Staff does not recommend any changes to Decision No. 67744 at this time because  
20 Staff continues to support the Settlement Agreement.

21

22 **SUMMARY OF STAFF RECOMMENDATIONS**

23 **Q. Please summarize Staff's recommendation.**

24 A. Staff's recommendation is that no modification to the Settlement Agreement or Decision  
25 No. 67744 be made at this time.

1    **Q.    Does this conclude your direct testimony?**

2    A.    Yes, it does.

## RESUME

**BARBARA KEENE**

### Education

B.S. Political Science, Arizona State University (1976)  
M.P.A. Public Administration, Arizona State University (1982)  
A.A. Economics, Glendale Community College (1993)

### Additional Training

Management Development Program - State of Arizona, 1986-1987  
UPLAN Training - LCG Consulting, 1989, 1990, 1991  
various seminars, workshops, and conferences on ratemaking, energy efficiency, rate design, computer skills, labor market information, training trainers, and Census products

### Employment History

**Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst Manager (May 2005-present).** Supervise the energy portion of the Telecommunications and Energy Section. Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

**Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst V (October 2001-May 2005), Senior Economist (July 1990-October 2001), Economist II (December 1989-July 1990), Economist I (August 1989-December 1989).** Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

**Arizona Department of Economic Security, Research Administration, Economic Analysis Unit: Labor Market Information Supervisor (September 1985-August 1989), Research and Statistical Analyst (September 1984-September 1985), Administrative Assistant (September 1983-September 1984).** Supervised professional staff engaged in economic research and analysis. Responsible for occupational employment forecasts, wage surveys, economic development studies, and over 50 publications. Edited the monthly **Arizona Labor Market Information Newsletter**, which was distributed to about 4,000 companies and individuals.

### Testimony

Resource Planning for Electric Utilities (Docket No. U-0000-90-088), Arizona Corporation Commission, 1990; testimony on production costs and system reliability.

Trico Electric Cooperative Rate Case (Docket No. U-1461-91-254), Arizona Corporation Commission, 1992; testimony on demand-side management and time-of-use and interruptible power rates.

Navopache Electric Cooperative Rate Case (Docket No. U-1787-91-280), Arizona Corporation Commission, 1992; testimony on demand-side management and economic development rates.

Arizona Electric Power Cooperative Rate Case (Docket No. U-1773-92-214), Arizona Corporation Commission, 1993; testimony on demand-side management, interruptible power, and rate design.

Tucson Electric Power Company Rate Case (Docket Nos. U-1933-93-006 and U-1933-93-066) Arizona Corporation Commission, 1993; testimony on demand-side management and a cogeneration agreement.

Resource Planning for Electric Utilities (Docket No. U-0000-93-052), Arizona Corporation Commission, 1993; testimony on production costs, system reliability, and demand-side management.

Duncan Valley Electric Cooperative Rate Case (Docket No. E-01703A-98-0431), Arizona Corporation Commission, 1999; testimony on demand-side management and renewable energy.

Tucson Electric Power Company vs. Cyprus Sierrita Corporation, Inc. (Docket No. E-0000I-99-0243), Arizona Corporation Commission, 1999; testimony on analysis of special contracts.

Arizona Public Service Company's Request for Variance (Docket No. E-01345A-01-0822), Arizona Corporation Commission, 2002; testimony on competitive bidding.

Generic Proceeding Concerning Electric Restructuring Issues (Docket No. E-00000A-02-0051), Arizona Corporation Commission, 2002; testimony on affiliate relationships and codes of conduct.

Tucson Electric Power Company's Application for Approval of New Partial Requirements Service Tariffs, Modification of Existing Partial Requirements Service Tariff 101, and Elimination of Qualifying Facility Tariffs (Docket No. E-01933A-02-0345) and Application for Approval of its Stranded Cost Recovery (Docket No. E-01933A-98-0471), Arizona Corporation Commission, 2002, testimony on proposals to eliminate, modify, or introduce tariffs and testimony on the modification of the Market Generation Credit.

Arizona Public Service Company's Application for Approval of Adjustment Mechanisms (Docket No. E-01345A-02-0403), Arizona Corporation Commission, 2003, testimony on the proposed Power Supply Adjustment and the proposed Competition Rules Compliance Charge.

Generic Proceeding Concerning Electric Restructuring Issues, et al (Docket No. E-00000A-02-0051, et al), Arizona Corporation Commission, 2003-2005; Staff Report and testimony on Code of Conduct.

Arizona Public Service Company Rate Case (Docket No. E-01345A-03-0437), Arizona Corporation Commission, 2004; testimony on demand-side management, system benefits, renewable energy, the Returning Customer Direct Assignment Charge, and service schedules.

Arizona Electric Power Cooperative Rate Case (Docket No. E-01773A-04-0528), Arizona Corporation Commission, 2005; testimony on a fuel and purchased power cost adjustor, demand-side management, and rate design.

Trico Electric Cooperative Rate Case (Docket No. E-01461A-04-0607), Arizona Corporation Commission, 2005; testimony on the Environmental Portfolio Standard; demand-side management; special charges; and Rules, Regulations, and Line Extension Policies.

Arizona Public Service Company (Docket Nos. E-01345A-03-0437 and E-01345A-05-0526), Arizona Corporation Commission, 2005; testimony on the Plan of Administration of the Power Supply Adjustor.

Arizona Public Service Company Emergency Rate Case (Docket No. E-01345A-06-0009), Arizona Corporation Commission, 2006; testimony on bill impacts.

Arizona Public Service Company Rate Case (Docket Nos. E-01345A-05-0816, E-01345A-05-0826, and E-01345A-05-0827), Arizona Corporation Commission, 2006; testimony on funding for renewable resources, net metering, green pricing tariffs, and a Power Supply Adjustor surcharge.

Tucson Electric Power Company Filing to Amend Decision No. 62103 (Docket No. E-01933A-05-0650), Arizona Corporation Commission, 2007, testimony on demand-side management, time-of-use, direct load control, and renewable energy.

### **Publications**

Author of the following articles published in the *Arizona Labor Market Information Newsletter*:

- "1982 Mining Employees - Where are They Now?" - September 1984
- "The Cost of Hiring" and "Arizona's Growing Industries" - January 1985
- "Union Membership - Declining or Shifting?" - December 1985
- "Growing Industries in Arizona" - April 1986
- "Women's Work?" - July 1986
- "1987 SIC Revision" - December 1986
- "Growing and Declining Industries" - June 1987
- "1986 DOT Supplement" and "Consumer Expenditure Survey" - July 1987
- "The Consumer Price Index: Changing With the Times" - August 1987
- "Average Annual Pay" - November 1987
- "Annual Pay in Metropolitan Areas" - January 1988

"The Growing Temporary Help Industry" - February 1988  
"Update on the Consumer Expenditure Survey" - April 1988  
"Employee Leasing" - August 1988  
"Metropolitan Counties Benefit from State's Growing Industries" - November 1988  
  
"Arizona Network Gives Small Firms Helping Hand" - June 1989

Major contributor to the following books published by the Arizona Department of Economic Security:

*Annual Planning Information* - editions from 1984 to 1989  
*Hispanics in Transition* - 1987

(with David Berry) "Contracting for Power," *Business Economics*, October 1995.

(with Robert Gray) "Customer Selection Issues," *NRRI Quarterly Bulletin*, Spring 1998.

#### **Reports**

(with Task Force) *Report of the Task Force on the Feasibility of Implementing Sliding Scale Hookup Fees*. Arizona Corporation Commission, 1992.

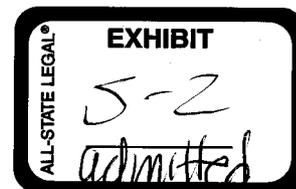
*Customer Repayment of Utility DSM Costs*, Arizona Corporation Commission, 1995.

(with Working Group) *Report of the Participants in Workshops on Customer Selection Issues*," Arizona Corporation Commission, 1997.

"DSM Workshop Progress Report," Arizona Corporation Commission, 2004.

(with Erin Casper) "Staff Report on Demand Side Management Policy," Arizona Corporation Commission, 2005.

"Staff Report on Interconnection for the Generic Investigation of Distributed Generation," Arizona Corporation Commission, 2007.



BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
KRISTIN K. MAYES  
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Commissioner

IN THE MATTER OF THE CONSIDERATION, )  
PURSUANT TO A.R.S. § 40-252 TO MODIFY )  
DECISION NO. 67744 RELATING TO THE )  
SELF-BUILD OPTION. )

DOCKET NO. E-01345A-07-0420

REBUTTAL  
TESTIMONY  
OF  
BARBARA KEENE  
PUBLIC UTILITIES ANALYST MANAGER  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

FEBRUARY 4, 2008

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**EXECUTIVE SUMMARY  
CONSIDERATION TO MODIFY DECISION NO. 67744  
RELATING TO THE SELF-BUILD OPTION  
DOCKET NO. E-01345A-07-0420**

This testimony addresses Staff's response to the following direct testimonies:

- Mr. Patrick Dinkel on behalf of APS;
- Mr. Theodore E. Roberts, on behalf of Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C, and Bowie Power Station, L.L.C.; and
- Ben C. Trammell, Jr., on behalf of the Electric Generation Alliance.

Staff's recommendations are as follows:

- There should not be a timetable for self-build proceedings.
- The Best Practices should not be integrated into the Settlement Agreement and Decision No. 67744.
- The Best Practices should not be modified for APS.
- No modification to the Settlement Agreement or Decision No. 67744 should be made at this time.

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Barbara Keene. My business address is 1200 West Washington Street,  
4 Phoenix, Arizona 85007.

5  
6 **Q. Have you previously filed testimony in this docket?**

7 A. Yes. I filed Direct Testimony addressing Staff's position concerning the self-build option  
8 for Arizona Public Service Company ("APS") that was approved by Decision No. 67744.

9  
10 **Q. As part of your employment responsibilities, were you assigned to review the Direct  
11 Testimonies of other parties in this docket?**

12 A. Yes.

13  
14 **Q. What is the subject matter of this testimony?**

15 A. This testimony will address Staff's response to the following Direct Testimonies:

- 16 • Mr. Patrick Dinkel on behalf of APS;  
17 • Mr. Theodore E. Roberts, on behalf of Mesquite Power, L.L.C., Southwestern  
18 Power Group II, L.L.C, and Bowie Power Station, L.L.C.; and  
19 • Ben C. Trammell, Jr., on behalf of the Electric Generation Alliance.

20  
21 **RESPONSE TO DIRECT TESTIMONY OF MR. PATRICK DINKEL**

22 **Q. What does Mr. Dinkel propose in his Direct Testimony?**

23 A. Mr. Dinkel proposes a timetable for self-build proceedings if APS seeks authorization  
24 from the Commission to self-build prior to 2015. He proposes a 90-day timeframe for a  
25 Commission decision when APS has complied with the Recommended Best Practices for  
26 Procurement ("Best Practices"), and the application includes a written acknowledgement

1 of such compliance by the Independent Monitor. He proposes a 180-day timeframe to  
2 apply when the Independent Monitor or a bidder has identified material concerns about the  
3 fairness of the procurement process or if an Independent Monitor was not involved in the  
4 process.

5  
6 **Q. What is Staff's response to the proposal for a timetable for self-build proceedings?**

7 A. Staff is opposed to a timetable for self-build proceedings. The Commission needs  
8 adequate time to review an application. It is difficult to know how much time would be  
9 needed for the review without considering the specifics of each application, and for that  
10 reason, uniform procedural deadlines tend to constrain the Commission's ability to  
11 adequately consider each case.

12  
13 **Q. Have there been many self-build proceedings?**

14 A. No. In fact, to the best of my knowledge, there has only been one (the Yuma proceeding)  
15 thus far. Over 250 days elapsed between APS' filing of its application in that matter and  
16 the issuance of the Commission's order. This experience would suggest that APS'  
17 recommended time frames are too short. In any event, Staff believes that it is too soon to  
18 estimate how long a typical "self-build" proceeding will take because we lack experience  
19 with these types of proceedings. It is thus too early to establish specific governing  
20 timeframes.

21  
22 **Q. If the Commission were to adopt such timeframes, does Staff have any  
23 recommendations?**

24 A. The experience with the Yuma proceeding tends to suggest that the time-frames proposed  
25 by APS are insufficient. If the Commission were to adopt time-frames, they should be

1 more liberal than those suggested by APS. In addition, the Commission should make it  
2 clear that it retains the authority to extend those time-frames, if necessary.  
3

4 **RESPONSE TO DIRECT TESTIMONY OF MR. THEODORE E. ROBERTS**

5 **Q. What does Mr. Roberts propose in his Direct Testimony?**

6 A. Mr. Roberts proposes that the Best Practices be integrated into the Settlement Agreement  
7 and Decision No. 67744.  
8

9 **Q. What is Staff's response to the proposal that the Best Practices be integrated into the  
10 Settlement Agreement and Decision No. 67744?**

11 A. Staff is opposed to integrating the Best Practices into the Settlement Agreement and  
12 Decision No. 67744. Proceedings on Resource Planning are currently underway. It is  
13 anticipated that rulemaking resulting from those proceedings may include the subject of  
14 procurement. The rules may include provisions similar to the Best Practices, but they  
15 might not be identical. If the Best Practices were to be made mandatory for APS, APS  
16 could ultimately be following requirements that differ from the rules required for other  
17 utilities. In this instance, Staff believes that it is desirable to have uniform standards to  
18 govern procurement.  
19

20 **Q. Does Mr. Roberts have any other proposal?**

21 A. Yes. Mr. Roberts also proposes to modify language in paragraph 75(b) of the Settlement  
22 Agreement by striking the phrase "from the competitive wholesale market."  
23

1 **Q. What is Staff's response to modifying the language in paragraph 75(b) of the**  
2 **Settlement Agreement?**

3 A. Staff continues to support the Settlement Agreement as it is and opposes making any  
4 modifications to it at this time. The self-build provisions continue to encourage APS to  
5 obtain resources to serve its customers by seeking the best options.

6

7 **RESPONSE TO DIRECT TESTIMONY OF MR. BEN C. TRAMMELL, JR.**

8 **Q. What does Mr. Trammell propose in his Direct Testimony?**

9 A. Mr. Trammell proposes that the Best Practices, with several modifications, be integrated  
10 into Decision No. 67744.

11

12 **Q. What is Staff's response to the proposal that the Best Practices be modified and**  
13 **integrated into Decision No. 67744?**

14 A. As stated above, Staff is opposed to integrating the Best Practices into Decision No.  
15 67744. Staff is also opposed to modifying the Best Practices at this time. The Best  
16 Practices were recently adopted by the Commission after input by several entities. As  
17 discussed above, proceedings on Resource Planning are currently underway.

18

19 **Q. Can Mr. Trammell suggest modifications to the Best Practices in the Resource**  
20 **Planning proceedings?**

21 A. Yes. Those proceedings are the best venue for addressing the subject of procurement for  
22 all electric utilities. The rules may ultimately include provisions similar to the Best  
23 Practices. If the Best Practices were modified in this proceeding only for APS, APS could  
24 have procurement requirements that differ from the rules required for other utilities. In  
25 Staff's view, this would be an undesirable result.

26

1 **Q. What other topic did Mr. Trammell address?**

2 A. Mr. Trammell supports an outright prohibition on utility self-build.  
3

4 **Q. What is Staff's response to an outright prohibition on utility self-build?**

5 A. Staff continues to support the Settlement Agreement with the self-build moratorium  
6 subject to a safety mechanism that permits APS to seek an exemption from the  
7 Commission if the wholesale market cannot cost-effectively meet the needs of APS'  
8 customers. Staff believes that the self-build provisions of Decision No. 67744 remain in  
9 the public interest for the reasons stated in my Direct Testimony, filed on January 11,  
10 2008.  
11

12 **SUMMARY OF STAFF RECOMMENDATIONS**

13 **Q. Please summarize Staff's recommendations.**

14 A. Staff's recommendations are as follows:

- 15 • There should not be a timetable for self-build proceedings.  
16 • The Best Practices should not be integrated into the Settlement Agreement and  
17 Decision No. 67744.  
18 • The Best Practices should not be modified for APS.  
19 • No modification to the Settlement Agreement or Decision No. 67744 should be  
20 made at this time.  
21

22 **Q. Does this conclude your Rebuttal Testimony?**

23 A. Yes, it does.

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MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
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2008 JUN 11 A 11:48

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE CONSIDERATION,  
PURSUANT TO A.R.S § 40-252, TO MODIFY  
DECISION NO. 67744 RELATING TO THE  
SELF-BUILD OPTION.

DOCKET NO. E-01345A-07-0420

**NOTICE OF FILING**

Staff of the Arizona Corporation Commission hereby provides notice of filing the Direct  
Testimony of Barbara Keene in the above-referenced matter.

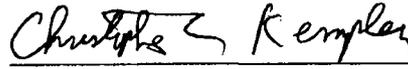
RESPECTFULLY submitted this 11<sup>th</sup> day of January, 2008.

Arizona Corporation Commission

**DOCKETED**

JAN 11 2008

DOCKETED BY



for Janet Wagner, Senior Staff Counsel  
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Original and thirteen (13) copies of the foregoing were filed this 11<sup>th</sup> day of January, 2008,

with:

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