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BEFORE THE ARIZONA CORPORATION COMMISSION

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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

STAFF'S POST HEARING BRIEF

Decision No. 69663 ordered the Hearing Division to conduct a hearing pursuant to Arizona Revised Statute Section 40-252 to consider modifying Decision No. 67744, which approved a Settlement Agreement between Arizona Public Service Company ("APS") and various parties with respect to APS' 2003 rate application. Parties to the Settlement Agreement and to Decision No. 67744 were given an opportunity to intervene. A significant number of parties filed for and was granted intervention. Following the filing of prefiled testimony on behalf of APS, Utilities Division Staff ("Staff"), the Residential Utility Consumer Office ("RUCO"), Electric Generation Alliance ("EGA"); and Mesquite Power, Southwestern Power Group, Bowie Power Station (collectively "Mesquite Power"); a hearing was held on February 20, 2008. At the conclusion the parties were directed to submit briefs.

Pursuant to the direction of the presiding Administrative Law Judge, Staff hereby submits its brief in this matter. Staff recommends that Decision No. 67744 not be modified at this time.

I. INTRODUCTION

As part of the settlement, as approved by Decision 67744, certain restrictions were placed on APS with respect to its ability to self-build additional generation capacity. The self-build moratorium stated that APS will not self-build any facility with an in-service date prior to January 1, 2015, without express authorization by the Commission. As defined in the Settlement Agreement and subsequent amendment, self-build includes the acquisition of a generating unit or interest in one from any merchant or utility generator as well as the building of new units. Self-build does not include the

1 acquisition of temporary generation needed for system reliability, distributed generation of less than
2 50 MW per location, renewable resources or up-rating of APS generation.

3 The purpose of the self-build moratorium was to address the potentially anti-competitive
4 effects of placing into rate base certain generation assets of an APS affiliate, Pinnacle West Energy
5 Corporation.¹ Also relevant to the instant proceeding is Decision No. 70032, which adopted the
6 Recommended Best Practices for Procurement (“Best Practices”).² The Best Practices address
7 acceptable methods of procurement, the role of an independent monitor in procurement and a
8 preference for requests is for proposals in the procurement process. The Best Practices were
9 developed through numerous workshops with opportunities for interested parties to participate and
10 provide written comments, which culminated in the Best Practices that were adopted by Decision No.
11 70032. The Best Practices provide guidance and the means to ensure that the procedures for
12 obtaining new resources are fair and transparent and result in the most economical resources being
13 selected. The Best Practices are designed for jurisdictional entities.

14 RUCO, Staff and APS support the self-build provisions in Decision No. 67744 and the
15 Settlement Agreement. EGA in its prefiled testimony seemed to support a prohibition on self-build
16 and also suggested that the Best Practices, with certain changes, be integrated into Decision No.
17 67744.

18 After reviewing the testimony of APS, EGA, Mesquite Power and RUCO, Staff believes that
19 there is no need for the Commission to modify Decision No. 67744 at this time.

20 **II. DECISION NO. 67744 SHOULD NOT BE MODIFIED**

21 At the hearing, EGA modified its position and agreed that Decision No. 67744 should not be
22 modified.³ Mesquite Power is alone in its stance that Decision No. 67744 and the Settlement
23 Agreement should be modified. However, Staff urges that the Decision not be modified and would
24 recommend that the Commission reject the arguments of Mesquite Power. Mesquite Power presented
25 no compelling evidence to support its position that the Decision be modified.

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28 ¹ Decision No. 67744, Dkt. No. E-01345A-03-0437 (April 7, 2005) at 25.

² Decision No. 70032, Dkt. No. E-00000E-05-0431 (December 4, 2007).

³ Tr. at 66:15-19.

1 Mesquite Power recommended that Decision No. 67744 be modified to “overlay” the Best
2 Practices onto the Settlement Agreement as well as to remove the phrase “from the competitive
3 wholesale market” from Section 75(b) of the Settlement Agreement. Mesquite Power witness Ted
4 Roberts testified that because of the disagreement between Mesquite Power on the one hand and APS
5 and Staff on the other, concerning the meaning of “competitive wholesale market” during the Yuma
6 proceeding⁴ as well as his feeling that the phrase was not necessary to effectuate the purposes of the
7 settlement agreement,⁵ Decision No. 67444 should be modified.

8 With respect to the misunderstanding between the parties concerning the meaning of
9 “competitive wholesale market”, it was Mesquite Power who had the misunderstanding. During the
10 Yuma proceeding, Mesquite Power wanted to include developer-build proposals in response to
11 requests for proposals into the definition of competitive wholesale market, because the developer in
12 that instance had also submitted a purchase power agreement. The Commission rejected this view.⁶
13 Staff contends that the “misunderstanding” is not significant enough to warrant the deletion of the
14 phrase “competitive wholesale market”.

15 When asked if requiring the Best Practices to be mandatory for APS and not for other
16 jurisdictional entities would be unfair to APS or somehow place them at a disadvantage, Mesquite
17 argued that APS was different from other entities because it had agreed to the self-build moratorium.⁷
18 But the simple statement ignores the complex set of circumstances, namely the attempt to place into
19 rate base the PWEC assets that led to the Settlement Agreement. Staff witness Barbara Keene
20 testified that if the Best Practices were made mandatory for APS, APS could ultimately be following
21 requirements that differ from rules required for other utilities and that Staff saw no reason for treating
22 APS differently from other utilities in these circumstances.⁸ Staff contends that the prudence review
23 of APS’ actions during any self-build scenario would influence APS’ behavior and adherence to the
24 Best Practices.⁹

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26 ⁴ Docket No. E-01345A-06-0464; Tr. at 48:11-17.

⁵ Tr. at 49:1-12.

27 ⁶ Decision No. 69400, Dkt. No. E-01345A-06-0464 (March 30, 2007) at 8, 14.

⁷ Tr. at 41:9-11.

28 ⁸ Keene Rebuttal Test., Ex. S-2 at 2.

⁹ Tr. at 184:1-8.

1 APS has testified that it will comply with the Best Practices.¹⁰ APS further testified that if the
2 Best Practices had been adopted at the time of the Yuma proceeding, it would have adhered to
3 them.¹¹ Mr. Roberts acknowledged that if APS were ordered to comply with the Best Practices and
4 the Best Practices were changed in the future, it would complicate the issue.¹²

5 Staff witness Barbara Keene testified that to the extent that there were further practices with
6 respect to procurement that needed to be considered, the appropriate forum would be the Resource
7 Planning Workshops. EGA testified that it was satisfied that any issues it had concerning
8 procurement could be addressed during those workshops.¹³

9 Mesquite has not offered any compelling reasons for modifying Decision No. 67744. There is
10 no need to make the Best Practices mandatory for APS; APS has agreed to comply with the Best
11 Practices. There is no real confusion as to the definition of competitive wholesale market. Staff
12 maintains its position that the Decision and the Settlement Agreement should not be modified at this
13 time.

14 **III. THE COMMISSION SHOULD REJECT THE REQUEST OF APS TO INSTITUTE A**
15 **TIMETABLE FOR SELF-BUILD PROCEEDINGS.**

16 APS proposed that the Commission recognize a 90 day time frame be established for self-
17 build proceedings when the company certifies that it has complied with the Best Practices by
18 providing a written acknowledgement by the independent monitor. The second time frame would be
19 a 180 days in the event that there were issues raised regarding the procurement process, and this time
20 frame would include an evidentiary hearing.

21 There has simply not been enough experience with such a proceeding to suggest a realistic
22 timetable that would allow the Commission enough time to thoroughly examine the evidence. Staff
23 witness Barbara Keene testified that there is no way of knowing how much time would be needed
24 without considering the specifics of each application.¹⁴

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27 ¹⁰ Dinkel Rebuttal Test., Ex. APS - 2 at 4.

¹¹ Tr. at 108:20-24.

¹² *Id.* at 45:20-21.

¹³ *Id.* at 63:5-8.

¹⁴ Keene Rebuttal Test., Ex. S-2 at 2.

1 The Commission's only experience with the self-build provisions of the Settlement
2 Agreement was in the docket commonly referred to as the Yuma Proceeding.¹⁵ APS filed its
3 application in that proceeding on July 13, 2006. The hearing on the matter was not until January
4 2007, with an order issued in March 2007.

5 The Commission declined to put in place other procedural requirements, such as specific
6 processes regarding intervention and an evidentiary hearing, in Decision No. 69400. The
7 Commission reasoned that it was not appropriate to impose specific procedural requirements on a
8 possible future dispute concerning Article IX of the Settlement Agreement, which deals with
9 Competitive Procurement.¹⁶ Staff would argue that a procedural requirement, such as a timetable, is
10 not appropriate.

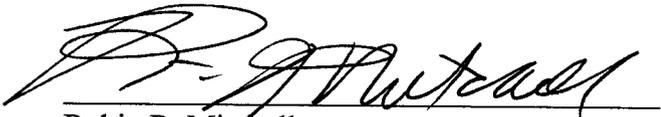
11 Staff remains opposed to a timetable for self-build proceedings.

12 **IV. CONCLUSION**

13 Under the circumstances presented, Staff continues to support the self-build moratorium,
14 Decision No. 67744 and the Settlement Agreement. There has been no evidence to recommend a
15 change to the decision at this time.

16 RESPECTFULLY submitted this 31st day of March, 2008.

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28 ¹⁵ Decision No. 69400, Dkt. No. E-01345A-06-0604 (March 30, 2007).
¹⁶ *Id.* at 18.

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