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OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: AUGUST 12, 2008

DOCKET NO: E-01345A-07-0420

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA PUBLIC SERVICE COMPANY  
(MODIFY DECISION NO. 67744)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 21, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 26, 2008 and AUGUST 27, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
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AUG 12 2008

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

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

DOCKET NO. E-01345A-07-0420  
DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: February 20, 2008  
11 PLACE OF HEARING: Phoenix, Arizona  
12 ADMINISTRATIVE LAW JUDGE: Lyn Farmer  
13 IN ATTENDANCE: Mike Gleason, Chairman  
14 APPEARANCES: Ms. Deborah R. Scott, PINNACLE WEST, on behalf of  
15 Arizona Public Service Company;  
16 Mr. Jay I. Moyes, MOYES STOREY LTD, on behalf of  
17 Electric Generation Alliance;  
18 Mr. Lawrence V. Robertson, Jr., on behalf of  
19 Mesquite/SWPG/Bowie;  
20 Mr. Scott Wakefield, Chief Counsel, on behalf of  
21 RUCO;  
22 Mr. Patrick J. Black, FENNEMORE CRAIG, on behalf  
23 of Gila River Power, LP; and  
24 Ms. Robin Mitchell and Ms. Maureen Scott, Staff  
25 Attorneys, Legal Division, on behalf of the Utilities  
26 Division of the Arizona Corporation Commission.  
27  
28

1 **BY THE COMMISSION:**

2 On April 7, 2005, the Arizona Corporation Commission ("Commission") issued Decision No.  
3 67744 in Arizona Public Service Company's ("APS") rate proceeding approving a Settlement  
4 Agreement with modifications.<sup>1</sup> The Settlement Agreement contains the following Paragraph 74:

5  
6 APS will not pursue any self-build option having an in-service date prior  
7 to January 1, 2015, unless expressly authorized by the Commission. For purposes  
8 of this Agreement, 'self-build' does not include the acquisition of a generating  
9 unit or interest in a generating unit from a non-affiliated merchant or utility  
10 generator, the acquisition of temporary generation needed for system reliability,  
11 distributed generation of less than fifty MW per location, renewable resources, or  
12 the up-rating of APS generation, which up-rating shall not include the installation  
13 of new units.

14 Decision No. 67744 modified the definition of self-build to include "the acquisition of a  
15 generating unit or interest in a generating unit from any merchant or utility generator."<sup>2</sup> According to  
16 Decision No. 67744, the self-build moratorium is useful for addressing the potentially anti-  
17 competitive effects that might be associated with rate-basing the Pinnacle West Energy Corporation  
18 ("PWEC") generating assets.<sup>3</sup>

19 Paragraph 79 of the Settlement Agreement stated that:

20 The Commission Staff will schedule workshops on resource planning  
21 issues to focus on developing needed infrastructure and developing a flexible,  
22 timely, and fair competitive procurement process. These workshops will also  
23 consider whether and to what extent the competitive procurement should include  
24 an appropriate consideration of a diverse portfolio of short, medium, and long-  
25 term purchased power, utility-owned generation, renewables, DSM, and  
26 distributed generation. The workshops will be open to all stakeholders and to the  
27 public. If necessary, the workshops may be followed with rulemaking.

28 As a result of Decision No. 67744 and Paragraph 79 of the Settlement Agreement, the  
Commission's Utilities Division Staff ("Staff") conducted workshops on competitive procurement

<sup>1</sup> The Settlement Agreement was entered into by 22 parties and resolved APS' 2003 rate application and addressed other issues, including the transfer of generation assets from an affiliate to APS, and ongoing litigation related to prior Commission decisions.

<sup>2</sup> Decision No. 67744 at 25 and 38.

<sup>3</sup> *Id.* At 25.

1 during 2007.<sup>4</sup> Staff's stated intent was to continue to facilitate competitive wholesale market options.  
 2 Staff concluded that conducting a rulemaking on procurement issues was premature, and  
 3 recommended that to enable the procurement process to move expeditiously, the Commission should  
 4 adopt recommended practices for procurement. On December 4, 2007, the Commission issued  
 5 Decision No. 70032<sup>5</sup> which adopted the Recommended Best Practices For Procurement ("Best  
 6 Practices"). Generally, the Best Practices lists procurement methods that are considered acceptable  
 7 for the wholesale acquisition of energy, capacity, and physical power hedge transactions; includes a  
 8 preference for requests for proposals ("RFP") as the primary acquisition process; and indicates that an  
 9 independent monitor should be used in all RFP processes for procurement of new resources. The  
 10 Best Practices are recommended, but are not mandatory.

11 Since Decision No. 67744 was adopted in April 2005, APS has sought authorization to  
 12 acquire a power plant only once. On July 13, 2006, APS filed an application for approval to purchase  
 13 a new generation resource within APS' Yuma load pocket ("Yuma Proceeding"). Mesquite Power,  
 14 L.L.C., Southwestern Power Group II, L.L.C. and Bowie Power Station, L.L.C. (collectively,  
 15 "Mesquite/SWPG/Bowie"), the Competitive Power Alliance, and the Distributed Energy Association  
 16 of Arizona were granted intervention. Four days of hearing were held in January 2007, and on March  
 17 30, 2007, the Commission issued Decision No. 69400 approving the application.

18 In Decision No. 69663 (June 28, 2007), the Commission determined that it was in the public  
 19 interest to conduct a proceeding pursuant to A.R.S. § 40-252 to consider modifying Decision No.  
 20 67744 relating to the self-build option.<sup>6</sup>

21 Accordingly, this docket was opened to conduct the proceeding and take evidence on whether  
 22 a modification was needed.<sup>7</sup> Intervention was granted to Mesquite/SWPG/Bowie, Southwest Energy  
 23 Efficiency Project ("SWEEP"), Gila River Power, LP ("GRP"), Phelps Dodge Mining Company  
 24 ("Phelps Dodge"), Arizonans for Electric Choice and Competition ("AECC"), the Residential Utility

25

26 <sup>4</sup> Staff planned to conduct separate workshops on issues related to resource planning.

27 <sup>5</sup> Docket No. E-00000E-05-0431, In the Matter of Competitive Procurement Issues in the Generic Investigation into  
 Electric Resource Planning.

28 <sup>6</sup> Decision No. 69663 at 146 and 157 (Decision in APS' rate case, Docket No. E-01345A-05-0816 et al.).

<sup>7</sup> By Procedural Order issued July 13, 2007, notice of the A.R.S. § 40-252 proceeding was given to all parties to Decision  
 Nos. 67744 and 69663.

1 Consumer Office (“RUCO”), Western Resource Advocates (“WRA”), Kenneth R. Saline, the Town  
2 of Wickenburg (“Wickenburg”), Navopache Electric Cooperative, Inc. (“Navopache”), Mohave  
3 Electric Cooperative, Inc. (“Mohave”), Electric Generation Alliance (“EGA”), Tucson Electric Power  
4 Company (“TEP”), UNS Electric, Inc. (“UNS Electric”), Greg Patterson, the Distributed Energy  
5 Association of Arizona (“DEAA”), and the Arizona Investment Council (“AIC”).

6 The hearing was held on February 20, 2008. Theodore Roberts testified on behalf of  
7 Mesquite/SWPG/Bowie; Ben C. Trammell, Jr. testified on behalf of the EGA; Patrick Dinkel testified  
8 on behalf of APS; Stephen Ahearn testified on behalf of RUCO; and Barbara Keene testified on  
9 behalf of Staff.

10 **Parties’ Positions on Modification of Decision No. 67744 Relating to the Self-build Option**

11 APS

12 APS supports the self-build provisions in Decision No. 67744 and the Settlement Agreement  
13 approved in that Decision. Mr. Dinkel testified that the Decision and Settlement Agreement do not  
14 prohibit APS from meeting its future needs and that the “practical effect of the self-build provisions is  
15 to test the market to ascertain whether needed resources can be acquired through a competitive  
16 process.”<sup>8</sup>

17 Although APS recommended no modification to Decision No. 67744, it did propose  
18 timeframes for the Commission to process self-build applications. According to Mr. Dinkel, the lack  
19 of any timelines for the Commission approval process causes uncertainties in the bidder prices and  
20 APS’ timing of resource additions. He recommends that the Commission adopt approval procedures  
21 based upon whether the company used the Best Practices adopted in Commission Decision No. 70032  
22 (December 4, 2007). Under the APS proposal, when an APS application for self-build or ownership  
23 indicates that the Company complied with Best Practices and includes a written acknowledgment by  
24 the Independent Monitor (“IM”) of compliance, the application would be processed by the  
25 Commission within a 90 day period without an evidentiary hearing. If the Company files an  
26 application where an IM was not involved or where an intervenor or the IM “identified material

27

28 <sup>8</sup> Ex. APS-1 at 4.

1 concerns regarding the fairness of the procurement process,”<sup>9</sup> a 180-day timeframe would apply,  
2 allowing for an evidentiary hearing if necessary.

3 In response to the recommendation of Mesquite/SWPG/Bowie that Decision No. 67744 and  
4 the Settlement Agreement be modified to include the Best Practices, Mr. Dinkle testified that that it is  
5 not necessary and would be inappropriate to make the Best Practices mandatory only for APS. He  
6 stated that the “self-build provisions of Decision No. 67744, along with the recently adopted  
7 procurement Best Practices, provide constructive and appropriate requirements that give APS the  
8 flexibility it needs to make necessary resource acquisition decisions, as well as providing all market  
9 participants a fair chance to compete for the utility’s needs.”<sup>10</sup> Mr. Dinkle opposed the proposals  
10 contained in Mr. Trammell’s prefiled testimony as discussed below.

11 EGA

12 Mr. Trammell, Managing Director of Dynegy Inc., testified on behalf of the EGA. The EGA  
13 is an “informal coalition” of Dynegy Arlington Valley, LLC, LS Power Associates, L.P., and  
14 Harquahala Generating Company. In its prefiled testimony, EGA recommended that the Commission  
15 modify Decision No. 67744 so that the procurements “acquire supply resources on the most  
16 competitive terms and in a manner most beneficial to the interests of APS’ ratepayers.”<sup>11</sup> The  
17 suggested modifications are:

- 18
- 19 a) that the independent monitor should be hired by and report directly to the  
Commission, but be paid by the Utility;
- 20 b) that the independent monitor should function not only as a monitor but also as  
21 a bid evaluator;
- 22 c) that bidding fees should be capped at a prescribed, nominal level;
- 23 d) that a single bidder should be allowed to submit multiple bids under a single  
24 bid fee, so as to not discourage multiple, creative and innovative RFP  
25 responses ‘in the alternative’ that may meet the needs of the utility and its  
26 ratepayers more efficiently than the precise resource response structure  
contemplated on the face of an RFP; and

27 <sup>9</sup> *Id.* at 7.

28 <sup>10</sup> Ex. APS-2 at 8.

<sup>11</sup> Ex. EGA-1 at 4.

1 e) that the entire process of bid evaluation by the independent monitor be open by  
 2 requiring that detailed information about the analysis used to evaluate bids,  
 3 including the bid evaluation criteria and weightings, descriptions of the  
 4 analytical approach of the evaluation, descriptions of modeling tools used in  
 the evaluation, input data, non-quantitative considerations, and the scoring  
 system for qualitative considerations be available to the public.<sup>12</sup>

5 Mr. Trammell also testified that an outright prohibition on self-build would provide greater  
 6 benefits to ratepayers through competitive bidding from wholesale generators. At the hearing, Mr.  
 7 Trammell testified that since EGA has learned that APS will voluntarily be bound by the Best  
 8 Practices adopted in Decision No. 70032, the suggested modifications would be better addressed in  
 9 the Resource Planning proceeding instead of in this docket.<sup>13</sup>

10 Mesquite/SWPG/Bowie

11 Mr. Theodore Roberts, Senior Regulatory Counsel for Sempra Energy, testified on behalf of  
 12 Mesquite/SWPG/Bowie, who believe that the self-build moratorium and Decision No. 67744 should  
 13 be modified as a result of Decision No. 70032's adoption of Best Practices and the Commission's  
 14 experience in Docket No. E-01345A-06-0464 (Yuma Proceeding). Mesquite/SWPG/Bowie  
 15 recommend that the Commission integrate Best Practices into the Settlement Agreement and  
 16 Decision No. 67744 in order to: "(i) provide greater clarity and unity, (ii) preserve the benefits of  
 17 wholesale competition that the Commission found existed in its prior decisions, and (iii) fill in gaps  
 18 that were exposed during the Commission's consideration of Docket No. E-01345A-06-0464."<sup>14</sup>

19 Specifically, Mesquite/SWPG/Bowie recommend that the Best Practices "should be overlaid  
 20 onto Paragraphs 75(b) and 75(d) of the Settlement and Decision No. 67744 so that they control APS'  
 21 procurement practices."<sup>15</sup>

22 Mesquite/SWPG/Bowie argue that it is appropriate that the Best Practices be mandatory for  
 23 APS during the self-build moratorium because in its 2003 rate case, APS agreed to the moratorium in  
 24 exchange for other parties dropping their opposition to APS' acquisition and rate base treatment of  
 25

26  
 27 <sup>12</sup> *Id.* at 4-5.

<sup>13</sup> Tr. at 62-63.

<sup>14</sup> Ex. Mesquite-1 at 3.

28 <sup>15</sup> Ex. Mesquite-2 at 2.

1 the PWEC generating assets, and because the Best Practices were a result of the workshops provided  
2 for in Paragraph 79 of the Settlement Agreement.

3 In his rebuttal testimony, Mr. Roberts testified that Mesquite/SWPG/Bowie generally agreed  
4 with APS' request for a specific timeline for Commission consideration of requests for authorization  
5 to self-build,<sup>16</sup> but believe that not just bidders should have the ability to challenge the fairness of a  
6 solicitation that results in a self-build request, because while the self-build moratorium is in place,  
7 any party to the Settlement Agreement with a legitimate concern about APS' adherence to the  
8 Settlement Agreement should be allowed to participate in the proceeding.

9 RUCO

10 Mr. Stephen Ahearn, Director of RUCO, testified on its behalf. RUCO does not propose any  
11 modifications to the self-build moratorium, as it believes "that the Settlement Agreement and  
12 Decision No. 67744 established an appropriate balance between reliance on the wholesale electric  
13 market and requiring APS to meet its load by using the most cost-effective resource – regardless of  
14 who owns those resources."<sup>17</sup>

15 Mr. Ahearn testified that the key element of the Settlement Agreement was the provision that  
16 APS is obligated to request authorization to self-build if the wholesale competitive market is unable  
17 to provide reasonably priced resources. In response to testimony filed by other parties, Mr. Ahearn  
18 testified that Staff's response to the perceived problems identified to date is appropriate and that  
19 RUCO would support discussions of the Best Practices in the Resource Planning docket. He also  
20 testified that if "reliance on wholesale markets and independent generation can be proven to be  
21 consistent with, and flexible enough to accommodate, changing regulatory policy responding to new  
22 environmental and resource imperatives, then RUCO will be supportive of efforts to bolster the  
23 independent sector and will support strengthening of the procurement process – possibly including a  
24 more aggressive role of an independent monitor as envisioned by intervenor Electric Generation  
25 Alliance."<sup>18</sup>

26 \_\_\_\_\_  
27 <sup>16</sup> *Id.* Mesquite/SWPG/Bowie think APS' proposed timetable appears reasonable, but defer to the Commission as to the  
specific timeframe to be adopted.

28 <sup>17</sup> Ex. RUCO-1 at 5.

<sup>18</sup> Ex. RUCO-2 at 3.

1 Staff

2 Staff recommended that the Best Practices not be modified or integrated into the Settlement  
 3 Agreement or Decision No. 67744. Staff recommends that no change be made to Decision No. 67744  
 4 because Staff continues to support the Settlement Agreement. Staff's witness, Barbara Keene,  
 5 testified about Staff's position on the self-build option for APS. She explained the concerns  
 6 identified by intervenors during APS' application to purchase a power plant in the area of Yuma,  
 7 Arizona. Ms. Keene testified that the Best Practices "go beyond" the Settlement Agreement and  
 8 provide that an independent monitor be used for all RFPs involving procurement of new resources  
 9 and provide that the utility will give the monitor a copy of any bid proposal prepared by the utility or  
 10 its affiliate or any benchmark or reference cost it will use to evaluate the bid, at least one week before  
 11 the deadlines for bids. According to Staff, the Best Practices appropriately address the concerns  
 12 identified by the intervenors in the Yuma Proceeding and although they are not mandatory, Staff  
 13 believes that their use in obtaining new resources would be "fair, transparent and [would] result in the  
 14 most economical resources being selected."<sup>19</sup> Staff expects that APS would follow the Best Practices  
 15 and if it did not, that failure could be considered in a later prudence determination. Staff also noted  
 16 that the Best Practices could become mandatory if they are incorporated into the rulemaking on  
 17 Resource Planning, and that to make them mandatory for APS now may result in APS being required  
 18 to follow requirements different from what the rules ultimately may require for other utilities.

19 Staff is opposed to a timetable for self-build proceedings because Staff believes that it is too  
 20 soon to estimate how long a typical proceeding may take, and if the Yuma Proceeding (the only  
 21 proceeding to date) provides guidance, it demonstrates that APS' timeframes are far too short. Staff  
 22 recommends that if the Commission were to adopt timeframes, they should be longer than suggested  
 23 by APS and the Commission must retain the authority to extend the timeframes when necessary.

24 **Proposed Modifications<sup>20</sup>**

25 1) Should Best Practices be mandatory for purposes of the APS self-build moratorium?

26 \_\_\_\_\_

27 <sup>19</sup> Ex. Staff-1 at 6.

28 <sup>20</sup> Although Mesquite/SWPG/Bowie's witness discussed deleting the phrase "from the competitive wholesale market" from Section 75(b) of the Settlement Agreement, this issue was not raised in Mesquite/SWPG/Bowie's Closing Brief and will not be addressed or adopted in this Decision.

1 2) Should the Commission adopt timeframes for processing self-build applications?

2 **Analysis**

3 1) Mandatory Application of Best Practices to the APS self-build moratorium

4       Only one party to this proceeding is recommending that the Best Practices be made mandatory  
 5 as to APS for purposes of the self-build moratorium. Mesquite/SWPG/Bowie point out that both APS  
 6 and Staff agree that the Best Practices are consistent with and do not conflict with Article IX of the  
 7 Settlement Agreement<sup>21</sup>, and that given APS' testimony that it supports and intends to comply with  
 8 Best Practices, it would not be burdensome to make Best Practices mandatory for APS in relation to  
 9 the self-build moratorium. In response to the argument that making Best Practices mandatory for APS  
 10 would be discriminatory, Mesquite/SWPG/Bowie argue that there are no other "similarly situated"  
 11 electric utilities that would be treated differently, because no other electric utility has agreed to a self-  
 12 build moratorium. Mesquite/SWPG/Bowie argue that absent mandatory compliance with Best  
 13 Practices, an after-the-fact prudence review does little to address concerns by bidders, who may  
 14 decide not to bid again in the future. They believe that the public interest requires Best Practices to  
 15 be made mandatory to assure that "merchants, developers and other non-utility generators" will have  
 16 confidence in the resource acquisition process. In response to the APS and Staff positions that Best  
 17 Practices may be included in the rulemaking underway for resource planning,  
 18 Mesquite/SWPG/Bowie argue that Decision No. 67744 could be modified in such a way to allow  
 19 future changes to Best Practices. They believe that this could be accomplished by making Best  
 20 Practices mandatory for APS for purposes of the self-build moratorium "unless and until otherwise  
 21 ordered"<sup>22</sup> which would also be consistent with the Settlement Agreement's Paragraph 80.<sup>23</sup>

22       APS, Staff, RUCO, and EGA oppose the mandatory application of Best Practices through the  
 23 modification of Decision No. 67744. They believe that the Resource Planning docket is the  
 24 appropriate place to address competitive procurement processes, as resource procurement is the result  
 25

26 \_\_\_\_\_  
 27 <sup>21</sup> Article IX, Competitive Procurement of Power, includes Paragraphs 74 – 80.

<sup>22</sup> Mesquite/ SWPG/Bowie Closing Brief at 16.

28 <sup>23</sup> Paragraph 80 states: "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."

1 of the planning process and Resource Planning rules would apply to all jurisdictional utilities.<sup>24</sup> APS  
 2 “fully supports the Best Practices,”<sup>25</sup> understands it is in its best interests to follow them, and “the  
 3 Company intends to implement them in its generation procurement activities.”<sup>26</sup> Because the Best  
 4 Practices were only recently adopted by the Commission, APS believes it would be beneficial to see  
 5 how well they work before making them mandatory. In its Post Hearing Brief, Staff argues that  
 6 Mesquite/SWPG/Bowie have not offered any compelling reasons to modify Decision No. 67744 and  
 7 Staff recommends that the Decision and Settlement Agreement should not be modified at this time.

## 8 **Conclusion**

9         Given the testimony from APS that it will comply with Best Practices, we do not believe that  
 10 it is necessary to modify Decision No. 67744 and the Settlement Agreement at this time. We intend  
 11 to hold APS to its statement that it will comply with Best Practices and believe that the ongoing  
 12 workshops and associated rulemaking would be a better vehicle for making any adopted procurement  
 13 processes mandatory. In the meantime, if Mesquite/SWPG/Bowie or another entity has reason to  
 14 believe that APS is not complying with Best Practices, then we encourage them to bring that to the  
 15 Commission’s attention.

## 16 2) Timeframes for processing self-build applications

17         APS proposed that the Commission adopt specific timeframes for processing applications for  
 18 authority to self-build. APS states that this would benefit its customers by allowing it to efficiently  
 19 manage, plan, and procure generation resources and capitalize on market opportunities. EGA  
 20 supported APS’ proposal because it believes that “the best interests of ratepayers, the utility and  
 21 possible market participants are all best served if there is a measure of certainty and reliability with  
 22 respect to the timing of the proceedings.”<sup>27</sup> Staff opposed APS’ recommended timetable because  
 23 there has not been enough experience with these kinds of proceedings to adopt a realistic timeframe  
 24 for the Commission to examine and consider the evidence. Further, Staff argued that without  
 25 knowing the specifics of each application, there would be no way to know how much time to allow.

26 <sup>24</sup> EGA’s witness testified that because APS had given assurances that it would abide by the Best Practices voluntarily,  
 27 EGA is not recommending that Decision No. 67744 be modified to incorporate the Best Practices. Tr. at 66.

28 <sup>25</sup> Ex. APS-2 at 4.

<sup>26</sup> APS Post-Hearing Brief at 4, citing Ex. APS-2 at 4 and Tr. at 102.

<sup>27</sup> Tr. at 24.

1 We understand the temporal concerns of APS and the market participants about processing  
 2 requests for self-build authorization. However, we agree with Staff that the Commission does not yet  
 3 have enough experience with this type of proceedings to adopt specific timeframes. We find that  
 4 APS' distinction between requests where there is a formal acknowledgment from the independent  
 5 monitor that APS complied with Best Practices and other requests may be a helpful indicator as to  
 6 what kind of process is appropriate and how long that process would take. We find that when APS  
 7 files applications for self-build, it should contain a summary of the procurement process undertaken  
 8 by APS, along with a recommended process and requested timeframe for the Commission to  
 9 consider. APS should be required to provide notice with copies of its application for self-build to  
 10 bidders currently in negotiation, and we agree with Mesquite/SWPG/Bowie that notice of the  
 11 application should also be provided to all persons or entities who submitted bids in response to the  
 12 RFP. APS' notices should include information about intervention. Upon the filing of such an  
 13 application, Staff should have 30 days to file a recommendation for processing the application,  
 14 including Staff's recommended timeframe. If the Staff recommended process does not require an  
 15 evidentiary hearing, and if no hearing is requested by any intervenor<sup>28</sup> within the 30 days, then Staff  
 16 should prepare its Staff Report and Recommended Order for Commission decision. If a hearing is  
 17 requested by any party, the Hearing Division should hold a procedural conference to determine  
 18 whether a hearing is necessary and set any appropriate procedural schedule.<sup>29</sup> We believe that this  
 19 process will allow us to develop experience with processing such applications and may eventually  
 20 lead to more uniform timeframes.

21 \* \* \* \* \*

22 Having considered the entire record herein and being fully advised in the premises, the  
 23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. APS is a public service corporation principally engaged in furnishing electricity in the  
 26 State of Arizona. APS provides either retail or wholesale electric service to substantially all of

27 <sup>28</sup> Or by an entity or person who has a request to intervene pending.  
 28 <sup>29</sup> Mesquite/SWPG/Bowie or any party can always docket a request that the Commission review a determination as to the  
 procedure to be followed.

1 Arizona, with the major exceptions of the Tucson metropolitan area and about one-half of the  
2 Phoenix metropolitan area. APS also generates, sells and delivers electricity to wholesale customers  
3 in the western United States.

4 2. In Decision No. 67744 (April 7, 2005), the Commission approved a Settlement  
5 Agreement that included a moratorium against APS pursuing a self-build option having an in-service  
6 date prior to January 1, 2015, unless expressly authorized by the Commission.

7 3. On June 28, 2007, the Commission issued Decision No. 69663, which ordered the  
8 Hearing Division to conduct a proceeding pursuant to A.R.S. § 40-252 to consider modifying  
9 Decision No. 67744 relating to the self-build option.

10 4. On July 10, 2007, this docket was opened for the purpose of conducting the  
11 proceeding as directed by Decision No. 69663.

12 5. By Procedural Order issued July 13, 2007, the parties were directed to discuss and  
13 propose a procedural schedule for conducting this proceeding, and an intervention deadline of August  
14 31, 2007, was established.

15 6. On September 10, 2007, APS filed a Request for Procedural Order ("Request"). The  
16 Request set forth a proposed procedural schedule that Staff and other parties generally agreed upon.

17 7. On September 10, 2007, Mesquite/SWPG/Bowie filed Comments on Proposed  
18 Procedural Schedule indicating that they would not object to a proposal with dates in the early  
19 months of 2008.

20 8. On September 12, 2007, Mesquite/SWPC/Bowie, SWEEP, GRP, Phelps Dodge,  
21 AECC, RUCO, WRA, Kenneth R. Saline, Wickenburg, Navopache, Mohave, EGA, TEP, UNS  
22 Electric, Greg Patterson and DEAA were granted intervention.

23 9. On September 25, 2007, AIC filed a Motion to Intervene ("Motion"), stating that it  
24 had been unaware of the July 13, 2007 Procedural Order. The Motion stated that the proposed  
25 procedural schedule was acceptable to AIC and that no party would be prejudiced by AIC's  
26 intervention.

27 10. By Procedural Order issued October 4, 2007, AIC was granted intervention, the  
28 hearing was set for February 20, 2008, and other procedural deadlines were established.

1           11.     The hearing was held as scheduled on February 20, 2008. Theodore Roberts testified  
2 on behalf of Mesquite/SWPG/Bowie; Ben C. Trammell, Jr. testified on behalf of the EGA; Patrick  
3 Dinkel testified on behalf of APS; Stephen Ahearn testified on behalf of RUCO; and Barbara Keene  
4 testified on behalf of Staff.

5           12.     On March 31, 2008, Closing Briefs were filed by Mesquite/SWPG/Bowie, APS,  
6 RUCO, and Staff.

7           13.     Mesquite/SWPG/Bowie recommended that Decision No. 67744 should be modified to  
8 provide that the Best Practices shall be mandatory as to APS for purposes of the "self-build"  
9 moratorium.

10          14.     APS, Staff, RUCO, and EGA recommended that Decision No. 67744 should not be  
11 modified to make the Best Practices mandatory as to APS for purposes of the "self-build"  
12 moratorium.

13          15.     APS testified that it fully supports Best Practices, understands that it is in its best  
14 interests to follow them, and intends to implement them in its generation procurement activities.

15          16.     The Resource Planning workshops and rulemaking proceeding is the appropriate  
16 docket to further address competitive procurement processes.

17          17.     Because the Best Practices were recently adopted by the Commission, it would be  
18 beneficial to gain experience and/or allow for further refinements before deciding whether to make  
19 them mandatory for any utility.

20          18.     Given the assurances by APS coupled with our ability to ensure that the procedures for  
21 obtaining new resources are fair and transparent, it is not necessary to make the Best Practices  
22 mandatory for APS at this time, nor is it required by the public interest.

23          19.     APS recommended that the Commission adopt procedural timeframes for processing  
24 self-build applications.

25          20.     There has been only one self-build proceeding to date and the Commission does not  
26 yet have enough experience with this type of proceeding to adopt specific timeframes.

27          21.     The procedures for processing self-build applications as outlined hereinabove should  
28 help to address APS' and other parties' concerns, and allow the Commission to develop experience

1 with processing such applications which may eventually lead to more uniform timeframes.

2 **CONCLUSIONS OF LAW**

3 1. Arizona Public Service Company is a public service corporation within the meaning of  
4 Article XV of the Arizona Constitution and A.R.S. §§ 40-222, 250, 251, 285, 321, 322 and 331.

5 2. The Commission has jurisdiction over Arizona Public Service Company and the  
6 subject matter of this proceeding pursuant to A.R.S. § 40-252.

7 3. Notice of the proceeding was provided in accordance with the law.

8 4. The public interest does not require modification of Decision No. 67744 relating to the  
9 self-build option.

10 5. The procedures for processing applications for self-build authorization as set forth  
11 herein shall be followed to the extent possible and practical.

12 **ORDER**

13 IT IS THEREFORE ORDERED that no modification shall be made to Decision No. 67744  
14 relating to the self-build option.

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IT IS FURTHER ORDERED that to the extent possible and practical, the procedures for processing applications for self-build authorization as set forth herein shall be followed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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ARIZONA PUBLIC SERVICE COMPANY

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