

ORIGINAL

Arizona Corporation Commission



0000089785

Docket No. E-00000E-05-0431

DOCKETED

OCT 17 2008

Comments on Arizona Public Service Company's October 10, 2008 Revisions to Best Practices For Procurement

RECEIVED

2008 OCT 17 P 1:31

DOCKETED BY

AZ CORP COMMISSION

Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C. and Bowie Power Station, L.L.C. (collectively "Mesquite Group") submit the following comments on APS' October 10, 2008 suggested revisions to the Best Practices For Procurement, as adopted by the Arizona Corporation Commission in Decision No. 70032. For convenience, the Mesquite Group's comments will include a reference to the source of Arizona Public Service Company's ("APS") proposed revisions, as indicated in APS' October 10, 2008 transmittal documents.

R14-2-705(1)(D)

APS' proposed revision to R14-2-705(1)(D), by means of deletion of the words "with non-affiliated entities," would appear to allow a utility to enter into a bilateral agreement with an affiliate without the oversight and participation of an independent monitor. The effect of this proposed change would be to emasculate an important feature of the Best Practices For Procurement, inasmuch as such an arrangement can represent an important means of resource acquisition for an electric utility. APS has offered no arguments in support of this recommended change, and the Mesquite Group believe that none exist. In that regard, the current absence of any affiliate(s) for any of the electric utilities which would be subject to the rule is no basis for the proposed change. Accordingly, the suggested revision should be rejected.

R14-2-705(1)(E)

The substitution of the word "compete" for the word beat, as suggested by Dinkel 1, leaves too much discretion in the utility, unless the exercise of that discretion is expressly subject to the requirements of R14-2-705(2)(A) through (F) and R14-2-705(3)(A) through (F) in their present form and content. The word "beat" establishes a known contract proposal or price which non-affiliated entities are given an opportunity to improve upon. The word "compete" alludes to the nature of a selection process, but contains no criteria for preserving the objectivity, transparency and integrity of that process. That preservation can be assured only by prescribing compliance with the requirements of R14-2-705(2)(A) through (F) and R14-2-705(3)(A) through (F) as currently written. In that regard, and consistent with the above-discussed principle, the language in R14-2-705(1)(C) should remain in its original form and content.

R14-2-705(2)(D)

The proposed change from 2 years to 5 years in the term of duration of transactions which would be exempt from the RFP requirement, as suggested by Dinkel 3, would remove a significant portion of the intermediate term power resource market from scrutiny by an independent monitor. This change, in combination with the proposed change to R14-2-705(1)(D) could conceivably permit a utility to forego or forestall any competitive resource solicitation by entering into a series of bilateral agreements (including agreements with an affiliate), each of which is for a term of shorter than five (5) years duration. Such a result is

unacceptable from the perspective of the Mesquite Group; and, it would represent a substantial variance from what the Commission contemplated and intended when it adopted the Best Practices For Procurement in Decision 70032, less than one (1) year ago after months of study and several workshops. Accordingly, this suggested revision should be rejected.

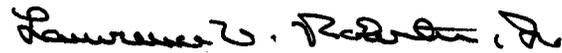
In addition, the original selection of 2 years was not predicated upon the liquidity or illiquidity of the power resource market, as APS endeavors to suggest. Rather, it represented a pragmatic delineation between those contract term periods for which compliance with the administrative requirements and expense of an RFP was believed to be reasonable (i.e. 2-plus years), and those periods for which such required compliance was not believed to be reasonable (i.e. 2 years or less). Thus, for each and all of the foregoing reasons, the Mesquite Group opposes APS' suggested revision to R14-2-705(2)(D).

R14-2-705(3)(E)

The independent monitor's securing of "the utility bid or benchmark" price provision, which Dinkel 4 proposes to delete, is an important attribute to that integrity of the competitive procurement process which must be insured. In its October 10, 2008 transmittal document, APS states that this deletion is proposed because "it is unnecessary." However, APS provides no evidence to substantiate that assertion. It appears to the Mesquite Group that retention of this requirement imposes no burden on APS, since it is the monitor who is required to safeguard the material and not APS. In that regard, Mesquite Group believes that APS should not presume to speak on behalf of the independent monitor. Moreover, retention of this requirement should forestall future concern(s) as to whether a given utility or its affiliate had improperly acquired access to or made improper use of the aforesaid bid or benchmark prices. Accordingly, this suggested revision should be rejected as well.

Dated this 15th day of October 2008.

Respectfully submitted,



Lawrence V. Robertson, Jr.  
Attorney for Mesquite Power, L.L.C.,  
Southwestern Power Group II, L.L.C. and  
Bowie Power Station, L.L.C.