

**ORIGINAL APS**

A subsidiary of Pinnacle West Capital Corporation



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October 17, 2008

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

RE: Arizona Public Service Company's Comments  
Resource Planning Draft Rules  
DOCKET NO. E-00000E-05-0431

Dear Madam or Sir:

Arizona Public Service Company ("APS") is providing the attached Joint Comments and Joint Recommendations regarding the Wholesale Power Procurement section of the Draft Resource Planning Rules. The Parties to the Joint Comments are APS, Tucson Electric Power and UNS Electric, Inc. At Staff's request, the Joint Recommendations were provided for comment to the parties that had participated in Commission workshops where the Recommended Best Practices for Competitive Procurement Best Practices were developed.

If you have any questions or wish to discuss these matters further, please call Jeff Johnson at 602-250-2661.

Sincerely,

*Barbara Klemstine / sc*

Barbara Klemstine

Attachment

BK/dst

Cc: Ernest Johnson  
Terri Ford  
Barbara Keene  
Parties of Record

Arizona Corporation Commission  
**DOCKETED**  
OCT 17 2008

EX-100-111111  
*MM*

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AZ CORP COMMISSION  
DOCKET CONTROL

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(Includes all who were sent electronic draft comments.)

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**Resource Planning Workshop  
Docket No. E-00000E-05-0431  
Joint Comments of  
Arizona Public Service Company, Tucson Electric Power, and UNS Electric, Inc.  
Regarding Wholesale Power Procurement  
October 17, 2008**

**I. Introduction**

In this docket, the Arizona Corporation Commission (“Commission” or “ACC”) Staff is currently engaged in workshops to develop Resource Planning Rules. Competitive power procurement practices will be incorporated into the proposed rules that Staff intends to take to the Commission before the end of the year. In the August Resource Planning workshop, Staff presented proposed Resource Planning Rules that incorporated (with some modifications) the Recommended Best Practices for Procurement (“Best Practices”) that were adopted by the Commission in Decision No. 70032 (Dec. 4, 2007). In the revised proposed rules that Staff presented at the October 3<sup>rd</sup> workshop, Staff eliminated some of the previous modifications that had been included in the earlier version.

In their September 15<sup>th</sup> comments and at the October 3<sup>rd</sup> workshop, representatives for Arizona Public Service (“APS”), Tucson Electric Power (“TEP”), and UNS Electric, Inc. (“UNS”) made recommendations to modify the Best Practices language. The companies’ objectives were to clarify and enhance Best Practices, without impacting their original intent, which is to assure that the procedures for obtaining new resources are fair and transparent and result in the acquisition of the best resources. However, because the parties who had been involved in workshops that resulted in Best Practices were not necessarily in attendance in the current Resource Planning Rulemaking workshops, and because the Commission had formally approved the Best Practices, Staff was hesitant to make changes. Nonetheless, the Utilities Division Director encouraged APS, TEP and UNS to engage those parties who had been involved in competitive procurement issues in the past to solicit input on potential improvements to Best Practices.

To that end, APS, TEP and UNS collaborated on recommendations (“Joint Recommendations”). The Joint Recommendations provide language modifications that would clarify certain provisions of Best Practices and would enhance the public’s understanding of those provisions when they are formalized as Resource Planning Rules. The Joint Recommendations are attached as Attachment A.<sup>1</sup> On October 7, 2008, APS, TEP and UNS sent an electronic copy of the Joint Recommendations to merchant generators who had participated in workshops that were held on competitive procurement and resource planning issues prior to the adoption of Best Practices. A list of the parties who were sent the Joint Recommendations is attached as Attachment B. APS, TEP and UNS asked interested parties to review the Joint Recommendations and provide comments by Wednesday, October 15<sup>th</sup>, and indicated that their comments would be included as part of the comments that APS, TEP and UNS would jointly file by Friday, October 17<sup>th</sup> (“Joint Comments”). Interested parties were also reminded that they

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<sup>1</sup> In preparing the Joint Recommendations, APS, TEP and UNS began with the Best Practices, as adopted by the Commission, and incorporated our recommended modifications for the proposed Resource Planning Rules in a redlined format.

could file their comments directly in the docket. Copies of the electronic communications sent to these parties are attached as Attachments C and D.

APS received limited responses, as compared to the number of parties who were sent the Joint Recommendations. Gila River L.P. indicated that they had no objection to the Joint Recommendations.<sup>2</sup> Another party's response simply indicated no position,<sup>3</sup> and another respondent indicated that their comments would be provided to APS, TEP and UNS and filed separately in Docket Control.<sup>4</sup> Comments received from Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C., and Bowie Power Station L.L.C. (collectively "Mesquite Group") indicated that they did not agree with changes that had been proposed in the Joint Recommendations. Their chief concerns related to: 1) affiliate participation in wholesale power procurement, and 2) extending the term of the duration of transactions that would be exempt from the RFP requirement. The Mesquite Group indicated that they will be filing their comments directly in Docket Control.<sup>5</sup> All written responses to the Joint Recommendations are attached in Attachment E.

## **II. Joint Recommendations of APS, TEP and UNS**

APS, TEP and UNS recognize that the Commission adopted the Best Practices as recommendations or guidelines for utilities to utilize in the competitive procurement process. However, incorporating these guidelines without modification in a formal rulemaking process goes beyond the intention of adopting voluntary recommendations or guidelines. APS, TEP and UNS continue to support the intention of Best Practices, which is "to provide a means by which the Commission, ratepayers, and bidders in the wholesale market can be assured that the procedures for obtaining new resources are fair, transparent, and result in the most economical resources being selected."<sup>6</sup> Since the Best Practices was adopted, APS, TEP and UNS have had the opportunity to implement them in our business practices. With that experience, we believe that there are modifications that should be made to the Best Practices in the context of a formal rulemaking process to make them more explicit and understandable. That way, in future years when the Resource Planning Rules addressing wholesale power procurement are consulted, there will be no question as to their meaning. It is to that end that we have provided the Joint Recommendations; an explanation of those recommendations is below.

### ***A. Affiliate Participation***

The Joint Recommendations attempt to reconcile two issues with the Best Practices. First, the Best Practices approved by the Commission only specifically address bilateral contracting with affiliate entities.<sup>7</sup> However, in addressing the use of Request for Proposals ("RFPs"), Best Practices clearly infer that affiliates may be involved in that process. For

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<sup>2</sup> P. Black email, dated Oct. 17, 2008. See Attachment E.

<sup>3</sup> D. Fredericks' email, dated October 14, 2008. See Attachment E.

<sup>4</sup> G. Patterson's email, dated October 14, 2008. See Attachment E. Mr. Patterson did not subsequently provide comments to APS, TEP and UNS.

<sup>5</sup> L. Robertson's e-mail, dated October 14, 2008, and T. Robert's email, dated October 15, 2008. See Attachment E.

<sup>6</sup> Decision No. 70032 at 2.

<sup>7</sup> Decision No. 70032 at 2-3, Best Practices, Section 1 (E); see also, Joint Recommendations, R14-2-705 (E).

example, Section 8 provides procedures for an independent monitor to manage a bid proposal “prepared by the utility or its affiliate”. [*Emphasis added.*]

Second, Best Practices make no distinction between whether the affiliate is regulated or non-regulated (also known as “market-regulated”), or the length of any affiliate agreement. Utilities may have the need, as is the case currently with UNS, to procure short-term power from an ACC regulated affiliate. These transactions do not impact the long-term market and are subject to Federal Energy Regulatory Commission and ACC review. As such, they should not be subject to the same procedures as long-term non-regulated affiliate transactions.

The Joint Recommendations propose changes to Section R14-2-705(1)(C) through (E) that would clarify that any type of affiliate can compete in procurement methods other than bilateral contracts, as they did in the procurement pursuant to the Commission’s Track B decision.<sup>8</sup> The Joint Recommendations make it clear that it is acceptable to consider affiliate proposals when utilizing other procurement methods, such as RFPs and auctions. Furthermore, these changes would allow for bilateral contracts between regulated utility affiliates, which could be limited to a shorter term. Under the Joint Recommendations, in those procurement processes where there was an affiliate’s participation (other than bilateral contracts with regulated utility affiliates), non-affiliated parties would be notified and they would have the opportunity to compete against the affiliate’s proposal. *Although not included in the Joint Recommendations, we suggest that the exclusion for regulated affiliate transaction be limited to short-term transactions. In addition, the Commission may want to consider clarifying that when an unregulated affiliate participates in a bilateral negotiation or auction that an independent monitor would be used in those procurement processes.*<sup>9</sup>

#### **B. Exceptions to the Use of an RFP**

The Joint Recommendations include two modifications, described below, that are meant to eliminate redundancy and provide clarity in the rule language.

- ***Emergencies:*** The definition for emergency was deleted<sup>10</sup> because it is now included in the “Definitions” section of the proposed Resource Planning Rules.
- ***Planning Horizon:*** The “planning horizon of two years or less” discussed as an exception to an RFP process<sup>11</sup> was not commonly understood. Because markets are sufficiently liquid for up to five years, and short-term purchases of less than five years do not eliminate the need to acquire long-term resources, we have proposed modifying this exception to state “when the term of the transaction is less than five years.” To use an RFP process for these short-term purchases would be both costly and time consuming, and a period greater than two years is more appropriate.

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<sup>8</sup> Decision No. 65743 (Mar. 14, 2003).

<sup>9</sup> We did not make these modifications to the Joint Recommendations in order to preserve the integrity of the version that was sent to interested parties.

<sup>10</sup> Joint Recommendations, R14-2-705(2)(A).

<sup>11</sup> Joint Recommendations, R14-2-705(2)(D).

### ***C. Role of the Independent Monitor and the RFP Process***

The Joint Recommendations relating to the RFP process and the independent monitor are aimed at changing the Best Practice language from “guidelines” to formal rules, and to eliminate an unnecessary provision relating to the location where an independent monitor would keep bids.

- The Joint Recommendations propose modifying Best Practices language to make the provisions related to the RFP process and the involvement of the independent monitor in that process mandatory (“shall”) rather than voluntary (“should”).
- The Best Practices include a directive to the independent monitor to secure the utility bid or benchmark price in a location that is not known or accessible to any of the bidders or the utility or its affiliate.<sup>12</sup> Given the fact that the monitor will receive this information a week ahead of the competitive bids and that the role of the independent monitor is to safeguard such information, APS, TEP and UNS believe it is unnecessary for the rules to dictate the location of the information.

### ***D. Role of Best Practices in the Future***

Although not specifically included in the Joint Recommendations, APS, TEP and UNS believe that the Resource Planning Rules should specifically state that the rules supersede and replace the Recommended Best Practices for Procurement. Such language could be included in section R14-2-702.

## **III. Conclusion**

APS, TEP and UNS respectfully request that Staff to incorporate the Joint Recommendations into the proposed Resource Planning Rules. These modifications will provide clarity to the rules, which in turn should facilitate a more effective and efficient wholesale power procurement process in the future. For that reason, the Commission should have the opportunity to consider these proposals. The formal rulemaking process will ensure that there will be adequate opportunity for interested parties to address concerns they may have with any provisions of the proposed rules.

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<sup>12</sup> Decision No. 70032 at 4; *see also* Joint Recommendations, R-14-2-705(3)(E).

# Attachment A

ATTACHMENT A

**APS, TEP & UNS ELECTRIC'S JOINT  
RECOMMENDATIONS**

**Note: Redline to Procurement Best Practices ACC Decision No. 70032**

**October 9, 2008**

**ARTICLE 7. RESOURCE PLANNING**

**R14-2-705. Wholesale Power Procurement**

1. The following procurement methods are considered to be acceptable for the wholesale acquisition of energy, capacity, and physical power hedge transactions:
  - A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange, or similar on-line third party systems.
  - B. Purchases from qualified, third party, independent energy brokers.
  - C. Purchases ~~from non-affiliated entities~~ through auctions or a request for proposals ("RFP") process.
  - D. ~~Bilateral contracts with non-affiliated entities.~~
  - E. ~~Bilateral contracts~~ Purchases with unregulated affiliated entities ~~(Dink1)~~, provided that non-affiliated entities are provided notice of and an opportunity to beat compete against any proposed contract the affiliate's proposal before executing the transaction.
  - F. Any other competitive procurement process approved by the Commission.
  
2. Utilities shall ~~seek to use~~ an RFP as the primary acquisition process. ~~Exceptions may except in the following circumstances include the following:~~
  - A. For ~~emergencies (Dink2)~~. An emergency is an unknown and unforeseeable condition (i) ~~not arising from acts or omissions by the utility which are not in accord with good utility practice,~~ (ii) that is temporary in nature, (iii) ~~that threatens reliability or poses some other significant risk to the system,~~ and (iv) where the subject procurement is not ~~greater in quantity or duration than what is necessary for the utility to restore the system to a safe and reliable condition.~~
  - B. For short-term acquisitions to maintain system reliability.
  - C. For other components of energy procurement, such as transmission projects, fuels, and fuel transportation.
  - D. When the ~~planning horizon (Dink3)~~ is two years or less ~~term of the transaction is less than five years.~~
  - E. When a utility encounters a genuine, unanticipated opportunity to acquire a power supply resource at a clear and significant discount when compared with the cost of acquiring new generating facilities that will provide unique value to customers.
  - F. For transactions that satisfy obligations under the Renewable Energy Standard rules and for demand-side management/demand response programs.
  
3. An independent monitor ~~should~~ shall be used in all RFP processes for procurement of new resources, in accordance with the following procedures:-
  - A. The utility ~~should~~ shall consult with Commission Staff and jointly select three to five

## ATTACHMENT A

companies or consultants ("vendor list") who can serve as an independent monitor.

- B. The utility ~~will~~shall file its vendor list in ~~this Docket Control~~ for interested parties' review. Interested parties will have 30 days to object to a vendor's inclusion on the list.
- C. Within 60 days of the filing of the vendor list, Staff ~~will~~shall ~~endorse~~identify the vendors it determines are appropriate. Once the vendors are ~~endorsed~~identified by Staff, the utility would be able to retain any of the authorized vendors for future RFPs. The utility ~~is required to~~shall provide written notice to staff of its retention of the independent monitor.
- D. The utility ~~should~~shall enter into a contract with the monitor and ~~should~~shall pay the monitor. Reasonable bidders' fees may be used to help offset these costs. When appropriate, the utility may request recovery of its payments to the monitor in customer rates.
- E. One week prior to the deadline for submitting bids, the utility ~~should~~shall provide the independent monitor with a copy of any bid proposal prepared by the utility or its affiliate, or any benchmark or reference cost the utility has developed against which to evaluate the bids. ~~The independent monitor should take steps to secure the utility bid or benchmark price in a location not known [Dinkel] or accessible to any of the bidders or the utility or its affiliate.~~
- F. The independent monitor ~~should~~shall provide reports (at least monthly) to Commission Staff throughout the RFP process.

# Attachment B

## ATTACHMENT B

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# Attachment C

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**Cc:** Scott, Deb (Z06165)  
**Subject:** Competitive Procurement - Resource Planning rulemaking

**Attachments:** 10~10~08 Best Practices Redlined - Resource Planning Rules - Power Procurement.doc

The Arizona Corporation Commission is currently engaged in workshops to develop Resource Planning rules (Docket No. E-00000E-05-0431). Competitive power procurement practices will be incorporated into the proposed rules that Staff intends to take to the Commission before the end of the year. In the August workshop, Staff included the Best Practices for Procurement that were adopted by Commission in Decision No. 70032 (Dec.4, 2007), with some modifications.

In the October 3<sup>rd</sup> workshop, Staff had eliminated some of the previous modifications that had been included in the earlier version. Both Arizona Public Service and Tucson Electric Power had made recommendations to modify the Best Practices language. The companies' objectives were to clarify and enhance Best Practices, without impacting their original intent, which is to assure that the procedures for obtaining new resources are fair and transparent and result in the acquisition of the best resources. However, because the parties who had been involved in workshops that resulted in Best Practices were not necessarily in attendance in the Resource Planning Rulemaking workshops, and because the Commission had formally approved the Best Practices, Staff was hesitant to make changes. Nonetheless, Ernest Johnson, Utilities Division Director, encouraged APS and TEP to engage those parties who had been involved in competitive procurement issues in the past to solicit input on potential improvements to Best Practices.

To that end, APS and TEP have collaborated on the attached recommendations. We are seeking your review and comment by **Wednesday, October 15<sup>th</sup> at noon**. Comments must be formally filed in Docket Control by **Friday, October 17<sup>th</sup>**. Please provide your thoughts and comments to Patrick Dinkel ([Patrick.Dinkel@aps.com](mailto:Patrick.Dinkel@aps.com)) and Deb Scott ([Deb.Scott@pinnaclewest.com](mailto:Deb.Scott@pinnaclewest.com)). APS will compile the comments we receive and incorporate them into our filing on October 17<sup>th</sup>. If you prefer, you can file your comments directly into the docket.

For this draft, we started with the Best Practices, as adopted by the Commission, and incorporated our recommended modifications for the proposed Resource Planning Rules, using redlines. You will see that the redlined version includes comments as to the basis for the recommended change. For your convenience, I have briefly outlined the key considerations below:

**Affiliate Participation:** Changes to Section R14-2-705(1) (C) through (E) are to clarify that affiliates can compete in procurements other than bilateral contracts, as they did in the procurement pursuant to the Commission's Track B decision. In those cases, non-affiliated parties would be notified of the affiliate's participation and would have the opportunity to compete against the affiliate's proposal.

**Exceptions to the use of an RFP**

- **Emergencies:** The definition for emergency was deleted from this section because it is now included in the Definitions section of the proposed Resource Planning Rules.
- **Planning Horizon:** The "planning horizon of two years or less" was not commonly understood.

Because markets are sufficiently liquid for up to five years, and short-term purchases of less than five years do not eliminate the need to acquire long-term resources, we have modified this exception to state "when the term of the transaction is less than five years." To use an RFP process for these short-term purchases would be costly and time consuming.

Independent Monitor:

- Language was modified to make these provisions mandatory ("shall"), rather than voluntary ("should").
- Provision requiring Independent Monitor to secure affiliate bids in an "unknown location" was deleted because it is unnecessary.

If you have any questions, please give us a call: Deb Scott - 602-250-5508;  
Pat Dinkel - 602-250-2016. We look forward to hearing from you next week.



10~10~08 Best  
Practices Redlin...

Deb Scott  
Senior Regulatory Attorney, Law Department  
Pinnacle West Capital Corporation  
400 North 5th Street  
Phoenix, Arizona 85004  
Tel: 602-250-5508  
Fax: 602-250-3393  
Deb.Scott@pinnaclewest.com

# WORKING DOCUMENT

**Note: Redline to Procurement Best Practices ACC Decision No. 70032**

October 9, 2008

## ARTICLE 7. RESOURCE PLANNING

### R14-2-705. Wholesale Power Procurement

1. The following procurement methods are considered to be acceptable for the wholesale acquisition of energy, capacity, and physical power hedge transactions:
  - A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange, or similar on-line third party systems.
  - B. Purchases from qualified, third party, independent energy brokers.
  - C. Purchases ~~from non-affiliated entities~~ through auctions or a request for proposals ("RFP") process.
  - D. Bilateral contracts ~~with non-affiliated entities~~.
  - E. ~~Bilateral contracts~~ Purchases with unregulated affiliated entities ~~(Dinkel1)~~, provided that non-affiliated entities are provided notice of and an opportunity to beat-compete against any proposed contract ~~the affiliate's proposal~~ before executing the transaction.
  - F. Any other competitive procurement process approved by the Commission.
  
2. Utilities shall ~~seek to use~~ an RFP as the primary acquisition process. ~~Exceptions may except in the following circumstances include the following:~~
  - A. For ~~emergencies~~ ~~(Dinkel2)~~. An emergency is an unknown and unforeseeable condition (i) ~~not arising from acts or omissions by the utility which are not in accord with good utility practice,~~ (ii) ~~that is temporary in nature,~~ (iii) ~~that threatens reliability or poses some other significant risk to the system,~~ and (iv) ~~where the subject procurement is not greater in quantity or duration than what is necessary for the utility to restore the system to a safe and reliable condition.~~
  - B. For short-term acquisitions to maintain system reliability.
  - C. For other components of energy procurement, such as transmission projects, fuels, and fuel transportation.
  - D. When the ~~planning horizon~~ ~~(Dinkel3)~~ is two years or less ~~term of the transaction is less than five years.~~
  - E. When a utility encounters a genuine, unanticipated opportunity to acquire a power supply resource at a clear and significant discount when compared with the cost of acquiring new generating facilities that will provide unique value to customers.
  - F. For transactions that satisfy obligations under the Renewable Energy Standard rules and for demand-side management/demand response programs.
  
3. An independent monitor ~~should~~ shall be used in all RFP processes for procurement of new resources, in accordance with the following procedures:-
  - A. The utility ~~should~~ shall consult with Commission Staff and jointly select three to five companies or consultants ("vendor list") who can serve as an independent monitor.
  - B. The utility ~~will~~ shall file its vendor list in ~~this~~ Docket Control for interested parties'

review. Interested parties will have 30 days to object to a vendor's inclusion on the list.

- C. Within 60 days of the filing of the vendor list, Staff ~~will~~ shall ~~endorse~~ identify the vendors it determines are appropriate. Once the vendors are ~~endorsed~~ identified by Staff, the utility would be able to retain any of the authorized vendors for future RFPs. The utility ~~is required to~~ shall provide written notice to staff of its retention of the independent monitor.
- D. The utility ~~should~~ shall enter into a contract with the monitor and ~~should~~ shall pay the monitor. Reasonable bidders' fees may be used to help offset these costs. When appropriate, the utility may request recovery of its payments to the monitor in customer rates.
- E. One week prior to the deadline for submitting bids, the utility ~~should~~ shall provide the independent monitor with a copy of any bid proposal prepared by the utility or its affiliate, or any benchmark or reference cost the utility has developed against which to evaluate the bids. ~~The independent monitor should take steps to secure the utility bid or benchmark price in a location not known [Dinkeld] or accessible to any of the bidders or the utility or its affiliate.~~
- F. The independent monitor ~~should~~ shall provide reports (at least monthly) to Commission Staff throughout the RFP process.

# Attachment D

## ATTACHMENT D

**Johnson, Janice (Z06369)**

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**From:** Scott, Deb (Z06165)  
**Sent:** Tuesday, October 14, 2008 12:30 PM  
**To:** Albert, Bradley J(R01514); Andreasen, Erinn A(Z06183); Barbara Keene; Beck Mayberry; Carlson, Thomas J(Z01883); Dale Fredericks; Dave Hutchens; David Getts; Dinkel, Patrick (F32614); Erick Bonner; Ernest Johnson; Greg Patterson; Jay Moyes; Jim Hinrichs; Johnson, Jeffrey W(V54212); Joseph Paul; Klemstine, Barbara A(F56661); Lawrence Robertson; Leesa Nayudu; Malcomb Hubbard; Patrick Black; Rebecca Turner; Steve Bloch; Terri Ford; Theodore Roberts; Toby Voge; Tom Jenkins; Tom Wray  
**Cc:** Johnson, Janice (Z06369)  
**Subject:** Wholesale Power Procurement - Resource Planning Rulemaking  
**Importance:** High

As you know, there is very limited time to file comments regarding wholesale power procurement in the Resource Planning Rulemaking docket. Based on some responses that we have received to our Friday email/redline that we sent to you for comment, APS and TEP/UNS Electric are realizing that there is insufficient time to incorporate the comments, circulate updated versions of the APS/TEP/UNS Electric joint proposal, have discussions with parties, and reach consensus on language for this section of the proposed Resource Plan Rules before the end of this week.

Therefore, in the joint comments that APS/TEP/UNS Electric will file on Friday, October 17<sup>th</sup>, we will briefly summarize the comments received from interested parties, and attach your comments and your red-lined versions that you send to us. Of course, any interested party can file comments directly with the Commission, as well.

Please give me a call if you wish to discuss this approach.

Thanks!

Deb Scott  
Senior Regulatory Attorney, Law Department  
Pinnacle West Capital Corporation  
400 North 5th Street  
Phoenix, Arizona 85004  
Tel: 602-250-5508  
Fax: 602-250-3393  
Deb.Scott@pinnaclewest.com

# Attachment E

Patrick Black

**Scott, Deb (Z06165)**

---

**From:** BLACK, PATRICK [PBLACK@FCLAW.com]  
**Sent:** Friday, October 17, 2008 9:13 AM  
**To:** Scott, Deb (Z06165)  
**Subject:** RE: Wholesale Procurement - Comments

Ms. Scott -

Gila River Power, L.P. will not be filing separate written comments on APS and TEP's proposed changes to the wholesale procurement section of Staff's draft IRP rules. GRP does not oppose the proposed changes. If you have any questions, please do not hesitate to call. Thank you.

[www.fennemorecraig.com](http://www.fennemorecraig.com)

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10/17/2008

**Dinkel, Patrick (F32614)**

---

**From:** Dale E. Fredericks [dfredericks@dgpower.com]  
**Sent:** Tuesday, October 14, 2008 9:24 AM  
**To:** Dinkel, Patrick (F32614)  
**Cc:** Greg Patterson; Jay Moyes  
**Subject:** ACC Best Procurement Practices - comments

Pat,

I am on a European trip and not able to provide detailed comments, so defer to those presented by others.

Dale Fredericks  
DG Power

Greg Patterson

**Johnson, Janice (Z06369)**

**NOTE:** Mr. Patterson did not forward additional comments.

**From:** Greg Patterson [gpatterson3@cox.net]

**Sent:** Tuesday, October 14, 2008 6:55 AM

**To:** 'Jay Moyes'; Scott, Deb (Z06165); Albert, Bradley J(R01514); Andreasen, Erinn A(Z06183); bkeene@azcc.gov; beck.mayberry@dynegy.com; Carlson, Thomas J(Z01883); dale@dgpower.com; dhutchens@tep.com; dgetts@southwesternpower.com; Dinkel, Patrick (F32614); EBronner@EntegraPower.com; ejohnson@azcc.gov; jim.hinrichs@dynegy.com; Johnson, Jeffrey W(V54212); joe.paul@dynegy.com; Klemstine, Barbara A(F56661); tubaclawyer@aol.com; Inayudu@semprageneration.com; mhubbard@harqgen.com; pblack@fclaw.com; BTurner@entegrapower.com; steve@blochcommunications.com; tford@azcc.gov; troberts@sempra.com; tvoge@tep.com; tjenkins@harqgen.com; twray@southwesternpower.com

**Subject:** RE: Competitive Procurement - Resource Planning rulemaking

**Follow Up Flag:** Follow up

**Flag Status:** Blue

The Alliance will have comments as well. We have some concerns about the proposed changes and will be offering some suggestions. We will be providing comments to APS on the 15th and to the ACC on Friday.

Lawrence Robertson

**Johnson, Janice (Z06369)**

**From:** TubacLawyer@aol.com  
**Sent:** Tuesday, October 14, 2008 2:23 PM  
**To:** Scott, Deb (Z06165)  
**Cc:** Albert, Bradley J(R01514); Andreasen, Erinn A(Z06183); bkeene@azcc.gov; beck.mayberry@dynegy.com; Carlson, Thomas J(Z01883); dale@dgpower.com; dhutchens@tep.com; dgetts@southwesternpower.com; Dinkel, Patrick (F32614); EBronner@EntegraPower.com; ejohnson@azcc.gov; gpatterson3@cox.net; jimoyes@lawms.com; jim.hinrichs@dynegy.com; Johnson, Jeffrey W(V54212); joe.paul@dynegy.com; Klemstine, Barbara A(F56661); Inayudu@semprageneration.com; mhubbard@harqgen.com; pblack@fclaw.com; BTurner@entegrapower.com; steve@blochcommunications.com; tford@azcc.gov; troberts@sempra.com; tvoge@tep.com; tjenkins@harqgen.com; TWray@southwesternpower.com; Johnson, Janice (Z06369)  
**Subject:** Re: Wholesale Power Procurement - Resource Planning Rulemaking

Deb,

Thanks for your most recent email on the above-referenced subject. Your revised approach sounds sensible under the circumstances. If time allows, I anticipate that Mesquite/SWPG/Bowie will be submitting comments to you before Noon tomorrow. In any event, I further anticipate that we will be filing those same comments with ACC Docket Control on or before this Friday (October 17, 2008).

Best regards,

Larry

In a message dated 10/14/2008 12:30:32 PM US Mountain Standard Time, Deb.Scott@Pinnaclewest.com writes:

As you know, there is very limited time to file comments regarding wholesale power procurement in the Resource Planning Rulemaking docket. Based on some responses that we have received to our Friday email/redline that we sent to you for comment, APS and TEP/UNS Electric are realizing that there is insufficient time to incorporate the comments, circulate updated versions of the APS/TEP/UNS Electric joint proposal, have discussions with parties, and reach consensus on language for this section of the proposed Resource Plan Rules before the end of this week.

Therefore, in the joint comments that APS/TEP/UNS Electric will file on Friday, October 17th, we will briefly summarize the comments received from interested parties, and attach your comments and your red-lined versions that you send to us. Of course, any interested party can file comments directly with the Commission, as well.

Please give me a call if you wish to discuss this approach.

Thanks!

Deb Scott  
Senior Regulatory Attorney, Law Department  
Pinnacle West Capital Corporation

10/16/2008

400 North 5th Street  
Phoenix, Arizona 85004  
Tel: 602-250-5508  
Fax: 602-250-3393  
Deb.Scott@pinnaclewest.com

Email Firewall made the following annotations

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**Johnson, Janice (Z06369)**

**From:** Roberts, Ted [TRoberts@sempra.com]  
**Sent:** Wednesday, October 15, 2008 11:04 AM  
**To:** Scott, Deb (Z06165); Albert, Bradley J(R01514); Andreasen, Erinn A(Z06183); bkeene@azcc.gov; beck.mayberry@dynegy.com; Carlson, Thomas J(Z01883); dale@dgpower.com; dhutchens@tep.com; dgetts@southwesternpower.com; Dinkel, Patrick (F32614); EBronner@EntegraPower.com; ejohnson@azcc.gov; gpatterson3@cox.net; jimoyes@lawms.com; jim.hinrichs@dynegy.com; Johnson, Jeffrey W (V54212); joe.paul@dynegy.com; Klemstine, Barbara A(F56661); tubaclawyer@aol.com; Nayudu, Leesa; mhubbard@harqgen.com; pblack@fclaw.com; BTurner@entegrapower.com; steve@blochcommunications.com; tford@azcc.gov; tvoge@tep.com; tjenkins@harqgen.com; twray@southwesternpower.com  
**Cc:** Johnson, Janice (Z06369)  
**Subject:** RE: Wholesale Power Procurement - Resource Planning Rulemaking  
**Follow Up Flag:** Follow up  
**Flag Status:** Blue  
**Attachments:** @

Ms. Scott: Attached hereto are the comments of Mesquite Power, LLC, Southwestern Power Group II, LLC and Bowie Power Station, LLC (Mesquite, et al) on APS' proposed changes to the procurement rules. These are being provided at your request so that APS can summarize or otherwise make use of the comments in its submission to the Arizona Corporation Commission on Friday, October 17th. Mesquite, et al will also be filing these comments with the Commission on Friday.

Regards,

Ted Roberts  
Senior Regulatory Counsel

Sempra Energy Law Department  
101 Ash Street, HQ 12B  
San Diego, CA 92101-3017  
Tel: 619.699.5111

---

**From:** Deb.Scott@Pinnaclewest.com [mailto:Deb.Scott@Pinnaclewest.com]  
**Sent:** Tuesday, October 14, 2008 12:30 PM  
**To:** Bradley.Albert@aps.com; Erinn.Andreasen@aps.com; bkeene@azcc.gov; beck.mayberry@dynegy.com; Thomas.Carlson@aps.com; dale@dgpower.com; dhutchens@tep.com; dgetts@southwesternpower.com; Patrick.Dinkel@aps.com; EBronner@EntegraPower.com; ejohnson@azcc.gov; gpatterson3@cox.net; jimoyes@lawms.com; jim.hinrichs@dynegy.com; Jeffrey.Johnson@aps.com; joe.paul@dynegy.com; Barbara.Klemstine@aps.com; tubaclawyer@aol.com; Nayudu, Leesa; mhubbard@harqgen.com; pblack@fclaw.com; BTurner@entegrapower.com; steve@blochcommunications.com; tford@azcc.gov; Roberts, Ted; tvoge@tep.com; tjenkins@harqgen.com; twray@southwesternpower.com  
**Cc:** Janice.Johnson@pinnaclewest.com  
**Subject:** Wholesale Power Procurement - Resource Planning Rulemaking

Importance: High

As you know, there is very limited time to file comments regarding wholesale power procurement in the Resource Planning Rulemaking docket. Based on some responses that we have received to our Friday email/redline that we sent to you for comment, APS and TEP/UNS Electric are realizing that there is insufficient time to incorporate the comments, circulate updated versions of the APS/TEP/UNS Electric joint proposal, have discussions with parties, and reach consensus on language for this section of the proposed Resource Plan Rules before the end of this week.

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Please give me a call if you wish to discuss this approach.

Thanks!

Deb Scott  
Senior Regulatory Attorney, Law Department  
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400 North 5th Street  
Phoenix, Arizona 85004  
Tel: 602-250-5508  
Fax: 602-250-3393  
Deb.Scott@pinnaclewest.com

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**Attachments:**

Cmnts-APSSggstdRevisionstoBestpractices.doc

(20 KB)

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

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.

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 \_\_\_\_ 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.