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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity	DOCKET NO. 020398-EI
	FILED: NOVEMBER 15, 2002

020398-EQ

COMMENTS OF CALPINE EASTERN CORPORATION

Pursuant to Commission Order No. PSC-02-1420A-NOR-EQ and Commission Order No. PSC-02-1514-PCO-EQ, Calpine Eastern Corporation ("Calpine") hereby submits these comments regarding the Commission Staff's proposal to amend the Commission's Rule 25-22.082, Florida Administrative Code ("F.A.C."), Selection of Generating Capacity, commonly referred to as the "Bid Rule." In summary, Calpine continues to support the Commission's efforts to improve the Bid Rule for the benefit of Florida electricity consumers and appreciates the opportunity to provide these comments and to participate in the formal rulemaking hearing scheduled for December 5 and 6, 2002. Calpine fully supports the comments being submitted contemporaneously by the Florida Partnership for Affordable Competitive Energy ("PACE") and submits these separate comments to advocate that the revised Bid Rule include an explicit provision permitting the use of auction processes to satisfy the Rule's requirements.

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Calpine's Permissive Auction Proposal

Specifically, Calpine recommends that the Commission include an additional subsection in the Bid Rule that will permit a public utility to comply with the Rule's requirements by conducting an anonymous electronic auction in lieu of an RFP process. Calpine's recommended language is permissive, not mandatory, and would read as follows:

> (15) In lieu of an RFP process, the utility may comply with this Rule by conducting an anonymous electronic auction in which all qualified bidders, including the utility and any affiliate of the utility, have the opportunity to bid to supply needed capacity and energy pursuant to a power purchase agreement developed by the utility, subject to Commission review and approval. The utility may petition the Commission to conduct a proceeding to pre-qualify bidders for eligibility to participate in the auction and for advance approval of the auction process and of the form power purchase agreement on which qualified bidders will bid. The Commission will process such a petition on an expedited basis. If the Commission has pre-approved the auction process and the form power purchase agreement, the winning bidder (or bidders) shall be presumptively

entitled to a determination of need for its (or their) proposed power plants, if applicable, and a power purchase agreement (or agreements) reflecting the terms of the winning bid (or bids) will be approved for cost recovery purposes by the Commission consistent with subsection (14) of this Rule.

In sum, Calpine's proposal is permissive, not mandatory, and will simply provide that a utility may satisfy the Rule's requirements by using an auction process in lieu of the RFP process otherwise required by the Rule. A copy of the Commission's proposed Rule with Calpine's proposed auction language incorporated therein is attached to these comments. (For convenience, Calpine has incorporated its proposal into both the Commission's proposed Rule language, Exhibit 1 to these comments, and also into PACE's proposed Rule, Exhibit 2.)

Benefits of Auction Processes

Auction processes have several salient benefits which were enumerated in detail in Calpine's comments submitted herein on June 28, 2002. (A copy of Calpine's June 28 comments is attached as Exhibit 3 to these comments.) Principal benefits of an anonymous electronic auction include:

1. Properly designed auctions are most likely to get the lowest prices for customers.
2. Auctions are truly objective. This characteristic solves

the "beauty contest" problem, and eliminates the need for lengthy administrative hearings as to whose proposal really was or is the best, as to how the proposals should have been evaluated, as to whether "penalties" were properly applied to IPPs' proposals and "premiums" were properly assigned to the IOU's self-build proposal, and so on.

3. An auction based on a utility-developed PPA, subject to Commission review and approval, respects the IOUs' role in developing a contract with non-price terms and conditions that best suit their particular needs and circumstances.

4. An auction based on a utility-developed and Commission-approved PPA eliminates litigation over evaluation criteria and weights assigned thereto that might have to be decided in a challenge either to an RFP or to the results of an RFP process.

5. An auction system is truly fair to all participants -- each and every qualified participant has an equal opportunity to bid a price low enough to win. This feature eliminates the problem of the current system where the IOU gets to go last and bid just low enough to beat the first-price, sealed-bid offers of the low-price IPPs, and simultaneously addresses fairly the IOUs' concern that if they have to reveal their best and final offer in an

RFP, such revelation would subject them to being similarly underbid by IPPs.

Current Use of Power Purchase Auctions

Auction processes are being used to procure wholesale power today in Florida and elsewhere in the United States. In Florida, the Utilities Commission of New Smyrna Beach ("UCNSB") has completed two separate auction processes by which it has procured needed energy, and the UCNSB has also recently completed an auction by which it has procured needed seasonal firm capacity with associated energy purchase rights. The UCNSB's experience with its energy purchase auctions has been quite favorable, yielding purchase rates approximately ten percent below what was otherwise available to the UCNSB via direct negotiations in the wholesale market.

The UCNSB has utilized the so-called "Anglo-Dutch" auction process, which consists of two phases. In the first "English auction" phase, all qualified bidders are allowed to bid, anonymously via a secure web site, for a set period of time, e.g., two to four hours. During this phase, the current lowest bid is posted for all bidders to see at all times. At the conclusion of this first phase, the three lowest bidders are selected to participate in the final round of bidding. This final round (the "Dutch auction" phase) takes a relatively short time, e.g., one hour. In this final phase, each bidder

submits a final bid without the ability to see any of the other finalists' bids. Professor Paul Klemperer of Oxford University has suggested[1] that this model is particularly valuable in obtaining the best possible bids because it enhances the competitiveness of the auction, and the UCNSB's experience certainly appears to bear this out.

The New Jersey Board of Public Utilities has approved "simultaneous descending clock auctions" for the purchase of the vast majority of all electricity to be supplied to the retail consumers of New Jersey's public utilities. This is the second such auction that New Jersey has conducted. A copy of the New Jersey Board's press release announcing its recent decision is attached as Exhibit 4 to these comments. (The order has not yet been issued.)

The Arizona Corporation Commission Staff have recommended a competitive solicitation process that would require Arizona's two large public utilities, Arizona Public Service Company and Tucson Electric Power Company, to procure needed additional long-term power supplies via either an RFP process very much like that recommended by PACE in this docket or via an auction process. The Staff's report, issued on October 25, 2002, clearly contemplates that either process would satisfy the

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[1] See Klemperer, Paul, "What Really Matters in Auction Design," working paper, Oxford, England (2001).

Commission's requirements. A copy of Arizona Corporation Commission Staff's October 25 report is attached as Exhibit 5 to these comments.

CONCLUSION

Calpine's permissive auction proposal will clearly provide another tool for Florida public utilities to use to procure the most cost-effective power supply alternatives for the benefit of their customers. Auction processes have many benefits, chiefly providing a mechanism for ensuring maximum competition and lowest costs for customers. As compared to the current RFP process in Florida, an anonymous electronic auction system can be expected to produce lower prices for customers through a fairer and much simpler administrative process. Accordingly, Calpine respectfully requests that the Commission incorporate this permissive option into its revised Bid Rule.

Exhibit 1

Calpine Eastern Corporation

CALPINE'S PROPOSED MODIFICATIONS TO THE PUBLIC SERVICE COMMISSION'S PROPOSED RULE LANGUAGE

25-22.082 Selection of Generating Capacity.

(1)Scope and Intent. A Public Utility is required to provide reasonably sufficient, adequate, and efficient service to the public at fair and reasonable rates. In order to assure an adequate and reliable source of energy, a public utility must plan and construct or purchase sufficient generating capacity. To assure fair and reasonable rates and to avoid the further uneconomic duplication of generation, transmission, and distribution facilities in Florida, a public utility must select the most economical and cost-effective mix of supply-side and demand-side resources to meet the demand and energy requirements of its end-use consumers. The intent of this rule is to provide the Commission information to evaluate a public utility's decision regarding the addition of generating capacity pursuant to Chapter 403.519, Florida Statutes. The use of a Request for Proposals (RFP) process is an appropriate means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.

(2)~~(1)~~Definitions. For the purpose of this rule, the following terms shall have the following meaning:

(a)Public Utility: all electric utilities subject to the Florida Public Service Commission's ratemaking authority, as defined in Section 366.02(1), Florida Statutes.

(b)~~(a)~~Next Planned Generating Unit: the next generating unit addition planned for construction by an investor-owned utility that will require certification pursuant to Section 403.519, Florida Statutes.

(c)~~(b)~~Request for Proposals (RFP): a document in which ~~an~~ public ~~investor-owned~~ utility publishes the price and non-price attributes of its next planned generating unit in order to solicit and screen, for potential subsequent contract negotiations, competitive proposals for supply-side alternatives to the public utility's next planned generating unit.

(d)~~(c)~~Participant: a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a public utility's RFP. A participant may include, but is not limited to, utility and non-utility generators, Exempt Wholesale Generators (EWGs), Qualifying Facilities (QFs), marketers, and affiliates of public utilities, as well as providers of turnkey offerings, distributed generation, and other ~~utility~~ supply side alternatives.

(e)~~(d)~~Finalist: one or more participants selected by the public utility with whom to conduct subsequent contract negotiations.

(3)~~(2)~~Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes, each investor-owned electric utility shall evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP).

(4)~~(3)~~Each public ~~investor-owned~~ utility shall provide timely notification of its issuance of an RFP by publishing public notices in major newspapers, periodicals and trade publications to ensure statewide and national circulation. The public notice given shall include, at a minimum:

(a)the name and address of the contact person from whom an RFP package may be requested;

(b)a general description of the public utility's next planned generating unit, including its planned in-service date, MW size, location, fuel type and technology; and

(c)a schedule of critical dates for the solicitation, evaluation, screening of proposals and subsequent contract negotiations.

(5)~~(4)~~Each public utility's RFP shall include, at a minimum:

(a)a detailed technical description of the public utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at a minimum, the following information:

1.a description of the public utility's next planned generating unit(s) and its proposed location(s);

2.the MW size;

3.the estimated in-service date;

4.the primary and secondary fuel type;

5.an estimate of the total direct cost;

6.an estimate of the annual revenue requirements;

7.an estimate of the annual economic value of deferring construction;

8.an estimate of the fixed and variable operation and maintenance expense;

9.an estimate of the fuel cost;

10.an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;

11.a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
12.a discussion of the actions necessary to comply with environmental requirements; and

13.a summary of all major assumptions used in developing the above estimates;
(b)Detailed information regarding the public utility's ten year historical and ten year projected net energy for load;

(c)~~(b)~~a schedule of critical dates for solicitation, evaluation, screening of proposals, selection of finalists, ~~and~~ subsequent contract negotiations;

(d)~~(c)~~a description of the price and non-price attributes to be addressed by each alternative generating proposal including, but not limited to:

1.technical and financial viability;

2.dispatchability;

3.deliverability (interconnection and transmission;

4.fuel supply;

5.water supply;

6.environmental compliance;

7.performance criteria; and

8.pricing structure~~;~~. ~~and~~

(e)~~(d)~~a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.

(f)All criteria, including all weighting and ranking factors that will be applied to select the finalists. Such criteria may include price and non-price considerations, but no criterion shall be employed that is not expressly identified in the RFP absent a showing of good cause;

(g)Any application fees that will be required of a participant. Any such fees or deposits shall be cost-based;

(h)Any information regarding system-specific conditions which may include, but not be limited to, preferred locations proximate to load centers, transmission constraints, the need for voltage support in particular areas, and/or the public utility's need or desire for greater diversity of fuel sources.

(6)~~(5)~~As part of its RFP, the public utility shall require each participant to publish a notice in a newspaper of general circulation in each county in which the participant~~'s~~ propose~~d~~s to build an electrical power plant ~~generating facility would be located~~. The notice shall be at least one-quarter of a page and shall be published no later than 10 days after the date that proposals are due. The notice shall state that the participant has submitted a proposal to build an electrical power plant, and shall include the name and address of the participant submitting the proposal, the name and address of the public utility that solicited proposals, and a general description of the proposed power plant and its location.

(7)~~(6)~~ Within 30 days after the public utility has selected finalists, if any, from the participants who responded to the RFP, the public utility shall publish notice in a newspaper of general circulation in each county in which a finalist ~~has~~ proposeds to build an electrical power plant. The notice shall include the name and address of each finalist, the name and address of the public utility, and a general description of each proposed electrical power plant, including its location, size, fuel type, and associated facilities.

(8)~~(7)~~Each public ~~electric~~ utility shall file a copy of its RFP with the Commission upon issuance.

(9)The public utility shall allow participants to formulate creative responses to the RFP. The public utility shall evaluate all proposals.

(10)The public utility shall conduct a meeting prior to the release of the RFP with potential participants to discuss the requirements of the RFP. The public utility shall also conduct a meeting within two weeks after the issuance of the RFP and prior to the submission of any proposals. The Office of Public Counsel and the Commission staff shall be notified in a timely manner of the date, time, and location of such meetings.

(11)A potential participant who attended the public utility's post-issuance meeting may file with the Commission specific objections to any terms of the RFP within 10 days of the post-issuance meeting. Failure to file objections within 10 days shall constitute a waiver of those objections. The Commission will address any objections to the terms of the RFP on an expedited basis.

(12)A minimum of 60 days shall be provided between the issuance of the RFP, and the due date for proposals in response to the RFP.

(13)The public utility shall evaluate the proposals received in response to the RFP in a fair comparison with the public utility's next planned generating unit identified in the RFP.

(14)If the Commission approves a purchase power agreement as a result of the RFP, the public utility shall be authorized to recover the prudently incurred costs of the agreement through the public utility's capacity, and fuel and purchased power cost recovery clauses absent evidence of fraud, mistake, or similar grounds sufficient to disturb the finality of the approval under governing law. If the public utility selects a self-build option, any costs in addition to those identified in the need determination proceeding shall not be recoverable unless the utility can demonstrate that such costs were prudently incurred and unforeseen and beyond its control.

(15) In lieu of an RFP process, the utility may comply with this Rule by conducting an anonymous electronic auction in which all qualified bidders, including the utility and any affiliate of the utility, have the opportunity to bid to supply needed capacity and energy pursuant to a power purchase agreement developed by the utility, subject to Commission review and approval. The utility may petition the Commission to conduct a proceeding to pre-qualify bidders for eligibility to participate in the auction and for advance approval of the auction process and of the form power purchase agreement on which qualified

bidders will bid. The Commission will process such a petition on an expedited basis. If the Commission has pre-approved the auction process and the form power purchase agreement, the winning bidder (or bidders) shall be presumptively entitled to a determination of need for its (or their) proposed power plants, if applicable, and a power purchase agreement (or agreements) reflecting the terms of the winning bid (or bids) will be approved for cost recovery purposes by the Commission consistent with subsection (14) of this Rule. [1]

(16) ~~(15)(8)~~ The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

(17) ~~(16)(9)~~ The Commission may waive this rule or any part thereof upon a showing that the waiver would likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.
Specific Authority: 350.127(2), 366.05(1), 366.06(2), 366.07, 366.051, F.S.
Law Implemented: 403.519, 366.04(1), 366.04(2), 366.04(5), 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.
History: New 01/20/94, Amended .

[1] This change is the sole change proposed independently by Calpine Eastern Corporation. Accordingly, all seven pages of Calpine's comments refer to this proposed change.

Exhibit 2
Calpine Eastern Corporation

CALPINE'S PROPOSED MODIFICATIONS TO PACE'S PROPOSED RULE LANGUAGE

Delete existing Rule 25-22.082 in its entirety, and replace with the following language:

25-6.0351 Selection of Generating Capacity

(1) Prior to commencing the construction of a capacity addition of 75 MW or more (of any technology, whether new construction or the repowering or expansion of existing capacity), a public utility as defined in Section 366.02(1), Florida Statutes shall first solicit competitive alternatives by issuing a Request For Proposals (RFP). The public utility shall publish notices of its RFP in major newspapers and trade publications nationwide. The deadline for submitting responses to the RFP shall be at least 75 days after the date of the first national advertisement.

(2) Prior to the date of the notice required by (1) above, the public utility shall file its RFP package with the Commission. By notice published in the Florida Administrative Weekly, the Commission shall establish the date by which any complaints by potential RFP participants relative to appropriateness of terms, scoring criteria, or any other aspects of the RFP package must be filed with the Commission. Within the same period the Commission may vote on its own motion to issue an order proposing to modify the RFP package. If a timely complaint is filed, or if such an order is protested, the Commission shall expedite the hearing on the matter. Upon the filing of a complaint or the decision to issue an order, the public utility shall hold RFP activities in abeyance until the related issues have been resolved.

(3) All respondents and, if it proposes a self-build option, the public utility, shall submit sealed proposals meeting the requirements of the RFP to the Commission or its

designated representative by the governing deadline. If the IOU or an affiliate/subsidiary of the IOU intends to submit a proposal, a neutral and independent entity shall evaluate all proposals. In the RFP the public utility shall provide the qualifications of another neutral entity it proposes to engage for the purpose; however, the Commission may elect to perform the evaluations in any RFP required by this rule. The application fees submitted by bidders will be used to compensate the third party evaluator.

(4) The neutral entity selected to evaluate the proposals (or the Commission or public utility, where applicable) shall apply the evaluation/scoring criteria of the RFP to the competing submissions and shall identify a short list of the highest ranked proposals or combinations of proposals for further consideration. The public utility shall provide to each participant on the short list its analysis of transmission integration costs necessary to integrate the participant's proposal into the public utility's system. Each participant on the short list, including the public utility, if applicable, shall thereafter submit a final sealed and binding bid for evaluation. Based on its review of the final bids, the independent evaluator (or the Commission or public utility, as applicable) shall identify the winner(s) of the RFP.

(5) An affected party may challenge, by complaint filed with the Commission or in a proceeding on a related petition to determine need, the selection made. However, the grounds for such a challenge shall be limited to an assertion that the RFP criteria were incorrectly applied, unless the party shows it could not have raised its issue in a complaint brought under (3) above.

(6) If a proposal other than the public utility's self-build option is chosen, the public utility and the winning RFP participant shall negotiate in good faith a power purchase agreement that incorporates the terms of the RFP and the winning proposal. If its proposal is selected as the most cost-effective, the public utility's proposed costs shall be binding on it in future earnings

surveillance reports and ratemaking proceedings to the same extent the pricing proposals of participants would be binding on them in a power purchase contract.

(7) The public utility's RFP shall include, at a minimum, the following information:

(a) Where applicable, a technical description of the public utility's proposed capacity addition, to include size (in MW), technology, estimated in-service date, primary and secondary fuels, location, market value of property and infrastructure at the location, associated facilities (such as pipelines and transmission facilities) to be built, and projected capacity factor over a twenty year horizon.

(b) The public utility's ten-year historical and (current) ten year projected net energy for load, and summer and winter peak demand by class of customers.

(c) A schedule of milestone dates for receipt, evaluation, and selection of proposals.

(d) (If the IOU or an affiliate/subsidiary of the IOU intends to offer a proposal) the neutral and independent entity that the public utility proposes to engage to evaluate proposals, and its qualifications .

(e) A complete list and description of all price and non-price attributes to be addressed by each participant in its proposal.

(f) Any application fees that will be required of a participant. Any such fees or deposits shall not exceed $10,000 in the aggregate, with no more than $500 required to obtain the RFP. Multiple application fees for variations of power supply options shall not be required.

(g) All criteria, including all weighting and ranking factors and all price and non-price considerations that will be applied to evaluate proposals. No increase to the public utility's cost of capital shall be imputed.

(h) A detailed description of the assumptions and methodology that will be employed to evaluate all proposals, including the manner in which the costs of any existing infrastructure will be allocated to the public utility's proposed capacity addition.

(8) In lieu of an RFP process, the utility may comply with this Rule by conducting an anonymous electronic auction in which all qualified bidders, including the utility and any affiliate of the utility, have the opportunity to bid to supply needed capacity and energy pursuant to a power purchase agreement developed by the utility, subject to Commission review and approval. The utility may petition the Commission to conduct a proceeding to pre-qualify bidders for eligibility to participate in the auction and for advance approval of the auction process and of the form power purchase agreement on which qualified bidders will bid. The Commission will process such a petition on an expedited basis. If the Commission has pre-approved the auction process and the form power purchase agreement, the winning bidder (or bidders) shall be presumptively entitled to a determination of need for its (or their) proposed power plants, if applicable, and a power purchase agreement (or agreements) reflecting the terms of the winning bid (or bids) will be approved for cost recovery purposes by the Commission subject to other applicable provisions of this Rule.[1]

[1] This change is the sole change proposed independently by Calpine Eastern Corporation. Accordingly, all seven pages of Calpine's comments refer to this proposed change.

Exhibit 3

Calpine Eastern Corporation

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity	)	DOCKET NO. 020398-EI
	)	FILED: JUNE 28, 2002

COMMENTS OF CALPINE EASTERN CORPORATION

Calpine Eastern Corporation ("Calpine") hereby submits these comments regarding the Commission Staff's proposal to amend the Commission's Rule 25-22.082, Florida Administrative Code ("F.A.C."), Selection of Generating Capacity, commonly referred to as the "Bid Rule." In summary, Calpine applauds the Staff and the Commission for initiating this docket to amend the Bid Rule, commends the general direction of the Staff's proposed modifications (as reflected in the draft attached to the May 29, 2002 Notice of Proposed Rule Development and Commission Workshop, hereinafter the "Staff's May 29 Proposal"), and supports continuing these proceedings with a formal hearing. Moreover, for the reasons previously set forth in the comments filed by the Florida Partnership for Affordable Competitive Energy ("PACE") on March 15, 2002, Calpine strongly believes that the Commission has the authority to adopt rules implementing all of the Staff's and all of PACE's and Calpine's recommendations. However, as with the "strawman" proposal advanced by Staff in the undocketed workshop held on February 7, 2002, Calpine believes that the Staff's May 29 Proposal is not adequate to ensure that the best, most cost-effective power supply options are chosen to meet the needs of the captive electric customers of Florida's investor-owned utilities ("IOUs") or to promote the realization of the lowest cost power supply for Florida electric customers, which would be available through a robust, competitive wholesale power supply market.

Accordingly, Calpine supports the comments filed contemporaneously by PACE, and Calpine also suggests an anonymous electronic auction model wherein all viable bidders, including retail-serving IOUs, will bid, anonymously, to supply power at the lowest cost pursuant to a power purchase agreement ("PPA") proposed by the utility, subject to Commission review and approval. These models can reasonably and realistically be expected to produce the most cost-effective power supplies for Florida electric customers.

THE PROPOSAL TO EXPAND THE SCOPE OF THE BID RULE IS A SOUND STEP TOWARD PROTECTING FLORIDA ELECTRIC CUSTOMERS

One of the most important changes proposed by the Staff is the expansion of the Bid Rule's scope to include all capacity additions of 150 MW or more. This is a sound, positive step that will prevent abuses by Florida IOUs that have used loopholes in the Florida Electrical Power Plant Siting Act to construct costly capacity additions which impose long-term cost responsibility and risks on the IOUs' captive customers, chiefly through repowering existing units, without any a priori review by the Commission.

ADDITIONAL IMPROVEMENTS ARE NEEDED

Additional improvements in the processes by which new power supply resources are selected and contracted are needed to achieve the best, most cost-effective results for Florida electric customers. The existing Bid Rule has been used to a conclusion three times by Florida IOUs, and each process to date has yielded the same result -- the IOU selecting its own self-build option as the winner over all other proposals. During the same time that the Bid Rule has been in effect, other Florida utilities, including Seminole Electric Cooperative, the Florida Municipal Power Agency, the Kissimmee Utility Authority, and the Orlando Utilities Commission, have conducted RFP processes that have resulted in PPAs between those utilities and independent power producers ("IPPs").

While an RFP-type process can work effectively, if the rules are set properly and administered fairly, the present system does not embody such a system, and unfortunately, the Staff's May 29 Proposal to amend the Bid Rule will not work effectively, and will probably not produce efficient results. Perhaps the most significant weakness of the current system and the Staff's May 29 Proposal is that it will not require the IOUs to submit, at any point in the process, a proposal that will bind the IOUs to their bids. This means that the utility's ratepayers will not be assured of getting the benefit of the bargain that the IOU has purported to offer in order to "win" its RFP process.

GUIDING PRINCIPLES

The Commission should be guided, as closely as possible, by the following principles in amending Rule 25-22.082, F.A.C.

1. The power supply procurement processes required by the Rule should be designed to obtain the best, most cost-effective, most reliable, and least risky power supplies possible for

Florida electric customers.

2. The power supply procurement processes required by the Rule should be designed to maximize the efficiency and cost-effectiveness of Florida's power supply system.

3. The power supply procurement processes should be credible and politically acceptable.

4. The processes should be fair to all parties, including the retail-serving IOUs subject to the Rule, those utilities' customers, and all potential power suppliers who may bid in the procurement processes.

MODEL I: AN IMPROVED RFP PROCESS

Calpine agrees with and supports the comments submitted by PACE at the February 7, 2002 undocketed workshop and also PACE's comments submitted contemporaneously with Calpine's comments on June 28, 2002. Calpine agrees with PACE that a properly designed and administered RFP process can work effectively to meet the needs of Florida electric customers for reliable, least-cost power supplies. Calpine suggests that, if the Commission determines that continuing some form of the existing RFP process is the preferred alternative, the following characteristics should be incorporated into the RFP process.

1. The Commission should approve a utility's RFP, including the criteria and weights to be applied, and should afford a clear point of entry for bidders to challenge an RFP at the beginning of any RFP process.

2. Utility self-build decisions have historically ignored the lost opportunity costs to consumers related to such irreversible long-term investments. In any situation where a utility commits ratepayers to pay for the capital costs and return of investment over the life of the asset (or stranded costs should the asset be prematurely retired), that decision forecloses ratepayers from the opportunity to buy at lower power prices when market conditions change in subsequent years. Over a 30-year mortgage period for the book life of a power plant, it is very likely that such opportunities will arise. Recognizing and evaluating the option value available under flexible terms (e.g., a shorter term of commitment) of competing power supply alternatives from IPPs is critical to assuring ratepayers the lowest long-term cost. As an example, if a utility self-build plant and a PPA with an IPP yielded the same net present value of costs over a 30-year term, but the PPA included a termination option in year 10, the PPA

would be a more valuable alternative. The value of that flexibility lies in the fact that consumers would have the benefit of buying from the market to the degree the market was lower than the original contract price. Under the utility self-build scenario, however, consumers would remain on the hook until all capital costs were amortized.

3. The scope of costs and related cost assumptions must not be biased to favor either IOUs or IPPs. Specifically, cost assumptions regarding interconnection upgrades and associated costs, interconnection status, and the cost of using existing utility rate-based assets must be treated in a fair and neutral manner. With respect to existing assets, this means that the cost-effectiveness evaluation must not simply treat existing assets as zero-cost assets, but rather that the evaluation must factor in the opportunity cost to the utility's customers of potentially selling the assets to other generators.

4. The Commission should employ, or require the IOU to employ, a truly independent entity to evaluate all available power supply proposals, including the utility's self-build options and IPPs' proposals.

5. In any RFP process, the Rule should require IOUs to submit binding, sealed bids for their self-build options. The IOU would be allowed to submit a sealed bid at a price less than its published avoided cost.

6. If the IOU submits the winning bid, it must be bound by the pricing and other relevant terms and conditions that the utility represents to the Commission as the best and most cost-effective power supply alternative available to meet the needs of its customers.

MODEL II: ANONYMOUS ELECTRONIC AUCTION BASED ON A UTILITY-DEVELOPED AND COMMISSION-APPROVED PPA

Calpine suggests that an anonymous electronic auction, in which participants bid to supply power pursuant to a utility-developed and Commission-approved PPA, may be best suited to satisfy the guiding principles articulated above. As conceived by Calpine, the auction would have at least the following features.

1. The process would be initiated by a utility's submittal to the Commission of a proposed form PPA that would specify all non-price terms and conditions for the anticipated power purchase by the utility. Generally, the performance terms and conditions specified in the PPA should be identical or neutral as between a utility-

built option and an IPP's proposal. Pricing terms (at least capacity payments) would be left blank. A particular PPA could, for example, be structured so that all bidders simply bid a capacity payment stream for the duration of the PPA, or a PPA could be structured so that bidders would bid a capacity payment stream and a heat rate that would be used to determine energy payments under the PPA (and that would be used to estimate energy costs for purposes of valuing bids in the auction).

2. The filing of the proposed PPA would trigger a proceeding before the Commission. The purpose of the proceeding would be to determine the most cost-effective means of meeting the need identified in the PPA, and, if necessary, to determine the need for a new power plant (or plants) to serve the identified need. In determining the term or duration of the PPA, or in determining any termination option provisions to be included in a PPA, or both, the Commission should take into account the option value referenced above. The hearing would encompass Commission review and approval of the form of the PPA, including a clear point of entry for the Public Counsel, any potential bidder, or any other authorized intervenor to challenge any provision of the PPA that it believes to be unduly onerous, biased, anticompetitive, or otherwise contrary to the best interests of the utility's customers. The hearing would also address the qualifications of potential bidders.

3. Once a PPA was approved by the Commission, a qualified auctioneer or auction administrator would conduct the auction. The Commission could decide on the qualifications of such administrator entities. The administrator could be engaged by the Commission or by the utility whose PPA is at issue. Participants would be charged the actual costs of administering the auction.

4. The auction must be an anonymous or "blind" electronic auction, with the administrator responsible for ensuring the anonymity of all bidders. The "reserve price" would be set at the utility's stated "avoided cost" for the unit it would otherwise build absent a better offer in the auction; in practical terms, this means that the bidding in the auction would <u>start</u> at the reserve price.

5. The winner of the auction would be eligible to sign a PPA in the form approved by the Commission at the prices bid. The Commission would approve such PPA for cost recovery, and would not revisit its approval unless certain extraordinary grounds -- perjury, deceit, fraud, intentional withholding of key information, mistake of fact, or collusion -- existed to warrant doing so. (This standard is analogous to the grounds for vacating a judgment under the Florida Rules of Civil Procedure.)

6. If applicable, the Commission's order approving the PPA (or the utility's self-build option) would also grant an affirmative determination of need from the Commission for any power plant subject to the Florida Electrical Power Plant Siting Act.

7. Any auction could be canceled by the Commission, with the process reverting to a conventional need determination hearing, if the PSC determines, as a matter of fact based on competent substantial evidence, that there is likely to be insufficient competitiveness in the auction to ensure the lowest-cost result for customers.

Discussion

Generically, auctions have many favorable characteristics, and they appear to be particularly applicable to achieving favorable results -- i.e., the most cost-effective power supplies -- for Florida's electric customers. The following is a brief summary of the favorable characteristics of an auction model in this context.

1. Properly designed auctions are most likely to get the lowest prices for customers.

2. Anonymity of bidders will reduce bias in the auction process.

3. A large number of bidders, which appears likely here, will enhance the overall competitiveness of the bids, thereby resulting in the most cost-effective PPA for customers.

4. Auctions can be designed and structured to encourage maximum participation.

5. Auctions are truly objective. This characteristic solves the "beauty contest" problem, and eliminates the need for lengthy administrative hearings as to whose proposal really was or is the best, as to how the proposals should have been evaluated, as to whether "penalties" were properly applied to IPPs' proposals and "premiums" were properly assigned to the IOU's self-build proposal, and so on.

6. An auction based on a utility-developed and Commission-approved PPA eliminates litigation over evaluation criteria and weights assigned thereto that might have to be decided in a challenge either to an RFP or to the results of an RFP process.

7. An auction based on a utility-developed PPA, subject to Commission review and approval, respects the IOUs' role in

developing a contract with non-price terms and conditions that best suit their particular needs and circumstances while providing an objective process for PSC review of any provisions that may be biased, unduly onerous, anticompetitive, discouraging to entry, or otherwise contrary to the best interests of Florida electric customers.

8. An auction with the winner signing a Commission-approved PPA with the utility (a) gives the utility's ratepayers the benefit of the bargain achieved by the auction and certainty of power supply costs pursuant to the PPA, (b) gives the utility the certainty of being able to recover payments made to the seller (or itself, if it is the winner), and (c) gives the winner-seller the certainty of its payment stream(s) as set forth in the PPA pursuant to its bid.

9. An auction system eliminates the utility's need to engage in extensive evaluations and modeling of a potential multitude of proposals from IPPs. All bidders are bidding on the same PPA developed by the utility.

10. An auction system is truly fair to all participants -- each and every participant has an equal opportunity to bid a price low enough to win.

11. An auction system is politically acceptable because it will get the lowest prices for customers, and because it is fair and objective.

12. An auction system is far more efficient administratively than an RFP process, particularly an RFP process like that currently used.

COMMISSION AUTHORITY TO PROMULGATE AMENDMENTS TO THE BID RULE

The general issue of the Commission's statutory authority to amend Rule 25-22.082, F.A.C., as proposed or to adopt a new rule related to the procurement of capacity additions was extensively briefed in PACE's Post-Workshop Memorandum filed on March 15, 2002, and PACE's Post-Workshop Memorandum is adopted and incorporated by reference herein. In summary, the 1999 amendments to Chapter 120, the Administrative Procedures Act (APA), require, in addition to a grant of rulemaking authority, a specific law to be implemented. Under those new provisions, an "agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute." Section 120.52(8) and Section 120.536(1), Florida Statutes (2001).

Section 120.58(8) and Section 120.536(1), Florida Statutes, specifically require:

> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

The rule provisions proposed by PACE in its comments and by Calpine herein, as well as the amendments to Rule 25-22.082, F.A.C., reflected in the Staff's May 29 Proposal, are firmly rooted in both general and specific powers of the Commission and general and specific rulemaking authority given to the Commission. Among other statutes, Sections 366.05(1), 366.04(5), 366.06(2), and 366.07, Florida Statutes, provide specific authority for the Commission to adopt either PACE's proposal or Calpine's auction model in its Rule. Section 366.05(1), Florida Statutes, contains the requisite general grant of rulemaking authority for the Commission to adopt rules implementing and enforcing the above-referenced specific statutes. In pertinent part, Section 366.05(1) provides as follows:

> (1) In the exercise of such jurisdiction, the commission shall have power . . . to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

Sections 366.04(5), 366.06(2), and 366.07, Florida Statutes, grant the Commission the specific powers and duties relevant to Calpine's auction proposal. Section 366.04(5), Florida Statutes, provides:

> The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational

and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Section 366.06(2), Florida Statutes, provides:

> Whenever the commission finds, upon request made or upon its own motion, that the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; that such rates yield excessive compensation for services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

Section 366.07, Florida Statutes, provides:

> Rates; adjustment.--Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

These sections specifically and unequivocally empower the Commission to govern and to fix practices of investor-owned electric utilities that are related to or affect rates. With Section 366.05(1), Florida Statutes, these provisions grant to the Commission exactly the combination of general and specific

authority that the amended APA requires to support rulemaking to adopt Calpine's proposal contained herein (as well as PACE's proposal and the proposed amendments published by the Commission).[1] The use of the word "practices" in these cited statutes should be interpreted by the Commission to include the practices related to capacity additions, because the process by which such additions are selected is directly tied to the level of rates to be paid by the captive retail customers of the IOUs. If the most cost-effective capacity addition is not pursued, the rates will be unnecessarily high.

Pursuant to Section 366.07, Florida Statutes, the Commission has the specific authority to fix and determine the practices and contracts of IOUs relating to rates. The Commission likewise has the general authority, pursuant to 366.05(1), Florida Statutes, to adopt rules implementing this specific authority. It cannot reasonably be disputed that an IOU's procurement of significant additional capacity falls within the term "practice." It also cannot reasonably be disputed that if the utility's procurement practices do not ensure that the very best deal for the utility's customers, its rates will be adversely affected and unnecessarily high. If the Commission, after hearing, determines that the best procurement practice and procedure to be followed by all IOUs in Florida is that proposed by Calpine or that proposed by PACE, then the Commission clearly has the requisite authority to impose such requirements by rule.

Additionally, the Commission has the necessary statutory authority to establish prerequisites to a utility placing a capacity addition in rate base or before a utility enters into PPAs. The Commission also has the needed specific statutory authority to promulgate rules requiring satisfaction of those prerequisites. Section 366.07, Florida Statutes, gives the Commission the authority to fix and determine a utility's practices and contracts affecting rates. Requiring advance approval of major investments in capacity, either through building facilities or through entering into long-term PPAs, is obviously a practice that

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[1] Existing case law concerning rulemaking under the amended APA clearly supports Calpine's position. See Southwest Florida Water Management District v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. 1st DCA 2000); Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So. 2d 696 (Fla. 1st DCA 2001); Osheyack v. Garcia, 2001 Fla. LEXIS 1573 (Fla. 2001); and Florida Board of Medicine v. Florida Academy of Cosmetic Surgery, 808 So. 2d 243 (Fla. 1st DCA 2002). For further discussion of these cases, please see PACE's Post-Workshop Memorandum, which is incorporated herein by reference.

affects rates. Further, Section 366.04(5), Florida Statutes, gives the Commission "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida," both for the assurance of adequate and reliable sources of energy and for the avoidance of further uneconomic duplication of generation. Such specific authority to ensure that an inefficient, non-cost-effective power plant is not built must, of necessity, extend to authority to establish the practices and procedures to avoid such a scenario.

Further, public policy, combined with the Commission's broad mandate to regulate public utilities in the public interest as an exercise of the police power, Section 366.01, Florida Statutes, strongly supports the Commission's authority to impose these types of prerequisites. The Commission is charged to protect the public interest, not merely to ensure that the rate impacts of electric utility's decisions are consistent with the public interest. The public interest mandates that new, major capacity additions are the most cost-effective and best for the state of Florida as a whole. Therefore, pursuant to Sections 366.04(5) and 366.07, Florida Statutes, the Commission has the necessary authority to ensure that the right resource decisions are made.

It can and must be concluded that the Commission has the authority, both general and specific, to promulgate rules related to capacity additions and that includes adoption of an auction proposal.

ANTITRUST DISCLAIMER

The Commission should include a statement, either within the body of the Rule or in the order adopting the Rule, to the effect that the Commission does not regard this Rule as establishing a program of continuing supervision of the behavior of any parties, including the IOUs subject to the Rule, as regards their participation in any auction pursuant to this Rule, and accordingly, the Commission does not intend that its actions under this Rule should be construed as conferring state action antitrust immunity on any participant in any auction hereunder with respect to such participant's activities in the auction.

CONCLUSION

Calpine appreciates the opportunity to present these summary comments at this time, and Calpine looks forward to participating in the rule development workshop and further proceedings in this docket. Calpine will also furnish specific analyses and recommendations on the subjects with regard to which the Staff are

seeking the Commission's direction, including the Commission's options regarding RFP outcomes and cost recovery, as well as other comments, in due course.

Respectfully submitted this 28th day of June, 2002.

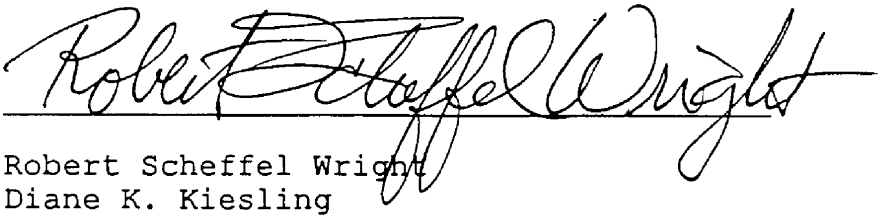

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Exhibit 4

Calpine Eastern Corporation

New Jersey Board of Public Utilities

NEWS

Release # 36-02

Contact: Tracy Munford
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NJBPU DECIDES BGS AUCTION FORMAT STARTING AUGUST 1, 2003

Newark, New Jersey, November 5, 2002 — The New Jersey Board of Public Utilities (NJBPU) today announced the auction format for the procurement of Basic Generation Service (BGS) for the period after the rate caps come off on August 1, 2003. The format is a simultaneous descending clock auction. This is the second BGS auction since the market started its transition from a regulated to a deregulated supply market under the Electric Discount and Energy Competition Act in 1999. Two auctions will occur simultaneously, one for large industrial and large commercial customers, and the other for residential, commercial, and small industrial customers.

In addition, the Board announced two green retail programs, a residential retail pilot program for green energy in JCP&L's service territory, as well as statewide incentives to begin June 1, 2004 to attract green energy third party suppliers (TPS) to the state's energy marketplace.

"Today's action is intended to help transition the State's electric industry from a regulated monopoly to a competitive power marketplace, as mandated by the Legislature in 1999," said Jeanne M. Fox, President of the NJBPU. "The process will help diversify the BGS supply by seeking multiple competitive wholesale suppliers to bid "tranches", or slices, of the BGS load through the auction process, to be held this February."

Basic generation service is electric generation service that is provided by an electric utility to any customer who has not chosen an alternative power supplier, whether or not the customer has received offers as to competitive supply options. Basic generation service is known in other states as the provider of last resort (POLR) or default service.

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According to the NJBPU, the new BGS process should:

1. Remove switching restrictions on non-residential customers;
2. Advance retail competition;
3. Promote the use of green power;
4. Facilitate the auction process, and;
5. Build on the successes of, and lessons learned from, the previous BGS auction.

"The Board's decisions will begin a process to enhance electric competition and increase green energy in the State of New Jersey, both of which will benefit consumers in the long run by providing energy choice and cleaner air," stated Commissioner Frederick F. Butler.

The two energy auctions and the green retail programs are outlined below:

Fixed Price/All Customers Except Large Industrial
Residential, commercial and small industrial customers can switch between BGS Fixed Price (FP) and third-party suppliers without restriction. All customers are subject to a 20-day notification period to the utility and are also subject to the contract with their TPS. The BGS load for the auction will be broken up into two time frames: a ten month period for two-thirds of the load, and a 34 month period for the remaining third. The Board decided to synchronize the schedule with the PJM capacity period, which begins on June 1. It is expected that this portfolio approach will minimize ratepayers' risk exposure by providing a hedge against any extreme changes in the energy marketplace.

Large Industrial Customers – Hourly Pricing
Large commercial and industrial customers can switch between BGS – Industrial Energy Pricing (IEP) and third-party suppliers (TPS), in the same manner as the BGS –FP class. The time frame for the IEP load is ten months.

Commissioner Carol J. Murphy stated: "It is my fervent hope that this auction as proposed will attract many new suppliers and this competition provides an opportunity for less-expensive energy for ratepayers."

"This auction format has several advantages including minimizing BGS prices, and keeping the process simple for bidders. Most importantly, the process is fair and should result in the lowest possible prices for electricity after August 1, 2003," said President Fox.

JCP&L Green Retail Pilot and Green Energy Programs
As part of the BGS auction, JCP&L will request sealed bids approximately three weeks prior to the auction to provide for 200 MW of green energy, which is clean renewable energy such as solar and wind power. All bidders must provide approximately 10 percent of their electric supply from green sources, which is three times the existing Renewable Portfolio Standards. Under the BGS proposed format, JCP&L will provide green power to approximately 200,000 residential customers in New Jersey for a period of 10 months.

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Commissioner Jack Alter at yesterday's Board meeting noted, "New Jersey is the most densely populated state of the union. Our air quality in New Jersey is not where we would like to see it. We should be doing all we can as regulators to see that air quality in New Jersey is the best that it can possibly be."

The Board also adopted a statewide green proposal, which provides an incentive of .5 cents per KWH to each retail green provider for power delivered starting June 1, 2004, to a maximum of 200,000 residential customers, on a first-come, first-serve basis.

President Fox said, "Our ultimate goal is to procure, produce and supply increased amounts of green power in the years ahead. These program have the potential to provide meaningful benefits to consumers, green retail suppliers and the State." President Fox also said, "New Jersey is still designated as an ozone non-attainment area, which has serious health risks to residents. The State has set standards to address this issue which is why this proposal is so important as we move toward a cleaner environment."

The electric distribution companies (EDC's) and the auction manager will provide final comments to the Board on the results of the auction and how the auction was conducted. Board staff and its consultant, Charles River Associates, will oversee the entire process.

The New Jersey Board of Public Utilities is a state agency and regulatory authority mandated to ensure safe, adequate, and proper utility services at reasonable rates for New Jersey customers. Critical services regulated by the BPU include natural gas, electricity, water, wastewater, telecommunications and cable television. The Board has general oversight responsibility for monitoring utility service, responding to consumer complaints, and investigating utility accidents. To find out more about the Board of Public Utilities, visit our web site at www.bpu.state.nj.us.

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Exhibit 5

Calpine Eastern Corporation

STAFF REPORT ON TRACK B:

COMPETITIVE SOLICITATION

DOCKET NOS E-00000A-02-0051 ET AL.

OCTOBER 25, 2002

STAFF REPORT

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STAFF REPORT

1. Introduction

Staff's goal is to have a transparent process that results in cost savings for ratepayers. The major benefit of a utility obtaining power through competitive solicitation is cost savings for ratepayers. Competition can help to obtain the best deal for ratepayers. However, a solicitation process needs to be designed in such a way as to ensure that benefits occur instead of pitfalls. In order to facilitate a manageable transition to a competitive wholesale power market that provides economic benefits to consumers in Arizona, the Staff believes that a transparent process, one that is equitable and auditable, needs to be established. That process must be well developed, flexible, and understood by all participants in the process. Furthermore, the process must result in reliable power being available over the long term at prices that are reasonable. Finally, all bidders prepared to provide power must be afforded the opportunity to compete for sales on equal and unbiased terms. The following pages describe a set of steps and requirements that, if adopted, will establish a process that encourages development of a wholesale market that benefits consumers.

The process described herein is intended to be used by Arizona utilities, as applicable, in the initial solicitation for competitive power to be commenced by March 2003. Subsequent solicitations may be conducted using this process. More likely, changes to the process will be recommended based on lessons learned from the initial solicitation and changes in wholesale market conditions as well as consideration of non-price factors.

2. Overview of Track B Proceeding

A. Background

On October 18, 2001, Arizona Public Service Company ("APS") filed a request for a variance to A.A.C. R-14-2-1606(B) and Approval of a Purchase Power Agreement (Docket No.

E-01345A-01-0822). On January 22, 2002, by Procedural Order, a generic docket (Docket No. E-00000A-02-0051) was opened to examine various electric restructuring issues. The Commissioners, through a series of letters requested that the parties file responses to questions regarding certain aspects of electric competition in the generic electric restructuring docket. On January 28, 2002, Tucson Electric Power Company ("TEP") filed a request for a variance to A.A.C. R-14-2-1606(B). On April 25, 2002, the Arizona Corporation Commission ("Commission") held a Special Open Meeting, at which the Commission stayed APS' Request for a Variance, and directed that certain issues be addressed in the generic electric restructuring docket. The Commission divided the issues to be addressed into two tracks, A and B. The Track A issues identified are the transfer of assets and associated market power issues, code of conduct issues, the Affiliated Interest rules, and jurisdictional issues. The Track B issue identified is the development of a competitive solicitation process.

On September 10, 2002, in Decision No. 65154 the Commission issued its decision in the Track A proceeding. In the Track A decision, the Commission stayed A.A.C. R-14-2-1606(B) which required that 100 percent of power purchased for Standard Offer Service shall be acquired from the competitive market, with at least 50 percent through competitive bid. However, the decision directed APS and TEP to acquire, at a minimum, any required power that cannot be produced from its own existing assets, through the competitive procurement process as developed in the Track B proceeding. The Decision further ordered that the amount of power, timing, and the form of procurement be determined in the Track B proceeding with the target date for a competitive solicitation process taking place by March 1, 2002.

B. Participants

The parties that have participated in one or all of the Track B workshops are: APS, TEP, Pinnacle West Capital Corporation, Panda Gila River, L.P., Reliant Resources, Inc., PG&E National Energy Group, Harquahala Generating Company, Sempra Energy Resources, Wellton Mohawk Generating Facility, Duke Energy North America, LLC, Calpine Corporation, Southwestern Power Group II, PPL Southwest Generation Holdings, LLC, PPL EnergyPlus, LLC, PPL Sundance Energy LLC, El Paso Electric, Desert Energy, Public Service Company of New

Mexico, Citizens Utilities Company, Salt River Project, the Grand Canyon State Electric Cooperative, Association, Inc., the Arizona Independent Scheduling Administrator Association, the Arizona Competitive Power Alliance, the Arizona Utilities Investors Association, Arizonans for Electric Choice in Competition, Arizona Transmission Dependent Utility Group, Arizona Clean Energy Industries Alliance, the Land and Water Fund of the Rockies, the Residential Utilities Consumer Office, NERA Economic Consulting, R.W. Beck, Inc., Industrial Power Technology, the City of Scottsdale, the City of Tucson, and Staff.

C. Collaborative Process

The workshops were conducted on July 24 and 25, 2002, August 13 and 14, 2002, and September 26 and 27, 2002. Prior to each workshop, an agenda was sent electronically to the distribution list and posted to the Utilities Division website. Staff developed a draft working paper regarding the competitive solicitation process and parties were able to provide substantive comment and make suggestions to Staff on the draft-solicitation process. A variety of issues relating to competitive bidding were raised, and through the collaborative process, the parties reached agreements in principal on several areas which are listed on page 34 of this report.

3. The Solicitation Process

A. Specific Process Goals

As more fully detailed in the following sections of this chapter, the Staff's goal in proposing this process is to facilitate a manageable transition to a competitive wholesale power market that provides economic benefits to consumers in Arizona. The proposed process has been designed to be open to all bidders, flexible, understandable by all participants in the process, and to result in reliable power being available over the long term at prices that are reasonable.

The process was developed with the view that prevailing wholesale market conditions are dynamic and that the potentially favorable conditions for buyers today are subject to potentially

significant changes over time. Accordingly, the Staff has developed a process that aligns the utilities' responsibilities for providing reliable service at reasonable rates with the authority to manage their power supply portfolios in a prudent manner. The process also preserves all of the Commission's ability to regulate the actions of its jurisdictional companies in a way that best serves the public interest.

The process described below is intended to be used by Arizona utilities, as applicable, in the initial solicitation for competitive power to be commenced by March 2003. If adopted, the Track A requirement of beginning a competitive solicitation by March 2003 will be met. Subsequent solicitations may be conducted using this process. More likely, changes to the process will be recommended based on lessons learned from the initial solicitation and to reflect changes in wholesale market conditions as well as to take into consideration non-price factors that have not been incorporated into the process at this time.

B. Assumptions Supporting the Proposed Process

Basic assumptions were developed by the Staff in preparing this proposed Solicitation Process, including the assumption that the process itself had to be flexible enough to allow purchasing utilities and selling merchants the latitude to structure the terms and conditions under which service would be provided in a manner that made economic, operational and regulatory sense, and provided benefits to all affected parties. Accordingly, the Staff has assumed that this process, if adopted, will be subject to changes based on the lessons learned during the initial solicitation conducted by the utilities during 2003. To the extent that a utility has load requirements, capacity or energy, not served by generating capacity owned by the utility or through existing contracts for capacity or energy or from sources from which the utility must purchase power as a result of law or regulation, that unmet need will be acquired through a competitive solicitation. Short-term power and daily, weekly or monthly power acquired to meet unplanned needs, would however continue to be purchased in the normal course of business as it is today.

The Staff assumed that all current regulatory standards would be maintained and that post solicitation reviews of the manner in which the solicitations were conducted and the appropriateness of the power supplies purchased would be reviewed by the Commission at hearings to be scheduled by the Commission at such time as it deems proper.

In conducting the initial solicitation, the Staff assumed that an independent party would monitor the process to provide assurances to all parties that the process was implemented as proposed and that no bidder was afforded an undue advantage or disadvantage.

Finally, the Staff assumed that no RTO or ISO would be operational prior to July 2003 and that each utility would make available to all bidders transmission access on its system in an unbiased fashion and that each utility would cooperate with all bidders in planning and scheduling deliveries of power.

C. Alternative Approaches Considered

In developing the proposed solicitation process detailed in the following section of this report, the Staff examined numerous alternative approaches to structuring the process. Among those were proposals relating to the amount of power to be procured, restrictions on the ability of the utility or any of its affiliated companies to participate in any solicitation, the type of procurement mechanisms (e.g. auctions, RFP's, bilateral contract negotiations) to be employed and the various roles and responsibilities to be assumed by the utility, the bidders, the Staff, the Commission and other persons participating in the solicitation process. Additionally, the Staff reviewed a myriad of potential terms and conditions that could be incorporated in any solicitation.

Many of those alternatives and potential terms and conditions were presented to the participants in the Track B workshops for their comments and input. The testing of the alternative approaches considered by the Staff and the terms and conditions reviewed has resulted in a significant narrowing of the issues that initially existed between the parties to Track B and has in the opinion of the Staff significantly contributed to the quality of the proposed process. In the following section of this Report the Staff presents the detailed proposed Solicitation Process it believes will best serve to meet the goals it set out above.

D. Detailed Staff Proposed Solicitation Process

I. Scope Of 2003 Solicitation

For 2003, the solicitation will be for all load and energy requirements not served by generation owned by the utility and included in the utility's rate base as of September 1, 2002, except to the extent that such generation is providing RMR service during RMR hours or by power supplied pursuant to FERC or Commission approved contracts with affiliated and non-affiliated suppliers entered into prior to September 1, 2002. To the extent that affiliated suppliers provide service pursuant to contracts dated on or after September 1, 2002, such service will be subject to competitive solicitation except to the extent that such contract is to provide RMR service during RMR hours. To the extent that load is served pursuant to capacity or energy contracts with Qualifying Facilities or Environmental Portfolio Standard requirements, that load will also not be contestable. Any generation capacity owned by a utility that has not been included in the utility's rate base may be bid by the utility in the initial solicitation on the same terms and conditions as all other bidders, including affiliated bidders. All demand-side management commitments in place as of September 1, 2002, shall be considered in determining contestable load.

For solicitations during 2003, each utility may contract for energy and capacity deliveries for differing time periods in order to test the efficiency of this process for acquiring short-term, medium-term and long-term contracts. While it is anticipated that during 2003 each utility will primarily require peaking capacity and energy with contract terms of one to three years, if, in the judgment of the utility, market conditions or economic opportunities dictate contract terms longer than three years, it will be the responsibility of the utility to enter into such contracts as are reasonable. For resource planning purposes each utility must demonstrate that its power supply portfolio contract durations are adequately diversified and that its portfolio's structure mitigates both cost and reliability risks appropriately.

Based on information available at this time, contestable loads for each utility for each year through 2006 are estimated to be:

CAPACITY (MW)

	2003	2004	2005	2006
APS[1]	1951	2289	2628	2898
TEP[2]	242	309	441	488

ENERGY (MWH)

	2003	2004	2005	2006
APS[3]	6,566,910	7,704,591	8,845,638	9,754,436
TEP[4]	345,300	345,460	388,460	389,460

The above capacity numbers for APS were provided by APS at the August workshop and were used by Staff to derive the energy numbers. Staff was subsequently informed by APS that the numbers provided at the August workshop required revision. In response to a data request from Staff, APS provided revised capacity and energy numbers on October 23, 2002. Staff has not had time to review and analyze these numbers for inclusion in the Staff report by the October 25, 2002 publication date. APS' response to Staff's data request is included in this report as Appendix Two.

II. Roles & Responsibilities

A. Utility

[1] Source: From data provided by APS at the August Workshop.
[2] Source: From data provided by TEP at the August Workshop, plus 95 MW of combustion turbines that are not presently in rate base.
[3] Assumes 38.6% average annual load factor for all contestable capacity.
[4] From August data provided by TEP plus 95 MW combustion turbines at 40% average annual load factor.

Absent evidence of abuse, the utility will be responsible for preparing the solicitation and conducting the solicitation process. Acquisition of energy and capacity to meet the needs of customers remains the responsibility of the utility, and the utility shall use accepted business standards for acquiring these resources, as it does when it buys all other products used in providing service.

B. Bidders

In order for the Solicitation to attract wide participation, the process must be accepted as fair, open and transparent. To achieve this, prospective bidders, and interested persons who agree to keep certain information confidential, will have the opportunity to review supporting data and draft documents in advance of the solicitation being distributed to bidders. All bidders and other interested persons may provide comments to the utility, the Independent Monitor or the Staff regarding the completeness or quality of the information provided. Bidders and interested parties may also provide comments to the utility, the Independent Monitor or the Staff regarding the process being employed or the decisions made regarding execution of the solicitation process.

All bidders will be required to consent to use appropriate alternative dispute resolution practices, specified by the utility and fully disclosed in the Solicitation materials if a dispute arises.

Each bidder must agree to permit the Commission Staff to inspect any generating facility the bidder owns or controls from which it proposes to provide capacity or energy to any Arizona utility pursuant to any contract awarded as a result of this solicitation.

1. Access to data

Bidders will have the opportunity to review non-restricted information used by the utility in preparation for the solicitation, as well as draft solicitation materials, before the solicitation is released. Bidders may provide comments to the Staff and the Independent Monitor regarding the materials at any time before the bidders' conference.

2. Opportunities to contribute & review

One or more bidders' conferences will be held so that all interested parties will have the opportunity to ask questions directly of the utility as well as to identify any deficiencies in the solicitation documents or supporting data. The bidders' conference will be held at least 10 days before the release of the solicitation.

Each utility shall schedule at least one bidders' conference prior to the distribution of its solicitation materials in final form to answer questions and to receive comments and suggestions regarding the materials to be distributed from interested persons. The first bidders' conference must occur no later than February 15, 2003.

Bidders will be invited to review non-proprietary materials produced by the utility and to address comments or inquiries to the utility, Staff or the Independent Monitor regarding those materials at any time between the release of reports, plans or drafts and the conclusion of the bidders' conference.

C. Independent Monitor

1. Overview

To assist the Staff and to assure all parties to the Solicitation for power supplies that the process employed is conducted in a transparent, effective, efficient and equitable manner, an Independent Monitor will be appointed by the Staff of the Commission to oversee the conduct of the Solicitation. The Independent Monitor will be selected by the Staff and will work at the Staff's direction. Any person expecting to participate in the solicitation process may suggest to the Staff any individual to serve as the Independent Monitor. The utility will retain the Independent Monitor selected by the Staff and will be responsible for all related costs. The Independent Monitor shall submit all invoices to the Staff for review. The Staff shall forward the invoices to the utility with a recommendation as to payment.

The Independent Monitor will be responsible for:

- monitoring all communications regarding the solicitation by and among the utility and any bidders or potential bidders;
- evaluating the adequacy, accuracy and completeness of all solicitation materials, and the quality of the evaluations conducted;
- monitoring any negotiations conducted by the utility and any bidder;
- assisting the Staff in developing the "prices to beat" and such other tasks as required;
- advising the Staff and the utility of any issue affecting the integrity of the solicitation process and providing the utility an opportunity to remedy the defect identified;
- periodically submitting status reports to the Commission and the Staff on the solicitation being conducted, noting any deficiencies identified in the preparation of solicitation materials, maintenance of records, communications with bidders, or in evaluating or selecting bids;
- advising the Commission and the Staff of significant unresolved issues as they arise;
- after bids have been selected, preparing and submitting a report to the Commission detailing the Independent Monitor's observations and findings relating to the conduct of the solicitation and any recommendations for improvements of the solicitation process employed in the initial solicitation; and
- making all written status reports and the final reports to the Commission available to any person having an interest in the solicitation.

The Independent Monitor shall have full access to all materials used in or relating to the Solicitation. The utility shall make its personnel available for consultation with the Independent Monitor as requested. The Independent Monitor shall attend, in person or telephonically, any negotiations conducted with bidders.

Following the bidders conferences and before the distribution of the solicitation materials, the Independent Monitor shall submit a status report to the Commission and the Staff noting any unresolved issues that could impair the equity or appropriateness of the solicitation process.

2. Post Selection Requirements

Subsequent to the final bid selections and prior to announcing the selection of winning bids, the utility shall meet with the Staff and the Independent Monitor to review its bid evaluations and to explain the basis for its selections. Within 3 days of the selection of winning bids, the Independent Monitor will file with the Commission a status report identifying the winning bids and outlining any deficiencies noted in the solicitation process.

The Independent Monitor will also file with the Commission a report on the fairness and effectiveness of the solicitation within 14 days of the selection of winning bids. In that report, the Independent Monitor will describe the process employed and will evaluate the utilities' conformity with the process requirements. If the Independent Monitor finds that the utility unfairly or erroneously conducted the solicitation, the report should so state. If the Independent Monitor believes that the selection process was flawed, the report submitted should detail the Independent Monitor's basis for such belief.

D. Staff

Throughout the solicitation process, the Staff and Independent Monitor will review data, review draft solicitation materials, and monitor the solicitation process. The Staff will observe the solicitation process, but will not approve any action or certify any aspect of the solicitation activities. If any disagreement concerning the solicitation occurs, the Staff or the Independent Monitor will promptly notify the utility of its concern and discuss the matter with the utility.

The Staff, in conjunction with the Independent Monitor, will be responsible for reviewing the resource plans, the price and cost forecasts, and the network transmission assessment to encourage the utility to develop comprehensive supporting data, and advise the Commission should the utility fail to address the information needs of the solicitation process. Also, the Staff

and the Independent Monitor will review forecast data provided by interested parties and compare it to the forecasts provided by the utility when assessing the system needs.

E. Commission

The Commission may upon request of the Independent Monitor or at such time or times as it deems appropriate, suspend or terminate the Solicitation in order to remedy any defect in the solicitation process identified by the Independent Monitor. The Commission may order the utility conducting the Solicitation to make changes to the solicitation process it deems necessary to promote effectiveness, reasonableness, and fairness.

In the event that the Independent Monitor finds that the utility failed to conduct the solicitation in an equitable manner, the Commission, after notice and hearing, may, among other things, disallow the recovery of costs of power incurred pursuant to contracts entered as a result of this Solicitation as well as the costs of conducting the solicitation or bar any bidder inequitably awarded a contract as a result of the solicitation from bidding in any subsequent solicitation. If the Commission finds that the utility failed to conduct an appropriate solicitation, it may order that a new solicitation, conducted by an independent party, be commenced forthwith.

III. Pre-Solicitation

A. Overview of process

In order to be ready to conduct a solicitation by March 1, 2003, as required by the Track A order, the utility must assemble information supporting the determination of products to be solicited and the amount of each product that is needed. The utility must be prepared to evaluate, without delay, all offers presented, including offers to deliver power to points that may differ from the utility's requested points of interconnection. The required data typically collected in the ordinary course of business will serve as the basis for all information to be provided to the Staff, Independent Monitor and bidders, though some will need to be modified to be suitable for the

solicitation. To facilitate a timely solicitation, the utility should begin assembling the necessary information without delay.

B. Data Collection

Prior to preparation of solicitation materials, supporting data shall be assembled by the utility and provided to the Staff and the Independent Monitor for their review at the earliest date practicable. These data shall include resource plans, load, price, and cost forecasts, and a network transmission assessment containing such information and in formats acceptable to the Staff, designed to facilitate the solicitation process. Once the Staff and the Independent Monitor have completed their review, the following data shall be made available to bidders expressing intent to bid and who have signed a confidentiality agreement: load forecasts, resource plans, needs assessments, and transmission assessments, as appropriate. Price and cost forecasts for power supplies and fuel costs prepared by, or available to the utility, will not be made available to bidders. Bidders may provide comments to the Staff or Independent Monitor on the quality or completeness of any information provided at any time.

In preparation for the solicitation, each utility shall prepare a list of potential bidders to whom bid materials will be sent. That list should be as expansive as is reasonable. Once assembled, that list is to be provided to the Staff and the Independent Monitor and posted on the solicitation website. Identified potential bidders are to be contacted and invited to submit a letter of intent to bid. Prospective bidders not identified by the utility will be added to the bidders list by submitting a letter of intent to bid.

C. Resource Plans

Prior to the first solicitation, each utility that will solicit power during 2003 must provide to the Staff and the Independent Monitor its current 10-year load and energy forecast and resource plan. Utility personnel must be made available to discuss the load forecast and resource plans with the Staff and the Independent Monitor.

The Resource Plan must describe all power sources currently employed to meet load including: generation owned by the utility, existing power supply contracts with affiliated and non-affiliated utilities, planned additions and retirements, contract expirations, loads to be met through the use of demand side management and contracts to satisfy the Environmental Portfolio Standard. The Resource Plan should identify RMR plants, the hours during which such plants are RMR, and the criteria employed to determine RMR. Additionally, the Resource Plan should detail the utility's planned outage schedule and any planned unavailability of power from contract suppliers. Planned reserve requirements shall also be specifically identified.

The utility will review with the Staff and the Independent Monitor the adequacy of resources committed to serve expected loads and the reliability of the resources planned to serve that load.

Based on the utility's load and energy forecast and the resource plan, the utility will develop a needs assessment. The needs assessment will be designed to identify specific capacity and energy needs and such other services and/or facilities as may be needed over the term of the load forecast.

The load forecast, resource plan and needs assessment will be reviewed with the Staff and the Independent Monitor.

D. Price & Cost Forecasts

Each utility will provide to the Staff and the Independent Monitor its four-year forecast of its power supply costs from its existing power sources.

Each utility shall provide to the Staff and the Independent Monitor the forecast of fuel prices that the utility used in preparation of its power supply costs and all other fuel forecasts relied on, or reviewed by, the utility.

Additionally, each utility shall provide to the Staff and the Independent Monitor a four-year forecast of the prices of wholesale power products, including both capacity and energy products by season and time period, in Western wholesale markets for delivery in Arizona prepared by an independent source that makes such estimates available in the normal course of its

business. Each utility shall also provide to the Staff and the Independent Monitor copies of all other forecasts of the prices of wholesale power supplies in Western wholesale markets for delivery in Arizona in the possession of or reviewed by the utility. The utility shall identify the source of each such forecast, and explain the strengths and weaknesses of each of the forecasts supplied.

Potential bidders may also submit wholesale price forecasts to the Staff. Those forecasts must clearly identify the source of the forecast and all assumptions relied on in preparing the forecast.

All forecasts provided will remain confidential and will serve as the basis for certain evaluative and review purposes as are discussed later in this document. During the reviews described above, the Staff and the Independent Monitor will examine the assumptions relied on in making the forecasts and assessments presented.

E. Deliverability Qualifications

The utility must provide Staff and the Independent Monitor with a listing of each committed use of its transmission capacity for the period over which resources are to be solicited.

The utility will perform and submit for review by the Staff and the Independent Monitor a network transmission assessment of the maximum resource capacity that can be physically and reliably accommodated simultaneously at all technologically feasible interconnection and delivery points. Such transmission limitations are to be used as a guide in the evaluation of deliverability of specific combinations of bid resource capacity and energy.

Upon completion of this review, the utility will be responsible for preparing and conducting a solicitation that encourages multiple bidders to respond to the solicitation. The specifics of products to be solicited, contract terms and conditions, terms of the confidentiality agreement, and the specific solicitation mechanics to be employed will be at the discretion of the utility. In any event, the process must be designed to promote acquisition of reliable power at reasonable costs over the long term.

F. Identification of Products

Each utility shall determine the specific products it will contract for in order to maintain an appropriately structured power supply portfolio. For 2003, utilities may request bids for firm power (e.g. on-peak and off-peak, annual or seasonal, capacity and energy blocks), and unit contingent supplies, as appropriate. Additionally, to the extent required, solicitations for ancillary services including, but not limited to, load following or spinning reserves, may be undertaken. It is, anticipated that bidders will provide all ancillary services required to support their bids. If the utility provides ancillary services to any generating asset not in its rate base, the utility shall make those ancillary services available to all bidders on the same terms and at the same price as available to those assets.

In identifying the products to be contracted for, the utility will specifically define the capacity and energy sought on a time-differentiated basis and the periods for which services will be purchased. The solicitation materials will contain the terms and conditions proposed by the utility, including the right of the utility to reject all bids and to amend the request for service without notice. The solicitation materials shall include a model contract.

IV. Preparation Of Initial Solicitation

A. Overview

The materials to be provided to potential bidders shall be prepared by the utility and shall be developed in a manner that facilitates the preparation of responsive and competitive bids. The materials must be accurate and sufficiently detailed so that no bidder is afforded an undue advantage. The terms and conditions must be reasonable and commercially acceptable and must be reviewed by the Independent Monitor and the Staff.

B. Solicitation Material Content

The utility will have responsibility for preparing all solicitation materials. The materials will be prepared in a timely manner so that the Staff and the Independent Monitor will have time to review the documents and suggest changes, before they are provided to interested parties for comment.

The utility will prepare bid packages that contain a description of the specific products to be acquired, the capacity and energy to be acquired, the bidding method to be employed (e.g. Request for Proposal or Descending Clock Auction), a copy of the contract to be executed, the preferred delivery points, the evaluation criteria to be used, bid fees (if any), credit requirements, due dates and such other information as may be appropriate.

It will be the responsibility of the utility to prepare draft solicitation materials and to discuss these drafts with the Staff and the Independent Monitor prior to distributing them in draft form to potential bidders. These drafts will include but will not be limited to: the specific power supply products sought, points of delivery, a model contract and confidentiality agreement, the bid requirements, pre-qualification requirements, creditworthiness requirements, the solicitation method to be employed, information describing the utility and its forecast load, and the evaluation criteria to be used.

In the Solicitation materials the utility will describe in detail how it will conduct bidding, such as how many rounds of bids will be accepted, Descending Clock Auction procedures, etc. The utility may specify that bids must be firm and for how long bids must be open after the auction is completed. If a Request for Proposal is used, a utility may specify that bids must be valid for up to 30 days.

Price caps or auction reserve prices may be established by the utility. Any caps or auction reserve prices established must be disclosed to and discussed with the Staff and the Independent Monitor before the solicitation occurs. No limitations are to be placed on the maximum or minimum capacity or energy that any bidder may bid for or provide.

The solicitation materials will also describe the criteria to be used to select winning bids and the weighting, if any, to be placed on each criterion.

The following criteria may be used to evaluate bids:

- Delivered price
- Deliverability
- Reliability
- Creditworthiness
- The source(s) of power for unit contingent products
- System benefits
- Exceptions to bid specifications and/or model contract terms and conditions
- Other criteria as appropriate and made publicly available

The bid package prepared by the utility should specify preferred delivery points and, if available, equivalent delivery points and any incremental costs the utility will incur if bidders deliver to those equivalent delivery points. The utility shall disclose to the bidders the existence of the network transmission assessment previously provided to the Staff and the Independent Monitor, and disclose that the assessment will be used in evaluating equivalent delivery points. The solicitation materials will specify the process the utility will use to identify whether any constraints would be created on its system as a result of deliveries to any alternative delivery point, how it will estimate the cost and time required to relieve the constraint, and the costs a bidder will incur to mitigate the constraint.

The bid materials will also describe the Supplier information to be provided and the dates when such information is due. This requirement may include a demonstration of the bidder's experience in providing services and evidence of the bidder's creditworthiness. Utilities shall require bidders to provide a description of the sources of electricity they intend to use to supply service.

The bid materials will specifically describe the credit support acceptable to the utility both as to form and amount. However, bidders may provide alternative credit support arrangements

and, if equivalent to that specified, the utility must evaluate the proposal as it would a conforming bid. Equivalent credit support arrangements may include, but will not be limited to, appropriate parental or affiliate guarantees.

Bid materials will also include:

- A draft Confidentiality Agreement
- Identification of any pre-qualification requirements
- Identification of any bid fees

C. Communications

Only those employees, officers, directors or contractors of the utility or its affiliates specifically assigned by January 1, 2003, to prepare the solicitation materials or to evaluate bids received, may participate in the preparation of solicitation materials or evaluation of bids. All persons assigned to the solicitation by the utility shall be subject to a standard of conduct established for the purpose of maintaining a separation between the utility and any affiliated entity or person. Persons who work for an affiliate, parent, or part of the utility involved in the sale or marketing of resources from generating assets owned by the utility shall not participate in the solicitation preparation or evaluation of bids, or have any contact regarding the solicitation with any personnel assigned to conduct the solicitation, except on the same terms as any other bidder.

A protocol shall be established for all communications between the utility and all prospective bidders, regardless of whether they are affiliates or third party bidders. The protocol must prohibit the dissemination of any data to an affiliated person that are not provided to all other interested persons on equal terms and at the same time. The utility will identify to the Staff and the Independent Monitor, the information it proposes to restrict access to by bidders and other interested persons.

The Staff and the Independent Monitor will review all draft solicitation materials before they are released to the parties for their review.

Concurrently, the utility will establish the procedures it will employ to communicate with all potential bidders. That communications plan must be designed to maintain confidentiality and to provide equal access to information to all. All bidders, including utility affiliates, must be required to communicate with the utility on equal terms. The approach adopted must be shown to provide no undue advantage to any potential bidder.

By January 1, 2003, each utility shall establish and maintain a solicitation website as the medium for communicating with bidders prior to the bid date, except for confidential exchanges regarding pre-qualification and creditworthiness. Bidders will address all inquiries to the utility on the website. Each inquiry and the utility response thereto shall be posted so that all bidders have equal access to information. The website will also be used to provide timely access to data and other information, such as the bidders list and the form letter of intent to bid that bidders may use to be placed on the bidders list.

Pre-solicitation data shall be posted on the website as soon as it has been reviewed by Staff and the Independent Monitor but in no case less than 5 days before the last bidders' conference.

Bidder inquires to the Independent Monitor may also be addressed using the solicitation website. All bidder inquiries to the Independent Monitor and the response provided, regardless of how the inquiry is made, will be posted on the solicitation website for review by all bidders.

As part of the communications protocols established by the utility, each utility shall establish a system for logging all contacts between utility personnel and bidders and potential bidders. That protocol must, at a minimum, require recording the date and time of any conversation, whether telephonic or in person, the substance of that discussion and whether the Independent Monitor participated in the contact. The utility shall maintain copies of all e-mails exchanged between the utility and bidders or potential bidders, copies of all correspondence, and all such other communications as may occur regarding the solicitation, for the terms set forth below.

Each utility shall schedule one or more bidders' conferences to answer questions posed by potential bidders and to take comments regarding the adequacy and quality of the information

provided to bidders. All bidders' conferences must be completed at least 10 days before the release of the final bid package.

Based on the comments received, the utility, after consultation with the Staff and the Independent Monitor, shall make such changes, as it deems necessary and produce in final form its solicitation materials.

D. Pre-qualification

Participation in pre-qualification shall be a prerequisite to having a bid accepted. The utility shall begin pre-qualifying bidders at the same time it assembles the list of prospective bidders. As bidders indicate their intent to submit a bid, the utility shall provide all necessary documents to complete the pre-qualification and undertake the review of completed bidder submissions as they are received.

Bidders shall be pre-qualified for:

- Creditworthiness
- Deliverability
- Reliability
- Business reputation and experience

The utility shall notify bidders of their pre-qualification status no less than 14 days before bids are due. Any bidder that has not successfully pre-qualified by that date shall be afforded the opportunity to submit pre-qualification materials or to cure any failure to pre-qualify before the bid date.

The specific pre-qualification requirements are dependent on the products to be contracted for and will be established by the utility. Standards for pre-qualification, including minimum credit worthiness, shall be included in the solicitation materials. Information provided by bidders as part of the pre-qualification process is to be considered confidential.

E. Solicitation Cost

The cost of conducting each solicitation is a business expense to be borne by all bidders in a fair and equitable manner. To that end, bid fees of up to $10,000 per bidder will be permissible. To the extent that bid fees collected exceed the incremental expenses incurred by the utility to conduct the solicitation, such excess is to be refunded to all non-winning bidders pro rata up to the amount of the bid fee actually paid by the bidder. Any costs incurred by the utility in excess of bid fees collected may be considered in subsequent regulatory proceedings.

Any utility requiring the payment of bid fees will be responsible for their collection and, if required, the refund of any amounts collected in excess of the costs incurred in conducting the solicitation.

Once a solicitation is provided to potential bidders, the utility will employ the steps laid out in the following section (V. Conducting the Solicitation) for each type of solicitation.

V. Conducting The Solicitation

A. Overview

In conducting the solicitation, whether by Request for Proposal or Descending Clock Auction, the utility shall employ standard sets of requirements and evaluative tools, appropriate to the type of solicitation conducted.

Bid evaluation will be conducted by a team of personnel including representatives of the utility and the Independent Monitor. In evaluating bids, the utility shall use a standard set of evaluative criteria, including a single fuel forecast for each type of fuel. The utility will also determine creditworthiness and deliverability using criteria that are unbiased and allow differing means of providing risk mitigation. Final bid selections will be at the sole discretion of the utility.

During the solicitation process, the Independent Monitor will oversee the solicitation process to ensure compliance with process requirements and to assure that evaluations are

conducted in an unbiased fashion. The Staff may be present during bid evaluations and may observe the solicitation process at its discretion.

B. Bid Evaluation

Bid evaluations should be conducted in three phases. The first should be to rank order the bids by price using valuation methods that equalize volumetric and or duration differences on a price basis. In the case of a Descending Clock Auction for firm power at fixed prices, only pre-qualified bids will be rank ordered. In the case of unit contingent Requests for Proposals or for non-conforming offers, approaches to valuing the bids that determine an equivalent per MWh net present value of the cost of the bid to the utility by using approved annuity-based approaches may be employed.

Phase Two should, to the extent not determined during pre-qualification, evaluate deliverability using the network transmission assessment previously provided to the Staff and the Independent Monitor. To the extent practicable, network resource status should be assigned to appropriate bids. Network service is to be provided pursuant to each utility's OATT. Bidders may propose delivery to alternative points (i.e. points other than those specified). In such case, the utility shall determine the deliverability of the capacity and energy bid using its best efforts. If a bid imposes delivery costs on the utility, the bid price as evaluated should be adjusted to reflect those costs and a new rank order established. If the bidder is prepared to mitigate those costs at its expense, no such adjustment need be made. All assessments of alternative delivery points shall be provided to the Staff and the Independent Monitor prior to the selection of winning bids.

During Phase Three all other factors not previously considered are to be evaluated. These include evaluations of creditworthiness, experience and proposed exceptions to model contract terms and/or conditions.

To the extent necessary, the utility may conduct post bid negotiations with selected bidders to clarify bid terms or to resolve issues relating to exceptions noted in submitted bids. Additionally, the utility may conduct final negotiations with selected bidders to resolve any other

issues that may arise. All such meetings are to be attended, in person or telephonically, by the Independent Monitor to assure that no undue advantage is afforded any bidder. Based on the evaluations conducted, the utility will, after consultation with the Independent Monitor, and discussion with Staff, select the winning bids.

C. Request for Proposal Bid Evaluation Procedures

Bids in response to a Request for Proposal are confidential and are to be submitted in sealed envelopes to be opened simultaneously at the Commission in the presence of the utility's bid evaluators, assigned Staff personnel, and the Independent Monitor. RUCO may also attend. Bids submitted may not be withdrawn for up to 30 days or until rejected by the utility.

Bid evaluation will be conducted by a team of personnel including representatives of the utility and the Independent Monitor. During the evaluations, the Staff may be present. Final bid selections will be at the sole discretion of the utility.

If the utility determines that all bids submitted are to be rejected, it will notify all bidders of its decision to reject all bids within 21 days of the day bids were opened.

D. Descending Clock Auctions Bid Evaluation Procedures

All bids are confidential and must be firm until the auction has been completed. Electronically submitted bids must be secured and may not be reviewed except in the presence of the Independent Monitor. If feasible, bids will be reviewed at the offices of the Commission. The Staff and RUCO may also attend. However, no person selling or which may sell energy in competitive markets may review the bids (except of course for utility personnel assigned to the solicitation.)

E. Terms Required for Staff Recommendation

Based on the utility's forecasts of its power supply cost, the submitted forecast of wholesale power supply in Arizona, and such other information as it deems appropriate, the Staff, assisted by the Independent Monitor, shall establish "prices to beat" for each product solicited for

each utility. The "prices to beat" established by the Staff will be used for the purpose of determining whether the Staff will recommend without further analysis a finding that prices contained in any contract meeting the conditions outlined below are reasonable. For contracts not meeting the "prices to beat" conditions outlined below, the Staff will, after further analysis, make findings and recommendations relating to prudence, reasonableness and used and usefulness as appropriate in any subsequent proceedings as scheduled by the Commission.

In any subsequent proceedings to recover the cost of power purchased pursuant to contracts entered as a result of the initial solicitation, the Staff will, without further analysis, recommend the Commission find the prices contained in such contracts are reasonable if the Monitor determines the solicitation was conducted appropriately and the following conditions are met:

- For contracts with durations of three years or less, the Staff will recommend without further analysis approving contract prices when such prices in each year of the contract are less than the "prices to beat" established by the Staff and permit, at the utility's sole discretion, extension of the contract for the same number of years at comparable prices and on the same terms.
- For contracts with durations longer than three years but less than eight years, the Staff will recommend without further analysis that the Commission find the prices contained in any contract reasonable when, in each year of the contract delivery period, prices for power are less than the "prices to beat" established by the Staff pursuant to the following schedule:
  - Contracts of 4 years if contract prices are less than the "prices to beat" by 4% or more during each year
  - Contracts of 5 or 6 years if contract prices are less than the "prices to beat" by 6% or more during each year

- Contracts of 7 years if contract prices are less than the "prices to beat" by 10% or more during each year.

- For contracts not meeting the conditions outlined above, the Staff reserves the right to challenge the prudence, reasonableness or usefulness of the contract entered.

The above-described recommendations by the Staff do not constitute a finding by the Staff that any contract was prudent or that the utility's power supply portfolio was prudently structured. The Staff reserves the right to contest the reasonableness of any recommended contract on its non-price terms or the utility's portfolio in its entirety in any future proceeding. Additionally, contracts not meeting the above stated standards will not automatically be viewed by Staff as unreasonable or imprudent. The reasonableness and prudence of contracts not meeting the above criteria will need to be evaluated by Staff in subsequent proceedings.

The "prices to beat" set by the Staff will not be disclosed. After final bid selections are announced, the Staff will identify those winning bids that have met the conditions set forth above.

VI. Post Selection Requirements

Within 14 days of the selection of winning bids, the utility will submit to the Commission a detailed report on the process employed to conduct the solicitation and an explanation of the basis for selecting the winning bids. To the extent that confidential information is to be provided it should be noted.

Within 3 days of the selection of winning bids the Independent Monitor will submit a status report on the solicitation process employed by the utility to the Commission. Within 14 days of the completion of the solicitation, the Independent Monitor will submit to the Commission the report described in Section II C 2 above.

Each utility shall maintain a complete record of all materials developed for, generated during or used in conducting the solicitation for the life of the longest contract, plus 5 years. The retained records shall include, but not be limited to, reports, internal and external communications, analyses, contracts, forecasts, bids submitted, questions received from bidders

and the answers provided in response, and resource plans. These materials will be available to the Staff. To the extent that the material is not subject to a confidentiality agreement, these materials will be available to the bidders upon reasonable terms and conditions.

Sometime after the completion of each utility's initial solicitation, the Commission Staff will commence a review of the utility's power supply portfolio to examine the prudence of that utility's planning and procurement practices, and to determine the effectiveness and efficiency of the solicitation process employed.

Also, sometime after the completion of the initial solicitation, the Commission Staff will commence a proceeding to review the solicitation process described in this document and will recommend such changes to the process as may be appropriate. Any refinements will be intended to improve the process and to enhance the development of a robust wholesale energy market in Arizona. Additionally, that proceeding will address the planning for future solicitations at such time and for such amounts of capacity and energy as may be needed.

E. Solicitation Timelines

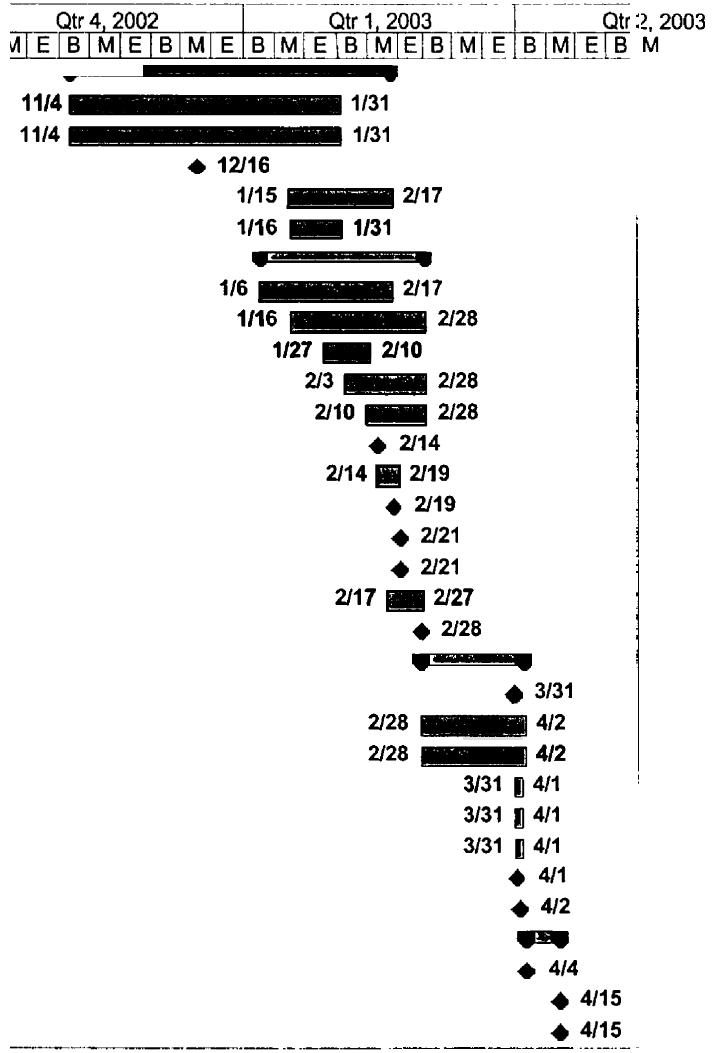
On the following pages we have presented Solicitation Timelines for the two primary solicitation methodologies discussed at the workshops: The Descending Clock Auction (as proposed by APS in its initial comments on Track B Issues) and a more traditional Request for Proposals approach to power supply acquisitions. The timelines illustrate the time periods during which various required tasks are expected to be completed in order to assure that adequate power supplies are available by July 1, 2003.

The timelines were reviewed with the workshop participants and there was a general consensus that they captured the major tasks that will need to be undertaken and that in the aggregate the tasks could be completed within the allotted timeframes.

ELAPSED TIME
Preparation – Monitor Recommendation: 67 Days
Solicitation – Selection: 32 Days

Commission STAFF SOLICITATION TIME LINE
FOR
DESCENDING CLOCK AUCTION

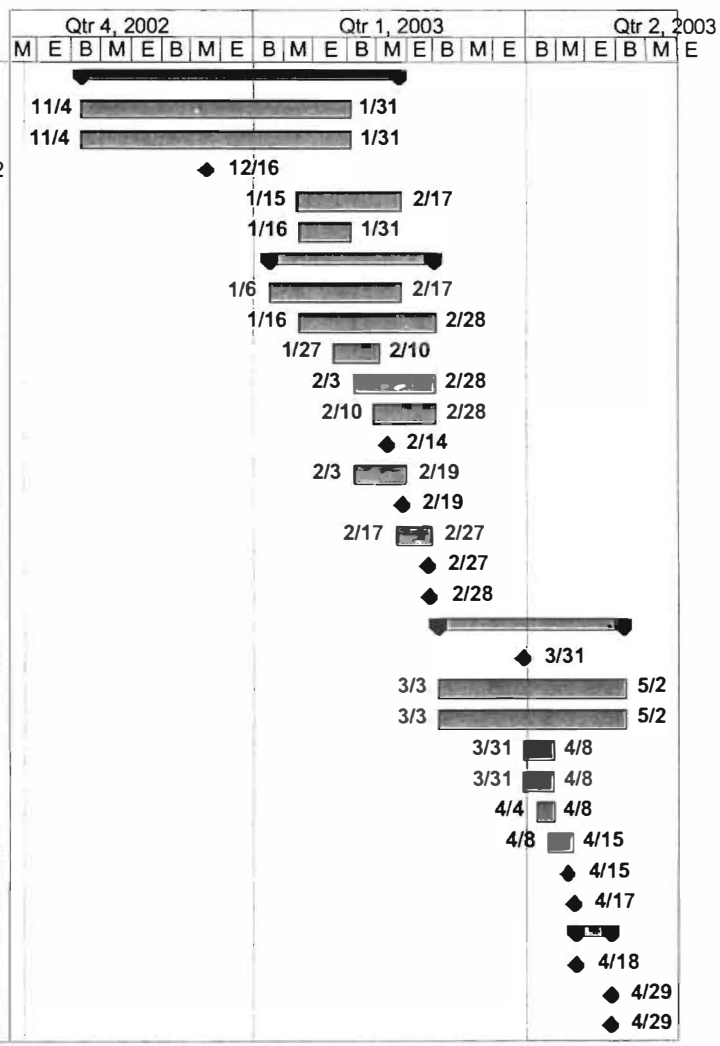
ID	Task Name	Duration	Start	Responsibilty	Finish
1	**Pre-solicitation**	**76 days**	**Mon 11/4/02**		**Mon 2/17/03**
2	Resource & cost data	65 days	Mon 11/4/02	Utility	Fri 1/31/03
3	Deliverability modeling	65 days	Mon 11/4/02	Utility	Fri 1/31/03
4	Monitor appointed	0 days	Mon 12/16/02	Staff	Mon 12/16/02
5	Staff & Monitor review	24 days	Wed 1/15/03	Staff	Mon 2/17/03
6	Identify products & bidders	12 days	Thu 1/16/03	Utility	Fri 1/31/03
7	**Solicitation Preparation**	**40 days**	**Mon 1/6/03**		**Fri 2/28/03**
8	Prepare documents	31 days	Mon 1/6/03	Utility & Monitor	Mon 2/17/03
9	Bidder Pre-qualification	32 days	Thu 1/16/03	Utility & Monitor	Fri 2/28/03
10	Establish communications	11 days	Mon 1/27/03	Utility	Mon 2/10/03
11	Pre-qualification notices	20 days	Mon 2/3/03	Utility	Fri 2/28/03
12	Staff & Monitor review	15 days	Mon 2/10/03	Monitor & Staff	Fri 2/28/03
13	Publish draft	0 days	Fri 2/14/03	Utility	Fri 2/14/03
14	Review by bidders	4 days	Fri 2/14/03	Bidders	Wed 2/19/03
15	Bidder conference	0 days	Wed 2/19/03	Utility & Bidders	Wed 2/19/03
16	Letter of intent	0 days	Fri 2/21/03	Bidders	Fri 2/21/03
17	Monitor status report	0 days	Fri 2/21/03	Monitor	Fri 2/21/03
18	Finalize documentation	9 days	Mon 2/17/03	Utility	Thu 2/27/03
19	Release solicitation	0 days	Fri 2/28/03	Utility	Fri 2/28/03
20	**Bid Evaluation**	**24 days**	**Fri 2/28/03**		**Wed 4/2/03**
21	Bids received	0 days	Mon 3/31/03	Utility & Bidders	Mon 3/31/03
22	Monitor oversight	24 days	Fri 2/28/03	Monitor	Wed 4/2/03
23	Observation by Staff	24 days	Fri 2/28/03	Staff	Wed 4/2/03
24	Evaluate prices	2 days	Mon 3/31/03	Utility & Monitor	Tue 4/1/03
25	Evaluate deliverability	2 days	Mon 3/31/03	Utility & Monitor	Tue 4/1/03
26	Post-bid negotiations	2 days	Mon 3/31/03	Utility & Monitor	Tue 4/1/03
27	Announce winners	0 days	Tue 4/1/03	Utility	Tue 4/1/03
28	Staff support identified	0 days	Wed 4/2/03	Staff	Wed 4/2/03
29	**Post-selection review**	**7 days**	**Fri 4/4/03**		**Tue 4/15/03**
30	Monitor status report	0 days	Fri 4/4/03	Monitor	Fri 4/4/03
31	UDC report	0 days	Tue 4/15/03	Utility	Tue 4/15/03
32	Monitor report	0 days	Tue 4/15/03	Monitor	Tue 4/15/03



ELAPSED TIME
Preparation – Monitor Recommendation: 82 Days
Solicitation – Selection: 45 Days

Commission STAFF SOLICITATION TIME LINE
FOR
REQUEST FOR PROPOSAL

ID	Task Name	Duration	Start	Responsibilty	Finish
1	**Pre-solicitation**	**76 days**	**Mon 11/4/02**		**Mon 2/17/03**
2	Resource & cost data	65 days	Mon 11/4/02	Utility	Fri 1/31/03
3	Deliverability modeling	65 days	Mon 11/4/02	Utility	Fri 1/31/03
4	Monitor appointed	0 days	Mon 12/16/02	Staff	Mon 12/16/02
5	Staff review	24 days	Wed 1/15/03	Staff	Mon 2/17/03
6	Identify products & bidders	12 days	Thu 1/16/03	Utility	Fri 1/31/03
7	**Solicitation Preparation**	**40 days**	**Mon 1/6/03**		**Fri 2/28/03**
8	Prepare documents	31 days	Mon 1/6/03	Utility & Monitor	Mon 2/17/03
9	Bidder Pre-qualification	32 days	Thu 1/16/03	Utility & Monitor	Fri 2/28/03
10	Establish communications	11 days	Mon 1/27/03	Utility	Mon 2/10/03
11	Pre-qualification notices	20 days	Mon 2/3/03	Utility	Fri 2/28/03
12	Review by Staff & Monitor	15 days	Mon 2/10/03	Monitor & Staff	Fri 2/28/03
13	Publish draft	0 days	Fri 2/14/03	Utility	Fri 2/14/03
14	Review by bidders	13 days	Mon 2/3/03	Bidders	Wed 2/19/03
15	Bidder conference	0 days	Wed 2/19/03	Utility & Bidders	Wed 2/19/03
16	Finalize documentation	9 days	Mon 2/17/03	Utility	Thu 2/27/03
17	Monitor status report	0 days	Thu 2/27/03	Monitor	Thu 2/27/03
18	Release solicitation	0 days	Fri 2/28/03	Utility	Fri 2/28/03
19	**Bid Evaluation**	**45 days**	**Mon 3/3/03**		**Fri 5/2/03**
20	Bids received	0 days	Mon 3/31/03	Utility & Bidders	Mon 3/31/03
21	Monitor oversight	45 days	Mon 3/3/03	Monitor	Fri 5/2/03
22	Observation by Staff	45 days	Mon 3/3/03	Staff	Fri 5/2/03
23	Evaluate prices	7 days	Mon 3/31/03	Utility & Monitor	Tue 4/8/03
24	Evaluate deliverability	7 days	Mon 3/31/03	Utility & Monitor	Tue 4/8/03
25	Evaluate other issues	3 days	Fri 4/4/03	Utility & Monitor	Tue 4/8/03
26	Post-bid negotiations	6 days	Tue 4/8/03	Utility & Monitor	Tue 4/15/03
27	Announce winners	0 days	Tue 4/15/03	Utility	Tue 4/15/03
28	Staff support identified	0 days	Thu 4/17/03	Staff	Thu 4/17/03
29	**Post-selection review**	**7 days**	**Fri 4/18/03**		**Tue 4/29/03**
30	Monitor status report	0 days	Fri 4/18/03	Monitor	Fri 4/18/03
31	UDC report	0 days	Tue 4/29/03	Utility	Tue 4/29/03
32	Monitor report	0 days	Tue 4/29/03	Monitor	Tue 4/29/03



4. Consensus Issues Among Parties

While there appeared to be few agreements among the participants to Track B when the workshops began in July 2002 the vast majority of the issues that separated the parties at that time were identified and discussed at the three workshops facilitated by the Staff. As a result of those discussions, only seven issues remain to be resolved by the Commission. Those issues are discussed in Section 5 of this Report.

During the workshops, the participants considered issues ranging from defining products to be solicited through defining what will indicate that the solicitation failed. In reaching consensus, the participants drew upon the experience of marketers who have participated in competitive solicitations in other states and utility personnel responsible for meeting the needs of consumers in Arizona. The Staff and its advisors directed the discussion through all necessary areas, with special attention being paid to transmission access.

On the following pages we set forth a list of the major issues considered during the workshop sessions and the agreements reached regarding those issues.

ISSUE	AGREEMENT IN PRINCIPLE
1. What is the appropriate way to structure the solicitation process?	1. Structure must be transparent 2. Structured to meet goals of: a. System reliability b. No increase in consumer risk c Reasonable prices to consumers d. Environmental standards met 3. Structure must be flexible a. Tailored to UDC b. Change over time c. Acquisition of multiple products from diverse generating sources should be encouraged. Multiple contracts from diverse suppliers are appropriate.
2. Are there power supplies that should be exempt from, or treated differently in, a competitive solicitation?	1. Exempt from competitive solicitation: a. Existing contracts b. Future QF contracts
3. What role should Least Cost Planning play in competitive markets?	1. UDC will continue to forecast load & develop supply portfolio 2. Least Cost Panning will not require self-build by UDC
4. Who should bear price risks?	1. Assigning risk to UDC increases UDC cost 2. Assigning risk to bidders will increase bid prices 3. Contract fuel adjustment mechanisms are appropriate 4. UDC will be free to seek cost recovery in future proceedings
5. Should there be a standard approach to competitive solicitations?	1. Process should accommodate all possible products 2. Same process should be used for all UDC's. 3. Load growth is contestable 4. Unmet needs are contestable 5. Contestable load will change over time 5. Affiliated suppliers may compete for load

ISSUE	AGREEMENT IN PRINCIPLE
6. How should UDC's meet the Environmental Portfolio Standards?	1. Bidders should not be required to include EPS in each bid. 2. EPS, Renewables and DSM should be permitted to bid in first solicitation, but no mandated "bonus points" awarded in review process. 3. Any EPS not acquired through this solicitation should be acquired in a separate process.
7. How should a competitively procured power supply portfolio be structured?	1. Current transmission allows some level of competitive solicitation 2. Must address load shape 4. Product diversity 5. Term diversity 6. Deliverability must be considered 7. Ancillary services are not to be solicited in the first solicitation as separate products. 8. Ancillary services should be phased in accordance with Standard Market Design. 9. Slice of system should not be bid in first solicitation. 10. Slice of system should not be included in the first solicitation. 11. Unit contingent bids may be used in 2003 Solicitation 12. Bids for multiple years should be considered in 2003 Solicitation
8. What are the acceptable pricing regimes?	1. Bidders should have option to bid pricing structure. 2. UDC not required to accept a particular structure. 3. For first solicitation, UDC will use pricing structure and terms approved by Commission.
9. Does a competitive solicitation address market power concerns?	1. Market power is mitigated by permitting bidders to identify equivalent transmission points 2. Deliverability of load must be verifiable 3. No preference to transmission should be given to UDC affiliates 4. Bidders' proposed transmission path cannot displace contract load or native load. 5. Through the use of equivalent delivery points, swaps should be permitted.

ISSUE	AGREEMENT IN PRINCIPLE
10. Who can participate in the solicitation?	1. Solicitation open to all bidders.
11. Are there requirements to qualify to bid?	1. Pre-qualification of bidders should be required 2. All pre-qualification requirements should be disclosed before bidding. 3. Amount of any bid fee imposed on bidders to be disclosed before bidding. 4. Minimum qualification should be demonstration to provide creditworthiness.
12. How should bids be evaluated?	1. Evaluation criteria disclosed with solicitation: a. Draft contract b. Review process c. Specific criteria d. Bidder & product requirements to close. 2. Commission Staff and Monitor should: a. Review solicitation before issuance b. Monitor bid review by UDC c. Monitor selection process d. Review bids and final selection(s) e. Assure fairness & arms-length review
13. Failure of the solicitation	1. Solicitation will be a failure if: a. No consumer benefit b. No power contract is signed d. Commission determines the process, as employed, was flawed e. Market power exacerbated f. Not enough capacity to meet load 2. If solicitation fails, Commission should require immediate new solicitation 3. UDC should retain solicitation records beyond life of contract

5. Unresolved Issues Among Parties

At the conclusion of the sixth day of workshops, the participants agreed on a list of seven unresolved issues to be presented to the Commission. The list was prepared to include all unresolved issues raised by any individual participant who was present at the workshop on September 27, 2002. Accordingly, the issues identified by the Staff and referenced in the Third Procedural Order were all of the issues the workshop participants claimed were unresolved at the end of the workshops. While discussed below, the Staff does not agree that all of these issues should be addressed in this proceeding. The seven issues presented were:

A. What portion of APS' load represents its unmet needs?

B. How the Staff will determine and use the "price to beat".

C. The timing of Commission prudence evaluation of solicited contracts.

D. Should the utility or a third party conduct the solicitation in 2003?

E. The standards of conduct governing utility-affiliate communications.

F. Whether a least-cost planning process should be adopted by the Commission.

G. Whether the Commission should initiate a proceeding to address DSM and Environmental Risk Mitigation.

The Third Procedural Order on Track B issues catalogs all of the issues presented by the individual parties at the procedural conference held on October 2, 2002. Many of the issues are variations of the seven issues listed above.

The procedural order also identifies issues that the Staff addressed in the Solicitation Proposal and discussed with the workshop participants. The Staff position on how those issues should be addressed by the Commission are set forth in the Solicitation Proposal, and a cross reference to that document is provided for ease of reference.

A. What portion of APS' load represents its unmet needs?

This is the penultimate issue to be resolved by the Commission. Clearly, there must be a clear identification of the capacity and energy that will be required in order to serve load before a solicitation can occur. The Staff believes the solicitation in 2003 should be for the energy and capacity the utility cannot supply from generation assets that are included in the utility's rate base, from contracts in effect, as of September 1, 2002, and from generation sources it must take as a result of law or regulation (QF's and Environmental Portfolio sources). This unmet need for each of the next 4 years should be the minimum amount that is included in the solicitations in 2003.

In Section I, B of the Staff proposed solicitation process, charts are provided showing Staff's current estimates of the capacity and energy needs for the next 4 years that should be deemed to be contestable loads in the 2003 solicitations for TEP and APS. These estimates were determined from information provided by the utilities during the workshops. In the case of TEP, the figures were provided by the utility. APS declined to provide energy and capacity estimates requiring the Staff to calculate the figures from information provided by the utility, which the utility now claims, is erroneous. Staff may, upon receipt of revised APS data, schedule an additional workshop to review APS' submitted data with the Track B participants and if appropriate revise the estimates contained in this Report. The Staff further believes that these estimates will need to be adjusted periodically to reflect changes in load, forecasted load, or power supply identified over time.

B. How the Staff will determine and use the "price to beat".

During the workshops, some participants expressed the desire to have prompt Commission review of selected bids, in order to reduce regulatory uncertainty resulting from the possibility of a future disallowance of related costs. Staff did not agree that all contracts awarded under the solicitation should be automatically approved by the Commission. However, Staff developed the price to beat concept to provide certainty of Staff support for cost recovery as an alternative to an expedited Commission review process.

The Staff will calculate the price to beat with the assistance of the independent monitor before the solicitation is released to prospective bidders. Available information on the forecast cost of delivered electricity in the Arizona market will be used to develop the price to beat. The Staff will review multiple sources of data to be provided by the utilities and any participant in the process who chooses to supply such data in establishing its price to beat. The price to beat is discussed in Section V, E (Terms Required for Staff Recommendation) of the proposed Initial Solicitation Process.

The "price to beat" calculated by the Staff will be used by the Staff to determine whether Staff will support the prices contained in any contract, without further investigation, when the utility seeks recovery of related costs from consumers. The price to beat will be used only by the Staff, and will not be disclosed to the utility or to bidders, even after the solicitation is completed. In this way, the chance that the price to beat will influence the evaluation process or the selection decisions made by the utilities will be minimized. After the solicitation is completed and contracts have been executed, the Staff will announce whether any of the winning bids have satisfied the price to beat criteria and, in turn, whether any contracts executed will have the support of the Staff in a future cost recovery proceeding.

C. The timing of Commission prudence evaluation of executed contracts.

In the opinion of the Staff, the Commission should review the contracts entered into as a result of the solicitation at such time as the utility seeks to recover the associated costs from customers.

During the Track B workshops some parties urged Commission review before contracts were executed, arguing that this would remove the risk to both utilities and merchants of regulatory disallowance and, presumably, result in lower cost bids. The Staff is interested in ensuring that consumers receive service at the best price, but believes that factors beyond price alone need to be considered in determining the reasonableness and prudence of decisions made by regulated utilities. At least in the case of this first solicitation the Staff believes that sufficient

time must be allocated to a review of each utility's power supply portfolio resulting from the solicitation to fully evaluate the success of the solicitation process implemented and the reasonableness of the decisions made by the utility in the solicitation.

D. Should the utility or a third party conduct the solicitation in 2003?

The solicitation should be conducted by the utility barring evidence of impropriety by the utility. The procurement of energy and capacity to meet the needs of consumers is the responsibility of the utility. The judgment of a third party should not, in the ordinary situation, be substituted for that of the utility. However, the Commission should, through the Staff and an Independent Monitor, review the actions of the utility and be prepared to appoint a third party to conduct the solicitation should the utility fail to conduct a fair and transparent solicitation. In particular, should there be any evidence of improper contact between the utility and an affiliate, the Commission should have a third party conduct the solicitation if it is determined that the contact was a material violation of the standard of conduct.

E. The standard of conduct governing utility-affiliate communications.

For the solicitation to be successful all bidders must be treated equally, starting with access to personnel assigned to the solicitation and information pertinent to the utilities' power supply requirements and delivery capabilities. To accomplish this, an enforceable standard of conduct controlling contact between any person including affiliated companies, their personnel and contractors, that may bid in the solicitation and the utility must be established. Absent such standards, bidders will lack confidence in the process, which may result in a less robust bidding process.

The standards must require that all contact between the utility and its affiliates be on the same terms and under the same conditions as with all other bidders. That is, there should be no contact between the utility and affiliates that may bid in the solicitation, except through the communications protocol established for bidders. The key elements of the Staff proposed protocol is set forth in Section IV C of the Staff proposal (Section 3D). The protocol would

require the utility to establish a solicitation team by January 1, 2003, and prohibit contact relative to the solicitation with the team by any individuals associated with any affiliate. The Staff anticipates that the team would include personnel from the utility and such other personnel as the utility may require and that those persons would be barred from assisting any affiliate in the evaluation of the solicitation or preparing a bid in response to the solicitation.

The utility should be required to prepare a draft standard of conduct and provide it to the Staff and the Independent Monitor as soon as possible as part of the pre-solicitation information and document preparation process. Once the Staff and the Independent Monitor have completed their review of the draft standard of conduct submitted by the utility and discussed changes with the utility, the draft should be shared with the prospective bidders. Their input on the draft standard of conduct will be reviewed by the Staff, the Independent Monitor and the utility. Upon completion of that review, the utility should make all changes to the draft standard of conduct deemed necessary and publish the final standard of conduct to the solicitation team and to all interested parties as part of its solicitation information. As discussed above, the Staff believes the utilities should begin that process in November 2002 and have all documents, including a draft standard of conduct, completed by the end of January 2003.

An acceptable standard of conduct will, at a minimum, address the following:

- Personnel who may be assigned
- Roles and Responsibilities
- Maintenance of confidential information
- Communications with affiliated entities and persons
- Equal access to information for all persons
- No undue advantage included in solicitation terms and conditions
- Standards for evaluations
- Protocols for logging communications
- Records maintenance, including communications records
- Procedures for monitoring by Staff and independent monitor
- Procedures for verifying compliance, internal and external

F. Whether a least-cost planning proceeding should be adopted by the Commission.

Least-cost planning was an issue raised by RUCO during the workshops. No other workshop participant joined RUCO in making this observation. Staff believes that least cost planning is not an issue to be explored in this initial solicitation proceeding.

G. Whether the Commission should initiate a proceeding to address DSM and Environmental Risk Mitigation.

The Law Fund requested that a proceeding be opened to examine the issue of how and when a solicitation for DSM and Environmental Risk Mitigation should be factored into the solicitation process. Staff believes that DSM and Environmental Risk Mitigation should not be addressed by the Commission in this proceeding. Also, the Commission need not decide at this time whether a separate proceeding is necessary to examine these issues.

Pursuant to the Staff proposed process, bidders would be free to submit bids that include DSM or Environmental Risk Mitigation in response to a product solicitation, and utilities will be required to evaluate those bids on the same basis as they evaluate all other bids. Several participants in the Track B workshops have suggested that bidders should be required to include in their bids an environmental component. Staff believes that bidders should not be required to include DSM or Environmental Risk Mitigation components as a part of their response to a solicitation but may do so if they deem it appropriate.

6. Lessons To Be Learned From The Initial Solicitation

While the proposed process described above is comprehensive and based on successful models from other jurisdictions, the unique circumstances that exist in Arizona will undoubtedly require that modifications to the process be made. The Staff has therefore planned to conduct thorough post solicitation reviews of the process each utility employs to determine what changes, if any, will need to be made to the process adopted by the Commission in this proceeding. While

the initial solicitations will be for all unmet needs presently identified, the Staff intends to review the appropriateness of the process for meeting future needs as they present themselves. The creation of an ISO or RTO or the ramifications of FERC's SMD NOPR will also need to be considered and factored into changes that may be needed to assure that the solicitation process can continue to meet the goals established by the Staff.

The Staff anticipates that codes of conduct and rules concerning affiliated transactions will also be reviewed.

The Staff intends to review and, if necessary, to amend the process to reflect lessons learned regarding the effectiveness of the various methods employed by the utilities to solicit bids. In particular, the communications protocols established to manage relations with affiliated companies, the power supply products solicited, the contract durations and terms and conditions sought and the tools used to solicit and evaluate bids submitted will be reviewed.

Finally, the Staff will evaluate the time allocated to each phase of the process to determine whether adequate time was allocated to allow for preparation of all required data, development of specifications and bids and for comprehensive evaluations of all bids received.

7. Subsequent Solicitations

After completion of the initial solicitations, the Staff will conduct the reviews described above in Chapter 6. To the extent that the Staff determines that changes to the process are required, it will recommend such changes to the Commission.

While presented as the "initial" solicitation process, the Staff believes the process is comprehensive and will be adequate to manage future solicitations to acquire power supplies to meet unmet needs identified in the future or to meet needs of the utility in the event that asset divestiture may be approved by the Commission. However, the creation of an ISO or RTO or the implementation of FERC's SMD proposal may significantly alter the dynamics of competitive wholesale markets and would likely require significant amendments to the process, particularly

with regard to the roles and responsibilities of the process participants and the range of power supply products to be acquired.

8. Appendix One To ACC Staff Report On Track B: An Overview Of Competitive Solicitation In Selected States For Wholesale Supply 2002

INTRODUCTION

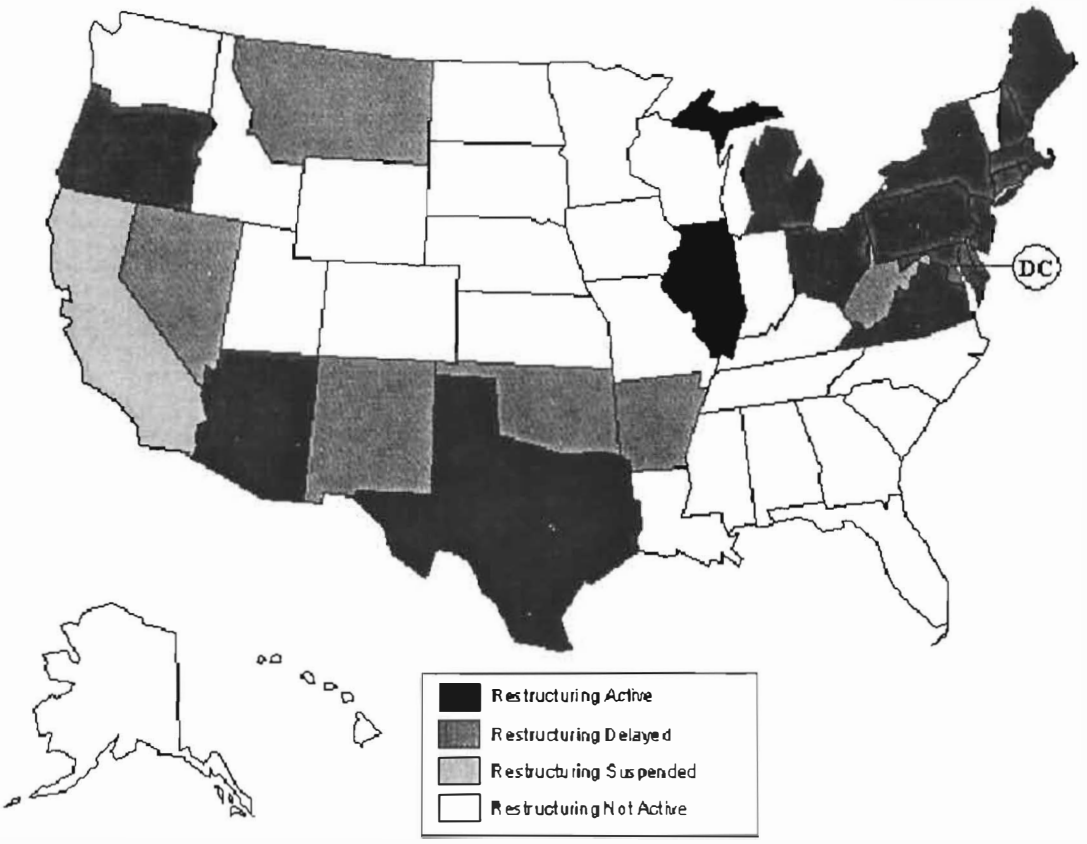
As the restructuring of the electric utility industry in the United States has evolved, regulators have examined various models in order to find the model that best provides sustainable benefits to consumers from development of competitive markets. In some states, the focus has been on retail choice accompanied by mandatory divestiture of generating assets. In other jurisdictions, retail choice was encouraged without divestiture. Still other jurisdictions have determined that neither retail choice nor divestiture is appropriate at this time, but that power supply additions should be competitively procured. With each model, the utility retained the responsibility for providing service to those customers who were not served by another supplier.

This review of the regulatory approaches of selected other state commissions concentrated on how those commissions used competitive bidding processes to meet default service obligations. A second part of the review examined what restrictions, if any, were imposed by regulators on wholly-owned affiliates of utilities in competitive solicitations.

In summary, each state that implemented competitive solicitation for wholesale supply of electricity adopted an approach unique to that jurisdiction. For example, states that required divestiture of generation implemented solicitation programs designed to procure full system requirements, typically with slice-of-system all requirement contracts, while utilities with owned-generation used solicitation programs to supplement their installed capabilities. The processes adopted were also significantly dependent on the state of development of the RTO, ISO, or power pool in which the affected utilities operated. There is no "perfect model" that can be adapted from another state for use in Arizona. Rather, the experience from a number of states should be

drawn upon, modified, and applied to the needs of Arizona to fashion a solicitation program that will meet the needs of this state.

Status of State Electric Industry Restructuring Activity
-- as of July 2002 --



As of June 2002, twenty-four states and the District of Columbia have either enacted enabling legislation or issued a regulatory order to implement retail access. Each state's retail access schedule varies according to its unique legislative mandates and regulatory orders. The information in the "Status of State Electric Industry Restructuring Activity Map" was gathered from state public utility commissions, state legislatures, and utility company web pages. The map was prepared by the Energy Information Administration of the U.S. Department of Energy.

DISCUSSION

Arizona has challenges that are different from those other states had to address when implementing a wholesale solicitation process. Most states that have moved forward in this area have had well developed and integrated transmission pools, providing the ability to balance needs and reserves with a high degree of certainty. Typically, those pools have well defined load management processes. In many of those states, the regulators have established rules and regulations to ensure that the wholesale power purchases made by utilities do not impair system reliability and are contracted for in a manner that is fair, equitable and provides tangible benefits for consumers.

Following are brief descriptions of the approaches adopted by several states that have addressed wholesale solicitation requirements as part of restructuring the electric utility industry.

Colorado

Background

Colorado has repeatedly rejected legislation to restructure the electric utility industry. Instead, the PUC, by rule making, requires utilities to use competitive solicitation to meet the Integrated Resource Plan (IRP) standard established by the Commission.

Wholesale solicitation

Utilities retain the obligation to procure capacity and energy to meet the needs of consumers. Each utility must file an IRP with the Commission (Code of Colorado Regulations 723-3, Rules 3600-3615), which includes a forecast and needs assessment every four years. The IRP must also include the draft RFP the utility will use to solicit energy and capacity bids. Under the recently amended rules, the PUC will review the resource plan and approve the plan for the utility before competitive solicitations are conducted, including the plan for competitive solicitation. Approval by the PUC creates the presumption that the utility actions are prudent. However, the rules expressly state

that approval of a plan carries no presumption that the selection of specific resources are prudent. The obligation to conduct a solicitation and to acquire resources and to prove that costs should be recovered *after the fact* remains with the utility. Public comments on the IRP are not required.

Florida

Background

Before an electric utility can build an electrical power plant that generates more than 75 megawatts of steam or solar generation, the electric utility must conduct a solicitation for wholesale power and secure a determination of need from the Florida Public Service Commission.

In making its need determination, the PSC takes into account:

1. the need for electric system reliability and integrity;
2. the need for adequate electricity at a reasonable cost; and
3. whether the proposed plant is the most cost-effective alternative available.

The need determination process enables the PSC to verify that more electricity generation capacity is needed to prevent unnecessarily burdening consumers with the costs associated with constructing new power plants.

The intent behind the bidding rule is to provide consumers with benefit when, through an open and fair process, the supply side of the wholesale energy equation is subject to competitive bidding.

Wholesale solicitation

Prior to filing a need determination petition to build an electrical power plant, an electric utility is required to solicit and evaluate competitive proposals for supply-side alternatives by issuing a Request for Proposals (RFP).

The PSC promulgated rules (PSC Rule 25-22-082) regulating the process by which capacity additions are authorized. The rules include evaluation of supply-side alternatives and detailed requirements that the utility must meet as part of a solicitation through a

request for proposal process. The RFP is filed with the PSC, which monitors the solicitation process, while the utility conducts the solicitation. Only parties to the solicitation are permitted to challenge the outcome of the solicitation. Utilities are permitted to bid in a solicitation.

Presently, the PSC is considering reviewing the solicitation process because, since the rules adoption in 1994 no contracts have been awarded to competing proposals, that is, the utility has won all of the contracts itself.

Maine

Background

As part of the 1997 restructuring of the electric utility industry, the legislature directed the Maine Public Utilities Commission (MePUC) to promulgate rules for the provision of standard offer service. In January 2001, the MePUC issued an order adopting detailed rules. Pursuant to those rules, the MePUC has, in the first instance, responsibility for conducting a solicitation to meet standard offer service obligations in the state. Electric companies only have the obligation to procure electricity and capacity in the event the MePUC notifies the company of its failure to procure the standard offer needs. Electric utilities retain the obligation to provide standard offer service to customers who chose not to switch providers.

Wholesale solicitation

Chapter 301 of the MePUC rules provides for the commission to conduct requests for proposal to meet the standard offer requirement. The rules limit sales by affiliates to no more than 20% of the amount of the solicitation, and the initial solicitation was only for contracts of one year. Bidders are permitted to bid for portions of the requirement in multiples of 20% of the total solicitation.

Maryland

Background

Pursuant to settlements reached with each of Maryland's electric utilities, generation was deregulated and retail customer choice was implemented beginning in 2000. Each utility retained the responsibility to provide Standard Offer Service for finite periods at rates that were frozen by the Commission for various classes of customers through as late as 2006. Each utility was given complete discretion to arrange electric supply, but for all SOS service to be rendered from 2004 through 2006 that supply has to be procured through competitive wholesale markets. No power supply contract executed to serve SOS customers could contain prices that exceeded the Price Freeze rates established by the Maryland Commission.

Wholesale solicitation

The Maryland PSC has not established rules or regulations mandating the conduct of power supply solicitations. Rather, through settlements with individual utilities, the Commission defined the responsibilities of each utility to acquire power in competitive solicitations to serve standard offer service customers.

Massachusetts

Background

The Massachusetts Department of Telecommunications and Electricity's (DTE) final decision to officially open the retail electricity market to competition in March 1998 was issued in January 1997. In early 1998 the DTE issued rules establishing licensing and disclosure requirements for retail suppliers and standard offer service and issued rules for distribution, default generation services, standard offer generation, aggregation requirements, and ownership of meters. During 2000 the DTE issued an order that allowed utilities to base their rates for default service on wholesale bid prices, beginning in January 2001. Utilities began issuing competitive bids seeking 6-month to 1-year contracts for the

power needed to serve their default service customers. Default service is defined as those customers who have left their competitive supplier, or are new to the utility's territory.

Wholesale solicitation

Massachusetts' four distribution utilities are each a member of NEPOOL, an integrated transmission pool with sophisticated load management and settlement procedures. Massachusetts required full divestiture of generating assets as part of electric utility restructuring. Each distribution company is responsible for default service. Each distribution company conducts a solicitation every 6-12 months and solicits bids for a subsequent 6-12 month period. Typically, there is a short round and then a final round of bidding. The issue of wholly-owned subsidiaries with load is not an issue in Massachusetts and, accordingly, there are no specific prohibitions on affiliate sales of power. However, regulators do monitor solicitations and if an affiliate were to bid, the solicitation would receive closer review. The regulators do not receive copies of the RFPs issued by the distribution companies.

New Jersey

Background

The Electric Discount and Energy Competition Act of 1999 ("EDECA" or "Act"), N.J.S.A. 48:3-49 et seq., provides that for at least three years from the starting date of electric retail choice and until the New Jersey Board of Public Utilities (the Board) finds it to be no longer necessary and in the public interest, electric public utilities shall provide basic generation service (BGS). N.J.S.A. 48:3-57(a).

By Order dated June 6, 2001, the Board directed the four electric distribution companies ("EDCs") in New Jersey to each file specific proposals to implement an RFP process for BGS for Year 4 of the Transition Period.

Wholesale solicitation

The four New Jersey electric distribution utilities filed a generic proposal for the provision of Basic Generation Service The generic proposal recommended a simultaneous, multi-round, descending clock auction format.

The EDCs jointly proposed a single Auction Process for the procurement of supply to meet the full electricity requirements (i.e., energy, capacity, ancillary services, transmission, etc.) of retail customers that had not chosen a Third Party Supplier. Under the proposal, the BGS Loads of all EDCs would be bid out in the same auction. The annual BGS retail load of each EDC is considered a separate "product."

The EDCs proposed that an Independent 3rd party conduct the Auction.

After hearings, the Board authorized the proposed process with modifications and assigned its consultant to monitor the auction.

Subsequent to the auction the Board commenced a proceeding to review the outcome of the process employed and to consider modifications to the process suggested by the Auction Manager, the Board's consultant and other persons who submitted comments.

Pennsylvania

Background

The Electricity Generation Customer Choice and Competition Act was enacted in 1996. The law allowed consumers to choose among competitive generation suppliers beginning with one third of the State's consumers by January 1999, two thirds by January 2000, and all consumers by January 2001. Utilities were required to submit restructuring plans by September 1997. Utilities are required to be providers of last resort and customers have the right to return to default service at any time through 2010.

Wholesale solicitation

The distribution company is required to meet its obligation as provider of last resort by purchasing required amounts of energy and capacity from wholesale sources. Procurement from affiliated generating companies is permitted. The utility retains discretion to determine the source of wholesale energy and capacity. As of January 1, 2001, the utility's recovery from customers is limited, through the terms of approved settlement agreements, to pre-established rates for each class of ratepayer.

Texas

Background

Restructuring legislation was enacted in 1999 to restructure the Texas electric industry allowing retail competition. The bill required retail competition to begin by January 2002. Rates are frozen for 3 years, and then a 6 percent reduction will be required for residential and small commercial consumers. This will remain the "price to beat" for five years or until utilities lose 40 percent of their consumers to competition. Utilities must unbundle into 3 separate categories, using separate companies or affiliate companies, the generation, the distribution and transmission, and the retail electric provider. Utilities will be limited to owning and controlling not more than 20 percent of installed generation capacity in their region (ERCOT).

The PUC adopted rules for the provider of last resort for when competition began in early 2002. The provider of last resort is required to provide to consumers no longer served by their provider of choice service at a fixed price. A competitive bidding process will designate the last resort providers for each consumer class. Bidding was completed by June 1, 2001.

During 2001, utilities in Texas began the process of auctioning part of their generating capacity. The auction is designed to increase the pool of available power for new retail suppliers entering the market, prevent market power, and promote competition in electricity markets.

Wholesale solicitation

As part of the restructuring of the market, utilities are required to acquire 15% of their capacity requirement through auction. The utility has the responsibility to procure the necessary capacity and energy, adhering to the rules established by ERCOT. Capacity in addition to the mandated capacity auction is procured through solicitation and secured by bilateral contracts.

9. Appendix Two: APS' Response To Staff's October 15, 2002, Data Request

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October 22, 2002

VIA FACSIMILE

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RE: ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE COMPANY PURSUANT TO ACC DOCKET NO. E-00000A-02-0051, ET AL.

Dear Ms. Wagner:

Enclosed is a copy of Arizona Public Service Company's ("APS") responses to the Arizona Corporation Commission Staff's (Staff's) First Set of Data Requests dated October 15, 2002.

If you or your staff have any questions, please feel free to call me.

Sincerely,

Jana Van Ness
Manager
Regulatory Compliance

Attachment

JVN/vld

Cc: With Attachments
Matt Rowell, ACC
Christopher Kemply, ACC
Thomas Mumaw, Esq. PWCC

STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE IN DOCKET NO's. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630 AND E-01933A-02-0069 (TRACK B)
October 15, 2002

MR 1.1 Please provide all forecasts of APS' total *retail* load capacity and energy for the following years: 2003, 2004, 2005, 2006, and 2007. For each forecast provided, please describe the purpose for which it was prepared, its strengths and weaknesses, and the degree of reliance that APS has placed upon it.

RESPONSE:

See attached table. [Attachment Staff DR 1, Q. MR1.1]

APS prepares forecasts of retail customer peak demands and energy requirements to support the operational, financial, and system improvement planning needs of the company. Each of the forecasts presented here has influenced the company's view of what actions are required to best meet the anticipated customer demands. APS places heavy reliance on each forecast to develop its plans, but recognizes that each forecast is inherently uncertain and plans accordingly.

Each forecast is typically characterized by the same set of strengths and weaknesses. Strengths include: preparing each forecast with sufficient detail such that actual results can be compared against projections and resulting deviations can be used in the preparation of subsequent forecasts; having a management review of the key assumptions underlying each forecast for consistency and, to the extent practical, accuracy; and the knowledge of how much uncertainty may be reflected in each forecast. Weaknesses are generally to be found in the areas of greatest volatility and uncertainty, such as the difficulty in accurately forecasting net population migration to Arizona, sudden changes to customer behavior, actual weather conditions, and customer coincident peak load factors.

Response to Staff Data Request MR 1.1 Dated October 15, 2002

		Retail Energy Load in Gigawatthours					Retail Peak Load in Megawatts				
Description	Date	2003	2004	2005	2006	2007	2003	2004	2005	2006	2007
1993 Long-Range Forecast	Feb 1993	22,157					4,354				
1994 Long-Range Forecast	Feb 1994	21,100	21,581				4,339	4,419			
1995 Long-Range Forecast	Jun 1995	24,273	24,922	25,561			4,725	4,836	4,945		
1996 Long-Range Forecast	Apr 1996	24,429	25,084	25,746	26,381		4,666	4,776	4,890	4,992	
1997 Long-Range Forecast	Feb 1997	25,064	25,736	26,414	27,080	27,781	4,888	5,005	5,122	5,231	5,347
1998 Long-Range Forecast	Feb 1998	25,590	26,369	27,176	27,964	28,797	5,288	5,445	5,611	5,761	5,918
1999 Long-Range Forecast	Apr 1999	25,689	26,530	27,370	28,195	29,068	5,509	5,700	5,890	6,078	6,276
2000 Budget	Oct 1999	25,233	26,074	26,918	27,757	28,611	5,609	5,786	5,981	6,179	6,378
2000 Long-Range Forecast	Apr 2000	26,339	27,376	28,326	29,187	30,048	5,852	6,073	6,294	6,498	6,698
2001 Budget	Oct 2000	26,845	27,860				5,945	6,164			
2001 Long-Range Forecast	Apr 2001	26,954	27,914	28,813	29,723	30,641	6,077	6,325	6,538	6,755	6,973
2002 Budget	Oct 2001	26,552	27,871	29,271	30,744	32,295	5,946	6,228	6,652	6,994	7,354
2002 Long-Range Forecast	Apr 2002	26,200	27,526	28,770	29,902	31,108	5,928	6,260	6,563	6,804	7,081
2003 Budget	Oct 2002	26,289	27,635	28,790	29,967	31,175	5,717	6,016	6,262	6,515	6,780

STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE IN DOCKET NO's. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630 AND E-01933A-02-0069 (TRACK B)
October 15, 2002

MR 1.2 Please specify whether there is an "official" forecast(s), i.e., one which APS uses for any formal purpose. If so, please identify it and describe its use. If there are more than one, please identify and describe each.

RESPONSE:

APS typically prepares two "official" forecasts each year: a 10-year forecast in the spring to support long range planning efforts and a forecast in the fall to support near-term budget and operational plan development. Historically, this has been for a 3-year period, although this year's budget forecast covers additional years. Of course, APS also has an on-going planning process that requires these forecasts to be modified and updated on a more periodic basis. These updates are generally adopted and used by the various planning groups within the Company to update their own plans.

STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE IN DOCKET NO's. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630 AND E-01933A-02-0069 (TRACK B)
October 15, 2002

MR 1.3 Please list each rate-based plant that APS uses to serve its retail load. For each plant listed, please specify the plant's capacity and capacity factor.

RESPONSE:

See attached table. [Attachment Staff DR 1. MR 1.3]

RESPONSE: MR 1.3

APS Generating Unit Historical Capacity Factor

2000 -2002

Unit	2002 SUMMER CAPACITY (MW)	ANNUAL CAPACITY FACTOR (%) 2000	2001	2002
Palo Verde 1	361.7	100.4	87.8	90.0
Palo Verde 2	361.7	87.2	92.6	91.0
Palo Verde 3	362.9	90.3	83.9	100.8
Four Corners 1	170.0	87.7	81.5	77.6
Four Corners 2	170.0	90.6	80.9	90.4
Four Corners 3	220.0	73.3	91.2	86.9
Four Corners 4	111.0	75.9	90.6	90.9
Four Corners 5	111.0	90.6	83.0	62.8
Navajo 1	105.0	86.4	80.2	81.9
Navajo 2	105.0	81.4	91.4	79.1
Navajo 3	105.0	85.3	82.5	83.7
Cholla 1	110.0	82.4	68.7	85.9
Cholla 2	245.0	90.2	81.1	74.4
Cholla 3	260.0	76.0	86.5	81.1
W. Phx. CC 1	80.0	49.0	49.0	32.6
W. Phx. CC 2	80.0	40.0	60.2	33.7
W. Phx. CC 3	80.0	54.0	42.7	42.9
Ocotillo Steam 1	110.0	34.6	39.8	17.4
Ocotillo Steam 2	110.0	31.5	38.5	10.6
Saguaro Steam 1	110.0	27.2	36.7	9.3
Saguaro Steam 2	100.0	30.6	40.9	11.7
W. Phx CT 1	50.0	15.2	18.4	2.6
W. Phx CT 2	50.0	17.0	19.2	3.8
Ocotillo CT 1	50.0	11.2	24.4	3.3
Ocotillo CT 2	50.0	9.6	21.8	3.0
Saguaro CT 1	50.0	13.3	19.7	3.0
Saguaro CT 2	50.0	14.7	16.4	1.9
Yucca 1	18.0	5.0	23.4	3.7
Yucca 2	18.0	6.9	21.8	4.3
Yucca 3	52.0	12.2	22.0	14.1
Yucca 4	51.0	4.8	11.9	0.3
Douglas	15.0	3.2	14.5	0.2
Childs / Irving	4.2	66.8	65.9	59.7
APS TOTAL	**3927**			

NOTE: Capacity factors are affected by planned outages, forced outages, APS fuel and variable O&M costs, market prices of economy energy, operational constraints, and APS load requirements

STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE IN DOCKET NO's. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630 AND E-01933A-02-0069 (TRACK B)
October 15, 2002

MR 1.4 Please list each contract under which APS obtains capacity and energy to serve its retail load. For each contract listed, please specify the contract's capacity and energy or load factor and the date it was entered into.

RESPONSE:

PacifiCorp Diversity Exchange

480 MW on-peak capacity limited to maximum 40% capacity factor May 15-Sep 15 each year. The contract was entered into September 1990.

Salt River Project Territorial Agreement

350 MW capacity for delivery January-December each year. This amount increases per a formula by 7 or 8 Mw per year. Energy is distpatchable and varies as a function of APS economics and to meet the needs of APS system reliability. The annual capacity factor has ranged from 31% to 59% in the 2000-2002 time frame. The contract was entered into in 1955 and was most recently amended in 1998.

Constellation Power (entered into March 2000)

25 MW on-peak capacity with 100% capacity factor during on-peak period for delivery July 2003 - September 2003

Williams Energy Marketing and Trading (entered into March 2000)

25 MW on-peak capacity with 100% capacity factor during on-peak period for delivery July 2003 - September 2003

Morgan Stanley Capital Group (entered into March 2000)

50 MW on-peak capacity with 100% capacity factor during on-peak period for delivery July 2003 - September 2003

Morgan Stanley Capital Group (entered into November 2001)

25 MW on-peak capacity with 100% capacity factor during on-peak period for delivery July 2003 - September 2003

NOTE: APS also has a QF agreement with Abitibi, but it is not for firm capacity or energy and thus has been excluded from APS resources for Track B purposes.

STAFF'S FIRST SET OF DATA REQUESTS TO ARIZONA PUBLIC SERVICE IN DOCKET NO's. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630 AND E-01933A-02-0069 (TRACK B)
October 15, 2002

MR 1.5 Please identify APS' forecasted unmet needs, i.e., the difference between forecasted load and capacity and associated unmet energy needs, for the years 2003, 2004, 2005, 2006, and 2007. Please identify the specific forecast used to determine your response, and please explain why that forecast was selected. For the purposes of this question, capacity and energy refers to rate-based generation assets and contracts to purchase power entered into before September 1, 2002.

RESPONSE:

See attached table [Attachment Staff DR 1, Q. MR 1.5] for the amount of energy and capacity APS currently expects to require to meet its reliability needs based on the October 2002 budget forecast. This is the most recent "official" forecast available. This table considers both its current rate-based generation assets referenced in Response MR 1.3 and the contracts referenced in Response MR 1.4. APS has further excluded capacity and energy for RMR above that provided from APS units because of the small number of even potential competitors and also amounts from renewable resources acquired or to be acquired under the EPS (APS believes this was a consensus position during the workshops).

In addition, APS expects to procure a certain amount of economy energy in each of these years depending solely on the actual energy cost of APS resources compared with market prices for power. Based on current expected forward market prices for natural gas and power, APS could potentially purchase up to 3,557 GWH of economy energy in 2003; 4,033 GWH in 2004; 6,695 GWH in 2005; 6,948 GWH in 2006, and 9,278 GWH in 2007. If actual power prices are 10% lower or higher (and all other factors remain as projected), APS would expect to make additional (fewer) economy energy purchases of 800 GWH or (500 GWH), respectively, for 2003 in response to these changing conditions.

This economy energy will be acquired competitively in a process that will permit qualified and interested sellers to participate and which APS will describe in more detail in its November 4, 2002 testimony in Track B.

As can be seen by the Attachment, APS requires approximately 22% of its 2003 retail load (plus reserves) to be competitively acquired in 2003, increasing to more than 25% in 2007. On the other hand, its energy needs are both significantly less initially and are at all times dependent upon the relative costs of gas and purchased power, but given current forecasts would range from some 15% in 2003 to 33% in 2007.

Response to Staff Data Request MR 1.5
APS Projected Unmet Capacity and Energy Needs as of 10/22/02
2003 - 2007

Description	2003 Capacity (MW)	2003 Energy (GWH)	2004 Capacity (MW)	2004 Energy (GWH)	2005 Capacity (MW)	2005 Energy (GWH)	2006 Capacity (MW)	2006 Energy (GWH)	2007 Capacity (MW)	2007 Energy (GWH)
Total standard offer load [1]	5,723	26,494	6,023	27,841	6,269	28,999	6,522	30,178	6,787	31,388
+ 15% reserve margin [2]	598	-	602	-	602	-	606	-	606	-
- Physical capability of APS units [3]	(3,927)	(24,132)	(3,953)	(25,313)	(3,949)	(25,733)	(3,975)	(26,563)	(3,975)	(28,047)
- Full capability of purchase contracts [4]	(955)	(1,972)	(837)	(1,678)	(844)	(2,006)	(852)	(2,057)	(860)	(2,108)
- RMR generation from non-APS units [5]	(29)	(0)	(184)	(2)	(338)	(8)	(493)	(27)	(647)	(40)
- Planned renewable energy supply under EPS [6]	(9)	(41)	(17)	(85)	(23)	(114)	(29)	(142)	(35)	(170)
= Net unmet reliability needs [7]	1,401	349	1,634	763	1,717	1,138	1,779	1,389	1,876	1,023

[1] Standard offer load includes all retail customer energy and coincident peak demands plus APS wholesale contracts served by APS resources from Oct 2002 budget projections. Under Staff's proposal, this calculation would be updated prior to any actual procurement.

[2] Reserve margin is calculated on APS generation and known contingent purchases only.

[3] Includes the production from all rate-based APS generation units subject to standard planned and forced outage assumptions.

[4] Includes the contracts referenced in Response to Staff Data Request MR 1.4.

[5] RMR generation assumes a Valley import limit of 3,535 MW, 660 MW of local APS generation, and 110 MW of required reserves. To the extent that bidders can demonstrate higher import capability or import capability is increased, RMR would be reduced, all else remaining the same. The present import limit of 3,535 MW assumes timely completion of the Southwest Valley line and also uses its most recent (and higher) capacity rating.

[6] Includes solar and renewable resource additions planned each year under current funding levels. To the extent the Commission approves higher funding levels, capacity and energy under EPS will increase.

[7] Energy figures do not include economy purchases, which as noted in the text of APS's response would add some 3,500 gwh in 2003 (and more in subsequent years) assuming present forecasts of gas and power costs.

CERTIFICATE OF SERVICE
DOCKET NO. 020398

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-delivery (*), and U.S. Mail to the following parties on this 15th day of November, 2002.

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