

**Arizona Supreme Court**  
**Civil Petition for Review - Tax**

**CV-23-0016-PR**

**MESQUITE v ADOR**

**Appellate Case Information**

Case Filed: 20-Jan-2023 Archive on: 27-Aug-2034 (planned)  
 Case Closed: 26-Aug-2024

**Dept/Composition**

**En Banc**  
 Hon. Ann A. Scott Timmer  
 Hon. Clint Bolick  
 Hon. John R Lopez  
 Hon. James P Beene  
 Hon. Kathryn H. King

**Side 1. MESQUITE POWER, LLC, Plaintiff/Appellee**  
 (Litigant Group) MESQUITE POWER, LLC

- Mesquite Power LLC

**Attorneys for: Plaintiff/Appellee**

Paul J Mooney, Esq. (AZ Bar No. 6708)  
 Bart S Wilhoit, Esq. (AZ Bar No. 20064)

**Side 2. ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellant**  
 (Litigant Group) ARIZONA DEPARTMENT OF REVENUE

- Arizona Department of Revenue

**Attorneys for: Defendant/Appellant**

Kristin K Mayes, Esq. (AZ Bar No. 22584)  
 Kimberly J Cygan, Esq. (AZ Bar No. 13977)  
 Jerry A Fries, Esq. (AZ Bar No. 11788)

**Side 3. WESTERN STATES ASSOCIATION OF TAX REPRESENTATIVES (WSATR) and the NATIONAL ASSOCIATION OF PROPERTY TAX REPRESENTATIVES - TRANSPORTATION ENERGY AND COMMUNICATIONS (NAPTR-TEC), Amicus Curiae**

(Litigant Group) WESTERN STATES ASSOCIATION OF TAX REPRESENTATIVES (WSATR) and the NATIONAL ASSOCIATION OF PROPERTY TAX REPRESENTATIVES - TRANSPORTATION ENERGY AND COMMUNICATIONS (NAPTR-TEC)

- Western States Association of Tax Representatives
- National Association of Property Tax Representatives

**Attorneys for: Amici Curiae WSATR and NAPTR-TEC**

James R Nearhood, Esq. (AZ Bar No. 4594)

**Side 4. GRIFFITH ENERGY, LLC, Amicus Curiae**  
 (Litigant Group) GRIFFITH ENERGY, LLC

- Griffith Energy LLC

**Attorneys for: Amicus Curiae Griffith Energy, LLC**

Douglas S John, Esq. (AZ Bar No. 21150)

**Side 5. ARIZONA COMPETITIVE POWER ALLIANCE (THE ALLIANCE), Amicus Curiae**  
 (Litigant Group) ARIZONA COMPETITIVE POWER ALLIANCE (THE ALLIANCE)

- Arizona Competitive Power Alliance

**Attorneys for: Amicus Curiae**

Greg Patterson, Esq. (AZ Bar No. 27109)  
 Tyler J Michalowski, Esq. (AZ Bar No. 37793)  
 Thomas A Denker, Esq. (AZ Bar No. 16453)

**Side 6. ARIZONA TAX RESEARCH ASSOCIATION, Amicus Curiae**  
 (Litigant Group) ARIZONA TAX RESEARCH ASSOCIATION

- Arizona Tax Research Association

**Attorneys for: Amicus Curiae**

Bennett Evan Cooper, Esq. (AZ Bar No. 10819)  
 Dawn R Gabel, Esq. (AZ Bar No. 12719)

**CASE STATUS**

Jul 22, 2024.....Decision Rendered	Aug 22, 2023....Oral Argument Granted
Jun 2, 2023.....Continued	Jan 20, 2023.....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-TX 22-0002				
ATC	TX2018-000928	Property Tax	Danielle J Viola, Authoring Judge of Order Comments: (none)		

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**CASE DECISION**

22-Jul-2024 **OPINION**

\* At the tax court, Mesquite's expert did not consider income from the Power Purchase Agreement under the income approach to valuation. For the reasons discussed, this valuation did not properly rebut ADOR's statutory valuation. But we do not decide whe

Filed: **22-Jul-2024**

Mandate: **27-Aug-2024**

Decision Disposition

**Vacated**  
**Reversed**  
**Remanded**

**Kathryn King**.....Author  
**Ann Timmer**.....Concur  
**John Lopez**.....Concur  
**Clint Bolick**.....Concur  
**James Beene**.....Concur

**46 PROCEEDING ENTRIES**

1. 20-Jan-2023 FILED: Petition for Review; Certificate of Service; Certificate of Compliance; Opinion (Appellee Mesquite)
2. 31-Jan-2023 FILED: Record from CofA: Electronic Record
3. 1-Feb-2023 RECEIPT No.: 2023-00109 ; \$280.00, Authorization: 8120524812169131, Applied to: MESQUITE POWER, LLC - Class A Filing Fee (\$280.00) Paid for: MESQUITE POWER, LLC - By nCourt LLC
4. 1-Feb-2023 FILED: Defendants' Motion to Strike Mesquite's Petition for Review's Appendices 4 and 5; Certificate of Service (Appellant ADOR)
5. 2-Feb-2023 FILED: Plaintiff's Response to Defendants' Motion to Strike Appendices 4 and 5 From Petition for Review; Certificate of Service; Exhibit A (Appellee Mesquite)
6. 3-Feb-2023 FILED: Defendants' Reply in Support of Their Motion to Strike Mesquite's Petition for Review's Appendices 4 and 5; Certificate of Service (Appellant ADOR)
7. 10-Feb-2023 On February 1, 2023, Defendants Arizona Department of Revenue and Maricopa County filed a motion to strike Appendices 4 and 5 from the petition for review filed by Plaintiff Mesquite Power, LLC.  
  
Rule 23(e) of the Arizona Rules of Civil Appellate Procedure states that an appendix filed with a petition for review must comply with the requirements of Rule 13.1 and must contain "only those documents" in the record on appeal that are necessary for determining the issues raised by the petition. Rule 13.1(b) requires that an appendix include "only those portions of the record and legal authorities that are cited in the brief and that are essential to decide an issue on appeal." Appendices 4 and 5 filed by Plaintiff do not comply with Rules 23(e) and 13.1(b). Therefore, having considered the motion, Plaintiff's response, and Defendants' reply,  
  
IT IS ORDERED granting the motion to strike Appendices 4 and 5 from Plaintiff's petition for review. (Hon. Ann A. Scott Timmer)
8. 15-Feb-2023 FILED: Defendants' Response to Petition for Review; Certificate of Service; Certificate of Compliance (Appellant ADOR)
9. 8-Mar-2023 FILED: Amicus Curiae Brief in Support of Mesquite Power, LLC's Petition for Review; Certificate of Service; Certificate of Compliance (Amici Curiae WSATR et al.)
10. 8-Mar-2023 FILED: Motion to File Amicus Curiae Brief in Support of Appellant's [sic] Petition for Review (Amici Curiae WSATR et al.)
11. 8-Mar-2023 FILED: Response to WSATR and NAPTR-TEC's Motion to File Amicus Curiae Brief in Support of Mesquite's Petition for Review; Certificate of Service (Appellant ADOR)
12. 8-Mar-2023 A "Motion to File Amicus Curiae Brief in Support of Appellant's [sic] Petition for Review" (Amici Curiae WSATR et al.) and the brief of amicus curiae were filed on March 8, 2023. Appellant ADOR's "Response to WSATR and NAPTR-TEC's Motion to File Amicus Curiae Brief in Support of Mesquite's Petition for Review" was also filed on March 8, 2023. After consideration,  
  
IT IS ORDERED the motion is granted. The brief shall be filed as of March 8, 2023. (Tracie K. Lindeman, Clerk)
13. 8-Mar-2023 FILED: Brief of Amicus Curiae Griffith Energy, LLC in Support of Petition for Review; Certificate of Service; Certificate of Compliance (Amicus Curiae Griffith Energy)
14. 8-Mar-2023 FILED: Motion to File Brief of Amicus Curiae (Amicus Curiae Griffith Energy)
15. 8-Mar-2023 FILED: Brief of Amicus Curiae in Support of Petition for Review; Certificate of Service; Certificate of Compliance (Amicus Curiae ACPA)

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16. 8-Mar-2023 FILED: Motion for Leave to Submit Brief as Amicus Curiae (Amicus Curiae ACPA)
17. 8-Mar-2023 FILED: Motion of Arizona Tax Research Association for Leave to File Amicus Curiae Brief; Certificate of Service (Amicus Curiae ATRA)
18. 8-Mar-2023 FILED: (Duplicate Motion) Motion of Arizona Tax Research Association for Leave to File Amicus Curiae Brief; Amicus Curiae Brief of Arizona Tax Research Association; Certificate of Compliance; Certificate of Service (Amicus Curiae ATRA)
19. 9-Mar-2023 SENT: Civil Deficient Letter: Exceeding Word Count
20. 9-Mar-2023 FILED: Response to Arizona Competitive Power Alliance's Motion for Leave to Submit Brief As Amicus Curiae in Support of Mesquite's Petition for Review; Certificate of Service (Appellant ADOR)
21. 9-Mar-2023 FILED: Motion for Procedural Order to Extend Word Count; Certificate of Service (Amicus Curiae Amicus Curiae Griffith Energy)
22. 9-Mar-2023 FILED: Response to Arizona Tax Research Association's Motion for Leave to File Amicus Curiae Brief in Support of Mesquite's Petition for Review; Certificate of Service (Appellant ADOR)
23. 13-Mar-2023 A "Motion for Leave to Submit Brief as Amicus Curiae" (Amicus Curiae ACPA) and the brief of amicus curiae were filed on March 8, 2023. After consideration,  
  
IT IS ORDERED the motion is granted. The brief shall be filed as of March 8, 2023. (Hon. James P. Beene)
24. 14-Mar-2023 A "Motion to File Brief of Amicus Curiae" (Amicus Curiae Griffith Energy) and the brief of amicus curiae were filed on March 8, 2023.  
  
On March 9, 2023, a "Motion for Procedural Order to Extend Word Count" (Amicus Curiae Griffith Energy) was filed with a 4,324 word count with a Brief of Amicus Curiae.  
  
IT IS ORDERED the motion is granted. The brief shall be filed as of March 8, 2023.  
  
IT IS FURTHER ORDERED granting Amicus Curiae's request to exceed the thirty five hundred word count limitation stated in Rules 4(b) and 23(g)(2), Arizona Rules of Civil Appellate Procedure by 824 words. (Hon. James P. Beene)
25. 14-Mar-2023 A "Motion of Arizona Tax Research Association for Leave to File Amicus Curiae Brief" and the brief of amicus curiae were filed on March 8, 2023. After consideration,  
  
IT IS ORDERED the motion is granted. The brief shall be filed as of March 8, 2023. (Hon. James P. Beene)
26. 28-Mar-2023 FILED: Defendants' Response to Amicus Curiae Briefs Filed by (1) WSATR and NAPTR-TEC, (2) Arizona Competitive Power Alliance, and (3) Arizona Tax Research Association; Certificate of Service; Certificate of Compliance (Appellant ADOR)
27. 28-Mar-2023 FILED: Petitioner's Response to Four Amicus Briefs; Certificate of Service; Certificate of Compliance (Appellee Mesquite)
28. 3-Apr-2023 FILED: Defendants' Response to Griffith Energy LLC Amicus Brief; Certificate of Service; Certificate of Compliance (Appellant ADOR)
29. 2-Jun-2023 ORDERED: Petition for Review = CONTINUED.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellee Mesquite) = CONTINUED.  
  
Chief Justice Brutinel and Justice Montgomery did not participate in the determination of this matter.

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30. 22-Aug-2023 ORDERED: Petition for Review = GRANTED as to these rephrased issues:
- (1) When the value of an electric generation facility is calculated using the income approach to valuation, does A.R.S. § 42-14156 permit the consideration of cash flows from a power purchase agreement that is severable from the facility but reserves a portion of the facility's generating capacity in exchange for annual payments?
- (2) When the value of an electric generation facility is calculated using the income approach to valuation, does the "current usage" requirement of A.R.S. § 42-11054(C)(1) require consideration of a power purchase agreement that is severable from the facility but reserves a portion of the facility's generating capacity for in exchange for annual payments?
- FURTHER ORDERED: The case shall be set for oral argument.
- FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before September 26, 2023 and any responses to amicus briefs are due on or before October 16, 2023. Any amicus briefs or responses may not exceed 20 pages in length.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellee Mesquite) = CONTINUED.
- Chief Justice Brutinel and Justice Montgomery did not participate in the determination of this matter.
31. 25-Aug-2023 RECEIVED: Record from CofA: Additional Record on Appeal
- Exhibit: Hearing Date 8/16/2021-List #222(CD) in Manila Envelope
- Physical Exhibit: Hearing Date 8/16/2021- List # 222 in Manila Envelope
32. 8-Sep-2023 NOTICE OF ORAL ARGUMENT: Set for Tuesday, December 19, 2023 at 10:15 A.M. [twenty (20) minutes per side]
33. 11-Sep-2023 FILED: Notice of Acknowledgment of Oral Argument (Paul J. Mooney will argue) (Appellee Mesquite)
34. 12-Sep-2023 FILED: Supplemental Brief of Mesquite Power, LLC; Certificate of Service; Certificate of Compliance (Appellee Mesquite)
35. 12-Sep-2023 FILED: Defendants/Appellees' Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellant ADOR)
36. 13-Sep-2023 FILED: Notice of Acknowledgment of Oral Argument (Lisa Neuville will argue) (Appellant ADOR)
37. 19-Dec-2023 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Paul J. Mooney, Lisa A. Neuville)
38. 2-Feb-2024 FILED: Notice of Substitution of Counsel for Defendants/Appellants; Certificate of Service (Appellant ADOR)
39. 22-Jul-2024 OPINION - At the tax court, Mesquite's expert did not consider income from the Power Purchase Agreement under the income approach to valuation. For the reasons discussed, this valuation did not properly rebut ADOR's statutory valuation. But we do not decide whether Mesquite has rebutted ADOR's valuation at this juncture. In at least one earlier case involving Mesquite's property, the tax court ruled that the Power Purchase Agreement could not be considered. It was therefore entirely understandable that Mesquite's expert did not consider the Power Purchase Agreement when valuing the property. Mesquite should be given that opportunity now.
- We therefore reverse the tax court's judgment and remand to the tax court for further proceedings consistent with this opinion. On remand, the tax court must give Mesquite an opportunity to offer a new valuation under the income approach consistent with this opinion, and ADOR must be given the same opportunity. We vacate the court of appeals' opinion.
- Mesquite requested attorney fees, citing only Arizona Rule of Civil Appellate Procedure 21. Rule 21 "only establishes the procedure for claiming attorneys' fees and does not create any substantive right to them." ARCAP 21(a)(2). A claim for fees under Rule 21 "must specifically state the statute, rule, decisional law, contract, or other authority for an award of attorneys' fees. If a party fails to comply with this requirement, the appellate court may decline to award fees on that basis." Id. We decline Mesquite's request for attorney fees because Mesquite did not provide any legal authority for an award of fees. (Hon. Kathryn H. King - Author; Hon. Ann A. Scott Timmer - Concur; Hon. John R. Lopez IV - Concur; Hon. Clint Bolick - Concur; Hon James P. Beene - Concur)
40. 6-Aug-2024 FILED: Motion for Reconsideration; Certificate of Service (Appellee Mesquite)
41. 6-Aug-2024 FILED: Certificate of Compliance; Certificate of Service (Appellee Mesquite)
42. 9-Aug-2024 On August 6, 2024, Appellee Mesquite Power, LLC, filed a motion for reconsideration. After consideration, IT IS ORDERED that the Appellant Arizona Department of Revenue shall file a response to the motion for reconsideration on or before August 22, 2024. IT IS FURTHER ORDERED no extensions of time shall be granted absent extraordinary circumstances. (Hon. Kathryn H. King)

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**46 PROCEEDING ENTRIES**

43. 21-Aug-2024 FILED: Response to Motion for Reconsideration; Certificate of Service; Certificate of Compliance (Appellant ADOR)
44. 26-Aug-2024 The Court has received and reviewed both Appellee Mesquite Power, LLC's "Motion for Reconsideration" and Appellant Arizona Department of Revenue's "Response to Motion for Reconsideration." Upon consideration of the Court en banc,  
IT IS ORDERED denying Appellee Mesquite Power, LLC's "Motion for Reconsideration." (Hon. Kathryn H. King)  
-----CASE STATISTICALLY TERMINATED-----
45. 27-Aug-2024 MANDATE REMANDING TO ARIZONA TAX COURT  
Issued Mandate and Copy of Opinion to Tax Court  

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46. 30-Aug-2024 Record Returned to MCSC  
Exhibit: Hearing Date 8/16/2021-List #222(CD) in Manila Envelope  
Physical Exhibit: Hearing Date 8/16/2021- List # 222 in Manila Envelope