

EXCEPTION



0000036112

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-02-0051  
PROCEEDING CONCERNING ELECTRIC )  
RESTRUCTURING ISSUES )

IN THE MATTER OF ARIZONA PUBLIC ) DOCKET NO. E-01345A-01-0822  
SERVICE COMPANY'S REQUEST FOR )  
VARIANCE OF CERTAIN REQUIREMENTS )  
OF A.A.C. R14-2-1606 )

IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-01-0630  
PROCEEDING CONCERNING THE ARIZONA )  
INDEPENDENT SCHEDULING )  
ADMINISTRATOR )

IN THE MATTER OF TUCSON ELECTRIC ) DOCKET NO. E-01933A-02-0069  
POWER COMPANY'S APPLICATION FOR A )  
VARIANCE OF CERTAIN ELECTRIC )  
COMPETITION RULES COMPLIANCE )  
DATES )

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. E-01933A-98-0471  
TUCSON ELECTRIC POWER COMPANY FOR )  
APPROVAL OF ITS STRANDED COST )  
RECOVERY )

EXCEPTIONS OF RELIANT RESOURCES, INC.

1 Reliant Resources, Inc. ("Reliant"), pursuant to A.A.C.R14-3-110(B),  
2 hereby files it exceptions to the July 23, 2002 recommended Opinion and Order of  
3 Administrative Law Judge Lynn A. Farmer ("ALJ Farmer") in the above captioned  
4 proceeding on Track A issues (the "Recommendation").  
5

### 6 Background

7 The Recommendation, *inter alia*, orders that A.A.C.R 14-2-1615(A),  
8 A.A.C.R14-2-1606(B) and A.A.C.R14-2-1611(A) be stayed and that Arizona  
9 Corporation Commission (the "Commission") Decision Nos. 61973 (dated October 6,  
10 1999) and 62103 (dated November 30, 1999) be modified: 1) to delay the transfer of  
11 generating assets until at least July 1, 2004, 2) to limit the amount of power required to  
12 be purchased for Standard Offer Service from the competitive procurement process to,  
13 at a minimum, any required power that cannot be produced from the existing assets of  
14 APS and TEP; the actual amount, timing and the form(s) of competitive procurement,  
15 however, will be determined in the Track B proceeding, and 3) to suspend the  
16 presumption that market determined rates for Competitive Services shall be deemed to  
17 be just and reasonable to APS' and TEP's captive customers. The Recommendation  
18 also orders that: 1) the Staff open a rulemaking to review all of the Retail Electric  
19 Competition Rules; 2) that APS and TEP and Staff develop a plan to resolve reliability  
20 must-run generation concerns; 3) that APS and TEP submit modifications to their  
21 Codes of Conduct; and 4) that an Electric Competition Advisory Group be formed.  
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1 As explained below, Reliant supports much of the Recommendation as  
2 one alternative compromise solution (but not the only reasonable solution) that  
3 balances the Commission's desire to continue moving toward competition  
4 expeditiously, while minimizing the risk of creating a flawed market model like the one  
5 created in California.<sup>1</sup> On the other hand, Reliant believes that some portions of the  
6 Recommendation are inaccurate, unsupported by the record or are unclear and  
7 therefore, should be corrected or stricken.  
8

9  
10 **Reliant's General Position**

11 Reliant strongly supports the Commission's previous decisions to move  
12 Arizona's electric industry into a competitive marketplace. The Commission's  
13 Competition Rules, and Decisions thereunder, create a general framework providing  
14 ratepayers with the benefits of competition, while protecting ratepayers against the  
15 risks of an illusionary competitive marketplace. No change in this framework is  
16 necessary. Therefore, Reliant continues to support the current rules (including, A.C.R  
17 14-2-1615(A) requiring 100% divestiture by January 1, 2003 and A.A.C.R14-2-  
18 1606(B) requiring 100% of power purchased for Standard Offer Service customers to  
19 be acquired from the competitive market, with at least 50% through a competitive bid  
20 process) as an appropriate means of transitioning to a competitive wholesale and retail  
21 electric market. Reliant believes that while divestiture is not essential to the  
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26 <sup>1</sup> The evidence presented in this matters demonstrates that the regulatory framework established by the  
Commission for electric competition does not contain the flaws inherent in the California model.

1 development of a vibrant competitive marketplace, divestiture of generation is  
2 preferred, as it subjects existing generation to competition and will more quickly  
3 eliminate inefficient and costly existing generation from the ratepayers' cost of  
4 electricity. At the same time, divestiture should not be permitted until appropriate  
5 competitive solicitation procedures are in place.  
6

7 Reliant further recognizes that 1) the transfer of all UDC generation  
8 assets to an affiliate will result in a concentration of market resources that provides the  
9 opportunity for the affiliate to exert market power on the wholesale generation market  
10 and 2) existing transmission constraints create load pockets in the service territories of  
11 both APS and TEP. However, these are short-term issues that can be addressed  
12 through market mechanisms, such as a capacity auction, staggered delivery dates,  
13 staggered contract lengths, and varying the product that is acquired competitively. So  
14 long as a transparent and fair competitive solicitation process is adopted with these  
15 short-term issues in mind, the Commission must move forward with competition and  
16 divestiture, sooner rather than later.  
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20 **Reliant Is Generally Supportive Of The Recommendation**

21 Despite its general position regarding competition and the  
22 appropriateness of the existing Rules, Reliant supports much of the Recommendation  
23 as a reasonable compromise. In particular, Reliant supports the Recommendation's  
24 suggestion that A.A.C.R 14-2-1615(A) and A.A.C.R14-2-1606(B) be stayed and that  
25 Commission Decision Nos. 61973 (dated October 6, 1999) and 62103 (dated  
26

1 November 30, 1999) be modified: 1) to delay the transfer of generating assets (although  
2 a delay until July 1, 2004 appears unduly long), and 2) to limit the amount of power  
3 required to be purchased for Standard Offer Service from the competitive procurement  
4 process to, at a minimum, any required power that cannot be produced from the  
5 existing assets of APS and TEP; with the actual amount, timing and the form(s) of  
6 competitive procurement to be determined in the Track B proceedings.  
7

8           Reliant also supports the portions of the Recommendation that require 1)  
9 APS, TEP and Staff to develop a plan to resolve reliability must-run generation  
10 concerns (however, the process should be a public one and any recommendation should  
11 be subject to review and comment by the public); 2) that APS and TEP submit  
12 modifications to their Codes of Conduct; and 3) that an Electric Competition Advisory  
13 Group be formed (however, the final order of the Commission should ensure that a  
14 cross-section of all interested parties are part of the advisory group and that any  
15 recommendations from the advisory group to the Commission are subject to public  
16 disclosure and comment). Reliant also agrees with the Recommendation's conclusion  
17 that issues regarding the transfer of PWEC's competitive generation to APS and  
18 changing the availability of Retail Competition fall outside the scope of the Track A  
19 proceeding (Recommendation at pp. 25, l. 23 – p.26, l. 3).  
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22

23           Reliant, however, opposes those portions of the Recommendation that  
24 find, conclude or imply that the wholesale market has faltered or is not currently  
25 workably competitive (see, e.g., Finding of Facts ("FF") No.s 25, 28, and 29); that  
26

1 market power cannot be mitigated through competitive procurement at this time (FF  
2 No. 21); that A.A.C. R14-2-1611 (A)'s applicability to APS' and TEP's "captive"  
3 customers be suspended (see, e.g., Conclusion of Law No. 8); and that "a  
4 comprehensive review of all Electric Competition Rules" is warranted (see, e.g.,  
5 Recommendation at p. 26, ll. 14-16). These items and other portions of the  
6 Recommendation requiring clarification are discussed below.  
7

8 **The Arizona Wholesale Competitive Market Is Workably**  
9 **Competitive.**

10  
11 The evidence demonstrates that 6,500 MW of new competitive supply  
12 will be on-line in the APS service territory around the summer of 2003, thereby  
13 increasing total generating capacity to approximately 12,500 MW on-line in the APS'  
14 service territory. (Recommendation at footnote 7). At the same time, the projected  
15 load in the APS service area is 6,000 MW. (Id.). Thus, even without considering the  
16 potential for importing power supplies from outside of APS' service area, a significant  
17 wholesale marketplace has already developed for APS' service area. Moreover, this  
18 market developed within just a few years after the Commission indicated a competitive  
19 electric marketplace would be permitted.<sup>2</sup> Thus, the issue is whether the marketplace is  
20 sufficiently competitive to provide a realistic opportunity to obtain the benefits arising  
21 from a competitive marketplace. Reliant believes that a marketplace that has local  
22 generation capacity that is double the load is sufficiently mature to provide a realistic  
23 opportunity to obtain the benefits arising from a competitive marketplace. The issues  
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<sup>2</sup> Reliant does not contend that the Commission's decision to open Arizona to electric competition is the sole reason for this increased capacity, but no one questions it is a significant contributing factor.

1 of market power and transmission constraints do have the potential for excluding some  
2 potential competitors, but market mechanisms, such as a capacity auction and a  
3 properly structured competitive procurement process, can be effective in minimizing  
4 the potential negative impacts therefrom.

5 Premised upon the erroneous determination that the wholesale market is  
6 not workably competitive, the Recommendation finds, at finding of Fact No. 25, that  
7 "reliance on that market will not result in just and reasonable rates for captive  
8 customers."<sup>3</sup> This finding is then apparently the sole justification for Conclusion of  
9 Law No. 8 recommending suspension of A.A.C. R14-2-1611(A)'s applicability to  
10 APS' and TEP's "captive customers."<sup>4</sup> These findings and conclusions directly  
11 contradict the recommendation requiring APS and TEP to acquire, at a minimum, any  
12 required power that cannot be produced from its own existing assets, once Track B is  
13 concluded.  
14

15 Finally, it appears that the Recommendation sometimes confuses the slow  
16 developing nature of Arizona's retail electricity market with activities in the wholesale  
17 market.

18 In order to correctly reflect the current state of the competitive wholesale  
19 market (or at least the state anticipated by summer 2003) and to eliminate the confusing  
20

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21 <sup>3</sup> The Recommendation does not define "captive customers," but Reliant assumes the term is synonymous to  
22 Standard Offer customers.

23 <sup>4</sup> For context, R14-2-1611(A) states: "Market determined rates for Competitive Services, as defined in R14-2-  
24 1601, shall be deemed to be just and reasonable."

25 "Competitive Services" is defined in R14-2-1601 as: "[A]ll aspects of retail electric service except those services  
26 specifically defined as 'Noncompetitive Services' pursuant to R14-2-1601(29) or noncompetitive services as  
defined by the Federal Energy Regulatory Commission."

Finally, "Noncompetitive Services" is defined in R14-2-1601(29) as: "Distribution Service, Standard Offer  
Service, transmission, and any ancillary services deemed to be non-competitive by the Federal Energy Regulatory  
Commission, Must-Run Generating Units services, provision of customer demand and energy data by an Affected  
Utility of Utility Distribution Company to Electric Service Providers, and those aspects of Metering Service set  
forth in R14-2-1612(K)."

1 and unsupported conclusion recommending suspension of A.A.C. R14-2-1611(A)'s  
2 applicability to APS' and TEP's "captive customers," the following amendments to the  
3 Recommendation are appropriate:

4           Finding of Fact No. 21 (page 28) should be amended to read: "While  
5 APS' and TEP's market power can be mitigated through application of appropriate  
6 competitive procurement processes, transmission constraints must be addressed in the  
7 short-term to permit optimal competitive procurement."

8           Delete:

9           a) Finding of Fact No. 25 (page 28) stating: " The wholesale market is  
10 not currently workably competitive; therefore, reliance on that market will not result in  
11 just and reasonable rates for captive customers."

12           b) Conclusion of Law No. 8 (page 31) stating: "The evidence presented  
13 in this proceeding demonstrates that, at this time, pursuant to Article 15, §3 of the  
14 Arizona Constitution and A.R.S. §§ 40-361 the public interest requires the suspension  
15 of A.A.C. R14-2-1611(A)'s applicability to APS' and TEP's captive customers."

16           and

17           c) "and A.A.C. R14-2-1611(A) as applied to TEP and APS' captive  
18 customers" at page 26, line 11 of the Recommendation.

19           Finding of Fact No. 29 (page 28) should be amended to read: "Contrary  
20 to the parties' expectations and assumptions new retail competitors have failed to  
21 materialize, and incumbent utilities have not lost customers in any meaningful  
22 number."



1 and B. Therefore Reliant suggests the Recommendation be amended at page 26, lines  
2 13 -18, deleting the text and inserting:

3 “Accordingly, we will direct Staff to review the Electric  
4 Competition Rules and other Commission decisions to  
5 determine what if any specific changes are necessary to  
6 ensure consistency with this Decision and our determination  
7 on Track B. Staff shall within 3 months of a decision in  
8 Track B make its recommendations, serving all parties to this  
9 docket. Any party having specific recommendations as to  
10 such revisions arising from our decisions in Track A and B  
11 should file them in this docket within thirty (30) days  
12 following a final decision in Track B. Importantly, this  
13 direction to Staff is intended to ensure our rules and decisions  
14 remain internally consistent. This limited review is not a  
15 direct or collateral attack on our commitment to electric  
16 competition. The parties to this docket should not interpret  
17 this direction to Staff as opening the door to a general re-  
18 visiting of the rules or the concept of competition. Those  
19 decisions have been made and we will abide by them.”

14 Reliant further suggests amending the second ordering paragraph on page  
15 32 of the Recommendation by deleting the present ordering paragraph and inserting:  
16

17 IT IS FURTHER OREDERED that Staff shall review the  
18 Electric Competition Rules and other Commission decisions  
19 to determine what if any specific changes are necessary to  
20 ensure consistency with this Decision and our determination  
21 on Track B and submit its recommendations thereon within  
22 three (3) months following a final decision in Track B.

23 **Certain Portions of the Recommendation Should be Clarified**

24 The portion of the Recommendation dealing with sharing the burden and  
25 obligation to resolve Arizona’s transmission constraints (Recommendation at page 25,  
26 ll. 15-17; Finding of Fact 39 at page 30) fails to recognize the jurisdiction of the  
Federal Energy Regulatory Commission with regard to transmission. Reliant therefore

1 suggests that the phrase "in a manner consistent with the policies, rules, orders and  
2 tariffs of the Federal Energy Regulatory Commission." This would be inserted  
3 following the word "constraints" on line 17, page 25 and at the end of finding of fact  
4 No. 39 at page 30.

5 Finally, Reliant suggests that Finding of Fact No. 38 at page 29 should be  
6 clarified to ensure that the Advisory Group will be composed of Staff, stakeholders and  
7 market participants. The following language should be added to Finding of Fact No. 38  
8 "and outlining the steps taken to ensure that the Advisory Group is truly representative  
9 of Staff, stakeholders and market participants."  
10

11 **CONCLUSION**

12 Reliant supports the Electric Competition Rules as they currently exist.  
13 However, Reliant finds the Recommendation of ALJ Farmer represents a reasonable  
14 compromise to permit additional time to transition to complete electric competition in  
15 Arizona, while insuring that a California-like situation is avoided. Such an approach is  
16 warranted due to localized constraints in transmission and the potential for APS and  
17 TEP exercising undue market power at the present time. The Recommendation,  
18 however, does need to be amended as set forth in these Exceptions to be consistent with  
19 the record, to be internally consistent and to avoid sending unwarranted signals that the  
20 concept of electric competition is no longer settled in Arizona.  
21

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1                   WHEREFORE, Reliant Resources, Inc. respectfully requests the Arizona  
2 Corporation Commission adopt the amendments to the Recommendation attached  
3 hereto as Exhibit A.

4                   RESPECTFULLY submitted this 1st day of August, 2002.

5                   MARTINEZ & CURTIS, P.C.

6  
7  
8                   By 

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15 1755-4/pleadings/Exceptions to ALJ Recommendation.Track A.0801.02

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1755/-4/pleadings/Exceptions to ALJ Recommendation.Track A.0801.02(WPS)

**RELIANT RESOURCES, INC.**  
**PROPOSED AMENDMENTS**  
**TO RECOMMENDED OPINION AND ORDER**  
DOCKET NOS.E-00000A-02-0051, E-01345A-01-0822;  
E-00000A-01-0630;E-01933A-02-0069; AND E-01933A-98-0471

At page 25, line 17 **insert** after the word “constraints” the phrase “in a manner consistent with the policies, rules, orders and tariffs of the Federal Energy Regulatory Commission”

At page 26, line 11 **delete** the phrase: “and A.A.C. R14-2-1611(A) as applied to TEP and APS’ captive customers”.

At page 26, lines 13 –18, **delete** the text that reads:

“Further, we agree with APS that there should be a comprehensive review of all Electric Competition Rules to determine if other rules or Commission decisions are also implicated as a result of our determinations in Track A, and we also believe that such a review and rulemaking may be appropriate at the conclusion of Track B. Accordingly, we will direct Staff to open a rulemaking docket to address any required changes to rules, and will keep this docket open for parties to file comments upon what other decisions/issues may need to be revisited.”

And **insert** the following:

“Accordingly, we will direct Staff to review the Electric Competition Rules and other Commission decisions to determine what if any specific changes are necessary to ensure consistency with this Decision and our determination on Track B. Staff shall within 3 months of a decision in Track B make its recommendations, serving all parties to this docket.

Any party having specific recommendations as to such revisions arising from our decisions in Track A and B should file them in this docket within thirty (30) days following a final decision in Track B. Importantly, this direction to Staff is intended to ensure our rules and decisions remain internally consistent. This limited review is not a direct or collateral attack on our commitment to electric competition. The parties to this docket should not interpret this direction to Staff as opening the door to a general re-visiting of the rules or the concept of competition. Those decisions have been made and we will abide by them.”

At page 28, lines 7 ½ through 8 ½ **amend** Finding of Fact No. 21 as follows: “While APS’ and TEP’s market power cannot be mitigated through application of appropriate competitive procurement processes at this time, transmission constraints must be addressed in the short-term to permit optimal competitive procurement.”

At page 28, lines 14 ½ through 15 ½ **delete** Finding of Fact No. 25. (The finding currently states: “ The wholesale market is not currently workably competitive; therefore, reliance on that market will not result in just and reasonable rates for captive customers.”)

At page 28, lines 25 through 26 ½ **amend** Finding of Fact No. 29 as follows: “Contrary to the parties’ expectations and assumptions, ~~the wholesale market has faltered,~~ the new retail competitors have failed to materialize, and incumbent utilities have not lost customers in any meaningful number.”

At page 29, line 25 through page 30, line 1 **amend** Finding of Fact No. 38 as follows: “Staff’s recommendation to form an Electric Competition Advisory Group is adopted, and Staff should prepare and file quarterly reports during the first two years following the effective date of this decision,<sup>12</sup> detailing the activities of the Advisory Group and outlining the steps taken to ensure that the Advisory Group is truly representative of Staff, stakeholders and market participants, with the first such report filed in January 2003 and detailing activities conducted during the third quarter of this year.”

At page 31, lines 1 ½ through 2 ½ **delete** Conclusion of Law No. 8. (The Conclusion currently states: “The evidence presented in this proceeding demonstrates that, at this time, pursuant to Article 15, §3 of the Arizona Constitution and A.R.S. §§ 40-361 the public interest requires the suspension of A.A.C. R14-2-1611(A)’s applicability to APS’ and TEP’s captive customers.”

At page 30, line 2 ½ **insert** following the word “constraints” the phrase “in a manner consistent with the policies, rules, orders and tariffs of the Federal Energy Regulatory Commission”

At page 32, lines 7 ½ through 9 ½ **amend** the ordering paragraph as

follows:

IT IS FURTHER OREDERED that Staff shall ~~open a rulemaking to~~ review the Retail Electric Competition Rules ~~in light of our decisions herein and to address issues resolved in~~ and other Commission decisions to determine what if any specific changes are necessary to ensure consistency with this Decision and our determination on Track B; and ~~to amend A.A.C.R14-2-1615(A) and A.A.C.R14-2-1606(B)~~ submit its recommendations thereon within three (3) months following a final decision in Track B.

1755-4/pleading/Exhibit A to Exceptions to Track A Recommendation.0731.02