



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

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)

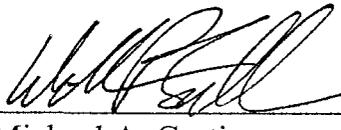
IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR A)
VARIANCE OF CERTAIN ELECTRIC)
COMPETITION RULES COMPLIANCE)
DATES)

RELIANT RESOURCES, INC.'S
NOTICE OF FILING EXCEPTIONS
TO STAFF'S RECOMMENDED ORDER AND OPINION

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RESPECTFULLY submitted this 10th day of February, 2003.

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By 

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1755\4\Track B Hearing\Pleadings\notice of filing exceptions.0210.03

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COMPETITION RULES COMPLIANCE)
DATES)

EXCEPTIONS OF RELIANT RESOURCES, INC.

Reliant Resources, Inc. ("Reliant"), expresses its appreciation to the
Commissioners, Administrative Law Judge Teena Wolfe ("ALJ Wolfe"), Arizona
Corporation Commission Staff ("Staff") and the other parties for their tireless

1 commitment to creating a fair and open wholesale competitive solicitation process.
2 While Reliant agrees with the majority of the Recommended Opinion and Order
3 issued January 29, 2003 (the "ROO" or "Recommendation"), it files these exceptions
4 pursuant to A.A.C. R14-3-110(B) to those portions of the Recommendation that
5 conclude or imply that an auction may not be used (see, e.g., ROO, p. 38, ll. 26-28; p.
6 39, ll. 1-3; p. 59, ll. 19-24, Finding of Facts (FF) No. 54); that the Staff's withdrawn
7 proposal of a "Price to Beat" will be implemented (ROO, p. 76, ll. 2-4); and to clarify
8 other statements regarding the competitive solicitation (FF 65).
9

10 **I. BACKGROUND**

11 The Recommendation, *inter alia*, adopts the Detailed Staff Proposed
12 Solicitation Process of October 25, 2002 ("Staff Report"). APS and TEP are further
13 ordered to comply with the requirements of the Staff Report and numerous other
14 directives related to a competitive procurement for certain utility power supplies as
15 described in the Recommendation. As explained below, Reliant supports much of the
16 Recommendation as part of the transition to a fully competitive electric market.
17

18 **II. RELIANT IS GENERALLY SUPPORTIVE OF THE RECOMMENDATION**

19 ALJ Wolfe utilizes market-based principles to bring the advantages of
20 competition directly to Arizona's consumers. If adopted by the Arizona Corporation
21 Commission (the "Commission"), the Recommendation will further support the
22 development of a robust and competitive wholesale market via a fair and open
23 competitive procurement. Specifically, Reliant supports the Recommendation's
24 adoption of the Staff's proposed levels of contestable load. A successful solicitation
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1 for the amount of capacity and energy as proposed by Staff will accomplish many of
2 the previously stated goals of the Commission.

3 Furthermore, Reliant supports the efforts of the Commission to ensure
4 that the competitive solicitation is open and fair with necessary language regarding
5 the interaction of utilities and their unregulated affiliates in the competitive
6 solicitation. The Recommendation provides appropriate interim measures until the
7 Commission can consider an updated Code of Conduct and Standards of Conduct.
8

9 However, as discussed below, Reliant believes that some portions of the
10 Recommendation are inaccurate, unsupported by the record or are unclear and
11 therefore, should be corrected or stricken.

12 **III. AN AUCTION PROCESS WILL PROVIDE BENEFITS FOR ALL**
13 **PARTIES, INCLUDING THE ARIZONA CONSUMER, AND SHOULD**
14 **NOT BE PRECLUDED FROM THIS OR FUTURE COMPETITIVE**
SOLICITATIONS

15 The record provides no support for ordering APS or TEP to use requests
16 for proposals ("RFPs") as the exclusive method for securing contestable load. In fact,
17 the Staff Report, as adopted by the Recommendation, supports at least two methods
18 for competitive solicitation. One of those methods is a descending clock auction.¹
19 (ROO, p. 76, ll. 2-4; Staff Report p. 17, ll. 7-11) Reliant presented evidence that a
20 competitive solicitation utilizing an auction can and will achieve the Commission's
21 stated goals to encourage a phase-in to competition, encourage the development of a
22 robust market for wholesale generation, and obtain some benefits of the new Arizona
23 generation resources, while at the same time protecting ratepayers. (See Reliant-1, p.
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25 _____
26 ¹ The other explicitly mentioned solicitation method is the request for proposal.

1 3-4; p.9) No party demonstrated that an auction process could not accomplish these
2 stated goals. Reliant further posited, without contention, that standardized products
3 could facilitate achievement of these same goals. In addition, consistent with
4 Reliant's desire for market-based mechanisms to accommodate competition in
5 Arizona, Reliant supported the APS compromise proposal for a quarterly auction of
6 economy energy needs. (ROO, p.32, ll. 20-27). The sole issue presented by the
7 testimony was whether APS and TEP should be compelled to secure a portion of the
8 contestable load through an auction process in this initial solicitation. No party
9 suggested APS and TEP should be precluded from using an auction process.
10

11 The ROO accepts the position of APS that "there is insufficient time to
12 develop an auction ... for the first solicitation" and then concludes, "it appears that an
13 RFP will be the better means of providing the utilities with the broadest array of
14 responses from which to choose." (ROO, p. 38, ll. 26-28; p. 39, ll.1-3). Furthermore,
15 the Recommendation rejects APS' proposal of a quarterly auction process for
16 solicitation of economy energy purchases "as a compromise to including the disputed
17 economy energy in contestable load"(ROO, p.32, ll. 20-27) and fails to specifically
18 reference auctions as an acceptable blind procurement technique for short term
19 purchases. (p. 52, ll. 18-20; p. 59, ll. 19-24, Finding of Facts (FF) No. 54.) These
20 provisions of the Recommendation, taken together, might be construed later as
21 precluding the use of the auction process despite adoption of the Staff Report.
22

23 Reliant, therefore, requests that the Recommendation be clarified to
24 ensure the auction process is available at the utility's option in this first solicitation
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26

1 and to further encourage the use of the auction process in future solicitations. With
2 this in mind, the Recommendation should be amended as follows:

3 1. Page 39, line 3 should be amended by adding: Therefore, the
4 proposals of APS and TEP to rely exclusively on the RFP methodology for the first
5 solicitation is approved, but the utilities are encouraged to use diverse procurement
6 methods in future solicitations, including auctions.

7 2. Finding of Fact No. 54 (page 72) should be amended to read:
8 “APS shall adopt the practice of using “blind” procurement techniques, such as
9 electronic trading platforms, electronic auctions, or independent brokers, for all its
10 short term purchases with the exception of emergency purchases. APS shall file a
11 draft protocol adopting this practice, for Commission approval, by March 20, 2003.”
12

13 3. Finding of Fact No. 59 (page 73) should be amended to read: “In
14 the event a TEP affiliate does plan to offer power on the wholesale market, TEP shall
15 adopt the practice of using “blind” procurement techniques, such as electronic trading
16 platforms, electronic auctions, or independent brokers, for all its short term purchases
17 with the exception of emergency purchases. TEP shall file a draft protocol adopting
18 this practice, for Commission approval, 60 days prior to a TEP affiliate offering any
19 power on the wholesale market.”
20

21 Finally, Reliant notes that the Recommendation at page 38, lines 23-26
22 inaccurately states: “Despite the fact that the parties have worked toward general
23 agreement regarding this solicitation, there is no general agreement of the parties on
24 standard products, and such agreement would be a requirement of a fair, open and
25 transparent solicitation process through an auction.” In fact, the products being
26

1 suggested by both APS and TEP are standard in nature. (See, APS-2, p.7, ll. 11-26; p.
2 8, ll. 1-8; TEP-1, p. 10, ll.6-23.) Furthermore, there is no requirement that the parties
3 agree on the product for an auction to be appropriate, only that the product be one
4 generally understood by and available on the wholesale market. (Staff Report at p. 1;
5 Reliant-1 at p. 3.) Therefore, Reliant respectfully requests the sentence at page 38,
6 lines 23-26 be deleted.

7
8 **IV. THE STAFF'S "PRICE TO BEAT" PROPOSAL SHOULD BE**
9 **EXPLICITLY REMOVED FROM THE STAFF REPORT**

10 Just prior to the hearing Staff officially withdrew its "Price to Beat"
11 proposal Staff had detailed in the Staff Report (see, e.g. S-2, p.1; Staff Report at p. 14,
12 l. 18; p. 24, ll. 24-28; p. 25, ll. 1-27, p. 26, ll. 1-14). Staff reiterated the withdrawal of
13 their proposal during the Track B hearing. However, the portion of the Staff report
14 attached as Exhibit A to the Recommendation still contains the "Price to Beat"
15 concept and therefore the Recommendation needs to be amended to reflect this
16 portion of the Staff Report is not being adopted. Further, neither the record nor the
17 Recommendation support a finding that expedited approval of procurement contracts
18 entered as a result of the competitive solicitation "would pose a substantial risk to
19 consumers." To deal with these two issues Reliant suggests amending Finding of Fact
20 65 to read: "The "Price to Beat" concept (page 24, line 24 through page 26, line 14 of
21 the Staff Report, attached hereto as Exhibit A) was abandoned at hearing and the
22 expedited approval of procurement contracts entered as a result of the competitive
23 solicitation is not necessary at this time for the protection of either the utilities or the
24 merchants and neither is adopted by the Commission."
25
26

1 **V. CONCLUSION**

2 Reliant supports a competitive market for electricity. The results of the
3 Track B process will provide an important milestone in Arizona's transition to a
4 competitive market. This competition will be to the benefit of Arizona's consumers.
5 Reliant finds the Recommendation of ALJ Wolfe represents a reasonable framework
6 from which the Arizona utilities can procure power supplies in an open and fair
7 manner. The Recommendation, however, should be amended as set forth in these
8 Exceptions to be consistent with the record and to be internally consistent.
9

10 WHEREFORE, Reliant Resources, Inc. respectfully requests the
11 Arizona Corporation Commission adopt the amendments to the Recommendation set
12 forth above and attached hereto as Exhibit A for the Commission's convenience.

13 RESPECTFULLY submitted this 10th day of February, 2003.

14 MARTINEZ & CURTIS, P.C.

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EXHIBIT A
RELIANT RESOURCES, INC.'S EXCEPTIONS

PROPOSED AMENDMENTS
TO RECOMMENDED OPINION AND ORDER (Track B)
DOCKET NOS.E-00000A-02-0051, E-01345A-01-0822;
E-00000A-01-0630;E-01933A-02-0069; AND E-01933A-98-0471

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5 1. At page 38, lines 23-26 **delete** the sentence that reads: "Despite the
6 fact that the parties have worked toward general agreement regarding this
7 solicitation, there is no general agreement of the parties on standards products, and
8 such agreement would be a requirement of a fair, open, and transparent solicitation
9 process through an auction."

10
11 2. At page 39, lines 3 **amend** by **inserting** the following new sentence
12 after the period: "Therefore, the proposals of APS and TEP to rely exclusively on
13 the RFP methodology for the first solicitation is approved, but the utilities are
14 encouraged to use diverse procurement methods in future solicitations, including
15 auctions."

16
17
18 3. At page 72, lines 13 through 16 **amend** Finding of Fact No. 54 by
19 **inserting** a reference to "electronic auctions" as follows: "APS shall adopt the
20 practice of using "blind" procurement techniques, such as electronic trading
21 platforms, electronic auctions, or independent brokers, for all of its short term
22 purchases with the exception of emergency purchases. APS shall file a draft
23 protocol adopting this practice, for Commission approval, by March 30, 2003."
24
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1 4. At page 73, lines 6 through 10 **amend** Finding of Fact No. 59 by
2 **inserting** a reference to “electronic auctions” as follows: “In the event a TEP
3 affiliate does plan to offer power on the wholesale market, TEP shall adopt the
4 practice of using “blind” procurement techniques, such as electronic trading
5 platforms, electronic auctions, or independent brokers, for all of its short term
6 purchases with the exception of emergency purchases. TEP shall file a draft
7 protocol adopting this practice, for Commission approval, 60 days prior to a TEP
8 affiliate offering any power on the wholesale market.”
9

10 5. At page 74, lines 9 through 11 **delete** the existing Finding of Fact
11 No. 65 and **insert** new Finding of Fact No. 65 as follows (underlined portions
12 represent additions; deletions are not shown): “The “Price to Beat” concept (page
13 24, line 24 through page 26, line 14 of the Staff Report, attached hereto as Exhibit
14 A) was abandoned at hearing and the expedited approval of procurement entered
15 as a result of the competitive solicitation is not necessary at this time for the
16 protection of either the utilities or the merchants and neither is adopted by the
17 Commission.”
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1 Original and nineteen (19) copies of the foregoing document filed with service list this 10th day of February,
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2 Docket Control
3 Arizona Corporation Commission
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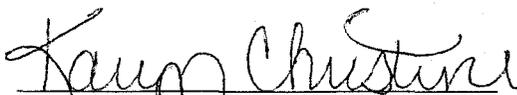
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