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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
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NOV 18 2002

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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)

NOTICE OF FILING REBUTTAL TESTIMONY OF

CURTIS L. KEBLER

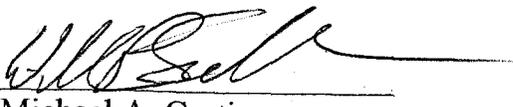
ON BEHALF OF RELIANT RESOURCES, INC.

Reliant Resources, Inc., by and through its attorneys, hereby files the
Rebuttal Testimony of Curtis L. Kebler, Director, Asset Commercialization, West
Region.

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RESPECTFULLY submitted this 18th day of November, 2002.

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4 JIM IRVIN
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6 MARC SPITZER
7 COMMISSIONER

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

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

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

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

24 **REBUTTAL TESTIMONY OF CURTIS L. KEBLER**

25 **On Behalf of**

26 **RELIANT RESOURCES, INC. ("RELIANT")**

NOVEMBER 18, 2002

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5 Commercialization, West Region for Reliant Resources, Inc. ("Reliant").
6

7 Q. ARE YOU THE SAME CURTIS L. KEBLER THAT OFFERED DIRECT
8 TESTIMONY IN THIS DOCKET ON NOVEMBER 12, 2002?

9 A. Yes.

10 **I. SUMMARY OF TESTIMONY**

11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN
12 TRACK B?

13
14 A. I will be responding to the testimony from Mr. Wheeler of Arizona Public
15 Service Company ("APS"), Mr. Hutchens of Tucson Electric Power Company
16 ("TEP"), Dr. Rosen for Residential Utility Consumer Office ("RUCO"), Mr. E.
17 Douglas Mitchell of Sempra Energy Resources ("Sempra") and Dr. Roach for
18 Panda Gila River, L.P. ("Panda") as it pertains to the following:

- 19 1. Commission approval of the Track B procurement and assurance of
20 cost recovery;
- 21 2. The "price to beat;"
- 22 3. Refinement of the role of Staff and the Independent Monitor; and
- 23 4. The regional and integrated resource evaluation methodologies
24 suggested by RUCO and Sempra.
25

26 I will also briefly address the revised Code of Conduct filed by APS on
November 12, 2002.

1 **II. COMMISSION REVIEW AND APPROVAL OF THE SELECTED**
2 **CONTRACTS**

3 Q. DO YOU AGREE WITH THE CONCERN EXPRESSED BY MR.
4 WHEELER AND MR. HUTCHENS REGARDING THE ABSENCE OF
5 PROMPT ARIZONA CORPORATION COMMISSION (“COMMISSION”)
6 ACCEPTANCE OF THE RESULTS OF THE POWER PROCUREMENT
7 PROCESS?

8 A. Yes. Both Mr. Wheeler¹ and Mr. Hutchens² express the same concern set forth
9 in my direct testimony – the lack of timely Commission approval of the
10 contracts selected through the solicitation process injects an unnecessary
11 element of regulatory risk into the economic transaction that will be reflected
12 in increased costs. Mr. Wheeler correctly observes that the structure of the
13 solicitation and the oversight of Staff and the Independent Monitor, provides a
14 high degree of confidence that the stated goals have been achieved in an
15 equitable and prudent manner and should permit the Commission to promptly
16 approve the selection decision.

17
18 **III. THE “PRICE TO BEAT” IS UNNECESSARY**

19 Q. DO ANY OF THE OTHER WITNESSES EXPRESS CONCERNS
20 REGARDING THE “PRICE TO BEAT” ADVOCATED BY STAFF?

21 A. Both Mr. Wheeler and Dr. Rosen express concern regarding the practical
22 difficulties Staff will face in establishing the price to beat,³ while Mr. Hutchens
23 states that the price to beat may deter long-term contracts by requiring an
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26 ¹ Wheeler, Direct at pages 4-7.

² Hutchens, Direct at pages 10-11.

³ Wheeler, Direct at page 4, lines 12-16, page 9, lines 1-11; Dr. Rosen, Direct at page 14,
 lines 12-20.

1 additional discount to the price to beat.⁴ My direct testimony explains how the
2 price to beat contributes to the uncertainty of the entire process and that the
3 methodology for its development and application is unknown and not
4 understood. Therefore, use of a price to beat in the evaluation process only
5 confuses the prudence issue due to the difficulty in making accurate
6 comparisons of all the varying products and the timeliness of its development
7 and its ultimate application.
8

9 When the solicitation is structured in an open, transparent and equitable
10 manner, then the winning bid represents *the* "price to beat." There is no need
11 for comparison with a hypothetical price to beat because the best price for that
12 particular product available in the market at that particular time has been
13 obtained by competitive solicitation.
14

15 Q. IF A "PRICE TO BEAT" IS RETAINED AS PART OF THE
16 SOLICITATION PROCESS, DO YOU AGREE WITH MR. WHEELER
17 THAT IT SHOULD BE REVEALED ONLY TO THE UTILITY?
18

19 A. No. First, for the reasons stated above and in my direct testimony, Reliant
20 believes the price to beat concept is unnecessary. If the price to beat concept is
21 adopted by the Commission, Reliant urges that it be used only as a reference
22 point for evaluating the bids selected by the utility. Therefore, Reliant agrees
23 with the Staff Report that it is not necessary to disclose the actual price to beat
24 as part of the competitive solicitation process. Reliant does, however,
25 recommend Staff be required to disclose the general methodology used to
26

⁴ Hutchens, Direct at page 9, lines 8-10.

1 determine the price to beat in the context of the products subject to competitive
2 solicitation. Furthermore, the utility should not be the only party apprised of
3 the price to beat as suggested by Mr. Wheeler.⁵ Whatever is revealed about the
4 price to beat should be revealed to all participants. This is the only way to
5 ensure a level playing field is maintained for the current, as well as future
6 competitive solicitations.

7
8 Q. DOES RELIANT AGREE WITH DR. ROACH'S SUGGESTION AT PAGE
9 34 OF HIS TESTIMONY THAT THE INDEPENDENT MONITOR
10 SHOULD ANNOUNCE WHETHER HE OR SHE CONCURS WITH APS'
11 PROCESS AND SELECTION OF THE WINNING BIDS AND THAT THE
12 COMMISSION SHOULD GIVE SUCH ANNOUNCEMENT
13 CONSIDERABLE WEIGHT IN ITS PRUDENCE REVIEW?

14
15 A. Yes, and Reliant believes the Staff Report already comports with Dr. Roach's
16 suggestion. The Staff Report requires the utility to submit a detailed report to
17 the Commission within two weeks of the selection of winning bids. The
18 utility's report must detail both the process employed to conduct the
19 solicitation and explain the basis for selecting the winning bid. The Staff
20 Report requires the Independent Monitor to submit two reports. The first
21 report is due within 3 days of the selection of winning bid identifying the
22 winning bids and outlining any deficiencies noted in the solicitation process.
23 A second report is due from the Independent Monitor within 14 days of the
24 selection of the winning bid. This report must describe the process employed
25 by the utility and evaluate the utilities' conformity with the process
26

⁵ Wheeler, Direct at page 8, lines 9-10.

1 requirements. The report must state if the Independent Monitor finds the
2 utility unfairly or erroneously conducted the solicitation and detail the basis for
3 the Independent Monitor's belief that the selection process was flawed.
4 Reliant believes the Commission should require the Independent Monitor's
5 reports to contain whatever information the Commission deems necessary to
6 aid it in the prompt review of the solicitation. We agree with Dr. Roach that,
7 as an opinion of an independent professional selected by Staff, the Independent
8 Monitor's reports are entitled to considerable weight by the Commission. As I
9 stated in my direct testimony, a five-day time frame is appropriate for auctions
10 because the standardization of product minimizes the subjectivity involved in
11 the final selection process.
12

13 **IV. BIDDERS MUST BE ABLE TO REPORT DIRECTLY TO THE**
14 **INDEPENDENT MONITOR**

15 Q. MR. WHEELER SUGGESTS⁶ THAT THE STAFF REPORT
16 CONTEMPLATES NUMEROUS OPPORTUNITIES FOR THE BIDDERS
17 TO ATTEMPT TO NEGOTIATE "AROUND" THE UTILITY TO
18 INFLUENCE THE PROCESS OR SUGGEST NEW PROCUREMENT
19 PROTOCOLS. DO YOU AGREE WITH THESE CONCERNS?

20 A. No. The Staff Report merely allows any participant in the process to provide
21 information to the Independent Monitor. The Independent Monitor determines
22 whether the information warrants any action. Bidders should not be prohibited
23 from reporting concerns directly to the Independent Monitor, whenever they
24 deem such a direct report is appropriate. Reliant does agree that a meeting
25
26

⁶ Wheeler, Direct at page 4, lines 18-21.

1 should be held with all affected parties, including the utility, before the
2 Independent Monitor takes any action on a concern reported by a bidder or the
3 utility. Reliant further emphasizes that it is better to resolve as many issues as
4 possible prior to the release of the final bid solicitation material so as to narrow
5 the field of open items to be dealt with after the bid.
6

7 Q. DOES THE USE OF AN AUCTION PROCESS ALSO ASSIST IN
8 NARROWING THE NUMBER OF OPEN ITEMS TO BE DEALT WITH
9 AFTER THE BID?

10 A. Yes. An auction process alleviates all of these concerns. For standard
11 products that are determined to be appropriate for the needs of utilities, an
12 auction is a transparent, equitable and neutral method of securing those
13 products. By involving Staff and the Independent Monitor ahead of time in the
14 product definition it removes the regulatory risk and the associated premium.
15 When the auction is concluded and the only variable among the participants
16 that has changed is the price, Staff, the Independent Monitor, the Commission
17 and the ratepayers of Arizona are assured the lowest price for a product agreed
18 upon beforehand.
19

20 V. INTEGRATED RESOURCE PLANNING AND REGIONAL MODELS

21 Q. MUST AN INTEGRATED RESOURCE PLAN OR A REGIONAL MODEL
22 BE EMPLOYED TO EVALUATE THE IMPACT OF THE CONTRACTS
23 SELECTED THROUGH THE CURRENT COMPETITIVE SOLICITATION
24 PROCESS?
25

26 A. No. Reliant believes the methodologies suggested by RUCO and Sempra are
unnecessary for the current competitive solicitation process scheduled for

1 March of 2003. The Staff Report recognizes that the wholesale competitive
2 solicitation process is part of the overall resource planning for the utility.⁷ The
3 Staff Report already requires each utility to provide Staff and the Independent
4 Monitor its current 10-year load and energy forecast and resource plan. The
5 utility must meet with Staff and the Independent Monitor and justify the
6 adequacy of its resources committed to serve expected loads and the reliability
7 of the resources planned to serve that load. Based upon the utility's load and
8 energy forecast and its resource plan, the utility must develop a needs
9 assessment identifying specific capacity and energy needs and such other
10 services and/or facilities as may be needed over the term of the load forecast.
11 The load forecast, resource plan and needs assessment are reviewed with Staff
12 and the Independent Monitor.
13

14
15 The Third Procedural Order recognized that the "utilities' needs
16 assessments and procurement proposals are issues central to the solicitation
17 process . . . [and required the parties to present] facts to support such a
18 determination . . . prior to the hearing."⁸ The Administrative Law Judge
19 emphasized that the "parties have been participating in workshops on the
20 development of a solicitation process since May of this year, and should be on
21 notice that such assessments and proposals are required. The provision of data
22 supporting a parties' position on these issues should therefore not be
23 problematic."⁹
24
25
26

⁷ Staff Report at page 13, line 24 through page 14, line 17.
⁸ Third P.O. at page 7, lines 17-20.
⁹ Id. at lines 20-23.

1 The parties have had six months to advocate methodologies in
2 workshops. The Commission put the parties on notice in its Track A decision
3 that a determination would be made in Track B as to the level of unmet needs
4 for APS and TEP to be used in the initial competitive solicitation process.
5 Clearly, this proceeding is intended to quantify the unmet need and the process
6 to be used in the initial competitive solicitation.
7

8 APS, TEP, Harquahala Generating Company, L.L.C. ("HGC") and
9 Panda each have presented evidence supporting a specific needs assessment.
10 The evidence presented by the parties provides the factual basis for the
11 Commission to make a decision for this initial solicitation.
12

13 **VI. CODE OF CONDUCT**

14 Q. DOES THE REVISED CODE OF CONDUCT FILED BY APS ON
15 NOVEMBER 12, 2002 ADDRESS THE CONCERN YOU RAISED IN
16 YOUR DIRECT TESTIMONY REGARDING DISPATCH FUNCTIONS?

17 A. APS' revised Code of Conduct appears to permit APS to improperly share
18 Confidential Information with APS Competitive Electric Affiliates (i.e., APS
19 affiliates offering competitive retail or wholesale services), to the extent they
20 are providing Shared Services, including "energy risk management" and
21 "system dispatch." In particular, Section IX.C of the revised Code of Conduct
22 (which generally prohibits the joint employment of employees) states:
23 "Contracts for services accounted for in conformance with Section X of this
24 Code of Conduct shall not constitute prohibited joint employment if measures
25 are taken to prevent the transfer of Confidential Information between APS and
26 a Competitive Electric Affiliate." Section X.C permits APS to provide Shared

1 Services to its Competitive Electric Affiliates and Sections X.D permits APS to
2 acquire Shared Services from Pinnacle West. Importantly, the definition of
3 Confidential Information excludes "information necessary for a Competitive
4 Electric Affiliate to provide or receive Shared Services". Shared Services
5 includes such things as "energy risk management," "system dispatch" and
6 "contract management."
7

8 Q. WHAT IS THE PROBLEM WITH THE FOREGOING LANGUAGE?

9 A. APS and Pinnacle West have integrated economic dispatching and purchasing
10 of generation supplies and therefore the information crosses corporate
11 boundaries. This undermines the competitive solicitation process. The
12 language referred to above would allow a "Competitive Electric Affiliate" or
13 Pinnacle West Energy Corporation ("PWEC") to be exempt from the
14 prohibition of the sharing of Confidential Information when it involves system
15 dispatching, energy risk management or contract management issues. This
16 means that corporate firewalls put into place to maintain confidentiality can be
17 set aside when purchasing Shared Services, including system dispatch or
18 making energy purchasing decisions. In fact, the Shared Service provision
19 appears to allow whoever at APS is in control of system dispatching to share
20 Confidential Information with persons at PWEC, even though PWEC is
21 competing in the marketplace with other generators.
22

23
24 Q. DO YOU HAVE A PROPOSAL TO REMEDY THIS SITUATION?

25 A. Yes. In addition to prohibiting PWEC personnel from making the short-term
26 economy transactions and energy dispatch decisions for APS, the definition of

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Shared Services should be changed to delete reference to “energy risk management,” “system dispatch” and “contract management.”

Q. DOES APS’ REVISED CODE OF CONDUCT ENSURE THAT AN APS EMPLOYEE ASSIGNED TO ANY PORTION OF THE PROCUREMENT PROCESS HAS NOT HAD ANY IMPROPER CONDUCT WITH AN APS AFFILIATE?

A. APS has indicated that personnel and their responsibilities are being shifted between APS and PWEC. For this reason, I recommend that any APS employee who works on the competitive procurement, including its development, execution and review, be required to attest that they have no knowledge of the products or offers of any APS affiliate participating in the competitive solicitation. In addition, they should attest that they have provided no information, not generally available to all entities participating in the competitive solicitation process, to an employee of an APS affiliate or to an employee performing Shared Services with an APS affiliate regarding APS’ procurement process.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.