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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
AN ORDER OR ORDERS AUTHORIZING IT TO
ISSUE, INCUR, OR ASSUME EVIDENCES OF
LONG-TERM INDEBTEDNESS; TO ACQUIRE A
FINANCIAL INTEREST OR INTERESTS IN AN
AFFILIATE OR AFFILIATES; TO LEND MONEY
TO AN AFFILIATE OR AFFILIATES; AND TO
GUARANTEE THE OBLIGATIONS OF AN
AFFILIATE OR AFFILIATES

DOCKET NO. E-01345A-02-0707

**RELIANT RESOURCES, INC.'S
NOTICE OF FILING ITS
OPENING POST-HEARING BRIEF**

Reliant Resources, Inc., by and through its attorneys, hereby files its
Opening Post-Hearing Brief.

RESPECTFULLY submitted this 27th day of January, 2003.

MARTINEZ & CURTIS, P.C.

Arizona Corporation Commission

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By *[Signature]*

William P. Sullivan, Esq.
Michael A. Curtis, Esq.
2712 North Seventh Street
Phoenix, Arizona 85006-1090
Attorneys for Reliant Resources, Inc.

1 APS financing application to guard against the possibility that the financing application
2 might subvert the efforts of the Commission and numerous parties to develop a fair and
3 open competitive wholesale generation market.¹

4 **II. THE COMMISSION DECISION SHOULD EXPRESSLY PROHIBIT**
5 **PREJUDICE TO THE TRACK B SOLICITATION OR ANY**
6 **RATEBASING OF PWEC GENERATION ASSETS**

7 The only way to ensure that a Commission decision approving the APS financing
8 application does not directly or indirectly prejudice the Track B Competitive Solicitation
9 or any request to ratebase PWEC generation assets is to include findings and ordering
10 paragraphs prohibiting such prejudice. Inclusion of express findings and ordering
11 paragraphs prohibiting such prejudice are consistent with the testimony provided by APS
12 and are necessary to guard against intentional and unintentional prejudice.

13 Throughout this docket, APS repeatedly assures the Commission and the parties
14 that this financing application shall not prejudice the solicitation process under Track B.
15 *See* APS-8, p. 4, ll. 2-3; Tr. Vol. II, p. 415, ll. 21-24; Tr. Vol. II, p.490, ll. 1-5; Tr. Vol.
16 II, p. 490, ll. 18-19. However, Track B can be prejudiced by the financing application in
17 a myriad of ways, from delaying the Track B solicitation² to providing a method for
18 providing Pinnacle West Energy Corporation an advantage in the competitive solicitation
19 process. APS testifies that without this financing, Pinnacle West Capital Corp (“PWCC”)
20

21
22 ¹ Reliant takes no position on the issue of whether the record supports a finding required by ARS §40-
23 301(C) as a precondition to the Arizona Corporation Commission’s (the “Commission”) granting of
24 APS financing application, i.e., “that such issue is for lawful purposes which are within the corporate
powers of the applicant, are compatible with the proper performance by the applicant of service as a
public service corporation and will not impair its ability to perform that service.”

25 ² Reliant notes the urgency for a prompt Track B Decision to provide a meaningful opportunity for APS to
26 secure power and energy for 2003 through a competitive process and is seriously concerned that the
resources devoted to the APS financing application has already delayed the Track B Decision.

1 and/or Pinnacle West Energy Corp ("PWEC") would likely lose their investment grade
2 rating. *See*, APS-1, p. 3, ll. 12-17; APS-2, p. 14, l. 25 – p. 15, l. 1; APS-3, p. 6; APS-3,
3 p. 10; Tr. Vol. I, p. 90, l. 25 – p. 91, ll. 1-3. Given PWEC's expressed intent to
4 participate in the upcoming competitive solicitations (Tr. Vol. I, p. 30, ll. 2-4.), any
5 attempt by APS to limit participation in the competitive solicitation to investment grade
6 entities, while permitting PWEC to participate, would constitute such prejudice.
7 However, this prejudice can be easily avoided so long as APS considers other alternatives
8 of assuring performance, such as provision of a line of credit and netting arrangements.

9
10 APS further assures the Commission and the parties that this financing application
11 shall not prejudice any future request to acquire and place in rate base most of the
12 generation assets of its affiliate, Pinnacle West Energy Corporation. *See* APS-8, p. 3, ll.
13 23-24; Tr. Vol. I, ll. 13-17; Tr. Vol. I, p. 99, ll. 11-14; Tr. Vol. II, p. 410, ll. 11-15; Tr.
14 Vol. II, p. 441, l. 7; Tr. Vol. II, p. 441, ll. 13-16. Yet, an order approving this financing
15 application will create a financial nexus with the plant and must contain the finding
16 required by A.R.S. §40-301(C) that such a financial interest is compatible with the proper
17 performance by APS as a public service corporation. Such factors could be used to
18 create an implicit prejudice in favor of ratebasing the PWEC generation. An express
19 directive in the Commission's decision in this matter prohibiting such prejudice is
20 necessary and appropriate to remove any such prejudice, whether implicit or explicit,
21 involving the acquisition or ratebasing of PWEC assets. Such a Commission directive
22 would protect against such prejudice in the event PWEC defaults on the loan or guaranty.

23 ///

24 ///

25 ///

26 ///

1 Original and thirteen (13) copies of the foregoing filed this 27th day of January, 2003, with:

2 Docket Control
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 Copies of the foregoing hand-delivered this 27th day of January, 2003, to:

7 Chris Kempley, Chief Counsel
8 Arizona Corporation Commission
9 Legal Division
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Lyn Farmer, Chief Administrative Law Judge
18 Hearing Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Copies of the foregoing mailed/e-mailed this 27th day of January, 2003, to:

23 C. Webb Crockett
24 Fennemore Craig, P.C.
25 3003 North Central Avenue, Suite 2600
26 Phoenix, Arizona 85012
Wcrocket@fclaw.com
Jshapiro@fclaw.com

Attorneys for Arizonans for Electric Choice
and Competition

Jeffrey B. Guldner
Snell & Wilmer
400 E. Van Buren
Phoenix, Arizona 85004
jguldner@swlaw.com

Thomas L. Mumaw
Pinnacle West Capital Corporation
P. O. Box 53999 MS 8695
Phoenix, Arizona 85004
Thomas.Mumaw@pinnaclewest.com

Scott S. Wakefield
Lindy Funkhouser
RUCO
1110 West Washington Street, Ste. 220
Phoenix, Arizona 85007
swakefield@azruco.com

1 Larry F. Eisenstate
2 Michael R. Engleman
3 Dickstein Shapiro Morin &
4 Oshinsky, LLP
5 2101 L Street NW
6 Washington, DC 20037
7 Eisenstatl@dsmo.com
8 Ochsenhirtf@dsmo.com
9 Attorneys for Panda Gila River, LP

10 Roger K. Ferland
11 Quarles & Brady Streich Lang, LLP
12 Renaissance One
13 Two North Central Avenue
14 Phoenix, Arizona 85004
15 Rferland@quarles.com
16 Attorneys for Harquahala Generating
17 Company, LLC

18 Jay I. Moyes
19 Moyes Storey
20 3003 North Central Avenue, Suite 1250
21 Phoenix, Arizona 85012
22 Jimoyes@lawms.com
23 Attorneys for PPL Southwest Generation
24 Holdings, LLC; PPL Energy Plus, LLC; and
25 PPL Sundance Energy LLC

26 Jesse A. Dillon
PPL
2 North Ninth Street
Allentown, Pennsylvania 18101
Jadillon@pplweb.com

Walter W. Meek, President
Arizona Utility Investors Association
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004
meek@auia.org

Lawrence V. Robertson, Jr.
Munger Chadwick
National Bank Plaza
333 North Wilmot, Suite 300
Tucson, Arizona 85711
Lvrobertson@mungerchadwick.com
Attorneys for Southwestern Power Group II,
LLC; Bowie Power Station; and Sempra
Energy Resources

Greg Patterson
5432 East Avalon
Phoenix, Arizona 85018
Gpatterson@aol.com

Raymond S. Heyman
Michael W. Pattern
Roshka, Heyman & DeWulf
One Arizona Center
400 East VanBuren Street, Suite 800
Phoenix, Arizona 85004
Rheyman@rhd-law.com
Attorneys for Tucson Electric Power Co.


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