

**Final Resolution on the Terms and Conditions for Competitive Electric Services --
April 12, 1999**

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT SETTING
FORTH A FINAL DECISION ON REHEARING OF
THE DECEMBER 7, 1998 RESOLUTION ON
REHEARING AND THE DECEMBER 7, 1998
RESOLUTION THAT ADOPTED REVISED TERMS
AND CONDITIONS FOR COMPETITIVE ELECTRIC
SERVICES.**

WHEREAS, on May 29, 1998, the State of Arizona enacted the Electric Power Competition Act ("Act"), with an effective date of August 21, 1998, to allow competition in the retail sale of electric generation and other specified electric services within the distribution service territories of public power entities, including the Salt River Project Agricultural Improvement and Power District ("SRP");

WHEREAS, the Act requires the Board of Directors of SRP ("Board") to conduct a public process and to determine the terms and conditions for implementation of competition;

WHEREAS, the Board began compliance with the Act in advance of its effective date to complete the requirements contained therein in a timely manner and to allow sufficient time for consideration of public comments and input;

WHEREAS, the Board on April 13, 1998 appointed the Customer Choice Committee to develop a recommendation to the Board on terms and conditions for implementation of competition in compliance with the Act;

WHEREAS, on August 14, 1998, following extensive public hearings and proceedings that exceeded the requirements of the Act, and based upon the recommendations of the Customer Choice Committee, the Board established terms and conditions for competitive electric services ("Terms and Conditions"), as set forth in its resolution dated August 14, 1998 ("August 14 Resolution");

WHEREAS, on September 3, 1998, pursuant to A.R.S. §30-810, Tucson Electric Power Company ("TEP"), the Land and Water Fund, the Office of the Attorney General ("Attorney General"), and the Arizona Consumers Council ("Consumers Council") (collectively "September 3 Applicants for Rehearing") each filed an application for rehearing (collectively "September 3 Applications for Rehearing") that requested

reconsideration of certain aspects of the August 14 Resolution;

WHEREAS, the Board accepted and considered the September 3 Applications for Rehearing even though the August 14 Resolution was adopted prior to the effective date of the Act and A.R.S. §30-810;

WHEREAS, the Board by resolution dated September 14, 1998 granted rehearing and directed that: (i) the issues raised in the September 3 Applications for Rehearing be determined in conjunction with the proceedings to reconsider the Terms and Conditions and to establish new bundled and unbundled prices; and (ii) the Customer Choice Committee conduct a public process to hear additional evidence and argument on the issues raised in the September 3 Applications for Rehearing and report to the Board with recommendations by November 9, 1998;

WHEREAS, the Board by resolution dated October 5, 1998 directed that: (i) special Board meetings be held on November 9 and 30, 1998 to consider the September 3 Applications for Rehearing, to reconsider the Terms and Conditions, to consider new bundled and unbundled prices, and to afford interested persons a reasonable opportunity to orally present their views, questions and comments and to pose questions to management and consultants on these matters; and (ii) notice of the special Board meetings be provided;

WHEREAS, consistent with Board resolutions dated February 2, 1998, August 3, 1998, and October 5, 1998, public notice of the special Board meetings to be held on November 9 and 30, 1998 was given on October 2, 1998 by publication in a newspaper of general circulation within SRP's electric service territory and by a mailing to standard electric rate schedule customers, the governing bodies of the cities, towns and counties within SRP's distribution service area and others;

WHEREAS, on October 21, 1998, the Customer Choice Committee conducted the rehearing proceeding, following public notice, to hear the arguments and evidence of the September 3 Applicants for Rehearing and management on the issues raised in the September 3 Applications for Rehearing, and to receive public comments;

WHEREAS, a special Board meeting was held on November 9, 1998, at which time the Customer Choice Committee presented a report on the rehearing proceeding and public comments were received;

WHEREAS, on November 13, 1998, the Customer Choice Committee issued its Report and Recommendations to the Board of Directors on Rehearing ("November 13 Report and Recommendations on Rehearing") that recommended certain changes to the Terms and Conditions adopted in the August 14 Resolution;

WHEREAS, a special Board meeting was held on November 30, 1998, at which time the Customer Choice Committee presented its November 13 Report and Recommendations on Rehearing and public comments were received;

WHEREAS, through November 30, 1998, the Customer Choice Committee accepted written comments on its November 13 Report and Recommendations on Rehearing and on the issues raised in the September 3 Applications for Rehearing;

WHEREAS, at the special Board meeting held December 7, 1998, public comments were received on the Customer Choice Committee's November 13 Report and Recommendations on Rehearing and on the issues raised in the September Applications for Rehearing, and the Board adopted three resolutions: (i) the "Resolution Of The Board Of Directors Of The Salt River Project Agricultural Improvement And Power District Setting Forth A Final Decision On Rehearing Of The August 14, 1998 Resolution Adopting Terms And Conditions For Competitive Electric Services" ("December 7 Rehearing Resolution"); (ii) the "Resolution Of The Board Of Directors Of The Salt River Project Agricultural Improvement And Power District Setting Forth A Final Decision Adopting Revised Terms And Conditions For Competitive Electric Services" ("December 7 Revised Terms And Conditions Resolution"); and (iii) the "Resolution Of The Board Of Directors Of The Salt River Project Agricultural Improvement And Power District Adopting Unbundled Electric Price Plans And Related Matters" ("December 7 Pricing Resolution") (collectively "December 7 Resolutions");

WHEREAS, Consumers Council, on December 23, 1998, and the Attorney General and TEP, on December 28, 1998, filed Applications for Rehearing of the December 7 Resolutions (collectively "December 28 Applications for Rehearing");

WHEREAS, the Board at its meeting on January 4, 1999: (i) granted rehearing to consider the matters raised in the December 28 Applications for Rehearing, with the exception of the portion of the Attorney General's application pertaining to the Code of Conduct which was not timely; and (ii) directed the Customer Choice Committee to conduct a public process to hear additional evidence and argument on the issues raised in the December 28 Applications for Rehearing and report to the Board with recommendations by March 1, 1999;

WHEREAS, on January 6, 1999, written notice of the Board's January 4, 1999 decision was mailed to the Consumers Council, Attorney General, and TEP (collectively "December 28 Applicants for Rehearing");

WHEREAS, on January 14, 1999, public notice of rehearing, of the schedule for the rehearing proceeding, and of the Board's March 1, 1999 meeting was mailed to interested persons;

WHEREAS, on January 29, 1999, management filed its Brief in response to the December 28 Applications for Rehearing;

WHEREAS, on February 5, 1999, the Customer Choice Committee conducted the rehearing proceeding to hear the arguments and evidence of the December 28 Applicants for Rehearing and management on the issues raised in the December 28

Applications for Rehearing, and to receive public comments;

WHEREAS, on February 12, 1999, the Customer Choice Committee issued its Report and Recommendations on Rehearing of the December 7 Resolutions ("February 12 Report and Recommendations on Rehearing");

WHEREAS, through February 26, 1999, the Customer Choice Committee accepted written comments on its February 12 Report and Recommendations on Rehearing and on the issues raised in the December 28 Applications for Rehearing;

WHEREAS, a Board meeting was held on March 1, 1999, at which time the Customer Choice Committee presented its February 12 Report and Recommendations on Rehearing and public comments were received;

WHEREAS, on March 12, 1999, the Customer Choice Committee issued a Revised Report and Recommendations on Rehearing of the December 7 Resolutions ("March 12 Revised Report and Recommendations on Rehearing");

WHEREAS, in order to provide additional opportunity for the submission of public comments, SRP extended the rehearing schedule and accepted through March 29, 1999 comments on the Customer Choice Committee's March 12 Revised Report and Recommendations on Rehearing and on the issues raised in the December 28 Applications for Rehearing;

WHEREAS, public notice of the Board meeting to be held April 12, 1999 was provided to interested persons on February 22, 1999;

WHEREAS, at the Board meeting held this date, the Customer Choice Committee presented its March 12 Revised Report and Recommendations on Rehearing, public comments were received on the March 12 Revised Report and Recommendations and the issues raised in the December 28 Applications for Rehearing, and the Board adopted this resolution and will adopt the " Resolution Of The Board Of Directors Of The Salt River Project Agricultural Improvement And Power District Setting Forth A Final Decision on Rehearing of the December 7, 1998 Resolution That Adopted Unbundled Electric Price Plans And Related Matters"; and

WHEREAS, the Board has considered the December 28 Applications for Rehearing, the oral arguments and evidence presented in support of the December 28 Applications for Rehearing, management's arguments and evidence in response to the December 28 Applications for Rehearing, the public comments, the Customer Choice Committee's reports and recommendations, and the record in the competition and rehearing proceedings in its entirety.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AS FOLLOWS:

Section 1. Recitation of Authority -- Pursuant to A.R.S. §30-801, *et seq.*, and A.R.S. §48-2301, *et seq.*, and based upon review and careful consideration of the record compiled in the competition and rehearing proceedings, the Board adopts this resolution to set forth its final decision on rehearing of the December 7 Rehearing Resolution and the December 7 Revised Terms and Conditions Resolution.

Section 2. Proceedings -- The Board finds as follows:

- A.** The Applications for Rehearing submitted by Consumers Council, the Attorney General, and TEP were timely filed and should be considered by the Board, with the exception of the portion of the Attorney General's application pertaining to the Code of Conduct which was not timely.
- B.** The conduct of the rehearing proceeding and the special Board meetings, and the acceptance of written and oral comments on the rehearing issues and on the Customer Choice Committee's reports, provided an extensive opportunity for public participation in the rehearing proceeding that exceeded the requirements of A.R.S. §30-810.
- C.** Public notices of the rehearing proceeding and the special Board meetings were duly provided.

Section 3. Rehearing -- The Board agrees with and adopts the discussion, findings, and recommendations of the Customer Choice Committee, as set forth in its March 12 Revised Report and Recommendations on Rehearing, which is attached to this Resolution as Exhibit 1 and incorporated by reference.

- A.** Consistent with the March 12 Revised Report and Recommendations on Rehearing, the Board hereby denies the Applications for Rehearing on all issues and, in support of that decision, finds as follows:
1. SRP's authority to set rates under A.R.S. §48-2334(E) in conjunction with its authority to establish a surcharge to recover stranded costs under A.R.S. §30-805(A)(3) provide the requisite legal basis for stranded cost recovery.
 2. Under the authority conferred by A.R.S §§30-804(A)(3) and 48-2443(E), there is no requirement that a regulatory compact or regulatory taking be established as a condition precedent to stranded cost recovery by a public power entity. The regulatory compact and regulatory taking concepts pertain to the entitlement of public service corporations to recover stranded costs; by law, they are unrelated to the authority of SRP, as a public power entity, to recover stranded costs.
 3. The Board's decision not to divest SRP's generation assets or transfer those assets to an affiliate as a pre-condition to stranded cost recovery does not violate A.R.S. §30-802(A).
 4. The United States is not an indispensable party to the competition proceedings.
 5. SRP has not mislead customers by including additional costs in the Competitive Transition Charge ("CTC") and falsely labeling them "stranded costs". As required by the Act, SRP's stranded costs have been removed from base rates and a portion of the total stranded costs has been transferred to the CTC for recovery.
 6. The calculation of stranded costs does not include the cost of inefficiencies or insulate SRP from the effect of inefficient operations. The record establishes that only prudently incurred costs have been included in the stranded cost calculation.
 7. Stranded cost recovery is not a disguised or converted rate increase and the Board did not falsely promise a rate decrease. There is no price increase. A.R.S. §30-805(B) and (C) expressly prohibit an increase, and SRP has complied with that law. The record demonstrates mathematically not only that a price increase

has not occurred, but that SRP has reduced its bundled offer price by an overall 5.4 percent.

8. The stranded cost recovery determination adopted by the Board is consistent with the provisions of the Act and resulted from negotiations with SRP's large general service customers and the Residential Utility Consumer Office, and was in no way the product of unlawful collusion with Arizona Public Service Company.
9. The record establishes that applying the CTC to energy consumption, rather than as fixed charge per customer, is the most appropriate method to recover stranded costs which are generation related. The record further establishes that the CTC is not a barrier to market entry because all customers will be assessed the charge, whether they take service from SRP or from a competitor.
10. A.R.S. §30-803(E), construed in conjunction and in harmony with A.R.S. §30-803(A), requires that SRP permit aggregation in Phase I only within the level of retail load required to be made available for competition. The December 7th Resolutions accomplish that objective and are lawful. Further, no customer request to aggregate load has been denied.
11. No legal conflict of interest arose from the participation of Board members of the SRP Agricultural Improvement and Power District ("District") who also serve as Board members of the Salt River Valley Water Users Association ("Association") in the determination of stranded costs contained in the December 7 Rehearing Resolution and the December 7 Revised Terms and Conditions Resolution.
12. The stranded cost determination contained in the December 7 Resolutions did not offset stranded costs by one-half of the water subsidy.
13. The competition and rehearing proceedings were legislative in nature, and met or exceeded applicable statutory requirements. SRP provided adequate time for interested persons to prepare and fully present their positions on the terms and conditions to be adopted for competitive electric services. The conduct of the competition and rehearing proceedings did not violate federal or state constitutional due process rights.
14. The competition and rehearing proceedings were legislative in nature, and met or exceeded applicable statutory requirements. Discovery and cross-examination are not required by the law for legislative proceedings or specifically by statute for SRP's

competition and rehearing proceedings. The conduct of the competition and rehearing proceedings did not violate federal or state constitutional due process rights.

15. The competition and rehearing proceedings were legislative in nature and the comments and arguments that were presented in the proceedings by management and interested persons constitute evidence and became part of the evidentiary record even though not they were not sworn statements. As a result, there is evidence in the record to support the findings and decisions made by the Board.
16. The Act is not void for vagueness by failing to define the term "stranded costs". The Act is constitutional and does provide legal basis for SRP to recover stranded costs.
17. The Act is not an unconstitutional special law.
18. The Board's stranded cost recovery determination included consideration of the 12 factors enumerated in A.R.S. §30-805(A)(3). Evidence on the stranded cost factors is contained in the record in the August 14, 1998 transcript, pp. 45-55, Management's October 21, 1998 presentation, and the October 21, 1998 transcript, pp. 50-57. The Board discussed the stranded cost factors at length in Section 6 of the August 14 Resolution, as well as in the December 7 Rehearing Resolution and the December 7 Revised Terms and Conditions Resolution.
19. The presentations and comments made by Management and the oral and written comments submitted by interested persons during the competition proceedings and rehearing proceedings constitute evidence and became part of the evidentiary record upon which the Board lawfully based its stranded cost decision. That evidence supports the level of stranded costs approved for recovery and the methodology utilized for stranded cost recovery in the December 7 Rehearing Resolution and December 7 Revised Terms and Conditions Resolution.
20. The Board's decision against using the payment of water support as an offset to stranded costs is not unlawful and does not violate A.R.S. §30-805(A)(3). A.R.S. §30-805(A)(3) does not contain a provision that imposes an absolute duty on public power entities to undertake mitigation efforts, that requires SRP to place its operations in financial jeopardy or abstain from other statutory responsibilities, such as provision of water support, or that requires that stranded generation costs be mitigated or reduced with funds

from sources that are unrelated to generation service, such as the funds used to support water delivery.

21. The record is devoid of any evidence from which a reasonable conclusion can be drawn that excessive earnings exist or what the dollar amount is of such earnings.
 22. There is evidence in the record to support the Board's finding that the costs of the Palo Verde Nuclear Generating Station were prudently incurred. To the extent those costs are reflected in the stranded cost determination, the inclusion is appropriate.
 23. SRP's legal notice of the competition proceedings indicated, *inter alia*, that the Board would consider terms and conditions for stranded costs. The Board's decision to identify a specific amount of stranded costs and to approve a methodology to recover that amount clearly falls within the notice that terms and conditions for stranded costs would be considered. The legal notice did not violate federal or state constitutional due process rights.
 24. Management, the large industrial customers, and the Residential Utility Consumer Office submitted a joint recommendation to the Board on stranded cost recovery. The Board's adoption of that proposal was an exercise of discretion and did not foreclose interested persons from advocating a different stranded cost recovery approach in the competition or pricing proceedings.
 25. The Board's determination of stranded costs was made in a rate proceeding.
 26. The stranded cost recovery approved in the August 14 Resolution and the December 7 Resolutions is not a rate increase disguised as or converted into a CTC. The recovery of stranded costs is contemplated by A.R.S. §30-805(A)(3), and the stranded cost recovery and CTC approved in the August 14 Resolution and the December 7 Resolutions are fully consistent with that provision.
- B.** In addition to the findings and recommendations contained in the March 12 Revised Report and Recommendations on Rehearing, the Board, in further support of the decision and findings set forth in Section 3(A) of this resolution, finds as follows:
1. The United States is not an indispensable party to the competition proceedings for the further reason that, by letter dated March 5, 1999, the United States Department of the Interior disclaimed the ownership interest and/or oversight function that would be one of

the elements necessary to a finding of indispensability.

2. No legal conflict of interest arose from the participation of dual members of the District and Association Boards in the determination of stranded costs for the further reason that the conflict of interest statutes expressly include as a “remote interest”, not subject to disclosure, the following: “That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.” A.R.S. § 38-502(10)(g).
3. The Act requires SRP to unbundle its prices as of the statutorily mandated start of competition, December 31, 1998. This means that the unbundled prices must show a CTC component of generation, for all customers, whether or not the particular customer is actually subject to competition. SRP did, in fact, open its service territory to competition, as required by the Act, effective December 31, 1998. Whether or when the Arizona Corporation Commission (“ACC”) certifies competitive electricity suppliers to serve in Arizona is out of the control of SRP. It would be impractical, and probably a violation of the Act, for SRP to wait to unbundle its prices until competitive electricity suppliers are actually authorized and undertake service in SRP’s service territory.

Further, SRP’s service territory was open to competition effective December 31, 1998, whether or not any competitive electricity supplier has taken advantage of that opportunity and commenced service. On December 31, 1998, the ACC did authorize one competitive electricity supplier, PG&E Energy Services, to serve in SRP’s service territory. The ACC later stayed that authority, but lifted the stay as of April 1, 1999. In addition, under the Act, a public power entity, not subject to the ACC’s jurisdiction, has the right to commence service in SRP’s service territory at any time, including as of January 1, 1999, by going through the statutory process.

4. We want to be clear on the imposition of the CTC. Customers who do not switch energy suppliers are being charged cost-based energy prices. As long as the customer remains as a standard-offer SRP customer, the components of the cost-based energy price, the CTC, and the market-based energy component, are identified *because of the unbundling requirement of the statute*. The CTC is assessed as a non-bypassable charge *only* to those customers who choose an alternative energy supplier.

5. The total generation price currently being charged to customers (including the CTC and the market based component of generation) is cost based and is justified by SRP's authority to charge cost-based prices to its customers.

Section 4. Rejection of Arguments -- The Board rejects all arguments and positions advanced by participants in the rehearing proceeding that are contrary to or inconsistent with the findings and directives adopted by this resolution.

Section 5. Record -- The Board hereby incorporates by reference the records in the competition, pricing, and rehearing proceedings in their entirety, including, without limitation, all of the material in the information room, management's proposals and comments, the consultants' reports, the comments of customers and the public, the reports of the Customer Choice Committee, the transcripts of the proceedings and meetings, and the Board's resolutions.

Section 6. Effective Date -- The effective date of this resolution is April 12, 1999.