

**Final Resolution on Rehearing  
December 7, 1998**

**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.**

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"), which is attached to this resolution and incorporated by reference;

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

August 14 Resolution;

WHEREAS, the Board accepted and considered the 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 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 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 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 Applicants for Rehearing and management on the issues raised in the 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 ("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 Report and Recommendations on Rehearing and public comments were received;

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

WHEREAS, at the special Board meeting held this date, public comments were received on the Customer Choice Committee's Report And Recommendations On Rehearing and on the issues raised in the Applications For Rehearing, and the Board will adopt a "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" ("Resolution On Revised Terms And Conditions") and a "Resolution Of The Board Of Directors Of The Salt River Project Agricultural Improvement And Power District Adopting Unbundled Electric Price Plans And Related Matters"; and

WHEREAS, the Board has considered the Applications for Rehearing, the oral arguments and evidence presented in support of the Applications for Rehearing, management's arguments and evidence in response to the 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 August 14 Resolution adopting Terms and Conditions for competitive electric services.

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

- A.** The Applications for Rehearing submitted by TEP, the LAW Fund, the Attorney General, and the Consumers Council should be accepted and considered by the Board even though the August 14 Resolution was adopted prior to the effective date of the Act and A.R.S. §30-810.
- 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 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 Report and Recommendations on Rehearing, which is attached to this Resolution as Exhibit 1 and incorporated by reference.

**A.** Consistent with the Report and Recommendations on Rehearing, the Board hereby grants the Applications for Rehearing on the following matters and, in support of that decision, makes the following findings and directives:

**1.** The Board agrees with Consumers Council that only prudent investment should be recovered through the competitive transition charge. Section 6(B)(1)(a) of the August 14 Resolution should be amended to add a finding that :

"The costs and investment included in the \$795 million stranded cost determination were prudently incurred and are appropriately recovered through the CTC."

**2.** The Board agrees with TEP that conditioning access to SRP's facilities and system upon a reciprocal grant by the electricity supplier is contrary to A.R.S. §30-805(E). The reciprocity provision set forth in Section 3 of the August 14 Resolution should be amended to delete that condition and to provide that:

"SRP shall participate in retail electric competition statewide directly, or indirectly through its subsidiary, and shall open its distribution service territory to competition in the sale of electric generation service, as set forth in this Resolution, to electricity suppliers certificated by the ACC pursuant to A.R.S. §40-207, and to providers of other competitive electric services, in accordance with the provisions of A.R.S. §805(E), which provides that:

Public power entities shall allow any provider of electric generation service access to the electric power transmission and distribution facilities of public power entities under rates and terms and conditions of service that are nondiscriminatory, cost based, just and reasonable and comparable to the rates charged for the public power entity's own use of the same facilities.

Pursuant to A.R.S. §30-803(A), SRP has the right to participate in competition statewide, and A.R.S. §40-202(E) provides that the ACC "shall order on a nondiscriminatory basis that public service corporations open their distribution territories to competition by public power entities to the same extent and under the same terms and conditions as authorized electricity suppliers are granted

access through [ACC] rules or orders."

3. The Board finds that the Attorney General's concern about limiting aggregation should be addressed. Management should develop a proposal to reallocate any unsubscribed load within the 20 percent limit first to customers with multiple meters who seek to aggregate and then to any classes with an over-subscription. Management should submit its proposal to the Board no later than July 1, 1999.
  4. The Board agrees with the LAW Fund that SRP's level of demand side management ("DSM") programs should be reconsidered. Management should meet with the LAW Fund, residential customer representatives, low-income customer representatives, and other interested parties to develop additional DSM programs. Management should develop a proposal for funding the new DSM programs by estimating the expected brokerage fee from Full Electric Service Rider customers and recommending how those funds should be allocated to the new programs. Management should submit its proposal to the Board no later than September 1, 1999.
  5. The Board finds that the LAW Fund's concern about the adoption of terms and conditions for buy-through service should be addressed. Management should prepare a buy-through provision and/or comparable brokerage program that complies with A.R.S. §30-803(D) and submit its proposal for public review and comment no later than July 1, 2000.
  6. The Board agrees with the LAW Fund that the adoption of disclosure requirements should be reconsidered. Management should develop a proposal for disclosure of information that will allow customers to make meaningful comparisons between SRP and other electricity suppliers. Management should submit its proposal to the Board no later than June 1, 1999. Management should also coordinate disclosure requirements with the Arizona Corporation Commission.
- B.** Consistent with the Report and Recommendations on Rehearing, the Board hereby denies the Applications for Rehearing on all matters not discussed in paragraph A above and, in support of that decision, finds as follows:
1. The absence of a regulatory compact between SRP and the State of Arizona does not preclude SRP from claiming and recovering stranded costs. 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. The stranded cost recovery approved in the August 14 Resolution does not disguise a rate increase as a Competitive Transition Charge ("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 are fully consistent with that provision.
3. The Act is not void for vagueness by failing to define the term "stranded costs".
4. The Act is not an unconstitutional special law.
5. The responsibilities of, and relationship between, the SRP Agricultural Improvement and Power District and the Salt River Valley Water Users Association do not give rise to a conflict of interest or conflicting loyalties for the Directors who serve on the Boards of both entities.
6. The conduct of the competition proceedings did not violate the due process provisions of the United States or Arizona constitutions.
7. Legal notice of the competition proceedings was not constitutionally or legally deficient.
8. There is evidence in the record to support the findings and decisions made by the Board in the August 14 Resolution.
9. The stranded cost recovery approved in the August 14 Resolution violates no statutory duty to mitigate stranded costs.
10. 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).
11. The Board adopted a Code of Conduct on November 9, 1998 and the requirements of A.R.S. §30-803(F) have, therefore, been met.
12. The United States is not an indispensable party to the competition proceedings.
13. The customer selection methodology approved in the August 14 Resolution complies with A.R.S. §30-803(A).

- 14.** The terms and conditions for competition approved in the August 14 Resolution require open access to SRP's transmission and distribution systems.
- 15.** The costs of nuclear decommissioning and environmental mandates are appropriately included in the system benefits charge.

**Section 4. Implementation** -- The Board hereby amends the August 14 Resolution to: (i) amend Section 3 to reflect the reciprocity provision adopted herein; and (ii) amend Section 6(B)(1)(a) to add the finding adopted herein that: "The costs and investment included in the \$795 million stranded cost determination were prudently incurred and are appropriately recovered through the CTC." The Board authorizes and directs management to do all things necessary to implement the findings and directives on the matters granted rehearing in Section 3(A) of this resolution.

**Section 5. 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 in this resolution.

**Section 6. Reservation of Consideration** -- The Board reserves the right to reconsider and amend the August 14 Resolution and the Terms and Conditions adopted therein with respect to the issues of aggregation, DSM programs, buy-through service, and disclosure requirements, which were granted rehearing in Section 3(a) of this resolution and remain pending for further review.

**Section 7. Record** -- The Board hereby incorporates by reference the record in the competition and rehearing proceedings in its entirety, including, without limitation, all of the material in the information room, management's proposals, the consultants' reports, the comments of customers and the public, the reports of the Customer Choice Committee, and the transcripts of the proceedings and meetings.

**Section 8. Effective Date** -- The effective date of this resolution is December 7, 1998.