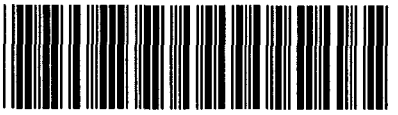

Control Number: 29206

Item Number: 189

Addendum StartPage: 0

SOAH DOCKET NO. 473-04-2459
PUC DOCKET NO. 29206

APPLICATION OF TEXAS-NEW MEXICO POWER COMPANY, FIRST CHOICE POWER, INC., AND TEXAS GENERATING COMPANY, L.P. TO FINALIZE STRANDED COSTS UNDER PURA § 39.262	§ § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ORDER NO. 14
GRANTING RELIANT RESOURCES, INC.'S MOTION TO INTERVENE AND DECLINING TO RULE ON TNMP's MOTION TO COMPEL CITIES TO RESPOND TO ITS FIRST SET OF REQUESTS FOR INFORMATION

Motion to Intervene

Reliant Resources, Inc. (Reliant), the parent company of Reliant Energy Retail Services, LLC and Reliant Energy Solutions, LLC (both certified retail electric providers), filed a motion to intervene on March 3, 2004. No party filed an objection. Retail electric providers have been found to have a justiciable interest in this case;[1] accordingly, the Administrative Law Judges (ALJs) **GRANT** Reliant's motion.

Motion to Compel

On March 1, 2004, Texas-New Mexico Power Company, First Choice Power, Inc. and Texas Generating Company, L.P. (Applicants) filed a motion to compel Cities to answer to their first set of requests for information (RFIs). Cities timely filed a response, providing a partial response to one RFI and generally and specifically objecting to all 26 RFIs. Cities complain that Applicants propounded discovery on Cities less than one month after the application was filed. Discovery responses would have been due one month before Cities' filing of their direct case, and Cities are still in the process of developing the issues and positions for such. Cities complain that discovery on Cities "appears to violate the procedural schedule" because the schedule has a deadline for the

[1] *See* Order No. 7.

end of discovery on Applicants' and Intervenors' testimony.[2] Cities contend that the schedule clearly contemplated that discovery would begin on the day each party files its direct testimony.

Applicants disagree with the Cities' interpretation of Order No. 5. Applicants also point out that the Commission's procedural rules contemplate discovery "at any time after an application is filed . . . any party may service upon any other party written requests for information and requests for admission of fact." P.U.C. PROC. R. 22.144(a).

The ALJ agrees with Applicants that Order No. 5 did not establish a beginning date for propounding discovery. Under the schedule and Commission's rules, Applicants can propound requests to intervenors and Staff. On a practical level, however, if requests seek those parties' positions on issues raised by the application, it is unlikely that intervenors and Staff will have taken a position before the due date of the filing of their testimony. Any responses will then need to be supplemented. A look at the RFIs in question reveal that Applicants seek to know Cities' position on a number of issues, yet Cities are not required to file testimony until March 29, 2004.

Rather than order Cities to supplement their responses when a position is taken, the ALJs agree that this particular set of discovery requests is, almost in its entirety, premature. Further, any rulings on RFIs where Cities claim that the requests are overly broad or burdensome to produce are premature because the Cities have not formed a position on the issues. It may well be that Cities are not taking a position on a particular issue–after discussion with Applicants, the dispute over a related RFI may be resolved.

---

[2] Cities objections at 2 (Feb. 27, 2004). *See* Order No. 5 at 2.

Thus, the ALJs decline to rule on the motion to compel until Cities file their direct case and the disputing parties have had an opportunity to discuss these RFIs in that context. Applicants may re-urge a motion to compel a response to their first set of RFIs to Cities no earlier than April 1, 2004, only after they have discussed their concerns with Cities.

SIGNED March 16, 2004.

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS