



BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
AUTHORIZATION TO ACQUIRE OUT-OF-
STATE RENEWABLE RESOURCES.

DOCKET NO. E-01345A-05-0675

PROCEDURAL ORDER

BY THE COMMISSION:

On September 22, 2005, pursuant to Decision No. 67744 (April 7, 2005), the Arizona Public Service Company ("APS") filed with the Arizona Corporation Commission ("Commission") an application for authority to acquire out-of-state renewable resources. The Company requested that the Commission act upon the Application by the Open Meeting to be held on November 8, 2005.

On September 30, 2005, APS filed a letter to Commissioner Mayes, indicating that it was responding to her request for APS to "identify those portions of the confidential briefing given you on September 20, 2005 relating to the Company's renewable energy RFP that the Company continues to believe are confidential." APS provided pages 1, 2, 6, 9 and a portion of page 3, but stated it believed that the remaining pages were confidential. The letter stated that a complete set of the pages was provided to Staff, who could make the confidential portions available to the Commissioner.

On October 4, 2005, Commissioner Mayes filed a letter in the Commission's Docket Control indicating her desire for "Staff and any other parties to this proceeding to evaluate the bids APS rejected so that the Commission may consider APS' application in context." She further stated that "APS has provided some confidential information in this matter that I would like to be able to discuss in an open meeting. I would therefore request that a procedural conference be scheduled as soon as possible to address these very important issues."

On October 6, 2005, Commission Spitzer filed a letter in the Commission's Docket Control, stating that the "question of in-state versus out-of-state renewable resources raises interesting regulatory, economic and political questions" and that "this application is beneficial regarding the

1 appropriate balancing of regulatory, economic and political policies.” He further stated that if “a
2 Procedural Order is issued in this case, it must protect those who responded to the RFP and submitted
3 confidential bids. The bids contain proprietary and trade secret material, and a seal or other protective
4 order would be appropriate.”

5 It appears from the filings that APS contacted the Commissioners and briefed them orally and
6 showed them documents that it believes contain confidential information related to its renewable
7 energy RFP. Subsequently, APS docketed redacted versions of those documents and indicated that
8 Commissioners may obtain the unredacted documents from Staff. From the letter docketed by
9 Commissioner Mayes, it appears that APS’ September 30, 2005 filing has not adequately addressed
10 the need she expressed to discuss this matter at an Open Meeting.

11 No finding or determination as to the confidentiality of the information has been made by the
12 Commission. Although a Procedural Conference has been suggested to discuss the issue of
13 confidentiality, APS should first be required to assert confidentiality and argue why these documents,
14 which it apparently believes are important in the Commission’s decision-making process, are entitled
15 to confidential treatment. If APS does argue that they are confidential, it must also propose how these
16 documents and this Application can be meaningfully discussed and deliberated on during either a
17 Procedural Conference or a Commission Open Meeting consistent with the Arizona Open Meeting
18 Law.

19 Accordingly, APS shall make a filing consistent with the above discussion. If APS continues
20 to believe that the documents should be confidential and requests such treatment, in addition to its
21 filing with Docket Control, it shall provide a copy of the documents under seal to the undersigned
22 presiding officer, for an *in camera* review on the issue of confidentiality.

23 IT IS THEREFORE ORDERED that APS shall make a filing with the Commission’s Docket
24 Control in accordance with the above discussion, no later than October 12, 2005.

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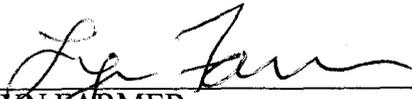
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1 IT IS FURTHER ORDERED that Staff and any other party shall file Responses, including a
2 legal analysis, to APS' filing, no later than October 17, 2005.

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4 Dated this 7 day of October, 2005

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6
7 
8 LYN FARMER
9 CHIEF ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 this 7 day of October, 2005 to:

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13 Karilee S. Ramaley
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28 By:


Molly Johnson
Secretary to