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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, Chairman
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2005 OCT 12 P 4: 48

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. E-01345A-05-0675

RESPONSE TO PROCEDURAL
ORDER

I. INTRODUCTION

Pursuant to the Procedural Order issued in this docket on October 7, 2005, Arizona Public Service Company (“APS” or “Company”) hereby reiterates its assertion that certain documents and information provided to the Arizona Corporation Commission (“Commission”) are and ought to remain confidential. As explained further below, the documents that APS asserts are confidential contain information that, if disclosed, would put both APS and the bidders responding to the Company’s request for proposals (“RFP”) at a competitive disadvantage in future solicitations and may result in fewer participants in such solicitations. That result also would harm APS customers.

Historically, parties to Commission proceedings have been protected from producing confidential and proprietary competitive information, especially where the disclosure of such information could adversely impact utility customers or the competitive market. The information that APS seeks to maintain as confidential clearly fits within that practice. Thus, although the information could be discussed at a procedural conference at which appropriate steps are taken to ensure confidentiality, such information should and need not be discussed during a public meeting such as a Commission Open Meeting. That restriction, however, would not limit the Commission’s ability to

1 discuss its policies relating to renewable resources; but instead merely prevents the public disclosure
2 of specific confidential information.

3 II. DISCUSSION

4 As the Procedural Order notes, APS has asserted confidentiality with respect to certain
5 documents that support the Company's Application for Authorization to Acquire Out-of-State
6 Renewable Resources. APS has again reviewed the documents at issue and reiterates its assertion of
7 confidentiality with respect to those documents. As the Procedural Order notes, APS has provided all
8 such documents confidentially to Staff or made them available for Staff's review. As required by the
9 Procedural Order, APS is also providing a copy of the documents under seal to the Presiding Officer
10 for an *in camera* review.

11 A. The Confidential Documents

12 The documents that APS seeks to protect fall into two general categories: (i) documents
13 showing the calculation of APS' avoided cost or that would allow the calculation of APS' avoided
14 cost; and (ii) the bids submitted in response to the Company's RFP for renewables. Both categories
15 of documents consistently have been protected from disclosure in proceedings before the
16 Commission (*e.g.*, the Track B and Sundance proceedings) because maintaining such confidentiality
17 is in the best interests of the Company and its customers, as well as the competitive market.

18 Commission Decision No. 67744 (April 7, 2005) required APS to issue an RFP for
19 renewable resources that were "no more costly, on a levelized cost per MWh basis, than 125% of the
20 reasonably estimated market price of conventional resource alternatives." Decision No. 67744 at
21 ¶69(g). Consistent with prior practice accepted by the Commission, APS determined the "reasonably
22 estimated market price of conventional resource alternatives" by calculating its avoided cost. The
23 Company then evaluated the responses to its RFP against that avoided cost and selected the most
24 economic bids that met the other criteria set forth in Decision No. 67744. If the Company were
25 required to disclose its avoided cost and how it was calculated, a future bidder could effectively
26 utilize the information to manipulate its bid in a manner potentially harmful to APS as well as
27 consumers. This is because avoided cost is the basis for determining the maximum price APS would
28

1 be willing to pay for a resource, whether renewable or traditional. What home buyer would disclose
2 to potential sellers the maximum price he or she was willing to pay for a house?

3 Although the avoided cost used to evaluate the renewable RFP bids was long term avoided
4 cost, it is significant to note that the same sort of information that determines the Company's short
5 term avoided cost, *e.g.*, fuel prices and generating unit performance data, is deemed confidential
6 when submitted as part of the Company's monthly PSA filings. *See* Decision No. 67744. By agreeing
7 that such information is confidential, the Commission has clearly recognized that maintaining the
8 Company's ability to both secure resources at the lowest reasonable cost and to competitively market
9 surplus power for the benefit of customers requires that competitively sensitive information be
10 protected.

11 In addition to the Company's avoided cost, the bids themselves must continue to be protected
12 as confidential. With respect to these documents, however, both APS and the bidders have clear
13 interests in maintaining the confidentiality of the bids. Because the bids contain proprietary
14 information of the bidders, APS is contractually required pursuant to Confidentiality Agreements
15 with those bidders to maintain the confidentiality of the bids, except in limited, prescribed
16 circumstances. In addition, the Company likely will conduct future RFPs and is more likely to
17 receive untainted bids if bid prices and terms remain confidential. It is to the benefit of all parties
18 involved in an RFP to ensure that the RFP process is conducted in a fair manner that does not provide
19 bidders with information they could use to disadvantage either other bidders or APS and its
20 customers.

21 *B. Commission Discussion of the Confidential Documents*

22 As reiterated above, APS continues to assert that certain of the documents it has provided or
23 made available to Commission Staff in support of its Application must remain confidential. The
24 Company does not believe that maintaining such confidentiality would prevent the Commission from
25 engaging in a general discussion regarding the Company's RFP process or the Commission's own
26 policies regarding renewable resources. If, however, the Commission believes that a discussion of
27 specific confidential information (*i.e.*, the Company's avoided cost or the specific bids) is required,
28 the Company agrees with Commissioner Spitzer that any procedural order issued should "protect

1 those who responded to the RFP and submitted confidential bids.” See Letter from Commission
2 Mark Spitzer to Docket No. E-01345A-05-0675 (October 6, 2005). APS also believes that any such
3 procedural order should protect APS’ proprietary information, including its avoided cost, from public
4 disclosure.

5 As to any Procedural Conference to discuss this confidential data, APS would propose the
6 following approach: (1) the procedural conference must take appropriate precautions to ensure
7 confidentiality; (2) as has been implemented in prior proceedings before the Commission, only those
8 parties to the docket that have executed an appropriate confidentiality agreement would be permitted
9 to remain in the hearing room during the discussion of confidential information;¹ (3) the
10 Commission’s Listen Line would be disconnected during such a discussion; (4) parties remaining in
11 the hearing room during the discussion would be admonished to maintain the confidentiality of the
12 information discussed. Such a process would protect the confidential information while affording the
13 Commission an opportunity to ask questions regarding the bids and the Company’s avoided cost.

14 Because of the limitations that the Arizona Open Meeting Law places on the ability of the
15 Commission to exclude the public from its discussions, APS does not believe the confidential
16 documents at issue should be discussed at an Open Meeting without risking the disclosure of the
17 proprietary and confidential information. See A.R.S. § 38-431.01. However, if the Commission
18 believes it necessary to again discuss this information prior to taking a public vote, A.R.S. § 38-
19 431.03 authorizes executive sessions for “Discussion or consideration of records exempt by law from
20 public inspection, including the receipt and discussion of information or testimony that is specifically
21 required to be maintained as confidential by state or federal law.”

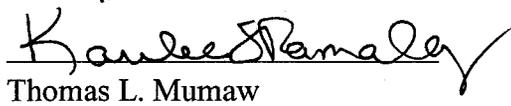
22 III. CONCLUSION

23 Confidential competitive information routinely has been protected from disclosure in
24 Commission proceedings and that general practice should apply to the documents and information at
25 issue in this proceeding. Although the Company does not believe that a thorough review of the RFP
26 process or a discussion of the Commission’s policies regarding renewable resources requires a
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28 ¹ To the Company’s knowledge, the only parties to this docket at this time are the Company and Commission Staff.

1 discussion of the Company's avoided cost or the terms of the bids, any such discussion should occur
2 only in a procedural conference at which appropriate measures are taken to ensure confidentiality is
3 maintained.

4 RESPECTFULLY SUBMITTED this 12th day of October, 2005.

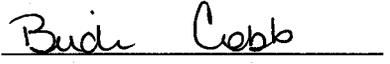
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9 The original and 13 copies of the foregoing were
10 filed this 12th day of October, 2005 with:

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14 
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