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**BEFORE THE ARIZONA CORPORATION COMMISSION**

2006 NOV 3 32

COMMISSIONERS

AZ CORP COMMISSION  
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- 3 JEFF HATCH-MILLER, Chairman
- 4 WILLIAM A. MUNDELL
- 5 MIKE GLEASON
- 6 KRISTIN K. MAYES
- 7 BARRY WONG

6 IN THE MATTER OF THE APPLICATION OF  
 7 ARIZONA PUBLIC SERVICE COMPANY FOR A  
 8 HEARING TO DETERMINE THE FAIR VALUE  
 9 OF THE UTILITY PROPERTY OF THE COMPANY  
 10 FOR RATEMAKING PURPOSES, TO FIX A JUST  
 11 AND REASONABLE RATE OF RETURN  
 12 THEREON, TO APPROVE RATE SCHEDULES  
 13 DESIGNED TO DEVELOP SUCH RETURN, AND  
 14 TO AMEND DECISION NO. 67744.

DOCKET NO. E-01345A-05-0816

**AUIA'S RESPONSE IN SUPPORT  
OF APS' MOTION TO PREVENT  
DISCLOSURE**

11 IN THE MATTER OF THE INQUIRY INTO THE  
 12 FREQUENCY OF UNPLANNED OUTAGES  
 13 DURING 2005 AT PALO VERDE NUCLEAR  
 14 GENERATING STATION, THE CAUSES OF THE  
 15 OUTAGES, THE PROCUREMENT OF  
 16 REPLACEMENT POWER AND THE IMPACT OF  
 17 THE OUTAGES ON ARIZONA PUBLIC SERVICE  
 18 COMPANY'S CUSTOMERS

DOCKET NO. E-01345A-05-0826

Arizona Corporation Commission

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16 IN THE MATTER OF THE AUDIT OF THE FUEL  
 17 AND PURCHASED POWER PRACTICES AND  
 18 COSTS OF THE ARIZONA PUBLIC SERVICE  
 19 COMPANY

DOCKET NO. E-01345A-05-0827

20 The Arizona Utility Investors Association ("AUIA") joins Arizona Public Service  
 21 Company ("APS") in its Motion to Prevent Disclosure of its Confidential Customer Study into  
 22 the Public Record (the "Motion") and requests that the Commission maintain the confidentiality  
 23 of the proprietary opinion study ("Study") conducted by APS. Because such studies are

GALLAGHER & KENNEDY, P.A.  
 2575 E. CAMELBACK ROAD  
 PHOENIX, ARIZONA 85016-9225  
 (602) 530-8000

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1 important not only to APS' but all other public service corporations' ability to gauge customer  
2 attitudes, measure public response to existing or planned service offerings and tailor strategies,  
3 AUIA requests that the Commission maintain the Study's confidentiality.

#### 4 ARGUMENT

5 AUIA understands that Pinnacle West Capital Corporation, APS' parent company,  
6 through a third-party vendor, conducted a study of APS' customers and community leaders to  
7 determine those groups' perceptions about APS as well as issues relating to APS' regulatory and  
8 other circumstances. APS conducted the Study to gain insight into key constituents' attitudes  
9 and provide APS with a competitive advantage in the marketplace.

10 Several public policy considerations support continued confidential treatment of the  
11 Study.<sup>1</sup> As an initial matter, Arizona law contains a presumption against disclosure of  
12 information furnished to the Commission by a public service corporation like APS. A.R.S. § 40-  
13 204. Specifically, § 40-204(C) provides that, "[n]o information furnished to the commission by  
14 a public service corporation, except matters specifically required to be open to public inspection,  
15 shall be open to public inspection or made public" unless the Commission takes specific,  
16 enumerated steps to make the information public.

17 There is no question that APS' proprietary customer survey is not the sort of information  
18 "required to be open to public inspection." *Id.* The statute demonstrates the legislature's  
19 recognition that much of a public service corporation's information should not be open to public  
20 inspection. APS and other utilities operate in a unique environment—on the one hand, they are  
21 subject to regulation by the Commission, but on the other, they face many of the same pressures

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22 <sup>1</sup> AUIA also joins in APS' argument that the Study constitutes a trade secret, pursuant to the Uniform Trade Secrets  
23 Act, A.R.S. § 44-401, *et seq.*, and its discussion regarding the confidential and proprietary nature of the Study. As a  
24 trade secret, or as confidential and proprietary information, the Study is properly protected by the terms of the  
Confidentiality Agreement. (Motion, pp. 5-9.)

1 and interests as non-regulated businesses with the same legitimate interests in keeping  
2 information private.

3       The statute's presumption against public inspection carries even greater force in this case.  
4 First, the parties agreed to the terms of the Protective Agreement, which protects from public  
5 disclosure materials that APS designates as confidential, proprietary or trade secret. Such  
6 protective agreements facilitate a free flow of information among parties to Commission  
7 proceedings. Second, the Study is not material or relevant to issues involved in this matter.  
8 Third, release would chill other utilities' inclination to collect such information about their  
9 services and the public's attitudes toward them. Finally, although the precise state of electric  
10 competition remains unclear, by statute and rule, APS operates in a competitive retail market and  
11 competitive ESP CC&N applications are pending.<sup>2</sup> Release of such information to potential  
12 competitors is both unfair and unwise in the interests of market innovation, customer service and  
13 product delivery.

14       The Protective Agreement is similar to protective orders available to litigants in state and  
15 federal court, pursuant to Ariz. R. Civ. P. 26(c), and its federal analog, Fed. R. Civ. P. 26(c).  
16 Protective orders are meant to ensure the full and efficient disclosure of information in civil  
17 disputes and to give parties and witnesses comfort that confidential or proprietary information  
18 will be protected from public disclosure. *See, e.g., Martindell v. Intern'l Telephone and*  
19 *Telegraph Corp.*, 594 F.2d 291, (2d. Cir. 1979) (emphasizing the importance to witnesses and  
20 parties in relying on the terms of a protective order to encourage full disclosure in civil suits).  
21 Particularly where the parties have negotiated the terms of a protective order, the parties have  
22 reason to rely on its terms and to expect that information disclosed pursuant to a protective order

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24 <sup>2</sup> See, for example, the PDM Energy, L.L.C. application in Docket No. E-03869A-06-0470.



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RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2006.

GALLAGHER & KENNEDY, P.A.

By   
Michael M. Grant  
Garry D. Hays  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Attorneys for Arizona Utility Investors  
Association

**Original and 17 copies** filed this  
1<sup>st</sup> day of November, 2006, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

**Copies** of the foregoing mailed, faxed or  
transmitted electronically this 1<sup>st</sup> day  
of November, 2006, to:

All Parties of Record  
  
18762-3/1466981