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BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

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JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

AZ CORP COMMISSION  
DOCUMENT CONTROL

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

DOCKET NO. E-01345A-05-0816

**RESPONSE TO APS' MOTION TO PREVENT DISCLOSURE**

IN THE MATTER OF THE INQUIRY INTO THE FREQUENCY OF UNPLANNED OUTAGES DURING 2005 AT PALO VERDE NUCLEAR GENERATING STATION, THE CAUSES OF THE OUTAGES, THE PROCUREMENT OF REPLACEMENT POWER AND THE IMPACT OF THE OUTAGES ON ARIZONA PUBLIC SERVICE COMPANY'S CUSTOMERS.

DOCKET NO. E-01345A-05-0826

IN THE MATTER OF THE AUDIT OF THE FUEL AND PURCHASED POWER PRACTICES AND COSTS OF THE ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. E-01345A-05-0827

Arizona Corporation Commission Staff ("Staff") hereby responds to the Motion to Prevent Disclosure filed by Arizona Public Service Company ("APS") on October 25, 2006. Staff believes that the proceedings necessary to dispose of this issue may unduly lengthen this proceeding without providing a corresponding public benefit. For that reason, Staff does not necessarily oppose APS' Motion, even though Staff may not agree with its underlying premise.

**I. Facts**

On October 10, 2006, which was the first day of the evidentiary hearing in the pending APS rate case, Commissioner Mayes asked APS to docket certain information related to a telephonic customer poll that APS had recently conducted. (Tr. at 100).<sup>1</sup> APS subsequently provided the poll to

<sup>1</sup> All transcript references are to the transcript of the evidentiary hearing in Docket No. E-01345A-05-0816.

1 the Commission under seal in accordance with the terms of an existing protective agreement. On  
2 October 19, 2006, Commissioner Mayes acknowledged that she had received the confidential copy of  
3 the customer poll, but requested that APS make the results of the poll publicly available. (Tr. at  
4 1186). In response, APS claimed that the customer poll is confidential and stated that its  
5 confidentiality should be maintained. (Tr. at 1306). APS also asked for permission to file a brief in  
6 order to address the legal basis for the confidentiality of the customer poll. (Tr. at 1306-07). The  
7 Administrative Law Judge granted that request, and APS has filed the present motion in compliance  
8 with that ruling.

9 **II. The fact-specific inquiry that may be necessary in order to resolve this issue may**  
10 **unduly lengthen this case without providing any evidentiary information**  
11 **necessary to the record in this proceeding.**

12 Staff has not reached a conclusion regarding whether the APS customer poll qualifies for  
13 treatment as a trade secret, but notes that pursuit of this inquiry is likely to require additional  
14 Commission proceedings—proceedings which may substantially lengthen the pending rate case.  
15 Whether a given compilation of information qualifies as a trade secret is a question of fact. In order  
16 to conclude that APS' poll is not a trade secret, the Commission would need to conduct a suitable  
17 proceeding that would both allow APS to present facts in support of its contentions and allow the  
18 Commission to develop appropriate findings of fact in support of its eventual conclusions. This  
19 effort could require the presentation of additional witnesses, which, in turn, could both lengthen and  
20 complicate an already attenuated and complex proceeding. This result could have implications not  
21 only for the requirements of the Timeclock Rule, but also for the rationing of Staff's extremely  
22 limited resources.

23 These potential detriments should be balanced against any potential benefits that may be  
24 gained from public disclosure of the customer poll. From Staff's perspective, this analysis of  
25 benefits-versus-detriments should focus upon the issues that the Commission will be required to  
26 examine in the pending rate case. Staff has filed extensive prefiled testimony in this case, and none  
27 of that testimony discusses the customer poll. To the best of Staff's knowledge, the other parties'  
28 extensive prefiled testimony is similarly silent. Nor have Staff or the other parties sought to

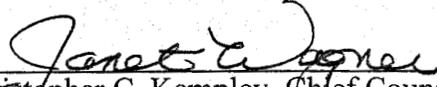
1 incorporate information about the customer poll into their respective cases since the poll's existence  
2 was disclosed. From Staff's perspective, this silence indicates that the customer poll does not provide  
3 information that the parties believe to be relevant to the issues in the pending rate case or useful to  
4 their analyses of those issues.

5 Finally, it is important to note that Staff does not presume to speculate as to the benefits of  
6 disclosure that the Commission may perceive; Staff offers these comments merely to provide Staff's  
7 perspective on these issues. Staff's view is primarily influenced by our perception that a review of  
8 the customer poll is not likely to be of evidentiary value in deciding the rate case, and Staff therefore  
9 believes that the Commission should avoid any additional proceedings to assess the issue within the  
10 context of the rate case proceedings.

11 **III. APS should be required to explain why the study cannot be redacted or**  
12 **summarized in a manner that appropriately balances the competing interests.**

13 APS' Motion does not discuss whether or to what extent APS has considered redacting the  
14 study or simply summarizing it so that it could be publicly docketed without disclosing any allegedly  
15 confidential information. APS should be required to consider this option, which may allow all parties  
16 to this matter to avoid further protracted proceedings.

17 RESPECTFULLY SUBMITTED this 3rd day of November, 2006.

18  
19   
20 Christopher C. Kempley, Chief Counsel  
21 Janet Wagner, Senior Staff Counsel  
22 Charles Hains, Attorney  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
25 Phoenix, Arizona 85007  
26 (602) 542-3402

27 Original and 17 copies of the foregoing filed  
28 this 3<sup>rd</sup> day of November, 2006, with:

26 Docket Control  
27 Arizona Corporation Commission  
28 1200 West Washington  
Phoenix, AZ 85007

1 Copy of the foregoing mailed this  
2 3<sup>rd</sup> day of November, 2006 to:

3 Deborah R. Scott  
4 Kimberly A. Grouse  
5 SNELL & WILMER  
6 One Arizona Center  
7 400 East Van Buren Street  
8 Phoenix, AZ 85004-2202

9 Thomas L. Mumaw  
10 Karilee S. Ramaley  
11 PINNACLE WEST CAPITAL  
12 CORPORATION  
13 Post Office Box 53999, MS 8695  
14 Phoenix, AZ 85072-3999

15 C. Webb Crockett  
16 Patrick J. Black  
17 FENNEMORE CRAIG, P.C.  
18 3003 North Central Avenue, Suite 2600  
19 Phoenix, AZ 85012-2913

20 Michelle Livengood  
21 UniSource Energy Services  
22 One South Church Street, Suite 200  
23 Tucson, AZ 85702

24 Donna M. Bronski  
25 Deputy City Attorney  
26 City Attorney's Office  
27 3939 North Drinkwater Boulevard  
28 Scottsdale, AZ 85251

George Bien-Willner  
3641 North 39<sup>th</sup> Avenue  
Phoenix, AZ 85014

Michael W. Patten  
J. Matthew Derstine  
Laura E. Sixkiller  
ROSHKA DEWULF & PATTEN, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004

Michael L. Kurtz  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

Scott S. Wakefield  
RUCO  
1110 West Washington Street, Suite 220  
Phoenix, AZ 85007

Lawrence V. Robertson, Jr.  
Post Office Box 1448  
Tubac, AZ 85646

Bill Murphy  
Murphy Consulting  
5401 North 25<sup>th</sup> Street  
Phoenix, AZ 85016

Andrew W. Bettwy  
Karen S. Haller  
Assistants General Counsel  
Legal Affairs Department  
5241 Spring Mountain Road  
Las Vegas, NV 89150

Amanda Ormond  
The Ormond Group LLC  
Southwest Representative  
Interwest Energy Alliance  
7650 South McClintock, Suite 103-282  
Tempe, AZ 85284

Joseph Knauer, President  
Jewish Community of Sedona  
and the Verde Valley  
100 Meadowlark Drive  
Post Office Box 10242  
Sedona, AZ 86339-8242

David C. Kennedy, Esq.  
818 East Osborn Road, Suite 103  
Phoenix, AZ 85014

1 S. David Childers, Esq.  
2 LOW & CHILDERS  
2999 North 44<sup>th</sup> Street, Suite 250  
3 Phoenix, AZ 85018

4 Tracy Spoon  
5 Sun City Taxpayers Association  
12630 North 103<sup>rd</sup> Avenue, Suite 144  
6 Sun City, AZ 85351

7 Tammie Woody  
10825 West Laurie Lane  
8 Peoria, AZ 85345

9 Douglas V. Fant  
10 Law Offices of Douglas V. Fant  
3655 West Anthem Drive, Suite A-109  
11 Anthem, AZ 85086

12 Walter W. Meek, President  
13 Arizona Utility Investors Association  
2100 North Central Avenue, Suite 210  
14 Phoenix, AZ 85004

15 Sein Seitz, President  
16 Arizona Solar Energy Industries Association  
3008 North Civic Center Plaza  
17 Scottsdale, AZ 85251

18 Dan Austin  
Comverge, Inc.  
19 6509 West Frye Road, Suite 4  
Chandler, AZ 85226

20 Timothy M. Hogan  
21 Arizona Center for Law in the Public Interest  
22 202 East McDowell Road, Suite 153  
Phoenix, AZ 85004

23 Jay I. Moyes  
24 Moyes Storey Ltd.  
1850 North Central Avenue, Suite 110  
25 Phoenix, AZ 85004

Kenneth R. Saline, P.E.  
K.R. Saline & Assoc., PLC  
160 North Pasadena, Suite 101  
Mesa, AZ 85201

Robert W. Geake  
Vice President and General Counsel  
Arizona Water Company  
Post Office Box 29006  
Phoenix, AZ 85038-9006

Lieutenant Colonel Karen S. White  
Chief, Air Force Utility Litigation Team  
AFLSA/JACL-ULT  
139 Barnes Drive  
Tyndall AFB, FL 32403

Greg Patterson  
Arizona Competitive Power Alliance  
916 West Adams Street, Suite 3  
Phoenix, AZ 85007

Jim Nelson  
12621 North 17<sup>th</sup> Place  
Phoenix, AZ 85022

Barbara Klemstine  
Brian Brumfield  
Arizona Public Service  
Post Office Box 53999, MS 9708  
Phoenix, AZ 85072-3999

Jon Poston  
AARP Electric Rate Project  
6733 East Dale Lane  
Cave Creek, AZ 85331

Coralette Hannon  
AARP Government Relations & Advocacy  
6705 Reedy Creek Road  
Charlotte, NC 28215

27 Roseann Osorio