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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION 3:29

DEC 28 2000

ARIZONA CORPORATION COMMISSION  
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CARL J. KUNASEK  
Commissioner-Chairman  
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Commissioner  
WILLIAM A. MUNDELL  
Commissioner

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IN THE MATTER OF THE GENERIC ) DOCKET NO. E-00000A-99-0205  
INVESTIGATION OF THE DEVELOPMENT )  
OF A RENEWABLE PORTFOLIO STANDARD ) AEPKO'S RESPONSE TO  
AS A POTENTIAL PART OF THE RETAIL ) MOTION FOR  
ELECTRIC COMPETITION RULES. ) CLARIFICATION

As set forth below, Arizona Electric Power Cooperative, Inc. ("AEPKO") responds to the Solar and Renewable Energy Industries' (the "Industries") Motion for Clarification of Decision No. 62506 filed on December 21, 2000. In their motion, the Industries contend there is some confusion over "the start-time for implementation of the EPS" under Decision No. 62506. The Industries then suggest that the Hearing Officer "affirm the January 1, 2001 start-date" for the EPS surcharge. Those positions are not well-taken and the Hearing Officer should deny the Industries' motion for two reasons.

First, Decision No. 62506 did not mandate implementation of the ESP surcharge on January 1, 2001. There is no confusion on that point--all Decision No. 62506 did was approve the EPS and order that Commission Staff commence rulemaking proceedings:

IT IS THEREFORE ORDERED that an Environmental Portfolio Standard based on Attachment B of this Order is hereby approved.

IT IS FURTHER ORDERED that Staff commence a rule making process to adopt rules consistent with this Decision and the Commission's Findings and Conclusions.

See Decision No. 62506, p. 26. Following that Decision, Commission Staff initiated rulemaking proceedings (including notice of proposed rulemaking and public comment) which still are

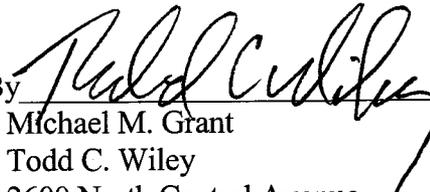
GALLAGHER & KENNEDY, P.A.  
2575 E. CAMELBACK ROAD  
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1 ongoing. Until that rulemaking process is complete, the Hearing Officer has no authority to  
2 order implementation of the ESP surcharge.

3 Second, if the Hearing Officer and/or the Commission were to "affirm" the  
4 January 1, 2001 start-date as the Industries suggest, such order would violate the applicable  
5 Administrative Procedures Act, including notice and comment requirements for the proposed  
6 rulemaking proceedings, and contravene the ongoing rulemaking process. As a matter of law,  
7 affirming the January 1, 2001 date for implementing the EPS surcharge as the Industries suggest  
8 is beyond the Commission's and Hearing Division's authority until the rulemaking process is  
9 complete and the Hearing Officer should disregard the Industries' Motion for Clarification.

10 RESPECTFULLY SUBMITTED this 28th day of December, 2000.

11 GALLAGHER & KENNEDY, P.A.

12 By 

13 Michael M. Grant  
14 Todd C. Wiley  
15 2600 North Central Avenue  
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17 Attorneys for Arizona Electric Power  
18 Cooperative, Inc.

19 Original and ten (10) copies  
20 of the foregoing Memorandum filed  
21 this 28th day of December 2000, with:

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

Copy of the foregoing Memorandum  
mailed and faxed this 28<sup>th</sup> day of December,  
2000, to:

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Jane Rodda (Fax: (520) 628-6559))  
Acting Chief Administrative Law Judge  
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