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**ORIGINAL**

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
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2010 FEB 12 A 10:43  
ARIZONA CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR APPROVAL OF ITS 2010  
RENEWABLE ENERGY STANDARD  
IMPLEMENTATION PLAN AND  
DISTRIBUTED ENERGY  
ADMINISTRATIVE PLAN AND REQUEST  
FOR RESET OF RENEWABLE ENERGY  
ADJUSTOR

DOCKET NO. E-01345A-09-0338

**NOTICE OF FILING AND REQUEST  
FOR FINDINGS OF CONFIDENTIALITY**

Arizona Corporation Commission

**DOCKETED**

FEB 12 2010

DOCKETED BY

On February 12, 2010, at the request of the Arizona Corporation Commission (“Commission”), Arizona Public Service Company (“APS” or “Company”) provided documents that are proprietary and competitively confidential to each individual Commissioner’s office under seal. With this filing, APS is requesting that the Commission make a formal determination that these documents are confidential, pursuant to Arizona Revised Statute § 40-204(C), and that any confidential information and testimony provided by Company representatives regarding these documents that may be provided to the Commission in an Open Meeting be limited to an executive session, pursuant to A.R.S. § 38-431.03(a)(2).

**BACKGROUND**

On February 3, 2010, the Commission held a Special Open Meeting where APS appeared and presented information regarding the competitive solicitation process for the Small Generation Pilot Program (“Small-Gen Pilot”), a pilot program focused on furthering small-scale renewable energy facilities. (The Small-Gen Pilot had also been addressed in APS’s 2010 Renewable Energy Standard Implementation Plan, which was adopted in

1 Decision No. 71459.<sup>1</sup>) During that Special Open Meeting, the Commission specifically  
2 requested that APS provide the bidders' responses to the Company's Small-Gen Request for  
3 Proposals ("RFP Responses"), a copy of the contract that was executed as a result of the RFP  
4 ("Executed Contract(s)"), and copies of documents that reflect the negotiating process  
5 ("Negotiation Documents") (collectively referred to as "Competitively Confidential  
6 Information"). The Commission also indicated that they would like to have the opportunity  
7 for discussion of the Competitively Confidential Information with APS, and among the  
8 Commissioners in an appropriate forum.

9 **LEGAL ANALYSIS**

10 *Production of Competitively Confidential Information*

11 The need to protect confidential and trade secret information exists for the third-party  
12 bidders and the Company. APS asserts that the Competitively Confidential Information is  
13 confidential and must be protected from public disclosure because it is sensitive commercial  
14 information for APS, as well as the renewable energy developers who submitted responses to  
15 the RFP, and that disclosure of the Competitively Confidential Information would be contrary  
16 to the public interest.

17 Competitive procurement conducted by APS is done so on behalf of customers, and  
18 the utility must engage in rigorous negotiations in order to ensure that the Company obtains  
19 the best and most cost effective resources for its customers. Public disclosure of the  
20 Negotiation Documents and the Executed Contract(s) would put APS at a competitive  
21 disadvantage when negotiating renewable energy contracts in the future. If this  
22 Competitively Confidential Information is released to the public, renewable energy vendors  
23 could derive a competitive advantage in future negotiations with APS, with the potential for  
24 APS to pay more than it otherwise would have. These costs would then be passed through to  
25 customers. This result is contrary to the public interest.

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28 <sup>1</sup> Issued Jan. 29, 2010. The Small-Gen Pilot had initially been approved in Decision No. 70654 (Dec. 18, 2008), which approved the Company's 2009 RES Implementation Plan.

1           There are other legitimate reasons to protect the proprietary RFP Responses. The RFP  
2 Responses provide specific information regarding the developers' proposals for renewable  
3 energy projects, including pricing and other information that is not readily ascertainable to  
4 others in the industry, and upon which developers seek to achieve a competitive advantage in  
5 the marketplace. It is for these reasons that the developer's propriety information is provided  
6 to APS pursuant to an executed Confidentiality Agreement.<sup>2</sup>

7           It is for these reasons that APS asserts that the RFP Responses, the Negotiation  
8 Documents, and the Executed Contract(s) are confidential pursuant to A.R.S. § 40-204(C) and  
9 is requesting a specific determination by the Commission to that effect.

10           *Discussion of Competitively Confidential Information*

11           In response to the Commissioners' request, APS is prepared to provide Company  
12 representatives who can provide information and testimony regarding the Competitively  
13 Confidential Information. As discussed above, this information and testimony would also be  
14 confidential pursuant to A.R.S. § 40-204(C). For that reason, APS is also seeking a similar  
15 determination by the Commission that such information be deemed confidential pursuant to  
16 statute.

17           Finally, should the Commission wish to address the Competitively Confidential  
18 Information in an Open Meeting, APS asserts that such a discussion would be appropriate  
19 only within an executive session, as permitted by A.R.S. § 38-431.03(A)(2).

20           **CONCLUSION**

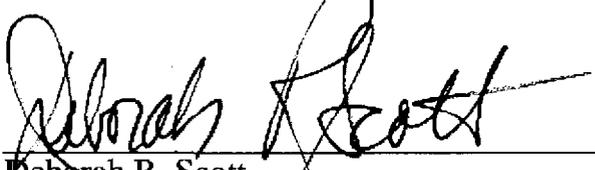
21           To protect the confidentiality of proprietary and competitively sensitive information,  
22 which disclosure could harm the public interest, APS respectfully requests that the  
23 Commission make the following determinations:

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26 <sup>2</sup> APS agrees to protect a bidder's confidential information pursuant to a Confidentiality Agreement.  
27 However, the Company also recognizes that that the information may need to be shared with Commission and  
28 its Staff and, therefore, includes a provision in its Confidentiality Agreement with the bidder that allows such  
disclosure to the Commission pursuant to a protective agreement. APS has notified all bidders that this  
information was requested and is being shared with the Commission under seal.

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1. The RFP Response, the Negotiation Documents, and Executed Contract(s) are confidential documents pursuant to A.R.S. § 40-204(C).
2. Information and discussion regarding the RFP Response, the Negotiation Documents, and the Executed Contract(s) are confidential pursuant to A.R.S. § 40-204(C), and
3. Discussion of these matters at a Commission Open Meeting shall occur only in an executive session, as authorized by A.R.S. § 38-431(03).

RESPECTFULLY SUBMITTED this 12th day of February, 2010.

By:   
Deborah R. Scott  
Attorney for Arizona Public Service Company

ORIGINAL and thirteen (13) copies of the foregoing filed this 12th day of February, 2010, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
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COPY of the foregoing mailed/delivered this 12th day of February, 2010 to:

See attached list of parties.



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