STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

April 20, 2005

DOCKET
04-IEP-1D
DATE APR 20 2005
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Gregory S.G. Klatt
Douglass & Liddel
411 E. Huntington Drive
Suite 107-356
Arcadia, CA 91006

Dear Mr. Klatt:

Re: Application for Executive Director's Reconsideration of Initial Denial of Designation of Confidentiality for Electricity Retail Price Forecast Data, Specifically Form 3.a (2) total of revenue requirements ($) for 2003. Docket No. 04-IEP-1D

On November 24, 2004, APS Energy Services, Inc. (APS) filed Electricity Retail Price Forecast Data Forms 3.a and 3.b with the California Energy Commission (Energy Commission) for use in the Commission's 2005 Energy Policy Report proceedings. As part of that filing, APS requested a designation of confidentiality for the above-referenced forms.

In a letter dated December 23, 2004, the Executive Director stated that "total MWh and total revenues data for 2003 in Form 3.a and actual electricity sales (MWh) data and total revenues for 2003 on Form 3.b will not be kept confidential." This determination was based on the pending release of 2003 data on total MWh, revenues, and sales for ESPs by the federal Energy Information Administration (EIA) as part of their electric sales and revenues data tables.

The Executive Director also limited the confidentiality of the remaining data to a period of three years, noting that "beyond that period, this information is unlikely to provide any advantage to competitors."

In a March 24, 2005, appeal for reconsideration, APS is seeking reconsideration of the non-confidential status of the total of revenue requirements for 2003, as provided in Form 3.a, and the Executive Director's limiting confidentiality to three (3) years from the December 23, 2004, letter.

The California Public Records Act allows for non-disclosure of trade secrets [Gov. Code, § 6254(k), Evid. Code, § 1060]. The California courts have traditionally used the following definition of trade secret:

> "A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it..." [Uribe v. Howie (1971) I9 Cal.App.3d 194, 207-208, 96 Cal. Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.]

APS's application for reconsideration dated March 24, 2005, makes a reasonable argument under the Energy Commission's regulation for classifying some of the information contained in your application as confidential, since it could provide your competitors with a competitive advantage if made public [Gov. Code, § 6254(k); Cal. Code Regs., tit. 20, § 2505]. Accordingly, confidentiality will be granted as follows:

After further review, I have determined that information labeled as historic "total revenue requirements," as reported by your company on Form 3.a, is not reported publicly as stated in the initial determination. You have clarified that what was reported is actually historic cost data. Because this data was not considered confidential on the basis of its pending release by EIA, I am now amending the initial determination to give confidentiality to the values reported as total revenue requirements on Form 3.a for a period of three years from the initial December 23, 2004, letter. This new determination is consistent with the initial determination that other data in this table that was not publicly released would be given confidentiality.

However, I do not find that your request for reconsideration provides a reasonable claim that confidentiality greater than three years from December 23, 2004, is justified. The original decision to limit confidentiality for non-public information reported in Forms 3.a and 3.b to three years from December 23, 2004, is sustained.

The procedures and criteria for appealing this decision are set forth in the California Code of Regulations, title 20, section 2505. While your company inadvertently missed the deadline for filing an appeal, the Executive Director has the authority to reconsider the decision of December 23, 2004, under California Code of Regulations, title 20, section 2505(a)(6) which states in part, "Failure to request confidentiality at the time a record is submitted to the Commission does not waive the right to request confidentiality later," especially in light of new information as noted above.

If you have any further questions regarding this decision, please contact Thomas Glaviano, Staff Counsel, at (916) 651-8893.

Sincerely,

SCOTT W. MATTHEWS
Acting Executive Director

cc: Docket Unit, 04-IEP-1D