

BEFORE THE ARIZONA CORPORATION COMMISSION

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2 WILLIAM A. MUNDELL
Chairman
3 JIM IRVIN
Commissioner
4 MARC SPITZER
Commissioner
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AZ CORP COMMISSION
DOCUMENT CONTROL

6
7 IN THE MATTER OF ELECTRIC SERVICE
AUTHORIZATION AGREEMENT
8 BETWEEN TUCSON ELECTRIC POWER
COMPANY AND NAVOPACHE ELECTRIC
9 COOPERATIVE, INC.; AND ELECTRIC
SERVICE AGREEMENT BETWEEN
10 NAVOPACHE ELECTRIC COOPERATIVE,
INC. AND RELIANT PROCESSING LTD.

Docket Nos. E-01933A-01-0702
E-01978A-01-0702

**NOTICE OF FILING PROTECTIVE
AGREEMENT BETWEEN TUCSON
ELECTRIC POWER COMPANY,
NAVOPACHE ELECTRIC COOPERA-
TIVE, INC. AND THE ARIZONA
CORPORATION COMMISSION**

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12
13 Tucson Electric Power Company and Navopache Electric Cooperative, Inc. hereby give
14 notice of filing the attached Protective Agreement with the Arizona Corporation Commission.

15
16 Respectfully submitted this 20th day of September, 2001.

ROSHKA HEYMAN & DEWULF, PLC

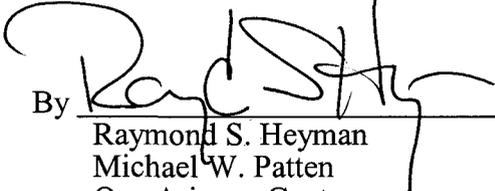
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18 Arizona Corporation Commission

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20 SEP 20 2001

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DOCKETED BY	
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By 
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Michael W. Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

Attorneys for Tucson Electric Power Company

23
24 **ORIGINAL + 10 COPIES** of the
foregoing filed September 20, 2001, with:

25 Docket Control
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington
28 Phoenix, Arizona 85007

1 **COPY** hand-delivered September 20, 2001, to:

2 Teena Wolfe, Esq.
3 Legal Division
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Erinn Andreason
8 Utilities Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington
11 Phoenix, Arizona 85007

12 **COPY** mailed September 20, 2001, to:

13 Michael A. Curtis, Esq.
14 MARTINEZ & CURTIS, PC
15 2712 North Seventh Street
16 Phoenix, Arizona 85006

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Docket Nos. E-01933A-01-0702
E-01978A-01-0702

**PROTECTIVE AGREEMENT BETWEEN
TUCSON ELECTRIC POWER
COMPANY, NAVOPACHE ELECTRIC
COOPERATIVE, INC. AND THE
ARIZONA CORPORATION
COMMISSION**

11
12 Tucson Electric Power Company ("TEP") and Navopache Electric Cooperative, Inc.
13 ("Navopache") have submitted to the Arizona Corporation Commission and its Utilities Division
14 (collectively "Commission") the following documents (the "ESA documents"): (i) Electric Service
15 Authorization Agreement between Tucson Electric Power Company and Navopache Electric
16 Cooperative, Inc. and (ii) Electric Service Agreement between Navopache Electric Cooperative, Inc.
17 and Reliant Processing LTD.

18 TEP and Navopache believe that the ESA documents should be protected from public
19 disclosure because they contain confidential information related to trade secrets, or is of a
20 proprietary, confidential, or legally protected nature. Those matters that TEP and Navopache allege
21 should be protected from public disclosure, including alleged confidential documents, data, studies
22 and other materials, shall hereinafter be referred to as "Confidential Information." The designation
23 by TEP and Navopache of any information as Confidential Information does not reflect an admission
24 or agreement by the Commission that the designated Confidential Information contains matters that
25 should be protected from public disclosure. However, in order to expedite the review and
26 Commission approval of ESA documents, TEP, Navopache and the Commission ("the parties")
27 agree that matters designated by TEP and Navopache as Confidential Information under this
28 Protective Agreement, shall be treated as follows:

1 **§ 1. Non-Disclosure.** Except with the prior written consent of the party originally
2 designating a document to be stamped as Confidential Information, or as hereinafter provided under
3 this Agreement, no Confidential Information may be disclosed to any person. This requirement does
4 not prohibit the Commission from using and disclosing Confidential Information provided by TEP
5 and Navopache in reports or documents that aggregate the TEP and Navopache information with
6 similar information obtained from other entities, provided TEP's and Navopache's individual
7 disclosures are indiscernible from the aggregate report.

8 **§ 2. Designation of Confidential Information.** For purposes of this Agreement,
9 all documents, data, information, studies, and all other written, printed, transcribed, audio-taped, or
10 video-taped materials furnished to the Commission that TEP and Navopache claim to be a trade
11 secret, or of a proprietary, confidential, or legally protected nature, shall be designated and referred to
12 herein as "Confidential Information." Access to and review of Confidential Information shall be
13 strictly controlled by the terms of this Agreement.

14 All Confidential Information provided to the Commission pursuant to this Agreement shall
15 be so marked by TEP and Navopache with a designation indicating the alleged trade secret,
16 proprietary, confidential, or legally protected nature. Any Confidential Information disclosed
17 verbally by TEP and Navopache shall be memorialized in writing within five (5) business days of its
18 verbal disclosure, and the writing shall be marked with the appropriate designation. Any
19 Confidential Information disclosed verbally by TEP and Navopache shall be safeguarded by the
20 Commission and its consultants during the five (5) business day period during which
21 memorialization may be provided. If no memorialization is provided during the five- (5) day period,
22 the information shall be subject to public disclosure.

23 **§ 3. Performance under Agreement Does Not Result in Waiver or Disclosure.**
24 Execution of this Agreement by the parties and performance of their obligations thereunder shall not
25 result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential or
26 legally protected nature of the Confidential Information provided. Neither shall the limited provision
27 of Confidential Information by TEP and Navopache pursuant to this Agreement, nor the limited
28 provision by the Commission of Confidential Information pursuant to Paragraph 6 of this Agreement

1 constitute public disclosure of it.

2 **§ 4. Access to Confidential Information.** Prior to reviewing any Confidential
3 Information, any Commission Staff members shall first be required to read a copy of this Protective
4 Agreement, and to certify by their signatures on Exhibit A of this Agreement, that they have
5 reviewed the same and have consented to be bound by its terms. Exhibit A of this Agreement shall
6 contain the signatory's full name, business address and employer, and the signatory's position with,
7 or relationship to the Commission. Upon their execution, any and all Exhibits shall be promptly
8 provided to counsel for TEP and Navopache.

9 **§ 5. Use of Confidential Information.** All persons who are signatories to this
10 Agreement shall neither use nor disclose the Confidential Information for purposes of business or
11 competition, or for any purposes other than those necessary for the disposition of this docket,
12 including preparation for and the conduct of any administrative or legal proceeding. All persons
13 entitled to review or afforded access to Confidential Information shall keep it secure as trade secret,
14 confidential, or legally protected information in accordance with the purposes and intent of this
15 Agreement.

16 **§ 6. Disclosure of Information to the Public.** The Confidential Information
17 provided pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public
18 record in this docket, or in any other administrative or legal proceeding unless the Commission
19 provides TEP and Navopache five (5) business days written notice that information designated by
20 TEP and Navopache as Confidential Information shall be subject to disclosure as a public record.
21 Upon the expiration of five (5) business days from the date written notice is received by TEP and
22 Navopache, any Confidential Information identified in the notice as subject to disclosure shall
23 become part of the public record, unless TEP and Navopache initiate a protective proceeding under
24 the terms of this Agreement.

25 **§ 7. Protective Proceedings to Prevent Disclosure to the Public.** In the event
26 that TEP and Navopache seek to prevent public disclosure of Confidential Information pursuant to
27 Paragraph 6 above, TEP and Navopache shall file within five (5) business days of receipt of written
28 notice, a motion presenting the specific grounds upon which they claim that the Confidential

1 Information should not be disclosed or should not be made a part of the public record.

2 The Commission shall have an opportunity to respond to the motion. TEP's and
3 Navopache's motion may be ruled upon by either the Commission or an assigned Commission
4 Administrative Law Judge ("ALJ"). TEP and Navopache may provide to the Commission or the
5 ALJ, the Confidential Information referenced in the motion without waiver that the information
6 should remain confidential under the terms of this Agreement. Any Confidential Information so
7 provided shall be kept under seal for the purpose of permitting inspection by the Commission or the
8 ALJ prior to ruling on the motion.

9 Notwithstanding any determination by the Commission or ALJ, that any Confidential
10 Information provided pursuant to this Agreement should be made a part of the public record or
11 otherwise disclosed, public disclosure shall not occur for a period of five (5) business days so that
12 TEP and Navopache may seek judicial relief from the Commission's or ALJ's decision. Upon
13 expiration of the five (5) day period, the information shall be subject to public disclosure, unless TEP
14 and Navopache has received a stay or determination from a court of competent jurisdiction that the
15 records, data, information or study are proprietary or are not otherwise subject to disclosure.

16 **§ 8. Judicial Proceedings Related to a NonParty's Request for Disclosure.** In
17 any judicial action against the Commission and/or Commissioners by a nonparty to this Agreement,
18 seeking disclosure of Confidential Information, unless specifically named, TEP and Navopache as
19 the real parties in interest, shall join in the action as co-defendants. TEP and Navopache also agree
20 to indemnify and hold the Commission harmless from any assessment of costs, expenses, attorneys
21 fees, or damages under A.R.S. § 39-121.02 or any other law, resulting from denial of access by the
22 Commission to the information, data, records, or study subsequently found to be nonconfidential.

23 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
24 request for documents, subpoena, civil investigative demand, or similar process) to make a public
25 disclosure of any of the Confidential Information, the Commission shall provide TEP and Navopache
26 with prompt written notice of such requirement so that TEP and Navopache may seek an appropriate
27 remedy and/or waive compliance. TEP and Navopache agree that upon receipt of such notice, TEP
28 and Navopache will either undertake to oppose disclosure of the Confidential Information or waive

1 compliance with this Agreement. In the event that disclosure of the Confidential Information is
2 ordered, the Commission agrees to furnish only that portion of the Confidential Information, which is
3 legally required.

4 **§ 9. No Preclusion of Evidentiary Objections.** In the event that disclosure of
5 Confidential Information occurs in accordance with Paragraphs 6 or 7 of this Agreement, the
6 provision of such information by TEP and Navopache pursuant to this Agreement shall not limit the
7 right of TEP and Navopache to object to the relevance or admissibility in proceedings before the
8 Commission.

9 **§ 10. Return of Confidential Information.** Upon the final disposition of any
10 administrative or legal proceeding related to the Confidential Information or within 180 days, which
11 ever is sooner, all Confidential Information, copies thereof, and notes made by signatories to this
12 Agreement shall be returned to TEP and Navopache or destroyed.

13 **§ 11. No Admission of Privileged or Confidential Status.** By participating in this
14 Agreement, the Commission is neither admitting nor agreeing with TEP and Navopache that any of
15 the materials or communications designated as Confidential Information are, either in fact or as a
16 matter of law, a trade secret or of a proprietary, confidential, or legally protected nature.

17 **§ 12. Breach of Agreement.** TEP and Navopache, in any legal action or complaint
18 they file in any court alleging breach of this Agreement shall, at the written request of the
19 Commission, name the Commission as a Defendant therein.

20
21 DATED this ____ day of September, 2001.

22 ARIZONA CORPORATION COMMISSION

ROSHKA HEYMAN & DeWULF, PLC

23
24 By _____
25 Teena Wolfe
26 Attorney, Legal Division
27 1200 West Washington Street
28 Phoenix, Arizona 85007
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By _____
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Telephone (602) 256-6100
Attorneys for Tucson Electric Power
Company

1 NAVOPACHE ELECTRIC COOPERATIVE
2

3
4 By _____
5 Michael A. Curtis, Esq.
6 MARTINEZ & CURTIS, PC
7 2712 North Seventh Street
8 Phoenix, Arizona 85006
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated _____, related to Tucson Electric Power Company's and Navopache Electric Cooperative, Inc.'s filing of the ESA documents in Docket Nos. E-01933A-01-0702 and E-01978A-01-0702 and agree to be bound by the terms and conditions of such Agreement.

Name

Signature

Employer or Firm

Business Address

Position or relationship

Date