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2006 FEB 22 P 4: 34  
AZ CORP COMMISSION  
DOCUMENT CONTROL

Attorneys for El Paso Natural Gas Company

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY FOR  
DETERMINATION OF PRUDENCE  
AND APPROVAL OF RATEMAKING  
TREATMENT RELATED TO NATURAL  
GAS INFRASTRUCTURE

DOCKET NO. E-01345A-05-0895

**EL PASO NATURAL GAS  
COMPANY'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS  
(Expedited Procedural Conference  
Requested)**

Pursuant to Rule 37(a) of the Arizona Rules of Civil Procedure, and Arizona Administrative Code R14-3-106(k), El Paso Natural Gas Company ("EPNG") moves the Commission for an order compelling Arizona Public Service Company ("APS") to produce certain documents on an expedited basis for the reasons described herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Factual Background**

On February 3, 2006, EPNG served APS with its first set of data requests that were specifically tailored to obtain: 1) information provided by APS in response to Staff's data requests, and 2) an unredacted copy of the Phoenix Project Expansion Agreement between APS and Transwestern Pipeline Company, LLC ("Transwestern"). See Exhibit A. APS provided responses to EPNG's Data Request Nos. 1.1 and 1.2 on February 13, 2006, attached hereto as Exhibit B. APS objected to EPNG Data Request No. 1.1 to the extent that the request seeks confidential or proprietary information, because the confidential responses to Staff's data requests contain information that discloses confidential terms of the Expansion Agreement with Transwestern. APS objected to EPNG Data Request No.

1 1.2 on the grounds that the request seeks confidential or proprietary information that is  
2 competitively sensitive.

3 Based on prior discussions with APS, EPNG was aware that APS might assert that  
4 this information is confidential. Consequently, EPNG offered to enter into a protective  
5 agreement for the disclosure and use of information and materials that APS considered to  
6 be proprietary or confidential. See Exhibit A. After receiving APS's objections, EPNG's  
7 counsel attempted to resolve the impasse by providing a signed protective agreement  
8 ("Protective Agreement") to APS's counsel on February 17, 2006. See Exhibit C. On  
9 February 21, 2006, APS responded and reiterated its original objections to EPNG's data  
10 requests. See Exhibit D.

## 11 **II. Brief Overview of Discovery Process**

12 Rule 26 provides that parties may obtain discovery "regarding any matter, not  
13 privileged, which is relevant to the subject matter involved." Ariz. R. Civ. P. 26(b)(1).  
14 Relevancy of evidence is found if it has "any tendency to make the existence of any fact  
15 that is of consequence to the determination of the action more probable or less probable  
16 than it would be without the evidence." Ariz. R. Evid. 401. Evidence need not be  
17 admissible in order to be discovered – it need only be "reasonably calculated to lead to the  
18 discovery of admissible evidence." Ariz. R. Civ. P. 26(b)(1). Rule 37 states that where a  
19 party fails to respond to an interrogatory or request for production, the party serving such  
20 discovery may move for an order compelling the non-responsive party to answer. Ariz. R.  
21 Civ. P. 37(a).

22 The Arizona Rules of Civil Procedure advocate a policy of full disclosure between  
23 parties. The purpose of discovery is to "provide a vehicle by which one party may be  
24 fairly apprised of the other's case and be prepared to meet it if he can." *Kott v. City of*  
25 *Phoenix*, 158 Ariz. 415, 418, 763 P.2d 235, 238 (1988), citing *Watts v. Superior Court*, 87  
26 Ariz. 1, 347 P.2d 565 (1959). Discovery promotes the efficient and speedy disposition of

1 an action, minimizes surprise, and prevents a hearing or trial from becoming a guessing  
2 game. *See Cornet Stores v. Superior Court*, 108 Ariz. 85, 86, 492 P.2d 1191, 1193  
3 (1972).

4 In addition, a claim that information is confidential or competitively sensitive does  
5 not provide any basis on which to deny discovery. *Id.* at 88, 492 P.2d at 1195. Instead, in  
6 those circumstances, discovery is permitted pursuant to the terms of a properly drafted  
7 protective order. As the Arizona Supreme Court has persuasively noted in addressing this  
8 issue:

9 Defendants further object to this interrogatory on the ground  
10 that it calls for "confidential information." We know of no  
11 case holding that this is a proper ground for objection to an  
12 otherwise proper interrogatory. Assuming that the  
13 information called for by this interrogatory is of a confidential  
14 nature which defendants do not want to have included in a  
15 public record, they presumably could have applied for a  
16 protective order.

17 *Id.*, quoting *Columbia Broadcasting System, Inc. v. Superior Court*, 263 Cal.App.2d 12,  
18 69 Cal.Rptr. 348 (1968). In light of Arizona's policy of full disclosure, a party must  
19 respond to a data request "unless it appears affirmatively that the evidence sought is  
20 patently objectionable and inadmissible." *Id.* at 87, 492 P.2d at 1194 (citations omitted).

21 With these well-established principles in mind, the Commission should order APS  
22 to produce the information and documents sought in EPNG Data Request Nos. 1.1 and  
23 1.2.

### 24 **III. APS Has Failed to Adequately Respond to EPNG's Data Requests**

25 APS objects to the EPNG's data requests on the ground that the information or  
26 documents sought include confidential or proprietary information. In its letter of February  
21, 2006, APS provides three primary reasons for objecting to EPNG's data requests: (1)  
Transwestern has not consented to the disclosure of the Expansion Agreement to EPNG;  
(2) disclosure of the Expansion Agreement and APS' financial analysis will cause

1 competitive harm to Transwestern and APS, and put APS and its customers at a  
2 competitive disadvantage in future negotiations with EPNG; and 3) EPNG has not  
3 demonstrated why it needs to review the Expansion Agreement or APS' financial analysis  
4 in order to protect its interests before the Commission. These reasons have no merit  
5 because protective agreements (like the Protective Agreement already provided to APS),  
6 which provide a procedure for disclosure of, use of, and return of sensitive information,  
7 are commonly utilized during Commission proceedings, and fully protect the producing  
8 party from competitive harm. A more detailed review of each of APS's objections  
9 follows.

10 **A. Transwestern's Consent is Not Necessary for Proper Disclosure.**

11 If Transwestern's consent were necessary before the unredacted Expansion  
12 Agreement can be disclosed to EPNG, then a *non-party* would be allowed to control  
13 discovery between parties in Commission proceedings. This is a remarkable position,  
14 especially given that, by APS's own admission, Transwestern plans to disclose the  
15 unredacted Expansion Agreement with it file its certificate application with the Federal  
16 Energy Regulatory Commission, approximately six months from now. In requesting that  
17 the Commission find the Expansion Agreement prudent at the present time, APS is  
18 seeking extra-ordinary rate relief. It is the Commission that must decide the proper terms  
19 of disclosure, as evidenced by APS' admission that the Expansion Agreement recognizes  
20 the Commission's authority.

21 The Commission employs an open and transparent process when considering  
22 applications made by public service corporations. Recently, the Commission addressed  
23 confidentiality and the disclosure of information during a water utility rate case. *See*  
24 Decision No. 66849 (March 19, 2004).<sup>1</sup> At issue was a settlement agreement between the

25 <sup>1</sup> *In the Matter of the Application of Arizona Water Company, for Adjustments to its Rates*  
26 *and Charges for Utility Service Furnished by its Eastern Group and for Certain Related*  
*Approvals, Docket No. W-01445A-02-0619.*

1 water utility and a third party containing a confidentiality provision that prohibited the  
2 utility from disclosing its terms.<sup>2</sup> In deciding to make the information public, the  
3 Commission held that there is strong presumption in favor of disclosure, and the public  
4 interest outweighs the potential chilling effect on settlements between utilities and third-  
5 party litigants because of “the public’s right to know the underlying basis for *how the*  
6 *rates set by the Commission were established.*” *Id.* at 27 (emphasis added).

7 By this Motion to Compel, EPNG is seeking access to confidential information  
8 under a protective agreement, and *not* through public disclosure. Disclosure in this  
9 manner will allow the Commission an opportunity to consider all relevant evidence in  
10 determining how the rates set by the Expansion Agreement are established, and whether  
11 approval will serve the public interest.

12 **B. Neither APS, its Customers nor Transwestern Will Suffer Competitive**  
13 **Harm as a Result of Disclosing the Confidential Information Sought by**  
14 **EPNG.**

15 APS argues that disclosing the unredacted Expansion Agreement and its own  
16 financial analysis would cause competitive harm to APS and Transwestern. However, the  
17 Protective Agreement provided to APS on February 17, 2006, was signed by four outside  
18 regulatory attorneys, and an outside consultant employed by Navigant Consulting, Inc.  
19 EPNG was careful to limit review of confidential information by individuals who are not  
20 associated with EPNG’s marketing and strategy group. In fact, none of the individuals  
21 who signed the Protective Agreement, which strictly prohibits the use of confidential  
22 information obtained in this proceeding, is an employee of EPNG.

23 Rule 26(c), Ariz. R. Civ. P., states that a protective order may be issued to ensure  
24 “that a trade secret or other confidential research, development or commercial information  
25 may not be disclosed or be disclosed only in a designated way....” EPNG asserts that the

26 \_\_\_\_\_  
<sup>2</sup> The allegedly confidential information was provided to most of the parties in the proceeding pursuant to protective agreements. *See* Decision No. 66849 at 26.

1 Protective Agreement represents a manner of disclosure consistent with Rule 26(c). In  
2 addition to the protections already afforded to APS and Transwestern under the Protective  
3 Agreement, APS and its customers will also not suffer a competitive disadvantage in  
4 future negotiations with EPNG, especially in light of the admission that Transwestern will  
5 disclose the information once it files for a certificate with FERC, only 6 months from  
6 now.<sup>3</sup> For APS and its customers to suffer a competitive disadvantage in negotiations  
7 with EPNG over these next 6 months, EPNG would have to violate the Protective  
8 Agreement. This will not occur.

9 **C. EPNG Has Demonstrated a Need to Review the Unredacted Expansion**  
10 **Agreement and APS' Financial Analysis.**

11 In its Application for Leave to Intervene, EPNG set forth several reasons why it  
12 has a direct and substantial interest in these proceedings. According to APS, it is  
13 requesting the Commission to approve an approximate rate premium of 18 percent for the  
14 cost of transporting natural gas supplies by means of Transwestern's proposed pipeline,  
15 when compared to the cost of transportation with EPNG. *See* APS Application at 10.  
16 However, APS claims that the \$5.7 million per year of increased transportation costs  
17 borne by APS customers will be offset by lower commodity costs. *Id.* EPNG's  
18 Application for Leave to Intervene presented the need for access to information relating to  
19 the Expansion Agreement so that an analysis of APS's assertions regarding cost  
20 differences between EPNG and Transwestern may be verified. In addition, EPNG is  
21 uniquely situated to assist the Commission in verifying the financial analysis implicit in  
22 APS's proposal that the Commission pre-approve the contract with Transwestern.  
23 Notably, APS did *not* oppose EPNG's Application for Leave to Intervene, nor did APS

24 \_\_\_\_\_  
25 <sup>3</sup> APS was not forced to file an application with the Commission for a pre-approval of  
26 costs associated with the Expansion Agreement, and is seeking extra-ordinary relief in this  
regard. Even if EPNG market personnel were to review the confidential information  
sought, which they will not, it would be APS directly placing itself and its customers at a  
competitive disadvantage. APS is very familiar with the Commission's open and  
transparent process, and the strong presumption in favor of disclosure.

1 offer any objection to the information sought until February 13, 2006 – 10 days after  
2 EPNG’s data requests were originally served.

3 Finally, a failure to require APS to provide EPNG a copy of the Expansion  
4 Agreement and financial analysis under the auspices of a protective order would deny  
5 EPNG the ability to meaningfully participate in this proceeding. The central issue in this  
6 case is the prudence of the Expansion Agreement. Obviously, without the ability to  
7 review the Expansion Agreement or APS’ own financial analysis, EPNG would be  
8 deprived of any ability to test APS’ claims about the higher transportation rates that it  
9 would pay to Transwestern under that agreement. Such a result would arbitrarily deny  
10 EPNG its right to participate meaningfully in this proceeding in violation of Arizona law  
11 and well-established principles of administrative due process. See Article 2, § 4 of the  
12 Arizona Constitution, *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976).

13 **CONCLUSION**

14 APS has failed to provide any legitimate basis on which to deny EPNG’s discovery  
15 requests. APS knew that when EPNG moved to intervene – and certainly when the  
16 Commission granted intervention – that EPNG would seek information necessary to  
17 verify the true amount of rate premium APS would pay Transwestern, and to analyze the  
18 basis for APS’ alleged savings in commodity costs. APS made no objection to EPNG’s  
19 participation. EPNG has already provided APS with a Protective Agreement limiting the  
20 availability of any competitively sensitive information, as is common practice before the  
21 Commission. None of the signatories to that agreement are persons responsible for  
22 marketing functions of EPNG. In fact, none of the signatories are EPNG employees.

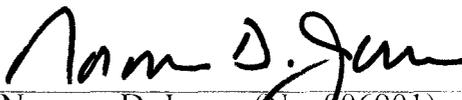
23 The bottom line is that EPNG has made every effort to accommodate APS, yet  
24 APS continues to withhold the information being sought. This information is relevant  
25 and necessary to evaluate the allegations in APS’s application. Therefore, there is no  
26

1 credible reason why APS should be allowed to continue withholding the information and  
2 documents requested by EPNG.

3 Based on the foregoing, EPNG requests that the Commission set a procedural  
4 conference on an expedited basis, so that it may promptly consider this Motion to Compel  
5 and order APS to produce information and documents responsive to EPNG Data Request  
6 Nos. 1.1. and 1.2.

7 RESPECTUFLLY SUBMITTED this 22<sup>nd</sup> day of February, 2006.

8 FENNEMORE CRAIG, P.C.

9  
10 By:   
11 Norman D. James (No. 006901)  
12 Jay L. Shapiro (No. 014650)  
13 Patrick L. Black (No. 017141)  
14 3003 North Central Avenue, Suite 2600  
15 Phoenix, Arizona 85012  
16 Attorneys for El Paso Natural Gas Company

17 ORIGINAL of the foregoing hand-delivered  
18 for filing this 22<sup>nd</sup> day of February, 2006, to:

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23 COPY of the foregoing hand-delivered  
24 this 22<sup>nd</sup> day of February, 2006, to:

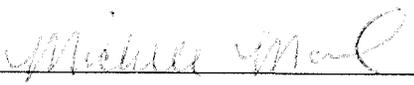
25 Lyn Farmer, Chief Administrative Law Judge  
26 Hearing Division  
Arizona Corporation Commission  
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1763139.2/15423.003

# EXHIBIT

A

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February 2, 2006

## HAND DELIVERY

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Karilee S. Ramalay  
Pinnacle West Capital Corporation  
400 North 5<sup>th</sup> Street  
P.O. Box 53999 MS 8695  
Phoenix, AZ 85072-3999

Re: Arizona Public Service Company Application for Determination of  
Prudence: Docket No. E-01345A-05-0895  
First Set of Data Requests

Dear Mr. Mumaw:

Enclosed herewith please find El Paso Natural Gas Company's ("EPNG") First Set of Data Requests to Arizona Public Service Company ("APS") in the above-captioned matter. Please provide full and complete responses to these data requests, attached hereto as Attachment No. 1, within ten (10) days of the date of this letter.

In the event that APS believes or asserts that the information requested by EPNG is of a proprietary or confidential nature, EPNG is willing to enter into a protective agreement in a form attached hereto as Attachment No. 2.

Should you have any questions, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

  
Jay Shapiro

Enclosures

cc: Craig V. Richardson

# **ATTACHMENT**

# **1**

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5 Attorneys for El Paso Natural Gas Company

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 IN THE MATTER OF THE APPLICATION  
8 OF ARIZONA PUBLIC SERVICE  
COMPANY FOR DETERMINATION OF  
9 PRUDENCE AND APPROVAL OF  
RATEMAKING TREATMENT RELATED  
10 TO NATURAL GAS INFRASTRUCTURE

DOCKET NO. E-01345A-05-0895

**EL PASO NATURAL GAS COMPANY'S  
FIRST SET OF DATA REQUEST TO  
ARIZONA PUBLIC SERVICE COMPANY**

11  
12 El Paso Natural Gas Company hereby submits its first set of data requests to Arizona  
13 Public Service Company ("APS") in the above-captioned docket, and requests that full and  
14 complete responses be made within ten (10) calendar days from the date of service.

15 **DEFINITIONS**

16 As used herein, the following terms have the meaning as set forth below:

17 1. The term "you," and "your" shall mean APS in the above captioned proceedings,  
18 as well as its parent, subsidiaries, and affiliates, its former and present officers, attorneys,  
19 employees, servants, agents and representatives, and any person acting on its behalf for any  
20 purpose.

21 2. "List," "describe," "explain," "specify" or "state" shall mean to set forth fully, in  
22 detail, and unambiguously each and every fact of which you have knowledge that relates to the  
23 information requested in the data request.

24 3. The terms "document," "documents," or "documentation" as used herein shall  
25 include, without limitation, any writings and documentary material of any kind whatsoever, and  
26 any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written

1 comments of and concerning such material, including, but not limited to: letters, memoranda,  
2 internal communications, notes, reports, studies, investigations, questionnaires, surveys, permits,  
3 citizen complaints, books, articles, manuals, instructions, records, pamphlets, forms, contracts,  
4 contract amendments or supplements, contract offers, tenders, acceptances, counteroffers or  
5 negotiating agreements, notices, confirmations, telegrams, communications sent or received,  
6 calendars, tables, compilations, tabulations, charts, graphs, maps, recommendations, ledgers,  
7 accounts, worksheets, photographs, tape recordings, videotapes, transcripts, logs, work papers,  
8 minutes, summaries, notations and records of any sort (printed, recorded or otherwise) of any oral  
9 communications whether sent or received or neither, and other written records or recordings, in  
10 whatever form, stored or contained in or on whatever medium including computerized or digital  
11 memory or magnetic media that: (a) are now or were formerly in your possession, custody or  
12 control; or (b) are known or believed to be responsive to these interrogatories, regardless of who  
13 has or formerly had custody, possession or control.

14         4.       The terms "identify" and "identity" when used with reference to a natural person  
15 means to state his or her full name, present or last known address, present or last known telephone  
16 number, present or last known place of employment, position or business affiliation, his or her  
17 position or business affiliation at the time in question, and a general description of the business in  
18 which he or she is engaged.

19         5.       The terms "identify" and "identity" when used with respect to any other entity  
20 means to state its full name, the address of its principal place of business and the name of its chief  
21 executive officer(s).

22         6.       The terms "identify" and "identity" with respect to a document mean to state the  
23 name or title of the document, the type of document (e.g., letter, memorandum, telegram,  
24 computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who  
25 signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general  
26 subject matter, its present location, and its present custodian. If any such document was but is no

1 longer in your possession or subject to your control, state what disposition was made of it and  
2 explain the circumstances surrounding, and the authorization for, such disposition, and state the  
3 date or approximate date of such disposition.

4 7. The terms "identify" and "identity" with respect to any non-written  
5 communication means to state the identity of the natural person(s) making and receiving the  
6 communication, their respective principals or employers at the time of the communication, the  
7 date, manner and place of the communication, and the topic or subject matter of the  
8 communication.

9 8. The term "state the basis" for an allegation, contention, conclusion, position or  
10 answer means: (a) to identify and specify the sources therefore; (b) to identify and specify all  
11 facts on which you rely or intend to rely in support of the allegation, contention, conclusion,  
12 position or answer; and (c) to set forth and explain the nature and application to the relevant facts  
13 of all pertinent legal theories upon which you rely for your knowledge, information and/or belief  
14 that there are good grounds to support such allegation, contention, conclusion, position or answer.

15 9. The terms "relates to" or "relating to" mean referring to, concerning, responding  
16 to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing,  
17 embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

18 10. The term "including" means "including, but not limited to."

19 11. The term "possession, custody or control" includes the joint and several  
20 possession, custody, or control not only by one or more employees or representatives of APS, but  
21 also by each or any person acting or purporting to act on behalf of APS or any of its employees or  
22 representatives whether as an agent, independent contractor, attorney, consultant, witness or  
23 otherwise.

24 12. "Entity" or "entities" means any corporation, unincorporated association, sole  
25 proprietorship, partnership, limited liability company, individual, department, agency or  
26 consulting firm.

1 INSTRUCTIONS

2 A. These data requests are continuing in nature. You are obliged to modify,  
3 supplement, and correct all answers to data requests to conform to available information,  
4 including any relevant information that becomes available to you after you have responded to the  
5 data requests below.

6 B. The response to each data request provided should first restate the question asked,  
7 identify the person(s) supplying information used in preparing your response, and the name of the  
8 witness or witnesses who will be prepared to testify concerning the information contained in any  
9 response or document provided.

10 C. In answering these data requests, furnish all information that is available to you,  
11 including information in the possession of any of your agents or attorneys, or otherwise subject to  
12 your knowledge, possession, custody or control.

13 D. If in answering these data requests you encounter any ambiguity in construing the  
14 request or a definition or instruction relevant to the inquiry contained within the request, set forth  
15 the matter deemed "ambiguous" and set forth the construction chosen or used in responding to the  
16 request.

17 E. If you object to any data request, state the specific basis for your objection in detail  
18 and describe all legal authorities that support your objection. If you object to any part of a  
19 request, answer all parts of such requests to which you do not object, and as to each part to which  
20 you do object, separately set forth the specific basis for your objection.

21 F. In the event you assert that any document or other information is privileged,  
22 identify any such document or other information in your response, and provide a general  
23 description of its content. Also, identify all persons who participated in the preparation of the  
24 document and all persons who received a copy, read or examined any such document. In  
25 addition, describe with particularity the grounds upon which privilege is claimed, including any  
26 applicable legal authorities.

1 G. In the event that you assert that the requested data are not relevant or material to  
2 any issue in the above-captioned matter, indicate in your written response to the specific basis for  
3 such assertion.

4 H. In the event you assert that the requested data are public information otherwise  
5 available, you should identify the following in your written response:

- 6 1. The title or description of the data claimed to be public information;
- 7 2. The specific page and line number on which the requested material can be  
8 found; and
- 9 3. The address of the office(s) and/or location(s) where the document or file  
10 containing the requested material is maintained for public inspection.

11 I. In the event that you assert that the requested data are not available in the form  
12 requested, you should disclose the following in your written response thereto:

- 13 1. The form in which the requested data currently exists (identifying  
14 documents by title or description); and
- 15 2. The dates and location at which the requested data may be inspected.

16 J. If any request calls for a document that has been destroyed, placed beyond your  
17 control, or otherwise disposed of, identify with specificity each such document and describe in  
18 detail any such destruction, placement or disposition.

19 **FIRST SET OF DATA REQUESTS**

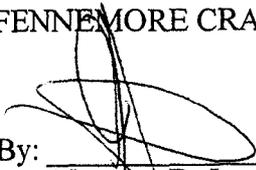
20 1-1. Provide copies of all data requests and other requests for information propounded  
21 in this matter by the Staff of the Arizona Corporation Commission to APS, and APS' responses  
22 thereto.

23 1-2. Provide a complete, unredacted copy of the proposed Phoenix Project Expansion  
24 Agreement between APS and Transwestern Pipeline Company, LLC, including all attachments  
25 and exhibits thereto.

26 ///

1 DATED this 2<sup>n</sup> day of February, 2006.

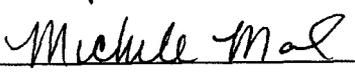
2 FENNEMORE CRAIG, P.C.

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4 By: 

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6 Jay L. Shapiro (No. 014650)  
7 Patrick L. Black (No. 017141)  
8 3003 North Central Avenue, Suite 2600  
9 Phoenix, Arizona 85012  
10 Attorneys for El Paso Natural Gas Company

11 ORIGINAL of the foregoing hand-delivered  
12 this 2<sup>nd</sup> day of February, 2006, to:

13 Thomas L. Mumaw  
14 Karilee S. Ramalay  
15 Pinnacle West Capital Corporation  
16 400 North 5<sup>th</sup> Street  
17 P.O. Box 53999 MS 8695  
18 Phoenix, AZ 85072-3999

19   
20  
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# **ATTACHMENT**

**2**

1 FENNEMORE CRAIG  
Norman D. James (No. 006901)  
2 Jay L. Shapiro (No. 014650)  
Patrick J. Black (No. 017141)  
3 3003 North Central Avenue  
Suite 2600  
4 Phoenix, Arizona 85012  
Telephone (602) 916-5000

5 Attorneys for El Paso Natural Gas Company

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 IN THE MATTER OF THE APPLICATION  
8 OF ARIZONA PUBLIC SERVICE  
COMPANY FOR DETERMINATION OF  
9 PRUDENCE AND APPROVAL OF  
RATEMAKING TREATMENT RELATED  
10 TO NATURAL GAS INFRASTRUCTURE

DOCKET NO. E-01345A-05-0895

**PROTECTIVE AGREEMENT**

11  
12 El Paso Natural Gas Company ("EPNG") and Arizona Public Service Company ("APS")  
13 hereby enter into the following agreement with respect to the disclosure and use of information  
14 and materials that may be proprietary or confidential in the above-entitled matter:

15 **RECITALS:**

16 A. In the above-captioned docket, EPNG has requested certain documents, data,  
17 information, studies and other materials, some of which may be of a proprietary or confidential  
18 nature. APS will provide such information to EPNG, subject, however, to the terms and  
19 conditions set forth below.

20 B. In consideration of being provided the information it has requested, EPNG  
21 covenants and agrees to be bound by the terms of this Agreement as to all documents, data,  
22 information, studies and other materials provided pursuant to this Agreement.

23 **AGREEMENTS:**

24 1. Confidential Information. All documents, data, information, studies and other  
25 materials furnished pursuant to any requests for information, subpoenas or other modes of  
26 discovery (formal or informal), and including depositions, that are claimed to be of a proprietary

1 or confidential nature (hereinafter referred to as "Confidential Information") shall be so marked  
2 by APS by stamping the same with a designation indicating its proprietary or confidential nature.  
3 Access to and review of Confidential Information shall be strictly controlled by the terms of this  
4 Agreement.

5 2. Use of Confidential Information. All persons who may be entitled to review or  
6 who are otherwise afforded access to any Confidential Information shall not use or disclose the  
7 Confidential Information for purposes of business or competition or for any purpose other than in  
8 connection with EPNG's participation in this proceeding, and shall keep the Confidential  
9 Information secure as confidential or proprietary information and in accordance with the purposes  
10 and intent of this Agreement.

11 3. Persons Entitled to Review. Access to Confidential Information shall be limited  
12 to: (1) attorneys employed by EPNG in this docket, (2) outside experts, consultants and advisors  
13 who require access to the information to assist EPNG in this docket, and (3) employees of EPNG  
14 who are directly involved in this proceeding, subject, however, to execution and delivery of a  
15 nondisclosure agreement as provided below. The foregoing notwithstanding, no EPNG employee  
16 primarily engaged in the sale or marketing of EPNG products or services shall be granted access  
17 to any Confidential Information.

18 4. Nondisclosure Agreement. Confidential Information shall not be disclosed to any  
19 person identified in paragraph 3, above, who has not signed a nondisclosure agreement in the  
20 form attached hereto and incorporated herein as Exhibit "A." The nondisclosure agreement  
21 (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this  
22 Agreement and to certify in writing that they have reviewed the same and have consented to be  
23 bound by its terms. The agreement shall contain the signatory's full name, permanent address  
24 and employer, and the name of the party with whom the signatory is associated. Such agreement  
25 shall be delivered to counsel for APS before disclosure is made, and if no objection thereto is  
26 registered to the Commission within three (3) business days, then disclosure shall follow.

1           5.     One (1) copy of each document containing Confidential Information requested by  
2 EPNG shall be provided.

3           6.     Return. All copies of documents containing any Confidential Information (except  
4 those received into evidence during a hearing or other proceeding before the agency) shall be  
5 returned to the providing party within thirty (30) days after the conclusion of this matter,  
6 including administrative or judicial review thereof.

7           7.     Objections to Admissibility. This Agreement is intended to restrict and control the  
8 production, use and dissemination of Confidential Information that may be provided by APS.  
9 The production of any document, information, data, study or other materials pursuant to this  
10 Agreement shall not limit the right of APS or any other party to object to its relevance or  
11 admissibility.

12          8.     Challenge to Confidentiality. This Agreement establishes a procedure for the  
13 expeditious handling of information that a party claims is confidential; it shall not be construed as  
14 an agreement or ruling on the confidentiality of any document. Any party may challenge the  
15 characterization of any information, document, data or study claimed by the providing party to be  
16 confidential in the following manner:

17                 (a)     A party seeking to challenge the confidentiality of any materials pursuant  
18 to this Agreement shall first contact counsel for the providing party and attempt in good faith to  
19 resolve any differences by stipulation.

20                 (b)     In the event that the parties cannot agree as to the character of the  
21 information challenged, any party challenging the confidentiality of any materials shall do so by  
22 appropriate pleading. This pleading shall:

23                         (1)     Designate the document, transcript or other material challenged in a  
24 manner that will specifically isolate the challenged material from other material claimed as  
25 confidential; and  
26

1                   (2) State with specificity the grounds upon which the documents,  
2 transcript or other material are deemed to be nonconfidential by the challenging party.

3                   (c) A ruling on the confidentiality of the challenged information, document,  
4 data or study shall be made by an Administrative Law Judge after proceedings *in camera*, during  
5 which only those persons duly authorized hereunder to have access to confidential materials shall  
6 be present.

7                   (d) The record of said *in camera* hearing shall be marked "CONFIDENTIAL-  
8 SUBJECT TO PROTECTIVE AGREEMENT IN DOCKET NO. E-1345A-05-0895." Court  
9 reporter notes of such hearing shall be transcribed only upon agreement by the parties or by order  
10 of the Administrative Law Judge. If a transcript is prepared, it shall be separately bound,  
11 segregated, sealed, and withheld from inspection by any person not bound by the terms of this  
12 Agreement.

13                   (e) In the event that the Administrative Law Judge should rule that any  
14 information, document, data or study should be removed from the restrictions imposed by this  
15 Agreement, no party shall disclose such information, document, data or study or use it in the  
16 public record for ten (10) business days unless authorized by the providing party to do so. The  
17 provisions of this subparagraph are intended to enable the providing party to seek a stay or other  
18 relief from an order removing the restriction of this Agreement from materials claimed by the  
19 providing party to be confidential.

20                   9.     Use of Confidential Information During Hearing. Information claimed to be  
21 confidential may be utilized by the parties and received into evidence in this proceeding in the  
22 following manner:

23                   (a) At least five calendar (5) days prior to the use of or substantive reference to  
24 any Confidential Information, the party intending to use such information shall make that  
25 intention known to the providing party. The requesting party and the providing party shall make  
26

1 a good-faith effort to reach an agreement so the Confidential Information can be used in a manner  
2 which will not reveal its confidential or proprietary nature.

3 (b) If such efforts fail, the providing party shall separately identify which  
4 portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.  
5 Only one (1) copy of the documents designated by the providing party to be placed in a sealed  
6 record shall be made. The copy of the documents to be placed in the sealed record shall be  
7 tendered by counsel for the providing party to the Commission, and maintained in accordance  
8 with the terms of this Agreement.

9 (c) While in the custody of the Commission, materials containing Confidential  
10 Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE AGREEMENT  
11 IN DOCKET NO. E-01345A-05-0895," and shall not be examined by any person except under  
12 the terms and conditions set forth in this Agreement.

13 (d) Any Confidential Information that must be orally disclosed to be placed in  
14 the sealed record in this proceeding shall be offered in an *in camera* hearing, attended only by  
15 persons authorized to have access to the information under this Agreement. Similarly, any cross-  
16 examination on or substantive references to Confidential Information (or that portion of the  
17 record containing Confidential Information or references thereto) shall be received in an *in*  
18 *camera* hearing, and shall be marked and treated as provided herein.

19 (e) Access to sealed testimony, records and information shall be limited to the  
20 Administrative Law Judge and persons who have signed an Exhibit "A," unless such information  
21 is released from the restrictions of this Agreement either through agreement of the parties or after  
22 notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the order  
23 of the Commission and/or the final order of a court having final jurisdiction.

24 (f) Sealed portions of the record in this proceeding may be forwarded to any  
25 court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for  
26 the information and use of the court. If a portion of the record is forwarded to a court under seal

1 for the purpose of an appeal, the providing party shall be notified which portion of the sealed  
2 record has been designated by the appealing party as necessary to the record on appeal.

3 (g) Unless otherwise ordered, Confidential Information, including transcripts  
4 of any depositions to which a claim of confidentiality is made, shall remain under seal, shall  
5 continue to be subject to the protective requirements of this Agreement, and shall be returned to  
6 counsel for the providing party within thirty (30) days after the conclusion of this matter,  
7 including any subsequent administrative or judicial proceeding seeking review thereof.

8 10. Use of Confidential Information in Pleadings. Where references to Confidential  
9 Information in the sealed record or with the providing party are required in pleadings, briefs,  
10 arguments or motions (except as provided in paragraph 10, above), such references shall be made  
11 by citation of title or exhibit number or some other description that avoids disclosure of the  
12 substantive Confidential Information contained therein. Any use of or substantive references to  
13 Confidential Information shall be placed in a separate section of the pleading or brief and  
14 submitted to the Administrative Law Judge or the Commission under seal. This sealed section  
15 shall be served only on counsel of record and parties of record who have signed the nondisclosure  
16 agreement set forth in Exhibit "A." All of the restrictions afforded by this Agreement apply to  
17 materials prepared and distributed under this paragraph.

18 11. Summary of Record. If the Administrative Law Judge finds it is necessary, the  
19 providing party shall prepare a written summary of the Confidential Information referred to in the  
20 Agreement to be placed on the public record.

21 12. Scope of Agreement. The provisions of this Agreement are specifically intended  
22 to apply to all data, documents, information, studies, and other materials supplied by APS or  
23 EPNG, whether the material originated at APS or EPNG or was provided to APS or EPNG by  
24 some other entity pursuant to an agreement to hold the material in a confidential manner.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

FENNEMORE CRAIG, P.C.

By: \_\_\_\_\_  
Norman D. James (No. 006901)  
Jay L. Shapiro (No. 014650)  
Patrick L. Black (No. 017141)  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for El Paso Natural Gas Company

ARIZONA PUBLIC SERVICE COMPANY

By: \_\_\_\_\_  
Thomas L. Mumaw  
Karilee S. Ramalay  
Pinnacle West Capital Corporation  
400 North 5<sup>th</sup> Street  
P.O. Box 53999 MS 8695  
Phoenix, AZ 85072-3999  
Attorneys for Arizona Public Service Company

ORIGINAL and 13 copies of the foregoing  
were filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006, with

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

COPY of the foregoing hand-delivered  
this \_\_\_ day of \_\_\_\_\_, 2006 to:

Lyn Farmer  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

1 Christopher Kempley  
Chief Counsel, Legal Division  
2 Arizona Corporation Commission  
1200 West Washington Street  
3 Phoenix, AZ 85007

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EXHIBIT "A"

I have read the foregoing Protective Agreement dated \_\_\_\_\_, 2006, made between El Paso Natural Gas Company and Arizona Public Service Company in Arizona Corporation Commission Docket No. E-01345A-05-0895 and agree to be bound by the terms and conditions of such Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

1755841/15423 .001

# **EXHIBIT**

# **B**

EL PASO NATURAL GAS' FIRST SET OF DATA REQUESTS TO  
ARIZONA PUBLIC SERVICE COMPANY  
FOR DETERMINATION OF PRUDENCE AND APPROVAL OF RATEMAKING  
TREATMENT RELATING TO NATURAL GAS INFRASTRUCTURE  
Docket No. E-01345A-05-0895  
February 2, 2006

- 1-1 Provide copies of all data requests and other requests for information propounded in this matter by the Staff of the Arizona Corporation Commission to APS, and APS' responses thereto.

RESPONSE:

Attached as APS07280 are copies of the data requests propounded by Staff in this docket and the non-confidential portions of the APS responses to those data requests. APS objects to this request to the extent it seeks confidential or proprietary information. The information provided to Staff that was designated as confidential is competitively sensitive information that would give EPNG an unfair advantage against other potentially competing pipeline projects. Such a result could chill interest by other potential entities in providing service to Arizona. In addition, pursuant to the Expansion Agreement with Transwestern, APS may not provide or disclose the terms of the Agreement to a third party except in limited circumstances that do not apply here. The confidential responses to Staff's data requests contain information that would disclose those terms.

EL PASO NATURAL GAS' FIRST SET OF DATA REQUESTS TO  
ARIZONA PUBLIC SERVICE COMPANY  
FOR DETERMINATION OF PRUDENCE AND APPROVAL OF RATEMAKING  
TREATMENT RELATING TO NATURAL GAS INFRASTRUCTURE

Docket No. E-01345A-05-0895

February 2, 2006

- 1-2 Provide a complete, unredacted copy of the proposed Phoenix Project Expansion Agreement between APS and Transwestern Pipeline Company, LLC, including all attachments and exhibits thereto.

RESPONSE:

APS objects to this request because it seeks to obtain confidential or proprietary information. The terms redacted from the Expansion Agreement provided to Staff contain competitively sensitive information that would give EPNG an unfair advantage against other potentially competing pipeline projects. Such a result could chill interest by other potential entities in providing service to Arizona. In addition, pursuant to the Expansion Agreement with Transwestern, APS may not provide or disclose the terms of the Agreement to a third party except in limited circumstances that do not apply here.

# EXHIBIT

# C

# FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5000

**Norman D. James**  
Direct Phone: (602) 916-5346  
Direct Fax: (602) 916-5546  
njames@fclaw.com

**Law Offices**  
Phoenix (602) 916-5000  
Tucson (520) 879-6800  
Nogales (520) 761-4215  
Lincoln (402) 323-6200

February 17, 2006

## VIA HAND DELIVERY

Thomas L. Mumaw  
Karilee S. Ramalay  
Pinnacle West Capital Corporation  
400 North 5<sup>th</sup> Street  
P.O. Box 53999 MS 8695  
Phoenix, AZ 85072-3999

Re: Arizona Public Service Company Application for Determination of  
Prudence: Docket No. E-01345A-05-0895  
First Set of Data Requests

Dear Mr. Mumaw:

We are in receipt of Arizona Public Service Company's ("APS") responses and objections to El Paso Natural Gas Company's ("EPNG") first set of data requests. Frankly, we were disappointed that your client chose to ignore EPNG's offer to enter into a protective agreement for the sharing of confidential or proprietary information. To the extent that APS' failure to agree to enter into a protective agreement was merely an oversight, enclosed please find an original Protective Agreement signed by EPNG representatives.

Please sign the original Protective Agreement and return it, along with all confidential documents responsive to EPNG's first set of data requests, no later than the close of business Tuesday, February 21, 2006. If APS continues to raise objections on the basis that the information sought is confidential or proprietary, we will have no choice but to file a Motion to Compel the Production of Documents with the Commission.

# FENNEMORE CRAIG, P.C.

Thomas L. Mumaw  
February 17, 2006  
Page 2

Should you have any questions, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'NDJ', with a horizontal line extending to the right.

Norman D. James

PBLA/NDJ/mm  
Enclosures

cc: Craig V. Richardson (w/out encl.)

1764491/15423.003

1 FENNEMORE CRAIG  
Norman D. James (No. 006901)  
2 Jay L. Shapiro (No. 014650)  
Patrick J. Black (No. 017141)  
3 3003 North Central Avenue  
Suite 2600  
4 Phoenix, Arizona 85012  
Telephone (602) 916-5000

5 Attorneys for El Paso Natural Gas Company

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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8 IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
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DOCKET NO. E-01345A-05-0895

**PROTECTIVE AGREEMENT**

11  
12 El Paso Natural Gas Company ("EPNG") and Arizona Public Service Company ("APS")  
13 hereby enter into the following agreement with respect to the disclosure and use of information  
14 and materials that may be proprietary or confidential in the above-entitled matter:

15 **RECITALS:**

16 A. In the above-captioned docket, EPNG has requested certain documents, data,  
17 information, studies and other materials, some of which may be of a proprietary or confidential  
18 nature. APS will provide such information to EPNG, subject, however, to the terms and  
19 conditions set forth below.

20 B. In consideration of being provided the information it has requested, EPNG  
21 covenants and agrees to be bound by the terms of this Agreement as to all documents, data,  
22 information, studies and other materials provided pursuant to this Agreement.

23 **AGREEMENTS:**

24 1. Confidential Information. All documents, data, information, studies and other  
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1 or confidential nature (hereinafter referred to as "Confidential Information") shall be so marked  
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3 Access to and review of Confidential Information shall be strictly controlled by the terms of this  
4 Agreement.

5       2.       Use of Confidential Information. All persons who may be entitled to review or  
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7 Confidential Information for purposes of business or competition or for any purpose other than in  
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11       3.       Persons Entitled to Review. Access to Confidential Information shall be limited  
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15 nondisclosure agreement as provided below. The foregoing notwithstanding, no EPNG employee  
16 primarily engaged in the sale or marketing of EPNG products or services shall be granted access  
17 to any Confidential Information.

18       4.       Nondisclosure Agreement. Confidential Information shall not be disclosed to any  
19 person identified in paragraph 3, above, who has not signed a nondisclosure agreement in the  
20 form attached hereto and incorporated herein as Exhibit "A." The nondisclosure agreement  
21 (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this  
22 Agreement and to certify in writing that they have reviewed the same and have consented to be  
23 bound by its terms. The agreement shall contain the signatory's full name, permanent address  
24 and employer, and the name of the party with whom the signatory is associated. Such agreement  
25 shall be delivered to counsel for APS before disclosure is made, and if no objection thereto is  
26 registered to the Commission within three (3) business days, then disclosure shall follow.

1           5.     One (1) copy of each document containing Confidential Information requested by  
2 EPNG shall be provided.

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7           7.     Objections to Admissibility. This Agreement is intended to restrict and control the  
8 production, use and dissemination of Confidential Information that may be provided by APS.  
9 The production of any document, information, data, study or other materials pursuant to this  
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20                 (b)     In the event that the parties cannot agree as to the character of the  
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23                         (1)     Designate the document, transcript or other material challenged in a  
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1 (2) State with specificity the grounds upon which the documents,  
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3 (c) A ruling on the confidentiality of the challenged information, document,  
4 data or study shall be made by an Administrative Law Judge after proceedings *in camera*, during  
5 which only those persons duly authorized hereunder to have access to confidential materials shall  
6 be present.

7 (d) The record of said *in camera* hearing shall be marked "CONFIDENTIAL-  
8 SUBJECT TO PROTECTIVE AGREEMENT IN DOCKET NO. E-1345A-05-0895." Court  
9 reporter notes of such hearing shall be transcribed only upon agreement by the parties or by order  
10 of the Administrative Law Judge. If a transcript is prepared, it shall be separately bound,  
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12 Agreement.

13 (e) In the event that the Administrative Law Judge should rule that any  
14 information, document, data or study should be removed from the restrictions imposed by this  
15 Agreement, no party shall disclose such information, document, data or study or use it in the  
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18 relief from an order removing the restriction of this Agreement from materials claimed by the  
19 providing party to be confidential.

20 9. Use of Confidential Information During Hearing. Information claimed to be  
21 confidential may be utilized by the parties and received into evidence in this proceeding in the  
22 following manner:

23 (a) At least five calendar (5) days prior to the use of or substantive reference to  
24 any Confidential Information, the party intending to use such information shall make that  
25 intention known to the providing party. The requesting party and the providing party shall make  
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1 a good-faith effort to reach an agreement so the Confidential Information can be used in a manner  
2 which will not reveal its confidential or proprietary nature.

3 (b) If such efforts fail, the providing party shall separately identify which  
4 portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.  
5 Only one (1) copy of the documents designated by the providing party to be placed in a sealed  
6 record shall be made. The copy of the documents to be placed in the sealed record shall be  
7 tendered by counsel for the providing party to the Commission, and maintained in accordance  
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10 Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE AGREEMENT  
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19 (e) Access to sealed testimony, records and information shall be limited to the  
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21 is released from the restrictions of this Agreement either through agreement of the parties or after  
22 notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the order  
23 of the Commission and/or the final order of a court having final jurisdiction.

24 (f) Sealed portions of the record in this proceeding may be forwarded to any  
25 court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for  
26 the information and use of the court. If a portion of the record is forwarded to a court under seal

1 for the purpose of an appeal, the providing party shall be notified which portion of the sealed  
2 record has been designated by the appealing party as necessary to the record on appeal.

3 (g) Unless otherwise ordered, Confidential Information, including transcripts  
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10 arguments or motions (except as provided in paragraph 10, above), such references shall be made  
11 by citation of title or exhibit number or some other description that avoids disclosure of the  
12 substantive Confidential Information contained therein. Any use of or substantive references to  
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14 submitted to the Administrative Law Judge or the Commission under seal. This sealed section  
15 shall be served only on counsel of record and parties of record who have signed the nondisclosure  
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17 materials prepared and distributed under this paragraph.

18 11. Summary of Record. If the Administrative Law Judge finds it is necessary, the  
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20 Agreement to be placed on the public record.

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22 to apply to all data, documents, information, studies, and other materials supplied by APS or  
23 EPNG, whether the material originated at APS or EPNG or was provided to APS or EPNG by  
24 some other entity pursuant to an agreement to hold the material in a confidential manner.

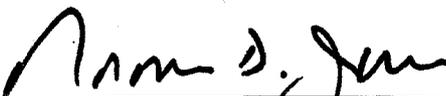
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

FENNEMORE CRAIG, P.C.

By:   
Norman D. James (No. 006901)  
Jay L. Shapiro (No. 014650)  
Patrick L. Black (No. 017141)  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for El Paso Natural Gas Company

ARIZONA PUBLIC SERVICE COMPANY

By: \_\_\_\_\_  
Thomas L. Mumaw  
Karilee S. Ramalay  
Pinnacle West Capital Corporation  
400 North 5<sup>th</sup> Street  
P.O. Box 53999 MS 8695  
Phoenix, AZ 85072-3999  
Attorneys for Arizona Public Service Company

ORIGINAL and 13 copies of the foregoing  
were filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006, with

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

COPY of the foregoing hand-delivered  
this \_\_\_ day of \_\_\_\_\_, 2006 to:

Lyn Farmer  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

1 Christopher Kempley  
2 Chief Counsel, Legal Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
5 Phoenix, AZ 85007

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EXHIBIT "A"

I have read the foregoing Protective Agreement dated \_\_\_\_\_, 2006, made between El Paso Natural Gas Company and Arizona Public Service Company in Arizona Corporation Commission Docket No. E-01345A-05-0895 and agree to be bound by the terms and conditions of such Agreement.

Norman D. James  
Name

Fennemore Craig  
Employer or Firm

3003 N. Central Ave.  
Suite 2600  
Phoenix, AZ 85012  
Business Address

El Paso Natural Gas  
Party

Norm D. James  
Signature

2/17/06  
Date

1755841/15423.001

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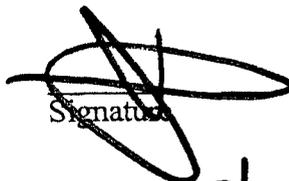
Jay Shapiro  
Name

Fennemore Craig  
Employer or Firm

3003 N. Central Ave Ste. 2600  
PHX, Arizona 85012

Business Address

EL PASO Natural GAS  
Party

  
Signature

2/15/06  
Date

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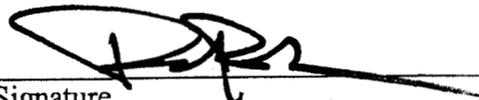
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PATRICK J. BLACK  
Name

FENNEMORE CRAIG, P.C.  
Employer or Firm

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Business Address

EL PASO NATURAL GAS  
Party

  
Signature

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KENNETH M. MINESINGER  
Name

GREENBERG TRAURIG, LLP  
Employer or Firm  
800 CONNECTICUT AVE., N.W.  
WASHINGTON, DC 20006

\_\_\_\_\_  
Business Address

EL PASO NATURAL GAS CO.  
Party

Kenneth M. Minesinger  
Signature

2/15/06  
Date

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Richard G. Smead  
Name

Navigant Consulting Inc.  
Employer or Firm

909 Fannin Street

Suite 1900

Houston, TX 77010  
Business Address

El Paso Natural Gas  
Party

  
Signature

2/14/06  
Date

1755841/15423.001

# **EXHIBIT**

**D**



**PINNACLE WEST**  
CAPITAL CORPORATION  
LAW DEPARTMENT

KARILEE S. RAMALEY  
Senior Attorney  
Telephone: (602) 250-3626  
Facsimile: (602) 250-3393

February 21, 2006

VIA FACSIMILE

Mr. Norman D. James  
Fennemore Craig, P.C.  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Re: El Paso Natural Gas First Set of Data Requests; Arizona Public Service  
Company's Application for Determination of Prudence; Docket No. E-01345A-  
05-0895.

Dear Mr. James:

We are in receipt of your letter of February 17, 2006 regarding Arizona Public Service Company's ("APS" or "Company") responses to El Paso Natural Gas Company's ("El Paso") First Set of Data Requests. As we indicated in our initial response to the data requests, APS objects to those requests to the extent they seek confidential and proprietary information.

Pursuant to the terms of the Phoenix Project Expansion Agreement ("Expansion Agreement"), APS may not disclose the Expansion Agreement or its terms to third parties without prior consent from Transwestern Pipeline Company, LLC ("Transwestern"), unless the Arizona Corporation Commission ("Commission") orders such disclosure. APS has notified Transwestern of El Paso's request and Transwestern has indicated that it will not consent to the disclosure of such information to El Paso, but will disclose that information when it files its certificate application with the Federal Energy Regulatory Commission ("FERC").

Even if Transwestern were to consent to the disclosure of the Expansion Agreement or its terms, APS would continue to object to El Paso's data requests because the disclosure of commercially sensitive information to a competing service provider could cause competitive

APS • APS Energy Services • Pinnacle West Energy • SunCor • El Dorado

Law Department, 400 North Fifth Street, Mail Station 8695, Phoenix, AZ 85004-3992  
Phone: (602) 250-3630 • Facsimile (602) 250-3393 • E-mail: Karilee.Ramaley@pinnaclewest.com

Mr. Norman D. James  
February 21, 2006  
Page 2

harm to Transwestern and APS. APS also objects because disclosure of this information would place APS and its customers at a competitive disadvantage in future negotiations with El Paso and in El Paso's pending FERC rate case in Docket No. RP05-422 irrespective of whether the Transwestern project is built.

Finally, APS does not believe that El Paso has demonstrated why it needs to see the Expansion Agreement or APS's confidential financial analysis relating to the Transwestern Pipeline in order to protect El Paso's interests before the Commission in the referenced proceeding. El Paso is free to provide to the Commission information regarding what El Paso believes APS's costs will be on the El Paso system to meet its needs going forward, as El Paso is well aware of the Company's projected gas burns for future years. The Commission can easily use the information that APS provided along with any information that El Paso elects to provide to make its own determination regarding whether the Expansion Agreement should be approved.

If you have any further questions, please feel free to contact me.

Sincerely,



Karilee S. Ramaley

Attorney for Arizona Public Service Company

cc: Keith A. Layton, Arizona Corporation Commission  
Thomas L. Mumaw