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MAY 23 2002

AZ CORP COMMISSION  
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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES

DOCKET NO. E-00000A-02-0051

DOCKET NO. E-01345A-01-0822

~~DOCKET NO. E-00000A-01-0620~~

DOCKET NO. E-01933A-98-0471

DOCKET NO. E-01933A-02-0069  
**REQUEST FOR PROTECTIVE AGREEMENT OF PANDA GILA RIVER, L.P.**

21 In a Procedural Order issued May 2, 2002, the Chief Administrative Law Judge  
 22 ordered "that the parties shall enter into protective agreements in order to facilitate the  
 23 orderly discovery process." Procedural Order at 3. Panda Gila River, L.P. ("Panda") has  
 24 attempted to reach consensus with the other parties on the terms of a protective agreement  
 25 but has been unable to do so. Panda reviewed the Confidentiality Agreement between  
 26 Arizona Public Service Company and the Residential Utility Consumer Office, and

1 modified the agreement to be appropriate for all parties to these consolidated dockets, and  
2 proposes that all of the parties execute the modified agreement to facilitate an orderly  
3 discovery process. A blacklined version of the agreement is attached hereto.

4 Panda believes that the parties should be able to agree on the terms of a protective  
5 agreement consistent with the attached proposal, and looks forward to discussing the  
6 agreement with the parties at the conference scheduled for May 24, 2002.

7 RESPECTFULLY SUBMITTED this 23rd day of May 2002.

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December 5, 2001

CONFIDENTIALITY PROTECTIVE AGREEMENT

Docket Nos. E-01345A-01-08220822, E-00000A-01-0630,  
E-00000A-02-0051, E-01933A-02-0069 and E-01933A-98-0471

WHEREFORE, Arizona Public Service Company ("APS") and the Residential Utility Consumer Office ("RUCO"Intervenor"), for the purposes of Discovery under Docket Number Numbers E-01345A-01-0822, E-00000A-01-0630, E-00000A-02-0051, E-01933A-02-0069 and E-01933A-98-0471 agree as follows:

1. Each document listed in Exhibit "A," designated by APS or Intervenor to be confidential or proprietary and any copies, notes, extracts, or summaries in any form whatsoever, mechanical, electronic, or otherwise, derived or prepared from said documents, as well as any future documents deemed by APS to be confidential or proprietary, document shall be designated as "Confidential Information." All Confidential Information provided to the RUCO any party pursuant to this Agreement shall be so marked by APS the producing party with a designation indicating its confidential nature.

2. Except as set forth in Paragraph 3, the Confidential Information shall not be disclosed to any person other than employees or independent contractors of the RUCO contractor attorneys or testifying independent experts in the above dockets who have signed this Agreement and to those who execute the attached Exhibit BA and have agreed to be bound by its terms and conditions. Persons signing Exhibit A other than independent contractor attorneys or testifying independent experts shall not have access to any confidential documents before the expiration of 10 days from the date of delivery of an executed copy of Exhibit A to the disclosing party, during which time the disclosing party may object to disclosure as set forth in Paragraph 9 below. Confidential Information shall not be disclosed to attorneys whose scope of employment includes the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee whose duties include the marketing of energy.

3. The Confidential Information provided pursuant to the terms of this Agreement may be disclosed to members of the RUCO by any RUCO signatory to this Agreement to paralegals and other employees associated for the purposes of the proceedings in Docket Nos. E-01345A-01-0822, E-0000A-01-0630, E-00000A-02-0051, E-01933A-02-0069 and E-01933A-98-0471 with attorneys and testifying independent experts of APS and the Intervenor only to the extent such disclosure is necessary. Such disclosure may be made only if the nonsignatory is provided with a copy of this Agreement and agrees to be bound by its terms.

4. The signatories to this Agreement and Exhibit BA shall treat the Confidential Information confidentially and no such person shall use any such Confidential Information in a manner that might foreseeably result in, or require disclosure of such

materials and any other information contained therein, to any persons not a signatory to this Agreement, other than unauthorized representatives of APS, except as provided in Paragraph Nos. 3 and 7.

5. All Confidential Information claimed by APS or Intervenor, respectively, to be protected under the provisions of this Agreement and which are in the possession of the ~~RUC~~ Intervenor or APS, respectively, shall be kept in a secure location by such persons in files, folders, or containers separate from other records, files and materials of the person and in a manner reasonably calculated to prevent unauthorized disclosure or access.

6. By releasing Confidential Information pursuant to this Agreement, APS ~~retains~~ and Intervenor retain in all respects every privilege and claim to confidentiality ~~it~~ each heretofore has had, and hereafter may have with respect to all such Confidential Information. The provision of the Confidential Information herein shall constitute neither (1) disclosure of the Confidential Information, nor (2) full or partial waiver of any claim of privilege as to the subject matter of the Confidential Information.

7. Unless APS ~~has~~ or Intervenor have given its consent in writing, no portion of the Confidential Information may be submitted to, or publicly filed with, the ~~ACC~~ Commission as a part of any hearings or other proceeding or otherwise disclosed in any manner unless: (a) the party seeking disclosure first presents to the assigned Commission Hearing Officer (or to ~~the~~ this Commission's Chief Hearing Officer, if no other Hearing Officer has been assigned to the matter), and provides a copy to APS or Intervenor, as required, an application requesting disclosure and setting forth the specific grounds upon which it claims that the Confidential Information to be disclosed, and (b) the Hearing Officer, rules that the Confidential Information, or a portion thereof may be disclosed, provided however, that if neither Party disputes that the Confidential ~~Confidential~~ Information is confidential and relevant to the proceeding, then the ~~Confidential~~ Confidential Information may be directly submitted under seal pursuant to Paragraph 8.

8. Any portion of the Confidential Information that is so submitted or filed with the Commission in accordance with the Paragraph 7 and any portion of the Commission's official record referring to such portion shall be placed under seal, and shall be subject to the public release or inspection (other than by a signatory to this Agreement or Exhibit B, the assigned Hearing Officer, and the Commissioners or their aides) only by order of the Commission, which order shall not become effective for at least ten (10) business days after entry.

9. In the event that APS or Intervenor wish to have a person other than those described in paragraphs 2 and 3 above execute Exhibit A and become bound by the terms and conditions of this Agreement, APS or Intervenor shall seek agreement from the other. If agreement is reached, the person in question shall have access to Confidential Information. If no agreement is reached, the parties shall submit their dispute to the assigned Hearing Officer (or to the Commission's Chief Hearing Officer, if no other

Hearing Officer has been assigned to this matter).

10. Confidential Information shall remain available to the parties until all Commission proceedings relating to the Confidential Information are concluded and no longer subject to judicial review. If requested to do so in writing after that date, a party shall, within 15 days of such request, return Confidential Information to the party that produced the Confidential Information, or shall destroy the Confidential Information. Within such time period a party, if requested to do so, also shall submit to the producing part an affidavit stating that, to the best of its knowledge, all Confidential Information has been returned or destroyed. To the extent that Confidential Information is not returned or destroyed, the Confidential Information shall remain subject to this Agreement.

DATED this 5<sup>th</sup> day of December, 2001.

By: \_\_\_\_\_

Signature By: \_\_\_\_\_ Signature \_\_\_\_\_

Name: Jana Van Ness  
Title: Manager, State Regulations

Date: \_\_\_\_\_  
Company: \_\_\_\_\_

By: \_\_\_\_\_ Signature \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Company: Arizona Public Service Company

By: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: Lindy Funkhouser  
Title: Director  
Date: \_\_\_\_\_  
Company: Residential Utility Consumers Office

By: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Company: \_\_\_\_\_

By: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Company: \_\_\_\_\_

Exhibit BA

Confidentiality Certificate

Docket Nos. E-01345A-01-08220822, E-00000A-01-0630,

APS'S Request for a Variance of Certain Requirements  
Of A.C.C. R14-2-1606 and Approval of Purchase Power Agreement  
E-00000A-02-0051, E-01933A-02-0069 and E-01933a-98-0471

I, \_\_\_\_\_, by executing this Confidentiality Certificate to hereby do hereby certify and agree that:

1. I have reviewed the Confidentiality Agreement, dated as of ~~December 5, 2001~~, between Arizona Public Service Company and the Residential Utility Consumer Officer ("RUCO") \_\_\_\_\_, (the "Confidentiality Agreement"), regarding the disclosure of Confidential Information (the "Confidential Information");
2. I understand that the documents described on Exhibit A to the Confidentiality Agreement are privileged and confidential and may not be used or disclosed except as expressly provided in the Confidentiality Agreement; and
3. I agree to comply with and be bound by the terms and conditions of the Confidentiality Agreement as it pertains to Confidential Information disclosed to me.

Dated: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_ Signature \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Company: \_\_\_\_\_

Representing: