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**BEFORE THE ARIZONA POWER
AND TRANSMISSION LINE SITING COMMITTEE**

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IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES 40-360 ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE Ocotillo Modernization Project, which includes the installation of five 102 MW gas turbines and the construction of two 230-kilovolt generation interconnections and other ancillary facilities, all located within the bounds of the existing Ocotillo Power Plant situated on property owned by Arizona Public Service Company and located at 1500 East University Drive, Tempe, Arizona, in Maricopa County.

DOCKET NO. L-00000D-14-0292-00169

Case No. 169

ORIGINAL

**ARIZONA PUBLIC SERVICE
COMPANY'S NOTICE OF FILING
PROTECTIVE AGREEMENT**

Arizona Corporation Commission

DOCKETED

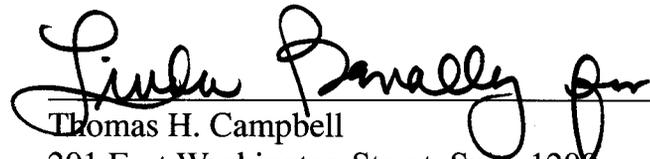
SEP 15 2014

DOCKETED BY 

Pursuant to Chairman Foreman's request during the Pre-Hearing Procedural Conference in this docket (held on September 12, 2014), Arizona Public Service Company (APS) submits the Protective Agreement entered into by APS and the Residential Utility Consumer Office (RUCO). The Protective Agreement, attached as Exhibit A to this filing, pertains to the above referenced docket.

RESPECTFULLY SUBMITTED this 15th day of September, 2014.

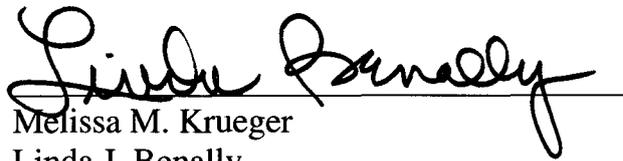
LEWIS ROCA ROTHGERBER, LLP



Thomas H. Campbell
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
Attorney for Arizona Public Service Company

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AZ CORP COMMISSION
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1 ARIZONA PUBLIC SERVICE COMPANY

2 

3 Melissa M. Krueger

4 Linda J. Benally

5 Pinnacle West Capital Corporation

6 Law Department

7 400 North 5th Street, MS 8695

8 Phoenix, Arizona 85004

9 Attorneys for Arizona Public Service

10 Company

11 ORIGINAL and twenty-five (25) copies
12 of the foregoing filed this 15th day of
13 September, 2014, with:

14 The Arizona Corporation Commission
15 Hearing Division – Docket Control
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 COPY of the foregoing delivered/mailed
19 this 15th day of September, 2014, to:

20 John Foreman
21 Arizona Power Plant and Transmission Line
22 Siting Committee
23 Office of the Arizona Attorney General
24 PAD/CPA
25 1275 West Washington Street
26 Phoenix, Arizona 85007

27 Lyn Farmer
28 Administrative Law Judge
Arizona Corporation Commission
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Phoenix, Arizona 85007

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2 1802 North 7th Street
3 Phoenix, Arizona 85006

4 Daniel Pozefsky
5 Residential Utility Consumer Office
6 1110 West Washington, Suite 220
7 Phoenix, Arizona 85007

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10 2394 E. Camelback Road, Suite 600
11 Phoenix, Arizona 85016

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13 100 S. Ashley Drive, Suite 1400
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EXHIBIT A

**BEFORE THE ARIZONA POWER PLANT
AND TRANSMISSION LINE SITING COMMITTEE**

1
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3 IN THE MATTER OF THE APPLICATION
4 OF ARIZONA PUBLIC SERVICE
5 COMPANY, IN CONFORMANCE WITH
6 THE REQUIREMENTS OF ARIZONA
7 REVISED STATUTES 40-360 ET SEQ., FOR
8 A CERTIFICATE OF ENVIRONMENTAL
9 COMPATIBILITY AUTHORIZING THE
10 OCOTILLO MODERNIZATION PROJECT,
11 WHICH INCLUDES THE INSTALLATION
12 OF FIVE 102 MW GAS TURBINES AND
13 THE CONSTRUCTION OF TWO 230-
KILOVOLT GENERATION
INTERCONNECTIONS AND OTHER
ANCILLARY FACILITIES, ALL LOCATED
WITHIN THE BOUNDS OF THE EXISTING
OCOTILLO POWER PLANT SITUATED
ON PROPERTY OWNED BY ARIZONA
PUBLIC SERVICE COMPANY AND
LOCATED AT 1500 EAST UNIVERSITY
DRIVE, TEMPE, ARIZONA, IN MARICOPA
COUNTY.

DOCKET NO. L-00000D-14-0292-00169

Case No. 169

PROTECTIVE AGREEMENT

14
15 The Residential Utility Consumer's Office ("RUCO") has requested access to certain
16 documents, data, studies, and other materials, some of which Arizona Public Service
17 Company or its affiliates ("APS" or "Company") considers to be of a proprietary,
18 confidential or legally-protected nature ("Confidential Information").

19 In order to facilitate the exchange of Confidential Information between APS and
20 RUCO, including any independent contracting consultants retained by RUCO in this matter,
21 (collectively referred to as the "Parties"), the Parties agree to the terms of this Protective
22 Agreement ("Agreement") as follows:

23 **§ 1. Confidential Information.** Any document, data, information, study, or any
24 other written, printed, transcribed, audio-taped or video-taped material furnished in this
25 matter that RUCO or APS or its affiliates claim to be confidential, proprietary, or of an
26 otherwise legally protected nature, as well as any copies, notes, materials, extracts, or
27 summaries in any form whatsoever, mechanical, electronic, or otherwise, derived or prepared
28 from said document, data, information, study or other item, shall be designated and referred

1 to herein as "Confidential Information." All Confidential Information provided under the
2 terms of this Agreement shall be marked by the Party producing such information (the
3 "Producing Party") with a written designation indicating its confidential nature. Where a
4 Producing Party claims that only a part of a document or other informational submittal
5 contains Confidential Information, that Party shall designate and mark only the confidential
6 portion of the document or other informational submittal as "Confidential Information."

7 To the extent either Party discloses Confidential Information verbally, such
8 Confidential Information shall be memorialized in writing by the Producing Party within five
9 (5) business days of its verbal disclosure, and the writing shall be marked with the
10 appropriate designation. Any such Confidential Information disclosed verbally shall be
11 safeguarded as confidential under the terms of this Agreement by the Party who receives
12 such information (the "Receiving Party") during the five (5) business day period during
13 which the written memorial may be provided.

14 Parties agree that they shall designate as Confidential Information only such
15 information that they believe in good faith to be legally protected. Access to and review of
16 Confidential Information shall be strictly controlled by the terms of this Agreement.

17 The Confidential Information produced pursuant to this Agreement may include
18 information designated by APS as "Competitively-Sensitive Confidential Information."
19 "Competitively-Sensitive Competitive Confidential Information" is Confidential Information
20 that may, if disclosed, allow others the opportunity to gain an advantage in the competitive
21 power market. APS does not share information designated as "Competitively-Sensitive
22 Confidential Information" with all parties to this docket. Although APS will allow RUCO to
23 review such information as Confidential Information subject to the terms of this Agreement,
24 RUCO shall not, under any circumstances or at any time, provide information designated as
25 "Competitively-Sensitive Confidential Information" to any other party to this matter.

26 § 2. **Non-Disclosure.** Except as set forth in Paragraph 3 or with prior written
27 consent of the Producing Party, Confidential Information shall not be disclosed to or
28 reviewed by any person other than (1) any employees, contractors, or other agents of the

1 Receiving Party who have executed a non-disclosure agreement in the form attached hereto
2 as Exhibit A and have certified by their signatures thereto that they have read this Agreement
3 and have consented to be bound by its terms; and (2) attorneys, outside experts, consultants,
4 or advisors of the Receiving Party who (a) have been retained or employed to assist in the
5 Receiving Party's participation in the above-captioned docket, and (b) have executed a non-
6 disclosure agreement in the form attached hereto and incorporated herein as Exhibit A and
7 have certified by their signatures thereto that they have read this Agreement and have
8 consented to be bound by its terms.

9 This Agreement shall not prevent the Receiving Party from using Confidential
10 Information provided by the Producing Party in reports or documents that aggregate all
11 information gathered from all parties to this docket, provided that the Producing Party's
12 individual Confidential Information is indiscernible from the aggregate report. In addition,
13 where the Producing Party designates information as confidential solely because it is
14 customer-specific information or discloses specific prices, this Agreement shall not prohibit
15 the Receiving Party from the public disclosure of such information in an aggregated form,
16 provided that no specific customer information or individual price can be ascertained.

17 **§ 3. Non-Signatories Entitled to Review.** Confidential Information provided
18 pursuant to the terms of this Agreement may be provided to the paralegals and employees of
19 any signatory to this Agreement only to the extent such disclosure is necessary to the
20 disposition of this docket. Such disclosure may be made only if the non-signatory employee
21 receiving the Confidential Information is provided with a copy of this Agreement and agrees
22 to be bound by its terms. All signatories to this Agreement will be held responsible for
23 ensuring that any non-signatory subject to this Paragraph complies with the terms of this
24 Agreement.

25 **§ 4. Use of Confidential Information.** No person who is afforded access to any
26 Confidential Information under the terms of this Agreement shall use such information for
27 any purpose other than for preparing and presenting the Receiving Party's position in the
28 above-captioned docket, including preparation for and the conduct of any administrative

1 proceeding. All persons entitled to review or afforded access to Confidential Information
2 shall keep it secure as trade secret, confidential, proprietary, or legally protected information
3 in accordance with the purposes and intent of this Agreement, and no such person shall use
4 any Confidential Information in a manner that may result in or require disclosure of such
5 information to any persons not permitted access to such information under the terms of this
6 Agreement.

7 **§ 5. Measures Taken to Prevent Unauthorized Disclosure.** Any person who
8 receives Confidential Information in accordance with the terms of this Agreement shall
9 maintain such information in a manner reasonably calculated to prevent its unauthorized
10 disclosure or access.

11 **§ 6. Performance Under Agreement Does Not Result in Waiver.** Execution of
12 this Agreement by the Parties and the performance of their obligations hereunder shall not
13 result in waiver of any claim, issue, or dispute concerning the proprietary, confidential, or
14 legally protected nature of the Confidential Information provided. In addition, nothing in
15 this Agreement is intended to require the production of any Confidential Information by any
16 Party. By releasing Confidential Information pursuant to this Agreement, the Parties
17 respectively retain in all respects every privilege and claim to confidentiality each heretofore
18 has had and hereafter may have with respect to all such Confidential Information. The
19 limited provision of Confidential Information by the Providing Party under the terms of this
20 Agreement shall not constitute public disclosure of it.

21 **§ 7. Use of Confidential Information in Pleadings.** Where references to
22 Confidential Information are required in any pleading, brief, argument or motion, such
23 references shall be made by citation of title or exhibit number or some other description that
24 avoids disclosure of the substantive Confidential Information contained therein. Any use of
25 or substantive references to Confidential Information shall be placed in a separate section of
26 the pleading, brief or motion and submitted to the Chairman of the Arizona Power Plant and
27 Transmission Line Siting Committee ("Chairman"), Administrative Law Judge ("ALJ") or
28 the Arizona Corporation Commission ("Commission") under seal. Any information filed,

1 submitted or designated as under seal as provided herein shall not be subject to public release
2 or inspection (other than inspection by a person authorized by the terms of this Agreement,
3 or by the assigned Chairman, ALJ or Commission and the Commissioners or their aides),
4 except by order of the Commission. All of the restrictions contained in this Agreement apply
5 to materials prepared and distributed under this Paragraph.

6 **§ 8. Disclosure of Information to the Public.** The Confidential Information
7 provided pursuant to this Agreement shall not be disclosed to any person not authorized to
8 review it under the terms of this Agreement or made part of the public record in the above-
9 captioned docket, or in any other administrative or legal proceeding, unless the Receiving
10 Party provides the Producing Party with five (5) business days written notice that it
11 challenges the Producing Party's designation of the information as legally protected and
12 intends that certain specifically identified information shall be subject to wider dissemination
13 or public disclosure. Upon the expiration of five (5) business days from the date such
14 written notice is received by the Producing Party, any Confidential Information specifically
15 identified in the notice as subject to public disclosure may become part of the public record
16 in this docket, unless the Producing Party initiates a protective proceeding under the terms of
17 Paragraph 9 to this Agreement.

18 **§ 9. Protective Proceedings to Prevent Disclosure to the Public.** In the event
19 that the Producing Party seeks to prevent disclosure of Confidential Information pursuant to
20 Paragraph 8 above, the Producing Party shall file, within five (5) business days of receiving
21 written notice of the Receiving Party's intent to disclose such information, a motion
22 presenting the specific grounds upon which it claims that the information should not be
23 disclosed or should not be made a part of the public record. The Receiving Party shall have
24 an opportunity to respond to the motion. The motion may be ruled upon by either the
25 Chairman, Commission or an assigned ALJ. The Producing Party may provide to the
26 Chairman, Commission or the ALJ the Confidential Information referenced in the motion
27 without waiver of its position that the information should be kept confidential under the
28 terms of this Agreement. Any Confidential Information so provided shall be filed and kept

1 under seal for the purpose of permitting inspection by the Chairman, the Commission or the
2 ALJ before ruling on the motion.

3 Notwithstanding any determination by the Chairman, ALJ or the Commission that any
4 Confidential Information provided pursuant to this Agreement should be made a part of the
5 public record or otherwise disclosed, such disclosure shall not occur for a period of five (5)
6 business days after such determination so that the Providing Party may seek judicial relief
7 from the Chairman's, ALJ's or the Commission's decision. Upon expiration of the five (5)
8 day period, the Chairman, ALJ or the Commission may release the information to the public
9 unless the Providing Party has received a stay or determination from a court of competent
10 jurisdiction that the Confidential Information should not be disclosed.

11 **§ 10. Disclosure to Third-Parties.** In the event the Receiving Party wishes to
12 provide the Producing Party's Confidential Information to a person who is not included
13 within the scope of Paragraphs 2 or 3 herein (a "Third Party"), the Receiving Party shall
14 make such request of the Producing Party in writing. If the Producing Party consents in
15 writing to providing such Third Party with Confidential Information under the terms of this
16 Agreement, the Third Party shall have access to such information only upon the Third
17 Party's execution of Exhibit A to this Agreement. If the Producing Party does not consent to
18 providing its Confidential Information to the Third Party, the Parties shall submit their
19 dispute to the Chairman, assigned ALJ (or to the Commission's Chief ALJ, if no ALJ has
20 been assigned to this docket) or the Commission for resolution in accordance with the
21 procedure set forth in Paragraph 9.

22 **§ 11. Return of Confidential Information.** Confidential Information shall remain
23 available to the persons who have received such information under the terms of this
24 Agreement until all Commission proceedings relating to the above-referenced docket are
25 concluded and are no longer subject to judicial review. Within 30 days after such time has
26 passed, the Producing Party may submit a written request for the return of all Confidential
27 Information, including copies thereof and notes pertaining thereto made by any person who
28 received such information under the terms of this Agreement, and the Receiving Party shall

1 cause all persons to have received such information under the terms of this Agreement to
2 return it to the Producing Party within 15 days of such request. If such request is not
3 received within the stated 30 days, the Receiving Party shall, within another 30 days, cause
4 all Confidential Information in the possession of any person to have received such
5 information under the terms of this Agreement, including copies thereof and any notes
6 pertaining thereto, to be destroyed or returned to the Producing Party, and shall certify in
7 writing to the Producing Party that this has been accomplished. To whatever extent
8 Confidential Information is not returned or destroyed as provided herein, such information
9 shall remain subject to the provisions of this Agreement.

10 **§ 12. Non-Termination.** The provisions of this Agreement shall not terminate at the
11 conclusion of the proceedings conducted in the above-referenced docket. Even if no longer
12 engaged in such proceedings, every person who has executed Exhibit A or who is otherwise
13 subject to this Agreement shall continue to be bound by its terms unless released therefrom
14 by the Company in writing.

15 **§ 13. Objections to Admissibility.** This Agreement is intended to restrict and
16 control the production, use, and dissemination of Confidential Information that may be
17 provided by either Party to this Agreement. The production of any document, information,
18 data, study or other materials pursuant to this Agreement shall not limit the right of any Party
19 to object to its relevance or admissibility in proceedings before the Commission or any
20 judicial body.

21 **§ 14. Designated Contacts.**

22 A. RUCO's designated contacts for written notice pertaining to this Agreement
23 are:

24 Daniel W. Pozefsky
25 Chief Counsel
26 Residential Utility Consumer Office
27 1110 West Washington Street
28 Suite 220
 Phoenix, Arizona 85007
 dpozefsky@azruco.gov

 Robert B. Mease
 Chief Accounting and Rates
 Residential Utility Consumer Office
 1110 West Washington Street
 Suite 220
 Phoenix, Arizona 85007
 rmease@azruco.gov

1 B. APS's designated contacts for written notice pertaining to this Agreement are:

2	Linda J. Benally	Melissa Krueger
3	Attorney	Senior Regulatory Attorney
4	Pinnacle West Capital Corporation	Pinnacle West Capital Corporation
5	Law Department	Law Department
6	400 North 5th Street, MS 8695	400 North 5 th Street, MS 8695
	Phoenix, Arizona 85004	Phoenix, Arizona 85004
	<u>Linda.Benally@pinnaclewest.com</u>	<u>Melissa.Krueger@pinnaclewest.com</u>

7 Gregory Bernosky
 8 Manager, Regulatory Policy, Consumer Advocates
 9 Arizona Public Service Company
 10 400 North 5th Street, MS 9708
 11 Phoenix, Arizona 85004
Gregory.Bernosky@asp.com

12 **§ 15. Breach of Agreement.** APS, in any legal action or complaint it files in any
 13 court alleging breach of this Agreement shall, at the written request of the Commission,
 14 name the Commission as a defendant therein.

15 **§ 16. Remedies.** The Parties acknowledge and agree that an exclusive remedy of
 16 money damages would not be a sufficient remedy for any breach of this Agreement, and that
 17 in addition to all other remedies to which the Producing Party may be entitled, each such
 18 Producing Party may be entitled to: (a) apply to the Chairman, ALJ or the Commission, as
 19 appropriate, for sanctions against the other Party and its legal counsel; and (b) specific
 20 performance and/or injunctive or other relief as a remedy. Any equitable relief sought or
 21 secured hereunder shall not bar recovery of other remedies available at law or in equity,
 22 including money damages.

23 ...

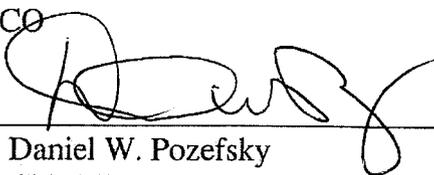
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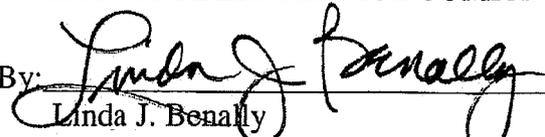
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DATED this 27th day of August, 2014.

RUCO

ARIZONA PUBLIC SERVICE COMPANY

By: 

By: 

Daniel W. Pozefsky
Chief Counsel
Residential Utility Consumer Office
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007
602-364-4835

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