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13 Attorneys for Arizona Public Service Company

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 06 2016

DOCKETED BY *NE*

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

DOUG LITTLE Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

IN THE MATTER OF THE  
COMMISSION'S INVESTIGATION OF  
VALUE AND COST OF DISTRIBUTED  
GENERATION.

DOCKET NO. E-00000J-14-0023

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

Arizona Public Service Company requests that the Hearing Officer enter the Protective Order attached as Exhibit A. This Protective Order is in the standard form typically used by Staff in administrative proceedings and before the Commission.

Good cause exists for entry of this Order because certain of the information being requested by Staff in data requests to APS and others, contains highly confidential information and competitively confidential information, such as solar purchase power

1 pricing information. APS understands that Staff and the other parties do not oppose this  
2 request for entry of the attached Protective Order.

3 For these reasons, APS respectfully requests that the Hearing Officer enter the  
4 attached Protective Order.

5  
6 RESPECTFULLY SUBMITTED this 6th day of May 2016.

7  
8  
9 By: 

10 For Thomas A. Loquvam

11 Raymond S. Heyman

12 Attorneys for Arizona Public Service Company

13 ORIGINAL and thirteen (13) copies  
14 of the foregoing filed this 6th day of  
15 May 2016, with:

16 Docket Control  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 COPY of the foregoing mailed/delivered this  
21 6th day of May 2016 to:

22 Janice Alward  
23 Legal Division  
24 Arizona Corporation Commission  
25 1200 W. Washington  
26 Phoenix, AZ 85007

27 Teena Jilibian  
28 Associate Law Judge  
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Dwight Nodes  
Chief Administrative Law Judge  
Arizona Corporation Commission  
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Phoenix, Arizona 85027



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# **EXHIBIT A**





1           **(b) Use of Confidential Information.** All persons who may be entitled to review,  
2 or who are afforded access to any Confidential Information by reason of this Order shall neither use  
3 nor disclose the Confidential Information for purposes of business or competition, or any purpose  
4 other than the purpose of preparation for and conduct of proceedings in the above-captioned docket  
5 and all subsequent appeals, and shall keep the Confidential Information secure as confidential or  
6 proprietary information and in accordance with the purposes, intent and requirements of this Order.

7           **(c) Persons Entitled to Review.** Each party that receives Confidential  
8 Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys  
9 employed or retained by the party in the proceedings and the attorneys' staff; (2) experts, consultants  
10 and advisors including in-house employees who need access to the material to assist the party in the  
11 proceedings; (3) employees of the party who are directly involved in the proceedings, provided that  
12 counsel for the party represents that no such employee is engaged in the sale or marketing of that  
13 party's products or services.

14           **(d) Nondisclosure Agreement.** Any party, person, or entity that receives  
15 Confidential Information pursuant to this Order shall not disclose such Confidential Information to  
16 any person, except persons who are described in section 1(c) above and who have signed a  
17 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A."  
18 Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.  
19 Commissioners, Administrative Law Judges, and their respective staff members are not required to  
20 sign the Exhibit "A" form.

21           The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is  
22 to be made to read a copy of the Protective Order and to certify in writing that they have reviewed the  
23 same and have consented to be bound by its terms. The agreement shall contain the signatory's full  
24 name, employer, job title and job description, business address and the name of the party with whom  
25 the signatory is associated. Such agreement shall be delivered to counsel for the providing party  
26 before disclosure is made, and if no objection thereto is registered to the Commission within two (2)  
27 business days, then disclosure shall follow. An attorney who makes Confidential Information  
28 available to any person listed in subsection (c) above shall be responsible for having each such person

1 execute an original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be circulated to  
2 all other counsel of record promptly after execution.

3       2.     **(a)     Notes.** Limited notes regarding Confidential Information may be taken by  
4 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,  
5 motions and argument in connection with this proceeding, or in the case of persons designated in  
6 section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall  
7 then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the  
8 final settlement or conclusion of the proceedings in accordance with subsection 2(b) below.

9       **(b)     Return.** All notes, to the extent they contain Confidential Information and are  
10 protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the  
11 final settlement or conclusion of the proceedings. The party destroying such Confidential  
12 Information shall advise the providing party of that fact within a reasonable time from the date of  
13 destruction.

14       3.     **Highly Confidential Information.** Any person, whether a party or non-party, may  
15 designate certain competitively sensitive Confidential Information as "Highly Confidential  
16 Information" if it determines in good faith that it would be competitively disadvantaged by the  
17 disclosure of such information to its competitors. Highly Confidential Information includes, but is  
18 not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which  
19 contain information regarding the market share of, number of access lines served by, or number of  
20 customers receiving a specified type of service from a particular provider or other information that  
21 relates to a particular provider's network facility location detail, revenues, costs, and marketing,  
22 business planning or business strategies.

23       Parties must scrutinize carefully responsive documents and information and limit their  
24 designations as Highly Confidential Information to information that truly might impose a serious  
25 business risk if disseminated without the heightened protections provided in this section. The first  
26 page and individual pages of a document determined in good faith to include Highly Confidential  
27 Information must be marked by a stamp that reads:

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**“HIGHLY CONFIDENTIAL”**

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted paper versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in Section 1 of this Protective Order. Highly Confidential Information provided in a computer-readable data file shall be so-labeled on the face of any disk containing the file and in any e-mail transmitting the file, and the data file itself shall be identified in a conspicuous manner as containing “Highly Confidential Information” to the extent reasonably practicable.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “B” of the non-disclosure agreement identified in Section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than: (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) a reasonable number of in-house experts and employees who need access to the material to assist the party in the proceedings; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the sale or marketing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “A” or “B”. Any such objection must demonstrate

1 good cause to exclude the challenged individual from the review of the Confidential Information or  
2 Highly Confidential Information. Written response to any objection shall be made within two (2)  
3 business days after receipt of an objection. If, after receiving a written response to a party's  
4 objection, the objecting party still objects to disclosure of either Confidential Information or Highly  
5 Confidential Information to the challenged individual, the Commission shall determine whether  
6 Confidential Information or Highly Confidential Information must be disclosed to the challenged  
7 individual.

8 Copies of Highly Confidential Information may be provided to the in-house attorneys, in-  
9 house experts, outside counsel and outside experts who have signed Exhibit "B".

10 Persons authorized to review the Highly Confidential Information will maintain the  
11 documents and any notes reflecting their contents in a secure location to which only designated  
12 counsel and experts have access. No additional copies will be made, except for use during hearings  
13 and then such disclosure and copies shall be subject to the provisions of Section 5. Any testimony or  
14 exhibits prepared that reflect Highly Confidential Information must be maintained in the secure  
15 location until removed to the hearing room for production under seal. Unless specifically addressed  
16 in this section, all other sections of this Protective Order applicable to Confidential Information also  
17 apply to Highly Confidential Information.

18 **4. Objections to Admissibility.** The furnishing of any document, data, study or other  
19 materials pursuant to this Protective Order shall in no way limit the right of the providing party to  
20 object to its relevance or admissibility in proceedings before this Commission.

21 **5. Disclosure of Information to the Public.** The Confidential Information provided  
22 pursuant to this Order shall not be disclosed, nor shall it be made a part of the public record in this  
23 docket, or in any other administrative or legal proceeding unless: Staff provides Company five (5)  
24 business days written notice that information designated by Company as Confidential Information  
25 shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from  
26 the date written notice is received by Company, any Confidential Information identified in the notice  
27 as subject to disclosure shall become part of the public record in this docket, unless Company  
28 initiates a protective proceeding under the terms of this Order.

1           **6. Protective Proceedings to Prevent Disclosure to the Public.** In the event that  
2 Company seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7  
3 above, Company shall file within five (5) business days of receipt of Staff's written notice, a motion  
4 presenting the specific grounds upon which it claims that the Confidential Information should not be  
5 disclosed or should not be made a part of the public record. Staff shall have an opportunity to respond  
6 to the motion. Company's motion may be ruled upon by either the Commission or an assigned  
7 Commission Administrative Law Judge ("ALJ"). Company may provide to the Commission or the  
8 ALJ, the Confidential Information referenced in the motion without waiving that the information  
9 should remain confidential under the terms of this Order. Any Confidential Information so provided  
10 shall be kept under seal for the purpose of permitting inspection by the Commission or the ALJ prior  
11 to ruling on the motion.

12           **7. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the  
13 Commission, ALJ or Staff determine that disclosure is not appropriate, in any judicial action against  
14 the Commission and/or Commissioners by the party seeking disclosure of the information, unless  
15 specifically named, Company as the real party in interest, shall join in the action as a co-defendant.  
16 Company also agrees to indemnify and hold the Commission harmless from any assessment of  
17 expenses, attorneys' fees or damages under A.R.S. § 39-121.02 or any other law, resulting from  
18 denial of access by the Commission to the information, data, records or study subsequently found to  
19 be non-confidential.

20           In the event that the Commission becomes legally compelled (by deposition, interrogatory,  
21 request for documents, subpoena, civil investigative demand or similar process) to disclose any of the  
22 Confidential Information, the Commission shall provide Company with prompt written notice of such  
23 requirement so that Company may seek an appropriate remedy and/or waive compliance. Company  
24 agrees that upon receipt of such notice, Company will either undertake to oppose disclosure of the  
25 Confidential Information or waive compliance with this Order. In the event that disclosure of the  
26 Confidential Information is ordered, the Commission agrees to furnish only that portion of the  
27 Confidential Information that is legally required.  
28 \

1           8.     (a)     Receipt into Evidence. Provision is hereby made for receipt into evidence in  
2 this proceeding materials claimed to be confidential in the following manner:

3                   (1)     Prior to the use of or substantive reference to any Confidential  
4 Information or Highly Confidential Information, the parties intending  
5 to use such Information shall make that intention known to the  
6 providing party.

7                   (2)     The requesting party and the providing party shall make a good-faith  
8 effort to reach an agreement so the Information can be used in a manner  
9 which will not reveal its confidential or proprietary nature.

10                  (3)     If such efforts fail, the providing party shall separately identify which  
11 portions, if any, of the documents to be offered or referenced shall be  
12 placed in a sealed record.

13                  (4)     Only one (1) copy of the documents designated by the providing party  
14 to be placed in a sealed record shall be made.

15                  (5)     The copy of the documents to be placed in the sealed record shall be  
16 tendered by counsel for the providing party to the Commission, and  
17 maintained in accordance with the terms of this Order.

18           (b)     Seal. While in the custody of the Commission, materials containing  
19 Confidential Information shall be marked "CONFIDENTIAL -- UNDER PROTECTIVE ORDER"  
20 IN DOCKET NO. E-00000J-14-0023 and Highly Confidential Information shall be marked  
21 "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO.  
22 E-00000J-14-0023" and shall not be examined by any person except under the conditions set forth in  
23 this Order.

24           (c)     In Camera Hearing. Any Confidential Information or Highly Confidential  
25 Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be  
26 offered in an in camera hearing, attended only by persons authorized to have access to the  
27 information under this Agreement. Similarly, any cross-examination on or substantive reference to  
28 Confidential Information or Highly Confidential Information (or that portion of the record containing  
Confidential Information or Highly Confidential Information or references thereto) shall be received  
in an in camera hearing, and shall be marked and treated as provided herein.

          (d)     Access to Record. Access to sealed testimony, records and information shall  
be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons  
who are entitled to review Confidential Information or Highly Confidential Information pursuant to

1 Subsection 1 (c) above and have signed an Exhibit "A" or "B", unless such information is released  
2 from the restrictions of this Order either through agreement of the parties or after notice to the parties  
3 and hearing, pursuant to the ruling of a Administrative Law Judge, the order of the Commission  
4 and/or final order of a court having final jurisdiction.

5 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in the  
6 proceedings may be forwarded to any court of competent jurisdiction for purposes of an appeal, but  
7 under seal as designated herein for the information and use of the court. If a portion of the record is  
8 forwarded to a court, the providing party shall be notified which portion of the sealed record has been  
9 designated by the appealing party as necessary to the record on appeal.

10 (f) **Return.** Unless otherwise ordered, Confidential Information and Highly  
11 Confidential Information, including transcripts of any depositions to which a claim of confidentiality  
12 is made, shall remain under seal, shall continue to be subject to the protective requirements of this  
13 Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or  
14 destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the  
15 proceedings. If the providing party elects to have Confidential Information or Highly Confidential  
16 Information destroyed rather than returned, counsel for the receiving party shall verify in writing that  
17 the material has in fact been destroyed.

18 9. **Use in Pleadings.** Where references to Confidential Information or Highly  
19 Confidential Information in the sealed record or with the providing party is required in pleadings,  
20 briefs, arguments or motions (except as provided in Section 6), it shall be by citation of title or  
21 exhibit number or some other description that will not disclose the substantive Confidential  
22 Information or High Confidential Information contained therein. Any use of or substantive  
23 references to Confidential Information or Highly Confidential Information shall be placed in a  
24 separate section of the pleading or brief and submitted to the Administrative Law Judge or the  
25 Commission under seal. This sealed section shall be served only on counsel of record and parties of  
26 record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B". All of the  
27 restrictions afforded by this Order apply to materials prepared and distributed under this section.  
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**EXHIBIT "A"**  
**NONDISCLOSURE AGREEMENT**

I have read the foregoing Protective Order dated \_\_\_\_\_, 2016, in ***IN THE***  
***MATTER OF THE COMMISSION'S INVESTIGATION OF VALUE AND COST OF***  
***DISTRIBUTED GENERATION*** Docket No. E-00000J-14-0023 and agree to be bound by the terms  
and conditions of such Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Position or relationship with the Party

\_\_\_\_\_  
Date

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**EXHIBIT "B"**  
**NONDISCLOSURE AGREEMENT**

I have read the foregoing Protective Order dated \_\_\_\_\_, 2016, in **IN THE**  
**MATTER OF THE COMMISSION'S INVESTIGATION OF VALUE AND COST OF**  
**DISTRIBUTED GENERATION Docket No. E-00000J-14-0023** and agree to be bound by the terms  
and conditions of such Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Position or relationship with the Party

\_\_\_\_\_  
Date