

ORIGINAL



0000170292

1 Thomas A. Loquvam  
2 Pinnacle West Capital Corporation  
3 400 North 5<sup>th</sup> Street, MS 8695  
4 Phoenix, Arizona 85004  
5 Tel: (602) 250-3630  
6 E-Mail: [Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)

7 Raymond S. Heyman  
8 Snell & Wilmer  
9 400 E. Van Buren St. #1900  
10 Phoenix, AZ 85004-2202  
11 Tel: (602) 382-6202  
12 E-Mail: [rheyman@swlaw.com](mailto:rheyman@swlaw.com)

13 Attorneys for Arizona Public Service Company

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 12 2016

DOCKETED BY *CK*

**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 REQUEST TO AMEND  
PROTECTIVE ORDER**

After further review, an errata was discovered in the Protective Order language regarding Highly Confidential Information. The original language was specific to the telecommunications industry. APS requests that the Protective Order be amended to incorporate the following changes to address this errata and make the Order more generally applicable:

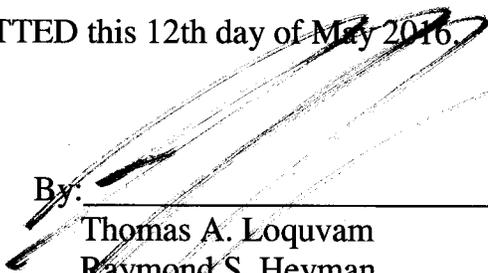
- Beginning on page three, line 19 at "regarding the market share of" through the end of line 22, delete and replace with "that is protected by a

1 pre-existing confidentiality agreement with a third party or could  
2 otherwise be used to obtain a competitive market advantage.”

- 3 • On page three, line 24 after “to information that” insert “is directly  
4 covered by a pre-existing confidentiality agreement or otherwise....”

5 Attached as Exhibit A is a redline version of the Protective Order. The attached  
6 Exhibit B is a clean version incorporating the above-referenced changes. To avoid any  
7 delay, APS has begun providing documents under the current Protective Order.

8  
9 RESPECTFULLY SUBMITTED this 12th day of ~~May~~ 2016.

10  
11  
12 By:   
13 Thomas A. Loquvam  
14 Raymond S. Heyman  
15 Attorneys for Arizona Public Service Company

16 ORIGINAL and thirteen (13) copies  
17 of the foregoing filed this 12th day of  
18 May 2016, with:

19 Docket Control  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 COPY of the foregoing mailed/delivered this  
24 12th day of May 2016 to:

25 Janice Alward  
26 Legal Division  
27 Arizona Corporation Commission  
28 1200 W. Washington  
Phoenix, AZ 85007

Teena Jilibian  
Associate Law Judge  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

1 Thomas Broderick  
2 Utilities Division  
3 Arizona Corporation Commission  
4 1200 W. Washington  
5 Phoenix, AZ 85007

Dwight Nodes  
Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

6 Connie Fitzsimmons  
7 Arizona Corporation Commission  
8 1200 W. Washington  
9 Phoenix, AZ 85007

Matthew Laudone  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

10 Maureen Scott  
11 Legal Division  
12 Arizona Corporation Commission  
13 1200 W. Washington  
14 Phoenix, AZ 85007

Brian Smith  
Legal Division  
Arizona Corporation Commission  
1200 W Washington  
Phoenix, AZ 85007

15 Richard Adkerson, CEO  
16 Ajo Improvement Company  
17 333 N. Central Ave  
18 Phoenix, AZ 85004-2189

Tyler Carlson  
Mohave Electric Cooperative, Inc.  
P.O. Box 1045  
Bullhead City, AZ 86430

19 Roy Archer  
20 Morenci Water and Electric Company  
21 and Ajo Improvement Company  
22 PO Box 68  
23 Morenci, AZ 85540

Michael Arnold, Director  
Morenci Water & Electric Company  
333 N. Central Ave  
Phoenix, AZ 85004

24 Than Ashby, Office Manager  
25 Graham County Electric Cooperative  
26 9 W. Center St  
27 PO Drawer B  
28 Pima, AZ 85543

Nancy Baer  
245 San Patricio Drive  
Sedona, AZ 86336

Patrick Black  
Attorney  
Fennemore Craig  
2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016

Jack Blair  
SSVEC  
311 E. Wilcox Drive  
Sierra Vista, AZ 85635

1	Bradley Carroll Assistant General Counsel, Regulatory Tucson Electric Power Company 88 East Broadway Blvd. Mail Stop HQE910 P.O. Box 711 Tucson, AZ 85702	State	Kirby Chapman CFAO Sulphur Springs Valley Electric Cooperative, Inc. 311 E. Wilcox Sierra Vista, AZ 85650
2			
3			
4			
5			
6	Karyn Christine Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007		Jennifer Cranston Gallagher & Kennedy, P.A. 2575 East Camelback Road Phoenix, AZ 85016-9225
7			
8			
9	C. Webb Crockett Attorney Fennemore Craig 2394 East Camelback Road, Suite 600 Phoenix, AZ 85016		Jeffrey Crockett, Esq. Attorney Crockett Law Group PLLC 2198 E. Camelback Road, Suite 305 Phoenix, AZ 85016-4747
10			
11			
12			
13	Nicholas Enoch Attorney Lubin & Enoch, P.C. 349 North Fourth Ave. Phoenix, AZ 85003		Patricia Ferre P.O. Box 433 Payson, AZ 85547
14			
15			
16	Briana Kobor Program Director Vote Solar 360 22nd Street, Suite 730 Oakland, CA 94612		Jason Gellman Snell & Wilmer LLP 400 E. Van Buren Street, Suite 800 Phoenix, AZ 85004
17			
18			
19			
20	Rick Gilliam Director of Research Vote Solar 1120 Pearl Street, Suite 200 Boulder, CO 80302		Peggy Gillman Mohave Electric Cooperative, Inc. P.O. Box 1045 Bullhead City, AZ 86430
21			
22			
23	Meghan Grabel Attorney for AIC Osborn Maledon, P.A. 2929 North Central Avenue Phoenix, AZ 85012		Garry D. Hays Attorney for ASDA Law Offices of Garry D. Hays, PC 2198 E Camelback Rd, Suite 305 Phoenix, AZ 85016
24			
25			
26			
27			
28			

1	Michael Hiatt Vote Solar	Timothy Hogan Attorney
2	633 17th Street, Suite 1600	Arizona Center for Law in the Public Interest
3	Denver, CO 80202	202 E. McDowell Road, Suite 153
4		Phoenix, AZ 85004
5	Dillon Holmes Clean Power Arizona	David Hutchens President
6	9635 N. 7th Street No 47520	UNS Electric, Inc.
7	Phoenix, AZ 85068	88 E. Boradway Blvd., MS HQE901
8		PO Box 711
9		Tucson, AZ 85701
9	Charles Kretek, General Counsel Columbus Electric Cooperative	Kevin Larson, Director UNS Electric, Inc.
10	PO Box 631	88 E. Broadway Blvd, MS HQE910
11	Deming, MN 88031	PO Box 711
12		Tucson, AZ 85701-0711
13	Ladel Laub Dixie Escalante Rural Electric Assn, Inc	Vincent Nitido TRICO Electric Cooperative, Inc.
14	71 East highway 56	8600 W. Tangerine Road
15	Beryl, UT 84714-5197	Marana, AZ 85653
16	Lewis Levenson 1308 E Cedar Lane	Marcus Lewis Garkane Energy Cooperative
17	Payson, AZ 85541	PO Box 65
18		Loa, UT 84747
19	Steven Lunt, CEO Duncan Valley Electric Cooperative	Craig Marks Attorney
20	379597 AZ Hwy 75	AURA
21	PO Box 440	10645 N. Tatum Blvd. Ste. 200-676
22	Duncan, AZ 85534	Phoenix, AZ 85028
23	Dan McClendon Garkane Energy Cooperative	Charles Moore Navopache Electric Cooperative
24	PO Box 65	1878 W. White Mountain Blvd.
25	Loa, UT 84747	Lakeside, AZ 85929
26	Paul O' Dair Navopache Electric Cooperative, Inc.	Chinyere Osuala Vote Solar
27	1878 W. White Mountain Blvd.	48 Wall Street, 19th Floor
28	Lakeside, AZ 85929	New York, NY 10005

1 Michael Patten  
2 Attorney  
3 SNELL & WILMER L.L.P.  
4 One Arizona Center  
5 400 E. Van Buren Street, Suite 1900  
6 Phoenix, AZ 85004-2202

Greg Patterson  
Attorney  
Munger Chadwick  
916 West Adams Suite 3  
Phoenix, AZ 85007

5 Gary Pierson  
6 Arizona Electric Power Cooperative  
7 PO Box 670  
8 1000 S. Highway 80  
9 Benson, AZ 85602

Richard Pitcairn PhD, DVM  
Susan Pitcairn, MS  
1865 Gun Fury Road  
Sedona, AZ 86336

8 Daniel Pozefsky  
9 Chief Counsel  
10 RUCO  
11 1110 W. Washington, Suite 220  
12 Phoenix, AZ 85007

Pat Quinn  
AURA  
5521 E. Cholla St.  
Scottsdale, AZ 85254

12 Court Rich  
13 Attorney  
14 Rose Law Group, pc  
15 7144 East Stetson Drive, Suite 300  
16 Scottsdale, AZ 85251

Timothy Sabo  
Snell & Wilmer  
400 East Van Buren  
Suite 1900  
Phoenix, AZ 85004

16 William Sullivan  
17 Attorney  
18 Curtis, Goodwin, Sullivan, Udall &  
19 Schwab, P.L.C.  
20 501 E Thomas Road  
21 Phoenix, AZ 85012

Gary Yaquinto  
President & CEO  
Arizona Investment Council  
2100 N. Central Avenue, Suite 210  
Phoenix, AZ 85004

20 Tom Harris, Chairman  
21 Arizona Solar Energy Industries  
22 Association  
23 2122 W. Lone Cactus Drive, Suite 2  
24 Phoenix, Arizona 85027

25   
26 \_\_\_\_\_  
27  
28

# **EXHIBIT A**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
7 ANDY TOBIN

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

DOCKET NO. E-00000J-14-0023

**PROTECTIVE ORDER**

11 The Arizona Corporation Commission Staff ("Staff") has requested access to certain  
12 documents, data, studies, and other materials, some of which may be of a proprietary, confidential or  
13 legally protected nature ("Confidential Information").

14 In order to expedite the exchange of information between Staff and the Parties to this matter,  
15 the Parties agree as follows:

16 **1. (a) Confidential Information.** All documents, data, studies and other materials  
17 furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or  
18 informal), and including depositions, and other requests for information, that are claimed to be  
19 proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by  
20 the providing party by stamping the same with a "Confidential" designation. Confidential  
21 Information provided in a computer-readable data file shall be so-labeled on the face of any disk  
22 containing the file and in any e-mail transmitting the file, and the data file itself shall be identified in  
23 a conspicuous manner as containing "Confidential Information" to the extent reasonably practicable.  
24 Moreover, to the extent responsive materials contain personally identifiable information about  
25 individual customers, that information shall be redacted from the materials. In addition, all notes or  
26 other materials that refer to, derive from, or otherwise contain parts of the Confidential Information  
27 will be marked by the receiving party as Confidential Information. Access to and review of  
28 Confidential Information shall be strictly controlled by the terms of this Order.

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~~that is protected by a pre-existing confidentiality agreement  
23 with a third party or could otherwise be used to obtain a competitive market advantage.

24       Parties must scrutinize carefully responsive documents and information and limit their  
25 designations as Highly Confidential Information to information that is directly covered by a pre-  
26 existing confidentiality agreement or otherwise truly might impose a serious business risk if  
27 disseminated without the heightened protections provided in this section. The first page and  
28 individual pages of a document determined in good faith to include Highly Confidential Information

1 must be marked by a stamp that reads:

2  
3 **“HIGHLY CONFIDENTIAL”**

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

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

27 Any party providing either Confidential Information or Highly Confidential Information may  
28 object to the designation of any individual as a person who may review Confidential Information

1 and/or Highly Confidential Information. Such objection shall be made in writing to counsel  
2 submitting the challenged individual's Exhibit "A" or "B". Any such objection must demonstrate  
3 good cause to exclude the challenged individual from the review of the Confidential Information or  
4 Highly Confidential Information. Written response to any objection shall be made within two (2)  
5 business days after receipt of an objection. If, after receiving a written response to a party's  
6 objection, the objecting party still objects to disclosure of either Confidential Information or Highly  
7 Confidential Information to the challenged individual, the Commission shall determine whether  
8 Confidential Information or Highly Confidential Information must be disclosed to the challenged  
9 individual.

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

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

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

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

1 as subject to disclosure shall become part of the public record in this docket, unless Company  
2 initiates a protective proceeding under the terms of this Order.

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

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

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

1 Confidential Information that is legally required.

2 \

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

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

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

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

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

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

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

26 (c) **In Camera Hearing.** Any Confidential Information or Highly Confidential  
27 Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be  
28 offered in an in camera hearing, attended only by persons authorized to have access to the  
information under this Agreement. Similarly, any cross-examination on or substantive reference to  
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

1 be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons  
2 who are entitled to review Confidential Information or Highly Confidential Information pursuant to  
3 Subsection 1 (c) above and have signed an Exhibit "A" or "B", unless such information is released  
4 from the restrictions of this Order either through agreement of the parties or after notice to the parties  
5 and hearing, pursuant to the ruling of a Administrative Law Judge, the order of the Commission  
6 and/or final order of a court having final jurisdiction.

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

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

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

1 restrictions afforded by this Order apply to materials prepared and distributed under this section.

2  
3 **10. Summary of Record.** If deemed necessary by the Commission, the providing party  
4 shall prepare a written summary of the Confidential Information or Highly Confidential Information  
5 referred to be placed on the public record.

6 **11. No Admission of Privileged or Confidential Status.** By agreeing to this Order,  
7 neither Utilities Division Staff nor any Party is admitting or agreeing that any of the materials or  
8 communications designated as “Confidential” or “Highly Confidential” Information are, either in fact  
9 or as a matter of law, a trade secret or of a proprietary, confidential or legally protected nature.

10 **12. Breach of Order.** Any Party, in any legal action or complaint it files in any court  
11 alleging breach of this Order shall, at the written request of the Commission, name the Arizona  
12 Corporation Commission as a Defendant therein.

13 **13. Non-Termination.** The provisions of this Order shall not terminate at the conclusion  
14 of this proceeding.

15 ORDERED this \_\_\_\_ day of May, 2016.

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17  
18 \_\_\_\_\_  
19 TEENA JIBILIAN  
20 ADMINISTRATIVE LAW JUDGE  
21  
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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

# **EXHIBIT B**



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 that is protected by a pre-existing confidentiality agreement with a third party or  
20 could otherwise be used to obtain a competitive market advantage.

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

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1 **“HIGHLY CONFIDENTIAL”**

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

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

25 Any party providing either Confidential Information or Highly Confidential Information may  
26 object to the designation of any individual as a person who may review Confidential Information  
27 and/or Highly Confidential Information. Such objection shall be made in writing to counsel  
28 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.



**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

**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