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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

2016 MAY 23 10:30:00

MAY 23 2016

AZ CORP COMMISSION
DOCKET CONTROL

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

DOCKETED BY

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

DOCKET NO. E-00000J-14-0023

PROCEDURAL ORDER
APPROVING AMENDED
PROTECTIVE ORDER AND
MODIFYING PROCEDURAL
SCHEDULE

BY THE COMMISSION:

On December 3, 2013, the Arizona Corporation Commission (“Commission”) issued Decision No. 74202 in Docket No. E-01345A-13-0248. As part of that Decision, the Commission ordered that a generic docket be opened on net metering (“NM”) issues, and that workshops be held with all stakeholders to help inform future Commission policy on the value that distributed generation (“DG”) installations bring to the grid.¹ As a result, this docket was opened.

On October 20, 2015, at its regularly scheduled Open Meeting, in the course of considering Docket No. E-01345A-13-0248,² the Commission ordered that an evidentiary hearing be held in this generic docket to include, in addition to the value and cost of DG, cost of service issues related to Arizona Public Service Company’s (“APS’s”) provision of service to DG and non-DG customers.

Parties to this case include: The Alliance for Solar Choice (“TASC”), Clean Power Arizona, Freeport Minerals Corporation (“Freeport Minerals”), Arizonans for Electric Choice and Competition (“AECC”), Arizona Solar Deployment Alliance (“ASDA”), Vote Solar, Arizona Utility Ratepayer Alliance (“AURA”), Arizona Investment Council (“AIC”), the Residential Utility Consumer Office (“RUCO”), Grand Canyon State Electric Cooperative Association, Inc. (“GCSECA”), Arizona Competitive Power Alliance (“ACPA”), Western Resource Advocates (“WRA”), Ajo Improvement

¹ Decision No. 74202 at 30.

² In the matter of the application of Arizona Public Service Company for approval of net metering cost shift solution. The Commission closed Docket No. E-01345A-13-0248 by Decision No. 75290 (October 27, 2015).

1 Company ("Ajo"), Arizona Electric Power Cooperative, Inc. ("AEPCO"), APS, Columbus Electric
2 Cooperative, Inc. ("CEC"), Dixie-Escalante Rural Electric Association, Inc. ("Dixie-Excalante"),
3 Duncan Valley Electric Cooperative, Inc. ("DVEC"), Garkane Energy Cooperative, Inc. ("Garkane"),
4 Graham County Electric Cooperative, Inc. ("GCEC"), Mohave Electric Cooperative, Inc. ("MEC"),
5 Morenci Water and Electric Company ("MWE"), Navopache Electric Cooperative, Inc. ("NEC"),
6 Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC"), Trico Electric Cooperative, Inc.
7 ("Trico"), Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNSE"), Patricia Ferré,
8 Nancy Baer, Arizona Solar Energy Industries Association ("ARISEIA"), Local Unions 387, 1116 and
9 769 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"), Lewis M. Levenson,
10 Susan Pitcairn, Richard Pitcairn, and the Commission's Utilities Division ("Staff").

11 Numerous public comments have been filed.

12 The hearing on this matter commenced on April 18, 2016. All witnesses' prefiled direct
13 testimony has been presented at hearing in accordance with the procedural schedule set by Procedural
14 Order in this docket, and as modified during the course of the hearing.

15 During Staff's cross-examination of utility witnesses, Staff requested that APS, TEP, and
16 UNSE provide further information regarding their utility scale solar renewable purchased power
17 agreements ("PPAs") and utility owned utility scale solar renewable generation.

18 On April 22, 2016, as agreed during the hearing, Staff submitted its information requests in
19 writing to APS, TEP, and UNSE. Staff issued the information requests to APS as Staff's Third Set of
20 Data Requests, and to TEP and UNSE as Staff's Second Set of Data Requests (collectively, "Staff's
21 Hearing Data Requests"). Staff's Third Set of Data Requests to APS was admitted into evidence as
22 Exhibit S-4, and is attached hereto as Exhibit 1 for convenience of reference. Staff stated that the data
23 requests were the same for all three utilities.

24 On May 6, 2016, the hearing on this matter was recessed until June 8, 2016 at 9:30 a.m. Prior
25 to the recess, APS, TEP, and UNSE agreed to make witnesses available on that date for the sole purpose
26 of providing testimony regarding the information to be provided in response to Staff's Hearing Data
27 Requests. The other parties to this docket agreed that they could file written responses to the
28 information to be provided in response to Staff's Hearing Data Requests, or alternatively, that they

1 would have an opportunity to present a witness to testify in response. The hearing date and due date
 2 for responses was set at June 13, 2016. The parties agreed that it was appropriate to set a briefing
 3 schedule, and briefing deadlines were set, with Initial Closing Briefs due on or before June 20, 2016,
 4 and Reply Closing Briefs due on or before July 8, 2016.

5 On May 6, 2016, as had been discussed during the hearing, APS filed a Form of Protective
 6 Order for the parties to utilize to facilitate the exchange of confidential information in response to
 7 Staff's Hearing Data Requests.

8 On May 10, 2016, the Hearing Division issued the Protective Order as filed on May 6, 2016.

9 On May 12, 2016, APS filed a Request to Amend Protective Order ("Request"). APS indicated
 10 that there were errors in the May 6, 2016 Form of Protective Order, which had been designed for the
 11 telecommunications industry, and requested the issuance of an amended Protective Order with changes
 12 making it more generally applicable. Both a redlined and a clean version of APS's proposed amended
 13 Form of Protective Order were attached to the Request. APS indicated that to avoid delay, it had begun
 14 providing documents under the Protective Order issued May 10, 2016. A copy of APS's amended
 15 Protective Order is attached hereto as Exhibit 2.

16 On May 12, 2016, Staff filed a Motion for Procedural Order ("Motion"). The Motion requests
 17 that a Procedural Order be issued adding an additional hearing date to those dates set prior to the hearing
 18 recess on May 6, 2016 as follows:

19	June 8, 2016	Testimony by APS Witness on Responses to Staff's Third Set of Data Requests
20		
21	June 9, 2016	Testimony by TEP and UNSE Witness on Responses to Staff's Second Set of Data Requests
22		
23	June 13, 2016	Responsive oral testimony at hearing, or written responsive filings by Staff and other Parties due by 4:00 p.m.
24		
25	June 20, 2016	Initial Closing Briefs due
26		
27	July 8, 2016	Reply Closing Briefs due

28 Staff's Motion and APS's Request are reasonable and should be granted.

IT IS THEREFORE ORDERED that the procedural schedule for the continuation of the hearing

1 is hereby set as follows:

- 2 June 8, 2016 Oral testimony by APS Witness on Responses to
- 3 Staff's Third Set of Data Requests
- 4 June 9, 2016 Oral testimony by TEP and UNSE Witness on
- 5 Responses to Staff's Second Set of Data Requests
- 6 June 13, 2016 Any responsive oral testimony at hearing to APS,
- 7 TEP and UNSE oral testimony.
- 8 Any written responsive filings by Staff and other
- 9 Parties due on or before June 13, 2016, 4:00 p.m.
- 10 June 20, 2016 Initial Closing Briefs due on or before June 20, 2016,
- 11 4:00 p.m.
- 12 July 8, 2016 Reply Closing Briefs due on or before July 8, 2016,
- 13 4:00 p.m.

14 IT IS FURTHER ORDERED that the Protective Order issued in this docket on May 10, 2016,
15 is hereby superseded by the Protective Order attached to this Procedural Order.

16 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
17 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at a
18 hearing.

19 DATED this 23rd day of May, 2016.



 TEENA JIBILIAN
 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
21 this 23rd day of May, 2016 to:

22 Dillon Holmes
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 24 9635 N. 7th Street, #47520
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24 **Consented to Service by Email for Grand Canyon State Electric Cooperative Association, Inc.**

25 Also Attorney for Arizona Electric Power Cooperative, Inc. and Dixie Escalante Rural Electric
26 Association, Inc., who have not consented to Email service

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36 Tucson Electric Power Company, and UNS Electric, Inc.

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24 Attorneys for Garkane Energy Cooperative, Inc., Mohave Electric Cooperative, Inc. and
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30 By: 
31 Rebecca Tallman
32 Assistant to Teena Jibilian
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EXHIBIT 1

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



JODI
Executive



ARIZONA CORPORATION COMMISSION

April 22, 2016

Thomas A. Loquvam
Pinnacle West Capital Corporation
P.O. Box 53999, MS 8695
Phoenix, Arizona 85072-3999

Via E-mail and United States Mail
thomas.loquvam@pinnaclewest.com

Re: Staff's **Third** Set of Data Requests to Arizona Public Service Company
Docket No. E-00000J-14-0023

Dear Mr. Loquvam:

Please treat this as Staff's **Third** Set of Data Requests to Arizona Public Service Company in the above matter.

For purposes of this data request set, the words "Arizona Public Service Company," "Company," "you," and "your" refer to Arizona Public Service Company and any representative, including every person and/or entity acting with, under the control of, or on behalf of Arizona Public Service Company. For each answer, please identify by name, title, and address each person providing information that forms the basis for the response provided.


These data requests are continuing, and your answers or any documents supplied in response to these data requests should be supplemented with any additional information or documents that come to your attention after you have provided your initial responses.

Please respond within **FIVE (5)** calendar days of your receipt of the copy of this letter. However, if you require additional time, please let us know.

Please provide one hard copy as well as searchable PDF, DOC or EXCEL files (via email or electronic media) of the requested data directly to each of the following addressees via overnight delivery services to:

- (1) Tom Broderick, Director, Utilities Division, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, tbroderick@azcc.gov.
- (2) Constance Fitzsimmons, Legal Division, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, cfitzsimmons@azcc.gov.

Sincerely,


Maureen A. Scott, Senior Staff Counsel
Matthew Laudone
Legal Division
(602) 542-3402

MAS;ML:klc:mam
Enclosure

ARIZONA CORPORATION COMMISSION
STAFF'S THIRD SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY
DOCKET NO. E-00000J-14-0023
APRIL 22, 2016

Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.

***For all data requests for which you do not have the information requested, please state such and skip to the next data request. Also, for responses to data requests that may be voluminous or overly burdensome, please contact Tom Broderick at 602-542-4251 to discuss.

STF 3.1 Please provide information on all utility-scale solar renewable PPAs, with an effective date on or after January 1, 2008, including:

- a. The effective date
- b. Term of the PPA
- c. Actual price per kWh to the utility and any other charges, by year for the life of the contract, and
- d. Type(s) of renewable technology for each PPA.
- e. Please also provide a copy of each PPA, including term sheet.

STF 3.2 Please provide the following information on any utility-scale solar renewable generation built and owned by the utility with a date construction began after January 1, 2008, including:

- a. Date construction began
- b. Date the facility began generating electricity
- c. Life expectancy of facility
- d. Type(s) of renewable technology at each facility
- e. Total revenue requirement resulting from each facility by year for depreciable life
- f. Total cost of the facility, and
- g. The cost per kWh generated over the life of the facility.

ARIZONA CORPORATION COMMISSION
STAFF'S THIRD SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY
DOCKET NO. E-00000J-14-0023
APRIL 22, 2016

Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.

***For all data requests for which you do not have the information requested, please state such and skip to the next data request. Also, for responses to data requests that may be voluminous or overly burdensome, please contact Tom Broderick at 602-542-4251 to discuss.

- h. If the utility contracted with a developer to build the facility and the utility subsequently bought the plant, please provide a copy of the relevant contracts.

STF 3. 3 Please explain the decision criteria you have and will rely upon for deciding whether to rely on a PPA or utility ownership for utility scale solar. If one decision criteria includes cost comparisons, please provide an explanation, formula and example of comparison between PPA and utility ownership. If that formula is from a perspective other than the customers' revenue requirements, please explain why.

STF 3. 4 Given the utilities' support for reliance upon PPA data for utility scale solar as a basis for pricing export for rooftop DG solar, please explain whether the utility is willing to apply the same criteria to its utility ownership decision process for utility scale solar. If not, why not apply the same criteria? Is the utility supportive of applying this criteria uniformly if the PPA concept is embraced as the benchmark for solar evaluation?

STF 3. 5 As regards the specific points of comparison between PPA's and utility ownership of utility scale solar which do or may lead to differences in cost comparisons, please address:

(To the extent these questions are general, please answer from the perspective of your utility's actual experience and practices.)

- a) Any differences in amount and timing of revenue requirements to customers given PPA's recovery in PPFAC's and utility ownership following a revenue requirements formula? For the same resource, is the PPA less costly initially due to typical reliance upon levelized pricing; whereas utility ownership prices are initially higher and subsequently lower under the revenue requirements formula?
- b) Please explain the differences between tax efficiency of utilization of related investment tax credits between PPA vendors and utility ownership?

ARIZONA CORPORATION COMMISSION
STAFF'S THIRD SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY
DOCKET NO. E-00000J-14-0023
APRIL 22, 2016

Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.

***For all data requests for which you do not have the information requested, please state such and skip to the next data request. Also, for responses to data requests that may be voluminous or overly burdensome, please contact Tom Broderick at 602-542-4251 to discuss.

- c) Please explain the differences between treatment of cost overruns, if any, between PPA's and utility ownership? Are PPA's typically not compensated for actual costs in excess of contract, but utilities typically request recovery of costs over budget in rate cases? Do utilities support limiting cost recovery in rate cases to budgets?
- d) Please explain differences between duration of PPA's versus useful life depreciation for owned assets? Are PPA's typically for less than the useful asset life such that vendors do not include all costs in the initial contract but plan on cost recovery in follow-on contracts?
- e) Please explain whether the procurement of panels from suppliers is different in PPA's versus utility ownership? Are PPA's typically sourced from vendors purchasing solar panels in high volumes at greater economies of scale than from a utility?
- f) To the extent available and for each existing utility owned utility scale solar, please provide the contemporaneous comparable PPA benchmarks known to the utility.

STF 3.6

To the extent that cost differences exist between PPA's and utility ownership of utility scale solar, should the formula for export pricing of rooftop DG solar, be based on a combination of the costs to customers of PPA's and utility ownership and not solely on PPA's? Why not? Could that formula be based on a weighted average of the percentage of your utilities reliance upon PPA or ownership either historically or as per IRP or both?

EXHIBIT 2

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 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:

27
28

“HIGHLY CONFIDENTIAL”

1
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.

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

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

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

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

ORDERED this _____ day of May, 2016.

TEENA JIBILIAN
ADMINISTRATIVE LAW JUDGE

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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1 **EXHIBIT "B"**

2 **NONDISCLOSURE AGREEMENT**

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

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8 _____
Name

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Signature

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Employer or Firm

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Business Address

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Position or relationship with the Party

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Date