

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of this 20th day of August, 2001, between those individuals and entities that are party to the Litigation, as hereinafter described (collectively, the "Parties"), and Arizona Public Service ("APS").

RECITALS

A. The Parties are currently involved in Cause No. CV99-09693, filed and pending in New Mexico District Court in Bernalillo County, entitled Havenor, et al. v. W.D. Industries, Inc., et al (the "Litigation").

B. APS is not a party to the Litigation.

C. During the course of the Litigation, APS was served with a subpoena for inspection of its Four Corners Power Plant ("Four Corners") and for production of documents. Pursuant to the subpoena, APS allowed the Parties to inspect Four Corners and to select documents for production from Four Corners and from an APS storage facility in Phoenix, Arizona.

D. Certain of the documents selected for production by the Parties contain provisions restricting the ability of APS to distribute or reproduce them to third parties. These documents include blueprints and mechanical drawings. APS is not the author of these documents. For purposes of this Agreement, these certain documents will be referred to as "Protected Documents," and will include any document produced by APS that contains a provision restricting or limiting in any way the ability of APS to distribute or reproduce the document to a third party.

E. The Parties, in an effort to obtain documents requested pursuant to subpoena, and APS, in an effort to comply with the obligations as contained in the Protected Documents, believe that it is in their best interests to enter into this Agreement regarding the Protected Documents.

AGREEMENT

For and in consideration of the mutual covenants and agreements contained herein, the Parties and APS agree as follows:

1. Scope. The terms of this Agreement shall apply only to disclosure of the Protected Documents, as that term is defined above.

2. Confidentiality of Protected Documents. The Protected Documents, and all copies made thereof, shall be held in strict confidence by the Parties and will only be disclosed by the Parties in connection with the Litigation, and will be for use only in the Litigation. The Parties shall not use any of the Protected Documents or information contained therein for any other purpose other than as set forth above.

3. Disclosure of Protected Documents. Except with the prior written consent of APS, none of the Protected Documents or information contained therein may be disclosed to any person other than:

- a. Counsel for the Parties in the Litigation.
- b. Secretaries, paralegal assistants, and other employees of such counsel who are actively engaged in assisting counsel in the preparation of the Litigation.
- c. Persons subpoenaed or noticed for depositions or formally designated as trial witnesses in the Litigation and their counsel to the extent necessary for the witnesses' preparation for testimony, upon the following terms and conditions:
 - (i) Before any disclosure, such persons shall be provided with a copy of this Agreement and advised that they are bound by it. No disclosure shall be made to any such person who does not agree to be bound by this Agreement, except that disclosure may be made to such persons during depositions or testimony at trial, and such disclosure shall not constitute a waiver of confidentiality.
- d. Consultants and experts retained for the purposes of assisting in the preparation of the Litigation, upon the following terms and conditions:
 - (i) Before any disclosure, the party must obtain an agreement in writing (per the form attached as Exhibit A) from the outside expert or consultant reciting that he or she has read a copy of this Agreement and agrees to be bound by its provisions.

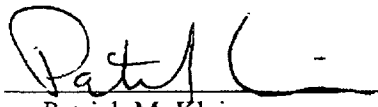
4. Duration. The confidentiality obligations of the Parties under this Agreement shall survive the termination of the Agreement and shall remain in full force and effect without regard to whether the Litigation is concluded.

5. Enforcement. The Parties and APS agree that a breach of the provisions of this Agreement will cause irreparable harm, for which there is no adequate remedy of law, and that such a breach may therefore be prevented or remedied by injunctive relief. The successful party in any enforcement action shall be entitled to recover its reasonable attorneys' fees and costs from the breaching party. This Agreement shall be construed and enforced pursuant to the laws of the State of Arizona. The Parties each agree to consent to personal jurisdiction in Arizona for purposes of enforcing this Agreement.

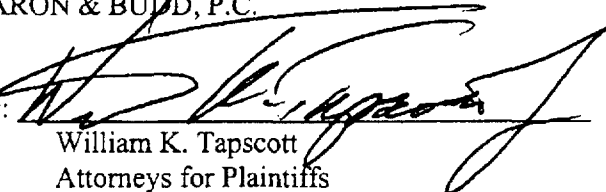
6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

IN WITNESS WHEREOF, the Parties and APS have executed this Agreement as of the date first set forth above.

GALLAGHER & KENNEDY, P.A.

By: 
Patrick M. Klein
Attorneys for Arizona Public Service

BARON & BUDD, P.C.

By: 
William K. Tapscott
Attorneys for Plaintiffs

BAKER & HOSTETLER, L.L.P.

By: _____
Ronald L. Hellbusch
Attorneys for Defendant _____

By: _____

By: _____

By: _____

By: _____

GALLAGHER & KENNEDY

P.A.

ATTORNEYS AT LAW

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August 28, 2001

VIA UNITED STATES MAIL

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Re: Ronald E. Havenor, et al v. W.D. Industries, et al.

Dear Ken and Ron:

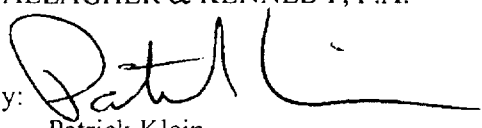
I enclose for your file a copy of the Confidentiality Agreement in this case, executed by Ken, Ron and myself. When you send out copies of the APS documents to any other party in this matter, please include a copy of the Agreement for that party's signature. I would like to receive a copy of all agreements signed by the other parties for my records.

Thank you both for your cooperation and assistance in this endeavor. If you have any questions, please do not hesitate to contact me.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:


Patrick Klein

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Enclosure
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