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*Docket*

Arizona Corporation Commission  
**THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

FEB 08 2001

2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
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6 IN THE MATTER OF THE NOTICE OF  
PROPOSED RULEMAKING FOR THE  
7 ENVIRONMENTAL PORTFOLIO STANDARD.

DOCKET NO. RE-00000C-00-0377

DECISION NO. *63364*

**OPINION AND ORDER**

8

9 DATE OF HEARING: November 9, 2000

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGES: Jane Rodda and Jerry L. Rudibaugh

12 APPEARANCES: Michael Grant, GALLAGHER & KENNEDY, on behalf  
of Arizona Electric Power Cooperative, Inc.;

13 Thomas Mumaw, SNELL & WILMER, on behalf of  
14 Arizona Public Service;

15 Webb Crockett, FENNEMORE CRAIG, on behalf of  
16 Phelps Dodge, ASARCO and Arizonans for Electric  
Choice and Competition;

17 Robert Annan, on behalf of the Arizona Clean Energy  
Industries Alliance;

18 Tom Hansen, Tucson Electric Power Company;

19 Paul Michaud, Martinez & Curtis, on behalf of York  
20 Research and Arizona Clean Energy Industries Alliance;

21 Rick Gillian, Land and Water Fund of the Rockies, the  
Grand Canyon Trust, the Grand Canyon Chapter of the  
22 Sierra Club, the Arizona Consumers Council;

23 Janice Alward, Staff Attorney, Legal Division, on behalf  
of the Arizona Corporation Commission Utilities  
24 Division.

**BY THE COMMISSION:**

25 On April 20, 1999, the Arizona Corporation Commission ("Commission") Staff ("Staff")  
26 opened Docket No. E-0000A-99-0205 in the Matter of the Generic Investigation of the Development  
27 of A Renewable Portfolio Standard As A Potential Part of the Retail Electric Competition Rules. The  
28

1 Commission accepted testimony and conducted hearings.

2 On May 4, 2000, in Decision No. 62506, the Commission adopted an Environmental Portfolio  
3 Standard ("EPS") and ordered Staff to commence a rulemaking process to adopt rules consistent with  
4 the EPS.

5 On May 31, 2000, Staff opened the rule-making docket. On August 1, 2000, in Decision No.  
6 62762, the Commission ordered Staff to forward the rules entitled "Environmental Portfolio  
7 Standard", to be numbered as A.A.C. R14-2-1618. to the Secretary of State for Notice of Proposed  
8 Rulemaking ("EPS Rule").

9 The EPS Rule was published in the Arizona Administrative Register on August 25, 2000.  
10 Pursuant to Procedural Order dated August 9, 2000, a public comment hearing was scheduled for  
11 November 9, 2000, and interested parties were requested to file written comments on or before  
12 October 5, 2000, and Reply comments on or before October 24, 2000. Staff conducted a workshop  
13 on the proposed EPS on August 29, 2000.

14 The following entities filed comments on the EPS Rule: Tucson Electric Power Company  
15 ("TEP"); the Land and Water Fund of the Rockies, the Grand Canyon Trust, the Arizona Consumers  
16 Council, and the Grand Canyon Chapter of the Sierra Club (collectively the "Environmental Group");  
17 the Residential Utility Consumer Office ("RUCO"); the Arizona Electric Power Cooperative, Inc.  
18 ("AEPCO"); the Arizona Clean Energy Industries Alliance and York Research, Inc. (the "Solar and  
19 Renewable Energy Industries"); New West Energy ("NWE"); the City of Scottsdale ("Scottsdale");  
20 Citizens Communications Company ("Citizens") and Staff. TEP, Staff, the Environmental Group  
21 and Arizona Public Service Company ("APS") filed Reply comments. The Public comment hearing  
22 took place on November 9, 2000, as scheduled.

23 The proposed EPS Rule provides that on its effective date, any Load-Serving Entity selling  
24 electricity or aggregating customers for the purpose of selling electricity must derive at least 0.2  
25 percent of the total retail energy sold from new solar resources or environmentally-friendly renewable  
26 electric technologies. The EPS Rule provides that solar resources include photovoltaic resources and  
27 solar thermal resources that generate electricity.

28 Electric Service Providers that are not Utility Distribution Companies ("UDC's") are exempt

1 until 2004, but could voluntarily participate.

2 UDCs would recover part of the costs of the portfolio standard through current System  
3 Benefits Charges, if they exist, including a re-allocation of demand side management funding to  
4 portfolio uses. Additional portfolio standard costs will be recovered by a customer environmental  
5 portfolio surcharge of \$.000875 per kWh on the customer's monthly bill. There is a surcharge cap of  
6 \$.35 per month for residential customers, and \$13 per month per meter or per service for all non-  
7 residential customers, except for those using 3000 kW or more per month who will be subject to a  
8 cap of \$39 per month.

9 The portfolio percentage increases on January 1 of each year after 2001, so that by 2012,  
10 Load-Serving Entities must derive 1.1 percent of their total retail sales from qualifying sources. A  
11 Load-Serving Entity is entitled to meet the portfolio requirement with electricity produced in Arizona  
12 by environmentally-friendly renewable electricity technologies that are defined as in-state landfill gas  
13 generators, wind generators and biomass generators.

14 The EPS Rule provides that the Commission would continue the annual increase in portfolio  
15 percentage after December 31, 2004, only if the cost of environmental portfolio electricity has  
16 declined to a Commission-approved cost/benefit point. If the Commission does not choose to  
17 continue the annual increase of the portfolio percentage after 2004, the portfolio percentage would be  
18 frozen at .8 percent until 2012 or until the Commission chooses to reinstate the annual increase.

19 Load-Serving Entities are eligible for a number of extra credit multipliers that may be used to  
20 meet the portfolio standard requirements. New solar electric systems installed and operating prior to  
21 December 31, 2003 qualify for multiple extra credits for kWh produced for 5 years following start-  
22 up. The extra credit varies depending on the year in which the system started up. There is a Solar  
23 Economic Development Extra Credit Multiplier for in-state power plant installation and in-state  
24 manufacturing and installation, and a Distributed Solar Electric Generation and Solar Incentive  
25 Program multiplier.

26 Beginning January 1, 2004, the Commission may impose a deficiency payment of 30¢ per  
27 kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. The Solar  
28 Electric Fund will be utilized to purchase solar electric generators or solar electricity in the following

1 calendar year for the use by public entities in Arizona, such as schools, cities, counties or state  
2 agencies.

3 One of the major concerns of the parties was that the EPS surcharge may not be sufficient for  
4 some Load-Serving Entities to meet their mandated renewable percentage under the EPS Rule, and as  
5 a result rate-payers may be faced with large deferred costs that the utilities might incur in meeting the  
6 mandate. A.A.C. R14-2-1618.B.2 requires Staff to establish, no later than January 1, 2003, an  
7 Environmental Portfolio Cost Evaluation Working Group to study the costs and benefits of the EPS.  
8 This Working Group will present its recommendations to the Commission whether in 2005 and after.  
9 the portfolio percentage should increase as currently scheduled. The deficiency payments under the  
10 Rule do not start until after the Commission has considered the recommendations of the Working  
11 Group. The Hearing Division has recommended replacing "shall" with "may" and inserting "no  
12 earlier than" before "January 1, 2004" in R14-2-1618.F to clarify that the deficiency payments may  
13 start as early as January 1, 2004, but do not have to start as of January 1, 2004, depending on when  
14 and how the Commission acts on the Working Group's recommendations.

15 Neither the Load-Serving Entities affected by the Rule nor the Commission will know the  
16 true cost of the EPS for several years, which is why the EPS Rule incorporates the "off ramp"  
17 provision of R14-2-1618.B.2. It is the intent of this Rule that the surcharge will cover the cost of the  
18 mandate. It is not the Commission's intent that the ratepayers of Arizona pay the surcharge and also  
19 be faced with high deferred costs if it turns out the surcharge is not sufficient to allow an utility that is  
20 taking prudent measures to meet the portfolio percentage. However, neither do we wish to encourage  
21 utilities to ignore their obligation under the EPS Rule to meet the required percentages. The  
22 Commission will re-examine the required percentages, appropriate surcharge and the amount of the  
23 deficiency payment in 2003 based on actual experience.

24 Staff should work with stakeholders and interested parties to develop operating procedures  
25 and standards for the implementation of the environmental Portfolio Standard. The Director, Utilities  
26 Division, shall establish workshops or working groups, as needed, to recommend operating  
27 procedures and standards. Operating procedures and standards should include, but are not limited to,  
28 the topics of green pricing, green electricity, net metering, net billing, solar leasing, credit trading,

1 sale or trading of excess portfolio kWhs, and other administrative details necessary to implement the  
2 portfolio standard. The Director, Utilities Division, shall have the authority to approve the operating  
3 procedures and standards.

4 After consideration of the filed written comments and oral comments received in the public  
5 comment hearings, the Hearing Division recommends modifications of the EPS Rule as set forth in  
6 Appendix A ("Proposed Modifications"). The Proposed Modifications are not substantive, but rather  
7 clarify the intent and parts of the EPS Rule.

8 \* \* \* \* \*

9 Having considered the entire record herein and being fully advised in the premises, the  
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. On April 20, 1999, Staff opened Docket No. E-0000A-99-0205 in the Matter of the  
13 Generic Investigation of the Development of A Renewable Portfolio Standard As A Potential Part of  
14 the Retail Electric Competition Rules. The Commission accepted testimony and conducted  
15 hearings.

16 2. On May 4, 2000, in Decision No. 62506, the Commission adopted an Environmental  
17 Portfolio Standard and ordered Staff to commence a rulemaking process to adopt rules consistent  
18 with the EPS.

19 3. On May 31, 2000, Staff opened the rule-making docket. On August 1, 2000, in  
20 Decision No. 62762, the Commission ordered Staff to forward the rules entitled the Environmental  
21 Portfolio Standard, to be numbered as A.A.C. R14-2-1618 to the Secretary of State for Notice of  
22 Proposed Rulemaking.

23 4. The EPS Rule was published in the Arizona Administrative Register on August 25,  
24 2000.

25 5. Pursuant to Procedural Order dated August 9, 2000, a public comment hearing was  
26 scheduled for November 9, 2000, and interested parties were requested to file written comments on  
27 or before October 5, 2000, and Reply comments on or before October 24, 2000. Staff conducted a  
28 workshop on the proposed EPS on August 29, 2000.



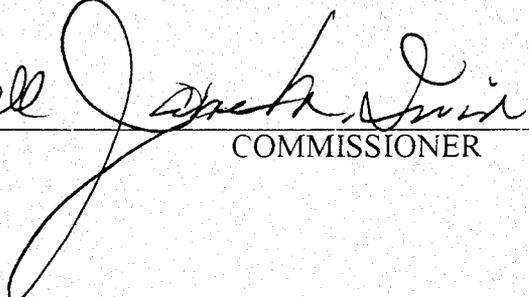
1 IT IS FURTHER ORDERED that the Director, Utilities Division, shall establish workshops  
2 or working groups, as needed, to recommend operating procedures and standards for the  
3 Environmental Portfolio Standard and that the Director shall have the authority to approve such  
4 operating procedures and standards.

5 IT IS FURTHER ORDERED that R14-2-1618 shall be effective for each individual Load-  
6 Serving Entity upon Commission approval of its Environmental Portfolio Standard Surcharge tariff.

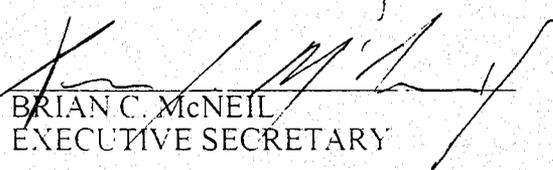
7 IT IS FURTHER ORDERED that the Utilities Division Staff shall investigate the feasibility  
8 and desirability of promulgating the Environmental Portfolio Standard under a new Article.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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13 CHAIRMAN COMMISSIONER COMMISSIONER  
14

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
16 Secretary of the Arizona Corporation Commission, have  
17 hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this 8<sup>th</sup> day of February, 2001.

20   
21 BRIAN C. McNEIL  
22 EXECUTIVE SECRETARY

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SERVICE LIST FOR: PROPOSED RULEMAKING FOR THE ENVIRONMENTAL PORTFOLIO STANDARD

DOCKET NO.: RE-00000C-00-0377

SERVICE LIST FOR RE-00000C-00-0377

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
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Deborah Scott, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
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APPENDIX A

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES  
REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 16. RETAIL ELECTRIC COMPETITION

Article 16. Retail Electric Competition

R14-2-1601. Definitions

1. No change.

2. No change.

3. No change.

4. No change.

5. No change.

6. No change.

7. No change.

8. No change.

9. No change.

10. No change.

11. No change.

12. No change.

13. No change.

14. No change.

15. No change.

16. No change.

17. No change.

18. No change.

19. "Green Pricing" means a program offered by an Electric Service Provider where customers elect to pay a rate premium for ~~electricity generated by renewable sources~~ renewable-generated electricity.

20. No change.

21. No change.

22. No change.

23. No change.

24. No change.

25. No change.

- 1 26. No change.
- 2 27. No change.
- 3 28. No change.
- 4 29. "Net Metering" or "Net Billing" is a method by which customers can use electricity from customer-  
5 sited solar electric generators to offset electricity purchased from an Electric Service Provider. The  
6 customer only pays for the "Net" electricity purchased.
- 7 30.29. "Noncompetitive Services" means Distribution Service, Standard Offer Service, transmission, and any  
8 ancillary services deemed to be non-competitive by the Federal Energy Regulatory Commission. Must-  
9 Run Generating Units services, provision of customer demand and energy data by an Affected Utility or  
10 Utility Distribution Company to Electric Service Providers, and those aspects of Metering Service set  
11 forth in R14-2-1612(K).
- 12 31.30. "OASIS" is Open Access Same-Time Information System, which is an electronic bulletin board where  
13 transmission-related information is posted for all interested parties to access via the Internet to enable  
14 parties to engage in transmission transactions.
- 15 32.31. "Operating Reserve" means the generation capability above firm system demand used to provide for  
16 regulation, load forecasting error, equipment forced and scheduled outages, and local area protection to  
17 provide system reliability.
- 18 33.32. "Potential Transformer (PT), Voltage Transformer (VT)" is an electrical device used to step down  
19 primary voltages to 120V for metering purposes.
- 20 34.33. "Provider of Last Resort" means a provider of Standard Offer Service to customers within the  
21 provider's certificated area whose annual usage is 100,000 kWh or less and who are not buying  
22 Competitive Services.
- 23 35.34. "Public Power Entity" incorporated by reference the definition set forth in A.R.S. § 30-801.16.
- 24 36.35. "Retail Electric Customer" means the person or entity in whose name service is rendered.
- 25 37.36. "Scheduling Coordinator" means an entity that provides schedules for power transactions over  
26 transmission or distribution systems to the party responsible for the operation and control of the  
27 transmission grid, such as a Control Area Operator, Arizona Independent Scheduling Administrator, or  
28 Independent System Operator.
- 38.37. "Self-Aggregation" is the action of a retail electric customer that combines its own metered loads into a  
single purchase block.
39. "Solar Electric Fund" is the funding mechanism established by this Article through which deficiency  
payments are collected and solar energy projects are funded in accordance with this Article.

1        40.38. "Standard Offer Service" means Bundled Service offered by the Affected Utility or Utility Distribution  
2        Company to all consumers in the Affected Utility's or Utility Distribution Company's service territory  
3        at regulated rates including metering, meter reading, billing and collection services, demand side  
4        management services including but not limited to time-of-use, and consumer information services. All  
5        components of Standard Offer Service shall be deemed noncompetitive as long as those components are  
6        provided in a bundled transaction pursuant to R14-2-1606(A).

7        41.39. "Stranded Cost" includes:

- 8            a.        The verifiable net difference between:
  - 9                    i.        The net original cost of all the prudent jurisdictional assets and obligations necessary  
10                    to furnish electricity (such as generating plans, purchased power contracts, fuel  
11                    contracts, and regulatory assets), acquired or entered into prior to December 26, 1996,  
12                    under traditional regulation of Affected Utilities; and
  - 13                    ii.        The market value of those assets and obligations directly attributable to the  
14                    introduction of competition under this Article:
- 15            b.        Reasonable costs necessarily incurred by an Affected Utility to effectuate divestiture of its  
16            generation assets;
- 17            c.        Reasonable employee severance and retraining costs necessitated by electric competition,  
18            where not otherwise provided; and
- 19            d.        Other transition and restructuring costs as approved by the Commission as part of the Affected  
20            Utility's Stranded Cost determination pursuant to R14-2-1607.

21        40.42. "System Benefits" means Commission-approved utility low income, demand side management,  
22        Consumer Education, environmental, renewables, long-term public benefit research and development,  
23        and nuclear fuel disposal and nuclear power plant decommissioning programs, and other programs that  
24        may be approved by the Commission from time to time.

25        43.44. "Transmission Primary Voltage" is voltage above 25 kV as it relates to metering transformers.

26        44.42. "Transmission Service" refers to the transmission of electricity to retail electric customers or to electric  
27        distribution facilities and that is so classified by the Federal Energy Regulatory Commission or, to the  
28        extent permitted by law, so classified by the Arizona Corporation Commission.

29        45.43. "Unbundled Service" means electric service elements provided and priced separately, including, but not  
30        limited to, such service elements as generation, transmission, distribution, Must Run Generation,  
31        metering meter reading, billing and collection, and ancillary services. Unbundled Service may be sold  
32        to consumers or to other Electric Service Providers.

1 46.44. "Universal Node Identifier" is a unique, permanent, identification number assigned to each service  
2 delivery point.

3 47.45. "Utility Distribution Company" (UDC) means the electric utility entity regulated by the Commission  
4 that operates, constructs, and maintains the distribution system for the delivery of power to the end user  
5 point of delivery on the distribution system.

6 48.46. "Utility Industry Group" (UIG) refers to a utility industry association that establishes national standards  
7 for data formats.

7 R14-2-1618. Environmental Portfolio Standard

8 A. Upon the effective implementation of a Commission-approved Environmental Portfolio Standard Surcharge  
9 tariff. ~~Starting on January 1, 2001, any Load-Serving Entity Electric Service Provider~~ selling electricity or  
10 aggregating customers for the purpose of selling electricity under the provisions of this Article must derive at  
11 least .2% of the total retail energy sold from new solar resources or environmentally-friendly renewable  
12 electricity technologies, whether that energy is purchased or generated by the seller. Solar resources include  
13 photovoltaic resources and solar thermal resources that generate electricity. New solar resources and  
14 environmentally-friendly renewable electricity technologies are those installed on or after January 1, 1997.

14 1. Electric Service Providers ~~Competitive~~ ESPs, that are not UDCs, are exempt from portfolio  
15 requirements until 2004, but could voluntarily elect to participate. ESPs choosing to participate would  
16 receive a pro rata share of funds collected from the Environmental Portfolio Surcharge delineated in  
17 R14-2-1618.A.2 for portfolio purposes to acquire eligible portfolio systems or electricity generated  
18 from such systems.

18 2. Utility Distribution Companies would recover part of the costs of the portfolio standard through current  
19 System Benefits Charges, if they exist, including a re-allocation of demand side management funding to  
20 portfolio uses. Additional portfolio standard costs will be recovered by a customer Environmental Portfolio  
21 Surcharge on the customers' monthly bill. The Environmental Portfolio Surcharge shall be assessed monthly to  
22 every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of  
23 \$0.000875 per kWh or:

- 24 • Residential Customers: \$.35 per service
- 25 • Non-Residential Customers: \$13 per service
- 26 • Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months:  
27 \$39.00 per service.

28 In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing the

1 Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use the lesser of (i) the load  
2 profile or otherwise estimated kWh required to provide the service in question; or (ii) the service's contract  
3 kWh. The Environmental Portfolio Surcharge shall be \$.000875 per kWh of retail electricity purchased by the  
4 customer. There shall be a surcharge cap of \$ .35 per month for residential customers. There shall be a  
5 surcharge cap of \$13 per month per meter or per service if no meter is used for all non-residential customers,  
6 except for those non-residential customers whose meter's registered demand is 3000 kW or more for 3  
7 consecutive months, who will be subject to a surcharge cap of \$39.00 per month per meter.

8 3. Customer bills shall reflect a line item entitled "Environmental Portfolio Surcharge, mandated by the  
9 Corporation Commission."

10 4. Utility Distribution Companies or ESPs that do not currently have a renewables program may request a  
11 waiver or modification of this section due to extreme circumstances that may exist.

12 B. The portfolio percentage shall increase after December 31, 2000.

13 1. Starting January 1, 2001, the portfolio percentage shall increase annually and shall be set according to  
14 the following schedule:

YEAR	PORTFOLIO PERCENTAGE
2001	.2%
2002	.4%
2003	.6%
2004	.8%
2005	1.0%
2006	1.05%
2007-2012	1.1%

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21 2. The Commission would continue the annual increase in the portfolio percentage after December 31,  
22 2004 only if the cost of environmental portfolio electricity has declined to a Commission-approved  
23 cost benefit point. The Director, Utilities Division shall establish, not later than January 1, 2003, an  
24 Environmental Portfolio Cost Evaluation Working Group to make recommendations to the Commission  
25 of an acceptable portfolio electricity cost/benefit point or portfolio kWh cost impact maximum that the  
26 Commission could use as a criteria for the decision to continue the increase in the portfolio percentage.  
27 The recommendations of the Working Group shall be presented to the Commission not later than June  
28 30 December 31, 2003. In no event, however, shall the Commission increase the surcharge caps as  
delineated in R14-2-1618.A.2 above.

3. The requirements for the phase-in of various technologies shall be:

- a. In 2001, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 10 percent on R&D.
- b. In 2002 and 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.
- ~~e. In 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.~~
- c.d. In 2004, through 2012, the portfolio kWh makeup shall be at least 60 percent solar electric with no more than 40 percent solar hot water or other environmentally-friendly renewable electricity technologies.

~~C. The portfolio requirement shall apply to all retail electricity in the years 2001 and thereafter.~~

C.D. Load-Serving Entities Electric Service Providers shall be eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements; Extra credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction requirements in R14-2-1618B.3. With the exception of the Early Installation Extra Credit Multiplier, which has a five-year life from operational start-up, all other extra credit multipliers are valid for the life of the generating equipment.

1. Early Installation Extra Credit Multiplier: For new solar electric systems installed and operating prior to December 31, 2003, Load-Serving Entities Electric Service Providers would qualify for multiple extra credits for kWh produced for 5 years following operational start-up of the solar electric system. The 5-year extra credit would vary depending upon the year in which the system started up, as follows:

YEAR	EXTRA CREDIT MULTIPLIER
1997	.5
1998	.5
1999	.5
2000	.4
2001	.3
2002	.2
2003	.1

1                    Eligibility to qualify for the The Early Installation Extra Credit Multiplier would end in 2003.  
2                    However, any eligible system that was operational in 2003 or before would still be allowed the  
3                    applicable extra credit for the full five years after operational start-up.

4                    2. Solar Economic Development Extra Credit Multipliers: There are 2 equal parts to this multiplier, an in-  
5                    state installation credit and an in-state content multiplier.

6                    a. In-State Power Plant Installation Extra Credit Multiplier: Solar electric power plants installed  
7                    in Arizona shall receive a .5 extra credit multiplier.

8                    b. In-State Manufacturing and Installation Content Extra Credit Multiplier: Solar electric power  
9                    plants shall receive up to a .5 extra credit multiplier related to the manufacturing and  
10                    installation content that comes from Arizona. The percentage of Arizona content of the total  
11                    installed plant cost shall be multiplied by .5 to determine the appropriate extra credit  
12                    multiplier. So, for instance, if a solar installation included 80% Arizona content, the resulting  
13                    extra credit multiplier would be .4 (which is .8 X .5).

14                    3. Distributed Solar Electric Generator and Solar Incentive Program Extra Credit Multiplier: Any  
15                    distributed solar electric generator that meets more than one of the eligibility conditions will be limited  
16                    to only one .5 extra credit multiplier from this subsection. Appropriate meters will be attached to each  
17                    solar electric generator and read at least once annually to verify solar performance.

18                    a. Solar electric generators installed at or on the customer premises in Arizona. Eligible customer  
19                    premises locations will include both grid-connected and remote, non-grid-connected locations.  
20                    In order for Load-Serving Entities ~~Electric Service Providers~~ to claim an extra credit  
21                    multiplier, the Load-Serving Entity ~~Electric Service Provider~~ must have contributed at least  
22                    10% of the total installed cost or have financed at least 80% of the total installed cost.

23                    b. Solar electric generators located in Arizona that are included in any Load-Serving Entity's  
24                    ~~Electric Service Provider's~~ Green Pricing program.

25                    c. Solar electric generators located in Arizona that are included in any Load-Serving Entity's  
26                    ~~Electric Service Provider's~~ Net Metering or Net Billing program.

27                    d. Solar electric generators located in Arizona that are included in any Load-Serving Entity's  
28                    ~~Electric Service Provider's~~ solar leasing program.

                    e. All Green Pricing, Net Metering, Net Billing, and Solar Leasing programs must have been  
                    reviewed and approved by the Director, Utilities Division in order for the Load-Serving Entity  
                    ~~Electric Service Provider~~ to accrue extra credit multipliers from this subsection.

                    4. All multipliers are additive, allowing a maximum combined extra credit multiplier of 2.0 in years 1997-  
                    2003, for equipment installed and manufactured in Arizona and either installed at customer premises or

1 participating in approved solar incentive programs. So, if a ~~an~~ Load-Serving Entity Electric Service  
2 Provider qualifies for a 2.0 extra credit multiplier and it produces 1 solar kWh, the Load-Serving Entity  
3 Electric Service Provider would get credit for 3 solar kWh (1 produced plus 2 extra credit).

4 D.E. Load-Serving Entities Electric Service Providers selling electricity under the provisions of this Article shall  
5 provide reports on sales and portfolio power as required in this Article, clearly demonstrating the output of  
6 portfolio resources, the installation date of portfolio resources, and the transmission of energy from those  
7 portfolio resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the  
8 accuracy of these data. Reports shall be made according to the Reporting Schedule in R14-2-1613.B

9 E.F. If a ~~an~~ Load-Serving Entity Electric Service Provider selling electricity under the provisions of this Article fails  
10 to meet the requirements of this rule as modified by the Commission after consideration of the recommendations  
11 of the Environmental Portfolio Cost Evaluation Working Group, the Commission ~~may~~ shall impose a deficiency  
12 payment penalty, beginning no earlier than January 1, 2004, on that Load-Serving Entity Electric Service  
13 Provider that the Load-Serving Entity Electric Service Provider pay an amount equal to 30¢ per kWh to the Solar  
14 Electric Fund for deficiencies in the provision of solar electricity. This deficiency payment, which is in lieu of  
15 any other monetary payment penalty which may be imposed by the Commission, may not be imposed for any  
16 calendar year prior to 2004. This Solar Electric Fund will be established and utilized to purchase solar electric  
17 generators or solar electricity in the following calendar year for the use by public entities in Arizona such as  
18 schools, cities, counties, or state agencies. Title to any equipment purchased by the Solar Electric Fund will be  
19 transferred to the public entity. In addition, if the provision of solar energy is consistently deficient, the  
20 Commission may void a ~~an~~ Load-Serving Entity's Electric Service Provider's contracts negotiated under this  
21 Article.

- 22 1. The Director, Utilities Division shall establish a Solar Electric Fund in 2004 to receive deficiency  
23 payments and finance solar electricity projects.
- 24 2. The Director, Utilities Division shall select an independent administrator for the selection of projects to  
25 be financed by the Solar Electric Fund. A portion of the Solar Electric Fund shall be used for  
26 administration of the Fund and a designated portion of the Fund will be set aside for ongoing operation  
27 and maintenance of projects financed by the Fund.

28 E.G. Photovoltaic or solar thermal electric resources that are located on the consumer's premises shall count toward  
the solar portfolio standard applicable to the current Load-Serving Entity Electric Service Provider serving that  
consumer.

E.H. Any solar electric generators installed by an Affected Utility to meet the environmental portfolio standard shall  
be counted toward meeting renewable resource goals for Affected Utilities established in Decision No. 58643.

1 H.I. Any Load-Serving Entity Electric Service Provider or independent solar electric generator that produces or  
2 purchases any eligible solar kWh in excess of its annual portfolio requirements may save or bank those excess  
3 solar kWh for use or sale in future years. Any eligible solar kWh produced subject to this rule may be sold or  
4 traded to any Load-Serving Entity Electric Service Provider that is subject to this rule. Appropriate  
5 documentation, subject to Commission review, shall be given to the purchasing entity and shall be referenced in  
6 the reports of the Load-Serving Entity Electric Service Provider that is using the purchased kWh to meet its  
7 portfolio requirements.

8 I.J. Environmental Portfolio Standard requirements shall be calculated on an annual basis, based upon electricity  
9 sold during the calendar year.

10 I.K. ~~A An~~ Load-Serving Entity Electric Service Provider shall be entitled to receive a partial credit against the  
11 portfolio requirement if the Load-Serving Entity Electric Service Provider or its affiliate owns or makes a  
12 significant investment in any solar electric manufacturing plant that is located in Arizona. The credit will be  
13 equal to the amount of the nameplate capacity of the solar electric generators produced in Arizona and sold in a  
14 calendar year times 2,190 hours (approximating a 25% capacity factor).

15 1. The credit against the portfolio requirement shall be limited to the following percentages of the total  
16 portfolio requirement:

2001	Maximum of 50 % of the portfolio requirement
2002	Maximum of 25 % of the portfolio requirement
2003 and on	Maximum of 20 % of the portfolio requirement

17 2. No extra credit multipliers will be allowed for this credit. In order to avoid double-counting of the same  
18 equipment, solar electric generators that are used by other Load-Serving Entities Electric Service  
19 Providers to meet their Arizona portfolio requirements will not be allowable for credits under this  
20 Section for the manufacturer, Electric Service Provider to meet its portfolio requirements.

21 K.L. The Director, Utilities Division shall develop appropriate safety, durability, reliability, and performance  
22 standards necessary for solar generating equipment and environmentally-friendly renewable electricity  
23 technologies and to qualify for the portfolio standard. Standards requirements will apply only to facilities  
24 constructed or acquired after the standards are publicly issued.

25 L.M. ~~A An~~ Load-Serving Entity Electric Service Provider shall be entitled to meet up to 20% of the portfolio  
26 requirement with solar water heating systems or solar air conditioning systems purchased by the Load-Serving  
27 Entity Electric Service Provider for use by its customers, or purchased by its customers and paid for by the  
28 Load-Serving Entity Electric Service Provider through bill credits or other similar mechanisms. The solar water  
heaters must replace or supplement the use of electric water heaters for residential, commercial, or industrial  
water heating purposes. For the purposes of this rule, solar water heaters will be credited with 1 kWh of

1 electricity produced for each 3,415 British Thermal Units of heat produced by the solar water heater and solar air  
2 conditioners shall be credited with kWhs equivalent to those needed to produce a comparable cooling load  
3 reduction. Solar water heating systems and solar air conditioning systems shall be eligible for Early Installation  
4 Extra Credit Multipliers as defined in R14-2-1618 CD.1 and Solar Economic Development Extra Credit  
Multipliers as defined in R14-2-1618 CD.2.b.

5 M.N. ~~A An Load-Serving Entity Electric Service Provider~~ shall be entitled to meet the portfolio requirement with  
6 electricity produced in Arizona by environmentally-friendly renewable electricity technologies that are defined  
7 as in-state landfill gas generators, wind generators, and biomass generators, consistent with the phase-in schedule  
8 in R14-2-1618 B.3. Systems using such technologies shall be eligible for Early Installation Extra Credit  
9 Multipliers as defined in R14-2-1618 CD.1 and Solar Economic Development Extra Credit Multipliers as  
10 defined in R14-2-1618 CD.2.b.

APPENDIX B

CONCISE EXPLANATORY STATEMENT

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

**I. CHANGES IN THE TEXT OF THE PROPOSED EPS RULE FROM THAT CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE SECRETARY OF STATE**

After public comment, the following sections have been modified from the text of the revised rules published in the Arizona Administrative Register:

**R14-2-1618.A**

Delete "January 1, 2001," and replace with "Upon the effective implementation of a Commission-approved Environmental Portfolio Standard Surcharge tariff," in the first sentence of section 1618.A.

**R14-2-1618.A.1**

Delete "Competitive ESPs", and replace with "Electric Service Providers". Insert "from the Environmental Portfolio Surcharge delineated in R14-2-1618.A.2" after "funds collected".

**R14-2-1618.A.2**

Delete the third and fourth sentences of section 1618.A.2 and replace with the following:

"The Environmental Portfolio Surcharge shall be assessed monthly to every metered and or non-metered retail electric service. This monthly assessment will be the lesser of \$0.000875 per kWh or:

- Residential Customers: \$.35 per service
- Non-Residential Customers: \$13 per service
- Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: \$39.00 per service."

In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing the Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use the lesser of (i) the load profile or otherwise estimated kWh required to provide the service in question; or (ii) the service's contract kWh.

1           **R14-2-1618.B.2**

2           Delete "December 31" in the third sentence of section 1618.B.2 and replace with "June 30".

3           **R14-2-1618.B.3**

4           Insert "and 2003" after "In 2002" in section 1618.B.3.b. Delete section 1618.B.3.c and re-  
5 letter accordingly.

6           **R14-2-1618.C**

7           Delete this paragraph in its entirety and reletter the Rule accordingly.

8           **R14-2-1618.D**

9           Replace "Electric Service Providers" with "Load-Serving Entities" whenever the former  
10 appears through this section.

11           Insert a second sentence after "requirements:" as follows "Extra Credits may be used to meet  
12 portfolio requirements and extra credits from solar electric technologies will also count toward the  
13 solar electric fraction requirements in R14-2-1618.B.3. With the exception of the Early Installation  
14 Credit Multiplier, which has a five-year life from operational system start-up, all other extra credit  
15 multipliers are valid for the life of the generating equipment." Insert a period and delete the colon  
16 after "requirements."

17           **R14-2-1618.D.1**

18           Following the table of extra credit multipliers, insert "Eligibility to qualify for" before "The  
19 Early Installation Credit Multiplier" and insert a second sentence as follows: "However, any eligible  
20 system that was operational in 2003 or before would still be allowed the applicable extra credit for  
21 the full five years after operational start-up."

22           **R14-2-1618.D.3**

23           Replace "Electric Service Providers" with "Load-Serving Entities".

24           **R14-2-1618.D.4**

25           Replace "Electric Service Provider" with "Load-Serving Entity".

26           **R14-2-1618.E**

27           Replace "Electric Service Providers" with "Load-Serving Entities".

28           **R14-2-1618.F**

1 Replace "Electric Service Provider" with "Load-Serving Entity". Replace "shall" with "may"  
2 before "impose". Replace "penalty" with "deficiency payment" in the first sentence. Insert "no  
3 earlier than" before "January 1, 2004,". Replace "penalty" with "payment" in the third sentence.

4 **R14-2-1618.G**

5 Replace "Electric Service Provider" with "Load-Serving Entity".

6 **R14-2-1618.I**

7 Replace "Electric Service Provider" with "Load-Serving Entity". Delete "or independent  
8 solar electric generator" after "Electric Service Provider". Replace "solar" with "eligible" where it  
9 appears before "kWh".

10 **R14-2-1618.K**

11 Replace "Electric Service Providers" with "Load-Serving Entities".

12 **R14-2-1618.M**

13 Replace "Electric Service Provider" with "Load-Serving Entity".

14 **R14-2-1618.N**

15 Replace "Electric Service Provider" with "Load-Serving Entity".

16 **II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED**  
17 **RULES**

18 **General Issues**

19 In its comments TEP supports the proposed EPS Rules, believing they will foster  
20 development of long-term, cost effective and sustainable growth in Arizona's renewable  
21 industries. The Environmental Group believes the proposed EPS Rules balance the benefits  
22 of clean energy generation with a modest cost. The Solar and Renewable Industries also  
23 supported the EPS Rules, stating they are positioned to help the Affected Utilities meet the  
24 requirements under the EPS and that solar and renewable energy technology investment in  
25 Arizona depends on passage of the EPS Rules.

26 **Issue:** RUCO and AEPCO argued that the mandatory surcharge violates Article XV, section  
27 14 of the Arizona Constitution, which requires the Commission to ascertain the fair value of a  
28 public service corporation's property in Arizona prior to establishing just rates. AEPCO

1 states that the surcharge will fall many hundred thousand dollars short each year of meeting  
2 the costs of the EPS mandate, thus the adoption of the EPS Rules denies AEPCO its  
3 constitutional right to recover its costs and earn a reasonable rate of return on fair value.

4 RUCO also argued that the Commission does not have authority to establish the Solar  
5 Electric Fund ("SEF") because, according to RUCO, only the legislature has the authority to  
6 establish such fund. Absent authority to create the SEF, by law the proceeds of penalties are  
7 to be paid into the state treasury and credited to the general fund. Further, RUCO argued the  
8 concept of the SEF violates state procurement laws which specifically set forth the terms and  
9 conditions for what a state agency may contract for or purchase on its own behalf with state  
10 funds. Finally, RUCO claims the Commission's authority is limited in the amount of penalty  
11 it can impose. Article XV, section 16 of the Arizona Constitution and A.R.S. section 40-425  
12 (A) limit the penalty to not less than \$100 nor more than \$5,000 for each offense. According  
13 to RUCO, having the penalty determined by kWh, falls outside constitutional limits.

14 Staff argued that the Commission's constitutional and statutory ratemaking authority  
15 includes adoption of the Rule. Staff cited that under the Arizona constitutional provisions of  
16 Article 15, Section 3 and statutory provisions such as A.R.S. §§ 40-321 and 40-331, the  
17 Commission may adopt rules requiring sales of electricity to conform to an environmental  
18 standard for the benefit of the Affected Utilities, ESPs and the public. Staff argued the  
19 Commission has the constitutional authority to set an appropriate market structure for just and  
20 reasonable rates in a competitive environment. If the Commission determines that the market  
21 structure for just and reasonable rates in a competitive market includes environmentally-  
22 friendly sources such as solar, the Commission may adopt rules under Section 3 to ensure its  
23 goals are met. According to staff, if the collection of penalties is reasonably related to these  
24 goals, the Commission may impose the penalties as a necessary step in its rate setting powers  
25 and under its authority to ensure the health and welfare of the public.

26 Staff argued that surcharges can be implemented in any number of ways for specific  
27 load-serving entities. As the Rule provides, some surcharges will be passed through as  
28 System Benefits Charges already included in rates for some entities. Staff noted that other

1 entities may request that the surcharge be implemented on an interim basis as either a deferral  
2 account or an adjuster clause to be reviewed in a subsequent rate proceeding for that entity. It  
3 is Staff's opinion that even in the event recent court decisions are upheld on appeal, the  
4 Commission could design mechanisms under the rule for individual utilities that would permit  
5 the EPS to continue.

6 **Analysis:** The Commission's ratemaking powers encompass a broader spectrum of  
7 actions than simply setting rates, and are matters uniquely for Commission determination.  
8 This Rule is an essential step in setting rates for Utility Distribution Companies and Load-  
9 Serving Entities because the Commission has determined that just and reasonable electric  
10 rates for Arizona should include a portfolio of renewable resources as the source of electricity.  
11 The Commission has appealed the recent court decisions which appear to require a finding of  
12 fair value whenever rates are set. At this juncture the Commission believes that the EPS Rule  
13 and its attendant surcharge are within the powers of the Commission to promulgate.

14 **Resolution:** No changes required.

15 **Issue:** Although arguing that the Commission does not have the authority to adopt the EPS  
16 Rules, AEPCO argued that if it does, the Commission should not apply the rule to the  
17 cooperatives. According to AEPCO: 1) it needs no new resources, of any kind, in the near  
18 future to meet the state's rural power needs; 2) investment in renewable resources when no  
19 resources are needed exacerbates consumer rate impacts and contributes unnecessarily to  
20 stranded costs; 3) cooperatives have little or no demand side management or other similar  
21 program funds to shift to renewable expenditures unlike investor-owned utilities; 4) non-profit  
22 cooperatives have no shareholder source of funds to apply to the capital costs associated with  
23 the EPS mandate, and thus may look only to borrowed funds to finance the EPS mandate, but  
24 since the environmental portfolio does not meet the lender's requirement that capital be  
25 expended only on needed, least-cost resources, the cooperatives have no funding source other  
26 than the surcharge; and 6) any ancillary, general economic benefits the EPS Rule may  
27 generate will most likely benefit the state's urban areas.

28 AEPCO proposed a new subsection 1618.A.1:

1 "1. Affected Utilities which are non-profit member owned cooperatives are exempt  
2 from the portfolio percentage requirements set forth in R14-2-1618.B.1 except as  
3 provided in this subsection. Such cooperative Affected Utilities shall collect the  
4 Environmental Portfolio surcharge authorized by R14-2-1618.A.3 and shall apply the  
5 proceeds toward meeting the renewable portfolio percentages. To the extent that the  
6 proceeds of the Surcharge are insufficient to allow such cooperative Affected Utilities  
7 to meet or exceed the renewable portfolio percentages, no further purchase of  
8 installation of renewable resources or technologies shall be required."

9 TEP argued that the Commission should reject AEPCO's position that certain utilities  
10 should be exempt from the Portfolio Standard requirements because all Arizona residents  
11 benefit from the development of renewable resources and thus all should contribute to funding  
12 the development of renewable resources.

13 Staff disagreed that any changes need to be made to the Rule on account of the  
14 cooperatives. Staff noted that R14-2-1618.A.4 provides that "Utility Distribution Companies  
15 or ESPs that do not currently have a renewables program may request a waiver or  
16 modification of this section due to extreme circumstances that may exist."

17 **Analysis:** With the growth that has taken place in this state, not all of the cooperatives are  
18 located in strictly rural communities. If the cooperatives expect to incur substantial hardship  
19 on account of the rule, they should be able to take advantage of the waiver provisions of the  
20 proposed rule.

21 **Resolution:** No change required.

22 **Issue:** The Solar and Renewable Industries do not believe the EPS is dependant on retail  
23 competition or even the presence of competitive ESPs, to be successful. The Solar and  
24 Renewable Industries suggested that the EPS be promulgated under a new Article entitled  
25 "Environmental Portfolio Standard" rather than as part of the Retail Electric Competition  
26 Rules.

27 Staff agreed that to promulgate the EPS under a new Article independent of the retail  
28 Electric Competition Rules is reasonable. Staff suggested that at some time in the future, the

1 new Article could also include the proposed Distributed Generation and Interconnection  
2 Rules, possible future rules related to reliability, and possible future rules related to electric  
3 transmission planning and adequacy studies.

4 **Analysis:** The suggestion to promulgate the Environmental Portfolio Standard under a  
5 new Article is reasonable, however, to effect such change requires careful consideration of the  
6 inter-relationship of the rules. Given the public benefit from enacting this rule sooner rather  
7 than later, we will reserve consideration of a new Article to a future date.

8 **Resolution:** No change required at this time, but the Utilities Division should study the  
9 feasibility and desirability of promulgating the EPS Rule as part of a separate Article.

10 **R14-2-1618.A**

11 **Issue:** AEPCO noted that 1618.A initially references "Electric Service Providers" as being  
12 subject to the Rule, but promptly exempts them from participation until 2004. AEPCO  
13 believed a broader term or additional terms need to be used rather than "ESP" in 1618.A and  
14 perhaps throughout the Rule. Similarly, AEPCO argued the word "Competitive" before ESP  
15 should be stricken in 1618.A.1. Citizens also noted that as written, the rules only apply to  
16 ESPs which by definition only include those providing competitive services. Citizens agreed  
17 that the term should be broader.

18 NWE noted that because the Retail Competition Rules define ESPs as a company  
19 supplying Competitive Services, which explicitly excludes Standard Offer Service, the use of  
20 the term ESP in 1618.A has the effect of excluding Affected Utilities from the portfolio  
21 standard. NWE believes the reference should be corrected to include all companies providing  
22 standard offer service. NWE noted that the use of ESP is repeated several times in the  
23 proposed rule and should be corrected wherever it occurs.

24 Staff acknowledged that the use of the term Electric Service Provider is a hold over  
25 from an earlier version of the Retail Electric Competition Rules and a slightly different  
26 definition of the term "Electric Service Provider." Staff recommended that to avoid any  
27 confusion as to the applicability of the portfolio requirements on UDCs, that every reference  
28 to Electric Service Provider or "ESP", with the exception of sections R14-2-1618.A.1 and A.4

1 be changed to "Load-Serving Entity." Load-Serving Entity is defined as "An Electric Service  
2 Provider, Affected Utility or Utility Distribution Company, excluding a Meter Service  
3 Provider and Meter Reading Service Provider." In its Reply comments, TEP supported  
4 Staff's recommended changes.

5 **Analysis:** The portfolio standard is intended to apply to Affected Utilities and UDCs as well  
6 as ESPs. Staff's recommended modification is reasonable and should be adopted. The use of  
7 the term "Competitive ESPs" in section 1618.A.1 is unnecessary in light of Staff's  
8 recommended change, and the term "Competitive" should be eliminated.

9 **Resolution:** Throughout the proposed rule, change reference to Electric Service Providers or  
10 ESPs to "Load-Serving Entity" except in sections 1618.A.1 and A.4. Delete "Competitive"  
11 before "ESP" in section 1618.A.1. For clarity replace "ESP" with "electric Service  
12 Provider" in section 1618.A.1.

#### 13 **R14-2-1618.A.1**

14 **Issue:** AEPCO believed the words "pro rata share of funds collected for portfolio purposes"  
15 is vague. AEPCO suggested that if "share of funds" relates to the surcharge in 1618.A.2, a  
16 reference to that section would clarify what monies are involved.

17 **Analysis:** Additional clarity would result by adding the phrase "from the Environmental  
18 Portfolio Surcharge delineated in R14-2-1618.A.2" after "funds collected".

19 **Resolution:** Modify section 1618.A.1 as discussed above.

#### 20 **R14-2-1618.A.2**

21 **Issue:** Scottsdale supported the use of renewable sources of energy as a means to reduce  
22 energy related pollution in the City of Scottsdale, but believed the proposed standard is unfair  
23 to municipalities because of the diversity and number of electric meters that cities have in  
24 service. Scottsdale has approximately 330 separate electric meters and APS has estimated  
25 that the formula in R14-2-1618.A.2 will cost Scottsdale approximately \$20,000 per year.

26 APS remarked that the inequity Scottsdale complained of is no different that that of  
27 330 individual small non-residential customers, and that to allow consolidation of customer  
28 accounts of large multiple-metered customers would require increasing the EPS Surcharge for

1 other non-residential customers or reduce the funding available to promote environmentally  
2 friendly technologies.

3 Staff disagreed that the surcharge was unfair to municipalities because all customers  
4 pay the same rate per kWh for the surcharge. Staff believed that a city might not pay more for  
5 the surcharge that a chain of stores with many outlets. Staff suggested that cities such as  
6 Scottsdale and other commercial customers consider approaching their Utility Distribution  
7 Company about combining appropriate loads onto fewer meters. By combining loads, it is  
8 possible for the customer to move to a more favorable rate, resulting in significant electric bill  
9 savings. Staff recommended that no change be made.

10 **Analysis:** The rules treat municipalities on a par with any other consumer of electricity  
11 and are not unfair.

12 **Resolution:** No change required.

13 **Issue:** Citizens noted that section 1618.A.2 provides for the partial recovery of the EPS costs  
14 by means of a customer surcharge. Citizens believed that the surcharge should be defined as  
15 applying to the generation portion of the transaction in a competitive environment, and there  
16 is no reason to introduce the UDC into the middle of the generation transaction, particularly  
17 when the UDC is not offering the service for which the surcharge is being applied. Citizens  
18 argued the reasonable approach would be for the UDC to charge the surcharge to its Standard  
19 Offer customers and the participating ESP to apply the charge to its customers.

20 AEPCO questioned whether the pro rata sharing would be customer class specific,  
21 total system kWh driven, or based on some other formula.

22 TEP believed that Staff's recommendations are sufficient to address Citizens'  
23 concerns regarding the of the portfolio surcharge. Staff disagreed with Citizens and argued  
24 that the easiest and guaranteed way to ensure that all customers pay their share is for the  
25 Utility Distribution Company to collect the surcharge from all customers. Staff noted that  
26 since the rule allows ESPs the option to voluntarily opt out of the program, using Citizens'  
27 approach would mean that nobody would collect the surcharge from the customers of the non-  
28 participating ESPs. This would give those non-participating ESPs a competitive advantage

1 over the UDC and other ESPs that do participate in the Portfolio Standard.

2 Staff explained that in order to collect its pro rata share of the surcharge funds an ESP  
3 would simply notify the UDC that it is participating in the Portfolio Standard. The UDC  
4 would then send the ESP the exact amount of surcharge monies collected from the  
5 participating ESP's customers. Staff recommended no change be made.

6 **Analysis:** The easiest approach appears to be to have the UDC collect the surcharge  
7 monies from its customers and then send the participating ESPs their share. No other UDC  
8 supported Citizens' proposal.

9 **Resolution:** No change required.

10 **Issue:** In section 1618.A.2 which provides for caps on the surcharge, Citizens noted that it is  
11 not clear if Dusk-to-Dawn lighting accounts were considered. Citizens argued that a \$13 per  
12 light charge for commercial lighting would significantly impact street lighting customers.  
13 Citizens advocated excluding Dusk-to-Dawn lighting from the application of the surcharge.

14 TEP opposed an exemption for the surcharge for Dusk-to-Dawn lighting. TEP  
15 believed that if a municipal customer cannot afford the \$13 per meter charge, it is a matter  
16 that can adequately be addressed with an ESP.

17 Staff also disagreed with Citizens and believes that perhaps Citizens misread or  
18 misunderstood the surcharge because the \$13 figure is a cap and a streetlight would have to  
19 use over 14,000 kWh in a month to reach the \$13 cap. Staff stated that a typical 100 Watt  
20 high pressure sodium dusk to dawn light, which is on 10 hours a night in a 30 day month  
21 would use only 30 kWh (or 1 kWh per day) and the Portfolio Surcharge for that light for that  
22 month would be 2.6 cents. Staff recommended that Citizens' suggestion be rejected.

23 APS believed it was the intent of the rule that all services (metered or non-metered)  
24 would be subject to the ESP Surcharge and it could be perceived that under current wording  
25 residential customers would arguably be exempt for any non-metered service currently being  
26 provided. In contrast, all non-residential customers will pay the cap regardless of their actual  
27 or contract kWh, and that the \$13 per month surcharge could greatly exceed their  
28 proportionate amount.

1 APS recommended that section A.2 be modified as follows:

2 "The Environmental Portfolio Surcharge shall be assessed monthly to every metered  
3 and/or non-metered retail electric service. This monthly assessment will be the lesser of  
4 \$0.00875 per kWh or:

- 5 • Residential Customers: \$.35 per service
- 6 • Non-Residential Customers: \$13 per service.
- 7 • Non-Residential Customers whose metered demand is 3,000 kW or more for 3  
8 consecutive months: \$39.00 per service."

9 In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing  
10 the Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use  
11 the lesser of (i) the load profile or otherwise estimated kWh required to provide the service in  
12 question; or (ii) the service's contract kWh.

13 Staff agreed with APS's suggested clarification.

14 **Analysis:** Citizens' comments indicate that the rule may be vague as currently written.  
15 APS' suggested modification rectifies the ambiguity and should be adopted.

16 **Resolution:** Modify section 1618.A.2 as proposed by APS.

17 **R14-2-1618.B.2**

18 **Issue:** Section 1618.B.3 orders the Director of the Utilities Division to establish an  
19 Environmental Portfolio Cost Evaluation Working Group to study the cost/benefits of the  
20 portfolio standard. The rule provides that the Commission shall consider the  
21 recommendations of the Working Group by December 31, 2003. After considering the  
22 conclusions of the Working Group the Commission could determine that the portfolio  
23 percentage established in the rule should be modified in the years after 2004. At the public  
24 comment hearing, AEPCO raised the issue that if the Commission didn't take action until  
25 December 31, 2003, regarding a standard that goes into effect on January 1, 2004, the utilities  
26 would not have sufficient time to take action regarding the Commission's action.

27 Staff agreed with the suggestion that the Working Group submit its final  
28 recommendations to the Commission no later than June 30, 2003.

1        **Analysis:**        By moving the date when the Working Group must report to the Commission  
2        six months earlier, the Commission will have more time to consider those recommendations  
3        and take action. We note the rule as written only provides that the Working Group must  
4        submit its recommendations to the Commission by December 31, 2003, but does not require  
5        the Commission to take action on those recommendations by any particular date. However,  
6        under the Rule the portfolio percentage will not increase, if at all, until the Commission has  
7        taken action on the Working Group's cost/benefit recommendations. In any case, the earlier  
8        the Commission is able to communicate potential changes in the portfolio percentage to the  
9        market participants, the better.

10       **Resolution:**    Delete "December 31" in section 1618.B.2 and replace it with "June 30".

11       **R14-2-1618.B.3**

12       **Issue:**    AEPCO noted that (b) and (c) read exactly the same for years 2002 and 2003. and if  
13       that is the intent, (c) could be deleted and the year "2003" added to (b). Staff concurred.

14       **Analysis:**    AEPCO's comments should be adopted.

15       **Resolution:**    Delete R14-2-1618.B.3.c and insert "and 2003" after "In 2002" in R14-2-  
16       1618.B.3.2.b.

17       **Issue:**    NWE noted that depending on the year, 50 to 60 percent of the EPS requirement will  
18       be met by solar electric technologies. NWE advocated modifying the rule to clarify that extra  
19       credits earned on solar electric technologies will also count toward the solar electric fraction.

20              Staff agreed and proposed adding a second sentence to section 1618.D after  
21       "requirements:" as follows: "Extra Credits may be used to meet portfolio requirements and  
22       extra credits from solar electric technologies will also count toward the solar electric fraction  
23       required in R14-2-1618.B.3."

24       **Analysis:**    NWE's and Staff's comments clarify the rule and should be adopted.

25       **Resolution:**    Modify R14-2-1618.D as recommended by Staff.

26       **R14-2-1618.C**

27       **Issue:**    AEPCO claimed that this provision that states "The portfolio requirement shall apply  
28       to all retail electricity in the years 2001 and thereafter" is left over from an earlier version of

1 the Rule and can be deleted.

2 **Analysis:** AEPCO's observations appear to be correct. The language in section 1618.C  
3 does not appear necessary, nor does it advance the clarity of the rule.

4 **Resolution:** Delete section 1618.C and renumber accordingly.

5 **R14-2-1618.D & I**

6 **Issue:** NWE argued that rights to qualifying energy and extra credits should be more  
7 explicitly defined. NWE believed it may be simpler to define all energy and extra credits as  
8 belonging to the person who owns the installation. The owner could, in turn, bank or sell the  
9 energy or credits to energy providers who can use them to meet some or all of their EPS  
10 requirement.

11 NWE notes that section 1618.I provides that any ESP or independent solar electric  
12 generator that produces or purchases any solar kWh in excess of its annual portfolio  
13 requirements may save or bank those solar kWhs for use or sale in future years. The terms  
14 "independent solar electric generator" and "solar kWh" are not defined. NWE suggested this  
15 section should be modified to provide that the owner or any facility producing energy or extra  
16 credits that satisfy the requirements of paragraph 1618 may sell or bank the energy or extra  
17 credits for use in meeting a future year requirement, which would avoid the need to define the  
18 term "independent solar electric generator" and would conform this section to accommodate  
19 the addition of environmentally friendly technologies that were incorporated into the revised  
20 rule.

21 APS argued that the term "independent solar generator" should be deleted from the  
22 rule because the term has no meaning within the context of the rule. APS claimed that solar  
23 generators that fall within the scope of being a "Load-Serving Entity" would already be  
24 covered by Staff's proposed amendment. Solar generators that are not within that definition  
25 have no EPS portfolio requirement and thus no "excess" solar kWh. If these generators are  
26 selling their generation to a "Load-Serving Entity," APS argued, it is the latter that should  
27 receive credit. APS argued that allowing the generator to also receive credits creates an  
28 unnecessary risk of double-counting the solar generation in question.

1 Staff agreed in concept with NWE and stated it was the intent of the rule. The  
2 Environmental Group agreed with NWE that the issue of banking of energy and credits  
3 should be clarified. The Environmental Group believed it was unclear whether the current  
4 wording would permit an independent solar electric generator to sell "excess" solar kWh in  
5 the current year. The Environmental Group suggested inserting the words "current and"  
6 before "future years". However, neither NWE nor Staff have specific suggestions for wording  
7 changes to the rule.

8 **Analysis:** APS's analysis appears correct. "Independent solar electric generators" that  
9 are not Load Serving Entities are not covered by the rule and do not have an ESP portfolio  
10 requirement. When independent solar electric generators, or other electric generator using  
11 renewable sources sells electricity to a Load Serving Entity, it is the latter that should receive  
12 the credits, as it is only the latter that has use for the credits.

13 In addition, it is not just "solar" kWh's that result in credits, but rather kWh that are  
14 produced by other renewable sources such as in-state landfill gas, biomass and wind.

15 **Resolution:** Delete the term "or independent solar electric generator" from section 1618.I.  
16 Delete "solar" where it appears before "kWh" and insert "eligible" before "kWh" where it  
17 appears the first time in the first sentence of section 1618.I.

#### 18 **1618.D.1**

19 **Issue:** AEPCO believed that it is unclear whether all early extra credit multipliers end in  
20 2003 or continue beyond that year for five years after installation. AEPCO believes the intent  
21 was the latter and suggested deleting the sentence "The Early Installation Extra Credit  
22 Multiplier would end in 2003."

23 Staff suggested that instead of deleting the sentence, it should be modified to read  
24 "The eligibility to qualify for the early Installation Extra Credit Multiplier would end in 2003.  
25 However, any eligible system that was operational in 2003 or before would still be allowed  
26 the applicable extra credit for the full five years after operational start-up." Staff also  
27 recommended that a clarifying sentence be added to the beginning of section 1618.D as  
28 follows: "Electric Service Providers shall be eligible for a number of extra credit multipliers

1 that may be used to meet the portfolio standard requirements: Extra credits may be used to  
2 meet portfolio requirements and extra credits from solar electric technologies will also count  
3 toward the solar electric fraction required in R14-2-1618.B.3 With the exception of the Early  
4 Installation Extra Credit Multiplier, which has a five-year life from operational system start-  
5 up, all other extra credit multipliers are valid for the life of the generating equipment.”

6 **Analysis:** Staff’s suggested modifications are reasonable and most clearly enunciate the  
7 intent of the rule.

8 **Resolution:** Modify 1618.D as proposed by Staff, however, reference should be made to  
9 Load-Serving Entities rather than ESPs.

10 **R14-2-1618.F**

11 **Issue:** Staff noted that section 1618.F refers to the imposition of a “penalty” and that later in  
12 the same section this payment is correctly referred to as a “deficiency payment”. Staff  
13 clarified that rather than being a “penalty” this payment is a requirement for the Load-Serving  
14 Entity to meet its obligations under the Portfolio Standard in another manner. If the Load-  
15 Serving Entity fails to meet its obligation to produce electricity from clean sources under the  
16 portfolio, the “deficiency payment” will be used to meet the Load-Serving Entity’s obligation.  
17 Therefor, Staff recommended that the references in section 1618.F to “penalty” should be  
18 changed to “deficiency payment”.

19 TEP is not in favor of imposing penalties or deficiency payments for non-compliance,  
20 but did support Staff’s recommendation to change the terminology from “penalty” to  
21 “deficiency payment”. TEP noted that because the imposition of deficiency payments is  
22 contingent on subsequent Commission action on the Environmental Portfolio Cost Evaluation  
23 Working Group’s recommendations, TEP reserved further comment on the deficiency  
24 payments until that time, if necessary.

25 **Analysis:** Staff’s proposed modification eliminates potential ambiguity and confusion and  
26 should be adopted.

27 **Resolution:** Modify section 1618.F as discussed above.

28 **R14-2-1618.I**

1        **Issue:** Scottsdale argued that the portfolio surcharge should replace the utility premium  
2 charge for "green power". Scottsdale noted that utilities currently allow customers to elect to  
3 use electricity generated from renewable source for a premium that amounts to considerably  
4 more than the 35 cents per month cap specified in the portfolio standard. For example, the  
5 City of Scottsdale is a solar partner with APS and the City pays a premium to have solar  
6 generation at some of its facilities, for which it will pay a premium of approximately \$7,000  
7 per year. Scottsdale believed it could invest in the same amount in city-owned solar  
8 generation and break even in 4 to 5 years. Therefore, it is the City's position that the existing  
9 program for Green Power should be eliminated.

10            TEP opposed Scottsdale recommendation that municipalities and citizens who install  
11 solar electric systems be exempt from paying the surcharge, and that green power programs  
12 be abolished. TEP argued that because all Arizona residents will benefit from developing  
13 renewable resources, all should contribute to funding the development of renewable  
14 resources. TEP noted that citizens who install solar electric systems stand to gain financially  
15 from the sale of renewable credits to electric service providers, and should not be exempt  
16 from the surcharge. TEP argued that all "green power" programs in Arizona are voluntary  
17 and allow the customer to decide if he wants to contribute a premium for development of  
18 renewable energy resources.

19            Staff also disagreed with Scottsdale and argued that the portfolio surcharge and "green  
20 power" charge are two entirely different mechanisms that have similar goals. The Portfolio  
21 Surcharge is a mandatory charge for all customers that is used to develop renewable  
22 electricity. The utility "green power" programs are entirely voluntary and allow customers to  
23 voluntarily pay a premium for renewable power.

24        **Analysis:** Because the "green power" programs are entirely voluntary there is no need to  
25 eliminate them. Customers who care about the environment, and can afford to pay a premium  
26 for renewable power, are able to do more by participating in the "green power" programs.  
27 There is a public benefit in continuing the programs while still requiring the payment of the  
28 surcharge. Scottsdale and other similarly situated entities should perform their won cost/

1 benefit analyses of how best to meet their own goals of utilizing "green" energy.

2 **Resolution:** No change required.

3 **Issue:** Scottsdale advocated that the Commission consider adopting a provision to encourage  
4 development of renewable generation by forgiving the surcharge to those who install  
5 renewable generation. The City believed that under such a plan, it could afford to invest  
6 \$20,000 each year in solar photo voltaic or other renewable generation equipment installed on  
7 City facilities in lieu of the surcharge, with the result of increasing the base of renewable  
8 generation. Scottsdale advocated that because the utility would forfeit the benefit of the  
9 surcharge, it should be allowed to count the City's solar generation against the utility's  
10 portfolio requirement.

11 Staff disagreed with Scottsdale, claiming that those customers who install their own  
12 renewable generation will automatically pay less of a Portfolio Surcharge because they will be  
13 purchasing fewer kWhs from their electric provider.

14 **Analysis:** We concur with Staff. If Scottsdale, or another electric user is able to install  
15 renewable generation, they will be able to reap the benefits of the power produced and will be  
16 able to reduce their consumption of electricity from other sources.

17 **Resolution:** No changed required.