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BEFORE THE ARIZONA CORPORATION COMMISSION

05RB

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A HEARING
TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN, AND TO AMEND
DECISION NO. 67744

DOCKET NO. E-01345A-05-0816

REPLY BRIEF

OF

SOLAR ADVOCATES

IN THE MATTER OF THE INQUIRY
INTO THE FREQUENCY OF
UNPLANNED OUTAGES DURING 2005
AT PALO VERDE NUCLEAR
GENERATING STATION, THE CAUSES
OF THE OUTAGES, THE
PROCUREMENT OF REPLACEMENT
POWER AND THE IMPACT OF THE
OUTAGES ON ARIZONA PUBLIC
SERVICE COMPANY'S CUSTOMERS

Docket No. E-01345A-05-0826

Arizona Corporation Commission

DOCKETED

FEB 16 2007

DOCKETED BY

NR

IN THE MATTER OF THE AUDIT OF
THE FUEL AND PURCHASED POWER
PRACTICES AND COSTS OF THE
ARIZONA PUBLIC SERVICE COMPANY

Docket No. E-01345A-05-0827

The undersigned counsel, on behalf of the Intervener's in this docket collectively known as the Solar Advocates, hereby offers its REPLY BRIEF in the above referenced dockets pertaining to the Arizona Public Service Company ("APS".)

SOLAR ADVOCATES REPLY BRIEF

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VI_____ **FINALLY, SOLAR ADVOCATES IS DISAPPOINTED IN THE APS INITIAL CLOSING BRIEF PERTAINING TO NET METERING, AS IT ESSENTIALLY IGNORE THE WEAKNESS AND ADMITTED NEED FOR CHANGE ESTABLISHED DURING CROSS EXAMINATION BY THE COMMISSION, THE ALJ, AND INTERVENERS..... 22**

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1
2 **I. A SERIOUS CHALLENGE TO TRADITIONAL REGULATION**
3

4 This proceeding is replete with potential challenges to the
5 Commission's continued authority to regulate a large and
6 powerful monopoly which owes its very existence to the State of
7 Arizona. While the "deregulation" or "restructuring" movement
8 which had begun to sweep the country is seemingly on hold, the
9 weaknesses of traditional cost-of-service, rate-of-return
10 regulation have not gone away. Indeed, the facts as offered in
11 this rate proceeding suggest that Arizona suffers from many of
12 the common problems of traditional regulation, and several
13 relatively unique issues that Arizona needs to address:
14
15

16 ***a. "Old" Challenges for Traditional Regulation (and previous***
17 ***remedies attempted with more or less success):***
18

- 19 1. **Asymmetry of information, resources, and experience**
20 (Traditionally addressed by Commission regulation,
21 publically funded staff, public consumer counsel,
22 public legal proceeding with potential or real
23 competitors and other represented interests allowed
24 intervention.)
25 2. **Inability Of Backward Looking, Cost-Reimbursement Plus Type**
26 **Regulation To Cope With Rapidly Escalating Costs**
27 (Traditionally addressed by Fuel cost adjustment
28 clauses, power purchase adjustments, third party
providers of electricity)
3. **Difficulty And Lack Of Regulatory Tools In Oversight Of**
Technology Choices For Generation, And Between "More Of The

threats for gross errors.

1 **QUESTION FACED BY COMMISSION:** How can the
2 Commission ensure that the Company adopts the
3 technological and operational innovations that
4 are being developed and implemented in other
5 jurisdictions that may provide other state
6 economies competitive advantages that if not
7 adopted in Arizona will ultimately disadvantage
8 our state's citizens and its economy?

- 9
10 d) **CURRENT FACT:** Failure to Address new Challenges
11 for Traditional Regulation may result in
12 overreaction by legislative or other non-
13 regulatory government institutions, leading to
14 inappropriately broad deregulation, management
15 "discretion," or other limitations on Commission
16 oversight.

17 **QUESTION FACED BY COMMISSION:** How to craft a
18 rate increase in this proceeding which addresses
19 the need of the Company to maintain or improve
20 its Wall Street credit ratings and other
21 favorable financial evaluations, while
22 maintaining appropriate oversight of a regulated
23 monopoly who does not have the same objectives as
24 the Commission pursuing the public interest.

- 25 e) **CURRENT FACT:** Even if the Commission determines
26 that the public interest requires that it approve
27 the full rate increase requested by the Company-
28 which Solar Advocates does not oppose-the public
will demand an explanation and justification for
the need for the rate increases beyond mysterious
concepts such as "attrition."

QUESTION FACED BY COMMISSION: How to include
in its general rate case decision the explanation
and justification for any rate increase granted
that satisfies the public that in return for the

1 increased revenues the state will receive a fair
2 bargain.

3 It is in answer to this very serious question
4 that Solar Advocates believes that Commission
5 support for such publically popular measures as
6 net metering, and the more general "future
7 proofing" suggestions made to allow the
8 Commission to monitor and ensure that the huge
9 investments to be made in the coming years by APS
10 will best prepare the state's infrastructure for
11 the very serious energy challenges ahead in the
12 remainder of this century and beyond.

13 **II. The Opportunity Available To Arizona's Economy If the** 14 **Challenges Can Be Met**

15
16 While the challenges facing the Commission, the
17 Company, and the other parties are significant, the
18 opportunity for Arizona and its economy is almost
19 limitless. Arizona is the fastest growing state in the
20 nation, and one of the nation's richest states in solar
21 energy, and has perhaps the best combination of the
22 "special direct" sunlight required for concentrating solar
23 installations¹ to generate electricity. This indigenous
24 source of energy is increasingly recognized as extremely
25
26

27 ¹ Utilizing either photovoltaic or solar thermal technologies in CSP
28 configurations.

1 important to the state's economy² and beyond, including the
2 national security of the United States³. The Arizona
3 Department of Commerce's recently issued Solar Electric
4 Road Map Study stated, in part,

5 **"AZ has the potential to become a world leader in many**
6 **aspects of solar development, and is a model location**
7 **for the evolution of new solar technologies and**
8 **applications.** This roadmap is intended to provide a
9 framework to make AZ a world leader in the research,
10 development, manufacture and deployment of next
11 generation solar electric technologies." (Emphasis
12 added)
13
14

15 The Solar Advocates role in this docket has focused on
16 bringing to the attention of the Commission, and perhaps in some
17 cases to Arizona Public Service Company (the "Company") the
18 documented knowledge and experience of the many other states,
19 Commissions, utilities, scientists and engineers, and
20 legislatures throughout the country who have already
21 successfully implemented and even expanded their true net
22 metering programs in the last three decades. With the recent
23 adoption of the RENEWABLE ENERGY STANDARD AND TARIFF RULES
24 ("REST Decision") in Commission Decision 69127, and perhaps more
25
26

27 ² Arizona Solar Electric Roadmap Study, Full Report, January 2007, Arizona Department of Commerce
28

³ See

1 importantly, the determination of the principles set forth in
2 that lengthy and thorough process, the Commission is well
3 positioned in this APS general rate proceeding to begin to
4 implement in utility specific fashion the policies that will
5 position Arizona's energy future for the daunting challenges
6 ahead.

7
8 Such specific action can and should start with the adoption
9 of a true net metering tariff in this docket, without the
10 strings and limitations again proposed by the Company. Such
11 action by the Commission will thereby accomplish both the
12 necessary determination of this specific rate case, but also the
13 broader goal of clarifying the Commissions intention of
14 following through on its efforts to date regarding Arizona's
15 sustainable energy future. By maintaining a steady course the
16 Commission will also ensure the ability the citizens and
17 consumers of Arizona to make their own market based choices, by
18 investing their own resources in addressing the energy needs of
19 the state. Such action will have the very real consequence of
20 reducing the need to further raise APS's rates to meet the
21 nation's highest and continuous demand growth.
22
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24

25 **III. THE IMPORTANCE OF THE PRINCIPLES AND REASONING OF**
26 **THE COMMISSION'S RECENT FINAL DECISION AND ORDER**
27 **NO. 69127 IN DETERMINING THIS UTILITY SPECIFIC**
28 **PROCEEDING**

1
2 The Administrative Law Judge has now officially taken
3 notice in this case of the recent decision by the full
4 Commission in DOCKET NO. RE-00000C-05-0030, IN THE MATTER
5 OF THE PROPOSED RULEMAKING FOR THE RENEWABLE ENERGY
6 STANDARD AND TARIFF RULES (hereinafter "RES Decision" or
7 "COMMISSISON'S FINAL DECISION AND ORDER NO. 69127.)

8
9 Whether or not the Decision is ultimately upheld pursuant
10 to the current Attorney General review or subsequent
11 appeals, the lengthy record, underlying Commission staff
12 work, public input, Commissioner deliberations, policy
13 discussions and reasoning, and Commission adopted final
14 conclusions and issue resolutions are clearly of continuing
15 relevance to the necessarily utility specific decisions in
16 this proceeding.
17

18 In fact, if the RES Decision does not ultimately go
19 into effect, the final conclusions and issue resolutions of
20 the REST Decision will likely provide the best set of
21 general principles available to the Commission and the
22 regulated utilities of the state for the foreseeable
23 future. Solar Advocates thus suggests that the RES
24 Decision is an extremely valuable resource to the State of
25 Arizona, its regulated utilities, and its economy in
26 seeking uniform statewide objectives and approaches
27
28

1 applicable to renewable energy issues -whether or not the
2 specific rules therein adopted ever go into effect.

3 Thus, Solar Advocates strongly urges the Commission,
4 even (or perhaps especially) in the event that the Attorney
5 General determines that the formal rules should not go into
6 effect in whole or in part, to give life to the hard
7 bargained issue resolutions embodied in the REST Decision
8 that apply to situations demanding resolution--such as the
9 present APS proceeding. In this case there can be no
10 argument as to the Commissions' underlying authority.

11 Faced with the need to decide issues such as the
12 appropriate form of a net metering tariff, or the proper
13 approach in determining whether and how much cost recovery
14 should be allowed to a utility adopting a net metering
15 tariff, Solar Advocates urges the Commission to recognize
16 that it has already decided these issues, and that
17 principles of judicial economy, *stare decisis*⁴, and the
18 general principle of non discrimination⁵ at the root of
19 public utility regulation requires renewable energy
20
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24 ⁴ "Latin for "to stand by things decided." *Stare decisis* is essentially the doctrine of precedent. Courts cite to *stare decisis*
25 when an issue has been previously brought to the court and a ruling already issued. Generally, courts will adhere to the
26 previous ruling, though this is not universally true." See, e.g., Planned Parenthood of Southeastern Pennsylvania v. Casey,
505 US 833 (1992), retrieved from "http://www.law.cornell.edu/wex/index.php/Stare_decisis" From Wex, everyone's
27 resource for law learning,

28 ⁵ Non discrimination in regulation endeavors to assure that customers in similar situations be treated similarly.

1 policies and consistent issue resolution that conform as
2 much as reasonably possible to the principles and issue
3 resolutions set forth in DECISION AND ORDER NO. 69127.
4

5 **IV. Analyzing an actual Solar Customer's Bill Where A So-**
6 **Called Substitute For Net Billing—The "Net Billing" Tariff**
7 **EPR-2 Is The Tariff Applied.**

8
9 APS consistently attempts to justify its failure to
10 offer a true net metering tariff on a general basis by
11 claiming that customers denied⁶ the choice of the proposed
12 Net Metering Tariff needn't complain—they have access to
13 EPR-2 and EPR-4—their so-called net billing tariffs. While
14 Solar Advocates points out in the Section VI the logical
15 inadequacy of attempting to legally justify an inadequate
16 tariff by stating that others are available, it is also
17 worthwhile to illustrate the magnitude of the Company's
18 misrepresentation in claiming that "net billing" is an
19 adequate substitute for "net metering"⁷.
20
21

22
23 ⁶ Because of the application of one of its many limitations such as
24 limitation to generation facilities of 10kw or under, the aggregate
25 cap, or the application of one of the "preferred" tariffs

26 ⁷ It must also be noted that the Company has offered no evidence from
27 any other jurisdiction that such a substitute is proper. In fact, they
28 offer only their assertion that such is true.

1 A member of the Solar Advocates, American Solar
2 Electric, is an Arizona-based design-build firm
3 specializing in Photovoltaic (Solar-Electric) Power Systems
4 for commercial, industrial and residential applications.
5 One of American Solar Electric's previously installed
6 projects, owned by Genesis Worldwide, Inc⁸., has made its
7 actual APS bills available to Solar Advocates and the
8 Commission for discussion and illustrative purposes. The
9 actual bill for the period ending July 18, 2006 is also
10 attached for the Commission's review (EXHIBIT A-2), with
11 only the account number and meter number redacted. The
12 basis for the bill is clearly indicated on page one, top
13 left, as "YOUR SERVICE PLAN: E-32 WITH EPR-2"
14

15
16 Even cursory review of this bill will disclose several
17 key elements that are not at all fully brought out in the
18 APS references to the availability of net billing:
19

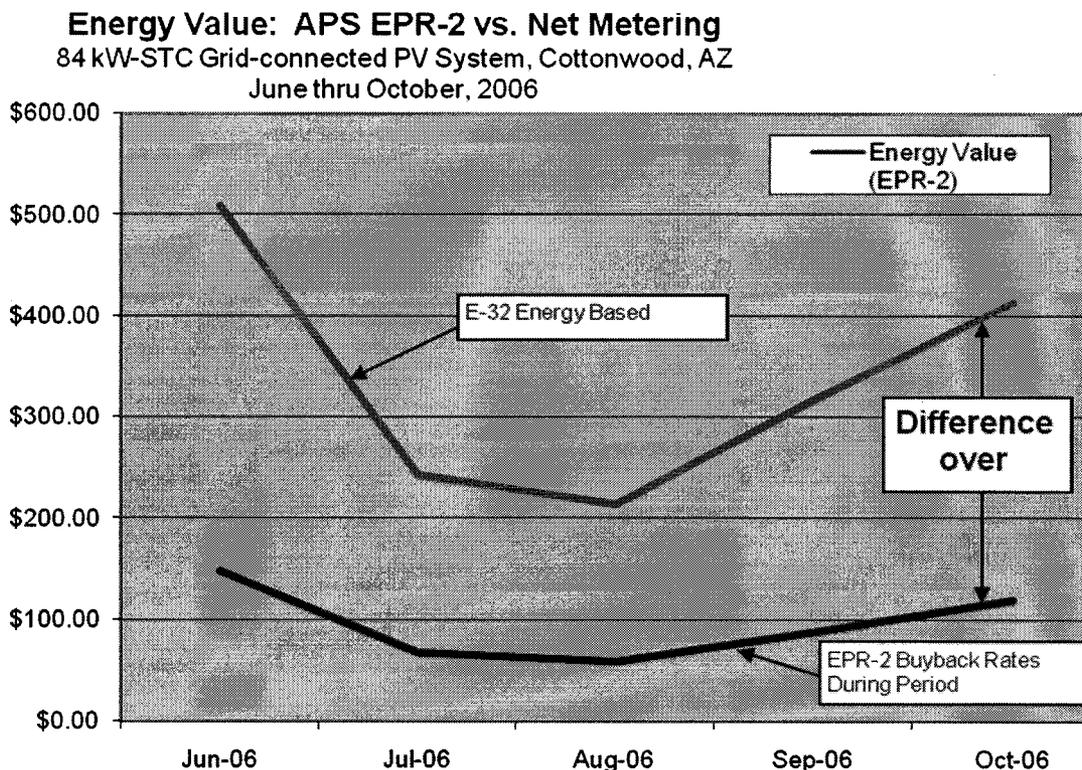
- 20 • The customer purchased from APS a total of 7,520 kWh
21 during the period ending July 18, 2006, for which it
22 was charged an average rate per kWh of \$0.0921.
23

24
25
26 ⁸ This commercial installation is described in the Project Installation
27 Bulletin (see EXHIBIT A-1) Members of the Company, the Commission, and
28 Commission staff attended the opening of this installation.

- 1 • While the solar system fed 2,640 kWh into the grid
2 during the same period, it received only \$67.87, at an
3 average rate of \$0.025708.
- 4 • If the 2,640 kWh that the Genesis system fed into the
5 grid had received even the average rate paid—i.e. net
6 metering—during the period, that would have resulted
7 in a credit of \$243.23. The difference for this
8 billing period is \$175.36.
- 9 • For this month, providing net metering instead of net
10 billing would result in a 15% reduction in Genesis's
11 utility bill. Net metering would clearly
12 significantly enhance the value of the solar system,
13 reducing it's payback time, and incentivizing more
14 customers to invest in clean, renewable solar energy.
- 15 • As indicated on FIGURE 1 below, this simple difference
16 in charged rates versus the rate paid under the "net
17 billing" tariff amounts to \$1,212.94 over the summer
18 peaking months of June through October, 2006. It is
19 no wonder the Company prefers "net billing" as a
20 substitute for "net metering."
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Figure 1-APS EPR-2 VS NET METERING



- Especially in light of the Commissions goals and objectives regarding removing barriers to private investment assisting the state in achieving a significantly increased penetration of sustainable energy technologies, this additional DISINCENTIVE imposed by net billing rates such as EPR-2 should not be ignored.

- 1 • The actual DISINCENTIVE is actually even greater, as
2 the above figures do not include the following:
- 3 • A customer utilizing tariff EPR-2 is also required to
4 pay an additional "basic service charge" of \$7.34.
5 (Note that this is in addition to the E-32 Basic
6 Service Charge also assessed)
- 7
- 8 • The distribution charge, assessed on a kW basis
9 similar to a demand charge, is \$7.722 per kW measured
10 at the monthly peak of 53 kW, for a total of \$409.27.
11 Note that under net billing, the customer owned
12 generation is not allowed to reduce the assessed peak,
13 which is thus unfairly discriminatory to the
14 particular customer, and also discourages in general
15 terms the very kind of peak reducing behavior that the
16 rate structure should encourage.
- 17
- 18
- 19 • While it is a matter of public record that on during
20 the peak on July 24-25 the listed price at the Palo
21 Verde Hub was listed price at Palo Verde for the 2006
22 summer peak hour was \$399.00 per MW hour, APS was
23 paying Genesis \$0.03551 per kW hour. If part of the
24 task of good regulation is "getting the incentives
25 right," there remains much work to be done.
26
- 27
- 28

1 In Summary, "Net Billing" is simply not an adequate
2 substitute for a true net metering tariff available to all
3 who are willing to invest their own funds in sustainable
4 energy technologies, and APS must not be allowed to claim
5 that it is. See Initial Reply Brief for additional facts
6 and reasoning regarding this issue.
7

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9
10 **V. Solar Advocates Has Previously Set Forth the Details of the**
11 **Issues that Are Determined by the Final Decision And**
12 **Order No. 69127, in its initial reply brief.**

13
14 **a. Final Decision And Order No. 69127 Clearly Sets Forth**
15 **Mechanism For Any Cost Recovery to be Allowed.**
16

17 As provided therein, any amount of costs to be allowed
18 APS must be demonstrated to be limited to that necessary
19 "to recover only the costs in excess of the Market Cost
20 of Comparable Conventional Generation⁹" as defined in the
21
22

23
24 ⁹ As adopted in Commission rule R14-2-1801. Definitions (K) "Market Cost of
25 Comparable Conventional Generation" means the Affected Utility's energy and capacity
26 cost of producing or procuring the incremental electricity that would be avoided by
27 the resources used to meet the Annual Renewable Energy Requirement, taking into
28 account hourly, seasonal, and long-term supply and demand circumstances. Avoided

1 Decision. The "methodology" proposed by APS in this
2 proceeding does not conform to either the letter or the
3 spirit of the policy determinations set forth in Final
4 Decision and Order No. 69127.

5
6 ***b. THE ISSUANCE OF FINAL DECISION AND ORDER NO.
7 69127 CLEARLY INDICATES THAT THE TIME FOR
8 OVERLY CAUTIOUS AND LIMITED "PILOT" NET
9 METERING TARIFFS IS LONG PAST. THE FUTURE OF
10 ARIZONA'S ECONOMY CANNOT AFFORD THE DEFEATIST
11 "MIXED MESSAGES" REGARDING SUSTAINABLE ENERGY
12 ADVOCATED BY APS.***

13 The Final Decision and Order No. 69127 approach
14 to net metering requirements indicates Commission
15 confidence that there is no need for the timidity
16 offered by APS "pilot" net metering tariff, with
17 limits in individual systems and aggregate
18 participation clearly below the current norm of
19 other states with much higher levels of experience,
20 including virtually all of Arizona's neighbors.

21
22 ***c. Any Subsequent Action by Arizona Attorney General on
23 Commission Authority Will not Alter Commission's Clear
24 Authority AND OBLIGATION To Decide this Case***

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26
27 costs include any avoided transmission and distribution costs and any avoided
28 environmental compliance costs.

1 Whether or not it is ultimately determined that
2 the Commission has the authority to order by rule that
3 the utilities meet the overall objectives set forth in
4 Final Decision And Order No. 69127, in its decision
5 applicable to a specific utility in this case there is
6 no such limitation on deciding the details of the
7 renewable energy related tariffs proposed by the
8 Company. It would be extremely inappropriate for the
9 Commission to allow the Company to ensure the failure
10 of any other approach to reaching the goals and
11 objectives of Final Decision And Order No. 69127 by
12 approving the proposed limits on net metering and the
13 inconsistent cost recovery proposals of APS. Rather,
14 the Commission can and should determine such details
15 based on its clear authority to decide such issues in
16 a manner consistent with what it has already
17 determined to be in the public interest regarding the
18 increase in public participation in achieving higher
19 percentages of renewable energy penetration in
20 Arizona's portfolio.
21
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24

25 ***d. Final Decision and Order No. 69127 was the result of a***
26 ***long, full, and wide-ranging inquiry by the***
27 ***Commission, it's Staff, and a very large representation***
28 ***of the public, focusing specifically on the issues related***
 to renewable energy in Arizona

1
2 Finally, Solar Advocates urges the Commission to stand firm in its clear
3 decisions set forth in its FINAL DECISION AND ORDER NO. 69127, whatever the
4 ultimate outcome of the current Attorney General review and subsequent
5 appeals may be. DOCKET NO. RE-00000C-05-0030, unlike this general rate case
6 directed at a specific utility, involved a long, full, and wide-ranging inquiry by the
7 Commission, it's Staff, and a very large representation of the public and formal
8 interveners, focusing specifically on the various issues related to renewable
9 energy in Arizona.
10
11

12 The very purpose of proceeding such as DOCKET NO RE-00000C-05-0030
13 is to determine general statewide policy, and whether or not it is ultimately
14 determined that the particular form in which the Commission expressed its
15 policy determinations was appropriate—the Commission must not allow those
16 who would tie the Commission's hands for perhaps years to come, to silence the
17 clear policy decisions rendered as a result of that Docket. in summary of the
18
19

20 The importance and depth of the factual review carried out in DOCKET
21 NO. RE-00000C-05-0030, and the full and fair consideration of the issues
22 contained in Final Decision And Order No. 69127, was directed at issues and
23 matters far broader than the narrow issue to be reviewed by the Attorney
24 General. Solar Advocates urges the Commission to stand firm, using its clear
25 authority to decide the issues presented in this rate case of its clear direction to
26 the utilities and citizens of Arizona regarding the importance of net metering and
27 investment in distributed renewable energy equipment and the related capital
28 costs:

1 **Analysis:** We agree with Staff that customers who pay capital costs to install
2 distributed generation, benefit not only themselves, but the system by not
3 contributing to overloading of transmission lines, overheating of distribution
4 lines, wear and stress on substations and transformers, and the need for
5 utilities to procure or generate the most expensive peaking power during
6 peak load times, and utility customers who do not install distributed
7 generation will therefore receive a benefit from distributed generation. We
8 agree with the VSI statement that Net Metering is an important piece of the
9 regulatory infrastructure for distributed generation, and disagree with APS'
10 assertion the terms of the definition go beyond what is necessary to define
11 the term. We see no reason to delete language requiring Affected Utilities to
12 pay for power it receives from customer-generators, and find that it is
13 preferable to have the definition of Net Metering set forth at this time in
14 order to provide: certainty for the Distributed Generation Working Group,
15 which can then move forward with other important interconnection issues.
16 We note that the definition of Net Metering adopted herein does not allow
17 for the "zeroing out" of credits at the end of the year, as the SunShare
18 customer stated currently occurs in her comments, but requires that the
19 customer-generator receive compensation for credits at the end of the
20 annualized period.

21 **Resolution: No change required¹⁰.**

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¹⁰ Final Decision in DOCKET NO. RE-00000C-05-0030 at page 6, Exhibit B

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I. Finally, Solar Advocates Is Disappointed in the APS Initial Closing Brief Pertaining to Net Metering, AS IT Essentially Ignore the weakness and admitted need for change established During Cross Examination By the Commission, the ALJ, and Intervenors.

7 While perhaps a bit tedious, Solar Advocates finds it
8 necessary to set forth below, in a Detailed Tabular Format, a
9 line by line refutation of the full argument of APS pertaining
10 to net metering contained in its INITIAL POST-HEARING BRIEF.
11 This verbatim analysis and refutation is made necessary
12 because of APS's apparent willingness to ignore virtually all
13 evidence brought out during the hearing relating to the
14 weaknesses of its net metering tariff and related proposals.
15 The second column associated with the language of APS presents
16 in summary form Solar Advocate's refutations, consisting of
17 identification of the factual error or linguistic diversions
18 concealed by the APS language, logical inconsistencies, and
19 where appropriate, a more accurate characterization of the
20 facts and analysis offered by Solar Advocates.

21
22
23 In each instance in the table where available, references
24 to the transcript or conflicting Company testimony is also
25 forth to demonstrate the lack of evidentiary basis for any
26 approval by the Commission of the APS proposals as filed.
27
28

1 THE TABLE BELOW CONTAINS THE COMPLETE SECTION REGARDING NET METERING FROM APS
2 INITIAL POST-HEARING BRIEF BEGINNING AT LINE 19, PAGE 107 WITH THE SECTION ENTITLED
3 "B. NET METERING. 1. THE APS PROPOSAL.

4 APS Initial POST-HEARING BRIEF beginning
5 at line 19, page 107

6 "APS is seeking Commission approval of its
7 proposed Rate Schedule EPR-5, which would
8 create a ~~three year pilot~~ net metering program
9 for customers that have renewable resource
10 generation facilities ~~of 10 kW or less~~, where
11 the customer's generator(s) and load are located
12 at the same premise. (APS Exhibit No. 37 at 9
13 [DeLizio]; id. at Attachment GAD-5). EPR-5
14 sets a proposed ~~15 MW cap~~ on total aggregate
15 participation in the EPR-5 net metering pilot
16 program. (APS Exhibit No. 38 at 14 [DeLizio]).
17 Renewable resources eligible to participate in
18 this pilot program include solar and other
19 renewable resources, as defined in the
20 Commission's Environmental Portfolio
21 Standard, A.A.C. R-14-2-1618. (APS Exhibit
22 No. 37 at 9-10 [DeLizio]). **Qualifying
23 ~~standard retail rate schedules for service
24 under this pilot program would be limited to
25 Rate Schedules E-12, ET-1, ET-2, ECT-IR
26 and ECT-2 for residential customers and
27 Rate Schedules E-32 and E-32TOU for
28 general service customers with a monthly
29 maximum demand of 20kW or less. (Id. at
30 10).~~**

- The first two paragraphs, beginning on line 16, page 107 and ending on line 15, page 108, is an accurate restatement of APS's proposal
- For summary purposes, the provisions to which Solar Advocates objects are highlighted by strike-through formatted font.
- Note that Commission Staff has joined the Solar Advocates in opposing the limitation of net metering to facilities "of 10kw or less," and also in opposition to the APS proposed limitation to customers taking service under only selected rate schedules.

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2 The EPR-5 rate is proposed ~~as a pilot~~
3 ~~program and is, therefore, designed to be a~~
4 ~~limited offering~~ to provide an incentive for
5 ~~small~~ customers to participate in the Company's
6 Solar Partners Incentive Program (credit
7 purchase program). (APS Exhibit No. 38 at 14-
8 1 5 [DeLizio]). The Company has proposed that
9 the EPR-5 net metering rate be available to
10 residential customers and general service
11 customers ~~with monthly demands less than or~~
12 ~~equal to 20 kW. (Id. at 16).~~ The net metering
13 program, as proposed within this rate schedule,
14 is intended to attract ~~small~~ customers to install
15 renewable generation by providing an
16 additional incentive beyond the credit purchase
17 under the Company's Solar Partners Incentive
18 Program. (Id.).

- Linguistic Device: Junk Logic¹¹
- The fact that APS has proposed its tariff as “a pilot program and is, therefore, designed to be a limited offering” is irrelevant to what the Commission should do, especially in light of the full decision and policy discussion in the final RES Decision.

14 APS Brief Page 108, beginning at line 16

15 “By setting a participation limit of 15 MW¹²
16 and limiting it to customer-owned renewable
17 resource generation facilities with a nameplate
18 rating of 10 kW or less, the Company has
19 targeted customers who have renewable
20 energy facilities for the primary purposes of
21 meeting their own energy needs, but
22 occasionally have excess energy to provide to
23 the Company” (APS Exhibit No. 37 at 12
24 [DeLizio]).

- **Misleading Linguistic Device**— combining facts with misleading description of target customers.
- By the conjunction of the preceding factual statement with an overly broad, and thus misleading, description of the Company’s “targeted customers,” APS attempts to cloak their proposal with an unjustified sense of reasonableness.
- The APS description of targeted

22 **12 Even with a 15MW cap, APS estimates**

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24 ¹¹ See “A Default-Logic Framework for Legal Reasoning in Multiagent Systems”,
25 peer-reviewed paper available in Technical Report FS-06-05 for the 2006 Fall
26 Symposium of the American Association for Artificial Intelligence, and
27 “Restoring the Individual Plaintiff to Tort Law by Rejecting “Junk Logic”
28 about Specific Causation”, 56 ALABAMA LAW REVIEW 381 (2004).

1 potentially 5,000 3kW-unit customer
2 installations. (Tr. Vol. VIII at 181 1
3 [DeLizio]).

customers, while reasonable, *is not
4 what the proposed APS Tariff
5 actually covers.*

- 6 • Contrary to the apparent meaning of
7 the highlighted statement, the
8 Company’s proposal in no way
9 allows all customers who meet the
10 offered description of targeted
11 customers to qualify for net
12 metering.
- 13 • The offered description of targeted
14 customers applies to any reasonably
15 expected installation of distributed
16 solar generation—“*customers who
17 have renewable energy facilities for
18 the primary purposes of meeting
19 their own energy needs, but
20 occasionally have excess energy to
21 provide to the Company*” .
- 22 • However, in truth APS would deny
23 net metering to any member of this
24 class described proposing an
25 installation of greater than 10kw.
- 26 • Solar Advocates strongly urges the
27 Commission to conform the final
28 tariff to be adopted to in fact apply
to the claimed targeted customers
“customers who have renewable
energy facilities for the primary
purposes of meeting their own
energy needs, but occasionally have
excess energy to provide to the
Company.”
- Solar Advocates notes that the APS
description would apply to virtually
all customers up to 2 MWs, as under
the current APS tariffs, even
including an unlimited net metering
tariff, it would never make
economic sense to invest in solar
generation in excess of that
appropriate “for the primary

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>purposes of meeting their own energy needs, but occasionally have excess energy to provide to the Company”</p>
<p>5 Company Initial Brief at page 108, beginning at line 23,</p> <p>6</p> <p>7 “The proposed 10 kW cap on the individual generator size is appropriate for net metering, even in light of an expanded program under the proposed Renewable Energy Standard (“RES”),</p> <p>8 <u>because the Company already offers net billing rate options for all distributed</u></p> <p>9 <u>generation systems up to 100 kW,</u> which options do not have any cap on aggregate participation. (APS Exhibit No. 38 at 13 [DeLizio]). APS also currently offers rate Schedule EPR-2, which is available to all.”</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Here is the very foundation of the Company’s argument, to which the Company witnesses returned again and again—in fact whenever directly challenged with evidence of the weakness of the extremely limited “pilot” proposal of the Company.</p> <p>Solar Advocates here wishes to clearly underline the logical structure of the APS justification: “The proposed 10 kW cap on the individual generator size is appropriate for net metering, even in light of an expanded program under the proposed Renewable Energy Standard (“RES”), <u>because the Company already offers net billing rate options for all distributed generation systems up to 100 kW.</u>”</p> <p>Or, reduced to its logical structure:</p> <p><u>“A”</u> is appropriate, even” [though the Commission has recently expanded its requirements] “because the Company already offers <u>“B”</u>.</p> <p>That is not a justification of <u>“A”</u>-it is a linguistic device diverting the reader’s attention to <u>“B.”</u></p> <p>This approach thus fails the Commission in two ways—it provides an inadequate basis for adopting the APS proposal <u>“A”</u> as offered, and yet</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>then begs the question of the adequacy of the “net billing” tariffs offered as justification for the anemic net metering proposal.</p> <ul style="list-style-type: none"> ● Review of the “net billing” tariffs as implemented by APS clearly shows that they are NOT adequate substitutes for a true net metering tariff, but are rather a vestige of the by-gone “PURPA WARS” when utilities defending their monopolies attempted to discourage the rise of independent generation. See Section IV “Analyzing an actual Solar Customer’s Bill Where A So-Called Substitute For Net Billing—The “Net Billing” Tariff EPR-2 Is The Tariff Applied.” above <p>”</p>
<p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Qualifying Facilities (“QF”), cogeneration and small power production facilities, up to 100 kW. (<i>Id.</i>). The Company further offers Rate EPR-4 for renewable distributed generation up to 10 kW, and, in addition, provides partial requirement rates for distributed generators larger than 100 kW. (<i>Id.</i> at 14). Finally, the Company has proposed a partial service requirement rate, E-57, for solar installations up to 1MW with no aggregate cap.</p> <p>Again, as noted above, providing a list of other tariffs is in no way, logical or otherwise, relevant to the merits of the tariff proposed.</p> <ul style="list-style-type: none"> ● Further, for the reasons noted in “ANALYZING AN ACTUAL SOLAR CUSTOMER’S BILL WHERE A SO-CALLED SUBSTITUTE FOR NET BILLING—THE “NET BILLING” TARIFF EPR-2 IS THE TARIFF APPLIED”, above, the Commission must not allow the Company to ensure the failure of the Commission’s efforts to encourage renewable and distributed generation through the use of “net billing” rather than “net metering.”

1 As part of this pilot program,
2 the Company would install the
3 necessary bi-directional metering
4 to measure power flow both to and
5 from the customer. (APS Exhibit
6 No. 37 at 10 [DeLizio]).

7 The Company would have to make
8 changes to its customer
9 information systems, so
10 participation under this schedule
11 is subject to the availability of
12 enhanced metering and billing
13 system upgrades. (Id.).

14 Renewable resource energy
15 generated by the customer in
16 excess of their monthly
17 consumption would be accumulated
18 on a kWh basis, and credited to
19 the customer's future monthly
20 bills within the same calendar
21 year. (Id.).

22 Under net billing,⁹³ excess power is
23 purchased at an avoided cost rate,⁹⁴
24 while under net metering the excess
25 power would be credited against
26 power that the customer purchases
27 from the Company in future billing
28 periods and would, therefore, be
compensated at full retail rates.⁹⁵
(APS Exhibit No. 37 at 3 [DeLizio]).
(emphasis added)

93 APS currently utilizes the net billing methodology for
customers taking service under rate schedules EPR-2 and EPR-4.
(APS Exhibit No. 38 at 13 [DeLizio]).

94 Avoided costs are based on wholesale generation market rates
for on-peak and off-peak generation by season.

95 The Energy Policy Act of 2005 defines net metering as
"....service to an electric consumer under which electric energy
generated by that electric consumer from an eligible on-site
generating facility and delivered to the local distribution facilities
may be used to offset electric energy provided by the electric
utility to the electric consumer
during the applicable billing period...." (APS Exhibit No. 38 at 12
[DeLizio]). Net Billing, as defined in the Proposed Rulemaking for
the Renewable Energy Standard and Tariff Rules (Decision No.
68566), "...is a system of billing a customer who installs an
eligible Renewable Energy Resource generator on the customer's
premises for retail electricity purchased at retail rates while

- **Solar Advocates urges the Commission to reject the attempt in the emphasized language to put yet another qualification or "string" on the APS offering of net metering.**

APS has the full power and authority to ensure that the "enhanced metering and billing system upgrades" are in place when needed.

- Rather than including such "requirements" as yet another potential excuse for not providing a modern net metering tariff which put Arizona in a leadership role, Solar Advocates urges the Commission to clearly state that delays in implementation will not be tolerated.

- See the example of how Net Billing actually works above, at **"Analyzing an actual Solar Customer's Bill Where A So-Called Substitute For Net Billing—The "Net Billing" Tariff EPR-2 Is The Tariff Applied"**

crediting the customer's bill for any customer-generated electricity sold to the Affected Utility at avoided cost." (*Id.*).

2. Uncollected Fixed Costs Or "Net Lost Revenues".⁹⁶

EPR-5 would not yield appropriate revenue to cover fixed costs because customers that took service under this schedule and produced their own generation would not pay appropriate transmission and distribution costs, nor will they pay the full amount of non-avoidable charges, such as the Competition Rules Compliance Charge ("CRCC"), EPS Surcharge, DSM Cost Adjustment, PSA (for deferred fuel costs incurred during prior periods) and Transmission Cost

(emphasis added)

⁹⁶ In discussing the Company's net metering proposal, "uncollected fixed costs" have also been referred to as "Net Loss Revenues," and are not to be confused with DSM related net lost revenues.

• Linguistic Device: Junk Logic

- Again, this "claim" must be rejected based on its complete lack of necessary factual basis and substance.

Carefully parsed, the emphasized language says:

- 1) "EPR-5 would not yield appropriate revenue to cover fixed costs"

Here is where the mischief begins. Nowhere in this proceeding has APS established what the "appropriate revenue," if any, is. Rather, they always rely on what appear to be reasonable "assumptions" which in fact lead to inequitable results.

While it is a clear requirement of traditional regulation that rates be set, in the course of a rate case, to provide the company with the reasonable opportunity to earn a reasonable

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return on, and of, its investment, that cannot simply be translated into an isolated demand for recovery of APS's "fixed costs" that it argues are somehow not being recovered because of the offering of net metering.

- 2) "because customers that took service under this schedule and produced their own generation would not pay appropriate transmission and distribution costs, "

Again, nowhere in this docket has APS established what the "appropriate transmission and distribution costs," are.

What is clear however, is that on this record the Commission has only essentially irrelevant estimates of what might occur with respect to revenue erosion, and absolutely no estimates of the value of benefits provided with the exception of a proposal to allow a credit for electricity generated calculated in a manner that clearly does not meet the requirements of Commission FINAL DECISION AND ORDER NO.

3) "nor will they pay the full amount of non-avoidable charges, such as [list]"

Again, APS is apparently only concerned about ensuring the full accounting for erosion in charges that should be accounted for in the general rate case. These charges especially may, at the discretion of the Commission, be deemed met (approximately or not) through a proper consideration of the benefits provided.

From at page 110, beginning at line

"Under the Company's proposal, the incremental cost for net metering would be funded through revenues collected through the current EPS surcharge. (Id. at 10). In addition, infrastructure costs, such as changes to the customer billing systems, would also be funded through the EPS surcharge. (Id.). Revenue associated with transmission and distribution, as well as non-avoidable costs that are not recovered from EPR-5 customers would also be funded by the EPS surcharge. (Id.)."

(emphasis added)

- **Here APS implies that it is entitled to the "incremental cost" for net metering—while nowhere in its testimony or other filings has it made any coherent argument regarding precisely what should appropriately be recovered beyond the bare assumption that it is entitled to various sums, always noting that "someone" has to pay!**

Solar Advocates points out that without more facts, and much more careful analysis, it is not at all clear that there is a "net" unrecovered cost to the company that "someone" has to pay.

Until such a proper analysis is done, and the experience which the Company's own witnesses (see Trans at ___ and ___) admitted

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was necessary in order to know what additional costs, if any (see transcript at ____) might exist, no recovery is appropriate, whether under general rate making principles or the principles of the RES Decision

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7 APS Initial Post-Hearing Brief beginning at Line 19, Page 107
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9 The Company believes that it is appropriate to recover its uncollected fixed costs under EPR-5, which offers a special financial subsidy to customers as a means to promote small renewable distributed generation systems. (APS Exhibit No. 38 at 18 [DeLizio]).
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20 With regard to the proposed RES energy requirement associated with distributed generation, the Company is seeking recovery of the fixed costs component and expenses associated with the infrastructure necessary to connect customers to the grid. (Tr. Vol. VIII at 1784 [DeLizio]). The Company is not requesting to collect the generation energy component or the fuel component of such costs. (Tr. Vol. XI1 at 2576 [DeLizio]).
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The term “special financial subsidy” is nowhere defined or demonstrated. Indeed, it logically cannot be demonstrated until the company determines the very elements which it claims is the reason for only offering a “pilot” provision.

Further, using such pejorative and undefined terminology is both unnecessary and inappropriate given the clear policy direction give in the Commission’s FINAL DECISION AND ORDER NO. 69127.

While it is of course clear that a regulated monopoly is entitled to have a reasonable chance to recover a return on, and a return of, it’s prudent investment, or rate base, it is by no means true that whenever such a Company makes an appropriate investment, it is immediately entitled to full recovery of such amount.

Recovery must be determined in a manner that allows full consideration of simultaneous reductions in cost occurring either because of the investment, or for that matter for any

1 other reason. The problems inherent in
2 addressing just one element of a utilities
3 cost and revenue structure are why there
4 is a strong tradition against “single issue
5 rate making.”¹³

6 **APS Initial Post-Hearing Brief beginning at Line
7 19, Page 107**

8 The potential loss of kWh sales and the related
9 uncollected fixed costs from the proposed net
10 metering program would occur for two reasons.

11 First, the Company would be providing a subsidy
12 through the net metering rate to encourage
13 customers to install renewable distributed
14 generation, which will reduce kWh cost recovery
15 that the Company would otherwise have achieved
16 absent the program. (Tr. Vol. XII at 2576 [DeLizio]).

Solar Advocates emphasizes to the
Commission that the fact that a particular
utility tariff provides a benefit to ratepayers
able to qualify for the tariff does not mean
there is a prohibited subsidy.

A “subsidy” must necessarily involve a
benefit not shared by other ratepayers, and
for which the utility is not fully
compensated. Otherwise, the concept can
have no meaning.

Of course, the fatal omission in the APS
approach to the discussion is their refusal, or
inability, to determine, or even address,
whether the benefits to be provided by the
installation of privately owned and operated
generation facilities qualifying for net
metering fully compensates the utility for
any costs incurred.

Rather, APS simply asserts that it is not being
compensated for fixed costs, as if the net
metered customer is producing ANY
electricity, APS is losing revenue, and
therefore it must be compensated. This is
simply false.

As discussed in Solar Advocates Initial Brief,
there are many reasons that a utility’s

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25 ¹³ In some states there is an absolute prohibition, “Single-issue ratemaking is prohibited
26 because it considers changes in isolation, thereby ignoring potentially offsetting
27 considerations and risking understatement or overstatement of the overall revenue
28 requirement. *City of Chicago v. Ill. Commerce Commn.*, 281 Ill.App.3d 617, 627 (1996),
See also 8 Am. Jur. 2d, Public Utilities § 118

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>revenues might decline, ranging from energy conservation, to warm weather in the winter, to cool weather in the summer. Only in the context of a general rate case can the complete financial picture and resulting appropriate rates and mechanisms be set, although curiously APS seems unable to determine just what the effects of net metering are or will be during this general rate case.</p>
<p>7 APS Initial Post-Hearing Brief beginning at Line 19, Page 107</p> <p>8</p> <p>9 Although the customer would be providing a</p> <p>10 portion of their own energy needs through their</p> <p>11 distributed generator, they would</p> <p>12 still be connected to the grid and would rely on</p> <p>13 APS to back up their distributed generator and</p> <p>14 provide their remaining energy needs. (Id.).</p> <p>15 Because the proposed net metering rate does</p> <p>16 not include a <u>customary standby charge</u> to</p> <p>17 recover such costs, the customer would not pay</p> <p>18 their full costs for transmission, distribution or</p> <p>19 other fixed costs, especially for rate schedules</p> <p>20 that recover these costs through energy-based</p> <p>21 charges. (APS Exhibit No. 38 at 19 [DeLizio]).</p> <p>22</p> <p>23</p> <p>24 APS Initial Post-Hearing Brief beginning at Line 19, Page 107</p>	<p>Solar Advocates asserts that there is no such thing as a “customary standby charge.” Rather, “standby charges” are largely an invention of monopoly utilities at the time of PURPA to provide significant disincentives to any customer considering the acquisition of self generation equipment. There are documented cases of utilities charging “standby” to customers self generating virtually all power the consumed charges in excess of the total amounts paid prior to the installation of the self generation equipment¹⁴.</p> <p>As documented in the recent December 2005 public cation, <u>“Rate Structures for Customers With Onsite Generation: Practice and Innovation”</u>, by Synapse Energy Economics and Regulatory Assistance Project, innovative state commissions have generally prohibited the charging of any form of standby rates to renewable and other environmentally preferred generation.</p> <p>The fact that the customer might receives</p>
<p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p></p>

¹⁴ See “Making Connections: Case Studies of Interconnection Barriers and their Impact on Distributed Power Projects” NREL/SR-200-28053 Revised July 2000, United States Department Of Energy, Distributed Power Program Office of Energy Efficiency and Renewable Energy, Office of Power Technologies

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2 Second, excess power that the customer
3 generates above their own needs, which flows
4 back to the grid, would be compensated at an
5 amount that is above the Company's avoided
6 cost.

an amount greater than the Company's
"avoided cost" is meaningless. The
Company's "avoided cost" is a simply
single rate computed as a result of
PURPA, enacted in 1978.

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10 As admitted on cross examination, net
11 metering clearly does not provide a net
12 metering customer investing in solar
13 generation—which only produces during
14 daylight hours—anywhere near market
15 value during APS's peak days, where for
16 example the listed rate at the Palo Verde
17 during the afternoon of the 2006 summer
18 peak, where the listed price was
19 \$399.00¹⁵ per MW hour. Meanwhile
20 paying the "avoided cost" suggests the
21 customer generating solar power should
22 be entitled to an offset of only \$0.05765
23 per kWh.

24
25 Second, the policy determined in the
26 Commission RES decision requires that
27 APS take into account "hourly, seasonal
28 and long-term supply and demand
circumstances."

17 APS Initial Post-Hearing Brief beginning at
18 Line 19, Page

19 The customer would receive a credit equal to
20 the entire energy charges in their applicable
21 rate schedule, which includes generation,
22 transmission, distribution, system benefits,
23 DSM, PSA, regulatory assessment, CRCC,
24 EPS and other energy-based charges. (Id.).

25 Again, the term used by APS conceals
26 important facts. Most importantly, note
27 that even with a full credit for energy,
28 tariffs including demand charges would
not be so credited, and further, as
admitted by the Company, "The basic
service charge and any kW charges would
not typically be included in this calculation
because the associated revenues are not
likely to be reduced with distributed
generation. (Id.)." Note that traditional
tariff practices utilize the basic service
charge and "any kW charges" to pay for
many of the very benefits provided by

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¹⁵ From ICE data available for Palo Verde Hub, July 24-25, 2006 at <https://www.theice.com/marketdata/indices>

1 APS Initial Post-Hearing Brief beginning at
2 Line 19, Page 107

3 The Company would **incur foregone kWh cost**
4 **recovery equal to the customer's total kWh**
5 **generation** and incur the associated fixed costs
6 consistent with the customer's otherwise
7 applicable rate schedule. (APS Exhibit No. 38 at
8 19 [DeLizio]).

distributed generation technologies.

Here the company asserts that it “incurs foregone kWh cost recovery equal to the customer’s total kWh generation.” If that mind numbing phrase means anything, it must mean that APS believes that if it doesn’t get paid for a kWh of electricity produced by a customer—it is entitled to that revenue as some sort of “make-up”!!!

Solar Advocates urges the Commission to clearly state that there is no such general principle in Arizona in 2007. Rather, APS is entitled to the reasonable chance to make a reasonable rate of return on its prudent investment, and a reasonable return of its investment.

APS does not own the right to all revenues that it might have received had it produced electricity produced by customers operating their own generation facilities within its monopoly territory.

As “technological deregulation¹⁶”

19 _____
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21 ¹⁶ “Technological Deregulation” occurs as technological advances allow the
22 purchase of smaller and smaller capacity generation technologies that become
23 economically competitive for an increasingly broad range of customers
24 previously limited to purchasing electric power from utilities able to fully
25 capture economies of scale and scope through their investment in huge
26 electric facilities. Note that while only large industrial plants first
27 found it economic to build co-generation plants, now even non cogeneration
28 technologies can be economic at the residential level, where customers are
faced with significant line extension costs.

1 continues to occur, this issue will grow in
2 importance, and the Commission should
3 put its regulated utilities on notice that the
4 proper remedy is technological evolution,
5 innovation, and building close
6 relationships with its customers—not
misplaced claims for public aid based on
fictitious incurrence of “foregone kWh
cost recovery.”

7 APS Initial Post-Hearing Brief beginning at
Line 19, Page

8 The customers' generation kWh output would be
9 calculated by applying a capacity factor to each
10 customer's actual installed kW of generation.
11 (Id.). The uncollected fixed costs would be
12 derived by applying the average kWh charges in
the customer's otherwise applicable rate schedule
to the lost kWh. (Id.).

Again, while APS is eager to compute the
“uncollected fixed costs,” there is no
mention of the many “unpaid for reductions
in costs” of distribution, transmission, and
generation, always occurring during the
daylight peaking hours. See the
Commission discussion of such benefits in
FINAL DECISION AND ORDER NO.
69127 at Exhibit B, page 6,

“Analysis: We agree with Staff that
customers who pay capital costs to
install distributed generation, benefit
not only themselves, but the system by
not contributing to overloading of
transmission lines, overheating of
distribution lines, wear and stress on
substations and transformers, and the
need for utilities to procure or
generate the most expensive peaking
power during peak load times, and
utility customers who do not install
distributed generation will therefore
receive a benefit from distributed
generation.”

20 APS Initial Post-Hearing Brief beginning at
21 Line 19, Page 107

22 The basic service charge and any kW charges
23 would not typically be included in this
24 calculation because the associated revenues are
25 not likely to be reduced with distributed
26 generation. (Id.). These uncollected fixed costs
would be calculated for each billing month for
each participating customer. (Id.).

Note as commented upon above that it is
the basic service charge and any kW hour
charges that traditionally are fashioned to
pay for the “fixed costs” of an utility
system. And these remain even under a
true net metering tariff.

Further, as shown in the analysis of net
billing, any rate that includes a kW
demand charge that provides only an
energy charge payment for solar
generation is likely ***grossly***

1 APS Initial Post-Hearing Brief beginning at
2 Line 19, Page 107

3
4 The uncollected fixed costs would be netted
5 against the associated avoided generation costs
6 that the Company would not incur as the result of
7 the distributed generation. (APS Exhibit No. 38
8 at 20 [DeLizio]). Both the generation energy and
9 capacity cost savings from net metering would be
10 based on the Company's PURPA avoided costs,
11 which are used to purchase excess energy from
12 qualifying small distributed generators in the
13 EPR-2 rate schedule. (Id.). The uncollected fixed
14 costs would be reflected within the EPS budget,
15 collected through the EPS surcharge, and
16 reported to the Commission as part of the
17 reporting requirements of the EPS program. (Id.).

18 (emphasis added)

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21 APS Initial Post-Hearing Brief beginning at
22 Line 19, Page 107

23 3. Staffs Recommendation.

24
25 Although Staff supported APS's
26 recovery of uncollected fixed costs through the
27 EPS, Staff would limit such recovery to the
28 customers' excess generation,⁹⁷ not total
generation. Staff also recommended that the
limit on facility size be increased to 100kW and

discriminatory against the solar investor.

As noted above, the PURPA avoided costs are not fairly compensatory in the Arizona climate to a technology that only produces during daylight hours, and the RES Decision requires that the overall recovery take into account Final Decision And Order No. 69127 Clearly Sets Forth Mechanism For Any Cost Recovery to be Allowed, and Amount limited to "to recover only the costs in excess of the Market Cost of Comparable Conventional Generation" as defined in the Decision.

The Decision provides the following definition:

R14-2-1801. Definitions (K) "Market Cost of Comparable Conventional Generation" means the Affected Utility's energy and capacity cost of producing or procuring the incremental electricity that would be avoided by the resources used to meet the Annual Renewable Energy Requirement, taking into account hourly, seasonal, and long-term supply and demand circumstances. Avoided costs include any avoided transmission and distribution costs and any avoided environmental compliance costs.

1 that participation not be limited by rate
2 schedule.

3 APS Initial Post-Hearing Brief beginning at
4 Line 19, Page 107

5 The Company's proposed recommendations
6 already attempt to allow the excess energy to be
7 netted against energy purchased from APS in
8 subsequent months. (Id. at 14).

9 APS Initial Post-Hearing Brief beginning at
10 Line 19, Page 107

11 Staff also recommended that the Company not
12 necessarily require the use of bidirectional
13 meters; rather Staff recommended the use of
14 two separate meters if more economical. It is
15 the Company's position that while the EPR-5
16 net metering rate could technically be
17 implemented with two standard meters, a single
18 bi-directional meter would be a better option
19 because any initial savings realized with two
20 standard meters would be eliminated due to
21 additional electrical infrastructure costs, such as
22 an additional meter base, sockets, adaptors and
23 other meter-service costs. (APS Exhibit No. 38
24 at 17 [DeLizio]). The Company also prefers the
25 operational benefits of the bi-directional meter
26 for this application, which includes reduced
27 meter inventory requirements, fewer meter sets
28 and less meter reading, and it is already using a
single bi-directional meter for the current
distributed generation (partial service
requirements) rates, EPR-2 and EPR-4. (Id.). In
addition, the use of a bi-directional meter is
consistent with industry and regulatory practice
throughout the country. (Id.).

27 APS Initial Post-Hearing Brief beginning at
28 Line 19, Page 107

Note that this is certainly not true with
respect to those customers left to the "net-
billing" rates under the APS proposal.

Solar Advocates generally supports the
use of a single meter, but also notes the
widely varying testimony from APS
witnesses ranging from net metering
customers requiring a \$450 meter to the
final estimate of \$150 for a modern meter
that can be programmed from the central
office.

Solar Advocates urges the Commission to
insist that APS cease the purchase of
obsolete metering systems that are used as
excuses for not moving to modern
dynamic rate structures that provide more
accurate market cost data to Arizona's
citizens, and lay the groundwork for a
more competitive economy than is
possible based on an obsolete and rigid
electric infrastructure.

See section IV above for a discussion of
the drawbacks and disincentives of the
EPR-2 and EPR-4 net billing tariffs.

1 4. Solar Advocates' Proposal.

2 The Solar Advocates proposed that the
3 cap on individual system size be increased to 2
4 MW, that the overall program cap be increased
5 to some higher level commensurate with an
6 expanded RES program, and that the rate be
7 made available to larger commercial customers.

8 Solar Advocates also opposed the recovery of
9 uncollected costs resulting from the company's
10 proposed net metering program.

11 APS believes that the proposed 10 kW cap on
12 the individual generator size is appropriate for
13 net metering, even in light of an expanded RES
14 program, because the Company already offers
15 net billing rate options for distributed
16 generation systems up to 100 kW (EPR-2),
17 which do not have any cap on aggregate
18 participation. (APS Exhibit No. 38 at 13
19 [DeLizio]).

20 Under EPR- 2, the customer's excess generation
21 is compensated at an avoided cost rate, while
22 EPR-5 would xxxxxx, In addition, the
23 Company has proposed a net metering
24 generation only rate, E-57, for solar
25 installations up to 1 MW with no aggregate
26 cap. (emphasis added)

27 APS Initial Post-Hearing Brief beginning at
28 Line 19, Page 107

29 Most other jurisdictions that offer net metering
30 have relatively small caps on the individual size
31 of participating generators as well as the overall
32 aggregate level of program participation. (APS
33 Exhibit No. 38 at 15 [DeLizio]).

34 Out of the 41 states referenced by the Interstate
35 Renewable Energy Council that offer net
36 metering, 33 have caps on generator size at or
37 below 100 kW. (Id.).

As discuss above , this is simply not an
adequate evidentiary basis for the
adoption of the APS proposal, and Solar
Advocates urges the Commission to
specifically instruct the Company that a
proposed tariff is not rendered fair and
reasonable because other options are
available to its customers.

Note the Solar Advocates Objection to
aspects of E-57 described in its Initial
Brief.

This first sentence, after the evidence of
the hearing and the revelations provided
by cross examination, appears to
approach, if not cross, the chutzpah line
and head toward that of intentional
disregard for the truth. Solar Advocates
has provided a graphic at Exhibit B of All
States listed on Solar Exhibit-2, which
was used in cross examination of Mr.
DeLizio at trial, showing graphically the
true distribution of all states that offer net
metering.

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At a minimum, this is a statement that should be offered to support Staff's recommended increase to a 100kw limit.

APS Initial Post-Hearing Brief beginning at Line 19, Page 107

The Company believes that its proposal of 10 kW for the EPR-5 rate is consistent with these other jurisdictions, including Arizona, because the Company already offers net billing rates, which provide most of the benefits of net metering, for customers with generators up to 100 kW in size. (Id.).

Again, the justification offered by APS for the woeful inadequacy of its proposed net metering tariff is the existence of other, even more inadequate, choices for its customers.

Unfortunately, as demonstrated in Section IV, those other choices are much worse than would be provided by the application and availability of a true net metering tariff.

APS Initial Post-Hearing Brief beginning at Line 19, Page 107

Although Solar Advocates cited several states with relatively high caps for individual generator size and for total MW allowed on a net metering program, in fact, only two states allow participation in net metering of generators up to 2 MW. (APS Exhibit No. 38 at 15-16[DeLizio]).

Furthermore, in each of the states that Solar Advocates cited as examples, other than Colorado, the utilities have divested generation as part of retail competition and are facing very different generation procurement situations compared to APS. (Id.).

Actually, as of the date of this filing, New Mexico has now increased its limit to

Once again, APS counsel uses a deceptive linguistic device. "Each of the states that Solar Advocates cited" are presumably two states! Thus, the "other than Colorado" exception dismissed by APS is fully 50 percent of the states under discussion.

APS Initial Post-Hearing Brief beginning at Line 19, Page 107

Solar Advocates also proposed that the overall cap of 15MW proposed by the Company should be increased. (Solar Exhibit No. 8 at 4-5 [Smeloff]). In contrast, the Company-proposed

1 1.5 MW cap on total aggregate participation in
2 the EPR-5 net metering pilot program is
3 appropriate, because (1) it is a pilot program
4 designed to be a limited offering to provide an
5 incentive for small customers to participate in
6 the Company's Solar Partners Incentive
7 Program (credit purchase program), and (2) the
8 Company already offers other net metering/net
9 billing type rates that do not have any
10 aggregate cap on participation. (APS Exhibit
11 No. 38 at 14-15 [DeLizio]).

This is not relevant to the Commission's
determination, but is simply an arrogant
restatement of the Company's unilateral
determination of what it will offer its
customers.

The use by the company of the phrase "
other net metering/net billing type rates"
hopefully needs no further comment.

8 APS Initial Post-Hearing Brief beginning at
9 Line 19, Page 107

10 Solar Advocates opposed the recovery of
11 uncollected costs from the Company's proposed
12 net metering program and claimed that such
13 recovery is unnecessary, because the Company
14 is experiencing rapid growth in its service
15 territory. However, the issue of whether APS
16 sales are growing, remaining flat, or declining
17 is irrelevant to the issues of uncollected fixed
18 costs.

To the contrary, as also argued by RUCO
in their initial closing brief, APS cannot
in the same argument demand payment
for revenues lost because a potential net
metering customer has self generated a
portion of its electricity load—and then
deny the relevance of the possibility that
the very service capacity that was not sold
to customer A because of such customer's
self generation, will be sold to either new
customer B, or growing customer C.

It is simply incredible that APS would
even attempt such an argument.

1 Sales will be less than they would have been
2 absent the distributed generator. (APS Exhibit
3 No. 39 at 6 [DeLizio]).

4
5 That particular customer will still have avoided
6 paying for the cost of providing service to such
7 customer.

8
9 Moreover, APS's rapid growth also carries with
10 it the additional costs to serve the Company's
11 increasing customer base. (Id.). This additional
12 financial burden heightens, not lessens, the
13 importance of preserving the margins for fixed
14 delivery costs from customers participating in
15 public benefit programs like net metering. (Id.).

16 APS Initial Post-Hearing Brief beginning at
17 Line 19, Page 107

18 The Commission must make a policy decision
19 as to the scope of the proposed net metering
20 program,

21 given the fact that there are uncollected fixed
22 costs that need to be recovered

23 and must determine whether it is more
24 appropriate to recover such costs through the
25 EPS or RES,

26 or defer recovery of such costs until a general
27 rate case and spread such costs among all
28 classes through the cost of service.

APS requests the Commission approve Rate

This alone does not justify any payment.

Again, this can only be relevant if the
company can prove:

- 1 The customer also has not provided benefits equal to the loss
- 2 The company has not simply sold the same amount to a neighboring customer
- 3 Other revenues have not grown by such amount, and
- 4 Other costs have not been reduced by such amount.

In the field of parenting, a tremendously effective linguistic technique in dealing with young children is for the adult to offer the child choices—all of which are acceptable to the adult.

It is easy for the child to miss the fact that the enumerated choices are a significant narrowing of the universe of choices actually available to him or her. The choices provided already presuppose (include) the key element desired by the adult.

In the emphasized language to the left, APS uses precisely such a device upon the Commission. In presupposes that

1 Schedule EPR- 5, without modification for
2 customers that have renewable resource
3 generation facilities of 10 kW or less. As part
4 of EPR-5, APS proposes that the Commission
5 enact a 15 MW cap on total aggregate
6 participation in the EPR-5 net metering pilot
7 program. The Company also requests
8 Commission authorization to recover its
9 uncollected fixed costs associated with the
10 implementation of EPR-5, which offers a
11 special financial subsidy to customers in order
12 to promote small renewable distributed
13 generation systems.

14 APS Initial Post-Hearing Brief beginning at
15 Line 19, Page 107

16 In response to an inquiry by Commissioner
17 Mayes, the Company has submitted Appendix
18 C (attached to APS Exhibit 105), which is a
19 recalculation of APS Exhibit 73 using Staffs
20 modified recommendation that only when a
21 metered customer is producing a surplus of
22 energy will there be unrecovered fixed
23 distribution costs through the EPS or RES.

24 It is noteworthy that the aggregate level of
25 unrecovered fixed distribution costs remains
26 unchanged from APS Exhibit 73. **These**
27 **unrecovered costs are an undeniable aspect of**
28 **net metering and, if not recovered through the**
RES, will impact base rates charged to non-
participating customers.

there **“are uncollected fixed costs that**
need to be recovered,” APS in fact
neither honestly points out the actual
choices available to the Commission, nor
provides all the data necessary for an
appropriate decision.

Solar Advocates believes this request for
cost recovery must be denied by the
Commission at this time. The
Commission can simply grant APS the
right to refile its claim under the
principles of the RES Decision.

The statement made by the Company that
the “level of unrecovered fixed
distributions costs remains unchanged” is
true only because APS did not in fact
carry out the intentions of Staff, and thus
did not carry out the intentions of
Commission Mayes.

By claiming that these **“unrecovered**
costs are an undeniable aspect of net
metering” APS once again simply
ignores the plain meaning of the staff
recommendation and Commissioner
Mayes request, and restates its claim for
full payment of the terriffed value of any
revenues lost to self generation—wholly
ignoring all cost savings other than the
grudging application of the PURPA
avoided cost rate, and the other logical
requirements noted above.

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98 APS Exhibit 73 entitled "RES Surcharge Calculations for Impacts of Uncollected Fixed Costs under Net Metering" sets forth the calculation that was requested to show the revenue impact of uncollected fixed costs due to net metering. It includes distribution costs plus items such as system benefits and other kilowatt hour, or non-fuel nonpurchased power, power supply fuel or related costs. (Tr. Vol. XXIII at 4313 [Rumolo]). Exhibit 73 makes the assumption that every three years the uncollected dollars from distributed net-metered customers would be rolled into the revenue requirements in a rate case. (Id).

As noted previously, Exhibit 73 is a misapplication of Staff's argument, and simply restates APS claim for full payment at tarriffed rates for all kW hours to be produced by net metering customers, reduced by the PURPA avoided cost rate. Such a methodology, while at times represented during the hearing as the proposed methodology, and at other times merely an example, with the "real" methodology to be developed during the pilot, should be denied by the Commission, with APS instructed to refile any claim for cost recovery under the principles of the RES Decision.

1 **VI. Closing Issues**

2
3 a. Unreasonable Limitation On Customers Choosing Solar-3 Tariff. The
4 unreasonable limitation on which customers may chose Solar-3 Tariff are
5 likely ensure failure. In its late filed exhibits pertaining to the **SCHEDULE**
6 **SOLAR-3, CLASSIFIED SERVICE SOLAR PILOT PROGRAM**
7 **TARIFF** further described in its INITIAL BRIEF at page 130 beginning at
8 line 12 APS sets forth the following options:
9

10 Solar Power Energy shall be a percentage of the customer’s total monthly
11 energy 6%). Two options are available:

12 A. Solar Power shall account for 100.0% of the customer’s
13 monthly energy

14 B. Solar Power shall account for 50.0% of the generation mix in
15 the customer’s service.

16 Solar Advocates suggests that there is no reason to limit customers to the 100%
17 and 50% services other than to ensure failure. Elimination of the unreasonable
18 percentage requirements leaving all customers free to specify any percentage,
19 or perhaps in multiples of 5 or 10 percent, would significantly increases the
20 potential class of customers electing to purchase some portion of their electricity
21 from solar generation.
22

23
24 b. SUMMARY OF CONCERNS REGARDING NET METERING

25 In its brief, APS describes, at some length, two cost-related impacts of the net
26 metering program: first, the incremental costs of a net metering program and second,
27 the “charges” that net-metered customers would not pay due to the reduction in
28

1 consumption resulting from the customer's generation – lost revenue implying
2 unrecovered cost. APS seeks to recover the “incremental cost of net metering” as well
3 as infrastructure costs through the EPS surcharge. While there may be a legitimate
4 argument for one-time overheads like billing system modification, to the extent it is
5 necessary, overhead costs should generally be very small on an ongoing basis. In any
6 event, both start-up and ongoing administrative costs should be scrutinized very
7 carefully in a regulatory setting to assure customers and the Commission that the funds
8 available through the renewables surcharge are not being treated as a slush fund for a
9 wish list of administrative maintenance projects (utility as free-rider).
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14 In regards to the second category, i.e. unrecovered costs, APS unveils a part of
15 the pie, but only a small slice. There are three final points to be made here. First, one
16 must never look at the costs of an option without looking at the benefits – every cost
17 incurred is subject to this discipline. Second, APS' rapid load growth impacts cost
18 recovery and thus must be carefully incorporated into the analysis of load reduction
19 impacts on cost recovery. Finally, ratepayers that reduce consumption for other
20 reasons, such as spending summers in a cooler climate, or buying energy efficient
21 appliances, are not similarly asked to reimburse the company for unrecovered costs.
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25 APS clearly recognizes that there are system benefits provided by many
26 instances of onsite generation which will be utilizing the net metering tariff , and staff
27 also clearly so concludes. However, the methodology offered by APS utilizes only the
28

1 offsetting cost of power not required to be purchased as a benefit—ignoring the
2 reliability, diversity, and other benefits found in the Commission’s Decision in the REST
3 proceeding and elsewhere in the testimony in this case. APS offers no offset for
4 benefits reducing its generation, transmission or distribution costs beyond the simple
5 “avoided cost” first and presumably still determined in reference to the PURPA
6 requirements enacted in 1978.
7

8 The citizens of Arizona deserve the far more accurate information and rate
9 costing that has been enabled in the last nearly three decades, in order to provide the
10 best possible price signals to the state’s energy markets. Before the Commission
11 considers allowing APS or any utility to draw down funds provided by customers
12 through the renewables surcharge, a much more detailed analysis must be done that
13 takes all of the costs AND all of the benefits of distributed generation into account.
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17 Similarly, APS complains that excess power the customer generates above their
18 own needs, which flows back to the grid, would be compensated at an amount that is
19 above the Company's avoided cost. The reality is that such excess power will flow
20 through the grid to the nearest load, reducing the overall load for that segment of the
21 company’s distribution system. If the excess is flowing from a residential system, it is
22 most likely flowing right back into a neighbor’s house. The image of small amounts of
23 excess electricity flowing back “to the grid” implying some sort of further control or
24 dispatch by the utility is far from the actual situation. It is wholly appropriate to
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1 compensate the customer-generator at retail rate levels for excess generation in a given
2 hour or month. Here again, a detailed examination of the costs and benefits is required.
3

4 APS loads are growing rapidly and the incremental cost of serving the new loads
5 is resulting in large proposed cost increases that will affect every ratepayer. These
6 increases are, in effect, the incremental cost of load growth. Reductions in consumption
7 from any source should be welcomed. Moreover, rapid load growth can result on over-
8 collection of costs in various other surcharges that APS ratepayers find on their bills,
9 depending on a host of factors. Here, too, all cost and benefits, and impacts related to
10 other factors, must be considered.
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14 APS apparently believes that whether sales are growing, are remaining flat, or
15 are declining is irrelevant to the issues of uncollected fixed costs. We believe it is
16 incumbent upon APS to provide an open and detailed analysis to demonstrate that its
17 sales and demand growth does not offset sales and demand reductions related to
18 distributed generation to prove its contention that the latter indeed results in a net
19 reduction of fixed cost recovery. All of APS's arguments points to the need for a
20 detailed analysis that demonstrates that the effect of a net metering program is a net
21 cost to the company. Solar Advocate's witness Smeloff identified numerous benefits
22 and cost savings (examples) related to distributed solar resources. APS has failed to
23 provide analytical proof of its contention in this proceeding, and the Commission should
24 reject the concept of "lost revenue" recovery as currently proposed by the Company.
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1 Similarly, it should reject the limitations and temporary nature of the proposed net
2 metering tariff proposed by APS, and provide a true net metering tariff available to all
3 customers willing to invest their own assets in helping Arizona's electric infrastructure
4 meet the very serious challenges ahead.
5

6
7 RESPECTFULLY SUBMITTED THIS 15TH DAY OF FEBRUARY, 2007.
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the Solar Advocates REPLY BRIEF upon all parties herein electronically or by mail or FED EX, this 15th day of February, 2007, addressed as follows:

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EXHIBITS

EXHIBIT A-1- PROJECT INSTALLATION BRIEF FOR MAY 2005 INSTALLATION

EXHIBIT A-2 GENESIS JULY 18TH BILL UNDER E-32 AND EPR-2

EXHIBIT A-3

EXHIBIT B