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December 2, 2008

Chairman Mike Gleason

Re: Distributed Renewable Energy Implementation Costs

Arizona Corporation Commission
DOCKETED

Ajo Docket # E-01025A-08-0332

Dear Chairman Gleason:

In your November 24, 2008 letter you worry that any relaxation of the 50/50—residential/commercial requirement in A.A.C. R14-2-1805(D) would undercut the authority of the Commission's REST Rules. I write to bring to your attention to R14-2-1816 of our REST Rules, which grants the Commission authority to "waive compliance with any provision of the [REST Rules] for good cause." You may recall that this is the waiver provision you relied upon earlier this year when you voted with me and our fellow commissioners to grant Morenci Water and Electric a "partial waiver" to exclude all of its energy sales to Phelps Dodge Morenci and Phelps Dodge Safford. *See* ACC Decision No. 70303.

In light of the flexibility that was built into our REST Rules, a Commissioner who believes that R14-2-1805(D) is unsound public policy has two avenues of recourse. He or she can attempt to amend the REST Rules by stripping out or modifying the provision as you suggest, or he or she can support an effort to waive that provision under R14-2-1816. While the first course of action certainly has the benefit of finality over the second, the concern that the second course "has the potential to degrade the Commission's authority as expressed through its rulemaking" is meritless. An argument that the REST Rules require you to vote to enforce 50/50—Residential/Commercial split cannot withstand the clear import of R14-2-1816.

Sincerely,

Commissioner Gary Pierce

cc: Chairman Mike Gleason
Commissioner William Mundell
Commissioner Jeff Hatch-Miller
Commissioner Kris Mayes
Brian McNeil, Executive Director
Ernest Johnson, Utilities Division
Janice Alward, Chief Counsel

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November 24, 2008

Commissioner William A. Mundell
Commissioner Jeff Hatch-Miller
Commissioner Kristin K. Mayes
Commissioner Gary Pierce

RE: Distributed Renewable Energy Implementation Costs
Docket No. E-01345A-08-0331 (APS)

Dear Colleagues:

In his dissent from the Commission's Decisions approving APS', TEP's and UNS Electric's 2008 REST Implementation Plans, and in his recent letters regarding the affected utilities' proposed 2009 Plans, Commissioner Pierce stated that he voted against the 2008 Plans because of the Commission's refusal to relax R14-2-1805(D), which requires affected utilities to satisfy half of their annual distributed renewable obligation with residential applications and the other half from non-residential, non-utility applications. In his view, this requirement unjustifiably drives up the cost of renewable energy. Commissioner Pierce's position in that regard prompts me to make the following observations and suggestions:

The distributed renewable energy requirement, expressly *including the 50/50 split* between residential and commercial applications, was adopted by a separate vote of the Commission at its Special Open Meeting on August 10, 2005. From then on, the high cost of the distributed renewable energy requirement (R14-2-1805) relative to the overall renewable energy requirement (R14-2-1804), as well as cost and attainability concerns arising from the residential component of R14-2-1805, were the subject of extensive discussion throughout the Commission's lengthy deliberations on the proposed rules.[1]

At the culmination of the Commission's deliberations in the Open Meeting on October 31, 2006, no Commissioner offered any amendment to R14-2-1805(D). However, then-Chairman Hatch-Miller offered an amendment[2] which, had it been adopted, would have had the effect of reducing the overall cost of complying with R14-2-1805. The proposed amendment failed.

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[1] *See* Docket No. RE-00000C-05-0030:
February 24, 2008, Arizona Public Service Company's Comments to Proposed Rules at pages 3 and 4
February 27, 2008, Special Open Meeting. Tr. pages 78-80; 96-105; 127-139
May 23, 2006, Public Comment Hearing. Tr. pages 230-236

[2] Hatch-Miller Proposed Amendment No. 3, October 31, 2006,Tr. at pages 203-226

From the foregoing history, one can only conclude that the Commission's adoption of R14-2-1805, including the 50/50 split, was the result of a thorough and deliberative process. At the conclusion of that process, the Commission was fully cognizant of the cost and attainability implications of the rule as adopted. Under these circumstances, and assuming that the Commission's Rules carry the weight of law, there can be no justifiable basis for "relaxing" any of them. Instead, if the Commission finds that one of its rules is no longer, or perhaps never was, in the public interest, the Commission should amend or repeal the rule. Unless and until the Commission makes such a finding, however, the Commission should use all means available to it to enforce the rule, including the imposition of appropriate sanctions on the affected utilities if they fail to comply.

Regardless of my vote against the REST Rules and my deep concern over the residential distributed requirement in particular, I am compelled to offer these comments because any suggestion that the Commission may relax its rules, has the potential to degrade the Commission's authority as expressed through rulemaking.

Sincerely,

Mike Gleason
Chairman

C: Brian C. McNeil, Executive Director
Ernest Johnson, Utilities Division
Janice Alward, Chief Counsel