

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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2008 DEC -9 P 3:17  
AZ CORP COMMISSION  
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Arizona Corporation Commission

DOCKETED

DEC -9 2008

DOCKETED BY

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR APPROVAL OF ITS  
2009 RENEWABLE ENERGY  
STANDARD IMPLEMENTATION PLAN  
AND DISTRIBUTED ENERGY  
ADMINISTRATIVE PLAN AND  
REQUEST FOR RESET OF RENEWABLE  
ENERGY ADJUSTOR

Docket No. E-01345A-08-0331

**ARIZONA PUBLIC SERVICE  
COMPANY'S COMMENTS TO THE  
PROPOSED RECOMMENDED  
OPINION AND ORDER**

Arizona Public Service ("APS" or "Company") filed its 2009 Renewable Energy Standard Implementation Plan ("Implementation Plan" or "Plan") for Arizona Corporation Commission ("Commission") approval on July 1, 2008, in compliance with the Renewable Energy Standard ("RES") Rules.<sup>1</sup> APS filed supplemental information on October 10, 2008 ("Supplemental Filing"), and further updated RES funding information on November 21, 2008 ("Updated Filing"). The Company is filing these Comments in response to the Commission Staff's Report and Recommended Opinion and Order ("ROO"), which was filed in this docket on November 25, 2008.

APS is generally in agreement with the conclusions reached in the Staff Report. However, the Company believes that the remaining funds from the 2008 RES funding should be included in the calculation of the 2009 RES adjustor rate, which would reduce the adjustor rate customers would pay in 2009; and that the proposed Research and Development ("R&D") projects should be approved in this Commission Decision, rather than requiring APS to return for subsequent approvals. In addition, APS believes that the regulatory

<sup>1</sup> A.A.C. R14-2-1801 through 1816.

1 approach that the Company has proposed regarding the payment of Production Based  
2 Incentives (“PBIs”) would provide a reasonable alternative to the Company’s current  
3 contractual approach in the event that there are future changes in law or regulation and APS is  
4 unable to recover funding for RES customer incentive commitments. Finally, the Company is  
5 requesting that the Commission add specific language to the ROO to formally approve the  
6 Distributed Energy Administration Plan (“DEAP”) as modified, to provide clarity in the  
7 record regarding minor modifications that have been proposed.

8 **Roll-over of 2008 RES Funding**

9 As reported in its Updated Filing, the Company estimates that it will have  
10 approximately \$8 million of uncommitted 2008 RES funds remaining at year-end. Staff  
11 indicated that because there is some uncertainty regarding the remaining 2008 RES funding,  
12 the \$8 million should not be included in the RES adjustor calculation. APS believes that it is  
13 in its customers’ best interest to “roll-over” remaining 2008 RES funds into the 2009 RES  
14 budget, and thereby reduce the amount of the RES adjustor that customers will pay next year.  
15 At this time, just weeks from the year-end, the Company believes that this estimate of  
16 remaining 2008 funds is “firm” enough to include this amount in the calculation.<sup>2</sup>

17 By including this \$8 million, APS’s RES funding requirement for 2009 would be  
18 reduced to \$70.4 million. Consequently, the RES adjustor would have a rate of \$0.007060  
19 per kilowatt hour with monthly caps of \$2.82 for residential customers, \$104.89 for  
20 commercial and industrial customers, and \$314.66 for commercial and industrial customers  
21 with greater than 3 megawatt loads. The \$70.4 million funding requirement would be  
22 collected from customers through \$6 million in the System Benefits Charge (base rates) and  
23 an RES Adjustor designed to collect \$64.4 million. APS requests that the Commission  
24 approve adjustor rates that reflect this approach, as set forth in the Company’s 2009 RES  
25 Adjustor Rate Schedule, which is attached as Attachment A. The Company has attached a  
26

27 <sup>2</sup> Any variations in the roll-over amount would be identified in the Company’s April Compliance Report  
28 (required by A.A.C R14-2-1812), and would be “trued-up” in the 2010 Implementation Plan, which would be  
filed July 1, 2009, as required by A.A.C. R14-2-1813.

1 proposed amendment to address these changes, which is attached as Attachment B.

2 **Research & Development Projects**

3 APS has proposed that \$500,000 of the 2009 RES funds be allocated for R&D to  
4 advance the role of renewable energy in the Company's resource mix, for the benefit of  
5 customers. To that end, the Company has partnered with US Solar on a Department of  
6 Energy ("DOE") Thermal Storage Study at APS's Saguaro Concentrated Solar Power plant.  
7 This project will utilize approximately \$150,000 of the 2009 R&D funding. APS intends to  
8 allocate \$350,000 to Arizona universities for projects in specific areas of interest, including  
9 distribution level battery storage, integration of distributed technologies with Smart Grid, and  
10 compressed air energy storage for renewable energy.<sup>3</sup>

11 Staff has recommended that the full funding for R&D remain in the 2009 budget,  
12 however, R&D projects (other than the DOE study) must be presented to the Commission for  
13 approval prior to expenditure of funds. The Company believes that this objective can be met  
14 with approval in this proceeding. The potential time it takes for additional Commission  
15 approvals may delay important R&D projects and, therefore, APS proposes that the  
16 Commission direct the remaining R&D budget of \$350,000 to be spent with Arizona  
17 universities in one or more of the areas APS has identified above. The Company has  
18 provided a proposed amendment that reflects this approach, attached as Attachment C.

19 **Change in Law Contract Provision**

20 In its Supplemental Filing, the Company addressed concerns that had been raised  
21 regarding the "Change in Law Provision" in APS's Credit Purchase Agreement ("CPA").<sup>4</sup>  
22 Contractual provisions, such as the Change in Law Provision, that address potential future  
23 regulatory changes are neither unusual nor uncommon, particularly with transactions  
24 involving long tenure with significant future financial exposure. The Change in Law  
25

26 <sup>3</sup> Specific information regarding these proposed projects was provided in response to Staff Informal Data  
Request Nos. 2.1 and 7.1.

27 <sup>4</sup> The Solar Alliance filed comments dated August 29, 2008 in this docket (Sept. 18, 2008) that expressed  
28 their concerns with the Change in Law provision, and Commissioner Mayes issued a letter to APS (Sept. 10,  
2008) addressing similar issues.

1 Provision was intended to address those narrow circumstances where modification in the RES  
2 Rules resulted in funding no longer being available for previously committed performance-  
3 based incentives. In those unlikely situations, and assuming the Commission did not  
4 otherwise provide funding, APS could terminate the CPA.

5 To address the concerns raised that this contractual provision may negatively influence  
6 renewable projects and provide a hurdle to obtaining financing, APS has recommended a  
7 regulatory approach to address this issue that assures cost recovery for utility contractual  
8 obligations, an approach that has been adopted in other states. For example, the Colorado  
9 Public Utilities Commission approved rebate provisions and Renewable Energy Credit prices  
10 in standard contracts and assured cost recovery for those payments.<sup>5</sup> Similarly, the Nevada  
11 Public Utilities Commission approved both prudence and future cost recovery for the “Solar  
12 Star” project at Nellis Air Force Base.<sup>6</sup>

13 If the Commission were to adopt similar findings regarding cost-recovery for payment  
14 of all PBIs over the term of the CPA, the need for the current contractual Change in Law  
15 Provision would be eliminated. APS believes this approach would provide a comprehensive  
16 solution to the issue that would be acceptable to interested stakeholders. This is evidenced by  
17 the comments of the Solar Alliance, who characterized the proposed regulatory approach as  
18 an “appropriate and workable solution” and “an excellent compromise” in their October 22,  
19 2008 filing in this docket. The total commitment for the full term of CPAs entered into  
20 through the end of 2009 is forecasted to be \$77 million to fully comply with the RES  
21 requirements.

22  
23 <sup>5</sup> The Colorado PUC finding was as follows:

24 Therefore, we grant limited approval of the standard contracts – those aspects relating to the  
25 rebate provisions and the REC prices. This limited approval also includes the associated cost  
26 recovery for the rebate payments and REC prices through retail rates.

27 Colorado Public Svc. Comm’n, Decision No. C07-0676 (August 8, 2007) at ¶ 105.

28 <sup>6</sup> The Nevada PUC finding was as follows:

29 The Commission finds that the Agreement between Applicant and Solar Star as set forth in the  
30 Stipulation is prudent and Applicant can recover all costs that are prudently incurred in carrying  
31 out the Agreement. The Commission also finds that the rates arising from the Agreement are just  
32 and reasonable

33 Nevada Public Util. Comm’n, Docket No. 07-01035 (March 23, 2007) at ¶ 17.

1           Should the Commission determine that such an approach is warranted, the Company  
2 has provided a proposed amendment, attached as Attachment D. If the Commission adopts  
3 the recommendations in the ROO, because of the potential magnitude of the PBI  
4 commitment,<sup>7</sup> APS believes that the Company will need to contractually address potential  
5 future changes to the RES Rules.

6 **Approval of Distributed Energy Administration Plan (“DEAP”) as Modified**

7           As addressed in the ROO, the Company has proposed minor modifications to its  
8 DEAP. These include:

- 9           • Optional disclosure of financing costs, where those types of disclosures  
10           had previously been required if they were to be included as part of total  
11           project costs. (The incentive cap would be calculated using only the  
12           disclosed project costs.)
- 12           ▪ Modifications to the *PV Off-Angle & Shading Incentive Adjustment*  
13           *Chart*<sup>8</sup> to address concerns that the former required angling could impair  
14           solar generation in certain northern Arizona locations, while maintaining  
15           reduced incentives for sub-optimal installations.
- 15           ▪ Modifications to metering and billing to reflect current APS practices of  
16           using telemetry to acquire system data.
- 16           ▪ Linking the payment term for PBIs to the term of the Renewable Energy  
16           Credit agreement term.

17 While the ROO specifically states that that these changes are designed to improve customer  
18 service and lead to increased customer participation and satisfaction,<sup>9</sup> it is silent regarding  
19 acceptance of these modifications. Therefore, to clarify the record, APS is requesting that the  
20 Commission include an ordering paragraph that states, “the DEAP as modified is approved”.  
21 APS has provided a proposed amendment to address this issue, attached as Attachment E.

22 **Conclusion**

23           With the modifications proposed above, APS supports the Recommended Opinion and  
24 Order. Therefore, APS respectfully requests the Commission issue an order that:

26 \_\_\_\_\_  
27 <sup>7</sup> The potential forward exposure to APS and its customers for ongoing PBI obligations committed by 2013  
27 could reach a notional amount of approximately \$250 million.

28 <sup>8</sup> See Exhibit 4 to the DEAP.

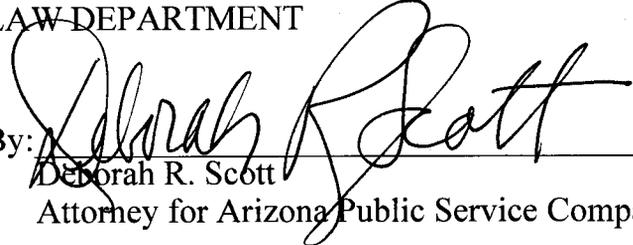
28 <sup>9</sup> See ROO at 3, lines 16-24.

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- Authorizes the inclusion of the \$8 million unspent/uncommitted 2008 RES funds in establishing the 2009 RES adjustor, and approve the RES adjustor rates set forth in the APS 2009 RES Adjustor Rate Schedule, which are as follows:
  - \$0.007060 per kilowatt hour with monthly caps:
    - \$2.82 for residential customers;
    - \$104.89 for commercial and industrial customers (less than 3 megawatt load), and
    - \$314.66 for commercial and industrial customers with greater than 3 megawatt loads.
- Approves APS's R&D proposals and budget in the amount of \$500,000.
- Finds that APS can recover costs of incentive payments that are incurred to meet the Company's obligation under all Production Based Incentive Credit Purchase Agreements that are executed through the end of 2009 for the full term of these agreements.
- Approves the Distributed Energy Administration Plan, as modified.

RESPECTFULLY SUBMITTED this 9th day of December, 2008.

PINNACLE WEST CAPITAL CORPORATION  
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By:   
Deborah R. Scott  
Attorney for Arizona Public Service Company

ORIGINAL and thirteen (13) copies  
of the foregoing filed this 9th day of  
December, 2008, with:

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//

1 COPY of the foregoing mailed/delivered this  
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3 See attached service list of parties.

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# ATTACHMENT A



**ADJUSTMENT SCHEDULE RES  
RENEWABLE ENERGY STANDARD**

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APPLICATION

The Renewable Energy Standard ("RES") Adjustor shall apply to all retail Standard Offer or Direct Access service, excluding kWhs served in accordance with rate schedules SP-1 (Solar Partners), Solar-2, Solar-3, and Adjustment Schedules GPS-1 and GPS-2. All provisions of the customer's current applicable rate schedule will apply in addition to the RES Adjustor. From time to time, the RES program spending requirements will be evaluated and if necessary the charge and/or caps may be modified by the Commission. Any new charges/caps will be applied in billing cycle 1 beginning in the month following Commission approval and will not be prorated. Details regarding the administration of this Adjustor can be found in A.A.C. R14-2-1808. The RES Adjustor and the Demand Side Management Adjustor may be combined on the customer's bill and shown on the "Environmental Benefits Surcharge" line.

RATES

The bill shall be calculated at the following rates:

All kWh	\$0.007060	per kWh
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SURCHARGE LIMITS

The monthly total of the Renewable Energy Standard Adjustment Charge shall not exceed the following limits:

Residential Customers	\$2.82	per service per month
Non-residential Customers	\$104.89	per service per month
Non-residential Customers with demand of 3,000 kW or higher per month for three consecutive months	\$314.66	per service per month

# ATTACHMENT B

**Attachment B**  
**APS Proposed Amendment #1**  
**Page 1 of 1**

**APS Proposed Amendment #1**  
**Docket No. E-01345A-08-0331**  
**(2009 RES Implementation Plan)**

Roll-over of uncommitted 2008 RES funds.

Insert: Page 9, Line 3, insert after “covered three issues.”

APS further updated the record regarding the amount of remaining 2008 RES funds in its Updated Supplemental Filing, which was docketed November 21, 2008.

Insert: Page 9, Line 10 after “RES Adjustor calculation.”

However, we believe that the remaining \$8 million of 2008 RES funds should be included in the computation of the 2009 RES Adjustor rates to reduce the costs to customers during 2009. Any variations in the rollover amounts will be identified in APS’ April Compliance Report and trued-up in APS’ 2010 Implementation Plan, which would be filed July 1, 2009.

Insert: Page 10, Line 7, after “3MW or greater.”

However, because the \$8 million of remaining 2008 RES funds will be rolled-over into the computation of 2009 RES Adjustor rates, the Commission approves the following rates: the RES Adjustor Rate will be reset to \$0.007060 per kWh with monthly caps of \$2.82 for residential customers, \$104.89 for non-residential customers, and \$314.66 for non-residential customers with demands of 3MW or greater.

Page 11, Line 16

DELETE: “\$0.007937” and REPLACE with: “\$0.007060”

Page 11, Line 17

DELETE: “\$3.17” and REPLACE with: “\$2.82”; and

DELETE: “\$117.93” and REPLACE with: “\$104.89”

Page 11, Line 18

DELETE: “\$353.78” and REPLACE with: “\$314.66”.

Make conforming changes.

# ATTACHMENT C

**Attachment C**  
**APS Proposed Amendment #2**  
**Page 1 of 1**

**APS Proposed Amendment #2**  
**Docket No. E-01345A-08-0331**  
**(2009 RES Implementation Plan)**

Research & Development

INSERT: Page 5, Line 12 - New paragraph No. 24:

We agree with Staff and APS that the \$500,000 of RES funding allocation for R&D is appropriate. We find that the proposals discussed by APS to partner with Arizona universities and the Department of Energy for research and development in the areas of solar thermal research, distribution level battery storage, integration of distributed technologies with the “Smart Grid”, and/or compressed air energy storage for renewable energy, will further the development and deployment of renewable resources for the benefit of customers. Therefore, we will approve both the funding and the R&D proposals in this Decision.

DELETE: Page 11, Line 20, beginning with “\$150,000 going toward...” through line 24, ending with “Commission”.

INSERT: Page 11, Line 20, following “an allocation of”

“\$500,000 for R&D projects in the areas of solar thermal research, distribution level battery storage, integration of distributed technologies with the “Smart Grid”, and/or compressed air energy storage for renewable energy.

Make conforming changes.

# ATTACHMENT D

**Attachment D**  
**APS Proposed Amendment #3**  
**Page 1 of 1**

**APS Proposed Amendment #3**  
**Docket No. E-01345A-08-0331**  
**(2009 RES Implementation Plan)**

Change in Law contractual provision.

Page 9, Line 22, INSERT after “or cost recovery.”

However, the Commission finds that the Production Based Incentive payments are consistent with the REST Rules. We recognize that these incentive payments are incurred to meet the Company’s obligations under these Production Based Incentive Credit Purchase Agreements, and will therefore approve cost-recovery for these payments.”

Page 12, Lines 1-2

DELETE: Ordering Paragraph, “IT IS FURTHER ORDERED...implied by this Decision”.

REPLACE with

IT IS FURTHER ORDERED that APS can recover costs of incentive payments that are incurred to meet the Company’s obligation under the Production Based Incentive Credit Purchase Agreements up to \$77 million.

Make conforming changes.

# ATTACHMENT E

**Attachment E**  
**APS Proposed Amendment #4**  
**Page 1 of 1**

**APS Proposed Amendment #4**  
**Docket No. E-01345A-08-0331**  
**(2009 RES Implementation Plan)**

Distributed Energy Administration Plan Approval.

Page 11, Line 25

INSERT new Ordering Paragraph:

“IT IS FUTHERED ORDERED that the Distributed Energy Administration Plan, as modified herein, is approved.”

Make conforming changes.