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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF NOTICE OF PROPOSED
RULEMAKING FOR THE ENVIRONMENTAL
PORTFOLIO STANDARD.

No.: RE-00000C-00-0377

**AEPCO'S COMMENTS ON THE
PROPOSED RULE**

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Pursuant to the Procedural Order dated August 9, 2000, the Arizona Electric Power
Cooperative, Inc. ("AEPCO") submits these comments on the proposed Environmental Portfolio
Standard ("EPS") Rule.

**I. FOR A NUMBER OF LEGAL AND JURISDICTIONAL REASONS, THE
COMMISSION SHOULD NOT ADOPT THE EPS.**

The Commission does not have the legal authority to adopt the EPS. These issues
previously have been briefed by several of the parties to the predecessor docket (No. E.0000A-
99-0205) and will not be extensively re-addressed here. For convenience, attached hereto as
Exhibits A and B are AEPCO's Post-Hearing Memorandum dated November 17, 1999 and its
Application for Rehearing of Decision No. 62506 dated May 24, 2000 which identify and discuss
these issues in greater detail.

Recent Superior Court and Court of Appeals decisions have reinforced the wisdom and

1 accuracy of several of these arguments.¹ Both Judge Campbell and the Court of Appeals have
2 ruled that this Commission must ascertain the fair value of utilities' property prior to setting
3 rates. No such process was followed in establishing the rate contained in the Environmental
4 Portfolio Surcharge in R14-2-1618.A.2. In AEPCO's case, the surcharge will fall many hundred
5 thousand dollars short each year of meeting the costs of the EPS mandates.² Thus, adoption of
6 the EPS Rule denies AEPCO its constitutional right to recover its costs and earn a reasonable
7 rate of return on its fair value.

8 Judge Campbell also ruled in July that the prior Solar Portfolio Rule (previously R14-2-
9 1609) is not a function of this Commission's ratemaking powers.³ This ruling reinforces
10 AEPCO and other parties' arguments that the Commission lacks either the constitutional or
11 statutory authority to adopt the proposed EPS.⁴ Neither Article 15 of the Constitution nor Title
12 40 of the Arizona Revised Statutes gives this Commission the authority to adopt the Rule.

13 AEPCO would urge the Commission not to inject still more uncertainty into the electric
14 competition arena by adopting the EPS. The adoption of the proposed Rule flies in the face of
15 settled constitutional and statutory law--as reaffirmed no less than three times in the past 18
16 months by this state's trial and appellate courts. If the Commission proceeds to adopt the EPS,

17 ¹ Judge Campbell's July 12, 2000 minute entry in Tucson Electric Power v. Commission, cause
18 no. CV 97-03748 (Consolidated) and the decision of the Arizona Court of Appeals on August 29,
19 2000 in U S WEST v. Commission, 1 CA-CV 98-0672.

20 ² AEPCO estimates the Surcharge would only raise \$800,000 annually while compliance costs
21 would be \$2.5-2.7 million over the approximately 11 year life of the EPS.

22 ³ Judge Campbell's ruling is consistent with last year's Court of Appeals decision in U S WEST
v. Commission, 1999 WL 308563 (Ariz. App. Div. 1, May 18, 1999).

⁴ See, for example, pages 9-10 of AEPCO's Post-Hearing Memorandum; pages 7-9 of APS Post-
Hearing Brief; and pages 2-5 of RUCO's Application for Rehearing--all in Docket No. E-
00000A-99-0205.

1 millions of dollars of investment will be unlawfully required. Millions of dollars of rates will be
2 unlawfully collected.

3 Renewable objectives are not advanced by adoption of the EPS given the uncertainty and
4 litigation that decision will foster. If, notwithstanding the results of Staff's sponsored survey
5 research that most Arizonans do not want to pay more for renewables the Commission believes
6 these goals should be pursued, it should seek the necessary constitutional and statutory changes
7 to do so prior to implementation. Adoption of the EPS Rule now will retard not advance the
8 cause of a sustainable and reliable renewables program.

9 **II. SHOULD THE COMMISSION NONETHELESS DECIDE TO ADOPT THE EPS**
RULE, SPECIAL PROVISIONS SHOULD BE INCLUDED FOR THE
COOPERATIVES TO LIMIT THEIR PARTICIPATION.

10 As the all requirements supplier for several of the state's rural distribution cooperatives,
11 AEPCO offered evidence in the predecessor docket concerning why the EPS Rule should not be
12 applied to cooperatives:

- 13 • AEPCO needs no new resources of any kind--renewable or otherwise--in the near
14 term to meet the state's rural power needs.
- 15 • Investment in renewable resources when no resources are needed exacerbates
16 consumer rate impacts and contributes unnecessarily to potential stranded costs.
- 17 • Cooperatives have little or no demand side management or other similar program
18 funds to shift to renewable expenditures unlike investor owned utilities.
- 19 • Non-profit cooperatives have no shareholder source of funds to apply to the
20 capital costs associated with the EPS mandate.
- 21 • Non-profit cooperatives, therefore, may look only to borrowed funds to finance
22 the EPS mandate. Given RUS' requirements that capital be expended only on
needed, least-cost resources, the EPS rule meets neither standard leaving
cooperatives with no funding source other than the surcharge to meet the EPS
requirements.

- Any ancillary, general economic benefits the EPS Rule may generate will most likely benefit the state's urban not rural areas.

Without waiver of the issues raised in Section I of these comments, in light of these and other factors AEPCO suggests that the EPS Rule be modified to limit the level of cooperative participation to the amount of monies raised by the Environmental Portfolio Surcharge.

To accomplish this, a new subsection A.1 should be added to R14-2-1618 as follows:

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

The remaining subsections of R14-2-1618.A should be renumbered accordingly.

Adoption of this limited exemption would require cooperatives to participate to the extent of funds made available by the Surcharge. It would, however, limit that participation appropriately for the cooperatives in light of the factors outlined above.

III. SEVERAL PROVISIONS OF THE RULE SHOULD BE CLARIFIED OR MODIFIED.

R14-2-1618.A initially references "Electric Service Providers" as being subject to the Rule but promptly exempts them from participation until 2004. A broader term or additional terms probably need to be used rather than Electric Service Provider in the first sentence of 1618.A and perhaps throughout the Rule. Similarly, the word "Competitive" before ESPs should be stricken in 1618.A.1.

The reference in 1618.A.1 to a "pro rata share of funds collected for portfolio purposes" is vague. Assuming the "share of funds" relates to the Surcharge in 1618.A.2, a reference to that

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1 section would clarify what monies are involved. Also, would the pro rata sharing requirement be
2 customer class specific, total system Kwh driven or based on some other formula?

3 1618.B.3. b and c read exactly the same for years 2002 and 2003. If that is intended, (c)
4 could be deleted and the year "2003" added to (b). 1618.C is surplusage from a prior Rule
5 version and should be deleted.

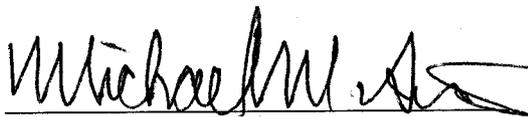
6 In 1618.D.1, it is unclear whether all early extra credit multipliers end in 2003 or
7 continue beyond that year for five years after installation. AEPCO believes the Rule's intent is
8 the latter and therefore suggests deleting the sentence "The Early Installation Extra Credit
9 Multiplier would end in 2003."

10 CONCLUSION

11 AEPCO urges the Commission to reject the EPS Rule or, alternatively and without
12 waiver, modify and clarify it as suggested in Sections II and II of these Comments.

13 RESPECTFULLY submitted this 5th day of October, 2000

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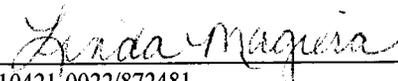
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