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FOR THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION  
INDEPENDENT CONTROL

6 IN THE MATTER OF NOTICE OF )  
7 PROPOSED RULEMAKING FOR THE )  
8 ENVIRONMENTAL PORTFOLIO STANDARD. )

DOCKET NO. RE-00000C-00-0377

COMMISSION STAFF'S  
REPLY COMMENTS

9 Arizona Corporation Commission Staff ("Staff") hereby files its Reply Comments  
10 in the above-captioned matter.

11 **I. THE COMMISSION HAS THE JURISDICTION TO ADOPT THE RULE.**

12 Certain parties continue to assert that the Arizona Corporation Commission  
13 ("Commission") lacks the jurisdiction to adopt the Environmental Portfolio Standard Rule ("Rule").

14 For the same reasons previously briefed by Staff in this docket, the Commission's constitutional and  
15 statutory rate-making authority includes adoption of the Rule. The Rule is an essential step in setting  
16 rates for Utility Distribution Companies and Electric Service Providers (hereinafter referred to as  
17 "load-serving entities") because the Commission has determined that just and reasonable electric  
18 rates for Arizona should include a portfolio of renewable resources as the source of electricity.  
19 Under AZ Corp. Comm'n v. State ex rel Woods, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992), the  
20 Commission has broad discretion in determining what regulation is necessary for effective  
21 ratemaking, including this adoption of a portfolio standard.

22 Although there are references in some parties' initial comments concerning recent  
23 court decisions related to fair value constitutional requirements, the decisions referred to do not  
24 preclude the Commission from adopting the Rule. Neither Judge Campbell's July 12, 2000 minute  
25 entry order in Tucson Electric Power v. Comm., Cause No. CV 97-03748 (consolidated), nor the  
26 Arizona Court of Appeals decision, in U S West v. Comm., 1 CA-CV 98-0672 or U S West v.  
27 Comm., 1999 WL 308563 (Ariz. App. Div. 1, May 18, 1999) prohibit the Commission from  
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1 establishing a generic rule for surcharges to support energy portfolios of environmentally friendly  
2 resources.

3           Surcharges can be implemented in any number of ways for a specific load-serving  
4 entity. As the Rule provides, some surcharges will be passed through as System Benefits Charges  
5 already included in rates for some entities. Other entities may request that the surcharge be  
6 implemented on an interim basis as either a deferral account or an adjuster clause to be reviewed in  
7 a subsequent rate proceeding for the entity. The point is that if certain parties believe that a new fair  
8 value determination is necessary before a surcharge is made permanent for a specific entity, interim  
9 measures can be taken if required by any final court opinion. However, contrary to any implication  
10 in the initial comments by other parties, no court has found that the proposed portfolio rule or a  
11 generic surcharge violates any constitutional or statutory provision.

## 12 **II. GENERAL REPLY COMMENTS.**

13           Some parties proposed changes to the Rule that did not refer to any specific rule  
14 provision. Staff comments on these proposals are as follows:

### 15 **A. Proposed New Article for the Portfolio Standard.**

16           The Arizona Clean Energy Industries Alliance and York Research, Inc., have  
17 recommended that the Environmental Portfolio Standard Rule be promulgated under a new Article,  
18 to avoid being affected by any future legal and/or political events concerning the Retail Electric  
19 Competition Rules.

20           **Staff Response:** Staff agrees that this approach would be reasonable. Since April  
21 1999, when the Commission decided to remove the Solar Portfolio Standard from the Retail Electric  
22 Competition Rules, the Portfolio evidentiary hearings and rule making have been separated from the  
23 Competition Rules.

24           Staff suggests that, at some time in the future, the new Article could also include the  
25 proposed Distributed Generation and Interconnection Rules, possible future rules related to  
26 reliability, and possible future rules related to electric transmission planning and adequacy studies.

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1           **B.     Proposal that the Portfolio Surcharge Replace Utility “Green Power” Premiums.**

2           The City of Scottsdale has recommended that the Portfolio Surcharge replace the  
3 utility premium charge for “green power”.

4           **Staff Response:** Staff disagrees. The Portfolio Surcharge and the “green power”  
5 charge are two entirely different mechanisms that have similar goals. The Portfolio Surcharge is a  
6 mandatory charge for all customers to pay a very small per kWh charge that is used to develop  
7 renewable electricity. The utility “green power” programs are entirely voluntary programs that allow  
8 customers to voluntarily pay a premium each month for renewable. There is no need to eliminate  
9 the voluntary “green power” programs, since they allow customers who really care about clean  
10 energy and a cleaner environment to go beyond the normal surcharge to help keep our air clean. No  
11 change is recommended.

12           **C.     Proposal to Forgive the Portfolio Surcharge for Customers Installing**  
13 **Renewables.**

14           The City of Scottsdale suggested that the Commission consider a provision that  
15 would forgive the Portfolio charge to those customers who install renewable generation.

16           **Staff Response:** Staff disagrees. Those customers who install their own renewable  
17 generation will automatically pay less of a Portfolio Surcharge, because they will be purchasing  
18 fewer kWhs from their electricity provider. Since the surcharge is based on retail electricity sold,  
19 any customer that produces a portion of its electricity from renewable sources will reduce its retail  
20 electricity purchased, which will reduce the basis upon which the customer surcharge is calculated.  
21 No change is recommended.

22           **D.     Proposal to Clarify Rights to Extra Credits.**

23           New West Energy has suggested that the rules need to be modified to make it clear  
24 that all energy and extra credits belong to the person or organization who owns the renewable  
25 generator. This would, in New West’s opinion, allow the owner to sell energy or credits to any  
26 provider that needed to meet the Portfolio requirement. New West made a similar comment about  
27 “banking” or selling excess portfolio kWh.

28           ...

1                   **Staff Response:** Staff agrees in concept. This would be a clarification of the intent  
2 of the Rule. New West gave no specific suggestions of wording changes to the Rule. Staff, at this  
3 time, does not have any specific suggested wording changes, but supports the idea in concept.

4                   **E.     Proposal to Limit the Participation of Cooperatives.**

5                   AEPCO has suggested that special provisions be included in the Rule to limit the  
6 participation of cooperatives.

7                   **Staff Response:** Staff disagrees that any changes to the Rule need to be made. In  
8 fact, Staff points out that there is a provision in R14-2-1618 A.4 which covers this issue:

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

12 **III.    REPLY COMMENTS RELATED TO SPECIFIC RULE PROVISIONS.**

13                  **A.     R 14-2-1618.A.**

14                  A number of commenters, including Citizens Communications, AEPCO, and New  
15 West Energy Corporation commented on the inappropriate use of the term “Electric Service  
16 Provider” in section 1618.A and elsewhere in the rule.

17                  **Staff Response:** In Commission Staff’s October 5, 2000 comments, a suggested  
18 wording change was presented. Due to the 1998 and 1999 changes in the “Electric Service Provider”  
19 definition, the use of “Load-serving Entity” should replace most of the references to “Electric  
20 Service Provider” in the Portfolio Standard.

21                  **B.     R 14-2-1618A.1.**

22                  A number of commenters, including Citizens Communications and AEPCO expressed  
23 concerns about the “pro rata share of funds” for ESPs that choose to participate in the Portfolio  
24 Standard prior to 2004. Citizens suggested that every ESP should directly collect the surcharge from  
25 its generation customers.

26                  **Staff Response:** Staff disagrees. The easiest and the guaranteed way to ensure that  
27 all customers pay their share of the portfolio surcharge is for the Utility Distribution Company to  
28 collect the surcharge from all customers. Since the Rule allows ESPs the option to voluntarily opt

1 out of this program, using Citizens' approach would mean that nobody would collect the surcharge  
2 from the customers of the non-participating ESPs. This would give those non-participating ESPs  
3 a competitive advantage over the UDC and other ESPs that do participate in the Portfolio Standard.

4 In order to collect its pro rata share of the surcharge funds an ESP would simply notify  
5 the UDC that it is participating in the Portfolio Standard. The UDC would then send the ESP the  
6 exact amount of surcharge monies collected from the participating ESP's customers. No change is  
7 recommended.

8 **C. R 14-2-1618A.2.**

9 The City of Scottsdale contends that the surcharge is unfair to municipalities because  
10 of the diversity and number of electric meters that cities have in service.

11 **Staff Response:** Staff disagrees. All customers pay the same rate per kWh for the  
12 surcharge. A municipality with a large number of meters would not necessarily pay any more than,  
13 say, a fast-food chain with 300 outlets, or a chain of convenience stores. Because of caps on  
14 individual meters, some of the electricity used by municipalities will be above the cap, so no  
15 surcharge would apply for that portion of electricity used.

16 Staff suggests that cities such as Scottsdale and other similar commercial customers  
17 consider approaching their distribution utility about combining appropriate loads onto fewer meters.  
18 By combining loads, it is possible for the customer to move to a more favorable rate, resulting in  
19 significant electricity bill savings. Those savings could be significant compared to the small  
20 Portfolio surcharge. No change is recommended.

21 **D. Proposal to Eliminate the Portfolio Surcharge for Dusk to Dawn Lighting.**

22 Citizens Communications has proposed that the Portfolio Surcharge for dusk to dawn  
23 lighting be eliminated.

24 **Staff Response:** Staff disagrees. It appears that Citizens has mis-read or  
25 misunderstood the surcharge. Citizens seems to think that there would be an automatic \$13 per  
26 month surcharge per streetlight. Citizens failed to notice that the \$13 figure is a "cap." The  
27 streetlight in question would have to use over 14,000 kWh in a month to reach the \$13 cap. In fact,  
28 a typical 100 Watt high pressure sodium dusk to dawn light, which is on for 10 hours a night in a 30-

1 day month would use only 30 kWh (or 1kWh per day) and the Portfolio Surcharge for that light for  
2 that month would be 2.6 cents (30 kWh times \$.000875). Staff recommends that Citizens'  
3 suggestion be rejected.

4 **D. R14-2-1618 B.3 - Proposal to Allow Extra Credits to Count Toward the Solar**  
5 **Electric Fraction.**

6 New West Energy has suggested that the Rule be clarified to show "that extra credits  
7 earned on solar electric technologies will also count toward the solar electric fraction."

8 **Staff Response:** Staff agrees. Staff believes that the appropriate place for this  
9 statement is at the beginning of R14-2-1618 D.

10 Staff proposes the following change:

11 After the 1<sup>st</sup> sentence in 1618 D., after "requirements":

12 **DELETE:** ":"

13 **ADD:** ". Extra credits may be used to meet portfolio requirements and  
14 extra credits from solar electric technologies will also count  
15 toward the solar electric fraction required in R14-2-1618 B.3."

16 **F. Proposal to Eliminate Duplicative Wording in R 14-2-1618 B.3.c**

17 AEPCO noted that 1618 B.3 b and c are almost identical in wording and suggested  
18 deleting (c) and that "2003" be added to (b).

19 **Staff Response:** Staff agrees. The beginning of (b) would then read: "In 2002 **and**  
20 **2003,**".

21 **G. R14-2-1618 D.1**

22 AEPCO pointed out that it is unclear if the extra credit multipliers end in 2003 or  
23 continue beyond that point. AEPCO suggested that the following sentence be deleted:

24 "The Early Installation Extra Credit Multiplier would end in 2003."

25 **Staff Response:** Rather than deleting the sentence, Staff recommends modifying the  
26 sentence as follows:

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

In addition, Staff recommends that a clarifying sentence be added to the beginning of section 1618 D, as follows:

Note that the extra credit wording suggested above is also included (in Italics).

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

RESPECTFULLY SUBMITTED this 26th day of October, 2000.

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