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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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7 IN THE MATTER OF THE APPLICATION
 8 OF THE SOLAR ALLIANCE FOR A
 9 DECLARATORY ORDER THAT
 10 PROVIDERS OF CERTAIN SOLAR
 11 SERVICE AGREEMENTS WOULD NOT
 12 BE PUBLIC SERVICE CORPORATIONS

DOCKET NO. E-20633A-08-0513

**ARIZONA PUBLIC SERVICE
COMPANY'S COMMENTS TO
STAFF'S REPORT**

12 Arizona Public Service Company ("APS" or "Company") hereby submits these
 13 comments in response to the Commission's Staff Report ("Staff Report") that was filed in this
 14 docket on March 11, 2009 regarding the Solar Alliance's (the "Alliance") application for a
 15 declaratory order that providers of certain solar service agreements would not be public
 16 service corporations (the "Application").

BACKGROUND

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 18 On October 3, 2008, the Alliance (a coalition of solar manufacturers, integrators, and
 19 financiers) filed its Application with the Arizona Corporation Commission ("Commission").
 20 The Alliance, rather than its individual members, is the applicant in this docket, and is
 21 seeking a "generic determination" for a narrowly defined business model, rather than an
 22 adjudication of its members. The substantive question before the Commission pertains to
 23 solar energy service companies that provide services to customers pursuant to solar service
 24 agreements ("SSAs"). In its Application, the Alliance asked the Commission to declare that a
 25 SSA provider that conforms to specific criteria or characteristics, as set forth in the
 26 Application, would not be a public service corporation subject to the Commission's
 27 jurisdiction.

1 In the Staff Report, Staff recognized that the SSAs contemplated in the Alliance's
2 Application would facilitate the increased use of distributed photovoltaic generation, which in
3 turn would provide an additional means for jurisdictional electric utilities to meet the
4 Distributed Renewable Energy Requirements of the Renewable Energy Standard ("RES")
5 Rules.¹ However, in examining the twelve characteristics set forth in the Alliance's business
6 model, Staff noted that those elements would not necessarily distinguish SSA providers from
7 public service corporations, because it is possible for a public service corporation to have
8 many of the specified characteristics. Additionally, Staff stated that the Alliance's
9 Application did not provide sufficient facts upon which to make a legal conclusion, and
10 suggested that a hearing would be helpful to clarify some of the issues.

11 LEGAL DISCUSSION

12 APS believes that the Commission set forth a public policy mandate with the adoption
13 of the RES Rules. The Commission sent a clear message that renewable energy is in the
14 public interest, and the explicit distributed energy requirement indicates that renewable
15 generation on a customer's premise was a fundamental component of the Commission's
16 vision. The RES Rules require the increased use of energy from renewable resources; the
17 requirement grows from two percent in 2009 to fifteen percent by 2025.² The requirement for
18 distributed energy escalates more quickly than the overall requirement. In just three years,
19 thirty percent of a utility's Annual Renewable Energy Requirement must be comprised of
20 distributed energy applications.³ APS recognizes the need for solar facility installers, such as
21 members of the Alliance, to increase the likelihood that electric utilities meet the RES
22 requirements for distributed generation.

23 APS has observed that non-residential customers have a growing interest in a
24 distributed energy model where a third party installs, owns, and operates renewable systems.

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27 ¹ A.A.C. R14-2-1801 through 1816.

28 ² A.A.C. R14-2-1804(B)

³ A.A.C. R14-2-1805.

1 As the Company has previously explained to the Commission,⁴ it is APS's business practice
2 in administering the RES customer incentives to accommodate such an approach. APS's
3 Distributed Energy Administration Plan ("DEAP"), which was provided as part of the
4 Company's Implementation Plan under the RES Rules,⁵ does not preclude customers from
5 entering into third party ownership arrangements. As a result, APS pays incentives to
6 customers if the third-party arrangement meets all requirements otherwise applicable under
7 the DEAP. The payment arrangements between the customer and the third party, or whether
8 the customer "owns" the system, are not considerations in paying customer incentives. The
9 key component for payment of customer incentives is that the customer is the owner of the
10 Renewable Energy Credits, which is the unit created to track the kilowatt hours derived from
11 renewable energy resources and, in this specific instance, the distributed energy resource.
12 The Company believes that this approach provides customers flexibility to acquiring
13 distributed energy systems and facilities, and furthers APS's opportunity for compliance with
14 the distributed energy requirements of the RES rules.

15 While APS recognizes that the solar providers, such as the Alliance members, are
16 essential for the implementation of the distributed energy requirements of the RES Rules, the
17 Company acknowledges that the proposed business model that is under review in this docket
18 raises legal issues. Similar to an individual's right to drill a well on one's property, an
19 electric customer has a right to install or lease renewable energy facilities on their premise to
20 offset the amount of energy they need to procure from the electric company. The Alliance
21 has characterized its members' businesses as supplying an array of services to customers in a
22 single package, of which the provision of electricity is only one element. It is this business
23 model, where a third party owns the solar facilities, and "sells" the electricity to the site
24 owner, that has raised the question whether the third party becomes a public service
25 corporation based on those transactions. This approach poses a number of issues, including

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27 ⁴ See *Arizona Public Service Company's Comments on the Implementation Plan Regarding Incentive*
28 *Payments to Customers With Third Party Ownership of Distributed Generation Arrangements*, Docket No. E-
1345A-07-0468 (April 4, 2008).

⁵ APS's 2008 Implementation Plan was approved by the Commission in Decision No. 70313 (April 28, 2008).

1 whether the manner in which a transaction is structured is a sufficient basis to require
2 Commission regulation.

3 Based on the Application, it is unclear whether the Alliance's proposed business model
4 converts entities into public service corporations. However, APS believes that if the Alliance
5 were to expand the business model so that its members provided electricity to multiple
6 customers from a single facility, such as a master-planned community with a solar substation
7 or a shopping center with a solar facility that sold electricity to multiple commercial tenants,
8 then the Alliance members would most likely be public service corporations.

9 Providing electric service to multiple customers would satisfy the literal and textual
10 definition of a public service corporation under the Arizona Constitution, which defines a
11 public service corporation as "[a]ll corporations . . . engaged in furnishing . . . electricity for
12 fuel, light or power."⁶ This conclusion is also supported by case law. The relevant factor in
13 determining whether this type of solar provider is a public service corporation is if the
14 provider has dedicated property to public use (the "Public Use Factor"), which was articulated
15 in *Serv-Yu Coop.*,⁷ and followed by other courts.⁸ In short, a solar provider that provides
16 electricity to multiple customers would satisfy the Public Use Factor because the generation
17 of solar energy would occur on one customer's private property, while the consumption of
18 that energy would be by multiple customers. Additionally, the generation and consumption
19 of solar energy under this business model would involve the use of public infrastructure.

20 The Company recognizes that the Commission may determine that it needs more
21 factual evidence in order to make its determination regarding the legal questions raised, and
22 APS has no objection to proceeding with an evidentiary hearing in this matter.

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25 _____
⁶ ARIZONA CONST., ART. 15, § 2.

26 ⁷ *Natural Gas Service Co. v. Serv-Yu Coop.*, 70 Ariz. 235 (1950).

27 ⁸ *Southwest Transmission Coop., Inc. v. Ariz. Corp. Comm'n*, 213 Ariz. 427 (Ct. App. 2006); *Southwest Gas*
Corp. v. Ariz. Corp. Comm'n, 169 Ariz. 279 (1991); *General Alarm, Inc. v. Underdown*, 76 Ariz. 235 (1953);
28 *Ariz. Corp. Comm'n v. Nicholson*, 108 Ariz. 317 (1972); *Ariz. Water Co. v. Ariz. Corp. Comm'n*, 161 Ariz. 389
(Ct. App. 1989).

1 **FACTUAL DISCUSSION**

2 Staff has noted that it would be helpful for the electric utilities to address safety and
3 reliability implications, and the impact on the utility's resource planning if the providers of
4 SSA's are not public service corporations. APS believes that the magnitude of the RES Rules
5 requirement for distributed energy has required examination of these issues, regardless of
6 whether Alliance members provide services under an SSA or other arrangements.

7 In regard to safety implications, the safety of the customer, utility worker and the
8 overall general public must be considered. With solar distributed generation, APS must
9 remain integrated in the connection and design process to assure that its delivery system is not
10 compromised, or that undesirable conditions, such as islanding or development of unplanned
11 micro-grids, do not occur. This will become even more important as distributed energy
12 becomes more widespread, and as distributed energy systems become larger. APS currently
13 implements extensive interconnection and inspection processes to assure safety of all
14 distributed energy that is interconnected to the Company's electric system.

15 To assure reliability, APS's electric system must be designed to meet the peak demand
16 needs of customers whenever the power is required. Currently, solar distributed generation is
17 not concentrated at a level that significantly impacts the operation of the Company's energy
18 grid. However, with the future level of solar distributed generation necessary to comply with
19 the RES Rules, understanding the impacts to the reliability and stability of the system will
20 become more critical. For example, the intermittency of solar installations periods (such as
21 during the night or on cloudy days) could provide a challenge to the utility to provide reliable
22 power to the customer and the grid itself. While the addition of solar installations provides
23 energy to the consumer and utility, it does not significantly reduce the amount of
24 infrastructure that is required to meet consumer demand during those times that the solar
25 facilities are not producing energy. APS continues to analyze and develop processes to
26 monitor and manage distributed energy to assure reliability as this resource becomes more
27 prevalent.

28

1 APS recognizes that solar energy will be a significant source of electric generation in
2 the future. As the contribution from distributed resources grows, it becomes increasingly
3 important to understand and accurately forecast the contribution from those resources;
4 production profiles, system orientation, operation and maintenance planning, and other
5 related factors become ever more important for resource planning. Under scenarios where
6 third party providers are helping customers meet their distributed energy objectives, it will be
7 critical for APS to receive detailed data for distributed resources on its system.

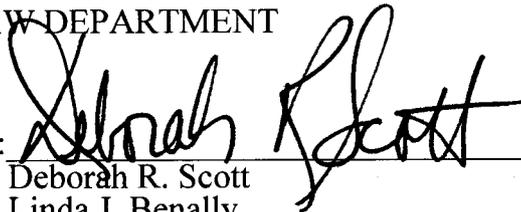
8 If an evidentiary hearing is held in this matter, APS will provide a witness to discuss
9 these issues, if necessary.

10 **CONCLUSION**

11 In conclusion, APS agrees with Staff that an evidentiary hearing is the appropriate
12 forum to make factual determinations that may assist in a legal determination regarding this
13 matter. APS has no objection for such a hearing.

14 RESPECTFULLY SUBMITTED this 17th day of April, 2009.

15 PINNACLE WEST CAPITAL CORPORATION
16 LAW DEPARTMENT

17
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23 April, 2009, with:

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