OPEN MEETING ITEM

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Executive Director

ARIZONA CORPORATION COMMISSION

2010 JUN 25 A 9:49

AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

DATE: JUNE 25, 2010

DOCKET NO.: RE-00000C-09-0427

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

RULEMAKING
(AMEND/ESTABLISH NEW RULES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 6, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 8, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED
JUN 25 2010
DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE NOTICE OF PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY.	DOCKET NO. RE-00000C-09-0427 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARING:	March 5, 2010
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Sarah N. Harpring
APPEARANCES:	Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

This matter is a rulemaking to adopt a new Article 24, "Electric Energy Efficiency Standards," in Arizona Administrative Code ("A.A.C.") Title 14, Chapter 2, to include 19 new rules concerning electric energy efficiency and demand-side management ("DSM") programs and measures. The rules are designed to cause affected utilities to achieve energy savings through cost-effective energy efficiency programs, in order to ensure reliable electric service at reasonable rates and costs. As established in these rules, "energy efficiency" means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers. Energy efficiency is a type of DSM. The rules also identify as DSM any measure designed to result in reduced peak demand or shifting of electricity consumption to off-peak periods and combined heat and power used to displace space heating, water heating, or another load.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the

Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Background and Process for this Rulemaking

1. In Decision No. 65743 (March 14, 2003), the Commission directed the Commission's Utilities Division ("Staff") to facilitate a workshop process to explore the development of a DSM policy. As a result, 14 workshops were held between October 30, 2003, and November 22, 2004, during which Staff and numerous industry participants and other interested parties[1] worked to develop a DSM policy for Arizona.

2. On February 7, 2005, Staff issued a Staff Report on DSM Policy for the Generic Proceeding Concerning Electric Restructuring Issues ("Staff Report"), in which Staff explained and set forth a largely consensus-based[2] Proposed Arizona Corporation Commission Demand-Side Management Policy ("DSM Policy"). In the Staff Report, Staff recommended that the Commission adopt the DSM Policy through rulemaking.

3. On April 14, 2005, in a new docket,[3] Staff issued Staff's First Draft of Proposed DSM Rules ("First Draft"), along with a request for interested persons to provide written comments. The First Draft was substantially similar to the DSM Policy included in the Staff Report. The Commission received nine sets of comments from interested parties in response to the First Draft.[4]

4. On June 19, 2008, a docket was opened for Investigation of Regulatory and Rate Incentives for Gas and Electric Utilities ("Incentives Docket"),[5] following a request by then-Commissioner Mundell in a letter dated May 9, 2008. The Incentives Docket was originally designed to inquire into the incentives and disincentives present under the current regulatory structure for

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[1] Of the 50 entities participating, 10 were public service corporations, and six were governmental or quasi-governmental entities. (Staff Report on DSM Policy for the Generic Proceeding Concerning Electric Restructuring Issues, Docket Nos. E-00000A-02-0051 et al. (Feb. 7, 2005).)

[2] The participants had been unable to reach consensus on the frequency of submission for portfolio plans, the treatment of self-direction, the potential for exemption of a customer from a DSM adjustment mechanism, recovery of lost net revenue, and requirements related to fuel neutrality. (*See id.*)

[3] The First Draft was issued in Docket No. RE-00000C-05-0230.

[4] Comments were received from Western Resource Advocates; Comverge, Inc.; the Residential Utility Consumers Office; Arizonans for Electric Choice and Competition; Tucson Electric Power Company, UNS Gas, and UNS Electric; Grand Canyon State Electric Cooperative Association, on behalf of electric cooperatives; Arizona Public Service Company; Demand Response and Advanced Metering Coalition; and Southwest Gas Corporation.

[5] The Incentives Docket is Docket No. E-00000J-08-0314 et al.

Arizona electric and gas utilities,[6] but has since been expanded specifically to address issues related to energy efficiency.[7]

5. On January 9, 2009, Chairman Mayes proposed by letter that an energy efficiency workshop be held and that comments be filed in the Incentives Docket. The Commission subsequently directed Staff to convene a series of workshops and technical working group meetings on energy efficiency.

6. On January 30, 2009, Staff issued a series of energy efficiency questions, with a request for responses to be filed by February 20, 2009. The questions concerned existing energy efficiency programs and measures, new energy efficiency programs and measures, regulatory elements, societal goals, impacts on utilities, and incentives and funding.

7. The Commission held workshops to discuss energy efficiency and aligning utility incentives with energy efficiency goals on March 6, 2009; March 27, 2009; and May 6, 2009. Technical working group meetings on cost recovery, appropriate ramp-up, and incentives were held on April 17, 2009. Another technical working group meeting, concerning the baseline for an energy efficiency standard and bill impacts, was held on April 30, 2009. Five more technical working group meetings were held in May 2009. The Commission received written comments from interested parties, including public service corporations, customer groups, energy efficiency advocates, and others, from February through April 2009.

8. From May through September 2009, the Commission received written comments from Arizona Public Service Company ("APS"); EnerNOC, Inc. ("EnerNOC"); Navopache Electric Cooperative, Inc. ("Navopache"); Southwest Energy Efficiency Project ("SWEEP"); Southwest Gas Corporation; Tucson Electric Power Company ("TEP"); UNS Electric, Inc. ("UNS"); UNS Gas, Inc.; Western Resource Advocates ("WRA"); and numerous energy consumers.

9. On September 4, 2009, Staff requested that a rulemaking docket on Electric Energy

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[6] Staff Letter re: Investigation of Regulatory and Rate Incentives for Gas and Electric Utilities, Docket No. E-00000J-08-0314 et al. (Aug. 1, 2008).

[7] On December 17, 2008, Staff issued a Memorandum in the Incentives Docket explaining that Section 532 of the Energy Independence and Security Act of 2007 required each state regulatory authority to consider whether to adopt standards regarding rate design modifications to promote energy efficiency investments and stating that those standards would be considered by the Commission in the Incentives Docket.

Efficiency Rules be opened. As a result, this docket was opened.

10. On October 30, 2009, Staff updated the First Draft that had been issued in 2005, modified the First Draft to include an energy efficiency standard and provide for incentives, and distributed the draft proposed Electric Energy Efficiency Standards rules for comment. Between November 9, 2009, and December 3, 2009, comments were received from Arizona Investment Council ("AIC"); Arizona Municipal Power Users' Association ("AMPUA"); APS; Freeport-McMoran Copper & Gold, Inc. ("Freeport-McMoran") and Arizonans for Electric Choice and Competition ("AECC"); Grand Canyon State Electric Cooperative Association ("GCSECA"), on behalf of a number of electric cooperatives;[8] EnerNOC; Morenci Water & Electric Company ("Morenci"); Natural Resources Defense Council ("NRDC"); Sierra Club – Grand Canyon Chapter ("Sierra Club"), on behalf of itself and 15 other interested parties;[9] The Ormond Group, L.L.C.; SWEEP; Southwest Solar Technologies, Inc.; TEP and UNS ("TEP/UNS"); and WRA.

11. On December 4, 2009, Staff filed in this docket a Memorandum recommending the filing of a Notice of Rulemaking Docket Opening ("NRDO") and a Notice of Proposed Rulemaking ("NPRM") to adopt the Electric Energy Efficiency Standards rules, along with additional procedural deadlines and requirements. Along with the Memorandum, Staff included a Proposed Order and a revised draft of the Electric Energy Efficiency Standards rules, for Commission consideration at an Open Meeting. Per Staff's Memorandum, the Electric Energy Efficiency Standards rules incorporated some of the comments received regarding the draft proposed Electric Energy Efficiency Standards rules.

12. Between December 10, 2009, and the Open Meeting on December 15 and 16, 2009, the Commission received written comments on the Electric Energy Efficiency Standards rules from

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[8] GCSECA filed comments on behalf of Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc.

[9] The Sierra Club stated that its comments were also sent on behalf of Arizona PIRG Education Fund; Republicans for Environmental Protection; Arizona Consumers Council; Sustainable Arizona; LISC Phoenix; Natural Resources Defense Council; Dooda (NO) Desert Rock Committee; Democratic Processes Center; Arizona Advocacy Network; Grand Canyon Trust; Natural Capitalism, Inc.; Arizona Interfaith Power and Light, Earth Care Commission, Arizona Ecumenical Council; Don't Waste Arizona; Environment Arizona; and High Performance Building Team.

WRA; GCSECA, on behalf of a number of electric cooperatives;[10] Freeport-McMoran and AECC; NRDC; SWEEP; APS; Sierra Club, on behalf of itself and 12 other interested parties;[11] TEP/UNS, who characterized their comments as exceptions; and Morenci, which also characterized its comments as exceptions.

13. The Proposed Order was discussed at length at the Commission's Open Meeting on December 16, 2009. Public comment was provided by Sierra Club and AIC, and SWEEP, GCSECA, Morenci, APS, WRA, RUCO, TEP, and AECC all participated in the discussion of the Proposed Order. The Commission approved the Proposed Order after amending the revised draft of the Electric Energy Efficiency Standards rules attached thereto.

14. Decision No. 71436 (December 18, 2009) directed Staff to prepare and file with the Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later than January 15, 2010, an NRDO and an NPRM including the text of the rules as included in Exhibit A to the Decision ("proposed EEE rules"). The Decision also ordered the Hearing Division to hold an oral proceeding on the NPRM on March 5, 2010; established dates for the submission of comments; and established other procedural deadlines and requirements.

15. On January 15, 2010, the NRDO and NPRM were published in the *Arizona Administrative Register*. The NPRM is attached hereto and incorporated herein as Exhibit A.

16. The NPRM proposed to adopt a new Article 24, "Electric Energy Efficiency Standards" and new Sections A.A.C. R14-2-2401 through R14-2-2419 ("Rules 2401 through 2419" or "2401 through 2419"). The proposed EEE rules establish definitions and provisions for applicability; prescribe goals and objectives for DSM programs; establish energy efficiency standards to be met by affected utilities; require implementation plans to be filed with the Commission at least every two years and prescribe their contents; establish requirements for DSM tariffs and Commission

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[10] GCSECA filed comments on behalf of Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc.

[11] The Sierra Club asserted that its comments were also sent on behalf of Arizona PIRG Education Fund; LISC Phoenix; Arizona Interfaith Power and Light Earth Care Commission, Arizona Ecumenical Council; Republicans for Environmental Protection; High Performance Building Team; League of Women Voters of Arizona; Environment Arizona; Western Grid Group; Don't Waste Arizona; Natural Capitalism, Inc.; Grand Canyon Trust; and Arizona Public Health Association.

consideration of DSM tariffs; establish requirements for Commission review and approval of DSM programs and DSM measures; require parity and equity for DSM programs, cost allocation, and use of DSM funds; establish affected utility annual reporting requirements; establish requirements for DSM program cost recovery and require the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenues in a rate case upon request; allow an affected utility to request performance incentives; require cost-effectiveness and establish standards to analyze cost-effectiveness; prescribe a general standard for baseline estimation; require fuel neutrality in ratepayer-funded DSM; require monitoring and evaluation of DSM programs and measures and allow research; allow for third-party program administration and implementation; encourage leveraging and cooperation; establish alternative energy efficiency standards for electric distribution cooperatives; and allow an affected utility to petition for a waiver from any provision in the Article.

17. On January 22, 2010, Staff filed an Economic, Small Business, and Consumer Impact Statement ("EIS"). The EIS is attached hereto and incorporated herein as Exhibit B.

18. On February 16, 2010, comments on the proposed EEE rules were filed by WRA, EnerNOC, OPOWER,[12] and TEP/UNS.

19. On February 18, 2010, written comments on the proposed EEE rules were filed by GCSECA on behalf of Duncan Valley Electric Cooperative, Inc. ("Duncan"); Graham County Electric Cooperative, Inc. ("Graham"); Mohave Electric Cooperative, Inc. ("Mohave"); Navopache; Trico Electric Cooperative, Inc. ("Trico"); and Sulphur Springs Valley Electric Cooperative, Inc. ("Sulphur") (collectively "the Cooperatives").

20. On February 19, 2010, written comments on the proposed EEE rules were filed by Katie Morales, an individual ratepayer, and by SWEEP.

21. On February 23, 2010, responsive comments were filed by GCSECA and APS.

22. On March 2, 2010, Staff filed Staff's Response to Written Comments in the Matter of Proposed Rulemaking on Electric Energy Efficiency ("Staff Response I"), which is attached hereto

[12] OPOWER was formerly known as Positive Energy and describes itself as "an energy efficiency company using behavioral science and data analytics to drive reductions in residential energy consumption."

and incorporated herein as Exhibit C-1.

23. On March 5, 2010, an oral proceeding on the proposed EEE rules was held at the Commission's offices in Phoenix, Arizona. Staff appeared through counsel, provided a statement summarizing the purpose of the proposed EEE rules, and provided Staff's analysis of the applicability to this rulemaking of Laws 2009, Chapter 7, § 28 (3rd Special Session) ("Moratorium"). Staff also answered a number of questions from the presiding officer related to the language of the proposed EEE rules. Oral comments on the proposed EEE rules were provided by TEP/UNS and APS.

24. On March 9, 2010, Arizona PIRG Education Fund ("PIRG") and Arizona Consumers Council filed written comments on the proposed EEE rules.

25. On March 17, 2010, William Scown, an individual consumer, filed written comments on the proposed EEE rules.

26. On April 16, 2010, Staff filed Staff's Response to Oral Comments in the Matter of Proposed Rulemaking on Electric Energy Efficiency ("Staff Response II"), which is attached hereto and incorporated herein as Exhibit C-2. Staff included several recommendations for changes to the language of the proposed EEE rules. In addition, Staff provided a revision of language included in the EIS filed on January 22, 2010.

27. On April 29, 2010, APS filed comments in response to Staff Response II.

28. On May 3, 2010, WRA filed comments in response to Staff Response II.

29. On May 6, 2010, SWEEP filed comments in response to Staff Response II.

30. On June 18, 2010, Staff filed Staff's Response to Comments in the Matter of Proposed Rulemaking on Electric Energy Efficiency. Subsequently, on June 24, 2010, Staff filed Revised Staff's Response to Comments in the Matter of Proposed Rulemaking on Electric Energy Efficiency ("Staff Response III"), which is attached hereto and incorporated herein as Exhibit C-3. In Staff Response III, Staff modified portions of its previous recommendations, specifically to address the concerns expressed by APS, WRA, and SWEEP in response to Staff Response II and to further clarify the proposed EEE rules. In Staff Response III, Staff asserted that APS, SWEEP, and WRA had indicated agreement with Staff's revisions recommended therein.

Authority for this Rulemaking

31. The Commission possesses the authority to engage in rulemaking under both its constitutional authority and its statutory authority endowed by the legislature. In the NPRM, Staff cited both constitutional authority and statutory authority for this rulemaking.[13]

32. Article 15, § 3 of the Arizona Constitution ("Art. 15, § 3") provides, in pertinent part:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may . . . make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations . . . .

The Arizona Supreme Court has declared that this constitutional provision gives the Commission exclusive authority to establish rates and to enact rules that are reasonably necessary steps in ratemaking and, further, that deference must be given to the Commission's determination of what regulation is reasonably necessary for effective ratemaking.[14]

33. As is discussed further below, the Commission finds that the proposed EEE Rules are reasonably necessary for effective ratemaking and thus that this rulemaking is wholly authorized under Art. 15, § 3. However, without waiving its position that this rulemaking is wholly authorized by Art. 15, § 3, the Commission also sets forth herein its statutory authority, and its additional constitutional authority, for this rulemaking.

34. A.R.S. § 40-202(A) provides: "The commission may supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of that power and jurisdiction." This language, although very broad, has been interpreted by the Arizona Supreme Court as bestowing no

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[13] Specifically, Staff cited the following: Arizona Const. Art. 15, § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-281, and 40-282.

[14] *Arizona Corporation Comm'n v. Woods*, 171 Ariz. 286, 294 (1992) ("*Woods*") (concluding that the Commission had the authority under its constitutional ratemaking power to enact its Affiliated Interest rules, because they are reasonably necessary for ratemaking, and giving deference to the Commission's determination of what regulation is reasonably necessary for effective ratemaking).

additional powers on the Commission other than those already granted by the Arizona Constitution or specifically granted elsewhere by the legislature, although the Court acknowledged that it also provides the Commission the authority to do those things necessary and convenient in the exercise of the powers so granted.[15]

35. A.R.S. § 40-203 states:

> When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.[16]

36. A.R.S. § 40-321(A) states:

> When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

37. A.R.S. § 40-322(A) states, in pertinent part:

> The commission may:
>
> 1. Ascertain and set just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished and followed by public service corporations other than a railroad.
>
> 2. Ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished by such public service corporation.
>
> 3. Prescribe reasonable regulations for the examination and testing of the product, commodity or service and for the measurement thereof.

38. A.R.S. §§ 40-281 and 40-282 require a public service corporation to obtain a Certificate of Convenience and Necessity ("CC&N") from the Commission before constructing any plant or system, prohibit a public service corporation from exercising any right or privilege under a franchise or permit without first obtaining a CC&N, and authorize the Commission to attach to the

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[15] *Southern Pacific Co. v. Arizona Corp. Comm'n*, 98 Ariz. 339, 348 (1965).
[16] A.R.S. § 40-203 (emphasis added).

exercise of rights under a CC&N such terms and conditions as the Commission deems that the public convenience and necessity require. (*See* A.R.S. §§ 40-281(A), (C); 40-282(C).)

39. The Commission has authority for this rulemaking, both constitutional and statutory, specifically with regard to requiring public service corporations to file information with the Commission. Article 15, § 13 of the Arizona Constitution provides: "All public service corporations . . . shall make such reports to the Corporation Commission, under oath, and provide such information concerning their acts and operations as may be required by law, or by the Corporation Commission." In addition, A.R.S. § 40-204(A) states:

> Every public service corporation shall furnish to the commission, in the form and detail the commission prescribes, tabulations, computations, annual reports, monthly or periodical reports of earnings and expenses, and all other information required by it to carry into effect the provisions of this title and shall make specific answers to all questions submitted by the commission. If a corporation is unable to answer any question, it shall give a good and sufficient reason therefor.

These provisions grant the Commission authority to require a public service corporation to provide reports concerning both past business activities and future plans.[17]

40. In addition, by its plain language, Art. 15, § 3 grants the Commission authority to regulate public service corporations in areas other than ratemaking, specifically authorizing the Commission to "make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of [public service] corporations."[18]

Rationale for the Rulemaking

41. At the oral proceeding for this rulemaking, Staff explained:

> The purpose of electric energy efficiency standards is for affected utilities to achieve energy savings through cost-effective energy-efficiency programs in order to ensure reliable electric service at reasonable rates and costs.
>
> Cost effective energy efficiency is less expensive than generating electricity and provides less impact on the environment.
>
> By December 31st, 2020, the propos[ed] rules would require affected utilities to achieve cumulative annual energy savings equivalent

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[17] *Arizona Pub. Serv. Co. v. Arizona Corp. Comm'n*, 155 Ariz. 263 (App. 1987), *approved in part, vacated in part*, 157 Ariz. 532 (1988).

[18] Ariz. Const., Art. 15, § 3. The Commission is aware of *Arizona Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159 (1939) ("*Pacific Greyhound*") and its progeny.

> to at least 22 percent of the affected utility's retail electric energy sale[s] for 2019.[19]

Staff further expressed agreement with SWEEP's assertions regarding why the proposed EEE rules are in the public interest and the benefits to be derived from the rules.[20]

42. Requiring affected utilities to achieve energy savings through cost-effective energy efficiency programs is an essential part of the Commission's efforts to meet its constitutional obligation to "prescribe just and reasonable rates and charges to be made and collected . . . by public service corporations within the State for service rendered therein"[21] because the amount of energy consumed by an affected utility's customers, and the pattern of peak usage of those customers, directly impacts the physical assets that an affected utility must have in place as well as the affected utility's operating expenses. Reducing the overall consumption of energy can reduce fuel costs, purchased power costs, new capacity costs, transmission costs, distribution costs, and adverse environmental impacts (such as water consumption and air emissions). Even reducing peak demand without reducing overall consumption can reduce fuel costs, purchased power costs, and new capacity costs because not as much plant or purchased power is needed at peak times to meet customers' needs.[22]

43. The public service corporations to whom the proposed EEE rules apply, because they are affected utilities classified as Class A under A.A.C. R14-2-103(A)(3)(q) and are not electric distribution cooperatives with fewer than 25 percent of their customers in Arizona, are APS, Graham, Mohave, Morenci, Navopache, Sulphur, TEP, Trico, and UNS.[23] None of these entities is a small business under A.R.S. § 41-1001.

44. Arizona currently has a monopoly market structure for electric utilities. The Commission generally sets rates for the electric utilities using the following formula: (Rate Base x Rate of Return) + Expenses = Revenue Requirement. "Rate Base" is the dollar value of the physical

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[19] Tr. at 4.
[20] Tr. at 28.
[21] *See* Ariz. Const., Art. 15, § 3.
[22] An electric utility must plan to have in place sufficient plant and/or purchased power agreements to meet projected peak demands, which can greatly exceed the level of demand on the system at other times. *See* A.A.C. R14-2-208(C) (requiring each electric utility to "make reasonable efforts to supply a satisfactory and continuous level of service").
[23] Tr. at 7. Four cooperatives are exempted from the applicability of the rules because they are not Class A, and three of them would also be exempted because fewer than 25 percent of their customers are in Arizona. *Id.*

assets prudently acquired and used and useful in the provision of utility service. "Rate of Return" is the authorized return on the utility's rate base and is expressed as a percentage. "Expenses" are the reasonable and prudent costs of service that cannot be capitalized, such as purchased power costs, fuel costs, salaries, and taxes. The resulting "Revenue Requirement" is the amount that a utility is authorized to collect from its customers through its rates and that the rates adopted by the Commission are designed to produce. Thus, the rates that a utility is authorized to charge its customers are inextricably related to the amount of physical assets (such as generation plant facilities) used by the utility and the costs of service incurred by the utility (such as costs of purchasing power to meet peak load and the costs of the fuel sources used to generate electricity).

45. The proposed EEE rules will impact an affected utility's revenues, at least in the interim period before the affected utility's next rate case, because DSM measures and DSM programs must be designed to accomplish energy efficiency (which reduces energy consumption), load management (which reduces peak demand or improves system operating efficiency), or demand response (which affects the timing or quantity of customer demand and usage and thus can reduce energy consumption). Currently, affected utilities' rate schemes rely heavily upon volumetric rates, meaning that the amount a customer is billed by the affected utility is based in large part upon the level of energy (kWh) consumed by the customer during the billing period.[24] If that amount is reduced by the customer's decreased consumption resulting from DSM measures/DSM programs, the affected utility's revenues will be impacted accordingly. Rule R14-2-2410(I) requires that this impact be addressed in an affected utility's rate case, if the affected utility requests to have it addressed and provides documentation/records supporting its request.

46. If an affected utility is permitted to recover the costs of compliance with the proposed EEE rules through ratemaking (because the costs of compliance are included as reasonable and prudent expenses and are consistent with the requirements imposed under Rule 2410(A)), the affected

[24] Because of this volumetric rate scheme, an affected utility may have an incentive to sell its customers more energy so that the affected utility earns more revenue, although this incentive may be balanced somewhat by the affected utility's desire not to need to build additional plant, not to need to enter into a purchased power agreement with an entity that can supply it power to meet demand in excess of what it already generates and/or receives through existing purchased power agreements, or even not to increase any adverse impact that its operations may have upon the environment. The concept of decoupling involves severing the link between the amount of energy an electric utility sells and the revenues it collects to recover its fixed costs of providing service, so as to remove the utility's incentive to sell more energy.

utility's revenue requirement will be impacted. Likewise, if an affected utility is permitted to recover its fixed costs and/or its net lost income/revenue resulting from Commission-approved DSM programs (as contemplated under R14-2-2410(I)), the affected utility's revenue requirement will be impacted. When an affected utility's revenue requirement is impacted, the rates charged to its customers are also impacted.

47. The reduction in overall energy consumption that will result from the rules should result in long-term cost savings to the affected utilities and thus to their customers because of decreased demand for generation and increased electric grid reliability and cost stability. In addition, the reduction in overall energy consumption will result in decreased adverse environmental impacts, such as air emissions, coal ash, nuclear waste, and water consumption, which should result in benefits to the public at large that cannot be adequately quantified at this time. The rules' requirement for each DSM program to be cost-effective will help to ensure that the programs adopted under the rules will result in long-term incremental benefits to all impacted groups.

48. The Commission makes the following findings relevant to the adoption of the proposed EEE rules:

a. Electric utilities' generation portfolios currently consist primarily of fossil fuel resources;

b. Electric utilities need to add new generation resources to their portfolios to meet load growth and ensure adequate and reliable service to customers;

c. Electric utilities' resource portfolios lack adequate and sufficient diversity to promote and safeguard the security, convenience, health, and safety of their customers and the Arizona public;

d. Energy efficiency is a reliable energy resource that costs less than other resources for meeting the energy needs of utility ratepayers;

e. Increasing energy efficiency to meet the Energy Efficiency Standard set forth in the proposed EEE rules will reduce the total cost of energy for affected utilities' ratepayers;

f. Increasing energy efficiency will result in less air pollution, reduced carbon

emissions, less consumption of water, and fewer other adverse environmental impacts than would occur if energy efficiency is not increased;

g. Increasing energy efficiency will reduce affected utilities' costs of compliance with current and future environmental regulations;

h. Increasing energy efficiency will reduce load growth, diversify energy resources, and enhance the reliability of the electric grid, thereby reducing the pressure on and costs of electric distribution and transmission;

i. Increasing energy efficiency will help the Commission ensure that patrons of affected utilities receive safe, adequate, and reliable electric service at just and reasonable rates;

j. Continued reliance on existing generation resources without increasing energy efficiency is inadequate and insufficient to promote and safeguard the security, convenience, health, and safety of electric utilities' customers and the Arizona public and is thus unjust, unreasonable, unsafe, and improper;

k. It is just, reasonable, proper, and necessary to require affected utilities to increase use of energy efficiency as a resource to meet Arizona's electricity needs in order to reduce reliance on fossil fuel energy sources in Arizona and promote and safeguard the security, convenience, health, and safety of affected utilities' customers and the Arizona public;

l. Increasing the use of electric energy efficiency as an energy resource is in the public interest; and

m. It is just, reasonable, proper, and necessary for the Commission to require affected utilities to include a minimum amount of energy efficiency in their resource portfolios in order to enhance system reliability; reduce energy costs; reduce adverse environmental impacts; and promote and safeguard the security, convenience, health, and safety of their customers and the Arizona public.

49. The proposed EEE rules are designed to ensure that the costs and rates for electric

service over the long-run are just and reasonable, that electric service to Arizona customers is adequate and reliable, and that adverse environmental impacts from electric generation are minimized to the extent feasible. The proposed EEE rules will accomplish this by requiring affected utilities, by December 31, 2020, to achieve cumulative annual energy savings equivalent to at least 22 percent of the affected utility's retail electric energy sales for calendar year 2019. The proposed EEE rules require an affected utility to meet cumulative energy-efficiency standards each year, beginning in 2011, while ramping up to the ultimate 22-percent standard. To ensure that affected utilities plan sufficiently to meet the cumulative standards, the proposed EEE rules require each affected utility to file with the Commission, at least every odd year, an implementation plan describing how the affected utility intends to meet the standard for the next one or two years. To ensure that the DSM programs and DSM measures adopted and maintained are effective and cost-effective, the proposed EEE rules require an affected utility to obtain Commission approval of each DSM program and DSM measure before it is implemented; require an affected utility to monitor and evaluate each DSM program and DSM measure on an ongoing basis; and require an affected utility each year to file with the Commission an annual DSM progress report including information concerning each Commission-approved DSM program and DSM measure and, six months later, an abbreviated status report regarding expenditures (as compared to budget) and participation rates. The proposed EEE rules are the progeny of a long line of rate-regulating rules and regulations; are reasonably necessary for effective ratemaking and for the convenience, comfort, safety, and preservation of health of the patrons of affected utilities; and will result in the adoption of just, reasonable, safe, proper, adequate, and sufficient DSM and energy efficiency standards for affected utilities' resource portfolios.

Rulemaking Requirements

50. A.R.S. § 41-1057(2) exempts Commission rules from A.R.S. Title 41, Chapter 6, Article 5, pertaining to review and approval of rulemakings by the Governor's Regulatory Review Council, but requires the Commission to "adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business."

51. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review,

an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025, the agency shall issue a supplemental notice containing the changes in the proposed rule and shall provide for additional public comment pursuant to A.R.S. § 41-1023.

52. A.R.S. § 41-1025 provides that an agency must consider all of the following in determining whether changes to a rule constitute a substantial change from the rule as proposed:

> 1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
>
> 2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
>
> 3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.[25]

53. A.R.S. § 41-1044 requires the Attorney General to review rules that are exempt pursuant to A.R.S. § 41-1057 as to form and whether the rules are clear, concise, and understandable; within the power of the agency to make; within the enacted legislative standards; and made in compliance with appropriate procedures.

54. Although Commission rules generally are subject to review and certification by the Attorney General under A.R.S. § 41-1044 before they become effective, Commission rules promulgated pursuant to the Commission's exclusive constitutional ratemaking authority need not be submitted to the Attorney General for certification.[26] However, a single rulemaking may contain both rules that require Attorney General certification and rules that do not because they are made under the Commission's constitutional ratemaking authority.[27]

55. The Moratorium provides that for fiscal year 2009-2010, an agency shall not conduct any rulemaking that would impose increased monetary or regulatory costs on other state agencies, political subdivisions, persons, or individuals or would not reduce the regulatory burden on the persons or individuals so regulated. By its own terms, the Moratorium does not apply to rulemakings "[t]o fulfill an obligation related to fees, rates, fines or regulations that are expressly delineated in the

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[25] A.R.S. § 41-1025(B).

[26] *Corbin v. Arizona Corp. Comm'n*, 174 Ariz. 216, 219 (App. 1992); *Phelps Dodge Corp. v. AEPCO*, 207 Ariz. 95, 115 (App. 2004) ("*Phelps Dodge*").

[27] *See, e.g., Phelps Dodge*, 207 Ariz. at 129-30.

constitution of this state." (Moratorium subsection (B)(4).) The Moratorium further provides that an agency shall not conduct any rulemaking permitted by the Moratorium without the prior written approval of the Governor, but expressly exempts the Commission from that requirement. (Moratorium subsection (C).)

56. Because the Commission is conducting this rulemaking to fulfill its constitutional ratemaking obligation under Art. 15, § 3, this rulemaking is not prohibited by the Moratorium. In addition, the Commission is not required, by the express terms of the Moratorium, to obtain Governor approval before proceeding with this rulemaking.

57. Although the Commission finds that this rulemaking is being conducted to fulfill the Commission's constitutional obligation under Art. 15, § 3, and pursuant to its plenary and exclusive ratemaking authority under Art. 15, § 3, and thus that the Commission is not required to obtain Attorney General certification of this rulemaking under A.R.S. § 41-1044, the Commission finds that it is prudent, in an abundance of caution and without waiving its position as to its constitutional authority for the rulemaking, to submit this rulemaking to the Attorney General for certification.

Public Comments & Staff's Recommendations

58. In its comments filed on February 16, 2010, WRA expressed support for the proposed EEE rules and urged the Commission to adopt them, stating that energy efficiency programs are effective and that the proposed EEE rules have numerous benefits. WRA stated that the benefits include (1) saving ratepayers money by lowering their overall cost for electric energy services, as energy efficiency is less costly than constructing and operating new power plants and often even less costly than running existing power plants; (2) reducing power generation and thus decreasing emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, and other pollutants into the atmosphere, thereby reducing Arizona consumers' contributions to climate change, reducing health impacts caused by emissions, reducing damage to wildlife and plants caused by mercury and other power plant emissions, and reducing utilities' costs to comply with environmental regulations; (3) making Arizona more energy efficient; (4) enabling utilities to recover program costs in a timely manner and addressing in rate cases any adverse effects on utilities' revenues as a result of energy savings; (5) allowing utilities an opportunity to earn performance incentives for superior efficiency

programs; and (6) keeping the Commission and the public informed about efficiency program progress and cost-effectiveness through the implementation plan and reporting requirements of the proposed EEE rules. WRA further asserted that the proposed EEE rules' energy efficiency standard is directly related to the Commission's regulatory responsibilities to set just and reasonable rates for electric service and to adopt reasonable rules for the convenience, comfort, safety, and health of patrons of public service corporations. Finally, WRA suggested the following changes to the proposed EEE rules to improve clarity:

a. In Rule 2409(A)(4)(g), change "The environmental savings realized, including emissions and water savings" to read "The environmental benefits realized, including reduced emissions and water savings," because "environmental benefits" is a defined term and thus clearer;

b. In Rule 2413(A) and (C), insert "the" before "baseline"; and

c. In Rule 2419(B), change "The affected utility" to read "An affected utility."

59. In its comments filed on February 16, 2010, EnerNOC expressed support for the proposed EEE rules, "applaud[ed]" Staff for its efforts and attentiveness to the comments submitted by parties, and expressed pleasure that the proposed EEE rules include demand response as a means of achieving the overall consumption reduction of 22 percent, which EnerNOC asserted is aggressive, but achievable. EnerNOC asserted that demand response results in a number of benefits, including system security, deferral of new investment, protecting consumers from price spike during peak periods, and reducing emissions during peak periods. EnerNOC requested, however, that the proposed EEE rules be modified to:

a. Increase the cap on demand response as a percentage of total energy efficiency reductions, either by raising it from 2 percent to 5 percent, adopting a range of 2 to 5 percent, implementing a separate peak-load reduction target of 5 percent with an energy efficiency standard of 17 percent, or requiring that the 22-percent reduction include a 5-percent peak load reduction;

b. Clarify whether the peak-load reduction of 2 percent is for existing or only new incremental peak-load reduction measures; and

c. Explicitly include third parties or energy service companies, including demand response providers such as EnerNOC, as a means for a utility to satisfy its DSM targets.

In addition, EnerNOC requested that the Commission examine the implications of a 50-percent load factor to reducing the opportunity for peak-load reductions and that the Commission hold workshops and determine baseline methodology before utilities submit their DSM program plans. EnerNOC also provided a list of other ways to design a demand response target and provided information about regulatory actions taken and/or pending by the federal government and the governments of several states. EnerNOC expressed hope that the Commission would carefully consider the various manners in which states have adopted demand reduction policies and adopt a policy that is most suitable for Arizona.

60. In its comments filed on February 16, 2010, OPOWER expressed its support for the energy efficiency targets in the proposed EEE rules and affirmed its understanding that utilities may use behavior-based programming to meet their annual savings goals. OPOWER asserted that energy consumption in Arizona is increasing rapidly, at a rate of 4.1 percent per year, which OPOWER characterized as almost twice the national average. OPOWER stated that if this increased demand is not addressed, it will strain existing infrastructure, decrease energy supply reliability, create higher customer bills, and ultimately spur requests for new power plants. OPOWER stated that the Commission is wise to set aggressive efficiency targets to reduce the state's energy consumption and that these targets are necessary and achievable, if Arizona encourages innovation in energy efficiency.

61. In its initial comments on the proposed EEE rules, filed on February 16, 2010, TEP/UNS expressed support for the principle of energy efficiency, but stated that energy efficiency rules must be realistic regarding standards, programs, and results and must provide the customer a meaningful way to control energy usage and the utility a way to promote energy efficiency without jeopardizing quality of service or the utility's financial condition. TEP/UNS stated that the proposed EEE rules are a step in the right direction, but that there is still much work to be done before the proposed EEE rules can be found to be in the public interest. TEP/UNS asserted that targets should

be established based upon supportive studies and analyses and should perhaps even be service-area specific, that energy efficiency rules should be implemented in a manner and at a time that will not conflict with any federal energy efficiency legislation or rulemaking, that energy efficiency rules should not interfere with or diminish a utility's ability to recover its fixed costs, and that there should be a clear statement of the Commission's authority to implement energy efficiency rules. TEP/UNS asserted that the 22-percent energy efficiency standard and resulting ramp-up schedule are not in the public interest and are not supported by testimony or analytical studies, pointing out that the January 2006 Western Governors' Association Energy Efficiency Task Force Report recommended a goal of 10 to 15 percent savings from DSM programs by 2020; that the November 2007 U.S. Environmental Protection Agency ("EPA") Guide to Resource Planning with Energy Efficiency sets forth four stages of energy efficiency potential that should be used to determine program potential on a utility-specific basis;[28] that the Institute for Electric Efficiency's ("IEE's") January 2010 State Energy Efficiency Regulatory Frameworks shows that 35 states have adopted electric energy efficiency standards or policies, but that Arizona's proposed standard and ramp-up schedule is significantly more aggressive than that for all but one other state; and that the IEE's December 2009 White Paper "Assessment of Electricity Savings in the U.S. Achievable through New Appliance/Equipment Efficiency Standards and Building Efficiency Codes (2010-2020)" states that new codes and standards can decrease the potential for utility's energy efficiency programs by increasing baseline efficiency and requiring utility programs to focus on higher cost, higher energy efficiency resources in their own programs. TEP/UNS further asserted that the proposed EEE rules should be aligned with any federally mandated energy efficiency standard, at least being consistent with federal requirements as to measurement methodology and definitions, and further stated that utilities should be able to exchange renewable energy credits and efficiency standard requirements to meet both the Renewable Energy Standards and the proposed EEE rules in an economical manner. Finally, TEP/UNS asserted that energy efficiency rules should not interfere with or diminish a utility's right to recover its costs and opportunity to earn a reasonable return on its investments and that the rules should include a

[28] TEP and UNS asserted that they have hired a consulting firm to complete a potential study for both of them, but that the results of the study will not be available until December 2010.

mechanism through which utilities can be compensated for lost revenue resulting from a decline in volumetric sales due to energy efficiency measures, pointing out that 11 states have adopted decoupling along with their energy efficiency initiatives, that eight states have decoupling cases pending, that seven states have adopted lost revenue adjustment mechanisms ("LRAMs"), and that one state has an LRAM case pending. TEP/UNS requested that the proposed EEE rules be modified to include the following provision for a fixed cost recovery deficiency mechanism, which TEP/UNS assert is necessary so that the energy efficiency standard will not place a financial burden upon the utilities and so that the interests of utilities and their customers are aligned:

> An affected utility shall file within 90 days of approval of this standard a Fixed Cost Recovery Rate supporting the per kWh cost recovery shortfall created by reduced kWh sales due to DSM/EE programs. This Fixed Cost Recovery Rate will be equal to the non-fuel-related variable rate approved by the ACC in the Utility's most recent rate case. The Fixed Cost Recovery Deficiency calculation shall multiply the Fixed Cost Recovery Rate by the cumulative kWh sales reductions due to DSM/EE since the Utility's last rate case. Both the Fixed Cost Recovery Rate and the cumulative DSM/EE sales reductions shall be reset coincident with the effective date of applicable changes to the Utility's rates. The affected utility shall recover the Fixed Cost Recovery Deficiency through the annual true-up of the affected utility's DSM adjustor mechanism.

62. In the comments filed by GCSECA on their behalf on February 18, 2010, the Cooperatives asserted that while they believe they can increase the amount and scope of cost-effective energy efficiency programs, they also believe that the standard in the proposed EEE rules may not be realistic, measurable, or achievable. The Cooperatives expressed concern about fixed cost recovery for energy efficiency programs and urged the Commission to address fixed cost recovery issues in this rulemaking. The Cooperatives also echoed TEP/UNS's comments related to basing the energy efficiency standard on studies and analyses, ensuring consistency with federal and state legislation, and having the Commission clarify its authority to implement the proposed EEE rules. The Cooperatives asserted that they cannot meet the 22-percent standard by 2020 or the annual ramp-up standards and that one standard based on reductions in kWh sales is not appropriate for all utilities. The Cooperatives proposed that each cooperative be permitted to file and have a Commission-approved energy efficiency plan and a mechanism to timely recover all related energy efficiency program costs and margins associated with energy efficiency kWh savings, specifically by

eliminating the language in Rule 2418(C) that requires each Cooperative's implementation plan to set forth an energy efficiency goal for each year "of at least 75% of the savings requirement specified in R14-2-2404." The Cooperatives further asserted that a utility should be able to count any and all DSM or energy efficiency measures that it has invested in since 2005 toward meeting the energy efficiency standard, without caps or disallowances, and that not allowing the use of DSM or of delivery system efficiency improvements to meet the energy efficiency standard "severely handicaps" the Cooperatives in meeting the standard. The Cooperatives also asserted that they will likely be unable to provide any meaningful information regarding assumptions, calculations, and amounts for environmental externalities or societal benefits and savings; that they would incur significant costs in trying to quantify these societal benefits and savings; that the Commission will already receive this type of information through its Resource Planning rules; and that the proposed EEE rules thus should not include a requirement for utilities to submit information regarding environmental externalities and societal benefits and savings. Finally, the Cooperatives stated that they do not support a profit-related performance incentive, instead desiring the regulatory flexibility to collect necessary expenses in an efficient, cost-effective, and timely manner.

63. In her comments filed on February 19, 2010, Katie Morales urged the Commission to increase energy efficiency requirements to at least 20 percent by 2020 and to require Arizona utilities to invest more ratepayer dollars into energy efficiency. Ms. Morales asserted that energy efficiency is one of the most effective energy cost management tools and that it is supported by numerous studies, such as the Western Governors' Association's Energy Efficiency Task Force Report, which Ms. Morales asserted found that the average cost for energy efficiency programs is $0.02 to $0.03 per lifetime kWh saved compared to conventional generation of $0.05 to $0.09 per kWh and current electric rates of approximately $0.10 per kWh. Ms. Morales asserted that by requiring utilities to provide incentives for energy efficiency and to ensure that businesses are informed and educated about incentives and the value of energy efficiency programs, the Commission will help residents to save money, save energy, and protect the environment. Ms. Morales asserted that while energy efficiency measures may result in slightly higher rates, if they are properly implemented, she expects to see a decline in her electric bills as she reduces her electricity consumption. Ms. Morales further

asserted that as the aggregate demand for electricity is reduced through efficiency measures, the total cost of electric energy services will decrease over the long run because utilities will reduce their fuel and other generation costs. Ms. Morales also stated that she would like to see programs to support renewable energy.

64. In its February 19, 2010, comments on the proposed EEE rules, SWEEP stated that it strongly supports the proposed EEE rules because they are in the public interest; that increasing energy efficiency through the proposed EEE rules will reduce the total energy costs for affected utilities' ratepayers because the DSM programs and measures must be cost-effective to gain approval; that increasing energy efficiency will reduce other costs, including environmental costs and water costs, which are passed on to ratepayers, because using less energy will result in less air pollution and fewer carbon emissions and environmental impacts, thus reducing the costs to comply with environmental regulations; and that increasing energy efficiency will increase the reliability of the electric grid by reducing load growth, diversifying energy resources, and reducing the pressure on and costs of electric distribution and transmission, thus ensuring reliable electric service for affected utilities' customers. SWEEP further asserted that through adopting the proposed energy efficiency standard, the Commission will be ensuring reliable electric service at reasonable rates and costs for ratepayers, while reducing environmental impacts. SWEEP also stated that the Commission has been considering and addressing issues regarding disincentives to utilities' supporting energy efficiency, cost recovery, and performance incentives in parallel proceedings in a separate docket and thus does not need to resolve them in this rulemaking. SWEEP asserted that increasing energy efficiency will save money for consumers and businesses through lower electric bills, will reduce load growth, will diversify energy resources, will enhance the reliability of the electric grid, will reduce the amount of water used for power generation, will reduce air pollution and carbon emissions, and will create jobs and improve the Arizona economy. SWEEP asserted that the total cost (both program and customer costs) for energy efficiency savings is $0.02 to $0.05 per lifetime kWh saved, significantly less than the cost of conventional electric generation, transmission, and distribution.

65. In the reply comments filed by GCSECA on behalf of the Cooperatives on February 23, 2010, the Cooperatives asserted that only SWEEP, which is not subject to the proposed EEE

rules, actively supported an energy efficiency standard as high as 20 percent; reiterated that the energy efficiency standard should be based on supported studies and analyses; pointed out that TEP/UNS's comments cited several studies that show achievable and cost-effective targets that are significantly lower than the proposed 22-percent standard; and asserted that several other studies, such as one performed by the Electric Power Research Institute, suggest cumulative, cost-effective energy efficiency savings in the west of approximately 6 percent by 2020 and 9 percent by 2030. The Cooperatives also asserted that a study completed for Salt River Project ("SRP") determined that the maximum achievable potential for SRP was 3 percent by 2014, less than half of the standard for 2014 included in the proposed EEE rules. The Cooperatives stated that an energy efficiency goal/target based on member/customer participation in proven energy efficiency programs would be more appropriate than a standard based on percentage reductions in kWh. The Cooperatives also disagreed with SWEEP's assertion that the proposed EEE rules do not need to resolve utility fixed cost recovery, indicating that they support the proposals made by utilities to allow utilities to recover the fixed costs associated with the kWh saved from energy efficiency programs. The Cooperatives also supported EnerNOC's comments that the demand response cap should be raised, asserting that a utility should be able to count any and all DSM/energy efficiency measures that it has invested in since 2005. Finally, the Cooperatives reiterated that not allowing the use of DSM to meet the EE standard and not allowing efficiency improvements to the delivery system to meet the standard "severely handicaps" the Cooperatives' abilities to meet the standard.

66. In its responsive comments filed on February 23, 2010, APS responded to the comments of TEP/UNS and the Cooperatives, stating that APS disagrees that the regulatory disincentives problem must be resolved in the proposed EEE rules and that it should instead be viewed in the full context of certain commitments made within the proposed EEE rules themselves and in other proceedings pending before the Commission. APS pointed out that Rule 2410(I) requires the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue due to Commission-approved DSM programs in an affected utility's rate case if the affected utility requests such consideration and provides documentation/records supporting its request in its rate application. APS further agreed with

SWEEP's assertion that the Commission has been reviewing and considering issues regarding utility disincentives, cost recovery, and performance incentives in parallel dockets and regulatory proceedings and stated that APS understood that a Notice of Inquiry on regulatory disincentives would be forthcoming from the Commission imminently.[29] APS stated that it will continue to work with the Commission and other interested parties in the workshop process to devise appropriate means of removing regulatory disincentives to cost-effective energy efficiency and expressed confidence that the Commission will adopt, no later than an affected utility's next rate case, the policies that will result from the workshops.

67. In Staff Response I, attached hereto as Exhibit C-1 and filed on March 2, 2010, Staff recommended the following changes to the proposed rules:

a. Rule 2409(A)(4)(g) should be modified to read "The environmental benefits realized, including reduced emissions and water savings;" to provide clarity, as recommended by WRA;

b. Rule 2413(A) and (C) should be modified by inserting "the" before "baseline," as recommended by WRA; and

c. Rule 2419(B) should be modified by changing "The affected utility" to read "An affected utility," as recommended by WRA.

Regarding the comments from TEP/UNS and the Cooperatives that the 22-percent standard is not in the public interest, Staff stated that Rule 2419 allows an affected utility to petition the Commission for a waiver of any provision of the rules and that an affected utility that believes the requirement in Rule 2404 is not appropriate for it could request such a waiver. Regarding the cap on demand response and load management programs of two percentage points of the 22-percent standard, Staff stated that the allowance is sufficient and pointed out that an affected utility may be more motivated to implement demand response programs than energy efficiency programs because demand response programs may reduce costs without reducing revenue, as electric usage is shifted rather than reduced. Staff also noted that an affected utility can have more demand response than the two percentage

[29] A Notice of Inquiry was filed in the Incentives Docket on February 24, 2010.

points, although the additional amount would not count toward meeting the 22-percent standard. Staff also clarified that the peak demand reductions occurring after the rules' effective date but resulting from a demand response or load management program implemented before the rules' effective date can be counted toward meeting the energy efficiency standard. Staff also noted that the proposed EEE rules do not prohibit an affected utility from using a third-party demand response provider and that the Commission can hold workshops on baseline methodology without including a provision for such workshops in the rules. Regarding the Cooperatives' assertion that language about societal benefits and savings should be eliminated from the rules, Staff stated that such estimates are important in deciding which energy efficiency programs to propose. Regarding TEP/UNS's suggestion to include language for a fixed cost recovery rate in the rules, Staff stated that a rate case is the most appropriate time to address fixed cost recovery and also noted that Rule 2410(I) requires the Commission to address fixed cost recovery in a rate case if an affected utility requests such consideration and provides supporting documentation. Regarding the Cooperatives' request to eliminate the requirement in Rule 2418(C) for each Cooperative's implementation plan to set forth an energy efficiency goal for each year "of at least 75% of the savings requirement specified in R14-2-2404," Staff stated that a cooperative that believes the 75-percent standard is not appropriate could request a waiver under Rule 2419.

68. At the March 5, 2010, oral proceeding on the proposed EEE rules, TEP/UNS clarified that they are not challenging the Commission's authority to adopt the proposed EEE rules, but are concerned about the impact of the proposed EEE rules because selling less power will result in less revenue unless the Commission authorizes recovery of that lost revenue. TEP/UNS characterized the proposed EEE rules as essentially producing a de facto rate decrease of 1.0 to 1.2 percent for each 2-percent decrease in kWh sold, without providing a clear mechanism to recover the revenue loss. TEP/UNS asserted that they will not recover their costs until their next rate cases and that TEP cannot file a rate case until 2012. TEP/UNS also stated that the energy efficiency savings for the first few years should not be too difficult to achieve, characterizing the early programs as "low-hanging fruit," but that accomplishing the savings in the later years will be more difficult. TEP/UNS again questioned the 22-percent standard, stating that it is not supported by any particular study and that it

would be helpful for the Commission to examine the existing studies in additional hearings and perhaps only adopt a five-year standard for now, with longer term standards to be adopted after additional examination. TEP/UNS acknowledged that Rule 2410(I) speaks to cost recovery in a rate case, but expressed concern about having to use an accounting order and also about the delay in recovery. TEP/UNS also acknowledged the Incentives Docket, but stated that it is unclear what will come out of that docket. APS continued to express support for the Commission's efforts to develop energy efficiency standards and rules for Arizona; stated that the 22-percent standard by 2020 is very aggressive and will take a lot of hard work and considerable money to achieve; expressed support for the proposed EEE rules' flexibility in meeting the 22-percent standard by 2020; and agreed with TEP/UNS that the financial disincentives issue must be addressed to make the energy efficiency standard goals sustainable going forward, but also stated that it has confidence in the Commission's commitment to addressing that issue through workshops and through APS's next rate case and that the issue need not be resolved in this rulemaking.

69. In its comments filed on March 9, 2010, PIRG included a letter supporting an energy efficiency requirement of at least 20 percent by 2020, which PIRG asserted is also supported by 187 listed individuals. PIRG stated that it supports the proposed EEE rules and that energy efficiency is a proven, immediate, and effective way to save ratepayers money, which is particularly important during the current hard economic times. PIRG stated that it wanted to ensure that the hundreds of other citizens, organizations, and businesses who previously urged the Commission to adopt the energy efficiency standard of at least 20 percent by 2020 are counted as supporters of the proposed EEE rules. PIRG stated that these energy efficiency supporters include hundreds of citizens, from Winslow to Eloy; more than 25 organizations, from the Coconino Coalition for Children & Youth in Flagstaff to the American Council of Consumer Awareness in Tucson; and more than 50 businesses, from Living Systems Sustainable Architecture in Prescott to the Downtown Deli in Phoenix. PIRG stated that while Arizonans may have different reasons to support energy efficiency—economic, public health, air quality, environmental, or other benefits—there is recognition and support across the state to raise rates for an increase of effective energy efficiency programs that ultimately will save consumers and businesses money on their monthly electric bills. PIRG explained its three Principles

for the Electric System: (1) Access to safe, reliable, affordable electricity service; (2) Balance of the long-term and short-term needs of consumers as well as the interests of various classes of consumers; and (3) Consumers being assured that the public interest guides all decisions with regard to the electric system. PIRG asserted that increasing energy efficiency to at least 20 percent by 2020 tops the list of achieving these three Principles.

70. In its comments filed on March 9, 2010, the Arizona Consumers Council ("Council") stated that its comments were made on behalf of itself and its more than 1,000 members, many of whom are APS customers. The Council thanked the Commission for focusing on energy efficiency, asserting that energy efficiency benefits consumers both in the short run by saving them money and in the long run by reducing environmental impacts. The Council added that the rules may also reduce the need for utilities to make capital expenditures, thus reducing one source of upward pressure on rates. The Council provided the following quote from a Consumer Federation of America study: "[E]nergy efficiency is the cornerstone to ensuring affordable energy for American households in the decades ahead . . . [because] [i]t costs so much less to save energy than it does to produce it."[30] The Council expressed support for an energy efficiency standard of 20 percent by 2020, for availability of a wide variety of energy efficiency programs suitable for different customer classes, and for customers of all classes to have access to clear and understandable information tailored to their own needs as well as technical assistance. The Council asserted that programs to help low-income consumers implement energy efficiency measures are especially important and that innovative programs to help other consumers finance more expensive energy efficiency methods should also be available.

71. In his comments filed on March 17, 2010, William Scown asserted that Arizona's peak demand for electricity doubled between 1990 and 2005 (from 8,000 MW to 16,000 MW) and that the current "economic hiccup" provides an opportunity to deal with future growth, which had been forecasted to result in another doubling of peak demand between 2006 and 2025 and would have necessitated a great deal of new plant capacity, "wreak[ing] havoc" on household budgets across

[30] Council Comments at 1 (quoting Mark Cooper, Consumer Federation of America, *Building on the Success of Energy Efficiency Programs to Ensure an Affordable Energy Future: State-by-State Savings on Residential Utility Bills from Aggressive Energy Efficiency Policies* (February 2010)).

the state, consuming scarce water resources, and contributing to air pollution and global warming. Mr. Scown asserted that 56 percent of electricity used in Arizona comes from coal-fired and natural gas-fired power plants, with all of the natural gas being imported from other states, which results in Arizonans spending nearly $1 billion per year to import out-of-state energy resources. Mr. Scown asserted that the cleanest, cheapest, and fastest way to avert a crisis is to improve efficiency, which will meet the growing energy needs of the state at an affordable price, will conserve water, and will protect air quality. Mr. Scown expressed support for the 22-percent standard in the proposed EEE rules, stating that he is willing to pay a little more in rates for energy efficiency programs that will make the total energy bill go down. In addition, Mr. Scown stated that the proposed EEE rules will help cap production of global warming gases, displace fossil fuels, and create new Arizona green jobs.

72. In Staff Response II, attached hereto as Exhibit C-2 and filed on April 16, 2010, Staff recommended the following changes to the proposed EEE rules:

a. Rule 2401 should be modified by adding the following definition: "'Thermal envelope' means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate the interior conditioned (heated and/or cooled) spaces from the exterior environment."

b. Rule 2404(A) should be revised to read as follows: "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% by December 31, 2020."

c. Rule 2404(B) should be revised to read "An affected utility shall meet at least the following annual energy efficiency standard for each year:" and to have the table therein revised to appear as follows:

CALENDAR YEAR	ANNUAL ENERGY EFFICIENCY STANDARD (Annual Energy Savings in Each Calendar Year as a Percent of the Retail Energy Sales in the Prior Calendar Year)	CUMULATIVE ENERGY SAVINGS
2011	1.25%	1.25%
2012	1.75%	3.00%
2013	2.00%	5.00%
2014	2.25%	7.25%
2015	2.25%	9.50%
2016	2.50%	12.00%
2017	2.50%	14.50%
2018	2.50%	17.00%
2019	2.50%	19.50%
2020	2.50%	22.00%

d. Rule 2404(D) should be revised by having the columns in its table reversed to be consistent with Staff's recommended table in Rule 2404(B) and to appear as follows:

CALENDAR YEAR	CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS APPLIED IN EACH YEAR (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Shall Be Applied in the Year)	CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS IN 2016-2020 (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Are Credited by the End of Each Year)
2016	7.5%	7.5%
2017	15.0%	22.5%
2018	20.0%	42.5%
2019	25.0%	67.5%
2020	32.5%	100.0%

e. Rule 2407(B) should be revised by deleting "annual" before "implementation plan" because Rule 2405 provides that implementation plans may be filed in each odd year.

f. Rule 2407(E) should be revised by inserting "DSM" before "programs" and "program" and by inserting "affected" before "utilities" for clarity.

g. Rule 2410(A)(3) should be revised by inserting ", pursuant to R14-2-2415" after "cost-effectiveness."

h. Rule 2410(I) should be revised by replacing the language "if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application" with "if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application."

i. Rule 2414(A) should be rewritten to read "Ratepayer-funded DSM programs and measures shall not promote the replacement of existing, or installation of new, appliances utilizing one fuel source with similar appliances that utilize another fuel source, unless the new appliance results in reduced overall energy use."

j. Rule 2415(B) should be revised by inserting "DSM" before "program planning" and "program improvement" for clarity.

In addition, Staff recommended that the second sentence of the first paragraph in Section B.1 of the EIS, attached hereto as Exhibit B, be replaced with the following for clarity: "Rules R14-2-2401 through R14-2-2419 require affected utilities to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent by December 31, 2020."

73. In its April 29, 2010, comments responding to Staff Response II, APS stated that many of the changes recommended by Staff therein provide clarity and are responsive to the oral comments provided at the oral proceeding, but expressed concern regarding Staff's recommended changes for Rules 2404(A) and 2414(A) and the EIS and stated that those changes should not be made. Regarding 2404(A) and the EIS, APS stated that Staff's recommended changes would leave uncertainty regarding to what value the 22-percent standard applies and would make the standard vague, stating that although the table provides some of the clarity that the text lacks, the 22-percent requirement is at the core of the proposed EEE rules and should be explicitly stated in the text. APS stated that the EIS language should be retained to be consistent with 2404(A). APS further stated that the recommended changes to 2414(A) expand and provide additional detail regarding the requirement therein and would result in a substantive change that would reverse the intent of the provision. APS expressed agreement with Staff's statement at the oral proceeding regarding the meaning of "fuel

neutral"—that ratepayer funds should not be used to promote one fuel over another—and stated that Staff's recommended change would appear to allow DSM-funded fuel switching if a new appliance resulted in reduced overall energy use, which APS asserted is inconsistent with the issue as discussed during the 2003 and 2004 workshops and with the February 2005 DSM Policy. APS stated that the former wording should be retained or, alternatively, that Staff's recommended wording for Rule 2414(A) could be used if the final phrase "unless the new appliance results in reduced overall energy use" were removed.

74. In its May 3, 2010, comments responding to Staff Response II, WRA stated that several of Staff's recommended wording changes have unintended consequences and should not be adopted. WRA recommended that no change be made to Rule 2404(A), as Staff's recommended change does not specify to what the 22-percent standard is to be applied. WRA also recommended that no change be made to Rule 2404(B) because the sum of the Staff-recommended annual standards is not the same as the cumulative standard in the proposed EEE rules. WRA included a table showing that the original proposed language and Staff's recommended revised language would have divergent results in 2012 and subsequent years.

75. In its May 6, 2010, comments responding to Staff Response II, SWEEP stated that Staff's proposed wording changes for Rules 2404(A), 2404(B), and 2414(A) should not be adopted. SWEEP asserted that Staff's proposed change to Rule 2404(A) should not be adopted because it does not state to what the 22 percent is to be applied and thus makes the rule unclear. SWEEP asserted that the originally proposed language is clear, accurate, and appropriate and that it should be retained by the Commission. SWEEP also asserted that Staff's changes to Rule 2404(B) should not be adopted because the energy efficiency standard is a cumulative standard and should not be changed to an annual standard and because the level of energy savings resulting from the energy efficiency standard as revised by Staff is not numerically equivalent to the standard set forth in Decision No. 71436. SWEEP expressed support for WRA's comments and analysis regarding this issue. Finally, SWEEP asserted that Staff's recommended change to Rule 2414(A) should not be adopted and that the originally proposed language should be retained because the revised language deletes the words "in a fuel-neutral manner" and replaces them with language regarding fuel switching, which SWEEP

views as a related, but distinct and thus additional issue. SWEEP asserted that developing and implementing DSM programs in a fuel-neutral manner means that a utility administrator should remain neutral regarding the customer's fuel choice and should not bias the customer's decision toward the fuel the utility provides or is associated with. SWEEP added that the proper place to review specific DSM programs and how DSM funding is used is in the Commission's review of implementation plans.

76. In Staff Response III, attached hereto as Exhibit C-3 and filed on June 24, 2010, Staff modified portions of its previous recommendations to address the concerns expressed by APS, WRA, and SWEEP in response to Staff Response II and to clarify the proposed rules. Specifically, Staff recommended the following changes to the proposed EEE rules:

a. Rather than being revised as provided in Staff Response II, Rule 2404(A) should be revised to read as follows: "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for calendar year 2019."

b. Rather than being revised as provided in Staff Response II, Rule 2404(B) should be revised to read as follows: "An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4."

c. Rather than being modified as included in Staff Response II, the table in Rule 2404(B) should be modified only by adding the heading "Table 1. Energy Efficiency Standard" and by replacing "in" with "by the End of" in the heading for the second column.

d. Rule 2404(B) should be further modified by adding a new Table 2 as follows to provide an illustrative example of how the required energy savings would be calculated:

Table 2. Illustrative Example of Calculating Required Energy Savings

CALENDAR YEAR	A RETAIL SALES (kWh)	B ENERGY EFFICIENCY STANDARD	C REQUIRED CUMULATIVE ENERGY SAVINGS (B*prior year A)
2010	100,000,000		0
2011	100,750,000	1.25%	1,250,000
2012	101,017,500	3.00%	3,022,500
2013	101,069,925	5.00%	5,050,875
2014	100,915,646	7.25%	7,327,570
2015	100,821,094	9.50%	9,586,986
2016	100,517,711	12.00%	12,098,531
2017	100,293,499	14.50%	14,575,068
2018	100,116,043	17.00%	17,049,895
2019	99,986,628	19.50%	19,522,628
2020	99,902,384	22.00%	21,997,058

e. Rule 2404(D) should be modified by replacing "as follows" in the third sentence with "as listed in Table 3, Column A."

f. The table in Rule 2404(D) should be modified by adding the heading "Table 3. Credit for Pre-Rules Energy Savings," by reversing the columns for clarity as previously recommended in Staff Response II, by adding column labels "A" and "B," and by replacing the word "Pre-Standard" with "Pre-Rules" where it appears in the headings for the columns.

g. Rule 2404 should be further modified by adding a new Table 4 as follows to provide an illustrative example of how the 22-percent standard could be met in 2020:

Table 4. Illustrative Example of How the Energy Standard Could Be Met in 2020

	2020 ENERGY EFFICIENCY STANDARD	**2019 RETAIL SALES (kWh)**	**REQUIRED CUMULATIVE ANNUAL ENERGY SAVINGS (kWh)**
Total	**22.00%**	**99,986,628**	**21,997,058**
			CUMULATIVE ANNUAL ENERGY SAVINGS OR CREDITS TO MEET THE STANDARD (kWh)
Demand Response Credit R14-2-2404(C)	**2.00%**		**1,999,733**
Pre-rules Savings Credit R14-2-2404(D)			**1,100,000***
Building Code R14-2-2404(E)			**1,000,000**
CHP R14-2-2404(F)			**500,000**
Self-Direction R14-2-2404(G)			**100,000**
Energy Efficiency R14-2-2404(A)			**17,297,325**
Total			**21,997,058**

* The total Pre-rules Savings Credit is capped at 4% of 2005 retail energy sales, and the total credit is allocated over five years from 2016 to 2020. The credit shown above represents an estimate of the portion of the total credit that can be taken in 2020, or 32.5% of the total credit allowed.

h. Rather than being revised as recommended in Staff Response II, Rule 2414(A) should be revised to read "Ratepayer-funded DSM programs shall be developed and implemented in a fuel-neutral manner, meaning that an affected utility as an administrator of DSM programs should not bias the customer's

fuel choice (such as electricity or gas) toward the fuel that the affected utility provides."

In addition, Staff provided a clarification of language included in the EIS filed on January 22, 2010, attached hereto as Exhibit B, and for which Staff had previously provided a recommended revision in Staff Response II. Specifically, Staff recommended that the second sentence of the first paragraph in Section B.1 of the EIS, attached hereto as Exhibit B, be replaced with the following for clarity: "Rules R14-2-2401 through R14-2-2419 require affected utilities, by December 31, 2020, to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for calendar year 2019."

77. A document summarizing the written and oral comments received regarding the proposed EEE rules and providing the Commission's responses to those comments is attached hereto as Exhibit E and incorporated herein. The summary of comments and the Commission's responses to those comments, as set forth in Exhibit E, should be included in the Preamble for a Notice of Final Rulemaking in this matter.

Probable Economic Impacts

78. Staff's EIS is attached hereto as Exhibit B. We find that the information included in Exhibit B is accurate and should be included in the EIS for this rulemaking, with the modification of the second sentence of the first paragraph of Section B.1 recommended by Staff in Findings of Fact No. 76.

79. We also find that the information set forth in Findings of Fact Nos. 42 through 47 and in Findings of Fact No. 48(d) through (i) should be added to the EIS for this rulemaking to reflect more fully the rulemaking's impacts.

Resolution

80. The changes recommended by Staff as set forth in Findings of Fact No. 67; in Findings of Fact No. 72(a), modified to delete "the" before "interior conditioned" and to delete "and/"; in Findings of Fact No. 72(e) and (f); in Findings of Fact No. 72(g), modified to delete the comma; in Findings of Fact No. 72(h) and (j); and in Findings of Fact No. 76(a) through (g) would increase the clarity, conciseness, and understandability of the proposed EEE rules and should be

adopted.

81. In addition to the Staff-recommended changes identified in Findings of Fact No. 80, we find that the following changes should be made to the proposed EEE rules, as modified under Findings of Fact No. 80, to make them more clear, concise, and understandable:

a. In Rule 2401, the following definition, which is consistent with Staff's recommended change described in Findings of Fact No. 76(h), should be inserted: "'Fuel-neutral" means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another."

b. The formatting of the tables in Rule 2404 should be modified slightly to be consistent with the general stylistic standards for the Arizona Administrative Code.

c. The heading of column "C" in Table 2 should be modified to show the equation as "B of current year × A of prior year" to enhance clarity.

d. In Table 4, a new row should be added after the second row to contain the heading "Breakdown of Savings and Credits Used to Meet 2020 Standard:" to enhance clarity, the words "Up to" should be inserted before "2.00%" in the row for Demand Response Credit, and "CREDITS TO MEET THE STANDARD" should be replaced with "CREDIT" in the fourth column heading.

e. In Rule 2404(C), the following should be added at the end of the subsection to clarify its meaning: "The measured reductions in peak demand occurring during a calendar year after the effective date of this Article may be counted for that calendar year even if the demand response or load management program resulting in the reductions was implemented prior to the effective date of this Article."

f. In Rule 2404(D), "energy efficiency" should be inserted between "pre-rules" and "programs" to be consistent with the first sentence of the subsection.

82. As published in the NPRM, the proposed EEE rules also included several minor errors

that should be corrected in the Notice of Final Rulemaking for this rulemaking, specifically:

a. In Rule 2401, a hyphen should be inserted in the term "low income customer";

b. In the definition for "self-direction" in Rule 2401 and in Rule 2409(A)(1), "towards" should be replaced with "toward";

c. In Rules 2404(D), 2405(A), 2405(B)(1), and 2416(B), "these rules" should be replaced with "this Article";

d. In Rule 2405(B)(2) and (3), "Except that the initial implementation plan shall" should be replaced with "Except for the initial implementation plan, which shall";

e. In Rule 2409(A), a hyphen should be inserted between "Commission" and "established";

f. In Rule 2409(A)(1), (2), and (3), the ending punctuation for each subsection should be a semicolon rather than a comma;

g. In Rule 2409(A)(3), an "and" should be added at the end of the subsection;

h. In Rule 2412(B), a hyphen should be inserted in "cost effectiveness";

i. In Rule 2412(F), "Programs" should not be capitalized;

j. In Rule 2419(B), "the Article" should be replaced with "this Article"; and

k. In Rule 2419(C), "these rules" should be replaced with "this Section."

83. The changes identified in Findings of Fact Nos. 80 through 82 would not result in a substantial change to the proposed EEE rules, as determined under A.R.S. § 41-1025, and would not necessitate a Notice of Supplemental Proposed Rulemaking because they will not change the persons affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules.

84. The proposed EEE rules, with the changes identified in Findings of Fact Nos. 80 through 82 ("revised EEE rules"), are set forth in Exhibit D and incorporated herein and should be adopted by the Commission.

85. The revised EEE rules, as set forth in Exhibit D, should be submitted to the Attorney General's Office for approval pursuant to A.R.S. § 41-1044, in the form of a Notice of Final

Rulemaking that includes a Preamble complying with A.R.S. § 41-1001(14)(d), along with a separate Economic, Small Business, and Consumer Impact Statement that combines the information contained in the EIS filed by Staff, as modified by Findings of Fact No. 78, and the information set forth in Findings of Fact Nos. 42 through 47 and Findings of Fact No. 48(d) through (i).

CONCLUSIONS OF LAW

1. Pursuant to Arizona Constitution, Art. 15, § 3, the Commission has authority and jurisdiction to adopt Article 24 and Rules 2401 through 2419 as reflected in Exhibit D.

2. The revised EEE rules, as set forth in Exhibit D, are reasonably necessary steps for effective rulemaking.

3. Because the Commission is adopting the revised EEE rules to fulfill its constitutional ratemaking obligation under Art. 15, § 3, this rulemaking is not prohibited by Laws 2009, Chapter 7, § 28 (3rd Special Session).

4. Although the Commission is not required to submit rulemakings authorized by the Commission's plenary and exclusive constitutional ratemaking authority under Art. 15, § 3 to the Attorney General for certification under A.R.S. § 41-1044, it is permissible for the Commission to do so, and the Commission's decision to do so does not constitute a waiver of its position that this rulemaking is wholly authorized by Art. 15, § 3.

5. Pursuant to Arizona Constitution, Art. 15, § 13 and A.R.S. §§ 40-202(A), 40-203, 40-204(A), 40-281(A), 40-282(C), 40-321(A), and 40-322(A), the Commission has additional authority and jurisdiction to adopt Article 24 and Rules 2401 through 2419 as reflected in Exhibit D.

6. Notice of the oral proceeding regarding the NPRM was provided in the manner prescribed by law.

7. Article 24 and Rules 2401 through 2419, as set forth in Exhibit D, contain no substantial changes from the proposed EEE rules as published in the NPRM.

8. Article 24 and Rules 2401 through 2419, as set forth in Exhibit D, are clear, concise, and understandable; within the Commission's power to make; within enacted legislative standards; and made in compliance with appropriate procedures.

9. Adoption of Article 24 and Rules 2401 through 2419, as set forth in Exhibit D, is in

the public interest.

10. A separate Economic, Small Business, and Consumer Impact Statement that combines the information contained in the EIS filed by Staff, as modified by Findings of Fact No. 78, and the information set forth in Findings of Fact Nos. 42 through 47 and Findings of Fact No. 48(d) through (i) will comply with A.R.S. § 41-1057(2) and should be adopted.

11. The summary of the written and oral comments received regarding the proposed EEE rules and the Commission's responses to those comments set forth in Exhibit E are accurate, will comply with A.R.S. § 41-1001(14)(d), and should be included in the Preamble for the Notice of Final Rulemaking for this matter.

ORDER

IT IS THEREFORE ORDERED that Arizona Administrative Code Title 14, Chapter 2, Article 24, and Rules R14-2-2401 through R14-2-2419, as set forth in Exhibit D, are hereby adopted.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff shall create a separate Economic, Small Business, and Consumer Impact Statement that combines the information contained in the EIS filed by Staff, as modified by Findings of Fact No. 78, and the information set forth in Findings of Fact Nos. 42 through 47 and Findings of Fact No. 48(d) through (i) and that the Commission hereby adopts the separate Economic, Small Business, and Consumer Impact Statement so created.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff shall prepare and file with the Office of the Attorney General, for approval pursuant to Arizona Revised Statutes § 41-1044, a Notice of Final Rulemaking that includes the text of Arizona Administrative Code Title 14, Chapter 2, Article 24, and Rules R14-2-2401 through R14-2-2419, as set forth in Exhibit D, and a Preamble that conforms to Arizona Revised Statutes § 41-1001(14)(d) and includes a summary of comments and Commission responses as set forth in Exhibit E. The Commission's Utilities Division Staff/Legal Division Staff shall also file with the Office of the Attorney General the separate Economic, Small Business, and Consumer Impact Statement required to be created by the second ordering paragraph herein and any additional documents required by the Office of the Attorney General for its approval process.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff is authorized to make non-substantive changes in the adopted Arizona Administrative Code Title 14, Chapter 2, Article 24, and Rules R14-2-2401 through R14-2-2419, as set forth in Exhibit D; the adopted Economic, Small Business, and Consumer Impact Statement; and any additional documents required by the Office of the Attorney General in response to comments received from the Office of the Attorney General during the approval process under Arizona Revised Statutes § 41-1044 unless, after notification of those changes, the Commission requires otherwise.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

SERVICE LIST FOR: RULEMAKING

DOCKET NO.: RE-00000C-09-0427

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NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

Editor's Note: The following Notice of Proposed Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 139.)

[R09-147]

PREAMBLE

1. **Sections Affected** / **Rulemaking Action**

Sections Affected	Rulemaking Action
Article 24	New Article
R14-2-2401	New Section
R14-2-2402	New Section
R14-2-2403	New Section
R14-2-2404	New Section
R14-2-2405	New Section
R14-2-2406	New Section
R14-2-2407	New Section
R14-2-2408	New Section
R14-2-2409	New Section
R14-2-2410	New Section
R14-2-2411	New Section
R14-2-2412	New Section
R14-2-2413	New Section
R14-2-2414	New Section
R14-2-2415	New Section
R14-2-2416	New Section
R14-2-2417	New Section
R14-2-2418	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-281, 40-282, 40-322

   Implementing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-281, 40-282, 40-321, 40-322

3. **A list of all previous notices appearing in the *Register* addressing the proposed rule:**

   Notice of Rulemaking Docket Opening: 16 A.A.R. 137, 2010 *(in this issue)*

4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Maureen Scott, Esq.
   Attorney, Legal Division, Corporation Commission

   Address: 1200 W. Washington St.
   Phoenix, AZ 85007

   Telephone: (602) 542-3402

Fax:	(602) 542-4870
E-mail:	mscott@azcc.gov
or	
Name:	Steve Olea Director, Utilities Division, Corporation Commission
Address:	1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-7270
Fax:	(602) 542-2129
E-mail:	solea@azcc.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The purpose of Electric Energy Efficiency Standards is for affected utilities to achieve energy savings through cost-effective energy efficiency programs in order to ensure reliable electric service at reasonable rates and costs. Energy efficiency means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers. Cost-effective energy efficiency is less expensive than generating electricity and provides less impact on the environment. By December 31, 2020, the rules would require affected utilities to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for the prior calendar year (2019).

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The public at large will benefit from increased energy efficiency because energy efficiency reduces the need for electricity generation. This results in fewer adverse impacts on air, land, and water than producing electricity.

Consumers of affected utilities who install energy efficiency measures may incur an initial cost for the measure, but they are then able to reduce the amount of electricity that they buy from the affected utility. Consumers include small businesses and other customer classes.

Manufacturers, distributors, and installers of energy efficiency measures benefit from increased energy efficiency because more of their products or services will be purchased. Employees of the manufacturers, distributors, and installers will benefit through increased job opportunities.

Affected utilities may incur additional costs of complying with program development, program implementation, and reporting activities. However, affected utilities will benefit from reduced costs for generation or procurement of electricity.

Probable costs to the Commission of the proposed rulemaking would include costs associated with reviewing filings, and participating in meetings and hearings.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Maureen Scott, Esq. Attorney, Legal Division, Corporation Commission
Address:	1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-3402
Fax:	(602) 542-4870
E-mail:	mscott@azcc.gov
or	
Name:	Steve Olea Director, Utilities Division, Corporation Commission

Address:	1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-7270
Fax:	(602) 542-2129
E-mail:	solea@azcc.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Public comment will be held on March 5, 2010, beginning at 10:00 a.m. or as soon as practicable thereafter, in Hearing Room 1 at the Commission's Phoenix offices of the Arizona Corporation Commission located at 1200 W. Washington St., Phoenix, AZ 85007. Hearing requests initial written comments be received on or before February 16, 2010 and responsive comments be received on or before February 23, 2010. Comments should be submitted to Docket Control at the above address. Please reference docket number RE-00000C-09-0427 on all documents. Oral comments may be provided at the proceeding to be held on March 5, 2010.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS

Section

R14-2-2401. Definitions
R14-2-2402. Applicability
R14-2-2403. Goals and Objectives
R14-2-2404. Energy Efficiency Standards
R14-2-2405. Implementation Plans
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R14-2-2407. Commission Review and Approval of DSM Programs and DSM Measures
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R14-2-2409. Reporting Requirements
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R14-2-2411. Performance Incentives
R14-2-2412. Cost-effectiveness
R14-2-2413. Baseline Estimation
R14-2-2414. Fuel Neutrality
R14-2-2415. Monitoring, Evaluation, and Research
R14-2-2416. Program Administration and Implementation
R14-2-2417. Leveraging and Cooperation
R14-2-2418. Compliance by Electric Distribution Cooperatives
R14-2-2419. Waiver from the Provisions of this Article

ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS

R14-2-2401. Definitions

In this Article, unless otherwise specified:

1. "Adjustment mechanism" means a Commission-approved provision in an affected utility's rate schedule allowing the affected utility to increase and decrease a certain rate or rates, in an established manner, when increases and decreases in specific costs are incurred by the affected utility.

2. "Affected utility" means a public service corporation that provides electric service to retail customers in Arizona.
3. "Baseline" means the level of electricity demand, electricity consumption, and associated expenses estimated to occur in the absence of a specific DSM program, determined as provided in R14-2-2413.
4. "CHP" means combined heat and power, which is using a primary energy source to simultaneously produce electrical energy and useful process heat.
5. "Commission" means the Arizona Corporation Commission.
6. "Cost-effective" means that total incremental benefits from a DSM measure or DSM program exceed total incremental costs over the life of the DSM measure, as determined under R14-2-2412.
7. "Customer" means the person or entity in whose name service is rendered to a single contiguous field, location, or facility, regardless of the number of meters at the field, location, or facility.
8. "Delivery system" means the infrastructure through which an affected utility transmits and then distributes electrical energy to its customers.
9. "Demand savings" means the load reduction, measured in kW, occurring during a relevant peak period or periods as a direct result of energy efficiency and demand response programs.
10. "Demand response" means modification of customers' electricity consumption patterns, affecting the timing or quantity of customer demand and usage, achieved through intentional actions taken by an affected utility or customer because of changes in prices, market conditions, or threats to system reliability.
11. "Distributed generation" means the production of electricity on the customer's side of the meter, for use by the customer, through a process such as CHP.
12. "DSM" means demand-side management, the implementation and maintenance of one or more DSM programs.
13. "DSM measure" means any material, device, technology, educational program, pricing option, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, or shifting of electricity consumption to off-peak periods and includes CHP used to displace space heating, water heating, or another load.
14. "DSM program" means one or more DSM measures provided as part of a single offering to customers.
15. "DSM tariff" means a Commission-approved schedule of rates designed to recover an affected utility's reasonable and prudent costs of complying with this Article.
16. "Electric utility" means a public service corporation providing electric service to the public.
17. "Energy efficiency" means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers.
18. "Energy efficiency standard" means the reduction in retail energy sales, in percentage of kWh, required to be achieved through an affected utility's approved DSM programs as prescribed in R14-2-2404.
19. "Energy savings" means the reduction in a customer's energy consumption directly resulting from a DSM program, expressed in kWh.
20. "Energy service company" means a company that provides a broad range of services related to energy efficiency, including energy audits, the design and implementation of energy efficiency projects, and the installation and maintenance of energy efficiency measures.
21. "Environmental benefits" means avoidance of costs for compliance, or reduction in environmental impacts, for things such as, but not limited to:
    a. Water use and water contamination;
    b. Monitoring storage and disposal of solid waste such as coal ash (bottom and fly);
    c. Health effects from burning fossil fuels; and
    d. Emissions from transportation and production of fuels and electricity.
22. "Incremental benefits" means amounts saved through avoiding costs for fuel, purchased power, new capacity, transmission, distribution, and other cost items necessary to provide electric utility service, along with other improvements in societal welfare, such as through avoided environmental impacts, including, but not limited to, water consumption savings, air emission reduction, reduction in coal ash, and reduction of nuclear waste.
23. "Incremental costs" means the additional expenses of DSM measures, relative to baseline.
24. "Independent program administrator" means an impartial third party employed to provide objective oversight of energy efficiency programs.
25. "kW" means kilowatt.
26. "kWh" means kilowatt-hour.
27. "Leveraging" means combining resources to more effectively achieve an energy efficiency goal, or to achieve greater energy efficiency savings, than would be achieved without combining resources.
28. "Load management" means actions taken or sponsored by an affected utility to reduce peak demands or improve system operating efficiency, such as direct control of customer demands through affected-utility-initiated interruption or cycling, thermal storage, or educational campaigns to encourage customers to shift loads.
29. "Low income customer" means a customer with a below average level of household income, as defined in an affected utility's Commission-approved DSM program description.
30. "Market transformation" means strategic efforts to induce lasting structural or behavioral changes in the market that

result in increased energy efficiency.

31. "Net benefits" means the incremental benefits resulting from DSM minus the incremental costs of DSM.
32. "Non-market benefits" means improvements in societal welfare that are not bought or sold.
33. "Program costs" means the expenses incurred by an affected utility as a result of developing, marketing, implementing, administering, and evaluating Commission-approved DSM programs.
34. "Self-direction" means an option made available to qualifying customers of sufficient size, in which the amount of money paid by each qualifying customer towards DSM costs is tracked for the customer and made available for use by the customer for approved DSM investments upon application by the customer.
35. "Societal Test" means a cost-effectiveness test of the net benefits of DSM programs that starts with the Total Resource Cost Test, but includes non-market benefits and costs to society.
36. "Staff" means individuals working for the Commission's Utilities Division, whether as employees or through contract.
37. "Total Resource Cost Test" means a cost-effectiveness test that measures the net benefits of a DSM program as a resource option, including incremental measure costs, incremental affected utility costs, and carrying costs as a component of avoided capacity cost, but excluding incentives paid by affected utilities and non-market benefits to society.

R14-2-2402. Applicability

This Article applies to each affected utility classified as Class A according to R14-2-103(A)(3)(q), unless the affected utility is an electric distribution cooperative that has fewer than 25% of its customers in Arizona.

R14-2-2403. Goals and Objectives

A. An affected utility shall design each DSM program:
   1. To be cost-effective, and
   2. To accomplish at least one of the following:
      a. Energy efficiency,
      b. Load management, or
      c. Demand response.

B. An affected utility shall consider the following when planning and implementing a DSM program:
   1. Whether the DSM program will achieve cost-effective energy savings and peak demand reductions;
   2. Whether the DSM program will advance market transformation and achieve sustainable savings, reducing the need for future market interventions; and
   3. Whether the affected utility can ensure a level of funding adequate to sustain the DSM program and allow the DSM program to achieve its targeted goal.

C. An affected utility shall:
   1. Offer DSM programs that will provide an opportunity for all affected utility customer segments to participate, and
   2. Allocate a portion of DSM resources specifically to low-income customers.

R14-2-2404. Energy Efficiency Standards

A. Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for the prior calendar year (2019).

B. An affected utility shall meet at least the following energy efficiency standard by the end of each year:

CALENDAR YEAR	ENERGY EFFICIENCY STANDARD (Cumulative Annual Energy Savings in Each Calendar Year as a Percent of the Retail Energy Sales in the Prior Calendar Year)
2011	1.25%
2012	3.00%
2013	5.00%
2014	7.25%
2015	9.50%
2016	12.00%
2017	14.50%
2018	17.00%
2019	19.50%
2020	22.00%

C. An affected utility's measured reductions in peak demand resulting from cost-effective demand response and load management programs may comprise up to two percentage points of the 22% energy efficiency standard, with peak demand reduction capability from demand response converted to an annual energy savings equivalent based on an assumed 50% annual load factor. The credit for demand response and load management peak demand reductions shall not exceed 10% of the energy efficiency standard set forth in subsection (B) for any year.

D. An affected utility's energy savings resulting from DSM energy efficiency programs implemented before the effective date of these rules, but after 2004, may be credited toward meeting the energy efficiency standard set forth in subsection (B). The total energy savings credit for these pre-rules programs shall not exceed 4% of the affected utility's retail energy sales in calendar year 2005. A portion of the total energy savings credit for these pre-rules programs may be applied each year, from 2016 through 2020, as follows:

CALENDAR YEAR	CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS IN 2016-2020 (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Are Credited by the End of Each Year)	CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS APPLIED IN EACH YEAR (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Shall Be Applied in the Year)
2016	7.5%	7.5%
2017	22.5%	15.0%
2018	42.5%	20.0%
2019	67.5%	25.0%
2020	100.0%	32.5%

E. An affected utility may count toward meeting the standard up to one third of the energy savings, resulting from energy efficiency building codes, that are quantified and reported through a measurement and evaluation study undertaken by the affected utility.

F. An affected utility may count the energy savings from combined heat and power (CHP) installations that do not qualify under the Renewable Energy Standard toward meeting the energy efficiency standard.

G. An affected utility may count a customer's energy savings resulting from self-direction toward meeting the standard.

H. An affected utility's energy savings resulting from efficiency improvements to its delivery system may not be counted toward meeting the standard.

I. An affected utility's energy savings used to meet the energy efficiency standard will be assumed to continue through the year 2020 or, if expiring before the year 2020, to be replaced with a DSM energy efficiency program having at least the same level of efficiency.

R14-2-2405. Implementation Plans

A. Except as provided in R14-2-2418, on June 1 of each odd year, or annually at the election of each affected utility, each affected utility shall file with Docket Control, for Commission review and approval, an implementation plan describing how the affected utility intends to meet the energy efficiency standard for the next one or two calendar years, as applicable, except that the initial implementation plan shall be filed within 30 days of the effective date of these rules.

B. The implementation plan shall include the following information:

1. Except for the initial implementation plan, a description of the affected utility's compliance with the requirements of these rules for the previous calendar year;
2. Except that the initial implementation plan shall describe only the next calendar year, a description of how the affected utility intends to comply with this Article for the next two calendar years, including an explanation of any modification to the rates of an existing DSM adjustment mechanism or tariff that the affected utility believes is necessary;
3. Except that the initial implementation plan shall describe only the next calendar year, a description of each DSM program to be newly implemented or continued in the next two calendar years and an estimate of the annual kWh and kW savings projected to be obtained through each DSM program;
4. The estimated total cost and cost per kWh reduction of each DSM measure and DSM program described in subsection (B)(3);
5. A DSM tariff filing complying with R14-2-2406(A) or a request to modify and reset an adjustment mechanism complying with R14-2-2406(C), as applicable; and
6. For each new DSM program or DSM measure that the affected utility desires to implement, a program proposal complying with R14-2-2407.

C. An affected utility shall notify its customers of its annual implementation plan filing through a notice in its next regularly scheduled customer bills.

D. The Commission may hold a hearing to determine whether an affected utility's implementation plan satisfies the requirements of this Article.
E. An affected utility's Commission-approved implementation plan, and the DSM programs authorized thereunder, shall continue in effect until the Commission takes action on a new implementation plan for the affected utility.

R14-2-2406. DSM Tariffs
A. An affected utility's DSM tariff filing shall include the following:
1. A detailed description of each method proposed by the affected utility to recover the reasonable and prudent costs associated with implementing the affected utility's intended DSM programs;
2. Financial information and supporting data sufficient to allow the Commission to determine the affected utility's fair value, including, at a minimum, the information required to be submitted in a utility annual report filed under R14-2-212(G)(4);
3. Data supporting the level of costs that the affected utility believes will be incurred in order to comply with this Article; and
4. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.
B. The Commission shall approve, modify, or deny a tariff filed pursuant to subsection (A) within 180 days after the tariff has been filed. The Commission may suspend this deadline or adopt an alternative procedural schedule for good cause.
C. If an affected utility has an existing adjustment mechanism to recover the reasonable and prudent costs associated with implementing DSM programs, the affected utility may, in lieu of making a tariff filing under subsection (A), file a request to modify and reset its adjustment mechanism by submitting the information required under subsections (A)(1) and (3).

R14-2- 2407. Commission Review and Approval of DSM Programs and DSM Measures
A. An affected utility shall obtain Commission approval before implementing a new DSM program or DSM measure.
B. An affected utility may apply for Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its annual implementation plan submitted under R14-2-2405 or through a separate application.
C. A program proposal shall include the following:
1. A description of the DSM program or DSM measure that the affected utility desires to implement,
2. The affected utility's objectives and rationale for the DSM program or DSM measure,
3. A description of the market segment at which the DSM program or DSM measure is aimed,
4. An estimated level of customer participation in the DSM program or DSM measure,
5. An estimate of the baseline,
6. The estimated societal benefits and savings from the DSM program or DSM measure,
7. The estimated societal costs of the DSM program or DSM measure,
8. The estimated environmental benefits to be derived from the DSM program or DSM measure,
9. The estimated benefit-cost ratio of the DSM program or DSM measure,
10. The affected utility's marketing and delivery strategy,
11. The affected utility's estimated annual costs and budget for the DSM program or DSM measure,
12. The implementation schedule for the DSM program or DSM measure,
13. A description of the affected utility's plan for monitoring and evaluating the DSM program or DSM measure, and
14. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.
D. In determining whether to approve a program proposal, the Commission shall consider:
1. The extent to which the Commission believes the DSM program or DSM measure will meet the goals set forth in R14-2-2403(A), and
2. All of the considerations set forth in R14-2-2403(B).
E. Staff may request modifications of on-going programs to ensure consistency with this Article. The Commission shall allow utilities adequate time to notify customers of program modifications.

R14-2-2408. Parity and Equity
A. An affected utility shall develop and propose DSM programs for residential, non-residential, and low-income customers.
B. An affected utility shall allocate DSM funds collected from residential customers and from non-residential customers proportionately to those customer classes to the extent practicable.
C. The affected utility costs of DSM programs for low-income customers shall be borne by all customer classes, except where a customer or customer class is specifically exempted by Commission order.
D. DSM funds collected by an affected utility shall be used, to the extent practicable, to benefit that affected utility's customers.
E. All customer classes of an affected utility shall bear the costs of DSM programs by payment through a non-bypassable mechanism, unless a customer or customer class is specifically exempted by Commission order.

R14-2-2409. Reporting Requirements
A. By March 1 of each year, an affected utility shall submit to the Commission, in a Commission established docket for that

year, a DSM progress report providing information for each of the affected utility's Commission-approved DSM programs and including at least the following:

1. An analysis of the affected utility's progress towards meeting the annual energy efficiency standard,
2. A list of the affected utility's current Commission-approved DSM programs and DSM measures, organized by customer segment,
3. A description of the findings from any research projects completed during the previous year,
4. The following information for each Commission-approved DSM program or DSM measure:
   a. A brief description;
   b. Goals, objectives, and savings targets;
   c. The level of customer participation during the previous year;
   d. The costs incurred during the previous year, disaggregated by type of cost, such as administrative costs, rebates, and monitoring costs;
   e. A description and the results of evaluation and monitoring activities during the previous year;
   f. Savings realized in kW, kWh, therms, and Btus, as appropriate;
   g. The environmental savings realized, including emissions and water savings;
   h. Incremental benefits and net benefits, in dollars;
   i. Performance-incentive calculations for the previous year;
   j. Problems encountered during the previous year and proposed solutions;
   k. A description of any modifications proposed for the following year; and
   l. Whether the affected utility proposes to terminate the DSM program or DSM measure and the proposed date of termination.

B. By September 1 of each year, an affected utility shall file a status report including a tabular summary showing the following for each current Commission-approved DSM program and DSM measure of the affected utility:
   1. Semi-annual expenditures compared to annual budget, and
   2. Participation rates.

C. An affected utility shall file each report required by this Section with Docket Control, where it will be available to the public, and shall make each such report available to the public upon request.

D. An affected utility may request within its implementation plan that these reporting requirements supersede specific existing DSM reporting requirements.

R14-2-2410. Cost Recovery

A. An affected utility may recover the costs that it incurs in planning, designing, implementing, and evaluating a DSM program or DSM measure if the DSM program or DSM measure is all of the following:
   1. Approved by the Commission before it is implemented,
   2. Implemented in accordance with a Commission-approved program proposal or implementation plan, and
   3. Monitored and evaluated for cost-effectiveness.

B. An affected utility shall monitor and evaluate each DSM program and DSM measure, as provided in R14-2-2415, to determine whether the DSM program or DSM measure is cost-effective and otherwise meets expectations.

C. If an affected utility determines that a DSM program or DSM measure is not cost-effective or otherwise does not meet expectations, the affected utility shall include in its annual DSM progress report filed under R14-2-2409 a proposal to modify or terminate the DSM program or DSM measure.

D. An affected utility shall recover its DSM costs concurrently, on an annual basis, with the spending for a DSM program or DSM measure, unless the Commission orders otherwise.

E. An affected utility may recover costs from DSM funds for any of the following items, if the expenditures will enhance DSM:
   1. Incremental labor attributable to DSM development,
   2. A market study,
   3. A research and development project such as applied technology assessment,
   4. Consortium membership, or
   5. Another item that is difficult to allocate to an individual DSM program.

F. The Commission may impose a limit on the amount of DSM funds that may be used for the items in subsection (E).

G. If goods and services used by an affected utility for DSM have value for other affected utility functions, programs, or services, the affected utility shall divide the costs for the goods and services and allocate funding proportionately.

H. An affected utility shall allocate DSM costs in accordance with generally accepted accounting principles.

I. The Commission shall review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue, due to Commission-approved DSM programs, if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application.

J. An affected utility, at its own initiative, may submit to the Commission twice-annual reports on the financial impacts of its Commission-approved DSM programs, including any unrecovered fixed costs and net lost income/revenue resulting from

its Commission-approved DSM programs.

R14-2-2411. Performance Incentives
In the implementation plans required by R14-2-2405, an affected utility may propose for Commission review a performance incentive to assist in achieving the energy efficiency standard set forth in R14-2-2404. The Commission may also consider performance incentives in a general rate case.

R14-2-2412. Cost-effectiveness
A. An affected utility shall ensure that the incremental benefits to society of the affected utility's overall DSM portfolio exceed the incremental costs to society of the DSM portfolio.
B. The Societal Test shall be used to determine cost effectiveness.
C. The analysis of a DSM program's or DSM measure's cost-effectiveness may include:
   1. Costs and benefits associated with reliability, improved system operations, environmental impacts, and customer service;
   2. Savings of both natural gas and electricity; and
   3. Any uncertainty about future streams of costs or benefits.
D. An affected utility shall make a good faith effort to quantify water consumption savings and air emission reductions, while other environmental costs or the value of environmental improvements shall be estimated in physical terms when practical but may be expressed qualitatively. An affected utility, Staff, or any party may propose monetized benefits and costs if supported by appropriate documentation or analyses.
E. Market transformation programs shall be analyzed for cost-effectiveness by measuring market effects compared to program costs.
F. Educational Programs shall be analyzed for cost-effectiveness based on estimated energy and peak demand savings resulting from increased awareness about energy use and opportunities for saving energy.
G. Research and development and pilot programs are not required to demonstrate cost-effectiveness.
H. An affected utility's low-income customer program portfolio shall be cost-effective, but costs attributable to necessary health and safety measures shall not be used in the calculation.

R14-2-2413. Baseline Estimation
A. To determine baseline, an affected utility shall estimate the level of electric demand and consumption and the associated costs that would have occurred in the absence of a DSM program or DSM measure.
B. For demand response programs, an affected utility shall use customer load profile information to verify baseline consumption patterns and the peak demand savings resulting from demand response actions.
C. For installations or applications that have multiple fuel choices, an affected utility shall determine baseline using the same fuel source actually used for the installation or application.

R14-2-2414. Fuel Neutrality
A. Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner.
B. An affected utility shall use DSM funds collected from electric customers for electric DSM programs, unless otherwise ordered by the Commission.
C. An affected utility may use DSM funds collected from electric customers for thermal envelope improvements.

R14-2-2415. Monitoring, Evaluation, and Research
A. An affected utility shall monitor and evaluate each DSM program and DSM measure to:
   1. Ensure compliance with the cost-effectiveness requirements of R14-2-2412;
   2. Determine participation rates, energy savings, and demand reductions;
   3. Assess the implementation process for the DSM program or DSM measure;
   4. Obtain information on whether to continue, modify, or terminate a DSM program or DSM measure; and
   5. Determine the persistence and reliability of the affected utility's DSM.
B. An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for program planning, product development, and program improvement.

R14-2-2416. Program Administration and Implementation
A. An affected utility may use an energy service company or other external resource to implement a DSM program or DSM measure.
B. The Commission may, at its discretion, establish independent program administrators who would be subject to the relevant requirements of these rules.

R14-2-2417. Leveraging and Cooperation
A. An affected utility shall, to the extent practicable, participate in cost sharing, leveraging, or other lawful arrangements with customers, vendors, manufacturers, government agencies, other electric utilities, or other entities if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

B. An affected utility shall participate in a DSM program or DSM measure with a natural gas utility when doing so is practicable and if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

R14-2-2418. Compliance by Electric Distribution Cooperatives

A. An electric distribution cooperative that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2404(A) and (B) and R14-2-2405(A).

B. An electric distribution cooperative shall, on June 1 of each odd year, or annually at its election:

1. File with Docket Control, for Commission review and approval, an implementation plan for each DSM program to be implemented or maintained during the next one or two calendar years, as applicable; and
2. Submit to the Director of the Commission's Utilities Division an electronic copy of its implementation plan in a format suitable for posting on the Commission's web site.

C. An implementation plan submitted under subsection (B) shall set forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2404 and shall include the information required under R14-2-2405(B).

R14-2-2419. Waiver from the Provisions of this Article

A. The Commission may waive compliance with any provision of this Article for good cause.

B. The affected utility may petition the Commission to waive its compliance with any provision of the Article for good cause.

C. A petition filed pursuant to these rules shall have priority over other matters filed under this Article.

DOCKET NO. RE-00000C-09-0427

EXHIBIT "B"

ORIGINAL

MEMORANDUM

RECEIVED

2010 JAN 22 P 3: 40

AZ CORP COMMISSION
DOCKET CONTROL

TO: Docket Control Center

FROM: Steven M. Olea
Director
Utilities Division

DATE: January 22, 2010

RE: IN THE MATTER OF PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET NO. RE-00000C-09-0427)

Attached is the Economic, Small Business, and Consumer Impact Statement that addresses the economic impacts of the proposed Electric Energy Efficiency rules, filed in compliance with Decision No. 71436.

SMO:BEK:tdp

Originator: Barbara Keene

Arizona Corporation Commission
DOCKETED

JAN 22 2010

DOCKETED BY

DECISION NO._____

B. Economic, Small Business and Consumer Impact Statement

1. Identification of the proposed rule making.

The rules are new Sections under Title 14, Chapter 2 - Corporation Commission, Fixed Utilities. Rules R14-2-2401 through R14-2-2419 require affected utilities by 2020 to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for the prior calendar year (2019).

The purpose of Electric Energy Efficiency Standards is for affected utilities to achieve energy savings through cost-effective energy efficiency programs in order to ensure reliable electric service at reasonable rates and costs. Energy efficiency means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers.

The Rules apply to affected utilities, as defined in the Rules.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rule making.

a. the public at large;
b. consumers of electric service in Arizona;
c. electric public service corporations;
d. Arizona Corporation Commission;
e. manufacturers, distributors, and installers of energy efficiency measures; and
f. public entities, such as schools, cities, counties, and state agencies.

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making.

Probable costs to the Commission of the proposed rule making would include costs associated with reviewing filings, and participating in meetings and hearings.

To the extent that the implementing agency and other agencies are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

To the extent that political subdivisions are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules. Political subdivisions may also benefit by increased sales tax revenues resulting from sales of energy efficient products.

c. Probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

Affected utilities may incur additional costs of complying with program development, program implementation, and reporting activities. Although some of the affected utilities are now engaging in some of the required activities, they may incur additional costs of complying with the rules. Payroll expenditures of affected utilities may be increased. These costs may be recovered through the affected utilities' rates to customers. Other costs may include penalties that may be imposed for failing to comply with the rules. Revenues of affected utilities may be reduced temporarily. Affected utilities will benefit from reduced costs for generation or procurement of electricity.

4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rule making.

The Commission and affected utilities may need additional employees or contractors. Manufacturers, distributors, and installers of energy efficiency measures may add employees. No impact on employment in political subdivisions is expected.

5. Probable impact of the proposed rule making on small businesses.
   a. Identification of the small businesses subject to the proposed rule making.

To the extent that small businesses are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules.

Only public service corporations that have annual operating revenue exceeding $5,000,000 (Class A electric utilities) will be required to comply with the rules. These entities are unlikely to be small businesses.

b. Administrative and other costs required for compliance with the proposed rule making.

None.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

The public at large will benefit from increased energy efficiency because energy efficiency reduces the need for electric generation. This results in fewer adverse impacts on air, land, and water than producing electricity.

6. Probable effect on state revenues.

There may be an increase in state revenues from sales taxes on energy efficiency products. However, there may be a decrease in revenues from sales taxes on electricity bills as customers reduce their consumption. There may also be increases in income taxes resulting from revenue increases of Arizona manufacturers, distributors, and installers of energy efficiency measures.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making.

The Commission is unaware of any alternative methods of achieving the purpose of the rule making that would be less intrusive or less costly.

8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

The data used to compile the information set forth in subsection B are reasonably adequate for these purposes.

Service List for: Proposed Rulemaking on Electric Energy Efficiency
Docket No. RE-00000C-09-0427

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DOCKET NO. RE-00000C-09-0427

EXHIBIT "C-1"

ORIGINAL

MEMORANDUM

RECEIVED

2010 MAR -2 P 3: 52

AZ CORP COMMISSION
DOCKET CONTROL

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: March 2, 2010

RE: STAFF'S RESPONSE TO WRITTEN COMMENTS IN THE MATTER OF PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET NO. RE-00000C-09-0427)

Attached is the Staff Report regarding written comments made by interested parties on Proposed Rulemaking on Electric Energy Efficiency, pursuant to Decision No. 71436. Decision No. 71436 ordered the Utilities Division to file with the Commission's Docket Control on or before March 2, 2010, a document including (1) a summary of any initial written comments filed by interested persons between the effective date of that Decision (December 18, 2009) and February 23, 2010, and (2) the Utilities Division's responses to those comments.

SMO:BEK:lhm

Originator: Barbara Keene

Arizona Corporation Commission
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DECISION NO._____

Service List for: PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY
Docket No. RE-00000C-09-0427

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY

DOCKET NO. RE-00000C-09-0427

STAFF RESPONSE TO WRITTEN COMMENTS

MARCH 2, 2010

STAFF ACKNOWLEDGMENT

The Staff Response to Written Comments for Proposed Rulemaking On Electric Energy Efficiency, Docket No. RE-00000C-09-0427, was the responsibility of the Staff member listed below.

Barbara Keene

Barbara Keene
Public Utilities Analyst Manager

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SUMMARY OF WRITTEN COMMENTS MADE REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM 1

Introduction

The Arizona Corporation Commission ("Commission") issued Decision No. 71436 on December 18, 2009. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Electric Energy Efficiency Rules be filed with the Office of the Secretary of State for publication. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 15, 2010.

Decision No. 71436 requested that interested parties provide initial comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by February 16, 2010, and comments in response to other interested parties' comments by February 23, 2010.

Decision No. 71436 also ordered the Utilities Division to file with the Commission's Docket Control on or before March 2, 2010, a document including (1) a summary of any initial written comments filed by interested persons between the effective date of that Decision (December 18, 2009) and February 23, 2010, and (2) the Utilities Division's responses to those comments.

Initial written comments were received from the Electric Cooperatives;[1] EnerNOC, Inc.; OPOWER; The Southwest Energy Efficiency Project ("SWEEP"); Tucson Electric Power Company and UNS Electric, Inc. ("TEP and UNSE"); and Western Resource Advocates ("WRA"). Reply comments were received from Arizona Public Service Company ("APS") and the Electric Cooperatives.

SUMMARY OF WRITTEN COMMENTS MADE REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM

ARTICLE 24 ELECTRIC ENERGY EFFICIENCY STANDARDS

Written Comments Received on Proposed Electric Energy Efficiency Rules by Section

R14-2-2404 Energy Efficiency Standards

Issue: Energy efficiency standard

R14-2-2404(A) and (B) set forth the energy efficiency standard and ramp-up schedule. TEP and UNSE believe that the 22% cumulative savings and the resulting ramp-up schedule are not in the public interest. They believe that the record contains no evidence to support a 22% standard. TEP and UNSE believe that a utility-specific analysis to determine technical,

[1] Grand Canyon State Electric Cooperative Association filed comments on behalf of Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc.

economic, and achievable potential is necessary and that the analysis may identify the need for a different standard percentage in each utility service area. TEP and UNSE note that the proposed standard is more aggressive than that of most other states using a standard based on previous year's sales. They also point out that other states use different methodologies to establish energy efficiency standards. In addition, utilities should have the flexibility to exchange renewable energy credits and efficiency standard requirements in order to meet both the Renewable Energy Standards and the proposed Energy Efficiency rules in an economical manner.

The Cooperatives believe that an energy efficiency goal/target based on member/customer participation in proven energy efficiency programs would be more appropriate than the annual rule requirements that are based on a percent reduction in kWh that will be difficult to measure. The Cooperatives also state that not counting efficiency improvements to the delivery system as stated in R14-2-2404(H) severely handicaps the Cooperatives in meeting the energy efficiency standard.

OPOWER expressed support for the proposed energy efficiency standards and believes that Arizona utilities would be able to count savings from behavior-based energy programs toward their annual energy efficiency goals.

SWEEP supports the proposed rule because: it is in the public interest, increasing energy efficiency will reduce total energy costs for ratepayers, increasing energy efficiency will reduce other costs, increasing energy efficiency will increase reliability of the electric grid, and that the Commission will be ensuring reliable electric service at reasonable rates and costs for ratepayers.

Analysis:

Staff points out that R14-2-2419 provides that a utility may petition the Commission to waive compliance with any provision of the Article. If an affected utility believes that the requirement in R14-2-2404 would not be an appropriate goal, then the affected utility could request a waiver of the requirement. However, it is unknown at this time whether the Commission would grant the waiver.

Resolution: No changes required.

Issue: Demand response limit of two percentage points

R14-2-2404(C) allows up to two percentage points of the 22% energy efficiency standard be met by demand response and load management programs. EnerNOC states that 5% by 2020 would be more in line with goals established by other state commissions. EnerNOC proposes that the cap be raised to 5% or a range of 2% to 5%, or the demand response target (5%) be separated from the energy efficiency target (17%), or require the 22% reduction in consumption to also produce a 5% reduction in peak load requirements. The Cooperatives agree with EnerNOC that the demand response cap should be raised.

EnerNOC also wants the rule to be clear as to whether the 2% peak load reduction will be for existing or incremental measures. In addition, the rules should explicitly include third-party demand response providers.

The Cooperatives believe that a utility should be able to count any and all demand response and energy efficiency measures it has invested in since 2005 towards meeting the energy efficiency standard.

EnerNOC further requests that workshops be held and that the Commission determine baseline methodology before program plans are submitted.

Analysis:

Staff believes that allowing two percentage points of the 22% energy efficiency standard be met by demand management and load response is sufficient. An affected utility may have more motivation to implement demand response programs than to implement energy efficiency programs because the demand response programs may reduce costs without reducing revenue because electric usage is shifted in time instead of reduced. The affected utility may do more demand response than the 2 percentage points, but the additional amount would not count toward meeting the energy efficiency standard.

The proposed rules do not provide for counting peak demand reductions, resulting from demand response and load management programs, that occurred before the rule's effective date toward meeting the energy efficiency standard. However, the demand response or load management program could have been implemented before the rule's effective date and its resulting peak demand reductions that occur after the rule's effective date would count toward meeting the energy efficiency standard.

The proposed rules do not prohibit affected utilities from utilizing third-party demand response providers. In addition, the Commission can hold workshops on baseline methodology, if desired, without such a provision in rules.

Resolution: No changes required.

R14-2-2407 Commission Review and Approval of DSM Programs and DSM Measures

Issue: Information on societal benefits and savings

The Cooperatives believe that language about societal benefits and savings should be eliminated.

Analysis:

Staff believes that estimating benefits and savings is an important part of deciding which energy efficiency programs to propose.

Resolution: No changes required.

R14-2-2409 Reporting Requirements

Issue: Environmental benefits/savings

WRA recommends that the language in R14-2-2409(A)(4)(g) be changed from "The environmental savings realized, including emissions and water savings" to read "The environmental benefits realized, including reduced emissions and water savings" to provide clarity. WRA points out that the rules define "environmental benefits" but not "environmental savings.

Analysis:

Staff finds that WRA's recommendation would provide clarity without making a substantive change.

Resolution: The language in R14-2-2409(A)(4)(g) should be modified to read "The environmental benefits realized, including reduced emissions and water savings;" to provide clarity.

R14-2-2410 Cost Recovery

Issue: Fixed cost recovery

TEP and UNSE have proposed that the following language be included in the rule:

"An affected utility shall file within 90 days of approval of this standard a Fixed Cost Recovery Rate supporting the per kWh cost recovery shortfall created by reduced kWh sales due to DSM/EE programs. This Fixed Cost Recovery Rate will be equal to the non-fuel-related variable rate approved by the ACC in the Utility's most recent rate case. The Fixed Cost Recovery Deficiency calculation shall multiply the Fixed Cost Recovery Rate by the cumulative kWh sales reductions due to DSM/EE since the Utility's last rate case. Both the Fixed Cost Recovery Rate and the cumulative DSM/EE sales reductions shall be reset coincident with the effective date of applicable changes to the Utility's rates. The affected utility shall recover the Fixed Cost Recovery Deficiency through the annual true-up of the affected utility's DSM adjustor mechanism."

SWEEP supports the Commission in addressing disincentives to utility support of energy efficiency in parallel proceedings. The Cooperatives disagree with SWEEP that the rules can move forward without addressing utility fixed cost recovery.

APS disagrees with TEP and UNSE that the regulatory disincentives problem should be solved within the proposed rules. APS believes that the concerns relating to regulatory disincentives are being addressed in other proceedings underway before the Commission and that the Commission will adopt policies to address the issue no later than in an affected utility's next rate case.

Analysis:

Staff believes that a rate case is the most appropriate time to address fixed cost recovery. R14-2-2410(I) provides for the Commission to address recovery of fixed costs if requested to do so by an affected utility in a rate case.

Resolution: No changes required.

R14-2-2413 Baseline Estimation

Issue: Insert "the" before "baseline"

WRA has suggested that "the" be inserted before "baseline" in R14-2-2413(A) and (C).

Analysis:

Staff agrees with WRA's typographical correction. This is not a substantive change.

Resolution: The word "the" should be inserted before the word "baseline" in R14-2-2413(A) and (C).

R14-2-2418 Compliance by Electric Distribution Cooperatives

Issue: Goal of at least 75% of requirement in R14-2-2404

R14-2-2418(C) requires distribution cooperatives to submit an implementation plan that sets forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2404. The Cooperatives propose that the language "of at least 75% of the savings requirement specified in R14-2-2404" be eliminated. Under the Cooperatives' proposal, the Commission would approve a plan for each cooperative that would identify appropriate goals.

Analysis:

Staff points out that R14-2-2419 provides that a utility may petition the Commission to waive compliance with any provision of the Article. If a cooperative believes that 75% of the requirement in R14-2-2404 would not be an appropriate goal, then the cooperative could request a waiver of the requirement. However, it is unknown at this time whether the Commission would grant the waiver.

Resolution: No changes required.

R14-2-2419 Waiver from the Provisions of this Article

Issue: "The affected utility" should be "An affected utility"

WRA has suggested that "The affected utility" be changed to "An affected utility" in R14-2-2419(B).

Analysis:

Staff agrees with WRA's typographical correction. This is not a substantive change.

Resolution: "The affected utility" should be changed to "An affected utility" in R14-2-2419(B).

DOCKET NO. RE-00000C-09-0427

EXHIBIT "C-2"

ORIGINAL

MEMORANDUM

30

TO: Docket Control

FROM: Steve M. Olea
Director
Utilities Division

DATE: April 16, 2010

RE: STAFF'S RESPONSE TO ORAL COMMENTS IN THE MATTER OF PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET NO. RE-00000C-09-0427)

Attached is the Staff Report regarding oral comments made by interested parties on Proposed Rulemaking on Electric Energy Efficiency, pursuant to Decision No. 71436. Decision No. 71436 ordered the Utilities Division to file with the Commission's Docket Control, a document including (1) a summary of all written comments filed by interested persons after February 23, 2010, and any oral comments received at the oral proceeding in this matter; (2) the Utilities Division's responses to those comments; and (3) a revised Economic, Small Business, and Consumer Impact Statement or a memorandum explaining why no revision of the prior Economic, Small Business, and Consumer Impact Statement is necessary.

SMO:BEK:kdh

Originator: Barbara Keene

Arizona Corporation Commission
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DECISION NO._____

Service List for: PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY
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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY

DOCKET NO. RE-00000C-09-0427

STAFF RESPONSE TO ORAL COMMENTS

APRIL 16, 2010

DECISION NO._____

STAFF ACKNOWLEDGMENT

The Staff Response to Oral Comments for Proposed Rulemaking On Electric Energy Efficiency, Docket No. RE-00000C-09-0427, was the responsibility of the Staff member listed below.

Barbara Keene

Barbara Keene
Public Utilities Analyst Manager

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DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT 6

Introduction

The Arizona Corporation Commission ("Commission") issued Decision No. 71436 on December 18, 2009. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Electric Energy Efficiency rules be filed with the Office of the Secretary of State for publication. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 15, 2010.

Pursuant to Decision No. 71436, Staff filed the Economic, Small Business, and Consumer Impact Statement that addressed the economic impacts of the proposed Electric Energy Efficiency rules on January 22, 2010.

Decision No. 71436 requested that interested parties provide initial comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by February 16, 2010, and comments in response to other interested parties' comments by February 23, 2010. On March 2, 2010, Staff filed a summary of the written comments and the Utilities Division's responses to those comments.

Decision No. 71436 also provided for an opportunity for interested parties to provide oral comments at a proceeding to be held on March 5, 2010 The Utilities Division was to file with the Commission's Docket Control, a document including (1) a summary of all written comments filed by interested persons after February 23, 2010, and any oral comments received at the oral proceeding in this matter; (2) the Utilities Division's responses to those comments; and (3) a revised Economic, Small Business, and Consumer Impact Statement or a memorandum explaining why no revision of the prior Economic, Small Business, and Consumer Impact Statement is necessary.

Summary of Written Comments Filed After February 23, 2010, Regarding the Proposed Electric Energy Efficiency Rules

The Arizona PIRG Education Fund filed comments on March 9, 2010, including the names of many Arizona residents. The group urges the adoption of an Energy Efficiency Standard of at least 20 percent by 2020 and states that energy efficiency is a proven, immediate, and effective way to save ratepayers money.

The Arizona Consumers Council filed comments on March 9, 2010. The organization believes that it is important for utilities to be required to meet specific standards over a clear timeline and agrees with those who suggest 20 percent by 2020. There should be a wide variety of energy efficiency programs so that consumers can save in different ways, such as through weatherization, rebates on purchases of energy-efficient appliances, innovative financing, and programs that help low-income consumers. Consumers should be able to get easy access to clear, understandable information tailored to their homes to help them decide which energy efficiency measures will save the most money. In addition, the Arizona Consumers Council believes that consumers also benefit when businesses and government implement energy

efficiency measures. Therefore, technical assistance to businesses is just as important as such assistance is to residential users.

On March 17, 2010, William Scown filed comments in support of the proposed rules, including the goal of 22 percent by 2020 and clear, measurable, yearly ramp-up and benchmarks. Mr. Scown believes that energy efficiency is the quickest, cleanest, and cheapest way to meet Arizona's energy needs and is willing to pay a little more in utility rates for energy efficiency programs in order to have his total energy bill go down.

Staff's Response to the Written Comments Filed After February 23, 2010

Staff finds that all of the written comments filed after February 23, 2010, are consistent with the proposed Electric Energy Efficiency rules as written. No modifications to the rules are required.

Summary of Oral Comments Regarding the Proposed Electric Energy Efficiency Rules

Michael Patten of Roshka DeWulf & Patten spoke on behalf of Tucson Electric Power ("TEP") and UNS Electric. He expressed a concern about the impact of the proposed rules and the issue of fixed cost recovery. He stated that energy efficiency reduces sales and that part of the volumetric rate goes to paying fixed costs of operation. Therefore, Mr. Patten believes that a 2 percent decrease in kilowatt-hours sold results in a de facto 1 to 1.2 percent rate decrease. His concern is that the rules as written do not have a mechanism to compensate the companies for that rate decrease. Since TEP can't file a rate case until 2012, regulatory lag is accentuated.

Mr. Patten also expressed his concern about the targets that are set forth in the rules. He believes that the 2 percent per year may make sense for a couple of years, but it may be difficult in later years.

Jim Wontor, from Arizona Public Service Company ("APS"), stated that APS supports efforts to develop energy efficiency standards and rules for Arizona. APS believes that the 22 percent goal is very aggressive but is pleased that the proposed rules provide for flexibility on ways to meet the goal. APS agrees with TEP that the issue of financial disincentives needs to be addressed, but APS believes that the Commission is committed to addressing the issue through workshops and resolving the issue in rate cases. Therefore, the issue does not need to be resolved within the rules.

Administrative Law Judge Sarah Harpring asked Staff several questions that lead to Staff's recommended clarifications to the rules as discussed below.

Staff's Response to the Oral Comments

Staff's response to TEP's concern about not recovering all of its fixed costs is that TEP can file an application for Commission approval of an accounting order to defer the unrecovered fixed costs for consideration in its next rate case. Staff offers this possibility without suggesting that Staff would necessarily support such an application. Nonetheless, an accounting order would not be prohibited in any way by the proposed rules.

Staff's recommended clarifications to the rules, based on Judge Harpring's questions, are the following:

R14-2-2401

Staff recommends that a definition of the term "thermal envelope" as used in R14-2-2414 (C) be added to this section. The language would be ""Thermal envelope" means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate the interior conditioned (heated and/or cooled) spaces from the exterior environment."

R14-2-2404(A)

For clarity, Staff recommends that the language "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for the prior calendar year (2019)." be revised to read as "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% by December 31, 2020."

R14-2-2404(B)

Staff recommends that the language "An affected utility shall meet at least the following energy efficiency standard by the end of each year:" be revised to read as "An affected utility shall meet at least the following annual energy efficiency standard for each year:" for clarity.

Staff recommends that the table be revised to have a more accurate column heading and to have a second column that contains the annual energy efficiency standard. The revised table would be as shown below.

CALENDAR YEAR	ANNUAL ENERGY EFFICIENCY STANDARD (Annual Energy Savings in Each Calendar Year as a Percent of the Retail Energy Sales in the Prior Calendar Year)	CUMULATIVE ENERGY SAVINGS
2011	1.25%	1.25%
2012	1.75%	3.00%
2013	2.00%	5.00%
2014	2.25%	7.25%
2015	2.25%	9.50%
2016	2.50%	12.00%
2017	2.50%	14.50%
2018	2.50%	17.00%
2019	2.50%	19.50%
2020	2.50%	22.00%

R14-2-2404(D)

Staff recommends that the columns in the table be reversed to be consistent with Staff's recommended table in R14-2-2404(B). The table would be as shown below.

CALENDAR YEAR	CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS APPLIED IN EACH YEAR (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Shall Be Applied in the Year)	CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS IN 2016-2020 (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Are Credited by the End of Each Year)
2016	7.5%	7.5%
2017	15.0%	22.5%
2018	20.0%	42.5%
2019	25.0%	67.5%
2020	32.5%	100.0%

R14-2-2407(B)

Staff recommends that the word "annual" be deleted from the sentence "An affected utility may apply for Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its annual implementation plan submitted under R14-2-2405 or through a separate application." because R14-2-2405 provides that implementation plans may be filed in each odd year. The sentence should be written as "An affected utility may apply for

Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its implementation plan submitted under R14-2-2405 or through a separate application."

R14-2-2407(E)

Staff recommends that "DSM" be inserted before "programs" and "program" and that "affected" be inserted before "utilities" for clarity. Therefore, the language "Staff may request modifications of on-going programs to ensure consistency with this Article. The Commission shall allow utilities adequate time to notify customers of program modifications." would be modified to read as "Staff may request modifications of on-going DSM programs to ensure consistency with this Article. The Commission shall allow affected utilities adequate time to notify customers of DSM program modifications."

R14-2-2410(A)(3)

Staff recommends that language be inserted to clarify that monitoring and evaluation should be done pursuant to R14-2-2415. Therefore, the language "Monitored and evaluated for cost-effectiveness." would be modified to read as "Monitored and evaluated for cost-effectiveness, pursuant to R14-2-2415."

R14-2-2410(I)

Staff recommends that the language "if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application." be clarified to read as "if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application."

R14-2-2414(A)

Staff recommends that the sentence "Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner." be clarified to read as "Ratepayer-funded DSM programs and measures shall not promote the replacement of existing, or installation of new, appliances utilizing one fuel source with similar appliances that utilize another fuel source, unless the new appliance results in reduced overall energy use.

R14-2-2415(B)

Staff recommends that "DSM" be inserted before "program planning" and "program improvement" for clarity. Therefore, the sentence would be "An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for DSM program planning, product development, and DSM program improvement."

Discussion of the Economic, Small Business, and Consumer Impact Statement

Staff recommends that a clarification be made to the Economic, Small Business, and Consumer Impact Statement that was filed on January 22, 2010.

Section B.1, first paragraph, second sentence

> "Rules R14-2-2401 through R14-2-2419 require affected utilities by 2020 to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for the prior calendar year (2019)."

should be replaced with:

> "Rules R14-2-2401 through R14-2-2419 require affected utilities to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent by December 31, 2020."

EXHIBIT "C-3"

HEARING

MEMORANDUM

RECEIVED

2010 JUN 24 P 12: 32

AZ CORP COMMISSION
DOCKET CONTROL

RECEIVED
JUN 24 2010
ARIZONA CORPORATION COMMISSION
HEARING DIVISION

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: June 24, 2010

RE: ***REVISED*** **STAFF'S RESPONSE** TO COMMENTS IN THE MATTER OF PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET NO. RE-00000C-09-0427)

On April 16, 2010, pursuant to Decision No. 71436, the Utilities Division ("Staff") filed with the Commission's Docket Control, a document including (1) a summary of written comments filed by interested persons after February 23, 2010, and oral comments received at the oral proceeding held on March 5, 2010; (2) the Utilities Division's responses to those comments; and (3) a proposed revision to the prior Economic, Small Business, and Consumer Impact Statement.

Three interested parties (Arizona Public Service ("APS"), the Southwest Energy Efficiency Project ("SWEEP"), and Western Resource Advocates ("WRA")) filed comments in response to the April 16, 2010 Staff Report. To address the concerns of those interested parties and clarify the proposed rules, Staff filed a Staff Report on June 18, 2010 which contained proposed modifications to some parts of what was contained in the April 16, 2010 Staff Report.

After further consultation with APS, SWEEP, and WRA, Staff is refiling the attached Staff Report with some revisions. Those revisions consist of adding column letters to Table 3, with a reference to one of the Table 3 columns added to R14-2-2404(D), and clarifications to Table 4. APS, SWEEP, and WRA have indicated that they are in agreement with the contents in the revised Staff Report.

SMO:BEK:red

Originator: Barbara Keene

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Docket No. RE-00000C-09-0427

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY

DOCKET NO. RE-00000C-09-0427

REVISED
STAFF RESPONSE TO COMMENTS

JUNE 24, 2010

DECISION NO._____

STAFF ACKNOWLEDGMENT

The *Revised* Staff Response to Comments for Proposed Rulemaking On Electric Energy Efficiency, Docket No. RE-00000C-09-0427, was the responsibility of the Staff member listed below.

Barbara Keene

Barbara Keene
Public Utilities Analyst Manager

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DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT 6

SECTION B.1, FIRST PARAGRAPH, SECOND SENTENCE 6

INTRODUCTION

The Arizona Corporation Commission ("Commission") issued Decision No. 71436 on December 18, 2009. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Electric Energy Efficiency rules be filed with the Office of the Secretary of State for publication. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 15, 2010.

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Three interested parties (Arizona Public Service, the Southwest Energy Efficiency Project, and Western Resource Advocates) filed comments in response to the April 16, 2010 Staff Report. To address the concerns of those interested parties and clarify the proposed rules, Staff proposes the following modifications to some parts of what was contained in the April 16, 2010 Staff Report. These modifications are intended to clarify the proposed rules without making any substantive changes to the rules.

STAFF'S PROPOSED MODIFICATIONS

R14-2-2404(A)

For clarity, Staff recommends that the language "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for the prior calendar year (2019)." be revised to read as Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh,

equivalent to at least 22% of the affected utility's retail electric energy sales for calendar year 2019.

R14-2-2404(B)

Staff recommends that the language "An affected utility shall meet at least the following energy efficiency standard by the end of each year:" be revised to read as "An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4."

Staff recommends that the only change to Table 1 would be to add the Table 1 title and to replace "in" with "by the End of" in the column heading. Table 2 would be added as an illustrative example of how the required energy savings would be calculated. The revised Table 1 and the added Table 2 would be as shown below.

Table 1. Energy Efficiency Standard

CALENDAR YEAR	ENERGY EFFICIENCY STANDARD (Cumulative Annual Energy Savings by the End of Each Calendar Year as a Percent of the Retail Energy Sales in the Prior Calendar Year)
2011	1.25%
2012	3.00%
2013	5.00%
2014	7.25%
2015	9.50%
2016	12.00%
2017	14.50%
2018	17.00%
2019	19.50%
2020	22.00%

Table 2. Illustrative Example of Calculating Required Energy Savings

CALENDAR YEAR	A RETAIL SALES (kWh)	B ENERGY EFFICIENCY STANDARD	C REQUIRED CUMULATIVE ENERGY SAVINGS (B*prior year A)
2010	100,000,000		0
2011	100,750,000	1.25%	1,250,000
2012	101,017,500	3.00%	3,022,500
2013	101,069,925	5.00%	5,050,875
2014	100,915,646	7.25%	7,327,570
2015	100,821,094	9.50%	9,586,986
2016	100,517,711	12.00%	12,098,531
2017	100,293,499	14.50%	14,575,068
2018	100,116,043	17.00%	17,049,895
2019	99,986,628	19.50%	19,522,628
2020	99,902,384	22.00%	21,997,058

R14-2-2404(D)

Staff recommends that the language "An affected utility's energy savings resulting from DSM energy efficiency programs implemented before the effective date of these rules, but after 2004, may be credited toward meeting the energy efficiency standard set forth in subsection (B). The total energy savings credit for these pre-rules programs shall not exceed 4% of the affected utility's retail energy sales in calendar year 2005. A portion of the total energy savings credit for these pre-rules programs may be applied each year, from 2016 through 2020, as follows:" be modified to include a reference to Table 3.

The revised language would be as follows: "An affected utility's energy savings resulting from DSM energy efficiency programs implemented before the effective date of these rules, but after 2004, may be credited toward meeting the energy efficiency standard set forth in subsection (B). The total energy savings credit for these pre-rules programs shall not exceed 4% of the affected utility's retail energy sales in calendar year 2005. A portion of the total energy savings credit for these pre-rules programs may be applied each year, from 2016 through 2020, as listed in Table 3, Column A."

Staff recommends that the table be labeled as Table 3 and the columns in the table be reversed for clarity. Also, the word "Pre-Standard" in the column headings would be replaced with "Pre-Rules" to be consistent with the narrative. Table 3 would be as shown below.

Table 3. Credit for Pre-Rules Energy Savings

CALENDAR YEAR	A CREDIT FOR THE PRE-RULES ENERGY SAVINGS APPLIED IN EACH YEAR (Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Shall Be Applied in the Year)	B CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-RULES ENERGY SAVINGS IN 2016-2020 (Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Are Credited by the End of Each Year)
2016	7.5%	7.5%
2017	15.0%	22.5%
2018	20.0%	42.5%
2019	25.0%	67.5%
2020	32.5%	100.0%

Staff recommends that a Table 4 be added to provide an illustrative example of how the standard could be met in 2020. The table would be as shown below.

Table 4. Illustrative Example of How the Energy Standard Could be Met in 2020

	2020 ENERGY EFFICIENCY STANDARD	2019 RETAIL SALES (kWh)	REQUIRED CUMULATIVE ANNUAL ENERGY SAVINGS (kWh)
Total	22.00%	99,986,628	21,997,058
			CUMULATIVE ANNUAL ENERGY SAVINGS OR CREDITS TO MEET THE STANDARD (kWh)
Demand Response Credit R14-2-2404(C)	2.00%		1,999,733
Pre-rules Savings Credit R14-2-2404(D)			1,100,000*
Building Code R14-2-2404(E)			1,000,000
CHP R14-2-2404(F)			500,000
Self-direction R14-2-2404(G)			100,000
Energy Efficiency R14-2-2404(A)			17,297,325
Total			21,997,058

* The total Pre-rules Savings Credit is capped at 4% of 2005 retail energy sales, and the total credit is allocated over five years from 2016 to 2020. The credit shown above represents an estimate of the portion of the total credit that can be taken in 2020, or 32.5% of the total credit allowed.

R14-2-2414(A)

Staff recommends that the sentence "Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner." be clarified to read as "Ratepayer-funded DSM programs shall be developed and implemented in a fuel-neutral manner, meaning that an affected utility as an administrator of DSM programs should not bias the customer's fuel choice (such as electricity or gas) toward the fuel that the affected utility provides."

DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

Staff recommends that a clarification be made to the Economic, Small Business, and Consumer Impact Statement that was filed on January 22, 2010.

Section B.1, first paragraph, second sentence

> "Rules R14-2-2401 through R14-2-2419 require affected utilities by 2020 to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for the prior calendar year (2019)."
>
> should be replaced with:
>
> "Rules R14-2-2401 through R14-2-2419 require affected utilities, by December 31, 2020, to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for calendar year 2019."

EXHIBIT "D"

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION

FIXED UTILITIES

ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS

R14-2-2401. Definitions

R14-2-2402. Applicability

R14-2-2403. Goals and Objectives

R14-2-2404. Energy Efficiency Standards

R14-2-2405. Implementation Plans

R14-2-2406. DSM Tariffs

R14-2-2407. Commission Review and Approval of DSM Programs and DSM Measures

R14-2-2408. Parity and Equity

R14-2-2409. Reporting Requirements

R14-2-2410. Cost Recovery

R14-2-2411. Performance Incentives

R14-2-2412. Cost-effectiveness

R14-2-2413. Baseline Estimation

R14-2-2414. Fuel Neutrality

R14-2-2415. Monitoring, Evaluation, and Research

R14-2-2416. Program Administration and Implementation

R14-2-2417. Leveraging and Cooperation

R14-2-2418. Compliance by Electric Distribution Cooperatives

R14-2-2419. Waiver from the Provisions of this Article

ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS

R14-2-2401. Definitions

In this Article, unless otherwise specified:

1. "Adjustment mechanism" means a Commission-approved provision in an affected utility's rate schedule allowing the affected utility to increase and decrease a certain rate or rates, in an established manner, when increases and decreases in specific costs are incurred by the affected utility.
2. "Affected utility" means a public service corporation that provides electric service to retail customers in Arizona.
3. "Baseline" means the level of electricity demand, electricity consumption, and associated expenses estimated to occur in the absence of a specific DSM program, determined as provided in R14-2-2413.
4. "CHP" means combined heat and power, which is using a primary energy source to simultaneously produce electrical energy and useful process heat.
5. "Commission" means the Arizona Corporation Commission.
6. "Cost-effective" means that total incremental benefits from a DSM measure or DSM program exceed total incremental costs over the life of the DSM measure, as determined under R14-2-2412.
7. "Customer" means the person or entity in whose name service is rendered to a single contiguous field, location, or facility, regardless of the number of meters at the field, location, or facility.
8. "Delivery system" means the infrastructure through which an affected utility transmits and then distributes electrical energy to its customers.
9. "Demand savings" means the load reduction, measured in kW, occurring during a relevant peak period or periods as a direct result of energy efficiency and demand response programs.
10. "Demand response" means modification of customers' electricity consumption patterns, affecting the timing or quantity of customer demand and usage, achieved through intentional actions taken by an affected utility or customer because of changes in prices, market conditions, or threats to system reliability.
11. "Distributed generation" means the production of electricity on the customer's side of the meter, for use by the customer, through a process such as CHP.

12. "DSM" means demand-side management, the implementation and maintenance of one or more DSM programs.
13. "DSM measure" means any material, device, technology, educational program, pricing option, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, or shifting of electricity consumption to off-peak periods and includes CHP used to displace space heating, water heating, or another load.
14. "DSM program" means one or more DSM measures provided as part of a single offering to customers.
15. "DSM tariff" means a Commission-approved schedule of rates designed to recover an affected utility's reasonable and prudent costs of complying with this Article.
16. "Electric utility" means a public service corporation providing electric service to the public.
17. "Energy efficiency" means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers.
18. "Energy efficiency standard" means the reduction in retail energy sales, in percentage of kWh, required to be achieved through an affected utility's approved DSM programs as prescribed in R14-2-2404.
19. "Energy savings" means the reduction in a customer's energy consumption directly resulting from a DSM program, expressed in kWh.
20. "Energy service company" means a company that provides a broad range of services related to energy efficiency, including energy audits, the design and implementation of energy efficiency projects, and the installation and maintenance of energy efficiency measures.
21. "Environmental benefits" means avoidance of costs for compliance, or reduction in environmental impacts, for things such as, but not limited to:
    a. Water use and water contamination;
    b. Monitoring storage and disposal of solid waste such as coal ash (bottom and fly);
    c. Health effects from burning fossil fuels; and
    d. Emissions from transportation and production of fuels and electricity.
22. "Fuel-neutral" means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another.
23. "Incremental benefits" means amounts saved through avoiding costs for fuel, purchased power, new capacity, transmission, distribution, and other cost items necessary to provide electric utility

service, along with other improvements in societal welfare, such as through avoided environmental impacts, including, but not limited to, water consumption savings, air emission reduction, reduction in coal ash, and reduction of nuclear waste.

24. "Incremental costs" means the additional expenses of DSM measures, relative to baseline.

25. "Independent program administrator" means an impartial third party employed to provide objective oversight of energy efficiency programs.

26. "kW" means kilowatt.

27. "kWh" means kilowatt-hour.

28. "Leveraging" means combining resources to more effectively achieve an energy efficiency goal, or to achieve greater energy efficiency savings, than would be achieved without combining resources.

29. "Load management" means actions taken or sponsored by an affected utility to reduce peak demands or improve system operating efficiency, such as direct control of customer demands through affected-utility-initiated interruption or cycling, thermal storage, or educational campaigns to encourage customers to shift loads.

30. "Low-income customer" means a customer with a below average level of household income, as defined in an affected utility's Commission-approved DSM program description.

31. "Market transformation" means strategic efforts to induce lasting structural or behavioral changes in the market that result in increased energy efficiency.

32. "Net benefits" means the incremental benefits resulting from DSM minus the incremental costs of DSM.

33. "Non-market benefits" means improvements in societal welfare that are not bought or sold.

34. "Program costs" means the expenses incurred by an affected utility as a result of developing, marketing, implementing, administering, and evaluating Commission-approved DSM programs.

35. "Self-direction" means an option made available to qualifying customers of sufficient size, in which the amount of money paid by each qualifying customer toward DSM costs is tracked for the customer and made available for use by the customer for approved DSM investments upon application by the customer.

36. "Societal Test" means a cost-effectiveness test of the net benefits of DSM programs that starts with the Total Resource Cost Test, but includes non-market benefits and costs to society.

37. "Staff" means individuals working for the Commission's Utilities Division, whether as employees or through contract.

38. "Thermal envelope" means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate interior conditioned (heated or cooled) spaces from the exterior environment.

39. "Total Resource Cost Test" means a cost-effectiveness test that measures the net benefits of a DSM program as a resource option, including incremental measure costs, incremental affected utility costs, and carrying costs as a component of avoided capacity cost, but excluding incentives paid by affected utilities and non-market benefits to society.

R14-2-2402. Applicability

This Article applies to each affected utility classified as Class A according to R14-2-103(A)(3)(q), unless the affected utility is an electric distribution cooperative that has fewer than 25% of its customers in Arizona.

R14-2-2403. Goals and Objectives

A. An affected utility shall design each DSM program:

1. To be cost-effective; and
2. To accomplish at least one of the following:
   a. Energy efficiency,
   b. Load management, or
   c. Demand response.

B. An affected utility shall consider the following when planning and implementing a DSM program:

1. Whether the DSM program will achieve cost-effective energy savings and peak demand reductions;
2. Whether the DSM program will advance market transformation and achieve sustainable savings, reducing the need for future market interventions; and
3. Whether the affected utility can ensure a level of funding adequate to sustain the DSM program and allow the DSM program to achieve its targeted goal.

C. An affected utility shall:

1. Offer DSM programs that will provide an opportunity for all affected utility customer segments to participate, and

2. Allocate a portion of DSM resources specifically to low-income customers.

R14-2-2404. Energy Efficiency Standards

A. Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for calendar year 2019.

B. An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4.

Table 1. Energy Efficiency Standard

CALENDAR YEAR	ENERGY EFFICIENCY STANDARD (Cumulative Annual Energy Savings by the End of Each Calendar Year as a Percentage of the Retail Energy Sales in the Prior Calendar Year)
2011	1.25%
2012	3.00%
2013	5.00%
2014	7.25%
2015	9.50%
2016	12.00%
2017	14.50%
2018	17.00%
2019	19.50%
2020	22.00%

Table 2. Illustrative Example of Calculating Required Energy Savings

CALENDAR YEAR	A RETAIL SALES (kWh)	B ENERGY EFFICIENCY STANDARD	C REQUIRED CUMULATIVE ENERGY SAVINGS (B of current year × A of prior year)
2010	100,000,000		0
2011	100,750,000	1.25%	1,250,000
2012	101,017,500	3.00%	3,022,500
2013	101,069,925	5.00%	5,050,875
2014	100,915,646	7.25%	7,327,570
2015	100,821,094	9.50%	9,586,986
2016	100,517,711	12.00%	12,098,531
2017	100,293,499	14.50%	14,575,068
2018	100,116,043	17.00%	17,049,895
2019	99,986,628	19.50%	19,522,628
2020	99,902,384	22.00%	21,997,058

C. An affected utility's measured reductions in peak demand resulting from cost-effective demand response and load management programs may comprise up to two percentage points of the 22% energy efficiency standard, with peak demand reduction capability from demand response converted to an annual energy savings equivalent based on an assumed 50% annual load factor. The credit for demand response and load management peak demand reductions shall not exceed 10% of the energy efficiency standard set forth in subsection (B) for any year. The measured reductions in peak demand occurring during a calendar year after the effective date of this Article may be counted for that calendar year even if the demand response or load management program resulting in the reductions was implemented prior to the effective date of this Article.

D. An affected utility's energy savings resulting from DSM energy efficiency programs implemented before the effective date of this Article, but after 2004, may be credited toward

meeting the energy efficiency standard set forth in subsection (B). The total energy savings credit for these pre-rules energy efficiency programs shall not exceed 4% of the affected utility's retail energy sales in calendar year 2005. A portion of the total energy savings credit for these pre-rules energy efficiency programs may be applied each year, from 2016 through 2020, as listed in Table 3, Column A.

Table 3. Credit for Pre-Rules Energy Savings

CALENDAR YEAR	A CREDIT FOR THE PRE-RULES ENERGY SAVINGS APPLIED IN EACH YEAR (Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Shall Be Applied in the Year)	B CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-RULES ENERGY SAVINGS IN 2016-2020 (Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Are Credited by the End of Each Year)
2016	7.5%	7.5%
2017	15.0%	22.5%
2018	20.0%	42.5%
2019	25.0%	67.5%
2020	32.5%	100.0%

E. An affected utility may count toward meeting the standard up to one third of the energy savings, resulting from energy efficiency building codes, that are quantified and reported through a measurement and evaluation study undertaken by the affected utility.

F. An affected utility may count the energy savings from combined heat and power (CHP) installations that do not qualify under the Renewable Energy Standard toward meeting the energy efficiency standard.

G. An affected utility may count a customer's energy savings resulting from self-direction toward meeting the standard.

H. An affected utility's energy savings resulting from efficiency improvements to its delivery system may not be counted toward meeting the standard.

I. An affected utility's energy savings used to meet the energy efficiency standard will be assumed to continue through the year 2020 or, if expiring before the year 2020, to be replaced with a DSM energy efficiency program having at least the same level of efficiency.

Table 4. Illustrative Example of How the Energy Standard Could Be Met in 2020

	2020 Energy Efficiency Standard	2019 Retail Sales (kWh)	Required Cumulative Annual Energy Savings (kWh)
Total	22.00%	99,986,628	21,997,058
Breakdown of Savings and Credits Used To Meet 2020 Standard:			
			Cumulative Annual Energy Savings or Credit (kWh)
Demand Response Credit R14-2-2404(C)	Up to 2.00%		1,999,733
Pre-rules Savings Credit R14-2-2404(D)			1,100,000*
Building Code R14-2-2404(E)			1,000,000
CHP R14-2-2404(F)			500,000
Self-Direction R14-2-2404(G)			100,000
Energy Efficiency R14-2-2404(A)			17,297,325
Total			21,997,058

* The total pre-rules savings credit is capped at 4% of 2005 retail energy sales, and the total credit is allocated over five years from 2016 to 2020. The credit shown above represents an estimate of the portion of the total credit that can be taken in 2020, or 32.5% of the total credit allowed.

R14-2-2405. Implementation Plans

A. Except as provided in R14-2-2418, on June 1 of each odd year, or annually at the election of each affected utility, each affected utility shall file with Docket Control, for Commission review and approval, an implementation plan describing how the affected utility intends to meet the energy efficiency standard for the next one or two calendar years, as applicable, except that the initial implementation plan shall be filed within 30 days of the effective date of this Article.

B. The implementation plan shall include the following information:

1. Except for the initial implementation plan, a description of the affected utility's compliance with the requirements of this Article for the previous calendar year;
2. Except for the initial implementation plan, which shall describe only the next calendar year, a description of how the affected utility intends to comply with this Article for the next two calendar years, including an explanation of any modification to the rates of an existing DSM adjustment mechanism or tariff that the affected utility believes is necessary;
3. Except for the initial implementation plan, which shall describe only the next calendar year, a description of each DSM program to be newly implemented or continued in the next two calendar years and an estimate of the annual kWh and kW savings projected to be obtained through each DSM program;
4. The estimated total cost and cost per kWh reduction of each DSM measure and DSM program described in subsection (B)(3);
5. A DSM tariff filing complying with R14-2-2406(A) or a request to modify and reset an adjustment mechanism complying with R14-2-2406(C), as applicable; and
6. For each new DSM program or DSM measure that the affected utility desires to implement, a program proposal complying with R14-2-2407.

C. An affected utility shall notify its customers of its annual implementation plan filing through a notice in its next regularly scheduled customer bills.

D. The Commission may hold a hearing to determine whether an affected utility's implementation plan satisfies the requirements of this Article.

E. An affected utility's Commission-approved implementation plan, and the DSM programs authorized thereunder, shall continue in effect until the Commission takes action on a new implementation plan for the affected utility.

R14-2-2406. DSM Tariffs

A. An affected utility's DSM tariff filing shall include the following:

1. A detailed description of each method proposed by the affected utility to recover the reasonable and prudent costs associated with implementing the affected utility's intended DSM programs;
2. Financial information and supporting data sufficient to allow the Commission to determine the affected utility's fair value, including, at a minimum, the information required to be submitted in a utility annual report filed under R14-2-212(G)(4);
3. Data supporting the level of costs that the affected utility believes will be incurred in order to comply with this Article; and
4. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.

B. The Commission shall approve, modify, or deny a tariff filed pursuant to subsection (A) within 180 days after the tariff has been filed. The Commission may suspend this deadline or adopt an alternative procedural schedule for good cause.

C. If an affected utility has an existing adjustment mechanism to recover the reasonable and prudent costs associated with implementing DSM programs, the affected utility may, in lieu of making a tariff filing under subsection (A), file a request to modify and reset its adjustment mechanism by submitting the information required under subsections (A)(1) and (3).

R14-2- 2407. Commission Review and Approval of DSM Programs and DSM Measures

A. An affected utility shall obtain Commission approval before implementing a new DSM program or DSM measure.

B. An affected utility may apply for Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its implementation plan submitted under R14-2-2405 or through a separate application.

C. A program proposal shall include the following:

1. A description of the DSM program or DSM measure that the affected utility desires to implement,
2. The affected utility's objectives and rationale for the DSM program or DSM measure,
3. A description of the market segment at which the DSM program or DSM measure is aimed,

4. An estimated level of customer participation in the DSM program or DSM measure,
5. An estimate of the baseline,
6. The estimated societal benefits and savings from the DSM program or DSM measure,
7. The estimated societal costs of the DSM program or DSM measure,
8. The estimated environmental benefits to be derived from the DSM program or DSM measure,
9. The estimated benefit-cost ratio of the DSM program or DSM measure,
10. The affected utility's marketing and delivery strategy,
11. The affected utility's estimated annual costs and budget for the DSM program or DSM measure,
12. The implementation schedule for the DSM program or DSM measure,
13. A description of the affected utility's plan for monitoring and evaluating the DSM program or DSM measure, and
14. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.

D. In determining whether to approve a program proposal, the Commission shall consider:

1. The extent to which the Commission believes the DSM program or DSM measure will meet the goals set forth in R14-2-2403(A), and
2. All of the considerations set forth in R14-2-2403(B).

E. Staff may request modifications of on-going DSM programs to ensure consistency with this Article. The Commission shall allow affected utilities adequate time to notify customers of DSM program modifications.

R14-2-2408. Parity and Equity

A. An affected utility shall develop and propose DSM programs for residential, non-residential, and low-income customers.

B. An affected utility shall allocate DSM funds collected from residential customers and from non-residential customers proportionately to those customer classes to the extent practicable.

C. The affected utility costs of DSM programs for low-income customers shall be borne by all customer classes, except where a customer or customer class is specifically exempted by Commission order.

D. DSM funds collected by an affected utility shall be used, to the extent practicable, to benefit that affected utility's customers.

E. All customer classes of an affected utility shall bear the costs of DSM programs by payment through a non-bypassable mechanism, unless a customer or customer class is specifically exempted by Commission order.

R14-2-2409. Reporting Requirements

A. By March 1 of each year, an affected utility shall submit to the Commission, in a Commission-established docket for that year, a DSM progress report providing information for each of the affected utility's Commission-approved DSM programs and including at least the following:

1. An analysis of the affected utility's progress toward meeting the annual energy efficiency standard;
2. A list of the affected utility's current Commission-approved DSM programs and DSM measures, organized by customer segment;
3. A description of the findings from any research projects completed during the previous year; and
4. The following information for each Commission-approved DSM program or DSM measure:
   a. A brief description;
   b. Goals, objectives, and savings targets;
   c. The level of customer participation during the previous year;
   d. The costs incurred during the previous year, disaggregated by type of cost, such as administrative costs, rebates, and monitoring costs;
   e. A description and the results of evaluation and monitoring activities during the previous year;
   f. Savings realized in kW, kWh, therms, and BTUs, as appropriate;
   g. The environmental benefits realized, including reduced emissions and water savings;
   h. Incremental benefits and net benefits, in dollars;
   i. Performance-incentive calculations for the previous year;
   j. Problems encountered during the previous year and proposed solutions;
   k. A description of any modifications proposed for the following year; and

1. Whether the affected utility proposes to terminate the DSM program or DSM measure and the proposed date of termination.

B. By September 1 of each year, an affected utility shall file a status report including a tabular summary showing the following for each current Commission-approved DSM program and DSM measure of the affected utility:

1. Semi-annual expenditures compared to annual budget, and
2. Participation rates.

C. An affected utility shall file each report required by this Section with Docket Control, where it will be available to the public, and shall make each such report available to the public upon request.

D. An affected utility may request within its implementation plan that these reporting requirements supersede specific existing DSM reporting requirements.

R14-2-2410. Cost Recovery

A. An affected utility may recover the costs that it incurs in planning, designing, implementing, and evaluating a DSM program or DSM measure if the DSM program or DSM measure is all of the following:

1. Approved by the Commission before it is implemented,
2. Implemented in accordance with a Commission-approved program proposal or implementation plan, and
3. Monitored and evaluated for cost-effectiveness pursuant to R14-2-2415.

B. An affected utility shall monitor and evaluate each DSM program and DSM measure, as provided in R14-2-2415, to determine whether the DSM program or DSM measure is cost-effective and otherwise meets expectations.

C. If an affected utility determines that a DSM program or DSM measure is not cost-effective or otherwise does not meet expectations, the affected utility shall include in its annual DSM progress report filed under R14-2-2409 a proposal to modify or terminate the DSM program or DSM measure.

D. An affected utility shall recover its DSM costs concurrently, on an annual basis, with the spending for a DSM program or DSM measure, unless the Commission orders otherwise.

E. An affected utility may recover costs from DSM funds for any of the following items, if the expenditures will enhance DSM:

1. Incremental labor attributable to DSM development,
2. A market study,
3. A research and development project such as applied technology assessment,
4. Consortium membership, or
5. Another item that is difficult to allocate to an individual DSM program.

F. The Commission may impose a limit on the amount of DSM funds that may be used for the items in subsection (E).

G. If goods and services used by an affected utility for DSM have value for other affected utility functions, programs, or services, the affected utility shall divide the costs for the goods and services and allocate funding proportionately.

H. An affected utility shall allocate DSM costs in accordance with generally accepted accounting principles.

I. The Commission shall review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue, due to Commission-approved DSM programs, if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application.

J. An affected utility, at its own initiative, may submit to the Commission twice-annual reports on the financial impacts of its Commission-approved DSM programs, including any unrecovered fixed costs and net lost income/revenue resulting from its Commission-approved DSM programs.

R14-2-2411. Performance Incentives

In the implementation plans required by R14-2-2405, an affected utility may propose for Commission review a performance incentive to assist in achieving the energy efficiency standard set forth in R14-2-2404. The Commission may also consider performance incentives in a general rate case.

R14-2-2412. Cost-effectiveness

A. An affected utility shall ensure that the incremental benefits to society of the affected utility's overall DSM portfolio exceed the incremental costs to society of the DSM portfolio.

B. The Societal Test shall be used to determine cost-effectiveness.

C. The analysis of a DSM program's or DSM measure's cost-effectiveness may include:

1. Costs and benefits associated with reliability, improved system operations, environmental impacts, and customer service;
2. Savings of both natural gas and electricity; and

3. Any uncertainty about future streams of costs or benefits.

D. An affected utility shall make a good faith effort to quantify water consumption savings and air emission reductions, while other environmental costs or the value of environmental improvements shall be estimated in physical terms when practical but may be expressed qualitatively. An affected utility, Staff, or any party may propose monetized benefits and costs if supported by appropriate documentation or analyses.

E. Market transformation programs shall be analyzed for cost-effectiveness by measuring market effects compared to program costs.

F. Educational programs shall be analyzed for cost-effectiveness based on estimated energy and peak demand savings resulting from increased awareness about energy use and opportunities for saving energy.

G. Research and development and pilot programs are not required to demonstrate cost-effectiveness.

H. An affected utility's low-income customer program portfolio shall be cost-effective, but costs attributable to necessary health and safety measures shall not be used in the calculation.

R14-2-2413. Baseline Estimation

A. To determine the baseline, an affected utility shall estimate the level of electric demand and consumption and the associated costs that would have occurred in the absence of a DSM program or DSM measure.

B. For demand response programs, an affected utility shall use customer load profile information to verify baseline consumption patterns and the peak demand savings resulting from demand response actions.

C. For installations or applications that have multiple fuel choices, an affected utility shall determine the baseline using the same fuel source actually used for the installation or application.

R14-2-2414. Fuel Neutrality

A. Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner.

B. An affected utility shall use DSM funds collected from electric customers for electric DSM programs, unless otherwise ordered by the Commission.

C. An affected utility may use DSM funds collected from electric customers for thermal envelope improvements.

R14-2-2415. Monitoring, Evaluation, and Research

A. An affected utility shall monitor and evaluate each DSM program and DSM measure to:

1. Ensure compliance with the cost-effectiveness requirements of R14-2-2412;
2. Determine participation rates, energy savings, and demand reductions;
3. Assess the implementation process for the DSM program or DSM measure;
4. Obtain information on whether to continue, modify, or terminate a DSM program or DSM measure; and
5. Determine the persistence and reliability of the affected utility's DSM.

B. An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for DSM program planning, product development, and DSM program improvement.

R14-2-2416. Program Administration and Implementation

A. An affected utility may use an energy service company or other external resource to implement a DSM program or DSM measure.

B. The Commission may, at its discretion, establish independent program administrators who would be subject to the relevant requirements of this Article.

R14-2-2417. Leveraging and Cooperation

A. An affected utility shall, to the extent practicable, participate in cost sharing, leveraging, or other lawful arrangements with customers, vendors, manufacturers, government agencies, other electric utilities, or other entities if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

B. An affected utility shall participate in a DSM program or DSM measure with a natural gas utility when doing so is practicable and if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

R14-2-2418. Compliance by Electric Distribution Cooperatives

A. An electric distribution cooperative that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2404(A) and (B) and R14-2-2405(A).

B. An electric distribution cooperative shall, on June 1 of each odd year, or annually at its election:

1. File with Docket Control, for Commission review and approval, an implementation plan for each DSM program to be implemented or maintained during the next one or two calendar years, as applicable; and

2. Submit to the Director of the Commission's Utilities Division an electronic copy of its implementation plan in a format suitable for posting on the Commission's website.

C. An implementation plan submitted under subsection (B) shall set forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2404 and shall include the information required under R14-2-2405(B).

R14-2-2419. Waiver from the Provisions of this Article

A. The Commission may waive compliance with any provision of this Article for good cause.

B. An affected utility may petition the Commission to waive its compliance with any provision of this Article for good cause.

C. A petition filed pursuant to this Section shall have priority over other matters filed under this Article.

Exhibit E

Summary of the Comments Made on the Rulemaking and the Agency Response to Them, Prepared Pursuant to A.R.S. § 41-1001(14)(d)(iii)

The written and oral comments received by the Commission concerning the published Notice of Proposed Rulemaking are included in the following table, along with the Commission response to each.

Comments on Notice of Proposed Rulemaking		
Section	**Public Comment**	**Commission Response**
Proposed EEE Rules Generally	WRA expressed support for the proposed EEE rules and urged the Commission to adopt them, stating that they will save ratepayers money by lowering the overall cost for electric energy services; decrease emissions of various pollutants into the atmosphere (thereby reducing Arizona's contributions to climate change, health impacts caused by emissions, damage to wildlife and plants, and utilities' costs to comply with environmental regulations); make Arizona more energy efficient; enable utilities to recover program costs in a timely manner and to address adverse revenue effects in rate cases; allow utilities to earn performance incentives; and keep the Commission and the public informed about efficiency program progress and cost-effectiveness.	The Commission acknowledges the supportive comments. No change is needed in response to these comments.
	EnerNOC applauded Commission Staff for its efforts and attentiveness to interested parties' comments.	The Commission acknowledges the supportive comment. No change is needed in response to this comment.
	EnerNOC requested that the Commission explicitly include third parties or energy service companies, including demand response providers such as EnerNOC, as a means for a utility to satisfy its DSM targets.	The proposed EEE rules allow an affected utility to use reductions in peak demand resulting from cost-effective demand response programs to meet a portion of the energy efficiency ("EE") standard and allow an affected utility to use an energy service company or other external resource to implement a DSM program or DSM measure. The Commission

	considers EnerNOC to be an external resource. No change is needed in response to this comment.
OPOWER stated that, in this docket, the Commission shows a firm commitment to driving significant energy reductions in the state by establishing aggressive efficiency goals for utilities and defining DSM measures broadly, ensuring that utilities may use innovative and proven programs to meet their energy savings targets.	The Commission acknowledges the supportive comment. No change is needed in response to this comment.
TEP/UNS stated that the proposed EEE rules should be aligned with any federally mandated EE standard, at least being consistent with federal requirements as to measurement methodology and definitions.	Federal law (U.S.C. Title 16, Chapter 46 ("PURPA")) currently requires each state regulatory authority, such as the Commission, to consider each standard set forth therein and determine whether or not to implement the standard. One PURPA standard, added in the Energy Independence and Security Act of 2007, would require each electric utility to integrate EE resources into utility, state, and regional plans and adopt policies establishing cost-effective EE as a priority resource. (16 U.S.C. § 2621(d)(16).) The Commission has committed to considering this standard in the pending Incentives Docket, E-00000J-08-0314 et al. ("Incentives Docket").[1] The Commission is unaware of any manner in which the proposed EEE rules conflict with PURPA or any other existing or proposed federal requirements,[2] and no citations to conflicting provisions have been provided. This issue will be dealt with in the Incentives Docket, and the Commission will ensure that the Commission's standards do not conflict with any applicable federal law.

[1] *See* Staff Memorandum (Dec. 18, 2008) (filed in Incentives Docket).
[2] *See* Tr. at 23.

	No change is needed in response to this comment.
TEP/UNS initially requested that the Commission clarify its authority to promulgate the proposed EEE rules, but later clarified that they are not challenging the Commission's authority to adopt the rules.	The Commission set forth its authority for this rulemaking in the Notice of Proposed Rulemaking published in this matter. No change is needed in response to this comment.
The Cooperatives[3] asserted that the proposed EEE rules should not include a requirement for utilities to submit information regarding environmental externalities and societal benefits and savings because the Cooperatives will likely be unable to provide any meaningful information regarding assumptions, calculations, and amounts for environmental externalities or societal benefits and savings and would incur significant costs in trying to quantify these societal benefits and savings and because the Commission will already receive this type of information through its Resource Planning Rules.	It is important for an affected utility to estimate and consider societal benefits and savings and environmental externalities when determining which EE programs to propose. Staff believes that this information is readily available and will not be burdensome to acquire and provide. (Tr. at 19-20.) Because incremental benefits are a key consideration in determining cost-effectiveness, the Commission believes that this information is crucial for the utility and the Commission to have. No change is needed in response to this comment.
Katie Morales, an individual ratepayer, urged the Commission to require Arizona utilities to invest more ratepayer dollars into EE and to increase EE requirements to at least 20% by 2020, because EE is one of the most effective energy cost management tools; is supported by numerous studies; and will help residents to save money, save energy, and protect the environment. Ms. Morales asserted that although EE measures may result in slightly higher rates, with proper implementation, they will result in declining electric bills and declining aggregate demand for electricity, which will reduce the total cost of electric energy services over	The Commission acknowledges and agrees with the supportive comments. No change is needed in response to these comments.

[3] Duncan Valley Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc. had comments submitted on their behalf by Grand Canyon State Electric Cooperative Association.

	the long run because utilities will reduce their fuel and generation costs.	
	SWEEP strongly supports the proposed EEE rules and asserts that they are in the public interest. SWEEP asserts that the rules will reduce the total energy costs for affected utilities' ratepayers because DSM programs and measures must be cost-effective to be approved; will reduce other costs, including environmental costs, water costs, and environmental compliance costs because of reductions in air pollution, carbon emissions, and environmental impacts; will increase the reliability of the electric grid by reducing load growth, diversifying energy resources, and reducing the pressure on and costs of electric distribution and transmission; and will enable the Commission to ensure reliable electric service at reasonable rates and costs for ratepayers. SWEEP further asserts that the rules will create jobs and improve the Arizona economy.	The Commission acknowledges and agrees with the supportive comments. Staff agreed with SWEEP's assertions regarding why the proposed EEE rules are in the public interest and the benefits to be derived from them. (Tr. at 28.) No change is needed in response to these comments.
	APS stated that it supports the efforts to develop EE standards and rules for Arizona; that it was actively involved in the workshops that took place in 2009; and that, as a leading provider of EE and DSM programs for the past several years, it is committed to expanding its EE programs going forward.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
Rule 2404	EnerNOC supports the inclusion of demand response as a means of achieving the overall consumption reduction of 22%, which EnerNOC said is aggressive but achievable. EnerNOC asserted that demand response results in a number of benefits, including system security, deferral of new investment, protecting consumers from price spike during peak periods, and reducing emissions	The Commission acknowledges the supportive comment. No change is needed in response to this comment.

	during peak periods.	
	EnerNOC requested that the rule be modified either to increase the cap on demand response from 2% to 5% or a range of 2 to 5% or to implement a separate peak-load reduction target of 5% and an EE standard of 17% or a requirement that the 22% reduction include a peak-load reduction of 5%.	The 2% cap is appropriate because affected utilities otherwise may choose to implement more demand response programs that shift time of usage instead of EE programs that will reduce usage. Demand response programs reduce affected utilities' costs without reducing revenues, but do not reduce overall consumption. The Commission desires to see a reduction in overall consumption. No change is needed in response to this comment.
	APS explained that it understands 2404 to allow the effects of EE programs implemented before the rules to count for up to 4% toward the 22% standard, but not to allow demand response program results to count toward the 22% standard (and the 2% cap on demand response) unless the results occur after the rules take effect (although the demand response program could have been implemented before the rules). APS explained that because EE and demand response programs have different aims, 2404 distinguishes between the results from each.	The Commission appreciates APS's explanation of its understanding of these provisions in 2404. No change is needed in response to this comment.
	EnerNOC requested that the Commission clarify whether the peak-load reduction of 2% is for existing or only new incremental peak-load reduction measures.	The proposed EEE rules allow an affected utility to count peak demand reductions that occur after the effective date of the rules, even if the demand response or load management program that caused the reductions was implemented before the effective date of the rules. The restriction in 2404(D) applies only to EE programs, not to demand response and load management programs. The Commission is adding language to clarify this in 2404(C) in the text for the Notice of Final Rulemaking.
	EnerNOC stated that it has previously expressed concerns at the workshops	The Commission believes that it is necessary and appropriate to establish

about converting demand reductions in to energy and vice versa because the conversions may not produce real, measurable, and verifiable results. EnerNOC explained that EE measures reduce consumption in kWh, whereas demand response reduces peak demand. EnerNOC stated that these may not be easily exchanged for one another. EnerNOC stated that it has previously suggested adoption of a percentage reduction of 0.5% per year, resulting in a total peak demand reduction of 5% in 2020. EnerNOC provided a list of other ways to design a demand response target and included references to regulatory actions taken and/or pending by the federal government and the governments of several states. EnerNOC stated that it hopes the Commission will carefully consider the many various ways in which states have adopted demand reduction policies and adopt a policy that is most suitable for Arizona. EnerNOC also requested that the Commission examine the implications of the 50% load factor to reducing the opportunity for peak-load reductions and that the Commission hold workshops and determine baseline methodology before utilities submit their DSM program plans.	a standard load factor to be used in determining the annual energy savings equivalent for peak demand reductions. However, if an affected utility determines that the standard impedes its ability to receive credit for actual peak load reductions, the Commission encourages the affected utility to petition the Commission for a waiver of the standard load factor under 2419(B). The Commission believes that it is not necessary or appropriate at this time to include a mandatory peak demand reduction standard for affected utilities to meet, as the Commission's primary goal with these rules is to increase energy efficiency. No change is needed in response to this comment.
OPOWER expressed its support for the EE targets in the proposed EEE rules, stating that it is wise for the Commission to set aggressive efficiency targets to reduce the state's energy consumption and that the targets are necessary and achievable. OPOWER also affirmed its understanding that utilities may use behavior-based programming to meet their annual savings goals.	The Commission acknowledges the supportive comments and confirms that there is nothing in the proposed EEE rules that would prohibit an affected utility from using a cost-effective behavior-based DSM measure or program toward meeting the EE standard. No change is needed in response to this comment.
TEP/UNS stated that although they	The Commission has determined that

support the principle of EE, and the proposed EEE rules are a step in the right direction, the proposed EEE rules are not in the public interest because the targets should be established based on studies and utility-specific and perhaps even service-area-specific analyses. TEP/UNS asserted that the 22% standard and ramp-up schedule are unsupported by testimony or analytical studies. TEP/UNS listed several sources that TEP/UNS assert argue against imposition of the 22% standard.[4] TEP/UNS further stated that the Commission should examine the existing studies in additional hearings and only adopt a five-year standard for now, with longer term standards to be adopted after additional examination. TEP/UNS stated that the EE savings for the first few years should not be too difficult to achieve, as these programs will be "low-hanging fruit," but that accomplishing the required savings in the later years will be more difficult.	an aggressive long-term EE standard (as opposed to a set of divergent standards for different affected utilities) is necessary and appropriate to implement now to ensure that Arizona consumers have a reliable and reasonably priced electric supply available for the long term. The Commission does not believe that aspirations should be set low or that additional delay would result in a more effective standard. If TEP/UNS determine that the EE standard cannot be met at some point, despite their best efforts, the proposed EEE rules allow them to petition for a waiver under 2419(B). The Commission is taking action now, during this period of slowed growth, to avert energy shortages and increased costs later and to protect the environment. No changes are necessary in response to these comments.
TEP/UNS stated that utilities should be able to exchange renewable energy credits and efficiency standard requirements to meet both the Renewable Energy Standards and the proposed EEE rules in an economical manner.	The proposed EEE rules allow an affected utility to count energy savings from combined heat and power installations that do not qualify under the Renewable Energy Standards and Tariff ("REST") rules, but otherwise do not speak to the REST rules. While the REST rules and the proposed EEE rules share the goals of ensuring reliable and reasonably priced electric service and protecting the environment, their means of achieving those goals are different. The REST rules are designed to achieve those

[4] TEP/UNS cited The Energy Efficiency Task Force Report (January 2006) produced as part of the Clean and Diversified Energy Initiative for the Western Governors' Association; the EPA's Guide to Resource Planning with Energy Efficiency (November 2007); The Institute for Electric Efficiency's ("IEE's") State Energy Efficiency Regulatory Frameworks (January 2010); and IEE's White Paper entitled "Assessment of Electricity Savings in the U.S. Achievable through New Appliance Equipment Efficiency Standards and Building Efficiency Codes (2010-2020)" (December 2009).

	goals by having affected utilities use different energy sources, and the proposed EEE rules achieve those goals by having affected utilities take action to reduce peak loads and overall energy consumption. In light of the different approaches, it would be inappropriate to treat the progress achieved under each standard interchangeably. No change is needed in response to this comment.
TEP/UNS stated that they are concerned about the impact of the proposed EEE rules because selling less power will result in less revenue unless the Commission authorizes recovery of that lost revenue somehow. TEP/UNS characterized the rules as producing a de facto rate decrease (equal to 1.0% to 1.2% for each 2% decrease in kWh sold), which will not be remedied until a subsequent rate case, and pointed out that TEP cannot file a rate case until 2012. TEP/UNS acknowledged that Rule 2410(I) speaks to cost recovery in a rate case, but expressed concern about having to use an accounting order and about the delay in recovery. TEP/UNS also acknowledged that the Commission has another pending docket concerning decoupling and incentives, but stated that it is unclear what will come out of that docket.	The Commission is addressing disincentives and fixed cost recovery in the Incentives Docket. The Commission has been holding workshops on decoupling in that docket and intends to determine how to resolve those issues in that docket. If that is not possible before an affected utility's next rate case, the proposed EEE rules require the Commission to consider the issue upon request in an affected utility's rate case, if the affected utility provides supporting records/documentation. In addition, an affected utility can, in the meantime, request approval for an accounting order. No change is needed in response to this comment.
The Cooperatives asserted that while they can increase the amount and scope of cost-effective EE programs, they believe that the standard in the proposed EEE rules may not be realistic, measurable, or achievable. They echoed TEP/UNS's comments regarding setting the standard based on studies and analyses and further asserted that they cannot meet the 22% standard by 2020 or the annual ramp-	The Commission determined, after the Cooperatives previously expressed their concerns regarding the standard, that it would be appropriate to allow them to meet a reduced standard. The reduced standard was included in the proposed EEE rules. The Commission reiterates its response to the similar comments of TEP/UNS regarding setting an aggressive uniform standard for utilities.

up standards and that one standard based on reductions in kWh sales is not appropriate for all utilities. The Cooperatives assert that only SWEEP, which is not subject to the proposed EEE rules, actively supported an EE standard as high as 20%; that the standard should be based on studies; that studies support standards that are significantly lower than the proposed 22% standard; and that a goal/target based on member/customer participation in proven EE programs would be more appropriate than a standard based on percentage reductions in kWh.	No change is needed in response to these comments.
The Cooperatives assert that a utility should be able to count any and all DSM/EE measures invested in since 2005 toward meeting the EE standard, without caps or disallowances, and that not allowing the use of DSM or of delivery system efficiency improvements to meet the EE standard "severely handicaps" the Cooperatives in meeting the EE standard. The Cooperatives supported EnerNOC's comments that the demand response cap should be raised.	The Commission has capped the amount of pre-rules EE program impact that can be counted each year because the Commission desires to increase the cost-effective EE programs implemented by affected utilities. The Commission reiterates the reasons stated previously regarding the cap for demand response programs. Through the rules, the Commission desires to see a reduction in overall electric consumption. Delivery system efficiency does not reduce consumption. The proposed EEE rules do allow the use of DSM. EE is a form of DSM. No change is needed in response to these comments.
APS expressed support for the Commission's efforts to develop EE standards and rules, stated that the 22% savings by 2020 is very aggressive and will take a lot of hard work and considerable money to achieve, and expressed support for the proposed EEE rules' flexibility in meeting the 22% goal by 2020 (counting of historical results, of results from demand response programs, and of a portion of results	The Commission acknowledges the supportive comment. No change is needed in response to this comment.

from improved codes and standards).	
APS explained its understanding of the 22% EE standard, which it stated means that in the year 2020, the sales for a utility will be 22% lower than they would have been if the utility had never implemented any EE programs. APS explained that the savings would not all have been achieved in 2020—rather, they would be the savings accrued since the utility began implementing EE programs, built up incrementally over the years. APS stated that it is useful to look at the incremental goals for each year, but that it is the cumulative number that matters.	The Commission appreciates APS's explanation of its understanding of these provisions in 2404. No change is needed in response to this comment.
Arizona PIRG Education Fund ("PIRG"), on behalf of itself and 187 listed individuals, expressed support for an EE requirement of at least 20% by 2020. PIRG expressed support for the proposed EEE rules, stating that EE is a proven, immediate, and effective way to save ratepayers money. PIRG stated that it wants to ensure that the hundreds of other citizens, organizations, and businesses who previously urged the Commission to adopt an EE standard of at least 20% by 2020[5] are counted as supporters of the proposed EEE rules. PIRG stated that there is recognition and support across the state to raise rates for an increase of effective EE programs that ultimately will save consumers and businesses money on their monthly electric bills. PIRG stated that increasing EE to at least 20% by 2020 tops the list for achieving its three Principles for the Electric System: (1) Access to safe, reliable, affordable	The Commission acknowledges the supportive comments. No change is needed in response to these comments.

[5] PIRG stated that these supporters include hundreds of citizens from Winslow to Eloy, more than 25 organizations from the Coconino Coalition for Children & Youth in Flagstaff to the American Council of Consumer Awareness in Tucson, and more than 50 businesses from Living Systems Sustainable Architecture in Prescott to the Downtown Deli in Phoenix.

electricity service; (2) Balance of the long-term and short-term needs of consumers as well as the interests of various classes of consumers; and (3) Consumers being assured that the public interest guides all decisions with regard to the electric system.	
Arizona Consumers Council ("Council") submitted comments on its own behalf and on behalf of its more than 1,000 members, many of whom it stated are APS customers. The Council thanked the Commission for focusing on EE, asserting that EE benefits consumers both in the short run by saving them money and in the long run by reducing environmental impacts. The Council asserted that EE may also reduce the need for utilities to make capital expenditures, thus reducing one source of upward pressure on rates. The Council cited a Consumer Federation of America study, which stated that "energy efficiency is the cornerstone to ensuring affordable energy for American households in the decades ahead . . . [because] [i]t costs so much less to save energy than it does to produce it."[6] The Council expressed support for an EE standard of 20% by 2020, for availability of a wide variety of EE programs suitable for different customer classes, and for customers of all classes to have access to clear and understandable information tailored to their own needs as well as technical assistance. The Council stated that programs to help low-income customers are especially important and that innovative programs to help other customers finance more expensive EE methods should also be available.	The Commission acknowledges the supportive comments. No change is needed in response to these comments.

[6] Mark Cooper, Consumer Federation of America, *Building on the Success of Energy Efficiency Programs to Ensure an Affordable Energy Future: State-by-State Savings on Residential Utility Bills from Aggressive Energy Efficiency Policies* (February 2010), at 1.

	William Scown, an individual consumer, expressed support for the 22% standard in the proposed EEE rules, stating that he is willing to pay a little more in rates for EE programs that will make the total energy bill go down. Mr. Scown stated that the proposed EEE rules will help cap production of global warming gases, displace fossil fuels, and create Arizona green jobs. Mr. Scown asserted that Arizona's peak demand for electricity doubled between 1990 and 2005 and that the current "economic hiccup" provides an opportunity to deal with future growth, which had been forecasted to result in another doubling of peak demand between 2006 and 2025 and would have necessitated a great deal of new plant capacity, thus increasing costs to consumers, consuming scarce water resources, and contributing to air pollution and global warming. Mr. Scown asserted that 56% of electricity used in Arizona comes from coal-fired and natural gas-fired power plants, with all of the natural gas being imported from other states, which results in Arizonans spending nearly $1 billion per year to import out-of-state energy resources. Mr. Scown asserted that the cleanest, cheapest, and fastest way to avert a crisis is to improve efficiency, which will meet the growing energy needs of the state at an affordable price, will conserve water, and will protect air quality.	The Commission acknowledges the supportive comments. No change is needed in response to these comments.
Rule 2409(A)(4)(g)	WRA suggested that "The environmental savings realized, including emissions and water savings" be changed to read "The environmental benefits realized, including reduced emissions and water savings" because "environmental benefits" is defined and thus clearer.	The Commission agrees that this change is appropriate and will make the rule clearer. The Commission will make this change in 2409(A)(4)(g) of the text for the Notice of Final Rulemaking.

Rule 2410	TEP/UNS stated that EE rules should not interfere with or diminish a utility's right to recover its costs and opportunity to earn a reasonable return on its investments and that the rules should include a mechanism through which utilities can be compensated for lost revenue resulting from a decline in volumetric sales due to EE measures. TEP/UNS stated that 11 states have adopted decoupling, that eight states have decoupling cases pending, that seven more states have adopted lost revenue adjustment mechanisms (LRAMs), and that one state has an LRAM case pending. TEP/UNS proposed the following language be added to the proposed EEE rules so that the EE standard will not place a financial burden on utilities, and the interests of utilities and their customers will be aligned: "An affected utility shall file within 90 days of approval of this standard a Fixed Cost Recovery Rate supporting the per kWh cost recovery shortfall created by reduced kWh sales due to DSM/EE programs. This Fixed Cost Recovery Rate will be equal to the non-fuel-related variable rate approved by the [Commission] in the Utility's most recent rate case. The Fixed Cost Recovery Deficiency calculation shall multiply the Fixed Cost Recovery Rate by the cumulative kWh sales reductions due to DSM/EE since the Utility's last rate case. Both the Fixed Cost Recovery Rate and the cumulative DSM/EE sales reductions shall be reset coincident with the effective date of applicable changes to the Utility's rates. The affected utility shall recover the Fixed Cost Recovery Deficiency through the annual true-up of the affected utility's DSM adjustor mechanism."	The Commission is addressing disincentives to EE in its Incentives Docket and has been holding workshops on decoupling, which is one method to allow a utility to recover fixed costs in spite of reduced sales due to EE. In addition, the proposed EEE rules require the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue in an affected utility's rate case if the utility requests such consideration and provides supporting records/documentation. In the absence of a more global resolution of the issue, the Commission believes that a rate case is the most appropriate venue to resolve these issues for an affected utility, as it gives the Commission the opportunity to conduct a full examination of the impacts of approved DSM programs in the context of examining a utility's complete revenues and expenses. Additionally, nothing in the proposed EEE rules would prevent an affected utility from requesting approval of an accounting order to defer unrecovered fixed costs for consideration in its next rate case. No change is needed in response to these comments.

Rules 2410 & 2411	SWEEP asserts that the Commission has been considering and addressing issues regarding disincentives to utilities' supporting EE, cost recovery, and performance incentives in parallel proceedings in a separate docket and thus need not resolve them in this rulemaking.	The Commission agrees with this supportive comment. No change is needed in response to this comment.
	The Cooperatives disagreed with SWEEP's assertion that the rules do not need to resolve utility fixed cost recovery and support the proposals made by utilities to allow utilities to recover fixed costs associated with the kWh saved from EE programs.	The Commission reiterates its response to TEP/UNS's similar comment. No change is needed in response to this comment.
	APS agreed with TEP/UNS that the financial disincentives issue must be addressed to make the EE standard goals sustainable going forward, but disagreed that the regulatory disincentives problem needs to be resolved in this rulemaking, stating that it should instead be viewed in the full context of certain commitments made within the proposed EEE rules themselves and in other proceedings pending before the Commission. APS pointed out that Rule 2410(I) requires the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue due to Commission-approved DSM programs in an affected utility's rate case if the affected utility requests such consideration and provides documentation/records supporting its request in its rate application. APS agreed with SWEEP that the Commission has been reviewing and considering issues regarding disincentives, cost recovery, and performance incentives in parallel proceedings; stated that it will continue to work with the Commission and other interested parties in the	The Commission acknowledges the supportive comment. No change is needed in response to this comment.

	workshop process to devise appropriate means of addressing these issues; and expressed confidence that the Commission is committed to addressing the issue and will adopt the policies that will evolve from the workshops no later than an affected utility's next rate case.	
Rule 2411	The Cooperatives stated that they do not support a profit-related performance incentive, instead desiring the regulatory flexibility to collect necessary expenses in an efficient, cost-effective, and timely manner.	The Commission understands that the Cooperatives are different than the other affected utilities in that they are member/customer owned and not operated for profit. As stated previously, the Commission is addressing financial disincentives in the Incentives Docket and, upon request, in rate cases. No change is needed in response to this comment.
Rule 2413(A) and (C)	WRA suggested that "the" should be inserted before "baseline" to make the rule clearer.	The Commission agrees that this change is appropriate and will make the rule clearer. The Commission is making this change in the text for the Notice of Final Rulemaking.
Rule 2416	APS explained that it understood that a third-party administrator would only be used if it was proven that the third-party administrator would be more efficient and effective in implementing a program. APS believes that it should implement its own programs because it is a trusted source of information for its customers and has implemented programs successfully in the past. APS explained that even with a third-party administrator, the fixed cost issue for utilities would not go away. APS asserted that one study found no correlation between the amount of savings achieved and who administered a program and further asserted that other states have effective programs run by both. APS stated that an affected utility would pass the cost of an independent program administrator on to ratepayers as a	The Commission appreciates APS's explanation of its understanding of these provisions in 2416. No change is needed in response to this comment.

	program cost.	
Rule 2418	The Cooperatives proposed that each Cooperative be permitted to file and have its own Commission-approved EE standard by eliminating the language in Rule 2418(C) that requires the EE goal set forth in a Cooperative's implementation plan to be an EE goal for each year "of at least 75% of the savings requirement specified in R14-2-2404."	As stated previously, the Commission believes that it is appropriate to set a uniform standard to be met, as opposed to having affected utilities set their own, possibly very low, standards. The Commission included a reduced standard for the Cooperatives in the proposed EEE rules, in recognition of their being different from the other affected utilities, but does not believe that it would be appropriate to eliminate the standard altogether and leave it to the discretion of each Cooperative. No change is needed in response to this comment.
Rule 2419(B)	WRA suggested that "The affected utility" be changed to "An affected utility" to make the rule clearer.	The Commission agrees that this change is appropriate and will make the rule clearer. The Commission is making this change in the text for the Notice of Final Rulemaking.

The written comments received by the Commission concerning Staff's recommended revisions to the proposed rules (included in Staff's filing made on April 16, 2010) are included in the following table, along with the Commission response to each.

Comments on Staff's Recommended Revisions to the Proposed Rules (April 16, 2010)		
Section	**Public Comment**	**Commission Response**
Rule 2404(A) and (B)	In response to Staff's recommended changes to Rule 2404(A), which would have eliminated the reference to the affected utility's retail electric energy sales for the prior calendar year (2019), and to Rule 2404(B), which would have added a column including an annual energy efficiency standard to the table therein, APS stated that the elimination of the reference to the prior calendar year 2019 would cause uncertainty regarding to what value the 22% applies. APS stated that the 22% requirement lies at the very core of the proposed rules and is vague unless it is stated as 22% of an identified, known, or measurable value and further stated	In its filing made on June 24, 2010, Staff revised its recommendations for both Rule 2404(A) and (B). Staff now recommends that Rule 2404(A) be revised by replacing "for the prior calendar year (2019)" with "for calendar year 2019" and that Rule 2404(B) be revised by replacing the original proposed language with the following: "An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of

	that the proposed language should be retained. APS stated that Staff's revised table in 2404(B) properly identified the columns of Annual Energy Savings and Cumulative Energy Savings and thus provided some of the clarity that the revised text lacks, but that the original text of 2404(A) should be retained. APS also stated that conforming changes should be made to the first paragraph in Section B.1 of Staff's Economic, Small Business, and Consumer Impact Statement.	how the standard could be met in 2020 is shown in Table 4." Staff further recommends that the table in 2404(B) be labeled Table 1, that the heading for the EE standard clarify that the standard is to be met by the end of each calendar year, and that new Tables 2 and 4 be added. The Commission believes that Staff's new recommended changes are appropriate and that they address APS's concern that the 22% standard would be vague if not tied to a particular year. The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
Rule 2404(A)	WRA stated that Staff's recommended change states that the cumulative energy efficiency savings should be 22% by December 31, 2020, but does not state to what the 22% is to be applied. WRA recommended that no change be made to the original 2404(A).	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address WRA's concern that the 22% standard is unclear if not tied to a particular year. The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
	SWEEP stated that Staff's recommended elimination of the reference to the prior calendar year (2019) results in wording that is unclear. SWEEP stated that the original language is clear, accurate, and appropriate; that it is the language adopted by the Commission; and that it should be retained.	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address SWEEP's concern that the 22% standard is unclear if not tied to a particular year. The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
Rule 2404(B)	WRA stated that Staff's recommended changes present the standard as an annual standard instead of a cumulative standard and that the sum of the proposed annual standards is not the same as the cumulative standard in Decision No. 71436. WRA included tables showing that when the two different standards (cumulative versus annual) are applied to the same retail sales figures for 5 calendar years, the annual and cumulative savings diverge	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address WRA's concern that Staff's prior recommended changes would have resulted in an annual standard as opposed to a cumulative standard. Staff's new recommended changes retain the cumulative annual EE standard (as opposed to the annual incremental standard recommended in Staff's prior recommended changes)

	somewhat. WRA recommended that no change be made to 2404(B).	and, by adding Tables 2 and 4, clarify how it is to be calculated. The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
	SWEEP stated that the Energy Efficiency Standard as proposed and as adopted by the Commission in Decision No. 71436 is a cumulative standard and should not be changed to an annual standard. SWEEP asserted that the level of energy savings resulting from the Staff-recommended language would not be the same as the savings under the cumulative standard included in the proposed rule. SWEEP stated that it supports the comments and analysis of WRA on this issue and that no change should be made to 2404(B).	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address SWEEP's concern that Staff's prior recommended changes would have resulted in an annual standard as opposed to a cumulative standard. Staff's new recommended changes retain the cumulative annual EE standard (as opposed to the annual incremental standard recommended in Staff's prior recommended changes) and, by adding Tables 2 and 4, clarify how it is to be calculated. The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
Rule 2414(A)	In response to Staff's recommendation to replace the requirement for ratepayer-funded DSM to be developed and implemented in a fuel-neutral manner with a prohibition on ratepayer-funded DSM programs and measures that promote the replacement of existing appliances that use one fuel source with similar appliances that use another fuel source or the installation of new appliances that use another fuel source, unless the new appliance results in reduced overall energy use, APS stated that Staff's recommended change expands and provides additional detail regarding this requirement and would result in a substantive change. APS agreed with Staff's statement in the oral proceeding herein that "Fuel neutral means that ratepayer funds should not be used to promote one fuel over another," but stated that the recommended revision would allow DSM-funded fuel	In its filing made on June 24, 2010, Staff revised its recommendations for Rule 2414(A). Staff now recommends that Rule 2414(A) be revised to read "Ratepayer-funded DSM programs shall be developed and implemented in a fuel-neutral manner, meaning that an affected utility as an administrator of DSM programs should not bias the customer's fuel choice (such as electricity or gas) toward the fuel that the affected utility provides." The Commission believes that it is appropriate to retain the original proposed language of Rule 2414(A) and to adopt the following definition of "fuel-neutral" in Rule 2401: "'Fuel-neutral' means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another." These changes will be made by the Commission in the text for the Notice of Final Rulemaking.

	switching if the new appliance results in reduced overall energy use. APS stated that this would reverse the intent of the rule and that the original wording should be restored or, alternatively, the revised wording used if the language about new appliances resulting in reduced overall energy use were deleted.	
	SWEEP stated that Staff's recommended clarification replaces language on fuel-neutrality with language on fuel switching, which SWEEP sees as a related but distinct and thus additional issue. SWEEP stated that developing and implementing DSM programs in a fuel-neutral manner means that a utility should remain neutral regarding the customer's fuel choice and should not bias customer decisions toward the fuel the utility provides or is associated with. SWEEP recommended that no change be made to 2414(A). SWEEP also asserted that the proper place to review specific DSM programs and the use of DSM funding is in the Commission's review of implementation plans.	The Commission believes that it is appropriate to retain the original proposed language of Rule 2414(A) and to adopt the following definition of "fuel-neutral" in Rule 2401: "'Fuel-neutral' means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another." These changes will be made by the Commission in the text for the Notice of Final Rulemaking.