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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

DEC 10 2010

DOCKETED BY *nr*

IN THE MATTER OF THE NOTICE OF
PROPOSED RULEMAKING ON GAS ENERGY
EFFICIENCY.

DOCKET NO. RG-00000B-09-0428

DECISION NO. 72042

OPINION AND ORDER

DATE OF HEARING: October 28, 2010

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

IN ATTENDANCE: Chairman Kristin K. Mayes
Commissioner Paul Newman

APPEARANCES: Ms. Maureen Scott, Senior Staff Counsel, and Mr. Wesley Van Cleve, 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 25, "Gas Utility Energy Efficiency Standards," in Arizona Administrative Code ("A.A.C.") Title 14, Chapter 2, to include 20 new rules concerning gas utility demand-side management ("DSM") and renewable energy resource technology ("RET") programs. The rules are designed to cause affected utilities to achieve them or them equivalent savings through DSM and RET programs in order to ensure reliable gas 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 gas service using less energy, or the conservation of energy by end-use customers. Energy efficiency is a type of DSM. DSM programs promote materials, devices, technologies, educational programs, practices, or facility alterations designed to result in increased energy efficiency, including combined heat and power used to displace space heating, water heating, or another load. RET programs promote technology applications that

1 use an energy source that is replaced rapidly by a natural, ongoing process and that displaces
2 conventional energy resources.

3 * * * * *

4 Having considered the entire record herein and being fully advised in the premises, the
5 Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 **Background and Process for this Rulemaking**

8 1. In Decision No. 65743 (March 14, 2003), the Commission directed the Commission’s
9 Utilities Division (“Staff”) to facilitate a workshop process to explore the development of a DSM
10 policy. As a result, 14 workshops were held between October 30, 2003, and November 22, 2004,
11 during which Staff and numerous industry participants and other interested parties¹ worked to
12 develop a DSM policy for Arizona.

13 2. On February 7, 2005, Staff issued a Staff Report on DSM Policy for the Generic
14 Proceeding Concerning Electric Restructuring Issues (“Staff Report”), in which Staff explained and
15 set forth a largely consensus-based² Proposed Arizona Corporation Commission Demand-Side
16 Management Policy (“DSM Policy”). In the Staff Report, Staff recommended that the Commission
17 adopt the DSM Policy through rulemaking. The DSM Policy was applicable to all electric and
18 natural gas utilities subject to the jurisdiction of the Commission that were classified as Class A
19 utilities under A.A.C. R14-2-103(A)(3)(q), except for electric transmission-only cooperatives.³

20 3. On April 14, 2005, in a new docket,⁴ Staff issued Staff’s First Draft of Proposed DSM
21 Rules (“First Draft”), along with a request for interested persons to provide written comments. The
22

23 ¹ Of the 50 entities participating, 10 were public service corporations, and six were governmental or quasi-
24 governmental entities. (Staff Report on DSM Policy for the Generic Proceeding Concerning Electric Restructuring
25 Issues, Docket Nos. E-00000A-02-0051 et al. (Feb. 7, 2005).) UNS Gas and Southwest Gas Corporation both
26 participated in these proceedings. (*Id.*)

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

26 ³ The Class A natural gas utilities to whom the DSM Policy applied were UNS Gas and Southwest Gas Corporation.
27 (*Id.*)

27 ⁴ The First Draft was issued in Docket No. RE-00000C-05-0230 and, like the DSM Policy, applied to Class A natural
28 gas utilities as well as Class A electric utilities. (Staff’s First Draft of Proposed DSM Rules, Docket No. RE-00000C-05-
0230 (April 15, 2005).)

1 First Draft was substantially similar to the DSM Policy included in the Staff Report. The
2 Commission received nine sets of comments from interested parties in response to the First Draft.⁵

3 4. On June 19, 2008, a docket was opened for Investigation of Regulatory and Rate
4 Incentives for Gas and Electric Utilities (“Incentives Docket”),⁶ following a request by then-
5 Commissioner Mundell in a letter dated May 9, 2008. The Incentives Docket was originally designed
6 to inquire into the incentives and disincentives present under the current regulatory structure for
7 Arizona electric and gas utilities,⁷ but has since been expanded specifically to address issues related
8 to energy efficiency.⁸

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

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

17 7. The Commission held workshops to discuss energy efficiency and aligning utility
18 incentives with energy efficiency goals on March 6, 2009; March 27, 2009; and May 6, 2009.
19 Technical working group meetings on cost recovery, appropriate ramp-up, and incentives were held
20 on April 17, 2009. Another technical working group meeting, concerning the baseline for an energy
21 efficiency standard and bill impacts, was held on April 30, 2009. Five more technical working group
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23 ⁵ Comments were received from Western Resource Advocates; Comverge, Inc.; the Residential Utility Consumers
24 Office; Arizonans for Electric Choice and Competition; Tucson Electric Power Company, UNS Gas, and UNS Electric;
25 Grand Canyon State Electric Cooperative Association, on behalf of electric cooperatives; Arizona Public Service
26 Company; Demand Response and Advanced Metering Coalition; and Southwest Gas Corporation.

25 ⁶ The Incentives Docket is Docket Nos. E-00000J-08-0314 and G-00000C-08-0314.

25 ⁷ Staff Letter re: Investigation of Regulatory and Rate Incentives for Gas and Electric Utilities, Docket No. E-00000J-
26 08-0314 et al. (Aug. 1, 2008).

26 ⁸ On December 17, 2008, Staff issued a Memorandum in the Incentives Docket explaining that Section 532 of the
27 Energy Independence and Security Act of 2007 required each state regulatory authority to consider whether to adopt
28 standards regarding rate design modifications to promote energy efficiency investments (with standards for both electric
utilities and natural gas utilities) and stating that those standards would be considered by the Commission in the
Incentives Docket.

1 meetings were held in May 2009. The Commission received written comments from interested
2 parties, including public service corporations, customer groups, energy efficiency advocates, and
3 others, from February through April 2009.

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

9 9. On September 4, 2009, Staff requested that a rulemaking docket on Gas Energy
10 Efficiency Rules be opened. As a result, this docket was opened. At the same time, Staff requested
11 that a rulemaking docket on Electric Energy Efficiency Rules be opened, in response to which
12 Docket No. RE-00000C-09-0427 was opened ("EEE Rules Docket").

13 10. Between September 4, 2009, and July 20, 2010, rulemaking efforts were focused
14 primarily on the EEE Rules Docket. A Notice of Proposed Rulemaking for the EEE Rules was
15 published in January 2010, pursuant to Decision No. 71436 (December 18, 2009). In Decision No.
16 71819 (August 10, 2010), the Commission adopted final text for the EEE Rules and directed Staff
17 and the Commission's Legal Division to prepare and file with the Office of the Attorney General, for
18 approval under A.R.S. § 41-1044, a Notice of Final Rulemaking for the EEE Rules.

19 11. On July 20, 2010, in this docket, Staff distributed for comment Draft Proposed Gas
20 Utility Energy Efficiency Rules ("Draft GEE Rules") along with notice of a Gas Energy Efficiency
21 Workshop to be held on July 26, 2010. Written comments in response to the Draft GEE Rules were
22 filed by OPOWER, Southwest Gas, APS, SWEEP, and UNS Gas.

23 12. On July 26, 2010, a Gas Energy Efficiency Workshop was held at the Commission's
24 offices in Phoenix, Arizona, to discuss the Draft GEE Rules. Comments were provided by UNS
25 Gas,⁹ UniSource Energy, Southwest Gas, APS, SemStream Arizona Propane ("SemStream"),
26 SWEEP, OPOWER, TEP, and the Arizona Investment Council ("AIC"). The Workshop was also
27

28 ⁹ The speaker stated that she was representing UniSource Gas and the whole UniSource family of companies. (Tr. at 21,49.)

1 attended by representatives for the Sierra Club, Western Resource Advocates (“WRA”), and the
2 Arizona Competitive Alliance.

3 13. On August 5, 2010, Staff filed in this docket a Memorandum recommending the filing
4 of a Notice of Rulemaking Docket Opening (“NRDO”) and a Notice of Proposed Rulemaking
5 (“NPRM”) to adopt the Gas Utility Energy Efficiency Standards rules, along with additional
6 procedural deadlines and requirements. Along with the Memorandum, Staff included a Proposed
7 Order and a revised draft of the Gas Utility Energy Efficiency Standards rules, for Commission
8 consideration at an Open Meeting. The Gas Utility Energy Efficiency Standards rules incorporated
9 many of the suggestions, both written and oral, received regarding the Draft GEE Rules.

10 14. Between August 5, 2010, and the Open Meeting on August 24 and 25, 2010, the
11 Commission received written comments on the Gas Utility Energy Efficiency Standards rules from
12 OPOWER, SemStream, WRA, SWEEP, and the Sierra Club. In addition, Staff filed a proposed
13 amendment to clarify several provisions of the Gas Utility Energy Efficiency Standards rules
14 included in its Proposed Order and to specify the time and date of the oral proceeding in this matter.

15 15. The Proposed Order was discussed at length at the Commission’s Open Meeting on
16 August 24, 2010. Public comment was provided by SWEEP, AIC, the Sierra Club, Southwest Gas,
17 and UNS Gas. The Commission approved the Proposed Order after amending the Gas Utility Energy
18 Efficiency Standards rules attached thereto.

19 16. Decision No. 71855 (August 25, 2010) directed Staff to prepare and file with the
20 Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later than
21 September 17, 2010, an NRDO and an NPRM including the text of the rules as included in Exhibit A
22 to the Decision (“proposed GEE rules”). The Decision also ordered the Hearing Division to hold an
23 oral proceeding on the NPRM on October 28, 2010; established dates for the submission of
24 comments; and established other procedural deadlines and requirements.

25 17. On September 17, 2010, the NRDO and NPRM were published in the *Arizona*
26 *Administrative Register*. The NPRM is attached hereto and incorporated herein as Exhibit A.

27 18. The NPRM proposed to adopt a new Article 25, “Gas Utility Energy Efficiency
28 Standards” and new Sections A.A.C. R14-2-2501 through R14-2-2520 (“Rules 2501 through 2520”

1 or "2501 through 2520"). The proposed GEE rules establish definitions and provisions for
2 applicability; prescribe goals and objectives for DSM and RET programs; establish energy efficiency
3 standards to be met by affected utilities; generally require implementation plans to be filed with the
4 Commission at least every two years and prescribe their contents; establish requirements for DSM
5 tariffs and Commission consideration of DSM tariffs; establish requirements for Commission review
6 and approval of DSM and RET programs; require parity and equity for DSM programs, cost
7 allocation, and use of DSM funds; establish affected utility annual reporting requirements; establish
8 requirements for DSM and RET program cost recovery; require the Commission to review and
9 address in a rate case, upon request and submission of adequate documentation/records to support the
10 request, financial or other disincentives, recovery of fixed costs, and recovery of net lost
11 income/revenue resulting from Commission-approved DSM and RET programs; establish
12 requirements for DSM program and measure cost-effectiveness and standards to analyze cost-
13 effectiveness; prescribe a general standard for baseline estimation; require fuel neutrality in
14 ratepayer-funded DSM; require monitoring and evaluation of DSM and RET programs and measures
15 and allow research; allow for third-party program administration and implementation; encourage
16 leveraging and cooperation; establish alternative energy efficiency standards for gas distribution
17 cooperatives; establish alternative energy efficiency standards for propane companies; and allow an
18 affected utility to petition for a waiver from any provision in the Article for good cause.

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

21 20. On October 22, 2010, Staff filed Notice of Submission of Proposed Gas Energy
22 Efficiency Rulemaking with Secretary of State, including copies of the Agency Receipts
23 acknowledging the filing of the NRDO and NPRM with the Secretary of State and copies of the
24 NRDO and NPRM as published in the *Arizona Administrative Register*.

25 21. On October 25, 2010, Staff filed Staff's Response to Written Comments in the Matter
26 of Proposed Rulemaking on Gas Energy Efficiency ("Staff Response I"), which is attached hereto
27 and incorporated herein as Exhibit C-1.

28 22. On October 27, 2010, SWEEP filed comments on the NPRM.

1 23. On October 28, 2010, the Sierra Club filed comments on the NPRM.

2 24. On October 28, 2010, an oral proceeding on the proposed GEE rules was held at the
3 Commission's offices in Phoenix, Arizona. Staff appeared through counsel and answered a number
4 of questions from the presiding officer related to the authority for the rulemaking, DSM and RET
5 generally, and the specific language of the proposed GEE rules. Oral comments on the proposed
6 GEE rules were provided by SWEEP, Southwest Gas, and UNS Gas.

7 25. On November 9, 2010, Staff filed Staff's Response to Oral Comments in the Matter of
8 Proposed Rulemaking on Gas Energy Efficiency ("Staff Response II"), which is attached hereto and
9 incorporated herein as Exhibit C-2. In Staff Response II, Staff included recommendations for
10 changes to the language of the proposed GEE rules. In addition, Staff provided additional language
11 to be included in the EIS.

12 **Authority for this Rulemaking**

13 26. The Commission possesses the authority to engage in rulemaking under both its
14 constitutional authority and its statutory authority endowed by the legislature. In the NPRM, Staff
15 cited both constitutional authority and statutory authority for this rulemaking.¹⁰

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

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

26 The Arizona Supreme Court has declared that this constitutional provision gives the Commission
27 exclusive authority to establish rates and to enact rules that are reasonably necessary steps in
28 ratemaking and, further, that deference must be given to the Commission's determination of what

¹⁰ Specifically, Staff cited the following: Arizona Const. Art. 15, § 3; A.R.S. §§ 40-202, 40-203, 40-281, 40-282, 40-321, and 40-322.

1 regulation is reasonably necessary for effective ratemaking.¹¹

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

7 29. A.R.S. § 40-202(A) provides: "The commission may supervise and regulate every
8 public service corporation in the state and do all things, whether specifically designated in this title or
9 in addition thereto, necessary and convenient in the exercise of that power and jurisdiction." This
10 language, although very broad, has been interpreted by the Arizona Supreme Court as bestowing no
11 additional powers on the Commission other than those already granted by the Arizona Constitution or
12 specifically granted elsewhere by the legislature, although the Court acknowledged that it also
13 provides the Commission the authority to do those things necessary and convenient in the exercise of
14 the powers so granted.¹²

15 30. A.R.S. § 40-203 states:

16 When the commission finds that the rates, fares, tolls, rentals, charges or
17 classifications, or any of them, demanded or collected by any public
18 service corporation for any service, product or commodity, or in
19 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.¹³

20 31. A.R.S. § 40-321(A) states:

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

26 ¹¹ *Arizona Corporation Comm'n v. Woods*, 171 Ariz. 286, 294 (1992) ("*Woods*") (concluding that the Commission had
27 the authority under its constitutional ratemaking power to enact its Affiliated Interest rules, because they are reasonably
28 necessary for ratemaking, and giving deference to the Commission's determination of what regulation is reasonably
necessary for effective ratemaking).

¹² *Southern Pacific Co. v. Arizona Corp. Comm'n*, 98 Ariz. 339, 348 (1965).

¹³ A.R.S. § 40-203 (emphasis added).

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

2 The commission may:

3 1. Ascertain and set just and reasonable standards, classifications,
4 regulations, practices, measurements or service to be furnished and
5 followed by public service corporations other than a railroad.

6 2. Ascertain and fix adequate and serviceable standards for the
7 measurement of quantity, quality, pressure, initial voltage or other
8 condition pertaining to the supply of the product, commodity or service
9 furnished by such public service corporation.

10 3. Prescribe reasonable regulations for the examination and testing of the
11 product, commodity or service and for the measurement thereof.

12 33. A.R.S. §§ 40-281 and 40-282 require a public service corporation to obtain a
13 Certificate of Convenience and Necessity ("CC&N") from the Commission before constructing any
14 plant or system, prohibit a public service corporation from exercising any right or privilege under a
15 franchise or permit without first obtaining a CC&N, and authorize the Commission to attach to the
16 exercise of rights under a CC&N such terms and conditions as the Commission deems that the public
17 convenience and necessity require. (*See* A.R.S. §§ 40-281(A), (C); 40-282(C).)

18 34. The Commission has authority for this rulemaking, both constitutional and statutory,
19 specifically with regard to requiring public service corporations to file information with the
20 Commission. Article 15, § 13 of the Arizona Constitution provides: "All public service corporations
21 . . . shall make such reports to the Corporation Commission, under oath, and provide such information
22 concerning their acts and operations as may be required by law, or by the Corporation Commission."

23 In addition, A.R.S. § 40-204(A) states:

24 Every public service corporation shall furnish to the commission, in the
25 form and detail the commission prescribes, tabulations, computations,
26 annual reports, monthly or periodical reports of earnings and expenses,
27 and all other information required by it to carry into effect the provisions
28 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.¹⁴

¹⁴ *Arizona Pub. Serv. Co. v. Arizona Corp. Comm'n*, 155 Ariz. 263 (App. 1987), *approved in part, vacated in part*, 157 Ariz. 532 (1988).

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

6 **Rationale for the Rulemaking**

7 36. In the EIS prepared by Staff for this rulemaking, Staff explained the rationale for this
 8 rulemaking as follows:

9 The purpose of Gas Utility Energy Efficiency Standards is for affected
 10 utilities to achieve therm or therm equivalent savings through demand-side
 11 management (“DSM”) and renewable energy resource technology
 12 (“RET”) programs in order to ensure reliable gas service at reasonable
 13 rates and costs. Energy efficiency means the production or delivery of an
 14 equivalent level and quality of end-use gas service using less energy, or
 15 the conservation of energy by end-use customers. DSM programs
 16 promote materials, devices, technologies, educational programs, practices
 17 or facility alterations designed to result in increased energy efficiency,
 18 including combined heat and power used to displace space heating, water
 19 heating or another load. RET programs promote technology applications
 20 that utilize an energy resource that is replaced rapidly by a natural,
 21 ongoing process, and that displaces conventional energy resources.

22 Requiring affected utilities to achieve energy savings through DSM and
 23 RET programs is an essential part of the Commission’s efforts to meet its
 24 constitutional obligation to “prescribe just and reasonable rates and
 25 charges to be made and collected . . . by public service corporations within
 26 the State for service rendered therein” because the amount of gas
 27 consumed by an affected utility’s customers, and the pattern of usage by
 28 those customers, directly impacts the physical assets that an affected
 utility must have in place and the amount of pipeline capacity it must
 reserve, as well as the affected utility’s operating expenses. Decreasing
 the overall consumption of energy can reduce gas costs, infrastructure
 costs, and distribution costs, and, in addition, reduce adverse
 environmental impacts (such as air emissions).

 Energy efficiency is a reliable energy resource that costs less than other
 resources for meeting the energy needs of utility ratepayers. Increasing
 energy efficiency to meet the Energy Efficiency Standard set forth in the
 Gas Utility Energy Efficiency Standards rules will reduce the total cost of
 energy for affected utilities’ ratepayers. Increasing energy efficiency will
 result in less air pollution, reduced carbon emissions, and fewer other
 adverse environmental impacts than would occur if energy efficiency is
 not increased. Increasing energy efficiency will reduce affected utilities’
 costs of compliance with current and future environmental regulations.
 Increasing energy efficiency will diversify energy resources, reduce the

¹⁵ 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.

1 overall cost of reserving pipeline capacity, and reduce the need for
2 additional infrastructure to distribute gas.¹⁶

3 Staff further expressed agreement with SWEEP's assertions regarding why the proposed GEE rules
4 are in the public interest and the benefits to be derived from the rules.¹⁷

5 37. We agree with Staff's explanation of the rationale for this rulemaking and adopt it as
6 our own. We also agree with SWEEP's assertions regarding why the proposed GEE rules are in the
7 public interest and the benefits to be derived from the rules.

8 38. The utilities to whom the proposed GEE rules apply, because they are public service
9 corporations that provide gas utility service to retail customers in Arizona and are classified as Class
10 A under A.A.C. R14-2-103(A)(3)(q), are Southwest Gas, UNS Gas, and SemStream Arizona Propane
(Payson Division). None of these entities is a small business under A.R.S. § 41-1001.

11 39. Arizona currently has a monopoly market structure for gas utilities. The Commission
12 generally sets rates for the gas utilities using the following formula: (Rate Base x Rate of Return) +
13 Expenses = Revenue Requirement. "Rate Base" is the dollar value of the physical assets prudently
14 acquired and used and useful in the provision of utility service. "Rate of Return" is the authorized
15 return on the utility's rate base and is expressed as a percentage. "Expenses" are the reasonable and
16 prudent costs of service that cannot be capitalized, such as purchased power costs, fuel costs, salaries,
17 and taxes. The resulting "Revenue Requirement" is the amount that a utility is authorized to collect
18 from its customers through its rates and that the rates adopted by the Commission are designed to
19 produce. Thus, the rates that a utility is authorized to charge its customers are inextricably related to
20 the amount of physical assets (such as pipelines) used by the utility and the costs of service incurred
21 by the utility (such as costs related to distribution).

22 40. The proposed GEE rules will impact an affected utility's revenues, at least in the
23 interim period before the affected utility's next rate case, because DSM and RET programs may
24 reduce therm consumption. Currently, affected utilities' rate schemes rely heavily upon volumetric
25 rates, meaning that the amount a customer is billed by the affected utility is based in large part upon
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28 ¹⁶ Exhibit B at 1-2.

¹⁷ See Tr. at 26.

1 the number of therms consumed by the customer during the billing period.¹⁸ If that amount is
2 reduced by the customer's decreased consumption resulting from DSM and RET programs, the
3 affected utility's revenues will be impacted accordingly. Rule R14-2-2511 requires that this impact
4 be reviewed and addressed in an affected utility's rate case, and that implementation of a revenue
5 decoupling mechanism be considered, if the affected utility requests to have its financial or other
6 disincentives addressed and provides adequate documentation/records supporting its request.

7 41. If an affected utility is permitted to recover the costs of compliance with the proposed
8 GEE rules through ratemaking (because the costs of compliance are included as reasonable and
9 prudent expenses and are consistent with the requirements imposed under Rule 2510(A)), the affected
10 utility's revenue requirement will be impacted. Likewise, if an affected utility is permitted to recover
11 its fixed costs and/or its net lost income/revenue resulting from Commission-approved DSM and RET
12 programs (as contemplated under R14-2-2511), the affected utility's revenue requirement will be
13 impacted. When an affected utility's revenue requirement is impacted, the rates charged to its
14 customers are also impacted.

15 42. The reduction in overall energy consumption that will result from the rules should
16 result in long-term cost savings to the affected utilities and thus to their customers because of
17 decreased demand for gas and gas transportation. In addition, the reduction in overall energy
18 consumption will result in decreased adverse environmental impacts, such as air emissions, which
19 should result in benefits to the public at large that cannot be adequately quantified at this time. The
20 rules' requirement for DSM programs to be cost-effective will also help to ensure that the DSM
21 programs adopted under the rules will result in long-term incremental benefits to all impacted groups.

22 43. The Commission makes the following findings relevant to the adoption of the
23 proposed GEE rules:

- 24 a. Gas utilities currently have an incentive to increase sales of gas to increase
25 their revenues;

26
27 ¹⁸ Because of this volumetric rate scheme, an affected utility generally has an incentive to sell its customers more gas so
28 that the affected utility earns more revenue. The concept of decoupling involves severing the link between the amount of
gas an affected utility sells and the revenues it collects to recover its fixed costs of providing service, so as to remove the
affected utility's incentive to sell more gas.

- 1 b. Gas storage, transportation, distribution, and use results in emissions into the
2 environment of greenhouse gases including methane, carbon monoxide, carbon
3 dioxide, and nitrogen oxides;
- 4 c. Gas is a fossil fuel and is not a renewable energy source;
- 5 d. Energy efficiency is a reliable energy resource that costs less than other
6 resources for meeting the energy needs of utility ratepayers;
- 7 e. RETs use energy resources that are replaced rapidly by a natural, ongoing
8 process to displace conventional energy resources and include applications
9 such as photovoltaic panels used to displace gas energy;
- 10 f. Increasing energy efficiency to meet the Energy Efficiency Standard set forth
11 in the GEE rules¹⁹ will reduce the total cost of energy for affected utilities'
12 ratepayers;
- 13 g. Increasing energy efficiency to meet the Energy Efficiency Standard set forth
14 in the GEE rules will result in fewer adverse environmental impacts than
15 would occur if energy efficiency is not increased;
- 16 h. Increasing energy efficiency to meet the Energy Efficiency Standard set forth
17 in the GEE rules will reduce affected utilities' costs of compliance with current
18 and future environmental regulations;
- 19 i. Increasing energy efficiency to meet the Energy Efficiency Standard set forth
20 in the GEE rules will reduce load growth and diversify energy resources,
21 thereby reducing the pressure on and costs of gas transportation and
22 distribution;
- 23 j. Increasing energy efficiency to meet the Energy Efficiency Standard set forth
24 in the GEE rules will help the Commission ensure that patrons of affected
25 utilities receive safe, adequate, and reliable gas utility service at just and
26 reasonable rates;

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28 ¹⁹ As used in this Finding of Fact, "increasing/to increase energy efficiency to meet the Energy Efficiency Standard set forth in the GEE rules" is intended to include using RETs to meet a portion of the Energy Efficiency Standard.

1 k. Gas utilities' continued reliance on existing energy resources without
2 increasing energy efficiency to meet the Energy Efficiency Standard set forth
3 in the GEE rules is inadequate and insufficient to promote and safeguard the
4 security, convenience, health, and safety of gas utilities' customers and the
5 Arizona public and is thus unjust, unreasonable, unsafe, and improper;

6 l. It is just, reasonable, proper, and necessary to require affected utilities to
7 increase energy efficiency to meet the Energy Efficiency Standard set forth in
8 the GEE rules in order to reduce reliance on fossil fuel energy sources in
9 Arizona and promote and safeguard the security, convenience, health, and
10 safety of affected utilities' customers and the Arizona public;

11 m. Requiring gas utilities to increase energy efficiency to meet the Energy
12 Efficiency Standard set forth in the GEE rules is in the public interest; and

13 n. It is just, reasonable, proper, and necessary for the Commission to require
14 affected utilities to increase energy efficiency to meet the Energy Efficiency
15 Standard set forth in the GEE rules in order to reduce energy costs; reduce
16 adverse environmental impacts; and promote and safeguard the security,
17 convenience, health, and safety of their customers and the Arizona public.

18 44. The proposed GEE rules are designed to ensure that the costs and rates for gas utility
19 service over the long-run are just and reasonable, that gas utility service to Arizona customers is
20 adequate and reliable, and that adverse environmental impacts from gas utility service are minimized
21 to the extent feasible. The proposed GEE rules will accomplish this by requiring each affected utility,
22 by December 31, 2020, to achieve cumulative annual energy savings equivalent to at least 6 percent
23 of the affected utility's retail sales for calendar year 2019. The proposed GEE rules require an
24 affected utility to meet cumulative energy efficiency standards each year, beginning in 2011, while
25 ramping up to the ultimate 6-percent standard. To ensure that affected utilities plan sufficiently to
26 meet the cumulative standards, the proposed GEE rules require each affected utility to file with the
27 Commission, at least every odd year, an implementation plan describing how the affected utility
28 intends to meet the standard for the next one or two years. To ensure that the DSM programs and

1 DSM measures adopted and maintained are effective and cost-effective and that the RET programs
 2 and RETs are effective, the proposed GEE rules require an affected utility to obtain Commission
 3 approval of each DSM program or measure and each RET program or RET before it is implemented;
 4 require an affected utility to monitor and evaluate each DSM program or measure and each RET
 5 program or RET on an ongoing basis; and require an affected utility each year to file with the
 6 Commission an annual DSM progress report including information concerning each Commission-
 7 approved DSM program and measure and RET program and RET and, six months later, an
 8 abbreviated status report regarding expenditures (as compared to budget) and participation rates. The
 9 proposed GEE rules are the progeny of a long line of rate-regulating rules and regulations; are
 10 reasonably necessary for effective ratemaking and for the convenience, comfort, safety, and
 11 preservation of health of the patrons of affected utilities; and will result in the adoption of just,
 12 reasonable, safe, proper, adequate, and sufficient DSM, RET, and energy efficiency standards for
 13 affected utilities' resource portfolios.

14 **Rulemaking Requirements**

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

20 46. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review,
 21 an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025,
 22 the agency shall issue a supplemental notice containing the changes in the proposed rule and shall
 23 provide for additional public comment pursuant to A.R.S. § 41-1023.

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

26 1. The extent to which all persons affected by the rule should
 27 have understood that the published proposed rule would affect their
 28 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.²⁰

48. 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.

49. 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.²¹ 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.²²

50. The Legislature has issued a Moratorium providing that for fiscal years 2009-2010 and 2010-2011, 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.²³ 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 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).)

51. 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

²⁰ A.R.S. § 41-1025(B).

²¹ *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*").

²² See, e.g., *Phelps Dodge*, 207 Ariz. at 129-30.

²³ Laws 2010, Ch. 287, § 18 (amending Laws 2009 (3rd Special Session) Ch. 7, § 28) ("*Moratorium*").

1 approval before proceeding with this rulemaking.

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

8 **Public Comments & Staff's Recommendations**

9 53. In its October 27, 2010, comments on the NPRM, and at the oral proceeding on
10 October 28, 2010, SWEEP expressed strong support for the proposed GEE rules. SWEEP urged the
11 Commission to adopt the proposed GEE rules because they will lower costs for gas utility ratepayers
12 and will ensure reliable utility service at just and reasonable rates. SWEEP asserted that the rules are
13 in the public interest because increasing energy efficiency as set forth in the rules will provide
14 significant, cost-effective benefits to Arizona gas utility ratepayers (both residential and commercial),
15 the utility system, the economy, and the environment. SWEEP asserted that increasing energy
16 efficiency will lower gas bills, diversify energy resources, reduce air pollution and emissions, and
17 create jobs and improve the Arizona economy. SWEEP explained that energy efficiency is a reliable
18 energy resource that costs less than other resources for meeting gas utility ratepayers' energy needs.
19 SWEEP also pointed out that the proposed GEE rules' requirement for energy efficiency measures
20 and programs to be cost-effective, coupled with the rules' requirement for affected utilities to
21 evaluate and report their programs' actual savings, benefits, and costs, will result in lower total
22 energy costs for ratepayers. SWEEP also stated that the Commission's review and consideration of
23 utility disincentives to energy efficiency, of cost recovery, and of performance incentives in parallel
24 proceedings and workshops is appropriate and should not delay final adoption of the proposed GEE
25 rules. SWEEP further expressed support for specific clarifications to the proposed GEE rules that
26 were discussed at the oral proceeding.

27 54. In its comments filed on October 28, 2010, the Sierra Club (on behalf of itself and
28 Arizona Interfaith Power and Light; Arizona Alliance for Retired Americans; Grand Canyon Trust;

1 Republicans for Environmental Protection; Natural Capitalism Solutions, Inc.; Environment Arizona;
2 American Council on Consumer Awareness; Arizona Consumers Council; Arizona PIRG Education
3 Fund; Democratic Processes Center; Gem Marketing Pearls, Inc.; High Performance Building
4 Technology Team; Physicians for Social Responsibility-Arizona Chapter; and Sustainable Arizona)
5 expressed support and appreciation for the Commission's significant commitment to increasing
6 energy efficiency and promoting clean renewable energy, which will help Arizona reduce its
7 emissions of air pollutants and greenhouse gases, while benefitting consumers by saving energy and
8 energy dollars. The Sierra Club stated that many of its members have natural gas service that will be
9 affected by the rules and will see the economic benefits, while all Arizonans will realize the
10 environmental and societal benefits. The Sierra Club stated that the environmental benefits will
11 include cleaner air as a result of reductions in oxides of nitrogen and reduced greenhouse gas
12 emissions, including carbon dioxide and methane, a powerful greenhouse gas emitted when natural
13 gas does not burn completely. The Sierra Club further asserted that by requiring investment in
14 energy efficiency measures, the rules will help to create jobs, which are critical in the current
15 economy.

16 55. At the oral proceeding, Southwest Gas and UNS Gas both expressed satisfaction with
17 the proposed GEE rules and with the clarifying changes discussed at the oral proceeding.

18 56. At the oral proceeding, Staff expressed agreement with SWEEP's assertions regarding
19 why the proposed GEE rules are in the public interest and the benefits to be derived from them. (*See*
20 *Tr. at 26.*)

21 57. In Staff Response I, attached hereto as Exhibit C-1 and filed on October 25, 2010,
22 Staff recommended revising the proposed GEE rules by making conforming changes in Rule 2504
23 Tables 2 and 4. Staff explained that certain conforming changes had not been made to the draft GEE
24 rules as included in Decision No. 71855 (August 25, 2010) and as published in the NPRM, although
25 the conforming changes were necessary to fully carry out an amendment passed by the Commission
26 at the Open Meeting on August 24, 2010. Specifically, Staff recommended that Tables 2 and 4 be
27 revised to appear as follows:

28 ...

Table 2. Illustrative Example of Calculating Required Energy Savings

| <u>CALENDAR YEAR</u> | <u>A</u> <u>RETAIL SALES</u> <u>(therms)</u> | <u>B</u> <u>ENERGY</u> <u>EFFICIENCY</u> <u>STANDARD</u> | <u>C</u> <u>REQUIRED</u> <u>CUMULATIVE</u> <u>ENERGY SAVINGS</u> <u>(therms or therm</u> <u>equivalents)</u> <u>(B of current year</u> <u>× A of prior year)</u> |
|----------------------|--|---|---|
| <u>2010</u> | <u>100,000,000</u> | | <u>0</u> |
| <u>2011</u> | <u>97,500,000</u> | <u>0.50%</u> | <u>500,000</u> |
| <u>2012</u> | <u>94,870,000</u> | <u>1.20%</u> | <u>1,170,000</u> |
| <u>2013</u> | <u>92,411,540</u> | <u>1.80%</u> | <u>1,707,660</u> |
| <u>2014</u> | <u>90,018,939</u> | <u>2.40%</u> | <u>2,217,877</u> |
| <u>2015</u> | <u>87,691,512</u> | <u>3.00%</u> | <u>2,700,568</u> |
| <u>2016</u> | <u>85,427,344</u> | <u>3.60%</u> | <u>3,156,894</u> |
| <u>2017</u> | <u>83,224,605</u> | <u>4.20%</u> | <u>3,587,948</u> |
| <u>2018</u> | <u>81,081,521</u> | <u>4.80%</u> | <u>3,994,781</u> |
| <u>2019</u> | <u>78,996,374</u> | <u>5.40%</u> | <u>4,378,402</u> |
| <u>2020</u> | <u>76,967,498</u> | <u>6.00%</u> | <u>4,739,782</u> |

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

| | <u>2020 Energy</u> <u>Efficiency</u> <u>Standard</u> | <u>2019 Retail</u> <u>Sales (therms)</u> | <u>Required Cumulative</u> <u>Annual Energy Savings</u> <u>(therms or therm</u> <u>equivalents)</u> |
|---|--|---|--|
| <u>Total</u> | <u>6.00%</u> | <u>78,996,374</u> | <u>4,739,782</u> |
| <u>Breakdown of Savings and Credits Used To Meet 2020 Standard:</u> | | | |
| | | | <u>Cumulative Annual</u> <u>Energy Savings Or</u> <u>Credit (therms)</u> |
| <u>Pre-rules Savings Credit</u> <u>R14-2-2504(D)</u> | | | <u>359,545*</u> |
| <u>Building Codes and</u> <u>Appliance Standards</u> <u>R14-2-2504(E)</u> | | | <u>425,000</u> |
| <u>Self-direction</u> <u>R14-2-2404(F)</u> | | | <u>27,000</u> |
| <u>RET</u> <u>R14-2-2504(G)</u> | | | <u>25,000</u> |
| <u>CHP</u> <u>R14-2-2501(10) and</u> <u>R14-2-2504(C)</u> | | | <u>135,000</u> |
| <u>Energy Efficiency</u> <u>R14-2-2504(C)</u> | <u>At least 4.5</u> <u>percentage</u> | | <u>3,768,237</u> |

| | | | |
|--------------|---------------|--|------------------|
| | <u>points</u> | | |
| Total | | | <u>4,739,782</u> |

* The total pre-rules savings credit shall be capped at 1% 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.

58. At the oral proceeding on October 28, 2010, Staff acknowledged that Table 2 included math errors in Column C as published in the NPRM. (See Tr. at 6-7.) Staff explained that at the Open Meeting, the Commission passed an amendment changing the percentages in Column B of Table 2 and requiring conforming changes and that the conforming changes were not made to Columns A and C in Table 2 before the proposed GEE rules were published in the NPRM. (*Id.*) Staff explained that its revised Table 2 makes the conforming changes in Columns A and C.²⁴ (*Id.*) When asked whether the changes to Tables 2 and 4 would make the rule “substantially different” from the published proposed rule, as that term is used in A.R.S. § 41-1025, Staff stated that they would not at all and further asserted that the changes do not change the persons affected by the rule, the subject matter of the rule, the issues determined by the rule, or the effect of the rule. (See Tr. at 7-8.)

59. In Staff Response II, attached hereto as Exhibit C-2 and filed on November 9, 2010, Staff recommended the following clarifying changes to the proposed GEE rules:

- a. In Rule 2501(14), the words “and RET” should be added after “DSM” in the definition of the term “energy efficiency standard.”
- b. In Rule 2503(B), subsection (B)(1) should be moved to follow the other two subsections and should have the qualifier, “If a DSM program,” added at its beginning.²⁵
- c. In Rule 2504, Tables 2 and 4 should be revised as recommended in Staff Response I, but with Table 4 revised to show “At least 75%” (rather than “At

²⁴ The revised figures in Column A reflect an assumed 2-percent decline in retail sales per year and annual compliance with the energy efficiency standard. (*Id.*) The revised figures in Column C reflect the results of the mathematic equation set forth in Table 2. The revisions in Table 4 flow from the changes in Table 2.

²⁵ In Staff Response II, Staff’s illustration of this change omits the word “whether,” which we believe to have been an inadvertent omission.

- 1 least 4.5 percentage points) for Energy Efficiency under “Breakdown of
2 Savings and Credits Used to Meet 2020 Standards.”
- 3 d. Rule 2504(C) should be reworded to read as follows: “An affected utility may
4 count energy savings resulting from DSM and RET programs to meet the
5 energy efficiency standard. At least 75% of the energy efficiency standard for
6 each year listed in Table 1 shall be achieved through DSM energy efficiency
7 programs.”
- 8 e. Rule 2504(E) should be reworded to read as follows: “An affected utility may
9 count toward meeting the energy efficiency standard up to one-third of the
10 energy savings resulting from energy efficiency building codes and up to one-
11 third of the energy savings resulting from energy efficiency appliance
12 standards if the energy savings are quantified and reported through a
13 measurement and evaluation study undertaken by the affected utility, and the
14 affected utility demonstrates and documents its efforts in support of the
15 adoption or implementation of the energy efficiency building codes and
16 appliance standards.”
- 17 f. In Rule 2504(F), “energy efficiency” should be inserted before “standard.”
- 18 g. In the second sentence of Rule 2504(G), “energy efficiency” should be inserted
19 before “standard,” and “clearly” should be deleted.
- 20 h. In Rule 2504(H), “energy efficiency” should be inserted before “standard.”
- 21 i. In Rule 2504(I), “an energy efficiency or RET measure” should be replaced
22 with “a DSM measure or RET.”
- 23 j. In Rule 2505(B)(4), “each DSM and RET measure and DSM and RET
24 program” should be replaced with “each DSM measure and program and each
25 RET and RET program.”
- 26 k. In Rule 2505(B)(6), “each new DSM and RET program and measure” should
27 be replaced with “each new DSM measure and program and each RET and
28 RET program.”

- 1 l. In Rule 2507(A), "or measure" should be inserted after "program."
- 2 m. In Rule 2507(C)(6), "For DSM" should be added at the beginning of the
- 3 subsection.
- 4 n. In Rule 2507(C)(7), "For DSM" should be added at the beginning of the
- 5 subsection.
- 6 o. In Rule 2507(C)(9), "For DSM" should be added at the beginning of the
- 7 subsection.
- 8 p. In Rule 2510(D), "and measures" should be deleted.
- 9 q. Both Rule 2518(B)(1) and Rule 2519(B)(1) should be reworded to read, "File
- 10 with Docket Control, for Commission review and approval, an implementation
- 11 plan providing information for each DSM and RET program to be
- 12 implemented or maintained during the next one or two calendar years, as
- 13 applicable; and".

14 60. In Staff Response II, Staff also recommended that the following language be added to

15 Section (3)(a) of the EIS: "While the Commission's Utilities Division will experience an increased

16 workload as a result of the rules, the Commission does not at this time anticipate adding any full-time

17 employees to implement and enforce the rules."

18 61. A document summarizing the written and oral comments received regarding the

19 proposed GEE rules and providing the Commission's responses to those comments is attached hereto

20 as Exhibit E and incorporated herein. The summary of comments and the Commission's responses to

21 those comments, as set forth in Exhibit E, should be included in the Preamble for a Notice of Final

22 Rulemaking in this matter.

23 **Probable Economic Impacts**

24 62. Staff's EIS is attached hereto as Exhibit B. We find that the information included in

25 Exhibit B is accurate and should be included in the EIS for this rulemaking.

26 63. We also find that Staff's recommended addition to the EIS, set forth in Findings of

27 Fact No. 60, is accurate and should be included in the EIS for this rulemaking, under subsection

28 (B)(3)(a) of the EIS, after the first complete sentence of text, to provide information that conforms

1 substantially to the information newly required for an economic, small business, and consumer
 2 impact statement under A.R.S. § 41-1055(B)(3)(a), pursuant to the amendment of A.R.S. § 41-1055
 3 by Laws 2010, Chapter 287, § 11, effective July 29, 2010.²⁶

4 64. Further, we find that the following information should be added under subsection
 5 (B)(1) in the EIS for this rulemaking, after the first paragraph, to provide information that conforms
 6 substantially to the information newly required for an economic, small business, and consumer
 7 impact summary under A.R.S. § 41-1055(A)(1)(a)-(c), pursuant to the amendment of A.R.S. § 41-
 8 1055 by Laws 2010, Chapter 287, § 11, effective July 29, 2010:²⁷ “The rulemaking is designed to
 9 change gas utilities’ longstanding practice of serving their customers’ energy needs solely through
 10 providing gas service, without using energy efficiency as a resource or encouraging use of renewable
 11 energy resources. The harms resulting from the continuation of this practice include an increased
 12 need for infrastructure to distribute gas, an increased need for pipeline capacity, increased greenhouse
 13 gas emissions, increased costs to comply with environmental regulations, and ultimately depletion of
 14 gas supplies. The harms are very likely to occur without this rulemaking, as gas utilities currently
 15 have an incentive to sell increased quantities of gas to increase revenues. The Commission expects
 16 the affected utilities to make long-term, likely permanent, changes to their practices to comply with
 17 the rules.”

18 **Resolution**

19 65. The changes recommended by Staff as set forth in Findings of Fact No. 59(a)-(d), (f)-
 20 (k), (p), and (q) and in Findings of Fact No. 59(e), modified to insert a comma between “standards”
 21 and “if” will increase the clarity, conciseness, and understandability of the proposed GEE rules and
 22 should be adopted.

23 66. In addition to the Staff-recommended changes described above, we find that the
 24 following changes should be made to the proposed GEE rules, as modified under Findings of Fact
 25
 26

27 ²⁶ Although the Commission is exempted from the applicability of A.R.S. § 41-1055 under A.R.S. § 41-1057, it is
 28 required 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.” (A.R.S. § 41-1057(2).)

²⁷ See note 26.

1 No. 65, to make them more clear, concise, and understandable²⁸ and to correct a couple of minor
2 errors:

- 3 a. In the Table of Contents for the Article, a period should be added after "R14-2-
4 2519."
- 5 b. In Rule 2504 Table 4, the reference under "Self-direction" should be corrected
6 to read "R14-2-2504(F)."
- 7 c. In Rule 2507(A), "a new DSM or RET program" should be revised to read "a
8 new DSM program or measure or a new RET program or RET."
- 9 d. In Rule 2507(B), "DSM or RET program" should be revised to read "DSM
10 program or measure or an RET program or RET" to be consistent with the
11 change in Rule 2507(A).
- 12 e. In Rule 2507(C)(1)-(4), (8), and (11)-(13), "DSM or RET program or
13 measure" should be revised to read "DSM program or measure or RET
14 program or RET."
- 15 f. In Rule 2507(C), a new subsection (C)(6) should be added to read "For a DSM
16 program or measure:" and subsections (C)(6), (7), and (9) should be rearranged
17 and relabeled as subsections (C)(6)(a), (b), and (c), with conforming changes
18 made to the other subsections in (C) and with "and" added at the end of the
19 new subsection (C)(6)(b).
- 20 g. In Rule 2509(A)(4) and (B), "DSM and RET program and measure" should be
21 revised to read "DSM program and measure and RET program and RET."
- 22 h. In Rule 2509(A)(4)(l), "DSM or RET program or measure" should be revised
23 to read "DSM program or measure or RET program or RET."
- 24 i. In Rule 2510(A) and (C), "DSM or RET program or measure" should be
25 revised to read "DSM program or measure or RET program or RET" in each
26 place it appears.

27 ²⁸ Most of these revisions are made to be consistent with Staff's recommendations set forth in Findings of Fact No.
28 59(i)-(k) and with the definition of "RET." As Staff explained during the oral proceeding, because "RET" is defined to
be an application, it is not necessary to use the term "measure" with "RET." (Tr. at 9.)

- 1 j. In Rule 2510(B), “DSM and RET program or measure” should be revised to
 2 read “DSM program or measure and each RET program or RET.”
- 3 k. In Rule 2515(A), “DSM and RET program and measure” should be revised to
 4 read “DSM program and measure and each RET program and RET.”
- 5 l. In Rule 2515(A)(3) and (4), Rule 2516(A), and Rule 2517(A), “DSM or RET
 6 program or measure” should be revised to read “DSM program or measure or
 7 RET program or RET.”
- 8 m. In Rule 2515(A)(5), “DSM and RET programs and measures” should be
 9 revised to read “DSM programs and measures and RET programs and RETs.”
- 10 n. In Rule 2517(B), “DSM or RET program or measure” should be revised to
 11 read “DSM program or measure or RET program or RET,” and “the program
 12 or measure” should be revised to read “the DSM program or measure or RET
 13 program or RET.”

14 67. The changes identified in Findings of Fact Nos. 65 and 66 would not result in a
 15 substantial change to the proposed GEE rules, as determined under A.R.S. § 41-1025, and would not
 16 necessitate a Notice of Supplemental Proposed Rulemaking because they will not change the persons
 17 affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects
 18 of the rules.²⁹

19 68. The proposed GEE rules, with the changes identified in Findings of Fact Nos. 65 and
 20 66 (“revised GEE rules”), are set forth in Exhibit D and incorporated herein and should be adopted by
 21 the Commission.

22 69. The revised GEE rules, as set forth in Exhibit D, should be submitted to the Attorney
 23 General’s Office for approval pursuant to A.R.S. § 41-1044, in the form of a Notice of Final
 24 Rulemaking that includes a Preamble complying with A.R.S. § 41-1001(15)(d), along with a separate
 25 Economic, Small Business, and Consumer Impact Statement that includes the information contained

26 ²⁹ We note that the changes in Tables 2 and 4, made as recommended by Staff, do not in any way alter the requirements
 27 of Rule 2504, as Tables 2 and 4 are merely illustrative examples and do not in any way establish a standard. We further
 28 note that the change in Rule 2507(A) is only a clarification, as Rule 2507(C) and (D) already referred to measures, “DSM
 program” is defined so that it can include only one DSM measure, and “RET program” is defined so that it can include
 only one RET.

1 in the EIS filed by Staff, as modified by Findings of Fact Nos. 63 and 64.

2 **CONCLUSIONS OF LAW**

3 1. Pursuant to Arizona Constitution, Art. 15, § 3, the Commission has authority and
4 jurisdiction to adopt Article 25 and Rules 2501 through 2520 as reflected in Exhibit D.

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

7 3. Because the Commission is adopting the revised GEE rules to fulfill its constitutional
8 ratemaking obligation under Art. 15, § 3, this rulemaking is not prohibited by Laws 2010, Chapter
9 287, § 18 (amending Laws 2009, Chapter 7, § 28 (3rd Special Session)).

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

15 5. Pursuant to Arizona Constitution, Art. 15, § 13 and A.R.S. §§ 40-202(A), 40-203, 40-
16 204(A), 40-281(A), 40-282(C), 40-321(A), and 40-322(A), the Commission has additional authority
17 and jurisdiction to adopt Article 25 and Rules 2501 through 2520 as reflected in Exhibit D.

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

20 7. Article 25 and Rules 2501 through 2520, as set forth in Exhibit D, contain no
21 substantial changes from the proposed GEE rules as published in the NPRM.

22 8. Article 25 and Rules 2501 through 2520, as set forth in Exhibit D, are clear, concise,
23 and understandable; within the Commission’s power to make; within enacted legislative standards;
24 and made in compliance with appropriate procedures.

25 9. Adoption of Article 25 and Rules 2501 through 2520, as set forth in Exhibit D, is in
26 the public interest.

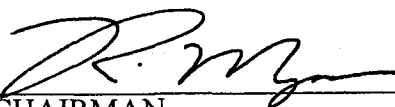
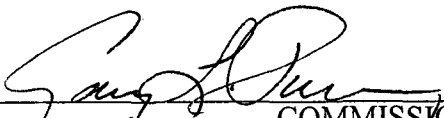
27 10. A separate Economic, Small Business, and Consumer Impact Statement that includes
28 the information contained in the EIS filed by Staff, as modified by Findings of Fact Nos. 63 and 64,

1 Office of the Attorney General during the approval process under Arizona Revised Statutes § 41-
2 1044 unless, after notification of those changes, the Commission requires otherwise.

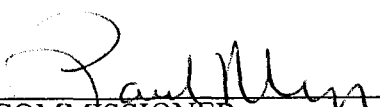
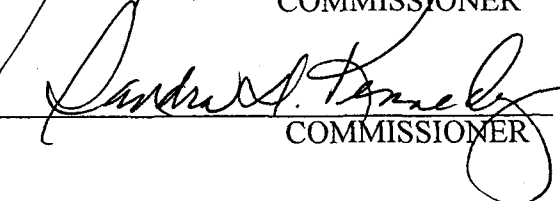
3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5

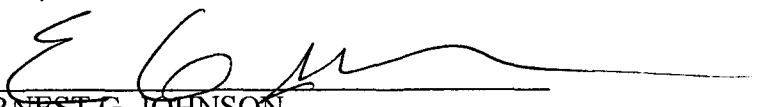
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7 CHAIRMAN COMMISSIONER

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9 COMMISSIONER COMMISSIONER COMMISSIONER

10
11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 10th day of December, 2010.

16 
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____

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SERVICE LIST FOR: RULEMAKING

DOCKET NO.: RG-00000B-09-0428

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EXHIBIT A

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

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 2010, Ch. 287, § 18. (See the text of § 18 on page 1867.)

[R10-132]

PREAMBLE

1. Sections Affected

Article 25
 R14-2-2501
 R14-2-2502
 R14-2-2503
 R14-2-2504
 R14-2-2505
 R14-2-2506
 R14-2-2507
 R14-2-2508
 R14-2-2509
 R14-2-2510
 R14-2-2511
 R14-2-2512
 R14-2-2513
 R14-2-2514
 R14-2-2515
 R14-2-2516
 R14-2-2517
 R14-2-2518
 R14-2-2519
 R14-2-2520

Rulemaking Action

New Article
 New Section
 New Section
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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. 1847, September 17, 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, Arizona Corporation Commission

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

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

Telephone: (602) 542-3402
 Fax: (602) 542-4870
 E-mail: mscott@azcc.gov

or

Name: Barbara Keene
 Public Utilities Analyst Manager, Arizona Corporation Commission

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

Telephone: (602) 542-0853

Fax: (602) 364-2270

E-mail: bkeene@azcc.gov

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

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

Cost-effective energy efficiency is less expensive than burning gas and produces less impact on the environment.

By December 31, 2020, the proposed rule would require affected utilities to achieve cumulative annual energy savings, expressed as therms or therm equivalents, equal to at least 6% of the affected utility's retail gas energy sales for calendar year 2019.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rules, 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 amount of gas needed by customers and reduces the need for additional gas infrastructure. This results in fewer adverse impacts on air, land, and water than transporting and burning gas.

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 gas 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 procuring, transporting and distributing gas.

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: Barbara Keene
 Public Utilities Analyst Manager, Arizona Corporation Commission

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

Telephone: (602) 542-0853

Fax: (602) 364-2270

E-mail: bkeene@azcc.gov

*Arizona Administrative Register / Secretary of State***Notices of Proposed Rulemaking****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 October 28, 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 October 18, 2010. Comments should be submitted to Docket Control at the above address. Please reference docket number RG-00000B-09-0428 on all documents. Oral comments may be provided at the proceeding to be held on October 28, 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 25. GAS UTILITY ENERGY EFFICIENCY STANDARDS

Section

| | |
|-------------|---|
| R14-2-2501. | <u>Definitions</u> |
| R14-2-2502. | <u>Applicability</u> |
| R14-2-2503. | <u>Goals and Objectives</u> |
| R14-2-2504. | <u>Energy Efficiency Standards</u> |
| Table 1. | <u>Energy Efficiency Standard</u> |
| Table 2. | <u>Illustrative Example of Calculating Required Energy Savings</u> |
| Table 3. | <u>Credit for Pre-rules Energy Savings</u> |
| Table 4. | <u>Illustrative Example of How the Energy Standard Could be Met in 2020</u> |
| R14-2-2505. | <u>Implementation Plans</u> |
| R14-2-2506. | <u>DSM Tariffs</u> |
| R14-2-2507. | <u>Commission Review and Approval of DSM and RET Programs</u> |
| R14-2-2508. | <u>Parity and Equity</u> |
| R14-2-2509. | <u>Reporting Requirements</u> |
| R14-2-2510. | <u>Cost Recovery</u> |
| R14-2-2511. | <u>Revenue Decoupling</u> |
| R14-2-2512. | <u>Cost-effectiveness</u> |
| R14-2-2513. | <u>Baseline Estimation</u> |
| R14-2-2514. | <u>Fuel Neutrality</u> |
| R14-2-2515. | <u>Monitoring, Evaluation, and Research</u> |
| R14-2-2516. | <u>Program Administration and Implementation</u> |
| R14-2-2517. | <u>Leveraging and Cooperation</u> |
| R14-2-2518. | <u>Compliance by Gas Distribution Cooperatives</u> |
| R14-2-2519. | <u>Compliance by Propane Companies</u> |
| R14-2-2520. | <u>Waiver from the Provisions of this Article</u> |

ARTICLE 25. GAS UTILITY ENERGY EFFICIENCY STANDARDS

R14-2-2501. 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 gas utility service to retail customers in Arizona.
3. "Baseline" means the level of gas demand, gas consumption, and associated expenses estimated to occur in the

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- absence of a specific DSM program, determined as provided in R14-2-2513.
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 R14-2-2512.
 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 gas energy to its customers.
 9. "DSM" means demand-side management, the implementation and maintenance of one or more DSM programs.
 10. "DSM measure" means any material, device, technology, educational program, practice, or facility alteration designed to result in increased energy efficiency and includes CHP used to displace space heating, water heating, or another load.
 11. "DSM program" means one or more DSM measures provided as part of a single offering to customers.
 12. "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.
 13. "Energy efficiency" means the production or delivery of an equivalent level and quality of end-use gas service using less energy, or the conservation of energy by end-use customers.
 14. "Energy efficiency standard" means the reduction in retail energy sales, in percentage of therms or term equivalents, required to be achieved through an affected utility's approved DSM programs as prescribed in R14-2-2504.
 15. "Energy savings" means the reduction in a customer's energy consumption, expressed in therms or term equivalents.
 16. "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.
 17. "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.
 18. "Fuel-neutral" means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another.
 19. "Gas" means either natural gas or propane.
 20. "Gas utility" means a public service corporation providing natural gas service or propane service to the public.
 21. "Incremental benefits" means amounts saved through avoiding costs for gas purchases, delivery system, and other cost items necessary to provide gas utility service, along with other improvements in societal welfare, such as through avoided environmental impacts, including, but not limited to, water consumption savings, water contamination reduction, air emission reduction, reduction in coal ash, and reduction of nuclear waste.
 22. "Incremental costs" means the additional expenses of DSM measures, relative to baseline.
 23. "Independent program administrator" means an impartial third party employed to provide objective oversight of DSM and RET programs.
 24. "kWh" means kilowatt-hour.
 25. "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.
 26. "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.
 27. "Market transformation" means strategic efforts to induce lasting structural or behavioral changes in the market that result in increased energy efficiency.
 28. "Net benefits" means the incremental benefits resulting from DSM minus the incremental costs of DSM.
 29. "Non-market benefits" means improvements in societal welfare that are not bought or sold.
 30. "Program costs" means the expenses incurred by an affected utility as a result of developing, marketing, implementing, administering, and evaluating Commission-approved DSM programs.
 31. "RET" means a renewable energy resource technology application utilizing an energy resource that is replaced rapidly by a natural, ongoing process and that displaces conventional energy resources otherwise used to provide energy to an affected utility's Arizona customers.
 32. "RET program" means one or more RETs provided as part of a single offering to customers.
 33. "Revenue decoupling" means a mechanism that reduces or eliminates the connection between sales volume and the recovery of an affected utility's Commission-approved cost of service.

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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 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.
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. "Therm" means a unit of heat energy equal to 100,000 British Thermal Units.
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. "Therm equivalent" means a unit of energy, such as kWh, converted and stated in terms of therms.
40. "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.

R14-2-2502. Applicability

This Article applies to each affected utility classified as Class A according to R14-2-103(A)(3)(q).

R14-2-2503. Goals and Objectives

- A.** An affected utility shall design each DSM program to be cost-effective.
- B.** An affected utility shall consider the following when planning and implementing a DSM or RET program:
1. Whether the DSM program will achieve cost-effective energy savings;
 2. Whether the DSM or RET 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 or RET program and allow the program to achieve its targeted goals.
- 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.

R14-2-2504. Energy Efficiency Standards

- A.** Except as provided in R14-2-2518 and R14-2-2519, in order to ensure reliable gas service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through DSM and RET programs, achieve cumulative annual energy savings, expressed as therms or therm equivalents, equal to at least 6% of the affected utility's retail gas 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 can be met in 2020 is shown in Table 4.

Table 1. Energy Efficiency Standard

| <u>CALENDAR YEAR</u> | <u>ENERGY EFFICIENCY STANDARD</u> (Cumulative Annual Energy Savings by the End of Each Calendar Year as a Percentage of the Retail Energy Sales in the Prior Calendar Year) |
|----------------------|--|
| <u>2011</u> | <u>0.50%</u> |
| <u>2012</u> | <u>1.20%</u> |
| <u>2013</u> | <u>1.80%</u> |
| <u>2014</u> | <u>2.40%</u> |
| <u>2015</u> | <u>3.00%</u> |
| <u>2016</u> | <u>3.60%</u> |
| <u>2017</u> | <u>4.20%</u> |
| <u>2018</u> | <u>4.80%</u> |
| <u>2019</u> | <u>5.40%</u> |
| <u>2020</u> | <u>6.00%</u> |

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Table 2. Illustrative Example of Calculating Required Energy Savings

| <u>CALENDAR YEAR</u> | <u>A</u> <u>RETAIL SALES</u> <u>(therms)</u> | <u>B</u> <u>ENERGY EFFICIENCY</u> <u>STANDARD</u> | <u>C</u> <u>REQUIRED CUMULATIVE</u> <u>ENERGY SAVINGS</u> <u>(therms or therm equivalents)</u> <u>(B of current year</u> <u>× A of prior year)</u> |
|----------------------|--|---|---|
| <u>2010</u> | <u>100,000,000</u> | | <u>0</u> |
| <u>2011</u> | <u>97,500,000</u> | <u>0.50%</u> | <u>500,000</u> |
| <u>2012</u> | <u>95,065,000</u> | <u>1.20%</u> | <u>975,000</u> |
| <u>2013</u> | <u>92,693,225</u> | <u>1.80%</u> | <u>1,425,975</u> |
| <u>2014</u> | <u>90,382,952</u> | <u>2.40%</u> | <u>1,853,865</u> |
| <u>2015</u> | <u>88,132,506</u> | <u>3.00%</u> | <u>2,259,574</u> |
| <u>2016</u> | <u>85,940,263</u> | <u>3.60%</u> | <u>2,643,975</u> |
| <u>2017</u> | <u>83,589,793</u> | <u>4.20%</u> | <u>3,222,760</u> |
| <u>2018</u> | <u>81,314,762</u> | <u>4.80%</u> | <u>3,761,541</u> |
| <u>2019</u> | <u>79,105,751</u> | <u>5.40%</u> | <u>4,269,025</u> |
| <u>2020</u> | <u>76,960,936</u> | <u>6.00%</u> | <u>4,746,345</u> |

- C.** An affected utility may count energy savings resulting from DSM energy efficiency and RET programs to meet the energy efficiency standard. At least 4.5 percentage points of the 6% energy efficiency standard in 2020, and at least 75% of the energy efficiency standard for the other years, set forth in subsection (B) shall be achieved through the energy efficiency programs.
- 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 DSM programs shall not exceed 1% 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.

Table 3. Credit for Pre-rules Energy Savings

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

- E.** An affected utility may count toward meeting the energy efficiency standard up to one-third of the energy savings resulting from energy efficiency building codes and up to one-third of the energy saving resulting from energy efficiency appliance standards. The energy savings must be quantified and reported through a measurement and evaluation study undertaken by the affected utility and the affected utility may count the energy savings only when the utility demonstrates and documents its efforts in support of the adoption or implementation of the energy efficiency building codes and appliance standards.
- F.** An affected utility may count a customer's energy savings resulting from self-direction toward meeting the standard.
- G.** An affected utility may count toward meeting the energy efficiency standard all energy savings resulting from the affected utility's sponsorship of RET projects that displace gas. An affected utility may also count toward meeting the standard all energy savings resulting from other RET projects that are not sponsored by the affected utility, if the affected utility can clearly demonstrate that its efforts facilitated the placement and completion of the RET project.
- 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

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year 2020 or, if expiring before the year 2020, to be replaced with an energy efficiency or RET measure having at least the same level of efficiency.

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

| | <u>2020 Energy Efficiency Standard</u> | <u>2019 Retail Sales (therms)</u> | <u>Required Cumulative Annual Energy Savings (therms or therm equivalents)</u> |
|---|--|-----------------------------------|--|
| Total | 6.00% | 79,105,751 | 4,746,345 |
| Breakdown of Savings and Credits Used To Meet 2020 Standard: | | | |
| | | | <u>Cumulative Annual Energy Savings Or Credit (therms)</u> |
| Pre-rules Savings Credit R14-2-2504(D) | | | 359,545* |
| Building Codes and Appliance Standards R14-2-2504(E) | | | 425,000 |
| Self-direction R14-2-2404(F) | | | 27,000 |
| RET R14-2-2504(G) | | | 25,000 |
| CHP R14-2-2501(10) and R14-2-2504(C) | | | 135,000 |
| Energy Efficiency R14-2-2504(C) | At least 4.5 percentage points | | 3,774,800 |
| Total | | | 4,746,345 |

* The total pre-rules savings credit shall be capped at 1% 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.

R14-2-2505. Implementation Plans

- A.** Except as provided in R14-2-2518 and R14-2-2519, 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 and RET program to be newly implemented or continued in the next two calendar years and an estimate of the annual therm or therm equivalent savings projected to be obtained through each DSM and RET program;
 4. The estimated total cost and cost per therm reduction of each DSM and RET measure and DSM and RET program described in subsection (B)(3);
 5. A DSM tariff filing complying with R14-2-2506(A) or a request to modify and reset an adjustment mechanism complying with R14-2-2506(C), as applicable; and
 6. For each new DSM and RET program and measure that the affected utility desires to implement, a program proposal complying with R14-2-2507.
- C.** An affected utility shall notify its customers of its implementation plan filing through a notice in its next regularly scheduled customer bills following the filing of the implementation plan.
- D.** The Commission may hold a hearing to determine whether an affected utility's implementation plan satisfies the require-

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ments of this Article.

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

R14-2-2506. 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 and RET 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 R14-2-312(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 and RET 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).

R14-2-2507. Commission Review and Approval of DSM and RET Programs

- A.** An affected utility shall obtain Commission approval before implementing a new DSM or RET program.
- B.** An affected utility may apply for Commission approval of a DSM or RET program by submitting a program proposal either as part of its implementation plan submitted under R14-2-2505 or through a separate application.
- C.** A program proposal shall include the following:
1. A description of the DSM or RET program or measure that the affected utility desires to implement.
 2. The affected utility's objectives and rationale for the DSM or RET program or measure.
 3. A description of the market segment at which the DSM or RET program or measure is aimed.
 4. An estimated level of customer participation in the DSM or RET program or measure.
 5. An estimate of the baseline.
 6. The estimated societal benefits and savings from the DSM program or measure.
 7. The estimated societal costs of the DSM program or measure.
 8. The estimated environmental benefits to be derived from the DSM or RET program or measure.
 9. The estimated benefit-cost ratio of the DSM program or measure.
 10. The affected utility's marketing and delivery strategy.
 11. The affected utility's estimated annual costs and budget for the DSM or RET program or measure.
 12. The implementation schedule for the DSM or RET program or measure.
 13. A description of the affected utility's plan for monitoring and evaluating the DSM or RET program or measure, and
 14. Any other information that the Commission believes is relevant to the Commission's consideration of the 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 measure will meet the goal set forth in R14-2-2503(A), and
 2. All of the considerations set forth in R14-2-2503(B).
- E.** Staff may request modifications of on-going DSM and RET programs to ensure consistency with this Article. The Commission shall allow affected utilities adequate time to notify customers of DSM and RET program modifications.

R14-2-2508. 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 and RET 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 and RET programs by payment through a non-bypassable mechanism, unless a customer or customer class is specifically exempted by Commission order.

R14-2-2509. Reporting Requirements

- A.** By April 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 and RET

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programs 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 and RET programs, 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 and RET program and 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 therm equivalents, as appropriate;
 - g. The environmental benefits realized;
 - 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 or RET program or measure and the proposed date of termination.
- B.** By October 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 and RET program and 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.

R14-2-2510. Cost Recovery

- A.** An affected utility may recover the costs that it incurs in planning, designing, implementing, and evaluating a DSM or RET program or measure if the DSM or RET program or 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, pursuant to R14-2-2515.
- B.** An affected utility shall monitor and evaluate each DSM and RET program or measure, as provided in R14-2-2515.
- C.** If an affected utility determines that a DSM program or measure is not cost-effective or that a DSM or RET program or measure does not meet expectations, the affected utility shall include in its annual DSM progress report filed under R14-2-2509 a proposal to modify or terminate the DSM or RET program or measure.
- D.** An affected utility shall recover its DSM and RET costs concurrently, on an annual basis, with the spending for DSM and RET programs and measures, 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 or RET programs:
1. Incremental labor attributable to DSM and RET development,
 2. A market study,
 3. A research and development project such as applied technology assessment,
 4. Consortium membership, or
 5. Other items that are difficult to allocate to an individual DSM or RET 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 or RET 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 and RET costs in accordance with generally accepted accounting principles.
- I.** An affected utility, at its own initiative, may submit to the Commission twice-annual reports on the financial impacts of its Commission-approved DSM and RET programs, including any unrecovered fixed costs and net lost income/revenue resulting from its Commission-approved DSM and RET programs.

R14-2-2511. Revenue Decoupling

The Commission shall review and address financial or other disincentives, recovery of fixed costs, and recovery of net lost income/revenue, including, but not limited to, implementation of a revenue decoupling mechanism, due to Commission-

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Notices of Proposed Rulemaking

approved DSM and RET programs, if an affected utility requests such review in its rate case and provides adequate documentation/records supporting its request in its rate application.

R14-2-2512. Cost-effectiveness

- A. An affected utility shall ensure that the incremental benefits to society of the affected utility's overall group of DSM programs exceed the incremental costs to society of the overall group of DSM programs.
- 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 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 resulting from implementation of DSM programs, 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.

R14-2-2513. Baseline Estimation

- A. To determine the baseline, an affected utility shall estimate the level of gas demand and consumption and the associated costs that would have occurred in the absence of a DSM program.
- B. For installations or applications that have multiple fuel choices, an affected utility shall determine the baseline using the same fuel source that would have actually been used for the installation or application in the absence of a DSM program.

R14-2-2514. 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 gas customers for gas DSM programs, unless otherwise ordered by the Commission.
- C. An affected utility may use DSM funds collected from gas customers for thermal envelope improvements.

R14-2-2515. Monitoring, Evaluation, and Research

- A. An affected utility shall monitor and evaluate each DSM and RET program and measure to:
 - 1. Ensure compliance with the cost-effectiveness requirements for DSM programs in R14-2-2512;
 - 2. Determine participation rates, energy savings, and demand reductions;
 - 3. Assess the implementation process for the DSM or RET program or measure;
 - 4. Obtain information on whether to continue, modify, or terminate a DSM or RET program or measure; and
 - 5. Determine the persistence and reliability of the affected utility's DSM and RET programs and measures.
- B. An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for DSM and RET program planning, product development, and DSM and RET program improvement.

R14-2-2516. Program Administration and Implementation

- A. An affected utility may use an energy service company or other external resource to implement a DSM or RET program or measure.
- B. The Commission may, at its discretion, establish independent program administrators who would be subject to the relevant requirements of this Article.

R14-2-2517. 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 gas utilities, or other entities if doing so will increase the effectiveness of a DSM or RET program or measure.
- B. An affected utility shall participate in a DSM or RET program or measure with an electric utility when doing so is practicable and if doing so will increase the effectiveness of the program or measure.

R14-2-2518. Compliance by Gas Distribution Cooperatives

- A. A gas distribution cooperative that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2504(A) and (B) and R14-2-2505(A).

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- B.** A gas 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 and RET 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.** A gas distribution cooperative's initial implementation plan shall be filed with Docket Control within 30 days of the effective date of this Article.
- D.** An implementation plan submitted under subsection (B) or (C) shall set forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2504 and shall include the information required under R14-2-2505(B).

R14-2-2519. Compliance by Propane Companies

- A.** A propane company that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2504(A) and (B) and R14-2-2505(A).
- B.** A propane company 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 and RET 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.** A propane company's initial implementation plan shall be filed with Docket Control within 30 days of the effective date of this Article.
- D.** An implementation plan submitted under subsection (B) or (C) shall set forth an energy efficiency goal for each year of at least 50% of the savings requirement specified in R14-2-2504 and shall include the information required under R14-2-2505(B).

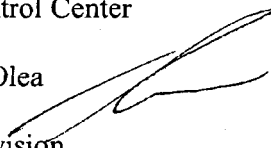
R14-2-2520. Waiver from the Provisions of this Article

- 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.

EXHIBIT B
ORIGINAL

MEMORANDUM

TO: Docket Control Center

FROM: Steven M. Olea
Director
Utilities Division 

DATE: September 22, 2010


RE: IN THE MATTER OF PROPOSED RULEMAKING ON GAS ENERGY
EFFICIENCY (DOCKET NO. RG-00000B-09-0428)

Attached is the Economic, Small Business, and Consumer Impact Statement that addresses the economic impacts of the proposed Gas Utility Energy Efficiency rules, filed in compliance with Decision No. 71855.

SMO:JMK:red

ORIGINATOR: Julie McNeely-Kirwan

Arizona Corporation Commission
DOCKETED
SEP 22 2010

DOCKETED BY 

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DECISION NO. 72042

Service List for: Proposed Rulemaking on Gas Energy Efficiency
Docket No. RG-00000B-09-0428

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Proposed Rulemaking on Gas Energy Efficiency
Docket No. RG-00000B-09-0428
Page 1

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 R14-2-2501 through R14-2-2520 require affected utilities, by December 31, 2020, to achieve cumulative annual energy savings, expressed as therms or therm equivalents, equal to at least 6 percent of the affected utility's retail gas energy sales for calendar year 2019.

The purpose of Gas Utility Energy Efficiency Standards is for affected utilities to achieve therm or therm equivalent savings through demand-side management ("DSM") and renewable energy resource technology application ("RET") programs in order to ensure reliable gas service at reasonable rates and costs. Energy efficiency means the production or delivery of an equivalent level and quality of end-use gas service using less energy, or the conservation of energy by end-use customers. DSM programs promote materials, devices, technologies, educational programs, practices or facility alterations designed to result in increased energy efficiency, including combined heat and power used to displace space heating, water heating or another load. RET programs promote technology applications that utilize an energy resource that is replaced rapidly by a natural, ongoing process, and that displaces conventional energy resources.

Requiring affected utilities to achieve energy savings through DSM and RET 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" because the amount of gas consumed by an affected utility's customers, and the pattern of usage by those customers, directly impacts the physical assets that an affected utility must have in place and the amount of pipeline capacity it must reserve, as well as the affected utility's operating expenses. Decreasing the overall consumption of energy can reduce gas costs, infrastructure costs, and distribution costs, and, in addition, reduce adverse environmental impacts (such as air emissions).

Energy efficiency is a reliable energy resource that costs less than other resources for meeting the energy needs of utility ratepayers. Increasing energy efficiency to meet the Energy Efficiency Standard set forth in the Gas Utility Energy Efficiency Standards rules will reduce the total cost of energy for affected utilities' ratepayers. Increasing energy efficiency will result in less air pollution, reduced carbon emissions, and fewer other adverse environmental impacts than would occur if energy efficiency is not increased. Increasing energy efficiency will reduce affected utilities' costs of compliance with current and future environmental regulations. Increasing energy efficiency will diversify energy

resources, reduce the overall cost of reserving pipeline capacity, and reduce the need for additional infrastructure to distribute gas.

The Rules apply to affected utilities, as defined in the Rules. The public service corporations to whom the proposed Gas Utility Energy Efficiency Standards rules currently apply, because they are affected utilities classified as Class A under A.A.C. R14-2-103(A)(3)(q), are Southwest Gas Corporation, UNS Gas, Inc., and SemStream Arizona Propane (Payson Division). None of these entities is a small business under A.R.S. § 41-1001.

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 gas service in Arizona;
- c. gas public service corporations;
- d. Arizona Corporation Commission;
- e. manufacturers, distributors, and installers of DSM measures;
- f. manufacturers, distributors, and installers of RET equipment; and
- g. 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 DSM measures or RET equipment, probable costs will include initial costs for the measures or equipment. 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 DSM measures or RET equipment, probable costs will include initial costs for the measures or equipment. Benefits will include lower

utility bills than without these rules. Political subdivisions may also benefit by increased sales tax revenues resulting from sales of DSM and RET 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 transporting and procuring gas.

Arizona currently has a monopoly market structure for gas utilities. The Commission generally sets rates for the gas utilities using the following formula: $(\text{Rate Base} \times \text{Rate of Return}) + \text{Expenses} = \text{Revenue Requirement}$. "Rate Base" is the dollar value of the physical 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 pipelines) used by the utility and the costs of service incurred by the utility (such as costs related to distribution).

The proposed Gas Utility Energy Efficiency Standards rules will impact an affected utility's revenues, at least in the interim period before the affected utility's next rate case, because DSM and RET programs may reduce therm 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 number of therms consumed by the customer during the billing period. If that amount is reduced by the customer's decreased consumption resulting from DSM and RET programs, the affected utility's revenues will be

impacted accordingly. Rule R14-2-2511 requires that this impact be reviewed and addressed in an affected utility's rate case, if the affected utility requests to have it addressed and provides adequate documentation/records supporting its request.

If an affected utility is permitted to recover the costs of compliance with the proposed Gas Utility Energy Efficiency Standards rules through ratemaking (because the costs of compliance are included as reasonable and prudent expenses and are consistent with the requirements imposed under R14-2-2510(A)), the affected 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 and RET programs (as contemplated under R14-2-2511), 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.

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 DSM measures or RET equipment, 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 gas utilities) will be required to comply with the rules. These entities are not 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 gas and the infrastructure needed to deliver it. This results in fewer adverse environmental impacts than transporting, distributing, and using gas.

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 gas and gas transportation. In addition, the reduction in overall energy consumption will result in decreased adverse environmental impacts, such as air emissions, which should result in benefits to the public at large that cannot be adequately quantified at this time.

6. *Probable effect on state revenues.*

There may be an increase in state revenues from sales taxes on DSM and RET products. However, there may be a decrease in revenues from sales taxes on gas 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 DSM measures and RET equipment.

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.


EXHIBIT C -1
ORIGINAL

MEMORANDUM

TO: Docket Control
FROM: Steve M. Olea
Director
Utilities Division



Arizona Corporation Commission
DOCKETED
OCT 25 2010

DOCKETED BY 

DATE: October 25, 2010

RE: STAFF'S RESPONSE TO WRITTEN COMMENTS IN THE MATTER OF
PROPOSED RULEMAKING ON GAS ENERGY EFFICIENCY
(DOCKET NO. RG-00000B-09-0428)

Attached is the Staff Report regarding written comments made by interested parties on Proposed Rulemaking on Gas Utility Energy Efficiency Standards, pursuant to Decision No. 71855. Decision No. 71855 ordered the Utilities Division to file with the Commission's Docket Control, a document including (1) a summary of any written comments filed by interested persons between the effective date of that Decision (August 25, 2010) and October 18, 2010, and (2) the Utilities Division's responses to those comments.

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Originator: Barbara Keene

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DOCKET CONTROL

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Docket No. RG-00000B-09-0428

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

PROPOSED RULEMAKING ON GAS ENERGY EFFICIENCY

DOCKET NO. RG-00000B-09-0428

STAFF RESPONSE TO WRITTEN COMMENTS

OCTOBER 25, 2010

DECISION NO. 72042

STAFF ACKNOWLEDGMENT

The Staff Response to Written Comments for Proposed Rulemaking On Gas Energy Efficiency, Docket No. RG-00000B-09-0428, was the responsibility of the Staff member listed below.

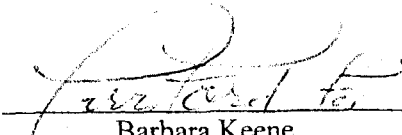

Barbara Keene
Public Utilities Analyst Manager

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Staff Response to Written Comments on Gas Energy Efficiency
Docket No. RG-00000B-09-0428
Page 1

Introduction

The Arizona Corporation Commission ("Commission") issued Decision No. 71855 on August 25, 2010. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Gas Utility Energy Efficiency Standards 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 September 17, 2010.

Decision No. 71855 requested that interested parties provide comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by October 18, 2010.

Decision No. 71855 also ordered the Utilities Division to file with the Commission's Docket Control on or before October 25, 2010, a document including (1) a summary of any written comments filed by interested persons between the effective date of that Decision (August 25, 2010) and October 18, 2010, and (2) the Utilities Division's responses to those comments.

SUMMARY OF WRITTEN COMMENTS MADE REGARDING THE PROPOSED RULES

No written comments were received from August 25, 2010 through October 18, 2010.

STAFF'S COMMENTS REGARDING THE PROPOSED RULES

Staff recommends that Tables 2 and 4 in the proposed Gas Utility Energy Efficiency Standards rules be revised. The Commission had passed an amendment at the Open Meeting to make changes to Table 1 with the instruction to make all conforming changes. Conforming changes need to be made to Tables 2 and 4 as shown below.

Staff Response to Written Comments on Gas Energy Efficiency
Docket No. RG-00000B-09-0428
Page 2

Table 2. Illustrative Example of Calculating Required Energy Savings

| <u>CALENDAR YEAR</u> | <u>A</u> <u>RETAIL SALES</u> <u>(therms)</u> | <u>B</u> <u>ENERGY</u> <u>EFFICIENCY</u> <u>STANDARD</u> | <u>C</u> <u>REQUIRED CUMULATIVE</u> <u>ENERGY SAVINGS</u> <u>(therms or therm equivalents)</u> <u>(B of current year</u> <u>× A of prior year)</u> |
|----------------------|--|---|---|
| <u>2010</u> | <u>100,000,000</u> | | <u>0</u> |
| <u>2011</u> | <u>97,500,000</u> | <u>0.50%</u> | <u>500,000</u> |
| <u>2012</u> | <u>94,870,000</u> | <u>1.20%</u> | <u>1,170,000</u> |
| <u>2013</u> | <u>92,411,540</u> | <u>1.80%</u> | <u>1,707,660</u> |
| <u>2014</u> | <u>90,018,939</u> | <u>2.40%</u> | <u>2,217,877</u> |
| <u>2015</u> | <u>87,691,512</u> | <u>3.00%</u> | <u>2,700,568</u> |
| <u>2016</u> | <u>85,427,344</u> | <u>3.60%</u> | <u>3,156,894</u> |
| <u>2017</u> | <u>83,224,605</u> | <u>4.20%</u> | <u>3,587,948</u> |
| <u>2018</u> | <u>81,081,521</u> | <u>4.80%</u> | <u>3,994,781</u> |
| <u>2019</u> | <u>78,996,374</u> | <u>5.40%</u> | <u>4,378,402</u> |
| <u>2020</u> | <u>76,967,498</u> | <u>6.00%</u> | <u>4,739,782</u> |

Staff Response to Written Comments on Gas Energy Efficiency
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Table 4. Illustrative Example of How the Energy Standard Could be Met in 2020

| | <u>2020 Energy Efficiency Standard</u> | <u>2019 Retail Sales (therms)</u> | <u>Required Cumulative Annual Energy Savings (therms or therm equivalents)</u> |
|---|--|-----------------------------------|--|
| Total | 6.00% | 78,996,374 | 4,739,782 |
| Breakdown of Savings and Credits Used To Meet 2020 Standard: | | | |
| | | | <u>Cumulative Annual Energy Savings Or Credit (therms)</u> |
| <u>Pre-rules Savings Credit</u> R14-2-2504(D) | | | 359,545* |
| <u>Building Codes and Appliance Standards</u> R14-2-2504(E) | | | 425,000 |
| <u>Self-direction</u> R14-2-2404(F) | | | 27,000 |
| <u>RET</u> R14-2-2504(G) | | | 25,000 |
| <u>CHP</u> R14-2-2501(10) and R14-2-2504(C) | | | 135,000 |
| <u>Energy Efficiency</u> R14-2-2504(C) | At least 4.5 percentage points | | 3,768,237 |
| Total | | | 4,739,782 |

*The total pre-rules savings credit shall be capped at 1 percent 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 percent of the total credit allowed.

EXHIBIT C-2

ORIGINAL


MEMORANDUM

2010 NOV -9 P 4: 04

AZ CORP COMMISSION
DOCKET CONTROL

TO: Docket Control

FROM: Steve M. Olea
Director
Utilities Division



DATE: November 9, 2010

RE: STAFF'S RESPONSE TO ORAL COMMENTS IN THE MATTER OF PROPOSED RULEMAKING ON GAS ENERGY EFFICIENCY (DOCKET NO. RG-00000B-09-0428)

Attached is the Staff Report regarding oral comments made by interested parties on Proposed Rulemaking on Gas Utility Energy Efficiency Standards, pursuant to Decision No. 71855. Decision No. 71855 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 October 18, 2010, and 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.

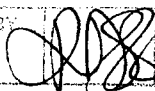
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Originator: Barbara Keene

Arizona Corporation Commission

DOCKETED

NOV - 9 2010

DOCKETED BY 

DECISION NO. 72042

Service List for: PROPOSED RULEMAKING ON GAS ENERGY EFFICIENCY
Docket No. RG-00000B-09-0428

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

PROPOSED RULEMAKING ON GAS ENERGY EFFICIENCY

DOCKET NO. RG-00000B-09-0428

STAFF RESPONSE TO ORAL COMMENTS

NOVEMBER 9, 2010

DECISION NO. 72042

STAFF ACKNOWLEDGMENT

The Staff Response to Oral Comments for Proposed Rulemaking On Gas Energy Efficiency, Docket No. RG-00000B-09-0428, was the responsibility of the Staff member listed below.



Barbara Keene

Public Utilities Analyst Manager

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Introduction

The Arizona Corporation Commission ("Commission") issued Decision No. 71855 on August 25, 2010. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking, including proposed Gas Utility Energy Efficiency Standards 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 September 17, 2010.

Pursuant to Decision No. 71855, Staff filed the Economic, Small Business, and Consumer Impact Statement that addressed the economic impacts of the proposed Gas Utility Energy Efficiency rules on September 22, 2010.

Decision No. 71855 requested that interested parties provide comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by October 18, 2010. On October 25, 2010, Staff filed a summary of the written comments and Staff's comments regarding the proposed rules.

Decision No. 71855 also provided an opportunity for interested parties to provide oral comments at a proceeding to be held on October 28, 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 October 18, 2010, and 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 October 18, 2010, Regarding the Proposed Gas Utility Energy Efficiency Standards Rules

The Southwest Energy Efficiency Project ("SWEEP") filed comments on October 27, 2010. SWEEP strongly supports the proposed rules because the rules are in the public interest, increasing energy efficiency will reduce the total energy costs for utility ratepayers, the proposed standard is appropriate for Arizona, reliable gas service at reasonable rates and costs will be ensured for utility ratepayers, and the Commission is considering the issues regarding incentives to utility support of energy efficiency in parallel proceedings.

The Sierra Club - Grand Canyon Chapter ("The Sierra Club group") filed comments on October 28, 2010, including the names of 14 other organizations. The group supports the Commission's commitment to increasing energy efficiency and promoting clean renewable energy. The group believes that a standard to achieve 6 percent energy savings by 2020 is a reasonable goal for Arizona. Arizonans will benefit from lower gas bills with a reasonable standard. Environmental benefits from the rules include cleaner air. Investing in energy efficiency also helps to create jobs.

Staff Response to Oral Comments on Gas Energy Efficiency
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The Sierra Club group supports giving the utility credit for energy savings regarding energy efficiency building codes and appliance standards but only if the utility demonstrates and documents its efforts to support the adoption and implementation of those building codes and appliance standards. The group also agrees with the provision for three-quarters of the energy savings coming from energy efficiency programs to apply to every year, not just to 2020.

Staff's Responses to the Written Comments Filed After October 18, 2010

Staff finds that all of the written comments filed after October 18, 2010, are consistent with the proposed rules as written. No modifications to the rules are required.

Summary of Oral Comments Regarding the Proposed Gas Utility Energy Efficiency Standards Rules

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

Jeff Schlegel from SWEEP stated that SWEEP supports the changes to the two tables that Staff included in its October 25, 2010, report. He also restated the comments made in SWEEP's written comments filed on October 27, 2010. In addition, Mr. Schlegel said that SWEEP believes that the clarifications mentioned by Judge Harpring are appropriate. In response to questions from Commissioners, he described measurement and evaluation studies.

Justin Lee Brown spoke on behalf of Southwest Gas. He stated that the clarifications discussed by Judge Harpring and Staff sounded reasonable. David Hutchens, representing UNS Gas, stated that UNS Gas is fine with the rules as written and has no additional comments to the edits discussed that day.

Staff's Response to the Oral Comments

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

R14-2-2501(14)

Staff recommends that the words "and RET" be added to the definition of the term "energy efficiency standard" for accuracy to read as "Energy efficiency standard" means the reduction in retail energy sales, in percentage of therms or therm equivalents, required to be achieved through an affected utility's approved DSM and RET programs as prescribed in R14-2-2504."

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R14-2-2503(B)

For clarity, Staff recommends that (B)(1) be moved to follow the other two items in this section and begin with a qualifier. The section would read as the following:

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

R14-2-2504

Staff recommends that Tables 2 and 4 be revised, as discussed in Staff's October 25, 2010 report, and as shown below.

Table 2. Illustrative Example of Calculating Required Energy Savings

| <u>CALENDAR YEAR</u> | <u>A RETAIL SALES (therms)</u> | <u>B ENERGY EFFICIENCY STANDARD</u> | <u>C REQUIRED CUMULATIVE ENERGY SAVINGS (therms or therm equivalents) (B of current year × A of prior year)</u> |
|----------------------|--|---|---|
| <u>2010</u> | <u>100,000,000</u> | | <u>0</u> |
| <u>2011</u> | <u>97,500,000</u> | <u>0.50%</u> | <u>500,000</u> |
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Table 4. Illustrative Example of How the Energy Standard Could be Met in 2020

| | <u>2020 Energy Efficiency Standard</u> | <u>2019 Retail Sales (therms)</u> | <u>Required Cumulative Annual Energy Savings (therms or therm equivalents)</u> |
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| CHP R14-2-2501(10) and R14-2-2504(C) | | | 135,000 |
| Energy Efficiency R14-2-2504(C) | At least 75% | | 3,768,237 |
| Total | | | 4,739,782 |

* The total pre-rules savings credit shall be capped at 1% 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.

R14-2-2504(C)

For clarity, Staff recommends that the language "An affected utility may count energy savings resulting from DSM energy efficiency and RET programs to meet the energy efficiency standard. At least 4.5 percentage points of the 6% energy efficiency standard in 2020, and at least 75% of the energy efficiency standard for the other years, set forth in subsection (B) shall be achieved through the energy efficiency programs." be revised to read as "An affected utility may count energy savings resulting from DSM and RET programs to meet the energy efficiency standard. At least 75% of the energy efficiency standard for each year listed in Table 1 shall be achieved through DSM energy efficiency programs."

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R14-2-2504(E)

For clarity, Staff recommends that the language "An affected utility may count toward meeting the energy efficiency standard up to one-third of the energy savings resulting from energy efficiency building codes and up to one-third of the energy saving resulting from energy efficiency appliance standards. The energy savings must be quantified and reported through a measurement and evaluation study undertaken by the affected utility and the affected utility may count the energy savings only when the utility demonstrates and documents its efforts in support of the adoption or implementation of the energy efficiency building codes and appliance standards." be revised to read as "An affected utility may count toward meeting the energy efficiency standard up to one-third of the energy savings resulting from energy efficiency building codes and up to one-third of the energy saving resulting from energy efficiency appliance standards if the energy savings are quantified and reported through a measurement and evaluation study undertaken by the affected utility, and the affected utility demonstrates and documents its efforts in support of the adoption or implementation of the energy efficiency building codes and appliance standards."

R14-2-2504(F)

Staff recommends that "energy efficiency" be inserted before "standard" for clarity. Therefore, the sentence would be "An affected utility may count a customer's energy savings resulting from self-direction toward meeting the energy efficiency standard."

R14-2-2504(G)

For clarity, Staff recommends that "energy efficiency" be inserted in the second sentence before "standard" and "clearly" be deleted. Therefore, the sentence would be "An affected utility may also count toward meeting the energy efficiency standard all energy savings resulting from other RET projects that are not sponsored by the affected utility, if the affected utility can demonstrate that its efforts facilitated the placement and completion of the RET project."

R14-2-2504(H)

Staff recommends that "energy efficiency" be inserted before "standard" for clarity. Therefore, the sentence would be "An affected utility's energy savings resulting from efficiency improvements to its delivery system may not be counted toward meeting the energy efficiency standard."

R14-2-2504(I)

Staff recommends that "an energy efficiency or RET measure" be replaced with "a DSM measure or RET" for clarity. Therefore, the sentence would be "An affected utility's energy savings used to meet the energy efficiency standard will be assumed to continue through the year"

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2020 or, if expiring before the year 2020, to be replaced with a DSM measure or RET having at least the same level of efficiency."

R14-2-2505(B)(4)

Staff recommends that "each DSM and RET measure and DSM and RET program" be replaced with "each DSM measure and program and each RET and RET program" for clarity. The language would read as "The estimated total cost and cost per therm reduction of each DSM measure and program and each RET and RET program described in subsection (B)(3);"

R14-2-2505(B)(6)

Staff recommends that "each new DSM and RET program and measure" be replaced with "each new DSM measure and program and each RET and RET program" for clarity. Therefore, the language would read as "For each new DSM measure and program and each new RET and RET program that the affected utility desires to implement, a program proposal complying with R14-2-2507."

R14-2-2507(A)

Staff recommends that "or measure" be inserted after "program" for clarity. Therefore, the sentence would be "An affected utility shall obtain Commission approval before implementing a new DSM or RET program or measure."

R14-2-2507(C)(6)

For clarity, Staff recommends that "For DSM" be added to the beginning of the item. Therefore, the language would read as "For DSM the estimated societal benefits and savings from the DSM program or measure,"

R14-2-2507(C)(7)

For clarity, Staff recommends that "For DSM" be added to the beginning of the item. Therefore, the language would read as "For DSM the estimated societal costs of the DSM program or measure,"

R14-2-2507(C)(9)

For clarity, Staff recommends that "For DSM" be added to the beginning of the item. Therefore, the language would read as "For DSM the estimated benefit-cost ratio of the DSM program or measure,"

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R14-2-2510(D)

For clarity, Staff recommends that "and measures" be deleted. Therefore, the sentence would read as "An affected utility shall recover its DSM and RET costs concurrently, on an annual basis, with the spending for DSM and RET programs, unless the Commission orders otherwise."

R14-2-2518(B)(1)

Staff recommends that the language "File with Docket Control, for Commission review and approval, an implementation plan for each DSM and RET program to be implemented or maintained during the next one or two calendar years, as applicable; and" be revised to read as "File with Docket Control, for Commission review and approval, an implementation plan providing information for each DSM and RET program to be implemented or maintained during the next one or two calendar years, as applicable; and" for clarity.

R14-2-2519(B)(1)

Staff recommends that the language "File with Docket Control, for Commission review and approval, an implementation plan for each DSM and RET program to be implemented or maintained during the next one or two calendar years, as applicable; and" be revised to read as "File with Docket Control, for Commission review and approval, an implementation plan providing information for each DSM and RET program to be implemented or maintained during the next one or two calendar years, as applicable; and" for clarity.

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

The only revision to the Economic, Small Business, and Consumer Impact Statement filed on September 22, 2010 that Staff recommends is the addition of the following language to Section 3.a.: "While the Commission's Utilities Division will experience an increased workload as a result of the rules, the Commission does not at this time anticipate adding any full-time employees to implement and enforce the rules."

EXHIBIT D

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

CHAPTER 2. CORPORATION COMMISSION

FIXED UTILITIES

ARTICLE 25. GAS UTILITY ENERGY EFFICIENCY STANDARDS

R14-2-2501. Definitions

R14-2-2502. Applicability

R14-2-2503. Goals and Objectives

R14-2-2504. Energy Efficiency Standards

R14-2-2505. Implementation Plans

R14-2-2506. DSM Tariffs

R14-2-2507. Commission Review and Approval of DSM and RET Programs

R14-2-2508. Parity and Equity

R14-2-2509. Reporting Requirements

R14-2-2510. Cost Recovery

R14-2-2511. Revenue Decoupling

R14-2-2512. Cost-effectiveness

R14-2-2513. Baseline Estimation

R14-2-2514. Fuel Neutrality

R14-2-2515. Monitoring, Evaluation, and Research

R14-2-2516. Program Administration and Implementation

R14-2-2517. Leveraging and Cooperation

R14-2-2518. Compliance by Gas Distribution Cooperatives

R14-2-2519. Compliance by Propane Companies

R14-2-2520. Waiver from the Provisions of this Article

ARTICLE 25. GAS UTILITY ENERGY EFFICIENCY STANDARDS**R14-2-2501. 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 gas utility service to retail customers in Arizona.
3. “Baseline” means the level of gas demand, gas consumption, and associated expenses estimated to occur in the absence of a specific DSM program, determined as provided in R14-2-2513.
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 R14-2-2512.
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 gas energy to its customers.
9. “DSM” means demand-side management, the implementation and maintenance of one or more DSM programs.
10. “DSM measure” means any material, device, technology, educational program, practice, or facility alteration designed to result in increased energy efficiency and includes CHP used to displace space heating, water heating, or another load.
11. “DSM program” means one or more DSM measures provided as part of a single offering to customers.
12. “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.

13. “Energy efficiency” means the production or delivery of an equivalent level and quality of end-use gas service using less energy, or the conservation of energy by end-use customers.
14. “Energy efficiency standard” means the reduction in retail energy sales, in percentage of therms or therm equivalents, required to be achieved through an affected utility’s approved DSM and RET programs as prescribed in R14-2-2504.
15. “Energy savings” means the reduction in a customer’s energy consumption, expressed in therms or therm equivalents.
16. “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.
17. “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.
18. “Fuel-neutral” means without promoting or otherwise expressing bias regarding a customer’s choice of one fuel over another.
19. “Gas” means either natural gas or propane.
20. “Gas utility” means a public service corporation providing natural gas service or propane service to the public.
21. “Incremental benefits” means amounts saved through avoiding costs for gas purchases, delivery system, and other cost items necessary to provide gas utility service, along with other improvements in societal welfare, such as through avoided environmental impacts, including, but not limited to, water consumption savings, water contamination reduction, air emission reduction, reduction in coal ash, and reduction of nuclear waste.
22. “Incremental costs” means the additional expenses of DSM measures, relative to baseline.
23. “Independent program administrator” means an impartial third party employed to provide objective oversight of DSM and RET programs.
24. “kWh” means kilowatt-hour.

25. “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.
26. “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.
27. “Market transformation” means strategic efforts to induce lasting structural or behavioral changes in the market that result in increased energy efficiency.
28. “Net benefits” means the incremental benefits resulting from DSM minus the incremental costs of DSM.
29. “Non-market benefits” means improvements in societal welfare that are not bought or sold.
30. “Program costs” means the expenses incurred by an affected utility as a result of developing, marketing, implementing, administering, and evaluating Commission-approved DSM programs.
31. “RET” means a renewable energy resource technology application utilizing an energy resource that is replaced rapidly by a natural, ongoing process and that displaces conventional energy resources otherwise used to provide energy to an affected utility’s Arizona customers.
32. “RET program” means one or more RETs provided as part of a single offering to customers.
33. “Revenue decoupling” means a mechanism that reduces or eliminates the connection between sales volume and the recovery of an affected utility’s Commission-approved cost of service.
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 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.
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. “Therm” means a unit of heat energy equal to 100,000 British Thermal Units.
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. “Therm equivalent” means a unit of energy, such as kWh, converted and stated in terms of therms.
40. “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.

R14-2-2502. Applicability

This Article applies to each affected utility classified as Class A according to R14-2-103(A)(3)(q).

R14-2-2503. Goals and Objectives

- A. An affected utility shall design each DSM program to be cost-effective.
- B. An affected utility shall consider the following when planning and implementing a DSM or RET program:
1. Whether the DSM or RET program will advance market transformation and achieve sustainable savings, reducing the need for future market interventions;
 2. Whether the affected utility can ensure a level of funding adequate to sustain the DSM or RET program and allow the program to achieve its targeted goals; and
 3. If a DSM program, whether the DSM program will achieve cost-effective energy savings.
- 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.

R14-2-2504. Energy Efficiency Standards

- A. Except as provided in R14-2-2518 and R14-2-2519, in order to ensure reliable gas service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through DSM and RET programs, achieve cumulative annual energy savings, expressed as therms or therm equivalents, equal to at least 6% of the affected utility's retail gas 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 can be met in 2020 is shown in Table 4.

Table 1. Energy Efficiency Standard

| <u>CALENDAR YEAR</u> | <u>ENERGY EFFICIENCY STANDARD</u> (Cumulative Annual Energy Savings by the End of Each Calendar Year as a Percentage of the Retail Energy Sales in the Prior Calendar Year) |
|----------------------|--|
| <u>2011</u> | <u>0.50%</u> |
| <u>2012</u> | <u>1.20%</u> |
| <u>2013</u> | <u>1.80%</u> |
| <u>2014</u> | <u>2.40%</u> |
| <u>2015</u> | <u>3.00%</u> |
| <u>2016</u> | <u>3.60%</u> |
| <u>2017</u> | <u>4.20%</u> |
| <u>2018</u> | <u>4.80%</u> |
| <u>2019</u> | <u>5.40%</u> |
| <u>2020</u> | <u>6.00%</u> |

Table 2. Illustrative Example of Calculating Required Energy Savings

| <u>CALENDAR YEAR</u> | <u>A</u> <u>RETAIL SALES</u> (therms) | <u>B</u> <u>ENERGY</u> <u>EFFICIENCY</u> <u>STANDARD</u> | <u>C</u> <u>REQUIRED</u> <u>CUMULATIVE</u> <u>ENERGY SAVINGS</u> (therms or therm equivalents) (B of current year × A of prior year) |
|----------------------|---|---|---|
| <u>2010</u> | <u>100,000,000</u> | | <u>0</u> |
| <u>2011</u> | <u>97,500,000</u> | <u>0.50%</u> | <u>500,000</u> |
| <u>2012</u> | <u>94,870,000</u> | <u>1.20%</u> | <u>1,170,000</u> |
| <u>2013</u> | <u>92,411,540</u> | <u>1.80%</u> | <u>1,707,660</u> |
| <u>2014</u> | <u>90,018,939</u> | <u>2.40%</u> | <u>2,217,877</u> |

| | | | |
|-------------|-------------------|--------------|------------------|
| <u>2015</u> | <u>87,691,512</u> | <u>3.00%</u> | <u>2,700,568</u> |
| <u>2016</u> | <u>85,427,344</u> | <u>3.60%</u> | <u>3,156,894</u> |
| <u>2017</u> | <u>83,224,605</u> | <u>4.20%</u> | <u>3,587,948</u> |
| <u>2018</u> | <u>81,081,521</u> | <u>4.80%</u> | <u>3,994,781</u> |
| <u>2019</u> | <u>78,996,374</u> | <u>5.40%</u> | <u>4,378,402</u> |
| <u>2020</u> | <u>76,967,498</u> | <u>6.00%</u> | <u>4,739,782</u> |

C. An affected utility may count energy savings resulting from DSM and RET programs to meet the energy efficiency standard. At least 75% of the energy efficiency standard for each year listed in Table 1 shall be achieved through DSM energy efficiency programs.

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 DSM programs shall not exceed 1% 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.

Table 3. Credit for Pre-rules Energy Savings

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

| | | |
|-------------|--------------|---------------|
| <u>2019</u> | <u>25.0%</u> | <u>67.5%</u> |
| <u>2020</u> | <u>32.5%</u> | <u>100.0%</u> |

- E. An affected utility may count toward meeting the energy efficiency standard up to one-third of the energy savings resulting from energy efficiency building codes and up to one-third of the energy savings resulting from energy efficiency appliance standards, if the energy savings are quantified and reported through a measurement and evaluation study undertaken by the affected utility, and the affected utility demonstrates and documents its efforts in support of the adoption or implementation of the energy efficiency building codes and appliance standards.
- F. An affected utility may count a customer’s energy savings resulting from self-direction toward meeting the energy efficiency standard.
- G. An affected utility may count toward meeting the energy efficiency standard all energy savings resulting from the affected utility’s sponsorship of RET projects that displace gas. An affected utility may also count toward meeting the energy efficiency standard all energy savings resulting from other RET projects that are not sponsored by the affected utility, if the affected utility can demonstrate that its efforts facilitated the placement and completion of the RET project.
- H. An affected utility’s energy savings resulting from efficiency improvements to its delivery system may not be counted toward meeting the energy efficiency 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 measure or RET having at least the same level of efficiency.

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

| | <u>2020 Energy Efficiency Standard</u> | <u>2019 Retail Sales (therms)</u> | <u>Required Cumulative Annual Energy Savings (therms or therm equivalentents)</u> |
|--|--|-----------------------------------|---|
| <u>Total</u> | <u>6.00%</u> | <u>78,996,374</u> | <u>4,739,782</u> |
| <u>Breakdown of Savings and Credits Used To Meet 2020 Standard:</u> | | | |
| | | | <u>Cumulative Annual Energy Savings Or</u> |

| | | | <u>Credit (therms)</u> |
|--|----------------------------|--|-------------------------------|
| <u>Pre-rules Savings Credit</u> | | | <u>359,545*</u> |
| <u>R14-2-2504(D)</u> | | | |
| <u>Building Codes and Appliance Standards</u> | | | <u>425,000</u> |
| <u>R14-2-2504(E)</u> | | | |
| <u>Self-direction</u> | | | <u>27,000</u> |
| <u>R14-2-2504(F)</u> | | | |
| <u>RET</u> | | | <u>25,000</u> |
| <u>R14-2-2504(G)</u> | | | |
| <u>CHP</u> | | | <u>135,000</u> |
| <u>R14-2-2501(10) and R14-2-2504(C)</u> | | | |
| <u>Energy Efficiency</u> | <u>At least 75%</u> | | <u>3,768,237</u> |
| <u>R14-2-2504(C)</u> | | | |
| <u>Total</u> | | | <u>4,739,782</u> |

* The total pre-rules savings credit shall be capped at 1% 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.

R14-2-2505. Implementation Plans

- A.** Except as provided in R14-2-2518 and R14-2-2519, 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 and RET program to be newly implemented or continued in the next two calendar years and an estimate of the annual therm or therm equivalent savings projected to be obtained through each DSM and RET program;
4. The estimated total cost and cost per therm reduction of each DSM measure and program and each RET and RET program described in subsection (B)(3);
5. A DSM tariff filing complying with R14-2-2506(A) or a request to modify and reset an adjustment mechanism complying with R14-2-2506(C), as applicable; and
6. For each new DSM measure and program and each RET and RET program that the affected utility desires to implement, a program proposal complying with R14-2-2507.

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

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 and RET programs authorized thereunder, shall continue in effect until the Commission takes action on a new implementation plan for the affected utility.

R14-2-2506. 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 and RET 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 R14-2-312(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 and RET 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).

R14-2-2507. Commission Review and Approval of DSM and RET Programs

- A.** An affected utility shall obtain Commission approval before implementing a new DSM program or measure or a new RET program or RET.
- B.** An affected utility may apply for Commission approval of a DSM program or measure or an RET program or RET by submitting a program proposal either as part of its implementation plan submitted under R14-2-2505 or through a separate application.
- C.** A program proposal shall include the following:
1. A description of the DSM program or measure or RET program or RET that the affected utility desires to implement;
 2. The affected utility's objectives and rationale for the DSM program or measure or RET program or RET;
 3. A description of the market segment at which the DSM program or measure or RET program or RET is aimed;
 4. An estimated level of customer participation in the DSM program or measure or RET program or RET;
 5. An estimate of the baseline;
 6. For a DSM program or measure:
 - a. The estimated societal benefits and savings from the DSM program or measure,
 - b. The estimated societal costs of the DSM program or measure, and
 - c. The estimated benefit-cost ratio of the DSM program or measure;
 7. The estimated environmental benefits to be derived from the DSM program or measure or RET program or RET;

8. The affected utility's marketing and delivery strategy;
9. The affected utility's estimated annual costs and budget for the DSM program or measure or RET program or RET;
10. The implementation schedule for the DSM program or measure or RET program or RET;
11. A description of the affected utility's plan for monitoring and evaluating the DSM program or measure or RET program or RET; and
12. Any other information that the Commission believes is relevant to the Commission's consideration of the 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 measure will meet the goal set forth in R14-2-2503(A), and
2. All of the considerations set forth in R14-2-2503(B).

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

R14-2-2508. 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 and RET 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 and RET programs by payment through a non-bypassable mechanism, unless a customer or customer class is specifically exempted by Commission order.

R14-2-2509. Reporting Requirements

- A. By April 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 and RET programs 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 and RET programs, 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 and measure and RET program and RET:
 - 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 therm equivalents, as appropriate;
 - g. The environmental benefits realized;
 - 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 measure or RET program or RET and the proposed date of termination.

B. By October 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 measure and RET program and RET 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.

R14-2-2510. Cost Recovery

- A. An affected utility may recover the costs that it incurs in planning, designing, implementing, and evaluating a DSM program or measure or RET program or RET if the DSM program or measure or RET program or RET 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, pursuant to R14-2-2515.
- B. An affected utility shall monitor and evaluate each DSM program or measure and each RET program or RET, as provided in R14-2-2515.
- C. If an affected utility determines that a DSM program or measure is not cost-effective or that a DSM program or measure or RET program or RET does not meet expectations, the affected utility shall include in its annual DSM progress report filed under R14-2-2509 a proposal to modify or terminate the DSM program or measure or RET program or RET.
- D. An affected utility shall recover its DSM and RET costs concurrently, on an annual basis, with the spending for DSM and RET programs, 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 or RET programs:
1. Incremental labor attributable to DSM and RET development,
 2. A market study,
 3. A research and development project such as applied technology assessment,
 4. Consortium membership, or
 5. Other items that are difficult to allocate to an individual DSM or RET 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 or RET 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 and RET costs in accordance with generally accepted accounting principles.
- I. An affected utility, at its own initiative, may submit to the Commission twice-annual reports on the financial impacts of its Commission-approved DSM and RET programs, including any unrecovered fixed costs and net lost income/revenue resulting from its Commission-approved DSM and RET programs.

R14-2-2511. Revenue Decoupling

The Commission shall review and address financial or other disincentives, recovery of fixed costs, and recovery of net lost income/revenue, including, but not limited to, implementation of a revenue decoupling mechanism, due to Commission-approved DSM and RET programs, if an affected utility requests such review in its rate case and provides adequate documentation/records supporting its request in its rate application.

R14-2-2512. Cost-effectiveness

- A. An affected utility shall ensure that the incremental benefits to society of the affected utility's overall group of DSM programs exceed the incremental costs to society of the overall group of DSM programs.
- 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 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 resulting from implementation of DSM programs, 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.

R14-2-2513. Baseline Estimation

- A. To determine the baseline, an affected utility shall estimate the level of gas demand and consumption and the associated costs that would have occurred in the absence of a DSM program.
- B. For installations or applications that have multiple fuel choices, an affected utility shall determine the baseline using the same fuel source that would have actually been used for the installation or application in the absence of a DSM program.

R14-2-2514. 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 gas customers for gas DSM programs, unless otherwise ordered by the Commission.
- C. An affected utility may use DSM funds collected from gas customers for thermal envelope improvements.

R14-2-2515. Monitoring, Evaluation, and Research

- A. An affected utility shall monitor and evaluate each DSM program and measure and each RET program and RET to:
 1. Ensure compliance with the cost-effectiveness requirements for DSM programs in R14-2-2512;
 2. Determine participation rates, energy savings, and demand reductions;
 3. Assess the implementation process for the DSM program or measure or RET program or RET;
 4. Obtain information on whether to continue, modify, or terminate a DSM program or measure or RET program or RET; and

5. Determine the persistence and reliability of the affected utility's DSM programs and measures and RET programs and RETs.

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

R14-2-2516. Program Administration and Implementation

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

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

R14-2-2517. 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 gas utilities, or other entities if doing so will increase the effectiveness of a DSM program or measure or RET program or RET.

B. An affected utility shall participate in a DSM program or measure or RET program or RET with an electric utility when doing so is practicable and if doing so will increase the effectiveness of the DSM program or measure or RET program or RET.

R14-2-2518. Compliance by Gas Distribution Cooperatives

A. A gas distribution cooperative that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2504(A) and (B) and R14-2-2505(A).

B. A gas 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 providing information for each DSM and RET 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. A gas distribution cooperative's initial implementation plan shall be filed with Docket Control within 30 days of the effective date of this Article.

- D.** An implementation plan submitted under subsection (B) or (C) shall set forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2504 and shall include the information required under R14-2-2505(B).

R14-2-2519. Compliance by Propane Companies

- A.** A propane company that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2504(A) and (B) and R14-2-2505(A).
- B.** A propane company 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 providing information for each DSM and RET 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.** A propane company's initial implementation plan shall be filed with Docket Control within 30 days of the effective date of this Article.
- D.** An implementation plan submitted under subsection (B) or (C) shall set forth an energy efficiency goal for each year of at least 50% of the savings requirement specified in R14-2-2504 and shall include the information required under R14-2-2505(B).

R14-2-2520. 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.

EXHIBIT E**Summary of the Comments Made on the Rulemaking and the Agency Response to Them,
Prepared Pursuant to A.R.S. § 41-1001(15)(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 GEE Rules Generally | The Southwest Energy Efficiency Project ("SWEEP") expressed strong support for the proposed GEE rules and urged the Commission to adopt them because they will lower costs for gas utility ratepayers and will ensure reliable utility service at just and reasonable rates. SWEEP asserted that the rules are in the public interest because increasing energy efficiency as set forth in the rules will provide significant, cost-effective benefits to Arizona gas utility ratepayers (both residential and commercial), the utility system, the economy, and the environment. SWEEP asserted that increasing energy efficiency will lower gas bills, diversify energy resources, reduce air pollution and emissions, and create jobs and improve the Arizona economy. SWEEP explained that energy efficiency is a reliable energy resource that costs less than other resources for meeting gas utility ratepayers' energy needs. SWEEP also pointed out that the GEE rules' requirement for energy efficiency measures and programs to be cost-effective, coupled with the rules' requirement for affected utilities to evaluate and report their programs' actual savings, benefits, and costs, will result in lower total energy costs for ratepayers. SWEEP also stated that the Commission's review and consideration of utility disincentives to energy efficiency, of cost recovery, and of performance incentives in | The Commission acknowledges and agrees with the supportive comments. Staff agrees with SWEEP's assertions regarding why the proposed GEE rules are in the public interest and the benefits to be derived from them. (<i>See</i> Tr. at 26.) No change is needed in response to these comments. |

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| | <p>parallel proceedings and workshops is appropriate and should not delay final adoption of the GEE rules.</p> | |
| | <p>The Sierra Club-Grand Canyon Chapter (on behalf of itself and Arizona Interfaith Power and Light; Arizona Alliance for Retired Americans; Grand Canyon Trust; Republicans for Environmental Protection; Natural Capitalism Solutions, Inc.; Environment Arizona; American Council on Consumer Awareness; Arizona Consumers Council; Arizona PIRG Education Fund; Democratic Processes Center; Gem Marketing Pearls, Inc.; High Performance Building Technology Team; Physicians for Social Responsibility-Arizona Chapter; and Sustainable Arizona) expressed support and appreciation for the Commission's significant commitment to increasing energy efficiency and promoting clean renewable energy, which will help Arizona reduce its emissions of air pollutants and greenhouse gases, while benefitting consumers by saving energy and energy dollars. The Sierra Club stated that many of its members have natural gas service that will be affected by the rules and will see the economic benefits, while all Arizonans will realize the environmental and societal benefits. The Sierra Club stated that the environmental benefits will include cleaner air as a result of reductions in oxides of nitrogen and reduced greenhouse gas emissions, including carbon dioxide and methane, a powerful greenhouse gas emitted when natural gas does not burn completely. The Sierra Club further asserted that by requiring investment in energy efficiency measures, the rules will help to create jobs, which are critical in the</p> | <p>The Commission acknowledges the supportive comment. No change is needed in response to this comment.</p> |

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| | current economy. | |
| | Southwest Gas stated that all of the clarifications discussed at the oral proceeding appeared to be pretty reasonable. | The Commission acknowledges the supportive comment. No change is needed in response to this comment. |
| | UNS Gas stated that it is fine with the rules as written and did not have any additional comments regarding the edits discussed at the oral proceeding. | The Commission acknowledges the supportive comment. No change is needed in response to this comment. |
| R14-2504(A) and (B) | The Sierra Club (on behalf of itself and the 14 other organizations listed above) stated that a standard to achieve 6% energy savings by 2020 is a reasonable standard for Arizona. The Sierra Club stated that increasing energy efficiency as proposed in the GEE rules will provide cost-effective benefits to gas utility ratepayers, in both residential and business customer classes, and that the benefits are cost effective in that Arizonans will benefit from lower gas bills in return for a reasonable investment. | The Commission acknowledges the supportive comment. No change is needed in response to this comment. |
| R14-2-2504(A) through (C) | SWEEP asserted that the proposed Energy Efficiency Standard of 6% energy savings by 2020, with at least 4.5 percentage points coming from energy efficiency programs, is appropriate because of Arizona's small amount of gas heating load, and is an ambitious, but reasonable and achievable standard. | The Commission acknowledges the supportive comment. No change is needed in response to this comment. |
| R14-2-2504(C) | The Sierra Club (on behalf of itself and the 14 other organizations listed above) stated that it supports the requirement for three-quarters of the counted energy savings each year to come from energy efficiency programs. | The Commission acknowledges the supportive comment. No change is needed in response to this comment. |
| R14-2-2504, Tables 2 and 4 | SWEEP supports Staff's recommended changes to Tables 2 and 4, as included in Staff Response I. | The Commission acknowledges the supportive comment. Tables 2 and 4 are being modified as recommended by Staff and SWEEP. |
| R14-2-2504(E) | The Sierra Club (on behalf of itself and the 14 other organizations listed above) stated that it supports the | The Commission acknowledges the supportive comment. No change is needed in response to |

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| | <p>provision that allows an affected utility credit for energy savings from energy efficiency building codes and appliance standards only if the utility demonstrates and documents its efforts to support the adoption and implementation of the building codes and appliance standards.</p> | <p>this comment.</p> |
| | <p>At the oral proceeding, SWEEP supported clarifying the language of 2504(E) as discussed and supported the rule's requiring measurement and evaluation studies to support the savings from energy efficiency building codes or appliance standards and allowing an affected utility to claim up to one third of those energy savings as credit toward the energy efficiency standard if the affected utility contributed to the adoption or implementation of the building codes or appliance standards. SWEEP also explained that the measurement and evaluation studies are often conducted by third-party evaluation contractors to ensure objectivity and independence, although the utilities are able to conduct the analysis themselves for smaller programs with smaller amounts of analyses to be done and would administer the studies if performed by contractors. SWEEP also explained that the cost for the studies would be funded by the same DSM energy efficiency program funds used for programs. In response to a question from Commissioner Newman, SWEEP also discussed techniques used for evaluation and measurement and the timing related thereto.</p> | <p>The Commission acknowledges the supportive comment. 2504(E) is being modified as discussed in the oral proceeding to make the subsection more clear, concise, and understandable</p> |
| | <p>At the oral proceeding, Southwest Gas supported the comments made by Staff and SWEEP regarding the use of measurement and evaluation studies, both as to requiring use of such studies and not needing to define the term in</p> | <p>The Commission acknowledges the supportive comment. No change is needed in response to this comment.</p> |

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| | <p>the rules. Southwest Gas stated that the term is understood by the affected utilities.</p> | |
| | <p>UNS Gas stated that it does not believe it necessary to define the term "measurement and evaluation study" because the term is understood by the affected utilities.</p> | <p>The Commission agrees with UNS Gas and is not defining the term in the rules.</p> |
| R14-2-2507(A) | <p>SWEEP commented that it agreed with Staff's recommendation that 2507(A) be clarified expressly to include DSM measures and RETs, in addition to DSM and RET programs.</p> | <p>The Commission acknowledges the supportive comment. 2507(A) is being modified expressly to include DSM measures and RETs, as recommended by Staff and SWEEP.</p> |