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BEFORE THE ARIZONA CORPORATE

RECEIVED

COMMISSIONERS

- BOB STUMP- CHAIRMAN
- GARY PIERCE
- BRENDA BURNS
- ROBERT L. BURNS
- SUSAN BITTER SMITH

2013 MAR -6 P 4:17

CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO. E-01345A-10-0394
 SERVICE COMPANY REQUEST FOR)
 APPROVAL OF UPDATED GREEN POWER)
 RATE SCHEDULE GPS-1, GPS-2 AND GPS-3.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-01345A-12-0290
 ARIZONA PUBLIC SERVICE COMPANY FOR)
 APPROVAL OF ITS 2013 RENEWABLE)
 ENERGY STANDARD IMPLEMENTATION FOR)
 RESET OF RENEWABLE ENERGY ADJUSTOR.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-01933A-12-0296
 TUCSON ELECTRIC POWER COMPANY FOR)
 APPROVAL OF ITS 2013 RENEWABLE)
 ENERGY STANDARD IMPLEMENTATION)
 PLAN AND DISTRIBUTED ENERGY)
 ADMINISTRATIVE PLAN AND REQUEST FOR)
 RESET OF RENEWABLE ENERGY ADJUSTOR.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-04204A-12-0297
 UNS ELECTRIC, INC. FOR APPROVAL OF ITS)
 2013 RENEWABLE ENERGY STANDARD)
 IMPLEMENTATION PLAN AND DISTRIBUTED)
 ENERGY ADMINISTRATIVE PLAN AND)
 REQUEST FOR RESET OF RENEWABLE)
 ENERGY ADJUSTOR)

JOINT REQUEST TO MODIFY PROCEDURAL ORDER

DOCKETED

MAR 6 2013

DOCKETED BY

1 APS requests that the Commission deny the relief sought in the Joint Exception on
2 procedural grounds so that APS can continue addressing concerns described below and the
3 technical conference can proceed without further interruption.

4 **I. After Only Attending the First of Six Sessions, The Joint Parties Cannot**
5 **Credibly Critique the Process.**

6 APS will not pick apart each assertion in the Joint Exception; a detailed discussion
7 regarding the process is best left for the technical conference itself, and any remaining
8 issues can be raised in the docket created by the post-technical conference filing. Instead,
9 APS provides the following facts to provide context for the Joint Parties' allegations:

- 10 • APS has invited participants to conduct their own studies, or introduce studies from
11 other states, regarding distributed energy (DE) benefits for full consideration during
12 the technical conference;
- 13 • The methodology used by R.W. Beck in its 2009 study was collaboratively
14 developed by many of the same stakeholders participating in the technical
15 conference today. Indeed, in its December 24, 2012 Comments, Vote Solar stated
16 "APS and RW Beck established a stakeholder process that was well informed and
17 based upon a rational, open and cooperative foundation on which to calculate value
18 assessments";¹
- 19 • The R.W. Beck Study refresh will consider all widely accepted categories of "DE
20 benefits," including the updated capacity value information and value of saved
21 water identified in the Joint Exception;
- 22 • The renewable industry proposed that APS refresh the 2009 R.W. Beck study in the
23 above-referenced dockets;²
- 24 • The R.W. Beck study is only one part of the technical conference;
- 25 • To jumpstart participant engagement, APS hired an independent third party to
26 manage the technical conference;

27 ¹ Vote Solar Reply Comments, p. 3 (December 24, 2012).

² See Vole Solar Reply Comments, p. 4. Vote Solar also proposed additional categories of DE benefits, all of which the Commission ordered that APS include as issues to be considered in the DE Technical Conference. See Decision No. 73636, Finding of Fact No. 42.

- 1 • The independent moderator met with several stakeholders before the technical
2 conference to understand the topics important to and concerns of all parties, and
3 those topics and concerns informed the technical conference agenda;
- 4 • APS has dedicated substantial resources to detailed presentations on the relevant
5 issues, including key ratemaking and resource planning issues that form the
6 foundation for both the problems and solutions at issue in the technical conference;
- 7 • APS has received over 35 data requests in the technical conference and will supply
8 all non-confidential responses as appropriate and upload its responses onto the
9 technical conference website;³ and
- 10 • APS has invited participants to secure their own external speakers to appear and
11 speak at for the technical conference.

12 APS cannot guarantee that these steps will satisfy all stakeholders. But APS can
13 guarantee that it will continue to solicit feedback from participants and consider all
14 relevant information submitted by participants as the development of an eventual DE and
15 Net Metering filing proceeds during this technical conference.

16 **II. Jurisdiction Does Not Exist to Grant the Relief Sought in the Joint Exception.**

17 The Joint Exception seeks to substantively modify Decision No. 73636 by requiring
18 APS to conduct a certain type of study regarding the costs and benefits of DE. This is the
19 same relief that several intervenors requested during APS's 2013 RES proceeding.⁴ In
20 response to these requests, the Commission approved an amendment that resulted in
21 Findings of Fact No. 41 and 42 and the ordering paragraph on page 27, lines 17-20 of
22 Decision No. 73636.

23 ...

24 ...

25 ³ Of course, APS notes that it has no obligation to respond to these data requests.

26 ⁴ See, e.g. Solar Energy Industry Association's Supplemental Comments, p. 3 (December 13, 2012); Reply
27 Comments of Vote Solar, p. 4 (December 24, 2012); Solar Energy Industry Association's Response to APS
Cost Report, p. 2 (December 27, 2012); Arizona Solar Energy Industry Association's Comments, pp. 2-3
(January 17, 2013).

1 Decision No. 73636 was made on January 31, 2013. No party sought rehearing
2 within the 20 day timeframe permitted by A.R.S. § 40-253(A). Without a rehearing request,
3 Decision No. 73636 became final on February 21, 2013, 21 days after it was made.⁵

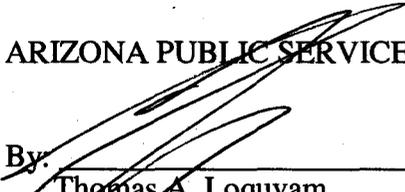
4 Moreover, APS's Supplemental Request for an Order Nunc Pro Tunc did not reopen
5 Decision No. 73636. An order nunc pro tunc may only involve correcting clerical errors so
6 that a final decision reflects the actual order or judgment originally entered:

7 We have consistently held that the function of an order or judgment nunc pro
8 tunc is to make the record speak the truth and that such power is inherent in
9 the court. We have made it clear that the court cannot do more than to make
10 the record correspond with the actual facts. It cannot cause an order or
11 judgment that was never previously made or rendered to be placed upon the
12 record of the court. **It is to record now for then an order actually made or
a judgment actually rendered which through some oversight or
inadvertence was never entered upon the records of the court by the
clerk or which was incorrectly entered.**⁶ (Emphasis added.)

13 Any order nunc pro tunc that exceeds the original order is void for want of jurisdiction.⁷
14 By requesting an order nunc pro tunc, APS could never have opened Decision No. 73636.
15 Because Decision No. 73636 became final on February 21, 2013 and APS's Supplemental
16 Request for an Order Nunc Pro Tunc could not reopen the Decision, no grounds exist to
17 grant the relief sought in the Joint Exception.

18
19 RESPECTFULLY SUBMITTED this 6th day of March 2013.

20 ARIZONA PUBLIC SERVICE COMPANY

21
22 By: 

23 Thomas A. Loquvam
24 Pinnacle West Capital Corporation
400 N. 5th Street, MS 8695
Phoenix, Arizona 85004

25
26 ⁵ See *Kunkle Transfer & Storage v. Superior Court*, 22 Ariz. App. 315, 317, 526 P.2d 1270, 1272 (1974).

27 ⁶ *Black v. Indus. Comm'n of Ariz.*, 83 Ariz. 121, 125, 317 P.2d 553, 555-56 (1957) *overruled on other grounds by Hash's Estate v. Henderson*, 109 Ariz. 174, 507 P.2d 99 (1973) (emphasis added).

⁷ *Id.* at 126, 317 P.2d at 556.

1 Original and 13 copies of the foregoing
2 filed this 6th day of March 2013 with copies delivered to
3 Parties of Record

4 By: Christie Dobozy

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