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Arizona Corporation Commission
DOCKETED
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13 BEFORE THE ARIZONA CORPORATION COMMISSION

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17 COMMISSIONER

SUSAN BITTER-SMITH
COMMISSIONER

18 **IN THE MATTER OF THE**
19 **APPLICATION OF ARIZONA**
20 **PUBLIC SERVICE COMPANY FOR**
21 **APPROVAL OF NET METERING**
22 **COST SHIFT SOLUTION**

DOCKET NO. E-01345A-13-0248
SOLAR ENERGY INDUSTRIES
ASSOCIATION'S (SEIA) PROTEST AND
MOTION TO DISMISS

23 **PROTEST AND MOTION TO DISMISS**

24 Pursuant to Rule 14-3-106(I), the Solar Energy Industries Association ("SEIA")
25 hereby protests and moves to dismiss the Application of Arizona Public Service ("APS")
26 for Approval of Net Metering Cost Shift Solution ("Application") filed on July 12, 2013
27 and entered into Arizona Corporations Commission ("Commission") Docket No. E-
28 01345A-13-0248 (the "Docket"). As explained in SEIA's Motion to Intervene in the

1 Docket, SEIA is a non-profit trade association representing local, national, and
2 international solar companies from all industry sectors in the Arizona market.¹ The
3 Application includes numerous proposals that will substantially and directly adversely
4 affect solar businesses in Arizona, including the interests of SEIA's members and their
5 respective customers.

6 SEIA's Protest, however, is not directed at the merits or the details of the
7 Application but instead at its very basis: APS's claim that there is an actionable issue that
8 requires the Commission's immediate attention. The Application purports to provide a
9 "solution" to a "cost shifting" problem that APS alleges is caused by certain customers of
10 APS availing themselves of duly-adopted Commission policies, specifically the rules
11 governing net energy metering ("NEM") in A.C.C. R14-2-2301 to -2307. There is a
12 fundamental flaw with APS's alleged problem: there is no cost shift between customer
13 classes as a result of NEM.² Even if there *were* a definable category of unrecovered
14 "costs" attributable to NEM customers (which SEIA rejects), the "solutions" offered by
15 APS's Application do not have the effect of "shifting costs back" from non-NEM
16 customers. Both of APS's solutions would result in significant additional revenue for the
17 company. Neither "solution" would allocate this revenue back to the non-NEM
18 ratepayers that APS claims are harmed by the alleged cost shift and both solutions would
19 result in increased rates to all solar and non-solar ratepayers. As shown in Section II
20 below, the result is that APS will make or retain more money from NEM customers, but
21 no other ratepayers will realize any rate reduction.

22 In addition, but on independent grounds, SEIA protests the process, legality, and
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24 ¹ The comments contained in this filing represent the position of SEIA as an organization, but not
25 necessarily the views of any particular member with respect to any issue.

26 ² SEIA acknowledges the REST Surcharge and the LFCR mechanism constitute a form of cost shift.
27 The cost spreading aspect of each, imposed on most APS ratepayers, was agreed to through a multi-party
28 rate case settlement, approved by the Commission, and implemented by APS. Moreover, with respect to
the LFCR in particular, this cost spreading mechanism was noted as a benefit; for example: "The LFCR
allows residential customers a choice as to how they pay the lost fixed costs and will give them some
experience to help them understand how energy efficiency savings affect a utility." Decision No. 73183
at 40, l: 9-12 (emphasis added).

1 timing of APS's attempt to engage in ratemaking via the Application. APS's filing: (1) is
2 improper ratemaking that violates the settlement of APS's last rate case approved by the
3 Commission just last year (as set forth in Section III below); (2) represents
4 unconstitutional single-issue ratemaking (as set forth in Section IV below); and (3) rests
5 on no legal or regulatory authority for the Application in the law or policy of Arizona (as
6 set forth in Section V). As a result of these infirmities, the Commission can and should
7 reject the Application on its face.

8
9 **I. BACKGROUND**

10 On June 29, 2012, APS filed its 2013 Renewable Energy Standard and Tariff
11 ("REST") Implementation Plan, docketed in E-01345A-12-0290. The filing "[did] not
12 request any new program approvals."³ On October 18, 2012, the staff of the Commission
13 ("Staff") submitted a Recommended Opinion and Order on APS's REST implementation
14 plan ("ROO"), arguing in part that distributed energy ("DE", also sometimes referred to
15 as distributed generation, "DG") was the lowest cost per kWh method for APS to meet its
16 REST obligation.⁴ On November 15, 2012, APS responded to the ROO, disagreeing with
17 Staff's view of DE, and stating the desire to hold technical conferences on what APS
18 alleged were NEM billing impacts and distributed energy cross-subsidies. The
19 Commission ordered APS to hold these conferences in Decision No. 73636, and meetings
20 were held approximately every other week from February 21, 2013, through a summary
21 conference on May 28, 2013. On July 12, 2013, based loosely on the discussion
22 generated during the technical conferences but seemingly largely on APS's internal
23 views, APS filed the Application.

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³ Decision No. 73636 at 2, l:11-12.

27 ⁴ *Id.* at 12, l:1-6.

1 **II. NO COSTS ARE BEING SHIFTED; APS'S APPLICATION**
2 **INCREASES APS'S REVENUES AT THE EXPENSE OF NEM**
3 **CUSTOMERS BUT DOES NOT REDUCE RATES FOR NON-NEM**
4 **CUSTOMERS; NO "BOW WAVE" OF UNRECOVERED COSTS**
5 **REQUIRES BYPASSING PROPER RATEMAKING PROCESS**

6 No portion of APS's filing in this docket, nor any previous filing by APS of
7 which we are currently aware, actually shows that costs that should be paid by NEM
8 customers are in fact being paid by other, non-NEM customers. All such costs are being
9 properly recovered by APS pursuant to its last Commission-approved rate case settlement
10 (discussed in Section III, below). Stated differently, APS has provided absolutely no
11 support for the existence of the cost shift to other customers that is the fundamental basis
12 of its filing. This is reason enough for the Commission to reject APS's filing as deficient.

13 **A. No Non-NEM Ratepayer's Rates Go Up As A Result Of NEM**

14 Mr. Guldner's direct testimony is illustrative of APS's failure to support the crux
15 of its application. In response to a request to "provide an example of the effect of this
16 cost shift on non-distributed energy customers," instead of using an actual example
17 drawn from APS's actual customers, Mr. Guldner instead refers to a hypothetical utility
18 with 100 hypothetical customers and the hypothetical costs of serving them.⁵ The failing
19 of this approach is clear: while potentially interesting as a ratemaking hypothetical, it
20 does not demonstrate that APS's non-NEM customers are in-fact subjected to such a cost
21 shift.

22 Mr. Guldner's testimony refers to Mr. Miessner's testimony as "provid[ing] a
23 more detailed description of the impacts of distributed energy on non-participating
24 customers."⁶ Mr. Miessner's testimony, however, provides no better support for the
25 alleged cost shift to other customers than Mr. Guldner's. Mr. Miessner alleges that "For

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27 ⁵ Guldner at 5, l: 4-24.

28 ⁶ *Id.*, l: 23-24.

1 Net Metering Customers, [the misalignment between the recovery of infrastructure and
2 fixed budget costs and APS's rate structures applicable to 90% of residential customers]
3 shifts infrastructure and fixed budget costs to customers without solar, raising their rates.
4 This occurs because solar customers still use the electrical infrastructure, but avoid
5 paying for the costs necessary to support that infrastructure, by avoiding variable energy
6 charges."⁷ APS and Mr. Miessner ignore the benefits, discussed at length in the technical
7 conferences preceding APS's Application, which the private investments of NEM
8 customers provide to other APS ratepayers, by reducing the utility's need to expand its
9 infrastructure. Even assuming that the costs that NEM customers avoid through NEM
10 exceed the benefits that NEM customers provide to APS, its interconnected electrical
11 system, and other customers (an assumption SEIA rejects), Mr. Miessner provides no
12 demonstration of the actual shift in which a non-NEM customer actually pays more than
13 he or she would have paid in the absence of other customers signing up for NEM.

14 Mr. Miessner's testimony reveals the actual basis for APS's filing in this docket:
15 APS believes, as a general matter, that its infrastructure cost recovery mechanism
16 applicable to residential customers is flawed.⁸ SEIA rejects this assertion as in any way
17 relevant to NEM. As discussed in Section III, the Lost Fixed Cost Recovery ("LFCR")
18 mechanism was specifically designed and agreed-to as a critical part of the settlement of
19 APS's most recent rate case as the preferred mechanism to address any alleged deficiency
20 in APS's infrastructure cost recovery arising due to energy efficiency and distributed
21 generation (including NEM). Furthermore, as discussed in Section III.E, APS has agreed
22 to, and the Commission has approved, the current rate recovery mechanisms that will

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24 ⁷ Miessner at 12, l: 17-21.

25 ⁸ *Id.* at 11, l: 15-22, "Ideally, these costs should be recovered through either a demand charge, a basic
26 service charge, or other alternative to a kWh charge because the costs are not driven or determined by the
27 customer's monthly energy consumption."; *Id.* at 11-12, l: 27-2, "This assessment demonstrates that the
28 recovery of infrastructure and fixed budget costs is misaligned with the rate structure for approximately
90% of residential customers. These costs are recovered through variable usage charges, but are not
variable costs."

1 apply until the May 31, 2015 end of the rate case stay out currently applicable to APS.
2 APS's application is thus revealed for what it actually is: an attempt to re-litigate issues
3 definitively resolved only a year ago, issues that were exhaustively addressed and
4 collaboratively resolved in a full rate case proceeding. The Commission should not
5 permit APS to subvert a settlement that APS has so-recently agreed to and the
6 Commission has, at great investment of time, effort and expense, reviewed and approved.

7 **B. No Ratepayer's Costs Go Down Under APS's Application; APS's**
8 **Application Produces Only A Windfall For APS**

9 Besides the total lack of factual support for the cost shift APS alleges, APS's
10 Application has an even more telling omission: it does not lower the rates paid by non-
11 NEM customers, who are supposedly bearing shifted costs created by NEM. Undeniably,
12 the two options that APS offers the Commission will result in a significant pool of new
13 money being collected and retained by APS from new NEM customers. The "Net
14 Metering Option," requiring new NEM customers to take service under APS's ECT-2
15 tariff rate schedule, will result in increased revenue to APS as such NEM customers are
16 assessed a demand charge. The "Bill Credit Option" proposes to compensate new NEM
17 customers for all of the generation flowing from their solar facility (whether excess
18 generation or subject to onsite consumption) at a short-term wholesale rate (rather than
19 the current NEM "credit" at the retail rate), while charging the NEM customer the full
20 retail rate for all of its usage, even that which is self-supplied by the on-site solar system.
21 This second option also will result in enhanced revenues for APS, equal to the difference
22 between the full retail rate and the wholesale rate times the output of the NEM system.

23 Under either option, there would be additional funds retained by APS in
24 comparison to the current baseline – those revenues approved in the last rate case. No
25 portion of APS's Application, however, explicitly proposes to use the additional revenue
26 generated by the two options to lower non-NEM customers' rates.⁹ Either of the options

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28 ⁹ SEIA acknowledges Mr. Miessner's proposal in the final pages of his testimony to change the
calculation of the LFCR mechanism so that the annual LFCR calculation excludes the output of new

1 that APS's Application proposes thus has only one economic effect: generating a windfall
2 for APS.

3 Further, because APS supports the imposition of increased incentives to make up
4 for the harm it acknowledges its proposed changes to NEM will have on its customers'
5 ability to economically go solar,¹⁰ all ratepayers' rates are likely to go up. Incentives
6 levied to encourage the implementation of solar energy are recovered and funded through
7 the REST surcharge on customer bills. Thus, if additional incentives are levied, they will
8 be recovered from all ratepayers through the monthly REST surcharge appearing on their
9 bills.¹¹

10 Accordingly, it is unclear why APS has chosen to propose two mechanisms to
11 solve a problem that does not actually exist (because no costs are being shifted from
12 NEM ratepayers to non-NEM ratepayers) without actually solving the alleged problem.
13 SEIA can only speculate at this point that APS made a conscious decision not to allocate
14 the additional revenue that its options would produce because doing so would have
15 looked too much like traditional ratemaking. APS is subject to a "stay out" provision in

16 NEM installations (*see* Miessner at 34, l: 20-22). This proposal may have the effect of nominally
17 reducing rates for APS's current customers who pay the LFCR (NEM and non-NEM). APS is insistent,
18 however, that "[t]he LFCR simply does not impact the rate increases caused by the solar cost shift." *Id.*
19 at 34, l: 15-16. Regardless, the effect of APS's LFCR calculation adjustment simply does not match the
20 magnitude of APS's windfall from either proposed "solution". According to its first LFCR rate
21 calculation filing, the LFCR applicable to new solar customers will generate additional revenue for APS
22 of just over \$0.031 cents/kWh times the output of new solar installations (*see* APS Application filed
23 January 15, 2013 in Docket No. E-01345A-11-0224, at Attachment C, Schedule 4, line 5, column C and
24 Schedule 3, lines 16 and 18). APS proposes to forego these revenues (thus reducing the LFCR rate) if its
25 proposals to change rate treatment for new solar customers are accepted. APS simultaneously requests
26 that the Commission, in adopting one of its proposals, allow it to extract additional revenue from NEM
27 customers of approximately 10 cents/kWh times the output of new solar installations (*see* Miessner at 15,
28 l: 9-17). APS acknowledges that the actual additional revenue is within the range of 7 to 11 cents/kWh
but is not clear (*see* Miessner at 30-31, l: 22-5, using the midpoints of the ranges that APS presents),
pointing ultimately to the fact that APS's Application is not based on rate case-quality data (as discussed
in Section IV.D). APS presents no proposal to return these higher revenues to non-NEM ratepayers.

10 Application at 14-15; Bernosky at 11, l: 20-23.

11 Bernosky at 12, l: 11-14. Mr. Bernosky raises the possibility of "a third party administrator that
assumes control over incentive program management," but does not provide a *mechanism* separate from
the REST Surcharge for acquiring the funds such an administrator would manage, so it seems reasonable
to conclude that the REST Surcharge will be that mechanism.

1 the settlement of its last rate case and cannot engage in the traditional ratemaking its
2 Application (if it were properly completed to include an allocation of new cost
3 responsibility) would require under normal circumstances.

4 APS seems cognizant of this problem. Mr. Miessner specifically testified as to
5 why the alleged cost shift shouldn't be addressed in a rate case.¹² As part of his response,
6 he asserts that "the proposed solutions do not redesign or reset rates for the general
7 classes of customers; they are limited to new solar customers and rely on existing
8 approved rate schedules."¹³ As an initial matter, note that this represents APS's explicit
9 acknowledgement that its Application only addresses "new solar customers" and "do[es]
10 not redesign or reset rates for the general classes of customers." This is APS's explicit
11 acknowledgement that non-NEM customers (*aka* "the general classes of customers"),
12 whom APS has alleged are suffering under the burden of improperly-shifted costs, will
13 not receive any rate relief as a result of APS's Application.

14 As a secondary matter, however, note that this is APS's implicit
15 acknowledgement that, were APS to have actually attempted to resolve the alleged costs
16 shift by "redesign[ing] or reset[ing] rates for the general classes of customers," i.e., for a
17 general class consisting of its non-NEM customers, such a filing would properly have to
18 be brought in a general rate case. And this, as we know, APS cannot do.

19 **C. Deferring This Issue To APS's Next Rate Case Will Not Result In A**
20 **Bow Wave Of Built Up Unrecovered Costs And An Excessive Rate**
21 **Increase**

22 APS expends significant energy to justify its unrequested, legally untethered
23 Application by asserting the *immediacy* of the alleged problem: that costs are currently
24 being shifted from NEM to non-NEM customers and that the Commission must act now

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27 ¹² Miessner at 23-24.

28 ¹³ *Id.* at 23, l: 24-25 (emphasis added).

1 to address this current cost shift.¹⁴ APS also asserts that the Commission is boxed in and
2 may somehow be required to either order or approve negative impacts on NEM
3 customers because a “[f]ailure to act now. . . may also preclude the Commission from
4 grandfathering the use of Net Metering by customers that currently have solar installed
5 on their homes.”¹⁵ SEIA does not believe the Commission to be so powerless; indeed, the
6 Commission has clear plenary authority in dealing with public service companies such as
7 APS, its programs, tariffs, and rates.¹⁶

8 As discussed above, APS has provided no evidence to support its cost shift claim
9 (nor, even assuming such a cost shift, does either of APS’s proffered solutions shift the
10 additional money collected back to other ratepayers). Assuming for the sake of argument
11 that, instead of the immediate issue APS actually alleges, its concern was in fact that a
12 “bow wave” of unrecovered costs were being amassed, there is no extant mechanism
13 (e.g., a regulatory asset or similar method) in place that would permit APS to accrue
14 amounts that it seems to allege will be under-collected from NEM customers and
15 somehow impose them, all at once, on non-NEM customers. In fact, the appropriate
16 agreed-to and Commission-approved mechanism for recovering such under-collections,
17 the LFCR, contains an annual adjustment cap precisely to avoid this result: documented
18 under-recoveries that exceed 1% of APS’s total revenues in a year are rolled forward to
19 the next period in which the adjustment to the LFCR mechanism again cannot exceed this
20 1% cap.¹⁷

21 As an initial matter, SEIA notes that “Staff testified that adjustments are estimated

22 ¹⁴ See, e.g., Application at 10 (“The expanding magnitude of this problem requires that action be
23 taken now, rather than waiting for more costs to accumulate and be shifted to customers without solar. It
24 would be irresponsible for APS to stay silent as the magnitude of this cost shift-and resulting
25 consequence to customers-grows. Failure to act now could prompt significant rate increases on customers
26 without solar.”).

26 ¹⁵ *Id.*

27 ¹⁶ Ariz. Rev. Stat. § 40-202(A).

28 ¹⁷ See Decision No. 73183 at 22, l: 10-12.

1 to be below that [1%] level, so no deferrals are expected,”¹⁸ and that APS has provided
2 no new evidence that the LFCR mechanism’s cap will be exceeded, so it is reasonable to
3 conclude that the expected impacts of *DG plus EE* are still less than the LFCR
4 mechanism’s 1% cap. Additionally, the structure of the LFCR does not permit the
5 sudden “significant rate increases on customers without solar” that APS claims will
6 occur: the LFCR as currently implemented imposes the 1% cap on an annual basis, only
7 permits recovery up to that level, and requires any amounts in excess be carried forward.
8 It is thus simply not possible for under-collections due to DG (combined with similar
9 under-collections from energy efficiency) to produce a rate impact in excess of the
10 stipulated and approved 1% per year.

11 If indeed there are costs that are under-recovered from NEM customers and not
12 satisfactorily dealt with through the LFCR mechanism (which SEIA refutes and a claim
13 for which APS has provided no factual support), the proper process to deal with such
14 costs is through the well-established, constitutionally required ratemaking process. In its
15 next rate case, APS will have the opportunity to demonstrate such alleged costs in a test
16 year revenue requirement (with known and measurable adjustments), which will be
17 followed by a cost of service and rate design studies and processes.¹⁹ The Commission
18 should not, however, allow APS to bypass this well established process due to unfounded
19 allegations, either of a current cost shift (as APS’s Application states but for which it
20 provides no support) or of a bow wave of unrecovered costs created by NEM customers
21 choosing to self-generate pursuant to APS’s Commission-approved program and tariffs.

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25 ¹⁸ *Id.*, l: 11-12.

26 ¹⁹APS outlined the proper way to set rates for a regulated public utility during the technical
27 conferences in Tony Georgis (NewGen Strategies & Solutions) presentation: “The Fundamentals of
28 Utility Ratemaking”. See nFront Consulting, Distributed Energy and NEM Technical Conference
Facilitator’s Report at 69-75 (July 8, 2013).

1 **III. APS'S APPLICATION SEEKS TO RESOLVE ISSUES THAT WERE**
2 **RESOLVED IN ITS LAST RATE CASE, VIOLATES THE TERMS OF**
3 **THE SETTLEMENT AGREEMENT IN ITS LAST RATE CASE, AND**
4 **FURTHER VIOLATES THE COMMISSION'S ORDER ADOPTING**
5 **AND APPROVING THE SETTLEMENT AGREEMENT**

6 APS's most recent rate case was resolved by a Settlement Agreement
7 ("Settlement Agreement") that was submitted to the Commission in Docket E-01345A-
8 11-0224 and approved in Decision No. 73183 (May 24, 2012). The Settlement
9 Agreement specifically addressed the primary issue that APS now seeks to re-litigate in
10 its Application: how to address the purported mismatch between APS's volumetric
11 energy rate structures and the recovery of fixed infrastructure costs. The Settlement
12 Agreement also contained a "stay out" provision that barred APS from filing a new
13 general rate case until May 31, 2015. This may explain, but does not legitimize, APS's
14 attempt, via its Application, to (1) avoid proper ratemaking by not allocating the revenue
15 its "solutions" will generate (as, discussed in Section II above) or (2) engage in single-
16 issue ratemaking (as discussed in Section 0 below).

17 **A. Distributed Generation, Which Necessarily Includes NEM, Was**
18 **Squarely Addressed By The Lost Fixed Cost Recovery Mechanism**

19 When crafting the LFCR mechanism, the signatories to the Settlement Agreement
20 began by identifying the issue they sought to address:

21 The Signatories also recognize that, under APS's current
22 volumetric rate design, the Company recovers a significant portion
23 of its fixed costs of service through kilowatt-hour ("kWh") sales.
24 Commission rules related to EE and Distributed Generation
25 ("DG") require APS to sell fewer kWh, which, in turn, prevents the
26 Company from being able to recover a portion of the fixed costs of
27 service embedded in its energy rates.²⁰

27 ²⁰ Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10 (emphasis
28 added).

1 The Settlement Agreement starts from the premise of a potential rate design issue: a
2 significant portion of APS's fixed costs are recovered in relation to charges assessed on a
3 volumetric basis (as part of energy rates). This has the potential to cause a rate recovery
4 mismatch. Distributed Generation customers (including NEM customers) purchase fewer
5 kWh from APS, and to the extent that the presence of their net metered systems does not
6 confer benefits in proportion to or in excess of the fixed costs they avoid paying, there is
7 a possibility that an under-recovery of such fixed costs from NEM customers may occur.

8 As an initial matter, as explained in greater detail in the Crossborder Energy
9 Study, SEIA rejects the assumption that NEM customers do not confer a benefit on APS
10 and its system at least in proportion to and very likely in excess of the fixed costs they
11 avoid. Setting this factual issue aside, compare the Settlement Agreement's framing of
12 the issue to APS's description of the alleged problem addressed by its Application:

13 A typical residential bill is structured so that the charges paid
14 contribute to the system's costs[.] The components of this average
15 bill reflect each category of costs required to supply electric
16 service to customers. A residential customer's contribution to these
17 costs occurs through energy usage charges. In other words, the
amount of a residential customer's contribution to fixed costs is
based on their energy usage. But Net Metering allows customers
to avoid paying for these fixed costs.²¹

18 The issues are precisely the same. Whether the phrasing is (as in the Settlement
19 Agreement) that "the Company [is prevented] from being able to recover a portion of the
20 fixed costs of service embedded in its energy rates [because] Distributed Generation
21 require APS to sell fewer kWh"²² or that (as in APS's Application) "Net Metering allows
22 customers to avoid paying for these fixed costs [because] the amount of a residential
23 customer's contribution to fixed costs is based on their energy usage,"²³ the issues are the
24 same. APS's attempt to avoid this correspondence by introducing a newly-alleged cost

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26 ²¹ Application at 8-9.

27 ²² Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10.

28 ²³ Application at 8-9.

1 shift from NEM to non-NEM customers is unavailing because, as detailed in Section II,
2 there is no such cost shift between such customers.

3 The mechanism chosen by the signatories to the Settlement Agreement to resolve
4 this potential under-collection issue was the LFCR adjustor. This mechanism is
5 addressed to potential cost-recovery issues with both energy efficiency (“EE”) and DG
6 (including NEM) programs. As agreed to by the signatories to the Settlement
7 Agreement, the LFCR mechanism “gives APS the opportunity to recover a portion of the
8 distribution and transmission costs associated with those residential, commercial and
9 industrial customers’ verified lost kWh sales attributed to EE and DG requirements.”²⁴ In
10 supporting the Settlement Agreement, APS specifically acknowledged that this was the
11 core function of the LFCR mechanism and agreed to it on this basis.

12 **B. APS Specifically Agreed That The LFCR Mechanism Is The**
13 **Appropriate Mechanism For Addressing Cost Recovery Issues**
14 **Related To DG**

15 Shortly after the Settlement Agreement was negotiated, signed and filed with the
16 Commission, APS testified in support of the Settlement Agreement. APS’s testimony
17 offered specific support for the LFCR mechanism. Mr. Snook explained why APS
18 supported the LFCR mechanism (after previously arguing for full revenue decoupling):

19 APS fully supports the LFCR mechanism proposed in the
20 Settlement Agreement and believes it is a reasonable mechanism to
21 implement to address the immediate concerns related to sales
22 reductions associated with EE and DG. The LFCR mechanism
represents a tailored solution to address the unrecovered fixed
costs associated with EE and DG - the exact issue at hand.²⁵

23 Mr. Snook’s testimony is as applicable today as when it was filed just last year:
24 the LFCR mechanism continues to represent a tailored solution to address the

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26 ²⁴ Decision No. 73183 at 12-13.

27 ²⁵ Direct Testimony of Leland R. Snook, attached to Notice of Filing Testimony in Support of
28 Proposed Settlement Agreement in Docket No. E-01345A-11-0224, at 7, l:5-9 (emphasis added).

1 unrecovered fixed costs associated with EE and DG - the exact issue at hand in APS's
2 Application. Given this, the issue remains, as it was last year, one of determining a
3 mechanism that permits APS to properly recover otherwise unrecovered fixed costs
4 associated with DG. And in this respect, the LFCR mechanism continues to, in Mr.
5 Snook's words:

6 provide[] a clear and direct link between EE and DG sales
7 reductions to the amount of uncollected fixed costs to be recovered
8 by [APS, allowing APS] the opportunity to recover its lost fixed
costs attributable to EE or DG at any level and pace that the
Commission authorizes as a matter of policy.²⁶

9 APS thus acknowledged that the LFCR mechanism provided a resolution acceptable to
10 APS that would be driven, at appropriate points, by the Commission.

11 **C. The LFCR Mechanism Was Approved By Staff And The**
12 **Commission As The Preferred Mechanism For Addressing The**
13 **Issues That APS's Application Now Seeks To Re-open**

14 In addition to participating in the negotiations that led to the Settlement
15 Agreement, including the LFCR mechanism, the Staff specifically supported the LFCR
16 mechanism itself (indeed, Staff was the original source of the mechanism²⁷). As noted in
17 the Commission's order approving and directing implementation of the Settlement
18 Agreement, the Staff "believes the LFCR mechanism is narrowly tailored to allow
19 recovery of certain documented and verified fixed costs that were not recovered due to
20 reductions in volumetric sales from Commission-approved EE and DG programs."²⁸
21 Again, this same cost recovery issue is precisely the issue that APS's Application seeks
22 to address. Staff believed last year that the appropriate way to address this rate recovery
23 issue was the LFCR mechanism. And, in its order, the Commission agreed: "We agree

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25 ²⁶ *Id.* at 2, 1:2-6.

26 ²⁷ Decision No. 73183 at 6.

27 ²⁸ *Id.* at 21. Note that, in addition to the Staff, the Signatories to the Settlement Agreement also
28 concurred in this finding. *Id.* at 29.

1 with Staff and the Joint Signatories that the LFCR mechanism is the appropriate
2 mechanism for APS at this time.”²⁹ APS’s Application provides no basis for disturbing
3 this determination.

4 The LFCR mechanism was thus mutually-agreed by the Settlement Agreement
5 signatories, proposed and agreed to by Staff, and ordered implemented by the
6 Commission. As intended by the signatories, acknowledged by Staff, and approved by
7 the Commission, the LFCR mechanism was and remains the appropriate mechanism to
8 resolve the DG-related fixed cost recovery issues that are the focus of the Application,
9 regardless of APS’s unconvincing allegation of a current cost shift.

10 **D. The LFCR Mechanism Has Just Been Implemented And Should Be**
11 **Allowed To Function As Agreed By The Settlement Agreement**
12 **Signatories And Adopted and Approved By The Commission**

13 As described by the Commission in its order approving the Settlement
14 Agreement, the LFCR mechanism requires annual filings and calls for annual
15 adjustments for actually-demonstrable unrecovered costs, with a 1 percent year-over-year
16 cap on adjustments (the excess is deferred to future year adjustments).³⁰ The LFCR
17 mechanism was thus designed to be flexible and respond to changes in the amount of
18 unrecovered lost fixed costs that APS could actually document. The impressive growth
19 of solar installations in APS’s territory³¹ is neither surprising nor a reasonable basis for
20 doing away with or bypassing the LFCR. It is instead an opportunity to test the
21 functioning of the mechanism.

22 Rather than allowing the LFCR mechanism to work, APS proposes to introducing
23 a new mechanism that (1) has not been subject to full ratemaking analyses (as was the

24 ²⁹ *Id.* at 40, l:1-6.

25 ³⁰ *Id.* at 13.

26 ³¹ Application at 1 (“In January 2009, there were approximately 900 systems installed. As of June
27 2013, that number has grown to over 18,000 and continues to grow at approximately 500 new rooftop
28 solar systems each month.”).

1 LFCR), (2) was not mutually-agreed to by a variety of diverse variety of stakeholders,
2 including the Staff (as was the LFCR), and (3) will need to be properly analyzed by the
3 Commission in order to test both its functioning and its appropriateness for the issue it
4 seeks to address. In stark contrast, the LFCR has already been analyzed and approved by
5 the Commission as “the appropriate mechanism for APS at this time” to address the exact
6 issues covered by APS’s Application. APS should not be permitted to revise rate
7 recovery treatment just as the agreed-to mechanism for such rate recovery is beginning to
8 function, and well before the comparison required by Decision No. 73183 of the LFCR
9 mechanism’s performance to the 1% cap level is made.

10 APS should further not be permitted to eliminate the newly-active LFCR
11 mechanism with respect to new DG customers, as proposed by Mr. Miessner.³² The
12 Commission’s order approving the Settlement Agreement contemplated that the LFCR
13 mechanism would, among other features, serve as a research and analysis tool for how to
14 move forward with rate design in APS’s next-permitted rate case.³³ Adjusting the
15 mechanism now – indeed, eliminating the mechanism for DG going forward – would
16 materially alter the results of the Settlement Agreement and reduces the value of the
17 LFCR mechanism to both the stakeholders and the Commission.

18 **E. The Settlement Agreement Prohibits A New Rate Case Before May**
19 **2015**

20 If APS’s Application were withdrawn and resubmitted to appropriately allocate
21 the revenue that would result from adoption of either option APS proposes, it would
22 properly be a matter for review in a general rate case. APS cannot, however, file such a
23 rate case. The Settlement Agreement requires that “APS will not file a general rate case
24
25

26 _____
27 ³² Miessner at 34, l: 19-22.

28 ³³ Decision No. 73183 at 40, l: 12-15.

1 prior to May 31, 2015. . . and that no resulting new base rates will be effective before
2 July 1, 2016.”³⁴

3 The testimony attached to APS’s Application fails to acknowledge that the
4 Settlement Agreement and the approving Decision No. 73183 proscribe the Application.
5 Merely asserting that APS believes this issue should be addressed now³⁵ is an insufficient
6 basis to disturb the barely year-old settlement, and that especially so where there is no
7 significant negative impact from deferring a review of this issue until APS’s next rate
8 case, as discussed in Section III.C, above. Moreover, APS cannot have it both ways: the
9 company cannot claim that “the proposed solutions do not redesign or reset rates for the
10 general classes of customers”³⁶ while simultaneously claiming to be solving a cost shift
11 being borne by all of APS’s non-NEM customers.

12 The four year stay-out period was agreed to by the parties and approved by the
13 Commission precisely to provide APS’s customers with rate certainty over that time.³⁷
14 APS now proposes to deny a class of customers, new NEM customers, that certainty.
15 APS’s proposed “Grandfathering” regime does not solve this issue. As has been raised
16 by numerous commenters in this Docket thus far, among other failings, grandfathering is
17 expressly non-transferable, effectively serving as a limitation on current NEM customers
18 selling their homes. APS’s proposal further denies rate certainty to the likely
19 significant³⁸ portion of APS’s current non-NEM customers who were considering
20 investing in a net metered solar system at some point during the stay-out period. They

21 ³⁴ *Id.* at 11.

22 ³⁵ Miessner at 22-24.

23 ³⁶ *Id.* at 23.

24 ³⁷ Decision No. 73183 at 41 (“We find that an important ratepayer benefit of the Settlement
25 Agreement is the four year stay out provision. . . . APS, Staff and the Joint Signatories believe that the
26 provisions of the Settlement Agreement will allow APS to remain financially stable and able to provide
reliable and safe electric service, while preserving the Commission’s flexibility to implement policy as it
chooses. We agree.”).

27 ³⁸ APS itself has noted that approximately 500 of its customers per month are currently installing
28 new rooftop solar systems each month. Application at 1.

1 were led to believe that, as a result of the Commission-approved Settlement Agreement,
2 which contained the LFCR mechanism, the issue of EE- or DG-related unrecovered costs
3 had been addressed through at least July 2016. Now, barely a year later, APS's
4 Application seeks to re-open this issue. The Commission should reaffirm the certainty
5 the Settlement Agreement was intended (and approved) to provide and reject APS's
6 Application.

7 SEIA will briefly address Section 21.3 of the Settlement Agreement in relation to
8 the goal of this filing.³⁹ For clarity: this filing does not seek to refer to the Settlement
9 Agreement as precedential. Instead, SEIA respectfully requests an order of the
10 Commission "enforcing [the] terms" of the Settlement Agreement as approved and
11 ordered by the Commission in Decision No. 73183, including directing APS to continue
12 to use the LFCR mechanism to address the cost recovery issue that it otherwise seeks to
13 address using one of the options proffered in its Application. The Commission should
14 direct APS to comply with the requirement of Decision No. 73183 "that Arizona Public
15 Service Company shall implement and comply with the terms of the Settlement
16 Agreement,"⁴⁰ including the LFCR mechanism, and otherwise maintaining the rates –
17 and rate certainty – that the Settlement Agreement provides.

18
19 **IV. APS'S APPLICATION CONSTITUTES IMPROPER SINGLE ISSUE**
20 **RATEMAKING**

21
22
23
24
25 ³⁹ Settlement Agreement at 21 ("Neither this Agreement nor any of the positions taken in this
26 Agreement by any of the Signatories may be referred to, cited, or relied upon as precedent in any
27 proceeding before the Commission, any other regulatory agency, or any court for any purpose except to
28 secure approval of this Agreement and to enforce its terms.").

⁴⁰ Decision No. 73183 at 47.

1 **A. Single Issue Ratemaking Is Impermissible In Arizona**

2 In cases such as *Scates v. Arizona Corp. Commission*, Arizona courts have
3 determined that “[w]hile the Corporation Commission has broad discretion in
4 establishing rates, it is required by our Constitution to ascertain the value of a utility’s
5 property within the State in setting just and reasonable rates.”⁴¹ The goal is first to
6 “determine the ‘fair value’ of a utility’s property and use this value as the utility’s rate
7 base,”⁴² and then to “determine what the rate of return should be, and then apply that
8 figure to the rate base in order to establish just and reasonable tariffs.”⁴³ It is precisely
9 these careful determinations that the Commission and a variety of other stakeholders
10 worked to make for APS just last year. It is precisely these determinations that APS’s
11 Application now aims to bypass.

12 Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in
13 response to a change in a single cost item considered in isolation. In *Scates*, Mountain
14 States Telephone and Telegraph Company sought to increase rates for the installation,
15 moving and changing of telephones, without an examination of the company’s other costs
16 and revenues.⁴⁴ As was found to be the case in *Scates*,⁴⁵ considering some costs in
17 isolation might cause the Commission to allow a utility to increase rates to recover higher
18 costs in one area without recognizing counterbalancing savings in another area. For this
19 reason, single-issue ratemaking is not sound regulatory policy.

20 _____
21 ⁴¹ *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978) (citing Ariz. Const.
art. 15, § 14).

22 ⁴² *Id.* at 615.

23 ⁴³ *Id.*

24 ⁴⁴ *Id.* at 614 (“The increase affected charges for all installation, moving and changing of telephones
25 within the State of Arizona. It amounted to an annual rise in revenue to Mountain States of approximately
4.9 million dollars, representing about two percent of its entire annual revenue in the state.”).

26 ⁴⁵ *Id.* (“The Commission approved the increase without any examination of the costs of the utility
27 apart from the affected services, without any determination of the utility’s investment, and without any
inquiry into the effect of this substantial increase upon Mountain States’ rate of return on that
28 investment.”)

1 **B. What APS Is Attempting To Do Is Single Issue-Ratemaking**

2 Both options proposed by APS's Application constitute impermissible single
3 issue-ratemaking. The Net Metering Option, which would require new NEM customers
4 to take service under the ECT-2 tariff, is single-issue ratemaking because it increases the
5 rates that a class of customers will pay for service by forcing new NEM customers onto
6 the ECT-2 rate so that they pay its demand charge, which will be assessed against the
7 peak monthly usage of a NEM customer on a per kW basis. This forced shift of rate
8 schedule and resulting increased total charges for new NEM customers will increase the
9 revenue that APS will receive without consideration of all the relevant costs and benefits
10 through a test year revenue requirement study, cost of service analysis, and rate design, as
11 would be accomplished in a general rate case.⁴⁶ Interestingly, in the technical
12 conferences, APS had Tony Georgis of NewGen Strategies & Solutions present "the
13 Fundamentals of Utility Ratemaking" which outlines the proper way to set rates for a
14 regulated public utility.⁴⁷ As described in Sections III.E, APS is likely not pursuing this
15 course – the correct method to set rates – despite the fact that good ratemaking principles
16 require it, because APS is forbidden by the terms of the Settlement Agreement from
17 pursuing new rates until May 2015 at the earliest.

18 The Bill Credit Option, which eliminates NEM as it currently exists and replaces
19 it with a bill credit based on a "sell all, buy all" scheme, will likewise change the amount
20 of revenue that APS collects and the amounts that it pays out in bill credits without
21 consideration of all the relevant costs and benefits through a test year revenue
22 requirement study, cost of service analysis, and rate design, as would be accomplished in
23 a general rate case. Specifically, APS proposes to change the rate at which it credits

24 _____
25 ⁴⁶ Note that General Order R14-2-103 requires "with regard to proposed increased rates or charges"
26 that APS submit "specific financial and statistical information required to be filed with a request by a
public service corporation doing business in Arizona for a determination of the value of the property of
the corporation and of the rate of return to be earned thereon."

27 ⁴⁷ nFront Consulting, Distributed Energy and NEM Technical Conference Facilitator's Report at 69-
28 75 (July 8, 2013).

1 NEM customers for their excess generation from a retail rate to a short-term wholesale
2 rate without rate-case quality data and analyses. APS will enjoy not only significant
3 savings in comparison to what it would otherwise expect to pay over the four year stay-
4 out period, it will also gain the benefit of DG generation at less than its real cost and
5 effectively see increased revenues due to the lower-than-retail credit amounts, in each
6 case without proper consideration of all of the relevant costs and benefits of so drastically
7 revising customer rates.

8 **C. Even If Single Issue Ratemaking Were Permissible, APS's**
9 **Application Fails As Proper Ratemaking Because It Does Not**
10 **Allocate The Additional Revenue That Would Be Generated To**
11 **Other Customer Classes**

12 APS has made no attempt to allocate the increased revenue that results from
13 either of its proposed NEM options. In a general rate case, such revenue would be
14 properly allocated. If either of the options in APS's Application is allowed to go into
15 effect, instead of being properly allocated, APS shareholders would receive a windfall.
16 There is certainly no explicit attempt to allocate the revenues to the non-NEM ratepayers
17 that APS claims are currently bearing unfairly-shifted costs.

18 The Net Metering Option will clearly collect more revenue, in comparison to
19 what APS expects to collect today. APS is not proposing to lower non-NEM customers'
20 rates as a result of collecting this additional revenue (except for the small reduction in
21 LFCR costs discussed in note 9 above). Given this lack of allocation, APS presumably
22 intends to keep the revenue for itself. If these customers were in fact unfairly paying
23 "more" than they would be absent the existence of NEM, APS's Application provides no
24 relief to them. They will continue to pay "more" than APS has alleged is their fair share
25 and in addition NEM customers will pay more than they currently pay. The same result
26 obtains with respect to the Bill Credit Option. Significant additional revenue will be
27 generated, but there is no attempt to allocate this revenue to lower non-NEM customers'

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1 rates. In each case, the increased revenue generated is unallocated and would presumably
2 be retained by APS shareholders. In addition, if APS' proposed incentives are instituted
3 then all ratepayers will see rates increase as a result of an increased REST Surcharge.

4 **D. Technical Conferences Are An Inadequate Basis For Changing**
5 **Rates Without A Rate Case**

6 As part of the Commission-ordered technical conferences that preceded APS's
7 Application, Tony Georgis of NewGen Strategies & Solutions summarized the elements
8 of standard utility ratemaking. In addition to the revenue requirement determination that
9 the Arizona Constitution demands, there is a requirement to allocate costs appropriately
10 across function areas (e.g., production, transmission, distribution), classify those costs
11 (e.g., demand, energy, customer costs), and then to allocate those costs among rate
12 classes. With this as background, the utility then designs rates.⁴⁸ At best, the technical
13 conferences produced information that could be introduced in a general rate case
14 assessment to discuss and determine the impact of NEM. Such information would be
15 useful solely in the context of all issues associated with determining and allocating the
16 utility's total costs and then designing appropriate rates. APS's Application seeks to
17 avoid this necessary work.

18 Indeed, APS arguably acknowledges that the technical conferences did not
19 produce results on which the Commission can reasonably rely in moving forward on this
20 issue in isolation. In particular, even though "there was disagreement on the amount and
21 type of infrastructure that DE defers,"⁴⁹ and even though "[t]here was no clear consensus
22 on how DE and net metering should be evaluated when developing utility programs,
23 and. . . what costs and benefits should be included when performing such evaluations,"⁵⁰

25 ⁴⁸ nFront Consulting, Distributed Energy and NEM Technical Conference Facilitator's Report 13-14
26 (July 8, 2013).

27 ⁴⁹ Bernosky at 10, l: 12-13.

28 ⁵⁰ *Id.*, l: 13-15.

1 APS proposes to present the Commission with two APS-preferred solutions, based on
2 APS's determination of the costs and benefits, and asks the Commission to choose. Note
3 also that the options that APS presents to the Commission lead to vastly different
4 outcomes: assuming for argument's sake that APS's estimates are correct, a decrease
5 from the current 14-16 cents/kWh savings to 6-10 cents/kWh for the Net Metering
6 Option or to approximately 4 cents/kWh for the Bill Credit Option.⁵¹ This significant
7 difference between these results make obvious that the Technical Conferences did not
8 produce rate case-quality data and that they cannot be relied on for the Commission to
9 make a rigorous and reasoned judgment in this matter. The Commission should thus
10 reject APS's invitation, especially so where moving forward on APS's Application would
11 constitute single-issue ratemaking and where the venue APS should properly look to in
12 order to determine "what costs and benefits should be included when performing such
13 evaluations" of NEM is a general rate case, a venue currently unavailable to APS.⁵²

14 The SAIC Energy, Environment and Infrastructure, LLC *2013 Updated Solar PV*
15 *Value Report* ("SAIC Report") that APS relies on as further support for its attempt to
16 engage in single-issue ratemaking is likewise unavailing. SEIA disagrees with its results,
17 of course, but leaving that aside for the moment, even if its results were not contested, the
18 SAIC Report is merely a datapoint that could be used in a general rate case to inform
19 appropriate ratemaking. It simply does not contain rate case-quality cost of service
20 information and the other elements of a proper rate design study and thus cannot be used
21 to change rates, as APS proposes to use it in the Application. To be clear, SEIA
22 acknowledges that a study that SEIA commissioned Crossborder Energy to perform titled
23 *The Benefits and Costs of Solar Distributed Generation for Arizona Public Service*
24 (*"Crossborder Energy Study"*), based as it is in on elements of the data that the SAIC
25 Report analyzes, necessarily carries this limitation as well. The point is that it is APS,

26 ⁵¹ Miessner at 30-31, l: 22-5.

27 ⁵² Decision No. 73183 at 11.

1 and not SEIA, that is attempting to use the SAIC Report as the basis for a rate change
2 instead of engaging in a rate case. This is necessarily improper, and the Commission
3 shouldn't allow APS to bypass good ratemaking principles in this manner.

4
5 **V. NO LEGAL OR REGULATORY AUTHORITY, NOR COMMISSION**
6 **REQUIREMENT, ALLOWS FOR THE RATE CHANGES PROPOSED**
7 **IN APS'S APPLICATION**

8 APS's Application is unmoored from state law or regulations and simply has not
9 been requested or required by the Commission. No statutory authority or regulation is
10 cited by APS as the basis for its Application. SEIA believes the proper legal standards
11 are those provided for a rate case, as described in *Scates*.⁵³ APS is, of course, forbidden
12 to file such a rate case, leaving the Commission to address APS's authority-free and
13 nearly standard-less filing.

14 Further, APS can find no support in the Commission's measured response to
15 APS's various filings in Docket No. E-01345A-12-0290 to give APS the authority to
16 make the proposed rate change proposed in the Application. Indeed, the Commission
17 there merely authorized APS to hold the technical conferences; there was no invitation
18 for the Application:

19 APS shall conduct a multi-session technical conference to evaluate
20 the costs and benefits of Distributed Renewable Energy and NEM
21 as proposed in the APS comments to Staffs Recommended
22 Opinion and Order that were docketed on November 15, 2012, and
23 as recommended by Staff in Finding of Fact No. 41.⁵⁴

24 The Commission certainly knows how to require filings like the Application, if and when
25 it desires them. For example, in the very same order, the Commission ordered APS to
26 conduct a study on the REST surcharge and to file proposed changes based on the study:

27 ⁵³ *Scates* at 614.

28 ⁵⁴ Decision No. 73636 at 27.

1
2 Arizona Public Service Company shall conduct a study of how to
3 expand the current three customer categories for the REST
4 surcharge into more distinct categories and that Arizona Public
Service Company shall file any proposed changes from the
customer category changes study in its 2014 REST Plan.⁵⁵

5 The Commission has the authority and knows how to order a subsequent filing
6 when it wants one. APS has failed to support its most basic claims of a cost shift; the
7 Commission should weigh this failing when considering whether it might be
8 appropriate to reject APS's filing as outside the bounds of what the Commission
9 authorized in Decision No. 73636.

10
11 **VI. COMMISSION SHOULD REJECT THIS FILING ON ITS FACE**

12 The ACC has plenary authority in dealing with public service companies.⁵⁶ In
13 addition to this general grant of authority, the Commission has specific authority to reject
14 APS's attempted violation of the Settlement and Decision No. 73183, and instead to
15 order APS's compliance.⁵⁷ SEIA hereby petitions the Commission pursuant to Ariz. Rev.
16 Stat. § 40-246(A) to address, and otherwise protests: (1) APS's attempt to subvert the
17 Constitutionally-required investigation of its rate base and otherwise engage in proper
18 ratemaking procedure, (2) APS's attempt to engage in single-issue ratemaking, (3) APS's
19 failure to comply with those elements of the Settlement Agreement and Decision No.
20 73183 that require that APS use and defend the LFCR mechanism as the appropriate
21 mechanism for resolving any alleged under-collection of fixed costs due to DG (which
22 necessarily includes with respect to NEM), and (4) APS's failure to comply with those
23 elements of the Settlement Agreement and Decision No. 73183 that require that APS
24 stay-out from filing a rate case until May 2015. The Commission should order such relief

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26 ⁵⁵ *Id.* (emphasis added)

27 ⁵⁶ Ariz. Rev. Stat. § 40-202(A).

28 ⁵⁷ Ariz. Rev. Stat. § 40-202(L).

1 as it deems appropriate for each of the foregoing issues and should, in addition, enter an
2 order dismissing the Application in its entirety and requiring APS to address the issues
3 discussed in the Application, if they are to be addressed at all, only in the filing of APS's
4 next general rate case, after May 31, 2015.

5
6 RESPECTFULLY SUBMITTED this 20th day of August, 2013.

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