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7 Attorneys for Arizona Public Service Company

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

11 BOB STUMP, Chairman
 12 GARY PIERCE
 13 BRENDA BURNS
 14 ROBERT L. BURNS
 15 SUSAN BITTER SMITH

14 IN THE MATTER OF THE APPLICATION
 15 OF ARIZONA PUBLIC SERVICE
 16 COMPANY FOR APPROVAL OF NET
 17 METERING COST SHIFT SOLUTION

DOCKET NO. E-01345A-13-0248

**RESPONSE TO SEIA'S MOTION
TO DISMISS**

17 In an apparent attempt to delay the Commission's substantive consideration of
 18 this matter, SEIA puts forth flawed arguments without citing to any legal standard for
 19 dismissal or invoking any legal principle that would justify rejecting APS's Application
 20 without even considering the facts. And even though the Application included sworn
 21 testimony, the Motion ignores it, making factual assertions regarding the existence of the
 22 cost shift without any supporting testimony or other evidence.

23 The Motion's arguments are unmoored from law or fact and reflect a
 24 misunderstanding of basic regulatory principles and the settlement agreement in APS's
 25 last rate case. Without legal or factual grounding, the Motion is simply a statement of
 26 policy disagreements—a plea for continuing an unsustainable status quo—not a motion
 27 to dismiss. To the extent that a procedural rule requires a response, and assuming that
 28

1 the Motion is in fact a valid motion and procedurally proper, APS requests that the
2 Motion be denied.

3
4 **I. THE MOTION'S COST SHIFT ARGUMENTS REFLECT A MISUNDERSTANDING OF BASIC REGULATORY PRINCIPLES.**

5 The Application included sworn testimony identifying how Net Metering will
6 result in costs being shifted to non-solar customers in the form of higher rates. The
7 Motion ignores that testimony, and without any of its own testimony, asserts that costs
8 are not currently being shifted to non-solar customers. This argument, and the Motion's
9 argument about a mechanism to share savings with non-solar customers, either
10 misunderstands or misrepresents APS's filed rate schedules and the cost of service
11 principles underlying rate cases in Arizona.

12 A review of basic regulatory principles and APS's filed rate schedules provides
13 all information needed regarding how costs are shifted to non-solar customers. Certain
14 costs are currently being shifted to customers without solar through approved rate
15 adjustor mechanisms. Less kilowatt hour (kWh) sales or revenue levels from which
16 fixed dollars are collected inherently result in higher cost-per-kWh or percentage-of-rate
17 adjustor payments. Because the dollars that these adjustors must recover do not decrease
18 if a customer installs solar, the same amount must be collected from a smaller pool of
19 customers. In the end, non-solar customers pay more for both cost-per-kWh and
20 percentage-of-rate adjustors.

21 For instance, customers pay for APS's Lost Fixed Cost Adjustor (LFCR)
22 mechanism as a percentage of their overall bill. When solar customers avoid
23 contributing to fixed costs, they pay the LFCR percentage on a smaller bill. But because
24 the LFCR is a balancing account designed to collect unrecovered amounts in future
25 periods, amounts that solar customers do not pay will be substantially paid for by non-
26 solar customers. Similarly, APS's Transmission Cost Adjustor and Demand Side
27 Management Adjustment Clause are applied to customers based on a per kWh rate.
28

1 Because solar customers' bills reflect less kWh, they will substantially avoid
2 contributing to the cost recovery for both of these adjustors. Finally, APS's Power
3 Supply Adjustor (PSA) is applied on a per kWh basis. Customers that transition to solar
4 within a year avoid paying for historical fuel cost balance amounts that they helped to
5 cause, as well as fuel hedges that were entered into on their behalf.

6 All other fixed costs not captured by these adjustor mechanisms will be
7 permanently shifted to non-solar customers when new billing determinants (and
8 resulting rates) are established in APS's next rate case. This permanent cost shifting has
9 already occurred in connection with those customers who installed solar before and
10 during the 2010 test year. The cost shift will continue in every subsequent rate case until
11 it is resolved.

12 APS's proposal would stop the cost shift that is presently occurring through the
13 rate adjustor mechanisms described above and the future cost shift that will occur when
14 new, eroded billing determinants and resulting rates are established. Stopping the cost
15 shift inherently reduces rates by preserving test year cost responsibility set by the
16 Commission. Costs recovered through the adjustor mechanisms and rates established in
17 a subsequent rate case will be lower under APS's proposals than they would be
18 otherwise because the customer deemed responsible for costs during a test year will
19 remain responsible for those costs.

20
21 **II. SEIA'S INTERPRETATION OF THE 2012 SETTLEMENT AGREEMENT
22 IS INCORRECT AND IRRELEVANT.**

23 The settlement agreement in APS's last rate case did not directly address Net
24 Metering nor preclude any attempt to address Net Metering. Nonetheless, the Motion
25 interprets a provision in that settlement agreement—concerning the LFCR—as close
26 enough in subject matter to somehow bar APS's application. But the Motion cites to no
27 legal principle supporting such a bar. And given that SEIA did not participate in the
28 settlement negotiations, nor sign the settlement agreement, it is not clear how SEIA

1 arrived at its interpretation in the first place. SEIA fails to recognize that the LFCR
2 mechanism only addresses APS's cost recovery for fixed costs related to distribution and
3 a portion of transmission facilities between rate cases. The LFCR does not in any way
4 address the inequity of shifting the recovery of those costs to non-solar customers, which
5 is the subject of APS's Application. Because the LFCR provision does not address Net
6 Metering, nor bar APS from proposing to change how Net Metering functions, SEIA's
7 attempt to graft new terms onto the settlement agreement fails. *See Long v. City of*
8 *Glendale*¹ (rejecting interpretation of contract that imposed term not expressed in
9 contract).

10 The Motion's argument that the four year stay out provision in the 2012
11 settlement agreement bars the Application similarly fails. In the stay-out provision, APS
12 agreed to not file a general rate increase until May of 2015:

13 APS agrees not to file its next general rate case prior to May 31, 2015. The
14 test year end date for the base rate increase filing contemplated in this
15 section shall be no earlier than December 31, 2014 but need not coincide
16 with the end of a calendar year. No new base rates resulting from APS's
next general rate case will be effective before July 1, 2016.²

17 The critical flaw in the Motion's argument is that APS's Application is not a general rate
18 case filing. APS's proposals will not create new base rates nor increase any existing rate
19 for APS service. Instead, they would change eligibility for some existing rates (the Net
20 Metering Proposal), or create a bill crediting mechanism in lieu of Net Metering (the
21 Bill Credit Proposal). Neither alternative affect existing Net Metering customers and
22 both rely on and are anchored in the revenue requirement and cost of service findings
23 made during the 2010 test year. The 2012 settlement agreement, and the Commission's
24 subsequent decision adopting that agreement, do not bar APS's Application.

25 ...

26 ...

27 ¹ 208 Ariz. 319, 329, 93 P.3d 519, 529 (Ct. App. 2004).

28 ² See Decision 73183, Exhibit A, § 2.1.

1 **III. APS'S APPLICATION IS PROPER OUTSIDE OF A RATE CASE.**

2 The proposals in APS's Application would not change existing base rates,
3 increase base rates or increase APS's revenue beyond the amount set in APS's last rate
4 case. Instead, both proposals rely on existing rates and only apply prospectively. If a
5 customer decides to install rooftop solar, (i) the Net Metering Proposal would change
6 that customer's eligibility for certain rates; and (ii) the Bill Credit Proposal would
7 update how that customer is credited for their solar energy production. APS's proposals
8 fit within existing rates and are based on the revenue requirement and billing
9 determinants approved in APS's most recent rate case. APS's Application merely seeks
10 to adjust the Net Metering framework reflected in APS's Rate Rider Schedule EPR-6
11 that, interestingly, was approved and became effective in its own proceeding outside of a
12 rate case.³

13 The Motion nonetheless claims that the proposals violate the rule set forth in
14 *Scates v. Arizona Corporation Commission*.⁴ In *Scates*, Mountain States Telephone and
15 Telegraph Company increased an existing rate outside of a rate case in a manner that
16 increased the utility's revenue by \$4.9 million over the level revenue approved in
17 Mountain States' last rate case.⁵ The court rejected this increase, holding that the
18 Commission cannot increase a rate outside of a rate case without determining the fair
19 value of the utility's rate base:

20 the Commission [is] without authority to increase [a] rate without any
21 consideration of the overall impact of that rate increase upon the return of
22 Mountain States, and without, as specifically required by our law, a
determination of Mountain States' rate base.⁶

23 This holding, however, does not implicate APS's Application because the proposals will
24 not increase any of APS's rates, nor increase APS's revenue beyond approved rate case
25 levels, as required by *Scates*.

26 ³ See ACC Decision No. 71182, which approved APS's Rate Rider Schedule EPR-6 for net metering.

27 ⁴ 118 Ariz. 531, 578 P.2d 612 (App. 1978). SELA refers to APS's proposals as "single issue
28 ratemaking," but the court in *Scates* does not use this term.

⁵ *Id.* at 533, 578 P.2d at 614.

⁶ *Id.* at 537, 578 P.2d at 618.

1 In APS's last rate case, the Commission—and all parties to the settlement
2 agreement—agreed that a certain amount of revenue was needed to meet an agreed upon
3 cost of service. That cost of service includes all fixed infrastructure costs. Rates were
4 designed to collect this revenue requirement based on the billing determinants and
5 customer class data that existed in the 2010 historical test year. As explained in APS's
6 Application, however, customers who install rooftop solar stop contributing to those
7 fixed costs even though they continue to rely on and use the electricity grid.

8 The customers that would be affected by APS's proposals did not have solar
9 systems installed in the 2010 test year. No forward looking adjustment was made to the
10 test year to account for future customer adoption of solar. Because APS's Application
11 seeks prospective treatment only for customers that install solar almost three full years
12 beyond the actual test year, the Application merely seeks to preserve the billing
13 determinants that existed during the test year and the baseline revenues upon which the
14 Commission established rates. APS's proposals rely on existing rates established in the
15 last rate case and are based on the cost of service study underlying those rates.

16 The testimony of Charles Miessner attached to the Application explains how
17 customers with solar do not pay for electric services they use. Attachment 3 to his
18 testimony provides illustrative examples of customer bills with and without solar under
19 three scenarios: the status quo, under the Net Metering Option and under the Bill Credit.
20 Using data in that attachment, the following table summarizes the total bill for a winter
21 customer on an inclining block rate under these scenarios:
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Table 1: Illustrative Customer Winter Bill With and Without Solar⁷

	Cost of Service Contribution	Change in Approved Revenue Needed to Meet Agreed Upon Cost of Service	Change in Cost of Service ⁸	Total Amount Shifted to Non-Solar Customers
Customer Without Solar	\$115.91	\$0	\$0	\$0
Customer Installs Solar— Status Quo	\$30.65	(\$85.26)	(\$30.00)	\$55.26
Customer Installs Solar— Net Metering Option	\$82.95	(\$32.96)	(\$30.00)	\$2.96
Customer Installs Solar— Bill Credit Option	\$85.91	(\$30.00)	(\$30.00)	\$0

As this table shows, customers that install solar now contribute less to the grid's fixed costs, even though the cost of service does not decline. APS's proposals would, by contrast, align solar customer contributions with cost of service reductions. APS performed a rigorous and detailed analysis to validate that the examples attached to Mr. Miessner's sworn testimony, and underlying this summary table, truly represented actual and typical APS solar customers.⁹ This detailed rebilling simulation spanned calendar year 2012 and included a representative group of almost 8,000 residential customers that

⁷ This table is based on a winter bill for a representative customer on the inclining block rate E-12.

⁸ The change in cost of service due to rooftop solar can be derived from average embedded costs, near-term avoided costs or near-term market purchase costs. This example reflects near-term market purchase costs.

⁹ As part of the discovery in this matter, APS produced Mr. Miessner's detailed workpapers and calculations and filed them in the docket.

1 had solar systems online for the entire year. This simulation calculated what the
2 customers would have paid under current rates if they did not have a solar system and
3 compared that amount to their bills with a solar system installed. The analysis supports
4 the conclusions in APS's Application beyond any doubt. SEIA's unsupported assertions
5 that APS did not base its proposals on rate case quality data or detailed analysis are
6 simply unfounded and untrue.

7 APS's proposals will not increase APS's overall revenue in a manner that violates
8 *Scates*; they will only result in solar customers contributing to fixed costs in a manner
9 that is closer to what the parties agreed upon during APS's last rate case. Indeed, the
10 court in *Scates* contemplated proposals similar to APS's Application when it suggested
11 that modernizing a rate schedule in a manner "designed to produce the same revenue" as
12 established in a rate case did not require a new rate case.¹⁰ APS's proposals are only
13 similar, however, (and not identical) to this suggestion in *Scates*, because the proposals
14 will not result in the same revenue as before. Customers who install solar under APS's
15 proposals still pay less than customers without solar, and by doing so, contribute less to
16 the grid's fixed costs than what would be called for based on data from the last rate case.

17 That solar customers will have lower bills under APS's proposals also addresses a
18 separate point raised by The Alliance for Solar Choice's (TASC) Joinder in SEIA's
19 Motion. TASC cites to A.A.C. R14-2-2305 as requiring APS to meet a minimum burden
20 of proof if APS's proposals "would increase a Net Metering Customer's costs beyond
21 those of other customers with similar load characteristics or customers in the same rate
22 class" if the customer did not participate in Net Metering. What TASC overlooks,
23 however, is what Table 1 demonstrates: customers installing solar under APS's
24 proposals will pay lower costs than they did before installing solar. Because they will
25 pay lower costs, the procedural requirements in R14-2-2305 do not apply.¹¹

26
27 ¹⁰ *Id.* at 536, 578 P.2d at 617.

28 ¹¹ In discussing R14-2305, APS assumes, for purposes of argument only, that the other requirements regarding similar load characteristics are met.

1 Despite SEIA and TASC's unsupported factual assertions, APS's proposals will
2 not generate additional, unapproved revenue for APS. Indeed, APS specifically did not
3 propose its solutions for the purpose of generating additional profits as alleged by SEIA.
4 Although APS believes it is unnecessary to do so for the reasons articulated above, if the
5 Commission has any doubts concerning revenues related to any particular solution, the
6 Commission could resolve the issue with an appropriate order in this proceeding. For
7 instance, the Commission could order APS to record a regulatory liability for any
8 incremental revenues received from customers that install solar systems after an ACC
9 decision on APS's Application and order APS to propose equitable treatment for the
10 regulatory liability in its next rate case.

11 **IV. LEGAL AUTHORITY EXISTS FOR APS'S APPLICATION**

12 APS's Application is expressly permitted by A.R.S. § 40-250(B), which
13 authorizes the Commission to approve—outside of a rate case—any “rate, fare, toll,
14 rental, charge, classification, contract, practice, rule or regulation not increasing or
15 resulting in an increase....” Moreover, A.R.S. § 40-249 is available to Public Service
16 Corporations to seek relief from the Commission in the very few circumstances where
17 A.R.S. § 40-250(B) would arguably not apply.

18 **V. CONCLUSION**

19 The Motion is nothing more than a delay tactic. It is not a motion—it is
20 unsupported by any legal standard for dismissal. Nor does it cite to a legal principle that
21 justifies dismissal. And although the Motion contains factual assertions, it does not
22 contain any testimony supporting those assertions. Without any factual and legal basis
23 for dismissal, the Protest and Motion to Dismiss is solely an attempt to both distract
24 policy makers from assessing the facts surrounding Net Metering and derail efforts to
25 build a sustainable framework for solar to flourish in Arizona over the long term. The
26 Protest and Motion to Dismiss does not contain an actionable motion to dismiss and
27 should be treated as a Protest that asserts policy disagreements. Nonetheless, to the
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1 extent required, APS requests that the Motion to Dismiss be denied for the reasons
2 described above.

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4 RESPECTFULLY SUBMITTED this 9 day of September, 2013.

5
6 By: _____

~~Thomas A. Loquvam
Deborah R. Scott~~

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8 Attorneys for Arizona Public Service Company
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12 September, 2013, with:

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