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Arizona Corporation Commission  
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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

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

DOCKET NO. E-01345A-13-0248

SEIA'S REPLY TO APS'S RESPONSE  
TO SEIA'S PROTEST AND MOTION TO  
DISMISS

The Solar Energy Industries Association<sup>1</sup> ("SEIA") hereby replies to Arizona Public Service's ("APS's") Response to SEIA's Motion to Dismiss ("Response"), filed in this Docket No. E-01345A-13-0248 (the "Docket") on September 9, 2013. APS's Response was an opportunity for APS to correct, or at least address, the significant flaws

<sup>1</sup> The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

1 in APS's Application for Approval of Net Metering Cost Shift Solution filed on July 12,  
2 2013 ("Application") and entered into the Docket. Several of these flaws were  
3 catalogued in SEIA's Protest and Motion to Dismiss, filed in this Docket on August 20,  
4 2013 ("Motion"). Instead, APS's Response reflects only misunderstanding and  
5 mischaracterization of SEIA's Motion and, more importantly, continues the effort to  
6 avoid APS's obligations under the Commission-approved settlement agreement of its last  
7 rate case with legal and factual sleights of hand. APS makes no attempt to address the  
8 fundamental flaw of APS's Application: "APS has provided absolutely no support for the  
9 existence of the cost shift to other customers that is the fundamental basis of its filing."<sup>2</sup>  
10 Without such factual demonstration, the Commission should dismiss the Application.

11  
12 **I. SEIA'S MOTION TO DISMISS IS PROCEDURALLY PROPER AND**  
13 **COMPLETE**

14 As a threshold matter, SEIA's Motion is procedurally proper and in compliance  
15 with both the Commission's rules and the Rules of Civil Procedure for the Superior  
16 Courts of Arizona.<sup>3</sup> The Rules of Civil Procedure require that a motion "be in writing,  
17 shall state with particularity the grounds therefor, and shall set forth the relief or order  
18 sought."<sup>4</sup> SEIA's written Motion submitted in this Docket satisfies all three  
19 requirements.

20 The relief sought is clear: SEIA seeks dismissal of APS's Application and an  
21 order of the Commission that the subject matter of the Application be addressed, if at all,  
22 in APS's next rate case.<sup>5</sup> In addition, SEIA requests an order of the Commission

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24 <sup>2</sup> Motion at 4.

25 <sup>3</sup> R14-3-106(K) (requiring compliance "insofar as practical" with the Rules of Civil Procedure  
26 for the Superior Courts of Arizona in motions practice before the Commission).

27 <sup>4</sup> Ariz. Rules Civ. Proc. 7.1(a).

28 <sup>5</sup> Motion at 26, l:1-4.

1 enforcing the Settlement Agreement, submitted to the Commission in Docket E-01345A-  
2 11-0224 and approved in Decision No. 73183 (May 24, 2012), by which APS's most  
3 recent rate case was resolved ("Settlement Agreement"), "including directing APS to  
4 continue to use the LFCR mechanism to address the cost recovery issue that it otherwise  
5 seeks to address using one of the options proffered in its Application."<sup>6</sup>

6 The particular grounds for granting this relief are equally clear. As described in  
7 SEIA's Motion:

- 8 (1) APS has failed to meet even the minimal standard of providing facts  
9 sufficient to determine how the cost shift it alleges occurs, and the facts it  
10 has provided belief that such a cost shift does in-fact occur;<sup>7</sup>
- 11 (2) The issues APS raises were squarely addressed in its last rate case, the  
12 resulting Settlement Agreement and the Commission order approving the  
13 Settlement Agreement. The Settlement Agreement and approving order  
14 should be enforced, and such enforcement serves as a bar to APS's  
15 incomplete, unsupported Application;<sup>8</sup>
- 16 (3) APS's Application constitutes impermissible single issue ratemaking,  
17 prohibited in Arizona as established in *Scates v. Arizona Corporation*  
18 *Commission*;<sup>9</sup> and
- 19 (4) There is no valid legal or regulatory authority that would permit APS to  
20 proceed in the face of these failings.<sup>10</sup>

21 On this last point, APS has attempted in its Response to offer the *ex post* rationale of  
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23 <sup>6</sup> *Id.* at 18, l: 7-17.

24 <sup>7</sup> *See id.*, Section II.

25 <sup>8</sup> *See id.*, Section III.

26 <sup>9</sup> *See id.*, Section IV.

27 <sup>10</sup> *See id.*, Section V.

1 A.R.S. § 40-250(B) as the legal basis for its filing.<sup>11</sup> APS provides no support for its new  
2 assertion that A.R.S. § 40-250(B) allows for its proposed rate schedule changes in either  
3 the Application (the Application was filed without reference to legal authority of any  
4 kind) or in the Response. Certainly a proposal like the Application, which seeks to move  
5 and lock a particular class of customers into a particular rate schedule (here, requiring  
6 new solar customers to take service under the ECT-2 schedule, via one of APS's  
7 proposed "solutions" to the alleged cost shift), requires a more fulsome explanation of  
8 precisely how A.R.S. § 40-250(B) might apply. Arguably, A.R.S. § 40-250(A) appears  
9 to be the proper legal standard because APS is proposing to "alter [a] classification,  
10 contract, practice, rule or regulation to result in [an] increase" of rates and charges that a  
11 class of customers will pay. The undeniable goal of APS's Application is to make new  
12 NEM customers pay more to APS through applicable rate schedule. In any event, the  
13 Commission should not accept this bald assertion of legal basis. Lacking any such legal  
14 and factual explanation, it is simply unreasonable that APS invokes the statute to do what  
15 it claims to be able to do here, i.e., shift a class of customers from one rate schedule to  
16 another by fiat in order to recover and retain greater revenues for APS.

17  
18 **II. APS MUST BEAR THE BURDEN OF PROOF TO SUPPORT ITS**  
19 **APPLICATION AND IT HAS FAILED TO DO SO**

20 APS's Response claims that SEIA's Motion is deficient because it "mak[es]  
21 factual assertions regarding the existence of the cost shift without any supporting  
22 testimony or other evidence."<sup>12</sup> The characterization is diametrically opposite where the  
23 Commission's rules actually place the burden of proof with respect to APS's Application:  
24 it is APS, not SEIA, that was required in the Application to present "the facts upon which  
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26 <sup>11</sup> Response at 9, l:12-17. APS has also offered A.R.S. § 40-249 as a possible basis for its filing  
27 but here again provides absolutely no justification by which the Commission might determine whether  
28 the assertion of this provision is proper.

<sup>12</sup> *Id.* at 1.

1 the application is based.”<sup>13</sup> As discussed at length in SEIA’s Motion, APS failed to do  
2 so.

3 Far from ignoring APS’s testimony attached to its Application,<sup>14</sup> SEIA not only  
4 reviewed it but cited to it in its Motion. As noted in SEIA’s Motion, Mr. Guldner’s  
5 testimony offers no examples of cost shifting, only hypotheticals, and then references Mr.  
6 Miessner’s testimony as supposedly containing a detailed description of the alleged cost  
7 shift.<sup>15</sup> As also discussed in SEIA’s Motion, however, Mr. Miessner’s testimony  
8 “provides no demonstration of the actual shift in which a non-NEM customer actually  
9 pays more than he or she would have paid in the absence of other customers signing up  
10 for NEM.”<sup>16</sup>

11 In lieu of correcting these obvious deficiencies, the Response simply restates  
12 APS’s unsupported assertions. Instead of clearly identifying the cost shift that APS  
13 alleges that is the fundamental basis of the Application, the Response maintains only that  
14 “[t]he Application includes sworn testimony identifying how Net Metering will result in  
15 costs being shifted to non-solar customers in the form of higher rates.”<sup>17</sup> Tellingly, APS  
16 does not cite to any portion of its testimony in support of this assertion. APS cannot  
17 point to any testimony because, as discussed in SEIA’s Motion, no portion of APS’s  
18 testimony actually identifies the alleged cost shift.<sup>18</sup> APS’s Response goes on to offer  
19 further citation-free assertions that “[a] review of basic regulatory principles and APS’s  
20 filed rate schedules provides all information needed regarding how costs are shifted to  
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22 <sup>13</sup> R14-3-106(F).

23 <sup>14</sup> This is APS’s claim, *see* Response at 1, notwithstanding that even a casual reading of SEIA’s  
24 Motion renders this claim clearly false.

25 <sup>15</sup> Motion at 4, l: 14-24.

26 <sup>16</sup> *Id.* at 5, l:11-13; *see also Id.* at 4-6.

27 <sup>17</sup> Response at 2 (emphasis added).

28 <sup>18</sup> *See* Motion Section II, at 4-10.

1 non-solar customers.”<sup>19</sup> These vague references are legally and factually worthless and  
2 do not provide the Commission with an adequate basis on which to approve APS’s rate  
3 increase proposed for new NEM customers. Whether or not these unspecified principles  
4 or rate schedules contain evidence of the cost shift APS alleges cannot be determined  
5 based on what APS has filed in this docket; what is clear and what APS makes no  
6 substantive effort to dispute is that support for the alleged cost shift does not appear in the  
7 only place that matters, APS’s Application and attached testimony.

8  
9 **III. THE LFCR MECHANISM IS THE TAILORED SOLUTION TO**  
10 **UNRECOVERED FIXED COSTS ASSOCIATED WITH DISTRIBUTED**  
11 **ENERGY, AS INTENDED BY THE COMMISSION-APPROVED**  
12 **SETTLEMENT AGREEMENT**

13 In service to its unsupported assertions that “[c]ertain costs are currently being  
14 shifted to customers without solar through approved rate adjustor mechanisms,”<sup>20</sup> APS  
15 offers a series of vague references to various Commission-approved mechanisms.<sup>21</sup> The  
16 first of these is the lost fixed cost recovery (LFCR) mechanism, discussed at great length  
17 in SEIA’s Motion. As an initial matter, SEIA questions the talismanic significance that  
18 APS seems to ascribe to its determination that the Settlement Agreement itself did not  
19 specifically reference “net metering” in relation to the LFCR. As APS’s own supporting  
20 witness stated at the time APS filed the Settlement Agreement, the LFCR mechanism is  
21 the “tailored solution to address the unrecovered fixed costs associated with EE and DG –  
22 the exact issue at hand.”<sup>22</sup> Net Metering is part and parcel with the installation of

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24 <sup>19</sup> Response at 2, l: 12-13.

25 <sup>20</sup> *Id.* at 2, l: 13-15.

26 <sup>21</sup> *Id.* at 2-3.

27 <sup>22</sup> Motion at 13, citing Direct Testimony of Leland R. Snook, attached to Notice of Filing  
28 Testimony in Support of Proposed Settlement Agreement in Docket No. E-01345A-11-0224, at 7, l:5-9.

1 customer-sited distributed generation, in particular the residential customers who are the  
2 target of APS's Application; indeed, for residential customers, installation of a solar  
3 distributed generation system and its interconnection with APS's electrical system  
4 requires that the customer elect either Rate Rider Schedule EPR-6 (Net Metering) or Rate  
5 Rider Schedule EPR-2 (addressing monthly purchases of excess generation).<sup>23</sup> It is  
6 hollow for APS to claim that the issues addressed by the Settlement Agreement-mandated  
7 LFCR mechanism – how best to address the purported mismatch between APS's  
8 volumetric energy rate structures and the recovery of fixed infrastructure costs,  
9 particularly in relation to distributed energy<sup>24</sup> – are somehow different from the issues  
10 raised by APS's Application.<sup>25</sup>

11           Given this, as described in SEIA's Motion,<sup>26</sup> the LFCR mechanism should be  
12 given a reasonable opportunity to do the work that the Settlement Agreement signatories,  
13 the Commission's staff, and the Commission itself approved it to do. In particular, SEIA  
14 notes that not only are any potential cost shifts from NEM to non-NEM customers  
15 attributable to the proper functioning of the LFCR capped,<sup>27</sup> but the LFCR is currently  
16 recovering at a rate well less than the 1 percent cap.<sup>28</sup>

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21           <sup>23</sup> See Arizona Public Service Company, Interconnection Requirements for Distributed  
22 Generation (July 2012), at p. 37, *available at*: [http://www.aps.com/library/solar  
renewables/InterconnectReq.pdf](http://www.aps.com/library/solar_renewables/InterconnectReq.pdf).

23           <sup>24</sup> See Motion, Section III.

24           <sup>25</sup> See *id.* Section III.A, starting at 11, l:17.

25           <sup>26</sup> See *id.* Section III.C and III.D, starting at 14, l:11.

26           <sup>27</sup> *Id.* at 15, l:13-16.

27           <sup>28</sup> Decision No. 73732 (February 20, 2013) at 5, l:3-4 (allowing an LFCR rate of 0.2%). Note  
28 that, even if the Commission had allowed APS's preferred 0.2892% rate, the LFCR would still be  
recovering well under the permitted 1 percent cap.

1     **IV.    THE ALLEGATIONS RAISED BY THE APPLICATION ARE BEST-**  
2     **ADDRESSED IN A RATE CASE, BUT THE SETTLEMENT**  
3     **AGREEMENT BARS APS FROM FILING SUCH A RATE CASE**

4           In addressing the LFCR mechanism, APS makes passing references to other  
5   Commission approved-adjustors as related to the alleged cost shift, specifically the  
6   Transmission Cost Adjustor, Demand Side Management Adjustment Clause and Power  
7   Supply Adjustor.<sup>29</sup> This marks the first time in this Docket that APS has referenced other  
8   adjustors, and the reference validates something SEIA noted in its Motion: “APS  
9   believes, as a general matter, that its infrastructure cost recovery mechanism applicable to  
10  residential customers is flawed.”<sup>30</sup> The extent of APS’s rate recovery mechanisms that it  
11  now describes as related to the alleged cost shift leads to only one reasonable conclusion:  
12  any such cost shift, if actually found to occur, would have to be addressed in a full rate  
13  case proceeding, and resolved after due assessment of all of the costs and benefits that are  
14  at issue, across customer classes.

15           The Settlement Agreement and the Commission’s approving order bars this path  
16  to APS until May 31, 2015 at the earliest.<sup>31</sup> The Commission should not accept APS’s  
17  attempt to avoid this limitation via the Application and unsubstantiated reference to  
18  A.R.S. § 40-250(B). Instead, the Commission should issue an order requiring APS to  
19  address the issues raised in the Application, to the extent there are actionable issues, only  
20  in the context of its next rate case. Only in such a rate case will the Commission have the  
21  full suite of regulatory tools available to it (as well as those available to other stake-  
22  holders involved in that process) to fully and fairly assess the costs and benefits of NEM.

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26           <sup>29</sup> Response at 2-3.

27           <sup>30</sup> Motion at 15-16.

28           <sup>31</sup> Decision No. 73183 at 11.



1 SEIA further notes that this is nothing more or less than what *Scates v. Arizona*  
2 *Corporation Commission* requires.<sup>32</sup> Moreover, it is simply wrong to assert that APS's  
3 Application will not raise its customers' rates. The plain, undeniable objective of APS's  
4 Application is to have new NEM customers pay more for electric service. As described  
5 in detail in SEIA's Motion, both the Net Metering Option and the Bill Credit Option will  
6 increase rates to be paid by a single class of customers (new NEM customers)<sup>33</sup> without  
7 an investigation of the costs and benefits of serving them in the context of the costs and  
8 benefits of serving other customers (in particular, the non-NEM customers that APS  
9 claims are harmed). *Scates* does not permit what APS's Application proposes to do, the  
10 self-servingly limited analysis in APS's Response notwithstanding.

11  
12 **V. CONCLUSION**

13 The Response reveals APS's Application for what it is: a poorly-conceived,  
14 unsupported attempt to evade the resolutions reached in and limitations of APS's last rate  
15 case. For the reasons set forth in SEIA's Motion and this Reply, the Commission should  
16 reject APS's Response and its Application as both deficient and impermissible under  
17 Arizona law and this Commission's orders, and order dismissal of APS's Application.  
18 The Commission should further require that APS address the issues discussed in the  
19 Application, if they are to be addressed at all, only in the filing of APS's next general rate  
20 case, after May 31, 2015.

21  
22 ///

23 ///


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25 \_\_\_\_\_  
26 <sup>32</sup> See Motion Section III.A, starting at 19, l:1.

27 <sup>33</sup> See *id.* Section III.B, starting at 20, l:1. SEIA also reminds the Commission that, if the  
28 incentives that APS proposes in the Application are instituted, then all ratepayers will see rates increased  
as a result of an increased REST Surcharge.

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RESPECTFULLY SUBMITTED this 16th day of September, 2013.

  
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