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AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

Bob Stump, Chairman  
Gary Pierce, Commissioner  
Brenda Burns, Commissioner  
Bob Burns, Commissioner  
Susan Bitter Smith, Commissioner

Arizona Corporation Commission

DOCKETED

NOV 04 2013

DOCKETED BY

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

**COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE  
ON THE UTILITIES DIVISION STAFF RECOMMENDED ORDER**

The Alliance for Solar Choice ("TASC") respectfully submits these comments on the Utilities Division Staff Recommended Order issued on October 1, 2013 ("Recommended Order"). For the reasons set forth below, TASC urges the Commission to accept the recommendation of Utilities Division Staff to take no action on APS's Application and defer the matter for consideration during APS's next rate case.

APS clearly did not even concern itself with possible solar adoption rates in its last rate case. If it had, it could have made its proposals in that rate case when all of the competing priorities could fairly be considered and the parties had all appropriate information on APS's cost of service. However, APS did not even identify net metering as a potential issue that needed to be

1 addressed during the rate case that just concluded, bringing into question how much of an  
2 emergency the current limited solar penetration really is to APS or its ratepayers.

3         Bringing these issues to this Commission, late and outside a rate case, as APS has done,  
4 has invited a confusing proliferation of conflicting proposals, none of which rest on a necessary  
5 foundation of evidentiary support. The result is that the weight of evidence in this proceeding  
6 clearly demonstrates support for no proposal other than Staff's well reasoned recommendation to  
7 take no action at this time and require APS to raise this issue in its next general rate case.  
8

9         If the Commission feels that immediate action is needed, TASC encourages the  
10 Commission to accept the well-reasoned recommendation of Utilities Division Staff to develop a  
11 common set of assumptions regarding the costs and benefits of net metering, which APS can then  
12 use to propose an appropriate charge *or credit* in its next general rate case.  
13

#### 14 **I. BACKGROUND**

15         On August 21, 2013, Administrative Law Judge ("ALJ") Teena Jibilian granted TASC's  
16 motion to intervene in this docket. As stated in TASC's motion, TASC's member companies  
17 represent the majority of the nation's rooftop solar market and include SolarCity, Sungevity,  
18 Sunrun, Solar Universe, Verengo Solar and REC Solar. These companies are important  
19 stakeholders in Arizona's Renewable Energy Standard and net metering programs and are  
20 responsible for thousands of residential, school, church, government and commercial solar  
21 installations in Arizona. TASC's member companies have brought hundreds of jobs and many  
22 tens of millions of dollars of investment to Arizona's cities and towns.  
23

24         This proceeding was opened on July 12, 2013, when Arizona Public Service Company  
25 ("APS") filed its Application for Approval of Net Metering Cost Shift Solution ("Application").  
26 With its Application, APS proposes to undermine the financial basis for residential customers to  
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28

1 self-supply their electric power needs with solar systems using the Commission's net metering  
2 rules. APS proposes to thwart the intended balance of the Commission's net metering rules by  
3 proposing two alternatives, either of which would have punitive effects on Arizona's residential  
4 solar market. The first alternative, which APS calls a "Bill Credit Option," would completely  
5 deny residential customers access to the net-metering rules, forcing customers to instead sell all  
6 output from onsite solar systems to APS under wholesale arrangements that substantially increase  
7 a customer's tax liability and reduce solar savings. The second alternative, which APS calls a  
8 "Net Metering Option," would create a new classification of residential customers that would be  
9 allowed to net meter, but only if a customer takes retail service under a specific APS tariff that  
10 will increase APS's revenue and reduce solar savings compared to tariff options that would  
11 otherwise be available to members of the residential rate class.<sup>1</sup>

14 TASC and a number of entities intervened in this docket. *See* October 4, 2013, Procedural  
15 Order issued by ALJ Jibilian. Several parties, TASC included, recognized the devastating impact  
16 APS's self-serving proposals would have on the Arizona residential solar market and therefore  
17 protested APS's proposals. *See* Recommended Order p. 1. TASC's protest urged the  
18 Commission to reject APS's alternatives and instead create a system-benefit credit to compensate  
19 solar customers for the myriad benefits they provide to the APS system and other ratepayers.<sup>2</sup>

21 Separately, TASC submitted a legal memorandum from Skadden, Arps, Slate, Meagher & Flom  
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24 <sup>1</sup> APS proposes that customers that submit a net metering application and signed contract  
25 by October 15, 2013 would be grandfathered under existing arrangements.

26 <sup>2</sup> TASC's proposal relies on a Crossborder Energy assessment of how demand-side solar  
27 will impact APS ratepayers. The Crossborder Energy analysis was commissioned by SEIA.  
28 *See* SEIA Protest and Motion to Dismiss, p. 23, l. 14 to p. 24. l. 3. The Crossborder analysis  
concludes that the benefits of rooftop solar in APS's system exceed the costs, such that new  
rooftop solar will not and does not impose a financial burden on non-participating ratepayers.

In fact, the study finds that the benefits exceed the costs by more than 50% with a

1 LLP, which explained how the “Bill Credit Option” would jeopardize Arizonans’ access to the  
2 federal residential tax credit and substantially increase personal tax liability. *See* August 15,  
3 2013, TASC Public Comment Letter.

4 On August 20, 2013, SEIA filed a motion to dismiss the APS Application, observing that  
5 there is no statutory or regulatory authorization for the APS Application, which represents an  
6 inappropriate attempt at single-issue ratemaking outside a general rate case. On August 29, 2013,  
7 the Interstate Renewable Energy Council, Inc. (“IREC”) supported SEIA’s motion and urged the  
8 Commission to reject APS’s Application and defer discussion to a future rate case. TASC filed a  
9 joinder to SEIA’s motion on August 30, 2013, agreeing that a rate case is the appropriate place  
10 for APS to make its proposals. In addition, thousands of Arizonans have opposed APS’s  
11 Application through letters sent to the Commission. On September 23, 2013, TASC submitted a  
12 petition signed by 19,559 Arizonans, more than the total number of APS customers with solar  
13 installations, which urges rejection of APS’s proposals.

14 A July 15, 2013, letter from Commissioner Pierce asked Staff to make recommendations  
15 on the APS proposals. On September 30, 2013, the Commission’s Utilities Division Staff issued  
16 a Recommended Order. In the Recommended Order, Staff recommends that (1) the Commission  
17 reject APS’s proposals and (2) the issues raised by APS should be addressed in APS’s next  
18 general rate case.<sup>3</sup> TASC agrees. Staff also proposes two alternatives, which TASC addresses  
19 below.

20 **II. TASC AGREES WITH STAFF’S RECOMMENDATION THAT THE**  
21 **COMMISSION TAKE NO ACTION ON THE APPLICATION AND DEFER THE**  
22 **MATTER FOR CONSIDERATION DURING APS’S NEXT RATE CASE.**

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26 benefit/cost ratio of 1.54. Based on APS’s projection of 431,000 MWh of incremental solar  
27 DG in 2015, the net benefits could amount to \$34 million per year for all APS ratepayers.

28 <sup>3</sup> Staff’s Recommended Order is in response to a July 15, 2013, correspondence from  
Commissioner Pierce.

1 Staff notes that “any cost-shift issue created by net metering is fundamentally a matter of  
2 rate design,” and “[t]he appropriate time for designing rates that equitably allocate the costs and  
3 benefits of net metering is during APS’s next general rate case.” See Recommended Order at pp.  
4 6-7. Moreover, “the objective value aspects of DG to the APS system can best be determined in  
5 the context of a general rate case when all of APS’s costs can be considered.” *Id.* at p. 6. Once  
6 the costs and benefits of residential rooftop solar have been adequately quantified and valued, the  
7 allocation of costs and benefits can be equitably distributed among customers as a matter of rate  
8 design. *Id.*

9  
10  
11 TASC strongly agrees that a general rate case is the right forum to address classifications,  
12 charges and credits for an important and growing segment of APS customers. In a rate case, APS  
13 will be required to submit a range of information on its fair value of assets used to provide  
14 service and the cost of serving customers with different service characteristics. In a rate case,  
15 parties will be able to litigate the numerous factual disputes regarding APS’s cost of serving  
16 residential solar customers through evidentiary hearings, where the Commission has the power of  
17 a court to compel the attendance of witnesses and the production of evidence. ARIZ. CONST. art.  
18 XV § 4. The production of such evidence is a fundamental prerequisite to determining whether  
19 any proposed rate, charge or classification is just and reasonable. Such procedural safeguards and  
20 evidentiary standards have been entirely lacking from the instant proceeding, rendering any  
21 decision issued in this proceeding legally insufficient.

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23  
24 A rate case will also allow the Commission and stakeholders to consider a broad range of  
25 ideas for modernizing APS rates in response to changing consumer preferences, such as a  
26 system-benefit credit, minimum bills, or other rate design options that only can be implemented  
27 in a rate case. The Recommended Order concurs: “the Commission has more options available  
28

1 within a rate case than it has outside a rate case.” Recommended Order at p. 10. By comparison,  
2 the Commission’s options in the current docket are limited. In fact, only one of the proposals  
3 offered in this proceeding (Staff Alternative 1) could be implemented in this docket for reasons  
4 we discuss below.

5  
6 The other proposals offered in this proceeding cannot be implemented. The Commission  
7 has not determined the fair value of APS property necessary to establish just and reasonable  
8 rates, charges and classifications under the Arizona Constitution. Moreover, the record is  
9 inadequate for the Commission to discharge its statutory duty to ensure that rates, charges and  
10 classifications are just and reasonable. Finally, the Commission’s rules reflect that rates, charges  
11 and classifications should be determined in a general rate case.

12  
13 **A. The Commission Has Not Determined the Fair Value of APS Property**  
14 **Necessary to Establish Rates, Charges and Classifications Under the Arizona**  
15 **Constitution.**

16 The Commission was created as a bulwark to protect consumers from precisely the sort of  
17 overreaching by public service corporations that APS demonstrates with its inappropriate attack  
18 on consumer self generation under the Commission’s net metering rules. *See* Scott Engelby,  
19 Deborah, *The Corporation Commission: Preserving Its Independence*, Arizona State Law Journal  
20 [Ariz. St. L.J. 20:241, pp. 242.243]. To discharge this responsibility, the Arizona Constitution  
21 grants the Commission exclusive authority to determine just and reasonable classifications to be  
22 used, and just and reasonable rates and charges to be made and collected.<sup>4</sup>

23 Arizona courts have held that the Commission cannot discharge its constitutional  
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25  
26 <sup>4</sup> “The Corporation Commission shall have full power to, and shall, prescribe just and  
27 reasonable classifications to be used and just and reasonable rates and charges to be made and  
28 collected, by public service corporations within the State for service rendered therein, and  
make reasonable rules, regulations and orders, by which such corporations shall be governed  
in the transaction of business within the State, \* \* \*.” ARIZ. CONST. art. XV § 3.

1 responsibilities solely by considering the profits of the corporation, which would increase under  
2 the two proposals offered by APS, but rather the Commission must also take into account the  
3 effect of its determinations upon persons to whom services are rendered. *Phelps Dodge Corp. v.*  
4 *Arizona Electric Power Coop., Inc.*, 207 Ariz. 95, 107 (2004). The consideration of consumer  
5 interests fulfills the protective role the constitutional framers envisioned in creating the  
6 Commission and clothing it with exclusive power to determine rates and classifications. *Id.*

8 In determining reasonable rates and classifications, Article 15, Section 14 of the Arizona  
9 Constitution<sup>5</sup> requires the Commission to determine the fair value of property owned by the  
10 utility and to consider that finding in setting rates. *Arizona Corp. Comm'n v. Arizona Pub. Serv.*  
11 *Co.*, 113 Ariz. 368, 370 (1976). In monopolistic markets, fair value has been the factor by which  
12 a reasonable rate of return was multiplied to yield, with the addition of operating expenses, the  
13 total revenue that a corporation should earn. 207 Ariz. at 105; *Scates v. Arizona Corp. Comm'n*,  
14 118 Ariz. 531, 533-34 (1978).

16 Applying these constitutional requirements, Arizona's courts have determined that the  
17 Commission may not set rates piecemeal, untethered from a determination of the fair value of  
18 utility property used to provide service. In *Scates v. Arizona Corp. Comm'n*, the Arizona Court of  
19 Appeals reversed and remanded a Commission decision in a situation similar to this one. In  
20 *Scates*, the Commission increased rates for Mountain State Telephone and Telegraph customers  
21 that installed, moved or changed a telephone after the date of the tariff increase approved by the  
22 Commission. *Id.* at 536. The increase applied to a limited number of customers. *Id.* at 534. The  
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25 \_\_\_\_\_  
26 <sup>5</sup> "The Corporation Commission shall, to aid it in the proper discharge of its duties,  
27 ascertain the fair value of the property within the State of every public service corporation  
28 doing business therein; and every public service corporation doing business within the State  
shall furnish to the Commission all evidence in its possession, and all assistance in its power,  
requested by the Commission in aid of the determination of the value of the property within

1 Commission based the increase on the utility's costs of providing only certain services and did  
2 not consider all of the utility's costs when it approved the raise. *Id.* at 533, 536. The elements of  
3 cost that it did consider were not easily segregated but rather included all of the operating  
4 expenses underlying a larger subset of services. *Id.* In reversing the Commission's approval of  
5 the rate increase, the Court held that the Commission "was without authority to increase the rate  
6 without any consideration of the overall impact of the rate increase upon the return of Mountain  
7 States, and without, as specifically required by our law, a determination of Mountain States' rate  
8 base." *Id.* at 537.

10 The APS Application violates the same legal principles that were at issue in *Scates*. APS  
11 has proposed new charges on a subset of customers that would not otherwise face such charges.  
12 APS claims the new charges are needed to recover cost of fixed infrastructure that is used to  
13 provide service to customers generally. These costs are not easily segregated but rather include  
14 all of the operating expenses underlying a large subset of services. Under *Scates*, this is precisely  
15 the type of situation in which a determination of the fair value of APS property is a necessary  
16 prerequisite to establishing any new rate, charge or classification. Yet, APS has not submitted  
17 information sufficient to allow a determination of the fair value of its property, nor has APS  
18 provided information sufficient to allow parties to determine its cost of serving residential solar  
19 customers. Thus, the minimum constitutional requirements for establishing new rates, charges  
20 and classifications have simply not been met in this proceeding.

23 Article 15, Section 3 of the Arizona Constitution, which grants the Commission its  
24 ratemaking authority, provides that classifications, like charges, must be "just and reasonable".  
25 ARIZ. CONST. art. XV § 3. Although the APS-proposed "Net Metering Option" does not create  
26



1 new rate schedules or new charges, it does create a new classification of residential customers  
2 that would not have the same rights and privileges as other members of the residential rate class.  
3 Under the unambiguous language of the Arizona Constitution, this proposal must be held to the  
4 same standard as a proposed rate increase. Accordingly, APS's proposed treatment of its  
5 customers must be addressed in a rate case where APS's cost of serving the customers that APS  
6 has proposed to single out for new charges can be considered.  
7

8 No determination has been made regarding the fair value of APS's property in this  
9 proceeding, and there is scant information regarding APS's cost of service generally, let alone its  
10 cost of serving residential solar customers specifically. Without this information, any  
11 determination arising from this proceeding regarding the reasonableness of rates, charges or  
12 classifications does not comport with Arizona's constitutional requirements.  
13

14 **B. The Record Is Inadequate for the Commission to Discharge Its Statutory**  
15 **Duty to Establish Just and Reasonable Rates, Charges and Classifications.**

16 In accord with the Arizona Constitution, Arizona's public utilities statutes (A.R.S. §§ 40-  
17 201 to 495) require classifications as well as rates and charges to be just and reasonable. A.R.S §  
18 40-250 states that "[n]o public service corporation shall raise any rate, fare, toll, rental or charge,  
19 *or alter any classification*, contract, practice, rule or regulation to result in any increase therefore,  
20 except upon a showing before the commission and a finding by the commission that an increase  
21 is justified." (Italics added.) If a proposed change to a rate, fare, toll, charge, or classification  
22 would increase customer charges and utility earnings, a hearing is required to determine the  
23 propriety of the proposed charge or change in classification. A.R.S. §§ 40-250 to 151.  
24

25 Given the numerous issues of disputed fact in this proceeding, any proposal to modify the  
26 rates, charges and classifications of APS customers must be subject to evidentiary hearings of the  
27 sort available in a rate case, where parties are under oath and subject to cross-examination. That  
28

1 has not happened in this proceeding. Without hearings to try the many issues of disputed fact, the  
2 record is inadequate to support the Commission's constitutional and statutory responsibility to  
3 determine just and reasonable rates and classifications.

4  
5 Moreover, in addition to requiring that rates and classifications for utility service be just  
6 and reasonable, A.R.S. § 40-332(B) requires that self-generators be provided access to  
7 distribution service under rates, terms and conditions of service that are just and reasonable.<sup>6</sup> The  
8 Legislature's choice of the term "self-generators" in this statute clearly implies that customers  
9 must be allowed to self generate electricity and therefore cannot be forced to sell all output from  
10 onsite generation to a utility. However, that is what APS inappropriately proposes with its "Bill  
11 Credit Option." No determination has been made, and no factual basis has been provided, for  
12 determining just and reasonable rates that should be charged to residential net-metered customers  
13 for their use of the APS distribution system. Given the insufficient factual record in this  
14 proceeding, including the lack of rate-case quality information regarding APS's cost of service  
15 generally and its cost of serving residential solar customers specifically, a just and reasonable  
16 result cannot be determined. Thus, there is simply no basis for approving any of the various  
17 charges that have been proposed by APS, Staff and other parties.

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19  
20 It is clear that these statutory requirements, which have not been met, apply in this  
21 proceeding. In responding to SEIA's Motion to Dismiss, which asserts there is no statutory or  
22 regulatory authorization for the APS Application, APS states that its Application is expressly  
23 permitted by A.R.S § 40-250(B). APS Response to SEIA's Motion to Dismiss, p. 9, ll. 11-18  
24

25  
26 <sup>6</sup> A.R.S. § 40-332(B) ("Every public service corporation shall allow every electricity  
27 supplier and self-generator of electricity access to electric transmission service and electric  
28 distribution service under rates and terms and conditions of service that are just and  
reasonable as determined and approved by regulatory agencies that have jurisdiction over  
electric transmission service and electric distribution service.")

1 (Sept. 9, 2013). The rate increases that were remanded in *Scates* was also considered under  
2 A.R.S § 40-250, and in that case, the reviewing court held a fair value determination was  
3 required. The record in this proceeding does not contain information on APS’s cost of service  
4 generally or its cost of serving residential solar customers specifically. Accordingly, the record is  
5 inadequate for the Commission to discharge its statutory duty to establish just and reasonable  
6 rates, charges and classifications on the subset of APS customers that have been singled out for  
7 discriminatory treatment.  
8

9 **C. The Commission’s Rules Reflect That Rates, Charges and Classifications**  
10 **Should be Determined in a General Rate Case.**

11 The Commission foresaw that public service corporations might propose new or  
12 additional charges on net-metered customers. To safeguard consumers, in keeping with the  
13 Commission’s constitutional duties, Commission Net Metering Rule R14-2-2305 requires new or  
14 additional charges to be “fully supported with cost of service studies and benefit/cost analysis.”  
15 The Commission’s rules define “cost of service” as “[t]he total cost of providing service to a  
16 defined segment of customers, as determined by the application of logical and generally accepted  
17 cost analysis and allocation techniques.” A.A.C. R14-2-103(A)(3)(c). As discussed above, no  
18 cost of service study meeting this definition has been submitted in this docket to support any of  
19 the various charges that have been proposed. Without such a study, no proposed rate or  
20 classification can be justified.  
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23 Likewise, when the Commission first adopted its net metering rules, it required initial  
24 utility net metering tariffs to include “financial information and supporting data sufficient to  
25 allow the Commission to determine the Electric Utility’s *fair value* for the purposes of evaluating  
26 any specific proposed charges.” (Italics added.) The Commission was clearly mindful in  
27 adopting its net metering rules that it has a constitutional duty to determine the fair value of a  
28

1 utility prior to approving new or additional charges. APS's fair value should be determined  
2 within a rate case so that the Commission can ensure that any proposed charges on residential  
3 solar customers are just and reasonable.

4 **D. The Commission Should Defer the Matter for Consideration During APS's**  
5 **Next General Rate Case.**

6 TASC agrees with the Commission's Staff that "any cost-shift issue created by [net  
7 metering] is fundamentally a matter of rate design." See Recommended Order at p. 10. TASC  
8 agrees that the appropriate time for designing rates that equitably allocate the costs and benefits  
9 of net metering is during APS's next general rate case. As Staff notes, data on all of APS's costs  
10 are available within a rate case and the Commission has more options available within a rate case  
11 than it has outside of a rate case. *Id.* TASC believes that within this context, the Commission  
12 should consider how best fairly to compensate residential customers participating in net metering  
13 for the many benefits they provide to other ratepayers. Single-issue ratemaking outside of a rate  
14 case limits options that could be considered to "fine tune" compensation levels. It also singles out  
15 specific groups of ratepayers for rate increases and sets a dangerous precedent.  
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18 The Court in *Scates* opined that a piecemeal approach to setting rates would "inevitably  
19 serve both as an incentive for utilities to seek rate increases each time costs in a particular area  
20 rise, and as a disincentive for achieving countervailing economies in the same or other areas of  
21 their operations." 118 Ariz. at 534. TASC believes the rates, charges and classifications proposed  
22 by APS, Staff and other parties likewise set a worrisome precedent that the Commission will  
23 entertain single-issue and discriminatory ratemaking any time a utility, such as APS, wants to  
24 raise additional revenue or avoid seeking countervailing efficiencies in its operations.  
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1 **III. ARIZONA LAW PREVENTS ALL BUT ONE OF THE PROPOSALS**  
2 **SUBMITTED IN THIS DOCKET FROM BEING IMPLEMENTED.**

3 Five alternatives have been proposed in this proceeding.<sup>7</sup> With its Application, APS  
4 proposes two: a “Bill Credit Option” and a “Net Metering Option.” These proposals suffer from  
5 numerous fatal defects. In addition to the legal and procedural defects discussed above, TASC  
6 identifies additional flaws with these proposals in the comments below. TASC proposed a third  
7 alternative, a system-benefit credit to compensate solar customers for the benefits they provide to  
8 the APS system and other ratepayers. However, TASC did not propose implementation of a  
9 system-benefit credit in this proceeding, recognizing that doing so would involve impermissible  
10 single-issue ratemaking in violation of *Scates*. Therefore, TASC does not elaborate further on  
11 this proposal in these comments. Finally, Staff’s Recommended Order proposes two additional  
12 alternatives. Only Staff’s first alternative, which relies on a flat charge that was approved in  
13 APS’s last rate case along with the Lost Fixed Cost Recovery Mechanism, can be implemented  
14 in this proceeding. Staff’s second alternative cannot be implemented for reasons discussed  
15 below.  
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18 **A. The APS “Bill Credit Option” Cannot Be Implemented In This Proceeding**

19 The “Bill Credit Option” would deny residential customers access to the Commission’s  
20 net-metering rules, forcing them to instead sell output from onsite solar systems to APS under  
21 wholesale arrangements that substantially increase a customer’s tax liability. By seeking to deny  
22 residential customers access to the Commission’s rules, rather than seeking to repeal or change  
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25 <sup>7</sup> TASC strenuously objects to Residential Utility Consumer Officer’s (“RUCO”) last-minute  
26 proposal, which was submitted in this docket on October 30th. RUCO’s proposal is not  
27 supported by sworn testimony and includes numerous erroneous statements that lack any  
28 evidentiary support. RUCO’s proposal has not been reviewed by Staff and has not been subject to  
discovery or cross-examination by parties. Given the myriad logical, factual and procedural  
defects associated with RUCO’s proposal, it should not be accorded any weight.

1 the Commission's rules directly, this proposal is an impermissible collateral attack on the  
2 Commission decision adopting the net metering rules. *See* A.A.C. § 40-252.

3 This proposal would also have devastating tax consequences on APS's customers. As  
4 noted above, TASC submitted a legal memorandum from Skadden, Arps, Slate, Meagher &  
5 Flom LLP (the "Tax Memorandum") into this docket. The Tax Memorandum states that when a  
6 program, such as the APS-proposed Bill Credit Option, includes separate and distinct payments  
7 for purchases of electricity and sales of electricity by a taxpayer, the latter transactions "fall  
8 squarely within the definition of taxable gross income."<sup>8</sup> In contrast, generation that is used to  
9 reduce or offset purchases of APS electricity does not result in taxable income. The result is that  
10 under the APS Bill Credit Option, a customer's taxes increase because electricity cannot be used  
11 onsite and instead must be sold to APS in a manner that increases a customer's taxable income.  
12  
13

14 Perhaps even more devastating, residential customers that are subjected to the Bill Credit  
15 Option would lose access to the federal investment tax credit. As the Tax Memorandum explains,  
16 residential customers may be eligible under Section 25D of the Internal Revenue Code for a  
17 federal tax incentive equal to 30% of the cost of qualified solar electric property. However, this  
18 tax incentive is only available for property that uses solar energy to generate electricity "for use  
19 in a dwelling unit" and only if at least 80% of the solar generation is used for non-business  
20 purposes. That would not be the case under the APS-proposed Bill Credit Option, which  
21 significantly undermines residential customer access to an important federal tax benefit. To  
22 ensure Arizonans have continued and full access to the Section 25D residential solar tax credit,  
23 residential customers should be allowed to use their solar energy generation onsite. This is not  
24 allowed under the proposed Bill Credit Option, which is a fatal defect with that proposal.  
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28 <sup>8</sup> Tax Memorandum at 3.

1 Inability to access the federal residential tax credit would be devastating to Arizona’s rooftop  
2 solar market.

3           The APS Bill Credit Option should give all Arizonans pause. It attempts to reach behind  
4 the billing meter and into the homes of APS’s residential customers to determine what those  
5 customers can and cannot do with personal property over which APS has no ownership interest.  
6 With this proposal, APS raises significant questions as to whether the result it seeks would  
7 constitute a regulatory taking of private property. Additionally, this proposal runs afoul of the  
8 federal Public Utility Regulatory Policies Act (“PURPA”), which recognizes the right of  
9 consumers to serve onsite load with generators that meet Federal Energy Regulatory Commission  
10 (“FERC”) qualifying facility (“QF”) eligibility requirements, which Arizona residential solar  
11 customers would easily satisfy.<sup>9</sup> Self-generation serves the overarching purpose of PURPA—to  
12 reduce dependence on foreign oil and other fossil-based fuel resources by encouraging cleaner,  
13 more efficient onsite generation<sup>10</sup>—and it is also imbued within FERC’s regulations and  
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19 <sup>9</sup> 18 CFR § 292.304(d) gives qualifying facilities (“QFs”) the option either: “(1) to provide  
20 energy as the *QF determines such energy to be available for such purchases*, in which case  
21 the rates for such purchases shall be based on the purchasing utility’s avoided costs calculated  
22 at the time of delivery; or (2) to provide energy or capacity pursuant to a legally enforceable  
23 obligation for the delivery of energy or capacity over a specified term” (emphasis added).

24 <sup>10</sup> In Order No. 69, FERC observed that a QF has little reason to produce “additional units  
25 of energy” beyond what is dedicated for its own usage if the QF’s own marginal costs of  
26 production exceed the price paid by the utility. This lack of incentive to produce beyond  
27 onsite needs would be contrary to the public interest goals of PURPA and would result in the  
28 utility being “forced to operate generating units which either are less efficient than those  
which would have been used by the qualifying facility, or which consume fossil fuel rather  
than the alternative fuel which would have been consumed by the qualifying facility had the  
price been set at full avoided costs.” 45 F.R. 12214, at 12222-12223 (Feb. 25, 1980). *See also*  
*American Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 417 (upholding FERC’s  
“full avoided cost” rule as consistent with the public interest and legislative goal of reducing  
reliance on fossil fuels).

1 precedent.<sup>11</sup>

2 Staff's Recommended Order clearly recognizes that "The Bill Credit Option is not  
3 equivalent to a [net metering] arrangement because it denies the residential customer the right to  
4 offset energy purchases from the utility with self-generation on a one-to-one basis."

5 Recommended Order at p. 7. Staff believes residential customers should have the ability to  
6 receive such an offset. TASC strongly agrees and believes federal and state laws require this  
7 result. Accordingly, the APS "Bill Credit Option" should be rejected.

8  
9 **B. The APS "Net Metering Option" Cannot Be Implemented In This**  
10 **Proceeding.**

11 With its "Net Metering Option," APS proposes a new classification of residential  
12 customer that would be allowed to net meter, but only if the customer takes retail service under  
13 an APS tariff that increases APS's revenue and reduces solar savings compared to other tariff  
14 options that are available to other members of the residential rate class. Staff's Recommended  
15 Order observes that "forcing certain customers to use a specific rate schedule removes a basic  
16 choice from the customer – the choice of the rate schedule that works best for their usage pattern  
17 and lifestyle." Recommended Order at p. 7. Treating members of the residential class in a  
18 dissimilar manner is discriminatory and must be justified. However, APS has not brought  
19 forward rate-case quality, cost-of-service information sufficient to demonstrate that the cost of  
20 serving residential solar customers is sufficiently different such that they should be singled out  
21  
22

23  
24  
25 <sup>11</sup> See, e.g., 18 C.F.R. §§ 292.303(e) (all utilities must offer parallel operation),  
26 292.205(d)(3) ("fundamental use test"), 292.304(e)(2)(v) (addressing capacity value for QFs  
27 able to separate their own load from onsite generation during system emergencies); FERC  
28 Staff Memorandum on Order 69, 44 F.R. 38863, at 38869 (July 3, 1979) (explaining that §  
292.303(e) provides QFs an "entitlement" to operate in parallel with utilities "so that the  
same customer circuits can be served simultaneously by both customer- and utility-generated  
electricity"); *Entergy Services, Inc. v. FERC*, 400 F.3d 5 (D.C. Cir. 2005); *So. Cal. Edison v.*



1 for discriminatory treatment. Without this information, APS cannot prove that the specific  
2 treatment that it has proposed is justified based on the cost of serving these customers.

3 Customers with onsite generation should only be treated differently from those that do not  
4 self-supply some of their energy needs if there are demonstrable differences in the cost of serving  
5 those customers that are not offset by commensurate benefits. With regard to charges based on  
6 volumetric usage, as with energy efficiency and conservation, customers that self-supply  
7 electricity and use it onsite have a right to purchase less electricity from a regulated utility  
8 without financial penalty. In addition to state laws that prohibit unjustified discrimination in  
9 pricing electricity service, FERC's regulations also prohibit the charging of discriminatory retail  
10 rates to consumers that use QFs to offset onsite load. 18 C.F.R. § 292.305(a)(1)(ii); *Pacific Gas*  
11 *and Electric Company*, 110 FERC ¶ 63,026 (Feb. 9, 2005). APS has failed to prove that the  
12 discriminatory treatment of residential solar customers it proposes under the Net Metering  
13 Option are justified. Accordingly, this proposal should be rejected.

14  
15  
16 **C. Staff Alternative #1 May Be Implemented, But Staff Alternative #2 Cannot**  
17 **Be Implemented In This Proceeding**

18 TASC believes Staff's first alternative could be implemented in this proceeding. That  
19 alternative relies on an existing flat charge that was approved in APS's last rate case. As such,  
20 this charge was subject to evidentiary and procedural safeguards to protect consumers that are  
21 associated with litigated rate case proceedings. By comparison, Staff's second alternative  
22 proposes a new charge that lacks a foundation in APS's last rate case. Staff claims this charge is  
23 revenue neutral. Nevertheless, it is a new charge and therefore must be developed in a rate case  
24 after the Commission has determined the fair value of APS property.  
25  
26

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27 *FERC*, 443 F.3d 94, 102 (D.C. Cir. 2006); *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006  
28 (Oct. 4, 2011).

1                   **1. The Methodology Used By Staff Alternative 2 Incorrectly Includes Energy**  
2                   **Used Onsite As A Cost to Ratepayers, Even Though That Energy Never**  
3                   **Touches the Grid and Does Not Impact Other Ratepayers.**

4                   The Recommended Order states that the goal of Alternative 2 is to “establish a cap on the  
5 net metering incentive to ensure that it is no greater than the price APS would pay to acquire the  
6 same amount of solar via a wholesale PPA.” Recommended Order p. 13. Accordingly, Staff  
7 proposes a charge “based on the difference between APS’s cost for purchasing a DG customer’s  
8 *excess generation*, and its cost to purchase an equivalent amount of energy from a wholesale  
9 PPA.” Recommended Order p. 13 (italics added). Although Staff unequivocally proposes to  
10 compare solar PPA prices with APS’s cost for purchasing a DG customer’s “excess generation,”  
11 the methodology used by Staff incorrectly looks at all onsite generation, not just “excess  
12 generation.” This methodological flaw by itself leaves Staff Alternative 2 inadequate for the  
13 Commission’s use.  
14

15                   There is simply no basis in logic or reason to compare APS’s cost from customers using  
16 less energy, because they use solar generation onsite, to APS’s cost of wholesale PPA  
17 procurement for solar power. Such a comparison would require this Commission to accept the  
18 logical fallacy that wholesale power prices are a proxy for APS’s fixed infrastructure cost of  
19 providing service. There is clearly no connection between the two, and a customer using solar  
20 panels to serve onsite electricity needs should be treated no differently than a customer that turns  
21 the lights off, installs energy-efficient appliances, or adds a solar water heater to replace an  
22 electric water heater.  
23

24                   All of the scenarios listed in the Recommended Order, including those in Appendix III,  
25 are flawed due to this failure to focus only on exported power from net-metered systems. The  
26 Testimony of Meissner (p. 4, ll. 12-12) states: “On average for a residential customer, roughly  
27  
28

1 80% of the solar generation immediately serves their household load and the remaining 20% is  
2 excess generation.” Accordingly, the line item identified as “Assumed Annual Rate of  
3 Production” in the Recommended Order, including Appendix III, should be reduced by 80% to  
4 exclude energy that is used onsite and not exported. However, the correction of this significant  
5 methodological flaw still does not render this approach acceptable for Commission ratemaking  
6 for the additional reasons stated below.  
7

8 **2. Alternative 2 Incorrectly Assumes 1-5 Solar PV Generators Interconnected**  
9 **to Sub-transmission Provide the Same Benefits as Residential Rooftop PV.**

10 Staff Alternative 2 proposes a “cap on the net metering incentive to ensure that it is no  
11 greater than the price APS would pay to acquire the same amount of solar via a wholesale PPA.”  
12 Staff specifically proposes to base this comparison on 1 to 5 MW PV systems interconnected to  
13 the APS sub-transmission system. Recommended Order p. 13. However, there is no evidentiary  
14 support for the proposition that a 1 to 5 MW PV system interconnected to the APS sub-  
15 transmission system offers the same costs or benefits as a large number of small, residential PV  
16 systems that are dispersed across the APS system and serve nearby customer load.  
17

18 In fact, the two categories of generators that Alternative 2 proposes to compare are  
19 fundamentally different in terms of the costs and benefits provided to APS and its ratepayers. The  
20 Recommended Order notes that “the distribution of DG systems appears relatively even across  
21 the urbanized areas within APS’s service territory.” Recommended Order p. 5. An even  
22 distribution of thousands of small systems located across the APS service territory will have  
23 lower integration costs and higher capacity values than a small number of larger systems, which  
24 may need to be located farther from customer load and may require significant grid upgrades.  
25 These differences must be taken into account in comparing the two categories of generators, but  
26 they have not been in this record.  
27  
28

1           There are also significant differences in the line losses associated with the two categories  
2 of generators that Alternative 2 proposes to compare. This has a significant impact on the overall  
3 value of the power that is provided. The Testimony of Bernosky (p. 9, ll. 22-24) acknowledges  
4 the cost savings to APS and its customers from rooftop solar related to avoided transmission and  
5 distribution losses. Bernosky describes these savings as “the ‘extra’ energy that would have been  
6 needed from a centralized facility to replace the energy lost during delivery from the plant to the  
7 customer.” Likewise, APS’s SAIC *2013 Updated Solar PV Value Report* (filed May 17, 2013 in  
8 Docket No. E-01345A-12-0290, p. 2-9) states: “Electricity generated at the site of application,  
9 such as a distributed solar PV system, reduces the load required to be served by a centralized  
10 power generating facility and thus reduces the electricity line losses that occur during delivery of  
11 electricity to load.” Before any version of Staff Alternative 2 could be used as a basis for  
12 imposing a new charge on solar customers, the difference in line losses between the two  
13 categories of generators that Alternative 2 proposes to compare, and the associated financial  
14 benefit to APS, must be determined through evidentiary hearings. They have not been, nor can  
15 they easily be outside a general rate case.  
16  
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19           Finally, there are significant differences in the transmission savings provided by the two  
20 categories of generators. The Testimony of Meissner (p. 13, ll. 14-18) states: “because rooftop  
21 solar is available intermittently during the day and located at the customer’s home, it could  
22 theoretically have a small impact on the cost of transmission service by delaying the investment  
23 in future infrastructure.” The APS SAIC Report (p 1-3) offers a paltry assessment of the potential  
24 savings – just 0.32 cents per kWh. Crossborder Energy, in contrast, determines the potential  
25 savings to be 2.1 to 2.3 cents per kWh. If Alternative 2 is to be used as a framework for  
26 developing a new charge on net-metered customers, the Commission must determine if there is a  
27  
28

1 difference in the transmission savings provided by rooftop PV systems versus 1 to 5 MW solar  
2 PV systems interconnected to the sub-transmission system. The only sworn testimony in the  
3 record – that which was entered by APS – suggests transmission savings are a function of the  
4 proximity between generation and load. That difference must be evaluated and quantified before  
5 Alternative 2 could provide a methodological framework for imposing a new charge on  
6 customers. It has not been and is best considered in a general rate case.

8 **3. Evidentiary Hearings are Necessary to Try Disputed Issues of Fact**  
9 **Regarding Alternative 2.**

10 Setting aside the numerous methodological flaws associated with Alternative 2 that  
11 TASC discussed above, significant disagreement also exists regarding the two simplistic  
12 variables that Alternative 2 does take into account. The first of these variables is the Assumed  
13 Retail Rate. The Testimony of Meissner (p. 10, ll 17-18) says the average pretax, fully bundled  
14 rate for residential customers is 12.6 cents for average customer. However, Meissner’s testimony  
15 (p. 14, ll. 18-20) muddies this issue by surmising that the amount may be as high as 13.5 cents  
16 before taxes for the average solar customer. TASC disputes Meissner’s figures and believes these  
17 numbers should be subject to cross-examination through evidentiary hearings before being  
18 accepted by the Commission.

19  
20 The second variable is the Assumed Utility Scale PPA Rate. Appendix III of the  
21 Recommended Order provides a range of scenarios that assume values between 7 cents and 10  
22 cents per kWh. However, there is no evidentiary basis for these numbers. The Recommended  
23 Order simply states Staff “understands that utility scale solar PV generation can be obtained in  
24 Arizona for between 7 and 10 cents per kWh under a PPA arrangement.” Recommended Order at  
25 p. 14. Moreover, Staff does not say whether its “understanding” of solar PPA prices relates to the  
26 1 to 5 MW solar PV facilities interconnected to the APS sub-transmission system that are  
27  
28

1 supposed to provide the basis against which the costs of residential net metered exports are being  
2 compared.

3 TASC believes it is highly suspect that the all-in cost of output from 1 to 5 MW solar PV  
4 facilities interconnected to the APS sub-transmission system would be below 10 cents per kWh.  
5 This is particularly unlikely for projects on the lower end of the 1 to 5 MW size, which would be  
6 more comparable in terms of value to residential rooftop solar systems. However, no evidentiary  
7 hearing has been held to resolve disputed issues of fact regarding this issue.  
8

9 TASC believes it is particularly important to determine through evidentiary hearings  
10 whether the 7 to 10 cent per kWh range of PPA costs assumed by Staff is reasonable. On  
11 September 27, 2013, TASC submitted a public comment letter in this docket to point out an  
12 unreasonable and misleading claim by APS in its August 1, 2013, data response in this docket. In  
13 that data response, APS relied on PPAs signed by Riverside Public Utilities in California to  
14 support APS's suspect claim that it can develop utility-scale projects and interconnect them to  
15 the distribution system for all-in costs between 7-9 cents/kWh. TASC pointed out that the  
16 Riverside projects exclude normal development costs, are connected to the transmission system  
17 (not the distribution system), and are part of an established 100 MW project already in the  
18 advanced stages of development. *See* September 27, 2013, TASC Public Comment Letter.  
19  
20

21 Staff acknowledges that it did not attempt precisely to determine the costs and benefits of  
22 residential solar in offering Alternative 2. The Recommended Order clearly acknowledges that  
23 Staff "developed a range of proxy values for DG as a basis for its alternative recommendations."  
24 Recommended Order at p. 6. These proxy values offer an inadequate basis for the Commission to  
25 discharge its constitutional and statutory duty to ensure that rates and classifications are just and  
26 reasonable. Given the lack of procedural safeguards employed in this proceeding, and the  
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28

1 significant disagreement that exists regarding the underlying assumptions behind Staff  
2 Alternative 2, TASC objects to the use of this methodology to adopt a new charge on customers  
3 in this proceeding. For these reasons, Staff Alternative 2 should be rejected.

#### 4 **IV. CONCLUSION**

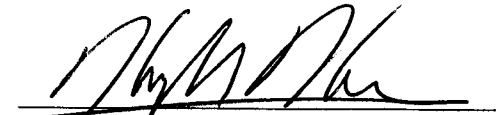
5  
6 TASC agrees with Staff's recommendation that the Commission should take no action on  
7 the instant application and defer the matter for consideration during APS's next rate case. The  
8 Commission has not determined the fair value of APS property necessary to establish just and  
9 reasonable rates, charges and classifications under the Arizona Constitution. Moreover, the  
10 record is inadequate for the Commission to discharge its statutory duty to establish just and  
11 reasonable rates, charges and classifications. The Commission's rules also reflect that rates,  
12 charges and classifications for net-metered customers should be determined in a general rate  
13 case.  
14

15 The only conclusion supported by the record in this proceeding is that parties  
16 fundamentally disagree on the methodology that should be used to measure the costs and benefits  
17 of distributed solar. This disagreement is noted in the testimony submitted with the APS  
18 Application; it is highlighted in the Rocky Mountain Institute study referenced in the  
19 Recommended Order; and it is further highlighted by Staff in recommending that the  
20 Commission should resolve this issue in APS's next general rate case.  
21

22 If the Commission feels that immediate action is needed, TASC encourages the  
23 Commission to accept the well-reasoned recommendation of Utilities Division Staff to develop a  
24 common set of assumptions regarding the costs and benefits of net metering, which APS can then  
25 use to propose an appropriate charge *or credit* in its next general rate case.  
26  
27  
28

1 RESPECTFULLY SUBMITTED this 4th day of November, 2013.

2  
3  
4 By



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**CERTIFICATE OF SERVICE**

I hereby certify I have this day sent via hand delivery an original and thirteen copies of the foregoing **COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE ON THE UTILITIES DIVISION STAFF RECOMMENDED ORDER** on this 4th day of November, 2013 with:

Docket Control  
 Arizona Corporation Commission  
 1200 W. Washington Street  
 Phoenix, Arizona 85007

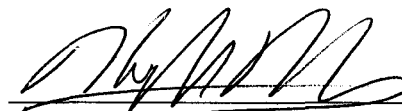
I hereby certify that I have this day served the foregoing documents via regular mail on all parties of record and all persons listed on the official service list for Docket No. E-01345A-13-0248 on the Arizona Corporation Commission's website:

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13 Dated this 4th day of November, 2013.

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