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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
ROBERT L. BURNS  
SUSAN BITTER SMITH, Commissioners

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

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COMMENTS OF  
BRUCE PLENK TO  
STAFF'S REPORT  
AND  
RECOMMENDED  
ORDER

Arizona Corporation Commission

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INTRODUCTION

For both legal and policy reasons, this matter should not be resolved by the Commission at this time but should be considered as a part of a new rulemaking proceeding to consider the benefits of net metering to APS and all other regulated Arizona utilities.

CURRENT COMMISSION NET METERING POLICIES ARE ESTABLISHED BY RULE AND CANNOT BE MODIFIED BY ACTION IN A CASE INVOLVING ONLY A SINGLE REGULATED UTILITY

**A. Framework and History of Net Metering Rule**

Current ACC policies regarding net metering were established after extensive hearings in 2007 and 2008, which resulted in the Commission adopting the PURPA standard on net metering:

...electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy

40 provided by the electric utility to the electric consumer during the  
41 applicable billing period. (Decision 69877, August 28, 2007).

42  
43 That decision included a discussion of comments from APS, UniSource  
44 Energy and Arizona cooperatives that may sound familiar: "...customers  
45 taking service under net metering rules do not pay the full cost of  
46 transmission and distribution systems...Therefore, those net metering  
47 customers are subsidized by other customers."

48  
49 The Commission soundly rejected these complaints and adopted net  
50 metering. This decision led to proposed Net Metering Rules (Decision  
51 70194, March 20, 2008) that were later approved by the Attorney  
52 General and promulgated by the Secretary of State.

53  
54 The Commission's press release announcing approval of net metering  
55 rules included these remarks from Commissioner Pierce:

56 I am happy to see these net metering rules move forward. Net  
57 metering is a critical component of establishing a viable market f  
58 or distributed generation in Arizona.... I enthusiastically support  
59 their passage. (March 12, 2008)

60  
61 The staff rulemaking report of Appendix C, attached to Decision 70567  
62 (October 23, 2008) includes several important policy perspectives that  
63 are still relevant today:

64 2. Brief Summary of Economic Impact

65 The public at large will benefit from Net Metering since it will  
66 encourage more of the electricity produced in Arizona to be  
67 generated from renewable resources and high-efficiency facilities.

68 (at 6)

69 5d. Probable cost and benefit to private persons and consumers  
70 who are directly affected by the final rules

71 ...most renewable resources rely on either no-cost resources  
72 (such as the sun, wind and geothermal heat) or very low-cost  
73 resources (eg biomass) which are available locally.... These  
74 features contribute to the reliability of the energy supply that  
75 Arizonans will depend upon to meet future energy needs. (at 12-  
76 13).

77

78 The reasons these sections and this analysis is significant can be found  
79 in R14-2-2305, New or Additional Charges, which requires any  
80 proposed additional charges to net metering customers be filed with the  
81 Commission and “fully supported with cost of service studies and  
82 benefit/cost analyses. The Electric Utility shall have the burden of proof  
83 on any proposed charge.” APS has utterly failed to meet this  
84 requirement. The development and expansion of the solar industry has  
85 depended in part on the existing Net Metering Rules and have created  
86 thousands of jobs, a substantial amount of tax revenue, and a decreased  
87 dependence on out of state coal, all benefits to Arizona and its residents.

88

89 **B. Any changes to the Net Metering Rules should be in Generic**  
90 **Rulemaking Proceedings, not in a proceeding covering only one**  
91 **regulated utility**

92 These net metering rules apply to all regulated electric utilities in  
93 Arizona and were to be followed by submission of tariffs to implement  
94 the rules for each utility, which was done beginning in 2009.

95 Rulemaking is the preferred method of regulation by state agencies  
96 charged with authority over numerous entities. This is true of the  
97 Arizona ACC and has been articulated by our courts. In ACC et al v Palm  
98 Springs Utility Co, 24 Ariz App 124 at 128(Div 1, 1975), the Court held  
99 that

100 as a general principle of administrative law, the promulgation of  
101 rules and regulations of general applicability is to be favored over  
102 the generation of policy in a piecemeal fashion through individual  
103 adjudicatory orders.

104 While there the Court approved an ACC order to a single utility in the  
105 absence of a rule, it seems clear that this principle requires amending an  
106 existing rule through generic rulemaking action, giving all parties an  
107 opportunity to participate. This concept would be violated by modifying  
108 the existing net metering rule for APS only, as requested in this case.

109

110 I support the Staff's recommendation of opening a generic docket to  
111 obtain stakeholder input on this matter. (Proposed Order at Para 52).

112

113 **C. Several of the proposed “solutions” in this case violate the**  
114 **existing Net Metering Rule and other Commission procedures**

115

116 The APS "Bill Credit Option" is not a proper option under the  
117 existing Net Metering Rule since it does not allow for an offsetting of  
118 electricity generated but forces solar customers into a "buy all/sell all"  
119 situation, very different from that set forth in PURPA and adopted by  
120 the Commission in its earlier orders cited above. Staff correctly  
121 dismisses this option (Proposed Order at Paras 36-37).

122 The APS "ETC-2 Plus NM Option" also violates the existing Net  
123 Metering Rule because it creates additional charges for these customers  
124 without the required showing and produces additional revenue for the  
125 utility outside a rate case.

126 Finally, APS attempts to have this Commission consider long-term  
127 UFI payments as part of this proceeding, rather than in the APS 2014  
128 REST case where decisions regarding utility incentives for solar are  
129 considered on a year-by-year basis. This is also clearly inappropriate  
130 procedurally.

131  
132 Staff Alternative #1 appears to violate the burden of proof  
133 requirements of the current Net Metering Rule, since no evidence has  
134 been presented by the utility to support such a proposal. Staff  
135 Alternative #2 is even further afield in lack of evidentiary support.  
136 Likewise, RUCO's proposals violate the evidentiary requirements of the  
137 Rule. All of these proposals should at the least be subject to hearing and  
138 cross-examination of proponents before they can be relied upon as a  
139 basis for an important Commission order.

140  
141 **D. This case also represents an attempt at single-issue ratemaking**  
142 **outside of a rate case, prohibited by Arizona law**

143  
144 As Staff and other parties have more fully articulated, the financial  
145 aspects of this case should not be decided in this proceeding, but should  
146 be resolved in the next APS rate case.

147

148 **CONCLUSION**

149 Changes to this Commission's properly adopted Net Metering Rule  
150 must be done in a generic proceeding where all parties affected can  
151 participate, present evidence and comments, and comply with the  
152 Arizona law concerning rulemaking, the preferred method of setting out  
153 policy by state agencies. Financial matters should be addressed in rate  
154 cases. I agree with staff that this matter should not be decided at this

155 time but should be referred to a generic proceeding to consider any and  
156 all possible modifications to the net metering scenario now in place in  
157 Arizona. Rate changes are proper subjects for rate cases. This  
158 proceeding is not the place for either a single-company modification to  
159 the Net Metering Rule or a change in its rates.

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161 Respectfully submitted this 6<sup>th</sup> day of November, 2013.

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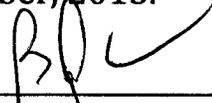
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