



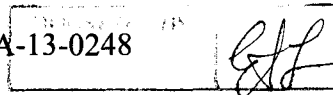
0000149423

November 8, 2013

NOV 08 2013

RECEIVED

Re: Net Metering Docket No. E-01345A-13-0248



AZ CORP COMMISSION  
DOCKET CONTROL

**ORIGINAL**

Commissioner Burns:

2013 NOV 8 PM 1 26

The Solar Energy Industries Association (“SEIA”) appreciates your desire for more information on the proposals by the Residential Utility Consumer Office (“RUCO”) in relation to the allegations that Arizona Public Service (“APS”) has raised with respect to net metering. SEIA believes that the Commission – and the public it serves – should have as much information as possible and be able to take the time necessary to evaluate APS’s claims. Unfortunately, this doesn’t feel like a proper proceeding that creates a deliberate forum and process in which competing information and proposals can be properly evaluated and tested, leading to a considered Commission decision. The utility-applied pressure to “do something” cannot be allowed to override the Commission’s obligation to act in a lawful, considered manner.

The fundamental question that the information your letter seeks answers is straightforward: what rates should APS’s customers with solar energy systems pay? That changing rates is RUCO’s intent could not be clearer: for example, Lon Huber, the consultant who helped prepare RUCO’s proposal, noted that the proposal “keeps net metering 100 percent intact by putting a patch on the rate design specific to solar owners.”<sup>1</sup> Rate design is also unquestionably APS’s focus in this proceeding, any claims to the contrary notwithstanding. As noted in APS parent Pinnacle West’s February 22, 2013 Form 10-K filing, “Reduced demand due to these energy efficiency and distributed energy requirements, unless substantially offset through ratemaking mechanisms, could have a material adverse impact on APS’s financial condition, results of operations and cash flows.”<sup>2</sup> This entire Docket is an attempt by APS to achieve a ratemaking result that the Settlement Agreement resolving APS’s last rate case expressly forbids.<sup>3</sup>

The ad hoc, rate-changing LFCR modifications proposed by RUCO (and by Staff and APS) are not legally permissible. *Scates v. Arizona Corp. Commission* requires that, before approving an increase in net metered customers’ rates that the proposed modifications to the LFCR would cause, the Commission examine “the costs of the utility apart from the affected services,” “determin[e] the utility’s investment,” and make the other investigations and findings that can only be undertaken in a general rate case.<sup>4</sup> RUCO, Staff and the other parties (including APS<sup>5</sup>) have made clear that this is a rate design issue; the only appropriate forum in which to change rates is APS’s next general rate case.

Your letter begins by stating that RUCO “determined that net metering has created a cost-shift situation for non-solar ratepayers.” RUCO, however, cannot make this determination; neither can Staff. Only the Commission can make this determination, and then only after using the investigative and adjudicatory

<sup>1</sup> Herman K. Trabish, *A New Proposal From Arizona’s Ratepayer Advocate Seeks to Fix Net Metering*, GREENTECH MEDIA, November 1, 2013, available at <http://www.greentechmedia.com/articles/read/A-New-Proposal-From-Arizonas-Ratepayer-Advocate-Looks-to-Fix-Net-Metering>.

<sup>2</sup> See Pinnacle West Capital Corporation Form 10-K at 32, attached to Pinnacle West Capital Corporation 2012 Annual Report, available at [http://www.pinnaclewest.com/files/annual/2012/PNW\\_2012\\_Annual\\_Report.pdf](http://www.pinnaclewest.com/files/annual/2012/PNW_2012_Annual_Report.pdf) (emphasis added).

<sup>3</sup> See SEIA’s Protest and Motion to Dismiss at 11-18 (detailing why APS’s attempt to engage in ratemaking in this Docket, and outside its next general rate case, is impermissible under the Settlement Agreement and the Commission’s order approving the Settlement Agreement).

<sup>4</sup> See *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 614 (Ariz. Ct. App. 1978).

<sup>5</sup> See Note 2. See also Testimony of Charles Miessner at 11-12 (“This assessment demonstrates that the recovery of infrastructure and fixed budget costs is misaligned with the rate structure for approximately 90% of residential customers. These costs are recovered through variable usage charges, but are not variable costs.”).

procedures available to it in a general rate case. If such a cost-shift were determined, then it is only the Commission, taking full account of the value of APS's property, various rate subsidies built into its tariffs, and public policies the Commission finds appropriate, that can set APS's rates – all of APS's rates – at the proper levels. The Arizona Constitution forbids piecemeal rate changes – including the RUCO LFCR "patch" – outside of a rate case.<sup>6</sup>

This work simply has not been done to date, and must be done by Staff, RUCO, APS, the other participants, and the Commission before such an important decision can be made. SEIA looks forward to engaging with the parties and the Commission to resolve these issues in their appropriate forum: APS's next general rate case. In that forum, the Commission will be able to take proper account of the information APS has offered in support of its cost-shift allegation and information like the Crossborder Energy Study filed in this Docket, which found that APS's solar customers actually confer a significant, uncompensated benefit on the APS grid.

SEIA is hopeful that the thoughtful and thorough procedures that such a rate case provides will help the Commission to make a clear, evidence-based, and Constitutionally-permissible determination with respect to the proper treatment of all APS's ratepayers, net metering and non-net metering alike.

Sincerely,



Carrie Cullen Hitt  
Senior Vice President of State Affairs

---

<sup>6</sup> See SEIA's Protest and Motion to Dismiss at 19-24 (citing the various aspects of *Scates'* interpretation of the Arizona Constitution that clearly require the issues APS seeks to resolve in this Docket be decided only in a general rate case – a conclusion no party has meaningfully contested).