ORIGINAL

OPEN MEETING AGENDA ITE

0000150146

Thomas A. Loquvam, AZ Bar No. 024058
Pinnacle West Capital Corporation
400 North 5th Street, MS 8695
Phoenix, Arizona 85004
Tel: (602) 250-3616
Fax: (602) 250-3393
E-Mail: Thomas.Loquvam@pinnaclewest.com
Attorney for Arizona Public Service Company

RECEIVED

2014 JAN 31 P 3:47

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
JAN 31 2014
DOCKETED BY

COMMISSIONERS

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

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY – APPROVAL OF UPDATED GREEN POWER RATE SCHEDULE GPS-1, GPS-2 AND GPS-3	DOCKET NO. E-01345A-10-0394
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION FOR RESET OF RENEWABLE ENERGY ADJUSTOR	DOCKET NO. E-01345A-12-0290
IN THE MATTER OF THE APPLICATION TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF RENEWABLE ENERGY ADJUSTOR	DOCKET NO. E-01933A-12-0296
IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC. FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF RENEWABLE ENERGY ADJUSTOR	DOCKET NO. E-04204A-12-0297

ARIZONA PUBLIC SERVICE COMPANY COMMENTS

This proceeding opened with a simple question: how will utilities meet their distributed generation (DG) requirement when direct cash incentives are no longer available to acquire Renewable Energy Credits (RECs)? This once theoretical scenario is now a reality for APS. In September 2013, APS exhausted its authorized cash incentive funding for PV rooftop solar. Since then, APS has already accumulated approximately 20 MW of solar DG that it cannot currently count towards compliance.

APS continues to believe that the most simple, cost-effective, solution to this issue, and the option that will solve the solar industry's concern about REC double counting, is to eliminate the DG requirement. If utilities' annual DG requirement is permanently waived or eliminated, there will be no future need for direct cash incentives. Anything less than a permanent waiver, however, and utilities will eventually need to provide direct cash incentives in exchange for DG RECs. If utilities must comply with the DG requirement, they need a means to demonstrate compliance—that means buying DG RECs. And since DG will be installed anyway, a requirement to buy DG RECs only forces additional, unnecessary costs onto customers.

A primary question (if not *the* question) in this proceeding is what outcome avoids the most costs for customers as DG continues to be installed. One path will lower costs for customers. The options on this path include (i) Eliminate: eliminate the DG compliance obligation, as APS originally proposed;[1] (ii) Reduce: reduce the DG compliance obligation over time as DG is installed without direct cash incentives, as Staff initially proposed; or (iii) Waive: permanently waive utilities' DG compliance obligations each year as circumstances justify, as proposed by the ROO. These proposals will reduce costs for customers because they involve *permanently* reducing or eliminating the DG compliance requirement in a manner that would not require "backfilling" the requirement with RECs from utility-scale generation.

[1] UNS Electric, Inc. and Tucson Electric Power Company also proposed eliminating the DG compliance obligation, as well as other options that would reduce costs for customers.

The second path would not reduce costs for customers, and in fact, will likely increase costs for customers. Proposals on this path include (i) any proposal that guarantees a minimum level of market activity; and (ii) the recently proposed amendments, which appear to either authorize only temporary waivers or require utilities to backfill any waived DG compliance obligation with RECs from utility-scale generation.

APS believes the choice is clear. If DG is installed on APS's system, whether incentivized with direct cash incentives or not, all customers should receive the benefit through an eliminated, reduced or waived compliance obligation. The alternative is that customers pay for essentially redundant renewable energy through direct cash incentives or purchased power agreements (PPAs). Since DG is being installed anyway, APS urges the Commission to do one of three things to keep customer costs low:

(1) Eliminate the DG requirement, as APS originally proposed and reflected in Exhibit A;

(2) Reduce the DG requirement over time as DG is installed without direct cash incentives, as Staff originally proposed and reflected in Exhibit B; or

(3) Waive the DG requirement as circumstances warrant each year in a manner that is permanent and does not require backfilling, as the ROO suggests with Staff's modifications, and as reflected in Exhibit C.

I. Only Permanently Eliminating, Reducing or Waiving the DG Compliance Obligation Reduces Customer Costs.

To resolve how utilities demonstrate compliance without DG RECs, APS proposed eliminating the requirement to demonstrate compliance. The elimination would occur through an initial waiver of compliance and subsequent change to the REST rules.[2] Eliminating the DG requirement would result in the lowest cost to customers by ending the need to use direct cash incentives.[3] APS subsequently adopted Staff's initial

[2] *See* Exhibit A.
[3] *See* Exhibit B.

proposal, which would reduce the DG requirement over time as DG was installed without direct cash incentives. Staff's secondary proposal—ultimately adopted in the ROO—involves utilities seeking permanent waivers of their annual DG requirements as circumstances warrant.[4] Because the ROO provides that the waived "annual requirement shall not be rolled into the subsequent year,"[5] the ROO does not involve backfilling any waived compliance obligations with utility-scale RECs or otherwise. Like APS's proposal, both Staff's initial proposal and ROO's proposal would address the compliance issue and lower costs for customers.

II. Any Resolution that is Temporary, Guarantees Minimum Market Activity or Requires Backfilling Increases Cost for Customers.

If a waiver of the DG requirement is not permanent, any utility that seeks a waiver would have to subsequently acquire DG RECs through direct cash incentives when the temporary waiver lapses. Similarly, if utilities must subsequently backfill any waived DG requirement with utility-scale RECs, they must acquire those utility-scale RECs through PPAs or building APS-owned facilities. Whether utilities acquire DG RECs through direct cash incentives, or utility-scale RECs through PPAs or self-builds, the result is the same: more costs to customers than otherwise would have been necessary for compliance.

A. The January 24 proposed amendments involve either temporary waivers or backfilling, increasing costs for customers.

The proposed amendments provide, in part:

> IT IS FURTHER ORDERED that if a waiver is granted, such waiver shall not reduce the annual renewable energy requirement for future years **nor reduce the distributed energy requirement for future years.**[6]

---

[4] *See* Exhibit C. Exhibit C modifies amendment language filed by Staff on January 24, 2014, but would functionally implement the ROO's recommendation.

[5] *See* Recommended Opinion and Order at p. 52 (December 30, 2013).

[6] *See* Staff's Notice of Filing Possible Amendments to Recommended Opinion and Order (January 24, 2014) (emphasis added).

This language would render any waiver temporary by leaving intact the DG requirement in future years. Those future year DG requirements are separately calculated each year as shown in the chart below:

Graph 1: The DG Requirement is Recalculated Each Year.

Year	Overall Annual Renewable Energy Requirement	Percentage of DG Required	Ultimate DG Requirement
2014	4.5%	30%	1.35%
2015	5%	30%	1.5%
2016	6%	30%	1.8%
2017	7%	30%	2.1%
2018	8%	30%	2.4%
2019	9%	30%	2.7%
2020	10%	30%	3%
2021	11%	30%	3.3%
2022	12%	30%	3.6%
2023	13%	30%	3.9%
2024	14%	30%	4.2%
2025	15%	30%	4.5%

If a utility obtained a waiver of its 2015 DG requirement, it would not need to demonstrate compliance in 2015. But if that waiver did not reduce or modify the DG requirement in future years, a utility would still have to meet the full 2016 requirement. Although the utility did not need enough DG to serve 1.5% of their retail load in 2015, it would need enough DG to serve 1.8% of its retail load in 2016. It would be as if the 2015 waiver never occurred in the first place. And if customers began installing less DG in 2016, the utility would have to provide direct cash incentives sufficient to ensure that DG served 1.8% of its retail load.

The proposed amendments might also require backfilling with utility-scale generation. They provide, in part:

> IT IS FURTHER ORDERED that if a waiver is granted, such waiver shall not require the utility to make up the difference with the utility-scale renewables **in the year for which the waiver is granted.**[7]

[7] *See* Staff's Notice of Filing Possible Amendments to Recommended Opinion and Order (January 24, 2014) (emphasis added).

This language, however, implies that utilities might need to "make up the difference" with utility-scale generation *in future years*. This is not a waiver of the requirement, but instead a shifting of the requirement from one type of generation to another. If utilities must acquire DG RECs after a temporary waiver lapses, or backfill waived DG requirements with utility-scale RECs, customers will pay for costs they otherwise would not need to incur.

B. Temporary waivers, or a backfilling requirement, would constitute de facto increases in the overall Annual Renewable Energy Requirement.

Under all waivers being proposed in this proceeding, a utility would essentially be entitled to a waiver of an annual DG requirement if a sufficient amount of DG is installed on the utility's system without cash incentives to justify the waiver. The utility would receive no compliance benefit from those unincentivized systems, but would also have no associated compliance obligation. If the utility were required to subsequently obtain that same amount of DG when the waiver lapsed, however, or backfill the waived DG requirement with utility-scale generation, the amount of renewable energy needed on the utility's system for compliance would be increased by the amount of the unincentivized DG that was installed.

For example, assume that in 2014, unincentivized DG produces **1,500,000 kWh** of renewable energy on APS's system, and that this amount is sufficient for APS to demonstrate compliance with its 2014 DG requirement. If APS then obtains a permanent waiver of its 2014 DG requirement, nothing further happens and customers never pay for direct cash incentives.

But if APS must backfill that waiver in subsequent years with utility-scale RECs, double the amount of energy will be produced on APS's system: **1,500,000 kWh** from DG without cash incentives and **1,500,000 kWh** from utility-scale renewable generation, for a total of **3,000,000 kWh**. Similarly, if the 2014 DG waiver is temporary, APS must subsequently incentivize sufficient DG to achieve compliance in later years, resulting in a total of **3,000,000 kWh** being produced for APS to achieve compliance with a

requirement that only called for **1,500,000 kWh**. This de facto increase in the amount of energy required to show compliance is demonstrated by the following chart:[8]

Graph 2: De Facto Increase in the REST Requirement

	Energy from DG Without Cash Incentives	DG Requirement Permanently Waived	Energy Necessarily Obtained Before Compliance	Energy Obtained in Excess of DG Requirement
Temporary Waiver	1,500,000 kWh	0	3,000,000 kWh (1,500,000 kWh from unincented DG + 1,500,000 kWh from incented DG)	1,500,000 kWh
Backfilled Waiver	1,500,000 kWh	1,500,000 kWh	3,000,000 kWh (1,500,000 kWh from unincented DG + 1,500,000 kWh from utility-scale RECs)	1,500,000 kWh
Permanent Waiver	1,500,000 kWh	1,500,000 kWh	1,500,000 kWh (all from unincented DG)	0

Taken as a whole, the proposed amendments either reinstate the entire DG requirement in future years or require utilities to backfill with utility-scale generation. Either result will cause customers to pay more money so that utilities can obtain RECs in order to demonstrate compliance. The alternative of permanently eliminating, reducing or waiving the DG requirement in a manner that does not require backfilling, would permit customers to avoid those costs. Each of the attached amendments would avoid this result.

C. Guaranteed minimum levels of market activity will increase costs for customers.

Customers will incur more costs if this proceeding results in guaranteeing a minimum level of market activity. For instance, assume that the Commission adopts an order that only permits a waiver if DG market activity without direct cash incentives equaled 50% of the existing DG requirement. If market activity in 2015 only equaled

[8] APS notes that increasing the REST, in a de facto manner or otherwise, can only be accomplished by amending the REST rules.

49% of the DG requirement, the utility would not be entitled to a waiver. Instead, direct cash incentives—funded by customers—would be needed to achieve compliance with the 2015 DG requirement. This scenario would also constitute a de facto increase in the DG requirement in the same manner described above—the 49% would be installed, but would not count towards compliance, and customers would pay for an additional 100% of the year's DG requirement, for a total of 149% being installed simply to achieve 100% compliance.

III. Utilities Cannot Predict the Amount of DG in the Next Year.

Another aspect of the proposed amendment that may prompt uncertainty and confusion is the requirement that utilities forecast the amount of distributed energy into the next calendar year that they seek a waiver. Customers decide to install DG and utilities cannot accurately predict those choices. A large number of factors could influence customer decisions about DG, including panel prices, installation costs, regulatory proceedings, tax policies and other market factors. Utilities are simply unable to provide accurate or worthwhile predictions regarding future DG installations. Moreover, given the inevitable inaccuracies, it is not clear what benefits such a forecast would provide. APS urges the Commission to delete the language in the proposed amendments that utilities forecast future distributed energy in any waiver request. The language in Exhibit C modifies Staff's amendment to remove the forecasting requirement.

IV. Waivers Granted Under the ROO Should be Forward Looking, Not Backward Looking.

If the Commission adopts the ROO, any waiver of the annual DG requirement should be on a prospective basis. For APS specifically, its ability to comply with the DG requirement is a prospective issue. APS projects it will be in compliance with the residential DG requirement through 2016 based on the current amount of incentivized DG in its service territory for which APS provided direct cash incentives. This means that the first year for which an APS waiver would apply is the 2017 program year.

But a prospective waiver is the best policy on a more general basis as well. The alternative is uncertainty for utilities and additional cost for customers. For instance, if a utility can only seek a waiver of the 2015 DG requirement at the end of 2015, it will not know until the year is over whether a waiver is justified. If the Commission declines to grant the waiver, the utility will have failed to comply with the 2015 DG requirement through no fault of its own.[9] In 2016, the utility would then need to require DG RECs to comply with both the 2015 and 2016 DG requirements. A key fact, however, is that none of the DG installed during 2015 can count towards the utility's compliance—the utility never provided a direct cash incentive in exchange for the customers' RECs. Facing the need to acquire enough DG RECs to comply with the 2015 and 2016 DG requirements—all in one year—would likely necessitate the use of direct cash incentives. The end result is uncertainty for utilities and additional costs for customers.

To resolve this possibility, APS suggests that any waiver granted under the ROO be prospective. To justify a waiver of the DG requirement in an upcoming year, utilities would provide sufficient information to demonstrate that such a waiver is in the public interest. The prospective waiver requests would also be accompanied by alternative requests for direct cash incentives. If the Commission declines to grant a waiver for the upcoming year, it can instead order that utilities offer direct cash incentives so that utilities can satisfy the upcoming DG requirement through the traditional method of obtaining and retiring DG RECs. The proposed language in Exhibit C modifies Staff's amendment to reflect the use of a prospective waiver.

[9] Utilities would not be at fault because they would not have had the authorization to provide direct cash incentives to customers.

RESPECTFULLY SUBMITTED this 31st day of January 2014.

By:_____

Thomas A. Loquvam

Attorney for Arizona Public Service Company

ORIGINAL and thirteen (13) copies
of the foregoing filed this 31st day of
January 2014, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing mailed/delivered this
31st day of January 2014 to:

Janice Alward
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Douglas Fant
Law Offices of Douglas V. Fant
3655 W. Anthem Way, Suite A-109
PMB 411
Anthem, AZ 85086

C. Webb Crockett
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012-2319

Lyn Farmer
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Michael Neary
AriSEIA
111 West Renee Dr.
Phoenix, AZ 85027

Steve Olea
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Craig Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd., Suite 200-676
Phoenix, AZ 85028

Court Rich
Rose Law Group, P.C.
202 E. McDowell Road, Suite 153
Phoenix, AZ 85250

David Berry
Western Resource Advocates
P.O. Box 1064
Scottsdale, AZ 85252

Timothy Hogan
Arizona Center for Law in the Public Interest
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004

Michael w. Patten
Roshka DeWulf & Patten PLC
One Arizona Center
400 E. Van Buren St. Suite 800
Phoenix, AZ 85004

Kevin Koch
2333 E. 1st Street
P.O. Box 42103
Tucson, AZ 85733

Christopher D. Thomas
Fred E. Breedlove III
Squire Sanders
1 E. Washington, 27th Floor
Phoenix, AZ 85004

Scott Wakefield
Ridenour Heinton & Lewis, P.L.L.C
201 N. Central Avenue, Suite 330
Phoenix, AZ 85004-1052

Kyle J. Smith
General Attorney
Office of the Judge Advocate General
U.S. Army Legal Service Agency
9275 Gunston Road
Fort Belvior, VA 22060-5546

Bradley Carroll
88 E. Broadway Blvd.
MS HQE910
Tucson, AZ 85072

Daniel Pozefsky
RUCO
1110 W. Washington St., Suite 220
Phoenix, AZ 85007

Annie C. Lappe
The Vote Solar Initiative
1120 Pearl Street, Suite 200
Boulder, CO 80302

Rick Gilliam
Director of Research and Analysis
The Vote Solar Initiative
1120 Pearl Street, Suite 200
Boulder, CO 80302

Christo Dodson

EXHIBIT A

ARIZONA PUBLIC SERVICE COMPANY
PROPOSED AMENDMENT
ELIMINATING THE DG REQUIREMENT

DOCKET NO. E-01345A-10-0394 ET AL.

Page 51, Line 9 through Line 24, DELETE "We find.....electricity infrastructure." and REPLACE with –

"We find that eliminating the DG requirement contained in A.A.C. R14-2-1805 is the most cost effective method to resolve how utilities comply with their DG requirements in the absence of providing direct cash incentives in exchange for DG RECs. This option will also guarantee the integrity of Arizona DG RECs. We will therefore direct Staff to open a new rulemaking docket for the sole purpose of permanently removing A.A.C. R14-2-1805 from the REST rules in a way that does not require utilities to replace their prior DG requirements with Renewable Generation. We will also grant all Arizona utilities under our jurisdiction a permanent waiver from the DG compliance requirements set forth in A.A.C. R14-2-1805 until that rulemaking is complete.

Page 52, line 4 through Line 18, DELETE "4. It is not.....service territory." and REPLACE with –

"4. It is reasonable and in the public interest, and good cause exists, to grant a permanent waiver to all Arizona utilities under our jurisdiction from the DG compliance requirements set forth in A.A.C. R14-2-1805 while the Commission conducts a rulemaking to eliminate those DG compliance requirements from the REST rules."

Page 52, Line 20 through Page 54, line 8, DELETE "IT IS THEREFORE ORDERED.....service territory." and REPLACE with –

"IT IS THEREFORE ORDERED that based on the record in this proceeding, good cause exists for granting all Arizona utilities under our jurisdiction a permanent waiver from the requirements of A.A.C. R14-2-1805 until A.A.C. R14-2-1805 is eliminated through the rulemaking we order in this proceeding.

IT IS FURTHER ORDERED that Staff will open a new docket within 180 days for the purpose of conducting a rulemaking to eliminate A.A.C. R14-2-1805 from the REST rules as discussed in this Decision."

EXHIBIT B

ARIZONA PUBLIC SERVICE COMPANY
PROPOSED AMENDMENT
REDUCING THE DG REQUIREMENT

DOCKET NO. E-01345A-10-0394 ET AL.

Page 51, Line 17 through Line 20, DELETE "No party.....informational purposes."

Page 51, Line 21, DELETE "Alternative"

Page 51, Line 24 ADD after "electricity infrastructure." –

"We agree with Staff and the utilities that Staff's Track and Monitor proposal does not result in double counting of RECs, does not constitute a property taking, does not compromise REC integrity, and does not impact third-party certification of RECs."

Page 52, Line 4 through Line 18, DELETE "4. It is not.....service territory." and REPLACE with –

"4. It is reasonable and in the public interest, and good cause exists, to authorize Arizona Public Service Company, Tucson Electric Power Company, and UNS Electric, Inc., to implement Staff's Track and Monitor proposal as discussed herein, beginning with the 2014 reporting year."

Page 52, Line 20 through Page 54, Line 8, DELETE "IT IS FURTHER ORDERED....service territory." and REPLACE with –

"IT IS THEREFORE ORDERED that based on the record in this proceeding, good cause exists for authorizing Arizona Public Service Company, Tucson Electric Power Company, and UNS Electric Inc. to adopt Staff's Track and Monitor proposal as described herein instead of requiring the utilities to demonstrate compliance with A.A.C. R14-2-1805.

IT IS FURTHER ORDERED that APS, TEP, and UNS shall use the Track and Monitor method beginning with the 2014 RES compliance year. APS, TEP, and UNS shall report in their 2015 REST Implementation Plans any kWh of DG production in 2013 that could not be utilized for compliance purposes and may propose a method to the Commission for including those kWh for compliance."

EXHIBIT C

ARIZONA PUBLIC SERVICE COMPANY'S PROPOSED REVISIONS
TO STAFF'S AMENDMENTS FILED 1/24/2014
WAIVING THE DG REQUIREMENT

DOCKET NO. E-01345A-10-0394 ET AL.

Page 53, Lines 1 & 2, DELETE "The waiver....public interest." And REPLACE With –

"Such full permanent waiver, if granted, will become effective for the budget year under consideration (i.e., a waiver requested in a utility's 2015 REST Implementation Plan filing will be in effect for the year 2015). In order to assist the Commission in determining whether the waiver request is in the public interest, the waiver request shall include the capacity of distributed generation installed in each of the previous five (5) calendar years and installed to date in the current calendar year, broken out by technology type, customer class, those receiving upfront incentives, those receiving performance based incentives and those receiving no incentives. Utilities may also include proposals for direct cash incentives should the Commission decline to grant a permanent waiver.

Page 53, Line 3, INSERT the following New Ordering Paragraphs –

"IT IS FURTHER ORDERED that for informational purposes only, the waiver request shall include the amount of actual distributed energy (kWh) produced in the previous calendar year and to date in the current calendar year, ~~and the forecasted amount of distributed energy (kWh) expected to be produced in the following calendar year,~~ broken out by technology type, customer class, those receiving upfront incentives, those receiving performance based incentives and those receiving no incentives.

IT IS FURTHER ORDERED that if a waiver is granted, such waiver shall ~~not~~ also permanently reduce the annual renewable energy requirement for future years ~~nor~~ and permanently reduce the distributed energy requirement for future years.

IT IS FURTHER ORDERED that if a waiver is granted, such waiver shall not require the utility to make up the difference with ~~the~~ utility-scale renewables ~~in the year for which the waiver is granted~~ in future years."