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Arizona Corporation Commission

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AZ CORP COMMISSION  
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BEFORE THE ARIZONA CORPORATION COMMISSION

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GARY PIERCE  
COMMISSIONER

BOB BURNS  
COMMISSIONER

SUSAN BITTER SMITH  
COMMISSIONER

BRENDA BURNS  
COMMISSIONER

11 IN THE MATTER OF THE ) DOCKET NO. E-01345A-13-0140  
12 APPLICATION OF ARIZONA )  
13 PUBLIC SERVICE COMPANY FOR )  
14 APPROVAL OF ITS 2014 )  
15 RENEWABLE ENERGY STANDARD )  
16 IMPLEMENTATION PLAN FOR )  
17 RESET OF RENEWABLE ENERGY ) MOTION TO DISMISS APS UTILITY DG  
18 ADJUSTOR. ) PROPOSAL

THE ALLIANCE FOR SOLAR CHOICE

MOTION TO DISMISS ARIZONA PUBLIC SERVICE COMPANY

APRIL 15, 2014 AND JULY 28, 2014 APPLICATIONS

21 Pursuant to A.A.C. §§ R14-3-106(K) and R14-3-109(C), The Alliance for Solar Choice  
22 (“TASC”), through its undersigned counsel, moves the Arizona Corporation Commission  
23 (“Commission”) to dismiss two applications that Arizona Public Service Company (“APS”) filed  
24 in the above-captioned docket on April 15, 2014 and July 28, 2014. These applications request  
25 approval for utility-owned solar generation that the Commission rejected in its final order in this  
26 proceeding over 7 months ago. The APS applications are contrary to that final order and should  
27 be dismissed with prejudice.  
28

1 TASC was founded by the nation's largest rooftop companies and represents the vast  
2 majority of the nation's rooftop solar market. Its members include: Demeter Power, SolarCity,  
3 Solar Universe, Sungevity, Sunrun, and Verengo. These companies are responsible for many  
4 thousands of solar installations serving businesses, residents, schools, churches and government  
5 facilities in Arizona. TASC's member companies have brought hundreds of jobs and many tens  
6 of millions of dollars of investment to Arizona's cities and towns.

7 The Commission's final order in this proceeding rejects the need for any additional  
8 utility-owned capacity at this time, including the capacity APS proposes in its April 15, 2014 and  
9 July 28, 2014 applications. The final order states the Commission will address whether APS has  
10 a need for any additional capacity in the APS 2015 REST Plan, after the Commission has  
11 collected additional information on whether additional capacity is even necessary. Recent filings  
12 that APS submitted subsequent to the final order suggest that in fact additional utility-owned  
13 capacity is not necessary. Accordingly, the Commission should dismiss APS's applications,  
14 which are contrary to the final order. Consistent with the final order, the Commission should  
15 consider whether there is a need for any additional utility-owned generation when it reviews the  
16 APS 2015 REST Plan.

17  
18 **I. The Commission Should Enforce The Final Order In This Proceeding, Dismiss APS's**  
19 **Applications For New Capacity, And Determine Whether There Is A Need For Any**  
20 **Additional Utility-Owned Capacity In The 2015 REST Plan.**

21 The Commission issued a final order on the APS 2014 REST Plan over 7 months ago, on  
22 January 7, 2014 ("Final Order").<sup>1</sup> APS requested authorization to complete a 50 MW phase of  
23 its AZ Sun program, including 30 MW of utility-owned solar adjacent to APS's Redhawk Power  
24 Station.<sup>2</sup> APS claimed this capacity is necessary to meet its REST requirements and a 2009  
25 Settlement that requires APS to acquire "new renewable energy resources with annual generation  
26 or savings of at least 1.7 million Megawatt hours to be in service by 2015...."<sup>3</sup>

27  
28 <sup>1</sup> Decision No. 74237.

<sup>2</sup> Id. page 2, lines 9-12.

<sup>3</sup> Id. page 2, lines 12-13; Decision No. 71488 (December 30, 2009).

1 Staff opposed the APS 30 MW Redhawk facility, claiming it may not be needed.

2 According to Staff:

3 “we do not believe that approval of the final 30 MW of the AZ Sun Program (currently  
4 proposed to be located at the Redhawk facility) is warranted at this time. We believe that  
5 APS will be able to meet its obligations, under the 2009 Settlement Agreement, to  
6 achieve 1.7 million MWhs by December 31, 2015. According to information submitted  
7 by APS in its 2014 RES Application, (Exhibit 2B), there could be enough distributed  
8 generation to enable APS to meet its required target without the 30 MW at Redhawk.”<sup>4</sup>

9  
10 The Final Order accepts Staff’s reasoning. It authorizes APS to build 20 MW of new  
11 utility-owned solar capacity at Luke Air Force Base and at the City of Phoenix. However, the  
12 Final Order rejects APS’s proposal to build 30 MW of utility-owned solar at APS’s Redhawk  
13 Power Station.<sup>5</sup> Instead, the Final Order directs APS and interested parties to submit information  
14 to the docket by April 15, 2014, addressing whether APS has a need for any additional capacity  
15 to meet the requirements of the 2009 Settlement.<sup>6</sup> The Final Order also requests information on  
16 the cost effectiveness of purchased power agreements over utility owned generation.<sup>7</sup> The Final  
17 Order directs Staff to take this information into account in issuing a Staff report on the APS 2015  
18 REST plan. Specifically, the Final Order states:

19 “IT IS FURTHER ORDERED that when Staff files its recommendations regarding  
20 Arizona Public Service Company’s 2015 REST Implementation Plan, it shall include a  
21 discussion of whether or not Arizona Public Service Company needs to install any  
22 portion of the final 30 MW phase of AZ Sun in order to comply with the REST Rules  
23 and/or the 2009 Settlement Agreement. These recommendations shall consider the  
24 information filed by Arizona Public Service Company and any interested parties  
25 regarding the cost effectiveness of utility owned generation and third party wholesale

26 <sup>4</sup> Id. page 11, lines 1-6.

27 <sup>5</sup> Id. page 15, lines 8-10: “IT IS FURTHER ORDERED that Arizona Public Service Company’s plan to move  
ahead with 10 MW at Luke Air Force Base and 10 MW at the City of Phoenix, as described herein, is approved.  
However, the plan for 30 MW at Redhawk is not approved, at this time.” (italics and underlining added)

28 <sup>6</sup> Id. page 15, lines 11-16.

<sup>7</sup> Id.

1 purchased power agreements in contemplating this final 30 MW phase of AZ Sun.”<sup>8</sup>  
2 (italics and underlining added)  
3

4 APS ignores the Final Order and instead submits two applications in this proceeding  
5 requesting authorization to build 20 MW of AZ Sun utility-owned generation that the Final  
6 Order rejects. On April 15, 2014, APS proposed a scaled down 20 MW utility-owned  
7 development at its Redhawk Power Station.<sup>9</sup> Then, on July 28, 2014, APS proposed a radically  
8 different alternative in which APS would locate 20 MW of utility-owned solar capacity on the  
9 rooftops of 3,000 residential customers in APS’s service territory.<sup>10</sup> Despite the significant legal  
10 and policy questions such a proposal raises, APS’s July 28, 2014 application spans barely three  
11 double-spaced pages and fails to provide the most basic information on proposed costs. Yet,  
12 APS asks the Commission to expedite approval with no evidentiary hearing in a ridiculously  
13 short 2-month timeframe.

14 The Commission should dismiss APS’s April 15, 2014 and July 28, 2014 applications  
15 from this proceeding with prejudice. The Final Order in this proceeding approves no capacity  
16 for these applications. To the contrary, the Final Order rejects this capacity, questions whether it  
17 is needed, and states the Commission will consider any additional capacity in APS’s 2015 REST  
18 Plan. Approval of either of APS’s applications would require significant modification to the  
19 Final Order, which neither of APS’s applications request. As such, APS has submitted  
20 applications that plainly contradict a Commission decision. Moreover, APS’s recent filings in  
21 this docket, and in the 2015 REST Plan Implementation docket, clearly indicate that APS has no  
22 need for additional utility-owned capacity, regardless of its location.<sup>11</sup>  
23  
24  
25

<sup>8</sup> Id. page 15, line 17-23.

<sup>9</sup> APS, *Application and Response to Commission Inquiry in Decision 74237*, Docket No. E-01345A-13-0140, (Apr. 15, 2014).

<sup>10</sup> APS, *Supplemental Application (Utility-Owned DG)*, Docket No. E-01345A-13-0140, (Jul. 28, 2014).

<sup>11</sup> APS’s April 15, 2014 application acknowledges that if the pace of residential DG applications received in the first quarter of 2014 continues until the end of 2015, which it has thus far, “APS anticipates that it would be very close to meeting its 2009 Settlement obligations.” Page 3, lines 5-7.

1 **II. The APS Applications Propose Capacity And Costs That Are Inconsistent With The**  
2 **Final Order In This Proceeding, Which APS Has Not Proposed to Modify. As Such,**  
3 **The Applications Should Be Dismissed As A Collateral Attack On A Commission**  
4 **Decision.**

5 The April 15, 2014 and July 28, 2014 APS applications do not comply with the  
6 Commission's 2014 REST Plan Final Order. The Final Order requests additional information so  
7 the Commission can determine whether any additional capacity is needed in the 2015 REST  
8 Plan. The Final Order did not invite proposals for scaled down capacity or alternate locations  
9 for rejected capacity, which is what APS has proposed. The Final Order rejected the proposed  
10 capacity and approves no budget or funding for it. APS did not request a rehearing of the Final  
11 Order, and neither of APS's applications request that the Commission amend the Final Order to  
12 increase the 2014 REST Plan budget or provide funding to accommodate 20 MW of additional  
13 utility-owned generation. APS's applications are simply inconsistent with the Final Order and  
14 should be dismissed. In all collateral actions or proceedings, the orders and decisions of the  
15 commission that have become final shall be conclusive.<sup>12</sup> The Commission's Final Order in this  
16 proceeding is conclusive. The APS applications are contrary to it and should be dismissed with  
17 prejudice. The Final Order is clear this issue will be addressed in the APS 2015 REST Plan,  
18 which in fact has already been filed.

19 Even if APS had requested a modification of the Final Order, which it has not, APS has  
20 failed to provide sufficient information in either of its applications to determine what  
21 modifications to the 2014 Plan Final Order would be necessary, including modifications to the  
22 budget and funding levels. The Commission's REST Rules require a utility to provide the  
23 following information for every proposed Eligible Renewable Energy Resource:<sup>13</sup>

- 24 • A description of the kW and kWh to be obtained for the next 5 years;
- 25 • Estimated cost, including cost per kWh and total cost per year;
- 26 • An evaluation or whether existing rates allow for the ongoing recovery of  
27 proposed resources, including a Tariff application that meets the requirements of

28 <sup>12</sup> A.R.S. § 40-252.

<sup>13</sup> A.C.C. § 14-2-1813(B)(1),(2),(4), (5).

1 R14-2-1808 if additional recovery is necessary; and

- 2 • A line item budget that allocates funding for each proposed resource.

3 Neither of APS's applications attempt to comply with the Commission's REST Rules. A  
4 single footnote in the April 15, 2014 application states APS "will provide updated revenue  
5 requirement numbers in its 2015 RES Implementation Plan that will be filed July 1, 2014."<sup>14</sup>  
6 The July 28, 2014 application provides nothing more than an apparent capital cost estimate that  
7 ranges wildly from \$57-70 million. These applications fail to provide the minimal information  
8 required by the Commission's REST Rules. As such, the Commission lacks sufficient  
9 information to review these applications and they should be dismissed from this proceeding.

10  
11 **III. The Commission Should Enforce Its Final Order And Consider Whether APS Has A**  
12 **Need For Any Additional Capacity In The 2015 REST Plan.**

13 APS filed its 2015 REST Plan on July 1, 2014. The 2015 REST Plan appears to confirm  
14 that in fact no additional AZ Sun capacity is needed to satisfy the REST or the 2009 Settlement.  
15 APS states: "By the end of 2015 and consistent with its intent to make best efforts to fulfill the  
16 RES and its 2009 Settlement obligations, APS projects it will have a total of approximately 1250  
17 MW of installed renewable capacity within its service territory, including approximately 930  
18 MW of solar capacity."<sup>15</sup> Likewise: "APS expects to achieve compliance with its 2015 RES  
19 requirements and maintain its renewable energy obligations in 2015 in accordance with APS's  
20 Settlement Agreement (2009 Settlement)."<sup>16</sup> These statements do not appear to be contingent on  
21 the approval of any additional utility-owned capacity.

22 Despite acknowledging that additional capacity is not needed, APS nevertheless includes  
23 a request to build a 20 MW utility-owned solar facility at the APS Redhawk Power Station.<sup>17</sup>

24 According to APS:

25 "APS is proposing in this plan that the Company be authorized to proceed with the  
26 construction of a 20 MW utility-owned solar project to the located at APS's Redhawk

27 <sup>14</sup> Page 4, lines 27-28.

28 <sup>15</sup> 2015 REST Plan Application, page 2, lines 8-11.

<sup>16</sup> 2015 REST Plan, page 1.

<sup>17</sup> 2015 REST Plan Application, page 3, lines 6-8.

1 Power Station, which is a previously identified site where the Company has already  
2 initiated pre-development activities. If approved, the Company expects it will be able to  
3 conduct the final RFP, sign a contract, and begin construction in 2014.”<sup>18</sup>  
4

5 APS proposes a budget of \$153.8 million for the 2015 REST Plan, which apparently  
6 includes the cost of the proposed 20 MW project at Redhawk. APS proposes no alternate  
7 location or budget for the proposed capacity. APS claims it has undertaken “pre-development  
8 activities” at Redhawk and APS has provided no information for the Commission to consider  
9 alternate locations.

10 The Commission should enforce its Final Order and consider whether a 20 MW facility at  
11 Redhawk is necessary within the context of the APS 2015 REST Plan. APS’s residential rooftop  
12 solar proposal is entirely inconsistent with the proposal APS has put forward in the 2015 Plan,  
13 and APS has not met the minimal information requirements of the REST Rules for a rooftop  
14 solar proposal to be considered. APS has provided no estimate of its total cost to lease  
15 residential rooftop space necessary to accommodate 20 MW, no estimate of installation costs, no  
16 estimate of interconnection costs, no estimate of permitting costs, and no estimate of operation  
17 and maintenance costs over a 20-25 year term. Without this information, the Commission has no  
18 basis to compare the cost of locating capacity on rooftops versus locating capacity where APS  
19 has already undertaken “pre-development activities”. Accordingly, the Commission has no basis  
20 on which to consider any alternative to the proposal APS included in its proposed 2015 REST  
21 Plan. Moreover, the Commission should also not lose sight of the fact that it has questioned  
22 whether any additional capacity is necessary, regardless of location. Based on APS’s recent  
23 filings, it appears the answer is no.  
24

25 **IV. APS’s Proposal To Locate 20 MW Of Solar Capacity On The Rooftops Of 3,000**  
26 **Residential Customers Raises Significant Public Policy And Legal Questions That**  
27 **Cannot Possibly Be Addressed In The 2 Month Timeframe APS Proposes.**  
28

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<sup>18</sup> 2015 REST Plan, page 3.

1 APS's rationale for 20 MW of residential solar stands in stark contrast to the positions  
2 taken by APS in recent Commission proceedings. By substituting a distributed solar program  
3 (i.e. AZ Sun DG) for a utility-scale solar installation (i.e. the 20 MW Redhawk project), APS  
4 signals that it no longer believes its statement from a year ago, that rooftop solar is more  
5 expensive and less efficient than other types of renewable generation, including utility-scale  
6 solar; and, its claim that without incentives, rooftop solar is not economical for customers.<sup>19</sup> The  
7 structure of APS's program suggests that it has abandoned the position it took on November 7,  
8 2013 where it attacked net metering because it supposedly relies on a fixed incentive, rather than  
9 on "compensation that can be adjusted."<sup>20</sup> Here APS proposes a fixed incentive applicable over  
10 a 20-year period.

11 The APS AZ Sun rooftop solar proposal raises a number of significant legal and public  
12 policy questions that the three-page, July 28, 2014 application makes no attempt to address. For  
13 example, there are several ways in which the APS program could raise costs to non-participating  
14 ratepayers. APS will add the program costs to rate base and recover a return on equity (over a  
15 20-25 year life of the solar energy equipment) on \$57-70 million of program costs. It is likely  
16 that this stream of costs will be higher than if the company looked to procure desired benefits  
17 from the full range of market actors. For example, customers who purchase or lease their  
18 systems and participate in net metering pay the full capital costs of PV equipment, and generate a  
19 surplus of system benefits. Any additional cost of incentivizing these customers to modify their  
20 systems to meet electric system needs is likely much smaller than the cost to APS and its  
21 ratepayers for paying for the full cost of systems installed on leased roofs. Similarly, third-party  
22 lease systems involve no expenditure from the utility, and parties to these transactions can also  
23 be incentivized to adopt optimal orientation or inverter configuration.

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24  
25  
26 <sup>19</sup> Page 3 of the *Application* filed July 12, 2013 in Docket No. E-01345A-13-0140, *In The Matter Of The*  
27 *Application Of Arizona Public Service Company For Approval Of Its 2014 Renewable Energy Standard*  
*Implementation Plan For Reset Of Renewable Energy Adjustor*. See:  
<http://images.edocket.azcc.gov/docketpdf/0000146805.pdf>

28 <sup>20</sup> Proposed Amendment #6: Solar Adjuster Pilot Program, Page 11, filed November 7, 2013 in Docket No. E-  
01345A-13-0248, *Arizona Public Service Company Net Metering Cost Shift Solution*. See:  
<http://images.edocket.azcc.gov/docketpdf/0000149819.pdf>.



1 One reason these private transactions are less expensive to ratepayers is that the  
2 homeowner, his/her contractors, and the third party owner/lessor bear all the risks. Under APS's  
3 proposal, a whole host of risks are shifted onto the ratepayer. If program costs are higher than  
4 expected, ratepayers pay those costs. If PV panels or balance of system fails, ratepayers will pay  
5 the cost of replacing the systems (to the extent not covered by warranties or insurance) and will  
6 suffer lost system benefits until replacement occurs. If the utility needs to spend money on  
7 billing system changes to accommodate the \$30/month credit – ratepayers pay those costs. If the  
8 utility's marketing costs are higher than those incurred by competitive suppliers, ratepayers pick  
9 up the difference. At a minimum, the Commission should carefully evaluate the costs APS has  
10 passed on to ratepayers in connection with its Flagstaff customer-sited DG pilot program to  
11 better understand the risk ratepayers face for cost overruns from utility-owned projects located  
12 on customers' premises.

13 Recent experience in California suggests that utility-owned distributed generation is more  
14 expensive than distributed generation procured through competitive bidding. Southern  
15 California Edison ("SCE") initially administered a system in which it procured distributed  
16 generation through a combination of utility-owned and competitively bid contracts. That utility  
17 found that the utility-owned option tended to be more expensive and repeatedly petitioned the  
18 California Public Utility Commission to reduce and ultimately eliminate the utility-owned  
19 portion of the procurement program.<sup>21</sup> Another utility, Duke Energy, suspended its rooftop  
20 program after a fire occurred at one of its locations.<sup>22</sup> These examples highlight the spotty  
21 record utilities have had attempting to locate utility-owned generation on the property of their  
22 customers.

23 <sup>21</sup> In Application 08-03-015, SCE proposed a 250 MW utility-owned Solar PV Program. See: SCE, *Petition For*  
24 *Modification Of Decision No. 12-02-035*, July 27, 2012, page 11 at:  
<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=63977>.

25 "Reducing the UOG portion of the SPVP program to 91 MW, as requested in this Petition, would continue to  
26 save customers money from having to bear the costs associated with SCE building relatively higher-cost rooftop  
27 SPV projects when SCE could buy these same renewable energy generated from SPV facilities through  
competitive, CPUC authorized procurement programs."

28 See also, *Southern California Edison Company's (U 338-E) Petition For Modification Of Decision 09-06-049*,  
February 11, 2011 at: <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=38778>

<sup>22</sup> See Charlotte Business Journal, "Duke Energy Suspends 'Rooftop Solar' Effort After Fire, Apr. 25, 2011.  
Available: [http://www.bizjournals.com/charlotte/blog/power\\_city/2011/04/duke-energy-suspends-rooftop-solar.html?page=all](http://www.bizjournals.com/charlotte/blog/power_city/2011/04/duke-energy-suspends-rooftop-solar.html?page=all)

1 The APS program also could increase the cost of solar energy systems to customers who  
2 prefer private solar energy services. When utility programs compete with non-utility-owned  
3 services, the advantages enjoyed by the incumbent utility threaten to drive competitive services  
4 out. The anti-competitive factors include:

- 5
- 6 • Access to customer data. The utility has detailed historical customer usage  
7 information that can greatly facilitate customer acquisition. This would create an  
8 unfair playing field for private solar vendors trying to compete with utilities for  
9 customers.
- 10
- 11 • Interconnection. Utilities can make it hard or easy to interconnect solar systems.  
12 Even short delays affect sales for competitive solar equipment vendors and utility  
13 sponsored projects that face no such delays would have an unfair advantage.
- 14
- 15 • System Capacity. The utility has advanced knowledge of where interconnection  
16 opportunities exist through its understanding of locations on the distribution  
17 system where there is spare capacity.
- 18
- 19 • Discretion in program implementation. The Utility can target its program in ways  
20 to disrupt marketing by private solar energy companies.
- 21
- 22 • Selection of Contractors. APS will be in charge of choosing which companies  
23 install systems under this program. It could discriminate among private solar  
24 companies, or condition contracts on terms that prevent vendors from installing  
25 net metered systems or engage in third-party ownership models.
- 26

27 Individually and in combination these factors would make competition unfair, with the  
28

1 result that customer choices would be restricted.<sup>23</sup> This is particularly true if the utility succeeds  
2 in driving-out or weakening private solar equipment vendors and then closes its own program.  
3 The proposed APS program is of limited duration and size, but in that period it could sufficiently  
4 damage competitive markets, such that when it is over customers are left without options.

5 APS has the motive and the opportunity to favor its own program and investments. The  
6 result is likely to be that building owners may have diminished access to competitive suppliers of  
7 rooftop PV systems and may experience higher costs due to a constrained marketplace. This  
8 outcome is antithetical to the general principle of open access to electric grids that has been  
9 central to energy policy-making for decades.

10 Competitive solar companies do not have the luxury of a rate base over which to spread  
11 costs. Granting APS the right to own customer-sited PV systems could result in systemic  
12 competitive advantages and unfair market power for APS, which could distort market clearing  
13 prices for certain products and services provided by the competitive market place. Unlike non-  
14 utility solar energy suppliers who are subject to competitive pressures of the private market place  
15 (which helps to control prices and ensure quality installations and service), APS has no reason to  
16 keep program costs low. In fact, it appears APS has proposed 20 MW of new utility owned solar  
17 capacity despite the fact that it does not need the capacity to meet its REST or 2009 Settlement  
18 requirements. And if costs escalate, APS is rewarded with a larger return on invested capital.

19 Finally, APS provides no information about how its cost estimates were calculated, or  
20 how it determined \$30/month is a reasonable cost for leasing residential customer roof space.  
21 The entire proposal is described in less than three pages (double-spaced). The Commission is  
22 left with only a vague idea regarding how much this will cost ratepayers. For example, does  
23 APS's estimate include costs of billing system changes to accommodate the \$30/month bill  
24 credit for participating customers? Does the cost estimate include expenses associated with  
25 establishing, marketing and administering the program? If these program costs are to be rate-  
26 based, how do overall ratepayer liabilities escalate to reflect the utility's return on equity

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27 <sup>23</sup> Whether or not APS takes advantage of asymmetric information or market power, just the perception of an  
28 uneven playing field would likely constrain investment and participation by investors, third-parties and  
customers, which would hinder the development of distributed solar market services.

1 earnings? What interconnection costs and permitting costs will APS incur, and are these costs  
2 included in APS's cost estimate?

3         Moreover, APS has not provided the lease that would govern the relationship with a  
4 participating customer. Without the lease, it is not clear how APS proposes to deal with a  
5 change in the identity of the real property owner that hosts an APS-owned solar system? What  
6 rights does APS propose for entering onto a residential customer's roof to perform maintenance  
7 and repairs or respond to any emergencies over a 20-year term? What recourse will APS seek if  
8 a new homeowner refuses to assume the lease that APS entered with the prior homeowner? Who  
9 is liable for any damage done to the customer's property? How will a system be removed at the  
10 end of the lease term? Who will be responsible for repairing any damage to the customer's  
11 property during the removal process? Who is liable if the solar system is damaged? Who will be  
12 responsible for resolving disputes between APS and customers hosting solar systems?

13         These considerations raise significant implications for would be participants in a utility-  
14 owned, residential rooftop solar program. For example, Arizona's utility statutes give utilities a  
15 broad right to pursue a civil action with treble damages and a right to pursue attorneys fees  
16 against any customer that "[t]ampers with property owned or used by the utility."<sup>24</sup> It is unlikely  
17 that the Arizona Legislature contemplated that these provisions might apply to a utility program  
18 that locates expensive generating equipment on the premises of residential customers.  
19 Nevertheless, these statutes are broad enough to apply in this context, and the Commission should  
20 carefully consider the potential liability to which approval of a utility-owned rooftop solar  
21 program may expose residential customers.<sup>25</sup>

22         The primary justification APS offers for its rooftop solar proposal is that it responds to  
23 "clear customer interest."<sup>26</sup> However there is no support for this claim in the three-page APS

24         <sup>24</sup> A.R.S. §§ 40-292, 40-493.

25         <sup>25</sup> The Commission's rules contemplate the utility's right of ingress and egress over a customer's premises  
26 extending only to the point of power delivery, which is the utility billing meter. *See, generally*, Rules R14-2-  
27 206(B),(C), R14-2-208(A),(B), and R14-2-209(D). The APS proposal would dramatically expand APS's need  
28 for ingress and egress over a customer's premises and would likely require a reevaluation of the Commission's  
rules providing for such access.

26         <sup>26</sup> July 28, 2014 Application, page 1, line 19.

1 application, and TASC questions whether residential customers would truly be interested in  
2 APS's proposal. APS proposes to provide a \$30/month lease payment, but APS has not  
3 explained how it determined this proposed payment, or whether it has conducted any research to  
4 determine whether it is sufficient to motivate a residential customer to want to host utility-owned  
5 generation that provides no tax benefits to the customer or utility bill savings. In fact, any  
6 benefit of participation may be reduced by taxation of the lease payment and overwhelmed by  
7 increased liability and potential burdens associated with transferring property. Finally, although  
8 the application signals that this program would open solar opportunities to lower income  
9 customers and target high value locations, APS has more recently stated in discussing the  
10 proposed program that the program will be first-come/first-served and proposed system sizes of  
11 4-8 kW suggest the smallest homes with little roof space will not qualify.

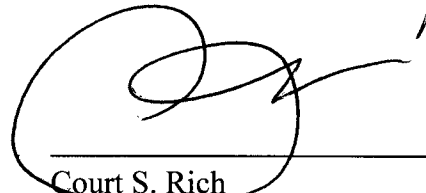
12 These questions cannot possibly be addressed within the 2-month timeframe APS has  
13 proposed for Commission action on the July 28, 2014 application. Considerable deliberation  
14 would be required to address these important public policy and legal matters. However, the  
15 Commission should first determine whether any proposed capacity is even necessary.  
16 Discussing alternate locations for capacity that has thus far been rejected, is likely not needed,  
17 and is not currently included in the APS 2015 REST Plan is a waste of Commission resources.

18  
19 **V. For The Reasons Discussed Herein, The Commission Should Dismiss APS's April 15,**  
20 **2014 and July 28, 2014 Applications From This Proceeding And Address The Need For**  
21 **New Capacity In The 2015 REST Plan Proceeding.**

22 WHEREFORE, The Alliance for Solar Choice requests that the Commission dismiss the  
23 APS April 15, 2014 and July 28, 2014 applications from the 2014 REST Plan proceeding.  
24 Consistent with the Commission's Final Order in the 2014 REST Plan proceeding, the  
25 Commission should address the need for any additional capacity, and the benefits of procuring  
26 capacity through purchased power agreements, in the context of the 2015 REST Plan that APS  
27 filed on July 1, 2014. The APS applications in the 2014 Plan proceeding propose capacity and  
28 costs that are inconsistent with the Final Order in the proceeding. APS's proposal to locate 20

1 MW of solar capacity on the rooftops of 3,000 residential customers raises significant public  
2 policy and legal questions that cannot be addressed in this docket and certainly cannot be  
3 addressed in the 2-month timeframe APS proposes. The Commission should enforce its Final  
4 Order, dismiss the APS April 15, 2014 and July 28, 2014 applications from the proceeding, and  
5 address the need for new capacity in the 2015 REST Plan proceeding.

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7 Respectfully submitted this 15<sup>th</sup> day of August, 2014.

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13 Rose Law Group pc  
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1 **Original and 13 copies filed on**  
2 **this 17<sup>th</sup> day of August, 2014 with:**

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