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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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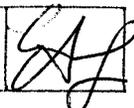
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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A HEARING
TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, AND TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-11-0224

Arizona Corporation Commission
DOCKETED

SEP 12 2014

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**JOINT REPLY BRIEF (FOUR CORNERS APPLICATION) OF
WAL-MART STORES, INC. AND SAM'S WEST, INC.,
FREEPORT-MCMORAN COPPER & GOLD, INC.,
ARIZONANS FOR ELECTRIC CHOICE & COMPETITION,
NOBLE AMERICAS ENERGY SOLUTIONS L.L.C.,
and THE KROGER CO.**

Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively "Walmart"); Freeport-McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition (collectively, "AECC"); Noble Americas Energy Solutions L.L.C., ("Noble Solutions"); and The Kroger Co. ("Kroger") hereby file this Joint Reply Brief in this matter. Walmart, AECC, Noble Solutions and Kroger shall be referred to collectively as the "AG-1 Intervenors."

1 I. **“GENERATION CHARGES” IN SCHEDULE AG-1 SHOULD NOT BE**
2 **READ NARROWLY, BUT SHOULD BE GIVEN ITS ORDINARY**
3 **MEANING**

4 Arizona Public Service Company’s (“APS”) Experimental Rate Rider Schedule
5 AG-1 (“Schedule AG-1”) explicitly provides that “[a]ll provisions, charges and
6 adjustments in the customer’s applicable retail rate schedule will continue to apply
7 except...”, and then lists four items (the “Generation Charges Exemption”). Decision No.
8 73183, Exhibit A at Attachment J (“Attachment J”), page 4 of 5. The four items that
9 constitute the Generation Charges Exemption are as follows:

- 10 1. The generation charges will not apply;
- 11 2. Adjustment Schedule PSA-1 will not apply, except that the
12 Historical Component will apply for the first twelve months
13 of service under this rate rider schedule;
- 14 3. Adjustment Schedule EIS will not apply; and
- 15 4. The applicable proportionate part of any taxes or
16 governmental impositions which are or may in the future be
17 assessed on the basis of gross revenues of the Company
18 and/or the purchase price or revenue from the electric energy
19 or service sold and/or the volume of energy generated or
20 purchased for sale and/or sold hereunder shall be applied to
21 the customer’s bill.

22 RUCO and Staff assert that the term “generation charges” in item #1 of the
23 Generation Charges Exemption should be interpreted narrowly. RUCO asserts that the
24 AG-1 Intervenors are recommending an “expansion” of the definition of the term.
25 RUCO’s Closing Brief at 7, lines 3, 13. RUCO goes on to boldly assert that the cost of
26 acquiring generation units is “not a generation cost[,]” but rather “it’s an acquisition
cost.” *Id.* at 9, lines 12-13. It is RUCO, however, that is unnecessarily, and illogically,
interpreting “generation” too narrowly.

RUCO concedes that fuel to power a generation facility is a “generation cost,” but
believes that the cost to acquire (or decommission) a generation facility is not a

1 “generation cost.” *Id.* at 9, lines 11-13. RUCO is in error. Both are generation costs.
2 While the cost of fuel is a variable cost, and the cost of a generation facility itself is a
3 fixed cost, both are functionalized as generation costs. See, Tr. 74, lines 13-15 (as to
4 APS’s 100% ownership interest in Units 1, 2 and 3); and Tr. 364, lines 19-24 (as to its
5 original 15% ownership interest in Units 4, 5). Further, nothing in the circumstances
6 surrounding negotiation of the Settlement Agreement and Attachment “J” suggests that
7 the term “generation costs” was meant to be limited to variable costs such as fuel in this
8 particular instance.

9 Staff similarly asserts that “generation charges” as used in the Generation Charges
10 Exemption has the same narrow meaning as the term “Generation Charge” as used in
11 Schedule E-34. The terms, however, are not the same. In Schedule E-34 (and similarly in
12 Schedules E-35 and the four E-32 schedules under which AG-1 customers may take
13 service) the term “Generation Charge” is a capitalized term, and is stated in the singular
14 (though there are a number of elements to the charge). Whereas, in Schedule AG-1, the
15 term “generation charges” is not capitalized, and is stated in the plural. Staff’s attempt to
16 equate “Generation Charge” in Schedule E-34 with “generation charges” in Schedule
17 AG-1 fails to recognize that the terms are stated differently, and that the differences are
18 real and meaningful.

19 Staff also asserts that the fact that items #2 and #3 of the Generation Charges
20 Exemption are separately listed requires that item #1 be interpreted narrowly, based on
21 Staff’s belief that, if item #1 were intended to have a broader interpretation, then items #2
22 and #3 would have been unnecessary. Staff’s Initial Post-Hearing Brief, at 22, lines 5-17.
23 However, Staff overlooks the fact that when “generation charges” is understood to be
24 broader than “Generation Charge,” as the latter is used in Schedule E-34, the separate
25 listing of items #2 and #3 is necessary, since their omission would have achieved a
26 different result. More specifically, item #2 includes two clauses, a statement that

1 Adjustment Schedule PSA-1 will not apply, and a separate clause with an exception to the
2 first clause with respect to the Historical Component. Had item #2 not been included in
3 the Generation Charges Exemption, all the charges under Adjustment Schedule PSA-1
4 would have been excluded. Thus, it was necessary to separately state item #2 to provide
5 that the Historical Component would nonetheless apply for the first twelve months
6 following commencement of service under Schedule AG-1. Likewise, omission of item
7 #3 would have created an ambiguity, as environmental-related costs such as those to be
8 recovered through Adjustment Schedule EIS are often recovered as system benefits
9 charges rather than as elements of generation charges. To confirm that customers taking
10 service under Schedule AG-1 were not to pay charges under Adjustment Schedule EIS, it
11 was necessary to separately state that these system benefits charges were also not to be
12 applied.¹

13 In connection with the foregoing, interpreting “generation charges” to include the
14 Four Corners Rate Rider (“FC Rider”) does not render Section 10.3(5) of the Settlement
15 Agreement meaningless, as RUCO asserts. See RUCO’s Closing Brief at 9, lines 17-18.
16 RUCO mistakenly believes that “the whole point” of Section 10.3(5) was to hold other
17 classes harmless from any adverse impacts of Schedule AG-1. See, *Id.* But Section
18 10.3(5) is not about Schedule AG-1. Rather, Section 10.3(5), like all of Section 10, is
19 about APS’s opportunity to recover costs if it closed on the then-proposed Four Corners
20 transaction. Section 10.3(5) merely provides that the adjustment rider (now referred to as
21 the FC Rider) shall be applied on an equal basis across all rate schedules. As discussed in
22 the AG-1 Intervenors’ Initial Closing Brief, the FC Rider will be applied to rate
23

24 ¹ Adjustment Schedule EIS was approved by the Commission in Decision No. 73183, as was the Settlement
25 Agreement and Attachment “J.” Unlike Schedule EIS and Schedule AG-1, the FC Rider was not to be immediately
26 implemented upon adoption of the Settlement Agreement, and whether the FC Rider would ever come into existence
was subject to a number of conditions, the satisfaction of which were unknown at the time the Settlement Agreement
was negotiated and approved.

1 Schedules E-32L, E-34 and E-35, as required by Section 10.3(5). Schedule AG-1,
2 however, is a rate rider schedule, and its terms supersede those of the underlying rate
3 schedules pursuant to which customers on Schedule AG-1 take service. Thus, Section
4 10.3(5) is not rendered meaningless by exempting AG-1 customers from the FC Rider.

5
6 **II. EXEMPTING AG-1 CUSTOMERS FROM THE FC RIDER DOES NOT**
7 **IGNORE LONG TERM SYSTEM PLANNING.**

8 RUCO asserts that because customers taking service under Schedule AG-1 may
9 return to bundled service and once again obtain their generation service from APS,
10 exempting AG-1 customers from the FC Rider “ignor[es] long term system planning.”
11 RUCO’s Closing Brief at 8, line 17. RUCO, however, overlooks a number of aspect of
12 Schedule AG-1 that provide for APS to be compensated for generation service it may in
13 the future provide to customers served by Schedule AG-1. First, should a Generation
14 Service Provider (“GSP”) fail to provide firm power as required, Schedule AG-1 provides
15 that the GSP shall pay APS for Imbalance Service according to the terms of APS’s Open
16 Access Transmission Tariff (“OATT”). Attachment “J” at 2, 3. Second, Schedule AG-1
17 requires that a customer returning to APS’s bundled generation service will pay APS for
18 generation service at the market index rate of APS’s OATT until APS is able to integrate
19 the customer back into its generation planning², and that a returning customer must then
20 stay on APS’s bundled generation service for at least one year. Attachment “J” at 3.
21 Third, should a customer served under Schedule AG-1 return to APS’s bundled service
22 while the FC Rider is in existence, such a customer would then begin paying the FC Rider
23 charge; and, upon the costs to be recovered through the FC Rider being folded into APS’s
24 base rates at the Company’s next rate case, such a customer would continue to pay those

25 _____
26 ² There are exceptions to the payment of these charges, namely, if the customer provides at least one year’s advance
notice to APS of its intent to return, or if the entire AG-1 program is terminated.

1 costs through APS's unbundled service rates. Finally, Units 4 and 5 do not provide any
2 more "reliability infrastructure" to benefit customers on Schedule AG-1 than do any other
3 generation resources APS has at its disposal and, except as otherwise provided by Schedule
4 AG-1, AG-1 customers are not required to pay APS for any such infrastructure. Thus,
5 there is no legitimate reason to single out costs incurred by APS to acquire an additional
6 48% ownership interest in Units 4 and 5 from any other similar costs APS incurs to
7 satisfy its reliability requirements.

8
9 **III. EXEMPTING AG-1 CUSTOMERS FROM THE FC RIDER DOES NOT**
10 **RESULT IN A COST SHIFT; RATHER, IMPOSING THE FC RIDER ON**
11 **AG-1 CUSTOMERS WOULD SHIFT GENERATION COSTS TO**
12 **CUSTOMERS WHO DO NOT TAKE GENERATION SERVICE FROM**
13 **APS.**

14 Exempting AG-1 customers from the FC Rider will not shift costs to non-AG-1
15 customers for services provided to AG-1 customers. Tr. at 207, lines 11-12. Rather,
16 imposing the FC Rider, which relates to APS's acquisition of generation resources that do
17 not provide service to AG-1 customers, would result in a cost-shift to AG-1 customers.
18 The costs to be recovered through the FC Rider are no different than fuel costs incurred by
19 APS. Thus, for example, if APS incurs additional costs for fuel, AG-1 customers should
20 not (and, pursuant to Schedule AG-1, will not) pay additional amounts, because the fuel is
21 not used to provide service to AG-1 customers. If AG-1 customers were required to pay
22 such costs, costs incurred to service non-AG-1 customers would be inappropriately
23 shifted to AG-1 customers. Accordingly, in reality, APS's, Staff's and RUCO's
24 proposals in this matter would result in such a cost shift to, not from, AG-1 customers.

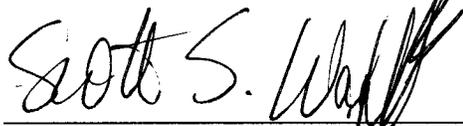
25 **IV. CONCLUSION**

26 The Arizona Corporation Commission should reject the respective proposals by

1 APS, Staff and RUCO to apply the FC Rider to AG-1 customers. Exemption of AG-1
2 customers from the FC Rider is consistent with the express terms, and the spirit, of
3 Schedule AG-1 and the Settlement Agreement.

4 Dated this 12th day of September, 2014.

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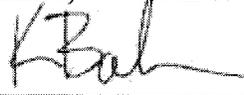
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