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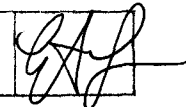
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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOUG LITTLE
COMMISSIONER

11) **DOCKET NO. E-01345A-13-0248**
12 **IN THE MATTER OF THE**)
13 **APPLICATION OF ARIZONA**)
14 **PUBLIC SERVICE COMPANY FOR**) **THE ALLIANCE FOR SOLAR**
15 **APPROVAL OF NET METERING**) **CHOICE'S (TASC) INITIAL BRIEF**
16 **COST SHIFT SOLUTION.**)

ORIGINAL

I. Introduction

18 In response to the April 28, 2015, Procedural Order, The Alliance for Solar Choice ("TASC")
19 hereby submits is Initial Brief. As an initial note, TASC previously filed a Response to APS's
20 Motion to Reset (the "TASC Response") before the Procedural Order was issued setting forth the
21 briefing schedule in this matter. For completeness, TASC includes many of its arguments from
22 the TASC Response here in the Initial Brief, while also expanding and modifying as appropriate.

24 Section II explains that the current solar charge has never received the legally required level of
25 scrutiny in a rate case. As explained in Section III, the Application and the Motion to Reset
26 collectively ask this Commission to engage in illegal single-issue ratemaking. Courts have
27 rejected single-issue ratemaking as violating the Arizona Constitution, and it must be rejected here
28 as well.

1 As set forth in Section IV, recent Commission precedent supports the resolution of this matter
2 inside a rate case. Section V explains how APS has failed to prove its allegations of an existing,
3 hidden, and growing cost shift. In fact, ratemaking principles make it clear that no present cost
4 shift exists as described, and therefore, there is no reason to again examine this issue outside of a
5 rate case.

6
7 Section VII and its subparts explain how the issues raised in the Application and again in the
8 Motion to Reset were already thoroughly litigated and resolved in APS's last rate case with the
9 consensual creation of the Lost Fixed Cost Recovery mechanism (the "LFCR"). As explained in
10 Section VII.A, the exact issues related to an alleged failure of rate design to account for lost kWh
11 sales from distributed generation ("DG") and energy efficiency ("EE") were raised and resolved
12 in the Settlement Agreement that concluded the last APS rate case. Further, Section VII.B explains
13 that the LFCR cannot be used as APS contemplates, since it was specifically designed to be split
14 evenly with an opt-out rate for those seeking not to participate. Sections VII.C and VII.D recap
15 the specific support for the existing LFCR that APS and Commission staff expressed during the
16 last rate case. The contradiction between charging DG customers more in the LFCR for utilizing
17 DG, while ignoring that 70% of the costs to customers in the LFCR are caused by energy efficiency
18 (EE) users, is set out in Section VII.E. Section VII.F explains how APS is urging the Commission
19 to conclude that the proper functioning of the LFCR as designed is an "extraordinary event"
20 permitting a departure from the settlement resolving the last rate case.

21
22 Further, even if APS's Motion to Reset was not otherwise impermissible, Section VIII makes it
23 clear that APS's Motion to Reset is untimely, because the Settlement Agreement only permits a
24 single annual adjustment to the LFCR and that adjustment has already happened for 2015.
25 Importantly, Section IX explains the misrepresentation of financial impact that underpins APS's
26 proposal, and shows how absurd it would be to expend the millions of dollars of ratepayer and
27 taxpayer funds needed to process this case outside a rate case when that amount of money would
28 clearly dwarf any return non-DG ratepayers would see before the resolution of the next rate case.

1 Section X explains how the current Motion to Reset flies in the face of the ratemaking principles
2 of certainty and gradualism, while leading to judicial waste if dealt with here and then again next
3 year in APS's rate case. Surprising the solar industry and its customers with a massive and
4 reasonably unexpected fee increase goes against these important principles.

5
6 Next, Section XI provides a survey of the numerous parties, including Commissioners themselves,
7 that have made it clear that the issues presented in this docket should be decided in a rate case.
8 Finally, Section XII points out that the Motion to Reset makes APS's compliance with its
9 commitments to cost parity made as part of its utility owned distributed generation ("UODG")
10 proposal now untenable. As a result, that decision must quickly be revisited.

11
12 **II. The Solar Charge Previously Adopted And The Proposed Increase Have Never**
13 **Been Subject To A Full Examination In A Rate Case As Due Process Requires**
14

15 Due process has long been notable in this docket for its absence. Not a single exhibit or sliver of
16 evidence ever has been formally admitted into this docket. Not one witness has been permitted to
17 give testimony, no witness has ever been subject to cross examination, and no evidentiary hearing
18 was ever held on this docket's hotly contested issues.¹ Despite APS's claims to the contrary in its
19 Motion to Reset, the process that led to the adoption of Decision 74202 was not legally sufficient,
20 resulting in a Decision that is certainly not sufficient to support the granting of the Motion to Reset
21 now.

22
23 APS tries to re-write this history, claiming wrongly in its Motion to Reset that "no party requested
24 a hearing"² on its original Application in this docket. To the contrary, TASC counts at least five
25

26
27 ¹ TASC notes that APS submitted unsolicited testimony into the docket, but no other party was given the
28 opportunity to submit its own responsive testimony, and no party was ever given the opportunity to depose or cross-
examine APS's witnesses.

² APS Motion to Reset at 3, l: 17,18.

1 (5) Intervenors (not including Staff, which made the same request) that specifically requested this
2 matter be heard as part of APS's rate case:

- 3
- 4 • The Solar Energy Industries Association ("SEIA") filed a Protest and Motion to Dismiss
5 on August 20, 2013, seeking to have APS's original Application dismissed and to have the
6 issue decided in a full rate case hearing (the "SEIA Motion").
- 7 • TASC joined in the SEIA Motion on August 30, 2013 (the "TASC Joinder"), similarly
8 arguing for dismissal of the Application and to have its issues adjudicated in a full rate case
9 proceeding.
- 10 • On August 29, 2013, the Interstate Renewable Energy Council ("IREC") submitted a
11 Protest to the Application, asking that APS's Application be dealt with in a rate case (the
12 "IREC Request").³
- 13 • On November 4, 2013, and again on November 7, 2013, the Arizona Solar Energy
14 Industries Association ("AriSEIA") filed requests that APS's Application be adjudicated
15 either in a reopening of the last APS rate case or in the next APS rate case (the "AriSEIA
16 Requests").
- 17 • Finally, on November 12, 2013, the Arizona Solar Deployment Alliance filed a request
18 stating that it "strongly supports [] resolving the issues raised in this docket in a rate case"
19 (the "ASDA Request").⁴
- 20

21 The Commission is yet to hear, consider, or otherwise rule on the SEIA Motion, the TASC Joinder,
22 the IREC Request, the AriSEIA Requests, or the ASDA Request.⁵ Building on that silence, APS
23 converts the Commission's refusal to even acknowledge these numerous requests into a self-
24 serving conclusion that no such requests were ever made.

25

26 ³ See IREC Protest to Application, August 29, 2013.

27 ⁴ See ASDA Notice of Filing November 12, 2013 at 1, 1:12.

28 ⁵ Note that numerous parties requested a rate case hearing, and that no party requested a hearing outside of a rate case, because those parties believed that a hearing in any other forum would be a violation of due process and illegal single-issue ratemaking, as explained further below.

1 In reality, the circumstances surrounding the Commission's refusal to consider multiple requests
2 for a rate case hearing and formal Motions to Dismiss cut against granting APS's current Motion
3 to Reset. APS is asking the Commission to take a decision that was made without the benefit of
4 any formal evidence, testimony, or cross examination, in a forum where repeated requests for due
5 process went unanswered, and to use that decision as the basis to justify the further relief APS now
6 seeks -- without remedying any of the lingering deficiencies. Ignoring Decision 74202's aberrant
7 foundation, and compounding the problem by building further upon that unsound base, exacerbates
8 the unfairness. It is past time to give this important issue the due process it deserves and that
9 numerous parties have repeatedly requested: Hear these issues in a full rate case.

10
11 The Commission previously ordered that result in this very docket, when it concluded that a full
12 rate case should begin from and after June 1, 2015. It was only at APS's demand and request of
13 the Commission in August 2014 that the scheduled rate case was delayed in an amendment to
14 Decision 74202. As discussed below, this delay was granted while APS reassured the public it
15 would not seek an increase in the solar charge outside its now delayed rate case. Any claimed
16 "hardship" that APS now seeks to cure in this docket is due only to APS's own action to defer the
17 rate case. If the problem APS seeks to address in this docket now actually exists, one would have
18 expected APS to have sought to *maintain* the date for its rate case, not put it off to a later date.

19
20 **III. The Application and Motion to Reset Constitute Unconstitutional Single-Issue**
21 **Ratemaking**

22
23 In cases such as *Scates v. Arizona Corp. Commission*, Arizona courts have determined that
24 "[w]hile the Corporation Commission has broad discretion in establishing rates, it is required by
25 our Constitution to ascertain the value of a utility's property within the State in setting just and
26 reasonable rates."⁶ The goal is first to "determine the 'fair value' of a utility's property and use

27
28

⁶ *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978) (citing Ariz. Const. art. 15, § 14).

1 this value as the utility's rate base,"⁷ and then to "determine what the rate of return should be, and
2 then apply that figure to the rate base in order to establish just and reasonable tariffs."⁸ It is
3 precisely these careful considerations in which the Commission will be unable to engage without
4 a rate case. It is precisely these determinations that APS's Application and now its Motion to
5 Reset seek to unconstitutionally bypass.

6
7 Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in response to a
8 change in a single cost item considered in isolation. In *Scates*, Mountain States Telephone and
9 Telegraph Company sought to increase rates for the installation, moving, and changing of
10 telephones, without an examination of the company's other costs and revenues.⁹ As the *Scates*
11 court recognized,¹⁰ considering some costs in isolation might cause the Commission to allow a
12 utility to increase rates to recover higher costs in one area without recognizing counterbalancing
13 savings in another. Such single-issue ratemaking is unsound regulatory policy, and impermissible
14 under law.

15
16 Here, APS is plainly asking the Commission to consider alleged costs associated with lost kWh
17 without considering the counterbalancing savings to the utility resulting from the deployment of
18 DG by its customers. That is impermissible single-issue ratemaking, and the Commission should
19 reject it.

20
21 APS would no doubt respond in part by arguing that it is now, by way of the Motion to Reset,
22 merely asking the Commission to make an adjustment to the solar charge under some sort of
23 automatic adjustment clause, the likes of which have been permitted in Arizona. However, the
24

25 ⁷ *Id.* at 615.

26 ⁸ *Id.*

27 ⁹ *Id.* at 614 ("The increase affected charges for all installation, moving and changing of telephones within the State
of Arizona. It amounted to an annual rise in revenue to Mountain States of approximately 4.9 million dollars,
representing about two percent of its entire annual revenue in the state.").

28 ¹⁰ *Id.* ("The Commission approved the increase without any examination of the costs of the utility apart from the
affected services, without any determination of the utility's investment, and without any inquiry into the effect of
this substantial increase upon Mountain States' rate of return on that investment.").

1 solar charge approved in Decision 74202 does not meet the requirements of an enforceable
2 automatic adjustment clause. Per the *Scates* court, an automatic adjustment clause “is a device to
3 permit rates to adjust automatically, either up or down, in relation to fluctuations in certain,
4 narrowly defined, operating expenses.”¹¹ Here, APS is not alleging any fluctuation in operating
5 expenses to support an adjustment of the solar charge. Rather, APS’s argument boils down to the
6 idea that a charge was previously levied and, in APS’s opinion, now is the time to raise that charge.
7 That opinion needs to be tested in a full rate case.

8
9 Importantly, *Scates* indicated that one of the key safeguards underlying legally implemented
10 automatic adjuster clauses is the fact that they themselves were carefully considered and
11 implemented through a rate case proceeding. The *Scates* court wrote, “[w]hen courts have upheld
12 such automatic adjustment provisions, they have generally done so because the clauses are initially
13 adopted as part of the utility’s rate structure in accordance with all statutory and constitutional
14 requirements[].”¹² As the solar charge plainly was not adopted “as part of the utility’s rate
15 structure” and was done outside of a rate case in the first instance, it lacks those safeguards.

16
17 Accordingly, it would be unconstitutional for the Commission to move forward with this
18 examination outside of APS’s next general rate case.

19 20 **IV. Precedent Supports That A Rate Case Is The Proper Venue For This Examination**

21
22 At its Staff Meeting on April 13, 2015, the Commission addressed a near identical issue, ruling in
23 favor of an adjudication in a rate case. The Commission was faced with the question of whether
24 to uphold Decision 74871, hold a hearing outside a rate case on the issues presented therein, or put
25 the decision on hold pending review in the next APS rate case. The Commission’s own attorney
26 told the Commission, “[a] rate case is the ideal way for setting rates [] that’s the way I think the
27

28 ¹¹ *Id.* at 616 (emphasis added).

¹² *Id.* (emphasis added).

1 courts might also view the issues presented here.”¹³ It was clear from the Commission’s discussion,
2 and the Commission’s attorney agreed, that the Commission would have more tools at its disposal
3 for investigating and solving issues inside a rate case.¹⁴

4
5 For example, outside of a rate case, the Commission is powerless to address rate design issues in
6 a broad context by reallocating costs across different classes. Nor could it create a new rate or
7 multiple rate tariffs to address any concerns it might have. Perhaps most importantly, outside of a
8 rate case the Commission simply will not have all the relevant information, including cost of
9 service studies, test year revenue requirement, and a full cost benefit analysis, which is necessary
10 to fully examine the issues presented in the Application.

11
12 APS is proposing to box the Commission into a narrow potential solution, focused on a single
13 characteristic of a small sub-class of customers, in response to an alleged problem – one that, if
14 real and verifiable, is likely caused by the very nature of rates themselves, and not by a narrow
15 sub-class of customers who generate a portion of their own power. The Commission should deal
16 with this issue in a forum that allows it to truly consider and implement any and all options it
17 deems appropriate. The only forum that permits that process is a general rate case.

18
19 Further, in explaining its position while deciding to send Decision 74871 to a rate case, the
20 Commission recognized that judicial economy dictates having the issue tried once in a rate case
21 rather than twice. All of the issues that led to the Commission making its decision in that matter
22 are present in this docket. If the Commission sends this matter to a rate case, the Commission will
23 avoid wasting taxpayer and ratepayer money adjudicating the same issue twice in a short period
24 of time.

25
26 **V. There Are No Costs Being Shifted**

27
28 ¹³ See http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1909 at 1:10:04

¹⁴ *Id.*

1 In its Motion to Reset, APS continues to describe a growing, present, and hidden cost shift from
2 customers with distributed solar to those without, alleging that “the cost shift grew by \$6.3 million
3 [in 2014].”¹⁵ APS prefers to frame the issue as being that every time a customer installs solar
4 panels, her neighbor without panels sees his bill increase. But just because that description fits
5 APS’s goals does not make it true – and it is not. For costs to be shifted, there must be a mechanism
6 in place whereby alleged costs are avoided by one customer or group of customers, while another
7 customer or group of customers pays a corresponding increase to make up for the costs avoided
8 by the first group. Of course, APS knows full well that no such mechanism exists that was not
9 already specifically vetted and approved by the Commission in a prior rate case proceeding. To
10 the extent any customer avoids any costs for any reason between rate cases, the utility does not, as
11 APS has been implying for far too long, immediately raise prices on some other subset of
12 customers to make up for that loss. In other words, this is (if anything) a revenue loss to the utility
13 – not a cost shift.¹⁶

14
15 Even assuming that every APS allegation regarding the amount of the alleged cost shift is accurate
16 (and TASC does not agree with such allegations), there would still be no present cost shift outside
17 of those charges collected in the LFCR, nor is there any ability for APS to move to collect for past
18 under-collections in its next rate case.¹⁷ This is an important point: any costs avoided today by
19 any customer, whether they have DG or not, are not going to be charged to the rest of the ratepayers
20 in the next rate case, and are not currently getting transferred to other ratepayers outside the LFCR.
21 It is simply not happening.

22
23 In fact, the only mechanism whereby any costs are allocated between rate cases as a result of lost
24 sales from electric efficiency and DG is the LFCR mechanism as it was approved in APS’s last
25

26 ¹⁵ APS’s Motion to Reset, 6, l:8.

27 ¹⁶ In addition, it is worth noting that if it is a revenue loss, it appears not be impacting the stock price or investors
view of APS’s parent company which recently was trading at its all-time high level.

28 ¹⁷ In fact, belying APS’s contention of some current under-recovery is the fact that it asked for, and received, an
amendment to Decision 74202 permitting it to delay, not accelerate, the date of its next rate case. If there were in
fact a ballooning under-recovery, you would expect APS to file sooner, rather than later.

1 rate case, which is more particularly described in Section V. To the extent that APS claims that
2 DG use impacts any other adjuster mechanisms, that only proves the point that this issue is a broad
3 issue of rate design that, if truly impacting other adjuster mechanisms, must be dealt with in a rate
4 case.

5
6 Despite knowing there is no real-time cost shift occurring in the manner it repeatedly claims, APS
7 continues to perpetuate this unfounded myth. The Commission should reject APS's alarmist
8 claims and deal with this issue in a calm and legally appropriate manner: in a rate case setting.

9
10 **VI. Rate Design Issues Like This One Can Only Be Dealt With In A Rate Case**

11
12 APS suffers from an issue of rate design that can only be resolved in a rate case. Recent testimony
13 filed in support of UNS Electric's rate case proves once and for all that self-serving utility
14 complaints of a solar-caused "cost shift" are trivial (if true at all) when compared to actual,
15 verifiable cost shifts in rates. UNS rate expert Dallas Dukes testified that "nearly 70% of
16 residential bills do not cover the average fixed costs recovery established in [UNS's] current base
17 rates."¹⁸ Compounding the problem is that UNS has seen residential usage decline 8% on a use-
18 per-customer basis.¹⁹ This means that, in the present Application, APS is asking the Commission
19 to address, outside of a rate case, alleged under-recovery arising out of DG adoption by roughly
20 2% of its customers, whereas UNS is complaining of under-recovery from *two out of every three*
21 *of its customers*. Even assuming that APS is in better shape on per-customer under-recovery, the
22 UNS admission suggests that APS could easily be under-recovering from a majority of its
23 customers.

24
25 What would be the justification for rushing to address an alleged under-recovery from a subset of
26 2% of the customer base, while ignoring that a supermajority of that same customer base is also
27

28 ¹⁸ Testimony of Dallas Dukes, May 5, 2015, Docket No. E-04204A-15-142 at 13:22-24

¹⁹ See, Id. at 14:10-11.

1 causing under-recovery? TASC submits that the reason is the utilities' desire to stop their
2 customers from utilizing rooftop solar that is not owned by the utilities. That said, it is not
3 necessary for the Commission to determine why a utility would ask that the Commission urgently
4 act to remedy a small under-recovery problem while ignoring a vastly larger one. The Commission
5 need only recognize that the utilities are alleging systemic rate design issues that can only be
6 adequately addressed in a rate case.

7
8 **VII. The Motion To Reset Asks The Commission To Illegally Overturn The Last APS**
9 **Rate Case**

10
11 APS's most recent rate case was resolved by a Settlement Agreement ("Settlement Agreement")
12 that was submitted to the Commission in Docket E-01345A-11-0224 and approved in Decision
13 No. 73183 (May 24, 2012). The Settlement Agreement specifically addressed the primary issue
14 that APS has sought to re-litigate in its Application and now again in its Motion to Reset: how to
15 address the purported mismatch between APS's volumetric energy rate structures and the recovery
16 of fixed infrastructure costs. In other words, in APS's last rate case, the utility raised the issue of
17 a mismatch between its rate structure and its expenses with regard to the impact of DG, and this
18 issue was fully litigated and resolved via the Settlement Agreement. Now, APS is trying again to
19 overturn the fully-litigated multi-party Settlement Agreement by pretending that it is raising a new
20 issue.

21
22 **A. Distributed Generation, Which Necessarily Includes NEM, Was Squarely Addressed**
23 **By The Lost Fixed Cost Recovery Mechanism**

24
25 When crafting the LFCR mechanism, the signatories to the Settlement Agreement began by
26 identifying the issue they sought to address:
27
28

1 *The Signatories also recognize that, under APS's current volumetric rate design, the Company*
2 *recovers a significant portion of its fixed costs of service through kilowatt-hour ("kWh") sales.*
3 *Commission rules related to EE and Distributed Generation ("DG") require APS to sell fewer*
4 *kWh, which, in turn, prevents the Company from being able to recover a portion of the fixed costs*
5 *of service embedded in its energy rates.²⁰*
6

7 The Settlement Agreement starts from the premise of a potential rate design issue: a significant
8 portion of APS's fixed costs are recovered through volumetric charges (as part of energy rates).
9 This has the potential to cause a rate recovery mismatch. Distributed Generation customers
10 (including NEM customers) may purchase fewer kWh from APS than non-DG customers, and to
11 the extent that their rooftop solar systems do not confer benefits in proportion to or in excess of
12 the fixed costs they may avoid paying, there is a possibility that an under-recovery of such fixed
13 costs from DG customers may occur.²¹
14

15 To be clear, as explained in greater detail in the Crossborder Energy Study, TASC again
16 emphatically rejects the assumption that DG customers do not confer a benefit on APS and its
17 system in excess of the fixed costs they avoid. Setting this factual issue aside, compare the
18 Settlement Agreement's framing of the issue as set forth above, to APS's description of the alleged
19 problem addressed by its original Application in this docket:
20

21 *A typical residential bill is structured so that the charges paid contribute to the system's costs[.]*
22 *The components of this average bill reflect each category of costs required to supply electric*
23 *service to customers. A residential customer's contribution to these costs occurs through energy*
24 *usage charges. In other words, the amount of a residential customer's contribution to fixed costs*
25
26
27

28 ²⁰ Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10 (emphasis added).

²¹ Note that APS previously disclosed that DG customers still pay an average bill of \$71/month to APS which is in line with the bills of many residential customers without DG.

1 is based on their energy usage. But Net Metering allows customers to avoid paying for these fixed
2 costs.²²

3
4 Comparing the issue raised in the Rate Case with the issue raised in the Application shows that
5 APS is raising the exact same issue in the Application that it raised in the Rate Case:
6

Under-recovery problem described in <i>Rate Case</i>	Under-recovery problem described in <i>Application</i>
“the Company [is prevented] from being able to recover a portion of the fixed costs of service embedded in its energy rates [because] Distributed Generation require[s] APS to sell fewer kWh” ²³	“Net Metering allows customers to avoid paying for these fixed costs [because] the amount of a residential customer’s contribution to fixed costs is based on their energy usage.” ²⁴

7
8
9
10
11
12
13
14
15
16 The Settlement Agreement signatories chose the LFCR adjustor as the mechanism to resolve this
17 potential under-collection issue. This mechanism is addressed to potential cost-recovery issues
18 with both energy efficiency (“EE”) and DG (which necessarily includes every NEM customer)
19 programs. As the signatories agreed, the LFCR mechanism “gives APS the opportunity to recover
20 a portion of the distribution and transmission costs associated with those residential, commercial
21 and industrial customers’ verified lost kWh sales attributed to EE and DG requirements.”²⁵ APS’s
22 solar charge may actually be billed to its customers through the LFCR line item on customer bills,
23 but the solar charge is a dramatic departure from the LFCR approved in the rate case.
24
25
26

27 ²² Application at 8-9.

28 ²³ Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10.

²⁴ Application at 8-9.

²⁵ Decision No. 73183 at 12-13.

1 **B. The LFCR Mechanism Approved In The Rate Case Cannot Be Used To Implement**
2 **The Proposed Solar Charge**

3
4 The solar charge that APS seeks to implement in its Motion to Reset is not permitted under the
5 LFCR approved in the rate case Settlement Agreement. The LFCR as set forth in the LFCR Plan
6 of Administration approved in Decision 73183 does not permit charging customers with DG (or
7 energy efficiency for that matter) a different amount than customers without DG. APS is asking
8 for a fundamental change to the LFCR that cannot be approved outside of another rate case.

9
10 **1. The LFCR Was Designed To Be Split Evenly Among All Ratepayers**

11
12 The LFCR Plan of Administration requires that the LFCR Adjustment (defined in the Plan of
13 Administration) will be expressed as a percentage that “will be applied to all customer bills
14 excluding [those that have opted out or are excluded].”²⁶ The solar charge changes the formula
15 for application of the LFCR to customer bills by raising the charge significantly for DG customers
16 and lowering the charge for non-DG customers.

17
18 In support of the Settlement Agreement and in harmony with the LFCR Plan of Administration,
19 APS witness Leland R. Snook made it clear that that the LFCR was to be based on a calculation
20 that would be applied equally to all its customers. Snook testified that, “[t]he adjustment will be
21 applied to customers’ bills on an equal percentage surcharge in March of each year and will
22 remain in effect for one year.”²⁷

23
24 If the parties to the Settlement Agreement had intended to use the LFCR to charge customers
25 utilizing DG or EE a greater amount than other ratepayers, that intent would have been expressed
26 in the Settlement Agreement. After all, to the extent the parties believed that it was appropriate to
27

28 ²⁶ LFCR Plan of Administration at 4 (emphasis added).

²⁷ Direct Settlement Testimony of Leland R. Snook, January 18, 2012, at 4:15-18

1 compensate APS for the reduced sales for which the LFCR was designed to compensate, one
2 alternative would have been to charge those with DG and EE more. However, the agreed-to LFCR
3 mechanism clearly rejected that alternative.

4
5 There is evidence that parties, including RUCO, supported the LFCR precisely because it did not
6 require a customer who is implementing an EE or DG energy saving device to pay extra to try and
7 reduce their own bill. Then-RUCO Director Jodi A. Jerich testified in support of the Settlement
8 Agreement that "RUCO has consistently voiced the proposition that making a customer share a
9 portion of their savings due to their own efforts to reduce their bill is unfair and can even
10 discourage conservation."²⁸ RUCO's position is the antithesis of what APS now proposes: a
11 structure where the customer pays more as a result of efforts to reduce their bill.

12
13 **2. The LFCR Opt-Out Was Designed To Provide Alternatives For Any Customer**
14 **Not Wishing To Be Subject To The LFCR**

15
16 Despite its prior vociferous support for the LFCR, APS now complains that it is unfair to ask non-
17 DG customers to pay as much as DG customers through the LFCR. APS entirely ignores that any
18 customer who wishes to avoid paying the LFCR has always had the option of opting out of the
19 charge. In fact, the opt-out was an important part of the LFCR implementation and had widespread
20 support as an alternative to the LFCR.

21
22 APS witness Mr. Snook described the opt-out rate, saying that "[t]he implementation of the LFCR
23 provided in the Settlement Agreement is coupled with the provision of an Opt-Out rate option for
24 residential customers. [] This Opt-Out rate provides customers with the opportunity to avoid an
25 LFCR charge, while still allowing the customer to participate in and benefit from DSM and DG
26 programs."²⁹ It is clear, that in championing the Settlement Agreement, APS viewed the opt-out
27

28 ²⁸ Testimony of Jodi A. Jerich In Support of Settlement Agreement at 16:5-8.

²⁹ Direct Settlement Testimony of Leland R. Snook, January 18, 2012, at 4:15-18

1 rate as the solution to any customer that felt it would rather not pay the LFCR charge. That remains
2 true today, even if APS would rather it not.

3
4 **C. APS Specifically Agreed That The LFCR Mechanism Is The Appropriate Mechanism**
5 **For Addressing Cost Recovery Issues Related To DG**
6

7 In supporting and as set out in the Settlement Agreement, APS specifically acknowledged that
8 addressing cost recovery issues, including those related to DG –which only accounts for one-third
9 of the LFCR--, was the core function of the LFCR mechanism. APS testified in support of the
10 Settlement Agreement shortly after it was negotiated, signed, and filed with the Commission and
11 offered specific support for the LFCR mechanism. Mr. Snook explained why APS supported the
12 LFCR mechanism (after previously arguing for full revenue decoupling):
13

14 *APS fully supports the LFCR mechanism proposed in the Settlement Agreement and believes it is*
15 *a reasonable mechanism to implement to address the immediate concerns related to sales*
16 *reductions associated with EE and DG. The LFCR mechanism represents a tailored solution to*
17 *address the unrecovered fixed costs associated with EE and DG - the exact issue at hand.*³⁰
18

19 Mr. Snook's testimony is as applicable today as when filed: the LFCR mechanism continues to
20 represent a tailored solution to address the unrecovered fixed costs associated with EE and DG -
21 the exact issue at hand in APS's Application, which APS seeks to revisit in its Motion to Reset.
22 Given this, the issue remains one of determining a mechanism that permits APS to properly recover
23 otherwise unrecovered fixed costs associated with DG. And in this respect, the LFCR mechanism
24 continues to, in Mr. Snook's words:
25

26 *provide[] a clear and direct link between EE and DG sales reductions to the amount of uncollected*
27 *fixed costs to be recovered by [APS, allowing APS] the opportunity to recover its lost fixed costs*
28

³⁰ *Id.* at 7:5-9 (emphasis added).

1 *attributable to EE or DG at any level and pace that the Commission authorizes as a matter of*
2 *policy.*³¹

3
4 APS thus acknowledged that the LFCR mechanism approved in the Settlement Agreement
5 provided a resolution acceptable to APS. It should not be permitted now to revise the past.

6
7 **D. Staff And The Commission Approved The LFCR Mechanism As The Preferred**
8 **Mechanism For Addressing The Issues That APS's Application Now Seeks To Re-**
9 **open**

10
11 APS is not the only entity that endorsed and approved the Settlement Agreement's version of
12 LFCR mechanism for this purpose. In addition to participating in the negotiations that led to the
13 Settlement Agreement, including the LFCR mechanism, Staff specifically supported the LFCR
14 mechanism itself (indeed, Staff was the original source of the mechanism³²). As noted in the
15 Commission's order approving and directing implementation of the Settlement Agreement, Staff
16 "believes the LFCR mechanism is narrowly tailored to allow recovery of certain documented and
17 verified fixed costs that were not recovered due to reductions in volumetric sales from
18 Commission-approved EE and DG programs."³³ Again, this same cost recovery issue is precisely
19 the issue that APS's Application seeks to address yet again. Staff believed at the time of the rate
20 case that the appropriate way to address this rate recovery issue was the LFCR mechanism. And,
21 in its Order, the Commission agreed: "We agree with Staff and the Joint Signatories that the LFCR
22 mechanism is the appropriate mechanism for APS at this time."³⁴ APS's Motion to Reset seeks to
23 turn the LFCR into something other than what was approved in the Settlement Agreement, yet
24 APS provides no basis for disturbing this previous agreement.

25
26
27 ³¹ *Id.* at 2, 1:2-6.

28 ³² Decision No. 73183 at 6.

³³ *Id.* at 21. Note that, in addition to the Staff, the Signatories to the Settlement Agreement also concurred in this finding. *Id.* at 29.

³⁴ *Id.* at 40, 1:1-6.

1 In sum, as intended by APS and the other signatories, acknowledged by Staff, and approved by
2 the Commission, the LFCR mechanism as approved in the rate case was and remains the
3 appropriate mechanism to resolve the DG-related fixed cost recovery issues that are the focus of
4 the Application and Motion to Reset, regardless of APS's unconvincing complaints about a current
5 cost shift.

6
7 **E. There Is No Rational Basis For Charging Solar Customers More Through The LFCR**
8 **While Ignoring EE Users Are Responsible For A Much Larger Portion Of LFCR**
9 **Costs**

10
11 The LFCR is designed to reimburse APS for the revenue impact of selling less kWh caused by EE
12 and DG. However, APS urges the Commission to ignore EE users and only increase charges on
13 DG users. In fact, according to APS's latest LFCR reset filing approved in Order 74994, total
14 recoverable EE savings are more than double the amount of the total recoverable DG savings that
15 get reimbursed to APS through the LFCR.³⁵ According to APS's own calculations, of the roughly
16 \$34.4 million in total lost fixed-cost revenue for the current period, lost kWh sales attributable to
17 EE make up 70% of that cost at roughly \$24.1 million.³⁶ That means that customers that do not
18 have EE are and that do not opt-out of the LFCR will pay for APS's lost kWh sales through the
19 LFCR attributable to EE, a situation with which APS apparently has no quarrel.

20
21 This silence from APS is telling, when compared to its near-hysteria about the far smaller "cost
22 shift" it alleges is being caused by DG.³⁷ Again, it is not necessary for the Commission to
23 determine *why* APS would demand instant action on a smaller issue while ignoring a much larger
24 one; the proper procedure is to refer all these questions to a full rate case for exploration.

25
26 **F. The Commission Cannot Simply Ignore And Alter The Settlement Agreement**

27
28 ³⁵ See APS's January 15, 2015, Application in Docket No. E-01345A-11-0224 at Exhibit C, page 3 of 8.

³⁶ See Id.

³⁷ See eg, Motion to Reset at 4:5-6.

1 At the end of the day, APS is urging the Commission to do something it just cannot do: ignore its
2 previous order and a negotiated Settlement Agreement. In response to Data Request 1.5 from
3 RUCO, APS contends that Section 19.1, Force Majeure, of the Settlement Agreement authorizes
4 the Commission to take the requested action.³⁸ It appears that APS is arguing that there is an
5 “emergency” under Section 19.1 that, as a result of an “extraordinary event,” requires the
6 Commission to provide the requested rate alteration.

7
8 That APS can make this argument with a straight face is remarkable. What is this “extraordinary
9 event”? Nothing more than the LFCR functioning in the exact manner for which it was designed,
10 with rate recovery through the LFCR well below the permitted cap. As explained in Section
11 VII.B(1), the LFCR Plan of Administration clearly states that the LFCR Adjustment will be
12 applied “to all customers’ bills” and APS testified in support of the LFCR mechanism, making a
13 point to explain that it applies equally to all bills. Further, RUCO even offered testimony
14 indicating that the LFCR was favorable to other alternatives precisely because it did not
15 disproportionately impact customers who invested in their own energy cost saving measures.

16
17 While Decision 74202 does purport to declare the presence of an “extraordinary event” in its
18 support for implementing the current solar charge, TASC submits that no legal analysis would
19 support the conclusion that the LFCR, functioning exactly as it is supposed to by distributing costs
20 equally among all ratepayers in an amount well below the permitted cap, legally could be deemed
21 an “extraordinary event.” Decision 74202 was not appealed of course, but that does not make such
22 a conclusion any less outlandish and unsupportable. The Settlement Agreement would not be
23 worth the paper it was written on if the Commission could declare an “extraordinary event” every
24 time the rate mechanisms provided for in the Settlement Agreement functioned exactly as they
25 were designed. Force majeure does not apply.

26
27
28

³⁸ All Data Request Responses referenced are attached hereto as Exhibit A.

1 **VIII. Even If It Were Otherwise Legal To Modify The LFCR For This Purpose Outside**
2 **A Rate Case, The LFCR Already Went Through Its Annual Adjustment This**
3 **Year And Cannot Be Adjusted Again**
4

5 Setting aside the numerous flaws with APS's Motion, even assuming APS could ask for a reset of
6 the LFCR solar charge adopted in Decision 74202, the Motion's request is not timely and must be
7 dismissed. Section 9.6 of the Settlement Agreement adopted in APS's last general rate case
8 provided that the LFCR mechanism adopted therein³⁹ would be subject to annual adjustments
9 only.⁴⁰ Such annual adjustments are required to be filed on or before January 15 of each year, with
10 the Commission making its best efforts to process such requests by March 1 of that same year.⁴¹
11

12 In accordance with the Settlement Agreement, on January 15, 2015, APS filed an application with
13 the Commission seeking approval of its annual LFCR adjustment.⁴² On March 16, 2015, the
14 Commission issued Decision 74994, granting APS's requested annual LFCR adjustment for 2015.
15 APS's Application for its annual LFCR adjustment did not include any request for an adjustment
16 to the solar charge adopted in Decision 74202, nor did the Commission grant it any adjustment to
17 the solar charge.
18

19 Yet despite already having sought and received its annual LFCR adjustment for 2015, APS filed
20 its Motion to Reset the LFCR solar charge on April 2, 2015, almost three months after the deadline
21 for any request for annual adjustments to the Commission. The Settlement Agreement prohibits
22 LFCR adjustments being made more than once each year and as such, even if the Motion to Reset
23
24
25

26
27 ³⁹ TASC submits that the LFCR charge against solar customers violates the provisions of the Settlement Agreement
adopted in Decision 73183.

28 ⁴⁰ Decision 73183 Settlement Agreement, Section 9.6

⁴¹ *Id.* See also, LFCR Plan of Administration, 3 at para 4.

⁴² Decision 74994 at para. 2.

1 were not otherwise legally impermissible, it would be untimely.⁴³ As a result, the Motion to Reset
2 must be denied.

3
4 **IX. This Proposal Is The Opposite Of Gradualism, And Is A Waste Of Resources**

5
6 The massive and unexpected increase in the solar charge that APS seeks flies in the face of the
7 principles of gradualism and regulatory certainty, and would waste Commission resources dealing
8 with issues that will also be dealt with in APS's next rate case next year. Nonetheless, in its Motion
9 to Reset, APS argues that its unexpected proposal for a 400% increase in the solar charge outside
10 a rate case is "consistent with the principles of rate gradualism."⁴⁴ The Commission should reject
11 this argument.

12
13 **A. The Solar Market Could Not Reasonably Have Anticipated This Increase And**
14 **APS Mislead Ratepayers And Regulators By Insisting It Would Not Seek This**
15 **Increase Outside A Rate Case**

16
17 Regulatory certainty is a principle so highly valued that it needs no citation to demonstrate its
18 importance to this Commission. Yet APS's proposal comes as a complete surprise to TASC.
19 Nearly all available information suggested that this matter would not be addressed again until
20 APS's next rate case. From Commissioners' own stated preferences for a rate case (described in
21 Section X.A.), to statements made at the hearing and those incorporated into the final Decision in
22 this docket, no one could have reasonably predicted this fee would be back before the Commission
23 outside a rate case.

24
25
26
27 ⁴³ Note that any change to the solar charge portion of the LFCR would also alter the LFCR charge on all customers'
28 bills that are subject to the LFCR whether or not they have solar. Again, this charge was already modified on all
bills as a result of the Decision 74994 and cannot be altered again for this year.

⁴⁴ Motion to Rest 8, 1:15

1 The solar charge adopted in Decision 74202 was always intended to remain set at \$0.70/kW until
2 the issue could be fully vetted in APS's next rate case. Director of RUCO Pat Quinn stated on the
3 record during the Commission's November 14, 2013, Open Meeting in this Docket that it was
4 RUCO's position that the solar charge it was asking the Commission to adopt "will not grow
5 between now and the next rate case."⁴⁵

6
7 The solar industry, and its customers and potential customers who were following the occurrences
8 in this docket, would no doubt have been aware that in Decision 74202, the Commission ordered
9 APS to file for its next rate case by June 2015. The speed with which the next rate case was to be
10 filed made it clear that there would be no interim increases in the solar charge. Now it appears
11 that APS is using the fact that it pushed for and got the Commission to permit a delay in the filing
12 of APS's next rate case to justify filing for an increase to the solar charge today, prior to the now
13 delayed rate case. Decision 74702 may have given APS permission to file a later rate case, but it
14 did nothing to express Commission support for filing this Motion to Reset.

15
16 Perhaps most importantly, APS actively worked to calm fears that extending its rate case filing
17 date meant it would seek an increase to the solar charge. In response to worries that the lifted rate
18 case filing date meant that APS was going to move to increase solar charges outside a rate case,
19 APS spokesman Jim MacDonald told the Arizona Republic, just days after the issuance of
20 Decision 74702, that, "[w]e have consistently said we have no current plans to ask the commission
21 for any change in the \$5-per-month charge on residential rooftop solar installations prior to the
22 next rate case because we are focused on the broader rate-design discussion."⁴⁶ Statements like
23 these were used to assuage customers fears and to convince Intervenors not to file for
24 reconsideration and challenge the Commission's use of A.R.S. 40-252 to eliminate this important

25
26
27 ⁴⁵ See Arizona Corporation Commission Video Archive,
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1246&meta_id=10165

28 At 52:08

⁴⁶ <http://www.azcentral.com/story/money/business/2014/08/15/can-best-regulate-aps-investment-firm-offers-opinion/14134995/>

1 provision of its earlier decision. APS should, for once, be held accountable for the representations
2 it makes to the public regarding its plans.

3
4 Moreover, even APS's CEO, Don Brandt, confirmed that APS had no intention of seeking any
5 increase in the solar charge until its rate case. During Pinnacle West's 2014 second quarter
6 earnings call, Mr. Brandt was asked about when APS planned to seek an increase in its \$5 solar
7 charge:

8
9 Question by Julien Dumoulin Smith: "And just to be clear, in theory, when would that \$5 tariff
10 at least be revisited, just procedurally speaking?"

11
12 Answer by Don Brandt: "That would be, if you do a rate design change or a change like that *that*
13 *would happen in the next rate case.*"⁴⁷

14
15 Decision 74202 itself is replete with findings and statements indicating that a rate case is the proper
16 place to adjudicate the matters raised in APS's Application and now, again, in its Motion to Reset.
17 For example, the Commission found that the "development of equitable rate structures that address
18 the inherent disconnect between NM and volumetric rates can best be accomplished in a rate
19 case."⁴⁸ Further, Staff took the position that issues raised in the Application would be "most
20 appropriately addressed in the setting of a general rate case."⁴⁹

21
22 Increasing fees by ambush is inconsistent with regulatory certainty. APS's Motion must be
23 rejected because it is such a radical departure from certainty, and because APS itself led observers
24 to believe no such request would be coming.

25
26 **B. There Is Nothing Gradual About This Massive Increase**

27
28 ⁴⁷ Pinnacle West Q2 Earnings Call Transcript (emphasis added)

⁴⁸ Decision 74202 at para. 32

⁴⁹ *Id.* At para. 33

1 APS's contention that the utility's Motion to Reset is an example of gradualism is simply
2 unsupportable. If APS has its way, a solar customer would be responsible for an approximately
3 \$5.00 monthly charge if he were to apply to install solar on his rooftop on July 31, 2015, but that
4 same solar customer would be subject to a \$21/month charge if he made that application just one
5 day later.

6
7 As this Commission knows, arguments erupt in utility rate cases over requests for increases of
8 mere cents. APS previously indicated that the average solar customer's monthly bill is \$71,
9 making this \$21 monthly increase the equivalent of an average 30% rate hike for anyone who goes
10 solar after August 1, 2015. Imagine the uproar if APS attempted a broad-based rate increase of
11 \$21 per month, or of 30% on any customer class, while arguing that the proposal was a perfect
12 example of "gradualism."

13
14 **C. It Is A Waste Of Time And Resources To Address This Issue Now And Then**
15 **Litigate It Again In APS's 2016 Rate Case**

16
17 As set forth throughout this Brief and in numerous filings in this and other dockets, several parties,
18 including Commission Staff and RUCO, understand that these issues will be fully addressed in
19 APS's next rate case, which the company has signaled will be filed next year. Dealing with this
20 issue now, in this docket, will double the burden on all interested parties and the Commission,
21 turning judicial economy on its head. With the intense scrutiny that will no doubt be part of this
22 examination, it makes the most sense to have a full and final examination of this in a single docket:
23 the next rate case. Staff makes this point in its April 17, 2015, Request for Procedural Order,
24 where it writes, "[] any decision in this case is likely to be issued not long before the time that APS
25 files its next rate case, where these issues will all be examined again.⁵⁰"

26
27
28

⁵⁰ Staff's Request For Procedural Order at 3, l:9-11

1 **D. APS Misrepresents The Benefit Of The Solution And Fails To Consider The**
2 **Massive Expense Of Litigating This Issue Twice**

3
4 If this issue is litigated outside a rate case, it is a virtual certainty that the costs incurred in will far
5 exceed any benefit bestowed upon ratepayers between the time of the resolution of this matter and
6 the imposition of new rates from APS's next rate case. Litigating will cost ratepayers hundreds
7 of thousands of dollars in fees and costs to APS and its experts. Further, the Commission Staff
8 and RUCO would have to spend substantial time on this issue, costing taxpayers additional
9 hundreds of thousands of dollars. In addition, numerous utilities from around the state have
10 intervened and will no doubt continue to participate, costing their ratepayers hundreds of thousands
11 of dollars as well. There can be little doubt that the cost to ratepayers and taxpayers for utility and
12 Commission resources will run into the several million dollar range, even without accounting for
13 the cost to private intervenor parties. Then, when it is all said and done, all the same parties will
14 turn around and begin re-litigating this exact same issue in APS's upcoming rate case commencing
15 just a few months after this matter is resolved. What sense does this make?

16
17 Compare the several million dollars in litigation costs with the amount that APS could reasonably
18 be expecting to recover from new DG customers between the conclusion of this matter and the
19 conclusion of APS's impending 2016 rate case. First, it is worth noting that the calculation of
20 estimated costs to be recovered annually from new DG customers appearing in the chart on page
21 2 of Arizona Public Service Company's Response To Staff's Request For Procedural Order (the
22 "Response") is substantially flawed. According to the chart, APS would have the Commission
23 believe that the new solar charge is likely to result in an additional payment of \$3 million from
24 new DG customers and a corresponding reduction of \$3 million passed on to non-DG customers.⁵¹
25 APS's chart is misleading, however, and impossibly presumes that after the imposition of the new
26 increased solar charge, solar signups would increase more than 50% from their all-time peak. For
27 APS's assumption to be correct, 12,500 new solar customers would sign up for DG in one year

28

⁵¹ See Response at 2.

1 after the imposition of the over \$21/month charge. APS provides no support for this assumption,
2 as one would expect, because it is ludicrous.

3
4 In fact, in response to RUCO's Data Request 1.4, provided to RUCO just five days after the filing
5 of the Response, APS calculates that if 8,000 new solar customers signed up for solar under the
6 new charge, that \$1,958,400 would be paid by those new DG customers and thereby reduced from
7 non-DG customers' LFCR charge. Thus, APS reduced its estimate of the amount at issue in this
8 matter by one third *in just five days*. (Of course, it did not amend its Response to reflect this
9 reduction.) Only APS can – and perhaps should -- explain why it chose to use unsupportable and
10 hidden assumptions in an effort to convince this Commission that its proposal would raise
11 substantially more money than it ever would.

12
13 In fact, even APS's \$1.9 million number is facially baseless. APS expects us to believe that it can
14 add \$21/month to the bills of its future solar customers and that solar adoption rates will climb to
15 their all-time highest annual rate?⁵² The solar industry, on the other hand, knows that the
16 \$21/month solar charge will decimate the industry. The following chart illustrates the amount of
17 money to be paid by DG customers under the new charge and therefore, reduced to non-DG
18 customers. The chart uses a range of assumptions from APS's outlandish 12,500 annual
19 installation number to a rate of installation that matches the current pace of installations in the now
20 dead SRP market. The numbers assume the \$3/kW charge and a 6.8 kW-DC average system size.

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⁵² APS has reported that 7,930 customers installed solar in 2014.

Estimate of Annual Number of Systems Installed After Imposition of \$3/kW/month Charge	Annual Amount Charged to DG Customers and Returned to Non-DG Customers Based On Adoption Rate	Savings to Non-DG Customer Per Month - Assuming 1.1 Million Residential Customers
12,500 systems -APS estimate in Response	\$3,060,000	\$0.23
8,000 systems -APS response to RUCO 1.4	\$1,958,400	\$0.15
4,000 systems -1/2 of APS latest estimate	\$979,200	\$0.07
1,000 systems -1/8 of APS latest estimate	\$244,800	\$0.02
144 systems -estimate using SRP adoption rate since solar charge	\$35,251	\$0.003

As this chart demonstrates, the several million dollar cost of processing this matter to ratepayers and taxpayers from around Arizona will far exceed the amount that could ever be returned to non-DG customers in the year or so between the completion of this matter and the imposition of new rates resulting from APS's next rate case. Further, the amount of benefit to non-DG customers per month under reasonable scenarios is mere pennies or fractions of pennies. Simply put, the reasonably-expected benefit does not justify the extreme cost.

Why would the Commission sign off on an expensive and protracted hearing process, outside of a rate case, that will cost ratepayers, taxpayers, and intervenors millions of dollars in an effort that will almost certainly result in a net loss to those same ratepayers once they are done paying for the

1 costs of this litigation? Add to that the likelihood that the solar industry would be decimated in
2 APS service territory if APS gets what it wants and a cost-benefit analysis to ratepayers and
3 taxpayers supports hearing this in a rate case.

4
5 **X. All Five Commissioners, Commission Staff, RUCO, and Numerous Other**
6 **Interested Parties Have Indicated that a Rate Case Is The Proper Venue For This**
7 **Examination**

8
9 TASC is not alone in its view that APS's Motion to Reset should be considered in a full rate case.
10 In fact, there is near unanimity among interested parties – the decision-makers themselves,
11 Commission Staff, and RUCO -- that a rate case is the proper venue. What follows is a brief
12 survey of various supporting statements that have been made from these important interests.

13
14 **A. All Five Commissioners Appear To Support Rate Case Resolutions Of This**
15 **Type Of Issue**

16
17 Starting on the final day of the previous APS net metering public meeting and going forward, both
18 newly elected and incumbent Commissioners have been asked about their position on the net
19 metering debate or have signaled their position regarding the issue's proper forum. The unanimous
20 chorus of responses is perhaps best summarized by a quote from Commissioner Little, where he
21 stated, “[w]ell here’s the thing, this [whole] question of net metering really needs to be discussed
22 in the context of a rate case. Because, that’s an evidentiary hearing, sworn testimony, everybody
23 has an opportunity to provide input, all the different interveners and stakeholders....But the true,
24 correct amount [] is something we probably do need to look like in the context of a rate case.”⁵³
25 Then-candidate and now-Commissioner Forese echoed those sentiments when he stated, “[t]his
26 issue of net metering should have been handled in a rate case. I would have preferred to see it that
27

28

⁵³ PBS Candidate Interview September 22, 2014.

1 way. You need to look at it in depth and look at it on all sides. It is sustainable. It can work. You
2 just have to make sure that you find the balance and that is done in a rate case.”⁵⁴

3
4 Then-Chairman and now-Commissioner Stump signaled his apparent support for a full vetting of
5 the issues raised in the Application in the context of a rate case during the debate on APS’s
6 proposed net metering “solution.” Chairman Stump’s Proposed Amendment No. 1 to the APS net
7 metering decision included the following proposed paragraph:

8
9 “85. *We reiterate that our decision today is a first step toward sorting out the complex issues*
10 *presented by this case. We recognize that a complete consideration of the many facets of these*
11 *issues must await APS’s next rate case. We therefore will require APS to file its next full rate case*
12 *at the earliest date that is consistent with the Commission’s decision in APS’s last rate case”*
13 *(emphasis added)*⁵⁵

14
15 Then-Commissioner and now-Chairman Bitter Smith proposed an amendment seeking to have the
16 entire APS net metering issue decided in a quickly brought rate case and to forego taking any
17 action on the matter outside of a rate case. Commissioner Bitter Smith’s Proposed Amendment
18 #1 included the following proposed paragraph:

19
20 “53. *We agree with Staffs view that the issues presented herein will likely need to be addressed*
21 *and considered as part of APS’s next rate case filing. This is also the view expressed by RUCO in*
22 *its comments to the docket. Therefore, the sooner APS makes its filing consistent with the*
23 *provisions of Decision No. 73 183, the sooner the important issues arising from these matters can*
24 *be considered in the context of a full rate case.” (emphasis added)*⁵⁶

25
26
27
28 ⁵⁴ PBS Candidate Interview June 25, 2014.

⁵⁵ See Docket No. E-01345A-13-0248, Chairman Stump’s Proposed Amendment # 1

⁵⁶ See Docket No. E-01345A-13-0248, Commissioner Bitter Smith’s Proposed Amendment #1

1 Finally, during a Commission Staff Meeting on August 12, 2014, Commissioner Bob Burns
2 indicated it is his clear preference that rate design issues be dealt with in rate cases as opposed to
3 other forums where fewer parties participate. Commissioner Burns said, "I've found out more
4 about how a workshop with a rate design would work and the universe that would be participating
5 would be considerably smaller possibly than if things were handled in a rate case, I'm now of the
6 position that we ought to do this rate design within a rate case."⁵⁷

8 **B. Commission Staff Has Repeatedly Expressed A Preference For A Rate Case**

9
10 Commission Staff has been outspoken in its support for hearing net metering issues in a rate case.
11 In its Staff Report and Recommended Order in the original Application in this docket, Staff
12 succinctly explained its support for a rate case by writing:

13
14 *"Staff believes that any cost-shift issue created by NM is fundamentally a matter of rate design.*
15 *The appropriate time for designing rates that equitably allocate the costs and benefits of NM is*
16 *during APS's next general rate case. Data on all of APS's costs are available within a rate case.*
17 *In addition, the Commission has more options available within a rate case than it has outside of a*
18 *rate case. Therefore, Staff recommends that the Commission take no action on the instant*
19 *application and defer the matter for consideration during APS's next rate case.*⁵⁸

20
21 Just in the last month, Staff has repeatedly urged the Commission to dismiss similar filings by
22 other utilities, arguing instead that the issues should be dealt with in a rate case proceeding.⁵⁹

24 **C. RUCO Has Expressed Support For A Rate Case**

26
27 ⁵⁷ August 12, 2014 Staff Meeting, Agenda Item No. 2; audio available here at 8:45:
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1646

28 ⁵⁸ See September 30, 2013 Staff Report in Docket No. E-01345A-13-0248 at p: 6-7.

⁵⁹ See Staff's April 6 Brief in Trico Docket No. 15-0057; See also, Staff Request for Procedural Conference in Dockets 15-0099 (UNS) and 15-0100(TEP).

1 RUCO has long contended that rate design issues should be heard in the context of a rate case.
2 During the APS net metering debate, RUCO wrote, “[t]he current net metering debate is a sub-
3 component of a much larger debate about the implications and benefits of new technology, the
4 value of the electric grid, and rate design. The Residential Utility Consumer Office (RUCO) agrees
5 with Arizona Corporation Commission (ACC) Staff that this issue should be part of a broader
6 discussion such as a rate case.”⁶⁰ As set forth above, Director of RUCO, Pat Quinn, stated on the
7 record during the Commission’s November 14, 2013, Open Meeting in this Docket that it was
8 RUCO’s position that the solar charge it was asking the Commission to adopt “will not grow
9 between now and the next rate case.”⁶¹ Clearly RUCO has long expected and supported a rate
10 case analysis as the next step in this process.

11
12 **XI. APS’s Motion To Reset Requires Revisiting Its Required Cost Parity**
13 **Commitments In Decision 74878 (UODG Program) And Exposes Impropriety Of**
14 **UODG**
15

16 Finally, TASC suggests that the Motion to Reset should trigger a review of the Commission’s
17 recent Decision 74847, which permitted APS to participate in the residential rooftop solar market.
18 That review should occur immediately prior to APS spending any additional funds on the utility-
19 owned DG program. Of note, that Decision set forth that “APS commits to cost parity with current
20 net metering rates” and further committed to updating its project costs to retain cost parity should
21 rate design alter the amount of the alleged cost shift.⁶² Indeed, promises of cost parity were a key
22 factor underlying the apparent tacit approval of that program. APS should be made to demonstrate
23 cost parity is possible in light of its Motion to Reset. If APS cannot demonstrate cost parity is
24 possible, the Commission should reopen Decision 74878 under the provisions of A.R.S. 40-252,
25 and make it clear that APS is directed not to proceed with its proposed UODG program.

26
27 ⁶⁰ See RUCO Letter to ACC Dated October 30, 2013 in Docket E-01345A-13-0248 at 1 (emphasis added).

28 ⁶¹ See Arizona Corporation Commission Video Archive,
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1246&meta_id=10165
At 52:08

⁶² Decision 74878 at 6, 1:6-10

1 Further, TASC wishes to note that the Motion to Reset itself is evidence why utilities should not
2 be permitted to compete under their regulated arm with private competitive businesses. Just
3 months after having its UODG program approved, APS is asking this Commission to make law
4 rendering its new rooftop solar products comparatively more attractive than those offered in the
5 private, competitive sector. For this reason alone, the Commission should revisit its earlier
6 decision and order APS to enter the rooftop solar market through an unregulated affiliate, if at all.
7 Perverse incentives for regulated utilities to attack private industry and raise the price of
8 competitively offered products should not be built into a regulatory framework.

9
10 **XII. Conclusion**

11
12 It is time for the Commission to commit to giving full due process to this important issue within
13 APS's next rate case. APS's Motion to Reset is legally impermissible and asks this Commission
14 to engage in unconstitutional single issue ratemaking. Recent Commission precedent and advice
15 from Commission attorneys indicates that this matter is proper for consideration in a rate case and
16 not in a separate action.

17
18 Despite APS's claims to the contrary, there is no current and growing cost shift harming existing
19 ratepayers and the current issues caused by reduced kWh sales were fully vetted and dealt with in
20 the last APS rate case. APS should not be permitted to re-litigate its last rate case and upset the
21 terms of a negotiated Settlement Agreement by trying to utilize the LFCR mechanism in a manner
22 that is inconsistent with its approved uses. Even if APS were legally permitted to bring this
23 Motion, the time for annual adjustments to the LFCR has passed and this Motion to Reset is
24 untimely.

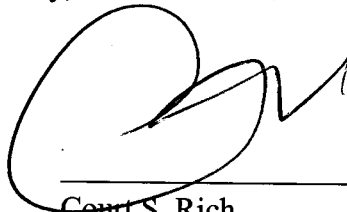
25
26 Further, the Motion asks the Commission to abandon the important principles of gradualism and
27 certainty and to instead engage in ratemaking by surprise; a tactic that should be rejected. As
28

1 Commissioners, Staff, and RUCO have all agreed, the proper venue for this adjudication is in a
2 rate case.

3
4 Finally, APS's Motion to Reset makes APS's compliance with its commitments to cost parity set
5 forth in the UODG decision impossible. As a result, that decision must be revisited today to stop
6 APS from moving forward in a manner that does not comport with the Commission's directives.

7
8 For the forgoing reasons, TASC respectfully requests that the Commission enter an Order
9 dismissing the Motion to Reset and directing that the issues discussed therein be brought back to
10 the Commission only in APS's next rate case.

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12 Respectfully submitted this 22nd day of May, 2015.

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EXHIBIT A

**ARIZONA CORPORATION COMMISSION
RUCO'S FIRST SET OF DATA REQUESTS
REGARDING THE APPLICATION OF ARIZONA PUBLIC SERVICE
COMPANY FOR APPROVAL OF NET METERING COST SHIFT SOLUTION
DOCKET NO. E-01345A-13-0248
APRIL 28, 2015**

RUCO 1.4: Please explain how resetting the LFCR to \$3k/w would be revenue neutral.

Response:

APS's proposal is revenue neutral because the new revenue from increasing the Grid Access Charge from \$0.70 to \$3.00 per kW-DC of installed solar will be credited dollar-for-dollar against the LFCR adjustor charge, which is reset annually.

Stated another way, all of the dollars from the Grid Access Charge are refunded annually to customers through the LFCR adjustor charge and thus result in no additional revenue to APS.

Below is an illustrative example, based on 8,000 new solar customers with average solar installations of 6.8 kW-DC billed under the grid access charge for 12 months. As shown, in this example, the grid access charge would result in \$1,958,400 of revenue from new solar customers and \$1,958,400 of revenue credits back to all customers through the LFCR adjustor rate, for a net zero revenue to APS. Please also see the Company's Response to Staff's Request for Procedural Order dated April 23, 2015.

**Revenue Impact from the Grid Access Charge
(Illustrative Example)**

New Solar Customers per year	8,000
Average Solar kW-DC	6.8
Grid Access Charge (\$/kW)	3.00
Monthly Billed Amount (\$)	20.40
Annual Billed Amount (\$)	1,958,400
LFCR Revenue Requirement (\$) ¹	38,500,000
Grid Access Charge LFCR Credit (\$)	(1,958,400)
Revised LFCR Revenue Requirement (\$)	36,954,400
Grid Access Charge (\$)	1,958,400
Grid Access Charge LFCR Credit (\$)	(1,958,400)
Net Revenue to APS (\$)	0

1. 12 months effective March 2015

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RUCO 1.5: If approved, would resetting the LFCR this year (2015) violate Section 9.6 of the Settlement Agreement approved in APS' last rate case which provides for an annual LFCR adjustment since the LFCR was already adjusted for 2015 in Commission Decision No. 74994-docketed March 16, 2015? Please explain.

Response: Resetting the LFCR by increasing the Grid Access Charge to \$3/kW would not violate the Settlement Agreement from APS's last rate case. Nor would doing so violate Decision No. 73183 that implemented that agreement. The Commission approved the Settlement Agreement because it found it to be in the public interest at that time. If the Commission were to grant APS's Motion to Reset, it would be because doing so was in the public interest.

The Commission faced this same situation in 2013 when it implemented the initial \$0.70/kW Grid Access Charge with Decision No. 74202. In doing so, the Commission noted that paragraph 19.1 of the Settlement Agreement authorized the Commission to take action in the public interest. The Commission also concluded that the LFCR's revenue allocation was defective, and that because of this defect, it was in the public interest to take action:

"We find that the presence of a defect in the method for allocating the revenue spread in the LFCR is such an 'extraordinary event,' and we believe that is it in the public interest for us to address it now. To conclude that our decision in APS's last rate case (Decision No. 73183) forecloses interim action would be unreasonable, especially in light of paragraph 19.1." [Decision No. 74202 at ¶ 106.]

In Decision No. 74202, the Commission also considered Paragraph 9.11 of the Settlement Agreement, which expressly contemplates changes to the LFCR before APS's next rate case:

"The LFCR shall be subject to Commission review at any time, the first to occur no later than APS's next general rate case. If the Commission decides to suspend, terminate, or materially modify the LFCR mechanism prior to the Company's next general rate case, and does not provide alternative relief that adequately addresses fixed cost revenue erosion, the moratorium for filing general rate case applications shall terminate." [Settlement Agreement at ¶ 9.11, Docket No. E-01345A-11-0224.]

In discussing the effect of paragraph 9.11 in creating the initial \$0.70/kW Grid Access Charge, the Commission left no ambiguity that its action in Decision No. 74202 was permitted:

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RUCO 1.5
Continued:

"Our order in Decision No. 73183 adopted the LFCR as proposed, and our adoption thereof was based on our understanding that the LFCR is an adjustor mechanism, subject to adjustments and mid-course corrections between rate cases. Our adjustments as adopted herein fall within the type of adjustments contemplated by Decision No. 73183 and the settlement agreement in that proceeding." [Decision No. 74202 at ¶ 107.]

APS agreed with the Commission in 2013, and no other party disagreed with the Commission's understanding of the relevant language. For the same reasons articulated by the Commission in Decision No. 74202, any action now to reset the Grid Access Charge pursuant to the public interest would be consistent with the letter and spirit of Decision No. 73183 and the underlying Settlement Agreement.