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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

TOM FORESE
COMMISSIONER

DOUG LITTLE
COMMISSIONER

11) **DOCKET NO. E-01345A-13-0248**
12)
13 **IN THE MATTER OF THE**)
14 **APPLICATION OF ARIZONA**)
15 **PUBLIC SERVICE COMPANY FOR**) **TASC'S RESPONSE TO APS'S MOTION**
16 **APPROVAL OF NET METERING**) **TO RESET**
17 **COST SHIFT SOLUTION.**)

18 The Alliance for Solar Choice ("TASC") hereby responds to APS's April 2, 2015, Motion to Reset.
19 It is past time that this issue be given a full and legally required examination in an APS rate case.
20 Section I calls upon the Commission to reject APS's push for further consideration of this issue
21 without evidence, witnesses, or due process outside a rate case.

22 As explained in Section II, the Application and the Motion to Reset collectively ask this
23 Commission to engage in illegal single issue ratemaking. Single issue ratemaking has been
24 rejected as violating the Arizona Constitution and must be rejected here as well. Section III
25 explains how just last week, the Commission decided a rate case was the appropriate forum for
26 adjudicating a rate related issue. This issue should be guided by that precedent and numerous
27 policy considerations support a rate case in this instance as well.

Arizona Corporation Commission
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1 As set forth in Section IV, APS has failed to prove its allegations of an existing, hidden, and
2 growing cost shift. In fact, ratemaking principles make it clear that no present cost shift exists of
3 the nature alleged and therefore, there is no reason to again examine this issue outside of a rate
4 case.

5
6 Section V explains how the issues raised in the Application and again in the Motion to Reset were
7 already thoroughly litigated and resolved in APS's last rate with the consensual creation of the
8 Lost Fixed Cost Recovery mechanism (the "LFCR"). The exact issues related to an alleged failure
9 of rate design to account for lost kWh sales from distributed generation ("DG") and energy
10 efficiency ("EE") were raised and resolved in the Settlement Agreement that concluded the last
11 APS rate case. APS cannot be permitted to re-litigate its prior rate case, including a Settlement
12 Agreement it signed, in this docket.

13
14 Further, even if APS's Motion to Reset was not otherwise impermissible, Section VI makes it clear
15 that APS's Motion to Reset is untimely because the Settlement Agreement only permits a single
16 annual adjustment to the LFCR and that adjustment has already happened for 2015.

17
18 Section VII explains how the current Motion to Reset flies in the face of the ratemaking principles
19 of certainty and gradualism while leading to judicial waste if dealt with here and then again next
20 year in APS's rate case. Surprising the solar industry and its customers with a massive and
21 reasonably unexpected fee increase goes against these important principles.

22
23 Next, Section VIII provides a survey of the numerous parties, including Commissioners
24 themselves, that have made it clear that the issues presented in this docket should be decided in a
25 rate case. Finally, Section IX points out that the Motion to Reset makes APS's compliance with
26 its commitments to cost parity made as part of its utility owned distributed generation ("UODG")
27 proposal now untenable. As a result, that decision must quickly be revisited.

1 **I. The Solar Charge Previously Adopted And The Proposed Increase Have Never**
2 **Been Subject To A Full Examination In A Rate Case As Due Process Requires**
3

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

11
12 APS tries to re-write this history, claiming wrongly in its Motion to Reset that "no party requested
13 a hearing"² on its original Application in this docket. To the contrary, TASC counts at least five
14 (5) Intervenors (not including Staff, which made the same request) that specifically requested this
15 matter be heard as part of APS's rate case:

- 16
- 17 • The Solar Energy Industries Association ("SEIA") filed a Protest and Motion to Dismiss
18 on August 20, 2013, seeking to have APS's original Application dismissed and to have the
19 issue decided in a full rate case hearing (the "SEIA Motion").
- 20 • TASC joined in the SEIA Motion on August 30, 2013 (the "TASC Joinder"), similarly
21 arguing for dismissal of the Application and to have its issues adjudicated in a full rate case
22 proceeding.
- 23 • On August 29, 2013, the Interstate Renewable Energy Council ("IREC") submitted a
24 Protest to the Application, asking that APS's Application be dealt with in a rate case (the
25 "IREC Request").³

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, 1: 17,18.

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

- 1 • On November 4, 2013, and again on November 7, 2013, the Arizona Solar Energy
2 Industries Association (“AriSEIA”) filed requests that APS’s Application be adjudicated
3 either in a reopening of the last APS rate case or in the next APS rate case (the “AriSEIA
4 Requests”).
- 5 • Finally, on November 12, 2013, the Arizona Solar Deployment Alliance filed a request
6 stating that it “strongly supports [] resolving the issues raised in this docket in a rate case”
7 (the “ASDA Request”).⁴

8
9 The Commission is yet to hear, consider, or otherwise rule on the SEIA Motion, the TASC Joinder,
10 the IREC Request, the AriSEIA Requests, or the ASDA Request.⁵ Building on that silence, APS
11 converts the Commission’s refusal to even acknowledge these numerous requests into a self-
12 serving conclusion that no such requests were ever made.

13
14 In reality, the circumstances surrounding the Commission’s refusal to consider multiple requests
15 for a rate case hearing and formal Motions to Dismiss cut against granting APS’s current Motion
16 to Reset. APS is asking the Commission to take a decision that was made without the benefit of
17 any formal evidence, testimony, or cross examination, in a forum where repeated requests for due
18 process went unanswered, and to use that decision as the basis to justify the further relief APS now
19 seeks -- without remedying any of the lingering deficiencies. Ignoring Decision 74202’s aberrant
20 foundation, and compounding the problem by building further upon that unsound base, exacerbates
21 the unfairness. It is past time to give this important issue the due process it deserves and that
22 numerous parties have repeatedly requested: Hear these issues in a full rate case. The Commission
23 previously ordered that result in this very docket, when it concluded that a full rate case should
24 begin from and after June 1, 2015. It was only at APS’s demand and request of the Commission
25 in August of 2014 that the scheduled rate case was delayed in an amendment to Decision 74202.

26
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 Any claimed “hardship” that APS now seeks to cure in this docket is due only to APS’s own action
2 to defer the rate case previously scheduled as a result of the decision the Commission reached in
3 this docket. If there were in fact the problem APS seeks to address in this docket now, one would
4 expect APS to have sought to maintain the date for its rate case, not put it off to a later date.

5
6 **II. The Application and Motion to Reset Constitute Unconstitutional Single-Issue**
7 **Ratemaking**

8 In cases such as *Scates v. Arizona Corp. Commission*, Arizona courts have determined that
9 “[w]hile the Corporation Commission has broad discretion in establishing rates, it is required by
10 our Constitution to ascertain the value of a utility’s property within the State in setting just and
11 reasonable rates.”⁶ The goal is first to “determine the ‘fair value’ of a utility’s property and use
12 this value as the utility’s rate base,”⁷ and then to “determine what the rate of return should be, and
13 then apply that figure to the rate base in order to establish just and reasonable tariffs.”⁸ It is
14 precisely these careful considerations in which the Commission will be unable to engage without
15 a rate case. It is precisely these determinations that APS’s Application and now its Motion to
16 Reset seek to unconstitutionally bypass.

17
18 Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in response to a
19 change in a single cost item considered in isolation. In *Scates*, Mountain States Telephone and
20 Telegraph Company sought to increase rates for the installation, moving, and changing of
21 telephones, without an examination of the company’s other costs and revenues.⁹ As the *Scates*
22 court recognized,¹⁰ considering some costs in isolation might cause the Commission to allow a
23 utility to increase rates to recover higher costs in one area without recognizing counterbalancing

24
25 ⁶ *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978) (citing Ariz. Const. art. 15, § 14).

⁷ *Id.* at 615.

⁸ *Id.*

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.”).

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 savings in another. Such single-issue ratemaking is unsound regulatory policy, and impermissible
2 under law.

3
4 Here, APS is plainly asking the Commission to consider alleged costs associated with lost kWh
5 without considering the counterbalancing savings to the utility resulting from the use of DG. That
6 is impermissible single-issue ratemaking, and the Commission should reject it.

7
8 APS would no doubt respond in part by arguing that it is now, by way of the Motion to Reset,
9 merely asking the Commission to make an adjustment to the solar charge under some sort of
10 automatic adjustment clause, the likes of which have been permitted in Arizona. However, the
11 solar charge approved in Decision 74202 does not meet the requirements of an enforceable
12 automatic adjustment clause. Per the *Scates* Court, an automatic adjustment clause “is a device to
13 permit rates to adjust automatically, either up or down, in relation to fluctuations in certain,
14 narrowly defined, operating expenses.”¹¹ Here, APS is not alleging any fluctuation in operating
15 expenses to support an adjustment of the solar charge. Rather, APS’s argument boils down to the
16 idea that a charge was previously levied and, in APS’s opinion, now is the time to raise that charge.
17 That opinion needs to be tested in a full rate case.

18
19 Importantly, *Scates* indicated that one of the key safeguards underlying legally implemented
20 automatic adjuster clauses is the fact that they themselves were carefully considered and
21 implemented through a rate case proceeding. The *Scates* court wrote, “[w]hen courts have upheld
22 such automatic adjustment provisions, they have generally done so because the clauses are initially
23 adopted as part of the utility’s rate structure in accordance with all statutory and constitutional
24 requirements[].”¹² As the solar charge plainly was not adopted “as part of the utility’s rate
25 structure” and was done outside of a rate case in the first instance, it lacks those safeguards.

26
27
28 ¹¹ *Id.* at 616 (emphasis added).

¹² *Id.* (emphasis added).

1 Accordingly, it would be unconstitutional for the Commission to move forward with this
2 examination outside of APS's next general rate case.

3
4 **III. Precedent Supports That A Rate Case Is The Proper Venue For This Examination**

5
6 At its Staff Meeting on April 13, 2015, the Commission addressed a near identical issue, ruling in
7 favor of an adjudication in a rate case. The Commission was faced with the question of whether
8 to uphold Decision 74871, hold a hearing outside a rate case on the issues presented therein, or put
9 the decision on hold pending review in the next APS rate case. The Commission's own attorney
10 told the Commission, "[a] rate case is the ideal way for setting rates [] that's the way I think the
11 courts might also view the issues presented here."¹³ It was clear from the Commission's discussion,
12 and the Commission's attorney agreed, that the Commission would have more tools at its disposal
13 for investigating and solving issues inside a rate case.¹⁴

14
15 For example, outside of a rate case, the Commission is powerless to address rate design issues in
16 a broad context by reallocating costs across different classes. Nor could it create a new rate or
17 multiple rate tariffs to address any concerns it might have. Perhaps most importantly, outside of a
18 rate case the Commission simply will not have all the relevant information, including cost of
19 service studies, test year revenue requirement, and a full cost benefit analysis, which is necessary
20 to fully examine the issues presented in the Application.

21
22 APS is proposing to box the Commission into a narrow potential solution, focused on a single
23 characteristic of a small class of customers, in response to an alleged problem – one that, if real
24 and verifiable, is likely caused by the very nature of rates themselves, and not by a narrow class
25 of customers who generate a portion of their own power. The Commission should deal with this

26
27
28 ¹³ See http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1909 at 1:10:04

¹⁴ *Id.*

1 issue in a forum that allows it to truly consider and implement any and all options it deems
2 appropriate. The only forum that permits that process is a general rate case.

3
4 Further, in explaining its position while deciding to send Decision 74871 to a rate case, the
5 Commission recognized that judicial economy dictates having the issue tried once in a rate case
6 rather than twice. All of the issues that led to the Commission making its decision in that matter
7 are present in this docket. If the Commission sends this matter to a rate case, the Commission will
8 avoid wasting taxpayer and ratepayer money adjudicating the same issue twice in a short period
9 of time.

10 11 **IV. There Are No Costs Being Shifted**

12
13 In its Motion to Reset, APS continues to make baseless allegations that there exists a growing,
14 present, and hidden cost shift from customers with distributed solar to those without. APS makes
15 the objectively false claim that “the cost shift grew by \$6.3 million [in 2014].”¹⁵ In order for costs
16 to be shifted, there must be a mechanism in place whereby alleged costs are avoided by one
17 customer or group of customers, while another customer or group of customers pays a
18 corresponding increase to make up for the costs avoided by the first group. Of course, APS knows
19 full well that no such mechanism exists that was not already specifically vetted and approved by
20 the Commission in a prior rate case proceeding. To the extent any customer avoids any costs for
21 any reason between rate cases, the utility does not, as APS has been implying for far too long,
22 simply raise prices on some other subset of customers to make up for that loss.

23
24 Even assuming that every APS allegation regarding the amount of the alleged cost shift is accurate
25 (and TASC does not agree with such allegations), there would still be no present cost shift, nor is
26
27

28

¹⁵ APS’s Motion to Reset, 6, l:8.

1 there any ability for APS to move to collect for past under-collections in its next rate case.¹⁶ This
2 is an important point: any costs avoided today by any customer, whether they have DG or not, are
3 not going to be charged to the rest of the rate base in the next rate case, and are not currently getting
4 transferred to other ratepayers.

5
6 In fact, the only mechanism whereby any costs are allocated between rate cases as a result of lost
7 sales from electric efficiency and DG is the LFCR mechanism as it was approved in APS's last
8 rate case, which is more particularly described in Section V. To the extent that APS claims that
9 DG use impacts any other adjuster mechanisms, that only proves the point that this issue is a broad
10 issue of rate design that, if truly impacting other adjuster mechanisms, must be dealt with in a rate
11 case.

12
13 Despite knowing there is no real-time cost shift occurring in the manner it repeatedly claims, APS
14 continues to perpetuate this unfounded myth. The Commission should reject APS's alarmist
15 claims and deal with this issue in a calm and legally appropriate manner: in a rate case setting.

16
17 **V. APS's Original Application And Its Motion To Reset Seek To Resolve Issues That**
18 **Were Resolved In Its Last Rate Case, Violate The Terms Of The Settlement**
19 **Agreement In Its Last Rate Case, And Further Violate The Commission's Order**
20 **Adopting And Approving The Settlement Agreement**

21
22 APS's most recent rate case was resolved by a Settlement Agreement ("Settlement Agreement")
23 that was submitted to the Commission in Docket E-01345A-11-0224 and approved in Decision
24 No. 73183 (May 24, 2012). The Settlement Agreement specifically addressed the primary issue
25 that APS has sought to re-litigate in its Application and now again in its Motion to Reset: how to
26 address the purported mismatch between APS's volumetric energy rate structures and the recovery

27
28 ¹⁶ 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 of fixed infrastructure costs. In other words, in APS's last rate case, the utility raised the issue of
2 a mismatch between its rate structure and its expenses with regard to the impact of DG, and this
3 issue was fully litigated and resolved via the Settlement Agreement. Now, APS is trying again to
4 overturn the fully-litigated multi-party Settlement Agreement by pretending that it is raising a new
5 issue.

6
7 **A. Distributed Generation, Which Necessarily Includes NEM, Was Squarely Addressed**
8 **By The Lost Fixed Cost Recovery Mechanism**

9
10 When crafting the LFCR mechanism, the signatories to the Settlement Agreement began by
11 identifying the issue they sought to address:

12
13 *The Signatories also recognize that, under APS's current volumetric rate design, the Company*
14 *recovers a significant portion of its fixed costs of service through kilowatt-hour ("kWh") sales.*
15 *Commission rules related to EE and Distributed Generation ("DG") require APS to sell fewer*
16 *kWh, which, in turn, prevents the Company from being able to recover a portion of the fixed costs*
17 *of service embedded in its energy rates.¹⁷*

18
19 The Settlement Agreement starts from the premise of a potential rate design issue: a significant
20 portion of APS's fixed costs are recovered through volumetric charges (as part of energy rates).
21 This has the potential to cause a rate recovery mismatch. Distributed Generation customers
22 (including NEM customers) purchase fewer kWh from APS, and to the extent that their rooftop
23 solar systems do not confer benefits in proportion to or in excess of the fixed costs they avoid
24 paying, there is a possibility that an under-recovery of such fixed costs from DG customers may
25 occur.

26
27
28

¹⁷ Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10 (emphasis added).

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

6
7 *A typical residential bill is structured so that the charges paid contribute to the system's costs[.]*
8 *The components of this average bill reflect each category of costs required to supply electric*
9 *service to customers. A residential customer's contribution to these costs occurs through energy*
10 *usage charges. In other words, the amount of a residential customer's contribution to fixed costs*
11 *is based on their energy usage. But Net Metering allows customers to avoid paying for these fixed*
12 *costs.*¹⁸

13
14 The issues are precisely the same, whether the phrasing is (as in the Settlement Agreement) that
15 "the Company [is prevented] from being able to recover a portion of the fixed costs of service
16 embedded in its energy rates [because] Distributed Generation require[s] APS to sell fewer kWh"¹⁹
17 or that (as in APS's Application) "Net Metering allows customers to avoid paying for these fixed
18 costs [because] the amount of a residential customer's contribution to fixed costs is based on their
19 energy usage."²⁰ APS's attempt to recast the issue as a cost shift from NEM to non-NEM
20 customers (as if that were different from DG customers as set forth in the rate case) is unavailing
21 because, as detailed in Section IV, there is no cost shift between such customers occurring now
22 anyway.

23
24 The Settlement Agreement signatories chose the LFCR adjustor as the mechanism to resolve this
25 potential under-collection issue. This mechanism is addressed to potential cost-recovery issues
26 with both energy efficiency ("EE") and DG (which necessarily includes every NEM customer)

27
28 ¹⁸ Application at 8-9.

¹⁹ Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10.

²⁰ Application at 8-9.

1 programs. As the signatories agreed, the LFCR mechanism “gives APS the opportunity to recover
2 a portion of the distribution and transmission costs associated with those residential, commercial
3 and industrial customers’ verified lost kWh sales attributed to EE and DG requirements.”²¹ APS’s
4 solar charge may actually be billed to its customers through the LFCR line item on customer bills,
5 but the solar charge is a dramatic departure from the LFCR approved in the rate case.

6
7 **B. The LFCR Mechanism Approved In The Rate Case Does Not Support The Currently**
8 **Imposed Solar Charge**

9
10 The solar charge that APS seeks to increase in its Motion to Reset is not permitted under the LFCR
11 approved in the rate case Settlement Agreement. The LFCR as agreed to in the Settlement
12 Agreement and set forth in the LFCR Plan of Administration approved in Decision 73183 does not
13 permit charging customers with DG a different amount than customers without DG.

14
15 The LFCR Plan of Administration requires that the LFCR Adjustment (defined in the Plan of
16 Administration) will be expressed as a percentage that “will be applied to all customer bills
17 excluding [those that have opted out or are excluded].”²² The solar charge changes the formula
18 for application of the LFCR to customer bills by raising the charge significantly for DG customers
19 and lowering the charge for non DG customers.

20
21 If the parties to the Settlement Agreement had intended to use the LFCR to charge customers
22 utilizing DG or EE a greater amount than other ratepayers, that intent would have been expressed
23 in the Settlement Agreement. After all, to the extent the parties believed that it was appropriate to
24 compensate APS for the reduced sales for which the LFCR was designed to compensate, one
25 alternative would have been to charge those with DG and EE more. However, the agreed-to LFCR
26 mechanism clearly rejected that alternative.

27
28 ²¹ Decision No. 73183 at 12-13.

²² LFCR Plan of Administration at 4 (emphasis added).

1 **C. APS Specifically Agreed That The LFCR Mechanism Is The Appropriate Mechanism**
2 **For Addressing Cost Recovery Issues Related To DG**

3
4 In supporting the Settlement Agreement, APS specifically acknowledged that this was the core
5 function of the LFCR mechanism, and agreed to it, as set forth in the Settlement Agreement, on
6 this basis. APS testified in support of the Settlement Agreement shortly after it was negotiated,
7 signed, and filed with the Commission and offered specific support for the LFCR mechanism. Mr.
8 Snook explained why APS supported the LFCR mechanism (after previously arguing for full
9 revenue decoupling):

10
11 *APS fully supports the LFCR mechanism proposed in the Settlement Agreement and believes it is*
12 *a reasonable mechanism to implement to address the immediate concerns related to sales*
13 *reductions associated with EE and DG. The LFCR mechanism represents a tailored solution to*
14 *address the unrecovered fixed costs associated with EE and DG - the exact issue at hand.*²³

15
16 Mr. Snook's testimony is as applicable today as when filed: the LFCR mechanism continues to
17 represent a tailored solution to address the unrecovered fixed costs associated with EE and DG -
18 the exact issue at hand in APS's Application, which APS seeks to revisit in its Motion to Reset.
19 Given this, the issue remains one of determining a mechanism that permits APS to properly recover
20 otherwise unrecovered fixed costs associated with DG. And in this respect, the LFCR mechanism
21 continues to, in Mr. Snook's words:

22
23 *provide[] a clear and direct link between EE and DG sales reductions to the amount of uncollected*
24 *fixed costs to be recovered by [APS, allowing APS] the opportunity to recover its lost fixed costs*
25 *attributable to EE or DG at any level and pace that the Commission authorizes as a matter of*
26 *policy.*²⁴

27
28 ²³ Direct Testimony of Leland R. Snook, attached to Notice of Filing Testimony in Support of Proposed Settlement Agreement in Docket No. E-01345A-11-0224, at 7, 1:5-9 (emphasis added).

²⁴ *Id.* at 2, 1:2-6.

1 APS thus acknowledged that the LFCR mechanism approved in the Settlement Agreement
2 provided a resolution acceptable to APS.

3
4 **D. Staff And The Commission Approved The LFCR Mechanism As The Preferred**
5 **Mechanism For Addressing The Issues That APS's Application Now Seeks To Re-**
6 **open**

7
8 APS is not the only entity that endorsed and approved the Settlement Agreement's version of
9 LFCR mechanism for this purpose. In addition to participating in the negotiations that led to the
10 Settlement Agreement, including the LFCR mechanism, the Staff specifically supported the LFCR
11 mechanism itself (indeed, Staff was the original source of the mechanism²⁵). As noted in the
12 Commission's order approving and directing implementation of the Settlement Agreement, the
13 Staff "believes the LFCR mechanism is narrowly tailored to allow recovery of certain documented
14 and verified fixed costs that were not recovered due to reductions in volumetric sales from
15 Commission-approved EE and DG programs."²⁶ Again, this same cost recovery issue is precisely
16 the issue that APS's Application seeks to address yet again. Staff believed at the time of the rate
17 case that the appropriate way to address this rate recovery issue was the LFCR mechanism. And,
18 in its Order, the Commission agreed: "We agree with Staff and the Joint Signatories that the LFCR
19 mechanism is the appropriate mechanism for APS at this time."²⁷ APS's Motion to Reset seeks to
20 turn the LFCR into something other than what was approved in the Settlement Agreement yet APS
21 provides no basis for disturbing this previous agreement.

22
23 In sum, as intended by APS and the other signatories, acknowledged by Staff, and approved by
24 the Commission, the LFCR mechanism as approved in the rate case was and remains the
25 appropriate mechanism to resolve the DG-related fixed cost recovery issues that are the focus of
26

27 ²⁵ Decision No. 73183 at 6.

28 ²⁶ *Id.* at 21. Note that, in addition to the Staff, the Signatories to the Settlement Agreement also concurred in this finding. *Id.* at 29.

²⁷ *Id.* at 40, 1:1-6.

1 the Application and Motion to Reset, regardless of APS's unconvincing allegation of a current cost
2 shift.

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

7
8 Setting aside the numerous flaws with APS's Motion, even assuming APS could ask for a reset of
9 the LFCR solar charge adopted in Decision 74202, the Motion's request is not timely and must be
10 dismissed. Section 9.6 of the Settlement Agreement adopted in APS's last general rate case
11 provided that the LFCR mechanism adopted therein²⁸ would be subject to *annual* adjustments
12 only.²⁹ Such annual adjustments are required to be filed on or before January 15 of each year, with
13 the Commission making its best efforts to process such requests by March 1 of that same year.³⁰

14
15 In accordance with the Settlement Agreement, on January 15, 2015, APS filed an application with
16 the Commission seeking approval of its annual LFCR adjustment.³¹ On March 16, 2015, the
17 Commission issued Decision 74994, granting APS's requested annual LFCR adjustment for 2015.
18 APS's Application for its annual LFCR adjustment did not include any request for an adjustment
19 to the solar charge adopted in Decision 74202, nor did the Commission grant it any adjustment to
20 the solar charge.

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

26
27 ²⁸ TASC submits that the LFCR charge against solar customers violates the provisions of the Settlement Agreement
adopted in Decision 73183.

28 ²⁹ Decision 73183 Settlement Agreement, Section 9.6

³⁰ *Id.* See also, LFCR Plan of Administration, 3 at para 4.

³¹ Decision 74994 at para. 2.

1 were not otherwise legally impermissible, it would be untimely.³² As a result, the Motion to Reset
2 must be denied.

3
4 **VII. This Proposal Is “Abruptism”, the Opposite Of Gradualism, And Is A Waste Of**
5 **Resources**

6
7 The massive and unexpected increase in the solar charge that APS seeks flies in the face of the
8 principles of gradualism and regulatory certainty, and would waste Commission resources dealing
9 with issues that will also be dealt with in APS’s next rate case next year. Nonetheless, in its Motion
10 to Reset, APS argues that its unexpected proposal for a 400% increase in the solar charge outside
11 a rate case is “consistent with the principles of rate gradualism.”³³ The Commission should reject
12 this argument.

13
14 **A. The Solar Market Could Not Reasonably Have Anticipated This Increase**

15
16 Regulatory certainty is a principle so highly valued that it needs no citation to demonstrate its
17 importance to this Commission. Yet APS’s proposal comes as a complete surprise to TASC.
18 Nearly all available information suggested that this matter would not be addressed again until
19 APS’s next rate case. From Commissioners’ own stated preferences for a rate case (described in
20 Section VIII), to statements made at the hearing and those incorporated into the final Decision in
21 this docket, no one could have reasonably predicted this fee would be back before the Commission
22 outside a rate case.

23
24 The solar charge adopted in Decision 74202 was always intended to remain set at \$0.70/kW until
25 the issue could be fully vetted in APS’s next rate case. Director of RUCO, Pat Quinn, stated on
26

27 ³² 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.

³³ Motion to Rest 8, 1:15

1 the record during the Commission's November 14, 2013, Open Meeting in this Docket that it was
2 RUCO's position that the solar charge it was asking the Commission to adopt "will not grow
3 between now and the next rate case."³⁴

4
5 The solar industry, and its customers and potential customers who were following the occurrences
6 in this docket, would no doubt have been aware that in Decision 74202, the Commission ordered
7 APS to file for its next rate case by June of 2015. The speed with which the next rate case was to
8 be filed made it clear that there would be no interim increases in the solar charge. Now it appears
9 that APS is using the fact that it pushed for and got the Commission to permit a delay in the filing
10 of APS's next rate case to justify filing for an increase to the solar charge today, prior to the now
11 delayed rate case. Decision 74702 may have given APS permission to file a later rate case, but it
12 did nothing to express Commission support for filing this Motion to Reset.

13
14 Decision 74202 itself is replete with findings and statements indicating that a rate case is the proper
15 place to adjudicate the matters raised in APS's Application and now, again, in its Motion to Set.
16 For example, the Commission found that the "development of equitable rate structures that address
17 the inherent disconnect between NM and volumetric rates can best be accomplished in a rate
18 case."³⁵ Further, Staff took the position that issues raised in the Application would be "most
19 appropriately addressed in the setting of a general rate case."³⁶

20
21 Moreover, even APS's CEO, Don Brandt, confirmed that APS had no intention of seeking any
22 increase in the solar charge until its rate case. During Pinnacle West's 2014 second quarter
23 earnings call, Mr. Brandt was asked about when APS planned to seek an increase in its \$5 solar
24 charge:

25
26
27 ³⁴ See Arizona Corporation Commission Video Archive,
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1246&meta_id=10165
At 52:08

28 ³⁵ Decision 74202 at para. 32

³⁶ *Id.* At para. 33

1 Question by Julien Dumoulin Smith: “And just to be clear, in theory, when would that \$5 tariff
2 at least be revisited, just procedurally speaking?”

3
4 Answer by Don Brandt: “That would be, if you do a rate design change or a change like that *that*
5 *would happen in the next rate case.*”³⁷

6
7 Increasing fees by ambush is inconsistent with regulatory certainty. APS’s Motion must be
8 rejected because it is such a radical departure from certainty, and because APS itself led observers
9 to believe no such request would be coming.

10
11 **B. There Is Nothing Gradual About This Massive Increase**

12
13 APS’s contention that the utility’s Motion to Reset is an example of gradualism is simply
14 unsupportable. If APS has its way, a solar customer would be responsible for an approximately
15 \$5.00 monthly charge if he were to apply to install solar on his rooftop on July 31, 2015, but that
16 same solar customer would be subject to a \$21/month charge if he made that application just one
17 day later.

18
19 As this Commission knows, arguments erupt in utility rate cases over requests for increases of
20 mere cents. APS previously indicated that the average solar customer’s monthly bill is \$71,
21 making this \$21 monthly increase the equivalent of an average 30% rate hike for anyone who goes
22 solar after August 1, 2015. Imagine the uproar if APS attempted a broad-based rate increase of
23 \$21 per month, or of 30% on any customer class, while arguing that the proposal was a perfect
24 example of “gradualism.”

25
26 **C. It Is A Waste Of Substantial Resources To Litigate This Issue Now And Then**
27 **Litigate It Again In APS’s 2016 Rate Case**

28

³⁷ Pinnacle West Q2 Earnings Call Transcript (emphasis added)

1 As set forth throughout this Response and in numerous filings in this and other dockets, several
2 parties, including Commission Staff and RUCO, understand that these issues will be fully
3 addressed in APS's next rate case, which the company has signaled will be filed next year.
4 Dealing with this issue now, in this docket, will double the burden on all interested parties and the
5 Commission, turning judicial economy on its head. With the intense scrutiny that will no doubt be
6 part of this examination, it makes the most sense to have a full and final examination of this in a
7 single docket: the next rate case. Staff makes this point in its April 17, 2015, Request for
8 Procedural Order, where it writes, "[] any decision in this case is likely to be issued not long before
9 the time that APS files its next rate case, where these issues will all be examined again.³⁸"
10

11 **VIII. All Five Commissioners, Commission Staff, RUCO, and Numerous Other**
12 **Interested Parties Have Indicated that a Rate Case is the Proper Venue for this**
13 **Examination**
14

15 TASC is not alone in its view that APS's Motion to Reset should be considered in a full rate case.
16 In fact, there is near unanimity among interested parties -- the decision-makers themselves,
17 Commission Staff, and RUCO -- that a rate case is the proper venue. What follows is a brief
18 survey of various supporting statements that have been made from these important interests.
19

20 **A. All Five Commissioners Appear To Support Rate Case Resolutions Of This**
21 **Type Of Issue**
22

23 Starting on the final day of the previous APS net metering public meeting and going forward, both
24 newly elected and incumbent Commissioners have been asked about their position on the net
25 metering debate or have signaled their position regarding the issue's proper forum. The unanimous
26 chorus of responses is perhaps best summarized by a quote from Commissioner Little, where he
27 stated, "[w]ell here's the thing, this [whole] question of net metering really needs to be discussed
28

³⁸ Staff's Request For Procedural Order at 3, 1:9-11

1 in the context of a rate case. Because, that's an evidentiary hearing, sworn testimony, everybody
2 has an opportunity to provide input, all the different interveners and stakeholders....But the true,
3 correct amount [] is something we probably do need to look like in the context of a rate case.”³⁹
4 Then-candidate and now-Commissioner Forese echoed those sentiments when he stated, “[t]his
5 issue of net metering should have been handled in a rate case. I would have preferred to see it that
6 way. You need to look at it in depth and look at it on all sides. It is sustainable. It can work. You
7 just have to make sure that you find the balance and that is done in a rate case.”⁴⁰

8
9 Then-Chairman and now-Commissioner Stump signaled his apparent support for a full vetting of
10 the issues raised in the Application in the context of a rate case during the debate on APS's
11 proposed net metering “solution.” Chairman Stump's Proposed Amendment No. 1 to the APS net
12 metering decision included the following proposed paragraph:

13
14 *“85. We reiterate that our decision today is a first step toward sorting out the complex issues*
15 *presented by this case. We recognize that a complete consideration of the many facets of these*
16 *issues must await APS's next rate case. We therefore will require APS to file its next full rate case*
17 *at the earliest date that is consistent with the Commission's decision in APS's last rate case”*
18 *(emphasis added)*⁴¹

19
20 Then-Commissioner and now-Chairman Bitter Smith proposed an amendment seeking to have the
21 entire APS net metering issue decided in a quickly brought rate case and to forego taking any
22 action on the matter outside of a rate case. Commissioner Bitter Smith's Proposed Amendment
23 #1 included the following proposed paragraph:

24
25 *“53. We agree with Staffs view that the issues presented herein will likely need to be addressed*
26 *and considered as part of APS's next rate case filing. This is also the view expressed by RUCO in*

27
28 ³⁹ PBS Candidate Interview September 22, 2014.

⁴⁰ PBS Candidate Interview June 25, 2014.

⁴¹ See Docket No. E-01345A-13-0248, Chairman Stump's Proposed Amendment # 1

1 *its comments to the docket. Therefore, the sooner APS makes its filing consistent with the*
2 *provisions of Decision No. 73 183, the sooner the important issues arising from these matters can*
3 *be considered in the context of a full rate case.*” (emphasis added)⁴²

4
5 Finally, during a Commission Staff Meeting on August 12, 2014, Commissioner Bob Burns
6 indicated it is his clear preference that rate design issues be dealt with in rate cases as opposed to
7 other forums where fewer parties participate. Commissioner Burns said, “I’ve found out more
8 about how a workshop with a rate design would work and the universe that would be participating
9 would be considerably smaller possibly than if things were handled in a rate case, I’m now of the
10 position that we ought to do this rate design within a rate case.”⁴³

11
12 **B. Commission Staff Has Repeatedly Expressed A Preference For A Rate Case**

13
14 Commission Staff has been outspoken in its support for hearing net metering issues in a rate case.
15 In its Staff Report and Recommended Order in the original Application in this docket, Staff
16 succinctly explained its support for a rate case by writing:

17
18 *“Staff believes that any cost-shift issue created by NM is fundamentally a matter of rate design.*
19 *The appropriate time for designing rates that equitably allocate the costs and benefits of NM is*
20 *during APS’s next general rate case. Data on all of APS’s costs are available within a rate case.*
21 *In addition, the Commission has more options available within a rate case than it has outside of a*
22 *rate case. Therefore, Staff recommends that the Commission take no action on the instant*
23 *application and defer the matter for consideration during APS’s next rate case.*⁴⁴

24
25
26
27 ⁴² See Docket No. E-01345A-13-0248, Commissioner Bitter Smith’s Proposed Amendment #1

28 ⁴³ 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

⁴⁴ See September 30, 2013 Staff Report in Docket No. E-01345A-13-0248 at p: 6-7.

1 Just in the last month, Staff has repeatedly urged the Commission to dismiss similar filings by
2 other utilities, arguing instead that the issues should be dealt with in a rate case proceeding.⁴⁵

3 4 **C. RUCO Has Expressed Support For A Rate Case**

5
6 RUCO has long contended that rate design issues should be heard in the context of a rate case.
7 During the APS net metering debate, RUCO wrote, “[t]he current net metering debate is a sub-
8 component of a much larger debate about the implications and benefits of new technology, the
9 value of the electric grid, and rate design. The Residential Utility Consumer Office (RUCO) agrees
10 with Arizona Corporation Commission (ACC) Staff that this issue should be part of a broader
11 discussion such as a rate case.”⁴⁶ As set forth above, Director of RUCO, Pat Quinn, stated on the
12 record during the Commission’s November 14, 2013, Open Meeting in this Docket that it was
13 RUCO’s position that the solar charge it was asking the Commission to adopt “will not grow
14 between now and the next rate case.”⁴⁷ Clearly RUCO has long expected and supported a rate
15 case analysis as the next step in this process.

16 17 **IX. APS’s Motion To Reset Requires Revisiting Its Required Cost Parity** 18 **Commitments In Decision 74878 (UODG Program) And Exposes Impropriety Of** 19 **UODG**

20
21 Finally, TASC suggests that the Motion to Reset should trigger a review of the Commission’s
22 recent Decision 74847, which permitted APS to participate in the residential rooftop solar market.
23 That review should occur immediately prior to APS spending any additional funds on the utility-
24 owned DG program. Of note, that Decision set forth that “APS commits to cost parity with current
25

26 ⁴⁵ 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).

27 ⁴⁶ See RUCO Letter to ACC Dated October 30, 2013 in Docket E-01345A-13-0248 at 1 (emphasis added).

28 ⁴⁷ See Arizona Corporation Commission Video Archive,
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1246&meta_id=10165

At 52:08

1 net metering rates” and further committed to updating its project costs to retain cost parity should
2 rate design alter the amount of the alleged cost shift.⁴⁸ Indeed, promises of cost parity were a key
3 factor underlying the apparent tacit approval of that program. APS should be made to demonstrate
4 cost parity is possible in light of its Motion to Reset. If APS cannot demonstrate cost parity is
5 possible, the Commission should reopen Decision 74878 under the provisions of A.R.S. 40-252,
6 and make it clear that APS is directed not to proceed with its proposed UODG program.

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

16 17 **X. Conclusion**

18
19 It is time for the Commission to commit to giving full due process to this important issue within
20 APS’s next rate case. APS’s Motion to Reset is legally impermissible and asks this Commission
21 to engage in unconstitutional single issue ratemaking. Recent Commission precedent and advice
22 from Commission attorneys indicates that this matter is proper for consideration in a rate case and
23 not in a separate action.

24
25 Despite APS’s claims to the contrary, there is no current and growing cost shift harming existing
26 ratepayers and the current issues caused by reduced kWh sales were fully vetted and dealt with in
27 the last APS rate case. APS should not be permitted to re-litigate its last rate case and upset the

28

⁴⁸ Decision 74878 at 6, 1:6-10


1 terms of a negotiated Settlement Agreement by trying to utilize the LFCR mechanism in a manner
2 that is inconsistent with its approved uses. Even if APS were legally permitted to bring this
3 Motion, the time for annual adjustments to the LFCR has passed and this Motion to Reset is
4 untimely.

5
6 Further, the Motion asks the Commission to abandon the important principles of gradualism and
7 certainty and to instead engage in ratemaking by surprise; a tactic that should be rejected. As
8 Commissioners, Staff, and RUCO have all agreed, the proper venue for this adjudication is in a
9 rate case.

10
11 Finally, APS's Motion to Reset makes APS's compliance with its commitments to cost parity set
12 forth in the UODG decision impossible. As a result, that decision must be revisited today to stop
13 APS from moving forward in a manner that does not comport with the Commission's directives.

14
15 For the forgoing reasons, TASC respectfully requests that the Commission enter an Order
16 dismissing the Motion to Reset and directing that the issues discussed therein be brought back to
17 the Commission only in APS's next rate case.

18
19 Respectfully submitted this 21st day of April, 2015

20
21 
22 _____
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26
27
28

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