



0000163268

BEFORE THE ARIZONA CORPORATION COMMISSION

2015 MAY 22 A 11:09

AZ CORP COMMISSION
DOCKET CONTROL

SUSAN BITTER SMITH
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

DOUG LITTLE
COMMISSIONER

TOM FORESE
COMMISSIONER

IN THE MATTER OF THE MOTION OF
ARIZONA PUBLIC SERVICE COMPANY
FOR APPROVAL OF NET METERING COST
SHIFT SOLUTION.

Docket No. E-01345A-13-0248

RUCO'S BRIEF ON INTERIM NET METERING SOLUTION

The Residential Utility Consumer Office ("RUCO") submits the following Brief on the issues of whether or not the Commission must 1) decide any portion of Arizona Public Service's ("APS" or Company) Motion inside of a rate case and if not 2) whether it would be appropriate to decide APS's Motion outside of a rate case under the circumstances of this case¹. For the following reasons, RUCO believes that the answer is no to the first issue and yes to the second issue.

ORIGINAL

Arizona Corporation Commission

DOCKETED

MAY 22 2015

INTRODUCTION

DOCKETED BY
DAS

This is not the first time that the Commission has been to this party. In fact, the Commission has visited and moved forward on these very issues in 2013 when APS brought

¹ The Procedural Order of April 24, 2014 seeks Briefs on the issue of whether any portion of APS' Motion must be decided in a rate case. RUCO has taken the liberty here of addressing the follow-up question if the central issue is answered in the negative which RUCO believes.

1 the matter before the Commission. See Decision No. 74202, Docket No. E-01345A-13-0248.
2 RUCO anticipates that most if not all of the arguments both in favor and in opposition to
3 moving forward in this case were presented at some point in that earlier proceeding. Most of
4 the parties in the present case were involved in the APS' earlier proceeding. In that
5 proceeding the Commission did reset APS' net metering rate and no party appealed the
6 Commission's decision to reset APS' net metering rate outside of a rate case. While this point,
7 by itself, does not make the Commission's ability to proceed at this time necessarily legal, it
8 does establish precedent to act in the same manner if the Commission wishes. In fact, to act
9 otherwise, given the Company's Motion would be inconsistent from both a procedural
10 standpoint and a policy standpoint.

11
12 **THE COMMISSION HAS THE LEGAL AUTHORITY TO MODIFY APS' NET
METERING RATE OUTSIDE OF A RATE CASE**

13 The Commission established APS' current net metering rate outside of a rate case. See
14 Decision No. 74202, Docket No. E-01345A-13-0248. APS' request here is for a new net
15 metering rate which will be revenue neutral and apply only to customers who install rooftop
16 solar after the effective date of any decision on this Motion. Company Motion at 2.

17 APS proposes resetting the LFCR adjustment to \$3/kw. Company Motion at 6.
18 Increasing the LFCR adjustment now would reduce the overall amount of the cost shift in APS'
19 next rate case. Company Motion at 8. If in fact APS' proposal does not adjust the rate base
20 or the rate of return, and is revenue neutral, then the Company's proposal tariff would not
21 create any fair value issues. A revenue neutral proposal which has the effect of simply shifting
22 costs within the residential rate class would not violate fair value. Nor would there be a
23 question of single issue ratemaking. In Arizona, the Courts have repeatedly found that the
24 Commission is required to make a fair value finding of a utility's property and use such finding

1 as a rate base for purpose of calculating fair and reasonable rates. See *Scates*, 118 Ariz. 531,
2 534, 578 P.2d 612, 616 (1978), *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 151,
3 294 P.2d 378, 382 (1956). In other words, when ascertaining the utility's rate base, the
4 Commission is required to find fair value. *Id.* APS's proposal calls into play a rate design issue,
5 not a rate base and/or rate of return issue and there would be no effect on the rate base nor
6 the Company's rate of return.

7 There is also Commission precedent for addressing this issue now. A.A.C. R14-2-2307
8 requires each electric utility to file net metering tariffs within 120 days of the effective date of
9 the Rule. APS' original net metering tariff appears to have been filed in compliance. The tariff
10 was approved without the benefit of a rate case. The Rule does not require that the tariff be
11 filed in a rate case. See A.A.C. R14-2-2307(a).

12 A.A.C. R14-2-2305 provides guidance for increasing the net metering rate. It also does
13 not require a rate case to increase the net metering rate. It does, however, require full support
14 with a cost of service study and cost/benefit analysis. A.A.C. R14-2-2305.

15 The Commission can also do what APS ultimately requests pursuant to the terms of the
16 Settlement Agreement it approved in APS' last rate case. Decision No.74876. The
17 Commission's action would be consistent with the flexibility that it has under paragraph 9.11
18 and 19.1 of the Settlement and Plan of Administration approved in APS' last rate case.
19 Decision No. 74876.

20 In sum, there is no legal impediment which requires the Commission to hear APS'
21 Motion outside of a rate case.

1 AN ORIGINAL AND THIRTEEN COPIES
2 of the foregoing filed this 22nd day
3 of May, 2015 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand delivered/
8 mailed/emailed this 22nd day of May,
9 2015 to:

7 Lyn Farmer
8 Hearing Division
9 Arizona Corporation Commission
10 1200 W. Washington St.
11 Phoenix, Arizona 85007

10 Maureen Scott
11 Wesley Van Cleve
12 Janet Wagner
13 Legal Division
14 Arizona Corporation Commission
15 1200 W. Washington St.
16 Phoenix, Arizona 85007

14 Steve Olea
15 Utilities Division
16 Arizona Corporation Commission
17 1200 W. Washington St.
18 Phoenix, Arizona 85007

17 Thomas Loquvam
18 Deborah Scott
19 Pinnacle West Capital Corporation
20 400 N. 5th St., MS 8695
21 Phoenix, Arizona 85004
22 Attorney for Arizona Public Service
23 Company
24 thomas.loquvam@pinnaclewest.com
deb.scott@pinnaclewest.com

22 Lewis Levenson
23 1308 E. Cedar Lane
24 Payson, Arizona 85541
equality@centurylink.net

Anne Smart
Alliance for Solar Choice
45 Fremont Street, 32nd Floor
San Francisco, California 94105
anne@allianceforsolarchoice.com

Michael Patten
Jason Gellman
Snell and Wilmer
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004
mpatten@swlaw.com
jgellman@swlaw.com

Garry Hays
Law Offices of Garry D. Hays, P.C.
1702 E. Highland Ave., Suite 204
Phoenix, Arizona 85016
Attorney for Arizona Solar Deployment
Alliance
ghays@lawgdh.com

Greg Patterson
916 W. Adams, Suite 3
Phoenix, Arizona 85007
Attorney for Arizona Competitive Power
Alliance
greg@azcpa.org

Patty Ihle
304 E. Cedar Mill Road
Star Valley, Arizona 85541
apattywack@yahoo.com

Bradley Carroll
Kimberly Ruht
Tucson Electric Power Company
88 E. Broadway Blvd., MH HQE910
P.O. Box 711
Tucson, Arizona 85702
bcarroll@tep.com
kruht@tep.com

1 John Wallace
Grand Canyon State Electric Cooperative
2 Association, Inc.
2210 S. Priest Drive
3 Tempe, Arizona 85282
jwallace@gcseca.coop

4 Court Rich
5 Rose Law Group, PC
7144 E. Stetson Drive, Suite 300
6 Scottsdale, Arizona 85251
Attorney for Alliance for Solar Choice
7 crich@roselawgroup.com

8 Todd Glass
Keene O'Connor
9 Wilson Sonsini Goodrich & Rosati, PC
701 Fifth Ave., Suite 500
10 Seattle, Washington 98104
Attorneys for Solar Energy Industries
11 tglass@wsgr.com

12 Timothy Hogan
Arizona Center for Law in the Public
13 Interest
202 E. McDowell Rd, Suite 153
14 Phoenix, Arizona 85003
Attorney for Western Resource
15 Advocates
thogan@aclpi.org

16 David Berry
17 Western Resource Advocates
P.O. Box 1064
18 Scottsdale, Arizona 85252
David.berry@westernresources.org

19 Kristin Mayes
20 Kris Mayes Law Firm
3033 N. 3rd St., Suite 200
21 Phoenix, Arizona 85012
Attorney for Solar Energy Industries
22 Association
kmayes@krismayeslaw.com

Gincarlo Estrada
Kamper, Estrada and Simmons, LLP
3030 N. Third St., Suite 770
Phoenix, Arizona 85012
Attorney for Solar Energy Industries
Association
gestrada@lawphx.com

Mark Holohan
Arizona Solar Energy Industries
Association
2122 W. Lone Cactus Dr., Suite 2
Phoenix, Arizona 85027
todd@arizonasolarindustry.org

Kevin Fox
Tim Lindl
Keyes, Fox & Wiedman LLP
436 14th St., Suite 1305
Oakland, California 94612
kfox@kfwlaw.com
tlindl@kfwlaw.com

Albert Gervenack
14751 W. Buttonwood Dr.
Sun City West, Arizona 85373

W.R. Hansen
Sun City West Property Owners and
Residents Association
13815 Camino Del Sol
Sun City West, Arizona 85375

By *Cheryl Frawley*