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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. E-01345A-13-0248

STAFF'S REPLY BRIEF

The Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC" or "Commission") hereby files its reply to the initial briefs of other parties filed on May 22, 2015. Initial briefs were filed by seven parties including Arizona Public Service Company ("APS" or "Company"), the Alliance for Solar Choice ("TASC"), the Residential Utility Consumer Office ("RUCO"), the Joint Solar Parties[1], the Arizona Solar Deployment Alliance ("ASDA'), the Arizona Competitive Power Alliance ("ACPA") and Western Resource Advocates ("WRA"). Three parties, TASC, SEIA and AriSEIA, believe that the Commission must address APS's application in a rate case. WRA did not take a position on the issue of whether a rate case is necessary. Most parties, however, appear to recognize that the Commission has considerable discretion in determining when to address the Company's application. Most parties commenting on the issue, including APS, also acknowledge that a more holistic rate design solution is necessary and that Decision No. 74202 did not view continued Lost Fixed Cost Recovery ("LFCR") adjustments as a solution to the issues raised. Finally, most parties acknowledge that a rate case is necessary to obtain a comprehensive solution to the issues raised by APS's application.

Staff continues to urge the Commission to address the net metering cost shift issue in the Company's next rate case. No party has presented any compelling reasons, in Staff's opinion,

[1] The Joint Solar Parties consist of the Solar Energy Industries Association ("SEIA") and the Arizona Solar Energy Industries Association ("AriSEIA").

for addressing this issue now. Another LFCR reset will have minimal impact on any cost shift that APS may be experiencing, and processing the application outside a rate case will do little to resolve the larger issue which APS itself acknowledges is one which is in need of a much broader remedy.

I. THE COMMISSION IS NOT REQUIRED TO PROCESS APS'S APPLICATION IN A RATE CASE.

Three parties take the position that APS's application must be addressed in a rate case: TASC, SEIA and AriSEIA (The Joint Solar Parties).[2] Staff disagrees. The Joint Solar parties state that the application must be handled in a rate case to avoid the potential for unjust and unreasonable rates.[3] TASC relies on *Scates*[4] for the proposition that the Commission must address any rate change in a rate case.[5]

As pointed out by Staff in its initial brief, the holding of *Scates* is actually much narrower than that suggested by TASC.[6] The *Scates* Court found:

> We...hold that the Commission was without authority to increase the rate without any consideration of the overall impact of that rate increase upon the return of...[the utility], and without as specifically required by our law, a determination of ... [the utility's] rate base.[7]

The *Scates* Court made it clear that a full rate case is not required for every increase in rates.[8] "There may well be exceptional situations in which the Commission may authorize partial rate increases without requiring" a full rate case.[9]

In addition, there are important distinctions between the facts in this case and the underlying facts in the *Scates* case. The LFCR was adopted by the Commission in Decision No. 73183, the Company's last rate case. Thus, the mechanism was adopted as "part of the utility's rate structure in accordance with all statutory and constitutional requirements."[10] The Commission also recognized,

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[2] Joint Solar Parties Br. at 1; TASC Initial Br. at 5-7.
[3] Joint Solar Parties Br. at 1.
[4] *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 578 P.2d 612 (App. 1978).
[5] TASC Initial Br. at 5-7.
[6] *See* Staff Initial Br. at 3-4.
[7] *Scates*, 118 Ariz. at 537, 578 P.2d at 618.
[8] *Id.* Staff Initial Br. at 4.
[9] *Id.*
[10] *Scates*, 118 Ariz. at 535, 578 P.2d at 616.

in Decision No. 74202, that the LFCR adjustment mechanism is an adjustor mechanism.[11] As Staff noted in its Initial Brief, "[w]here a mechanism is adopted in the context of a rate case as part of a utility's rate structure, rate adjustments achieved through that mechanism have been found to satisfy constitutional requirements."[12]

The LFCR provisions of the Settlement Agreement give the Commission substantial flexibility to "suspend, terminate, or materially modify the LFCR mechanism prior to the Company's next general rate case . . . ." An adjustment to the LFCR was approved in Decision No. 74202 because it found that the LFCR's revenue allocation methodology needed to be modified. The Commission found from its review of the record in that case, that DG customers were allocated cost responsibility for a "disproportionately smaller share of the annual LFCR revenue than non-DG customers."[13]

Staff does not agree with TASC's argument that the LFCR adjustment is not a true adjustor clause. Staff would note that the LFCR was set up to adjust in relation to fluctuations in a narrowly defined parameter, in this case lost kWh due to Energy Efficiency ("EE") programs or Distributed Generation ("DG") programs. Mid-course changes and adjustments to the LFCR were specifically contemplated in the Settlement Agreement approved by Decision No. 73183.

However, even if TASC was correct that this is not an adjustor mechanism, it would still be permissible for the Commission to address the issue outside of a rate case under the *Scates* opinion, as long as the Commission finds fair value and determines the impact of any change on the Company's fair value rate of return ("FVROR").

In summary, a rate case is not required for the Commission to address the issues raised in APS's Application. As the Commission found in Decision No. 74202, "*Scates* does not require a full rate case every time the Commission changes rates; instead, it merely requires the Commission to ascertain the utility's fair value and to consider the impact of any rate increase upon the utility's rate of return."[14]

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[11] Decision No. 74202 at 27, FOF 107.
[12] *Scates*, 118 Ariz. at 535, 578 P.2d at 616.
[13] Decision 74202 at 25, FOF 95.
[14] Decision No. 74202 at 26, FOF 101.

II. THE SETTLEMENT AGREEMENT ADOPTED BY THE COMMISSION IN DECISION NO. 73183 IS NOT A BARRIER TO COMMISSION ACTION ON APS'S APPLICATION.

TASC also argues that APS is trying to overturn the Settlement Agreement adopted by the Commission in Decision No. 73183.[15] According to TASC, APS raised the issue of a mismatch between the Company's rate structure and its expenses with respect to DG in its last rate case, and thus the issue has been litigated and resolved.[16] TASC asserts that APS is thus asking for a fundamental change to the LFCR which cannot be approved outside another rate case.[17]

TASC raised a similar issue in response to Tucson Electric Power Company's ("TEP") recent application in Docket No. E-01933A-15-0100. Staff's response to TASC in the TEP case is equally applicable here:

> Staff does not believe the Settlement Agreement would prohibit the Commission from processing this Application, if it determined it is in the public interest to do so. Under TASC's theory, a public service corporation that enters into a settlement would never be entitled to seek relief in a subsequent proceeding on an issue that is the same as that addressed in the settlement. However, issues often arise after a settlement has been entered into, which require Commission action. The Commission is not precluded from addressing these simply because there is a settlement agreement.

Furthermore, provisions in the APS Settlement Agreement itself expressly contemplate that the Commission may revisit issues involving the LFCR and make mid-course adjustments as necessary. The APS Settlement Agreement also contained the following provision: "Nothing in this Agreement is intended to bind the Commission to any specific EE or DG policy or standard."[18]

TASC further argues that the LFCR Plan of Administration does not permit charging customers with DG (or EE) a different amount than customers without DG.[19] TASC relies upon the language in the LFCR Plan of Administration which requires the LFCR Adjustment to be expressed as a percentage that "will be applied to all customer bills excluding [those that have opted out or are excluded]."[20] TASC also relies upon APS witness Snook's Direct Settlement Testimony that "[t]he

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[15] TASC Initial Br. at 11.
[16] *Id.*
[17] *Id.* at 14.
[18] Decision No. 73183, Exh. A at 10, ¶. 9.2.
[19] TASC Initial Br. at 14.
[20] *Id.*

adjustment will be applied to customer's bills on an equal percentage surcharge in March of each year and will remain in effect for one year."[21]

TASC's position ignores the provisions of the Settlement Agreement discussed above which were designed to give the Commission significant flexibility with respect to DG and EE policy. They were also designed to give the Commission the ability to modify the LFCR if appropriate or necessary. In Decision No. 74202, the Commission adjusted the LFCR because non-DG customers were bearing a disproportionate share of fixed costs relative to DG customers. The LFCR Plan of Administration was revised to reflect the provisions of Decision No. 74202 and it was filed in Docket No. E-01345A-13-0248 as a compliance item.

The Settlement Agreement resolved the issues presented at that time, and does not prohibit the Commission from addressing the issues now raised. Since there is no longer a stay-out provision, the Company is free to seek relief as it deems necessary.

III. MOST PARTIES FAVOR ADDRESSING THE ISSUES RAISED IN APS'S APPLICATION IN THE COMPANY'S NEXT RATE CASE.

Only two parties in their initial briefs (including APS), advocate that the Commission proceed at this time to address the issues raised in APS's application.[22] RUCO argues that it is concerned that "if the Commission defers until APS's next rate case to decide this issue, the cost shift will be so great that the potential impact on new solar customers to address the cost shift could be cost prohibitive."[23] RUCO also argues that by the time APS files its next rate case in 2016, the amount of the cost shift could "be so great that it would be impractical and maybe even impossible for the Commission to make a decision."[24] APS argues that comprehensive solutions to the cost shift may be made more difficult if the Commission waits to address the issue. APS states that

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[21] *Id.,* (citing Leland R. Snook, Docket No. E-01345A-11-0224, January 18, 2012).

[22] Staff would note that the ACPA in its Reply Brief now advocates the matter be resolved before APS's next rate case.

[23] RUCO's Interim Net Metering Br. at 4. Staff would note that there appears to be a change to RUCO's position as expressed in its April 2015 Response which advocated addressing the pending cost shift now, but that "RUCO could support the Commission should it decide to defer this matter to the Company's next rate case." *Id.* at 3.

[24] *Id.*

grandfathering, in particular, may become less feasible, in its opinion, if the Commission does not proceed at this time:

> Waiting to take any additional action might hinder comprehensive and balanced solutions to the cost shift. A significant issue to be resolved in connection with the cost shift is whether and how to grandfather existing DG customers. APS is strongly inclined to prefer grandfathering. But the cost shift continues to grow at a rapid pace. At some point, the cost shift might grow to such an extent that grandfathering all existing DG customers will significantly increase rates for all other non-DG customers. In that circumstance it might not be feasible for the Commission to grandfather current DG customers. Resetting the Grid Access Charge now affords a greater opportunity to protect current DG customers.[25]

APS also argues that waiting is unfair to non-DG customers. It further states that "taking action now is an incremental step towards fairness in the interest of gradualism."[26] Finally, APS argues that "[f]airness to non-DG customers and the public interest weigh heavily against claims of judicial economy."[27]

The Joint Solar Parties, on the other hand, believe that "the purported urgency of this matter is overstated" with respect to the size of the cost shift claimed by APS.[28] The Joint Solar Parties point out that the size of any cost shift is entirely dependent on the accuracy of APS's numbers.[29] The Joint Solar Parties dispute APS's claims that the evidence in this docket establishes that each DG installation shifts approximately $804 annually to non-DG customers.[30] The Joint Solar Parties state that APS's claims can only be resolved through a rate case where the Company's costs will be clearly identified.[31]

APS's arguments that the cost shift might grow to such an extent that grandfathering all existing DG customers will significantly increase rates for all other non-DG customers and make grandfathering less tenable in the end, presumes that the Commission will want to continue grandfathering tranches of DG customers under different rates. Decision No. 74202 was clear that the rates of all customers, including grandfathered customers, would be subject to review in the

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[25] APS Initial Br. at 12.
[26] APS Initial Br. at 13
[27] *Id.* at 13.
[28] Joint Solar Parties Br. at 3.
[29] *Id.*
[30] *Id.*
[31] *Id.*

Company's next rate case.[32] There is good reason for this approach. In APS's next rate case, when there is a more broad based inquiry into this issue, it is likely that a rate design solution will be found which will resolve many of these issues. Any ultimate rate design solution may be a more attractive option for all customers.

Most parties, including APS, agree that a rate case is necessary to develop more comprehensive and permanent solutions to the cost shift issue.[33] For instance, SEIA argues that "a rate case would provide a more complete body of evidence than this proceeding has been able to offer to date and would provide a more complete toolbox of solutions."[34] It also states that the Commission in Decision No. 74202 stated its preference to ultimately resolve this in a rate case.[35]

Staff has consistently taken the view that a rate case is necessary to develop solutions to the difficult rate design issues raised by the Company's application. In addition to giving the Commission a much broader array of options to address the issues, a rate case would also permit the Commission to look at this issue in a much more comprehensive fashion. Cost savings and other benefits associated with DG could be considered in a rate case. Also, as noted by Staff in its Initial Brief, the Commission could look at a solution that would account for lost kWh caused by both DG and EE. Action on APS's application would only address lost kWh as a result of DG. APS's recent reset application indicates that recoverable EE lost fixed costs constitute a much greater proportion of the total lost fixed-cost revenue for the period covered.[36] Under the circumstances, the issues presented by APS's application are better-suited for a rate case.

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[32] Decision No. 74202 at 24, FOF 88, ("This tranch of customers and any successive tranches of customers shall remain in place until APS's next rate case decision.").

[33] APS Initial Br. at 11.

[34] Joint Solar Parties' Br. at 5.

[35] *Id.* at 5.

[36] *See* APS App., Attach. C, Docket No. E-01345A-11-0224 (Jan. 15, 2015).

IV. MOST PARTIES SUPPORT THE COMMISSION HOLDING A HEARING ON THE ISSUES RAISED BY APS IF THE APPLICATION IS ADDRESSED BEFORE THE COMPANY'S NEXT RATE CASE.

If the Commission decides to address APS's application now before the Company's next rate case, almost all parties, including Staff and RUCO,[37] believe that a hearing would be appropriate. APS itself notes that any additional evidence needed to assess APS's Application can be obtained through an evidentiary hearing on this matter.[38] APS states that the primary factual issues that would need to be resolved is "what amount of fixed costs do DG customers not pay each month after accounting for the immediate benefits provided by DG (like avoided fuel costs)?"[39]

RUCO noted in its Response to APS's Motion to Reset:

> A lot has happened since the last time the Commission addressed the issue and at the very least, RUCO's analysis needs to be updated and should be vetted by the Commission in a hearing. Without question, RUCO needs to verify the Company's numbers and conclusions as well as the solar industries and RUCO intends to hire experts to do the same.[40]
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> RUCO also recommends a hearing so that the issues will be more fully vetted.[41]

Staff agrees that if the Commission elects to proceed now to address APS's Application, the Commission should do so after the issues have been more fully vetted and explored in an evidentiary hearing.

V. CONCLUSION.

Staff believes that the Commission should dismiss APS's application and address the issues raised holistically in the Company's next rate case.

RESPECTFULLY SUBMITTED this 5th day of June, 2015.

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[37] RUCO Rsp. to APS Reset at 2.
[38] APS Initial Br. at 10.
[39] *Id.*
[40] RUCO Rsp. to APS Mot. Reset at 2.
[41] *Id.* at 3.

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