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**EXCEPTION ORIGINAL**

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

DOCKET CONTROL

**SUSAN BITTER SMITH, CHAIRMAN**

**BOB STUMP COMMISSIONER**

**ROBERT L. BURNS, COMMISSIONER**

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**DOUG LITTLE, COMMISSIONER**

2015 AUG 12 AM 11:29

Arizona Corporation Commission

**DOCKETED**

AUG 12 2015

DOCKETED BY TV

**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**

**Arizona Competitive Power Alliance**

**Exceptions to the Recommended Opinion and Order**

The Commissioners have all the authority and information that they need in order to rule on APS's request.

**Legal Issue: Authority under Scates**

We agree with the majority of the parties that the ACC has the authority to decide the Reset Application outside of the context of a rate case. While the ROO does not rule on the ACC's authority in this Application, the ROO does not site a lack of authority as part of its rationale for dismissing the Application. We believe that the ACC is on solid legal ground and has the authority to decide this case. (See ROO footnote 7 for positions of parties on this issue).

If the ACC agrees that they have the legal authority to act, then we move on to policy issues. Assuming that the ACC CAN rule on the Reset Application, SHOULD the ACC rule on the Reset Application? We believe that the ACC should indeed rule on the Application and should grant the

1 company's request in this proceeding and then look toward a more comprehensive solution in the  
2 company's upcoming rates case.

3 **Policy Issue: Comprehensive versus Interim Solution**

4           The ROO is correct in Conclusion of Law 3 that: "The issues raised by the Reset  
5 Application are rate design issues which will be more reasonably and appropriately dealt with in the  
6 context of a full rate case proceeding." Indeed we would actually go further and say that many of the  
7 issues raised by the Reset Application are rate design issues that can ONLY be dealt with in the  
8 context of a full rate case proceeding. The Company plans to file a full rate case in 2016 and it is  
9 quite possible that these rate design issues could be addressed in early to mid 2017—two years from  
10 now. However, the ability of the ACC to initiate a comprehensive solution within two years is no  
11 reason to defer providing a partial solution now. The Reset Application provides the ACC with the  
12 ability to make an immediate, revenue neutral and rather surgical adjustment to the existing rate  
13 structure while still deferring the comprehensive rate design issues until the full rate case. We  
14 support that approach.

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17 **Policy Issue: Sufficient Information**

18           In footnote 26 of the ROO, the Judge correctly points out that there is technically no  
19 evidence in this case. The parties have made numerous filings but those filings have not been  
20 sponsored by witnesses or subjected to cross examination. However, when making policy decisions,  
21 a lack of formal evidence does not mean a lack of information<sup>1</sup>. The Commissioners will, of course,  
22 have to determine how much weight they will give to each of the filings, but the parties have had  
23 ample opportunity to present their positions. Furthermore, the Reset Application is just that...a

24  
25 <sup>1</sup> Frankly, we doubt the filings would be more probative if they met the standards of "evidence." If policy positions  
26 could be proven through sworn testimony, then the debates between Keynesians and monetarists—or indeed  
Armenians and Calvinists—would have long ago been settled.

1 “reset” application. The original mechanism was established in a rate case and the first reset was  
2 accomplished after parties filed significant amounts of refresh material.

3 **Policy Issue: Judicial Economy**

4 The flip side of having a process that does not generate enough evidence is having a process  
5 that generates too much. APS’s 2016 rate filing will require a full-blown hearing which will compel  
6 the parties--as well as the ACC itself--to commit significant resources. Several parties<sup>2</sup> have argued  
7 that the Reset Application could also require significant legal resources and have expressed the  
8 concern that the cases may even overlap temporally as well as procedurally and substantially. One  
9 solution, of course, would have been to ensure that any hearings associated with the Reset  
10 Application be narrowly tailored to the specific issues of the filing and not be allowed to drift into  
11 the broader rate design issues that are more appropriately handled in the rate case or into the broader  
12 policy issues reserved for the Generic Proceeding. That is easier said than done. The ROO’s  
13 suggestion of dismissing the case solves the problem as well, and is perhaps the best example of  
14 judicial economy. However, the judicial savings associated with dismissal would be more than  
15 offset by the lost opportunity to take a step toward solving these issues a full two years before the  
16 ACC can implement a more comprehensive solution.

17 There is a middle path between extensive litigation and outright dismissal. After all, we  
18 know that the parties will be litigating the full range of issues in the upcoming rate case; that process  
19 will start in less than a year. That means that any judicial economy to be gained in the two cases will  
20 have to be gained from the current application. Fortunately that middle way is easy to find—that is  
21 because the ACC chose that path last year. The ROO provides an excellent procedural summary of  
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<sup>2</sup> For an excellent articulation of this argument see WRA opening statement TR page 16, starting at line 11.

1 the filings, counter filings, letters and responses that preceded the ACC's decision last year to  
2 implement the current \$ .70 KW charge. Here, the parties have engaged in a similar process of  
3 filings and counter filings and the ACC can simply engage in the same process that it did last year—  
4 read the filings, propose amendments, bring the parties together at Open Meeting and vote for the  
5 level of surcharge that the Commissioners deem appropriate. Then remind the participants that this  
6 is an interim step and that APS will soon be filing a full-blown rate case in which these issues will be  
7 fully litigated in a forum in which the Commissioners can provide a more comprehensive solution.  
8 The AzCPA recommends that the ACC choose this middle path.  
9

10 **Conclusion**

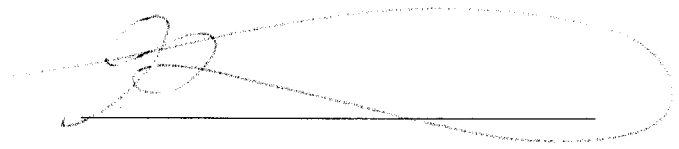
11 The Reset Application presents one legal issue and several policy issues. The legal issue is a  
12 threshold issue and fortunately is not exceptionally complex or controversial. We believe that the  
13 ACC has the authority to rule on the Reset Application.  
14

15 The policy issues are for the Commissioners to determine. Do they have enough information  
16 from the parties in order to rule on the application? Do they want to take this interim step before  
17 they provide a more comprehensive solution next year? We believe that they have sufficient  
18 information and that deciding the issue on an interim basis now and on a more comprehensive basis  
19 in the upcoming case would be the best policy to adopt.  
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RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of August, 2015.

By: Greg Patterson, Of Counsel  
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ORIGINAL and 13 copies of the  
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this 12<sup>th</sup> day of August, 2015

Docket Control  
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