

ORIGINAL

INTERVENTION



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Attorneys for Arizona Public Service Company

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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 13 BOB STUMP
 14 BOB BURNS
 15 TOM FORESE
 16 ANDY TOBIN

Arizona Corporation Commission

DOCKETED

FEB 25 2016

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16 IN THE MATTER OF THE APPLICATION
 17 OF ARIZONA PUBLIC SERVICE
 18 COMPANY FOR APPROVAL OF LOST
 19 FIXED COST RECOVERY MECHANISM.

DOCKET NO. E-01345A-11-0224

**ARIZONA PUBLIC SERVICE
 COMPANY'S RESPONSE TO
 EFCA'S APPLICATION FOR
 LEAVE TO INTERVENE AND
 MOTION FOR PROCEDURAL
 CONFERENCE**

21 Arizona Public Service Company urges the Arizona Corporation Commission to
 22 deny the request for intervention by Energy Freedom Coalition of America (EFCA) and
 23 its Motion for Procedural Conference (Motion). EFCA's requested intervention is
 24 contrary to the requirements of A.A.C R14-3-105 (Rule 105). And the Motion itself
 25 seeks legal review of an issue that is already being reviewed by Arizona's highest court.
 26 A concurrent review by the Commission's Hearing Division is unnecessary. Finally,
 27 EFCA's call for staying the LFCR lacks merit. The LFCR is a lawfully authorized
 28 adjustment mechanism that is dramatically different from the System Improvement

1 Benefits (SIB) mechanism being considered in *RUCO v. ACC*. The SIB seeks *new*
2 revenue for *new* infrastructure. The LFCR seeks to maintain *authorized* revenue for
3 operating expenses lost because of separate Commission directives. Nonetheless, to the
4 extent that “any person or association of persons” believes that grounds exist to
5 challenge the LFCR, the appropriate procedure is a complaint filed under A.R.S. § 40-
6 426, not expanding a simple compliance filing that only assesses whether APS complied
7 with the LFCR Plan of Administration.

8 **I. INTERVENTION**

9 A. Rule 105 Does Not Authorize EFCA’s Intervention Because EFCA Lacks
10 a “Direct and Substantial Interest”

11 EFCA does not establish a direct or a substantial interest in this LFCR reset
12 proceeding. EFCA is not a customer of APS. EFCA does not allege that it will pay any
13 amount of the LFCR Adjustment, or that its members will do so. Instead, EFCA claims
14 that each of its “Members’ customers” will be subject to the LFCR. But EFCA is not
15 authorized by statute or any other rule to represent APS customers, unlike RUCO or the
16 Arizona Attorney General. EFCA can no more intervene on behalf of its members’
17 customers (who may or may not be APS customers) any more than Wal-Mart could
18 intervene on behalf of its customers or, for that matter, APS on behalf of its customers.
19 Further, EFCA, bearing the burden of proof, does not address how its interest, its
20 Members’ interests, or its Members’ customers’ interests, are substantial. EFCA has no
21 direct or substantial interest in this matter—indeed no legally recognized interest at all—
22 and its intervention should be denied.

23 B. Rule 105 Does Not Authorize EFCA’s Intervention Because EFCA Would
24 Broaden These Proceedings

25 EFCA states, without elaborating, that its intervention “will not unduly broaden
26 the issues or prejudice other parties in the Docket.” (Intervention at p. 4, lns. 2-3.) Such
27 an unsupported boilerplate assertion does not withstand the briefest of scrutiny. The
28 January 15 LFCR reset filing is a routine compliance filing. It is two pages and only

1 involves whether APS complied with the Commission-approved LFCR Plan of
2 Administration.

3 The position EFCA intends to take upon intervening, however, would
4 dramatically expand the scope of this proceeding. EFCA apparently seeks to introduce a
5 myriad of legal issues. The scope proposed by EFCA would, if permitted, expand a
6 simple compliance filing into a full blown rate case and vitiate a critical component of
7 the 2012 Settlement approved by the Commission in Decision No. 73183 (May 24,
8 2012). It is not clear how much more “broadened” a routine compliance filing could be.

9 Moreover, virtually every other party to this Docket, including APS, would be
10 severely prejudiced by EFCA’s intervention. The prejudice to APS is obvious. Perhaps
11 less obvious is the prejudice to all the parties who timely intervened in this Docket and
12 negotiated a Settlement. That Settlement was based on a balancing of numerous
13 competing interests and included adopting the LFCR mechanism, rather than full
14 decoupling or a higher base rate increase, as requested by the Company.

15 C. Rule 105 Does Not Recognize EFCA’s Alleged Ability to “Assist the
16 Commission” as a Basis for Intervention

17 Although Rule 105 makes no mention of “assisting the Commission” as a basis
18 for intervention, in fact there is no reason to believe EFCA could “assist the
19 Commission.” EFCA raises no issue affecting it—only a vague claim of “possible
20 unconstitutionality” of the LFCR, itself an issue about which EFCA claims no special
21 expertise. Far from aiding the Commission, EFCA would seek only to delay these
22 proceedings and obfuscate the simple issue of whether the Company’s January 15, 2016
23 filing satisfied the Plan of Administration for the LFCR or did not.

24 **II. THE MOTION**

25 EFCA’s Motion is moot should its intervention be denied. However, if the
26 Commission grants EFCA intervention, EFCA’s Motion is both premature and
27 procedurally flawed.
28

1 EFCA's Motion is premature. EFCA bases its Motion entirely on *Residential*
2 *Utility Consumer Office v. Arizona Corporation Commission*, 238 Ariz. 8, 355 P.3d 610
3 (App. 2015), cert. granted February 9, 2016 (*RUCO*).¹ *RUCO*, however, is presently
4 under review by the Arizona Supreme Court at the request of the Commission. In fact,
5 oral argument at the Arizona Supreme Court is scheduled for less than one month from
6 now. EFCA urges a new legal review that parallels the court's assessment of the law
7 regarding adjustment mechanisms. This would be redundant and wasteful. The better
8 course would be to wait until the court provides further clarity regarding the SIB
9 mechanism.

10 This is particularly true because any connection between the SIB mechanism at
11 issue in *RUCO* and the LFCR mechanism approved in 2012 is nominal at most. The SIB
12 mechanism seeks additional revenue for new rate base additions. By contrast, the LFCR
13 concerns revenue that the Commission properly authorized in a general rate case, but
14 that the Company nonetheless could not recover because of separately-mandated,
15 competing Commission directives related to energy efficiency and distributed
16 generation. Indeed, EFCA's statements that the LFCR increases revenue in a legally
17 significant way, or involves adopting a new rate, reflect a profound misunderstanding of
18 the LFCR, Arizona law, and perhaps ratemaking itself.

19 EFCA's assertion that money collected under the LFCR might be subject to
20 refund similarly reflects an incorrect statement of the law. "When an agency approves a
21 rate, and the rate became final, the agency may not later on its own initiative or as the
22 result of a collateral attack make a retroactive determination of a different rate and
23 require reparations." *Mountain States Tel. & Tel. Co. v. ACC*.² Refund considerations
24 can only arise from "the result of the direct, statutorily authorized, review of the
25 Commission's order." *Id.* And even then, whether to order a refund is in the
26

27 ¹ EFCA claims there are factual issues involving implementation (for the 4th time) of the LFCR (Motion
28 at p.1, ln. 24), but it identifies no such issue in the Motion.

² 124 Ariz. 433, 436, 604 P.2d 1144, 1147 (1979).

1 Commission's discretion. *Id.* Thus, there is no possibility of a refund of money collected
2 under the LFCR. The LFCR is a properly-authorized rate, and the time for reviewing the
3 Commission's order authorizing the LFCR has long since passed. The possibility of a
4 refund provides no basis for granting EFCA's intervention or Motion.

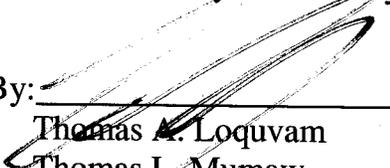
5 Finally, the only proper procedure for challenging the LFCR rate itself is under
6 A.R.S. § 40-246. No statute or regulation permits intervening in, and seeking to
7 dramatically expand, a compliance docket rather than following the statutorily-required
8 procedure in A.R.S. § 40-246.

9 **III. CONCLUSION**

10 EFCA's requested intervention should be summarily denied. EFCA has no direct
11 or substantial interest in this proceeding, only seeks to unduly expand a routine
12 compliance filing, and cannot offer assistance to the Commission.

13 Further, EFCA's Motion is improper substantively and procedurally.
14 Substantively, *RUCO* is under active review by the highest court in Arizona. To take
15 action on its terms before the Arizona Supreme Court provides the final statement of the
16 law on the matter, would be redundant and wasteful. It would also be inappropriate
17 given the vast qualitative differences between the SIB mechanism under review and the
18 Commission-authorized LFCR at issue in this compliance docket. Procedurally, the
19 Motion can only be properly brought as a § 40-246 complaint by an entity with the
20 requisite standing to file such a complaint.

21 RESPECTFULLY SUBMITTED this 25th day of February 2016.

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3 February 2016, with:

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