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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE
APPLICATION OF UNS ELECTRIC,
INC. FOR THE ESTABLISHMENT OF
JUST AND REASONABLE RATES
AND CHARGES DESIGNED TO
REALIZE A REASONABLE RATE OF
RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF UNS ELECTRIC,
INC. DEVOTED TO ITS OPERATIONS
THROUGHOUT THE STATE OF
ARIZONA, AND FOR RELATED
APPROVALS.

DOCKET NO. E-04204A-15-0142

Arizona Corporation Commission

DOCKETED

MAY 11 2016

DOCKETED BY *AG*

**POST-HEARING REPLY BRIEF
OF
ARIZONA INVESTMENT COUNCIL**

MAY 11, 2016

1 **I. INTRODUCTION**

2 Intervenor’s post-hearing briefs largely repeat the same arguments offered at
3 hearing. For the proposed mandatory three-part residential demand rate and net
4 metering modifications, those opposed to the Company’s proposals still fail to provide
5 any persuasive explanation as to why it is appropriate to continue using an outdated and
6 ineffective rate scheme that allows DG customers to avoid paying their fair share of
7 fixed costs while simultaneously forcing ratepayers to subsidize rooftop solar at
8 artificially inflated prices. Such Intervenor’s do not and cannot claim that the current rate
9 design and net metering policies are sustainable in the long-term; instead, they argue that
10 the problems inherent in these rates are small enough to ignore for now. But avoidance
11 is not a reasonable rate-setting strategy. In the interests of fairness to all ratepayers and
12 the sustainability of the solar industry, the Commission should approve the proposed rate
13 design changes and thereby lay a healthy foundation for future rate-making that
14 encourages innovation and efficiency.

15 As for the proposed buy-through rate, AECC, Freeport McMoran, Noble
16 Solutions and Walmart do not provide any compelling reason to implement a program
17 that is “as similar as reasonably possible” to Arizona Public Service Company’s
18 (“APS”) AG-1 buy-through program before that experimental pilot program is analyzed
19 as part of APS’s next rate case, which will be filed in mere weeks. (See AECC & Noble
20 Solutions Post-Hearing Joint Opening Brief at 6.)

21 Finally, it appears that no party opposes the Company’s proposed Rider 13, the
22 Economic Development Rate. Arizona Investment Council (“AIC”) urges the hearing
23 officer to recommend approving Rate Rider 13 to encourage economic growth in UNS
24 Electric’s service territory.

25 In an effort to avoid repeating arguments in this Reply brief that are now familiar
26 to the hearing officer, AIC will not respond to arguments raised by Intervenor’s in their
27

1 post-hearing briefs to which AIC has already addressed in depth in its initial post-
2 hearing brief.

3
4 **II. MANDATORY RESIDENTIAL DEMAND RATES**

5 UNS Electric originally proposed implementation of a mandatory three-part
6 demand rate for residential DG ratepayers as a way to correct the under-recovery of
7 fixed costs from these customers. However, after studying the issue, Commission
8 Staff concluded that a mandatory three-part demand rate for all residential customers
9 provided a more comprehensive and equitable solution to the fixed cost recovery and
10 cross-subsidization issues faced by UNS Electric and ratepayers. For the reasons
11 enumerated in its initial post-hearing brief, AIC agrees with Staff that public policy
12 favors transitioning all residential customers to a three-part demand rate sooner rather
13 than later.

14
15 **A. The Commission Has Already Ruled That UNS Electric Provided
16 Ample Notice of the Proposed Changes at Issue.**

17 In its initial post-hearing brief, Intervenor AURA attempts to revive the
18 argument that UNS Electric and Commission Staff somehow failed to provide notice
19 to the public that they were proposing to change to a different rate design. However,
20 the administrative law judge has already heard and rejected this argument. On January
21 26, 2016, AURA moved to extend the procedural schedule for this case to allow more
22 time for surrebuttal testimony and additional public notice, arguing that more time
23 was necessary because Staff's proposal to apply a three-part residential demand rate
24 was radically different than the three-part residential demand rate for DG customers
25 originally proposed by the Company. On January 29, 2016, Judge Rodda denied the
26 motion, concluding that:

27 The fact that rate design was going to be a major issue in the UNSE rate
28 case has been known since before the Company filed its application in

1 May 2015. It was also widely known that the UNSE rate case would be
2 the first of several electric utility rate cases in Arizona. Fourteen parties
3 with diverse interests intervened. The recommendation that the
4 Commission should adopt mandatory three-part rates for all residential
5 and small commercial customers was proposed in Staffs testimony filed
6 on December 9, 2015. It is not unusual for utilities to accept the
7 recommendations of other parties in Rebuttal Testimony. The parties to
8 this case have had since at least December 9, 2015, to engage in
9 discovery about the effects of adopting mandatory three-part rates for
10 residential and small commercial customers, which makes AURA's
11 request at this point in the process unreasonable and not in the public
12 interest.

13 (Procedural Order (Jan. 29, 2016) at 2.)

14 In its initial post-hearing brief, AURA makes the very same arguments that it
15 made in its earlier motion, without offering any new facts or law that could support a
16 different result. (*Compare* AURA Initial Brief at 2-4, *with* AURA Motion to Extend
17 Procedural Schedule (Jan. 26, 2016) at 1-3.) Accordingly, AURA has provided no
18 basis for overruling Judge Rodda's previous (and correct) ruling on this issue.

19 **B. UNS Electric Is Dealing With A Fixed Cost Recovery/Cost Shift
20 Problem, Not A Revenue Problem.**

21 The Alliance for Solar Choice ("TASC") and Vote Solar spend a significant
22 portion of their post-hearing briefs arguing that the real problem for UNS Electric is
23 not DG customers, but the loss of large commercial customers, "snowbirds," and
24 vacant homes in its service territory, and the "lackluster performance" of the service
25 territory economy. (*See, e.g.*, TASC Post-Hearing Brief at 19-20.) These Intervenors
26 miss the point—the Company's proposals are not about declining revenue generally,
27 but the specific issue of under-recovery of fixed costs and corresponding cost shift
28 associated with an outdated rate design. Regardless of how the Company's sales are
doing, the current two-part residential rates do not adequately reflect cost-causation
and thereby allow certain customers to avoid paying their fair share of fixed charges.
Even if the Company has other revenue-related problems, this does not obviate the

1 need to address the flaws in the current residential rate design that exacerbate the cost
2 shift and impair the recovery of fixed costs.

3 More importantly, the solar DG industry advocates' claims regarding the
4 relatively low contribution of DG customers to the under-recovery of fixed costs are
5 irrelevant under Staff's proposal that the three-part residential demand rate apply to all
6 customers. (See TASC Post-Hearing Brief at 19-25; Vote Solar Initial Post-Hearing
7 Brief at 5-10.) In fact, avoiding complicated arguments like those that TASC and Vote
8 Solar raise on this point is a key benefit of a mandatory residential demand rate
9 scheme. Because the proposed rate is agnostic across classes of ratepayers and
10 technologies, it eliminates the need for the Commission to draw difficult comparisons
11 between "traditional" and "non-traditional" ratepayers and hear a new rate case every
12 time technologies are adopted or advanced. Further, by removing these additional
13 regulatory barriers and uncertainty, an agnostic demand charge also fosters the
14 innovation and adoption of new technologies.

15 **C. Demand Charges Are Not An "Experiment" But A Proven And**
16 **Effective Tool For Linking Rates To the Actual Costs of Providing**
17 **Energy Services**

18 A consistent theme in certain Intervenor's post-hearing briefs is the suggestion
19 that the proposed three-part demand rates are a wild experiment that will result in a
20 multitude of untenable consequences for ratepayers. (See, e.g., AURA Initial Brief at
21 8-10; TASC Post-Hearing Brief at 13-19.) While AIC appreciates the apparent
22 concerns of the solar DG industry advocacy groups for the well-being of UNS
23 Electric's customers, concrete evidence shows that these hypothetical fears are
24 unfounded.

25 **(1) Demand Charges Are Widely Used**

26 Demand charges are not a new concept. They have been widely used for
27 commercial and industrial customers for decades, both in Arizona and nationwide. (See
28 APS Br. at 7.) Further, APS has offered residential demand rates to its customers for

1 nearly thirty-five years. (APS Initial Post-Hearing Brief at 6.) When the Commission
2 approved APS's proposed three-part residential demand rate in 1981, it acknowledged
3 that including a demand component in residential ratepayers' bills would provide "an
4 incentive to customers to manage their electric load in a manner that can result in lower
5 electric bills for the individual customers and equally important, a reduction in APS
6 peak demand which can have the effect of reducing the need for expensive additional
7 generating facilities." (Decision No. 51472 (Oct. 21, 1980) at Finding of Fact 3.) Since
8 then, over 117,000 APS customers have elected to take service under the voluntary
9 three-part demand rate. (Exhibit APS-6 (Miessner Direct) at 6; Exhibit APS-4 (Faruqui
10 Surrebuttal) at 7.) "In fact, APS has the highest participation in residential demand
11 rates in the country." (Exhibit APS-7 (Miessner Surrebuttal) at 4.)

12 The popularity of the demand rate in APS's service territory has translated to
13 significant benefits. A sample study of APS's voluntary demand charge customers
14 showed that 60% reduced their demand after switching to a three-part rate. Customers
15 who actively managed their demand achieved savings of 10 to 20% or more. (Exhibit
16 APS-6 (Miessner Direct) at 7.) On average, customers on the three-part demand rate
17 not only reduced their monthly demand by 3 to 4%, but also tended to save on their on-
18 peak and monthly kWh usage. (*Id.* at 8.)

19 While Vote Solar and TASC repeatedly trumpet that no other regulated utility
20 has adopted a mandatory residential demand charge, they ignore that this is largely
21 because the metering technology necessary to track and provide demand information to
22 customers has only recently become widely available in the residential context. (*See*
23 Exhibit APS-3 (Faruqui Direct) at 13; Faruqui Hearing Testimony, Tr. at 3047:7-15.)
24 As UNS Electric witness Dr. Overcast explained, "The rationale historically that led to
25 the two-part rates was a compromise based on the inability to meter and bill a three-
26 apart rate at a cost effective meter price. That compromise is no longer needed."
27 (Overcast Hearing Testimony, Tr. at 1389:13-17.) More fundamentally, Intervenors
28

1 fail to explain why being among the first to take advantage of technological advances
2 and modernize residential rates in the same way that has been done for millions of
3 commercial and industrial customers is a bad thing. As Staff witness Mr. Solganick
4 observed, now is the time to use this new technology to align rates with costs and send
5 the proper price signals to consumers, “otherwise, I should be arguing that utilities are
6 imprudent for building a metering system and then wasting the data.” (Solganick
7 Hearing Testimony, Tr. at 2748:11-14.)

8 Even so, UNS Electric and Staff took Intervenors’ concerns seriously and have
9 proposed measures to protect ratepayers and give the Company and the Commission
10 flexibility to address any unanticipated issues that may arise. For example, Staff and
11 the Company agreed to keep the rate case open for eighteen months after the adoption
12 of the new three-part rates so the Company can monitor for and promptly address any
13 unintended consequences. In response, Intervenors argue that the Company’s
14 proposal is evidence of an inherent flaw in three-part rates. (*See, e.g.*, TASC Post-
15 Hearing Brief at 13; Vote Solar Initial Post-Hearing Brief at 28.) This suggestion is
16 both circular and unfounded. Intervenors’ reaction to this proposal, which was
17 designed to assuage concerns they raised, demonstrates that their opposition is not
18 founded on facts or evidence, but self-interest and misinformation.

19
20 **(2) A Demand Charge That Reflects The Cost Of Providing Service To**
21 **Customers Is Neither Volatile Nor Unmanageable**

22 Some Intervenors argue that demand charges are volatile and burdensome on
23 UNS Electric customers. (*See* TASC Post-Hearing Brief at 17-19.) For example,
24 TASC claims that customers will need to “perfectly manage” their demand over
25 hundreds of hours to avoid volatile charges. Again, such a concern is overstated. In
26 fact, the UNS Electric rebuttal proposal would measure demand only during a specific
27 on-peak period and over a one-hour interval—a rate structure that allows customers
28

1 far greater flexibility compared to the 15-minute interval generally charged to
2 commercial customers. These measures were specifically included to avoid the types
3 of bill fluctuations TASC purports to fear.

4 Customers will have to manage their electricity use on a demand rate, just as
5 they will on a time of use rate—indeed, a principal objective of such rate tools is to
6 send price signals to customers that encourage them to use the electric system more
7 efficiently. That customers will be encouraged to conserve energy and use the system
8 more efficiently is a reason to approve the demand rate, not reject it. Moreover, a three-
9 part demand rate provides customers with another way to save money on their
10 electricity bill. (Exhibit APS-4 (Faruqui Surrebuttal) at 13.) Under the current two-part
11 rate, the only savings option for customers is reducing total consumption. The three-
12 part demand rate, by contrast, gives customers the ability to save more both by reducing
13 total consumption and reducing maximum demand. (*Id.*)

14 TASC also laments that the “introduction of rates sensitive to the whims of
15 residential behavior” could impact ratepayers’ lifestyle choices, such as holding potluck
16 dinners. (*See* TASC Post-Hearing Brief at 17.) But UNS Electric’s costs are
17 themselves sensitive to ratepayer behavior, and TASC and Vote Solar fail to explain
18 why customers’ rates should not reflect the cost of serving that customer. As Staff
19 witness Mr. Solganick explained in his testimony, “we’re just trying to show people
20 that sometimes there are costs to that lifestyle choice.” (*Id.* (quoting Solganick Hearing
21 Testimony, Tr. at 2849).) While TASC quotes Mr. Solganick’s statement as if it were a
22 damning admission, there is nothing wrong with reflecting the cost of service in a
23 customer’s rates—in fact, that’s quite the point.

24 Finally, some Intervenors point out that DG customers will have more difficulty
25 anticipating their demand than non-DG customers because of weather issues. (*See id.* at
26 19.) Of course, and that is why demand charges are a necessary component of any cost-
27 based rate design! Right now, DG customers’ fluctuating and uncertain demand places
28

1 an inordinately high burden on the grid relative to their energy consumption, which
2 means that non-DG customers and the Company bear the brunt of the fixed costs
3 associated with serving DG customers since fixed costs are recovered through
4 volumetric energy charges. The proposed rate design will shift some, but not all, of the
5 cost of DG customer demand back to the DG customer. This is a fair result for all
6 customers.

7
8 **(3) Demand Charges Will Not Disproportionately Impact Low-Income**
9 **Customers.**

10 The evidence refutes the contention of some Intervenors that low-income
11 customers will be disproportionately impacted by demand charges. Demand charges
12 are agnostic and, by design, they do not harm certain customers more as a result of the
13 customer's income or even monthly consumption. A customer's demand dictates the
14 demand charge, and, as APS witness Charles Miessner explained, low-income
15 customers are not low usage customers by default. (Exhibit APS-6 (Miessner Direct) at
16 11.) In fact, low-income customers' usage levels are essentially equivalent to those of
17 standard residential customers. (*Id.*)

18 Certain intervenors nonetheless assume that low-income customers cannot
19 manage demand. However, as numerous witnesses noted, no party has provided any
20 empirical evidence showing that low-income customers will fare worse overall under a
21 three-part rate. (*See* Exhibit APS-1 (Brown Surrebuttal) at 8; Exhibit APS-3 (Faruqui
22 Surrebuttal) at 13.) Common sense suggests the opposite is true, because low-income
23 customers likely have fewer electrical appliances and thus smaller loads than other
24 customers. Further, three-part rates offer enhanced opportunities for bill reductions
25 because low-income customers can lower their bills in two ways instead of one—by
26 reducing maximum demand and/or reducing consumption. (Exhibit APS-4 (Faruqui
27 Surrebuttal) at 13.) To the extent low-income customers might be unfavorably
28

1 impacted under a demand rate, that impact can be remedied during the eighteen-month
2 period following adoption of this rate design.

3 The argument relating to low income customers also ignores that the Company
4 has proposed an additional discount for CARES customers to offset any bill increases
5 that could result for low income customers that are also low usage customers. UNS
6 Electric is proposing to offer a \$17 flat discount off each month's bill for CARES
7 customers, which will greatly mitigate any impacts resulting from the change in rate
8 design. (Exhibit APS-6 (Miessner Direct) at 11.)

9 Finally, it is worth noting that the cross-subsidies inherent in the current two-part
10 rates themselves disproportionately disadvantage low-income customers. (*Id.* at 12.)
11 Right now, customers who can afford to invest in DG systems are receiving a subsidy.
12 In UNS Electric's service territory, there are almost six times as many standard
13 residential customers using DG as there are CARES customers using DG, and that
14 differential is increasing rapidly. (Exhibit UNSE-30 (Dukes Rejoinder) at 12; Exhibit
15 APS-1 (Brown Surrebuttal) at 5.) This means that lower-income customers are paying
16 the subsidies for standard residential DG customers in the form of higher rates, in effect
17 transferring wealth from lower-income to higher-income customers. (*Id.*) Adoption of
18 demand charges reduces this cross-subsidy and thus offers an important benefit to low-
19 income customers, rather than a burden.

20
21 **D. Intervenors' Proposed Alternatives To The Three-Part Rate Are**
22 **Inadequate.**

23 AIC addressed Intervenors' various alternative rate proposals in its initial post-
24 hearing brief, including minimum bills, Time-Of-Use ("TOU") rates, and RUCO's
25 three optional rates, and explained why these alternatives cannot achieve the same
26 public policy benefits that a three-part demand rate can. (*See* AIC Initial Post-Hearing
27 Brief at 5-10.) AIC will avoid repetition of those points here. However, Intervenor
28

1 RUCO offers four new alternative rate proposals in its post-hearing brief. (See RUCO
2 Closing Brief at 13-15.) AIC appreciates the spirit of cooperation in which these new
3 proposals were offered, but nonetheless believes that RUCO's new proposals are
4 offered too late in this proceeding to be sufficiently analyzed. And, in the end, none of
5 the four alternatives addresses the cost-shift and incentivizes innovation in behind-the-
6 meter customer technologies as well as the mandatory three-part demand rate endorsed
7 by Commission Staff.

8
9 **E. Demand Charges Should Be Implemented Now and Not Delayed
10 Until DG Penetration Grows.**

11 Some Intervenors also suggest that the decision to implement three-part demand
12 rates should be pushed off until sometime in the future, and perhaps until a pilot
13 program is run. (See AURA Initial Brief at 13; RUCO Closing Brief at 7-9.) However,
14 there is little to be gained from waiting, and plenty to lose.

15 First, a residential demand charge pilot program will not provide the information
16 that certain intervenors claim they need—what the impacts of a mandatory residential
17 demand rate will be—because a voluntary opt-in demand pilot simply cannot function
18 the same way as a universal mandatory residential demand rate. (See AIC Initial Post-
19 Hearing Brief at 8-10.) Further, to the extent a voluntary demand rate pilot program in
20 UNS Electric's territory is undertaken, it is unlikely to provide any additional useful
21 information that cannot already be gleaned from APS's voluntary demand rates
22 program. Further, numerous mitigation measures designed to ease the transition and
23 comply with the principles of gradualism are built into the proposed three-part rates.
24 For example, the Company will provide each customer with at least three months of
25 demand data prior to implementing the new rates, so customers can become familiar
26 with their demand and how lifestyle changes can impact it, before there are any
27 financial consequences. (Staff Opening Brief at 14.) Moreover, by the time the new
28

1 rates go into effect, the Company will have around nine months' worth of data on its
2 customers. (*Id.* at 13) In practice, then, AURA's request that the three-part rates be
3 pushed off until the Company has one year of data on its customers will largely be
4 accommodated. (*See* AURA Initial Brief at 14.)

5 Moreover, there are several important reasons why the Commission should not
6 delay implementing a residential demand rate program in the UNS Electric service
7 territory. As the evidence at hearing demonstrated, and as other states have learned the
8 hard way, the cost shift from DG to non-DG customers is becoming a more pressing
9 issue as more and more people transition to solar. (*See, e.g.,* Faruqui Hearing
10 Testimony, Tr. at 3048:4-8.) At the same time, this will make it increasingly difficult to
11 implement a fix and transition people to accurate cost-based rates, because more people
12 have relied on the broken two-part rate design in making the decision to "go solar"—a
13 fact that is heavily exploited by the rooftop solar industry. (*See* Exhibit APS-1 (Brown
14 Surrebuttal) at 31.) As Staff carefully and thoughtfully explained when putting forth
15 the proposed mandatory residential demand rate, the best thing for everyone involved is
16 to make the transition to an accurate, cost-based rate design now. (Exhibit S-16
17 (Broderick Rate Design Direct) at 2.) Delay will only hurt ratepayers, the Company,
18 and the sustainability of the rooftop solar industry.

19 **F. UNS Electric Has Provided A Comprehensive Customer Education**
20 **Plan.**

21 AIC agrees with APS's and Commission Staff's view that customers are capable
22 of understanding demand rates and that UNS Electric's proposed customer education
23 program is sufficiently robust. (*See* Staff Opening Brief at 13-14; APS Initial Post-
24 Hearing Brief at 6-7.) Even so, AIC supports Staff and the Company's position that the
25 transition period to three-part demand rates be flexible so that the Company has
26 adequate time to overcome misconceptions about demand rates and educate customers
27 about their demand and energy costs. (*See* UNSE Initial Post-Hearing Brief at 21.)
28

1 **III. NET METERING**

2 **A. UNS Electric is Not Proposing to Eliminate Net Metering**

3 At the outset, AIC wants to make clear that the Company is not proposing to
4 eliminate net metering, notwithstanding Intervenor TASC's and Vote Solar's repeated
5 claims to the contrary. Under the Company's proposal, DG customers will still be
6 credited at the full retail rate for energy that they produce that offsets their usage, and
7 credited at the Renewable Credit Rate for excess energy that they produce and export
8 back onto the grid. (Exhibit UNSE-26 (Tilghman Rebuttal) at 6.) Even so, on the very
9 first page of its brief, TASC states that UNS Electric is proposing to "end the State's
10 successful and cost-effective net metering ("NEM") program)" and promises that
11 "eliminating NEM has already been shown to individually have the power to kill the
12 solar industry" (TASC Post-Hearing Brief at 1; *see also id.* at 2 (referencing UNS
13 Electric's "proposed elimination of retail rate net metering"). Likewise, on the very
14 first page of its brief, Vote Solar claims that UNS Electric's "proposal eliminates net
15 metering . . ." (Vote Solar Initial Post-Hearing Brief at 1.) These statements are
16 misleading at best, and blatant misrepresentations at worst.

17 **B. The Commission Rules Do Not Preclude Changes to the Net**
18 **Metering Rate.**

19 TASC and Vote Solar argue in their briefs that the Commission's existing rules
20 on net metering prevent the Commission from making any changes to the net
21 metering rules. (TASC Post-Hearing Brief at 7; Vote Solar Initial Post-Hearing Brief
22 at 11-14.) This argument is flawed both logically and legally.

23 Basically, TASC and Vote Solar claim that:

- 24 (1) Arizona Administrative Code ("A.A.C." or "the Code") R14-2-1801(M)
25 entitles DG customers to compensation at the full retail rate for each
26 kWh of electricity produced by a DG system;
- 27 (2) A.A.C. R14-2-2306(D) entitles DG customers to bank excess energy
28 produced by a DG system and carry those full retail rate credits over to
future months; and

1 (3) the lack of a waiver provision in Article 23 of the Code (which
2 addresses net metering specifically) means that the Commission cannot
3 waive or change these rules absent a rulemaking. (See TASC Post-
4 Hearing Brief at 7, 14; Vote Solar Initial Post-Hearing Brief at 13-14.)

5 These arguments do not withstand scrutiny. First, A.A.C. R14-2-1801(M)
6 does not suggest that DG customers must be compensated or credited for all energy
7 produced by a DG system at the full retail rate. Section R14-2-1801 contains a list of
8 definitions applicable to Article 18 of the code, which addresses the Renewable
9 Energy Standard and Tariff (“REST”). In that article, net metering is defined for
10 purposes of the REST as:

11 a system of metering electricity by which the Affected Utility credits the
12 customer at the full retail rate for each kilowatt-hour of electricity produced by
13 an Eligible Renewable Energy Resource system installed on the customer-
14 generator’s side of the electric meter, up to the total amount of electricity used
15 by that customer during an annualized period, and which compensates the
16 customer-generator at the end of the annualized period for any excess credits at
17 a rate equal to the Affected Utility’s avoided cost of wholesale power.

18 (A.A.C. R14-2-1801(M).) A plain reading of this definition shows that net metering
19 customers must receive credit at the full retail rate for energy that they use to offset
20 their consumption, but are entitled to compensation for any excess credits at year end
21 only at a rate equal to the avoided costs to the utility. (See *id.*)

22 Even more dubious is that the solar industry advocates then say that Article 23’s
23 lack of an explicit waiver provision means that the Commission is powerless to change
24 the net metering rules as they exist today. Such a waiver provision is expressly
25 included in Article 18, the regulations upon which TASC and Vote Solar rely in arguing
26 that the full retail rate credit must apply to net metered energy in perpetuity. Not only
27 does A.A.C. R14-2-1816 allow a utility to petition the Commission for a waiver from
28 the REST Rules, but it requires the Commission to prioritize that request above all other
matters before the Commission at the time. (See A.A.C. R14-2-1816(C).)

1 Second, while A.A.C. R14-2-2306(D) does authorize DG customers to “bank”
2 credits, the Commission has the authority to grant a partial waiver of this rule. As
3 TASC and Vote Solar implicitly recognize, Article 18 and Article 23 are related. The
4 Commission enacted the rules in Article 23 pursuant to the express directive and
5 authorization in Article 18 that they adopt net metering rules and tariffs. (*See* A.A.C.
6 R14-2-1811 (instructing the Commission to adopt rules and standards for net metering
7 and establish net metering tariffs).) It would make little sense to conclude that the
8 Commission has the authority to design and implement net metering rules and tariffs
9 pursuant to Article 18, but no authority to waive them pursuant to that same article.

10 Nor is there any merit to the solar industry advocates’ claim that the Company is
11 not seeking a waiver, but trying to eliminate the Commission’s net metering rules (i.e.,
12 Article 23) entirely. (*See* TASC Post-Hearing Brief at 14; Vote Solar Initial Post-
13 Hearing Brief at 11.) This argument is based on the self-serving view that “net
14 metering” can only mean the exact program currently in place and that any change to a
15 credit rate under a net metering program somehow ceases to be “net metering” at all.
16 (*See id.*) This view defies both common sense and the Commission’s own rules. The
17 principal concept behind net metering is that DG customers should be allowed to
18 receive appropriate credit for electricity generated by DG systems that is available to
19 the grid. (*See* A.A.C. R14-2-2302(11).) The proposed changes preserve this key
20 objective, as DG customers will continue to receive value for the excess energy they
21 generate, just at a more appropriate market-based price.

22 **C. Intervenors’ Suggestion That Any Net Metering Changes Should Be**
23 **Addressed in the General “Value of Solar” Docket Is a Familiar**
24 **Delay Refrain**

25 Some Intervenors argue that any changes to the net metering rules should be
26 delayed until the “Value & Costs of Distributed Generation” docket (E-00000J-14-0023)
27 concludes. (*See, e.g.*, Vote Solar Initial Post-Hearing Brief at 21-22.) This argument is
28

1 nothing more than an oft-repeated delay tactic. Solar industry advocates have argued in
2 several recent utility filings that changes to the net metering rules cannot happen outside
3 of a rate case. (*See, e.g.*, Decision No. 75295, In the Matter of the Application of
4 Sulphur Springs Valley Electric Cooperative for Approval of a New Net Metering Tariff
5 Schedule NM-2 and Revisions to the Existing Net Metering Tariff Schedule NM
6 (2015).) The current proceeding *is* a rate case. The solar DG industry’s attempt to punt
7 the resolution of this issue yet again to a generic proceeding is a hypocritical and self-
8 serving effort to preserve the status quo indefinitely. Indeed, the purpose of that generic
9 docket is to “gather[] Stakeholder input and to help inform future Commission policy on
10 the value and costs that Distributed Generation brings to the grid.” (*See* Request for
11 New Docket (Jan. 24, 2014). Such a goal is broad-ranging and amorphous; it is not
12 designed to calculate a monetary value for solar DG once and for all. (*See id.*) Even
13 Vote Solar admits that it is “unclear at this time what the eventual outcome of the Value
14 of Solar proceeding will be.” (Vote Solar Initial Post-Hearing Brief at 21.)

15 Nor will delaying consideration of the proposed net metering changes make the
16 difficult task of righting prices any easier—it will only get more difficult. Even
17 assuming that the Value & Costs of Distributed Generation docket produces a specific
18 valuation methodology for solar DG, the discussion is far from over. TASC and Vote
19 Solar admit that they do not really even care what the “true” value of solar DG is,
20 because they oppose any changes to net metering, period. (*See* Exhibit TASC-21
21 (Fulmer Surrebuttal) at 30.) So even if the Commission delays a decision on net
22 metering until after the generic docket on the Value & Costs of Distributed Generation,
23 all of the arguments that the Commission has already heard in this case will be repeated,
24 again. In the meantime, additional customers will have installed rooftop solar under the
25 flawed net metering system, deepening the intra-class subsidy problem. (*See* Faruqui
26 Hearing Testimony, Tr. at 3048:4-8.) As Nevada recently discovered, the longer the
27 artificially-inflated net metering credits are allowed to continue, the harder it is to wean
28

1 customers off of them. (*See* Vote Solar Initial Post-Hearing Brief at 49.) Even so,
2 Nevada made the right choice to modernize its rate designs and stop propping up the
3 rooftop solar industry at the expense of ratepayers. AIC strongly encourages the
4 Commission to do the same here, before the subsidy problems with the current net-
5 metering scheme balloon out of control.

6 **D. UNS Electric’s Proposal to Grandfather All Existing DG Customers**
7 **As Of June 1, 2015 Into the Current Net Metering Scheme Is Fair**
8 **and Rational.**

9 Several Intervenors contend that all existing DG customers and those who
10 applied to install DG customers prior to the resolution of this case must be
11 grandfathered into the existing net metering design. (*See, e.g.,* Vote Solar Initial Post-
12 Hearing Brief at 52-53; AURA Initial Brief at 15.) However, AIC agrees with UNS
13 Electric and Staff that June 1, 2015 is a reasonable cut-off date for grandfathering
14 existing DG customers. As of June 1, 2015, UNS Electric notified its customers that it
15 would seek changes to the net metering scheme, which means customers who applied to
16 install DG systems after that date cannot be said to have reasonably relied on the
17 continuation of the existing net metering scheme. (*See* UNSE Initial Post-Hearing Brief
18 at 35-36.) For the same reason, it is misleading to claim that these proposed net
19 metering changes are “retroactive,” as TASC and Vote Solar do. (*See* TASC Post-
20 Hearing Brief at 29-31; Vote Solar Initial Post-Hearing Brief at 25-29.) All of the
21 proposed changes would operate prospectively from June 1, 2015, the date on which
22 customers were notified of the potential change. (UNSE Initial Post-Hearing Brief at
23 35-36.)

24 Moreover, any claim that existing DG customers are being “retroactively”
25 deprived of a full retail rate credit for excess energy because they relied on those rates
26 when installing their systems is untenable. First, utility customers are well aware that
27 rates and incentives change over time. Second, as Intervenors openly acknowledge, DG
28 customers took a risk when installing solar technology and part of that risk was that DG

1 might not turn out to be as economically advantageous as they had hoped. (*See* TASC
2 Post-Hearing Brief at 29; RUCO Closing Brief at 16.) Nowhere else are customers
3 guaranteed a rate of return on their contract or investment, so it is hard to understand
4 why UNS Electric should be forced to insulate DG customers from any change that
5 might impact the economics of their decision to install rooftop solar in this instance.

6 No one is trying to pull the rug out from under existing DG customers or engage
7 in a “bait and switch.” Instead, UNS Electric is proposing that net metering rates be
8 adjusted to ensure fairness to all ratepayers. This does not mean, as Intervenors
9 suggest, that DG customers’ investments in rooftop solar are guaranteed to suffer. (*See*
10 Vote Solar Initial Post-Hearing Brief at 48-52.) Even with the proposed changes, DG
11 customers still receive significant benefits, including a credit for excess energy and a
12 1:1 offset at the retail rate for generated energy up to their consumption levels. Stated
13 otherwise, the fact that DG customers may (but not necessarily) see a reduced benefit
14 once they are credited at an accurate price for their excess energy does not mean that
15 DG customers are deprived of the benefit of their systems entirely.

16 **IV. BUY-THROUGH RATE**

17 **The Proposed Buy-Through Rate Is Not Ready for “Primetime.”**

18 Intervenors Freeport Minerals, AECC, and Noble Solutions vehemently argue
19 that the Commission should implement a buy-through rate program “as similar as
20 possible” to APS’s AG-1 experimental pilot program without delay, notwithstanding
21 the fact that the APS test program will be vetted and reviewed in a rate case to be filed
22 next month. (*See* AECC & Noble Solutions Post-Hearing Joint Opening Brief at 13.)
23 And they criticize AIC for urging the Commission to hold off implementing a similar
24 buy through rate for UNS Electric until after that review, claiming that AIC’s
25 argument regarding the implementation of residential three-part demand rates is
26 somehow inconsistent with that position. (*Id.* at 14.) Nothing could be further from
27 the truth.

1 AIC shares Commission Staff's concern about the customer-to-customer cost
2 shift. That concern is brought to bear in both the residential rate design/net metering
3 conversation and the buy-through rate proposal. Commission Staff, the Company, and
4 even Nucor (UNS Electric's largest customer) all expressed concerns about some
5 customers—even those in the class eligible for the buy-through program—having to
6 pay more on their electric bill so that other customers can participate in the program.
7 (See Exhibit S-5 (Solganick Rate Design Direct) at 48; Jones Hearing Testimony, Tr. at
8 2008:17-23; Zarnikau Hearing Testimony, Tr. at 2446:20 - 2447:5.) And while the
9 buy-through rate proponents look to Mr. Higgins' funding mechanism as a way to
10 minimize the cost shift, that mechanism does not eliminate it for any customer class.
11 To the contrary, as both UNS Electric and Commission Staff explained, purchased
12 power is the lowest cost power for the Company's customers. If UNS Electric's largest
13 customers (such as Wal-Mart) purchase power off the wholesale market themselves, the
14 average power cost for the Company's remaining customers increases. (See UNSE
15 Initial Post-Hearing Brief at 45.) The mere existence of the buy-through rate proposal
16 will increase electric bills for every customer taking power supply from UNS Electric.

17 The buy-through rate proponents cite to Freeport's positive experience with the
18 APS AG-1 program in support of its argument that such a program can be used to retain
19 large customers. (AECC & Noble Solutions Post-Hearing Joint Opening Brief at 7).
20 But Freeport is not a UNS Electric customer, has no plans to expand into the UNS
21 Electric service territory, and has benefited from what appears to be a significant
22 subsidy inherent in the AG-1 rate design. (See AIC Initial Post-Hearing Brief at 27-28.)
23 That company's experience should be given little weight in the current proceeding.

24 Indeed, AECC, Noble, and Freeport have not provided a single justification for
25 implementing the proposed buy-through rate now, as opposed to waiting until the
26 Commission has substantively reviewed the very program that the proposed rate is
27 modeled upon. In essence, their position is "we want it now." But they offer no policy
28

1 rationale that justifies the urgency of their request. This is particularly true given that
2 the Commission may decide, after reviewing the AG-1 data, that a buy-through rate
3 program is not in the public interest at all given the significant issues that APS has
4 raised about it. (*Id.* at 28-29.) In fact, these intervenors implicitly acknowledge that
5 review of APS's AG-1 program is necessary to address these potential issues. For
6 example, the buy-through rate proponents say that it might be reasonable to double
7 UNS Electric's management fee to address the issues APS had with its fee in the AG-1
8 program, but only "if the information supports such a request in the upcoming APS rate
9 case hearing." (AECC & Noble Solutions Post-Hearing Joint Opening Brief at 14.)

10 AIC's position on the buy-through rate is entirely consistent with its view on
11 three-part demand rates. The proposed three-part rates are about fixing an existing
12 problem, which will only get worse if something is not done quickly. By contrast, the
13 proposed buy-through rate program will not fix any existing problem, and will not be
14 negatively impacted by waiting until more information is available. Three-part
15 residential demand rates lay the foundation for sustainable rate design across all
16 residential customer classes in the future and have been available to and successfully
17 implemented by residential customers in Arizona for thirty-five years. The proposed
18 buy-through rate program is modeled on APS's AG-1 program, which has been in place
19 for only a few years and appears to have been plagued by numerous issues.

20 In short, there is truly nothing to be lost by waiting until the Commission has had
21 a chance to review APS's AG-1 program before moving ahead with the proposed buy-
22 through rate. AIC strongly urges the Commission to defer a decision on proposed
23 Experimental Rider 14.

24 **V. ECONOMIC DEVELOPMENT RATE RIDER**

25 From the initial post-hearing briefs, it appears that no party opposes the
26 Company's proposed Rider 13, the Economic Development Rate. AIC continues to
27
28

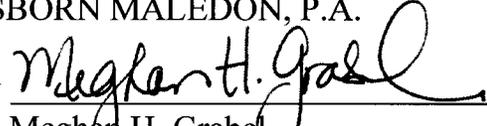
1 support the adoption of this rate, for the reasons enumerated in its initial brief. (AIC
2 Initial Post-Hearing Brief at 29.)

3 **VI. CONCLUSION**

4 For the foregoing reasons, AIC urges the administrative law judge to
5 recommend that Staff's mandatory three-part residential demand rate design and the
6 Company's net metering and economic development rate proposals be granted, and
7 the buy-through rate be rejected.

8 RESPECTFULLY SUBMITTED this 11th day of May, 2016.

9 OSBORN MALEDON, P.A.

10 By 
11 Meghan H. Grabel
12 2929 North Central Avenue
13 Phoenix, Arizona 85012

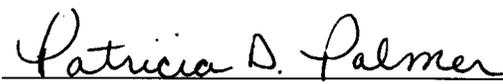
14 Attorney for Arizona Investment Council

15 **Original and 13 copies** filed this 11th
16 day of May, 2016, with:

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 **Copies** of the foregoing served
22 this 11th day of May, 2016, to:

23 All Parties of Record

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