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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE CHAIRMAN	BOB STUMP COMMISSIONER	BOB BURNS COMMISSIONER
TOM FORESE COMMISSIONER	ANDY TOBIN COMMISSIONER	

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** **THE ALLIANCE FOR SOLAR CHOICE'S POST-HEARING REPLY BRIEF**

POST-HEARING REPLY BRIEF

OF THE ALLIANCE FOR SOLAR CHOICE

May 11, 2016

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The Alliance for Solar Choice ("TASC"), through its undersigned counsel, hereby submits its Post-Hearing Reply Brief.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

In what is becoming all too commonplace in this proceeding, UNS Electric, Inc. ("UNSE" or "Company") has once again completely altered its position with regard to residential rate design impacting all customers including those with distributed generation ("DG") solar. It is readily apparent that even UNSE knows it has failed to make its case to support its radical rate design changes to customers with and without solar. The Commission must reject UNSE's attempts to introduce yet another new rate proposal into this docket; this time after the conclusion of the evidentiary hearing. UNSE has changed its proposal at every possible step. The Company's Rebuttal Testimony reflected a substantial departure from its Application. UNSE's position at hearing included alterations to its already modified proposal representing a third version of its tender. Finally, in its Post-Hearing Brief, UNSE again made substantial modifications to its aggressive proposals resulting in an all new fourth iteration and a substantial flip-flop on the issues.

While the exact proposals have differed, one constant has been the Company's hyper-focus on making proposals that would render DG solar uneconomical for its customers. Despite the fact that it was conclusively demonstrated that only 6% of the Company's lost kWh sales resulted from DG customers,[1] UNSE's newest new proposal again singles out DG customers for discriminatory rate treatment rendering DG uneconomical. In fact, UNSE now expressly proposes that its DG customers be subject to a rate that it admits it cannot impose on its other customers because it has not properly educated them about it. If it was not clear before just how much UNSE is attempting to dissuade DG adoption it should now be obvious; UNSE's position is now that demand rates are too complicated and that it has not adequately prepared its residential customers to understand and respond to these rates yet it is perfectly fine subjecting DG customers to those very same rates.

Under UNSE's fourth revised proposal contained for the first time its Post-Hearing Brief, DG customers would only be able to receive service from the two mandatory proposed three-part demand

[1] *See, e.g.*, Kobor Direct Test., Vote Solar, 11:2-4.

charge rates. These two new demand rates would also have higher per kW demand charges than the proposal for mandatory three-part demand rates the company supported at the recently concluded hearing[2] and a second tier higher demand charge if demand exceeds 7 kW.[3]

The Company has also decided in its newest iteration of its proposal to change positions with respect to net energy metering ("NEM"). At the Hearing, the Company supported withdrawing its proposal to end NEM and substitute the Renewable Credit Rate (the "RCR") in its place,[4] but now the Company again proposes combining mandatory demand charges for DG customers with the elimination of NEM and replacement with the RCR.

The sum total of this whiplash inducing series of changes is that TASC and other intervenors cannot now, or ever, formally examine; any evidence regarding new projected bill impacts; any new cost of service information justifying the newest proposal; any proposed educational programs for the new demand rates - which are conspicuously absent; any justifications for new demand charge rate designs; or anything else about UNSE's newest proposal. UNSE continues to fail to meet its burden to present the necessary cost of service studies, cost/benefit analysis, and additional requisite support required to justify adoption of its proposed discriminatory rate design. As a result, UNSE's rate design that discriminatorily targets DG customers must be rejected.

II. A SIMPLE PROPOSAL.

For the reasons set forth in its Post-Hearing Brief and below, TASC believes that UNSE has failed to meet its burden in this case. As a result, the most reasonable approach is to implement increased revenue recovery for the Company to the extent the Commission believes the Company sufficiently has made its case for some level of increase and to deny the Company's requested rate design alterations to residential, small commercial, and DG customers.[5] There is clearly no emergency or even any urgency that requires the Commission to adopt any one of the numerous hastily prepared

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[2] *See* Jones Tr. Vol. IX, at 2088:3-20.
[3] *Compare* Jones Rejoinder Test., Ex. 33, Ex. CAJ-RJ-2, Schedule H-3 thereto, at 1; and Post-Closing Brief Ex.1, at 1.
[4] *See* Tilghman Rebuttal Ex. UNSE-26, at 3:16-18; Tilghman Tr. Vol. VI, at l266:l4-l267:20.
[5] *State ex rel. Corbin v. Arizona Corp. Comm'n*, 143 Ariz. 219, 227, 693 P.2d 362, 370 (App. 1984) ("Under appropriate circumstances [the Commission] may fashion remedies less drastic than dismissal, which will accord to all parties the fairness essential to fundamental notions of due process, while at the same time preserving the integrity of the adjudicative body, considering the interests of that body and the duties imposed upon it.").

and ever changing proposals the Company has thrown out and continues to throw out in the case.

Certainly, there is insufficient evidence to support the proposed residential, small commercial, and DG rate designs and changes to NEM. However, if the Commission desires to explore new rate designs it should Order the Company to propose pilot rates for testing throughout the service territory. This testing will allow the Company to experiment with rates, educational materials, and customer support needed to seek potential implementation of new rate designs on solar and non-solar customers in its next rate case.

III. UNSE'S RATE DESIGN CLEARLY DISCRIMINATES AGAINST DG IN VIOLATION OF THE COMMISSION'S RULES.

It is exceedingly apparent that UNSE is singling out DG customers for unjust treatment it readily concedes would be inappropriate for the rest of its customers. In order to carry its burden and permit adoption of rates that single out DG customers and treat them differently than similarly-situated non-DG customers, UNSE has the burden of proof and *must* (1) demonstrate that such differential treatment is just, reasonable, and nondiscriminatory; and (2) introduce solar specific cost of service studies and benefit/cost analyses proving the disparate treatment is warranted.[6] Further, because the proposed rate for DG customers represents a marked departure from prior rates for DG customers and from the rates proposed for non-DG customers, the studies and analyses needed to support adoption of such rates must be substantive and well-supported with actual data.[7] UNSE has utterly failed to meet its burden to support its claims that the proposed DG rate is nondiscriminatory, just and reasonable.

A. UNSE Concedes Demand Rates are Not Ready for Residential Customers Yet Proposes DG Customers be Forced to Adopt Them.

UNSE itself now acknowledges that "it will take much longer than the Company had originally anticipated to inform and educate customers about how three-part rates work and how they can manage their demand in addition to other ways to save on their electric rates."[8] Oddly, UNSE uses this

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[6] A.R.S. §§ 40-250(A), and (C); A.A.C. R14-2-2305; *see also* Ariz. Const. art. XV, § 3; *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982).

[7] Corporation Decision # 72253, at 11:3-22.

[8] *See* UNSE Post-Hearing Brief, at 4:19-23; Kobor Direct Test., Vote Solar Ex. 6.

statement as justification for not imposing three-part rates on non-DG customers while simultaneously proposing to stick DG customers with these same demand charges. Three-part rates with mandatory demand charges have never been imposed on DG customers, and DG customers have no greater understanding of three-part rates or ability to control their demand than their non-DG counterparts.[9] In fact, the future DG customers that the mandatory demand rates would apply to, are the exact same customers (standard residential customers) that UNSE freely admits it will take "much longer" to inform and educate about demand rates. Thus, in light of UNSE's own statements that its customers are not yet ready to adapt to a three-part rate with demand charges, it would be discriminatory, unjust and unreasonable to adopt them for DG customers.

Further, the Commission recognized the growth of emerging technologies when it adopted the Renewable Energy Standard Tariff (REST).[10] Punishing DG customers by forcing them to be subjected to demand charges will be bad public policy and ill-conceived ratemaking. The REST was not intended to be manipulated in order to serve the motives of investor-owned utilities.[11]

Demand charge volatility stems from the fact the demand charges will be based on brief snapshots of time for each ratepayer's monthly usage.[12] Residential usage, by its nature, is unpredictable and subject to whims of lifestyles and behavior. DG customers will need to manage demand between 120-138 hours per month in the summer and approximately 152 – 184 hours per month in the winter. It is unfair and unjust to adopt a rate design that could see a residential customer's diligent electricity usage wiped out by one hour that would constitute just .005% (one-half of one-percent) of the total on peak hours for an entire month. A DG customer will have to be constantly conscious of simultaneous use of appliances and how to best use those appliances.[13] Unfortunately, DG customers will not have access to real-time information to aid them in this Herculean effort.[14] It will be virtually impossible for any DG customer to monitor or control load and demand behavior.

The Company understands that demand charges are too problematic to continue advocating for

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[9] Hutchens Tr. Vol. II, at 361:4-14; Jones Tr. Vol. IX, at 2043:2-23.
[10] A.A.C. R14-2-1801.
[11] *See* TASC Ex. 8.
[12] *See generally*, Wilson Tr. Vol XI, at 2494 - 2495, 2509; Jones Tr. Vol XI, at 2686 – 87.
[13] Faruqui Tr. Vol. XIII, at 3072.
[14] Smith Tr. Vol. III, at 644:6-13.

them in this rate case. The biggest reason why is that demand charges are sure to create unintended consequences.[15] The Company conceded that even one-hour with higher than usual demand could result in much higher bills.[16] Monitoring peak demand periods, in the mornings and evenings, would frankly be unconscionable to expect of residential ratepayers. Yet the proposed demand charges would provide *an even direr situation* for DG customers.[17] In addition to the volatility and burdensome nature of demand charges, a DG customer must also take into account the unpredictability of the weather on a daily basis. These factors present an impossible challenge for DG customers to manage their loads.

The Company recognized that it will be particularly difficult for non-grandfathered solar customers to respond to demand charges and control their bills as they simply lack the ability to do so.[18] UNSE's CEO David Hutchens highlighted that solar customers have a particular difficulty in handling demand charges because of weather issues. When asked if it would be more difficult for solar customers to estimate what their future bill would look like if they were subject to demand charges, Hutchens replied, "I would say yes, because they can't predict the weather."[19]

UNSE's witness Craig Jones alluded to a plan for a "temporary relief mechanism to limit demand charge impacts for low load factor customers," a desirable safeguard against unintended consequences because "there was some concern … the demand charge would affect them potentially disproportionately to the overall class as a whole."[20] Further, UNSE witness Denise Smith acknowledged the "variability" issue as a strong reason why solar customers would have specific issues reacting to demand charges.[21] The evidence makes it clear that the problems of adapting to and dealing with demand charges are significant for all customers but even more so for solar customers. As a result it would be unjust to saddle DG customers with a rate that the Company even admits is not ready for the rest of its customers.

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[15] Jones Tr. Vol. XI, at 2546:24-13.
[16] Overcast Tr. Vol. VII, at 1466:2-12.
[17] Hutchens Tr. Vol. II, at 361:4-14.
[18] Hutchens Tr. Vol. II, at 361:4-14.
[19] *Id.*
[20] Jones Tr. Vol. IX, at 2043:2-23.
[21] Smith Tr. Vol. III, at 663:7-21; Kobor Tr. Vol. X, at 2118:23 – 2119:9.

B. UNSE's Proposed Treatment of DG Customers is Discriminatory without Submission of the Legally Required Cost of Service Studies and Benefit/Cost Analysis.

State law expressly prohibits discriminatory treatment of DG customers, specifically stating that "[Net Metering] charges *shall be* assessed *on a nondiscriminatory basis*."[22] Only under very limited circumstances may a utility impose higher charges on DG customers than all other "customers with similar load characteristics or customers in the same rate class that the [DG] Customer would qualify for if not participating in [net metering]."[23] To do so, UNSE *must* support any differential treatment with "cost of service studies and benefit/cost analyses" and also carries "the burden of proof on any proposed charge."[24]

C. UNSE has Spectacularly Failed to Meet its Burden to Justify Imposition of its Proposed DG Mandatory Demand Rates.

UNSE still fails to present the requisite studies or analyses needed to support differential treatment of DG customers. Prior to submission of its Post-Hearing Brief, UNSE did not provide any DG-specific cost of service study and failed to undertake a benefit/cost analysis.[25] Nor has it provided any such study or analyses in its Post-Hearing Brief. Instead, the Company only offers a chart of projected bill impacts for all newly-proposed rates and a rate-design comparison chart.[26] Neither of these documents constitute a DG cost of service study or benefit/cost analysis. Even if such chart could somehow constitute the requisite study or analyses, such charts are woefully inadequate. Further, to the extent the charts are based on the rates proposed for the very first time in the Company's Brief, this documentation has not been subject to any type of examination to determine its adequacy.

The Company maintains that DG causes considerable challenges to the grid but it provided no evidence to back up that claim.[27] The Company has still not identified even a single cost the Company

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[22] A.A.C. R14-2-2305.
[23] *Id.*
[24] *Id.*
[25] Tilghman Tr. Vol. VI, at 1272:7 – 1275:16.
[26] UNSE Post-Hearing Brief, Exs. 1 and 2.
[27] Tilghman Direct, UNSE Ex. 25, at 4:12-6:23.

has incurred as a result of the implementation of DG systems in its territory.[28] And notably, UNSE cannot document even one single instance of the Company incurring additional operations and maintenance costs due to excess energy flows from DG.[29] UNSE has been unable to produce any evidence that counters the various studies that have shown that DG geographic diversity provide a smoother load profile.[30] The Company is unable to highlight even one expense that is attributable to handle impacts to the grid.[31]

D. UNSE Discriminatory Treatment of DG Customers is Neither Just Nor Reasonable.

Despite the claims of serious DG caused "cost shifts," the undisputed facts plainly demonstrate that of all low use residential customers, which UNSE identified as the type of customers that necessitated the adoption of a three-part rate with demand charges, *only 5% are even DG customers*.[32] In fixating on DG customers, the Company ignores the actual causes of its declining revenue that can be attributed to the recent loss of its largest commercial customers, a high number of "snowbirds" that seasonally visit the service territory, the growing number of vacant homes, and the service territory's laggard economy.[33]

It is curious that the Company has spent such a disproportionate amount of time targeting DG customers, who have invested in DG systems upon the prompting of the Commission to help fulfill the REST guidelines, but has not shown the same motivation to address its more pressing cost recovery problems. Even UNSE witness Craig Jones conceded that, "there are more vacant homes and snowbirds than distributed generation owners right now"[34] yet the Company has failed to embrace the concept of a minimum bill which would directly deal with those problems and has support from the solar industry.

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[28] Tilghman Tr. Vol. VI, at 1310:1 – 1313:8 (admitting that UNSE cannot quantify any cost resulting from providing ancillary services to DG customers, cannot quantify any cost resulting from excess backflow, cannot quantify any cost borne due to alleged phase imbalance).
[29] *Id.* at 1246:24-l247:l9; 1252:4-1253:10
[30] Tilghman Tr. Vol. VI, 1247:20 – 1249:9.
[31] *Id.* at 1246:4 – 1247:19.
[32] Hutchens Tr. Vol. II, at 307:5 – 308:1; Dukes Tr. Vol. VIII, 1787:6 - 1788:11.
[33] Dukes Direct Test., UNSE Ex. 28, at 12:10 – 14:18.
[34] Jones Tr. Vol. XI, at 2576:22 – 2577:1.

UNSE claims that rate design changes must be implemented against DG customers because of a reduction in sales.[35] They asserted in testimony that DG and energy efficiency are to "blame."[36] In fact, the loss of industrial and mining customers accounted for 75% of the Company's decline in retail sales.[37] The sluggish economic conditions plus energy efficiency are 19% of the sales reductions.[38] Incredibly, despite the Company's obsessive efforts to sideline DG customers, they only account for 6% of the total sales decline.[39]

UNSE does not refute the evidence cited above in which DG customers account for only a tiny fraction of the real issues UNSE is facing. As the data shows, by subjecting only DG customers to a mandatory three-part rate with demand charges, UNSE will not actually redress the issues it claims to be suffering from. Singling out DG customers from similarly-situated non-DG customers is not just or reasonable.

IV. NET METERING MUST REMAIN AT THE RETAIL RATE AND THE COMMISSION SHOULD NOT APPROVE THE COMPANY'S PROPOSED MODIFICATIONS TO THE NET METERING TARIFFS.

A. The Proposed RCR Rate is Discriminatory and Significantly Flawed.

1. The RCR Undercompensates for the Exported Power.

As shown in TASC's Post-Hearing Brief,[40] the value of solar is 10-14 cents per kWh – double the RCR. This evidence was the only complete benefit/cost analysis submitted on this point and demonstrates unequivocally that Net Metering is a cost effective program at the retail rate. As a result, compensation below the retail rate would undercompensate ratepayers for their valuable exported power. Further, UNSE is selling the exported power back to other non-DG customers at the retail rate and would indeed be making money off of DG exports at a 100 percent markup if the RCR rate was adopted.

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[35] Hutchens Direct Test., UNSE Ex. 3, at 5:16-17.
[36] *Id.* at 13:1-2.
[37] Kobor Direct Test., Vote Solar Ex. 6, at 10:4-7.
[38] *Id.* at 11:7-9.
[39] *Id.* at 11:2-4.
[40] TASC Post-Hearing Brief, at 6; Fulmer Surrebuttal Test., TASC Ex. 21, at 30-47.

2. The RCR would Create Substantial Uncertainty, Subjecting Ratepayers to Terms to which no Utility Scale Developer would Agree.

The RCR deprives the solar customer of certainty. The Company has proposed to base the RCR on the single most recent contract between a third-party utility and a third-party project developer.[41] UNSE also proposes to periodically update the rate, possibly every year.[42] How and when that rate will be updated are complex questions that neither the Company nor its ratepayers can answer. Utility power purchase agreements ("PPAs") from utility-scale suppliers are entered into for long term fixed prices[43] yet UNSE seeks to subject its own customers to constantly adjusting prices that no renewable project developer would ever agree to.

UNSE has indicated that even the Company itself cannot predict future RCR adjustments or levels.[44] By setting the RCR based on a single PPA, UNSE has also made the rate subject to large annual fluctuations. This can be seen through examination of utility-scale solar prices from recent Tucson Electric Power PPAs. The PPA used as the basis for UNSE's proposal has a rate of 5.84 cents/kWh, while another contract signed by TEP has a rate as high as 10.875 cents/kWh.[45]

Utilities have every incentive to game the system to create uncertainty, discourage the DG customer and disincentive DG, while increasing their own utility-scale projects and having the ratepayers pay for them. RCR fluctuations would subject DG customers to significant uncertainty and volatility, making investments difficult and expensive. Once a DG customer was locked into a purchase or lease agreement, a new adjusted RCR could make the investment untenable and a DG customer may have to breach their respective agreement (remove the solar) to stop the financial harm caused by the new compensation rate. No rational investor would implement DG in such an environment.

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[41] Tilghman Direct Test., UNSE Ex. 25, at 7:14-20.
[42] *Id.* at 8:4-9.
[43] Tilghman Tr. Vol. VI, at 1286:5 - 1287:18.
[44] *Id.* at 1279:4 -1282:17.
[45] *Id.* at 1278:19 - 25.

3. Utility Scale Solar is Not the Same as DG Solar and Should Not Set the Proxy Price of DG Solar.

Comparing solar DG and utility-scale solar is an "apples to oranges" comparison. The Commission and several other states have already recognized that solar DG and utility-scale solar are not interchangeable resources. The REST includes a DG "carve out," which requires utilities to meet 30% of the overall renewables requirements with DG solar or other distributed resources.[46] UNSE's suggested parallels must also be rejected for several reasons.

a) The Market for Utility-Scale and DG are Significantly Different.

A utility-scale developer can choose to develop projects in various locations and can bid into several utility requests for proposals and even sell the power to any interconnecting utility.[47] In contrast, the DG customer can only export power to his utility and only has one possible buyer for that power – UNSE.[48] The Company has a monopoly and there is no market to price DG exports.[49] The lack of a competitive market for net metering customers' DG exports is illustrated by the fact that UNSE proposes to adjust the rate it pays net metering customers every year, and to do so in a manner that would be difficult for customers to accurately predict. Utility-scale solar developers are not forced to accept such uncertain and variable prices for the electricity they generate over long term PPAs. Yet DG customers would have no choice but to be subject to this highly variable pricing regime under UNSE's proposal. Thus, the only fair rate to use for NEM is the full value the utilities receive from the DG customer.

b) DG Solar has Added Value Not Found in Utility Scale Solar.

When a generation facility is located behind a residential customer's meter, at the point of consumption, it has added benefits that a utility-scale solar facility simply cannot provide. These added benefits include: avoided energy, avoided generation capacity, avoided transmission costs, and avoided distribution costs.[50] In addition, solar DG offers the same emissions savings as central solar

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[46] A.A.C. R14-2-1805 (B).
[47] Kobor Tr. Vol. X., at 2122:6-12.
[48] *Id.* at 2122:13 -2123:5.
[49] *Id.*
[50] Fulmer Surrebuttal Test., Ex. 21, at 31:18 – 32:19.

PV, "but without the potential habitat, visual and cultural impacts associated with utility-scale solar plants."[51] The DG system also avoids line losses when compared to the utility generation that must travel across the service territory on transmission and/or distribution lines. The geographic diversity of dispersed DG provides added reliability and offsets issues of intermittency that utility-scale solar cannot otherwise mitigate.[52] Also, DG solar, as a whole, enables an electric utility to defer or avoid the need to invest in capital projects for plant while utility-scale solar, when owned by the utility, is itself an investment in plant that must be rate based and paid back with a rate of return, thereby increasing rates for all customers.[53] Clearly, customer sited DG solar is worth more to a utility and its ratepayers than utility scale solar.

B. The Value of Solar Docket is the Only Appropriate Venue to Determine Methodology for Accounting for Cost and Benefits of DG and Any Changes to Net Metering.

Currently, the Commission is engaged in the "Value of Solar" docket.[54] That docket is expressly designed to create a methodology to be implemented to value DG exports in utility rate cases. This methodology is then to be applied in rate cases in a manner to be set forth by the Commission. UNSE is asking that the Commission ignore that ongoing process and authorize an end to NEM without proper supporting analysis. There is no urgency that cannot wait for the Commission to complete the process it has set out for this precise purpose.

V. IT IS ESSENTIAL THAT THE COMMISSION FULLY GRANDFATHER EXISTING NET METERING CUSTOMERS AND THE JUNE 15, 2015 PROPOSED EFFECTIVE DATE MUST NOT BE ADOPTED.

If any changes impacting DG customers are implemented, all current DG customers should be grandfathered from their existing rates and must be implemented on a going forward basis from the date of the Decision.

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[51] *Id.* at 4:14 – 16.
[52] *Id.* at 21:3 – 22:13.
[53] *Id.* at 37:9 – 38:12.
[54] *See* Commission Docket No. 14-0023.

In 2013, Staff recommended to the Commission that "any consideration of grandfathering existing net metering situations to existing net metering customers should view the grandfathering as pertaining to the DG system and premises where the DG system is sited (in other words, 'runs with the land'), versus a 'right' that resides with a specific customer."[55] Consequently, the Commission decided that, "[r]esidential customers who either have a DG system installed on their homes now, or who submit an application and a signed contract with a solar installer to APS by December 31, 2013, shall have their system grandfathered under the current net metering policies . . . ."[56]

The Company's proposals, while flawed in many ways, would create a significant negative impact if they are applied to the existing DG customers who have adopted solar since June 1, 2015. For instance, mandatory demand charges imposed on DG customers who installed solar at the beginning of this year would undermine the investment that was contemplated and executed at a different rate and rate design. The Commission should reject the Company's proposed cut-off date and should adhere to precedent of mandating charges against ratepayers upon or after the effective date of the Decision.

The Company's proposed cut-off date serves as a retroactive ratemaking. The Company has claimed that it has undertaken "significant efforts to fully inform post June 1, 2015 customers" that they could be subjected to an unprecedented form of rate design.[57] However, earlier in its brief the Company acknowledged the pronounced opposition to demand charges and three-part rate design expressed by the public to the Commission.[58] By positing that all customers have not been sufficiently educated about demand charges but then attempting to subject certain customers to these demand charges in any case, the Company has contradicted itself on the importance of communicating key information to its ratepayers.

Chairman Doug Little and Commissioner Bob Burns have already expressed their support, and their rationale, for why grandfathering should be honored for DG customers who have already made

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[55] Corporation Decision # 74202, at 11:23-26.
[56] *Id.* at 24:17-19.
[57] UNSE Post-Hearing Brief, at 35:21-23.
[58] *Id.* at 4:16-23.

solar investments.[59] Chairman Little compared the current cut-off date proposal to "an ex-post facto situation" and Commissioner Burns expressed concerns about a "retroactive rate increase."[60] Chairman Little continued to say that "putting out grandfather dates" is "probably inappropriate."[61]

As outlined above, the total amount of DG customers comprise about 2% of the Company's service territory. The Company's continued advocacy for the arbitrary June 1, 2015 cutoff date, despite backing off its attempt to subject all ratepayers to mandatory three-part rate design, would only serve to punish a handful of DG customers. Further, even if a "cost shift" does exist, the subjugation of post June 1, 2015, customers to these unprecedented rates would barely make a dent in the Company's revenue recovery efforts.

RUCO's witness Huber acknowledged that the post June 1, 2015, customers could be severely affected by the Company's proposal when he testified that "customers may not fully understand the magnitude of the negative impact to this value proposition that may come from rate design."[62] The Company has already exposed itself as being woefully unprepared when it comes to planning an entirely new rate design. These post June 1, 2015, customers should not serve as ratemaking lab experiments in order to better understand how these rates might be adversely applied.

The proposed cutoff date is ill-conceived and only serves to further the Company's antipathy towards DG customers and does nothing to address its endemic problems affecting revenue that have nothing at all to do with DG. The June 1, 2015, date also stands diametrically opposed to the policy pronouncements of at least two commissioners. The Company itself has stated that ratepayers are united in opposition against demand charges and three-part rate design. The Company has failed to justify why implementing retroactive rates on a small number of DG customers is sound or just and reasonable ratemaking. The Commission should continue to follow and advance precedent by implementing any new rates with an effective date that takes place after the Commission's ultimate vote.

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[59] ACC hearing for Commission Docket No. E-01933A-15-0100, at 4:11:55 - 4:13:03.
[60] *Id.*
[61] *Id.*
[62] Huber Direct Test., RUCO Ex. 5, at 16:21-22.

VI. IN CHANGING ITS RATE PROPOSALS AND PROPOSING FOUR DIFFERENT PROPOSALS OVER THE COURSE OF THIS HEARING, UNSE HAS VIOLATED THE GENERAL PUBLIC AND INTERVENORS' DUE PROCESS RIGHTS AND ITS APPLICATION SHOULD BE REJECTED.

Individuals and entities are constitutionally entitled to due process of the law.[63] "Procedural due process means that a party had the opportunity to be heard at a meaningful time and in a meaningful manner."[64] "The elements of procedural due process are notice and an opportunity to be heard."[65]

These procedural safeguards apply in ratemaking contexts wherein the Commission is considering adoption of new rates. State law requires that the Commission give "reasonable notice" when conducting a hearing concerning changes to rates.[66] Upon receiving such notice, parties may apply for intervenor status and once granted, are entitled to meaningful participation in the ensuing hearing concerning such rate proposals.[67] Arizona Courts have recognized as much, concluding that "[a] public utility is entitled to due process when a ratemaking body undertakes to calculate a reasonable return for the use of its property and services by the public. Conversely, *the public is entitled to the same level of protection when the government seeks to increase the utility rates that the public is obligated to pay.*[68]

Additionally, the general public has a substantive due process right to ensure that any rates or charges adopted are just and reasonable.[69] This right is borne out of the Constitutional mandate that

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[63] Ariz. Const. Art. II, § 4.

[64] *Comeau v. Arizona State Bd. of Dental Examiners*, 196 Ariz. 102, 106-07, ¶ 20, 993 P.2d 1066, 1070-71 (App. 1999) (internal quotation omitted).

[65] *Iphaar v. Indus. Comm'n of Arizona*, 171 Ariz. 423, 426, 831 P.2d 422, 425 (App. 1992).

[66] A.R.S. § 40-250; A.A.C. R14-2-105(A).

[67] A.A.C. R14-3-105, -109.

[68] *Residential Util. Consumer Office v. Arizona Corp. Comm'n*, 199 Ariz. 588, 593, ¶ 22, 20 P.3d 1169, 1174 (App. 2001) (internal citation omitted); *see also State ex rel. Church v. Arizona Corp. Comm'n*, 94 Ariz. 107, 112, 382 P.2d 222, 225-26 (1963).

[69] *See generally Residential Util. Consumer Office v. Arizona Corp. Comm'n*, 199 Ariz. 588, 593, ¶ 21-22, 20 P.3d 1169, 1174 (App. 2001) (citing Op. Ariz. Att'y Gen. 71–15); *see also Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 103-04, ¶ 18, 83 P.3d 574, 581-82 (App. 2004) ("Our constitution requires the [ACC] to prescribe . . . just and reasonable rates and charges to be made and collected, by public service corporations for services rendered in the state.".)

the Commission *only* prescribe "just and reasonable rates and charges."[70] This prerogative is also recognized by State statute, stating that "[n]o public service corporation shall raise any rate, fare, toll, rental or charge, or alter any classification, contract, practice, rule or regulation to result in any increase thereof, except upon a showing before the commission and a finding by the commission that an increase is justified."[71] Recognizing the public's due process right to obtain the enactment of just and reasonable rates, the Commission expressly mandates that "[e]very public service corporation [] *give notice* to customers affected *of any hearing at which* the fair value of that corporation's property is to be determined and *just and reasonable rates and charges are to be established.*"[72] "Due process is not a static concept; it must account for the practicalities and peculiarities of the case."[73]

UNSE's actions have deprived the public and all intervenors (including and especially TASC) of their right to due process. Upon filing, the Company sought adoption of only a two-part rate structure similar to the currently existing structure. Only upon the filing of rebuttal testimony did the Company suddenly seek to adopt a mandatory three-part rate with demand charges. This caused all intervenors to scramble and struggle to identify, prepare and disclose appropriate witnesses and issue appropriate discovery. Now, after the hearing is concluded, UNSE has again proposed adoption of wholly new rates in its Post-Hearing Brief – a mandatory three-part rate with demand charges and the RCR for solar customers and multiple newly-devised rate options for residential and small general service users. As the hearing is now concluded, the timing of this proposal deprives all intervenors from having had reasonable notice of this new rate proposal, opportunity to present witnesses and evidence bearing on the proposals, or even a substantive amount of time to assess the proposal.

A review of the transitory nature of UNSE's proposals is illustrative of the deficiency of the process. The following looks only at one of the ever-changing rate design elements and tracks it through the four iterations of UNSE's proposal. That element is the proposed demand charge to be leveled on DG customers:

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[70] Ariz. Const. Art. XV, § 3.
[71] A.R.S. § 40-250(A) and (C).
[72] A.A.C. R14-2-105(A).
[73] *Comeau v. Arizona State Bd. of Dental Examiners*, 196 Ariz. 102, 106-07, ¶ 20, 993 P.2d 1066, 1070-71 (App. 1999) (internal quotation omitted).

	UNSE's Application Position[74]	UNSE's Surrebuttal Position[75]	UNSE's Hearing Position[76]	UNSE's Post Hearing Brief Position[77]
Demand Charge Amount on DG Customers	0-7 kW $6.00 >7 kW $9.95	$5.15	$5.00	0-7 kW $5.50 >7 kW $7.50

At every step of the proceedings, UNSE has introduced drastically differing rate proposals. Even now, after the close of evidence, it once again seeks adoption of an entirely new, untested, unsupported, and now non-vetted rate structure without reasonable notice. In so doing, UNSE has violated all intervenors' and the general public's due process rights. In this case, by seeking to adopt a multitude of different rates throughout the pendency of the proceedings and in failing to provide the requisite studies and analyses to support any of the rate changes, the Company has infringed upon the general public's substantive and procedural due process rights to the adoption of only just and reasonable rates and charges. The data presented cannot possibly support a conclusion that the proposed rates, especially the rates proposed for the first time in the Post-Hearing Brief, are just and reasonable. In adopting any rate other than that initially proposed in the Company's application, the Commission would violate due process rights affording intervenors and the public a fair hearing process. The State Constitution itself therefore demands that the Application and the gamesmanship of UNSE be rejected.[78]

VII. THE COMMISSION SHOULD NOT JUST ADOPT UNSE'S RETURN ON EQUITY FROM ITS LAST RATE CASE AND SHOULD RECOGNIZE THAT FINANCIAL IMPROVEMENTS WARRANT A LOWER RETURN ON EQUITY.

Critically, since the conclusion of its last rate case in 2013,[79] UNSE has benefited from a significant improvements in its financial position warranting a change of the ROE granted in the last

[74] Application, at Ex. CAJ 3.
[75] Jones Surrebuttal, at Ex. CAJ-R-4, Schedule H-3, 4 of 8.
[76] Jones Tr. Vol. IX, 2088:3-20.
[77] UNSE Initial Post-Hearing Brief, at Ex. 1, 1 of 4.
[78] This same objection applies to all parties that continue to file new rate proposals after the close of evidence including RUCO among others. None of these new proposals can be subject to scrutiny in a rate case as required by law.
[79] *See* Commission Decision # 74235.

rate.[80] The lower investment risk of UNSE as indicated by the Moody's ratings would indicate a lower ROE is warranted. Mr. Woolridge has empirically supported his calculations through exhaustive research into the Company's weighted cost of capital and capital structure based on these changed conditions.[81] Discounted Cash Flow analysis revealed ROEs of 8.70 percent and 9.00 percent.[82] Capital Asset Pricing Modeling demonstrated ROE results of 8.1 percent and 8.3 percent.[83] These results further reveal that Mr. Woolridge's 8.75 percent ROE is in fact on the conservative side. The Commission should step in and recognize the tremendous improvements in UNSE's financial position that should lead to a lower ROE of 8.75 percent.

Ms. Bulkley presentation of "ROE Decisions For Integrated Electric Utilities"[84] is another example of the Company trying to pull a fast one. Ms. Bulkley lumps all of the ROE returns for 2012-2016 into one chart, but the recent trend, however, has been toward lower authorized rates of return since 2012.[85] In addition, the authorized rate of returns often lag current conditions based simply of the duration of time for a state utility commission to implement a decision. As can be seen in Ms. Bulkley's supporting spreadsheet for chart 1,[86] the authorized ROEs for electric utility companies have actually decreased in recent years such that the trend for authorized ROEs is lower than 9.5 percent. For example, in 2010, Interstate Power and Light Company was awarded an authorized return on equity of 10.44 percent, while Ameren Illinois Electric was awarded an authorized return on equity of 9.14 percent in 2015.[87] In addition, certain utilities including in her spreadsheet are conspicuously absent from Ms. Bulkley's chart 1. For instance, she did not include Orange & Rockland Utilities 2015 authorized rates of return of 9.0% or Consolidated Edison Company of New York's 2015

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[80] *See* TASC Ex. 4, at 9; http://www.uns.com/acquisition-docs/acc-settlement-agreement-5-16-2014.pdf, Commission Docket Nos. E-04230A-14-0011 and E-01933A-14-0011, Attachment A at 1, ¶ 2; Woolridge Surrebuttal Test., TASC Ex. 23, at 5:2-11, 9-15; Woolridge Direct Test., TASC Ex. 22, at 30; https://www.fortisinc.com/Investor-Centre/Financial-and-Regulatory-Reports/Documents/ThirdQtrReport-FINAL.pdf, at 22, n.1.; Woolridge Direct Test., TASC Ex. 22, at 30:2-4.

[81] Woolridge Direct Test., TASC Ex. 22, at 26 - 27.

[82] *Id.* at 26.

[83] *Id.*

[84] *See* UNSE Post-Hearing Brief, at 13; Ms. Bulkley Rejoinder Test., UNSE Ex. 24, at 10 - chart 1, and Ex. AEB-2 thereto).

[85] *See* Woolridge Surrebuttal Test., TASC Ex. 23, at 3-5.

[86] *See* Ms. Bulkley Rejoinder Test., UNSE Ex. 24, at Ex. AEB-2 thereto.

[87] *Id.*

authorized rate of return of 9.0%.[88]

Further, forecasting prices and rates that are determined in the financial markets, such as interest rates, is impossible to accurately do, and why an ROE based on the "possibility of increased interest rates" should not be the foundational basis for UNSE's authorized rate on return.[89]

UNSE also relies on general statements that Mr. Woolridge's ROE is far outside the norm and must be rejected. Apart from the statement being spurious, a utility needs to be looked at on its *own* individual basis to determine its authorized return on Equity.[90] In 2014, the Company was acquired[91] by Fortis Inc., which assumed its debt and injected $220 million in equity into both UNSE and TEP's operations.[92] UNSE's bond rating has also increased from Baa3 to A3 since 2013[93] and on March 2, 2015, the Company has raised over $100 million in capital this year.[94] Reduced investor risk is key to the authorized rate of return calculation of a utility and has been the bases for a downward adjustment of a utilities' return on equity by the Commission previously.[95] Mr. Woolridge's 8.75 percent ROE is appropriate based on the Company's fiscal improvements[96] and should be adopted. In any event, the evidence entirely fails to support maintaining the previous ROE in the face of so many positive improvements for the Company.

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[88] *Compare* Ms. Bulkley Rejoinder Test., UNSE Ex. 24, at 10- chart 1, and Ex. AEB-2 thereto.

[89] Woolridge Surrebuttal Test., TASC Ex. 23, at 9-16.

[90] *See Arizona Corp. Comm'n v. Citizens Utilities Co.*, 120 Ariz. 184, 584 P.2d 1175 (App. 1978) (hypothetical rate of return for comparison companies was not substantial evidence upon which to base rate of return for electric utility).

[91] *See* TASC Ex. 4, at 9.

[92] http://www.uns.com/acquisition-docs/acc-settlement-agreement-5-16-2014.pdf, Commission Docket Nos. E-04230A-14-0011 and E-01933A-14-0011, Attachment A at 1, ¶ 2.

[93] *See* Woolridge Surrebuttal Test., TASC Ex. 23, at 5:2-11.

[94] https://www.fortisinc.com/Investor-Centre/Financial-and-Regulatory-Reports/Documents/ThirdQtrReport-FINAL.pdf, at 22, n.1.; Woolridge Direct Test., TASC Ex. 22, at 30:2-4.

[95] *Litchfield Park Serv. Co. v. Arizona Corp. Comm'n*, 178 Ariz. 431, 437, 874 P.2d 988, 994 (App. 1994) (affirming Commission's adjusted downward cost of equity capital to reflect reduced investor risk from its equity-rich plant).

[96] *Residential Util. Consumer Office v. Arizona Corp. Comm'n*, 238 Ariz. 8, ¶ 53, 355 P.3d 610, 621 (App. 2015), *review granted* (Feb. 9, 2016) (citing *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 693 (1923).

VIII. CONCLUSION.

TASC recognizes the difficulty that the Commission is likely to have sorting through the numerous and ever-changing proposals that have been made in this docket. TASC has outlined the numerous legal, procedural, and policy shortfalls of the various proposals that have been made. TASC reminds the Commission that the Company, not the Commission or any intervenor, has the burden of clearly setting out a proposal for just and reasonable rates in accordance with Arizona law.

For the reasons stated above, the following actions should be taken:

(1) Recognize that UNSE has failed to carry its burden to provide the proper evidence to support (a) waiver of the NEM Rules to permit an alternative compensation for exported DG power, including the RCR; and (b) adoption of its unprecedented proposal for a mandatory three-part rate with demand charge as applied to all residential customers or solar customers alone. Accordingly, these proposals should be rejected;

(2) Recognize that Commission Staff, RUCO and the Company have all also failed to carry their burden to justify the adoption of the alternative rate proposals proposed by Commission Staff and RUCO and reject the same;

(3) Recognize that the evidence only supports the use and exploration of an optional two-part rate with a minimum bill and TOU component through pilot programs moving forward before the next rate case;

(4) Regardless of the rate adopted, all DG customers that have contracted for DG systems prior to the final order issued in this docket should be grandfathered and continue to utilize currently-implemented rate structures and NEM;

(5) Regardless of the rate adopted, reject UNSE's proposal to include an LFCR in its new rate design; and

(6) Set a ROE of 8.75%.

Respectfully submitted this 11th day of May, 2016.

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