PROTEST AND MOTION TO DISMISS

Pursuant to Rule 14-3-106(I), the Solar Energy Industries Association ("SEIA") hereby protests and moves to dismiss the Application of Arizona Public Service ("APS") for Approval of Net Metering Cost Shift Solution ("Application") filed on July 12, 2013 and entered into Arizona Corporations Commission ("Commission") Docket No. E-01345A-13-0248 (the "Docket"). As explained in SEIA’s Motion to Intervene in the
Docket, SEIA is a non-profit trade association representing local, national, and international solar companies from all industry sectors in the Arizona market. The Application includes numerous proposals that will substantially and directly adversely affect solar businesses in Arizona, including the interests of SEIA’s members and their respective customers.

SEIA’s Protest, however, is not directed at the merits or the details of the Application but instead at its very basis: APS’s claim that there is an actionable issue that requires the Commission’s immediate attention. The Application purports to provide a “solution” to a “cost shifting” problem that APS alleges is caused by certain customers of APS availing themselves of duly-adopted Commission policies, specifically the rules governing net energy metering (“NEM”) in A.C.C. R14-2-2301 to -2307. There is a fundamental flaw with APS’s alleged problem: there is no cost shift between customer classes as a result of NEM. Even if there were a definable category of unrecovered “costs” attributable to NEM customers (which SEIA rejects), the “solutions” offered by APS’s Application do not have the effect of “shifting costs back” from non-NEM customers. Both of APS’s solutions would result in significant additional revenue for the company. Neither “solution” would allocate this revenue back to the non-NEM ratepayers that APS claims are harmed by the alleged cost shift and both solutions would result in increased rates to all solar and non-solar ratepayers. As shown in Section II below, the result is that APS will make or retain more money from NEM customers, but no other ratepayers will realize any rate reduction.

In addition, but on independent grounds, SEIA protests the process, legality, and

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1 The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

2 SEIA acknowledges the REST Surcharge and the LFCR mechanism constitute a form of cost shift. The cost spreading aspect of each, imposed on most APS ratepayers, was agreed to through a multi-party rate case settlement, approved by the Commission, and implemented by APS. Moreover, with respect to the LFCR in particular, this cost spreading mechanism was noted as a benefit; for example: “The LFCR allows residential customers a choice as to how they pay the lost fixed costs and will give them some experience to help them understand how energy efficiency savings affect a utility.” Decision No. 73183 at 40, 1:9-12 (emphasis added).
timing of APS’s attempt to engage in ratemaking via the Application. APS’s filing: (1) is improper ratemaking that violates the settlement of APS’s last rate case approved by the Commission just last year (as set forth in Section III below); (2) represents unconstitutional single-issue ratemaking (as set forth in Section IV below); and (3) rests on no legal or regulatory authority for the Application in the law or policy of Arizona (as set forth in Section V). As a result of these infirmities, the Commission can and should reject the Application on its face.

I. BACKGROUND

On June 29, 2012, APS filed its 2013 Renewable Energy Standard and Tariff (“REST”) Implementation Plan, docketed in E-01345A-12-0290. The filing “[did] not request any new program approvals.” On October 18, 2012, the staff of the Commission (“Staff”) submitted a Recommended Opinion and Order on APS’s REST implementation plan (“ROO”), arguing in part that distributed energy (“DE”, also sometimes referred to as distributed generation, “DG”) was the lowest cost per kWh method for APS to meet its REST obligation. On November 15, 2012, APS responded to the ROO, disagreeing with Staff’s view of DE, and stating the desire to hold technical conferences on what APS alleged were NEM billing impacts and distributed energy cross-subsidies. The Commission ordered APS to hold these conferences in Decision No. 73636, and meetings were held approximately every other week from February 21, 2013, through a summary conference on May 28, 2013. On July 12, 2013, based loosely on the discussion generated during the technical conferences but seemingly largely on APS’s internal views, APS filed the Application.

3 Decision No. 73636 at 2, l:11-12.
4 Id. at 12, l:1-6.
II. NO COSTS ARE BEING SHIFTED; APS’S APPLICATION
INCREASES APS’S REVENUES AT THE EXPENSE OF NEM
CUSTOMERS BUT DOES NOT REDUCE RATES FOR NON-NEM
CUSTOMERS; NO “BOW WAVE” OF UNRECOVERED COSTS
REQUIRES BYPASSING PROPER RATEMAKING PROCESS

No portion of APS’s filing in this docket, nor any previous filing by APS of
which we are currently aware, actually shows that costs that should be paid by NEM
customers are in fact being paid by other, non-NEM customers. All such costs are being
properly recovered by APS pursuant to its last Commission-approved rate case settlement
(discussed in Section III, below). Stated differently, APS has provided absolutely no
support for the existence of the cost shift to other customers that is the fundamental basis
of its filing. This is reason enough for the Commission to reject APS’s filing as deficient.

A. No Non-NEM Ratepayer’s Rates Go Up As A Result Of NEM

Mr. Guldner’s direct testimony is illustrative of APS’s failure to support the crux
of its application. In response to a request to “provide an example of the effect of this
cost shift on non-distributed energy customers,” instead of using an actual example
drawn from APS’s actual customers, Mr. Guldner instead refers to a hypothetical utility
with 100 hypothetical customers and the hypothetical costs of serving them. The failing
of this approach is clear: while potentially interesting as a ratemaking hypothetical, it
does not demonstrate that APS’s non-NEM customers are in-fact subjected to such a cost
shift.

Mr. Guldner’s testimony refers to Mr. Miessner’s testimony as “provid[ing] a
more detailed description of the impacts of distributed energy on non-participating
customers.” Mr. Miessner’s testimony, however, provides no better support for the
alleged cost shift to other customers than Mr. Guldner’s. Mr. Miessner alleges that “For

5 Guldner at 5, l: 4-24.
Net Metering Customers, [the misalignment between the recovery of infrastructure and fixed budget costs and APS’s rate structures applicable to 90% of residential customers] shifts infrastructure and fixed budget costs to customers without solar, raising their rates. This occurs because solar customers still use the electrical infrastructure, but avoid paying for the costs necessary to support that infrastructure, by avoiding variable energy charges. APS and Mr. Miessner ignore the benefits, discussed at length in the technical conferences preceding APS’s Application, which the private investments of NEM customers provide to other APS ratepayers, by reducing the utility’s need to expand its infrastructure. Even assuming that the costs that NEM customers avoid through NEM exceed the benefits that NEM customers provide to APS, its interconnected electrical system, and other customers (an assumption SEIA rejects), Mr. Miessner provides no demonstration of the actual shift in which a non-NEM customer actually pays more than he or she would have paid in the absence of other customers signing up for NEM.

Mr. Miessner’s testimony reveals the actual basis for APS’s filing in this docket: APS believes, as a general matter, that its infrastructure cost recovery mechanism applicable to residential customers is flawed. SEIA rejects this assertion as in any way relevant to NEM. As discussed in Section III, the Lost Fixed Cost Recovery (“LFCR”) mechanism was specifically designed and agreed-to as a critical part of the settlement of APS’s most recent rate case as the preferred mechanism to address any alleged deficiency in APS’s infrastructure cost recovery arising due to energy efficiency and distributed generation (including NEM). Furthermore, as discussed in Section III.E, APS has agreed to, and the Commission has approved, the current rate recovery mechanisms that will

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7 Miessner at 12, l: 17-21.

8 Id. at 11, l: 15-22, “Ideally, these costs should be recovered through either a demand charge, a basic service charge, or other alternative to a kWh charge because the costs are not driven or determined by the customer’s monthly energy consumption.”; Id. at 11-12, l: 27-2, “This assessment demonstrates that the recovery of infrastructure and fixed budget costs is misaligned with the rate structure for approximately 90% of residential customers. These costs are recovered through variable usage charges, but are not variable costs.”
apply until the May 31, 2015 end of the rate case stay out currently applicable to APS.

APS’s application is thus revealed for what it actually is: an attempt to re-litigate issues definitively resolved only a year ago, issues that were exhaustively addressed and collaboratively resolved in a full rate case proceeding. The Commission should not permit APS to subvert a settlement that APS has so-recently agreed to and the Commission has, at great investment of time, effort and expense, reviewed and approved.

B. No Ratepayer’s Costs Go Down Under APS’s Application; APS’s Application Produces Only A Windfall For APS

Besides the total lack of factual support for the cost shift APS alleges, APS’s Application has an even more telling omission: it does not lower the rates paid by non-NEM customers, who are supposedly bearing shifted costs created by NEM. Undeniably, the two options that APS offers the Commission will result in a significant pool of new money being collected and retained by APS from new NEM customers. The “Net Metering Option,” requiring new NEM customers to take service under APS’s ECT-2 tariff rate schedule, will result in increased revenue to APS as such NEM customers are assessed a demand charge. The “Bill Credit Option” proposes to compensate new NEM customers for all of the generation flowing from their solar facility (whether excess generation or subject to onsite consumption) at a short-term wholesale rate (rather than the current NEM “credit” at the retail rate), while charging the NEM customer the full retail rate for all of its usage, even that which is self-supplied by the on-site solar system. This second option also will result in enhanced revenues for APS, equal to the difference between the full retail rate and the wholesale rate times the output of the NEM system.

Under either option, there would be additional funds retained by APS in comparison to the current baseline – those revenues approved in the last rate case. No portion of APS’s Application, however, explicitly proposes to use the additional revenue generated by the two options to lower non-NEM customers’ rates.  

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9 SEIA acknowledges Mr. Miessner’s proposal in the final pages of his testimony to change the calculation of the LFCR mechanism so that the annual LFCR calculation excludes the output of new

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that APS’s Application proposes thus has only one economic effect: generating a windfall for APS.

Further, because APS supports the imposition of increased incentives to make up for the harm it acknowledges its proposed changes to NEM will have on its customers’ ability to economically go solar, all ratepayers’ rates are likely to go up. Incentives levied to encourage the implementation of solar energy are recovered and funded through the REST surcharge on customer bills. Thus, if additional incentives are levied, they will be recovered from all ratepayers through the monthly REST surcharge appearing on their bills.10

Accordingly, it is unclear why APS has chosen to propose two mechanisms to solve a problem that does not actually exist (because no costs are being shifted from NEM ratepayers to non-NEM ratepayers) without actually solving the alleged problem. SEIA can only speculate at this point that APS made a conscious decision not to allocate the additional revenue that its options would produce because doing so would have looked too much like traditional ratemaking. APS is subject to a “stay out” provision in

NEM installations (see Miessner at 34, l: 20-22). This proposal may have the effect of nominally reducing rates for APS’s current customers who pay the LFCR (NEM and non-NEM). APS is insistent, however, that “[t]he LFCR simply does not impact the rate increases caused by the solar cost shift.” Id. at 34, l: 15-16. Regardless, the effect of APS’s LFCR calculation adjustment simply does not match the magnitude of APS’s windfall from either proposed “solution”. According to its first LFCR rate calculation filing, the LFCR applicable to new solar customers will generate additional revenue for APS of just over $0.03 cents/kWh times the output of new solar installations (see APS Application filed January 15, 2013 in Docket No. E-01345A-11-0224, at Attachment C, Schedule 4, line 5, column C and Schedule 3, lines 16 and 18). APS proposes to forego these revenues (thus reducing the LFCR rate) if its proposals to change rate treatment for new solar customers are accepted. APS simultaneously requests that the Commission, in adopting one of its proposals, allow it to extract additional revenue from NEM customers of approximately 10 cents/kWh times the output of new solar installations (see Miessner at 15, l: 9-17). APS acknowledges that the actual additional revenue is within the range of 7 to 11 cents/kWh but is not clear (see Miessner at 30-31, l: 22-5, using the midpoints of the ranges that APS presents), pointing ultimately to the fact that APS’s Application is not based on rate case-quality data (as discussed in Section IV.D). APS presents no proposal to return these higher revenues to non-NEM ratepayers.

10 Application at 14-15; Bernosky at 11, l: 20-23.

11 Bernosky at 12, l: 11-14. Mr. Bernosky raises the possibility of “a third party administrator that assumes control over incentive program management,” but does not provide a mechanism separate from the REST Surcharge for acquiring the funds such an administrator would manage, so it seems reasonable to conclude that the REST Surcharge will be that mechanism.
the settlement of its last rate case and cannot engage in the traditional ratemaking its
Application (if it were properly completed to include an allocation of new cost
responsibility) would require under normal circumstances.

APS seems cognizant of this problem. Mr. Miessner specifically testified as to
why the alleged cost shift shouldn’t be addressed in a rate case. As part of his response,
he asserts that “the proposed solutions do not redesign or reset rates for the general
classes of customers: they are limited to new solar customers and rely on existing
approved rate schedules.” As an initial matter, note that this represents APS’s explicit
acknowledgement that its Application only addresses “new solar customers” and “do[es]
not redesign or reset rates for the general classes of customers.” This is APS’s explicit
acknowledgement that non-NEM customers, whom APS has alleged are suffering under the burden of improperly-shifted costs, will
not receive any rate relief as a result of APS’s Application.

As a secondary matter, however, note that this is APS’s implicit
acknowledgement that, were APS to have actually attempted to resolve the alleged costs
shift by “redesign[ing] or reset[ting] rates for the general classes of customers,” i.e., for a
general class consisting of its non-NEM customers, such a filing would properly have to
be brought in a general rate case. And this, as we know, APS cannot do.

C. Deferring This Issue To APS’s Next Rate Case Will Not Result In A
Bow Wave Of Built Up Unrecovered Costs And An Excessive Rate
Increase

APS expends significant energy to justify its unrequested, legally untethered
Application by asserting the immediacy of the alleged problem: that costs are currently
being shifted from NEM to non-NEM customers and that the Commission must act now

12 Miessner at 23-24.
13 Id. at 23, l: 24-25 (emphasis added).
to address this current cost shift.\textsuperscript{14} APS also asserts that the Commission is boxed in and
may somehow be required to either order or approve negative impacts on NEM
customers because a “[f]ailure to act now... may also preclude the Commission from
grandfathering the use of Net Metering by customers that currently have solar installed
on their homes.”\textsuperscript{15} SEIA does not believe the Commission to be so powerless; indeed, the
Commission has clear plenary authority in dealing with public service companies such as
APS, its programs, tariffs, and rates.\textsuperscript{16}

As discussed above, APS has provided no evidence to support its cost shift claim
(nor, even assuming such a cost shift, does either of APS’s proffered solutions shift the
additional money collected back to other ratepayers). Assuming for the sake of argument
that, instead of the immediate issue APS actually alleges, its concern was in fact that a
“bow wave” of unrecovered costs were being amassed, there is no extant mechanism
(e.g., a regulatory asset or similar method) in place that would permit APS to accrue
amounts that it seems to allege will be under-collected from NEM customers and
somehow impose them, all at once, on non-NEM customers. In fact, the appropriate
agreed-to and Commission-approved mechanism for recovering such under-collections,
the LFCR, contains an annual adjustment cap precisely to avoid this result: documented
under-recoveries that exceed 1% of APS’s total revenues in a year are rolled forward to
the next period in which the adjustment to the LFCR mechanism again cannot exceed this
1% cap.\textsuperscript{17}

As an initial matter, SEIA notes that “Staff testified that adjustments are estimated

\textsuperscript{14} \textit{See, e.g.,} Application at 10 ("The expanding magnitude of this problem requires that action be
taken now, rather than waiting for more costs to accumulate and be shifted to customers without solar. It
would be irresponsible for APS to stay silent as the magnitude of this cost shift-and resulting
consequence to customers-grows. Failure to act now could prompt significant rate increases on customers
without solar.").

\textsuperscript{15} \textit{Id.}

\textsuperscript{16} \textit{Ariz. Rev. Stat. § 40-202(A).}

\textsuperscript{17} \textit{See Decision No. 73183 at 22, l: 10-12.}
to be below that [1%] level, so no deferrals are expected," and that APS has provided
no new evidence that the LFCR mechanism’s cap will be exceeded, so it is reasonable to
conclude that the expected impacts of DG plus EE are still less than the LFCR
mechanism’s 1% cap. Additionally, the structure of the LFCR does not permit the
sudden “significant rate increases on customers without solar” that APS claims will
occur: the LFCR as currently implemented imposes the 1% cap on an annual basis, only
permits recovery up to that level, and requires any amounts in excess be carried forward.
It is thus simply not possible for under-collections due to DG (combined with similar
under-collections from energy efficiency) to produce a rate impact in excess of the
stipulated and approved 1% per year.

If indeed there are costs that are under-recovered from NEM customers and not
satisfactorily dealt with through the LFCR mechanism (which SEIA refutes and a claim
for which APS has provided no factual support), the proper process to deal with such
costs is through the well-established, constitutionally required ratemaking process. In its
next rate case, APS will have the opportunity to demonstrate such alleged costs in a test
year revenue requirement (with known and measurable adjustments), which will be
followed by a cost of service and rate design studies and processes. The Commission
should not, however, allow APS to bypass this well established process due to unfounded
allegations, either of a current cost shift (as APS’s Application states but for which it
provides no support) or of a bow wave of unrecovered costs created by NEM customers
choosing to self-generate pursuant to APS’s Commission-approved program and tariffs.

18 Id., l: 11-12.

19 APS outlined the proper way to set rates for a regulated public utility during the technical
conferences in Tony Georgis (NewGen Strategies & Solutions) presentation: “The Fundamentals of
Utility Ratemaking”. See nFront Consulting, Distributed Energy and NEM Technical Conference
Facilitator’s Report at 69-75 (July 8, 2013).
III. APS'S APPLICATION SEEKS TO RESOLVE ISSUES THAT WERE RESOLVED IN ITS LAST RATE CASE, VIOLATES THE TERMS OF THE SETTLEMENT AGREEMENT IN ITS LAST RATE CASE, AND FURTHER VIOLATES THE COMMISSION'S ORDER ADOPTING AND APPROVING THE SETTLEMENT AGREEMENT

APS's most recent rate case was resolved by a Settlement Agreement ("Settlement Agreement") that was submitted to the Commission in Docket E-01345A-11-0224 and approved in Decision No. 73183 (May 24, 2012). The Settlement Agreement specifically addressed the primary issue that APS now seeks to re-litigate in its Application: how to address the purported mismatch between APS's volumetric energy rate structures and the recovery of fixed infrastructure costs. The Settlement Agreement also contained a "stay cut" provision that barred APS from filing a new general rate case until May 31, 2015. This may explain, but does not legitimize, APS's attempt, via its Application, to (1) avoid proper ratemaking by not allocating the revenue its "solutions" will generate (as, discussed in Section II above) or (2) engage in single-issue ratemaking (as discussed in Section 0 below).

A. Distributed Generation, Which Necessarily Includes NEM, Was Squarely Addressed By The Lost Fixed Cost Recovery Mechanism

When crafting the LFCR mechanism, the signatories to the Settlement Agreement began by identifying the issue they sought to address:

The Signatories also recognize that, under APS's current volumetric rate design, the Company recovers a significant portion of its fixed costs of service through kilowatt-hour ("kWh") sales. Commission rules related to EE and Distributed Generation ("DG") require APS to sell fewer kWh, which, in turn, prevents the Company from being able to recover a portion of the fixed costs of service embedded in its energy rates.\(^{20}\)

\(^{20}\) Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10 (emphasis added).
The Settlement Agreement starts from the premise of a potential rate design issue: a significant portion of APS’s fixed costs are recovered in relation to charges assessed on a volumetric basis (as part of energy rates). This has the potential to cause a rate recovery mismatch. Distributed Generation customers (including NEM customers) purchase fewer kWh from APS, and to the extent that the presence of their net metered systems does not confer benefits in proportion to or in excess of the fixed costs they avoid paying, there is a possibility that an under-recovery of such fixed costs from NEM customers may occur.

As an initial matter, as explained in greater detail in the Crossborder Energy Study, SEIA rejects the assumption that NEM customers do not confer a benefit on APS and its system at least in proportion to and very likely in excess of the fixed costs they avoid. Setting this factual issue aside, compare the Settlement Agreement’s framing of the issue to APS’s description of the alleged problem addressed by its Application:

A typical residential bill is structured so that the charges paid contribute to the system’s costs[.] The components of this average bill reflect each category of costs required to supply electric service to customers. A residential customer’s contribution to these costs occurs through energy usage charges. In other words, the amount of a residential customer’s contribution to fixed costs is based on their energy usage. But Net Metering allows customers to avoid paying for these fixed costs.

The issues are precisely the same. Whether the phrasing is (as in the Settlement Agreement) that “the Company [is prevented] from being able to recover a portion of the fixed costs of service embedded in its energy rates [because] Distributed Generation require APS to sell fewer kWh” or that (as in APS’s Application) “Net Metering allows customers to avoid paying for these fixed costs [because] the amount of a residential customer’s contribution to fixed costs is based on their energy usage,” the issues are the same. APS’s attempt to avoid this correspondence by introducing a newly-alleged cost

21 Application at 8-9.
22 Settlement Agreement Sec. 9.1, attached to Decision No. 73183 as Exhibit A, at 10.
23 Application at 8-9.
shift from NEM to non-NEM customers is unavailing because, as detailed in Section II, there is no such cost shift between such customers.

The mechanism chosen by the signatories to the Settlement Agreement to resolve this potential under-collection issue was the LFCR adjustor. This mechanism is addressed to potential cost-recovery issues with both energy efficiency ("EE") and DG (including NEM) programs. As agreed to by the signatories to the Settlement Agreement, the LFCR mechanism "gives APS the opportunity to recover a portion of the distribution and transmission costs associated with those residential, commercial and industrial customers' verified lost kWh sales attributed to EE and DG requirements." In supporting the Settlement Agreement, APS specifically acknowledged that this was the core function of the LFCR mechanism and agreed to it on this basis.

B. APS Specifically Agreed That The LFCR Mechanism Is The Appropriate Mechanism For Addressing Cost Recovery Issues Related To DG

Shortly after the Settlement Agreement was negotiated, signed and filed with the Commission, APS testified in support of the Settlement Agreement. APS’s testimony offered specific support for the LFCR mechanism. Mr. Snook explained why APS supported the LFCR mechanism (after previously arguing for full revenue decoupling):

APS fully supports the LFCR mechanism proposed in the Settlement Agreement and believes it is a reasonable mechanism to implement to address the immediate concerns related to sales reductions associated with EE and DG. The LFCR mechanism represents a tailored solution to address the unrecovered fixed costs associated with EE and DG - the exact issue at hand.24

Mr. Snook’s testimony is as applicable today as when it was filed just last year: the LFCR mechanism continues to represent a tailored solution to address the

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unrecovered fixed costs associated with EE and DG - the exact issue at hand in APS's Application. Given this, the issue remains, as it was last year, one of determining a mechanism that permits APS to properly recover otherwise unrecovered fixed costs associated with DG. And in this respect, the LFCR mechanism continues to, in Mr. Snook’s words:

provide[] a clear and direct link between EE and DG sales reductions to the amount of uncollected fixed costs to be recovered by [APS, allowing APS] the opportunity to recover its lost fixed costs attributable to EE or DG at any level and pace that the Commission authorizes as a matter of policy.26

APS thus acknowledged that the LFCR mechanism provided a resolution acceptable to APS that would be driven, at appropriate points, by the Commission.

C. The LFCR Mechanism Was Approved By Staff And The Commission As The Preferred Mechanism For Addressing The Issues That APS’s Application Now Seeks To Re-open

In addition to participating in the negotiations that led to the Settlement Agreement, including the LFCR mechanism, the Staff specifically supported the LFCR mechanism itself (indeed, Staff was the original source of the mechanism27). As noted in the Commission’s order approving and directing implementation of the Settlement Agreement, the Staff “believes the LFCR mechanism is narrowly tailored to allow recovery of certain documented and verified fixed costs that were not recovered due to reductions in volumetric sales from Commission-approved EE and DG programs.”28

Again, this same cost recovery issue is precisely the issue that APS’s Application seeks to address. Staff believed last year that the appropriate way to address this rate recovery issue was the LFCR mechanism. And, in its order, the Commission agreed: “We agree

26 Id. at 2, 1,2-6.
27 Decision No. 73183 at 6.
28 Id. at 21. Note that, in addition to the Staff, the Signatories to the Settlement Agreement also concurred in this finding. Id. at 29.
with Staff and the Joint Signatories that the LFCR mechanism is the appropriate mechanism for APS at this time. APS’s Application provides no basis for disturbing this determination.

The LFCR mechanism was thus mutually-agreed by the Settlement Agreement signatories, proposed and agreed to by Staff, and ordered implemented by the Commission. As intended by the signatories, acknowledged by Staff, and approved by the Commission, the LFCR mechanism was and remains the appropriate mechanism to resolve the DG-related fixed cost recovery issues that are the focus of the Application, regardless of APS’s unconvincing allegation of a current cost shift.

D. The LFCR Mechanism Has Just Been Implemented And Should Be Allowed To Function As Agreed By The Settlement Agreement Signatories And Adopted and Approved By The Commission

As described by the Commission in its order approving the Settlement Agreement, the LFCR mechanism requires annual filings and calls for annual adjustments for actually-demonstrable unrecovered costs, with a 1 percent year-over-year cap on adjustments (the excess is deferred to future year adjustments). The LFCR mechanism was thus designed to be flexible and respond to changes in the amount of unrecovered lost fixed costs that APS could actually document. The impressive growth of solar installations in APS’s territory is neither surprising nor a reasonable basis for doing away with or bypassing the LFCR. It is instead an opportunity to test the functioning of the mechanism.

Rather than allowing the LFCR mechanism to work, APS proposes to introducing a new mechanism that (1) has not been subject to full ratemaking analyses (as was the

29 Id. at 40, l:1-6.
30 Id. at 13.
31 Application at 1 (“In January 2009, there were approximately 900 systems installed. As of June 2013, that number has grown to over 18,000 and continues to grow at approximately 500 new rooftop solar systems each month.” ).
LFCR), (2) was not mutually-agreed to by a variety of diverse variety of stakeholders, including the Staff (as was the LFCR), and (3) will need to be properly analyzed by the Commission in order to test both its functioning and its appropriateness for the issue it seeks to address. In stark contrast, the LFCR has already been analyzed and approved by the Commission as “the appropriate mechanism for APS at this time” to address the exact issues covered by APS’s Application. APS should not be permitted to revise rate recovery treatment just as the agreed-to mechanism for such rate recovery is beginning to function, and well before the comparison required by Decision No. 73183 of the LFCR mechanism’s performance to the 1% cap level is made.

APS should further not be permitted to eliminate the newly-active LFCR mechanism with respect to new DG customers, as proposed by Mr. Miessner. The Commission’s order approving the Settlement Agreement contemplated that the LFCR mechanism would, among other features, serve as a research and analysis tool for how to move forward with rate design in APS’s next-permitted rate case. Adjusting the mechanism now – indeed, eliminating the mechanism for DG going forward – would materially alter the results of the Settlement Agreement and reduces the value of the LFCR mechanism to both the stakeholders and the Commission.

E. The Settlement Agreement Prohibits A New Rate Case Before May 2015

If APS’s Application were withdrawn and resubmitted to appropriately allocate the revenue that would result from adoption of either option APS proposes, it would properly be a matter for review in a general rate case. APS cannot, however, file such a rate case. The Settlement Agreement requires that “APS will not file a general rate case

32 Miessner at 34, l: 19-22.
33 Decision No. 73183 at 40, l: 12-15.
prior to May 31, 2015... and that no resulting new base rates will be effective before July 1, 2016."

The testimony attached to APS’s Application fails to acknowledge that the Settlement Agreement and the approving Decision No. 73183 proscribe the Application. Merely asserting that APS believes this issue should be addressed now is an insufficient basis to disturb the barely year-old settlement, and that especially so where there is no significant negative impact from deferring a review of this issue until APS’s next rate case, as discussed in Section III.C, above. Moreover, APS cannot have it both ways: the company cannot claim that “the proposed solutions do not redesign or reset rates for the general classes of customers” while simultaneously claiming to be solving a cost shift being borne by all of APS’s non-NEM customers.

The four year stay-out period was agreed to by the parties and approved by the Commission precisely to provide APS’s customers with rate certainty over that time. APS now proposes to deny a class of customers, new NEM customers, that certainty. APS’s proposed “Grandfathering” regime does not solve this issue. As has been raised by numerous commenters in this Docket thus far, among other failings, grandfathering is expressly non-transferable, effectively serving as a limitation on current NEM customers selling their homes. APS’s proposal further denies rate certainty to the likely significant portion of APS’s current non-NEM customers who were considering investing in a net metered solar system at some point during the stay-out period. They

34 Id. at 11.
35 Miessner at 22-24.
36 Id. at 23.
37 Decision No. 73183 at 41 (“We find that an important ratepayer benefit of the Settlement Agreement is the four year stay out provision. ... APS, Staff and the Joint Signatories believe that the provisions of the Settlement Agreement will allow APS to remain financially stable and able to provide reliable and safe electric service, while preserving the Commission’s flexibility to implement policy as it chooses. We agree.”).
38 APS itself has noted that approximately 500 of its customers per month are currently installing new rooftop solar systems each month. Application at 1.
were led to believe that, as a result of the Commission-approved Settlement Agreement, which contained the LFCR mechanism, the issue of EE- or DG-related unrecovered costs had been addressed through at least July 2016. Now, barely a year later, APS’s Application seeks to re-open this issue. The Commission should reaffirm the certainty the Settlement Agreement was intended (and approved) to provide and reject APS’s Application.

SEIA will briefly address Section 21.3 of the Settlement Agreement in relation to the goal of this filing. For clarity: this filing does not seek to refer to the Settlement Agreement as precedential. Instead, SEIA respectfully requests an order of the Commission “enforcing [the] terms” of the Settlement Agreement as approved and ordered by the Commission in Decision No. 73183, including directing APS to continue to use the LFCR mechanism to address the cost recovery issue that it otherwise seeks to address using one of the options proffered in its Application. The Commission should direct APS to comply with the requirement of Decision No. 73183 “that Arizona Public Service Company shall implement and comply with the terms of the Settlement Agreement,” including the LFCR mechanism, and otherwise maintaining the rates – and rate certainty – that the Settlement Agreement provides.

IV. APS’S APPLICATION CONSTITUTES IMPROPER SINGLE ISSUE RATEMAKING
A. Single Issue Ratemaking Is Impermissible In Arizona

In cases such as Scates v. Arizona Corp. Commission, Arizona courts have determined that "[w]hile the Corporation Commission has broad discretion in establishing rates, it is required by our Constitution to ascertain the value of a utility’s property within the State in setting just and reasonable rates." The goal is first to "determine the ‘fair value’ of a utility’s property and use this value as the utility’s rate base," and then to "determine what the rate of return should be, and then apply that figure to the rate base in order to establish just and reasonable tariffs." It is precisely these careful determinations that the Commission and a variety of other stakeholders worked to make for APS just last year. It is precisely these determinations that APS’s Application now aims to bypass.

Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in response to a change in a single cost item considered in isolation. In Scates, Mountain States Telephone and Telegraph Company sought to increase rates for the installation, moving and changing of telephones, without an examination of the company’s other costs and revenues. As was found to be the case in Scates, considering some costs in isolation might cause the Commission to allow a utility to increase rates to recover higher costs in one area without recognizing counterbalancing savings in another area. For this reason, single-issue ratemaking is not sound regulatory policy.

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42 Id. at 615.
43 Id.
44 Id. at 614 ("The increase affected charges for all installation, moving and changing of telephones within the State of Arizona. It amounted to an annual rise in revenue to Mountain States of approximately 4.9 million dollars, representing about two percent of its entire annual revenue in the state.").
45 Id. ("The Commission approved the increase without any examination of the costs of the utility apart from the affected services, without any determination of the utility’s investment, and without any inquiry into the effect of this substantial increase upon Mountain States’ rate of return on that investment.")
B. What APS Is Attempting To Do Is Single Issue-Ratemaking

Both options proposed by APS’s Application constitute impermissible single issue-ratemaking. The Net Metering Option, which would require new NEM customers to take service under the ECT-2 tariff, is single-issue ratemaking because it increases the rates that a class of customers will pay for service by forcing new NEM customers onto the ECT-2 rate so that they pay its demand charge, which will be assessed against the peak monthly usage of a NEM customer on a per kW basis. This forced shift of rate schedule and resulting increased total charges for new NEM customers will increase the revenue that APS will receive without consideration of all the relevant costs and benefits through a test year revenue requirement study, cost of service analysis, and rate design, as would be accomplished in a general rate case.46 Interestingly, in the technical conferences, APS had Tony Georgis of NewGen Strategies & Solutions present “the Fundamentals of Utility Ratemaking” which outlines the proper way to set rates for a regulated public utility.47 As described in Sections III.E, APS is likely not pursuing this course – the correct method to set rates – despite the fact that good ratemaking principles require it, because APS is forbidden by the terms of the Settlement Agreement from pursuing new rates until May 2015 at the earliest.

The Bill Credit Option, which eliminates NEM as it currently exists and replaces it with a bill credit based on a “sell all, buy all” scheme, will likewise change the amount of revenue that APS collects and the amounts that it pays out in bill credits without consideration of all the relevant costs and benefits through a test year revenue requirement study, cost of service analysis, and rate design, as would be accomplished in a general rate case. Specifically, APS proposes to change the rate at which it credits

46 Note that General Order R14-2-103 requires “with regard to proposed increased rates or charges” that APS submit “specific financial and statistical information required to be filed with a request by a public service corporation doing business in Arizona for a determination of the value of the property of the corporation and of the rate of return to be earned thereon.”

NEM customers for their excess generation from a retail rate to a short-term wholesale rate without rate-case quality data and analyses. APS will enjoy not only significant savings in comparison to what it would otherwise expect to pay over the four year stay-out period, it will also gain the benefit of DG generation at less than its real cost and effectively see increased revenues due to the lower-than-retail credit amounts, in each case without proper consideration of all of the relevant costs and benefits of so drastically revising customer rates.

C. Even If Single Issue Ratemaking Were Permissible, APS’s Application Fails As Proper Ratemaking Because It Does Not Allocate The Additional Revenue That Would Be Generated To Other Customer Classes

APS has made no attempt to allocate the increased revenue that results from either of its proposed NEM options. In a general rate case, such revenue would be properly allocated. If either of the options in APS’s Application is allowed to go into effect, instead of being properly allocated, APS shareholders would receive a windfall. There is certainly no explicit attempt to allocate the revenues to the non-NEM ratepayers that APS claims are currently bearing unfairly-shifted costs.

The Net Metering Option will clearly collect more revenue, in comparison to what APS expects to collect today. APS is not proposing to lower non-NEM customers’ rates as a result of collecting this additional revenue (except for the small reduction in LFCR costs discussed in note 9 above). Given this lack of allocation, APS presumably intends to keep the revenue for itself. If these customers were in fact unfairly paying “more” than they would be absent the existence of NEM, APS’s Application provides no relief to them. They will continue to pay “more” than APS has alleged is their fair share and in addition NEM customers will pay more than they currently pay. The same result obtains with respect to the Bill Credit Option. Significant additional revenue will be generated, but there is no attempt to allocate this revenue to lower non-NEM customers’
rates. In each case, the increased revenue generated is unallocated and would presumably be retained by APS shareholders. In addition, if APS’ proposed incentives are instituted then all ratepayers will see rates increase as a result of an increased REST Surcharge.

D. Technical Conferences Are An Inadequate Basis For Changing Rates Without A Rate Case

As part of the Commission-ordered technical conferences that preceded APS’s Application, Tony Georgis of NewGen Strategies & Solutions summarized the elements of standard utility ratemaking. In addition to the revenue requirement determination that the Arizona Constitution demands, there is a requirement to allocate costs appropriately across function areas (e.g., production, transmission, distribution), classify those costs (e.g., demand, energy, customer costs), and then to allocate those costs among rate classes. With this as background, the utility then designs rates. At best, the technical conferences produced information that could be introduced in a general rate case assessment to discuss and determine the impact of NEM. Such information would be useful solely in the context of all issues associated with determining and allocating the utility’s total costs and then designing appropriate rates. APS’s Application seeks to avoid this necessary work.

Indeed, APS arguably acknowledges that the technical conferences did not produce results on which the Commission can reasonably rely in moving forward on this issue in isolation. In particular, even though “there was disagreement on the amount and type of infrastructure that DE defers,” and even though “[t]here was no clear consensus on how DE and net metering should be evaluated when developing utility programs, and... what costs and benefits should be included when performing such evaluations,”

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49 Bernosky at 10, l: 12-13.
APS proposes to present the Commission with two APS-preferred solutions, based on
APS’s determination of the costs and benefits, and asks the Commission to choose. Note
also that the options that APS presents to the Commission lead to vastly different
outcomes: assuming for argument’s sake that APS’s estimates are correct, a decrease
from the current 14-16 cents/kWh savings to 6-10 cents/kWh for the Net Metering
Option or to approximately 4 cents/kWh for the Bill Credit Option. This significant
difference between these results make obvious that the Technical Conferences did not
produce rate case-quality data and that they cannot be relied on for the Commission to
make a rigorous and reasoned judgment in this matter. The Commission should thus
reject APS’s invitation, especially so where moving forward on APS’s Application would
constitute single-issue ratemaking and where the venue APS should properly look to in
order to determine “what costs and benefits should be included when performing such
evaluations” of NEM is a general rate case, a venue currently unavailable to APS.

The SAIC Energy, Environment and Infrastructure, LLC 2013 Updated Solar PV
Value Report (“SAIC Report”) that APS relies on as further support for its attempt to
engage in single-issue ratemaking is likewise unavailing. SEIA disagrees with its results,
of course, but leaving that aside for the moment, even if its results were not contested, the
SAIC Report is merely a datapoint that could be used in a general rate case to inform
appropriate ratemaking. It simply does not contain rate case-quality cost of service
information and the other elements of a proper rate design study and thus cannot be used
to change rates, as APS proposes to use it in the Application. To be clear, SEIA
acknowledges that a study that SEIA commissioned Crossborder Energy to perform titled
The Benefits and Costs of Solar Distributed Generation for Arizona Public Service
(“Crossborder Energy Study”), based as it is in on elements of the data that the SAIC
Report analyzes, necessarily carries this limitation as well. The point is that it is APS,

51 Miessner at 30-31, l: 22-5.
52 Decision No. 73183 at 11.
and not SEIA, that is attempting to use the SAIC Report as the basis for a rate change instead of engaging in a rate case. This is necessarily improper, and the Commission shouldn’t allow APS to bypass good ratemaking principles in this manner.

V. NO LEGAL OR REGULATORY AUTHORITY, NOR COMMISSION REQUIREMENT, ALLOWS FOR THE RATE CHANGES PROPOSED IN APS’S APPLICATION

APS’s Application is unmoored from state law or regulations and simply has not been requested or required by the Commission. No statutory authority or regulation is cited by APS as the basis for its Application. SEIA believes the proper legal standards are those provided for a rate case, as described in Scates. APS is, of course, forbidden to file such a rate case, leaving the Commission to address APS’s authority-free and nearly standard-less filing.

Further, APS can find no support in the Commission’s measured response to APS’s various filings in Docket No. E-01345A-12-0290 to give APS the authority to make the proposed rate change proposed in the Application. Indeed, the Commission there merely authorized APS to hold the technical conferences; there was no invitation for the Application:

> APS shall conduct a multi-session technical conference to evaluate the costs and benefits of Distributed Renewable Energy and NEM as proposed in the APS comments to Staffs Recommended Opinion and Order that were docketed on November 15, 2012, and as recommended by Staff in Finding of Fact No. 41.

The Commission certainly knows how to require filings like the Application, if and when it desires them. For example, in the very same order, the Commission ordered APS to conduct a study on the REST surcharge and to file proposed changes based on the study:

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53 Scates at 614.

54 Decision No. 73636 at 27.
Arizona Public Service Company shall conduct a study of how to expand the current three customer categories for the REST surcharge into more distinct categories and that Arizona Public Service Company shall file any proposed changes from the customer category changes study in its 2014 REST Plan.\(^{55}\)

The Commission has the authority and knows how to order a subsequent filing when it wants one. APS has failed to support its most basic claims of a cost shift; the Commission should weigh this failing when considering whether it might be appropriate to reject APS’s filing as outside the bounds of what the Commission authorized in Decision No. 73636.

VI. COMMISSION SHOULD REJECT THIS FILING ON ITS FACE

The ACC has plenary authority in dealing with public service companies.\(^{56}\) In addition to this general grant of authority, the Commission has specific authority to reject APS’s attempted violation of the Settlement and Decision No. 73183, and instead to order APS’s compliance.\(^{57}\) SEIA hereby petitions the Commission pursuant to Ariz. Rev. Stat. § 40-246(A) to address, and otherwise protests: (1) APS’s attempt to subvert the Constitutionally-required investigation of its rate base and otherwise engage in proper ratemaking procedure, (2) APS’s attempt to engage in single-issue ratemaking, (3) APS’s failure to comply with those elements of the Settlement Agreement and Decision No. 73183 that require that APS use and defend the LFCR mechanism as the appropriate mechanism for resolving any alleged under-collection of fixed costs due to DG (which necessarily includes with respect to NEM), and (4) APS’s failure to comply with those elements of the Settlement Agreement and Decision No. 73183 that require that APS stay-out from filing a rate case until May 2015. The Commission should order such relief

\(^{55}\) Id. (emphasis added)


as it deems appropriate for each of the foregoing issues and should, in addition, enter an
order dismissing the Application in its entirety and requiring APS to address the issues
discussed in the Application, if they are to be addressed at all, only in the filing of APS’s
next general rate case, after May 31, 2015.

RESPECTFULLY SUBMITTED this 20th day of August, 2013.

[Signature]

Court S. Rich
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[Signature]

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