The Solar Energy Industries Association ("SEIA") hereby replies to Arizona Public Service’s ("APS’s") Response to SEIA’s Motion to Dismiss ("Response"), filed in this Docket No. E-01345A-13-0248 (the "Docket") on September 9, 2013. APS’s Response was an opportunity for APS to correct, or at least address, the significant flaws.

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.
in APS’s Application for Approval of Net Metering Cost Shift Solution filed on July 12, 2013 (“Application”) and entered into the Docket. Several of these flaws were catalogued in SEIA’s Protest and Motion to Dismiss, filed in this Docket on August 20, 2013 (“Motion”). Instead, APS’s Response reflects only misunderstanding and mischaracterization of SEIA’s Motion and, more importantly, continues the effort to avoid APS’s obligations under the Commission-approved settlement agreement of its last rate case with legal and factual sleights of hand. APS makes no attempt to address the fundamental flaw of APS’s Application: “APS has provided absolutely no support for the existence of the cost shift to other customers that is the fundamental basis of its filing.”

Without such factual demonstration, the Commission should dismiss the Application.

I. SEIA’S MOTION TO DISMISS IS PROCEDURALLY PROPER AND COMPLETE

As a threshold matter, SEIA’s Motion is procedurally proper and in compliance with both the Commission’s rules and the Rules of Civil Procedure for the Superior Courts of Arizona. The Rules of Civil Procedure require that a motion “be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” SEIA’s written Motion submitted in this Docket satisfies all three requirements.

The relief sought is clear: SEIA seeks dismissal of APS’s Application and an order of the Commission that the subject matter of the Application be addressed, if at all, in APS’s next rate case. In addition, SEIA requests an order of the Commission

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2 Motion at 4.
3 R14-3-106(K) (requiring compliance “insofar as practical” with the Rules of Civil Procedure for the Superior Courts of Arizona in motions practice before the Commission).
5 Motion at 26, l:1-4.
enforcing the Settlement Agreement, submitted to the Commission in Docket E-01345A-11-0224 and approved in Decision No. 73183 (May 24, 2012), by which APS’s most recent rate case was resolved (“Settlement Agreement”), “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 particular grounds for granting this relief are equally clear. As described in SEIA’s Motion:

(1) APS has failed to meet even the minimal standard of providing facts sufficient to determine how the cost shift it alleges occurs, and the facts it has provided belief that such a cost shift does in-fact occur;

(2) The issues APS raises were squarely addressed in its last rate case, the resulting Settlement Agreement and the Commission order approving the Settlement Agreement. The Settlement Agreement and approving order should be enforced, and such enforcement serves as a bar to APS’s incomplete, unsupported Application;

(3) APS’s Application constitutes impermissible single issue ratemaking, prohibited in Arizona as established in Scates v. Arizona Corporation Commission; and

(4) There is no valid legal or regulatory authority that would permit APS to proceed in the face of these failings.

On this last point, APS has attempted in its Response to offer the ex post rationale of

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6 Id. at 18, l: 7-17.
7 See id., Section II.
8 See id., Section III.
9 See id., Section IV.
10 See id., Section V.
A.R.S. § 40-250(B) as the legal basis for its filing.\textsuperscript{11} APS provides no support for its new assertion that A.R.S. § 40-250(B) allows for its proposed rate schedule changes in either the Application (the Application was filed without reference to legal authority of any kind) or in the Response. Certainly a proposal like the Application, which seeks to move and lock a particular class of customers into a particular rate schedule (here, requiring new solar customers to take service under the ECT-2 schedule, via one of APS’s proposed “solutions” to the alleged cost shift), requires a more fulsome explanation of precisely how A.R.S. § 40-250(B) might apply. Arguably, A.R.S. § 40-250(A) appears to be the proper legal standard because APS is proposing to “alter [a] classification, contract, practice, rule or regulation to result in [an] increase” of rates and charges that a class of customers will pay. The undeniable goal of APS’s Application is to make new NEM customers pay more to APS through applicable rate schedule. In any event, the Commission should not accept this bald assertion of legal basis. Lacking any such legal and factual explanation, it is simply unreasonable that APS invokes the statute to do what it claims to be able to do here, i.e., shift a class of customers from one rate schedule to another by fiat in order to recover and retain greater revenues for APS.

II. APS MUST BEAR THE BURDEN OF PROOF TO SUPPORT ITS APPLICATION AND IT HAS FAILED TO DO SO

APS’s Response claims that SEIA’s Motion is deficient because it "mak[es] factual assertions regarding the existence of the cost shift without any supporting testimony or other evidence."\textsuperscript{12} The characterization is diametrically opposite where the Commission’s rules actually place the burden of proof with respect to APS’s Application: it is APS, not SEIA, that was required in the Application to present “the facts upon which

\textsuperscript{11} Response at 9, l:12-17. APS has also offered A.R.S. § 40-249 as a possible basis for its filing but here again provides absolutely no justification by which the Commission might determine whether the assertion of this provision is proper.

\textsuperscript{12} Id. at 1.
the application is based." As discussed at length in SEIA’s Motion, APS failed to do so.

Far from ignoring APS’s testimony attached to its Application, SEIA not only reviewed it but cited to it in its Motion. As noted in SEIA’s Motion, Mr. Guldner’s testimony offers no examples of cost shifting, only hypotheticals, and then references Mr. Miessner’s testimony as supposedly containing a detailed description of the alleged cost shift. As also discussed in SEIA’s Motion, however, Mr. Miessner’s testimony “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.”

In lieu of correcting these obvious deficiencies, the Response simply restates APS’s unsupported assertions. Instead of clearly identifying the cost shift that APS alleges that is the fundamental basis of the Application, the Response maintains only that “[t]he Application includes sworn testimony identifying how Net Metering will result in costs being shifted to non-solar customers in the form of higher rates.” Tellingly, APS does not cite to any portion of its testimony in support of this assertion. APS cannot point to any testimony because, as discussed in SEIA’s Motion, no portion of APS’s testimony actually identifies the alleged cost shift. APS’s Response goes on to offer further citation-free assertions that “[a] review of basic regulatory principles and APS’s filed rate schedules provides all information needed regarding how costs are shifted to

13 R14-3-106(F).

14 This is APS’s claim, see Response at 1, notwithstanding that even a casual reading of SEIA’s Motion renders this claim clearly false.

15 Motion at 4, l: 14-24.

16 Id. at 5, l:11-13; see also Id. at 4-6.

17 Response at 2 (emphasis added).

18 See Motion Section II, at 4-10.
non-solar customers.” These vague references are legally and factually worthless and do not provide the Commission with an adequate basis on which to approve APS’s rate increase proposed for new NEM customers. Whether or not these unspecified principles or rate schedules contain evidence of the cost shift APS alleges cannot be determined based on what APS has filed in this docket; what is clear and what APS makes no substantive effort to dispute is that support for the alleged cost shift does not appear in the only place that matters, APS’s Application and attached testimony.

III. THE LFCR MECHANISM IS THE TAILORED SOLUTION TO UNRECOVERED FIXED COSTS ASSOCIATED WITH DISTRIBUTED ENERGY, AS INTENDED BY THE COMMISSION-APPROVED SETTLEMENT AGREEMENT

In service to its unsupported assertions that “[c]ertain costs are currently being shifted to customers without solar through approved rate adjustor mechanisms,” APS offers a series of vague references to various Commission-approved mechanisms. The first of these is the lost fixed cost recovery (LFCR) mechanism, discussed at great length in SEIA’s Motion. As an initial matter, SEIA questions the talismanic significance that APS seems to ascribe to its determination that the Settlement Agreement itself did not specifically reference “net metering” in relation to the LFCR. As APS’s own supporting witness stated at the time APS filed the Settlement Agreement, the LFCR mechanism is the “tailored solution to address the unrecovered fixed costs associated with EE and DG – the exact issue at hand.” Net Metering is part and parcel with the installation of

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20 Id. at 2, l: 13-15.
21 Id. at 2-3.
customer-sited distributed generation, in particular the residential customers who are the target of APS’s Application; indeed, for residential customers, installation of a solar distributed generation system and its interconnection with APS’s electrical system requires that the customer elect either Rate Rider Schedule EPR-6 (Net Metering) or Rate Rider Schedule EPR-2 (addressing monthly purchases of excess generation). It is hollow for APS to claim that the issues addressed by the Settlement Agreement-mandated LFCR mechanism – how best to address the purported mismatch between APS’s volumetric energy rate structures and the recovery of fixed infrastructure costs, particularly in relation to distributed energy – are somehow different from the issues raised by APS’s Application.

Given this, as described in SEIA’s Motion, the LFCR mechanism should be given a reasonable opportunity to do the work that the Settlement Agreement signatories, the Commission’s staff, and the Commission itself approved it to do. In particular, SEIA notes that not only are any potential cost shifts from NEM to non-NEM customers attributable to the proper functioning of the LFCR capped, but the LFCR is currently recovering at a rate well less than the 1 percent cap.

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24 See Motion, Section III.

25 See id. Section III.A, starting at 11, l:17.

26 See id. Section III.C and III.D, starting at 14, l:11.

27 Id. at 15, l:13-16.

28 Decision No. 73732 (February 20, 2013) at 5, l:3-4 (allowing an LFCR rate of 0.2%). Note that, even if the Commission had allowed APS’s preferred 0.2892% rate, the LFCR would still be recovering well under the permitted 1 percent cap.
IV. THE ALLEGATIONS RAISED BY THE APPLICATION ARE BEST-
ADDRESSED IN A RATE CASE, BUT THE SETTLEMENT
AGREEMENT BARS APS FROM FILING SUCH A RATE CASE

In addressing the LFCR mechanism, APS makes passing references to other
Commission approved-adjustors as related to the alleged cost shift, specifically the
Transmission Cost Adjustor, Demand Side Management Adjustment Clause and Power
Supply Adjustor. This marks the first time in this Docket that APS has referenced other
adjustors, and the reference validates something SEIA noted in its Motion: “APS
believes, as a general matter, that its infrastructure cost recovery mechanism applicable to
residential customers is flawed.” The extent of APS’s rate recovery mechanisms that it
now describes as related to the alleged cost shift leads to only one reasonable conclusion:
any such cost shift, if actually found to occur, would have to be addressed in a full rate
case proceeding, and resolved after due assessment of all of the costs and benefits that are
at issue, across customer classes.

The Settlement Agreement and the Commission’s approving order bars this path
to APS until May 31, 2015 at the earliest. The Commission should not accept APS’s
attempt to avoid this limitation via the Application and unsubstantiated reference to
A.R.S. § 40-250(B). Instead, the Commission should issue an order requiring APS to
address the issues raised in the Application, to the extent there are actionable issues, only
in the context of its next rate case. Only in such a rate case will the Commission have the
full suite of regulatory tools available to it (as well as those available to other stake-
holders involved in that process) to fully and fairly assess the costs and benefits of NEM.

29 Response at 2-3.
30 Motion at 15-16.
31 Decision No. 73183 at 11.
SEIA further notes that this is nothing more or less than what Scates v. Arizona Corporation Commission requires.\(^32\) Moreover, it is simply wrong to assert that APS’s Application will not raise its customers’ rates. The plain, undeniable objective of APS’s Application is to have new NEM customers pay more for electric service. As described in detail in SEIA’s Motion, both the Net Metering Option and the Bill Credit Option will increase rates to be paid by a single class of customers (new NEM customers)\(^33\) without an investigation of the costs and benefits of serving them in the context of the costs and benefits of serving other customers (in particular, the non-NEM customers that APS claims are harmed). Scates does not permit what APS’s Application proposes to do, the self-servingly limited analysis in APS’s Response notwithstanding.

V. CONCLUSION

The Response reveals APS’s Application for what it is: a poorly-conceived, unsupported attempt to evade the resolutions reached in and limitations of APS’s last rate case. For the reasons set forth in SEIA’s Motion and this Reply, the Commission should reject APS’s Response and its Application as both deficient and impermissible under Arizona law and this Commission’s orders, and order dismissal of APS’s Application. The Commission should further require that APS 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.

\(^32\) See Motion Section III.A, starting at 19, l:1.

\(^33\) See id. Section III.B, starting at 20, l:1. SEIA also reminds the Commission that, if the incentives that APS proposes in the Application are instituted, then all ratepayers will see rates increased as a result of an increased REST Surcharge.
RESPECTFULLY SUBMITTED this 16th day of September, 2013.

[Signature]

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