The Alliance for Solar Choice ("TASC") respectfully submits these comments on the Utilities Division Staff Recommended Order issued on October 1, 2013 ("Recommended Order"). For the reasons set forth below, TASC urges the Commission to accept the recommendation of Utilities Division Staff to take no action on APS's Application and defer the matter for consideration during APS's next rate case.

APS clearly did not even concern itself with possible solar adoption rates in its last rate case. If it had, it could have made its proposals in that rate case when all of the competing priorities could fairly be considered and the parties had all appropriate information on APS's cost of service. However, APS did not even identify net metering as a potential issue that needed to be
addressed during the rate case that just concluded, bringing into question how much of an
emergency the current limited solar penetration really is to APS or its ratepayers.

Bringing these issues to this Commission, late and outside a rate case, as APS has done,
has invited a confusing proliferation of conflicting proposals, none of which rest on a necessary
foundation of evidentiary support. The result is that the weight of evidence in this proceeding
clearly demonstrates support for no proposal other than Staff’s well reasoned recommendation to
take no action at this time and require APS to raise this issue in its next general rate case.

If the Commission feels that immediate action is needed, TASC encourages the
Commission to accept the well-reasoned recommendation of Utilities Division Staff to develop a
common set of assumptions regarding the costs and benefits of net metering, which APS can then
use to propose an appropriate charge or credit in its next general rate case.

I. BACKGROUND

On August 21, 2013, Administrative Law Judge (“ALJ”) Teena Jibilian granted TASC’s
motion to intervene in this docket. As stated in TASC’s motion, TASC’s member companies
represent the majority of the nation’s rooftop solar market and include SolarCity, Sungevity,
Sunrun, Solar Universe, Verengo Solar and REC Solar. These companies are important
stakeholders in Arizona’s Renewable Energy Standard and net metering programs and are
responsible for thousands of residential, school, church, government and commercial solar
installations in Arizona. TASC’s member companies have brought hundreds of jobs and many
tens of millions of dollars of investment to Arizona’s cities and towns.

This proceeding was opened on July 12, 2013, when Arizona Public Service Company
(“APS”) filed its Application for Approval of Net Metering Cost Shift Solution (“Application”).
With its Application, APS proposes to undermine the financial basis for residential customers to
self-supply their electric power needs with solar systems using the Commission’s net metering rules. APS proposes to thwart the intended balance of the Commission’s net metering rules by proposing two alternatives, either of which would have punitive effects on Arizona’s residential solar market. The first alternative, which APS calls a “Bill Credit Option,” would completely deny residential customers access to the net-metering rules, forcing customers to instead sell all output from onsite solar systems to APS under wholesale arrangements that substantially increase a customer’s tax liability and reduce solar savings. The second alternative, which APS calls a “Net Metering Option,” would create a new classification of residential customers that would be allowed to net meter, but only if a customer takes retail service under a specific APS tariff that will increase APS’s revenue and reduce solar savings compared to tariff options that would otherwise be available to members of the residential rate class.¹

TASC and a number of entities intervened in this docket. See October 4, 2013, Procedural Order issued by ALJ Jibilian. Several parties, TASC included, recognized the devastating impact APS’s self-serving proposals would have on the Arizona residential solar market and therefore protested APS’s proposals. See Recommended Order p. 1. TASC’s protest urged the Commission to reject APS’s alternatives and instead create a system-benefit credit to compensate solar customers for the myriad benefits they provide to the APS system and other ratepayers.²

Separately, TASC submitted a legal memorandum from Skadden, Arps, Slate, Meagher & Flom

¹ APS proposes that customers that submit a net metering application and signed contract by October 15, 2013 would be grandfathered under existing arrangements.
² TASC’s proposal relies on a Crossborder Energy assessment of how demand-side solar will impact APS ratepayers. The Crossborder Energy analysis was commissioned by SEIA. See SEIA Protest and Motion to Dismiss, p. 23, l. 14 to p. 24, l. 3. The Crossborder analysis concludes that the benefits of rooftop solar in APS’s system exceed the costs, such that new rooftop solar will not and does not impose a financial burden on non-participating ratepayers. In fact, the study finds that the benefits exceed the costs by more than 50% with a
LLP, which explained how the "Bill Credit Option" would jeopardize Arizonans' access to the federal residential tax credit and substantially increase personal tax liability. See August 15, 2013, TASC Public Comment Letter.

On August 20, 2013, SEIA filed a motion to dismiss the APS Application, observing that there is no statutory or regulatory authorization for the APS Application, which represents an inappropriate attempt at single-issue ratemaking outside a general rate case. On August 29, 2013, the Interstate Renewable Energy Council, Inc. ("IREC") supported SEIA's motion and urged the Commission to reject APS's Application and defer discussion to a future rate case. TASC filed a joinder to SEIA's motion on August 30, 2013, agreeing that a rate case is the appropriate place for APS to make its proposals. In addition, thousands of Arizonans have opposed APS's Application through letters sent to the Commission. On September 23, 2013, TASC submitted a petition signed by 19,559 Arizonans, more than the total number of APS customers with solar installations, which urges rejection of APS's proposals.

A July 15, 2013, letter from Commissioner Pierce asked Staff to make recommendations on the APS proposals. On September 30, 2013, the Commission's Utilities Division Staff issued a Recommended Order. In the Recommended Order, Staff recommends that (1) the Commission reject APS's proposals and (2) the issues raised by APS should be addressed in APS's next general rate case. TASC agrees. Staff also proposes two alternatives, which TASC addresses below.

II. TASC AGREES WITH STAFF'S RECOMMENDATION THAT THE COMMISSION TAKE NO ACTION ON THE APPLICATION AND DEFER THE MATTER FOR CONSIDERATION DURING APS'S NEXT RATE CASE.

benefit/cost ratio of 1.54. Based on APS's projection of 431,000 MWh of incremental solar DG in 2015, the net benefits could amount to $34 million per year for all APS ratepayers. Staff's Recommended Order is in response to a July 15, 2013, correspondence from Commissioner Pierce.
Staff notes that “any cost-shift issue created by net metering is fundamentally a matter of rate design,” and “[t]he appropriate time for designing rates that equitably allocate the costs and benefits of net metering is during APS’s next general rate case.” See Recommended Order at pp. 6-7. Moreover, “the objective value aspects of DG to the APS system can best be determined in the context of a general rate case when all of APS’s costs can be considered.” Id. at p. 6. Once the costs and benefits of residential rooftop solar have been adequately quantified and valued, the allocation of costs and benefits can be equitably distributed among customers as a matter of rate design. Id.

TASC strongly agrees that a general rate case is the right forum to address classifications, charges and credits for an important and growing segment of APS customers. In a rate case, APS will be required to submit a range of information on its fair value of assets used to provide service and the cost of serving customers with different service characteristics. In a rate case, parties will be able to litigate the numerous factual disputes regarding APS’s cost of serving residential solar customers through evidentiary hearings, where the Commission has the power of a court to compel the attendance of witnesses and the production of evidence. Ariz. Const. art. XV § 4. The production of such evidence is a fundamental prerequisite to determining whether any proposed rate, charge or classification is just and reasonable. Such procedural safeguards and evidentiary standards have been entirely lacking from the instant proceeding, rendering any decision issued in this proceeding legally insufficient.

A rate case will also allow the Commission and stakeholders to consider a broad range of ideas for modernizing APS rates in response to changing consumer preferences, such as a system-benefit credit, minimum bills, or other rate design options that only can be implemented in a rate case. The Recommended Order concurs: “the Commission has more options available
within a rate case than it has outside a rate case.” Recommended Order at p. 10. By comparison, the Commission’s options in the current docket are limited. In fact, only one of the proposals offered in this proceeding (Staff Alternative 1) could be implemented in this docket for reasons we discuss below.

The other proposals offered in this proceeding cannot be implemented. The Commission has not determined the fair value of APS property necessary to establish just and reasonable rates, charges and classifications under the Arizona Constitution. Moreover, the record is inadequate for the Commission to discharge its statutory duty to ensure that rates, charges and classifications are just and reasonable. Finally, the Commission’s rules reflect that rates, charges and classifications should be determined in a general rate case.

A. The Commission Has Not Determined the Fair Value of APS Property Necessary to Establish Rates, Charges and Classifications Under the Arizona Constitution.

The Commission was created as a bulwark to protect consumers from precisely the sort of overreaching by public service corporations that APS demonstrates with its inappropriate attack on consumer self generation under the Commission’s net metering rules. See Scott Engelby, Deborah, The Corporation Commission: Preserving Its Independence, Arizona State Law Journal [Ariz. St. L.J. 20:241, pp. 242.243]. To discharge this responsibility, the Arizona Constitution grants the Commission exclusive authority to determine just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected.4

Arizona courts have held that the Commission cannot discharge its constitutional

4 “The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations and orders, by which such corporations shall be governed in the transaction of business within the State, * * *.” ARIZ. CONST. art. XV § 3.
responsibilities solely by considering the profits of the corporation, which would increase under
the two proposals offered by APS, but rather the Commission must also take into account the
effect of its determinations upon persons to whom services are rendered. Phelps Dodge Corp. v.
Arizona Electric Power Coop., Inc., 207 Ariz. 95, 107 (2004). The consideration of consumer
interests fulfills the protective role the constitutional framers envisioned in creating the
Commission and clothing it with exclusive power to determine rates and classifications. Id.

In determining reasonable rates and classifications, Article 15, Section 14 of the Arizona
Constitution requires the Commission to determine the fair value of property owned by the
Co., 113 Ariz. 368, 370 (1976). In monopolistic markets, fair value has been the factor by which
a reasonable rate of return was multiplied to yield, with the addition of operating expenses, the
total revenue that a corporation should earn. 207 Ariz. at 105; Scates v. Arizona Corp. Comm’n,

Applying these constitutional requirements, Arizona’s courts have determined that the
Commission may not set rates piecemeal, untethered from a determination of the fair value of
utility property used to provide service. In Scates v. Arizona Corp. Comm’n, the Arizona Court of
Appeals reversed and remanded a Commission decision in a situation similar to this one. In
Scates, the Commission increased rates for Mountain State Telephone and Telegraph customers
that installed, moved or changed a telephone after the date of the tariff increase approved by the
Commission. Id. at 536. The increase applied to a limited number of customers. Id. at 534. The

5 “The Corporation Commission shall, to aid it in the proper discharge of its duties,
ascertain the fair value of the property within the State of every public service corporation
doing business therein; and every public service corporation doing business within the State
shall furnish to the Commission all evidence in its possession, and all assistance in its power,
requested by the Commission in aid of the determination of the value of the property within
Commission based the increase on the utility’s costs of providing only certain services and did not consider all of the utility’s costs when it approved the raise. *Id.* at 533, 536. The elements of cost that it did consider were not easily segregated but rather included all of the operating expenses underlying a larger subset of services. *Id.* In reversing the Commission’s approval of the rate increase, the Court held that the Commission “was without authority to increase the rate without any consideration of the overall impact of the rate increase upon the return of Mountain States, and without, as specifically required by our law, a determination of Mountain States’ rate base.” *Id.* at 537.

The APS Application violates the same legal principles that were at issue in *Scates.* APS has proposed new charges on a subset of customers that would not otherwise face such charges. APS claims the new charges are needed to recover cost of fixed infrastructure that is used to provide service to customers generally. These costs are not easily segregated but rather include all of the operating expenses underlying a large subset of services. Under *Scates,* this is precisely the type of situation in which a determination of the fair value of APS property is a necessary prerequisite to establishing any new rate, charge or classification. Yet, APS has not submitted information sufficient to allow a determination of the fair value of its property, nor has APS provided information sufficient to allow parties to determine its cost of serving residential solar customers. Thus, the minimum constitutional requirements for establishing new rates, charges and classifications have simply not been met in this proceeding.

Article 15, Section 3 of the Arizona Constitution, which grants the Commission its ratemaking authority, provides that classifications, like charges, must be “just and reasonable”. *Ariz. Const.* art. XV § 3. Although the APS-proposed “Net Metering Option” does not create the State of such public service corporation.” *Ariz. Const.* art. XV §14.
new rate schedules or new charges, it does create a new classification of residential customers
that would not have the same rights and privileges as other members of the residential rate class.
Under the unambiguous language of the Arizona Constitution, this proposal must be held to the
same standard as a proposed rate increase. Accordingly, APS’s proposed treatment of its
customers must be addressed in a rate case where APS’s cost of serving the customers that APS
has proposed to single out for new charges can be considered.

No determination has been made regarding the fair value of APS’s property in this
proceeding, and there is scant information regarding APS’s cost of service generally, let alone its
cost of serving residential solar customers specifically. Without this information, any
determination arising from this proceeding regarding the reasonableness of rates, charges or
classifications does not comport with Arizona’s constitutional requirements.

B. The Record Is Inadequate for the Commission to Discharge Its Statutory
Duty to Establish Just and Reasonable Rates, Charges and Classifications.

In accord with the Arizona Constitution, Arizona’s public utilities statutes (A.R.S. §§ 40-
201 to 495) require classifications as well as rates and charges to be just and reasonable. A.R.S §
40-250 states 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 therefore,
except upon a showing before the commission and a finding by the commission that an increase
is justified.” (Italics added.) If a proposed change to a rate, fare, toll, charge, or classification
would increase customer charges and utility earnings, a hearing is required to determine the
propriety of the proposed charge or change in classification. A.R.S. §§ 40-250 to 151.

Given the numerous issues of disputed fact in this proceeding, any proposal to modify the
rates, charges and classifications of APS customers must be subject to evidentiary hearings of the
sort available in a rate case, where parties are under oath and subject to cross-examination. That
has not happened in this proceeding. Without hearings to try the many issues of disputed fact, the
record is inadequate to support the Commission’s constitutional and statutory responsibility to
determine just and reasonable rates and classifications.

Moreover, in addition to requiring that rates and classifications for utility service be just
and reasonable, A.R.S. § 40-332(B) requires that self-generators be provided access to
distribution service under rates, terms and conditions of service that are just and reasonable. The
Legislature’s choice of the term “self-generators” in this statute clearly implies that customers
must be allowed to self generate electricity and therefore cannot be forced to sell all output from
onsite generation to a utility. However, that is what APS inappropriately proposes with its “Bill
Credit Option.” No determination has been made, and no factual basis has been provided, for
determining just and reasonable rates that should be charged to residential net-metered customers
for their use of the APS distribution system. Given the insufficient factual record in this
proceeding, including the lack of rate-case quality information regarding APS’s cost of service
generally and its cost of serving residential solar customers specifically, a just and reasonable
result cannot be determined. Thus, there is simply no basis for approving any of the various
charges that have been proposed by APS, Staff and other parties.

It is clear that these statutory requirements, which have not been met, apply in this
proceeding. In responding to SEIA’s Motion to Dismiss, which asserts there is no statutory or
regulatory authorization for the APS Application, APS states that its Application is expressly
permitted by A.R.S § 40-250(B). APS Response to SEIA’s Motion to Dismiss, p. 9, ll. 11-18

6 A.R.S. § 40-332(B) (“Every public service corporation shall allow every electricity
supplier and self-generator of electricity access to electric transmission service and electric
distribution service under rates and terms and conditions of service that are just and
reasonable as determined and approved by regulatory agencies that have jurisdiction over
electric transmission service and electric distribution service.”)
(Sept. 9, 2013). The rate increases that were remanded in Scates was also considered under A.R.S § 40-250, and in that case, the reviewing court held a fair value determination was required. The record in this proceeding does not contain information on APS's cost of service generally or its cost of serving residential solar customers specifically. Accordingly, the record is inadequate for the Commission to discharge its statutory duty to establish just and reasonable rates, charges and classifications on the subset of APS customers that have been singled out for discriminatory treatment.

C. The Commission’s Rules Reflect That Rates, Charges and Classifications Should be Determined in a General Rate Case.

The Commission foresaw that public service corporations might propose new or additional charges on net-metered customers. To safeguard consumers, in keeping with the Commission’s constitutional duties, Commission Net Metering Rule R14-2-2305 requires new or additional charges to be “fully supported with cost of service studies and benefit/cost analysis.” The Commission’s rules define “cost of service” as “[t]he total cost of providing service to a defined segment of customers, as determined by the application of logical and generally accepted cost analysis and allocation techniques.” A.A.C. R14-2-103(A)(3)(c). As discussed above, no cost of service study meeting this definition has been submitted in this docket to support any of the various charges that have been proposed. Without such a study, no proposed rate or classification can be justified.

Likewise, when the Commission first adopted its net metering rules, it required initial utility net metering tariffs to include “financial information and supporting data sufficient to allow the Commission to determine the Electric Utility’s fair value for the purposes of evaluating any specific proposed charges.” (Italics added.) The Commission was clearly mindful in adopting its net metering rules that it has a constitutional duty to determine the fair value of a
utility prior to approving new or additional charges. APS’s fair value should be determined
within a rate case so that the Commission can ensure that any proposed charges on residential
solar customers are just and reasonable.

D. The Commission Should Defer the Matter for Consideration During APS’s
Next General Rate Case.

TASC agrees with the Commission’s Staff that “any cost-shift issue created by [net
metering] is fundamentally a matter of rate design.” See Recommended Order at p. 10. TASC
agrees that the appropriate time for designing rates that equitably allocate the costs and benefits
of net metering is during APS’s next general rate case. As Staff notes, data on all of APS’s costs
are available within a rate case and the Commission has more options available within a rate case
than it has outside of a rate case. Id. TASC believes that within this context, the Commission
should consider how best fairly to compensate residential customers participating in net metering
for the many benefits they provide to other ratepayers. Single-issue ratemaking outside of a rate
case limits options that could be considered to “fine tune” compensation levels. It also singles out
specific groups of ratepayers for rate increases and sets a dangerous precedent.

The Court in Scates opined that a piecemeal approach to setting rates would “inevitably
serve both as an incentive for utilities to seek rate increases each time costs in a particular area
rise, and as a disincentive for achieving countervailing economies in the same or other areas of
their operations.” 118 Ariz. at 534. TASC believes the rates, charges and classifications proposed
by APS, Staff and other parties likewise set a worrisome precedent that the Commission will
entertain single-issue and discriminatory ratemaking any time a utility, such as APS, wants to
raise additional revenue or avoid seeking countervailing efficiencies in its operations.
III. ARIZONA LAW PREVENTS ALL BUT ONE OF THE PROPOSALS 
SUBMITTED IN THIS DOCKET FROM BEING IMPLEMENTED.

Five alternatives have been proposed in this proceeding. With its Application, APS proposes two: a “Bill Credit Option” and a “Net Metering Option.” These proposals suffer from numerous fatal defects. In addition to the legal and procedural defects discussed above, TASC identifies additional flaws with these proposals in the comments below. TASC proposed a third alternative, a system-benefit credit to compensate solar customers for the benefits they provide to the APS system and other ratepayers. However, TASC did not propose implementation of a system-benefit credit in this proceeding, recognizing that doing so would involve impermissible single-issue ratemaking in violation of Scates. Therefore, TASC does not elaborate further on this proposal in these comments. Finally, Staff’s Recommended Order proposes two additional alternatives. Only Staff’s first alternative, which relies on a flat charge that was approved in APS’s last rate case along with the Lost Fixed Cost Recovery Mechanism, can be implemented in this proceeding. Staff’s second alternative cannot be implemented for reasons discussed below.

A. The APS “Bill Credit Option” Cannot Be Implemented In This Proceeding

The “Bill Credit Option” would deny residential customers access to the Commission’s net-metering rules, forcing them to instead sell output from onsite solar systems to APS under wholesale arrangements that substantially increase a customer’s tax liability. By seeking to deny residential customers access to the Commission’s rules, rather than seeking to repeal or change

7 TASC strenuously objects to Residential Utility Consumer Officer’s (“RUCO”) last-minute proposal, which was submitted in this docket on October 30th. RUCO’s proposal is not supported by sworn testimony and includes numerous erroneous statements that lack any evidentiary support. RUCO’s proposal has not been reviewed by Staff and has not been subject to discovery or cross-examination by parties. Given the myriad logical, factual and procedural defects associated with RUCO’s proposal, it should not be accorded any weight.
the Commission’s rules directly, this proposal is an impermissible collateral attack on the
Commission decision adopting the net metering rules. See A.A.C. § 40-252.

This proposal would also have devastating tax consequences on APS’s customers. As
noted above, TASC submitted a legal memorandum from Skadden, Arps, Slate, Meagher &
Flom LLP (the “Tax Memorandum”) into this docket. The Tax Memorandum states that when a
program, such as the APS-proposed Bill Credit Option, includes separate and distinct payments
for purchases of electricity and sales of electricity by a taxpayer, the latter transactions “fall
squarely within the definition of taxable gross income.” In contrast, generation that is used to
reduce or offset purchases of APS electricity does not result in taxable income. The result is that
under the APS Bill Credit Option, a customer’s taxes increase because electricity cannot be used
onsite and instead must be sold to APS in a manner that increases a customer’s taxable income.

Perhaps even more devastating, residential customers that are subjected to the Bill Credit
Option would lose access to the federal investment tax credit. As the Tax Memorandum explains,
residential customers may be eligible under Section 25D of the Internal Revenue Code for a
federal tax incentive equal to 30% of the cost of qualified solar electric property. However, this
tax incentive is only available for property that uses solar energy to generate electricity “for use
in a dwelling unit” and only if at least 80% of the solar generation is used for non-business
purposes. That would not be the case under the APS-proposed Bill Credit Option, which
significantly undermines residential customer access to an important federal tax benefit. To
ensure Arizonans have continued and full access to the Section 25D residential solar tax credit,
residential customers should be allowed to use their solar energy generation onsite. This is not
allowed under the proposed Bill Credit Option, which is a fatal defect with that proposal.

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8 Tax Memorandum at 3.
Inability to access the federal residential tax credit would be devastating to Arizona’s rooftop solar market.

The APS Bill Credit Option should give all Arizonans pause. It attempts to reach behind the billing meter and into the homes of APS’s residential customers to determine what those customers can and cannot do with personal property over which APS has no ownership interest. With this proposal, APS raises significant questions as to whether the result it seeks would constitute a regulatory taking of private property. Additionally, this proposal runs afoul of the federal Public Utility Regulatory Policies Act (“PURPA”), which recognizes the right of consumers to serve onsite load with generators that meet Federal Energy Regulatory Commission (“FERC”) qualifying facility (“QF”) eligibility requirements, which Arizona residential solar customers would easily satisfy.\(^9\) Self-generation serves the overarching purpose of PURPA—to reduce dependence on foreign oil and other fossil-based fuel resources by encouraging cleaner, more efficient onsite generation\(^10\)—and it is also imbued within FERC’s regulations and

\(^9\) 18 CFR § 292.304(d) gives qualifying facilities (“QFs”) the option either: “(1) to provide energy as the QF determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery; or (2) to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term” (emphasis added).

\(^10\) In Order No. 69, FERC observed that a QF has little reason to produce “additional units of energy” beyond what is dedicated for its own usage if the QF’s own marginal costs of production exceed the price paid by the utility. This lack of incentive to produce beyond onsite needs would be contrary to the public interest goals of PURPA and would result in the utility being “forced to operate generating units which either are less efficient than those which would have been used by the qualifying facility, or which consume fossil fuel rather than the alternative fuel which would have been consumed by the qualifying facility had the price been set at full avoided costs.” 45 F.R. 12214, at 12222-12223 (Feb. 25, 1980). See also American Paper Inst. v. Am. Elec. Power Serv. Corp., 461 U.S. 402, 417 (upholding FERC’s “full avoided cost” rule as consistent with the public interest and legislative goal of reducing reliance on fossil fuels).
Staff's Recommended Order clearly recognizes that "The Bill Credit Option is not equivalent to a [net metering] arrangement because it denies the residential customer the right to offset energy purchases from the utility with self-generation on a one-to-one basis." Recommended Order at p. 7. Staff believes residential customers should have the ability to receive such an offset. TASC strongly agrees and believes federal and state laws require this result. Accordingly, the APS "Bill Credit Option" should be rejected.

B. The APS "Net Metering Option" Cannot Be Implemented In This Proceeding.

With its "Net Metering Option," APS proposes a new classification of residential customer that would be allowed to net meter, but only if the customer takes retail service under an APS tariff that increases APS's revenue and reduces solar savings compared to other tariff options that are available to other members of the residential rate class. Staff's Recommended Order observes that "forcing certain customers to use a specific rate schedule removes a basic choice from the customer -- the choice of the rate schedule that works best for their usage pattern and lifestyle." Recommended Order at p. 7. Treating members of the residential class in a dissimilar manner is discriminatory and must be justified. However, APS has not brought forward rate-case quality, cost-of-service information sufficient to demonstrate that the cost of serving residential solar customers is sufficiently different such that they should be singled out

See, e.g., 18 C.F.R. §§ 292.303(e) (all utilities must offer parallel operation), 292.205(d)(3) ("fundamental use test"), 292.304(e)(2)(v) (addressing capacity value for QFs able to separate their own load from onsite generation during system emergencies); FERC Staff Memorandum on Order 69, 44 F.R. 38863, at 38869 (July 3, 1979) (explaining that § 292.303(e) provides QFs an "entitlement" to operate in parallel with utilities "so that the same customer circuits can be served simultaneously by both customer- and utility-generated electricity"); Entergy Services, Inc. v. FERC, 400 F.3d 5 (D.C. Cir. 2005); So. Cal. Edison v.
for discriminatory treatment. Without this information, APS cannot prove that the specific treatment that it has proposed is justified based on the cost of serving these customers.

Customers with onsite generation should only be treated differently from those that do not self-supply some of their energy needs if there are demonstrable differences in the cost of serving those customers that are not offset by commensurate benefits. With regard to charges based on volumetric usage, as with energy efficiency and conservation, customers that self-supply electricity and use it onsite have a right to purchase less electricity from a regulated utility without financial penalty. In addition to state laws that prohibit unjustified discrimination in pricing electricity service, FERC's regulations also prohibit the charging of discriminatory retail rates to consumers that use QFs to offset onsite load. 18 C.F.R. § 292.305(a)(1)(ii); Pacific Gas and Electric Company, 110 FERC ¶ 63,026 (Feb. 9, 2005). APS has failed to prove that the discriminatory treatment of residential solar customers it proposes under the Net Metering Option are justified. Accordingly, this proposal should be rejected.

C. Staff Alternative #1 May Be Implemented, But Staff Alternative #2 Cannot Be Implemented In This Proceeding

TASC believes Staff’s first alternative could be implemented in this proceeding. That alternative relies on an existing flat charge that was approved in APS’s last rate case. As such, this charge was subject to evidentiary and procedural safeguards to protect consumers that are associated with litigated rate case proceedings. By comparison, Staff’s second alternative proposes a new charge that lacks a foundation in APS’s last rate case. Staff claims this charge is revenue neutral. Nevertheless, it is a new charge and therefore must be developed in a rate case after the Commission has determined the fair value of APS property.

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FERC, 443 F.3d 94, 102 (D.C. Cir. 2006); Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 (Oct. 4, 2011).
1. The Methodology Used by Staff Alternative 2 Incorrectly Includes Energy Used Onsite As a Cost to Ratepayers, Even Though That Energy Never Touches the Grid and Does Not Impact Other Ratepayers.

The Recommended Order states that the goal of Alternative 2 is to "establish a cap on the net metering incentive to ensure that it is no greater than the price APS would pay to acquire the same amount of solar via a wholesale PPA." Recommended Order p. 13. Accordingly, Staff proposes a charge "based on the difference between APS's cost for purchasing a DG customer's excess generation, and its cost to purchase an equivalent amount of energy from a wholesale PPA." Recommended Order p. 13 (italics added). Although Staff unequivocally proposes to compare solar PPA prices with APS's cost for purchasing a DG customer's "excess generation," the methodology used by Staff incorrectly looks at all onsite generation, not just "excess generation." This methodological flaw by itself leaves Staff Alternative 2 inadequate for the Commission's use.

There is simply no basis in logic or reason to compare APS's cost from customers using less energy, because they use solar generation onsite, to APS's cost of wholesale PPA procurement for solar power. Such a comparison would require this Commission to accept the logical fallacy that wholesale power prices are a proxy for APS's fixed infrastructure cost of providing service. There is clearly no connection between the two, and a customer using solar panels to serve onsite electricity needs should be treated no differently than a customer that turns the lights off, installs energy-efficient appliances, or adds a solar water heater to replace an electric water heater.

All of the scenarios listed in the Recommended Order, including those in Appendix III, are flawed due to this failure to focus only on exported power from net-metered systems. The Testimony of Meissner (p. 4, ll. 12-12) states: "On average for a residential customer, roughly
80% of the solar generation immediately serves their household load and the remaining 20% is excess generation.” Accordingly, the line item identified as “Assumed Annual Rate of Production” in the Recommended Order, including Appendix III, should be reduced by 80% to exclude energy that is used onsite and not exported. However, the correction of this significant methodological flaw still does not render this approach acceptable for Commission ratemaking for the additional reasons stated below.

2. Alternative 2 Incorrectly Assumes 1-5 Solar PV Generators Interconnected to Sub-transmission Provide the Same Benefits as Residential Rooftop PV.

Staff Alternative 2 proposes a “cap on the net metering incentive to ensure that it is no greater than the price APS would pay to acquire the same amount of solar via a wholesale PPA.” Staff specifically proposes to base this comparison on 1 to 5 MW PV systems interconnected to the APS sub-transmission system. Recommended Order p. 13. However, there is no evidentiary support for the proposition that a 1 to 5 MW PV system interconnected to the APS sub-transmission system offers the same costs or benefits as a large number of small, residential PV systems that are dispersed across the APS system and serve nearby customer load. In fact, the two categories of generators that Alternative 2 proposes to compare are fundamentally different in terms of the costs and benefits provided to APS and its ratepayers. The Recommended Order notes that “the distribution of DG systems appears relatively even across the urbanized areas within APS’s service territory.” Recommended Order p. 5. An even distribution of thousands of small systems located across the APS service territory will have lower integration costs and higher capacity values than a small number of larger systems, which may need to be located farther from customer load and may require significant grid upgrades. These differences must be taken into account in comparing the two categories of generators, but they have not been in this record.
There are also significant differences in the line losses associated with the two categories of generators that Alternative 2 proposes to compare. This has a significant impact on the overall value of the power that is provided. The Testimony of Bernosky (p. 9, ll. 22-24) acknowledges the cost savings to APS and its customers from rooftop solar related to avoided transmission and distribution losses. Bernosky describes these savings as "the 'extra' energy that would have been needed from a centralized facility to replace the energy lost during delivery from the plant to the customer." Likewise, APS's SAIC 2013 Updated Solar PV Value Report (filed May 17, 2013 in Docket No. E-01345A-12-0290, p. 2-9) states: "Electricity generated at the site of application, such as a distributed solar PV system, reduces the load required to be served by a centralized power generating facility and thus reduces the electricity line losses that occur during delivery of electricity to load." Before any version of Staff Alternative 2 could be used as a basis for imposing a new charge on solar customers, the difference in line losses between the two categories of generators that Alternative 2 proposes to compare, and the associated financial benefit to APS, must be determined through evidentiary hearings. They have not been, nor can they easily be outside a general rate case.

Finally, there are significant differences in the transmission savings provided by the two categories of generators. The Testimony of Meissner (p. 13, ll. 14-18) states: "because rooftop solar is available intermittently during the day and located at the customer's home, it could theoretically have a small impact on the cost of transmission service by delaying the investment in future infrastructure." The APS SAIC Report (p 1-3) offers a paltry assessment of the potential savings – just 0.32 cents per kWh. Crossborder Energy, in contrast, determines the potential savings to be 2.1 to 2.3 cents per kWh. If Alternative 2 is to be used as a framework for developing a new charge on net-metered customers, the Commission must determine if there is a
difference in the transmission savings provided by rooftop PV systems versus 1 to 5 MW solar PV systems interconnected to the sub-transmission system. The only sworn testimony in the record – that which was entered by APS – suggests transmission savings are a function of the proximity between generation and load. That difference must be evaluated and quantified before Alternative 2 could provide a methodological framework for imposing a new charge on customers. It has not been and is best considered in a general rate case.

3. **Evidentiary Hearings are Necessary to Try Disputed Issues of Fact Regarding Alternative 2.**

Setting aside the numerous methodological flaws associated with Alternative 2 that TASC discussed above, significant disagreement also exists regarding the two simplistic variables that Alternative 2 does take into account. The first of these variables is the Assumed Retail Rate. The Testimony of Meissner (p. 10, ll 17-18) says the average pretax, fully bundled rate for residential customers is 12.6 cents for average customer. However, Meissner’s testimony (p. 14, ll. 18-20) muddies this issue by surmising that the amount may be as high as 13.5 cents before taxes for the average solar customer. TASC disputes Meissner’s figures and believes these numbers should be subject to cross-examination through evidentiary hearings before being accepted by the Commission.

The second variable is the Assumed Utility Scale PPA Rate. Appendix III of the Recommended Order provides a range of scenarios that assume values between 7 cents and 10 cents per kWh. However, there is no evidentiary basis for these numbers. The Recommended Order simply states Staff “understands that utility scale solar PV generation can be obtained in Arizona for between 7 and 10 cents per kWh under a PPA arrangement.” Recommended Order at p. 14. Moreover, Staff does not say whether its “understanding” of solar PPA prices relates to the 1 to 5 MW solar PV facilities interconnected to the APS sub-transmission system that are
supposed to provide the basis against which the costs of residential net metered exports are being compared.

TASC believes it is highly suspect that the all-in cost of output from 1 to 5 MW solar PV facilities interconnected to the APS sub-transmission system would be below 10 cents per kWh. This is particularly unlikely for projects on the lower end of the 1 to 5 MW size, which would be more comparable in terms of value to residential rooftop solar systems. However, no evidentiary hearing has been held to resolve disputed issues of fact regarding this issue.

TASC believes it is particularly important to determine through evidentiary hearings whether the 7 to 10 cent per kWh range of PPA costs assumed by Staff is reasonable. On September 27, 2013, TASC submitted a public comment letter in this docket to point out an unreasonable and misleading claim by APS in its August 1, 2013, data response in this docket. In that data response, APS relied on PPAs signed by Riverside Public Utilities in California to support APS’s suspect claim that it can develop utility-scale projects and interconnect them to the distribution system for all-in costs between 7-9 cents/kWh. TASC pointed out that the Riverside projects exclude normal development costs, are connected to the transmission system (not the distribution system), and are part of an established 100 MW project already in the advanced stages of development. See September 27, 2013, TASC Public Comment Letter.

Staff acknowledges that it did not attempt precisely to determine the costs and benefits of residential solar in offering Alternative 2. The Recommended Order clearly acknowledges that Staff “developed a range of proxy values for DG as a basis for its alternative recommendations.” Recommended Order at p. 6. These proxy values offer an inadequate basis for the Commission to discharge its constitutional and statutory duty to ensure that rates and classifications are just and reasonable. Given the lack of procedural safeguards employed in this proceeding, and the
significant disagreement that exists regarding the underlying assumptions behind Staff Alternative 2, TASC objects to the use of this methodology to adopt a new charge on customers in this proceeding. For these reasons, Staff Alternative 2 should be rejected.

IV. CONCLUSION

TASC agrees with Staff's recommendation that the Commission should take no action on the instant application and defer the matter for consideration during APS's next rate case. The Commission has not determined the fair value of APS property necessary to establish just and reasonable rates, charges and classifications under the Arizona Constitution. Moreover, the record is inadequate for the Commission to discharge its statutory duty to establish just and reasonable rates, charges and classifications. The Commission's rules also reflect that rates, charges and classifications for net-metered customers should be determined in a general rate case.

The only conclusion supported by the record in this proceeding is that parties fundamentally disagree on the methodology that should be used to measure the costs and benefits of distributed solar. This disagreement is noted in the testimony submitted with the APS Application; it is highlighted in the Rocky Mountain Institute study referenced in the Recommended Order; and it is further highlighted by Staff in recommending that the Commission should resolve this issue in APS's next general rate case.

If the Commission feels that immediate action is needed, TASC encourages the Commission to accept the well-reasoned recommendation of Utilities Division Staff to develop a common set of assumptions regarding the costs and benefits of net metering, which APS can then use to propose an appropriate charge or credit in its next general rate case.
RESPECTFULLY SUBMITTED this 4th day of November, 2013.

By

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Attorney for The Alliance for Solar Choice
CERTIFICATE OF SERVICE

I hereby certify I have this day sent via hand delivery an original and thirteen copies of the
foregoing COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE ON THE
UTILITIES DIVISION STAFF RECOMMENDED ORDER on this 4th day of November,
2013 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

I hereby certify that I have this day served the foregoing documents via regular mail on all parties
of record and all persons listed on the official service list for Docket No. E-01345A-13-0248 on
the Arizona Corporation Commission’s website:

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Dated this 4th day of November, 2013.

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