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IMISSIONERS
ROBERT "BOB" BURNS
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

ROBERT "BOB" BURNS
Chairman

ARIZONA CORPORATION COMMISSION

May 29, 2020

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

RE: ARIZONA CORPORATION COMMISSION STAFF REVIEW OF ARIZONA PUBLIC SERVICE COMPANY CUSTOMER OUTREACH AND EDUCATION PROGRAM (DOCKET NOS. E-01345A-19-0236 and E-01345A-19-0003)

Commissioners and Interested Parties:

On May 19, 2020, the Arizona Corporation Commission's ("Commission") Utilities Division Staff ("Staff") filed its report authored by Ms. Barbara R. Alexander, Staff Consultant. In my opinion, Staff's report puts forth a scathing assessment of Arizona Public Service Company's ("APS") customer outreach and education program ("COEP"). Unless I somehow overlooked other positive findings in my reading of this report (which I would be happy to have anyone point out), the only positive comment offered by Staff was that APS apologized for errors in its rate analysis tool along with a pledge for refunds to affected customers. Due to these rate tool errors (and APS's seemingly lacking COEP), APS customers are allowed to switch rate plans as often as they want, with almost no restrictions (under normal circumstances, customers are allowed to switch rate plans only once per year).

This report is only the latest development that seems to indicate that APS did not fully comply with the Commission's order and expectations from its approval of APS's last rate case. The first was the complaint of Ms. Stacy Champion (Docket No. E-01345A-18-0002). Although Ms. Champion's case was ultimately dismissed, I believe that Docket No. E-01345A-19-0003 was a direct result of her complaint.

Docket No. E-01345A-19-0003 was opened to conduct a review of APS's COEP and to review APS's earnings to determine if they were in-line with what was expected from the Commission's order in APS's last rate case, Decision No. 76374. The consultant's report in Docket No. E-01345A-19-0003 resulted in Staff's recommendations for APS to file a new rate case because of the possibility of APS's overearning, due in part to APS's possibly inadequate COEP. An interesting side fact here is that the consultant's ***draft report*** showed that APS was possibly overearning by millions of dollars.

The COEP was an ***extremely important*** piece of Commission Decision No. 76374 due primarily, if not exclusively, to the fact that APS was completely revamping its rate plans to what it termed 'modern rate plans'. New customers were even being ***required*** to be on time-of-use rates for at least 90 days. It turns out that these new, modern rate plans were extremely confusing to customers, even though Mr. Don Brandt (APS's former Chief Executive Officer and President)

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stated that APS's COEP was the envy of the industry and that as far as he knew, APS customers were very pleased with APS.

At this point, one may say that it has been shown that APS is overearning. However, Staff's draft and official reports in Docket No. E-01345A-19-0003 and Staff's latest report reviewing APS's COEP are only one side of the issue. APS must be afforded due process in order for the Commission to make an informed and proper decision regarding the issue of overearning. At the same time, APS's customers must be afforded the same due process. What this means to me, is that if APS's COEP is as described in Staff's May 19th report, and as a result, APS's revenue was higher than it should have been, somehow APS's customers must be held harmless for APS's inadequate COEP.

Two questions that may arise are - can the Commission hold APS customers harmless for APS's mistakes, and if the answer is 'yes', how can the Commission hold APS customers harmless?

There may be more than one way to hold APS customers harmless, but the one that I believe would be most effective is to make APS's current rates interim. The rates should be interim because there is a reasonable possibility that APS has been out of compliance with Decision No. 76374 due to its completely inadequate COEP (according to the May 19th Staff report). The COEP is what the Commission, and more importantly, APS customers relied on to ensure that the new, modern APS rates were properly implemented in a way that provided APS the opportunity to earn its authorized rate of return, but not to over earn.

If in the end it is shown that APS's current rates are resulting in APS overearning and this is in any way the result of APS's inadequate COEP, how does classifying APS's current rates as interim hold APS customers at least partially harmless? If APS's current rate case (Docket No. E-01345A-19-0236) results in rates that are lower than the present rates, APS would then be required to refund the difference, i.e., APS would be required to refund whatever it over earned.

Based on Staff's May 19th report, it seems that APS's COEP has been inadequate since its inception, which to me means that APS has been out of compliance with the COEP aspect of Decision No. 76374 from the start. Therefore, I believe the rates should be classified interim as of August 19, 2017. Some may say that this would be retroactive rate making. My rebuttal to this is that the COEP was such a critical part of Decision No. 76374, if APS has been in non-compliance all this time, that would make APS's current rates improper, unjust, and unreasonable. In other words, the COEP was a critical underpinning for finding that the rates approved in Decision No. 76374 were proper, just and reasonable; but how can those rates be considered proper, just and reasonable if the rates themselves were not understandable by the average ratepayer?

At the Commission's June Open Meeting, I would like the Commissioners, APS, Staff and any interested parties to be prepared to discuss the method for holding APS customers harmless that I have proposed, along with any other possible remedies to hold APS customers harmless. Based on the discussion that occurs at the June Open Meeting, I may call for a vote to have a conforming order prepared that incorporates my hold-harmless proposal.

As I stated earlier, APS must be afforded due process. APS can exercise its due process rights in its current rate case. In this current rate case, APS can present a case as to why Staff's May 19th report is inaccurate, why APS has not been out of compliance with Decision No. 76374, why APS's current rates should not be considered interim (from August 19, 2017 or any other date), why APS customers should not be held harmless from APS's mistakes (if any), and any other evidence it would like to present to demonstrate that its current rates are not improper, unjust, and unreasonable.

APS's current rate case would also afford any party that agrees with my hold-harmless proposal, to present evidence that demonstrates that APS has been out of compliance with Decision No. 76374, why APS's current rates should be considered interim (from August 19, 2017 or any other date), why APS customers should be held harmless from APS's mistakes (if any), and any other evidence it would like to present to demonstrate that APS's current rates are improper, unjust, and unreasonable.

APS may consider my hold-harmless proposal to be too drastic or maybe even unlawful. If that is the case, I expect APS to do more than just tell this Commission why something like this cannot be done. I expect APS to come to the June Open Meeting prepared with an alternative proposal(s) to hold APS customers harmless in the event this Commission finds that APS's current rates are improper, unjust and unreasonable.

I look forward to this discussion at the June Open Meeting.

Sincerely,

Bob Burns
Chairman