ARIZONA COURT OF APPEALS
DIVISION ONE

ARISEIA , et al., Appellants, vs. ARIZONA CORPORATION COMMISSION, Appellee.	Court of Appeals, Division One No. 1 CA-CC 25-0001 1 CA-CC 25-0002 1 CA-CC 25-0003 1 CA-CC 25-0004 Arizona Corporation Commission Docket No. E-01345A-22-0144

OPENING BRIEF AND JOINDER

ROSE LAW GROUP, PC
Court S. Rich - Bar No. 021290
Logan V. Elia - Bar No. 025009
Eric A. Hill – Bar No. 029890
7144 E. Stetson Drive, Suite 300
Scottsdale, Arizona 85251
Direct: (480) 505-3937
crich@roselawgroup.com
lelia@roselawgroup.com
ehill@roselawgroup.com
docket@roselawgroup.com

ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION AND SOLAR ENERGY INDUSTRIES ASSOCIATION
Autumn T. Johnson - *Pro Hac Vice*
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
(520) 240-4757
autumn@ariseia.org

Attorney for Appellants
AriSEIA and SEIA, Diane Banet, and Michael Self

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

Arizona Public Service Company's ("APS") ability to indulge in monopolistic predation is limited only by the Arizona Corporation Commission's (the "Commission") regulatory oversight. Appellants seek relief from this Court because the Commission *repeatedly* failed to exercise appropriate regulatory oversight and that failure to act was both illegal and unconstitutional. The Commission authorized APS to significantly increase the prices it charges to service homes equipped with solar panels. It did so without receiving or reviewing evidence on the issue, without notifying APS' captive customers responsible for paying the monopoly's prices, and without notifying anyone in the solar industry. Indeed, APS acted *without notifying anyone at all*.

Appellants, Diane Banet ("Banet") and Michael Self ("Self") are APS customers with solar panels. Yet, the only notice Banet and Self received were larger bills detailing higher rates and new fees. As should be obvious from the timing, this legally invalid notice came only after the Commission had considered and authorized a price hike specifically targeting APS' solar customers. Indeed, the only documentation purporting to give Ms. Banet and Mr. Self notice was issued after they had received bills containing the price hike.

AriSEIA, the State of Arizona, and Vote Solar filed motions for rehearing of the Commission's decions. Confronted by its transparent due process violation —

and the fact that its action violates both federal and state law — the Commission publicly noticed a rehearing. This notice properly clarified that the Commission was considering altering the rates paid by solar customers.

Appellants intervened in the rehearing, eager to be heard on all the reasons why it is unjust and unreasonable for APS to discriminate against solar panel customers. They should not have to pay more than their neighbors simply because they are trying to be energy efficient.

Nonetheless, the rehearing failed to provide the required due process. The Commission's order setting a rehearing expressly recognized that due process requires proper notice and an opportunity to be heard. But the Commission did not actually conduct a rehearing in a legally cognizable way. The Commission offered rehearing *without reconsideration*. Interpreting its own order for rehearing, the Commission *significantly narrowed* the scope of the rehearing. Specifically, the narrow scope of the rehearing did not allow for the reconsideration of the reasons for its initial decision or the evidence supporting that decision. Essentially, the Commission allowed rate payers to challenge their new power bill so long as they did not challenge any evidence purportedly supporting it, its price, or that they were required to pay it. Given those rules, the rehearing affirmed every word of its 489 page decision. Given those rules, the rehearing did not cure the due process violation, it exacerbated it.

II. JOINDER

Appellants the Arizona Solar Energy Industries Association and the Solar Energy Industries Association (collectively, "AriSEIA"), Self , and Banet hereby join the Opening Briefs filed by appellants Vote Solar and the State of Arizona in this consolidated appeal, including their respective statements of the case, statement of the disposition of the administrative proceeding by the Commission, statements of facts, statements of the issues, and arguments. To avoid duplicative briefing, this brief focuses primarily on expressing the unique positions of Banet and Self, individual rate payers who were not parties to the original hearing and who intervened in the rehearing.

III. STATEMENT OF THE CASE AND STATEMENT OF FACTS

Appellant the Solar Energy Industries Association is the national trade association for the solar and storage industries.

Appellant the Arizona Solar Energy Industries Association is a non-profit 501(c)(6) trade organization representing the solar, storage, and electrification industry, solar-friendly businesses, and others interested in advancing solar and complementary technologies in Arizona.

Appellant Self is a long-time APS customer with solar who is on APS' residential time of use plan with net metering. (TAB A-2176, pg. 6-7). Self is considered a "Legacy" solar customer because he is subject to rates available only to net metering customers. Under net metering, APS bills Self for the net amount of power APS delivers, *i.e.*, the amount of power APS delivers to Self less the amount of power Self's solar system delivers to the grid. Self's bill has increased 15% more than every APS customer without solar because of the rate increase the Commission approved.

Appellant Banet is another APS customer with solar who is on APS' residential time of use plan. Banet's bill from APS is subject to the Resource Comparison Proxy ("RCP"). Under the RCP, APS pays Banet for any power her solar system exports to the grid at a rate determined by a Commission-calculated formula. Banet's bill has increased by 15% because she is now billed a grid access charge ("GAC"). (TAB A-2177, pg. 6).

In 2022, APS filed its Application with the Commission to increase its "base rates by $460 million, or 13.6%, to become effective on December 1, 2023." (TAB A-7, pg. 1). Regarding residential rate design, APS' Application indicated that it intended "to keep rate structure changes to a minimum . . . eliminate in-network payment fees . . . [and] offer two additional off-peak holidays for time-of-use (TOU) plan . . . " (TAB A-7, pg. 10). The application gave no indication that APS would

seek or that the Commission would consider imposing new or additional fees or costs on APS' residential solar customers or that APS would seek to differentiate the cost to serve solar customers from the cost to serve other similarly situated residential customers.

As approved and directed by the Commission, APS published public notice of its application, and the ratemaking hearing the Commission would hold to consider it. This notice said nothing about new or additional fees or costs applicable only to residential solar customers. It gave no indication that that APS would seek to differentiate the cost to serve solar customers from the cost to serve other similarly situated residential customers. (TAB A-29, pg. 10-15). Instead, regarding residential rate design changes, the notice stated: "APS proposes to eliminate credit card fees and in-person kiosk fees and to provide two additional off-peak holidays for time-of-use rate plans." *Id*. After the hearing, APS withdrew its proposal to eliminate payment processing fees for non-limited-income customers. (TAB A-1498, pg. 89).

At the hearing, APS offered a cost of service study ("COSS") that calculated the cost to serve its residential customers without solar based on how much power APS actually delivered to them ("Delivered Load") and calculated the cost to serve its residential customers with solar based on how much power APS hypothetically could have delivered to them if they did not have solar ("Site Load"). (TAB A-1498, pgs. 61-72)[i].

Importantly, the Commission expressly found that "[t]he evidence of record in this matter now makes it clear that APS does not truly provide additional services and does not use additional equipment to serve [solar] customers… there are no extra costs…" (TAB A-1866, pg. 272). This finding has an obvious implication. If APS does not use additional equipment to serve residential solar customers and APS does not incur unique costs to serve residential solar customers, then the Commission should treat APS' solar and non-solar customers similarly. The Commission should have rejected any COSS that applied different methodologies to calculate the cost to serve these similarly situated customers.

But instead of reasoning to the logical conclusion, the Commission erroneously reasoned by false analogy and hasty generalization. First, the Commission incorrectly likened solar customers to AG-X customers. (TAB A-1866, pg. 272). By definition, AG-X customers consume a massive amount of electricity at a single location. (TAB A-2179, pg. 21). Indeed, *only two* AG-X customers exist and they each consume as much electricity as 9,600 residential solar customers. *Id.* The fundamental nature of APS' relationship with an AG-X customer is different than APS' relationship with a residential solar customer. APS is a utility for residential solar customers. For an AG-X customer, APS provides transmission and distribution of power generated by a third party together with a promise that APS will act as a backup generator if the third-party generator fails.

It is more likely that one of the AG-X customers might experience a generation failure than 9,600 residential solar systems failing simultaneously. *Id*. And even if 9,600 residential solar systems did fail simultaneously, they would almost certainly be spread across the grid so that diverting power to them would be easier. *Id*.

Importantly, there was no testimony in the record suggesting that residential solar customers and AG-X customers are analogous. Absent substantiating evidence, it was arbitrary and capricious for the Commission to rely on this false analogy.

The false analogy was plainly an outcome-driven attempt to justify charging solar customers more than non-solar customers. APS charges AG-X customers for "resource adequacy" based on a site load analysis. Simply stated, APS incurs real and specific costs to maintain constant readiness to serve each AG-X customer. The Commission incorrectly reasoned that if APS may charge an AG-X customer to maintain readiness, then APS may also charge a solar customer to maintain readiness.

The Commission's analogy is poorly conceived for apparent reasons. It is obviously a lesser burden for APS to power an additional neighborhood residence in its service area than it is to suddenly power a gigafactory. There is a difference between the commercial and residential markets. AG-X customers can purchase wholesale power beyond the APS monopoly generation area and purchase only transmission and distribution from APS. Residential customers cannot access the wholesale electricity market.

Most importantly, there is no evidence that APS maintains resource adequacy for its residential solar customers specifically. The evidence is that APS maintains a multi-purpose generation reserve margin of 15% above peak demand. This reserve is not calculated or allocated based on a Site Load analysis of residential solar customers. APS's reserve guards against unplanned outages, extreme weather conditions or any other variation in the amount of power actually demanded. The Site Load methodology is an improper measure of APS cost to maintain resource adequacy for residential solar because it is not something that APS actually measures to set its generation reserve. (TAB A-2179, pg. 17-26).

During the hearing, there was no discussion of adding a GAC or implementing any increased charges for residential customers with solar separate or above from the charges to residential customers without solar. Nor was there any reason to suspect that the Fictitious COSSwould result in rate differentiation because such ratemaking had been recently rejected by Commission Orders 78317 and 75859. (TAB A-1877, pg. 8, 14).

Ignoring the lack of notice and evidence, the Commission decided to uniquely and separately increase the rates paid by solar customers 15% above other residential customers. (TAB A-1940, pg. 2-3). For Legacy solar customers, such as Self, (who, again, are on rates available only to net metering customers), the Commission ordered that their rates be increased directly by 15% more than the rates of non-solar

customers. For RCP customers, such as Banet, (who take service under rates available to customers with and without solar and who represent *all* non-Legacy solar customers), the Commission upheld the GAC created by APS in order to somehow "minimize confusion." *Id*. Importantly, the GAC was the same as the rate increase applied to Legacy solar customers, simply applied by a different name to RCP customers. (TAB 1952, pg. 5).

AriSEIA timely applied for rehearing. (TAB A-1877). The Commission granted rehearing because these charges were imposed "without a full opportunity to be heard and present evidence . . . ." (TAB A-1898, pg. 2). The rehearing was conducted expressly to review the claims made in the Applications for Rehearing filed by the State of Arizona, AriSEIA, and Vote Solar regarding whether the GAC rates are just and reasonable and whether the GAC is potentially discriminatory to solar users or discriminatory, in the absence of a GAC, to non-solar users. (TAB A-1898, pg. 3).

When noticing the rehearing, the Commission again sought to avoid confusion by crafting a notice that stated: "Residential solar customers on Legacy Solar Rates may also be impacted by the outcome of the limited rehearing granted in Decision No. 79318." (TAB A-1984, pg. 12).

Based on this notice, both Self and Banet sought and obtained leave to intervene in the rehearing and to be heard regarding the 15% rate increase. (TAB A-2109, pg. 1, TAB A-2117, pg. 6, TAB A-2115, pg. 1, TAB A-2118, pg. 6).

In the Commission's order for rehearing, the GAC refers broadly to the 15% increase in rates charged to solar customers. The charge is identical for all residential solar customers. (TAB A-2179, pg. 8-12).

Importantly, the Commission justified increasing the rates for solar customers above other customers based on its adoption of the Fictitious COSS. APS estimated the cost to deliver electricity to solar customers based on the cost to generate electricity it *theoretically would have delivered* to those customers if those solar customers did not have solar. The Commission reasoned that non-solar customers adequately compensate APS for its cost to generate electricity because they pay APS for the electricity APS provides to them. The Commission then concluded that solar customers do not adequately compensate APS for its cost to generate electricity because they *only* pay APS for the electricity APS provides them. This is plainly contradictory. It is like a gas station charging Prius owners for gas based on how much gas the station could have sold them if only they drove Hummers instead.

It is also factually false. In addition to paying APS for the electricity APS provides them, solar customers *also* generate electricity and provide it to APS. The

Fictitious COSSjustifies charging for counterfactual "costs" while ignoring real world benefits. (TAB A-1952).

However, the Commission decided to narrow the scope of the rehearing both to exclude consideration of the 15% rate increase applied to Legacy solar customers, to receive evidence only regarding the 15% rate increase applied to non-Legacy solar customers, and to preclude evidence on or reconsideration of the Hypothetical COSS.

Because the GAC is just another name for the 15% rate increase applied to all solar customers, and because *no solar customers* received proper notice of the issues decided at the first hearing, the Commission rehearing could not possibly cure the due process violation. The right to be heard on an important issue with direct financial implications is not the same as an invitation to speak only about other things.

SEIA, AriSEIA, Banet, and Self timely applied for rehearing and timely appealed to this Court when rehearing was denied. (TAB A-2516, 2517, 2524, 2530).

IV. STATEMENT OF THE ISSUES

1. Given the GAC is just the 15% rate increase by a different name, and no solar customer received proper notice of the issues decided at the original hearing, did the Commission cure the admitted due process violation by noticing a rehearing and

later limiting its scope to preclude reconsideration of both the rate increase and the COSS it was based upon?

2. If APS' is entitled to recover its costs plus a reasonable return and APS' rates are set based on a document that systematically overstates APS' costs to serve residential solar customers, can the resulting rates be just and reasonable?

V. ARGUMENT

A. The charges were imposed without due process.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); accord, *Malnar v. Joice*, 236 Ariz. 170, 172, 337 P.3d 43, 45 (2014).

Due process requires that the Commission provide public notice and an opportunity to be heard before authorizing an increase in the rates charged by any regulated utility. Due process imposes public notice requirements on all levels of regulatory bodies, from lowly homeowners' associations to special taxing districts to municipal, city, county, and state governmental agencies. The Commission's privileged and powerful position does not excuse it from fundamental constitutional

requirements. The fact that the Commission not only sets rates for utilities but also grants and enforces their monopoly protection should broaden the scope of notice required. Increasing electrical rates within a monopoly service territory affects everyone within the service monopoly and also businesses that market technology to help users lower their reliance on the utilities' power.

The solar industry has an obvious economic interest in utility rates generally, and a special interest in rates imposed uniquely on their customers.

Regardless, however, the individual rate payers who must directly purchase electricity have the most profound need to be apprised and heard before a utility is authorized to reach deeper into their pockets.

Electricity use is fundamental. Indeed, many jurisdictions within APS' service territory require that new buildings be connected to the grid before they are eligible to receive a certificate of occupancy. Obtaining and maintaining utility service is a basic obligation addressed in every lease agreement.

Banet and Self each receive and pay bills from APS. They received notice that APS sought to adjust its rates to eliminate certain fees and recognize two additional holidays. They did *not* receive notice that the Commission was considering a fee that would apply specifically to them and not to their neighbors, a fee that is specifically meant to penalize them for reducing their burden on the grid and strengthening its ability to meet power demands. They purchased, with their own money, equipment

that achieves these goals best when Arizona's summer sun is at its most intense and having access to electricity for air conditioning is literally a matter of life or death. Because they made such an investment, the Commission authorized APS to levy targeted, increased charges on them. They must pay more because, allegedly, they do not buy enough.

Banet and Self were absolutely entitled to be heard on this matter. But they were not given meaningful notice of the original hearing. Then the Commission attempted to "cure" this due process violation by conducting a rehearing where Banet and Self were allowed to be heard *except* they were not allowed to address or question the Hypothetical COSS, which was the central and sole evidence that caused the Commission to devise and set the new charges it imposed in the first place. The Fictitious COSSand its application of Site Load analysis solely to solar customers entirely created both the reason for and the parameters of the new charges. Indeed, APS admitted it does not use any additional equipment or provide any additional services to solar customers that would explain how they are somehow more expensive to service. Said differently, the Commission reasoned that solar customers are more expensive to serve only because the Fictitious COSS says they are. The Fictitious COSSsays so only because it measures the cost to serve them by a different metric than other customers. Because the Fictitious COSSsays they are more expensive to serve, APS should recover more money from them. APS should

recover that additional fee to recoup that cost. And if Banet or Self wish to be heard, they may speak, just not about the Hypothetical COSS, its methodology, or its untethered relationship to reality. (TAB A-2245, pg. 27-35).

B. The charges are not just and reasonable.

It is not just and reasonable to impose a rate that is unsupported by real world evidence. The fact that APS does not utilize a Site Load analysis when planning its system and therefore does not even build its system to serve solar customers' Site Load shows that the Site Load analysis is not a valuable analysis to learn about reality. Indeed, APS seems to consider the Site Load analysis, which plainly overstates costs, to be relevant only when it seeks to impose costs on the public, not when it considers what costs it must plan to incur itself.

"[R]ates established by the Commission should meet the overall operating costs of the utility and produce a reasonable rate of return… the rates cannot be considered just and reasonable if they fail to produce a reasonable rate of return or if they produce revenue which exceeds a reasonable rate of return." *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 534, 578 P.2d 612, 615 (App. 1978). If APS plans and accounts for its own costs based on the amount of electricity it actually provides, but seeks to recover higher costs tied to a larger, hypothetical amount of electricity it never provided, such a calculation can never result in rates that are just and reasonable. It will always produce returns that are some measure higher than any

return the Commission determines is reasonable. This Court cannot allow the Commission to simultaneously authorize rates that are unjust and unreasonable while also preventing evidence of this fact from being considered. Such a decision would be unreasonably unjust.

V. ATTORNEYS' FEES

AriSEIA, Banet, and Self are entitled to, and hereby request, their reasonable attorney fees incurred in this appeal pursuant to A.R.S. § 12-348 and § 41-1001.01.

VI. CONCLUSION

Pursuant to A.R.S. § 40-254.01, the Court should vacate, set aside, or remand with instructions the Arizona Corporation Commission's Decision No. 79648 and Decision No. 79293 in Docket No. E-01345A-22-0144 on the issues granted rehearing by the Commission on April 15, 2024. Banet and Self have no option to price shop another utility. The Commission cannot require solar customers to pay increased prices to APS without first providing both notice and a meaningful opportunity to be heard on the reasons why such a charge is or is not appropriate. Because the charges were imposed both without due process and they are also illegal under federal and state law, the charges should be vacated, and solar rate payers

should receive a refund of the illegally levied charges. The rate increase should be spread evenly across residential ratepayers.

RESPECTFULLY SUBMITTED this 18th day of July 2025.

ROSE LAW GROUP, PC

/s/ Court S. Rich
Court S. Rich
Logan V. Elia
Eric A. Hill
7144 E. Stetson Drive, Suite 300
Scottsdale, Arizona 85251
Attorneys for AriSEIA and SEIA, Diane Banet, and Michael Self

-and-

ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION AND SOLAR ENERGY INDUSTRIES ASSOCIATION
Autumn T. Johnson - *Pro Hac Vice*
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
(520) 240-4757
autumn@ariseia.org

[i] Page citations refer to the page of the .pdf regardless of any page numbers within the cited document.