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ARIZONA COURT OF APPEALS

DIVISION ONE

VOTE SOLAR, *et al.*, Appellants, v. ARIZONA CORPORATION COMMISSION, Appellee.	Nos. 1 CA-CC 25-0001, 1 CA-CC 25-0002, 1 CA-CC 25-0003, 1 CA-CC 25-0004 (Consolidated) Arizona Corporation Commission Docket No. E-10345A-22-0144 **APPELLANTS' CONSOLIDATED RESPONSE TO MOTIONS FOR RECONSIDERATION**

TABLE OF CONTENTS

INTRODUCTION 4

BACKGROUND 4

I. The Court correctly held that the Commission violated due process when it initially approved the Grid Access Charge. 5

II. The Court correctly held that the Commission's rehearing did not cure the violation. 5

A. The Court correctly concluded that the Commission unfairly narrowed the scope of rehearing in a way that prejudiced parties. 5

B. The Court correctly identified related problems, including improper consideration of prior testimony about resource adequacy and a misallocated burden of proof. 8

ARGUMENT 11

I. The Court should retain its conclusion that the Commission unfairly narrowed the scope of rehearing in a way that prejudiced parties. 11

A. The Court's decision will not prevent the Commission from holding issue-specific rehearings in the future. 11

B. The scope of rehearing was, in fact, defined unfairly narrowly in a way that prejudiced parties. 12

C. The narrow scope of rehearing was adequately presented on appeal. 15

D. The parties were not required to make an offer of proof. 16

II. The Court should retain its conclusion that certain testimony about resource adequacy was improper, and any reconsideration should not change the disposition. 17

III. The Court should retain its conclusion that the Commission misallocated the burden of proof, and any reconsideration should not change the disposition. 22

IV. The Court should clarify its disposition. 27

V. In no event should the Court affirm. 28

CONCLUSION 28

INTRODUCTION

The Court correctly held that the Commission violated due process when it approved a solar-specific charge (hereafter the "Grid Access Charge") in March 2024. No party seeks reconsideration of this holding.

The Court also correctly held that the Commission's subsequent rehearing did not cure the due process violation for multiple independent reasons. The Commission and APS seek reconsideration of this holding, but they identify no "erroneous determination of fact or law" requiring reconsideration. ARCAP 22(a). And even if the Court reconsiders parts of its analysis, the disposition should remain the same: vacate the parts of the Commission's initial decision approving the Grid Access Charge and the Commission's post-rehearing decision, and remand for further proceedings.

The Commission also identifies a discrepancy in how the Court described its disposition. Paragraphs 1 and 101 of the Court's decision are correct on this point. Paragraph 99 should be modified as explained below.

BACKGROUND

Some of the Commission's and APS's arguments attack a straw man instead of the Court's decision. So, before responding, Appellants summarize the Court's analysis here.

I. The Court correctly held that the Commission violated due process when it initially approved the Grid Access Charge.

The Court held that the initial rate proceedings underlying the Commission's approval of the Grid Access Charge in March 2024 "did not comport with due process," because interested parties were not given fair notice and an opportunity to contest the charge. Decision ¶ 77. This holding was well supported. *Id.* ¶¶ 2–27 (facts), ¶¶ 63–77 (analysis).

II. The Court correctly held that the Commission's rehearing did not cure the violation.

Next the Court held that the Commission's subsequent "rehearing did not cure the due process violation." Decision ¶ 99. This holding, too, was well supported for multiple independent reasons. *Id.* ¶¶ 28–62 (facts), ¶¶ 78–99 (analysis).

A. The Court correctly concluded that the Commission unfairly narrowed the scope of rehearing in a way that prejudiced parties.

As the Court explained, the Commission initially found "persuasive" the assertion that it had approved the Grid Access Charge "without a full opportunity to be heard and present evidence." Decision ¶ 32 (quoting TAB A-1898, p. 2). The Commission therefore decided to hold a rehearing on "the issues pertaining to the adoption of" the Grid Access Charge. *Id.*

But disputes arose about the scope of rehearing. The most fundamental dispute was whether parties would be allowed to challenge the underlying site-load Cost of Service Study, the primary evidence that the Commission had used to justify the Grid Access Charge. Decision ¶ 34; *see id.* ¶¶ 12–13, 19–26 (explaining how the Commission relied on the Study).

The State and other parties maintained that the validity of the Study was necessarily within the scope of rehearing, but APS took a far narrower view, arguing that the subject was not open for reconsideration. Decision ¶¶ 34, 36–37.

In July 2024, the ALJ sided with APS's narrow view. Decision ¶ 38. The ALJ declared the Commission's prior findings approving the site-load Cost of Service Study to be "final" and "not at issue" in the rehearing. TAB A-1970 (July 24, 2024), p. 11. Similarly, in October 2024, the ALJ declared that the Commission's adoption of the Study "may not be collaterally attacked" in the rehearing—but she also confusingly stated that "it is reasonable to allow the parties to address" the Study and "its relationship to and impact on" the Grid Access Charge to ensure a "complete record." TAB A-2269, pp. 10–11.

The Commission's chair also confirmed ahead of the rehearing that the scope would be narrow. At a public meeting in August 2024, the chair declared that the site-load Cost of Service Study had been "accepted during the [initial] rate case proceedings" and would not be reheard. Decision ¶ 39 (quoting meeting).[1]

Accordingly, while parties at the rehearing presented *some* evidence about the validity of the site-load Cost of Service Study, several witnesses made clear that they had omitted or limited testimony to comply with the pre-defined narrow scope of rehearing. *E.g.*, Decision ¶ 49 (Vote Solar witness), ¶ 50 (RUCO witness), ¶ 51 (Commission witness). In addition, at the rehearing the ALJ enforced her own ruling about scope when she perceived witnesses crossing the line. *E.g.*, *id.* ¶ 52 (State witness).[2]

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[1] Later in the meeting, the ALJ assured the chair that the Commission had already decided "the issue of the Cost of Service Study," so although parties in the rehearing might "refer" to previous testimony about the Study, the Study is "not at issue." ARIZ. CORP. COMM., *Open Meeting* (Aug. 13, 2024), at 58:26–59:20 (available at https://azcc.granicus.com/player/clip/6059?view_id=3&redirect=true).

[2] The record includes additional examples of witnesses limiting testimony and the ALJ enforcing her ruling. *E.g.*, TAB B-37 (Oct. 29, 2024) at 5834:3–5835:12; TAB B-38 (Oct. 30, 2024) at 6053:6–6054:5.

That the rehearing was narrowly defined to limit challenges to the site-load Cost of Service Study—the primary evidence underlying the Grid Access Charge—led this Court to conclude that the rehearing did not cure the due process violation. The Court reasoned, for example, that (1) the ALJ and the Commission "plainly discouraged the parties from developing and presenting evidence at the rehearing by declaring in advance that they would not consider it"; (2) "the record does not support" the idea that the rehearing allowed challenging parties to "present all of their evidence" challenging the Study; (3) the Commission "made clear" in advance that challenges to the Study would not be entertained, so challenging parties cannot be faulted for "failing to gather such evidence anyway so they could present it by offer of proof"; and (4) to the extent there was "ambiguity" in the ALJ's rulings on the scope, this ambiguity "itself violated due process." Decision ¶¶ 80, 83–97.

B. The Court correctly identified related problems, including improper consideration of prior testimony about resource adequacy and a misallocated burden of proof.

In addition to the Commission's unfair narrowing of the rehearing, the Court identified two related serious problems.

The first involved APS witness Justin Joiner. In the initial rate proceedings, Joiner testified about "resource adequacy," referring to a utility's obligation to maintain sufficient system resources to meet customer energy needs. Decision ¶ 19. The Commission relied on Joiner's testimony (among other testimony) to support the Grid Access Charge, reasoning that APS provides residential solar customers with energy when they need it. *Id.* ¶¶ 23–26.

At the rehearing, the parties could not cross-examine Joiner because he had left APS's employ. Decision ¶ 53. Yet, APS objected to striking Joiner's prior testimony and instead offered another employee (Hart McClain) to substitute for Joiner and be cross-examined about Joiner's testimony. *Id.* ¶ 54. The ALJ accepted this suggestion, declining to strike Joiner's prior testimony and instead allowing McClain to serve as a substitute for Joiner's cross-examination. *Id.* ¶ 55. But then McClain expressly declined to adopt Joiner's testimony and proved unable to answer questions about it. *Id.*¶ 56.

Given these circumstances, the Court explained that Joiner's prior testimony should not have been considered. Decision ¶¶ 81–82.

The second additional problem involved who had the burden of proof. AriSEIA and the State claimed that the burden of justifying the Grid Access

Charge should remain as it was in the initial rate proceedings: on APS. Decision ¶ 43. But APS argued that, even though it had the burden in the initial proceedings, the burden had shifted to the challenging parties now that the Commission adopted the Grid Access Charge. *Id.* ¶ 44.

The ALJ sided with APS, agreeing that the challenging parties had the burden at the rehearing. Decision ¶ 58. Accordingly, the Commission reaffirmed the Grid Access Charge on the theory that the evidence submitted by the challenging parties at the rehearing was "no more reliable than" evidence in the initial proceedings that supported the charge. *Id.* ¶ 59 (quoting TAB A-2508, p. 16).

These events led the Court to clarify: Because the Commission's initial decision approving the Grid Access Charge violated due process rights of notice and opportunity to be heard, the Commission was wrong to shift the burden to the challenging parties at the rehearing. Decision ¶¶ 94–98.

ARGUMENT

I. The Court should retain its conclusion that the Commission unfairly narrowed the scope of rehearing in a way that prejudiced parties.

Both the Commission and APS try to defend the narrow scope of the Commission's rehearing. Neither identifies an "erroneous determination of fact or law." ARCAP 22(a).

A. The Court's decision will not prevent the Commission from holding issue-specific rehearings in the future.

The Commission's motion (at 10–14) criticizes a conclusion the Court never reached. According to the Commission (at 12), the Court "erred in concluding that the Commission could not, without violating due process, grant a limited rehearing on a discrete issue." But the Court never stated that the Commission cannot grant limited rehearings on discrete issues.

The lesson for the Commission here is modest. If the Commission approves a charge in violation of due process rights to fair notice and an opportunity to contest the charge, the Commission may not cure the violation by (1) announcing a rehearing on "the issues pertaining to the adoption of" the charge, but then (2) narrowly defining the scope of rehearing to limit challenges to the *primary evidence* underlying the charge. Such a rehearing is not a fair opportunity to contest the charge.

B. The scope of rehearing was, in fact, defined unfairly narrowly in a way that prejudiced parties.

1. The Commission argues (at 1–3) that "the record demonstrates" that parties at the rehearing *did* submit evidence challenging the site-load Cost of Service Study, so any limiting ruling by the ALJ was "harmless." APS also makes this argument (at 10–11).

But the Court correctly rejected this argument. Although parties submitted *some* evidence challenging the site-load Cost of Service Study, several witnesses omitted or limited testimony to comply with the pre-defined narrow scope of rehearing, and the ALJ enforced her own ruling about scope. Background § II.A above.

2. The Commission also suggests (at 2) that the ALJ relaxed her narrow view of the scope before the rehearing: In an October 2024 ruling, the ALJ stated that it would be reasonable to allow parties "to address" the site-load Cost of Service Study and "its relationship to and impact on" the Grid Access Charge to ensure a "complete record." TAB A-2269, pp. 10–11. But this statement came months *after* the ALJ's July 2024 ruling declaring the Commission's findings approving the Study "final" and "not at issue." TAB A-1970, p. 11. It also came months *after* the August 2024 announcement by

the Commission's chair that the Study would not be reheard. Decision ¶ 83; Background § II.A above. Indeed, the ALJ's October 2024 statement came on the eve of evidentiary proceedings that began later that month—after parties had already spent months developing evidence based on the pre-established narrow scope of rehearing. Decision ¶ 46.

And even the ALJ's October 2024 statement was ambiguous. In the same ruling, the ALJ reiterated her July 2024 conclusion that the adoption of the site-load Cost of Service Study was "final" and "may not be collaterally attacked in this rehearing." TAB A-2269, pp. 10–11. As the Court correctly observed, this "ambiguity in itself violated due process." Decision ¶ 87.

3. APS tries to downplay the ALJ's rulings and the Commission chair's statements about the scope of rehearing. APS argues (at 10) that the ALJ's July 2024 ruling "merely resolved a motion to clarify the rehearing's scope," so the parties "remained free to submit whatever evidence they wanted." This argument flatly contradicts APS's motion below, which urged the ALJ to "make clear from the outset" that re-litigating the site-load Cost of Service Study is "beyond the scope of this rehearing" so parties would not spend "substantial time and resources." TAB A-1947, pp. 9–13.

That was the motion the ALJ granted in July 2024. The idea that parties remained free to submit whatever evidence they wanted is fiction.

APS also argues (at 11) that the ALJ's rulings are "irrelevant" because ALJs merely make recommendations to the Commission. But the ALJ presided over the rehearing and determined which issues and evidence were heard. Background § II.A above. That is precisely why APS urged the ALJ to "make clear from the outset" that the site-load Cost of Service Study was "beyond the scope of this rehearing." TAB A-1947, pp. 9–13.

APS next argues (at 11–12) that the August 2024 statements from the Commission's chair about the rehearing are not attributable to the Commission. But the chair was discussing limitations that, in his words, "the five of us had unanimously set out," and no Commission member contradicted him.[3] And regardless, the "touchstone of due process" is "fundamental fairness," not technical nuance. Decision ¶ 67 (quoting *State v. Melendez*, 259 Ariz. 282, 290, ¶ 26 (2025)).

[3] ARIZ. CORP. COMM., *Open Meeting* (Aug. 13, 2024), at 56:20–56:49 (available at https://azcc.granicus.com/player/clip/6059?view_id=3&redirect=true).

Finally, APS argues (at 12) that the ALJ's rulings in October 2024 and during rehearing "came too late to deny" due process because the parties had pre-filed written testimony by that time. But as the Court explained, the "record refutes counsel's assertions about the timing of the relevant events," since the ALJ's July 2024 ruling and the Commission chair's August 2024 statements occurred long before then. Decision ¶¶ 85–87.

C. The narrow scope of rehearing was adequately presented on appeal.

APS suggests (at 8–10) that the due process problem with the ALJ's narrow scope of rehearing was not adequately presented on appeal. This is incorrect.

AriSEIA et al.'s opening brief explained, for example, that the rehearing did not cure the due process violation because residents "were not allowed to address or question" the site-load Cost of Service Study. AriSEIA et al. Op. Br. 14. Similarly, in response to the Commission's motion to partially dismiss the appeal, the State explained that "the ALJ interpreted the scope of rehearing in a narrow and confusing way," the Commission did not fairly consider even the evidence that *was* submitted against the Study because it deemed the Study "not subject to reconsideration," and adopting

the Commission's narrow view on appeal would "exacerbat[e] the due process problems." State Resp. 17–18, 20–22, 35–36. The State's opening brief likewise faulted the ALJ for deeming the Study "not subject to rehearing" and faulted the Commission for dismissing even the evidence that *was* submitted against the Study as "not subject to reconsideration." State Op. Br. 12–13, 17–19, 35–37. And the State's reply reiterated that the "problem began" with the ALJ and continued with the Commission's post-rehearing decision. State Reply 38–43. These issues were adequately presented.

D. The parties were not required to make an offer of proof.

APS also tries to resuscitate the argument (at 12–14) that the parties needed to "make an offer of proof" to show prejudice. But the Court correctly rejected this argument, explaining by analogy that "[w]hen a trial court issues a pretrial ruling precluding a line of inquiry, a litigant need not make an offer of proof at trial to preserve its challenge to the ruling for appeal." Decision ¶ 90 (citing *Molloy v. Molloy*, 158 Ariz. 64, 68 (App. 1988)).

That makes sense. When an adjudicator rules in advance that a line of inquiry would be beyond the scope of an upcoming evidentiary proceeding, parties are not required to develop such evidence anyway.

Here, three *months* before the rehearing, the ALJ ruled that the validity of the site-load Cost of Service Study was beyond the scope, and the Commission's chair publicly agreed. Background § II.A above. The parties were not required to develop expert testimony and other evidence on a subject that the ALJ and Commission had declared out of bounds. Decision ¶ 93.

APS nevertheless argues (at 13) that an "offer of proof" was required under Arizona Administrative Code R14-3-109(Y). But APS did not previously cite this rule. And regardless, the rule does not say *when* an offer of proof is required; it only says *what* an offer of proof must be. Moreover, the rule applies only when an "objection has been sustained." A.A.C. R14-3-019(Y). This suggests that—like the analogous Arizona Rule of Evidence—it does not apply when an adjudicator clarifies in advance that a line of inquiry is beyond the scope of an upcoming hearing.

II. The Court should retain its conclusion that certain testimony about resource adequacy was improper, and any reconsideration should not change the disposition.

The Court correctly explained why Joiner's prior testimony should not have been considered at the rehearing while using McClain as a substitute for cross-examination. Background § II.B above. APS claims that Joiner's

testimony does not require vacatur. But APS identifies no "erroneous determination of fact or law." ARCAP 22(a). And regardless, the Court did not hold that Joiner's testimony, standing alone, required vacatur. Rather, the Court exercised its discretion to identify a specific due process problem related to more fundamental problems (such as the unfair scope of rehearing) that independently require vacatur.

A. APS argues (at 4–5) that the parties forfeited any challenge to Joiner's testimony by failing to raise it "before the Commission" and "on appeal." It appears true that the parties did not specifically raise, after rehearing, the problem of considering Joiner's prior testimony on resource adequacy while using McClain as a substitute for cross-examination. But the problem was raised during rehearing, as the Court noted. Decision ¶¶ 53–56. And after rehearing, AriSEIA et al. continued to criticize the Commission's resource adequacy theory, including in exceptions to the ALJ's recommendations and in a subsequent application for another rehearing. *E.g.*, TAB A-2437, pp. 10–15; TAB A-2516, pp. 17–23. This included arguing that the resource adequacy theory relied on "Mr. McClain's testimony," who had "no expertise" on relevant issues, had done "no risk analysis relevant to solar customers and resource adequacy," and

was "not even familiar with" APS's integrated resource plan. TAB A-2437, p. 13; TAB A-2516, pp. 21–22. And more generally, APS does not dispute that AriSEIA et al. and the State argued, below and on appeal, that the rehearing did not comply with due process.

In these circumstances, the Court would have been justified in ignoring the specific due process problem posed by Joiner's testimony, but the Court did not *err* in addressing it. Appellate courts have discretion to address issues not raised by parties, including when they are "of constitutional dimension or situations in which the public interest is better served by having the issue considered rather than deferred." *Dombey v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 482 (1986). And here, "whether the Commission complied with its due process obligations is a constitutional question which we review *de novo*." Decision ¶ 65 (citing *Sun City Home Owners Ass'n v. Ariz. Corp. Comm'n*, 252 Ariz. 1, 5, ¶ 18 (2021)). So the Court, while reviewing de novo whether the rehearing complied with due process, appropriately addressed a specific and important due process problem related to those identified by the parties. The Court's evaluation is helpful, especially if the Commission decides to hold another rehearing on remand.

APS cites no authority prohibiting the Court's approach here. In *DeGroot v. Arizona Racing Commission*, the Court merely applied the "general rule" that failing to raise an issue "before an administrative tribunal" precludes appellate review. 141 Ariz. 331, 340 (App. 1984). Here, the problem with Joiner's testimony was identified during the rehearing below, and the parties raised related due process arguments afterward, prompting the Court's de novo review. Similarly, while A.R.S. § 40-253(C) prohibits parties from raising in court "grounds" not set forth in applications for rehearing, here the applications for rehearing raised due process problems, and the Court identified one such related problem.

B. APS also argues (at 5–7) that the ALJ did not err in considering Joiner's prior testimony while substituting McClain for cross-examination. But APS's argument attacks a straw man, not the Court's rationale.

APS reasons (at 5–7) that (1) the Sixth Amendment's Confrontation Clause governs criminal prosecutions; (2) due process in agency proceedings may sometimes be satisfied through a right to subpoena or submit contrary evidence; and (3) the Commission is not strictly bound by rules of evidence. Appellants do not dispute these general principles. But here, APS *convinced* the ALJ to resolve Joiner's unavailability by using McClain as a substitute

for cross-examination, and then McClain declined to adopt Joiner's testimony and proved unable to answer questions. Decision ¶¶ 53–56. The Court correctly reasoned that, in *this* situation, consideration of Joiner's testimony was improper. *Id.* ¶¶ 81–82.

C. Finally, APS argues (at 7) that there is "no evidence" that the consideration of Joiner's prior testimony prejudiced the parties. The Commission makes a similar argument (at 2–3).

But as the Court explained, Joiner was one of two witnesses who testified about resource adequacy in the initial rate proceedings, and the Commission relied on both witnesses. Decision ¶ 19. Likewise, the Commission's post-rehearing decision relied on the evidence from "the underlying case," which included Joiner's prior testimony. *Id.* ¶ 59 (quoting TAB A-2508, p. 16).

APS says (at 7) that there is no evidence that Joiner's testimony was "necessary or dispositive" given that another witness offered similar testimony. But it was APS who prevented parties from exploring the significance of Joiner's testimony, by convincing the ALJ to approve a substitute who then declined to adopt Joiner's testimony and could not answer questions. Having convinced the ALJ to chart a course that

foreclosed inquiry into the issue, APS cannot fault others for the resulting absence of evidence. Such a position is, as the Court elsewhere observed, "singularly unpersuasive." Decision ¶ 93 (quoting *Molloy*, 158 Ariz. at 68).

D. In any event, the Court's conclusion about Joiner's testimony is not necessary to the disposition. The Court devoted only two paragraphs of its Discussion to the issue. Decision ¶¶ 81–82. So even if reconsideration were warranted, vacatur would still be required because the Commission unfairly narrowed the scope of rehearing. Background § II.A above.

III. The Court should retain its conclusion that the Commission misallocated the burden of proof, and any reconsideration should not change the disposition.

The Court correctly explained why the Commission was wrong to shift the burden of proof to the challenging parties at the rehearing. Background § II.B above. The Commission and APS protest, but neither identifies an "erroneous determination of fact or law." ARCAP 22(a). And regardless, this issue should not alter the Court's disposition, as the Commission's unfair narrowing of the scope of rehearing requires vacatur anyway.

A. The Commission admits (at 9) that APS "unquestionably" bore the burden of proof during the initial rate proceedings. Yet the Commission argues (at 5–10) that, once it approved the Grid Access Charge, any

challenging party had the burden of *disproof* at the rehearing—even if they never got their constitutionally guaranteed notice and opportunity to contest the charge. That cannot be right. The Court was right to correct the Commission's misunderstanding of this basic point. Decision ¶¶ 94–98.

The Commission invokes (at 5–10) statutes governing its processes, citing A.R.S. §§ 40-253 and -254.01(E) and related cases. But regardless of how those statutes usually apply, the Constitution requires an exception for a rehearing intended to cure due process violations. As the Arizona Supreme Court explained in an analogous context, a statute that otherwise imposes a different burden of proof "does not apply in an adjudication of the Commission's constitutional authority." *Sun City Home Owners Ass'n*, 252 Ariz. at 5, ¶ 18 n.2.

The Commission also worries (at 9) that "[a]dministrative finality would be substantially undermined" if a utility must "re-establish the correctness of every aspect of a Commission decision whenever rehearing is requested." This worry is misplaced. The Court's decision rests on a modest premise: If the Commission imposes a charge in violation of due process and then rehears the matter to cure the violation, the burden of proof at the rehearing must be on *the same party* as in the initial proceeding. Otherwise,

the Commission could rush all its decisions without giving notice or an opportunity to be heard, so that challengers would face a steeper burden.

B. APS asserts (at 15) that "no opening brief" mentions burden of proof. This artful phrasing ignores that the Court was responding to arguments from the *Commission and APS* on this point. *E.g.*, Decision ¶ 94 (responding to "Appellees' assertion").

Moreover, APS acknowledges (at 15) that AriSEIA et al.'s reply raised the burden of proof issue, and APS does not dispute that the parties preserved the issue below, so this Court has discretion to consider it. *E.g.*, *State v. Far W. Water & Sewer Inc.*, 224 Ariz. 173, 182, ¶ 14 (App. 2010).

C. Next, APS argues (at 15–17) that burden of proof was "not relevant" to the rehearing because (1) the sole question on rehearing was how to allocate revenue among customer classes, and (2) APS had proposed an even allocation among residential customer classes in the initial rate proceeding. This argument fails for three reasons.

First, everyone agrees that APS bore the burden in the initial rate proceeding. As the Court explained, the Commission's rules assign "applicants" the burden of proof. Decision ¶ 97 (citing A.A.C. R14-3-109(G)).

Second, although APS *had* proposed an even allocation among residential customer classes in the initial proceeding, APS abandoned neutrality at the rehearing and has since defended the Grid Access Charge. *E.g.*, Decision ¶¶ 33, 36–37, 44. APS cannot plausibly say that, after defending the Grid Access Charge for more than two years (including on appeal), it has no position on the matter.

Third, regardless of how exactly to describe the burden, the point is that it needed to be on *the same party* at the rehearing as it was in the initial rate proceeding, because the purpose of the rehearing was to cure a due process violation. As the Court explained, the rehearing "should have been conducted as, in effect, a new rate case" about the Grid Access Charge. Decision ¶ 97. Because everyone agrees that the challenging parties did *not* have a burden of disproof in the initial proceedings, they also should *not* have had the burden of disproof in the rehearing.

D. Finally, APS criticizes (at 18–19) Paragraph 98 of the Court's decision, which describes the Commission's post-rehearing decision. As the Court explained in that paragraph, the Commission found that evidence submitted by challenging parties at the rehearing was "no more reliable than" evidence submitted by APS and staff in the initial proceedings and

thus reaffirmed its decision to impose the Grid Access Charge. Decision ¶ 98 (quoting TAB A-2508, p. 16). This finding shows that the Commission's analysis placed the burden on the challenging parties. *Id.*

APS points out that, elsewhere in its post-rehearing decision, the Commission stated that "[t]he record supports the imposition of the GAC, regardless of which parties have the burden of proof." TAB A-2508, p. 20. APS therefore invokes a presumption of regularity and asks the Court (at 18–19) to refrain from holding that the Commission misallocated the burden in a way that prejudiced the challenging parties.[4]

But in context, the Commission *did* misallocate the burden in a prejudicial way. Despite the Commission's general statement elsewhere in its post-rehearing decision, the fact that the Commission reaffirmed the Grid Access Charge upon finding that evidence submitted by challenging parties at the rehearing was "no more reliable than" evidence submitted in the

[4] APS also points out that the Commission stated that evidence at the rehearing "supports" the use of the site-load Cost of Service Study. TAB A-2508, p. 16. But this statement was not indicative of who had the burden, and regardless the ALJ and the Commission had narrowly defined the rehearing to limit challenges to the site-load Cost of Service Study.

initial proceedings confirms that it was *applying* a burden on the challenging parties. The Court correctly recognized this reality in Paragraph 98.

That said, Paragraph 98 is not necessary to the Court's disposition. It is phrased as an alternative "counterfactual" conclusion. Decision ¶ 98. So even if the Court omits Paragraph 98, vacatur is still required.

IV. The Court should clarify its disposition.

As the Commission points out (at 3–4), Paragraphs 1 and 101 of the Court's decision describe the disposition somewhat differently than Paragraph 99 does. The Court should reconcile this discrepancy.

Paragraphs 1 and 101 are correct. This appeal is under A.R.S. § 40-254.01(A), which authorizes the Court to "vacate" parts of a Commission decision and "remand with instructions." Because parts of the Commission's March 2024 rate decision were rendered in violation of due process and the Commission's post-rehearing decision did not cure the violation, the Court's disposition in Paragraphs 1 and 101 is correct.

Paragraph 99 is less precise. It states: "we vacate the Rehearing Decision and remand for the Commission to either conduct a due process-compliant rehearing or vacate the provision of the Rate Decision authorizing the imposition of the solar specific charges." (Emphasis added.) By statute,

the Court itself may "vacate" parts of the March 2024 rate decision, as it did in Paragraphs 1 and 101. Paragraph 99 should be revised accordingly.

Appellants agree that it is up to the Commission whether, on remand, to conduct a due process-compliant rehearing or *leave vacated* the parts of the March 2024 rate decision that authorize the solar-specific charge.

V. In no event should the Court affirm.

APS asserts (at 19) that the Court should "affirm" the Commission's post-rehearing decision. It should not. That would require not only reaching the opposite conclusion on due process, but also resolving against Appellants all their other challenges. *See* Decision ¶ 63.

CONCLUSION

The Court should deny the motions for reconsideration and clarify its disposition by modifying Paragraph 99.

RESPECTFULLY SUBMITTED this 7th day of August, 2026.

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