ARIZONA COURT OF APPEALS
DIVISION TWO

THE ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION, Appellant, vs. ARIZONA CORPORATION COMMISSION, Appellee.	Court of Appeals, Division Two No. 2 CA-CC 2026-0001 Arizona Corporation Commission Docket No. E-01575A-24-0246

REPLY BRIEF

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INTRODUCTION

The Arizona Solar Energy Industries Association ("AriSEIA") provides this reply to the Arizona Corporation Commission's ("Commission") Answering Brief ("ACC Br.") and Intervenor Sulphur Springs Valley Electric Cooperative, Inc.'s ("Utility") Brief in Support of Appellee ("Utility Br.").

AriSEIA challenges Commission Decision No. 81586 because it approved solar-customer tariffs that freeze net metering and impose conditions that conflict with the Commission's Net Metering Rules, A.A.C. R14-2-2301 to 2308. The approved tariffs do not net kilowatt-hours ("kWhs") delivered by the utility against kWhs exported by the customer during the monthly billing period; do not carry excess kWhs forward to the next month; and monetize every exported kWh at low Avoided Cost prices rather than monetizing only annual excess kWhs. [ROA 39 ep 7–8; *see also* ROA 107 ep 61–62 (eliminating net metering)]. Those features of the approved tariffs conflict with A.A.C. R14-2-2302(11) and A.A.C. R14-2-2306. The Utility and the Commission were explicit that they intended to eliminate net metering, and the tariffs do exactly that. [ROA 4 ep 1, 4–5, 21; ROA 107 ep 61–62 ¶ 201; ROA 109 ep 65 (net

metering is "frozen")]; *see also* Utility Br. 18, 22, 24 (net metering frozen), 25 (net metering eliminated).[1]

The Commission responds with two arguments. First, it contends that because the Net Metering Rules require Commission approval of tariffs, the Commission may approve tariffs that do not comply with the Rules' substantive requirements. Second, it argues that requiring the Commission to follow its own Rules would conflict with Article 15, Section 3 of the Arizona Constitution. Both arguments fail. The Rules bind the Commission until amended or rescinded through rulemaking, and the Administrative Procedure Act's ("APA") rulemaking requirement

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[1] The Commission contends that it did not "eliminate" Net Metering but merely replaced the "netting/billing mechanism" with an "inflow/outflow rate design that still credits exports at avoided cost." ACC Br. 20. An "inflow/outflow" rate design is not Net Metering under the Rules. It does not allow solar customers to use the kWhs they export to offset the kWhs they receive from the utility and bill them only for their net consumption, does not allow customers to carry excess kWhs forward to the next month, and monetizes every exported kWh at low Avoided Cost prices rather than only annual excess generation. A.A.C. R14-2-2302(11), 2306.

regulates procedure, not the Commission's substantive authority to set just and reasonable rates.

Despite the Commission's and Utility's efforts to complicate the case,[2] the question is narrow: may the Commission freeze net metering and approve replacement tariffs that conflict with the substantive requirements of A.A.C. R14-2-2302(11) and R14-2-2306 because it changed its policy objectives but not its rules? ACC Br. 20; Utility Br. 34. Longstanding law says no. The Commission's rules bind the Commission unless and until it changes them. That does not limit the Commission's constitutional authority to set rates under Article 15, Section 3; it only

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[2] Both the Commission and the Utility make various arguments unrelated to whether the solar-customer tariffs comply with the Net Metering Rules, including: claims about "cost-shifts" and "subsidies," the Commission's authority to approve tariffs, arguments that the Commission is not bound by stare decisis or res judicata, an argument that the Commission is not required to "follow a prior Legislature's budget or tax plan," standards of deference to findings of fact when no facts are disputed, that it was "a long time" since the Utility's last general rate case, net metering policies and 20 year old energy market history in California, and separation of solar customers into a separate class. ACC Br. 8–10, 13–19 & nn.6–7, 21; Utility Br. 9, 12, 14–15, 18–21, 27–28, 35–36, 41. These arguments have no bearing on AriSEIA's challenge here.

requires the Commission to use the process Article 15, Section 6 expressly authorizes the Legislature to prescribe.

And the Commission agrees that the ultimate question here—interpretation of the Net Metering Rules and the solar tariffs it approved—are questions of law that this Court reviews de novo. ACC Br. 15 (quoting *Szeto v. Ariz. Pub. Serv. Co.*, 252 Ariz. 378, 382 ¶9 (App. 2021)).

The Commission and Utility make variations of the same argument: because the Net Metering Rules require Commission approval of utility-filed Net Metering tariffs, the Commission may approve tariffs that disregard the Rules' substantive requirements. That argument fails. Authority to approve a Net Metering tariff is not authority to eliminate net metering. To rescind the Rules' substantive requirements, the Commission must use rulemaking. Otherwise, any agency charged with applying standards codified in a rule could nullify those standards case-by-case without ever amending the rule.

The Court should accordingly vacate the Decision and remand with instructions to approve rates consistent with the Net Metering Rules. A.R.S. § 40-254.01(A), (E).

I. ARGUMENT

A. The Net Metering Rules authorize the Commission to approve Net Metering tariffs, not tariffs that disregard the Rules' substantive standards.

The Commission's approval-authority argument fails at the threshold. Rules R14-2-2305 and R14-2-2307(A) allow the Commission to review tariff filings under the Net Metering Rules; they do not allow the Commission to approve tariffs that conflict with those Rules. ACC Br. 8–10, 23–30, 43–44; Utility Br. 33, 40–41. Treating approval authority as repeal authority would let the Commission erase substantive rules' requirements case-by-case without ever amending the Rules.

To make that argument, the Commission misquotes the Rules, ignores limits in the text, and conflates authority to approve tariffs under the Rules with authority to approve tariffs that conflict with the Rules. The Commission has no "discretion" to approve tariffs that violate the Net Metering Rules. Its contrary claim defies the Rules' plain language, the APA's rulemaking procedures, and the Legislature's superior authority under Article 15, Section 6 to prescribe procedures for Commission decisionmaking.

1. The Commission misquotes R14-2-2305.

The Commission misquotes R14-2-2305 as stating that "Net Metering charges shall be filed by the Electric Utility with the Commission for consideration and approval." ACC Br. 24, 25 (emphasis omitted). That is not what R14-2-2305 says. The rule addresses discrimination, including any utility proposal to impose a charge only on solar customers "that would increase a Net Metering Customer's costs beyond those of other customers...." A.A.C. R14-2-2305. To avoid such discriminatory fees, the rule provides that if a utility seeks to impose a solar-only charge "for recovery of additional costs due to compliance with" the Net Metering Rules, such as "the additional cost of a bi-directional meter," the utility must file the proposal with the Commission, fully support its application with cost-of-service studies and cost-benefit analyses, and bear the burden of proof. 15 A.A.R. 638, 640, 646 (Apr. 17, 2009); A.A.C. R14-2-2305.

Incorrect Quote from Commission's Brief p. 24.	Actual Quote from R14-2-2305
Net Metering charges shall be filed by the Electric Utility with the ***Commission for consideration and approval***. The charges shall be fully supported with cost of service studies and benefit/cost analyses. The Electric Utility shall have the burden of proof on any proposed charge. (Emphasis added by Commission).	Net Metering charges shall be assessed on a nondiscriminatory basis. Any proposed charge that would increase a Net Metering Customer's costs beyond those of other customers with similar load characteristics or customers in the same rate class that the Net Metering Customer would qualify for if not participating in Net Metering shall be filed by the Electric Utility with the Commission for consideration and approval. The charges shall be fully supported with cost of service studies and benefit/cost analyses. The Electric Utility shall have the burden of proof on any proposed charge.

But regardless of the Commission's misquoting, Rule R14-2-2305 has no application here. This case does not involve a discriminatory solar-only fee or a charge to recover costs specific to solar customers, such as the cost of an additional meter. It involves the Commission's decision freezing net metering and approving replacement tariffs that do not satisfy the definition of Net Metering in R14-2-2302(11) or the substantive requirements for a Net Metering tariff in R14-2-2306. And even if R14-2-2305 applied, it does not give the Commission discretion to

waive those requirements by approving tariffs that fail to meet them. The Commission's "rubber stamp" response answers a strawman. ACC Br. 25. The question is not whether the Commission must approve every tariff filed by a utility. The question is whether authority to review and approve Net Metering tariffs includes authority to approve tariffs that are not Net Metering tariffs at all.

2. The Commission focuses on the wrong words.

The Commission's focus on the terms "consider" and "approve" and the fact that tariffs are not "effective unless first approved by the Commission" sidesteps the relevant question of what standards apply to the Commission's approval decision. ACC Br. 26–27; *see also* Utility Br. 32.

The Commission is correct that it may approve or disapprove a tariff, may base its decision on case-specific data, and may decide whether to approve a submitted tariff "*sub judice*." ACC Br. 23–25, 27. But the Rules provide standards for the Commission's approval decision and do not confer unbounded discretion to approve or disapprove. And they certainly do not confer discretion to approve tariffs that contradict the Rules because the Commission no longer wants to apply them.

The Commission's argument ignores the difference between applying the Rules case-by-case and rescinding them by approving tariffs that conflict with the Rules. The approval authority in A.A.C. R14-2-2307(A) is for "a Net Metering tariff." A.A.C. R14-2-2307(A). The Rules define "Net Metering" as offsetting energy provided by the utility with electricity produced by the customer and sent to the utility during the billing period. A.A.C. R14-2-2302(11). R14-2-2306 then specifies what a Net Metering tariff must do: bill the customer only for net kWhs, roll excess kWhs to the next month, and monetize only annual excess kWhs at avoided cost. By authorizing approval of a "Net Metering tariff" and defining that tariff's substantive requirements, the Rule limits the Commission's discretion to determining whether those requirements are met. *Cf. KOLA, Inc. v. U.S.*, 882 F.2d 361, 363–64 (9th Cir. 1989) (where a regulation sets the applicable criteria for an agency's otherwise wide discretion when approving applications, the agency is bound to apply those criteria); *Trout Unlimited v. Pirzadeh*, 1 F.4th 738, 755–57 (9th Cir. 2021) (agency constrains its own discretion by adopting rule requiring a decision and establishing criteria). The Rules do not permit the

Commission to jettison their substantive standards while purporting to approve a tariff under the Rules.

Turf Paradise v. Arizona Racing Commission, 160 Ariz. 241 (App. 1989), does not help the Commission either. ACC Br. 26. There, the court held that the agency could condition approval of a horse track license because a statute specifically authorized denial when an applicant entered a contract that would not further the best interests of racing. 160 Ariz. at 244. That holding does not apply here. *Turf Paradise* confirms authority to approve, deny, or condition approval based on governing criteria; it does not authorize an agency to approve an application that violates those criteria.

The Commission's claimed authority to negate the Rules' requirements through tariff approval also cannot be squared with its own repeated recognition that changing the Net Metering Rules requires rulemaking: its statements that rulemaking was needed, its directive to staff to begin that process, and its initial steps towards amending the Rules. [ROA 133 ep 150, 153–54; ROA 132 ep 17]; 26 A.A.R. 3182; 27 A.A.R. 960–61.

3. The Commission's "surplusage" and "*expressio unius*" arguments fail.

The Commission's surplusage argument fails because it attacks an argument AriSEIA does not make: that the Commission must automatically approve whatever tariff a utility proposed. AriSEIA contends that the tariffs the Commission did approve in Decision No. 81586—which freeze net metering and replace it with tariffs that do not satisfy the Net Metering Rules' substantive criteria—do not exercise authority to approve a "Net Metering tariff" in R14-2-2307(A). Instead, the Decision rewrites the Rule's criteria. Because the Commission's surplusage argument rests on a false premise, it proves nothing.

In fact, if the canon of avoiding surplusage applies, it contradicts the Commission's argument. The Commission's rules contain provisions allowing it to waive substantive requirements where it otherwise has authority to approve filings by utilities or make case-specific determinations. *See* AriSEIA Br. 26 n.1 (identifying five waiver provisions). Those waiver provisions would be surplusage if—as the Commission argues here—the Commission's authority to make case-specific determinations grants unlimited discretion to ignore the substantive standards set by rule in individual cases.

The Commission's *expressio unius* argument also fails for the same reason. The argument wrongly assumes that AriSEIA contends that the Net Metering Rules "compel Commission approval" to "rubber-stamp" whatever the utility files through "automatic-approval." ACC Br. 29–30. As noted above, AriSEIA's claim is not mandatory approval but that authority to approve a Net Metering tariff does not imply authority to rewrite the Rules' definition and substantive requirements defining what a Net Metering tariff must include.

In fact, the doctrine of *expressio unius* applied here, it would contradict the Commission and supports AriSEIA. The Rules' express definition of Net Metering in R14-2-2302(11) and requirements for a Net Metering tariff in R14-2-2306 constitute the "decisional standard" the drafters intended to apply and "directly excludes" consideration of any other considerations when the Commission decides whether to approve "a Net Metering tariff" under R14-2-2307(A). ACC Br. 29–30.[3]

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[3] The Utility points to A.A.C. R14-2-212(I) and contends that some Commission rules provide that if the rule conflicts with a tariff order, the tariff order takes precedence. Utility Br. 40. But that supports

4. The Utility's claim that the Decision set a capacity limit based on R14-2-2307(B) has no support in the Decision or record.

This Court reviews the decision the Commission made, not intervenor counsel's post hoc alternative rationales. A.R.S. § 40-254.01(A), (E) (Court reviews the Commission's order); *Univ. Med. Ctr. of S. Nev. v. Health Choice Ariz.*, 253 Ariz. 524, 531 ¶ 32 n.3 (App. 2022) (post hoc rationales not relied on below cannot justify a decision on appeal). Neither the Utility's application nor the Commission's decision mentions R14-2-2307(B) or total utility capacity limits. Nor does the Decision identify any maximum megawatts of net metered generation that would constitute a capacity limit. The Utility therefore cannot recast the Decision approving changes to Net Metering tariffs under R14-2-2307(A) as a capacity-limit order under R14-2-2307(B). Utility Br. 32.

AriSEIA, not the Commission. Rule R14-2-212(I)'s orders-trump-rules provision is limited to "the rules in this Article"—Article 2 (R14-2-201 to 216). The Net Metering Rules are in Article 23. Under the *expressio unius* rule, the fact that R14-2-212(I) provides that orders trump only the rules in Article 2 means the drafters intended that orders not trump the Net Metering Rules in Article 23.

The Commission's textual arguments therefore fail on their own terms. Its constitutional arguments do no better.

B. Requiring the Commission to use APA rulemaking to change its own ratemaking rules does not violate Article 15, Section 3.

The Commission's constitutional argument rests on a false premise. It says AriSEIA's position would require the Commission to approve any filed Net Metering tariff "automatically," even if the tariff is unjust and unreasonable or prevented a fair-value determination. ACC Br. 7, 30–32, 34, 36. AriSEIA makes no such argument. AriSEIA's position is narrower: the Commission must either apply the Net Metering Rules or amend them through rulemaking before approving tariffs that conflict.

The Commission may stop applying the Net Metering Rules if it determines they no longer produce just and reasonable rates; to do so it must simply rescind or amend them through the rulemaking process that the Commission controls. And because the Net Metering Rules address rate design at the end of the ratemaking process, they do not preclude assessment of a utility's fair return earlier in the ratemaking process. The Commission's constitutional arguments are built on false premises and unsupported by law. The Court should reject them accordingly.

5. The Commission's constitutional premise is false.

AriSEIA does not contend that the Net Metering Rules are "forever binding," "compel automatic tariff approval," or preclude "case-by-case ratemaking judgment." ACC Br. 38, 40–41; *see also id.* at 30–32, 34, 36. AriSEIA's argument is narrower: the Commission must use rulemaking to modify the Net Metering Rules it imposed on itself. It cannot use an adjudicatory order to treat them as no longer in force.

6. The Commission's substantive authority to set rates is not constrained by APA ratemaking procedural requirements.

The Legislature's APA requirement that existing rules be rescinded or amended through rulemaking is a valid regulation of Commission procedure under Article 15, Section 6, which authorizes the Legislature to "prescribe rules and regulations to govern proceedings" before the Commission. *State ex rel. Corbin v. Corp. Comm'n*, 143 Ariz. 219, 225 (App. 1984) (the Legislature "has exercised this constitutionally delegated power through the enactment of . . . Arizona's administrative procedure act"); *see also Residential Util. Consumer Off. v. Corp. Comm'n*, 261 Ariz. 237, 582 P.3d 448, 454–55 ¶¶ 19–23 (App. 2025) (the Commission must comply with rulemaking requirements under the APA). That requirement does not interfere with, or "trump," the

Commission's "exclusive" and "plenary" authority to prescribe rates; prevent the Commission from setting "just and reasonable" rates; or bar the Commission from reassessing whether rates remain just and reasonable. ACC Br. 11, 31–32; Utility Br. 35–38. It simply requires the Commission to use rulemaking if it wants to adopt a different policy from the one it codified in the Net Metering Rules—a need the Commission recognized almost a decade ago and began addressing six years ago, but never finished. *See* AriSEIA Br. 12–13.

No case supports the Commission's claim that the Legislature cannot require rulemaking to change a rule the Commission adopted. The Commission and Utility cite cases holding that the Legislature or a court cannot dictate how the Commission sets rates. ACC Br. 32–36; Utility Br. 35–40. But those cases address substantive control over ratemaking, not procedural rules such as the APA's rulemaking provisions. *Johnson Utils. v. Corp. Comm'n*, 249 Ariz. 215, 221 ¶¶ 21–25 (2020) (Legislature cannot divest and the Commission cannot delegate its authority to prescribe rates); *Corp. Comm'n v. Ariz. Pub. Serv. Co.*, 113 Ariz. 368, 370 (1976) (court cannot compel or prohibit using future test year); *Ethington v. Wright*, 66 Ariz. 382, 390–92 (1948) (Legislature

cannot interfere with powers conferred to Commission through Constitution); *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 308 (1914) (Legislature cannot constrain Commission's ratemaking power).

Those cases do not apply here. The Legislature did not promulgate the Net Metering Rules; the Commission did.[4] Even if the Rules constrain ratemaking under Article 15, Section 3, the Commission imposed that constraint on itself and holds the keys to remove it. As the Commission correctly states, "[a]dministrative rules... are not written in stone." ACC Br. 17 n.8. The Commission can exercise its ratemaking authority to eliminate net metering, unencumbered by the Rules, by simply rescinding or amending them. There is no control of the Commission by the Legislature or the courts. ACC Br. 34–35. There is only "control" of the Commission by its *own* rules.

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[4] The Utility also cites *Phelps Dodge Corp. v. Ariz. Elec. Power Coop.*, 207 Ariz. 95, 107–08, ¶¶ 32, 38–39 (App. 2004), for the proposition that the Commission cannot delegate its authority to set rates "to some other force"—in that case, the market. Utility Br. 38. That also has no application here, since the Rules were promulgated by and can be changed by the Commission at any time. There is no "other force," market or otherwise; there is only the Commission.

The APA's requirement that the Commission use rulemaking to change rules regulates procedure, not substance. It does not control the content of the Commission's rules or prohibit the Commission from exercising ratemaking power. To the contrary, Article 15, Section 6 specifically permits the Legislature to set the procedures the Commission must follow when exercising that power. The APA's rulemaking process is one such requirement. No case exempts the Commission from the APAs' procedural requirements.

The Commission also points to *State ex rel. Corbin v. Corporation Commission*, 174 Ariz. 216 (App. 1992), as exempting the Commission from APA rulemaking for "ratemaking rules." ACC Br. 35. That is not *Corbin's* holding. *Corbin* exempts the Commission only from *certain* procedures that insert other state officers into the Commission's rulemaking process. 174 Ariz. at 219. It does not broadly exempt the Commission from all rulemaking procedures for so-called "ratemaking rules." In fact, the opinion specifically recognizes that under Article 15, Section 6 "the legislature can enact rules of practice and procedure governing the initiation and conduct of the proceedings before the commission" and whether the Commission complies with those

procedures is "subject, of course, to judicial review." *Id.*; *see also* ACC Br. 34 (recognizing that Section 6 permits the Legislature to constrain the procedures the Commission uses).[5]

There is no law to support the Commission's premise that determining a "just and reasonable" rate requires adjudicating cases on a blank slate without application of pertinent rules. ACC Br. 31.

7. Nor do the Net Metering Rules interfere with the Commission's fair-value analysis.

Net metering is a rate-design mechanism, distinct from setting a fair-value return. It occurs at the end of the ratemaking process, after the utility's fair return is determined. *See Scates v. Corp. Comm'n*, 118 Ariz. 531, 534 (App. 1978) (describing determination of "fair value" as the first step and setting tariffs to provide a just and reasonable return on that value as a later step). Nothing in the Net Metering Rules interferes with, or is incompatible with, the Commission's fair-value

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[5] The Commission claims that the rulemaking procedures applicable to the Commission are limited by caselaw and statute. ACC Br. 34 n.17. But this Court need not parse which rulemaking procedures apply and which do not in this case. There is no dispute that some rulemaking procedures apply and the Commission has not complied with any of them to rescind or amend the Net Metering Rules.

determination in a rate case. Indeed, the Rules require the Commission to ensure that rates allow the utility to recover its authorized return (including fair value). A.A.C. R14-2-2307(A). And the Commission historically applied the Net Metering Rules without undermining the constitutionally required fair value determination. *See e.g., In re Sulphur Springs Valley Elec. Coop.*, Docket No. E-01575A-09-0429, Decision No. 71463, 2010 WL 348440 (Corp. Comm'n, Jan. 16, 2010) (approving tariffs consistent with Net Metering Rules and determining no impact to fair value rate base or rate of return); *In re Sulphur Springs Valley Elec. Coop.*, Docket No. E-01575A-10-0298, Decision No. 71864, 2010 WL 3478561 (Corp. Comm'n, Sep. 1, 2010) (setting updated net metering rates without implicating fair value determination); *In re Sulphur Springs Valley Elec. Coop.*, Docket No. E-01575A-13-0296, Decision No. 74381, 2014 WL 1117857 (Corp. Comm'n, Mar. 19, 2014) (setting revenue requirement for just and reasonable rates while utility offered tariff based on Net Metering Rules). The Commission's claim that applying the Net Metering Rules is inherently incompatible with fair-value ratemaking is therefore wrong.

The Commission cites *Simms v. Round Valley Light & Power*, 80 Ariz. 145 (1956) and *Scates v. Corporation Commission*, 118 Ariz. 531 (App. 1978), which hold that the Commission must conduct a fair value analysis when setting rates. ACC Br. 37–38. But that is irrelevant here. The Net Metering Rules apply when designing rates, which happens only after determining the fair value of the utility's property in an earlier step. Nothing in the Rules "excuse[s] the Commission from making the fair-value" determination or makes any such determination "forever binding" as the Commission contends. *Id.* at 38.

U.S. West Communications v. Corporation Commission, 197 Ariz. 16 (App. 1999), is also not on point. The Commission cites it for the proposition that because net metering affects utility cost recovery and rates paid by other customers, Article 15, Section 3 requires a case-by-case decision rather than a rule-based outcome. ACC Br. 39. But *U.S. West* held only that the Legislature cannot give the Attorney General power to review and reject Commission rules reasonably related to ratemaking. 197 Ariz. at 24. It did not hold that the Commission may ignore its own ratemaking rules without first amending them.

The Net Metering Rules do not transfer any authority over ratemaking to the Attorney General (or anyone else). The Commission retains "plenary" authority over rates. The existence of the Rules only dictates the process the Commission must use to change them. As the Court recognized in *U.S. West,* imposing procedural requirements the Commission must follow is within the Legislature's authority in Article 15, Section 6 of the Constitution. *Id.* at 23–24. Nothing in *U.S. West* supports the Commission's argument that it cannot bind itself to using the rulemaking process to change ratemaking policies.

Lastly, the Commission relies on *RUCO v. Corporation Commission*[6], which recognizes that the Commission may satisfy the constitutionally required fair-value analysis through informal updates to inputs. ACC Br. 39–40; *Residential Util. Consumer Off. v. Corp. Comm'n*, 240 Ariz. 108, 112–13 (2016) (Section 3 does not require a full-blown evidentiary rate case necessary to set "fair value"). The Commission contends that means the Net Metering Rules cannot compel "automatic tariff approval" without a case-specific fair value determination. ACC Br. 40.

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[6] The Commission incorrectly cites 239 Ariz. 385, 390, ¶16 (2016). ACC Br. 39. It appears the Commission intended to cite 240 Ariz. 108 (2016).

The Commission's logic is unclear. As explained above, AriSEIA does not contend the Rules require automatic approval. And as also explained above, fair-value analysis and rate design, including net metering, occur at different stages and are not incompatible. Neither *RUCO* nor any other case supports the Commission's claimed authority to approve tariffs that violate the Net Metering Rules without first rescinding or mending those Rules through rulemaking.

C. The Commission cannot use an adjudicative order to repeal the Net Metering Rules in substance while leaving them on the books.

The Commission misses the mark with its argument that "[n]othing about evaluating a specific tariff filing under an existing, validly adopted procedural rule constitutes the promulgation of a new 'rule' within the meaning of the APA." *Id.* at 42. In this case, the Commission did not evaluate the utility's tariff filing "following the express terms of the" Net Metering Rules as the Commission contends. *Id.*; *see also id.* at 8 (claiming decision replacing Net Metering "is in full compliance with the text and purpose of the rules"), 44 (claiming to have applied the facts of the case to the existing Net Metering Rules). It evaluated and then approved tariffs that conflict with the Net Metering Rules by not

basing bills on net kWh consumption over the billing period, not carrying excess kWhs over to the next month, and monetizing all kWhs at Avoided Cost rather than only the annual excess. *See infra* p. 7-8; AriSEIA Br. 17–18, 23–24.

The Commission's own rules bind it until they are amended or rescinded. *Gibbons v. Corp. Comm'n*, 95 Ariz. 343, 347 (1964) (Commission's rules "have the effect of law and are binding on the Commission and must be followed as long as they are in force and effect"); *Clay v. Ariz. Interscholastic Ass'n, Inc.*, 161 Ariz. 474, 476 (1989) ("an agency must follow its own rules and regulations; to do otherwise is unlawful")[7]; *see also* ACC Br. 10 (agreeing that it is bound to follow "such

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[7] The Commission asserts that AriSEIA cites no authority that the Commission's Net Metering Rules are binding unless repealed. ACC Br. 23 n.12. AriSEIA's opening brief cites *George v. Corp. Comm'n*, 83 Ariz. 387, 390 (1958) and *Cochise Cnty. v. Health Care Cost Containment Sys.*, 170 Ariz. 443, 445 (App. 1991). AriSEIA Br. 25. The law that rules are binding on the Commission until repealed is well established. *See also City of Chandler v. Dep't of Transp.*, 216 Ariz. 435, 441, 167 P.3d 122 (App. 2007) (agency "has a duty to follow its own rules and regulations"); *Dept. of Rev. v. Care Comput. Sys., Inc.*, 197 Ariz. 414, 418 (App. 2000) ("an agency must follow its own rules and regulations").

procedural constraints as the legislature has validly enacted under Article 15, Section 6"). Thus, to approve solar-customer tariffs that *conflict* with the Rules' substantive requirements, the Commission first had to rescind or amend the Rules through APA rulemaking.[8] A.R.S. § 41-1001(22) (rulemaking includes the process to "amend" or "repeal" a prior rule); *see also* ACC Br. 10 (Commission is bound by procedures the Legislature validly enacts), 34–35 (the Constitution allows the Legislature to enact procedural processes for the Commission, including the APA rulemaking provisions).[9] It cannot accomplish the same result through an adjudicative order that treats the Rules as if they no longer exist. ACC Br. 42.

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[8] AriSEIA does not contend that rulemaking is required "every time [the Commission] declined to approve, or modified, a tariff that a utility filed under R14-2-2307" as the Commission claims. ACC Br. 44. Rulemaking is only required when the Commission seeks to approve tariffs that are contrary to the substantive standards currently codified in rules.

[9] The Commission contends that nothing in this Court's decision in *Residential Utility Consumer Office v. Corporation Commission*, 261 Ariz. 237 (App. 2025) (RUCO), is relevant here. ACC Br. 43. However, as explained in AriSEIA's opening brief, the opinion confirms that the Commission must comply with the procedural requirements of the APA, including rulemaking, even when exercising its constitutional authority to set rates. AriSEIA Br. 28 (citing RUCO, 582 P.3d at 451 ¶ 2, 454–55 ¶¶ 19–23).

For these reasons, each of the Commission's and Utility's merits arguments fails. Their remaining arguments do not defend Decision No. 81586 on its own terms. Instead, they try to avoid review by recasting AriSEIA's challenge as an untimely attack on different decisions. That procedural defense fails too.

D. AriSEIA challenges Decision No. 81586, not the 2017 Value of Solar Decision or the Utility's 2017 Rate Case.

This appeal challenges Decision No. 81586, which prospectively approved new rates for the utility's solar customers. The Commission and Utility cannot bar that challenge by invoking a settlement agreement related to the 2017 Value of Solar Decision or the Utility's 2017 rate case. *Id.* at 20–21; *see also* Utility Br. 43, 46. AriSEIA does not challenge those decisions here. Nor could those decisions resolve this case. The Value of Solar decision was not a rulemaking and therefore did not rescind or amend the Net Metering Rules governing this appeal. And the 2017 rate case did not consider whether any tariffs conflict with the Rules, much less the tariffs approved in this case.

Here, the Commission defined Net Metering as netting kWhs delivered by the utility against kWhs exported by the customer over each month and codified substantive criteria for Net Metering tariffs: billing

the customer only for net consumption, rolling kWhs over to the next month, and monetizing excess kWhs at "Avoided Cost" only at the end of the year. Its authority to approve such Net Metering tariffs in R14-2-2307(A) is limited to applying those codified substantive standards. That authority is not a mechanism for amending or rescinding the standards because the Commission no longer believes they are good policy or produce just and reasonable rates. To make that change, the Commission must adopt a new rule. The Commission retains full authority to define a just and reasonable rate, including determining that Net Metering is not just and reasonable. The question is what process applies for making that determination.

AriSEIA also does not challenge the Utility's 2017 rate case decision. Utility Br. 42–43. That order remained in effect until the 2025 order here, which set new rates prospectively. AriSEIA does not seek to "enjoin, restrain, suspend, delay or review" the rates in effect under prior orders. A.R.S. § 40-254.01(F). It seeks review only of Decision No. 81586, which approved replacement tariffs for residential and commercial solar customers effective January 1, 2026. [ROA 109 ep 11–12, 65–75]. The fact that the Commission previously approved tariffs with some similar

provisions does not transform AriSEIA's timely challenge to the 2026 tariffs into an untimely attack on the prior tariffs. Utility Br. 42–46.

Nor is there issue preclusion based on the Value of Solar decision or the Utility's 2017 rate case decision. Utility Br. 45–46. Neither the question whether the Utility's tariffs comply with the Commission's Net Metering Rules, nor the question whether the Commission can approve tariffs inconsistent with the Rules without first modifying the Rules through rulemaking procedures, was "actually litigated" or "essential to the judgement" in those decisions. *Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 254 Ariz. 485, 492 (2023). The Value of Solar decision did not set rates. It deferred both setting rates for solar customers and initiating rulemaking to modify the Net Metering Rules. [ROA 133 ep 184–87]. At most, the Value of Solar decision announced an inchoate plan to phase out net metering and to undertake rulemaking to change the Rules. Those rule changes could have occurred prior to any tariffs actually being approved. And in the Utility's 2017 rate case, no party raised, and the Commission never considered or decided, whether tariffs complied with the Net Metering Rules. *See* Utility Br. 46 (quoting Restatement (Second) of Judgements § 27 (1982) as requiring an issue to

be "properly raised,… and… determined" to be "actually litigated"); Restatement (Second) of Judgments § 27, cmt c. (where arguments are not raised, the "issue" is not the same between cases).

The Commission's and Utility's attempts to avoid the merits by recasting AriSEIA's timely challenge to Decision No. 81586 as an untimely challenge to prior decisions fail. This Court should reject those attempts and vacate Decision No. 81586.

CONCLUSION

The Court should vacate Decision No. 81586 under A.R.S. § 40-254.01 and instruct the Commission to apply the Net Metering Rules when approving rates for solar customers unless and until the Commission amends or rescinds those Rules through rulemaking.

RESPECTFULLY SUBMITTED this 13th day of August, 2026.

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ARIZONA COURT OF APPEALS
DIVISION TWO

THE ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION, Appellant, vs. ARIZONA CORPORATION COMMISSION, Appellee.	Court of Appeals, Division Two No. 2 CA-CC 2026-0001 Arizona Corporation Commission Docket No. E-01575A-24-0246

CERTIFICATE OF SERVICE

The undersigned certifies that on the 13th day of August, 2026, Appellant's Reply Brief was electronically filed and copies of the same were served via email on the following:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14, Arizona Rules of Civil Appellate Procedure, I certify that the attached brief uses proportionately spaced type of 14 points or more, is double spaced using a Century font, and does not exceed 7,000 words.

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