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ARIZONA CORPORATION COMMISSION
OFFICE OF COMMISSIONER LEA MÁRQUEZ PETERSON

March 12, 2020

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

Re: Docket No. E-01345A-16-0272: In the Matter of the Application of Arizona Public Service Company for Approval of Revised APS Partial Requirements Rate Schedule EPR-2 (PURPA).

Dear Chairman Burns,

Related to the Public Utility Regulatory Policies Act of 1987 (PURPA), on August 5, 2016, Arizona Public Service Company (APS) filed an application to revise and modify its Rate Rider EPR-2 tariff (PURPA Tariff) to say, "The terms for [the purchase energy from a Qualifying Facility that is not configured for partial requirements service and/or is greater than 100 kw] shall be provided in a contract to be approved by the Commission, which shall not exceed two years."¹

On December 17, 2019, Commissioners Bob Burns, Boyd Dunn, Sandra Kennedy, Justin Olson, and I unanimously adopted Decision No. 77512 (the Commission's 18-year PURPA Contracts Decision), rejecting APS's "two-year" contract-term language and adopting instead an alternative "eighteen-year" contract-term language,² which required APS to offer Qualifying Facilities under PURPA (QFs) a minimum contract length of eighteen years, to save PURPA in Arizona and help make a substantial difference for low-cost renewable energy development in the state. Specifically, the Commission's 18-year PURPA Contracts Decision ordered APS to file a revised PURPA Tariff, which was to be revised and modified to reflect the following five terms and conditions with respect to contracts between APS and QFs with a nameplate capacity over 100 kW (the Five Revisions and Modifications):³

1. *APS will provide QFs with a contract term of no less than eighteen (18) years, applicable to a QF with nameplate capacity over 100 kw.*
2. *APS shall offer QFs contracts that have business terms that are reasonably similar to other PPAs that the utility has entered into previously.*
3. *The rate paid to the QF will be established using APS's long-term avoided cost. APS shall use the long-term avoided cost methodology established by the Commission.*

¹ Application of APS, Exhibit C. (Aug 5, 2016), available at: <https://docket.images.azcc.gov/0000172720.pdf>.

² See Kennedy/Marquez Peterson Proposed Amendment No. 1 (Dec 12, 2019), available at: <https://docket.images.azcc.gov/E000004068.pdf>.

³ See Decision No. 77512 (Dec 17, 2019), available at: <https://docket.images.azcc.gov/0000200428.pdf>.



4. *APS shall make its application and contracting procedures readily available to QFs.*
5. *A QF must follow the interconnection procedures outlined by APS. APS is obligated to make all the necessary interconnections with the qualifying facility to accomplish purchase or sales of energy and capacity.*

On December 31, 2019, which was the deadline the Commission's 18-year PURPA Contracts Decision had required APS to comply with the Decision, APS submitted a document saying, "APS's currently effective [PURPA Tariff], approved in Decision No. 76295 (August 18, 2017), is in all respects consistent with [the Commission's 18-year PURPA Contracts Decision] and requires no revisions."⁴

On January 24, 2020, supposedly in response to a request made by Commission Staff,⁵ APS submitted an updated PURPA Tariff, which was revised and modified to say the following language: "Contracts between APS and QFs larger than 100kW will be consistent with Decision Nos. 52345 and 77512."⁶ Because Staff's request was not included in the above-captioned docket, we do not know what date Commission Staff made the request or what the request said.⁷

Following APS's updated PURPA Tariff, intervenor 1.2 GW LLC filed a letter that same day saying, "[APS] failed to follow the clear and unambiguous terms of the [Commission's 18-year PURPA Contracts Decision] and [has] not made appropriate revisions to [its] tariff." "None of [the Five Revisions and Modifications] are reflected in APS's tariff."⁸

Despite intervenor 1.2 GW LLC's concerns, on March 9, 2020, Commission Staff approved APS's updated PURPA Tariff, saying it was "in compliance" with the Commission's 18-year PURPA Contracts Decision.⁹

After looking at the various filings, the Commission's 18-year PURPA Contracts Decision, and Staff's response, I have concerns regarding how Staff is interpreting and enforcing the Commission's 18-year PURPA Contracts Decision as Commissioners Burns, Dunn, Kennedy, Olson, and I explicitly and unanimously ordered. Specifically, I have concerns that APS's filings may not be satisfying the Five Revisions and Modifications required in the Commission's 18-year PURPA Contracts Decision, or that, if they are, they are not satisfying them by the December 31st deadline set forth in Ordering Paragraph 2.

If no other commissioner objects, I respectfully request Staff conduct a comprehensive reevaluation of its original compliance analysis and docket, no later than March 18, 2020, a full and complete public compliance report that includes a side-by-side comparison and checklist of APS's filing with the Commission's 18-year PURPA Contracts Decision, identifying where, specifically, each and every one of the itemized Five Revisions and Modifications listed in Finding of Fact No. 40 can be found in APS's filing.

⁴ Filing from APS (Dec 31, 2020), <https://docket.images.azcc.gov/E000004289.pdf>.

⁵ See Filing from APS (Jan 24, 2020), <https://docket.images.azcc.gov/E000004570.pdf> (stating, "Pursuant to Commission Staff's request.").

⁶ *Id.*

⁷ See Docket No. E-01345A-16-0272 (Aug 5, 2016), <https://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=19603#docket-detail-container2> (showing no filings, documents, correspondence, or requests docketed by Staff between December 31, 2019, and January 24, 2020).

⁸ Correspondence from 1.2 GW LLC (Jan 24, 2020), <https://docket.images.azcc.gov/E000004576.pdf>.

⁹ See Notice of Compliance (Mar 9, 2020), <https://docket.images.azcc.gov/E000005226.pdf>.



As ambiguities in the Commission's original 1987 PURPA Policy (Decision No. 52345) were ultimately responsible for bringing us through the lengthy evidentiary proceedings that brought us here today, I believe clearing APS's PURPA Tariff of any potential ambiguities is an absolute imperative to helping the Commission move-forward with its 18-year PURPA Contracts Decision to achieve common goals for a cleaner and more affordable energy future in Arizona.

If, after review of Staff's public compliance report, I have any remaining concerns with APS's PURPA Tariff or the concerns of any other party, then I may request an agenda item be placed on the Commission's March Open Meeting, to discuss APS's compliance and possible remedies.

I look forward to hearing from any commissioners who share my concerns and would like to write in support.

Sincerely,

A handwritten signature in blue ink that reads "Lea Márquez Peterson".

Lea Márquez Peterson
Commissioner

