

RESIDENTIAL UTILITY CONSUMER OFFICE

REQUEST FOR PROPOSAL

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.

ACC DOCKET NO. E-01345A-11-0063

BEFORE THE ARIZONA CORPORATION COMMISSION

PROPOSALS TO BE CONSIDERED MUST BE RECEIVED

ON OR BEFORE

June 1, 2011 at 5:00 P.M. (ARIZONA TIME),

ISSUE DATE: April 12, 2011

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1. INTRODUCTION

You are invited to submit a proposal in accordance with the specifications and conditions contained in this Request for Proposal (RFP). Offerors must submit an original and three (3) copies of their proposals on or before 5:00 p.m. (Arizona time) on June 1, 2011.

2. BACKGROUND

2.1. DESCRIPTION OF RESIDENTIAL UTILITY CONSUMER OFFICE (“RUCO”)

RUCO was established in 1983, through the enactment of enabling legislation by the Thirty-Sixth Legislature of the State of Arizona, for the purpose of representing the interests of residential utility consumers in regulatory proceedings involving public service corporations before the Arizona Corporation Commission (“ACC” or “Commission”).

RUCO is empowered to:

- Research, study and analyze residential utility consumer concerns.
- Prepare and present briefs, arguments, proposed rates or orders, and intervene or appear on behalf of residential utility consumers before hearing officers and the ACC.
- Make and execute contracts for outside services.

2.2. DESCRIPTION OF THE COMPANY

Arizona Public Service Company (“APS” or “Company”) is a public service company principally engaged in the generation, transmission and distribution of electricity for sale in Arizona. APS is a subsidiary of Pinnacle West Capital Corporation (“PWCC”). APS provides electric service to approximately 970,000 customers in Arizona.

2.3. PREVIOUS RATE CASE DECISIONS AND RECENT COMMISSION PROCEEDINGS

On December 26, 1996, the Commission issued Decision No. 59943, which adopted A.A.C. R14-2-1601 through 1616, the Retail Electric Competition Rules. On August 10, 1998, in Decision No. 61071, the Commission adopted amended rules on an emergency

basis, and on December 11, 1998, adopted the emergency rules on a permanent basis in Decision No. 61272. On January 11, 1999, the Commission issued Decision No. 61311, which stayed the Retail Electric Competition Rules and related decisions. In April 1999, in Decision No. 61677, the Commission began the process to revise the stayed Retail Electric Competition Rules. Decision No. 61677 ordered the Commission's Hearing Division to set dates for consideration of stranded costs and unbundled tariffs for each Affected Utility, including APS. On May 18, 1999, APS filed for approval of a Settlement Agreement of its stranded cost and unbundled tariff matters. RUCO was one of the parties to the Settlement Agreement. A hearing was held on the Settlement Agreement, and the Commission issued Decision No. 61973 (October 6, 1999), approving the Settlement Agreement with changes. On September 29, 1999, the Commission issued Decision No. 61969, which approved revised Retail Electric Competition Rules.

The Settlement Agreement adopted in Decision No. 61973 provided for five pre-determined rate decreases to become effective July 1 of each year from 1999 to 2003. Rates for residential customers were to be decreased by 1.5% each year. In addition, the Settlement Agreement provided that APS would divest its generation assets to an affiliate (which later became Pinnacle West Energy Corporation ("PWEC")) no later than December 31, 2002. After that date, APS would be required to acquire power for its standard offer customers from the competitive market, with at least 50% through a competitive bid process. The Settlement Agreement further provided that APS would write-off \$183 million present value of its claimed \$533 million stranded costs. The Settlement Agreement also provided that the Commission would approve, prior to December 31, 2002, adjustment clause(s) to be implemented beginning July 1, 2004 to permit recovery of certain types of costs. The Settlement Agreement also provided for APS to file a rate case by June 30, 2003 with rates to go into effect no sooner than July 1, 2004.

In October 2001, APS filed a Variance/Purchased Power Agreement ("PPA") application. The application requested that the Commission grant a partial variance to R14-2-1606(B) that would otherwise obligate APS to acquire all of its customers' Standard Offer generation requirements from the competitive market, and sought Commission approval of a long-term purchase power agreement with its parent, PWCC.

By Procedural Order issued May 2, 2002, a generic proceeding was established that set up Track A to resolve issues relating to market power, divestiture, codes of conduct/affiliate transactions and jurisdictional issues. It also established Track B to address competitive procurement. On September 10, 2002, the Commission issued Decision No. 65154 in the Track A proceeding. In that Decision, the Commission ordered APS to cancel its plans to divest its generation assets.

In Decision No. 65434 (December 3, 2002), the Commission approved with conditions APS' emergency application requesting a waiver of A.A.C. R14-2-804(B)(1) and (2) to permit APS to make short-term advances to PWCC in the form of an inter-affiliate line of credit, or alternatively, in the form of an APS guarantee of PWCC's short-term debt.

On March 4, 2003, the Commission issued Decision No. 65743 in the Track B proceeding.

In September 2002, APS filed an application seeking approval of financing to permit APS to provide financial support for the Arizona-related PWEC asset. RUCO recommended in that proceeding that PWEC transfer its generation assets to APS as a condition of approval of the financing. On April 8, 2003, the Commission issued Decision No. 65796 authorizing APS to issue non-secured debt of up to \$500,000,000 and loan the proceeds to PWEC and/or guarantee the debt of PWEC in the amount of \$500,000,000.

In June 2004, APS filed an application seeking approval from the Commission to purchase the Sundance Generating Station from PPL Sundance Energy, LLC. In Decision No. 67504, the Commission declined to grant approval of the transaction, or make any determination of the prudence of the acquisition prior to the occurrence of the investment, but the Commission did indicate that if APS requests relief for the Sundance Plant in the context of a ratemaking proceeding, the request would be considered under traditional cost of service ratemaking principles. The Commission further approved a deferral order for a portion of the capital and operating costs of the plant, subject to certain conditions.

In June 2003, the Company filed an application for a rate increase. In April 2005, the Commission issued Decision No. 67744 approving a settlement agreement that provided for the transfer of certain generation assets from PWEC to APS, for the establishment of a power supply adjustor to recover the costs of fuel and purchased power, and for an increase of 4.21% in base rates.

Base rates were established based on 2003 fuel and purchase power costs, and the power supply adjustor provided for annual adjustment each April 1 beginning in 2006. The annual adjustor was capped at \$0.004 per kWh for the life of the mechanism. APS could seek a surcharge for additional recovery if necessary.

In August 2005, APS filed an application for a surcharge to recover \$80 million in fuel and purchased power costs. In Decision No. 68437 (February 2, 2006), the Commission denied the application as premature, ruling that a surcharge can only be used to recover a balance remaining after the regularly-scheduled annual adjustment is implemented. The Commission modified Decision No. 67744 to permit the annual adjustment to take place on February 1 rather than on April 1, and implemented a \$0.004 per kWh annual adjustment effective February 1, 2006. The Commission also permitted APS to continue to defer power costs in excess of the \$776 million cap that was adopted in Decision No. 67744.

In Decision No. 68295 (November 14, 2005), the Commission approved APS' parent company to invest an additional \$450 million in APS.

On November 4, 2005, Company filed an application for a rate increase. It amended the application on January 31, 2006. The amended application seeks an increase of \$449.6 million or 21.1% percent over adjusted Test Year operating figures. The application is based on a 12-month historical Test Year ended September 30, 2005. The Company's application includes a proposal to modify the terms of the power supply adjustor that was approved in Decision No. 67744, and to include the Sundance plant in rate base.

In June 2007, the Commission issued Decision No. 69663 authorizing an increase of \$321,723,000 or a 12.33 percent increase over test year revenues. The Commission awarded the Company a 10.75% cost of equity and an overall weighted cost of capital of 8.32%. The Commission allowed for the continuation of the Company's Power Supply Adjustor ("PSA") awarded in Decision No. 67744 and eliminated the four mill lifetime cap and replaced it with a 4 mill annual cap. The PSA also will continue to include the 90/10 sharing mechanism.

In December 2009, the Commission issued Decision No. 71448 which approved a Settlement Agreement authorizing an increase of \$344.7 million over test year revenues. The Commission awarded the Company an 11% cost of equity and a rate of return of 6.65%.

The Commission allowed for the continuation of the Company's Power Supply Adjustor ("PSA") The PSA also will continue to include the 90/10 sharing mechanism. The Decision also prohibited the Company from filing its next rate case prior to June 1, 2011.

2.4. DESCRIPTION OF THE PENDING APPLICATION

On February 1, 2011, APS filed its 120-day Notice of Intent to file a rate case application. Among other things, the Company intends to seek a revenue decoupling mechanism, 18-months of post test year plant, an infrastructure tracker mechanism, and an 11% ROE. Attached is a copy of an overview of the key rate case elements identified by the Company in its 120-day Notice.

The Contractor will perform an analysis of rate base, revenues and expenses and revenue requirement. The Contractor(s) will be required to perform comprehensive analyses and formulate recommendations regarding the Company's rate design/cost of service, and to design rates for RUCO's recommended revenue requirement. RUCO will be performing the cost of capital analysis in-house.

2.5. ADDITIONAL INFORMATION

The Company maintains its books and records at its principal executive offices at 400 North Fifth Street, Phoenix, Arizona 85004. The Company's mailing address is P.O. Box 53999, Phoenix, Arizona 85072-3999.

Examination of dockets will occur at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Certain recent dockets, including the application in this docket, may be reviewable on the Commission's website: edocket.azcc.gov. Meetings with RUCO staff will occur at 1110 West Washington, Suite 220, Phoenix, Arizona 85007.

Other than the June 1, 2011 date that the Company intends to file its rate application there are no scheduled dates. RUCO is issuing this RFP early in the hope of getting the Consultant up to speed early in the event Settlement negotiations take place promptly after the Company's filing.

- RUCO Direct Testimony TBD
- Company Rebuttal Testimony TBD
- RUCO Surrebuttal Testimony TBD
- Company Rejoinder Testimony TBD
- Pre-Hearing Conference TBD
- Hearing Begins TBD

3. SCOPE OF WORK

The Contractor(s) (“Contractor”) will conduct an analysis of the generation and associated costs included in the Company’s application for an increase in rates. The Contractor shall provide a recommended rate design, as well as develop tariffs that will generate RUCO’s recommended revenue requirement.

The Contractor should be aware that the scope of the project and procedural schedules are subject to change and that the Contractor will be required to maintain a reasonable amount of flexibility and accommodate any changes

3.1. MAJOR WORK ELEMENTS

The major work elements will include, but not be limited to, the following:

1. Read and review and identify issues in the testimony and schedules submitted by Company and any other parties in this docket, as well as any updated schedules and testimony. Prepare and submit a proposed rate design, including an in-depth analysis of the Company’s decoupling proposal.
2. Review the Company’s cost of service study and testimony. The Company’s study should either be adopted, modified, or, if necessary, the Contractor should prepare an independent cost of service study and adopt the resulting allocation of costs and expenses among the various customer classes and contracts.
3. Develop fair rates for each rate class.
4. Evaluate the Company’s requested Service Schedule changes.
5. Prepare and submit all data requests necessary and prepare responses to data requests served on RUCO.

6. Prepare expert testimony, surrebuttal testimony, and, if required by Procedural Order, supplemental testimony.
7. Appear and testify at the evidentiary hearing(s) for this docket.
8. Provide technical support in the preparation and presentation of RUCO's position in public hearings.
9. Prepare questions for cross-examination and rebuttal.
10. Analyze the Proposed Opinion and Order issued by the Administrative Law Judge and evaluate it for possible exceptions, rehearing and appeal.
11. If requested, provide technical support in the preparation of other RUCO members' testimony and RUCO's brief.
12. Assist RUCO and its attorneys in writing exceptions to the Proposed Order, if necessary.

3.2. WORK PRODUCTS

The Contractor shall provide the following work products:

1. Discovery data requests to submit to other parties as necessary.
2. Three (3) copies of written direct testimony in draft form and fifty (50) copies of written testimony in its final form.
3. Three (3) copies of written surrebuttal testimony in draft form and fifty (50) copies of written testimony in its final form.
4. One copy of a brief, written summary of Contractor's pre-filed testimony.
5. One copy of questions for cross examination and rebuttal, if desired by RUCO.
6. Responses to data requests submitted to RUCO.

7. Oral briefings, if desired by RUCO staff. Participation in telephonic settlement conferences, if applicable.
8. Oral testimony and technical support at the hearings.
9. One complete set of workpapers, indexed in an orderly form, supporting the development of all calculations by Contractor and summarizing the procedures used in analyzing and evaluating all data. Workpapers shall also include computer disks, printouts, and any other media by which data and narratives were obtained and retained.

3.3. WORK STATUS REPORTS

Throughout all phases of work, the Contractor will be required to submit to the Director, on a monthly basis, one copy of a work status report. The report shall contain the following information:

1. Comparison of planned and actual progress in carrying out all of the Contract tasks during the previous month.
2. Identification of actual or foreseeable problems in completing the work, with an assessment of probable impacts and any recommended solutions to the problems.
3. Timeline showing completion dates for remaining tasks.

3.4. ESTIMATED COMPLETION DATES

Procedural deadlines for this proceeding have yet to be established by the Commission.

Preliminary drafts of written testimony must be submitted to RUCO at least two weeks prior to the due date for delivery of testimony in its final form. It is anticipated that the written summary of direct testimony and written surrebuttal testimony will be due approximately three days prior to RUCO's scheduled appearance in the hearing, with a draft copy due to RUCO at least one week prior to the specified due date.

The expected due dates for delivery of testimony may change depending on dates established in any forthcoming Procedural Order(s). Duration of the contract will run until these proceedings before the Commission have been completed.

It is expected that RUCO will award a contract(s) on June 2, 2011 or shortly thereafter.

4. CONTRACT MANAGEMENT

The Director of RUCO, or the Director's designee, is responsible for the overall management of this project. Among other things, the Director, or the Director's designee, will be responsible for:

1. Overseeing the project operation as it relates to policy questions.
2. Determining any changes in emphasis or end product that may be desired.
3. Assessing the progress and problems of the project.
4. Reviewing status reports and approving Contractor's proposed plans for action.
5. Determining final compliance with terms of the contract.

5. INSTRUCTIONS FOR PREPARING PROPOSALS

5.1. GENERAL INSTRUCTIONS

Offerors shall prepare a *single* proposal containing a Technical and a Cost Section. An original and three (3) copies of proposals are to be mailed or delivered to:

Jodi Jerich, Director
Residential Utility Consumer Office
1110 W. Washington, Suite 220
Phoenix, Arizona 85007

Joint ventures involving several firms will be considered, provided that a prime Contractor, who shall be responsible for coordinating the work of Subcontractors, is clearly identified. The prime Contractor will be responsible for the timely completion of the work performed by Subcontractors. The work tasks and associated budget to be provide by Subcontractors must be clearly defined as part of the proposal.

The cover sheet for the proposal should indicate clearly the consulting firm's name, address, and the coinciding RFP name.

To be considered for award, all proposals must be received no later than 5:00 p.m. (Arizona time), June 1, 2011.

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Contractor's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. If RUCO has recently been provided pertinent information regarding Offeror's firm, such as resumes and work history, reference to those documents in lieu of their inclusion will suffice.

Proposals will be opened publicly on June 2, 2011 at RUCO's offices, 1110 W. Washington, Suite 220, Phoenix, Arizona 85007. Previously submitted offers may not be withdrawn after that time.

After contract award, the proposals shall be open for public inspections except to the extent that the withholding of information is permitted by law. Additionally, work performed under contract will become a matter of public record unless determined to be confidential.

Offerors may designate as proprietary certain portions of the proposals by so identifying those portions in writing at the time of submitting the proposal.

Proposals which do not meet all the requirements specified in the RFP shall be deemed non-responsive.

Inquiries may be directed to:

Residential Utility Consumer Office
1110 W. Washington, Suite 220
Phoenix, Arizona 85007
Telephone: (602) 364-4835

5.2. TECHNICAL SECTION FORMAT

The Technical Section should be submitted as a separate part of the total response to this RFP. The proposal format should be the same as the format below, and all information requested must be presented; otherwise, the proposal may be deemed non-responsive.

PART ONE Business Organization

State the full name and address of your organization, and if applicable, the branch office or other subordinate element that will perform or assist in performing the work. For any Subcontractors included in your proposal, indicate whether they operate as an individual, partnership or corporation; if as a corporation, include the state in which they are incorporated. State whether they are licensed to operate in the State of Arizona.

PART TWO Project Summary

Present your understanding of the project requirements, its goals and objectives, and a summary of the problems which must be addressed and solved to successfully fulfill the requirements. Include a brief narrative description of your proposed effort and of the products that will be delivered.

PART THREE Work Plan

Describe your plan for accomplishing the work. Indicate the number of person-hours you have allocated to each task. Include a time-related display showing each task, even and decision point in your plan.

PART FOUR Management Summary

Provide an overview explanation and chart showing project leadership and supervision, reporting responsibilities, and Contractor (and Subcontractor, if appropriate) team interfaces. Identify individuals by name and title. Indicate the procedures you will use for scheduling and controlling the work to be performed. Indicate the person, or persons, responsible for each phase of the work, and indicate the person with ultimate responsibility for completion of the project.

PART FIVE Prior Experience

Provide a brief description of recent assignments which would qualify your firm to undertake the proposed work. Include the project title and completion date related to each assignment. Also include the names of each assignment's project manager and other key participants. Provide a specific reference including name, title, organization, address, and telephone number for each assignment

given. Offerors may be required to submit copies of relevant testimony upon request by RUCO.

PART SIX Personnel

Include the number of executive and professional personnel by skill and qualification. Show where these personnel will be stationed during the time they are engaged in the work. Show the inclusive periods, total number of hours, and percent of time that each individual will devote to the project. Identify each individual by name and title. Provide resumes of all executive or professional personnel. Indicate, by name and title, who prepared the proposal and how the individual will participate in the project. Specify personnel who will testify in the hearing and identify their previous experience in providing oral testimony.

PART SEVEN Relationships with Arizona Utilities

List all public utilities or public utility subsidiaries for which your firm, or any members of your professional staff proposed for the project, has worked in a professional capacity during the past three years. For each firm listed, briefly describe the nature of the professional relationship and the impact of this relationship upon your firm's ability to serve RUCO in an independent capacity. Describe any other legal, professional, or financial relationships between Arizona public utilities and any key members of the firm.

PART EIGHT Authorized Negotiators

Include the name, address, and telephone numbers of persons in your organization authorized to negotiate the proposed contract.

5.3.COST SECTION FORMAT

The Cost Section should be submitted as a separate part within the total response to this RFP. The format should be the same as that below, and all information requested must be present.

The information requested in this section is required to support the reasonableness of your quotation. Your established method of costing should be described.

1. Labor Costs - Itemize so as to show the following for each category of personnel with a different rate per hour:
 - a. Position: e.g., Project Manager, Senior Analyst, etc.;

- b. Project work station location;
 - c. Estimated hours;
 - d. Rate per hour; and
 - e. Total cost for each position and for all direct labor proposed.
- 2. Cost of Supplies - Itemize.
 - 3. Other Direct Costs - Itemize.
 - 4. Transportation and Subsistence Costs - Show travel cost and per diem separately.
 - 5. Total Price Bid for Project - By separate explanation, segregate the labor costs between direct labor costs, indirect or overhead costs, and fixed fee or profit.

6. PROPOSAL EVALUATION CRITERIA

The contract will be awarded to the Offeror whose proposal is determined to be most advantageous to the State based on the factors set forth in this Request for Proposal. In addition, RUCO reserves the right to award less than the entire work project described in Section 3 to any one Contractor and to direct the retention of a Subcontractor or Subcontractors approved by RUCO. The following is a list of factors in descending order of relative importance that will be considered in evaluating the proposals received:

1. DEMONSTRATED UNDERSTANDING OF THE PROJECT

A determination will be made of the Offeror's clear understanding of the project. Specifically, attention will be given to the Offeror's demonstrated understanding of public utility regulatory issues on a national scope, understanding of the treatment of issues under the State of Arizona's regulatory law, and identification of case-specific issues and understanding of such issues upon the residential consumers of Arizona.

2. TECHNICAL CREDIBILITY

An evaluation will be made of the soundness of the proposal as it relates to the technical details of the project in order to attain the requirements described in the RFP, including a proposed work plan and management plan. Attention will be given to the distribution of person-hours by task for each Contractor team member, the percentage of each team member's time devoted to this project, the chart highlighting relevant deadlines by task, and the clear identification of proposed witnesses and individuals assigned to participate in the hearing.

3. QUALIFICATIONS OF THE FIRM

The proposal will be reviewed with careful attention to the bidder's prior work experience in the areas described in Section 3.

4. QUALIFICATIONS OF ON-SITE CONTRACTOR TEAM

The proposal will also be reviewed with regard to the commitment of specific personnel to the project and their experience in the areas described in the Scope of Work as described in Section 3 of this RFP. Bidders are encouraged to submit illustrative abstracts or samples of individual's previous work in relevant areas.

5. COSTS

An evaluation of the reasonableness of the proposed cost in light of the project scope will be made.

7. TERMS AND CONDITIONS OF SOLICITATION OF AWARD

a. EXPLANATION TO OFFERORS

RUCO is not liable for any cost associated with the preparation of Offerors' proposals or any other costs incurred by any Offeror prior to the issuance of any agreement or contract.

The contents of the proposal of the successful Offeror(s) shall become contractual obligations if the proposal is accepted. Failure of the successful Offeror(s) to accept these obligations in a contract, agreement, purchase order, or similar acquisition instrument, may result in cancellation of the award.

News releases pertaining to this project shall not be made without prior written approval of RUCO.

In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all Offerors previously contacted by RUCO.

All responses, inquiries or correspondence relating to or in reference to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Offeror and/or Contractor shall, when received by RUCO, become the property of the State of Arizona.

7.1. VALIDITY OF PROPOSALS

All proposals may be modified or withdrawn by written or telegraphic notice received by RUCO any time prior to 5:00 p.m., (Arizona time) **June 1, 2011** may be withdrawn in person by an Offeror or his designated representative, providing his identity is made known and a receipt for the withdrawn offer is signed prior to the due date.

8. TERMS AND CONDITIONS OF THE AWARD

8.1. CONTRACT TYPE

The Contract referred to in this and subsequent sections is the contract or agreement between RUCO and the successful Offeror. RUCO contemplates that a fixed price reimbursement type contract will be awarded. Reimbursement will be made for authorized travel and subsistence expenses only upon submission and approval of receipts and required supporting information as indicated in this RFP.

8.2. PAYMENT

Payments will be made upon submission of an approved original invoice, detailing charges for the previous month. The invoice (statement) shall include a record of the time expended, services performed, and expenses incurred in sufficient detail so as to justify claims for payment. Each invoice shall clearly show:

- (1) The Contractor's name and address;
- (2) Amount of the bill;
- (3) The RUCO contract billing number and date;
- (4) The hours and rates per individual designating dates, time and hours worked, and distinguishing charged hours from non-charged hours; and
- (5) The percentage of work completed.

Invoices which carry requests for reimbursement of travel and subsistence must be exact and must be accompanied by all required back-up information with one (1) copy of appropriate, legible receipts for each reimbursement. All invoices will be reviewed and must be approved by RUCO prior to payment.

Payments for invoices covering work on contract deliverables may be withheld pending delivery and acceptance of such deliverable items.

RUCO WILL NOT PROCESS PAYMENTS SUBMITTED BY CONTRACTOR UNLESS CONTRACTOR HAS SUBMITTED, ALONG WITH THE DETAILED STATEMENT OF CHARGES, THE MONTHLY WORK STATUS REPORT REQUIRED PURSUANT TO SECTION 3.3. OF RFP.

IF SATISFACTORY PROGRESS IS BEING MADE, THE CONTRACTOR WILL RECEIVE PAYMENT EACH MONTH BASED UPON THE AMOUNT OF WORK COMPLETED DURING THE PREVIOUS MONTH. EXCEPT AS MAY BE PROVIDED BY WRITTEN WAIVER OF THIS PROVISION BY THE DIRECTOR, RUCO WILL RETAIN TEN PERCENT (10%) OF THE AMOUNT BILLED, ACCORDING TO EACH MONTHLY STATEMENT, UNTIL ALL THE WORK DEFINED IN THE CONTRACT IS COMPLETED TO THE SATISFACTION OF RUCO.

8.3. REGULATIONS FOR THE REIMBURSEMENT OF EXPENSES

In order for reimbursement to occur, regulations must be adhered to, in detail, as described in this RFP. Invoices must be submitted on a timely basis.

- i. Travel, meals and lodging. Travel expense reimbursement will be based upon coach airfare, and reasonable per diem expense reimbursement up to a maximum of the state-approved allowances (\$195.00 per day per person January 1 – March 31; \$163.00 per day per person April 1 – May 31; \$128.00 per day per person June 1 – August 31; \$157.00 per day per person September 1- December 31) will be made for food and lodging. Receipts documenting airfare, lodging, car rentals and significant miscellaneous expenses must be provided to RUCO.
- ii. Telephone Charges. Reimbursement will be made for telephone calls supported by statements indicating the number called and the purpose of the call unless the number implicitly indicates such a purpose (i.e. it is RUCO's, the Commission's, or another Contractor's number).

8.4. GENERAL CONDITIONS

- i. Contractor Conditions. Contractor shall make prompt payment, as due, to all persons supplying to said Contractor labor or material for the performance of the work provided for in this agreement. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such Contractor and/or Subcontractor, incurred in the performance of the Contract. Contractor shall not permit any lien, or claim, to be filed, or prosecuted, against the State on account of any labor or material furnished.
 - 1. Compliance with Applicable Laws. The materials and services supplied under this Agreement shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain applicable licenses and permit requirements. In particular, Contractor, by entering this Agreement, warrants that it is in compliance with all federal immigration laws and regulations, and that all Subcontractors to the Agreement have executed similar warranties. The breach of any such warranty shall be deemed a material breach of the Agreement, subject to monetary penalties and other penalties up to and including termination of the Agreement. RUCO shall retain the legal right to inspect the papers of any employee of the Contractor who works on the Agreement to ensure that the Contractor is in compliance with its warranties.
- ii. Payment of Claims. If the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with this agreement as such claim becomes due, the proper officer(s) representing RUCO, or the State of Arizona, may pay such claim to the person furnishing the labor or services and charge the amount of the payment

against funds due, or to become due, the Contractor by reason of agreement. The payment of a claim in the manner authorized in this section does not relieve the Contractor or his/her surety from his/her/its obligation with respect to any unpaid claims.

- iii. Incorporation of Documents. The entire contract ("Contract") between Contractor and RUCO shall consist of (1) this Agreement for Professional Services ("Agreement"), (2) the RFP (Exhibit A), (3) the _(date)_ Proposal submitted by Contractor (Exhibit B), (4) the list of State of Arizona Uniform Terms and Conditions (Exhibit C), and (5) all Procedural Orders and briefing schedules that have been, or will be, issued by the Commission in this docket.

- iv. Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by RUCO and as they may be amended from time to time, the following shall prevail in the order set forth below:
 - 1. Procedural Orders.
 - 2. Agreement.
 - 3. Uniform Terms and Conditions (attached hereto as Exhibit A)
 - 4. Proposal submitted by Contractor
 - 5. RFP

RUCO reserves the right to clarify any contractual relationship in writing -- with the concurrence of the Contractor -- and such written clarification shall govern in case of conflict with the applicable requirements stated in the Agreement or Exhibits.

- v. Contract Changes.
 - 1. Amendment. This Agreement may be modified only by a written document signed by the Director of RUCO and the Contractor's representative authorized to sign contracts on behalf of the Contractor.

 - 2. Substitution of Personnel. The Contractor agrees and understands that RUCO's assent to this Agreement is predicated in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified by the Contractor. Therefore, the Contractor agrees that no substitution of such specified individuals and/or personnel qualifications shall be made without the prior written approval of the Director of RUCO, or his designee. It is understood by RUCO and Contractor that all testimony in this proceeding required to be submitted by Contractor

on behalf of RUCO will be prepared by or under the direction and control of, and presented by, _(name of individual)_.

- vi. Termination for Convenience. This Agreement may be terminated at any time by the Director of RUCO, or his designee, for any reasons whatsoever, with or without cause, and without penalty, recourse, or further obligation, upon written notice. In the event of termination by RUCO, Contractor shall, in accordance with the law and terms and conditions of this Agreement, be paid the agreed compensation for requested services rendered, and reimbursed for authorized expenses actually incurred in rendering such services as of the date of the termination, upon delivery to RUCO of the following materials: (1) a complete set of all materials, information, and data required or prepared by Contractor as of the date of termination, and (2) a completed final statement.

- vii. Termination for Default. This Agreement is critical to RUCO and RUCO reserves the right to cancel the whole, or any part, of the Agreement due to failure of the Contractor to carry out any term, promise, or condition of the Agreement. RUCO shall issue a written notice of default effective at once to the Contractor for acting or failing to act in any of the following:
 - 1. Contractor fails to perform adequately the services required in the Contract.
 - 2. Contractor fails to furnish the required product within the time stipulated in the Contract.
 - 3. Contractor fails to furnish the required product within the time stipulated in the Contract.
 - 4. Contractor fails to make timely progress in the performance of the requirements of the Contract and/or gives RUCO a positive indication that Contractor will not, or cannot, perform to the requirements of the Agreement.

Upon issuing such notice, RUCO may resort to any single or combination of the following remedies: 1. Cancel the Contract. 2. Reserve all rights or claims to damages for breach of contract. 3. Reserve the right to procure substitute services from other sources, for which RUCO may recover from Contractor excess costs by deduction from any unpaid balance to Contractor or by other means as provided by law.

- viii. Conflict of Interest. Contractor avows that no officer, director, member or employee of Contractor has an interest that would conflict in any manner or degree with performance of services Contractor is required to perform

under this Agreement. Contractor further promises and avows that during the period this Agreement is in effect it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of services required to be performed under this Agreement, and further promises and avows that in the performance of this Agreement no person having any such interest shall be employed or otherwise utilized. RUCO reserves the right to establish the specific conflict of interest requirements which will govern any contract resulting from this RFP.

- ix. Availability of Funds. Each payment obligation of RUCO which is created hereby is conditioned upon the availability of funds which are appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuation of service, the contract for any service may be terminated by RUCO at the end of the period for which funds are available. RUCO shall notify Contractor at the earliest possible time that service will or may be affected by a shortage of funds. No penalty shall accrue to RUCO in the event this provision is exercised, and RUCO shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit RUCO to terminate this Agreement in order to acquire similar service from another Contractor.
- x. Contract Claims. All contract claims or controversies arising under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder. The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the sole relief sought is monetary damages of \$50,000.00 or less, exclusive of interest and costs.

9. FILING OF A PROTEST

Any interested party may protest the award of a Contract pursuant to this RFP. The protest shall include the following information:

1. The name, address and telephone number of the protestor;
2. The signature of the protestor or its representative;
3. A detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; and
4. The form of relief requested.

Protests based upon alleged improprieties in the solicitation that are apparent before the closing date for receipt of proposals shall be filed before the closing date for receipt of proposals. Other protests shall be filed within ten days after the protestor knows or should have known the basis of the protest, whichever is earlier.

ACC Policy Statement Regarding Utility Disincentives to Energy Efficiency and Decoupled Rate Structures

Introduction

Several factors underscore the need for increased energy efficiency in Arizona. Historically, Arizona has experienced high population growth and corresponding increases in demand for energy which has required significant investments in distribution, transmission and generation facilities and led to increased utility infrastructure and operational expenses.

While growth is anticipated to continue in the future, expanded demand side efforts, such as energy efficiency and demand response, can moderate rate pressures otherwise experienced from growth and reduce customer utility bills. Expansion of demand side management programs is cost effective, promotes price stability, mitigates exposure to volatile fuel prices, creates cost savings opportunities for customers and limits unnecessary load growth.

Since June 2008 the Commission, in this generic docket (08-0314) and subsequent Notice of Inquiry (“NOI”), has been investigating utility financial disincentives to energy efficiency and considering how it can address these issues and maximize energy efficiency efforts at Arizona’s utilities.

On December 18, 2009, the Commission issued a Notice of Proposed Rulemaking on Electric Energy Efficiency, which adopted an energy efficiency requirement for Arizona’s electric utilities. The proposed rules require cumulative annual energy savings of 22% by December 31, 2020 for Arizona’s largest electric utilities. The proposed energy efficiency rules recognize potential utility disincentives to achieving the Energy Efficiency Standard (“EES”) and include provisions providing for Commission review of

measures designed to address these disincentives in future rate cases. Similar energy efficiency rules are currently being developed for Arizona's gas utilities. On August 25, 2010, the Commission issued a Notice of Proposed Rulemaking on Gas Energy Efficiency, which adopted an energy efficiency requirement for Arizona's gas utilities to achieve cumulative annual energy savings of 6% by December 31, 2020.

Purpose

Properly addressing disincentives to energy efficiency is important to the Commission, the companies involved, and Arizona's utility consumers. Traditionally, Arizona's utilities have been disincented to vigorously utilize demand-side management programs to meet their resource needs. An internal conflict exists for utilities between sales growth and promotion of programs or technologies which reduce sales, as these sales offer the opportunity to recover fixed costs and earn profit; sales erosion may impact recovery of fixed costs and investment returns. To the degree to which utility fixed costs are recovered from volumetric sales, a net lost revenue and profit erosion effect exists which could act as a disincentive to utilities robustly seeking to implement energy efficiency measures. This utility disincentive to reduce sales discourages demand-side management programs which could ultimately benefit customers and minimize utility rates and customer utility bills.

In recognition of the need to fully utilize supply and demand side options for meeting resource needs in Arizona, the Commission has been considering alternate approaches it could adopt to spur the use of demand side programs. On February 23, 2010 the Commission issued a Notice of Inquiry to solicit input on utility disincentives and decoupling frameworks. The responses to the Notice of Inquiry led to Commission

Workshops on decoupling and a study by the Lawrence Berkeley National Laboratory (“LBNL”) examining the potential impacts of energy efficiency savings goals and decoupling through 2030. The Regulatory Assistance Project also participated in and provided technical assistance during the Commission Workshops.

Description

A revenue decoupling mechanism is a ratemaking design which reduces or removes the linkage between sales and utility revenues and/or profits, reducing utility disincentives to the adoption of programs that benefit customers by saving energy, but which also contribute to sales erosion and under-recovery of authorized fixed costs. Several states have utilized decoupling as a means of bolstering their energy efficiency efforts and the American Recovery and Reinvestment Act of 2009 (ARRA) has asked participating states to consider general policies that ensure that utility financial incentives are aligned with helping customers use energy more efficiently. Arizona, in accepting ARRA funding, agreed to analyze and consider these policies.

Mechanically, revenue decoupling compares actual versus authorized revenues or revenues per customer over a period and either credits or collects any differences from customers in a subsequent period. This collection would include, among other things, revenue impacts associated with implementation of demand side programs.

States which have implemented revenue decoupling have addressed several issues within the decoupling design. Among the design and implementation issues are the application of the mechanism to all or only some customer classes; whether to include or exclude weather related sales fluctuations; and the frequency, nature, and allowed amount of true-ups or decoupling adjustments.

Revenue decoupling achieves the primary purpose of reducing utility disincentives to implementing demand side programs and reducing energy consumption. While decoupling alone does not directly lead to increases in utility promotion of energy efficiency, decoupling paired with energy efficiency requirements creates an effective environment for the implementation and promotion of demand side programs.

The Commission recognizes that alternative mechanisms to addressing utility disincentives may exist, such as implementation of fully-cost based rates, development of lost revenue mechanisms or incorporation of anticipated energy efficiency effects into rate case forecasts. While these measures address some utility disincentives, they can lead to significant bill impacts or prove complex and administratively challenging to implement.

The Commission believes that, properly structured, decoupling offers significant advantages over alternative mechanisms to addressing utility disincentives which furthers the utilization of demand-side resources.

DECOUPLING WORKSHOPS

The Commission conducted workshops in April, May, and June of 2010 to address issues raised by the Notice of Inquiry, stakeholder concerns and an analysis of energy efficiency goals and decoupling prepared by LBNL at the Commission's request.

April 15-16, 2010 Workshop

The April 15-16, 2010 workshops principally provided background information on decoupling and addressed stakeholder responses to the Notice of Inquiry, highlighting areas of agreement and issues which required further consideration.

Participants noted that the Commission's EES "...changes the landscape for energy efficiency in the state"¹ and that significant growth in energy programs results in "...growth in the impacts..."² Modest sales reductions, such as those likely to result from utility energy programs, were alleged to have significant impacts on utility earnings. Decoupling was identified as a means of holding revenues constant by fluctuating prices up and down in the opposite direction of sales changes.³

Among the issues identified regarding decoupling, parties spoke to the timing of true-ups, the benefits of full versus limited decoupling, and limitations or collars on the decoupling adjustments.⁴ Extensive discussion centered on the effect of decoupling on utility risk and cost of capital, and whether recognition of the risk mitigation implied by decoupling could be synchronized with the adoption of decoupling. The Commission was cautioned that adoption of decoupling through a pilot program or limited term may not provide investors sufficient certainty to merit cost of capital benefits at the outset.⁵ Explicit adoption of decoupling with a periodic review was identified as an alternative option to pilot adoption.⁶

Utility representatives spoke on behalf of Arizona Public Service Company ("APS"), Tucson Electric Power ("TEP"), Southwest Gas ("SWG"), and the Grand Canyon State Electric Cooperative Association ("GCSECA"). Utility representatives generally argued that decoupling, or similar mechanisms, were necessary to support the

¹ TR Vol I, Pg 15, 24-25.

² TR Vol I, Pg 30, 18-19.

³ TR Vol I, Pg 68, 4-5.

⁴ TR Vol I, Pgs 79-90.

⁵ TR Vol II, Pg 164, 12-18; TR Vol II, Pg 170, 9-14.

⁶ TR Vol II, Pg 187, 6-16.

Commission's energy efficiency requirements⁷ and largely advocated a revenue per customer form of full decoupling.⁸

In supporting decoupling, utility representatives identified the need to align utility and customer interests,⁹ the generation infrastructure that could be deferred as a result of decoupling,¹⁰ environmental benefits which would result from deferral of future generation,¹¹ a heightened focus on operational expenses¹² and the likelihood of better and less expensive resource portfolios for customers in the long run.¹³ Utilities preferred full decoupling to limited decoupling, for its administrative simplicity, stating that it would result in cost minimization and lessen adversarial hearings.¹⁴

In response to questions as to whether Arizona should engage in a broad approval of decoupling, utilities responded that a rulemaking would provide a framework and parameters but the expectation was that utilities would more fully address issues within a rate case proceeding.¹⁵ When asked which time interval should be used to reconcile revenues - annual, semi-annual or quarterly - utilities supported at least annual reconciliation with several arguing in favor of more frequent adjustments allowing customers to receive offsets in the event of extreme weather events.¹⁶

In response to questions about how to control for excessive rate impacts associated with decoupling and whether a "dead-band" would be appropriate, utilities

⁷ TR Vol II, Pg 198, 3-12; TR Vol II, Pgs 203, 18 through 204, 15; TR Vol II, Pg 213, 14-21; TR Vol II, Pgs 222, 25 through Pg 225, 13.

⁸ TR Vol II, Pg 198, 14.

⁹ TR Vol II, Pg 200, 17-18; Pg 205, 1-6.

¹⁰ TR Vol II, Pg 201, 6-10.

¹¹ TR Vol II, Pg 201, 10-13.

¹² TR Vol II, Pg 223, 10-18.

¹³ TR Vol II, Pg 207, 8-10.

¹⁴ TR Vol II, Pgs 300, 10 through 303, 19.

¹⁵ TR Vol II, Pgs 304, 13 through 305, 19.

¹⁶ TR Vol II, Pgs 305, 20 through 311, 15.

supported a dead-band in concept and favored annual caps or a collar of at least three percent.¹⁷

The Residential Utility Consumer Office (“RUCO”) indicated it is not opposed necessarily to decoupling, however it believed “...any recovery mechanism must, one, be cost effective; two, contain a detailed commitment to energy efficiency;...three, have a high degree of accountability and transparency; and four, have a cap on the amount that may be recovered.”¹⁸ Parties largely agreed with RUCO’s position and believed planned and existing requirements under the Commission’s EES addressed some of the expressed concerns.¹⁹

Commission Staff recognized impacts to utility fixed cost recovery from energy efficiency²⁰ and indicated a need to balance the incentives of the utilities wanting to sell more and policies asking customers to use less.²¹ Staff further stated it believed it would be appropriate to adjust capital structures to the extent decoupling enhanced revenue stability.²² In addressing decoupling, Staff indicated that Arizona’s utility companies were unlikely to achieve the EES without some kind of cost recovery, whether decoupling or other form of rate recovery.²³

Representatives for Arizonans for Electric Choice and Competition (“AECC”) opposed decoupling, stating that any discussion would best be had in a general rate case²⁴ and arguing that industrial consumers were probably not a good target for revenue

¹⁷ TR Vol II, Pgs 312, 10 through 315, 3.

¹⁸ TR Vol II, Pgs 232, 22 through 233, 4.

¹⁹ TR Vol II, Pgs 233, 12 through 234, 3; Pgs 234, 15 through 235, 11; Pg 236, 3-19; Pg 237, 2-13.

²⁰ TR Vol II, Pgs 254 line 25 through 255, line 3.

²¹ TR Vol II, Pg 256, 20-23.

²² TR Vol II, Pgs 259, 16 through 260, 3.

²³ TR Vol II, Pg 265, 3-15.

²⁴ TR Vol II, Pg 284, 5.

decoupling.²⁵ While AECC indicated its opposition to revenue decoupling, it further stated that if decoupling was adopted AECC would want to see clear and careful review on return on equity.²⁶

Representatives for the Arizona Investment Council (“AIC”) spoke in favor of decoupling, arguing that there are benefits that accrue to consumers from such a mechanism.²⁷ AIC further stated that the Commission must pay attention to energy efficiency programs to be able to reach out and get as many customers as possible engaged in conservation.²⁸

Marshall Magruder noted that avoided costs could result for both utilities and consumers, from aggressive adoption of energy efficiency, where lower operational demands ease maintenance requirements.²⁹

In concluding the meeting, specific questions were posed to utility representatives regarding appropriate decoupling designs. In response to questions as to whether Arizona should engage in a broad approval of decoupling, utilities responded that a rulemaking or policy statement would provide a framework and parameters but the expectation was that utilities would more fully address the adoption of decoupling within a rate case proceeding.³⁰ When asked which time interval should be used to reconcile revenues, annual, semi-annual or quarterly, utilities supported at least annual reconciliation with several arguing in favor of more frequent adjustments allowing customers to receive offsets in the event of extreme weather events.³¹

²⁵ TR Vol II, Pg 284, 14-18.

²⁶ TR Vol II, Pg 286, 1-8.

²⁷ TR Vol II, Pg 294, 13-22.

²⁸ TR Vol II, Pg 296, 7-11.

²⁹ TR Vol II, Pgs 297, 13 through 298, 7.

³⁰ TR Vol II, Pgs 304, 13 through 305, 19.

³¹ TR Vol II, Pgs 305, 20 through 311, 15.

In response to questions about how to control for excessive rate impacts associated with decoupling and whether a “dead-band” or collar would be appropriate, utilities supported a dead-band in concept and favored annual caps of at least three percent.³² When asked whether changes to capital structure to reflect reduced risk were in order, utilities encouraged caution and a fuller record to develop the issue.³³ In addressing questions regarding appropriate reporting and evaluation, utilities and stakeholders responded that the reporting required under the energy efficiency rules was significant, however, additional information specifically related to decoupling would likely be needed.³⁴ In response to concerns raised about maintaining customer service standards, stakeholders and utilities asserted that decoupling would not minimize the focus on customer service and the energy efficiency rules would require the development of enhanced customer relationships and interaction.³⁵

In response to questions regarding the reception of the investment community to decoupling, electric utilities responded that some concerns had been expressed regarding details and more specifically about how a decoupling mechanism would address growth.³⁶ SWG stated its discussions with ratings agencies indicated a positive reception for decoupling.³⁷

In response to questions regarding application of decoupling to customer classes, APS indicated that there were merits to both class specific and aggregated mechanisms,³⁸

³² TR Vol II, Pgs 312, 10 through 315, 3.

³³ TR Vol II, Pgs 322, 2 through 329, 12.

³⁴ TR Vol II, Pgs 330, 14 through 336, 7.

³⁵ TR Vol II, Pgs 336, 11 through 344, 9.

³⁶ TR Vol II, Pg 344, 16-23; Pgs 345, 22 through 346, 4.

³⁷ TR Vol II, Pg 349, 19-25.

³⁸ TR Vol II, Pg 351, 6-12.

TEP expressed a preference for a by class mechanism,³⁹ and SWG expressed a preference for application to all classes.⁴⁰

May 3, 2010 Workshop

The May 3, 2010 workshop principally addressed rate design issues associated with decoupling, common concerns raised regarding decoupling, impacts on participating and nonparticipating customers and a discussion of technical issues amongst participants.

It was argued that decoupling is a means of pursuing rate designs better structured to drive energy efficient outcomes. Stakeholders noted that decoupling "...allows the Commission to... set rates that are based on long-run marginal costs without creating the new revenue volatility for the utilities."⁴¹ Energy efficiency benefits were identified where rates were based on long-run marginal costs.⁴² Stakeholders stated that properly designed rates have resulted in dramatic conservation effects.⁴³ It was asserted that the Commission must ensure that its actions on rate design now and in the future must be internally consistent with energy efficiency programs and internally consistent with ratemaking treatment and decoupling, with each reinforcing the other and moving utilities in the same direction.⁴⁴

Stakeholders highlighted common criticisms of decoupling, including that it is a different approach to ratemaking,⁴⁵ it could serve as a disincentive for a utility's management to control costs,⁴⁶ that it diminished risk for investors,⁴⁷ that it should

³⁹ TR Vol II, Pg 351, 16 through 352, 1.

⁴⁰ TR Vol II, Pg 352, 8-11.

⁴¹ TR Vol III, Pg 369, 21-24.

⁴² TR Vol III, Pgs 373, 25 through 374, 4.

⁴³ TR Vol III, Pg 407, 3-4.

⁴⁴ TR Vol III, Pg 376, 10-16.

⁴⁵ TR Vol III, Pg 411, 5-13.

⁴⁶ TR Vol III, Pgs 411, 25 through 412, 13.

⁴⁷ TR Vol III, Pgs 412, 14 through 413, 2.

require a demonstrated commitment to energy efficiency,⁴⁸ that it could diminish utility support for economic development,⁴⁹ and that energy efficiency savings are not necessarily being caused by utilities.⁵⁰

Other concerns raised with respect to decoupling included the differences between new and existing customers in a decoupling design. With straight revenue per customer decoupling, new customers utilizing less gas or electricity than existing customers could drive upward rate pressure as rates for existing customers would need to make up the difference between revenues received at current rates from new customers and the allowed revenue per customer.⁵¹ In response to this issue, some parties stated that decoupling models could adjust revenues per customer downward year by year to reflect what would happen in the absence of decoupling, or a bifurcated approach could be used for existing and new customers.⁵²

Stakeholders addressed impacts of decoupling on customers who participated in energy efficiency programs and nonparticipating customers. For customers who adopted energy efficiency measures, decoupling slightly eroded some of the savings they received.⁵³ For nonparticipants, decoupling contributed to slight increases in rates.⁵⁴ Robust customer participation was identified as a means of addressing impacts to all customers, with particular focus on low income customers who could be most at risk.⁵⁵ Particular attention was paid to utility plans for scaling up programs, reaching as many

⁴⁸ TR Vol III, Pg 413, 3-13.

⁴⁹ TR Vol III, Pgs 413, 14 through 414, 14.

⁵⁰ TR Vol III, Pg 424, 4-13.

⁵¹ TR Vol III, Pg 417, 2-1.

⁵² TR Vol III, Pgs 418, 12 through 419, 2.

⁵³ TR Vol III, Pgs 426, 14 through 429, 4.

⁵⁴ TR Vol III, Pgs 426, 14 through 429, 4.

⁵⁵ TR Vol III, Pgs 429, 21 through 430, 13.

communities as possible and touching all customers with energy efficiency programs, so that the number of nonparticipants would be minimized.⁵⁶

In response to questions regarding maintenance of service quality standards,⁵⁷ the utilities responded that service quality was being addressed in existing operations, but that the key consideration with respect to decoupling was establishing the appropriate performance benchmark that utilities would be required to achieve.⁵⁸

In response to questions regarding opposition to decoupling by ratepayer advocates and the National Association of State Utility Consumer Advocates⁵⁹ (“NASUCA”), parties recognized a need to explain to the public the policies that the Commission is adopting and implementing.⁶⁰ Utilities were encouraged to develop plans for communicating decoupling and energy efficiency to their customers.⁶¹

In response to questions regarding third party administration of energy efficiency, parties noted that the third party administrator model has been successful where implemented but was not necessarily superior to a utility based model.⁶² Existing third party involvement was identified in the areas of measurement, evaluation and research.⁶³ It was suggested by some parties that utility administration of energy efficiency programs has largely been successful in Arizona and it was further noted that the regulatory compact accorded the Commission better opportunities to steer regulated utilities than with a third party administrator operating under a contract.⁶⁴

⁵⁶ TR Vol III, Pgs 435, 15 through 436, 20.

⁵⁷ TR Vol III, Pg 438, 4-23.

⁵⁸ TR Vol III, Pgs 437, 24 through 442, 13.

⁵⁹ TR Vol III, Pg 454, 10-22.

⁶⁰ TR Vol III, Pg 457, 20-25.

⁶¹ TR Vol III, Pg 461, 13-25.

⁶² TR Vol III, Pgs 466, 22 through 467, 18.

⁶³ TR Vol III, Pg 469, 18-21; Pg 472, 11-19.

⁶⁴ TR Vol III, Pg 471, 2-20.

In technical discussions, parties outlined decoupling models which could be appropriate for Arizona. Assuming revenue per customer decoupling, which was supported by many workshop participants: principal concerns revolved around the customer classes that would be affected, distribution of adjustments, rate design, accrual methodology, weather risk, caps on decoupling adjustments and whether new customers merited different treatment than existing customers.⁶⁵

In response to the issue of treating new customers distinctly from existing customers, parties noted that one approach by a Washington utility was to leave new customers entirely out of the decoupling mechanism and apply adjustments solely to existing customers between rate cases.⁶⁶ Electric utilities noted little difference between new and existing customers⁶⁷ and remarked that the issue would likely be more pronounced for gas utilities. Parties suggested that further analysis was needed to examine whether any difference existed between new and old customers and whether such a difference required particular treatment.⁶⁸

Parties raised concerns regarding the application of decoupling adjustments to customer classes, particularly with respect to industrial customers, arguing that some customer classes lacked enough homogeneity to lend themselves to revenue decoupling.⁶⁹ Others suggested that it may make sense for some industrial customers to be excluded as they make not contribute significantly to fixed recovery.⁷⁰ Some parties argued that application of decoupling adjustments may be inappropriate for small customer classes

⁶⁵ TR Vol III, Pgs 482, 2 through 483, 23.

⁶⁶ TR Vol III, Pgs 486, 3 through 488, 2.

⁶⁷ TR Vol III, Pgs 488, 17 through 490, 8.

⁶⁸ TR Vol III, Pg 493, 11-24.

⁶⁹ TR Vol III Pgs 494, 14 through 496, 15.

⁷⁰ TR Vol III Pg 499 19 through 21.

with fewer than one hundred customers.⁷¹ Others asserted that decoupling should lean towards broad inclusion with participation from all customers through a certain demand level.⁷² Recognizing the unique issues faced by individual utilities, some argued that these issues would best be dealt with on a utility-by-utility basis.⁷³

Related to the customer class issue was the question of whether shortfalls or over recoveries should be spread evenly across classes or specifically within classes.⁷⁴ Parties noted that states have approached this issue in both ways; class distribution was seen as keeping costs and adjustments focused within a class but potentially leading to larger per unit adjustments, while across-class adjustments smoothed out overall impacts but potentially led to some level of subsidy between classes.⁷⁵ In addressing the distribution of adjustments among customer classes, parties noted that adjustment collars could minimize fluctuations and could be seasonally tailored where more current adjustments were utilized.⁷⁶

Discussion segued into whether decoupling adjustments should be current, monthly, or annualized. Parties noted that further examination of the utilities' billing system infrastructure would be necessary to determine whether a utility's existing systems could functionally support more current adjustments.⁷⁷ In response to questions regarding administrative burdens, parties noted that monthly decoupling adjustments

⁷¹ TR Vol III Pg 497, 11-22.

⁷² TR Vol III, Pg 499, 3-18; Pg 502, 5-9.

⁷³ TR Vol III, Pgs 502, 22 through 503, 25; Pg 508 4-12.

⁷⁴ TR Vol III, Pg 513, 6-13.

⁷⁵ TR Vol III, Pgs 515, 22 through 516, 11.

⁷⁶ TR Vol III, Pgs 516, 19 through 518, 18.

⁷⁷ TR Vol III, Pg 521, 6-14.; 522, 4-16.

would likely require less work than fuel cost adjustments, as the data for the former would come directly from the billing systems.⁷⁸

Parties addressed the ability of decoupling to facilitate improved rate designs that could encourage conservation and other goals.⁷⁹ Rate designs which solely utilized volumetric rates with no customer charges and use of inverted block rates were identified as concepts worthy of discussion.⁸⁰ While decoupling was recognized for facilitating rate designs, caution was urged, particularly if decoupling was adopted as a pilot and not a permanent mechanism.⁸¹ Cooperatives were open to exploring changed rate designs, but expressed reluctance toward any elimination of customer charges.⁸² If straight fixed/variable cost rates were adopted in lieu of decoupling, utility customer charges alone would range from \$22 to \$70 per month with additional charges for variable costs.⁸³

In response to questions regarding adoption of a pilot program or implementation with review, RUCO noted it did not support decoupling, nor was RUCO opposed.⁸⁴ RUCO's stated concerns were the perception that decoupling adjustments were driven by factors other than utility efforts, such as weather, and impacts of decoupling on customers who implemented no energy efficiency measures.⁸⁵

In response to questions about whether decoupling was appropriate for cooperatives, parties stressed the need for administrative simplicity, given the

⁷⁸ TR Vol III, Pg 523, 15-21.

⁷⁹ TR Vol III, Pg 525, 15-25.

⁸⁰ TR Vol III, Pg 526, 2-19.

⁸¹ TR Vol III, Pg 526, 20-24; Pg 532, 1-9; Pg 533, 11-18.

⁸² TR Vol III, Pg 529, 4-19.

⁸³ TR Vol III, Pgs 537, 23 through 538, 13.

⁸⁴ TR Vol III, Pg 545, 3-6.

⁸⁵ TR Vol III, Pgs 545, 7 through 546, 7.

cooperatives' more limited resources.⁸⁶ Parties remarked on the unique characteristics of rural cooperatives and noted that the cooperatives were beginning to implement programs and would need to be very aggressive in the future in order to comply with the EES.⁸⁷

Echoing the cooperatives comments regarding administrative simplicity, parties reiterated that full decoupling offered more straightforward calculations than if weather and other non-efficiency related effects were removed.⁸⁸

May 24, 2010 Workshop

The May 24, 2010 workshop focused on utility historical analyses of rates if decoupling had existed between 2000 and 2010, LBNL's preliminary analysis of the impact of the electric Energy Efficiency Standard and decoupling on APS and its customers, and follow-up on recommended decoupling designs and related issues.

APS presented a ten-year look back analysis that had been requested by Commissioners and noted that if decoupling had existed over that interval, customers would have experienced both refunds and surcharges of roughly one and a half percent.⁸⁹ Similar conclusions were reached whether the examination was based on an actual sales basis or a weather normalized approach, though the weather normalized approach produced slightly more revenue over the ten-year period.⁹⁰ APS analyzed a revenue per customer approach, modeling the fixed cost by class, excluding fuel costs, transmission costs, regulatory assets, special surcharges and system benefits from the calculation.⁹¹ Parties noted that APS' findings underscored other research which contends that,

⁸⁶ TR Vol III, Pg 556, 7-18.

⁸⁷ TR Vol III, Pgs 558, 17 through 559, 8.

⁸⁸ TR Vol III, Pgs 560, 11 through 562, 13.

⁸⁹ TR Vol IV, Pgs 586, 21 through 587, 12.

⁹⁰ TR Vol IV, Pgs 587, 19 through 588, 2.

⁹¹ TR Vol IV, Pg 589, 12-22.

nationally, decoupling mechanisms tend to result in adjustments that are less than three percent.⁹²

TEP's decoupling calculations resulted in similar findings to APS, largely falling below three percent.⁹³ Similar results were identified for both UNS Electric and UNS Gas, as they stayed within a three percent cap; however, greater volatility was identified for UNS Gas.⁹⁴ In response to greater gas volatility, parties suggested that a larger collar or cap be utilized and that balances be allowed to carry forward if the collar is exceeded.⁹⁵

SWG's decoupling calculations reflected modest customer impacts, with a minimum impact of \$.86 to a maximum impact of \$2.61, with an average of \$1.53.⁹⁶ The company noted that the decoupling impact on a customer bill was relatively small in relation to the total customer bill.⁹⁷ While SWG acknowledged that the adjustments exceeded three percent, rising to nearly six percent in some cases, they argued that the dollar impact remained modest considering that the average gas bill was lower than the average electric bill.⁹⁸ In response, parties argued that consideration could be given to a larger cap for gas utilities.⁹⁹

Following the utility presentations of their historical analyses, LBNL presented its preliminary analysis of APS with the implementation of the electric EES, with and without decoupling. LBNL's analysis examined "...future impacts of current resource plans and adopted policies of the Commission and strategies for dealing with energy

⁹² TR Vol IV, Pg 595, 1-11.

⁹³ See June 9, 2010, TEP Decoupling Calculation Chart.

⁹⁴ TR Vol IV, Pg 605, 8-13; Pg 607, 21-24; Pg 609, 7-22.

⁹⁵ TR Vol IV, Pgs 609, 23 through 610, 9.

⁹⁶ TR Vol IV, Pg 613, 6-14.

⁹⁷ TR Vol IV, Pg 615, 8-11.

⁹⁸ TR Vol IV, Pg 621, 1-11.

⁹⁹ TR Vol IV, Pgs 622, 22 through 623, 14.

efficiency, utilities and their customers.”¹⁰⁰ The LBNL analysis documented the benefits, costs and financial impacts on ratepayers and shareholders of achieving energy efficiency savings goals consistent with the Commission’s EES, and the potential impact of a decoupling mechanism.¹⁰¹

The LBNL analysis began with establishing a business as usual case, based on publicly available information, where APS offers efficiency programs as if the EES was not enacted and continues on its preexisting savings path. This presumed APS would meet the annual energy savings targets in its 2010 Rate Settlement Agreement and thereafter meet a one percent annual energy savings target the 2010-2012 period covered in the APS rate case settlement.¹⁰² Fuel and purchased power costs which were passed through to customers and nonfuel expenses, such as return of and on capital expenditures and O&M expenses for new generation and transmission and distribution resources, were expected to grow in excess of five percent per year.¹⁰³ Rate cases were assumed to be filed every three years or when capital expenditure budgets exceeded a billion dollars, rates were assumed to take effect two years from the time of filing, and compliance with the Renewable Energy Standard (“RES”) was presumed.¹⁰⁴ In order to capture the full benefits of the energy efficiency measures installed in the business as usual case or under the standard, a 20-year planning horizon was utilized.¹⁰⁵

The business as usual scenario reflected ten year savings of more than 600 megawatts of peak demand, and more than 43,000 gigawatt hours of energy savings over

¹⁰⁰ TR Vol IV, Pg 627, 15-18.

¹⁰¹ TR Vol IV, Pg 631, 9-22.

¹⁰² TR Vol IV, Pg 635, 2-17.

¹⁰³ Id.

¹⁰⁴ TR Vol IV, Pg 640, 11-23.

¹⁰⁵ TR Vol IV, Pg 642, 4-16.

the measure lifetimes, with net benefits of \$943 million (present value at 4.0%).¹⁰⁶

Roughly a third of the projected energy savings and half the peak demand savings came from residential portfolio programs.¹⁰⁷ Among its assumptions, the business as usual case assumed growth in nominal operation and maintenance costs of 3.5 percent per year, fuel and purchased power budget growth of 6.8 percent per year, rate-base related cost (e.g., return on rate base, interest on debt, and depreciation) growth of 6.0 percent per year and retail sales growth of 2.2 percent a year.¹⁰⁸ Under the business as usual case, the analysis showed that APS is expected to under-earn relative to its authorized level in almost every year during the 20-year time horizon.¹⁰⁹

Under the high energy efficiency scenario (i.e. to meet the EES), APS was assumed to offer energy efficiency and demand response programs to comply with the Commission's EES, with estimated program costs, measure lifetimes and on-peak/off-peak savings.¹¹⁰ Energy efficiency program costs to the utility were estimated at about \$35/MWh.¹¹¹ Up to 6,800 gigawatt hours of cumulative annual energy savings were expected to be achieved in 2020 with the Standard.¹¹²

Comparing the business as usual case to the high efficiency scenario demonstrated additional offsets to load growth.¹¹³ Under the high efficiency scenario, annual retail sales growth drops from 2.2 percent to 1.1 percent and to about 1.4 percent growth in peak demand.¹¹⁴ Following the ten-year EES, the 2021-2030 period was

¹⁰⁶ TR Vol IV, Pgs 647, 25 through 648, 15.

¹⁰⁷ TR Vol IV, Pg 651, 1-4.

¹⁰⁸ TR Vol IV, Pg 652, 4-21.

¹⁰⁹ TR Vol IV, Pg 656, 7-15.

¹¹⁰ TR Vol IV, Pg 657, 9-24.

¹¹¹ TR Vol IV, Pgs 658, 25 through 659, 16.

¹¹² TR Vol IV, Pg 662, 10-15.

¹¹³ TR Vol IV, Pg 662, 16-21.

¹¹⁴ TR Vol IV, Pg 662, 22 through 663, 4.

assumed to resume normal underlying load growth of about 3 percent a year; this was done solely for modeling purposes.¹¹⁵ The cost to meet the EES in 2020, including program administration, measure incentives and customer measure cost contributions, were projected to be about \$41 per lifetime megawatt hour for the whole portfolio, and \$55 per lifetime megawatt hour for the residential portfolio.¹¹⁶ Achievement of the EES more than doubles the lifetime energy savings compared to the business as usual scenario, from about 43,000 gigawatt hours to 95,000 gigawatt hours and increases peak demand savings from 600 to more than 1,500 megawatts.¹¹⁷ Total net resource benefits increased to \$1.4 billion from \$943 million (present value at 4.0%).¹¹⁸ The Commission was cautioned to recognize the degree of variability in the numbers, which could increase or decrease projected benefits.¹¹⁹ Variability could result from changes in assumed conditions, such as increased/decreased program costs or increased/decreased avoided costs.

The high efficiency scenario resulted in direct bill savings to ratepayers on the order of \$4.6 billion between 2011 and 2030, compared to the business as usual case.¹²⁰ Bill savings were principally driven by utility plant deferrals and by reductions in utility fuel and purchased power budgets.¹²¹ In response to questions about the potential impacts from avoided externalities, LBNL responded that the planning model was not well suited

¹¹⁵ TR Vol IV, Pg 664, 16-21.

¹¹⁶ TR Vol IV, Pg 665, 23 through 666, 4.

¹¹⁷ TR Vol IV, Pg 667, 4-11.

¹¹⁸ TR Vol IV, Pg 667, 7-11.

¹¹⁹ TR Vol IV, Pg 669, 13-23.

¹²⁰ TR Vol IV, Pg 676, 2-8.

¹²¹ TR Vol IV, Pg, 676, 24 through 678, 22.

for identifying those benefits;¹²² however, LBNL re-emphasized that the identified benefits were conservative numbers.¹²³

Following LBNL's presentation, the Commission continued discussion of recommended decoupling designs and rate related issues. In prior discussions, the Commission had taken up issues concerning customer classes, collars, types of deferrals, pilot programs and other issues.¹²⁴ AECC commented that decoupling could result in recession-induced rate increases and urged caution.¹²⁵ AECC further argued that the concept of "average customer" was best applicable to residential customers but made little sense for industrial customers.¹²⁶ Rather than utilizing decoupling, AECC advocated for adoption of projected test years to address some of the potential utility challenges.¹²⁷ AECC noted that other jurisdictions which had adopted decoupling segregated some or all nonresidential customers.¹²⁸ AECC's principal objections included a perceived risk shift between the utility and customers, through the incorporation of weather and other factors affecting electricity usage in the decoupling mechanism.¹²⁹

In response to AECC's concerns, APS noted that no conclusions had been drawn regarding which customer classes would be involved in a decoupling mechanism, as this is a policy decision for the Commissioners; however, benefits would inure to all customers from deferred capacity.¹³⁰ With respect to the issue of weather risk, APS noted

¹²² TR Vol IV, Pgs 717, 21 through 718, 2.

¹²³ TR Vol IV, Pg 720, 1-8.

¹²⁴ TR Vol IV, Pg 747, 7-11.

¹²⁵ TR Vol IV, Pg 748, 18-25.

¹²⁶ TR Vol IV, Pg 752, 5-16.

¹²⁷ TR Vol IV, Pgs 755, 22 through 756, 13.

¹²⁸ TR Vol IV, Pg 757, 1-5.

¹²⁹ TR Vol IV, Pgs 777, 18 through 778, 20.

¹³⁰ TR Vol IV, Pg 781, 5-17.

that the analysis demonstrated that APS would have been better off if weather effects were excluded, to the tune of \$15 million.¹³¹

Stakeholders further noted that large customers, like mines, were typically excluded from decoupling mechanisms, largely because their operations would not be contributing to fixed cost recovery through variable charges.¹³² As a result, these customers would not be making material impacts on the underlying problem decoupling addresses.¹³³ Others argued that there could be good reasons for excluding certain customer classes, but that the Commission should begin from the presumption that all customers should be included absent contrary evidence.¹³⁴ Commission staff recognized that each company presents a unique mix of customers which may require each company to figure out the best way to address those customers under a decoupling mechanism.¹³⁵

Stakeholders highlighted different approaches used to address large utility customers, which included rate collars to minimize rate dislocation, use of a pure net lost revenue adjustment, and use of adjustments other than revenue per customer.¹³⁶

June 10, 2010 Workshop

The June 10, 2010 workshop principally addressed LBNL's analysis of APS and TEP with the implementation of the EES, with and without decoupling.

LBNL examined the incremental benefits and costs of achieving higher levels of energy efficiency on ratepayers and utility shareholders.¹³⁷ The analysis addressed

¹³¹ TR Vol IV, Pg 783, 14-23.

¹³² TR Vol IV, Pg 789, 2-8

¹³³ TR Vol IV, Pg 789, 9-13.

¹³⁴ TR Vol IV, Pg 790, 13 through 791, 7.

¹³⁵ TR Vol IV, Pg 791, 9-15.

¹³⁶ TR Vol IV, Pg 793, 12 through 794, 23.

¹³⁷ TR Vol V, Pg 812, 3-10.

impacts to customer bills, rates, earnings and return on equity.¹³⁸ LBNL's approach included a long-term 20-year analysis, allowing stakeholders to better understand impacts from utilization of efficiency as a resource over a long-term.¹³⁹

LBNL reiterated and finalized its preliminary findings for APS which LBNL had presented earlier at the May 24, 2010 workshop. For the business as usual case (with about one percent annual energy savings), LBNL identified about 43,000 gigawatt hours in total energy savings and 600 megawatts of peak demand savings, producing combined benefits of about \$1.6 billion on a present value basis at a cost of about \$730 million,¹⁴⁰ with net benefits of \$946 million and a benefit/cost ratio around 2.¹⁴¹ The high efficiency scenario, when compared to the business as usual case, reduced sales growth in half because of the EES.¹⁴² When compared with the business as usual scenario, the energy efficiency scenario produced more than twice the total energy savings, a 150 percent increase in peak demand savings and a 50 percent improvement in net resource benefits.¹⁴³ LBNL identified net benefits, on a present value basis (4.0%) of \$1.4 billion under the high efficiency scenario versus \$946 million in the business as usual case.¹⁴⁴ The LBNL analysis also estimated that customer bill savings in the high efficiency case would be about \$4.6 billion more than the bill savings achieved in the business as usual case.¹⁴⁵

LBNL conducted a separate but similar analysis for TEP, examining energy efficiency impacts on customer bills and rates, the Company's earnings and return on

¹³⁸ TR Vol V, Pg 812, 10-13.

¹³⁹ TR Vol V, Pgs 813, 22 through 814, 4.

¹⁴⁰ TR Vol V, Pg 822, 7-17.

¹⁴¹ TR Vol V, Pg 826, 20-21.

¹⁴² TR Vol V, Pg 832, 13-21.

¹⁴³ TR Vol V, Pg 833, 1-5.

¹⁴⁴ TR Vol V, Pg 833, 18-20.

¹⁴⁵ TR Vol V, Pgs 835, 2 through 836, 8.

equity. While the TEP analysis made similar assumptions to those in the APS analysis, key differences included substantially lower growth rates for nonfuel costs¹⁴⁶ and two year intervals between rate case filings rather than three.¹⁴⁷

For the TEP business as usual case, a one percent annual efficiency savings level was assumed, to be consistent with the APS business as usual case, though TEP's existing level of savings is at or about 0.4 percent per year.¹⁴⁸ Under the business as usual case (which included the one percent annual efficiency savings level), LBNL identified about 13,000 gigawatt hours of energy savings and 230 megawatts of peak demand reductions¹⁴⁹ with a value of \$472 million (present value at 4.0%) in total net resource benefits.¹⁵⁰ Under the EES, TEP would achieve cumulative annual savings in excess of 2,000 gigawatt hours in 2020.¹⁵¹ The EES flattened retail sales growth and dropped peak demand growth to half a percentage point.¹⁵² Overall savings associated with the EES more than doubles total lifetime energy savings relative to the business as usual case of one percent savings (i.e, about 27,900 vs. 13,000 GWh), producing a 210 percent increase in peak demand levels and a 44 percent increase in net resource benefits.¹⁵³ The present value of customer bill savings totaled \$570 million over the 20 year period between 2011-2030.¹⁵⁴

Comparing the high efficiency scenario to the business as usual case revealed shareholder impacts of \$38 million (present value at 4.0%) between 2011-2020, reducing

¹⁴⁶ TR Vol V, Pg 846, 13-18.

¹⁴⁷ TR Vol V, Pg 846, 20-22.

¹⁴⁸ TR Vol V, Pg 847, 5-19.

¹⁴⁹ TR Vol V, Pg 848, 5-13.

¹⁵⁰ TR Vol V, Pg 849, 2-10. Revised numerical value from LBNL Analysis, June 14 Update, Slide 30.

¹⁵¹ TR Vol V, Pg 853, 3-6.

¹⁵² TR Vol V, Pg 853, 16-20.

¹⁵³ TR Vol V, Pgs 853, 21 through 854, 2. Revised numerical value from LBNL Analysis, June 14 Update, Slide 35.

¹⁵⁴ LBNL Analysis, June 14 Update, Slide 38.

the utility's average return on equity by 46 basis points.¹⁵⁵ Incorporation of revenue per customer decoupling added \$36 million (present value at 4.0%) to TEP earnings over the 10-year period, or 59 basis points to return on equity.¹⁵⁶ Decoupling resulted in a 0.7 percent increase to customer bills, or \$70 million (present value at 4.0%) as compared to \$570 million of projected ratepayer bill savings achieved under the EES.¹⁵⁷

Combining results for TEP and APS, LBNL identified total resource net benefits on the order of about \$2 billion without a decoupling mechanism in the high efficiency case with the EES, and approximately \$670 million more in total net benefits than the business as usual case.¹⁵⁸ Customer bill savings totaled about \$5.2 billion between the two utilities for the high efficiency scenario compared to the business as usual case, even after accounting for the rate increases.¹⁵⁹ Retail rates rose between 1 and 1.8 cents higher for APS and TEP respectively for the high efficiency case compared to the business as usual case.¹⁶⁰ Without decoupling, APS and TEP average utility return on equity decreased by about 50 basis points over the 10-year period compared to the business as usual case.¹⁶¹ The inclusion of a decoupling mechanism added about 45 to 60 basis points to the utilities' return on equity.¹⁶²

While LBNL's analysis revealed consistent results between APS and TEP, several assumptions drove distinct results. Assumed avoided costs were lower for APS than for TEP;¹⁶³ TEP utilized lower DSM program costs;¹⁶⁴ nonfuel cost growth assumptions

¹⁵⁵ TR Vol V, Pg 857, 16-23.

¹⁵⁶ TR Vol V, Pg 858, 6-11.

¹⁵⁷ TR Vol V, Pg 859, 1-24. Revised numerical value from LBNL Analysis, June 14 Update, Slide 42.

¹⁵⁸ TR Vol V, Pg 861, 15-21. Revised numerical value from LBNL Analysis, June 14 Update, Slide 44

¹⁵⁹ TR Vol V, Pg 861, 21-24.

¹⁶⁰ TR Vol V, Pg 862, 1-5. Revised numerical value from LBNL Analysis, June 14 Update, Slide 44.

¹⁶¹ TR Vol V, Pg 862, 6-9.

¹⁶² TR Vol V, Pg 862, 9-12.

¹⁶³ TR Vol V, Pg 863, 4-12

were higher for APS;¹⁶⁵ and APS forecasted higher retail sales, customer, and peak demand growth rates.¹⁶⁶ TEP noted that differences in avoided cost estimates were largely the result of whether the utility was long or short on resource capacity.¹⁶⁷ Parties noted that assumptions could change some of the total resource benefits; however, concerns about these benefits were dwarfed by net incremental customer bill savings of \$5.2 billion (combined APS and TEP) over the business as usual case and \$8.7 billion over a case with no energy efficiency savings.¹⁶⁸

Parties clarified that the bill savings figures presented were net of rate impacts for energy efficiency programs and emphasized the need to address utility disincentives to align the interests of customers in saving energy and the interests of utilities in maintaining their rates of return.¹⁶⁹

ISSUES

The Commission's extensive workshop process unearthed significant benefits for ratepayers and utilities and clarified stakeholder concerns. The Commission's analysis revealed that customer bill savings for APS and TEP from achieving the EES, including implementation of decoupling, would total \$8.7 billion relative to a scenario in which no EES existed. Customer bill savings would total about \$5.2 billion under the EES with decoupling when compared to a scenario in which the utilities only achieved one percent annual energy efficiency savings. The Commission further recognizes that decoupled utility companies would be foregoing overearning opportunities as decoupling would

¹⁶⁴ TR Vol V, Pg 863, 13-16.

¹⁶⁵ TR Vol V, Pg 863, 17-18.

¹⁶⁶ TR Vol V, Pg 863, 23-25.

¹⁶⁷ TR Vol V, Pg 872, 11-15.

¹⁶⁸ TR Vol V, Pgs 880 5 through 881, 15.

¹⁶⁹ TR Vol V, Pgs 883, 1 through 884, 17.

provide customers credits in the event of excess earnings. The savings and benefits of decoupling encourages the Commission to move forward with steps that support the Standard, including eliminating disincentives to the pursuit of energy efficiency.

Among the issues stakeholders raised in workshops were: the proper mechanism for aligning utility and customer incentives; whether differences between new and existing customers necessitated different treatment; whether adjustments to cost of capital should be undertaken; whether the Commission should adopt decoupling on a pilot or permanent basis; whether full or partial decoupling should be adopted; the appropriate timing for adjustments; applicability of decoupling across customer classes; whether adjustments would be blended across customer classes or segregated by class; and whether collars or caps on adjustments were necessary and the appropriate bandwidth for such collars or caps.

The Commission believes it is critical that utility disincentives to demand side management programs and energy efficiency be addressed. As stakeholders recognized, it is unlikely that the EES can be met without addressing financing disincentives and impacts to utilities' revenues and earnings. LBNL's analysis estimated that the utility bills of APS and TEP customers would be reduced by about \$5.2 billion through compliance with the EES, relative to the business as usual case. Similar benefits are anticipated at other utilities. Absent achievement of the EES, APS and TEP ratepayers will unnecessarily pay between \$5.2 billion and \$8.7 billion in higher energy bills.

The Commission's workshops, while not limited to decoupling, demonstrated significant interest in decoupling as a means of addressing utility disincentives. Revenue per customer decoupling is uniquely suited for Arizona as it establishes a target revenue

per customer and responds to customer growth in between rate case cycles. While the target revenues per customer are established in traditional rate cases, revenues are allowed to increase with customer growth, better matching utility costs and revenues. As recognized in workshops, further analysis is necessary to determine whether new and existing customers should be expected to consume similar amounts, require similar infrastructure costs and generate similar revenues. If new customers, whether through decreased costs to serve or decreased usage, would bring in less revenue than existing customers, this dynamic must be considered.

Other proposals discussed in the workshops included fixed cost/variable cost pricing and mechanisms to address lost margin recovery. Though these and other proposals may be appropriate for some utilities, the Commission believes they have limited application. Fixed cost/variable pricing would result in larger customer charges, which impact low-income customers, and reduced variable charges, which discourages efficient energy use. Lost margin recovery mechanisms allow for recovery of margins attributable to decreased energy sales from energy efficiency programs; however, this mechanism may be subject to prolonged litigation, and would not allow for other beneficial actions on rate design or contribute to improved costs of capital.

Some stakeholders proposed that the Commission adopt decoupling as a pilot and refrain from broader adoption. The Commission believes that adoption of decoupling should occur in rate cases, with evaluation and review occurring after an initial three year period. This would demonstrate a stronger commitment to decoupling and better facilitates action on complimentary rate designs and on costs of capital. The Commission recognizes that Arizona's largest utilities, while improving, are not well-rated by

financial ratings agencies. The Commission believes it is important to send long-term signals and demonstrate commitment to decoupling before taking action on costs of capital. Adoption of decoupling on a pilot basis would not send appropriate signals and would not demonstrate the requisite commitment to eliminating financial disincentives to the adoption of energy efficiency.

Parties have argued that full decoupling may draw in effects from factors other than energy-efficiency, such as weather or economic effects. However, full decoupling is preferable as it enhances utility and customer billing stability, is administratively more manageable and would allow for rate relief during extreme weather events. Utility analyses indicated ratepayer benefits even if weather effects had been considered. With decoupling in place, these ratepayer benefits would have been directly distributed to customers rather than benefitting the utility. With respect to economic effects, utilities would be capable of filing rate cases or emergency rate increase requests with or without decoupling. The Commission believes a collar or cap on the size of decoupling adjustments appropriately addresses concerns raised by parties as it limits effects from extraordinary economic downturns or unforeseen circumstances.

Decoupling adjustments occur over periods of time, whether annually, quarterly or monthly. The Commission believes that more current adjustments respond better to extreme weather events and allow for ratepayer relief. Appropriate collars or caps on adjustments ensure that rates will not vacillate between periods. While annual adjustments may smooth and moderate changes, as a longer time interval may dampen seasonal variations, they lack responsiveness to weather events.

ACC Policy Statement Regarding Utility Disincentives to Energy Efficiency and Decoupled Rate Structures

POLICY STATEMENTS

1. Diversity and utilization of both demand and supply side options for meeting Arizona's energy resource needs is beneficial and should be actively pursued by Arizona utilities as a way of moderating capital expenses, encouraging greater flexibility, ensuring reliability, and minimizing rate impacts and customer energy bills.

2. Arizona utilities should pursue all cost-effective energy efficiency and demand side management resources, and should meet Arizona's Electric and Gas Energy Efficiency Standards of at least 22% electric energy savings and at least 6% gas savings by 2020.

3. Revenue decoupling may offer significant advantages over alternative mechanisms for addressing utility financial disincentives to energy efficiency, as it establishes better certainty of utility recovery of authorized fixed costs and better aligns utility and customer interests. The Commission could also consider alternative methods for addressing utility financial disincentives. Some form of decoupling or alternative for addressing financial disincentives must be adopted in order to encourage and enable aggressive use of demand side management programs and the achievement of Arizona's Electric and Gas Energy Efficiency Standards, which will benefit ratepayers and minimize utility costs. These types of mechanisms offer short term and long term benefits: in the short term they allow for customer bill savings through increased energy efficiency, achieved through Commission-approved energy efficiency programs; in the long term they contribute to plant deferrals and may contribute to improvements in costs of capital.

4. While other decoupling models are appropriate in general, non-fuel revenue per customer decoupling may be well suited for Arizona as it responds to customer growth and is better suited to address the issues associated with customer growth. Utilities interested in revenue per customer decoupling must address whether new customers should be treated distinctly from existing customers.

5. Adoption of decoupling (or any other alternative mechanism that addresses utility disincentives to promoting energy efficiency) should not occur as a pilot, as this insufficiently supports demand side management efforts, discourages beneficial changes to rate design and is unlikely to encourage financial ratings improvements. In lieu of pilot adoption, an initial three-year review period should be utilized which allows for evaluation and redress of decoupling models and related issues. The initial review period should be within three years of adoption or until the company files its next rate case after a decoupling or alternative mechanism is approved. If Commission Staff is not able to conduct this review due to resource constraints, an independent evaluation contractor shall be hired by the utility.

6. Commitment to and early implementation of decoupling should precede significant decoupling-specific adjustments to cost of capital if a revenue per customer decoupling mechanism is approved for a utility. The review of the initial three-year period following adoption of revenue per customer decoupling should include analysis and discussion of possible adjustments to cost of capital to recognize any modified risk at the utilities, as well as benchmarking and comparisons to other utilities operating with revenue per customer decoupling.

7. Utilities are encouraged to develop customer rate designs that support energy efficiency and work well in tandem with decoupling (or alternative mechanisms). Utilities may propose preliminary rate designs for the initial three-year period, and the preliminary rate designs should be evaluated during the review of the initial period. Revisions to the preliminary rate designs based on the results of the review should be proposed for the subsequent period.

8. Full decoupling is preferable to partial decoupling as it contributes to greater rate stability which would encourage improvements in financial ratings, is administratively more manageable, and offers opportunities for rate relief following extreme weather events.

9. Weather normalization in the application of decoupling is discouraged because such normalization would reduce the size of decoupling surcredits to customers following an extreme weather event.

10. Decoupling adjustments should occur at least on an annual basis; however, parties may propose more current adjustments as this may provide ratepayers with weather related rate relief following extreme events.

11. Broad participation in decoupling is preferred; however, the unique characteristics of each utility may merit different treatment of some customer classes. Utilities should address any proposed distinct treatments and justify why certain customer classes may merit different treatment.

12. Decoupling adjustments should be blended and applied across customer classes to discourage dramatic changes experienced by any one class.

13. Decoupling adjustments applied in a manner to encourage energy efficiency are preferred, such as applying decoupling surcharges to rates and higher-usage blocks to encourage energy efficiency, and applying decoupling surcredits to reward customers who use less energy.

14. Collars or caps on decoupling adjustments should be designed to encourage gradualism, and to minimize the short-term effects on customers. If the decoupling adjustments are to occur on a monthly, quarterly, annual, or less-than-annual basis, the utility should propose a cap for the periodic decoupling adjustments. Customers should receive the full amount of any credit in a timely manner in the event that achieved

revenue per customer exceeds authorized revenue per customer. Therefore, it is not necessary to cap the amount of surcredit decoupling adjustments or credits to customers.

ORDER

A utility may file a proposal for decoupling or alternative mechanisms for addressing utility financial disincentives to energy efficiency, including revenue per customer decoupling, in its next general rate case. A utility filing such a proposal should address this policy statement in its filing and should use this policy statement as a guideline in development of its proposal.

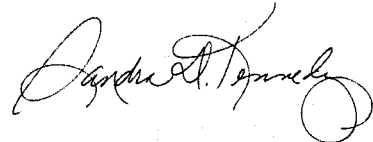
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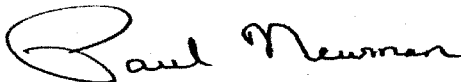
Kristin K. Mayes
Chairman



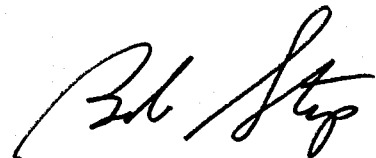
Gary Pierce
Commissioner



Sandra D. Kennedy
Commissioner



Paul Newman
Commissioner



Bob Stump
Commissioner

UNIFORM TERMS AND CONDITIONS

Version 8

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.

The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Scrutinized Businesses. In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.

- 3.12 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment

within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
 - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
 - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
 - 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing,

force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default

under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.