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Arizona Corporation Commission

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Boyd Dunn
Sandra D. Kennedy
Justin Olson

DOCKETED BY

March 7, 2019

RE: Docket No. E-00000Q-19-0015; Commission Policies Regarding PURPA in Arizona

Dear Chairman Burns,

I am writing this letter in response to the March Open Meeting Agenda you issued on March 5, 2019.

I am confused that an item for Commission discussion and possible vote regarding Docket No. E-00000Q-19-0015 (General PURPA Docket) and my proposed §40-252 was notably omitted from the Commission Agenda. In light of your promise to commissioners to *place all requested-items on the agenda for public meeting*,¹ I am asking that you add the following item, verbatim, to the Agenda for the March 12-13, 2019, Staff or Open Meeting:²

Arizona Corporation Commission (E-00000Q-19-0015) – Commission discussion, consideration, and possible vote to amend, pursuant to A.R.S. § 40-252, Decision No. 52345 (July 27, 1981) to clarify or add provisions relating to contract terms and application requirements related to the development of qualifying facilities in Arizona, with an opportunity for all interested parties to be heard.³ (NOTE: *there will be no discussion regarding the substantive merits or individual requests made in any of the applications pending in Docket Nos. E-01345A-16-0272, E-01933A-17-0360, and E-04204A-18-0087.*)⁴

¹ See Statements of Chairman Bob Bruns, Audio Recording of Staff Open Meeting, 00:03:41-00:04:36 (Jan. 9, 2019) (“[A]nytime you have any issue you want to see on the agenda, just let me know, and, in time so that we can get it on the agenda, and it’ll be on the agenda. So, everybody will have an opportunity to bring ideas forward.”), http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=3373; see also id. (“I believe that we are all equal in authority and responsibility, and so that means to me that every commissioner needs to be able to bring ideas forward.”), at 00:05:28-00:06:56 (“I would like to bring some of the ideas I’ve had relative to certain issues . . . so, those kind of discussions I’d like to encourage, if you have an idea that you want to submit, that we can have a discussion about, so that we can, in my opinion, get a feel for what the consensus of the body is on certain issues . . . At least have a discussion and ask questions, and find out if we can get some answers, as a group.”), at 00:11:11-00:11:34 (“I want to be as well educated as I can be when it comes time to make that decision, and I think there’s an opportunity to learn from the other commissioners sitting around this table.”).

² See id., at 00:07:29-00:07:40 (“This [staff meeting] is an open meeting, this is a public meeting, is my understanding. So, if we’re in a public meeting I think we’re free to discuss a lot more than we are in our offices.”), at 00:10:38-00:11:08 (“[F]rom my point of view, I think that this is a docket, a verbal docket, so people that are here or people that are outside listening, and have issue with what is said, have an opportunity to respond through the docket, so they’re not, you know, denied the opportunity to make their case. And it is an open meeting.”); see also Statement of Arizona Corporation Commission Chief Counsel Robin Mitchell, id., at 00:09:25-00:09:28 (“You’re right, this is an open meeting.”).

³ Commissioner Tobin’s request matches the format and process the Commission used in March 2016, when Chairman Burns and Commissioner Tobin were both on the Commission and Commissioner Tobin requested a Staff Meeting to consider a §40-252. See Docket No. W-02271A-14-0265, <https://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18648#docket-detail-container2>; Correspondence from Commissioner Tobin (Mar. 10, 2016) (requesting the Chairman convene a Staff Meeting as soon as possible to consider a §40-252 request from Commissioner Andy Tobin and providing the specific language for the agenda item), <http://docket.images.azcc.gov/0000168907.pdf>; Notice of Special Open Meeting (Mar. 10, 2016) (issuing, within 24 hours of Commissioner Andy Tobin’s request for a staff meeting, public notice of the staff meeting and listing the specific language requested by Commissioner Andy Tobin as the agenda item), http://azcc.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=2239; Video Archive of Staff Meeting (Mar. 11, 2016) (demonstrating the Commission’s ability to, and precedent in, bringing, discussing, and voting on proposals for §40-252 within a “staff meeting” setting); http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=2239; Decision No. 75490 (Mar. 25, 2016) (finding that the matter was adequately brought before the Commission during the staff meeting with notice and opportunity to be heard, and finding that it was in the public interest adopt Commissioner Tobin’s §40-252 to amend a prior decision), <http://docket.images.azcc.gov/0000169242.pdf>.

⁴As this letter explains below, the scopes of these three dockets are limited to their respective applicants only, and discussing or considering this General PURPA Docket or the Commission’s 1981 Policy have no effect on any of the applicants’ respective rights in these three dockets.



Chairman Robert "Bob" Burns
Andy Tobin
Boyd Dunn
Sandra D. Kennedy
Justin Olson

For the last 30 years, it has been the policy of the Commission to *encourage* the development of qualifying facilities in Arizona under the Public Utility Regulatory Policies Act (PURPA),⁵ take an *active leadership role* in the development of renewable energy resources,⁶ *promote equity* in the production and sale of electricity in Arizona,⁷ and *reduce administrative and bureaucratic barriers and not impose frustrating delays* for the advancement of renewable resources in the state.⁸ Renewable energy projects operating in Arizona as a result of Decision No. 52345 (1981 Policy), however, comprise no more than 1% of Arizona's total energy mix, today.⁹

Given the meager state of PURPA investments in Arizona, it is apparent that the 1981 Policy needs clarification if Arizona intends to adequately comply with federal law.¹⁰ Chairman Burns and Commissioner Olson have said that the Commission must act expediently if it is to address this issue before potentially missing out on hundreds of millions of dollars of solar investments and federal resources that could be brought into the state that would otherwise end up in neighboring states.¹¹

⁵ See Decision No. 52345, p.1 of the attached Cogeneration and Small Power production Policy (Jul. 27, 1981) ("It shall be the policy of the Arizona Corporation Commission to encourage the development of cogeneration and small power production.").

⁶ See id. ("It is essential that the Commission take an active leadership role in the development of waste heat and renewable energy resources such as solar, geothermal, biomass and wind power to reduce the consumption of non-renewable resources, and to promote equity, efficiency, and conservation in the production and sale of electricity in Arizona.").

⁷ See id.

⁸ See id. ("The substantial effort by this Commission to design a policy for the implementation of rules for cogeneration and small power production promulgated by the Federal Energy Regulatory Commission represents an attempt to reduce the administrative and bureaucratic barriers to the advancement of cogeneration and small power production, not to impose frustrating delays and procedures.").

⁹ See Docket No. E-00000V-15-0094, Resource Planning and Procurement: Arizona Public Service Company, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 9,327 MW), <http://docket.images.azcc.gov/0000178832.pdf>; Tucson Electric Power Company, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 3,171 MW), <http://docket.images.azcc.gov/0000178618.pdf>; UNS Electric Inc, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 437 MW), <http://docket.images.azcc.gov/0000178617.pdf>; Arizona Electric Power Cooperative Inc, 2017 Demand- and Supply-Side Data Filing (Apr. 3, 2017) (showing an existing portfolio of 555 MW), <http://docket.images.azcc.gov/0000178652.pdf>; Salt River Project, 2017-18 Integrated Resource Plan (2018) (showing an existing portfolio of 8,863 MW), <https://www.srpnet.com/about/stations/pdfx/2018irp.pdf>; see in comparison Docket No. E-04204A-15-0314, In matter of the application of UNS Electric, Inc. for approval of a power purchase agreement with LS-Cliffrose, LLC (Aug. 31, 2015) (seeking Commission approval of a 75MW QF that generates power via solar photovoltaics; deemed approved by operation of law on Sep. 16, 2015), <http://docket.images.azcc.gov/0000166011.pdf>; Decision No. 73729 (Feb. 20, 2013) (approving two 600 kW QF dairy farms that generate power via biological biomass waste, totalling 1.2 MW), <http://docket.images.azcc.gov/0000142948.pdf>; Decision No. 63670 (May 24, 2001) (approving a 12 MW QF paper mill that generates power via biomass waste), <http://images.edocket.azcc.gov/docketpdf/0000025271.pdf>; see also, U.S. Energy Information Administration, Independent Statistics & Analysis, EIA.GOV (Aug. 23, 2016) (showing total utility-scale solar capacity in Arizona in 2015 at approximately 1,000 MW and differentiating approximately 200 MW or less of that capacity as PURPA QFs), <https://www.eia.gov/todayinenergy/detail.php?id=27632>.

¹⁰ See Windham Solar LLC & Allico Fin. Ltd., 157 FERC ¶ 61134 (Nov. 22, 2016) ("Given this need for certainty with regard to return on investment, coupled with Congress' directive that the [Federal Energy Regulatory Commission] encourage QFs, a [contract term] should be long enough to allow QFs reasonable opportunities to attract capital from potential investors."), fn.13 ("[O]ur regulations, do not, however, specify a particular number of years for such legally enforceable obligations."); see also Decision No. 52345, *supra* note 5, Cogeneration and Small Power production Policy (requiring that "[a]ll contracts" "shall be submitted" to the Commission "for review and approval" and "should include" "[a]dditional terms and conditions" "such as" "length of contract," but leaving as ambiguous the term length for a contract or the minimum length required by the Commission for the Commission to approve the contract).

¹¹ See Video Archive of Staff Meeting (Feb. 6, 2019), Statements of Commissioner Justin Olson, at 02:39:02-02:39:12 ("I do view this as something that perhaps justifies a quicker resolution; I think that it's a policy decision that we need to make."), Statements of Chairman Burns, 02:39:30-02:39:48 ("I think there's a component in this particular item with the federal money that is sitting on the shelf, if you will, and if we don't, are unable to act fast enough we do not have an opportunity to take advantage of that federal money."), http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=3416. Commissioner Boyd Dunn presented a pessimistic view of the Commission's ability to act more quickly, and Commissioner Sandra Kennedy was silent on trying to save PURPA in Arizona.



The Commission's ability to have these kinds of expedient and open discussions, however, seems to be restricted. While our Utilities Division has advised the Chairman in the past that "Staff's goal is not to stop the commissioners from having a dialogue,"¹² the Commission has failed to have the open dialogue in public regarding the Commission's 1981 Policy or any pending §40-252.

Discussing or passing my pending §40-252 would have no effect on any of the individual applications currently scheduled for hearings in any of the other three, unrelated PURPA dockets. The Commission's 1981 Policy is a policy of general applicability, and the individual applications from the three utilities are requests for exceptions to this policy. To reiterate, the 1981 Policy *applies to ALL regulated electric utilities in Arizona*, while the three PURPA dockets currently pending for hearings on November 13, 2019, *apply only to APS's ERP-2 rate schedule,¹³ TEP's R-11 rate schedule,¹⁴ and UNS's QF rate schedules.¹⁵* Footnotes 2, 3, and 4 below quote the utilities' own, individual applications.

In November 2019, the Commission will hear from the three utilities regarding whether the evidence is sufficient to demonstrate that a contract length that is different than the length contemplated in the 1981 Policy is reasonable.¹⁶ It is entirely possible, for example, that the Commission could find that the intent of the 1981 Policy requires 15-year contract terms, but also find that contract terms for TEP of 5 years, for UNS of 2 years, and for APS of 10 years are reasonable exceptions to the 1981 Policy, based on the individual evidence each utility presents in its respective proceedings.

Because the matters to be discussed in this General PURPA Docket do not address the substantive merits of whether any of the three utilities deserve an exception to the 1981 Policy, discussing the Commission's 1981 Policy does not overlap with *ANY* pending matter currently before the Commission.

¹² See Statement of Utilities Director Elijah Abinah, *id.*, at 00:11:43-00:11:51 ("Staff's role, or Staff's goal, is not to stop the commissioners from having a dialogue").

¹³ See Docket No. E-01345A-16-0272, *Application of APS for Revisions to APS's Partial Requirements Rate*, p.3 (Aug. 5, 2016) ("APS asks for language in [APS's] rate schedule *EPR-2 [only (not the 1981 Policy nor any other utility's schedules)]* adopting a similar two year limitation for these larger QP suppliers." "The Company is seeking specific Commission *approval of this [APS's] partial requirement rate schedule [only (not the 1981 Policy nor any other utility's schedules)]*, including both the new avoided cost rate and the two year limit on larger QF contracts") (emphasis added), <http://docket.images.azcc.gov/0000172720.pdf>.

¹⁴ See Docket No. E-01933A-17-0360, *Application of TEP for Revisions to TEP's Partial Requirements Rate*, p.4 (Dec. 5, 2017) ("TEP respectfully requests the Commission *approve the revisions to [TEP's] R-11 [only (not the 1981 Policy nor any other utility's schedules)]* as set forth in this Application.") (emphasis added), <http://docket.images.azcc.gov/0000172720.pdf>.

¹⁵ See Docket No. E-04204A-18-0087, *Application of UNS Electric for Revisions to UNS Electric's Partial Requirements Rates*, p.1-2 & 4 (Apr. 9, 2018) ("The Company is proposing modifications to the [Company's] *QF Tariffs [only (not the 1981 Policy nor any other utility's schedules)]* that would . . . Set a limitation of two years . . ." (emphasis added), p. 4 ("UNS Electric respectfully requests the Commission *approve the revisions to [UNS's] QF-A, QF-B and QF-C [only (not the 1981 Policy nor any other utility's schedules)]* as set forth in this Application.") (emphasis added), <http://docket.images.azcc.gov/0000187169.pdf>.

¹⁶ Granting variances to policies of general applicability, such as the Commission's 1981 Policy, would be nothing new for the Commission, as the Commission has granted waivers and exceptions to utilities many times before, including, for example, in their respective REST implementation plans and when the Commission waives their respective distributed generation "carve-outs." Consider, for example, that the Commission's act of approving APS's REST Implementation Plan is not a simultaneous act also approving TEP's REST Implementation Plan, and *vice versa*. Consider also, for example, that while the Commission has had the REST rules on the books since 2006, it has granted individual *waivers* to APS, TEP, and UNS for each of their respective Distributed Generation carve-outs. See, for example, the application, Staff recommendation, and Commission approval of APS in 2018: "APS requests a full and permanent waiver of the DG carve out contained in A.A.C. R14-2-1805 for 2018;" "Staff believes it is appropriate to grant a permanent waiver of the Distributed Renewable Energy Requirement contained in A.A.C. R14-2-1805 as allowed under A.A.C. R14-2-1816 for 2018;" "IT IS FURTHER ORDERED that Arizona Public Service Company be granted a waiver of A.A.C. R14-2-1805(A-D) for the 2018 implementation year." (<http://docket.images.azcc.gov/0000180694.pdf>, p.3) (<http://docket.images.azcc.gov/0000189461.pdf>, p.8) (*id.*, p.10).



Chairman Robert "Bob" Burns
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I am requesting the Chairman schedule my proposed §40-252 and any and all related friendly amendments for discussion and vote. I have provided specific language for the agenda item, above.

By clarifying ambiguities in the Commission's 1981 Policy, the Commission would be adding certainty for not only **ALL** electric utilities (not just three), but also all future renewable developers, financial lenders, and commissioners in Arizona. Adopting my proposed §40-252 would support significant renewable energy investments in Arizona's rural counties, uphold the rule of law required by FERC, and ensure the kind of clean energy future contemplated by Commissioner Andy Tobin and Commissioner Sandra Kennedy in their respective Arizona Energy Modernization Plan and increased REST proposals.

I have attached, and am filing, a revised §40-252 for purposes of my above-requested Agenda item.

Sincerely,

Andy Tobin
Commissioner



RESOLUTION CLARIFYING DECISION NO. 52345 PURSUANT TO A.R.S. § 40-252

TO INCLUDE THE ARIZONA CORPORATION COMMISSION'S INTERPRETATION OF, AND CLARIFY AMBIGUITIES IN, THE EXISTING RULES, REGULATIONS, ORDERS, DECISIONS, STATUTES, CODES, AND POLICIES OF THE ARIZONA CORPORATION COMMISSION, FEDERAL ENERGY REGULATORY COMMISSION, AND CONGRESS RELATED TO IMPLEMENTING THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 IN ARIZONA

Docket No. E-00000Q-19-0015 Commission Policies Regarding PURPA in Arizona

E-1025-81-045 Ajo Improvement Company

U-1773-81-045 Arizona Electric Power Cooperative

U-1345-81-045 Arizona Public Service Company

E-1032-81-045 Citizens Utilities - Nogales

E-1032-81-045 Citizens Utilities - Kingman

U-1851-81-045 Columbus Electric Cooperative

U-1824-81-045 Continental Divide Electric Cooperative

U-2044-81-045 Dixie Escalante Rural Electric Association

U-1586-81-045 Utah Power & Light Company

U-1703-81-045 Duncan Valley Electric Cooperative

U-1891-81-045 Garkane Power Association

U-1749-81-045 Graham County Electric Cooperative

U-1750-81-045 Mohave Electric Cooperative

E-1049-81-045 Morenci Water & Electric Company

U-1787-81-045 Navopache Electric Cooperative

U-1575-81-045 Sulphur Springs Valley Electric Cooperative

U-1461-81-045 Trico Electric Cooperative

U-1933-81-045 Tucson Electric Power Company

Open Meeting: March 12-13, 2019

Notice:

Opportunity to be Heard: March 12, 2019

WHEREAS, the Public Utility Regulatory Policies Act of 1978 (PURPA) requires the Arizona Corporation Commission (Commission) to implement the rules of the Federal Energy Regulatory Commission (FERC) and carry-out the legislative intent of Congress;¹ and

¹ See 16 U.S.C. § 824a-3(f).



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WHEREAS, the Commission issued Decision No. 52345 on July 27, 1981, and Decision No. 56271 on December 18, 1989, implementing PURPA in Arizona and setting forth regulations and policies of general applicability to all regulated electric utilities in Arizona;² and

WHEREAS, it is the policy of the Commission that the Commission encourage the development of qualifying facilities (QF) in Arizona;³ and

WHEREAS, it is the policy of the Commission that the Commission take an active leadership role in the development of renewable energy resources such as solar, wind, and biomass power;⁴ and

WHEREAS, it is the policy of the Commission that the Commission promote equity in the production and sale of electricity in Arizona;⁵ and

WHEREAS, it is the policy of the Commission that the Commission attempt to reduce the administrative and bureaucratic barriers to the advancement of QFs and not impose frustrating delays and procedures;⁶ and

WHEREAS, the regulations and policies of the Commission in Decision Nos. 52345 and 56271, and the rules and regulations promulgated by FERC,⁷ contain ambiguities⁸ that have hindered the execution of PURPA contracts that would promote development of renewable energy investments in Arizona and have created uncertainty regarding QF's expected returns on investment; and

WHEREAS, renewable energy projects operating in Arizona as a result of PURPA comprise no more than 1% of Arizona's total energy portfolio today;⁹ and

² See Decision No. 52345, p.12 of the attached Cogeneration and Small Power production Policy (Jul. 27, 1981) ("Conclusion of Law No. 3. After a comprehensive review of the recommendations of staff, the hearing officer, the utilities companies and other parties, the Commission concludes that it is appropriate to adopt a policy for the implementation of [PURPA] and [FERC rules].") ("Cogeneration and Small Power Production Policy No. XII. [T]his policy complies with the final rules regarding the implementation of Section 201 and 210 of PURPA.").

³ See id. at p.1 of the attached Cogeneration and Small Power production Policy ("It shall be the policy of the Arizona Corporation Commission to encourage the development of cogeneration and small power production.").

⁴ See id. at p.1 (finding it essential that the Commission take a leadership role).

⁵ See id.

⁶ See id.

⁷ See 18 CFR § 292.304(d) (2016) (establishing that a QF shall have the option to sell energy or capacity pursuant to a "legally enforceable obligation" for the delivery of energy or capacity "over a specified term").

⁸ See Windham Solar LLC & Allco Fin. Ltd., 157 FERC ¶ 61134 (Nov. 22, 2016) ("[O]ur regulations, do not, however, specify a particular number of years for such legally enforceable obligations.") (referring to 18 CFR § 292.304(d), see id.); see also Decision No. 52345, supra note 2 (stating that "[a]ll contracts" "shall be submitted" "for review and approval" and "should include" "[a]dditional terms and conditions" "such as" "length of contract," but is ambiguous regarding the term length for a contract nor the minimum length required by the Commission for the Commission to approve the contract). This resolution made pursuant to A.R.S. § 40-252 clarifies that ambiguity.

⁹ See Docket No. E-00000V-15-0094, Resource Planning and Procurement: Arizona Public Service Company, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 9,327 MW), <http://docket.images.azcc.gov/0000178832.pdf>; Tucson Electric Power Company, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 3,171 MW), <http://docket.images.azcc.gov/0000178618.pdf>; UNS Electric Inc, 2017 Integrated Resource Plan (Apr. 3, 2017) (showing an existing portfolio of 437 MW), <http://docket.images.azcc.gov/0000178617.pdf>; Arizona Electric Power Cooperative Inc, 2017 Demand- and Supply-Side Data Filing (Apr. 3, 2017) (showing an existing portfolio of 555 MW), <http://docket.images.azcc.gov/0000178652.pdf>; Salt River Project, 2017-18 Integrated



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WHEREAS, the legislative intent of Congress is to encourage the development of QFs by providing certainty with respect to QF return on investment;¹⁰ and

WHEREAS, a contract under PURPA should be long enough to allow QFs a reasonable opportunity to attract capital from potential investors;¹¹ and

WHEREAS, a contract price that is known at the outset of a PURPA obligation for the entire length of the contract furthers the purposes behind PURPA and provides potential investors with reasonable certainty regarding their expected rate of return;¹² and

WHEREAS, a purchasing utility bears the risk that avoided costs will decrease in the future, and a selling QF bears the corresponding risk that avoided costs will increase in the future, the risks of avoided costs are deemed to balance-out in the long-term;¹³ and

WHEREAS, public utility commissions (PUC) in other states have established PURPA contract lengths of 2, 5, 10, 15, and 20 years;¹⁴ and

Resource Plan (2018) (showing an existing portfolio of 8,863 MW), <https://www.srpnet.com/about/stations/pdfx/2018irp.pdf>; see in comparison Docket No. E-04204A-15-0314, In matter of the application of UNS Electric, Inc. for approval of a power purchase agreement with LS-Cliffrose, LLC (Aug. 31, 2015) (seeking Commission approval of a 75MW QF that generates power via solar photovoltaics; deemed approved by operation of law on Sep. 16, 2015), <http://docket.images.azcc.gov/0000166011.pdf>; Decision No. 73729 (Feb. 20, 2013) (approving two 600 kW QF dairy farms that generate power via biological biomass waste, totalling 1.2 MW), <http://docket.images.azcc.gov/0000142948.pdf>; Decision No. 63670 (May 24, 2001) (approving a 12 MW QF paper mill that generates power via biomass waste), <http://images.edocket.azcc.gov/docketpdf/0000025271.pdf>; see also, U.S. Energy Information Administration, Independent Statistics & Analysis, EIA.GOV (Aug. 23, 2016) (showing total utility-scale solar capacity in Arizona in 2015 at approximately 1,000 MW and differentiating approximately 200 MW or less of that capacity as PURPA QFs), <https://www.eia.gov/todayinenergy/detail.php?id=27632>.

¹⁰ See F.E.R.C. v. Mississippi, 456 U.S. 742, 750–51 (1982) (referencing the remarks of Sen. Percy, Sen. Durkin, Sen. Haskell, and Sen. Hart and hearings before the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., 552–553 (1977)); Jd Wind 1, LLC Jd Wind 2, LLC Jd Wind 3, LLC Jd Wind 4, LLC Jd Wind 5 LLC Jd Wind 6, LLC, 130 FERC ¶ 61127, 61631 (Feb. 19, 2010) (“an investor needs to be able to estimate, with reasonable certainty, the expected return on a potential investment before construction of a facility.”).

¹¹ See Windham Solar LLC, *supra*, note 8, at p8 (referencing FERC Order No. 69, Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 FR 12214-02 (“[R]egulations pertaining to legally enforceable obligations ‘are intended to reconcile the requirement that the rates for purchases equal to the utilities’ avoided cost with the need for qualifying facilities to be able to enter into contractual commitments, by necessity, on estimates of future avoided costs”) (“Many commentators have stressed the need for certainty with regard to return on investment in new technologies. The Commission agrees with these . . . arguments.”).

¹² See Jd Wind 1, 130 FERC ¶ 61127, 61631 (finding that the purposes behind PURPA are furthered by allowing a QF to establish a fixed contract price for its energy and capacity at the outset of its obligation and that a fixed contract price provides a potential investor in a QF with reasonable certainty about the expected return on a potential investment).

¹³ See Allco Renewable Energy Ltd. v. Massachusetts Elec. Co., 208 F. Supp. 3d 390, 400 (D. Mass. 2016), *aff’d*, 875 F.3d 64 (1st Cir. 2017).

¹⁴ See, e.g., In Re: Optimum Renewables LLC, Complainant, No. FCU-2017-0004, 2018 WL 305996 (Jan. 3, 2018) (Iowa Utilities Board (20 years)); In the Matter of the Petition of Mtsun, LLC to Set Terms & Conditions for Qualifying Small Power Prod. Facility Pursuant to M.C.A. § 69-3-603, No. 7535B, 2017 WL 5990072 (Nov. 29, 2017) (Montana Public Service Commission (15 years)); In the Matter of the Application of Rocky Mountain Power for Modification of Contract Term of Purpa Power Purchase Agreements with Qualifying Facilities, No. 15-035-53, 2016 WL 157566 (Jan. 7, 2016) (Utah Public Service Commission (15 years)); In the Matter of the Application of Rocky Mountain Power for Modification of Contract Term of Purpa Power Purchase Agreements with Qualifying Facilities, No. 20000-481-EA-15, 2016 WL 3483204 (June 23, 2016) (Wyoming Public Service Commission (20 years)); In the Matter of Idaho Power Companys Petition to Modify Terms & Conditions of Purpa Purchase Agreements in the Matter of Avista Corps. Petition to Modify Terms & Conditions of Purpa Purchase Agreements in the Matter of Rocky Mountain Power Companys Petition to Modify Terms & Conditions of Purpa Purchase Agreements, No. 33419, 2015 WL 6958997 (Nov. 5, 2015) (Idaho Public Utilities Commission (2 years)).



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WHEREAS, regulated electric utilities in Arizona have entered into PURPA contracts and purchased power agreements (PPA) with QFs and similar renewable energy projects with durations of 15, 20, and 24 years;¹⁵ and

WHEREAS, lenders and financial institutions that provide financing to QFs and other similar renewable energy projects in other states have generally required contract terms of no less than 15 years to issue or approve financing;¹⁶ and

WHEREAS, clarifying the Commission's interpretation of its existing policies and regulations is in the public interest and further implements FERC's rules in Arizona and carries out the legislative intent of Congress in enacting PURPA; now, therefore

BE IT RESOLVED by the Arizona Corporation Commission and the power vested in it by the Arizona Constitution and delegated to it by Congress through FERC under PURPA that any and all ambiguities arising out of the Commission's policies and regulations that implement PURPA in Arizona be interpreted, and that the Cogeneration and Small Power Production Policy attached to Decision No. 52345 be hereby interpreted, clarified, and amended pursuant to A.R.S. § 40-252, as follows:

Page (6), Line 12, DELETE "such as" and INSERT "including, without limitation,"

Page (6), Lines 1-14, after "length of contract" INSERT "no less than 15 years"

Page (6), Lines 14-15, DELETE "should be included"

Page (8), Line 15, DELETE "should" and INSERT "shall"

Page (8), Line 16, after "Paragraph IV, B and C." INSERT the following provision:
"Contracts shall include all other material clauses, provisions, and definitions approved by the Commission in contracts for QFs of similar nameplate capacity and generation technology, and such material clauses, provisions, and definitions shall be substantially similar in both form and content to those contracts previously approved."

Page (8), Line 26, INSERT a new subparagraph:
"E. Contracts shall be executed by the parties and submitted to the Commission for approval no more than 90 days from the later date of the following: the date of the first request for current

¹⁵ See *supra*, note 9, Docket No. E-04204A-15-0314, In matter of the application of UNS Electric, Inc. for approval of a power purchase agreement with LS-Cliffrose, LLC, (seeking approval of a contract term with a length of 24 years).

¹⁶ See *supra*, note 14, In the Matter of the Petition of Mtsun, at *9 ("Expert testimony in the record indicated 15 years was the maximum contract length necessary for QFs to obtain long-term financing, and that argument was not challenged or refuted by parties, including [the utility] and [the Montana ratepayer advocate]."); see also



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avoided cost pricing the QF made to the utility; the date of the first application for interconnection the QF submitted to the utility.”

Page (10), Lines 14-15, after “costs,” INSERT “terms,”

Page (10), Line 18, below “for review,” INSERT a new subparagraph:

“F. A utility shall not require a QF to obtain an executed contract or a signed interconnection agreement with the utility for the QF to establish a legally enforceable obligation (LEO) with the utility, nor may a utility require a QF to obtain a permit or certification from a regulatory agency or body for the QF to establish a LEO with the utility. A utility shall not delay interconnection, negotiate in bad faith, or otherwise impose additional application requirements or fees on a QF to frustrate the QF’s ability to establish a LEO with the utility, execute a contract with the utility, or attempt to circumvent the Commission’s implementation of this policy.”

**** Make all conforming changes.**

IN WITNESS THEREOF, We, the Duly Elected Commissioners of the Arizona Corporation Commission, have hereunto set our hands caused to be affixed the Official Seal of this Commission.

CHAIRMAN BURNS

COMMISSIONER DUNN

COMMISSIONER TOBIN

COMMISSIONER KENNEDY

COMMISSIONER OLSON

DONE at the Capitol, in the City of Phoenix, on this _____ day of _____, 2019.

ATTEST: _____
EXECUTIVE DIRECTOR MATT NEUBERT



ARIZONA CORPORATION COMMISSION
Powering Arizona's Future

DISSENT: _____

DISSENT: _____

On this 7th day of March, 2019, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Andy Tobin, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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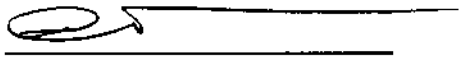
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By:



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Deputy Policy Advisor to
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