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Commissioner

ARIZONA CORPORATION COMMISSION

December 9, 2016

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

RE: An Examination into the Modernization and Expansion of the Arizona Renewable Energy Standard and Tariff, Docket No. E-00000Q-16-0289

Dear Commissioners and Other Interested Parties:

The time is ripe to revisit and revise Arizona's Renewable Energy Standard and Tariff (REST).

The REST rules took effect soon after I was first elected to the Arizona Legislature in 2006. As anyone involved in that process will recount, REST's adoption involved much acrimony. It was the subject of litigation—*Miller vs. Arizona Corporation Commission*—spearheaded by now-Arizona Supreme Court Justice Clint Bolick, who was previously at the Goldwater Institute. Justice Bolick called REST, "the largest intrusion into private business in Arizona's history, and consumers are picking up the tab."¹ In 2010, a three-judge panel on the Arizona Court of Appeals ruled that the power over ratemaking is to be broadly construed and that included the ability to establish major policies like REST. On appeal, the Arizona Supreme Court declined review of *Miller*, leaving unanswered by the ultimate arbiter of our Constitution the full reach of the Commission's "fourth branch" authority.

As Speaker of the Arizona House of Representatives, I, along with then-Representative Tom Forese, supported then-Representative Debbie Lesko's 2012 legislation, House Bill 2789. The bill would have required the Commission to seek approval of any major policy decision from the Legislature. To be sure, REST was the impetus behind this legislation. Representative Lesko pointed out at the time that the entire premise of her proposal was to keep customers' utility bills as low as possible and to ensure that the Legislature retained the power to set energy policy in Arizona just like it does in every other area of law.

Justice Bolick supported HB 2789, too, and raised concern that if the Commission were left to make policy on its own, then a special interest need only capture three regulators as opposed to 47 legislators to work its will. The prescience of his concern about regulatory capture could not have been more vivid than it was in the Commission's most recent election.

¹ O'Grady, Patrick (November 4, 2009). Goldwater Institute appeals decision in suit against ACC on renewable energy standards. *Phoenix Business Journal*. Retrieved December 2, 2016 from <http://www.bizjournals.com/phoenix/stories/2009/11/02/daily26.html>.

Experts may continue to dispute the legality of the Commission's policymaking authority, and rightly so. But the reality is that REST exists, and now commissioners must discern the policy's wisdom in its current form and whether corrective action is needed.

Since arriving at the Commission in February, I have been interested in figuring out more innovative ways to solve system peak demand, either by reducing it or finding the least cost resource to meet it. Everyone knows that one of the most significant cost drivers for Arizona electric utilities today is the generation capacity required to meet system peak energy demand in the evening hours of the day during four to five months out of the year. These hours and months add extraordinary cost to ratepayers.

To that end, I co-authored a proposal that received unanimous Commission approval in August. It does two things: 1) Requires a utility's Energy Efficiency and Demand Response programs to reach peak energy demand reduction targets; and 2) Establishes a residential energy storage incentive program designed to shift a customer's demand during peak periods. I also helped facilitate a workshop at the Arizona Legislature with Commissioner Stump; Representative Pratt, Chairman of the House Energy, Environment and Natural Resources Committee; and David Tenney, Director of the Residential Utility Consumer Office (RUCO), that addressed various peak demand reduction strategies, including advanced rate designs and innovative energy technologies.

Sifting through the various responses to Commissioner Little's September 14, 2016 letter to this docket, one proposal clearly stood out from the others: RUCO's Clean Peak Standard, which was developed by Mr. Lon Huber. By properly setting goals that allow all renewable and carbon-free energy technologies to compete as the least cost resource to satisfy system peak, the Clean Peak Standard elegantly contemplates space for market forces to provide the largest menu of energy options for all Arizonans, especially those who live in our rural areas.

The Clean Peak Standard offers great promise in moving the Commission away from an obsolete commitment to arbitrary renewable energy goals that ignore significant zero-emission resources like Palo Verde Nuclear Generating Station or other emerging technologies like energy storage. When we think about correcting our REST rules moving forward, the Commission must not make the same mistake of separating system peak from renewable or carbon-free energy. Otherwise, as RUCO's White Paper illustrates in the cases of Hawaii and California, our utilities will simply focus on acquiring expensive energy resources with diminishing marginal impact at the expense of actual system needs. Regardless of whether the Commission or the Legislature has the authority to enact energy policy, REST's logical conclusion in its current form is simply a bad idea.

Sincerely,

Andy Tobin
Commissioner