

COMMISSIONERS
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GARY L. PIERCE
Commissioner
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December 2, 2008

Chairman Mike Gleason

Re: Distributed Renewable Energy Implementation Costs

APS Docket # E-01345A-08-0331
TEP Docket # E-01933A-07-0594
UNS Electric Docket # E-04204A-07-0593
Morenci Docket # E-01049A-08-0507
Navopache Docket # E-01787A-07-0576
SSVEC Docket # E-01575A-07-0310
Ajo Docket # E-01025A-08-0332
AEPSCO Docket # E-01773A-08-0333

Dear Chairman Gleason:

In your November 24, 2008 letter you worry that any relaxation of the 50/50—residential/commercial requirement in A.A.C. R14-2-1805(D) would undercut the authority of the Commission’s REST Rules. I write to bring to your attention to R14-2-1816 of our REST Rules, which grants the Commission authority to “waive compliance with any provision of the [REST Rules] for good cause.” You may recall that this is the waiver provision you relied upon earlier this year when you voted with me and our fellow commissioners to grant Morenci Water and Electric a “partial waiver” to exclude all of its energy sales to Phelps Dodge Morenci and Phelps Dodge Safford. *See* ACC Decision No. 70303.

In light of the flexibility that was built into our REST Rules, a Commissioner who believes that R14-2-1805(D) is unsound public policy has two avenues of recourse. He or she can attempt to amend the REST Rules by stripping out or modifying the provision as you suggest, or he or she can support an effort to waive that provision under R14-2-1816. While the first course of action certainly has the benefit of finality over the second, the concern that the second course “has the potential to degrade the Commission’s authority as expressed through its rulemaking” is meritless. An argument that the REST Rules require you to vote to enforce 50/50—Residential/Commercial split cannot withstand the clear import of R14-2-1816.

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Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Pierce". The signature is written in a cursive, flowing style with a large initial "G".

Commissioner Gary Pierce

cc: Chairman Mike Gleason
Commissioner William Mundell
Commissioner Jeff Hatch-Miller
Commissioner Kris Mayes
Brian McNeil, Executive Director
Ernest Johnson, Utilities Division
Janice Alward, Chief Counsel