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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM O'CONNOR CHAIRMAN	LEA MÁRQUEZ PETERSON COMMISSIONER	ANNA TOVAR COMMISSIONER
KEVIN THOMPSON COMMISSIONER	NICK MYERS COMMISSIONER	

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, AND TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	)	**DOCKET NO. E-01345A-22-0144** **NRG ENERGY, INC.'S EXCEPTIONS TO THE RECOMMENDED OPINION AND ORDER**

NRG Energy, Inc. ("NRG") hereby submits its Exceptions to the Recommended Opinion and Order ("ROO") issued in the above captioned matter.

I. Introduction

If the Commission approves the Recommended Opinion and Order (the "ROO") without key amendments, this Commission could be putting an end to a functioning AG-X program thereby striping away the only small bit of consumer choice and competition available to Arizona electric utility customers. In this matter, NRG presented evidence and proposed a program that would maintain the benefits of consumer choice and competition for AG-X customers while modestly expanding freedom and choice to the residential class. Without intervention from the Commission, this rate case decision as set forth in the ROO will signal a stark rebuke to those that support the promise and benefit of freedom of choice and effective competition.

This case presents an important opportunity for the Commission and for Arizona's residential ratepayers to recognize the benefits that additional competitive options can bring to Arizona's otherwise monopolistic energy sector. NRG's proposed Residential Buy-Through Pilot Program ("RBT Pilot") provides a limited number of residential customers with the opportunity to obtain flat-bill and fixed-rate contracts previously only available to Arizona's largest commercial and industrial utility customers via the AG-X rider. These options allow customers to lock in a price and thereby avoid costly fuel and energy price spikes that have become a feature of APS's pricing due to its exposure to the wholesale market and its ability to pass-through those costs through its tariff to customers. NRG believes there is no reason why residential customers who want and value this rate certainty should be prohibited from contracting with willing providers.

In its recent letter supporting the RBT Pilot, the **Goldwater Institute** explained why the Commission should move forward with the pilot program format as a way to expand freedom for APS customers while limiting risks through pilot implementation. The Goldwater Institute wrote,

> Pilot programs provide a controlled testing environment where consumers can sample a new business or service with minimal risks. These programs allow businesses to test new products and services to implement and perfect new ideas and pave the way for a smooth transition for a larger audience. The pilot program presented by NRG allows certain residential customers an opportunity to test an alternate provider for their energy needs. This pilot program is a good step towards

> freedom of contract and choice and competition in the energy marketplace in Arizona.[1]

As explained in the Sections below, the ROO gets it wrong on the RBT Pilot. The evidence clearly shows that this modest pilot is in the public interest and that the program's design adequately mitigates the concerns that APS posited in its effort to deny its customers any modicum of choice.

Not only should the Commission adopt the RBT Pilot, but the Commission must make essential modifications to the ROO's recommendations about the AG-X program and resource adequacy ("RA") to avoid unintentionally killing off the program while eliminating the only functioning program that leverages competition for consumer benefit in Arizona. As explained more fully below, the ROO rejects NRG's reasonable proposal for a hybrid option whereby the AG-X customer can provide RA for its base demand via its GSP and pay APS to provide RA for the 15% reserve margin the utility requires. Without this important modification, testimony in the proceeding demonstrated that AG-X customers may not be able to acquire the product that would provide RA for their reserve margin as such product may not even exist on the market. Further, the ROO wrongly recommends a significantly inflated reserve capacity charge that threatens the economic viability of receiving APS-provided RA by charging AG-X customers at the same rate as full requirements customers despite the difference in what APS provides both. NRG proposes an alternative calculation that appropriately recognizes the irrefutable differences between full requirements customers and AG-X customers.

Finally, while APS and its over 8GW of load are not going to be fully compliant with the Western Resource Adequacy Program ("WRAP") until at least 2026, the ROO recommends requiring Generation Service Providers ("GSPs") providing service to AG-X customers to be fully WRAP compliant in just 12 months. Not only is this requirement unfair and unreasonable given the extended period of compliance granted to APS, but it also jeopardizes the future of the AG-X program and should be changed as proposed below.

[1] Letter from Goldwater Institute to Arizona Corporation Commission dated January 22, 2024. Available in docket at https://docket.images.azcc.gov/E000033251.pdf?i=1706972833931

Unless important amendments are made as set forth below, the ROO jeopardizes the future of even the smallest measure of energy choice for large and small customers in APS service territory. The following Sections first describe the flaws with the ROO's findings on the RBT Pilot and then propose an amendment to implement the Pilot. Then the ROO's mistakes related to its RA findings are discussed and an amendment is proposed to fix the three key problems with the ROO's RA recommendations.

In addition to the positions stated below, NRG also joins in and supports the Exceptions filed by Calpine Energy Solutions, LLC.

II. Argument

A. NRG's RBT Pilot Should Be Adopted

As explained in this Section, the ROO should be amended to permit the Commission to evaluate the benefits of and consumer reaction to the RBT Pilot. Without a pilot of this program, the Commission will have no way of measuring or evaluating if residential consumers should, as NRG believes, have the same opportunities as the largest customers to lock in their energy costs and benefit from limited competition and choice. As explained more fully below, the ROO bases its recommended rejection of the RBT Pilot on a significant mistake about a key program element. Once this mistake is fixed, the ROO's most dire fear is revealed to be non-existent. Furthermore, despite the ROO's suggestion that the Commission lacks authority to protect the public, the Commission maintains full control over every element of the program design and there is sufficient consumer protection available from the Commission and existing laws to support this limited pilot moving forward. This Section also explains how the ROO expresses a baseless concern about administrative costs associated with the RBT Pilot and misses key points regarding the flat-bill option that will be available to customers.

Once the ROO's arguments are closely examined, it is clear that the RBT Pilot is in the public interest and that the concerns expressed are unfounded. A pilot program is a safe and efficient way to test the efficacy of a residential buy-through program while limiting risks to the public.

1. The ROO's denial of the RBT Pilot is based on a material mistake of fact. Customers returning to APS service will *never* be placed on a market rate and NRG designed the RBT Pilot to address this issue.

The ROO spends a significant portion of its RBT Pilot Resolution Section describing a "risk" of the RBT Pilot that simply does not exist. The ROO states, "APS has indicated that customers who unexpectedly leave the RBT Pilot would be subject to market pricing for a full year, the same as an AG-X customer" and the ROO concludes this could be a "rude awakening" and "extremely financially damaging" to customers.[2] On this point, the ROO (and APS for that matter) is flat out wrong as the record reflects that the RBT Pilot is specifically designed so that customers can go directly back to their regular APS rate if transferred from GSP service. In fact, this is the purpose of the collateral posting element of the RBT Pilot that so much time was spent on during the hearing.

NRG witness, Travis Kavulla, was clear on this issue from his original Direct Testimony, testifying that, "[i]f customers who are receiving GSP service under this tariff are involuntarily transferred back to the utility, they will be charged according to the incumbent APS rate schedule."[3] Furthermore, at the hearing itself Mr. Kavulla agreed it would be poor policy to force residential customers onto a market-based rate and explained that the collateral posting element permits customers to go right back to regular APS rates without shifting costs if their GSP service terminates. On this point Mr. Kavulla testified, "[a]nd rather than putting those customers on a market-based rate upon their reentry to APS, which I think would be the wrong policy call, the presence of collateral that's posted allows [returning customers to the regular rates] to be a riskless proposition from the perspective of other consumers or from the utility."[4]

To be clear, the ROO's reliance on APS' assertion that "customers who unexpectedly leave the RBT Pilot would be subject to market pricing for a full year" is misplaced. APS' argument is false and should have been rejected. The record unequivocally demonstrates that the RBT Pilot

[2] ROO at 350:14-18.
[3] Kavulla Direct at 20:12-14.
[4] Kavulla Hearing Testimony, Vol. XIII, 3198:17-22.

addressed this issue and that NRG proposed that residential customers ***never*** be placed on market pricing rates.

Once this mistake in the ROO is corrected, the ROO's conclusion about "extremely financially damaging" risks and a "rude awakening" flowing from residential customers being forced onto floating market rates are shown to be simply baseless. The Resolution Section of the ROO makes no other finding about a specific program element that causes risk to consumers. Simply put, correct this mistake, and the significant concerns on which the ROO bases its recommendation denying the RBT Pilot melt away.

2. The ROO expresses concern that the Commission lacks regulatory authority over the RBT Pilot, but the Commission possesses ultimate control of each and every element of the tariff while other governmental avenues exist for additional and adequate consumer protection.

The ROO expresses concern that the Commission "would not be able to exercise sufficient regulation authority over GSPs [ ] to ensure customers would be fully aware of the potential consequences of the deals they would make and to make the RBT safe for customers."[5] To reach this conclusion, the ROO fails to consider the essential role the Commission plays in designing and approving each and every element of the RBT Pilot in the first place. The Commission approves limits to the rates the GSPs may charge while also approving key elements including among others, the duration of the customer contracts, the types of contracts that can be offered under the program, the way that billing works, customers' rights to opt-out of contracts at the end of a term, the collateral posting requirement to avoid cost shifting, and on and on.

NRG submits that this total control over the program design is indistinguishable from how the Commission interacts with numerous other providers of services and products that rely on utility rates and programs. For example, the Commission approves details of DSM or EE programs while not directly regulating the providers of goods and services that interact with such programs. In fact, the Commission sets rates and programs related to and impacting rooftop solar and other distributed generation providers, electric vehicle charging providers, private microgrid developers,

[5] ROO 350:19-22.

providers of energy audits, smart thermostat installers and manufacturers, HVAC manufacturers and installers, pool pump companies, and many others industry participants that the Commission does not regulate but that must comply with Commission-approved program details.

The Commission has authorized countless programs, rates, and tariffs that empower unregulated providers of goods and services to interact with millions of utility customers statewide. In these other cases, the Commission seems content that laws, including the Arizona Consumer Fraud Act, provide consumers with significant protections. It is unclear why the Commission would have heightened concerns about the mere 10,000 participants in the RBT Pilot while the millions of Arizonans doing business with industries enabled as a result of Commission-created programs and tariffs are served just fine by the protections afforded by laws like the Fraud Act.

3. The ROO's concerns about the potential costs of consolidated billing are unfounded since the RBT Pilot would be subject to the same monthly administrative management fee as the current AG-X program.

The ROO expresses a concern that there, "is also the question of the additional costs that would be incurred by APS for consolidated billing [for the RBT Pilot] and how those would be covered so that there would not be a cost shift."[6] This concern is unfounded since the RBT Pilot participants will pay the same monthly administrative management fee that AG-X customers pay under the current AG-X tariff. The monthly administrative management fee is proposed and calculated by APS itself, covers just these types of expenses, and is designed to avoid the cost shift that the ROO raises. Because this issue has already been addressed in settled rates, it is improper to use it as a basis for concern about the RBT Pilot.

[6] ROO at 350:26-27.

4. The ROO's concerns about the flat-bill option are misplaced since NRG proposes a cap on the usage available to customers under the flat-bill alternative and there is no evidence in the record to suggest that flat-bill options for a mere 10,000 small customers will have any impact on capacity.

The ROO expresses concern that the flat-bill options available under the proposed RBT Pilot will, "be counterproductive for APS and its nonparticipating customers at a time when there are constraints on the grid and there is little if any excess capacity to be purchased on the western market" and further concludes that the evidence, "shows that flat-bill plan customers increase their usage."[7] In raising this concern, the ROO appears to unintentionally conflate energy and capacity.

While limited and inconclusive evidence may have shown customers on flat-billing rates may increase their energy consumption, NRG is unaware of any evidence that even suggested customers on flat-bill rates increased their capacity needs. As a result, there is no factual basis for the ROO's conclusion that the RBT Pilot will be "counterproductive [ ] at a time when [ ] there is little if any excess ***capacity*** to be purchased on the western market." Furthermore, the flat-bill option includes a cap of 3,000kWh per month before the option transitions to a fixed-rate for remaining usage which sends a clear price signal to consumers of energy.

5. An amendment should be introduced to implement the RBT Pilot.

For the forgoing reasons, NRG respectfully requests that the Commission adopt the following amendment to implement the RBT Pilot:

Proposed Amendment

Purpose: This amendment approves the Residential Buy-Through Pilot Program (the "RBT Pilot").

DELETE page 350, line 8 thru page 351, line 7 and **INSERT**:

[7] ROO at 351:1-4.

The RBT Pilot program would provide a limited number of residential customers with access to fixed-rate and flat-bill options currently only available to the largest APS customers under the AG-X program. The RBT Pilot would provide residential customers with the ability to lock in their energy costs in a way that is likely to benefit those customers. The pilot nature of the RBT Pilot provides the Commission and interested stakeholders an opportunity to conservatively test the ability of a buy-through program to bring benefits to residential customers. The Commission agrees with NRG that APS' current rate structure requires residential utility customers to cover all the costs and risks of fuel and energy prices fluctuations and the Commission sees value in piloting a program whereby the energy provider shoulders this risk instead of customers. Participation in the RBT Pilot is purely voluntary and the Commission sets the relevant program parameters. Further, the Commission is convinced that Arizona law provides ample protections for participating customers to dissuade bad actors and remedy any issues that may exceed this already significant Commission's authority over this program.

As a result, we conclude that it is just and reasonable and in the public interest to require APS to implement the RBT Pilot based on NRG's proposal. APS will be required, within 90 days after this decision, to file as a compliance item in this docket a RBT Pilot POA that includes the RBT Pilot features identified by NRG herein. APS will be required, prior to this filing and within 30 days after this decision, to meet with NRG and any other interested parties to discuss collaboratively and attempt to reach agreement on the language of the RBT Pilot POA. It is the Commission's desire that the RBT Pilot POA be a document upon which the interested parties have reached agreement. Staff will be required to review the RBT Pilot POA within 60 days after it is filed and to file no later than 90 days after it is filed a Staff Report and Proposed Order, for Commission consideration at a subsequent open meeting, that recommends whether the RBT Pilot POA should be approved as written or should be further modified.

INSERT at the bottom of page 451:

IT IS FURTHER ORDERED that APS shall, within 90 days of this Decision, file as a compliance item in this docket a Residential Buy-Through ("RBT") Pilot POA that includes the RBT Pilot features identified by NRG in this matter,

IT IS FURTHER ORDERED that APS shall, within 30 days after the effective date of this Decision, meet with NRG and any other interested parties to discuss collaboratively and attempt to reach agreement on the language of the RBT Pilot POA.

IT IS FURTHER ORDERED that Staff shall:

- Within 60 days after the RBT Pilot POA is filed, review the RBT Pilot POA; and
- Within 90 days after the RBT Pilot POA is filed, file in this docket a Staff Report and Proposed Order, for Commission consideration at an Open Meeting, that recommends whether the RBT Pilot POA should be approved as written or should be further modified.

B. NRG's RA-Related Proposals Should Be Adopted

The ROO jeopardizes the future of the only program in Arizona providing any choice to electric customers—the AG-X program. Without significant amendment, it is likely the AG-X program and the proposed RBT Pilot if adopted as well, will be left unworkable and at risk of becoming non-functioning.

1. The ROO rejects NRG's proposed hybrid RA option, finding it "potentially unworkable" without sufficient explanation. In fact, the evidence demonstrated the hybrid option should be adopted to avoid an otherwise unworkable program.

The ROO adopts APS' proposal giving AG-X customers the option to either provide their own RA via a GSP or pay APS to provide RA for them. NRG proposed a reasonable third hybrid option whereby the AG-X customer can provide RA for its base demand via its GSP and pay APS to provide RA for the 15% reserve margin the utility requires. The ROO rejected NRG's proposed hybrid option and described its rationale in a single sentence fragment including conclusory

statements with no support. The ROO found, "[ ] NRG's proposed third 'hybrid' RA option should be rejected as inadequate to address the RA concerns and potentially unworkable."[8] The evidence in the hearing leads to the opposite conclusion: without this third option, it is the ROO's proposed solution that may be "unworkable."

The ROOs conclusion is contrary to the record in this matter as the evidence showed that without this third hybrid option, it may be impossible for an AG-X customer to procure the two separate products needed to: 1) serve the customer's actual load; and 2) serve the customer's 15% reserve margin. It is the product to provide RA for the 15% reserve margin that was shown to be problematic for non-utility providers to procure. At the hearing NRG witness, Dr. Lance Kaufman, explained the problem with procuring the specialized product needed to serve the customer's 15% reserve margin:

> NRG is an experienced market participant and believes that this aspect of APS's proposal is problematic. NRG believes that APS's proposed call option product for energy in excess of the AG-X customer's actual load is not readily available and that it would be operationally and technically impractical to implement call options of this nature.[9]

NRG is an experienced GSP and submitted evidence at the hearing showing that it is "operationally and technically impractical" for GSPs to provide a product that provides RA for the 15% reserve margin. This is the reason the third "hybrid" option was proposed in the first place, yet the ROO rejects a simple solution to this problem with mere conclusions. Despite the ROO's conclusions to the contrary, if this third option is not adopted, it is the ROO's proposal that is "likely unworkable."

The record does not support the ROO's unsubstantiated conclusion that the hybrid option is "likely unworkable." In fact, the record revealed that when APS makes its forward showing to WRAP, it just shows that it has a quantity of RA available for the total load that requires it and does not relate that RA to specific customer load. This means that APS could simply add the load required to address the reserve margin for whichever AG-X customers purchased RA for their reserve margin from APS under the hybrid option to the aggregate load number for which it is

[8] ROO 330:10-15.
[9] Ex. NRG-1, Kaufman Direct at 4:23-5:2.

providing RA system-wide. APS witness Joiner testified specifically that APS does not tie generators to specific customer load for the purposes of calculating RA, meaning that it is not at all unworkable to simply increase the number needed to account for those electing the hybrid option:

> A:[ ] are you saying if I have some load in Phoenix, do I say that this specific generator is serving this specific load? [ ] No. I just say that this specific until is serving this portion of my load number-wise, not geographic, but quantity-wise.
>
> Q: Okay, and the same is true for RA. You don't assign the generator to RA for a certain piece of load; correct?
>
> A: No. Just quantities.[10]

Joiner's testimony here makes it clear that, despite the ROO's assertion, the hybrid option is plainly workable.

As set forth in Subsection 2, below, the charge for APS-provided RA is unreasonably high and greatly exceeds the cost of providing RA. When faced with an unreasonably priced APS-provided RA option, the only alternative left for an AG-X customer would be to turn to their GSP to provide RA. However, absent the hybrid option, the evidence demonstrated it may not be possible to obtain GSP provided RA covering the reserve margin. Thus, if the hybrid option is not offered, the only practical RA option available to AG-X customers will be the overpriced APS-provided RA option. This risks placing AG-X customers in an economically untenable position and places the future of beneficial energy choice via AG-X in jeopardy.

2. The ROO sides with APS and adopts a grossly inflated reserve capacity charge that overcharges AG-X customers for RA. If this charge is not corrected, there may be no consumer choice of any kind left in APS territory.

The ROO recommends that the E-34 generation demand charge be used as the reserve capacity charge for AG-X customers even though that demand charge reflects the cost of APS

[10] Joiner, Tr. Vol V. at 1268:21-1269:6.

meeting demand for full requirements customers in all hours while it is undisputed that GSPs, and not APS, serve AG-X customers' load in virtually every hour of the year. As a result, the reserve capacity charge is really a planning charge, yet the ROO treats AG-X customers as if they are not serving their own load at all and are the same as full requirements customers. This is plainly flawed reasoning. Stated differently, the E-34 generation demand charge reflects the cost of meeting demand for a full requirements customer and is unrelated to APS' cost of providing planning for RA to a GSP-supplied AG-X customer.

The ROO's conclusion misses an irrefutable difference between what APS provides to full requirements customers and what it provides to AG-X customers. Once this difference is understood and accounted for, it is obvious that the E-34 generation demand charge simply cannot be the correct compensation to APS for providing RA to AG-X customers. Dr. Kaufman explains this detail here:

> The APS supplied resource adequacy charge for AG-X customers is only applied when a GSP serves the AG-X load but APS serves resource adequacy needs. Because the AG-X customer's load is served by the GSP, any resources APS secures for planning purposes become freed up in actual operations to provide other services, such as making economic wholesale sales or providing replacement capacity for plant outages. This is distinctly different from the cost of serving full requirement customer demand. For full requirement customers, APS must plan for and serve demand, rather than just plan for demand. This means that the full requirement customers impose an opportunity cost on APS above and beyond the cost imposed by AG-X customers.[11]

As Dr. Kaufman highlights, to the extent APS secures resources to plan for RA for an AG-X customer, those resources are not being used to provide service in actual operations to those AG-X customers who receive their actual service from their GSP in real time. As a result, these resources are freed up and can and do make sales into the wholesale market or provide replacement capacity for plants during outages.

[11] Ex. NRG-l, Kaufman Direct at 18:5-18.

In fact, APS witness, Hobbick, readily admitted that APS does dispatch energy from resources it uses to provide RA to AG-X customers without crediting those customers with the value of those sales:

> Q: And to the extent that you get [ ] economic benefits from that, from selling energy from that system, from the resource you believe that benefit should not accrue to the AG-X customer, correct?
>
> A: When we sell energy, based on from the dispatch of our facilities that aren't serving our customer, that benefits all participant – all customers to the PSA, although I recognize that AG-X participants don't pay the PSA.
>
> Q: So they would not reserve a benefit from that energy that's sold from the resource that their reserve capacity charge was paying for, correct?
>
> A: Correct. They would not.[12]

APS' proposal and the ROO do not acknowledge this undeniable reality and the AG-X customer is not given any credit for the benefit APS derives from the real-time operations of these resources.

While APS deploys the resources it uses to plan for RA for AG-X customers for other purposes in operation, this is undeniably different from the situation whereby APS secures resources to serve a full requirements customer; a resource that it must operate for those customers to serve their load in real-time. In that case, the resources are actually used in operations to serve those full requirements customers. Again, this is simply not the same thing that APS does for AG-X customers and, as a result, the E-34 demand charge applicable to full requirements customers just cannot be the appropriate value for the resource adequacy charge.

The appropriate calculation of the cost of APS providing RA to AG-X customers must recognize that the resource APS uses to satisfy AG-X demand for planning purposes, is actually operated to provide service to other customers and make sales into the wholesale market. As a result, in order to avoid improperly charging the AG-X customer for service the customer actually never receives, the reserve capacity charge must recognize the net benefit that RA resources offer in real-time operations. Dr. Kaufman's RA charge accounts for this benefit by offsetting demand costs with the net revenue from real-time proceeds of energy sales.

[12] Hobbick, Tr. Vol. X at 2519:11-23.

To properly calculate the reserve capacity charge, Dr. Kaufman utilized EIA data as well as APS' IRP forward price curves.[13] Ultimately, Dr. Kaufman describes the calculation of the appropriate charge as follows:

> I used Energy Information Administration's Annual Energy Outlook for 2022 cost estimates and APS's 2020 RP price assumptions to calculate these amounts for a new CCCT. The levelized fixed cost for a 1,083 MW CCCT is $9.22 per kw month. However, if the energy produced by the CCCT is sold at projected market rates, these fixed costs are offset by net revenues of $7.70 per kW-month. Thus, the cost of sewing demand needs for planning purposes, but not operational purposes, is $1.52 per kW-month.[14]

As a result, the reserve capacity charge should be set at $1.52 per kW per month.

3. APS will not be a binding member of WRAP until 2026 at the earliest and will not be subject to full WRAP requirements until the transition period ends in 2029, yet the ROO unreasonably gives GSPs only 12 months to reach full WRAP compliance.

It is undisputed that APS will not be a binding member of the WRAP until 2026, and will not be subject to the full suite of WRAP compliance requirements until 2029, nevertheless the ROO requires full, binding WRAP compliance from GSPs participating in the AG-X program within 12 months of the Decision.

Not only is APS not WRAP compliant today, but the utility will not be a binding member of WRAP until 2026.[15] When asked why APS is not becoming a binding member of WRAP today, APS' Joiner testified that the utility and other WRAP participants, "are just needing time to gear up and make sure we are fully compliant."[16] It is unreasonable for APS to "need time" (several years actually) to "gear up" before becoming a binding member of WRAP while asking that AG-X customers and their suppliers immediately make a transition to full WRAP compliance within just 12 months.

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[13] *See* Ex. NRG-1, Kaufman Direct at20: 15-22.
[14] *See* id. at 20:6-13.
[15] *See* Joiner Tr. Vol. V 1278:16-20.
[16] Joiner Tr. Vol. Vol. VI 1548:20-21.

Furthermore, APS isn't even subject to full WRAP compliance requirements until three years ***after*** it becomes a binding WRAP member. Joiner testified that penalties for failing to meet compliance step up for new WRAP members over a period of three years after they become binding members, in 2029.[17] This means that while APS is asking the Commission to require full WRAP compliance from of AG-X participants immediately, APS will not be a full WRAP member subject to its full suite of requirements until 2029—***five years from now***. NRG submits that it is simply unreasonable for the ROO to require full WRAP compliance from AG-X customers and their suppliers in 12 months when APS itself will not be subject to full responsibility for its own compliance until 2029. If APS and its over 8GW of load need not be WRAP compliant until 2026 and not fully accountable for that compliance in 2029, it is simply unreasonable that the few hundred MWs participating in the AG-X program should be held to a higher standard.

4. The Commission's decision on RA-related issues will have important impacts and may destroy the viability of the only options for consumer choice in APS service territory. NRG proposes an amendment to solve these problems.

The decisions related to RA in this matter are not trivial and will impact the viability of the AG-X program and the RBT Pilot—if the Commission approves that pilot. The lack of a hybrid option, the proposed overcharging for RA, and the hurried and unfair WRAP compliance timeline can each threaten the viability of beneficial choice and competition and taken together make it highly unlikely that any modicum of choice will be left. For example, it is simply not possible to know right now whether products that are fully WRAP compliant will be available in sufficient quantiles (***or at all***) in the market within 12 months to sustain the AG-X and RBT Pilot program participants. Further, as shown above, the proposed charge for RA is excessive and may make it uneconomical for AG-X and RBT Pilot participants to have APS supply RA at all.

For the reasons set forth above, changes must be made to the RA-related recommendations in the ROO. The following proposed amendment implements the changes explained herein.

[17] *See* Joiner Tr. Vol. V 1279: 11-17.

Proposed Amendment

Purpose: This amendment makes three modifications to the ROO's recommendations related to resource adequacy ("RA"). The record supports these changes, and they are necessary to protect the continued viability of the AG-X program. These changes are: 1) adopt a reasonable hybrid option whereby the AG-X customer can provide RA for its base demand via its GSP and pay APS to provide RA for the 15% reserve margin the utility requires; 2) sets the reserve capacity charge at $1.52 per kW month; and 3) orders that GSPs be required to comply with Western Resource Adequacy Program ("WRAP") RA requirements concurrently with APS becoming a binding member of WRAP.

DELETE page 330, line 13 after the word "approved," thru the end of the sentence and **INSERT**:

"and NRG's third "hybrid" RA option should be adopted as a reasonable alternative that provides an additional option to AG-X customers."

DELETE page 330, lines 16-23 and **INSERT**:

Because the reserve capacity charge should recognize the difference between full requirements customers that receive all service from APS and AG-X customers that are served by a GSP, the unbundled demand generation charge from the E-34 tariff is an inappropriate measure and is rejected. A reasonable reserve capacity charge must recognize the difference between planning for demand and providing demand in operations and must recognize that the resource APS uses to satisfy AG-X demand for planning purposes, is actually operated to provide service to other customers and make sales into the wholesale market. As a result, we find it just and reasonable and in the public interest to adopt NRG's proposed reserve capacity charge and set it at $1.52 per kW month for APS-provided RA.

DELETE page 331 lines 4-8 and **INSERT**:

"Because GSPs may need some time to obtain WRAP-compliant RA, it is just and reasonable and in the public interest to require GSPs to become WRAP-compliant no later than the time that APS becomes a binding member of WRAP.

Page 448 at the end of line 16 after "approved." **INSERT** new bullet:

- "NRG's "hybrid option whereby the AG-X customer can provide RA for its base demand via its GSP and pay APS to provide RA for the 15% reserve margin the utility requires is approved."

DELETE page 448 lines 17-20 and **INSERT** new bullet:

- "GSPs shall become WRAP-compliant no later than the time that APS becomes a binding member of WRAP."

DELETE page 448 lines 21-22 and **INSERT** new bullet:

- "The reserve capacity charge shall be set at $1.52 per kW month."

RESPECTFULLY SUBMITTED this 12th day of February, 2024.

ROSE LAW GROUP pc

/s/ Court S. Rich
Court S. Rich
Eric A. Hill
Attorneys for NRG Energy, Inc.

Original e-filed on
this 12th day of February, 2024 with:

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I hereby certify that I have this day served a copy of the foregoing document on all parties of record in this proceeding by regular or electronic mail to:

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