NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL SERVICES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-25-803	No change
Exhibit 1	Amend

2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-136(F), 36–2202(A), 36- 2205(C), and 36-2209(A)

Implementing statute: A.R.S. § 36-2205(A)

3. The effective date of the rule:

March 30, 2001

4. A list of all previous notices appearing in the Register addressing the exempt rule:

None

5. The name and address of agency personnel by whom persons may communicate regarding the rulemaking:

Name: Kathleen Phillips

Address: Arizona Department of Health Services
1740 West Adams Street
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 548-1090

OR

Name: Dona Marie Markley

Address: Arizona Department of Health Services
Bureau of Emergency Medical Services
1651 East Morten, Suite 130
Phoenix, Arizona 85020

Telephone: (602) 861-0708

Fax: (602) 861-9812

6. An explanation of the rule, including the agency's reason for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

A.A.C. R9-25-803 establishes drug box procedures and minimum standard medications required to be carried in a drug box. Due to a shortage of the drug naloxone in some parts of the state, Exhibit 1 of the protocol is amended to:

1. Designate an alternative naloxone concentration, due to the shortage of the drug in the current concentrations, and
2. Designate an alternative medication, generic name nalmefene, that can be placed in the ALS drug box and administered by ALS personnel when naloxone is not available.

In addition, the note at the end of the Exhibit 1, EMT-P and EMT-I Drug Lists is amended to conform to current rulemaking grammar and style requirements.

A.R.S. § 36-2205(C) exempts this protocol from the provisions of A.R.S. Title 41, Chapter 6.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable

8. The summary of the economic, small business and consumer impact:
A.R.S. § 36-2205(C) provides exemption from the provisions of Title 41, Chapter 6.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Not applicable

10. A summary of the principle comments and the agency response to them:
Not applicable

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

12. Incorporation by reference and their location in the rules:
None

13. Was this rule previously adopted as an emergency rule?
No

14. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL SERVICES

ARTICLE 8. MEDICAL DIRECTION PROTOCOL FOR EMERGENCY MEDICAL TECHNICIANS

Section
R9-25-803. Protocol for Drug Box Procedures
Exhibit 1. EMT-P Drug List; EMT-I Drug List

R9-25-803. Protocol for Drug Box Procedures
A. No change.
B. No change.
C. No change.
D. No change.
E. No change.
F. No change.
G. No change.
H. No change.

Exhibit 1. EMT-P Drug List; EMT-I Drug List

EMT-P DRUG LIST

AGENT	CONCENTRATION	SUPPLY RANGE
ADENOSINE	6 mg/ 2 mL	5 - 6
ALBUTEROL SULFATE * (sulfite free)	2.5 mg/3 mL normal saline Unit dose or 2.5 mg/0.5 mL solution in 20 mL dropper bottle and 3 mL normal saline bullets	2 - 6 1 bottle 2-6 bullets
ASPIRIN, CHILDREN'S CHEWABLE	81 mg	4 - 36
ATROPINE SULFATE	1 mg/10 mL pre-filled syringes	3 - 4
ATROPINE SULFATE	8 mg/20 mL	1 - 2
BRETYLIUM TOSYLATE (optional)	500 mg/10 mL	1 - 3
CALCIUM CHLORIDE	1 g/10 mL	1 - 2
CHARCOAL, ACTIVATED (with or without sorbitol)	25 g	2 - 4
DEXTROSE	25 g/50 mL	2 - 4
DIAZEPAM (required) and DIAZEPAM RECTAL DELIVERY GEL (optional)	10 mg/ 2 mL 10 mg twin pack pediatric (Total 20 mg)	2 1
DIPHENHYDRAMINE HCl	50 mg/1 mL	1 - 2
DOPAMINE HCl	400 mg/5 mL or 400 mg/250 mL ~~cc~~ dextrose 5% in water (D_5W)	1 - 2 1 - 2
EPINEPHRINE HCl 1:1,000 solution	1 mg/1 mL ampules or prefilled syringes	1 - 2
EPINEPHRINE HCl 1:1,000 solution	1 mg/1 mL 30 mL multidose vial	1 - 2
EPINEPHRINE HCl 1:10,000 solution	1 mg/10 mL prefilled syringes	6 - 8
FUROSEMIDE	40 mg/4 mL	2 - 4
GLUCAGON	1 mg with 1 mL diluting solution dose pack	1 - 2
IPRATROPIUM BROMIDE * 0.02%	2.5 mL unit dose	2 - 4
LIDOCAINE HCl IV	100 mg/5 mL prefilled syringes	3 - 4

LIDOCAINE HCl IV	1 g/25 mL or 2 g/500 mL dextrose 5% in water (D_5W)	1 - 2 1 - 2
MAGNESIUM SULFATE	1 g/2 mL	 4 -10
METHYLPREDNISOLONE SODIUM SUCCINATE	125 mg	1 - 2
MORPHINE SULFATE	10 mg/1 mL	 2
NALOXONE HCl or If NALOXONE HC1 is not available, NALMEFENE HC1	0.4 mg/1 mL or 1 mg/1 mL or 10 mg/10 mL 2 mg/2 mL	10 mg 1 - 2
NITROGLYCERIN TABLETS or NITROGLYCERIN SUBLINGUAL SPRAY	0.4 mg tablets /25 in bottle 0.4 mg/metered dose 200 metered doses/bottle	1 - 2 bottles 1 - 2 bottles
OXYTOCIN	10 units/1 mL	1 - 2
PHENYLEPHRINE NASAL SPRAY 0.5%	15 mL	1 - 2
SODIUM BICARBONATE 8.4%	50 mEq/50 mL	2 - 3
THIAMINE HCl	100 mg/1 mL	1 - 2

VERAPAMIL HCl	5 mg/2 mL	2 - 3
NITROUS OXIDE (optional)	Nitrous Oxide 50% / Oxygen 50% fixed ratio setup with O_2 fail-safe device and self-administration mask	1 setup
SYRINGES	1 mL tuberculin 3 mL 10 - 12 mL 20 mL 50 - 60 mL	2 4 4 2 2
FILTER NEEDLES	5 micron	3
NON - FILTER NEEDLES		assorted sizes
INTRAVENOUS SOLUTIONS: (Bulk restricts inclusions of all fluids in drug box)		
DEXTROSE, 5% in water	250 mL bag	1
LACTATED RINGER'S	1 L bag	4 - 8
NORMAL SALINE	1 L bag	4 - 8
NORMAL SALINE	250 mL bag	3
NORMAL SALINE	50 mL bag	2

* Administer by nebulizer

Note: Per Arizona Administrative Code R9-25-803, only appropriate levels of EMT personnel ~~shall be~~ educated in an approved curriculum (covering both IV pumps and the specific drugs named in Exhibit 1 and Exhibit 2 of this section) and approved by their base hospital medical director ~~, before monitoring~~ may monitor patients on the listed medications during interfacility transports.

EMT-I DRUG LIST

AGENT	CONCENTRATION	SUPPLY RANGE
ALBUTEROL SULFATE * (sulfite free)	2.5 mg/3 mL normal saline Unit dose or 2.5 mg/0.5 mL solution in 20 mL dropper bottle and 3 mL normal saline bullets	2 - 6 1 bottle 2 - 6 bullets
ASPIRIN, CHILDREN'S CHEWABLE	81 mg	4 - 36
ATROPINE SULFATE	8 mg/20 mL	1 - 2
CHARCOAL, ACTIVATED (with or without sorbitol)	25 g	2 - 4
DEXTROSE	25 g /50 mL	2 - 4
DIAZEPAM (required) and DIAZEPAM RECTAL DELIVERY GEL (optional)	10 mg/2 mL 10 mg twin pack pediatric (Total 20 mg)	2 1
DIPHENHYDRAMINE HCl	50 mg/1 mL	1 - 2
EPINEPHRINE HC1 1:1,000 solution	1 mg/1 mL ampules or prefilled syringes	1 - 2
EPINEPHRINE HCl 1:10,000 solution	1 mg/10 mL prefilled syringes	3 - 6
FUROSEMIDE	40 mg/4 mL	2 - 4
GLUCAGON	1mg with 1 mL diluting solution dose pack	1 - 2
IPRATROPIUM BROMIDE* 0.02%	2.5 mL Unit dose	2 - 4
METHYLPREDNISOLONE SODIUM SUCCINATE	125 mg	1 - 2
MORPHINE SULFATE	10 mg/1 mL	2
NALOXONE HCl or If NALOXONE HC1 is not available, NALMEFENE HC1	0.4 mg/1 mL or 1 mg/1 mL or 10 mg/10 mL 2 mg/2 mL	10 mg 1 - 2
NITROGLYCERIN TABLETS or NITROGLYCERIN SUBLINGUAL SPRAY	0.4 mg tablets /25 in bottle 0.4 mg/metered dose 200 metered doses/bottle	1 - 2 bottles 1 - 2 bottles

OXYTOCIN	10 units/1 mL	1 - 2
PHENYLEPHRINE NASAL SPRAY 0.5%	15 mL	1 - 2
SODIUM BICARBONATE 8.4%	50 mEq/50 mL	2 - 3
THIAMINE HCl	100 mg/1 mL	1 - 2
NITROUS OXIDE (optional)	Nitrous oxide 50% / Oxygen 50% fixed ratio setup with O_2 fail-safe device and self-administration mask.	1 setup
SYRINGES	1 mL tuberculin 3 mL 10 - 12 mL 20 mL 50 - 60 mL	2 2 2 2 2
FILTER NEEDLES	5 micron	3
NON-FILTER NEEDLES		assorted sizes
INTRAVENOUS SOLUTIONS: (Bulk restricts inclusion of all fluids in drug box)		
DEXTROSE, 5% in water	250 mL bag	1
LACTATED RINGER'S	1 L bag	4 - 8
NORMAL SALINE	1 L bag	4 - 8
NORMAL SALINE	250 mL bag	3

* Administer by nebulizer

Note: Per Arizona Administrative Code R9-25-803, only appropriate levels of EMT personnel ~~shall be~~ educated in an approved curriculum (covering both IV pumps and the specific drugs named in Exhibit 1 and Exhibit 2 of this section) and approved by their base hospital medical director ~~, before monitoring~~ may monitor patients on the listed medications during interfacility transports.

NOTICE OF EXEMPT RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R14-2-1601	Amend
R14-2-1618	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 40-202, 40-203, 40-321, 40-441 and 40-442 et seq.

Implementing statute: Not applicable

Constitutional authority: Arizona Constitution, Article XV

3. The effective date of the rules:

These rules are effective upon Order approving rules by the Commission.

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 2680, July 14, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 3162, August 25, 2000

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Janice A. Alward
Attorney

Address: Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

On April 8, 1999, Commissioner Kunasek filed a proposed new rule "Solar and Environmentally - Friendly Portfolio Standard" to replace the former Solar Portfolio rule. The proposed rule expanded the portfolio standard to include technologies other than solar electricity generation and in order to produce any significant results, a combination of a mandatory portfolio combined with existing voluntary efforts was required.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule does not diminish any previous grant of authority of a political subdivision.

8. The summary of the economic, small business, and consumer impact:

The public at large would benefit from an environmental portfolio standard that encourages a larger portion of the electricity sold in Arizona to be produced from environmentally friendly sources. Producing electricity from environmentally friendly sources has fewer adverse impacts on air, land, and water than producing electricity from conventional sources.

The cost to consumers of electric service would be $0.000875 per kilowatt-hour of retail electricity purchased by the consumer with caps of $0.35 per month for residential customers, $13.00 per meter per month for nonresidential consumers whose demand is less than 3,000 kilowatts per month, and $39.00 per meter per month for nonresidential consumers whose demand is 3,000 kilowatts or more per month.

Manufacturers and installers of environmentally friendly electric power plants in Arizona would benefit because the proposed rule provides incentives (extra credit multipliers) for environmentally friendly power plants installed or manufactured in Arizona. Employees of those firms would be expected to have increased job opportunities. Manufacturers and distributors of solar water heaters would benefit because load-serving entities could meet a portion of their portfolio requirement through the installation of solar water heating and solar air conditioning systems. Employees of those firms would be expected to have increased job opportunities.

Public entities, such as schools, cities, counties, or state agencies, may benefit from the establishment of the Solar Electric Fund, because the fund would be used to purchase solar electric generators or solar electricity for those entities. Adoption of the proposed permanent rule and rule amendments would increase the portion of electricity sold in Arizona that is produced from environmentally friendly sources.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

After public comment, the following Sections have been modified from the text of the revised rules published in the *Arizona Administrative Register* on August 25, 2000:

R14-2-1618(A)

Insert after 2001: "or upon Commission approval of its Environmental Portfolio Standard tariff whichever is later,"

Delete: ~~Electric Service Provider~~ and replace with Load-Serving Entity

R14-2-1618(A)(1)

Delete: ~~Competitive ESPs~~, and replace with Electric Service Providers

Insert after "funds collected": from the Environmental Portfolio Surcharge delineated in R14-2-1618(A)(2).

R14-2-1618(A)(2)

Delete: ~~The Environmental Portfolio Surcharge shall be $.000875 per kWh of retail electricity purchased by the customer. There shall be a surcharge cap of $.35 per month for residential customers. There shall be a surcharge cap of $13 per month per meter or per service if no meter is used for all non-residential customers, except for those non-residential customers whose meter's registered demand is 3000 kW or more for 3 consecutive months, who will be subject to a surcharge cap of $39.00 per month per meter.~~

Insert: The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.000875 per kWh or:

a. Residential Customers: $.35 per service,

b. Non-Residential Customers: $13 per service,

c. Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service.

R14-2-1618(B)(2)

Delete after "not later than": ~~December 31~~

Insert: June 30

R14-2-1618(B)(3)

Insert "and 2003" after "In 2002" in Section R14-2-1618(B)(3)(b)

R14-2-1618(B)(3)(c)

Delete:

~~c. In 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.~~

R14-2-1618(C)

Delete:

~~**C.** The portfolio requirement shall apply to all retail electricity in the years 2001 and thereafter.~~

R14-2-1618(C)

Replace "Electric Service Providers" with "Load-Serving Entities" whenever the former appears through this Section.

Insert after requirements: Extra Credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction requirements in R14-2-1618(B)(3). With the exception of the Early Installation Credit Multiplier, which has a five-year life from operational system start-up, all other extra credit multipliers are valid for the life of the generating equipment.

Insert a period and delete the colon after "requirements."

R14-2-1618(C)(1)

Following the table of extra credit multipliers, insert: Eligibility to qualify for the before ~~The~~ Early Installation Extra Credit Multiplier would end in 2003.

Insert after end in 2003: However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up.

R14-2-1618(C)(3)(a)

Replace "Electric Service Providers" with "Load-Serving Entities".

R14-2-1618(C)(3)(b)

Replace "Electric Service Provider's" with "Load-Serving Entity's".

R14-2-1618(C)(3)(c)

Replace "Electric Service Provider's" with "Load-Serving Entity's".

R14-2-1618(C)(3)(d)

Replace "Electric Service Provider's" with "Load-Serving Entity's".

R14-2-1618(C)(3)(e)

Replace "Electric Service Provider" with "Load-Serving Entity".

R14-2-1618(C)(4)

Replace "an Electric Service Provider" with "a Load-Serving Entity".

Replace "Electric Service Provider" with "Load-Serving Entity".

R14-2-1618(D)

Replace "Electric Service Providers" with "Load-Serving Entities".

R14-2-1618(E)

Replace "an Electric Service Provider" with "a Load-Serving Entity".

Replace "shall impose" with "may impose".

Replace "penalty" with "deficiency payment" in the first sentence. Insert "no earlier than" before "January 1, 2004,".

Replace "Electric Service Provider" with "Load-Serving Entity".

Replace "Electric Service Provider" with "Load-Serving Entity".

Replace "penalty" with "payment" in the third sentence.

R14-2-1618(F)

Replace "Electric Service Provider" with "Load-Serving Entity".

R14-2-1618(H)

Replace "Electric Service Provider" with "Load-Serving Entity". Delete "or independent solar electric generator" after "Electric Service Provider". Replace "solar" with "eligible" where it appears before "kWh".

R14-2-1618(J)

Replace "An Electric Service Provider" with "A Load-Serving Entity".

Replace "Electric Service Provider" with "Load-Serving Entity".

R14-2-1618(J)(2)

Replace "Electric Service Providers" with "Load-Serving Entities".

R14-2-1618(L)

Replace "Electric Service Provider" with "Load-Serving Entity".

R14-2-1618(M)

Replace "An Electric Service Provider" with "A Load-Serving Entity".

At the January 30, 2001 Open Meeting, the Commission adopted the proposed rules as amended below:

Before:

R14-2-1618(A)

Starting on January 1, 2001, or upon Commission approval of its Environmental Portfolio Standard tariff, whichever is later,

After:

R14-2-1618(A)

Upon the effective implementation of a Commission-approved Environmental Portfolio Standard Surcharge tariff, ~~Starting on January 1, 2001, or upon Commission approval of its Environmental Portfolio Standard tariff, whichever is later~~,

Before:

R14-2-1618(A)(2)

Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service.

After:

R14-2-1618(A)(2)

Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service. In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing the Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use the lesser of (i) the load profile or otherwise estimated kWh required to provide the service in question; or (ii) the service's contract kWh.

Before:

R14-2-1618(D)

D~~E~~. Load-Serving Entities ~~Electric Service Providers~~ selling electricity under the provisions of this Article shall provide reports on sales and solar power as required in this Article, clearly demonstrating the output of solar resources, the installation date of solar resources, and the transmission of energy from those solar resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data.

After:

D~~E~~. Load-Serving Entities ~~Electric Service Providers~~ selling electricity under the provisions of this Article shall provide reports on sales and ~~solar~~ portfolio power as required in this Article, clearly demonstrating the output of ~~solar~~ portfolio resources, the installation date of ~~solar~~ portfolio resources, and the transmission of energy from those ~~solar~~ portfolio resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data. Reports shall be made according to the Reporting Schedule in R14-2-1613(B).

Before:

E~~F~~. If a ~~an~~ Load-Serving Entity ~~Electric Service Provider~~ selling electricity under the provisions of this Article fails to meet the requirements of this rule as modified by the Commission after consideration of the recommendations of the Environmental Portfolio Cost Evaluation Working Group, the Commission may ~~shall~~ impose a deficiency payment ~~penalty~~, beginning no earlier than January 1, 2004, on that Load-Serving Entity ~~Electric Service Provider~~ that the Load-Serving Entity ~~Electric Service Provider~~ pay an amount equal to 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. This penalty, which is in lieu of any other monetary payment ~~penalty~~ which may be imposed by the Commission, may not be imposed for any calendar year prior to 2004.

After:

E~~F~~. If a ~~an~~ Load-Serving Entity ~~Electric Service Provider~~ selling electricity under the provisions of this Article fails to meet the requirements of this rule as modified by the Commission after consideration of the recommendations of the Environmental Portfolio Cost Evaluation Working Group, the Commission may ~~shall~~ impose a deficiency payment ~~penalty~~, beginning no earlier than January 1, 2004, on that Load-Serving Entity ~~Electric Service Provider~~ that the Load-Serving Entity ~~Electric Service Provider~~ pay an amount equal to 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. This ~~penalty~~ deficiency payment, which is in lieu of any other monetary payment ~~penalty~~ which may be imposed by the Commission, may not be imposed for any calendar year prior to 2004.

Before:

G~~H~~. Any solar electric generators installed by an Affected Utility to meet the solar portfolio standard shall be counted toward meeting renewable resource goals for Affected Utilities established in Decision No. 58643.

After:

G~~H~~. Any solar electric generators installed by an Affected Utility to meet the ~~solar~~ environmental portfolio standard shall be counted toward meeting renewable resource goals for Affected Utilities established in Decision No. 58643.

Before:

R14-2-1618(L)

Solar water heating systems and solar air conditioning systems shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618(D)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(D)(2)(b).

After:

R14-2-1618(L)

Solar water heating systems and solar air conditioning systems shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618(C)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(C)(2)(b).

Before:

R14-2-1618(M)

as defined in R14-2-1618(D)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(D)(2)(b).

After:

R14-2-1618(M)

as defined in R14-2-1618(C)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(C)(2)(b).

At the March 29, 2001 Special Open Meeting, the Commission reviewed, discussed, and approved the following additional non-substantive changes:

Before:

R14-2-1601(39)

39. "Solar Electric Fund" is the funding mechanism established by this Article through which deficiency payments are collected and solar energy projects are funded in accordance with this Article.

After:

~~39. "Solar Electric Fund" is the funding mechanism established by this Article through which deficiency payments are collected and solar energy projects are funded in accordance with this Article.~~

Before:

R14-2-1618(E)

E. If a ~~an~~ Load-Serving Entity ~~Electric Service Provider~~ selling electricity under the provisions of this Article fails to meet the requirements of this rule as modified by the Commission after consideration of the recommendations of the Environmental Portfolio Cost Evaluation Working Group, the Commission may ~~shall~~ impose a deficiency payment ~~penalty~~, beginning no earlier than January 1, 2004, on that Load-Serving Entity ~~Electric Service Provider~~ that the Load-Serving Entity ~~Electric Service Provider~~ pay an amount equal to 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. This deficiency payment, which is in lieu of any other monetary payment ~~penalty~~ which may be imposed by the Commission, may not be imposed for any calendar year prior to 2004. This Solar Electric Fund will be established and utilized to purchase solar electric generators or solar electricity in the following calendar year for the use by public entities in Arizona such as schools, cities, counties, or state agencies. Title to any equipment purchased by the Solar Electric Fund will be transferred to the public entity. In addition, if the provision of solar energy is consistently deficient, the Commission may void a ~~an~~ Load-Serving Entity's ~~Electric Service Provider's~~ contracts negotiated under this Article.

1. The Director, Utilities Division shall establish a Solar Electric Fund in 2004 to receive deficiency payments and finance solar electricity projects.

2. The Director, Utilities Division shall select an independent administrator for the selection of projects to be financed by the Solar Electric Fund. A portion of the Solar Electric Fund shall be used for administration of the Fund and a designated portion of the Fund will be set aside for ongoing operation and maintenance of projects financed by the Fund.

After:

~~**EF.** If a an Load-Serving Entity Electric Service Provider selling electricity under the provisions of this Article fails to meet the requirements of this rule as modified by the Commission after consideration of the recommendations of the Environmental Portfolio Cost Evaluation Working Group, the Commission may shall impose a deficiency payment penalty, beginning no earlier than January 1, 2004, on that Load-Serving Entity Electric Service Provider that the Load-Serving Entity Electric Service Provider pay an amount equal to 30¢ per kWh to the Solar Electric Fund for deficiencies in the provision of solar electricity. This deficiency payment, which is in lieu of any other monetary payment penalty which may be imposed by the Commission, may not be imposed for any calendar year prior to 2004. This Solar Electric Fund will be established and utilized to purchase solar electric generators or solar electricity in the following calendar year for the use by public entities in Arizona such as schools, cities, counties, or state agencies. Title to any equipment purchased by the Solar Electric Fund will be transferred to the public entity. In addition, if the provision of solar energy is consistently deficient, the Commission may void a an Load-Serving Entity's Electric Service Provider's contracts negotiated under this Article.~~

~~1. The Director, Utilities Division shall establish a Solar Electric Fund in 2004 to receive deficiency payments and finance solar electricity projects.~~

~~2. The Director, Utilities Division shall select an independent administrator for the selection of projects to be financed by the Solar Electric Fund. A portion of the Solar Electric Fund shall be used for administration of the Fund and a designated portion of the Fund will be set aside for ongoing operation and maintenance of projects financed by the Fund.~~

Before:

R14-2-1618(F)

F~~G~~. Photovoltaic or solar thermal electric resources that are located on the consumer's premises shall count toward the solar portfolio standard applicable to the current Load-Serving Entity ~~Electric Service Provider~~ serving that consumer.

After:

R14-2-1618(F)

F~~G~~. Photovoltaic or solar thermal electric resources that are located on the consumer's premises shall count toward the Environmental ~~solar~~ P~~p~~portfolio S~~s~~tandard applicable to the current Load-Serving Entity ~~Electric Service Provider~~ serving that consumer unless a different Load-Serving Entity is entitled to receive credit for such resources under the provisions of R14-2-1618(C)(3)(a).

10. A summary of the principal comments and the agency response to them:

General Issues

In its comments TEP supports the proposed EPS Rules, believing they will foster development of long-term, cost effective and sustainable growth in Arizona's renewable industries. The Environmental Group believes the proposed EPS Rules balance the benefits of clean energy generation with a modest cost. The Solar and Renewable Industries also supported the EPS Rules, stating they are positioned to help the Affected Utilities meet the requirements under the EPS and that solar and renewable energy technology investment in Arizona depends on passage of the EPS Rules.

Issue: Five parties filed timely Applications for Rehearing of Decision 63364: AEPCO, APS, RUCO, Sulphur Springs Valley Electric Cooperative and AECC. The Commission considered the applications and reviewed Staff's recommendations. Public comments and discussion was undertaken at a special open meeting held March 29, 2001 to considered the merits of these applications.

Analysis: APS requested a clarification of R14-2-1618(F) stating that the wording could be construed to discourage customer premises systems by giving the portfolio requirement credit to the customer's current Load-Serving Entity, even if it had not financed or paid for the qualifying system. APS provided modified language for subsection (F).

AEPCO requested a rehearing and stay of the rules based upon several legal challenges primarily concerning their cooperative status. AEPCO alleged that the Rural Utilities Service requirements would preclude them from obtaining financing portfolio resources. For this and other reasons, AEPCO requested that the cooperatives participation be limited and followed their previously filed exceptions, offering a special rule to limit their participation.

Staff recommended the modified language suggested by APS be adopted in R14-2-1618(F). In response to AEPCO, Staff believed that a special rule was unnecessary when the rules provide the cooperatives an opportunity to seek a waiver. Staff acknowledged that the cooperatives may have different concerns than other Load-Serving Entities because of their unique status as customer-owned cooperatives, therefore Staff recommended that the rules not be modified, but instead that the Commission modify the Decision 63346 to (1) stay the rules as applied to the cooperatives for 180 days and require filing of a plan for meeting portfolio requirements or in the alternative to provide good cause why the exempt period should be extended, and (2) that the Commission order representatives of the cooperatives to meet with Staff, RUS representatives and other federal agencies to discuss the goals of the EPS.

Other requests for reconsideration concerned opposition to the deficiency payments. Due to the potential for future modification of the rules, staff agreed with these requests and recommended that the Commission reconsider adoption of specific deficiency rule provisions that will not be imposed until 2004 and therefore subsection R14-2-1618(E) should be deleted and the rules conformed to this change.

Resolution: Staff's recommendations were adopted at the special open meeting held on March 29, 2001.

Issue: RUCO and AEPCO argued that the mandatory surcharge violates Article XV, section 14 of the Arizona Constitution, which requires the Commission to ascertain the fair value of a public service corporation's property in Arizona prior to establishing just rates. AEPCO states that the surcharge will fall many hundred thousand dollars short each year of meeting the costs of the EPS mandate, thus the adoption of the EPS Rules denies AEPCO its constitutional right to recover its costs and earn a reasonable rate of return on fair value. RUCO also argued that the Commission does not have authority to establish the Solar Electric Fund ("SEF") because, according to RUCO, only the legislature has the authority to establish such fund. Absent authority to create the SEF, by law the proceeds of penalties are to be paid into the state treasury and credited to the general fund. Further, RUCO argued the concept of the SEF violates state procurement laws which specifically set forth the terms and conditions for what a state agency may contract for or purchase on its own behalf with state funds. Finally, RUCO claims the Commission's authority is limited in the amount of penalty it can impose. Article XV, section 16 of the Arizona Constitution and A.R.S. section 40-425 (A) limit the penalty to not less than $100 nor more than $5,000 for each offense. According to RUCO, having the penalty determined by kWh, falls outside constitutional limits.

Staff argued that the Commission's constitutional and statutory ratemaking authority includes adoption of the Rule. Staff cited that under the Arizona constitutional provisions of Article 15, Section 3 and statutory provisions such as A.R.S. §§ 40-321 and 40-331, the Commission may adopt rules requiring sales of electricity to conform to an environmental standard for the benefit of the Affected Utilities, ESPs and the public. Staff argued the Commission has the constitutional authority to set an appropriate market structure for just and reasonable rates in a competitive environment. If the Commission determines that the market structure for just and reasonable rates in a competitive market includes environmentally-friendly sources such as solar, the Commission may adopt rules under Section 3 to ensure its goals are met. According to staff, if the collection of penalties is reasonably related to these goals, the Commission may impose the penalties as a necessary step in its rate setting powers and under its authority to ensure the health and welfare of the public.

Staff argued that surcharges can be implemented in any number of ways for specific load-serving entities. As the Rule provides, some surcharges will be passed through as System Benefits Charges already included in rates for some entities. Staff noted that other entities may request that the surcharge be implemented on an interim basis as either a deferral account or an adjuster clause to be reviewed in a subsequent rate proceeding for that entity. It is Staff's opinion that even in the event recent court decisions are upheld on appeal, the Commission could design mechanisms under the rule for individual utilities that would permit the EPS to continue.

Analysis: The Commission's ratemaking powers encompass a broader spectrum of actions than simply setting rates, and are matters uniquely for Commission determination. This Rule is an essential step in setting rates for Utility Distribution Companies and Load-Serving Entities because the Commission has determined that just and reasonable electric rates for Arizona should include a portfolio of renewable resources as the source of electricity. The Commission has appealed the recent court decisions which appear to require a finding of fair value whenever rates are set. At this juncture the Commission believes that the EPS Rule and its attendant surcharge are within the powers of the Commission to promulgate.

Resolution: No changes required.

Issue: Although arguing that the Commission does not have the authority to adopt the EPS Rules, AEPCO argued that if it does, the Commission should not apply the rule to the cooperatives. According to AEPCO: 1) it needs no new resources, of any kind, in the near future to meet the state's rural power needs; 2) investment in renewable resources when no resources are needed exacerbates consumer rate impacts and contributes unnecessarily to stranded costs; 3) cooperatives have little or no demand side management or other similar program funds to shift to renewable expenditures unlike investor-owned utilities; 4) non-profit cooperatives have no shareholder source of funds to apply to the capital costs associated with the EPS mandate, and thus may look only to borrowed funds to finance the EPS mandate, but since the environmental portfolio does not meet the lender's requirement that capital be expended only on needed, least-cost resources, the cooperatives have no funding source other than the surcharge; and 6) any ancillary, general economic benefits the EPS Rule may generate will most likely benefit the state's urban areas.

AEPCO proposed a new subsection R14-2-1618(A)(1):

"1. Affected Utilities which are non-profit member owned cooperatives are exempt from the portfolio percentage requirements set forth in R14-2-1618(B)(1) except as provided in this subsection. Such cooperative Affected Utilities shall collect the Environmental Portfolio surcharge authorized by R14-2-1618(A)(3) and shall apply the proceeds toward meeting the renewable portfolio percentages. To the extent that the proceeds of the Surcharge are insufficient to allow such cooperative Affected Utilities to meet or exceed the renewable portfolio percentages, no further purchase of installation of renewable resources or technologies shall be required."

TEP argued that the Commission should reject AEPCO's position that certain utilities should be exempt from the Portfolio Standard requirements because all Arizona residents benefit from the development of renewable resources and thus all should contribute to funding the development of renewable resources.

Staff disagreed that any changes need to be made to the Rule on account of the cooperatives. Staff noted that R14-2-1618(A)(4) provides that "Utility Distribution Companies or ESPs that do not currently have a renewables program may request a waiver or modification of this Section due to extreme circumstances that may exist."

Analysis: With the growth that has taken place in this state, not all of the cooperatives are located in strictly rural communities. If the cooperatives expect to incur substantial hardship on account of the rule, they should be able to take advantage of the waiver provisions of the proposed rule.

Resolution: No change required.

Issue: The Solar and Renewable Industries do not believe the EPS is dependant on retail competition or even the presence of competitive ESPs, to be successful. The Solar and Renewable Industries suggested that the EPS be promulgated under a new Article entitled "Environmental Portfolio Standard" rather than as part of the Retail Electric Competition Rules.

Staff agreed that to promulgate the EPS under a new Article independent of the retail Electric Competition Rules is reasonable. Staff suggested that at some time in the future, the new Article could also include the proposed Distributed Generation and Interconnection Rules, possible future rules related to reliability, and possible future rules related to electric transmission planning and adequacy studies.

Analysis: The suggestion to promulgate the Environmental Portfolio Standard under a new Article is reasonable, however, to effect such change requires careful consideration of the inter-relationship of the rules. Given the public benefit from enacting this rule sooner rather than later, we will reserve consideration of a new Article to a future date.

Resolution: No change required at this time, but the Utilities Division should study the feasibility and desirability of promulgating the EPS Rule as part of a separate Article.

R14-2-1618(A)

Issue: AEPCO noted that R14-2-1618(A) initially references "Electric Service Providers" as being subject to the Rule, but promptly exempts them from participation until 2004. AEPCO believed a broader term or additional terms need to be used rather than "ESP" in R14-2-1618(A) and perhaps throughout the Rule. Similarly, AEPCO argued the word "Competitive" before ESP should be stricken in R14-2-1618(A)(1). Citizens also noted that as written, the rules only apply to ESPs which by definition only include those providing competitive services. Citizens agreed that the term should be broader.

NWE noted that because the Retail Competition Rules define ESPs as a company supplying Competitive Services, which explicitly excludes Standard Offer Service, the use of the term ESP in R14-2-1618(A) has the effect of excluding Affected Utilities from the portfolio standard. NWE believes the reference should be corrected to include all companies providing standard offer service. NWE noted that the use of ESP is repeated several times in the proposed rule and should be corrected wherever it occurs.

Staff acknowledged that the use of the term Electric Service Provider is a hold over from an earlier version of the Retail Electric Competition Rules and a slightly different definition of the term "Electric Service Provider." Staff recommended that to avoid any confusion as to the applicability of the portfolio requirements on UDCs, that every reference to Electric Service Provider or "ESP", with the exception of Sections R14-2-1618(A)(1) and R14-2-1618(A)(4) be changed to "Load-Serving Entity." Load-Serving Entity is defined as "An Electric Service Provider, Affected Utility or Utility Distribution Company, excluding a Meter Service Provider and Meter Reading Service Provider." In its Reply comments, TEP supported Staff's recommended changes.

Analysis: The portfolio standard is intended to apply to Affected Utilities and UDCs as well as ESPs. Staff's recommended modification is reasonable and should be adopted. The use of the term "Competitive ESPs" in Section R14-2-1618(A)(1) is unnecessary in light of Staff's recommended change, and the term "Competitive" should be eliminated.

Resolution: Throughout the proposed rule, change reference to Electric Service Providers or ESPs to "Load-Serving Entity" except in Sections R14-2-1618(A)(1) and R14-2-1618(A)(4). Delete "Competitive" before "ESPs" in Section R14-2-1618(A)(1). For clarity replace "ESP" with "Electric Service Provider" in Section R14-2-1618(A)(1).

R14-2-1618(A)(1)

Issue: AEPCO believed the words "pro rata share of funds collected for portfolio purposes" is vague. AEPCO suggested that if "share of funds" relates to the surcharge in R14-2-1618(A)(2), a reference to that Section would clarify what monies are involved.

Analysis: Additional clarity would result by adding the phrase "from the Environmental Portfolio Surcharge delineated in R14-2-1618(A)(2)" after "funds collected".

Resolution: Modify Section R14-2-1618(A)(1) as discussed above.

R14-2-1618(A)(2)

Issue: Scottsdale supported the use of renewable sources of energy as a means to reduce energy related pollution in the City of Scottsdale, but believed the proposed standard is unfair to municipalities because of the diversity and number of electric meters that cities have in service. Scottsdale has approximately 330 separate electric meters and APS has estimated that the formula in R14-2-1618(A)(2) will cost Scottsdale approximately $20,000 per year.

APS remarked that the inequity Scottsdale complained of is no different than that of 330 individual small non-residential customers, and that to allow consolidation of customer accounts of large multiple-metered customers would require increasing the EPS Surcharge for other non-residential customers or reduce the funding available to promote environmentally friendly technologies.

Staff disagreed that the surcharge was unfair to municipalities because all customers pay the same rate per kWh for the surcharge. Staff believed that a city might not pay more for the surcharge than a chain of stores with many outlets. Staff suggested that cities such as Scottsdale and other commercial customers consider approaching their Utility Distribution Company about combining appropriate loads onto fewer meters. By combining loads, it is possible for the customer to move to a more favorable rate, resulting in significant electric bill savings. Staff recommended that no change be made.

Analysis: The rules treat municipalities on a par with any other consumer of electricity and are not unfair.

Resolution: No change required.

Issue: Citizens noted that Section R14-2-1618(A)(2) provides for the partial recovery of the EPS costs by means of a customer surcharge. Citizens believed that the surcharge should be defined as applying to the generation portion of the transaction in a competitive environment, and there is no reason to introduce the UDC into the middle of the generation transaction, particularly when the UDC is not offering the service for which the surcharge is being applied. Citizens argued the reasonable approach would be for the UDC to charge the surcharge to its Standard Offer customers and the participating ESP to apply the charge to its customers.

AEPCO questioned whether the pro rata sharing would be customer class specific, total system kWh driven, or based on some other formula.

TEP believed that Staff's recommendations are sufficient to address Citizens' concerns regarding the of the portfolio surcharge.

Staff disagreed with Citizens and argued that the easiest and guaranteed way to ensure that all customers pay their share is for the Utility Distribution Company to collect the surcharge from all customers. Staff noted that since the rule allows ESPs the option to voluntarily opt out of the program, using Citizens' approach would mean that nobody would collect the surcharge from the customers of the non-participating ESPs. This would give those non-participating ESPs a competitive advantage over the UDC and other ESPs that do participate in the Portfolio Standard.

Staff explained that in order to collect its pro rata share of the surcharge funds an ESP would simply notify the UDC that it is participating in the Portfolio Standard. The UDC would then send the ESP the exact amount of surcharge monies collected from the participating ESP's customers. Staff recommended no change be made.

Analysis: The easiest approach appears to be to have the UDC collect the surcharge monies from its customers and then send the participating ESPs their share. No other UDC supported Citizens' proposal.

Resolution: No change required.

Issue: In Section R14-2-1618(A)(2) which provides for caps on the surcharge, Citizens noted that it is not clear if Dusk-to-Dawn lighting accounts were considered. Citizens argued that a $13 per light charge for commercial lighting would significantly impact street lighting customers. Citizens advocated excluding Dusk-to-Dawn lighting from the application of the surcharge.

TEP opposed an exemption for the surcharge for Dusk-to-Dawn lighting. TEP believed that if a municipal customer cannot afford the $13 per meter charge, it is a matter that can adequately be addressed with an ESP.

Staff also disagreed with Citizens and believes that perhaps Citizens misread or misunderstood the surcharge because the $13 figure is a cap and a streetlight would have to use over 14,000 kWh in a month to reach the $13 cap. Staff stated that a typical 100 Watt high pressure sodium dusk to dawn light, which is on 10 hours a night in a 30 day month would use only 30 kWh (or 1 kWh per day) and the Portfolio Surcharge for that light for that month would be 2.6 cents. Staff recommended that Citizens' suggestion be rejected.

APS believed it was the intent of the rule that all services (metered or non-metered) would be subject to the ESP Surcharge and it could be perceived that under current wording residential customers would arguably be exempt for any non-metered service currently being provided. In contrast, all non-residential customers will pay the cap regardless of their actual or contract kWh, and that the $13 per month surcharge could greatly exceed their proportionate amount.

APS recommended that Section R14-2-1618(A)(2) be modified as follows:

"The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.000875 per kWh or:

a. Residential Customers: $.35 per service,

b. Non-Residential Customers: $13 per service,

c. Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service. In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing the Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use the lesser of (i) the load profile or otherwise estimated kWh required to provide the service in question; or (ii) the service's contract kWh."

Staff agreed with APS's suggested clarification.

Analysis: Citizens' comments indicate that the rule may be vague as currently written. APS' suggested modification rectifies the ambiguity and should be adopted.

Resolution: Modify Section R14-2-1618(A)(2) as proposed by APS.

R14-2-1618(B)(2)

Issue: Section R14-2-1618(B)(3) orders the Director of the Utilities Division to establish an Environmental Portfolio Cost Evaluation Working Group to study the cost/benefits of the portfolio standard. The rule provides that the Commission shall consider the recommendations of the Working Group by December 31, 2003. After considering the conclusions of the Working Group the Commission could determine that the portfolio percentage established in the rule should be modified in the years after 2004. At the public comment hearing, AEPCO raised the issue that if the Commission didn't take action until December 31, 2003, regarding a standard that goes into effect on January 1, 2004, the utilities would not have sufficient time to take action regarding the Commission's action.

Staff agreed with the suggestion that the Working Group submit its final recommendations to the Commission no later than June 30, 2003.

Analysis: By moving the date when the Working Group must report to the Commission six months earlier, the Commission will have more time to consider those recommendations and take action. We note the rule as written only provides that the Working Group must submit its recommendations to the Commission by December 31, 2003, but does not require the Commission to take action on those recommendations by any particular date. However, under the Rule the portfolio percentage will not increase, if at all, until the Commission has taken action on the Working Group's cost/benefit recommendations. In any case, the earlier the Commission is able to communicate potential changes in the portfolio percentage to the market participants, the better.

Resolution: Delete "December 31" in Section R14-2-1618(B)(2) and replace it with "June 30".

R14-2-1618(B)(3)

Issue: AEPCO noted that (b) and (c) read exactly the same for years 2002 and 2003, and if that is the intent, (c) could be deleted and the year "2003" added to (b). Staff concurred.

Analysis: AEPCO's comments should be adopted.

Resolution: Delete R14-2-1618(B)(3)(c) and insert "and 2003" after "In 2002" in R14-2-1618(B)(2)(b).

Issue: NWE noted that depending on the year, 50 to 60 percent of the EPS requirement will be met by solar electric technologies. NWE advocated modifying the rule to clarify that extra credits earned on solar electric technologies will also count toward the solar electric fraction.

Staff agreed and proposed adding a second sentence to Section R14-2-1618(D) after "requirements:" as follows: "Extra Credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction required in R14-2-1618(B)(3)."

Analysis: NWE's and Staff's comments clarify the rule and should be adopted.

Resolution: Modify R14-2-1618(D) as recommended by Staff.

R14-2-1618(C)

Issue: AEPCO claimed that this provision that states "The portfolio requirement shall apply to all retail electricity in the years 2001 and thereafter" is left over from an earlier version of the Rule and can be deleted.

Analysis: AEPCO's observations appear to be correct. The language in Section R14-2-1618(C) does not appear necessary, nor does it advance the clarity of the rule.

Resolution: Delete Section R14-2-1618(C) and renumber accordingly.

R14-2-1618(D) & (I)

Issue: NWE argued that rights to qualifying energy and extra credits should be more explicitly defined. NWE believed it may be simpler to define all energy and extra credits as belonging to the person who owns the installation. The owner could, in turn, bank or sell the energy or credits to energy providers who can use them to meet some or all of their EPS requirement.

NWE notes that Section R14-2-1618(I) provides that any ESP or independent solar electric generator that produces or purchases any solar kWh in excess of its annual portfolio requirements may save or bank those solar kWhs for use or sale in future years. The terms "independent solar electric generator" and "solar kWh" are not defined. NWE suggested this Section should be modified to provide that the owner or any facility producing energy or extra credits that satisfy the requirements of Section R14-2-1618 may sell or bank the energy or extra credits for use in meeting a future year requirement, which would avoid the need to define the term "independent solar electric generator" and would conform this Section to accommodate the addition of environmentally friendly technologies that were incorporated into the revised rule.

APS argued that the term "independent solar generator" should be deleted from the rule because the term has no meaning within the context of the rule. APS claimed that solar generators that fall within the scope of being a "Load-Serving Entity" would already be covered by Staff's proposed amendment. Solar generators that are not within that definition have no EPS portfolio requirement and thus no "excess" solar kWh. If these generators are selling their generation to a "Load-Serving Entity," APS argued, it is the latter that should receive credit. APS argued that allowing the generator to also receive credits creates an unnecessary risk of double-counting the solar generation in question.

Staff agreed in concept with NWE and stated it was the intent of the rule. The Environmental Group agreed with NWE that the issue of banking of energy and credits should be clarified. The Environmental Group believed it was unclear whether the current wording would permit an independent solar electric generator to sell "excess" solar kWh in the current year. The Environmental Group suggested inserting the words "current and" before "future years". However, neither NWE nor Staff have specific suggestions for wording changes to the rule.

Analysis: APS's analysis appears correct. "Independent solar electric generators" that are not Load Serving Entities are not covered by the rule and do not have an ESP portfolio requirement. When independent solar electric generators, or other electric generator using renewable sources sells electricity to a Load Serving Entity, it is the latter that should receive the credits, as it is only the latter that has use for the credits.

In addition, it is not just "solar" kWh's that result in credits, but rather kWh that are produced by other renewable sources such as in-state landfill gas, biomass and wind.

Resolution: Delete the term "or independent solar electric generator" from Section R14-2-1618(I). Delete "solar" where it appears before "kWh" and insert "eligible" before "kWh" where it appears the first time in the first sentence of Section R14-2-1618(I).

R14-2-1618(D)(1)

Issue: AEPCO believed that it is unclear whether all early extra credit multipliers end in 2003 or continue beyond that year for five years after installation. AEPCO believes the intent was the latter and suggested deleting the sentence "The Early Installation Extra Credit Multiplier would end in 2003."

Staff suggested that instead of deleting the sentence, it should be modified to read "The eligibility to qualify for the early Installation Extra Credit Multiplier would end in 2003. However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up." Staff also recommended that a clarifying sentence be added to the beginning of Section R14-2-1618(D) as follows: "Electric Service Providers shall be eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements: Extra credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction required in R14-2-1618(B)(3). With the exception of the Early Installation Extra Credit Multiplier, which has a five-year life from operational system start-up, all other extra credit multipliers are valid for the life of the generating equipment."

Analysis: Staff's suggested modifications are reasonable and most clearly enunciate the intent of the rule.

Resolution: Modify R14-2-1618(D) as proposed by Staff, however, reference should be made to Load-Serving Entities rather than ESPs.

R14-2-1618(F)

Issue: Staff noted that Section R14-2-1618(F) refers to the imposition of a "penalty" and that later in the same Section this payment is correctly referred to as a "deficiency payment". Staff clarified that rather than being a "penalty" this payment is a requirement for the Load-Serving Entity to meet its obligations under the Portfolio Standard in another manner. If the Load-Serving Entity fails to meet its obligation to produce electricity from clean sources under the portfolio, the "deficiency payment" will be used to meet the Load-Serving Entity's obligation. Therefor, Staff recommended that the references in Section R14-2-1618(F) to "penalty" should be changed to "deficiency payment".

TEP is not in favor of imposing penalties or deficiency payments for non-compliance, but did support Staff's recommendation to change the terminology from "penalty" to "deficiency payment". TEP noted that because the imposition of deficiency payments is contingent on subsequent Commission action on the Environmental Portfolio Cost Evaluation Working Group's recommendations, TEP reserved further comment on the deficiency payments until that time, if necessary.

Analysis: Staff's proposed modification eliminates potential ambiguity and confusion and should be adopted.

Resolution: Modify Section R14-2-1618(F) as discussed above.

R14-2-1618(I)

Issue: Scottsdale argued that the portfolio surcharge should replace the utility premium charge for "green power". Scottsdale noted that utilities currently allow customers to elect to use electricity generated from renewable source for a premium that amounts to considerably more than the 35 cents per month cap specified in the portfolio standard. For example, the City of Scottsdale is a solar partner with APS and the City pays a premium to have solar generation at some of its facilities, for which it will pay a premium of approximately $7,000 per year. Scottsdale believed it could invest in the same amount in city-owned solar generation and break even in 4 to 5 years. Therefore, it is the City's position that the existing program for Green Power should be eliminated.

TEP opposed Scottsdale recommendation that municipalities and citizens who install solar electric systems be exempt from paying the surcharge, and that green power programs be abolished. TEP argued that because all Arizona residents will benefit from developing renewable resources, all should contribute to funding the development of renewable resources. TEP noted that citizens who install solar electric systems stand to gain financially from the sale of renewable credits to electric service providers, and should not be exempt from the surcharge. TEP argued that all "green power" programs in Arizona are voluntary and allow the customer to decide if he wants to contribute a premium for development of renewable energy resources.

Staff also disagreed with Scottsdale and argued that the portfolio surcharge and "green power" charge are two entirely different mechanisms that have similar goals. The Portfolio Surcharge is a mandatory charge for all customers that is used to develop renewable electricity. The utility "green power" programs are entirely voluntary and allow customers to voluntarily pay a premium for renewable power.

Analysis: Because the "green power" programs are entirely voluntary there is no need to eliminate them. Customers who care about the environment, and can afford to pay a premium for renewable power, are able to do more by participating in the "green power" programs. There is a public benefit in continuing the programs while still requiring the payment of the surcharge. Scottsdale and other similarly situated entities should perform their won cost/ benefit analyses of how best to meet their own goals of utilizing "green" energy.

Resolution: No change required.

Issue: Scottsdale advocated that the Commission consider adopting a provision to encourage development of renewable generation by forgiving the surcharge to those who install renewable generation. The City believed that under such a plan, it could afford to invest $20,000 each year in solar photo voltaic or other renewable generation equipment installed on City facilities in lieu of the surcharge, with the result of increasing the base of renewable generation. Scottsdale advocated that because the utility would forfeit the benefit of the surcharge, it should be allowed to count the City's solar generation against the utility's portfolio requirement.

Staff disagreed with Scottsdale, claiming that those customers who install their own renewable generation will automatically pay less of a Portfolio Surcharge because they will be purchasing fewer kWhs from their electric provider.

Analysis: We concur with Staff. If Scottsdale, or another electric user is able to install renewable generation, they will be able to reap the benefits of the power produced and will be able to reduce their consumption of electricity from other sources.

Resolution: No changed required.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The proposed rule includes a maximum surcharge for all electric consumers to support environmentally friendly resources through 2012. The Commission has the constitutional and statutory authority to set just and reasonable rates in a competitive environment. The Commission determined that the proposed rule is just and reasonable and in the best interest of the public.

12. Incorporations by reference and their location in the rules:

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 16. RETAIL ELECTRIC COMPETITION

Section
R14-2-1601. Definitions
R14-2-1618. Environmental Portfolio Standard

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.

12. No change.
13. No change.
14. No change.
15. No change.
16. No change.
17. No change.
18. No change.
19. "Green Pricing" means a program offered by an Electric Service Provider where customers elect to pay a rate premium for ~~electricity generated by renewable sources~~ renewable-generated electricity.
20. No change.
21. No change.
22. No change.
23. No change.
24. No change.
25. No change.
26. No change.
27. No change.
28. No change.
29. "Net Metering" or "Net Billing" is a method by which customers can use electricity from customer-sited solar electric generators to offset electricity purchased from an Electric Service Provider. The customer only pays for the "Net" electricity purchased.

30~~29~~. "Noncompetitive Services" means Distribution Service, Standard Offer Service, transmission, and any ancillary services deemed to be non-competitive by the Federal Energy Regulatory Commission, Must-Run Generating Units services, provision of customer demand and energy data by an Affected Utility or Utility Distribution Company to Electric Service Providers, and those aspects of Metering Service set forth in R14-2-1612(K).

31~~30~~. "OASIS" is Open Access Same-Time Information System, which is an electronic bulletin board where transmission-related information is posted for all interested parties to access via the Internet to enable parties to engage in transmission transactions.

32~~31~~. "Operating Reserve" means the generation capability above firm system demand used to provide for regulation, load forecasting error, equipment forced and scheduled outages, and local area protection to provide system reliability.

33~~32~~. "Potential Transformer (PT)/Voltage Transformer (VT)" is an electrical device used to step down primary voltages to 120V for metering purposes.

34~~33~~. "Provider of Last Resort" means a provider of Standard Offer Service to customers within the provider's certificated area whose annual usage is 100,000 kWh or less and who are not buying Competitive Services.

35~~34~~. "Public Power Entity" incorporated by reference the definition set forth in A.R.S. § 30-801.16.

36~~35~~. "Retail Electric Customer" means the person or entity in whose name service is rendered.

37~~36~~. "Scheduling Coordinator" means an entity that provides schedules for power transactions over transmission or distribution systems to the party responsible for the operation and control of the transmission grid, such as a Control Area Operator, Arizona Independent Scheduling Administrator, or Independent System Operator.

38~~37~~. "Self-Aggregation" is the action of a retail electric customer that combines its own metered loads into a single purchase block.

39~~38~~. "Standard Offer Service" means Bundled Service offered by the Affected Utility or Utility Distribution Company to all consumers in the Affected Utility's or Utility Distribution Company's service territory at regulated rates including metering, meter reading, billing and collection services, demand side management services including but not limited to time-of-use, and consumer information services. All components of Standard Offer Service shall be deemed noncompetitive as long as those components are provided in a bundled transaction pursuant to R14-2-1606(A).

40~~39~~. "Stranded Cost" includes:

a. The verifiable net difference between:
   i. The net original cost of all the prudent jurisdictional assets and obligations necessary to furnish electricity (such as generating plans, purchased power contracts, fuel contracts, and regulatory assets), acquired or entered into prior to December 26, 1996, under traditional regulation of Affected Utilities; and
   ii. The market value of those assets and obligations directly attributable to the introduction of competition under this Article;
b. Reasonable costs necessarily incurred by an Affected Utility to effectuate divestiture of its generation assets;
c. Reasonable employee severance and retraining costs necessitated by electric competition, where not otherwise provided; and

d. Other transition and restructuring costs as approved by the Commission as part of the Affected Utility's Stranded Cost determination pursuant to R14-2-1607.

41~~40~~. "System Benefits" means Commission-approved utility low income, demand side management, Consumer Education, environmental, renewables, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning programs, and other programs that may be approved by the Commission from time to time.

42~~41~~. "Transmission Primary Voltage" is voltage above 25 kV as it relates to metering transformers.

43~~42~~. "Transmission Service" refers to the transmission of electricity to retail electric customers or to electric distribution facilities and that is so classified by the Federal Energy Regulatory Commission or, to the extent permitted by law, so classified by the Arizona Corporation Commission.

44~~43~~. "Unbundled Service" means electric service elements provided and priced separately, including, but not limited to, such service elements as generation, transmission, distribution, Must Run Generation, metering meter reading, billing and collection, and ancillary services. Unbundled Service may be sold to consumers or to other Electric Service Providers.

45~~44~~. "Universal Node Identifier" is a unique, permanent, identification number assigned to each service delivery point.

46~~45~~. "Utility Distribution Company" (UDC) means the electric utility entity regulated by the Commission that operates, constructs, and maintains the distribution system for the delivery of power to the end user point of delivery on the distribution system.

47~~46~~. "Utility Industry Group" (UIG) refers to a utility industry association that establishes national standards for data formats.

R14-2-1618. Environmental Portfolio Standard

A. Upon the effective implementation of a Commission-approved Environmental Portfolio Standard Surcharge tariff, any Load-Serving Entity selling electricity or aggregating customers for the purpose of selling electricity under the provisions of this Article must derive at least .2% of the total retail energy sold from new solar resources or environmentally-friendly renewable electricity technologies, whether that energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources and environmentally-friendly renewable electricity technologies are those installed on or after January 1, 1997.

1. Electric Service Providers, that are not UDCs, are exempt from portfolio requirements until 2004, but could voluntarily elect to participate. ESPs choosing to participate would receive a pro rata share of funds collected from the Environmental Portfolio Surcharge delineated in R14-2-1618.A.2 for portfolio purposes to acquire eligible portfolio systems or electricity generated from such systems.
2. Utility Distribution Companies would recover part of the costs of the portfolio standard through current System Benefits Charges, if they exist, including a re-allocation of demand side management funding to portfolio uses. Additional portfolio standard costs will be recovered by a customer Environmental Portfolio Surcharge on the customers' monthly bill. The Environmental Portfolio Surcharge shall be assessed monthly to every metered and/or non-metered retail electric service. This monthly assessment will be the lesser of $0.000875 per kWh or:
   a. Residential Customers: $.35 per service,
   b. Non-Residential Customers: $13 per service,
   c. Non-Residential Customers whose metered demand is 3,000 kW or more for 3 consecutive months: $39.00 per service. In the case of unmetered services, the Load-Serving Entity shall, for purposes of billing the Environmental Portfolio Standard Surcharge and subject to the caps set forth above, use the lesser of (i) the load profile or otherwise estimated kWh required to provide the service in question; or (ii) the service's contract kWh.
3. Customer bills shall reflect a line item entitled "Environmental Portfolio Surcharge, mandated by the Corporation Commission."
4. Utility Distribution Companies or ESPs that do not currently have a renewables program may request a waiver or modification of this Section due to extreme circumstances that may exist.

B. The portfolio percentage shall increase after December 31, 2000.

1. Starting January 1, 2001, the portfolio percentage shall increase annually and shall be set according to the following schedule:

YEAR	PORTFOLIO PERCENTAGE
2001	.2%
2002	.4%
2003	.6%
2004	.8%
2005	1.0%
2006	1.05%
2007-2012	1.1%

2. The Commission would continue the annual increase in the portfolio percentage after December 31, 2004, only if the cost of environmental portfolio electricity has declined to a Commission-approved cost/benefit point. The Director, Utilities Division shall establish, not later than January 1, 2003, an Environmental Portfolio Cost Evaluation Working Group to make recommendations to the Commission of an acceptable portfolio electricity cost/benefit point or portfolio kWh cost impact maximum that the Commission could use as a criteria for the decision to continue the increase in the portfolio percentage. The recommendations of the Working Group shall be presented to the Commission not later than June 30, 2003. In no event, however, shall the Commission increase the surcharge caps as delineated in R14-2-1618(A)(2).
3. The requirements for the phase-in of various technologies shall be:
   a. In 2001, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 10 percent on R&D.
   b. In 2002 and 2003, the Portfolio kWh makeup shall be at least 50 percent solar electric, and no more than 50 percent other environmentally-friendly renewable electricity technologies or solar hot water or R&D on solar electric resources, but with no more than 5 percent on R&D.
   c. In 2004, through 2012, the portfolio kWh makeup shall be at least 60 percent solar electric with no more than 40 percent solar hot water or other environmentally-friendly renewable electricity technologies.

C. Load-Serving Entities shall be eligible for a number of extra credit multipliers that may be used to meet the portfolio standard requirements. Extra credits may be used to meet portfolio requirements and extra credits from solar electric technologies will also count toward the solar electric fraction requirements in R14-2-1618(B)(3). With the exception of the Early Installation Extra Credit Multiplier, which has a five-year life from operational start-up, all other extra credit multipliers are valid for the life of the generating equipment.

1. Early Installation Extra Credit Multiplier: For new solar electric systems installed and operating prior to December 31, 2003, Load-Serving Entities would qualify for multiple extra credits for kWh produced for 5 years following operational start-up of the solar electric system. The 5-year extra credit would vary depending upon the year in which the system started up, as follows:

YEAR	EXTRA CREDIT MULTIPLIER
1997	.5
1998	.5
1999	.5
2000	.4
2001	.3
2002	.2
2003	.1

   Eligibility to qualify for the Early Installation Extra Credit Multiplier would end in 2003. However, any eligible system that was operational in 2003 or before would still be allowed the applicable extra credit for the full five years after operational start-up.
2. Solar Economic Development Extra Credit Multipliers: There are 2 equal parts to this multiplier, an in-state installation credit and an in-state content multiplier.
   a. In-State Power Plant Installation Extra Credit Multiplier: Solar electric power plants installed in Arizona shall receive a .5 extra credit multiplier.
   b. In-State Manufacturing and Installation Content Extra Credit Multiplier: Solar electric power plants shall receive up to a .5 extra credit multiplier related to the manufacturing and installation content that comes from Arizona. The percentage of Arizona content of the total installed plant cost shall be multiplied by .5 to determine the appropriate extra credit multiplier. So, for instance, if a solar installation included 80% Arizona content, the resulting extra credit multiplier would be .4 (which is .8 X .5).
3. Distributed Solar Electric Generator and Solar Incentive Program Extra Credit Multiplier: Any distributed solar electric generator that meets more than one of the eligibility conditions will be limited to only one .5 extra credit multiplier from this subsection. Appropriate meters will be attached to each solar electric generator and read at least once annually to verify solar performance.
   a. Solar electric generators installed at or on the customer premises in Arizona. Eligible customer premises locations will include both grid-connected and remote, non-grid-connected locations. In order for Load-Serving Entities to claim an extra credit multiplier, the Load-Serving Entity must have contributed at least 10% of the total installed cost or have financed at least 80% of the total installed cost.
   b. Solar electric generators located in Arizona that are included in any Load-Serving Entity's Green Pricing program.
   c. Solar electric generators located in Arizona that are included in any Load-Serving Entity's Net Metering or Net Billing program.

d. Solar electric generators located in Arizona that are included in any Load-Serving Entity's solar leasing program.

e. All Green Pricing, Net Metering, Net Billing, and Solar Leasing programs must have been reviewed and approved by the Director, Utilities Division in order for the Load-Serving Entity to accrue extra credit multipliers from this subsection.

4. All multipliers are additive, allowing a maximum combined extra credit multiplier of 2.0 in years 1997-2003, for equipment installed and manufactured in Arizona and either installed at customer premises or participating in approved solar incentive programs. So, if a Load-Serving Entity qualifies for a 2.0 extra credit multiplier and it produces 1 solar kWh, the Load-Serving Entity would get credit for 3 solar kWh (1 produced plus 2 extra credit).

D. Load-Serving Entities selling electricity under the provisions of this Article shall provide reports on sales and portfolio power as required in this Article, clearly demonstrating the output of portfolio resources, the installation date of portfolio resources, and the transmission of energy from those portfolio resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data. Reports shall be made according to the Reporting Schedule in R14-2-1613(B).

E. Photovoltaic or solar thermal electric resources that are located on the consumer's premises shall count toward the Environmental Portfolio Standard applicable to the current Load-Serving Entity serving that consumer unless a different Load-Serving Entity is entitled to receive credit for such resources under the provisions of R14-2-1618(C)(3)(a).

F. Any solar electric generators installed by an Affected Utility to meet the environmental portfolio standard shall be counted toward meeting renewable resource goals for Affected Utilities established in Decision No. 58643.

G. Any Load-Serving Entity that produces or purchases any eligible kWh in excess of its annual portfolio requirements may save or bank those excess kWh for use or sale in future years. Any eligible kWh produced subject to this rule may be sold or traded to any Load-Serving Entity that is subject to this rule. Appropriate documentation, subject to Commission review, shall be given to the purchasing entity and shall be referenced in the reports of the Load-Serving Entity that is using the purchased kWh to meet its portfolio requirements.

H. Environmental Portfolio Standard requirements shall be calculated on an annual basis, based upon electricity sold during the calendar year.

I. A Load-Serving Entity shall be entitled to receive a partial credit against the portfolio requirement if the Load-Serving Entity or its affiliate owns or makes a significant investment in any solar electric manufacturing plant that is located in Arizona. The credit will be equal to the amount of the nameplate capacity of the solar electric generators produced in Arizona and sold in a calendar year times 2,190 hours (approximating a 25% capacity factor).

1. The credit against the portfolio requirement shall be limited to the following percentages of the total portfolio requirement:

2001	Maximum of 50 % of the portfolio requirement
2002	Maximum of 25 % of the portfolio requirement
2003 and on	Maximum of 20 % of the portfolio requirement

2. No extra credit multipliers will be allowed for this credit. In order to avoid double-counting of the same equipment, solar electric generators that are used by other Load-Serving Entities to meet their Arizona portfolio requirements will not be allowable for credits under this Section for the manufacturer/Electric Service Provider to meet its portfolio requirements.

J. The Director, Utilities Division shall develop appropriate safety, durability, reliability, and performance standards necessary for solar generating equipment and environmentally-friendly renewable electricity technologies and to qualify for the portfolio standard. Standards requirements will apply only to facilities constructed or acquired after the standards are publicly issued.

K. A Load-Serving Entity shall be entitled to meet up to 20% of the portfolio requirement with solar water heating systems or solar air conditioning systems purchased by the Load-Serving Entity for use by its customers, or purchased by its customers and paid for by the Load-Serving Entity through bill credits or other similar mechanisms. The solar water heaters must replace or supplement the use of electric water heaters for residential, commercial, or industrial water heating purposes. For the purposes of this rule, solar water heaters will be credited with 1 kWh of electricity produced for each 3,415 British Thermal Units of heat produced by the solar water heater and solar air conditioners shall be credited with kWhs equivalent to those needed to produce a comparable cooling load reduction. Solar water heating systems and solar air conditioning systems shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618(C)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(C)(2)(b).

L. A Load-Serving Entity shall be entitled to meet the portfolio requirement with electricity produced in Arizona by environmentally-friendly renewable electricity technologies that are defined as in-state landfill gas generators, wind generators, and biomass generators, consistent with the phase-in schedule in R14-2-1618(B)(3). Systems using such technologies shall be eligible for Early Installation Extra Credit Multipliers as defined in R14-2-1618(C)(1) and Solar Economic Development Extra Credit Multipliers as defined in R14-2-1618(C)(2)(b).