

# ARIZONA FEDERATION OF TAXPAYERS OPPOSES RES

## Public Comment Letter      Docket No. RE-00000C-05-0030

The Arizona Federation of Taxpayers (AFT) strongly opposes the Renewable Energy Standard and Tariff (RES) Act. AFT has four reasons for opposing RES:

- RES exceeds the Arizona Corporation Commission's (ACC) authority under the Arizona Constitution and under state statute;
- The ACC failed to conduct proper due diligence by not commissioning an independent economic impact study of RES;
- RES is not economically feasible and will force dramatic increases in rates; and,
- RES will impose a regressive tax increase on the ratepayers least able to pay.

### Constitutionality

Under the Arizona Constitution and under statute, the ACC is a rate making body and cannot extend its regulatory authority without legislative approval or constitutional changes. However, RES goes beyond the ACC's rate making authority by forcing business decisions on private utilities. In Decision No. 68566, Finding of Fact No. 11, the ACC states the purpose of RES as:

“[to] promote the Commission's goals to protect the environment and increase renewable energy resources for diversity of the fuel supply, to enhance system reliability and safety in a post 9/11 era, and to mitigate against volatility in non-renewable fuel prices.”

AFT cites the following three legal precedents to support its contention that the stated purpose of the RES is beyond the ACC's constitutional or statutory mandate:

- *Phelps Dodge v. Arizona Electric Power Cooperative*, 207 Ariz 95 (holding that the ACC's constitutional powers are limited to ratemaking only);
- *Corp. Commission v. Consolidated Stage Co.*, 63 Ariz 257, 263, 161, (the management interference doctrine, according to which the Commission may not interfere in the internal affairs of a corporation, recently reaffirmed by the ACC in Dec. No 68302 (Nov 2005), citing that a city may not plan the use of a water company's CAP allocation); and,
- Opinion of Arizona Attorney General, No I79-099 (finding that an ACC mandate to require utilities to join a coop fuel purchasing scheme was outside of the ACC's constitutional powers).

## **Due Diligence**

Given the significant impact of RES on the Arizona economy, the ACC should have commissioned an independent economic impact study. Such a study would have attempted to estimate the long-term impact of RES, and would have included scenarios wherein the costs of renewable energy technologies would have been projected at rates that were: A) above their historical averages; B) at their historical averages; and, C) below their historical averages. Such a study was conducted in 2000 when the ACC proposed the Environmental Portfolio Standard, a precursor to RES. The commissioning of such a study for RES would also follow the precedent set by New Jersey, which commissioned a study by Rutgers University in 2004 before voting on its Renewable Portfolio Standard.

## **Economic Cost**

Given existing technology, the cost of RES is prohibitive. Virtually every renewable source of energy is significantly more expensive than conventional sources. As reported in the Arizona Utility Investors Association journal *Investors Quarterly* (June 2006),

APS estimates that its cost to implement the RES requirements will average between \$60 and \$75 million per year over the next 10 years and the proposed surcharge will produce only \$37 million on average. The shortfall gets worse as the RES requirement increases in later years.

TEP estimates... a total program cost between \$4.5 and \$7 billion to be collected from its ratepayers.

There are serious concerns that the surcharge to ratepayers will have to be increased dramatically to allow regulated utilities to meet the demands of RES without going into bankruptcy.

## **Regressive Taxation**

RES also contains a distributed generation (DG) rule that represents a possible regressive tax on ratepayers. The DG rule contains a rebate for homeowners who purchase rooftop photovoltaics. Given the exorbitant price of rooftop photovoltaics, only a wealthy few will be able to purchase them and take advantage of the rebate. However, all ratepayers will end up subsidizing the use of that technology by the wealthy few.

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**Submitted Thursday, October 26, 2006**