

Issue: AZ ACC and Corruption

Arizona Corporation Commission Power Plays

Arizona’s Stymied Solar Energy is No Accident

Arizona is the sunniest state in the country with enormous solar energy potential, ranking second behind only Nevada in energy potential.¹ Yet in 2018, the state generated only seven percent of its net energy from solar power.² According to National Renewable Energy Laboratory data, Arizona’s sun index, defined as “the amount of direct sunlight received in each state and accounts for latitude and cloud cover”, with its potential for as yet untapped power, is among those dominating the scales:

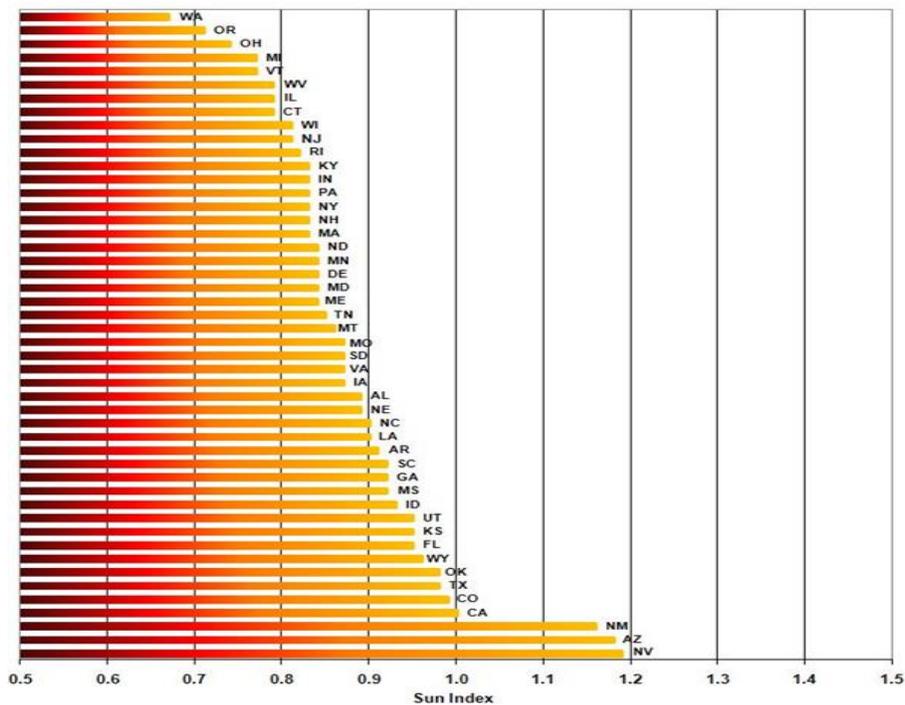


Figure 1 Solar Power Potential³

Arizona would be much further along were it not for opposition from the Arizona Public Service Company (APS), the largest power provider in the state, which “owns the transformers, transmission lines and other infrastructure needed to sell electricity, and is, by necessity, a monopoly.”⁴

APS is not against solar power, per se. In fact, it has invested in a number of large-scale solar projects. With a history of obstructing homeowners generating their own electricity and selling it to the grid, APS is only against that solar which it cannot control. Traditionally, utilities have made money by selling power to consumers. However, with the growth of private rooftop solar installations, an incentive known as net energy metering became more widespread. With net metering, excess solar-generated energy is sent into the electrical grid in exchange for utility bill credits.⁵ Ratepayers can generate their own power, and net metering policies require utilities to purchase the surplus energy. Both rooftop solar and net metering result in lower electric bills for consumers and lower profits for the utility companies.⁶

Role of the Arizona Corporation Commission (ACC)

In an effort to thwart both user-generated solar power and net metering, APS corporate spent millions of dollars on the campaigns of anti-solar Republicans to help them get elected to the Arizona Corporation Commission (ACC), the body that regulates the state's utilities.⁷

Charged with ensuring “safe, reliable, and affordable utility services” for consumers, the ACC, a co-equal fourth branch of the Arizona government, is controlled by five commissioners who are elected in the general election and serve four-year terms.^{8,9} In most states, the Public Service or Public Utility Commission's primary role is to regulate utilities. Arizona's ACC has a number of additional responsibilities that include “facilitating the incorporation of businesses and organizations, securities regulation and railroad/pipeline safety.”¹⁰

In recent years, APS has tainted the election of ACC commissioners by funding utility-friendly candidates through dark money groups. As a result, voters have become increasingly dissatisfied with the ACC, which is seen as serving the interests of the utilities it is supposed to regulate rather than the interests of the general public.¹¹ In addition, there have been contentious fights between the solar industry, utilities, and Arizona's government over net metering.¹²

History of Corruption: Allegations, Investigations, and Court Orders

Here is a headline you don't want to read referring to your utility services watchdog organization:¹³

“Arizona Corporation Commission Goes From Corrupt to Comical”

Yet “who watches the watchers?” is a question that has haunted Arizona residents about the ACC's ability to govern fairly and represent consumers for years.

The following is a brief history of documented attempts by APS—Arizona's largest electric utility company—to control the political process and dictate the outcome of ACC commissioner elections in recent years. Uncovered through years of investigation and battles between competing members on the Commission itself, it also highlights the main issues related to Arizona's energy policy.

2013: The first debate over Arizona's solar policy erupted between APS and the pro-net metering group Tell Utilities Solar Won't be Killed (TUSK). APS fought to reduce the net metering credit allowed, which would decrease the incentive for ratepayers to install solar.¹⁴

2014: During the campaign to elect ACC commissioners, the APS engaged in the following unethical activities in order to elect anti-solar candidates:

- APS and its parent company, Pinnacle West Capital Corporation, donated \$10.2 million through the dark money group Save Our Future Now and the Arizona Free Enterprise Club to bolster anti-solar candidates in the primary and general elections. Evidence supporting this accusation was ultimately uncovered in 2019.¹⁵
- Top executives at APS and Pinnacle West engaged in smear campaigns against two Democratic pro-solar candidates who lost in the primary to two Republicans backed by APS.¹⁶
- The results of the general election stacked the ACC board with five pro-APS, anti-solar Republican members.¹⁷

2015: The wide-spread suspicions of dark money funding during the 2014 election resulted in a public records request which found that a sitting Republican ACC commissioner had exchanged texts numerous times with the APS, the Free Enterprise Club, and the two Republican ACC candidates subsequently elected. However, the contents of the texts were deleted, and all parties denied that there was any collusion.¹⁸

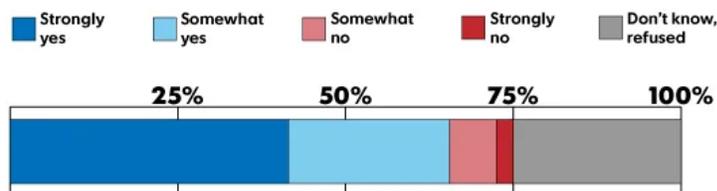
2016: Multiple investigations showed evidence of APS’s election influencing:

- APS openly spent \$4.2 million on the ACC race, supporting three Republicans who were successfully elected to the board. The election again stacked the ACC with all Republicans.¹⁹
- The FBI investigated APS’s role in the 2014 ACC elections and requested documents from at least one dark money group that made contributions that year.²⁰
- One of the newly elected Republican commissioners, Bob Burns (an ex-Arizona state senator who was first elected to the ACC in 2012), began a campaign for greater transparency in election contributions to anti-solar ACC candidates. He issued subpoenas to both APS and Pinnacle West for documents related to their political contributions.²¹ He also planned to hire an out of state attorney to investigate APS’s influence. However, Burns did not get the necessary votes of support from the four other ACC commissioners and had to cancel the attorney’s contract.²² APS countered by filing a suit against Burns, seeking an injunction to stop him from enforcing his subpoenas.²³
- Encapsulating the 2016 election interference, “I think we vastly underestimated the amount of money and the depth of political planning by APS,” said Bill Mundell, a former Corporation Commissioner and one of the candidates APS spent heavily to oppose in 2016. “To me, APS is a political machine masquerading as a public service utility.”²⁴

2017: A poll showed that a majority of Arizona voters believed the ACC had been corrupted by outside influences.

Likely voters on utility regulators

Do you believe that the Arizona Corporation Commission has been corrupted by outside influences and contributions to their election campaigns by the utilities they are supposed to regulate?



Source: HiahGround Public Affairs Consultants

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After a compromise settlement with the Residential Utilities Consumer Office, the ACC voted to approve a 4.5% rate hike for APS customers. Only Burns voted against the increase, maintaining that it was unnecessary. He also pointed out that the CEO of APS earned about \$1 million a *month*, while the CEO of Salt River Project, a similar-sized Arizona utility with lower rates, made about \$1 million a *year*.²⁶

2018: Rate hikes, biased ACC voting, and a failed pro-solar ballot measure increased public awareness of the APS's corrupt practices.

- **Campaign finance records denied:** ACC Commissioner Bob Burns lost his bid to force APS to comply with his subpoena for records on campaign financing of anti-solar candidates through dark money groups. A yes vote from all five commissioners would have been necessary to enforce the subpoena.²⁷
- **Suspected link between Rate hike approval and campaign financing:** Burns also lost his bid to investigate whether two of the ACC commissioners supported APS's rate hike in return for dark money contributions to their 2014 election campaigns.²⁸ Over 400 customers filed a petition with the ACC asking for a rehearing on APS's rate hike, which for many people exceeded the original 4.5% increase.²⁹ The petition led to hearings in front of an ACC administrative law judge, who heard arguments against excessively high rates and a confusing array of new plans.³⁰

The judge recommended that the ACC dismiss the complaint because there wasn't enough evidence to pursue overturning the rate increase. As it turned out, the ACC commissioners didn't rule on the complaint until 2019.³¹

Prop 127: Proposition 127, backed by San Francisco environmentalist and billionaire Tom Steyer, would have amended the Arizona constitution to require the state to generate 50% of its energy from renewable sources by 2030.³² The proposition's opponents argued that passage would increase energy bills, close existing nuclear power plants, and lock the ACC into a specific plan with no possibility of change. The opposition also gained support by emphasizing that the proposition's backer was an out-of-state billionaire who didn't understand Arizona's issues.³³

The proposition, the most expensive in Arizona history, with both sides spending more than \$65 million, lost 69% to 31% in the general election.³⁴

2019: The ACC commissioners finally ordered APS to provide information regarding the 2017 rate hike.³⁵ They also examined APS documents that revealed the scope of the utility company's involvement in politics.³⁶

- **Rate Hikes Not Rescinded:** Following the 2018 recommendation of the ACC administration law judge, the ACC commissioners finally ruled they would not rescind the 2017 rate increase.³⁷ However, they did order APS to detail how much money it was generating from the rate hike, required it to offer a new rate structure, and to allow customers to switch plans. The rate increase was shown to be generating far more revenue than the original estimate of \$95 million. In fact, in the first *three months* of 2019, APS reported profits of \$167 million. A customer survey concluded that bills rose an average of 15 percent, not the 4.5 percent estimated in the rate hearings, with some customers claiming their bills had doubled.³⁸

APS responded by announcing yet another rate hike would go into effect in December 2020.³⁹ "We prepared this filing with a focus on customers and to meet the energy needs of one of the fastest-growing states in the country," utility President Jeff Guldner said in an online statement. But ACC commissioners accused APS's executives of growing wealthy while some of their customers struggled to pay their bills.

- **Anti-Corruption Platform Wins:** On January 7, 2019, elected ACC Commissioner Sandra Kennedy stated in her swearing-in ceremony, "I am here to deliver on my campaign promises to stop the corruption, to stop unjustified rate increases, to lower rates that were unjustly raised, and to make Arizona the solar capital of the world," said Commissioner Kennedy.
- **Evidence Supporting Corruption Charges:** Efforts by Burns, now the ACC Chairman, and Sandra Kennedy, the Democrat re-elected for a second ACC term in 2018, finally resulted in APS releasing thousands of documents. These documents revealed the scope of the utility's efforts to influence the political process by funding anti-solar Republican candidates and engaging in smear campaigns against their Democratic opponents.⁴⁰

2020: A bipartisan clean energy proposal, public reaction to APS's proposed rate hikes, Republican-sponsored bills to make ACC commissioners appointees rather than elected officials, and the November election have continued to keep the public aware of clean energy issues in Arizona.

- **Bipartisan Energy Proposal:** ACC Chairman, Bob Burns, and Commissioner Sandra Kennedy, presented a bipartisan energy proposal that included a "more transparent and accountable long-term resource planning process."⁴¹ The plan, virtually identical to Prop 127, required utilities to generate 50% of their energy from renewable sources by 2030, be 100% carbon-free by 2050, and extend the Energy Efficiency Standard to 35% by 2030.

A broad coalition of community, business, and faith groups, as well as thousands of customers, supported the plan, but three of the five ACC commissioners opposed it and, as a result, it was tabled for 2020.⁴²

In an opinion piece for the *Arizona Capitol Times*, Amanda Ormond, director of the Western Grid Group, and Sandy Bahr, director of the Sierra Club, Grand Canyon Chapter made the following statement:

"Chairman Burns and Commissioner Kennedy proposed bold steps to reform the Commission's ineffective resource planning and procurement process. If adopted today, their proposal would have established a robust process with significant stakeholder participation, a bidding process that will ensure fairness and encourage competition among energy suppliers, and careful consideration of the state's energy needs would have been adopted."⁴³

- **Public input on \$184 million rate hike:** The ACC has asked for public input on APS's proposed \$184 million rate hike scheduled to take effect in December. A significant number of consumers have pointed out the hardship of paying bills during the COVID-19 pandemic.⁴⁴
- **Legislative ballot referrals to make ACC commissioners appointees:** The state Legislature was set to consider three ballot referrals (Republican-sponsored companion bills HCR2041 and SCR 1048, and Democratic-sponsored SCR 1027) that would have had ACC commissioners appointed rather than elected. The Republican referrals would have had the governor appoint commissioners subject to Senate consent, while the Democratic version, sponsored by eight Democratic legislators, called for two members of the majority party and two members of the minority party, plus an elected Governor's representative, to each appoint one commissioner every four years on a rolling basis. In order to take effect, the bills would have needed to pass both chambers of the Legislature and then be approved by voters during the general election, but the legislature adjourned sine die before taking a vote.⁴⁵

ACC chairman, Bob Burns, said he “didn’t support any effort to remove voters from choosing who represents them.”⁴⁶

Consumer advocate Stacey Champion who was the moving force behind the ACC rate review said, “I think this would be 10 steps in the wrong direction. What we’re seeing is these elected officials saying that we as constituents, as voters, are not capable of choosing our elected leaders.”⁴⁷

- **The 2020 Election: An opportunity for pro-solar Democrats to control the ACC:** The November election offers voters the opportunity to flip the ACC to Democratic control, with three open seats on the ballot. Justin Olson (R) and Sandra Kennedy (D), neither of whom voted for the 2017 APS rate hike, will remain on the commission. There are three pro-solar Democrats and three Republicans running for the three seats.⁴⁸ One of the Republican candidates, who voted against the bipartisan energy proposal, is an incumbent appointed by governor Ducey.

APS CEO Jeff Guldner has promised that the utility will not be involved in any way in the upcoming elections.⁴⁹

A Reformed ACC

A reformed ACC that protects the interests of consumers, rather than those of Arizona’s utilities, means that utilities will commit to generating 50% of their energy from renewable sources by 2030, the state will be 100% carbon-free by 2050, and significantly more people will have access to affordable roof top solar systems. It also means the end to exorbitant rate hikes. And it means that the country’s sunniest state will finally take advantage of its vast supply of renewable energy. An informed, active electorate will ensure that the ACC remain pro-solar and pro-consumer.

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² https://www.eia.gov/state/analysis.php?sid=AZ&_ga=2.193549618.1679681638.1599016794-1724528779.1595709323

³ <https://neo.ne.gov/programs/stats/inf/201.htm>

⁴ <https://thinkprogress.org/arizona-investigation-solar-utilities-15bf28f10ae3/>

⁵ <https://www.energysage.com/solar/101/net-metering-for-home-solar-panels/>

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⁸ <https://www.azcc.gov/divisions>

⁹ <https://azcc.gov/news/2020/05/27/arizona-corporation-commissioner-sandra-kennedy-calls-on-governor-ducey-to-work-across-the-aisle-on-utility-assistance-package#:~:text=The%20Arizona%20Corporation%20Commission%20was,equal%2C%20fourth%20branch%20of%20government.>

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¹¹ <https://www.azcentral.com/story/opinion/editorial/2018/08/03/arizona-corporation-commission-corruption-impacts-utility-bill/890623002/>

¹² <https://azbigmedia.com/business/arizona-energy-industry/isnt-arizona-leading-solar/>

¹³ <https://arizonadailyindependent.com/2016/06/18/arizona-corporation-commissioner-goes-from-corrupt-to-comical/>

¹⁴ <https://www.motherjones.com/environment/2013/07/barry-goldwater-tusk-arizona-solar-net-metering/>

¹⁵ <https://www.phoenixnewtimes.com/news/arizona-public-service-political-machine-emails-records-solar-11271265>

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- ²² <https://www.azcentral.com/story/money/business/energy/2016/08/25/arizona-corporation-commission-robert-burns-subpoenas-aps-pinnacle-west/89355508/>
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