

ORIGINAL



0000123102

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2011 FEB 14 P 3:44

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS
GARY PIERCE- CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

VICTOR PETER POLIVKA)

DOCKET NO. E-01933A-10-0340

Complainant,)

MOTION IN LIMINE

vs.)

Arizona Corporation Commission

TUCSON ELECTRIC POWER COMPANY)

DOCKETED

Respondent.)

FEB 14 2011

DOCKETED BY

Tucson Electric Power Company ("TEP" or "Company"), though undersigned counsel, submits this Motion in Limine precluding Complainant from raising issues contained in his most recent filings at the evidentiary hearing. Specifically, Complainant filed a "Motion for Default Summary Judgment" on December 22, 2010, and a "Witness List" on February 3, 2011. In both pleadings, Complainant again references his demands for production of documents based on statements about a "similar system in the past" made by TEP Electrical Engineer Chris Lindsey. Further, Complainant requests the presence of a customer with approved off-grid incentives. TEP responds as follows:

Complainant has made several motions regarding an allusion made by Mr. Lindsey to a system that may be similar to the Complainant's (i.e., the "similar system"). TEP has previously explained the reference, but provides additional clarification through Mr. Lindsey's affidavit and through redacted information about the "similar system." This system is similar only in that it had battery backup and TEP provided an off-grid incentive for the customer. TEP believes any outstanding demands to produce are now resolved and Complainant should be precluded from

1 referring to his demands for production during the evidentiary hearing. Further, TEP opposes
2 Complainant listing as a witness the “Approved Off-Grid TEP customer with similar system in
3 the past.”¹ Complainant has not established any basis as to how any customer testimony would
4 be material, relevant and not redundant. Therefore, TEP requests that Complainant be precluded
5 from requiring the customer with the approved system from appearing and testifying in this
6 hearing.

7 This Motion is supported by the attached Memorandum of Points and Authorities.

8
9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. COMPLAINANT SHOULD BE PRECLUDED FROM CONTINUALLY RAISING**
11 **ISSUES INVOLVING PRODUCTION OF DOCUMENTS INVOLVING A**
12 **“SIMILAR SYSTEM” DURING THE HEARING.**

13 TEP has repeatedly responded in prior pleadings that Mr. Lindsey’s reference was of a
14 general nature and did not specifically refer to a specific customer’s account.² Mr. Lindsey was
15 not personally involved with any “similar system” to the Complainant’s system. TEP’s response is
16 further supported by the Affidavit of Chris Lindsey, Electrical Engineer for TEP attached as
17 Exhibit 1 to this motion.

18 Even so, TEP conducted an extensive independent search, including contacting a now-
19 retired employee, regarding the reference to a “similar system” – referred to in the Company’s
20 response to questions that Commission Staff submitted on May 20, 2010 (specifically to question
21 10). Attached is a redacted copy of a system where the customer received an off-grid incentive
22 (only the customer’s personal information is redacted). This system is similar to that of
23 Complainant’s system in that it included battery backup. This system was installed by a
24 contractor, not the customer, and the contractor worked with TEP prior to installing the system.

25
26 _____
27 ¹ See Complainant’s February 2, 2011 “Witness List.”

² See TEP Responses dated September 17, 2010 and December 29, 2010.

1 The Company, by providing this information, does not stipulate to its relevance or that it is similar
2 to Complainant's system in any other way.

3 This information is provided to simply show that a customer received an off-grid incentive
4 for a system configured with battery backup. This is the same type of incentive that has been
5 offered to Complainant on multiple occasions, but that Complainant has rejected accepting. TEP
6 believes that Complainant now has any and all discoverable information regarding the "similar
7 system." As a result, any outstanding motions demanding to produce this information are now
8 moot (including Complainant's "Motion for Default Summary Judgment"). Therefore,
9 Complainant should also be precluded from continually raising this issue in testimony during the
10 evidentiary hearings – as any such testimony would be immaterial, irrelevant and not be probative
11 as to the pertinent issues in this case.

12 **II. COMPLAINANT SHOULD BE PRECLUDED FROM REQUIRING THE**
13 **TESTIMONY OF THE CUSTOMER WITH THE "SIMILAR SYSTEM."**

14 TEP objects to Complainant compelling the appearance of any customer to testify absent a
15 showing that such testimony would be relevant, material, not redundant or duplicative, and not
16 result in waste of time or undue delay. Complainant has not provided any indication as to how the
17 testimony of the customer with the "similar system" is material to the issues in this case. TEP
18 provided that customer with the same type of incentive it offered to Complainant. Complainant has
19 not provided any basis as to how testimony from this other customer would be relevant, material,
20 and not redundant.

21 To this point, TEP redacted customer information from the "similar system"
22 documentation provided with this pleading. Complainant has provided no reason justifying the
23 disclosure of such information would lead to the discovery of relevant evidence. The pertinent
24 information is the system specifications and the type of incentive approved for the system.
25 Providing customer information is not the probative to the issue of whether TEP has violated any
26 Commission rules or orders with regards to the execution of its Renewable Energy Standard Tariff
27 Implementation Plan in 2010 as to Complainant's system. Further, the Company believes

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

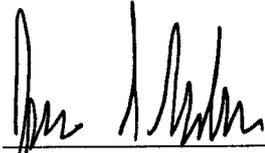
1 customer privacy interests outweigh the Complainant's need for that information. For these
2 reasons, Complainant should not be permitted to require the customer's testimony or obtain
3 possession of customer personal information on relevance grounds.

4 **CONCLUSION**

5 For the foregoing reasons, TEP respectfully requests the Administrative Law Judge issue
6 an Order (1) denying Complainant's demand for production of documents regarding the "similar
7 system" and precluding Complainant's testimony on any demands for production; and (2)
8 precluding Complainant's requiring the presence of the customer with the "similar system."

9
10 RESPECTFULLY SUBMITTED this 14th day of February 2011.

11 TUCSON ELECTRIC POWER COMPANY

12
13
14 By 
15 Melody Gilkey, Regulatory Counsel
16 Tucson Electric Power Company
17 One South Church Avenue, Suite 200
18 Tucson, Arizona 85701

19 and

20 Jason D. Gellman
21 ROSHKA DEWULF & PATTEN, PLC
22 One Arizona Center
23 400 East Van Buren Street, Suite 800
24 Phoenix, Arizona 85004

25 Attorneys for Tucson Electric Power Company
26
27

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Original and 13 copies of the foregoing
2 filed this 14th day of February 2011 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered/mailed
6 this 14th day of February 2011 to:

7 Belinda Martin, Esq.
8 Administrative Law Judge
Hearing Division
9 Arizona Corporation Commission
400 West Congress, Suite #221
Tucson, Arizona 85701

10 Scott Hesla, Esq.
11 Legal Division
Arizona Corporation Commission
1200 West Washington
12 Phoenix, Arizona 85007

13 Steve Olea
14 Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
15 Phoenix, Arizona 85007

16 Jenny Gomez
17 Utilities Division
Arizona Corporation Commission
400 West Congress, Suite #221
18 Tucson, Arizona 85701

19 Victor P. Polivka
20 4675 S. Harrison Road, #82
Tucson, Arizona 85730

21
22
23
24
25
26
27

By Albbie Amarel

Exhibit

"1"

1 3. My responsibilities as an Energy Services Engineer with TEP's Sunshare Program
2 include an engineering review, including review of the proposed interconnections and
3 commissioning, of potentially eligible solar electric systems applying for distributed generation
4 incentives through TEP's Sunshare Program. I am not responsible for the formal inspection of
5 power production, paneling, grounding and other facets of reviewing a system once a customer
6 has received the requisite permits and before any incentive is awarded to a customer.

7 4. From approximately February 2010 through the present, I became involved in the
8 engineering review of Complainant's solar electric system due to Complainant's application to
9 receive incentives. I had several communications with Complainant both by phone and email. I
10 was aware that Complainant had already built his system before applying for incentives and had
11 not received the relevant permitting approval from the City of Tucson. On or around April 2,
12 2010, I conducted a site visit of Complainant's premises simply to view how the system was
13 interconnected to TEP's distribution grid and to view the inverters and the battery configuration.
14 This was not the required official inspection of Complainant's system before incentives would be
15 paid to him. I had several conversations with Complainant regarding his system configuration
16 and the metering challenges with that configuration.

17 5. During the course of my contact with Complainant, I mentioned to him that TEP
18 had approved a system as an off-grid system for a similar system in the past. I do not have any
19 firsthand knowledge as to the specifics of this similar system. My personal knowledge is based
20 on casual conversations with other former and present TEP electrical service engineers involved
21 with TEP's Sunshare Program.

22 6. During April of 2010, I indicated to Complainant that TEP could approve his
23 system as an off-grid system. I indicated through separate correspondence that Complainant
24 could either receive a permit from the City of Tucson, or disconnect from TEP's distribution grid
25 in order to receive the off-grid incentive. My understanding is that Complainant has not
26 accepted TEP's offer for an off-grid incentive.

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FURTHER AFFIANT SAYETH NOT

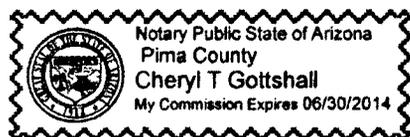


Christopher Lindsey

Subscribed and sworn before me this 11th day of February, 2011



Notary Public



Exhibit

"2"

TUCSON ELECTRIC POWER COMPANY ON-GRID RESIDENTIAL SOLAR ELECTRIC APPLICATION



SunShare

Customer Information

Name (As it appears on utility bill) _____
 Mailing Address _____
 City _____, AZ Zip Code _____
 Street Address (If different from above) _____
 Daytime Phone Number _____
 E-mail Address: _____ Account Number _____
 Operating Agent (If different from Customer) _____

Solar - PV System Information

Module Supplier Name SOLAR DEPOT Nameplate DC Rating 190 watts
 Module Manufacturer BP Type _____ Quantity of Modules 16
 Module Warranty 25 year (Copy of warranty must be on file with Tucson Electric Power.)
 Inverter Make and Model Number XANTREX XW 4548
 Inverter Warranty 10 years (Copy of inverter warranty must be on file with Tucson Electric Power.)
 Total Cost \$25,750 PV Cost \$18,000 Labor Cost \$7,000
 Estimated Installation Date 8/1/09

System Qualifications

The system must meet the requirements outlined in Attachment A and Attachment B of the On-Grid Residential Solar Up Front Incentive (UFI) or Performance Based Incentive (PBI) Agreements.

Rebate Calculation

Rebate Calculation: Nameplate DC Rating 190 Watts x Quantity of Panels 16 = System Size 3040

UFI Calculation for residential projects with a 10 year inverter warranty.

Rebate Calculation: 3.04 kW (System Size) x \$3.00 per W \$9120

Rebate Calculation for Self-Install: _____ kW (System Size) x \$3.00 x 70% = _____

*2.00
at
9/1/09*

*1 @ solar gain inc.
10/1*

*256-0306
melina*

Residential Solar Electric (PV) Rebate Calculations		
	Solar Electric (UFI)	Solar Electric (PBI)
System Installed Watts - solar electric	3,040	
PBI - Estimated Annual Energy Production		0
Total Installation Cost	\$25,750	
Customer selected PBI term in years		10
Customer selected PBI payment amount per kWh		\$0.202
UNS Incentive Payment Based on Insatalled Watts (UFI)	\$6,080	
UNS Incentive Payment Based on Annual Energy Savings (PBI)		\$0
Fed and State Credit-Eligible Installation Cost	\$19,670	\$0
Estimated State Tax Credit	\$1,000	\$0
Estimated Federal Tax Credit	\$5,901	\$0
Total Tax Incentive	\$6,901	\$0
60% Total Installation Cost(Upper Limit for UES Rebate)	\$15,450	\$0
Upper Rebate Limit (Including Customer's 15%)	\$14,987	\$0
Estimated UNS Incentive Payment	\$6,080	\$0

Solar Gain
2009 PV

Customer system is off grid. Agreed to accept system size/off grid due to misunderstanding of the fact that this was a battery back up system.