

ORIGINAL



0000141294

Court S. Rich AZ Bar No. 021290
Rose Law Group pc
6613 N. Scottsdale Road, Suite 200
Scottsdale, Arizona 85250
Direct: (480) 505-3937
Fax: (480) 505-3925
Attorney for Solar Energy Industries Association

RECEIVED

2013 JAN - 7 P 4: 34

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
CHAIRMAN

GARY PIERCE
COMMISSIONER

BRENDA BURNS
COMMISSIONER

SUSAN BITTER SMITH
COMMISSIONER

BOB BURNS
COMMISSIONER

IN THE MATTER OF THE)
APPLICATION OF TUCSON)
ELECTRIC POWER COMPANY)
FOR APPROVAL OF ITS 2013)
RENEWABLE ENERGY)
STANDARD IMPLEMENTATION)
PLAN AND DISTRIBUTED)
ENERGY ADMINISTRATIVE)
PLAN AND REQUEST FOR)
RESET OF ITS RENEWABLE)
ENERGY ADJUSTOR.)

DOCKET NO. E-01933A-12-0296
COMMENTS OF SOLAR ENERGY
INDUSTRIES ASSOCIATION (SEIA)

Please find attached hereto the comments of the Solar Energy Industries Association ("SEIA") in the above referenced docket.

Respectfully submitted this 7th day of January, 2013.

Court S. Rich
Rose Law Group pc
Attorney for SEIA

Arizona Corporation Commission
DOCKETED

JAN 07 2013

DOCKETED BY

1 **Original and 13 copies filed on**
2 **this 9th day of January, 2013 with:**

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 *I hereby certify that I have this day served the foregoing documents on all parties of record in*
8 *this proceeding by sending a copy via electronic or regular U.S. mail to:*

9 Steven M. Olea
10 Director, Utilities Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, Arizona 85007
14 *solea@azcc.gov*

Kevin Higgins
215 South State Street, Ste. 200
Salt Lake City, Utah 84111

C. Webb Crockett
3003 N. Central Ave. - 2600
Phoenix, Arizona 85012-2913

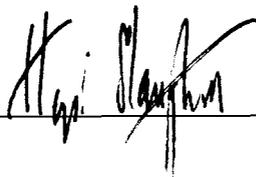
15 Janice M. Alward
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, Arizona 85007
20 *jalward@azcc.gov*

Michael Neary
111 W. Renee Dr.
Phoenix, Arizona 85027

21 Lynn Farmer
22 Chief Administrative Law Judge
23 Hearing Division
24 Arizona Corporation Commission
25 1200 W. Washington Street
26 Phoenix, Arizona 85007
27 *lfarmer@azcc.gov*

Kevin Koch
P.O. Box 42103
Tucson, Arizona 85733

28 Bradley Carroll
88 E. Broadway Blvd.
MS HQE910
P.O. Box 711
Tucson, Arizona 85702
bcarroll@tep.com



January 7, 2013

Docket No.: E-01933A-12-0296

I. Introduction

The Solar Energy Industries Association¹ (SEIA) hereby provides Comments in response to the Commission Staff's Recommended Opinion and Order (the "ROO") in the TEP's 2013 Renewable Energy Implementation Plan (the "REST Plan") Docket. Overall, SEIA is supportive of the ROO and thanks Staff for their time and effort in creating a reasonable order. However, SEIA is very concerned with one major issue in regards to the REC transfer policy recommended by Staff in the ROO. The proposed policy of "Track and Record" is incredibly problematic, and is premature given the series of technical conferences on net metering taking place early in 2013. The entirety of our comments addresses this issue.

II. Comments

The "Track and Record" proposal for demonstrating REST compliance is premature, harmful, and therefore should be rejected

The phase-out of incentives creates a challenge for the utility because the REST Rules set out that the only way to prove compliance with the Rules is to acquire renewable energy credits ("RECs") from system owners. A.A.C R14-2-1804(A) requires that, "each Affected Utility shall be required to satisfy an Annual Renewable Energy Requirement by obtaining Renewable Energy Credits from Eligible Renewable Energy Resources." A.A.C R14-2-1804(A) (emphasis added). Utilities recognize that some customers currently do not sell their RECs to the utility, and this will only increase when incentives are phased out, and once that occurs, it may be unable to demonstrate compliance in the method required in A.A.C R14-2-1804(A). As an alternative to direct RECs acquisition, APS has proposed, and Staff has since recommended for both APS and TEP, the "Track and Record" methodology that would allow the utilities to meet "compliance" with the REST Rules without acquiring RECs.

Unforeseen when the Track and Record policy was put forward is the call for a series of technical conferences on net metering. The technical conference could result in a different method of incentive (or lack thereof) that could impact the proper way to do compliance accounting. Much like this REC transfer issue, policy decisions for one major utility usually transfer to other utilities in the state. **Therefore, SEIA believes that any action or policy solution put forth to address the REC transfer issue should be incorporated into the technical conference.** We also believe it is prudent to invite other stakeholders, such as TEP, to those discussions. There may be statewide implications from the outcome of the conference so it is only fitting to have a broad representation of Arizona stakeholders.

Track and Record has two fundamental flaws. First, Track and Record clearly violates A.A.C R14-2-1804(A). While R14-2-1816 permits the Commission to issue a waiver from the Rules for good cause, the Track and Record methodology does not include a granting of a waiver. Without a waiver there is no legal basis to permit utilities to implement a change that is at direct odds with the REST Rules. The Rules say utilities must demonstrate compliance by acquiring RECs and without a formal waiver, the Commission is obligated to require utilities follow the REST Rules.

Second, even with a waiver Track and Record would invalidate a customer's RECs and deprives customers of their private property without compensation making this bad public policy. In a letter docketed on November 16, 2013, The Center for Resource Solutions ("CRS"), administrator of Green-e Energy, the nation's leading independent certification

¹ The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

and verification consumer protection program for RECs sold in the voluntary market, wrote that, "Use of the renewable kWh to meet or determine a compliance obligation renders the DG customer's REC effectively taken and used by the utility. Unless the utility purchased or otherwise contractually received the REC, the utility would be double counting the REC that rightfully belongs to the DG owner, resulting in the DG owner being unable to sell their REC into the voluntary market or, potentially, other states' RPS markets." In other words, the nation's largest independent REC certification group has said that Track and Record results in the REC becoming worthless to the solar REC owner while the utility gets the benefit of the REC without even acquiring it.

The Department of Veterans Affairs (the "VA") is a perfect example of the type of utility customer that would suffer at the hands of a Track and Record policy. In a letter dated November 26, 2012, the VA explained the legal issues that Track and Record creates. The VA writes that it "has made significant investments in VA solar projects in Arizona to meet the Federal renewable energy requirements and standards, as set forth in legislation and Presidential executive orders." The VA is required to own RECs to meet its Federal standards pursuant to Executive Order 13423. However, that compliance cannot be shown if the utility is permitted to count those RECs toward compliance at the same time. Applying Track and Record against the VA or any of the numerous utility customers in Arizona that have chosen or choose in the future to retain their RECs would unfairly deny such customers the right to use their RECs as they see fit. The VA writes that Track and Record "would interfere with VA's ability to sell or claim solar generation from VA facilities....the Plan would threaten the viability of the renewable energy certificates (REC) system and would set a dangerous precedent if approved.... the policy would deter future VA renewable energy investments in the State of Arizona." There are numerous existing customers just like the VA that have already chosen to retain their RECs.

Arizona needs a solution that is both legal and fair, and that is in complete compliance with the REST Rules and that does not deny individuals their property rights without due compensation. Arizona policy should not endorse, promote, or mandate a program whereby customers would be forced to surrender their private property rights to utilities without proper compensation.

The "Track and Record" approach could lead to a forfeiture of Arizona's ability to have a viable REC market and stifle investment in non-incentivized systems. Given the recommendation to hold a technical conference on solar net metering, SEIA strongly urges the Commission to maintain an incentive for the TEP residential and commercial markets until discussions can take place during the technical conference on the solution to the REST compliance question.

III. Conclusion

SEIA appreciates the opportunity to provide comments in response to the Commission Staff's ROO. While there are many positive aspects of the ROO that SEIA supports, we urge the Commission to prevent the implementation of the damaging "Track and Record" REC transfer policy.