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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JAN 18 2013

ARIZONA CORP COMMISSION
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THOMAS PATZKE,)	DOCKET NO. E-01933A-12-0416
)	
Complainant,)	TUCSON ELECTRIC POWER
)	COMPANY'S REPLY TO
vs.)	COMPLAINANT'S RESPONSE
)	
TUCSON ELECTRIC POWER COMPANY,)	
)	
Respondent)	
)	
)	

Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel, replies to the Complainant's Response filed December 24, 2012. Complainant still fails to demonstrate how his complaint is anything but a contract dispute between him and the Company. In fact, this entire case rests on whether TEP breached any terms and conditions of the Up Front Incentive Renewable Energy Credit Purchase Agreement ("Agreement") with Complainant.¹ But while the Agreement (exchanging an incentive payment for Renewable Energy Credits or "RECs") stems from the Commission's Renewable Energy Standard and Tariff Rules and approval of TEP's 2011 Implementation Plan, this is *not* a case about compliance with the Commission's rules or orders. This is simply a case about whether there is an incentive "balance due of \$4,246.00" owed to the Complainant. As a relatively simple matter of traditional contract law that requires no specialized expertise to resolve, and as agreed to by the Complainant in signing the Agreement, this dispute is appropriately handled in Pima County Court and not before the Commission.

¹ The Company denies any and all allegations that it breached the Purchase Agreement.

1 Further, as the Company stated in its October 19, 2012 Answer, the Complainants choice
2 of venue is improper because Section 15.3 of the Agreement expressly states that the appropriate
3 venue to address any dispute regarding the incentive is a court of competent jurisdiction located
4 in Pima County, Arizona.² Since Complainant voluntarily agreed to this provision in the July 20,
5 2011 Agreement, this matter should be dismissed so that Complainant can pursue the matter in
6 the appropriate venue, should he choose to do so.

7 Further, the matter is inextricably linked to the involvement of Technicians for
8 Sustainability (TFS), the third-party contractor for Complainant's system. While Complainant
9 claims he may have resolved his dispute with TFS, the facts and circumstances surrounding this
10 complaint inevitably makes TFS an indispensable party to the proceeding. First, TFS and the
11 Complainant signed an assignment of payment on July 21, 2011; therefore any potential
12 outstanding incentive payment would go to them. Second, TFS was the party responsible for, and
13 the actual party to, submit the Certification of Completion. It is certain that TFS would have to
14 be involved as a party in order to determine the appropriate relief, if any. But the Commission
15 does not have any jurisdiction over a third-party installer like TFS and to mandate joinder into
16 this action.

17 In short, none of what Complainant provides in his response addresses how this is
18 anything but a contract issue where TFS must be involved. For these reasons, TEP maintains
19 that this matter should be dismissed as deficient, raises issues outside the scope of the
20 Commission's jurisdiction, and is in the improper venue.

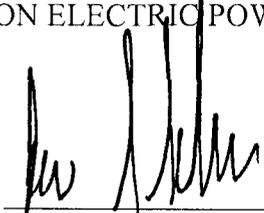
21 WHEREFORE, having fully answered Mr. Patzke's Complaint, TEP requests that the
22 Commission issue a Decision dismissing the Complaint; and should the Commission decide not
23 to summarily act on the Company's Motion to Dismiss, TEP respectfully requests an oral
24 argument on its Motion to Dismiss.

25
26 ² Up Front Incentive Renewable Energy Credit Purchase Agreement Section 15.3 Governing Law and Venue: This
27 Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. *Venue for any dispute arising hereunder shall be any court of competent jurisdiction in Pima County, Arizona.* (emphasis added)

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RESPECTFULLY SUBMITTED this 19th day of January 2013.

TUCSON ELECTRIC POWER COMPANY

By 

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Original and 13 copies of the foregoing
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