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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- BOB STUMP – Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY REQUEST FOR APPROVAL OF UPDATED GREEN POWER RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.

DOCKET NO. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION FOR RESET OF RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-01345A-12-0290

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

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC. 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-04204A-12-0297

**PROCEDURAL ORDER**  
**CONSOLIDATING DOCKETS AND**  
**SETTING HEARING**

**BY THE COMMISSION:**

On January 31, 2013, the Commission issued Decision Nos. 73636 for Arizona Public Service Company (“APS”), 73637 for Tucson Electric Power Company (“TEP”), and 73638 for UNS Electric, Inc. (“UNS”) in the above-captioned dockets (“2013 REST dockets”).<sup>1</sup> Those Decisions directed that the Commission would consider the proposed “Track and Record” mechanism (as well

<sup>1</sup> Requests for Proposed Orders Nunc Pro Tunc correcting clerical errors are pending for Decision Nos. 73636, 73637, and 73638.

1 as alternatives thereto), for APS, TEP and UNS (“collectively, “Utilities”) at a hearing. In addition,  
2 the Commission directed the Hearing Division to include within the scope of the hearing the subject  
3 matter of Commissioner Gary Pierce’s withdrawn Amendment No. 2, which would have required the  
4 exclusion of retail sales to the utilities’ largest customers (3MW or greater in demand) from their  
5 overall retail sales calculation under the Renewable Energy Standard and Tariff,<sup>2</sup> specifically A.A.C.  
6 R14-2-1804.

7 On January 29, 2013, by Procedural Orders issued in Docket Nos. E-01345A-10-0394 et al.  
8 and E-01933A-12-0296, a procedural conference was set to commence on February 14, 2013, for the  
9 purpose of allowing the parties to discuss the procedures to govern the hearing directed by Decision  
10 Nos. 73636, 73637, and 73638. The Procedural Orders indicated that the topics to be discussed  
11 would include, but would not be limited to: 1) notice; 2) intervention; 3) hearing dates; 4) hearing  
12 process (e.g. pre-filed written testimony); and 5) possible consolidation of the TEP, APS, and UNS  
13 matters. Copies of the Procedural Orders were mailed to entities that filed comments in these dockets  
14 and provided contact information. The Procedural Orders indicated that entities receiving the  
15 Procedural Orders would not continue to receive copies of filings in these matters unless they request  
16 and are granted intervention.

17 The procedural conference convened as scheduled. Appearances were entered through  
18 counsel for parties APS, TEP, UNS, Freeport-McMoRan Copper & Gold, Inc. (“Freeport-  
19 McMoRan”), Arizonans for Electric Choice and Competition (“AECC”), Arizona Competitive Power  
20 Alliance (“Alliance”), Solar Energy Industries Association (“SEIA”), and Western Resource  
21 Advocates (“WRA”). An appearance was entered by an authorized lay representative, pursuant to  
22 Arizona Supreme Court Rule 31.d.28, for Arizona Solar Energy Industries Association (“AriSEIA”).

23 Appearances were also entered through counsel for pending intervenors Sonoran Solar, LLC  
24 (“Sonoran”), Wal-Mart Stores, Inc. and Sam’s West Inc. (collectively “Walmart”), and the United  
25 States Department of Defense and all other Federal Executive Agencies (“DoD”). Interwest Energy  
26 Alliance (“Interwest”) also appeared, and an application to intervene was filed by counsel on  
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28 <sup>2</sup> Arizona Administrative Code (“A.A.C.”) R14-2-1801 et al. (“REST Rules”).

1 February 14, 2013.

2 No parties objected to the intervention requests of Sonoran, Walmart, DoD, or Interwest, and  
3 the parties were informed at the procedural conference that they would be granted intervention.

4 At the procedural conference, there was no objection to consolidation of the 2013 REST  
5 dockets for the limited purpose of hearing the issues deferred to hearing by Decision Nos. 73636,  
6 73637, and 73638. The above-captioned dockets should be consolidated for that limited purpose.

7 The parties discussed public notice of the hearing. Proposals and arguments were made both  
8 for publication and for mailing of notice to the Utilities' customers. Because of the possible broad  
9 effects of the Decision in these dockets, in order to ensure the best possible notice, both mailing and  
10 statewide publication of notice will be required, with publication costs to be shared among APS,  
11 TEP, and UNS.

12 During the discussion of the procedural schedule for this hearing, some parties indicated that  
13 their positions on the issues set for hearing in these dockets could be subject to change, depending  
14 upon proposals made in upcoming technical conferences ordered by Decision No. 73636.<sup>3</sup> For that  
15 reason, multiple rounds of testimony should be scheduled, with time available for discovery, so that  
16 the parties can update their positions and the issues can be appropriately narrowed prior to hearing.

17 This Procedural Order is now issued to govern the procedural schedule for the hearing  
18 directed by the Commission in Decision Nos. 73636, 73637, and 73638.

19 IT IS THEREFORE ORDERED that the above-captioned dockets are hereby consolidated for  
20 hearing evidence and legal arguments on two issues: 1) whether the Utilities should be allowed, in the  
21 absence of payment of incentives, to use a "track and record" means of securing compliance with  
22 their Distributed Renewable Energy Requirements under the Renewable Energy Rules; and 2)  
23 whether the Utilities should be allowed, in their calculation of Renewable Energy Rules  
24 requirements, to exclude retail sales to their largest customers (with 3 megawatts or greater in  
25 demand) from their overall retail sales calculations under Arizona Administrative Code R14-2-1804.

26 \_\_\_\_\_  
27 <sup>3</sup> Decision No. 73636 ordered APS to conduct a multi-session technical conference to evaluate the costs and benefits of  
28 Distributed Renewable Energy and Net Metering. At the February 14, 2013, procedural conference in these dockets,  
parties indicated that the technical conference series is scheduled to commence on February 21, 2013, to continue on a  
biweekly basis for a total of 6 sessions, and to end mid-May 2013.

1 IT IS FURTHER ORDERED that intervention is hereby granted to Sonoran, Walmart, DoD,  
2 and Interwest.

3 IT IS FURTHER ORDERED that the hearing directed by the Commission in Decision Nos.  
4 73636, 73637, and 73638 shall commence on **May 29, 2013, at 10:00 a.m.**, or as soon thereafter as is  
5 practicable, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,  
6 Phoenix, Arizona 85007.

7 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on **May 23, 2013**,  
8 commencing at **10:00 a.m.**, or as soon thereafter as practicable, at the Commission's offices, 1200  
9 West Washington Street, Hearing Room No. 1, Phoenix, Arizona 85007, for the purpose of  
10 scheduling witnesses and the conduct of the hearing.

11 IT IS FURTHER ORDERED that **direct testimony** and associated exhibits to be presented at  
12 hearing by **APS, TEP and UNS** shall be reduced to writing and filed on or before **March 15, 2013**.

13 IT IS FURTHER ORDERED that **direct testimony** and associated exhibits to be presented at  
14 hearing by **Staff and Intervenors** shall be reduced to writing and filed on or before **April 10, 2013**.

15 IT IS FURTHER ORDERED that **rebuttal testimony** and associated exhibits to be presented  
16 by **all parties** shall be reduced to writing and filed on or before **on May 1, 2013**.

17 IT IS FURTHER ORDERED that **surrebuttal testimony** and associated exhibits to be  
18 presented at the hearing by **all parties** shall be reduced to writing and filed no later than **noon** on  
19 **May 22, 2013**.

20 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m. on the date the**  
21 **filing is due, unless otherwise indicated above.**

22 IT IS FURTHER ORDERED that **any objections to testimony or exhibits that have been**  
23 **prefiled as of May 22, 2013, shall be made before or at the May 23, 2013, pre-hearing**  
24 **conference.**

25 IT IS FURTHER ORDERED that **all testimony filed shall include a table of contents** which  
26 lists the issues discussed.

27 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to  
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1 prefiled testimony, with the exception of rejoinder testimony, shall be reduced to writing and filed no  
2 later than five calendar days before the witness is scheduled to testify. **Substantive corrections,**  
3 **revisions, or supplements to prefiled surrebuttal testimony shall be reduced to writing and**  
4 **presented on the first day of hearing.**

5 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the  
6 prefiled testimony of each of their witnesses and **shall file each summary at least two working**  
7 **days before the witness is scheduled to testify.**

8 IT IS FURTHER ORDERED that copies of summaries shall be served upon the  
9 Administrative Law Judge, the Commissioners, and the Commissioners' aides as well as the parties  
10 of record.

11 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,  
12 except that **all motions to intervene must be filed on or before March 22, 2013.**

13 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
14 regulations of the Commission, except that until **April 2, 2013**, any objection to discovery requests  
15 shall be made within 7 calendar days of receipt<sup>4</sup> and responses to discovery requests shall be made  
16 within 10 calendar days of receipt. Thereafter, objections to discovery requests shall be made within  
17 5 calendar days and responses shall be made within 7 calendar days. The response time may be  
18 extended by mutual agreement of the parties involved if the request requires an extensive compilation  
19 effort.

20 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a  
21 receiving party requests service to be made electronically, and the sending party has the technical  
22 capability to provide service electronically, service to that party shall be made electronically.

23 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
24 discovery, any party seeking resolution of a discovery dispute may telephonically contact the  
25 Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery  
26 dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and

27 \_\_\_\_\_  
28 <sup>4</sup> The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. MST will be considered as received the next business day.

1 that the party making such a request shall forthwith contact all other parties to advise them of the  
2 hearing date and shall at the hearing provide a statement confirming that the other parties were  
3 contacted.<sup>5</sup>

4 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are  
5 not ruled upon by the Commission within 20 calendar days of the filing date of the motion shall be  
6 deemed denied.

7 IT IS FURTHER ORDERED that any responses to motions shall be filed within five calendar  
8 days of the filing date of the motion.

9 IT IS FURTHER ORDERED that any replies shall be filed within five calendar days of the  
10 filing date of the response.

11 IT IS FURTHER ORDERED that APS, TEP and UNS shall provide public notice of the  
12 hearing in this matter, in the following form and style, with the heading in no less than 24-point bold  
13 type and the body in no less than 10-point regular type:

14  
15 **PUBLIC NOTICE OF HEARING ON CERTAIN ISSUES IN THE 2013**  
16 **RENEWABLE ENERGY RULES COMPLIANCE FILINGS OF ARIZONA**  
17 **PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY,**  
**AND UNS ELECTRIC, INC.**  
**(DOCKET NOS. E-01345A-10-0394 ET AL.)**

18 On January 31, 2013, the Arizona Corporation Commission (“Commission”) issued Decisions on the  
19 applications that Arizona Public Service Company (“APS”), Tucson Electric Power Company  
20 (“TEP”), and UNS Electric, Inc. (“UNS”) (collectively, “Utilities”) filed in Docket Nos. E-01345A-  
21 10-0394 et al. in order to satisfy their annual compliance requirements under Arizona Administrative  
22 Code R14-2-1801 et al. (“Renewable Energy Rules”). The Commission’s Decisions on the 2013  
23 Renewable Energy Rules compliance filings deferred two issues to a hearing, so that the Commission  
24 can take evidence and hear legal arguments on certain issues. Those issues concern: 1) whether the  
Utilities should be allowed, in the absence of payment of incentives, to use a “track and record”  
means of securing compliance with their Distributed Renewable Energy Requirements under the  
Renewable Energy Rules; and 2) whether the Utilities should be allowed, in their calculation of  
Renewable Energy Rules requirements, to exclude retail sales to their largest customers (with 3  
megawatts or greater in demand) from their overall retail sales calculations under Arizona  
Administrative Code R14-2-1804.

25 The Commission will consider testimony and evidence on the two issues at a joint evidentiary hearing  
26 involving the Utilities and interested parties. Parties to the proceeding will be required to file any  
27 witness testimony and exhibits prior to the hearing. Witnesses presenting evidence will be required  
28 to be present at the hearing for cross-examination on testimony and exhibits. Parties will also be

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<sup>5</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 required to prepare and file legal briefs following the hearing to provide legal support for their positions. The Commission is not bound by the proposals made by any party to this proceeding.

2 **How You Can View or Obtain a Copy of Documents**

3 Copies of the Utilities' applications and subsequent filings are available from the Utilities' offices, [APS, TEP and UNS insert contact information] and at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public inspection during regular business hours and on the Internet via the Commission's website [www.azcc.gov](http://www.azcc.gov) using the e-Docket function, located at the bottom of the web page, and referencing Docket Nos. E-01345A-10-0394 et al.

5 **Arizona Corporation Commission Public Hearing Information**

6 The Commission will hold a hearing on this matter beginning **May 29, 2013, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

8 Interested parties may participate in this matter through (1) filing for intervention and becoming a formal party to the proceeding; or (2) through written or oral public comment. **Written public comments may be submitted at any time** by mailing a letter referencing **Docket Nos. E-01345A-10-0394 et al.** to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services Section at 602.542.4251 or 1.800.222.7000.

12 If you do not intervene in this proceeding, you will receive no further notice of the proceedings in these dockets. **However, all documents filed in this docket are available online** (usually within 24 hours after docketing) at the Commission's website [www.azcc.gov](http://www.azcc.gov) using the e-Docket function, located at the bottom of the web page and referencing Docket Nos. E-01345A-10-0394 et al. RSS feeds are also available through e-Docket.

16 **About Intervention**

17 You do not need to intervene if you want to appear at the hearing and provide public comment on the issues, or if you want to file written comments in the record of the case.

18 Any person or entity entitled by law to intervene and having a direct substantial interest in the matter will be permitted to intervene. The granting of intervention entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. **If you wish to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission's Docket Control Center no later than March 22, 2013, and send a copy of the motion to all parties of record.**

21 Contact information for the parties of record is located on the "Service List" tab for Docket No. E-01345A-10-0394 et al. using the Commission's e-Docket function. Your motion to intervene must contain the following:

- 23 1. Your name, address, and telephone number, and the name, address, and telephone number of any party upon whom service of documents is to be made, if not yourself;
- 24 2. A short statement of your interest in the proceeding (e.g., a customer, a shareholder, etc.); and
- 25 3. A statement certifying that you have mailed a copy of the motion to intervene to all parties of record in the case.

26 The granting of motions to intervene is governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before March 22, 2013. For a sample intervention request form, go to <http://www.azcc.gov/divisions/utilities/FORMS/interven.pdf>. All parties must comply with Arizona Supreme Court Rules 31 and 38 and A.R.S. § 40-243 with respect to the practice of law.

1 **If you do intervene, and you wish to present direct testimony and associated exhibits at the**  
2 **hearing, you must, on or before April 10, 2013: (1) reduce your witness direct testimony and**  
3 **associated exhibits to writing, (2) file the original and 13 copies of your testimony and exhibits**  
4 **with the Commission's Docket Control Center by 4:00 p.m., and (3) mail a copy to each party**  
5 **of record.**

6 **ADA/Equal Access Information**

7 The Commission does not discriminate on the basis of disability in admission to its public meetings.  
8 Persons with a disability may request a reasonable accommodation such as a sign language  
9 interpreter, as well as request this document in an alternative format, by contacting the ADA  
10 Coordinator, Shaylin Bernal, email [SABernal@azcc.gov](mailto:SABernal@azcc.gov), voice phone number 602-542-3931.  
11 Requests should be made as early as possible to allow time to arrange the accommodation.

12 IT IS FURTHER ORDERED that APS, TEP, and UNS shall mail to each of their customers a  
13 copy of the above notice, and shall cause a copy of such notice to be published at least once in a  
14 newspaper of statewide circulation, with mailing and publication to be completed no later than  
15 **March 1, 2013.**

16 IT IS FURTHER ORDERED that APS, TEP, and UNS shall share the costs of publication of  
17 notice.

18 IT IS FURTHER ORDERED that APS, TEP, and UNS shall file affidavits of publication and  
19 mailing as soon as possible after the mailing/publication has been completed, but no later than  
20 **March 15, 2013.**

21 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication  
22 of same, notwithstanding the failure of an individual customer to read or receive the notice.

23 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
24 31, 38, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

25 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
28 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized

1 Communications) applies to this proceeding and shall remain in effect until the Commission's  
2 Decision in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
4 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

5 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
6 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
7 hearing.

8 DATED this 15<sup>th</sup> day of February, 2013.

9  
10   
11 TEENA JIBILIAN  
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered  
13 this 15<sup>th</sup> day of February, 2013 to:

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