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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
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2013 APR 24 A 9 14

DOCKET CONTROL

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S 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

**NRG SOLAR
NOTICE OF FILING TESTIMONY**

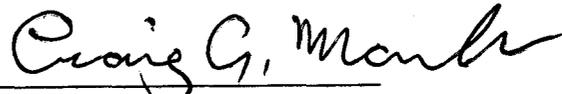
1 NRG Solar LLC ("NRG Solar") hereby provides notice of filing the Direct Testimony of
2 Diane Fellman in the above-captioned case.

Arizona Corporation Commission
DOCKETED

APR 24 2013

DOCKETED BY

1 RESPECTFULLY SUBMITTED on April 24, 2013.
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23 **Copy of the foregoing mailed**
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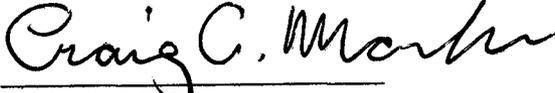
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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR APPROVAL OF UPDATED GREEN POWER RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.	DOCKET NO. E-01345A-10-0394
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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
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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
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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
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**DIRECT TESTIMONY
OF
DIANE FELLMAN
ON BEHALF ON NRG SOLAR LLC
DATED APRIL 24, 2013**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TELEPHONE**
3 **NUMBER.**

4 A. My name is Diane I. Fellman. My business address is 5790 Fleet Street, Suite 200,
5 Carlsbad, California 92008, and my business phone is (415) 665-3824.

6 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE?**

7 A. I have been engaged in the energy industry since 1972 when I began as a legal intern at
8 the Ohio Power Siting Commission. Starting in 1975 until 1983, I served as an
9 Administrative Law Judge there and then at the California Energy Commission, where I
10 also was Office Manager of Demand Forecasting. From 1983 to 1986, I served as staff
11 counsel at the California Public Utilities Commission. Following my departure from
12 public service, I represented a number of energy clients before various California state
13 agencies and Legislature for 18 years in a private law practice. In 2004, I joined NextEra
14 Energy Resources as a Director of Regulatory and Governmental Affairs. Since joining
15 NRG Energy in 2010, I have served in the same capacity.

16 **Q. WHAT IS YOUR EDUCATIONAL EXPERIENCE?**

17 A. I obtained my BA in Political Science from Ohio State University (1972) and my JD
18 from the University of Cincinnati (1975).

19 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

20 A. NRG Solar LLC ("NRG").

21 **Q. WHAT IS NRG SOLAR LLC?**

22 A. NRG Solar, LLC is a subsidiary of NRG Energy, Inc., the largest independent power
23 producer in the United States. NRG Solar is one of the largest solar companies in the
24 nation, with approximately 2,000 MW of projects in operation and development, which
25 range from large-scale utility photovoltaic and thermal to distributed generation.

1 **II. PURPOSE OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. My testimony spells out NRG's position on the proposed "Track and Record"
4 mechanism as the means for APS, TEP, and UNS Electric ("the utilities") to achieve
5 compliance with their Distributed Energy ("DE") requirement (both residential and
6 nonresidential portions) under the Arizona Corporation Commission's ("Commission")
7 Renewable Energy Standard ("RES") Rules in the absence of paying cash incentives. My
8 testimony will recommend that the Commission adopt the following positions: 1)
9 Renewable Energy Credit ("REC") ownership must be preserved for customers wherein
10 no compensation is paid by the utility; 2) the integrity of RECs must be maintained for
11 use by the owners to the purpose of meeting green certification or voluntary sustainability
12 goals without a secondary use that could lead to double counting; and 3) the DE
13 requirement of the RES Rules (A.C.C. R14-2-1805) should be retained.

14 **Q. WHY DOES NRG CARE ABOUT THE ARIZONA RES RULES AND THE**
15 **UTILITIES' PROPOSED CHANGES?**

16 A. In Arizona, NRG Solar is the majority owner of the Agua Caliente Solar Project (292
17 MW) near Yuma and the 100% owner of the Avra Valley Solar Project (25 MW) near
18 Tucson. In addition, NRG Solar is invested in many distributed generation projects at
19 various school districts and at Arizona State University ("ASU"). ASU has stated its
20 commitment to the further development of solar whether the Commission continues cash
21 incentives or not. In the absence of cash incentives, it is critical for solar developers to
22 have the ability to retain their REC property rights. Without these rights, the market
23 opportunities for further solar development outside of the Commission mandated RES
24 program would be diminished, if not eliminated.

25 **Q. ARE YOU TESTIFYING CONCERNING PROPOSED CHANGES TO THE**
26 **RESIDENTIAL DISTRIBUTED ENERGY MARKET?**

1 A. No. NRG does not currently participate in the residential DE market in Arizona.

2 **III. DIRECT TESTIMONY**

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

4 A: First, customers should be able to retain their REC ownership where the utilities do not
5 provide cash incentives. Second, the Commission should reject the utilities' proposal to
6 issue a temporary waiver from the DE requirement and then make a permanent change to
7 the RES Rules by eliminating the DE requirement altogether. Third, in this era of DE
8 over-compliance by the utilities, there is no compelling reason (a) to allow the utilities to
9 report, even for informational purposes, the energy produced by DE systems that do not
10 receive compensation for RECs or (b) to alter the Commission's sound policy that the
11 utilities obtain renewable energy from a combination of utility scale and distributed
12 generation projects rather than just from utility scale projects.

13 **Q. THE UTILITIES FORECAST THAT THEY WILL BE EXCEEDING THE DE**
14 **REQUIREMENTS SET FORTH IN THE RES RULES. DO YOU AGREE?**

15 A. Yes, but only in the short run. In order to meet the annual DE requirements, the utilities
16 implemented a competitive process that attracted the most cost-effective projects. The
17 inherent competitive nature of this procurement model has been overwhelmingly
18 successful in driving down cash incentives, so much so that in January 2013, the
19 Commission decided that it was no longer necessary to provide performance based
20 incentives ("PBI"s) for nonresidential distributed solar projects. Even in the wake of
21 declining cash DE incentives, customer participation has been robust to the point that the
22 utilities have over-complied with the DE requirement. Even though the PBI levels have
23 fallen so dramatically over the last few years, the utilities have stated publicly and
24 reported in their 2012 Annual REST Compliance filings and 2013 REST Implementation
25 Plans that they have exceeded compliance in the nonresidential DE carve-out requirement
26 through 2019.

1 **Q. GIVEN THE FORECASTED OVER-COMPLIANCE, DOES THE COMMISSION**
2 **NEED TO ALTER THE RES RULES?**

3 A. No. The utilities requested that the Commission eliminate the DE requirement altogether
4 because it is an "arbitrary benchmark," and they should not be held to a requirement in
5 which they do not participate in the decision-making process. While it is true that
6 utilities have no ability to drive customer behavior in the present and the future, relieving
7 them from the DE requirement would undermine the Commission's policy for utilities to
8 achieve the overall RES with a mixture of utility-scale and distributed generation
9 projects. The underlying objective of the Commission is to allow the utilities' customers
10 to participate directly in the RES program by installing solar systems on their own
11 homes, businesses, and schools. Removing the DE requirement would upend this policy
12 objective and deny customers the opportunity to assist their utilities in meeting the DE
13 carve-out of the RES. The 15% RES, of which the utilities must derive 30% from DE
14 applications, must be achieved by 2025. It is a long-term goal, and with 12 years left,
15 making this type of substantial change to a key marker would be shortsighted and send
16 the wrong message to the utilities' customers that their contribution of installing rooftop
17 solar is not important to meeting the RES.

18 **Q. WHO SHOULD OWN RECS?**

19 A. Unless they are purchased by the utility, RECs should be retained by the customer or the
20 entity leasing the solar system or entering into a PPA for the solar system, depending on
21 the particular contractual arrangement. NRG conducts business with various large
22 commercial entities and federal agencies that have their own sustainability goals. In most
23 cases, these goals require that all the REC attributes from installed DE systems be
24 bundled with the energy as part of the transaction. Fair compensation must be paid to the
25 owner of the DE system if the utilities want to count the energy produced by customers'
26 distributed solar systems for either compliance or informational purposes. Otherwise, the

1 owners of such systems, either NRG or its nonresidential customers, should retain the
2 REC ownership, with the utilities receiving no “credit” from that production either
3 through a reduction in RPS compliance or in the load required to measure that
4 compliance.

5 **Q. WHAT IS NRG'S RESPONSE TO THE UTILITIES' TESTIMONY**
6 **CONCERNING GREEN CERTIFICATION?**

7 A. NRG agrees with APS that various green certification organizations (including the Center
8 of Resource Solutions and the Western Renewable Energy Generations Information
9 System) and various federal agencies (including the Department of Defense) would
10 construe the original “Track and Record” proposal as the double counting of RECs.
11 These entities require that all RECs tracked under an independent REC certification
12 system or the federal rules governing EPCAct 2005 and Executive Order 13423 be bundled
13 and not have their attributes counted or claimed elsewhere to meet another renewable
14 portfolio standard. However, absent a clear change in the definition of RECs (A.C.C.
15 R14-2-1803), APS’s revised proposal would appear, on its face, to double-count the
16 RECs.

17 **Q. HOW WOULD APS' REVISED PROPOSAL DOUBLE-COUNT RECS?**

18 A. Energy produced from those DE systems that did not receive cash incentives would be
19 reported to the Commission for informational purposes. The REC certification
20 organizations and various federal agencies may consider the revised proposal to be
21 double counting because the REC energy would also be reported to the Commission and
22 potentially used for a secondary purpose. NRG is not sure why reporting this energy to
23 the Commission is necessary or relevant when the utilities are proposing that the
24 Commission eliminate the DE carve-out requirement. It is confusing and potentially
25 misleading.

1 **Q. DO YOU AGREE WITH TEP'S AND UNS ELECTRIC'S SUGGESTION THAT**
2 **NET METERING AND "TRACK AND REDUCE" WOULD COMPENSATE FOR**
3 **THE UTILITIES' RECEIVING RECS?**

4 A. Absolutely not. First, the utility should not receive all RECs in exchange where a small
5 portion of the power transmitted by the DE system is delivered to the transmission or
6 distribution system. The issue of net metering is unrelated to the purchase of RECs by
7 the utilities to comply with annual RES requirements through the payment of cash
8 compensation (i.e., upfront incentives or PBIs). Second, the application of the "Track
9 and Reduce" option would compromise the utilities' annual RES compliance requirement
10 where customers would retain the RECs from their DE systems and the utilities would
11 then reduce their retail kWh sales by the same amount.

12 **Q. WOULD APS' PROPOSAL REQUIRE A RULE CHANGE?**

13 A. Yes. The RES Rules specifically state that the utilities must acquire RECs, which are
14 directly derived from actual kWh energy production from an Eligible Renewable Energy
15 Resource. A conflict exists and would have to be addressed through a rule change.

16 **Q. SHOULD THE RES RULES BE WAIVED OR CHANGED?**

17 A. No. NRG does not support a temporary waiver from the DE requirement or a permanent
18 change in the RES Rules that would eliminate the DE carve-out requirement. There is no
19 urgent need to address a non-existent problem. By the utilities' own admission,
20 complying with the DE requirement will not become an issue for them until 2015 for
21 residential systems and 2019 for nonresidential systems.

22 **Q. DOES NRG SUPPORT ANY PORTION OF THE UTILITIES' PROPOSALS?**

23 A. Yes. NRG supports part of APS's revised proposal that allows customers to retain their
24 RECs in the absence of receiving compensation. However, NRG opposes the remaining

1 parts of APS's proposal – the imposition of a DE energy tracker for informational
2 purposes and the elimination of the DE requirement of the RES Rules.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 **A. Yes.**