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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

RECEIVED
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2013 MAY 8
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IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR APPROVAL
OF UPDATED GREEN POWER RATE
SCHEDULES 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
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
RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-04204A-12-0297

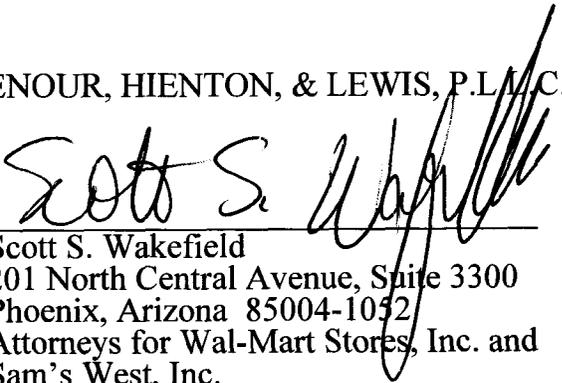
**WAL-MART STORES, INC. AND SAM'S WEST, INC.'S
NOTICE OF FILING REBUTTAL TESTIMONY**

1 Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively "Walmart"), hereby
2 provides notice of filing Rebuttal Testimony of Ken Baker in the above-referenced
3 matter.

4 Dated this 8th day of May, 2013.

5 RIDENOUR, HIENTON, & LEWIS, P.L.L.C.

6
7 By


8 Scott S. Wakefield
9 201 North Central Avenue, Suite 3300
10 Phoenix, Arizona 85004-1052
11 Attorneys for Wal-Mart Stores, Inc. and
12 Sam's West, Inc.

11 ORIGINAL and 13 copies filed
12 This 8th day of May, 2013 with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 W. Washington Street
16 Phoenix, AZ 85007

17 COPY of the foregoing HAND-
18 DELIVERED this 8th day of
19 May, 2013 to:

20 Lyn Farmer
21 Chief Administrative Law Judge
22 Hearing Division
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 Janice M. Alward, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Steven M. Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Teena Jibilian
2 Administrative Law Judge, Hearing
3 Division
4 Arizona Corporation Commission
5 1200 W. Washington
6 Phoenix, Arizona 85007

7 COPY of the foregoing MAILED
8 and/or EMAILED this 8th day of May,
9 2013 to:

10 Michael W. Patten
11 Roshka DeWulf & Patten, PLC
12 400 E. Van Buren St., Suite 800
13 Phoenix, Arizona 85004
14 mpatten@rdp-law.com
15 *Attorneys for Tucson Electric Power*
16 *and UNS Electric, Inc.*

17 Bradley S. Carroll
18 Tucson Electric Power Company
19 88 E. Broadway Blvd., MS HQE910
20 P.O. Box 711
21 Tucson, Arizona 85702
22 bcarroll@tep.com

23 Thomas Loquvam
24 Pinnacle West Capital Corporation
25 Law Department
26 400 N. 5th Street
Box 53999, MS 8695
Phoenix, Arizona 85072-3999
thomas.loquvam@pinnaclewest.com
Attorneys for Arizona Public Service

18 Jeffrey W. Johnson
19 Arizona Public Service
20 Mail Station 9708
21 P.O. Box 53999
22 Phoenix, Arizona 85072
23 Jeffrey.Johnson@aps.com

24 C. Webb Crockett
25 Fennemore Craig, PC
26 2394 E. Camelback Rd., Suite 600
Phoenix, Arizona 85016
wcrockett@fclaw.com
Attorneys for Freeport-McMoRan Copper & Gold, Inc.
and AECC

///

1 Court S. Rich
2 Rose Law Group, PC
3 6613 N. Scottsdale Road, Suite 200
4 Scottsdale, Arizona 85250
5 crich@roselawgroup.com
6 *Attorneys for Solar Energy Industries Association*

4 Michael L. Neary
5 Executive Director
6 Arizona Solar Industries Association
7 111 W. Renee Drive
8 Phoenix, Arizona 85027
9 mneary@arizonasolarindustry.org

8 Timothy M. Hogan
9 Arizona Center for Law in the Public
10 Interest
11 202 E. McDowell Road, Suite 153
12 Phoenix, AZ 85004
13 thogan@aclpi.org
14 *Attorneys for Western Resource
Advocates and the Vote Solar Initiative*

12 David Berry
13 Western Resource Advocates
14 P.O. Box 1064
15 Scottsdale, AZ 85252-1064
16 david.berry@westernresources.org

15 Annie C. Lappe
16 Rick Gilliam
17 The Vote Solar Initiative
18 1120 Pearl Street, Suite 200
19 Boulder, CO 80302
20 annie@votesolar.org
21 rick@votesolar.org

19 Jane Rodda
20 Administrative Law Judge, Hearing Division
21 Arizona Corporation Commission
22 400 W. Congress
23 Tucson, Arizona 87501

22 Kevin C. Higgins
23 Energy Strategies, LLC
24 215 S. State St., Suite 200
25 Salt Lake City, Utah 84111

25 Kevin Koch
26 612 N. 7th Avenue
Tucson, Arizona 85705

1 Christopher D. Thomas
2 Fred E. Breedlove III
3 Squire Sanders
4 1 East Washington, 27th Flr.
5 Phoenix, Arizona 85004
6 *Attorneys for Sonoran Solar, LLC*

7 Kyle J. Smith
8 General Attorney
9 Office of the Judge Advocate General
10 U.S. Army Legal Services Agency
11 9275 Gunston Road
12 Fort Belvoir, Virginia 22060
13 kyle.j.smith124.civ@mail.mil
14 *Attorney for United States Department of*
15 *Defense and all other Federal Executive*
16 *Agencies*

17 Douglas V. Fant
18 Law Offices of Douglas V. Fant
19 3655 W. Anthem Way, Suite A-109,
20 PMP 411
21 Anthem, Arizona 85060
22 dfantlaw@earthlink.net
23 *Attorney for Interwest Energy Alliance*

24 Daniel Pozefsky
25 Residential Utility Consumer Office
26 1110 W. Washington, Suite 220
Phoenix, Arizona 85007
DPozefsky@azruco.gov

Craig A. Marks
Craig A. Marks PC
10645 N. Tatum Blvd., Suite 200-676
Phoenix, Arizona 85028
Craig.Marks@azbar.org
Attorneys for NRG Solar

21 By: 

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REBUTTAL TESTIMONY OF
KENNETH E. BAKER
On Behalf of
WAL-MART STORES, INC. AND SAM'S WEST, INC.
May 8, 3013

Docket Nos. E-01345A-10-0394, E-01345A-12-0290,
E-01933A-12-0296 and E-04204A-12-0297

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Introduction

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Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION.

A. My name is Kenneth E. Baker. My business address is 2001 SE 10th St., Bentonville, AR 72716-0550. My title is Senior Manager for Sustainable Regulation for Wal-Mart Stores, Inc.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?

A. I am testifying on behalf of Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively "Walmart").

Q. DID YOU SUBMIT DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY SUBMITTED BY VARIOUS PARTIES IN THIS DOCKET?

A. Yes. I have reviewed the comments filed by the Renewable Energy Markets Association ("REMA"), and the testimony of Western Resource Advocates ("WRA"), The Vote Solar Initiative, the Solar Industry Energy Association ("SEIA"), the Department of Defense and all other Federal Executive Agencies, NRG Solar LLC, the Residential Utility Consumer Office and the Utilities Division ("Staff") of the Arizona Corporation Commission.

1 **Q. BASED UPON YOUR REVIEW OF THE DIRECT TESTIMONY**
2 **OF THE PARTIES LISTED ABOVE, ARE THERE ANY**
3 **REVISIONS YOU WISH TO MAKE IN YOUR DIRECT**
4 **TESTIMONY?**

5 A. No.

6 **Q. BASED UPON YOUR REVIEW OF THE DIRECT TESTIMONY**
7 **OF THE PARTIES LISTED ABOVE, ARE THERE ANY**
8 **ADDITIONS YOU WOULD LIKE TO MAKE TO YOUR**
9 **DIRECT TESTIMONY?**

10 A. Yes. Several parties/commenters including WRA, REMA, and The
11 Vote Solar Initiative expressed concerns that if a utility were required to
12 track the amount of incremental energy produced by DE systems in its
13 service territory and report that information to the Commission, it would
14 result in double counting of RECs.

15 **Q. DO YOU AGREE WITH THOSE ASSESSMENTS AS THEY**
16 **RELATE TO DOUBLE COUNTING?**

17 A. I believe that the proposal that I made in my Direct Testimony would
18 not result in a double count of RECs. If a utility were granted a
19 temporary waiver of the DE requirement of the RES rules as discussed
20 in my direct testimony, there would be no compliance obligation for it

1 to comply with. The information supplied to the Commission by the
2 utility would be strictly for informational purposes and not for satisfying
3 any type of compliance obligation.

4 It is my understanding that as long as the temporary waiver is not
5 based upon kWh production, no controversial issue would exist. My
6 proposal was that the entire DE requirement could be waived on a
7 temporary (year-to-year) basis as appropriate. Unlike the "Track and
8 Reduce" proposal by TEP and the "Track and Monitor" proposal by
9 Staff, the waiver I propose would not be based on the kWh production
10 of distributed generation systems, but would be a waiver from the full
11 amount of the DE requirement of the RES rules for a given year.

12 I have attached to my testimony as Exhibit "A" excerpts from the
13 Green-e Energy National Standard (Version 2.3) adopted by the Center
14 for Resource Solutions (CRS). Pursuant to this Standard, double
15 counting would result when "the same REC is used by an electricity
16 provider or utility **to meet an environmental mandate**, such as an
17 RPS, and is also used to satisfy customer sales under Green-e Energy"
18 (emphasis added). If the utility was granted a waiver from the RES DE
19 requirement for a particular year, and merely reported to the
20 Commission the kWhs generated by distributed resources

1 interconnected to its distribution system, the utility would not be using
2 such kWhs to "meet" any environmental mandate. I note that CRS's
3 comments filed in this docket on November 16, 2012 (attached hereto as
4 Exhibit "B") suggested that it "may be possible to craft a compliance
5 obligation waiver that preserved the value and ownership of the REC.
6 Such a policy would need to be carefully constructed, applied and
7 enforced such that the waiver was not dependent on renewable kWh of
8 generation by [DE] facilities." Contrary to the suggestion of some other
9 parties, it appears that kWhs reported to the Commission, but not
10 claimed to be satisfying a utility's RES DE requirement (because that
11 requirement was waived for a given year), or any other portion of the
12 utility's RES requirement, would not result in double counting as
13 defined by CRS in its Green-e National Standard.

14
15 **Q. BASED UPON THE TESTIMONY OF OTHER PARTIES IN**
16 **THIS DOCKET, ARE THERE ANY OTHER APPROACHES**
17 **WALMART WOULD CONSIDER APPROPRIATE?**

18 A. Yes. As proposed by SEIA (*see* Direct Testimony of Carrie Cullen Hitt,
19 pg.11 lines 4-14) "The Commission would grant the Utilities a one year
20 waiver from their DE compliance requirements immediately. During

1 that term of the waiver, the REC's associated with the installed DE
2 system would remain the property of the system's owner. During the
3 waiver period, the Utilities would track the energy produced by the DE
4 installations through the continued deployment of the DE production
5 meters and regularly report the amount of energy produced to the
6 Commission. This would give the parties additional information to
7 determine the appropriate way to move forward on a long term basis.
8 However, so as to maintain the integrity of the REC's associated with
9 the DE systems, the Utilities would not use that information to satisfy
10 any REST requirements...."

11 Walmart could support this process which would allow for the
12 parties to work together in hopes of formulating a long term solution
13 that could not only resolve the REC issues in Arizona but could become
14 a model for the rest of the country.

15 **Q. DOES THAT CONCLUDE YOUR REPLY TESTIMONY?**

16 **A. Yes.**

EXHIBIT A



Energy

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Center for Resource Solutions
1012 Torney Ave., 2nd Floor
San Francisco, CA 94129
415-561-2100
energy@green-e.org

Version 2.3 Released: April 23, 2013
Generation occurring on or after July 1,
2014 must comply with Version 2.3

Next Scheduled Revision: April 2018

promote their purchase must meet the requirements of the Green-e Marketplace Program: www.green-e.org/marketplace.

B. Vintage of Eligible Renewables

A Green-e Energy certified product may include only renewables that are generated in the calendar year in which the product is sold, the first three months of the following calendar year, or the last six months of the prior calendar year.

C. Fully Aggregated Renewables

Green-e Energy only certifies renewable energy products that are fully aggregated to the extent possible under law.

Green-e Energy certified MWh (electricity or REC) must contain all the greenhouse gas (GHG) emission reduction benefits, including carbon dioxide (CO₂) reduction benefits, associated with the MWh of renewable electricity when it was generated.

Emissions of other capped pollutants where allowances are not routinely assigned to renewable electricity generators¹² are not required to be included in Green-e Energy certified renewable electricity or RECs¹³.

D. Renewable Portfolio Standard (RPS) Renewables, Other Mandated Renewables, and Financial Incentives

Green-e Energy certified products must be comprised of eligible renewable generation over and above anything required by state or federal RPS requirements, legislation, or settlement agreements. If a utility or electricity marketer is subject to an RPS or other mandate or agreement, they must comply with it regardless of the existence of a voluntary market for renewable energy. If a participant in Green-e Energy is determined to be out of compliance with these obligations, or is selling renewables from a mandated facility, that may be grounds for decertification from Green-e Energy.

Renewable energy or RECs may not be used in a Green-e Energy certified product under the following circumstances:

- 1) The REC or the electricity from which the RECs are derived is being used simultaneously to meet a local, state, or federal energy mandate or other legal requirement; or
- 2) The RECs are derived from a renewable facility that has been mandated by a local, state, or federal government agency or was required under any legal requirement.

¹² For example, under the national sulfur dioxide cap, allowances are assigned to entities with compliance obligations, i.e. polluting entities.

¹³ As of 7/15/2010, such capped pollutants include sulfur dioxide nationally and the oxides of nitrogen regionally. For more details on marketing claims under the Green-e Energy program please see the Green-e Energy Code of Conduct and Customer Disclosure Requirements.

The sole exception to (1) and (2) is a facility that is generating renewable energy in excess of the government mandate or other legal contract, in which case that excess (either renewable electricity or the RECs associated with the renewable electricity) may be used in a Green-e Energy certified product.

If the product meets 100% of a customer's electricity use with eligible renewables, Green-e Energy allows a percentage of a product's content to be satisfied by renewable portfolio standard (RPS) state-mandated renewables up to the percentage RPS requirement. For example, if the RPS is set at 5% (either company based or product based), up to 5% of the Green-e Energy certified product can be satisfied with renewable power purchased to meet a mandated RPS requirement. This applies only to products that meet 100% of a customer's electricity use with Green-e Energy eligible renewables.

RECs or renewable energy from renewable generating facilities that obtain tax or financial incentive payments are eligible under Green-e Energy (to the extent allowed by law, regulation, and contract language governing the tax or financial incentives program).

E. Double Counting and Use of Utility Resources

Eligible RECs or renewable energy can be used once and only once; making a claim (e.g. stating "we buy wind power") is one example of a 'use' that results in retirement. Renewable energy or RECs (or the renewable or environmental attributes incorporated in that REC) that can be legitimately claimed by another party may NOT be used in Green-e Energy certified REC products.¹⁴ Examples of prohibited double uses include, but are not limited to:

- 1) When the same REC is sold by one party to more than one party, or any case where another party has a conflicting contract for the RECs or the renewable electricity;
- 2) When the same REC is claimed by more than one party, including any expressed or implied environmental claims made pursuant to electricity coming from a renewable energy resource, environmental labeling or disclosure requirements. This includes representing the energy from which RECs are derived as renewable in calculating another entity's product or portfolio resource mix for the purposes of marketing or disclosure;
- 3) When the same REC is used by an electricity provider or utility to meet an environmental mandate, such as an RPS, and is also used to satisfy customer sales under Green-e Energy; or
- 4) Use of one or more attributes of the renewable energy or REC by another party (See Section III.C. "Fully Aggregated Renewables" for details). This includes when a REC is simultaneously sold to represent 'renewable electricity' to one party, and one or more

¹⁴ If the owner of a renewable generation facility is reporting direct greenhouse gas emissions in a legally binding (through voluntary agreement, law or regulation) cap-and-trade program and the renewable energy facility is included within the organizational boundary in the reporting structure, the following applies: Renewable energy facilities that are owned by entities participating in a legally binding greenhouse gas cap-and-trade program are ineligible under Green-e Energy. Green-e Energy may grant exceptions on a case-by-case basis if the cap-and-trade program has an accounting mechanism that assures that the GHG emissions benefits of renewable electricity and/or RECs are not double counted or double claimed, such as exists in nine out of 10 states participating in the Regional Greenhouse Gas Initiative (RGGI). Future cap-and-trade systems will be considered as they are developed.

Attributes associated with the same MWh of generation (such as CO2 reduction) are also sold, to another party.

When a utility is involved in a REC transaction, either as a generator, a purchaser of RECs, or a purchaser of the commodity electricity from which the RECs have been derived, the local utility commissions in the states where the electricity was generated and where the electricity is sold must be notified of the transactions and, in some cases, of the money received by the utility.

F. Customer-Sited Facilities

On-grid customer sited (behind the meter) facilities that meet the eligible renewables definition are eligible sources for Green-e Energy. Customer sited off-grid renewables are not eligible. Any generation unit less than or equal to 10 kW may use a conservative engineering estimate of output. CRS must pre-approve the estimation methodology. Systems over 10 kW must be metered.

Customer-sited generators (such as net-metered solar) cannot claim to be selling/supplying renewable electricity if they sell the RECs (in part or in whole) separately.

G. Location of Eligible Generation Facilities

Renewable electricity generation facilities supplying renewable MWh to Green-e Energy certified renewable energy products may only be located in: the 50 US states; Puerto Rico; Canada; or portions of North American Electricity Reliability Corporation regions located in Mexico. Eligibility of other locations outside of these areas will be considered and decided upon by the Green-e Governance Board on a case-by-case basis. Additional geographic restrictions apply to utility green pricing and competitive electricity products; see section IV.A and IV.B.

IV. ADDITIONAL CRITERIA FOR COMPETITIVE ELECTRICITY AND UTILITY GREEN PRICING PRODUCTS

A. Geographic Eligibility for Electricity Products¹⁵

For electricity products (i.e. products used to meet a customer's electricity needs), provider can source from one or more of the following geographic boundaries:

- a) The state where the customer is located; and/or
- b) The North American Electric Reliability Corporation (NERC) region, Independent System Operator (ISO), Regional Transmission Organization (RTO) or Balancing Authority Area of the customer being served; and/or

¹⁵ For Green-e Energy certified products sold in Connecticut under the CT DPUC ATSO Program, renewable resources can be sourced from eligible renewable facilities located in New England, New York, New Jersey, Delaware, Pennsylvania and/or Maryland consistent with the CT DPUC ATSO rules. This change will remain in effect as long as the CT DPUC ATSO rules are in effect.

EXHIBIT B

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CRS

resource solutions



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OPEN MEETING AGENDA ITEM

E-01345A-12-0290
E-01345A-10-0394

AZ CORPORATION COMMISSION
DOCKET CONTROL

November 15, 2012

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Arizona Corporation Commission
DOCKETED

NOV 16 2012

Paul Newman
Commissioner
Arizona Corporation Commission
Commissioners Wing
1200 W. Washington - 2nd Floor
Phoenix, Arizona 85007

DOCKETED BY

Dear Commissioner Newman,

The Center for Resource Solutions (CRS) appreciates the opportunity to provide input to the Arizona Corporation Commission (the Commission) on the proposed Track and Record option for utilities to use kilowatt-hours (kWh) from interconnected distributed generation (DG) for compliance with Arizona's Renewable Energy Standard and Tariff (REST), instead of using Renewable Energy Certificates (RECs). CRS is a nonprofit organization that creates policy and market solutions to advance sustainable energy and mitigate climate change.

CRS administers Green-e® Energy, the nation's leading independent certification and verification consumer protection program for renewable energy sold in the voluntary market. Green-e Energy certifies and verifies over two thirds of the U.S. voluntary renewable energy market and an even higher proportion of U.S. voluntary REC sales. CRS's role in this market is to protect the voluntary consumer against double counting and false claims, and ensure the purchaser of renewable energy that they are receiving all of the attributes of renewable energy generation that they were promised.

A Track and Record approach uses kWh from interconnected DG for REST compliance and will negatively impact the voluntary market for RECs in Arizona, as well as complicate utilities' REST compliance obligations. As I am sure you are aware, REST currently requires Arizona utilities to procure RECs for compliance obligations, not kWhs.¹ Without a corresponding change in the REST legislation, utilities will be unable to use kWh from interconnected DG facilities for REST compliance.

Enabling utilities to use kWh from customer DG facilities instead of RECs for REST purposes would effectively destroy the market for voluntary RECs from DG in Arizona, and may prevent such RECs' access to other RPS markets as well. The Arizona voluntary REC market is thriving, in large part because the owners of DG facilities are able to claim the RECs produced from the renewable energy and sell them in either the voluntary or the compliance market. In 2010, Arizona had approximately 3,200 residential customers and 80 non-residential customers purchase renewable energy in the voluntary market, and Arizona renewable generators generated nearly 28,000 MWh that were sold into the voluntary REC market.²

WREGIS and independent REC certification organizations like Green-e Energy require that RECs be fully aggregated, and that none of the attributes of renewable energy generation have been stripped, sold

¹ See Renewable Energy Standard and Tariff, §R14-2-1805, available at <http://www.azcc.gov/divisions/utilities/electric/res.pdf>.

² Data collected from Green-e Energy Verification 2010.

separately, or double counted. Under the Track and Record approach kWh from the renewable DG facility are effectively credited to the utility company for REST compliance. 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. If any Arizona DG owners are tracking their RECs in WREGIS, selling their RECs would be in violation of the WREGIS Terms of Use, which require all RECs tracked in the system to be fully bundled and not have attributes counted or claimed elsewhere.

A similar proposal was adopted in Hawaii with devastating effects on the voluntary market for DG RECs.³ When Hawaii modified its RPS eligibility rules to count all customer-sited, grid-connected renewable generation toward the state's RPS goal, Green-e Energy disallowed RECs generated in Hawaii from participating in the program to prevent the double counting of the renewable attributes.⁴ This decision has effectively eliminated the opportunity for renewable generators in Hawaii to participate in the voluntary REC market, an outcome that would also affect Arizona DG customers should this proposal move forward.

Finally, using the Track and Record approach for REST compliance would create tremendous administrative complexity by requiring the utility to track, by sector, whether they are using kWhs or RECs to meet their REST targets. This creates an unnecessary administrative burden, both on Arizona utilities and the Commission and potentially exposes the Commission to Takings Clause challenges.

CRS encourages the Commission to reject the Track and Record approach to REST compliance, and to pursue alternative market mechanisms that would enable utilities to purchase and aggregate RECs from DG to count towards REST compliance. Solutions such as a standard offer to DG customers for their RECs or using REC brokers to help aggregate DG RECs for sale to utilities will maintain the stability of the existing voluntary REC market, and avoid unnecessary expense and uncertainty associated with a radical change to REST eligibility and compliance.

CRS believes that this market based approach is the best option, however if this option is not viable there may be another option that would retain viability of the voluntary REC market, thereby allowing Arizona generators to sell RECs out of state. It may be possible to craft a compliance obligation waiver that preserved the value and ownership of the REC. Such a policy would need to be carefully constructed, applied and enforced such that the waiver was not dependent on renewable kWh of generation by DG facilities. Further, the Commission and utilities would need to be very clear that the utilities are not meeting their REST obligations. CRS strongly recommends that for whatever compliance amount of DG RECs are waived, that an equal amount of replacement Arizona solar RECs be attained. Replacing the DG RECs previously required under the REST will have the impact of reducing the likelihood of confusion as to the amount of renewable kWh actually delivered to Arizona customers.

³ See *Green-e Energy National Standard*, Center for Resource Solutions, 22 (2011). Available at: http://www.green-e.org/docs/energy/Appendix%20D_Green-e%20Energy%20National%20Standard.pdf.

⁴ *Id.*

CRS urges the Commission to consider the impact of the Track and Record proposal on Arizona renewable energy generators and customers and to ensure that the renewable energy industry continues to thrive in Arizona. Thank you for accepting and considering our input. Please do not hesitate to contact us should you have questions regarding the Green-e Energy program or the impact of this proposal on the voluntary renewable energy market in Arizona.

Sincerely,



Robin Quarrier

Counsel

Center for Resource Solutions

415-568-4285

robin@resource-solutions.org