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REPLY TO
ATTENTION OF
Regulatory Law Office

2013 AUG 22 August 22, 2013

VIA FEDERAL EXPRESS

Docket Control Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Subject: DoD/FEA's Notice of Filing Brief

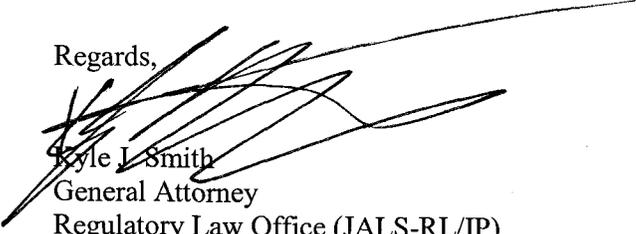
Re: Docket Nos. E-01345A-10-0394; E-01345A-12-0290; E-01933A-12-0296;
E-04204A-12-0297 (Consolidated)

Dear Clerk:

Please find attached hereto the U.S. Department of Defense and all other Federal Executive Agencies' ("DoD/FEA") Brief in the above captioned consolidated matter, together with thirteen (13) copies of same.

Thank you in advance for your attention to this important matter. Please call if there are any problems or if any further action is needed. I can be reached at (703) 693 - 1274 or by e-mail at kyle.j.smith124.civ@mail.mil.

Regards,


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Enclosure: DoD/FEA Brief

Cc: See Service List

Arizona Corporation Commission
DOCKETED
AUG 22 2013

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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 ELECTIC, 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

**THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL
EXECUTIVE AGENCIES' BRIEF**

I. SUMMARY OF ARGUMENT

Arizona has established its Renewable Energy Standard and Tariff ("REST") rules, requiring utilities to serve a percentage of their customers load with renewable energy. The REST rules additionally require that a portion of this renewable energy come from commercial and residential customer sited generation sources. Renewable Energy Credits – defined in the rules as “the unit created to track kWh derived from an Eligible Renewable

Energy Resource” – are used to track compliance with the REST requirements.¹ Traditionally, utilities have paid incentives to obtain the RECs derived from customer sited generation.

The United States Department of Defense and all other Federal Executive Agencies (“DoD/FEA”) have their own requirements and goals, established by Federal statute and Executive Order, to serve a certain percentage of their total electric consumption from renewable energy sources. Pursuant to Department of Energy Guidelines, DoD/FEA uses its RECs for compliance, or to make projects economically viable by transferring them for value. RECs that are used to meet state requirements cannot be counted toward DoD/FEA’s Federal compliance requirements or transferred for value; if RECs are claimed for two purposes, i.e. for a utility’s REST requirements and Federal requirements, double counting would occur.

To meet their Federal requirements and goals, DoD/FEA have made significant investments in renewable energy projects in Arizona, including: The Department of Veterans Affairs (“VA”) has invested over \$50 million to develop approximately 10.6 MW of solar photovoltaic generating capacity, with future investments planned; a 14.5 MW solar photovoltaic project is currently being constructed on Davis-Monthan Air Force Base; and the Army is planning construction of approximately 20 MW of solar photovoltaic generating capacity at Fort Huachuca and/or Yuma Proving Ground.

Now, changes to the REST are being contemplated that may compromise the integrity of all RECs from customer sited generation in Arizona, including DoD/FEA’s. Several policy proposals have been presented by various parties in this docket for how RECs should be obtained and used for utilities’ compliance requirements in Arizona,

¹ See Arizona Administrative Code §§ R14-2-1801(N) and R14-2-1804.

absent utilities paying up front incentives in exchange for long term REC purchase agreements. Given DoD/FEA's significant investments in renewable energy in Arizona, and their use of RECs for their own Federal compliance requirements, DoD/FEA assert that any policy adopted by the Commission should maintain the viability of RECs and should not result in double counting. In the alternative, a waiver from any policy that takes RECs without just compensation and an explicit transfer agreement should be granted for customers with their own compliance requirements like DoD/FEA. Any policy that results in double counting, or that automatically transfers RECs to utilities without just compensation, would deprive DoD/FEA of a benefit of its investments in renewable energy, and may result in future renewable projects planned in Arizona being canceled or diverted to another state. At an absolute minimum, any change in policy that results in a transfer of RECs without just compensation should only apply to future projects where no agreements have been executed, and not to existing projects or existing contractual relationships.

II. THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' RENEWABLE ENERGY REQUIREMENTS

The Energy Policy Act of 2005 ("EPACT 2005") requires, in part, that 7.5% of all energy consumed by the Federal government each year originate from renewable energy sources.² Executive Order 13423 ("EO13423") requires that half of the 7.5% renewable requirement originate from renewable energy sources placed in service after January 1, 1999, and promotes development of renewable generation projects on Federal Agency

² Renewable Energy Requirement Guidance for EPACT 2005 and Executive Order 13423 marked as DoD/FEA Exhibit 4 at pg. 1.

property for that agency's use.³ Renewable Energy Credits ("RECs") are used to determine compliance with both EPACT 2005 and EO13423.⁴

DoD/FEA has received specific guidance ("Guidance") from the Department of Energy ("DOE") on how RECs must be used to comply with the requirements of EPACT 2005 and EO13423.⁵ The DOE Guidance explicitly contains a prohibition against double counting, stating as follows:

RECs that count toward the EPACT 2005 and EO13423 Requirements cannot be double counted[.] *It is important to protect the credibility of RECs in the general market where they are traded, and double counting could jeopardize that credibility.* (emphasis added)⁶

The DOE Guidance goes on to define double counting as occurring when:

- a) more than one party at the same time claims the renewable energy attributes from renewable energy generation (as either RECs or as renewable energy), i.e., the renewable energy is "double sold" to other customers; or
- b) *the renewable energy counted toward the agency's goal is also used to meet a renewable portfolio standard or other federal, state, or local regulatory requirement, except for the exemptions provided to projects initiated prior to final publication of this guidance; or*
- c) non-energy attributes such as emissions credits/allowances or other environmental attributes are further disaggregated from the renewable attributes by the renewable energy/REC supplier and sold separately. (emphasis added)⁷

Additionally, the DOE Guidance requires DoD/FEA to retain their RECs, stating:

It is expected that Federal renewable energy use under EPACT 2005 and EO13423 will result in renewable energy use beyond the existing state renewable portfolio standard (RPS) goals. Any RECs sold or relinquished to meet State RPS goals or corporate renewable energy goals that are not replaced with other RECs do not contribute to the goals established by EPACT 2005 or EO13423. This is to prevent Federal agencies from claiming credit for renewable energy attributes that are also claimed by

³ *Id.* at pg 1 -3.

⁴ *Id.* at pg. 4.

⁵ *Id.*

⁶ *Id.* at pg. 6.

⁷ *Id.* at pg. 7.

other parties such as states or corporations (see Section 3.1.4.2). Therefore, agencies are required to retain ownership of the RECs from projects in order to count them toward EPACT 2005 or EO13423 Requirements.⁸

DoD/FEA use RECs in accordance with this Guidance to count toward compliance with the EPACT 2005 and EO13423. In some instances, DoD/FEA installations sell RECs, either to a third party or to a utility, where such an arrangement increases the economic viability of a project. When RECs are transferred for value to make renewable projects more cost effective, a DoD/FEA department may purchase replacement RECs on the open market to count toward its compliance requirements. REC integrity is essential to DoD/FEA's use of RECs; if REC integrity is compromised by allowing a utility to claim RECs without an explicit transfer supported by adequate consideration, those RECs could not be used toward Federal compliance requirements or transferred for value.

III. THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' RENEWABLE ENERGY PROJECTS IN ARIZONA

For obvious reasons to anyone who lives or has visited this great state, Arizona is a very attractive place to build solar energy facilities. To take advantage of the abundance of consistent, reliable sunshine, DoD/FEA has invested in solar facilities in Arizona, with plans for future investments. These investments were made, in part, due to the existing REST rules that allow for DoD/FEA to use RECs generated at their Arizona facilities for Federal compliance requirements, or to transfer them for value as needed and DOE guidance allows.

Among the DoD/FEA agencies and departments that have made investments in Arizona solar, the VA has invested over \$50 million on existing solar projects without

⁸ *Id.* at pg. 8. Agencies are allowed to swap or trade RECs in certain instances, as described in Section 3.2.2.

taking incentives from utilities.⁹ The VA has built customer sited solar photovoltaic generation in Phoenix, Prescott, and Tucson, amounting to over 10.6 MW of capacity collectively.¹⁰ VA also has future investments in solar generation planned in Arizona.¹¹

The Department of the Air Force (“AF”) is in the process of having a 14.5 MW solar photovoltaic facility constructed on Davis-Monthan Air Force Base. For the Davis-Monthan Project, AF has transferred the RECs to a third party to reduce the costs of energy purchased from the third party, and the third party has transferred those RECs for value to Tucson Electric Power. These transfers are made pursuant to fully executed enforceable contracts.

The Department of the Army (“Army”) is in the process of planning several installations in Arizona. Projects are being evaluated at Fort Huachuca and Yuma Proving Ground.¹² RECs play a critical role in Army’s planning of future projects in Arizona.¹³ Army is exploring different options for using RECs to make projects more cost effective or for Federal compliance requirements.¹⁴

**IV. ANY POLICY ADOPTED BY THE COMMISSION SHOULD PROTECT
AGAINST DOUBLE COUNTING OF RENEWABLE ENERGY
CREDITS**

This consolidated docket was initiated to respond to the inquiry by the Commission of how utilities should acquire RECs in the future, absent providing up-front incentives, and what REST rules would need to change in order to effectuate this process. It is significant to note that the REST requirement that 15% of a utility’s annual retail kWh

⁹ Direct Testimony of Cynthia J. Córdoba marked as DoD/FEA Exhibit 1 at pg. 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Direct Testimony of Kathy Ahsing, P.E. marked as DoD/FEA Exhibit 2 at pg. 5.

¹³ *Id.* at 6.

¹⁴ *Id.*

sales be derived from renewable sources by 2024 is still in its early stages, with only 4% being required this year and 4.5% in 2014.¹⁵

In response to the Commission's inquiry, the utilities, staff, and several interveners have proposed various different approaches, which have been explained in more detail by the presenting party. Some of these proposals, namely Staff's proposal and Tucson Electric Power Company's ("TEP") proposal, may grant utilities' the ability to claim RECs without entering into an explicit agreement, supported by consideration, for them and to use those RECs toward their compliance requirements. RECs, or the renewable attribute of energy, used by utilities for REST compliance cannot be used by DoD/FEA for any other purpose, or double counting would occur. For this reason, DoD/FEA strongly opposes any policy that would allow utilities to claim RECs without an explicit agreement supported by adequate consideration. In addition to the problem of double counting, a policy that allows utilities to take RECs without a transfer supported by consideration may result in a regulatory taking. For the aforementioned reasons, DoD/FEA opposes Staff's proposal and TEP's proposal.

Any proposal that would result in DoD/FEA's inability to use their RECs due to double counting should not be adopted by the Commission. DoD/FEA have made significant investments in renewable generation in Arizona, and any policy that resulted in double counting would deprive DoD/FEA of this investment and may detrimentally affect existing contractual agreements. Moreover, if a policy that resulted in double counting were adopted, it is likely that any plans for DoD/FEA to develop additional renewable energy projects in Arizona would be abandoned. At a bare minimum, if the Commission chooses to adopt a policy that erodes or destroys REC integrity, such policy should not

¹⁵ See Arizona Administrative Code R14-2-1804.

affect existing projects or planned projects where binding agreements are in place. Investments and agreements that have already been made based on the policies currently in effect should not be affected or undermined by any changes ultimately adopted.

While DoD/FEA does not advocate for any specific policy on RECs in Arizona, it does not oppose proposals that do not implicate double counting. Policies that maintain the integrity of RECs and a party's ability to use its RECs as it sees fit are the only policies that should be considered acceptable by the Commission. Among the acceptable policies are market based proposals where a firm offer or auction process would be established for utilities to procure RECs, Arizona Public Service Company's proposal, and the Residential Utility Consumer Office's ("RUCO") modified baseline proposal.¹⁶

V. CONCLUSION

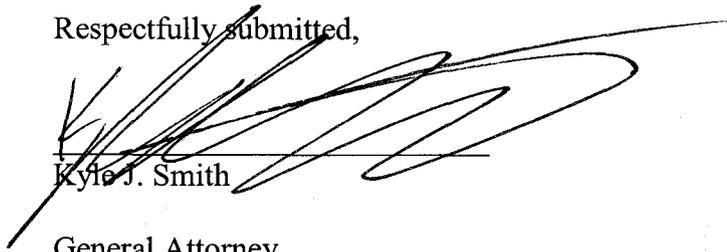
DoD/FEA has invested heavily in solar photovoltaic generation in Arizona, with substantial projects planned in the future. RECs are used by DoD/FEA for its own Federal renewable energy requirements, or to increase the economic viability of projects. Any change in REC policy that results in double counting of RECs could severely inhibit the growth of renewable generation in Arizona, and may result in the abandonment of future DoD/FEA projects planned in Arizona.

Arizona, with its abundance of sun, is a leader in solar renewable energy, and it should not adopt policies that could diminish its standing. Any policy regarding RECs adopted by the commission should maintain REC integrity and avoid double counting.

¹⁶ RUCO presented a witness from the Center for Resource Solutions ("CRS"), Jennifer Martin. CRS certifies more than ninety percent of U.S. voluntary retail REC sales. Jennifer Martin was called on to testify on whether individual proposals would result in double counting. As a national leader in certification of RECs to ensure that double counting doesn't occur, it would be prudent give weight to this testimony and to seek guidance from CRS on whether any proposal chosen by the Commission results in double counting before such proposal is adopted, to ensure REC integrity is safeguarded.

Several proposals put forward in this docket achieve this goal. While the Commission should not adopt a policy that diminishes or destroys REC integrity in Arizona, if such a policy is adopted, it should not affect existing projects or agreements in place before the new policy is in effect.

Respectfully submitted,



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For
The United States Department of Defense
And
All Other Federal Executive Agencies

SERVICE LIST

The original and thirteen (13) copies of the foregoing is being transmitted Federal Express overnight delivery this 21st day of August 2013 to be received and filed on the 22nd day of August 2013 with:

Docket Control Division
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A copy of same is being served by e-mail or first class mail on the date of filing (August 22nd, 2013) to the following:

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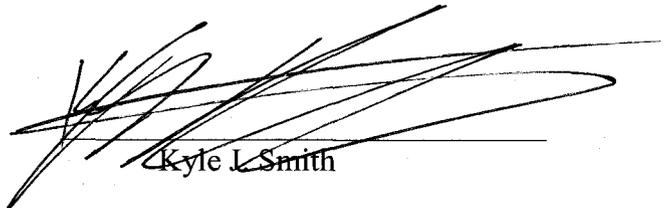
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