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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
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

INITIAL BRIEF OF NRG SOLAR LLC

Arizona Corporation Commission

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1 **INITIAL BRIEF OF NRG SOLAR LLC**

2 **I Introduction**

3 This proceeding concerns the future distributed energy requirements for three Arizona
4 electric utilities: Arizona Public Service Company (“APS”), Tucson Electric Power Company
5 (“TEP”), and UNS Electric, Inc. (“UNS”) in the above-captioned dockets.¹ There is one stated
6 issue in this proceeding: whether the Utilities should be allowed, in the absence of payment of
7 cash incentives, to use “track and record” as the means of securing compliance with their
8 Distributed Renewable Energy (“DE”) Requirements under the Renewable Energy Standard
9 Rules (“RES”).²

10 In order to preserve the Commercial REC markets, NRG Solar LLC (“NRG Solar”)
11 recommends the following steps:

- 12 1. REC owners should retain their RECs unless the utilities purchase them.
- 13 2. The Commission should provide utilities a temporary waiver of their DE purchase
14 requirements, which would maintain the full value of RECs by preventing double
15 counting.
- 16 3. The Commission should conduct a rulemaking to determine whether and how to
17 modify the current RES rules permanently.

18 There were a large number of proposals by the other parties concerning if and how the
19 Commission’s current DE Requirement should be modified. Much of the testimony concerned a
20 single term: “Renewable Energy Credit” (“REC”). The Commission’s rules define a REC as
21 “the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh
22 equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy
23 Resources.” R14-2-1801(N). The Green-e Energy National Standard (Version 2.3) refers to a
24 REC, a Renewable Energy Certificate, in a similar manner.³

¹ See Decisions No. 72636, 73637, and 73678, respectively, all dated January 31, 2013.

² Procedural Order dated February 15, 2013, as amended by Procedural Order dated March 13, 2013.

³ A Renewable Energy Certificate is created in essentially the same way as Renewable Energy Credit, except that it is measured in MWh instead of kWh.

1 We will refer to a REC used to comply with the Arizona RES as a Compliance REC and
2 a REC used for compliance with the voluntary market as a Commercial REC. To comply with
3 the RES rules, Arizona electric utilities have been required to purchase Compliance RECs from
4 eligible renewable facilities that produce them.⁴ At the same time, there is a voluntary Arizona
5 market comprised of eligible renewable facilities that have not sold their RECs to utilities.
6 Instead, either the developer retains the RECs for use in the voluntary commercial market, or the
7 facility owner sells the RECs to purchasers in the commercial market. Purchasers may use the
8 acquired Commercial RECs for various purposes, such as to satisfy federal renewable-resource
9 programs or to facilitate green marketing programs. “The Army has made renewable energy a
10 key component to meet this objective, and it, as well as the Navy and Air Force, have each set an
11 ambitious goal for deploying one gigawatt (GW) of renewable energy by 2025.”⁵ The
12 Commercial REC market has allowed vendors to install “22 installations, 62 million kilowatt
13 hours in 2012 of solar” for Wal-Mart and Sam’s Club, where the vendors retained the Market
14 RECS for sales in other markets.⁶

15 The greatest controversy in this proceeding results from the dual purposes for RECs –
16 they may be purchased by utilities for RES compliance purposes or retained by the vendor or
17 facility owner as part of the commercial market. Many parties, including NRG Solar, believe
18 that several of the proposals in this case would, if adopted, allow utilities to claim Commercial
19 RECs for RES compliance purposes without providing cash compensation to REC owners. This
20 would jeopardize not only the property rights of REC owners but also the healthy operation of
21 the voluntary commercial market.

22 **II The APS “Track and Monitor” Proposal Is Generally Acceptable to NRG and Most**
23 **Parties**

24 Arizona Public Service Company (“APS”) proposed “that the Commission implement a
25 Track and Record policy that would no longer require APS (and other Affected Utilities, as

⁴ R14-2-1804.

⁵ Direct Testimony of Kathy Ahsing (Exhibit FEA/DOD-3) at 3:34-36.

⁶ Tr. 377:14 – 378:4.

1 appropriate) to obtain RECs from DE sources as contemplated in A.A.C. RI4-2-1805.”⁷ The
2 Commission would eliminate the “requirement that Affected Utilities acquire a particular amount
3 of RECs from DE.”⁸ Utilities would “track the energy produced by DE installations through the
4 continued deployment of DE production meters and annually report the amount of that energy to
5 the Commission for informational purposes, rather than for compliance purposes.”⁹

6 The modified APS policy was the most generally acceptable of those put forth by APS,
7 TEP, Unisource, the Staff, and RUCO. As discussed below, NRG Solar generally supports the
8 modified APS proposal, except that instead of permanently eliminating the DE purchase
9 requirement, NRG Solar prefers a temporary waiver of the purchase requirement, followed by a
10 collaborative rulemaking to allow all parties to present their proposals concerning if and how to
11 permanently modify the current RES rules regarding the DE requirement.

12 **III The Parties Agree that the Commission Should Take No Actions to Abridge**
13 **Property Rights or Disturb the Commercial DE Market**

14 At present, RECs can be sold to Arizona utilities for RES compliance purposes
15 (Compliance RECs). RECS may also be retained for other purposes including sales to out-of-
16 state utilities for their own regulatory compliance, or to satisfy federal or corporate green energy
17 commitments (Commercial RECs). Currently, Arizona utilities must actually purchase all RECs
18 used for DE compliance purposes, so fair compensation is paid for each REC.

19 NRG Solar explained how the Commercial REC market is and should be conducted:

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

⁷ Direct Testimony of Gregory L. Bernosky (Exhibit APS-1) at 2:17-19. DE refers to Distributed Renewable Energy Resources as that term is defined in the Rules. R14-2-1802(B).

⁸ Exhibit APS-1 at 2:25-26.

⁹ Id. at 2:21-24.

1 customers' distributed solar systems for either compliance or informational
2 purposes.¹⁰

3 Because a Commercial REC has intrinsic economic value, the owner of a Commercial
4 REC has a property right attendant to those RECs. With the exception of TEP/Unisource, the
5 parties agreed that the Commission should take no actions to abridge those property rights.
6 Again, with the exception of TEP/Unisource, the parties agreed to the related position that the
7 Commission should not modify the current DE rules in any way that would disturb the
8 Commercial DE Market.

9 **IV NRG Solar's Position – Arizona's Distributed Energy Requirements Can Be**
10 **Modified Without Jeopardizing the Commercial DE Market**

11 NRG Solar is one of the largest solar companies in the nation, with approximately 2,000
12 MW of projects in operation and development, which range from large-scale utility photovoltaic
13 and thermal to distributed generation."¹¹ NRG Solar presented its testimony through the Direct
14 Testimony of Diane Fellman (Exhibit NRG-1) and the Surrebuttal Testimony of Diane Fellman
15 (Exhibit NRG-2). Ms. Fellman is Director of Regulatory and Governmental Affairs for NRG
16 Energy, the parent of NRG Solar.¹² Ms. Fellman has over 40-years experience in the energy
17 industry.¹³ Ms. Fellman provided NRG Solar's position in this case in her Direct Testimony, as
18 modified by her Surrebuttal Testimony.¹⁴

19 NRG's major concern was preserving the viability of Arizona's commercial DE market:

20 In the absence of cash incentives, it is critical for solar developers to have the
21 ability to retain their REC property rights. Without these rights, the market
22 opportunities for further solar development outside of the Commission
23 mandated RES program would be diminished, if not eliminated.¹⁵

24 To preserve the Commercial REC market, NRG Solar makes three recommendations:

¹⁰ Direct Testimony of Diane Fellman (Exhibit NRG-1) at 4:19-26.

¹¹ Exhibit NRG-1 at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ Exhibits NRG-1 and NRG-2.

¹⁵ Exhibit NRG-1 at 2:20-24.

1 1. Unless they are purchased by the utility, RECs should be retained by the customer
2 or the entity leasing the solar system or entering into a PPA for the solar system,
3 depending on the particular contractual arrangement.¹⁶

4 2. The Commission should provide utilities a temporary waiver of their DE purchase
5 requirements.¹⁷ The DE purchase waiver is key to preserving the value of RECs by
6 preventing REC double counting (as discussed below).

7 3. The Commission should conduct a rulemaking to determine whether and how to
8 permanently modify the current RES rules.¹⁸ The temporary waiver of the DE purchase
9 requirements would last until the conclusion of the rulemaking.

10 **V Other Proposals Could Jeopardize the Arizona Commercial DE Market**

11 **A The Proposals of TEP/Unisource and Staff Would Double-Count RECs and**
12 **Destroy their Value**

13 TEP/Unisource propose that the Commission hold a rulemaking to eliminate the DE
14 purchase requirement from the RES rules.¹⁹ NRG Solar does not support such a drastic remedy
15 for a non-existent problem.

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

21 Until its recommended rulemaking is completed, TEP suggests three alternatives to the
22 Commission. The first option calls for the Commission to provide the utilities a temporary
23 waiver of the DE purchase requirements until the rulemaking is completed.²¹ Although, as
24 discussed above, NRG Solar does not support elimination of the DE purchase requirement, NRG
25 Solar does support a temporary waiver of the DE purchase requirement until a rulemaking is
26 completed.

¹⁶ Exhibit NRG-1 at 4:19-21.

¹⁷ Exhibit NRG-2 at 2:16-22.

¹⁸ Exhibit NRG-1 at 6:12-15; NRG-2 at 2:8-11.

¹⁹ Direct Testimony of Carmine Tilghman (Exhibit TEP-1) at 6:1-17.

²⁰ Exhibit NRG-1 at 6:17-21.

²¹ Exhibit TEP-1 at 7:21-26.

1 TEP's second option requires generators in its service territory to transfer their RECS in
2 exchange for the "benefits" of net metering.²² There are two flaws in this suggestion. First, the
3 utility should not receive all RECs in exchange, particularly where only a small portion of the
4 power transmitted by the DE system is delivered to the transmission or distribution system.²³
5 The customer generally consumes most, if not all, of the kWh generated by the solar installation
6 during the hotter months throughout the year. Giving up all the associated RECs in exchange for
7 net metering would take private property without adequate cash compensation. Second, the issue
8 of net metering is unrelated to the purchase of RECs by the utilities to comply with annual RES
9 requirements through the payment of cash compensation (i.e., upfront incentives or PBIs).²⁴

10 TEP's third option recommends that the Commission approve a "Track-and-Reduce"
11 methodology, whereby the Commission would reduce each utility's annual purchase requirement
12 by the amount of installed DE in its service territory.²⁵ This proposal is fatally flawed because it
13 would double-count RECs and destroy their value in the Commercial DE market. According to
14 The Center for Resource Solutions, RECs or renewable energy can be used only once by a party
15 and another party cannot claim those same RECs or other attributes for Green-e Energy
16 certification.²⁶ In addition, the sustainability programs of various federal agencies and many
17 companies have similar REC guidelines.²⁷

18 The Center for Resource Solutions ("CRS") is a non-profit corporation that, through its
19 Green-e Energy program, certifies Commercial RECs.²⁸ This certification assures the purchaser
20 that RECs are generated from renewable resources and that the amount of the generation is

²² *Id.* at 8:1-5.

²³ Exhibit NRG-1 at 6:4-6

²⁴ *Id.* at 6:6-8.

²⁵ Exhibit TEP-1 at 8:7-17.

²⁶ NRG-2 at 1:21-23, citing Center for Resource Solutions, *Green-e Energy, National Standard Version 2.3*, at p. 9;
http://www.green-e.org/docs/energy/Appendix%20D_Green-e%20Energy%20National%20Standard.pdf

²⁷ NRG-2 at 1:23-24

²⁸ Direct Testimony of Jennifer Martin (RUCO-4) at pp. 1 – 2.

1 accurate and free from double counting.²⁹ Preserving the value of Commercial RECs through
2 CRS certification is critical to NRG Solar and other participants in the commercial DE market.

3 Q. (Mr. Marks) And do the CRS rules govern certification of rules for the
4 voluntary market?

5 A. (Ms. Fellman) Yes.

6 Q. And what is the role of the voluntary market for NRG?

7 A. For NRG, in addition to our utility off-taker transactions across the
8 country, and in Arizona in particular, we are also in negotiations to build
9 and sell the solar off-take of projects ranging from utility scale down to
10 distributed energy projects, so from 200 megawatts to two kilowatts. And
11 we would be selling those to private entities as off-takers or public
12 agencies and the government such as the Department of Defense.

13 Q. And are RECs necessary as adjuncts to those transactions?

14 A. Absolutely. The REC is the value of the renewableness that each of those
15 private off-takers or government off-takers can use for purposes of
16 meeting their specific corporate or government goals as we heard earlier in
17 the testimony from the witnesses from DoD.³⁰

18 If the Commission were to reduce a utility's DE purchase requirements by the total of all
19 DE generation in its services territory, this would count the generation toward the Arizona RES.

20 If this were to happen, CRS could not certify the generators' RECs as Green-e Energy.

21 According to the program rules of our Green-e Energy program, if electricity
22 is used to meet a state renewable energy requirement, we view that in the
23 Green-e program as a claim on the renewable energy and we will not certify
24 the renewable energy certificates associated with that electricity.³¹

25 If the Track and Reduce policy were approved, the utility would gain the full value of the RECs
26 for compliance with its DE requirements without providing any cash compensation to the REC
27 owners.

28 Track and Reduce would double-count each REC, once for RES compliance and then
29 again for the commercial market. This is clearly prohibited by CRS.

30 [I]f track and monitor were implemented and a one megawatt hour of behind-
31 the-meter solar generation were tracked and counted towards the RES, and at

²⁹ Center for Resource Solutions, Green-e Energy, National Standard Version 2.3, http://www.green-e.org/docs/energy/Appendix%20D_Green-e%20Energy%20National%20Standard.pdf

³⁰ Tr. 517:8 – 518:3.

³¹ Tr. 810:14 – 811:5.

1 the same time a renewable energy certificate for that same generation were
2 sold to another party, that would be double counting.³²

3 Double counting RECs would destroy their value in the Commercial DE market.

4 Double counting is a very important concept in renewable energy markets, not
5 just to CRS. In order to foster markets for renewable energy or any other
6 commodity, it is important to have certainty about property rights of the
7 commodity that you are trading. If double counting were to occur in the
8 renewable energy market, it would erode confidence of market participants in
9 that market and make the commodity a less viable commodity. And for
10 renewable energy generators, they would have less certainty about being able
11 to rely on the value of their RECs when they are considering project
12 financing.³³

13 Staff fashions its recommendation as "Track and Monitor." However, it is fundamentally
14 just a slight variation on TEP/Unisource's Track-and-Reduce alternative. This is clear from
15 Staff's prefiled testimony: "Under this alternative, where Track and Monitor would be used, the
16 REST requirement would be reduced for each utility, on a kWh per kWh basis, for all DE that is
17 produced in their service territory where no REC transfer to the utility takes place."

18 CRS unequivocally believed that Staff's proposal would also impermissibly double-count
19 RECs.

20 Q. (Mr. Pozefsky) Now, you are familiar with Staff's proposal in this case,
21 the track and monitor approach, correct?

22 A. (Ms. Martin) That's correct.

23 Q. In your opinion, does that approach count RECs twice, double count?

24 A. My understanding of Staff's track and monitor approach is that it does use
25 claimed renewable energy generation for the purpose of meeting the RES.
26 Whether or not the RECs are physically acquired by the utilities is not the
27 only determinant of whether or not this could lead to double counting.

28 According to the program rules of our Green-e Energy program, if
29 electricity is used to meet a state renewable energy requirement, we view
30 that in the Green-e program as a claim on the renewable energy and we
31 will not certify the renewable energy certificates associated with that
32 electricity.³⁴

³² Tr. 811:24 – 812:4.

³³ Tr. 812:6-17.

³⁴ Tr. 810:14 – 811:5.

1 NRG Solar understands that Staff's proposal is made in good faith and that Staff does not
2 believe that its Track and Monitor proposal would double-count RECs. Further, Staff agrees that
3 customers who install DE without receiving utility incentives should retain their RECs.

4 Q. (Ms. Scott) Mr. Gray, I am going to read a statement here now, and can
5 you tell me whether you agree with this or you disagree with it.

6 A. (Mr. Gray) Yes.

7 Q. Customers who install DE without a utility incentive should be permitted
8 to retain RECs that have value in the market.

9 A. Staff agrees with that.³⁵

10 Staff also agrees that the Commission should avoid double counting.

11 Q. (Mr. Hays) Okay. So it is fair to say Staff is concerned then about double
12 counting and trying to avoid it?

13 A. (Mr. Gray) I mean it is certainly one of a number of considerations in
14 crafting a proposal in this case, yes.³⁶

15 And Staff would not support taking private property such as a REC without just
16 compensation.

17 Q. (Mr. Hogan) Staff wouldn't support any kind of proposal in which the
18 Arizona Corporation Commission was taking somebody's private property
19 without just compensation?

20 A. (Mr. Gray) I guess inherently that would infer that there was, it was
21 somehow unjust. And Staff, yeah, Staff certainly believes things that are
22 done should be just.³⁷

23 Despite Staff's good intentions, the bottom line is that, as the Green-e Energy certifier,
24 CRS has the last word on the double-counting issue for the commercial DE market. CRS
25 believes that Staff's Track-and-Monitor proposal would impermissibly double-count RECs. For
26 this reason, the Commission should not support Staff's proposal.

27 **B RUCO's Various Proposals All Have Serious Flaws**

28 RUCO's first proposal "would change the definition of compliance for the distributed
29 generation portion of the renewable energy standard."³⁸ As a consequence, this would require a

³⁵ Tr. 694:20 – 695:2.

³⁶ Tr. 698:12-15.

³⁷ Tr. 725:7-13.

³⁸ Direct Testimony of Lon Huber (Exhibit RUCO-1) at 5:13-14.

1 rulemaking.³⁹ The proposal would “move DG compliance from a system based on retired RECs
2 to a system based on null electricity (kWhs stripped of their environmental attributes) from
3 customer cited renewable systems hosted on a utility’s grid (distribution system).⁴⁰ Although
4 RUCO’s proposal is conceptual and requires more details, it deserves further consideration in the
5 rulemaking recommended by NRG Solar and other parties. However, it does not address the
6 interim between this current proceeding and the conclusion of the rulemaking.

7 RUCO’s second proposal “recommends splitting the RECs 50/50 between the system
8 owner and the utility.”⁴¹ On its face, this proposal seems to amount to taking of property rights
9 without due compensation. RUCO admits that this proposal is coercive.

10 [RUCO’s 50-50 split proposal] could be more of a stick approach, so, you
11 know, transfer 50 percent of your RECs or pay, you know, a nominal RES fee
12 or something to that extent. There could be something to be acting as a stick to
13 facilitate that transfer.⁴²

14 Moreover, RUCO concedes that the details of its 50-50 split proposal still need to be worked out.

15 Now, admittedly, all the details of this proposal would have to be worked out
16 in a collaborative setting, as is the case with many of the proposals put
17 forward.⁴³

18 NRG Solar does appreciate that RUCO would allow commercial “customers” “to retain
19 100 percent of their RECs if they can prove they are required to meet an internal or external
20 standard that demands retired RECs as proof of compliance.”⁴⁴ However, NRG Solar still cannot
21 support RUCO’s second proposal. It would be unfair to non-commercial generators and would
22 place the burden on commercial generators to prove that the RECs are required for another
23 purpose. If this burden of proof could not be met, utilities would presumably be allowed to
24 commandeer Commercial RECs for compliance purposes. Finally, the parties should be

³⁹ *Id.* at 5:12-14.

⁴⁰ *Id.* at 5:15-18.

⁴¹ Rebuttal Testimony of Lon Huber (Exhibit RUCO-2) at 7:21-22.

⁴² Tr. 609:13-19.

⁴³ Tr. 569:17-21.

⁴⁴ Exhibit RUCO-2 at 8:11-13.

1 providing concrete, specific proposals for the Commission to consider, not a conceptual proposal
2 like RUCO's where the details remain to be worked out.

3 RUCO's final proposal is another conceptual one – a modification to Staff's Track-and-
4 Monitor proposal that would base compliance on installed MW, rather than MWh.⁴⁵
5 Unfortunately, RUCO's final proposal "is very complicated and does not allow transparency for
6 compliance."⁴⁶ A significant problem is that it would make planning for the solar industry very
7 difficult because the compliance baseline would be reset each year.⁴⁷ Further, although RUCO
8 believes that the Commission could implement RUCO's proposal without a rulemaking, this
9 seems dubious to NRG Solar. The RES rules clearly specify kWh targets that the utilities must
10 meet, including the annual DE targets. RUCO is essentially asking the Commission to rewrite
11 the rules through waivers, which is problematic at best.

12 Finally, a lot of work still must be done before RUCO's third proposal is ready for
13 consideration by the Commission. Like its second proposal, RUCO has offered only a vague
14 concept for the parties and the Commission to consider.

15 It is as complicated as the parties want to make it. And that's, and that's, you
16 know, in the spirit that RUCO -- we are trying to make this something that
17 parties can get behind. And it can be very simple; it can be more complex. So
18 it is really up to the parties essentially. You could do it in a variety of ways.⁴⁸

19 **VI Conclusion**

20 To preserve the Commercial REC markets, NRG Solar makes three recommendations
21 which the Commission should accept:

- 22 1. Unless they are purchased by the utility, RECs should be retained by the customer
23 or the entity leasing the solar system or entering into a PPA for the solar system,
24 depending on the particular contractual arrangement.

⁴⁵ Surrebuttal Testimony of Lon Huber (Exhibit RUCO-2) at 3 – 5.

⁴⁶ Tr. 542:3-4.

⁴⁷ Tr. 542:9-10.

⁴⁸ Tr. 573:6-14.

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3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 **Copy of the foregoing mailed**
8 on August 27, 2013, to:

Thomas A. Loquvam
Pinnacle West Capital Corporation
400 N. 5th St., MS 8695
Phoenix, AZ 85004.

Greg Patterson
Munger Chadwick
2398 E. Camelback Rd., Suite 240
Phoenix, AZ 85016

Michael W. Patten
Roshka Dewulf & Patten PLC
One Arizona Center
400 E. Van Buren St., Suite 800
Phoenix, AZ 85004

Michael L. Neary
Executive Director
AriSEIA
11 1 West Renee Dr.
Phoenix, AZ 85027

C. Webb Crockett
Patrick J. Black
Fennemore Craig
3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012-2913

Timothy M. Hogan
Arizona Center for Law in the Public Interest
202 E. McDowell Rd., Suite 153
Phoenix, AZ 85004

Kevin Koch
2333 E. 1st St.
P.O. Box 42103
Tucson, AZ 85733

Scott S. Wakefield
Ridenour Hienton & Lewis, P.L.L.C.
201 N. Central Ave., Suite 330
Phoenix, AZ 85004-1052

Christopher D. Thomas
Fred E. Breedlove III
Squire Sanders
1 E. Washington, 27th Floor
Phoenix, AZ 85004

Douglas V. Fant
Law Offices of Douglas V. Fant
655 W. Anthem Way, Suite A-109, PMB 411
Anthem, AZ 85086

Court S. Rich
Rose Law Group, PC
6613 N. Scottsdale Rd., Suite 200
Scottsdale, AZ 85250

Lyle J. Smith
Regulatory Law Office (JALS-RWIP)
Office of the Judge Advocate General
U.S. Army Legal Service Agency
1275 Gunston Road
Fort Belvoir, VA 22060-5546

9
10
11
12

By: 
Craig A. Marks