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BEFORE THE ARIZONA CORPORATION COMMISSION

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11 IN THE MATTER OF THE APPLICATION OF
 12 ARIZONA PUBLIC SERVICE COMPANY FOR
 13 APPROVAL OF UPDATED GREEN POWER
 RATE SCHEDULES GPS-1, GPS-2 AND GPS-3.

DOCKET NO. E-01345A-10-0394

14 IN THE MATTER OF THE
 15 APPLICATION OF ARIZONA PUBLIC
 16 SERVICE COMPANY FOR APPROVAL OF ITS
 17 2013 RENEWABLE ENERGY STANDARD
 IMPLEMENTATION FOR RESET OF
 RENEWABLE ENERGY ADJUSTOR

DOCKET NO. E-01345A-12-0290

18 IN THE MATTER OF THE APPLICATION OF
 19 TUCSON ELECTRIC POWER COMPANY FOR
 20 APPROVAL OF ITS 2013 RENEWABLE
 21 ENERGY STANDARD IMPLEMENTATION
 22 PLAN AND DISTRIBUTED ENERGY
 ADMINISTRATIVE PLAN AND REQUEST
 FOR RESET OF ITS RENEWABLE ENERGY
 ADJUSTOR.

DOCKET NO. E-01933A-12-0296

23 IN THE MATTER OF THE APPLICATION OF
 24 UNS ELECTRIC, INC. FOR APPROVAL OF ITS
 25 2013 RENEWABLE ENERGY STANDARD
 26 IMPLEMENTATION PLAN AND
 27 DISTRIBUTED ENERGY ADMINISTRATIVE
 28 PLAN AND REQUEST FOR RESET OF ITS
 RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-04204A-12-0297

SOLAR ENERGY INDUSTRIES
ASSOCIATION'S POST HEARING BRIEF
Arizona Corporation Commission

DOCKETED

AUG 27 2013

DOCKETED BY

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1 Solar Energy Industries Association ("SEIA"), by and through its undersigned counsel
2 hereby submits this Post Hearing Brief in the above captioned matter.
3

4 **Respectfully submitted** this 27th day of August, 2013.

5 
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10 Attorney for SEIA
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2 **This 27th day of August, 2013 with:**

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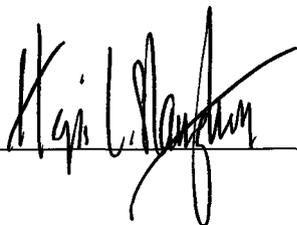
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POST HEARING BRIEF
OF
SOLAR ENERGY INDUSTRIES ASSOCIATION

AUGUST 27, 2013

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1 **I. INTRODUCTION AND PROCEDURAL HISTORY**

2 Arizona’s distributed solar market has experienced significant success in recent years.
3 To date, Arizona has installed 1097 MW of solar energy and currently boasts more than 284
4 solar companies that employ 9800 people statewide, making Arizona one of the leading solar
5 states in the country.¹

6 This impressive growth is due in part to the Distributed Renewable Energy Requirement,
7 a portion of Arizona’s Renewable Energy Standard also known as the “DE carve-out.”² The DE
8 carve-out requires that for all years after 2011, 30% of the renewable energy provided by
9 Affected Utilities come from distributed energy (“DE”) systems.³ The DE carve-out is designed
10 to encourage businesses and residents throughout the state to install DE systems, particularly
11 rooftop solar.

12 Under the DE carve-out, utilities offer an upfront incentive to businesses and residents
13 that install DE systems in exchange for the Renewable Energy Credits (“RECs”), or distributed
14 energy, generated by the systems. The utilities then use these RECs to satisfy their DE carve-out
15 compliance requirements. The proceeds from the RECs are used to finance distributed solar
16 systems.

17 Over the last few years, adoption of DE is trending up while incentives have declined. In
18 January 2012, the Arizona Corporation Commission (“Commission” or “ACC”) recognized
19 these trends and ordered Arizona Public Service Corporation (“APS”), and subsequently Tucson
20 Electric Power/UNS Electric, Inc. (“TEP/UNS”), to consider how they would meet their annual
21 distributed energy compliance requirements should incentives be eliminated, and customers no
22 longer sell their Renewable Energy Credits (“RECs”) to the utilities.⁴

23 In its 2013 REST Plan, APS proposed a method of compliance called “Track and
24 Record.”⁵ Under “Track and Record,” APS proposed to track all distributed energy installation
25 in its territory towards its DE compliance requirements without purchasing the associated RECs.⁶

26 ¹ Cullen Hitt Direct at 4

27 ² A.A.C. R14-2-1805

³ Id.

28 ⁴ A.C.C. Order 72737 at 39

⁵ APS 2013 REST Plan at 2-5

⁶ Id.

1 “Track and Record” was rejected immediately by stakeholders because it would allow APS to
2 claim distributed energy to meet its compliance requirements without compensating the owners
3 of the systems that generated the energy claimed. Recognizing that “Track and Record” was not
4 a viable option, the Commission ordered a hearing in its Order 73636 dated January 31, 2013 to
5 consider alternatives.⁷

6 Eight parties, including the Solar Energy Industries Association (“SEIA”), intervened in
7 this proceeding.⁸ Further, several interested stakeholders including the Environmental Protection
8 Agency (“EPA”) and the Center for Resource Solutions (“CRS”) filed letters or comments to the
9 docket. The high level of participation highlights the importance of this proceeding to the
10 Arizona solar market, and underscores the fact that the Commission’s actions in this and other
11 ongoing proceedings will determine whether Arizona remains an important solar state.

12 On March 29, 2013 APS and TEP/UNS filed written direct testimony. On April 25,
13 2013, all other parties filed written direct testimony. Subsequently, several parties filed written
14 rebuttal and surrebuttal testimony.

15 On June 3-6 and June 21, 2013, the Commission held evidentiary hearings before
16 Administrative Law Judge Teena Jibilian. At the hearings, the Direct, Rebuttal and Surrebuttal
17 testimonies of the various parties were entered into the record. In addition, several witnesses
18 provided oral direct testimony and witnesses from various parties were cross-examined. The
19 record in this case is now complete, and ready to be briefed for the Commission.

20 21 **II. SUMMARY OF ARGUMENT**

22 There are two issues in this proceeding. First, as incentives dwindle, the utilities may
23 need guidance on how they should comply with the DE carve-out once they can no longer
24 acquire RECs through a rebate program. While this is may become a pertinent issue, it is
25 couched within a much larger issue. As the market shifts away from incentives, the Commission
26 must take actions that foster sustained growth in Arizona’s budding solar market.

27 ⁷ A.C.C. Order 7636 at 26

28 ⁸ These parties include: Residential Utility Customer Office; Department of Defense/Federal Executive Agencies;
Walmart; Western Resource Advocates; Vote Solar Initiative; ACC Staff; Solar Energy Industries Association;
NRG

1 First, to ensure the continued growth of Arizona's solar market, the Commission should:
2 1) reject any proposal that eliminates the DE carve-out and 2) reject any proposal that does not
3 compensate distributed energy system owners for energy produced by their systems that is used
4 by utilities to satisfy DE compliance requirements. To allow either would seriously jeopardize
5 the Arizona solar market success story.

6 Specifically, the Commission should not adopt APS' proposal to eliminate the DE carve-
7 out. APS' proposal is outside the scope of this proceeding, will seriously threaten the DE
8 market, and is a significant and unnecessary Rule change that cannot be reversed.

9 In addition, the Commission should not adopt the proposals put forth by Staff or
10 TEP/UNS because both proposals allow utilities to use distributed energy for compliance
11 purposes without compensating the system owners. These proposals should be not be adopted
12 because the proposals will choke off investment in Arizona solar, violate the REST Rules, and
13 will permit utilities to take Arizona residents' distributed energy without compensation.

14 Second, the Commission does not need to take any action on the issue of utility
15 compliance with the DE carve-out at this time. The utilities are in compliance for the next
16 several years and there are ongoing proceedings whose outcomes will impact the issues
17 presented here.

18 However, should the Commission choose to take action, it should grant the utilities a one-
19 year waiver as needed, during which time the Commission can track DE for informational
20 purposes. A one-year waiver will allow the Commission to provide the utilities guidance on DE
21 compliance, monitor the strength of the DE market, and await the resolution of ongoing
22 proceedings that are likely to impact Arizona's distributed energy market. The terms of the
23 waiver can easily be determined by the Commission at a workshop and the waiver can quickly be
24 implemented as needed.

25 Finally, should the Commission take other action, SEIA supports the Residential Utility
26 Consumer's Office's ("RUCO") "Baseline" proposal. However, SEIA believes that a one-year
27 waiver is a better simpler solution than the "Baseline" proposal at this time.

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III. ARGUMENT

This proceeding originated when the Commission asked the utilities to consider how they would comply with the DE carve-out if incentives are eliminated.⁹ However, this issue is just a small part of a much larger goal: to build a sustainable solar market in Arizona. While the utilities may need guidance on compliance with the REST rules, including the DE carve-out, compliance must be achieved in a way that ensures the Arizona solar market and industry will continue to flourish. The Commission has ample time and options to address the issue at hand while protecting the DE market. Thus, the Commission need not act rashly or make permanent decisions and Rule changes that could have unintended consequences.

Specifically, the Commission should not adopt any proposal that eliminates the DE carve-out or likely leads to the counting of RECs without compensation flowing to the owner of the solar system that creates the RECs. Adopting such a proposal would significantly and unnecessarily jeopardize Arizona’s solar market and the investment that has transformed Arizona into a solar success story.

A. The Commission Should Reject APS’ Proposal to Eliminate the DE Carve-Out Because Elimination of the DE Carve-Out is Outside the Scope of This Proceeding, Would Seriously Threaten Arizona’s Solar Market, and Is a Significant Rule Change That Cannot Easily Be Reversed

i. APS’ Proposal to Eliminate the DE Carve-Out Is Outside the Scope of This Proceeding

APS’ proposal to eliminate the DE carve-out lies far outside the scope of this proceeding. To appreciate this, one need only look at the procedural history.

In its January 2012 Order, the Commission expressed concern that “at some incentive level, the distributed solar system customers will stop offering to sell their Renewable Energy Credits to the local utility in exchange for an incentive.”¹⁰ The Commission then ordered APS to consider this possibility and recommend methods of compliance if DE customers stopped

⁹ A.C.C. Order 7636 at 5-6, 26

¹⁰ A.C.C. Order 72737 at 34-35

1 offering RECs for incentives.¹¹ In response, APS proposed a method of compliance called
2 “Track and Record.”¹² Under “Track and Record,” APS would track all DE installations in its
3 service territory and count those installations towards its DE compliance requirements.¹³ “Track
4 and Record” drew strong objections from stakeholders because it amounted to APS proposing
5 that if customers would not sell their RECs, APS would take the RECs.¹⁴ Thus, the Commission
6 did not approve “Track and Record” and instead ordered a hearing to consider alternatives.¹⁵

7 Once APS realized that the Commission likely would not approve its plan to meet
8 compliance by taking its customers’ RECs without compensation, it proposed a “solution” that
9 would eliminate its DE compliance requirement altogether.¹⁶ If APS could not take RECs, APS
10 recommended that the Commission do away with the DE carve-out entirely.¹⁷

11 Clearly, eliminating the DE carve-out lies far outside the scope of this proceeding. Going
12 back to the 2012 Order, the Commission ordered APS to consider ways in which it could “meet
13 its annual Distributed Renewable Energy REST requirement” if customers were no longer
14 willing to sell their RECs back to APS – the very opposite of eliminating the DE carve-out.¹⁸
15 The Commission would have ordered APS to consider eliminating the DE carve-out if this were
16 its intention. However, the Commission did not order APS to consider removing the DE carve-
17 out. The Commission specifically ordered APS to consider how it would *comply* with the DE
18 carve-out as incentives dwindled.¹⁹

19 Thus, APS’ recommendation to eliminate the DE carve-out should be rejected because it
20 is nothing but an attempt by APS to evade its compliance obligations, and lies far outside the
21 scope of this proceeding.

22 **ii. APS’ Proposal to Eliminate the DE Carve-Out Will Seriously Threaten the**
23 **DE Market Because The Strength of the Market Is Unknown and Other**

24 _____
25 ¹¹ A.C.C. Order 72737 at 39

¹² APS 2013 REST Plan at 2-5

¹³ Id.

26 ¹⁴ A.C.C. Order 73636 at 5-6

¹⁵ Id.

27 ¹⁶ APS Direct at 3

¹⁷ Id.

28 ¹⁸ A.C.C. Order 72737 at 34-35

¹⁹ Id.

1 **Unresolved Proceedings Will Have an Impact on the Economics of**
2 **Distributed Energy**

3 The DE carve-out was originally implemented to facilitate the development of distributed
4 energy located at a ratepayer's home or business.²⁰ To this end, the carve-out has been a
5 successful policy. Arizona has seen rapid growth in its DE market over the last several years
6 along with a rapid decrease in the incentives needed to drive such adoption.²¹ However, the
7 current strength of the market is unknown. It is unclear whether the market will continue to
8 flourish if incentives become very low or no longer available, and policy changes that will likely
9 impact the economics of distributed energy loom on the horizon.

10 **a. It is Unclear Whether Incentives Are Currently Driving Installation of**
11 **Distributed Solar**

12 There is significant consensus that it would be premature to eliminate the DE carve-out at
13 this time.²² For example, Walmart witness Kenneth Baker stated that Walmart does not believe
14 that the Arizona solar market is self-sustaining without an incentive.²³ Similarly, TEP/UNS
15 witness Carmine Tilghman testified that TEP/UNS believes that the DE carve-out is still needed
16 at this time and incentives may still drive the market.²⁴ In addition, Vote Solar witness Rick
17 Gilliam stated that "there has been a lot of speculation that incentives are about to go to zero."

18 APS alone asserts that it may be appropriate to eliminate the DE carve-out at this time.²⁵
19 However, when asked whether the DE carve-out should be eliminated because the sector is self-
20 sustaining, APS witness Greg Bernosky refused to answer affirmatively.²⁶ Instead, Mr.
21 Bernosky merely speculated that incentives are no longer driving customer installation of DE.²⁷
22 Curiously, neither Mr. Bernosky's direct testimony nor his testimony during cross examination
23 rises above the level of mere speculation on the subject. While APS provides unsupported

24 ²⁰ R14-2-1802; Bernosky Cross at 59

25 ²¹ See SEINGTM Research U.S. Solar Market Insight Report; U.S. Energy Information Administration
<http://www.eia.gov/state/?sid=AZ> accessed on 8/21/13

26 ²² Gray Cross at 701; Baker Cross at 380; Gilliam Cross at 283; Cullen Hitt Direct at 9; NRG 536; 550-551; Berry
Cross at 481

27 ²³ Baker Cross at 378, 380

27 ²⁴ Tilghman Cross at 177-178

28 ²⁵ Bernosky Cross at 76

²⁶ Id.

²⁷ Id.

1 assertions that it believes the market to be self-sustaining without incentives, APS provides no
2 evidence that this is the case.

3 There is clearly overwhelming consensus that more time is needed to determine if
4 incentives are driving the market. For this reason, APS' proposal to eliminate the DE carve-out
5 should not be adopted.

6 **b. A Number of Proceedings Will Likely Have Significant Impact on the Economics**
7 **of Distributed Solar**

8 Several parties testified that the strength of the DE market depends not only on
9 incentives, but on other factors such as rate design, net metering, and tax issues.²⁸ As a result,
10 even if we were to assume the market is self-sufficient today, there are significant uncertainties
11 about the future of rate design, net metering, and tax policy that could lead the market to lose its
12 self-sufficiency at a future date.²⁹

13 APS witness Greg Bernosky testified that the current net metering proceeding may affect
14 customer uptake of distributed solar depending on the outcome of the proceeding.³⁰ Staff
15 witness Robert Gray agreed, stating that a "significant change to net metering...could impact
16 certain customers' decisions" about whether to install solar.³¹ In fact, RUCO witness Lon
17 Huber stated that the main market driver at this point may be rate design, and that the issue in
18 this proceeding about what to do when incentives are no longer available may be resolved in the
19 net metering proceeding.³² Mr. Huber stated that before making any decisions regarding
20 incentives and the DE carve-out, the Commission should consider the impact of net metering and
21 rate design on distributed solar.³³

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25 ²⁸ Gillian Cross at 283; Bernosky Cross at 77-78; Huber Cross at 636; Gray Cross at 702; Cullen Hitt Direct at 9;
Barry Direct at 450

26 ²⁹ Specifically, resolution of the current Net Metering docket (E-01345A-13-0248), Retail Competition docket (E-
00000W-13-0135), and further study of rate design are required before the Commission takes action on the issue of
DE compliance.

27 ³⁰ Bernosky Cross at 80

28 ³¹ Gray Cross at 702

³² Huber Cross at 596-597

³³ Id.

1 It would be premature to eliminate the DE carve-out at this time. Other ongoing
2 proceedings, such as net metering, will impact the economics of distributed solar and will inform
3 the Commission on the next best step as relates to the DE carve-out.

4 **c. Elimination of the DE Carve-Out Is a Permanent Action That Is Both**
5 **Unnecessary and Risky**

6 The Commission should be mindful that the REST rules took several years to implement
7 as it moves forward in this proceeding.³⁴ Eliminating the DE carve-out would be a significant
8 Rule change that would require a rulemaking.³⁵ Such a rulemaking could not easily be reversed
9 should the DE market falter in the future.³⁶ Thus, Staff, Vote Solar, Walmart, SEIA, Western
10 Resource Advocates (“WRA”), and NRG all testified that eliminating the DE carve-out is a
11 permanent action that should be avoided at this time because it is too early to know whether the
12 carve-out is needed to maintain market stability.³⁷

13 In addition, APS and TEP/UNS are in compliance through this year in some market
14 segments, and through 2016 and 2020 in other market segments.³⁸ This means that the
15 Commission does not need to take the risky and permanent step of eliminating the DE carve-out
16 at this time.

17 Therefore, the Commission should reject APS’ proposal to eliminate the DE carve-out.

18 **B. The Commission Should Not Adopt The Proposals Put Forth By Staff or TEP/UNS**
19 **Because Both Proposals Would Facilitate Counting RECs Without Compensation,**
20 **Which Would Violate the REST Rules, Choke Off Investment In Arizona’s Solar**
21 **Market, and Allow Utilities to Take Distributed Energy From System Owners**
22 **Without Compensation**

23 The Commission should reject any proposal that facilitates double counting. Double
24 counting occurs when two parties claim and retire the same unit of renewable energy or a single
25

26 ³⁴ Gilliam Cross at 318

27 ³⁵ Gray Cross at 701; Tilghman Cross at 252

28 ³⁶ Id.; Gilliam Cross at 318

³⁷ Gray Cross at 701; Baker Cross at 380; Gilliam Cross at 318; Cullen Hitt Direct at 9; NRG 536; 550-551; Berry Cross at 481

³⁸ Bernosky Cross at 103, 151; Tilghman Cross at 201, 226, 252, 278

1 REC.³⁹ Claims that qualify as a “count” can be made for a variety of reasons, including
2 regulatory compliance.⁴⁰ In order for a REC to maintain its integrity, it can only be “counted”
3 once.⁴¹ REC certification entities like CRS will not certify transactions that result in already
4 counted RECs being counted for a second time.⁴²

5 The Commission should avoid creating situations where the utilities count their
6 ratepayers’ RECs, whether intentionally or unintentionally, without providing compensation to
7 the generator of the electricity. Allowing Arizona utilities to count RECs without acquiring the
8 RECs poses a serious threat to Arizona’s solar market and is a violation of the REST rules.

9 **i. The Commission Should Not Adopt The Proposals Put Forth By TEP/UNS**
10 **and Staff Because The Proposals Would Choke Off Investment In Arizona’s**
11 **Solar Market**

12 RECs serve as a primary financing mechanism used to drive investment in the solar
13 market.⁴³ Solar system owners and developers sell RECs to third parties to finance the cost of
14 their system.⁴⁴ In Arizona, the sale of RECs has traditionally been to the utilities through the
15 incentive program, with the proceeds often used to offset the costs of the distributed solar
16 system. In addition, RECs can be sold outside of Arizona as a means of attracting out of state
17 investment in Arizona’s solar market.⁴⁵

18 If third parties believe that Arizona distributed energy has been counted for compliance
19 or other purposes, they will not certify or purchase the associated RECs, which could choke off
20 investment in the Arizona solar market. This is why it is extremely important that the
21 Commission reject any proposal that allows utilities to count energy towards compliance without
22 purchasing the associated RECs.

23 Throughout this proceeding, several parties have expressed concern that the proposals put
24 forth by Staff and TEP/UNS are likely to lead to the counting of RECs without compensation.

25 _____
26 ³⁹ Martin Cross at 811, 821; R14-2-1803(C); See CRS Letter to the ACC dated May 21, 2013

27 ⁴⁰ Id.

28 ⁴¹ Id.

⁴² Id.

⁴³ Fellman Cross at 517-520; Martin Direct at 809-810

⁴⁴ Id.

⁴⁵ Martin Cross at 856; Ahsing Cross at 440

1 Therefore, in order to protect Arizona’s solar market and encourage investment in the market, the
2 Commission should not adopt the proposals put forth by Staff or TEP/UNS.

3 **a. Staff’s “Track and Monitor” Proposal**

4 First, Staff’s “Track and Monitor” proposal is problematic because it allows utilities to
5 count kWh of renewable energy towards their compliance requirements under the DE carve-out
6 without requiring utilities to acquire the RECs associated with the kWh that the utilities claim for
7 compliance.⁴⁶ Staff attempts to alleviate counting concerns by proposing to reduce the DE
8 requirement annually based on the amount of DE that is actually installed in a utility’s service
9 territory.⁴⁷ Staff argues that reducing the DE requirement in lockstep with the amount of DE
10 installed will avoid actually giving the utility “credit” for the DE and therefore will avoid a
11 counting of the RECs.⁴⁸ Staff asserts that by reducing the DE requirement (i.e. excusing
12 compliance) rather than crediting the utility for compliance, the distributed energy is not
13 counted.⁴⁹

14 While SEIA appreciates Staff’s recognition that a counting should be avoided and is
15 grateful that Staff attempts to fashion a solution that will avoid a counting, this solution still
16 preserves a one to one link between the amount of DE installed in a utility service territory and
17 the DE requirement applicable to that utility. Thus, Staff’s proposal will result in a clear
18 counting of the distributed energy which would then prohibit the owner of the solar system from
19 selling or otherwise counting the REC for any other purpose.

20 Staff argues that the Commission should decide what constitutes a counting or double
21 counting for the purpose of utility compliance with the DE carve-out.⁵⁰ While the Commission
22 does have plenary authority over utilities in Arizona, this perspective fails to acknowledge that
23 Arizona’s solar market functions as part of a broader national and international market where
24 RECs are bought and sold.⁵¹ Participants in REC markets rely on third parties such as CRS for

25
26 ⁴⁶ Gray Direct at 7; Gray Cross at 694; Berry Cross at 450; Martin Cross at 811

27 ⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Gray Cross at 698, 699)

⁵¹ Martin Cross at 828; Huber Cross at 573, 574

1 guidance to determine REC values.⁵² The ACC's authority over utilities in Arizona gives it no
2 power to dictate how world REC markets view the RECs generated in Arizona. If participants in
3 the market do not have confidence in their ability to sell Arizona RECs to finance their projects
4 or to meet compliance requirements, they will invest elsewhere.

5 For example, NRG, one of the largest solar developers in the United States, testified that
6 its future investment in the Arizona solar market is dependent on its ability to sell RECs to off-
7 takers who purchase the RECs for use in the compliance and voluntary markets.⁵³ If buyers are
8 concerned that Arizona's distributed energy has already been counted for compliance purposes,
9 then buyers likely will not purchase RECs in Arizona and NRG will have to develop projects
10 elsewhere.⁵⁴

11 Wal-Mart Stores Inc. and Sam's West Inc. (collectively "Walmart") expressed concern
12 over the integrity of RECs for the same reason.⁵⁵ Walmart is one of the nation's largest retailers
13 and a solar leader in the retail space. Walmart stated that the viability of its solar installations
14 depends directly on the value of its RECs.⁵⁶ To help it determine the value of its RECs, Walmart
15 depends on third parties such as CRS. If an organization such as CRS determines that Walmart's
16 RECs are being counted for distributed energy compliance by utilities without compensating
17 Walmart, this will impact the value of their RECs and inhibit Walmart's ability to invest in
18 Arizona solar installations.⁵⁷

19 Further, the Department of Defense/Federal Executive Agencies (DOD) stated that it uses
20 Arizona RECs to satisfy federal compliance requirements for its facilities located in Arizona.⁵⁸ If
21 it determines that its energy is being used by other entities to satisfy compliance requirements,
22 the DOD will no longer be able to invest in Arizona's solar market to satisfy its compliance
23 obligations.⁵⁹ In fact, this is the very reason that DOD is involved in this proceeding.⁶⁰

24 ⁵² Martin Cross at 812-813

25 ⁵³ Fellman Cross at 517-520

26 ⁵⁴ Fellman Cross at 519

27 ⁵⁵ Baker Cross at 378

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Cordova Cross at 405

28 ⁵⁹ Cordova Cross at 401-402

⁶⁰ Cordova Cross at 408

1 Further, Arizona's market is situated alongside other state markets and within a larger
2 national REC market.⁶¹ Many entities that participate in Arizona's market also participate in
3 other state markets and the national REC market.⁶² RUCO witness Lon Huber testified that
4 Arizona REC holders may be cut off from other markets, including the national market, if third
5 parties believe that Arizona RECs are worthless because the underlying renewable energy has
6 been counted by Arizona utilities for compliance purposes.⁶³ In fact, despite proposing a method
7 of compliance that raises serious double counting concerns, even Staff agreed that retaining REC
8 value creates investment opportunities in Arizona.⁶⁴

9 Finally, it should be noted that Arizona's solar market is comprised of an entire
10 ecosystem of developers, service providers, installers, and other businesses.⁶⁵ If large players
11 such as Walmart, DOD, or NRG are unable to invest in Arizona, this will have a ripple effect on
12 all the businesses that service the solar market throughout Arizona.⁶⁶

13 **b. TEP/UNS' Track and Reduce Proposal**

14 TEP/UNS' "Track and Reduce" proposal is problematic for the same reasons as Staff's
15 proposal. Under "Track and Reduce," a utility's distributed energy requirement would be
16 reduced by the amount of DE installed in the utility's service territory.⁶⁷ The utility would not be
17 required to purchase RECs associated with this reduction in compliance.⁶⁸

18 "Track and Reduce" would render the RECs associated with the kWh of renewable
19 energy worthless to a buyer because the energy will have been "counted" for compliance
20 purposes.⁶⁹ Therefore, "Track and Reduce" should be avoided because it will threaten
21 investment in Arizona's solar market by undermining the integrity of Arizona RECs in the same
22 manner as Staff's proposal discussed above.

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25 ⁶¹ Martin Cross at 809; 810; 856

26 ⁶² Martin Cross at 820-821

27 ⁶³ Huber Cross at 594; Martin Cross at 830

28 ⁶⁴ Gray Cross at 696

⁶⁵ Gilliam Cross at 286; Cullen Hitt Direct at 1

⁶⁶ Id.

⁶⁷ Tilghman Direct at 8

⁶⁸ Id.

⁶⁹ Martin Cross at 833, 838

1 **ii. The Commission Should Not Adopt The Proposals Put Forth By Staff and**
2 **TEP/UNS Because They Violate the REST Rules and Would Allow Utilities**
3 **To Count Renewable Energy For Compliance Without Compensating**
4 **System Owners**

5 **a. Staff and TEP/UNS' Proposals Violate the REST Rules**

6 Section R14-2-1803(C) of the REST Rules states that RECs must be transferred through
7 a transaction.⁷⁰ In fact, this very hearing came about because the Commission recognized that if
8 utilities use the energy (“kWh”) generated in their service territory for compliance purposes, a
9 REC transaction must take place.⁷¹ Any proposal that suggests otherwise violates the REST
10 rules.

11 **b. Staff and TEP/UNS' Proposals Would Allow Utilities To Count Renewable**
12 **Energy For Compliance Without Compensating System Owners**

13 Allowing utilities to count distributed energy towards compliance without purchasing the
14 RECs associated with that energy renders the system owners' RECs virtually worthless. This is
15 the equivalent of allowing the utilities to take RECs directly from distributed energy system
16 owners without compensation. In the case of the DE carve-out, many of the individuals who
17 would be harmed by the proposals put forth by Staff and TEP/UNS are Arizona residents with
18 rooftop solar systems. Adopting the proposals put forth by Staff or TEP/UNS would allow
19 utilities to essentially take the value associated with the distributed energy production generated
20 by Arizona residents who have invested in Arizona solar, without compensating those residents
21 for the energy their systems produce. Such a result would harm Arizona residents and
22 discourage solar adoption.

23 Therefore, the proposals put forth by Staff and TEP/UNS should not be adopted because
24 they will seriously threaten Arizona's solar market, violate the REST Rules, and will harm
25 Arizona residents.

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⁷⁰ Tilghman Direct at 7

⁷¹ A.C.C. Order 73636 at 21-24, 26

1 **C. Commission Action: The Commission Should Not Act At This Time, Or Should It**
2 **Choose to Act, The Commission Should Grant The Utilities A One-Year Waiver As**
3 **Needed**

4 The Commission does not need to act immediately. The utilities are currently in
5 compliance with the DE carve-out, incentives may still be driving the market, and there are other
6 unresolved proceedings that will guide the Commission on the issues presented in this
7 proceeding. Therefore, the Commission should take no action at this time.

8 However, if the Commission chooses to act, it should grant utilities a one-year waiver
9 from the DE carve-out as needed. This will allow the Commission to monitor the DE market and
10 wait for other influential proceedings to be resolved before acting.

11 **i. The Commission Should Not Act At This Time: The Utilities Are In**
12 **Compliance; Incentives May Still Be Driving the Market; Other Proceedings**
13 **Will Guide the Commission On How To Address The Issues Presented In This**
14 **Proceeding**

15 The Commission does not need to act at this time because the utilities are generally in
16 compliance for the next several years. APS witness Gregory Bernosky testified that APS is in
17 residential compliance through 2016 and commercial compliance through 2020.⁷² Further,
18 TEP/UNS witness Carmine Tilghman testified that UNS is in compliance for its residential and
19 commercial segments through 2013, and TEP is six years ahead of compliance for its
20 commercial segment and in compliance for its residential segment through 2013.⁷³

21 Further, the primary purpose of this proceeding is to determine how utilities can comply
22 with the DE carve-out once incentives are no longer traded for RECs.⁷⁴ However, no one knows
23 whether DE installation is being driven by incentives or other market forces at this time.⁷⁵

24 Therefore, this question is not yet ripe.

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27 ⁷² Bernosky Cross at 103, 151

⁷³ Tilghman Cross at 201, 226, 252, 278

⁷⁴ A.C.C. Order 72737 at 39

⁷⁵ Gilliam Cross at 283; Baker Cross at 380, 386; Gray Cross at 700-701

1 Finally, the DE market does not exist in a vacuum. There are other ongoing proceedings,
2 net metering in particular, which will likely have an impact on the issues at hand.⁷⁶

3 Therefore, the Commission should not take any action at this time.

4 **ii. Should The Commission Choose To Act, It Should Grant The Utilities A One-**
5 **Year Waiver From Complying With The DE Carve-Out As Needed**

6 Should the Commission choose to act, it should grant the utilities a one-year waiver from
7 complying with the DE carve-out for market segments in which the utilities fall out of
8 compliance and are unable to purchase RECs. A waiver will allow the Commission to satisfy the
9 immediate issue of compliance while avoiding harm to the DE market and maintaining the
10 requisite regulatory flexibility needed to set sound policy in the future. The terms of the waiver
11 can easily be agreed upon by all parties in an efficient workshop. During the period of the
12 waiver, the Commission can track DE installations for informational purposes.

13 **a. A One-Year Waiver Allows the Commission to Determine the Strength of the**
14 **DE Market**

15 The purpose of taking no action, or granting a one-year waiver, is for the Commission to
16 track the market and allow other influential proceedings to be resolved before deciding the issues
17 presented here. Under a one-year waiver, the Commission can require the utilities to report DE
18 installation in their service territory for informational purposes only. So long as the reporting
19 does not satisfy any compliance requirements, this is a satisfactory way for the Commission to
20 monitor the strength of the DE market.

21 **b. A One-Year Waiver Avoids Harming the DE Market**

22 As discussed above, the strength of the DE market is currently unknown.⁷⁷
23 Further, ongoing proceedings will likely affect the economics of DE.⁷⁸ In light of these facts,
24 removal of the DE carve-out is a significant step that could reap irreparable harm on the DE

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27 ⁷⁶ Gillian Cross at 283; Bernosky Cross at 77-78; Huber Cross at 636; Gray Cross at 702; Cullen Hitt Direct at 9;
Barry Direct at 450

28 ⁷⁷ Gilliam Cross at 283; Baker Cross at 380, 386; Gray Cross at 700-701

⁷⁸ Gillian Cross at 283; Bernosky Cross at 77-78; Huber Cross at 636; Gray Cross at 702; Cullen Hitt Direct at 9;
Barry Direct at 450

1 market should it falter. A one-year waiver allows the Commission to retain stability in the DE
2 market, while addressing any compliance issues that may come up in the future.

3 **c. A One-Year Waiver Can Be Written In A Way That Avoids Risk of Double**
4 **Counting**

5 CRS is one of the nation's preeminent experts in REC markets. Several parties to this
6 proceeding, including APS, rely on third parties such as CRS to value RECs.⁷⁹ CRS testified
7 that a waiver can be written in a way that avoids a counting and preserves REC integrity for the
8 DE system owner.⁸⁰ Also, parties with the strongest interest in the double counting issue, such
9 as Walmart, DOD, and NRG all testified that a waiver is a viable solution to the issues in this
10 proceeding that also avoids double counting concerns.⁸¹

11 **d. A One-Year Waiver Will Not Impose Additional Costs on Ratepayers**

12 Retaining the DE carve-out will not increase the cost of the RES for ratepayers.⁸² By
13 implementing a one-year waiver as needed, the Commission is essentially retaining the DE
14 carve-out as it currently stands and thus not increasing the cost of the RES for ratepayers.

15 **e. The REST Rules Permit a One-Year Waiver**

16 A waiver is a contingency that is already built into the REST Rules.⁸³
17 Thus, a waiver falls squarely within the purpose and intent of the rules as they are currently
18 written. Unlike many of the other proposals described above, a one-year waiver does not require
19 a modification to, or reopening of, the REST Rules.

20 **f. A One-Year Waiver Is Broadly Supported by Several Parties and Satisfies All**
21 **The Goals Set Out By Staff**

22 A waiver is the only solution that most parties agree would address the immediate issues
23 and preserve stability in the DE market.⁸⁴ In fact, Staff testified that it supports a one-year
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26 ⁷⁹ Baker Cross at 378; Fellman Cross at 517; Cordova Cross at 406; Bernosky Cross at 119-120

27 ⁸⁰ Martin Cross at 826;

28 ⁸¹ Fellman Cross at 515; Cordova Cross at 403-404, 407-408; Wal-Mart at 372,382

⁸² Huber Cross at 587-588; Gray Cross at 710

⁸³ A.C.C. R14-2-1816

⁸⁴ Gray Cross at 699; Tilghman Cross at 182; Berry Cross at 455; Fellman Cross at 516; Baker Cross at 369; Cullen Hitt Direct at 13; Huber Cross at 622; Cordova Cross at 707-408; Gilliam Cross at 310

1 waiver second only to its “Track and Monitor” proposal.⁸⁵ Further, Staff confirmed that the
2 waiver would satisfy the five goals it set out for this proceeding.⁸⁶

3 Therefore, should the Commission choose to take action at this time, it should grant the
4 utilities a one-year waiver as needed.

5 **iii. Should The Commission Feel Compelled To Take Action Other Than A One-**
6 **Year Waiver, It Should Adopt RUCO’s “Baseline” Proposal**

7 It is SEIA’s position that should the Commission act, it should grant the utilities a one-
8 year waiver as needed. However, should the Commission feel compelled to take other action,
9 SEIA recommends adoption of RUCO’s “Baseline” proposal.⁸⁷

10 SEIA believes that a one-year waiver is the best solution because it is simpler than the
11 “Baseline” proposal. However, the “Baseline” proposal is also acceptable because it achieves
12 the same goals as a waiver and can be implemented in a manner that avoids double counting or
13 harming the DE market.

14 Specifically, the Baseline proposal breaks the link between installed generation capacity
15 and the reduction made to the annual DE requirements in the REST.⁸⁸ Simply put, the
16 “Baseline” proposal successfully does what Staff’s proposal attempts to do; permit reductions of
17 the DE requirement while avoiding a counting.

18 Therefore, SEIA would support adoption of the “Baseline” proposal should the
19 Commission decide to take action beyond a one-year waiver.

20
21 **IV. CONCLUSION**

22 For the foregoing reasons, SEIA respectfully submits that the Commission should reject
23 any proposal that eliminates the DE carve-out or allows utilities to count distributed energy
24 towards compliance without compensating system owners. Specifically, the Commission should
25 not adopt the proposals put forth by APS, TEP/UNS, or Staff.

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27 ⁸⁵ Gray Cross at 699

28 ⁸⁶ Gray Cross at 708-712

⁸⁷ Huber Surrebuttal Testimony at 3-5

⁸⁸ Id.

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The Commission should take no action at this time. However, should the Commission choose to take action, it should issue the utilities a one-year waiver as needed while it determines the strength of the DE market and until other consequential proceedings, such as net metering, are resolved.