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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO. E-01345A-10-0394
SERVICE COMPANY REQUEST FOR)
APPROVAL OF UPDATED GREEN POWER)
RATE SCHEDULE GPS-1, GPS-2 AND GPS-3.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-01345A-12-0290
ARIZONA PUBLIC SERVICE COMPANY FOR)
APPROVAL OF ITS 2013 RENEWABLE)
ENERGY STANDARD IMPLEMENTATION FOR)
RESET OF RENEWABLE ENERGY ADJUSTOR.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-01933A-12-0296
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.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-04204A-12-0297
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)

Arizona Corporation Commission

DOCKETED

AUG 27 2013

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INITIAL POST-HEARING BRIEF

OF TUCSON ELECTRIC POWER COMPANY

AND UNS ELECTRIC, INC.

AUGUST 27, 2013

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1 Tucson Electric Power Company and UNS Electric, Inc. ("Companies"), through
2 undersigned counsel, respectfully submits its Initial Post-Hearing Brief in this matter.

3 **I. INTRODUCTION.**

4 This matter is about one simple issue: What should happen to the annual distributed
5 renewable energy requirement once incentives are no longer necessary. The answer to that
6 question is to adopt Staff's Track and Monitor Proposal in this docket and subsequently reopen the
7 Renewable Energy Standard Tariff Rules ("REST Rules") and eliminate the annual Distributed
8 Renewable Energy Requirement ("DE requirement"). Utilities, including the Companies and
9 Arizona Public Service Company ("APS"), have broached the subject in current and past annual
10 renewable energy implementation plan filings. This is a ripe issue affecting utilities and should be
11 addressed now. This is not some speculative musing as certain parties, like the Solar Electric
12 Industries Association ("SEIA"), suggest.

13 Amongst the range of options put forth, the Track and Monitor solution that the Utilities
14 Division Staff has proposed is the best short-term fix. It is a simple and straightforward method
15 that merely adjusts the distributed renewable energy ("DE") requirement under the REST Rules.
16 Yet, it still fits within the framework of the REST Rules and allows Staff to do its job to ensure
17 that sufficient DE in the market for energy exists. Track and Monitor will not result in double
18 counting, despite the skepticism levied by the Center for Resource Solutions ("CRS") and some of
19 the parties to this proceeding. The most basic reason why is simply this: Track and Monitor does
20 not allow a utility to claim the environmental attributes associated with renewable energy towards
21 the requirements in the REST Rules for compliance purposes; rather, Track and Monitor adjusts
22 the standard so that ratepayers do not have to pay any more than necessary to ensure a self-
23 sufficient market. Further, because Track and Monitor does not deprive system owners of all
24 value (and because state action would not be depriving REC holders of value) there is no legal
25 takings issue.

26 Other proposed solutions are too costly, too complicated, too ambiguous, or are some
27 combination of the three. The Residential Utility Consumer Office ("RUCO") puts forth two

1 well-meaning proposals but both suffer from the need to engage in complicated proceedings. The
2 50/50 proposal, where one-half of the RECs would go to the utility presumably by some sort of
3 “stick” approach, presents more of a takings issue than Track and Monitor. RUCO’s “Baseline”
4 proposal – essentially using capacity (kilowatts or “kW”) to determine market self-sufficiency
5 would likely lead to extensive proceedings, conferences and workshops; even so, reaching
6 consensus over what the baseline should be is unlikely. Also, the “Baseline” proposal does not by
7 itself avoid the double-counting issue (according to some parties) absent a waiver. Both of
8 RUCO’s proposals suffer from being more extreme variants from the structure of the REST Rules.

9 Vote Solar Initiative (“VSI”) and Western Resource Advocates (“WRA”) propose a
10 standard offer and reverse auction respectively. While the proponents may contend that the two
11 are distinct, both proposals unnecessarily burden ratepayers with additional costs. Either process
12 would be costly and difficult to implement. Both parties were scant on the details of either
13 process. Market power concerns would arise, if the majority of RECs are in the possession of a
14 few solar leasing companies. But fundamentally, both proposals create an artificial market for
15 RECs, which was not the objective of the REST Rules. Residential DE proliferation is already
16 being primarily driven by customer choice – and not the REST Rules or incentives. In the short-
17 term, Track and Monitor is the superior option.

18 In the long-term, the Commission should reopen the REST Rules and eliminate the DE
19 requirement. Simply put, the utilities should not be obligated to meet a compliance standard when
20 they are no longer active participants in the process. The “DE carveout” did its job. It spurred the
21 distributed renewable energy industry in general and rooftop solar photovoltaic facilities in
22 particular. CRS admitted that Arizona has a vibrant voluntary market. With that in mind, there is
23 no need to continue to force upon the utilities a specific DE requirement. Even so, DE is now a
24 viable resource that is part of utilities’ resource planning. And the Commission always has the
25 ability to bring back incentives for a particular utility if the DE market is faltering in that utility’s
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1 service territory. But utilities should meet the Annual Renewable Energy Requirement¹ through
2 the most cost-effective means available. That could mean more or less DE, but there should no
3 longer be a blind adherence to an arbitrary percentage. While removing the DE requirement will
4 require a modification to the REST Rules, Staff's remaining four goals - minimizing cost to
5 ratepayers, finding a clear way for utilities to meet production, tracking the amount of energy
6 produced from each eligible resource, and maximizing value to those who install DE - are met.

7 The Companies contend the testimony and evidence support what they are respectfully
8 requesting the Arizona Corporation Commission ("Commission") to do, which is to (1) adopt
9 Track and Monitor at the end of this proceeding as the best solution in the short-term; and (2)
10 reopen the REST Rules for the express purpose of removing the DE requirement under A.A.C.
11 R14-2-1805.

12 **II. POINTS AND AUTHORITIES SUPPORTING THE COMPANIES POSITION.**

13 **1. Staff's Track and Monitor proposal is the most simple and straightforward**
14 **proposal to address the issue of when incentives for distributed renewable**
15 **energy are no longer necessary - in the short-term.**

16 **A. *A concise description of Staff's Track and Monitor Proposal - as the***
17 ***Companies view it.***

18 Track and Monitor would reduce each utility's DE requirement on a kilowatt-hour
19 ("kWh")-per-kWh basis for distributed renewable energy produced in that utility's service
20 territory where there is no transfer of RECs.² The utilities will eventually have production meters
21 on all interconnected distributed renewable energy facilities in their respective service territories.
22 So they will know which "DE" facility owners have transferred their RECs and which facility
23 owners have not.³ The utilities will then know exactly how much production has taken place from
24 *all DE facilities.*⁴

25 ¹ This term is defined in the REST Rules at R14-2-1801(B). The term Distributed Renewable Energy
26 Requirement used in this brief is also defined at R14-2-1801(F).

27 ² See Direct Testimony of Staff witness Robert Gray (Ex. S-1) at 7.

³ Robert Gray Direct Testimony at 7.

⁴ Id.

1 Thus, Staff's Track and Monitor approach fully captures DE generation activity in a given
2 utility's service territory. This provides an accurate picture of how much renewable energy
3 production is taking place on an on-going basis.⁵ Further, those who undertake DE installations
4 without taking a utility incentive would retain their rights to their RECs. This distinguishes Staff's
5 proposal from some of the other options – such as requiring an exchange of RECs in order to
6 interconnect with a utility or to take advantage of net metering service from a utility.⁶

7 Per Staff's testimony, it believes that the Commission should initially grant a limited
8 waiver from the Annual Renewable Energy Requirement and the DE requirement – so that the
9 utilities can implement Track and Monitor.⁷ The limited waiver would then become a permanent
10 adjustment for that year.⁸ After this initial period, if Track and Monitor is working well, then the
11 Commission should consider amending the REST Rules to incorporate Track and Monitor on a
12 permanent basis.⁹ For example, if Track and Monitor were implemented as part of the utilities'
13 respective 2014 implementation plans, then the utilities could report back on Track and Monitor's
14 successes, and recommend appropriate adjustments, in their respective 2015 implementation plan
15 filings.¹⁰

16 Further, the utilities could still monitor market activity and suggest means to boost DE
17 generation within its service territory, should that market fall significantly below expectations.
18 This could be done in that utility's next implementation-plan filing. For example, any utility could
19 request reinstating direct incentives temporarily for one-or-more segments of the DE market –
20 until the market is at a point where the utility would be back in compliance the following year.¹¹

21 ***B. Staff's Track and Monitor Proposal is both simple and straightforward.***

22 Under Staff's proposal, the Commission would only adjust the DE requirement (and the
23

24 _____
25 ⁵ Robert Gray Direct Testimony at 8.

26 ⁶ Id.

27 ⁷ Tr. (Gray) at 750, 779-80.

⁸ Tr. (Gray) at 787-88.

⁹ Tr. (Gray) at 779-80.

¹⁰ Robert Gray Direct Testimony at 10.

¹¹ Robert Gray Direct Testimony at 13.

1 overall Annual Renewable Energy Requirement consequently) for those kWh's produced from DE
2 facilities where an incentive is not provided to the customer from the utility. In short, Track and
3 Monitor provides an accounting mechanism for those installations in a marketplace where some
4 customers are taking direct incentives and some are not.¹² Track and Monitor meets the following
5 objectives:

- 6 • Confirming that there is sufficient market activity by tracking actual kWh
7 production from DE.
- 8 • Providing Staff a direct means to track the DE market and measure its sufficiency.
- 9 • Adjusting the DE requirement for utilities by reducing it – on a kWh-per-kWh basis
10 – the amount of kWh produced where they do not acquire the RECs.
- 11 • Ensuring an appropriate level of production in the most cost-effective manner.¹³

12 By using historical data and updated current-year data to make findings for the upcoming
13 year prevents retroactive changes and preserves certainty with simplicity.¹⁴

14 **C. *Track and Monitor not only stays within the framework of the REST***
15 ***Rules, it aligns with its goals and intent– making it an optimal short-term***
16 ***solution.***

17 Track and Monitor would only adjust the REST requirements for production from DE
18 systems where the owners do not receive an incentive and do not transfer their RECs to the
19 utility.¹⁵ The utility then tracks the production from these customers through installed production
20 meters. The utility is still using renewable energy resources to provide for a portion of its retail
21 load – as the REST Rules intended.¹⁶ As Mr. Gray stated during the evidentiary hearings, Track

22 ¹² See Robert Gray Direct Testimony at 12.

23 ¹³ Tr. (Gray) at 896-97; 900-01 (where Mr. Gray refers to an automatic inherent waiver), 904.

24 ¹⁴ Tr. (Gray) at 911.

25 ¹⁵ Robert Gray Direct Testimony at 9; See also Responsive Testimony of Staff witness Robert Gray (Ex. S-
26 4) at 2-3.

27 ¹⁶ See Rebuttal Testimony of the Companies Witness Carmine Tilghman (Ex. TEP-2) at 5-6; See also
Rebuttal Testimony of Staff witness Robert Gray (Ex. S-2) at 5 (“The Commission has very relevant and
compelling interests in knowing what production is coming from renewable energy facilities, whether they
take an incentive from utilities or not. As part of ensuring reliable utility service in Arizona, the
Commission has a direct interest knowing about all electric generation facilities in Arizona, particularly
those on which its jurisdictional utilities will be relying.”)

1 and Monitor will minimize costs to ratepayers because it will actually lower renewable energy
2 surcharges. Mr. Gray points out that if DE deployments exceed the 4.5-percent target for DE
3 compliance in 2025, then that will lower the 10.5-percent target that must be met with utility
4 generation.¹⁷ Thus, the ratepayers would not fund those additional deployments above the 4.5-
5 percent target. In this way, Track and Monitor still meets the original goals of the REST Rules as
6 stated in Decision No. 69127 (November 14, 2006)¹⁸; at the same time recognizing this new era
7 where customer-funded incentives are no longer necessary to spur DE deployment:

8 Staff recognizes that the Commission set a 15 percent standard and that's an
9 important policy decision. Staff recognizes that with this new world we have,
10 where some people aren't taking incentives, that we have to look at the rules and
11 how can we make them work in this new incentiveless world, at least in some
12 segments. And I think Staff's attempt was to honor the spirit of the rules and that
13 their – you could see in the whole Arizona renewable energy market there would
14 be 15 percent activity, but the utilities could only claim, you know, that lower
15 amount, whatever it is, 10 percent, you know, or whatever, that that other part
16 wouldn't be claimed by the utilities for compliance. But, you know, like I
17 mentioned before, the Commission has ordered the utilities to meter all this
18 production. So under any scenario the Commission will know what amount of
19 DE is going, both that takes incentives and doesn't take incentives.¹⁹

20 So the intent and objective of Staff's proposal is to still ensure that kWh is derived from
21 renewable resources – for the reasons put forth in Decision No. 69127. Track and Monitor
22 provides the means to these ends in a way that adjusts to the new paradigm of DE deployment
23 without incentives.

24
25 ***D. Track and Monitor is similar to other proposals offered by TEP and
26 Arizona Public Service Company.***

27 The Companies proposed a “Track and Reduce” methodology through Mr. Carmine
Tilghman's Direct Testimony. This option would allow utilities to report the number of kWh
sales served from customers' renewable energy systems where no transfer of RECs took place –

¹⁷ See Robert Gray Direct Testimony at 8. The total Annual Renewable Energy Requirement is 15 percent in 2025.

¹⁸ See Findings of Fact Nos. 234 and 237; see also A.A.C. R14-2-1805(A). (which states that distributed energy aides in reliability).

¹⁹ Tr. (Gray) at 901-02.

1 and reduce the utility's Annual Renewable Energy Requirement. The customer retains ownership
2 of the RECs and would be free to sell them in any market; but the utility's requirement would be
3 reduced by those amounts.²⁰ This proposal would require a waiver of the DE requirement under
4 R14-2-1805 because the utility would not have ownership of the RECs to prove compliance as
5 required under the REST Rules.²¹

6 In its 2013 REST Implementation Plan, APS had proposed Track and Record. In Decision
7 No. 73636 (January 31, 2013), the Commission subjected Track and Record to this hearing – and
8 ordered the same for the Companies.²² Although not as similar, Track and Record does share
9 common characteristics with Track and Monitor. For instance, Track and Record would have
10 simply tracked distributed generation for informational purposes. Instead of acquiring (and later
11 retiring) RECs from any newly installed systems, APS would only have tracked the amount of
12 incremental energy these systems produced within its service territory, and report that information
13 to the Commission.²³ Under its proposal, APS would only be able to retire any DE RECs
14 currently in its possession to satisfy its Annual Renewable Energy Requirement obligations under
15 A.A.C. R14-2-1804. It could also acquire new DE RECs to satisfy the annual requirement, but
16 would have no further obligation to obtain and retire new DE RECs to satisfy the DE requirement
17 under A.A.C. R14-2-1805.²⁴ By contrast, Track and Monitor adjusts the compliance requirement
18 under A.A.C. R14-2-1805 based on DE production where the REC is not transferred.²⁵

19 The Companies view Staff's proposal as a very viable mechanism to address what happens
20 when incentives become unnecessary – in the short term.²⁶ Therefore, the Companies Track and
21 Monitor as the best short-term solution. Based on their testimony, APS also supports Track and
22

23 ²⁰ See Direct Testimony of the Companies witness Carmine Tilghman (Ex. TEP-1) at 8.

24 ²¹ Carmine Tilghman Direct Testimony at 8.

25 ²² See Decision No. 73636 at 26; see also Decision Nos. 73767 (March 21, 2013) at 4-5 (amending
Decision No. 73637 decided January 31, 2013) (for TEP) and 73638 (March 21, 2013) at 22 (amended by
Decision No. 73766 on March 21, 2013 for other reasons) (for UNS Electric). The Commission's orders in
those respective decisions spawned this proceeding.

26 ²³ See Direct Testimony of APS witness Greg Bernovsky (Ex. APS-1) at 6.

27 ²⁴ Greg Bernovsky Direct Testimony at 6.

²⁵ See Robert Gray Direct Testimony at 10.

²⁶ See Carmine Tilghman Rebuttal Testimony at 2.

1 Monitor. And it appears that Wal-Mart may be supportive so long as the DE requirement is not
2 entirely removed.²⁷

3 *E. Staff's alternative adjustment to track and monitor (adding a full waiver*
4 *of the DE requirement) could also be workable and would be acceptable.*

5 Staff indicated that if the Commission had concerns about Track and Monitor as proposed,
6 its alternative recommendation would be for Track and Monitor coupled with a full waiver. This
7 full waiver would essentially replace the kWh-per-kWh adjustment that Staff prefers; in other
8 words, there would be no limited waiver based on a kWh-to-kWh adjustment.²⁸ Staff and the
9 Commission would still be able to monitor the market and determine whether a waiver should
10 apply on a year-to-year basis, so the full waiver does not appear to be automatic.²⁹ CRS admitted
11 during the evidentiary hearings that if this waiver component is added (waiving the utilities
12 obligation to meet the DE requirement in the REST Rules), then any double-counting concerns are
13 avoided.³⁰ This option, however, would not adjust the standard on a kWh-per-kWh basis based on
14 kWh production where RECs are not acquired. So it appears to be what Staff recommends only if
15 the Commission is uncomfortable with what Mr. Gray characterized as "Staff's first track and
16 monitor proposal."³¹ As the following section will show, there is no double counting issue with
17 Track and Monitor. In fact, the evidence does not support the arguments several parties make to
18 criticize Staff's "first" proposal.

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24 ²⁷ Tr. (Baker) at 371-72 ("As to the third suggestion offered by TEP and UNS in their testimony, Wal-Mart
believes that this method may have some merit.")

25 ²⁸ Tr. (Gray) at 743, 789.

26 ²⁹ Tr. (Gray) at 786.

27 ³⁰ See. e.g. Tr. at 886 (Jennifer Martin testifying for CRS: "If the waiver, you know, reduces that amount,
then anything that is not used to meet the remaining requirement, assuming that there are no other claims to
it, would not be counted.")

³¹ Tr. (Gray) at 743.

1 **2. The Criticisms of Staff’s Track and Monitor proposal are unfounded.**

2 **A. Staff’s Track and Monitor proposal does not double-count RECs or**
3 **renewable attributes.**

4 Under Track and Monitor, utilities will not claim kWh’s produced by renewable DE for
5 compliance purposes if the RECs are not transferred. All that occurs is an adjustment to the DE
6 requirement. Therefore, there is no double counting. This is a fundamental precept with the Track
7 and Monitor proposal.

8 The double-counting criticism is put forth by a number of parties, most notably CRS –
9 which is a non-profit organization whose self-described mission is to develop market and policy
10 solutions to advance sustainable energy. Among other areas, CRS offers consumer protection and
11 certification programs under its “Green-e” brand.³² CRS’s Executive Director Jennifer Martin
12 proffered testimony suggesting that Staff’s Track and Monitor proposal *could* result in double-
13 counting for the purpose of Green-e’s certification of RECs in the voluntary market – or in a
14 market where purchases of renewable energy are made above and beyond state requirements in a
15 compliance market.³³ CRS’s criticisms regarding double counting lack merit for several reasons.

16 First, there is no requirement in Arizona that RECs be certified by CRS through its Green-
17 e program or any other program. Even so, the RECs that the utility acquires from the customer or
18 system owner fit the REC definition under the REST Rules – and do represent energy derived
19 from renewable resources. A REC in Arizona must flow from the source (generation) to the sink
20 (consumption) and be consumed within the state of Arizona. In other words, the “renewable
21 attribute” and the energy are bundled in a “Green Tag.”³⁴ By contrast, in the voluntary market that
22 CRS presumably presides over, the RECs or “renewable attributes” can be unbundled from the
23 actual energy itself. This is part of the difference that distinguishes Arizona’s compliance market
24 from CRS’s voluntary market – discussed in more detail in the next section.

25 _____
26 ³² See Direct Testimony of CRS Executive Director Jennifer Martin (Ex. RUCO-4) at 1 (RUCO sponsored
her pre-filed testimony).

27 ³³ Jennifer Martin Direct Testimony at 4, 13.

³⁴ See Tr. (Tilghman) at 249-50.

1 Second, there is a difference between how Arizona defines RECs versus how CRS views a
2 REC. The Arizona definition of REC is “the unit created to track kWh derived from an Eligible
3 Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by
4 Distributed Renewable Energy Resources.”³⁵ Arizona’s definition does not include
5 “environmental attributes.”³⁶ As such, RECs in Arizona have been described as more of a
6 facilitator of system installs, rather than an accounting mechanism for environmental attributes.³⁷
7 This is a fundamental difference between the Arizona REC and a REC from other jurisdictions. In
8 fact, the CRS describes the REC as the “greenness” of electricity produced from renewable
9 resources.³⁸ Essentially, what the Commission is counting for compliance purposes and what CRS
10 is concerned with are two different things, even if both are called a “REC.” This is another reason
11 why double counting is not an issue under Track and Monitor.

12 Yet CRS and other parties continue to argue that double counting occurs in their view,
13 even if the energy is used or claimed to meet a renewable energy standard.³⁹ This gets to the third
14 and most fundamental reason why Track and Monitor does not double count: a utility will not
15 *claim or use* energy to meet a compliance obligation where the REC is not acquired. In other
16 words, if the utility does not acquire the REC, it cannot claim it towards compliance. Rather,
17 Track and Monitor adjusts the standard based on kWh produced from renewable resources, where
18 the utility does not acquire the REC.

19 CRS and others have separated the “renewable attributes” – which are bundled into a
20 distinct entity (the REC) – from the energy (kWh) produced from the renewable energy facility.
21 The RECs are then bought and sold in the voluntary market.⁴⁰ At the same time, Track and
22

23 ³⁵ See A.A.C. R14-2-1801(N).

24 ³⁶ VSI witness Rick Gilliam admitted that the Arizona REST Rules definition of RECs do not include
25 environmental attributes. Tr. (Gilliam) at 316-17.

26 ³⁷ See Rebuttal Testimony of RUCO witness Lon Huber (Ex. RUCO-2) at 4.

27 ³⁸ See *Best Practices in Public Claims for Solar Photovoltaic Systems*, CRS, October 7, 2010 at 2 (available
at <http://www.green-e.org/docs/energy/Solar%20FAQ%20and%20Claims.pdf> and last checked August 26,
2013).

³⁹ See Tr. (Martin) at 811; 852-53; and CRS Responses to TEP Data Requests (“DRs”) 13 and 16 (admitted
as part of Ex. TEP-3).

⁴⁰ Tr. (Martin) at 807-08. See also CRS Response to TEP DR 12 in Ex. TEP-3.

1 Monitor will disaggregate the renewable attributes that a utility can use to meet its compliance
2 target, from that energy actually produced (which only adjusts the compliance target). For
3 example, if a customer DE facility produces 10,000 kWh of renewable energy but the utility
4 acquires only 5,000 RECs associated with that facility, then the utility can only claim that it has
5 acquired 5,000 kWh as renewable energy. The remaining 5,000 kWh produced from the customer
6 DE facility adjusts the standard downward. While the total renewable energy production is 10,000
7 kWh, the customer has 5,000 unclaimed RECs available to be sold into in the voluntary market. In
8 this way, Track and Monitor adjusts compliance but does not allow the use of the “renewable
9 attribute” towards compliance if it was not acquired.

10 In short, REC integrity is preserved because RECs or the “renewable” in the energy would
11 *not* be counted toward compliance unless the REC is transferred to the utility.⁴¹ Track and
12 Monitor carves out that energy where the RECs are not transferred from counting towards
13 compliance – and where the utility is specifically *not* using the REC to meet compliance – while
14 still giving the Commission the necessary information to determine what is happening with the
15 markets for renewable energy.⁴² Any confusion could be resolved by making sure the language is
16 clear. As suggested by RUCO’s witness Lon Huber, an affected utility could simply state that
17 there were “1,000 kWh hosted on [a utility’s] grid that [it] does not own the attributes to.”⁴³ At the
18 same time, a utility’s ratepayers would not have to fund any more incentives for DE.

19 As CRS expressed their skepticism over Track and Monitor, it became clear that they did
20 not entirely understand Staff’s proposal. Ms. Martin for CRS even admitted she is not 100%
21 certain about what is Staff’s actual proposal.⁴⁴ But as Mr. Gray stated multiple times, utilities
22 would only acquire kWh and the associated RECs to comply up to the lower requirement; Arizona
23 customers that do not take an incentive and do not sell their RECs to the utility can do with them
24 as they see fit – because neither the energy, (kWh) nor the RECs would be used towards
25

26 ⁴¹ Tr. (Gray) at 694.

27 ⁴² Tr. (Gray) at 700-01.

⁴³ See Lon Huber Rebuttal Testimony at 4.

⁴⁴ See Tr. (Martin) at 822.

1 compliance.⁴⁵ Staff's proposal does not count those kWh where RECs are not acquired for
2 compliance; it lowers the DE requirement.⁴⁶ And by Ms. Martin's own admission, if there is no
3 claim on the renewable attributes for compliance purposes, there is no double counting:

4 If you require compliance for a portion or all of the existing requirement, then any
5 renewable energy used to meet that compliance is considered claimed and would
6 not be eligible to participate in the Green-e program. *If the waiver, you know,*
7 *reduces that amount, then anything that is not used to meet the remaining*
8 *requirement, assuming that there are no other claims to it, would not be double*
9 *counting.*⁴⁷

8 Essentially, Track and Monitor provides a limited waiver where it adjusts the compliance
9 requirements in the REST Rules – but without using any renewable attributes associated with that
10 generation. This distinguishes Track and Monitor from the system used in Hawaii – where all of
11 the renewable energy is counted toward its requirement.⁴⁸ Further, there appears to be some
12 inconsistency as to what CRS considers double counting; for instance, if retail sales were to be
13 reduced because of DE (which also lowers the compliance requirement) that is not double
14 counting in CRS's view.⁴⁹ As stated above, language could be crafted to ensure utilities do not
15 claim renewable energy toward compliance if the attributes were not acquired; this would address
16 both Ms. Martin's and CRS's concerns.⁵⁰ In the alternative, if Staff simply established a new
17 mandate with, for example, a full waiver of the DE requirement and without saying how that new
18 mandate came about, then that lessens the risk of double counting according to Ms. Martin.⁵¹
19 Still, CRS, Green-e and Ms. Martin's testimony should be given limited weight given the
20 fundamental differences between CRS's Green-e Standard and the Arizona REST Rules.

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⁴⁵ See e.g. Robert Gray Responsive Testimony at 2.

24 ⁴⁶ Tr. (Gray) at 901.

25 ⁴⁷ Tr. (Martin) at 886 (emphasis added).

26 ⁴⁸ Tr. (Martin) at 827.

27 ⁴⁹ Tr. (Martin) at 846.

⁵⁰ Tr. (Martin) at 860 (responding to questions from the Companies' counsel and stating, in part, that "... there are many ways for the Commission to be explicitly clear about what their intent is and what is being counted or not counted.")

⁵¹ Tr. (Martin) at 881-82.

1 **B. *CRS's Green-e certification deals with the voluntary market outside of***
2 ***Arizona; Arizona's REST Rules and Track and Monitor addresses the***
3 ***compliance market in Arizona.***

4 This represents a fundamental difference between CRS's voluntary market and Arizona's
5 REST Rules.⁵² By Ms. Martin's own admission, the voluntary market is only addressing what is
6 over and above what is required of the utilities in a compliance market such as in Arizona.⁵³ The
7 principal concern of CRS with its Green-e certification is to maintain confidence in the value of
8 RECs in the compliance market for consumers and prevent two entities from claiming essentially
9 the same environmental attributes from one unit of renewable energy.⁵⁴ But the Green-e
10 certification, as it applies to utilities, addresses voluntary programs – like when a customer opts to
11 purchase “green” power. In that case, the Green-e certification of the “green” in the power is of
12 value. An example in Arizona would be APS using CRS's certification for its voluntary green
13 pricing program.⁵⁵ Essentially, the focus of CRS's program is providing consumer assurance that
14 when they purchase renewable energy, they acquire the “renewable” in the energy.⁵⁶ Arizona's
15 REST Rules, by contrast, address a utility meeting certain benchmarks in ensuring production of
16 energy from renewable resources within its service territory. As APS's witness Greg Bernovsky
17 put it– “I think that ultimately the [Commission] determines what counts for compliance and
18 CRS's requirements are an informative component of that but not the absolute authority on REC
19 disposition.”⁵⁷ In a situation where utilities must show compliance (as Track and Monitor is meant
20 to address), considering Green-e certification is ill applied and a bad fit.

21 Further (and as previously described) what Green-e is certifying in terms of a “REC” for
22 the voluntary market is different than how Arizona defines a “REC” for compliance purposes.
23 Essentially, the “credit” is not the same thing.⁵⁸ In fact, there are several different definitions of

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25 ⁵² Tr. (Tilghman) at 188.

26 ⁵³ Tr. (Martin) at 810; see also Jennifer Martin Direct Testimony at 4.

27 ⁵⁴ Tr. (Martin) at 811-12.

28 ⁵⁵ See Tr. (Bernovsky) at 119-20 and Tr. (Huber) at 661 (discussing APS's program).

29 ⁵⁶ See Tr. (Berry) at 487 (agreeing that the purpose of CRS is to protect the buyer of the RECs.)

30 ⁵⁷ Tr. at 141-42.

31 ⁵⁸ Tr. (Tilghman) at 230-31.

1 renewable energy credit – with varying degrees of what environmental attributes are contained
2 within them.⁵⁹ This is yet another key component that distinguishes what Arizona is examining for
3 compliance purposes and what CRS is examining for certification purposes in the voluntary
4 market – making the weight of any argument regarding Green-e certification against Track and

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7 ⁵⁹ For instance, Mr. Gilliam for VSI refers to the Colorado definition of “Renewable Energy Credit” – the
8 full definition is “a contractual right to the full set of non-energy attributes, including any and all credits,
9 benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a
10 specific amount of electric energy generated from a renewable energy resource. One REC results from one
11 megawatt-hour of electric energy generated from an eligible energy resource. For the purposes of these
12 rules, RECs acquired from on-site solar systems before August 11, 2010 shall qualify as RECs from retail
13 renewable distributed generation for purposes of demonstrating compliance with the renewable energy
14 standard. RECs acquired from off-grid on-site solar systems prior to August 11, 2010 shall also qualify as
15 RECs from retail renewable distributed generation for purposes of demonstrating compliance with the
16 renewable energy standard.” See Code of Colorado Regulations at 4 CCR 723-3-3652(t) (emphasis added),
17 which was referred to in the Direct Testimony of Rick Gilliam (Ex. Vote Solar-1) at 8 and Tr. (Gilliam) at
18 316-17 – and which is available at <http://www.sos.state.co.us/CCR/Rule.do?deptID=18&deptName=700>
19 *Regulatory Agencies&agencyID=96&agencyName=723 Public Utilities*
20 *Commission&ccrDocID=2259&ccrDocName=4 CCR 723-3 RULES REGULATING ELECTRIC*
21 *UTILITIES&subDocID=59011&subDocName=RENEWABLE ENERGY STANDARD&version=25* (last
22 checked August 26, 2013).

23 Further, Ms. Martin refers to the definition of “Renewable and Environmental Attributes” under the
24 Western Renewable Energy Generation Information System (“WREGIS”) Operating Rules as “Any and all
25 credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the
26 generation from the Generating Unit, and its avoided emission of pollutants. [Footnote 2] Renewable and
27 Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from
the Generating Unit, (ii) production tax credits associated with the construction or operation of the
Generating Unit and other financial incentives in the form of credits, reductions or allowances associated
with the Generating Unit that are applicable to a state, provincial or federal income taxation obligation, (iii)
fuel-related subsidies or “tipping fees” that may be paid to the seller to accept certain fuels, or local
subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion
of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating
Unit for compliance with local, state, provincial or federal operating and/or air quality permits. Footnote 2:
The avoided emissions referred to here are the emissions avoided by the generation of electricity by the
Generating Unit, and therefore do not include the reduction in greenhouse gases (GHGs) associated with
the reduction of solid waste or treatment benefits created by the utilization of biomass or biogas fuels.
Avoided emissions may or may not have any value for complying with any local, state, provincial or
federal GHG regulatory program. Although avoided emissions are included in the definition of a WREGIS
Certificate, this definition does not create any right to use those avoided emissions to comply with any
GHG regulatory program.” See Western Electricity Coordinating Council, WREGIS Operating Rules
(December 2010) located at
<http://www.wecc.biz/WREGIS/2013%20Operating%20Rules/WREGIS%20Operating%20Rules%20%2052013%20clean.pdf> (last checked August 26, 2013) and cited in CRS’s Response to TEP DR 10 in Ex.
TEP-3. Clearly, each definition of a “REC”, even in terms of the renewable attributes, varies from
jurisdiction to jurisdiction.

1 Monitor dubious. Indeed, given CRS's apparent rigidity regarding its certification, it may prove
2 difficult for a producer from *any* jurisdiction to have their RECs certified given the need for all
3 environmental attributes to be included.⁶⁰

4 Also, the Green-e certification program has existed since 1997⁶¹ – while the Arizona REST
5 Rules became effective on August 14, 2007.⁶² CRS admitted that the Green-e certification was
6 not updated or modified to reflect Arizona's REST Rules.⁶³ It is questionable to what extent CRS
7 has adapted to any compliance market, even though Ms. Martin stated that they are “responsive”
8 to state policy and compliance markets.⁶⁴ Besides, CRS admits it has never evaluated a proposal
9 like Track and Monitor and could not make any definite conclusion here, especially since Ms.
10 Martin was unclear about Staff's proposal to begin with.⁶⁵ Perhaps it is time, as Mr. Gray
11 suggested, that CRS adopt its standard to the reality of state compliance markets like Arizona.⁶⁶

12 Finally, CRS is not simply adjudicating which “renewable attributes” should be certified
13 under its Green-e standard. CRS is also a self-described promoter of sustainable energy
14 solutions.⁶⁷ So it is in a dual role of trying to promote more renewable energy while at the same
15 time judging what is “renewable” for purposes of the marketplace. This dual role must be noted in
16 terms of evaluating the weight of any CRS statements regarding their objectivity – especially
17 regarding any statements made about adjusting Arizona's compliance requirements through Track
18 and Monitor or waiving the DE requirement from the REST Rules.

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22 ⁶⁰ Tr. (Martin) at 865 (admitting under cross-examination that CRS could preclude certification if a state
law prevents certain attributes from being included, for example).

23 ⁶¹ Jennifer Martin Direct Testimony at 1.

24 ⁶² See Arizona Administrative Register, Vol. 13, Issue 27 (July 6, 2007) at pages 2389-2433 (attached to
Staff's Notice dated July 10, 2007 in Docket No. RE-00000C-05-0030 and available at
<http://images.edocket.azcc.gov/docketpdf/0000074568.pdf> (last checked August 26, 2013).)

25 ⁶³ See CRS Response to TEP DR 4 in Ex. TEP-3.

26 ⁶⁴ Tr. (Martin) at 875.

27 ⁶⁵ Tr. (Martin) at 831-32, 835.

⁶⁶ Tr. (Gray) at 699, 773; see also Tr. (Bernovsky) at 142 (suggesting CRS does have the ability to modify
its guidelines).

⁶⁷ Jennifer Martin Direct Testimony at 1; Tr. (Martin) at 818; 874.

1 **C. *The Federal Trade Commission (“FTC”) guidelines and WREGIS***
2 ***operating rules do not apply to Arizona’s REST Rules.***

3 The FTC *guidelines* are focused on protecting consumers from unscrupulous marketers
4 touting their “use” of renewable energy. Examples range from a clothing manufacturer advertises
5 that it uses wind power – to a manufacturing plant placing solar panels on its roof, selling the
6 environmental attributes, and then advertising that it uses “100% solar power.”⁶⁸ The FTC
7 guidelines do *not* address utility compliance obligations. Any reference to these guidelines, such
8 as in Ms. Martin’s Direct Testimony, are not applicable here. Even so, FTC may not view what is
9 and what is not double counting the same way CRS does.⁶⁹

10 Similarly, WREGIS addresses issues related to the bulk transmission of electricity and not
11 what occurs behind the meter on a distribution system. WREGIS is the renewable energy tracking
12 system covered by the Western Electricity Coordinating Council or “WECC.” The WECC, when
13 referring to bulk transmission, is typically referring to transmission at 100 kV or above. The DE
14 systems, and proposals regarding what to do when incentives are no longer provided for DE, are
15 typically addressing systems interconnected at voltages significantly lower than 100 kV.⁷⁰
16 Therefore, Ms. Martin’s Direct Testimony addressing WREGIS standards are of limited, if any,
17 relevance to the issues in this case.

18 **D. *Staff’s Track and Monitor proposal does not result in any unlawful***
19 ***takings of any property right.***

20 Regardless of how a “REC” is defined (and what attributes are included) at its core a REC
21 is an accounting mechanism. It is neither real nor tangible property; it is not even a license or
22 something akin to a privilege or a permit to carry out certain activities or business. Therefore, it is
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25 ⁶⁸ See the FTC Green Guides – Renewable Energy Claims – codified at 16 CFR § 260.15 and available at
<http://www.ftc.gov/os/2012/10/greenguides.pdf> (last checked August 26, 2013).

26 ⁶⁹ See Tr. (Martin) at 879-80 (responding to cross-examination from Staff’s counsel)

27 ⁷⁰ See Western Electricity Coordinating Council, NERC/WECC Planning Standards – Planning and
Operating Criteria, Revised September 2007, at page XI-10 available at
[http://www.wecc.biz/library/Library/Planning%20Committee%20Handbook/WECC-
NERC%20Planning%20Standards.pdf](http://www.wecc.biz/library/Library/Planning%20Committee%20Handbook/WECC-
NERC%20Planning%20Standards.pdf) (last checked August 26, 2013).

1 questionable as to what degree there are any legal property rights attached to an accounting
2 mechanism. Even so, it is less clear whether that property right lies originally with the system
3 owner. Some states have determined that the ownership of the REC rests with the utility, for
4 example.⁷¹

5 But even if some form of “property right” attaches to this accounting mechanism, Track
6 and Monitor does not amount to an illegal taking. This is because: (1) Track and Monitor would
7 not result in the utility forcibly acquiring the REC from the system owner; (2) the utilities would
8 not be taking RECs absent compensation, similar to an incentive payment; and (3) the renewable
9 attributes are not being claimed or used to meet compliance absent the utility acquiring the RECs.
10 Some parties may argue that the value of RECs in Arizona may be lessened. But aside from that
11 being speculation, a taking only occurs when *all* value - economically beneficial or productive use
12 is deprived. A possible loss of value is not deprivation of all value; otherwise, all government
13 action taken could result in a takings claim.⁷²

14 Even assuming that this was equivalent to a regulatory taking of land (which is highly
15 dubious) the fact remains that CRS would be the entity taking the action to deprive the system
16 owner of any value of the RECs by not certifying the RECs. CRS is a non-profit entity based in
17 California. The Arizona Corporation Commission approving Track and Monitor does not affect
18 the value of the RECs absent CRS taking action. So it is not state action depriving system owners
19 of value; rather, it is the California-based non-profit organization doing so.

20 Track and Monitor is also a *prospective* adjustment to the REST Rules. Those who oppose
21 Track and Monitor still had to admit that if the DE requirement was changed or eliminated going
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23 ⁷¹ See RUCO’s filing in this docket dated May 21, 2013, which included a State Survey of Renewable
24 Energy Credits Ownership Policies put together by Arizona State University’s Energy Policy Innovation
25 Council. That handout notes that Kansas and New Mexico award the RECs from DE systems to utilities.
26 Other states, like California and North Carolina, have more of a hybrid system of REC ownership. The
27 Companies are not aware of any case where these systems have been overturned on legal property rights
ground.

⁷² See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1018 (1992) (“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law”) (citations omitted).

1 forward, there would be no taking issue.⁷³ Finally, Track and Monitor advances a legitimate state
2 interest – finding the most cost-effective means to encourage renewable energy production in
3 Arizona. Track and Monitor would achieve that goal in the short term. And even if the value of
4 RECs is modestly impacted, residential customers are still able to produce electricity from these
5 DE systems, with the opportunity to lower their electric utility bills. Track and Monitor does not
6 double count the RECs or the environmental attributes of renewable energy, and it would not
7 deprive property owners the ability to sell the RECs. Therefore, there is no takings issue.

8 ***E. The issue of what to do when incentives are no longer needed is ripe and***
9 ***it is not too early to implement Track and Monitor.***

10 Some parties suggest that it is not necessary to implement Track and Monitor (or any
11 solution) now. Parties like SEIA believe that ratepayers should continue to pay more for DE when
12 unnecessary to do so. Delaying resolution is unwise. As Mr. Tilghman testified that TEP is facing
13 the very real issue now of what to do when incentives are not accept by DE facility owners
14 interconnecting onto its system.⁷⁴ In fact, Mr. Tilghman referred to multiple DE systems whose
15 owners chose not to take an incentive.⁷⁵ This has real cost impact to the utilities and their
16 customers based on the situation that currently exists.⁷⁶ Indeed, as a result both TEP and UNS
17 Electric are proposing an option in each of their 2014 REST Implementation Plans to eliminate all
18 DE incentives.⁷⁷

19 Staff also agrees that there should be resolution of this issue now. Mr. Gray notes in pre-
20 filed testimony that there have been numerous discussions with a wide variety of interested parties

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22 ⁷³ See e.g. Tr. (Gilliam) at 317-19 (responding to cross-examination from the Companies' counsel).

23 ⁷⁴ Tr. (Tilghman) at 243 (“this is a very real issue and it is a very real issue as it applies to compliance
24 today, not what might happen down the road. . . constantly refining and revising the policies is much more
appropriate in our opinion than simply waiting to see if it works itself out. I don’t believe that’s
appropriate.”); see also Carmine Tilghman Rebuttal Testimony at 4-5.

25 ⁷⁵ Tr. (Tilghman) at 204-05 (responding to cross-examination from WRA’s counsel).

26 ⁷⁶ Tr. (Tilghman) at 181.

27 ⁷⁷ See TEP Proposed 2014 REST Implementation Plan, Docket No. E-01933A-13-0224 (July 1, 2013) at 1,
8 (available at <http://images.edocket.azcc.gov/docketpdf/0000146274.pdf> and last checked August 26,
2013); UNS Electric Proposed 2014 REST Implementation Plan, Docket No. E-04204A-13-0225 (July 1,
2013) at 1, 5-6 (available at <http://images.edocket.azcc.gov/docketpdf/0000146275.pdf> and last checked
August 26, 2013.)

1 and that all of the ideas have more or less been put on the table.⁷⁸ The fact that there are other
2 ongoing proceedings that might affect renewable energy is not a reason to delay resolution of this
3 issue:

4 Undoubtedly, there will be a variety of changes in the marketplace and possibly in
5 regulatory matters such as net metering, rate design, etc. But such possibilities do
6 not present a compelling argument to let this issue languish for an indeterminate
7 period of time while utilities continue to have compliance obligations to meet under
8 the REST Rules.⁷⁹

9 To be blunt, nothing would ever be accomplished if we waited for that magical moment
10 when all remains unchanged. That is fantasy. The parties have had more than ample opportunity
11 to vet this issue present their arguments on how to proceed. The circumstances are ripe to
12 implement Track and Monitor and not delay a resolution any further.

13 **3. RUCO's proposals, while well meaning, are too complicated to implement and**
14 **do not resolve the issue as efficiently or within the construct of the REST**
15 **Rules.**

16 *A. RUCO's "50/50" proposal augments any takings argument, increases the*
17 *standard, and is more costly to the ratepayers.*

18 While the Companies do not agree with RUCO's proposal, at least RUCO understands that
19 a resolution is needed now to address what to do when incentives are no longer unnecessary.
20 RUCO's 50/50 proposal is contained in Mr. Huber's Rebuttal Testimony. Under this proposal,
21 50% of the RECs would go to the utility while 50% would remain with the system owner, who
22 could do with them as they please. There would be an exemption for commercial customers to
23 keep 100% of their RECs if they need to meet another standard or if they are required to retire the
24 RECs.⁸⁰ For example, according to the testimony of U.S. Department of Defense Kathy K.
25 Ahsing of the Energy Initiatives Task Force, for military installations to meet federal
26 requirements, they must keep 100% of the RECs created by renewable generation.⁸¹

27 ⁷⁸ See Robert Gray Rebuttal Testimony at 3.

⁷⁹ Surrebuttal Testimony of Robert Gray (Ex. S-3) at 3.

⁸⁰ See Lon Huber Rebuttal Testimony at 7-8.

⁸¹ Tr. (Ahsing) at 422-23; but see Direct Testimony of Kathy Ahsing (Ex. DoD/FEA-3) at 6 (where she states that, despite the federal requirements, the military will utilize RECs to attract developers and make a renewable project financially tenable.)

1 Unfortunately, the 50/50 proposal suffers from some fatal flaws. First, RUCO's proposal
2 augments any takings argument when 50% of the RECs are transferred – especially considering
3 the “stick” approach that Mr. Huber referred to during the evidentiary hearing. RUCO does not
4 believe a takings issue exists here, because the transactional method could be devised to compel a
5 transfer (such as assessing a fee).⁸² This is the proverbial “stick” in RUCO's proposal. But unlike
6 the 50/50 proposal, Track and Monitor allows the system owner the choice to keep all of the RECs
7 created by the renewable generation. In short, Track and Monitor is the safer legal option.

8 Second, the 50/50 proposal would likely result in a *de facto* increase to the standards and
9 requirements in the REST Rules. Indeed, this could result in up-to-twice as much renewable
10 energy being on the system than what is required. This is because utilities would only receive
11 one-half of the RECs it needs to comply with the REST Rules – since such compliance is based on
12 acquiring RECs.⁸³ As a result, the utilities would have to seek out additional renewable
13 installations – likely resulting in higher costs. RUCO denies that there will be a doubling⁸⁴; but
14 their convictions were unconvincing to several parties. No other party testified in support for this
15 approach. In short, any increase in the standard results in to higher costs to the ratepayers.

16 Finally, the 50/50 proposal would be more invasive to the REST Rules than Track and
17 Monitor. For instance, how one-half of the RECs are transferred via this “stick” approach would
18 be a fundamental change to how RECs are transferred under A.A.C. R14-2-1803. It is
19 questionable as to how the Commission could employ this approach without substantially
20 modifying the REST Rules. In addition, one would have to construct an entire new approach to
21 compel system owners to transfer 50% of the RECs created or pay a fee⁸⁵ (a system akin to
22 “hand'em over or else”). In short, there are too many questions, and RUCO does not provide
23 enough satisfactory answers to advocate the 50/50 proposal over Track and Monitor.

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⁸² Tr. (Huber) at 655-56; 667-68.

26 ⁸³ See Tr. (Tilghman) at 254-55; Mr. Berry for WRA corroborated Mr. Tilghman's testimony on this point.
27 See Tr. at 484-85.

⁸⁴ Tr. (Huber) at 569.

⁸⁵ Tr. (Huber) at 668.

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B. RUCO’s mercurial “Baseline” proposal is an overly complicated modification to Track and Monitor likely to lead to protracted proceedings that do not improve on Staff’s proposal.

RUCO’s “Baseline” proposal, as it became known during the hearing, appears to establish a capacity target as the threshold for determining when the DE market is self-sufficient.⁸⁶ Mr. Huber first made this proposal in his Surrebuttal Testimony. This proposal also suffers from some fatal flaws.

First, double counting would still remain an outstanding issue absent a waiver, according to other intervenors’ testimony.⁸⁷ It is far from clear that the “Baseline” proposal gets any closer to resolving the double-counting concerns expressed by witnesses any more than Track and Monitor does; and even Mr. Huber admitted one would still have to employ careful wording to assuage those concerns.⁸⁸ Ms. Martin testified that using capacity (kW) instead of energy (kWh) does not resolve the double-counting issue by itself.⁸⁹

Second, the “Baseline” proposal is also a different construct than how the REST Rules are currently structured. Staff expressed concerns, for example, that there would be no direct link between renewable energy deployed in Arizona and compliance with RES requirements,⁹⁰ since the REST Rules are based on energy and not capacity. To determine market self-sufficiency, Track and Monitor uses actual kWh production, which is much closer to the structure of the REST Rules than a capacity-based approach. Thus, the baseline proposal is a more radical departure from the REST Rules – likely to cause confusion and require extensive proceedings on an annual basis. It would be better to go with a straight waiver than try to reinvent the wheel in this fashion.⁹¹

⁸⁶ See Surrebuttal Testimony of Lon Huber (Ex. RUCO-3) at 3-4.
⁸⁷ See e.g. Tr. at 328 (Mr. Gilliam for VSI stating that the DE standard is effectively waived under the “Baseline” proposal); Tr. at 815, 841-42 (testimony from Ms. Martin for CRS stating that her understanding of RUCO’s proposal is that it involves a waiver.)
⁸⁸ See Lon Huber Surrebuttal Testimony at 5.
⁸⁹ See CRS Response to TEP DR 27 in Ex. TEP-3.
⁹⁰ See Tr. (Gray) at 692.
⁹¹ Tr. (Gray) at 720.

1 Finally, there is the problem of how to establish this baseline; even RUCO does not seem
2 to have a clear plan as to how to do that.⁹² If past practice and history at the Commission are any
3 indication, given the number of interested parties, there will likely be several technical
4 conferences and workshops, followed by yet another formal process of pre-filed testimony and
5 evidentiary hearings.⁹³ Certain parties are justifiably worried that establishing a “baseline” would
6 be very complicated and lead to much uncertainty as to whether compliance is met – as well as the
7 possibility of a “moving target.”⁹⁴ Mr. Huber acknowledges that establishing a baseline could
8 become very complicated.⁹⁵ Given that it would not be certain whether the market would be
9 determined self-sufficient until the last minute adds to the uncertainty.⁹⁶ The utilities would still
10 be on the hook for compliance when the market is not self-sufficient, even when they no longer
11 have any influence over the market through incentives. In short, the “Baseline” proposal simply
12 has too many questions and complications to implement in a practical and efficient way.

13 **4. Both VSI’s standard offer proposal and WRA’s reverse auction proposal add**
14 **costs to the ratepayers and suffer from other complications.**

15 **A. VSI’s Standard Offer proposal.**

16 The standard offer proposal would essentially provide for a periodic standard offer price.
17 The Utilities would issue a standard offer in exchange for RECs from solar DE systems that are
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20 ⁹² Tr. (Huber) at 604-05 (stating “So I could give you a hypothetical. I am not saying that this would be our
21 position, but one could examine historical market levels based on, say, capacity, not kilowatt hours. You
22 could look at capacity and say, okay, well, the market on average has installed, I think in my surrebuttal I
23 say 6 megawatts on average. Well, you know, that seems that the market is self sufficient. So that will be
24 the threshold that we set from now into perpetuity until the end of the RES or some mandates. So that's a
25 method. The other method is to project how much more demand the RES would require of, say, each utility
and not to pin the target directly to the RES but just somewhere in that ballpark and maybe levelize it over
the remaining years of the RES and use it that way. Another option is just to go year by year. That's
something similar to what the RES -- to drum up and set the threshold there. *So those are three different
options that I could foresee. There is probably more.*” (emphasis added).

26 ⁹³ Even Mr. Huber seems to acknowledge this. See Tr. at 676-77.

27 ⁹⁴ See e.g. NRG Solar LLC’s testimony during the hearing – Tr. (Fellman) at 542; 558.

⁹⁵ Tr. (Huber) at 573.

⁹⁶ RUCO appears to suggest that the self-sufficiency determination for the following year would not be
made until December. Tr. (Huber) at 657, 672.

1 installed after the incentives for residential solar are eliminated.⁹⁷ Mr. Gilliam suggests a quarterly
2 offer for a limited number of RECs to “get a feel” for the market value. REC owners should also
3 be encouraged to offer RECs at a price lower than the standard offer. If needed, the utilities would
4 ratchet up the price until they acquire enough RECs to be compliant. This standard offer should
5 be open to systems owners and third-party aggregators who acquire RECs and bid them on the
6 customer’s behalf. Mr. Gilliam characterizes his proposal as market-based⁹⁸ - even though it
7 compels utilities to participate.

8 **B. WRA’s Reverse Auction Process.**

9 This proposal would have the Commission direct the utilities to offer to purchase RECs
10 from willing sellers.⁹⁹ The specifics of an auction or similar approach, including the terms of REC
11 purchases, should be developed through a collaborative process among Staff, utilities and
12 stakeholders. According to Mr. Berry, an appropriate starting point for designing an auction
13 method would be APS’s experience with performance-based incentives; but WRA envisions a
14 collaborative effort led by Staff to develop the auction framework. WRA warns that the
15 transaction costs for buyers and sellers should be as low as practical – or else it would endanger
16 participation. This was the first of two proposals by WRA.¹⁰⁰

17 **C. Both proposals from VSI and WRA suffer from the same defects – higher**
18 **costs to ratepayers and the added administrative burdens of creating,**
monitoring and policing the processes.

19 Both proposals suffer from requiring customers to pay more than what is necessary for
20 utilities to acquire RECs to ensure that the DE market is sufficient in Arizona. When customer
21 choice is driving the DE market, and not utility-provided incentives, it is counter intuitive to create
22 an artificial market (whether by standard offer or a reverse auction) that requires more ratepayer
23 funds to drive compliance.¹⁰¹ Yet that is what VSI’s proposal and WRA’s proposal both

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26 ⁹⁷ Mr. Gilliam details VSI’s proposal in his Direct Testimony at 15-16.

27 ⁹⁸ See e.g. Tr. (Gilliam) at 306-07.

⁹⁹ Mr. Berry details WRA’s proposal in his Direct Testimony (Ex. WRA-1) at 8-9.

¹⁰⁰ Tr. (Berry) at 451.

¹⁰¹ See Tr. (Tilghman) at 215, 221; Tr. (Bernovsky) at 122, 146.

1 accomplish.

2 Both Staff and RUCO have concerns with the proposals. Staff highlights the uncertainty
3 and high cost of an auction process.¹⁰² RUCO agrees with Staff that it would be costly to
4 implement and notes the additional difficulty of applying the proposals across Arizona.¹⁰³ Further,
5 since the majority of RECs would remain with solar leasing companies,¹⁰⁴ market power concerns
6 could arise if only a few solar leasing companies held the majority of the RECs that Utilities
7 needed to purchase.¹⁰⁵

8 Ultimately, the goal of the REST Rules was not to create an artificial value in the RECs by
9 compelling utilities to participate in a mandatory market. Rather, the goal as stated in Decision
10 No. 69127 was to reduce air emissions, their associated external costs, and to safeguard the health
11 and safety of electric utility customers.¹⁰⁶ It is one thing to have a concern about the value of
12 RECs in a voluntary market; it is another thing to force utilities to use ratepayer money to buy
13 RECs. This is a major flaw with the VSI and WRA proposals, and why neither should be adopted.

14 **5. Simply waiting for other proceedings to conclude is inappropriate and is not**
15 **an option given that the issue is facing the utilities and the Commission now.**

16 SEIA has been the most vocal in urging the Commission to wait until other issues
17 associated with DE are resolved.¹⁰⁷ Meanwhile, its members who participate in Arizona will
18 continue to reap windfall benefits at the expense of the ratepayers. But the issue of what to do
19 when incentives are no longer necessary to incent ratepayers to install DE is a very real issue for
20 the utilities now.¹⁰⁸ Staff agrees that now is the time to address the issue. In fact, Mr. Gray added
21 that a solution is needed sooner rather than later due to incentives approaching zero for several

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23 ¹⁰² Tr. (Gray) at 691-92.

24 ¹⁰³ See Lon Huber Rebuttal Testimony at 5.

25 ¹⁰⁴ See Tr. (Gilliam) at 321-22.

26 ¹⁰⁵ Tr. (Berry) at 500 (admitting that market power concerns could arise if a few solar leasing companies
27 have possession of a bulk of the RECs.)

¹⁰⁶ Decision No. 69127 at Finding of Fact 234.

¹⁰⁷ See Tr. (Cullen Hitt) at 344.

¹⁰⁸ Tr. (Tilghman) at 181 (stating that "It is a very real issue in my service territory, as we have effectively a
year's worth of commercial distributed generation going on line without incentives that the utility will not
be able to take credit for, which ultimately will lead to additional costs.")

1 utilities. This necessitates a clear means to comply with the REST Rules requirements for those
2 utilities.¹⁰⁹ Keeping the current incentive structure adds unnecessary cost to all ratepayers, not just
3 those that elect to install DE. So the time to put forth a solution is now and not in the future. It is
4 simply not a good idea to wait to see if the problem works itself out – or to be paralyzed from
5 taking action because of future policy considerations.¹¹⁰ Simply put, a delay would be costly.

6 Some parties, like WRA, advocate for more technical conferences and workshops, and
7 further proceedings.¹¹¹ It is difficult to see what benefit there is to be gained with yet another
8 series of such proceedings – on top of all of the previous workshops and hearings. Undoubtedly,
9 such additional proceedings would add costs, complexity, and depletion of resources to both the
10 ratepayers and the utilities alike – for little to no gain. It is very likely additional workshops or
11 technical conferences would result in the Commission having to referee disagreements – as WRA
12 witness Mr. Berry essentially admitted.¹¹² Sorting out disagreements usually means further
13 evidentiary hearings, as well as additional time and expense.

14 If the Commission is uncomfortable with any of the solutions proffered by the parties, then
15 a temporary waiver of the DE requirement would be acceptable to the Companies in the short-
16 term.¹¹³ Of course, the approach loses some of the benefits that Mr. Gray described extensively in
17 his pre-filed testimonies and evidentiary hearing. Any such waiver would have to be permanent
18 removed for that year; if the DE requirement is waived in 2014, for example, that requirement
19 should not be rolled into a subsequent year.¹¹⁴ Additionally, a full waiver of the DE requirement
20 would resolve any concerns about double counting from any of the parties.

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22
23 ¹⁰⁹ Tr. (Gray) at 693 (stating “some utilities are not ahead or very far ahead on some DE sectors, arguing a
24 solution is needed sooner, not later, to provide those utilities and sectors with a clear means of
compliance.”)

25 ¹¹⁰ Tr. (Tilghman) at 244-45.

26 ¹¹¹ This is WRA’s second proposal that it put forward in pre-filed testimony and during the hearing. See Tr.
(Berry) at 451.

27 ¹¹² Tr. (Berry) at 499-500.

¹¹³ Tr. (Tilghman) at 260-61.

¹¹⁴ See Tr. at 261 (where Mr. Tilghman for the Companies expressed the concern about whether full
compliance would be required retroactively.)

1 A full waiver of the DE requirement is a better solution than temporary, year-by-year
2 waivers, because temporary waivers add to the administrative costs of addressing a DE carve-out.
3 Further, the approach of addressing whether or not to provide a temporary waiver each year adds
4 uncertainty for the utility for both business development and long-term planning.¹¹⁵ The
5 Companies contend that, in the short-term, Track and Monitor is the best option. But the
6 Companies differ with Staff as to what the solution should be in the long term. The Companies
7 believe that the best long-term solution is to eliminate the DE requirement.

8 **6. The best long-term solution is to remove the DE requirement from the REST**
9 **Rules.**

10 *A. Customer choice is the primary driver for the DE market.*

11 Many parties agreed that incentives are no longer the driving mechanism for the consumer
12 behavior of installing rooftop solar. Customers are choosing to install solar for reasons
13 independent of the incentives.¹¹⁶ According to APS witness Greg Bernovsky – solar DE will
14 continue to develop with or without a carve-out, and that DE is a component of resource planning
15 for the utilities.¹¹⁷ Mr. Berry for WRA agreed that thousands of customers are pursuing solar DE
16 because they can have control over their own energy use and for environmental reasons.¹¹⁸ Mr.
17 Huber essentially agrees with Mr. Berry, and adds that people are also installing solar DE because
18 of social pressures or to simply “keep up with the Joneses.”¹¹⁹ In short, the existence of incentives
19 is a secondary factor, at best, in the continued proliferation of DE. Thus, the DE requirement will
20 no longer be needed to spur the DE market.

21 The testimony and evidence in this case strongly suggests that the market for DE is
22 approaching or has already reached, the point of self-sustainability – precisely because customers
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24 ¹¹⁵ Tr. (Tilghman) at 276-77.

25 ¹¹⁶ Tr. (Bernovsky) at 76 (where he stated that customers are choosing to put solar on by their own value
26 decisions); Tr. (Tilghman) at 211 (where he stated that the incentives do not currently drive consumer
behavior)

27 ¹¹⁷ Tr. at 76-77, 84-86, 125-26

¹¹⁸ Tr. (Berry) at 461.

¹¹⁹ Tr. (Huber) at 592.

1 are choosing to put DE on their rooftops independent of utility-incentive levels and any regulatory
2 requirement. As Mr. Tilghman stated during the evidentiary hearing, when the market is self-
3 sufficient, there is no need to have the utilities directly involved.

4 The reality of the new market -- and again our proposal has been at the time when
5 we no longer offer those incentives and it is a market based product, and this is
6 regardless of what makes it a market based product, regardless of whether it was a
7 federal act policy, whether it is a state policy, if it becomes a market based decision
8 that they, being the solar industry, can sell their product independent of the utility's
9 interaction, that's a reflection of the market that should be addressed in the Arizona
10 RPS and acknowledge that the utilities -- having a requirement on the utilities
11 where they lack the ability to manage the outcome is what we were advocating for
12 at that point it was no longer necessary.¹²⁰

13 Although he disagrees that now is the time to remove the DE requirement, even WRA's
14 witness Mr. Berry agrees that the time will come to remove the DE requirement.¹²¹ The
15 Companies believe that time has arrived -- when incentives reach zero, the utilities are no longer
16 participating in the market.¹²² Therefore the utilities should not be held responsible for a market
17 when it is not an active participant.¹²³ In other words, utilities will not influence customer
18 behavior - and will have no direct control over the factors that are primarily driving the customer
19 choice to install DE.¹²⁴ Utilities, therefore, should not be responsible for meeting a requirement
20 they will have no control over.

21 ***B. Retaining the DE requirement after incentives are at zero is unnecessary
22 and burdensome.***

23 Having the DE requirement continue when it is not necessary adds cost and complexity.¹²⁵
24 Some parties, like SEIA, suggest that removing the DE requirement will result in more expensive
25 utility-scale renewable resources replacing the DE. This argument lacks merit. First, SEIA's
26 belief that utility-scale solar costs more than DE is uncorroborated -- especially given the hidden
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25 ¹²⁰ Tr. (Tilghman) at 271.

26 ¹²¹ See Tr. (Berry) at 481.

27 ¹²² Tr. (Tilghman) at 264

¹²³ Tr. (Tilghman) at 185.

¹²⁴ Tr. (Tilghman) at 216, 257-58.

¹²⁵ Tr. (Tilghman) at 182, 264-65.

1 costs of DE being explored in the other technical proceedings.¹²⁶ In fact, the evidence is that
2 utility-scale is less expensive than DE.¹²⁷ Second, Mr. Tilghman for the Companies did not
3 suggest or endorse simply substituting DE with utility scale.¹²⁸ The assertion that utility-scale
4 renewable generation would “gobble up” the carveout is wrong. Third, the benefits of DE can be
5 achieved through other means – such as smaller-scale projects being attached to the distribution
6 grid.¹²⁹ Ultimately, DE would become part of the resource mix utilities analyze when undergoing
7 their long-term planning. And because DE has its own momentum (customers choosing to install
8 DE independent of incentives) there is no longer a need for it to have its own special category.

9 The Companies are aware and understand Staff’s concern about being “minimally invasive
10 to the REST Rules.” This is one of Staff’s five precepts about coming to the appropriate solution
11 for how a utility can meet the compliance requirement when incentives for DE are no longer
12 needed. Even so, being mindful of the precept does not mean overriding a superior solution,
13 especially when the goals of minimizing cost to ratepayers, finding a clear way for utilities to meet
14 production, tracking the amount of energy produced from each eligible resource, and maximizing
15 value to those who install DE.¹³⁰ Waiving the DE requirement will meet four out of five of Staff’s
16 objectives – as utilities must still file compliance reports and meet the Annual Renewable Energy
17 Requirement. But they will be able to meet that requirement by doing so in the most cost-
18 effective and efficient means available to them.

19 ***C. A strong voluntary market is compelling evidence that the DE***
20 ***requirement is no longer necessary.***

21 Ms. Martin for CRS testified that there is a growing vibrant market in Arizona for RECs.¹³¹
22 In fact, there were 29,997 MWh sold into the voluntary market.¹³² Further, if the DE requirement
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24 ¹²⁶ Mr. Huber mentioned the exploration of DE hidden costs during the evidentiary hearing. See Tr. at 586.

25 ¹²⁷ Tr. (Tilghman) at 265.

26 ¹²⁸ Tr. (Tilghman) at 179-80, 229, 260.

27 ¹²⁹ Tr. (Tilghman) at 185, 262-63.

¹³⁰ Tr. (Tilghman) at 274.

¹³¹ Tr. (Martin) at 820, 877.

¹³² See Jennifer Martin Direct Testimony at 6.

1 were removed, double counting is no longer an issue, according to the testimony of several
2 witnesses.¹³³ Further, removing the DE requirement is therefore not a weakening of the REST
3 Rules; it is an acknowledgement of the presence of a vibrant DE market existing independent of
4 any compliance requirements. In addition, utilities will still be looking to purchase RECs from
5 DE if it is a cost-effective means to achieve compliance with the overall requirement. But the
6 presence of a voluntary market already allows customers to maximize the value for their DE
7 facility – which is one of Staff’s five objectives.

8 Removing the DE requirement does not defeat the purpose of the REST Rules as DE is
9 now entrenched as a resource in Arizona, and will continue to proliferate. The REST Rules did
10 their job; they spurred and facilitated a nascent resource into maturity. Should there be any lag,
11 incentives could be brought back through approval of the utilities annual implementation plans.
12 The time has come to reopen the REST Rules and remove the DE requirement – while
13 implementing Staff’s Track and Monitor in the interim.

14 **III. CONCLUSION.**

15 Staff’s attorneys asked virtually all of the witnesses during the evidentiary hearings: (1)
16 whether certain scenarios resulted in double counting; and (2) whether it was essentially in the
17 public interest to adopt any of those scenarios going forward. Those scenarios were prescient as to
18 getting into the proverbial minds of the parties. What was illuminating was that while most
19 parties were concerned about double counting and did not want the voluntary market
20 compromised – they were against the *best* long-term solution to ensuring a fully vibrant DE
21 market. Simply put, removing the DE requirement when incentives are no longer necessary
22 removes *any* doubt about the integrity of the RECs and gives customers the maximum ability to
23 seek out whatever value they can. Clearly there are parties willing and able to do that for those
24 customers – as shown by the level of interest in these proceedings.

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27 ¹³³ See Tr. (Gilliam) at 339; Tr. (Cordova) at 394; Tr. (Berry) at 483; Tr. (Fellman) at 520, 544-45; Tr. (Martin) at 849.

1 Instead, certain parties seek a guaranteed compliance market that forces utilities to buy a
2 certain amount of DE when such compulsion is not necessary; at the same time, they claim
3 double-counting concerns with any proposal such as Track and Monitor, even though a utility
4 makes no claim on the renewable attributes for compliance purposes. These parties' intransigence
5 makes for an untenable situation if the goal is to minimize costs to ratepayers while also ensuring
6 the most robust development of DE in Arizona that maximizes value for DE owners. Their
7 positions are inconsistent. The beginning of this brief posed the question of what to do when
8 incentives are no longer necessary to encourage DE installations. The answer is to do what is best
9 to continue to promote DE while minimizing costs to ratepayers. The means to that end is to
10 eliminate the DE requirement ultimately – but to implement Track and Monitor in the interim.

11 Based on the evidence in this case, one can make the following conclusions:

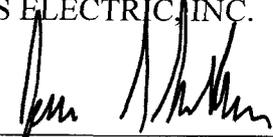
- 12 • The market for DE is mature and incentives will no longer be needed in a very
13 short time. The time to select and implement a solution to when incentives reach
14 zero is now.
- 15 • Track and Monitor is a viable approach that does not double count and meets all
16 five of Staff's objectives. Further there is no takings issue.
- 17 • Other proposals are more costly, more complicated, more ambiguous, or some
18 combination of the three.
- 19 • The DE market is growing – including a growing voluntary market for RECs from
20 DE.
- 21 • Mainly because customer choice is driving the DE market, the DE requirement is
22 no longer necessary and should be removed; this will minimize cost to the
23 ratepayer and achieve most of Staff's goals.

24 The Companies believe the Commission should (1) adopt Track and Monitor at the end of
25 this proceeding as the best solution in the short-term; and (2) reopen the REST Rules for the
26 express purpose of removing the DE requirement under A.A.C. R14-2-1805. The Companies
27 respectfully request the Commission take both actions as a result of the testimony and evidence in

1 this case, and thank the Administrative Law Judge and Commission for their careful deliberations
2 on this matter.

3 RESPECTFULLY SUBMITTED this 27th day of August 2013.

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