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Arizona Corporation Commission

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7 Attorneys for Western Resource Advocates  
8 and The Vote Solar Initiative

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BEFORE THE ARIZONA CORPORATION COMMISSION

9 BOB STUMP, Chairman  
10 GARY PIERCE  
11 BRENDA BURNS  
12 BOB BURNS  
13 SUSAN BITTER SMITH

14 IN THE MATTER OF ARIZONA PUBLIC  
15 SERVICE COMPANY REQUEST FOR  
16 APPROVAL OF UPDATED GREEN POWER  
17 RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.

Docket No. E-01345A-10-0394

18 IN THE MATTER OF THE APPLICATION OF  
19 ARIZONA PUBLIC SERVICE COMPANY FOR  
20 APPROVAL OF ITS 2013 RENEWABLE  
21 ENERGY STANDARD IMPLEMENTATION FOR  
22 RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01345A-12-0290

23 IN THE MATTER OF THE APPLICATION OF  
24 TUCSON ELECTRIC POWER COMPANY FOR  
25 APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION PLAN  
AND DISTRIBUTED ENERGY  
ADMINISTRATIVE PLAN AND REQUEST FOR  
RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01933A-12-0296

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

Docket No. E-04204A-12-0297

OPENING BRIEF OF WESTERN  
RESOURCE ADVOCATES AND THE  
VOTE SOLAR INITIATIVE

1 Western Resource Advocates (“WRA”) and The Vote Solar Initiative (“Vote  
2 Solar”) submit this Opening Brief.

3 **I. INTRODUCTION**

4 This case is about what, if anything, needs to be done if incentives for the  
5 installation of distributed renewable energy facilities are eliminated. If the incentives are  
6 eliminated, then the renewable energy credits (“RECs”) associated with installations will  
7 not be transferred to the utility companies. If the renewable energy credits are not  
8 transferred, then the utilities cannot count the RECs produced by those installations  
9 because they will not own them. That means that at some point the utilities may  
10 potentially be out of compliance with the distributed energy requirement in the  
11 Commission’s Renewable Energy Standard and Tariff (“REST”) rules.

12 The parties have set forth numerous proposals for the Commission’s consideration  
13 to address this potential problem. Some parties have advocated for proposals that go well  
14 beyond what is necessary to address the very narrow problem presented in this  
15 proceeding. However, it is important for the Commission to proceed with caution. There  
16 are numerous circumstances affecting the market for the deployment of distributed solar  
17 energy facilities and the incentives are just one part of a larger issue. That issue is  
18 whether the Commission will continue to support the deployment of distributed solar  
19 energy for residential and nonresidential customers.

20 Resolution of the matters in this proceeding is closely related to the resolution of  
21 the net metering application filed by APS on July 12, 2013 in Docket No. E-01345A-13-  
22 0248. Therefore, the Commission should do what is minimally necessary to address the  
23 problem regarding the acquisition of RECs in this proceeding and retain as much  
24 flexibility as possible to address net metering and other issues as they affect distributed  
25

1 renewable energy production in the future. Even APS's net metering application  
2 suggests that incentives may be necessary if the net metering practices of the proposal  
3 have a negative effect on the deployment of distributed energy (APS net metering  
4 application, pp. 2, 14-15). It is obviously premature to assume that incentives will be  
5 eliminated. The Commission should retain the flexibility it needs to make use of  
6 incentives if net metering practices are changed.

## 7 **II. SCOPE OF THIS PROCEEDING**

8 In Decision No. 73636, the Commission directed:

9 ...[T]he hearing division to schedule a procedural conference, entertain  
10 requests for intervention, hold a hearing, and prepare a recommended  
11 opinion and order ("ROO") for Commission consideration on the "track  
12 and record" proposal and potential alternatives. The ROO should evaluate  
13 whether adoption of the "track and record" proposal (or alternatives  
14 thereto) would require modifications to the REST rules. Decision No.  
15 73636 at 6.

16 There is nothing in the Commission's direction to indicate that some kind of  
17 seismic policy shift was being contemplated. APS had identified what it believes is a  
18 problem concerning acquisition of RECs if incentives are no longer made available and  
19 the Commission directed the Hearing Division to address that problem and that problem  
20 only. There is no hint in the direction from the Commission that it wanted to change the  
21 Renewable Energy Standard or eliminate the distributed energy carve out. If those issues  
22 are to be considered by the Commission, it should be done in an appropriate proceeding.  
23 This case is not that proceeding.

## 24 **III. IDENTIFYING THE PROBLEM**

25 At the outset, it is important to consider what problem we are trying to address in  
this proceeding. The fundamental problem is that there may come a day, if incentives are  
eliminated, when the utilities are unable to comply with the REST rules because they

1 cannot acquire the necessary RECs. The REST rules determine compliance by counting  
2 RECs. A.A.C. R14-2-1805(A) provides that:

3 In order to improve system reliability, each effected utility shall be required  
4 to satisfy a distributed renewable energy requirement by obtaining  
renewable energy credits from distributed renewable energy resources.

5 A renewable energy credit means “the unit created to track kWh derived from an eligible  
6 renewable energy resource or kWh equivalent of conventional energy resources displaced  
7 by distributed renewable energy resources.” A.A.C.R. 14-2-1801 (N).

8 Arizona Public Service Company is compliant with the distributed energy carve  
9 out for residential customers through the end of 2016 and for commercial customers  
10 through the end of 2019. Therefore, the earliest that APS will have any kind of issue  
11 with compliance is at the beginning of 2017. A lot can happen between now and then.  
12 For example, Commission action in the net metering proceeding may lead the  
13 Commission to require that incentives be provided to customers for the installation of  
14 distributed energy. If incentives are either continued or reactivated between now and the  
15 end of 2016, then it is unlikely that APS will have any problem that needs solving.

16 TEP and UNS are currently compliant with the DE carve out and will be through  
17 the end of 2013. TEP is compliant for commercial distributed energy through the end of  
18 2016. The RES implementation plan filed by TEP on July 1, 2013 in Docket No. E-  
19 01933A-13-0224, has proposed three options with regard to distributed energy. The first  
20 is to maintain a \$0.10 per watt upfront incentive for residential projects and non-  
21 residential projects (up to 70 kW). The second is to maintain the \$0.10 per watt upfront  
22 incentive for residential projects only, and the third is to provide no new additional  
23 incentives. Depending on the Commission’s disposition of TEP’s request, it may well be  
24 that TEP will continue to acquire RECs through 2014 at a minimum.  
25

1           Therefore, at least for APS and TEP, if they have a problem it is not immediate  
2 and it is not substantial. In fact, if nothing is done in this proceeding, there is nothing in  
3 the REST rules to prevent them from acquiring RECs from customers with new  
4 installations by purchase or otherwise. As APS itself indicated at the hearing, the current  
5 purchase price for RECs is approaching zero. As the witness for Vote Solar testified,  
6 APS and TEP might be able to acquire RECs with gift cards from Starbucks.<sup>1</sup>

7           That being the case, one has to wonder why both APS and TEP have proposed  
8 elimination of the distributed energy carve out as a long term solution. We don't even  
9 know what the short term holds in store for us much less the long term, but at least based  
10 on current circumstances, the acquisition of RECs would appear to be a relatively small  
11 expense for the utilities. Even if at the time of acquisition the expense is more than  
12 minimal, APS and TEP can file an appropriate application for relief with the  
13 Commission.

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16  
17 <sup>1</sup> During the hearing the relationship between incentives and the price of RECs was  
18 discussed. As the Commission's Renewable Energy Standard has been implemented, the  
19 incentive offered by utilities for distributed renewable energy projects is equal to the  
20 REC price. In a well-functioning REC market, "the difference between the market price  
21 of electricity generated with renewable resources and the market price of electricity  
22 generated by conventional means represents the premium for energy from renewable  
23 resources. ... The price of tradable credits equals the premium for renewable energy"  
24 (David Berry, "The Market for Tradable Renewable Energy Credits," *Ecological*  
25 *Economics*, vol. 42, no. 3, September 2002, p. 374). "[M]arket forces will tie the price of  
tradable credits to the cost difference between generating electricity from renewable  
resources and generating electricity from conventional resources" (Berry, p. 377). To  
overcome the disincentive attributable to the cost premium for renewable energy, utilities  
offer an incentive to customers to invest in distributed solar energy. The incentive should  
equal the cost premium which equals the REC price.

1 **IV. THE ORIGINAL TRACK AND RECORD PROPOSAL**

2 In APS' 2013 REST implementation plan, the Company proposed no new  
3 incentives for residential and non-residential distributed energy in 2013. In response,  
4 Staff proposed a \$0.10 per watt incentive so that APS could determine whether incentives  
5 would be helpful in 2014. Assuming that there would be no incentives in future years,  
6 APS proposed a "Track and Record" method of meeting the REST requirements.

7 The Track and Record proposal assumes that no incentives would be provided but  
8 would count the energy produced from such installations toward compliance with the  
9 REST standard for distributed energy. Numerous parties submitted comments in  
10 response to the proposal, many suggesting that counting distributed energy (DE) or  
11 distributed generation (DG) kWhs to establish compliance without acquiring the RECs  
12 would devalue the customers' RECs and constitute a taking of their property without  
13 compensation. On November 15, 2012, the Center for Resource Solutions (CRS)  
14 submitted a letter to the Docket (Docketed on November 16, 2012) explaining the  
15 problem:

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

23 CRS further noted that:

24 Under the track and record approach kWh from the renewable DG facility  
25 are effectively credited to the utility company for REST compliance. Use  
of the renewable kWh to meet or determine a compliance obligation renders

1 the DG customer's REC effectively taken and used by the utility. Unless  
2 the utility purchased or otherwise contractually received the REC, the  
3 utility would be double counting the REC that rightfully belongs to the DG  
owner, resulting in the DG owner being unable to sell their REC into the  
voluntary market or, potentially, other states' RPS markets.

4 CRS stated that a proposal similar to Track and Record was adopted in Hawaii with  
5 devastating effects on the voluntary market for DG RECs. Instead, CRS encouraged the  
6 Commission to reject the Track and Record approach to REST compliance and to pursue  
7 alternative market mechanisms that would enable utilities to purchase and aggregate  
8 RECs from DG to count towards REST compliance. Such market solutions could include  
9 a standard offer to DG customers for their RECs or using REC brokers to help aggregate  
10 DG RECs for sale to utilities.

11 Because of the questions raised about the track and record proposal, this  
12 proceeding was established to consider not only Track and Record but other alternative  
13 options.

#### 14 **V. CRITERIA FOR EVALUATION**

15 Staff proposed five important considerations for evaluation of the proposals. They  
16 are as follows:

- 17 1. Provide a clear and easily documented way for utilities to achieve  
18 compliance under the REST rules;
  - 19 2. Recognize reality regarding how much electric load is actually being met  
20 with renewable energy;
  - 21 3. Minimize the cost to ratepayers;
  - 22 4. Maximize value to the extent possible for those who undertake DE  
23 installations and Arizona as a whole; and
  - 24 5. Be minimally invasive to the REST rules.
- 25

1 WRA/Vote Solar do not disagree with Staff's identification of considerations but would  
2 add flexibility as an important consideration as well. As noted earlier, any solution that  
3 locks the Commission into a fixed path for the indefinite future is unwise given the  
4 changing circumstances surrounding the deployment of distributed energy. Any proposal  
5 adopted by the Commission should provide enough flexibility to adapt to those changing  
6 circumstances.

7 In summary, WRA/Vote Solar support proposals that are flexible, preserve the  
8 integrity of RECs, maintain the REST rules and promote compliance with them. There  
9 are several proposals that satisfy these criteria in some measure and several that have  
10 fatal flaws.

## 11 **VI. PRESERVING THE INTEGRITY OF RECs**

### 12 **A. The Double Counting Issue**

13 Because the issue of double counting RECs is what triggered this proceeding, it is  
14 important to understand the concept of double counting RECs and why double counting  
15 should be avoided in any proposal adopted by the Commission.

16 The Center for Resource Solutions has established the Green-e Energy National  
17 Standard for Renewable Electricity Products. The standard is intended to protect buyers  
18 of RECs by mandating accountability on retail products sold to consumers. Double  
19 counting is not permitted under the Green-e National Standard.

20 CRS does not set state renewable energy policies. Rather, CRS certifies that  
21 RECs represent the attributes of renewable energy production so that buyers of the RECs  
22 can be assured that they are getting what they are paying for. This includes assurance  
23 that the RECs are associated with eligible renewable resources (such as solar energy) and  
24 that the RECs have not been claimed by another party.

25

1 CRS's National Standard (Green-e Energy National Standard Version 2.3, April  
2 23, 2013) "defines standards for renewable electricity and renewable energy certificates  
3 (RECs) sold in Green-e Energy certified sales, in order to help promote high quality  
4 renewable electricity development and generation, and the environmental benefits of such  
5 generation in place of traditional fuels used for electricity" (p. 2). Among its objectives  
6 ([http://green-e.org/about\\_miss.shtml](http://green-e.org/about_miss.shtml)) are:

- 7 • Bolstering customer confidence in the reliability of retail electricity products  
8 reflecting renewable energy generation.
- 9 • Providing customers clear information about retail clean energy products to enable  
10 them to make informed purchasing decisions.

11 CRS also states that its verification process gives customers confidence in their  
12 choice of renewable energy options and suppliers and that many large customers  
13 (Commercial & Industrial, federal, state and local governments) require Green-e  
14 certification in their solicitations ([http://green-e.org/getcert\\_re\\_why.shtml](http://green-e.org/getcert_re_why.shtml)).

15 CRS's website ([http://green-e.org/getcert\\_re.shtml](http://green-e.org/getcert_re.shtml)) further describes CRS's  
16 activities as follows: "When you see our logo and buy renewable energy that is Green-e  
17 Energy Certified, you know that:

- 18 • You are supporting new renewable resources: The windmill, solar panel or other  
19 generator that produced your renewable energy was built since 1997.
- 20 • There has been no double selling: You are the only one that can claim the benefits  
21 of the renewable energy you bought; these benefits include the fact that renewable  
22 energy produces little or no greenhouse gas emissions.
- 23 • Your purchase goes beyond business as usual: You are buying renewable energy  
24 beyond what is required by law or claimed against a mandate, and are helping  
25 expand the production of renewable energy in the U.S. and Canada."

1 In conclusion, the Commission sets utility policy in Arizona, but in setting a  
2 policy the Commission should be cognizant of the consequences of that policy. If the  
3 Commission adopted Staff's Track & Monitor approach, the result would be a  
4 devaluation of customers' RECs as explained in this brief.

5 **B. Property Rights in RECs.**

6 Tucson Electric Power Company and UNS Electric, Inc. maintain that any value  
7 of RECs to the Affected Utilities is the result of a legal fiction created under the  
8 Renewable Energy Standard and that renewable energy credits are a means of tracking  
9 compliance (TEP & UNS rebuttal p. 5, lines 13-18). TEP and UNS misrepresent the role  
10 of RECs. First, renewable energy comes with environmental and other attributes.  
11 Property rights in these attributes are separable from the rights to electric energy (kWh)  
12 generated by renewable resources and are traded in REC markets. "Unbundling" of  
13 attributes from an underlying good or service is not unique to renewable energy. For  
14 instance, development rights can be unbundled from land. Separable development rights  
15 underlie such practices as public purchase of development rights to preserve open space,  
16 acquisition of development rights by land trusts to preserve open space, and use of  
17 transferable development rights to preserve open space.

18 Second, RECs associated with Arizona distributed renewable energy projects (and  
19 central station renewable energy projects) would exist even if there were not a Renewable  
20 Energy Standard in Arizona. Those RECs could be purchased by parties other than  
21 Arizona utilities through voluntary REC markets or retained by their owners to  
22 demonstrate that they are meeting their own clean energy goals.

23 Third, A.A.C. R14-2-1803C indicates that a Renewable Energy Credit is owned  
24 by the owner of the Eligible Renewable Energy Resource from which it was derived  
25 unless specifically transferred. Thus, a REC owner has rights associated with RECs. The

1 U.S. Environmental Protection Agency (“EPA”) states that a REC “represents the  
2 property rights to the environmental, social, and other nonpower qualities of renewable  
3 electricity generation. A REC, and its associated attributes and benefits, can be sold  
4 separately from the underlying physical electricity associated with a renewable-based  
5 generation source.” (<http://www.epa.gov/greenpower/gpmarket/rec.htm>).

6 More generally, “Property rights delineate ownership of tradable credits and  
7 enable the legally recognized transfer of control of the credits. Without a clear  
8 assignment of rights to tradable credits, the regulator and the utility required to meet the  
9 portfolio standard could not be sure that the portfolio standard was being met.  
10 Additionally, without a clear assignment of rights, owners of renewable generation  
11 equipment could not be sure of their ability to capture the revenues from the production  
12 of eligible energy for which they have incurred the costs.” (David Berry, “The Market for  
13 Tradable Renewable Energy Credits,” *Ecological Economics*, vol. 42, no. 3, September  
14 2002: p. 372). Further, buyers of RECs could not be sure that they aren’t being swindled  
15 if property rights are not clearly defined and enforceable.

16 Thus, RECs are not a fiction. They are real and exist whether or not TEP & UNS  
17 track them or acquire them. Further, property rights in RECs are addressed by the  
18 Commission’s Renewable Energy Standard (A.A.C. R14-2-1803).

## 19 **VII. EVALUATING THE PROPOSALS**

### 20 **A. WRA’s Proposal**

21 WRA believes that if utilities need RECs to comply with the distributed renewable  
22 energy requirements, utilities should purchase the RECs. This is straightforward,  
23 provides incentives to customers if incentives are needed, could be used only when  
24 utilities need RECs, and does not require a change in the REST rule. No double counting  
25

1 problem occurs and the ability of the Commission to apply incentives when necessary to  
2 increase adoption of distributed renewable energy is preserved.

3 WRA proposed two alternatives for acquiring RECs:

- 4 1. Use an auction process to obtain RECs from distributed renewable energy projects  
5 to comply with the current distributed renewable energy requirement if additional  
6 RECs are needed, or
- 7 2. Conduct a technical conference to obtain reliable information on the effect on the  
8 rate of adoption of distributed renewable energy of eliminating incentives,  
9 changing net metering practices, or changing rate designs for electric service. If  
10 the technical conference indicates that incentives are still needed because, for  
11 example, the Commission modifies net metering practices, utilities could continue  
12 to obtain RECs for distributed resources by employing the methods they  
13 previously used or by using an auction if additional RECs are needed.

14 The specifics of an auction or similar approach, including the terms of REC  
15 purchases, should be developed through a collaborative process among Staff, utilities,  
16 and stakeholders so that the auction is workable, fair, effective, and consistent with the  
17 Renewable Energy Standard. The utilities, Staff, and stakeholders should provide the  
18 Commission with their recommendations within six months of the effective date of the  
19 decision in this matter. A well-designed auction process will reveal the level of  
20 incentives needed to attract investment in distributed resources, including situations in  
21 which the net metering rule is modified (or expected to be modified) and rate design  
22 changes are adopted. If incentives are not needed, the market price for RECs should be  
23 very low in all Arizona market segments (PV, solar hot water, other technologies, and  
24 residential, commercial, government, and school sectors).

1 It is appropriate for the Commission to waive the distributed renewable energy  
2 requirement until an auction method is adopted or the results from the technical  
3 conference are reviewed by the Commission and the Commission takes action on the  
4 matter.

5 Staff raised the issue of the Commission's control over the level of incentives if an  
6 auction process were used. The Commission could establish an annual budget in its  
7 regular review of implementation plans, based upon information provided by  
8 stakeholders, proposed budgets developed by the utilities, and prior years' experience  
9 with REC prices. Further, the Commission could require utilities to set a maximum REC  
10 price or "standard offer." If a technical conference approach is adopted to determine  
11 whether incentives would be needed and if incentives are needed, they could be set  
12 administratively or via an auction as just described.

13 Staff also raised the issue of whether sellers of RECs in an auction process would  
14 be able to manipulate the market and force up REC prices. The Commission could take  
15 several steps to eliminate the effects of market power. First, results of any auctions  
16 should be made public, audited by or for Staff, and reviewed by the Commission. Second,  
17 a reasonable maximum bid price or maximum incentive ("standard offer") could counter  
18 sellers' ability inflate REC prices.

19 **B. Vote Solar Proposal**

20 Vote Solar proposed an administratively simple and low-cost market-based  
21 standard offer method for continued acquisition of RECs if and when incentives are  
22 trimmed to zero. This method, however small the successful payment offer, avoids  
23 double-counting and maintains the integrity of the REST.

24 Utilities and load-serving entities across the country have actively conducted  
25 market-based solicitations to obtain RECs for compliance with state-based renewable

1 policies. Additionally, Arizona utilities have used a similar approach in soliciting non-  
2 residential solar projects, as well, based on the uniform credit purchase program or  
3 UCPP. The UCPP was developed in 2006 by a broad range of stakeholders representing  
4 utilities (including the cooperatives), renewable industries, cities and state government.  
5 APS for example, would solicit for a certain number of RECs at a certain price, but allow  
6 bidders to offer RECs at a lower price. These cheaper RECs would be purchased first. A  
7 similar structure can be established here, if and when it becomes necessary.

8         Vote Solar suggested an initial *quarterly* offer to purchase a limited number of  
9 RECs to test market values, while encouraging REC owners to offer RECs at a price  
10 lower than the standard offer. Such lower priced RECs, if offered would be acquired first  
11 in order of cost. Over time, the offers and timing can be refined. The Standard Offer  
12 should be open to system owners and third party aggregators who acquire RECs and/or  
13 bid them on customers' behalf.

14         This procurement method is consistent with Arizona law and Commission rules  
15 and does not require special consideration, creative work-arounds, obfuscating semantics,  
16 rule modifications or on-going waivers. Indeed, it is similar to the method used by the  
17 IOUs to acquire commercial solar RECs in the early days of the standard. It uses the  
18 market to assure that residential RECs are acquired at the lowest cost while respecting the  
19 property rights of solar system owners. Third, it avoids unnecessary complexity and  
20 administrative or regulatory burdens and uses a mechanism with which the utilities have  
21 experience.

22         Finally, it puts Arizona in a leadership position on valuing and acquiring RECs so  
23 that as other state markets reach a similar point in their evolution, the Arizona model can  
24 be replicated elsewhere.

1 Any administrative preparation that is required can occur prior to the elimination  
2 of incentives. However, Vote Solar does not oppose a limited waiver of the residential  
3 portion of Section 1805 for up to one year.

4 **C. RUCO Baseline Proposal**

5 RUCO proposed a new approach to RECs in its surrebuttal -- the "baseline"  
6 concept. While RUCO's proposal is rather general, the concept should be considered by  
7 the Commission.

8 The baseline concept is as follows. In its annual review of utility implementation  
9 plans, the Commission would establish a baseline amount of distributed renewable  
10 energy generation capacity (MW) that represents an acceptable level of, or acceptable  
11 growth rate of, distributed renewable energy in lieu of the distributed renewable energy  
12 requirements in the Renewable Energy Standard. The Commission would obtain  
13 information from utilities and interested parties on the particular level of the baseline  
14 each year when reviewing utility implementation plans for the next year. For example,  
15 the baseline might be an increase of 100 MW of distributed renewable energy projects  
16 from a previous year.

17 If the amount of distributed generation in a utility's service area meets or exceeds  
18 the baseline amount in the year prior to the implementation plan year, the utility's  
19 distributed renewable energy requirement would be waived for the next year. If the level  
20 of distributed generation in a utility's service area does not meet the baseline, the  
21 Commission would require the utility to engage in an auction or otherwise purchase  
22 sufficient RECs in the next year to comply with the distributed renewable energy goal in  
23 the Renewable Energy Standard.

24 A crucial element of the baseline proposal is setting the baseline in a manner that  
25 does not result in double counting, i.e., that does not create a potential for multiple claims

1 to the same RECs and that does not devalue a customer's RECs. Parties participating in  
2 the Commission's review of an implementation plan should provide support for their  
3 opinion on whether double counting of RECs could occur.

4 It is appropriate for the Commission to waive the distributed renewable energy  
5 requirement until the baseline method is approved in its review of the 2015 renewable  
6 energy standard implementation plans which would be filed in 2014.

7 Finally, the Commission should hold all utilities to the total renewable energy  
8 requirements contained in A.A.C. R14-2-1804, regardless of whether the distributed  
9 requirement is waived.

#### 10 **D. Staff's Modified Baseline Proposal**

11 Staff was concerned that under RUCO's baseline proposal, the Commission would  
12 not have a direct linkage between the amount renewable energy deployed in Arizona and  
13 compliance with RES requirements. Volume 4 at 692. As Staff witness Gray stated:

14 Simply put, the numbers do not add up as they do under the current RES  
15 rules or Staff's track and monitor proposal. So RUCO's proposal would  
not fully meet Staff's goal number 2...

16 Transcript, Volume IV at 692-3.

17 As Mr. Gray further explained, RUCO's revision might be problematic in regard to how  
18 it relates to the annual cycle for Commission consideration of RES plans. Therefore,  
19 Staff determined that if the Commission were to decide to move toward a variation of the  
20 track and monitor proposal that did not have a direct link to actual renewable energy  
21 production, "Staff would prefer to simply have the full DE piece for a given year be  
22 waived and then the Commission would determine each following year if another waiver  
23 should be granted or other action taken." Volume IV at 693.

24 Explained another way, Staff believes its modification of RUCO's baseline  
25 proposal is a "simpler way to get to basically the same point." Volume IV at 699. Once

1 there is no direct tie to the 15% RES level or some lower level where the numbers all add  
2 up, Staff testified that a waiver makes more sense than the more complicated process that  
3 RUCO put forth “recognizing that they are...in the same ball park as proposals.”  
4 Volume IV at 700. Staff recognized that there are changing circumstances that will affect  
5 customers’ installation of distributed generation. That is why Staff was uncomfortable  
6 with a permanent elimination of that carve out. However, Staff believed that it can get to  
7 a similar result with the year – to – year waiver “but giving the Commission more  
8 flexibility to react as things change in the market.” Volume IV at 701. Staff believes that  
9 the mechanism should be sufficiently flexible to react to changing circumstances. *Id.*

10 Staff testified that it believes this modified version of RUCO’s baseline proposal is  
11 a viable option for the Commission to consider if the Commission decides not to adopt  
12 Staff’s track and monitor proposal. It would not require any change to the REST rules  
13 and it avoids any potential for double counting. Volume IV at 722.

14 **E. Staff’s Track and Monitor Proposal**

15 Under Staff’s Track and Monitor method, the Renewable Energy Standard  
16 requirement would be reduced for each utility on a kWh per kWh basis for all distributed  
17 energy that is produced in its service territory where no REC transfer to the utility takes  
18 place. Staff provides numerical examples in Exhibit RGG-2. All customers’ distributed  
19 energy production would be metered and that energy would either fall into: (1) the  
20 category where the utility receives the RECs, or (2) the category of production facilities  
21 where no incentive is taken and no RECs are transferred to the utility. Production from  
22 category 1 would count toward meeting the utility’s Renewable Energy Standard  
23 compliance requirement, and production from category 2 would reduce the utility’s  
24 Renewable Energy Standard requirement.

1 This method creates a double counting predicament for REC owners. According  
2 to the Green-e Energy National Standard for Renewable Electricity Products, “Eligible  
3 RECs or renewable energy can be used once and only once ... Renewable energy or  
4 RECs (or the renewable or environmental attributes incorporated in that REC) that can be  
5 legitimately claimed by another party may NOT be used in Green-e Energy Certified  
6 REC products.”<sup>2</sup>

7 In particular, energy (kWh) produced from eligible renewable resources for which  
8 the RECs are not transferred to the utility would be used to reduce the renewable energy  
9 requirement under the Track and Monitor method. Thus, the RECs associated with these  
10 kWh are implicitly counted to adjust the regulatory requirement. Consequently, those  
11 RECs cannot also be used by the customer to meet his or her own renewable energy goals  
12 nor can they be sold by the customer to another party because the RECs would be double  
13 counted. As a result, in the case where the utility counts renewable kWh from distributed  
14 resources to adjust the renewable energy requirement without actually obtaining the  
15 RECs, Staff’s proposal devalues a customer’s RECs without compensation to the  
16 customer. One REC cannot serve two purposes. Therefore, Staff’s Track and Monitor  
17 approach should be rejected.

#### 18 **F. RUCO’s 50/50 Proposal**

19 The Commission should reject RUCO’s 50/50 split proposal because there are too  
20 many unanswered questions and too many inappropriate assumptions.

21 The proposal cannot accurately be called a “compromise” as depicted by RUCO  
22 unless the affected parties agree to it. A “compromise” cannot be imposed on customers  
23 by the Commission or the utilities. In this case, RECs are initially owned by the owners  
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25 <sup>2</sup> Center for Resource Solutions, *Green-e Energy, National Standard Version 2.3*, p. 9.

1 of the distributed renewable energy systems. RUCO's proposal requires customers to  
2 hand over some of their property (RECs) to a utility without compensation from the  
3 utility in order to obtain electric service. Why should customers agree to hand over half  
4 their RECs to the utility in return for getting interconnection service they are otherwise  
5 currently entitled to as utility customers? How would the utilities know whether the  
6 customers have affirmatively agreed to transfer half their RECs and thus be able to count  
7 the RECs? How could a customer be prevented from seeking compensation from the  
8 utility for the utility's claiming ownership of the customer's RECs?

9 An additional concern is what the utility is going to do with only half the RECs.  
10 Would the utility have to try to get customers to install twice as much distributed  
11 renewable energy as they otherwise would in order to obtain sufficient RECs to meet  
12 regulatory requirements? How would they do this without paying for the RECs?

13 Finally, RUCO revealed during the hearing that in order to incent customers to  
14 give half their RECs to the utility (for no compensation) under the 50/50 split proposal, a  
15 "stick" is necessary such as the utility charging a fee for not turning over the RECs. This  
16 kind of punitive approach applied to customers is poor public policy, distorts the purpose  
17 of incentives to encourage distributed renewable energy generation, and would be  
18 extremely difficult for the Commission to justify to the public.

### 19 **G. The Utilities' Proposal**

20 The utilities' main proposal is to eliminate the distributed generation carve-out and  
21 thereby eliminate the need to acquire distributed energy RECs. APS proposed that the  
22 REST total requirement (A.A.C. R14-2-1804) would be unchanged. As indicated above,  
23 elimination of the distributed generation carve-out in A.A.C. R14-2-1805 is premature  
24 because incentives may be needed in the future to accelerate early adoption of distributed  
25 resources if net metering rules change, if rate structures are changed, or for other reasons.

1 These types of changes are proposed in APS's net metering application. The utilities'  
2 proposals should be rejected. WRA and Vote Solar also support retention of the current  
3 standard in A.A.C. R14-2-1804.

#### 4 **VIII. CONCLUSIONS**

5 The threshold question in this matter is whether anything needs to be done to  
6 achieve compliance with the distributed generation portion of the Renewable Energy  
7 Standard if incentives are no longer needed. One avenue available to the Commission is  
8 to do nothing in this docket and simply authorize utilities to purchase RECs from  
9 distributed resources as needed in its review of implementation plans. If incentives are  
10 rarely needed, the REC price will be minimal.

11 WRA and Vote Solar recommend that either: (a) the Commission adopt an auction  
12 proposal with the option of the Commission capping the price, or (b) the Commission  
13 require utilities to employ a standard offer to purchase RECs that is regularly revised and  
14 updated. The auction process or standard offer mechanism would be reviewed each year  
15 when the Commission considers the REST implementation plans. No fundamental  
16 change to current practice is needed. Under either the auction or standard offer approach,  
17 the utilities would seek to acquire at least the volume of RECs necessary to meet the  
18 REST requirements each year. If no RECs are needed, no acquisition is required. If  
19 incentives are occasionally needed to attract investments in distributed solar energy, REC  
20 prices will be very low. Both WRA's and Vote Solar's proposals maintain the existing  
21 rule, require no regulatory contortions to meet the distributed generation requirement, do  
22 not double count RECs, provide flexibility to alter incentives as market conditions  
23 change (e.g., if net metering practices are changed or rates are redesigned), and are  
24 simple and practical. The utilities can also report kWh of distributed energy as required  
25 by A.A.C. R14-2-1812(B)(1) and (2).

1 The RUCO baseline proposal may be an acceptable solution but setting the  
2 baseline could be a difficult process.

3 Staff's modification to the RUCO baseline proposal which would allow the  
4 Commission to annually evaluate the need for incentives and implement waivers as  
5 appropriate may also be a potential solution. It preserves flexibility for the Commission  
6 and does not require any change to the rules.

7 The utilities' proposal to eliminate the distributed generation requirement, the  
8 Staff Track and Monitor proposal, the original Track and Record proposal, and RUCO's  
9 50/50 split proposal should all be rejected. Elimination of the distributed generation  
10 requirement reduces the Commission's flexibility and is premature as there is no reason  
11 to believe that incentives will never be needed again, especially in light of APS's net  
12 metering proposal. The Track and Monitor and Track and Record proposals result in  
13 double counting of RECs. The 50/50 split proposal is unworkable.

14 DATED this 27<sup>th</sup> day of August, 2013.

15  
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THE PUBLIC INTEREST

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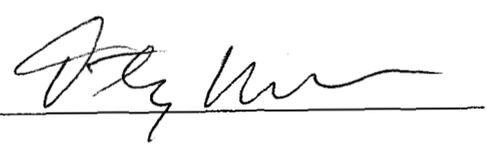
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All Parties of Record

  
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