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BEFORE THE ARIZONA CORPORATIO
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AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. E-01345A-10-0394

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

DOCKET NO. E-01345A-12-0290

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

DOCKET NO. E-01933A-12-0296

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

DOCKET NO. E-04204A-12-0297

STAFF'S OPENING BRIEF

I. INTRODUCTION.

This proceeding concerns a very narrow issue involving the Arizona Corporation Commission's Renewable Energy Standard Tariff ("REST") rules and the means used by utilities in a post-incentive era to demonstrate compliance with the rules.

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Arizona Corporation Commission

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1 In 2006, the Arizona Corporation Commission (“Commission”) adopted the Renewable
2 Energy Standard and Tariff (“REST”) rules. Under the REST rules, utilities are required to meet a
3 growing percentage of their retail sales with renewable energy resources, beginning with
4 1.25 percent in 2006 to 15 percent in 2025. The rules contain a carve-out for distributed energy
5 (“DE”) which began at 5 percent of the renewable energy requirement in 2007, increasing to 30
6 percent of the renewable requirement from 2012 to 2025.

7 The REST rules provide for upfront incentives which started at \$3.00 per watt for residential
8 systems in 2008 for Arizona Public Service Company (“APS”), Tucson Electric Power Company
9 (“TEP”) and UNS Electric, Inc. (“UNSE”)(collectively the “Utilities”) customers but by 2013 had
10 decreased to \$.10 per watt for all of the Utilities. To demonstrate compliance with the rules, the
11 utilities use Renewable Energy Credits (“RECs”) which are defined as representing each kWh
12 derived from an Eligible Renewable Energy Resource. The Utilities are required to file annual
13 compliance reports with the Commission on April 1st of each year.

14 The rules also require utilities to file, for Commission approval, a proposed REST
15 implementation plan each year on July 1st which is to cover the following calendar year. In their
16 2013 plans that were filed with the Commission for approval, the Utilities noted as incentives for
17 distributed energy (“DE”) decline and eventually reach zero, utilities will face a dilemma because
18 they will no longer receive a REC from customers in exchange for incentives from the utility. Up to
19 this point in time, when a utility offered upfront incentives for DE installations; the customer
20 received the incentive, and in return, the utility received the REC. The REST rules do not provide a
21 clear means for utilities to demonstrate compliance when a customer declines to request an incentive
22 from the utility, or incentives are no longer offered.

23 The Commission ordered a hearing to examine APS’s original “Track and Record” proposals
24 which Staff initially supported as well as any proposals offered by other parties. At the hearing there
25 were a variety of proposals offered by the Utilities, Staff, RUCO and the other parties. The proposals
26 included: adoption of a waiver; elimination of the DE carve-out altogether, “Track and Record” and
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1 "Track and Monitor" type proposals; an auction process; a standard offer process; or simply delay
2 taking any action.

3 One of the most controversial issues at the hearing was whether the various proposals resulted
4 in "double counting" of RECs. Double counting refers to a situation where a utility attempts to use
5 the REC for compliance purposes; and the owner attempts to transfer it for value. Once a REC is
6 used for one purpose, it cannot be used for another purpose. Many parties were concerned that the
7 adoption of a policy in Arizona which resulted in a devaluation of the REC and the owner's inability
8 to use it for its own compliance purposes or to be able to transfer the REC for value, would have an
9 adverse impact upon the solar market in Arizona.

10 Staff recommends that the Commission adopt its proposal which is called "Track and
11 Monitor" which is a modified form of "Track and Record." "Track and Monitor" works simply by
12 reducing the REST requirement for each utility on a kWh per kWh basis, for all DE that is produced
13 in their service territory where no REC transfer to the utility takes place. Staff's "Track and
14 Monitor" meets the five policy goals identified by Staff:

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

23 Gray Dir. Test., Ex. S-1 at 6.

24 Staff supports maintaining the value of the REC. For the reasons discussed in this brief, Staff
25 does not believe that its proposal results in double counting of RECs. If the Commission believes,
26 however, that Staff's proposed "Track and Monitor" would result in double counting then Staff's
27 preference would then be for the Commission to adopt a modification of "Track and Monitor"

1 wherein a waiver would be granted to companies for the full DE requirement for a given year and
2 then the Commission would determine each following year if another waiver should be granted.

3 **II. PROCEDURAL HISTORY.**

4 APS, TEP and UNSE recognized the need to find a means to demonstrate compliance with
5 the REST rules when incentives were no longer offered when they filed their proposed 2013 REST
6 plans with the Commission on June 29, 2012 (APS) and July 2, 2012 (TEP and UNS). APS's
7 proposed 2013 REST plan specifically proposed adoption of a "Track and Record" method for DE
8 compliance, whereby APS would meter (track) all DE production that is interconnected with APS'S
9 system and record it for REST compliance. TEP's and UNSE's proposed 2013 REST plans both
10 requested guidance from the Commission on how to demonstrate REST compliance in a post-
11 incentive time.

12 On October 18, 2012, the Commission's Utilities Division ("Staff") filed its initial Staff
13 Reports on the proposed APS, TEP, and UNSE 2013 REST plans. In its initial Reports, Staff
14 recommended adoption of the "Track and Record" method of determining DE compliance with the
15 REST rules. A number of entities filed comments in the APS and TEP proceedings, proposing
16 various possible alternatives to the "Track and Record" Proposal.

17 On January 31, 2013, the Commission issued Decision Nos. 73636 for APS; 73637 for TEP;
18 and 73638 for UNSE in the above-captioned dockets ("2013 REST dockets"). Those Decisions
19 directed that the Hearing Division schedule a hearing to consider the proposed "Track and Record"
20 mechanism (as well as alternatives thereto), for APS, TEP and UNSE. The Commission further
21 ordered that the ROO in this proceeding should evaluate whether adoption of "Track and Record" or
22 alternatives would require modifications to the REST rules.

23 On March 29, 2013, APS, TEP and UNSE filed testimony containing their perspectives and
24 proposals for how they should achieve compliance with the REST rules in future years if or when at
25 least some incentive levels reach zero.

26 Participants in this phase of the proceeding included APS, TEP, UNSE, Staff, Freeport-
27 McMoRan Copper & Gold, Inc. ("Freeport-McMoRan"), Arizonans for Electric Choice and
28

1 Competition (“AECC”), Solar Energy Industries Association (“SEIA”), Western Resource Advocates
2 (“WRA”), the Vote Solar Initiative (“Vote Solar”), NRG Solar LLC (“NRG”), Arizona Solar Energy
3 Industries Association (“AriSEIA”), Sonoran Solar, LLC (“Sonoran”), Wal-Mart Stores, Inc. and
4 Sam’s West Inc. (collectively “Wal-Mart”), the United States Department of Defense and all other
5 Federal Executive Agencies (“DoD/FEA”), Interwest Energy Alliance (“Interwest”), Kevin Koch,
6 NextEra Energy Resources LLC (“NextEra”), and the Residential Utility Consumer Office
7 (“RUCO”).

8 There have been a variety of proposals offered by the parties. The proposals include adoption
9 of a waiver, on auction process and standard offer process, elimination of the DE carve-out
10 altogether, “Track and Record” and “Track and Monitor” type proposals, or do nothing. Staff is
11 recommending that the Commission adopt its “Track and Monitor” proposal.

12 A hearing on the various proposals was held on June 3, 2013 through June 6, 2013. On June
13 21, 2013, Jennifer Martin, the Executive Director of the Center for Resource Solutions provided
14 testimony on the double counting issue.

15 **III. ARGUMENT.**

16 **A. Staff’s “Track and Monitor” Proposal Is In The Public Interest And Should Be**
17 **Adopted By The Commission.**

18 Staff recommends that the Commission adopt “Track and Monitor” to solve the compliance
19 dilemma when a utility no longer offers incentives or customers no longer take incentives thereby
20 allowing the utility to obtain the RECs necessary to demonstrate compliance with the REST rules.
21 With “Track and Monitor,” the Utilities would receive a variance to the REST rules by having the
22 REST requirement reduced for each utility, on a kWh per kWh basis, for all DE that is produced in
23 their service territory where no REC transfer to the utility takes place. “Track and Monitor” meets all
24 of the policy goals set out by Staff Witness Robert Gray in his filed testimony in this case.

25 **1. “Track and Monitor” provides a clear and easily documented way for**
26 **utilities to achieve compliance under the REST rules.**

27 “Track and Monitor” will utilize existing facilities and processes to achieve compliance with
28 the REST rules. APS, TEP and UNSE have, or will have, production meters on all interconnected

1 DE facilities in their service territory. With actual production data from the meters, the utilities will
2 know the actual kWh produced by the DE facility. The utilities will know which DE facilities have
3 involved a REC transfer to the utility. When considering the production from DE facilities that did
4 not transfer their RECs to the utility and those that did transfer the RECs, they will have all the
5 information they need to determine whether they meet the modified REST requirements or not. This
6 is a clear and straightforward method to determine what is happening for each utility each year under
7 the REST rules. Gray Dir. Test., Ex. S-1 at 7.

8 **2. “Track and Monitor” recognizes reality regarding how much electric load**
9 **is actually being met with renewable energy.**

10 Unlike other proposals, “Track and Monitor” will recognize DE generation activity in a given
11 utility’s service territory, and will provide an accurate picture of how much renewable energy
12 reduction is taking place on an on-going basis. The Utilities will use accurate information on what is
13 happening both within utility renewable energy programs and with projects that are not part of a
14 Utilities’ REST compliance efforts. It is very straightforward to track the actual metered production
15 of renewable facilities. *Id.* at 7-8.

16 The Commission recognized the value in measuring actual kWh production when it approved
17 APS’s request to install production meters on all renewable DE production facilities within APS’s
18 service territory, as TEP and UNSE had been doing for a number of years. According to Staff
19 Witness Gray “[t]he value in this is that the utilities and the Commission will know the amount of
20 kWhs systems are actually producing, rather than relying on any sort of estimate or other less direct
21 and less accurate measure.” The best and most accurate way to measure compliance is for utilities to
22 report actual kWh production and to compare that to the percentage of kWh retail sales each year.

23 **3. “Track and Monitor” minimizes the cost to ratepayers.**

24 “Track and Monitor” should not lead to any additional cost to ratepayers. Staff believes it
25 could actually lower REST surcharge costs, if DE deployments that do not take an incentive go
26 beyond the 4.5 percent DE REST compliance floor and lower the 10.5 percent that must be met with
27 utility scale generation. *Id.* at 8.

1 **4. “Track and Monitor” maximizes value to the extent possible for those who**
2 **undertake DE installations in Arizona as a whole.**

3 Staff modified its original “Track and Record” proposal to address concerns regarding double
4 counting. It is Staff’s desire to preserve the value of the REC and Staff believes its new “Track and
5 Monitor” proposal resolves the concerns regarding double counting.

6 Staff Witness Gray testified as follows regarding this issue:

7 Under “Track and Monitor,” those who undertake DE installations
8 without taking a utility incentive would retain the rights to their RECs,
9 unlike other options such as requiring an exchange of RECs in order to
10 interconnect with a utility or take net metering service from a utility. A
variety of renewable energy interests have expressed a desire to have
owners of DE systems maintain ownership of the RECs their systems
produce.

11 Under “Track and Monitor,” owners of DE systems that do not take a
12 utility incentive will retain ownership of their RECs. They can use
13 their RECs to meet their own renewable energy goals or potentially
14 even sell their RECs. Such sales would inevitably enhance the
economic equation for installing DE in Arizona and therefore, would
likely spur further DE installation in Arizona. Such additional
15 installations would not increase the REST surcharge and could provide
further opportunities for economic activity in Arizona.

16 *Id.*

17 a. The double counting issue.

18 Perhaps the most controversial issue in this proceeding was whether the various proposals
19 resulted in double counting of RECs. There continues to be uncertainty with respect to double
20 counting for many proposals. Virtually all parties, including Staff, believe that double counting
21 should be avoided and recommend that the Commission look at solutions that will maintain the value
of the REC.

22 There are two REC markets in Arizona. There is the compliance market which the
23 Commission controls and a voluntary market for RECs. Entities such as the Center for Resource
24 Solutions (“CRS”) certify RECs for use in the voluntary market. CRS certifies most of the voluntary
25 renewable energy transactions in the United States. Tr. at 812.
26
27
28

1 The RECs lose their value if they are being used for more than one purpose. Ms. Martin from
2 CRS stated “double counting actually occurs when there are two parties claiming the same renewable
3 energy or renewable energy REC attributes.” Tr. at 822. She further stated that if Arizona adopts a
4 policy that counts renewable generation, then the owner of the facility is no longer free to sell their
5 REC to another party. And, CRS would not certify the REC through the Green-e Energy program.
6 *Id.*

7
8 Ms. Martin testified that Hawaii explicitly stated that all the renewable energy generated
9 within Hawaii, whether owned or purchased by the utility, and including on-site generation where the
10 facility owner retains the RECs, gets counted towards the state’s RES policy. CRS’ response has
11 been not to allow any renewable energy or renewable energy certificates from Hawaii to be certified
12 through Green-e Energy. *Id.* at 827. Ms. Martin stated that to the best of her knowledge no RECs
13 from Hawaii are being sold in the voluntary market. *Id.*

14
15 Some parties continue to believe that Staff's proposal results in double counting of RECs,
16 which will result in a devaluation of the REC. Gray Surreb. Test., Ex. S-3 at 4. Staff does not
17 believe this to be the case because its proposal contemplates that the REC would remain with the
18 owner and Staff's proposal does not rely on counting RECs for compliance purposes. Nonetheless,
19 there continues to be a belief among some of the parties that the mere act of adjusting the REST
20 requirement downward to carve out systems that did not take an incentive from being counted toward
21 the REST requirement is in some manner taking the RECs from such systems. Staff believes that
22 such a reading is erroneous and does not reflect how the “Track and Monitor” proposal is intended to
23 operate. It is that very feature of “Track and Monitor” which is meant to avoid double counting.

24
25 Mr. Gray testified:

26 For example, if in 2025 utilities were acquiring RECs for 13 percent under the
27 REST requirement, and the further two percent represented systems that did
28 not take an incentive, RECs would only be acquired by the utilities for the 13
percent, not the two percent, which was explicitly carved out from the REST

1 requirement to make room for those systems that did not take an incentive to
2 retain their RECs.

3 *Id.* at 5.

4 There is no definitive way of knowing for certain if the marketplace would consider “Track
5 and Monitor” as double counting. While Ms. Martin believes Staff’s proposal would likely constitute
6 double counting, she provided a narrow interpretation by qualifying that it is only based on her
7 perspective of the CRS Green-e Energy program. Tr. at 807-808. Further, Ms. Martin indicated
8 that CRS would consider the Commission’s stated intent and the actual wording the Commission
9 order in deciding whether to certify the RECs in Arizona. *Id.* at 845. There is no way the
10 Commission can know with certainty whether CRS would or would not certify RECs if Staff’s
11 “Track and Monitor” proposal is adopted, an uncertainty also facing other less defined proposals in
12 this case.
13

14 For this reason, Staff is recommending that if the Commission believes that Staff’s “Track
15 and Monitor” results in double counting, Staff would propose a modification to its “Track and
16 Monitor” proposal in which the Commission would waive the full DE piece for a given year and then
17 the Commission would determine each following year if another waiver should be granted. When
18 asked about this modification, almost all parties indicated that they did not believe that this would
19 result in double counting.¹
20

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25 ¹ RUCO also proposed a modification to Staff’s “Track and Monitor” proposal called the baseline amendment. RUCO
26 would set a baseline that gauge the self-sufficiency of the market. If the utilities hit the baseline, the utility gets a
27 permanent waiver from the one year increment amount. Staff has a few concerns with RUCO’s proposal. First, the
28 Commission would not have a direct linkage between the amount of renewable energy deployed in Arizona and
compliance with the REST rules. Also, RUCO’s revision may be problematic in regard to how it relates to the annual
cycle of Commission REST plan consideration.

1 All in all, the impact upon the solar market of any action by the Commission is likely to
2 depend upon the whole of the Commission's solar policies as the following passage from Ms.
3 Martin's testimony indicates:

4
5 Q. Okay. And the last question that I have is you talked a lot about
6 Hawaii. And I wanted to know whether or not you are aware of what
7 effect that Hawaii's policy has had on their solar market or their
8 renewable market because I suppose they could be generating from
9 other sources than solar.

10 A. Well I am not an expert in renewable energy policy in Hawaii.
11 But it is my understanding that the state had many effective incentive
12 programs to promote the development of renewable energy I the state
13 and to meet their goal. So there are many renewable energy
14 installations going on in Hawaii. I can't speculate on how much more
15 would have been developed if customers in Hawaii had also had access
16 to selling RECs into the voluntary market.

17 *Id.* 839-40.

18
19 **5. To be minimally invasive to the REST Rules in resolving this issue.**

20 Staff's fifth and final goal is that any solution be minimally invasive to the REST rules in
21 resolving this issue. "Track and Monitor" accomplishes this more than most of the other proposals
22 offered. Initially, the Commission would grant a variance to the utilities to implement "Track and
23 Monitor." If "Track and Monitor" seemed to be working well, then the Commission could consider
24 amending the REST rules.

25 **B. The Alternatives Offered By Other Parties Are Not In The Public Interest.**

26 As discussed above, there have been a host of other alternatives that have been recommended
27 by the parties. These options include, auctions, standard offers, elimination of the DE carve-out, a
28 temporary waiver of the rules, "Track and Reduce," splitting the RECs between the system owner
and utility on a 50/50 basis, or to simply delay taking any action at this time. Staff does not believe
that those proposals balance the policy goals as well as Staff's proposal does. And we believe that
those proposals may or are likely to result in increased costs, the level and extent of which is
unknown at this point in time. If "Track and Monitor" or some form of it is not adopted, Staff
believes that the next best option would be to reopen the REST rules and the parties can then propose
changes to the rules at that time. Gray Surreb. Test., Ex. S-3 at 8.

1 RUCO Witness Lon Huber presented a backstop proposal of splitting RECs between the
2 system owner and the utility on a 50/50 basis. Tr. at 639. Staff does not believe that there is
3 sufficient information in the record on this option. This concern was echoed by other parties as well.
4 It also appears to have some problems. Further if utilities receive only half of the RECs from a given
5 DE project they would have to have twice the projects in their service territory to meet their DE
6 requirement in a given year, effectively doubling the DE requirement for utilities. The retention by
7 system owners of only 50% of the REC, also does not address the concerns of a taking of property
8 rights that has been raised by several parties. This proposal would also create disparate treatment
9 between residential and certain commercial customers, who are allowed to retain 100% of the related
10 REC. Gray Surreb. Test., Ex S-3 at 7.

11 WRA has made a proposal that utilities hold an auction process to acquire RECs, with the
12 specifics of the auction process being determined through a collaborative effort among Staff, utilities,
13 and stakeholders. Berry Dir. Test., Ex. WRA-1 at 8. Vote Solar proposes that utilities conduct
14 periodic standard offer processes to acquire RECs once direct incentives have been eliminated and
15 there is a need for RECs to meet compliance. Gilliam Dir. Test., Ex. Vote Solar-1 at 15-16. Staff has
16 serious concerns about WRA's auction proposal and Vote Solar's standard offer proposal. Some
17 form of auction or standard offer would expose utility ratepayers to an unknown and potentially large
18 amount of additional cost that would have to be recovered through the REST surcharge. The record
19 also does not contain much information as to how both of these proposals would work.

20 The cost utilities will have to pay for DE RECs and pass along to ratepayers through the
21 REST surcharge under an auction or standard offer model will not be known until the auction or
22 standard offer actually takes place in the future. So, the cost exposure to ratepayers cannot be known
23 at this time. Additionally, it would be difficult for utilities to present a budget to the Commission in
24 their annual REST plans, when they would not know how much they would be paying for RECs in
25 the coming year. Gray Dir. Test., Ex. S-1 at 7-8.

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1 Other parties suggest that the Commission simply delay acting on this matter altogether.
2 This issue has been before the Commission for a long time. Some utilities are not offering incentives
3 at this time in certain markets. Additionally some customers are not taking incentives when they
4 install a DE system in a utility service territory. Given this, the Utilities need some guidance from
5 the Commission and Staff opposes further delay.

6 Finally, Staff does not agree with elimination of the DG carve-out at this time. Elimination of
7 the carve-out would likely result in increased costs since this would result in more utility scale
8 generation. Its elimination is also premature at this time.

9 **IV. CONCLUSION.**

10 For all of the reasons discussed above, the Commission should adopt Staff's "Track and
11 Monitor" proposal to address REST compliance in a post-incentive era.

12 RESPECTFULLY SUBMITTED this 27th day of August, 2013.

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14 

15 Maureen A. Scott, Senior Staff Counsel
16 Robin R. Mitchell, Attorney
17 Matthew Laudone, Attorney
18 Legal Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007
22 (602) 542-3402

23 Original and thirteen (13) copies
24 of the foregoing filed this
25 27th day of August, 2013 with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing e- mailed and/or
mailed this 27th day of August, 2013 to:

Thomas A. Loquvam
Pinnacle West Capital Corporation
400 North 5th Street, MS 8695
Phoenix, Arizona 85004
Attorney for Arizona Public Service Company
thomas.loquvam@pinnaclewest.com

1 Michael W. Patten
Roshka DeWulf & Patten PLC
2 One Arizona Center
400 East Van Buren Street, Suite 800
3 Phoenix, Arizona 85004
Attorneys for Tucson Electric Power and UNS
4 Electric, Inc.
mpatten@rdp-law.com

5 Garry D. Hays
6 The Law Offices of Garry D. Hays, PC
1702 East Highland Avenue, Suite 204
7 Phoenix, Arizona 85016
ghays@lawgdh.com

8 Kevin Koch
9 612 North 7th Avenue
Tucson, Arizona 85705
10 kevin@tfssolar.com

11 C. Webb Crockett
Patrick J. Black
12 Fennemore Craig
2394 East Camelback Road, Suite 600
13 Phoenix, Arizona 85016-3429
Attorneys for Freeport-McMoRan and
14 AECC
wcrocket@fclaw.com
15 pblack@fclaw.com

16 Court S. Rich
Rose Law Group, P.C.
17 6613 North Scottsdale Road, Suite 200
Scottsdale, Arizona 85250
18 Attorneys for SEIA
crich@roselawgroup.com

19 Michael L. Neary, Executive Director
20 Arizona Solar Energy Industries Association
111 West Renee Drive
21 Phoenix, Arizona 85027
mneary@arizonasolarindustry.org
22 m3masson@gmail.com

23 Timothy M. Hogan
Arizona Center for Law in the Public Interest
24 202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
25 Attorneys for WRA and
Vote Solar Initiative
26 thogan@aclpi.org

David Berry
Western Resource Advocates
Post Office Box 1064
Scottsdale, Arizona 85252-1064
david.berry@westernresources.org

Christopher D. Thomas
Fred E. Breedlove III
Squire Sanders
1 East Washington, 27th Floor
Phoenix, Arizona 85004
Attorneys for Sonoran Solar, LLC
christopher.d.thomas@squiresanders.com
fred.breedlove@squiresanders.com

Scott S. Wakefield
Ridenour, Hinton & Lewis, PLLC
201 North Central Avenue, Suite 3300
Phoenix, Arizona 85004-1052
Attorneys for Wal-Mart Stores, Inc.
and Sam's West Inc.
swakefield@rhlfirm.com

Ken Baker
Wal-Mart Stores, Inc.
2011 S.E. 10th Street
Bentonville, Arkansas 72716-0550
ken.baker@wal-mart.com

Karen S. White
U.S. Air Force Utility Law Field Support Center
139 Barnes Drive
Tyndall AFB, Florida 32403
karen.white@tyndall.af.mil

Kerry Hattevik
Director of West Regulatory and Market Affairs
NextEra Energy Resources, LLC
829 Arlington Boulevard
El Cerrito, California 94530
kerry.hattevik@nexteraenergy.com

Kyle J. Smith, General Attorney
Office of the Judge Advocate General
U.S. Army Legal Service Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060-5546
Attorney for United State Department of
Defense and all other Federal Executive Agencies
kyle.j.smith124.civ@mail.mil

1 Douglas V. Fant
Law Offices of Douglas V. Fant
2 3655 West Anthem Way, Suite A-109, PMB 411
Anthem, Arizona 85086
3 Attorney for Interwest Energy Alliance
dfantlaw@earthlink.net

4
5 Bradley Carroll
Tucson Electric Power Company
88 East Broadway Boulevard
6 MS HQE910
Post Office Box 711
7 Tucson, Arizona 85702
bcarroll@tep.com

8
9 Kevin C. Higgins, Principal
Energy Strategies, LLC
215 South State Street
10 Suite 200
Salt Lake City, Utah 84111
11 khiggins@energystrat.com

12 Daniel W. Pozefsky, Chief Counsel
Residential Utility Consumer Office
13 1110 West Washington, Suite 220
Phoenix, Arizona 85007
14 dpozefsky@azruco.gov

15 Craig A. Marks
Craig A. Marks, PLC
16 10645 North Tatum Boulevard
Suite 200-676
17 Phoenix, Arizona 85028
Attorney for NRG Solar
18 Craig.Marks@azbar.org

19 Greg Patterson
Munger Chadwick
20 2398 East Camelback Road
Suite 240
21 Phoenix, Arizona 85016
greg@azcpa.org

22
23 Rick Umoff
Counsel and Regulatory Affairs Manager,
State Affairs
24 Solar Energy Industries Association
505 9th Street, NW, Suite 800
25 Washington, DC 20004
RUmoff@seia.org

26
27
28

Maja Wessels
First Solar
350 West Washington Street
Tempe, Arizona 85281
mwessels@firstsolar.com

