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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 REPLY BRIEF**

**I. INTRODUCTION**

The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby files its reply brief responding to the initial briefs of other parties regarding "Track and Record" and alternatives thereto to address compliance when Renewable Energy Standard ("RES") incentives are no longer offered by the utilities.

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1 **II. DISCUSSION.**

2 **A. Staff's Track and Monitor Proposal is the Best Solution to Address Renewable**  
3 **Energy Standard Tariff ("REST") Compliance in a Post-Incentive Environment**  
4 **and is Supported by Arizona Public Service Company ("APS"), Tucson Electric**  
5 **Power Company ("TEP") and UNS-Electric (:UNSE").**

6 Throughout this case, Staff has advocated for a solution that addresses the following goals:

- 7 1. Provide a clear and easily documented way for utilities to achieve compliance  
8 under the REST rules;
- 9 2. Recognize reality regarding how much electric load is actually being met with  
10 renewable energy;
- 11 3. Minimize the cost to ratepayers;
- 12 4. Maximize value to the extent possible for those who undertake Distributed  
13 Energy ("DE") installations and Arizona as a whole; and
- 14 5. Be minimally invasive to the REST rules.

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

16 No other proposal addresses these five goals to the extent Staff's Track and Monitor proposal does.

17 APS, TEP and UNSE all support Staff's Track and Monitor proposal. Under Track and  
18 Monitor, the Utilities would receive a variance to the REST rules by having the REST requirement  
19 reduced for each utility, on a kWh per kWh basis, for all DE that does not take a utility incentive,  
20 which is produced in their service territory. Staff's Track and Monitor proposal is simple, maintains  
21 the spirit of the REST rules by continuing to track actual DE production so that the Commission  
22 would continue to have accurate yearly information on the amount of DE installed and produced for  
23 that year. The failure to have a compliance system in place that accurately captures the totality of  
24 renewable energy production in utility service territory would set the marketplace at odds with REST  
25 rules based upon renewable energy meeting a percentage of retails sales for a given utility.

26 Some parties have advocated delaying any action on this matter for a variety of reasons,  
27 including possible changes to new metering and changing market conditions. Staff opposes delaying  
28 this proceeding, as a delay is unnecessary and possibly harmful and will consume significant time  
and resources for the parties involved. Most incentives are at or near zero at this time, with further

1 incentives expected to trigger to zero before the end of 2013. The on-going growth in installations  
2 that take no incentive further exacerbates the disconnect between REST compliance activities and the  
3 amount of renewable energy actually being deployed in utility service territories. This matter has  
4 been before the Commission for a significant amount of time. Further, Staff's proposal is flexible  
5 enough to accommodate changes in net metering or other market changes. There is no compelling  
6 reason to delay making a decision and multiple reasons to make a decision sooner rather than later.

7 All TEP and UNSE customers have production meters at their premises. APS is in the  
8 process of installing production meters at all of its customers' premises. Thus, Staff's Track and  
9 Monitor proposal would rely upon existing processes and facilities to track DE output.

10 Staff's method would not entail increased costs for the utilities and their customers. In fact it  
11 might result in decreased costs. As Mr. Gray noted, if DE installations exceed the 4.5 percent target  
12 for DE compliance in 2025, that would lower the 10.5 percent target that would have to be met with  
13 utility scale generation.

14 **B. Staff's Track and Monitor Proposal was Designed to Avoid the Double Counting**  
15 **Issue.**

16 As discussed by Staff in its Initial Brief, most parties including Staff, believe that maintaining  
17 the value of the Renewable Energy Credit ("REC") in the voluntary market is one of a number of  
18 factors to consider in this proceeding. Staff designed its Track and Monitor proposal so that no REC  
19 transfer to the utility would take place for installations that do not take a utility incentive since the  
20 REST requirement itself is being reduced. Since the owner of the REC retains the REC under Staff's  
21 proposal, the REC should not lose its value in the voluntary market.

22 Some parties continue to represent that Staff is proposing for utilities to be able to acquire,  
23 without compensation, RECs from renewable system owners who do not take an incentive. For  
24 example, the Solar Energy Industries Association makes this claim, where they cite Mr. Gray's direct  
25 testimony and testimony on the stand. SEIA Post-Hearing Br. at 10. However, in both cases Mr.  
26 Gray states that the lower REST requirement is only met by RECs acquired by the utilities when  
27 offering an incentive. Staff has not advocated that utilities can take system owners' RECs to meet  
28 REST requirements unless an incentive was provided to the system owner. There is no REST

1 requirement that RECs from non-incentive systems would be used to meet under Staff's proposal.  
2 For this reason, Staff also does not believe that Track and Monitor takes any property right a system  
3 owner may have from electricity produced by their renewable energy system. The reason for this is  
4 that there would be no REC transfer to the utility because there would no longer be an incentive  
5 payment for the generation provided by the renewable system owner. Track and Monitor would  
6 permit the system owner to utilize their accrued RECs in any manner they chose as they would no  
7 longer be something that is required by the utility.

8 Some of the parties also believe Track and Monitor to be a violation of the REST rules. Staff  
9 does not agree. Staff believes that since no REC is being transferred except when incentives are  
10 taken under Track and Monitor, there is no violation of the RES rules. In addition, Staff Witness  
11 Gray proposed that the Commission grant utilities a waiver to the rules to implement Track and  
12 Monitor. Gray Dir. Test., Ex. S-1 at 10.

13 **C. The Concern of Other Parties with Regard to Track and Monitor and Possible**  
14 **Double Counting Could Be Addressed through a Modification to the Track and**  
15 **Monitor Proposal.**

16 Some parties argue that Staff's Track and Monitor proposal results in double counting and  
17 could strip the REC of value in the voluntary market. RUCO Closing Br. at 7; Solar Energy Industry  
18 Association ("SEIA") Post-Hearing Br. at 10; NRG Solar; Opening Br. at 5; Opening Br. of Western  
19 Resource Advocates and the Vote Solar Initiative at 17-18. As already indicated, Staff is in support  
20 of maintaining the value of the REC.

21 If the Commission believes there is a double counting concern with Track and Monitor, Staff  
22 would recommend that the Commission adopt Staff's alternative to its Track and Monitor proposal.  
23 Staff's alternative to its Track and Monitor proposal is for the Commission to waive the full DE piece  
24 for a given year and then the Commission would determine each following year if another waiver  
25 should be granted. When asked about this alternative, virtually all parties indicated that they did not  
26 believe that this would result in double counting.

27 If the Commission is concerned the Track and Monitor may result in double counting, Staff  
28 prefers its alternative to the Track and Monitor proposal over the Residential Utility Consumer  
...

1 Office's ("RUCO") proposed baseline amendment.<sup>1</sup> RUCO's proposal would require that a baseline  
2 be set each year to gauge the self-sufficiency of the market. If the utilities hit the baseline, the utility  
3 gets a permanent waiver from the one year increment amount. RUCO's proposal is much more  
4 complicated than Staff's. When asked how it would work at the hearing, RUCO witness Huber left a  
5 lot of questions unanswered. RUCO apparently contemplates an initial workshop process in which  
6 the parties would attempt to come to agreement on the baseline. Most parties testified that this could  
7 turn into a contentious process with little agreement on what the baseline should be.

8 The Commission's intent as ultimately expressed in its Order will be critical to any  
9 determination on double counting according to the Center for Resource Solutions ("CRS").

10 Q. (by Ms. Scott)

11 If the Commission looked at historical levels of DE activity, if the Staff looked  
12 at that and analyzed that, and in the Commission order the Commission simply  
13 set a new mandate that the utilities had to meet to the next year without, you  
14 know, going into a lot of detail about how that standard was determined, but it  
15 simply set a new mandate, would that be double counting in your opinion?

16 A. (by Ms. Martin)

17 It sounds like what you are describing is similar to the RUCO proposal where  
18 there would be some assessment. Is that correct?

19 Q. It does have a lot of similarities, yes.

20 A. Yeah, that there would be an assessment of market activity and then a  
21 determination made about whether or not the policy should be adjusted and then  
22 the Commission making a determination to adjust the amount of incremental  
23 DE that was required based on that, I think it is possible to design a system like  
24 that where there would not be a risk of double counting.

25 Q. Okay. So a lot of it would depend, a lot of it would depend on what the  
26 Commission's order stated, is that not correct?

27 A. That's right.

28 Tr. at 881-82.

Further, whether or not the Commission will be using the information collected for  
"compliance" purposes will be key in any ultimate double counting determination.

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<sup>1</sup> CRS also expressed their opinion that the RUCO baseline proposal would remove any double counting issue with the Track and Monitor proposal.

1 A. (by Ms. Martin)

2 Certainly the Commission can at any time, you know, adjust the DE carve-out  
3 as they see fit. For me one of the key aspects of Staff's proposal is whether or  
4 not the collecting of information and the use of that information in decision  
5 making is effectively trying to meet compliance by other means. If it is not that,  
6 if it is clearly a policy change on the part of the Commission, then there would  
7 potentially be not a claim on that renewable energy because it wasn't being used  
8 to meet any mandate directly because the mandate is changed."

6 Q. (by Ms. Scott)

7 Okay. But you can understand that the Commission would want to know how  
8 the market is performing, correct, and they would want accurate information?

9 A. Yeah. And I understand that the RES requires collection of that information. It  
10 is whether or not that information is used in the determination of compliance  
11 that is critical.

11 *Id.* at 882-83.

12 In sum, there can only be one use of the REC. Where a REC is used for compliance purposes,  
13 it cannot be used again for another purpose. Therefore, it is important that under any proposal, any  
14 data collected be for informational purposes, not compliance purposes. Under Staff's waiver  
15 proposal, there would be a waiver of the actual DE requirements. Therefore, the information  
16 collected would be for informational purposes only.

17 The above discussion presumes, of course, that the Commission is interested in promoting a  
18 voluntary market for RECs. This question was asked of witnesses at the hearing: why should the  
19 Commission be in the business of creating a voluntary market for RECs?

20 Several parties addressed this issue in their testimony. In the voluntary market, "individuals,  
21 businesses and local governments acquire RECs to achieve certain sustainability or climate change  
22 goals." Gilliam Dir. Test., Ex. Vote Solar-1 at 10. According to Vote Solar witness Gilliam, there  
23 are many companies operating at the national, regional and state level which acquire and aggregate  
24 RECs from individual projects for resale to individuals and organizations. *Id.* According to one such  
25 aggregator, the Bonneville Environmental Foundation, entities typically buy RECs to:

- 26 1. Offset the carbon emissions associated with their electricity use;
- 27 2. Choose renewable power when their local utility does not offer a green power option;
- 28 ...

- 1 3. Consolidate procurement of renewable energy for multiple locations instead of buying  
2 renewable electricity from multiple suppliers, and  
3 4. Offset electricity used for special events.

4 *Id.*

5 In addition, it is also used by governmental entities and businesses to meet their own  
6 renewable requirements and to reduce the cost of the project in some cases. DOD/FEA Initial Br. at  
7 5; Walmart Initial Br. at 2. DOD/FEA states that it uses RECS for compliance purposes to meet the  
8 requirements of EPACT 2005 and EO13423. DOD/FEA Initial Br. at 5. In other instances,  
9 DOD/FEA states that its installations sell RECs, either to a third party or to a utility, when such  
10 transfers would increase the economic viability of a project. *Id.*

11 NRG Solar, one of the largest solar companies in the nation, stated that “[i]n the absence of  
12 cash incentives, it is critical for solar developers to have the ability to retain their REC property  
13 rights. Without these rights, the market opportunities for further solar development outside of the  
14 Commission mandated RES program would be diminished, if not eliminated.” Fellman Dir., Ex.  
15 NRG-1 at 2.

16 CRS Executive Director, Jennifer Martin, addressed the effect of the Commission’s  
17 determinations on the voluntary market in the following exchange with Staff Counsel:

18 Q. (by Ms. Scott)

19 ...In your view, why should the Commission change its policies for purposes of  
20 compliance to create a voluntary market for RECs? Why should the  
Commission be in the business of creating a market for RECs in your opinion?

21 A. (by Ms. Martin)

22 Well, I would state first that there already is a voluntary market for RECs. And  
23 we think, CRS thinks it is relevant for the Commission to know how their  
24 decisions may impact the ability of Arizona residents and organizations, how  
they would impact the ability of those people in organizations to participate in  
the voluntary market.”

25 Q. If the Commission adopted a proposal that CRS believed to be double counting,  
26 how would that – what effect would that have on sellers and -- or what effect  
would that have for Arizona in its renewable energy markets?

27  
28 ...

1 A. Well, if the CRS Green-e program determined that there was double counting  
2 going on, we would not allow the affected generation to participate in the  
3 Green-e Energy program. So the owners of those RECs or renewable electricity  
4 would not have the opportunity to generate revenue for themselves by selling  
5 their renewable energy or RECs into Green-e certified transactions.

6 Q. Why would that be a bad thing for Arizona?

7 A. Because customers here have the ability to, you know, grow their revenue and  
8 potentially invest in more renewable energy or increase, you know, economic  
9 activity here in the state if they have access to this marketplace. So it may, you  
10 know, there may be an economic loss to the state if they [don't] have access to  
11 this marketplace.

12 Tr. at 877-78.

13 **D. The Commission Should Focus any Action on the Narrow Issue Presented and**  
14 **Not Decide Issues Now that Would Result in Less Flexibility in the Long-Term.**

15 Several parties advocate that the Commission eliminate the DE Carve out at this time. Staff  
16 believes that this goes far beyond the narrow issue presented in this case. Elimination of the DE  
17 Carve out at this time is premature. *See* Opening Br. of Western Resource Advocates and the Vote  
18 Solar Initiative at 21. As SEIA notes, "...the current strength of the market is unknown," SEIA's  
19 Post-Hearing Br. at 6. Walmart stated that it was important to maintain the DE requirement, "in the  
20 event market conditions change in such a way that the Commission desires to require utilities to  
21 comply with the DE requirement." Walmart Initial Br. at 3.

22 It also would require a rulemaking. And, if the Commission later decided that the DE  
23 mandate was important and should be included in the rules, it would require another rulemaking to  
24 add back the DE requirement. *See* Tr. at 272.

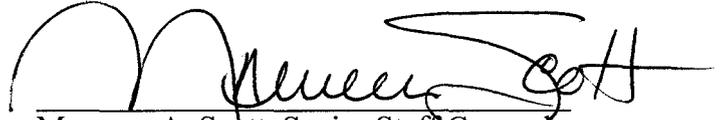
25 Staff continues to recommend that if Staff's primary proposal, Track and Monitor, or its  
26 alternative waiver proposal are not adopted, that the Commission re-open the REST rules to address  
27 the compliance issue.

28 **III. CONCLUSION.**

Staff believes that the Commission should adopt its "Track and Monitor" proposal. If the  
Commission believes that such a proposal may run the risk of double counting RECs, which Staff  
does not believe is the case, then Staff recommends the Commission adopt the waiver alternative to  
address any double counting concerns. Staff's proposals are the least invasive to the REST rules.

1 They maximize value for system owners by giving them full control over their RECs. Additionally  
2 they would minimize any further cost to the ratepayers.

3 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of September, 2013.

4 

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