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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF UPDATED GREEN POWER RATE SCHEDULES 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

SOLAR ENERGY INDUSTRIES ASSOCIATION'S REPLY BRIEF

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

4 **Respectfully submitted** this 13th day of September, 2013.
5

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9 Rose Law Group pc
10 Attorney for SEIA
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1 **Original and 13 copies filed on**
2 **This 13th day of September, 2013 with:**

3 **Docket Control**
4 **Arizona Corporation Commission**
5 **1200 W. Washington Street**
6 **Phoenix, Arizona 85007**

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8 *this proceeding by sending a copy via electronic and/or regular U.S. mail to:*

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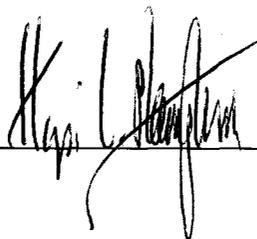
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REPLY BRIEF
OF
SOLAR ENERGY INDUSTRIES ASSOCIATION

SEPTEMBER 13, 2013

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1 **I. INTRODUCTION**

2 The following is the Solar Energy Industries Association’s (“SEIA”) response to the
3 Post-Hearing Briefs filed by Staff, Arizona Public Service Corporation (“APS”), and Tucson
4 Electric Power Company and UNS Electric, Inc. (“TEP/UNS”). SEIA¹ urges the Arizona
5 Corporation Commission (“Commission”) to consider the issues presented while keeping in
6 mind that the intent of the Renewable Energy Standard Tariff Rules (“REST” or “REST Rules”)
7 is to develop a sustainable renewable energy market.

8
9 **II. ARGUMENT**

10 **A. The Parties Agree that the DE Carve-Out Should Not be Eliminated at this Time**

11 At this stage in the proceeding, no party asserts that the distributed energy REST
12 requirement (“DE carve-out”) should be eliminated at this time.² Some parties, such as
13 TEP/UNS and NRG Solar LLC, recommend a rulemaking once it is shown that incentives no
14 longer drive the market.³ Further, APS has abandoned its original position to remove the DE
15 carve-out and has adopted Staff’s Track and Monitor proposal.⁴

16 However, no party asserts that the DE carve-out should be eliminated at this time. Based
17 on this unanimous agreement, and because the impact of incentives on DE adoption is currently
18 unknown, the Commission should not eliminate the DE carve-out at this time.

19 **B. The Commission Should Not Adopt Staff’s Track and Monitor Proposal Because it**
20 **Will Harm Arizona Ratepayers and Drive Away Investment in Arizona’s Economy**
21 **by Allowing Utilities to Count Distributed Energy Towards Compliance Without**
22 **Compensating System Owners**

23 Throughout this proceeding, parties representing Arizona ratepayers and the Arizona
24 solar market have clearly stated that the Commission should not allow utilities to count

25 ¹ The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the
26 views of any particular member with respect to any issue.
27 ² APS Post Hearing Brief at 2; TEP/UNS Post Hearing Brief at 26-27; Staff Post-Hearing Brief at 12; NRG Post-
28 Hearing Brief at 12; Western Resource Advocates/Vote Solar Post-Hearing Brief at 21; Wal-Mart Stores, Inc. Post-
Hearing Brief at 3; Kevin Koch Post-Hearing Brief at 4; SEIA Post-Hearing Brief at 4; Note that Dept of
Defense/Federal Executive Agencies Post-Hearing Brief did not weigh in on this issue.
³ TEP/UNS Post-Hearing Brief at 2; NRG Solar LLC Post-Hearing Brief at 12
⁴ APS Post-Hearing Brief at 2

1 generation of distributed energy without compensating system owners.⁵ Doing so would be
2 harmful to Arizona ratepayers and will drive away investment in Arizona's economy.⁶

3 **i. Staff Recognizes that Track and Monitor May Result in Counting**
4 **Distributed Energy Towards the REST Without Compensating System**
5 **Owners, and Thus May Not be a Viable Option**

6 In its Post-Hearing Brief, Staff continues to promote its Track and Monitor proposal.
7 Under Track and Monitor, a utility's DE requirement under the REST Rules is reduced on a kWh
8 per kWh basis for DE produced in the utility's service territory where no transfer of Renewable
9 Energy Credits ("RECs") takes place.⁷ However, Staff indicates that if the Commission
10 determines that Track and Monitor constitutes a count of distributed energy ("DE") without
11 compensating system owners, Staff withdraws its support of Track and Monitor and recommends
12 a temporary waiver of the DE carve-out requirements.⁸

13 Throughout this proceeding, ratepayer advocates, solar developers, policy experts, REC
14 certifiers, governmental agencies, and trade associations that are invested in Arizona's solar
15 market and economy have all echoed the same message: distributed energy that is credited
16 towards compliance, whether by crediting DE to the REST or by a reduction of the REST, is
17 considered counted and the system owners must be compensated.⁹

18 Track and Monitor counts DE by reducing the REST requirement and fails to compensate
19 system owners. Therefore, Track and Monitor should not be adopted.

20 **ii. APS Fails to Recognize that Double Counting is a Significant Issue that Will**
21 **Harm Ratepayers and Drive Away Investment in Arizona's Economy by**

22 _____
23 ⁵ Fellman Cross at 517-520; Baker Cross at 378; Cordova Cross at 401-402; Staff Post-Hearing Brief at 7; Huber
24 Cross at 594; Vote Solar/Western Resource Advocates Post-Hearing Brief at 8; TEP/UNS Direct at 7; SEIA
25 Rebuttal Testimony at 1; NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing
26 Brief at 7; Staff Post-Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates
27 Post-Hearing Brief at 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets
28 Association Letter to the Commission April 29, 2013

⁶ For further discussion of this issue, see SEIA Post-Hearing Brief at 8

⁷ Gray Direct at 7; Gray Cross at 694; Staff Post-Hearing Brief at 3

⁸ Staff Post-Hearing Brief at 9

⁹ NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-
Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at
18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to
the Commission April 29, 2013

1 **Allowing Utilities to Count DE Towards Compliance Without Compensating**
2 **System Owners**

3 APS attempts to minimize the importance of properly tracking DE and adequately
4 compensating system owners by asserting that concern over double counting is not a sufficient
5 reason to reject Staff's Track and Monitor proposal.¹⁰ As explained in SEIA's Post-Hearing
6 Brief, double counting is a significant concern because it directly impacts Arizona ratepayers and
7 will drive away investment in Arizona's economy.¹¹

8 First, APS argues Arizona DE REC owners cannot sell their RECs because no market
9 exists.¹² This argument is not borne out by the facts. It has been established in this proceeding
10 there are state and national REC markets which are open to Arizona REC holders.¹³ In addition,
11 Arizona's compliance market is a significant driver of investment and economic growth in
12 Arizona.¹⁴

13 Citing R14-2-1803(C), APS also argues that it would be unlawful to sell RECs to non-
14 utility buyers.¹⁵ Nowhere does this R14-2-1803(C) state that Arizona DE RECs cannot be sold
15 to non-utility purchasers. In fact, several witnesses testified that RECs can be sold to non-utility
16 third parties.¹⁶

17 Third, APS argues that it is unclear what impact double counting would have on
18 Arizona's market because other markets, such as Hawaii, do allow double counting.¹⁷ While it is
19 possible that Arizona's market would survive a policy that allows counting DE without
20 compensating system owners, given the amount of concern over double counting from a variety
21 of parties who actively participate in Arizona's solar and REC markets, it seems a risk the
22 Commission should not take. Further, the Commission has plenty of time and options available
23 to it, and does not need to make a rash decision based on speculation by APS.

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25

¹⁰ APS Post-Hearing Brief at 4

26 ¹¹ SEIA Post-Hearing Brief at 8

27 ¹² APS Post-Hearing Brief at 4

28 ¹³ Martin Cross at 809-811, 821; 856; R14-2-1803(C); See CRS Letter to the ACC dated May 21, 2013

¹⁴ Ahsing Cross at 422-423, 440; Fellman Cross at 517-520

¹⁵ APS Post-Hearing Brief at 4; A.A.C R14-2-1803(C)

¹⁶ Fellman Cross at 517-520; Martin Direct at 809-810, 856; Ahsing Cross at 440

¹⁷ APS Post-Hearing Brief at 4

1 Fourth, APS argues that the double counting issue can be settled with a “statement of
2 intent.”¹⁸ However, APS never goes on to explain exactly how such a statement would settle the
3 concern over double counting. If anything, APS merely misconstrues CRS’ testimony on this
4 point, in which Ms. Martin explained the intent of the rules must be to ensure that renewable
5 energy is counted for only one purpose, and that system owners are adequately compensated for
6 their DE production.¹⁹

7 Fifth, APS ignores the potential impact on the private property rights of Arizonans. If a
8 solution is implemented that, either intentionally or unintentionally, counts RECs without
9 compensating the owner of the solar system, that solution will result in depriving the owner of
10 the system of his property right interest in the REC. SEIA suggests that the Commission should
11 favor policies that do not deprive private citizens and ratepayers of their private property without
12 just compensation.

13 Finally, APS questions whether CRS should be consulted on these issues at all because of
14 the fact that CRS is based in California. APS argues that because CRS is an entity that is based
15 in the state of California, if the Commission agrees with CRS that Track and Monitor will result
16 in a counting of RECs, the Commission would really be modeling Arizona’s energy goals after
17 California and the priorities of a California non-profit.²⁰ The fallacy of this argument should be
18 immediately apparent. This argument misconstrues the double counting issue and CRS’ role in
19 this proceeding entirely. The issue of properly accounting for renewable energy generated in
20 Arizona is an Arizona issue that directly impacts Arizona’s ratepayers and economy. CRS is a
21 REC policy expert that deals with REC markets throughout the country and certifies 90% of all
22 voluntary RECs traded in the country while also certifying RECs for APS itself.²¹ It is logical to
23 consult the leading experts on REC markets in a proceeding centered on REC policy, especially
24 considering the potential impact on Arizona’s ratepayers. APS’s attempt to play politics with
25 CRS’s place of business should be rejected. No matter where CRS is headquartered, the record
26 clearly reflects it is the expert in the nation on REC certification. In fact, aside from CRS, no

27 ¹⁸ Id.

28 ¹⁹ Id.; Martin Cross at 825

²⁰ APS Post-Hearing Brief at 5

²¹ Martin Cross at 865-866; Bernosky Cross at 118

1 other expert in the certification of RECs testified at this hearing. The expert opinion on this issue
2 is simply uncontroverted by any other experts.

3 APS attempts to minimize the importance of properly tracking DE and adequately
4 compensating system owners. However, these issues are fundamental to ensuring the integrity of
5 RECs, a functioning solar market, and protecting Arizona ratepayers. Based on the
6 overwhelming evidence from the only expert to testify on the subject, Track and Monitor counts
7 distributed energy towards the REST without compensating system owners, and therefore should
8 not be adopted.

9 **iii. TEP/UNS Fails to Acknowledge that Track and Monitor Will Harm**
10 **Ratepayers and Drive Away Investment in Arizona's Economy by Allowing**
11 **Utilities to Count DE Towards Compliance Without Compensating System**
12 **Owners**

13 In its Initial Brief, TEP/UNS undertakes a long convoluted analysis to arrive at the
14 conclusion that Track and Monitor will not negatively impact Arizona utility customers because
15 it does not count DE towards the REST, a position that is at odds with the only REC policy
16 expert that testified in this matter.

17 First, TEP/UNS argues that Arizona RECs need not be certified by CRS to comply with
18 the REST, pointing to differences between the compliance and voluntary markets such as
19 "bundling."²² Further, TEP/UNS argues that the definition of RECs in voluntary and compliance
20 markets vary.²³ These assertions have no bearing on whether Track and Monitor counts DE
21 towards the REST. Under Track and Monitor, utilities are relieved of a compliance requirement
22 for the DE generated in their service territory. Most parties to this proceeding, representative of
23 a wide swath of Arizona's ratepayers, solar customers, and policy experts, agree that reducing a
24 utility's compliance requirement by crediting DE generation in its territory constitutes a count
25 and requires compensation of the system owner.²⁴ Most importantly, the only expert on REC

26 ²² TEP/UNS Post-Hearing Brief at 9

27 ²³ Id.

28 ²⁴ NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-
Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at
18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; See Renewable Energy Markets Association Letter to
the Commission April 29, 2013

1 certification to testify in this matter concluded that Track and Monitor would result in a counting
2 of the solar customer's RECs without compensation.²⁵

3 Second, TEP/UNS argues that Track and Monitor does not constitute double counting
4 because under Track and Monitor utilities do not claim DE for compliance.²⁶ Once again, this
5 argument is contrary to a widely held perspective that has been established again and again in
6 this proceeding: crediting distributed energy towards compliance, either by crediting the energy
7 to the REST with RECs or by reducing REST requirements according to DE generation, is a
8 count of DE that requires compensation of the system owner.²⁷

9 TEP/UNS goes on to argue that under Track and Monitor, DE's "renewable attributes"
10 are not counted towards compliance under the REST Rules where there is no REC transfer.²⁸
11 Rather, the utilities' REST requirements are reduced according to production of DE for which
12 TEP/UNS does not acquire RECs.²⁹ TEP/UNS is making a distinction without a difference. As
13 TEP/UNS states in its own argument, "...RECs that the utility acquires from the customer or
14 system owner fit the REC definition under the REST rules – and do represent energy derived
15 from renewable sources".³⁰ Thus, by TEP/UNS' own admission, reducing the REST
16 requirement by DE production is the equivalent of counting renewable energy towards the
17 REST. RECs not only represent energy production, RECs represent production of renewable
18 energy with renewable attributes. In fact, this is the very purpose of the REST – to promote
19 installation of energy with renewable attributes. Therefore, whether the REST requirement is
20 reduced under Track and Record or met through RECs, renewable energy is being produced and
21 used to meet the utility's REST requirement. Reducing a utility's REST requirement by tracking
22 DE in its territory is counting that energy towards the REST. This is why the non-utility parties,
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25 ²⁵ Martin Cross at 810

26 ²⁶ TEP/UNS Post-Hearing Brief at 10-11

27 ²⁷ NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-
28 Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at
29 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to
30 the Commission April 29, 2013

²⁸ TEP/UNS Post-Hearing Brief at 11

²⁹ *Id.*

³⁰ TEP/UNS Post-Hearing Brief at 10-11 at 9

1 including the only REC policy expert to testify agree that Track and Monitor counts distributed
2 energy towards the REST without adequately compensating system owners.

3 TEP/UNS goes on to argue that policies from CRS' Green-e Program, the Federal Trade
4 Commission (FTC), and Western Renewable Energy Generation Information System
5 ("WREGIS") do not apply to Arizona's compliance market and therefore are irrelevant to this
6 proceeding.³¹ Once again, TEP/UNS either misses the point or is attempting to distract the
7 Commission from the issue at hand: if solar customers and investors cannot sell their Arizona
8 RECs to help finance their solar projects because the utilities are counting the RECs without
9 compensation, they will look to invest in other solar markets.³² These investors and customers
10 look to organizations that are highly knowledgeable about REC markets, such as CRS, the FTC,
11 and WREGIS to help determine the validity of RECs in a given market.³³ Therefore, the policies
12 of these organizations carry value and can be used to help guide the Commission's decision on
13 this very important and technical issue.

14 Finally, TEP/UNS argues that Track and Monitor does not amount to a taking, and that it
15 is aligned with the intent of the REST Rules.³⁴ Contrary to TEP/UNS' assertion, customers do
16 have property rights in their RECs, and the Commission should not adopt any policy that takes
17 ratepayer property, RECs or otherwise, without just compensation.³⁵ Further, under Arizona's
18 REST rules, utilities cannot take credit for distributed energy generated by their customers
19 without a REC transaction. Section R14-2-1803(C) of the REST Rules states that RECs must be
20 transferred through a transaction. This helps to incentivize investment and protect Arizona
21 ratepayers. To allow a utility to comply through a reduction in its REST requirement without
22 compensating system owners, rather than by crediting RECs to the REST, is to allow the utilities
23 to create and exploit a loophole that undermines the intent of the REST Rules. Ratepayers will
24 not be properly incentivized or compensated if utilities are allowed to comply through a
25 reduction in the REST without purchasing RECs or otherwise compensating system owners.

26 ³¹ Id. at 13-16

27 ³² SEIA Post-Hearing Brief at 9-10

28 ³³ Baker Cross at 385; Cordova Cross at 406

³⁴ TEP/UNS Post-Hearing Brief at 5; 16

³⁵ See Renewable Energy Markets Association Letter to the Commission April 29, 2013; Martin Cross at 812

1 Track and Monitor counts distributed energy towards the REST without compensating
2 system owners, and therefore should not be adopted.

3 **C. The Commission Should Either Take No Action or Issue The Utilities Annual**
4 **Waivers As Needed**

5 The Commission need not take any action at this time because the utilities are in
6 compliance through 2013 in some market segments, and for several years in other segments.³⁶
7 There are other proceedings that should be resolved before the DE compliance issue, and the
8 Commission can afford to wait.³⁷ APS, TEP/UNS, and Staff assert that waiting will involve
9 more cost and administrative burden.³⁸ However, a permanent decision may prove much more
10 costly than waiting should the DE market falter.

11 If the Commission chooses to take action, it should issue an annual waiver to the utilities
12 as needed and require the utilities to report DE installations for informational purposes only.³⁹

13 The waiver approach has the following advantages:

- 14 1. An annual waiver is widely supported, including support from Staff and TEP/UNS
- 15 2. An annual waiver will achieve Staff's goals
- 16 3. An annual waiver will allow the Commission to monitor the DE market
- 17 4. An annual waiver can be written so as to avoid double counting
- 18 5. An annual waiver creates no additional uncertainty, cost, or administrative burden
- 19 6. An annual waiver is provided for in Section R14-2-1816 of the REST Rules
- 20 7. An annual waiver satisfies any compliance issues the utilities may face

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³⁶ Bernosky Cross at 103, 151; Tilghman Cross at 201, 226, 252, 278

26 ³⁷ Gillian Cross at 283; Bernosky Cross at 77-78; Huber Cross at 636; Gray Cross at 702; Cullen Hit Direct at
27 9; Barry Direct at 450

28 ³⁸ APS Post-Hearing Brief at 5; TEP/UNS Post-Hearing Brief at 18; Staff Post-Hearing Brief at 12; Gray Rebuttal
Testimony at 3

³⁹ It should be noted that APS does not even address the proposal that annual waivers be issued and mischaracterizes
the world of options presented to the Commission.

