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**BEFORE THE ARIZONA CORPORATION**

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission
DOCKETED
OCT 25 2013
DOCKETED BY

IN THE MATTER OF THE FORMAL COMPLAINT OF THOMAS PATZKE,

COMPLAINANT,

V.

TUCSON ELECTRIC POWER COMPANY,

RESPONDENT.

DOCKET NO. E-01933A-12-0416

DECISION NO. 74162

**ORDER DISMISSING COMPLAINT**

Open Meeting
October 16 and 17, 2013
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

**Procedural History**

1. On September 24, 2012, Thomas Patzke filed a formal complaint against Tucson Electric Power Company ("TEP" or "Company") with the Commission pursuant to A.R.S. § 40-246 ("Complaint"). Mr. Patzke alleged that TEP failed to pay him the full amount he was entitled to for his 18.4 kW photovoltaic system under TEP's 2011 Renewable Energy Credit Purchase Program ("2011 RECPP").

2. On October 19, 2012, TEP filed its Answer to Formal Complaint and Motion to Dismiss.

3. Pursuant to a Procedural Order docketed November 29, 2012, a procedural conference was held on December 13, 2012. During the procedural conference, the parties stated they had not

resolved the matter. TEP's Motion to Dismiss was taken under advisement pending Mr. Patzke's response to the Motion to Dismiss and the Company's Reply.

4. On December 24, 2012, Mr. Patzke filed his Answer to TEP's Motion to Dismiss, and TEP filed its Reply to Complainant's Response on January 18, 2013.

5. On June 18, 2013, a Procedural Order was docketed denying TEP's Motion to Dismiss and setting the matter for hearing on August 28, 2013, and setting other procedural deadlines.

6. On July 10, 2013, Mr. Patzke filed a Motion to Continue Hearing.

7. Mr. Patzke filed his Pre-Filed Testimony on July 17, 2013.

8. TEP docketed its Response to Motion to Continue Hearing on July 18, 2013, stating the Company did not object the Motion to Continue.

9. A Procedural Order was filed on July 22, 2013, granting the Motion to Continue and rescheduling the hearing for October 3, 2013.

10. On August 16, 2013, TEP docketed the Pre-Filed Testimony of Carmine Tilghman, TEP's Director of Renewable Resources and Programs.

11. On September 23, 2013, TEP filed a Motion to Dismiss and Request to Vacate Hearing Date ("Motion to Dismiss"). TEP stated that the parties had settled the issues underlying the Complaint and wished to dismiss the Complaint with prejudice, and requested that the October 3, 2013, hearing be vacated.

12. On September 24, 2013, TEP docketed a Notice of Filing Errata to Motion to Dismiss and Request to Vacate Hearing Date, attaching a copy of the Settlement Agreement that had inadvertently been left off of the previous filing.

13. A Procedural Order was issued on September 26, 2013, vacating the October 3, 2013, hearing.

**Summary of the Complaint**

14. On July 20, 2011, Mr. Patzke entered into a 2011 RECPP Purchase Agreement with TEP. Under the terms of the Purchase Agreement, TEP would pay Mr. Patzke an upfront incentive ("UFI") for his 18kW photovoltaic system in the amount of $2.00 per watt of installed on-grid residential solar generating capacity as determined by TEP's Customer System Acceptance Test.

15. Mr. Patzke's system was installed by Technicians for Sustainability ("TFS"). On January 3, 2012, TEP received a Certificate of Completion ("COC") from TFS reflecting a system size of 18 kW and a total system cost of $65,088.[1]

16. Based on this information, TEP determined that under the 2011 RECPP, the appropriate UFI for Mr. Patzke's system was $32,544, and issued the check for the incentive payment on January 9, 2012. TEP calculated the UFI amount as follows: 18.4 kWx $2.00 per watt = $36,800. However, the 2011 RECPP states that the UFI cannot be more than 50 percent of the total system cost. According to TEP, at the claimed total system cost of $65,088, the maximum UFI that Mr. Patzke was entitled to was $32,544.

17. On January 24, 2012, TEP received another COC from TFS that included expenses claimed by Mr. Patzke that had not been provided in earlier COCs, reflecting total system costs of $73,381.[2] Mr. Patzke believed he should receive the maximum UFI allowable under the 2011 RECPP for his 18.4 kW system of $36,800 and asserted that TEP owed him an additional $4,256.

18. TEP disputed some of Mr. Patzke's claimed expenses, asserting that they were not supported by adequate invoices or they reflected installation expenses paid to a non-qualified installer and ultimately rejected Mr. Patzke's demand for the additional $4,256.

19. Mr. Patzke filed an informal complaint with the Commission on August 28, 2012, but the parties did not resolve the matter and Mr. Patzke filed this Complaint on September 24, 2012.

**Settlement Agreement and Motion to Dismiss**

20. On September 23, 2013, TEP filed its Motion to Dismiss stating that the parties had settled the issues underlying the Complaint and on September 24, 2013, TEP docketed a copy of the Settlement Agreement, which Mr. Patzke signed on September 20, 2013, and TEP signed on September 23, 2013. Under the terms of the Settlement Agreement, TEP agrees to pay Mr. Patzke $3,000 on the condition that the Commission dismisses the Complaint with prejudice. The Settlement Agreement states that Mr. Patzke acknowledges TEP would not have consented to the

[1] TFS had submitted two earlier COCs. The first COC indicated an 18.72 kW system size and a total system cost of $63,040. The second COC revised the total system size to 18.4 kW. TEP's Answer, Exhibits 5 – 7.
[2] TEP's Answer, Exhibit 8.

settlement if Mr. Patzke had not agreed to the Complaint's dismissal.[3]

21. TEP agrees to pay Mr. Patzke within 14 days of the Commission's issuance of a Decision dismissing the Complaint with prejudice.

**Conclusion**

22. Based on the record in this matter, we find it is in the public interest to grant TEP's Motion to Dismiss.

23. We believe it is reasonable to require TEP to file with Docket Control a Notice of Payment Pursuant to Settlement Agreement within 10 days of issuing its payment to Mr. Patzke.

## CONCLUSIONS OF LAW

1. TEP is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-246 and 40-361.

2. The Commission has jurisdiction over TEP and over the subject matter of the Complaint.

3. It is in the public interest to grant the Motion to Dismiss.

## ORDER

IT IS THEREFORE ORDERED that the Formal Complaint of Thomas Patzke vs. Tucson Electric Power Company, Docket No. E-01933A-12-0416, is dismissed with prejudice.

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[3] Settlement Agreement, page 2.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall file with Docket Control a Notice of Payment Pursuant to Settlement Agreement within 10 days of issuing its payment to Thomas Patzke.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 25th day of October 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BM:ru

SERVICE LIST FOR: THOMAS PATZKE VS. TUCSON ELECTRIC POWER COMPANY

DOCKET NO.: E-01933A-12-0416

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