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OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

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DOCKET CONTROL

DATE: DECEMBER 30, 2013

DOCKET NOS.: E-01345A-10-0394, E-01345A-12-0290, E-01933A-12-0296 AND E-04204A-12-0297
2013 DEC 30 PM 2 58

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Teena Jibilian. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY
AND UNS ELECTRIC, INC.
(TRACK AND RECORD)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

January 8, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 14, 2014 and JANUARY 15, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY 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

DECISION NO. _____

**OPINION AND ORDER
ON TRACK AND RECORD AND
POTENTIAL ALTERNATIVES**

DATE OF HEARING:

February 14, 2013 (Procedural Conference), May 30, 2013 (Pre-Hearing Conference), June 3-6, 2013, and June 21, 2013

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Jibilian

APPEARANCES:

Mr. Thomas A. Loquvam, PINNACLE WEST CAPITAL CORPORATION, on behalf of Arizona Public Service Company;

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Mr. Michael W. Patten, ROSHKA DEWULF & PATTEN, PLC, on behalf of Tucson Electric Power Company and UNS Electric, Inc.;

Mr. C. Webb Crockett, FENNEMORE CRAIG, PC, on behalf of Freeport-McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition;

Mr. Court S. Rich, ROSE LAW GROUP, PC, on behalf of Solar Energy Industries Association;

Mr. Michael Neary, Executive Director, on behalf of Arizona Solar Industries Association;

Mr. Timothy M. Hogan, ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST, on behalf of Western Resource Advocates and the Vote Solar Initiative;

Messrs. Christopher D. Thomas and Fred Breedlove, SQUIRE SANDERS, on behalf of NextEra Energy Resources, LLC;

Mr. Scott S. Wakefield, RIDENOUR HIENTON & LEWIS, PLLC, on behalf of Wal-Mart Stores, Inc. and Sam's West Inc.;

Mr. Kyle J. Smith, OFFICE OF THE JUDGE ADVOCATE GENERAL, on behalf of the United States Department of Defense and all other Federal Executive Agencies;

Mr. Craig A. Marks, CRAIG A. MARKS, PLC, on behalf of NRG Solar, LLC;

Mr. Garry Hays, LAW OFFICES OF GARRY HAYS, on behalf of Kevin Koch;

Mr. Daniel Pozefsky, Chief Counsel, on behalf of the Residential Utility Consumer Office; and

Ms. Maureen Scott, Senior Staff Counsel, Ms. Robin Mitchell and Mr. Matthew Laudone, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

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1 **BY THE COMMISSION:**

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 **I. Procedural History**

7 1. On January 31, 2013, the Arizona Corporation Commission (“Commission”) issued
8 Decision Nos. 73636¹ for Arizona Public Service Company (“APS”), 73637² for Tucson Electric
9 Power Company (“TEP”), and 73638³ for UNS Electric, Inc. (“UNS”) in the above-captioned
10 dockets (“2013 REST dockets”). Those Decisions stated that the Commission would consider issues
11 related to the Track and Record mechanism proposed by APS (as well as its potential alternatives) for
12 APS, TEP and UNS (collectively, “Utilities”) at a hearing. The Decisions directed the Hearing
13 Division to schedule a procedural conference, entertain requests for intervention, hold a hearing, and
14 prepare a Recommended Opinion and Order for Commission consideration on the Track and Record
15 proposal and potential alternatives, and further directed that the Recommended Opinion and Order
16 evaluate whether adoption of the Track and Record proposal (or alternatives thereto) would require
17 modifications to the Renewable Energy Standard and Tariff (“REST rules”).⁴ The Commission
18 directed the Hearing Division to include within the scope of the Track and Record hearing the subject
19 matter of Commissioner Pierce’s withdrawn Amendment No. 2, which would have required the
20 exclusion of retail sales to the Utilities’ largest customers (3MW or greater in demand) from their
21 overall retail sales calculation under the REST rules, specifically A.A.C. R14-2-1804.

22 2. On January 29, 2013, Procedural Orders were issued in the above-captioned dockets
23 setting a procedural conference for the purpose of discussing the procedural issues associated with
24 setting the matter for hearing.

25 ¹ Decision No. 73636 was modified *nunc pro tunc* by Decision No. 73765 (March 31, 2013) and Decision No. 73808
26 (April 3, 2013).

27 ² Decision No. 73637 was modified *nunc pro tunc* by Decision No. 73767 (March 31, 2013) and Decision No. 73806
28 (April 3, 2013).

³ Decision No. 73638 was modified *nunc pro tunc* by Decision No. 73766 (March 31, 2013) and Decision No. 73807
(April 3, 2013).

⁴ Arizona Administrative Code (“A.A.C.”) R14-2-1801 *et seq.*

1 3. On February 14, 2013, the procedural conference convened as scheduled.
2 Appearances were entered through counsel for APS, TEP, UNS, Freeport-McMoRan Copper & Gold,
3 Inc. ("Freeport-McMoRan"), Arizonans for Electric Choice and Competition ("AECC"), Arizona
4 Competitive Power Alliance, Solar Energy Industries Association ("SEIA"), Western Resource
5 Advocates ("WRA"), Wal-Mart Stores, Inc. and Sam's West Inc. (collectively "Walmart"), Sonoran
6 Solar, LLC, the United States Department of Defense and all other Federal Executive Agencies
7 ("DoD/FEA"), and the Commission's Utilities Division ("Staff"). Michael Neary appeared on behalf
8 of Arizona Solar Energy Industries Association ("AriSEIA"), and Amanda Ormond appeared on
9 behalf of Interwest Energy Alliance ("Interwest").⁵

10 4. On February 15, 2013, a Procedural Order was issued consolidating the above-
11 captioned dockets,⁶ granting pending interventions, setting a hearing to commence on May 29, 2013,
12 and setting associated procedural deadlines.

13 5. On February 20, 2013, the Utilities filed a Joint Request to Modify Procedural Order,
14 requesting changes to the procedural schedule.

15 6. On February 22, 2013, DoD/FEA filed a Notice of Unavailability and Motion for
16 Continuance of Pre-Hearing Conference and Hearing, requesting that the pre-hearing conference and
17 hearing be rescheduled to accommodate counsel's scheduling conflict.

18 7. On February 26, 2013, a Procedural Order was issued continuing the hearing date to
19 June 3, 2013, and modifying the procedural schedule.

20 8. On March 12, 2013, at an Open Meeting, the Commission voted to: 1) reopen and
21 modify Decision Nos. 73636, 73637 and 73638, pursuant to A.R.S § 40-252 with notice and
22 opportunity to be heard, to add language to expressly eliminate from Commission consideration in
23 the Track and Record proceedings any proposal that would require the exclusion of retail sales to the
24 Utilities' largest customers (3MW or greater in demand) from their overall retail sales calculation
25 under A.A.C. R14-2-1804; and to 2) direct the Hearing Division to modify the February 26, 2013,
26 Procedural Order in the consolidated Track and Record proceedings to expressly eliminate from the

27 ⁵ On February 14, 2013, counsel for Interwest filed a Motion to Intervene, which was granted on February 15, 2013.

28 ⁶ APS had previously requested consolidation of Docket Nos. E-01345A-10-0394 and E-01345A-12-0290, and those dockets
 were consolidated by a Procedural Order issued September 28, 2012.

1 scope of the proceedings any proposal that would require the exclusion of retail sales to the Utilities'
2 largest customers (3MW or greater in demand) from their overall retail sales calculation under
3 A.A.C. R14-2-1804.

4 9. On March 13, 2013, a Procedural Order was issued incorporating the Commission's
5 vote at Open Meeting. The Procedural Order also modified the notice ordered in the February 26,
6 2013, Procedural Order, in order to reflect the narrowed scope of the hearing, and directed that
7 because the scope of the proceeding was being narrowed, rather than widened, if the Utilities had
8 already mailed or published the public notice ordered by the February 26, 2013, Procedural Order,
9 they would not be required to incur additional expense to repeat the publication or mailing in order to
10 remove notice of the subject matter of Commissioner Pearce's withdrawn Amendment No. 2.

11 10. On April 3, 2013, the Commission issued in these consolidated dockets Decision Nos.
12 73806, 73807 and 73808, modifying Decision Nos. 73637, 73638 and 73636 respectively, *nunc pro*
13 *tunc*, to expressly eliminate from the scope of these Track and Record proceedings any proposal that
14 would require the exclusion of retail sales to the Utilities' largest customers (3MW or greater in
15 demand) from their overall retail sales calculation under A.A.C. R14-2-1804.

16 11. The parties to this proceeding are APS, TEP, UNS, Freeport-McMoRan, AECC,
17 SEIA, AriSEIA, WRA, Vote Solar, NextEra Energy Resources, LLC ("NextEra")(parent company of
18 Sonoran Solar, LLC), Walmart, DoD/FEA, Interwest, Kevin Koch, NRG Solar, the Residential
19 Utility Consumer Office ("RUCO"), and Staff.

20 12. On March 29, 2013, APS filed the Direct Testimony of its witness Gregory L.
21 Bernosky, and TEP and UNS filed the Direct Testimony of their witness Carmine Tilghman.

22 13. On April 12, 2013, APS filed an Affidavit of Publication indicating that notice of the
23 Track and Record proceeding was published in the *Arizona Republic* on March 15, 2013, and a
24 certification indicating that the notice was mailed to all APS customers as a bill insert in APS's
25 March 2013 billings.

26 14. On April 15, 2013, TEP filed an Affidavit of Mailing indicating that notice of the
27 Track and Record proceeding was mailed to all TEP customers as a bill insert in TEP's March 2013
28 billings.

1 15. Also on April 15, 2013, UNS filed an Affidavit of Mailing indicating that notice of the
2 Track and Record proceeding was mailed to all UNS customers as a bill insert in UNS's March 2013
3 billings.

4 16. On April 24, 2013, DoD/FEA filed the Direct Testimony of their witnesses Cynthia J.
5 Cordova and Kathy Ahsing, P.E., Walmart filed the Direct Testimony of its witness Ken Baker, Vote
6 Solar filed the Direct Testimony of its witness Rick Gilliam, WRA filed the Direct Testimony of its
7 witness David Berry, NRG Solar filed the Direct Testimony of its witness Diane Fellman, RUCO
8 filed the Direct Testimony of its witness Lon Huber, and Staff filed the Direct Testimony of its
9 witness Robert G. Gray.

10 17. On April 25, 2013, SEIA filed the Direct Testimony of its witness Carrie Cullen Hitt.

11 18. On May 8, 2013, TEP and UNS filed the Rebuttal Testimony of their witness Carmine
12 Tilghman, Walmart filed the Rebuttal Testimony of its witness Ken Baker, WRA filed the Rebuttal
13 Testimony of its witness David Berry, RUCO filed the Rebuttal Testimony of its witness Lon Huber,
14 and Staff filed the Rebuttal Testimony of its witness Robert G. Gray.

15 19. On May 22, 2013, DoD/FEA filed the Surrebuttal Testimony of their witness Cynthia
16 J. Cordova, WRA filed the Surrebuttal Testimony of its witness David Berry, NRG Solar filed the
17 Surrebuttal Testimony of its witness Diane Fellman, RUCO filed the Surrebuttal Testimony of its
18 witness Lon Huber, and Staff filed the Surrebuttal Testimony of its witness Robert G. Gray. APS,
19 TEP, and UNS filed Notice that they would not be filing Surrebuttal Testimony.

20 20. On May 22, 2013, Staff filed a Notice of Errata to which was attached a revised copy
21 of Exhibit A to the Surrebuttal Testimony of its witness Robert G. Gray.

22 21. On May 28, 2013, a Notice of Appearance of Counsel was filed for Kevin Koch.

23 22. On May 28, 2013, DoD/FEA filed a Notice of Errata to which was attached the
24 Corrected Surrebuttal Testimony of DoD/FEA's witness Cynthia J. Cordova.

25 23. On May 30, 2013, testimony summaries were filed for witnesses for APS, TEP, UNS,
26 WRA, and Vote Solar.

27 24. On May 31, 2013, testimony summaries were filed for witnesses for Walmart, SEIA,
28 NRG Solar, DoD/FEA, RUCO, and Staff.

1 25. On May 31, 2013, Walmart filed a Notice of Filing Supplement to Testimony of its
2 witness Ken Baker.

3 26. On June 3, 2013, the hearing on Track and Record issues commenced as scheduled.
4 APS, TEP, UNS, Freeport-McMoRan, AECC, SEIA, WRA, Vote Solar, Walmart, DoD/FEA, NRG
5 Solar, Kevin Koch, RUCO, and Staff entered appearances through counsel. The parties were
6 provided an opportunity to present their evidence for the record and to cross examine witnesses.

7 27. On the first day of the hearing, RUCO proposed to present a new witness, Jennifer
8 Martin, Executive Director of the Center for Resource Solutions ("CRS"), with no prefiled testimony.
9 Also on that day, Walmart proposed to supplement the prefiled testimony of its witness Ken Baker
10 with a copy of the public comment letter CRS filed in this docket on May 31, 2013. The parties
11 agreed that RUCO could present Ms. Martin as its witness, agreed to the scope of Direct Testimony
12 of RUCO's witness Jennifer Martin, and agreed to a schedule for the filing of that Direct Testimony
13 and the filing of parties' responses thereto. The parties also agreed, and it was directed, that the
14 witness would be available for cross examination on June 21, 2013, and that parties would be allowed
15 to present rebuttal witnesses on the CRS issues following her cross examination, if they wished to do
16 so.

17 28. On June 10, 2013, RUCO filed the Direct Testimony of its witness Jennifer Martin.

18 29. On June 17, 2013, Staff filed the Responsive Testimony of its witness Robert G. Gray
19 in response to the Direct Testimony of RUCO witness Jennifer Martin.

20 30. On June 17, 2013, APS filed Notice that it would not be filing Rebuttal Testimony.

21 31. On June 17, 2013, Freeport-McMoran and AECC filed Notice that they would not be
22 filing Responsive Testimony.

23 32. On June 18, 2013, Staff filed a Summary of Current and Past Arizona Corporation
24 Commission Renewable Energy Standards.

25 33. On June 21, 2013, the evidentiary hearing concluded. The parties agreed to a briefing
26 schedule, with simultaneous Initial Closing Briefs due on August 23, 2013, by 4:00 p.m. and Reply
27 Closing Briefs due on September 10, 2013, by 4:00 p.m.

28 34. On August 22, 2013, DoD/FEA filed its Initial Closing Brief.

1 35. Also on August 22, 2013, Staff filed a Motion requesting a two day extension of time
2 for filing Initial Closing Briefs.

3 36. On August 23, 2013, a Procedural Order was issued extending the deadline to file
4 Initial Closing Briefs to August 27, 2013.

5 37. On August 27, 2013, Initial Closing Briefs were filed by APS, TEP and UNS, Wal-
6 Mart, SEIA, NRG Solar LLC, WRA, Kevin Koch, RUCO, and Staff. Freeport-McMoran filed a
7 notice indicating that it would not be filing an Initial Closing Brief.

8 38. On September 6, 2013, Kevin Koch filed a Request for Extension of Time to File
9 Reply Brief.

10 39. On September 10, 2013, a Procedural Order was issued extending the deadline for
11 filing Reply Closing Briefs to September 13, 2013.

12 40. On September 13, Reply Closing Briefs were filed by APS, TEP and UNS, SEIA,
13 WRA, Kevin Koch, RUCO, and Staff. Freeport-McMoran filed a notice indicating that it would not
14 be filing a Reply Closing Brief.

15 41. On September 16, 2013, DoD/FEA filed its Reply Closing Brief.

16 42. Following a full evidentiary hearing before a duly authorized Administrative Law
17 Judge of the Commission and the filing of post-hearing briefs, the matter was taken under
18 advisement.

19 **II. Background**

20 **A. DG Carve-out**

21 43. The REST rules require Affected Utilities (electric utilities in Arizona subject to the
22 REST rules), including the Utilities involved in this proceeding, to serve a portion of their annual
23 retail load with renewable energy.⁷ Thirty percent of Affected Utilities' renewable energy
24 requirements must come from renewable distributed generation ("DG").⁸ Half of this Distributed
25 Renewable Energy Requirement,⁹ ("DG carve-out") must come from residential applications, and

26 _____
27 ⁷ A.A.C. R14-2-1804.

28 ⁸ A.A.C. R14-2-1801(E), 1804 and 1805. The DG requirement ramped up from 5.00 percent in 2007 to 30.00 percent after 2011.

⁹ A.A.C. R14-2-1805.

1 half from non-residential, non-utility applications.¹⁰ Each year, the renewable requirement increases
 2 incrementally. In 2014, Affected Utilities must serve 4.50 percent of their retail load with renewable
 3 energy, 1.35 percent of which must be DG.¹¹ After 2024, the REST rules require Affected Utilities to
 4 serve 15 percent of their retail load with renewable energy, 4.50 percent of which must be DG.¹²

5 **B. RECs**

6 44. To establish compliance with the REST rules, including the DG carve-out, Affected
 7 Utilities must acquire Renewable Energy Credits (“RECs”) from Eligible Renewable Energy
 8 Resources.¹³ An Affected Utility may use RECs acquired in any year to meet annual REST
 9 requirements, including DG requirements, and RECs are retired upon being used for compliance
 10 purposes.¹⁴

11 45. In this case, we examine the parties’ recommendations regarding how the Utilities can
 12 comply with the DG carve-out in the REST rules in the absence of incentives with which Utilities can
 13 pay for RECs.

14 46. Currently, the Utilities acquire RECs from the owners of eligible DG projects through
 15 contractual agreements by which customers transfer DG RECs to the Utilities in exchange for REST
 16 incentives that help pay for the cost of installing DG systems.¹⁵ These incentives have taken the form
 17 of residential and commercial up-front incentives (“UFIs”) and commercial performance-based
 18 incentives (“PBIs”),¹⁶ which are funded by a REST surcharge assessed monthly to every retail
 19 electric service. The surcharge is set annually for each Utility pursuant to Commission-approved
 20 REST tariffs.¹⁷

21 47. APS’s witness Gregory Bernosky testified that APS is in compliance with residential

22 ¹⁰ *Id.*

23 ¹¹ A.A.C. R14-2-1804 and 1805.

24 ¹² *Id.*

25 ¹³ The REST rules define a REC as “the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy Resources.” A.A.C. R14-2-1801(N). A.A.C. R14-2-1803 sets forth requirements for creation and transfer of RECs.

26 ¹⁴ A.A.C. R14-2-1804(D) and 1805(C).

27 ¹⁵ Direct Testimony of TEP and UNS witness Carmine Tilghman, Hearing Exhibit (“Exh.”) TEP-1 at 3; Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 4.

28 ¹⁶ See Notice of Filing Staff Summary of Current and Past ACC Renewable Energy Standards, Exh. S-5 at 4-6.

¹⁷ See A.A.C. R14-2-1808, which requires Affected Utilities to file a tariff, substantially conforming with the Sample Tariff in Appendix A to the REST rules, and which proposes methods for recovering the reasonable and prudent costs of complying with the REST rules.

1 DG requirements through 2016 and with commercial DG requirements through 2020.¹⁸ TEP and
 2 UNS witness Carmine Tilghman testified that UNS is in compliance for its residential and
 3 commercial DG requirements through 2013, and that TEP will need to acquire new residential DG
 4 RECs in 2014, and new commercial DG RECs in 2020.¹⁹

5 48. The REST rules require the Utilities to file a proposed implementation annually on
 6 July 1, and an annual compliance report each April 1.

7 49. UFI's were as high as \$4.00 per watt for residential DG systems in 2006, but by 2013
 8 had decreased to \$0.10 per watt.

9 **C. Track and Record Issue**

10 50. In Decision No. 72737 (January 18, 2012), the Commission noted that APS's future
 11 ability to meet its annual DG REST requirement might be in question, due to the rapid lowering of
 12 installed costs for solar photovoltaic ("PV") systems, and the resulting reduction in APS's REST
 13 surcharge-funded UFI payments to customers with DG systems in exchange for RECs. Decision No.
 14 72737 ordered APS to suggest possible solutions to the emerging issue in APS's 2013 REST Plan
 15 filing.

16 51. In compliance with Decision No. 72737, APS included the "Track and Record"
 17 proposal in its 2013 REST filing in Docket No. E-01345A-12-0290. In that filing, APS proposed, in
 18 the absence of incentives, to simply track all energy produced by DG systems installed on APS's
 19 system and count that energy for purposes of REST rules compliance, hence the proposal's name
 20 "Track and Record."²⁰

21 52. In its 2013 REST filing in Docket No. E-01933A-12-0296, TEP also addressed the
 22 issue of REST compliance in the absence of incentives to pay for RECs. TEP offered four possible
 23 solutions to achieving REST compliance in the event TEP no longer uses REST incentives to
 24 purchase RECs from customers who install DG.²¹

25 ¹⁸ Hearing Transcript ("Tr.") at 103, 151.

26 ¹⁹ Tr. at 201, 226, 252, and 278.

27 ²⁰ Direct Testimony of APS witness Gregory L. Bernosky, Exh. APS-1 at 2.

28 ²¹ In that filing, TEP offered the following four options:

1. Change or waive the existing REST requirement to eliminate either the DG requirement, or the requirement to retire RECs associated with the customer-sited DG system, and allow the utility to report metered production data in order to show the percentage of sales associated with renewable energy; or

1 53. In its 2013 REST filing in Docket No. E-04204A-12-0297, UNS offered the same four
2 potential solutions as TEP.

3 54. On October 18, 2012, Staff filed Staff Memoranda and Recommended Orders on the
4 Utilities' 2013 REST filings. In those filings, Staff recommended approval of the APS-proposed
5 Track and Record mechanism for REST rule compliance requirements for all three Utilities, to be
6 effective for 2013 and beyond for compliance reporting beginning April 1, 2014. However, Staff
7 noted in its analysis in the APS 2013 REST docket that several comments had been filed raising
8 issues with APS's Track and Record proposal in regard to the integrity of RECs.²²

9 55. Between October 29, 2012, and January 17, 2013, WRA, SEIA, the Center for
10 Resource Solutions, the Center for Biological Diversity, the U.S. Department of Veterans Affairs
11 ("VA"), Vote Solar, SolarCity, and AriSEIA filed comments in the APS 2013 REST docket, all
12 opposing approval of the APS-proposed Track and Record mechanism for REST rule compliance
13 requirements. Similar comments were filed in that timeframe in the TEP 2013 REST docket.

14 56. On January 17, 2013, Staff filed memoranda in the Utilities' 2013 REST filing
15 dockets. In each filing, Staff noted that a number of stakeholders had filed comments raising a
16 variety of concerns about adoption of APS's Track and Record proposal. Staff stated that it believed
17 the Track and Record proposal had merit, but that due to the number and tenor of the opposing
18 comments, the issues related to Track and Record and its potential alternatives merited a hearing.
19 Staff recommended that the Commission act upon all other aspects of the Utilities' 2013 REST plans,
20 but defer a determination on the Track and Record issue, and potential alternatives thereto, to a
21 hearing process.

- 22
-
- 23 2. Allow utilities to modify their existing net metering tariffs to require customers to surrender all credits and
24 environmental attributes in exchange for net metering; or
25 3. Allow utilities to meet the DG requirement by showing a percentage of their sales through metered data without
26 the requirement of retiring RECs (and without altering the existing rules); or
27 4. In the absence of existing rule changes, allow the utilities to request waivers for meeting the DG requirement
28 through the use of REC retirement and allow the utility to show compliance in an alternative manner.

Direct Testimony of TEP and UNS witness Carmine Tilghman, Exh. TEP-1 at 5.

²² SEIA claimed that APS's proposed Track and Record program proposal constituted "an unauthorized taking of property without just compensation," and AriSEIA asserted that it would invalidate the integrity of RECs. Decision No. 73636 at 20. The Renewable Energy Markets Association claimed that because it would deny customers the right to sell or claim their RECs, Track and Record would be "a government taking of private property," and WRA and Vote Solar rejected Track and Record and proposed an auction mechanism for RECs instead. Decision No. 73636 at 21.

1 57. Decision Nos. 73636,²³ and 73637,²⁴ and 73638²⁵ did not adopt the Track and Record
2 proposal for APS, TEP, or UNS. All three Decisions directed the Hearing Division to schedule a
3 procedural conference, entertain requests for intervention, hold a hearing, and prepare a
4 Recommended Opinion and Order for Commission consideration on the Track and Record proposal
5 and potential alternatives, with an evaluation of whether adoption of the Track and Record proposal
6 (or alternatives thereto) would require modifications to the REST rules.

7 58. A full evidentiary hearing was held before a duly authorized Administrative Law
8 Judge of the Commission. Evidence and legal arguments were taken and entered into the record.

9 **III. Proposals Presented by Parties**

10 59. At the outset of this case, in their prefiled witness testimony, the Utilities and several
11 intervenors proposed alternatives to the original APS Track and Record proposal. The proposals as
12 they appeared in the parties' prefiled witness testimony are set forth here.

13 **A. APS's Revised Track and Record Proposal²⁶**

14 60. Overview. At the hearing and in closing briefs, APS stated that it supports Staff's
15 Track and Monitor proposal instead of the Revised Track and Record Proposal presented in its Direct
16 Testimony.²⁷ In its Direct Testimony APS stated that it proposed the Revised Track and Record
17 Proposal, in response to protests that its original Track and Record proposal would constitute "double
18 counting" of RECs.²⁸

19 61. Treatment of DG Carve-out Requirement. APS's revised Track and Record Proposal
20 involved initially waiving compliance with the DG carve-out, followed by a rule change completely
21 eliminating the DG carve-out.²⁹ APS stated that in the long term, a narrow rule change offered
22 certain advantages over a waiver, expressing concern that if a waiver from the DG carve-out was
23 given and subsequently revoked, APS could be required to obtain sufficient DG RECs to meet the 30
24

25 ²³ Decision No. 73636 as modified *nunc pro tunc* by Decision Nos. 73765 and 73808.

26 ²⁴ Decision No. 73637 as modified *nunc pro tunc* by Decision Nos. 73767 and 73806.

27 ²⁵ Decision No. 73638 as modified *nunc pro tunc* by Decision Nos. 73766 and 73807.

28 ²⁶ APS did not advocate adoption of this proposal. It is described here for informational purposes.

29 ²⁷ APS Initial Closing Brief ("Br.") at 2.

²⁸ Direct Testimony of APS witness Gregory L. Bernosky, Exh. APS-1 at 2, 8.

²⁹ *Id.* at 6.

1 percent requirement in a condensed timeframe, causing uncertain costs and impacts.³⁰ In Direct
 2 Testimony, APS stated that it would propose specific REST rule changes to eliminate the DG carve-
 3 out requirement in its Rebuttal Testimony.³¹ However, APS chose not to file Rebuttal Testimony.
 4 APS stated at the hearing that it supports Staff's Track and Monitor Proposal, which leaves the DG
 5 carve-out intact, instead of its own Revised Track and Record Proposal.

6 62. Implementation. The Revised Track and Record Proposal would have initially
 7 waived, then eliminated the DG requirement through a rulemaking, tracked the energy produced by
 8 DG installations with production meters, and annually reported the DG production to the
 9 Commission for informational, rather than compliance, purposes.³² It would have allowed the
 10 retirement of any DG RECs currently in the Utilities' possession to satisfy the overall REST
 11 requirement in A.A.C. R14-2-1804.³³

12 63. REC Integrity. Because it would have completely removed the DG carve-out
 13 requirement, APS's Revised Track and Record Proposal would have maintained REC integrity.

14 64. Would Proposal Require Revisions to REST Rules? The revised Track and Monitor
 15 proposal appearing in APS's Direct Testimony would have required revision to the REST rules.

16 **B. TEP and UNS's Track and Reduce and Other Proposals**

17 65. Overview. In their Rebuttal Testimony, TEP and UNS stated that they generally
 18 support Staff's Track and Monitor proposal, which they note is similar to their Track and Reduce
 19 proposal, as an interim solution, along with elimination of the DG carve-out.³⁴

20 66. Treatment of DG Carve-out Requirement. TEP and UNS advocate reopening the
 21 REST rules in order to eliminate the DG carve-out.

22 67. Implementation. In Direct Testimony, TEP and UNS proposed that the Commission
 23 implement one of the three following options in the interim period while the REST rules are being
 24 revised:³⁵

25 _____
 26 ³⁰ *Id.* at 7.

27 ³¹ *Id.*

28 ³² Direct Testimony of APS witness Gregory L. Bernosky, Exh. APS-1 at 2-3, 6.

³³ *Id.* at 6.

³⁴ Rebuttal Testimony of TEP and UNS witness Carmine Tilghman, Exh. TEP-2 at 1-2.

³⁵ Direct Testimony of TEP and UNS witness Carmine Tilghman, Exh. TEP-1 at 7-8.

1 Option 1: Fully Waive DG Requirement Pending Rule Change. Grant the Utilities a
 2 full waiver³⁶ from the DG requirement until the REST rules have been modified to
 3 remove the DG requirement, which would allow the Utilities to meet the Annual
 4 Renewable Energy Requirement³⁷ without being penalized for non-compliance with
 5 the REST rules; or

6 Option 2: Exchange RECs for Net Metering. Require a customer to transfer the RECs
 7 from its DG system to a Utility in exchange for net metering as compensation for net
 8 metering-associated benefits. This proposal would require the utilities to file updated
 9 net metering tariffs that would require transfer of RECs in exchange for net metering;
 10 or

11 Option 3: Track and Reduce. If the Commission determines that neither of the two
 12 above proposals is appropriate as an interim solution, TEP and UNS propose a third
 13 solution in which they would institute a “Track and Reduce” mechanism. This option
 14 would allow Utilities to report the number of kWh sales from customers’ DG systems
 15 where no transfer of RECs took place – and then reduce the Utility’s Annual
 16 Renewable Energy Requirement by that amount. TEP and UNS state that the
 17 customer would retain ownership of the RECs and would be free to sell them in any
 18 market, but the Utility’s requirement would be reduced by those amounts. This
 19 proposal would require a waiver of the DG carve-out, since the Utility would not have
 20 the RECs to prove compliance as required by the REST rules.

21 68. REC Integrity. Option 1 would maintain REC integrity because it completely
 22 removes the DG carve-out requirement. Option 2 would maintain REC integrity because it would
 23 require the transfer RECs from DG systems to the Utility. In the opinion of some parties, Option 3,

24 ³⁶ The waiver provision in the REST rules provides as follows:

25 **A.A.C. R14-2-1816 Waiver from the Provisions of this Article**

- 26 A. The Commission may waive compliance with any provision of this Article for good cause.
 27 B. Any Affected Utility may petition the Commission to waive its compliance with any provision of
 this Article for good cause.
 28 C. A petition filed pursuant to these rules shall have priority over other matters filed at the
 Commission.

 A.A.C. R14-2-1816.

³⁷ A.A.C. R14-2-1804.

1 which resembles Staff's Track and Monitor proposal, would count DG RECs toward Utility
 2 compliance. TEP and UNS disagree, and assert that any RECs not acquired by a Utility to meet
 3 compliance under Track and Monitor could be sold by DG system owners into other markets, and
 4 because the energy would not be used to meet any compliance targets, fears about the RECs being
 5 valueless are unwarranted and premature.³⁸

6 69. Would Proposal Require Revisions to REST Rules? TEP and UNS advocate
 7 reopening the REST rules in order to eliminate the DG carve-out.

8 **C. SEIA's One-Year Waiver and Annual Waiver Proposals**

9 70. Overview. SEIA stated that the Utilities are generally in compliance with the REST
 10 rules at this time, and advocated that there is no immediate need to make a policy change.³⁹ In
 11 prefiled testimony and in its Initial Closing Brief, SEIA proposed that if the Commission takes any
 12 action, it should grant the Utilities a one year waiver from the DG carve-out requirement.⁴⁰ In its
 13 Reply Closing Brief, SEIA proposed that if the Commission takes any action, SEIA advocates an
 14 annual waiver of the DG carve-out as needed.⁴¹

15 71. Treatment of DG Carve-out Requirement. SEIA's proposals would keep the DG
 16 carve-out intact but would provide waivers of the requirement, either for one year in its One Year
 17 Waiver Proposal or annually, as needed, in its Annual Waiver Proposal.

18 72. Implementation – One Year Waiver. Under SEIA's original proposal, the
 19 Commission would grant the Utilities a one year waiver from the DG carve-out requirements
 20 immediately.⁴² During the term of the one-year waiver, the Utilities would track the energy produced
 21 by DG installations through the continued deployment of DG production meters and regularly report
 22 to the Commission the amount of energy produced, in order to give parties additional information to
 23 determine the appropriate way to move forward on a long term basis.⁴³ At the end of the one year
 24

25 ³⁸ Rebuttal Testimony of TEP and UNS witness Carmine Tilghman, Exh. TEP-2 at 3.

26 ³⁹ Direct Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-1 at 10.

27 ⁴⁰ *Id.*

28 ⁴¹ SEIA Reply Closing Brief ("Reply Br.") at 9.

⁴² Direct Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-1 at 11; Rebuttal Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-2 at 2-3.

⁴³ Direct Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-1 at 10; Rebuttal Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-2 at 2-3.

1 waiver period, the Commission would implement DG policy based on the data collected and reported
2 by the Utilities.⁴⁴

3 73. Implementation – Annual Waiver as Needed. Under SEIA’s Annual Waiver
4 Proposal, the Commission would grant Utilities a waiver of the DG carve-out requirements as needed
5 annually, on a year-to-year basis.⁴⁵ During the term of the annual waivers, the Utilities would track
6 the energy produced by DG installations through the continued deployment of DG production meters
7 and report to the Commission the amount of energy produced for informational purposes only.⁴⁶

8 74. REC Integrity. Under both SEIA waiver proposals, the Utilities would not use the
9 information reported from the DG production meters to satisfy any REST requirements. The RECs
10 associated with DG systems would not be acquired by the Utility and would not be counted in any
11 way toward Utility compliance requirements.⁴⁷

12 75. Would Proposals Require Revisions to REST Rules? Because SEIA’s proposals call
13 for a waiver of the DG requirement, they would not require a revision to the REST rules.

14 **D. Vote Solar’s Standard Offer Proposal**

15 76. Overview. Vote Solar proposed a market-based standard method which would require
16 the Utilities to continue acquisition of residential DG RECs.⁴⁸ Vote Solar’s proposal calls for the
17 issuance of a periodic standard offer, initially quarterly, for residential RECs from DG systems
18 installed after incentives are eliminated.⁴⁹ Vote Solar states that Arizona utilities have already used a
19 market-based approach in soliciting non-residential solar projects, and that utilities and load-serving
20 entities are actively conducting market-based solicitations to obtain RECs in California, Colorado,
21 Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, New York,
22 Ohio and Pennsylvania.⁵⁰

23 77. Treatment of DG Carve-out Requirement. Vote Solar opposes removal of the DG
24

25 ⁴⁴ Direct Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-1 at 10.

26 ⁴⁵ SEIA Reply Br. at 9.

27 ⁴⁶ *Id.*

28 ⁴⁷ Direct Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-1 at 10; Rebuttal Testimony of SEIA witness Carrie Cullen Hitt, Exh. SEIA-2 at 3.

⁴⁸ Direct Testimony of Vote Solar witness Rick Gilliam, Exh. Vote Solar-1 at 15.

⁴⁹ *Id.*

⁵⁰ Direct Testimony of Vote Solar witness Rick Gilliam, Exh. Vote Solar-1 at 16.

1 carve-out, asserting that it would defeat the purpose of the REST rules,⁵¹ and recommends that the
 2 REST rules not be reopened at this time.⁵² Vote Solar stated that it would support a waiver of the
 3 residential portion of the DG carve-out for up to one year to provide time for the Utilities to prepare
 4 for the standard offer.⁵³

5 78. Implementation. Vote Solar stated that over time, its standard offer for RECs, and its
 6 timing, can be refined.⁵⁴ Vote Solar proposed the following guidelines for its standard offer
 7 proposal:⁵⁵

- 8 • The standard offer should be issued quarterly or semi-annually via a website (with
 9 notification through the monthly newsletter included in each bill) and should
 10 remain open for a few days or weeks depending on market response; and
- 11 • The Utilities should set an initial price at a low rate and ratchet up the price, if
 12 necessary, to gather sufficient RECs for compliance (at the Utility's discretion to
 13 pay as-bid or set a market clearing price); and
- 14 • The standard offer should be open to system owners and third party aggregators
 15 who acquire RECs and/or bid them on customers' behalf.

16 79. REC Integrity. Because the Utilities would continue to acquire RECs, implementation
 17 of Vote Solar's proposed standard offer would maintain REC integrity.

18 80. Would Proposal Require Revisions to REST Rules? Because this proposal would
 19 require the Utilities to continue acquiring RECs, it would require no revisions to the REST rules.

20 **E. WRA's Auction Proposal**

21 81. Overview. WRA proposed that the Commission temporarily waive or suspend
 22 compliance with the DG carve-out for no longer than one year, until either 1) an auction for RECs is
 23 set up, or 2) a technical conference is conducted.⁵⁶ During the waiver period, the RECs associated
 24

25 ⁵¹ *Id.* at 4.

26 ⁵² *Id.* at 17.

27 ⁵³ *Id.*

28 ⁵⁴ Direct Testimony of Vote Solar witness Rick Gilliam, Exh. Vote Solar-1 at 15.

⁵⁵ *Id.* at 16.

⁵⁶ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 8, 10; Surrebuttal Testimony of WRA witness David Berry, Exh. WRA-3 at 6.

1 with DG projects would stay with the owners of the DG facilities.⁵⁷ The purpose of the technical
 2 conference would be to obtain reliable information on the effect on the rate of DG adoption of: 1)
 3 elimination of incentives; 2) net metering policy changes; and 3) recent and pending rate design
 4 changes.⁵⁸

5 82. Treatment of DG Carve-out Requirement. WRA's proposal leaves the DG carve-out
 6 requirement intact. WRA's witness testified that the REST, the DG market, net metering policy, and
 7 rate design make up a complex system of interconnected factors, and that it is premature at this time
 8 to commence a rulemaking to eliminate the DG carve-out, before the effects of net metering changes
 9 and pending rate design changes are known.⁵⁹ WRA asserts that the DG carve-out should not be
 10 eliminated before there is concrete evidence that the DG market can stand on its own without
 11 incentives, taking into account the effects of any changes to net metering policy and significant
 12 effects in rate designs that affect the economics of investor decisions regarding DG.⁶⁰

13 83. Implementation of WRA's Auction Process Proposal. Under WRA's auction
 14 proposal, the Utilities would be directed to offer to purchase DG RECs from willing sellers.⁶¹ WRA
 15 stated that a process that is workable, fair, effective and consistent with the REST rules should be
 16 developed through a collaborative process led by Staff that includes Staff, the Utilities, and
 17 stakeholders.⁶² According to WRA, a well-designed auction process will reveal the level of
 18 incentives needed to attract investment in distributed resources, and if incentives are no longer
 19 needed, the market price for RECs should be very low in all Arizona market segments (PV, solar hot
 20 water, other technologies, and residential, commercial, government, and school sectors).⁶³ WRA
 21 stated that a salient starting point for designing an auction would be APS's experience with PBIs, and
 22 that information and guidance may also be obtained from experiences with processes in other states
 23 such as the Delaware REC procurement program and from commercial exchanges that auction
 24

25 ⁵⁷ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 10.

26 ⁵⁸ *Id.* at 8.

27 ⁵⁹ *Id.* at 6-7.

28 ⁶⁰ *Id.* at 10; Surrebuttal Testimony of WRA witness David Berry, Exh. WRA-3 at 6.

⁶¹ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 8-9.

⁶² *Id.* at 8.

⁶³ *Id.* at 9.

1 RECs.⁶⁴ WRA stated that an important component of a workable auction or other method is that
 2 transaction costs for buyers and sellers be as low as is practical.⁶⁵ WRA proposed that the Utilities,
 3 Staff, and stakeholders provide the Commission with their recommendations regarding the specifics
 4 of an auction or similar approach, including the terms of REC purchases, within six months of the
 5 effective date of a Decision in this matter.⁶⁶

6 84. Implementation of WRA's Technical Conference Proposal. WRA's technical
 7 conference option involves a technical conference led by Staff.⁶⁷ The technical conference would
 8 examine the effect of changes in incentives and the effect of changes in DG costs on the adoption rate
 9 over time of various renewable energy technologies by residential, commercial, school, and
 10 government customers.⁶⁸ It would also address the combined effects of other regulatory changes and
 11 rate design changes on the adoption rates of DG technologies. WRA stated that if the evidence
 12 provided in the technical conference does not conclusively indicate that incentives are no longer
 13 needed, taking into account potential changes in net metering practices and recent or pending changes
 14 in rate design, the Utilities' proposal to eliminate the DG carve-out would be either modified,
 15 postponed, or rejected.⁶⁹ WRA stated that the combined effect of reducing incentives or eliminating
 16 the DG carve-out and other Commission actions, like changes to net metering policies and rate design
 17 changes must be considered, or the advantages of DG could be jeopardized by separate decisions that,
 18 when taken together, discourage DG, thwart customer choice, inhibit innovation, and restrain market
 19 entry and competition.⁷⁰

20 85. REC Integrity. WRA's Auction Proposal would maintain REC integrity because the
 21 Utilities would continue to acquire RECs.⁷¹

22 86. Would Proposal Require Revisions to REST Rules? Because this proposal would
 23 require the Utilities to continue acquiring RECs, it would require no revisions to the REST rules.

24 _____
 25 ⁶⁴ *Id.* at 8.

⁶⁵ *Id.*

⁶⁶ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 8-9.

⁶⁷ *Id.* at 9.

⁶⁸ *Id.*

⁶⁹ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 9-10.

⁷⁰ *Id.* at 9.

⁷¹ See Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 16.

1 **F. RUCO's Baseline and 50/50 Sharing Proposals**

2 87. Overview. RUCO's concern is that the solution to the lowering of incentives does not
3 burden ratepayers and does not affect the integrity of RECs.⁷² RUCO made two separate proposals,
4 the 50/50 Sharing Proposal and the Baseline Proposal. RUCO presented its first proposal, to split
5 RECs 50/50 between owners of interconnected DG systems and the Utility, in Rebuttal Testimony.⁷³
6 In Surrebuttal Testimony, RUCO presented its Baseline Proposal, and recommended that 50/50
7 sharing of RECs be considered only as an alternative to the new proposal.⁷⁴ RUCO stated that it
8 intended the Baseline Proposal as a modification to Staff's Track and Monitor proposal in a way that
9 will maintain REC integrity, while still lowering DG requirements if the DG market is self-sufficient,
10 or robust enough to carry itself.⁷⁵

11 88. DG Carve-out. RUCO does not support elimination of the DG carve-out, as the
12 current situation may be temporary, and it would constitute a substantive change to Commission
13 policy.⁷⁶ RUCO also stated that the cost effectiveness of eliminating the DG carve-out is unclear,
14 because with elimination of the DG carve-out, the Utilities would need to fill in the remaining portion
15 with utility-scale resources, and RUCO's witness approximated that for each utility-scale REC
16 replaced by a DG REC, the savings is around \$0.03 to \$0.04 per kWh.⁷⁷

17 89. Implementation: Baseline Proposal. Under its Baseline Proposal, which RUCO
18 describes as "a waiver with a metric,"⁷⁸ and "an earned waiver,"⁷⁹ the Commission would set an
19 annual benchmark, or baseline, to judge the market for DG uptake based on a percentage of historic
20 or projected market levels of DG deployment.⁸⁰ If the DG market reached the chosen baseline target
21 by the end of that year, and was thus deemed self-sufficient for that year, the Commission would then
22 waive that year's incremental amount of DG from the Utility's DG carve-out requirement
23 accordingly, and Utilities would not be required to catch up for past years' DG carve-out

24 _____
⁷² RUCO Reply Br. at 2.

25 ⁷³ Rebuttal Testimony of RUCO witness Lon Huber, RUCO-2 at 7-9.

26 ⁷⁴ RUCO Reply Br. at 2.

27 ⁷⁵ Surrebuttal Testimony of RUCO witness Lon Huber, RUCO-3 at 3-5.

28 ⁷⁶ *Id.* at 6; Rebuttal Testimony of RUCO witness Lon Huber, RUCO-2 at 5; RUCO Reply Br. at 7.

⁷⁷ Rebuttal Testimony of RUCO witness Lon Huber, RUCO-2 at 5, 9.

⁷⁸ RUCO Reply Br. at 3.

⁷⁹ *Id.* at 6.

⁸⁰ Surrebuttal Testimony of RUCO witness Lon Huber, RUCO-3 at 3.

1 requirements.⁸¹ RUCO stated that the baseline should reflect the level of market activity in the
 2 residential and commercial market sectors that indicates market self-sufficiency.⁸² RUCO purposely
 3 did not provide a methodology for setting the baseline target, instead recommending that the
 4 methodology be established in a collaborative technical session with input from all parties.⁸³ RUCO
 5 argued that its Baseline Proposal can be “as simple as a Staff Report which recommends the market
 6 level of activity threshold and a waiver for any utility that meets the threshold,” stating that Staff is
 7 often tasked with looking at data and coming up with a baseline threshold in the realm of the REST
 8 and Energy Efficiency Plans, where Staff makes a recommendation to the Commission, and parties
 9 are able to comment.⁸⁴ RUCO stated that as an example, the threshold could be based on historical
 10 market demand, such that if the market installed within a certain percentage of the average yearly
 11 market demand within a year, a waiver would be granted.⁸⁵

12 90. Implementation: 50/50 Sharing Proposal. RUCO recommends its 50/50 Sharing
 13 Proposal, which would require a 50/50 split of RECs associated with DG projects between REC
 14 owners and the Utilities, only as an alternative to its Baseline Proposal.⁸⁶ RUCO stated that it
 15 intended the 50/50 Sharing Proposal only as a stop gap solution until completion of a more holistic
 16 policy update.⁸⁷ Under the 50/50 Sharing Proposal, commercial customers would be allowed to
 17 retain 100 percent of their RECs upon proving that they are required to meet an internal or external
 18 standard that demands RECs as proof of compliance.⁸⁸

19 91. REC Integrity. RUCO’s witness Jennifer Martin testified that RUCO’s Baseline
 20 Proposal, where the baseline is determined by capacity rather than kWh, does not raise the
 21 problematic issue of double counting for CRS, when it is made clear that REST compliance is
 22 waived, rather than met, and that the critical factor in the CRS evaluation is that the Baseline
 23 Proposal disconnects kWh generated from determination of REST compliance.⁸⁹

24 ⁸¹ *Id.* at 3, 5.

25 ⁸² *Id.* at 5.

26 ⁸³ *Id.* at 4-5; RUCO Reply Br. at 3.

27 ⁸⁴ RUCO Reply Br. at 8.

28 ⁸⁵ *Id.* at 3.

⁸⁶ *Id.* at 2.

⁸⁷ Rebuttal Testimony of RUCO witness Lon Huber, RUCO-2 at 7-9.

⁸⁸ *Id.* at 8.

⁸⁹ Direct Testimony of RUCO’s witness Jennifer Martin, Exh. R-4 at 14-15.

1 92. Would Proposal Require Revisions to REST rules? Neither of RUCO's proposals
2 would require a revision to the REST rules.

3 **G. Staff's Track and Monitor And Alternative Track and Monitor Proposals**

4 93. Overview. Staff stated that it held the following goals to be the most important
5 considerations when it evaluated how compliance under the REST rules could be achieved in a
6 setting where there is little if any incentive money offered for DG installations:

- 7 • Provide a clear and easily documented way for utilities to achieve compliance under
8 the REST rules;
- 9 • Recognize reality regarding how much electric load is actually being met with
10 renewable energy;
- 11 • Minimize the cost to ratepayers;
- 12 • Maximize value to the extent possible for those who undertake DG installations and
13 Arizona as a whole; and
- 14 • Be minimally invasive to the REST rules.⁹⁰

15 94. With the intent of maintaining REC integrity while retaining the Commission's
16 interest in seeing its 15 percent renewable energy goal for 2025 reached, Staff proposed a modified
17 form of the APS Track and Record proposal that it calls Track and Monitor.⁹¹ Staff's Track and
18 Monitor Proposal is based on TEP and UNS's Track and Reduce proposal, where the REST
19 requirement would be reduced for each utility, on a kWh per kWh basis, for all DG produced in their
20 respective service territories for which no REC transfer to the utility takes place.⁹² Staff stated that
21 DG installations not taking a direct incentive impact the extent to which the required percentage of
22 load within a Utility service territory is being met with renewable energy resources, and thus should
23 somehow be reflected in REST reporting.⁹³ Staff stated that it does not intend for its Track and
24 Monitor proposal to impact the utility scale segment of the REST requirement, and that under Track
25 and Monitor, the actual level of renewable energy in a given utility's service territory in total should

26 _____
27 ⁹⁰ Direct Testimony of Staff witness Robert G. Gray, Exh. S-1 at 6.

⁹¹ Surrebuttal Testimony of Staff witness Robert G. Gray, Exh. S-3 at 7.

⁹² Direct Testimony of Staff witness Robert G. Gray, Exh. S-1 at 7, 10-11.

⁹³ *Id.* at 12.

1 tally to at least 15 percent.⁹⁴ Staff indicated a willingness to consider any proposals that might
 2 modify Track and Monitor to potentially enhance the likelihood of maintaining REC integrity.⁹⁵
 3 Staff recommended in Surrebuttal Testimony that if some form of Track and Monitor is not adopted,
 4 that the Commission move to reopen the REST rules for modification and the parties can propose
 5 rule changes at that time.⁹⁶ However, at the hearing, Staff testified that if Staff's Track and Monitor
 6 proposal were not adopted, a viable option would be for the Commission to annually determine
 7 whether to grant the Utilities a waiver of the DG carve-out requirement, based on behavior in the
 8 market and whether a need exists to incentivize DG installations.⁹⁷ In its Initial Closing Brief, Staff
 9 stated that it does not believe that its Track and Monitor Proposal results in double counting of RECs,
 10 but that if the Commission believes that it does, then Staff's preference would be for the Commission
 11 to adopt its Alternative Track and Monitor Proposal which would grant the Utilities a full waiver of
 12 the DG carve-out requirements for a given year, and then each following year the Commission would
 13 determine whether another waiver should be granted.⁹⁸

14 95. Treatment of DG Carve-out Requirement. Staff does not propose elimination of the
 15 DG carve-out. Staff stated that if the 4.50 percent reservation for DG were eliminated, the utility-
 16 scale component of the 15.00 percent by 2025 requirement would have to make up the difference,
 17 and given the current much higher direct cost recovered through the REST surcharge of utility-scale
 18 generation in comparison to the recent low level of DG incentives, the expansion of the utility scale
 19 component that would occur with elimination of the DG carve-out could significantly increase the
 20 Utilities' REST budgets, and therefore the costs recovered through REST surcharges, in future
 21 years.⁹⁹

22 96. Implementation – Track and Monitor. Staff recommended that Track and Monitor
 23 initially be implemented immediately via a waiver for the Utilities.¹⁰⁰ The waiver would function to
 24 adjust applicable REST requirements for a Utility downward in a given compliance year, on a kWh

25 ⁹⁴ *Id.* at 12, 14.

26 ⁹⁵ Surrebuttal Testimony of Staff witness Robert G. Gray, Exh. S-3 at 7.

27 ⁹⁶ *Id.* at 8; Staff Br. at 10.

28 ⁹⁷ Tr. at 719-22.

⁹⁸ Staff Br. at 3-4, 9.

⁹⁹ Direct Testimony of Staff witness Robert G. Gray, Hearing Exh. S-1 at 5.

¹⁰⁰ *Id.* at 10, 11.

1 per kWh basis, to reflect production from DG facilities within a Utility's service territory that do not
 2 receive incentives and transfer no RECs to the Utility.¹⁰¹ To accomplish Track and Monitor, Utilities
 3 would meter all DG production in their territories.¹⁰² The Utilities would categorize and count the
 4 metered production into two types: 1) the Utility receives the RECs, in which case the production is
 5 counted toward meeting the Utility's annual REST compliance requirement; or 2) no incentive is
 6 taken, with no REC transfer to the Utility, in which case the renewable energy production is counted
 7 toward reducing the Utility's annual REST compliance requirement.¹⁰³ In the event a Utility falls
 8 significantly short of the REST DG requirement in a given year, the Utility would be required to
 9 come before the Commission to address the shortfall, such as a request for a direct incentive level
 10 that would spur the market to a point to put the Utility back into compliance the following year.¹⁰⁴

11 97. Implementation – Track and Monitor Alternative. Under Staff's Alternative Track
 12 and Monitor Proposal, the Utilities would be granted a full waiver of the DG carve-out requirements
 13 for a given year, and the Commission would determine each following year if another waiver should
 14 be granted.

15 98. REC Integrity. Staff asserted that there would be no double counting of RECs under
 16 its Track and Monitor proposal, because the Commission would issue an order establishing a new,
 17 lower REST requirement, and Utilities would only acquire kWh and associated RECs to comply up
 18 to that lower Commission mandate.¹⁰⁵ However, many parties contend that Staff's Track and
 19 Monitor proposal places the integrity of the RECs in question, because it does not disconnect kWh
 20 generated from a determination of REST compliance.

21 99. Would Proposal Require Revisions to REST Rules? Because the Track and Monitor
 22 and Alternative Track and Monitor Proposals would function with a waiver, neither would require
 23
 24

25 ¹⁰¹ *Id.*

26 ¹⁰² TEP and UNS have installed production meters on all DG production facilities in their service territories, and the Commission has approved APS's request to install production meters in its service territory. Surrebuttal Testimony of Staff witness Robert G. Gray, Exh. S-3 at 7-8.

27 ¹⁰³ Direct Testimony of Staff witness Robert G. Gray, Hearing Exh. S-1 at 11.

28 ¹⁰⁴ *Id.* at 13.

¹⁰⁵ Responsive Testimony of Staff witness Robert G. Gray to the Direct Testimony of RUCO witness Jennifer Martin, Exh. S-4 at 2.

1 revisions to the REST rules.¹⁰⁶

2 **IV. REC Integrity, REC Certification and Double Counting**

3 100. As set forth above, Staff's Track and Monitor Proposal, which is supported by Staff,
4 APS, TEP, UNS, and Mr. Koch, and opposed by all other parties, requires the counting of RECs in a
5 Utility's service territory and using that count to reduce the Utility's DG carve-out REC requirement.
6 While the Utilities argued that the Commission need not be concerned with the impact of this
7 Decision on RECs outside the four corners of the REST rules and the State of Arizona, several parties
8 vehemently argue that any action the Commission takes should maintain the integrity of RECs by
9 ensuring that there is no "double counting" of RECs by using them to adjust compliance
10 requirements, which they claim would render them unusable and unsalable in the voluntary market.
11 Staff also supports maintaining the value of RECs associated with Arizona resources by avoiding
12 double counting.

13 101. Vote Solar states that a REC is created whenever a renewable resource generates
14 electricity, regardless of whether the utilities in the state or service territory where the energy is
15 generated have a renewable compliance obligation, and that RECs have value in both the compliance
16 market and in the voluntary market in which individuals, businesses or local governments acquire
17 RECs to achieve their clean energy goals.¹⁰⁷ WRA states that RECs associated with Arizona DG
18 projects would exist even if there were no REST rules in Arizona, and whether or not the Utilities
19 acquire them or track them.¹⁰⁸

20 102. WRA and Vote Solar stated that until recently, nearly all DG RECs in Arizona were
21 purchased by utilities through DG incentives, but that in 2011, Arizona renewable generators
22 generated 29,997 MWh that were sold into the voluntary REC market to customers inside and outside
23 Arizona,¹⁰⁹ and that if incentives are no longer needed or allowed, and REC integrity is protected, the
24 volume of DG RECs sold in the voluntary market may increase.¹¹⁰

25

26 ¹⁰⁶ Staff stated that if Track and Monitor is adopted and works well, the REST rules could be amended to reflect Track
and Monitor on a permanent basis. Direct Testimony of Staff witness Robert G. Gray, Hearing Exh. S-1 at 10.

27 ¹⁰⁷ WRA and Vote Solar Reply Br. at 3; Direct Testimony of Vote Solar witness Rick Gilliam, Exh. Vote Solar-1 at 8-10.

28 ¹⁰⁸ *Id.*; Surrebuttal Testimony of WRA witness David Berry, Exh. WRA-3 at 4, 5.

¹⁰⁹ WRA and Vote Solar Reply Br. at 4, citing to Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 7.

¹¹⁰ WRA and Vote Solar Reply Br. at 2.

1 103. DoD/FEA's witness testified that RECs are a renewable attribute of electricity,
2 represent one megawatt-hour of energy, and can be sold separately from the electricity, with the value
3 determined by the market.¹¹¹ WRA's witness also testified that renewable energy comes with
4 environmental and other attributes, that the property rights in those attributes are separable from the
5 rights to electric energy generated by renewable resources, and that it is those environmental and
6 other attributes that are traded in REC markets.¹¹²

7 104. SEIA states that in order to maintain REC integrity, a REC can only be counted once,
8 and that any proposal that facilitates double counting, whether intentional or not, without providing
9 compensation to the renewable electricity generator, should be rejected.¹¹³ SEIA argues that if third
10 parties believe that DG energy from Arizona has already been counted for regulatory compliance or
11 other purposes, they will not certify or purchase the associated RECs, and that this could drive away
12 investment in Arizona's solar market.¹¹⁴

13 105. WRA, DoD/FEA, NRG, Walmart, SEIA, and RUCO all assert that the Track and
14 Monitor approach proposed by Staff and supported by the Utilities would create a double counting
15 predicament for REC owners, even though the RECs are not transferred to the Utility, because one
16 REC cannot be used for two purposes, and under Track and Monitor, the REC is being used to reduce
17 the Utility's DG carve-out requirement. Consequently, the REC cannot also be used by its owner to
18 qualify for independent green certification or to meet the owner's own renewable energy goals, and
19 cannot be sold to another party. DoD/FEA, NRG, WRA, Vote Solar, SEIA and RUCO stressed that
20 any policy that directly reduces renewable energy targets based on the kWh output of a customer's
21 DG system would result in an invalidation of that customer's RECs due to a double counting
22 violation, because if a Utility applies a customer's energy generation towards a renewable energy
23 standard, the Utility is making claims to the renewable energy attributes of the customer's system.

24 106. RUCO's witness testified that although a customer would technically still own his or
25 her RECs, Green-e Energy would not be able to certify or verify the sale of such RECs to other
26

27 ¹¹¹ Direct Testimony of DoD/FEA witness Kathy Ahsing, Exh. DoD/FEA- 3 at 5-6.

¹¹² Surrebuttal Testimony of WRA witness David Berry, Exh. WRA-3 at 4.

¹¹³ SEIA Br. at 8-9; SEIA Reply Br. at 2-3.

¹¹⁴ SEIA Br. at 9; SEIA Reply Br. at 3-4.

1 purchasers. According to RUCO, double counting issues arise from the Track and Monitor proposal
 2 because the Utilities would be counting RECs, or renewable kWhs underlying RECs, that the Utilities
 3 do not own in order to meet the Utilities' REST requirements.¹¹⁵ This counting occurs from the
 4 Track and Monitor proposal's use of kWh data to modify a compliance obligation, which effectively
 5 results in a claim on the renewable energy value that would otherwise be included in the RECs.¹¹⁶
 6 Those RECs would therefore be barred from sale in any official market, due to the existing regulatory
 7 claim on the renewable attributes of the kWhs by their use to reduce the Utilities' DG
 8 requirements.¹¹⁷

9 107. Staff states that there are two REC markets in Arizona: the compliance market which
 10 the Commission controls, and a voluntary market for RECs.¹¹⁸ The RECs in voluntary markets are
 11 usually certified, and the leading independent certification organization is CRS, which administers
 12 the Green-e Energy program.¹¹⁹ CRS launched Green-e Energy, a certification program that serves
 13 the voluntary renewable energy market, in 1997.¹²⁰ Green-e Energy is a voluntary program for
 14 sellers of green power products that certifies utility green pricing programs, competitive electricity
 15 products offered in deregulated electricity markets, and RECs.¹²¹ Participants in the Green-e Energy
 16 program must adhere to the program's standards.¹²² Green-e Energy certifies and verifies roughly
 17 two-thirds of the U.S. voluntary retail renewable energy market and more than 90 percent of U.S.
 18 retail REC sales.¹²³

19 108. RUCO's witness testified that the Green-e Energy National Standard for Renewable
 20 Electricity Products ("Green-e National Standard") is intended to protect consumers in renewable
 21 energy markets by mandating accountability on retail products sold to customers,¹²⁴ by protecting
 22 renewable energy purchasers against double counting and false claims, and by ensuring purchasers of

23 ¹¹⁵ Direct Testimony of RUCO witness Jennifer Martin at 15.

24 ¹¹⁶ *Id.* at 13-14; Surrebuttal Testimony of RUCO witness Lon Huber, Exh. RUCO-3 at 1.

25 ¹¹⁷ *Id.*

26 ¹¹⁸ Staff Br. at 7.

27 ¹¹⁹ Direct Testimony of Vote Solar witness Rick Gilliam, Exh. Vote Solar-1 at 11; Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 6; Staff Br. at 7, citing to Tr. at 812.

28 ¹²⁰ Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 1.

¹²¹ *Id.* at 1-2.

¹²² *Id.* at 2.

¹²³ *Id.* at 5.

¹²⁴ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 6.

1 renewable energy that they are receiving all of the attributes of renewable energy generation that they
2 purchased.¹²⁵

3 109. The Green-e National Standard allows eligible RECs to be counted only once, so that
4 a REC or the renewable or environmental attributes incorporated in that REC that can legitimately be
5 claimed by another party may not be used in Green-e Energy certified REC products.¹²⁶ Green-e
6 Energy certified renewable electricity and RECs must be additional to any renewable energy or RECs
7 required by state or federal renewable portfolio requirements, legislation, or settlement agreements.¹²⁷
8 Renewable energy generators participating in Green-e Energy and electronic tracking systems such as
9 the Western Renewable Energy Generation Information System (“WREGIS”) must sign Green-e
10 Energy Tracking System Attestations, which declare that the renewable attributes contained in the
11 RECs have not been used to meet “any federal, state, or local renewable energy requirement,
12 renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by
13 any entity other than the party on whose behalf the Renewable Attributes are retired.”¹²⁸

14 110. RUCO’s witness testified that organizations other than CRS interpret double counting
15 of RECs similarly to Green-e Energy, including the U.S. Environmental Protection Agency
16 (“EPA”),¹²⁹ and the U.S. Green Building Council’s Leadership in Energy and Environmental Design
17 (“LEED”) program.¹³⁰ RUCO’s witness also testified that the Federal Trade Commission (“FTC”)
18 identifies double counting of RECs as misleading,¹³¹ and that in order to be consistent with the FTC,
19 Green-e Energy will not certify RECs that have been effectively claimed when they were used to

20 _____
21 ¹²⁵ Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 5.

22 ¹²⁶ Direct Testimony of WRA witness David Berry, Exh. WRA-1 at 6; Rebuttal Testimony of WRA witness David Berry,
23 Exh. WRA-2 at 2, citing to Center for Resource Solutions, *Green-e Energy, National Standard Version 2.3*, p.8 (“Eligible
24 RECs or renewable energy can be used once and only once . . . Renewable energy or RECs (or the renewable or
25 environmental attributes incorporated in that REC) that can be legitimately claimed by another party may NOT be used in
26 Green-e Energy Certified REC products.”) (emphasis in original).

27 ¹²⁷ Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 7, citing to Center for Resource Solutions, *Green-e*
28 *Energy National Standard*, http://www.green-e.org/getcert_re_stan.shtml at 7-8 (accessed June 5, 2013).

¹²⁸ Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 8-9, citing to Center for Resource Solutions,
Tracking System Attestation, http://www.green-e.org/verif_docs.html at 3 (accessed May 30, 2013).

¹²⁹ WRA also points out that according to the EPA, a REC “represents the property rights to the environmental, social,
and other nonpower qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can
be sold separately from the underlying physical electricity associated with a renewable-based generation source.” WRA
and Vote Solar Reply Br. at 4, citing to <http://www.epa.gov/greenpower/gpmarket/rec/htm>.

¹³⁰ Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 9-11.

¹³¹ *Id.* at 12, citing to Federal Trade Commission, *Green Guides* 260.15(d), 32-34,
<http://www.ftc.gov/opa/2012/10/greenguides.shtml> (October 1, 2012).

1 reduce a Utility's REST obligations.¹³²

2 111. TEP and UNS assert that there is no requirement in Arizona that RECs be certified by
 3 Green-e Energy or any other program;¹³³ that the Commission's role is not to buttress value in RECs
 4 for a voluntary market at ratepayer expense;¹³⁴ and that the REST rules' definition of a REC differs
 5 from CRS's view of a REC because, TEP and UNS claim, Arizona's definition of a REC does not
 6 include "environmental attributes."¹³⁵ TEP and UNS contend that Track and Monitor would preserve
 7 REC integrity because the RECs would only be counted toward regulatory compliance if transferred
 8 to the Utility;¹³⁶ that Track and Monitor essentially provides a limited waiver coupled with an
 9 adjustment to the DG compliance requirements without using any renewable attributes associated
 10 with the electricity;¹³⁷ and that language could be crafted to ensure the Utilities do not claim
 11 renewable energy toward compliance if the renewable attributes were not acquired.¹³⁸ TEP and UNS
 12 argue that the FTC guidelines testified to by RUCO's witness are not applicable in this case because
 13 the FTC guidelines do not address utility compliance obligations, and argue that the testimony of
 14 RUCO's witness addressing WREGIS standards are of limited relevance, because WREGIS
 15 addresses issues related to the bulk transmission of electricity and not what occurs behind the meter
 16 on a distribution system.¹³⁹ TEP and UNS suggest that CRS should adapt its Green-e Energy
 17 certification standard to Arizona's compliance market, and that CRS's role as a promoter of
 18 sustainable energy solutions should be taken into account in evaluating the objectivity of Ms.
 19 Martin's testimony.¹⁴⁰

20 112. APS claims that the concerns parties have voiced regarding double counting is flawed,
 21 because no market currently exists into which Arizona owners of DG RECs could sell their RECs,¹⁴¹
 22 and that the issue of double counting, and rules created by CRS, a California non-profit, should not
 23

24 ¹³² Direct Testimony of RUCO witness Jennifer Martin, Exh. R-4 at 12.

¹³³ TEP and UNS Br. at 9.

¹³⁴ TEP and UNS Reply Br. at 7.

¹³⁵ TEP and UNS Br. at 9, 13-15.

¹³⁶ *Id.* at 10-11.

¹³⁷ *Id.* at 12.

¹³⁸ *Id.*; TEP and UNS Reply Br. at 7-8.

¹³⁹ TEP and UNS Br. at 16.

¹⁴⁰ *Id.* at 15.

¹⁴¹ APS Br. at 4.

1 dictate Arizona energy policy.¹⁴² Like TEP and UNS, APS asserts that if the Commission's
 2 determination in this proceeding is inconsistent with CRS's rules, CRS can modify its rules to reflect
 3 the reality of Arizona's market.¹⁴³

4 113. WRA and Vote Solar state that the policies of CRS on double counting, which
 5 encompass North America, are not an attempt of an out-of-state entity to determine Arizona's energy
 6 policy, as APS asserts, but rather the policies are in place to assure buyers of RECs that they are
 7 getting what they pay for. They point out that APS does not ignore national reliability standards,
 8 even though they are developed by an out-of-state entity, the North American Electric Reliability
 9 Corporation.¹⁴⁴

10 114. SEIA contends that the Utilities' arguments that Arizona's energy policy should not be
 11 dictated by CRS's rules completely misconstrue the double counting issue and CRS's role in this
 12 proceeding.¹⁴⁵ SEIA asserts that the issue of properly accounting for renewable energy generated in
 13 Arizona is an Arizona issue that directly impacts Arizona's ratepayers and Arizona's economy, and
 14 that CRS is a REC policy expert that deals with REC markets throughout the country, and certifies 90
 15 percent of all voluntary RECs traded in the U.S.,¹⁴⁶ including the certification of RECs for APS.¹⁴⁷
 16 SEIA argues that it is only logical to consult the national expert on REC markets in a proceeding
 17 centered on REC policy, and the fact that CRS's place of business is in California is irrelevant.¹⁴⁸
 18 SEIA adds that since no party presented any other expert on RECs, CRS's expert opinion on the issue
 19 of RECs in this proceeding is uncontroverted.¹⁴⁹

20 115. NRG, one of the largest solar companies in the U.S., with approximately 2,000 MW
 21 of renewable energy projects in operation and development, ranging from large-scale utility PV and
 22 thermal to DG, is concerned with preserving the viability of Arizona's commercial DG market, and
 23 cautioned that if solar developers are not allowed retain their REC property rights in Arizona, market
 24

25 ¹⁴² *Id.* at 5.

26 ¹⁴³ *Id.*

27 ¹⁴⁴ WRA and Vote Solar Reply Br. at 3.

28 ¹⁴⁵ SEIA Reply Br. at 5.

¹⁴⁶ *Id.*, citing to Tr. at 865-66.

¹⁴⁷ SEIA Reply Br. at 5, citing to Tr. at 118.

¹⁴⁸ SEIA Reply Br. at 6.

¹⁴⁹ *Id.* at 5.

1 opportunities for future solar development outside the REST requirements would be diminished, if
 2 not eliminated.¹⁵⁰ NRG states that RECs may be used for either compliance purposes, or may be
 3 retained by the facility owner as part of the voluntary commercial REC market, and that allowing the
 4 Utilities to claim voluntary commercial RECs for REST compliance without providing cash
 5 compensation to the owners of those RECs would jeopardize not only the property rights of the REC
 6 owners, but also the healthy operation of the voluntary commercial REC market.¹⁵¹

7 116. Walmart's witness testified that as of January 2013, Walmart had 112 facilities and
 8 over 31,000 associates in Arizona, and currently has 22 operating solar installations in Arizona, and
 9 Walmart solar facilities in Arizona generated approximately 62 million kWh of renewable energy.¹⁵²
 10 Walmart urges the Commission to insure that customers and DG system owners retain the value of
 11 their RECs, and to reject proposals that will discourage customers from installing DG.¹⁵³

12 117. DoD/FEA urge the Commission not to adopt any policy that would allow the Utilities
 13 to claim RECs without an explicit agreement supported by adequate consideration.¹⁵⁴ DoD/FEA
 14 assert that such a policy would deprive DoD/FEA of its investment, may detrimentally affect existing
 15 contractual agreements, may result in a regulatory taking, and would likely cause DoD/FEA to
 16 abandon any plans to develop additional renewable projects in Arizona.¹⁵⁵ A witness for DoD/FEA
 17 testified that RECs must be retained to meet renewable energy mandates with which it must comply
 18 pursuant to EPACT 2005 ("EPACT") and Executive Order 13423 ("EO 13423").¹⁵⁶ DoD/FEA state
 19 that the VA has invested over \$50 million in Arizona to develop approximately 10.6 MW of PV in
 20 Phoenix, Prescott, and Tucson,¹⁵⁷ and has additional investments planned in the future; that a 14.5
 21

22 ¹⁵⁰ Direct Testimony of NRG witness Diane Fellman, Exh. NRG-1 at 1-2; NRG Br. at 4.

23 ¹⁵¹ NRG Br. at 2.

24 ¹⁵² Direct Testimony of Walmart witness Ken Baker, Exh. Walmart-1 at 3-4.

25 ¹⁵³ Walmart Br. at 3, 4.

26 ¹⁵⁴ DoD/FEA Br. at 7.

27 ¹⁵⁵ *Id.* at 3, 7.

28 ¹⁵⁶ Direct Testimony of DoD/FEA witness Kathy Ahsing, Exh. DoD/FEA-3 at 5. The witness testified that EPACT 2005 requires that in fiscal year 2013 and beyond, 7.5 percent of the Army's energy must come from renewable sources, and EO 13423 requires that at least half of renewable energy used by the federal government must come from new renewable sources in service after January 1, 1999. *See also* Exh. DoD/FEA-3 (Renewable Energy Requirement Guidance for EPACT 2005 and Executive Order 13423, Final, Prepared by the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, January 28, 2008), and DoD/FEA Br. at 4-5.

¹⁵⁷ This investment was made without taking Utility incentives. Direct Testimony of DoD/FEA witness Cynthia J. Cordova, Exh. DoD/FEA-1 at 2; DoD/FEA Br. at 6.

1 MW PV project is under construction at Davis-Monthan Air Force Base;¹⁵⁸ and the Army is planning
 2 construction of approximately 20 MW of PV generating capacity at Fort Huachuca and/or Yuma
 3 Proving Ground.¹⁵⁹ The witness stated that the Army's retention of a REC associated with its
 4 renewable energy installations precludes transfer to other parties of all renewable energy and non-
 5 energy attributes of the renewable energy project, because under EPCAct and EO13423, the DoD/FEA
 6 cannot claim credit for renewable energy attributes that are also claimed by states or corporations.¹⁶⁰
 7 RECs play a critical role in the Army's renewable energy program in Arizona, as it anticipates that it
 8 will need to utilize RECs associated with projects on its land to attract project developers in Arizona,
 9 because without RECs, the projects will not be feasible.¹⁶¹ DoD/FEA urges that any policy the
 10 Commission adopts not result in double counting, in order to maintain the integrity of RECs, or in the
 11 alternative, the Commission should grant a waiver from any policy that takes RECs without just
 12 compensation, and the Commission should grant an explicit transfer agreement for customers with
 13 their own compliance requirements, like the DoD/FEA.¹⁶²

14 118. RUCO argues that the DoD's ability to rely on the integrity of their RECs drives
 15 millions of dollars of investment in Arizona, and that Arizona policies should not stifle out-of-state
 16 investment in Arizona and energy self-sufficiency measures by DoD/FEA.¹⁶³ RUCO urges that the
 17 Commission should not enact a policy that would prevent the formation of a robust trading network
 18 in RECs, and that the Commission not approve any proposal that would lead to forfeiting Arizona's
 19 opportunity to participate in the voluntary market for RECs.¹⁶⁴

20 119. WRA asserts that A.A.C. R14-2-1803, which deals with the creation of and transfer of
 21 RECs under the REST rules, provides for a clear assignment of rights in tradable credits, and that
 22 without this clear assignment, there would be no way to be sure that the Utilities were meeting the
 23 REST rules' renewable requirements.¹⁶⁵ WRA's witness testified that customers have property rights

24 ¹⁵⁸ The Air Force has transferred the RECs from this project to a third party to reduce the costs of energy purchased from
 25 the third party, and the third party has transferred those RECs for value to TEP. DoD/FEA Br. at 6.

26 ¹⁵⁹ DoD/FEA Br. at 2.

27 ¹⁶⁰ Direct Testimony of DoD/FEA witness Kathy Ahsing, Exh. DoD/FEA- 3 at 5.

28 ¹⁶¹ *Id.* at 6-7.

¹⁶² DoD/FEA Br. at 3.

¹⁶³ RUCO Reply Br. at 9.

¹⁶⁴ *Id.* at 4-5, 9.

¹⁶⁵ Surrebuttal Testimony of WRA witness David Berry, Exh. WRA-3 at 4.

1 associated with RECs,¹⁶⁶ which include the ability to legitimately claim the environmental attributes
 2 of the underlying energy, and that it is those rights that are transferred in REC markets.¹⁶⁷ WRA
 3 points out that under the terms of their credit purchase agreements, the Utilities do not permit double-
 4 counting of RECs they use to meet their REST requirements, and that TEP's credit purchase
 5 agreement definition of a REC does not distinguish between compliance markets and voluntary
 6 markets, but applies to both.¹⁶⁸ WRA and Vote Solar contend that double counting is a real issue to
 7 the Utilities, which they address explicitly in their credit purchase agreements; and that it should be a
 8 real issue to the Commission.¹⁶⁹

9 120. APS, TEP, and UNS addressed the possibility raised by some parties that
 10 implementation of Staff's Track and Monitor Proposal could constitute a property taking. TEP
 11 contends that adoption of Track and Monitor would not pose a takings issue, because Track and
 12 Monitor is a prospective adjustment to the REST rules that advances a legitimate state interest, and
 13 that a mere diminution in value without more does not constitute a compensable taking.¹⁷⁰ TEP
 14 asserts that RECs have no inherent economic value, that their book value is zero,¹⁷¹ and that RECs
 15 are "merely an accounting mechanism."¹⁷² APS argues that a court would not likely find double
 16 counting a REC to constitute a compensable property taking, because it is not clear that RECs
 17 constitute property under Arizona law,¹⁷³ and because only action by the government can constitute a
 18 compensable regulatory taking of property.¹⁷⁴ APS argues that the REST rules do not empower third
 19

20 ¹⁶⁶ *Id.*

21 ¹⁶⁷ WRA and Vote Solar Reply Br. at 4.

22 ¹⁶⁸ *Id.*, citing to TEP's 2013 Up-Front Incentive Renewable Energy Credit Purchase Agreement (Leased Residential Grid-
 Tied Solar PV), Section 1.8, which defines RECs as follows:

23 "REC" means any and all environmental credits, attributes and benefits, including greenhouse gas or
 24 emissions reductions and any associated credits, environmental air quality credits, offsets, allowances
 25 and howsoever entitled, actual SO₂, NO_x, CO₂, Carbon, VOC, mercury, and other emissions avoided,
 credits toward achieving local, national or international renewable portfolio standards, green tags, and
 any and all other green energy or other environmental benefits associated with the generation of renewable
 energy (regardless of how any present or future law or regulation attributes or allocates such
 characteristics), including those created under the REST.

26 ¹⁶⁹ WRA and Vote Solar Reply Br. at 7, 8.

27 ¹⁷⁰ TEP and UNS Reply Br. at 5; TEP and UNS Br. at 18.

28 ¹⁷¹ TEP and UNS Reply Br. at 7, 8.

¹⁷² *Id.* at 7.

¹⁷³ APS Reply Br. at 3.

¹⁷⁴ *Id.* at 2-3.

1 parties to sell RECs to one another;¹⁷⁵ double counting cannot physically invade RECs because they
 2 are intangible;¹⁷⁶ and that even if a DG REC market exists, limiting the ability of REC owners to sell
 3 into that market is not necessarily a compensable property taking, because the mere loss of future
 4 profits has been found insufficient to sustain a takings claim, and there could be other uses for RECs
 5 besides selling them into a market.¹⁷⁷ TEP and UNS argue that a possible loss of REC value is not
 6 deprivation of all value, which is necessary to find a regulatory taking, because customers would still
 7 be able to produce electricity from the DG systems, with the opportunity to lower their electric
 8 bills.¹⁷⁸ APS and TEP both contend that no governmental action would be involved in any double
 9 counting, because double counting can only occur once CRS interprets its rules, applies that
 10 interpretation to Commission policy and refuses to certify RECs.¹⁷⁹ They argue that if CRS refuses
 11 to certify RECs because of Track and Monitor, then it would be CRS who is directly depriving DG
 12 system owners of REC value.¹⁸⁰

13 **V. Parties' Positions on Specific Proposals**

14 **A. Elimination of DG Carve-Out**

15 121. TEP and UNS advocate that along with the adoption of Track and Monitor, the REST
 16 rules be reopened for the express purpose of removing the DG requirement under A.A.C. R14-2-
 17 1805. TEP and UNS contend that while Track and Monitor is the best short-term solution,
 18 elimination of the DG carve-out is the best long-term solution to the issue of REST compliance when
 19 payment of incentives is no longer necessary to increase DG installations.¹⁸¹ TEP and UNS state that
 20 a full waiver of the DG requirement would resolve any concerns about double counting of RECs,¹⁸²
 21 and that a full waiver of the DG requirement would provide a better solution than temporary, year-to-
 22 year waivers, because of administrative costs associated with temporary waivers.¹⁸³ They argue that
 23 just because a rulemaking might be an arduous undertaking does not mean there is no justification for

24 ¹⁷⁵ *Id.* at 3.

25 ¹⁷⁶ *Id.* at 4.

26 ¹⁷⁷ *Id.* at 4-5.

27 ¹⁷⁸ TEP and UNS Br. at 17, 18.

28 ¹⁷⁹ APS Reply Br. at 2-3; TEP and UNS Br. at 17; TEP and UNS Reply Br. at 6.

¹⁸⁰ *Id.*

¹⁸¹ TEP and UNS Br. at 26; TEP and UNS Reply Br. at 2-3.

¹⁸² TEP and UNS Br. at 25.

¹⁸³ *Id.* at 26.

1 doing so, if it is in the public interest.¹⁸⁴ TEP and UNS argue that the market for DG is approaching
 2 the point of self-sustainability, and that when incentives reach zero, the Utilities are no longer
 3 actively participating in the DG market, and should not be held responsible for meeting a requirement
 4 they will have no control over.¹⁸⁵ They dispute assertions that removing the DG requirement will
 5 result in more expensive utility-scale renewables replacing DG installations.¹⁸⁶ TEP and UNS argue
 6 that some customers are choosing to install DG independent of incentives, which demonstrates that
 7 the DG market is growing, and there is no longer a need for DG to have its own special category in
 8 the REST rules.¹⁸⁷ TEP and UNS believe that the Utilities will purchase RECs from DG installations
 9 on the voluntary market if it is a cost-effective means to achieve compliance with overall REST
 10 requirements.¹⁸⁸ TEP and UNS assert that the fact that there is a voluntary market for RECs in
 11 Arizona means that the DG carve-out is no longer necessary, and point out that elimination of a
 12 separate DG requirement would remove any doubt about the integrity of RECs.¹⁸⁹ TEP and UNS
 13 argue that removal of the DG requirement would not defeat the purpose of the REST rules, because
 14 DG will continue to proliferate, and that in the absence of a DG requirement, incentives for DG could
 15 be brought back in the Utilities' annual implementation plans if needed.¹⁹⁰

16 122. SEIA opposes elimination of the DG carve-out. SEIA argues that it is unclear at this
 17 time whether DG incentives are currently driving DG installations,¹⁹¹ and contends that elimination
 18 of the DG carve-out would seriously threaten development of the DG market in Arizona, and would
 19 constitute a significant change to the REST rules that is unnecessary, risky, and cannot easily be
 20 reversed.¹⁹²

21 123. Mr. Koch is strongly opposed to reopening the REST rules for any reason.¹⁹³ Mr.
 22 Koch agrees with Staff that elimination of the DG carve-out would lead to increased REST costs for
 23

24 ¹⁸⁴ TEP and UNS Reply Br. at 9.

¹⁸⁵ TEP and UNS Br. at 26-27.

¹⁸⁶ *Id.* at 27.

¹⁸⁷ *Id.* at 28-29.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ TEP and UNS Br. at 29; TEP and UNS Reply Br. at 9.

¹⁹¹ SEIA Br. at 6.

¹⁹² *Id.* at 4-8.

¹⁹³ Koch Reply Br. at 4-7.

1 ratepayers due to increased, more expensive utility scale renewable plant, and disputes TEP and
 2 UNS's assertion that utility scale renewables are less expensive than DG, stating that the record in
 3 this proceeding contains no evidence to support the assertion.¹⁹⁴ Mr. Koch also points out that if the
 4 DG carve-out is eliminated, reinstatement of incentives, as suggested by TEP and UNS, could be
 5 difficult because there would be no mandate in place.¹⁹⁵

6 124. WRA and Vote Solar oppose the elimination of the DG carve-out, as it reduces the
 7 Commission's flexibility and is premature.¹⁹⁶ They contend that there is no reason to believe that
 8 incentives will never be needed again.¹⁹⁷

9 125. NRG does not support elimination of the DG carve-out.¹⁹⁸ While NRG does advocate
 10 for a reopening of the REST rules to determine whether and how they should be modified, and a
 11 temporary waiver of the DG requirement until that rulemaking is completed, NRG does not support a
 12 permanent change in the REST rules that would eliminate the DG carve-out requirement, and argues
 13 that there is no urgent need to address a non-existent problem.¹⁹⁹

14 126. While Walmart is not opposed to temporary waivers of the DG requirement, Walmart
 15 opposes permanent elimination of the DG requirement, because eliminating the DG requirement
 16 would make it difficult for the Commission to react to changes in circumstances.²⁰⁰ Walmart
 17 contends that it is premature to conclude that the market for DG is now self-sustaining, and a time
 18 may come when the DG requirement again becomes necessary to ensure adequate levels of DG
 19 installations.²⁰¹ Walmart further contends that permanently eliminating the DG requirement could
 20 have a chilling effect on DG development.²⁰²

21 127. RUCO believes that permanently altering the REST rules would be extreme and
 22 would put Arizona on a fixed course in dealing with the current issue when flexibility, rather than
 23

24 ¹⁹⁴ *Id.* at 6.

¹⁹⁵ *Id.* at 6-7.

25 ¹⁹⁶ WRA and Vote Solar Br. at 21.

¹⁹⁷ *Id.*

26 ¹⁹⁸ Direct Testimony of NRG witness Diane Fellman, Exh. NRG-1 at 6; Surrebuttal Testimony of NRG witness Diane
 Fellman, Exh. NRG-2 at 2; NRG Br. at 1, 5.

27 ¹⁹⁹ Direct Testimony of NRG witness Diane Fellman, Exh. NRG-1 at 6; NRG Br. at 5.

²⁰⁰ Walmart Br. at 3.

28 ²⁰¹ *Id.*

²⁰² *Id.*

1 rigidity, is the better choice.²⁰³

2 128. Staff does not agree with elimination of the DG carve-out at this time.²⁰⁴ Staff
3 contends that such a step is premature, goes far beyond the narrow issue presented in this case, and
4 would require a rulemaking.²⁰⁵ Staff states that elimination of the DG carve-out would result in more
5 utility-scale generation,²⁰⁶ and given the current much higher direct cost recovered through the REST
6 surcharge of utility-scale generation in comparison to the recent low level of DG incentives, the
7 expansion of the utility scale component that would occur with elimination of the DG carve-out could
8 significantly increase the Utilities' REST budgets, and therefore the costs recovered through their
9 REST surcharges, in future years.²⁰⁷ Staff agrees with SEIA that the current strength of the market is
10 unknown, and agrees with Walmart that it is important to retain the DG requirement to provide the
11 Commission with flexibility in the event market conditions change.²⁰⁸ Staff points out that if the DG
12 carve-out were removed through a rulemaking, another rulemaking would be required to add it back
13 in.²⁰⁹

14 **B. Taking No Action or Annual Waivers as Needed**

15 129. SEIA states that the Commission need not take any action at this time, but that if the
16 Commission chooses to take action, it should issue an annual waiver of the DG requirement to the
17 Utilities as needed, and require the Utilities to report DG installations in their service territories for
18 informational purposes only.²¹⁰ SEIA contends that this annual waiver approach is widely supported,
19 including support from TEP and UNS and Staff; will achieve Staff's stated goals; will allow the
20 Commission to monitor the DG market; can be written so as to avoid double counting of RECs; will
21 create no additional uncertainty, cost, or administrative burden; is consistent with the REST rules;
22 and satisfies any compliance issues the Utilities may face.²¹¹

23 _____
24 ²⁰³ RUCO Reply Br. at 7.

²⁰⁴ Staff Br. at 12.

²⁰⁵ *Id.*; Staff Reply Br. at 8.

²⁰⁶ Staff Br. at 12.

²⁰⁷ Direct Testimony of Staff witness Robert G. Gray, Hearing Exh. S-1 at 5.

²⁰⁸ Staff Reply Br. at 8.

²⁰⁹ *Id.*

²¹⁰ SEIA Reply Br. at 9. This position is a change from SEIA's position in its prefiled testimony and its Initial Closing Brief, where it recommended the Utilities be granted only a one-year waiver from the DG carve-out for market segments in which they fall out of compliance and are unable to purchase RECs. *See* SEIA Br. at 14-15.

²¹¹ SEIA Reply Br. at 9.

1 130. APS is opposed to taking no action at this time, stating that waiting only furthers
 2 uncertainty and administrative burden, and that the time to act is now.²¹² Responding to parties who
 3 assert that changing circumstances favor waiting to act, APS responds that circumstances regarding
 4 Arizona's renewable energy marketplace are always changing, the Commission has successfully
 5 addressed those changes as they have arisen, and that APS expects that the Commission will continue
 6 to do so through the Utilities' annual REST plans and other fora.²¹³ APS is not opposed to Staff's
 7 Alternative Track and Monitor Proposal, which is similar to SEIA's Annual Waivers of the DG
 8 Carve-Out as Needed Proposal.²¹⁴

9 131. TEP and UNS state that taking no action at this time and continuing to use ratepayer
 10 funds for incentives would be inappropriate.²¹⁵ TEP and UNS state that if the Commission does not
 11 wish to adopt any of the proposals presented by the parties, a temporary year-to-year waiver of the
 12 DG requirement would be acceptable in the short term, as long as the DG requirement for the year in
 13 which a waiver is granted is permanent for that year, that is, not rolled into a subsequent year.²¹⁶

14 132. Walmart supports a temporary year-to-year waiver that is not based on kWh
 15 production.²¹⁷ Walmart contends that an annual waiver of the DG requirement can both provide the
 16 Utilities the relief they seek, and maintain the integrity of RECs, as long as the waivers are not based
 17 on actual kWhs of energy in the Utilities' service territories, so that the DG system owners are not
 18 left with RECs that they cannot claim on the market.²¹⁸ Walmart recommends that if the Commission
 19 deems it necessary to suspend the DG requirement, only a temporary waiver be given, because of the
 20 potentially chilling impact of permanent removal of the DG requirement on customer-sited
 21 installations.²¹⁹

22 133. NRG is not in favor of taking no action, but advocates a temporary waiver of the DG
 23

24 ²¹² APS Br. at 5; APS Reply Br. at 2.

²¹³ APS Br. at 5-6.

25 ²¹⁴ APS Reply Br. at 2.

²¹⁵ TEP and UNS Reply Br. at 7.

26 ²¹⁶ TEP and UNS Br. at 25; TEP and UNS Reply Br. at 9. TEP and UNS opposed SEIA's proposal to only grant a one
 year waiver, asserting that SEIA's recommendation to simply wait is inappropriate, because according to TEP and UNS,
 27 waiting to act will continue to cost ratepayers unnecessarily. *See* TEP and UNS Reply Br. at 7.

²¹⁷ Rebuttal Testimony of Walmart witness Ken Baker, Exh. Walmart-2 at 5-6.

28 ²¹⁸ NRG Br. at 5.

²¹⁹ Direct Testimony of Walmart witness Ken Baker, Exh. Walmart-1 at 5-6, 9.

1 requirements, while a rulemaking is conducted to determine whether and how to modify the REST
 2 rules permanently.²²⁰ NRG states that while the waiver is in effect, the Commission could collect
 3 energy production data from DG systems that are connected to the grid but receive no cash incentives
 4 or compensation for REC transfers, and use this information strictly for informational, and not
 5 compliance, purposes.²²¹ The Utilities would not receive any credit from the production, either
 6 through a reduction in their DG compliance requirements or for the load required to measure that DG
 7 compliance.²²²

8 134. WRA and Vote Solar state that allowing the Commission to annually evaluate the
 9 need for incentives and implement waivers as appropriate is acceptable, would preserve flexibility for
 10 the Commission, and would not require any changes to the REST rules.²²³ WRA and Vote Solar also
 11 state that while an occasional waiver may be warranted, it should not become a regular occurrence,
 12 and that the best way to implement the REST is to require the Utilities to legitimately acquire RECs
 13 from customers using a method that minimizes costs to ratepayers.²²⁴

14 135. Staff does not agree with SEIA that the Commission should simply delay acting on
 15 this matter altogether.²²⁵ Staff states that delay is unnecessary, possibly harmful, and would consume
 16 significant additional time and resources for the parties.²²⁶ Staff notes that most incentives are at or
 17 near zero at this time, and there is ongoing growth in installations that take no incentive.²²⁷ SEIA's
 18 proposal of Annual Waivers of the DG Carve-Out as Needed appears to be indistinguishable from
 19 Staff's Alternative Track and Monitor Proposal.

20 C. Auction and Standard Offer

21 136. WRA and Vote Solar propose that the Utilities continue to acquire RECs as needed to
 22 meet the DG requirement, and believe that the acquisition process can be designed to obtain the
 23 lowest cost for ratepayers, through either an Auction or a regularly updated Standard Offer.²²⁸ They

24 ²²⁰ NRG Br. at 1, 3, 5, 11-12.

25 ²²¹ Surrebuttal Testimony of NRG witness Diane Fellman, Exh. NRG-2 at 2-3.

26 ²²² *Id.*

27 ²²³ WRA and Vote Solar Br. at 21.

28 ²²⁴ WRA and Vote Solar Reply Br. at 8.

²²⁵ Staff Br. at 12.

²²⁶ Staff Reply Br. at 2.

²²⁷ *Id.*

²²⁸ WRA and Vote Solar Br. at 20; WRA and Vote Solar Reply Br. at 8.

1 respond to criticisms of their proposals stating concerns over market power or uncertain budgets for
 2 REC acquisitions under their proposals could be addressed by placing a cap on the REC price
 3 Utilities pay at auction and setting a budget annually for each Utility during its review of REST
 4 implementation plans, with continuing input from the parties.²²⁹ WRA and Vote Solar assert that
 5 both the Auction Proposal and the Standard Offer Proposal are continuations of existing practices and
 6 are quite workable, as the Commission has used a standard offer approach for years by setting an
 7 incentive rate for the acquisition of RECs, and Staff has reviewed the Utilities' incentive proposals,
 8 recommended incentive levels, and has experience with dynamic REC market conditions.²³⁰ WRA
 9 and Vote Solar assert that the collaborative process they propose for developing an auction or
 10 standard offer is necessary and would not be cumbersome. They state that APS held such a technical
 11 conference when it developed its PBIs, and Staff held a series of workshops on developing the
 12 uniform credit purchase programs ("UCCP").²³¹ WRA and Vote Solar stress that their proposals do
 13 not create a double counting problem.²³² WRA and Vote Solar also state that the Commission could
 14 do nothing in this docket, and authorize the Utilities to purchase RECs from DG resources as needed
 15 in Commission review of the Utilities' annual implementation plans, and that if incentives are rarely
 16 needed, the REC price will be minimal.²³³

17 137. APS opposes both the Auction Proposal and the Standard Offer Proposal. APS is
 18 concerned that both proposals involve payment by Utilities of an unknown amount of costs to acquire
 19 RECs to demonstrate REST compliance, which costs would be recovered through the REST
 20 surcharge.²³⁴ APS points out that if Arizona were to adopt a standard-offer type model, it would be
 21 the first state in the west to do so.²³⁵

22 138. TEP and UNS also oppose both the Auction Proposal and the Standard Offer Proposal.
 23 They argue that when REST incentives are no longer driving the market, it is counter-intuitive to
 24 create an artificial market by these means, which would both require ratepayer funds to drive

25 ²²⁹ WRA and Vote Solar Reply Br. at 6.

26 ²³⁰ *Id.* at 5, 8.

27 ²³¹ *Id.* at 6.

28 ²³² *Id.* at 7, 8.

²³³ WRA and Vote Solar Br. at 20.

²³⁴ APS Br. at 6.

²³⁵ *Id.*

1 compliance.²³⁶ TEP and UNS are concerned with the use of Utility resources and ratepayer funds to
 2 create an artificial value in RECs by requiring the Utilities to participate in the markets that would
 3 result from adoption of either of these proposals, and the associated annual budget reviews, possible
 4 additional technical conferences, and a quarterly process for Vote Solar's Standard Offer Proposal.²³⁷
 5 TEP and UNS respond to WRA and Vote Solar's claims that acquiring RECs would be a small
 6 expense for the Utilities, stating that no matter the magnitude of the expense, customers should not
 7 have to pay more than is necessary for a DG market in which customer choice is the primary
 8 driver.²³⁸ TEP and UNS also join in APS's criticisms of these proposals.²³⁹

9 139. Staff states that it also has serious concerns related to the costs of the Auction and
 10 Standard Offer Proposals.²⁴⁰ Staff asserts that the record does not contain much information about
 11 how either proposal would work, and that a form of auction or standard offer would expose
 12 ratepayers to unknown and potentially large costs that would not be known until the process actually
 13 takes place, but would have to be recovered through the REST surcharge nonetheless.²⁴¹ Staff
 14 additionally notes that it would be difficult for the Utilities to present a budget to the Commission in
 15 their annual REST plans when they would not know how much they would be paying for RECs in the
 16 following year.²⁴²

17 **D. Baseline and 50/50 Sharing**

18 140. RUCO states that its Baseline Proposal accomplishes the overall objectives sought by
 19 most parties to this proceeding, promotes market certainty, can fit into the Utilities' yearly REST
 20 implementation plans, and will allow Arizona's RECs to remain viable in the voluntary market.²⁴³
 21 RUCO offers the 50/50 Sharing proposal only as an alternative to its Baseline Proposal.²⁴⁴

22 141. SEIA states that if the Commission does not adopt its proposal for a waiver of the DG
 23 carve-out, the Commission should adopt the Baseline Proposal, because it would successfully do

24 ²³⁶ TEP and UNS Br. at 23; TEP and UNS Reply Br. at 5.

25 ²³⁷ TEP and UNS Br. at 23-24; TEP and UNS Reply Br. at 6.

26 ²³⁸ TEP and UNS Reply Br. at 6.

27 ²³⁹ *Id.* at 3.

28 ²⁴⁰ Staff Br. at 11, citing to Direct Testimony of Staff witness Robert G. Gray, Exh. S-1 at 7-8.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ RUCO Br. at 3-6.

²⁴⁴ *Id.* at 3.

1 what Staff's Track and Monitor Proposal attempts to do, which is permit reductions of the DG
2 requirements while avoiding a counting of RECs.

3 142. APS opposes the Baseline Proposal, arguing that an annual setting of the DG
4 threshold may hinder DG developers by complicating the consummation of deals for solar projects
5 that require more than one year to negotiate. APS characterizes the Baseline Proposal as a rewriting
6 of Arizona policy regarding how much DG should be installed, and contends that the Baseline
7 Proposal could establish a "new de facto DG threshold" that could "wind up guaranteeing a specific
8 level of DG market activity." APS states that the Baseline Proposal lacks sufficient details to
9 compare it to other proposals, and that prior to its adoption, several issues must be resolved, including
10 whether the baseline is set using a percentage of historic DG installations, or using a projection of
11 market activity; whether the baseline is based on installed capacity, or on energy; whether the
12 baseline applies to commercial customers; whether the baseline would exceed the current REST
13 requirements; and when the Commission would stop using the baseline method of determining a
14 waiver of the DG requirement.

15 143. TEP and UNS oppose the Baseline Proposal because they find it overly complicated
16 and do not believe that it improves on Track and Monitor. They argue that RUCO did not make
17 clear the means of establishing a baseline, and that the Utilities could still be on the hook for
18 compliance when the market is not self-sufficient, even when they no longer have any influence over
19 the market through incentives. TEP and UNS further argue that under the Baseline Proposal, there
20 would be no direct link between renewable energy deployed and REST compliance, such that
21 implementation could therefore cause confusion, take more time to implement than Track and
22 Monitor, and require extensive proceedings on an annual basis. TEP and UNS also join APS's
23 criticisms of the Baseline Proposal. TEP and UNS state that the 50/50 Sharing Proposal would
24 require a REC owner to give up half its RECs, and would likely result in a *de facto* increase in REST
25 requirements because the Utilities would receive only half of the RECs from a DG system.²⁴⁵

26 144. WRA and Vote Solar state that the Baseline Proposal may be an acceptable solution,
27

28 ²⁴⁵ See, e.g., TEP and UNS Br. at 20.

1 but setting the baseline could be a difficult process.²⁴⁶ WRA and Vote Solar state that the 50/50
2 Sharing Proposal should be rejected as unworkable.²⁴⁷

3 145. NRG does not support the Baseline Proposal due to its complexity and lack of
4 transparency, and because NRG believes it would require much work to be ready for the
5 Commission's consideration.²⁴⁸ NRG states that it appreciates that the 50/50 Sharing proposal would
6 allow commercial customers to retain 100 percent of their RECs if they can prove they are required to
7 meet an internal or external standard that demands retired RECs as proof of compliance, but cannot
8 support it, because it would be unfair to non-commercial generators, and would place the burden on
9 commercial generators to prove that RECs are required for another purpose.²⁴⁹

10 146. Staff prefers its Alternative Track and Monitor Proposal over the Baseline Proposal.²⁵⁰
11 Staff states that the Alternative Track and Monitor Proposal is much less complicated, and would not
12 require any additional workshop processes.²⁵¹ Staff does not believe there is sufficient information in
13 the record for the 50/50 Sharing Proposal, and that it appears to have some problems.²⁵² Like TEP
14 and UNS, Staff is concerned that if the Utilities receive only half of the RECs from a project, twice
15 the projects would be required in their service territory to meet their DG requirement in a given year,
16 which would effectively double the Utilities' DG requirements.²⁵³ Staff also states that the proposal
17 would create disparate treatment between residential and commercial customers, and the proposal
18 fails to address the concerns raised by some parties of a taking of property rights.²⁵⁴

19 **E. Track and Monitor and Alternative Track and Monitor**

20 147. Staff states that no other proposal offered in this proceeding better addresses Staff's
21 five goals than its Track and Monitor Proposal.²⁵⁵ Staff argues that Track and Monitor is simple, and
22 maintains the spirit of the REST rules by continuing to track actual DG production so that the
23

24 ²⁴⁶ WRA and Vote Solar Br. at 21.

25 ²⁴⁷ *Id.*

26 ²⁴⁸ NRG Br. at 11.

27 ²⁴⁹ *Id.* at 10.

28 ²⁵⁰ Staff Reply Br. at 4-5.

²⁵¹ *Id.* at 5.

²⁵² *Id.* at 11.

²⁵³ *Id.*

²⁵⁴ *Id.*, citing to Surrebuttal Testimony of Staff witness Robert G. Gray, Exh. S-3 at 7.

²⁵⁵ Staff Reply Br. at 2.

1 Commission will continue to have accurate yearly information on the amount of DG installed and
 2 produced each year.²⁵⁶ Staff believes it is important to have a compliance system in place that
 3 accurately captures all the renewable energy production in the Utilities' service territories, because
 4 the REST rules are based upon renewable energy meeting a percentage of each Utility's retail
 5 sales.²⁵⁷

6 148. Staff states that it designed its Track and Monitor Proposal so that no REC transfer to
 7 the Utility would take place for DG installations not taking an incentive, since the DG requirement
 8 itself would be reduced, and Staff believes that the RECs associated with those DG installations
 9 would not lose their value in the voluntary market because the owners would not transfer their RECs
 10 to the Utility.²⁵⁸ However, Staff acknowledges that some parties believe that the mere act of
 11 adjusting the DG REC requirement downward to remove from the requirement DG systems that did
 12 not take an incentive is in some manner taking the RECs from those unincentivized DG systems.²⁵⁹
 13 Staff argues that such a reading is erroneous, and does not reflect how its Track and Monitor Proposal
 14 is intended to operate, because it intends the REC to remain with the owner and not rely on counting
 15 RECs for compliance purposes, but acknowledges that there is no way the Commission can know
 16 with certainty whether CRS would or would not certify RECs if Staff's Track and Monitor Proposal
 17 is adopted.²⁶⁰ Staff has therefore offered the Alternative Track and Monitor Proposal, which would
 18 waive the full DG carve-out for a given year, and then the Commission would determine each
 19 following year if another waiver should be granted.²⁶¹ Like its Track and Monitor Proposal, Staff's
 20 Alternative Track and Monitor Proposal would utilize the production meters that TEP and UNS have
 21 already installed, and that APS is in the process of installing, to track DG deployment and output, but
 22 since there would be a yearly waiver of DG requirements, the information collected would be for
 23 informational purposes only, and would therefore certainly not result in a use of RECs for
 24 compliance purposes.²⁶² Staff recommends that the Commission adopt the Alternative Track and

25 ²⁵⁶ *Id.*

26 ²⁵⁷ *Id.*

26 ²⁵⁸ Staff Reply Br. at 3.

27 ²⁵⁹ Staff Br. at 8.

27 ²⁶⁰ *Id.* at 9.

28 ²⁶¹ *Id.*; Staff Reply Br. at 4.

28 ²⁶² Staff Reply Br. at 3, 6.

1 Monitor Proposal if the Commission believes that Staff's Track and Monitor Proposal would result in
 2 double counting of RECs.²⁶³ Staff states that neither proposal would result in increased costs for the
 3 Utilities and their customers.²⁶⁴

4 149. TEP and UNS contend that Track and Monitor is a simple, straightforward short-term
 5 solution that stays within the framework of the REST rules, because the Utilities would still be using
 6 renewable energy resources to provide for a portion of their retail loads.²⁶⁵ TEP and UNS argue that
 7 the opponents of Track and Monitor misinterpret and mischaracterize how it will operate, and that
 8 Track and Monitor does not result in double counting of RECs, but that wording must be carefully
 9 crafted to ensure that the Utilities do not claim renewable attributes they have not acquired.²⁶⁶ TEP
 10 and UNS contend that it is not too early to implement Track and Monitor, because TEP is facing the
 11 issue now of what to do when incentives are not accepted by DG facility owners interconnecting onto
 12 its system.²⁶⁷ TEP and UNS also opine that the Commission would not be unlawfully impeding any
 13 property rights by adopting Track and Monitor when advancing the legitimate state interest of
 14 achieving renewable energy goals through the most cost effective means.²⁶⁸ However, TEP and
 15 UNS emphasize that they recognize the contributions that DoD agencies have made in Arizona, that
 16 they understand the needs of both the VA and the Army to comply with EPACT 2005 and EO 13423,
 17 and they do not want to take any action that would jeopardize Arizona DoD projects.²⁶⁹ While TEP
 18 and UNS contend that Track and Monitor would preserve the significant DG investments DoD has in
 19 Arizona,²⁷⁰ they state that Staff's Track and Monitor Alternative Proposal is acceptable, and they
 20 believe that Staff's Alternative Track and Monitor Proposal would resolve concerns regarding double
 21 counting of RECs.²⁷¹

22 150. APS contends that the only potential criticism of Track and Monitor is that CRS might
 23

24 ²⁶³ Staff Br. at 9; Staff Reply Br. at 4.

25 ²⁶⁴ Staff Reply Br. at 3.

26 ²⁶⁵ TEP and UNS Br. at 4-5.

27 ²⁶⁶ *Id.* at 8-15; TEP and UNS Reply Br. at 1-2, 7-8.

28 ²⁶⁷ TEP and UNS Br. at 18.

²⁶⁸ TEP and UNS Reply Br. at 5.

²⁶⁹ *Id.* at 3.

²⁷⁰ *Id.*

²⁷¹ TEP and UNS Br. at 8; TEP and UNS Reply Br. at 2.

1 refuse to certify unincentivized DG RECs in Arizona, and APS is dismissive of this criticism.²⁷² In
 2 support of its position, APS asserts that CRS does not certify RECs in Hawaii, but that Hawaii
 3 nonetheless enjoys strong renewable energy growth.²⁷³ According to APS's legal analysis, double
 4 counting of RECs does not constitute a compensable regulatory taking.²⁷⁴ APS states that Track and
 5 Monitor, and the Alternative Track and Monitor Proposal identified in Staff's Initial Closing Brief,
 6 offer the best options in this proceeding.²⁷⁵

7 151. Mr. Koch is in favor of adoption of Staff's Track and Monitor Proposal, arguing that it
 8 is the only proposal that addresses the policy goals recommended by Staff, and he argues that it does
 9 not result in double counting RECs.²⁷⁶ Mr. Koch does not support an accompanying waiver of the
 10 DG requirement.²⁷⁷

11 152. NRG contends that Track and Monitor is not needed at this time, and that it does not
 12 protect the integrity of RECs and property rights of REC owners under the Rest rules.²⁷⁸ NRG states
 13 that preserving the value of RECs through CRS Green-e Energy certification is critical to NRG and
 14 other commercial DG market participants, and that impermissible double counting of RECs, as would
 15 occur under the Track and Monitor Proposal, should therefore not be allowed.²⁷⁹ NRG states that it
 16 understands that Staff's Track and Monitor proposal is made in good faith, and that Staff does not
 17 believe that its proposal would double count RECs, but that CRS, as the Green-e Energy certifier, has
 18 the last word on the double counting issue for the commercial DG market, and that the Commission
 19 should therefore not implement the Track and Monitor Proposal.²⁸⁰ NRG believes that a change in
 20 the REST rules, with a new methodology to track compliance, is necessary in order to achieve a long-

21
 22
 23 ²⁷² APS Br. at 9.

24 ²⁷³ *Id.* Ms. Martin testified that Hawaii explicitly stated that all the renewable energy generated within Hawaii, whether
 25 owned or purchased by the utility, and including on-site generation where the facility owner retains the RECs, gets
 26 counted toward the state's renewable energy policy, and that CRS's response has been not to allow any renewable energy
 27 or renewable energy certificates from Hawaii to be certified through Green-e Energy. Tr. at 827. Ms. Martin testified
 28 that to the best of her knowledge no RECs from Hawaii are being sold in the voluntary market. Tr. at 827.

²⁷⁴ See APS's Reply Brief at 2-5.

²⁷⁵ APS Reply Br. at 2.

²⁷⁶ Kevin Koch Reply Br. at 2-3.

²⁷⁷ *Id.* at 4.

²⁷⁸ Surrebuttal Testimony of NRG witness Diane Fellman, Exh. NRG-2 at 1-2.

²⁷⁹ NRG Br. at 7-8.

²⁸⁰ *Id.* at 9.

1 term solution.²⁸¹ NRG does not have a suggestion regarding such a new methodology, but states that
 2 the parties should collaborate to develop an acceptable policy that retains the value and property
 3 rights of RECs.²⁸² NRG also proposed a temporary waiver from the DG carve-out, in order to
 4 provide time for the parties to design a policy that preserves the value and ownership of RECs,²⁸³ and
 5 suggested that the Commission could collect energy production data from DG systems that are
 6 connected to the grid but receive no cash incentives or compensation for REC transfers, and use this
 7 information strictly for informational, and not compliance, purposes, such that the Utilities would not
 8 receive any credit from the production, either through a reduction in their DG compliance
 9 requirements or for the load required to measure that DG compliance.²⁸⁴

10 153. Walmart argues that the Commission should reject Staff's Track and Monitor Proposal
 11 due to its unintended consequences to the owners of DG systems.²⁸⁵ Walmart is concerned that
 12 because the Track and Monitor proposal grants a waiver to a Utility of its DG requirement of one
 13 REC for each kWh produced in its service territory, it could be perceived as a use of the RECs from
 14 customers' DG systems, which would preclude REC owners from using their RECs to satisfy their
 15 own internal renewable goals.²⁸⁶ Walmart states that it does support a temporary year-to-year waiver
 16 that is not based on kWh production.²⁸⁷

17 154. SEIA contends that Track and Monitor should not be adopted because it would
 18 seriously threaten Arizona's solar market, would violate the REST rules, and would harm Arizona
 19 residents,²⁸⁸ and because it fails to compensate DG system owners.²⁸⁹ SEIA argues that whether the
 20 REST requirement is met through a Utility purchase of RECs or reduced under Track and Monitor,
 21 renewable energy is being produced and used to meet the Utility's REST requirement, and reducing a
 22 REST requirement by tracking DG in its territory actually counts that energy toward the REST
 23

24 ²⁸¹ Surrebuttal Testimony of NRG witness Diane Fellman, Exh. NRG-2 at 2.

²⁸² *Id.*

25 ²⁸³ Direct Testimony of NRG witness Diane Fellman, Exh. NRG-1 at 6; Surrebuttal Testimony of NRG witness Diane
 Fellman, Exh. NRG-2 at 2; NRG Br. at 1, 5.

26 ²⁸⁴ Surrebuttal Testimony of NRG witness Diane Fellman, Exh. NRG-2 at 2-3.

²⁸⁵ Walmart Br. at 4.

²⁸⁶ *Id.*

27 ²⁸⁷ Rebuttal Testimony of Walmart witness Ken Baker, Exh. Walmart-2 at 5-6.

²⁸⁸ SEIA Br. at 13.

28 ²⁸⁹ SEIA Reply Br. at 3.

1 requirement.²⁹⁰ SEIA argues that based on the uncontroverted evidence of CRS's expert opinion on
 2 the issue of RECs, Track and Monitor would count DG energy toward REST requirements without
 3 compensating system owners, and should therefore be rejected.²⁹¹ SEIA states that while it
 4 appreciates Staff's recognition that a counting of RECs should be avoided, and Staff's attempt to
 5 avoid a counting, Staff's Track and Monitor Proposal is flawed, because it preserves a one-to-one
 6 linkage between the amount of DG installed in a Utility's service territory and the Utility's DG
 7 requirement, which would prohibit the DG system owner from using its RECs for any other purpose
 8 than Utility DG compliance.²⁹² SEIA disputes arguments that it is the Commission that should
 9 decide what constitutes a double counting, asserting that it fails to acknowledge that Arizona's solar
 10 market functions as part of a broader national and international market where RECs are bought and
 11 sold.²⁹³ SEIA argues that if participants in the market do not have confidence in their ability to sell
 12 Arizona RECs to finance their projects or meet their own compliance requirements, they will invest
 13 elsewhere, which would have a ripple effect on all the businesses that serve the solar market
 14 throughout Arizona.²⁹⁴ SEIA also claims Track and Monitor would violate the REST rules provision
 15 R14-2-1803(C).²⁹⁵ In its Reply Closing Brief, SEIA proposed that the Commission issue an annual
 16 waiver of the DG requirement to the Utilities as needed, and require the Utilities to report DG
 17 installations in their service territories for informational purposes only.²⁹⁶ SEIA's alternative
 18 proposal for an Annual Waiver as Needed is materially the same as Staff's Alternative Track and
 19 Monitor Proposal.

20 155. WRA and Vote Solar contend that the Track and Monitor approach is unsuitable as a
 21 Commission policy because it creates a double counting dilemma.²⁹⁷ WRA and Vote Solar assert
 22 that Track and Monitor tries to get something for nothing by meeting the DG requirement or reducing

23 ²⁹⁰ *Id.* at 7.

24 ²⁹¹ *Id.* at 5.

25 ²⁹² SEIA Br. at 10.

26 ²⁹³ *Id.*

27 ²⁹⁴ SEIA Br. at 11-12.

28 ²⁹⁵ *Id.* at 13. A.A.C. R14-2-1803(C) provides as follows:

An Affected Utility may transfer Renewable Energy Credits to another party and may acquire Renewable Energy Credits from another party. A Renewable Energy Credit is owned by the owner of the Renewable Energy Resource from which it was derived unless specifically transferred.

²⁹⁶ SEIA Reply Br. at 9.

²⁹⁷ WRA and Vote Solar Br. at 21; WRA and Vote Solar Reply Br. at 5, 7, 8.

1 the DG requirement by claiming RECs for regulatory purposes that Utilities have not purchased.²⁹⁸
 2 They argue that Track and Monitor devalues RECs owned by Utility customers or others, because
 3 adjusting the DG requirement downward would constitute a Utility claim on RECs without actually
 4 acquiring the RECs from the REC owners.²⁹⁹ WRA and Vote Solar state that allowing the
 5 Commission to annually evaluate the need for incentives and implement waivers as appropriate is
 6 acceptable, would preserve flexibility for the Commission, and would not require any changes to the
 7 REST rules.³⁰⁰

8 156. DoD/FEA contend that any policy that results in double counting would deprive
 9 DoD/FEA of a benefit of its investments in renewable energy, and may result in future renewable
 10 projects planned in Arizona being canceled or diverted to another state.³⁰¹ DoD/FEA state that while
 11 APS makes an example of Hawaii as a state that enjoys growth in renewables in the absence of CRS
 12 certification of RECs, APS fails to acknowledge that Hawaii's utilities continue to provide incentives
 13 or compensation in exchange for customers' RECs, which the Utilities do not propose in this
 14 proceeding.³⁰² DoD/FEA urge that any policy the Commission adopts should maintain the integrity
 15 of customers' RECs.³⁰³ They argue that adoption of a policy that results in double counting would
 16 render all RECs generated in Arizona useless in a voluntary market and for its compliance
 17 requirements, and there is no reason supporting adoption of such a policy, when the double counting
 18 problem can be avoided with reasonable effort.³⁰⁴

19 **VI. Conclusions**

20 157. We find that Staff's stated goals³⁰⁵ provide good guidance in addressing the issue of

21 ²⁹⁸ WRA and Vote Solar Reply Br. at 5, 7, 8.

22 ²⁹⁹ *Id.*

23 ³⁰⁰ WRA and Vote Solar Br. at 21.

24 ³⁰¹ DoD/FEA Br. at 3, 7.

25 ³⁰² DoD/FEA Reply Br. at 2.

26 ³⁰³ *Id.* at 3.

27 ³⁰⁴ *Id.* at 2-3.

28 ³⁰⁵ Staff provided for consideration of the parties and the Commission five goals which it considered to be the most important considerations when it evaluated how compliance under the REST rules could be achieved in a setting where there is little if any incentive money offered for DG installations. Those five goals are reproduced here for ease of reference:

- Provide a clear and easily documented way for utilities to achieve compliance under the REST rules;
- Recognize reality regarding how much electric load is actually being met with renewable energy;
- Minimize the cost to ratepayers;
- Maximize value to the extent possible for those who undertake DG installations and Arizona as a whole; and

1 the Utilities' compliance with the REST rules when there is little if any incentive money offered for
2 DG installations, and we continue to believe that the REST rules provide an important framework for
3 ensuring continued reliable electric service for the State of Arizona at reasonable rates.

4 158. SEIA advocates that the Commission take no action at this time due to the Utilities'
5 current REST compliance status. We disagree with this approach. The parties have had ample
6 opportunity to present their views in this proceeding. We agree with Staff, APS, TEP and UNS that
7 action should be taken now to provide as much certainty as possible under the circumstances for the
8 Utilities and market participants.

9 159. Some parties' proposals, such as the Baseline Proposal, the Auction Proposal, the
10 Standard Offer Proposal, and the proposal to reopen the REST rules for the purpose of determining
11 how and whether to permanently modify them, would require additional stakeholder workshops and
12 technical conferences. For some proposals, these conferences and workshops would be necessary to
13 work out the details of the proposal prior to implementation, and for some, the workshop and
14 conference processes would also be an ongoing affair. We share the concerns of TEP and UNS that
15 the Auction Proposal and the Standard Offer Proposal would use ratepayer funds to create an
16 artificial market in RECs by either of these means, and agree with APS and Staff that the proposals
17 could be costly to implement. We agree with the concern voiced by TEP and UNS that more
18 technical conferences and workshops could add costs, complexity, and depletion of resources for all
19 parties involved, and they could likely result in more disagreements which could lead to additional
20 time and expense, and possibly more hearings. While we appreciate the efforts of the parties who put
21 forth these proposals, we do not believe the issue facing us at the present time warrants such an
22 expensive and time-consuming undertaking, or that in the long run, that implementing any of the
23 proposals calling for more workshops and technical conferences and the like would culminate in a
24 superior solution than the one we reach today.

25 160. TEP and UNS advocate the institution of a rulemaking to eliminate the DG carve-out
26 from the REST rules, and APS's original proposal in this proceeding also called for its elimination.

27
28 • Be minimally invasive to the REST rules.
Direct Testimony of Staff witness Robert G. Gray, Exh. S-1 at 6.

1 Some parties opposing the elimination assert that removing the DG requirement would result in more
 2 expensive utility-scale renewables replacing DG installations. While there were claims by parties on
 3 both sides of the issue of whether DG or utility-scale renewables are the more cost-effective means of
 4 adding renewables to the Utilities' portfolios, no definitive evidence was provided by any party on
 5 the issue. Other parties, including Staff, oppose removing the DG carve-out because eliminating,
 6 rather than waiving, the DG carve-out would limit the Commission's flexibility to react to changing
 7 circumstances in the future. While TEP and UNS argue that incentives for DG could be brought back
 8 in the Utilities' annual implementation plans if needed, TEP and UNS did not elaborate on how this
 9 would be accomplished if the DG requirement were eliminated. We find that instead of undertaking
 10 a reopening of the REST rules to eliminate a requirement that even TEP and UNS appear to concede
 11 may be needed in the future, it is more appropriate to use a mechanism that already exists in the
 12 REST rules and use the waiver provision in the REST rules to fully and permanently waive DG
 13 requirements on an annual basis when evidence shows that due to DG adoption rates in a Utility's
 14 service territory, the Utility should be granted such a waiver. The record does not support
 15 elimination of the DG carve-out at this time, and will therefore not order a reopening of the REST
 16 rules for that purpose.

17 161. No party to this proceeding disagrees that in any year in which a Utility is granted a
 18 waiver of DG carve-out requirements, any RECs tracked by the Utilities and reported to the
 19 Commission would not be double-counted, because the reporting would be only for informational
 20 purposes. We find that in the absence of the need for monetary incentives funded by a REST
 21 surcharge on Arizona ratepayers' bills, Staff's Alternative Track and Monitor Proposal, as described
 22 herein, will provide the best and most flexible means of monitoring the deployment of DG resources
 23 in the Utilities' service territories while protecting the RECs of all DG system owners, thereby
 24 encouraging investment in Arizona's renewable electricity infrastructure.

CONCLUSIONS OF LAW

- 25
- 26 1. APS, TEP and UNS are public service corporations within the meaning of Article XV
 27 of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.
- 28 2. The Commission has jurisdiction over APS, TEP and UNS and the subject matter of

1 this proceeding.

2 3. Notice of the proceeding was provided in the manner prescribed by law.

3 4. It is not reasonable or in the public interest at this time to reopen the REST rules.

4 5. It is reasonable and in the public interest, and good cause exists, to authorize Arizona
5 Public Service Company, Tucson Electric Power Company, and UNS Electric, Inc., to request, in
6 their next REST Implementation Plan Filing, pursuant to A.A.C. R14-2-1816, a full permanent
7 waiver from the requirements of A.A.C. R14-2-1805 for the period of one year, which annual
8 requirement shall not be rolled into the subsequent year, and to include in the request a list of
9 proposed criteria to aid the Commission in a determination of whether the requested waiver is in the
10 public interest.

11 6. It is reasonable and in the public interest, if a requested waiver as authorized herein is
12 granted, to require the utility to augment its Compliance Reports filed pursuant to A.A.C. R14-2-
13 1812, with information regarding Distributed Generation in its service territory for which the utility
14 has not acquired Renewable Energy Credits, as ordered herein.

15 7. The augmentation of reporting requirements ordered herein is not for the purpose of
16 demonstrating the utility's compliance with A.A.C. R14-2-1805, but is solely for the purpose of
17 informing the Commission of the amount of renewable energy being produced in the utility's service
18 territory.

19 **ORDER**

20 IT IS THEREFORE ORDERED that based on the record in this proceeding, good cause exists
21 for authorizing Arizona Public Service Company, Tucson Electric Power Company, and UNS
22 Electric, Inc. to request, in future REST Implementation Plan Filings, pursuant to A.A.C. R14-2-
23 1816, a full permanent waiver from the requirements of A.A.C. R14-2-1805 for the period of one
24 year, which annual requirement shall not be rolled into the subsequent year.

25 IT IS FURTHER ORDERED that Arizona Public Service Company, Tucson Electric Power
26 Company, and UNS Electric, Inc., are hereby authorized to request, in their next respective REST
27 Implementation Plan Filings, pursuant to A.A.C. R14-2-1816, a full permanent waiver from the
28 requirements of A.A.C. R14-2-1805 for the period of one year, which annual requirement shall not be

1 rolled into the subsequent year. The waiver request shall include a list of proposed criteria to aid the
2 Commission in a determination of whether the requested waiver is in the public interest.

3 IT IS FURTHER ORDERED that Staff shall, in the Staff Report that it issues on the
4 Implementation Plan Filing including the above-authorized waiver request, provide a public interest
5 analysis and recommendation on the request.

6 IT IS FURTHER ORDERED that the utility requesting the waiver shall timely respond to
7 Staff's requests for information needed to aid in its analysis.

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1 IT IS FURTHER ORDERED that, if a requested waiver as authorized herein is granted, the
2 utility shall augment its Compliance Reports filed pursuant to A.A.C. R14-2-1812, with information
3 regarding Distributed Generation in its service territory for which the utility has not acquired
4 Renewable Energy Credits. This information shall be provided for all reporting categories in A.A.C.
5 R14-2-1812(B)(1) through (3). The reporting of this information is not for the purpose of
6 demonstrating the utility's compliance with A.A.C. R14-2-1805, but is solely for the purpose of
7 informing the Commission of the amount of renewable energy being produced in the utility's service
8 territory.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN _____ COMMISSIONER

14
15 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

16
17 IN WITNESS WHEREOF, I, JODI JERICH, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this _____ day of _____ 2014.

22 JODI JERICH
23 EXECUTIVE DIRECTOR

24 DISSENT _____

25
26
27 DISSENT _____
28 TJ:ru

1 SERVICE LIST FOR:

ARIZONA PUBLIC SERVICE COMPANY

2 DOCKET NOS.:

3 E-01345A-10-0394; E-01345A-12-0290; E-01933A-12-
4 0296; E-04204A-12-0297

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