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ARIZONA CORPORATION COMMISSION
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6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

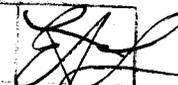
8 COMMISSIONERS

9 BOB STUMP, Chairman
10 GARY PIERCE
11 BRENDA BURNS
12 ROBERT L. BURNS
13 SUSAN BITTER SMITH

Arizona Corporation Commission

DOCKETED

APR 21 2014

DOCKETED BY 

13 PROPOSED RULEMAKING TO MODIFY
14 THE RENEWABLE ENERGY STANDARD
15 RULES IN ACCORDANCE WITH ACC
16 DECISION NO. 74365.

DOCKET NO. RE-00000C-14-0112

COMMENTS TO STAFF'S
NOTICE OF COMPLIANCE

16 APS thanks Commission Staff for its hard work and diligence in tackling these
17 complicated issues. Because several of the concepts included in Staff's compliance
18 filing have been extensively considered during the evidentiary hearing and in the parties'
19 filings, APS will keep its comments brief.

20 **A. Track and Monitor would best address this issue, keep customer costs**
21 **low, preserve RECs and retain the DG carve out.**

22 APS is one of several intervening parties that support Staff's Track and Monitor
23 concept. Implementing this rule change would ensure that all distributed energy is
24 recognized, even if customers install the DG systems and own the associated renewable
25 energy credits (RECs). Track and Monitor would also preserve the DG carve out and be
26 consistent with the purpose behind the REST rules. And as explained by Staff witness
27 Bob Gray, Track and Monitor would preserve RECs by ensuring that the RECs in
28 question are never retired to satisfy a compliance obligation. Finally, Track and Monitor

1 would provide a clear and certain path for compliance with the DG carve out. APS
2 supports Staff's Track and Monitor proposal as a simple way to resolve this matter.

3 **B. Any requirement that utilities separately purchase RECs only imposes**
4 **additional costs on customers that could otherwise be avoided.**

5 APS does not support the two concepts that involve the separate purchase of
6 RECs because they would increase costs for customers. The first such concept would
7 require utilities to purchase least cost RECs. This concept is equivalent to the standard
8 offer and auction proposals proposed during the evidentiary hearing and rejected in the
9 Recommended Opinion and Order. A requirement that utilities offer upfront incentives
10 to customers installing DG would similarly impose costs on customers that can
11 otherwise be avoided in this proceeding. To the extent that existing subsidies drive
12 customer installations without upfront incentives, there is no need to require customers
13 to fund additional subsidies. This is particularly true if another solution exists in Staff's
14 compliance filing that sets forth how utilities can comply with the DG carve out in the
15 REST in a manner that does not increase costs (such as Track and Monitor).

16 **C. Rewriting the REST to focus on conventional generation will interject**
17 **more complication and delay than needed to resolve this proceeding.**

18 The third concept would entirely reconfigure the REST rules so that compliance
19 no longer required a certain percentage of renewable generation, but instead involved
20 limiting how much energy utilities can obtain from conventional generation. This
21 proposal would require a significant revision of the REST rules. Because the third
22 concept would involve a potentially lengthy and complicated process for revising the
23 REST rules, pursuing the feasibility of other options first, such as Track and Monitor, is
24 preferable.

25 **D. APS does not support requiring customers to convey RECs in exchange**
26 **for net metering.**

27 Requiring customers to transfer RECs in exchange for receiving service under a
28 net metering tariff would require the Commission to open and modify the net metering

1 rules, and also require utilities to change their respective net metering tariffs. The
2 multiple proceedings required to implement this concept would likely result in
3 significant delay and potential complications. Because of these challenges, APS does not
4 endorse this option.

5 It is worth noting, however, that this concept would not result in a compensable
6 taking of property. RECs are not property; they were created by the Commission as an
7 accounting measure to facilitate measuring utilities' compliance with the REST. And to
8 the extent any rule change in this proceeding only applies prospectively, the rule change
9 would not take any existing RECs from customers. Any customer deciding to install DG
10 after this rule took effect would knowingly exchange their RECs for net metering
11 service.

12 Finally, assuming RECs are property (they are not), this option would
13 nonetheless provide something to customers in exchange for RECs—service under a net
14 metering tariff. Currently, customers may opt to take net metering service. If a customer
15 instead opted to retain her RECs in lieu of taking net metering service, that would be her
16 preference. The voluntary participation in net metering in exchange for relinquishing
17 RECs would defeat any takings claim under the United States or Arizona Constitutions.¹

18 **E. Relying on rate cases for renewable energy cost recovery would not**
19 **resolve this proceeding and might result in undesirable consequences.**

20 This proceeding concerns how utilities will comply with the DG requirement if
21 they no longer buy DG RECs from customers. Whether utilities recover costs incurred in
22 connection with meeting the DG requirement through the REST adjuster, or in a rate
23 case, is a separate topic entirely. The Commission's decision on how utilities recover
24 costs is independent from whether utilities incur costs in the first place. This sixth option
25 would authorize utilities to seek a waiver of the DG requirement if they demonstrated
26 financial hardship, or that third parties were installing a sufficient number of DG
27

28 ¹ See *Bowles v. Willingham*, 321 U.S. 503, 517-18, 64 S. Ct. 641, 648-49 (1944) (holding that regulating a program cannot constitute a taking if participation in the program is voluntary).

1 installations. But this waiver could be implemented without reopening the REST rules
2 and eliminating DG-related cost recovery through the REST adjuster. Thus, delaying
3 DG-related cost recovery until a rate case provides little benefit in relation to this
4 proceeding.

5 Along with this minimal benefit come potentially significant challenges. For
6 instance, denying DG-related cost recovery until a rate case may confiscate utility
7 property unless, as Staff noted, some sort of regulatory asset or deferral account was
8 established. In addition, limiting DG-related cost recovery to rate cases might
9 incentivize utilities to file rate cases more often, and disincentivize utilities from
10 agreeing to stay-out provisions, such as the one APS agreed to in its last rate case.
11 Finally, to the extent that this concept involves utilities incurring costs in order to
12 establish compliance with the DG requirement, other proposals would better accomplish
13 the purpose of this proceeding while avoiding additional costs to customers altogether.

14 **F. Track and Record would effectively resolve this proceeding as long as it**
15 **provides certainty on how utilities can achieve compliance.**

16 The final concept, entitled Track and Record, is similar to APS's original
17 proposal in 2012. Based upon APS's understanding of testimony offered in this
18 proceeding, reporting DG RECs for informational purposes only would not "count" a
19 REC, such that double counting the REC then becomes possible. On the other hand,
20 Track and Record, as explained in Staff's filing, does not provide clear direction on how
21 utilities would comply with the DG requirement. This lack of clarity suggests that Track
22 and Monitor is a superior option to Track and Record.

23 RESPECTFULLY SUBMITTED this 21st day of April 2014.

24
25
26 By: _____

27 Thomas A. Loquvam
28 Attorney for Arizona Public Service Company

1 ORIGINAL and thirteen (13) copies
2 of the foregoing filed this 21st day of
3 April 2014, with:

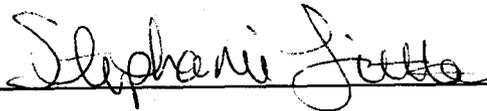
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6 Copies of the foregoing delivered/mailed this 21st
7 day of April 2014, to:

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