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BEFORE THE ARIZONA CORPORATION COMMISSION

Bob Stump, Chairman  
Gary Pierce, Commissioner  
Brenda Burns, Commissioner  
Bob Burns, Commissioner  
Susan Bitter Smith, Commissioner

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
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Docket No. RE-00000C-14-0112

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

ORIGINAL

**RESPONSE OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION TO STAFF'S  
DRAFT OF PROPOSED RULEMAKING**

In its Draft Proposed Rulemaking filed on August 8, 2014, Staff noted that the Solar Energy Industries Association (SEIA)<sup>1</sup> did not explain whether its proposal would accomplish the same objectives sought by Commissioner Brenda Burns' proposal. SEIA appreciates the opportunity to clarify its position and explain why our proposed changes not only meet the same objectives, but are actually necessary to do so. The core issue at stake is whether the Commission intends to allow for "acknowledged kWhs" – that is, renewable energy (RE) for which the Affected Utility does not own the renewable energy credits (RECs) – to effectively reduce an Affected Utility's REST obligation. If the Commission allows this to occur then the proposed rulemaking will fail to meet its own objectives. However, if the Commission intends to meet its stated objectives, then it should include the modifications suggested by SEIA, described below in more detail.

***Staff's draft proposal contains ambiguous language that puts its own objectives at risk***

Both Commissioner Burns' original proposal, and Staff's Draft Proposed Rulemaking refer to three main objectives, namely:

- *Objective 1:* preserve the REST,
- *Objective 2:* resolve double counting, and

<sup>1</sup> The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

- 1       • *Objective 3*: avoid new subsidies.

2       However, the proposals each contain ambiguous language that may actually prevent them from  
3       meeting their stated objectives. We believe SEIA’s modifications actually serve to strengthen the  
4       draft proposal’s ability to meet its objectives by clarifying these ambiguities. Below we address  
5       specific language changes in Staff’s draft, and explain how SEIA’s modifications help to resolve  
6       the problems they raise.

7       ***Problematic Proposed Staff change #1***: “The reporting of kWhs associated with Renewable  
8       Energy Credits not owned by the utility will be acknowledged.” (Addition to R14-2-1805.G).

- 9       • *Problem Raised*: It is ambiguous whether the “acknowledged kWhs” can be considered  
10       when the Commission evaluates an Affected Utility’s REST compliance.
- 11       • *Possible Remedies*:
- 12             1. Explicitly state that “acknowledged kWhs” *can* reduce an Affected Utility’s  
13             compliance obligation (thereby abandoning Objective 1)
- 14             2. Explicitly state that “acknowledged kWhs” *cannot* be considered when evaluating  
15             REST compliance (thereby preserving Objective 1).
- 16       • *SEIA’s Suggested Modification*: SEIA suggests that the Commission explicitly state in  
17       the new rule that “acknowledged kWhs” cannot be considered when evaluating REST  
18       compliance.” This was the intention of our comments filed on July 3, 2014.<sup>2</sup>

19       ***Problematic Proposed Staff change #2***: “The Commission *may* consider all available  
20       information and may hold a hearing to determine whether an Affected Utility’s compliance  
21       report satisfies the requirements of these rules.” (Addition to R14-2-1812.C).

- 22       • *Problems Raised*: This language suggests that the Commission might consider  
23       “acknowledged kWhs” when determining an Affected Utility’s REST compliance. If that  
24       were to occur, then the REST requirement would effectively be lowered.
- 25       • *Possible Remedies*:

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27       <sup>2</sup> See Appendix, *Track and Record (energy-based)*, which modifies a sentence in Commissioner Brenda Burns’  
28       proposal as follows: “Any kWhs associated with RECs not owned by the Utility would not be counted towards that  
      Utility’s REST compliance obligation.”

1 1. Explicitly state that “acknowledged kWhs” are part of the “available information”  
2 that should be considered when determining an Affected Utility’s REST compliance  
3 (thereby abandoning Objective 1).

4 2. Remove this change to avoid an unintended reduction in the REST requirement  
5 (thereby preserving Objective 1).

- 6 • *SEIA’s Suggested Modification:* SEIA suggests removing this change from the proposed  
7 rulemaking to prevent future Commissions from considering “acknowledged kWhs” when  
8 evaluating REST compliance. This was the intention of our comments filed on July 3, 2014.<sup>3</sup>

9 ***Problematic Proposed Staff change #3:*** “Such Renewable Energy Credit may not be considered  
10 used or extinguished by any Affected Utility without approval and proper documentation from  
11 the entity creating the Renewable Energy Credit, regardless of whether or not the Commission  
12 acknowledged the kWhs associated with non-utility owned Renewable Energy Credits.”

13 (Addition to R14-2-1805.F).

- 14 • *Problems Raised:* This language appears intended to resolve double counting by  
15 preventing utilities from claiming a REC owned by another entity. However, it leaves open  
16 the possibility that double counting could still occur if the “acknowledged kWhs” are used to  
17 reduce the REST obligation while the associated RECs are still claimed elsewhere.

- 18 • *Possible Remedies:*

19 1. Explicitly state whether “acknowledged kWhs” can lower an Affected Utility’s  
20 REST compliance obligation without ownership of the associated REC (thereby  
21 abandoning Objective 2).

22 2. State that “acknowledged kWhs” cannot lower an Affected Utility’s REST  
23 compliance without retirement of associated RECs (thereby preserving Objective 2).

- 24 • *SEIA’s Suggested Modification:* SEIA suggests deleting the last phrase added  
25 (“regardless of whether or not the Commission acknowledged the kWhs associated with non-  
26 utility owned Renewable Energy Credits”) to eliminate the confusing notion that the  
27 Commission could “acknowledge” DE without affecting RECs. Any acknowledgement of

28 <sup>3</sup> See Appendix, *Track and Record (energy-based)*, which deletes the following sentence from Commissioner  
Brenda Burns’ proposal: “The Commission could consider all available information.”

1 kWhs that lowers REST compliance could have a direct impact on REC value, regardless of  
2 the Commission's intent. This determination is made by REC certifiers and is not within the  
3 Commission's power to decide. Thus this language has no effect and only serves to create  
4 confusion. This was the intention of our comments filed on July 3, 2014.<sup>4</sup>

5  
6 ***Comments on Objective 3***

7 Neither Commissioner Burns' original proposal, nor Staff's draft include language changes  
8 directly address Objective 3. Accordingly SEIA's modifications do not address Objective 3  
9 directly either. However, SEIA believes that our proposed modifications will also meet Objective  
10 3 for the following reasons:

11 Affected Utilities must acquire DE-RECs to meet their REST obligations. As long as the DE-  
12 RECs originate from facilities owned by entities other than the Affected Utility, the Affected  
13 Utilities must acquire RECs from those other entities. This acquisition necessitates a transaction  
14 whereby REC owners are given something of value in exchange for their RECs. In the past this  
15 item of value has been a direct cash incentive. Going forward utilities will need to identify a  
16 different item of value to provide in exchange for RECs. The only way to avoid this exchange  
17 would be for Affected Utilities to either own the DE facilities directly or to diminish the  
18 requirement for Affected Utilities to acquire DE-RECs (i.e. lowering the REST).

19 Since the Commission does not appear predisposed to reinstate direct cash incentives, SEIA  
20 believes that it is incumbent upon the Affected Utilities and other parties to this proceeding to  
21 identify an alternative item of value to facilitate REC transfer other than direct subsidies. SEIA  
22 supports RUCO's proposed language<sup>5</sup> filed on August 1, 2014 in this regard. We believe this  
23 option has a similar intent to earlier comments filed by SEIA on April 21, 2014, and strikes a  
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<sup>4</sup> See Appendix, *Track and Record (energy-based)*, which deletes the following phrase from Commissioner Brenda  
27 Burns' proposal: "regardless of whether or not the Commission acknowledged the kWhs associated with non-utility  
28 owned RECs."

<sup>5</sup> See RUCO, August 1, 2014, Docket No. RE-00000C-14-0112, page 3.

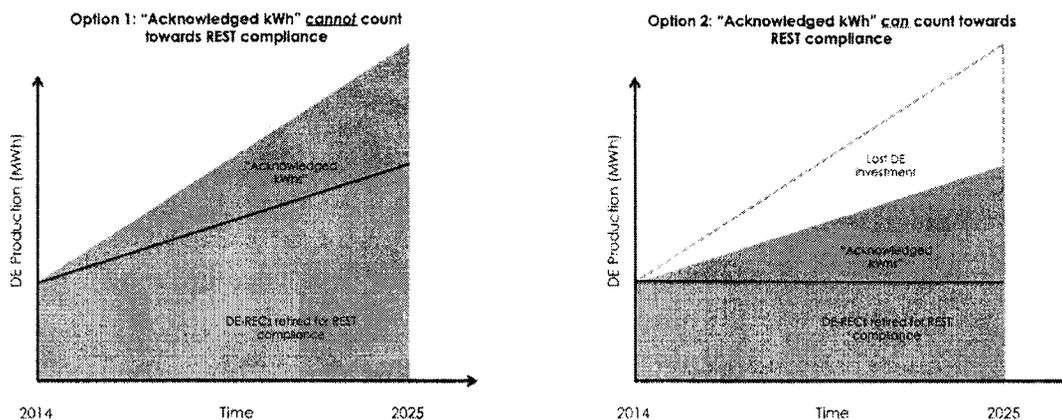
1 good balance between Objectives 1 and 3.<sup>6</sup> A crucial aspect of this solution is the ability for  
2 Affected Utilities to use existing RECs (at no additional cost to ratepayers) to fulfill any waived  
3 portion of DE carve-out, thereby allowing the Commission to uphold Objective 3.

### 4 ***Impact of the Commission's Decision on the Solar Industry***

5 The Commission's choice on this matter is clear and there are two primary options.

- 6 • Option 1: explicitly prevent "Acknowledged kWh" from counting towards REST  
7 compliance
- 8 • Option 2: explicitly allow for "Acknowledged kWh" to count towards REST compliance

9 What is potentially at stake is the overall opportunity for unsubsidized DG investment in  
10 Arizona. Option 1 would maximize that opportunity by preserving the ability for entities to  
11 generate RECs in Arizona. Meanwhile Option 2 would eliminate that opportunity since those  
12 entities seeking RECs from DG facilities will undoubtedly take their investment dollars  
13 elsewhere. The charts below illustrate the difference and the potentially lost investment  
14 opportunity.



26 <sup>6</sup> Objective 1 may be partially violated since a portion of the utility's RECs used to meet the DE carve-out no longer  
27 come from DE sources. However, the overall RES requirement is preserved. SEIA notes that RUCO's option  
28 provides an effective safeguard to ensuring that the level of DG established by the carve-out will be deployed. Thus  
Objective 1 is largely upheld. Objective 3 could be violated since the utility may need to purchase additional RECs  
to meet its REST obligations. However, SEIA notes that these purchases are unlikely to be needed in the foreseeable  
future due to the anticipated REC surplus among Affected Utilities. Thus Objective 3 is largely upheld.

1 Respectfully submitted this 29<sup>th</sup> day of August, 2014,  
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3 **Original and 13 copies of the foregoing**  
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