

ORIGINAL



0000156014

MEMORANDUM

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2014 SEP 19 PM 4 11

TO: Docket Control

FROM: Betty Camargo *Betty*
Paralegal, Legal Division

DATE: September 19, 2014

RE: Notice of Filing Proposed Rulemaking Documents with The Secretary of State
A.A.C. R14-2-1805, R14-2-1812
DOCKET NO. RE-00000C-14-0112.

Per Decision No. 74753, attached are the documents that were filed with the Secretary of State, which include the following:

- Agency Certificate
- Agency Receipt
- Notice of Rulemaking Docket Opening
- Notice of Proposed Rulemaking

Arizona Corporation Commission

DOCKETED

SEP 19 2014

DOCKETED BY *GAZ*

AGENCY CERTIFICATE

SECRETARY OF STATE

NOTICE OF RULEMAKING DOCKET OPENING

2014 SEP 19 PM 3:43

FILED

1. **Agency name:** Arizona Corporation Commission
2. **Chapter heading:** Corporation Commission-Fixed Utilities
3. **Code citation for the Chapter:** 14 A.A.C. 2
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

Subchapters, Articles, Parts, and Sections
(in alphabetical and numerical order)

Action:

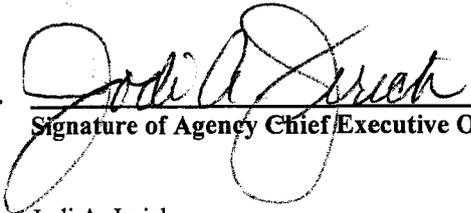
R14-2-1805

Amend

R14-2-1812

Amend

5. **The rules contained in this package are true and correct as proposed.**

6. 

Signature of Agency Chief/Executive Officer

Jodi A. Jerich

Printed or typed name of signer

9-19-14

Date of signing

Executive Director

Title of signer

AGENCY CERTIFICATE

SECRETARY OF STATE

NOTICE OF PROPOSED RULEMAKING

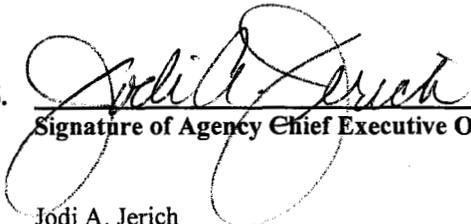
2014 SEP 19 PM 3:44

FILED

- 1. **Agency name:** Arizona Corporation Commission
- 2. **Chapter heading:** Corporation Commission-Fixed Utilities
- 3. **Code citation for the Chapter:** 14 A.A.C. 2
- 4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

Subchapters, Articles, Parts, and Sections (in alphabetical and numerical order)	Action:
R14-2-1805	Amend
R14-2-1812	Amend

- 5. **The rules contained in this package are true and correct as proposed.**

6. 
 Signature of Agency Chief Executive Officer

9-19-14
 Date of signing

Jodi A. Jerich
 Printed or typed name of signer

Executive Director
 Title of signer

AGENCY RECEIPT

2014 SEP 19 PM 3:43

NOTICE OF RULEMAKING DOCKET OPENING

FILED

1. Agency name: Arizona Corporation Commission
2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

<u>Subchapters, Articles, Parts, and Sections</u> (in alphabetical and numerical order)	<u>Action</u>
R14-2-1805	Amend
R14-2-1812	Amend

SECRETARY OF STATE

AGENCY RECEIPT

NOTICE OF PROPOSED RULEMAKING

2014 SEP 19 PM 3:43

1. Agency name: Arizona Corporation Commission

FILED

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections

involved in the rulemaking, listed in alphabetical and numerical order:

Subchapters, Articles, Parts, and Sections
(in alphabetical and numerical order)

Action

R14-2-1805

Amend

R14-2-1812

Amend

NOTICE OF RULEMAKING DOCKET OPENING

2014 SEP 19 PM 3:43

ARIZONA CORPORATION COMMISSION

1. **Title and its heading:** 14, Public Service Corporations; Corporations and **FILED**
Associations; Securities Regulation
- Chapter and its heading:** 2, Corporation Commission Fixed Utilities
- Article and its heading:** 18, Renewable Energy Standard and Tariff
- Section numbers:** R14-2-1805
R14-2-1812
2. **The subject matter of the proposed rule:**

The proposed rule changes will clarify and update how the Commission deals with renewable energy compliance and related renewable energy credits ("RECs"). The Commission's Renewable Energy Standard and Tariff ("REST") rules have not been updated since they were approved by the Commission in Decision No. 69127 (November 14, 2006). Since this decision, the renewable energy marketplace has changed dramatically. The existing REST rules require the utility to serve a growing percentage of its retail sales each year via renewable energy, with a carve-out for distributed energy ("DE"). The rules were predicated on utilities acquiring RECs to achieve compliance. In the DE market, RECs were acquired by the utility when the utility gave the entity installing the renewable energy system an incentive. In recent years some utilities have seen their incentives eliminated as market conditions have changed. This led to utilities seeking guidance from the Commission as to how they should demonstrate compliance with the DE portion of the REST rules when the transaction REC acquisition was predicated upon is no longer occurring. This issue was explored in great detail in the context of the utilities 2013 annual renewable energy implementation plans as well as in the proceeding that culminated in Commission Decision No 74365 on February 26, 2014 (Docket Nos. E-01345-10-0394, etc.). Decision No. 74365 required the Commission Staff to propose new rules to the Commission. Staff made its filing, offering a number of options for the Commission to consider. At its September 9, 2014 Open Meeting, the Commission in Decision No. 74753 in Docket No. RE-00000C-14-0112, ordered Staff to file a Notice of Proposed Rulemaking which seeks comment on the attached changes to the REST rules intended to address the issue of utility compliance in the DE market in a post-incentive era. Absent action by the Commission on this issue, it is unclear how utilities who are no longer offering DE incentives would demonstrate compliance with the REST rules' DE requirements. This is not a critical issue for some utilities in their residential DE and/or

commercial DE segments, as they are far ahead of current compliance goals. However, not all residential DE and commercial DE segments for affected utilities are ahead in compliance and thus it is necessary for the Commission to provide a new framework for considering compliance with the rules.

The agency docket number, if applicable: RE-00000C-14-0112.

3. A citation to all published notices relating to the proceeding:

Published concurrently with this notice in the Administrative Register is the Notice of Proposed Rulemaking.

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Maureen Scott
Attorney, Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington Street
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

Name: Robin Mitchell
Attorney, Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington Street
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

Email: rmitchell@azcc.gov

Name: Bob Gray
Executive Consultant, Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington Street

Phoenix, AZ 85007

Telephone: (602) 542-0827

Fax: (602) 542-2129

E-mail: bgray@azcc.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Public comment will be held on November 12, 2014, beginning at 1:00 p.m. at the Commission's Tucson office, 400 W. Congress, Room 222, Tucson, AZ 85701 and on November 14, 2014, at 10:00 a.m. in the Phoenix offices of the Commission located at 1200 West Washington, Hearing Room 2, Phoenix, AZ 85007. The Hearing Division requests initial written comments be received on or before November 10, 2014, and that responsive comments be received on or before November 14, 2014. Please reference docket number RE-00000C-14-0112 on all documents.

6. A timetable for agency decisions or other action on the proceeding, if known:

The Commission will likely bring this to Open Meeting for final approval in December, 2014.

NOTICE OF PROPOSED RULEMAKING

2014 SEP 19 PM 3:43

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

SECURITIES REGULATION

FILED

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF.

PREAMBLE

1. Sections Affected

Rulemaking Action

R14-2-1805

Amend

R14-2-1812

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: Arizona Constitution article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322.

Implementing statute: Arizona Constitution article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322.

The agency docket number, if applicable: RE-00000C-14-0112

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Published concurrently with this notice in the Administrative Register is the Notice of Rulemaking Docket Opening.

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Maureen Scott

Attorney, Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington Street

Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

Name: Robin Mitchell

Attorney, Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington Street
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: rmittell@azcc.gov

Name: Bob Gray

Executive Consultant, Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington Street
Phoenix, AZ 85007

Telephone: (602) 542-0827

Fax: (602) 542-2129

E-mail: bgray@azcc.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed rule changes will clarify and update how the Commission deals with renewable energy compliance and related renewable energy credits ("RECs"). The Commission's Renewable Energy Standard and Tariff ("REST") rules have not been updated since they were approved by the Commission in Decision No. 69127 (November 14, 2006). Since this decision, the renewable energy marketplace has changed dramatically. The existing REST rules require the utility to serve a growing percentage of its retail sales each year via renewable energy, with a carve-out for distributed energy ("DE"). The rules were predicated on utilities acquiring RECs to achieve compliance. In the DE market, RECs were acquired by the utility when the utility gave the entity installing the renewable energy system an incentive. In recent years some utilities have seen their incentives eliminated as market conditions have changed. This led to utilities seeking guidance from the Commission as to how they should demonstrate compliance with the DE portion of the REST rules when the transaction REC acquisition was predicated upon is no longer occurring. This issue was explored in great detail in the context of the utilities 2013 annual renewable energy implementation plans as well as in the proceeding that culminated in Commission Decision No 74365 on February 26, 2014 (Docket Nos. E-01345-10-0394, etc.). Decision No. 74365 required the Commission Staff to propose new rules to the Commission. Staff made its

filing, offering a number of options for the Commission to consider. At its September 9, 2014 Open Meeting, the Commission in Decision No. 74753 in Docket No. RE-00000C-14-0112, ordered Staff to file a Notice of Proposed Rulemaking which seeks comment on the attached changes to the REST rules intended to address the issue of utility compliance in the DE market in a post-incentive era. Absent action by the Commission on this issue, it is unclear how utilities who are no longer offering DE incentives would demonstrate compliance with the REST rules' DE requirements. This is not a critical issue for some utilities in their residential DE and/or commercial DE segments, as they are far ahead of current compliance goals. However, not all residential DE and commercial DE segments for affected utilities are ahead in compliance and thus it is necessary for the Commission to provide a new framework for considering compliance with the rules.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

N/A

8. **The preliminary summary of the economic, small business, and consumer impact:**

NOTE – The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a “substantially similar” statement.

1. **NEED:**

Under the present rules, utilities demonstrate compliance with the DE requirement through RECs. The proposed rule changes are necessary to address the problem created when DE incentives are no longer offered by the utility and the utility therefore no longer obtains RECs from the customer. The proposed rule changes do this by noting that the Commission may consider all available information. All available information may include measures such as market installations, historical and projected production and capacity levels in each segment of the DE market and

other indicators of market sufficiency activity.

The proposed rule changes also provide a new requirement for the reporting of renewable production from facilities installed in a utility's service territory without an incentive which means the REC is not transferred to the utility. The proposed rules provide that these non-utility owned RECs will be acknowledged for informational purposes by the Commission. This language is intended protect the value of RECs and avoid the issue of double counting.

In addition, new language was added to the rules that explicitly states that RECs remain with the entity that created them absent the approval of the entity that they be transferred to the utility or another entity. This language is also meant to protect the value of RECs and prevent against the issue of double counting.

2. NAME AND ADDRESS OF AGENCY EMPLOYEE WHO MAY BE CONTACTED TO SUBMIT ADDITIONAL DATA ON THE INFORMATION INCLUDED IN THIS STATEMENT:

Bob Gray, Executive Consultant, Utilities Division

Arizona Corporation Commission

1200 W. Washington Street

Phoenix, AZ 85007

Telephone Number (602) 542-0827; Fax Number (602) 542-2129

3. AFFECTED CLASSES OF PERSONS:

- A. Commission-regulated utilities
- B. Customers of Commission-regulated utilities
- C. The solar industry
- D. Arizona Corporation Commission

4. RULE IMPACT ON AFFECTED CLASSES OF PERSONS:

- A. Utilities subject to the REST rules will have a means to achieve compliance with the DE portion of the REST rules in a post-incentive environment.
- B. Utilities will have to report additional information in their reports in the form of production by non-incentivized DE production within its service territory. Utilities are

already required to meter all DE production within their service territory, so the utility already has this information available, and this additional reporting requirement should not be burdensome. This reporting is intended to be for informational purposes only.

- C. The utility may also report information related to market activity. Thus information should be readily available to the utility and should not be burdensome. Regulatory certainty with respect to the Commission's rules will benefit all segments of the industry involved in the provision of solar, including the utilities, solar providers and customers.
- D. Some solar industry representatives may believe that the proposed rules do not provide sufficient protection for the value of RECs and such belief could also lead to a concern that there is a property rights issue if the value of RECs is impaired. These concerns are not warranted given the safeguards built into the proposed rules to only acknowledge kWh production associated with RECs not owned by the utility as well as language specifying that RECs are retained by the entity creating them absent the creating entity transferring the RECs to the utility or another entity. If the value of RECs were somehow impaired, it could have a negative impact on the costs associated with installing solar since RECs may be used to offset or lower the cost of the solar installation. Although there were some parties in the underlying Commission proceeding who believed the value or cost of RECs would be relatively low.
- E. Some solar industry representatives may believe that no change is necessary to the rules or that an alternative proposal should be adopted.

5. COSTS AND BENEFITS TO THE AGENCY:

The Commission will benefit from having a method for considering utility compliance with the REST rules that recognizes that the DE market may be self-sufficient and that incentives may no longer be necessary to incent solar installations in this market. The Commission will have a more complete picture of Arizona's renewable energy market by having information on all DE production in utility reports. The Commission will also benefit from receiving available information on market sufficiency and activity. There are minimal costs associated with this

proposal because the Commission typically performs an analysis of the DE market in conjunction with the utilities' annual implementation plans.

6. COSTS AND BENEFITS TO POLITICAL SUBDIVISIONS:

There will be no impact to political subdivisions because the Commission does not have jurisdiction over political subdivisions and the Rules do not apply to them.

7. COSTS AND BENEFITS TO PRIVATE PERSONS:

Many utility customers may benefit from not having to pay more for utilities to achieve compliance with the REST rules, as would have resulted from some alternative proposals. Customers will benefit from the certainty these changes provide regarding the treatment of RECs by the Commission in a post-incentive environment. Customers will also be able to retain the value of any RECs they own. Some customers who own RECs may believe that the proposed rules do not provide sufficient protection for the value of RECs. If customers believe that the value of their RECs was brought into question, they may argue that they have property interests in the RECs which were being impaired. The Commission has built adequate protections into the rules so it is clear that the intent is for non-utility REC owners to retain the value of their RECs.

8. COST AND BENEFITS TO CONSUMERS OR USERS OF ANY PRODUCT OR SERVICE IN THE IMPLEMENTATION OF THE NEW RULES.

Customers of solar providers should benefit since there will be certainty with respect to REC ownership. Customers of the utilities should benefit since they will no longer be paying for incentives or additional costs for utilities to procure RECs in this market.

9. LESS COSTLY OR INTRUSIVE METHODS:

The amendments to the rules are one of the least cost methods for providing utilities with a path to DE compliance under the REST rules and, with respect to any incorporated by reference materials, provide for the Commission's rules to be consistent with A.R.S. § 41-1028 and the rules of the Secretary of State.

10. ALTERNATIVE METHODS CONSIDERED:

The Commission considered alternative methods offered in the utility annual implementation plans as well as the underlying Commission proceeding. A wide variety of proposals were put forward by

Commission Staff, the Residential Utility Consumer Office, and a variety of other interested parties including utilities, solar providers, solar installers and various industry and environmental associations. These alternatives included the utility paying to acquire RECs, the utility claiming the RECs through interconnection or net metering activities, granting a waiver of portions of the REST rules, taking no action, reducing the REST requirement to reflect non-utility owned RECs, re-introduction of up-front incentives, creation of a maximum conventional energy requirement, utilities counting all RECs toward compliance, and recovery of DE costs through the standard rate case process. A number of these proposals had multiple variations. Each option had its pros and cons and in some cases parties disagreed on the effect of some proposals on preservation of the value of RECs and other issues. Generally the other options were considered to have one or more of the following flaws: it increased costs paid by ratepayers through the REST surcharge, it did not preserve the 15 percent overall REST requirement, it either did not or it was questionable whether it maintained the value of the RECs, and/or it was overly complicated and cumbersome.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Maureen Scott, Esq.
Attorney, Legal Division, Arizona Corporation Commission
Address: 1200 W. Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: mscott@azcc.gov

Name: Robin Mitchell, Esq.
Attorney, Legal Division, Arizona Corporation Commission
Address: 1200 W. Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: rmittchell@azcc.gov

Name: Bob Gray

Executive Consultant, Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington Street

Phoenix, AZ 85007

Telephone: (602) 542-0827

Fax: (602) 542-2129

E-mail: bgray@azcc.gov

10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Public comment will be held on November 12, 2014 at 1:00 p.m. at the Commission's Tucson offices, 400 W. Congress, Room 222, Tucson, AZ 85701 and on November 14, 2014 at 10:00 a.m. at the Phoenix offices of the Arizona Corporation Commission located at 1200 W. Washington, Hearing Room 2, Phoenix, AZ 85007. The Hearing Division requests initial written comments be received on or before November 10, 2014, and that responsive comments be received on or before November 14, 2014. Please reference docket number RE-00000C-14-0112 on all documents.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

12. **Incorporations by reference and their location in the rules:**

Not Applicable

13. **The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION
CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES
ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF**

R14-2-1801. Definitions

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change

R14-2-1802. Eligible Renewable Energy Resources

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - a. No change
 - b. No change
 - c. No change
 - 10. No change
 - 11. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change

- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- C. No change
- D. No change

Historical Note

R14-2-1803. Renewable Energy Credits

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change

R14-2-1804. Annual Renewable Energy Requirement

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change

R14-2-1805. Distributed Renewable Energy Requirement

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned Renewable Energy Credits.
- G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged.

R14-2-1806. Extra Credit Multipliers

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change

- 5. No change
- G. No change

R14-2-1807. Manufacturing Partial Credit

- A. No change
- B. No change
- C. No change

R14-2-1808. Tariff

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C. No change
- D. No change
- E. No change

R14-2-1809. Customer Self-Directed Renewable Energy Option

- A. No change
- B. No change
- C. No change

R14-2-1810. Uniform Credit Purchase Program

- A. No change
- B. No change

R14-2-1811. Net Metering and Interconnection Standards

No change

R14-2-1812. Compliance Reports

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is suitable for posting on the Commission's web site.
- B. The compliance report shall include the following information:
 - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfied the requirements of these rules.

R14-2-1813. Implementation Plans

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C. No change

R14-2-1814. Electric Power Cooperatives

- A. No change
- B. No change

R14-2-1815. Enforcement and Penalties

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- D. No change

R14-2-1816. Waiver from the Provisions of this Article

- A. No change
- B. No change
- C. No change

Appendix A. Sample Tariff

No change