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AZ CORP COMMISSION
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Arizona Corporation Commission

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DEC 17 2014

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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

BRENDA BURNS
COMMISSIONER

11 **IN THE MATTER OF THE**) **DOCKET NO. E-01933A-14-0248**
12 **APPLICATION OF TUCSON**)
13 **ELECTRIC POWER COMPANY**)
14 **FOR APPROVAL OF ITS 2015**) **RESPONSE TO STAFF**
15 **RENEWABLE ENERGY STANDARD**)
16 **IMPLEMENTATION PLAN.**)

ORIGINAL

17 **THE ALLIANCE FOR SOLAR CHOICE RESPONSE TO**
18 **TUCSON ELECTRIC POWER'S NOVEMBER 12, 2014 AND DECEMBER 8, 2014**
19 **SUPPLEMENTAL RESPONSES**

20 The Alliance for Solar Choice ("TASC"), through its undersigned counsel, hereby
21 responds to the supplemental responses filed by Tucson Electric Power ("TEP") on November
22 12, 2014 and December 8, 2014. In its supplemental responses, TEP tries to convince the
23 Commission that its proposed utility-owned, distributed generation ("UODG") program is
24 nothing more than a typical utility proposal to build new solar generating capacity and then sell
25 the output from the new capacity to individual customers. Specifically, TEP incorrectly
26 analogizes its UODG proposal to its Bright Tucson community solar project or APS's Flagstaff
27 community solar pilot project. However, neither supports TEP's UODG proposal.

1 TEP's proposed UODG program would entail a radical departure from the monopoly
2 service offerings the Commission has previously approved. The Colorado Public Utilities
3 Commission recently rejected a similar utility owned solar program on the basis that it would
4 have an unfair competitive advantage over the private solar market and because it was not
5 designed as a rate regulated utility service.¹ Similarly, the UODG rate TEP proposes to use in
6 connection with the proposed UODG service violates the cost causation principles that serve as a
7 foundation for public utility ratemaking. TEP has provided a paucity of information to the
8 Commission and parties regarding the UODG program and its associated costs and risks. Staff
9 has performed only a cursory analysis of the UODG proposal, leaving the Commission with no
10 basis in the record of this proceeding to determine whether TEP's proposed UODG rate is just or
11 reasonable. Moreover, although Staff concludes the Commission may take a close look at
12 program costs in a future rate case, the Commission lacks jurisdiction to authorize TEP to engage
13 in non-public services, such as the proposed UODG service; and the Commission certainly may
14 not authorize a utility to include costs unrelated to public service in the utility's rate base.

15 In light of these deficiencies, the Commission should reject TEP's UODG proposal and
16 approve the remainder of the TEP 2015 REST Implementation Plan. If the Commission would
17 like to consider a UODG pilot program, the Commission should direct TEP to file an application
18 that contains sufficient information upon which the Commission may base a decision. The
19 Commission should also require TEP to include appropriate limitations and requirements on the
20 scope of a proposed pilot. Although Staff proposes to approve the UODG program as a pilot,
21 Staff proposes no parameters to define the scope of such a program. No program should be
22 approved in the absence of reasonable limitations.

23 **I. TEP's Proposed UODG Program Is A Radical Departure From Previously Approved**
24 **Monopoly Service Offerings.**

25 Unlike previous solar programs that the Commission has approved, TEP proposes a
26 radically new retail service offering that TEP proposes to price without regard to traditional

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28 ¹ See, http://www.denverpost.com/business/ci_27095610/colorado-puc-rejects-xcel-solar-connect-plan-over?source=infinite (included as Attachment A); See also, Colorado PUC Decision No. C14-1485 in Docket No. 14A-0302E at p. 11, ¶ 35 - 36 (included as Attachment B).

1 means of pricing public utility service, such as a customer's energy consumption or TEP's cost
2 of serving the customer. Instead, TEP proposes to price this service in a way that ensures it can
3 enter into and compete in the rooftop solar market on unfair, subsidized terms. In its
4 supplemental responses, TEP states "[i]n order to attract participation in the Program, the
5 customer must receive some benefit from allowing TEP to place a rooftop solar system on the
6 customer's house."² To incentivize customers to enroll in the UODG program, TEP proposes to
7 charge customers "a 25 year fixed rate that approximates the monthly electric bill that they are
8 currently paying."³ TEP states: "a fixed rate for an extended period is necessary to attract
9 customers to the Program."⁴ TEP proposes a 25 year fixed rate because "[t]his period is similar
10 to the term of the solar leases offered by third party solar providers."⁵

11 TEP's statements demonstrate that: 1) TEP's proposed UODG rate is based on current
12 embedded costs of service, which are completely unrelated to the costs of the UODG program
13 that TEP proposes; 2) TEP's proposed pricing is designed to entice participation, which
14 promotes utility investment, by offering rates that compete with TEP's regulated monopoly rates;
15 and 3) TEP has designed its UODG service offering to compete with solar lease terms that are
16 offered in a currently competitive market by third party solar providers.

17 TEP's admissions lay bare its intent to leverage its state-sanctioned monopoly to require
18 its audience of captive ratepayers to subsidize a new class of ratepayers to make decisions that
19 will enable TEP to make profitable investments. So as to not disclose the potential cost and risk
20 that may be shifted to non-participating ratepayers, TEP has proposed the UODG program within
21 a RES implementation plan, and not within a rate case where the Commission and interested
22 parties would have access to far more information upon which to determine if the proposed
23 UODG rate recovers TEP's cost of service in a manner that is just and reasonable.

24 The Commission should adhere to Arizona's constitutional ratemaking standards and
25 reject this proposal to inappropriately entertain single-issue ratemaking outside a general rate
26

27 ² TEP, December 8, 2014 Supplemental Response, p. 2, ll. 19-21.

28 ³ TEP, December 8, 2014 Supplemental Response, p. 1, ll. 15-17.

⁴ TEP, December 8, 2014 Supplemental Response, p. 2, ll. 19-22.

⁵ TEP, December 8, 2014 Supplemental Response, p. 2, ll. 16-17.

1 case. TEP' supplemental filings make clear that the UODG rate is designed to subsidize TEP's
2 entry into a currently competitive market, not recover program costs. The Staff Report flatly
3 concludes: "Staff does not believe that the program will fully pay for itself..."⁶

4 Rates are adopted in rate cases to provide the Commission a venue in which to set rates
5 based on cost of service. Cost of service information is entirely lacking, yet TEP proposes that
6 the Commission adopt a new rate, for a new class of customer, outside a rate case, based on a
7 three page description tucked into a RES plan filing. Staff says the costs can be considered later.
8 However, in the absence of any information on cost, there is no basis for the Commission to
9 approve the UODG rate as just or reasonable. TEP argues that the Commission should overlook
10 this because the potential impact on its earning is "de minimus." TASC notes that the Arizona
11 courts have observed no such exception to constitutional ratemaking requirements. Moreover, a
12 rate that is not based on consumption or cost of service, and that is instead based entirely on
13 TEP's need for a subsidized entry into a currently competitive market holds no claim to being
14 just or reasonable regardless of the impact on TEP's earnings.

15 As mentioned above, the Colorado Public Utilities Commission recently rejected a
16 similar utility owned solar program based, in part, on the fact that the proposal lacked sufficient
17 regulatory oversight with regard to rates. In denying Public Service Company of Colorado's
18 ("PSCo") application to institute its Solar*Connect program, the Commission specifically stated,
19 "we find it unacceptable to require ratepayers to fund proposed subsidies for a program that
20 produces unspecified utility profits . . . The program as proposed does not have adequate
21 regulatory oversight." The Colorado Commission also found that the Solar*Connect proposal
22 could damage the competitive solar industry and that PSCo had "not adequately demonstrated
23 that it will ensure a level competitive playing field with other solar providers."⁷ As explained
24 above, TEP's proposed UODG program raises similar concerns.

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26
27
28 ⁶ Staff Report page 7.

⁷ Attachment B at p. 11, ¶ 36.

1 **II. Approval Of TEP's Proposed UODG Rate Would Violate Cost Causation Principles**
2 **That Are A Bedrock Of Public Utility Ratemaking And A Constitutional Requirement**
3 **In The State of Arizona.**

4 The APS Flagstaff project, which TEP's November 12, 2014 supplemental filing says has
5 "many similarities to the Program here,"⁸ was proposed as an application. The APS Flagstaff
6 application spans 45 pages and includes a 23-page description with four attachments that contain
7 considerable project detail. By comparison, TEP's proposal is barely three pages (double
8 spaced); the proposed UODG tariff is a single page; and the portion of the Staff Report related to
9 the UODG Program spans barely three more.

10 There is simply no basis in the record of this proceeding to determine whether TEP's
11 proposed rate for the new UODG service it proposes is just or reasonable. Staff did not analyze
12 the costs of this proposal or consider lower cost alternatives. As noted above, the Staff Report
13 concludes that "Staff does not believe that the program will fully pay for itself..."⁹ Moreover,
14 the contract to implement the UODG program has not been provided, and fundamental legal
15 problems are completely unaddressed. Even assuming a tariff (and hypothetical contract
16 governing service) could be approved outside a rate case, which it cannot, there is no basis in the
17 record of this proceeding to determine whether TEP's proposed rate for the new service it
18 proposes is just or reasonable. The Commission has a constitutional responsibility to determine
19 that proposed utility rates are just and reasonable. That responsibility cannot be discharged
20 based on the record of this proceeding.

21 **III. There Is No Precedent To Support TEP's Groundless UODG Proposal.**

22 TEP claims its proposed UODG program is like TEP's Bright Tucson Community Solar
23 Program, APS's Flagstaff Pilot Program, or various special contracts approved by the
24 Commission.¹⁰ TEP is simply wrong. Bright Tucson and Flagstaff are block purchase programs
25 where participating customers purchase output from a specified facility at a fixed price. The
26 TEP Bright Tucson Community Solar Program was approved by the Commission and contains a

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28 ⁸ TEP, November 12, 2014 Supplemental Response, p. 1, ll. 18-20.

⁹ Staff Report page 7.

¹⁰ TEP, December 8, 2014 Supplemental Response, p. 3, ll. 1-4.

1 fixed rate for 20 years.¹¹ However, that program only allows customers to purchase 1 kW blocks
2 of solar energy generation from a shared community solar facility under a pass through of actual
3 costs incurred to serve participants in the shared community solar facility. Importantly, customer
4 consumption over and above the block purchases are billed at the standard rate that is applicable
5 to other ratepayers.¹² As such, customers that participate in Bright Tucson pay the cost of
6 service that TEP incurs to provide service to those customers. By comparison, TEP's UODG
7 proposal is fundamentally different and proposes to charge participating customers a flat rate per
8 month for all electricity consumption regardless of customer's actual level of consumption, or
9 the output of the onsite solar generating facility, or the cost of serving the participating customer.
10 This would entail a radical departure from all rates approved by this Commission previously.

11 Likewise, the APS Flagstaff project sells pre-determined blocks of power from a
12 "community" resource. The Commission's Flagstaff Decision says the intent is to "provide the
13 customer with rate certainty for the portion of the customer usage that is attributable to the output
14 of the rooftop PV system."¹³ As with the Bright Tucson, the rate approved by the Commission is
15 a pass through of costs that are incurred to serve the participating customer. Flagstaff customers
16 must continue to take service on an otherwise available and applicable rate that applies to the
17 purchase of additional power needs. Participating customers continue to be subject to customer
18 charges and other charges that members of the residential customer class are subject to. Like
19 other residential customers, participating customers are subject to changes in these rates over
20 time. By comparison, TEP proposes to remove customers from an otherwise applicable rate that
21 is subject to change over time. Instead, TEP proposes to charge a fixed rate for *all* electricity a
22 customer uses (within a +/- tolerance band) for a 25-year period that is not based on metered
23 consumption of the customer or changes in cost of service over time. As such, TEP proposes an
24 entirely new means of pricing that does not currently exist in Arizona.

25 **IV. The Commission May Not Authorize A Utility To Engage In Non-Public Services Over**
26 **Which It Does Not Have Jurisdiction.**

27 _____
28 ¹¹ TEP, November 10, 2014 Response to TASC Opposition, page 3.

¹² Decision No. 71835, ¶ 14.

¹³ Decision No. 71646, ¶ 52.

1 There can be no doubt that the service TEP proposes to provide is a ratepayer-subsidized
2 private service, not a public service. TEP proposes to provide service to a limited number of
3 customers and to do so under private contract. TEP proposes to size a solar system to meet
4 100% of a participating customer's onsite energy needs, and to charge a flat fee to the
5 participating customer for 100% of the customer's electricity needs for a 25-year period,
6 regardless of whether the customer's energy needs are fully satisfied by the onsite solar system
7 and regardless of the utility's actual cost of serving the customer.¹⁴

8 TEP acknowledges "the Program is entirely voluntary for TEP customers."¹⁵ TEP
9 compares the proposed UODG service to service provided under special contract.¹⁶ However,
10 TASC notes that when the Commission has previously approved special contracts, utilities have
11 provided the contract for which they seek approval. That has not happened in this proceeding.

12 As TASC noted in its November 12, 2014 comments on the Staff Report, Arizona courts
13 apply an eight-factor test to determine whether a service is a public service subject to the
14 Commission's jurisdiction.¹⁷ Several of the eight *Serv-Yu* factors indicate that TEP's proposed
15 service is not a public utility service, including 1) whether facilities are dedicated to private use,
16 versus public use; 2) whether only a limited number of requests for service would be accepted,
17 versus accepting substantially all requests; and 3) whether service is provided under private
18 contract, versus a generally applicable tariff.¹⁸ Any attempt to approve a new utility service that
19 is not subject to the Commission's jurisdiction is subject to appeal to the Arizona courts.

20 With the UODG proposal, TEP proposes to dedicate a limited number of generators to
21 private use, under private contract, with a fixed rate, for 25 years. Regardless of whether UODG
22 systems would be interconnected on the utility-side or customer-side of the meter, TEP has
23 proposed a UODG tariff that conveys all the benefits of a UODG system to the customer on
24 whose premises a system is located. TEP has stated that a solar system will be sized to meet the
25 host customer's electrical needs, and TEP's supplemental filings admit that the UODG rate is

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27 ¹⁴ *Ibid.*, also TEP Response to Staff's First Set of Data Requests, Question 1.13.

¹⁵ TEP, December 8, 2014 Supplemental Response, p.2, ll. 18-19.

¹⁶ TEP, December 8, 2014 Supplemental Response, p. 2, l. 26 to p. 3, l. 1.

¹⁷ *Natural Gas Serv. Co. v. Serv-Yu Cooperative*, 70 Ariz. 235, 219 P.2nd 324 (1950).

¹⁸ *Id.*

1 designed to provide incentivize participation in a program that results in TEP making profitable
2 investments. Under the *Serv-Yu* factors, this is private service, not a public service, and the
3 Commission cannot authorize a utility to enter a competitive market and provide a private
4 service that is not subject to its jurisdiction. Further, assets associated with a private service
5 must be excluded from a utility's rate base.

6 TEP admits that the service it proposes is not a public service in a response TEP filed on
7 November 10, 2014. In its response, TEP states with regard to the UODG rate it proposes:
8 "Notably, this is not a monopoly service rate."¹⁹ If the Commission authorizes TEP to move
9 forward, TEP will imprudently incur costs that the Commission will have to disallow at a later
10 time. When a company operates a business independent of its activities as a public utility,
11 subtraction should be made from rate base for the portion of property "used for purposes other
12 than service to the public as a utility."²⁰

13 In response to concerns raised by TASC that it would be bad public policy and contrary
14 to Commission precedent to set rates for a 25 year term, TEP says the hypothetical contract, that
15 it has thus far failed to produce, will contain a "regulatory out" provision. TEP says that if the
16 Commission changes the 25-year rate, or terminates the program without grandfathering
17 participants, "TEP will remove the solar facilities from the customer's premises and move the
18 customer onto an appropriate tariff – all at no cost to the customer."²¹

19 However, TEP has not addressed the cost to non-participating ratepayers to remove and
20 relocate the assets. TEP has also failed to explain what it will do with removed assets and
21 whether they will retain any value to ratepayers. Assuming that TEP could include the UODG
22 assets in rate base, which TASC disputes, neither TEP nor Commission Staff has addressed
23 whether such assets could be included in rate base if they are removed from a customer's
24 premises and therefore are no longer used and useful.

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27 ¹⁹ TEP, November 10, 2014 Response to TASC Opposition, p. 4.

28 ²⁰ *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 152,294 P.2d 378, 382,1956 Ariz. LEXIS 191,
12(Ariz.1956).

²¹ TEP, December 8, 2014 Supplemental Response, p. 3, ll. 10-11.

1 In a competitive market, shareholders bear these risks. TEP, by comparison, asks the
2 Commission to approve a program that shifts these risks and associated costs onto its captive,
3 monopoly customers. TEP acknowledges that its intent in doing so is to leverage its state-
4 sanctioned monopoly to enter a currently competitive market and undercut its own monopoly
5 prices that this Commission regulates on the basis of cost. Granting such a proposal would be a
6 radical departure from constitutional ratemaking requirements and would entail a significant
7 erosion of the principals upon which the Commission has historically set rates.

8 **V. Although Staff Recommends Approval Of The UODG Program As A Pilot, Staff Has**
9 **Proposed No Parameters To Define The Scope Of A Pilot Program.**

10 Reasonable limitations should be placed on the scope of any pilot program the
11 Commission considers. For example, the APS Flagstaff program was limited to a maximum of
12 200 systems, dedicated to a small number of customers, on single distribution feeder.²²
13 Although Staff recommends approval of the UODG Program as a pilot, Staff has proposed no
14 parameters to define the scope of a pilot program. At a minimum, the Commission should
15 ensure any pilot program is designed to achieve the benefits that TEP claims its UODG program
16 is intended to achieve. The Staff report on the TEP UODG proposal states:

17 "TEP will target installations to areas on its grid where DG will provide the most
18 benefit to utility operations. TEP believes that this program will inherently
19 provide access to DG to customers who were unable to install DG in the past due
20 to financial constraints and/or low credit scores."²³

21 Despite these claims, TEP has not identified what feeders could benefit from DG to make the
22 best use of ratepayer resources. On December 8, 2014, the Residential Utility Consumers Office
23 ("RUCO") and the Arizona Solar Energy Industries Association ("AriSEIA") recommended a
24 number of modifications to an APS-proposed UODG program. TASC believes the requirements
25 proposed by RUCO and AriSEIA should serve as minimum requirements for approval of any
26 utility-owned residential DG pilot program.

27
28 ²² Decision No. 71646, ¶ 52.

²³ Staff Report p. 7.

1 Most importantly, installations should be limited to pre-identified areas of the grid that
2 TEP identifies as high value. As well, installations must be limited to customers that are not
3 suited for third party developers to avoid subsidizing the entry of a state-sanctioned monopoly
4 into a currently competitive market. Finally, the Commission should require TEP to recover
5 costs from participating customers. TEP claims: "the Program is intended to be revenue
6 neutral."²⁴ The Commission should hold TEP to its claims and ensure that it is not allowed to
7 shift any costs to non-participating customers. Costs not covered by participating customers
8 should be borne by shareholders to avoid subsidizing an expansion in the scope of a state-
9 sanctioned monopoly. By imposing these requirements, the Commission would ensure that any
10 authorized pilot program would be directed at achieving the benefits upon which the pilot
11 program was justified and sold to the Commission.

12 Finally, TEP justifies the need for the program on its claim that it will assist TEP in
13 meeting its RES DG obligations.²⁵ The Commission's final decision on the APS Flagstaff Pilot
14 makes clear that RES DG credit may not be obtained for all utility owned DG programs. Based
15 on that precedent, TASC believes TEP should not be allowed RES DG credit from any UODG
16 program. The Flagstaff decision states: "While the Commission today approves this pilot
17 program, * * * we limited our findings in this regard to this project and make no determination
18 regarding whether future utility-owned, residential customer-site projects will be eligible for
19 meeting a utility's distributed energy requirement."²⁶ Accordingly, TEP should not receive RES
20 DG credit for systems installed under its proposed program.

21 **VI. The Commission Should Approve The Remainder Of The REST Implementation Plan**
22 **And Reject The UODG Proposal.**

23 TEP's proposal violates the public interest in placing necessary limits on the scope of
24 regulated monopoly service to promote competition in markets where there is no benefit to
25 service being provided by a single, state-sanctioned monopoly. It is not the Commission's
26 responsibility to protect incumbent utilities from competition. TEP does not request cost

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28 ²⁴ TEP, December 8, 2014 Supplemental Response, p. 2, ll. 6-7.

²⁵ TEP, December 8, 2014 Supplemental Response, p. 2, l. 18.

²⁶ Decision No. 71646, ¶ 55.

1 recovery for the UODG proposal through the RES mechanism.²⁷ As such, there is no reason to
2 include the UODG proposal in the TEP RES Implementation Plan.

3 If TEP would like the Commission to consider a UODG pilot program, the Commission
4 should require TEP to file its proposal as an application, like APS did with the Flagstaff Pilot,
5 with sufficient information upon which to base a decision. The Commission should then set a
6 procedural schedule that respects the due process rights of entities and individuals that will be
7 impacted, such as the participants in the currently competitive market to which Arizona's utilities
8 now seek subsidized entry. The Commission should allow legal briefing to determine if a
9 proposed service is a regulated monopoly service that may be authorized by the Commission
10 with assets included in rate base, or whether a proposal entails a competitive service that should
11 be provided through an unregulated affiliate. Finally, the Commission should hold an
12 evidentiary hearing to determine the costs and subsidies to which non-ratepayers will be
13 exposed, and whether there is an adequate basis for finding a proposed UODG rate is just and
14 reasonable. The Arizona Constitution requires proposed rates to be addressed in the context of a
15 utility rate case. Proposals that lack a retail rate component, or that involve a pass through of
16 wholesale generation costs, such as the APS Flagstaff program or the TEP Bright Tucson
17 program, should be addressed in an application.

18
19 Respectfully submitted this 19th day of December, 2014.

20
21
22 
23 _____
24 Court S. Rich
25 Rose Law Group pc
26 Attorney for The Alliance for Solar Choice
27

28 ²⁷ Staff Report p. 6 ("TEP is not seeking any cost recovery through the 2015 REST plan and would seek recovery of expenditures under this program in TEP's next rate case.")

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2 **this 17th day of December, 2014 with:**

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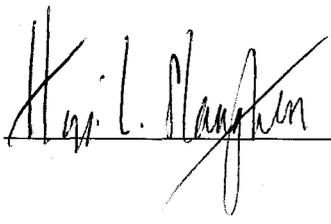
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EXHIBIT A

Colorado PUC rejects Xcel Solar Connect plan over competition concerns

Updated: 12/09/2014 01:57:44 AM MST

DenverPost.com

Xcel Energy's bid to create a premium solar energy program — potentially in competition with solar installers — was rejected Monday by the Colorado Public Utilities Commission.

Under the proposed Solar Connect program, customers would pay Xcel, the state's largest electricity provider, a premium on their bills to support solar projects.

The company said this would enable those who can't have solar panels on their roofs to support solar energy.

"We are disappointed with the commission's decision today," the company said in a statement. "We thought that Solar Connect could bring a solar product to consumers in Colorado that do not currently have the option to install solar panels."

In a filing, the PUC staff recommended rejecting the program, saying Solar Connect would "have an unfair competitive advantage" over home rooftop solar and community solar garden programs.

PUC chairman Josh Epel said Monday that the commission has to make sure that solar proposals are "in harmony and not in conflict."

Solar industry executives and advocates had also voiced concerns about Solar Connect.

"We applaud the PUC decision," said Rebecca Cantwell, executive director of the Colorado Solar Energy Industries Association. "We think they got it right. Solar Connect as proposed just had too many unresolved issues."

Mark Jaffe: 303-954-1912, mjaffe@denverpost.com or twitter.com/bymarkjaffe

EXHIBIT B

Decision No. C14-1485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0302E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS SOLAR*CONNECT PROGRAM.

PROCEEDING NO. 14A-0301E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL TO ISSUE TARGETED REQUEST FOR PROPOSALS TO ACQUIRE GENERATION RESOURCES TO SUPPORT THE SOLAR*CONNECT PROGRAM.

**DECISION DENYING APPLICATIONS,
DENYING MOTION TO DISMISS
AS MOOT, AND ADDRESSING
SHORT-TERM SOLAR ENERGY AGREEMENT**

Mailed Date: December 16, 2014

Adopted Date: December 8, 2014

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A. The Commission Orders That:15
B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING December 8,
2014.....16

I. BY THE COMMISSION

A. Statement

1. This Decision denies the Application for Approval of the Solar*Connect Program (Program Application) and the Application for Approval to Issue Targeted Request for Proposals to Acquire Generation Resources to Support the Solar*Connect Program (RFP Application) filed by Public Service Company of Colorado (Public Service or Company). We also deny the Motion to Dismiss filed by the Staff of the Colorado Public Utilities Commission (Staff) as moot, and we address the regulatory treatment of the energy the Company has obtained for an initial period of the Solar*Connect Program through the Short-Term Solar Energy Purchase Agreement with Solar Star Colorado III, LLC.

B. Public Service's Proposed Solar*Connect Program

2. On April 3, 2014, Public Service filed the Program Application in Proceeding No. 14A-0302E. On the same day, Public Service filed the RFP Application in Proceeding No. 14A-0301E.

3. Public Service's Program Application proposes the acquisition of 50 MW of solar generation and associated Renewable Energy Credits (RECs) through long-term solar power purchase agreements (PPAs). The Company would offer retail customers short-term subscriptions to the solar energy produced for up to 100 percent of their annual consumption.

4. Public Service would bill participating customers the same tariffed charges as other customers, but would also issue a program bill credit and bill a program charge.

The proposed bill credit would be set forth in the tariffs approved in this Proceeding based on what Public Service calls the “embedded costs” of current utility service, though the embedded cost reduction contained in the Company’s proposed tariffs does not reflect the utility costs avoided by customers taking Solar*Connect service. The credit instead is a reduction in rates to a level where Public Service expects the Solar*Connect program to be marketable.¹ This credit would be supported using funds from the Company’s Renewable Energy Standard Adjustment (RESA).² The proposed program charge would be set at the Company’s discretion within 100 percent to 150 percent³ of the bill credit.⁴

5. After recovering the start-up, marketing, and administration costs of the program through collections of the program charge, the Company would share 40 percent of program earnings with ratepayers through credits to the RESA.⁵ Public Service would retain the remaining 60 percent of profits.

6. Public Service proposes that ratepayers purchase any unsubscribed solar energy from the PPAs at the average hourly incremental cost of the prior year’s total system generation. If the program is oversubscribed, the Company would purchase solar energy from the utility system at the average cost of energy from large scale solar.

¹ See Brockett Direct P.9, L.13-20; Brockett Rebuttal P.21, L.10-21.

² Because RESA funds would be used to support the Solar*Connect program, the Company proposes to retain the associated RECs rather than retiring them on behalf of the subscribing customers.

³ A charge set at 150 percent of the credit would be approximately \$0.03/kWh above the total aggregate retail rate.

⁴ Public Service’s proposal includes a discretionary escalation rate between 0 and 3 percent as a term in initial enrollment agreements to represent escalation rates that are typically included in solar PPAs.

⁵ There would be no sharing until start-up marketing and administration costs are covered, which are forecast to be approximately \$830,000. Then, any earnings over \$200,000 would be shared 60 percent to the Company, 40 percent to customers.

7. Public Service's RFP Application requests Commission approval to issue a targeted request for proposals (RFP) to acquire the necessary generation resources to support the Company's Solar*Connect Program.

C. Procedural History

8. On May 6, 2014, Public Service moved for an expedited Commission decision on its RFP Application and an expedited bidding procedures schedule for the RFP process.

9. On June 9, 2014, the Commission: (1) denied Public Service's motion for expedited consideration of the RFP Application; (2) consolidated the Program Application and the RFP Application proceedings; and (3) set the consolidated application before the Commission *en banc*.⁶

10. The Commission granted interventions to the following entities: The Alliance for Solar Choice (TASC); City of Boulder; Clean Energy Collective, LLC (Clean Energy); Colorado Energy Consumers; Colorado Independent Energy Association; Colorado Solar Energy Industries Association (CoSEIA); Interwest Energy Alliance (Interwest); NextEra Energy Resources, LLC (NextEra); Solar Energy Industries Association (SEIA); SunShare, LLC (SunShare); Vote Solar Initiative (Vote Solar); and Western Resource Advocates (WRA).⁷

11. Staff, the Colorado Office of Consumer Counsel (OCC), and the Colorado Energy Office (CEO) each timely filed notices of intervention by right.

12. The following parties filed written testimony: Public Service, Staff, OCC, CEO, Clean Energy, CoSEIA, SEIA, SunShare, Vote Solar, and WRA.

⁶ Decision No. C14-0616-I.

⁷ Decision No. C14-0616-I.

13. On August 29, 2014, Staff filed a Motion to Dismiss both the Program Application and the RFP Application. The Motion to Dismiss argues that Public Service's proposed program violates § 40-3-114, C.R.S., which says: "The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize nonregulated activities." Staff contends that, under the proposed program, Public Service charges unregulated rates to subscribers; yet, the program's services are supported through state subsidies funded through surcharges paid by ratepayers. Staff asserts that § 40-3-114, C.R.S., precludes the use of a surcharge to support the unregulated aspects of the program.

14. Our decision of October 20, 2014, informed the parties that resolution of Staff's Motion to Dismiss requires consideration of the factual record in this case. We stated that we would address the motion after the evidentiary hearings as part of the merits of the case. We also allowed the parties to address the Motion to Dismiss in their final Statements of Position (SOPs).⁸

15. On October 31, 2014, Staff filed a Motion to Strike Certain Substantive Corrections to Public Service's Direct Testimony (Motion to Strike).

16. We conducted an evidentiary hearing on November 3 through 5, 2014. As discussed below, we addressed the Motion to Strike as a preliminary matter at the hearing. Hearing Exhibits numbered 1-57 were offered and admitted at the hearing, including all of the written testimony.

17. After the hearing, the following parties submitted SOPs: Public Service, Staff, OCC, CEO, Clean Energy, CoSEIA, Interwest, SEIA, Vote Solar, and WRA.

⁸ Decision No. C14-1260-I,

D. Staff's Motion to Strike

18. Staff argues that Public Service made substantive changes in the Corrected Direct Testimony of Alice K. Jackson filed by the Company on October 29, 2014. Ms. Jackson's original testimony proposed that, if the Commission denies the Program Application, resale of any contracted start-up energy⁹ would be treated as a Proprietary Book sale. In her Corrected Direct Testimony, Ms. Jackson proposes to sell the start-up energy as a Generation Book sale.¹⁰ According to Staff, this and related modifications to the pre-filed testimony were substantive, effectively altering the Company's proposal, and thus parties were prejudiced because the changes were made less than a week before the evidentiary hearing.

19. The Commission heard arguments on Staff's Motion to Strike at the hearing on November 3, 2014. Public Service argued that Ms. Jackson sought to change her testimony to comply with the Company's Trading Business Rules and that the change would benefit ratepayers.¹¹ OCC, TASC, and WRA supported Staff's motion.

20. At the hearing, we concluded that the process for corrected testimony is intended to govern changes of a typographical nature, not the substance of a party's position, and that Public Service's late changes prejudiced the ability of other parties to respond. For these reasons, the Commission granted Staff's Motion to Strike.¹²

⁹ Public Service contracted for start-up energy through its Short-Term Solar Energy Purchase Agreement with Solar Star Colorado after Direct Testimony was filed.

¹⁰ See *Public Service Company of Colorado Policy for Resource Management and Cost Assignment for Short-Term Electric Energy and Renewable Energy Credit Transactions (Revised June 10, 2013)*, Attachment A to Stipulation and Settlement Agreement approved by Commission Decision No. R13-1544 in Proceeding No. 13A-0689E issued December 16, 2013.

¹¹ November 3, 2014 Hearing Transcript, 13-19.

¹² *Id.* at 27-28.

21. Additionally, TASC and WRA orally moved to strike other portions of Ms. Jackson's corrected testimony. TASC moved to strike a sentence in Ms. Jackson's Corrected Rebuttal Testimony in which she states that 90 percent of small and medium Solar*Rewards installations came from a single supplier in 2014.¹³ TASC argued that the corrected sentence was materially different from the statement in Ms. Jackson's original Rebuttal Testimony, which says that 70 percent of small and medium Solar*Rewards applications came from a single supplier in 2013.¹⁴ Public Service argued that both statements were correct, but it agreed that the testimony may revert to the original sentence.¹⁵

22. WRA moved to strike a statement in Ms. Jackson's Corrected Supplemental Direct Testimony, which stated that Solar*Connect customers would pay Demand Side Management (DSM) costs, in contrast to her original Supplemental Direct Testimony stating that Solar*Connect customers would not pay DSM costs.¹⁶ Public Service admitted that the change was an error.¹⁷

23. On November 4, 2014, Public Service filed corrected testimony of Ms. Jackson (Second Corrected Direct, Second Corrected Supplemental Direct, and Corrected Rebuttal) reflecting the Commission's decision and Public Service's stipulations. This testimony was entered into the record as Hearing Exhibits 43, 44, and 45, respectively.

¹³ *Id.* at 19-20.

¹⁴ *Id.*

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 23.

E. Positions of the Parties

24. Public Service argues that approval of the Solar*Connect Program is in the public interest. The Company states that the Solar*Connect program would bring more solar energy to Colorado for less cost than the Solar*Rewards and Community Solar Gardens programs due to economies of scale, location, orientation, and tracking advantages. The Company further asserts that Solar*Connect allows customers to subscribe to a solar program though unable to participate in the Solar*Rewards and Community Solar Gardens programs. Public Service also says it is unfair for all customers to pay RESA-funded subsidies for on-site solar and Community Solar Gardens when many customers are not able to participate in those programs.

25. Public Service asserts that Solar*Connect results in lower ratepayer subsidy levels than the current Solar*Rewards and Community Solar Gardens programs. For example, in Supplemental Direct Testimony, Public Service contrasts Solar*Connect to its existing solar programs, asserting that full utility bills are subsidized by \$0.0745/kWh for Solar*Rewards and by \$0.03966/kWh for Community Solar Gardens as compared to a subsidy of \$0.03235/kWh for Solar*Connect.¹⁸

26. No interveners support approval of the Solar*Connect program as proposed by Public Service. In general, interveners object to the calculation of the proposed credit, the lack of transparency regarding the proposed program, and the absence of necessary regulatory oversight.

27. Staff contests the program's legality, as reflected in its Motion to Dismiss, stating that Public Service's proposal to maintain the charge within a pricing band does not alleviate the

¹⁸ Jackson Supplemental Direct, at 28.

illegality of using ratepayer subsidies to support an unregulated activity and its merits. Staff highlights the magnitude of Public Service's proposed subsidy, arguing that it is greater than 50 percent of the cost of the utility-scale photovoltaic resources likely to be used to serve Solar*Connect. Staff asserts that Public Service would still make a significant profit even if the program is marketed with no premium over standard service. Staff agrees with other parties that the program creates an unfair competitive advantage over other programs authorized by the General Assembly.

28. Similarly, the OCC recommends that the Commission deny the program because it would benefit shareholders while imposing additional costs and subsidies on ratepayers. According to the OCC, the program would cost ratepayers \$4 million per year, or \$47 million over 20 years.

29. WRA recommends that the Commission modify Solar*Connect into a more transparent, cost-based program with regulated rates and profits.

30. The solar industry parties argue that the program, as proposed, would harm the competitive environment for the current Solar*Rewards and Community Solar Gardens programs. For instance, Community Solar Gardens face restrictions not placed on Solar*Connect, such as a 5 percent low income set-aside, a 2 MW limit on project size, and a requirement that the facility be located in the same county as the subscriber. Further, they argue that Public Service has advantages in its capacity as the administrator of Solar*Rewards and Community Solar Gardens programs, because it has access to customer information and can market to prospective customers through utility mailings.

31. Some parties argue that specific changes to the Solar*Connect program are necessary for it to be in the public interest. For example, WRA proposes a fully-regulated

Solar*Connect program with rates, administrative cost limits, and profit margins set by the Commission. The OCC suggests that Solar*Connect should be offered as a non-subsidized, Windsource-style program,¹⁹ which would charge a premium for solar energy without subsidization from other customers. In addition, both WRA and OCC suggest that the Commission direct Public Service to solicit additional utility-sale solar resources for the system to take advantage of the price benefits from the federal 30 percent Investment Tax Credit.

32. Clean Energy and SunShare propose a competitively open program where all solar providers can participate in the new solar facility, with certain controls on Public Service's participation. CoSEIA suggests third-party oversight for all solar programs and recommends the Commission require Public Service to participate only through an unregulated subsidiary. SEIA suggests that Public Service implement a collaborative approach, similar to Windsource, to design a new Solar*Connect proposal.

F. Conclusions and Findings

1. Program Application

33. Only Public Service supports approval of the Solar*Connect program as proposed. The proposed program suffers from four infirmities and therefore the program is not in the public interest.

34. First, Public Service has no need for the solar RECs supported by RESA funds, because the Company's Renewable Energy Standard compliance requirements are essentially satisfied through at least 2030. There is also no system energy or capacity need for the

¹⁹ Windsource is a voluntary program in which retail customers pay for RECs (wind and utility-scale solar) to be retired on their behalf in order to make environmental claims regarding their electricity usage. The Commission approves the price of the RECs sold to Windsorce customers. The current pricing method is based on a modeled cost to acquire additional renewable energy resources on Public Service's system.

generation output from the PPAs acquired to support the program. Public Service's recent Electric Resource Planning (ERP) proceeding, Proceeding No. 11A-869E, demonstrated that the Company has relatively low system capacity needs for several years. Within the ERP process, the Commission recently approved a cost-effective resource plan, including 170 MW of utility-scale solar, to fulfill those limited needs. The Commission denied approval of an additional 50 MW utility scale project. Shortly we will consider the acquisition of utility-scale resources again in the Company's next ERP to be filed in October 2015. Additionally, the Solar*Connect program would require substantial support from non-participating customers, including RESA funds and the payment of costs associated with the purchase or sale of solar energy.

35. Second, we find it unacceptable to require ratepayers to fund proposed subsidies for a program that produces unspecified utility profits. As pointed out by Staff, Public Service would make a significant profit even if Solar*Connect were marketed at the bottom of the range for the proposed charge, which would result in participating customers paying no premium above standard service at the time of enrollment. Public Service profits would increase if it successfully markets the program with higher charges. The program as proposed does not have adequate regulatory oversight.

36. Third, Public Service has not adequately demonstrated that it will ensure a level competitive playing field with other solar providers. Solar*Connect may have significant advantages due to facility size (economies of scale) and superior solar locations that are not permitted under the existing programs' statutes. We also agree with the arguments that Public Service has access to customer information and other marketing advantages because of its status as the regulated monopoly utility.

37. Finally, Public Service did not adequately demonstrate that there is customer demand for the proposed Solar*Connect product. It is unclear whether the Company can successfully market this program without offering prices that are at or near prices for standard utility service.

38. We also deny the requests to order Public Service to modify its proposed Solar*Connect program, as none are fully developed in the record.²⁰

39. Further, we deny the recommendation that the Commission direct Public Service to issue an RFP to acquire additional utility-scale solar for its system. The Commission rejected the Company's proposal to acquire 50 MW of additional solar generation in its recent ERP proceeding. The Commission will consider the acquisition of utility-scale resources to meet future resource needs again in the Company's next ERP to be filed in October 2015.

40. For the reasons described above, we deny the Program Application. Because an RFP is not needed to support Solar*Connect, we deny the RFP Application as moot.

2. Staff's Motion to Dismiss

41. Staff argues that Public Service's proposed program violates § 40-3-114, C.R.S., because it would require the use of ratepayer funds to subsidize nonregulated activities. Because we deny the Program Application for other reasons, we deny the Motion to Dismiss as moot.

G. Short-Term Energy Contract

42. In the Program Application, Public Service asks permission to use, as start-up energy, the solar production from one or more of the developments that were the winning bidders

²⁰ Many parties expressed favor toward the acquisition of cost-effective solar resources and new programs that offer additional solar energy opportunities to retail customers that cannot install facilities or participate in Community Solar Gardens. We encourage the Company to work cooperatively with all of the parties if the Company is to prepare a voluntary program that cures all of the identified deficiencies.

in the recent ERP bid solicitation. The Company explains that the start-up energy would be provided under a separate contract by advancing the in-service date of these facilities, and it would not diminish the benefits to the Public Service system expected from the winning bids.

43. Under cross-examination at the hearings, Public Service witness Alice Jackson stated that Public Service has entered into a short-term “bridge contract”²¹ for the start-up energy. In its SOP,²² Public Service requests that if the Commission denies the Program Application, the Commission should allow Public Service to treat the energy purchased under the contract the same as Proprietary Book transactions under the Company’s Business Trading Rules.

44. Proprietary Book transactions are wholesale purchase and sale transactions that are separate from the wholesale purchases and sales Public Service makes to serve its native load in Colorado. The Company’s Business Trading Rules, approved by the Commission in Proceeding No. 13A-0689E, govern the execution of and accounting for Proprietary Book transactions. In general, the profits and losses of all Proprietary Book transactions in a given year are summed and the overall net profits are divided 90 percent to shareholders and 10 percent to ratepayers.

45. Staff recommends that, as a matter of fairness to customers, the Commission require Public Service to bear 100 percent of the risk of handling the contracted solar energy. Staff further suggests that the Company should not reduce the margins from its other Proprietary Book trades available for sharing with ratepayers by any losses from sales of the start-up

²¹ The contract was provided as Hearing Exhibit 33 and is discussed in the November 3, 2014 transcript at 57-61.

²² Public Service SOP, at 25-27. *See also* footnote 8.

energy.²³ However, if Public Service sells the energy at a profit, Staff suggests that shareholders may keep all of the margins.

46. We adopt Staff's recommendation and require Company shareholders to bear 100 percent of any losses, and receive 100 percent of the gains, associated with the sale of the start-up energy. The short-term purchase agreement for the start-up solar energy is outside the assumptions underlying our assignment of risk and profit in our Business Trading Rules. Public Service entered the contract at its own risk, despite the Commission having denied the earlier application. The bridge contract was to support retail sales through the Solar*Connect program, and not for a contemplated wholesale transaction or an economic energy purchase to serve native load. The parties to the short-term agreement necessarily selected solar as a generating resource to provide energy for a subsidized solar program; the agreement's terms and conditions, particularly the pricing, were not negotiated in the context of the overall wholesale market for energy. It is unfair to impose upon ratepayers losses sustained under a wholesale contract that was negotiated and priced as a solar project with subsidies, and not one that considered the pricing necessary to compete in the overall wholesale energy market without subsidies. The short-term agreement for start-up energy therefore deviates from the transactions governed by the Business Trading Rules as approved in Proceeding No. 13A-0689E. These unusual circumstances therefore warrant a divergence from typical Proprietary Book allocations of losses and profits.

47. We therefore require the Company to sell the start-up energy in the wholesale market rather than use it as system energy. Public Service does not need the RECs, the energy, or the capacity to serve native load. The start-up energy transactions shall be evaluated and

²³ Staff SOP, at 24-26.

accounted using Proprietary Book procedures, consistent with the Company's request. In accordance with Staff's suggestion, Public Service shall track these sales separately from other Proprietary Book transactions so any losses will not reduce the margins otherwise available for sharing with ratepayers. The Company's shareholders may retain 100 percent of any profits from the start-up energy sales.

II. **ORDER**

A. **The Commission Orders That:**

1. The Application for Approval of the Solar*Connect Program filed by Public Service Company of Colorado (Public Service) on April 3, 2014 is denied.

2. The Application for Approval to Issue Targeted Request for Proposals to Acquire Generation Resources to Support the Solar*Connect Program filed by Public Service on April 3, 2014, is denied as moot, consistent with the discussion above.

3. The Motion to Dismiss filed on August 29, 2014, by Staff of the Colorado Public Utilities Commission (Staff) is denied as moot, consistent with the above discussion.

4. The Motion to Strike Certain Substantive Corrections to Public Service's Direct Testimony filed on October 31, 2014, by Staff is granted, consistent with the discussion above.

5. Because the Application for Approval of the Solar*Connect Program is not approved, Public Service shall track and account for the purchase and resale of the already-acquired start-up energy as if they were Proprietary Book Transactions under its Business Trading Rules, with modifications, consistent with the discussion above. Public Service shall not reduce the margins from its Proprietary Book trades available for sharing with ratepayers by any losses associated with the purchase and resale of the energy under the contract intended for program start-up energy.

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
December 8, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners