



**SED BRENDA BURNS PROPOSED AMENDMENT NO. 1**

**ORIGINAL**

TIME/DATE PREPARED: December 18, 2014

COMPANY: Rulemaking to Modify the Renewable Energy Standard and Tariff Rules

AGENDA ITEM NO. 5

DOCKET NO(S). RE-00000C-14-0112

OPEN MEETING DATE: December 18-19, 2014

*The purpose of this Amendment is to adopt the rules as originally proposed in the Notice of Proposed Rulemaking. Staff's November 3, 2014 proposed changes would not be adopted.*

**Page 35, Line 13**, INSERT at the end of Finding of Fact 64, "Staff indicated that it believed that both the NOPR language and the NOPR language modified by Staff's 11/3 Comments are clear and preserve the value of the RECs."

**Page 36, Line 24 - Page 37, Line 2**, DELETE the sentences beginning with "Given" and "Such"

Arizona Corporation Commission

**DOCKETED**

DEC 18 2014

**Page 38, Lines 8-12**, DELETE the sentences beginning with "APS" and "If"

DOCKETED BY

**Page 38, Line 17 - Page 39, Line 4**, DELETE from the word "Nonetheless" to the word "concerns" (except for the footnote)

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**Page 39, Lines 8-9**, DELETE the sentence beginning with "If"

**Page 42, Lines 23-24**, DELETE "and the make revisions to § 1805 and § 1812 as suggested in the 11/3 Comments attached hereto as Exhibit B."

**Page 46, Lines 16-18**, DELETE the sentence beginning with "The"

**Page 46, Line 23 - Page 47, Line 19**, DELETE Finding of Fact No. 94: INSERT the following as Finding of Fact No. 94 "Notwithstanding the foregoing discussion, we believe that Staff's suggested changes in its 11/3/14 Comments are not necessary to clarify the Commission's intentions for the proposed rules as included in the NPRM. We also believe that the rulemaking as proposed will be clearly understood to expand the annual reporting requirements for utilities, so that the Commission is made aware of all of the renewable energy being produced in a utility's service territory, to preserve the value of RECs, and to allow the Commission to consider all relevant information should the Commission desire to determine whether an affected utility's report satisfies the requirements of the REST rules. For all of these provisions and expressed intentions to have meaning, and to be legally operable, one must conclude (as Staff

did) that Commission “acknowledgment” does not count or use a REC and that the expanded reporting under 1805 is made for informational purposes rather than for purposes of demonstrating compliance with the REST standards. (fn 44) The NPRM Preamble reflected this in more than one area, and the rulemaking adopted by the Commission will clearly reflect this as well.”

**Page 48, Lines 15-16, DELETE “, with the additional modifications included in the 11/3 Comments”**

**Page 48, Line 18, DELETE “, and with the additional revisions reflected in the 11/3 Comments attached hereto as Exhibit B”**

**Page 49, Lines 1-2, DELETE “and with the additional revisions included in the 11/3 Comments attached hereto as Exhibit B”**

**Page 49, Line 3, DELETE “and as revised per Exhibit B”**

**Page 49, Lines 11-12, DELETE “and revised per Exhibit B”**

**Page 49, lines 14-15, DELETE “and revised per Exhibit B”**

**Page 49, Lines 17-18, DELETE “and revised per Exhibit B”**

**Page 50, Line 3, DELETE “and revised per Exhibit B”**

**Page 50, Line 10, DELETE “and revised per Exhibit B”**

**Page 51, Line3, DELETE “and revised per Exhibit B”**

<b>THIS AMENDMENT:</b>			
_____ Passed _____	Passed as amended by _____		
_____ Failed _____	_____ Not Offered _____	_____ Withdrawn _____	

**EXHIBIT E**

<b>INDIVIDUAL/COMPANY</b>	<b>COMMENT</b>	<b>ACC RESPONSE</b>
Tucson Electric Power Company ("TEP") and UNS Electric, Inc. ("UNS")	TEP and UNS have reviewed the proposed NOPR revisions to the REST Rules and Staff's Comments. The Companies have no further comments on the proposed revisions at this time.	No change is needed in response to this comment.
The Alliance for Solar Choice ("TASC")	TASC supports comments of Solar Energy Industry Association ("SEIA"). SEIA did not file any responsive comments, so the comments that TASC supports are SEIA's initial comments filed November 10, 2014.	See response to SEIA comments. No change is needed in response to this comment.
Arizona Public Service Company ("APS")	<p>[initial comments filed November 10, 2014]</p> <p>Supports the proposed NOPR modifications to the REST Rules as they provide an effective solution to a lingering issue-compliance within an evolving renewable environment. APS is analyzing Staff's comments and will respond, if necessary, in responsive comments on November 14.</p> <p>APS has asked the Commission for guidance on how to demonstrate compliance when it no longer purchases RECs with direct cash incentives.</p>	<p>The Commission acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>See discussion of this issue in regard to APS' responsive comments.</p> <p>The Commission acknowledges this supportive comment. No change is needed in response to this comment.</p>

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	<p>The NOPR's proposed revisions provide a reasonable framework for considering compliance when direct cash incentives are no longer available.</p> <p>APS supports the NOPR proposed rule changes because they provide a reasonable post-incentive path to compliance, preserve the existing REST compliance and DE carve-out requirement, and resolve perceived "double-counting" of RECs without imposing additional costs.</p> <p>Any attempt to factor in the impacts of EPA's Clean Power Plan ("CPP") is premature.</p> <p>[responsive comments filed November 14, 2014]  APS believed that the purpose of the October 10, 2014 NOPR was to establish a means for the Commission to determine compliance with the REST rules in a manner that did not require the utilities to acquire, then retire, DE RECs.</p>	<p>The Commission acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>The Commission agrees that it is premature to make changes to the REST rules based on EPA's proposed CPP. No change is needed in response to this comment.</p> <p>Under the existing REST rules and the NOPR modifications the only way to demonstrate compliance under the REST rules is via RECs. There is no change in how an affected utility demonstrates compliance. However, under the NOPR modifications, an affected</p>

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	<p>Although APS reaffirmed its support for the NOPR, APS is struggling to understand the impact of Staff's November 3, 2014 comments, and to understand how APS would establish compliance under the new changes. It appears that Staff's modifications remove alternative means to demonstrate compliance by eliminating the nexus between compliance with the REST rules and the Commission's consideration of all available information. APS perceived in the NOPR preamble a flexibility to determine compliance, but, per Staff's November 3 comments, it appears that all is left for the Commission to determine compliance is whether the utility has sufficient utility-owned RECs to meet the annual REST's quantitative requirements. If so, utilities will have to purchase RECs from third parties, resulting in a negative impact on customers. In the alternative, utilities may choose to request waivers instead-an outcome that challenges the very purpose of the rules. Staff's November 3 comments introduce uncertainty, making it difficult to determine compliance and leaving the</p>	<p>utility is provided with additional clarity in how it can demonstrate that it is not out of compliance. Namely the Commission would formally recognize that it may consider all available information in considering a waiver request from an affected utility, while simultaneously ensuring that the integrity of RECs is maintained. Thus an affected utility is not limited to the option of expending additional ratepayer funds to acquire RECs, as it has the alternative of seeking a waiver of the REST rules. No change is needed in response to this comment.</p>

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	<p>fundamental question unanswered. APS is open to understanding more about how utilities can establish compliance under Staff's revisions, but, for now, it appears the only two compliance options are acquiring RECs or obtaining a waiver. If so, the Commission should reject the Nov. 3 revisions, and adopt the modifications in the NOPR.</p>	
<p>U.S. Department of Defense and Federal Executive Agencies</p>	<p>Is concerned that utilities will be allowed to count non-utility owned RECs toward compliance under the NOPR modifications as DOD/FEA believes acknowledgement is equivalent to counting RECs towards compliance, possibly resulting in double counting. DOD/FEA therefore opposes the NOPR modifications.</p> <p>Staff's November 3<sup>rd</sup> wording changes may address concerns with the NOPR modifications but confirmation should be sought from the Center for Resource Solutions.</p>	<p>The Commission believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p> <p>The Commission believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p>
<p>Vote Solar</p>	<p>Vote Solar believes key provisions are vague. The proposed rules appear to</p>	<p>The Commission believes the NOPR modifications are clear and that they provide protection for the owners of non-utility owned</p>

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	<p>provide that non-utility owned RECs will be acknowledged by the Commission for informational purposes. Vote Solar proposes that the Commission be very clear as to whether the rules' language means that non-utility owned RECs can be used by the utility for REST compliance. If so, Vote Solar opposes that approach, because RECs have value and may not be conveyed for free to the utility. Vote Solar shares the Commission's intent to avoid double-counting, but the proposed language will compromise REC value because "acknowledging" non-utility owned RECs for REST compliance creates a double-counting scenario. When customer owned RECs are used to track REST compliance, the utility must pay the customer for the value of the REC. RECs cannot retain market value if they are claimed by a utility for RPS compliance. If the Commission adopts the proposed rule changes, customers owning RECs in</p>	<p>RECs. No change is needed in response to this comment.</p>

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	<p>Arizona will be unable to receive Green-e Energy and other certifications for their RECs.</p> <p>The clarifying modification proposed by Staff "...will be acknowledged for reporting purposes, but will not be eligible for compliance with R14-2-1804 and-1805" clarifies the vague language in the proposed rule changes. If Staff's proposed modifications in its comments are adopted, the value of RECs will not be devalued. Vote Solar's concerns with the proposed changes are largely addressed by the Staff's November 3 modifications, and we therefore support the proposed rule changes if Staff's modifications are adopted.</p> <p>We recommend that the Commission begin using WREGIS (or other tracking system) to track REST compliance, to ensure that any RECs used for TT compliance is appropriately issued, tracked and retired.</p>	<p>The Commission does not believe that the wording in the NOPR is vague and in need of clarification. No change is needed in response to this comment.</p> <p>This proposal is outside the scope of this proposed rulemaking. No change is needed in response to this comment.</p>
Residential Utility Consumer	[initial comments filed on	

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Office ("RUCO")	<p>November 10, 2014]</p> <p>The Commission should consider alternative policies to resolve the REC issues.</p> <p>There is no version of the renewable energy policy that stops the outflow of RECs to other states.</p> <p>We support Staff's clarification, as it will avoid debate each year on the meaning behind the term "acknowledge".</p> <p>The Rule revision, with Staff's clarification, appears to meet the end goal of Commissioner Brenda Burns to ensure that there will not be a claim on the RECs of solar adopters.</p> <p>[responsive comments filed on November 14, 2014] RUCO suggests adding the</p>	<p>The Commission has considered a wide variety of options in over two years of proceedings leading to the currently proposed NOPR modifications. No change is needed in response to this comment.</p> <p>This issue is outside the scope of rule changes contemplated in this proceeding but may be something the Commission could consider in the future. No change is needed in response to this comment.</p> <p>The Commission believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p> <p>The Commission believes that the NOPR makes it clear that RECS of solar adopters will not be claimed. No change is needed in response to this comment.</p>

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	<p>following language to the REST rules: "Affected utilities, upon approval by the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the number of RECs and/or kWhs produced by customers who have not exchanged their RECs to the utility in their respective service territory." RUCO argues that this language will enable future policies that allow DG adopters a choice to keep their RECs or provide them to the utility, and, if the customer decides to keep their RECs, the utility will incur a small charge that will cover the cost of procuring inexpensive, unbundled RECs.</p>	<p>The Commission does not believe it is necessary to add the language proposed by RUCO to the REST rules. No change is needed in response to this comment.</p>

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Solar Energy Industries Association	<p>[initial comments filed November 10, 2014]</p> <p>We support Staff's November 3, 2014 recommendations as set forth in its comments. The Commission's proposal with Staff's recommended modifications is aligned with the Commission's intent of tracking the DE market while protecting ratepayer interests in RECs.</p> <p>We agree with Staff that these clarifying modifications do not amount to a "substantial change." Therefore, we recommend that the Commission adopt its proposal as modified by Staff.</p>	<p>The Commission believes that the language contained in the NOPR provides for tracking the DE market while protecting ratepayer interests in RECs. No change is needed in response to this comment.</p> <p>The Commission, in adopting the NOPR language without Staff's modifications, moots the issue of whether Staff's modifications amount to a "substantial change." No change is needed in response to this comment.</p>
Arizona Solar Deployment Alliance	<p>[comment filed on November 14; ]</p> <p>ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining the carve out.</p>	<p>The Commission acknowledges this supportive comment and agrees that the NOPR modifications preserve the DG carve out. No change is needed in response to this comment.</p>

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Terry Finefrock	[comment filed on November 14; Mr. Finefrock also provided comment at the Tucson public comment session] Mr. Finefrock said it appears that the NOPR modifications may allow double-counting of RECs.	The Commission believes that the NOPR modifications make it clear that RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.
<b>TUCSON PUBLIC COMMENT SESSION</b>		
Robert Bulechek (an energy efficiency consultant and chair of the Tucson-Pima Metropolitan Energy Commission)	Mr. Bulechek fears the REST standard will be weakened if a utility can count RECs it doesn't own. RECs are a way to acknowledge that clean energy has health and climate effects.  If a utility uses RECs for compliance purposes, it should have to pay for them.	The Commission does not believe the REST standard will be weakened by the NOPR modifications. The Commission notes that utilities will not be allowed to count RECs they do not own towards compliance. No change is needed in response to this comment.  The Commission believes that there is nothing in the NOPR modifications that would allow a utility to use RECs they don't own for compliance purposes.
Ryan Anderson (the planning, sustainability, and transportation policy advisor to City of Tucson Mayor Jonathan	Mr. Anderson read prepared written comments of Mayor Rothschild into the record.	The Commission believes that the NOPR modifications achieve the goals discussed by Mayor Rothschild. No change is needed

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Rothschild).	<p>Mayor Rothschild urges Commission to preserve RECs' integrity; help to keep the solar market thriving; believes track and recording of DE, if used to satisfy utility REC requirements would erode REC market and compromise REST and pursue policies that don't result in double-counting or a regulatory taking.</p> <p>The Mayor opposed the initial draft of the revisions, but Mr. Anderson believes, based on the discussion at the Public Comment meeting, that Staff's November 3<sup>rd</sup> filing may satisfy the Mayor's concerns.</p>	<p>in response to this comment.</p> <p>The Commission believes that the NOPR modifications address the Mayor's concerns. No change is needed in response to this comment.</p>
Bruce Plenk	<p>Mr. Plenk thinks Staff November 3<sup>rd</sup> comments regarding use of word "acknowledge" in proposed rules is an important clarification.</p> <p>Mr. Plenk believes it may be useful to seek comments from Center for Resource Solutions.</p>	<p>The Commission believes that the NOPR modifications are clear in regard to the word "acknowledge." No change is needed in response to this comment.</p> <p>The Commission believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur.</p>

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	<p>Mr. Plenk believes the Commission should preserve the original intent of REST rules, and expand the solar market.</p>	<p>No change is needed in response to this comment.</p> <p>The Commission believes that the original intent of the REST rules is preserved by the NOPR modifications. No change is needed in response to this comment.</p>
<p>Terry Finefrock</p>	<p>Mr. Finefrock would like to see CRS comment on the proposed revisions.</p> <p>Mr. Finefrock believes there may be contract law implications related to ownership of RECs resulting from the NOPR modifications and Staff's November 3<sup>rd</sup> wording changes.</p>	<p>The Commission believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p> <p>The Commission does not believe there are any contract law implications resulting from the NOPR modifications. No change is needed in response to this comment.</p>
PHOENIX PUBLIC COMMENT SESSION		
<p>Arizona Solar Deployment Alliance</p>	<p>ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining the carve out.</p>	<p>The Commission acknowledges this supportive comment and agrees that the NOPR modifications preserve the DG carve out. No change is needed in response to this comment.</p>

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APS	In addition to reiterating its written comments, APS noted that CRS believes that Staff's modifications would not lead to double counting, but say in their email that they can't determine for sure until the final rule language is available, and, even then, future Commission action could make the RECs ineligible for Green-e energy.	See discussion of APS initial comments filed November 10, 2014 and APS responsive comments dated November 14, 2014. No change is needed in response to this comment.
RUCO	RUCO believes that its proposed additional language, submitted in its November 14 comments, will set up a "no regrets" policy mechanism that, in the future, will allow utilities to use non-DG RECs for REST compliance, and this language may help to comply with EPA rules in the future, if that proves necessary.	See discussion of RUCO initial comments filed November 10, 2014 and responsive comments filed on November 14, 2014. No change is needed in response to this comment.

**PLEASE MAKE ALL CONFORMING CHANGES.**

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