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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission
DOCKETED
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IN THE MATTER OF THE PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES.

DOCKET NO. RE-00000C-14-0112

DECISION NO. 74882

OPINION AND ORDER

DATES OF HEARING: November 12 and 14, 2014

PLACES OF HEARING: Tucson and Phoenix, Arizona

ADMINISTRATIVE LAW JUDGES: Sarah N. Harpring and Teena Jibilian

IN ATTENDANCE: Commissioner Brenda Burns

APPEARANCES: Ms. Maureen Scott, Senior Staff Counsel, and Ms. Janet Wagner, Assistant Chief Counsel, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

This matter is a rulemaking to amend two sections within the Arizona Corporation Commission's ("Commission's") Renewable Energy Standard and Tariff ("REST") rules, specifically Arizona Administrative Code ("A.A.C.") Sections R14-2-1805 ("§ 1805") and R14-2-1812 ("§ 1812"). The rulemaking would increase the information that an Affected Utility must report annually to the Commission by requiring an Affected Utility to report all of the kWhs of energy produced within the Affected Utility's service territory, with differentiation between the kWhs for which the Affected Utility owns the Renewable Energy Credits ("RECs") and the kWhs for which the Affected Utility does not own the RECs. The rulemaking would also expressly allow the Commission to consider all available information when reviewing an Affected Utility's report filed under § 1812(C).

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. On February 26, 2014, in Docket Nos. E-01345A-10-0394 et al. ("Track & Record Docket"[1]), the Commission issued Decision No. 74365, "Opinion and Order on Track and Record and Potential Alternatives." In Decision No. 74365 (February 26, 2014), the Commission made the following background Findings of Fact that are helpful to an understanding of this rulemaking:

> **II. Background**
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> **A. DG Carve-out**
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> 51. The REST rules require Affected Utilities (electric utilities in Arizona subject to the REST rules), including the Utilities involved in this proceeding, to serve a portion of their annual retail load with renewable energy. Thirty percent of Affected Utilities' renewable energy requirements must come from renewable distributed generation ("DG"). Half of this Distributed Renewable Energy Requirement, ("DG carve-out") must come from residential applications, and half from non-residential, non-utility applications. Each year, the renewable requirement increases incrementally. In 2014, Affected Utilities must serve 4.50 percent of their retail load with renewable energy, 1.35 percent of which must be DG. After 2024, the REST rules require Affected Utilities to serve 15 percent of their retail load with renewable energy, 4.50 percent of which must be DG.
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> **B. RECs**
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> 52. To establish compliance with the REST rules, including the DG carve-out, Affected Utilities must acquire Renewable Energy Credits ("RECs") from Eligible Renewable Energy Resources. An Affected Utility may use RECs acquired in any year to meet annual REST requirements, including DG requirements, and RECs are retired upon being used for compliance purposes.
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> 53. In this case, we examine the parties' recommendations regarding how the Utilities can comply with the DG carve-out in the

[1] The following were parties to the "Track & Record Docket": Arizona Public Service Company ("APS"); Tucson Electric Power Company ("TEP"); UNS Electric, Inc. ("UNSE"); Freeport-McMoRan Copper & Gold, Inc. and Arizonans for Electric Choice and Competition (collectively "AECC"); Solar Energy Industries Association ("SEIA"); Arizona Solar Industries Association; Western Resource Advocates; the Vote Solar Initiative; NextEra Energy Resources, LLC; Wal-Mart Stores, Inc. and Sam's West Inc.; U.S. Department of Defense and all other Federal Executive Agencies ("DOD/FEA"); NRG Solar, LLC; Kevin Koch; the Residential Utility Consumer Office ("RUCO"); and the Commission's Utilities Division ("Staff"). Docket Nos. E-01345A-10-0394 et al., concerned APS, TEP, and UNSE 2013 REST Implementation Plans as well as an APS application for approval of certain "Green Power" rate schedules.

REST rules in the absence of incentives with which Utilities can pay for RECs.

54. Currently, the Utilities acquire RECs from the owners of eligible DG projects through contractual agreements by which customers transfer DG RECs to the Utilities in exchange for REST incentives that help pay for the cost of installing DG systems. These incentives have taken the form of residential and commercial up-front incentives ("UFIs") and commercial performance-based incentives ("PBIs"), which are funded by a REST surcharge assessed monthly to every retail electric service. The surcharge is set annually for each Utility pursuant to Commission-approved REST tariffs.

55. APS's witness Gregory Bernosky testified that APS is in compliance with residential DG requirements through 2016 and with commercial DG requirements through 2020. TEP and UNS witness Carmine Tilghman testified that UNS is in compliance for its residential and commercial DG requirements through 2013, and that TEP will need to acquire new residential DG RECs in 2014, and new commercial DG RECs in 2020.

56. The REST rules require the Utilities to file a proposed implementation plan annually on July 1, and an annual compliance report each April 1.

57. UFIs were as high as $4.00 per watt for residential DG systems in 2006, but by 2013 had decreased to $0.10 per watt.

C. Track and Record Issue

58. In Decision No. 72737 (January 18, 2012), the Commission noted that APS's future ability to meet its annual DG REST requirement might be in question, due to the rapid lowering of installed costs for solar photovoltaic ("PV") systems, and the resulting reduction in APS's REST surcharge-funded UFI payments to customers with DG systems in exchange for RECs. Decision No. 72737 ordered APS to suggest possible solutions to the emerging issue in APS's 2013 REST Plan filing.

59. In compliance with Decision No. 72737, APS included the "Track and Record" proposal in its 2013 REST filing in Docket No. E-01345A-12-0290. In that filing, APS proposed, in the absence of incentives, to simply track all energy produced by DG systems installed on APS's system and count that energy for purposes of REST rules compliance, hence the proposal's name "Track and Record."

60. In its 2013 REST filing in Docket No. E-01933A-12-0296, TEP also addressed the issue of REST compliance in the absence of incentives to pay for RECs. TEP offered four possible solutions to achieving REST compliance in the event TEP no longer uses REST incentives to purchase RECs from customers who install DG.

61. In its 2013 REST filing in Docket No. E-04204A-12-0297, UNS offered the same four potential solutions as TEP.

62. On October 18, 2012, Staff filed Staff Memoranda and Recommended Orders on the Utilities' 2013 REST filings. In those

filings, Staff recommended approval of the APS-proposed Track and Record mechanism for REST rule compliance requirements for all three Utilities, to be effective for 2013 and beyond for compliance reporting beginning April 1, 2014. However, Staff noted in its analysis in the APS 2013 REST docket that several comments had been filed raising issues with APS's Track and Record proposal in regard to the integrity of RECs.

63. Between October 29, 2012, and January 17, 2013, WRA, SEIA, the Center for Resource Solutions, the Center for Biological Diversity, the U.S. Department of Veterans Affairs ("VA"), Vote Solar, SolarCity, and AriSEIA filed comments in the APS 2013 REST docket, all opposing approval of the APS-proposed Track and Record mechanism for REST rule compliance requirements. Similar comments were filed in that timeframe in the TEP 2013 REST docket.

64. On January 17, 2013, Staff filed memoranda in the Utilities' 2013 REST filing dockets. In each filing, Staff noted that a number of stakeholders had filed comments raising a variety of concerns about adoption of APS's Track and Record proposal. Staff stated that it believed the Track and Record proposal had merit, but that due to the number and tenor of the opposing comments, the issues related to Track and Record and its potential alternatives merited a hearing. Staff recommended that the Commission act upon all other aspects of the Utilities' 2013 REST plans, but defer a determination on the Track and Record issue, and potential alternatives thereto, to a hearing process.

65. Decision Nos. 73636, and 73637, and 73638 did not adopt the Track and Record proposal for APS, TEP, or UNS. All three Decisions directed the Hearing Division to schedule a procedural conference, entertain requests for intervention, hold a hearing, and prepare a Recommended Opinion and Order for Commission consideration on the Track and Record proposal and potential alternatives, with an evaluation of whether adoption of the Track and Record proposal (or alternatives thereto) would require modifications to the REST rules.

66. A full evidentiary hearing was held before a duly authorized Administrative Law Judge of the Commission. Evidence and legal arguments were taken and entered into the record.[2]

2. In Decision No. 74365, the Commission determined that it was "reasonable to allow the Utilities to request one-year waivers as needed until the REST rules are modified to achieve a long-term solution," that the granting of waivers was a short-term solution, that the Commission did "not desire to lessen the requirement that at least 15% of a utility's retail load be derived from renewable energy by 2025," and that a continuous practice of granting waivers would result in "an implicit reduction of the 15% goal." (Decision No. 74365 at 51.) The Commission also found that

[2] Decision No. 74365 (February 26, 2014) at 9-13 (footnotes omitted). Official notice of this Decision is taken.

"it may be necessary to develop a new methodology to track the utilities' compliance with the REST rules in order to achieve a long-term solution." (*Id.*) The Commission ordered the REST rules opened, in a new docket, "for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not solely based on the use of RECs." (*Id.* at 55.) The Commission directed Staff, after consultation with parties to the Track & Record Docket and other interested stakeholders, to file proposed new rules with the Commission no later than April 15, 2014, so that a Notice of Proposed Rulemaking could be addressed at the May 2014 Open Meeting or as soon as practical thereafter. (*Id.* at 55.)

3. The Commission also ordered that, until the REST rules were modified to provide a long-term solution, APS, TEP, and UNSE, in their next REST Implementation Plan filings, could request permanent one-year waivers of the requirements of § 1805.[3] (*Id.* at 54.) The Commission further required each utility granted such a waiver to augment its "Compliance Report," filed under § 1812, by providing information regarding DG[4] in its service territory for which the utility had not acquired RECs, "not for the purpose of demonstrating the utility's compliance . . . , but . . . solely for the purpose of informing the Commission of the amount of renewable energy being produced in the utility's service territory." (*Id.* at 56.)

4. The Commission has not held proceedings or issued decisions specifically concerning whether affected utilities have achieved or have not achieved compliance with the annual REST standards in § 1804 and § 1805. (*See* Tr. I at 16-17, 34.) Rather, the Commission has used the reports filed each April under § 1812 when reviewing the affected utilities' REST Implementation Plans for the coming year filed each July under § 1813. (*See* Tr. I at 34.) If an affected utility has failed to achieve annual compliance with the REST standard as set forth in § 1804 and § 1805, the

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[3] The waivers were described as "permanent" because they would not expire—*i.e.,* the annual requirement waived would not be an obligation going forward.

[4] The REST rules define distributed generation as follows:

> "Distributed Generation" means electric generation sited at a customer premises, providing electric energy to the customer load on that site or providing wholesale capacity and energy to the local Utility Distribution Company for use by multiple customers in contiguous distribution substation service areas. The generator size and transmission needs shall be such that the plant or associated transmission lines do not require a Certificate of Environmental Compatibility from the Corporation Commission.

A.A.C. R14-2-1801(E).

affected utility is required to include a notice of noncompliance in its report filed under § 1812. (*See* § 1815(A).) The affected utility must include in its notice of noncompliance a computation of the shortfall for the year, a plan for making up the shortfall in the current year, and an estimate of the costs to meet the shortfall. (§ 1815(B).) The REST rules do not require the Commission to take any particular action in response to an affected utility's notice of noncompliance. (*See* § 1815(C) and (D).) In fact, the REST rules do not specify any penalty for noncompliance with the annual requirements set forth in § 1804 and § 1805, but instead specify a penalty that the Commission may impose after determining that an affected utility has failed to comply with its Commission-approved REST Implementation Plan. (§ 1815(C).) The specific penalty that the rules authorize the Commission to impose, in its discretion after notice and an opportunity to be heard, is denial of rate recovery for the costs to meet the shortfall identified in the notice of noncompliance.[5] (§ 1815(C).) The Commission's focus in implementing the REST rules has been on ensuring that affected utilities' REST Implementation Plans are designed to meet the standards in the REST rules and to serve the public interest, not on punishment for failure to meet the standards.[6]

Procedural History

5. On March 31, 2014, Staff filed a Memorandum requesting that a generic docket be opened for the purpose of commencing a proposed rulemaking on the REST rules as directed in Decision No. 74365. As a result, this Docket was opened.[7]

6. On April 4, 2014, Staff filed a Notice of Compliance, in which Staff set forth seven different options for REST rules modification ("Seven Options"). Staff stated that its goal with the Seven Options was to engender discussion and have the Commission provide Staff with direction on whether and in what manner the Commission desired to modify the REST rules. Staff also raised a "fundamental question" needing to be answered at the outset—whether the Commission wants to

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[5] The REST rules do not limit the Commission's general authority to take action or impose penalties after notice and an opportunity to be heard. (§ 1815(D).)

[6] This has been the case since the REST rules were originally adopted, as the Commission consciously decided at that time that the enforcement mechanism adopted in the rules—denial of rate recovery for the costs to meet a shortfall—would be based upon a finding that an affected utility had failed to comply with its REST Implementation Plan, as opposed to a finding of noncompliance with the REST standard itself. (*See* Decision No. 69127 (November 14, 2006) at Appendix B at 36-37.) Official notice is taken of this Decision.

[7] Subsequent references to filings that do not specify a Docket are to filings that have been made in this Docket.

track information regarding DG and Distributed Renewable Energy[8] ("DE") activity in each utility's service territory regardless of ownership or only for DG/DE activity that each utility owns or purchases. Staff stated that the answer to that question would more clearly define what changes to the REST rules, if any, might be needed. Staff also stated that after consultation among Staff, parties to the Track & Record Docket, and other stakeholders, Staff had determined that consensus would not be reached as to the approach or language to use for new REST rules. Staff's Seven Options included the following, each of which was briefly described:

1. Track & Monitor,
2. Process Where Utility Would Purchase Least Cost RECs or kWh ("Least Cost RECs"),
3. Creation of Maximum Conventional Energy Requirement ("Maximum Conventional Energy"),
4. Mandatory Upfront Incentives ("UFIs"),
5. REC Transfer Associated with Net Metering ("REC Transfer"),
6. Recovery of DG/DE Costs Through the Standard Rate Case Process ("Rate Case Recovery"), and
7. Track & Record.

Staff requested that parties to the Track & Record Docket and any other interested stakeholders provide initial comments on the Seven Options by April 21, 2014, and provide any reply comments by April 28, 2014.

7. On April 21, 2014, the Center for Resource Solutions[9] ("CRS") filed its Comments on the Seven Options. CRS responded to each of the Seven Options, opposing most of them, at least in part, due to concern that non-utility-owned DG/DE would be used to determine compliance with the REST rules, that this use would result in a claim on the associated RECs, and that the associated RECs would thus be ineligible for use in other state Renewable Portfolio Standard ("RPS") markets

[8] The REST rules define Distributed Renewable Energy Resources as applications of specifically listed and defined technologies that are located at a customer's premises and that displace conventional energy resources that would otherwise be used to provide electricity to Arizona customers (A.A.C. R14-2-1801(B).)

[9] CRS is a nonprofit organization that certifies RECs through a program called Green-e Energy. CRS's Executive Director, Jennifer Martin, provided testimony in the Track & Record Docket.

(*i.e.*, for compliance in other states) and in the voluntary market for RECs. CRS stated the following:

> [A]ny use of renewable energy generation . . . , its attributes and/or associated RECs toward the REST constitutes a claim, eroding the value of an associated voluntary market REC. Such is the case even if the associated RECs contractually remain with the installer or generation owner. The statement "Such REC may not be considered used or extinguished by any entity without approval and proper documentation from the entity creating the REC." will not alleviate concerns about REC value for buyers of RECs who wish to use them outside of the Arizona REST, including other state RPS markets and in the voluntary market for RECs.[10]

CRS described the Arizona voluntary market as "vibrant" and stated that Green-e Energy verification data showed that, in 2011, thousands of customers voluntarily purchased renewable energy in Arizona, and Arizona renewable generators generated 29,997 MWh that were sold into the voluntary REC market.[11] CRS also asserted that the primary market for voluntary RECs in the U.S. is for RECs certified by Green-e Energy, which certifies and verifies approximately two-thirds of overall U.S. voluntary renewable energy sales and more than 90 percent of U.S. voluntary retail REC sales. CRS emphasized the importance of undisputed ownership of and title to renewable energy attributes, including REC ownership, the claim to own or use renewable energy, and the ability to sell that claim and further stated that the Commission's adoption of a policy that would bring those rights into question would "significantly reduce the value of renewable energy for DE owners in the state and . . . hinder future economic growth in this sector in Arizona."[12] In closing, CRS "urge[d] the Commission to maintain its current policy to require the utilities to acquire RECs to demonstrate REST compliance."[13]

8. On April 21, 2014, the Grand Canyon State Electric Cooperative Association, Inc. ("GCSECA")[14] filed the Cooperatives' Comments, urging the Commission to reevaluate the REST

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[10] CRS Comments of April 21, 2014, at 3.

[11] CRS identified APS and the Salt River Project ("SRP") as sellers and identified Apollo Group, Inc., University of Phoenix, Arid Zone Trees, Arizona Lithographers, ConserVentures, Evolution Beauty Technologies, Inc., Forever Resorts/Big Bend Resorts, Chisos Mountain Lodge, Forever Resorts/Grand Canyon North Rim, LLC, International Student Exchange Cards, Inc., and Prime Time Thermographics as purchasers.

[12] CRS Comments of April 21, 2014, at 4.

[13] *Id.* at 5.

[14] For purposes of the REST rules, GCSECA identified the following as Arizona cooperative members: Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Sulphur Springs Electric Cooperative, Inc.; and Trico Electric Cooperative, Inc.

rules to recognize market changes, while protecting the current ability for cooperatives to establish their own renewable energy and DG requirements based upon their individual REST Implementation Plans, which are reviewed and approved by the Commission annually. The cooperatives did not support any of the Seven Options.

9. On April 21, 2014, RUCO filed RUCO's Comments on the Seven Options. RUCO stated that only Track & Record had the potential to strike the correct balance between all parties, as every other option would either cost ratepayers money, invalidate RECs, or present additional complexities. RUCO suggested the following options, in order of preference, as striking the right balance: (1) The Recommended Opinion and Order ("ROO") from the Track & Record Docket, with Commissioner Pierce's Amendment Number 1 from the Open Meeting of February 5, 2014;[15] (2) Track & Monitor based on capacity, for which RUCO included a description in an appendix;[16] (3) Staff's Track & Record option, if implemented carefully; or (4) A "Back fill" policy requiring those who want to keep their RECs to pay a small fee, applied to the REST surcharge, so that the utility would have the resources to replace their RECs at no cost to other ratepayers. RUCO stated that "very few options [would] strike a better balance than the ROO"; that it would be "detrimental to ratepayers to sideline out of state investment"; and that choosing the "incorrect policy" would result in effectively punishing businesses and households that held onto their RECs rather than taking incentives when they were available.

10. On April 21, 2014, AECC filed a Notice that it would not be filing initial comments on the Seven Options, but desired to reserve the right to file reply comments.

11. On April 21, 2014, SEIA filed Comments on the Seven Options, stating that SEIA had supported adoption of the ROO in the Track & Record Docket and that, although SEIA continued to believe that the REST rules provide sufficient ability for utilities to meet compliance through requesting waivers, SEIA believed this matter could be a useful forum to provide the additional

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[15] Decision No. 74365 with Commissioner Brenda Burns's Proposed Amendment No. 1 significantly amended the ROO in the Track & Record Docket by inserting, *inter alia*, the requirement for a rulemaking to revise the REST rules.

[16] In the appendix, RUCO stated that the intent of its policy would be permanently to remove a specific year's requirement for a portion of the REST to be met with DG if analysis (comparison with a market proxy) showed that the amount of DG capacity installed without incentives demonstrated market self-sufficiency. RUCO asserted that RECs would not be double counted or claimed and provided a quote from the testimony of CRS's Ms. Martin to support that. RUCO emphasized that implementation would need to be done carefully to ensure that RECs were not invalidated.

certainty the Commission desired. SEIA stated that any rule change or new Commission policy adopted in this matter should adhere to Staff's five original policy goals, supported in the ROO, which SEIA identified as follows:

> [Goal] 1) Provide a clear and easily documented way for utilities to achieve compliance under the REST rules;
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> [Goal] 2) Recognize reality regarding how much renewable energy generation is occurring in a utility's service territory and what fraction has been procured by utilities;
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> [Goal] 3) Minimize the cost to ratepayers;
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> [Goal] 4) Maximize value to the extent possible for those who undertake DG installations and Arizona as a whole; [and]
>
> [Goal] 5) Be minimally invasive to the REST rules.[17]

SEIA stated that many of the Seven Options would fall short of meeting the five policy goals, and specifically opposed Track & Monitor, Maximum Conventional Energy, and REC Transfer, stating that each would violate Goal 4 by diminishing the value of RECs produced by customers electing to install DE in Arizona and might also violate Goal 5 by necessitating fundamental changes to the REST rules to allow utilities to meet REST rule requirements based on the actions of others, allowing the utilities to become "free riders." SEIA also asserted that Maximum Conventional Energy might eliminate the DG carve-out, which SEIA characterized as a "substantial rule change" that was not supported in the ROO or by most parties to the Track & Record Docket. SEIA stated that a waiver of the DE requirement might be in the public interest, asserting that Track & Record alluded to a waiver process based on DE market activity, but also stated that Track & Record might not prevent double counting of RECs. SEIA expressed support for Least Cost RECs, stating that the elements of Least Cost RECs, modified through revisions described as "SEIA's Proposed Alternative," could uphold all five policy goals. SEIA's Proposed Alternative would have the Commission (1) adopt the ROO from the Track & Record Docket, (2) adopt a specific detailed process for waiver determinations, and (3) allow utilities with waivers to meet their REST obligations with non-DE RECs. SEIA asserted that no change to the REST rules would be needed to implement SEIA's Proposed Alternative, but that SEIA could support minimal rule changes to

[17] SEIA Comments of April 21, 2014, at 2 (footnotes omitted).

include adding a reporting requirement for all DE capacity installed in an affected utility's service territory, with differentiation between capacity for which the utility did and did not receive RECs, and adding specific provisions in A.A.C. R14-2-1816 related to waivers. According to SEIA, SEIA's Proposed Alternative would preserve the value of RECs for DG customers by avoiding double-counting without lowering the overall REST requirement. Additionally, however, SEIA provided an "Alternative Proposal" that would involve utilities' exchanging utility-owned RECs (of any kind) for customers' DE RECs, something that SEIA asserted could be done with no incremental cost to customers because of "the anticipated surplus of utility-scale RECs."

12. On April 21, 2014, Western Resource Advocates ("WRA") filed its Comments regarding the Seven Options, in which it provided a table analyzing each option for practicality, direct costs incurred for implementation, whether RECs would be devalued, and whether market confidence regarding DE in Arizona would be weakened. WRA asserted that Least Cost RECs presented the best option based on this analysis, as it could be implemented via a simple-to-use web-based market acquisition process, its costs would be low, it would not devalue RECs by making any claim on RECs that a utility did not own, and it would retain market confidence in the Commission's policies to support DE. WRA advocated for the adoption of Least Cost RECs and asserted that no changes to the REST rules were needed because the Commission could authorize utilities to purchase RECs to meet their DG requirements through the implementation plan process, competitive market acquisition would result in the lowest cost RECs, and the REST rules already require utilities to report both the amount of DG produced and the number of RECs obtained.

13. On April 21, 2014, The Vote Solar Initiative ("Vote Solar") filed a Notice stating that it concurred with and supported the comments filed by WRA.

14. On April 21, 2014, TEP/UNSE filed their comments on the Seven Options, asserting that the REST rules should be modified to reflect significant market changes since their adoption, most significantly the increase in DG/DE use resulting from reductions in the cost of PV technology and the emergence of the leased ownership model. TEP/UNSE stated that it anticipated interconnection of DG systems with approximately 10 MW of total capacity during 2014, without paying any incentives. TEP/UNSE asserted that the acquisition of the RECs for such DG systems is

not possible without incentives, although the REST rules require submission of such RECs for compliance. TEP/UNSE expressed support for Track & Monitor, agreeing with a Staff determination that it would not result in double-counting of RECs and further asserting that it would allow utilities to achieve REST rule compliance with no additional costs to customers and with less frequent need for DG waivers. TEP/UNSE stated that while it would not object to REC Transfer, it was not advocating it in this matter due to controversy surrounding net metering. TEP/UNSE opposed all of the other Seven Options as costly, complicated, controversial, or unfair.

15. On April 21, 2014, The Alliance for Solar Choice ("TASC") filed Comments stating that the Commission did not need to choose between preserving the DG carve-out and preserving the integrity of RECs because slight modifications to Track & Record would preserve REC integrity, preserve the DG carve-out, promote the uptake of DE, and result in no additional costs to ratepayers. TASC asserted that the rest of the Seven Options were inadequate and unworkable either because they would not maintain both the DG carve-out and REC integrity or because of other policy shortcomings. TASC proposed a Modified Track & Record that would require utilities to report the total kWhs of energy created from incentivized and unincentivized DE resources each year, would compare the annual incremental increase in total kWhs so produced with the historic average annual increase from prior years, and would allow the utility to seek a waiver from that year's required incremental increase in DG under the REST rules if the annual increase met or exceeded the historic average annual increase. TASC asserted that because the Modified Track & Record would not involve a one-to-one link between kWhs and the DG waiver, the integrity of RECs would be preserved. TASC also asserted that the Commission would be focusing on the health of the market in the absence of incentives as opposed to compliance with the DG carve-out. TASC provided specifics regarding how it believed the waivers could and should be implemented. According to TASC, the Modified Track & Record would provide benefits including REC retention by owners, retention of the DG carve-out, no increased costs to ratepayers, continued annual reporting of renewables, and no unnecessary incentives.

16. On April 21, 2014, APS filed Comments on the Seven Options, supporting Track & Monitor as the best option to recognize all DE while ensuring low customer costs, preserving RECs

and the DG carve-out, and providing a "clear and certain path for compliance with the DG carve out."[18] APS opposed options that it said would require utilities to purchase RECs, would require complete revamping of the REST rules, would require customers to surrender RECs in return for net metering service,[19] or would focus on cost recovery rather than on finding a way to achieve DG carve-out compliance. APS also criticized Track & Record's lack of clarity regarding a path for utilities to comply with the DG carve-out.[20]

17. On April 22, 2014, Staff filed correspondence showing that it had sent the Seven Options filing to Jennifer Martin, Executive Director of CRS, with an invitation for CRS to provide input on the Seven Options, including any suggested modifications thereto. Staff also expressed a desire for CRS to share information regarding other states' use of RECs and, specifically, CRS's views of Texas's handling of RECs.

18. On April 22, 2014, the Arizona Solar Deployment Alliance ("ASDA") filed comments to the Seven Options, stating that it was not necessary to revise the REST rules and suggesting that the Commission instead adopt a process change ASDA called the Renewable Energy Credit Acquisition Program ("RECAP"). ASDA asserted that RECAP would allow customers installing DE systems independent of REC purchase programs to choose, during the interconnection process, to assign RECs to the utility voluntarily for a 20-year term at no charge, to provide the utility the option to purchase RECs by the end of January of the next year at a specified cost set by the Commission during REST Implementation Plan proceedings, or to keep RECs. Under RECAP, utilities would purchase RECs only if REC donations received were insufficient to reach compliance for a given year. ASDA asserted that RECAP would preserve REC integrity while still allowing the utilities to take advantage of renewable energy in their service territories.

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[18] APS Comments of April 21, 2014, at 2.

[19] APS asserted, however, that requiring customers to exchange their RECs for net metering tariff service "would not result in a compensable taking of property [because] RECs are not property; they were created by the Commission as an accounting measure to facilitate measuring utilities' compliance with the REST." (APS Comments of April 21, 2014, at 3.) APS also stated that if RECs were property ("they are not"), the REC Transfer would not involve a taking of property without just compensation under the U.S. or Arizona Constitutions because of the voluntary nature of the net metering program. (*Id.* (citing *Bowles v. Willingham*, 321 U.S. 503, 517-18 (1944)).) APS has since acknowledged that RECs have value in other forums. (*See* Tr. II at 25.)

[20] However, APS opined that Track & Record would not result in double counting of RECs because DG RECs would only be reported for informational purposes. (APS Comments of April 21, 2014, at 4.)

19. On April 28, 2014, SEIA filed reply comments, urging the Commission to consider that Track & Monitor was opposed by most parties to the proceeding and supported only by APS and TEP. SEIA asserted that Track & Monitor would render RECs ineligible for certification because of the manner in which certifying organizations would count the RECs regardless of how the Commission thought the certifying organizations should count the RECs. SEIA asserted that entities seeking RECs such as Walmart, DOD/FEA, and others would thus be discouraged from making solar investments in Arizona and would instead make their investments in regulatory environments more supportive of DE. SEIA also opposed Track & Monitor as a reduction in the REST requirement and a step backward for Arizona. SEIA urged the Commission to reject Track & Monitor and to adopt either the waiver approach supported in the Track & Record Docket ROO, with additional waiver criteria such as those proposed by SEIA in its previous comments, or a transactional approach that would give DE customers the option to provide utilities with RECs in exchange for something of comparable value.

20. On April 28, 2014, AECC filed Notice that it would not be filing reply comments.

21. On April 28, 2014, TEP/UNSE filed reply comments supporting Track & Monitor, asserting that it would achieve the goal of capturing all DE generation activity in a utility's service territory when incentives are no longer needed to encourage installations and that it would allow compliance with the REST rules in the most cost-effective manner, without additional costs to customers. TEP/UNSE stated that many of the other proposals had already been considered and rejected in the Track & Record Docket.

22. On April 28, 2014, ASDA filed its reply comments, stating that the Commission should avoid any approach, such as Track & Monitor, that could lead to devaluation of RECs owned by private parties. ASDA expressed support for Least Cost RECs, stating that it was favored by a majority of parties and that it could be adapted to the RECAP model proposed by ASDA previously. ASDA stated that REC transfers appeared to be the only way to recognize REST rules compliance without compromising REC values. ASDA emphasized that its RECAP proposal would not require a rule change, expressed openness to suggestions for revision to the RECAP proposal, and offered to meet with Staff and other parties to obtain support for RECAP.

23. On April 28, 2014, APS filed its responsive comments, stating that RUCO's modified Track & Monitor should be seriously considered because it would preserve RECs by not requiring utilities to retire RECs to establish REST compliance, would allow recognition of all DG in a service area, would provide utilities certainty by permitting prospective waivers of the DG carve-out if sufficient capacity has been installed, and would not impose additional costs on customers. APS opposed SEIA's proposals as too costly to customers because utilities would need to purchase RECs to comply with either of them, which APS stated was avoidable. APS opposed TASC's proposal as an increase in the DG carve-out that would result in uncertainty for utilities and a shifting of costs to customers without DG and further asserted that TASC's proposal should not be adopted because the parties to the Track & Record Docket had not had an opportunity to cross-examine TASC's witness regarding the proposal. APS asserted that Staff's Track & Monitor would be the simplest and most cost-effective way to resolve this matter, but that RUCO's modified Track & Monitor would also provide a simple and cost-effective resolution.

24. On April 29, 2014, Green Earth Energy & Environmental, Inc. ("Green Earth"), which identified itself as a small renewable energy company, filed comments on the Seven Options. Green Earth stated that the integrity of RECs is vital to the solar market in Arizona and that not double counting them is crucial. Green Earth stated that it is registered with Western Renewable Energy Generation Information System ("WREGIS") to track the RECs generated by Green Earth's systems so that those RECs can be sold to markets outside of Arizona. Green Earth supported Least Cost RECs as the simplest solution for addressing REST compliance and asserted that it would be the easiest to establish, would provide a market-based solution, and would be a long-term solution without the need for Commission intervention. Green Earth urged the Commission seriously to consider adopting Least Cost RECs to provide a permanent solution to the REST compliance question.

25. On April 29, 2014, the Renewable Energy Markets Association ("REMA"), which described itself as a non-profit association representing organizations that sell, purchase, or promote

renewable energy products in North America,[21] filed comments on the Seven Options. REMA stated that its members support policies that maintain consumers' freedom to buy and sell renewable energy voluntarily and that a market for renewable energy, including RECs, is "alive and well in Arizona." REMA characterized many of the Seven Options as jeopardizing the voluntary market by creating uncertainty about REC ownership, stating that "when there is a simultaneous ownership claim to a REC, the monetary, compliance, and environmental value of the REC becomes worthless." REMA asserted that the voluntary market provides an economic opportunity that will likely grow, as it has had an annual growth rate around 10 percent, and that Arizona home and business owners have benefited. REMA recommended that the Commission institute a REC marketplace that would allow eligible generators to sell their RECs to utilities that would use those RECs to demonstrate DG compliance, while avoiding double counting concerns. REMA asserted that both Track & Monitor and Track & Record would infringe on generators' property rights.

26. Between April 29 and May 6, 2014, GCSECA, Mohave Electric Cooperative, Incorporated ("Mohave"), and the Rose Law Group pc filed requests related to the service list for this matter.

27. On May 21, 2014, Commissioner Brenda Burns filed a letter to the parties and interested stakeholders for this matter, expressing appreciation for the proposals made thus far, but requesting that focus be maintained on the purpose for revising the REST rules: "[We] simply want to know how many renewable energy kilowatt-hours are being produced within our regulated utilities' service territories via distributed generation." Commissioner Burns stated that the Commission does not seek to deprive anyone of a right to own the attributes of a renewable energy product and, further, that she was unlikely to support either an option that would require ratepayers to pay subsidies to count existing renewable energy or an option that could be criticized or perceived as weakening the current REST goals. Additionally, Commissioner Burns stated that she believed only Track & Monitor or Track & Record were workable, although SEIA's criticism of Track & Monitor caused her concern that some would characterize Track & Monitor as a lowering of the REST

[21] REMA stated that the renewable energy products include RECs, retail green power programs, utility green pricing services, and on-site renewable energy solutions.

requirement. Commissioner Burns advocated for Track & Record as the best possible outcome for this matter, provided an appendix describing a modified Track & Record,[22] and asserted that the modified Track & Record would eliminate concerns about double counting of RECs while maintaining the REST and not requiring ratepayers to pay further subsidies. Commissioner Burns characterized the current REST rules as a "dead-end" and the waiver provision of the ROO as subject to manipulation and exploitation.

28. On May 28, 2014, Commissioner Gary Pierce filed a letter to the parties and interested stakeholders for this matter, expressing appreciation for Commissioner Brenda Burns's letter of May 21, 2014, and expressing reservations about the waiver approach from the Track & Record Docket ROO. Commissioner Pierce asserted that the average ratepayer would not understand the waiver approach and could easily perceive it as a decrease in the DG requirement. Commissioner Pierce further asserted that the method adopted by the Commission should be easy to understand, should not create doubt as to the Commission's commitment to the 15-percent renewable goal or the DG carve-out, and should enable the Commission to ascertain how much renewable energy has been produced within affected utilities' service areas. Commissioner Pierce expressed a desire to discuss at an Open Meeting the modified Track & Monitor proposal set forth by Commissioner Burns in her letter.

29. On June 20, 2014, Commissioner Robert Burns filed a letter to the parties and interested stakeholders for this matter, expressing appreciation for Staff's work leading to the Seven Options filing, but stating that none of the Seven Options as included therein appeared likely to resolve all of the issues confronted in the Track & Record Docket ROO. Commissioner Burns stated

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[22] The modified Track & Record would require a utility to track, record, and report all renewable kWhs produced within its CC&N service area; would require the utility to distinguish in its reporting between those kWhs for which it owned the REC and those for which it did not; would have the reporting of kWhs associated with RECs not owned by the utility acknowledged; and would allow the Commission to consider all available information. Commissioner Burns stated that the REST rules would not be altered with respect to the overall 15-percent requirement or the 30-percent DG carve out, and that the double-counting issue would be resolved because reporting of the kWhs for which a utility did not own the REC would be acknowledged, and the rule would include a statement regarding the use/extinguishment of RECs. The modified Track & Record would involve having the following language, or something similar, added to the REST rules:

> Any Renewable Energy Credit (REC) created by the production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the REC. Such REC may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the REC, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned RECs.

that Commissioner Brenda Burns's modified Track & Record language warranted further consideration by the Commission and could resolve the parties' concerns about double counting. Commissioner Burns further stated that the Commission needs to track all DG installed and that the modified Track & Record language would allow the Commission to acknowledge that information while avoiding waivers. Commissioner Burns also expressed a desire to discuss the various proposals at an Open Meeting.

30. On July 3, 2014, SEIA filed a letter responding to the modified Track & Record proposal from Commissioner Brenda Burns and supporting the proposal, with additional modifications that SEIA stated were necessary to clarify the intent of the rule change and remove any remaining confusion about the possibility of double counting RECs. SEIA's additional modifications were provided as two alternatives, one based on energy (kWhs) and one based on capacity (kWs). SEIA's modifications clarified that neither kWhs associated with non-utility-owned RECs nor kWs installed for which the utility will not own RECs would be counted toward the utility's REST compliance obligation, eliminated the concept of acknowledgment, and added that RECs created by the production of energy not owned by a utility shall not be considered owned by the utility without approval and documentation.

31. At its Staff Open Meeting on July 22, 2014, the Commission directed Staff to move forward with preparation of draft REST rules using the language set forth by Commissioner Brenda Burns in her letter filed May 21, 2014.

32. On August 1, 2014, RUCO filed comments regarding the relationship between this matter and the U.S. Environmental Protection Agency's ("EPA's") proposed Rule 111(d) regarding emissions reductions. RUCO expressed concern that the EPA requirements will be stringent and will revolve around RECs, creating the possibility for Arizona to be subjected to "steeper than necessary 111(d) compliance targets" if the Commission's actions in this matter do not preserve REC integrity and establish a clear transaction to acquire RECs. RUCO strongly recommended that the Commission create a transaction through which a utility can gain RECs from willing solar adopters, emphasizing that REC accumulation should start as soon as possible. RUCO proposed two potential methods, with the first allowing DG adopters the choice of providing their RECs to the utility or

keeping their RECs and paying the utility a small charge to cover the cost for the utility to buy inexpensive unbundled RECs elsewhere, and the second using the lost fixed cost recovery ("LFCR") net metering charge as the transaction mechanism and otherwise using the same general concept of customers paying to retain their RECs. RUCO stated that either option would likely maintain REC integrity for Rule 111(d) compliance because of the clear transaction for a customer's RECs and no claim upon RECs not transferred to a utility. In the event the Commission were not to adopt one of RUCO's proposed methods, however, RUCO suggested that specific language be included in the REST rules to give a future Commission flexibility in the event of Rule 111(d) implementation.[23]

33. On August 8, 2014, Staff filed a Memorandum and proposed Order that would authorize Staff to file a Notice of Proposed Rulemaking ("NPRM") with the Office of the Secretary of State to commence formal rulemaking to adopt the language provided by Commissioner Brenda Burns.

34. Between August 11 and 19, 2014, TEP/UNSE, AECC, APS, Mohave, and Navopache Electric Cooperative, Inc. ("Navopache") filed requests related to the service list for this matter.

35. On August 29, 2014, SEIA filed a response to Staff's Memorandum and proposed Order, asserting that the proposed rules included therein contained ambiguous language that would jeopardize the three main objectives identified by both Commissioner Brenda Burns and Staff—(1) preserving the REST, (2) resolving double counting, and (3) avoiding new subsidies. SEIA identified the "core issue" as whether the Commission intends to allow "acknowledged kWhs" (that renewable energy for which the affected utility does not own the RECs) to effectively reduce an affected utility's REST obligation. SEIA asserted that allowing this would cause the rulemaking to fail to meet the stated objectives. SEIA explained the ambiguities it saw in the proposed language and offered modifications intended to clarify the language and allow the rulemaking to meet all three stated objectives. Specifically, SEIA suggested the following:

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[23] RUCO's language was as follows:

> Affected utilities, upon approval of 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.

a. That additional language be added to § 1805(G) explicitly stating that "acknowledged kWhs cannot be considered when evaluating REST compliance";

b. That the language proposed to be added to § 1812(C), which would allow the Commission to "consider all available information," be eliminated; and

c. That a portion of the language proposed to be added to § 1805(F)—specifically the phrase "regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned Renewable Energy Credits"—be eliminated.

SEIA stated that any acknowledgment of kWhs that lowers REST compliance could directly impact REC value regardless of the Commission's intentions because it is REC certifiers who make that determination, and the Commission cannot control how REC certifiers treat the RECs. SEIA asserted that an alternative item of value to facilitate REC transfer, in lieu of direct subsidies, would need to be identified for the third objective to be met, and supported RUCO's language filed on August 1, 2014, as striking a good balance between the first and third objectives. SEIA further stated that the Commission's choice—whether or not to allow acknowledged kWh to count toward REST compliance—will determine whether unsubsidized DG investment occurs in Arizona.

36. At the Commission's Open Meeting held on September 9, 2014, the Commission approved the proposed Order directing Staff to file a NPRM with the Office of the Secretary of State no later than September 19, 2014, for publication in the *Arizona Administrative Register* no later than October 10, 2014. The Proposed Order directed the Commission's Hearing Division to hold oral proceedings to receive public comment on the NPRM in Tucson on November 12, 2014, and in Phoenix on November 14, 2014.

37. On September 10, 2014, a Procedural Order was issued providing the specific times and locations for the November 12 and 14, 2014, oral proceedings.

38. On September 11, 2014, Staff filed a memorandum providing several additions to the service list for this matter.

39. On September 15, 2014, Decision No. 74753 was issued, adopting the proposed Order filed by Staff on August 8, 2014, with Commissioner Susan Bitter-Smith dissenting.

. . .

40. On September 19, 2014, the Commission's Legal Division filed copies of the Agency Certificate, Agency Receipt, Notice of Rulemaking Docket Opening ("NRDO"), and NPRM that had been filed with the Office of the Secretary of State that day.

41. On October 10, 2014, the NRDO and NPRM were published in the *Arizona Administrative Register*. A copy of the NPRM is attached hereto and incorporated herein as Exhibit A.

42. At the Commission's Staff Open Meeting on October 16, 2014, the procedural schedule for this matter was discussed concerning whether the Commission would be able to vote on final rules in this matter before the end of 2014.

43. On November 3, 2014, Staff filed Staff's Comments ("11/3 Comments"), a copy of which is attached hereto and incorporated herein as Exhibit B. In the 11/3 Comments, Staff provided background information related to this matter, described additions and modifications to the rule language to clarify the NPRM's intent, included an Exhibit A showing the NPRM rule language as revised by the additions and modifications, and "recommend[ed] that the Commission enact the NPRM as a final rule, with the clarifying additions and modifications set forth in Exhibit A [to the 11/3 Comments]." Staff stated that the NPRM's intent was "to clearly establish the means by which the Commission will measure utility compliance under the REST rules" and to "eliminate the specter of double-counting," as demonstrated by the NPRM's focus on retention of RECs by their owners and differentiation between energy for which RECs are owned by an affected utility and energy for which RECs are owned by others. Staff stated that although some have implied that the use of the word "acknowledge" in the NPRM obscured the Commission's intent for RECs to remain with their owners unless specifically transferred, this argument ignores the context provided by the rest of the proposed language in the NPRM, which Staff believes made it "absolutely clear that double counting is not intended." Staff pointed out that the NPRM's Preamble explicitly provided that "acknowledged" means that non-utility-owned RECs will be reported "for informational purposes only."[24] To provide additional clarification, however, Staff suggested the following additions and

[24] Exhibit A, 20 A.A.R. 2750-51, item 8(1) and (4)(B).

modifications to the NPRM's proposed rule language:

a. Add language at the end of § 1805(G) to clarify that kWhs associated with non-utility-owned RECs are reported for information purposes and are not eligible to be used for compliance with the REST standards;

b. Add language in § 1805(F) to clarify that the Commission acknowledges the reporting of kWhs associated with non-utility-owned RECs; and

c. Delete the word "compliance" in three places in § 1812—the title heading, the first sentence of § 1812(B), and the end of § 1812(C)—"to clarify . . . that the non-utility owned RECs (or kWhs) will be reported for informational purposes only and will not be used to determine compliance with the REST Rules."[25]

Staff stated that adoption of the NPRM as a final rule with these slight clarifying changes "would eliminate any potential for allegations of ambiguity . . . [and] should completely eliminate any question about the Commission's intent."[26] Staff further asserted that, under A.R.S. § 41-1025, these minor changes would not render the rules "substantially different" than the rules as published in the NPRM, because the changes only clarify the rules to better reflect the Commission's intent, which had been clearly stated in the NPRM's Preamble. Staff asserted that interested persons already received notice through the NPRM because the newly suggested revisions merely clarify the rule language without changing the extent, subject matter, issues involved in, or effects of the rules from what was included in the NPRM. Staff concluded that because the suggested revisions would not make the rules substantially different from those published in the NPRM, the clarifying changes could be made without delaying the rulemaking process. The text of the rules with Staff's suggested revisions was attached to the 11/3 Comments and is set forth in Exhibit B hereto.

44. On November 10, 2014, Vote Solar, DOD/FEA, RUCO, TEP/UNSE, SEIA, APS, and TASC filed initial written comments on the NPRM, with most also addressing the 11/3 Comments.

45. On November 12, 2014, an oral proceeding was held before two duly authorized Administrative Law Judges ("ALJs") of the Commission, at the Commission's offices in Tucson,

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[25] Exhibit B, 11/3 Comments at 6.
[26] *Id.*

Arizona. Staff provided an explanatory statement regarding the rulemaking and responded to a number of questions from the ALJs. Oral comments were provided by Robert Bulechek, Energy Efficiency Consultant and Chair of the Tucson-Pima Metropolitan Energy Commission[27]; Tucson Mayor Jonathan Rothschild, through a statement read by Ryan Anderson, the Mayor's Planning, Sustainability, and Transportation Advisor; Bruce Plenk, Solar Consultant and TEP Customer; and Terry Finefrock, Ratepayer and TEP Customer. Mr. Anderson also provided a written copy of the statement that he read on behalf of Mayor Rothschild. These comments are summarized, and Commission responses to them are provided, in Exhibit E hereto. During the oral proceeding, Staff was asked to respond to specific alternate rule language and indicated a preference to see the language in writing before providing a response. It was determined that the alternate rule language would be docketed and that Staff would provide its responses at the second oral proceeding. Additionally, when Staff was asked whether CRS had indicated its position on the 11/3 Comments, Staff stated that it had received an email from CRS and would request CRS's consent to file the email in the docket for this matter.

46. On November 13, 2014, a Procedural Order was issued providing the alternate rule language for Staff's review.

47. On November 13, 2014, Staff filed a copy of a November 10, 2014, email sent to Staff and the Legal Division by Robin Quarrier, CRS Chief Counsel, in which CRS provided its response to the suggested language changes set forth in the 11/3 Comments. CRS stated that the language changes in the 11/3 Comments appear to result in a policy that would not lead to double counting, but also indicated that its position would change in the event of future Commission statements or actions inconsistent with a policy that kWhs associated with non-utility-owned RECs cannot be used for compliance with the REST rules. A copy of the CRS email is attached hereto and incorporated herein as Exhibit C.

48. On November 14, 2014, a second oral proceeding was held at the Commission's offices in Phoenix, with two ALJs presiding and Commissioner Brenda Burns attending. Staff

[27] The Tucson-Pima Metropolitan Energy Commission is an Advisory Commission to the Tucson City Council and the Pima County Board of Supervisors. (Tr. I at 40.)

provided an explanatory statement regarding the rulemaking; provided responses to the alternate rule language included in the Procedural Order of November 13, 2014; and responded to a few additional questions from Commissioner Brenda Burns and the ALJs. Oral comments were provided by ASDA, APS, and RUCO.

49. On November 14, 2014, responsive comments were filed by APS, TASC, ASDA, Mr. Finefrock, and RUCO.

50. On November 14, 2014, Staff also filed responsive comments, recommending that the Commission adopt the rule revisions either as published in the NPRM or, to the extent additional clarification is desired, with the modifications set forth in the 11/3 Comments.

51. On November 18, 2014, comments were filed by Hieu Tran and Carolyn Allen.

52. On November 20, 2014, Staff filed a Staff Report summarizing the oral and written comments received October 10 through November 14, 2014, and providing Staff's responses to those comments. In the Staff Report, Staff also indicated that it had no changes to the Preliminary Summary Economic, Small Business, and Consumer Impact Statement published in the Preamble to the NPRM. Consequently, Staff is recommending that this Preliminary Summary be adopted as the Economic, Small Business, and Consumer Impact Statement ("EIS") for this rulemaking. The Staff Report is attached hereto and incorporated herein as Exhibit D.

Description of the Rule Changes

53. As published in the NPRM, the proposed rules would do the following:

a. Create a new § 1805(F) stating that a REC created by production of renewable energy not owned by an affected utility is owned by the entity creating the REC and that an affected utility cannot use or extinguish such a REC without the entity's approval and documentation from the entity, even if the Commission "acknowledges" the kWhs associated with the REC;

b. Create a new § 1805(G) announcing that the reporting of kWhs associated with non-utility-owned RECs "will be acknowledged";

c. Amend § 1812(A) to expand the scope of the information to be reported annually by a utility to include "other relevant information";

d. Amend § 1812(B)(1) to expand the specific information to be reported annually by a utility to include kWhs of energy produced within its service territory for which the affected utility does not own the associated RECs, which must be differentiated from the kWhs of energy for which the affected utility does own the RECs; and

e. Amend § 1812(C) to allow the Commission to "consider all available information" to determine whether an affected utility's compliance report satisfies the REST rules.

54. With the changes set forth in the 11/3 Comments, the proposed rules would do the following (modifications in bold):

a. Create a new § 1805(F) stating that a REC created by production of renewable energy not owned by an affected utility is owned by the entity creating the REC and that an affected utility cannot use or extinguish such a REC without the entity's approval and documentation from the entity, even if the Commission "acknowledges" **the reporting of** the kWhs associated with the REC;

b. Create a new § 1805(G) announcing that the reporting of kWhs associated with non-utility-owned RECs "will be acknowledged" **for reporting purposes, but will not be eligible for compliance with § 1804 and § 1805**;

c. **Eliminate the word "Compliance" from the title to § 1812;**

d. Amend § 1812(A) to expand the scope of the information to be reported annually by a utility to include "other relevant information";

e. Eliminate the word "compliance" from the introductory language in § 1812(B);

f. Amend § 1812(B)(1) to expand the specific information to be reported annually by a utility to include kWhs of energy produced within its service territory for which the affected utility does not own the associated RECs, which must be differentiated from the kWhs of energy for which the affected utility does own the RECs; and

. . .

. . .

g. Amend § 1812(C) to allow the Commission to "consider all available information" to determine whether an affected utility's ~~compliance~~ report satisfies the REST rules.

Reasons for the Rulemaking

55. In her letter of May 21, 2014, Commissioner Brenda Burns emphasized that the purpose for revising the REST rules was to allow the Commission to know how many renewable energy kWhs are being produced within affected utilities' service territories through DG, without depriving anyone of a right to own the attributes of a renewable energy product and without weakening, or even being perceived as weakening, the existing REST goals.

56. The NPRM Preamble stated that the proposed rule changes would clarify and update how the Commission deals with renewable energy compliance and related RECs and would address how utilities that are no longer offering DE incentives in exchange for DE RECs would demonstrate compliance with the DE portion of the REST rules. According to the NPRM Preamble, it is "necessary for the Commission to provide a new framework for considering compliance with the rules" when incentives are not paid, and the proposed rule changes will accomplish this "by noting that the Commission may consider all available information[, including] 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 NPRM Preamble pointed out that utilities will also be required to report renewable production from facilities installed in the utilities' service territories without an incentive and for which the RECs are not transferred to the utilities and that "***these non-utility owned RECs will be acknowledged for informational purposes by the Commission*** . . . [to] protect the value of RECs and avoid the issue of double counting."[28] The NPRM Preamble also stated the following, in reference to the affected utilities' new reporting of non-incentivized DE production within their service territories: "***This reporting is intended to be for informational purposes only***."[29]

. . .

[28] NPRM Preamble item 8(1), 20 A.A.R. 2750 (emphasis added).
[29] NPRM Preamble item 8(4)(B), 20 A.A.R. 2751 (emphasis added).

57. In spite of the NPRM Preamble language indicating that non-utility owned RECs would be acknowledged for informational purposes (*i.e.*, not for compliance purposes), some commenters expressed concern that the NPRM proposed rules, especially in their use of "acknowledged," were vague and potentially a threat to REC integrity. Commenters expressed concern that acknowledgment would be linked to compliance and would result in double counting of RECs not owned by affected utilities, which some asserted would be a taking of the value of those RECs from their owners. In response to the comments criticizing the NPRM language as vague and potentially damaging to REC integrity and value, Staff filed its 11/3 Comments to clarify further the meaning and intent behind the NPRM language. In the 11/3 Comments, Staff eliminated references to "compliance" reporting and clarified that the kWhs associated with RECs not owned by a utility, although reported by a utility, would not be eligible to be used for compliance with the REST rules. Staff asserted that the suggested changes in the 11/3 Comments are intended only to clarify the proposed rule language to reflect what was included in the Preamble. Staff does not believe that the rule language revisions suggested in the 11/3 Comments change the benefits and burdens of the rulemaking as proposed in the NPRM and does not believe that those suggested revisions constitute a substantive change.

Additional Information from Staff & the Legal Division

58. At the oral proceedings for this matter, Staff provided the following additional information related to the REST rules, the renewable energy market, and the rulemaking:

a. Staff notified stakeholders of the proposed changes to be included in the NPRM through an August 8, 2014, memorandum that was sent to a wide variety of potentially interested parties using the service list in this docket, the service list in the Track & Record Docket, a list of all affected utilities not included in those service lists, and the Executive Secretary's office "blast list" of persons who might be interested in Commission proceedings. (Tr. I at 6-7.)

b. Staff believes that the rule language as proposed in the NPRM was clear and offered the 11/3 Comments as an effort to provide some additional clarification in response to some filings that have been made in the docket. (Tr. II at 6.)

c. The Tucson DG market has taken off in recent months like it never has before, and the utilities are not receiving those RECs. (Tr. I at 8.)

d. The rule revisions will provide the Commission and the public the benefit of knowing about all Arizona renewable energy market activity, even though the non-utility-owned RECs are not to be used in any way toward compliance. (Tr. I at 8-9.) It is in the public interest to have clarity regarding who owns RECs and for double counting to be avoided. (*Id.*) The utilities will benefit from the clarity provided regarding how to pursue compliance going forward "through, for example, waiver requests" and with "market-based information that could be considered by the Commission that would not be tied to those nonutility-owned RECs that aren't being counted." (Tr. I at 9.)

e. The REST rules allow for RECs to be obtained on a utility-scale level through purchase power agreements, such as the one through which TEP obtains both power and RECs from a 50 MW wind farm in New Mexico. (Tr. I at 21.)

f. There is currently nothing to prohibit a utility from owning residential DG, although Staff understands § 1805(D) to prohibit a utility from owning commercial DG. (Tr. II at 8-9.) TEP has received a waiver from this prohibition in order to implement its Bright Roofs program, which is for non-residential DG. (Tr. II at 9.)

g. If a utility desires to use REST funding to implement renewable energy programs or to build or obtain renewable energy facilities, the utility must first obtain Commission approval. (Tr. I at 14-16.) If a utility intends to invest its own money to pursue renewable energy facilities, it is not required to obtain prior Commission approval before doing so. (*Id.*) The utility would then request rate treatment for such an investment in its next rate case. (*Id.*)

h. There is currently nothing to prohibit a utility from purchasing DG RECs from REC owners. (Tr. I at 15.) However, according to Staff, since the Track & Record Docket, "the Commissioners have expressed a strong desire to not see ratepayer funds spent when there's distributed generation that's being installed without an incentive." (Tr. I at 15.) Staff stated that buying the RECs would be just like paying incentives for the RECs and that,

because "the market is going gangbusters, . . . there's . . . a strong argument that it doesn't make sense to spend a lot of ratepayer money buying RECs when the market is taking off without needing to spend that money." (Tr. I at 15.) Staff conceded, however, that the funds used for an investment initiated by a utility without prior Commission authorization are not actually ratepayer money, not until recovery for the investment is being provided through ratemaking. (Tr. I at 16.)

i. The pending APS and TEP 2015 REST Implementation Plans, which propose to allow the utilities to establish utility-owned DG systems for residential premises, should be considered at an Open Meeting in the near future, at which time the Commission will provide guidance on utility-owned DG. (Tr. I at 12.)

j. The Commission approves a utility's REST Implementation Plan for each year, typically with some amendments. (Tr. I at 16.)

k. The Commission historically has not made determinations regarding whether a utility's operations for a specific year did or did not result in the utility's compliance with the REST rules requirements. (Tr. I at 16-17.). The Commission could make that determination, although the REST rules do not require it to do so. (*Id.*) The Commission is authorized by the REST rules to sanction utilities for failure to reach compliance. (*Id.*)

l. The Commission historically has not made determinations regarding whether a utility's operations for a specific year have or have not resulted in the utility's compliance with its Commission-approved REST Implementation Plan. (Tr. I at 17.)

m. The Commission receives counts of RECs acquired by utilities in their annual reports filed under the REST rules each April, but the Commission does not keep a count of RECs, and Staff did not recall any Commission order ever saying X utility has this many RECs. (Tr. I at 17-18.)

n. Utilities' "compliance reports" are filed by the utilities in April and are looked at by Staff, but there is not a formal processing requirement for them, such as a requirement that Staff must make a recommendation for consideration at an Open Meeting. (Tr. I at 34.) The compliance reports are primarily used during the review of the REST Implementation

Plans that are filed by the utilities in July. (Tr. I at 34.)

o. There are two REC markets—the compliance market and the voluntary market—and Arizona's primary market has been the compliance market because of the REST rules. (Tr. I at 24.)

p. For Commission purposes, RECs in Arizona were created when the REST rules were created, to serve as a vehicle for compliance with the rules, although some would say that the national renewable energy market would have recognized that someone put in renewable energy installation in Arizona and that there was a REC related to that. (Tr. I at 19.) When people discuss Arizona RECs, they are generally talking about compliance with the REST rules. (Tr. I at 18.)

q. Although not every jurisdiction uses the same unit to measure a REC (kWh versus MWh, for example), the general idea is that RECs capture the renewable and environmental characteristics of the renewable energy produced. (Tr. I at 19-21.) The RECs' purpose is to recognize the value of renewable energy beyond the electrons flowing through the power lines, the value of a renewable energy electron over an electron from a coal plant or a natural gas plant. (Tr. I at 21.)

r. While Staff is very involved in examining EPA Rule 111(d) and its implications, Staff considers it premature to consider whether Rule 111(d) should impact the Commission's decision concerning whether and how to go forward with this rulemaking. (Tr. I at 24.) Staff believes that the interaction between the proposed EPA rules and the REST rules is something that will need to be considered down the road, but the EPA rules are not yet finalized. (Tr. II at 35.)

s. The term "acknowledge," as used in the proposed rules, is meant to be understood consistent with a standard dictionary definition of the term—to accept or not to deny the truth or existence of something. (Tr. I at 26.) In other words, it is intended to denote a recognition that something exists. (Tr. I at 26.) The addition of the language regarding acknowledgment in the 11/3 Comments was not intended to change what the Commission considers (from the kWhs themselves to the reporting of the kWhs), just to make it clear that

the Commission is not considering the information for compliance purposes. (Tr. I at 26-27.) Staff stated that there is not a problem with noting the amount of kWhs as long as the Commission is not using the information for compliance purposes. (Tr. I at 27.)

t. Staff does not believe that the Commission would be prevented from acknowledging the existence of renewable energy in Arizona in any given utility's service territory if this rulemaking were not completed, as the Commission could insert a line in REST Implementation Plan orders, for example, saying that it acknowledged the non-utility owned generation. (Tr. I at 69.)

u. While the rulemaking initially was being pursued to address the issue of compliance, and that is still part of the discussion, a major issue that arose during the process was the interest many parties have in protecting the value of the RECs. (Tr. II at 5.) Also, the Commission expressed a strong interest in knowing what is happening in the market, as to both installations for which the utilities get the RECs and installations for which they do not. (Tr. II at 5.)

v. The purpose of § 1812(B)(1) is to create a new reporting requirement that includes reporting of both production from the facilities for which a utility owns the RECs and from the facilities for which the utility does not own the RECs, to meet the Commission's stated interest in knowing about everything that is out there. (Tr. I at 33-34.)

w. Once a REC has been used by an affected utility for purposes of compliance, it can no longer be used for purposes of compliance. (Tr. I at 38.) Staff believes that the reporting of energy by an affected utility, when the affected utility does not own the REC from the energy, has no effect on the usability of the REC or the energy. (Tr. I at 38.) One of the things Staff was trying to clarify in the 11/3 Comments was that if the utility has not paid an incentive and thus has not acquired a REC, the person who owns the REC should be able to use the REC in whatever manner they choose. (Tr. I at 38.) The reporting and acknowledgment contemplated in this rulemaking are not intended to impinge upon the value of RECs that do not belong to an affected utility. (Tr. I at 38-39.) Thus, those RECs that do not belong to an affected utility are not being used toward compliance. (Tr. I at 39.)

x. Staff does not consider § 1805(G) to create a requirement on the Commission or any other entity. (Tr. I at 28.) When asked whether it serves any purpose, Mr. Gray stated that he thinks it helps to protect the value of RECs by indicating that the RECs are not being counted for compliance, that the production that is occurring is being noted but not counted. (Tr. I at 28-29.)

y. Staff does not believe that the rule revisions will result in any significant burdens. (Tr. II at 6.) The utilities will report more information, but it is information that they generally already have because of the production meters already in place. (Tr. II at 6.) The benefits will be additional clarity concerning compliance, additional protections for the integrity of RECs, and additional information to the Commission that will provide a more complete view of what is happening in the Arizona renewable energy market. (Tr. II at 6-7.)

z. In response to concerns raised by APS about how utilities are to demonstrate compliance if the 11/3 Comments are adopted, Mr. Gray stated that Staff considers the 11/3 Comments to be clarifying in nature and that there has not been "a connection broken with how a utility could reach compliance." (Tr. II at 20.) Mr. Gray stated:

> And I think some of it is there's some nuance to this, but under the REST rules, the only way to demonstrate compliance, as the REST rules are written, is with RECs. So, but with, for example, the statement in the rules about the Commission considering all available information, there's – the Commission could find that the utilities are not out of compliance, which is subtly different than that the utilities are in compliance. Because, again, the REST rules, as written, require RECs for compliance. So if a utility needed 10 percent and they had 8 percent, and they didn't make up that other 2 percent with RECs, they wouldn't be found in compliance, but the Commission could consider market activity, whatever other available information they choose to consider, and decide, you know, hey, like right now the market's going gangbusters, so we're going to find them not out of compliance.[30]

Mr. Gray acknowledged that, from Staff's perspective, a finding that a utility is "not out of compliance" is no different than providing the utility an explicit waiver of compliance. (Tr. II at 28.)

aa. When asked whether Staff prefers and recommends the adoption of the

[30] Tr. II at 20-21.

language of the NPRM as opposed to the 11/3 Comments language, Mr. Gray stated that Staff supports the language as filed. (Tr. II at 28.) Staff also thinks that the 11/3 Comments wording is helpful, if the Commission believes it is necessary. (Tr. II at 28.) Staff thinks that either version of the language is good and would support either one. (Tr. II at 28-29.) From Staff's perspective, the 11/3 Comments revisions were intended just to be clarifying changes, as Staff believes the language in the NPRM accomplished the same thing. (Tr. II at 21.) Staff suggested the changes in the 11/3 Comments, in response to concerns that had been raised, to ensure that everyone understood that non-utility owned RECs could not be counted or used to determine compliance, just as they cannot be used currently to determine compliance. (Tr. II at 22.) Staff felt that taking the term "compliance" out would make it clearer to affected utilities that "while the Commission can look at all information, it cannot rely on nonutility-owned RECs for compliance purposes." Staff does not believe that the suggested changes in the 11/3 Comments modify the Commission's ability to look at market sufficiency information, market installations, capacity levels, production level data, and other information along those lines. (Tr. II at 22-23.) That would all still fall within "all available information." (Tr. II at 22-23.) Staff believes that the clarifying changes in the 11/3 Comments do not change anything, but hoped that they could address the concerns that had been raised while still remaining true to the proposed rules as published in the NPRM. (Tr. II at 23.)

bb. Regarding the CRS email, Mr. Gray stated that CRS always provides a caveat in its responses concerning the possibility that the manner in which something is implemented, or even something that someone says, could be seen by CRS as an issue. (Tr. II at 21.) Mr. Gray said that he considered CRS's caveats to be standard, and he does not believe those caveats mean CRS does not see value in the 11/3 Comments. (Tr. II at 21.)

59. The Commission's Legal Division believes that there likely is a property interest in a REC in light of the REST rules and the fact that a property interest can be either tangible or intangible. (Tr. I at 22.)

60. APS has acknowledged that RECs have value in other forums. (Tr. II at 25.)

61. At the November 12, 2014, oral proceeding, the Legal Division stated that the record

would need to be developed more fully to make a complete analysis of whether there is a property interest in RECs that would be protected under the Fifth Amendment Takings Clause, which provides that private property shall not be taken for public use without just compensation. (Tr. I at 22-23.) The purpose of the Takings Clause is to prevent the government from forcing some people alone to bear public burdens that should, in fairness and justice, be borne by the public as a whole. (Tr. II at 9-10.) Staff does not believe that the proposed rule revisions raise a takings claim, although a potential takings argument could arise if the proposed rule revisions were deemed to be double counting. (Tr. II at 10.)

62. Through the Legal Division, Staff provided the following explanation for why the proposed rules would not result in double counting:

> The provisions of the existing REST rules, and I'll refer you to R14-2-1803(C), already recognize that nonutility RECs belong to the entity that generates the kWh from a qualifying renewable resource.
>
> These rules state that the REC remains with the renewable energy generator until it is specifically transferred. The Commission's rules, therefore, in effect already protect the RECs held by nonutilities. Administrative agencies such as the Commission are required to follow their own rules. Absent a repeal of these provisions, a requirement to count nonutility-owned RECs for utility compliance purposes would likely be inconsistent with the REST rules.
>
> Thus, the amendment proposed to the rules must be read in the context of the rules as a whole. When read as a whole, the proposed modifications to the rules are not vague. Nonutility-owned RECs cannot be used for compliance purposes. The term acknowledge must be read in this context.
>
> Moving on to Staff's clarifying language, that was intended to make the intent of the proposed changes even more clear. SEIA had originally stated that it believed that the proposed rule changes were ambiguous. While Staff does not believe that to be the case, many parties that filed comments on Staff's minor clarifying changes believed that the amendments may be helpful. But, again, Staff believes that the original proposed changes to the rules and Staff's clarifying amendments do the same thing.
>
> Finally, no one has raised a taking claim in the rulemaking case, that I am aware of.[31] The proposals and the record in this case simply do not support a takings claim or a double counting claim. Further, the court

[31] We note that the issue of whether the NPRM would result in a regulatory taking under the Fifth Amendment Takings Clause was raised by commenters, as is described herein.

> cases, and I'm referring to U.S. Supreme Court cases, recognize that taking analyses are a very fact-specific assessment.
>
> At the Tucson public comment session, Staff was asked about using the record in the track and record case to analyze a takings claim. While we believe that the record in that case does contain some helpful information, when looking at this issue, it may not be very helpful for purposes of analyzing the rule changes at issue in this case, because they are different from the proposals that were examined in the track and record case.[32]

Public Comments

63. The Commission received formal comments in this matter in writing and at two oral proceedings. Comments were received addressing both the rules as proposed in the NPRM and the suggested modifications to those proposed rules set forth in the 11/3 Comments.

64. The Staff Report including Staff's summary of the comments received, with Staff's responses thereto, is attached hereto and has been incorporated herein as Exhibit D. Staff does not recommend any modifications to the rules in addition to those included in the NPRM and the suggested modifications in Exhibit B. Staff indicated that it believed that both the NPRM language and the NPRM language modified by Staff's 11/3 Comments are clear and preserve the value of the RECs.

65. Most of the public commenters have raised concerns that the NPRM language would damage the integrity and value of RECs and result in claims of double counting and potentially claims of regulatory taking under the Fifth Amendment Takings Clause. Most of the public commenters also have now expressed support for the modifications suggested in the 11/3 Comments. Specifically, Vote Solar found the NPRM language to be vague regarding whether non-utility owned RECs would be used for REST compliance and objected to such use as a devaluation of RECs that could easily be construed as a regulatory taking. Vote Solar stated that the modifications in the 11/3 Comments would resolve its concerns. DOD/FEA asserted that the NPRM language would effectively destroy REC integrity in Arizona, would render the RECs associated with energy produced at DOD/FEA's Arizona facilities worthless for use toward federal compliance requirements, and would result in double counting and a deprivation of customer property without

[32] Tr. II at 10-12 (footnote added).

just compensation. DOD/FEA suggested that the modifications of the 11/3 Comments would be sufficient to address its concerns, provided that CRS agreed that the modifications would not result in double counting. SEIA and TASC both expressed concerns regarding REC integrity/double counting of RECs prior to the NPRM, and both have now expressed support for the modifications in the 11/3 Comments. RUCO raised concerns about REC integrity and double counting prior to the NPRM and suggested that the NPRM language would result in an annual debate over the meaning and significance of Commission acknowledgment. RUCO stated that the modifications in the 11/3 Comments would reduce debate over the meaning and consequences of the rules and eliminate double counting. Mayor Rothschild asserted that the NPRM would expose the Commission to regulatory takings litigation because property rights inherent in RECs would lose value. Mr. Anderson, the Mayor's Policy Advisor, asserted that the 11/3 Comments appear to address the Mayor's concerns. Mr. Plenk asserted that the NPRM language could create a double counting problem, which the 11/3 Comments would go a long way to eliminate, although he also stated that the Commission should get CRS's view on whether the problem would be resolved. Mr. Bulechek stated that allowing utilities to count non-utility owned RECs for regulatory purposes would be a taking of their value without just compensation, but that informational reporting alone (such as through the modifications in the 11/3 Comments) would be acceptable as long as the utility received no value. Mr. Finefrock suggested that the NPRM would result in legal action such as a proceeding involving the Vermont Public Utility Commission and would risk litigation and Commission liability for damages because RECs are property and the NPRM would make them ineligible for use/sale. Mr. Finefrock did not specifically address the 11/3 Comments. Finally, CRS, which had expressed concern about double counting prior to the NPRM, asserted in the email to Staff/Legal attached hereto as Exhibit C that the 11/3 Comments modifications would not result in double counting and would not render RECs ineligible for certification, provided that the Commission implements the rules consistent with those modifications.

66. While the issue would appear to be one of first impression in Arizona, there is

persuasive authority for the position that RECs are property.[33] The REST rules themselves support the idea that RECs would be considered property under Arizona law, as § 1803(C), (D), and (E) discuss ownership, transfer, acquisition, and contracts for the purchase or sale of RECs, and § 1803(E) expressly differentiates between the transfer of rights concerning energy and the transfer of rights concerning RECs. In addition, § 1804(E) discusses environmental attributes associated with kWhs as an equivalent for RECs, in the context of the RECs associated with kWhs being used up, essentially, if a utility first trades or sells any of the environmental attribute associated with the kWhs. Further, § 1804(G) discusses Commission preapproval of agreements to purchase either energy or RECs. Thus, the Commission's own rules treat RECs as property with value independent from the value of the kWhs of energy with which they are associated.

67. APS is the only commenter that has expressed opposition to the modifications in the 11/3 Comments, based on the assertion that the 11/3 Comments "stripped away alternative means for . . . demonstrating compliance by eliminating the nexus between compliance and the Commissioners' consideration of all available information . . . like market installations and historical and projected production and capacity levels." (Tr. II at 17.) APS has also asserted that the modifications in the 11/3 Comments render the rules unclear. However, APS asserted that it did not believe the NPRM language would allow APS to count non-utility owned RECs toward compliance. (Tr. II at 24.) And APS was unable to identify any difference in the information that it would report to the Commission

[33] *See, e.g., Wheelabrator Lisbon, Inc. v. Department of Public Utility Control*, 931 A.2d 159 (Conn. 2007); *Minnesota Methane, LLC v. Department of Public Utility Control*, 931 A.2d 177 (Conn. 2007). Both of these cases concerned the ownership of RECs associated with electrical output purchased by utilities subject to pre-existing purchase agreements that did not address RECs. The Connecticut Supreme Court held that the Department had jurisdiction to determine ownership of the RECs, that there was substantial evidence to support the Department's determinations that the RECs were owned by the utilities, and that the Department's decision that the utilities were entitled to the RECs did not constitute unconstitutional takings. The long-term purchase agreements in question, created in the 1990s, required the utilities to purchase all of the electricity produced by the plaintiffs' facilities and had been approved by the Department under Connecticut's statutory and regulatory scheme specifically due to the renewable nature of the electricity produced. RECs were not recognized in Connecticut until 2002 and thus were not separately addressed in those purchase agreements. The Department concluded that the RECs were inextricable from the electricity purchased under the purchase agreements because the electricity would not have been eligible for the long-term purchase agreements in the absence of its renewable attributes. The Connecticut Supreme Court deferred to the Department's expertise in interpreting the applicable regulations and statutes. The court noted that other states had addressed the issue of initial ownership of RECs for existing contracts that did not anticipate the creation of RECs, with Colorado, Maine, Minnesota, North Dakota, New Jersey, New Mexico, Nevada, Texas, and Wisconsin all concluding that the RECs were owned by the purchasing utility. (931 A.2d at 174 n.23.) The court further noted that regulatory agencies in Colorado, Nevada, Oregon, Rhode Island, Texas, and Utah had concluded that the RECs associated with purchase agreements executed after the creation of the statutory scheme regulating RECs belong to the generator of the associated energy. (*Id.*)

under the NPRM as opposed to the NPRM as modified per the 11/3 Comments. (Tr. II at 27.) It is difficult to understand APS's concerns if APS did not believe that "acknowledgment" would include counting of RECs (or measuring of the associated kWhs) for purposes of compliance. The only way to comply with the rules currently is by meeting the requirements of § 1804 and § 1805 (or obtaining a waiver).

68. Because the NPRM did not alter § 1804(A) or § 1805(A), each of which specifically requires affected utilities to satisfy annual requirements by obtaining RECs,[34] any interpretation of the NPRM language to allow a path for compliance other than through the acquisition of RECs (or obtaining a waiver) would be in conflict with the plain language of the rules, both as they exist now and as proposed to be amended in the NPRM.[35] Neither this Decision nor the Preambles to the NPRM or Final Rulemaking will be codified in the Administrative Code. Thus, to avoid future interpretation issues, it is important for the rule language to clearly communicate the Commission's intent. Additionally, the Commission has a legal obligation to make its rules clear, as a matter of ensuring due process for those subject to the rules.[36]

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[34] § 1804(A) states: "In order to ensure reliable electric service at reasonable rates, each Affected Utility shall be required to satisfy an Annual Renewable Energy Requirement by obtaining Renewable Energy Credits from Eligible Renewable Energy Resources."
§ 1805(A) states: "In order to improve system reliability, each Affected Utility shall be required to satisfy a Distributed Renewable Energy Requirement by obtaining Renewable Energy Credits from Distributed Renewable Energy Resources."

[35] Arizona Courts will interpret a rule in a manner that harmonizes and gives meaning to all of its components and will assume that an enacting body's decision not to amend or repeal any provision was intentional and that any intention to supersede or repeal any provision is stated clearly. (*See Curtis v. Morris*, 184 Ariz. 393 (Ariz. Ct. App. 1995).) As the court stated in *Curtis v. Morris*, "[i]f the legislature had intended to overturn both its own clear statutory language and the long-standing precedent interpreting that language, we believe the legislature would have made that intention clear." (184 Ariz. at 397.) The court also stated:

> We also believe that our holding is consistent with the canon of statutory construction that prefers an interpretation giving meaning to all parts of a statute over one that makes part of the statute meaningless:
>
> > In construing a statute or rule, we presume that the promulgating body did not intend to do a futile act by including a provision that is not operative or that is inert and trivial. We must give each word, phrase, clause and sentence meaning so that no part of the rule is rendered superfluous, void, insignificant, redundant or contradictory.

(*Id.* (quoting *Patterson v. Maricopa County Sheriff's Office*, 177 Ariz. 153, 156 (Ariz. Ct. App. 1993)).)

[36] "A rule is impermissibly vague if it 'allows for arbitrary and discriminatory enforcement by failing to provide an objective standard for those who are charged with enforcing or applying the law.'" (*Mercy Healthcare Ariz., Inc. v. AHCCCS*, 181 Ariz. 95, 100 (Ariz. Ct. App. 1994) (citation omitted.)) A rule's failure to provide explicit standards, which can lead to arbitrary and discriminatory application, is a violation of due process. (*In re Appeal in Maricopa County Juvenile Action No. JS-5209 and No. JS-4963*, 143 Ariz. 178, 183 (Ariz. Ct. App. 1984).) "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." (*Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).) Vague laws do not provide a person of ordinary intelligence a reasonable opportunity to determine what the law requires and allow for arbitrary and discriminatory enforcement by not providing

Authority for this Rulemaking

69. The Commission possesses the authority to engage in rulemaking under both its constitutional authority and its statutory authority endowed by the legislature. In the NPRM, Staff cited both constitutional authority and statutory authority for this rulemaking.[37]

70. Arizona Constitution Article 15, § 3 ("Art. 15, § 3") provides, in pertinent part:

> The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; . . . Provided further, that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said corporation commission may from time to time be amended or repealed by such commission.

The Arizona Supreme Court has declared that this constitutional provision gives the Commission exclusive authority to establish rates and to enact rules that are reasonably necessary steps in ratemaking and, further, that deference must be given to the Commission's determination of what regulation is reasonably necessary for effective ratemaking.[38]

71. Staff believes that this rulemaking is authorized under the Commission's exclusive ratemaking authority under Art. 15, § 3, although specific statutes were also cited in the Preamble to the NPRM as providing additional authority. Staff does not believe that it is necessary and did not intend to submit the rulemaking to the Attorney General's office for certification under A.R.S. § 41-1044.

72. In *Miller v. Arizona Corporation Commission*, 227 Ariz. 21 (Ariz. Ct. App. 2011), in

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explicit standards for its application, thereby impermissibly delegating basic policy matters for resolution on an ad hoc and subjective basis by those who apply them. (*Id.* at 108-09.)

[37] Specifically, Staff cited the following: Arizona Const. Art. 15, § 3; A.R.S. §§ 40-202, 40-203, 40-321, and 40-322.

[38] *Arizona Corporation Comm'n v. Woods*, 171 Ariz. 286, 294 (1992) ("*Woods*") (concluding that the Commission had the authority under its constitutional ratemaking power to enact its Affiliated Interest rules, because they are reasonably necessary for ratemaking, and giving deference to the Commission's determination of what regulation is reasonably necessary for effective ratemaking).

the face of a collateral attack, the Arizona Court of Appeals determined that the Commission's original adoption of the REST rules had been authorized by the Commission's exclusive and plenary ratemaking authority under Art. 15, § 3. *Inter alia*, the court stated the following:

> In its ratemaking capacity, the Commission looks at more than "setting a fair return on a predetermined value." *Woods,* 171 Ariz. at 296, 830 P.2d at 817. The Commission may take a "broader view" and consider, for example, risks associated with contemplated action or inaction. *See id.* (noting that inter-corporate dealings "can have disastrous consequences for the economic viability of the entire enterprise," ultimately prejudicing ratepayers). Or, as the *Woods* court more colorfully put it, the Commission has "the power to lock the barn door before the horse escapes." *Id.* at 297, 830 P.2d at 818.
>
> The record here establishes a sufficient nexus between the REST rules and ratemaking. Prophylactic measures designed to prevent adverse effects on ratepayers due to a failure to diversify electrical energy sources fall within the Commission's power "to lock the barn door before the horse escapes." *Id.* Indeed, as *Woods* found in the context of inter-company transactions, "[i]t would subvert the intent of the framers to limit the Commission's ratemaking powers so that it could do no more than raise utility rates to cure the damage." *Id.* at 296, 830 P.2d at 817.
>
> In formulating the REST rules, the Commission considered price fluctuations, transportation disruptions, and shortages associated with conventional fuel sources, noting that renewable resources are not subject to these same vagaries. Its findings connect the identified risks to the financial stability of utilities and, therefore, to consumer electric rates. The Commission also found that Arizona's anticipated load growth requires the identification and development of new sources of electrical generation to ensure adequate service to utility customers. It concluded that diversification through the use of renewable energy is directly linked to the "security, convenience, health and safety" of utility customers and the general public.
>
> The record demonstrates a relationship between the REST rules and electric rates. If anything, the ratemaking connection is stronger here than with the affiliated interest rules at issue in *Woods.*[39]

73. The reasons stated by the *Miller* court in concluding that the REST rules as originally promulgated were wholly authorized by the Commission's constitutional ratemaking authority would apply equally to the proposed revisions to the REST rules contemplated herein. Staff's citing statutory authority for this rulemaking does not waive its position that this rulemaking is wholly authorized under Art. 15, § 3.

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[39] *Miller*, 227 Ariz. at 28-29.

74. A.R.S. § 40-202(A) provides: "The commission may supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of that power and jurisdiction." This language, while very broad, has been interpreted by the Arizona Supreme Court as bestowing no additional powers on the Commission other than those already granted by the Arizona Constitution or specifically granted elsewhere by the legislature, although the Court acknowledged that it also provides the Commission the authority to do those things necessary and convenient in the exercise of the powers so granted.[40]

75. A.R.S. § 40-203 provides:

> When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.

76. A.R.S. § 40-321 states, in pertinent part:

> **A.** When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.
>
> **B.** The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity, and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

77. A.R.S. § 40-322(A) states, in pertinent part:

> **A.** The commission may:
>
> 1. Ascertain and set just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished and followed by public service corporations other than a railroad.

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[40] *Southern Pacific Co. v. Arizona Corp. Comm'n*, 98 Ariz. 339, 348 (1965); *see also Phelps Dodge Corp. v. Arizona Elec. Power Co-op, Inc.*, 207 Ariz. 95 (Ariz. Ct. App. 2004).

> 2. Ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished by such public service corporation.

78. The Commission finds that the Commission's constitutional authority wholly authorizes the Commission to make revisions to § 1805 and § 1812 as proposed in the NPRM attached hereto as Exhibit A. The Commission further finds, without waiving its position that the changes are wholly authorized by Art. 15, § 3, that it has statutory authority to make such changes through rulemaking.

Rulemaking Requirements

79. The Commission is an "agency" under the Administrative Procedure Act ("APA"), A.R.S. Title 41, Chapter 6 (A.R.S. §§ 41-1001 through 41-1092.12), and is generally subject to APA requirements.

80. A.R.S. § 41-1001(19) defines a rule as follows:

> "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

81. Under A.R.S. § 41-1057, the Commission is exempted from Article 5 of the APA (A.R.S. §§ 41-1051 through 41-1057), pertaining to the Governor's Regulatory Review Council ("GRRC"), but is required to adopt substantially similar rule review procedures, to include preparation of an EIS.

82. A.R.S. § 41-1044 requires the Attorney General to review rules that are exempt under A.R.S. § 41-1057 and further requires that such rules not be submitted to the Office of the Secretary of State unless first approved by the Attorney General.

83. Although Commission rules generally are subject to review and certification by the Attorney General under A.R.S. § 41-1044 before they become effective, Commission rules promulgated pursuant to the Commission's exclusive and plenary constitutional ratemaking authority need not be submitted to the Attorney General for certification. (*State ex rel. Corbin v. Arizona Corp. Comm'n*, 174 Ariz. 216, 848 P.2d 301 (Ariz. Ct. App. 1992); *Phelps Dodge Corp. v. Arizona Elec.*

Power Coop., 207 Ariz. 95, 83 P.3d 573 (Ariz. Ct. App. 2004).)

84. A.R.S. § 40-1030(A) provides that "[a] rule is invalid unless it is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law."

85. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review, an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025, the agency shall issue a supplemental notice containing the changes in the proposed rule and shall provide for additional public comment pursuant to A.R.S. § 41-1023.

86. A.R.S. § 41-1025 prohibits an agency from adopting a final rule that is substantially different from the rule proposed by the agency in its NPRM and provides that an agency must consider all of the following in determining whether a rule is substantially different from the proposed rule published in the NPRM:

> 1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
> 2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
> 3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.

87. If an agency desires to make a rule substantially different from the rule proposed in an NPRM, A.R.S. § 41-1025(A) allows the agency, in lieu of engaging in supplemental proposed rulemaking, to terminate the existing rulemaking and commence a new rulemaking for purposes of adopting the substantially different rule.

88. Since fiscal year 2009-2010, Arizona has had in place a general rulemaking moratorium, first through creation of the legislature[41] and then through gubernatorial orders. The most recent gubernatorial order, Executive Order 2012-03 ("EO 2012-03"), effective on June 26, 2012, and expiring on December 31, 2014, generally prohibits a state agency from conducting rulemaking except for specific purposes and with prior written approval from the Office of the Governor. However, EO 2012-03 expressly exempts the Commission from its applicability, although

[41] *See* Laws 2010, Ch. 287, § 18 (amending Laws 2009 (3rd Special Session) Ch. 7, § 28).

it encourages all exempted state officials and agencies to participate voluntarily within the context of their own rulemaking processes.

89. Because the Commission finds that this rulemaking is being conducted pursuant to its plenary and exclusive ratemaking authority under Art. 15, § 3, the Commission is not required to obtain Attorney General certification of this rulemaking under A.R.S. § 41-1044 and may instead submit a Notice of Final Rulemaking directly to the Office of the Secretary of State for publication.

90. A.R.S. § 41-1032(A) provides that a final rule filed with the Office of the Secretary of State under A.R.S. § 41-1031 becomes effective 60 days after filing unless the rulemaking agency includes in the preamble information demonstrating that the rule needs to be effective immediately upon filing, for one of five reasons listed in the statute. No information has been provided in this rulemaking to indicate that this rulemaking would need to take effect immediately.

Substantial Change Analysis

91. To determine whether the modifications included in the 11/3 Comments would constitute a substantial change to the rules, we look at the factors listed in A.R.S. § 41-1025. The first of these factors is the "extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests." Aside from the Commission itself, the persons affected by the rule as proposed in the NPRM include affected utilities, customers of affected utilities, and persons involved with the solar industry. As stated previously, Commission Staff made efforts to notify these interested persons in August 2014 by mail to the service lists for the Track & Record Docket and this docket and by email to the Commission's blast list. The publication of the NPRM in the *Arizona Administrative Register* in October 2014 provided notice to the public in general. If the proposed rules were revised through adoption of the modifications included in the 11/3 Comments, the pool of affected persons would not change in any respect. All affected persons should be on notice of the existence of this rulemaking and, further, should be on notice that the rulemaking would affect their interests. Consideration of the first factor does not indicate a substantial change.

92. The second factor is the "extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published

proposed rule." The subject matter of this rulemaking as proposed in the NPRM involves the information that is to be reported to the Commission in annual reports under § 1812, the Commission consideration of that information, and the impacts that Commission consideration is to have on RECs and kWhs that are not owned by utilities. The revision of the proposed rules through adoption of the modifications included in the 11/3 Comments would neither expand nor narrow the subject matter of the rulemaking, which would still involve reporting under § 1812, Commission consideration of the information reported, and the impacts that Commission consideration is to have on RECs and kWhs not owned by utilities. Consideration of the second factor does not indicate a substantial change.

93. The third factor is the "extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead." The effects of the rule, as published in the NPRM, would be that an affected utility's additional reported information would be considered by the Commission in the context of the utility's REST Implementation Plan and would be considered only "for informational purposes"[42]—*i.e.,* not for purposes of compliance—so as to "protect the value of RECs and avoid the issue of double counting."[43] Additionally, because the proposed rules as published in the NPRM made no changes to either § 1804(A) or § 1805(A), utilities would continue to be required to obtain RECs to satisfy annual REST requirements under the proposed rules as published in the NPRM (or to obtain waivers). While some interested persons were concerned that the NPRM proposed rule language signified that non-utility owned RECs (or the kWhs associated with those RECs) would somehow be applied or counted toward determining a utility's annual compliance with the REST rules, the language of the proposed rules as published in the NPRM did not state that. Rather, the proposed rule language required additional reporting regarding such kWhs and RECs and stated that RECs not owned by a utility would be retained by their owners, regardless of any Commission acknowledgment of the associated kWhs. This is consistent with the NPRM rule language, albeit clearer, and would not change the effects of the proposed rules (except to the extent that clarity provides a benefit both to the Commission and regulated or otherwise impacted entities). Thus, consideration of the third factor also indicates that the modifications suggested in the 11/3

[42] Exhibit A, 20 A.A.R. 2750-51, item 8(1), 8(4)(B).
[43] Exhibit A, 20 A.A.R. 2750, item 8(1).

Comments do not reflect a substantial change.

94. Notwithstanding the foregoing discussion, we believe that Staff's suggested changes in its 11/3 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.[44] The NPRM Preamble reflected this in more than one area, and the rulemaking adopted by the Commission will clearly reflect this as well.

Commission Responses to Public Comments

95. A summary of the oral and written comments received October 10 through November 18, 2014, along with the Commission's responses thereto, is attached hereto and incorporated herein as Exhibit E. We find that the summary of comments and the Commission's responses to those comments, as set forth in Exhibit E, are reasonable and appropriate and should be included in the Preamble for a Notice of Final Rulemaking in this matter.

Economic Impact Statement

96. Staff has provided, in the Preamble to the NPRM, information proposed to be used for an EIS to satisfy the requirements of A.R.S. §§ 41-1057 and 41-1055.[45]

97. We find that the information included in the document attached hereto and

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[44] A number of interested persons have made it clear that applying non-utility owned RECs, or the kWhs associated with them, to direct consideration of a utility's REST rules compliance would constitute a counting of the RECs/kWhs that would invalidate those RECs for any other purpose. While some may argue that it is possible to consider those RECs/kWhs without actually counting them, the information provided in this matter is overwhelmingly to the contrary. At the very least, any attempt to consider those RECs/kWhs in relation to a utility's compliance would appear to taint the RECs/kWhs such that their value would be compromised.

[45] Although A.R.S. § 41-1057 exempts the Commission from having its rules reviewed by GRRC and from application of A.R.S. § 41-1055, it also requires the Commission to adopt substantially similar rule review procedures, to include preparation of "an economic impact statement and a statement of the effect of the rule on small business."

incorporated herein as Exhibit F substantially conforms to the requirements of A.R.S. §§ 41-1057 and 41-1055, and we adopt it as the EIS for this rulemaking.

Conclusion

98. Because the Commission desires to be informed on an annual basis of all of the renewable energy production within each affected utility's service territory, along with the RECs associated with that energy and the ownership of those RECs, as well as all other information available concerning the renewable energy market, such as market installations, historical and projected production capacity levels in each segment of the DE market, and other indicators of market sufficiency, it is just and reasonable and in the public interest for the Commission to adopt the amendments to § 1805 and § 1812 proposed in the NPRM.

99. The proposed § 1805 and § 1812, as set forth in the NPRM attached hereto as Exhibit A, should be submitted directly to the Office of the Secretary of State in the form of a Notice of Final Rulemaking package conforming to the requirements of A.R.S. § 41-1001(16)(d) and the Rules of the Office of the Secretary of State.[46] The Final Rulemaking package should include the separate Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F.

CONCLUSIONS OF LAW

1. Pursuant to Arizona Constitution, Art. 15, § 3, the Commission has authority and jurisdiction to amend A.A.C. Title 14, Chapter 2, Article 18 by revising § 1805 and § 1812 as set forth in the NPRM attached hereto as Exhibit A.

2. The revised § 1805 and § 1812, as set forth in Exhibit A, are reasonably necessary steps for effective ratemaking.

3. Because the Commission is adopting the revised § 1805 and § 1812 under its exclusive and plenary constitutional ratemaking authority under Art. 15, § 3, the Commission is not required to submit this rulemaking to the Office of the Attorney General for certification under A.R.S. § 41-1044.

4. Notice of the oral proceedings regarding the NPRM was provided in the manner

[46] *See, e.g.*, A.A.C. R1-1-105(D), R1-1-601, and R1-1-602.

prescribed by law.

5. The amendments to § 1805 and § 1812 proposed in Exhibit A are clear, concise, and understandable; within the Commission's power to make; within enacted legislative standards; and made in compliance with appropriate procedures.

6. The amendments to § 1805 and § 1812 proposed in Exhibit A do not constitute rule changes that are substantially different than the rule changes that would result from the NPRM alone under A.R.S. § 41-1025.

7. Adoption of the amendments to § 1805 and § 1812 proposed in Exhibit A is just and reasonable and in the public interest.

8. The Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F substantially conforms to the requirements of A.R.S. §§ 41-1057 and 41-1055 and should be adopted.

9. The summary of the written and oral comments received regarding the NPRM and the 11/3 Comments, and the Commission's responses to those comments, as set forth in Exhibit E, are accurate, comply with A.R.S. § 41-1001(16)(d), and should be included in the Preamble for the Notice of Final Rulemaking for this matter.

10. It is just and reasonable and in the public interest for the Commission to take the actions described in Findings of Fact No. 99.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts the revised Arizona Administrative Code R14-2-1805 and R14-2-1812 as set forth in Exhibit A hereto.

IT IS FURTHER ORDERED that the Commission hereby adopts the Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff shall prepare and file with the Office of the Secretary of State, for publication as an approved final rule, a Notice of Final Rulemaking that includes the text of the amended R14-2-1805 and R14-2-1812, set forth in Exhibit A, and a Preamble that conforms to Arizona Revised Statutes § 41-1001(16)(d) and includes a summary of comments and Commission responses as set forth in Exhibit

E and an Economic Impact Summary consistent with the Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F. The Commission's Utilities Division Staff/Legal Division Staff shall also file with the Office of the Secretary of State the separate Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F, along with any additional documents required by the Office of the Secretary of State for publication and codification.

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IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff is authorized to make non-substantive changes in the adopted Arizona Administrative Code R14-2-1805 and R14-2-1812 set forth in Exhibit A; the adopted Economic, Small Business, and Consumer Impact Statement attached as Exhibit F; and any additional documents required by the Office of the Secretary of State, in response to comments received from the Office of the Secretary of State during the publication and/or codification process unless, after notification of those changes, the Commission requires otherwise.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 31st day of December 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT
SH:tv

SERVICE LIST FOR: RULEMAKING

DOCKET NO.: RE-00000C-14-0112

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EXHIBIT A

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2772.)

[R14-158]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** — **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:**
   Notice of Rulemaking Docket Opening: 20 A.A.R. 2763, October 10, 2014 (*in this issue*).

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

Name:	Maureen Scott, Esq. Attorney, Legal Division
Address:	Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-3402
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Name:	Robin Mitchell, Esq. Attorney, Legal Division
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DECISION NO. 74882

Name:	Bob Gray Executive Consultant, Utilities Division
Address:	Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
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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

DECISION NO. 74882

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:

DECISION NO. 74882

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
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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:

A public meeting 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.

DECISION NO. 74882

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

R14-2-1805. Distributed Renewable Energy Requirement
R14-2-1812. Compliance Reports

ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF

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.

R14-2-1812. 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.

DECISION NO. 74882

EXHIBIT B

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission
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BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES.

DOCKET NO. RE-00000C-14-0112

STAFF'S COMMENTS

ORIGINAL

The Arizona Corporation Commission ("Commission") Staff files the following comments on the proposed Renewable Energy Standard Tariff ("REST") rule revisions.

I. BACKGROUND.

The proposed rules are the culmination of several Commission proceedings that have addressed how to measure utility compliance with the REST Rules. This issue was first raised by Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP") in their 2012 REST plans, which addressed the issues related to achieving compliance with the distributed energy ("DE") carve-out (required by A.A.C. R14-2-1805) once incentives are no longer offered. *See, e.g.*, Docket No. E-01345A-10-0394.

A.A.C. R14-2-1804 requires every Affected Utility to serve a portion of its annual retail load with renewable energy. Under A.A.C. R14-2-1801(E), -1804, and -1805, thirty percent of an Affected Utility's renewable energy requirements must come from renewable DE. Each year, the renewable energy and the DE requirements increase by a set percentage.

Compliance with the REST Rules is measured by Renewable Energy Credits ("RECs"). The REST Rules define a REC as "the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy Resources." A.A.C. R14-2-1801(N). A.A.C. R14-2-1803 sets forth requirements for the creation and transfer of RECs.

Until recently, Arizona utilities acquired RECs from owners of eligible DE projects through contractual agreements. Under these agreements, customers would transfer DE RECs to the utilities

in exchange for REST incentives, which were used to offset part of the cost of installing DE systems. These incentives have taken the form of residential and commercial up-front incentives ("UFIs") and commercial performance-based incentives ("PBIs"), and are funded by a REST surcharge assessed monthly to every retail electric service. UFIs were as high as $4.00 per watt for residential DE systems in 2006, but had been entirely eliminated by 2013 for some utilities.

In Decision No. 72737 (January 18, 2012), the Commission noted that APS's future ability to meet its annual DE REST requirement might be in question, due to the rapid decrease in the installed costs for solar photovoltaic ("PV") systems and the resulting reduction in APS's REST-funded incentives. Decision No. 72737 ordered APS to suggest possible solutions to the emerging issue in APS's 2013 REST Plan filing.

APS subsequently proposed "Track and Record" in its 2013 REST filing (Docket No. E-01345A-12-0290). Under this proposal, APS would track all energy produced by DE systems that are interconnected with its system, and would then record (or count) that energy for purposes of REST compliance. TEP and UNS Electric, Inc. offered four possible solutions, which partially incorporated similar "Track and Record" proposals.[1]

In its Staff Reports on the 2013 implementation plans, Staff recommended approval of the "Track and Record" methodology for all Affected Utilities. Staff noted, however, that comments had been filed that raised concerns about the "Track and Record" proposal's impact on REC integrity. After the Staff Report was filed, a number of parties filed comments in the APS and TEP 2013 REST dockets, opposing the "Track and Record" methodology. In a subsequent memorandum, Staff recommended a hearing on these issues because of the number and tenor of opposing comments.

The Commission agreed with Staff's recommendation and convened an evidentiary hearing. Thirteen parties participated, presenting twelve witnesses over a five-day period. There were many alternatives discussed, such as requiring utilities to pay to acquire RECs, allowing utilities to obtain RECs as a condition of interconnection or net metering, reducing the REST requirement to reflect non-utility owned RECs, reintroducing up-front incentives, creating a maximum conventional energy

[1] Docket No. E-01933A-12-0296; Docket No. E-04204A-12-0297.

requirement, counting all RECs toward compliance, and monitoring non-utility owned RECs solely for informational purposes.

On February 26, 2014, the Commission docketed Decision No. 74365, its Opinion and Order on Track and Record and Potential Alternatives. That decision authorized each Affected Utility to request, in its next REST Implementation Plan Filing, a full permanent waiver from the requirements of A.A.C. R14-2-1805 for a period of one year, such that the annual requirement would not be rolled into the subsequent year. Under the decision, the Staff Report for each utility implementation plan would include a public interest analysis and recommendation on the requested waiver.

Decision No. 74365 also stated that the Commission would conduct a rulemaking in order to consider different methods for measuring utility compliance with the REST Rules. Staff subsequently opened a rulemaking docket, and then sought comments on several proposals. At an open meeting in July, the Commission directed Staff to prepare a draft Notice of Proposed Rulemaking for the Commission's consideration, which the Commission subsequently adopted in Decision No.74753. The notice of proposed rulemaking explains the purpose of the proposed rules as follows:

> 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 that REC acquisition was predicated upon is no longer occurring.

...

...

...

II. STAFF RECOMMENDS THAT THE COMMISSION ADOPT THE NPRM AS A FINAL RULE IN ORDER TO CLEARLY ESTABLISH THE MEANS BY WHICH THE COMMISSION WILL MEASURE UTILITY COMPLIANCE UNDER THE REST RULES.

Staff believes that the Commission's intent in this rulemaking is to clearly eliminate the specter of double-counting. This intent is demonstrated by the following proposed amendment to R14-2-1805(F), as set forth in the proposed rules:

> 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.[2]

In addition, the proposed amendment (underlined in the following quotation) to the reporting requirements of R14-2-1812(B) also clearly eliminates any possibility of double counting. Each year, Affected Utilities would be required to file the following information:

> The actual kWh of energy <u>produced within its service territory and the actual kWh of energy</u> or equivalent obtained from Eligible Renewable Energy Resources, <u>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 . . . .</u>[3]

These proposed amendments plainly demonstrate that the Commission intends for the RECs to remain with their owners unless specifically transferred.

Some have implied that these clear statements may be obscured by other language in the NPRM, such as the word "acknowledge" in the proposed revisions to R14-2-1805(F) and (G). The weakness with this argument is that it focuses upon the word "acknowledge" in isolation and ignores the context provided by the proposed amendments as a whole. For example, in the above-quoted

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[2] Decision No. 74753, Attachment at 1 (September 15, 2014) (emphasis added).

[3] Decision No. 74753, Attachment at 2 (September 15, 2014) (amending language indicated by underlining).

amendments, it is absolutely clear that double counting is not intended. In addition, the Preamble to the NPRM specifically states that the term "acknowledged" means that non-utility owned RECs will be reported for informational purposes only.

If the Commission were to conclude that additional clarification would be desirable, Staff suggests the following additions, which are set forth in bold type below, to the NPRM's revisions to R14-2-1805(G):

> The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged **for reporting purposes, but will not be eligible for compliance with R14-2-1804 and -1805.**

A similar change (also set forth in bold type) could be made to the NPRM's revisions to R14-2-1805(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 reporting of** kWhs associated with non-utility owned Renewable Energy Credits.

Finally, Staff suggests that the Commission delete the word "compliance" in three places in R14-2-1812: in the heading, in the first sentence in R14-2-1812(B), and at the end of R14-2-1812(C). These suggested changes to the NPRM are shown below:

> R14-2-1812. ~~Compliance~~ Reports
>
> . . . .
>
> B. The ~~compliance~~ report shall include the following information:
>
> . . . .
>
> C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's ~~compliance~~ report satisfies the requirements of these rules.

All of these suggested changes are set forth in Exhibit A to these comments.

These suggested changes are intended to clarify (if the Commission believes that is necessary) that the non-utility owned RECs (or kWhs) will be reported for informational purposes only and will not be used to determine compliance with the REST Rules. Staff believes that adoption of these slight changes (as set forth in Exhibit A) would eliminate any potential for allegations of ambiguity. Adoption of the NPRM as a final rule, with these changes, should completely eliminate any question about the Commission's intent.

III. STAFF'S CLARIFYING MODIFICATIONS DO NOT AMOUNT TO A "SUBSTANTIAL CHANGE" FOR PURPOSES OF A.R.S. § 41-1025(A).

The additions and other minor changes that Staff has suggested would not make the rules substantially different than that which was proposed in the NPRM. Any person whose interests would be affected by the published proposed rules has had adequate notice because Staff's suggested clarifying language does not change the extent, subject matter, or issues involved in the published rules. Further, the effects of the clarifications do not differ from the effects of the published proposed rules. In addition, parties were given further notice of these clarifications through the preamble to the proposed rules that was published by the Secretary of State.

For example, deleting the word "Compliance" from "Compliance Reports" is not a substantial change. This modification merely reflects that the purpose of the reports should be consistent with the published proposed rules. Similarly, clarifying that non-utility owned RECs will not be counted toward utility REST compliance does not change the effects of the published proposed rules; instead, this language simply adds clarity consistent with the overall effects of the proposed rules. Thus, under the criteria set forth in A.R.S. § 41-1025(A), Staff's clarifying language does not constitute a substantial change to the proposed rules, and the Commission may adopt these modifications without delaying the rulemaking process.

. . .

. . .

. . .

IV. CONCLUSION.

For the reasons stated above, Staff recommends that the Commission enact the NPRM as a final rule, with the clarifying additions and modifications set forth in Exhibit A.

RESPECTFULLY SUBMITTED this 3rd day of November, 2014.

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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

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 reporting of*** 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 ***for reporting purposes, but will not be eligible for compliance with R14-2-1804 and -1805.***

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

DOCKET NO. RE-00000C-14-0112

EXHIBIT C

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission
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NOV 13 2014
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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPENED FOR THE PURPOSE OF COMMENCING A PROPOSED RULEMAKING ON THE RENEWABLE ENERGY STANDARD ("RES") RULES AS DIRECTED IN ARIZONA CORPORATION COMMISSION DECISION NO. 74365.	DOCKET NO. RE-00000C-14-0112 **STAFF'S NOTICE OF FILING**

At the Tucson Public Comment session on the proposed REST Rule changes on November 12, 2014, Staff was asked by the Administrative Law Judge ("ALJ") whether it had heard from the Center of Resource Solutions ("CRS") on the proposed revisions. Staff indicated that it had received an email from CRS regarding the changes and that Staff would docket that email for informational purposes. Staff has attached the email from CRS for the Commission's and ALJ's consideration.

RESPECTFULLY SUBMITTED this 13th day of November 2014.

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Original and thirteen (13) copies of the foregoing filed this 13th day of November 2014 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

DECISION NO. 74882

Copy of the foregoing **emailed** this 13th day of November 2014 to:

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Kaye Christine

Maureen Scott

From: Robin Quarrier <robin@resource-solutions.org>
Sent: Monday, November 10, 2014 11:21 AM
To: Maureen Scott; Bob Gray
Cc: Jennifer Martin
Subject: Nov 3 Staff Proposed Changes

Dear Bob and Maureen,

We have reviewed the Staff Comments filed on November 3rd. We don't have the resources to respond formally but wanted to respond to your request for our initial feedback on the proposal. As we read the proposal, the proposed language changes would weaken the REST, which we do not support. However, the REST language, amended by the proposed staff clarifications, particularly differentiating between kWh for which the utility owns the RECs and kWh produced in the service territory for which the utility does not own the RECs, the clarification that the kWh where the RECs are not owned by the utility are not eligible for compliance with the REST, and the removal of the word "compliance" in the titles of sections containing information about kWh where the RECs not owned by the utility, lead us to believe that the resulting policy would not lead to double counting. We cannot make a conclusive determination without seeing the final language and how it is implemented, but this is our current understanding. The language in section R14-2-1805(F) has little or no bearing on the status of the RECs under Green-e Energy.

Even if this language is adopted, a future statement or action by the Commission contradicting the clarified intent that the kWh associated with RECs not owned by the utility are not eligible for compliance, could render the RECs ineligible for Green-e Energy. For example, if the Commission were to count up all the kWh regardless of REC ownership and use that information to determine REST compliance, the associated RECs will likely be ineligible for Green-e Energy due to double counting.

Regards,

Robin

Robin Quarrier
Chief Counsel
Center for Resource Solutions
415-568-4285

EXHIBIT D

MEMORANDUM

TO: Docket Control Center

FROM: Steven M. Olea EA for SMO
Director
Utilities Division

ORIGINAL

DATE: November 20, 2014

RE: STAFF REPORT REGARDING THE PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES (DOCKET NO. RE-00000C-14-0112)

Attached is the Staff Report regarding (1) Utilities Division's summary of written and oral comments received after the October 10, 2014 publication in the Arizona Administrative Register of the Notice of Proposed Rulemaking to Modify the Renewable Energy Standard and Tariff Rules and the Utilities Division's responses to those comments, and (2) Staff's response regarding any updating that is necessary to the Economic, Small Business, and Consumer Impact Statement. Staff recommends approval of the Proposed Rulemaking with or without Staff's November 3, 2014 optional wording clarifications.

SMO:RGG:tdp/JFW

Originator: Robert Gray

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES

DOCKET NO. RE-00000C-14-0112

NOVEMBER 20, 2014

DECISION NO. 74882

STAFF ACKNOWLEDGMENT

The Staff Report for Docket No. RE-00000C-14-0112, was the responsibility of the Staff member listed below.

Robert Gray
Executive Consultant

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INTRODUCTION

On March 31, 2014, Commission Staff ("Staff") filed a memo with docket control to open generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard ("RES") rules as directed in Arizona Corporation Commission Decision No. 74365. On February 26, 2014, the ACC issued Decision No. 74365. In that Decision, the Commission ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs...and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, file proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

On April 4, 2014 Staff filed its Notice of Compliance Filing Per Decision No. 74365, in which Staff provided seven options for the Commission to consider. On July 22, 2014, the Commission directed Staff to move forward with preparing draft RES rules. On October 10, 2014, the Notice of Proposed Rulemaking was published in the Arizona Administrative Register.

In accordance with the Administrative Procedure Act, A.R.S. 41-1001 et seq., and Administrative Law Judge's directive to Staff at the November 10 and 12, 2014 oral proceedings held on this proposed rulemaking, Staff is filing its summary of written and oral comments received since the October 10, 2014 publication of the Notice of Proposed Rulemaking, along with Staff's responses thereto. Staff is also filing its discussion of the Economic, Small Business, and Consumer Impact Statement.

SUMMARY OF WRITTEN AND ORAL COMMENTS AND STAFF RESPONSES TO COMMENTS

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
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")	[initial comments filed November 10, 2014]	
	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.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	APS is analyzing Staff's comments and will respond, if necessary, in responsive comments on November 14.	See discussion of this issue in regard to APS' responsive comments.
	APS has asked the Commission for guidance on how to demonstrate compliance when it no longer purchases RECs with direct cash incentives.	Staff acknowledges this supportive comment. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	The NOPR's proposed revisions provide a reasonable framework for considering compliance when direct cash incentives are no longer available.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	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.	Staff 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.
	Any attempt to factor in the impacts of EPA's Clean Power Plan ("CPP") is premature.	
	[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. Although APS reaffirmed its support for the NOPR, APS	Under the existing REST rules, the NOPR modifications, and Staff's November 3rd optional wording clarifications, 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 both the NOPR modifications and Staff's November 3rd filing, an affected utility is provided with additional

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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 fundamental question unanswered. APS is open to understanding more about	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. Staff's November 3rd revisions do not change this path to demonstrating an affected utility is not out of compliance. 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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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.	
U.S. Department of Defense and Federal Executive Agencies	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.	Staff 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.
	Staff's November 3rd wording changes may address concerns with the NOPR modifications but confirmation should be sought from the Center for Resource Solutions.	Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3rd wording changes, would result in double counting. No change is needed in response to this comment.
Vote Solar	Vote Solar believes key provisions are vague. The proposed rules appear to provide that non-utility owned RECs will be acknowledged by the Commission for informational purposes. Vote	Staff believes the NOPR modifications are clear and that they provide protection for the owners of non-utility owned RECs. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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 Arizona will be unable to receive Green-e Energy and other certifications for their RECs.	
	The clarifying modification proposed by Staff "...will be	Staff acknowledges this supportive comment. No change is needed in

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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.	response to this comment.
	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.	This proposal is outside the scope of this proposed rulemaking. No change is needed in response to this comment.
Residential Utility Consumer Office ("RUCO")	[initial comments filed on November 10, 2014]	
	The Commission should consider alternative policies to resolve the REC issues.	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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	There is no version of the renewable energy policy that stops the outflow of RECs to other states.	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.
	We support Staff's clarification, as it will avoid debate each year on the meaning behind the term "acknowledge".	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	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.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	[responsive comments filed on November 14, 2014] RUCO suggests adding the 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	Staff 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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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.	
Solar Energy Industries Association	[initial comments filed November 10, 2014]	
	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.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	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.	Staff acknowledges this supportive comment. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
Arizona Solar Deployment Alliance	[comment filed on November 14;] 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.	Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3rd filing preserve the DG carve out. No change is needed in response to this comment.
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.	Staff 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.
TUCSON PUBLIC COMMENT SESSION		
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.	Staff does not believe the REST standard will be weakened by the NOPR modifications and the Staff November 3rd filing. Staff 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.
	If a utility uses RECs for compliance purposes, it should have to pay for them.	Staff believes that there is nothing in the NOPR modifications or Staff's November 3rd filing that would allow a utility to use RECs they don't own for compliance

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
		purposes.
Ryan Anderson (the planning, sustainability, and transportation policy advisor to City of Tucson Mayor Jonathan Rothschild).	Mr. Anderson read prepared written comments of Mayor Rothschild into the record. 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.	Staff believes that both the NOPR modifications and Staff's November 3rd wording changes achieve the goals discussed by Mayor Rothschild. No change is needed in response to this comment.
	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 3rd filing may satisfy the Mayor's concerns.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
Bruce Plenk	Mr. Plenk thinks Staff November 3rd comments regarding use of word "acknowledge" in proposed rules is an important clarification.	Staff acknowledges this supportive comment. No change is needed in response to this comment.
	Mr. Plenk believes it may be useful to seek comments from Center for Resource Solutions.	Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
		November 3rd wording changes, would result in double counting. No change is needed in response to this comment.
	Mr. Plenk believes the Commission should preserve the original intent of REST rules, and expand the solar market.	Staff believes that the original intent of the REST rules is preserved by both the NOPR modifications and Staff's November 3rd wording changes. No change is needed in response to this comment.
Terry Finefrock	Mr. Finefrock would like to see CRS comment on the proposed revisions.	Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3rd wording changes, would result in double counting. No change is needed in response to this comment.
	Mr. Finefrock believes there may be contract law implications related to ownership of RECs resulting from the NOPR modifications and Staff's November 3rd wording changes.	Staff does not believe there are any contract law implications resulting from the NOPR modifications or Staff's November 3rd wording changes. No change is needed in response to this comment.
PHOENIX PUBLIC COMMENT SESSION		
Arizona Solar Deployment Alliance	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	Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3rd filing preserve the DG carve out. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	the carve out.	
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.

DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

In the September 19, 2014 Notice of Filing Proposed Rulemaking Documents with the Secretary of State, Staff provided its preliminary summary of the economic, small business, and consumer impact. Staff has reviewed the preliminary summary contained in the September 19, 2014 Notice and does not have any changes to it at this time.

Service List for: Arizona Corporation Commission
Docket No. RE-00000C-14-0112

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EXHIBIT E

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
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")	[initial comments filed November 10, 2014] 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. APS has asked the Commission for guidance on how to demonstrate compliance when it no longer purchases RECs with direct cash incentives. The NOPR's proposed revisions provide a reasonable framework for considering compliance when direct cash incentives are no longer available. APS supports the NOPR proposed rule changes because	 The Commission acknowledges this supportive comment. No change is needed in response to this comment. See discussion of this issue in regard to APS' responsive comments. The Commission acknowledges this supportive comment. No change is needed in response to this comment. The Commission acknowledges this supportive comment. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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.	
	Any attempt to factor in the impacts of EPA's Clean Power Plan ("CPP") is premature.	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.
	[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. 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	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 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

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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 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.	alternative of seeking a waiver of the REST rules. No change is needed in response to this comment.
U.S. Department of Defense and Federal Executive Agencies	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. Staff's November 3rd wording changes may address concerns	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. The Commission believes that the NOPR modifications make it clear

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	with the NOPR modifications but confirmation should be sought from the Center for Resource Solutions.	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.
Vote Solar	Vote Solar believes key provisions are vague. The proposed rules appear to 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 Arizona will be unable to receive Green-e Energy and	The Commission believes the NOPR modifications are clear and that they provide protection for the owners of non-utility owned RECs. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	other certifications for their RECs. 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.	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.
	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.	This proposal is outside the scope of this proposed rulemaking. No change is needed in response to this comment.
Residential Utility Consumer Office ("RUCO")	[initial comments filed on November 10, 2014]	
	The Commission should consider alternative policies to resolve the REC issues.	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.
	There is no version of the renewable energy policy that stops the outflow of RECs to	This issue is outside the scope of rule changes contemplated in this proceeding but may be something

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	other states.	the Commission could consider in the future. No change is needed in response to this comment.
	We support Staff's clarification, as it will avoid debate each year on the meaning behind the term "acknowledge".	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.
	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.	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.
	[responsive comments filed on November 14, 2014] RUCO suggests adding the 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	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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	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.	
Solar Energy Industries Association	[initial comments filed November 10, 2014] 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. 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.	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. 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.
Arizona Solar Deployment Alliance	[comment filed on November 14;] 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.	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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
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.
TUCSON PUBLIC COMMENT SESSION		
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.	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.
	If a utility uses RECs for compliance purposes, it should have to pay for them.	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 Rothschild).	Mr. Anderson read prepared written comments of Mayor Rothschild into the record. 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.	The Commission believes that the NOPR modifications achieve the goals discussed by Mayor Rothschild. No change is needed in response to this comment.
	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	The Commission believes that the NOPR modifications address the Mayor's concerns. No change is needed in response to this comment.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	November 3rd filing may satisfy the Mayor's concerns.	
Bruce Plenk	Mr. Plenk thinks Staff November 3rd comments regarding use of word "acknowledge" in proposed rules is an important clarification.	The Commission believes that the NOPR modifications are clear in regard to the word "acknowledge." No change is needed in response to this comment.
	Mr. Plenk believes it may be useful to seek comments from Center for Resource Solutions.	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.
	Mr. Plenk believes the Commission should preserve the original intent of REST rules, and expand the solar market.	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.
Terry Finefrock	Mr. Finefrock would like to see CRS comment on the proposed revisions.	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.
	Mr. Finefrock believes there may be contract law implications related to ownership of RECs resulting from the NOPR modifications and Staff's November 3rd wording changes.	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.

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
PHOENIX PUBLIC COMMENT SESSION		
Arizona Solar Deployment Alliance	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.	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.
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.

EXHIBIT F

Economic, Small Business, and Consumer Impact Statement Prepared Pursuant to A.R.S. § 41-1057

Note: The Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. However, under A.R.S. § 41-1057, the Commission is required to prepare a "substantially similar" statement.

1. An identification of the rulemaking.

This rulemaking amends A.A.C. R14-2-1805 ("§ 1805") and R14-2-1812 ("§ 1812") in the Commission's Renewable Energy Standard and Tariff ("REST") rules by doing the following:

- Creating a new § 1805(F) stating that a renewable energy credit ("REC") created by production of renewable energy not owned by an affected utility is owned by the entity creating the REC and that an affected utility cannot use or extinguish such a REC without the entity's approval and documentation from the entity, even if the Commission "acknowledges" the reporting of the kilowatt-hours ("kWhs") associated with the REC;
- Creating a new § 1805(G) announcing that the reporting of kWhs associated with non-utility-owned RECs "will be acknowledged" for reporting purposes, but will not be eligible for compliance with § 1804 and § 1805;
- Eliminating the word "Compliance" from the title to § 1812;
- Amending § 1812(A) to expand the scope of the information to be reported annually by a utility to include "other relevant information";
- Eliminating the word "compliance" from the introductory language in § 1812(B);
- Amending § 1812(B)(1) to expand the specific information to be reported annually by a utility to include kWhs of energy produced within its service territory for which the affected utility does not own the associated RECs, which must be differentiated from the kWhs of energy for which the affected utility does own the RECs; and
- Amending § 1812(C) to allow the Commission to "consider all available information" when reviewing an affected utility's annual report filed under § 1812.

The REST rules require an affected utility to serve a growing percentage of its retail sales each year via renewable energy, with a carve-out for distributed energy ("DE"). The REST rules were predicated on utilities acquiring RECs to achieve compliance. In the DE market, RECs were acquired by a utility when the utility gave the entity installing the renewable energy system an incentive. In recent years, these incentives have been nearly or entirely eliminated as market conditions have changed, with greater adoption of DE without incentives. This led to utilities seeking guidance from the Commission as to how they should demonstrate compliance with the DE carve-out of the REST rules when the transaction REC acquisition was predicated upon is no longer occurring.

The Commission has explored this issue in great detail in the context of several consolidated dockets that culminated in Commission Decision No. 74365 (February 26, 2014). That Decision required the Commission's Utilities Division ("Staff") to propose new rules. Staff initially proposed to the Commission seven different concepts for a new regulatory approach to the REST

rules to address the changes in the market. After considering these different concepts and stakeholder comments filed in response to those comments, the Commission directed Staff, in Decision No. 74753 (September 15, 2014), to file a Notice of Proposed Rulemaking using specific language originally suggested by Commissioner Brenda Burns in correspondence to the docket. The specific language was intended to allow the Commission to know how many renewable energy kWhs are being produced within affected utilities' service territories through DG, without depriving anyone of a right to own the attributes of a renewable energy product and without weakening, or even being perceived as weakening, the existing REST goals.

The NPRM Preamble stated that the proposed rule changes would clarify and update how the Commission deals with renewable energy compliance and related RECs and would address how utilities that are no longer offering DE incentives in exchange for DE RECs would demonstrate compliance with the DE portion of the REST rules. According to the NPRM Preamble, the proposed rule changes would accomplish this "by noting that the Commission may consider all available information[, including] 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 NPRM Preamble pointed out that utilities will also be required to report renewable production from facilities installed in the utilities' service territories without an incentive and for which the RECs are not transferred to the utilities and that "*these non-utility owned RECs will be acknowledged for informational purposes by the Commission* . . . [to] protect the value of RECs and avoid the issue of double counting." The NPRM Preamble also stated the following, in reference to the affected utilities' new reporting of non-incentivized DE production within their service territories: "*This reporting is intended to be for informational purposes only.*"

In spite of the NPRM Preamble language indicating that non-utility owned RECs would be acknowledged for informational purposes (*i.e.*, not for compliance purposes), commenters expressed concern that the NPRM proposed rules, especially their use of "acknowledged," were vague and potentially a threat to REC integrity. Commenters expressed concern that acknowledgment would be linked to compliance and would result in double counting of RECs not owned by affected utilities, which some asserted would be a taking of the value of those RECs from their owners and potentially a regulatory taking in violation of the Fifth Amendment Takings Clause. In response to the comments criticizing the NPRM language as vague and potentially damaging to REC integrity and value, Staff filed Comments in the docket on November 3, 2014, ("11/3 Comments") to clarify further the meaning and intent behind the NPRM language. In the 11/3 Comments, Staff eliminated references to "compliance" reporting and clarified that the kWhs associated with RECs not owned by a utility, although reported by a utility, would not be eligible to be used for compliance with the REST rules. Staff asserted that the suggested changes in the 11/3 Comments are intended only to clarify the proposed rule language to reflect what was included in the Preamble. Staff does not believe that the rule language revisions suggested in the 11/3 Comments change the benefits and burdens of the rulemaking as proposed in the NPRM and does not believe that those suggested revisions constitute a substantive change.

The Commission agrees that the suggested modifications in the 11/3 Comments do not result in substantive or substantial changes to the rules as proposed in the NPRM and is adopting those

changes in the final rulemaking, to ensure that the final rulemaking is consistent with the Commission's intent that it be informed of all renewable energy production in Arizona without infringing upon any potential property right in RECs and without weakening or creating the perception of weakening the REST rule standards.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking.

The changes to the REST rules will impact the electric utilities regulated by the Commission, customers of the electric utilities regulated by the Commission, the solar industry, and the Commission itself. The changes may also impact other renewable energy industries, to the extent they are involved with DE, in the same manner and to the same extent as similarly situated participants in the solar industry would be affected.

3. A cost benefit analysis of the following:

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

The Commission will benefit as a result of receiving a more complete picture of Arizona's renewable energy market by having information on all DE production provided in utility reports required to be filed annually under the REST rules. The Commission will also benefit from receiving and being able to consider any other relevant available information, such as information related to market sufficiency and activity. The Commission will incur minimal added costs from processing this additional information, but these costs should be relatively consistent with the costs the Commission has typically incurred in performing an analysis of the DE market in conjunction with utilities' annual REST Implementation Plans. The Commission does not anticipate that it will need to make any change in personnel resources as a result of the revisions to the rules and does not believe that the changes to the rules should have any impact on any other state agency.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.

There should be no impact to political subdivisions because the Commission does not have jurisdiction over political subdivisions, and the REST rules do not apply to them.

c. The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking.

Electric utilities subject to the REST rules will have a better understanding of the Commission's approach to the DE carve-out of the REST rules in a post-incentive environment. Utilities will be required to report additional information in their annual reports under the REST rules, in the form of data regarding all DE production within their service territories, including DE production for which no incentives have been paid and the RECs are not owned by the utilities. Utilities are already required to meter all DE production within their service territories, so the utilities should already have all of this information available and should not be burdened by the requirement to include it in their reports required to be filed annually under the REST rules. Utilities may also choose to report additional relevant information related to market activity. This information should be readily available to the utility, and a utility would not be significantly burdened if it

chose to include additional relevant information in its annual report. Additionally, any burden on an affected utility from such inclusion would result from the utility's choice rather than as a direct result of the rules.

Members of the solar and any other renewable energy industries involved in DE will be benefited because the rules will clarify the Commission's approach to the DE carve-out of the REST rules in a post-incentive environment, making it clear that the Commission will administer the REST rules in a manner that protects the ownership and value of RECs that are not owned by affected utilities. The Commission understands that some interested persons consider REC ownership to involve property rights that are protected under the Fifth Amendment Takings Clause, and the Commission's rules adopted herein are intended to have no detrimental impact upon any such property rights that may exist. The Commission's revisions to the REST rules are intended to ensure that REC integrity is protected and that double counting of RECs does not occur as the result of any Commission action.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rulemaking.

The Commission does not believe that this rulemaking will have any impact on private or public employment in any entity directly affected by the rulemaking.

5. A statement of the probable impact of the rulemaking on small businesses. The statement shall include:

a. An identification of the small businesses subject to the rulemaking.

The Commission does not believe that any of the affected utilities subject to the rules would qualify as small businesses as defined in A.R.S. § 41-1001. The Commission does believe that some solar or other renewable energy industry participants may be small businesses. Status as a small business should not change the manner or extent to which a market participant would be impacted by this rulemaking.

b. The administrative and other costs required for compliance with the rulemaking.

Affected utilities will incur minimal additional costs related to the creation and submission of their reports filed annually under § 1812, as the utilities will be required to provide additional information in those reports. The additional costs will be minimal, however, because the new information to be provided should be readily available to the utilities. The changes to the rules do not create any other new obligations.

c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The Commission does not believe that any of the affected utilities subject to the rules would qualify as small businesses as defined in A.R.S. § 41-1001 or that any impact on any of the affected utilities as a result of this rulemaking would be sufficiently significant to make reduction possible or necessary. Nor does the Commission believe that this rulemaking will result in any adverse impacts on any small businesses that may be impacted.

d. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking.
Customers will benefit from the certainty the rule revisions will provide regarding the treatment of RECs by the Commission in a post-incentive environment. Customers will be able to retain the value of any RECs they own and thus will be able to use those RECs in any manner that they see fit, including making those RECs available for sale. The Commission understands that some interested persons consider REC ownership to involve property rights that are protected under the Fifth Amendment Takings Clause, and the Commission's rules adopted herein are intended to have no detrimental impact upon any such property rights that may exist. The Commission's revisions to the REST rules are intended to ensure that REC integrity is protected and that double counting of RECs does not occur as the result of any Commission action.

6. A statement of the probable effect on state revenues.
The rule changes are not expected to have any impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.
The Commission considered numerous alternative options before deciding upon the rule revisions being adopted through this rulemaking. A wide variety of proposals were put forth in utilities' annual REST Implementation Plans, in the Commission docket that led to Decision No. 74365, by Commission Staff in this docket before the Commission issued Decision No. 74753, and by a variety of interested parties who participated in this matter, including the Residential Utility Consumer Office ("RUCO"), affected utilities, members of the solar industry, and various industry and environmental associations. Each alternative had pros and cons as well as proponents and opponents, and the Commission decided on the rule revisions being adopted through this rulemaking because each other option was generally considered to have at least one of the following flaws: it would increase costs paid by ratepayers through the REST surcharge; it would not preserve the 15 percent overall REST requirement; it would not preserve the DE carve-out; it would not provide adequate protection for non-utility owned RECs; or it would be overly complicated, cumbersome, or costly to implement.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.
The Commission has not based any of the rule revisions being adopted herein on any specific data.

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Commissioner

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December 30, 2014

Re: RE-00000C-14-0112

Dear fellow Commissioners, Parties and Stakeholders:

I respectfully dissent from Decision Number 74365 in Docket Number RE-00000C-14-0112 and welcome this opportunity to explain my vote. Earlier this year, I dissented in Decision Number 74753 in this docket because I was concerned that the then proposed rules did not contain a clear solution to the identified purpose of the Rulemaking docket which was to develop "a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of REC's". I am still concerned that the now adopted rules do not resolve the underlying issue of how the Utilities can prove compliance if they do not have REC's.

The dilemma regarding how utilities can demonstrate compliance with the REST rules if customers are entitled to freely convey their RECS and utilities no longer provide incentives has been under lengthy discussion at the Commission for nearly two years. The question of REST compliance in the post incentive era was raised in Arizona Public Service's June 29, 2012 filing of its proposed 2013 REST plan and in that filing APS requested approval of a Track and Record method for meeting its compliance requirements. Tucson Electric Power and UNS Electric, Inc. asked similar questions in their filing of their proposed 2013 REST plan. These inquiries led the Commission to order that APS's Track and Record proposal and other alternatives be subject to a hearing. Fifteen parties participated in this proceeding.

In this Decision, we state "The Commission is obligated to ensure the utilities comply with the Commission's renewable energy standard" and that "action should now be taken to provide as much certainty as possible, under the circumstances, for the Utilities and market participants". I do not believe that the rules adopted in this decision provide such certainty nor definitively solve the problem articulated in the Rulemaking and therefore respectfully Dissent.

Sincerely,

Susan Bitter Smith

Susan Bitter Smith
Commissioner