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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

AZ CORP COMMISSION  
DOCKET CONTROL

2015 JAN 8 PM 1 46

**ORIGINAL**

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

DOCKET NO. RE-00000C-14-0112

**STAFF'S REQUEST FOR AN ERRATA  
PROCEDURAL ORDER**

At the Arizona Corporation Commission's ("ACC") December 18, 2014 Open Meeting, the Commission voted to amend two sections of the Renewable Energy Standards and Tariff ("REST") rules. Decision No. 74882 was docketed on December 31, 2014.

Staff respectfully requests that the Hearing Division issue an errata procedural order in this matter to reflect several minor corrections to the Economic, Small Business and Consumer Impact Statement ("EIS") attached as Exhibit F to Decision No. 74882. Staff has attached the corrected Exhibit F to this request.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January, 2015.

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Original and thirteen (13) copies  
of the foregoing filed this  
8<sup>th</sup> day of January, 2015 with:

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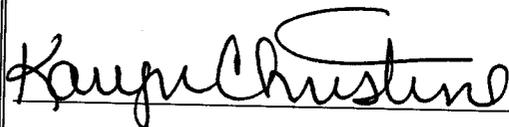
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**EXHIBIT F****Economic, Small Business, and Consumer Impact Statement  
Prepared Pursuant to A.R.S. § 41-1057**

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;
- Amending § 1812(A) to expand the scope of the information to be reported annually by a utility to include “other relevant information”;
- 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 believes that the suggested modifications in the 11/3 Comments are not necessary 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 the 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.