

OPEN MEETING ITEM

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



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ARIZONA CORPORATION COMMISSION

2015 JAN 13 P 3:15

CORP COMMISSION
DOCKET CONTROL

DATE: JANUARY 13, 2015

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

ORIGINAL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Order on:

ORDER CORRECTING DECISION NO. 74882 *NUNC PRO TUNC*

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **10:00** a.m. on or before:

JANUARY 22, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

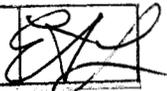
TO BE DETERMINED

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JAN 13 2015

DOCKETED BY 



JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DOCKET NO. RE-00000C-14-0112

DECISION NO. _____

ORDER CORRECTING ERRORS
IN DECISION NO. 74882
NUNC PRO TUNC

Open Meeting
TBD
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On December 31, 2014, the Commission issued Decision No. 74882, adopting revisions to Arizona Administrative Code ("A.A.C.") Sections R14-2-1805 and R14-2-1812. In the Decision, the Commission directed:

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.¹

2. Decision No. 74882 incorporated Revised Brenda Burns Proposed Amendment No. 1 (“Burns No. 1”), which altered language in the Recommended Opinion and Order (“ROO”) and entirely replaced Exhibit E to the ROO, but did not make any changes to Exhibit F to the ROO. Burns No. 1 included a request for “all conforming changes” to be made. As adopted, Decision No. 74882 includes Exhibit F as it appeared in the ROO, with no conforming changes.

3. On January 8, 2015, Staff’s Request for an Errata Procedural Order was filed in this docket, requesting that the Hearing Division issue an Errata Procedural Order in this matter to reflect several minor corrections to Exhibit F to Decision No. 74882. Staff included a “corrected Exhibit F” incorporating those minor corrections.

4. The Exhibit F attached to Staff’s Request for an Errata Procedural Order (“corrected Exhibit F”), which is attached hereto and incorporated herein, makes minimal changes to conform to the revisions to A.A.C. R14-2-1805 and R14-2-1812 made through Burns No. 1 and adopted in Decision No. 74882.

5. Decision No. 74882 should be corrected, *nunc pro tunc*, to reflect the corrected Exhibit F, attached hereto, so that the minimal changes reflected in the corrected Exhibit F are adopted and included in the rulemaking filings made with the Office of the Secretary of State pursuant to Decision No. 74882.

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 as adopted in Decision No. 74882.

2. Decision No. 74882 should be corrected, *nunc pro tunc*, as discussed herein.

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¹ Decision No. 74882 at 49.

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ORDER

IT IS THEREFORE ORDERED that Decision No. 74882 is hereby corrected, *nunc pro tunc*, with the corrected Exhibit F attached hereto.

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 _____ day of _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SH:tv

1 SERVICE LIST FOR:

RULEMAKING

2 DOCKET NO.:

RE-00000C-14-0112

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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.