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BEFORE THE ARIZONA CORPORATION COMMISSION

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SUSAN BITTER SMITH  
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Arizona Corporation Commission

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AZ CORP COMMISS  
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IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY  
FOR (1) APPROVAL OF NET METERING  
COST SHIFT SOLUTION AND (2) PARTIAL  
WAIVER OF THE NET METERING RULES

Docket No. E-01933A-15-0100

ORIGINAL

**RUCO'S BRIEF ON INTERIM NET METERING SOLUTION**

The Residential Utility Consumer Office ("RUCO") submits the following Brief on the issue of whether or not it would be legal to 1) decide Tucson Electric Power's ("TEP" or Company) Application outside of a rate case and if so 2) whether it would be appropriate to decide TEP's Application outside of a rate case under the circumstances of this case. For the following reasons, RUCO believes that the answer is yes to both of the questions.

**INTRODUCTION**

This is not the first time that the Commission has been to this party. In fact, the Commission has visited and moved forward on these very issues in 2013 when APS brought the matter before the Commission. See Decision No. 74202, Docket No. E-01345A-13-0248. RUCO anticipates that most if not all of the arguments both in favor and in opposition to moving forward in this case were presented at some point in that docket. Granted APS and

1 TEP are different utilities with different cost structures and rate designs, the narrow issue here  
2 is the same – whether it would be legal to adjust the net metering rate outside of a rate case.  
3 Most of the parties in the present case were involved in the APS case. In that case the  
4 Commission did reset APS' net metering rate and no party appealed the Commission's  
5 decision to reset APS' net metering rate outside of a rate case. While this point, by itself, does  
6 not make the Commission's ability to proceed in this case necessarily legal, it does establish  
7 precedent to act in the same manner. In fact, to act otherwise, given the Company's  
8 application would be inconsistent from both a procedural standpoint and a policy standpoint.

9  
10 **THE COMMISSION HAS THE LEGAL AUTHORITY TO MODIFY TEP'S NET  
METERING RATE OUTSIDE OF A RATE CASE**

11 The Commission established TEP's net metering tariff outside of a rate case. See  
12 Decision No. 71411 docketed on December 8, 2009. The Commission has not approved a  
13 new net metering tariff since, although the Company has been in for a rate case. See Decision  
14 No. 73912. TEP's request here is for a new Net Metering Tariff which will not increase TEP's  
15 revenues above the revenue requirement set forth in the most recent rate case nor would it act  
16 to increase TEP's rate of return above the authorized rate of return. Company Application at 7.

17 TEP claims its proposal is revenue neutral and will not change in any manner the  
18 Commission's rate base finding made in the last rate case decision nor would it act to increase  
19 the Company's rate of return. Company Application at 7, Decision No. 73912. If in fact TEP's  
20 proposal does not adjust the rate base or the rate of return, then the Company's proposed tariff  
21 would not create any fair value issues. A revenue neutral proposal which has the effect of  
22 simply shifting costs within the residential rate class would not violate fair value. Nor would  
23 there be a question of single issue ratemaking. In Arizona, the Courts have repeatedly found  
24 that the Commission is required to make a fair value finding of a utility's property and use such

1 finding as a rate base for purpose of calculating fair and reasonable rates. See *Scates*, 118  
2 Ariz. 531, 534, 578 P.2d 612, 616 (1978), *Simms v. Round Valley Light & Power Co.*, 80 Ariz.  
3 145, 151, 294 P.2d 378, 382 (1956). In other words, when ascertaining the utility's rate base,  
4 the Commission is required to find fair value. Id. TEP's proposal calls into play a rate design  
5 issue, not a rate base and/or rate of return issue and there would be no effect on the rate base  
6 nor the Company's rate of return.

7         There is also Commission precedent for addressing this issue now. A.A.C. R14-2-2307  
8 requires each electric utility to file net metering tariffs within 120 days of the effective date of  
9 the Rule. TEP's original net metering tariff appears to have been filed in compliance. The tariff  
10 was approved without the benefit of a rate case. The Rule does not require that the tariff be  
11 filed in a rate case. See A.A.C. R14-2-2307(a).

12         A.A.C. R14-2-2305 provides guidance for increasing the net metering rate. It also does  
13 not require a rate case to increase the net metering rate. It does, however, require full support  
14 with a cost of service study and cost/benefit analysis. A.A.C. R14-2-2305.

15         The Commission can also do what TEP ultimately requests for reasons other than legal  
16 concerns. For instance, if the Commission believes that the amount of the cost shift is too  
17 large for any meaningful interim solution to mitigate or would be illegal to modify outside of a  
18 rate case, then the Commission could consider adjusting the Company's Lost Fixed Cost  
19 Recovery Mechanism ("LFCR"). The Commission's action would be consistent with the  
20 flexibility that it has under paragraph 8.2 of the Settlement and Plan of Administration approved  
21 in TEP's last rate case. Decision No. 73912.

22         In sum, there is no legal impediment which prevents the Commission from hearing  
23 TEP's Application outside of a rate case.

24

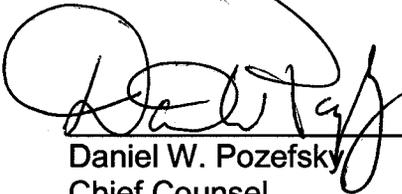
1           **IT WOULD BE APPROPRIATE TO ADDRESS THE COST SHIFT PRIOR TO THE**  
2           **COMPANY'S NEXT RATE CASE**

3           RUCO is concerned that if the Commission defers until TEP's next rate case to decide  
4 this issue, the cost shift will be so great that the potential impact on new solar customers to  
5 address the cost shift could be cost prohibitive. There is little doubt that the cost of solar is  
6 coming down and the number of solar sales has increased significantly. There is also no doubt  
7 that as the number of solar sales continues to grow the cost shift to non-solar customers  
8 continues to increase. It would be counter-productive in the long run to continue to avoid the  
9 issue and defer it to the next rate case.

10           From what RUCO can tell, the Company has not announced nor identified when it will  
11 be filing its next rate case. The Commission should not put the Company in the position of  
12 having to file its next rate case solely on the basis of the net metering issue. Such a course of  
13 action would not be good for either solar or non-solar customers and would not be in the public  
14 interest. Moreover, at that point the amount of the cost shift could be so great that it would be  
15 impractical and maybe even impossible for the Commission to make a fair and reasonable  
16 decision. The Commission should not act in a manner that limits its options on this issue.

17           RUCO would also like to reiterate its concern that whatever solution the Commission  
18 considers, the Commission provides some rate certainty to the solar industry and customers.  
19 RUCO's seeks to "lock-in" the fixed charge for a 20 year period. It should be self-evident that  
20 providing some regulatory certainty is crucial to any business model that involves a long-term  
21 investment. RUCO understands that this Commission cannot bind future Commissions on  
22 rates, but this Commission could express its intent in its Decision by incorporating relevant  
23 language in its Decision.  
24

1 RESPECTFULLY SUBMITTED this 15th day of May, 2015.

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3   
4 Daniel W. Pozefsky  
Chief Counsel

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6 AN ORIGINAL AND THIRTEEN COPIES  
7 of the foregoing filed this 15<sup>th</sup> day  
8 of May, 2015 with:

9 Docket Control  
10 Arizona Corporation Commission  
11 1200 West Washington  
12 Phoenix, Arizona 85007

13 COPIES of the foregoing hand delivered/  
14 mailed this 15<sup>th</sup> day of May, 2015 to:

15 Jane Rodda  
16 Hearing Division  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, AZ 85007

Bradley Carroll  
Tucson Electric Power Company  
88 E. Broadway Blvd., MS HQE910  
P.O. Box 711  
Tucson, AZ 85702

20 Wes Van Cleve  
21 Robin Mitchell  
22 Legal Division  
23 Arizona Corporation Commission  
24 1200 West Washington  
Phoenix, AZ 85007

Kevin Koch  
P.O. Box 42103  
Tucson, AZ 85733

Steve Olea, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

Mark Holoham  
AriSEIA  
2122 W. Lone Cactus Dr., Suite 2  
Phoenix, AZ 85027

Michael Patten  
Jason Gellman  
Snell & Wilmer, LLP  
400 E. Van Buren Street, Suite 1900  
Phoenix, AZ 85004

Court Rich  
Rose Law Group PC  
7144 E. Stetson Dr., Suite 300  
Scottsdale, AZ 85251

1 Timothy Hogan  
Arizona Center for Law in the Public  
2 Interest  
202 E. McDowell Rd, Suite 153  
3 Phoenix, AZ 85004

4 Rick Gilliam  
The Vote Solar Initiative  
5 1120 Pearl St., Suite 200  
Boulder, CO 80302

6 Jill Tauber  
7 Chiyere Osuala  
Earthjustice Washington DC Office  
8 1625 Massachusetts Ave., NW, Suite 702  
Washington, DC 20036-2212

9 Garry Hays  
10 Law Offices of Garry D. Hays, PC  
1702 E. Highland Ave., Suite 204  
11 Phoenix, AZ 85016

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By Cheryl Froul