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Arizona Corporation Commission

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1 Arizona Solar Energy Industries Association (AriSEIA)  
 2 2221 W. Lone Cactus Dr. Suite 2  
 3 Phoenix, AZ 85027  
 4 Tel: (602) 559-4769  
 5 info@ariseia.org

BEFORE THE ARIZONA CORPORATION COMMISSION

6 SUSAN BITTER SMITH, CHAIRWOMAN  
 7 BOB STUMP, COMMISSIONER  
 8 BOB BURNS, COMMISSIONER  
 9 TOM FORESE, COMMISSIONER  
 10 DOUG LITTLE, COMMISSIONER

11 IN THE MATTER OF THE APPLICATION OF  
 12 TUCSON ELECTRIC POWER COMPANY FOR THE  
 13 ESTABLISHMENT OF JUST AND REASONABLE  
 14 RATES AND CHARGES DESIGNED TO REALIZE A  
 15 REASONABLE RATE OF RETURN ON THE FAIR  
 16 VALUE OF ITS OPERATIONS THROUGHOUT THE  
 17 STATE OF ARIZONA.  
 18 AND  
 19 IN THE MATTER OF THE APPLICATION OF  
 20 TUSCON ELECTRIC POWER COMPANY FOR  
 21 APPROVAL OF A NEW NET-METERING TARIFF  
 22 FOR FUTURE NET METERED CUSTOMERS AND A  
 23 PARTIAL WAIVER OF THE COMMISSION'S NET  
 24 METERING RULES.

Docket No.: E-01933A-12-0291

**ARISEIA'S COMBINED INITIAL BRIEF;  
MOTION TO DISMISS; AND MOTION TO  
ENFORCE SETTLEMENT AGREEMENT**

I. Introduction

25  
 26 The Arizona Solar Energy Industry Association hereby files its combined Initial Brief, Motion to Dismiss, and  
 27 Motion to Enforce Settlement Agreement (collectively referred to as the "Combined Motion") in the above  
 28 captioned matters. This Combined Motion is filed in response to Tucson Electric Power's Application for Approval

2014/02/27

1 of a New Net-Metering Tariff for Future Net Metered Customers and a Partial Waiver of the Commission's Net  
2 Metering Rules (the "Application") which seeks to end the policy of net metering ("NEM") in TEP's service  
3 territory while raising rates on an artificially created sub-class of customers and increasing revenue to TEP. TEP  
4 proposes to do all this outside of a rate case and without any the constitutionally required examinations. In addition,  
5 TEP's Application violates the Settlement Agreement that AriSEIA and TEP entered into (along with 14 other  
6 parties) on or about February 2, 2014 that resolved TEP's last rate case (the Settlement Agreement).  
7 This Combined Motion asks that Commission enter an order; 1) enforcing the Settlement Agreement; 2) dismissing  
8 the Application; and 3) ordering that TEP can only bring a similar request in the context of its next rate case  
9 proceeding without expressly violating the terms of the Settlement Agreement and Order 73912 (the Order resolving  
10 TEP's last rate case and incorporating and adopting the Settlement Agreement).

11 II. Argument

12 A. TEP's Application is in violation of the Settlement Agreement and Order 73912 and must be dismissed  
13 AriSEIA was a party to TEP's last rate case and, along with fourteen other parties, entered into a Settlement  
14 Agreement wherein TEP agreed that the Lost Fixed Cost Recovery Mechanism (the "LFCR") resolved the issue of  
15 lost fixed costs arising from the adoption of DG solar. Section 1.8 of the Settlement Agreement sets out that the  
16 parties (TEP included) agree that the provisions of the Settlement Agreement "resolve the issues arising from this  
17 Docket."

18 As a result, if TEP is raising the same issue in the Application that it raised in the rate case, then this Application  
19 must be dismissed for violating the Settlement Agreement. AriSEIA explains below how this Application  
20 unequivocally seeks to modify the remedy agreed upon and ordered in the rate case.

21 1. In its Application, TEP seeks relief from the same issue it raised and was awarded relief from in its last  
22 rate case.

23 TEP raised the exact same issue in the rate case that it does in the Application and as such, the Settlement  
24 Agreement that resolved "the issues arising from the [rate case] Docket" similarly resolved the issues now raised in  
25 the Application in this Docket. TEP's own Chief Executive Officer explained the utility's ask for the LFCR at the  
26 time as follows, "without a mechanism in place to capture and recover these lost revenues [caused by the  
27 implementation of DG and EE], TEP's rates are inadequate as they do not provide the Company with a reasonable  
28 opportunity to recover certain costs or achieve its Commission-authorized rate of return. The proposed LFCR

1 mechanism would alleviate this inequity.” Further, Order 73912 described the issue giving rise to the LFCR by  
2 stating that, “under the current rate structure, when kwh sales decline as a result of [ ] DG systems, TEP does not  
3 recover the fixed distribution and transmission costs that are embedded in its volumetric-based rates, and it does not  
4 have an opportunity to recover certain costs or achieve its Commission-authorized rate of return.”

5 Borrowing language almost identical to the language used in the rate case, TEP describes the issue raised in the  
6 Application by stating that because of, “the Company’s current rate design, DG Customers do not pay for all of the  
7 fixed costs that TEP incurs to serve them because a large portion of those costs are recovered through volumetric  
8 kWh charges.”

9 The rate case and the Application clearly raise the same issue.

## 10 2. TEP must not be permitted to violate the Settlement Agreement

11 AriSEIA was a party to the Settlement Agreement and as a party to it must be able to rely on the promises and legal  
12 obligations set forth in the Settlement Agreement. AriSEIA refrained from litigating the rate case in reliance on the  
13 provisions setting out the LFCR and TEP’s legally binding proclamation under Section 1.8 that the Settlement  
14 Agreement resolved the issues raised in the rate case. What would be the point of a settlement agreement at all if the  
15 parties cannot rely upon it?

16 Recall that the issue of net metering had been brought to the Commission by APS in late 2012 in APS’s Comments  
17 to Staff’s Recommended Opinion and Order in Docket No. E-01345A-12-0290 dated November 15, 2012 and that a  
18 technical conference had ensued to discuss utility claims of lost fixed costs in early 2013. AriSEIA and TEP were  
19 both well aware of this discussion and APS’s proposal for fixed charges or other raised rates on solar customers at  
20 the time that the Settlement Agreement was entered into yet TEP always contended that the LFCR was its preferred  
21 solution.

22 AriSEIA believed that the LFCR was the appropriate way to deal with the issue and agreed with the other  
23 intervenors on that point. Importantly, the LFCR was TEP’s idea. The LFCR was its remedy to this issue –the  
24 same issue it raises in the Application yet again.

### 25 B. TEP is proposing a rate and revenue increase that cannot be heard outside a rate case

26 TEP admits it is proposing to “slow [ ] revenue degradation ” but refuses to admit it is raising rates on all future  
27 solar customers. AriSEIA submits that any dispute about whether or not this is a rate and revenue increase to the  
28 utility is easily resolved by imagining the bill of a customer subject to the regime set up in the Application: if that

1 customer's bill would be higher, as a result of this remedy being instituted, then the Application seeks a rate increase.  
2 If you imagine two hypothetical solar customers with the same system, same usage, and same everything except for  
3 one is subject to this new regime and one is billed under today's rules, and you put their bills side by side what do  
4 you find? Of course the solar customer subject to the Application's request will get a higher bill. That is a rate  
5 increase.

6 Further, TEP appears to ascribe some significance to the fact that it will only apply to future solar customers. Does  
7 this mean that utilities are free to implement increased rates on any new customers without subjecting such new  
8 rates to the careful review in a rate case? Of course not!

9 Increases in revenue must be subject to careful review in a rate case setting where all the implications can be  
10 carefully reviewed. TEP also suggests that this increase in revenue would not take it above its approved rate of  
11 return. First, how do we have any idea if that is true without the exacting review required in a rate case? Second,  
12 this is an admission that there is, in fact, a rate increase occurring.

13 III. Conclusion

14 TEP is in breach of its Settlement Agreement with this Application. TEP agreed with AriSEIA and 14 other parties  
15 that the LFCR solved the exact same issue it re-raises in the Application. If this Commission does not enforce  
16 Settlement Agreements it is going to undermine the ability of parties to rely on such Agreements in the future.  
17 Parties will be forced to litigate issues or be left to wonder if the Agreement reached has any meaning whatsoever.

18 WHEREFORE, AriSEIA respectfully requests that this Commission enter an Order dismissing the Application and  
19 ordering that TEP comply with the Settlement Agreement.

20  
21 AriSEIA respectfully submitted this document in the above captioned matter.

22 Dated this 15th day of May, 2015

23 

24 Arizona Solar Energy Industries Association

25 Mark Holohan, Chairman

26 2221 W. Lone Cactus Dr. Suite 2

27 Phoenix, AZ 85027

28 AN ORIGINAL AND THIRTEEN COPIES  
of the foregoing filed this 15th day of May, 2015 with:

1 Docket Control  
2 Arizona Corporation Commission 1200 West Washington  
3 Phoenix, Arizona 85007

4 COPIES of the foregoing mailed  
5 this 15th day of May, 2015 to:

6 Terrance Spann  
7 9275 Gunston Rd, Ste 1300  
8 Fort Belvoir, Virginia 22060

9 Kyle Smith  
10 U.S. Army Legal Services  
11 9275 Gunston Rd  
12 Fort Belvoir, Virginia 22060

13 Stephen Baron  
14 570 Colonial Park Dr. Ste 305  
15 Roswell, Georgia 30075

16 Karen White  
17 U. S. Air Force Utility Law Field  
18 Support Center  
19 139 Barnes Dr.  
20 Tyndall AFB, Florida 32403

21 Kurt Boehm  
22 Boehm, Kurtz & Lowry  
23 36 E. Seventh St. Suite 1510  
24 Cincinnati, Ohio 45202

25 Annie Lappe  
26 Rick Gilliam  
27 The Vote Solar Initiative  
28 1120 Pearl St. - 200  
29 Boulder, Colorado 80302

30 Kevin Higgins  
31 215 South State Street, Ste. 200  
32 Salt Lake City, Utah 84111

33 Nicholas Enoch  
34 349 N. Fourth Ave.  
35 Phoenix, Arizona 85003

36 Timothy Hogan  
37 202 E. McDowell Rd. - 153  
38 Phoenix, Arizona 85004

39 Gary Yaquinto  
40 2100 North Central Avenue, Suite 210  
41 Phoenix, Arizona 85004

42 Arizona Public Service Company  
43 Leland Snook

1 400 North 5th St., MS 869  
Phoenix, Arizona 85004

2  
3 COASH & COASH  
1802 North 7th Street  
Phoenix Arizona 85006

4  
5 Steve Olea  
1200 W. Washington St.  
Phoenix Arizona 85007

6  
7 Janice Alward  
1200 W. Washington  
Phoenix Arizona 85007

8  
9 Daniel Pozefsky  
1110 West Washington, Suite 220  
Phoenix, Arizona 85007

10  
11 Arizona Corporation Commission  
Dwight Nodes  
1200 W. Washington  
12 Phoenix, Arizona 85007-2927

13  
14 C. Webb Crockett  
Fennemore Craig, P.C  
2394 E. Camelback Rd, Ste 600  
Phoenix, Arizona 85016

15  
16 Cynthia Zwick  
1940 E. Luke Avenue  
Phoenix, Arizona 85016

17  
18 Robert Metli  
2398 E. Camelback Rd., Ste. 240  
Phoenix, Arizona 85016

19  
20 Michael Grant  
Gallagher & Kennedy, P.A.  
2575 E. Camelback Rd, 11th Floor  
21 Phoenix, Arizona 85016-9225

22  
23 John Moore, Jr.  
7321 N. 16th Street  
Phoenix, Arizona 85020

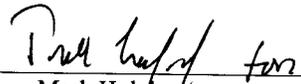
24  
25 Thomas Mumaw  
P.O. Box 53999, Station 8695  
Phoenix, Arizona 85072-3999

26  
27 Court Rich  
7144 E. Stetson Drive, Suite 300  
Scottsdale, Arizona 85251

28  
Lawrence Robertson Jr.  
PO Box 1448

1 Tubac, Arizona 85646  
2 Jessica Bryne  
88 E. Broadway Blvd., P.O. Box 711  
3 Tucson, Arizona 85702  
4 Jeff Schlegel  
1167 W. Samalayuca Dr.  
5 Tucson, Arizona 85704-3224  
6 Warren Woodward  
55 Ross Circle  
7 Sedona, Arizona 86336  
8 Travis Ritchie  
85 Second St., 2nd Floor  
9 San Francisco, California 94105

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12  
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By   
Mark Holohan