

ORIGINAL

Arizona Corporation Commission



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8 BEFORE THE ARIZONA CORPORATION COMMISSION

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10 CHAIRMAN

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12 COMMISSIONER

13 BOB BURNS
14 COMMISSIONER

15 TOM FORESE
16 COMMISSIONER

17 DOUG LITTLE
18 COMMISSIONER

19 **IN THE MATTER OF THE) DOCKET NO. E-01933A-15-0239**
20 **APPLICATION OF TUCSON)**
21 **ELECTRIC POWER COMPANY)**
22 **FOR APPROVAL OF ITS 2016)**
23 **RENEWABLE ENERGY STANDARD) THE ENERGY FREEDOM COALITION**
24 **AND TARIFF IMPLEMENTATION) OF AMERICA'S MOTION FOR**
25 **PLAN.) PROCEDURAL CONFERENCE**

26 **I. Introduction**

27 Energy Freedom Coalition of America¹ ("EFCA") hereby requests a procedural order be
28 entered setting a procedural conference for the purpose of setting a schedule for a formal
evidentiary hearing regarding Tucson Electric Power's ("TEP") 2016 Renewable Energy Standard
Implementation Plan Application (the "2016 Plan"). An evidentiary hearing is necessary because
there are material facts that are either unknown or disputed at this time. The Commission must
resolve these material issues of fact before it can make a decision as to whether or not certain
aspects of the 2016 Plan are in the public interest as required by law. These unknown or disputed
facts can only be discovered and resolved in a formal evidentiary hearing as described in more
detail below.

¹ EFCA's membership is made up of solar companies including Silevo, Inc., Zep Solar, LLC, SolarCity Corporation, and NRG Energy, Inc.

1 **II. Discussion**

2 **A. Background**

3 **1. The 2015 Plan**

4 In its 2015 Renewable Energy Standard Implementation Plan Application (the “2015
5 Plan”), TEP requested approval of a program whereby the utility could develop and own a certain
6 number of distributed solar generation systems (the “UODG Program”). The UODG Program was
7 ultimately approved in Decision 74884 wherein the Commission authorized TEP to expend up to
8 \$10 million² to install up to 600 utility owned DG systems.³ Among other requirements, the
9 Commission ordered TEP to provide a cost/benefit analysis of the UODG Program⁴ and to make
10 sure it maintained “cost parity with current net metering rates.”⁵ Importantly, the Commission’s
11 Decision described the UODG Program as a “pilot program”⁶ with a fair value impact that is “de
12 minimis.”⁷

13 TEP estimated in its 2015 Plan that it planned, “to install approximately 3.5 MW of utility-
14 owned residential rooftop DG, based on an expected installed cost of \$2.85 to \$3.00 per watt.”⁸
15 TEP also wrote in its 2015 Plan that, “installations under this program are likely to represent a
16 relatively small segment of the residential DG market in TEP’s service territory.”⁹ In explaining
17 its authorization of the UODG Program, the Commission specifically referred to the project as a
18 “pilot project” with a limited size and budget.¹⁰ The 2015 Plan was approved without an
19 evidentiary hearing and in the absence of any formal evidence or testimony.

20 **2. The 2016 Plan**

21 In the 2016 Plan, TEP seeks to expand upon the “pilot” UODG Program by “an additional
22 \$15 million and expanding participation by up to an additional 1,000 customers.”¹¹ Cumulatively,

23 ² See Decision 74884, at para 67.

24 ³ See *id.* at para 70(a).

24 ⁴ See *id.* at para 70(d).

25 ⁵ *Id.* para 73.

25 ⁶ *Id.* at page 18, line 4

26 ⁷ *Id.* at page 17, line 26

26 ⁸ In The Matter Of The Application Of Tucson Electric Power Company For Approval Of Its 2015 Renewable
Energy Standard Implementation Plan. Page 7, lines 20 through 22.

27 ⁹ *Id.* at page 8 lines 1 through 2.

28 ¹⁰ See Decision 74884, at para 67.

28 ¹¹ In The Matter Of The Application Of Tucson Electric Power Company For Approval Of Its 2016 Renewable
Energy Standard Implementation Plan, at 10.

1 TEP now is proposing that this “pilot” program should be operating with a budget of \$25 million
2 and 1,600 customers.

3 Further, TEP has proposed treating utility owned, utility scale solar as distributed
4 generation as part of its 2016 Plan.

5 **B. TEP Has Not Complied With Decision 74884**

6 Before even discussing the myriad disputed facts, it is important to note that TEP is seeking
7 to expand the UODG Program despite the fact that it has failed to abide by the Commission’s order
8 approving the program in the first place. The Commission approved the UODG Program as a
9 “pilot” primarily as a source of valuable research and conditioned its approval on TEP meeting
10 several requirements going forward.¹²

11
12 *Since this is a unique pilot program, TEP should form a voluntary, unpaid advisory*
13 *committee that should advise the Company on a defined set of research goals... The group*
14 *should review the direction of the project and provide feedback on program design.*
15 *Reports on the program results as well as any research findings should be made public.*¹³

16
17 Despite the requirement set forth above, TEP has not submitted any report on results or
18 research findings to the public. Further, TEP has not submitted the cost/benefit analysis and has
19 not “report[ed] fully on all aspects of the program”¹⁴ pursuant to the Commission’s requirements.

20 TEP’s attempt to increase this pilot program’s budget by 150% and the number of
21 customers by 167% raises numerous questions about whether or not this is an attempt to transition
22 an approved pilot program into a regular revenue generating utility offering to directly compete in
23 an unregulated market place. TEP should be subject to cross examination as to why it would be
24 appropriate to grow a pilot program that has, as of the date of the 2016 Plan, not produced any
25 useful information and stands in violation of the Commission’s specific direction.

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28 ¹² See Decision 74884 at para 70-71.

¹³ *Id.* at para 71 (emphasis added).

¹⁴ *Id.* at para 70(d)

1 Because TEP already has violated the clear provisions of Decision 74884, there is not much
2 data for the Commission to work with to determine whether or not the pilot program is achieving
3 “research goals” as mandated. There is nothing in the docket to indicate that TEP has formed and
4 convened the mandated Advisory Committee that is supposed to review and report back to the
5 Commission.

6 Yet, TEP wants to dramatically increase the size of this pilot program. If TEP wants to
7 continue to pursue this unproven program, then an evidentiary hearing is warranted.

8 **C. Issues of Fact**

9 Key issues of material fact need to be resolved prior to Commission consideration of the
10 2016 Plan and thus an evidentiary hearing is warranted. Corporation Commission Staff recently
11 agreed that when there are contested issues of material fact, an evidentiary hearing is appropriate.
12 Staff recently wrote, “[] when parties are contesting issues of material fact-as they likely will be
13 in this case-the better practice is to provide each interested party an opportunity to develop a case
14 and test the Company’s assertions through cross examination.”¹⁵

15 An evidentiary hearing is necessary to resolve several factual issues arising out of the 2016
16 Plan. The following is a subset of the many issues of material fact that TASC believes will be
17 contested:

- 18
- 19 • What is the true cost of the UODG Program and what is the true cost of growing
20 the program by 150% next year?
- 21 • What mechanisms are in place to ensure that the UODG program is not subsidized
22 by other utility services, including assurances that all supporting costs and services
23 provided by the utility are fully allocated to the UODG program and that those costs
24 are recovered from program participants?
- 25 • Is TEP recovering its full costs of the UODG program from participants or
26 ratepayers, or is it subsidizing the program with “below the line” funding from its
27 investors?

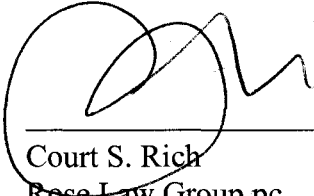
28 ¹⁵ *Staff Response to Trico’s Request for Procedural Order*, Docket No. E-01461A-15-0057 at 3:8-10 (March 19, 2015).

- 1 • What mechanisms are in place (e.g. codes of conduct, competitively neutral and
- 2 non-discriminatory access to critical facilities, information, and services) to prevent
- 3 anticompetitive business practices in TEP's provision of customer solar service?
- 4 • What is the difference in cost to ratepayers between the UODG Program and
- 5 privately owned DG?
- 6 • Is TEP meeting the cost parity stipulation to which it was required to adhere?
- 7 • What is the public interest purpose of the UODG proposal?
- 8 • If the UODG Program is a true "pilot" then what data has been derived; what has
- 9 been learned; what goals have been set for research; and which have been met?
- 10 • What impact has TEP's UODG Program had on the private sector solar providers
- 11 in the TEP service territory?
- 12 • Has TEP's UODG Program created new solar customers that would not have
- 13 otherwise gone solar or has it merely caused customers that would have used a
- 14 private party to go solar to instead use TEP?
- 15 • Has TEP reached new markets with its UODG Program?
- 16 • Has TEP targeted new markets that previously were underrepresented in solar
- 17 utilization?
- 18 • What market segments has TEP targeted and why?
- 19 • How has TEP marketed its UODG Program and is its marketing being done with
- 20 ratepayer or shareholder money?
- 21 • What criteria is TEP using to locate its solar?
- 22 • Has TEP's solar been specifically targeted to achieve grid benefits? Why or why
- 23 not?
- 24 • What benefits are ratepayers getting from the UODG Program that they do not
- 25 receive from privately owned DG solar?
- 26 • What is the long term plan for the growth of the UODG Program?
- 27 • Will the dramatic increase in size of the program have fair value implications?
- 28 • Is TEP earning increased revenue from the UODG Program?

1 **III. Conclusion**

2 In light of the numerous material facts at issue in this matter, EFCA respectfully requests
3 that the Commission issue a procedural order convening a procedural conference for the purposes
4 of setting a schedule for an evidentiary hearing in this matter.

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6 Respectfully submitted this 19th day of November, 2015.

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