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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF)
TUCSON ELECTRIC POWER COMPANY FOR)
APPROVAL OF ITS 2016 RENEWABLE)
ENERGY STANDARD IMPLEMENTATION)
PLAN.)

DOCKET NO. E-01933A-15-0239

**RESPONSE IN OPPOSITION TO
EFCA'S MOTION FOR
PROCEDURAL CONFERENCE**

Tucson Electric Power Company ("TEP" or the "Company"), through undersigned counsel, hereby responds to the Motion for Procedural Conference ("Motion") filed by The Energy Freedom Coalition of America ("EFCA"). In compliance with the Arizona Corporation Commission's ("Commission") Renewable Energy Standard and Tariff rules ("REST Rules"), TEP timely filed its 2016 REST Implementation Plan ("2016 Plan") on July 1, 2016. As contemplated by the REST Rules, and consistent with prior Commission practice, the 2016 Plan sets forth TEP's REST programs and revised REST charges for Commission approval to commence January 1, 2016. However, at the eleventh hour, after months of inaction, EFCA has now requested a procedural conference to set an evidentiary hearing on the Application.

EFCA's motion at this juncture should be viewed as nothing more than a blatant delay tactic designed to disrupt the process. EFCA has not engaged in *any* discovery to determine facts that it now claims are unknown or in dispute. EFCA apparently believes that its willful inaction justifies delay. The Commission should reject EFCA's request for an evidentiary hearing. To do otherwise would condone EFCA's delay tactics, interfere with the Commission's effective and efficient processing of applications under its rules, prejudice the parties to this proceeding who attempt to adhere to fair process before the Commission and encourage similar behavior in the future which is not in the public interest.

1 **A. Background.**

2 As required by the REST Rules, TEP timely filed its proposed 2016 Plan on July 1, 2015.
3 Under the REST Rules, the 2016 Plan sets forth the programs and methods regarding how TEP
4 intends to comply with the REST Rules in 2016 and updates the REST charges accordingly.

5 Commission Staff promptly began its review of the 2016 Plan, including submitting several
6 sets of data requests to TEP. RUCO also intervened and submitted data requests to the Company.
7 Although Staff has not yet issued its Staff Report and proposed order, RUCO recently docketed
8 support of the 2016 Plan based on its review and investigation of the 2016 Plan and the responses to
9 the data requests.

10 Moreover, the Commission's December Open Meeting is scheduled for December 8-9, 2015.
11 Given Staff's diligent review and investigation of the 2016 Plan, TEP anticipates that the Staff Report
12 and related proposed order regarding its 2016 Plan will be filed at any time now to facilitate the
13 Commission's consideration of the 2016 Plan in December so that it may take effect on January 1,
14 2016. This is similar to the process that the Commission followed last year.

15 EFCA did not move to intervene until October 22, 2015, despite knowing full well that the
16 2016 Plan is intended to support compliance with the REST Rules for 2016 and that the Commission
17 typically approves REST Plans at the December Open Meeting. Moreover, even though it was
18 granted intervention on November 2, 2016, EFCA delayed almost three weeks before filing its
19 Motion. Finally, in the five months since TEP filed its 2016 Plan, EFCA has not engaged in any
20 discovery concerning the 2016 Plan, nor has it reviewed the discovery timely promulgated by Staff
21 and RUCO.

22 **B. EFCA's Tactics Seek to Delay and Unreasonably Interfere with Commission**
23 **Process.**

24 EFCA has provided absolutely no reason or justification for the unreasonable delay in filing
25 its Motion. EFCA waited almost four months to intervene – it chose not to intervene in July, August,
26 September and most of October. Once granted intervention, it waited almost three weeks to file the
27 Motion. Nothing precluded EFCA from intervening sooner or from filing its Motion months ago.

1 The REST Rules contemplate a particular process for timely approvals of REST
2 implementation plans. TEP timely filed the 2016 Plan that it intends to rely on to comply with the
3 REST Rules in 2016. Commission Staff has been diligently examining TEP's Application. Staff has
4 expended significant resources reviewing TEP's 2016 Plan and investigating any concerns it might
5 have with the 2016 Plan. RUCO has done the same.

6 EFCA, on the other hand, has ignored the process and timing contemplated under the REST
7 Rules. Ironically, EFCA states that an evidentiary hearing is necessary to determine facts that are
8 "either unknown or in dispute." Yet, EFCA has engaged in no discovery, has not reviewed the
9 discovery that was conducted and has waited almost five months to assert its ignorance of TEP's
10 2016 Plan. Had EFCA participated timely, the parties could have addressed appropriate concerns
11 raised by EFCA.

12 In justifying its intervention, EFCA stated that it would be directly and substantially affected
13 by TEP's 2016 Plan. Moreover, EFCA represented in its motion to intervene that granting its
14 intervention "will not unduly broaden the issues or prejudice other parties to the docket."¹ However,
15 EFCA's unreasonable delay in participating in the docket abuses that status as an intervenor and
16 prejudices the other parties in this docket by its conduct. The Commission often sets intervention
17 deadlines and procedural schedules in an effort to avoid exactly what EFCA is attempting to do here.
18 Well-settled judicial doctrines, such as laches, do not allow parties to gain advantage by sitting on
19 their hands and not acting timely. EFCA's actions here similarly justify precluding the relief it seeks.

20 EFCA cannot be excused from understanding the Commission's process and timing regarding
21 REST plans. Indeed, a similar entity, The Alliance for Solar Choice ("TASC"), which also included
22 SolarCity among its members and was represented by the same counsel as TASC, participated in
23 TEP's 2015 REST Plan docket. TASC used similar tactics – requests for delay at the eleventh hour –
24 in order to delay Commission consideration of TEP's 2015 REST Plan. TASC also suggested that
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27 ¹ EFCA Application for Leave to Intervene at page 2, lines 12-13.

1 evidentiary hearings would be necessary.² If anything, EFCA should understand that timely
2 participation facilitates Commission process under the REST Rules. This near-repeat of these tactics
3 interferes with the Commission and its Staff's efforts to effectively manage its resources and timely
4 process applications under the Commission's rules.

5 Finally, the Commission is under no obligation to allow EFCA's untimely attempt to
6 undermine Commission process and delay TEP's 2016 Plan. Under the REST Rules, any evidentiary
7 hearing concerning a REST Plan is discretionary. The REST Rules certainly do not require an
8 evidentiary hearing. Rather, the REST Rules state only that "The Commission *may* hold a hearing to
9 determine whether an Affected Utility's implementation plan satisfies the requirements of these
10 rules." A.A.C. R14-2-1813.C (emphasis added).

11 **C. The Delay Prejudices TEP and its Customers.**

12 Delaying implementation of the 2016 Plan prejudices TEP and its customers. For example,
13 TEP depends on the 2016 Plan to meet its compliance obligations under the REST Rules. It also
14 depends on the approval of programs budgets and the revised tariff to meet or continue third-party
15 obligations. TEP's customers will benefit from the programs offered in the 2016 Plan, including the
16 rooftop solar program, which EFCA is attempting forestall for its own business reasons. To the
17 extent that EFCA has comments or concerns relating to the 2016 Plan, it may file such comments or
18 concerns in the docket for Commission consideration at the Open Meeting. That is the appropriate
19 process that has been and should be followed.

20 **D. Conclusion.**

21 TEP requests that the Commission reject EFCA's untimely request for an evidentiary hearing
22 in this docket and that the matter proceed in accordance with standard Commission practice under the
23 REST rules.

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26 ² TASC's Opposition to Tucson Electric Power's Utility-Owned Distributed Generation Program (docketed
27 October 29, 2014) at page 2, lines 11-14 (suggesting an evidentiary hearing if the Commission did not reject
the program on legal grounds).

1 RESPECTFULLY SUBMITTED this 23rd day of November 2015.

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