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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Interim Chairman
BOB STUMP
BOB BURNS
TOM FORESE
VACANT

Arizona Corporation Commission

DOCKETED

JAN 06 2016

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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

PROCEDURAL ORDER
(Sets a Hearing)

BY THE COMMISSION:

On July 1, 2015, Tucson Electric Power Company (“TEP” or “Company”) filed with the Arizona Corporation Commission (“Commission”) its 2016 Renewable Energy Standard and Tariff (“REST”) Implementation Plan (“Plan”) in compliance with A.A.C. R14-2-1801 *et seq.* (“REST Rules”).

Intervention was granted to the Residential Utility Consumer Office (“RUCO”) on October 15, 2015, and to the Energy Freedom Coalition of America (“EFCA”) on November 2, 2015.

On November 6, 2015, RUCO filed Comments on TEP’s 2016 Plan which expressed general support for the Plan.

On November 14, 2015, EFCA filed a Motion for Procedural Conference (“Motion”), requesting a schedule for a formal evidentiary hearing on TEP’s 2016 REST Plan. EFCA claimed that there are issues of material fact concerning TEP’s proposal to expand its utility owned distributed generation program (“UODG Program”) that was approved as part of the Company’s 2015 REST Plan.¹

On November 24, 2015, the Commission’s Utilities Division (“Staff”) filed a Response to EFCA’s Motion for Procedural Conference. Staff stated that although it has concerns related to the timeliness of EFCA’s motion, Staff did not oppose holding a procedural conference to discuss the Motion. Staff suggested that a possible alternative to a hearing would be to consider TEP’s UODG

¹ Decision No. 74884 (December 31, 2014). The Commission approved the UODG as a pilot program with a limit on expenditures of \$10 million. In the 2016 REST Plan, TEP proposes to expand the UODG budget to \$15 million.

1 Program as part of TEP's pending rate case that was filed on November 5, 2015.²

2 On November 25, 2015, TEP filed a Response in Opposition to the Motion. TEP argued that
3 EFCA's motion was a "delay tactic" designed to disrupt the process of approving TEP's 2016 REST
4 Plan by January 1, 2016; interfered with the Commission's efficient processing of applications;
5 prejudiced the parties to this proceeding; and encouraged similar behavior in the future which is not in
6 the public interest. TEP asserted that EFCA did not move to intervene until October 22, 2015, waited
7 an additional three weeks before filing its Motion, and did not engage in any discovery concerning the
8 2016 REST Plan. TEP argued that whether to conduct a hearing under the REST Rules is discretionary,
9 and that delaying implementation of the 2016 REST Plan prejudices TEP and its customers.

10 On November 25, 2015, TEP filed a Supplemental Response in Opposition to EFCA's Motion.
11 TEP submitted that it is premature to conduct the requested procedural conference, and that the most
12 appropriate and efficient process would be to proceed with Staff filing its Staff Report and Proposed
13 Order; the parties filing comments or exceptions; the Commission considering the matter at Open
14 Meeting; and then approving, amending or denying some or all of the Proposed Order. TEP stated that
15 as part of the Open Meeting process, the Commission could determine whether an evidentiary hearing
16 is necessary on elements of the 2016 Plan.

17 On December 1, 2015, EFCA filed a Reply in Support of its Motion. EFCA argued that TEP is
18 attempting to avoid scrutiny of its UODG Program, that EFCA's Motion is timely and that an
19 evidentiary hearing will not prejudice TEP or its ratepayers.

20 By Procedural Order dated December 4, 2015, a Procedural Conference was set for December
21 17, 2015, for the purpose of discussing EFCA's Motion.

22 The Procedural Conference commenced as scheduled, with TEP, EFCA, RUCO and Staff
23 appearing through counsel.

24 EFCA argued that a hearing is warranted because there are material issues of fact regarding
25 TEP's proposed UODG. EFCA also raised additional questions of fact surrounding TEP's proposal for
26 a Residential Community Solar Program ("CSP") as part of its 2016 REST Plan.³

27 ² Docket No. E-01933A-15-0322.

28 ³ Under the proposed CSP, TEP would own larger-scale solar projects, not located on customer premises, to provide customers with solar energy. *See* 2016 REST Plan at 10 attached to Application. TEP included the CSP in response to a

1 TEP opposed a hearing on the grounds that the request was made late in the process and TEP
2 and its customers would be prejudiced by a delay in approving its 2016 REST Plan. TEP reiterated its
3 view that the Commission should consider the entire 2016 REST Plan at an Open Meeting and at that
4 time determine if it required additional information.

5 Staff supported a hearing because of the issues of material fact raised by EFCA and due process
6 concerns. Staff suggested that the Commission could carve out the UODG and CSP proposals for
7 hearing in order to address the remainder of TEP's 2016 REST Plan sooner.⁴

8 RUCO proposed that if a hearing is determined to be necessary that it be held in conjunction
9 with TEP's pending rate case for reasons of judicial efficiency.

10 On December 21, 2015, EFCA filed a "Response to Staff Request" in which it presented the
11 issues of fact that it believes affect the proposed CSP.⁵

12 On December 30, 2015, Staff filed a Supplemental Response to ECFA's Motion. After
13 reviewing EFCA's December 21, 2015 Response, Staff agreed that issues of fact relating to the CSP
14 warrant an evidentiary hearing, and supported evaluating both the proposed UODG and CSP in an
15 evidentiary hearing.

16 EFCA identified the following issues related to the UODG:

- 17 • The cost of the UODG Program and the cost of expanding it as proposed;
- 18 • What mechanisms are in place to ensure that the UODG program is not subsidized by
19 other utility services (including assurances that all costs and services provided by the
20 utility are fully allocated to the program and recovered from the program);
- 21 • Whether TEP is recovering its full costs from participants or ratepayers;
- 22 • What mechanisms prevent anticompetitive business practices;
- 23 • What is the cost differential to ratepayers between the UODG and privately owned DG;
- 24 • Whether TEP is meeting the cost parity stipulation;
- 25 • What is the public interest purpose of the UODG proposal;

26 requirement in Decision No. 74884 that TEP include in its 2016 Plan an analysis of larger scale distributed generation
27 options.

28 ⁴ Staff no longer supports addressing the UODG as part of the pending rate case.

⁵ In order to make a well-founded recommendation, Staff requested that EFCA file a list of the issues it identified concerning
the CSP that EFCA had described verbally during the Procedural Conference.

- 1 • If the UODG Program is a true “pilot,” then what data has been derived and what goals
- 2 for research have been set;
- 3 • What impact has the program had on the private sector solar providers;
- 4 • Has the program created new solar customers or merely caused customers who would
- 5 have used a private party to use TEP instead;
- 6 • Has TEP targeted or reached new markets with its UODG Program;
- 7 • How has TEP marketed the program and how has marketing been funded;
- 8 • What criteria is TEP using to locate its solar;
- 9 • Has TEP used the program to achieve grid benefits;
- 10 • What benefits are ratepayers getting from the UODG Program that they do not receive
- 11 from privately owned DG solar;
- 12 • What is the long term plan for the growth of the UODG Program;
- 13 • Will the increase in size of the program have fair value implications; and
- 14 • Whether TEP is earning increased revenue form the UODG Program.

15 EFCA also alleged that even though TEP is seeking to expand the UODG Program, it has failed to
 16 comply with the provision of Decision No. 74884 that requires TEP to make public reports on the
 17 program’s results.

18 With respect to the CSP, EFCA identified the following issues:

- 19 • What is the purpose and effect of TEP’s limiting eligibility for the CSP to only residential
- 20 customers eligible for net metering under Rider R-4, particularly given TEP’s
- 21 simultaneous proposal to double the UODG Program;
- 22 • What is the justification for treating the CSP as “residential distributed generation” under
- 23 the Commission’s REST Rules without also permitting third-party provision of
- 24 community solar to TEP’s residential customers;
- 25 • How is the CSP cost effective for ratepayers;
- 26 • What is the justification for offering participants in the CSP all TEP electric services at a
- 27 flat per-kW rate in a “bundled-bundled” tariff regardless of a participant’s load profile,
- 28 and what is the expected distribution of the type of energy resources used by participants

1 in the CSP by time-of-day and by season;

- 2 • What is the justification for proposing a new DG offering that creates no incentives for a
3 customer to structure his/her usage to minimize peak demand at the same time same that
4 TEP is proposing to restructure the rates of third-party DG customers to incorporate rate
5 designs that allegedly create market signals to better align a customer's usage/demand
6 with the costs imposed;
- 7 • Why is TEP offering prospective customers rate stability under its expanded UODG and
8 CSP at the same time it is proposing revisions to its rate plans for third-party DG
9 customers that allegedly incorporate customer-specific demand determinations and
10 allegedly eliminate predictability for net metering customers; and
- 11 • What protections are available to ensure the competitive viability of third-party DG
12 providers if TEP's CSP and expanded rooftop offerings are provided within TEP's
13 regulated network and/or incorporates flat-rate pricing bundles unavailable to customers
14 of third-party DG providers, and how effective would such protections be.

15 Under the REST Rules, when the Commission approves a REST Plan, it sets the REST
16 surcharge. TEP's proposed 2016 REST Plan contemplates recovering \$48 million through its REST
17 tariff, increasing the REST surcharge from \$0.00800 per kWh for 2015 to \$0.01300 per kWh for 2016,
18 as well as increasing the surcharge caps across rate classes. The REST Rules do not require a hearing
19 on REST Plans, but do recognize that hearings may be held to determine if a proposed plan comports
20 with the REST Rules.⁶

21 The REST Rules also contemplate that the utility will provide data that supports the
22 reasonableness, prudence and level of the asserted costs of the proposed programs. Further, in its
23 consideration of the public interest, the Commission has been concerned that proposed REST programs
24 be effective and economically efficient. In this case, material issues of fact have been raised regarding
25 whether two of TEP's proposed programs are in the public interest. These questions are best resolved
26 in an evidentiary hearing during which assertions of fact will be subject to cross-examination and
27

28 ⁶ A.A.C. R14-2-1813(C).

1 alternative views aired. Staff, who otherwise would prepare a Proposed Order for REST Plans when
2 there has not been a request for a hearing, agrees that a hearing is appropriate in this case. For all these
3 reasons, an evidentiary hearing on TEP's REST Plan will be set.

4 To avoid unnecessarily complicating the pending rate case, and to have a REST Plan approved
5 as soon as possible, all parties, except RUCO, prefer addressing the REST Plan outside of the rate case.
6 Counsel for the parties to this case are also participating in a rate case scheduled for UNS Electric, Inc.,
7 a sister company of TEP, which hearing is set to commence at the beginning of March 2016, and have
8 requested that if a hearing is to be held in this docket, that it be set after the UNS Electric hearing. It
9 was also suggested that the UODG and CSP programs could be carved out for an evidentiary hearing,
10 with the rest of the Plan going before the Commission for consideration more quickly. This last
11 proposal, however, would not permit the Commission to consider the proposed 2016 REST Plan as a
12 whole, and could hamper the Commission's ability to approve a holistic Plan. It could also result in
13 confusion relating to the REST surcharge. At the current time it is not certain whether there are other
14 issues with TEP's proposed 2016 REST Plan in addition to those identified concerning the UODG and
15 CSP. Therefore, the scope of the hearing will include TEP's 2016 REST Plan as proposed.⁷

16 IT IS THEREFORE ORDERED that a **Hearing** in this matter shall commence on **April 5,**
17 **2016, at 10:00 a.m.**, or a soon thereafter as is practical, at the **Commission's Tucson offices, Room**
18 **222, 400 West Congress, Tucson, Arizona 85701.**

19 IT IS FURTHER ORDERED that TEP's **direct testimony** and any exhibits in support of its
20 2016 REST Plan shall be reduced to writing and filed by **February 12, 2016.**

21 IT IS FURTHER ORDERED that any **Staff Report/direct testimony**⁸ and associated exhibits
22 to be presented at hearing on behalf of **Staff or Intervenors** shall be reduced to writing and filed on or
23 before **March 11, 2016.**

24 IT IS FURTHER ORDERED any **rebuttal testimony** to Staff or Intervenor Direct Testimony
25 to be presented at hearing by **TEP, and any responsive testimony by Staff/Intervenors to each**
26 **other's direct testimony** shall be reduced to writing and filed on or before **March 28, 2016.**

27 ⁷ As in any hearing process, the parties' testimony will identify areas of dispute.

28 ⁸ If Staff files direct testimony in lieu of a Staff Report, Staff should include all information that it would otherwise include in a Staff Report when it prepares a Proposed Order.

1 IT IS FURTHER ORDERED that any **surrebuttal testimony** by any party shall be made orally
2 at the hearing.

3 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105,
4 except that all motions to intervene must be filed **on or before March 4, 2016**.

5 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
6 regulations of the Commission, except that through **February 12, 2016**, any objection to discovery
7 requests shall be made within 7 days⁹ of receipt and responses to discovery requests shall be made
8 within 10 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and
9 responses shall be made in 7 days;¹ the response time may be extended by mutual agreement of the
10 parties involved if the request requires an extensive compilation effort.

11 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
12 discovery, any party seeking discovery may telephonically contact the Commission's Hearing Division
13 to request a date for a procedural hearing to resolve the discovery dispute; that upon such a request, a
14 procedural hearing will be convened as soon as practicable; and that the party making such a request
15 shall forthwith contact all other parties to advise them of the hearing date and shall at the hearing
16 provide a statement confirming that the other parties were contacted.¹⁰

17 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
18 the filing date of the motion.

19 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
20 of the response.

21 IT IS FURTHER ORDERED that any motions filed in this matter that are not ruled upon by
22 the Commission within 20 days of the filing date of the motion shall be deemed denied.

23 IT IS FURTHER ORDERED that the Company shall provide public notice of the hearing in
24 this matter, in the following type size, form and style with the heading in no less than 16 point bold
25 type and the body in no less than 10-point regular type:

26
27 _____
⁹ "Days" means calendar days.

28 ¹⁰ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 Comments from the public will be heard and recorded at the beginning of the hearing.
 2 Intervention is not required if you wish to provide public comments, either orally at the
 hearing or in writing at any time.

3 Written public comments may be submitted by mailing a letter referencing **Docket No.**
E-01933A-15-0329 to Arizona Corporation Commission, Consumer Services Section,
 4 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on the
 Commission's website (www.azcc.gov) using the "Submit a Public Comment for a
 5 Utility" function. If you require assistance, you may contact the Consumer Services
 Section at 1-800-222-7000 or (520) 628-6550.

6 **About Intervention**

7 Any person having a direct and substantial interest in this proceeding is entitled to
 8 intervene as a matter of law. If you wish to become a party and participate in the
 evidentiary hearing process, you must file **an original and 13 hard copies** of a written
 9 request to intervene with Docket Control, 1200 West Washington, Phoenix, AS 85007,
no later than March 4, 2016. You also must serve a copy of the request to intervene
 10 on each party of record, on the same day that you file the request to intervene with the
 Commission. The service list can be obtained on the Commission's website
 (www.azcc.gov) by selecting the "eDocket" link and entering "15-0239" in the search
 11 box.

12 All requests to intervene must contain the following:

- 13 1. Your name, address, and telephone number and the name, address and
 the name, address and telephone number of any person upon whom
 14 service of documents is to be made, if not yourself;
- 15 2. A reference to **Docket No E-01933A-15-0239**;
- 16 2. A short statement explaining your interest in the proceeding (e.g., a
 customer of the Company, etc.); and
- 17 3. A statement certifying that you have mailed a copy of the request to
 18 intervene on all parties of record in the case.

19 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
 20 that all motions to intervene must be filed on or before March 4, 2016. **Information**
about intervention and sample intervention requests are available on the
 21 **Commission's website (www.azcc.gov) using the "Intervention in Utility Cases"**
link.

22 **ADA/Equal Access Information**

23 The Commission does not discriminate on the basis of disability in admission to its
 24 public meetings. Persons with a disability may request a reasonable accommodation
 such as a sign language interpreter, as well as request this document in an alternative
 25 format, by contacting the ADA Coordinator Shaylin Bernal, E-mail
 SABernal@azcc.gov, voice phone number 602/542-3931. Requests should be made as
 early as possible to allow time to arrange the accommodation.

26 IT IS FURTHER ORDERED that the Company shall **mail, which may be as bill insert,** to
 27 each of its customers a copy of the above notice by **February 19, 2016**; shall cause the above notice
 28 to be published at least once in a newspaper of local circulation in its service territory, with **publication**

1 completed no later than **February 19, 2016**; and shall make the notice available on its website easily
2 accessible from the homepage.

3 IT IS FURTHER ORDERED that the Company shall file certifications of mailing and
4 publication as soon as practicable after completion.

5 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and
6 publication of same, notwithstanding the failure of an individual customer to read or receive the notice.

7 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
8 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
9 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
10 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
11 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
12 Law Judge or the Commission.

13 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
14 31 and 39 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

15 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to this
16 matter may opt to receive service of all filings in this docket, including all filings by parties and all
17 Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
18 Commission's Hearing Division, via email sent to an email address provided by the party rather than
19 via U.S. Mail. To exercise this option, a party shall:

- 20 1. Ensure that the party has a valid and active email address to which the party has regular
21 and reliable access ("designated email address");
- 22 2. Complete a Consent to Email Service using the form available on the Commission's
23 website (www.azcc.gov) or a substantially similar format;
- 24 3. File the original and 13 copies of the Consent to Email Service with the Commission's
25 Docket Control, also providing service to each party to the service list;
- 26 4. Send an email, containing the party's name and the docket number for this matter, to
27 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to allow
28 the Hearing Division to verify the validity of the designated email address;

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5. Understand and agree that service of a document on the party shall be complete upon the sending of an email containing the document to the designated email address, regardless of whether the party receives or reads the email containing the document; and
6. Understand and agree that the party will no longer receive service of filings in this matter through First Class U.S. Mail or any other form of hard-copy delivery, unless and until the party withdraws this consent through a filing made in this docket.

IT IS FURTHER ORDERED that a party's consent to email service shall not become effective until a Procedural Order is issued approving the use of email service for the party. The Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the Hearing Division has verified receipt of an email from the party's designated email address.

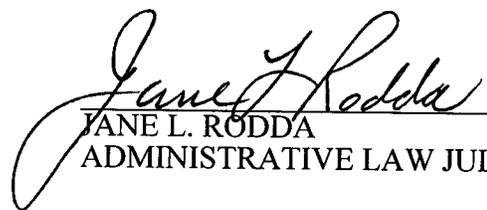
IT IS FURTHER ORDERED that a party's election to receive service of all filings in this matter via email does not change the requirement that all filings with the Commission's Docket Control must be made in hard copy and must include an original and 13 copies.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended pursuant to Rule 6(a) or (3) of the Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 6th day of January, 2016.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed
2 this 6th day of January, 2016 to:

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