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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

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COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

11 **IN THE MATTER OF THE) DOCKET NO. E-01933A-15-0239**
12 **APPLICATION OF TUCSON)**
13 **ELECTRIC POWER COMPANY FOR) THE ENERGY FREEDOM COALITION**
14 **APPROVAL OF ITS 2016 RENEWABLE) OF AMERICA'S OPPOSITION TO TEP'S**
ENERGY STANDARD) MOTION TO BIFURCATE AND TO
IMPLEMENTATION PLAN.) CONSOLIDATE

15 Energy Freedom Coalition of America ("EFCA"), through its undersigned counsel,
16 hereby opposes Tucson Electric Power Company's ("TEP") March 31, 2016 Motion to:

17 1. Bifurcate the TEP-Owned Rooftop Solar ("TORS") program in its entirety from the
18 2016 TEP REST Implementation Plan ("2016 Plan") and consolidate the program (including the
19 TORS tariff rate) into the pending TEP rate case (Docket No. E-01933A-15-0322) ("Rate
20 Case"); and

21 2. Bifurcate TEP's proposed Residential Community Solar ("RCS") program from the
22 2016 Plan and consolidate issues regarding the RCS (including the RCS tariff rate) into the Rate
23 Case, except for the issue of whether the REST Rules should be revised to enable the use by TEP
24 of community solar programs to meet its Distributed Generation ("DG") requirements set out in
25 the REST Rules.¹

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27
28 ¹ EFCA does not oppose the third component of TEP's request, whereby Commission Staff would be required to prepare a Staff Report and proposed order for Commission consideration on the portions of the 2016 Plan that do not involve the TORS and RCS programs, including the 2016 budget, REST surcharge and surcharge caps.

1 TEP's motion is a last minute attempt to avoid a much-needed factual inquiry into
2 whether TEP's proposals with respect to TORS and RCS are "effectively efficient," and "in the
3 public interest."² EFCA contends that TEP's proposals should be rejected because they pose a
4 material threat to competition in the DG solar segment, competition that has redounded to the
5 benefit of consumers in TEP's service territory. EFCA also contends that the manner and extent
6 of TEP's participation in a competitive industry raises issues that are distinct from those that will
7 be addressed in the upcoming rate case, and that this hearing is an appropriate opportunity to
8 adjudicate them with a singular focus on how best to preserve competition in the DG solar
9 segment going forward. Rather than address this fundamental issue, which EFCA through its
10 experts has put squarely on the table, TEP instead requests that the hearing:

- 11 1. Be limited in scope to the issuance of a Commission advisory "public policy"
12 opinion regarding the definition of "distributed generation" in its REST Rules
13 without the need for a necessary rulemaking proceeding; and
- 14 2. Confirm TEP's role as the monopoly provider of community solar by assuring
15 TEP that its RCS program can be approved in TEP's pending rate case *without the*
16 *need* to confront the key issue currently to be addressed in this hearing: whether
17 permitting TEP (as opposed to a separate subsidiary) to enter community solar is
18 in the public interest, given the likely problematic impact such entry would have
19 on competition in that segment going forward.

20
21 **I. TEP's Request to Avoid this Hearing Has Been Rejected on Multiple Occasions,**
22 **and Should Be Rejected Again.**

23 On November 14, 2015, EFCA filed a procedural motion in this docket to set a schedule
24 for the evidentiary hearing now to be held on April 5. On November 25, 2015, TEP opposed that
25 request, characterizing it as a "delay tactic", and then supplemented that response, contending
26 that EFCA's request was "premature." This Commission rejected TEP's position and scheduled
27 a December procedural conference that led to its January 6 order. The January 6 Order further

28

² *Procedural Order*, Docket No. E-01933A-15-0239, at 5 (January 6, 2016).

1 noted that “all parties, except RUCO, prefer addressing the REST Plan outside of the [TEP] rate
2 case,” and the April 5 hearing date was set to fulfill this objective.

3 Now, at the almost literal 11th hour, TEP is once again attempting to avoid an evidentiary
4 hearing focused on the competitive (and thus public interest) implications of its TORS and RCS
5 proposals. It is doing so even though its own witnesses have admitted that the issues on the table
6 with its TORS and RCS proposals have little connection to the issues in the rate case. TEP’s
7 gambit is highly prejudicial to EFCA. EFCA has retained experts for this hearing and submitted
8 detailed direct and rebuttal testimony from them, and these experts are prepared to appear next
9 week to testify at the hearing. Nothing—except TEP’s desire to avoid an evidentiary hearing on
10 the TORS expansion and RCS proposal—can justify TEP’s extraordinary motion to undo the
11 procedural determinations that have been made since EFCA filed its November motion seeking a
12 hearing. There is simply no basis to grant TEP’s last minute preemptive request at this late date.

13
14 **II. TEP is Attempting to Avoid a Hearing Dedicated to the Key Issue on the Table:**
15 **Whether and How It Should be Permitted to Expand into a Competitive Market**
16 **Segment.**

17 TEP’s REST proposal does not shy away from its intention to exclude third parties from
18 the provision of community solar offerings in TEP’s service territory, as confirmed by its direct
19 testimony:

20 **Q: Would third-party installers, or neighborhood community associations be**
21 **eligible to offer a similar community solar program?**

22 A: No. Third-parties are not allowed to utilize a regulated utility’s distribution
23 system. In those states where third parties are able to offer a community solar
24 program, they must have either a virtual net metering program or established
25 distribution wheeling charges. At present, neither exists in the State of
26 Arizona.

27 As the sole owner of the distribution system, TEP is uniquely positioned to
28 offer this program.³

³ Tilghman Direct Testimony, 24:15-24.

1 According to TEP's motion, a ruling that TEP's monopoly community solar offering
2 would count as "residential distribution" under the Commission's RES requirement is necessary
3 to enable it to determine whether it wants to move forward with the RCS proposal. TEP suggests
4 that consideration of this issue "prior to the TEP Rate Case may affect whether the proposed
5 RCS program and tariff need to be considered in the rate case." Motion at 3.

6 However, in its 2016 REST Application (at page 16-17 and note 6), TEP concedes that
7 treating its RCS program as distributed generation under the Commission's REST Rule
8 definitions "would encompass a broader hearing process" as a formal rule change. But TEP
9 cannot have it both ways. If it wants a broader "policy decision" on the treatment of RCS as
10 "residential distribution" for RES compliance purposes, it must file a petition for rulemaking.
11 Put differently, if TEP wants such a determination apart from a rulemaking limited only to the
12 TEP RCS proposal—if legally possible—such a request can only properly be considered when
13 the entire TEP RCS proposal is before the Commission.

14 That conclusion is readily apparent when one considers the illogic of considering TEP's
15 request for this policy change without first addressing the competitive (and public interest)
16 implications of its proposed foray into community solar. Only after addressing the broader
17 issues raised by TEP's proposals will the Commission be well-positioned to adjudicate TEP's
18 proposed revision to the REST Rule definitions. For example, EFCA is prepared to argue next
19 week that to the extent TEP's entry into community solar could benefit the public, such benefits
20 could be achieved by compelling TEP to enter that segment through a separate subsidiary with
21 additional protections to ensure that competition from third-party DG solar is preserved going
22 forward.

23
24 Should the Commission agree with that position, that outcome would likely bear on its
25 determination of the separate-but-related question concerning TEP's request that the REST Rule
26 be changed to include community solar in the definition of distributed generation. In this regard,
27 both RUCO and the staff conceded that some accommodation to third-party participation in
28 community solar needs to be developed before TEP's RCS program should proceed. While their

1 suggested approaches differ from EFCA's, they raise the point that we make above: that
2 mechanisms for third-party participation should be resolved before addressing the definitional
3 question that TEP raises.

4 TEP is essentially requesting a policy change that will cement its ability to enter
5 community solar and extend its monopoly into that segment without a hearing on the merits of
6 that outcome. TEP's proposal that the Commission make a determination that TEP's RCS
7 output constitutes residential DG should thus be seen for what it is—a scheme to grant TEP its
8 desire outcome, while preempting and avoiding the holistic consideration of the Plan and
9 evidentiary consideration of competition issues, such as customer fairness and freedom of
10 choice, that were envisioned in the January 6, Procedural Order (at 6).

11 Finally, even TEP's rebuttal expert, Robert Yardley, concludes that the TORS and RCS
12 programs raise distinct issues that are not at all dependent on the matters at issue in the TEP rate
13 case. In responding to EFCA's contention that TEP's cost shift justification for TORS and RCS
14 relative to third-party solar was both groundless and pretextual, Mr. Yardley essentially agreed
15 with our position, admitting: "These issues are being addressed more directly in the rate case
16 (rate design and NEM) and in the value of distributed generation proceedings. In this
17 proceeding, TEP is requesting approval of a 2016 program *that will not be affected by the*
18 *outcome of these proceedings.*"⁴

19
20 **III. Despite TEP's Claims, Decisions Made in this Docket will be too Late to Impact**
21 **Rate Case Application.**

22 TEP contends that resolving the issue related to treatment of utility-owned community
23 solar as distributed generation "prior to the TEP Rate Case may affect whether the proposed RCS
24 program and tariff need to be considered in the rate case." Motion at 3. This contention cannot
25 withstand scrutiny.

26 Given the schedule of this proceeding and allowing time for post hearing briefing, the
27 preparation of a Recommended Opinion and Order, Exceptions thereto, and a Commission
28

⁴ Rebuttal Testimony of Robert C. Yardley, Jr., 15:27 – 16:2 (emphasis added).

1 hearing date, it is reasonable to believe this item will not go to the Commission for final approval
2 until August of 2016 while TEP's rate case hearing begins that same month.⁵ As a result, this
3 hearing is likely to be resolved far too late to send a signal to TEP and other parties to the rate
4 case as to whether or not the RCS program should be considered in the rate case. In fact,
5 bifurcating the issues in this manner is more likely to create undue confusion and complications
6 in the rate case rather than a streamlining of issues.

7 **IV. Conclusion**

8 EFCA requests that TEP's Motion to Bifurcate and Consolidate promptly be rejected
9 (except as to request number 3).

10 Further, we respectfully urge this Court to rule on this motion before the close of business
11 on April 1. While we appreciate the tight time frame, the pressure here has been created by
12 TEP's eleventh hour motion, and EFCA (and others) have to finalize travel arrangements for
13 witnesses who might be impacted by the Court's determination of this motion. If a telephonic
14 conference is necessary, we will make ourselves available on April 1.

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16
17 RESPECTFULLY SUBMITTED this 31st day of March 2016.

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22 Court S. Rich
23 Rose Law Group pc
24 Attorney for EFCA

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28 ⁵ EFCA notes that the Commission is tentatively planning to hear the already-concluded UNS Rate Case at its July 21, 2016 Open Meeting, and this docket is obviously behind that docket in time.

1 **Original and 13 copies filed on**
2 **this 8th day of March, 2016 with:**

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