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BEFORE THE ARIZONA CORPORATION 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-1933A-15-0239

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
THE ESTABLISHMENT OF JUST AND  
REASONABLE RATES AND CHARGES  
DESIGNED TO REALIZE A REASONABLE  
RATE OF RETURN ON THE FAIR VALUE OF  
THE PROPERTIES OF TUCSON ELECTRIC  
POWER COMPANY DEVOTED TO ITS  
OPERATIONS THROUGHOUT THE STATE OF  
ARIZONA AND FOR RELATED APPROVALS.

DOCKET NO. E-01933A-15-0322

Arizona Corporation Commission  
**DOCKETED**

JUN 10 2016

DOCKETED BY

**INITIAL POST HEARING BRIEF**  
**OF TUCSON ELECTRIC POWER COMPANY**  
**REGARDING 2016 REST IMPLEMENTATION PLAN ISSUES**

**JUNE 10, 2016**

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1 **I. Introduction.**

2 Tucson Electric Power Company (“TEP” or “the Company”) has long been a leader in  
3 solar power, focused on supplying solar power to all of its customers, not merely the select few  
4 customers with the resources and inclination to install their own solar facilities. TEP provides  
5 solar power from TEP-owned utility-scale solar facilities, purchased power agreements with third-  
6 party owners of utility-scale solar facilities, its Bright Tucson Community Solar Program, and  
7 recently, through the TEP-Owned Rooftop Solar (“TORS”) program approved by the Commission  
8 as part of the Company’s 2015 REST plan.<sup>1</sup> As a result of these efforts by TEP and other Arizona  
9 utilities, Arizona remains a top producer of solar power.<sup>2</sup> TEP’s customers continue to show a  
10 strong demand for these solar power options from TEP. The Company also needs a way to meet  
11 the “DG carve-out” requirement in the REST rules. Accordingly, TEP seeks approval to expand  
12 its TORS program and to offer its new Residential Community Solar (“RCS”) program. These  
13 programs will expand customer choice and promote additional competition in Arizona’s robust  
14 solar sector. Importantly, these programs are more cost-effective for TEP’s customers than many  
15 other programs. Approving these programs will allow Arizona to continue leading the way in  
16 solar while reducing subsidies and retaining competitive power prices.

17 Despite its name, the Energy Freedom Coalition of America (“EFCA”)—funded and  
18 controlled by the third-party rooftop solar leasing industry—seeks to restrict customer freedom by  
19 quashing the TORS and RCS programs, thereby ensuring that its members continue to dominate  
20 the rooftop solar industry, preserving the level of subsidies enjoyed by its members, and insulating  
21 those members from competition. EFCA’s anticompetitive recommendations should be rejected,  
22 and the Commission should allow eligible customers to have the option to choose the TORS or  
23 RCS programs.

24  
25 <sup>1</sup> In 2016, TEP will have 236 MW of installed solar capacity including PPA resources and TEP owned  
26 resources. Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan) at page 3.

27 <sup>2</sup> See e.g. <http://www.techinsider.io/top-10-solar-states-2016-5> (dated May 10, 2016 and visited June 1,  
2016)(ranking Arizona third in installed solar capacity).

1 **II. The programs promote competition and customer choice.**

2 **A. Customers should be able to choose the TORS and RCS programs.**

3 Fundamentally, this case is about customer choice. Not every customer that is interested in  
4 solar has a suitable rooftop. Nor can every interested customer meet the stringent credit score  
5 requirements mandated by rooftop solar leasing companies. And some customers that meet these  
6 requirements may not like the leasing model or the complex and lengthy contracts that go with it.  
7 For example, many leasing contracts require approval from the solar company before the  
8 homeowner can sell their home, a restriction many customers would prefer to avoid. Other  
9 customers may prefer the fixed nature of the TORS and RCS rates, or they may simply prefer to  
10 deal with TEP, a local utility with more than a century of service to its community. Solar leasing  
11 will still be the choice of many customers. TEP does not support banning third-party lease  
12 programs, as some states have done. Customers should have the choice to select the offering that  
13 best suits them.

14 **B. It is appropriate for a vertically integrated utility, like TEP, to build**  
15 **generation facilities and offer generation services—including solar generation.**

16 Arizona has retained the traditional, vertically integrated utility model, where a single  
17 utility offers generation, transmission, and distribution services to a fixed service area. While at  
18 one point Arizona contemplated requiring electric utilities to divest all their generation assets<sup>3</sup>,  
19 Arizona ultimately rejected that path<sup>4</sup>, and Arizona's electric utilities continue to own a significant  
20 portion of their generation. Indeed, TEP is obligated to provide generation service to its service  
21 area. It's common and appropriate for Arizona utilities to own generation assets. Rather than  
22 place all their eggs in one basket, Arizona utilities typically own a diverse and balanced portfolio  
23 of different types of generation assets, protecting customers from environmental, regulatory and  
24 fuel cost risks.

25 \_\_\_\_\_  
26 <sup>3</sup> See A.A.C. R14-2-1615(A).

27 <sup>4</sup> See e.g. Decision No. 65154 (Sept. 10, 2002)(the "Track A" order) at pages 22-25 (granting waivers of  
generation divestiture requirements and requiring ACC approval of any future divestitures).

1 Solar generation is an important and growing part of TEP's generation portfolio. Solar  
2 generation is still generation, and there's no reason to treat it differently than other types of utility-  
3 owned generation. Indeed, TEP has owned utility-scale solar assets for many years.<sup>5</sup> And last  
4 year, TEP began owning TORS rooftop systems. As the Commission noted in approving that  
5 program, "TEP does not need our permission to acquire generation assets. Typically, public  
6 service corporations decide what type of generation assets to acquire for their resource portfolios.  
7 They then build and/or acquire those assets, and the Commission evaluates the prudence of those  
8 decisions in subsequent rate cases."<sup>6</sup> Commission Staff reiterated this point in this case, with Staff  
9 witness Gray testifying that "the company can go and build generation on their own anytime they  
10 want."<sup>7</sup> Thus, it is entirely appropriate for TEP to build and own solar generation assets as a  
11 means of meeting the requirements set forth by the REST, including rooftop solar assets under the  
12 TORS program and community solar assets under the RCS program.

13 **C. Adding choices will not destroy competition.**

14 The RCS and TORS programs will add choices for customers—not take choices away. In  
15 short, adding choices is not anticompetitive; indeed, "improving customer choice is  
16 procompetitive," *Paladin Associates v. Montana Power Co.*, 328 F.3d 1145, 1157 (9th Cir. 2003).

17 **D. EFCA's arguments are unsupported.**

18 EFCA's attorney proclaimed that TEP "want[s] to shut down this industry."<sup>8</sup> EFCA's  
19 witnesses offered similar comments. For example, EFCA witness DeRamus argued that the  
20 "purpose and effect" of the TORS and RCS programs is "eliminating competition in the  
21 residential rooftop solar market in TEP's service territory"<sup>9</sup> and that the programs "would have

22 \_\_\_\_\_  
23 <sup>5</sup> Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan), at Page 5, Table 1 (listing TEP owned and  
contracted solar resources).

24 <sup>6</sup> Decision No. 74884 (Dec. 31, 2014) at Page 17, Finding of Fact No. 63.

25 <sup>7</sup> Tr. at 636.

26 <sup>8</sup> Tr. at 38 (Opening Statement of EFCA attorney Mr. Court Rich).

27 <sup>9</sup> Ex. EFCA-20 (DeRamus Direct) at 14.

1 severe anticompetitive consequences that would effectively eliminate competition from  
2 independent DG service providers in the TEP service territory....”<sup>10</sup> Likewise, EFCA witness  
3 Cicchetti opines that these proposals “will likely eviscerate a competitive marketplace and replace  
4 it with a monopoly.”<sup>11</sup> These inflammatory comments have no connection to the reality of the  
5 RCS and TORS programs.

6 EFCA’s testimony ignores the inconvenient facts that refute its contentions, including  
7 EFCA members’ continuing dominance of solar DG and electricity consumers’ express desire to  
8 have at least some regulated utility-backed alternatives. Stripped of hyperbole, EFCA’s testimony  
9 winnows down to three principal contentions: (1) once TEP offers these programs, monopolization  
10 of solar DG will be inevitable;<sup>12</sup> (2) TEP should be forbidden to use the efficiencies of its system  
11 to provide lower cost options to its consumers;<sup>13</sup> and (3) the proposed rate structures for the TORS  
12 and RCS programs are unfair to unregulated companies because they allow capital in rate base and  
13 allegedly entail some cost shifting.<sup>14</sup> Each of these contentions is demonstrably without merit.

14 ***1. These modest programs are no threat to SolarCity or other EFCA***  
15 ***members.***

16 The proposed programs are very small compared to the current third-party rooftop solar  
17 market. TEP proposes to add a maximum of 1,000 customers to TORS. The TORS program  
18 installs about 50 systems a month, which would rise to about 83 systems a month if the extension  
19 of the program is approved.<sup>15</sup> In contrast, TEP saw 4,100 rooftop solar installations in 2015, with  
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22 <sup>10</sup> Ex. EFCA-20 (DeRamus Direct) at 2.

23 <sup>11</sup> Ex. EFCA-16 (Cicchetti Direct) at 5.

24 <sup>12</sup> *E.g.*, Ex. EFCA-16 (Cicchetti Direct) at 5.

25 <sup>13</sup> *E.g.*, Ex. EFCA-20 (DeRamus Direct) at 11.

26 <sup>14</sup> *E.g.*, Ex. EFCA-20 (DeRamus Direct) at 9.

27 <sup>15</sup> Ex. TEP-2 (Tilghman Rebuttal) at 11.

1 2,700 installations from Solar City alone.<sup>16</sup> In short, the TORS program will be a mere drop in the  
2 rooftop solar bucket.

3 Even if each TORS customer represented a lost customer to the solar leasing companies,  
4 there would still be a very large rooftop solar market. But TORS has not slowed third-party  
5 installations; in fact, third-party solar installations have only increased since the TORS program  
6 was implemented.<sup>17</sup> It's not a zero sum game; some TORS customers would not have qualified  
7 for solar leases or are not comfortable with the lease paradigm. Thus, in reality, TORS expands  
8 the market. As TEP witness Yardley testified, "[t]his is particularly true for customers that do not  
9 have acceptable credit scores typically required for eligibility by third-party providers (e.g. FICO  
10 score greater than 680). In this way, the TORS program serves the public interest by bringing in  
11 customer segments previously unable to participate into the solar market."<sup>18</sup>

12 The RCS program is similarly modest. It is limited to \$10 million and 5 MW.<sup>19</sup> As TEP  
13 witness Yardley explained, the RCS program is "unlikely to pose any significant threat to third-  
14 party providers, given the small size of the program...."<sup>20</sup> And like the TORS program, it will  
15 expand the market. The RCS program does not carry the strict credit score requirements imposed  
16 by many solar leasing companies, and the RCS program is also available to customers whose roofs  
17 are not suitable for solar, due to structural, size, or shade issues.

18 The simple fact is that third-party solar companies dominate solar installations, with Solar  
19 City alone controlling approximately 70 percent of the rooftop solar industry in TEP's service  
20 territory.<sup>21</sup> TEP seeks authority for only 5 MW of RCS and an additional 1,000 TORS

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<sup>16</sup> Ex. TEP-2 (Tilghman Rebuttal) at 11.

22 <sup>17</sup> Ex. TEP-1 (Tilghman Direct) at 10.

23 <sup>18</sup> Ex. TEP-5 (Yardley Rebuttal) at 16-17.

24 <sup>19</sup> Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan), at 18; Ex. TEP-5 (Yardley Rebuttal) at 18; *see*  
25 *also* Tr. at 618-19 (Staff witness Gray noting the 5 MW cap).

26 <sup>20</sup> Ex. TEP-5 (Yardley Rebuttal) at 20.

27 <sup>21</sup> Tr. at 66 (Tilghman).

1 installations. By contrast, TEP received more than 6,700 third-party solar DG applications from  
2 2014-2015 for systems with a total capacity of 48 MW. TEP's proposals thus cover only a very  
3 small fraction of the potential applications for DG solar and do not remotely threaten the current  
4 dominance of EFCA's members.<sup>22</sup> Moreover, the market, as every witness has acknowledged, is  
5 very robust, and has been growing even faster since the TORS program was initially announced.<sup>23</sup>  
6 EFCA's own witness admitted that there are no entry barriers to provision of rooftop solar.<sup>24</sup> In  
7 short, the record makes clear that no monopoly will arise if these limited proposals are approved.

8 Confronted with these facts, on cross-examination, EFCA witness DeRamus offered a  
9 "boiling frog" analogy, hypothesizing that TEP's proposals reflect a "gradualism" that will "kill  
10 off" competition.<sup>25</sup> This false analogy highlights the flaws in EFCA's argument. Each program  
11 has specific dollar and customer caps, and TEP will have to return to the Commission each time it  
12 want to add dollars or customers. Further, the TORS and RCS rates are regulated rates set by this  
13 Commission, which will ensure that these rates are just and reasonable and that these programs  
14 continue to serve the public interest. In contrast to witness DeRamus's hypothetical frog, which  
15 has no control over the water temperature or its fate, this Commission fully controls any future  
16 ability to expand the TORS and RCS programs and the Commission can ensure that no  
17 impairment of competition, much less any monopoly, occurs.<sup>26</sup> Significantly, neither the Staff's  
18 witness nor RUCO's witness agreed with EFCA's assertions that TEP's TORS and RCS offerings  
19 threaten to monopolize solar DG.<sup>27</sup>

20 <sup>22</sup> Ex. TEP-1 (Tilghman Direct) at 10; Ex. TEP-2 (Tilghman Rebuttal at Ex. CT-R-2 (of a total of 61,118  
21 kW of solar DG installations in TEP's service area, SolarCity alone accounts for over 40,000 kW, *i.e.*  
22 greater than 66% market share). Indeed, the total authorization sought for the RCS program is less than the  
capacity of rooftop applications that TEP accepted in the fourth quarter of 2014 alone (6,223 kW).

23 <sup>23</sup> E.g., Ex. TEP-1 (Tilghman Direct) at 10; Tr. at 525 (DeRamus).

24 <sup>24</sup> Tr. at 501 (DeRamus).

25 <sup>25</sup> Tr. at 509-510 (DeRamus).

26 <sup>26</sup> Ex. TEP-5 (Yardley Rebuttal) at 4, 12; Tr. at 268, 289 (Yardley).

27 <sup>27</sup> Tr. at 603-604 (Gray); Tr. at 659 (Huber) (rejecting "logic" that the TORS program could replace third-  
party rooftop solar in TEP's service territory, and noting that "RUCO supports gradualism" and "I highly

1                                   2.       ***Economies of scale will benefit—not harm—customers.***

2           Equally without merit is EFCA’s objection to TEP using the economies of scale inherent in  
3 its system. There is nothing anticompetitive about a vertically integrated firm using any  
4 efficiencies or lawful advantages that result from its size or scope of operations to offer better  
5 priced or better quality products to consumers; in fact, that is precisely what the law encourages.  
6 *Catlin v. Washington Energy Co.*, 791 F.2d 1343, 1346-47 (9th Cir. 1986) (holding that a  
7 monopoly firm is permitted to reap the benefits of its efficient size and integration). If economies  
8 of scale allow TEP to provide a service more cost efficiently and at lower prices, consumers  
9 benefit.

10                                   3.       ***Rate basing generation assets is appropriate.***

11           EFCA complains that TEP’s proposals would allow TEP’s capital investments to go into  
12 rate base and would allow some cost shifting to non-participating customers. These complaints  
13 are without merit. As already explained, as a vertically-integrated utility, it is appropriate for TEP  
14 to own generation assets, including solar generation assets. Because the TORS and RCS assets  
15 will be owned by TEP, they will be part of the “fair value of the property within the state of [a]  
16 public service corporation” under Article 15, Section 14 of the Arizona Constitution, and thus  
17 these assets will be part of the rate base if they are prudent and serving customers. *Arizona Corp.*  
18 *Comm’n v. Arizona Pub. Serv. Co.*, 113 Ariz. 368, 555 P.2d 326 (1976)(“Under the constitution as  
19 interpreted by this court, the Commission is required to find the fair value of the company’s  
20 property and use such finding as a rate base for the purpose of determining what are just and  
21 reasonable rates.”); *see also Litchfield Park Serv. Co. v. Arizona Corp. Comm’n*, 178 Ariz. 431,  
22 874 P.2d. 988, (App. 1994)(fair value finding must be used as rate base).

23           There is no question that under Arizona law, TEP’s sales of electricity—including  
24 electricity sold under the TORS and RCS programs—must be at regulated rates determined by this  
25 Commission. The TORS and RCS programs and rates are under this Commission’s control, and

26  
27           doubt that we would put forward the position to just all of a sudden one day end the entire third-party solar  
market.”).

1 the Commission can consider any alleged impacts on competition in evaluating the scope of the  
2 programs and the rates.<sup>28</sup> EFCA objects that TEP's proposed rates would entail some cost  
3 shifting, but the record reflects that the RCS and TORS programs would each result in *lower*  
4 prices and *less* cost shifting than under the current net metering regime that benefits EFCA's  
5 members.<sup>29</sup> Thus, these programs would involve lesser subsidies from non-participating  
6 customers than solar DG is currently receiving.<sup>30</sup>

7 **E. EFCA's proposal to require a separate subsidiary is unnecessary.**

8 EFCA argues that TEP should be required to use a separate subsidiary to offer these  
9 programs.<sup>31</sup> But again, TEP is a vertically integrated utility that provides generation service, and  
10 it is appropriate for TEP to own generation assets to meet some of its obligations to provide  
11 generation service.

12 Moreover, the TORS program includes a \$250 processing fee, which covers the  
13 incremental administrative costs of the TORS program.<sup>32</sup> This insures that these administrative  
14 costs are not subsidized by other ratepayers. Further, the TORS program uses the same  
15 "protocols, processes, and services as those utilized by third-party providers to ensure that no  
16

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17 <sup>28</sup> Tr. at 269, 271-272; Ex. TEP-5 (Yardley Rebuttal) at 4 (noting that TEP's proposed solar options "are  
18 provided after regulatory review and subject to ongoing regulatory oversight by this Commission"); *see*  
19 *also id.* at 12 ("Regulatory commissions, and presumably the ACC, are not only sensitive to the concerns  
20 raised by Witnesses Cicchetti and Deramus but can take actions if it deems that the utility is attempting to  
21 exclude third-parties from participating in the market.").

22 <sup>29</sup> Ex. TEP-1 (Tilghman Direct) at 15, 18, 22, and 25; *see also* Ex. TEP-5 (Yardley Rebuttal) at 5 (noting  
23 EFCA's inconsistent position with respect to other Commission policies that effectively operate as  
24 subsidies to its members, including the statements by SolarCity's co-founder and Chief Technology Officer  
25 that "We must lower costs. It is a subsidized business.").

26 <sup>30</sup> Ex. TEP-1 (Tilghman Direct) at 14 (noting that TEP's analysis of the TORS program's effects in 2016  
27 "showed the Company's program providing superior benefits to our customers who are contracted with  
third-party solar providers" and that the ACC's prior Order requires TEP to address any cost-parity issues  
in the event that the Commission adopts new net metering rules or TEP's rate design is changed in a way  
that impacts existing net metering participants).

<sup>31</sup> Ex. EFCA-20 (DeRamus Direct) at 14-15.

<sup>32</sup> Ex. TEP-1 (Tilghman Direct) at 8.

1 benefits were being given to one program over another.”<sup>33</sup> Thus, EFCA’s alleged concerns about  
2 cross-subsidization are baseless. Again, the Commission controls the TORS and RCS rates, and  
3 the Commission controls any expansion to these programs.

4 **III. The TEP Owned Rooftop Solar (TORS) program is reasonable and should be**  
5 **extended.**

6 TEP’s TORS proposal is identical to the existing program, except for the increased  
7 customer and dollar caps.<sup>34</sup> TEP simply seeks to keep this program open so that customers have  
8 the choice.

9 The TORS program provides important benefits compared to typical third-party rooftop  
10 solar installations. For example, the TORS systems are designed to peak in the late afternoon to  
11 more closely match TEP’s summer peak.<sup>35</sup> In contrast, the typical third-party system is designed  
12 to maximize total output in kWh annually without regard to system peak.<sup>36</sup> In addition, the TORS  
13 program gives TEP the ability to target specific areas where solar DG would be beneficial to its  
14 system. For example, TEP has targeted the area served by the West Ina substation; additional  
15 solar in this area, in coordination with other technologies, could potentially avoid an overload at  
16 this substation or the need for costly upgrades there.<sup>37</sup>

17 Further, the TORS program greatly reduces the DG “cost-shift” as compared to typical  
18 “net zero” third-party rooftop solar customer.<sup>38</sup> Staff and RUCO both acknowledge the cost  
19 shift.<sup>39</sup> The cost shift is currently \$58 per month for each third-party rooftop solar customer, and  
20

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21 <sup>33</sup> Ex. TEP-1 (Tilghman Direct) at 8.

22 <sup>34</sup> Ex. TEP-1 (Tilghman Direct) at 6.

23 <sup>35</sup> Ex. TEP-1 (Tilghman Direct) at 14.

24 <sup>36</sup> Ex. TEP-1 (Tilghman Direct) at 14.

25 <sup>37</sup> Ex. TEP-1 (Tilghman Direct) at 11.

26 <sup>38</sup> Ex. TEP-1 (Tilghman Direct at 15-17.

27 <sup>39</sup> Ex. TEP-2 (Tilghman Rebuttal) at 14.

1 growing.<sup>40</sup> In contrast, the TORS program has a much smaller cost shift. The reduced cost shift  
2 benefits the vast majority of TEP customers—who do not have rooftop systems—and who would  
3 otherwise be stuck with the unrecovered fixed costs associated with third-party solar systems.

4 Staff argues that the TORS program is not cost effective compared to waivers or  
5 purchasing RECs. However, Staff's analysis does not consider the savings associated with the  
6 reduced cost shift.<sup>41</sup> Forcing non-solar ratepayers to bear the costs of REC payments to SolarCity  
7 and other leasing companies, while those ratepayers are also shackled with unrecovered fixed  
8 costs—which effectively subsidize SolarCity and other solar leasing companies—from the very  
9 same rooftop systems that produce those RECs, makes little sense. Reducing the cost shift will  
10 ultimately save ratepayers money, as will avoiding the needless cost of buying DG RECs.

11 The TORS program is very popular with customers. Over 5,000 customers have expressed  
12 interest, and the existing 600 customer cap will be reached this fall.<sup>42</sup> TEP asks that this  
13 Commission act no later than August to preserve this popular program by authorizing an  
14 additional 1,000 customers and \$15 million.<sup>43</sup>

15 **IV. The Residential Community Solar (RCS) plan should be approved.**

16 **A. Benefits of RCS program.**

17 Solar is a technology where scale is important. Despite thousands of rooftop solar  
18 installations, residential third-party rooftop solar represents only 14% of TEP's renewable  
19 portfolio.<sup>44</sup> Utility-scale solar resources are far more effective and far less expensive. A single  
20 utility-scale facility can provide the same capacity as hundreds or thousands of rooftop units, and  
21 of course it costs far less to complete one large installation than thousands of small ones.

22  
23 <sup>40</sup> Ex. TEP-4 (Jones Rebuttal) at 2-3.

24 <sup>41</sup> Ex. TEP-2 (Tilghman Rebuttal) at 14.

25 <sup>42</sup> Ex. TEP-1 (Tilghman Direct) at 9-10.

26 <sup>43</sup> Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan), page 10.

27 <sup>44</sup> Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan), at page 3, Graph 1.

1 Thus, TEP's Residential Community Solar program offers customers a way to benefit from  
2 some economies of scale, while still providing solar facilities in the community, on the local  
3 distribution grid. Significant economies of scale are available for initial capital costs, which are  
4 approximately \$2.50 to \$2.85 per watt for third-party rooftop systems, \$2.20 for TORS, and only  
5 \$1.60 to \$1.70 per watt for RCS systems.<sup>45</sup> RCS systems will also see economies of scale in  
6 operating and maintenance expense.<sup>46</sup> Staff witness Gray confirmed these benefits, testifying that  
7 "I think in some ways we see it as a way of getting some of the economies of scale benefits, but at  
8 a smaller size, a smaller level on the distribution system. So in some ways you get some of the  
9 best of both worlds with DG and utility scale. You know, we see a lot of value" in the RCS  
10 program.<sup>47</sup>

11 The RCS program is also available to many customers who cannot access the traditional  
12 rooftop solar market. Some roofs are not suitable for rooftop solar, due to structural weaknesses,  
13 roof size, or shade. RCS is an option for these customers.<sup>48</sup> And like the TORS program, the RCS  
14 program does not have the strict credit requirements imposed by many solar leasing companies.  
15 Moreover, RCS facilities can also be tied into TEP's existing control and communication network,  
16 enabling control of advanced inverter functionality.<sup>49</sup>

17 The RCS is essentially a hybrid of TEP's popular TORS and Bright Tucson programs.  
18 TEP witness Tilghman outlined the significant differences between the RCS and TORS  
19 programs<sup>50</sup>:

21  
22 <sup>45</sup> Ex. TEP-1 (Tilghman Direct) at 22-23.

23 <sup>46</sup> Ex. TEP-1 (Tilghman Direct) at 22-23.

24 <sup>47</sup> Tr. at 623 (Gray).

25 <sup>48</sup> Ex. TEP-1 (Tilghman Direct) at 23.

26 <sup>49</sup> Ex. TEP-1 (Tilghman Direct) at 22.

27 <sup>50</sup> Ex. TEP-1 (Tilghman Direct) at 21-22.

- 1 • The capacity associated with a customer's equivalent Solar Rate Capacity  
2 calculation would be deducted from the larger facility's overall capacity, rather  
3 than a stand-alone system on the customer's property.
- 4 • The fixed contract term would be 10 years, rather than 25 years.
- 5 • The Residential Community Solar tariff would use a price of \$17.50 per kW to  
6 calculate the fixed rate, as opposed to \$16.50 for the TORS program. The slightly  
7 higher rate reflects that customers can go solar without placing a solar facility on  
8 their property and being exposed to: potential insurance implications, roof  
9 maintenance or repair costs, construction disruptions, possible tax consequences,  
10 or the general long term commitment to their physical property that a PV system  
11 installation requires.
- 12 • Due to the lower cost of developing a utility-scale facility compared to a rooftop  
13 facility, the revenue associated with the program will further reduce the amount of  
14 unrecovered fixed costs shifted to other, non-solar customer classes.
- 15 • The customer would not have the option to purchase the system (or any portion  
16 thereof).
- 17 • The customer would pay an early termination fee based on the number of months  
18 remaining on contract. Capacity made available by a customer terminating their  
19 participation would be available for other customers who wanted to participate in  
20 the program.

21 TEP agrees with Staff that Purchased Power Agreements ("PPAs") should be considered  
22 for RCS facilities. As with its current utility-scale facilities, TEP will consider both direct  
23 ownership and PPAs for each RCS facility. The proposed RCS tariff includes both options.<sup>51</sup> If  
24 the Commission desires to further encourage PPAs, TEP would support separate 5MW caps for  
25 TEP-owned RCS facilities and PPA-based RCS facilities.

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27 <sup>51</sup> Tr. at 617 (Gray).

1           **B.       Use of existing TEP land for the RCS program.**

2           EFCA objects to TEP using land it already owns for potential RCS sites. It would be  
3 imprudent, unduly costly and wasteful for TEP to purchase additional land for such sites, if it  
4 already owns a suitable site. As already noted, it is not improper for a vertically integrated utility  
5 to use its utility assets to reduce costs or to seek economies of scale. In short, it's not wrong for a  
6 utility to be thrifty. In addition, certain existing TEP sites, such as substation locations, may also  
7 provide operational benefits and reduced interconnection costs.

8           **C.       Waiver of DG definition for RCS program.**

9           In connection with the RCS program, TEP seeks a waiver from the current definition of  
10 “distributed generation” in the REST rules. The rules include the phrase “sited at a customer  
11 premises....” or “located at a customer’s premises” in the definitions of “Distributed Generation”,  
12 “Distributed Solar Electric Generator”, and “Distributed Renewable Energy Resources”.<sup>52</sup> TEP  
13 requests that all solar generation resources that are “directly connected to the Company’s  
14 distribution system” be considered “distributed” for the purposes of the REST rules.<sup>53</sup>

15           This waiver is reasonable. A facility is no less “distributed” if it is next door to a customer  
16 or up the street from the customer. Indeed, Staff commented that “[i]f a renewable generation  
17 facility is connected to the distribution grid, but simply is not on a given customer premise[s],  
18 Staff believes that not allowing such facilities to be considered distributed generation would be  
19 arbitrary.”<sup>54</sup> And as Staff notes, community solar is a new concept that was not contemplated  
20 when the REST rules were adopted.<sup>55</sup>

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24 <sup>52</sup> A.A.C. R14-2-1801(E); R14-2-1801(G); R14-2-1802(B).

25 <sup>53</sup> Ex. TEP-1 (Tilghman Direct) at Ex. A (REST Plan) at page 16.

26 <sup>54</sup> Ex. S-1 (Gray Direct) at 6

27 <sup>55</sup> Ex. S-1 (Gray Direct) at 6.

1           **D.     Year-by-year DG waivers are not a reliable alternative.**

2           The “customer premises” waiver is important because, along with providing customer  
3 choice, compliance with the REST distributed generation requirement is a major motivation for  
4 the RCS and TORS programs. However, EFCA suggests that TEP simply rely on year-by-year  
5 waivers of the DG requirement, and Staff suggests that waivers are the least cost option. But TEP  
6 does not believe that relying on year-by-year waivers of the DG requirement is a sound long-term  
7 approach.<sup>56</sup> As Staff witness Gray testified, “[c]ertainly there isn’t a guarantee from year to year  
8 that the Commission will grant the waiver.”<sup>57</sup> And the purpose of the rule is better served by  
9 allowing off-site distributed generation to count, rather than waiving the distributed generation  
10 requirement altogether year after year.

11           EFCA witness Cicchetti testified that a waiver would not be needed because the  
12 Commission could consider third-party solar DG towards the DG requirement, even when the  
13 related RECs stay with the leasing company. Staff witness Gray demonstrated that is not  
14 permitted.<sup>58</sup>

15           Finally, there is no merit to EFCA’s contention that it was anticompetitive for TEP to not  
16 seek a series of waivers of its REST obligations, rather than submitting its TORS and RCS  
17 proposals. TEP cannot be required to rely on uncertain waivers that may or may not be approved.  
18 In any event, it is not anticompetitive for TEP to invest in the renewable DG capacity necessary to  
19 comply with its REST obligations mandated by this Commission.

20           **E.     REC purchases are not a viable compliance option.**

21           EFCA witnesses argue that as an alternative to waiver, TEP might comply with its REST  
22 obligations by purchasing RECs from third-party DG customers rather than procuring its own DG  
23 capacity. However, Staff witness Gray testified that based on his participation in the earlier REST  
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25 <sup>56</sup> Ex. TEP-2 (Tilghman Rebuttal) at 4.

26 <sup>57</sup> Tr. at 612 (Gray).

27 <sup>58</sup> Ex. S-2 (Gray Rebuttal) at 3).

1 proceedings, the Commission did not appear supportive of proposals for utilities to purchase RECs  
2 on the market as a means of achieving REST compliance.<sup>59</sup> And in response to questioning by  
3 Judge Rodda, EFCA witness Beach acknowledged that there was currently no visible market for  
4 RECs in the State of Arizona.<sup>60</sup> Thus, REC purchases are not a viable alternative.

5 **V. The proposed rates are just and reasonable.**

6 The TORS rate is a fixed \$16.50 per kW rate that is fixed for 25 years, while the proposed  
7 RCS rate is a \$17.50 per kW rate that is fixed for 10 years. The TORS rate is unchanged. It is  
8 roughly equivalent to the current average bill.<sup>61</sup> Because the TORS rate was already approved in  
9 Decision No. 74884 (Dec. 31, 2014), no further approval of the TORS rate is needed. Of course,  
10 the Commission can review and modify the TORS rate as part of the pending rate case.

11 The RCS rate is new. But there is no impediment to approving the rate now. The RCS  
12 rate is revenue neutral and the fair value impact is de minimus.<sup>62</sup> Indeed, because no RCS  
13 facilities have been built, their fair value impact is \$0. This is the same analysis the Commission  
14 used in approving the TORS rate in 2014, “[c]urrently the fair value of TEP’s utility-owned  
15 residential distributed generation assets is zero, because the program has not yet begun, and there  
16 are no program assets. We therefore conclude that the fair value impact of TEP’s proposal is de  
17 minimus at this time.”<sup>63</sup> Likewise, the Commission approved rates for TEP’s Bright Tucson  
18 community solar program in similar circumstances outside of a rate case.<sup>64</sup> Thus, the Commission  
19 is free to approve the RCS rate now, rather than waiting until after the rate hearing. Alternatively,  
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21 <sup>59</sup> Tr. at 633-634 (Gray).

22 <sup>60</sup> Tr. at 460 (Beach).

23 <sup>61</sup> Ex. TEP-1 (Tilghman Direct) at 6-7.

24 <sup>62</sup> Ex. TEP-3 (Jones Direct) at 6.

25 <sup>63</sup> Decision No. 74884 (Dec. 31, 2104) at Page 17, Finding of Fact No. 65.

26 <sup>64</sup> See Decision No. 71835 (August 10, 2010); see also Decision No. 72800 (Feb. 2, 2012)(approving  
27 special contract rate for Bright Tucson community solar agreement with La Posada at Park Centre, Inc.).  
The tariff for the Bright Tucson program is TEP Rider R-5, Bright Tucson Community Solar Tariff.

1 the Commission could approve the RCS program now, and defer setting the RCS rate to TEP's  
2 pending general rate case.<sup>65</sup>

3 **VI. Conclusion.**

4 The TORS and RCS programs provide choices to TEP's customers. No customer will be  
5 forced into these programs, and no customer will be prevented from choosing third-party solar.  
6 The programs are small and expand the number of customers that can "go solar" if they choose.  
7 The TORS and RCS programs are cost-effective ways for TEP to meet its DG compliance  
8 obligations under the REST rules, while also mitigating the sharp cost shift caused by third-party  
9 solar. EFCA's members may not like these programs, but these modest and limited programs are  
10 reasonable and in the public interest.

11 The Commission should approve an expansion of the TORS program, limited to an  
12 additional 1,000 customers and \$15 million, to be served under the existing TORS tariff rate  
13 (Rider R-10). The Commission should also approve the new RCS program, limited to \$10 million  
14 and 5 MW (or \$20 million and 10 MW, with 5 MW reserved for PPAs, if the Commission chooses  
15 to further encourage the PPA route). In addition, the Commission should approve the RCS rate  
16 tariff (proposed Rider R-17 Residential Community Solar Program).<sup>66</sup> Alternatively, the  
17 Commission should approve the RCS program and defer consideration of the R-17 tariff to the  
18 pending rate case. In addition, the Commission should approve the waiver to the definition of  
19 distributed generation so that all renewable generation connected to the distribution grid is  
20 considered distributed generation.

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24 <sup>65</sup> The April 6, 2016 Procedural Order states that "...the parties to the Rate Case docket are on notice that in  
25 the event the Commission determines that it is in the public interest that the RCS program should qualify  
26 for the DG carve out under the REST Rules, the RCS tariff and rate will be considered and set in the Rate  
27 Case proceeding." (Procedural Order at 4).

<sup>66</sup> The proposed R-17 tariff is attached as Exhibit 8 to TEP's 2016 REST Plan, which is Exhibit A to  
Exhibit TEP-1 (Tilghman Direct).

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RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2016.

Tucson Electric Power Company

By 

Bradley S. Carroll  
Tucson Electric Power Company  
88 East Broadway, MS HQE910  
P.O. Box 711  
Tucson, Arizona 85702

and

Michael W. Patten  
Timothy J. Sabo  
Jason D. Gellman  
Snell & Wilmer L.L.P.  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004

Attorneys for Tucson Electric Power Company

1 Original and 13 copies of the foregoing  
filed this 10<sup>th</sup> day of June 2016, with:

2 Docket Control  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
Phoenix, Arizona 85007

5 Copies of the foregoing hand-delivered/mailed/e-mailed  
this 10<sup>th</sup> day of June 2016, to:

6 Jane Rodda,  
7 Administrative Law Judge  
8 Hearing Division  
9 Arizona Corporation Commission  
400 West Congress  
Tucson, Arizona 85701

10 Robin Mitchell  
11 Legal Division  
12 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

13 Thomas Broderick, Director  
14 Utilities Division  
15 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

16 Daniel W. Pozefsky, Chief Counsel  
17 RUCO  
1110 West Washington, Suite 220  
Phoenix, Arizona 85007

18 Barbara LaWall, Pima County Attorney  
19 Charles Wesselhoft, Deputy County Attorney  
20 Pima County Attorneys' Office  
32 North Stone Ave., Suite 2100  
Tucson, Arizona 85701  
21 [Charles.Wesselhoft@pcao.pima.gov](mailto:Charles.Wesselhoft@pcao.pima.gov)  
**Consented To Service By Email**

22 C. Webb Crockett  
23 Patrick Black  
24 Fennemore Craig, PC  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016  
25 [wcrockett@fclaw.com](mailto:wcrockett@fclaw.com)  
[pblack@fclaw.com](mailto:pblack@fclaw.com)  
26 **Consented To Service By Email**

1 Kevin Higgins  
Energy Strategies, LLC  
215 South State Street, Suite 200  
2 Salt Lake City, Utah 84111

3 Nicholas J. Enoch  
Jarrett J. Haskovec  
4 Emily A. Tornabene  
Lubin & Enoch, PC  
5 349 North Fourth Avenue  
Phoenix, Arizona 85003

6 Lawrence V. Robertson, Jr.  
7 P.O. Box 1448  
Tubac, Arizona 85646

8 Meghan H. Grabel  
9 Osborn Maladon, PA  
2929 North Central Avenue  
10 Phoenix, Arizona 85012  
[mgrabel@omlaw.com](mailto:mgrabel@omlaw.com)

11 **Consented To Service By Email**

12 Gary Yaquinto, President & CEO  
Arizona Investment Council  
13 2100 North Central Avenue, Suite 210  
Phoenix, Arizona 85004  
14 [gyaquinto@arizonaaic.org](mailto:gyaquinto@arizonaaic.org)

15 **Consented To Service By Email**

16 Timothy M. Hogan  
Arizona Center for Law in the Public Interest  
202 E. McDowell Road, Suite 153  
17 Phoenix, Arizona 85004  
[thogan@aclpi.org](mailto:thogan@aclpi.org)

18 **Consented To Service By Email**

19 Rick Gilliam  
Director of Research and Analysis  
20 The Vote Solar Initiative  
1120 Pearl Street, Suite 200  
21 Boulder, Colorado 80302  
[rick@votesolar.org](mailto:rick@votesolar.org)

22 **Consented To Service By Email**

23 Briana Kobor, Program Director  
Vote Solar  
24 360 22<sup>nd</sup> Street, Suite 730  
Oakland, CA 94612  
25 [briana@votesolar.org](mailto:briana@votesolar.org)

26 **Consented To Service By Email**

1 Michael Alan Hiatt  
2 Katie Dittelberger  
3 Earthjustice  
4 633 17<sup>th</sup> Street, Suite 1600  
5 Denver, Colorado 80202  
6 [mhiatt@earthjustice.org](mailto:mhiatt@earthjustice.org)  
7 [kdittleberger@earthjustice.org](mailto:kdittleberger@earthjustice.org)  
8 **Consented To Service By Email**

9 Craig A. Marks  
10 Craig A. Marks, PLC  
11 10645 N. Tatum Blvd., Suite 200-676  
12 Phoenix, Arizona 85028  
13 [craig.marks@azbar.org](mailto:craig.marks@azbar.org)  
14 **Consented To Service By Email**

15 Pat Quinn  
16 President and Managing Partner  
17 Arizona Utility Ratepayer Alliance  
18 5521 E. Cholla Street  
19 Scottsdale, Arizona 85254

20 Kurt J. Boehm  
21 Jody Kyler Cohn  
22 Boehm, Kurtz & Lowry  
23 36 E. Seventh Street, Suite 1510  
24 Cincinnati, OH 45202

25 The Kroger Co.  
26 Attn: Corporate Energy Manager (G09)  
27 1014 Vine Street  
Cincinnati, OH 45202

28 Stephen J. Baron  
29 J. Kennedy & Associates  
30 570 Colonial Park Dr., Suite 305  
31 Roswell, GA 30075

32 Travis Ritchie  
33 Sierra Club Environmental Law Program  
34 2101 Webster Street, Suite 1300  
35 Oakland, California 94612  
36 [Travis.ritchie@sierraclub.org](mailto:Travis.ritchie@sierraclub.org)  
37 **Consented To Service By Email**

38 Court S. Rich  
39 Rose Law Group pc  
40 7144 E. Stetson Dr., Suite 300  
41 Scottsdale, AZ 85251  
42 [crich@roselawgroup.com](mailto:crich@roselawgroup.com)  
43 **Consented To Service By Email**

1 Jeffrey Shinder  
Constantine Cannon LLP  
335 Madison Avenue, 9<sup>th</sup> Floor  
2 New York, NY 10017

3 Richard O. Levine  
Constantine Cannon LLP  
4 1001 Pennsylvania Ave, NW  
Suite 1300 North  
5 Washington, DC 20004

6 Thomas A. Loquvam  
Pinnacle West Capital Corporation  
7 P.O. Box 53999, MS 8695  
Phoenix, AZ 85072  
8 [thomas.loquvam@pinnaclewest.com](mailto:thomas.loquvam@pinnaclewest.com)  
**Consented To Service By Email**

9 Kerri A. Carnes  
10 Arizona Public Service Company  
P.O. Box 53072, MS 9712  
11 Phoenix, AZ 85072-3999  
[Kerri.Carnes@aps.com](mailto:Kerri.Carnes@aps.com)  
12 **Consented To Service By Email**

13 Tom Harris, Chairman  
Arizona Solar Energy Industries Association  
14 2122 W. Lone Cactus Dr., Suite 2  
Phoenix, AZ 85027  
15 [Tom.harris@ariseia.org](mailto:Tom.harris@ariseia.org)  
16 **Consented To Service By Email**

17 Scott Wakefield  
Hienton & Curry, PLLC  
5045 N 12th Street, Suite 110  
18 Phoenix, Arizona 85014-3302

19 Steve Chriss  
Wal-Mart Stores, Inc.  
20 2011 S.E. 10th Street  
Bentonville, Arkansas 72716

21 Ken Wilson  
22 Western Resource Advocates  
2260 Baseline Road, Suite 200  
23 Boulder, Colorado 80302

24 Jeff Schlegel  
SWEEP Arizona Representative  
25 1167 W. Samalayuca Dr.  
Tucson, Arizona 85704-3224  
26

1 Ellen Zuckerman  
SWEEP Senior Associate  
4231 E. Catalina Dr.  
2 Phoenix, Arizona 85018

3 Cynthia Zwick  
Arizona Community Action Association  
4 2700 North 3<sup>rd</sup> Street, Suite 3040  
Phoenix, Arizona 85004

5 Kevin Hengehold  
6 Arizona Community Action Association  
2700 N 3rd St., Suite 3040  
7 Phoenix, Arizona 85004

8 Bryan Lovitt  
3301 West Cinnamon Drive  
9 Tucson, Arizona 85741

10 Kevin M. Koch  
P.O. Box 42103  
11 Tucson, Arizona 85733

12 Karen White  
139 Barnes Drive  
13 Suite 1  
Tyndall Air Force Base, Florida 32401  
14 [karen.white.13@us.af.mil](mailto:karen.white.13@us.af.mil)  
**Consented To Service By Email**

15 Kyle J. Smith  
16 9275 Gunston Road (JALS RL/IP)  
Suite 1300  
17 Fort Belvoir, Virginia 22060  
[kyle.j.smith124.civ@mail.mil](mailto:kyle.j.smith124.civ@mail.mil)  
18 **Consented To Service By Email**

19 Jeffrey W. Crockett  
Crockett Law Group PLLC  
20 2198 E. Camelback Road, Suite 305  
Phoenix, Arizona 85016

21 Bruce Plenk  
22 2958 N. St. Augustine Place  
Tucson, Arizona 85712  
23 [bplenk@igc.org](mailto:bplenk@igc.org)  
**Consented To Service By Email**

24 Garry D. Hays  
25 Law Offices of Garry D. Hays, PC  
2198 E. Camelback Road, Suite 305  
26 Phoenix, Arizona 85016

27

1 Greg Patterson  
2 Munger Chadwick  
3 916 West Adams, Suite 3  
4 Phoenix, Arizona 85007

5 Camila Alarcon  
6 Gammage & Burnham, PLC  
7 Two N. Central Ave., 15<sup>th</sup> Floor  
8 Phoenix, Arizona 85004  
9 [calarcon@gblaw.com](mailto:calarcon@gblaw.com)  
10 **Consented To Service By Email**

11 Michele L. Van Quathem  
12 Law Office of Michele Van Quathem, PLLC  
13 7600 N. 15<sup>th</sup> St., Suite 150-30  
14 Phoenix, Arizona 85020  
15 [mvq@mvqlaw.com](mailto:mvq@mvqlaw.com)  
16 **Consented To Service By Email**

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

By *Jaelyn Howard*