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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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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

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD AND TARIFF
IMPLEMENTATION PLAN.

DOCKET NO. E-01933A-15-0239

NOTICE OF FILING ERRATA

The Utilities Division ("Staff") of the Arizona Corporation Commission hereby files this Notice of Errata regarding its Opening Brief filed on June 10, 2016. Staff inadvertently omitted Energy Freedom Coalition of America's response to a data request referenced in the brief. This exhibit is attached hereto.

RESPECTFULLY SUBMITTED this 13th day of June, 2016.

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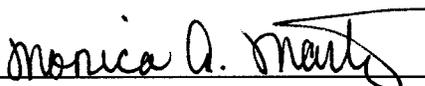
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April 22, 2016

SENT BY ELECTRONIC MAIL

Original sent by regular U.S. mail

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RE: Energy Freedom Coalition of America's Response to Staff's First Set of Data Requests - TEP Docket No. 15-0239

Dear Mr. Smith:

Enclosed is EFCA's response to Staff's First Set of Data Requests in the above referenced docket.

Should you have any questions or comments, please feel free to contact me directly at 480-505-3937.

Sincerely,

/s/Court S. Rich
Court S. Rich

Attachment

**ENERGY FREEDOM COALITION OF AMERICA'S RESPONSE TO STAFF'S FIRST
SET OF DATA REQUESTS 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

April 22, 2016

STF 1.1: Throughout the testimony filed on behalf of the Energy Freedom Coalition of America ("EFCA") in this docket, there are references to the proposed TEP-Owned Residential Solar ("TORS") program and Residential Community Solar ("RCS") program ("the programs") "preventing competition," "eliminating competition," or being "anticompetitive." (See e.g., Beach Direct at 7, 14, Cicchetti Direct at 3, 13, Responsive at 4, 6, DeRamus Direct *passim*) Is it EFCA's position that there is a legal prohibition to the Arizona Corporation Commission approving these programs? If so, please state all legal theories to support this position including all legal citations.

RESPONSE:

Yes. It is unlawful for the Arizona Corporation Commission to approve expansion of the TORS program and the implementation of the RCS program as originally proposed and as restated in Mr. Tilghman's Rebuttal Testimony at page 16, lines 21-27 (addition of matching 5 MW of capacity under a PPA arrangement).

While the Staff's request is for EFCA to state "All legal theories to support this position," EFCA notes that, subsequent to the filing of this Data Request, the presiding officer set out a briefing schedule under which post-hearing briefs in this docket are due on June 10 and reply briefs are due on June 24. Thus, EFCA's response is without prejudice to, and may be supplemented by, the legal positions and factual support thereof contained in EFCA's post-hearing briefs.

As the Data Request summarized, the record in this proceeding demonstrates that both the proposed TORS expansion and the RCS program are anticompetitive, and if approved by the Commission, would lead to the elimination of the competitive DG industry in TEPs service territory and, thus, competition with TEP from non-TEP-owned DG solar resources.

TORS

Violation of obligation to maintain distributed generation competition. The Commission's obligation to maintain distributed generation competition is not only consistent with, but compelled by, the Legislature's determination that it is "the public policy of" Arizona that "competitive markets shall exist" in electric generation, A.R.S. § 44-202(B).

Against the public interest. The Commission has adopted a policy of approving a utility's REST Implementation Plan only if it finds that such a plan is "in the public interest." *See* Order 74884, Conclusions of Law, ¶ 3. There is no basis under which the Commission lawfully could find that expansion of the TORS program as a rate-based offering under the flat-rate structure of Rider R-10 is in the public interest.

RCS

Violation of obligation to maintain distributed generation competition. In addition to the reasons set out with respect to TEP's TORS program expansion, TEP admits its intent to offer RCS to TEP's customers on a monopoly basis. TEP has stated no legal reason why this is permissible, except that it has not proposed a tariffed arrangement that would enable third party participation. Both EFCA and RUCO have suggested mechanisms by which this objective might be lawfully accomplished.

Under these circumstances, the Commission has an obligation under the public policy of Arizona, as embodied in A.R.S. § 44-202(B), to reject the RCS proposal, or any modified TEP "residential community solar" proposal," unless and until appropriate mechanisms are developed and approved by the Commission to preserve and/or ensure competition on a level playing field basis. *See* R14-2-1616. Further, by delaying approval of any TEP proposal until such level-playing-field mechanisms are in place, the Commission would be acting in accordance with Arizona's public policy, while avoiding subsequent issues of divestiture under R14-2-1615(A).

Fundamental changes to the Commission's REST Rules in the absence of a full rulemaking proceeding. TEP requests that the Commission's approval of its RCS proposal be treated as tantamount to adding the words "or directly connected to the Company's distribution system" to the text of sections R14-2-1801 and R14-2-1803 of the REST regulations, while the text of these sections remains unchanged. TEP has admitted that all but one of TEP's utility-scale solar facilities are "directly connected to the Company's distribution system." If that capacity is treated as distributed generation, the result would essentially negate the material distinction between the utility-scale renewable and distributed generation requirements. Such an outcome works a fundamental change in the REST requirements, and thus can only occur following a rulemaking proceeding addressing such a definitional revision. Alternatively, permitting TEP to treat all its utility scale solar facilities as "distributed generation" for the purpose of implementing its unlawful RCS program cannot constitute "good cause" for a REST rule waiver under R14-2-1816(A), should TEP's Application for approval of its RCS proposal be treated as an implicit request for such a waiver.

Against the public interest. The Commission has adopted a policy of approving a utility's REST Implementation Plan only if it finds that such a plan is "in the public interest." *See* Order 74884, Conclusions of Law, ¶ 3. There is no basis under which the Commission lawfully could find that approval of the RCS program as a rate-based offering under the flat-rate structure of Rider R-17 is in the public interest.

RESPONDENT:

EFCA