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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 APPLICATION OF
12 TUCSON ELECTRIC POWER COMPANY FOR
13 APPROVAL OF ITS 2016 RENEWABLE
14 ENERGY STANDARD IMPLEMENTATION
15 PLAN

DOCKET NO. E-01933A-15-0239

16 IN THE MATTER OF THE APPLICATION OF
17 TUCSON ELECTRIC POWER COMPANY FOR
18 THE ESTABLISHMENT OF JUST AND
19 REASONABLE RATES AND CHARGES
20 DESIGNED TO REALIZE A REASONABLE
21 RATE OF RETURN ON THE FAIR VALUE OF
22 THE PROPERTIES OF TUCSON ELECTRIC
23 POWER COMPANY DEVOTED TO ITS
24 OPERATIONS THROUGHOUT THE STATE OF
25 ARIZONA AND FOR RELATED APPROVALS

DOCKET NO. E-01933A-15-0322

**ENERGY FREEDOM COALITION
OF AMERICA'S REPLY IN
SUPPORT OF ITS MOTION TO
STRIKE TESTIMONY OF LON
HUBER**

26 The Energy Freedom Coalition of America ("EFCA") hereby files this Reply In Support
27 of Its Motion to Strike Testimony of Lon Huber.

28 If RUCO has its way, RUCO's proposed "RPS Rate Credit Option" will be the only
alternative to net energy metering ("NEM") discussed during Phase 1 of this docket. Similarly,
unless EFCA's Motion to Strike is granted, RUCO's proposed meter fee, applicable only to
distributed generation solar ("DG") customers, will be the only rate design change aimed
exclusively at DG customers evaluated in Phase 1. There is no logical reason to single out these

1 two proposals for isolated evaluation in Phase 1 and there is no tenable way to discuss RUCO's
2 two proposals without a broader discussion of the benefits, costs, and overall value of DG and
3 exported energy.

4 The bottom line is this: in an effort to maximize judicial economy and benefit from the
5 ongoing investigation in the Value of Solar Docket, the Commission entered a Procedural Order
6 that clearly directed issues related to DG rate design and NEM to a Phase 2 of this docket. The
7 portions of Huber's testimony that EFCA seeks to strike, undoubtedly are directly and substantially
8 related to DG rate design and NEM and, therefore do not comport with the Procedural Order that
9 established Phase 2. As a result, these portions of Huber's testimony must wait until Phase 2 or
10 the efficiencies hoped for will be lost.

11 EFCA responds to RUCO's arguments raised in its Response to EFCA's Motion to Strike
12 (the "Response") below.

13 **1. The RPS Bill Credit Option is directly and substantially related to NEM and DG rate**
14 **design.**

15 Despite the fact that RUCO has proposed that its RPS Bill Credit Option be among the
16 mechanisms to permanently replace NEM in at least three different dockets, RUCO hyperbolically
17 accuses EFCA of "willful ignorance"¹ for even suggesting that the RPS Rate Option actually is
18 related to NEM in this docket. RUCO's allegation that its RPS Bill Credit Option is not related to
19 NEM and that EFCA is "ignorant" claiming it is, is facially absurd to anyone following the
20 proceedings at the Commission. Despite this obvious incongruity, EFCA believes it is useful to
21 point the Commission to RUCO's own testimony and position on the RPS Bill Credit Option.
22 RUCO's testimony in multiple dockets belies its unsupportable assertion that its RPS Bill Credit
23 Option is not directly and substantially related to NEM.

24 For example, in the Value of Solar proceeding, Huber testified describing what he now
25 calls the RPS Bill Credit Option and advocated that it be adopted as the preferred method for
26 compensating DG customers for their exports.² In Huber's Direct Testimony in this Docket he
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28 ¹ Response, 3:16-17.

² Docket No. E-00000J-14-0023, Transcript Vol. XII at 2146-2159.

1 testified that RUCO believes that, “reforming distributed generation compensation is necessary”³
2 before proposing that the RPS Bill Credit Option (then called the “RES Credit Option”) be adopted
3 along with other alternatives.⁴ In fact, Section V of Huber’s Direct Testimony -where he advocates
4 for adoption of the proposed RPS Bill Credit Option- is titled, “RUCO’s proposed rate design and
5 policy for DG customers.”⁵

6 Even in its Brief in the UNS Rate Case, RUCO proposed the RPS Bill Credit Option along
7 with other alternatives and urged that, “the Commission should adopt RUCO’s proposed rate
8 design for partial requirement DG customers.”⁶ There is absolutely no doubt that the RPS Bill
9 Credit Option is directly and substantially related to DG rate design and NEM. RUCO’s arguments
10 to the contrary are clearly disproven by its own position taken in this and other dockets.

11 **2. The DG Meter Fee is directly and substantially related to NEM and DG rate design.**

12 It is obvious that the proposed meter fee is an element of rate design that will exclusively
13 impact new DG customers and, as such, it should be heard in Phase 2. EFCA strongly disagrees
14 with RUCO’s position that such a charge is not clearly an element of DG rate design. In fact, it
15 appears that even RUCO may disagree with RUCO’s position because early on in its Response
16 RUCO emphatically states that, “there is a clear direct link between fixed charges and rate design
17 for new DG customers and net metering.”⁷ Furthermore, the Decision in the UNS case includes a
18 statement that the Commission “expect[s] the Value of DG docket to provide general guidance on
19 the fixed costs of a second meter for DG customers...”⁸ before directing that the charge to be
20 levied for a second meter be discussed more fully in Phase 2 of that case.

21 The meter fee is a fixed charge to be levied exclusively on DG customers and, as RUCO
22 admits, a fixed charge is part of rate design. As a result, the Procedural Order directs this issue to
23 be dealt with in Phase 2.

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26 ³ Direct Testimony of Lon Huber, 4:21.

27 ⁴ See *Id.* at 33.

28 ⁵ *Id.* at 32.

⁶ Docket No. E-04204A-15-0142, RUCO’s Closing Brief, 13:4-5.

⁷ Response, 3:2-3.

⁸ Decision 75697, 118:21-22.

1 **3. RUCO should not be granted a strategic advantage for not following the Procedural**
2 **Order.**

3 RUCO argues that EFCA’s very reasonable interpretation of the Procedural Order should
4 be held against it and that if the Commission permits discussion of RUCO’s NEM alternative or
5 meter fee to move forward in Phase 1, EFCA now should be forbidden from filing testimony on
6 an issue it never could have anticipated being at issue in Phase 1. While EFCA continues to believe
7 the only rational way forward is to strike the offending testimony, EFCA certainly reserves the
8 right to seek leave to file responsive testimony if its Motion to Strike is denied.

9 **4. RUCO’s allegations of a slippery slope are unfounded.**

10 RUCO alleges that the challenged parts of Huber’s testimony fall in some murky gray area
11 and that to strike Huber’s testimony begs the Commission to slide along a slippery slope that will
12 lead it to striking testimony about generally applicable fixed charges and other general rate design
13 elements. In reality, RUCO’s proposals for a DG only meter fee and a NEM alternative do not
14 occupy a space anywhere near the edge of a slippery slope. RUCO’s proposals deal exclusively
15 with DG customers’ rate design and NEM. Furthermore, no party is arguing that any general rate
16 issue should be stricken from consideration in this docket thereby proving RUCO’s slippery slope
17 argument demonstrably false.

18 As discussed more fully in Section 1 above, RUCO has proposed its RPS Bill Credit Option
19 in multiple dockets *as an alternative to and a replacement for NEM*. Despite RUCO’s
20 protestations, EFCA is not asking that the Commission stretch the concept of what is “related to
21 changes to net metering and rate design for new DG customers” but instead to recognize that the
22 RPS Bill Credit Option and a DG only fixed meter charge are plainly and undeniably related to
23 those things and, therefore properly should be considered in Phase 2.

24 **5. This case is procedurally different from the UNSE case.**

25 RUCO’s argument that “[p]rocedurally, the UNSE case is virtually identical to the present
26 case”⁹ is critically flawed. At the time the RPS Bill Credit Option was adopted by the Commission
27 as a NEM alternative in the UNSE case, the UNSE case had gone through weeks of hearing on all
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⁹ Response, 4:15

1 matters related to NEM and DG rate design. In this matter, there is no record on NEM and DG
2 rate design, no hearing has yet been held, no briefs have been filed, and the addition of Phase 2
3 guarantees that this docket and the UNSE case will not be “virtually identical” at the time of the
4 Open Meeting for Phase 1.

5 In fact, in order for this docket to be procedurally “virtually identical” to the UNSE docket,
6 there would need to be weeks of testimony on *all* NEM issues and options and DG rate design
7 before it gets to the Commission. This is exactly what the bifurcation of this docket is attempting
8 to avoid for judicial economy. Instead, RUCO proposes that this matter come before the
9 Commission with only testimony on its RPS Bill Credit Option and its proposed DG meter fee
10 while all other NEM or solar rate design issues and alternatives continue to be dealt with in Phase
11 2.

12 **6. RUCO wrongly accuses EFCA of delay**

13 To be clear, EFCA is only asking that the Procedural Order be enforced and that issues
14 related to NEM and DG rate design be dealt with exclusively in the Phase 2 proceeding that was
15 already ordered. EFCA did not invent or even ask for Phase 2 to be implemented in this docket,
16 yet RUCO alleges that EFCA’s Motion to Strike is somehow designed to delay this proceeding.
17 This is obviously false.

18 Further, RUCO concludes that because EFCA found out about RUCO’s intention to file
19 testimony on its NEM alternative and DG meter fee, despite the Procedural Order’s restrictions,
20 EFCA “surely had enough time”¹⁰ to file testimony on these DG and NEM related issues. As
21 EFCA stated in its Motion, EFCA found out about RUCO’s intentions the afternoon prior to the
22 filing of testimony and immediately reached out to RUCO about this. Certainly, one afternoon is
23 not enough time to prepare testimony on an issue that had previously been reserved for Phase 2.
24 EFCA can only imagine how RUCO may have complained of undue surprise had it been EFCA
25 that posited its own one-off proposal for a NEM alternative in the last round of testimony.

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¹⁰ Response, 6:7.

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

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7 *I hereby certify that I have this day served a copy of the foregoing document on all parties of*
8 *record in this proceeding by regular or electronic mail to:*

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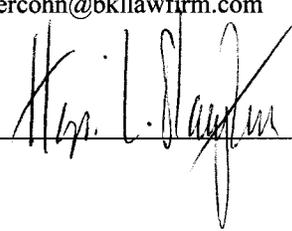
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