

ORIGINAL

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OPEN MEETING ITEM



0000173832

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 7, 2016

DOCKET NOS.: E-01933A-15-0239 and E-01933A-15-0322

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

TUCSON ELECTRIC POWER COMPANY  
(2016 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN/RATES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 17, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 27, 2016 AND OCTOBER 28, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

OCT 07 2016

DOCKETED BY	<i>[Signature]</i>
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

On this 7th day of October, 2016, the following document was filed with Docket Control as a Recommended Opinion and Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE – Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF  
9 TUCSON ELECTRIC POWER COMPANY FOR  
10 APPROVAL OF ITS 2016 RENEWABLE ENERGY  
11 STANDARD IMPLEMENTATION PLAN.

DOCKET NO. E-01933A-15-0239

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

DOCKET No. E-01933A-15-0322

DECISION NO. \_\_\_\_\_

22 **OPINION AND ORDER**

23 DATE OF HEARING:

April 5-7, 2016

24 PLACE OF HEARING:

Tucson, Arizona

25 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

26 APPEARANCES:

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Mr. Brian E. Smith and Mr. Wesley C. Van Cleve,  
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Division.

1 **BY THE COMMISSION:**

2 \* \* \* \* \*

3 Having considered the entire record herein and being fully advised in the premises, the Arizona  
 4 Corporation Commission ("Commission") finds, concludes, and orders that:

5 **FINDINGS OF FACT**6 **Procedural History**

7 1. On July 1, 2015, in Docket No. E-01933A-15-0239, Tucson Electric Power Company  
 8 ("TEP" or "Company") filed with the Commission its 2016 Renewable Energy Standard and Tariff  
 9 ("REST") Implementation Plan ("Plan" or "2016 REST Plan") in compliance with Arizona  
 10 Administrative Code ("A.A.C.") R14-2-1801 *et seq.* ("REST Rules").

11 2. On November 5, 2015, in Docket No. E-01933A-15-0322, TEP filed an Application  
 12 with the Commission for a rate increase ("Rate Case").

13 3. Intervention in the 2016 REST Plan docket was granted to the Residential Utility  
 14 Consumer Office ("RUCO") on October 15, 2015, to the Energy Freedom Coalition of America  
 15 ("EFCA") on November 2, 2015; and to Arizona Public Service Company ("APS") on April 1, 2016.

16 4. Intervention in the Rate Case has been granted to RUCO, Pima County, Freeport  
 17 Minerals Company and Arizonans for Electric Choice and Competition (collectively "AECC"),  
 18 International Brotherhood of Electrical Workers Local 1116, Noble Americas Energy Solutions, LLC  
 19 ("Noble Solutions"), Arizona Investment Council, Vote Solar, Sierra Club, The Alliance for Solar  
 20 Choice, APS, the Arizona Solar Energy Industries Association, the Arizona Utilities Ratepayers  
 21 Alliance, Wal-Mart Stores, Inc., Western Resource Advocates, the Southwest Energy Efficiency  
 22 Project, Arizona Community Action Association, Solon, Arizona Competitive Power Alliance, the  
 23 Department of Defense, the Southern Arizona Home Builders Association, Tucson Meadows, LLC,  
 24 Arizona Solar Deployment Alliance, and the following individuals: Kevin Koch, Bryan Lovitt and  
 25 Bruce Plenk.

26 5. On November 6, 2015, RUCO filed Comments in support of TEP's 2016 REST Plan.

27 6. On November 14, 2015, EFCA requested a Procedural Conference and schedule for a  
 28 formal evidentiary hearing on TEP's 2016 REST Plan related to TEP's proposal to expand its utility-

owned distributed generation program (“TEP-owned Rooftop Solar Program” also known as “TORS”) that was approved as part of the Company’s 2015 REST Plan.<sup>1</sup> The Commission’s Utilities Division (“Staff”) filed a Response to EFCA’s Motion on November 24, 2016; and TEP filed a Response in Opposition on November 25, 2015. On December 1, 2015, EFCA filed a Reply in Support of its Motion.

7. By Procedural Order dated December 4, 2015, a Procedural Conference was set for December 17, 2015, for the purpose of discussing EFCA’s Motion. The Procedural Conference commenced as scheduled, with TEP, EFCA, RUCO and Staff appearing through counsel.

8. TEP argued that EFCA’s motion interfered with the Commission’s efficient processing of applications, was prejudicial and a “delay tactic” to disrupt approval of TEP’s 2016 REST Plan by January 1, 2016. TEP submitted that the appropriate and efficient process would be to: proceed with a Staff Report and Proposed Order on the 2016 REST Plan; allow the parties to file comments or exceptions; Commission consideration of the matter at Open Meeting; and the Commission decides if an evidentiary hearing is needed as part of the Open Meeting process. EFCA argued that TEP was attempting to avoid scrutiny of its TORS program. In addition to its assertions concerning the TORS program, at the Procedural Conference EFCA raised similar concerns surrounding TEP’s proposal for a Residential Community Solar Program (“RCS”) that was also being proposed as part of TEP’s 2016 REST Plan.<sup>2</sup> Staff supported a hearing based on due process concerns, and suggested that the Commission could carve out the TORS and RCS proposals for hearing in order to address the remainder of TEP’s 2016 REST Plan sooner.<sup>3</sup> Staff asserted that the TORS Program could be evaluated as part of the pending Rate Case. RUCO proposed that any hearing be held in conjunction with TEP’s pending Rate Case for reasons of judicial efficiency.<sup>4</sup>

<sup>1</sup> Decision No. 74884 (December 31, 2014). The Commission approved a Utility-Owned Distributed Generation (“UODG”) proposal 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. The term UDOG has been replaced by TORS.

<sup>2</sup> Under the proposed RCS, 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 RCS in response to a requirement in Decision No. 74884 that TEP include in its 2016 Plan an analysis of larger scale distributed generation options.

<sup>3</sup> Staff no longer supported addressing TORS as part of the pending rate case.

<sup>4</sup> During the Procedural Conference, Staff requested that EFCA reduce its concerns with the RCS to writing and file them with the Commission to allow Staff to better evaluation them and formulate a recommendation. On December 21, 2015, EFCA filed a “Response to Staff Request.”

1           9.     On December 30, 2015, Staff filed a Supplemental Response to ECFA's Motion. After  
2 reviewing EFCA's December 21, 2015 Response, Staff agreed that issues of fact relating to the RCS  
3 warranted a hearing, and supported evaluating both the proposed TORS and RCS in the context of an  
4 evidentiary hearing.

5           10.    By Procedural Order dated January 6, 2016, the 2016 REST Plan was set for an  
6 evidentiary hearing to commence April 5, 2016.<sup>5</sup> It was determined that the TORS and RCS programs  
7 would not be carved-out of the 2016 REST Plan in order to permit the Commission to consider the  
8 proposed 2016 REST Plan as a whole.

9           11.    On February 12, 2016, TEP filed the Direct Testimony of Carmine Tilghman and Craig  
10 Jones.

11           12.    On February 23, 2016, TEP filed affidavits that indicate it had provided notice of the  
12 2016 REST Plan hearing to customers as a bill insert mailed between January 22, 2016 and February  
13 19, 2016, and by publication in the *Arizona Daily Star* on February 2, 2016.

14           13.    On March 11, 2016, RUCO filed the Direct Testimony of Lon Huber; EFCA filed the  
15 Direct Testimony of R. Thomas Beach, Charles J. Cicchetti, and David W. DeRamus, PhD;<sup>6</sup> and Staff  
16 filed the Direct Testimony of Robert G. Gray.

17           14.    On March 28, 2016, TEP filed the Rebuttal Testimony of Mr. Tilghman, Mr. Jones and  
18 Robert Yardley, Jr.; RUCO filed the Responsive Testimony of Mr. Huber; and Staff filed the  
19 Responsive Testimony of Mr. Gray.

20           15.    On March 30, 2016, EFCA filed the Responsive Testimony of Mr. Cicchetti and Dr.  
21 DeRamus.

22           16.    On March 31, 2016, TEP filed a Motion to Bifurcate and to Consolidate ("TEP  
23 Motion"). Because there was no opposition to the portions of the 2016 REST Plan not involving the  
24 TORS and RCS programs, TEP sought to bifurcate the TORS and RCS programs from the rest of the  
25 2016 REST Plan, and proposed that Staff prepare a Staff Report and Order for Commission  
26 consideration on the uncontested portions of the 2016 REST Plan (including the 2016 budget, REST

27 <sup>5</sup> The Rate Case has been set for hearing to commence on September 1, 2016.

28 <sup>6</sup> On March 30, 2016, EFCA filed a Notice of Errata, attaching a revised and clean copy of a Table to the Direct Testimony of Mr. Beach.



1 surcharge and surcharge caps).<sup>7</sup> TEP proposed that the TORS and RCS programs be consolidated with  
 2 the pending TEP Rate Case. Under TEP's proposal, the focus of the April 5, 2016, hearing would be  
 3 on whether community solar programs could be used to meet the Distributed Generation ("DG")  
 4 requirements in the REST Rules. Staff and RUCO supported TEP's Motion.

5 17. On March 31, 2016, EFCA filed an Opposition to the TEP Motion. EFCA stated that it  
 6 did not oppose the request that Staff prepare an Order on the uncontested portion of the 2016 REST  
 7 Plan, but opposed TEP's request to limit the scope of the April 5<sup>th</sup> hearing to whether the RCS could  
 8 be considered DG under the REST Rules. EFCA viewed TEP's request as an attempt to confirm TEP's  
 9 role as the monopoly provider of community solar without addressing EFCA's allegations of the anti-  
 10 competitive impact of the RCS proposal.

11 18. TEP, EFCA, RUCO, APS and Staff participated in a telephonic procedural conference  
 12 on April 1, 2016, to discuss TEP's Motion. All agreed that it was in the public interest for Staff to  
 13 prepare an Order for the Commission on the non-TORS and non-RCS portions of the 2016 REST Plan.<sup>8</sup>  
 14 EFCA argued that the April 5, 2016 hearing should address all facets of the TORS and RCS programs  
 15 that have been addressed in pre-filed testimony. Staff and TEP argued that because the RCS program  
 16 involves a tariffed rate, the Rate Case was the appropriate venue to consider that program.

17 19. After hearing from the parties, it was determined that the April 5, 2016 hearing would  
 18 consider all of the issues and recommendations raised in the pre-filed testimony. The matter of  
 19 consolidation was taken under advisement. By Procedural Order dated April 6, 2016, the Rate Case  
 20 and 2016 REST Plan dockets were consolidated so that if, as a result of the April hearing, it is  
 21 determined that the TORS expansion and RCS are in the public interest, the specifics of the tariff and  
 22 rate will be considered as part of the Rate Case.<sup>9</sup>

23 20. The hearing convened on April 5, 2016, before a duly authorized Administrative Law  
 24 Judge, and continued on April 6, 2016 and April 7, 2016. Mr. Tilghman, Mr. Jones, and Mr. Yardley

25 <sup>7</sup> Neither the proposed TORS expansion nor proposed RCS program affect the REST budget or surcharge.

26 <sup>8</sup> The Commission approved the Staff Order on the 2016 REST Plan (minus the TORS and RCS programs) in Decision No. 75560 (May 13, 2016).

27 <sup>9</sup> Thus, the parties to the Rate Case docket were put on notice that in the event the Commission determines that it is in the  
 28 public interest that the RCS program should qualify for the DG carve out under the REST Rules, the RCS tariff and rate  
 will be considered and set in the Rate Case proceeding. In the event the Commission determines that the RCS is not in the  
 public interest, there would be no need to determine the RCS rate in the Rate Case.

1 testified for TEP; Mr. Cicchetti, Mr. Beach and Dr. DeRamus testified for EFCA; Mr. Huber testified  
 2 for RUCO; and Mr. Gray testified for Staff. Seven members of the public appeared at the beginning of  
 3 the hearing to provide comments.<sup>10</sup> At the conclusion of the hearing, the ALJ took the matter under  
 4 advisement pending the filing of Closing Briefs and the issuance of a Recommended Opinion and  
 5 Order.

6 21. On June 10, 2016, Initial Closing Briefs were filed by TEP, RUCO, EFCA, APS, and  
 7 Staff.<sup>11</sup>

8 22. On June 24, 2016, Reply Briefs were filed by TEP, RUCO, EFCA, APS, AECC, Noble  
 9 Solutions, and Staff.

### 10 **The TORS and RCS Programs**

11 23. Under TORS, a residential customer contracts with TEP to install a DG system on the  
 12 customer's roof, the size of which would approximate the annual energy usage of the particular  
 13 customer. TEP owns and operates the systems, and contracts with independent companies to install  
 14 and maintain the systems. For a period of 25 years, the customer pays a fixed amount each month,  
 15 which approximates what the customer was paying previously, which matches the manufacturer's  
 16 warrantied life of the system.<sup>12</sup> Pursuant to the Company's proposal, if a customer's usage rises or falls  
 17 by more than 15 percent in any given year, the customer's fixed charge would be adjusted accordingly.  
 18 TEP notes that there is no guaranty of savings for the customer, only that the rate would be fixed, and  
 19 that the potential for future savings as well as the flexibility to float energy consumption with the band  
 20 without being penalized is provided in exchange for the use of their roof or premises.<sup>13</sup> TEP proposed  
 21 that the TORS customers would pay an initial processing fee of \$250 prior to installation of the system,  
 22 and a fixed energy rate of \$16.50 per kW.<sup>14</sup>

23 24. In Decision No. 74884, the Commission approved the TORS program as a pilot, limited  
 24 to an expenditure of \$10 million, including operation and maintenance costs not to exceed 3.5  
 25

26 <sup>10</sup> The Commission received many more written comments in the 2016 REST Plan docket, but the vast majority were related  
 to the proposed REST tariff rather than the TORS or RCS programs.

27 <sup>11</sup> On June 13, 2016, Staff filed a Notice of Errata which included an attachment omitted from its Initial Brief.

<sup>12</sup> Staff Initial Brief at 5 *citing* Decision No. 74884 at 8-9; Ex TEP-1 Tilghman Dir at 7.

<sup>13</sup> Hearing Transcript ("Tr.") at 45.

28 <sup>14</sup> Ex TEP-1 Tilghman Dir at 7-8; Ex TEP-3 Jones Dir at 5; Ex Staff-1 Gray Dir at 13.

1 cents/watt per year.<sup>15</sup> The Commission also required TEP to ensure that the costs of the TORS program  
 2 would be similar to that of third-party programs.<sup>16</sup> At that time, TEP intended to install approximately  
 3 3.5 MW of utility-owned residential rooftop DG at an expected installed cost of \$2.85 to \$3.00 per  
 4 watt. Assuming a typical system of 6 KW, TEP anticipated 600 installed residential DG systems in the  
 5 program.<sup>17</sup> TEP reports that that the actual average installed cost of the initial 600 installations under  
 6 the TORS pilot program will be approximately \$2.20 per watt.<sup>18</sup>

7 25. Because of the large demand for the program, as part of its 2016 REST Plan, TEP  
 8 requested Commission approval to expand the TORS program by an additional \$15 million to increase  
 9 participation by 1,000 customers.

10 26. As proposed the TORS program does not recover its full cost allocation for the program  
 11 through the fixed tariff, and there is a cost shift of approximately \$0.02/kWh from participants to non-  
 12 participants.<sup>19</sup> Currently, the cost-shift associated with TORS is less than half that of the cost-shift  
 13 associated with the existing net metering tariff.<sup>20</sup>

14 27. In Decision No. 74884, the Commission noted that TEP believed that larger scale DG  
 15 facilities located in its grid could provide more benefits than rooftop DG at a lower cost. The  
 16 Commission ordered that as part of its 2016 REST Plan TEP should report on the “feasibility, costs,  
 17 benefits, and other aspects of larger scale distributed generation options, either company-owned or  
 18 through purchase power agreements and if Tucson Electric Power Company wishes, an implementation  
 19 proposal, as part of their REST activities.”<sup>21</sup> In response, in its 2016 REST Plan, TEP proposed the  
 20 creation of the RCS, and a new Residential Community Solar Tariff (“Rider-17”).

21 28. Under the RCS program, TEP proposes to build an approximate 5 megawatt (“MW”)  
 22 community solar facility at a cost of up to \$10 million, or up to \$2.00/watt, at a location where it would  
 23 interconnect with the Company’s distribution system.<sup>22</sup> TEP estimates the actual cost would be  
 24

25 <sup>15</sup> Decision No. 74884 at 21.

26 <sup>16</sup> *Id.* at 22.

27 <sup>17</sup> TEP 2016 Implementation Plan at 8; Ex S-1 Gray Dir at 7.

28 <sup>18</sup> Tr. at 77.

<sup>19</sup> Ex TEP-1 Tilghman Dir at 9.

<sup>20</sup> Tr. at 52 and 190-91.

<sup>21</sup> Decision No. 74884 at 10 and 22.

<sup>22</sup> Ex TEP-1 Tilghman Dir at 21; Ex Staff-1 Gray Dir at 13.

1 approximately \$1.60/watt, or about \$8 million for a 5MW system.<sup>23</sup> Given a 5MW capacity and a 5.53  
 2 kW system size, the RCS program could serve an estimated 900 customers if fully subscribed.<sup>24</sup>

3 29. According to the Company, the proposed RCS would operate similarly to the TORS  
 4 program, wherein the customer's equivalent net-zero value ("Solar Rate Capacity") would be  
 5 calculated (previous annual consumption/average solar production for kWh); the customer would pay  
 6 a fixed monthly payment based on the Solar Rate Capacity; and the per-kW fixed rate would be  
 7 evaluated annually if consumption increased or decreased by 15 percent.<sup>25</sup>

8 30. TEP would manage the system by contracting out specific engineering and construction  
 9 services via competitive bid. To the extent that the capacity of the RCS system is not fully subscribed,  
 10 TEP would use the balance of the facility to meet its system's power needs. As proposed, TEP would  
 11 own all of the renewable energy credits ("RECs") from the facility, and RCS customers would enter  
 12 into a ten-year agreement with TEP at a fixed rate of \$17.50 per kW.<sup>26</sup>

### 13 Positions of the Parties

#### 14 TEP

15 31. TEP claims that its TORS proposal merely expands a popular program so that customers  
 16 have choices with respect to rooftop solar. TEP states that over 5,000 customers have expressed interest  
 17 in the program, and that the Company will reach the 600 customer cap in the fall of 2016.<sup>27</sup>

18 32. According to TEP, the TORS program provides important benefits compared to typical  
 19 third-party rooftop solar installations because TORS installations are designed to maximize production  
 20 in the late afternoon when the TEP system peaks in summer, versus the third-party installations which  
 21 are typically designed to maximize production without regard to the system peak; and because TORS  
 22 gives TEP the ability to target specific areas where solar DG would benefit the system. TEP also argues  
 23 that the TORS program reduces the DG "cost-shift" compared to a typical "net zero" third-party rooftop  
 24 solar customer.<sup>28</sup>

25 <sup>23</sup> Ex TEP-1 Tilghman Dir at 22; Ex Staff-1 Gray Dir at 13.

26 <sup>24</sup> Staff Initial Brief at 7. Ex TEP-1 Jones Dir at 4; Ex Staff-1 Gray Dir at 14.

27 <sup>25</sup> Staff Initial Brief at 7; 2016 REST Plan at 18-19; REST Plan Ex 8; Ex TEP-1 Tilghman Dir at 21.

28 <sup>26</sup> Staff Initial Brief at 7.

<sup>27</sup> TEP Initial Brief at 9-10; Ex TEP-1 Tilghman Dir at 9-10.

<sup>28</sup> Ex TEP-1 Tilghman Dir at 15-17, TEP Reply Brief at 11. TEP argues that the cost shifts from TORS and RCS are much smaller than the cost shift associated with net metering, and thus less expensive for non-participant ratepayers. TEP claims

1        33.     TEP contends that Staff's analysis, which concludes that the TORS program is not as  
2 cost effective as waivers or purchasing RECs, does not consider the savings associated with the reduced  
3 cost shift. TEP argues that it does not make sense to force non-solar ratepayers to bear the costs of  
4 acquiring RECs from the third-party companies who install and/or lease rooftop solar systems, and also  
5 require the same ratepayers to pay unrecovered fixed costs caused by the same third-party systems.<sup>29</sup>

6        34.     TEP asserts that there are many benefits to the RCS program. First, TEP notes that the  
7 RCS program offers customers a way to benefit from the economies of scale from a system connected  
8 to the local distribution grid. TEP claims that significant economies of scale are available for initial  
9 capital costs, which TEP estimates to be \$2.50 to \$2.85 per watt for third-party rooftop systems, \$2.20  
10 for TORS, and only \$1.60 to \$1.70 per watt for RCS systems.<sup>30</sup> In addition, TEP states that the RCS  
11 program would be available to many customers who cannot access the traditional rooftop solar market  
12 because some roofs are not suitable for rooftop solar due to structural weaknesses, size, or shade.  
13 Furthermore, TEP states that the RCS program would not have as strict credit requirements as imposed  
14 by many solar leasing companies. Moreover, TEP states that RCS facilities can also be tied into TEP's  
15 existing control and communication network, enabling control of advanced inverter functionality.<sup>31</sup>

16        35.     TEP agrees that Purchased Power Agreements ("PPAs") should be considered for RCS  
17 facilities, and states that TEP will consider both direct ownership and PPAs for each RCS facility.<sup>32</sup>  
18 TEP states that it would support separate 5MW caps for TEP-owned RCS facilities and PPA-based  
19 RCS facilities in order to encourage the use of PPAs.

20        36.     TEP argues that it would be imprudent, unduly costly and wasteful for TEP not to use  
21 suitable land it already owns to locate RCS facilities, and that it is not improper for a vertically  
22 integrated utility to use its assets to reduce costs or to seek economies of scale.<sup>33</sup>

23        37.     In order for the RCS program to count toward REST DG compliance, TEP seeks a

24 \_\_\_\_\_  
25 that EFCA has understated the cost shift associated with third-party DG leases by relying on unrealistic assumptions. ("Net  
26 zero" means that the rooftop solar system produces as much energy as the home uses over the course of a year. Net zero  
does not mean that the home does not rely on the utility's grid for power when the rooftop system is not producing, or not  
producing enough.)

27 <sup>29</sup> TEP Initial Brief at 9.

<sup>30</sup> Ex TEP-1 Tilghman Dir at 22-23.

<sup>31</sup> TEP Initial Brief at 11.

<sup>32</sup> TEP Initial Brief at 12. TEP notes that the proposed RCS tariff includes both options.

<sup>33</sup> TEP Initial Brief at 13.

1 waiver from the current definition of “distributed generation” in the REST Rules.<sup>34</sup> The REST Rules  
 2 include the phrases “Sited at a customer premises....” Or “located at a customer’s premises” in the  
 3 definitions of “Distributed Generation”, “Distributed Solar Electric Generator”, and “Distributed  
 4 Renewable Energy Resources”.<sup>35</sup> TEP argues that a waiver is reasonable because a facility is no less  
 5 “distributed” if it is next door to a customer or up the street from the customer, and it is arbitrary to  
 6 exclude renewable generation facilities that are connected to the distribution grid, but not on the  
 7 customer’s premises. TEP points to Staff’s testimony that community solar was not contemplated when  
 8 the REST Rules were adopted.<sup>36</sup>

9 38. TEP argues that year-by-year DG waivers are not a reliable long-term approach to  
 10 meeting REST compliance as there is no guarantee that the Commission would grant a waiver each  
 11 year.<sup>37</sup> Moreover, TEP argues that the purpose of the REST Rules is better served by allowing off-site  
 12 distributed generation to count, rather than waiving the distributed generation requirement year after  
 13 year.<sup>38</sup>

14 39. TEP also argues that purchasing RECs is not a viable compliance option, as it does not  
 15 appear that the Commission has supported such proposals in the past and there is no visible market for  
 16 RECs in Arizona.<sup>39</sup>

17 40. TEP argues that its proposed rates for the TORS and RCS programs are just and  
 18 reasonable. The TORS rate is \$16.50 per kW that is fixed for 25 years, while the proposed RCS rate is  
 19 \$17.50 per kW and fixed for 10 years.<sup>40</sup> TEP claims the RCS rate is revenue neutral and the fair value  
 20 impact is *de minimus*, and that because no RCS facilities have yet been built, the fair value impact is  
 21 \$0 at this time. Thus, according to TEP, as it did with the TORS rate (as part of the 2015 REST Plan),  
 22 the Commission can approve the RCS rate now without waiting for the Rate Case hearing.<sup>41</sup>

23  
 24 <sup>34</sup> *Id.* at 13-14.

25 <sup>35</sup> A.A.C. R14-2-1801(E); R14-2-1801(G); R14-2-1802(B).

26 <sup>36</sup> Ex S-1 Gray Dir at 6.

27 <sup>37</sup> TEP Initial Brief at 14.

28 <sup>38</sup> TEP notes that Staff’s witness Gray did not believe that the Commission would permit RECs that stay with the third-party leasing company to count DG towards the DG requirement. Ex S-2 Gray Reb at 3.

<sup>39</sup> TEP Initial Brief at 14-15.

<sup>40</sup> The TORS rate is unchanged and is roughly equivalent to the current average bill, and TEP states because it was approved in the Decision No. 74884, no further approval is needed.

<sup>41</sup> TEP Initial Brief at 15.

1        41. In response to EFCA, TEP asserts that the TORS and RSC programs increase  
 2 competition and do not violate competition principles. TEP argues that both programs serve the public  
 3 interest by offering additional solar choices, reducing cost shifts, providing service more efficiently,  
 4 and providing cost-effective ways to comply with its obligations under the REST Rules.<sup>42</sup>

5        42. TEP asserts that approving the programs is not inconsistent with any “policy” of  
 6 competition as it is appropriate for a regulated utility to own generation assets; and furthermore,  
 7 offering additional choices like RCS promotes competition.<sup>43</sup> TEP notes that Arizona halted its move  
 8 to electric competition, but in any case, the competition contemplated in the Retail Electric Competition  
 9 Rules (A.A.C. R14-2-1601 *et seq.*) required competitors to obtain a Certificate of Convenience and  
 10 Necessity from the Commission – a step that EFCA’s members have not taken.<sup>44</sup> TEP asserts that it is  
 11 providing the programs to provide choices to its customers and to meet its DG obligations imposed by  
 12 the REST Rules, and that although TEP has a waiver of the residential DG compliance requirement for  
 13 2016 and 2017, it must plan to meet its DG obligations in 2018 and beyond.<sup>45</sup>

14        43. TEP argues that as a matter of law, EFCA cannot come close to meeting any of the  
 15 elements needed to support the claim that TEP is attempting to monopolize the DG solar segment of  
 16 the market.<sup>46</sup> TEP notes that an attempted monopolization claim requires proof of three elements: (1)  
 17 a “dangerous probability” of monopoly power in the targeted market; (2) a “specific intent” to  
 18 monopolize that segment; and (3) “predatory or anticompetitive conduct.”<sup>47</sup> TEP asserts there is no  
 19 dangerous probability of monopolization of solar DG from the TORS or RCS programs because the  
 20 proposal to add 1,000 new TORS customers and 5 MW of capacity for RCS are finite and account for  
 21 a very small slice of the residential DG solar segment.<sup>48</sup> TEP notes that the Commission controls

22 \_\_\_\_\_  
<sup>42</sup> TEP Reply Brief at 2.

23 <sup>43</sup> *Id.*

24 <sup>44</sup> *Id.* at 3. TEP states that in Decision No. 71795 (July 12, 2010), the Commission found that solar providers like SolarCity  
 are not a public service corporation, in part, because they do not compete with public service corporations, but are partners  
 in helping utilities reach their distributed generation goals. (We note that the holding in Decision No. 71795 was limited to  
 the circumstances of that case which involved providing rooftop solar to schools and non-profits.)

25 <sup>45</sup> Decision No. 75560 (May 13, 2016) finds that there is sufficient solar in TEP’s service territory to meet the DG rules  
 through 2020, but recognizes that TEP does not own title to the RECs and cannot claim the kWhs or RECs for compliance  
 purposes.

26 <sup>46</sup> TEP Reply Brief at 4.

27 <sup>47</sup> *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456-57 (1993).

28 <sup>48</sup> TEP notes that in the last three years, the residential DG solar market saw 8,400 third-party solar installations totaling 61  
 MW of capacity. Ex TEP-2 Tilghman Reb at Ex CT-R-2.

whether the TORS or RCS programs can be expanded in the future, and can impose whatever conditions it deems necessary to protect effective competition. In addition, TEP states that it has provided numerous reasons in support of its proposals, while EFCA has not offered “one speck” of evidence that TEP has the requisite “intent,” (or that would support an inference of such specific intent) to monopolize the production of solar DG.<sup>49</sup> Finally, TEP asserts that the third element does not exist here because TEP has not harmed competition by any anticompetitive acts, and has only advocated proposals for Commission evaluation.<sup>50</sup>

44. TEP contends that this is not a situation where a regulated monopoly seeks to sell a product on an unregulated basis in a second market where there could be concerns that the regulated entity could evade regulation and affect competition. Here, TEP notes, the TORS and RCS programs are fully regulated (including their prices) and there is no risk of regulatory evasion.<sup>51</sup>

45. To contest EFCA’s claims that the TORS and RCS proposals do not make economic sense, TEP asserts pro-competitive justifications for TORS and RCS including: (1) some customers prefer solar DG service from their regulated service provider and some prefer the price stability over the “cost savings-only” approach embodied in available rooftop solar arrangements; (2) the programs cost significantly less than third-party programs;<sup>52</sup> (3) the programs reduce the cost shift associated with DG solar to non-participants; (4) the programs are designed to align peak output with TEP’s system peak which maximizes the value of the output; and (5) the programs help TEP meet its DG requirements under the Commission’s Rules.

46. In contrast to EFCA’s claims that TEP could expand the TORS and RCS programs as

<sup>49</sup> TEP Reply Brief at 5-6.

<sup>50</sup> TEP Reply Brief at 6. According to TEP, if the Commission approves the programs as consistent with the public interest, there can be no argument they are illegitimate, and if the Commission denies them, there will be no effect on the DG solar segment.

<sup>51</sup> TEP Reply Brief at 6 citing *Western Resources, Inc. v. Surface Transp. Bd.*, 109 F.3d 782, 788 (D.C. Cir. 1997) (where vertically integrated railroad was not able to evade rate regulation, there was no harm to competition); *Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 19 (1<sup>st</sup> Cir. 1990) (“Effective price regulation at both the first and second industry levels makes it unlikely that requesting such rates will ordinarily create a serious risk of significant anticompetitive harm.”)

<sup>52</sup> TEP states that TORS costs \$0.30-\$0.65 less per watt and RCS costs \$0.80-\$1.25 less than third party rooftop solar. TEP claims that recent financial data for EFCA member SolarCity, which has a nearly 70 percent market share for DG solar in TEP’s service area, shows that SolarCity’s total cost per watt deployed rose to \$3.18 per watt in the first quarter of 2016, which TEP states would increase the gap even more. TEP Reply Brief at 7 citing Sheldon Krieger, *Why Did SolarCity’s Costs Increase in 1Q16?* MARKET REALIST, (May 19, 2016, 12:06 AM), available at <http://marketrealist.com/2016/05/solarcitys-costs-increase-1q16/1>.



1 warranted to meet customer demand, TEP asserts that the record shows that any subsequent expansion  
 2 beyond the levels in the instant application would require Commission approval, which means there is  
 3 no danger that the programs will eliminate other forms of DG solar.<sup>53</sup>

4 47. TEP argues that it is not anticompetitive to exclude renters from the RCS program,<sup>54</sup>  
 5 and there are sound reasons to limit the RCS program to homeowners at this time because the RCS  
 6 contract is tied to a specific service point (the home) and the contract is for 10 years while most  
 7 residential leases are for one year. In addition, TEP believes it is sensible to keep the new RCS program  
 8 similar to the TORS program. TEP explains that it tied the RCS program capacity to a customer, and  
 9 that customer's premises, because the contract is based on that customer's consumption at that  
 10 premises, and different rates, terms and conditions would need to be developed to extend the program  
 11 to renters.<sup>55</sup> TEP states it still has its Bright Tucson program which is open to all residential and  
 12 commercial customers and allows them to "jump on or off" the program without a long-term  
 13 commitment.<sup>56</sup> TEP states that the Bright Tucson and RCS are different types of community solar  
 14 programs designed for different purposes, with different rate structures, and will appeal to different  
 15 customers.

16 48. TEP asserts that its access to its own information does not harm EFCA members, as  
 17 EFCA offered no evidence of any specific case or situation where any of its members lost a sale because  
 18 of lack of information from TEP or uncertainty about the distribution network data.<sup>57</sup>

19 49. TEP defends the proposed 15 percent rate band, and argues it is unlikely that customers  
 20 will be less efficient in their energy use just to take advantage of the flat rate, and further, that they will  
 21 have an incentive to lower use below the 15 percent band in order to save.<sup>58</sup> TEP contends that fixed  
 22 pricing within the 15 percent band makes sense given that most costs are fixed costs, which would be  
 23 recovered by a fixed price. TEP argues that having some customers on a fixed rate will provide an  
 24

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25 <sup>53</sup> TEP Reply Brief at 9.

26 <sup>54</sup> *Id.* at 10.

27 <sup>55</sup> Tr. at 55.

28 <sup>56</sup> TEP Reply Brief at 10; Tr. at 54. The Bright Tucson program is a premium rate/green tariff under which the customer selects how much solar they want to sponsor by signing up for "blocks" of solar energy (150 kW) and pay a \$0.02 per kWh premium, with a discount applied to their PPFAC and REST surcharges. Ex TEP-1 Tilghman Dir at 20.

<sup>57</sup> TEP Reply Brief at 11.

<sup>58</sup> *Id.* at 13.

1 incentive to TEP to keep fixed costs under control. While recognizing that the fixed price could be  
 2 viewed as a type of future subsidy to customers, TEP states that a small future subsidy is better than  
 3 the much larger current net metering subsidy.<sup>59</sup> In response to EFCA's claim that no third-party could  
 4 compete with long-term fixed pricing, TEP claims that many consumer products offer long-term fixed  
 5 prices, such as mortgages, annuities, and fixed rate corporate bonds, and that solar PPAs are typically  
 6 long-term fixed price contracts.<sup>60</sup> TEP argues that fixed rates for these programs make perfect  
 7 economic sense as they are designed to be similar to the customer's current payment (instead of offering  
 8 a discount as is being promoted in solar leasing advertisements).<sup>61</sup>

9 50. In response to EFCA's assertion that the RCS is not true community solar, TEP notes  
 10 that one of the earliest sources on community solar, the National Renewable Energy Lab's *A Guide to*  
 11 *Community Solar: Utility Private and Non-Profit Project Development* (November 2010) includes  
 12 utility owned or operated solar as one of its three models of community solar.<sup>62</sup>

13 51. TEP argues that allowing existing facilities to be included as community solar under the  
 14 RCS will speed up the availability of the RCS program, as customers will not have to wait through  
 15 designing, bidding and constructing the next project before signing up.<sup>63</sup>

16 52. TEP asserts that the RCS program has never been limited to TEP-owned projects, and  
 17 any solar developer is free to respond to a Request for Proposals ("RFP") for any RCS projects, and  
 18 thus any argument that TEP is requesting a monopoly in community solar is false.<sup>64</sup> TEP states that  
 19 EFCA's apparent argument that third parties should be allowed to directly offer community solar to  
 20 customers raises issues that go far beyond the scope of this docket because such an offering could be  
 21 viewed as a direct retail sale of power to customers, which potentially triggers the requirement to obtain  
 22 a CC&N and be subject to the fair value requirement of the Arizona Constitution.<sup>65</sup> TEP also questions  
 23 how power would get from the third-party community solar facility to the customer, and asserts that

24 <sup>59</sup> TEP further argues that any subsidies are naturally limited by the small and regulated size of the programs. TEP Reply  
 25 Brief at 13.

26 <sup>60</sup> TEP Reply Brief at 13. TEP states that the TORS and RCS contracts can be likened to micro-PPAs.

27 <sup>61</sup> TEP Reply Brief at 14. TEP alleges that the lower rates advertised by the solar lease companies are attributable in large  
 28 part to avoiding paying the fixed costs embedded in volumetric rates.

<sup>62</sup> <http://www.nrel.gov/docs/fy11osti/499930.pdf> at 6-11. See also Ex TEP-5 Yardley Reb at Ex RCY-3.

<sup>63</sup> TEP Reply Brief at 14-15.

<sup>64</sup> *Id.* at 15.

<sup>65</sup> *Id.* at 15.

1 retail wheeling, “sleeving” and virtual net metering are all currently not permitted in Arizona and are  
2 complex topics that require study before implementation.<sup>66</sup>

3 53. TEP believes that RUCO’s recommendation, that if the TORS program cost is greater  
4 than the solar leasing cost shift any such overage should not be recoverable, adds unnecessary  
5 complexity to the program as the TORS program already contains a “cost parity” provision and any  
6 “overage” is highly unlikely.<sup>67</sup> In addition, TEP asserts that RUCO’s suggestion that participants be  
7 allowed to make upfront payments as part of the RCS program is not fully developed, and that  
8 customers willing to pay upfront have the option of buying or leasing their own rooftop solar system.

9 54. In response to Staff’s recommendation that TEP provide the pilot project report before  
10 the TORS expansion is approved, is not efficient and could raise costs.<sup>68</sup> TEP notes that the report will  
11 be completed after the 600 customer pilot is completed, but if the TORS expansion is not extended, the  
12 program would start, stop, and then potentially start again after the report is evaluated. TEP proposes  
13 that the 1,000 customer extension be approved, and the full report be considered in TEP’s next annual  
14 REST proceeding, at which time the TORS program can be re-evaluated. In lieu of expanding TORS,  
15 Staff identifies waivers and purchasing RECs as cheaper alternatives to REST compliance, but TEP  
16 believes that waivers are uncertain and that the Commission has not favored up front incentives to  
17 acquire RECs.

18 55. TEP also believes that Staff’s suggested modifications to the RCS program are not  
19 needed, as limiting the program to new facilities would delay the program, and adjusting the pricing  
20 each year would create confusion among consumers over why a fixed rate could change every year.  
21 TEP states that the fixed rate is a key component to the plan and provides the economic motivation for  
22 customers to sign up without a discount. Finally, TEP states that Staff’s request for additional  
23 information on how the \$17.60 per kW RCS rate was derived can be explored in the Rate Case.

24 \_\_\_\_\_  
25 <sup>66</sup> According to Staff, virtual net metering is a means for distributing the economic benefits from a shared solar energy  
26 system whereby energy generated by the solar project is fed onto the grid to offset general demand, and customers  
27 participating in the community solar project then receive bill credits in recognition of the value of their electricity. Staff  
28 Initial Brief at 15. Staff also illustrated a sleeve arrangement as one where a third party handles the development and  
operations of the renewable system with a wholesale rate PPA from the utility. The utility uses its existing infrastructure  
and transaction management capabilities to wheel the project output to the particular customers (“contract sleeve”) at its  
retail value.

<sup>67</sup> TEP Reply Brief at 16.

<sup>68</sup> *Id.* at 17.

1 RUCO

2 56. RUCO supports TEP's application to expand the TORS program and also supports  
3 counting an approved community solar program towards REST compliance. However, RUCO does  
4 not support TEP's RCS program as proposed.<sup>69</sup>

5 57. RUCO notes that TEP is not seeking recovery of the TORS program costs through its  
6 REST implementation tariff, and thus, RUCO views the issue of expanding the TORS program to be  
7 one of "prudence" to be addressed in TEP's next rate case.<sup>70</sup>

8 58. RUCO's concern with the TORS program is that the ratepayer cost for a TEP-owned  
9 system should not be more than the fixed cost shift from a similarly sized net metered system.<sup>71</sup> RUCO  
10 argues that in the event that it is determined that the TORS program costs are greater than the third-  
11 party cost shift, the excess should not be recovered by the Company, and if the net metering cost shift  
12 is eliminated, then the TORS program should also be eliminated.<sup>72</sup>

13 59. RUCO states that it appreciates TEP's efforts to bring low cost grid scale solar to  
14 individual residential customers through community solar, but believes that TEP's proposed RCS  
15 program does not go far enough because it does not include renters or other alternative ownership  
16 ratepayers, and does not "provide market/business model equity" in the form of an alternative third-  
17 party centric model.<sup>73</sup> RUCO believes that the Commission should investigate the possibility of a third-  
18 party program.<sup>74</sup> Although RUCO is less concerned about the program being considered anti-  
19 competitive and monopolistic, RUCO agrees that opening it to third-party participation is a way to  
20 alleviate anti-competitive concerns expressed by other parties.

21 60. RUCO criticizes the RCS proposal for not allowing customers to make up-front  
22 payments. RUCO believes that allowing a customer to make an up-front payment would lead to lower  
23 costs for all ratepayers and a better return for customers.<sup>75</sup>

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24 <sup>69</sup> RUCO Initial Brief at 1-2.

25 <sup>70</sup> Ex RUCO-1 Huber Dir at 3.

26 <sup>71</sup> Ex RUCO-2 Huber Reb at 2.

27 <sup>72</sup> RUCO Initial Brief at 3.

28 <sup>73</sup> RUCO Initial Brief at 3; RUCO Reply Brief at 2.

<sup>74</sup> RUCO Reply Brief at 3.

<sup>75</sup> For example, according to RUCO, a customer would supply \$5,000 toward the capital cost of the system and receive a 2.5 percent return and a fixed electric bill for 10 years. In essence, RUCO states, the customer replaces the traditional utility debt lender. RUCO Initial Brief at 3-4.

61. RUCO states that it is comfortable with the temporary waiver of the REST DG requirements that the Company has requested for 2016 because currently the DG market appears to be healthy and self-sustaining. However, RUCO encourages the Commission to establish a REC exchange policy.<sup>76</sup> Furthermore, while RUCO is not recommending that the Commission find “good cause” to waive the REST Rule provisions that require distributed generation to be sited on the customer’s premises in order to approve the RCS program, RUCO recognizes that if the Commission desires to approve the RCS program, it is within the Commission’s powers to grant such waiver and approve the program.<sup>77</sup>

62. RUCO agrees with the Company that there is no significant difference in the economic value of solar installations located on the customer’s side of the meter versus the utility’s side of the meter, assuming both are connected within the Company’s distribution system.<sup>78</sup> RUCO supports the Company’s efforts to pursue the most cost effective solar systems to meet the DG carve out.

63. RUCO claims that EFCA’s argument that TEP is proposing to expand the TORS program solely to eliminate competition in the DG solar market was the same argument made when the program was first proposed. RUCO believes the argument is antiquated and not based in fact.<sup>79</sup> RUCO states that the facts show that rooftop solar is thriving in Tucson, and states that if the TORS program eliminates the third-party rooftop market, the TORS program would also be eliminated because it cannot be costlier to ratepayers than the cost-shift to non-participants from third-party systems.<sup>80</sup>

64. Even though Staff opposes the TORS expansion, RUCO believes that it is reasonable to approve 1,000 more applicants under the circumstances. Because the TORS program cannot be costlier than the non-participant cost shift associated with net metering, RUCO believes that there is no reason to impede the modest growth of a popular solar program that helps the Company meet REST compliance.<sup>81</sup> RUCO believes that both the TORS and RCS programs are small, modest programs that,

<sup>76</sup> RUCO Initial Brief at 4.

<sup>77</sup> RUCO Reply Brief at 4. RUCO also believes that if, in the future, the Commission wants to entertain off-site DG solar as counting towards the REST requirement, the Commission should consider amending the relevant rules.

<sup>78</sup> RUCO Initial Brief at 4.

<sup>79</sup> RUCO Reply Brief at 1-2.

<sup>80</sup> RUCO Reply Brief at 2 citing Ex RUCO-2 Huber Reb at 4.

<sup>81</sup> RUCO Reply Brief at 2.

at best, could have a minimal impact on third party solar sales. RUCO believes that the solar industry's anti-competitive argument alone should not be the basis for rejecting TEP's RCS program.<sup>82</sup>

### EFCA

65. EFCA argues that the TORS and RCS Programs are not in the public interest because they will eliminate competition and unnecessarily burden ratepayers. EFCA argues that TEP's proposals would replace the competitive DG solar market segment in Tucson with a regulated, monopolistic, rate-based, rate-of-return world for DG, under which most, if not all, DG solar facilities will be provided by TEP or through vendors under TEP's control.<sup>83</sup> EFCA argues that the proposals are not in the public interest because: (1) they will impose unwarranted additional costs on ratepayers; (2) they make economic sense only to TEP because they exclude competition in the DG solar segment; (3) they will deprive consumers of the benefits of competition, including lower prices, more choices, and greater innovation; (4) they do not provide a mechanism for third-party participation in community solar; and (5) to the extent TEP's entry into community solar and broader expansion into rooftop solar could be beneficial, there are means that would be less harmful to competition such as requiring a separate subsidiary subject to a Code of Conduct.

66. Because EFCA believes there are fundamental flaws to TEP's proposals, EFCA argues that TEP has not met its burden of demonstrating "good cause" for waiving the requirements of the REST Rules that require the location of DG resources on a customer's premises.<sup>84</sup> EFCA asserts that by granting waivers through 2017 with respect to TEP's 2016 and 2017 incremental residential DG requirements, the Commission has rendered moot any concerns regarding the need for TEP to establish an RCS-like program to meet near-term residential DG carve-out compliance requirements.

67. EFCA believes that competition results in consumer welfare benefits including lower prices, more choices, more innovation, and argues that the impacts on competition should be considered in the analysis of whether TEP's proposals are in the public interest. EFCA argues that TEP's programs make sense only as a way to eliminate competition, as the flat-rate pricing with a 15 percent usage band, are not rational policies for a utility because they shift risks to non-solar ratepayers and encourage

<sup>82</sup> *Id.* at 3.

<sup>83</sup> EFCA Initial Brief at 1.

<sup>84</sup> *Id.* at 2.

1 less efficient energy use. EFCA claims that TEP is intentionally disregarding the risk to non-  
 2 participating ratepayers that costs will increase during the terms of the contracts. EFCA also claims  
 3 that by including its investments in these programs in its rate base, TEP ensures that captive customers  
 4 provide their financing. EFCA argues that no rational provider operating in a competitive environment  
 5 could match these offerings (guaranteed pricing for up to 25 years) without taking on undue risk.<sup>85</sup>  
 6 Moreover, EFCA argues TEP could not produce the calculations to support its proposed prices, and  
 7 thus, cannot assure the Commission that a TEP-installed residential solar system would actually match  
 8 the energy capacity for which a customer would be charged, and thus, exacerbates the risk that these  
 9 programs will shift costs and risks onto ratepayers.

10 68. EFCA claims that it demonstrated that TEP's proposed programs would impose a cost  
 11 shift greater than the cost shift related to third-party solar.<sup>86</sup> According to EFCA witness Cicchetti, for  
 12 every dollar invested by a utility, it would typically require customers to pay three dollars to cover the  
 13 investment and related costs.<sup>87</sup> Thus, by placing residential solar investments in rate base, EFCA asserts  
 14 that TEP will obligate its ratepayers to the three-dollar revenue requirement for up to 25 years, which  
 15 EFCA claims is in "stark contrast" to third-party DG solar that relies solely on third-party or consumer  
 16 financing. EFCA asserts that in addition, TEP could impose more costs on ratepayers if: (1) a TEP  
 17 residential DG solar customer exceeds electricity consumption within the 15 percent band; (2) TEP is  
 18 required to increase rates on TEP DG solar customers; or (3) a TEP subscriber's solar system is  
 19 removed.<sup>88</sup>

20 69. EFCA argues that because TEP denies that its proposed programs will displace third-  
 21 party solar in any meaningful way, the cost shift associated with the programs (2 cents/kWh for TORS,  
 22 and 1 cent/kWh for RCS) will impose additional, not reduced, costs on ratepayers.<sup>89</sup> EFCA asserts that  
 23 if TEP's proposals are designed to expand the solar market, they should be rejected because they  
 24 needlessly increase costs for all ratepayers.<sup>90</sup>

25 <sup>85</sup> EFCA Initial Brief at 4. According to EFCA, TEP has the option of passing along the risk to captive ratepayers.

26 <sup>86</sup> EFCA Initial Brief at 6-7 *citing* Tr. at 441-451.

27 <sup>87</sup> Ex EFCA-6 Cicchetti Dir at 16.

28 <sup>88</sup> EFCA Initial Brief at 7.

<sup>89</sup> *Id.*

<sup>90</sup> EFCA Reply Brief at 7. On the other hand, EFCA argues, if the programs are targeted at eliminating third-party solar, they should be rejected because they threaten to replace a well-functioning industry with a TEP monopoly.

1        70. EFCA argues that TEP should not be allowed to exploit its REST obligations to justify  
 2 the TORS and RCS programs.<sup>91</sup> EFCA notes that Staff has concluded that, as of August 28, 2015,  
 3 sufficient residential solar capacity has been installed to satisfy TEP's residential DG requirements  
 4 through 2020.<sup>92</sup> EFCA argues that because TEP can meet its REST requirements in various ways,  
 5 including purchasing RECs from third-parties and obtaining waivers, TEP cannot use its REST  
 6 requirement obligations to justify the TORS and RCS programs. EFCA claims that the "patent  
 7 superficiality" of TEP's REC justification exposes the Company's real intent to eliminate  
 8 competition.<sup>93</sup>

9        71. EFCA asserts that TEP's proposals are not in the public interest because they will  
 10 eliminate competition in the DG Solar market.<sup>94</sup> EFCA presented testimony that residential DG solar  
 11 is provided by numerous unregulated third-party providers who sell, finance, or lease DG solar systems,  
 12 and asserts that falling prices due to declining costs and increased innovations demonstrate that the  
 13 industry is competitive.<sup>95</sup> EFCA argues that extending a monopolistic rate-based, rate-of-return service  
 14 offering will eliminate competition.<sup>96</sup> By offering flat rate pricing over an extended period of time, and  
 15 financing by captive ratepayers, EFCA asserts that TEP is leveraging its monopoly position to cross-  
 16 subsidize entry into the residential DG space. EFCA also asserts that TEP's monopoly position grants  
 17 inherent informational advantages over third-party DG, as TEP has access to customer-specific  
 18 information as well as network transmission and distribution data. EFCA claims that TEP's entry will  
 19 create an uneven playing field that will inevitably eliminate third-party competition because of TEP's  
 20 inherent advantages.<sup>97</sup> As a result, according to EFCA, consumers will be deprived of the benefits of  
 21 competition—greater choice, higher quality, and lower prices.

22        72. EFCA states that TEP is expressly requesting a monopoly in community solar, as under  
 23 the proposal, only TEP can offer the program. EFCA alleges that the evidence indicates that TEP  
 24 designed the RCS program to target customers who would be potential customers of third-party

25 <sup>91</sup> EFCA Initial Brief at 8-9; EFCA Reply Brief at 8.

26 <sup>92</sup> Decision No. 75560 at ¶ 18.

27 <sup>93</sup> EFCA Initial Brief at 9.

28 <sup>94</sup> *Id.* at 9-10.

<sup>95</sup> Ex EFCA-20 DeRamus Dir 17-19 and Tr. 483-84 and 488-90.

<sup>96</sup> EFCA Initial Brief at 10 *citing* Ex EFCA-20 DeRamus Dir at 5 and Tr. 495-96.

<sup>97</sup> EFCA Initial Brief at 12.



1 providers, even though, as recognized by Staff and RUCO, the program could be extended beyond  
2 homeowners.<sup>98</sup>

3 73. EFCA claims that community solar is traditionally designed to provide members of  
4 communities the ability to band together to provide electricity from a relatively small scale,  
5 community-sponsored facility that is typically financed by the community itself, rather than included  
6 in a utility's rate base and subject to cost recovery from all of the utility's captive retail customers.<sup>99</sup>  
7 EFCA argues that third-party participation is the essence of community solar. EFCA notes that  
8 Colorado and Minnesota have authorized third-party participation with vertically integrated utilities,  
9 but TEP has deliberately failed to allow for third-party participation.

10 74. EFCA notes that there is nothing in Rider 17 that limits the RCS program to a specific  
11 solar facility, and argues that the ability to attach Rider 17 to any TEP facility leaves the scope of the  
12 program virtually unlimited.<sup>100</sup> EFCA asserts that once the programs are approved, the "intrinsic and  
13 insurmountable advantages" that they give TEP over third-parties will lead to their expansion to the  
14 detriment of competition.<sup>101</sup> EFCA claims prudency reviews are unlikely to constrain the growth of the  
15 program, and would be ill-equipped to address the harm already caused to competition.

16 75. EFCA notes that when the Commission adopted its Retail Electric Competition Rules,  
17 it included R14-2-1616(A) which required affected utilities to file a Code of Conduct designed to  
18 prevent anticompetitive behavior by a regulated utility that offers competitive services thorough a  
19 separate affiliate. While the Arizona Court of Appeals struck down certain parts of the Retail Electric  
20 Competition Rules, EFCA states the court left R14-2-1616 in effect, and that this rule offers guidance  
21 on how TEP should be permitted to enter the DG solar market beyond the initial TORS pilot, if the  
22 Commission determines the programs are in the public interest.<sup>102</sup>

23 76. EFCA argues that TEP has not demonstrated "good cause" to justify a waiver of the  
24 definition of "distributed generation" in the REST Rules because the RCS program, the only reason for  
25

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26 <sup>98</sup> *Id.* at 13.

27 <sup>99</sup> *Id.* at 14.

28 <sup>100</sup> *Id.* at 17

<sup>101</sup> *Id.*; EFCA Reply Brief at 6.

<sup>102</sup> EFCA Initial Brief at 21. Rule 1616(B) requires a utility to offer competitive services only through a separate subsidiary.

1 the waiver request, is not in the public interest.<sup>103</sup> EFCA asserts that the competitive deficiencies of  
 2 TEP's RCS program should be addressed before approving the program.

3 77. EFCA asserts that TEP does not dispute that: (1) TEP intends to cross-subsidize both  
 4 the TORS and RCS programs from its rate base, with the costs and risks associated with the programs  
 5 borne by captive ratepayers; (2) TEP can exploit its rate base to offer customers fixed, long-term rates  
 6 for their entire electrical needs that cannot be matched by third-party solar providers; (3) informational  
 7 asymmetries resulting from TEP's status as a regulated monopoly would provide it with an unfair, anti-  
 8 competitive advantage in targeting potential third-party solar customers; (4) TEP is requesting a  
 9 monopoly in the provision of community solar power; (5) TEP intends to expand the TORS and RCS  
 10 programs as warranted by customer demand; (6) TEP can liberally add RCS capacity by reclassifying  
 11 current utility-scale solar facilities as "community solar" or by adding new facilities without any prior  
 12 Commission approval and subject only to *ex post facto* prudence review; (7) TEP is proposing to enter  
 13 an industry which TEP describes as "robust"; and (8) the Commission can and should consider the  
 14 impact of TORS and RCS on competition in evaluating TEP's proposed programs.<sup>104</sup> Thus, EFCA  
 15 argues that TEP concedes or admits all of the predicate facts that support EFCA's assertion that TEP's  
 16 proposals threaten to replace a competitive market with a monopoly.<sup>105</sup>

17 78. EFCA also argues that TEP's proposals will not enhance customer choice because its  
 18 RCS program does not allow for third-party options.<sup>106</sup> EFCA asserts that Staff's suggestion to add  
 19 PPA options to TEP's proposal would not introduce customer choice into community solar, and would  
 20 codify TEP's community solar monopoly and enshrine TEP as the only community solar provider.<sup>107</sup>  
 21 In addition, EFCA argues that although the current programs may be modest, EFCA believes that it is  
 22 clear that TEP intends to add capacity, and that TEP's arguments are a ruse to obscure its true intentions  
 23 to eliminate competition from third-party solar.<sup>108</sup>

24  
 25 <sup>103</sup> EFCA Initial Brief at 23.

26 <sup>104</sup> EFCA Reply Brief at 2-3.

27 <sup>105</sup> EFCA Reply Brief at 3.

28 <sup>106</sup> EFCA Reply Brief at 4. EFCA questions why if TEP's programs provide meaningful value, the value could not be delivered through a separate subsidiary, and that the Company's inability to answer this point demonstrates the hollowness of TEP's claim that customer choice is the reason behind the programs.

<sup>107</sup> EFCA Reply Brief at 4 and 10.

<sup>108</sup> *Id.* at 5-6.

79. EFCA argues that TEP's proposals should be rejected as a matter of law because Arizona law precludes TEP from directly offering competing services.<sup>109</sup> EFCA argues that because the *Phelps Dodge* decision left intact R14-2-1615 (B) (precluding utilities from offering competitive services directly) and R14-2-1616 (prescribing guidelines for a code of conduct when a utility offers competitive services through a subsidiary), the court underscored the Commission's regulatory power to prevent a utility from offering competitive services directly, and affirmed the Commission's power to proscribe anti-competitive activity. EFCA argues that because DG solar is a competitive segment (and claims that TEP admits it is competitive), the only way the Company can expand into DG solar beyond the limited TORS pilot is by submitting a revised proposal that includes a separate subsidiary and in which TEP and the subsidiary will be subject to a Code of Conduct pursuant to R14-2-1616.<sup>110</sup>

80. EFCA argues that Arizona law does not preclude third-parties from having "customer-facing" relationships, and that the Commission can enable third-party participation in TEP's solar program via sleeving or virtual net metering.<sup>111</sup> EFCA asserts that TEP did not dispute that a virtual net metering or sleeving approach is permissible under Arizona law and notes that Staff acknowledges the absence of a legal bar to virtual net metering or sleeving. However, EFCA states it does not have the burden to articulate how such a tariff should be structured.

#### APS

81. APS supports TEP's application to expand TORS and create a new RCS, and also supports TEP's request to count RECs obtained through the RCS towards TEP's residential DG requirement under the REST Rules. APS asserts that TEP needs to comply with the REST DG carve out and that purchasing RECs from third parties would needlessly increase costs to customers without providing additional benefits.<sup>112</sup>

<sup>109</sup> *Id.* at 9.

<sup>110</sup> EFCA Reply Brief at 9. EFCA notes that Staff relies on striking down R14-2-1615(A) in *Phelps Dodge* as support of the proposition that the Commission lacks authority to require TEP to offer competitive DG solar via a separate subsidiary. Staff Initial Brief at 17. However, EFCA states that Staff does not discuss 1615(B), which was not struck down. EFCA asserts 1615(B) gives the Commission the power to reject TEP's proposal outright for offering competitive services through its regulated monopoly.

<sup>111</sup> EFCA Initial Brief at 23-24. One example of a customer-facing third-party participation would be to have TEP acquire title to the electricity from the third-party and deliver it to the customers. EFCA states that the APS AG-1 buy through tariff for industrial customers presents a similar concept. EFCA Reply Brief at 9-10 citing Staff Initial Brief at 15.

<sup>112</sup> APS Initial Brief at 2-3. See also APS Reply Brief at 6-7. APS refutes RUCOs objections to the RCS program because APS does not believe the program should be rejected just because it does not allow participation by all customers, and

1        82.     APS asserts that a waiver of the DG carve-out would be the least expensive means to  
 2 establish REST compliance, but would also involve risk.<sup>113</sup> APS notes that REST compliance is a long-  
 3 term obligation, and it is uncertain if future Commissions will grant waivers, or be bound by prior  
 4 waivers. APS argues that a permanent waiver is a better option compared to a year-to-year waiver, but  
 5 APS believes there are doubts associated with whether a permanent waiver could not be undone by a  
 6 future Commission.

7        83.     APS asserts that the evidence shows that TEP's proposed TORS and RSC programs are  
 8 cost-effective means for TEP to comply with the REST obligation and should be approved. APS argues  
 9 that the TORS proposal would modestly expand a cost-effective program that provides more options  
 10 to customers. APS notes that under the TORS program, the non-DG participant would gain the benefit  
 11 of decreasing solar costs because the price of the program would correspondingly decrease.<sup>114</sup> APS  
 12 claims that under the current net metering structure, non-DG participants do not see lower costs even  
 13 if the cost of solar declines, because the amount paid to the DG customer is fixed at the retail rate and  
 14 does not decrease as the price of solar declines.<sup>115</sup>

15        84.     APS asserts that the RCS program also would provide a cost-effective way for utilities  
 16 to meet the DG carve-out. APS states there is nothing in the REST Rules that forbids a utility from  
 17 owning DG assets to meet the DG carve-out obligation, and that limiting all DG to only customer  
 18 premises may foreclose opportunities to install renewable resources at the least cost while providing  
 19 the most benefits.<sup>116</sup>

20        85.     APS believes it is important to note that TEP is not seeking recovery of the proposed  
 21 capital investments necessary for the TORS expansion or proposed RCS through the REST plans, but  
 22 rather, that those investments will be subject to a prudence review and evaluation in the next rate case.  
 23 APS asserts that the prudence review would ensure that customers only pay the cost of the program

24 \_\_\_\_\_  
 25 because of size limitations, even if the program were modified as RUCO suggests, participation would still be limited. APS  
 26 also does not accept Staff's reason for objecting to the TORS expansion because TEP has not provided a full report of the  
 27 costs and benefits. APS argues that there has been tremendous customer response and TEP is offering only a modest  
 28 expansion. In addition, although the RCS program would be less expensive, APS argues the TORS program is still a  
 reasonable and appropriate proposal.

<sup>113</sup> APS Initial Brief at 3-4.

<sup>114</sup> Tr. at 650-51.

<sup>115</sup> Tr. at 651.

<sup>116</sup> APS Initial Brief at 6 citing Ex Staff-1 Gray Dir at 6.

1 but would not also pay an unknown amount of profit for rooftop solar.<sup>117</sup>

2       86.     APS argues that the rooftop solar industry's concerns about the effect on competition  
3 are overstated.<sup>118</sup> APS notes that TEP is proposing to limit participation in each program, and that the  
4 Commission has the power to determine if future expansion is in the public interest. APS notes that the  
5 TORS program to-date has not detrimentally affected competition, and that RUCO witness Huber has  
6 found the third-party market as "healthy as ever."<sup>119</sup> APS asserts that there is no evidence TEP's  
7 proposals will eviscerate the third-party market, but rather only self-serving predictions made by the  
8 rooftop solar companies.<sup>120</sup>

9       87.     APS argues that TEP does not need to create a separate subsidiary to provide distributed  
10 generation offerings. APS states that TEP is a vertically integrated utility that provides generation,  
11 transmission and distribution services in a fixed service area, and, as Staff noted, it would be illogical  
12 to think that TEP is prevented from determining the location and type of generation mix to provide.<sup>121</sup>  
13 APS notes that in approving the TORS program, the Commission determined that TEP did not need  
14 Commission permission to acquire generation assets,<sup>122</sup> and that the Commission has found that public  
15 service corporations are entrusted with the responsibility of determining the type and mix of generation  
16 assets that they need in order to fulfill their service obligations.<sup>123</sup> In Decision No. 74884, the  
17 Commission recognized that the "onset of distributed generation has significantly impacted the electric  
18 distribution function, and that the pace of technology necessarily requires electric distribution utilities  
19 to make creative adaptations to their business models."<sup>124</sup> Given these Commission's findings, APS  
20 argues that it is completely appropriate for TEP to propose the expansion of TORS and the creation of  
21 the RCS to fulfill its obligations under the REST.<sup>125</sup>

22       88.     APS asserts that if TEP were to offer TORS and RCS through a third-party affiliate,  
23 TEP would not retain ownership of the RECs and the Company would be in the same position of

24 <sup>117</sup> APS Initial Brief at 6-7.

25 <sup>118</sup> *Id.* at 7.

26 <sup>119</sup> Tr. at 643.

27 <sup>120</sup> APS Initial Brief at 8.

28 <sup>121</sup> APS Reply Brief at 2, citing Staff Initial Brief at 17.

<sup>122</sup> Decision No. 74884 at ¶ 63.

<sup>123</sup> Decision No. 67744 (April 5, 2005) at Attachment A, ¶ 76.

<sup>124</sup> Decision No. 74884 at ¶ 69.

<sup>125</sup> APS Reply Brief at 3.

1 needing RECs to fulfill its REST obligations. APS argues that TEP's ability to buy RECs is speculative  
2 and even if there were a market, purchasing RECs is an incremental cost that should be avoided.

3 89. APS asserts that both A.R.S. § 40-202(B) and A.A.C. R14-2-1616(B) were written in  
4 anticipation of a regulatory framework of retail competition that never came to fruition. APS argues  
5 that EFCA's reliance on an incomplete and obsolete set of rules that has never been implemented or  
6 enforced is not persuasive.<sup>126</sup>

7 90. APS disputes EFCA's characterization of APS' AG-1 tariff as a simple sleeving  
8 arrangement, stating that EFCA is incorrect and misses the point that APS has alleged that AG-1 has  
9 resulted in substantial lost margins and cost-shifting.<sup>127</sup> APS notes that there has not been a sleeving or  
10 virtual net metering proposal offered in this case, and that EFCA claims that it is not obligated to  
11 propose one. APS argues that the fact that TEP omitted proposals, such as sleeving or virtual net  
12 metering, that would be more expensive for its customers, comports with TEP's responsibilities and  
13 should not be a basis for rejecting what TEP actually proposed.<sup>128</sup>

#### 14 **Noble Solutions**

15 91. Noble Solutions takes no position on the question of expanding the TORS program or  
16 creating a new RCS program, but filed a Reply Brief in this portion of the consolidated proceeding to  
17 argue that the Commission should not address or resolve either issue at this juncture.<sup>129</sup>

18 92. Noble Solutions asserts that it must be noted that TEP is arguing for customer choice  
19 and promoting competition in connection with its TORS and RCS proposals but, in the pending Rate  
20 Case, is opposing a "buy-through" program for large commercial and industrial customers, which  
21 Noble Solutions claims would offer the same "customer choice" and "competitive power price" to these  
22 customers.

23 93. Noble Solutions takes issue with Staff's statement in its Initial Brief that the public  
24 policy declaration of A.R.S. § 40-202(B) was mooted or emasculated by the *Phelps Dodge* decision  
25 and the absence of any rulemaking activity to address certain defects in the Retail Electric Competition

26 <sup>126</sup> *Id.* at 4.

27 <sup>127</sup> APS Reply Brief at 5. In its rate case filed on June 1, 2016, APS proposed to allow AG-1 to sunset by its own terms.

28 <sup>128</sup> APS Reply Brief at 5-6.

<sup>129</sup> Noble Solutions Reply Brief at 2. Noble Solutions did not intervene in Docket No. E-01933A-15-0239, but did intervene in the Rate Case (Docket No. E-01933A-15-0322), and thus is an intervenor in the consolidated proceeding.

1 Rules. Noble Solutions believes that: (1) the Commission has the ability to address and avoid those  
 2 defects through the manner in which it: (a) conducts proceedings, (b) renders findings of fact and  
 3 conclusions of law and (c) prescribes related compliance conditions in individual applicant-specific  
 4 proceedings and decisions, without the necessity of further rulemaking; and (2) competition for the  
 5 provision of electric generation service can occur in effect at the retail level in forms other than the  
 6 specific form contemplated by Retail Electric Competition Rules.<sup>130</sup>

7 94. As a result of the foregoing, Noble Solutions urges the Commission to defer a decision  
 8 on the TORS and RCS programs, and their rates, until a final decision is rendered in TEP's Rate Case  
 9 as a whole.

#### 10 AECC

11 95. AECC has two concerns in this proceeding: (1) a Commission determination of whether  
 12 the TORS and RCS programs are in the public interest should not be made without considering other  
 13 customer choice offerings in the TEP Rate Case application, such as full customer choice, or a proposed  
 14 buy-through option for large customers; and (2) the Commission should refrain from making any  
 15 substantive determination as to the current state of the Retail Electric Competition Rules and the role  
 16 of competitive markets based on this proceeding.

17 96. AECC does not believe that the Commission can make a fully informed decision as to  
 18 whether the TORS or RCS programs are in the public interest without weighing their costs and overall  
 19 impact within the broader context of the Rate Case. AECC asserts that the TORS and RCS programs  
 20 should go through the same review and analysis as the proposed buy-through tariff in the Rate Case,  
 21 especially since TEP intends to include these assets in rate base.<sup>131</sup>

22 97. AECC is concerned about Staff's statements or positions made in this proceeding about  
 23 the issue of choice in electric competition. AECC supports full retail competition.<sup>132</sup> AECC attached  
 24 its July 15, 2013 and August 16, 2013 briefs filed in Docket No. E-00000W-13-0135 in order to  
 25 preserve its rights concerning the status of choice and competition in electric generation.<sup>133</sup> AECC

26 <sup>130</sup> Noble Solutions Reply Brief at 3.

27 <sup>131</sup> AECC Reply Brief at 4.

28 <sup>132</sup> *Id.*

<sup>133</sup> AECC Reply Brief at 5. Generic Docket No. E-00000W-13-0135, *In the Matter of the Commission's Inquiry into Retail Electric Competition*. In the generic docket, the Executive Director filed a letter to interested stakeholders setting forth 18

urges the Commission to reopen the generic docket so that a determination can be made as to the status of the Retail Electric Competition Rules and whether choice and competition can move forward.<sup>134</sup>

### Staff

98. Staff recommends that the Commission not approve TEP's request to expand the TORS program as proposed because: (1) TEP should provide a cost/benefit analysis and full report on the TORS pilot program before the program is expanded; (2) the Company has acknowledged that the proposed RCS program is expected to be cheaper than TORS while providing the same or more benefits;<sup>135</sup> and (3) the expansion is not warranted as the Company has not complied with some of the Commission-ordered requirements for the TORS program and has failed to demonstrate that the proposed expansion is necessary for the purposes of the pilot program.<sup>136</sup>

99. Staff does not believe that the need to comply with the REST Rules is a good reason to approve the TORS expansion as there are less costly options available to TEP for REST compliance, including a waiver or paying small up-front incentives for RECs.<sup>137</sup>

100. Absent fulfilling the pilot program requirements, and a demonstration that the TORS program is cost competitive with similar community solar programs or other similarly situated resources, Staff does not support further expansion of the TORS program. However, if the Commission determines that expansion of the TORS program is in the public interest, Staff recommends the rate applicable to the program be set in a future rate case.<sup>138</sup>

101. Staff notes that TEP has not completed the report on the TORS program and it did not form its own advisory group, instead participating in the APS advisory group that was formed from a similar requirement placed on APS.<sup>139</sup> Staff finds that it is understandable that TEP has not completed the report on the TORS pilot because the program has only recently been implemented. Staff

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questions so that the Commission could make an informed choice about electric retail competition. According to AECC, during a September 11, 2013, Staff meeting, the Commission's Legal Division opined there were threshold constitutional impediments to moving toward a competitive market in generation based on the *Phelps Dodge* decision. As a result, AECC states, the generic docket was closed. AECC asserts that it believes the Legal Division's conclusions were in error.

<sup>134</sup> AECC Reply Brief at 6.

<sup>135</sup> Staff states that the RCS program is expected to be 40 percent cheaper than a third-party installation and 25 percent cheaper than TEP's own TORS program.

<sup>136</sup> Staff Initial Brief at 8-9.

<sup>137</sup> Staff Initial Brief at 9.

<sup>138</sup> *Id.* at 10.

<sup>139</sup> *Id.* at 8.



1 recommends revising the requirement that TEP form its own advisory group so that TEP could fulfill  
 2 this requirement by participating in the APS advisory group, with TEP playing a substantive role in the  
 3 group's activities and ensuring that TEP's program is fully addressed in the advisory group efforts.  
 4 Staff states that, specifically, TEP should still meet the stated goals of the Order that approved the  
 5 TORS pilot, including that TEP set its own defined set of research goals, that there be review of the  
 6 direction of the project and feedback on the program design from the group, resulting in public  
 7 reporting on program results and research findings. Staff explains that its recommended modification  
 8 would provide TEP and others with the benefits of a TEP advisory group without having two separate  
 9 advisory groups at TEP and APS undertaking similar efforts.<sup>140</sup>

10 102. Staff asserts that the RCS program, with modifications, is in the public interest. Staff  
 11 believes that community solar projects are going to be a growth market in the United States and Staff  
 12 sees value in customers having the opportunity to access solar DG at a lower cost than rooftop solar.  
 13 Staff supports the program because the cost estimates are much lower than for a similar amount of  
 14 rooftop solar under TORS and because the non-cost benefits of community solar over rooftop solar,  
 15 such as economies of scale in construction/operation and avoidance of possible issues related to the  
 16 placement of DG systems on rooftops, may outweigh non-cost benefits from rooftop solar, including  
 17 the avoidance of a small amount of distribution system line loss.<sup>141</sup>

18 103. Staff also supports the RCS program because it provides customers with greater access  
 19 to solar, as issues such as lack of home ownership, rooftop availability, rooftop orientation, rooftop  
 20 condition, plant shading, and low credit can be obstacles to adopting solar.<sup>142</sup>

21 104. Staff's support for the RCS program is predicated on several modifications/conditions:  
 22 (1) that a new 5 MW facility be built and that the program does not rely on an existing solar facility;  
 23 (2) the RCS program allow for third-party participation by using a competitive RFP process;<sup>143</sup> (3) the  
 24 Company should adjust the customer charge each year for any movement, higher or lower, in the  
 25 customer's average monthly usage during the previous year (instead of allowing usage with a plus or

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26 <sup>140</sup> *Id.*

27 <sup>141</sup> *Id.* at 10.

28 <sup>142</sup> *Id.* at 10-11.

<sup>143</sup> TEP would be required to use the least-cost option, and if that is the third-party option, TEP would enter into a PPA to serve the RCS customers.

1 minus 15 percent band without adjusting the price); and (4) that the Company provide additional  
 2 information regarding the \$17.50 fixed energy charge and show what the price would be if based on  
 3 cost-of-service for evaluation in the Rate Case.<sup>144</sup>

4 105. Staff argues that the RCS Program should be considered distributed generation under  
 5 the REST Rules and for REST compliance.<sup>145</sup> Staff believes that it is arbitrary to limit DG to a  
 6 customer's premises because it may foreclose opportunities to install renewable resources at the least  
 7 cost and with greater benefit. It is Staff's understanding that the circumstances of a community solar  
 8 facility connecting to the distribution grid was not contemplated at the time the REST Rules were  
 9 promulgated and the DG definition created.<sup>146</sup>

10 106. Staff states that it found no authority that addresses the status of virtual net metering or  
 11 sleeving in Arizona.<sup>147</sup> Staff states further that it is important to note that although there does not appear  
 12 to be a legal impediment to sleeving or virtual net metering, Staff is not recommending the use of either  
 13 in this case.<sup>148</sup> Staff clarifies that it is recommending third-party participation in community solar  
 14 through PPAs.<sup>149</sup>

15 107. Staff states that based on the record in this case, EFCA has not demonstrated any intent  
 16 on the part of TEP to eliminate DG solar competition in its service territory, or that the expansion of  
 17 the TORS program or approval of the RCS program will eliminate DG solar competition in TEP's  
 18 service territory.<sup>150</sup> Staff asserts that EFCA's contentions that there is no justification for either program  
 19 or their flat rate pricing except to eliminate competition is unsupported by the record and is without  
 20 merit.<sup>151</sup> Staff believes that it is important to note that the cost and prudence of the program facilities  
 21 would be reviewed by the Commission in future rate cases before they are allowed in rate base. Further,  
 22

23 <sup>144</sup> Staff Initial Brief at 11-12.

24 <sup>145</sup> *Id.* at 13-15.

25 <sup>146</sup> In addition, Staff notes that in Decision No. 72736 (January 13, 2012) the Commission granted TEP's request to count  
 26 installations under its Bright Roofs program as DG for compliance purposes. See also Staff Reply Brief at 12-13.

27 <sup>147</sup> Staff Initial Brief at 15. However, Staff states that APS's AG-1 tariff could be considered "sleeving."

28 <sup>148</sup> Staff Initial Brief at 15.

<sup>149</sup> Staff Reply Brief at 13. Staff claims that it is perplexed by EFCA's attitude that although it advocates for third-party  
 participation in community solar through virtual net metering or sleeving, it dismisses any responsibility for articulating  
 how such tariffs should be structured to accomplish that goal. Staff states that if EFCA has a position that it would like to  
 be adopted in a case, it has the burden of demonstrating how that position would be accomplished.

<sup>150</sup> Staff Reply Brief at 3.

<sup>151</sup> *Id.* at 7.

Staff believes the fact that the program facilities are not on the customer side of the meter distinguishes them from offerings by third parties, as the facilities would benefit all ratepayers and could reduce the need for costly upgrades to TEP's distribution system. Staff also notes that the fixed contract duration for TORS is based on the anticipated lifespan of the solar facility, and the 10 year duration of the RCS contract was chosen so that TEP would recover the majority of the costs of the facility through participating customers. According to Staff, these terms reduce the cost shift that EFCA claims will be created.<sup>152</sup>

108. Staff believes the TORS and RCS assets would benefit all ratepayers.<sup>153</sup> Staff asserts that EFCA's argument that all TEP ratepayers will be responsible for, and burdened by, paying for the TORS and RCS investments is no different than how any generation asset is treated.

109. Staff states that although TEP would receive the benefit of receiving RECs under the TORS and RCS programs which will count toward its DG carve-out requirement, Staff does not think that this is the primary reason TEP proposed the programs, but rather that the programs were proposed to respond to strong customer interest and to benefit a diverse resource portfolio.<sup>154</sup>

110. Staff states that it did not find evidence in the record that TEP's programs will eliminate competition.<sup>155</sup> Staff asserts that what is offered through the programs is not in competition with third-party offerings because TEP has control over the manner of installation and location of the facilities, and the RCS program offers options to TEP customers that cannot be obtained from third-party providers because their rooftops are not suitable for rooftop solar. Staff argues that expanding the TORS program by 1,000 customers and serving 900 customers under the new RCS program is not the unfettered expansion claimed by EFCA.<sup>156</sup>

111. Staff reiterates that the Retail Electric Competition Rules are an incomplete and out-of-

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<sup>152</sup> *Id.* at 7.

<sup>153</sup> *Id.* at 8.

<sup>154</sup> Staff Reply Brief at 9 citing Tr. at 79-80.

<sup>155</sup> Staff Reply Brief at 9-10. Staff notes that EFCA contends that not only is it TEP's intention to eliminate competition, but that the proposed programs will eliminate competition. Staff asserts that although EFCA asserts the DG solar market is competitive, it is unclear how competitive the market in TEP's service territory is given that SolarCity has approximately 70 percent of that market. Tr. at 66. Staff states that what is clear is that currently the solar DG market is not regulated by the Commission, and that absent the Commission's rules regarding net metering and the DG carve out, there would not be a "vibrant" or "robust" solar DG market in TEP's service territory. Tr. at 551.

<sup>156</sup> Staff Reply Brief at 11.

1 date scheme that cannot be relied upon in this case.<sup>157</sup> Staff states that TEP was correct that Arizona  
 2 retained the “traditional, vertically integrated utility model, where a single utility offers generation,  
 3 transmission, and distribution services to a fixed service area”<sup>158</sup> Thus, according to Staff, it is  
 4 appropriate for utilities to own a diverse and balanced portfolio of generation assets, which is the  
 5 ultimate purpose of the REST Rules.<sup>159</sup>

### 6 **Analysis and Conclusions**

7 112. In this proceeding the Commission is asked to determine: 1) whether the pilot TORS  
 8 program approved in Decision No. 74884 should be expanded; and 2) whether to approve a new RCS  
 9 program and to waive portions of the REST Rules in order to allow the RECs received under the RCS  
 10 to qualify for the DG carve out for REST compliance.<sup>160</sup>

11 113. EFCA argues that the proposed programs should not be approved on the grounds they  
 12 would be detrimental to the installation of rooftop PV systems in TEP’s service territory by third party  
 13 providers because the programs are unfair and anti-competitive and the request comes before the results  
 14 of the pilot report are known. RUCO supports expanding the TORS program and community solar in  
 15 general, but does not support the RCS as proposed because it does not allow greater participation  
 16 beyond homeowners. Staff does not support expanding TORS because Staff believes the RCS is a less  
 17 expensive way to obtain RECs for REST compliance; Staff supports the RCS if modified to apply only  
 18 to a new facility, to permit third party ownership of the facilities, and re-set the charge each year based  
 19 on consumption.<sup>161</sup>

20 114. When the Commission approved TORS as a pilot in TEP’s 2015 REST Implementation  
 21 Plan, it limited TEP’s investment to \$10 million, and stated that rate base treatment for the TORS assets  
 22 would be determined in a future rate case.<sup>162</sup> In addition, the Commission ordered:

23 IT IS FURTHER ORDERED that TEP should form an advisory committee  
 24 that should advise the Company on a defined set of research goals. The  
 advisory committee would be convened by TEP and include representatives

25 <sup>157</sup> *Id.* at 12.

26 <sup>158</sup> TEP Initial Brief at 2.

27 <sup>159</sup> Staff Reply Brief at 12 citing *Miller v. Ariz Corp. Comm’n*, 227 Ariz 21, 29, ¶31, 251 P.3d 400, 408 (app. 2011).

28 <sup>160</sup> If the concept of the RCS is found to be in the public interest, the actual tariff terms of the tariff will be evaluated in Phase 2 of the pending Rate Case.

<sup>161</sup> Tr. at 39.

<sup>162</sup> Decision No. 74884 at 21.

involved in technological and operational aspects of rooftop solar and supporting infrastructure. This group of stakeholders should include, but not be limited to: Commission Staff, the Electric Power Research Institute ("EPRI"), the Residential Utility Consumer Office ("RUCO"), other Arizona electrical utility system operators or engineers, a rooftop solar industry representative, an inverter manufacturer representative, and university power systems engineering departments. The group should review the direction of the project and provide feedback on program design. Reports on the program results as well as any research findings should be made public.

IT IS FURTHER ORDERED that Tucson Electric Power Company should ensure that the cost of the utility-owned residential distributed generation program is similar to that of third-party programs. Accordingly, TEP should commit to cost parity with current net metering rates, and if rate design is addressed in the future in a way that materially impacts existing net energy metering participants, TEP should evaluate options for existing solar customers, as well as TEP DG customers, to minimize any cost parity issues between the two groups and unintended impacts.<sup>163</sup>

115. The record of this proceeding shows that currently the cost of TEP's TORS program to non-participating ratepayers is less than the current cost of net metering. The flat rate of \$16.50 per kW results in a cost shift of approximately \$0.02 per kWh to non-participants, which is less than half of the cost-shift under the current net metering tariff.<sup>164</sup> However, the net metering tariff will be examined, and potentially modified for new DG customers, in Phase 2 of the pending Rate Case, which will utilize the findings and conclusions of the pending Value of Solar docket. Thus, at this time, we cannot evaluate the reasonableness of the costs of TORS going forward.

116. Further, the evidence indicates that instead of forming its own advisory committee, TEP joined and participates in a similar advisory committee that was formed by APS, and that to-date, no report has been issued on the results of the TORS program. As a result, we do not yet have the information we were seeking on the benefits of the TORS program when we approved the pilot. Until the facts are gathered and reported, any extra benefits beyond the addition of renewable resources, are speculative.

117. TORS was proposed as a pilot without a hearing. Until the results of Phase 2 of the Rate Case and the conclusions of the advisory committee report are known, it is premature to authorize the expansion of the TORS program as requested.<sup>165</sup>

<sup>163</sup> *Id.* at 21-22.

<sup>164</sup> Tr. at 190-91.

<sup>165</sup> Once the results of any changes to net metering are known in Phase 2 of the Rate Case and the technical report is released, TEP may renew its request.

1           118. Staff recommends that the provision in Decision No. 74884 that required TEP to set up  
2 an advisory committee to address the design and goals of the TORS program be modified to allow TEP  
3 to meet this obligation by actively participating in the advisory committee that was set up by APS. We  
4 agree with Staff that as long as TEP actively participates and retains responsibility for the direction of  
5 its own project, participating in the APS committee accomplishes the same goal more efficiently.

6           119. We are not surprised that a fixed flat-rate program such as TORS would be popular with  
7 TEP customers and that there appears to be a demand to expand the program. It is our duty to determine  
8 if the costs of the program are fair and reasonable for all TEP customers. Although deferring a decision  
9 on the TORS expansion until the costs of net metering and the benefits of TORS assets are known may  
10 result in the pilot being fully-subscribed and creation of a waiting list, such potential inconvenience is  
11 outweighed by ensuring that nonparticipating ratepayers are not paying more than is necessary for the  
12 addition of renewable resources.

13           120. We believe that community solar represents an opportunity to bring additional  
14 renewable resource options to TEP's customers cost effectively. In addition, the RCS would allow  
15 ratepayers who are not able to put rooftop systems on their homes to participate in the expansion of  
16 renewables. The location of the project should not hinder the ability to provide this service offering as  
17 long as the generation facilities are connected to the grid at the distribution level. Thus, we find that  
18 the 5 MW RCS program should be examined in Phase 2 of the Rate Case.

19           121. According to TEP, the price of the RCS is a critical component of the project. While we  
20 approve the concept of the RCS, we do not approve the specific RCS tariff at this time, but defer  
21 consideration of the rate and exact terms to Phase 2 of the Rate Case. At that time, we will evaluate the  
22 reasonableness of TEP's proposed \$17.50 per kW price, as well as any alternative pricing options,  
23 including what price would result under a cost-based or rate-of-return approach as suggested by Staff,  
24 or other specific recommendations offered by other parties. We understand the need for some  
25 flexibility in usage, but also have concerns about the reasonableness of the plus or minus 15 percent  
26 band, and would like to consider other options in Phase 2 of the Rate Case, such as, but not limited to,

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1 a smaller band, or re-pricing after usage varies beyond a band in two out of three years.<sup>166</sup>

2 122. RUCO and Staff recommend expanding the RCS to include customers who are not  
3 homeowners. We agree that renters, and others, should have the benefit of participating in the solar  
4 market, however, the specific program being advanced is structured based on the ability to bind the  
5 premises. At this time, we do not find that the RCS must necessarily be modified to allow for renter  
6 participation, but can evaluate specific proposals for expansion in Phase 2 of the Rate Case.

7 123. Apart from what may result in Phase 2, we believe that TEP should explore other types  
8 of community solar options that would be available to renters. Bright Tucson appears to be one such  
9 option, although it does not appear to have been marketed in recent years. If TEP does not believe the  
10 Bright Tucson program is effective as currently structured, it should consider modifying it to make it  
11 more attractive or cost-effective. In its next REST Implementation Plan, TEP should include a  
12 discussion for how community solar can play a role in its service territory, and should specifically  
13 discuss how such a program could be designed to include renters, and if such program can be extended  
14 reasonably to low income participants.<sup>167</sup>

15 124. In addition to utility-owned DG assets such as TORS and the proposed RCS, TEP could  
16 comply with the DG obligation of the REST Rules by obtaining a waiver of the obligation to obtain  
17 RECs or by acquiring RECs from third-parties in some manner. The cost of obtaining a waiver is free  
18 to ratepayers (except perhaps for the expense associated with obtaining Commission approval). The  
19 cost of obtaining RECs from other parties is unknown as there currently is no market for them in  
20 Arizona. TEP used to obtain RECs by paying incentives to the owners of the rooftop solar systems,  
21 but the Commission has not approved up-front incentives in recent years after it became clear that they  
22 were no longer needed to incentivize the installation of residential rooftop solar. In Decision No. 85560  
23 (May 13, 2016), based on a strong market activity for DG solar, the Commission granted TEP a waiver  
24 for the 2016 and 2017 increment for the residential DG requirement. While seeking waivers appears to  
25 be one solution to the compliance dilemma, it should not preclude or discourage the Company or the

26 <sup>166</sup> Our comments here do not pre-judge the ultimate conclusion on the proposed terms to the program, but rather are  
27 intended to give the parties advance notice of areas we would like to address in Phase 2.

28 <sup>167</sup> TEP currently has a program that allows its customers to voluntarily contribute to a fund that assists the installation of  
solar facilities on Habitat for Humanity projects. It does not appear the Company has a program as part of its REST or low-  
income budgets that would more systematically support low income solar installations.

1 Commission from exploring additional means of expanding the amount and variety of renewable  
2 resources.

3 125. The RCS, if fully subscribed, would provide approximately 2,000 megawatt hours,  
4 which translates to approximately 10 million RECs.<sup>168</sup> In the event we conclude that the RCS program  
5 is just and reasonable in Phase 2 of TEP's Rate Case, we find that there is good cause to waive those  
6 portions of the REST Rules that require distributed generation to be located on the customer's premises  
7 in order that TEP may use the RECs generated by the RCS to show compliance with the REST Rules.

8 126. The proposed RCS tariff already contemplates the ability of third-parties to participate  
9 by means of a PPA, which we agree is an important feature. However, to determine whether third-  
10 parties can provide community solar directly to customers raises legal and public policy issues that go  
11 for beyond the scope of this proceeding. Although EFCA suggests that there may be ways such an  
12 arrangement may be permissible under Arizona law, it did not propose a specific modification to the  
13 tariff or alternative tariff. If any party believes that the Commission should consider a specific  
14 alternative form of community solar, they should propose such program to the Commission either in a  
15 rate case or in another appropriate docket (e.g., a REST Implementation Plan). It is not reasonable for  
16 parties to criticize particular proposals and claim that there may be better permissible alternatives, but  
17 refuse to bring forth these proposals for evaluation.

18 127. The reasons behind our decision to wait on the expansion of the TORS program are  
19 unrelated to the argument that the program is anti-competitive or would harm the installation of DG  
20 solar in TEP's service area. We do not believe that adding 1,000 additional utility-owned rooftop  
21 systems, or a 5 MW community solar program that can serve an additional 900 customers, would  
22 destroy the third-party market for the installation of rooftop solar, especially as the RCS will be  
23 subscribed to in part by homeowners who cannot install rooftop solar. To-date, third-party solar system  
24 providers are not considered to be public service corporations furnishing electricity, but enable utility  
25 customers to acquire the facilities to generate their own electricity. TEP does not compete with its  
26 customers. With respect to the deployment of DG, one of the Commission's duties is to ensure that

27 \_\_\_\_\_  
28 <sup>168</sup> Tr. at 188. Mr. Tilghman testified that in 2016, the Company was approximately 10 million REC's short for compliance purposes.



1 utility customers who wish to deploy DG solar can interconnect with their utility under terms that are  
2 fair and reasonable to all – the DG customer, the non-participant customers, and the company. The  
3 Commission does not regulate the third-party providers and does not evaluate or protect their business  
4 models; nor does the Commission have access to the data to comprehensively assess their claims that  
5 the rooftop solar market would be destroyed if a utility is allowed to own DG assets. Based on the  
6 record in this proceeding, EFCA's arguments that TORS or RCS would destroy the third-party market  
7 are speculative and extreme based on the limited size of the programs being considered. In any case,  
8 the Commission will have the opportunity to gauge the vitality of DG installations before we approve  
9 any new programs or the expansion of these programs.

### 10 CONCLUSIONS OF LAW

11 1. TEP is an Arizona public service corporation within the meaning of Article XV, Section  
12 2 of the Arizona Constitution.

13 2. The Commission has jurisdiction over TEP and over the subject matter of the 2016  
14 REST Plan, and the TORS and RCS programs described herein.

15 3. Notice of the Application and hearing was provided as required by law.

16 4. The Commission, having reviewed the Application and the entire record in this  
17 proceeding, concludes that it is premature to find the proposed TORS expansion to be in the public  
18 interest until the results of the technical study and potential modifications to net metering tariffs are  
19 known.

20 5. Pending evaluation of the reasonableness of its pricing and tariff terms in Phase 2 of the  
21 Rate Case, the concept of the proposed RCS program, including the limited waiver of A.C.C. R14-2-  
22 1801 *et seq.* in order to allow the RCS program to count toward the Residential DG carve out, is in the  
23 public interest.

### 24 ORDER

25 IT IS THEREFORE ORDERED that approval of Tucson Electric Power Company's request to  
26 expand the TORS program by \$15 million is denied until the pilot program is evaluated in the technical  
27 advisory committee report as directed in Decision No. 74884.

28 IT IS FURTHER ORDERED that the requirement in Decision No. 74884 that Tucson Electric

1 Power Company form an advisory committee to review the direction of the TORS pilot project and  
 2 provide feedback on program design, and to report on the program results as well as any research  
 3 findings is modified to allow Tucson Electric Power Company to participate in such an advisory  
 4 committee that has been formed by Arizona Public Service Company rather than create a separate  
 5 advisory committee as long as the joint committee considers the actual results and findings of Tucson  
 6 Electric Power Company's program.

7 IT IS FURTHER ORDERED that Tucson Electric Power Company is authorized to propose  
 8 the 5 MW Residential Community Solar project in Phase 2 of the pending Rate Case.

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1 IT IS FURTHER ORDERED that in the event that the final terms of the Residential Community  
2 Solar program are determined to be in the public interest, those portions of A.A.C. R14-2-1801 *et seq.*  
3 that require DG facilities to be located on the customer's premises in order to count toward the  
4 Residential DG carve out, shall be waived.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
7  
8

9 CHAIRMAN

COMMISSIONER

10  
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director  
14 of the Arizona Corporation Commission, have hereunto set my  
15 hand and caused the official seal of the Commission to be affixed  
16 at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day  
17 of \_\_\_\_\_ 2016.

18 JODI JERICH  
EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_  
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21 DISSENT \_\_\_\_\_  
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