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EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKET CONTROL

2016 OCT 17 PM 2 21

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

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

DOCKET NO. E-01933A-15-0239

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

DOCKET NO. E-01933A-15-0322

EXCEPTIONS TO
RECOMMENDED OPINION AND
ORDER

**FREEMPORT MINERALS CORPORATION,
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION AND NOBLE
AMERICAS ENERGY SOLUTIONS LLC**

JOINT EXCEPTIONS

Arizona Corporation Commission

DOCKETED

OCT 17 2016

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1 Freeport Minerals Corporation, Arizonans for Electric Choice and Competition
2 (collectively "AECC") and Noble Americas Energy Solutions LLC ("Noble Solutions")
3 hereby submit their Exceptions in the above captioned Docket relating to the Tucson
4 Electric Power Company's ("TEP") 2016 Renewable Energy Standard and Tariff
5 ("REST") Implementation Plan.

6 DISCUSSION

7 AECC has argued in this proceeding that the Arizona Corporation Commission
8 ("Commission") cannot make a fully informed decision as to whether the TEP-Owned
9 Rooftop Solar ("TORS") or Residential Community Solar ("RCS") programs are in the
10 public interest without weighing their costs and overall impact within the broader context
11 of the current TEP rate case ("Rate Case"). This position is based on the view that
12 programs like TORS and RCS represent competitive electric services that should be
13 offered by market participants, not vertically integrated monopoly providers providing
14 service at cost-plus rate-of-return based rates. Noble Solutions supports that proposition.

15 While the Recommended Opinion and Order ("ROO") essentially delays the
16 Commission's consideration of the TORS and RCS programs into Phase 2 of the Rate
17 Case, it does so not on policy grounds, but rather on the reasons that: (i) TEP has failed to
18 comply with the requirements set forth in Decision No. 74884 (December 31, 2014) with
19 respect to continuing or expanding the TORS program, and (ii) the terms and pricing
20 options of a 5 MW RCS program can be better evaluated in the context of Phase 2 of the
21 Rate Case. AECC and Noble Solutions agree that these factual considerations warrant the
22 conclusions made in the ROO to delay a final decision until Phase 2 of the Rate Case is
23 completed. However, the policy issues associated with the TORS and RCS programs are
24 also important factors that the Commission should consider as well.

25 For instance, during Phase 1 of the Rate Case proceedings, TEP's own rate design
26 expert witness (Dr. Edwin Overcast) described the advent and expansion of solar rooftop

1 DG as creating a “mixed monopoly-competition” model within TEP’s own service
2 territory; and during cross examination, he agreed that buy-through programs are also a
3 form of the “mixed monopoly-competition” model. AECC and Noble Solutions
4 wholeheartedly agree with Dr. Overcast that competition and customer choice in
5 generation already exists for TEP ratepayers, and they believe that the Commission is not
6 precluded from assessing how a “mixed monopoly-competition model” can be expanded
7 within the regulatory framework in a manner that best serves the public interest.

8 As observed in the ROO, the question of whether utility-owned DG assets should be
9 encouraged as a policy directive can be evaluated in terms of alternatives for REST Rules
10 compliance, such as a waiver of renewable energy credit (“REC”) requirements. In that
11 regard, AECC and Noble Solutions believe that reliance on competitive markets can
12 facilitate the continued development of innovation and technology choices for consumers.
13 Indeed, the gradual reduction and elimination of incentives has not deterred customers
14 from choosing renewable energy options, and subsidies should be eliminated when
15 establishing cost-of-service rate-of-return based rates.

16 Unfortunately, AECC and Noble Solutions’ own proposals to bring customer choice
17 and price competition to commercial and industrial customers are being addressed in Phase
18 1 of the Rate Case. As a result, several “competition” related issues will be addressed prior
19 to the Commission’s final order in Phase 2 of the Rate Case – but not the entire spectrum of
20 issues. The ability of TEP or third party solar DG providers to legally offer competitive
21 *retail* electric service in the absence of becoming a qualified electric service provider
22 (“ESP”) under the Retail Electric Competition Rules¹ is a policy concern that remains
23 unanswered. Likewise, Staff has concluded in this REST-related portion of the proceeding
24

25 ¹ AECC and Noble Solutions disagree with Commission Staff that the Retail Electric Competition Rules are an
26 incomplete and out-dated scheme to facilitate retail competition. In fact, APS makes reference to the Rules in its
request to approve an experimental high load factor pricing structure. Docket No. E-01345A-16-0131.

1 that there is not any legal impediment to “sleeving” in Arizona, and uses Arizona Public
2 Service Company’s AG-1 Tariff as an example of such a transaction.

3 “Sleeving” is certainly an issue that was raised during Phase 1 of the Rate Case in
4 the context of AECC and Noble Solutions’ proposed buy-through programs, and will likely
5 be an issue during Phase 2 of the Rate Case in the event TEP proposes a 5MW RCS facility
6 as suggested in the ROO. AECC and Noble Solutions agree with the basic premise in the
7 ROO that third-parties providing community solar directly to customers raises legal and
8 public policy issues that go beyond the scope of the REST-related portion of this
9 consolidated proceeding, and believe that the Commission needs to be aware that such
10 issues also implicate and involve TEP and third parties providing electricity directly to
11 retail customers through solar DG rooftop systems.

12 CONCLUSION

13 AECC and Noble Solutions support customer choice and competition. The purpose
14 of these Exceptions is not to limit the ability of parties to offer expanded choices to
15 residential customers through competitive services, but rather highlight for the Commission
16 that these residential programs cannot be fully evaluated – either on a legal or public policy
17 basis – without recognizing their impact on the larger issue of how to facilitate choice and
18 competition for all classes of customers. In that regard, AECC and Noble Solutions reject
19 the axiom asserted by some parties that “competition” and “retail choice” does not exist in
20 Arizona, when the weight of the evidence in this particular proceeding strongly suggests
21 otherwise.

22 Accordingly, AECC and Noble Solutions urge the Commission to expand the basis
23 for any decision to address both the TORS and RCS programs in Phase 2 of the Rate Case
24 to include legal and public policy considerations of whether approval serves the broad
25 public interest.

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RESPECTFULLY SUBMITTED this 17th day of October, 2016.

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COPY of the foregoing hand-delivered/mailed/emailed
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