

ORIGINAL EXCEPTION



0000174029

Court S. Rich AZ Bar No. 021290
Rose Law Group pc
7144 E. Stetson Drive, Suite 300
Scottsdale, Arizona 85251
Direct: (480) 505-3937
Fax: (480) 505-3925
Attorney for Energy Freedom Coalition of America

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 OCT 17 PM 3 57

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

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

DOCKET NO. E-01933A-15-0239

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

**ENERGY FREEDOM COALITION
OF AMERICA'S EXCEPTIONS
TO RECOMMENDED OPINION
AND ORDER**

The Energy Freedom Coalition of America ("EFCA") hereby files the attached Exceptions to Recommended Opinion and Order.

RESPECTFULLY SUBMITTED this 17th day of October, 2016.

Arizona Corporation Commission

DOCKETED

OCT 17 2016

/s/ Court S. Rich

Court S. Rich
Rose Law Group pc
Attorney for EFCA

DOCKETED BY *NA*

1 **Original and 13 copies filed on**
2 **this 17th day of October, 2016 with:**

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

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

9 Judge Jane Rodda
10 Arizona Corporation Commission
11 jrodde@azcc.gov

12 Janice Alward
13 Arizona Corporation Commission
14 rmitchell@azcc.gov
15 wvancleve@azcc.gov
16 mfinical@azcc.gov
17 legaldiv@azcc.gov

18 Thomas Broderick
19 Arizona Corporation Commission
20 tbroderick@azcc.gov

21 Dwight Nodes
22 Arizona Corporation Commission
23 dnodes@azcc.gov

24 Michael Patten
25 Snell & Wilmer L.L.P.
26 mpatten@swlaw.com
27 jgellman@swlaw.com
28 tsabo@swlaw.com
29 jhoward@swlaw.com
30 docket@swlaw.com

31 Bradley Carroll
32 TEP
33 bcarroll@tep.com

34 C. Webb Crockett
35 Patrick Black
36 Fennemore Craig, P.C
37 wcrockett@fclaw.com
38 pblack@fclaw.com

39 Kyle J. Smith
40 kyle.j.smith124.civ@mail.mil
41 Karen White
42 karen.white.13@us.af.mil

Charles Wesselhoft
Pima County Attorney's Office
Charles.wesselhoft@pcoa.pima.gov

Timothy Hogan
ACLP
thogan@aclpi.org

Michael Hiatt
Earthjustice
mhiatt@earthjustice.org

David Bender
Earthjustice
1625 Massachusetts Ave, NW, Suite 702
Washington D.C. 20036-2243

Rick Gilliam
Briana Kobor
Vote Solar
rick@votesolar.org
briana@votesolar.org

Craig Marks
Craig A. Marks, PLC
craig.marks@azbar.org

Patrick Quinn
Arizona Utility Ratepayer Alliance
Pat.quinn47474@gmail.com

Daniel Pozefsky
RUCO
1110 W. Washington, Suite 220
Phoenix, Arizona 85007
dpozefsky@ruco.gov

Kevin Higgins
Energy Strategies, LLC
khiggins@energystrat.com

1 Nicholas Enoch
Lubin & Enoch, P.C.
2 Nick@lubinandenoch.com

3 Gary Yaquinto
Arizona Investment Council
4 gyaquinto@arizonaic.org

5 Megan Grabel
Osborn Maledon, P.A.
6 mgrabel@omlaw.com

7 Thomas A. Loquvam
Pinnacle West Capital Corporation
8 thomas.loquvam@pinnaclewest.com

9 Kerri A. Carnes
Arizona Public Service Company
10 kerri.carnes@aps.com

11 Travis Ritchie
Sierra club Environmental Law Program
12 travis.ritchie@sierraclub.org

13 Jeffrey Shinder
Richard Levine
14 Constantine Cannon LLP
jshinder@constantinecannon.com
15 rlevine@constantinecannon.com

16 Camila Alarcon
Gammage & Burnham PLC
17 calarcon@gblaw.com

18 Michele L. Van Quathem
Law Office of Michele Van Quathem, PLLC
19 mvq@mvqlaw.com

20 Lawrence V. Robertson, Jr.
Noble Americas Energy Solutions LLC
21 tubacklawyer@aol.com

22 Scott Wakefield
Hienton & Curry, P.L.L.C.
23 swakefield@hclawgroup.com

24 Steve W. Chriss
Wal-Mart Stores, Inc.
25 stephen.chriss@wal-mart.com

26 John William Moore, Jr.
27 jmoore@mbmblaw.com

28 By: /s/ Hopi L. Slaughter _____

Jeff Schlegel
SWEEP Arizona
schlegelj@aol.com
Ellen Zuckerman
SWEEP
ezuckerman@swenergy.org

Cynthia Zwick
Kevin Hengehold
Arizona Community Action Assoc.
czwick@azcaa.org
khengehold@azcaa.org

Ken Wilson
Western Resource Advocates
Ken.wilson@westernresources.org

Tom Harris
AriSEIA
tom.harris@ariseia.org

Bryan Lovitt
3301 W. Cinnamon Drive
Tucson, Arizona 85741

Kevin Koch
PO Box 42103
Tucson, Arizona 85733

Bruce Plenk
solarlawyeraz@gmail.com

Garry D. Hays
Law Offices of Garry D. Hays, PC
2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016
ghays@lawgdh.com

Greg Patterson
greg@azcpa.org

Jeff Crockett
Crockett Law Group, PLLC
jeff@jeffcrockettlaw.com

Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

1 **I. Introduction**

2 It is an article of faith among industrial organization economists in the United States that
3 competition, and competitive markets, are always the best way to create more choices, innovation,
4 and lower prices for consumers. Consistent with that axiom is the related concept that regulation
5 should be limited to markets that are natural monopolies, usually because they cannot efficiently
6 support competitive options, and thus, such markets require regulatory scrutiny to ensure that the
7 public interest is served by the incumbent monopolist. Unless such a backdrop exists, preserving
8 competition always is a better outcome for consumer welfare than extending regulation to a
9 competitive industry. Indeed, competition in the distributed generation (“DG”) solar industry will
10 be of increasing importance going forward, as DG solar systems become part of an integrated
11 package of distributed energy resources including storage and demand management devices and
12 software. Competitive offerings in this area will provide customers with choices and stimulate the
13 more rapid development of these advanced offerings. The Commission recently articulated this
14 exact point: “Public policy should not be ossified and competition, choice, innovation and market-
15 based solutions are the preferred approach as we enter a new era dominated by customer-sited
16 technologies and the grid [sic] upgrades and innovations that enable such technologies to exist and
17 flourish.”¹ The Recommended Order and Opinion (“ROO”) is in defiance of these bedrock
18 principles and should be modified.

19 The ROO does not dispute that the DG solar segment in Tucson Electric Power’s (“TEP”) service territory is a competitive industry. Nor does the ROO dispute that the State of Arizona has never articulated a policy of displacing competition in DG solar with regulation. In fact, it has done the opposite by enacting statutory consumer protection obligations for competitive DG solar providers, not price or entry restrictions.² Yet, nowhere does the ROO grapple with the stark reality that permitting TEP’s proposals to go forward will inevitably result in the regulation of a competitive industry, an entirely unnecessary and unjustified outcome that is not in the public interest.

28 ¹ Decision No. 75697 at 118:1-3 (Aug. 18, 2016).

² ARS §§ 44-1761-63 (effective January 1, 2016).

1 The ROO's failure to recognize the threat TEP's proposals pose to competition in DG solar
2 highlights the danger of extending regulation to this competitive industry. Energy Freedom
3 Coalition of America ("EFCA") takes exception to the ROO's conclusions on several grounds.
4 The ROO ignores the clear threats to competition posed by TEP's proposals, including that TEP
5 proposes to enter and compete for the same customers that competitive DG solar providers serve,
6 but on tariffed terms, that by virtue of TEP's provision of DG solar from inside its regulated
7 network, no competitive DG solar provider can match. Moreover, in concluding that TEP's
8 proposals pose no meaningful risk to competition, the ROO made several material errors.

9 First, the ROO relied on the mistaken conclusion that the scope of the TEP-owned Rooftop
10 Solar Program ("TORS") and the Residential Community Solar Program ("RCS") are effectively
11 limited to the 1900 installations on the table. This finding ignores the fact that TEP has no real
12 impediment to unfettered expansion, particularly because it could provide RCS from solar facilities
13 already in its rate base to destroy the competitive DG solar industry without any review by the
14 Commission. TEP admitted at trial that it intends to expand these programs as warranted by
15 consumer demand, and that it already has a waiting list – generated by its ability to offer fixed
16 rates at a time that the economic foundation of DG solar is being challenged in the rate case – far
17 in excess of the initial limits it has placed on the program in its 2016 Renewable Energy Standard
18 and Tariff ("REST") Implementation Plan. Perhaps most critically, the ROO incorrectly
19 concluded that the RCS program will not give TEP a monopoly in community solar – a monopoly
20 that it can strategically deploy to destroy competition – because the proposal provides for
21 Purchased Power Agreements ("PPAs"). This ignores the basic fact that PPAs do not enable
22 customer facing relationships, and thus, they cannot possibly provide competition to TEP at the
23 retail level.

24 The ROO also makes factual findings regarding the cost shift to non-participating
25 customers associated with TORS *vis-a-vis* the supposed (and hotly disputed) cost shift associated
26 with current net metering. The question of whether there is any cost shift at all associated with net
27 metering was not the subject to any TEP cost studies in this proceeding and any conclusions that
28 suggest this question was determined in this proceeding should be disregarded.

1 EFCA believes that the issue of TORS expansion has appropriately been deferred by the
2 ROO, and similarly believes that whether the RCS program, and the TEP's requested REST waiver
3 for it, are in the public interest cannot be determined at present. Thus, the Commission should not
4 authorize the RCS proposal to proceed to Phase 2 of TEP's rate case. EFCA's reasons for these
5 conclusions are set out in more detail below. Attachment 1 sets out EFCA's proposed amendments
6 to the ROO's Findings of Fact, Conclusions of Law, and Ordering clauses.

7 **II. TEP's RCS And TORS Programs Compete With Competitive DG Solar**

8 ECFA takes exception to the ROO's conclusion that TEP's proposals do not raise
9 competition concerns because "TEP does not compete with its customers."³ The statement ignores
10 the relevant analysis to assess the competitive impact of TEP's proposals. At the outset, it is worth
11 noting that TEP's traditional service competes with the competitive DG solar industry. Against
12 this backdrop, there is no dispute that the Commission's approval of TEP's proposal would lead
13 to additional competition, in this instance, direct competition between regulated monopolist TEP
14 and the competitive DG solar industry. Indeed, TEP's admissions in these proceedings
15 demonstrate that TEP's DG solar offerings would compete head-to-head with competitive DG
16 solar.

17 First, TEP has claimed that its venture into rooftop solar will offer its customers additional
18 solar choices beyond those that currently exist within the competitive solar industry.⁴ Therefore,
19 by TEP's own admission, utility and competitive DG solar would be direct competitors for TEP's
20 rate-base customers. This conclusion is reinforced by the fact that TEP seeks with RCS to address
21 largely the same customer base as competitive DG solar by limiting eligibility to customers who
22 are also eligible for net metering.⁵

23 Second, TORS and competitive DG solar offer the same product. Under TEP's proposal,
24 regulated monopolist TEP and competitive DG providers would compete to sell consumers a
25 choice of photovoltaic panels and services granting self-generation of electricity. In comparing
26 the two products, TEP's expert Mr. Tilghman acknowledged that TEP-offered rooftop solar and

27 _____
28 ³ ROO at 36:25-26.

⁴ TEP Reply Brief at 2; *see also* ROO at 11:1-4.

⁵ EFCA Initial Brief at 13:10-15.

1 DG rooftop solar are quite obviously similar products. Test’y, Apr. 5, 2016 Hr’g Tr. Vol. I, at
2 116:10 (“The fact is there is a solar system on the top of a consumer’s roof in either case.”). And,
3 again, with RCS, TEP has targeted the customer base of competitive DG solar for its offering. In
4 other words, TEP’s proposed offerings and the products and services provided by the competitive
5 DG solar industry would be competitive substitutes for consumers.⁶

6 That TEP’s business model as a regulated monopolist differs from that provided by DG
7 solar providers is not relevant to a proper analysis of whether the products offered by these models
8 are substitutes. For example, the fact that Uber is unregulated and the taxi industry is regulated
9 does not bar the inescapable conclusion that the two models are competitive because consumers
10 treat them as substitutes.⁷ Therefore, the fact that competitive DG solar providers are not “public
11 service corporations furnishing electricity” is a red herring.⁸ By the same token, the fact that the
12 Commission does not directly regulate existing DG solar is not relevant to analyzing whether TEP
13 proposes to directly compete against the competitive DG solar industry.⁹

14 Given that TEP clearly proposes to compete with the competitive DG solar industry, to
15 protect the public interest, the Commission must grapple with the competitive implications of
16 empowering TEP, a regulated monopolist, to expand into this vibrantly competitive industry.¹⁰
17 Those implications are starkly presented by the following undisputed facts, largely elided by the
18 ROO, that:

- 19 • Regulated monopolist TEP proposes to enter an industry that is competitive;
- 20 • TEP will cross-subsidize both the TORS and RCS programs from its rate base, with
21 the costs and risks associated with these programs paid by captive rate-payers;
- 22 • TEP can exploit its regulated network and services to offer customers terms, such
23 as long flat long-term fixed rates, that cannot be matched by competitive DG solar
24 providers;
- 25 • TEP will expand the TORS and RCS program as warranted by customer demand
26 for DG solar under those terms, and RCS expansion may not be evaluated at all if
27 TEP utilizes solar facilities that already have been allowed in its rate base;
- 28 • TEP seeks a monopoly in the provision of community solar.

25 Against this backdrop, the ROO’s conclusion that EFCA’s concerns are “speculative and

26 _____
27 ⁶ *Id.* at 19:5-6.

28 ⁷ *Id.* at 19:6-9 (citing Dr. DeRamus’s Test’y, Apr. 7, 2016 Hr’g Tr. Vol. III, at 507:19-508:6).

⁸ ROO at 36:23-25.

⁹ *Id.* at 37:2-4.

¹⁰ Under A.R.S. § 44-202(B), it remains Arizona public policy that competitive markets exist in electric generation.

1 extreme” cannot withstand scrutiny.¹¹

2 **III. If Approved, TORS And RCS Expansion Will Proceed Unchecked**

3 The ROO incorrectly asserts that Commission approval of the proposed TORS and RCS
4 programs would be limited “to 1,000 additional utility-owned rooftop systems” and a “5 MW
5 community solar program that can serve an additional 900 customers.”¹² This finding was a
6 primary basis for determining that TEP’s proposals could not harm competition.¹³ But given that
7 TEP can re-deploy current assets for the RCS program without any Commission scrutiny, and any
8 RCS and TORS expansion using new assets will not be reviewed until the next rate case,
9 potentially years later, neither program is so limited in size and scope.

10 In actuality, TEP can unilaterally expand both its RCS and TORS programs as it readily
11 conceded at trial.¹⁴ First, TEP can expand RCS for utility-scale DG already in the rate base with
12 *no* prudence review whatsoever. TEP witness Mr. Tilghman stated that TEP can attach Rider R-
13 17 to any TEP solar facility.¹⁵ As a result, the constraint on RCS is not the number of customers
14 served, but is instead limited by “only the amount of solar capacity needed to meet TEP’s utility-
15 scale DG requirements.”¹⁶ This fact was confirmed by Staff’s Mr. Gray who found that the text
16 of Rider R-17 did not limit the capacity of RCS.¹⁷ The purported 5 MW “limit” upon which the
17 ROO so heavily relies is illusory, and approval of TEP’s RCS proposal will lead to RCS expansion
18 with no review, prudence or otherwise, to check TEP’s acquisition and exploitation of a monopoly
19 in community solar.

20 Second, TEP states it can expand both RCS and TORS on the basis of “customer demand,”
21 and it has already generated a long waiting list based on its ability to promise fixed rates at a time
22 when the economic foundations of DG solar are being challenged in the upcoming rate case.¹⁸
23 TEP has admitted that it could expand the RCS program beyond the 900 customers proposed by

24 _____
25 ¹¹ ROO at 37:5-7.

26 ¹² *Id.* at 36:20-21.

27 ¹³ *Id.* at 36:21-22, 37:5-9.

28 ¹⁴ Tilghman Test’y, Apr. 5, 2016 Hr’g Tr. Vol I, at 198:23-200:18.

¹⁵ EFCA Initial Brief at 17:3-14 (quoting Tilghman Test’y, Apr. 5, 2016 Hr’g Tr. Vol. I, at 128:8-128:21).

¹⁶ *Id.* at 17:16-17.

¹⁷ Gray Test’y, Apr. 7, 2016 Hr’g Tr. Vol. III, at 634:13-25.

¹⁸ *See* Tilghman Test’y, Apr. 5, 2016 Hr’g Tr. Vol. I, at 200:6-14 (noting that there are “5,000 or so customers waiting to get in.”).

1 adding utility-owned community solar generation and tying it to consumer demand.¹⁹ Similarly,
2 as noted by the Commission in its initial approval of the TORS program, TEP does not need prior
3 Commission approval if there is customer demand to construct generating facilities, including
4 utility-operated rooftop solar.²⁰ With the demand it can generate with its anticompetitive fixed-
5 rate offering, TEP can simply add capacity that will not be reviewed by the Commission until the
6 next rate case. By then, competition in DG solar could be eliminated and the Commission will be
7 powerless to reverse that outcome.

8 Therefore, as admitted by TEP, it intends to grow TORS program beyond the 1,000
9 customer expansion²¹ without *ex-ante* Commission approval.²² Furthermore, while
10 acknowledging the Commission has power to conduct an *ex-post facto* prudence review, such
11 review is not geared to competition issues and will be, in any event, hard-pressed to repair harms
12 to competition after they occur. Any prudence review, which will not be held for three years,
13 during the next rate case, will involve a vastly different market in which TEP's continued
14 expansion of TORS and RCS, based on consumer demand for its cross-subsidized, long-term
15 fixed-rate solar, has eliminated DG solar competition.²³ It will not be feasible to unscramble the
16 eggs and restore competition after it has been distorted and potentially eliminated.

17 **IV. The Commission Should Deny TEP's TORS and RCS Proposals And Employ A**
18 **Stakeholder Process To Develop Rules For Participation In Community Solar**

19 Instead of relying on a limited *ex post facto* prudence review to address competitive harm,
20 the Commission should reject TEP's TORS expansion and RCS proposal. EFCA argued that the
21 Commission could alternatively require TEP's competitive entry into DG solar through a separate
22 subsidiary subject to a code of conduct similar to R14-2-1616, which would be designed to prevent
23 anticompetitive conduct by a regulated utility that offers competitive services.²⁴ The ROO
24 criticized EFCA for failing to flesh out this alternative, even though TEP bore the burden of setting

25 _____
26 ¹⁹ EFCA Initial Brief at 18:3-6.

27 ²⁰ *Id.* at 17:26-18:2 (citing Order 74884, Commission Discussion at ¶ 63).

28 ²¹ Cicchetti Direct Test'y, EFCA Ex. 16, at 26:18-19 (citing TEP Response to STF 1.25).

²² Yardley Test'y, Apr. 6, 2016 Hr'g Tr. Vol. II, at 290:6-9, cf. Tilghman Direct Test'y, TEP Ex. 1, at 21:4-12 (admitting that the TEP "could expand" RCS "to meet customer demand").

²³ EFCA Reply Brief at 6:15-17.

²⁴ *Id.* at 9:14-17.

1 forth a proposal that is in the public interest, not EFCA.²⁵ Instead, EFCA offered sufficient
2 evidence that a less anticompetitive option for implementing the TORS and RCS programs was
3 available that could have given TEP's ratepayers additional choices without harming competition
4 in DG solar.²⁶

5 Chairman Little recently opened a docket entitled, "An Examination into the
6 Modernization and Expansion of the Arizona Renewable Energy Standard and Tariff."²⁷ As noted
7 in the announcement, the Commission will be reviewing the following – "What value is there in
8 diversity of ownership? Is utility ownership of renewable generation inherently better or worse
9 than third party ownership?"²⁸ EFCA believes that this proceeding could and should include a
10 workshop that would address rules that would enable competitive community solar providers'
11 participation in this market segment. Such competitive providers could include a TEP separate
12 affiliate, subject to a code of conduct. Therefore, the issue of whether utilities should be permitted
13 to compete in DG industries, and if so, how that competition should be facilitated, are properly
14 within the parameters of that proceeding. The ROO should be modified to account for this.

15 **V. RCS Provides No Opportunity For Competitive DG Providers To Participate**

16 The ROO states that TEP's "proposed RCS tariff [] contemplates the ability of third-parties
17 to participate by means of a PPA," to incorrectly suggest that EFCA's concerns regarding RCS are
18 not well-founded.²⁹ ECFA takes exception with the ROO's finding that offering PPAs provides
19 competitive DG providers a meaningful opportunity to participate in RCS, *i.e.*, compete for
20 customers. There is no direct access to customers offered under PPAs. Moreover, the extent to
21 which a utility purchases from a PPA is entirely under the control of the utility. Their existence
22 as a feature of RCS does nothing to allay the competition concerns raised by TEP's proposal.

23 **VI. There Is No Evidence That TORS Presents A Lower Cost Shift**

24 Even though the alleged cost shift was not at issue in Docket E-01933A-15-0239, and
25 therefore, was not the subject of testimony in this case, the ROO improperly renders conclusions

26 ²⁵ See ROO at 36:8-17 ("Although EFCA suggests that there may be ways such an arrangement may be permissible
27 under Arizona law, it did not propose a *specific modification* to the tariff or alternative tariff.") (emphasis added).

²⁶ See generally EFCA Initial Brief at 20-22.

²⁷ Docket No. E-00000Q-16-0289.

²⁸ *Id.* at 3.

²⁹ ROO at 36:8-9.

1 regarding this hotly contested issue. It does so by stating that the current “cost of TEP’s TORS
2 program to non-participating customers is less than the current cost of net-metering.”³⁰ Moreover,
3 based solely on speculative and unsubstantiated testimony, the ROO concludes that there is a \$0.02
4 per kWh cost shift from TORS to non-participating customers, “which is less than half of the cost-
5 shift under the current net-metering tariff.”³¹

6 In making this finding, the ROO relied on a portion of Mr. Tilghman’s testimony at the
7 hearing.³² However, that portion of Mr. Tilghman’s analysis is based upon a hypothetical forecast
8 and his statement that such cost would be substantiated in a later proceeding. *See* Apr. 5, 2016
9 Hr’g Tr. Vol. I, at 52:1-3 (“It is a very real cost, and one that will be filed here in a few weeks
10 showing those costs going forward.”). Phase 2 of TEP’s rate case, where this contested issue is
11 squarely on the table, should not be prejudged with such an unsupported finding. Therefore, EFCA
12 requests that this statement be identified as TEP’s assertion, not as a finding of fact as to its validity.

13 However, EFCA agrees with the ROO that the net metering tariff and any suggested cost
14 shift from net metering or utility-owned DG solar should be examined and properly analyzed in
15 Phase 2 of the TEP rate case, which will be informed by the findings of fact and conclusions of
16 law in the pending Value of Solar docket.

17
18
19
20
21
22
23
24
25
26
27

³⁰ *Id.* at 33:10-11.

³¹ *Id.* at 33:11-23.

³² Tilghman Test’y, Apr. 5, 2016 Hr’g Tr. Vol. I, at 190:18-191:9.

Attachment 1

Attachment 1

Proposed Amendments to Recommended Opinion and Order

Purpose:

Energy Freedom Coalition of America (“ECFA”) offers the below amended language to clarify and correct the record so that the issues raised and discussed can be properly weighed and considered in future proceedings. ECFA also provides amended language to alter certain aspects of the Recommended Opinion and Order’s Conclusions of Law and Ordering clauses as consistent with EFCA’s exceptions submitted herewith.

Proposed Amended Language:

DELETE page 7, lines 10 to 13, and **INSERT:**

TEP claims the TORS program does not recover its full cost allocation for the program though the fixed tariff, and there is a cost-shift of approximately \$0.02/kWh from participants to non-participants. TEP claims the TORS cost-shift is less than half that of the cost-shift associated with the existing net metering tariff.

DELETE page 33, lines 10 to 16, and **INSERT:**

TEP claims that the current cost of TEP’s TORS program to non-participating ratepayers is less than the current cost of net metering. However, the current cost of net metering was not at issue in this proceeding and there were no cost studies introduced by TEP on that question. Further, the net metering tariff will be examined, and potentially modified for new DG customers in Phase 2 of the pending Rate Case, which will be informed by the findings of fact and conclusions of law in the pending Value of Solar docket. Thus, at this time, we cannot evaluate the reasonableness of the costs of TORS going forward.

DELETE page 34, lines 17 to 18 (last sentence of paragraph 120 only).

DELETE page 34, line 19 to page 35, line 6.

DELETE page 35, line 7: “Apart from what may result in Phase 2,” only and commence with “We.”

DELETE page 36, lines 3 to 7, and **INSERT:**

However, the Commission has already granted TEP a waiver of the residential DG requirement for 2016 and 2017 based on sufficient market activity from competitive systems for which it does not have rights to RECs, and has found that there appears sufficient market activity from competitive residential DG installations through 2020.¹ Thus, the Commission concludes that there likely will be no need for RECs from RCS during the next few years – sufficient time

¹ See Decision No. 75560 (May 13, 2016).

for the Commission to revisit the REC requirement for residential DG in Docket E-00000Q-16-0289 (“An Examination into the Modernization and Expansion of the Arizona Renewable Energy Standard and Tariff”).

DELETE page 36, lines 8 to 17, and **INSERT**:

The proposed RCS tariff contemplates the ability of third-parties to participate by means of a PPA. This arrangement limits third parties to the role of wholesale supplier to TEP, and thus does not remedy the competitive concerns raised in this proceeding. A determination of how third parties can provide community solar directly to customers can be made in Docket E-00000Q-16-0289 along with related rules regarding TEP’s offering of community solar services.

DELETE page 36, line 18 to page 37, line 9, and **INSERT**:

The reasons behind our decision to wait on the expansion of the TORS program are unrelated to the argument that the program is anti-competitive or would harm the installation of DG solar in TEP's service area. However, with respect to the deployment of DG, one of the Commission’s duties is to ensure that utility customers who wish to deploy DG can interconnect with their utility under terms that are fair and reasonable to all – the DG customer, the non-participant customers, and the company.

DELETE page 37, lines 20 to 23, and **INSERT**:

5. The Commission cannot conclude that TEP’s RCS proposal is in the public interest at the present time.

6. Rules for participation in DG solar by competitive community solar providers, and for participation by TEP separate subsidiaries for DG solar (both community and rooftop), could be addressed in Docket E-00000Q-16-0289 (“An Examination into the Modernization and Expansion of the Arizona Renewable Energy Standard and Tariff”).

DELETE page 38, lines 7 to 8, and **INSERT**:

IT IS FURTHER ORDERED that because the Commission cannot conclude that the Residential Community Solar program is in the public interest, Tucson Electric Power Company is not authorized to propose the 5 MW Residential Community Solar project in Phase 2 of the pending Rate Case.

DELETE page 39, lines 1 to 4.