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BEFORE THE ARIZONA CORPORATION COMMISSION

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

**REPLY BRIEF
OF
ARIZONA INVESTMENT COUNCIL**

November 14, 2016

1 Arizona Investment Council (“AIC”) has reviewed the initial post-hearing briefs
2 filed by other parties on October 31, 2016 and believes that its own initial brief
3 sufficiently anticipated the arguments that the parties to this proceeding have made.¹
4 AIC therefore offers only four short points in response to the argument relating to the
5 legality of the buy-through rate contained in the Initial Post-Hearing Joint Brief filed by
6 Freeport Minerals Corporation, Arizonans for Electric Choice and Competition, and
7 Noble Americas Energy Solutions (“Buy-Through Proponents’ Brief”)²:

- 8
9 • It is simply wrong to state that “there are no legal impediments that prohibit
10 the Commission from implementing competition in electric generation, or
11 adopting” a buy-through rate, in which rates would be set by competitive
12 market forces. (Buy-Through Proponents’ Brief at 32, lines 9-10). The law is
13 clear: allowing a rate to be set by the market violates the Arizona Constitution
14 because it “improperly delegate(s) to the competitive marketplace the
15 Commission’s duty to set just and reasonable rates” and violates the
16 Constitutional requirement that rates include consideration of the fair value of
17 the public service corporation’s property. *See Phelps Dodge Corp. v. Arizona*
18 *Elec. Power Co-Op., Inc.*, 207 Ariz. 95, 108 (2004). Neither a statute that sets
19 a policy directive, a strategic goal of the Commission, nor the Commission’s
20 competition rules (most of which have been ruled unconstitutional) can trump
21 that constitutional mandate.
22
- 23 • The fact that a buy-through program is currently in effect for another utility is
24 irrelevant if that program suffers the same fatal legal flaws raised here, which
25 AIC believes it does. The Arizona Public Service AG-1 program was
26

27 ¹ AIC’s silence with respect to any arguments proffered or statements made in the parties’ initial
28 post-hearing briefs should not be construed as agreement with them.

² That argument is found on pages 30-32 of the Buy-Through Proponents’ Brief.

1 implemented in the context of a settlement agreement, and no party
2 challenged its legal viability.

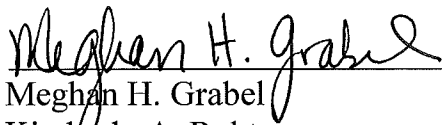
- 3
- 4 • The buy through program is easily distinguishable from the franchise
5 agreement between MWE and Graham as well as Tucson Electric Power's
6 TORS and RCS programs. Even if they were not, again, the existence of
7 similarly flawed programs is irrelevant if they, too, are unconstitutional but
8 were never challenged. The fact that one illegal program is in place does not
9 justify the creation of another.
 - 10
 - 11 • The question of whether rooftop solar energy products offered by third party
12 providers are legal has not been tested in court. Even if they are also
13 unconstitutional, their existence does not make the implementation of an
14 illegal buy-through program right.

15 For these reasons, AIC continues to urge her honor to not only reject the proposed
16 buy-through programs as against public policy, but to also reach the conclusion that they
17 are unlawful under the Arizona Constitution.

18

19 RESPECTFULLY SUBMITTED this 14th day of November, 2016.

20 OSBORN MALEDON, P.A.

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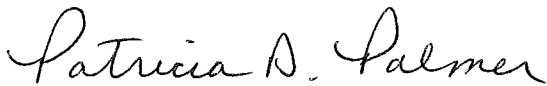
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1 **Original and 13 copies** filed this
2 14th day of November, 2016, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 **Copies** of the foregoing mailed
8 this 14th day of November, 2016, to:

9 All Parties of Record

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