000162077

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

Arizona Corporation Commission
DOCKETED

2015 MAY 15 P 2: 52

SUSAN BITTER SMITH - CHAIRMAN
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

MAY 15 2015

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY, INC. FOR (1) APPROVAL OF A NET METERING TARIFF AND (2) PARTIAL WAIVER OF THE NET METERING RULES.

DOCKET NO. E-01933A-15-0100

STAFF'S MOTION TO DISMISS

ORIGINAL

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") moves to dismiss the application filed by Tucson Electric Power Company ("TEP" or "Company") on March 25, 2015. Staff believes that this matter should be addressed in a rate case. The Administrative Law Judge ("ALJ") directed the parties to file initial briefs by May 15, 2015, on the issue of whether TEP's application should be dismissed.

I. BACKGROUND.

On March 25, 2015, TEP filed an application (the "Application") seeking approval of a new net-metering tariff for future distributed generation customers ("DG Customers"). The new tariff would lower the rate used to calculate the monthly bill credits for excess energy, thereby reducing customer incentives for solar installations. TEP also seeks approval of a partial waiver of the Commission's Net-Metering Rules. On April 1, 2015, TEP filed a Supplement to its Application that included additional proposed revisions to its current net-metering tariff that would also apply to future DG Customers.

On April 14, 2015, Staff filed a request for a procedural order ("Request"). In the Request, Staff recommended that TEP withdraw its pending Application and pursue these issues in a future rate case.[1] If the Company is not inclined to withdraw its application, Staff recommended that the Commission should establish a briefing schedule so that the parties may file briefs addressing

[1] Staff Req. for Procedural Order at 2:3-7.

whether this case should be dismissed.[2] On April 20, 2015, TEP filed a response to Staff's Request. In its response, TEP declined to withdraw its Application, and indicated that it does not plan on filing a rate case in the near future.[3]

On April 27, 2015, the ALJ held a procedural conference to discuss a briefing schedule for motions to dismiss. On April 28, 2015, the ALJ issued a Procedural Order requesting the parties to file initial briefs by May 15, 2015, on the issue of whether TEP's Application should be dismissed and responsive briefs by May 29, 2015. The ALJ scheduled oral argument for June 10, 2015.

II. THE ISSUES.

In its Application, TEP asserts that it is experiencing exponential growth in the number of distributed solar rooftop systems in its service territory.[4] The Company claims that this growth is due to recent reductions in solar system costs and significant subsidies that DG Customers receive through a combination of rate design and net metering.[5] TEP asserts that its DG Customers avoid paying some of the fixed costs associated with operating and maintaining the grid, even though they remain connected to the grid and benefit from that connection.[6] According to TEP, this results in an increasing amount of utility costs that are shifted to other customers, and this cost shift will continue to increase for the foreseeable future absent some fundamental change in rate design, net-metering, or both.[7] Ultimately, TEP acknowledges that its proposal is only a partial fix.[8]

The Company raises three issues as the basis for seeking a change to its net metering tariff. First, the Company claims that its net metering tariff does not reflect the realities of today's distributed generation market. Second, the Company asserts that it has suffered a substantial rise in unrecovered fixed costs due to net metering. Third, the Company claims that its current rate design and net metering tariff operate to shift significant amounts of fixed costs to non-DG customers.

---

[2] *Id.* at 2:8-10.
[3] TEP Rsp. at 2:1-3.
[4] TEP App. at 1:21-24.
[5] *Id.*
[6] *Id.* at 2:1-2.
[7] *Id.* at 2:2-5.
[8] *Id.* at 2:5-7.

A. In 2013, The Commission Granted TEP A Lost Fixed Cost Recovery Mechanism, Which Was Specifically Designed To Address The Under-Recovery Of Fixed Costs Due To DG Systems.

In its Application, the Company asserts that the DG landscape has changed significantly since the Commission adopted the Renewable Energy Standard ("RES") Rules in 2006 and the Net Metering Rules in 2008.[9] The Company claims that RES funds have provided significant customer-funded incentives for the installation of DG systems, and that net metering tariffs adopted in conformity with the Net Metering Rules have provided substantial ongoing subsidies for DG Customers.[10] In addition, tax credits have further supported the installation of DG systems.[11]

Due to the evolution of photovoltaic technology and manufacturing efficiencies, the price of solar rooftop systems has declined from $8.00 per watt in 2008 to $3.00 per watt today.[12] TEP notes that the Commission has mostly eliminated upfront incentives for solar DG systems, and argues that it is unnecessary and inequitable to maintain additional subsidies.[13] TEP ultimately concludes that it is time to make further reductions to the various subsidies incentivizing DG installations.[14]

Although TEP's Application discusses the changes that have occurred in the DG market since the adoption of the RES Rules and the Net Metering Rules, TEP minimizes the significance of its LFCR Mechanism, which was adopted by the Commission in 2013.[15] The LFCR was designed to mitigate the impact of any under-recovery of fixed costs attributable to the rising number of DG Customers in TEP's service territory.[16] The issues raised in TEP's Application are not new, and the Commission took steps to address them in TEP's last rate case.

In its 2012 rate case, the Company indicated that its rate structure is designed to recover its revenue requirement, including fixed costs, primarily through usage-based kWh sales.[17] If kWh sales were to decline as a result of DG systems, TEP would be unable to recover the fixed distribution and

---

[9] *Id.* at 2:11-12.
[10] *Id.* at 2:13-14.
[11] *Id.* at 2:14-16.
[12] *Id.* at 2:17-20.
[13] *Id.* at 3.
[14] *Id.* at 4.
[15] *Id.* at 5:17-23.
[16] Decision No. 73912 at 8.
[17] Docket No. E-01933A-12-0291 Direct Testimony of David G. Hutchens at 14.

transmission costs that are embedded in those kWh rates.[18] Ultimately, without a mechanism in place to capture and recover lost revenues, TEP would not have a reasonable opportunity to recover its fixed costs. The Commission responded to these concerns by implementing TEP's LFCR.[19]

If the Company is now claiming that its LFCR does not adequately address the lost-fixed-cost issue, there are a variety of possible regulatory solutions. For example, it may be possible to alter the Company's rate design to both promote the recovery of fixed costs and leave incentives for solar installations largely unchanged. The Application, which is presented as a simple tariff filing, is too confining, and does not lend itself to the type of comprehensive analysis that this case requires. Because a variety of ratemaking remedies may be applicable to these issues, Staff believes that it would be prudent to dismiss TEP's present Application without prejudice so that these issues may be considered in a rate case.

III. ADDRESSING THESE ISSUES IN A RATE CASE WILL PLACE MORE ANALYTICAL TOOLS AT THE COMMISSION'S DISPOSAL, AND WILL THEREBY MAXIMIZE THE CHANCES OF ARRIVING AT AN OPTIMAL OUTCOME.

Staff recognizes that the proliferation of solar installations may lead to under-recovery of fixed costs. The net metering rules and the current tariffs provide an incentive for customers to install rooftop solar panels. This increasing installation of rooftop solar leads to the sale of fewer kWhs and therefore to the under-recovery of the portion of fixed costs that would ordinarily be recovered through kWh charges. These issues, however, are fundamentally rate design issues that are best addressed in a rate case.

By contrast, TEP proposes to address these issues through a tariff filing. In its Application, TEP is requesting that the Commission approve a new net metering tariff for customers that interconnect to TEP's grid facilities after June 1, 2015.[20] Under this proposed change, new DG Customers would be compensated for excess energy at a reduced rate (the "Renewable Credit Rate"). Existing DG Customers would continue to be compensated at the retail rate, which is higher than

---

[18] *Id.*

[19] Decision No. 73912 at 22:18-21.

[20] TEP App. at 10:4-7.

TEP's proposed "Renewable Credit Rate."[21] Since TEP is proposing to "grandfather" existing DG Customers, this solution appears to hold constant any current under-recovery of fixed costs as it relates to existing DG Customers, and merely slows the increase in any under-recovery related to new DG Customers.[22]

The Company acknowledges that this proposed change will not fully mitigate the DG cost shift, but asserts that its proposal meets the public interest by mitigating the amount of unrecovered fixed costs and the related cost shift.[23] Staff is concerned that a partial solution may be equivalent to no solution. Staff believes that, in order to address the under-recovery of fixed costs and any associated cost shifts, it will be necessary to examine TEP's LFCR and/or its rate design. Possible solutions could include changing the application of the LFCR, increasing monthly minimums, applying a demand charge, or introducing new rate schedules, among other possibilities. The solution could combine these various elements in a way that addresses all customers, not just DG Customers as proposed by TEP. The important point is that under-recovery of fixed costs, cost shifts, and rate design are complex issues that are best addressed in rate cases where there are more tools at the Commission's disposal.

IV. CONCLUSION.

The Company claims that its proposal meets the public interest by mitigating the amount of unrecovered fixed costs and the related cost shift, while still continuing to provide an incentive for all DG Customers.[24] Staff, however, does not believe that TEP's proposed solution will directly address the issues raised in TEP's Application. Staff believes that the broader public interest requires a comprehensive solution to address these issues, and that these issues should be addressed in a rate

. . .

. . .

. . .

---

[21] *Id.* at 6-7.
[22] *Id.* at 10:8-11.
[23] *Id.* at 9:4-11.
[24] *Id.* at 9.

case or possibly an LFCR reset. Staff recommends that the Commission dismiss TEP's Application, without prejudice to the Company's ability to raise these issues in a subsequent rate case.

RESPECTFULLY SUBMITTED this 15th day of May, 2015.

Wesley C. Van Cleve
Robin Mitchell
Attorneys, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing filed this 15th day of May, 2015, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing mailed this 15th day of May, 2015, to:

Michael W. Patten
Jason D. Gellman
Snell & Wilmer, LLP
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004

Bradley S. Carroll
Tucson Electric Power Company
88 East Broadway Blvd., MS HQE910
P.O. Box 711
Tucson, Arizona 85702

Daniel W. Pozefsky
Chief Counsel
Residential Utility Consumer Office
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

Kevin M. Koch
P.O. Box 42103
Tucson, Arizona 85733

Mark Holoham, Chairman
Arizona Solar Energy Industries Association
2221 West Lone Cactus Drive, Suite 2
Phoenix, Arizona 85027

Court S. Rich
Rose Law Group, PC
7144 East Stetson Drive, Suite 300
Scottsdale, Arizona 85251
Attorneys for The Alliance for Solar Choice

Timothy M. Hogan
Arizona Center for Law in the Public Interest
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
Attorney for Vote Solar

Rick Gilliam
Director of Research & Analysis
The Vote Solar Initiative
1120 Pearl Street, Suite 200
Boulder, Colorado 80302

Jill Tauber
Managing Attorney, Clean Energy Program
Earthjustice Washington, DC Office
1625 Massachusetts Avenue, NW, Suite 702
Washington, DC 20036-2212

Chinyere A. Osuala
Associate Attorney
Earthjustice Washington, DC Office
1625 Massachusetts Avenue, NW, Suite 702
Washington, DC 2003-2212

Garry D. Hayes
Law Offices of Garry D. Hayes, P.C.
1702 East Highland Street, Suite 204
Phoenix, Arizona 85016
Attorney for the Arizona Solar Deployment Alliance

Roseann Osorio