000162085

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
SUSAN BITTER SMITH, CHAIRMAN
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ORIGINAL

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

DOCKET NO. E-01933A-15-0100

TUCSON ELECTRIC POWER COMPANY'S INITIAL BRIEF IN SUPPORT OF ITS APPLICATION

Tucson Electric Power Company, ("TEP" or "Company"), through undersigned counsel, hereby submits its brief on the issue of whether its Application should be dismissed. The Application need not be dismissed because there are no legal barriers to addressing TEP's proposed modifications to its net metering tariff in this docket at this time. Moreover, the Arizona Corporation Commission ("Commission") should not delay resolution of the relief sought in this docket until a rate case, as the rapidly increasing cost shift is creating unacceptable inequities in how customers pay for TEP's electric system.

TEP's Application sets forth a proactive approach for mitigating the lost fixed cost revenue and the related inequitable cost shift resulting from the rapidly escalating deployment of distributed generation ("DG") systems in TEP's service area in a way that is gradual, less costly and less confusing than deferring the issue to a rate case. The overall interest of TEP and its customers, as well as due process, supports having the Commission determine the Application on the merits in this docket at this time.

I. Background.

As set forth in its Application in this docket, TEP is facing rapidly escalating deployment of DG systems in its service area. In its Application, TEP noted that it had received more than 600 applications for residential DG interconnection in the first two and a half months of 2015. Since the filing of the Application less than two months ago, TEP has received more than 660 *additional* applications. At this pace, the number of applications submitted to TEP in 2015 will be nearly 60% *higher* than the 2,663 applications received in 2014.

The Company filed the Application in this docket to promptly and proactively address the dramatic increase in lost revenues intended to cover its fixed costs and the related shifting of fixed cost recovery to non-DG Customers. The Application requests: (1) approval of a new net metering tariff for future net metered customers that provides monthly bill credits for any excess energy produced from an eligible net metering facility at a "Renewable Credit Rate"[1] and (2) approval of a partial waiver of the Commission's Net Metering Rules (A.A.C. R14-2-2301 *et seq.*). Through its Application, TEP seeks to: (1) partially address the impacts of the rapidly changing DG landscape in its service area; (2) reduce the increasing inequity in how TEP's customers pay for the fixed costs of operating and maintaining the Company's electric system; and (3) mitigate the revenue degradation and related cost shifting caused by TEP's current net metering tariff. TEP believes that the relief sought in this docket meets those objectives and balances the interests of the TEP and all of its customers. This docket will provide a more timely – and less costly - resolution than a rate case that has not yet been contemplated or filed and is years from a final order.

---

[1] The proposed "Renewable Credit Rate" is the rate equivalent to the most recent utility scale renewable energy purchased power agreement connected to the Company's distribution system. The current Renewable Credit Rate would be 5.84 cents per kWh. The rate would apply to future DG Customers that qualify for the Commission's Net Metering Rules.

II. Due Process and the Public Interest Require Consideration of TEP's Application in this Docket.

A. TEP's Proposed Net Metering Tariff Does Not Have to Be Approved in a Rate Case.

TEP's present net metering tariff was approved outside of a rate case and has not been modified since its initial approval in Decision No. 71411 (December 8, 2009).[2] The current tariff tracks the Net Metering Rules that require TEP to: (i) interconnect with customer-owned or leased DG facilities using bi-directional metering; (ii) net the energy generated by the facility up to the customer's usage on an annual twelve-month rolling basis; and (iii) credit or pay the customer for excess energy generated above the customer's usage, on an annual basis, at the utility's avoided cost.

TEP's net metering tariff was not approved in a rate case (nor has the Commission approved any utilities' net metering tariff as part of a rate case). The Commission's approval of utility net metering tariffs, as well as periodic modifications to utility avoided cost rates, has been done outside of rate cases in connection with the Commission's Net Metering Rules.[3] Such approvals are not inconsistent with the legal requirements of *Scates* that would require a rate case.[4] The relief sought by TEP does not impact its fair value or result in an increase to its authorized rate of return. Rather, the proposed net metering tariff will only act to slow the transfer of fixed cost recovery from net metering customers to non-net metering customers and the erosion of fixed cost revenue recovery not presently recovered through TEP's Lost Fixed Cost Recovery mechanism ("LFCR"). Therefore, the proposed modification to the net metering tariff does not need to be considered and approved in a rate case.

---

[2] Decision No. 71411 (December 8, 2009). The Decision also concluded that it was in the public interest to approve the proposed Pricing Plan Rider-3 (MCCCG) as applicable to determining the avoided cost for purchasing excess energy from net metering facilities. The Commission just recently reset the MCCCG for TEP during its March 2, 2015 open meeting and does this annually outside of a rate case. See Decision No. 74937 (March 16, 2015).

[3] The Commission recently approved TEP's annual application for a change in its MCCCG rate (Decision No. 74973, March 16, 2015) and the application for approval to modify the MCCCG rate for UNS Electric is currently pending before the Commission in Docket No. E-04204A-15-0097.

[4] *Scates v. Arizona Corporation Comm'n*, 188 Ariz. 531, 578 P.2d 612 (Ct. App. 1978).

The consideration of the issues in the Application also does not constitute "single issue ratemaking" because the proposed changes will not affect any rate or charge imposed on TEP's customers and therefore may be considered outside of a rate case.[5] Moreover, the Commission has broad discretion to consider a tariff issue at *any* time. Commission rules provide for a number of types of tariffs to be approved without a full general rate case, such as REST tariffs, electric and gas DSM tariffs, AUSF surcharges, CLEC tariffs and COPT tariffs.[6] The Commission has acted outside of a rate case to establish the rolling average Purchased Gas Adjustor mechanism,[7] to approve water hook-up fees,[8] to approve reductions in electric base rates,[9] to approve new partial requirements tariffs,[10] and to approve new street lighting tariffs.[11] None of these actions required a rate case or violated *Scates*. Here, TEP is not proposing an additional charge; rather it is proposing a reduced credit to be paid for excess electricity that will have no impact on TEP's fair value and will not increase TEP's rate of return above what was approved in its last rate case.

Finally, the Commission has the authority to grant waivers of its rules outside a rate case and has done so on many occasions.

B. It is in the Public Interest for the Commission to Address the Issues Raised by the Application in this Docket.

Consideration of the proposed net metering tariff in this docket provides many benefits, including: (i) a more timely and less costly mitigation of inequitable impacts of the rapid escalation of DG deployment, (ii) a more gradual approach to reducing DG subsidies in the face of

---

[5] Commission Staff also has stated that modification of the net metering tariff does not constitute single issue ratemaking and that the Commission is not precluded from processing a similar net metering tariff application outside of a rate case. See Staff's Response Brief in Trico Electric Cooperative Net Metering Docket (Docket No. E-001461A-15-0057) at pages 5-6.

[6] See e.g. A.A.C. R14-2-1808 (REST tariffs); A.A.C. R14-2-2406 and -2410 (Electric DSM tariffs); A.A.C. R14-2-2506 and -2510 (Gas DSM tariffs); A.A.C. R14-2-2307 (net metering tariffs); A.A.C. R14-2-1110 (CLEC rate tariffs); A.A.C. R14-2-905 and -906 (COPT tariffs); see also A.A.C. R14-2-1205 and 1206 (AUSF surcharge).

[7] Decision No. 61225 (Oct. 30, 1998).

[8] Decision No. 66512 (Nov. 10, 2003).

[9] Decision No. 61973 (Oct. 6, 1999)(APS); Decision No. 61104 (August 28, 1998)(TEP).

[10] Decision No. 65751 (March 20, 2003)(TEP); Decision NO. 74438 (Apirl 18, 2014)(APS).

[11] Decision No. 68954 (Southwest Gas)(closing G-45 Street Lighting Tariff to new applicants); Decision No. 72433 (June 27, 2011)(APS)(revised E-47 and E-58 schedules).

the rapidly changing DG landscape and (iii) a less confusing forum to consider the net metering tariff issue. Delaying consideration of the modifications to the net metering tariff until TEP's next rate has the opposite effect – it will be less timely (thus potentially exacerbating the amount of lost revenues and related cost shift), more costly (due to the nature of a rate case) and more confusing (due to the myriad issues that are addressed in a rate case).

Although the Commission's Utility Division ("Staff") is recommending that TEP's Application be considered as part of its next rate case, TEP (unlike its sister, UNS Electric, Inc.) has not filed a rate case.[12] Even if the Company were to utilize 2015 as its test year and file a rate case in 2016, it may take at least two (2) years from today before the Commission could address the important issues raised in its Application. Alternatively, the Commission may consider the Company's pending Application in less than six (6) months with an evidentiary hearing. Although the relief requested in the Application will not completely address the DG cost shift, it will help mitigate the amount of unrecovered fixed costs and the related cost shift from one group of customers to another while still continuing to prove an incentive for all DG customers until TEP's next rate case is decided. Staff's recommendation would require TEP to prematurely spend hundreds of thousands of dollars (or more) and devote significant company resources to have the Commission address this issue when a legal and viable procedural alternative is available.

A prompt resolution of the requested net metering tariff serves both the best interests of its customers as a whole and the public interest. The Commission already has acknowledged the lost fixed cost recovery and the cost shifting impacts of net metering.[13] The Commission also has recognized that delaying the mitigation of the lost revenues and the related cost shift would not serve the public interest.[14] In TEP's case, waiting to consider this issue in a full rate case would

---

[12] TEP's affiliate UNS Electric, Inc. ("UNS Electric") filed on March 25, 2015 an identical net metering application in Docket No. E-04204-15-0099. On April 14, 2015 Staff filed a motion recommending that the application be consolidated with the rate case that UNS Electric intends to file in early May 2015. Because UNS Electric was already planning to file a rate case in the ordinary course that will be decided within approximately the next year, UNS Electric accepted Staff's recommendation and withdrew its application and will bring forth its DG cost shift issues as part of its rate case filing that was made on May 5, 2015, in Docket No. E-04204A-15-0412. TEP does not have this option.

[13] Decision No. 74202, Finding of Fact 49.

[14] Decision No. 74202, Findings of Fact 99, 106.

delay resolution significantly, even assuming TEP could prepare and file a rate case in the near future. Further, TEP's customers should not be required to incur the significant expense of a rate case at this time when the lost revenue and related cost shift can be mitigated in this docket.

TEP is aware that its proposed net metering tariff will not fully mitigate the DG cost shift, but will act to slow the cost shift and the revenue degradation caused by TEP's current net metering tariff and rate design. TEP's proposal is a gradual approach that reduces, but does not fully eliminate, DG subsidies. Moreover, adopting a modified net metering tariff now may provide insight into further gradual steps that could be taken, such as increased customer charges or residential rate design that may include a demand component.

Further, TEP submits that including the net metering tariff modification into a complex rate case will make it more difficult and more confusing for interested parties to participate in the discussion on the issue. Rate cases are complicated dockets with numerous issues wholly unrelated to net metering, such as pro forma adjustments, cost of capital, line extensions, buy through tariffs, used and useful evaluations and the like. Having a stand-alone docket for TEP on the net metering tariff will facilitate participation by parties interested in this particular issue.

Finally, net metering currently provides a significant subsidy for DG installations that is factored into DG system pricing, leasing models and estimated "payback" periods. Prompt resolution of the Application will mitigate the uncertainty over net metering in TEP's service area.

III. Conclusion

TEP believes that the relief sought in this docket is in the best interests of the Company and its customers and requests a prompt resolution of the Application at this time. A timely assessment of the proposed net metering tariff in relation to the cost shift is in the public interest. Because modification of its net metering tariff need not be done in a rate case, TEP has the right to pursue its Application at this time. Accordingly, the Application should proceed to an evidentiary hearing.

RESPECTFULLY SUBMITTED this 15th day of May, 2015.

Tucson Electric Power Company

By: ____________________

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

and

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

Attorneys for Tucson Electric Power Company

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 hand-delivered/mailed this 15th day of May, 2015, to the following:

Jane Rodda
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
400 West Congress
Tucson, Arizona 85701

Steven Olea
Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Wesley C. Van Cleve
Robert Geake
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Kevin M. Koch
PO Box 42103
Tucson, AZ 85733

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

Mark Holohan
AriSEIA
2221 W. Lone Cactus Dr., Suite 2
Phoenix, AZ 85027

Court S. Rich
Rose Law Group PC
7144 E. Stetson Dr., Suite 300
Scottsdale, AZ 85251
Attorney for TASC

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

Rick Gilliam
Director of Research and Analysis
The Vote Solar Initiative
1120 Pearl St., Suite 200
Boulder, CO 80302

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

Chiyere A. Osuala
Associate Attorney
Earthjustice Washington, DC Office
1625 Massachusetts Ave., NW, Suite 702
Washington, DC 20036-2212

Garry D. Hays
The Law Offices of Garry D Hays, PC
1702 East Highland Ave. Suite 204
Phoenix, AZ 85016
Attorney for the ASDA

Thomas A. Loquvam
Pinnacle West Capital Corporation
P.O. Box 53999, MS 8695
Phoenix, Arizona 85072-3999

Gregory Bernosky
Arizona Public Service Company
P.O. Box 53999, MS 9712
Phoenix, Arizona 85072-3999

By:__________________________