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BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH, Chairman
BOB STUMP
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DOUG LITTLE
TOM FORESE

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

VOTE SOLAR'S RESPONSE BRIEF IN SUPPORT OF DISMISSAL

Tucson Electric Power Company ("TEP" or "the Company") claims the recent growth in solar distributed generation ("DG") has caused increases in unrecovered fixed costs and "inequit[able]" cost shifting between DG and non-DG customers.[1] TEP's proposed solution is to functionally eliminate net metering. Under TEP's proposal, new DG customers would no longer have the right to offset their energy purchases from TEP with excess generation from their DG systems. This would be a dramatic modification to TEP's current net metering program that runs counter to the Commission's net metering rules.

TEP argues the Commission should approve these extensive changes to net metering in this tariff filing, rather than consider the underlying issues and proposed solutions in TEP's next rate case. According to TEP, the Commission has the legal authority to act in this

[1] *See* TEP Br. at 1:18.

proceeding and it would not be in the public interest to wait until TEP's next rate case to address these issues. TEP is mistaken, and the Commission should dismiss the Company's Application for two reasons. First, the Commission should consider the rate design issues driving TEP's Application in a full rate case, where the Commission and the parties would be able to more comprehensively analyze the full value of DG, all of TEP's costs, alternative cost of service methodologies, and rate design opportunities. Second, TEP's proposed modifications to net metering would violate the Commission's net metering rules, and a waiver of those rules is improper.

I. TEP'S APPLICATION SHOULD BE DISMISSED BECAUSE IT RAISES RATE DESIGN ISSUES THAT THE COMMISSION SHOULD ADDRESS IN A RATE CASE.

TEP's proposal would fundamentally undermine net metering in an attempt to address the Company's concerns about alleged cost recovery and cost shifting under the current net metering tariff. These cost concerns raise core rate design issues, and the proper proceeding for the Commission to consider these issues is a full rate case, rather than this net metering tariff filing that targets a narrow customer segment. As Staff, Vote Solar, and other Intervenors have explained, in a rate case the Commission would be able to more comprehensively analyze these issues and TEP's proposal based on a thorough examination of DG's full benefits, TEP's costs, and alternative rate design opportunities.[2] Moreover, the Commission has recognized elsewhere that it should address utilities' concerns regarding cost shifting under net metering in rate cases, based on a full cost-benefit analysis of DG resources.[3]

TEP makes two arguments against dismissal of its Application. First, TEP argues its Application should not be dismissed because there is no legal requirement that the Commission consider these issues in a rate case.[4] TEP claims that because the Commission has approved

[2] Staff Mot. to Dismiss at 4-5; Vote Solar Br. at 2-4; The Alliance for Solar Choice ("TASC") Br. at 16-17; Ariz. Solar Deployment Alliance Br. at 2.

[3] Vote Solar Br. at 3:1-3:7 (discussing Decision No. 74202 (Dec. 3, 2013)).

[4] TEP Br. at 3-4.

tariffs outside rate cases in other proceedings, the Commission can likewise do so here. However, these other proceedings are distinguishable and provide no support for TEP. TEP first notes the Commission approved the current net metering tariff outside a rate case.[5] But the Commission's net metering rules explicitly required the prompt adoption of the new net metering tariff before the next rate case, as it required utilities to file tariffs within 120 days of the effective date of the rules.[6] And critically, the Commission's net metering rules required those tariff filings to "includ[e] financial information and supporting data sufficient to allow the Commission to determine the [utility's] fair value for the purposes of evaluating any specific proposed charges."[7] In contrast, TEP's Application here does not include sufficient financial information and supporting data. If TEP pursues a rate change outside a rate case but fails to provide this information, the Commission would be unable to make a reasoned decision and it could not ensure that TEP's proposal would be just and reasonable. Accordingly, the Commission should consider TEP's proposal in the next rate case, rather than this tariff filing.[8]

TEP also points to other Commission rules and decisions approving tariffs without a full rate case.[9] But once again, these rules require utilities to provide detailed financial information that allows the Commission to ensure that proposed rate changes are just and reasonable.[10] This financial information and supporting data is conspicuously absent from

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[5] *Id.* at 3:5, 3:12-3:13; *see also* Residential Utility Consumer Office ("RUCO") Br. at 2:11.

[6] A.A.C. R14-2-2307(A).

[7] *Id.*

[8] RUCO acknowledges that "TEP's proposal calls into play a rate design issue." RUCO Br. at 3:4-3:5. Yet RUCO nonetheless supports TEP's decision to pursue this "rate design issue" outside of a rate case. *Id.* at 4.

[9] TEP Br. at 4:4-4:10.

[10] *See, e.g.*, A.A.C. R14-2-1808(B) (REST tariff filings must include "[f]inancial information and supporting data sufficient to allow the Commission to determine the [utility's] fair value," data supporting the utility's cost estimates, and data demonstrating the tariff is designed to only recover the costs in excess of the Market Cost of Comparable Conventional Generation); A.A.C. R14-2-2406(A) (Electric DSM tariff filings must include "[f]inancial information and supporting data sufficient to allow the Commission to determine the affected utility's fair value," and data supporting the utility's cost estimates).

TEP's Application. TEP has not provided this important information or conducted a full analysis of values and costs across customer classes and services. Instead, TEP's proposal focuses on a limited segment of future customers, and would significantly restructure their rate tariff to address the Company's cost shifting concerns, without considering other customer segments that could have countervailing effects. TEP's narrow analysis is insufficient and its Application should be dismissed in favor of comprehensively addressing the proposal and TEP's underlying concerns in a rate case.[11]

TEP's second argument against dismissal is that it would not be in the public interest to address its cost recovery and cost shifting concerns in the next rate case because it could take two years to resolve the case.[12] TEP claims that waiting until the next rate case would increase the amount of lost revenues and cost shifting.[13] But as Staff, Vote Solar, and other Intervenors have noted, TEP's last rate case provided a mechanism to remedy this very issue: the Lost Fixed Costs Recovery ("LFCR") mechanism.[14] The LFCR was specifically designed to allow TEP to recover a portion of its unrecovered fixed costs if DG and energy efficiency reduced the Company's sales.[15] Moreover, TEP agreed that adjustments to the size of the LFCR cap will be evaluated "in TEP's next rate case."[16] To the extent that TEP now argues the LFCR alone is inadequate and additional cost recovery measures are necessary, it should have raised

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[11] The Commission need not reach the issue of whether *Scates v. Arizona Corporation Commission*, 578 P.2d 612 (Ariz. Ct. App. 1978), prohibits modifications to net metering tariffs outside a rate case. Regardless of whether a full rate case is required, TEP must provide the Commission with sufficient financial information and supporting data, which TEP failed to do here. *See, e.g.*, Staff Resp. Br. in the Trico net metering docket at 6:18-6:20, Docket No. E-01461A-15-0057 ("[T]he Commission is required to consider the 'fair value' of a Company's rate base whenever it changes rates. The requirement to determine fair value, however, is *not* the same as requiring a full rate case." (footnotes omitted)).

[12] TEP Br. at 4-6.

[13] *Id.* at 5:2-5:5.

[14] Staff Mot. to Dismiss at 3-4; Vote Solar Br. at 3-4; TASC Br. at 5-12; Ariz. Solar Energy Indus. Ass'n Br. at 2-3.

[15] *See, e.g.*, Decision No. 73912 at 25:22-26:11 (June 27, 2013).

[16] *Id.* at 26:11 ("The amount of the [1% year-over-year] cap will be evaluated in TEP's next rate case.").

the issue before the Commission approved the LFCR as part of the multi-party settlement in 2013. The fact that solar DG in TEP's territory has continued to grow since 2013 does not justify TEP's request to functionally eliminate net metering for new customers as a means to address cost concerns before the Company's next rate case, in which the size of the LFCR cap will be evaluated.[17]

Moreover, TEP and RUCO provide inadequate support for their claims that the alleged cost issues would substantially worsen if TEP must wait until the next rate case to address these issues. For example, RUCO provides no data or support for its speculation that if TEP must wait until its next rate case, "the cost shift will be so great that the potential impact on new solar customers to address the cost shift could be cost prohibitive."[18] Similarly, TEP stresses that since it filed its Application on March 25, 2015, it "has received more than 660 *additional* [DG interconnection] applications," which would put TEP on pace to have 60% greater DG applications in 2015 than 2014.[19] But this significant growth in DG applications over the past two months is likely in part a response to TEP's efforts in this proceeding to raise rates for new DG customers who apply after June 1, 2015. TEP's Application has received substantial media coverage.[20] As a result, the increased growth rate in DG applications over the past two months may not continue indefinitely beyond June 1.[21]

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[17] TEP's proposal to fundamentally change net metering outside a rate case by eliminating new DG customers' right to a one-to-one offset distinguishes TEP's Application from the Arizona Public Service Company ("APS") proceeding in Docket No. E-01345A-13-0248, where the Commission approved an "interim LFCR DG adjustment." *See* Decision No. 74202 at 28:18-28:22 (Dec. 3, 2013). TEP has not sought an LFCR adjustment in this proceeding, and the Commission should not consider such an adjustment outside TEP's next rate case. One of TEP's core concerns with the current net metering tariff is alleged cost shifting between DG and non-DG customers. But as Staff and the Commission noted multiple times in the APS proceeding, such cost shifting concerns raise fundamental rate design issues that are properly addressed in a full rate case. *See, e.g.*, *id.* at 9:3-9:9, 9:10-9:18, 13:26-14:3, 28:13-28:17. In addition, APS's recent request to adjust the LFCR a second time before its next rate case demonstrates the inefficiencies in allowing utilities to seek LFCR adjustments outside a rate case.

[18] RUCO Br. at 4:3-4:4.

[19] TEP Br. at 2:4-2:7.

[20] *See, e.g.*, Tony Davis, *TEP seeks reduced net metering benefits for new home solar customers*, Ariz. Daily Star, Mar. 25, 2015 ("New [TEP] home solar customers who use net metering . . . would get their

TEP also claims that waiting until its next rate case would be more costly and inefficient because it would force the Company to prematurely file its next rate case.[22] But as TEP acknowledges, it considers its proposal here to be a "partial" fix for the purported cost issues arising from the current net metering tariff.[23] Thus, because TEP would only consider its proposal a partial fix, it is very likely that the Commission and the parties would need to address these critically important issues twice: in this proceeding and in the next rate case. It is not in the public interest to substantially change the nature of net metering in a proceeding that would limit the thoroughness and comprehensiveness of the Commission's analysis, especially when the Commission would likely still need to address these issues in a more thorough manner in the next rate case.[24]

II. TEP'S APPLICATION SHOULD BE DISMISSED BECAUSE IT WOULD VIOLATE THE COMMISSION'S NET METERING RULE AND A WAIVER IS IMPROPER.

The foundational principle of net metering is that it gives DG customers the right to offset the electricity they purchase from their utility with excess electricity generated by their DG system. If a DG customer generates 100 kWh of excess energy that is delivered to the utility in

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savings cut by a $22-a-month average," and "[i]f the ACC approves this proposal, it wouldn't affect customers who already have solar power systems or those who request to connect new solar arrays to TEP's grid by June 1 of this year."), *available at* http://goo.gl/ZTjFIY.

[21] Recent experience in Arizona confirms that DG customers rationally respond to changes in net metering policies that effectively raise rates. For example, according to SolarCity, solar DG applications in Salt River Project's ("SRP") territory fell by 96% after the effective date of new solar DG charges for SRP customers. *Our response to anti-competitive behavior in Arizona*, SolarCity (Mar. 3, 2015), http://blog.solarcity.com/our-response-to-anti-competitive-behavior-in-arizona.

[22] TEP Br. at 5:4, 5:15-5:17.

[23] *See, e.g.*, *id.* at 2:14.

[24] TEP's claim that addressing net metering in a rate case would be more confusing for parties interested primarily in DG and net metering issues is without merit. *See id.* at 5:4-5:5, 6:10-6:15. The Commission's decision in TEP's last rate case amply demonstrates that parties can effectively advocate for discrete issues within the context of a larger rate case. *See, e.g.*, Decision No. 73912 at 16:5-16:7 ("Vote Solar's pre-Settlement testimony focused on how TEP's cost recovery and rate design proposals may affect current solar customers and future solar adopters . . . ."); *id.* at 17:4-17:5 ("SWEEP's pre-Settlement testimony focused on TEP's EE programs.").

the current month, the customer can use this energy to offset 100 kWh of subsequent electricity purchases.[25] In other words, the customer can net the energy it exports against the energy it consumes. The Commission's net metering rules codify this important principle by defining net metering as providing DG customers the right to generate excess electricity that "may be used to *offset* electric energy provided by the Electric Utility to the [DG customer] during the applicable billing period."[26] Staff has also explained that a modification to net metering that would eliminate this one-to-one offset would result in a program that is *not net metering*. Specifically, when evaluating a proposed change to APS's net metering program, Staff concluded: "The Bill Credit Option is *not equivalent to a [net metering] arrangement* because it denies the residential customer the *right to offset energy purchases* from the utility with self-generation *on a one-to-one basis*."[27]

TEP's proposal would fundamentally change net metering by eliminating new DG customers' ability to offset their energy consumption with onsite generation.[28] Under TEP's proposal, new DG customers would receive a bill credit for excess generation that is initially 35% less than the one-to-one retail rate current DG customers receive.[29] New DG customers would also no longer be able to roll-over their excess generation to offset energy usage in the next month's billing cycle. As a result, TEP's proposal violates the foundational principle of net metering and the Commission's net metering rules, and the Application should thus be dismissed.

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[25] *See* A.A.C. R14-2-2306(D) ("If the electricity generated by the Net Metering Customer exceeds the electricity supplied by the Electric Utility in the billing period, the Customer shall be credited during the next billing period for the excess kWh generated.").

[26] A.A.C. R14-2-2302(11) (emphasis added).

[27] Decision No. 74202 at 10:15-10:17 (discussing Staff's analysis of APS's proposed alternatives) (emphases added).

[28] Vote Solar Br. at 4-7.

[29] *See id.* at 4:5-4:7 (explaining that TEP compensates current DG customers for excess generation at the retail rate of approximately 9 cents per kWh, while the bill credit for new DG customers would be initially set at 5.84 cents per kWh).

TEP correctly acknowledges that its current net metering program "tracks" the Commission's net metering rules.[30] However, its proposed changes to net metering do not do so, as TEP concedes when it asks the Commission for a "partial waiver" of the rules.[31] As Vote Solar explained in its opening brief, a waiver from the Commission's net metering rules is improper because (1) the net metering rules do not contain a waiver provision, in contrast to other Commission rules; (2) TEP's waiver request obfuscates the fact that the proposal would fundamentally alter net metering by eliminating DG customers' right to a one-to-one offset; and (3) the Commission should not waive the important benefits the net metering rules provide to DG customers in a proceeding that does not provide the thorough and comprehensive analysis available in a rate case.[32]

For the foregoing reasons, Vote Solar respectfully recommends that the Commission dismiss TEP's Application.

DATED this 29th day of May, 2015.

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[30] TEP Br. at 3:6-3:7.

[31] Application at 8-9.

[32] Vote Solar Br. at 6-7.

ORIGINAL and 13 COPIES of the Foregoing filed this 29th day of May, 2015 with:

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COPIES of the foregoing Electronically mailed this 29th day of May, 2015, to:

All Parties of Record