



0000162193

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**COMMISSIONERS**

SUSAN BITTER SMITH, ~~Arizona Corporation Commission~~  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

2015 MAY 29 P 4: 26

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED

MAY 29 2015

DOCKETED BY *[Signature]*

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 REPLY BRIEF IN  
SUPPORT OF ITS APPLICATION**

ORIGINAL

Tucson Electric Power Company, ("TEP" or "Company"), through undersigned counsel, hereby submits its reply brief on the issue of whether its Application should be dismissed. TEP's Application presents 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 light of the changes in the DG market in TEP's service area, the Company believes it is appropriate to further reduce the subsidies that incent residential DG deployment. This approach continues the historical gradual reduction of such incentives and helps mitigate the increasing cost shift.

TEP does not have a rate case on the immediate horizon – a key point ignored by all parties except the Residential Utility Consumer Office ("RUCO") – and delaying the relief sought in this docket until TEP's next rate case could increase the cost shift to levels that will make it challenging for the Arizona Corporation Commission ("Commission") to resolve in the future. Keeping the amount of the cost shift at a more manageable level should facilitate the Commission's ability to further address the cost shift issue when TEP files its next rate case.

1           TEP's Lost Fixed Cost Recovery mechanism ("LFCR") does not obviate the need for relief  
2 now. Although the LFCR helps TEP recover a portion of revenues intended to cover fixed costs,  
3 the LFCR also results in shifting recovery of such costs from DG customers to non-DG customers.  
4 If the amount of lost fixed costs is reduced, the cost shift is also reduced. Nothing in the LFCR (or  
5 TEP's last rate case settlement) precludes the reduction of either the net metering incentive or the  
6 lost fixed revenues that would be collected through the LFCR. The LFCR certainly should not be  
7 construed to guarantee a certain level of DG incentives through net metering.

8           Further delay in considering the relief sought in this docket will continue to exacerbate the  
9 inequities in how customers pay for TEP's electric system. The overall interest of TEP and its  
10 customers, as well as due process, supports having the Commission address the Application on its  
11 merits in this docket at this time. Absent any legal bar to hearing the Application in this docket,  
12 TEP has the right to have the opportunity to have its Application heard on the merits and to prove  
13 that the requested relief is in the public interest.

14           **I. *Scates* Does Not Require TEP's Proposed Net Metering Tariff to Be Approved in a**  
15 **Rate Case.**

16           Both Staff and RUCO have stated that there are no legal barriers to considering  
17 modifications to net metering tariffs outside of a rate case. RUCO so states in its initial brief in  
18 this docket. Although Staff did not address the issue in its initial brief this docket, it has  
19 previously stated that modification of the net metering tariff does not constitute single issue  
20 ratemaking and that the Commission is not precluded from processing a similar net metering tariff  
21 application outside of a rate case.<sup>1</sup>

22           *Scates* does not create significant barriers to considering matters - or approving rates -  
23 outside of a rate case. In fact, *Scates* confirms the Commission's broad discretion to do so,  
24 provided it considers the impact on the utility's fair value and its rate of return.<sup>2</sup> Moreover, the  
25 Commission has acknowledged in a similar context that "*Scates* does not require a full rate case

26 \_\_\_\_\_  
27 <sup>1</sup> See Staff's Response Brief in Trico Electric Cooperative Net Metering Docket (Docket No. E-01461A-  
15-0057) at pages 5-6.

<sup>2</sup> See *Scates v. Arizona Corporation Comm'n*, 188 Ariz. 531, 537, 578 P.2d 612, 618 (Ct. App. 1978).

1 every time the Commission changes rates; instead, it merely requires the Commission to ascertain  
2 the utility's fair value and to consider the impact on upon the utility's rate of return."<sup>3</sup>

3 Moreover, TEP is not seeking to change a rate charged to customers or to add a new  
4 charge. Rather, the Company requests to reduce the credit it pays under the Net Metering rules for  
5 excess energy pushed into its electric system by DG customers. Reducing the credit will have no  
6 impact on TEP's fair value and will not increase TEP's rate of return above what was approved in  
7 its last rate case. TEP is prepared to provide factual support on these issues at the hearing in this  
8 docket.

9 Several parties suggest that modifications to TEP's net metering tariff constitute a change  
10 in rate design that must be done in a rate case. However, TEP's present net metering tariff was  
11 approved outside of a rate case and has not been modified since its initial approval in Decision No.  
12 71411 (December 8, 2009).<sup>4</sup> Net metering is not part of TEP's rate design. Even if it was, the  
13 Commission potentially could modify it outside of a rate case provided it considered fair value and  
14 impact on rate of return.

15 TASC misconstrues TEP's proposal by asserting that the Company will somehow be  
16 "double dipping" through its net metering modification because it would impose additional costs  
17 on DG customers, receive additional payments from future DG customers, and then seek further  
18 recovery of lost fixed costs resulting from the service to those DG customers. TEP's proposal  
19 would not "impose additional costs to solar customers." TEP is proposing a reduced credit (not an  
20 increased charge) for DG customers that will effectively require those customers to cover a more  
21 equitable amount of the costs they already impose on the TEP system. Those costs currently are  
22 shifted to TEP's non-DG customers under the existing net metering structure. The proposal will  
23 not result in a net system cost increase to TEP customers, but will actually shift cost recovery back  
24 to the customers who cause them (thus reducing the cost burden shifted to non-DG customers).  
25 Moreover, TEP will be compensating DG customers for any excess energy their DG system  
26

27 <sup>3</sup> Decision No. 74202 (December 3, 2013) at 26.

<sup>4</sup> Decision No. 71411 (December 8, 2009).

1 produces and delivers to TEP with bill credits using the Renewable Credit Rate, which will reduce  
2 the number of kWhs creating lost fixed cost revenues that are shifted to non-DG customers  
3 through the LFCR. Any DG kWhs that are consumed on-site will still be offset at the full retail  
4 rate and will continue to create lost fixed cost revenues that will be recovered through the LFCR.  
5 The Company's proposal is intended to be revenue neutral to TEP. TEP will use the additional  
6 fixed cost recovery resulting from the tariff to offset the cost shift to non-DG customers. TEP is  
7 prepared to address this in more detail in the hearing.<sup>5</sup>

8 **II. Considering TEP's Application on the Merits in this Docket Serves the Public**  
9 **Interest.**

10 None of the parties present compelling reasons to delay consideration of TEP's  
11 Application on the merits in this docket. RUCO, who is charged with representing the interests of  
12 the residential utility consumers, agrees that the Application should be considered now; however  
13 the other parties believe that consideration of the proposed net metering tariff should be delayed  
14 until TEP's next rate case. The arguments for delay effectively seek to "kick the can down the  
15 road" and allow the magnitude of the cost shift to grow, potentially beyond what the Commission  
16 may be able to address in a fair and equitable manner. This delay is not in the public interest.

17 First, delaying consideration of TEP's Application until its next rate case may force TEP to  
18 file a rate case sooner than it may otherwise need to. TEP (unlike its affiliate, UNS Electric, Inc.)  
19 has not filed a rate case and has not determined when it may need to file its next rate case. TEP is  
20 partially buffered from the full impact of the rapid escalation of DG deployment by shifting  
21 recovery of some of the lost fixed costs to non-DG customers through its LFCR. However,  
22 without the relief sought by TEP in this docket, the amount of lost fixed cost recovery and related  
23 cost shift will continue to escalate rapidly as well.

---

24  
25 <sup>5</sup> Although a question has been raised about the Commission's ability to grant a waiver of the Net Metering  
26 Rules, the Commission has the authority to grant waivers of its rules even without an express waiver  
27 provision and has done so on many occasions. It does not need an express provision in the rules to grant  
such waivers, particularly when the application of the rules to the particular facts is not in the public  
interest. See Decision No. 70706 (January 20, 2009) (granting a waiver of the Commission's Slamming  
Rules is in the public interest even though the rules do not contain a waiver provision).

1           Delaying the net metering modification until TEP's next rate case also may create  
2 additional challenges for the Commission in resolving the issues.<sup>6</sup> For example, the Commission  
3 will have to address to what extent it will "grandfather" existing DG customers into any new rates  
4 and new net metering tariffs. A larger cost shift may make it more difficult if the Commission  
5 decides that it does not want to upset the economics of the decisions made by existing DG  
6 customers in obtaining their rooftop solar systems (e.g. pay-off periods, lease terms, etc.). Timely  
7 resolution of this docket may help keep the magnitude of the cost shift to a more manageable level  
8 and allow the Commission more flexibility in taking further appropriate steps.

9           Second, although Staff believes that there are other "tools" to address the cost shift that are  
10 only available in a rate case, addressing the net metering modifications in this docket does not  
11 foreclose use of those tools, such as rate design, in TEP's next rate case. TEP submits that trying  
12 to apply numerous different methods to address the lost fixed cost revenue and related cost shift  
13 issues - all at the same time - will be challenging.

14           TEP's proposal to reduce a subsidy intended to incent the deployment of rooftop solar is a  
15 gradual step that follows previous Commission reductions in other DG incentives. The  
16 Commission slowly reduced upfront incentives that were being funded by customers through the  
17 REST surcharge. The current net metering structure in Arizona also is an incentive designed to  
18 encourage deployment of DG. Indeed, in directing the preparation of the net metering rules, the  
19 Commission stated that "Net metering provided a financial incentive to encourage the installation  
20 of DG, especially renewable resources."<sup>7</sup> Similar to upfront incentives, the costs of net metering  
21 are ultimately borne by other customers. Moreover, if TEP's gradual approach towards mitigating  
22 the DG cost shift is adopted, the Commission will have the benefit of gaining some real world  
23 experience with a modified net metering tariff. That may assist the Commission when it considers  
24 other options to address fixed cost recovery and cost shift issues in a future TEP rate case.

25  
26  
27 <sup>6</sup> RUCO also raises this concern in its Initial Brief (at page 4).

<sup>7</sup> Decision No 69877 (August 28, 2007), Finding of Fact 9.

1 Third, arguments that the net metering tariff is too closely related to rate design to be  
2 considered outside a rate case ignore the fact that the Commission approved TEP's net metering  
3 tariff in a stand-alone docket, outside of a rate case, without findings on fair value or impact on  
4 rate of return.

5 Finally, any suggestion or intimation that the Application should not be considered now  
6 because TEP has not proven statements in its Application puts the cart before the horse. A hearing  
7 on the Application provides the proper forum to present evidence in support of TEP's requested  
8 relief, all of which will be subject to cross-examination to support its position. Further, any  
9 factual allegations set forth in argument against consideration of the Application at this time  
10 should also be proven at hearing.

11 As set forth in TEP's Initial Brief, consideration of the proposed net metering tariff in this  
12 docket provides many benefits, including: (i) a more timely and less costly mitigation of  
13 inequitable impacts of the rapid escalation of DG deployment; (ii) a more gradual approach to  
14 reducing DG subsidies in the face of the rapidly changing DG landscape; and (iii) a more focused  
15 forum to consider the net metering tariff issue. Delaying consideration of the modifications to the  
16 net metering tariff until TEP's next rate has the opposite effect – it will be less timely (thus  
17 potentially exacerbating the amount of lost revenues and related cost shift), more costly (due to the  
18 nature of a rate case) and more confusing (due to the myriad issues that are addressed in a rate  
19 case). The Commission already has acknowledged the lost fixed cost recovery and the cost  
20 shifting impacts of net metering.<sup>8</sup> The Commission also has recognized that delaying the  
21 mitigation of the lost revenues and the related cost shift would not serve the public interest.<sup>9</sup> The  
22 Commission should consider the substantive merits of the Application now.

23  
24  
25  
26  
27 <sup>8</sup> Decision No. 74202, Finding of Fact 49.

<sup>9</sup> Decision No. 74202, Findings of Fact 99, 106.

1           **III. The Existence of the LFCR Does Not Preclude Reducing DG Subsidies or**  
2 **Mitigating the DG Cost Shift.**

3           Staff, among others, asserts that TEP's LFCR was intended to address the lost fixed cost  
4 revenue issue facing TEP. However, as set forth in TEP's Application, circumstances surrounding  
5 DG in TEP's service area have changed significantly since the LFCR was approved. TEP  
6 acknowledges that its lost fixed cost recovery is partially reduced through the LFCR. However,  
7 the operation of the LFCR in conjunction with the net metering tariff rapidly increases the cost  
8 shift due to the rapidly escalating DG deployment. As a result, non-DG customers are paying an  
9 increasingly inequitable portion of the fixed costs of TEP's electric system. The rapid increase in  
10 the DG deployment also suggests that the existing net metering subsidy can be reduced. TEP's  
11 proposed net metering tariff addresses both the subsidy and the cost shift in a timely, yet gradual  
12 manner.

13           TEP's own lost fixed cost recovery is not the reason TEP filed the Application, even  
14 though the LFCR does not provide full recovery of its lost fixed cost revenues resulting from net  
15 metering. The existence of the LFCR does not and should not preclude reducing the DG subsidies  
16 or mitigating the DG cost shift.<sup>10</sup>

17           **IV. Modifying TEP's Net Metering Tariff Does Not Violate TEP's Rate Case**  
18 **Settlement.**

19           AriSEIA has argued that a request to modify TEP's net metering tariff violates the  
20 Settlement Agreement approved in TEP's most recent rate case by Decision No. 73912 (June 27,  
21 2013), claiming that the LFCR resolved the issue of lost fixed costs arising from DG. However,  
22 approval of the LFCR did not preclude further reductions in DG incentives nor did it mandate a  
23 continuing escalation of lost fixed revenues and the related DG cost shift. Indeed, Section 8.2 of  
24 the Settlement Agreement expressly stated that: "*Nothing in this Agreement is intended to bind the*  
25 *Commission to any specific EE or DG policy or standard.*" (emphasis added) The net metering  
26

---

27 <sup>10</sup> The LFCR also does not preclude the Commission from approving an additional charge under the LFCR,  
as it did for APS in Decision No. 74202.

1 tariff is clearly a DG policy issue subject to that provision. Moreover, TEP is not seeking to  
2 modify the LFCR in any way to allow for additional recovery of fixed cost beyond the levels  
3 agreed to in the Settlement and approved by the Commission. AriSEIA's argument does not  
4 prevent the Application from moving forward in this docket now.

5 **V. TEP's Application Does Not Require an Immediate Review of TEP's Approved**  
6 **Rooftop DG Program.**

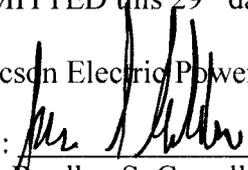
7 TASC suggests that TEP's Application should trigger an immediate Commission review of  
8 the TEP's rooftop DG program that was approved in Decision No. 74884. TASC's suggestion is  
9 both premature and unnecessary. First, the Commission already has an annual review process in  
10 place for the TEP program. The next review will take place in connection with the review of  
11 TEP's 2016 REST Plan, which will be filed July 1, 2015. Second, the Commission has not yet  
12 approved TEP's application. TASC's suggestion is meaningless until the Commission approved  
13 specific modifications to TEP's net metering tariff.

14 **VI. Conclusion.**

15 TEP believes that the relief sought in this docket is in the best interests of the Company  
16 and its customers and requests a prompt resolution of the Application at this time. Accordingly,  
17 the Application should proceed to an evidentiary hearing.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27

RESPECTFULLY SUBMITTED this 29<sup>th</sup> 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

1 Michael W. Patten  
2 Jason D. Gellman  
3 Snell & Wilmer L.L.P.  
4 One Arizona Center  
5 400 East Van Buren Street, Suite 1900  
6 Phoenix, Arizona 85004

Attorneys for Tucson Electric Power Company

7 ORIGINAL and thirteen (13) copies of the foregoing  
8 filed this 29<sup>th</sup> day of May, 2015, with:

9 Docket Control  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 COPY of the foregoing hand-delivered/mailed  
14 this 29<sup>th</sup> day of May, 2015, to the following:

15 Jane L. Rodda  
16 Administrative Law Judge  
17 Hearing Division  
18 Arizona Corporation Commission  
19 1200 West Washington  
20 Phoenix, Arizona 85007

21 Wes Van Cleve  
22 Robin Mitchell  
23 Legal Division  
24 Arizona Corporation Commission  
25 1200 West Washington Street  
26 Phoenix, Arizona 85007

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

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

Mark Holohan, Chairman  
Arizona Solar Energy Industries Association  
2122 W. Lone Cactus Drive, Suite 2  
Phoenix, AZ 85027

1 Kevin M. Koch  
2 P.O. Box 42103  
3 Tucson, AZ 85733

4 Court S. Rich  
5 Rose Law Group pc  
6 7144 E. Stetson Dr., Suite 300  
7 Scottsdale, AZ 85251

8 Timothy M. Hogan  
9 Arizona Center for Law in the Public Interest  
10 514 West Roosevelt Street  
11 Phoenix, AZ 85003

12 Rick Gilliam  
13 Director of Research and Analysis  
14 The Vote Solar Initiative  
15 1120 Pearl Street, Suite 200  
16 Boulder, CO 80302

17 Jill Tauber  
18 Chiyere A. Osuala  
19 Earthjustice Washington, DC Office  
20 1625 Massachusetts Avenue, NW, Suite 702  
21 Washington, DC 20036-2212

22 Garry D. Hays  
23 The Law Offices of Garry D. Hays, PC  
24 1702 East Highland Avenue, Suite 204  
25 Phoenix, AZ 85016

26 Thomas A. Loquvam  
27 Pinnacle West Capital Corporation  
28 P.O. Box 53999, MS 8695  
29 Phoenix, AZ 85072-3999

30 Gregory Bernosky  
31 Arizona Public Service Company  
32 P.O. Box 53999, MS 9712  
33 Phoenix, AZ 85072-3999

34 Ken Wilson  
35 Western Resource Advocates  
36 2260 Baseline Road, Suite 200  
37 Boulder, CO 80302

38 By: Jaelyn Howard

39  
40  
41