



0000165616

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2015 JUL 31 P 4: 43

AZ CORP COMMISSION  
DOCKET CONTROL

**COMMISSIONERS** Arizona Corporation Commission

**DOCKETED**

SUSAN BITTER SMITH, Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

JUL 31 2015

DOCKETED BY

**DOCKET NO. E-01575A-15-0127**

**INITIAL BRIEF  
OF  
SULPHUR SPRINGS VALLEY ELECTRIC  
COOPERATIVE, INC.**

**ORIGINAL**

IN THE MATTER OF THE APPLICATION  
OF SULPHUR SPRINGS VALLEY  
ELECTRIC COOPERATIVE, INC., AN  
ARIZONA NONPROFIT CORPORATION,  
FOR (1) APPROVAL OF A NEW NET  
METERING TARIFF; (2) APPROVAL OF  
REVISIONS TO ITS EXISTING NET  
METERING TARIFF; AND (3) PARTIAL  
WAIVER OF THE NET METERING  
RULES.

CROCKETT LAW GROUP PLLC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
602.441.2775

On April 14, 2015, Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC" or the "Cooperative") filed an application ("Application") in this docket for: (i) approval of a new Net Metering Tariff Schedule NM-2 that would apply to all future net metered members which credits to a member's account any excess energy produced from an eligible net metering facility on a monthly basis at SSVEC's authorized avoided costs rate; (ii) revisions to the Cooperative's existing Net Metering Tariff Schedule NM (to be revised and renamed Net Metering Tariff Schedule NM-1) providing that members who have an installed eligible net metering facility or an accepted SunWatts Incentive/Interconnection application on file with SSVEC by close of business on April 14, 2015 would be grandfathered under the existing Net Metering Tariff; and (iii) approval of a partial waiver of the Commission's net metering rules set forth in A.A.C. R14-2-2301 *et seq.* (the "Net Metering Rules") as necessary to authorize the new tariff and the tariff revisions requested in the Application.

On April 22, 2015, Utilities Division ("Staff") filed a Request for Procedural Order wherein Staff argued that the issues raised in SSVEC's Application should be addressed in a rate case, and recommended that if the Cooperative will not voluntarily withdraw its

1 application, then the parties should brief the issue of whether the Application should be  
2 dismissed.

3 In a July 10, 2015 Procedural Order, the Administrative Law Judge ordered the  
4 parties to file initial briefs by July 31, 2015, addressing the following issues:

5 A threshold issue raised by SSVEC's application is whether SSVEC's  
6 request as set forth in its application must (a question of law), or should (a  
7 policy question) be considered in a rate case proceeding. To determine these  
8 legal and policy questions before expending resources on an evidentiary  
9 hearing promotes judicial economy and conforms with procedures utilized in  
10 similar tariff requests filed by other utilities.<sup>1</sup>

11 Clearly, the Arizona Corporation Commission ("Commission") has the legal  
12 authority to approve in this docket the tariff revisions and waiver of the Net Metering Rules  
13 requested by SSVEC in its Application. Moreover, for the reasons set forth in the  
14 Application and this initial brief, the Commission should grant the requested relief.

15 **1. The Commission May Legally Process SSVEC's Net Metering Application**  
16 **Outside of a Rate Case.**

17 There has been substantial briefing in two other dockets regarding whether the  
18 Commission must, as a question of law, consider a request to modify a net metering tariff  
19 in a rate case proceeding. With the exception of The Alliance for Solar Choice ("TASC"),  
20 it appears that all of the parties in these dockets have acknowledged to one degree or  
21 another that the Commission may lawfully consider and address the requested relief in the  
22 subject net metering dockets. Specifically, Staff—which advocated for the partial  
23 dismissal of a similar net metering application filed by Trico Electric Cooperative, Inc.  
24 ("Trico") in Docket E-01461A-15-0057—stated that "[it] disagrees with TASC's  
25 suggestions that the Commission is *precluded* as a matter of law from processing Trico's  
26 present Application as a tariff filing."<sup>2</sup> Staff continued, stating that "[it] believes that  
27 Trico's Application could be processed in a way that would satisfy any applicable  
28 constitutional requirements."<sup>3</sup>

<sup>1</sup> Procedural Order dated July 10, 2015, at 2, lines 6-10.

<sup>2</sup> Staff's Response Brief dated April 30, 2015 in Docket E-01461A-15-0057 at 5-6 (emphasis in original).

<sup>3</sup> *Id.* at 7, lines 1-3.

1 Like Trico, Tucson Electric Power (“TEP”) filed an application to modify its net  
2 metering tariff in Docket E-01933A-15-0100. Once again, TASC argued that TEP’s net  
3 metering application must be heard in a rate case, and once again, Staff disagreed stating:

4 Staff agrees with RUCO and TEP that the Commission is not required to  
5 address the issues raised by TEP’s Application in a rate case, but for different  
6 reasons. Further, Staff disagrees with TASC’s determination that the  
7 Commission is prohibited from engaging in rate making absent a rate case.<sup>4</sup>

8 The Cooperative acknowledges that Staff advocated the dismissal (without  
9 prejudice) of TEP’s net metering application, but not on the grounds that the Commission  
10 lacked authority to consider that application outside of a rate case. On that point, Staff has  
11 been very consistent—the Commission may legally process the net metering applications  
12 in the dockets where they were filed.

13 While Trico and TEP have since withdrawn their respective net metering  
14 applications, neither company retracted its position that the Commission may legally  
15 process the net metering applications outside of a rate case. In its Notice of Withdrawal  
16 of Application filed June 19, 2015 in Docket E-01933A-15-0100, TEP reaffirmed its  
17 position that “there would be a public benefit in mitigating the cost shift now, even if that  
18 mitigation is an interim solution....”<sup>5</sup> Trico expressed the very same position in its Notice  
19 of Partial Withdrawal of Application filed July 6, 2015 in docket E-01461A-15-0057.<sup>6</sup>

20 Given the extensive briefing regarding the legal jurisdiction of the Commission that  
21 has already occurred in the Trico and TEP net metering dockets, SSVEC will not further  
22 belabor the point in this brief but will simply incorporate herein by reference the arguments  
23 set forth in its Application and in its April 30, 2015 Response Brief in Docket E-01461A-  
24 15-0057.

25 SSVEC and its members are suffering harm today as a result of the net metering  
26 cost shift and will continue to suffer harm under the current net metering tariff. While the

27 <sup>4</sup> Staff’s Reply Brief dated May 29, 2015 in Docket E-01933A-15-0100 at 2-3.

28 <sup>5</sup> Notice of Withdrawal of Application filed June 19, 2015 in Docket E-01933A-15-0100 at 2, lines 5-6.

<sup>6</sup> Trico’s Notice of Partial Withdrawal of Application dated July 6, 2015 in Docket E-01461A-15-0057 at 2, lines 7-8.

1 relief requested in the Application may not provide complete relief, it will stop a bad  
2 situation from getting worse, which is a critical first step. There is no legal reason why  
3 the Commission cannot consider and act upon the Application in this docket, and the public  
4 interest requires that it do so.

5 **2. SSVEC's Net Metering Application Should be Addressed in this Docket.**

6 Having established that the Commission may legally process SSVEC's Application  
7 outside of a rate case, the Cooperative will now discuss the reasons why the Commission  
8 should process the Application in this Docket.

9 **A. The Commission Gives Greater Latitude and Deference to the**  
10 **Decisions of Cooperative Boards, and the Decision of SSVEC's**  
11 **Board to Proceed with the Application in this Docket Should be**  
12 **Honored.**

13 SSVEC is a member-owned non-profit cooperative founded in 1938 providing  
14 electric service to approximately 51,000 customers in parts of Cochise, Santa Cruz, Pima  
15 and Graham counties. SSVEC exists for the sole purpose of providing reliable electric  
16 service to its members at the best possible rates. SSVEC is governed by a 10-member  
17 board of directors elected by the members/customers of SSVEC to oversee all aspects of  
18 the Cooperative's operations.

19 Because cooperatives are governed by an elected board of directors that is directly  
20 accountable to the rate payer members, the Commission gives greater latitude and  
21 deference to the decisions of cooperative boards. This greater latitude and deference is  
22 evidenced by the Commission's recent adoption of a new Rule R14-2-107 in the Arizona  
23 Administrative Code which provides an alternative streamlined ratemaking application  
24 and process for nonprofit electric and gas cooperatives. As stated in the Application, the  
25 proposed revisions to the Cooperative's net metering tariff were unanimously authorized  
26 by the board of directors. Given that SSVEC has made the informed decision to proceed  
27 with the net metering tariff revisions in this docket, and not in a rate case, the Commission  
28 should honor that decision and permit the Application to move forward.

1           **B. SSVEC IS EXPERIENCING A HARMFUL NET METERING**  
2           **COST SHIFT THAT IS GROWING QUICKLY AND SHOULD**  
3           **BE ADDRESSED IN THIS DOCKET.**

4           As described in the Application, SSVEC has experienced a significant increase in  
5           the number of customers installing rooftop solar Photovoltaic (“PV”) systems, the most  
6           common form of distributed generation. Rooftop PV systems are eligible for net metering  
7           under SSVEC’s current Net Metering Tariff Schedule NM and the proliferation of PV  
8           systems in the Cooperative’s service area has resulted in a dramatic and alarming increase  
9           in unrecovered fixed costs attributable to net metered members. A net metered member  
10          avoids paying the full cost of the transmission and distribution infrastructure used to serve  
11          that member. Additionally, a net metered customer receives the full retail rate for excess  
12          energy generated by the member, even though the retail rate far exceeds the Cooperative’s  
13          cost of purchasing power. As a result, the rapid increase in rooftop PV systems has  
14          shifted—and continues to shift—the recovery of those fixed costs to members who have  
15          not installed PV systems.

16          As set forth in its Application, SSVEC’s unrecovered fixed costs due to net  
17          metering have increased at an alarming rate, from \$82,104 in 2010 to \$947,370 in 2014.  
18          SSVEC estimates that the cost shift in 2015 will exceed \$1.1 million. This inequitable  
19          circumstance is a serious problem that is growing larger day-by-day, and it caused SSVEC  
20          to assess the impact that solar distributed generation is having on its ability to fully recover  
21          the costs of providing service, as well as the cross subsidies that have resulted between net  
22          metered customers and those who are not.

23          Historically, SSVEC and similar cooperatives have recovered the costs of providing  
24          service to residential members through rates with a monthly service availability charge and  
25          an energy charge applied to the monthly energy consumption. The monthly service  
26          availability charge approved by the Commission has historically been an amount that was  
27          well below the total justifiable customer-related cost of providing service per customer.  
28          The energy charge has historically been designed to recover the remainder of costs to  
            provide service not included in the service availability charge which include a portion of

1 the customer-related costs, all of the fixed distribution demand costs, the fixed wholesale  
2 demand costs and the variable energy costs.

3 This structure is common among utilities and it recovers a major portion of the fixed  
4 costs in the variable component of the rate. This structure has functioned well historically  
5 for the recovery of costs where all of the customers being served in the residential class  
6 are similar consuming customers who do not operate solar distributed generation facilities.  
7 However, this structure does not provide for the appropriate recovery of the costs to  
8 provide service to customers that have solar distributed generation facilities.

9 A customer who installs solar distributed generation facilities reduces the kilowatt  
10 hours that are purchased from SSVEC by an amount equal to the generation output of the  
11 customer's solar facility. This reduction in kilowatt hours purchased from the Cooperative  
12 results in a loss of fixed costs being recovered through the energy component of the rate.  
13 The fixed distribution demand and customer costs that the Cooperative incurs to provide  
14 service are similar for all residential customers whether they have solar distributed  
15 generation or not. These fixed distribution demand and customer costs incurred by the  
16 Cooperative are not reduced as a result of the installation of solar distributed generation.  
17 Yet, because of the existing rate structure and the reduction in kilowatt hours purchased  
18 by the customer, the fixed costs recovered in the energy component of the rate are not  
19 recovered.

20 SSVEC's existing net metering tariff does not allow for the appropriate recovery of  
21 the costs of providing service to a member with solar distributed generation. So long as  
22 this situation is not addressed, the lost fixed costs from customers with solar distributed  
23 generation will eventually be recognized as costs to be recovered from all of the remaining  
24 customers with energy consumption. The result is that customers with solar distributed  
25 generation do not pay the appropriate fixed demand and customer costs for the provision  
26 of electric service while the remainder of customers pay more than their equitable share of  
27 those costs. Without addressing this issue, the installation of solar distributed generation  
28 will continue to shift costs from one group of customers to another.

1 The Commission has previously recognized the net metering cost-shift in the case  
2 of Arizona Public Service Company in Docket E-01345A-13-0248. In Finding of Fact 49  
3 in Decision 74202, the Commission stated as follows:

4 In light of the record before us, we find that the proliferation of DG  
5 installations results in a cost shift from APS's DG customers to APS's non  
6 DG residential customers absent significant changes to APS's rate design.

7 Having recognized the net metering cost shift, the Commission should begin to  
8 address the issue immediately and not wait for the filing and prosecution of a rate case,  
9 which will take much longer than this case. The net metering tariff revisions proposed by  
10 SSVEC in its Application will begin to arrest the cost shift immediately. The fact that a  
11 more comprehensive resolution of the issue may require changes to rate design in a rate  
12 case is not a valid reason to delay action that can begin to address the issue now. Thus, it  
13 is in the public interest to address the net metering cost shift now, and SSVEC urges the  
14 Commission to move forward with the Application in this docket, as approved by the  
15 Cooperative's board of directors.

16 C. The Commission Should Not Dismiss SSVEC's Application  
17 Simply Because a Rate Case Provides Options Beyond Those  
18 Available in this Docket.

19 In its Request for Procedural Order, Staff asserts that "[i]n order to be able to more  
20 fully address these overriding issues, Staff recommends that SSVEC withdraw its  
21 application so that the Commission may consider these matters in a rate case," which "will  
22 increase the solutions available to the Commission."<sup>7</sup> SSVEC acknowledges that a  
23 complete remedy to the net metering cost shift will likely require changes to the  
24 Cooperative's rate design in a rate case, but that is not a valid reason to dismiss the  
25 Application. After careful consideration of all options, the Cooperative's board of  
26 directors voted to file the Application in this docket so that the Commission can begin to  
27 address the net metering cost shift by approving the requested modifications to the  
28 Cooperative's Net Metering Tariff as described in the Application. Staff's judgement

<sup>7</sup> Staff's Request for Procedural Order dated April 22, 2015 at 2, lines 16-17 and 21-22.

1 regarding the best forum to address the requested net metering tariff revisions should not  
2 be substituted for that of SSVEC's elected board. This docket provides an appropriate  
3 vehicle for the Commission to take certain measured steps that will immediately stem the  
4 growth in the net metering cost shift. By so doing, the Commission will relieve the  
5 building pressure and provide more time to consider additional appropriate solutions in a  
6 rate case. Thus, even if SSVEC files a rate case, there are still public interest benefits to  
7 proceeding with the Application in this docket.

8 Additionally, SSVEC believes that this docket will allow interested Cooperative  
9 members and intervenors to more effectively participate in addressing the net metering  
10 issues because such issues are significantly narrower than the issues in a general rate case.

11 **D. There Is No Reason Why a Rate Case Is a Better Forum than this**  
12 **Docket to Address the Requested Waiver of the Net Metering**  
13 **Rules.**

14 SSVEC has requested a partial waiver of the Net Metering Rules. Action on the  
15 Cooperative's request will necessarily involve consideration and re-evaluation of the  
16 policies underlying the Net Metering Rules and the effect of the requested net metering  
17 tariff revisions on those policies. There is no reason why a rate case is inherently better  
18 than this docket to address the requested waiver. In fact, SSVEC believes there are public  
19 interest benefits to a proceeding such as this which is focuses specifically on the issues  
20 around net metering. Again, SSVEC urges the Commission to move forward with the  
21 Application in this docket.

22 **3. Conclusion.**

23 Further delay in addressing the current net metering cost shift will only exacerbate  
24 the growing problem and make implementation of a remedy that much more difficult in  
25 the future. It has been well established that the Commission may legally process SSVEC's  
26 Application in this docket and, for all of the foregoing reasons, the Commission should  
27 process SSVEC's Application.  
28

1 RESPECTFULLY submitted this 31st day of July, 2015.

2 CROCKETT LAW GROUP PLLC

3 

4 Jeffrey W. Crockett, Esq.  
5 1702 East Highland Avenue, Suite 204  
6 Phoenix, Arizona 85016  
7 Attorney for Sulphur Springs Valley Electric  
8 Cooperative, Inc.

9 **ORIGINAL** plus thirteen (13) copies of the foregoing  
10 filed this 31<sup>st</sup> day of July, with:

11 Docket Control  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

15 **COPIES** of the foregoing hand-delivered  
16 this 31<sup>st</sup> day of July, to:

17 Dwight Nodes, Chief Administrative Law Judge  
18 Hearing Division  
19 ARIZONA CORPORATION COMMISSION  
20 1200 West Washington Street  
21 Phoenix, Arizona 85007

22 Janice Alward, Chief Counsel  
23 Legal Division  
24 ARIZONA CORPORATION COMMISSION  
25 1200 West Washington Street  
26 Phoenix, Arizona 85007

27 Steve Olea, Director  
28 Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

CROCKETT LAW GROUP PLLC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
602.441.2775

CROCKETT LAW GROUP PLLC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
602.441.2775

1 **COPIES** of the foregoing mailed via first  
2 class mail this 31<sup>st</sup> day of July, to:

3 Court S. Rich, Esq.  
4 ROSE LAW GROUP PC  
5 7144 E. Stetson Dr., Suite 300  
6 Scottsdale, Arizona 85251

7 Mark Holohan, Chairman  
8 ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION  
9 2122 W. Lone Cactus Dr., Suite 2  
10 Phoenix, Arizona 85027

11 Thomas A. Loquvam, Esq.  
12 PINNACLE WEST CAPITAL CORPORATION  
13 PO Box 53999, MS 8695  
14 Phoenix, Arizona 85072-3999

15 Gregory Bernosky  
16 ARIZONA PUBLIC SERVICE COMPANY  
17 PO Box 53999, MS 9712  
18 Phoenix, Arizona 85072-3999

19 Michael A. Curtis, Esq.  
20 William P. Sullivan, Esq.  
21 CURTIS, GOODWIN, SULLIVAN  
22 UDALL & SCHWAB, PLC  
23 501 E. Thomas Road  
24 Phoenix, Arizona 85012-3205

25 Tyler Carlson, CEO  
26 MOHAVE ELECTRIC COOPERATIVE, INC.  
27 PO Box 1045  
28 Bullhead City, Arizona 86430

29 Peggy Gillman, Manager of Public Affairs  
30 MOHAVE ELECTRIC COOPERATIVE, INC.  
31 PO Box 1045  
32 Bullhead City, Arizona 86430

33 Paul O'Dair, Manager of Financial Services  
34 NAVOPACHE ELECTRIC COOPERATIVE, INC.  
35 1878 W. White Mountain Blvd.  
36 Lakeside, Arizona 85929

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  
28

Charles Moore, Chief Executive Officer  
NAVOPACHE ELECTRIC COOPERATIVE, INC.  
1878 W. White Mountain Blvd.  
Lakeside, Arizona 85929

A handwritten signature in cursive script, appearing to read "Jeff Crockett", is written over a horizontal line.

CROCKETT LAW GROUP PLLC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
602.441.2775