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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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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.

DOCKET NO. E-01575A-15-0127

RESPONSE BRIEF
OF
SULPHUR SPRINGS VALLEY ELECTRIC
COOPERATIVE, INC.

ORIGINAL

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Sulphur Springs Valley Electric Cooperative, Inc., (“SSVEC” or the “Cooperative”) hereby responds to the initial briefs filed in this docket by Utilities Division Staff (“Staff”) and The Alliance for Solar Choice (“TASC”). SSVEC also joins in the Separate Comments filed by intervenors Navopache Electric Cooperative, Inc. (“NEC”) and Mohave Electric Cooperative, Inc. (“MEC”) in this docket on July 31, 2015 (“Joint Brief”).

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

In this docket, SSVEC filed an application (“Application”) seeking approval of a new Net Metering Tariff NM-2 and modifications to its existing Net Metering Tariff NM, as well as a partial waiver of the Arizona Corporation Commission’s net metering rules (“Net Metering Rules”). In her July 10, 2015 Procedural Order, the Administrative Law Judge ordered the parties to file briefs addressing the following issues:

A threshold issue raised by SSVEC’s application is whether SSVEC’s request as set forth in its application must (a question of law), or should (a policy question) be considered in a rate case proceeding. To determine these legal and policy questions before expending resources on an evidentiary

1 hearing promotes judicial economy and conforms with procedures utilized in
2 similar tariff requests filed by other utilities.¹

3 Regarding the threshold issue, Staff stated without any equivocation in its initial
4 brief that “[t]he Commission is not required, as a matter of law, to consider the Company’s
5 Application in a full rate case proceeding.”² Likewise, intervenors NEC and MEC argue
6 in their Joint Brief that “[n]othing in Arizona statutes, case law or the Commission rules
7 preclude the Commission from altering the level of credit SSVEC provides to its net
8 metering customers outside of a rate proceeding.”³ TASC stands alone in arguing that the
9 Commission lacks the authority to consider SSVEC’s net metering Application outside of
10 a rate case. TASC is simply wrong.

11 TASC argues that SSVEC’s net metering Application attempts unconstitutional
12 single-issue ratemaking.⁴ Quoting *Scates v. Arizona Corp. Commission*,⁵ TASC asserts
13 that “[w]hile the Corporation Commission has broad discretion in establishing rates, it is
14 required by our Constitution to ascertain the value of a utility’s property within the State
15 in setting just and reasonable rates.”⁶ TASC argues that the Commission is required to
16 “determine the ‘fair value’ of a utility’s property and use this value as the utility’s rate
17 base,” and then to “determine what the rate of return should be, and then apply that figure
18 to the rate base in order to establish just and reasonable tariffs.”⁷

19 However, Staff correctly rejected TASC’s single-issue ratemaking argument in its
20 Reply Brief in the Tucson Electric Power Company (“TEP”) net metering case (Docket E-
21 01933A-15-0100), stating as follows:

22 [The *Scates*] case criticized the Commission for increasing rates
23 without any consideration of the impact:

24 We ... hold that the Commission was without authority to
25 increase the rate without any consideration of the overall

26 ¹ Procedural Order dated July 10, 2015, at 2, lines 6-10.

27 ² Staff Brief (July 31, 2015) at 2, lines 24-25.

28 ³ Joint Brief (July 31, 2015) at 1, lines 21-23.

⁴ TASC Brief (July 31, 2015) at 3-4.

⁵ *Scates v. Arizona Corp. Comm’n*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978).

⁶ TASC Brief (July 31, 2015) at 3, lines 15-18 (citations omitted).

⁷ *Id.* at lines 18-22

1 impact of that rate increase upon the return of ... [the utility],
2 and without, as specifically required by our law, a
3 determination of ... [the utility's] rate base.

4 The *Scates* Court determined that the Commission had violated Arizona's
5 constitutional provisions regarding ratemaking by setting rates without any
6 consideration of the utility's rate base and without any inquiry into the effect
7 of the increase upon the utility's rate of return.

8 The Court, however, was careful to make clear that a full rate case is
9 not required for every rate change. As the Court specifically stated,

10 [t]here may be exceptional situations in which the Commission
11 may authorize partial rate increases without requiring entirely
12 new submissions. We do not decide in this case, for example,
13 whether the Commission could have referred to previous
14 submissions with some updating or whether it could have
15 accepted summary financial information.

16 In short, Arizona cases establish that, subject to certain exceptions,
17 the Commission is required to consider the "fair value" of a Company's rate
18 base whenever it changes rates. The requirement to determine fair value,
19 however, is not the same as requiring a full rate case. The Commission could
20 move forward with the processing of [TEP's Net Metering] Application
21 without violating the holding in *Scates*.⁸

22 In fact, the Commission actually did consider the fair value of SSVEC's property
23 when it first approved the Cooperative's Net Metering Tariff Schedule NM in Decision
24 71463 in Docket E-01575A-09-0429. Clearly, the Commission may legally consider and
25 approve SSVEC's Application and grant the requested partial waiver of the Net Metering
26 Rules in this docket without requiring SSVEC and its members to submit to a rate case.

27 TASC has never addressed the glaring contradiction in its vacuous argument—that
28 SSVEC's Net Metering Tariff Schedule NM, which was ordered by the Commission
pursuant to A.A.C. R14-2-2307(A), was approved and implemented outside of rate case,
like the net metering tariffs of the other electric utilities. Further, subsequent annual

⁸ Staff's Reply Brief (May 29, 2015) in Docket E-01933A-15-0100 at 3 (citations omitted, emphasis added).

1 approvals of SSVEC’s avoided cost rates have all occurred outside of a rate case, including
2 a recent modification to eliminate the March true-up.⁹ When the Commission adopted its
3 Net Metering Rules, no one in the rooftop solar industry—including any member of TASC—
4 stepped up to argue that the initial net metering tariffs of the utilities required approval in
5 a rate case in order to avoid single-issue ratemaking. To the contrary, those interests
6 strongly urged the Commission to approve the net metering tariffs in the quickest possible
7 way. TASC’s self-serving argument now that the proposed changes to the net metering
8 tariff can only occur in a rate case should be rejected.

9 As detailed in the Application, SSVEC and its members are suffering harm today
10 as a result of the net metering cost shift and will continue to suffer harm under the current
11 net metering tariff. While the relief requested in the Application may not provide complete
12 relief, it will stop a bad situation from getting worse, which is a critical first step. There is
13 no legal reason why the Commission cannot consider and act upon the Application in this
14 docket, and the public interest requires that it do so.

15 TASC also criticizes SSVEC’s Application because it does not attempt to allocate
16 the increased revenue that its proposal would generate to non-net-metered customers,
17 thereby creating a “revenue windfall” for SSVEC.¹⁰ TASC’s argument shows a basic lack
18 of understanding of electric cooperatives. SSVEC is a member-owned non-profit
19 cooperative. It is governed by a board of directors elected by the member/owners and its
20 sole purpose for existing is to provide reliable electric service to its member/owners at the
21 best possible rates. There are no performance-based bonuses paid to management or
22 dividends paid to shareholders.¹¹ Thus, any so-called “revenue windfall” attributable to
23 the slowing of the net metering cost shift will accrue directly to the member/owners of the
24 Cooperative—who are SSVEC.

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27 ⁹ See Decision 74811 in Docket E-01575A-09-0429.

28 ¹⁰ TASC Brief (July 31, 2015) at 4-5.

¹¹ SSVEC would note also that there are no performance-based incentives paid to the management team or employees. The only type of incentive offered is a modest bonus for achieving safety goals.

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

2 As described in the Application, SSVEC has experienced a significant increase in
3 the number of customers installing rooftop solar systems. Rooftop solar systems are
4 eligible for net metering under SSVEC's current Net Metering Tariff Schedule NM, and
5 the proliferation of rooftop solar systems has resulted in a dramatic and alarming increase
6 in the Cooperative's unrecovered fixed costs attributable to net-metered members. As
7 further explained in the Application, and as noted by Staff in its brief, SSVEC's
8 unrecovered fixed costs due to net metering have increased from \$82,104 in 2010 to
9 \$947,370 in 2014, and the Cooperative estimates that the cost shift in 2015 will exceed
10 \$1.1 million. SSVEC's objective in this docket is clear: the proposed net metering tariff
11 revisions will begin to arrest the cost shift immediately and will keep it from growing much
12 larger, which is of paramount importance to the Cooperative.

13 Staff argues¹² that the net metering Application should be dismissed because
14 "processing the Application outside of a rate case may foreclose the Commission from
15 developing an effective and fair solution to all aspects of the problem, not just those
16 emphasized by the Company."¹³ Staff continues, "[b]y proposing a narrowly drawn tariff
17 filing to address issues that are broad in scope and consequence, the Company may
18 potentially foreclose the Commission from developing a comprehensive solution to the
19 Company's alleged problem."¹⁴ SSVEC acknowledges that a complete remedy to the net
20 metering cost shift will likely require changes to the Cooperative's rate design in a future
21 rate case, but that is not a valid reason for the Commission to reject the present opportunity
22 to consider the measured and interim steps that are set forth in the Application.

23 Moreover, Staff fails to explain how granting the relief requested in the
24 Application—which Staff acknowledges would hold the existing under-recovery constant—
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26 ¹² TASC argues similarly that the Commission would be "hamstrung in its ability to address the
27 Application's issues if forced to do so outside a formal utility rate case..." SSVEC's response to Staff's
28 argument in this section applies equally to the argument raised by TASC.

¹³ Staff Brief (July 31, 2015) at 3, lines 6-8 (emphasis added).

¹⁴ *Id.* at 4, lines 3-5 (emphasis added).

1 will foreclose any option the Commission may want to consider in a future rate case.¹⁵ For
2 example, Staff states that the Commission may want to “increase the monthly minimum,
3 apply a demand charge, introduce new rate schedules, or authorize a lost fixed cost
4 recovery mechanism, among other possibilities.”¹⁶ Every one of these options would be
5 on the table in a future rate case even if the Commission approves the Application.
6 Likewise, the Commission would certainly have the discretion to revisit in a future rate
7 case any relief ordered in this docket. In other words, the Commission can approve
8 changes to SSVEC’s net metering tariff now and can address rate design changes later in
9 a rate case. It is not a one-or-the-other choice.

10 After careful consideration of all options, SSVEC’s elected board of directors voted
11 to file the Application in this docket so that the Commission can immediately begin to
12 address the net metering cost shift. The board’s decision should not be lightly case aside.
13 Under these circumstance, dismissing an application which Staff readily acknowledges
14 may legally be considered in this docket is bad public policy and sets a bad precedent.
15 Having previously acknowledged the net metering cost shift in Docket E-01345A-13-
16 0248, the Commission should begin to address the issue immediately and not wait for the
17 filing and prosecution of a rate case by SSVEC, which will no doubt take longer than this
18 case. The public interest will be served if the Commission begins to address the net
19 metering cost shift now, and SSVEC urges the Commission to allow the Application to
20 move forward to a hearing.¹⁷

21 TASC argues that adjudicating SSVEC’s Application outside of a rate case is a
22 waste of Commission resources. However, the issues presented in the Application are
23 limited in nature and this docket provides an appropriate vehicle for the Commission to
24 take certain measured steps that will immediately stem the growth in the net metering cost
25 shift. This in turn will relieve the building pressure and will actually provide more time to

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27 ¹⁵ *Id.* at 3, lines 22-24.

28 ¹⁶ *Id.* at 3, lines 13-15.

¹⁷ SSVEC notes also that it will still have to prove the claims contained in its Application and demonstrate that approval of the relief requested is in the public interest.

1 consider additional appropriate measures in a rate case. Thus, SSVEC believes that this
2 docket would work as a complimentary precursor to a future rate case.

3 TASC also argues that the Commission's Net Metering Rules do not include a
4 provision permitting the Commission to issue a waiver and, as a result, the Commission
5 cannot grant the request that SSVEC seeks in its Application.¹⁸ However, the Commission
6 clearly has the authority to grant waivers of its own rules even without an express waiver
7 provision and has done so on prior occasions where the granting of a waiver is in the public
8 interest. For example, in Decision 70706 in T-01051B-07-0527, the Commission granted
9 a waiver of its anti-slamming rules even though the rules do not contain a waiver provision,
10 stating as follows:

11 Although the anti-slamming rules do not contain a waiver provision, the
12 Commission has in previous decisions granted waivers of the anti-slamming
13 rules when doing so served the public interest. (*See, e.g.*, Decision No. 70218
14 (March 27, 2008); Decision No. 70057 (December 4, 2007); Decision No.
15 69573 (May 21, 2007); Decision No. 67241 (September 15, 2004).)¹⁹

16 Certainly, the Commission can grant a waiver of its rules anytime it finds that a
17 waiver is in the public interest.

18 Finally, TASC argues that "all five commissioners appear to support rate case
19 resolutions of this type of issue."²⁰ However, SSVEC is not aware that any commissioner
20 has expressed a position on the net metering cost shift with specific regard to SSVEC or
21 Trico Electric Cooperative, Inc., the other cooperative that filed a net metering
22 application.²¹ Thus, TASC's quotation of prior statements and amendments proffered by
23 commissioners in other dockets has no application in this docket. Likewise, TASC's
24 reference to statements by the Residential Utility Consumer Office ("RUCO") is equally
25 senseless as RUCO, by statute, does not have standing to participate in the cases of
26 cooperatives.²²

26 ¹⁸ TASC Brief (July 31, 2015) at 5, lines 24-25.

27 ¹⁹ Decision 70706 at Finding of Fact 46.

28 ²⁰ TASC Brief (July 31, 2015) at 11, lines 15-16.

²¹ Docket E-01461A-15-0057.

²² TASC Brief (July 31, 2015) at 11, lines 15-16.

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