



0000165918

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

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

AUG 26 2015

DOCKETED BY 

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

DECISION NO. 75224

ORDER

August 18 and 19, 2015
Open Meeting
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 25, 2015, Tucson Electric Power Company, Inc. ("TEP" or "Company") filed an Application with the Commission for: (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"; and (2) approval of a partial waiver of the Commission's Net Metering Rules ("A.A.C. R14-2-2301 et seq.). TEP requested that the Commission set this matter for a hearing and issue a procedural schedule that would allow the Commission to consider and approve the Application before the end of 2015.

2. On April 1, 2015, TEP filed a Supplement to Application attaching a copy of the proposed tariff.

3. On April 6, 2015, TEP filed a Notice of Waiver of any 30-day "time clock" that would apply to the Company's Application.

1 4. Intervention was granted to Kevin Koch, the Residential Utility Consumer Office
2 (“RUCO”), the Arizona Solar Deployment Alliance (“ASDA”), Arizona Solar Energy Industries
3 Association (“AriSEIA”), The Alliance for Solar Choice (“TASC”), Vote Solar, Western Resource
4 Advocates (“WRA”), and Arizona Public Service Company (“APS”).

5 5. On April 14, 2015, the Commission’s Utilities Division (“Staff”) filed a Request for
6 Procedural Order. Staff asserted that the issues raised by TEP’s Application should be addressed in a
7 rate case, and that the Application should be dismissed. Staff proposed a briefing schedule, and
8 requested a Procedural Conference to discuss procedural issues.

9 6. By Procedural Order dated April 16, 2015, a Procedural Conference to discuss the
10 schedule was set for April 27, 2015.

11 7. On April 20, 2015, TEP filed a Response to Staff’s Request for Procedural Order.
12 TEP urged the Commission to consider its Application independently of a net metering tariff filed by
13 Trico Electric Cooperative, Inc. (“Trico”), but as soon as possible, and at the same Commission Open
14 Meeting as the Trico matter. To that aim, TEP suggested that Staff’s proposed briefing schedule be
15 accelerated.

16 8. The April 27, 2015, Procedural Conference convened as scheduled, and by Procedural
17 Order dated April 28, 2015, a briefing schedule was established and oral argument was set for June
18 10, 2015.

19 9. On May 15, 2015, TEP, TASC, Vote Solar, RUCO, Mr. Koch, ASDA and Staff filed
20 Initial Briefs;¹ and on May 18, 2015, AriSEIA filed a Combined Initial Brief, Motion to Dismiss and
21 Motion to Enforce Settlement Agreement. On May 29, 2015, TEP, RUCO, TASC, Vote Solar and
22 Staff filed Reply Briefs.

23 10. Oral argument was heard on June 10, 2015, at the Commission’s Tucson office. TEP
24 argued that there is no legal requirement that the Application be heard as part of a rate case, and that
25 the public interest favored considering the matter in an evidentiary hearing as soon as possible to
26 avoid a larger cost shift problem. TASC argued that the prohibition on single issue rate making
27

28 ¹ Staff’s filing was captioned as a Motion to Dismiss.

1 requires, and the public interest favors, hearing this Application in a rate case proceeding. Staff
2 argued that although a rate case is not legally required for the Commission to consider the matter, the
3 public interest in having a complete solution to a rate design issue supports dismissing the
4 Application until TEP files its next rate case. Vote Solar and ASDA supported considering TEP's
5 proposal in a rate case. ARiSEIA argued that TEP's Application violated the settlement agreement in
6 TEP's last rate case, and should be dismissed. RUCO supported TEP's position that deciding the
7 issue sooner rather than later is in the public interest in order to prevent a larger cost-shift problem,
8 unless the proposal is not revenue neutral, in which case, RUCO asserts that a rate case would be
9 necessary. Following oral argument, the Administrative Law Judge took the matter under advisement.

10 11. On June 19, 2015, TEP filed a Notice of Withdrawal of Application ("Notice"). TEP
11 states that in light of Staff's position, as well as the briefing and oral argument on the Motion to
12 Dismiss, TEP reconsidered its position and agrees with Staff that a rate case proceeding would
13 provide additional ratemaking tools to address the alleged cost shift.² TEP states that it will be filing a
14 general rate case before the end of 2015, with the intent of having its modified net metering tariff
15 considered as part of that docket.

16 12. On June 26, 2015, Staff filed a Response to Motion to Withdraw. Staff had no
17 objection to the withdrawal of TEP's Application and recommended that the docket be
18 administratively closed.

19 13. On June 30, 2015, Vote Solar filed a Response to TEP's Notice. Vote Solar supports
20 TEP's decision to withdraw its Application, but is concerned by a statement in TEP's Notice about
21 how the Company will amend its interconnection application disclaimer for new Distributed
22 Generation ("DG") customers ("Disclaimer"). Because Vote Solar perceived the potential for
23 needless confusion and a chilling effect on new DG applications, Vote Solar requested that the
24 Commission order TEP to amend the Disclaimer by deleting any reference to this proceeding and
25 reinstating the disclaimer language TEP used prior to the initiation of this docket.

26
27
28 ² TEP continues to believe that there would be a public benefit in mitigating the cost shift now, even if only an interim solution.

1 14. The disclaimer language as posted on TEP's website as of July 2, 2015 contained the
2 following addition to the original Disclaimer:

3 On March 25, 2015, TEP filed an application with the Commission in
4 Docket No. E-01933A-15-0100 proposing elimination of the monthly
5 energy carryover (banked credits) and changes to the retail credit
6 customers receive for all excess energy placed on the grid that would
7 apply to distributed generation system applications submitted after 5pm on
8 June 1, 2015 ("Proposal"). Although TEP subsequently withdrew the
9 application on June 19, 2015, TEP intends to include this Proposal in its
10 upcoming rate case. The Commission may accept, reject, or modify this
11 Proposal.

12 15. By referencing the March 25, 2015 Application and the proposed effective date of
13 June 1, 2015, it is unclear whether TEP intends to retain the June 1, 2015, effective date when it
14 proposes a modified net metering tariff as part of a forthcoming rate case. Although the language
15 recognizes that the Commission is not bound by TEP's proposals (including the effective date) Vote
16 Solar believed the language might unnecessarily prevent solar installations that might otherwise go
17 forward.

18 16. By Procedural Order dated July 6, 2015, the parties were directed to confer and
19 attempt to reach agreement on a revised Disclaimer for TEP's new DG customers, and to file either
20 jointly proposed disclaimer language or individual recommendations for disclaimer language for the
21 interim period prior to TEP filing its anticipated rate case.

22 17. On July 20, 2015, TEP filed a Joint Recommendation Regarding Disclaimer Language
23 For New DG Customers ("Joint Recommendation"). The Joint Recommendation has been agreed to
24 by TEP, Vote Solar, RUCO, ASDA, and ARiSEIA.³

25 18. The Joint Recommendation proposes to replace the language to which Vote Solar
26 objected with the following:

27 In its upcoming rate case that will be filed before the end of 2015, TEP
28 intends to ask the Commission for approval to change the retail customer
credit for excess energy placed on the grid and to eliminate the monthly
energy carryover (banked credits). These changes, if approved by the

³ TASC, APS, WRA, Mr. Koch and Staff did not sign the Joint Recommendation. TEP indicates that APS does not object to the Joint Resolution. Staff filed a separate concurrence in the adoption of the Joint Resolution. Mr. Koch objects to the Joint Recommendation, and TASC has not indicated an opinion.

1 Commission, may affect your bill. The Commission may accept, reject, or
2 modify this proposal.

3 19. On July 20, 2015, Staff filed a Supplemental Response to TEP's Notice of Withdrawal
4 and Response to July 6, 2015 Procedural Order. Staff states that it believes that reaching an
5 agreement regarding the Disclosure language is the best solution, and that because the proposed
6 language appears to be factually accurate, Staff does not object to it. Staff believes, however, that it
7 is important to put the parties on notice, that whatever language the Company includes in its
8 Disclaimer, or may request in the upcoming rate case, Staff may propose something completely
9 different. Staff states that such proposals may include modifying the Lost Fixed Cost Recovery
10 Mechanism and rate design, increasing monthly minimums, applying demand charges, and/or new
11 rate schedules, and may not include grandfathering. Staff recommends that the Company be allowed
12 to utilize the Joint Recommendation language. Staff continues to recommend that the docket be
13 administratively closed.

14 20. On July 20, 2015, Kevin Koch filed a separate Response to the July 6, 2015
15 Procedural Order. Mr. Koch believes that the Disclaimer language should look similar to the
16 Disclaimer as it existed pre-June 1, 2015. He believes that the Disclaimer as of July 2, 2015, and the
17 Joint Recommendation merely remove mention of the grandfathering date, but do not remove the
18 uncertainty faced by new DG customers, and will make it difficult for people to make the decision to
19 install solar. He argues the solution is to remove the implication of the grandfathering date, by either
20 applying a modest policy change that affects all solar customers, or implementing any changes to the
21 net metering tariff for new DG customers after the effective date of the rate case. Mr. Koch
22 recommends adopting the disclaimer in place prior to June 1, 2015, which omits any reference to the
23 March 2015 application or the forth-coming rate case.

24 ...

25 ...

26 ...

27 ...

28 ...

21. The Disclaimer on TEP's website⁴ as of July 21, 2015 provides as follows:

**DISCLAIMER
POSSIBLE FUTURE RULES and/or RATE CHANGES
AFFECTING YOUR PHOTOVOLTAIC (PV) SYSTEM**

The following is a supplement to the Grid-Tied Residential Solar Electric PV Application you signed with Tucson Electric Power Company (TEP).

1. Your PV system is subject to the current rates, rules and regulations established by the Arizona Corporation Commission (Commission). The Commission may alter its rules and regulations and/or change rates in the future. If this occurs, your PV system is subject to those changes and you will be responsible for paying any future increases to electricity rates, charges or service fees from TEP.

2. TEP's electricity rates, charges and service fees are determined by the Commission and are subject to change based upon the decision of the Commission. These future adjustments may positively or negatively impact any potential savings or the value of your PV system.

3. Any future electricity rate projections which may be presented to you are not produced, analyzed or approved by TEP or the Commission. They are based on projections formulated by external third parties not affiliated with TEP or the Commission.

Initials _____

On March 25, 2015, TEP filed an application with the Commission in Docket No. E-01933A-15-0100 proposing elimination of the monthly energy carryover (banked credits) and changes to the retail credit customers receive for all excess energy placed on the grid that would apply to distributed generation system applications submitted after 5pm on June 1, 2015 ("Proposal"). Although TEP subsequently withdrew the application on June 19, 2015, TEP intends to include this Proposal in its upcoming rate case. The Commission may accept, reject, or modify this Proposal.

Initials _____

By signing below, you acknowledge that you have read and understand the above disclaimer. Please return to TEP.

Main Customer's Printed Name Main Customer's Signature

Installation Address

22. The first part of the disclaimer was in use prior to TEP filing the Application in this docket. The portion of the disclaimer currently at issue is the underlined section. The purpose of the Disclaimer is to inform new DG customers that tariffs may change in the future, so that they can make an informed decision about installing solar panels. Although the additional information may

⁴ <https://www.tep.com/renewable/home/pv/>.

1 dissuade some people from entering into PV installation contracts until they know for certain how
2 tariffs might be affected, it is important that the public have this information.

3 23. As Staff notes in its comments, the Commission does not yet have the full set of
4 possible proposals before it. It is not in the public interest to pre-judge the merits of any proposal, and
5 it is in the public interest to be transparent concerning possible tariff changes.

6 24. The Joint Recommendation is factually correct and supported by a broad range of
7 interests. Not including it, or something similar, would be a dis-service to new DG customers. We
8 find, however, that it does not go far enough in explaining the forthcoming rate making process, and
9 find that it should be modified as follows:⁵

10 In its upcoming rate case that will be filed before the end of 2015, TEP
11 intends to ask the Commission for approval to change the retail customer
12 credit for excess energy placed on the grid and to eliminate the monthly
13 energy carryover (banked credits). These changes, if approved by the
14 Commission, may affect your bill. Other parties participating in the rate
15 case may recommend different proposals that may affect your bill in
16 other ways. The Commission is not bound by any party's proposal, and
17 may accept, reject, or modify any proposed rate, charge or term of
18 service.

16 25. We approve the Joint Recommendation as modified above and direct TEP to replace
17 the underlined portion of its Disclaimer with the modified language.

18 26. No party objected to the dismissal of TEP's Application in this docket. We find that it
19 is in the public interest to consider the proposed changes to TEP's net metering tariff in the context of
20 a rate case where the Commission is able to consider a wide range of possible rate design options,
21 and thus we dismiss TEP's Application without prejudice.

22 CONCLUSIONS OF LAW

23 1. TEP is an Arizona public service corporation within the meaning of Article XV,
24 Section 2, of the Arizona Constitution.

25 2. The Commission has jurisdiction over TEP and over the subject matter of the
26 Application.

27 3. Notice of the Application was in accordance with law.

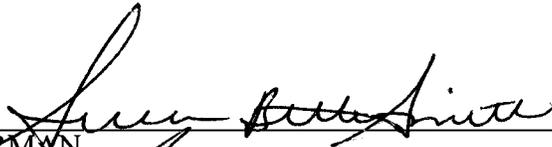
28 ⁵ The modified language is underlined.

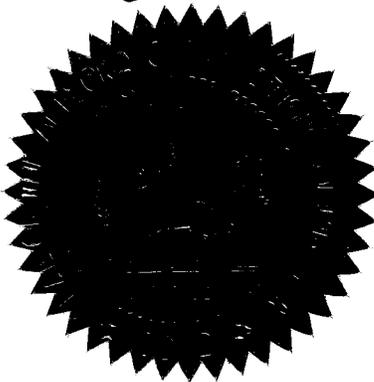
1 IT IS FURTHER ORDERED that Tucson Electric Power Company Inc. shall update the
2 Disclaimer utilized in the interim period before it files its rate case with the following:

3 In its upcoming rate case that will be filed before the end of 2015, TEP
4 intends to ask the Commission for approval to change the retail customer
5 credit for excess energy placed on the grid and to eliminate the monthly
6 energy carryover (banked credits). These changes, if approved by the
7 Commission, may affect your bill. Other parties participating in the rate
8 case may recommend different proposals that may affect your bill in
9 other ways. The Commission is not bound by any party's proposal, and
10 may accept, reject, or modify any proposed rate, charge or term of
11 service.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRWOMAN	COMMISSIONER	
		
COMMISSIONER	COMMISSIONER	COMMISSIONER



16 IN WITNESS WHEREOF, I, JODI JERICH, Executive
17 Director of the Arizona Corporation Commission, have
18 hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this 21st day of August 2015.

21 
22 JODI JERICH
23 EXECUTIVE DIRECTOR

24 DISSENT _____

25 DISSENT _____

26 JLR:tv(ru)

1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY, INC.

2 DOCKET NO.:

E-01933A-15-0100

3 Michael W. Patten
4 Jason D. Gellman
5 Snell & Wilmer, LLP
6 One Arizona Center
7 400 East Van Buren Street
8 Phoenix, AZ 85004
9 Attorneys for TEP

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

7 Bradley S. Carroll
Tucson Electric Power Company
8 88 East Broadway Blvd., MS HQE910
9 PO Box 711
Tucson, AZ 85702

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

10 Kevin M. Koch
11 PO Box 42103
Tucson, AZ 85733

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

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

Thomas A Loquvam
Pinnacle West Capital Corporation
PO Box 53999, MS 8695
Phoenix, AZ 85072-3999

15 Mark Holoham, Chairman
16 AriSEIA
2122 W. Lone Cactus Dr., Suite 2
Phoenix, AZ 85027

Gregory Bernosky
Arizona Public Service Company
PO Box 53999, MS 9712
Phoenix, AZ 85072-3999

17 Court S. Rich
18 Rose Law Group PC
19 7144 E. Stetson Dr., Suite 300
20 Scottsdale, AZ 85251
Attorney for TASC

Ken Wilson
Western Resource Advocates
2260 Baseline Road, suite 200
Boulder, CO 80302

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

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

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

Thomas Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007