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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOUG LITTLE – Chairman
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TOM FORESE
ANDY TOBIN

DOCKETED

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AZ CORP COMMISSION
DOCKET CONTROL

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IN THE MATTER OF THE APPLICATION OF
SULPHUR SPRINGS VALLEY ELECTRIC
COOPERATIVE, INC. FOR A HEARING TO
DETERMINE THE FAIR VALUE OF ITS
PROPERTY FOR RATEMAKING PURPOSES, TO
FIX A JUST AND REASONABLE RETURN
THEREON, TO APPROVE RATES DESIGNED TO
DEVELOP SUCH RETURN, AND FOR RELATED
APPROVALS.

DOCKET NO. E-01575A-15-0312

PROCEDURAL ORDER
CLARIFYING PREVIOUS
PROCEDURAL ORDER AND
EXTENDING THE TIME CLOCK

BY THE COMMISSION:

On May 5, 2015, Sulphur Springs Valley Electric Cooperative, Inc. (“SSVEC” or “Co-op”) filed an Application with the Arizona Corporation Commission (“Commission”) for a rate increase. By Procedural Order dated October 6, 2015 (modifying a previous Procedural Order), the matter was set for hearing to commence on May 17, 2016, and other procedural guidelines were established.

On January 13, 2016, the Energy Freedom Coalition of America (“EFCA”) requested intervention. EFCA is comprised of seven solar energy system providers: Solar City Corporation (“Solar City”), Silevo, LLC, Zep Solar, LLC, NRG Energy, Inc. (“NRG”), Go Solar, LLC (“Go Solar”), 1 Sun Solar Electric (“Sun Solar”), LLC, and Ecological Energy Systems. In its Application to Intervene, EFCA stated:

These companies are important stakeholders in Arizona’s rooftop solar industry. EFCA’s members are responsible for thousands of residential, school, church, government and commercial solar installations in the [sic] Arizona. Together, EFCA’s members have brought hundreds of jobs and many tens of millions of dollars of investment to Arizona’s cities and towns.

* * * * *

EFCA is entitled to intervene because EFCA and its members are directly and substantially affected by the Proceeding...¹

¹ EFCA’s Application for Leave to Intervene, pages 1 – 2.

1 By Procedural Order issued January 22, 2016, EFCA's Application for Intervention was
2 granted.

3 The evidentiary hearing in this matter commenced on May 17, 2016, and is scheduled to resume
4 May 26, 2016.

5 On May 10, 2016, SSVEC filed a Motion to Compel Intervenor Energy Freedom Coalition of
6 America's Responses to SSVEC's First Set of Data Requests ("Motion"). The Co-op also requested
7 expedited oral argument.

8 On May 11, 2016, EFCA filed its Response to SSVEC's Motion to Compel Responses to
9 SSVEC's First Set of Data Requests.

10 Oral argument on SSVEC's Motion was held on May 12, 2016. Appearing through counsel
11 were SSVEC, EFCA, Commission Utilities Division ("Staff"), and additional intervenors, Trico
12 Electric Cooperative, Inc. ("Trico"), Arizona Public Service Company ("APS"), and Arizona Solar
13 Deployment Alliance ("ASDA"). A fourth intervenor, Arizona Solar Energy Industries Association
14 ("AriSEIA"), was not present at oral argument.

15 In its Motion, the Co-op claims it had provided 18 narrowly-focused data requests to EFCA
16 seeking information pertaining to leases and purchase contracts between distributed generation ("DG")
17 customers and EFCA's members. The information sought was limited to the years 2014, 2015, and
18 2016 to date, and restricted to those solar installations within SSVEC's service area. SSVEC asserts
19 the information sought is necessary to help it evaluate EFCA's arguments regarding the economic
20 impact of proposed rates on DG customers. SSVEC asserts this information is relevant to the issues in
21 this matter.

22 EFCA objected to 13 of the 18 data requests, claiming that SSVEC "is impermissibly
23 demanding information not from EFCA, but from EFCA's individual members who are not parties to
24 this docket." EFCA points out that it does not have the information sought, and, as such, cannot provide
25 it. EFCA also contends that the requested information is not relevant, not reasonably calculated to lead
26 to the discovery of admissible evidence, unreasonably vague, and is unduly burdensome. In addition,
27 EFCA claims the information described is confidential and proprietary business information. Finally,
28 EFCA contends that requiring its non-party members to respond to discovery would have a chilling

1 effect on trade associations' future participation as intervenors in matters before the Commission.

2 During the oral argument, both SSVEC and EFCA acknowledged that the Commission has
3 broad discretion when directing discovery and has the authority to order disclosure that might be
4 otherwise impermissible in the traditional courts.² EFCA claimed it does not have the authority to
5 compel its members to provide the information sought in the data requests. The parties were advised
6 that the Commission has the authority to issue subpoenas, if necessary, pursuant to Arizona
7 Administrative Code ("A.A.C.") R14-3-109(O).

8 At the conclusion of the procedural conference, EFCA was directed to provide the information
9 sought in data requests numbered 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.12, and 1.14. EFCA had
10 previously provided responses to data requests numbered 1.13, 1.15, 1.16, 1.17, and 1.18. the
11 Administrative Law Judge also ruled that the information sought in data requests numbered 1.10 and
12 1.11 would be unduly burdensome and would contain private information of the members' customers,
13 which is unnecessary for the purposes of this proceeding.

14 In response to EFCA's concerns that the data requests sought information that is confidential
15 and proprietary, SSVEC and EFCA were advised that they could execute a confidentiality agreement
16 in which the information provided by EFCA could be viewed only by SSVEC's counsel, SSVEC's
17 outside consultants, and Staff. The remaining parties present during oral argument did not object to
18 this limitation.

19 On May 16, 2016, a Procedural Order was issued directing EFCA to provide responses to
20 SSVEC's data requests numbered 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.12, and 1.14. EFCA was
21 not ordered to provide the information sought in data requests numbered 1.10 and 1.11.

22 On May 17, 2016, at the request of SSVEC, the Commission's Executive Director issued
23 Subpoenas *Duces Tecum* to EFCA members Solar City Corporation,³ NRG Energy, Inc., Sun Solar
24

25 ² See, for example, A.A.C. R-14-3-109(K). "Rules of evidence. In conducting any investigation, inquiry or hearing, neither
26 the Commission nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality
27 in any proceeding or in the manner of taking testimony shall invalidate any order, decision, rule or regulation made,
approved or confirmed by the Commission. Rules of the Superior Court of the state of Arizona will be generally followed
but may be relaxed in the discretion of the Commission or presiding officer when deviation from the technical rules of
evidence will aid in ascertaining the facts."

28 ³ The items requested in the Subpoena issued to Solar City also requested information from Silevo, LLC, and Zep Solar,
LLC.

1 Electric, LLC, and Go Solar, LLC. As of May 23, Solar City, NRG, and Sun Solar had accepted service.

2 On May 19, 2016, EFCA filed a Motion to Clarify and Reconsider the Order Granting Motion
3 to Compel and Extending Time Clock (“Motion to Reconsider”). In the Motion to Reconsider, EFCA
4 states, “[t]o clarify the record in this Matter and alleviate EFCA of the potential obligation to comply
5 with orders it cannot satisfy, EFCA requests modification of the Procedural Order to suspend EFCA’s
6 obligation to produce the information requested of EFCA’s individual members and to direct SSEVC
7 to issue subpoenas to EFCA’s individual members if it continues to seek the information previously
8 requested of EFCA.”⁴ EFCA requested expedited oral argument on its Motion to Reconsider.

9 Telephonic oral argument on EFCA’s Motion to Reconsider was held on May 23, 2016.
10 Counsel for EFCA, SSVEC, Staff, Trico, and APS participated in the telephonic conference. EFCA
11 and SSVEC presented their arguments regarding EFCA’s Motion to Reconsider and the remaining
12 parties also stated their positions on the matter. At the conclusion of the proceeding the matter was
13 taken under advisement.

14 As to EFCA’s request for clarification, the May 16, 2016, Procedural Order noted that SSVEC
15 had the right to submit applications for the issuance of subpoenas, and also that SSVEC and EFCA
16 could enter into a confidentiality agreement regarding the information sought. These observations were
17 stated in the hope that SSVEC and EFCA could work out the dispute between themselves. However,
18 barring an amicable resolution, EFCA is required to produce the information sought by SSVEC, as
19 limited by the May 16, 2016, Procedural Order.

20 EFCA’s Motion to Reconsider contained many of the same arguments it presented in its
21 Response to SSVEC’s Motion to Compel. As noted in the May 16, 2016, Procedural Order, the
22 Commission may deviate from the rules of evidence and discovery when doing so will aid in
23 ascertaining the facts and will enable it to determine just and reasonable rates for the public as well as
24 for the utility.

25 Accordingly, after reviewing the facts and law presented in the various motions, and based on
26 the arguments presented during oral arguments, the findings of the May 16, 2016, Procedural Order
27

28 ⁴ EFCA’s Motion to Reconsider, page 1.

1 remain in effect.

2 SSVEC requested that if EFCA does not respond as ordered, or if the member companies fail
3 to comply with the subpoenas *duces tecum*, the testimony of EFCA's witness be stricken from the
4 record.

5 It is premature at this time to address SSVEC's request. However, SSVEC may renew its
6 request in the future in the event the discovery dispute remains unresolved.

7 SSVEC also indicated that although a delay in the issuance of a final Opinion and Order is not
8 ideal, the Co-op would prefer to have the opportunity to create a complete record and it would not
9 object to an extension of the time clock in order to obtain the data requests from EFCA or its members,
10 and to conduct further cross-examination of EFCA's witness based on the information provided in the
11 responses, if necessary.

12 Additionally, based on the information provided by the parties, it is necessary to add an
13 additional day of hearing.

14 IT IS THEREFORE ORDERED that the **findings of the May 16, 2016, Procedural Order**
15 **remain in effect**, as discussed herein.

16 IT IS FURTHER ORDERED that an **additional day of hearing shall be held on May 27,**
17 **2016, at the Commission's Tucson offices, 400 West Congress, Room 222, beginning at 9:00 a.m.**

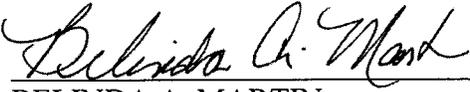
18 IT IS FURTHER ORDERED that the **time clock in this matter is extended accordingly.**

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
20 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision
21 in this matter is final and non-appealable.

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
2 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4
5 DATED this 24th day of May, 2016.

6 
7 _____
8 BELINDA A. MARTIN
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed
10 this 24th day of May, 2016 to:

11 Jeffrey W. Crockett
12 CROCKETT LAW GROUP, PLC
13 2198 East Camelback Road, Suite 305
14 Phoenix, AZ 85016
15 Attorney for Sulphur Springs Valley Electric
Cooperative, Inc.
jeff@jeffcrockettlaw.com
kchapman@ssvec.com
Consented to Service by Email

16 Garry D. Hays
17 THE LAW OFFICES OF
18 GARRY D. HAYS, P.C.
2198 East Camelback Road, Suite 305
Phoenix, AZ 85016
Attorney for Arizona Solar Deployment Alliance

19 Thomas A. Harris, Chairman
20 ARIZONA SOLAR ENERGY
INDUSTRIES ASSOCIATION
21 2122 W. Lone Cactus Dr., Suite 2
Phoenix, AZ 85027
22 Attorney for Arizona Solar Energy Industries Association
Tom.Harris@AriSEIA.org
23 **Consented to Service by Email**

24 Michael W. Patten
25 SNELL & WILMER, L.L.P.
26 One Arizona Center
400 E. Van Buren St., Suite 1900
Phoenix, AZ 85004
Attorney for Trico Electric Cooperative, Inc.

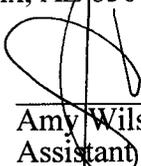
1 Court S. Rich
ROSE LAW GROUP, PC
2 7144 East Stetson Drive, Suite 300
Scottsdale, AZ 85251
3 Attorney for Energy Freedom Coalition of America

4 Thomas A. Loquvam
Thomas L. Mumaw
5 Melissa M. Krueger
PINNACLE WEST CAPITAL
6 CORPORATION
P.O. Box 53999, MS 8692
7 Phoenix, AZ 85072
Attorneys for Arizona Public Service Company
8 Thomas.loquvam@pinnaclewest.com
Consented to Service by Email

9
10 Kerri A. Carnes
ARIZONA PUBLIC SERVICE COMPANY
P.O. Box 53999, MS 9712
11 Phoenix, AZ 85072

12 Janice Alward, Chief Counsel
Legal Division
13 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
14 Phoenix, AZ 85007
jalward@azcc.gov
15 rgeake@azcc.gov
wvancleve@azcc.gov
16 mfinical@azcc.gov
Consented to Service by Email

17
18 COASH & COASH
1802 North 7th Street
19 Phoenix, AZ 85006

20 By: 
21 Amy Wilson
Assistant to Belinda A. Martin

22
23
24
25
26
27
28