

ORIGINAL



0000172290

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2016 AUG -5 P 1:15

Arizona Corporation Commission

DOCKETED

AUG 05 2016

DOCKETED BY *[Signature]*

DOCKET NO. E-01575A-15-0312

COMMISSIONERS

DOUG LITTLE-CHAIRMAN
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICAITON 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.

STAFF'S REPLY BRIEF

I. INTRODUCTION.

The Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC" or "Commission") hereby files its reply brief to the initial briefs in this docket filed on July 14, 2016. Staff will reply to the briefs of the applicant, Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC" or "Company"), and the Energy Freedom Coalition of America Briefs separately. To the extent that Staff does not address a specific issue herein, Staff relies upon the arguments it presented in its Initial Brief, its prefiled testimony, and the testimony of its witnesses at the hearing.

II. RESPONSE TO SSVEC'S INITIAL BRIEF.

A. Residential Rate Design.

Judging from the content of the Company's and EFCA's initial briefs, as argued in its opening brief, residential rate design remains the most contested issue in this case.

Staff continues to argue that, as proposed by the Company, the monthly service availability charge in its standard residential tariff should be increased from \$10.25 to \$25.00 in four steps over four years.¹

¹ Staff's Br. at 7:15-16.

1 However, Staff also continues to oppose the Company's proposal for approval of two
2 distributed generation tariffs. Tariff DG-E and Tariff DG, as thoroughly discussed in its initial brief.²
3 The Company continues to argue for the approval of both tariffs,³ but has not, in Staff's view, met its
4 burden of proving that a separate DG customer class is justified in this case.

5 The Company continues to argue in its initial brief that it has experienced an under recovery
6 of fixed costs from its DG customers, and that this under recovery justifies the creation of a separate
7 DG rate class.⁴ The Company also continues to argue that Staff has "validated" SSVEC's under-
8 recovery of fixed costs due to DG in the Company's service territory, and cites the testimony of Staff
9 witness Eric Van Epps in support of its argument. However, as Staff will explain below, while it
10 agrees that the Company is experiencing an under-recovery of fixed costs, Staff does not agree that
11 the amount of fixed costs, \$1,139,013 that the Company says it experienced in the test year due to
12 current DG installations, is a verifiable number. Staff pointed this out specifically when this issue
13 was discussed during the hearings:

14 Q. (Mr. Van Cleve, redirect of Mr. Van Epps) ...regarding this \$1.13
15 million I believe it is, \$1.139 million of under recovery. Is it fair
16 to say that...the concern that Staff has is that the number that the
 Company has developed is based completely on assumptions?

17 A. Yes.

18 Q. Is that a fair statement?

19 A. Yes.

20 Q. So we don't have any way of knowing if that is the actual level of
 under recovery that the Company is experiencing?

21 A. Yes.

22 Thus, Staff submits that the Company has not produced for the record in this case a verifiable
23 number of fixed costs that it is under recovering. Although no other party presented an alternative
24 calculation, the Company did not satisfy its burden of proof.

27 ² Staff Br. at 7:19-8:10.

28 ³ SSVEC Br. at 31-46.

⁴ SSVEC Br. at 32-36

1 Staff does agree that the under recovery of fixed costs as to the residential class as a whole
2 justifies an increase (for all residential customers) to a \$25.00 per month fixed customer charge.⁵
3 However, while Staff asserts the Company has justified an under recovery of the residential class as a
4 whole, this alone does not satisfy the Company's burden of proof of under recovery to justify a
5 separate residential DG class of customers.

6 Although Staff did initially consider a three-part rate design for the Company,⁶ it was not
7 possible due to the limitations of the Company's meters.⁷ Nonetheless, this, also, does not justify the
8 creation of a separate rate class for DG customers. If the three-part rate would have been possible,
9 Staff would have been recommending these rates for all residential customers.

10 In summation, the Company did not meet its burden of proof for approval of a separate DG
11 class of customers. The evidence that Staff presented does not support the Company's request.

12 **B. Time of Use Rates.**

13 The Company continues to request that the Commission approve the Company's request to
14 freeze its Time of Use ("TOU") rate schedules and eventually phase them out.⁸ Staff continues to
15 believe that both the Company's existing and proposed TOU rates are not harmful to the Company's
16 operations, and continues to recommend that the Company continue to offer TOU rates for its
17 residential, commercial, and large power customers.⁹

18 Staff believes that the Company's arguments for freezing its rates simply do not hold weight.
19 For example, the Company argues that TOU rates could lead to member dissatisfaction when a
20 member is paying more for electricity on TOU rates than would be the case under the standard rate,¹⁰
21 but the Company provides no specific examples of the occurrence of such dissatisfaction, and
22 concedes that, when it has determined that a customer would be better off on a standard rate, it
23 simply moves the customer to that rate.¹¹

24
25 ⁵ Ex. S-8 at 4:15:26.

26 ⁶ Ex. S-7 at 6:25-26.

27 ⁷ Ex. S-7.

28 ⁸ *Id.* at 58:14-17.

⁹ Staff's Br. at 11:16-25.

¹⁰ SSVEC Br. at 60:12-14.

¹¹ *Id.* at 6-9.

1 During the hearings, the Company also conceded that its support for freezing its TOU rates is
2 really not that important to it:

3 Q. (by Mr. Van Cleve) When the original rates were proposed and put
4 in place, it was in response to a decision of the Commission.
 Correct?

5 A. (by Mr. Hedrick) It was. It was in response to the EPAC decision.

6 Q. So it may be a different circumstance?

7 A. It's a different circumstance, but they were never done outside of a
8 rate case.

9 Q. An is this something that you would consider to be a fall-on-your-
10 sword kind of issue for the Company that if this rate must be
 frozen, is it the end of the world?

11 A. I'm going to speak—I'm going to speak on behalf of the co-op
 here and say no.¹²

12 Another important factor to consider if the TOU rates are frozen is the possible impact of
13 other rate design issues in this case. As detailed in Staff's opening brief and in Section A, above, the
14 Company has proposed, and Staff has recommended the implementation of residential rates that
15 would phase in rates over a four year period. If the Commission approves the Company's rate design
16 proposal, it is not unreasonable to expect that the Company may not file another general rate case for
17 at least four years. A reinstatement or revised TOU rate schedule, therefore, may not take place for at
18 least four years.

19 The Company argues that the primary reason that TOU rates are not attractive to its customers
20 is the lack of a meaningful differential between the on-peak and off-peak prices for energy it receives.
21 The primary source of the Company's power supply is the Arizona Electric Power Cooperative
22 ("AEPCO").¹³ As the Company itself points out in its initial brief¹⁴ the Company's contract with
23 AEPCO could change in the future; the new rate could make TOU rates attractive to the Company's
24 customers. If the Company's TOU rates are frozen, as the Company proposes, the TOU rates would

27 ¹² Tr. 480:9-22.

28 ¹³ Ex. A-6.

¹⁴ SSVEC Br. at 52:8-18.

1 not be available to its customers for two, or perhaps four or five, years. Under Staff's proposal, TOU
2 rates would remain available to SSVEC customers.

3 Staff believes that the Company has failed to show that the TOU rates are harmful. The
4 Company's request to freeze its TOU rates should be denied.

5 **III. RESPONSE TO EFCA'S INITIAL BRIEF.**

6 **A. Residential Rate Design.**

7 Staff is not altogether clear about EFCA's position on residential rate design. It is clear that
8 EFCA, like Staff, strongly opposes the Company's proposal to create new tariffs for distributed
9 generation customers. However, it is not altogether clear, judging from EFCA's initial brief, that
10 EFCA agrees with Staff's other recommendations for residential rate design.

11 Specifically, Staff continues to recommend the approval of a \$25.00 per month system
12 availability charge, to be implemented over four years, for all residential customers (DG and non-
13 DG), and an adjustment in the Energy charge to be implemented over the same four-year period.¹⁵ In
14 EFCA's brief, EFCA said that all rate proposals by Staff should be rejected,¹⁶ however, EFCA also
15 said that

16 [the Commission should] Reject the proposed increases to the fixed
17 customer charge for residential DG and non-DG customers, or *in the*
18 *alternative*, approve only one reasonable increase to the current fixed
customer charge equally applicable to all residential customers (both DG
and non-DG customers) (emphasis supplied)¹⁷

19 Regardless of this lack of clarity regarding EFCA's position, it is Staff's position that in this
20 case the Commission should approve a \$25.00 per month customer charge for all residential
21 customers, and an adjustment in the energy charge, both to be phased in over a four-year period.

22 EFCA also argues that SSVEC's Application failed to include information required by A.A.C.
23 R-14-2-103 (the "Rate Rule"), resulting in prejudice to DG customers.¹⁸ Staff does not agree with
24 EFCA's arguments. Staff's position is that the Company's application was reviewed by Staff
25 pursuant to the provisions of the Rate Rule, and Staff found it to be sufficient, i.e., the application

26 _____
27 ¹⁵ Staff Br. at 10:6-10.

28 ¹⁶ EFCA Br. at 26:6-7.

¹⁷ *Id.* at 25:20-23.

¹⁸ EFCA Br. at 5-8.

1 contained everything that is was required to contain for a Class A utility under the Rate Rule. EFCA
2 is critical of the Company's Schedule H-5.2 because that schedule did not include the netted amounts
3 of energy delivered for DG customers that would reflect a different bill count that it presented as
4 filed. However, the Rate Rule did not require the Company to file a separate rate schedule for DG
5 residential customers; the Company chose to do so because, in this case, it is seeking approval for a
6 separate DG customer class.

7 Because the separate H-5.2 schedule for Residential DG customers is not required by the rule,
8 the application was appropriately found to be sufficient by Staff. The issue is whether the Company
9 has presented sufficient evidence in this case to meet its burden of proof to support its request for a
10 separate DG customer class. Staff agrees with EFCA that providing an H-5.2 schedule for
11 Residential DG customers with the netted amounts of energy incorporated would have been useful.
12 However by failing to do this, Staff respectfully submits that the Company has not supported its
13 request for a separate DG customer class. Notwithstanding this, its application was sufficient under
14 the Rate Rule.

15 **B. Net Metering.**

16 Although, as discussed in its initial brief, Staff determined that it is unable, without further
17 policy direction from the Commission to support changes to net metering ("NEM") in this case, Staff
18 finds it necessary to respond to some of EFCA's arguments concerning NEM.

19 EFCA argues that SSVEC's DG tariffs cannot be approved because the tariffs do not comply
20 with the provisions of A.A.C. R14-2-1305 (the "Rule") because, according to EFCA:

- 21 i. the tariff charges are not supported with a solar cost of service study.
- 22 ii. the tariff charges are not supported with a benefit/cost analysis.

23 Staff believes that the Company did comply with the Rule, and that EFCA's arguments are incorrect
24 for several reasons.

25 First, although EFCA argues that the Company's DG tariff proposals are deficient because the
26 Company did not perform a solar specific cost of service study or benefit/cost analysis, the simple
27 fact is that the plain language of the Rule DOES NOT require a solar specific cost of service study or
28

1 solar specific benefit/cost analysis. EFCA is reading this requirement into the plain language of the
2 Rule. Furthermore, EFCA cites no authority for its position.

3 Second, the Company performed a cost of service study for its residential customers that Staff
4 accepted.¹⁹ Moreover, EFCA itself pointed out that a cost of service study is generally conducted on
5 a rate class basis.²⁰

6 Third, while EFCA argues that the Company did not conduct a solar-specific cost analysis, it
7 concedes in its brief that the Company did conduct a benefit-cost analysis, which EFCA criticizes for
8 not sufficiently crediting DG for all of the avoided costs and benefits that EFCA's witness Fulmer
9 argues it creates.²¹ Thus, the Company did perform a cost-benefit analysis, as the Company pointed
10 out in its initial brief²² EFCA just did not like the results. As Company witness David Hedrick
11 explained during the hearings:

12 "it's not a matter of a lack of analysis,...(t)here just aren't any costs that
13 are reduced as a result of a reduction in demand at this point."²³

14 Notwithstanding the foregoing argument, the Company is seeking a waiver of the net
15 metering rules that, if granted, would include a waiver of the Rule's provisions. EFCA argues that,
16 because the net metering rules do not contain a specific provision allowing a waiver of the rules, the
17 Commission cannot waive the rules if the Commission deems that necessary to approve any of the
18 changes to NEM that the Company is proposing in this case. EFCA's position is incorrect.

19 First, as pointed out in the Company's brief,²⁴ the Commission has specifically rejected this
20 argument with respect to waivers of its anti-slamming rules, determining that the anti-slamming rules
21 can be waived when the Commission determines it is in the public interest to do so.

22 Second, EFCA has cited no authority, only its own conclusion, for its argument that the
23 Commission cannot grant a waiver of its own rules, even when it is in the public interest to do so.

24
25 _____
26 ¹⁹ Ex. S-7 at 5.

27 ²⁰ EFCA Br. at 4:10.

28 ²¹ EFCA Br. at 14:10-14.

²² SSVEC Br. at 57:8-9.

²³ Tr. at 467:3-6.

²⁴ SSVEC at 48:19-49:7.

1 Third, the Commission's rate-making authority is plenary;²⁵ and the Commission's NEM
2 rules were created pursuant to its ratemaking authority set for in Article XV sec. 3 of the Arizona
3 constitution.

4 Because the Commission's rate making authority is plenary, pursuant to its authority granted
5 under Article XV, Section 3 of the Arizona Constitution,²⁶ it would be simply illogical to conclude
6 that the Commission's plenary ratemaking authority would preclude it from waiving the applicability
7 of a rule it promulgated under its ratemaking authority if the rule is not functioning in a manner that
8 is in the public interest. Therefore, the Commission should reject EFCA's argument.

9 It is also interesting to note that the Recommendation docketed on July 20, 2016 in the UNS
10 Electric, Inc. rate case includes a recommendation²⁷ that would postpone phase two of that case to
11 consider any changes to UNS's net metering tariffs and proposed rate options for Residential and DG
12 customers until after the issuance of an order in the Commission's Value of DG docket.

13 EFCA next argues that SSVEC's grandfathering proposal is illegal and should be rejected
14 because it is illegal. Again, although Staff is taking no position on NEM in this case, it believes it is
15 necessary to point out the mistakes in EFCA's position.

16 This issue really boils down to the Company's proposed April 14, 2015 grandfathering date for
17 NEM for customers who take service under the Company's proposed DG-E tariff. EFCA argues that
18 a grandfathering date that occurs in the past will result in retroactive ratemaking but that is not the
19 case, and EFCA's argument is simply incorrect. Under the Company's proposal, any DG customer
20 that signs up after the grandfathering date will be subject to the new NEM tariff (if the Company's
21 proposal is approved) as of the date of the decision in this case.

22 Despite EFCA's arguments, the Company has not made any proposal that would result in
23 retroactive rate making, i.e., going back in time to seek additional payments from its customers from
24 the grandfathering date through the date of the decision. Again, EFCA is simply mistaken in its
25 arguments.

27 ²⁵ *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 645 P.2d 231 (1982).

28 ²⁶ *Id.*

²⁷ Docket E-04204A-15-0142, Recommendation at 140, 2-4.

1 Staff's argument that no retroactivity is contemplated by the Company is further confirmed by
2 this testimony during the hearings in this matter:

3 By Mr. Van Cleve:

4 Q. You had indicated that with grandfathering, it was never the
5 intention, essentially, that rate design would also be grandfathered.

6 Is that a fair characterization? It was just as to the net metering,
7 not as to the other rates that the customer would pay?

8 A. That's correct.²⁸

9 In its Initial Brief,²⁹ for the first time in this case, EFCA presents a table that its witness Mark
10 Fullmer used in his surrebuttal testimony in the Unisource Electric, Inc. rate case, Docket No. E-
11 04204A-15-0142. Staff and the Company had no opportunity to cross-examine Mr. Fullmer on the
12 validity of the numbers contained in the table, which are from the UNSE case, not this case;
13 therefore, the Commission should give the table no weight whatsoever in this case.

14 Staff believes it is also necessary to point out some errors in EFCA's initial brief. At page
15 eight, lines nine-eleven, culminating in its footnote 27, EFCA argues that Staff agrees with EFCA
16 that SSVEC's proposed DG rates are discriminatory. This is an incorrect characterization of Staff's
17 position. Although, Staff has argued throughout this proceeding that SSVEC has not presented
18 evidence that supports a DG rate class, Staff has never argued or agreed with EFCA that the
19 Company's proposed DG rates are discriminatory. Indeed, in the sections of the transcript that EFCA
20 cites in footnote 27, the word discriminatory is never mentioned by either Staff witness. Staff's
21 position is simply that SSVEC has not justified a separate rate classification for Residential DG
22 customers in this case.

23 Further, at page thirteen, 22-23, of its initial brief, EFCA implies that Staff withdrew its
24 original NEM recommendation because Staff understood the potential of severe repercussions to the
25 DG market in the Company's service area in connection with the Company's NEM proposal. Again,
26 this improperly characterizes Staff's position. As explained in detail in Staff's initial brief, Staff
27 changed its original NEM recommendation to allow the Commission to decide the issue based upon

28 ²⁸ Tr. 521:8-14.

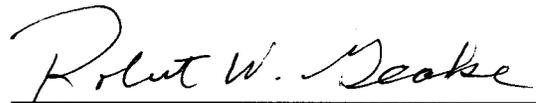
²⁹ EFCA Br. at 12-13.

1 the SSVEC and EFCA positions, and because Staff believes it needs more policy direction from the
2 Commission to support changes to NEM in this case. The record does not support EFCA's
3 characterization, and the Staff Surrebuttal testimony EFCA cites in its footnote 55 does not support
4 EFCA's characterization; indeed, it confirms Staff's position that it needs more information before
5 formulating a policy direction in this case.

6 **IV. CONCLUSION.**

7 Staff respectfully requests that the Commission adopt Staff's recommendations on the
8 disputed issues in this matter, as discussed and detailed in its initial brief and this reply brief, for the
9 reasons stated therein, and based on the testimony and evidence provided in this matter.

10 RESPECTFULLY SUBMITTED this 5th day of August, 2016.

11 

12 _____
13 Robert W. Geake
14 Wesley Van Cleve
15 Attorneys, Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, AZ 85007
19 (602) 542-3402
20 rgeake@azcc.gov
21 wvancleve@azcc.gov
22 mfinical@azc.gov
23 jalward@azcc.gov
24 **Consented to Service by Email**

SERVICE LIST FOR DOCKET NO. E-01575A-15-0312

On this 5th day of August, 2016, the foregoing document was filed with Docket Control as a Utilities Division Brief, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
HearingDivisionServicebyEmail@azcc.gov

Garry D. Hays
THE LAW OFFICES OF GARRY D.
HAYS, PC
1702 East Highland Avenue, Suite 204
Phoenix, AZ 85016

Jeffrey W. Crockett
CROCKETT LAW GROUP, PLC
1702 East Highland Avenue, Suite 204
Phoenix, AZ 85016
Attorney for Sulphur Springs Valley Electric
Cooperative, Inc.
jeff@jeffcrockettlaw.com
kchapman@ssvec.com

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

Consented to Service by Email

Kerri A. Carnes
ARIZONA PUBLIC SERVICE COMPANY
P.O. Box 53999, MS 9712
Phoenix, AZ 895072

Thomas A. Loquvam
Thomas L. Mumaw
Melissa M. Krueger
PINNACLE WEST CAPITAL
CORPORATION
P.O. Box 53999, MS 8692
Phoenix, AZ 85072
Attorneys for Arizona Public Service
Company
Thomas.loquvam@pinnaclewest.com

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

Consented to Service by Email

Thomas Broderick
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Thomas Harris, President
ARIZONA SOLAR ENERGY INDUSTRIES
ASSOCIATION
2122 West Lone Cactus Drive, Suite 2
Phoenix, AZ 85027
Tom.Harris@AriSEIA.org

Dwight Nodes
Director, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Consented to Service by Email

Consented to Service by Email

