

ORIGINAL

EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

11 IN THE MATTER OF THE) DOCKET NO. E-01575A-15-0312
12 APPLICATION OF SULPHUR SPRINGS)
13 VALLEY ELECTRIC COOPERATIVE,)
14 INC., FOR A HEARING TO)
15 DETERMINE THE FAIR VALUE OF ITS)
16 PROPERTY FOR RATEMAKING)
17 PURPOSES, TO FIX A JUST AND)
18 REASONABLE RETURN THEREON,) ENERGY FREEDOM COALITION
19 TO APPROVE RATES DESIGNED TO) OF AMERICA'S EXCEPTIONS TO
20 DEVELOP SUCH RETURN AND FOR) RECOMMENDED ORDER AND
21 RELATED APPROVALS.) OPINION

18
19 The Energy Freedom Coalition of America ("EFCA") hereby files its Exceptions to the
20 October 12, 2016, Recommended Opinion and Order (the "ROO") issued in this docket.

21 **I. Convening a Phase 2 is appropriate**

22 EFCA supports the ROO's conclusion that issues related to net metering ("NEM") and
23 rate design for distributed generation ("DG") solar customers should be dealt with in a Phase 2
24 hearing commencing only after the conclusion of the Commission's investigation into the value
25 of distributed generation. This result is consistent with the decision rendered in the UNSE Rate
26 Case and should be adopted here.

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1 **II. EFCA supports fully grandfathering DG customers and suggests a clarifying change**
2 **to strengthen the ROO**

3 EFCA supports the ROO's recitation of the Commission's continued support for
4 grandfathering as reiterated in the Decision resolving the UNSE Rate Case. However, the
5 confirmation of the Commission's commitment to grandfathering should be further clarified to
6 make sure that the Commission's will is clearly set forth under the unique circumstances of this
7 case.

8 Both SSVEC and UNSE proposed retroactive dates for determining what DG customers
9 would receive grandfathering protection. However, what "grandfathering" meant to each
10 company was substantially different. While UNSE proposed grandfathering DG customers under
11 current NEM and current rate design, SSVEC's version of "grandfathering" preserved NEM, but
12 exposed all DG customers, even those that adopted DG prior to the "cut-off date," to changes to
13 rate design leading to a massive fixed customer charge increase from \$10.25 all the way to
14 \$50.00 a month. This was no "grandfathering" at all and the record reflected that SSVEC's
15 "grandfathered" customers would actually pay higher rates than those DG customers that were
16 not "grandfathered" under SSVEC's proposal.

17 EFCA's concern is that the ROO uses language from the UNSE Decision whereby it
18 indicates that those signing up for solar before the end of the rate case will be treated the same as
19 those that signed up before the proposed April 15, 2015 cut-off date. In this case, however,
20 SSVEC had actually proposed not grandfathering the rate design of those who signed up for DG
21 even before the cut-off date so treating those adopting DG before and after the cut-off date the
22 same would not actually protect those that signed up before the cut-off date from the \$50.00
23 charge. Essentially, SSVEC proposed treating all DG customers the same on rate design, by
24 arguing for absolutely no grandfathering. As a result, unless further clarified, the ROO could be
25 read to support only grandfathering NEM while not protecting DG customers from increased
26 fees and rate design changes. EFCA does not believe this is the Commission's intent and would
27 not want this to be a point of contention in Phase 2.

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1 The Commission has been clear in its support for fully grandfathering those that apply for
2 DG interconnection through the end of the rate case and EFCA suggests modified language to
3 make sure that it is clear in this case that grandfathering applies to NEM as well as rate design.
4 EFCA believes it is appropriate to draw upon language set forth in the October 7, 2016,
5 Recommended Opinion and Order in the Value of Solar Docket (E-00000J-14-0023) (the “VOS
6 ROO”) and to add that language into the ROO accordingly.

7 EFCA suggests the following clarifying amendment to assist the Commission in clearly
8 communicating its position in light of the unique facts of this case:¹

9
10 *DELETE page 34, line 21 to page 34, line 23 and replace with:*

11
12 *“Therefore, going forward, DG customers who have signed up for new DG interconnection*
13 *before the effective date of the Decision issued in Phase 2 will be considered to be fully*
14 *grandfathered and continue to utilize currently-implemented rate design and net metering, and*
15 *will be subject to currently-existing rules and regulations impacting DG.”*

16
17 **III. The 143% increase in the fixed customer charge should be rejected**

18 EFCA’s biggest concern with the ROO is that it approves an unprecedented increase in
19 the fixed customer charge raising it 143%, from \$10.25 today, all the way up to an
20 unprecedented \$25.00. EFCA objects to both the dramatic increase in the customer charge and
21 the rationale for that increase as expressed in the ROO. EFCA believes that any attempt to raise
22 a customer charge by nearly 150% in one rate case without evidence of an emergency situation
23 should be rejected.

24 **A. The fixed charge increase is too big, too fast**

25 The ROO suggests that the Commission take the unprecedented step of allowing the
26 utility to raise its \$10.25 fixed charge all the way to \$25.00 in one case. An annual 36% increase
27 to the fixed charge for four consecutive years flies in the face of gradualism and should be

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¹ This language is adapted from the VOS ROO at 154:1-4

1 rejected. Testimony at the hearing suggested this was the single largest fixed fee increase that
2 the testifying experts ever had heard of; there is nothing gradual about this.

3 ***B. The ROO's rationale for supporting the 143% increase in the fixed charge is***
4 ***erroneous and should be deleted***

5 The ROO supports the massive and unprecedented increase in the fixed customer charge
6 by asserting two rationales that the Commission must reject. First, the ROO concludes that the
7 mere fact that SSVEC has a two-part rate means it is "necessary" for fixed monthly charges to
8 increase dramatically. Next, the ROO justifies supporting this huge, unprecedented increase
9 because that as the fixed charge goes up, the volumetric rate will decrease. EFCA evaluates why
10 each of these rationale should be rejected.

11 **1. Increasing the customer charge is not "necessary" as the ROO**
12 **concludes; the volumetric rate could be increased as an alternative**

13 The ROO concludes that because SSVEC has a two part rate design, "it is necessary to
14 place more of the fixed costs of the Residential customer class in the monthly service availability
15 charge and rely less on the energy charge to cover the fixed costs."² This is a dangerous
16 conclusion to reach, and make no mistake, utilities seeking to raise fixed fees or implement
17 demand charges on residential utility customers throughout Arizona will be quoting this
18 conclusion if it remains in the ROO. If SSVEC believes it needs to earn additional revenue, it
19 can quite easily raise its volumetric rates, as all utilities in Arizona historically have done when
20 faced with similar circumstances.

21 Raising fixed charges is not the answer to utilities seeking to raise additional revenue.
22 Staff agreed with this during the hearing stating that, "Staff cannot support [increasing the fixed
23 customer] rates based solely on under-recovery, especially when under-recovery could be easily
24 addressed with a nominal increase in the volumetric energy rate."³ EFCA supports Staff's
25 conclusion on this point and believes it is clearly not "necessary" to raise fixed charges to solve
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28 ² ROO at 17:12-14. (emphasis added)

³ Van Epps Surrebuttal Test., Staff Ex. 10 at 4:1-9

1 under-recovery issues. In fact, a nominal increase in volumetric rates, as staff suggests, is much
2 more appropriate.

3 While EFCA expects that the Commission will not approve the extraordinary and
4 unprecedented 143% fixed charge increase, in the event that such change is approved, EFCA
5 suggests that the reference to it being “necessary” as a result of the two-part rate design should
6 be stricken to fully preserve the Commission’s flexibility going forward regarding fixed charges
7 and demand charges.

8 **2. The fact that the fixed charge increase is revenue neutral is not a**
9 **factor that supports the proposed monumental increase in the fixed charge**

10 The ROO attempts to explain its comfort with the unprecedented fixed charge increase by
11 noting that the when you evaluate the corresponding “decreasing energy rates, the net increase to
12 the residential customer is approximately \$3.50.”⁴ This is merely a recitation of the ratemaking
13 fact that changes in rate design need to be revenue neutral and should not be a reason that
14 Commission is comforted by an otherwise immense fixed charge increase.

15 The ROO’s rationale could be employed to support fixed charges of any size. For
16 example, the utility even could propose to transition to a 100% fixed charge billing arrangement
17 that is revenue neutral as to the residential class. Would the Commission be comforted that the
18 fixed charge would coincide with an elimination of the volumetric rate resulting in a revenue
19 neutral change?

20 The same could be said for controversial demand charges. Revenue neutral proposals to
21 implement demand charges could be made, but would that make this controversial rate design
22 any more or less palatable? In fact, the Commission has already rejected UNSE’s demand charge
23 proposal even though it was purportedly revenue neutral.

24 The current language of the ROO suggests the fact that a fixed charge increase is revenue
25 neutral (as it would be required to be) is somehow relevant when it certainly is not. EFCA asks
26 that if for some reason the Commission retains the excessive 143% increase, it at least strikes
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⁴ ROO at 17:15-16.

1 this language that suggests the revenue neutrality of a rate design change makes the change
2 desirable.

3 **IV. There is no reason to nullify R14-2-2305 in this ruling; the Commission should**
4 **exercise judicial restraint and delete superfluous language invalidating this Rule**

5 Whether or not SSVEC met its burden of proof on various issues has been hotly
6 contested during this action. EFCA argued that the clear and unambiguous language of R14-2-
7 2305 provides that DG customers cannot be subjected to different rates or charges from other
8 customers in the same class unless a specific benefit/cost study and a solar-specific cost of
9 service study have been performed and justify the otherwise discriminatory rates and charges.
10 This Rule includes language that says the benefit/cost and cost of service studies “shall be”
11 provided before any proposed rates or charges are approved on DG customers and, as such, this
12 requirement is mandatory, not optional.⁵

13 EFCA agrees with and welcomes the ROO’s ultimate conclusion that “SSVEC did not
14 provide sufficient evidence to support creation of a separate residential DG customer class.”⁶
15 However, EFCA believes that the ROO mistakenly includes language that needlessly renders
16 R14-2-2305 meaningless going forward. Prior to concluding that SSVEC failed to meet its
17 burden anyway, the ROO states, “Nor do we believe that failure to provide a solar-specific
18 COSS or benefit/cost analysis pursuant to A.A.C. R14-2-2305 necessarily prohibits
19 implementation of tariffs for partial requirements customers such as residential DG members.”
20 To be clear, the Rule specifically says that the COSS and benefit/cost analysis “shall be”
21 provided to “fully support” the proposed changes before they can be approved. By concluding
22 that failing to follow the Rule does not “necessarily prohibit[] implementation” of the rates and
23 charges, the ROO is declaring that R14-2-2305 is without force and effect; that the mandatory
24 language in the Rule is not actually mandatory. While EFCA strongly disagrees with this
25 conclusion for the reasons set out in its briefs, EFCA submits that there is a way for the
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28 ⁵ R14-2-2305.
⁶ ROO 17:4-5.

1 Commission to reserve judgment on this issue to a more appropriate time and place without
2 making this contentious but unnecessary declaration.

3 EFCA suggests that the ROO be amended to eliminate the superfluous language
4 declaring that R14-2-2305 is not a binding requirement. Had the ROO concluded that SSVEC
5 actually carried its burden on this issue, it would have been reasonable for the Commission to
6 explain why it felt it could create a new DG rate class when the utility had failed to provide the
7 studies that are expressly made mandatory in R14-2-2305. In this case however, the ROO
8 concludes that the utility failed to meet its burden anyway and, therefore there is no reason for
9 the Commission to make any determination about R14-2-2305. Since the Commission's
10 decision does not hinge on the Rule, there is no need to invoke it and certainly no need to make a
11 finding contradicting the plain language of the Rule.

12 Judicial bodies commonly act to limit their decisions so they do not make declarations of
13 law that are not essential to deciding the matter at hand. Having declared that SSVEC did not
14 carry its burden of proof, EFCA urges the Commission to exercise this common judicial restraint
15 and not unnecessarily eliminate the protections afforded by R14-2-2305 in this docket. Quite
16 simply, there is a more direct and less controversial way of achieving the same practical result.
17 A failure to modify the ROO accordingly could necessitate litigation on this important legal issue
18 that could easily be avoided while retaining the ROO's conclusions and even its complete
19 justification therefore.

20 The following Amendment would retain the conclusion reached in the ROO along with
21 the basis for the conclusion without simultaneously, and needlessly, finding that the express
22 mandatory requirements set forth in R14-2-2305 are not going to be treated as mandatory:

23
24 **DELETE** page 16, line 24 starting with the word "Although" through page 17, line 3.

1 Respectfully submitted this 21st day of October, 2016.

2
3 **Rose Law Group pc**

4
5 /s/ Court S. Rich

6 Court S. Rich

7 Attorney for Energy Freedom Coalition of America

8 **Original and 13 copies filed**
9 **this 21st day of October, 2016 with:**

10 Docket Control
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, Arizona 85007

14 *I hereby certify that I have this day served a copy of the foregoing document on all parties of*
15 *record in this proceeding by regular or electronic mail to:*

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