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Utility Rate Plan Addressing Certain Self-Generating Solar Customers: U.S. District Court Addresses Equal Protection/Antitrust Challenges

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A United States District Court (D. Arizona) ("Court") addressed in an August 18, 2022, Opinion certain issues arising out of the Salt River Project Agricultural Improvement and Power District ("SRP") adoption of a new rate structure (denominated Standard Electric Price Plans ["SEPP"]).

The SEPP included a new E-27 Plan charging solar customers who began self-generating electricity after December 8, 2014, additional fees and different rates.

A group of Arizona SRP customers challenged E-27 alleging violation of the Equal Protection Clause and certain federal antitrust laws.

The Plaintiff customers encompassed those who installed solar panels after E-27 took effect.

SRP moved to dismiss the alleged claims.

The Equal Protection claim was deemed subject to a rationale-basis review. The claim involved an allegation that similarly situated individuals were being treated differently. The Court held that the Plaintiffs had the burden of proving the classification is not rationally related to a legitimate government interest.

First, the Plaintiffs were required to prove they were similarly situated to non-solar customers and solar customers who were grandfathered into the new structure. This would require that the Plaintiffs be "arguably indistinguishable" from non-solar customers and solar customers that had been grandfathered into the plan.

The Court held that the non-solar customers and the grandfathered solar customers were not similarly situated to the Plaintiffs based on the energy usage, grid demands, and the nature of the commercial relationship. The distinctions cited included:

- Energy Usage:
 1. solar customers use less energy than non-solar customers
- Grid Demands:

1. solar customers draw energy from the grid and can generate excess energy that the grid must absorb
- Nature of the Commercial Relationship:
 1. solar customers buy and sell energy from SRP, but non-solar customers only buy energy
 2. grandfathered solar customers had a legitimate reliance on the previous rate and subjecting them to the E-27 could result in rate shock

The Court, considering all of these differences, held the Plaintiffs could not compare their treatment to the other two categories of consumers because they were not similarly situated.

Second, the Plaintiffs were required to prove that SRP lacked a legitimate governmental interest in increasing the electricity rates for Solar customers. The plaintiffs argued that E-27 was not rationally related to a legitimate government interest because Arizona law prevents distinctions between solar and non-solar customers for the purpose of recovering stranded costs. Stranded costs are expenses that cannot be recovered from customers through competitive electric prices.

SRP denied that the purpose of E-27 was to recover stranded costs. Instead, it argued the purpose was to recover a portion of fixed costs from solar customers that are receiving services. The stated purpose behind the plan was to equalize costs to ensure that Solar Customers “pay their fair share.”

Under a rational basis review, courts give an extreme deference to regulatory economic line-drawing. Therefore, the Court found this to be a legitimate state interest.

Finally, the Plaintiffs argued that the legitimate state interest of equalizing costs was not rationally related to the E-27 plan because it did not actually save SRP money. However, whether the SRP plan achieves its stated goal was not deemed relevant in a rational basis inquiry. The question is whether SRP could have rationally decided that the electricity pricing would achieve the stated objective of equalizing costs.

The Court found that SRP could have rationally decided that its “pricing structure was needed to eliminate a subsidy for those customers at the expense of others.” Consequently, the Equal Protection claim was dismissed.

The Court also addressed the argument that E-27 either fostered a monopoly or is an attempt to monopolize in violation of federal antitrust laws. The Court balances a number of factors in determining whether a plaintiff who has been injured has anti-trust standing. In this decision, the Court focused its decision on:

- the nature of the plaintiff’s alleged injury and whether it is the type that anti-trust laws were meant to address

The Plaintiffs alleged that being charged higher than normal rates for their electricity was an anti-trust injury. However, a company that charges higher rates before it achieves monopoly power is merely creating an incentive for other competitors to enter the market with more competitive prices. This is not the type of injury that the anti-trust laws were designed to prevent.

The Court further held competitors, rather than consumers, have standing to challenge an attempted monopolization. The plaintiffs, as electricity consumers, lacked standing to bring a claim for attempted monopolization.

A copy of the Opinion can be downloaded [here](#).