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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ARIZONA ELECTRIC POWER COOPERATIVE,
INC. FOR A RATE INCREASE.

DOCKET NO. E-01773A-04-0528

IN THE MATTER OF THE APPLICATION OF
SOUTHWEST TRANSMISSION COOPERATIVE,
INC. FOR A RATE INCREASE.

DOCKET NO. E-04100A-04-0527

PROCEDURAL ORDER

BY THE COMMISSION:

On July 23, 2004, Arizona Electric Power Cooperative, Inc. ("AEPCO") and Southwest Transmission Cooperative, Inc. ("SWTC") (collectively "Applicants") filed Applications for Rate Increases.

On August 27, 2004, Commission Utilities Division Staff ("Staff") notified AEPCO and SWTC, respectively, that their Applications met the sufficiency requirements of A.A.C. R14-2-103. Staff classified both entities as Class A utilities.

Counsel for AEPCO and SWTC and Staff requested a Procedural Conference prior to the Hearing Division issuing its Procedural Order setting the matters for hearing. Pursuant to Procedural Order dated September 3, 2004, a Procedural Conference was held on September 9, 2004.

During the September 9, 2004 Procedural Conference, Applicants requested an expedited schedule for filing testimony and conducting the hearing in this matter. Under the Applicants' proposed schedule, Staff and Intervenors would file direct testimony on November 15, 2004, rebuttal testimony would be due December 6, 2004 and surrebuttal testimony on December 20, 2004, with a hearing in the early part of January, 2005. Applicants state that the request for an expedited schedule is based on comments made by the Commission when it considered and adopted Decision No. 66835 (March 12, 2004) (SWTA's application for adjudication not a public utility corporation). At that

1 time, Applicants state Commissioners indicated that the Commission should be flexible and efficient
2 in its consideration of rate cases for cooperatives. The Applicants also argued that the Commission
3 should expedite the applications because both Applicants are losing money and AEPCO will be in
4 technical default of financial ratios required by its lenders.

5 Staff opposed the expedited schedule. Staff states that the issues in this case are potentially
6 complex and Staff wanted to be sure that all issues receive adequate analysis. Staff also cited
7 personnel constraints that prevent it from being able to recommend expediting the applications. Staff
8 stated it needs the full 180 days allowed under Commission Rules for Staff to file testimony in a
9 Class A utility rate case. Pursuant to R14-2-103(B)(11), Staff's direct testimony would be due
10 February 23, 2005.

11 In addition to scheduling issues, Staff requested that the two applications be consolidated.
12 Staff argued that because Applicants are affiliates, there are issues and witnesses in common which
13 favor consolidation. As or more importantly, however, Staff feared that if the records were not
14 consolidated, one or the other might be incomplete. Applicants opposed consolidation, but agreed
15 that the testimony and hearings should be coordinated. Applicants believed that consolidation might
16 lead to confusion.

17 In Decision No. 66835, in deciding that the Commission had jurisdiction over SWTC, the
18 Commission stated, "This Commission has in the past shown flexibility in regulating non-profit
19 membership cooperatives, and there is no reason that for as long as circumstances warrant, the
20 Commission would not exercise flexibility in the future." Decision No. 66835 at 19. When adopting
21 Decision No. 66835, Commissioners expressed concerns that where appropriate, the Commission
22 should move in a timely fashion and be flexible in processing the cooperative applications, but they
23 also expressed the need to protect due process.

24 In Decision No. 63868 (July 25, 2001) the Commission approved the restructuring of AEPCO
25 that resulted in SWTC being spun off into a separate entity. In that Decision, the Commission
26 ordered AEPCO and SWTC to file a rate case application in 18 months after the restructure. The
27 purpose of requiring the rate case filing as expressed in Decision No. 63868, was to insure that asset
28 and liability allocations among the three entities have been performed in a fair and equitable manner;

1 to insure that the ultimate customers of AEPCO benefit from any cost savings flowing from the
2 restructuring; to insure that AEPCO's and SWTC's rates are fair and reasonable; to determine
3 allocations are reasonable; and to determine if the restructured cooperatives were experiencing
4 savings from the restructuring that exceed costs. Dec. No. 63868, Finding of Fact No. 57, at 11.

5 In Decision No. 65367 (November 5, 2002), the Commission approved SWTC's Open Access
6 Transmission Tariff ("OATT"). In that Decision, the Commission found that "[a]ny rate case filed
7 by Southwest will involve substantial issues concerning Southwest's affiliate, AEPCO.
8 Accordingly, the rate case discussed herein should be a joint AEPCO/Southwest application. This
9 rate case should be filed in full compliance with the requirements of R14-2-103." Dec. No. 65367,
10 FFOF 23 at 6.

11 The applications addressed herein are the first rate cases for AEPCO and SWTC since the
12 restructuring. It is important at all times that issues such as allocations be considered and addressed
13 sufficiently, but especially so the first time. Although the Commission is sympathetic to the
14 Applicants' request to expedite these applications, Staff does not believe that it is able to give
15 sufficient consideration to the various issues in less than the 180 days normally granted under our
16 rules. A general desire for speed cannot blindly trump the need for a thorough analysis and the
17 ability of interested parties to participate. In this case, given the importance of our review, we must
18 rely on Staff's assessment of its own capabilities. Consequently, we cannot expedite the applications
19 as requested, but will take measures to insure the applications are processed efficiently and timely.

20 Because these applicants are affiliates and their rate cases will involve several inter-related
21 issues, not the least of which is allocating expenses. The need to insure a complete record in both
22 cases warrants consolidation. The inter-relationship of the applications was recognized in Decision
23 No. 65367. Applicants raise concerns about potential confusion and the need to recognize that while
24 these entities are affiliates, they are also separate entities with unique circumstances as well. Thus, to
25 assist in minimizing confusion, the parties should file separate testimony for each company. During
26 the pre-hearing conference, the Hearing Division and the parties can discuss how to handle common
27 witnesses in an attempt to promote efficiency and minimize confusion. By consolidating the hearing,
28

1 the Commission will not have to contend with the possibility of an issue affecting both entities not
2 arising until after one of the hearing records is closed, and having to re-open the record.

3 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
4 the preparation and conduct of this proceeding.

5 IT IS THEREFORE ORDERED that the above-captioned matters should be consolidated.

6 IT IS FURTHER ORDERED that the hearing in the consolidated matters shall commence on
7 **April 14, 2005, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices,
8 **Room 222, 400 West Congress, Tucson, Arizona 85701.**

9 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on **April 7, 2005**, at
10 10:30 a.m. at the Commission's Tucson offices, for the purpose of scheduling witnesses and the
11 conduct of the hearing.

12 IT IS FURTHER ORDERED that Staff's direct testimony and associated exhibits to be
13 presented at hearing on behalf of Staff shall be reduced to writing and filed on or before **February**
14 **23, 2005.**

15 IT IS FURTHER ORDERED that any direct testimony and associated exhibits to be presented
16 at hearing on behalf of intervenors shall be reduced to writing and filed on or before **February 23,**
17 **2005.**

18 IT IS FURTHER ORDERED that any rebuttal testimony and associated exhibits to be
19 presented at hearing by the Company shall be reduced to writing and filed on or before **March 16,**
20 **2005.**

21 IT IS FURTHER ORDERED that any surrebuttal testimony and associated exhibits to be
22 presented by the Staff or intervenors shall be reduced to writing and filed on or before **April 4, 2005.**

23 IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have
24 been prefiled as of **April 4, 2005**, shall be made before or at the **April 7, 2005** pre-hearing
25 conference.

26 IT IS FURTHER ORDERED that all testimony filed shall include a table of contents which
27 lists the issues discussed.
28

1 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
2 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is
3 scheduled to testify.

4 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the
5 pre-filed testimony of each of their witnesses and shall file each summary at least two working days
6 before the witness is scheduled to testify.

7 IT IS FURTHER ORDERED that copies of summaries should be served upon the Presiding
8 Officer, the Commissioners, and the Commissioners' aides as well as the parties of record.

9 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
10 except that all motions to intervene must be filed on or before February 23, 2005.

11 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
12 regulations of the Commission, except that: until February 23, 2005, any objection to discovery
13 requests shall be made within 7 days¹ of receipt and responses to discovery requests shall be made
14 within 10 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and
15 responses shall be made in 7 days¹; the response time may be extended by mutual agreement of the
16 parties involved if the request requires an extensive compilation effort; and no discovery requests
17 shall be served after April 8, 2005.

18 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
19 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
20 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
21 request, a procedural hearing will be convened as soon as practicable; and that the party making such
22 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
23 hearing provide a statement confirming that the other parties were contacted²

24
25
26
27 ¹ "Days" means calendar days.

28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are
2 not ruled upon by the Commission within 10 days of the filing date of the motion shall be deemed
3 denied.

4 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
5 the filing date of the motion.

6 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
7 of the response.

8 IT IS FURTHER ORDERED that the Applicants shall provide public notice of the hearing in
9 this matter, in the following form and style, with the heading in no less than 24 point bold type and
10 the body in no less than 10 point regular type:

11 **PUBLIC NOTICE OF HEARING ON THE**
12 **RATE APPLICATIONS OF**
13 **ARIZONA ELECTRIC POWER COOPERATIVE, INC.**
14 **DOCKET NO. E-01773A-04-0528**
AND SOUTHWEST TRANSMISSION COOPERATIVE, INC.
DOCKET NO. E-04100A-04-0527

15 On July 23, 2003, Arizona Electric Power Cooperative, Inc. ("AEPKO") and
16 Southwest Transmission Cooperative, Inc. ("SWTC") (collectively "Applicants") filed
17 applications with the Arizona Corporation Commission for rate increases. AEPKO's
18 Application indicates it is requesting an approximate 10 percent increase in revenue.
19 SWTC's Application indicates it is requesting an approximate 14 percent revenue
20 increase. The actual percentage rate increase for individual customers will vary
depending upon the type and quantity of service provided. The applications have been
consolidated for purposes of a hearing. Copies of the applications and proposed tariffs
are available at the Commission's offices for public inspection during regular business
hours and at the Applicants' offices: **(insert addresses)**.

21 The Commission will hold a hearing on this matter beginning April 14, 2005 at 10:00
22 a.m. at the Commission's offices, Room 222, 400 West Congress, Tucson, Arizona.
Public comments will be taken on the first day of the hearing.

23 The law provides for an open public hearing at which, under appropriate
24 circumstances, interested parties may intervene. Intervention shall be permitted to any
25 person entitled by law to intervene and having a direct and substantial interest in the
matter. Persons desiring to intervene must file a written motion to intervene with the
Commission, which motion should be sent to the Cooperative or its counsel and to all
parties of record, and which, at the minimum, shall contain the following:

- 26 1. The name, address, and telephone number of the proposed intervenor
27 and of any party upon whom service of documents is to be made if
28 different than the intervenor.

- 1 2. A short statement of the proposed intervenor's interest in the
2 proceeding (e.g., a customer of the Cooperative, a stockholder of the
3 Company, etc.).
- 4 3. A statement certifying that a copy of the motion to intervene has been
5 mailed to the Cooperative or its counsel and to all parties of record in
6 the case.

7 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
8 that all motions to intervene must be filed on or before February 23, 2005. The
9 granting of intervention, among other things, entitles a party to present sworn evidence
10 at the hearing and to cross-examine other witnesses. However, failure to intervene
11 will not preclude any interested person or entity from appearing at the hearing and
12 providing public comment on the application or from filing written comments in the
13 record of the case. You will not receive any further notice of this proceeding unless
14 you request it.

15 If you wish to make written comments objecting to, or supporting this application.
16 Mail them to:

17 Arizona Corporation Commission
18 Attention Docket Control
19 Re: Arizona Electric Power Cooperative, Inc.
20 E-01773A-04-0528
21 Southwest Transmission Cooperative, Inc.
22 E-04100A-04-0527
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 If you have any questions about this application, or want further information on
26 intervention, you may contact the Consumer Services Section of the Commission at
27 1200 W. Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000.

28 The Commission does not discriminate on the basis of disability in admission to its
public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, as well as request this document in an alternative
format, by contacting Yvonne McFarlin at YMcFarlin@admin.cc.state.az.us, the ADA
Coordinator, voice phone number 602/542-3931. Requests should be made as early as
possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that the Applicants shall mail to each of its customers, and
publish at least twice (and at least two weeks apart) in newspapers of general circulation in the
service territories of their member distribution cooperatives, a copy of the above notice by November
30, 2004. Applicants shall also arrange to have the notice published in any newsletters published by
its member distribution cooperatives prior to January 31, 2005.

IT IS FURTHER ORDERED that the Applicants shall file certification of mailing and
publication as soon as practicable after the mailing or publication has been completed.

1 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
2 of same, notwithstanding the failure of an individual customer to read or receive the notice.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
4 Communications) applies to this proceeding as the matter is now set for public hearing.

5 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
6 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

7 DATED this 15th day of September, 2004.

8
9 
10 JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

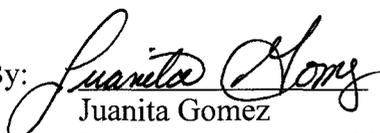
11
12 Copies of the foregoing mailed
this 15th day of September, 2004 to:

13 Michael M. Grant
14 Todd C. Wiley
15 Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix Arizona 85016-9225

16 Christopher Kempley, Chief Counsel
17 LEGAL DIVISION
18 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

19 Ernest Johnson, Director
20 Utilities Division
21 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

22 Arizona Reporting Service, Inc.
23 2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1103

24
25 By: 
26 Juanita Gomez
Secretary to Jane Rodda