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Arizona Corporation Commission

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DOCKET NO. E-01773A-04-0528

DOCKET NO. E-04100A-04-0527

**PROCEDURAL ORDER**

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

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

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

**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 Intervenor 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

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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 days<sup>1</sup> 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 days<sup>1</sup>; 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 contacted<sup>2</sup>

24  
25  
26  
27 <sup>1</sup> "Days" means calendar days.

28 <sup>2</sup> 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. ("AEPSCO") and  
16 Southwest Transmission Cooperative, Inc. ("SWTC") (collectively "Applicants") filed  
17 applications with the Arizona Corporation Commission for rate increases. AEPSCO'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 15<sup>th</sup> day of September, 2004.

8  
9   
10 JANE L. RODDA  
11 ADMINISTRATIVE LAW JUDGE

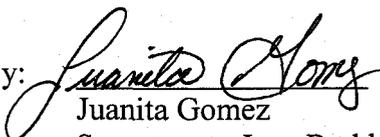
11  
12 Copies of the foregoing mailed  
13 this 15<sup>th</sup> day of September, 2004 to:

13 Michael M. Grant  
14 Todd C. Wiley  
15 Gallagher & Kennedy, P.A.  
16 2575 E. Camelback Road  
17 Phoenix Arizona 85016-9225

16 Christopher Kempsey, Chief Counsel  
17 LEGAL DIVISION  
18 Arizona Corporation Commission  
19 1200 W. Washington Street  
20 Phoenix, Arizona 85007

19 Ernest Johnson, Director  
20 Utilities Division  
21 Arizona Corporation Commission  
22 1200 W. Washington Street  
23 Phoenix, Arizona 85007

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

24  
25 By:   
26 Juanita Gomez  
27 Secretary to Jane Rodda  
28