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AZ CORP COMMISSION

ARIZONA CORPORATION COMMISSION
TUCSON, AZ

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM. IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-01933A-98-0471

SUPPLEMENTAL RESPONSE OF
TRICO ELECTRIC COOPERATIVE,
INC. TO THE QUESTIONS
PROPOUNDED BY THE
COMMISSIONERS REGARDING
ELECTRIC RESTRUCTURING

1 I. INTRODUCTION

2 A. Reservation of Rights. Trico Electric Cooperative, Inc. ("Trico") submits the
3 following responses to the January 14, 2002 and January 30, 2002 questions propounded by
4 Chairman Mundell, the February 7, 2002 questions propounded by Commissioner Irvin and the
5 January 22, 2002 questions propounded by Commissioner Spitzer regarding electric restructuring
6 supplementing the responses filed by the Rural Electric Distribution Cooperatives ("REDCs"). By
7 filing these responses Trico does not in any manner waive its rights and legal positions with
8 respect to the numerous Commission Decisions adopting various forms of the Retail Electric
9 Competition Rules, A.A.C. R14-2-1601, *et seq.* ("Rules") and issuing to numerous Electric
10 Service Providers certificates of convenience and necessity ("CC&Ns") pursuant to Rule 1603,
11 and Trico reserves all rights asserted by it in connection with such Decisions that are now
12 pending in the appeal of Consolidated Cases in the Court of Appeals, Division One, 1CA-CV 01-
13 0068, Maricopa County Superior Court No. CV 1997-03748 (Consolidated).

14 The following pertain to all of the questions propounded by the Chairman,
15 Commissioner Irvin and Commissioner Spitzer.

16 B. Constitutional Issues.

17 Trico believes this Generic Proceeding Concerning Electric Restructuring Issues is
18 premature. The Commission should await the decision of the Court of Appeals, Division One, in
19 the pending electric deregulation case which will determine under the Arizona Constitution what
20 the Commission can and cannot do. The following constitutional issues have been raised in the
21 appeal:¹

22 1. Whether the Commission is required to ascertain the fair value of the
23 property of an electric public service corporation ("PSC") devoted to the public use in setting the
24 PSC's rates?

25 ¹ Words and phrases used herein in which the first letter is capitalized not otherwise
26 defined herein have the same definitions as the Electric Competition Rules adopted by the
Commission in Decision No. 61969 on September 29, 1999.

1 2. Whether the Commission must use fair value when setting rates for PSCs
2 and, if so, to what extent?

3 3. Can the Commission delegate its mandatory rate setting duty to electric
4 service providers (“ESPs”) (as defined in A.R.S. §§40-201 and 40-202) or the market as provided
5 in the Rules?

6 4. Can the Commission permit the aggregation of consumers and/or the self-
7 aggregation of consumers. If so, can the Commission permit negotiation by the aggregated
8 consumers with ESPs to set their rates?

9 5. Is the Commission required to prescribe classifications of consumers to be
10 used by ESPs?

11 6. Can the Commission provide different rights, obligations or requirements
12 for ESPs and those PSCs who are not ESPs?

13 7. Is the Commission required to provide for Just Compensation pursuant to
14 Article II, Section 17 of the Arizona Constitution (as distinguished from the Fifth Amendment to
15 the United States Constitution) resulting from its granting access to ESPs to sell electricity in the
16 certificated areas of Affected Utilities?

17 8. Can the Commission substitute Stranded Costs for Just Compensation
18 pursuant to Article II, Section 17?

19 9. Do the Affected Utilities have a contract with the State of Arizona which
20 the Commission has impaired by adopting the Rules and issuing CC&Ns to ESPs?

21 10. Are the Wholesale Power Contracts between Arizona Electric Power
22 Cooperative, Inc. and each of its Arizona Class A Members (Trico, Duncan, Graham, Mohave
23 and Sulphur Springs) impaired by the Rules and the issuance of CC&Ns to ESPs?

24 11. Does the Commission have jurisdiction to require an unwilling PSC to
25 divest its Competitive Services and Competitive Generation Assets?
26

1 12. Does the Commission have the jurisdiction or the power to require a Code
2 of Conduct as provided in Rule 1616 between Sierra Southwest Cooperative Services, Inc. and
3 each of its Class A Members?

4 13. Does the Commission have the jurisdiction to remove substantial control of
5 a PSC's transmission facilities and vest such control in an Arizona Independent Scheduling
6 Administrator?

7 II. SUPPLEMENTAL RESPONSES TO THE COMMISSIONERS' QUESTIONS

8 A. Chairman Mundell's January 14, 2002 Questions:

9 Trico has no responses to supplement the responses of the REDCs.

10 B. Chairman Mundell's January 30, 2002 Questions:

11 **Corporate Structure and Affiliate Relations**

12 2. What is the extent of the Commission's authority to protect retail
13 consumers from any potential adverse consequences resulting from multi-
state companies operating in either wholesale or retail markets in the state?

14 A: **Article XV, Section 2 of the Arizona Constitution provides that all**
15 **corporations other than municipal engaged in furnishing electricity are deemed**
16 **public service corporations ('PSCs'). Article XV, Section 3 provides that the**
17 **Commission is mandated to prescribe just and reasonable rates and charges to be**
18 **made and collected by PSCs. Article XV, Section 14 provides that the Commission**
19 **shall ascertain and use fair value in prescribing rates. Accordingly, the Commission**
20 **is mandated to regulate the rates of out-of-state companies providing electricity to**
21 **retail consumers. Additionally, the Commission has the duty to review all purchases**
22 **of electricity by wholesale electric providers who sell to retail electric providers. By**
23 **properly executing these duties and otherwise complying with the Arizona**
24 **Constitution, the Commission can effectively protect retail consumers.**

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3. How would the existence of effective retail competition in Arizona affect your responses to Questions 1 and 2 above?

A: Retail competition that complies with the Constitution and laws of Arizona will provide retail consumers protection.”

Divestiture or Corporate Separation

14. How would the divestiture or transfer of assets of vertically integrated utilities now serving Arizona affect the Commission’s regulatory authority over the divested entities? What controls or limitations might the Commission place on divestiture or transfer of Assets to limit any loss of authority over the divested assets?

A: AEPCO, Duncan, Graham, Sulphur and Trico have taken the legal position in the pending deregulation cases before the Court of Appeals that involuntary divestiture is unconstitutional. Therefore, the Commission’s regulatory authority of regulated utilities who do not voluntarily divest is unimpaired. With respect to divested entities whose assets have been the result of a voluntary divestiture, such entities are PSCs and therefore subject to the full regulation by the Commission as mandated by the Constitution. With respect to voluntary divestiture, the Commission has ample authority to regulate pursuant to A.R.S. §40-285 as well as the applicable provisions of the Constitution and statutes.

16. How would the potential effects of divestiture or transfer of assets on Commission authority differ under a competitive retail regime than under a monopoly regime?

A: Since a competition retail regime and a monopoly regime are subject to the same constitutional and statutory provisions, there should be no difference in effects.

17. How would a requirement that competitive services, such as generation services, be offered only through a separate corporate affiliate affect the Commission’s regulatory authority and any risks identified in response to the questions above?

1 A. Nonprofit member owned cooperatives cannot have corporate
2 affiliates as the term is defined in A.A.C. R14-2-801, *et seq.* Investor owned utilities
3 can own all of the stock of a subsidiary and completely control the subsidiary. The
4 Distribution Cooperatives can only be individual members of a generation and
5 transmission cooperative (G&T) and no individual Distribution Cooperative can
6 control its G&T. The only manner in which it can obtain distributions of funds from
7 a G&T is through the distribution of capital credits which normally take a long
8 period of time.

9 18. For any risks resulting from a divestiture requirement or a requirement that
10 competitive services be offered through separate affiliate, how might those
11 risks be eliminated or reduced? Specifically --

12 a. What actions might the Arizona Commission take?

13 A: By exercising its mandatory duties pursuant to the Constitution and
14 A.R.S. §40-285, the Commission should be able to eliminate such risks.

15 C. Commissioner Irvin's February 7, 2002 Questions

16 I. Arizona Independent Scheduling Administrator

17 1. Please address whether Arizona's Constitution prohibits the Commission
18 from giving up any authority with respect to the pricing of services by
19 public service corporations which occur solely within the state.

20 A: The Constitution clearly prohibits the Commission from giving up
21 such authority.

22 2. Should Arizona be willing to let the federal government take over pricing
23 jurisdiction (market-based rates) for all retail transactions which occur in
24 the state, or is this an inevitable (and proper) result of opening retail
25 markets to competition?

26 A: In the event the federal government enacts legislation that clearly
preempts the applicable provisions of the Arizona Constitution and Arizona statutes
regarding retail pricing and transactions, under the Supremacy Clause of the United
States Constitution, such legislation will be effective and the applicable provisions of

1 the Arizona Constitution and Arizona statutes will be ineffective. However, in *U.S.*
2 *West II*, 34 P.3d 351 (Nov. 15, 2001), the Arizona Supreme Court held that the 1996
3 Federal Communications Act did not preempt the applicable provisions of the
4 Arizona Constitution and Arizona statutes.”

5 **II. Retail Electric Competition Rules (“Rules”)**

6 1. If the majority of market participants intend to market electricity only to
7 industrial, large commercial and load serving ESPs entities, should retail
8 markets be limited by load size to allow those entities with the bargaining
9 power to negotiate Direct Access?

10 **A: This question assumes that the existing deregulation in Arizona is**
11 **constitutional, which the Cooperatives dispute. If such deregulation is constitutional**
12 **or the Commission undertakes revised deregulation rules that are constitutional and**
13 **permit the restriction of market participants, retail markets limited by load size**
14 **would be appropriate.**

15 4. When price caps are lifted for the majority of Arizona consumers, what
16 assurances do we have that volatility in the market (for both natural gas and
17 electricity) will not result in unstable or inflated rates? Will the generation
18 price of electricity fluctuate with the price of natural gas?

19 **A: Assuming the existing deregulation is valid, there is no assurance that**
20 **volatility in the market will not result in unstable or inflated rates. As a matter of**
21 **fact, it is almost a certainty that some times in the future demand will exceed supply**
22 **and there will be unstable and inflated rates. The generation price of electricity will**
23 **fluctuate with the price of natural gas.**

24 7. Will IPPs market their power directly to retail customers, or are their
25 efforts mainly focused on selling power to wholesale customers?

26 **A: It depends on the IPP. It should be assumed that certain IPP will**
market directly with retail customers. Others will sell primarily to wholesale
customers.

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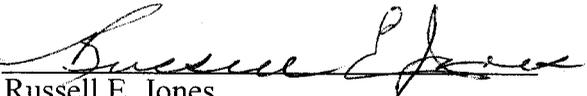
10. What are the long-term effects of divestiture for APS? How does the Commission guard against a PG&E situation, where the distribution company declares bankruptcy after profits have flowed to its parent holding company?

A: The Commission has ample powers under the Affiliate Rule, A.A.C. R14-2-801, et seq., to preclude improvident transactions between APS and its affiliate. In addition, both are PSCs and the Commission can regulate them as such.

D. Commissioner Spitzer's January 22, 2002 Questions.
Trico has no responses to supplement the responses of the REDCs.

RESPECTFULLY SUBMITTED this 23rd day of February, 2002.

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By 
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1 Original and 10 copies of the foregoing
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3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington
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8 Charles Watson

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