



0000109455

ORIGINAL

RECEIVED

2010 MAR 29 P 2:05

LAW OFFICES

WATERFALL ECONOMIDIS CALDWELL

HANSHAW & VILLAMANA, P.C.

SB No 00078300

5210 E. WILLIAMS CIRCLE, SUITE 800

TUCSON, ARIZONA 85711

TELEPHONE (520) 790-5828

FACSIMILE (520) 745-1279

Russell E. Jones, #000549, rjones@wechv.com

D. Michael Mandig, #005601, mmandig@wechv.com

Attorneys for Trico Electric Cooperative, Inc.

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 25 2010

DOCKETED BY *MM*

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chairman

PAUL NEWMAN

Commissioner

GARY PIERCE

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

RECEIVED

MAR 25 2010

ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85701

IN THE MATTER OF THE FORMAL
COMPLAINT OF GARY R. BAHR AND
LARRY C. ROWLEY AGAINST TRICO
ELECTRIC COOPERATIVE, INC.

Docket No. E-01461A-10-0073

**MOTION TO DISMISS AND
ANSWER OF TRICO ELECTRIC
COOPERATIVE, INC.**

MOTION TO DISMISS

TRICO ELECTRIC COOPERATIVE, INC. ("Trico") moves that the Arizona Corporation Commission ("Commission") dismiss Complainants' formal Complaint ("Complaint") against Trico on the following grounds:

1. The Complaint makes no allegation that Trico has any legal obligation to Complainants with respect to Silver Star Road or Herman's Road as having an ownership interest in the Roads or other legal basis for such alleged obligations; and

2. The Complaint is based upon an alleged tort for which the Arizona courts rather than the Commission have jurisdiction. *Campbell v. Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 586 P.2d 987 (1978).

1 e. The Road is located in or near the floodplain and has numerous
2 washes that funnel into the Road from the floodplain; the Road is subject to numerous rains
3 and flooding.

4 f. Trico has properly maintained its facilities in the Road.

5 g. Trico's trench and other facilities have not caused the erosion or other
6 conditions alleged in the Complaint.

7 h. Trenches and other facilities of other utilities are located in the Road;
8 Trico has responded to telephone calls of exposed cable and upon its investigation none of
9 the cables were Trico's.

10 i. Insofar as Herman Road is concerned, all of Trico's facilities are
11 overhead and do not cause any damage to Complainants or others.

12 WHEREFORE, Trico requests that the Complaint be dismissed with prejudice and
13 that Complainants take nothing insofar as Trico is concerned.

14 Respectfully submitted this 25th day of March, 2010.

15 WATERFALL ECONOMIDIS CALDWELL
16 HANSHAW & VILLAMANA, P.C.

17 By 
18 Russell E. Jones
19 D. Michael Mandig
20 5210 E. Williams Circle, Suite 800
21 Tucson, Arizona 85711
22 Attorneys for Trico Electric Cooperative, Inc.

23 Original and 13 copies of the foregoing
24 filed this 25th day of March 2010, with:

25 Docket Control (filed with Tucson office)
26 Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

1 Copy mailed this 25th day of March,
2010, to:

2 Gary R. Bahr
3 Larry C. Rowley
15150 W Ajo Way, Apt 458
4 Tucson, AZ 85735

5 Lyn Farmer
Chief Administrative Law Judge
6 Hearing Division
Arizona Corporation Commission
7 1200 W Washington
Phoenix, AZ 85007

8 Janice Alward, Esq.
9 Chief Counsel, Legal Division
Arizona Corporation Commission
10 1200 W Washington
Phoenix, AZ 85007

11 Steve Olea, Director
12 Utilities Division
Arizona Corporation Commission
13 1200 W Washington
Phoenix, AZ 85007

14
15 
16 _____

17
18
19
20
21
22
23
24
25
26