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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 17 2010

DOCKETED BY

IN THE MATTER OF TRICO ELECTRIC  
COOPERATIVE, INC.'S APPLICATIONS FOR  
APPROVAL OF A NET METERING TARIFF.

DOCKET NO. E-01461A-09-0450

PROCEDURAL ORDER

**BY THE COMMISSION:**

On January 26, 2010, the Arizona Corporation Commission ("Commission") issued Decision No. 71462 which approved Trico Electric Cooperative, Inc.'s ("Trico") net metering tariff. The tariff applies to customers with on-site generation using resources allowed by the Commission, and works in conjunction with the rate schedule under which the customer takes electric service from Trico.

Intervenor James Arkoosh filed an application for rehearing of Decision No. 71462 on the narrow issue of the alleged failure of the Commission to apply the provisions of Commission Rule A.A.C. R14-2-2305 in connection with its approval of a \$3.38 monthly administrative charge. Mr. Arkoosh's application for rehearing was denied by operation of law.

On April 8, 2010, Trico filed a request to reopen Decision No. 71462 pursuant to A.R.S. §40-252 for further Commission consideration and to provide notice and opportunity for the parties to be heard on the narrow issue raised by Mr. Arkoosh, and to supplement the record with information which Trico had previously provided to the Commission's Utilities Division ("Staff") and Mr. Arkoosh, but which had not been docketed.

On May 14, 2010, the Commission issued Decision No. 71694, which reopened Decision No. 71462 pursuant to A.R.S. § 40-252 and directed the Commission's Hearing Division to hold a procedural conference to discuss further proceedings in this matter, and granted Trico's request to supplement the record with the information that was previously provided to Staff and Mr. Arkoosh.

Pursuant to Procedural Order dated May 19, 2010, a Procedural Conference convened on June

1 22, 2010, at the Commission's Tucson offices. Trico, Mr. Arkoosh and the Commission's Utilities  
2 Division ("Staff") appeared.

3 Trico stated that it submitted documents in support of the tariff and recommended that as a  
4 next step Staff should file a Staff Report indicating whether Staff believes there is any reason to  
5 modify or amend the Order that approved the tariff. Trico believes that the Staff Report should  
6 indicate whether Staff believes that some sort of hearing is necessary.<sup>1</sup>

7 At the time of the Procedural Conference, Mr. Arkoosh had an appeal of Decision No. 71462  
8 pending before the Arizona Court of Appeals in Tucson, and expressed the desire not to have a  
9 hearing before the Commission, but to pursue his claims in the Court of Appeals.<sup>2</sup> Subsequently,  
10 however, the Commission received a copy of an Order of the Arizona Court of Appeals Division Two  
11 dismissing the appeal.

12 Staff indicated a belief that an evidentiary hearing is probably required in this matter.<sup>3</sup>

13 Mr. Arkoosh's Application for Rehearing alleged that in approving Trico's net metering tariff  
14 and approving the \$3.38 monthly Administrative Charge, the Commission did not comply with the  
15 requirements of R14-2-2305. This Rule provides:

16 New or Additional Charges

17 Net Metering charges shall be assessed on a nondiscriminatory basis. Any  
18 proposed charge that would increase a Net Metering Customer's costs  
19 beyond those of other customers with similar load characteristics or  
20 customers in the same rate class that the Net Metering Customer would  
21 qualify for if not participating in Net Metering shall be filed by the  
22 Electric Utility with the Commission for consideration and approval. The  
23 charges shall be fully supported with cost of service studies and  
24 benefit/cost analyses. The Electric Utility shall have the burden of proof  
25 on any proposed charge. (Emphasis Added)

26 Specifically, Mr. Arkoosh alleges Trico did not meet its burden to demonstrate that the approved  
27 charges were fully supported with cost of service studies and benefit/cost analyses.

28 Trico submitted data attached to its Petition to Re-Open Decision No. 71462 which it believes  
is responsive to the Commission's directive in Decision No. 71694. To determine compliance with  
Rule R14-2-2305, Mr. Arkoosh and Staff must have the opportunity to review Trico's submission to

<sup>1</sup> Transcript of the June 22, 2010 Procedural Conference ("Tr.") at 5 and 28.

<sup>2</sup> Tr. at 10, 14.

<sup>3</sup> Tr. at 16 and 21.

1 determine if it is complete and responsive to the Commission's concerns when it reopened the  
2 docket; to supplement the record with any additional relevant information; and to conduct additional  
3 discovery if necessary. Mr. Arkoosh has questioned whether Trico's procedures are as cost effective  
4 as they might be, and stated he could offer the opinion of an expert witness to support his claim that  
5 Trico's costs are higher than necessary.<sup>4</sup>

6 Mr. Arkoosh states that he previously provided information to the parties which he asserts  
7 shows Trico's administrative costs are higher than necessary. Decision No. 71462, in which the  
8 Commission approved the net metering tariff, does not discuss the cost issues that Mr. Arkoosh  
9 raises. The tariff had been approved in the usual manner of tariffs without a hearing. It was unclear at  
10 the Procedural Conference whether Staff considered questions raised by Mr. Arkoosh, when it  
11 formulated its recommendations that led to the approval of the tariff.<sup>5</sup>

12 The Commission has an obligation to ensure that its orders comply with the rules and are  
13 supported by the evidence. Trico bears the burden of proof that its charges are fair and reasonable.  
14 The dispute concerning whether the net metering charges are fair and reasonable and what R14-2-  
15 2305 requires vis-a-vis their approval involves questions of both fact and law. A hearing will be  
16 required to resolve issues of fact. At this time there are both issues of fact and law to be resolved,  
17 and consequently, a hearing schedule will be set. However, if after discovery, the parties believe that  
18 the matter can be resolved without a hearing, the hearing date can be vacated or utilized for legal  
19 argument.

20 For administrative efficiency, the parties will be directed to file written pre-filed testimony  
21 and/or legal arguments in support of their positions. The parties' filings shall address whether Trico's  
22 net metering charges are fair and reasonable and whether Trico has met its burden of proof to show  
23 that the charges are fully supported with cost of service studies and benefit/cost analyses, as well as  
24 the legal standard or requirements for approving net metering charges. In their testimony, the parties  
25 should also include a recommendation on whether an evidentiary hearing is required in this matter.

26 IT IS THEREFORE ORDERED that a **hearing** in this matter shall commence on **December**

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28 <sup>4</sup> Tr. at 15.

<sup>5</sup> Tr. at 8-9.

1 **8, 2010, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's **Tucson offices,**  
2 **Room 222,** 400 West Congress St., Tucson, Arizona 85701.

3 IT IS FURTHER ORDERED that a **telephonic pre-hearing conference** for the purpose of  
4 discussing hearing procedures shall commence on **December 6, 2010, at 10:00 a.m.**, or as soon  
5 thereafter as is practical, at the Commission's **Tucson offices, Room 222,** 400 West Congress St.,  
6 Tucson, Arizona 85701. **The parties should contact the Hearing Division (602) 542-4250 in the**  
7 **week prior to the pre-hearing conference to receive the procedures for appearing**  
8 **telephonically.**

9 IT IS FURTHER ORDERED that **Trico shall file written direct testimony and/or legal**  
10 **brief** addressing whether its net metering tariff is fair and reasonable and complies with all applicable  
11 rules and regulations, including in particular R14-2-2305, **by September 30, 2010.**

12 IT IS FURTHER ORDERED that **Mr. Arkoosh shall file direct testimony and/or legal**  
13 **brief** addressing whether Trico's net metering tariff is fair and reasonable and complies with all  
14 applicable rules and regulations, including in particular R14-2-2305, **by October 22, 2010.**

15 IT IS FURTHER ORDERED that **Staff shall file testimony or Staff Report and/or legal**  
16 **brief** addressing whether Trico's net metering tariff is fair and reasonable and complies with all  
17 applicable rules and regulations, including in particular R14-2-2305, **by November 12, 2010.**

18 IT IS FURTHER ORDERED that **Trico shall file any reply testimony and or legal brief on**  
19 **or before November 30, 2010.**

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

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1 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
3 ruling at hearing.

4 DATED this 12th day of August, 2010.

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7   
8 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 This 12th day of August, 2010 to:

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