

REHEARING 7/30/98



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JAMES M. IRVIN  
Chairman  
RENZ D. JENNINGS  
Commissioner  
CARL J. KUNASEK  
Commissioner

Arizona Corporation Commission  
**DOCKETED**

JUL 10 1998

DOCKETED BY *frk*

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AZ CORP COMMISSION  
JUL 10 11 25 AM '98

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPETITION  
IN THE PROVISION OF ELECTRIC  
SERVICES THROUGHOUT THE STATE OF  
ARIZONA

Docket No. RE-00000C-94-165

**APPLICATION FOR REHEARING  
AND REQUEST FOR STAY OF  
TRICO ELECTRIC COOPERATIVE,  
INC.**

TRICO ELECTRIC COOPERATIVE, INC., an Arizona nonprofit corporation ("Trico"), whose Post Office address is P.O. Box 35970, Tucson, Arizona 85740, a party in the above proceeding, pursuant to A.R.S. §40-253, submits this Application for Rehearing and Request for Stay of Decision No. 60977 dated June 22, 1998 ("Decision").

The Decision, and the whole thereof, is unconstitutional, unlawful, unreasonable, unjust, in excess of the Commission's jurisdiction, unwarranted, arbitrary, capricious and an abuse of the Commission's discretion upon the grounds and for the reasons set forth in the Exceptions to Proposed Opinion and Order of Arizona Electric Power Cooperative, Inc., an Arizona nonprofit electric generation and transmission cooperative corporation ("AEPSCO"), and four of its Class A Members, including Trico, a copy of which is attached hereto and incorporated herein, and upon the following grounds and for the following reasons:

1. The Decision violates the provisions of Article XV, Sections 3 and 14 of Arizona's Constitution in that the Decision does not provide for the prescribing of rates and charges sufficient to allow Affected Utilities, including Trico and AEPSCO, Trico's sole supplier of electricity pursuant to the Wholesale Power contract dated February 15, 1962, as amended,

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1 between Trico and AEPCO, which requires Trico to purchase all of its electricity from AEPCO  
2 and requires AEPCO to furnish Trico all of Trico's requirements for electricity, a reasonable rate  
3 of return on the fair value of their property devoted to public use.

4 2. The Decision exceeds the jurisdiction, power and authority granted the  
5 Commission in the Arizona Constitution and statutes implementing the applicable constitutional  
6 provisions by assuming powers to the Commission not granted to it by the Constitution or such  
7 statutes and/or expressly reserved to the Legislature and the Courts of Arizona.

8 3. The Decision violates the just compensation clause of the Fifth Amendment as  
9 incorporated into the Due Process Clause of the Fourteenth Amendment of the United States  
10 Constitution and Article II, Section 17 of the Arizona Constitution by:

11 A. Limiting the time period and amount that AEPCO and its Class A  
12 Members, including Trico, receive as just compensation for the taking  
13 and/or damaging of their vested property rights, assuming to the  
14 Commission the right to determine such just compensation rather than  
15 having such just compensation determined by the Courts as required by  
16 such Constitutions.

17 B. Limiting and/or effectively precluding recovery of Stranded Costs by  
18 AEPCO and its Class A Members, including Trico, by requiring a filing in  
19 relation to such Stranded Costs before they are reasonably ascertainable or  
20 even known and by terminating allowance for them prior to the time all  
21 Stranded Costs have been incurred.

22 C. Limiting recovery of Stranded Costs to generation, regulatory and social  
23 costs whereas Trico and AEPCO's other Arizona Class A Members may  
24 suffer the loss of their assets associated with their electric distribution  
25 systems, that cannot now be determined and cannot be determined until the  
26 Rules are implemented.

1           4.       The Decision violates the Electric Competition Rules, A.A.C. R14-2-1601 through  
2 R14-2-1616 ("Rules") and Decision No. 59943 entered by the Commission December 26, 1996  
3 by, *inter alia*, ignoring the requirement of R14-2-1607.B that "The Commission shall allow  
4 recovery of unmitigated Stranded Costs by Affected Utilities" and as purportedly amended by the  
5 Decision which provides "The Commission shall allow a reasonable opportunity for the recovery  
6 of unmitigated Stranded Costs by Affected Utilities."

7           5.       The Decision is unconstitutional in violation of the United States and Arizona  
8 Constitutions:

- 9           A.       By limiting Affected Utilities' opportunity to recover any Stranded Costs  
10 by only two designated options: (1) Divestiture/Auction Methodology  
11 requiring all generation assets to be sold by January 1, 2001 at auction, and  
12 (2) Transition Revenues Methodology which purportedly provides for  
13 sufficient revenues to Affected Utilities to maintain financial integrity for a  
14 period of ten years.
- 15           B.       By requiring the sale by an Affected Utility, including AEPCO, of all of its  
16 generation assets to have the opportunity to recover all of its Stranded  
17 Costs; and the Rules, because they limit the opportunity of Affected  
18 Utilities to recover all of their Stranded Costs to the Divestiture/Auction  
19 option, have indirectly coerced the Affected Utilities to sell all of the  
20 generation assets in the manner set forth in the Decision or denied Affected  
21 Utilities of the opportunity to recover "Stranded Costs."
- 22           C.       The other option, Transmission Revenues Methodology is so vague that no  
23 reasonably intelligent person or Affected Utility can understand the nature  
24 or extent thereof and no standards are provided to determine such transition  
25 revenues and therefore such option is in violation of the Due Process  
26

1                   Clauses of Amendment XIV of the United States Constitution and  
2                   Article II, Section 4 of the Arizona Constitution.

3           6.       The Decision coerces divestiture of generation assets by Affected Utilities as a  
4 condition to the opportunity of full Stranded Costs recovery and is unsupported by the record,  
5 contrary to Decision No. 59943, beyond the Commission's jurisdiction, an exercise of the power  
6 of eminent domain which the Commission does not possess, and an assumption to the  
7 Commission of judicial power reserved to the Courts of Arizona.

8           7.       The Decision was adopted by a procedure which violated the procedural and  
9 substantive due process rights of the Affected Utilities, including AEPCO and Trico and which  
10 violated A.A.C. R14-3-110 and R14-3-113.

11          8.       The Decision is unconstitutional by depriving the Affected Utilities, including  
12 AEPCO and Trico, from recovering just compensation for their damage sustained from electric  
13 generation competition by limiting their Stranded Costs to those which existed on or before  
14 December 26, 1996, whereas the Affected Utilities have continued to incur Stranded Costs after  
15 said date by reason of the Rules and the Decision.

16          9.       Trico and the other parties were given improper and inadequate notice of the  
17 subject matters to be dealt with in the Decision. The proceeding was noticed on nine specific  
18 questions concerning Stranded Costs calculation and related matters. Instead, the primary thrust  
19 of the Decision focuses on the desirability of Affected Utilities' divesting their generation  
20 facilities. Trico and the other parties' constitutional due process rights were violated by such  
21 procedures.

22               WHEREFORE, Trico requests that the Commission enter its Order granting its  
23 Application for Rehearing and staying the Decision and the whole thereof.



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**PROOF OF SERVICE**

I hereby certify that I have caused the original and ten (10) copies of the foregoing document to be delivered for filing to:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, Arizona 85007

Further, I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid.

DATED at Tucson, Arizona this 9th day of July, 1998.

  
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Secretary to Russell E. Jones

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COMPETITION IN THE PROVISION OF  
ELECTRIC SERVICES THROUGHOUT THE  
STATE OF ARIZONA.

DOCKET NO.:

RE-00000C-94-165

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BEFORE THE ARIZONA CORPORATION COMMISSION  
AZ CORP COMMISSION

JIM IRVIN  
Commissioner-Chairman  
RENZ D. JENNINGS  
Commissioner  
CARL J. KUNASEK  
Commissioner

MAY 29 3 48 PM '98

DOCUMENT CONTROL

IN THE MATTER OF THE COMPETITION )  
IN THE PROVISION OF ELECTRIC )  
SERVICES THROUGHOUT THE )  
STATE OF ARIZONA. )

DOCKET NO. RE-00000C-94-0165

EXCEPTIONS TO PROPOSED  
OPINION AND ORDER

The Arizona Electric Power Cooperative, Inc. ("AEPSCO"),  
Duncan Valley Electric Cooperative, Inc. ("Duncan"), Graham County  
Electric Cooperative, Inc. ("Graham") and Sulphur Springs Valley  
Electric Cooperative, Inc. ("Sulphur Springs") and Trico Electric  
Cooperative, Inc. ("Trico") (collectively "the Cooperatives") submit  
these exceptions to the Hearing Officer's Proposed Opinion which was  
issued on May 6, 1998 (the "Proposed Opinion").

These exceptions focus on items of major concern to the  
Cooperatives without waiver of their ability to address different or  
additional matters based on this record including, but not limited  
to, filings of the other parties.<sup>1</sup> Incorporated herein by this  
reference are AEPSCO's Initial Brief and Reply Brief. For  
convenience, a copy of the Initial Brief and Reply Brief are attached  
to the original of these exceptions filed with Docket Control and the  
copies provided to the Commissioners.

The nature of exceptions is to highlight failings and  
foibles of the Proposed Opinion. This writing will be no exception

<sup>1</sup> The Cooperatives' participation in this and other stranded  
cost proceedings is without waiver of their rights to pursue adequate  
remedies for compensation in relation to loss of their vested  
property rights pursuant to the State and Federal Constitutions.

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1 to that general rule. Notwithstanding that, the Cooperatives commend  
 2 the Hearing Officer for the conduct of a complex, multiparty  
 3 proceeding involving complicated issues conducted over a very  
 4 compressed period of time. Although the Cooperatives take exceptions  
 5 to various provisions of the Proposed Opinion, they appreciate and  
 6 acknowledge the efforts of the Hearing Officer in attempting to  
 7 resolve these difficult issues.

8 Regulatory Assets.

9 One of the primary failings of the Proposed Opinion is its  
 10 inadequate, non-differentiated treatment of regulatory assets.  
 11 Although the Proposed Opinion attempts to deal separately with  
 12 regulatory assets at pages 11 and 12, (1) it is unclear whether that  
 13 separation is limited only to the net revenues lost method and (2)  
 14 the limits on recovery of regulatory assets there undoubtedly would  
 15 require large write-offs.

16 In general, all witnesses agreed that regulatory assets  
 17 should be afforded different and preferential treatment for a variety  
 18 of reasons including, but not limited to, the facts that they are  
 19 sunk costs incapable of being mitigated which have little, if any,  
 20 market value. Also, inadequate or improper regulatory allowance for  
 21 recovery of regulatory assets in this and other Commission  
 22 proceedings will have immediate and dire FASB 71 consequences likely  
 23 to lead, as the Hearing Officer acknowledged, to serious impairment  
 24 of the financial integrity of an Affected Utility. Finally, any  
 25 decision affecting the utility's ability to recover regulatory assets

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1 would raise serious jurisdictional issues pursuant to A.R.S.  
2 § 40-252.

3 In AEPCO's case, its regulatory assets total approximately  
4 \$31 million. To place this amount in some context, that is roughly  
5 11% of AEPCO's net utility plant value. The vast majority of these  
6 regulatory assets are costs already incurred but deferred for future  
7 recovery so as to (1) renegotiate and reduce AEPCO's fuel costs and  
8 (2) refinance and reduce AEPCO's debt costs. The benefits of the  
9 cost reductions these regulatory assets produced have been flowing to  
10 AEPCO's member-owners and their customer-owners for many years. The  
11 reduced costs associated with these regulatory assets are a primary  
12 reason why over the past 12 years AEPCO has been able to reduce its  
13 rates by more than 21% and in addition to return more than  
14 \$16 million in cash refunds to its members.

15 Rather than the Proposed Opinion's approach of treating  
16 regulatory assets together with other stranded costs, the  
17 Cooperatives would suggest that regulatory assets simply be placed in  
18 their own category - regardless of choices made and methods used for  
19 recovery of other stranded costs. Filings concerning the size,  
20 identity, recommended recovery period and other details concerning  
21 regulatory assets would be made with the Commission. These  
22 proceedings should be less contested and controversial than those  
23 involving other stranded cost issues. Therefore, they might be dealt  
24 with as Open Meeting items without the necessity of a hearing.

25 Distribution Stranded Costs.

26 The Proposed Opinion fails to address the issue of stranded  
27 costs which may arise in the future at the distribution level.

28

1 Several witnesses agreed that distribution entities, in general, and  
 2 distribution cooperatives specifically may incur stranded costs in  
 3 the metering, meter reading, billing and collection areas, but also  
 4 agreed that those costs are not capable of ascertainment nor  
 5 quantification at this time. The uncertainty concerning distribution  
 6 related stranded costs is heightened further by various conflicting  
 7 proposals currently being circulated at the Commission as well as  
 8 different competition criteria in HB 2663 - both of which call into  
 9 question precisely when and at what level certain distribution  
 10 related services such as metering, meter reading, billing and  
 11 collection will in fact be competitive.

12 The Proposed Opinion conflicts on this subject. On the one  
 13 hand, it does contemplate a Rule amendment to allow stranded costs  
 14 arising after the adoption of the Rules, if approved by the  
 15 Commission. On the other hand, as currently written, any stranded  
 16 cost proposal would have to be submitted within 30 days of the  
 17 Order's effective date. This would preclude stranded cost recovery  
 18 requests by distribution cooperatives well in advance of a point when  
 19 the stranded costs could be fairly accurately quantified or even  
 20 anticipated.

21 To address this issue, the Cooperatives would suggest that  
 22 a new subsection be added to R14-2-1607 which expressly provides that  
 23 application may be made by an Affected Utility as to distribution  
 24 related stranded costs arising after competition is implemented.

25 Calculation Methodologies.

26 There are a number of difficulties with the calculation  
 27 methodologies and individual stranded costs filing discussions at

28

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1 pages 11 to 13 of the Proposed Opinion. Key problems are as follows:

2 ● Although on its face the Proposed Opinion purports to  
3 allow Affected Utilities an opportunity to recover  
4 100% of stranded costs, analysis quickly reveals that  
5 the methods authorized do not deliver on that promise.  
6 For example, the net revenues lost assumption that, in  
7 effect, there would be 100% growth in a five year  
8 period is not only not supported by any record  
9 evidence, but is contrary to the record evidence. It  
10 certainly is a blanket assumption which has little, if  
11 any, application to the rural areas of the state. The  
12 effect is to reduce by at least 50% and possibly more  
13 any realistic opportunity to recover unmitigated  
14 stranded costs.

15 ● The three options proposed force utilities to select  
16 one to the exclusion of others rather than allowing  
17 utilities to fashion an overall plan which might  
18 contain rational cost effective blends of different  
19 options.

20 ● It is possible that the Financial Integrity  
21 Methodology at pages 12-13 might be a workable  
22 solution for the Cooperatives. However, no details  
23 are available as to what the "minimum financial  
24 ratios" would be. Therefore, entities choosing this  
25 method would be purchasing the classic "pig in a  
26 poke." AEPCO is also not certain what accounting  
27 write-off/financial statement impacts the ten year  
28 recovery limitation might have.

● The thirty day filing requirement is simply  
inadequate. It will serve no one well and, in fact,  
may retard progress and processing if utilities are  
forced to make filings in haste. Sixty days is an  
absolute minimum in which to prepare an adequate  
filing.

● Finally, the options presented do not take into  
account the significant differences between investor  
owned utilities and customer owned cooperatives. The  
latter have no shareholder/customer conflict or profit  
motive. All witnesses agreed that cooperatives,  
because of these and other differences, deserved  
different stranded cost treatment.

At least some of these concerns could be addressed by making the  
discussion of the three options permissive rather than mandatory and  
changing their details from absolute maxims to guidelines. Affected

1 utilities should then be instructed to file an overall plan with  
2 appropriate detail directed to their individual circumstances within  
3 60 days of the Order's effective date.

4 True-up Mechanism.

5 At page 18 of the Proposed Opinion, a true-up is stated as  
6 necessary only in relation to the net revenues lost method. Although  
7 the Cooperatives admit, as previously noted, that the details of the  
8 Financial Integrity Methodology are sketchy, we believe it too  
9 requires a true-up.

10 Price Cap/Rate Freeze.

11 The Cooperatives simply do not understand this discussion  
12 at page 18 of the Proposed Opinion. In particular, we are unable to  
13 locate the "limitation" which the Proposed Opinion states has been  
14 placed on increases in the standard offer rate as a result of  
15 stranded costs. In any event, the Cooperatives oppose a price  
16 cap/rate freeze both because it exceeds the Commission's jurisdiction  
17 and, as importantly, is antithetical to the stated desire to move to  
18 a competitive market.

19 CONCLUSION

20 "One size fits all" solutions, particularly in this area,  
21 simply don't. The Cooperatives acknowledge that the Proposed Opinion  
22 has brought some clarification and standards to several stranded cost  
23 issues. They suggest, however, that precise specification of  
24 particular methods with rigid criteria be avoided and that Affected  
25 Utilities be given the ability to propose a plan best suited to their  
26 individual circumstances.

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RESPECTFULLY SUBMITTED this 29th day of May, 1998.

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