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Attorney For

Sulphur Springs Valley Electric Cooperative, inc.

CHRISTOPHER HITCHCOCK
STATE BAR NO. 004523

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKETED

AUG 27

DOCKETED BY

IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE 00000C-94-0165
THE PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA) APPLICATION FOR REHEARING
) AND REQUEST FOR STAY
)
)
)

SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.

("SSVEC"), 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. 61071 dated August 10, 1998. Rehearing and a Stay pending Commission determination of the issues raised is requested as to all aspects of Decision No. 61071 and its appendices including the Rules set forth in its Appendix A (collectively, the "Decision").

The Decision is unconstitutional, unlawful, unreasonable, in excess of the Commission's jurisdiction, arbitrary, capricious and an abuse of the Commission's discretion for the reasons and upon the grounds set forth below:

- 1. The Decision is not supported by any evidence.

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2. The Decision is unlawful and exceeds the Commission's jurisdiction in that several of its provisions conflict with HB 2663, Chapter 209 of the 1998 Session Laws, including but not limited to the Decision's provisions as to provider of last resort obligations, competitive phasing requirements and when certain services such as metering, meter reading, billing and collection may be offered competitively.

3. The Decision violates the provisions of the Administrative Procedure Act, A.R.S. §41-1001 et seq., in that it fails to adopt as a rule all Commission statements of general applicability that implement, interpret or prescribe law or policy or describe the procedure or practice requirements of the Commission concerning the subject matter of the Decision.

4. The Decision is unlawful, unconstitutional and exceeds the jurisdiction of the Commission by exercising general lawmaking and judicial powers which the Commission does not possess including but not limited to its stranded cost provisions at R14-2-1607, its solar water heater rebate program at R14-2-1608, its solar electric fund at R14-2-1609, its forced divesture and competitive service restrictions at R14-2-1616 and its affiliate transaction requirements at R14-2-1617.

5. The provisions of the Decision pertaining to Stranded Costs are in conflict with the Commission's Decision No. 60977 entered June 22, 1998.

6. Both the manner in which the Decision was adopted and the Decision itself violates the requirements of the Administrative Procedure Act, A.R.S., Title 41,

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Chapter 6, including but not limited to the provisions of A.R.S. §§41-1026, 41-1044 and 41-1057.

7. The Decision and in particular A.A.C. R14-2-1612 violate the provisions of A.R.S. §§40-203, 40-250, 40-251, 40-252, 40-334, 40-361, 40-365 and 40-367 by permitting the sale of electricity at rates fixed by providers or by the market rather than at rates prescribed by the Commission and permits aggregators to designate classes of consumers of Affected Utilities rather than the Commission determining classes of customers - all of which are contrary to such statutes.

8. The entire Decision, which is premised upon the delegation of the Commission's rate setting power to others and the basing of rates on the "market" not fair value, is unconstitutional, in excess of the Commission's jurisdiction and otherwise invalid.

9. The Decision violates Arizona statutes including, but not limited to, A.R.S. §40-281 and case law decided thereunder by changing the public policy of this state from one of regulated monopoly concerning the supply of electric service.

10. The Decision violates Arizona's Constitution including, but not limited to, its Article XV, Section 6, by attempting to exercise powers expressly and impliedly reserved to the Legislature and the Courts.

11. The Decision violates Article XV of Arizona's Constitution in purporting to prescribe and establish rates and charges for electric services on a basis other

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than the constitutionally mandated system of a just and reasonable rate of return on the fair value of the property of public service corporations.

12. The Decision violates the just compensation provisions of the Fifth Amendment to the United States Constitution and Article II, Section 17 of the Arizona Constitution (Just compensation provisions”), and the due process provisions of the Fourteenth Amendment to the United States Constitution and Article II, Section 4 of the Arizona Constitution (:due process provisions”), by breaching the regulatory compact between the State of Arizona and its electric public service corporations, including SSVEC, to whom the Commission has issued Certificates of Convenience and Necessity.

13. The Decision violates the due process provisions of the United States and Arizona Constitutions and the requirements of A.R.S. §40-252 by failing to provide SSVEC with notice and an opportunity to be heard prior to the amendment of its Certificate of Convenience and Necessity.

14. The Decision violates the just compensation provisions of the United States and Arizona Constitutions by depriving SSVEC and its member-owners of their vested property rights.

15. The Decision violates the just compensation provisions of the United States and Arizona Constitutions by confiscating SSVEC’s and its member-owners’ property for a public purpose and use.

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16. The Decision violates the just compensation and other provisions of the United States and Arizona Constitutions by purporting to limit amounts to be paid to SSVEC and its member-owners for deprivation of their property rights and by assuming to the Commission, not the Courts, the power of determining such compensation.

17. The Decision violates the supremacy clause of Article VI of the United States Constitution and frustrates federal law including, but not limited to the Rural Electrification Act of 1936, as amended, by, inter alia, causing defaults on federal loans and/or federally guaranteed mortgages on which SSVEC is an obligor, impairing the contractual relationships between SSVEC and its member-owners and impairing the all requirements wholesale power contracts relationship between and among AEPCO and its Class A member distribution cooperatives, which includes SSVEC (Class A Members).

18. The Decision violates Article I, Section 10, CL. 1 of the United States Constitution, and Article II, Section 25 of the Arizona Constitution, in that it impairs the obligations of contracts between SSVEC and its member-owners and the obligations of contracts between and among AEPCO and its Class A members including SSVEC.

19. The Decision violates the equal protection provisions of the 14th Amendment to the United States Constitution and Article II, Section 13 of the Arizona Constitution in that it does not provide equal treatment of all electric utilities and electric service providers in the State of Arizona.

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20. The Decision exceeds the Commission's statutory authority to order joint use of facilities by other of property owned and operated by SSVEC.

21. The Decision is impermissibly vague.

22. The Decision impermissibly interferes with the internal management and operations of SSVEC and its owners-members.

23. The Decision exceeds the jurisdiction, power and authority granted to the Commission in the Arizona Constitution and the statutes of Arizona and assumes powers to the Commission not granted by the Constitution and statutes of the State of Arizona.

24. The Decision violates the requirements of the Administrative Procedure Act, Title 41 chapter 6, of the Arizona Revised Statutes including but not limited to the provisions of A.R.S. §41-1025, 41-1044 and 41-1057.

CONCLUSION

WHEREFORE, having fully stated its Application for Rehearing, SSVEC respectfully requests that the Commission enter its Order granting the Application for Rehearing and staying the Decision and the Rules adopted pending resolution of the issues set forth herein.

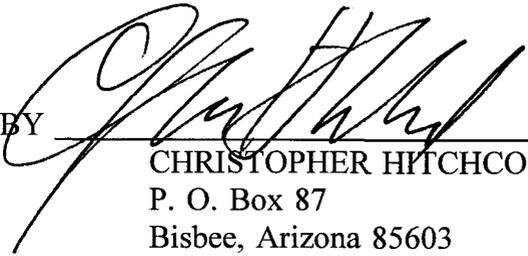
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RESPECTFULLY SUBMITTED this 27th day of August, 1998.

HITCHCOCK, HICKS & CONLOGUE

BY 

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ORIGINAL and ten (10) copies
of the foregoing filed this
27th day of August, 1998, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing mailed this
27th day of August, 1998, to:

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All other parties listed in the docket

