

HITCHCOCK



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REHEARING 6/6/99

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Attorney For

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Sulphur Springs Valley Electric Cooperative, inc.

**CHRISTOPHER HITCHCOCK**  
**STATE BAR NO. 004523**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

JIM IRVIN

Commissioner - Chairman

TONY WEST

Commissioner

CARL J. KUNASEK

Commissioner

|                                     |   |                                  |
|-------------------------------------|---|----------------------------------|
| IN THE MATTER OF THE COMPETITION IN | ) | DOCKET NO. RE-00000C-94-0165     |
| THE PROVISION OF ELECTRIC SERVICES  | ) |                                  |
| THROUGHOUT THE STATE OF ARIZONA     | ) | <b>APPLICATION FOR REHEARING</b> |
|                                     | ) | <b>AND REQUEST FOR STAY OF</b>   |
|                                     | ) | <b>SULPHUR SPRINGS VALLEY</b>    |
|                                     | ) | <b>ELECTRIC COOPERATIVE INC.</b> |
|                                     | ) |                                  |

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. 61677 dated April 27, 1999 ("Decision").

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

1. In violation of Article 15, Sections 3 and 14, of Arizona's Constitution, the Decision does not provide for the prescribing of rates sufficient to allow Affected Utilities, including AEPCO and its Class A Members, which includes SSVEC (collectively "AEPCO and its Class A Members"), a reasonable rate of return on the fair value of their property devoted to public use.

**HITCHCOCK, HICKS & CONLOGUE**

ATTORNEYS AT LAW

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2. The Decision exceeds the jurisdiction, power and authority granted the Commission in the Arizona Constitution and statutes by assuming powers to the Commission not granted to it and/or expressly reserved to the Legislature and the Courts.
3. The Decision violates the just compensation procedures/due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and Article II, Section 17 of the Arizona Constitution by purporting to limit the time period and amounts to be received by AEPCO and its Class A Members, including SSVEC, for deprivation of their vested property rights and by assuming to the Commission, not the Courts, the power of determining such compensation.
4. The Decision violates the just compensation provisions of the Constitution and procedural and substantial due process by severely limiting and/or effectively precluding recovery of stranded costs by AEPCO and its Class A Members, including SSVEC, by requiring a filing in relation to them before they are readily ascertainable or even known and by terminating allowance for them prior to a point when all stranded costs have been incurred, and by limiting recovery of Stranded Costs to generation, regulatory and social costs.
5. The Decision violates the Commission's Electric Competition Rules, A.A.C. R14-2-1601 through R14-2-1616 and Decision No. 59943 entered by the Commission December 26, 1996, as amended by Decision No. 61071 entered by the Commission and on August 10, 1998, and further amended by Decision No. 61272, entered by the Commission on December 11, 1998, and as proposed to be amended by Decision No. 61634 entered by the Commission on April 23, 1999 (collectively, "Rules"), by, *inter alia*, ignoring the requirement of R14-2-1607B, as so amended, that "The Commission shall allow a reasonable opportunity for recovery of unmitigated Stranded Costs by Affected Utilities."
6. The Decision is unconstitutional in violation of the United State and Arizona Constitutions limiting Affected Utilities' opportunity to recover any Stranded Costs to only five designated options which are beyond the Commission's jurisdiction, an exercise of the power of eminent domain which the Commission does not possess an assumption to the Commission of judicial power reserved to the Courts of Arizona and ignores the taking of SSVEC's invested property rights.

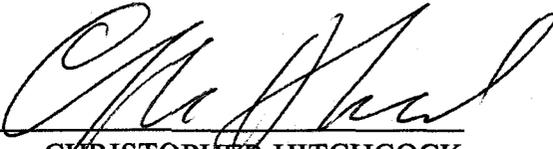
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- 7. The Decision is impermissibly vague and violated due process requirements in that, inter alia, it prescribes no standards to govern filings for stranded costs and lacks standards to restrict the Commission's discretion in making such determination as to stranded costs.
- 8. The Decision ignores the contact between the State of Arizona and SSVEC, the vested property rights of SSVEC that are protected by Article II, Section 17 of the Arizona Constitution and the relief to which SSVEC is entitled for the taking and/or damaging of its vested property rights as provided by such constitutional section.
- 9. Finding of Fact Nos. 6 through 11 of the Decision clearly established that the entry of the Decision is premature and a Decision pertaining to Stranded Costs of the Affected Utilities, other than Decision No. 61311 entered by the Commission on January 11, 1999, which stayed the effectiveness of Decision No. 60977, should not be entered until the Commission has resolved the issues set forth in such Findings of Fact.

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

RESPECTFULLY SUBMITTED this 17 day of May, 1999.

HITCHCOCK, HICKS & CONLOGUE

BY   
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ORIGINAL and ten (10) copies  
of the foregoing filed this  
17 day of May, 1999, with:

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

Copy of the foregoing mailed this  
17 day of May, 1999, to:

Paul Bullis  
Chief Counsel  
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1200 West Washington Street  
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All parties listed on this docket.

  
Laura M. Room