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BEFORE THE ARIZONA CORPORATION COMMISSION

JAMES M. IRVIN
Chairman
CARL J. KUNASEK
Commissioner
TONY WEST
Commissioner

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

Docket No. RE-00000C-94-0165

**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. 61677 dated April 27, 1999 ("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, and upon the following grounds and for the following reasons:

1 1. The Decision violates the provisions of Article XV, Sections 3 and 14 of Arizona's
2 Constitution in that the Decision does not provide for the prescribing of rates and charges
3 sufficient to allow Affected Utilities, including Trico and Arizona Electric Power Cooperative,
4 Inc., an Arizona nonprofit electric generation and transmission cooperative corporation
5 ("AEPCO"), Trico's sole supplier of electricity pursuant to the Wholesale Power contract dated
6 February 15, 1962, as amended, between Trico and AEPCO, which requires Trico to purchase all
7 of its electricity from AEPCO and requires AEPCO to furnish Trico all of Trico's requirements
8 for electricity, a reasonable rate of return on the fair value of their property devoted to public use.

9
10 2. The Decision exceeds the jurisdiction, power and authority granted the
11 Commission in the Arizona Constitution and statutes implementing the applicable constitutional
12 provisions by assuming powers to the Commission not granted to it by the Constitution or such
13 statutes and/or expressly reserved to the Legislature and the Courts of Arizona.

14
15 3. The Decision violates the just compensation clause of the Fifth Amendment as
16 incorporated into the Due Process Clause of the Fourteenth Amendment of the United States
17 Constitution and Article II, Section 17 of the Arizona Constitution by:

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

23
24 B. Limiting and/or effectively precluding recovery of Stranded Costs by
25 AEPCO and its Class A Members, including Trico, by requiring a filing in relation to such
26

1 Stranded Costs before they are reasonably ascertainable or even known and by terminating
2 allowance for them prior to the time all Stranded Costs have been incurred.

3 C. Limiting recovery of Stranded Costs to generation, regulatory and social
4 costs whereas Trico and AEPCO's other Arizona Class A Members may suffer the loss of their
5 assets associated with their electric distribution systems, that cannot now be determined and
6 cannot be determined until the Rules are implemented.
7

8 4. The Decision violates the Electric Competition Rules, A.A.C. R14-2-1601 through
9 R14-2-1616 and Decision No. 59943 entered by the Commission December 26, 1996, as
10 amended by Decision No. 61071 entered by the Commission on August 10, 1998, and further
11 amended by Decision No. 61272, entered by the Commission on December 11, 1998, and as
12 proposed to be amended by Decision No. 61634 entered by the Commission on April 23, 1999
13 (collectively, "Rules"), by, *inter alia*, ignoring the requirement of R14-2-1607.B, as so amended,
14 that "The Commission shall allow a reasonable opportunity for recovery of unmitigated Stranded
15 Costs by Affected Utilities."
16

17 5. The Decision provides for the recovery of Stranded Costs pursuant to five
18 designated options which do not allow the Affected Utilities, including Trico, a reasonable
19 opportunity for recovery of unmitigated Stranded Costs, are so vague that they violate the due
20 process clauses of the U.S. and Arizona Constitutions, are an unconstitutional attempted exercise
21 of the power of eminent domain and are in excess of the jurisdiction of the Commission
22

23 6. The Decision is unconstitutional by depriving the Affected Utilities, including
24 AEPCO and Trico, the opportunity to recover just compensation for their damage sustained from
25 electric generation competition by limiting their Stranded Costs to those which existed on or
26

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before December 26, 1996, whereas the Affected Utilities have continued to incur, and will continue to incur, Stranded Costs after said date by reason of the Rules and the Decision.

7. The Decision ignores the contract between the State of Arizona and Trico, the vested property rights of Trico that are protected by Article II, Section 17 of the Arizona Constitution and the relief to which Trico is entitled for the taking and/or damaging of its vested property rights as provided by such constitutional section.

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

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3 Docket Control
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6 Phoenix, Arizona 85007

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