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AZ CORP COMMISSION
REGULATORY CONTROL

Arizona Corporation
DOCKETED

FEB 04 2000

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

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DOCKET NO. RE-00000C-94-0165

THE COOPERATIVES' FILING
OF A CODE OF CONDUCT
PURSUANT TO R14-2-1616 AND
REQUEST FOR WAIVERS

The Cooperatives¹ submit this filing in compliance with R14-2-1616 and without waiver of the points raised in their Applications for Rehearing and appeals of Commission Orders concerning Retail Electric Competition including without limitation their Applications for Rehearing and appeals of Decision No. 61969.

BACKGROUND

AEPCO is a non-profit generation and transmission cooperative formed in the early 1960s to supply and transmit at wholesale the power needs of its member distribution cooperatives.² It and most of its Member Distribution Cooperatives are Rural Utilities Service (RUS) borrowers. In order to meet FERC reciprocity and other requirements, AEPCO has filed an Open Access Transmission Tariff with SWRTA and adopted a Code of Conduct in relation to its provision of transmission and other ancillary services as defined by FERC.

¹ The Arizona Electric Power Cooperative, Inc. (AEPCO); Duncan Valley Electric Cooperative, Inc. (Duncan); Graham County Electric Cooperative, Inc. (Graham); Sulphur Springs Valley Electric Cooperative, Inc. (Sulphur); and Trico Electric Cooperative, Inc. (Trico). Duncan, Graham, Sulphur and Trico are collectively referred to as the "Member Distribution Cooperatives."

² AEPCO's fifth Class A Arizona member distribution cooperative is Mohave Electric Cooperative which is submitting its own filing.

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1 AEPCO does not provide service at retail. It makes only sales of power to its Member
2 Distribution Cooperatives and others at wholesale pursuant to tariff or contract. The Member
3 Distribution Cooperatives then supply that power at retail pursuant to their tariffs or contracts.
4 The Cooperatives are separate corporate entities which are geographically and physically
5 separated, supplying different services through separately owned facilities pursuant to separate
6 tariff and contract policies and procedures. No cooperative exercises control over any other
7 cooperative nor holds any equity shares in any other cooperative. Each cooperative employs its
8 own staff although the Member Distribution Cooperatives pursuant to bylaw provisions do send
9 representatives to the AEPCO board.
10

11 Thus, the Cooperatives are legally, functionally and physically disaggregated. They are
12 not affiliates of each other as that term is normally defined. *See*, for example, the Affiliate Interest
13 Rules, R14-2-801 *et seq.* which apply to investor owned not cooperative public service
14 corporations.
15

16 AEPCO is in the process of restructuring. As applicable here and subject to RUS', this
17 Commission's and others' approvals, Sierra Southwest Electric Power Cooperative Services, Inc.
18 ("Sierra") has been formed. AEPCO is a Class B member of Sierra; the Member Distribution
19 Cooperatives are Class A members of Sierra. Sierra has obtained a certificate of convenience and
20 necessity as an ESP from this Commission. For the provision of any Competitive Services,
21 however, it will maintain its own staff and physical facilities in Tucson separate from those
22 AEPCO maintains in Benson or the Member Distribution Cooperatives maintain in other
23 locations around the state.
24

25 Pursuant to A.R.S. § 10-2138, Sierra must seek approval from a cooperative prior to
26 supplying electric generation service in the service territory of that cooperative. Pursuant to
27 A.R.S. §§ 10-2057.A.4 and 10-2127.A.5, the Cooperatives are authorized to engage in joint

1 marketing activities. To comply with both requirements and authorizations, Sierra and each
2 member distribution cooperative will separately enter into a Joint Marketing Plan Agreement.

3
4 For the reasons discussed in this submission, the Cooperatives do not believe the Code of
5 Conduct provisions of R14-2-1616 can or should apply to them. Because, however, AEPCO is a
6 member of Sierra and the Member Distribution Cooperatives are members of Sierra, this
7 submission is made in compliance with R14-2-1616.A. subject to the requested waivers

8 CODES OF CONDUCT

9 AEPCO proposes the Code of Conduct attached as Exhibit A between it and Sierra. The
10 Member Distribution Cooperatives propose the Code of Conduct attached as Exhibit B between
11 each of them and Sierra. Although certain of the Rule's provisions do not seem to apply to the
12 disaggregated cooperative structure previously discussed, the Cooperatives have in proposing
13 these Codes attempted in good faith to apply the Rule's standards where relevant to their
14 activities.
15

16 REQUESTED WAIVERS

17 As to the Cooperatives

18 AEPCO, the Member Distribution Cooperatives and Sierra are separate corporate entities,
19 performing separate functions through separate staffs and facilities pursuant to separate tariffs and
20 contracts. They are already disaggregated in wholesale, retail and competitive service delivery
21 and unlike other integrated utilities subject to this Commission's jurisdiction have not previously
22 provided services in a single corporate structure both at wholesale and retail. Thus, the concerns
23 underlying the Code of Conduct requirements simply do not exist for the Cooperatives.
24

25 For example, AEPCO does not have detailed retail customer information which it could
26 supply to Sierra. Wholesale and retail services have been and are provided by separate
27 corporations pursuant to different tariffs approved by this Commission so the possibility of

1 internal rate cross subsidization does not exist. Also, the Cooperatives do not have market power;
2 it is estimated that they supply only about 3% (?) of the state's power requirements.

3
4 Without comment on the need for Codes of Conduct generally,³ the Cooperatives believe
5 that these and other differences negate the need for Codes of Conduct as applied to them.
6 Therefore, they request a general waiver of R14-2-1616.

7 **As to AEPCO/Sierra**

8 Because AEPCO is a member of Sierra, R14-2-1616.A seems to apply to AEPCO.
9 However, AEPCO is not a "utility distribution company" and each of the subjects required to be
10 addressed by the Code of Conduct in R14-2-1616.B relate to AEPCO's non-existent role as a
11 UDC. In AEPCO's case, the two subsections of the Rule simply do not relate to each other. For
12 that reason, AEPCO requests a Commission waiver or finding that the Rule does not apply to it.

13
14 **As to Sierra/the Member Distribution Cooperatives**

15 If the request for general waiver is not granted, the Member Distribution Cooperatives
16 request a waiver of the specific requirement of R14-2-1616.B.4 and 6 which generally pertain to
17 name issues and require that there be no "joint advertising, joint marketing, or joint sales" ("joint
18 marketing") by each of them with Sierra. In support of this request, the Cooperatives note the
19 following:

- 20
21 1. Pursuant to R14-2-1615.C, the Member Distribution Cooperatives are specifically
22 authorized to supply both noncompetitive and competitive services within its
23 territory. That provision of the Rule conflicts with the prohibition on joint
24 marketing with Sierra. Because the cooperatives may supply both services, under
25 the Rules their decision to supply Competitive Services in tandem with Sierra
26 should not be restricted by another Rules' provision.
27

³ The Cooperatives note again that no similar Code of Conduct provisions were adopted by the

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2. Joint marketing is specifically allowed and required by A.R.S. §§ 10-2127.A.5 and 10-2138;
3. Joint marketing will enable small rural electric cooperatives with few resources, no market power and limited staffing access to Arizona's competitive marketplace which they otherwise will not have;
4. Joint marketing will encourage development of a competitive electric generation market in Arizona by increasing the amount of competitors available to customers in the rural areas;
5. Joint marketing will provide rural electric cooperatives with the ability effectively to compete with larger marketing entities to replace Standard Offer sales lost to the competitive market, thereby keeping the cost of Standard Offer service lower in rural areas;
6. Joint marketing will ensure the continuation of electric service at reasonable prices to rural areas which have historically been unserved or underserved by competitive markets and profit making utilities; and
7. The Commission cannot constitutionally restrict the free speech of Affected Utilities and, especially, while not similarly restricting the speech of a new market entrant.

This specific request for waiver of R14-2-1616.B.6 is in addition to and not in lieu of the previous request for a general waiver of the Rules' requirements.

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CONCLUSION

The Cooperatives request that the Commission grant the waivers as requested herein or, alternatively, approve the Codes of Conduct which are attached to this submission as Exhibits A and B.

RESPECTFULLY SUBMITTED this 4th day of February, 2000.

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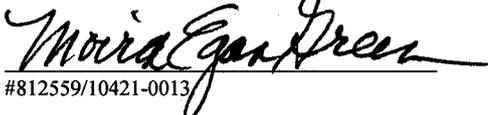
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Exhibit A

**Arizona Electric Power Cooperative, Inc., and
Sierra Southwest Electric Power Cooperative Services, Inc.**

CODE OF CONDUCT

Arizona Electric Power Cooperative, Inc. (AEPCO) is a non-profit electric generation and transmission cooperative which makes only wholesale sales of electric energy to its Class A member-owners, among others. It does not provide retail service to end-use customers nor does it provide Distribution Service. Its Class A Members are non-profit rural electric distribution cooperatives which make sales of electricity at retail to their members and other patrons. Pursuant to A.A.C. R14-2-1615.C, distribution cooperatives may provide both Noncompetitive Services and Competitive Services within their distribution service territories.

Sierra Southwest Electric Power Cooperative Services, Inc. ("Sierra") is also a non-profit cooperative and holds a CC&N as an Electric Service Provider to provide certain Competitive Services (among them, retail electric sales) in Arizona. Its members include the electric distribution cooperatives (as Class A Members), AEPCO and other utilities (as Class B members) as well as its retail customers (as Class C Members).

Pursuant to the bylaws of AEPCO and Sierra, each distribution cooperative that is a Class A Member of AEPCO and/or of Sierra is represented on the Board of Directors of AEPCO and/or Sierra as are other classes of membership. However, each cooperative is a corporate entity entirely separate from each other cooperative. No cooperative holds any equity shares of any other cooperative nor does any cooperative exercise control over any other cooperative. Therefore, they are not "affiliates" of each other.

A.A.C. R14-2-1616 ("the Rule") requires: "Each Affected Utility that is an electric cooperative, that plans to offer Noncompetitive Services, and that is a member of any electric cooperative that plans to offer Competitive Services shall also submit a Code of Conduct to prevent anti-competitive activities." AEPCO does not provide Standard Offer Service, it only makes wholesale sales. While AEPCO is a member of Sierra which provides Competitive Services, AEPCO is not a "Utility Distribution Company" to which R14-2-1616.B relates. Although AEPCO does not believe the Rule specifically applies to it, AEPCO supplies this Code of Conduct to comply with the Rules and to describe and govern certain conduct concerning AEPCO and Sierra. (AEPCO also provides transmission and other ancillary services deemed non-competitive by FERC and does so in conformance with FERC's requirements for a code of conduct and separation of functions. Provision of those services is not intended to be included within this Code of Conduct.)

1. DEFINITIONS

All capitalized terms used and not defined herein shall have the respective meanings set forth in A.A.C. R14-2-1601.

“AEPCO” shall mean the Arizona AEPCO Electric Power Cooperative, Inc..

“Class A Members” shall mean AEPCO’s Class A Members which serve retail customers in Arizona and includes: Duncan Valley Electric Cooperative, Inc. (DVEC), Graham County Electric Cooperative, Inc. (GCEC), Mohave Electric Cooperative, Inc. (MEC), Sulphur Springs Valley Electric Cooperative Inc. (SSVEC) and TRICO Electric Cooperative, Inc. (TRICO).

“Sierra” shall mean Sierra Southwest Electric Power Cooperative Services, Inc.

“Rule” shall mean A.A.C. R14-2-1616. Code of Conduct

“RUS” shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture.

“Personnel” shall mean a cooperative’s employee, authorized agent or representative, leased employee or other worker provided to the cooperative under contract by another cooperative or third party.

2. APPLICABILITY OF CODE OF CONDUCT

- 2.1 This Code of Conduct shall apply to the conduct specified between AEPCO and Sierra. All Personnel shall conduct their activities in compliance with its requirements.
- 2.2 Failure to conduct activities in compliance with this Code of Conduct will subject the employee or agent to disciplinary or other actions in accordance with policies established by AEPCO or Sierra.
- 2.3 Copies of the Code of Conduct and associated policies and procedures shall be provided to Personnel and authorized agents and training on its provisions shall be provided.

3. CUSTOMER TELEPHONE CALLS

Telephone numbers used by AEPCO shall be different than those used for Sierra’s competitive activities.

4. PROHIBITION ON SUGGESTION OF UTILITY ADVANTAGE

AEPCO Personnel shall not state that a consumer who purchases competitive services from Sierra will receive any preferential treatment in the provision of Noncompetitive Services from an AEPCO Class A Member.

5. ACCOUNTING FOR COSTS

- 5.1. AEPCO and Sierra shall keep separate books and records. All records of each company shall be kept in accordance with the RUS Uniform System of Accounts and/or Generally Accepted Accounting Principles.
- 5.2. AEPCO shall develop and follow a cost allocation methodology to account for and bill transactions between AEPCO and Sierra based on the following:
 - a. To the extent practicable, costs will be classified on a direct cost basis for each service or product provided.
 - b. Indirect costs will be charged on a fully allocated basis as a cost for employee and management services or for any other services.
 - c. All direct and indirect costs for services and products will be traceable on the accounting records by account prescribed by the RUS Uniform System of Accounts.
 - d. Cost allocations shall include, without limitation:
 1. employee salaries and benefits;
 2. purchased materials and services;
 3. costs associated with office buildings and office furniture including computer equipment software programs and systems;
 4. management services;
 5. administrative and general overheads; and
 6. taxes imposed by Federal, State or other political subdivisions.

6. SEPARATION REQUIREMENTS

- 6.1. AEPCO shall be a separate corporate entity from Sierra.
- 6.2. AEPCO shall maintain its offices in a location geographically separate from Sierra's Competitive Services sales offices, telephones and Personnel.
- 6.3. AEPCO may contract for services and Personnel from Sierra through a written staffing agreement.
- 6.4. Any telecommunications, computer and information systems shared between AEPCO and Sierra shall be operated with appropriate security devices and procedures to protect against any disclosure of information in a manner inconsistent with this Code of Conduct.

- 6.5. AEPCO shall ensure that Sierra Personnel who provide staffing services to AEPCO shall do so in conformance with this Code of Conduct.
- 6.6 In accordance with the bylaws of AEPCO and Sierra, an officer or director of AEPCO may also serve as an officer or director of Sierra. Joint officers or directors shall not provide Standard Offer customer information obtained from a Class A Member to Sierra for its provision of competitive services without the customer's consent.

7. TRANSFERS OF GOODS AND SERVICES

All transfers of nontariffed goods and services from AEPCO to Sierra shall be priced to recover, at least, AEPCO's cost and shall be accounted for in accordance with Section 5 above.

8. TRANSFERS OF ASSETS

Any transfer of assets from AEPCO to Sierra shall be conducted in accordance with RUS requirements and generally accepted accounting principles.

9. VIOLATIONS

If filed with the Commission, complaints concerning alleged violations of the Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.

Exhibit B

ARIZONA ELECTRIC COOPERATIVES

CODE OF CONDUCT

INTRODUCTION

Pursuant to A.A.C.R14-2-1616A, each Affected Utility, including an electric cooperative, is required to establish a Code of Conduct. The cited rule states: "Each Affected Utility that is an electric cooperative that plans to offer Noncompetitive Services, and that is a member of any electric cooperative that plans to offer Competitive Services shall also submit a Code of Conduct to prevent anti-competitive activities". The Cooperatives propose this Code of Conduct to meet the requirements of the Rules.

DEFINITIONS

"Arizona Electric Cooperatives" or "Cooperatives" means the following organizations: Sierra Southwest Electric Power Services Cooperative, Inc. (Sierra) and the Member Distribution Cooperatives.

"Competitive Services" means those services described in A.A.C. R14-2-1601(7).

"Commission" means the Arizona Corporation Commission.

"Electric Competition Rules" or "Rules" means A.A.C. R14-2-1601 et seq., as set forth in Decision No. 61969 dated September 29, 1999.

"Distribution Services" means those services described in A.A.C. R14-2-1601 (14).

"Electric Service Provider" or "ESP" means a provider of Competitive Services as defined in A.A.C. R14-2-1601 (15).

“Member Distribution Cooperatives” mean Duncan Valley Electric Cooperative, Inc. (Duncan); Graham County Electric Cooperative, Inc. (Graham), Mohave Electric Cooperative, Inc. (Mohave), Sulphur Springs Valley Electric Cooperative, Inc., (Sulphur), and Trico Electric Cooperative, Inc. (Trico).

“Noncompetitive Services” means those services described in A.A.C. R14-2-1601(29).

CODE OF CONDUCT PROVISIONS

A. General

1. All employees and authorized agents of the Cooperatives shall conduct their activities in compliance with the requirements of this Code of Conduct.
2. Failure to conduct activities in compliance with this Code of Conduct will subject the employee or agent to disciplinary or other actions in accordance with the policies of the individual Cooperative.
3. Copies of the Code of Conduct and associated policies and procedures shall be provided to employees and authorized agents of the Cooperatives.
4. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of the Member Distribution Cooperatives and authorized agents likely to be engaged in activities subject to the Code of Conduct.

B. Financial Matters

1. Financial Separation – Should a Member Distribution Cooperative elect to offer Competitive Services outside its distribution service territory, such services shall be provided only through a separate corporate affiliate in accordance with the Rules. The Member Distribution Cooperative and its affiliate shall keep separate books, records and accounts. The Member Distribution Cooperative shall not subsidize Competitive Services through rates and charges for Non-Competitive Services.

2. Accounting for Costs – Member Distribution Cooperatives and Sierra are separate corporate entities and each shall keep and maintain separate books, records and accounts. All books, records and accounts shall be maintained in accordance with the RUS Uniform System of Accounts and accounting standards.
3. Cost Allocation – In all transactions between a Member Distribution Cooperative and Sierra, each shall develop and follow a cost allocation methodology to account for and bill transactions between them based on the following:
 - a. To the extent practicable, costs will be collected and classified on a direct cost basis for each service or product provided.
 - b. Indirect costs will be charged on a fully allocated basis as a cost for employee and management services or for any other services.
 - c. All direct and indirect costs for services and products will be traceable on the accounting records by account prescribed by the RUS Uniform System of Accounts.
 - d. Cost allocations shall include, without limitation, all purchased materials and services.

C. Separation Requirements

1. Each Member Distribution Cooperative shall maintain its offices in a location geographically separate from Sierra's sales offices, telephones and personnel.
2. Any telecommunications, computer and information systems shared by a Member Distribution Cooperative, Sierra or a competitive affiliate shall be operated with appropriate security devices and procedures to protect against any disclosure of information in a manner inconsistent with this Code of Conduct.

D. Use of Confidential Customer Information

1. A Cooperative shall not provide confidential customer information obtained in the provision of Noncompetitive Services to any third party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
2. A Cooperative shall inform any third party seeking such confidential customer information that the information may be released only after the Cooperative receives the customer's written authorization.
3. A Member Distribution Cooperative, shall provide, with the customer's written authorization, confidential customer information obtained in the provision of Non-Competitive Services to an ESP in the same manner and form as it would provide such information to Sierra.

E. Joint Employment

1. Each Cooperative is a separate corporate entity and shall maintain its own staff.
2. Should a Member Distribution Cooperative elect to provide Competitive Services outside its distribution service territory through a competitive affiliate, such competitive affiliate shall provide and employ its own staff.
3. Member Distribution Cooperatives, Sierra and any separate competitive affiliate may jointly employ officers and directors in accordance with applicable bylaw provisions. Joint officers and directors, however, shall not provide customer information obtained from a Cooperative supplying Noncompetitive Services to any Cooperative supplying Competitive Services without the customer's consent.

F. Non-Preferential Treatment

1. A Member Distribution Cooperative that enters into a joint marketing agreement with Sierra or participates in the formation of a competitive corporate affiliate shall, together with Sierra or such corporate affiliate, comply with this Code of Conduct.
2. Member Distribution Cooperatives shall apply tariffs in the same manner to similarly situated persons. If a tariff provision allows for discretion in its application, the Member Distribution Cooperative shall apply that provision in a non-discriminatory manner.
3. A Member Distribution Cooperative shall process similar requests for Noncompetitive Services and for Competitive Services, if applicable, in the same manner and according to the order in which received.
4. A Member Distribution Cooperative shall provide information concerning its Distribution Services (including information about available distribution capability, distribution access and curtailments) to ESPs, Sierra and any Competitive Service affiliate on a non-discriminatory basis.

G. Prohibition on Suggestion of Utility Advantage

1. Member Distribution Cooperatives shall not state in any advertising, promotional materials or sales efforts that a consumer who purchases Standard Offer Service or other Non-Competitive Service from the Member Distribution Cooperative will receive any better service from the Member Distribution Cooperative as a result of purchasing Competitive Services from Sierra or any competitive affiliate.
2. A Member Distribution Cooperative shall not require that a consumer purchase any Competitive Service from the Member Distribution Cooperative or Sierra as a condition to providing Noncompetitive Services.

H. Joint Advertising, Marketing, and Sales

1. Pursuant to A.R.S. §§ 10-2057.A.4, 10-2127.A.5 and 10-2138 a Member Distribution Cooperative and Sierra may engage in joint advertising, joint marketing and joint sales activities.
2. Joint Advertising, Joint Marketing, and Joint Sales activities may be performed only in accordance with a written Joint Marketing Plan entered into between a Member Distribution Cooperative and Sierra.
3. Any joint advertising, joint marketing and joint sales activities shall be conducted in conformance with this Code of Conduct.

I. Code of Conduct Violations – If filed with the Commission, complaints concerning alleged violations of the Code of Conduct shall be processed under the procedures established in A.A.C.R14-2-212.