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LAW OFFICES OF PROF. D. SUTTER 1913
SUTTER ROCHE & GENTRY 1928
GENTRY & GENTRY 1949
GENTRY, McNULTY & KIMBLE 1955
GENTRY, McNULTY & DESENS 1979
DESENS & HITCHCOCK 1986

REHEARING OCT 05 1999

September 10, 1999

VIA CERTIFIED MAIL

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

RE: Docket No. E-03665A-98-0681
Sierra Southwest Application for a CC&N

Dear Sir/Madam:

I have enclosed the original and ten copies of Sulphur Springs Valley Electric Cooperative, Inc.'s Application for Rehearing regarding the above matter. I have also included an additional copy to be file stamped for our files. Please forward that to me in the stamped, self-addressed envelope I have provided.

Please do not hesitate to contact me if you have any questions.

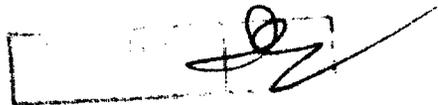
Sincerely,

HITCHCOCK, HICKS & CONLOGUE

By 
Christopher Hitchcock

CH/lmr
Enclosure
cc: C.W. Huber, SSVEC
Board of Directors

Arizona Corporation Commission
FILED



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ARIZONA CORPORATION COMMISSION

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Attorney For
Sulphur Springs Valley Electric Cooperative, inc.

CHRISTOPHER HITCHCOCK
STATE BAR NO. 004523

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Commissioner - Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

Arizona Corporation Commission

RECEIVED


IN THE MATTER OF THE APPLICATION OF) DOCKET NO.:
SIERRA SOUTHWEST ELECTRIC POWER) E-03665A-98-0681
COOPERATIVE SERVICES, INC. FOR A)
CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO PROVIDE COMPETITIVE) APPLICATION FOR
RETAIL ELECTRIC SERVICES AS AN) REHEARING AND
ELECTRIC SERVICE PROVIDER PURSUANT) REQUEST FOR STAY OF
A.A.C. R14-2-1601 *ET SEQ.*) DECISION NO. 61932

Sulphur Springs Valley Electric cooperative, Inc. ("SSVEC"), a party in the above proceedings, pursuant to A.R.S. §40-253, submits to the Commission this Application For Rehearing and Request for Stay of Decision No. 61932 entered and dated August 27, 1999 ("Decision"), and of the whole thereof, on the grounds that the Decision is unlawful, unreasonable, unjust, unconstitutional, in excess of the Commission's jurisdiction, arbitrary, capricious and an abuse of the Commission's discretion for the following reasons and upon the following grounds:

1. The Decision is not supported by any substantial evidence.
2. The Decision is unconstitutional by granting the Application of Sierra

Southwest Electric Power Cooperative Services, Inc. ("SSWEPCO") for a Certificate of

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Convenience and Necessity ("CC&N") as an Electric Service Provider ("ESP") as defined in A.A.C. R14-2-1601, et seq., as amended, the Retail Electric Competition Rules ("Rules"), and by issuing to SSWEPCO a CC&N to supply Competitive Services, as defined in the Rules on a statewide basis, which statewide basis includes all of the areas described in the CC&Ns issued by the Commission to SSVEC as an electric public service corporation ("PSC") for each and all of the following reasons:

A. The Decision violates Article XV, Sections 3 and 14 of the Arizona Constitution by authorizing SSWEPCO to charge rates which are not based on the fair value of the property of PSCs devoted to the public use, nor on a just and reasonable rate of return on such fair value nor on a rate design which will produce just and reasonable rates based thereon.

B. The Decision violates Article XV, Section 3 of the Arizona Constitution by delegating to SSWEPCO the authority to determine the rates SSWEPCO will charge customers and by permitting SSWEPCO to charge what are ostensibly "market-determined rates". The Commission has the duty to prescribe the rates SSWEPCO is authorized to charge which cannot be delegated to SSWEPCO, the market or anyone else.

C. The Decision violates Article XV, Section 3 of the Arizona Constitution by authorizing SSWEPCO, aggregators or self-aggregators, as those terms are defined in the Rules, to prescribe classes to be used by SSWEPCO. The Commission is to prescribe classifications to be used by SSWEPCO and this duty cannot be delegated

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to SSWEPCO or anyone else.

D. The Decision violates Article XV, Sections 3 and 12 of the Arizona Constitution by authorizing SSWEPCO, aggregators to discriminate in charges made to customers within the classes of customers of SSWEPCO that are or must be prescribed by the Commission. Section 12 requires that there shall be no discrimination in charges made between persons or places for rendering a like or contemporaneous service.

E. The Decision violates Article XV, Sections 2 and 3 of the Arizona Constitution which requires that all corporations other than municipal furnishing electricity for light, fuel or power shall be deemed PSCs by creating a new type of certificate of convenience and necessity ("CC&N) for ESPs, including SSWEPCO, who have not been issued CC&Ns by the Commission pursuant to A.R.S. §§40-281, *et seq.*, as have SSVEC and the other Affected Utilities. Only one type of CC&N is permitted by said Sections and the only power or jurisdiction granted by such Section 3 of the Arizona Constitution to the Commission with respect to classes of PSCs is to prescribe just and reasonable classifications to be used by PSCs and not the power and jurisdiction to prescribe just and reasonable classes of PSCs.

3. The Decision violates Article IV and Article XV, Section 6 of the Arizona Constitution by purporting to give the Commission the right to exercise legislative powers expressly or impliedly reserved to the Legislature by the Arizona Constitution.

4. The Decision is unconstitutional in violation of the just compensation provisions of the Fifth Amendment as incorporated into the Due Process Clause of the

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Fourteenth Amendment of the United States Constitution and Article II, Section 4 of the United States Constitution and Article II, Section 17 of the Arizona Constitution by breaching the contract and the exclusive regulatory compact between the State of Arizona and SSVEC.

5. The Decision breaches the contract and regulatory compact between the State of Arizona and SSVEC by denying SSVEC the exclusive right to sell electricity in its certificated areas and is unconstitutional in violation of Article II, Section 17, Article III and Article VI, Section 1 of the Arizona Constitution which require that when vested property rights are taken or damaged for public or private use, the State must, before such taking or damage, pay on behalf of the owner of the property or property rights taken or damaged just compensation (i) into court, secured by a bond as may be fixed by the court or (ii) into the State treasury on such terms and conditions as are provided by statute.

6. The Decision is unconstitutional, in excess of the jurisdiction of the Commission and in violation of Article II, Section 17, Article III and Article VI, Section 1 of the Arizona Constitution that:

A. The issue of just compensation to be paid SSVEC for the breach of the contract and the regulatory compact with the State or Arizona is an issue to be determined by the courts, not the Commission, and the Decision fails to provide for just compensation by the courts.

B. The Decision places unconstitutional restrictions, burdens and limitations on the right of SSVEC to obtain just compensation for the breach of the

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contract and the regulatory compact with the State of Arizona and the loss of, and damage to, its vested property rights.

7. The Decision is unconstitutional and in violation of Article I, Section 10, Clause 1 of the United States Constitution and Article II, Section 25 of the Arizona Constitution in that it impairs the obligation of contracts:

A. Between the State of Arizona and SSVEC, which has been issued certificates of convenience and necessity by the Commission pursuant to A.R.S. §§40-281, *et seq.*, which are in full force and effect, and

B. Between Arizona Electric Power Cooperative, Inc. ("AEPCO") and its Class A Members, including SSVEC, which contracts are all requirements wholesale power contracts requiring such Class A Members to purchase all of their electricity from AEPCO.

C. Between SSVEC and its members as they have agreed to purchase all of their electricity from SSVEC.

8. The Decision is unconstitutional, exceeds the jurisdiction of the Commission and violates the just compensation provisions of the United States and Arizona constitutions by confiscating the property of SSVEC.

9. The Decision violates the Supremacy Clause of Article VI of the United States Constitution, Article II, Section 3 of the Arizona Constitution, and the Rural Electrification Act of 1936, as amended, United States Code Annotated, Title 7, Chapter 31, Subchapters I and III ("RE Act") by reason of:

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A. Loans made by the United States pursuant to the RE Act to AEPCO and to SSVEC which are secured by utility realty mortgages and security agreements based upon the all requirements wholesale power contract between AEPCO and SSVEC are placed in jeopardy by the Decision.

B. The frustration of the objectives and means of the RE Act by permitting the benefits of the RE Act to be enjoyed by those not intended to be beneficiaries of the Act, such as ESPS who are permitted to use or access the distribution facilities of SSVEC without its consent, to the detriment of the Act's true beneficiaries are those financing the RE Act's programs.

C. Loans made by the United States pursuant to the RE Act to SSVEC which are secured by utility realty mortgages and security agreements based upon the bylaws contract between SSVEC and its owners/members are placed in jeopardy by the Decision.

10. The Decision violates the Due Process Clauses of each of the Fourteenth Amendment of the United States Constitution and Article II, Section 4 of the Arizona Constitution for each of the following reasons:

A. The Decision unlawfully amends and/or deprives SSVEC of the benefits of prior decisions of the Commission in its certification, finance, ratemaking and other orders without notice and an opportunity to be heard as required by A.R.S. §40-252.

B. The Decision is contrary to accepted judicial construction of A.R.S.

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§40-252, as set forth in decisions of the Arizona Supreme Court, as the Decision permits competitive encroachment into SSVEC's territory without the showing of inability or unwillingness of SSVEC to serve required by law.

C. The Decision violates 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.

11. The Decision unlawfully restricts SSVEC from providing Competitive Services, as defined in the Rules, pursuant to, or based upon, the existing CC&Ns of SSVEC.

12. The Decision is unconstitutional in that it prohibits SSVEC, who has been issued CC&Ns pursuant to A.R.S. §§40-281, *et seq.*, from selling electricity and other services competitively outside its certificated areas when SSWEPCO, who has not been issued CC&Ns pursuant to A.R.S. §§40-281, *et seq.*, is granted the right to sell electricity and other services competitively anywhere in the State of Arizona, except in the service territories of municipal corporations or political subdivisions of the State of Arizona who do not elect Reciprocity pursuant to A.A.C. R14-2-1611.

13. The Decision violates the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Article II, Section 13 of the Arizona Constitution by burdening SSVEC with unlawful discriminatory restrictions and requirements which are not made applicable to SSWEPCO although both SSVEC and SSWEPCO are PSCs such as:

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2 A. SSVEC is required to comply with A.R.S. §40-281, 40-282 and
3 other regulatory statutes, whereas SSWEPCO is not;

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5 B. SSVEC is required to serve electricity within its certificated areas
6 whereas SSWEPCO is not;

7 C. SSVEC is required to be a Provider of Last Resort whereas
8 SSWEPCO is not.

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10 14. The Decision deprives SSVEC of the value of its respective CC&Ns which
11 are severely damaged or taken by the Decision.

12 15. The Decision is unlawful, unconstitutional and exceeds the jurisdiction of
13 the Commission in ordering use or access of facilities of SSVEC by SSWEPCO without
14 the consent of SSVEC.

15 16. The Decision is unlawful and exceeds the jurisdiction of the Commission by
16 impermissibly interfering with the internal management and operations of SSVEC.

17 17. The Decision is unlawful and exceeds the jurisdiction of the Commission by
18 violating the provision of ARS. §40-334, which prohibits discrimination between persons,
19 localities or classes of service as to rates, charges, service or facilities.

20 18. The maximum rate of \$25 per kWh for electric Competitive Service as filed
21 by SSWEPCO when the average cost of a kWh is approximately \$.03 to \$.05 is so
22 unreasonable that it is meaningless and does not comply with the Rules for the issuance of
23 a CC&N to an ESP such as SSWEPCO.
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26 19. The public policy of the State of Arizona with respect to rates, charges and

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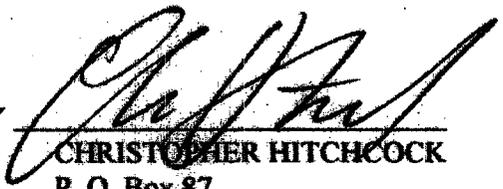
classifications to be used by PSCs is established by the applicable provisions of Article XV of the Arizona Constitution and neither the Commission nor the Legislature has the jurisdiction to change such public policy.

20. The Decision fails to give the Affected Utilities, including SSVEC, a hearing with respect to any competitive residential electric tariff that SSWPCO may file in the future.

WHEREFORE, having fully stated its Application for Rehearing and Request for Stay, SSVEC respectfully requests that the Commission enter its Order granting this Application for Rehearing and this Request for Staying the Decision, and the whole thereof.

RESPECTFULLY SUBMITTED this 9th day of September, 1999.

HITCHCOCK, HICKS & CONLOGUE

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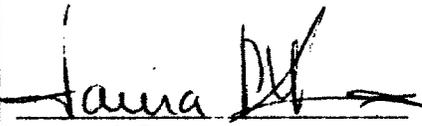
ORIGINAL and ten (10) copies
of the foregoing filed this 9th
day of September, 1999, with:

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

Copy of the foregoing mailed
this 9th day of September, 1999, to:

Chief Counsel
Legal Division
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All parties listed on this docket.



Laura M. Room