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**O'CONNOR CAVANAGH MOLLOY JONES**  
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ARIZONA CORPORATION COMMISSION  
HEARING DIVISION

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Attorneys for Trico Electric Cooperative, Inc.

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:

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

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

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

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

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

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

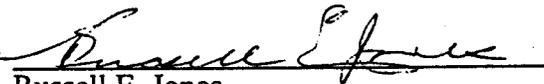
1 before December 26, 1996, whereas the Affected Utilities have continued to incur, and will  
2 continue to incur, Stranded Costs after said date by reason of the Rules and the Decision.

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

8 8. Finding of Fact Nos. 6 through 11 of the Decision clearly established that the entry  
9 of the Decision is premature and a Decision pertaining to Stranded Costs of the Affected Utilities,  
10 other than Decision No. 61311 entered by the Commission on January 11, 1999, which stayed the  
11 effectiveness of Decision No. 60977, should not be entered until the Commission has resolved the  
12 issues set forth in such Findings of Fact.  
13

14 WHEREFORE, Trico requests that the Commission enter its Order granting its  
15 Application for Rehearing and staying the Decision and the whole thereof.  
16

O'CONNOR CAVANAGH MOLLOY JONES

17  
18 By:   
19 Russell E. Jones  
20 D. Michael Mandig  
21 Attorneys for Trico Electric Cooperative, Inc.  
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Original and 10 copies of the foregoing document filed the 17 day of May, 1999, with:

Docket Control  
Arizona Corporation Commission  
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Phoenix, Arizona 85007

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Carol Watson