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BEFORE THE ARIZONA CORPORATION COMMISSION

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11 **IN THE MATTER OF THE**)
12 **APPLICATION OF TRICO**)
13 **ELECTRIC COOPERATIVE, INC.**)
14 **FOR APPROVAL OF A NEW NET-**)
15 **METERING TARIFF, A PARTIAL**)
16 **WAIVER OF THE COMMISSION'S**)
17 **NET METERING RULES AND A**)
18 **REVISED AVOIDED COST RATE IN**)
19 **THE COMPANY'S EXISTING NET**)
20 **METERING TARIFF.**)

DOCKET NO. E-01461A-15-0057 Arizona Corporation Commission

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**THE ALLIANCE FOR SOLAR
CHOICE'S BRIEF**

I. Background

The Alliance for Solar Choice ("TASC") submits this Brief in response to the request from the Administrative Law Judge assigned to this proceeding. Below, TASC sets forth the numerous legal and policy reasons that Trico Electric Cooperative's ("Trico") *Application for Approval of Net Metering Tariffs and Partial Waiver of the Net Metering Rules* (the "Application") cannot and should not be heard outside a full rate case proceeding. Rather than evaluating the merits of Trico's misguided proposal, this brief focuses on the numerous deficiencies in Trico's attempt to evade legally necessary scrutiny of the Application in a full rate case.

First, as described in Section II, Trico's Application asks the Commission to engage in impermissible single issue ratemaking. Single issue ratemaking is the prohibited practice of making adjustments to utility rates because of changes in costs in a single item without examining

1 the entire cost and revenue structure of the utility and any potential impact of the rate change on
2 the utility's rate of return on investment. Despite this well-established prohibition, Trico's
3 Application asks the Commission to approve an increase in recovery without the examination
4 required under the Arizona Constitution. Further, if granted, the Application would send a windfall
5 of increased revenue from all future solar customers to Trico, while failing to return any of that
6 increased revenue to Trico ratepayers. Given that reality, Arizona's Constitution is clear that the
7 Application must be heard in the context of a full rate proceeding.

8 In addition, Trico proposes to adjust its avoided cost allocation, which is not an uncommon
9 request. However, in light of Trico's parallel request to altogether eliminate net metering and
10 replace it with a credit for all exported power at an avoided cost rate, the avoided cost calculation
11 proposal takes on an entirely different meaning. Trico asks that its avoided cost adjustment be
12 heard outside a rate case and without a hearing, while simultaneously asking that this new and
13 substantially lower avoided cost rate be applied to *all* exported power. This issue, too, must be
14 fully vetted in a rate case.

15 Moreover, Trico is proposing a permanent, not interim, solution to the issues the
16 Application identifies. As explained in Section III, to ensure a fair, non-discriminatory resolution,
17 such a permanent solution must be dealt with in the context of a full rate case, where the
18 Commission will act with its full powers to impact rate design and recovery mechanisms. As
19 noted, Trico also seeks permission to end net metering in its service territory. Net metering, or
20 "NEM," is the law in 43 states, including in Arizona since 2009. This court should reject Trico's
21 request to end NEM -- itself a significant and extremely controversial proposal -- without
22 consideration of all the relevant costs and benefits through a test year revenue requirement study,
23 cost of service analysis, and rate design, and other safeguards of a general rate case.

24 Finally, in addition to these legal deficiencies, and perhaps because of them, all five sitting
25 Arizona Corporation Commissioners have expressly stated his or her desire to address utilities'
26 claims of issues with rate design leading to cost shifts in a full rate case proceeding. Commission
27 Staff, RUCO, and numerous interested parties have all similarly indicated that a general rate case
28 is the appropriate forum for resolution of these issues.

1 For all these reasons, on which TASC elaborates below, Trico's Application should be heard only
2 in a full rate case proceeding.

3 **II. The Application Constitutes Impermissible Single Issue Ratemaking**

4 **A. Single Issue Ratemaking Is Impermissible In Arizona**

5 In cases such as *Scates v. Arizona Corp. Commission*, Arizona courts have determined that
6 "[w]hile the Corporation Commission has broad discretion in establishing rates, it is required by
7 our Constitution to ascertain the value of a utility's property within the State in setting just and
8 reasonable rates."¹ The goal is first to "determine the 'fair value' of a utility's property and use
9 this value as the utility's rate base,"² and then to "determine what the rate of return should be, and
10 then apply that figure to the rate base in order to establish just and reasonable tariffs."³ It is
11 precisely these careful considerations in which the Commission will be unable to engage without
12 a rate case. It is precisely these determinations that Trico's Application seeks to unconstitutionally
13 bypass.

14 **B. Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in**
15 **response to a change in a single cost item considered in isolation. In *Scates*, Mountain**
16 **States Telephone and Telegraph Company sought to increase rates for the installation,**
17 **moving, and changing of telephones, without an examination of the company's other**
18 **costs and revenues.⁴ As the *Scates* court recognized,⁵ considering some costs in**
19 **isolation might cause the Commission to allow a utility to increase rates to recover**
20 **higher costs in one area without recognizing counterbalancing savings in another. Such**
21 **single-issue ratemaking is unsound regulatory policy, and impermissible under law.**

22 **Trico Is Attempting Forbidden Single-Issue Ratemaking**

23 Despite Arizona courts' rejection of single-issue ratemaking, Trico is asking for exactly
24 that. The Application seeks to eliminate net metering and serve all new solar customers under a
25 new rate that will result in increased recovery for Trico from all new solar customers. Trico asks
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27 ¹ *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978) (citing Ariz. Const. art. 15, §
28 14).

² *Id.* at 615.

³ *Id.*

⁴ *Id.* at 614 ("The increase affected charges for all installation, moving and changing of telephones within the
State of Arizona. It amounted to an annual rise in revenue to Mountain States of approximately 4.9 million dollars,
representing about two percent of its entire annual revenue in the state.").

⁵ *Id.* ("The Commission approved the increase without any examination of the costs of the utility apart from
the affected services, without any determination of the utility's investment, and without any inquiry into the effect
of this substantial increase upon Mountain States' rate of return on that investment.").

1 that this rate alteration occur in isolation, outside of a rate case, and without the constitutionally
2 mandated examination into fair value and impact on its rate of return. Trico asks the Commission
3 to approve the Application without considering the relevant costs and benefits through a test year
4 revenue requirement study, cost of service analysis, and rate design, as a general rate case would
5 require which means it is asking to do precisely what the *Scates* court forbade.

6 **C. Even If Single Issue Ratemaking Were Permissible, Trico's Application Fails As**
7 **Proper Ratemaking Because It Does Not Allocate The Additional Revenue That**
8 **Would Be Generated To Other Customer Classes**

9 Even were single-issue ratemaking permissible – which it is not – the Application has
10 another fatal problem. Trico has made no attempt to allocate the increased revenue that its proposal
11 would create. In a general rate case, such revenue would be properly allocated, and a proposed
12 increase in collection from one class of customers would require a corresponding reduction across
13 other classes. In contrast, if Trico's Application is allowed to go into effect, instead of being
14 properly allocated, Trico would receive a revenue windfall. The proposal is no different than if
15 Trico proposed to subject all new residential customers to a more expensive rate plan that is not
16 currently being offered. Those increased revenues from those on the new plan would have to be
17 reallocated to the rest of the rate base (in a rate case) if such a proposal were to pass muster as
18 proper ratemaking. Trico makes no attempt in its Application to allocate the revenues to the non-
19 solar ratepayers that Trico claims are currently bearing unfairly-shifted costs. Perhaps Trico does
20 not propose the reallocation of this collected windfall because it realizes that to do so would make
21 it even more obvious that this request properly belongs in a rate case.

22 The proposal in the Application will clearly allow Trico to collect more revenue, in
23 comparison to what Trico expects to collect today. Trico is not proposing to lower non-solar
24 customers' rates as a result of collecting this additional revenue. Given this lack of allocation,
25 Trico's intent with this increased revenue is entirely unknown. If any customers were in fact
26 unfairly paying "more" than they would be absent the existence of NEM, Trico's Application
27 provides no relief to them. They will continue to pay "more" than Trico has alleged is their fair
28 share, and in addition, solar customers will pay more than they currently pay.

1 **D. As Trico Has Not Had A Rate Case Since 2008, Any Claims Of Insufficient**
2 **Revenue Must Be Subject To Scrutiny In A Rate Case**

3 Without careful examination in a rate case, it is impossible to ascertain the cause or validity
4 of any of Trico's allegations of eroding or insufficient revenues. Much has changed over the seven
5 years that have passed since the filing of Trico's last general rate case, and without full
6 examination, we cannot know the reasons for any current under-recovery. Only two of Arizona's
7 electric utilities have gone a longer time between rate cases than Trico's seven years. It would
8 appear Trico is due –overdue in fact—for a full rate case, where this issue can be properly vetted.

9 **E. The Avoided Cost Calculation Itself Must Be Heard In The Next Rate Case As**
10 **Well**

11 The preceding sections explained why the issue of whether net metering should be
12 eliminated and replaced with an avoided cost credit program must be heard in a rate case. The
13 same is true for Trico's request to adjust the amount of that avoided cost calculation itself. Trico
14 argues that the avoided cost reset is a routine matter not worthy of a hearing at all, let alone a
15 proper vetting in a full rate case proceeding. However, the nature of the Application itself has
16 changed the purpose of the avoided cost calculation, and made this proposed significant reduction
17 in the avoided cost rate a substantially more important and meaningful exercise.

18 Today, a very small percentage of an average customer's annual power generated by her
19 rooftop solar panels ends up being credited by the utility at this avoided cost rate at year end. Trico
20 proposes to apply this new rate to *all* exported power. The ACC has never dealt with an avoided
21 cost reset in this context, where the utility seeks to expand the amount of power subject to credit
22 at this rate. This is not an academic point: some customers could see this new avoided cost rate
23 apply to upwards of 45% or more power than the rate would previously have applied to under the
24 current Rules.

25 The bottom line is that rather than remain an exceedingly small piece of the economics of
26 rooftop solar, Trico is proposing that the avoided cost rate become one of the single most important
27 factors impacting a customer's decision to go solar. Accordingly, this analysis should be
28 completed – like that of the rest of the Application -- in an upcoming Trico rate proceeding.

1 **III. It Would Be Poor Policy To Entertain Trico's Proposal Outside A General Rate**
2 **Case**

3 In addition to the legal reasons barring single-issue ratemaking, there are solid policy
4 reasons why the Application should only be considered as part of a general rate case.

5 **A. Trico's Proposal Seeks A Permanent, Not Interim, Change And Should Only Be**
6 **Considered In A Rate Case**

7 Trico's proposal seeks a permanent, not an interim, solution to the alleged problems it
8 describes. In a similar matter, the Commission rejected APS's request for a permanent solution,
9 instead requiring that APS submit its request only in a general rate case.⁶ Trico's Application even
10 concedes this point, stating, "[u]nlike past cases where a utility has attempted an interim rate-
11 design solution or adding an additional fixed-cost recovery charge, Trico believes that modifying
12 its net-metering tariff directly mitigates the problem in a timely manner."⁷ In other words, Trico
13 believes the resolution it seeks is the final resolution of this issue and that no further scrutiny will
14 be merited in the Company's next rate case.

15 In addition to being at odds with Commission precedent, such a request ensures that there
16 will *never* be a full examination of the alleged problem or a variety of potential solutions. If a
17 permanent solution is adopted outside a rate case, the public will never have the opportunity to
18 evaluate this proposal while considering of all the relevant costs and benefits through a test year
19 revenue requirement study, cost of service analysis, and rate design, as would be accomplished in
20 a general rate case. There is no reason to shortcut the process and lose the benefits of full
21 evaluation.

22 **B. Outside Of A Rate Case, The Commission Cannot Utilize All Its Regulatory**
23 **Powers To Address The Application**

24 Another consideration is that the Commission would be hamstrung in its ability to address
25 the Application's issues if forced to do so outside a formal utility rate case. Commission Staff
26 agrees, noting in its response to Trico in this Docket, "*the Commission has more options available*
27 *within a rate case than it has outside of a rate case.*"⁸ For example, outside of a rate case, the

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6 Decision 74202

7 Application at 6, l: 1-3.

8 See Staff's Response to Trico's Request for Procedural Conference at 3, l:15-17

1 Commission is powerless to address rate design issues in a broad context by reallocating costs
2 across different classes.

3 Similarly, the Commission would be unable to create a new rate or multiple rate tariffs to
4 address any concerns it might have. Perhaps most importantly, outside of a rate case the
5 Commission simply will not have all the relevant information, including cost of service studies,
6 test year revenue requirement, and a full cost benefit analysis, which is necessary to fully examine
7 the issues presented in the Application.

8 Trico is proposing to box the Commission into a narrow potential solution, focused on a
9 single characteristic of a small class of customers, in response to an alleged problem – one that if
10 real and verifiable-- is likely caused by the very nature of rates themselves, and not by a narrow
11 class of customers who generate a portion of their own power. The Commission should deal with
12 this issue in a forum that allows it to truly consider and implement any and all options it deems
13 appropriate after reviewing the matter. The only forum that permits that process is a general rate
14 case.

15 **C. Trico Is Really Seeking A Full, Not “Partial,” Waiver Of the Net Metering Rules,
16 A Major Change That Should Only Be Considered In A Rate Case**

17 Net metering (NEM) is the policy in 43 states and the District of Columbia whereby solar
18 customers receive a one for one credit for any excess power exported to the grid, and may rollover
19 any unused credits from month to month over an annual term. Although Trico characterizes its
20 Application as a request for a “partial waiver” of the Commission’s Net Metering Rules, in reality
21 Trico is requesting freedom to not provide NEM to its customers.

22 As the Commission no doubt understands, this proposal would be a significant departure
23 from the current state of policy in Arizona. The Commission should not consider the elimination
24 of net metering in a one-off forum of the utility’s choosing. Such an important examination and
25 analysis must be carried out in a full general rate case.

26 **IV. All Five Commissioners, Commission Staff, RUCO, and Numerous Other
27 Interested Parties Have Indicated that a Rate Case is the Proper Venue for this
28 Examination**

1 TASC is not alone in its view that Trico's Application should be considered in a full rate case. In
2 fact, there is near unanimity among interested parties – the decision-makers themselves,
3 Commission Staff, and RUCO -- that a rate case is the proper venue. What follows is a brief
4 survey of various supporting statements that have been made from these important interests.

5 **A. All Five Commissioners Appear To Support Rate Case Resolutions Of This**
6 **Type Of Issue**

7 Starting on the final day of the previous APS net metering public meeting and going
8 forward, both newly elected and incumbent Commissioners have been asked about their position
9 on the net metering debate or have signaled their position regarding the issue's proper forum. The
10 unanimous chorus of responses is perhaps best summarized by a quote from Commissioner Little,
11 where he stated, "[w]ell here's the thing, this [whole] question of net metering really needs to be
12 discussed in the context of a rate case. Because, that's an evidentiary hearing, sworn testimony,
13 everybody has an opportunity to provide input, all the different interveners and stakeholders....But
14 the true, correct amount [] is something we probably do need to look like in the context of a rate
15 case."⁹ Then-candidate and now-Commissioner Forese echoed those sentiments when he stated,
16 "[t]his issue of net metering should have been handled in a rate case. I would have preferred to see
17 it that way. You need to look at it in depth and look at it on all sides. It is sustainable. It can work.
18 You just have to make sure that you find the balance and that is done in a rate case."¹⁰

19 Then-Chairman and now-Commissioner Stump signaled his apparent support for a full
20 vetting of the issues raised in the Application in the context of a rate case during the debate on
21 APS's proposed net metering "solution." Chairman Stump's Proposed Amendment No. 1 to the
22 APS net metering decision included the following proposed paragraph:

23 *"85. We reiterate that our decision today is a first step toward sorting out the complex issues*
24 *presented by this case. We recognize that a complete consideration of the many facets of these*
25 *issues must await APS's next rate case. We therefore will require APS to file its next full rate case*

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28 ⁹ PBS Candidate Interview September 22, 2014.

¹⁰ PBS Candidate Interview June 25, 2014.

1 at the earliest date that is consistent with the Commission's decision in APS's last rate case"
2 (emphasis added)¹¹

3 Then-Commissioner and now-Chairman Bitter Smith proposed an amendment seeking to
4 have the entire APS net metering issue decided in a quickly brought rate case and to forego taking
5 any action on the matter outside of a rate case. Commissioner Bitter Smith's Proposed Amendment
6 #1 included the following proposed paragraph:

7 "53. We agree with Staffs view that the issues presented herein will likely need to be addressed
8 and considered as part of APS's next rate case filing. This is also the view expressed by RUCO in
9 its comments to the docket. Therefore, the sooner APS makes its filing consistent with the
10 provisions of Decision No. 73 183, the sooner the important issues arising from these matters can
11 be considered in the context of a full rate case." (emphasis added)¹²

12 Finally, During a Commission Staff Meeting on August 22, 2014, Commissioner Bob
13 Burns indicated it is his clear preference that rate design issues be dealt with in rate cases as
14 opposed to other forums where fewer parties participate. Commissioner Burns said, "I've found
15 out more about how a workshop with a rate design would work and the universe that would be
16 participating would be considerably smaller possibly than if things were handled in a rate case,
17 I'm now of the position that we ought to do this rate design within a rate case."¹³

18 **B. Commission Staff has repeatedly expressed a preference for a rate case**

19 Commission Staff has been outspoken in its support for hearing net metering issues in a
20 rate case. In its Staff Report and Recommended Order in the APS net metering case, Staff
21 succinctly explained its support for a rate case by writing:

22 *"Staff believes that any cost-shift issue created by NM is fundamentally a matter of rate design.*
23 *The appropriate time for designing rates that equitably allocate the costs and benefits of NM is*
24 *during APS's next general rate case. Data on all of APS's costs are available within a rate case.*
25 *In addition, the Commission has more options available within a rate case than it has outside of a*
26

27 ¹¹ See Docket No. E-01345A-13-0248, Chairman Stump's Proposed Amendment # 1

28 ¹² See Docket No. E-01345A-13-0248, Commissioner Bitter Smith's Proposed Amendment #1

¹³ August 22, 2014 Staff Meeting, Agenda Item No. 2; audio available here at 8:45:

http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1646

1 rate case. Therefore, Staff recommends that the Commission take no action on the instant
2 application and defer the matter for consideration during APS's next rate case.¹⁴

3 More importantly, Staff has already taken a strong position in favor of a rate case
4 examination in this docket. Staff notes that Trico is preparing to file a rate case "in the near future"
5 in a filing in this docket. Further, "Staff notes that addressing these issues in Trico's next rate
6 case, instead of this Application, will increase the remedies available to the Commission to achieve
7 a just and reasonable resolution of the issues."¹⁵

8 C. RUCO has expressed support for a rate case

9 RUCO has long contended that rate design issues should be heard in the context of a rate
10 case. During the APS net metering debate RUCO wrote that, "[t]he current net metering debate is
11 a sub-component of a much larger debate about the implications and benefits of new technology,
12 the value of the electric grid, and rate design. The Residential Utility Consumer Office (RUCO)
13 agrees with Arizona Corporation Commission (ACC) Staff that this issue should be part of a
14 broader discussion such as a rate case."¹⁶

15 V. Conclusion

16 For legal and policy reasons, the Commission cannot and should not hear Trico's
17 Application outside of a general rate case. Before the Commission can pass judgment on Trico's
18 proposal, the State Constitution requires a detailed and robust examination of costs, rate of return
19 impacts, fair value, and other items that simply cannot be completed outside of a rate case. Further,
20 Trico's proposal plainly fails to reallocate any of the increased revenue it will generate for the
21 utility and such increased revenue can only be reallocated inside a rate case.

22 Trico proposes a drastic elimination of net metering without any scrutiny. Such a major
23 departure from the law should only be examined in a setting where it can be adequately vetted and,
24 perhaps most importantly, where the Commission has all of its many tools at its disposal. Trico is
25
26

27 ¹⁴ See September 30, 2013 Staff Report in Docket No. E-01345A-13-0248 at p: 6-7.

28 ¹⁵ See Staff's Response to Trico's Request for Procedural Conference at p:3, l:15-17. In the same filing Staff goes
as far as asking that Trico simply withdraw its Application and refile as part of its rate proceeding. Id at p:3, l:5-7.

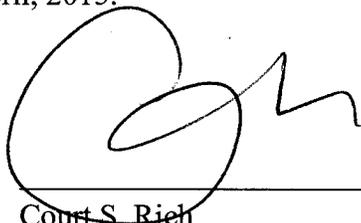
¹⁶ See RUCO Letter to ACC Dated October 30, 2013 in Docket E-01345A-13-0248 at 1.

1 overdue for a rate case and this issue should be brought to the Commission in the context of a rate
2 proceeding.

3 Finally, Commissioners, Commission Staff, and RUCO have all expressed a clear
4 preference for a deliberative process and a thorough examination of the rate design issues raised
5 in the Application to be carried out in a rate case.

6 For the forgoing reasons, TASC respectfully requests that the Commission dismiss the
7 entirety of the Application and only consider the issues presented therein in the context of Trico's
8 next general rate case.

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10 Respectfully submitted this 10th day of April, 2015.



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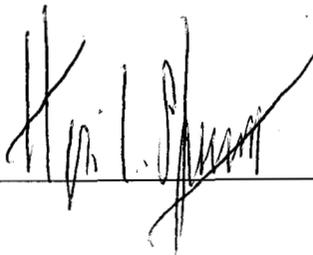
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