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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

- SUSAN BITTER SMITH, Chairman
- BOB STUMP
- BOB BURNS
- TOM FORESE
- DOUG LITTLE

IN THE MATTER OF THE APPLICATION OF TRICO ELECTRIC COOPERATIVE, INC., FOR APPROVAL OF A NEW NET-METERING TARIFF, THE PARTIAL WAIVER OF THE COMMISSION'S NET METERING RULES AND A REVISED AVOIDED COST RATE IN THE COMPANY'S EXISTING NET METERING TARIFF.

**DOCKET NO. E-01461A-15-0057**  
**RESPONSE BRIEF OF SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.**

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In her April 3, 2015, Procedural Order, the Administrative Law Judge ("ALJ") ordered that the parties file briefs by April 10, 2015, on the following issues:

The parties are directed to file briefs discussing the legal issues affecting whether the actions requested under Trico's Application must be considered in a rate case proceeding. This directive affects all aspects of Trico's request: whether a proposed net metering tariff that would affect only future DG members can be heard outside of a rate case proceeding; and whether modification of the existing Trico net metering tariff that applies to current DG members can be heard outside of a rate case hearing.

In a subsequent Procedural Order dated April 16, 2015, the ALJ ordered the parties to file response briefs by April 30, 2015. In accordance with the procedural orders in this docket, Sulphur Springs Valley Electric Cooperative ("SSVEC" or the "Cooperative") hereby files its response brief and asserts that:

- (i) The new Net Metering Tariff Schedule NM1 and the revised Net Metering Tariff Schedule NM proposed by Trico Electric Cooperative, Inc., ("Trico") in its February 26, 2015 application ("Application") may legally be considered and approved in this docket;

<sup>1</sup> Procedural Order dated April 3, 2015, at 3-4.

1 (ii) The partial waiver of the net metering rules (“Net Metering Rules”) requested by Trico in its Application may legally be granted in this docket; and

2  
3 (iii) Trico’s net metering tariffs and the requested waiver of the Net Metering Rules should be addressed in this docket.

4 **1. There is No Legal Requirement that Trico’s Application be Addressed in a Rate Case.**

5  
6 Clearly, the Arizona Corporation Commission (“Commission”) may legally  
7 consider and approve Trico’s proposed Net Metering Tariff Schedule NM1 and grant the  
8 requested partial waiver of the Net Metering Rules in this docket without requiring Trico  
9 and its members to submit to a costly rate case. As Trico points out in its Brief on  
10 Process Issues, the Commission approved its current Net Metering Tariff Schedule NM  
11 in a stand-alone docket, outside of a rate case.<sup>2</sup> Additionally, there have been subsequent  
12 adjustments to the avoided cost rate which also occurred outside of a rate case. When  
13 the Commission adopted its Net Metering Rules, no one in the rooftop solar industry  
14 (including the intervenors in this docket) argued that the initial net metering tariffs of the  
15 utilities required approval in a rate case. To the contrary, those interests strongly urged  
16 the Commission to approve the net metering tariffs in the quickest possible way.

17 The Utilities Division Staff acknowledges that Trico’s application can be  
18 considered and approved in this docket. In its March 19, 2015 Response to Trico’s  
19 Request for Procedural Order, Staff very clearly states that “[it] is not contending that a  
20 rate case is required in order to process this matter.”<sup>3</sup> Likewise, in its Brief Pursuant to  
21 the April 3, 2015 Procedural Order filed a few weeks later, Staff again acknowledged  
22 that Trico’s requested relief does not require a rate case filing.<sup>4</sup> There is simply no legal  
23 impediment to the Commission’s consideration of Trico’s Application in this docket.

24 To date, none of the intervenors have presented any applicable legal authority  
25 which would preclude the Commission’s consideration of Trico’s Application in this  
26 docket. Intervenor Arizona Solar Energy Industries Association (“AriSEIA”) filed

27 <sup>2</sup> Trico’s Brief on Process Issues dated April 10, 2015, at 2, lines 14-15.

28 <sup>3</sup> Staff’s Response to Trico’s Request for Procedural Order dated March 19, 2015, at 4, lines 2-3.

<sup>4</sup> Staff’s Brief Pursuant to April 3, 2015 Procedural Order dated April 10, 2015, at 2, line 15.

1 letters in the docket on March 23, 2015 and April 2, 2015,<sup>5</sup> but neither of those letters  
2 raised an objection to the Commission addressing Trico's Application in this docket. In  
3 fact, AriSEIA said that "[w]e look forward to engaging more fully in this docket as it  
4 progresses..."<sup>6</sup> Similarly, intervenor Robert Hall stated that "[t]he TRICO application  
5 ... in its entirety should be heard now, and not postponed to a later hearing time in an  
6 ensuing rate case."<sup>7</sup> Intervenor Pascua Yaqui Tribe did not assert a position in its April  
7 9, 2015, Notice of Filing, but stated that it "will attend the public hearing scheduled  
8 before the Commission in this matter and may speak briefly on the issues presented."<sup>8</sup>

9 The Residential Utility Consumer Office ("RUCO") correctly acknowledges in its  
10 April 1, 2015 letter to the commissioners that it has no standing in cases that involve  
11 cooperatives. Notwithstanding the lack of standing, it bears noting that there is nothing  
12 in RUCO's letter which suggests that Trico's Application cannot legally be addressed in  
13 this docket.

14 Intervenor Kevin Koch asserts that "cost shift discussions should be heard in a  
15 rate case," but he does not state that Trico's Application must legally be heard in a rate  
16 case.<sup>9</sup>

17 The Arizona Solar Deployment Alliance ("ASDA") asserts that "Trico is, in  
18 essence, asking for a new design for DG customers," and then cites *Scates v. Arizona*  
19 *Corporation Commission*, 118 Ariz. 531, 578 P.2d 612 (Ct. App. 1978) for the  
20 proposition that rate design and rate making must occur in a rate case.<sup>10</sup> However, as  
21 Tucson Electric Power Company ("TEP") and UNS Electric ("UNS") correctly note in  
22 their April 10, 2015 Comments on Procedural Order, "[t]he Commission's approval of  
23 utility net metering tariffs, as well as periodic modifications to utility avoided cost rates,

24 <sup>5</sup> The AriSEIA letter filed April 2, 2015 is actually dated April 1, 2015.

25 <sup>6</sup> Letter from Mark Holohan of AriSEIA to Vincent Nitido of Trico dated April 1, 2015, and filed in the  
26 docket on April 2, 2015.

27 <sup>7</sup> Robert Hall's Briefing Related to Timeliness and Need for Net Metering Hearing dated April 9, 2015, at  
28 1, lines 11-12.

<sup>8</sup> Pascua Yaqui Tribe's Notice of Filing dated April 9, 2015 at 1, lines 19-20.

<sup>9</sup> Comments of Kevin Koch, Chad Waits and George Villec dated April 9, 2015 and filed April 10, 2015,  
at 1.

<sup>10</sup> Brief dated April 10, 2015, by the Arizona Solar Deployment Alliance at 2, lines 18-19.

1 has been done outside of rate cases in connection with the Commission's net metering  
2 rules."<sup>11</sup> Staff agrees that "[h]istorically, the Commission has updated utility avoided  
3 costs through a memorandum and proposed order prepared by Staff."<sup>12</sup> Additionally,  
4 TEP and UNS correctly state that "the Commission has the authority to grant waivers of  
5 its rules outside of a rate case."<sup>13</sup> ASDA fails to cite any specific language in the *Scates*  
6 decision which would require the Commission to address Trico's Application in a rate  
7 case, nor does ASDA attempt to reconcile the fact that the initial net metering tariffs and  
8 subsequent revisions to the avoided cost rates have all occurred outside of rate cases.

9 ASDA also asserts that "Trico will not be harmed in any manner since it is  
10 anticipating filing a rate case 'in the near future.'"<sup>14</sup> However, ASDA completely  
11 ignores the harm alleged by Trico in its Application which states, in part, as follows:

12 Trico's unrecovered fixed costs due to net metering have been increasing at  
13 an alarming rate. In 2009, Trico determined that the annual unrecovered  
14 fixed costs due to net metering were approximately \$142,000. In 2013, that  
15 figure was approximately \$550,000; but has now jumped to over \$1.0  
16 million. Trico has seen a continuing acceleration in the amount of  
17 unrecovered fixed costs due to the increased number of solar rooftop  
18 systems. About half of these costs (associated with generation and  
19 transmission) are shifted to non-DG Members through Trico's Power Cost  
20 Adjustor while the other half (associated with distribution) cannot currently  
21 be recovered by Trico through existing rates.<sup>15</sup> (emphasis added)

22 Trico and its non-net metering members are suffering harm today and will  
23 continue to suffer harm as a result of the current tariff. While the relief requested in  
24 Trico's Application may not provide complete relief, it certainly stops a bad situation  
25 from getting worse, which is a critical first step.

26 The Alliance for Solar Choice ("TASC") argues that the net metering tariff  
27 changes proposed by Trico constitute "impermissible single issue ratemaking."<sup>16</sup>  
28

<sup>11</sup> Tucson Electric Power and UNS Electric Comments on Procedural Order dated April 10, 2015, at 2, lines 2-4 (citation omitted).

<sup>12</sup> Staff's Brief Pursuant to April 3, 2015 Procedural Order dated April 10, 2015, at 5, lines 12-13.

<sup>13</sup> *Id.* at 2, lines 5-6.

<sup>14</sup> Brief dated April 10, 2015, by The Arizona Solar Deployment Alliance at 3, lines 9-10.

<sup>15</sup> Trico's Application for Approval of Net Metering Tariffs and Partial Waiver of the Net Metering Rules at 5, lines 17-24.

<sup>16</sup> The Alliance for Solar Choice's Brief dated April 10, 2015, at 1, lines 26-27.

1 However, TASC fails to explain why its argument is not equally applicable to the  
2 original approval of Trico's Net Metering Tariff Schedule NM and to the subsequent  
3 revisions to Trico's avoided cost rate. Trico's net metering tariff was approved in a  
4 separate docket well after its most recent rate case was decided.<sup>17</sup> If TASC is correct that  
5 changes to net metering tariffs require a rate case, then the approval of the original tariff  
6 was not lawful. This, of course, is simply not true. The Commission has broad authority  
7 to address tariff issues inside or outside of a rate case. In fact, the Commission regularly  
8 approves a variety of different tariffs and tariff revisions outside of a rate case. TASC's  
9 argument is without merit.

10 In Trico's Reply Brief on Process Issues filed today, and in its prior filings in this  
11 docket, Trico provides compelling reasons why the proposed Net Metering Tariff  
12 Schedule NM1 should be considered and approved in this docket. No party in this  
13 docket has provided any applicable legal authority that would preclude the Commission  
14 from moving forward with Trico's Application. SSVEC hereby joins in Trico's Reply  
15 Brief on Process Issues dated April 30, 2015.

16 **2. Trico's Application Should be Addressed in this Docket.**

17 Staff asserts that "[a]ltering the applicable net metering tariff, in a precise  
18 technical sense, does not *directly* address the *existing* under-recovery of fixed costs. It  
19 instead appears to simply hold them constant."<sup>18</sup> The cowboy poet Will Rogers once  
20 famously said, *if you find yourself in a hole, stop digging*. That wise advice is certainly  
21 applicable to the present situation regarding net metering. Trico, SSVEC, UNS, TEP and  
22 Arizona Public Service have all experienced significant increases in the number of  
23 customers installing rooftop solar photovoltaic ("PV") systems. The proliferation of  
24 these PV systems has resulted in a dramatic and alarming increase in unrecovered fixed  
25 costs attributable to net metered members. A net metered customer avoids paying the  
26 full cost of the transmission and distribution infrastructure used to serve that customer.

27 <sup>17</sup> Trico's Brief on Process Issues dated April 10, 2015, at 2, lines 14-17.

28 <sup>18</sup> Staff's Brief Pursuant to April 3, 2015 Procedural Order dated April 10, 2015, at 3, lines 22-24  
(emphasis in original).

1 Additionally, a net metered customer receives the full retail rate for excess energy  
2 generated by the customer, even though the retail rate far exceeds the utility's cost of  
3 power. As a result, the rapid increase in rooftop PV systems has shifted (and continues  
4 to shift) the recovery of those fixed costs to customers who have not installed PV  
5 systems. This inequitable circumstance is a serious problem that is growing larger day-  
6 by-day.

7 Trico, SSVEC and the other Arizona cooperatives warned of the harmful cost  
8 shift that would occur as a direct consequence of net metering in comments filed more  
9 than seven years ago by the Grand Canyon State Electric Cooperative Association in  
10 Docket RE-00000A-07-0608. In those comments, the cooperatives stated the following:

11 Net metering creates a subsidy for customers who receive net metering.  
12 The cooperative and its members have incurred the cost of a transmission  
13 and distribution system to serve all members/customers. A customer that is  
14 net metered avoids paying the full cost of those facilities and receives a full  
15 retail rate for power generated by the customer. The other members will  
16 eventually be forced to pay higher rates to subsidize these costs that are not  
17 being paid by net metered customers.

18 \* \* \*

19 The Staff Report and Net Metering Rule R-14-2-2303 [13.d] state that a  
20 customer with generating capacity less than or equal to 125% of the  
21 customer's requirements is eligible to receive net metering. The Electric  
22 Cooperatives have previously stated in their comments that net metering  
23 systems should be sized to meet the customer's load and that customers  
24 should not be incented to oversize their distributed generation ("DG")  
25 system such that on a regular, net basis they are able to provide electricity  
26 to the utility. A net metering rule that would allow net metered customers  
27 to oversize their systems by up to 25% appears to incent customers to  
28 install more DG equipment so that net metered customers could regularly  
sell energy to a utility. In addition, the Electric Cooperatives are already  
required to maintain reserve margins for all customers in order to maintain  
system reliability. To require utilities and their consumers to buy power  
from net metered customers on a regular basis that is due to the additional  
25% is unfair to non-net metered customers and duplicative.<sup>19</sup>

As more and more customers take advantage of net metering, a greater portion of  
the unrecovered fixed costs associated with their energy use must be borne by the  
customers who do not have rooftop PV systems. Moreover, the current model shifts

<sup>19</sup> Letter dated January 4, 2008, filed by the Grand Canyon State Electric cooperative Association in  
Docket No. RE-00000A-07-0608, at pages 1-4.

1 costs from those who typically have the greatest financial resources (*i.e.*, those who can  
2 afford to purchase a system or who have the requisite credit to lease a system) to those  
3 who do not. This is an economic model that simply cannot reasonably be sustained.  
4 Trico and the other electric utilities cannot wait any longer to begin making the necessary  
5 changes to the current net metering model to ensure that everyone pays a fair share of the  
6 fixed costs of the power usage.

7 While a complete remedy to the net metering cost shift may ultimately require  
8 changes to Trico's rate design in a rate case, SSVEC agrees with Trico that the  
9 Commission must immediately begin to address the growing problem by granting the  
10 requested waiver of the Net Metering Rules and approving modifications to Trico's Net  
11 Metering Tariff Schedule NM and the proposed Net Metering Tariff Schedule NM1.  
12 SSVEC also agrees with Trico that there is wisdom in a single, gradual step to address  
13 the cost shift that has been caused by the recent and rapid proliferation of PV systems.  
14 Further, SSVEC agrees with Trico that a separate net metering docket actually allows  
15 interested members to more effectively participate on the net metering issue. Finally, it  
16 is significant that Trico agrees that any changes to its net metering tariff approved in this  
17 docket may be further considered in a future rate case, and that there may be further  
18 revisions to the tariff as a result of a future rate case.

19 In conclusion, any delay in addressing the current net metering cost shift will only  
20 exacerbate the growing problem and make implementation of a complete remedy that  
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much more difficult in the future. SSVEC joins with Trico in urging the Commission to grant the relief requested in the Application.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April, 2015.

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**ORIGINAL** and thirteen (13) copies of the foregoing filed this 30<sup>th</sup> day of April, 2015, with:

Docket Control  
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**COPY** of the foregoing hand-delivered this 30<sup>th</sup> day of April, 2015, to:

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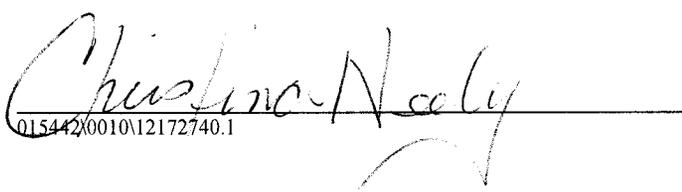
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