

**ORIGINAL**

OPEN MEETING AGENDA ITEM



0000163104

1 Court S. Rich AZ Bar No. 021290  
2 Rose Law Group pc  
3 7144 E. Stetson Drive, Suite 300  
4 Scottsdale, Arizona 85251  
5 Direct: (480) 505-3937  
6 Fax: (480) 505-3925  
7 *Attorney for The Alliance for Solar Choice*

RECEIVED

2015 APR 30 PM 10:19

AZ CORP COMMISSION  
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH  
CHAIRMAN

BOB STUMP  
COMMISSIONER

BOB BURNS  
COMMISSIONER

TOM FORESE  
COMMISSIONER

DOUG LITTLE  
COMMISSIONER

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**

**TASC'S REPLY BRIEF**

Arizona Corporation Commission

**DOCKETED**

APR 30 2015

DOCKETED BY

**I. Introduction**

Because Trico proposes to raise revenue from a rate increase on solar customers, its request must be heard in the context of a rate proceeding. TASC explained the myriad reasons why in its initial brief. Now, Trico's Opening Brief makes the necessity of a rate case even more clear. In that brief, Trico alleges it has been aware of its revenue under-recovery since at least 2009, and asks the Commission to permit it to solve that under-recovery by raising rates on all future solar customers outside of a rate case.

But this Commission solves issues of under-recovery through a full rate case examination, not by raising rates on a singular class of customers, outside a rate proceeding, based almost exclusively

1 on mere conjecture and baseless allegations from the utility seeking the increase. Trico has  
2 presented no evidence of an emergency requiring this Commission to suspend due process rights  
3 to achieve an instant resolution (even if it had, any such emergency would have been caused by  
4 Trico's admitted six years of willful inaction in the face of alleged revenue depletion). The answer  
5 to Trico's alleged problem is not an unjustified and unfair procedural shortcut, but a full, fair, rate  
6 case.

7  
8 Trico's Brief is full of unsubstantiated claims and arguments with no legal support. TASC  
9 responds to each claim in turn.

10  
11 **A. Trico Is Proposing A Rate Increase On All New Solar Customers**

12  
13 Trico attempts to recast its proposal not as a rate increase, but rather as an "attempt to slow the  
14 erosion of revenue," as though that would eliminate the need for a rate case.<sup>1</sup> This verbal sleight-  
15 of-hand cannot disguise the facts of what Trico proposes: a change in rates that makes it more  
16 expensive for a certain specific class of its customers to take service from the utility. There can  
17 be no dispute that Trico's proposed change will make it more expensive for all future DG  
18 customers to take service from Trico. That is a rate increase, regardless of how Trico styles it.

19  
20 Trico's position seems to be that if a proposed rate increase does not completely solve a utility's  
21 alleged under-recovery, the Commission can approve it outside of a rate case. Such a rule would  
22 stand procedure on its head -- by that reasoning, for example, Trico could ask that it be allowed to  
23 immediately begin charging all *new* residential hookups at a new higher rate, without going  
24 through a rate case, as long as that higher rate would yield *one penny less* than the amount needed  
25 to make up a revenue under-recovery. That is not the law: no case or Commission precedent  
26 supports the conclusion that rate increases that stop short of triggering over-recovery can be heard  
27 outside a rate case. Due process, and the many other reasons behind requiring full rate cases for

28  

---

1 Trico's Opening Brief at 4, l:9.

1 rate increases, do not magically lose their force when applied to less-than-fully-effective rate  
2 increases. The bottom line: Trico is proposing that a class of customers pay more for a certain  
3 type of service. This is a rate increase and deserves full due process in a rate case.

4  
5 TASC also notes that Trico has offered insufficient evidence to support its contention that its  
6 proposed rate increase will not cause it to over-recover, or that its rate increase is even warranted.  
7 This is precisely why a full analysis in a rate case is warranted.

8  
9 Moreover, in August of 2009, and based on a 2007 test year, Trico was awarded an 8.8% rate of  
10 return. The 2007 test year rate of return was found to be 4.49%.<sup>2</sup> In Trico's previous rate case, its  
11 2003 test year yielded a rate of return of 4.09%<sup>3</sup> and the utility was awarded a 6.13% rate of return  
12 going forward.<sup>4</sup> Between its being awarded the 6.13% rate of return on May 26, 2005 in Decision  
13 68073 and the completion of its 2007 test year, Trico's rate of return plummeted nearly 44% from  
14 what was permitted. This happened in just two years' time. Trico plainly has a history of under-  
15 earning in a time well before solar energy was prevalent.

16  
17 Further, the currently approved 8.8% rate of return was based on a test year that ended more than  
18 seven years ago. Financial markets have gone through dramatic changes and interest rates are at  
19 near all-time lows. Trico's claims that it is under-earning based upon a rate of return set in an era  
20 now bygone by financial world standards needs to be evaluated in a rate case where the theory can  
21 be tested and the rate of return can be updated. Trico has under-recovered in the past without any  
22 help from solar. This is reason enough for this matter to be fully vetted in a rate case.

23  
24 **B. Arizona's Constitution Prohibits This Sort Of Single Issue Ratemaking**

25  
26  
27  
28 

---

2 Decision 71230 at para 28.

3 Decision 68073 at para 15.

4 Id. at para 17.

1 As set forth in TASC's Opening Brief, Arizona's Constitution prohibits the type of single issue  
2 ratemaking that Trico seeks. In its Brief, Trico dedicates all of one paragraph to explaining why,  
3 in its opinion, cases like *Scates v. Arizona Corp. Commission* do not prohibit its current  
4 Application.<sup>5</sup> This single paragraph is unconvincing and actually includes an admission by Trico  
5 that proves TASC's point.

6  
7 Trico admits that its sought rate increase will increase Trico's rate of return, then tries to downplay  
8 that admission by claiming that such an increase will not take its rate of return above the level  
9 approved in its last rate case. Trico's key admission reads, "[t]he modification to the existing tariff  
10 will not result in an overall increase in Trico's rate of return *to a level above that authorized in its*  
11 *last rate case.*"<sup>6</sup> If, as Trico maintains, its proposal were not a rate increase resulting in increased  
12 revenue to the utility, Trico would have ended its sentence after "rate of return." But by including  
13 the disclaimer "to a level above that authorized in its last rate case," Trico admits that this proposal  
14 would raise its revenue. Thus, TASC has explained and Trico has admitted that Trico is attempting  
15 to raise revenue outside a rate case, in the absence of a fair value and rate of return examination.  
16 Arizona's Constitution prohibits this result.

17  
18 **C. Trico Alleges Under-Recovery of Revenue, Which Is Properly Dealt With In A**  
19 **Rate Case**

20  
21 Trico alleges that its current issue is "under-recovery interfere[ing] with Trico's opportunity to  
22 earn its authorized revenue requirement and rate of return, as set forth in its last rate case."<sup>7</sup> While  
23 Trico complains of under-recovery, it has not filed for a rate case since August 2008. Without  
24 examination in a rate case, there is no way to know the cause of any actual under-recovery – any  
25 number of changes in the nearly seven years since Trico last filed for a rate case may have  
26 contributed, and distributed generation ("DG") may or may not play any role. Trico does not

27  
28 

---

5 Trico Brief at 4, 1:9-17..

6 Id. at 1:13-14 (emphasis added).

7 Id.1:4-5.

1 provide the Commission with the evidence necessary to ascertain the cause or even the net impact  
2 of the alleged under-recovery on Trico's rate of return.

3  
4 Trico's allegations, if true, tell the story of a utility that is under-recovering. That is an argument  
5 *in favor of*, not against, holding a full rate case. When a utility is under-recovering, it cannot  
6 simply raise rates on one segment of its customers outside a rate case, as Trico proposes to do to  
7 DG solar customers in its Application.

8  
9 **D. Trico Continues To Mischaracterize Its Proposal And Fails To Acknowledge It Is**  
10 **Asking To Eliminate Net Metering**

11  
12 The Commission's Net Metering Rules provide for a credit for exported power at the retail rate.  
13 That is the essence of net metering –a one for one credit for exported power. Trico's proposal –  
14 one it refers to in its Brief as a "modification" of net metering—eliminates net metering and  
15 replaces it with an avoided cost buyback rate for all power. Trico seeks a waiver of the Rules but  
16 has not even set forth which particular Rule(s) it seeks to waive. TASC submits that no Rule is  
17 specified because Trico knows that it is asking not for a true waiver, but to rewrite the Rule to  
18 change its intent and its implementation. Trico is attempting to repurpose avoided cost, change  
19 the definition of net metering, and alter the method of payment for excess power, all in one  
20 application.

21  
22 This major departure from the Rules must be given proper review in a rate case.

23  
24 **E. Cost-Benefit Studies Must Be Completed**

25  
26 R14-2-2305 provides that new charges that "increase a Net Metering Customer's costs" must be  
27 supported by cost of service studies or cost-benefit analyses. Any proposal, such as Trico's, that  
28 completely eliminates net metering should, at a minimum, be required to comply with regulatory

1 requirements for imposing a new or additional charge on net metering customers. Allowing  
2 utilities to propose eliminating net metering or otherwise alter the buyback rate for exported energy  
3 in order to circumvent the safeguards of R14-2-2305 would be unfair. Lowering the buyback rate  
4 has the exact same impact as the imposition of a comparable affirmative charge on solar customers.  
5 The Commission should not permit the creation of such a loophole and must require cost-benefit  
6 studies to be performed. These studies should be performed in the context of a rate case.

7  
8 **F. Trico's Attempt To Turn The Net Metering Tariff Into A Lost Fixed Cost**  
9 **Recovery Mechanism Must Be Heard In A Rate Case**

10  
11 As another tactic, Trico alleges that it can raise rates on solar customers to solve revenue under-  
12 recovery outside a rate case by turning its net metering tariff into a lost fixed cost recovery  
13 mechanism. The Commission should not permit Trico to create a lost fixed cost recovery  
14 mechanism or some other similar device outside of a rate case. Both APS and TEP have been  
15 awarded formal Lost Fixed Cost Recovery (the "LFCR") mechanisms through rate case  
16 settlements<sup>8</sup> that were fully reviewed, vetted, and supported with rate case quality data and  
17 oversight. Trico cannot simply sidestep that process by characterizing its proposal as a  
18 modification of its net metering tariff.

19  
20 Trico alleges it is suffering revenue under-recovery and has proposed a way to solve that issue.  
21 By whatever name, this situation must be addressed in a rate case.

22  
23 **G. The Fact That The Adoption Rate Of Solar Is Increasing Does Not Justify Raising**  
24 **Rates On Solar Customers Without A Thorough Review In A Rate Case**

25  
26 Trico suggests its Application must be dealt with outside a rate case because adoption of DG in its  
27 service territory has been on a "rapid rise."<sup>9</sup> Trico makes this assertion in the same Section of its

28 <sup>8</sup> Settlements that their own proposals to add solar charges or eliminate net metering now violate.

<sup>9</sup> Id. at 3, 1:5-6.

1 Brief where it also admits that it first concluded it was suffering a DG-caused under-recovery as  
2 early as 2009.<sup>10</sup> Trico’s admission that it has calculated and been tracking this alleged under-  
3 recovery for years<sup>11</sup> contradicts its simultaneous claim that it is now acting “proactively to address  
4 the dramatic increase in lost revenues.”<sup>12</sup>

5  
6 Trico cannot have it both ways. It cannot argue that a “rapid rise” in DG adoption merits a free  
7 pass from a rate case, while admitting that it actually has been tracking this issue, and watching it  
8 grow, for over six years. Trico has had six years to bring a rate case to address this alleged issue,  
9 and cannot now base its request for a shortcut on its own years of knowing inaction.

10  
11 Further, according to its latest R14-2-1812 Compliance Report, Trico has not even met its Annual  
12 Renewable Energy Requirement and is not getting the required 4.5% of its electricity from  
13 renewable resources.<sup>13</sup> How can Trico even claim to be inundated with so many solar systems that  
14 due process must be suspended when Trico has not even met the minimum standards set out in the  
15 Renewable Energy Standard and Tariff?<sup>14</sup>

#### 16 17 **H. The Commission Must Protect Due Process**

18  
19 Trico tries to base much of its argument for avoiding a full and thorough analysis of this issue in  
20 a rate case on the virtues of upholding due process and the public interest. Paradoxically, Trico  
21 argues that in this case, less process actually is more. Not only does Trico take the legally incorrect  
22 position that due process permits the Commission to raise rates on a single class of customers  
23 outside a rate case, the utility goes one step further and argues the Commission is *required* to hear

24  
25 \_\_\_\_\_  
26 10 Id. at 3, l:7.

27 11 Id.

28 12 Id. at 1, l:19-21.

13 See Trico’s Notice of Filing Compliance dated March 27, 2015 in Docket No. E-01461A-13-0231

14 TASC notes that Trico has reached compliance with the residential distributed generation requirement of the REST however, Trico remains below compliance with the overall standard –more residential DG can help Trico reach that overall compliance level.

1 this matter outside a rate case.<sup>15</sup> Trico appears to make five arguments in support of this claim,  
2 each of which falls flat.

3  
4 **1. Any uncertainty exists because of Trico's own actions**

5  
6 Trico argues that, "prompt resolution of the application will mitigate the uncertainty over net  
7 metering in Trico's service area."<sup>16</sup> Of course, the only reason any uncertainty exists in Trico's  
8 service area with regard to net metering in the first place is because Trico filed its Application,  
9 creating the uncertainty. Before Trico filed its Application asking to end net metering, Trico  
10 offered net metering under an approved Commission Tariff. There is absolutely nothing uncertain  
11 about that.

12  
13 Trico further stoked the uncertainty by messaging to customers that this purported rate increase  
14 for solar customers will apply retroactively. If Trico were truly concerned about uncertainty, it  
15 could have structured its Application to seek a resolution applying on a going-forward basis from  
16 the date of any Commission decision.

17  
18 Having manufactured consumer uncertainty, Trico now tries to use it to its further advantage by  
19 asking the Commission to alleviate the confusion by shortchanging the public of due process. The  
20 Commission should reject this self-serving and circular argument.

21  
22 **2. Trico argues that even though it has not filed for a new rate case in seven**  
23 **years, it must have this change immediately to avoid unproven revenue**  
24 **erosion and unsupported cost shifting.**

25  
26 As set forth in Section I.G., Trico claims to have been aware of the alleged revenue erosion since  
27 2009, yet has done nothing to address the issue. Trico last filed for a rate case in 2008 and has

28  

---

15 Id. at 5, l:8-9.  
16 Id. at 5, l:23-24.

1 gone longer than all but two Arizona electric utilities between current rate cases. If Trico is truly  
2 suffering from under-recovery, it should file its rate case now. It cannot justify its request for a  
3 due process shortcut by its own conscious failure to file a timely rate case.

4  
5 Further, it cannot simply claim the existence of a cost shift from DG when there is no mechanism  
6 available to shift costs in the manner it is complaining. Its current under-recovery (if true) does  
7 not manifest itself as a cost shift because that is not how rates work.

8  
9 **3. Trico makes the unsupported claim that if this issue is heard in a rate case,**  
10 **it may not be able to grandfather existing solar customers.**

11  
12 Trico speculates that if something is not done right now, outside a rate case, then it “may not be  
13 possible”<sup>17</sup> to grandfather existing DG customers. Yet Trico provides no explanation or basis for  
14 this conjecture. This bald and baseless assertion – a threat, really -- must not be permitted to shape  
15 the Commission’s decision on this important procedural issue.

16  
17 **4. Trico asserts that because the proposal is intended to “slow the erosion of**  
18 **Trico’s revenues” it should be heard outside a rate case.**

19  
20 As set forth in numerous places above, a proposal to raise rates to “slow revenue erosion” is exactly  
21 what a rate case is designed to address. Simply alleging, as Trico does, that its “financial stability  
22 may be challenged”<sup>18</sup> if it cannot deal with this issue outside a rate case cannot be sufficient to end  
23 run around the Commission’s requirements.

24  
25 Trico is trying to scare the Commission into acting by making claims without offering any  
26 foundation of support. According to Trico, it “*may not*” be able to grandfather customers, and its  
27 financial wherewithal “*may be challenged*” if this matter is actually given the consideration it

28 

---

17 Id. at 6, l:13.

18 Id. at l:18.

1 deserves in a rate case. These exaggerative claims ring hollow when raised by a party that admits  
2 it has known about this alleged issue for six years, yet has not stirred a finger to address it until  
3 now.

#### 4 5 **I. Issues Of Fact Remain With Regard To The Avoided Cost Calculation**

6  
7 TASC believes that Trico's proposed avoided cost calculation fails to consider the benefits of DG  
8 as required in R14-2-2302(1). The Commission's definition of "avoided cost" requires an analysis  
9 of the costs avoided by net metered systems. A full cost-benefit analysis should be performed in  
10 the context of a rate case in order to ascertain the correct avoided cost amount in compliance with  
11 R14-2-2302(1).

#### 12 13 **II. Conclusion**

14  
15 In sum, Trico admits its proposal is a rate increase designed to raise revenue. Trico alleges that it  
16 is somehow suffering both revenue erosion and a simultaneous cost shift to non-solar customers  
17 (whereby the non-solar customers are paying for the revenues that would have otherwise been lost  
18 but yet are still somehow being lost) and that despite the fact Trico has not filed for a rate case in  
19 seven years, the uncertainty it created by filing this case in the first place must be alleviated by  
20 hearing this matter right now outside a rate case. Trico alleges the rate case can be sidestepped  
21 because, despite the fact that it is raising rates on all future solar customers who take service from  
22 Trico, the rate increase proposed does not totally eliminate its under-recovery problem, thereby  
23 somehow making the rate increase not a rate increase at all. In addition, this entire plan is  
24 unsupported by any evidence, so the Commission will just have to take Trico's word for it.

25  
26 This is a proposal to alleviate alleged revenue erosion and under-recovery. The proper place to  
27 hear such a request is in a rate case, where it can be fully examined and supported. TASC  
28

1 respectfully requests that the Commission enter an Order dismissing Trico's Application and  
2 indicating that such Application should only be brought as part of Trico's next rate case.

3  
4  
5 Respectfully submitted this 30th day of April, 2015.

6  
7 

8  
9 \_\_\_\_\_  
10 Court S. Rich  
11 Rose Law Group pc  
12 Attorney for TASC  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **Original and 13 copies filed on**  
2 **this 20th day of April, 2015 with:**

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington Street  
6 Phoenix, Arizona 85007

6 Copy of the foregoing sent by electronic and regular mail to:

7 Lyn Farmer  
8 Arizona Corporation Commission  
9 1200 W. Washington Street  
10 Phoenix, Arizona 85007

Steven M. Olea  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Janice M. Alward  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

11 Jeffrey Crockett  
12 1 E. Washington Street, Suite 2400  
13 Phoenix, Arizona 85004

Paul O'Dair  
1878 W. White Mtn. Boulevard  
Lakeside Arizona 85929

Thomas Loquvam  
PO Box 53999, MS 8695  
Phoenix, Arizona 85072

14 Vincent Nitido  
15 8600 W. Tangerine Road  
16 Marana, Arizona 85658

J. Tyler Carlson  
P.O. Box 1045  
Bullhead City, Arizona 86430

Creden Huber  
311 E. Wilcox Drive  
Sierra Vista, Arizona 85635

17 Robert Hall  
18 4809 Pier Mountain Place  
19 Marana, Arizona 85658

Garry Hays  
1702 E. Highland Avenue, Suite 204  
Phoenix, Arizona 85016

Kevin Koch  
PO Box 42103  
Tucson, Arizona 85716

20 Michael Curtis  
21 501 E. Thomas Road  
22 Phoenix, Arizona 85012-3205

COASH & COASH  
1802 N. 7th Street  
Phoenix, Arizona 85006

Paul O'Dair  
1878 W. White Mountain Boulevard  
Lakeside, Arizona 85929

23 Peggy Gillman  
24 P.O. Box 1045  
25 Bullhead City, Arizona 86430

Mark Holoham  
2221 W. Lone Cactus Drive, Suite 2  
Phoenix, Arizona 85027

Kristin Mayes  
3030 N. Third Street, Suite 200  
Phoenix, Arizona 85012

26 Robyn Interpreter  
27 Susan B. Montgomery  
28 Montgomery & Interpreter, PLC  
4835 E. Cactus Road, Suite 210  
Scottsdale, Arizona 85254

Michael Patten  
Snell & Wilmer L.L.P.  
One Arizona Center  
400 E. Van Buren Street, Suite 1900  
Phoenix, Arizona 85004-2202

Bradley Carroll  
88 E. Broadway Blvd.  
MS HQE910  
PO Box 711  
Tucson, Arizona 85701

Gregory Bernosky  
PO Box 53999, MS 9708  
Phoenix, Arizona 85072

By: 