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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 Energy Freedom Coalition of America

Arizona Corporation Commission

DOCKETED

AUG 11 2016

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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE  
CHAIRMAN

BOB STUMP  
COMMISSIONER

BOB BURNS  
COMMISSIONER

TOM FORESE  
COMMISSIONER

ANDY TOBIN  
COMMISSIONER

11 **IN THE MATTER OF THE ) DOCKET NO. E-01461A-15-0363**  
12 **APPLICATION OF TRICO ELECTRIC )**  
13 **COOPERATIVE, INC, AN ARIZONA )**  
14 **NONPROFIT CORPORATION, FOR A )**  
15 **DETERMINATION OF THE ) MOTION FOR EXPEDITED**  
16 **CURRENT FAIR VALUE OF ITS ) CONSIDERATION OF MOTION TO**  
17 **UTILITY PLANT AND PROPERTY ) COMPEL RESPONSE TO FOURTH**  
18 **AND FOR INCREASES IN ITS RATES ) DATA REQUESTS 4.1, 4.2, AND 4.4-4.15.**  
19 **AND CHARGES FOR UTILITY )**  
20 **SERVICE AND FOR RELATED )**  
21 **APPROVALS. )**

19 Energy Freedom Coalition of America (“EFCA”) moves for expedited consideration of its  
20 motion to compel because its deadline to pre-file rebuttal expert testimony is tomorrow, August  
21 12, 2016. EFCA’s motion seeks an order compelling Trico to provide expert material in response  
22 to a data request. EFCA needs Trico’s expert material to prepare its rebuttal expert presentation.

23 Trico previously represented that it would provide that material on August 5.<sup>1</sup> In reliance  
24 on Trico’s representation, EFCA waited to file its motion. EFCA hoped that Trico would provide  
25 enough material that a formal discovery motion would be unnecessary.

28 <sup>1</sup> Ex. 1.

1 Trico reneged on its representation. Trico concealed its true intention to withhold all expert  
2 material until August 8.<sup>2</sup> To use Trico's responses to EFCA's data requests, EFCA now must 1)  
3 file a motion, 2) wait for a response, 3) obtain a hearing, 4) receive answers to its requests, and 5)  
4 analyze those responses. Trico waited until it was too late to do this to reveal its actual intent to  
5 withhold all expert material.

6 **CONCLUSION**

7 Trico represented that it would disclose expert material seven days in advance of EFCA's  
8 rebuttal expert deadline. Trico created a scheduling problem when it dishonored that commitment  
9 without prior notice. EFCA relied on that representation; it now needs an expedited hearing to  
10 protect itself from prejudice resulting from that false representation.

11  
12 Respectfully submitted this 11<sup>th</sup> day of August, 2016.

13  
14 /s/ Court S. Rich

15 Court S. Rich  
16 Rose Law Group pc  
17 Attorney for EFCA  
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2 Ex. 1.

1 **Original and 13 copies filed on**  
2 **this 11<sup>th</sup> day of August, 2016 with:**

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

7 *I hereby certify that I have this day served the foregoing documents on all parties of record in*  
8 *this proceeding by sending a copy via electronic or regular mail to:*

9 Janice Alward  
10 Arizona Corporation Commission  
11 jalward@azcc.gov

COASH & COASH  
1802 N. 7th Street  
Phoenix, Arizona 85006  
mh@coashandcoash.com

12 Thomas Broderick  
13 Arizona Corporation Commission  
14 tbroderick@azcc.gov

C. Webb Crockett  
Patrick Black  
Fennemore Craig, P.C  
wcrockett@fclaw.com  
pblack@fclaw.com

15 Dwight Nodes  
16 Arizona Corporation Commission  
17 1200 W. Washington Street  
18 Phoenix, Arizona 85007-2927

Vincent Nitido  
Trico Electric Cooperative, Inc.  
vnitido@trico.coop

19 Kevin Higgins  
20 Energy Strategies, LLC  
21 khiggins@energystrat.com

Robert Hall  
Solar\_bob@msn.com

22 Michael Patten  
23 Jason Gellman  
24 Snell & Wilmer L.L.P.  
25 mpatten@swlaw.com  
26 jgellman@swlaw.com

Charles Wesselhoft  
Pima County Attorney's Office  
Charles.wesselhoft@pcao.pima.gov

27  
28  
By: /s/ Hopi L. Slaughter

# **EXHIBIT 1**

## Rose Reynolds

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**Subject:** RE: Response to July 21 letter re Trico rate case (15-363)

-----Original Message-----

From: Patten, Michael [mailto:mpatten@swlaw.com]  
Sent: Monday, August 8, 2016 10:07 AM  
To: Court Rich <CRich@roselawgroup.com>; Sam Doncaster <sdoncaster@roselawgroup.com>  
Cc: Hopi Slaughter <HSlaughter@roselawgroup.com>  
Subject: RE: Response to July 21 letter re Trico rate case (15-363)

We are still working on providing it. It will not be provided today. We have had two extensive data requests from EFCA in the interim as well.

-----Original Message-----

From: Court Rich [mailto:CRich@roselawgroup.com]  
Sent: Monday, August 08, 2016 10:04 AM  
To: Patten, Michael; Sam Doncaster  
Cc: Hopi Slaughter  
Subject: RE: Response to July 21 letter re Trico rate case (15-363)

Mike,

According to your email below, Trico was to have the discovery responses to us by last Friday, August 5, 2016. This will confirm we did not receive the information that Trico indicated it would be providing. Will Trico be providing that information today?

Court S. Rich

7144 E Stetson Drive, Suite 300, Scottsdale Arizona 85251  
Direct: 480.505.3937 || Mobile: 602.741.3794

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Think green, please don't print unnecessarily

-----Original Message-----

From: Patten, Michael [mailto:mpatten@swlaw.com]  
Sent: Friday, July 22, 2016 8:03 AM

To: Court Rich <CRich@roselawgroup.com>; Sam Doncaster <sdoncaster@roselawgroup.com>  
Cc: Patten, Michael <mpatten@swlaw.com>  
Subject: Response to July 21 letter re Trico rate case (15-363)

Dear Court and Sam,

I received your July 21, 2016 letter regarding EFCA 's 4th set of Data Requests and our July 20 meet and confer phone call. I have several points in initial response.

First, I disagree with much of your recitation of the call. However, as I told you on the call, I was going to be out of town for work the remainder of the week with limited time availability. And as I told you, I needed to discuss your position with my client before I could respond. I was not in an position to offer a compromise on the phone call without first consulting with my client.

Second, a rate case is a completely different type of proceeding than complaint litigation before a court. Recitation of Superior Court rules is not necessarily relevant when many procedures in a rate case are markedly different than superior court litigation.

Third, I disagree with your belief that we have not responded to several of the data requests. For example, with respect to 4.4 and 4.5, we provided an adequate response. However, contrary to your arguments, we are not obliged to do your work in reviewing publicly available documents at the commission.

I have had the opportunity to discuss your position with Trico. We are prepared to provide the communications with Staff regarding the settlement agreement. I am sure you have compared your notes from the July 17 settlement meeting with the June 22 term sheet you received and the final settlement agreement and have confirmed there are no material differences. Regardless we will provide the communications. We are also prepared to provide the written communications with Guernsey regarding the Trico rate case, although providing such information is well outside standard Commission discovery practices.

Trico believes this is more than reasonable. Beyond this, EFCA's requests are both tardy (all but one these requests could have been asked months ago) and an overreaching, unduly burdensome discovery tactic.

We will endeavor to provide the information by next Friday. Trico is a small rural electric cooperative and has limited resources to collect and provide the information.

Please let me know if you have any questions.

Mike

Michael W Patten  
Snell & Wilmer  
Via iPad