

October 6, 1955
Opinion No. 55-198

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REQUESTED BY: Arizona Power Authority
1816 W. 4th St., Phoenix, Arizona

OPINION BY: Robert Morrison, The Attorney General
James H. Green, Jr., Special Assistant
Attorney General

QUESTION: What territory within its application could be legally covered in a power purchase certificate to be issued to the Trico Electric Cooperative, Inc.?

CONCLUSION: Territory now served with electric energy by Trico; territory that is not now served with electric energy and for which there is no power purchase certificate issued; and territory that is not now served with electric energy, but for which a power purchase certificate has been issued to Tucson Gas & Electric or Citizens Utilities, under certain conditions.

As we understand the facts as submitted by you, the application of Trico for a power purchase certificate includes the following categories of territory:

1. Territory now served with electric energy by Trico.
2. Territory now served with electric energy by Tucson Gas, Electric Light and Power Company or Citizens Utilities Company.
3. Territory that is not now served with electric energy and for which there is no power purchase certificate issued.
4. Territory that is not now served with electric energy, but for which a power purchase certificate has been issued to Tucson or Citizens companies.

The specific limitations and bounds of such territory set forth in 1,2,3 and 4 above may be determined by the Arizona Power Authority Commission from the evidence considered by it.

On our understanding of the facts involved, our opinion with respect to the categories of territory involved is as follows:

1. Territory now served with electric energy by Trico. Section 75-1906(d), ACA, 1939, provides in part:

"The application of any applicant shall be granted to it for so much of the territory included in its application as is then being served with electrical energy by it; . . ."

Under this provision it is our opinion that Trico is entitled to a power purchase certificate for that territory within its application which it is now serving with electrical energy.

2. Territory now served with electric energy by Tucson or Citizens.

Section 75-1906(d), ACA, 1939, provides in part:

"...no power purchase certificate shall be issued to an applicant for territory which is then being served with electrical energy by a person or operating unit,..."

Under this provision it is our opinion that no power purchase certificate may be granted to Trico for that territory which is now being served with electrical energy by the Tucson or Citizens companies.

3. Territory that is not now served with electric energy and for which there is no power purchase certificate issued.

It is our opinion that the commission may grant Trico a power purchase certificate for such territory, if in its judgment such action is warranted.

4. Territory for which a power purchase certificate has already been issued to the Tucson or Citizens companies, but which is not now being served with electrical energy.

It is the opinion of this office that if the Arizona Power Authority Commission finds that certain territory or areas within the power purchase certificates already issued to Tucson and Citizens are not being served with electrical energy, that the authority commission may grant a power purchase certificate to Trico for such unserved territory or areas.

In other words, where a territory or area is not being served with electrical energy, we do not believe the authority commission is limited to the issuance of one power purchase certificate covering such territory. When a power purchase certificate is granted by the Arizona Power Authority, the holder is then entitled to serve the entire area within it. If the holder does, so then, under Section 75-1906(d), ACA, 1939, he establishes an exclusive right to serve, and no other power purchase certificate

may be issued. However, if the Power Authority Commission finds that the holder of the power purchase certificate does not serve the entire territory, then as to such unserved territory, the holder has no exclusive right to a power purchase certificate, and another power purchase certificate may be issued by the authority covering such unserved territory.

We believe that this view is consistent with the objective and purpose of the Power Authority Act, to effect the widest practical distribution of electric energy in the state. It is an incentive for the holder of a power purchase certificate to serve the entire territory within his power purchase certificate. However, if a holder permits territory within his power purchase certificate to remain unserved, then it assures those who are unserved that another power purchase certificate may be issued to one from whom they can obtain electric service.

Our opinion on this point is based upon the intent of the Power Authority Act in general and upon the following considerations in particular:

1. The Arizona Power Authority Act does not specifically prohibit the granting of more than one power purchase certificate for an area or territory that is not served with electrical energy.

2. On the contrary Section 75-1906(d), provides in part:

"If applications for power purchase certificates are filed by two (2) or more applicants covering, wholly or in part, the same geographical area, and no electrical service is then being rendered in such area by any person or operating unit, the Authority shall award a certificate to the applicant or applicants which, in the judgment of the Authority will best serve such area after giving due consideration to the preparedness of competing applicants to serve the territory in question, the investments involved, the adequacy of the service proposed to be rendered to consumers therein, and the time required to furnish such service and any other relevant and pertinent matters bearing upon the controversy." (Emphasis supplied)

Under this section the commission is authorized to grant power purchase certificates to "applicants" i.e., more than one, for a territory which is unserved.

3. Article 4, (9), of the Rules and Regulations of the Arizona Power Authority provides:

"No Purchaser shall make and or carry on any power or energy sales within the service territory of any Power Purchase Certificate holder involving power or energy obtained from or intermingled with power or energy purchased from the Authority Power Pool except as expressly permitted by its own Power Purchase Certificate..."

This exception allows a purchaser, if his own particular power purchase certificate so provides, to sell power within territory covered by the power purchase certificate of another. This language contemplates the issuance of more than one power purchase certificate covering the same area or territory and is some evidence of administrative interpretation of the Power Authority Act.

ROBERT MORRISON
The Attorney General

James H. Green, Jr.

JAMES H. GREEN, JR.
Special Assistant
Attorney General

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