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March 18, 2004

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Commissioners:

As some of you know, AUIA worries about precedents and we have serious concerns about the potential impact of your action yesterday in requiring advance Commission approval of the contents of bill inserts, press releases and radio and television advertising to be issued by UNS Gas to inform customers about its low income assistance program.

Most of you, including Commissioner Mayes who is a former newspaper reporter, were dismissive of my concerns about trading on the company's First Amendment rights\* and the precedent involved in dictating what a company must say in its communications.

The fact is that by your order, the government of the State of Arizona has proscribed the speech of one of its citizens. The plain purpose of this order is to ensure that the company says exactly what you want it to say to its customers. An irony in this instance is that the UNS communications that Commissioner Mayes found objectionable had been reviewed, if not precisely "approved," by the Commission Staff and was still found wanting.

It should be obvious and of grave concern that if the Commission can require editorial approval of communications devoted to a low income assistance program, it can impose the same requirements regarding the results of rate cases, fuel clause adjustments, billing issues, power plant and transmission line construction or virtually any other matter that requires communication from the company to its customers.

When you prescribe what a company must say, you are also dictating what it cannot say. And from there, it is a baby step to a directive that nothing can be said at all. Both of these results constitute a classic prior restraint, no different from telling a newspaper what it can't print.

It was suggested at the Open Meeting that this requirement is not substantively different from ongoing mandates regarding the form and content of hearing and line siting notices. The comparison is specious because those notices are legally required and concern the Commission's own business. The companies are only acting as surrogate communicators for the Commission.

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I'm sure that some of you will also argue that the order in this case is restricted in scope and applies to a very special circumstance. Unfortunately, there is no assurance that this body or a future Commission, having once invoked this authority, would not do so in a different circumstance.

As a long-time journalist and communications consultant, freedom of speech and expression has been a big part of my life, including some trips to the U.S. and Arizona Supreme Courts. I've also learned that the slippery slope is a myth in government. Once you're on it, the only direction available is down hill.

I think it would probably be too cumbersome to amend your order at this stage or I would file an appeal. In lieu of that, perhaps the Executive Secretary could ask the Staff to holster their red pencils when UniSource comes around.

Sincerely,



Bill Meek  
President  
Arizona Utility Investors Association

\* For the record, you are probably aware that the First Amendment prohibits Congress from abridging the rights of free speech and that the U.S. Supreme Court has extended that prohibition to the entire federal government. Further, the Supreme Court has construed the due process clause of the 14<sup>th</sup> Amendment to protect First Amendment rights from interference by state governments.