

ORIGINAL



0000014460

BEFORE THE ARIZONA CORPORATION

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
MIKE GLEASON
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
KRISTIN MAYES
COMMISSIONER

Arizona Corporation Commission
DOCKETED

NOV 29 2004

DOCKETED BY *AMC*

IN THE MATTER OF THE COMPLAINT OF
MOHAVE ELECTRIC COOPERATIVE, INC.
AGAINST UNISOURCE ENERGY
CORPORATION

Docket No. E-04230A-04-0798

**ANSWER
AND
MOTION FOR DISMISSAL**

UNS Electric, Inc¹ ("UNS Electric"), through undersigned counsel, hereby responds to the specific allegations set forth in the formal complaint filed by Mohave Electric Cooperative, Inc. ("MEC Complaint") in the above captioned matter. In addition, UNS Electric hereby requests that the Arizona Corporation Commission ("Commission") dismiss the MEC Complaint because it fails to state a claim for which relief can be granted.

1. In response to paragraph 1 of MEC's Complaint, UNS Electric admits that Mohave Electric Cooperative, Inc. ("MEC") holds a Certificate of Convenience and Necessity ("CC&N") issued by the Commission. UNS Electric is without sufficient knowledge or information to form a belief regarding the specific geographical area that comprises MEC's CC&N and further believes that the language of the Commission order granting MEC the CC&N speaks for itself.

¹ Mohave Electric Cooperative has erroneously named UniSource Energy Corporation ("UniSource") as the party in this matter. The correct party in interest is UNS Electric, Inc., a subsidiary of UniSource that provides electric service in Mohave County.

1 2. In response to paragraph 2 of MEC's Complaint, UNS Electric denies that MEC has
2 sufficient electric distribution lines, plant systems or metering facilities in that portion of MEC's
3 certificated area that is the subject of MEC's Complaint ("Subject Territory"). UNS Electric
4 asserts that MEC does not have the necessary facilities to cost-effectively provide service to
5 Central Trucking, Inc. ("CTI"), a customer that has requested electric service in the Subject
6 Territory. According to MEC's Complaint, MEC has provided CTI with a cost estimate of
7 \$600,000 to construct distribution facilities necessary for service in the Subject Territory. UNS
8 Electric asserts that it currently has facilities in place to serve CTI in the Subject Territory and
9 can begin service at any such time that the Commission so authorizes. Maps of the Subject
10 Territory are attached as Exhibit A.

11 3. In response to paragraph 3 of MEC's Complaint, UNS Electric admits that the
12 Commission issued Decision No. 58798. UNS Electric asserts that Decision No. 58798 speaks
13 for itself.

14 4. In response to paragraph 4 of MEC's Complaint, UNS Electric admits that the sole
15 purpose that Citizens Utilities Company ("Citizens") agreed to transfer the Subject Territory was
16 to allow MEC to serve North Star Steel, a steel manufacturing plant that was planning to locate
17 in the Kingman, Arizona area in 1994. The agreement between Citizens and MEC ("Transfer
18 Agreement"²) stated that MEC "shall serve only North Star Steel within the North Star Steel
19 Site" and stipulated that if MEC no longer served North Star Steel, the CC&N would revert back
20 to Citizens. See Exhibit B (Transfer Agreement between Citizens and MEC). Decision No.
21 58798 included a provision that the Commission must first approve the transfer before such a
22 reversion could occur. This Decision is attached as Exhibit C.

23 As to the other allegations in paragraph 4 of MEC's Complaint, UNS Electric asserts that
24 Decision No. 58795 speaks for itself.

25 5. In response to paragraph 5 of MEC's Complaint, UNS Electric denies that since
26 October 1994, MEC has been authorized to provide power to all customers located in the Subject

27 ² The Transfer Agreement consists of two letter agreements between Citizens and MEC, one dated May 3, 1994, the other dated September 22, 1994.

1 Territory without limitation. Although the Commission did not address the issue specifically, the
2 Transfer Agreement, which was the basis for Commission action resulting in Decision No.
3 58798, specifically limited MEC to provide electric service only to North Star Steel. To the best
4 of UNS Electric's knowledge and belief, it was Citizens' understanding that Citizens would
5 serve any other customers in the Subject Territory. It was not until early 1996 that the issue of
6 providing service to other customers in the Subject Territory was raised.

7 In February 1996, Citizens received a request for electric power from Roadrunner
8 Trucking, Inc. ("Roadrunner"), stating that "Our current situation of running on a generator, and
9 with no reasonable solution submitted from Mojave Electric Coop, leaves us no other option than
10 to try to obtain power from Citizens Utilities." See Exhibit D (letter dated February 5, 1996,
11 from Roadrunner to Citizens). Citizens immediately notified MEC that it had received a request
12 from Roadrunner to provide electric service to its facility, which was located within the Subject
13 Territory. Citizens notified MEC that it was ready, willing and able to provide such service
14 within 30 days, and requested permission to provide service. See attached Exhibit E (letter dated
15 February 7, 1996, from Citizens to MEC). However, MEC refused to allow Citizens to serve
16 Roadrunner, relying on a written interpretation of Decision No. 58798 by the Director of the
17 Utilities Division. See Exhibit F (letter dated February 2, 1995, from Gary Yaquinto to MEC).

18 UNS Electric admits that, to the best of its knowledge, MEC agreed to pay Citizens
19 approximately \$26,000 for the construction and subsequent removal of facilities to provide
20 temporary construction power to the North Star Steel line extension project. Because the project
21 was for temporary service, MEC was required to pay a nonrefundable contribution in aid of
22 construction to cover the estimated cost of constructing the facilities. See Exhibit G (Executed
23 Letter of Agreement, dated Nov. 29, 1994, from Citizens to MEC).

24 UNS Electric admits that, to the best of its knowledge, MEC purchased power at
25 Citizen's retail Large General Service ("LGS") retail rate.

26 6. In response to paragraph 6 of MEC's Complaint, UNS Electric admits that both
27 North Star Steel and Roadrunner Trucking discontinued electric service in 2002, and no longer

1 conduct business in the Subject Territory. As a consequence, UNS Electric asserts that pursuant
2 to the Transfer Agreement, the Subject Territory would revert to Citizens upon Commission
3 approval. UNS Electric filed its Application for Commission approval for transfer of the Subject
4 Territory to UNS Electric on November 12, 2004, Docket No. E-04230A-04-0798.

5 7. In response to paragraph 7 of MEC's Complaint, UNS Electric admits that Citizens
6 filed rate schedules with FERC for ongoing wholesale service to MEC ("Rate Schedule Filing").
7 See MEC's Exhibit 2. UNS Electric asserts that the documents speak for themselves.

8 UNS Electric further asserts that MEC notified Citizens that service was no longer
9 needed and requested to have the facilities physically disconnected. See Exhibit H (letter dated
10 July 3, 2003, from MEC to Citizens). On April 11, 2003, Citizens filed a Notice of Termination
11 of Rate 46 with FERC. See Exhibit I (FERC filing dated April 11, 2003). Citizens' facilities
12 were disconnected and physically separated from the North Star site in June 2003.

13 UNS Electric is without sufficient information or knowledge regarding the remaining
14 allegations of paragraph 7 of MEC's complaint, and therefore denies the same.

15 8. In response to paragraph 8 of MEC's Complaint, UNS Electric admits that the
16 CC&N for the Subject Territory was originally issued to Citizens and that this portion of the
17 CC&N territory was transferred to UNS Electric in 2003. This was a result of the acquisition of
18 Citizens' properties by UniSource Energy Corporation ("UniSource"). Decision No. 66028,
19 which approved the transfer, is attached as Exhibit J.

20 9. In response to paragraph 9 of MEC's Complaint, UNS Electric is without sufficient
21 information and knowledge regarding communications between CTI and MEC, and therefore
22 denies the same. UNS Electric admits that on July 30, 2004, MEC verbally requested re-
23 establishment of the primary metering point at the location where MEC had previously received
24 service for Roadrunner. UNS Electric asserts that it does not have a FERC approved tariff to
25 provide wholesale service to MEC. UNS Electric admits to receiving a written request for
26 transmission service under its Open Access Transmission Tariff ("OATT") from MEC in
27 September, 2004. UNS Electric asserts that it appropriately responded to MEC's request by

1 explaining that such a request must be submitted through the Open Access Sametime
2 Information System ("OASIS"). See MEC's Exhibit 4.

3 10. In response to paragraph 10 of MEC's Complaint, UNS Electric denies having
4 refused to initiate service to MEC. UNS Electric asserts that MEC never completed the
5 necessary procedures through OASIS. UNS Electric admits that it informed MEC that it
6 intended to file a request to have the CC&N for the Subject Territory returned to UNS Electric
7 prior to filing such a request in Docket No. E-04230A-04-0798. Furthermore, UNS Electric
8 asserts that it offered to serve CTI through an Electric Service Authorization Agreement³
9 ("Authorization Agreement") with MEC until the CC&N issue was determined. See MEC's
10 Exhibit 4.

11 11. In response to paragraph 11 of MEC's Complaint, UNS Electric denies that it is
12 impeding CTI from receiving electric service. UNS Electric asserts that CTI should not have to
13 pay \$600,000 for facilities when it is unnecessary because UNS Electric has facilities available
14 and is ready, willing and able to provide electric service to CTI upon Commission approval of
15 the Authorization Agreement or transfer of the Subject Territory to UNS Electric, whichever
16 occurs first. UNS Electric denies all remaining allegations in paragraph 11 of MEC's Complaint.

17 12. UNS Electric denies each and every allegation in paragraph 12 of MEC's
18 Complaint.

19 13. In response to paragraph 13 of MEC's Complaint, UNS Electric denies that MEC
20 has made a good faith effort to resolve this matter. UNS Electric has requested that MEC allow
21 UNS Electric to serve CTI and has provided MEC an Authorization Agreement that has been
22 executed by UNS Electric, in a good faith effort to facilitate the timely provision of electric
23 service to CTI. However, to date, MEC has failed to respond to UNS Electric's request. See
24

25
26 ³ Typically, such an agreement is called a "borderline agreement." However, in these circumstances, the Subject
27 Territory is not on the border of UNS Electric's CC&N territory, but rather, in the middle of the territory – much
like an island. Therefore, the title "Electric Service Authorization Agreement" more precisely describes this
situation.

1 Exhibit K (letter dated November 8, 2004, from UNS Electric to MEC, including partially
2 executed Authorization Agreement).

3 UNS Electric denies that it has refused to provide service under an OATT. UNS Electric
4 asserts that MEC has failed to follow the procedures or provide the information necessary to
5 pursue such service.

6 UNS Electric denies that it has refused to consider a system-wide border area agreement.
7 In a telephonic meeting between UNS Electric's and MEC's senior management, the concept of
8 a system-wide borderline agreement was discussed. UNS Electric indicated that the Company
9 was willing to further explore that approach. See Exhibit L (letter dated October 15, 2004, from
10 UNS Electric to MEC). UNS Electric asserts that a borderline agreement, by its nature, is
11 determined on a case-by-case basis. The determination is made based on the best interest of the
12 customer, in particular, the most economic way to provide service to the customer. UNS Electric
13 asserts that although MEC has proposed the concept of a system-wide borderline agreement,
14 MEC has failed to provide any specific terms of such an agreement.

15 UNS Electric asserts that it is not in the best interests of CTI to pay \$600,000 for MEC
16 facilities when UNS Electric has facilities that are ready and available to service CTI.

17 UNS Electric denies all remaining allegations of paragraph 13 of MEC's Complaint.

18 14. In response to paragraph 14 of MEC's Complaint, UNS Electric denies that it
19 currently has FERC Rate Schedules 45 and 46 in effect. UNS Electric is without sufficient
20 information and knowledge regarding the remaining allegations contained in paragraph 14 of
21 MEC's Complaint, and therefore denies the same.

22 15. UNS Electric denies each and every allegation in paragraph 15 of MEC's
23 Complaint.

24 16. UNS Electric denies each and every allegation in paragraph 16 of MEC's
25 Complaint.

26 17. In response to paragraph 17 of MEC's Complaint, UNS Electric admits that CTI is
27 in need of immediate electric service. UNS Electric asserts that CTI's needs can be remedied by

1 either: 1) the return of the Subject Territory CC&N to UNS Electric; or 2) with the execution
2 and approval of the Authorization Agreement. UNS Electric again asserts that a borderline
3 agreement, by its nature, is determined on a case-by-case basis. The determination is made
4 based on the best interest of the customer, in particular, the most economic way to provide
5 service to the customer. UNS Electric further asserts that MEC has failed to provide sufficient
6 information on the concept of a system-wide borderline agreement, including an explanation on
7 how such agreement(s) would not be in violation of the Commission's laws and regulations
8 regarding the granting of CC&Ns.

9 18. UNS Electric denies each and every, all and singular, the allegations of MEC's
10 Complaint not specifically admitted or denied herein.

11 19. The names, mailing addresses and telephone numbers of the persons upon whom
12 service of all documents should be made are:

13 Deborah R. Scott
14 Michelle Livengood
15 Attorneys for UNS Electric, Inc.
16 One South Church Ave. Suite 200
17 MailStop UE201
18 PO Box 711
19 Tucson, AZ 85702
20 520-884-3685 or 520-884-3664
21 Email: dscott@tep.com
22 mlivengood@tep.com

23 Copies to :

24 Tom Ferry
25 UNS Electric, Inc.
26 P.O. Box 3099
27 Kingman, AZ 86402
Email: tferry@uesaz.com

Affirmative Defenses

25 20. MEC's Complaint fails to state a claim for which relief can be granted.

26 21. UNS Electric does not know at this time which, if any, additional affirmative
27 defenses may apply. UNS Electric believes that facts may come to light in this case that support

1 any or all of the affirmative defenses set forth in Rule 8(c), Arizona Rules of Civil Procedure,
2 and hereby incorporates them by reference.

3
4 **MEC'S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM**
5 **FOR WHICH RELIEF CAN BE GRANTED.**

6 **A. Rates May Only Be Determined as Part of a Rate Case.**

7 MEC has requested that the Commission authorize MEC to collect any excess power
8 costs through a surcharge, plus reasonable margin, until an OATT can be established by UNS
9 Electric or until MEC serves its customer directly. What MEC is really asking is for the
10 Commission to approve a new rate outside of a rate case. This is in clear conflict with well-
11 established regulatory law.

12 The general theory of public utility regulation is that the total revenue for a utility
13 company, including income from rates and charges, should be sufficient to meet the company's
14 operating costs and to give the company and its stockholders a reasonable rate of return on the
15 company's investment. *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 534, 578
16 P.2d 612, 615 (Arizona Court of App. 1978). A piecemeal approach to ratemaking, as MEC is
17 proposing, is fraught with potential abuse. Piecemeal ratemaking can serve as either an incentive
18 for utilities to seek rate increases each time costs increase in a particular area, or act as a
19 disincentive for achieving countervailing economies in the same or other areas of the company's
20 operations. *Id.*

21 UNS Electric contends that MEC, by seeking a Commission approval to collect any
22 excess power costs from CTI through "surcharge, plus a reasonable margin," is in fact, an
23 attempt to accomplish a rate increase. Because the Commission is charged with establishing
24 utility rates that are just and reasonable and must determine the fair value of the utility's property
25 in setting rates, the Commission cannot grant the relief that MEC is seeking in a formal
26 complaint docket.

27

1 **B. Borderline Agreements Must Be Determined on a Case-by-Case Basis.**

2 MEC has also requested that the Commission order UNS Electric to negotiate with MEC
3 to establish a system-wide border area agreement. The purpose of a borderline agreement is to
4 allow a public service corporation, other than the company certificated in a specific geographic
5 area, to provide utility service to a customer when it is in the best interest of the customer. One
6 of the key factors in making such a determination is the economic interests of the customer.
7 Borderline agreements are, by their very nature, established on a case-by-case basis to
8 accommodate specific customer situations, and require approval by the Commission.

9 The Arizona Constitution grants the Commission broad powers to regulate public service
10 corporations to protect the health, safety and convenience of customers. Ariz. Const., Article
11 XV, Section 3. Arizona law specifically requires a public service corporation to secure a CC&N
12 before it can serve customers or even begin the construction of "a line, plant, service or system."
13 ARS Section 40-281(A). When a public service corporation is granted a CC&N, it becomes
14 obligated to serve all customers in its certificated area. A borderline agreement provides a
15 limited exception to a CC&N by allowing another company to assume the obligation to serve a
16 customer, when it is in the customer's best interest.

17 UNS Electric contends that if the Commission were to approve a system-wide borderline
18 agreement, its authority to require a certificated utility to provide service within its certificated
19 area would be diminished. With a system-wide borderline agreement in place, how would the
20 Commission know whether UNS Electric or MEC had the obligation to serve a particular
21 customer? For these reasons, UNS Electric asserts that MEC's request for a system-wide
22 borderline agreement is inappropriate and usurps Commission authority, and therefore fails to
23 state a claim for which relief can be granted.

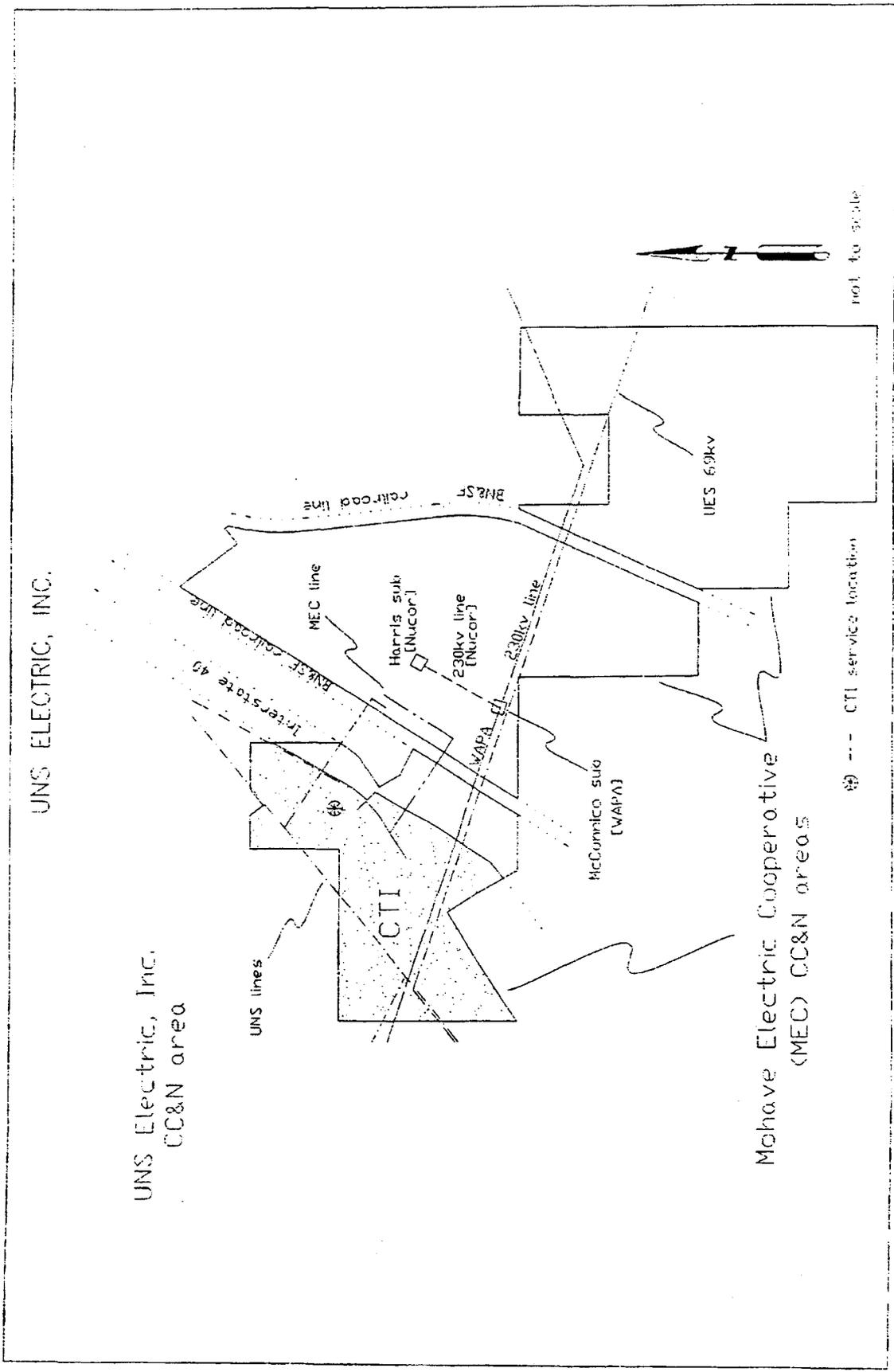
24 Therefore, based on the above discussion, UNS Electric moves to dismiss MEC's
25 complaint based upon a failure to state a claim upon which relief may be granted.

26

27

- 1 Commissioner Jeff Hatch-Miller
2 ARIZONA CORPORATION COMMISSION
3 1200 West Washington Street
4 Phoenix, Arizona 85007
- 4 Commissioner Kirsten Mayes
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington Street
7 Phoenix, Arizona 85007
- 7 Commissioner William A. Mundell
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007
- 10 Lyn A. Farmer, Esq.
11 Chief ALJ, Hearing Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007
- 13 Christopher Kempley, Esq.
14 Chief Counsel, Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007
- 16 Ernest Johnson
17 Director, Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007
- 20 Mohave Electric Cooperative
21 1999 Arena Drive
22 Bullhead City, AZ 86442
- 22 Michael A. Curtis
23 William P Sullivan
24 K. Russell Romney
25 Martinez & Curtis, P.C.
26 2712 N. Seventh Street
27 Phoenix, AZ 85006-1090
-

A



UNS ELECTRIC, INC.

UNS Electric, Inc.
CC&N area

UNS lines

CTI

Harris sub
(Nucor)

230kv line
(Nucor)

McComico sub
(WAPA)

UES 69kv

Mahave Electric Cooperative
(MEC) CC&N areas

⊕ --- CTI service location

not to scale

B

EXHIBIT B

O'CONNOR CAVANAGH

The Law Offices of
O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears
A Professional Association

RECEIVED
AUG 17 1994

PHOENIX ADM. OFFICE

Reply to Phoenix Office
RAYMOND S. HEYMAN
(602) 263-2698
File No. 27180-0100

August 16, 1994

Ms. Beth Ann Burns
CITIZENS UTILITIES
Phoenix Administrative Office
2901 North Central Avenue, Suite 1660
Phoenix, Arizona 85012-2736

Re: Mohave Electric Cooperative, Inc.

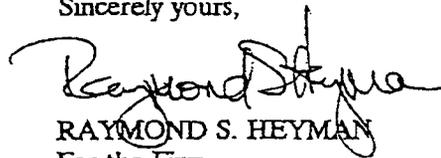
Dear Beth Ann:

Enclosed please find a fully executed copy of the letter from James P. Avery to Robert E. Broz dated May 3, 1994.

I should point out that Mohave Electric interprets Citizens' condition that "MEC shall serve all electric requirements of NSS at the NSS Site and shall provide all such service to NSS at the retail rates and charges approved by the Arizona Corporation Commission" to include special contract rates approved by the Commission.

If you have any questions regarding this, please do not hesitate to contact me.

Sincerely yours,



RAYMOND S. HEYMAN
For the Firm

RSH:lfe

Enclosure

cc: Robert E. Broz (w/o enclosure)

MECNBURNS816.LTR

CITIZENS UTILITIES

Administrative Offices
High Ridge Park, Stamford, CT 06905
(203) 329-8800

May 3, 1994

Robert E. Broz
Executive Vice President/General Manager
Mohave Electric Cooperative
P.O. Box 1045
Bullhead City, AZ 86430



Dear Mr. Broz:

In response to your request dated April 28, 1994, Citizens Utilities Company ("Citizens") hereby consents to Mohave Electric Cooperative, Inc. ("MEC") serving the retail electric load of North Star Steel ("NSS") at 1,040-acre site optioned by NSS in Sections 4, 5, and 9, Township 20 North, Range 17 West, Mohave County, Arizona ("NSS" Site").

This consent is given subject to the following conditions:

- 1) MEC shall serve all of the electric requirements of NSS at the NSS Site and shall provide all such service to NSS at the retail rates and charges approved by the Arizona Corporation Commission ("Commission");
- 2) The boundaries of the NSS Site to be served by MEC shall be determined by the legal description for the 1,040 acres under option, or any portion thereof, purchased, leased, or otherwise acquired by NSS.
- 3) MEC shall serve only NSS within the NSS Site and shall not extend service to any other customer located beyond the boundaries of the NSS Site nor serve contiguous loads;
- 4) The contracts submitted to the Commission for approval shall provide that service to NSS will comply with the design criteria previously provided by Citizens to NSS, and any system upgrades required to comply with such criteria will be provided without expense to Citizens or MEC;
- 5) All required approvals by the State of Arizona for MEC to serve the NSS Site must be obtained, including, but not limited to, approval by the Commission. Citizens will cooperate in obtaining such approval from the Commission; and

CITIZENS UTILITIES

Robert E. Broz
Page 2
May 4, 1994

- 6) If NSS does not construct its plant at the NSS Site or if service to the site is not initiated by MEC or is thereafter abandoned by MEC, the right to serve the NSS Site shall revert back to Citizens.

By your signature, MEC accepts the obligation to provide retail service to the NSS Site subject to the conditions set forth above. MEC also agrees that the consent is not transferable or assignable to any other entity without the express written consent of Citizens. MEC further agrees that in consideration for Citizens' consent, MEC shall pay to Citizens the sum of \$1.00, plus any reasonable out-of-pocket expenses incurred by Citizens in obtaining Commission approval of the transfer to MEC of that portion of Citizens' Certificate of Convenience and Necessity applicable to the NSS Site.

MOHAVE ELECTRIC COOPERATIVE

CITIZENS UTILITIES COMPANY


By: Robert E. Broz
Executive V.P./General Manager


By: James P. Avery
Vice President, Electric

cc: B. Burns - CUC
T. Ferry - CUC
T. Carlson - WAPA
G. Yaquinto - ACC

9436

BGT 4 - 1994

file
NSS/MEC
Agreement



Phoenix Administrative Office
2901 North Central Avenue, Suite 1650
Phoenix, Arizona 85012-2736
(602) 274-1653 - Fax (602) 265-3415

September 30, 1994

Carmen Madrid
Docketing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Dear Ms. Madrid:

Please file as a late-filed exhibit in Docket Nos. E-1032-94-293 and U-1750-94-293 the enclosed Letter Agreement, dated September 22, 1994, as fully executed by Mohave Electric Cooperative, Inc., Arizona Electric Power Cooperative, Inc., and Citizens Utilities Company.

Thank you for your attention to this matter.

Very truly yours,

Beth Ann Burns
Senior Counsel - Arizona

cc: Lyn Farmer
All parties of record



SEP 28 1994
Phoenix Administrative Office
2901 North Central Avenue, Suite 1660
Phoenix, Arizona 85012-2736
(602) 274-1653 · Fax (602) 265-3415

September 22, 1994

Robert E. Broz
Executive Vice President & General Manager
Mohave Electric Cooperative, Inc.

and

Donald Kimball
Executive Vice President & General Manager
Arizona Electric Power Cooperative, Inc.

Dear Sirs:

By letter dated May 3, 1994, Citizens Utilities Company ("Citizens") entered into a Letter Agreement ("Letter Agreement") with Mohave Electric Cooperative, Inc., ("MEC"), wherein Citizens consented, subject to certain stated conditions, to MEC serving the retail electric load of North Star Steel Company ("North Star" or "NSS") at a 1,040-acre site optioned by NSS in Sections 4, 5, and 9, Township 20 North, Range 17 West, Mohave County, Arizona ("NSS Site"). MEC accepted the obligation to provide retail service to the NSS Site subject to the enumerated conditions.

Citizens has reviewed the contracts reached between MEC, Arizona Electric Power Cooperative, Inc., ("AEPSCO"), the United States Department of Energy Western Area Power Administration ("Western"), and North Star for the provision of electric utility service to the NSS Site. Those contracts are the Non-Firm Electric Service Agreement ("Non-Firm"), the Construction and Interconnection Contract ("C&I"), and the Consolidated Arrangements ("Contract").

As a result of that review, Citizens, AEPSCO, and MEC hereby clarify that the referenced provisions of those contracts are intended to mean, and should be interpreted, as follows:

Neither Non-Firm, Paragraph 5.6.2 nor Consolidated, Paragraph 5.4 contemplate or permit retail wheeling under the contract. If North Star unilaterally terminates the Non-Firm contract pursuant to Paragraph 5.8.2: the CC&N transferred by Citizens to MEC, and all rights incident thereto, will automatically revert to Citizens pursuant to the Letter Agreement, subject to any approval necessary by the Commission; and retail wheeling will begin no earlier than one second after reversion of the CC&N legally vests in Citizens.

MEC/AEPCO/Citizens
September 22, 1994
Page 2

Non-Firm, Paragraph 10.4 provides that North Star's requirements will not be met under the contract if agreement on a resource schedule cannot be reached. That provision does not allow North Star to obtain electric service from another source. If North Star and MEC cannot agree on a resource schedule, North Star's load will be reduced to the level agreed upon or service to the NSS Site will be interrupted by MEC/AEPCO until agreement on a resource schedule is reached.

Consolidated, Paragraph 2.8 and C&I, Paragraph 2.7 refer to serving other loads that may be developed in Mohave County. These paragraphs refer to Western and do not confer on MEC any greater rights than those set forth in Condition (3) of the Letter Agreement.

Non-Firm, Paragraph 12 and Consolidated, Paragraph 19 requires North Star to maintain unity or a leading power factor. Western's customers are required to maintain a power factor below 95 percent leading. AEPCO will interrupt North Star if the power factor varies beyond the limits of unity and 95 percent leading.

Consolidated, Paragraph 17.2.1 would implement automatic underfrequency load-shedding for North Star at a level to be designated at 59 Hertz or below. Consolidated, Paragraph 17.2.2 provides for Western dispatcher initiated load-shedding via supervisory control command. North Star will be included in the first block in the underfrequency load reduction program developed by the South West Off-Frequency Group in compliance with WSCC criteria.

Non-Firm, Paragraph 26.1 would permit assignment of the contract under stated terms and conditions. MEC and AEPCO agree that the contracts are not transferable or assignable to any other entity without the express written consent of Citizens, which shall not be unreasonably withheld, pursuant to the Letter Agreement.

C&I, Paragraph 7 provides for a shoo-fly to meet the electrical requirements of the North Star load. Any temporary connection to Western will be connected at the source side of a 230 kV circuit breaker. The breaker will provide for isolation of the Harris Substation in the event any problem occurs.

Further, Citizens and MEC hereby supplement the Letter Agreement to include the following provisions, to which AEPCO concurs:

The consent of Citizens granted in the Letter Agreement for the transfer of a portion of its service territory, and the conditions for that consent, shall remain in effect in perpetuity and do not terminate upon approval of the transfer by the Commission. If

MEC/AEPCO/Citizens
September 22, 1994
Page 3

any material violation of those conditions by MEC or AEPCO occurs, Citizens may abrogate its consent and the CC&N transferred by Citizens to MEC may revert to Citizens, subject to any approval necessary by the Commission, with all rights incident thereto.

The consent of Citizens is also conditioned upon approval by the Rural Electrification Administration of the contracts and a determination by Western, based upon the results of its studies, that service to the NSS Site is technically feasible and would not have an adverse impact on the regional electric system.

Under Condition (4) of the Letter Agreement, the contracts provide that service to NSS will comply with the design criteria previously provided by Citizens to NSS, and any system upgrades required to comply with such criteria will be provided without expense to Citizens or MEC. If the conditions in providing electric service to North Star exceed the IEEE standards referenced in the contracts, MEC/AEPCO will interrupt service to North Star and the interruption shall continue until conditions comply with the standards.

In the event that the Non-Firm contract is terminated by any party for any reason, MEC and AEPCO shall provide notification of the termination to Citizens. Notification shall be provided to the following persons, or any other person designated in writing by Citizens:

James P. Avery
Vice President - Energy Division
Citizens Utilities Company
1233 West Bank Expressway
Harvey, Louisiana 70059

and

Beth Ann Burns
Senior Counsel - Arizona
Citizens Utilities Company
2901 N. Central Ave., Suite 1660
Phoenix, Arizona 85012

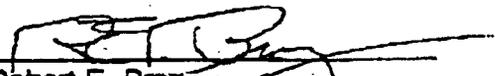
In the event that the Commission's approval of the transfer is granted under terms or conditions that materially deviate from or conflict with provisions of the Letter

MEC/AEPCO/Citizens
September 22, 1994
Page 4

Agreement, as supplemented herein, Citizens may withdraw its consent to the transfer of a portion of its service territory to MEC.

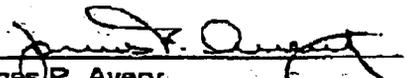
MOHAVE ELECTRIC COOPERATIVE,
INC.

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.


Robert E. Broz
Executive V. P. & General Manager


Donald Kimball
Executive V. P. & General Manager

CITIZENS UTILITIES COMPANY


James P. Avery
Vice President - Energy Division

C

Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION DOCKETED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

RECEIVED
OCT 19 1994
PHOENIX ADM. OFFICE

OCT 14 1994

DOCKETED BY [Signature]

IN THE MATTER OF THE TRANSFER OF A) DOCKET NO. E-1032-94-293
PORTION OF CITIZENS UTILITIES) DOCKET NO. U-1750-94-293
COMPANY'S CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO) DECISION NO. 58798
MOHAVE ELECTRIC COOPERATIVE, INC.)
_____) OPINION AND ORDER

DATE OF HEARING: September 16, 1994
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Lyn Farmer
APPEARANCES: Mr. Raymond S. Heyman, O'CONNOR, CAVANAGH,
ANDERSON, WESTOVER, KILLINGSWORTH &
BESHEARS, on behalf of Mohave Electric
Cooperative, Inc.; and
Ms. Beth Ann Burns, Senior Counsel -
Arizona, on behalf of Citizens Utilities
Company; and
Mr. Michael Grant, JOHNSTON, MAYNARD, GRANT
& PARKER, on behalf of Arizona Electric
Power Cooperative; and
Mr. Phillip L. Chabot, Jr., and Ms. Sandra
E. Rizzo, BRICKFIELD, BURCHETTE & RITTS,
P.C., and Mr. Patrick J. Paul, GALLAGHER &
KENNEDY, on behalf of North Star Steel
Company; and
Ms. Janice Alward and Mr. Bradford A.
Borman, Attorneys, Legal Division, on behalf
of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:
On August 23, 1994, Mohave Electric Cooperative, Inc. ("Mohave
Electric") filed with the Arizona Corporation Commission
("Commission") an Application to Transfer a Certain Portion of the
Certificate of Convenience and Necessity of Citizens Utilities Company

1 ("Citizens") to provide electric utility service to Mohave Electric.
 2 By Procedural Order issued August 29, 1994, the hearing on the
 3 above-captioned matter was set for September 16, 1994. On September
 4 7, 1994, Citizens filed its Motion to Intervene, Motion for
 5 Continuance, and Motion for Correction of Docket Number. On September
 6 9, 1994, Arizona Electric Cooperative, Inc. ("AEPSCO") filed its Motion
 7 to Intervene, and Mohave Electric filed its Response to Citizens'
 8 Motions. On September 12, 1994, Citizens filed its Reply and North
 9 Star Steel Company ("North Star") filed its Motion to Intervene. On
 10 September 13, 1994, the Commission's Utilities Division Staff
 11 ("Staff") filed its Staff Report in this matter. Staff recommended
 12 approval of the application following a hearing. By Procedural Order
 13 issued September 14, 1994, Citizens was granted intervention.
 14 Intervention was granted to AEPSCO and North Star at the commencement
 15 of the hearing.

16 The hearing was held as scheduled and no members of the public
 17 were present to make public comment. No objections concerning the
 18 application were received by the Commission or by Mohave Electric.
 19 Mr. Robert Broz testified on behalf of Mohave Electric, and Mr.
 20 Patrick Williams testified on behalf of Staff. The matter was taken
 21 under advisement pending submission to the Commission of a Recommended
 22 Opinion and Order by the Presiding Officer.

23 * * * * *

24 Having considered the entire record herein and being fully
 25 advised in the premises, the Commission finds, concludes, and orders
 26 that:
 27
 28

FINDINGS OF FACT

1
2 1. Mohave Electric is an Arizona nonprofit electric cooperative
3 providing electric utility service to the public in portions of Mohave
4 County, Arizona, pursuant to authority granted by the Commission.

5 2. Citizens is a Delaware corporation engaged in the business
6 of providing electric utility service to the public in portions of
7 Mohave County, Arizona, pursuant to authority granted by the
8 Commission.

9 3. North Star Steel Company, a corporation organized and
10 operating pursuant to the laws of Minnesota, intends to build a mini-
11 mill steel recycling facility on approximately 1,047 acres of land
12 near Kingman, in Mohave County, Arizona ("plant site").

13 4. The North Star plant site is located within Citizens'
14 certificated service area, but no electric service is currently
15 provided to any customer within the plant site.

16 5. In approximately 1991, North Star approached Citizens
17 requesting electric service for the proposed plant, but was unable to
18 reach agreement regarding the provision of electric service.

19 6. In approximately April 1994, North Star approached Mohave
20 Electric and requested Mohave Electric arrange to provide electric
21 service to the plant.

22 7. Mohave Electric and North Star obtained consent from
23 Citizens for Mohave Electric to serve the electric load to the plant
24 site, subject to six conditions.¹

25 8. On August 23, 1994, Mohave Electric filed its Application to
26
27

28 ¹ See Exhibit A-1, May 3, 1994 letter attached to the
Application.

1 Transfer a Portion of a Certificate of Convenience and Necessity
2 ("Application").

3 9. On September 1, 1994, Mohave Electric provided notice of the
4 Application and hearing, and the hearing was held as scheduled on
5 September 16, 1994.

6 10. Staff filed a Staff Report on September 13, 1994,
7 recommending approval of the Application subject to the following
8 conditions: that Citizens agree to the transfer; and that the
9 Commission approve the Non-Firm Electric Service Agreement Among
10 Mohave Electric Cooperative, Inc., Arizona Electric Power Cooperative,
11 Inc., and North Star Steel Company ("Agreement").

12 11. Service to the plant site will be provided by wheeling the
13 power over the Western Area Power Administration's ("Western") 230 kV
14 transmission system to Western's McConnico switching station, through
15 facilities owned by AEPCO and by Mohave Electric, to the Harris
16 substation which will be owned by North Star.

17 12. According to the Staff Report, when the plant is fully
18 operational, 250 people will be employed, with an annual payroll of
19 approximately \$11 million.

20 13. Staff found that Mohave Electric is capable of serving the
21 plant site; that the transfer will facilitate construction of the
22 manufacturing plant; and that the regional economy should benefit by
23 the presence of the manufacturing plant.

24 14. Staff found that approval of the Application to be in the
25 public interest.

26 15. On September 15, 1994, the Agreement was filed with the
27 Commission², and was approved in Decision No. _____ (October __, 1994).

28 ² See Docket Nos. U-1750-94-323 and U-1773-94-323.

CONCLUSIONS OF LAW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Mohave Electric and Citizens are public service corporations within the meaning of Article 15 of the Arizona Constitution and A.R.S. Sections 40-281 et seq.

2. The Commission has jurisdiction over Mohave Electric and Citizens and over the subject matter of the Application.

3. There is a need for electric utility service at the North Star plant site.

4. Mohave Electric is a fit and proper entity to receive the Certificate for this plant site.

5. Approval of the Application is in the public interest.

6. The Application should be granted.

. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .
. . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

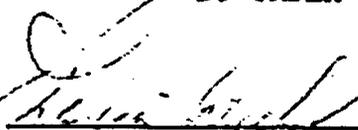
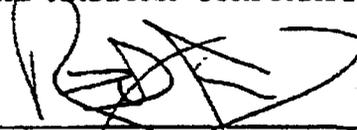
ORDER

IT IS THEREFORE ORDERED that the Application of Mohave Electric Cooperative, Inc., is hereby approved and the portion of Citizens Utilities Company's Certificate of Convenience and Necessity as described in the attached Exhibit A, is hereby transferred to Mohave Electric Cooperative, Inc.

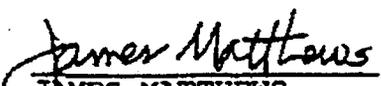
IT IS FURTHER ORDERED that notwithstanding any agreement among any parties to this proceeding, the portion of Citizens Utilities Company's Certificate of Convenience and Necessity described in the attached Exhibit A, which is being transferred hereby to Mohave Electric Cooperative, Inc., shall not revert to Citizens Utilities Company under any circumstances without prior Commission approval.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 14 day of October, 1994.


JAMES MATTHEWS
EXECUTIVE SECRETARY

DISSENT _____
LF

1 SERVICE LIST FOR: CITIZENS UTILITIES COMPANY and
2 MOHAVE ELECTRIC COOPERATIVE, INC.
3
4 DOCKET NOS.: E-1032-94-293 and U-1750-94-293
5
6 Raymond S. Heyman
7 O'CONNOR, CAVANAGH, ANDERSON,
8 WESTOVER, KILLINGSWORTH & BESHEARS
9 One East Camelback Road, Suite 1100
10 Phoenix, Arizona 85012-1656
11
12 Beth Ann Burns
13 Senior Counsel - Arizona
14 CITIZENS UTILITIES COMPANY
15 2901 North Central Avenue
16 Suite 1660
17 Phoenix, Arizona 85012
18
19 Michael M. Grant
20 JOHNSTON, MAYNARD, GRANT & PARKER
21 3200 North Central Ave., Suite 2300
22 Phoenix, AZ 85012
23
24 Charles A. Bischoff, Esq.
25 GALLAGHER & KENNEDY
26 2600 North Central Avenue
27 Phoenix, Arizona 85004-3020
28 Attorney for North Star Steel Company
29
30 Philip L. Chabot
31 Sandra E. Rizzo
32 BRICKFIELD, BURCHETTE & RITTS, P.C.
33 1025 Thomas Jefferson Street, NW
34 Suite 800 - West Tower
35 Washington, DC 20007
36 Attorney for North Star Steel Company
37
38 Paul A. Bullis, Chief Counsel
39 Janis Alward, Staff Attorney
40 Bradford A. Borman, Staff Attorney
41 Legal Division
42 ARIZONA CORPORATION COMMISSION
43 1200 West Washington Street
44 Phoenix, Arizona 85007
45
46 Gary Yaquinto, Director
47 Utilities Division
48 ARIZONA CORPORATION COMMISSION
49 1200 West Washington Street
50 Phoenix, Arizona 85007
51
52
53
54

EXHIBIT A

LEGAL DESCRIPTION "F-1"

A parcel of land located in the West Half and the West Half of the East Half of Section 4, the Southeast Quarter and Government Lot 9 of Section 5, and the Northwest Quarter of Section 9 all in Township 20 North, Range 17 West of the Gila and Salt River Meridian, Mohave County, Arizona and said parcel of land being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 5, and running thence, North $89^{\circ}47'47''$ West, along the South Line of said Section 5, a distance of 1847.73 feet to a point lying Southeasterly 100.00 feet at a right angle to the centerline of the existing west bound main track of the Atchison, Topeka and Santa Fe Railway Company;

Thence, North $32^{\circ}54'09''$ East, along a line being Southeasterly 100.00 feet and parallel to the centerline of said West bound main track, a distance of 3395.41 feet to a point common to the East Line of said Section 5 and the west Line of said Section 4;

Thence, continuing North $32^{\circ}54'09''$ East, along the line being Southeasterly 100.00 feet and parallel with the centerline of said West bound main track, 2582.07 feet to a point of curvature of a curve to the right having a radius of 5628.65 feet;

Thence, Northeasterly, 589.02 feet, along the arc of said curve through a central angle of $05^{\circ}47'28.5''$ to a point on the Southwesterly Boundary of the Unawep Patented Mineral Claim as delineated by U.S. Mineral Survey 2750;

Thence, South $38^{\circ}12'00''$ East, along the Southwesterly Boundary of said Unawep Mineral Claim, 1064.18 feet to the Southeasterly Corner thereof;

Thence, North $51^{\circ}48'33''$ East, along the Southeasterly Boundary of said Unawep Mineral Claim, 300.02 feet to a point being the Northwesterly Corner of the Cadillac Patented Mineral Claim as delineated by U.S. Mineral Survey 2750;

LEGAL DESCRIPTION "E-1"
PAGE TWO OF TWO

Thence, South $37^{\circ}59'27''$ East, along the Southwesterly Boundary of said Cadillac Mineral Claim, 66.55 feet to a point being Northwesterly 100.00 feet at a right angle to the centerline of the East bound main track of the Atchison, Topeka and Santa Fe Railway Company;

Thence, South $11^{\circ}44'40''$ West, along a line being westerly 100.00 feet and parallel to the centerline of said East bound main track, a distance of 307.09 feet to a point of curvature of a curve to the left having a radius of 2964.93 feet;

Thence, Southwesterly 831.27, along the arc of last said curve through a central angle of $16^{\circ}03'50''$ to the point of tangency of said curve;

Thence, South $04^{\circ}19'10''$ East, along a line being westerly 100.00 feet and parallel to the centerline of said East bound main track, 2081.46 feet to a point of curvature of a curve to the right having a radius of 2764.93 feet;

Thence, Southwesterly 1420.64, along the arc of last said curve through a central angle of $29^{\circ}26'20''$ to the point of tangency of said curve;

Thence, South $25^{\circ}07'10''$ West, along a line being westerly 100.00 feet and parallel to the centerline of said East bound main track, 215.18 feet to a point being common to the South Line of said Section 4 and the North Line of said Section 9;

Thence, South $25^{\circ}07'10''$ West, along a line being westerly 100.00 feet and parallel to the centerline of said East bound main track, 2917.39 feet to a point on the South Boundary of the Northwest Quarter of said Section 9;

Thence, South $89^{\circ}58'03''$ West, along said South Boundary, 1113.29 feet to the West One-quarter (W1/4) Section Corner of said Section 9;

Thence, North $00^{\circ}14'02''$ West, along the West Line of said Section 9, a distance of 2638.64 feet to the POINT OF BEGINNING.

The parcel of land herein described containing 433.54 acres, more or less.

LEGAL DESCRIPTION "F-2"

A parcel of land located in Section 9, Township 20 North, Range 17 West of the Gila and Salt River Meridian, Mohave County, Arizona and said parcel of land being more particularly described as follows:

BEGINNING at the Northeast Corner of said Section 9, and running thence, South $00^{\circ}02'37''$ East, along the East Line of said Section 9, a distance of 2841.22 feet to the East One-quarter (E1/4) Section Corner of said Section;

Thence, South $00^{\circ}04'12''$ East, along the East Line of said Section, 2841.10 feet to the Southeast Corner of said Section;

Thence, South $89^{\circ}53'24''$ West, along the South Line of said Section, 2841.36 feet to the South One-quarter (S1/4) Section Corner of said Section;

Thence, North $00^{\circ}14'58''$ West, along the North-South Centerline of said Section 9, a distance of 1322.35 feet to the Southeast Corner of the NE1/4 SW1/4 of said Section;

Thence, North $89^{\circ}58'42''$ West, along the South Boundary of said NE1/4 SW1/4, a distance of 1322.80 feet to the Southwest Corner of said NE1/4 SW1/4;

Thence, North $00^{\circ}15'34''$ West, along the West Boundary of said NE1/4 SW1/4, a distance of 1296.96 feet to point being 100.00 feet Southeasterly at a right angle to the Centerline of the East bound main track of the Atchison, Topeka and Santa Fe Railway Company;

Thence, North $25^{\circ}07'10''$ East, along a line being 100.00 feet Southeasterly and parallel to the Centerline of the East bound main track of said Atchison, Topeka and Santa Fe Railway Company, a distance of 2944.27 feet to a point on the North line of said Section 9;

Thence, North $89^{\circ}54'55''$ East, along said North Line, 61.36 feet to the Northwest corner of the NW1/4 NE1/4 of said Section 9;

LEGAL DESCRIPTION "F-2".
PAGE TWO OF TWO

Thence, South $00^{\circ}14'58''$ East, along the west Boundary of said NW1/4 NE1/4, a distance of 1320.52 feet to the Southwest corner of said NW1/4 NE1/4:

Thence, North $89^{\circ}57'55''$ East, along the South Boundary of said NW1/4 NE1/4, a distance, of 1327.06 feet to the Southeast corner thereof:

Thence, North $00^{\circ}09'08''$ West, along the East Boundary of said NW1/4 NE1/4, 1320.56 feet to the Northeast corner of said NW1/4 NE1/4 of said Section 9:

Thence, North $89^{\circ}57'48''$ East, along the North Line of said Section 9, a distance of 1329.83 feet to the POINT OF BEGINNING.

The parcel of land herein described containing 362.93 acres, more or less.

DECISION NO. 58798

LEGAL DESCRIPTION "F-3"

A parcel of land located in Government Lots 9 and 10, and the South Half of Section 5, Township 20 North, Range 17 West of the Gila and Salt River Meridian, Mohave County, Arizona and said parcel of land being more particularly described as follows:

Commencing at the Southeast Corner of said Section 5, and running thence, North $89^{\circ}47'47''$ West, along the South Line of said Section 5, a distance of 2085.39 feet to a point lying Northwesterly 100.00 feet at a right angle to the Centerline of the West bound main track of the Atchison, Topeka and Santa Fe Railway Company, and said point being the true POINT OF BEGINNING:

Thence, North $89^{\circ}47'47''$ West, along the South Line of said Section 5, a distance of 545.56 feet to the South One-quarter ($S1/4$) Section Corner of said Section 5;

Thence, North $89^{\circ}56'47''$ West, along the South Line of said Section 5, a distance of 318.28 feet to a point being the Easterly most corner to that parcel as described in Book 2176, Pages 737-742, Mohave County Official Records;

Thence, North $32^{\circ}04'52''$ West, along the Easterly Boundary of said parcel being described in said Book 2176, Pages 737-742, a distance of 1222.85 feet to a point;

Thence, South $57^{\circ}55'08''$ West, along the Northwesterly Boundary of said parcel being described in said Book 2176, Pages 737-742, a distance of 1946.45 feet to a point on the South Line of said Section 5;

Thence, North $89^{\circ}56'47''$ West, along said South Line, 21.34 feet to the Southwest Corner of said Section 5;

Thence, North $00^{\circ}09'33''$ West, along the West Line of said Section 5, a distance of 2841.78 feet to the West One-quarter ($W1/4$) Section Corner of said Section 5;

Thence, South $89^{\circ}59'48''$ East, along the East-West Centerline of said Section 5, a distance of 2640.17 feet to the Center One-quarter (Ctr. $1/4$) Section Corner of said Section 5;

LEGAL DESCRIPTION "F-3"
PAGE TWO OF THREE

Thence, North $00^{\circ}06'59''$ West, along the West Line of said Government Lot 10, a distance of 1320.93 feet to the Northwest Corner of said Government Lot 10:

Thence, South $89^{\circ}59'35''$ East, along the North Line of said Government Lot 10, a distance of 514.46 feet to a point on the Southwesterly Boundary of that parcel of land as described in Book 797, Pages 491-495, Official Records:

Thence, South $38^{\circ}18'23''$ East, along said Southwesterly Boundary, 248.90 feet to the Southerly most corner of said parcel:

Thence, North $51^{\circ}32'32''$ East, along the Southeasterly Boundary of said parcel being described in Book 797, Pages 491-495, a distance of 313.95 feet to the North Line of said Government Lot 10:

Thence, South $89^{\circ}59'35''$ East, along said North Line, 402.15 to a point being common the Northeast Corner of said Government Lot 10 and the Northwest Corner of said Government Lot 9:

Thence, North $89^{\circ}59'23''$ East, along the North Line of said Government Lot 9, a distance of 310.12 feet to a point:

Thence, South $00^{\circ}06'53''$ East, 1322.26 feet to a point being the Northerly most point of that parcel being described in Book 56, Page 417 of Deeds, Mohave County Records, and said point being on a curve concave to the Northwest, the radius point of which bears North $50^{\circ}02'29''$ West, 530.00 feet:

Thence, Southwesterly 163.45 feet along the arc of said curve being the Northwesterly Boundary of said parcel as described in said Book 56, Page 417 of Deeds to the point of tangency of said curve:

Thence, South $57^{\circ}37'46''$ West, along last said Northwesterly Boundary, 528.87 to the Westerly most corner of said parcel as described in said Book 56, Page 417 of Deeds:

LEGAL DESCRIPTION "F-3"
PAGE THREE OF THREE

Thence, South 57°05'44" East, along the Southwesterly Boundary thereof, 330.69 feet to a point on the Southeasterly Boundary of a perpetual easement for Interstate 40 granted to the State of Arizona by the Atchison, Topeka and Santa Fe Railway Company and described in Book 36, Pages 91-94 of Deeds;

Thence, South 29°45'37" West, along said Southeasterly Easement Boundary, 371.20 feet to a point;

Thence, South 64°11'14" East, 451.41 feet to a point being 100.00 feet Northwesterly at a right angle from the Centerline of the West bound main track of the Atchison, Topeka and Santa Fe Railway Company;

Thence, South 32°54'09" West, along a line being Northwesterly 100.00 feet and parallel to the Centerline of the said West bound main track, a distance of 1852.73 feet to the true POINT OF BEGINNING.

The parcel of land herein described containing 251.21 acres, more or less.

D

UT 21-01

done 2/6/96

cc Danny

For estimate

by 2/9

ROADRUNNER TRUCKING INC.

An Intrenet Company

P.O. Box 26748
Albuquerque, NM 87125

EXHIBIT D

Xcc Bill D.

Steve P.

Dick Faust
Jim Avery

Mike Celsi
Regional Manager

February 5, 1996

Mr. Tom Ferry
Citizens Utilities
2202 Stockton Hill Road
Kingman, Arizona 86401

Dear Tom:

Please prepare an estimate for providing electrical power to our facility in Kingman.

Our current situation of running on a generator, and with no reasonable solution submitted from Mojave Electric Co-op, leaves us no other option than to try to obtain power from Citizens Utilities.

Please contact me to discuss how this may be accomplished. I may be reached at (520) 718-0400.

Sincerely,

Mike Celsi

Mike Celsi
Regional Manager

cc: Larry Cobb
Rob Robinson

MC:akk

KZMAN\CITIZEN



Customer Service/Sales: (800) 546-6530
Corporate Office: (505) 833-2200 • (800) 777-7784
10605 Central Ave., N.W. • Albuquerque, NM 87121



E



2202 STOCKTON HILL RD. • P.O. BOX 3099 • KINGMAN, AZ 86402 • (520) 753-4051

February 7, 1996

Robert Broz
Executive Vice President and General Manager
Mohave Electric Cooperative
P.O. Box 1045
Bullhead City, Az. 86430

Dear Mr. Broz:

We have received a request from Roadrunner Trucking, Inc. to provide electric service to their facility near McConnico Interchange south of Kingman. In accordance with the letter of agreement dated May 3, 1994 between Mohave Electric Cooperative and Citizens Utilities Company; Citizens is ready, willing and able to provide such service within 30 days.

I am requesting a letter from you allowing Citizens to provide electric service to Roadrunner Trucking which is located on property owned by North Star Steel and included in MEC's certificated service territory as granted by the Arizona Corporation Commission's order E-1032-94-293.

Thank you in advance for your prompt response to this request.

Sincerely,


Thomas J. Ferry
Assistant Vice President

TJF:pw

cc: Mike Celsi, Roadrunner Trucking
Gary Yaquinto, Director ACC

F

RENZ D. JENNINGS
CHAIRMAN

MARCIA WEEKS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



JAMES MATTHEWS
EXECUTIVE SECRETARY

EXHIBIT F

ARIZONA CORPORATION COMMISSION

February 8, 1995

Mr. Robert E. Broz
Executive Vice President and
General Manager
Mohave Electric Cooperative
P. O. Box 1045
Bullhead City, AZ 86430

Post-It® brand fax transmittal memo 7671		# of pages
To <i>Kasen</i>	From <i>Bob Broz</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>692-6974</i>	Fax #	

Mr. Broz:

I have received your February 1, 1995 letter, and am in agreement with your interpretation of Decision No. 58798. I agree with our assessment that Decision No. 58798 "did not contain any conditions, limitations or restrictions regarding Mohave Electric's right and authority to service customers within (the) territory [transferred from Citizens Utilities Company to Mohave]." My reading of the Commission's decision is that it granted Mohave the authority to serve a location and not specific customers.

It was also Staff's belief following the transfer of territory to Mohave, that Mohave would provide electric service to the North Star Steel construction site, whether the construction was performed directly by Northstar or by a construction contractor and subcontractors.

I hope this provides you with the clarification you sought. If you have any further questions, please call me at 542-0745.

Very truly yours,

Gary Laguito
Director
Utilities Division

GMV:alw

Post-It® Fax Note	7671	Date	<i>10/20/95</i>	# of pages	<i>1</i>
To <i>Kasen</i>	From <i>Kasen</i>	Co./Dept.	Co.	Phone #	
Co./Dept.	Co.	Phone # <i>5</i>	Phone #	Fax #	
Fax # <i>505-856-1293</i>	Fax #				

G



2202 STOCKTON HILL RD. • P.O. BOX 3099 • KINGMAN, AZ 86402 • (602) 753-2124

271.0 I O 4219

20,802.78

November 29, 1994

non-refundable

David Bryan
Mohave Electric Cooperative
928 Hancock Rd.
Bullhead City, Az. 86430

Dear Mr. Bryan:

This Letter of Agreement, entered into between Citizens Utilities Company, a Delaware Corporation, hereinafter referred to as "Company", and Mohave Electric Cooperative, hereinafter referred to as "Customer", covers the conditions under which Company will provide temporary overhead construction to North Star Steel Project, Section 5, Township 20 North, Range 17 West, G.& S.R.M., Mohave County, Arizona.

Customer has requested 12,470/7200 volt wye primary distribution service. Company will upgrade 4,200 feet of existing single phase overhead primary distribution and install one primary metering installation to provide the service requested for an estimated cost of \$20,802.78.

Since this is for temporary service, coincident with signing this agreement, Customer shall pay to Company \$20,802.78 as a nonrefundable contribution in aid of construction to cover the estimated cost of constructing the facilities.

At such time as the actual cost of construction, including the cost of engineering and overheads is determinable, the parties will cause the previously advanced amounts to be adjusted to the actual cost of construction.

Attached hereto and made a part hereof is the current electric rate schedule for the type of service for which you will be billed.

Company's estimated starting date for construction will be within 30 days from date of execution of the Letter of Agreement. Construction will be complete within 30 days thereafter.

David Bryan
Mohave Electric Cooperative
Page 2

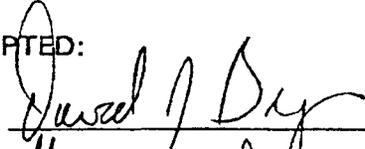
This Agreement supersedes any and all other agreements or Letters of Understanding which may have come before it in connection with the matters herein contained. Any amendment hereto, to be effective, must be made in writing.

CITIZENS UTILITIES COMPANY

By: 

Its: Comm. mgr.

ACCEPTED:

By: 

Its: Manager of Engineering

Enclosures: Job Plan
 Rate Schedule

H

EXHIBIT H



P.O. Box 1045, Bullhead City, AZ 86430

July 3, 2003

Ms. Eileen Jacobson
Citizens Utilities Company
P. O. Box 3099
Kingman, AZ 86402-3609

Received
7-14-03
H.

Dear Ms. Jacobson:

Nice talking with you this morning! As we discussed, Bill DeJulio recently had a telephone conversation with Tom Longtin, Manager of Operations and Engineering for Mohave Electric, and during that conversation Tom advised Mr. DeJulio that we would provide written confirmation that the electric service should be disconnected for meter A56448 under account 5483524. Tom indicated to me that he understood this disconnect was to have taken place after his initial discussion with Mr. DeJulio on this subject some time ago, however we have continued to receive invoices for service. You noted that Tom's understanding is correct and that the billing will be adjusted back to early February (I believe you indicated February 6, 2003). You also indicated there will be a credit balance of approximately \$300.00 which will be refunded after the paperwork related to the disconnect has been processed.

Please feel free to contact me or Tom directly if you have questions or if you need any additional information. Thank you for your help and for the information. Have a great vacation!

Sincerely,

Stephen McArthur
Comptroller

cc: Thomas Longtin
Files

I

HAYNES AND BOONE, LLP

FILED
OFFICE OF THE SECRETARY
03 APR 11 PM 2:13
FEDERAL ENERGY
REGULATORY COMMISSION

ORIGINAL

April 11, 2003

Direct Phone Number: 202.654.4521
Direct Fax Number: 202.654.4501
ken.hurwitz@haynesboone.com

(BY HAND DELIVERY)

h | b
The Honorable Magalie R. Salas
Secretary
FEDERAL ENERGY REGULATORY COMMISSION
888 First Street, N.E.
Washington, D.C. 20426

ER03-737-000

Re: Citizens Communications Company, Docket No. ER03- -000

Dear Secretary Salas:

Pursuant to Section 35.15 of the Commission's regulations, 18 C.F.R. § 35.15 (2002), we hereby tender for filing on behalf of Citizens Communications Company ("Citizens" or the "Company") an original and five copies of the Notice of Termination of Rate Schedule 46, *Power Sale Agreement between Citizens Communications Company, Arizona Electric Division, and Mohave Electric Cooperative*. Citizens requests that the termination of Rate Schedule 46 be made effective June 10, 2003, sixty days from today's filing.

Citizens filed Rate Schedule 46 on March 3, 2003 in Docket No. ER03-584-000, proposing an effective date of May 3, 2003 to commence sales for resale service to Mohave Electric Cooperative ("MEC") under the Rate Schedule. On March 5, FERC issued notice of the filing, setting March 24 as the due date for motions to intervene. MEC did not file a motion to intervene.

MEC was to resell the energy to certain geographically-isolated retail customers. After making the filing, Citizens learned that the retail customers had gone out of business

The Honorable Magalie R. Salas
April 11, 2003
Page 2

Enclosed are an original and six copies of the following documents:

- Attachment A Copy of an April 11, 2003 letter from Tom Ferry, Vice President and General Manager, Arizona Electric Division, Citizens Communications Company, to Mohave Electric Cooperative, terminating the sales contract between Citizens and MEC.
- Attachment B Notice of Termination.
- Attachment C Coversheet for the termination of Rate Schedule 46.

h } b

Please direct all correspondence and service to:

Kenneth G. Hurwitz, Esq.
HAYNES AND BOONE, LLP
555 11th Street, N.W.
Suite 650
Washington, D.C. 20004

Deborah R. Scott, Esq.
Associate General Counsel
CITIZENS COMMUNICATIONS COMPANY
2901 N. Central Suite 1660
Phoenix, Arizona 85012

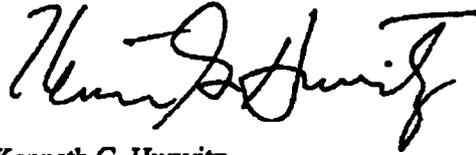
As required by § 35.2(d) of the Commission's regulations, a copy of this filing is being served upon MEC and the Arizona Corporation Commission. In addition, copies of the Notice of Termination are available for inspection at the offices of Citizens' Arizona Electric Division during regular business hours.

Two additional copies of this filing are provided. Please date-stamp them to indicate they have been received, and return them to our courier.

The Honorable Magalie R. Salas
April 11, 2003
Page 3

If you have any questions concerning this filing, please contact the undersigned.
Thank you for your consideration.

Very truly yours,



Kenneth G. Hurwitz
Counsel to Citizens Communications Company

h | b

Enclosures

ATTACHMENT A

A Citizens Energy Services Company
2498 Airway Avenue
P.O. Box 3099
Kingman, Arizona 86402-3099
(928) 681-4100



April 11, 2003

Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442
Attn: Thomas Longtin, Operations Manager

Re: Power Sale Agreement between Citizens Communications Company,
Arizona Electric Division, and Mohave Electric Cooperative

Dear Mr. Longtin:

In accordance with Article 2.1 of the Power Sale Agreement between Citizens Communications Company, Arizona Electric Division, and Mohave Electric Cooperative ("Agreement"), Citizens Communications Company hereby informs you that it is terminating the Agreement as of June 10, 2003.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas J. Ferry".

Thomas J. Ferry
Vice President and General Manager
Arizona Electric Division,
Citizens Communications Company

ATTACHMENT B

NOTICE OF TERMINATION

Notice is hereby given that effective the 10th day of June, 2003, Rate Schedule FERC No. 46, effective date May 3, 2003, filed with the Federal Energy Regulatory Commission by Citizens Communications Company, is to be cancelled. Notice of the proposed cancellation has been served upon the following:

Thomas Longtin
Operations Manager
Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442

Ernest Johnson
Director of Utilities
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Robert E. Broz
Executive Vice President/General Manager
Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442

Brian McNeil
Executive Secretary
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

CITIZENS COMMUNICATIONS COMPANY

By:


Kenneth G. Hurwitz, Esq.
HAYNES AND BOONE, LLP
555 11th Street, N.W.
Suite 650
Washington, D.C. 20004

Attorney for Citizens
Communications Company

Dated: April 11, 2003

ATTACHMENT C

NOTICE OF TERMINATION

OF

RATE SCHEDULE FERC NO. 46

**(Power Sale Agreement between Citizens Communications Company,
Arizona Electric Division, and Mohave Electric Cooperative)**

Issued by: Thomas J. Ferry
Vice President and General Manager, AED
Issued on: April 11, 2003

Effective: June 10, 2003

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Citizens Communications Company

)

Docket No. ER03-__-000

NOTICE OF FILING

(April __, 2003)

Take notice that on April 11, 2003, Citizens Communications Company ("Citizens") tendered for filing six copies of a Notice of Termination of Rate Schedule 46, applicable to sales-for-resale service to Mohave Electric Cooperative.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April __, 2003

Magalie R. Salas
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first class mail upon each person listed below, in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 11th day of April, 2003.


Kenneth G. Hurwitz

Thomas Longtin
Operations Manager
Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442

Ernest Johnson
Director of Utilities
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Robert E. Broz
Executive Vice President/General Manager
Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442

Brian McNeil
Executive Secretary
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

In Reply Refer to:
Docket Nos. ER03-584-000
and ER03-584-001
June 2, 2003

Haynes and Boone, LLP
1225 Eye Street, N.W.
Washington, D.C. 20005-3914

Attention: Kenneth G. Hurwitz, Esquire

Reference: FERC Electric Rate Schedule Nos. 45 and 46; and FERC Electric Rate
Schedule First Revised No. 46.

Dear Mr. Hurwitz:

On March 3, 2003, in Docket No. ER03-584-000, you submitted on behalf of Citizens Communications Company (Citizens) two rate schedules designated as Rate Schedule Nos. 45 and 46. Both rate schedules provide for sales of electricity by Citizens' Arizona Electric Division to the Mohave Electric Cooperative (MEC). On April 11, 2003, in Docket No. ER03-584-001, you submitted a notice of termination of Rate Schedule No. 46. Waiver of the notice requirements under Section 35.11 of the Commission's regulations is granted and Rate Schedule Nos. 45 and 46 are accepted effective November 29, 1994 and May 3, 2003, respectively. The notice of termination is accepted effective June 10, 2003.

Specifically, Rate Schedule Nos. 45 and 46 establish the rates, terms, and conditions for ongoing wholesale sales service of approximately 100-200 kW monthly peak load to MEC. You state that the notice of termination is in response to MEC's request that it will no longer require wholesale service from Citizens and is filed pursuant to the procedures specified in Rate Schedule No. 46.

The filings were noticed on March 5, 2003 and May 6, 2003, with comments, protests, or interventions due on or before March 24, 2003 and May 16, 2003. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the

Docket Nos. ER03-584-000
and ER03-584-001

-2-

Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This acceptance shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service provided for in the filed documents; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or any which may hereafter be made by the Commission in any proceeding now or pending or hereafter instituted by or against Citizens Communications Company.

This action is taken pursuant to authority delegated to the Director, Division of Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

John T. Carlson
Acting Director, Division of Tariffs
and Market Development - West

J

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MARC SPITZER, Chairman
 JIM IRVIN
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 MIKE GLEASON

JUL 03 2003

DOCKETED BY	<i>sd</i>
-------------	-----------

IN THE MATTER OF THE APPLICATION OF THE ARIZONA ELECTRIC DIVISION OF CITIZENS COMMUNICATIONS COMPANY TO CHANGE THE CURRENT PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE RATE, TO ESTABLISH A NEW PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE BANK, AND TO REQUEST APPROVED GUIDELINES FOR THE RECOVERY OF COSTS INCURRED IN CONNECTION WITH ENERGY RISK MANAGEMENT INITIATIVES.

DOCKET NO. E-01032C-00-0751

IN THE MATTER OF THE APPLICATION OF CITIZENS COMMUNICATIONS COMPANY, ARIZONA GAS DIVISION, FOR A HEARING TO DETERMINE THE FAIR VALUE OF ITS PROPERTIES FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, AND TO APPROVE RATE SCHEDULES DESIGNED TO PROVIDE SUCH RATE OF RETURN.

DOCKET NO. G-01032A-02-0598

IN THE MATTER OF THE JOINT APPLICATION OF CITIZENS COMMUNICATIONS COMPANY AND UNISOURCE ENERGY CORPORATION FOR THE APPROVAL OF THE SALE OF CERTAIN ELECTRIC UTILITY AND GAS UTILITY ASSETS IN ARIZONA, THE TRANSFER OF CERTAIN CERTIFICATES OF CONVENIENCE AND NECESSITY FROM CITIZENS COMMUNICATIONS COMPANY TO UNISOURCE ENERGY CORPORATION, THE APPROVAL OF THE FINANCING FOR THE TRANSACTIONS AND OTHER RELATED MATTERS.

DOCKET NO. E-01933A-02-0914
 DOCKET NO. E-01032C-02-0914
 DOCKET NO. G-01032A-02-0914

66028

DECISION NO. _____

OPINION AND ORDER

DATES OF HEARING: May 1, 2, and 5, 2003
 PLACE OF HEARING: Phoenix, Arizona
 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

1 IN ATTENDANCE:

Commissioner William A. Mundell
Commissioner Mike Gleason

2 APPEARANCES:

3 Mr. Thomas H. Campbell, LEWIS & ROCA, LLP, on
4 behalf of Citizens Communications Company,
5 UniSource Energy Corporation, and Tucson Electric
6 Power Company;

7 Mr. Andrew W. Bettwy, Assistant General Counsel, on
8 behalf of Southwest Gas Corporation;

9 Mr. Walter W. Meek, on behalf of the Arizona Utility
10 Investors Association;

11 Mr. Scott Wakefield, on behalf of the Residential Utility
12 Consumer Office;

13 Mr. John White, Deputy County Attorney, on behalf of
14 Mohave County;

15 Ms. Holly J. Hawn, Deputy County Attorney, on behalf
16 of Santa Cruz County;

17 Mr. Hugh Holub, on behalf of the City of Nogales;

18 Mr. Marshall Magruder, *in propria persona*; and

19 Mr. Jason Gellman and Ms. Lisa Vandenberg, Staff
20 Attorneys, Legal Division, on behalf of the Utilities
21 Division of the Arizona Corporation Commission.

22 BY THE COMMISSION:

23 I. INTRODUCTION

24 On September 28, 2000, the Arizona Electric Division ("AED") of Citizens Communications
25 Company ("Citizens") filed with the Arizona Corporation Commission ("Commission") an
26 application (Docket No. E-01032C-00-0751) to change Citizens' current Purchased Power and Fuel
27 Adjustment Clause ("PPFAC") rate, to establish a new PPFAC bank, to begin accruing carrying
28 charges and to request approved guidelines for the recovery of costs incurred in connection with
energy risk management initiatives. Citizens filed an amended application on September 19, 2001,
and errata to the amended application on September 26, 2001. By its amended application, Citizens
sought, among other things, to recover nearly \$100 million from customers in its AED for the PPFAC
bank's under-recovered balance. Citizens' AED serves approximately 59,000 customers in Mohave
County and 16,000 customers in Santa Cruz County.

On August 6, 2002, Citizens' Arizona Gas Division ("AGD") filed an application (Docket

1 No. G-01032A-02-0598) for authority to increase AGD revenues by \$21,005,521, an increase of
2 approximately 28.75 percent. Citizens' AGD is made up of a Northern Arizona Gas Division
3 ("NAGD"), which provides natural gas service to approximately 118,000 customers in portions of
4 Coconino, Mohave, Navajo, and Yavapai Counties, and a Santa Cruz Gas Division ("SCGD") which
5 serves approximately 7,000 customers in Santa Cruz County.

6 On December 18, 2002, Citizens and UniSource Energy Corporation ("UniSource"), on
7 behalf of itself, Tucson Electric Power Company ("TEP") and UniSource's designated affiliates
8 (collectively "Joint Applicants"), filed a Joint Application (Docket Nos. E-01933A-02-0914, E-
9 01032C-02-0914 and G-01032A-02-0914). The Joint Application requested authority for UniSource
10 to acquire the gas and electric assets of Citizens in Arizona, to transfer Citizens' gas and electric
11 Certificates of Convenience and Necessity ("CC&Ns") to UniSource, to obtain certain financing
12 approvals, and to consolidate the above-captioned dockets. UniSource is the parent company of TEP,
13 which provides electric service to more than 360,000 customers in southern Arizona.

14 II. PROCEDURAL HISTORY

15 The key issue in the PPFAC docket described above involved a dispute that arose under the
16 purchased power contract (the "Old Contract") between Citizens and Arizona Public Service
17 Company ("APS") with respect to the appropriate means of billing Citizens under the contract.
18 Because APS did not own sufficient generating capacity to meet its full load requirements, it
19 purchased power on the spot market and charged Citizens the highest cost of market power that it
20 purchased every hour under the "floor price" provision of the contract. The impact of the floor price
21 provision was not evident to Citizens until May 2000 when the spot market became volatile and APS
22 began to assess Citizens significantly higher bills under the purchased power contract. APS and
23 Citizens disagreed regarding how the System Incremental Cost provision of the contract should be
24 interpreted. After analyzing its options, Citizens decided not to submit the contract interpretation
25 dispute to the FERC but, instead, renegotiated the contract with APS. Ultimately, Citizens entered
26 into a "New Contract" with APS' parent company, Pinnacle West Capital Corporation ("PWCC"),
27 effective June 1, 2001, that contained a simple fixed purchased power rate.

28 The PPFAC case was originally scheduled for hearing in March, 2002. The hearing was

1 postponed, however, to allow an opportunity to address a Motion raised by intervenor Marshall
2 Magruder regarding an alleged conflict between Citizens' attorneys and APS/PWCC. Following
3 several Procedural Conferences, Citizens' counsel was disqualified by Procedural Order issued April
4 18, 2002.

5 By Motion filed May 9, 2002, Mohave and Santa Cruz Counties raised an objection to
6 Citizens' substitute counsel due to a potential conflict. Following briefing and oral argument, a
7 Procedural Order was issued on July 16, 2002 disqualifying two of the attorneys employed by
8 Citizens' substitute law firm. Citizens objected to the ruling and filed a Motion for Reconsideration
9 on July 31, 2002. On August 21, 2002, the Commission conducted a Special Open Meeting to
10 address Citizens' arguments. At the Open Meeting, the Commission passed an amendment to the
11 July 16, 2002 Procedural Order that disqualified the entire law firm retained by Citizens as substitute
12 counsel. An Amended Procedural Order incorporating the Commission's amendment was issued on
13 August 23, 2002.

14 By Procedural Order issued August 27, 2002, a new procedural schedule was established in
15 the PPFAC case, with a hearing date set for November 6, 2002. By Procedural Order issued
16 September 27, 2002, the procedural schedule was amended and the hearing was rescheduled to begin
17 December 9, 2002.

18 On October 16, 2002, Staff filed a Sufficiency Letter in Citizens' gas rate case. By
19 Procedural Order issued October 18, 2002, as amended on November 8, 2002, a procedural schedule
20 was established in the gas rate case, including a hearing date of June 24, 2003.

21 On October 29, 2002, UniSource and Citizens entered into Asset Purchase Agreements that
22 provide for Citizens to transfer its electric and gas assets, as well as its CC&Ns for electric and gas
23 service, to UniSource or its electric and gas affiliate companies.

24 By separate Procedural Orders issued December 3, 2002, Citizens' request to suspend the
25 procedural schedules in both the PPFAC case and the gas rate case was granted, and the December 9,
26 2002 hearing date in the PPFAC case was vacated.

27 On December 18, 2002, Citizens and UniSource filed their Joint Application for approval of
28 the sale of Citizens' gas and electric assets to UniSource.

1 On January 8, 2003, a Procedural Order was issued scheduling a joint Procedural Conference
2 in the above-captioned dockets for January 17, 2003.

3 At the request of the Joint Applicants, the three applications described above were
4 consolidated, without objection, by ruling made by the Administrative Law Judge at the January 17,
5 2003 Procedural Conference.

6 Santa Cruz and Mohave Counties ("Counties"), the City of Nogales ("Nogales"), Marshall
7 Magruder, the Arizona Utility Investors Association ("AUIA"), Southwest Gas Corporation
8 ("Southwest Gas"), the International Brotherhood of Electrical Workers, Local 769 ("IBEW"), and
9 the Residential Utility Consumer Office ("RUCO") were granted intervention in the consolidated
10 dockets¹.

11 Pursuant to Procedural Order issued February 7, 2003, any proposed Settlement Agreement
12 was to be filed by April 1, 2003; intervenor and Staff testimony was to be filed by April 21, 2003;
13 Joint Applicant rebuttal testimony was due to be filed by April 28, 2003; a hearing was scheduled to
14 begin on May 1, 2003; and post-hearing briefs were to be filed by May 15, 2003.

15 Public Comment sessions regarding this consolidated proceeding were conducted by the
16 Commission in Flagstaff and Prescott on March 5, 2003; in Lake Havasu City on March 25, 2003; in
17 Kingman on March 26, 2003; in Nogales on April 3, 2003; and in Show Low on April 25, 2003.

18 A Settlement Agreement ("Settlement," "Agreement" or "Stipulation") signed by the Joint
19 Applicants and Staff was filed on April 1, 2003. A Staff Report explaining and supporting the
20 Settlement Agreement was filed on April 21, 2003. RUCO filed testimony on April 21, 2003
21 generally supporting the Settlement, with the exception of two issues.

22 On April 16, 2003, IBEW filed a pleading expressing support for the Settlement Agreement.

23 The Joint Applicants filed rebuttal testimony on April 28, 2003 in support of the Settlement
24 Agreement.

25 Mr. Magruder filed testimony opposing the Settlement Agreement on April 30, 2003.

26 An evidentiary hearing was conducted in this consolidated proceeding on May 1, 2, and 5,
27

28 ¹ Unless otherwise indicated, the Counties, Nogales, and Mr. Magruder will be referred to as the "Joint Intervenors" due to the commonality of positions taken in this proceeding.

1 2003. Post-hearing briefs were filed on May 15, 2003.

2 A. Settlement Process

3 On January 13, 2003, Staff conducted a general meeting with the Joint Applicants and
4 approximately 30 of the intervenors' representatives. At this initial meeting, the Joint Applicants
5 described the application and answered questions.

6 According to Staff, it conducted additional meetings on January 22 and 31, 2003 with
7 intervenors and the Joint Applicants. However, Staff informed the intervenors following the January
8 31, 2003 meeting that it intended to conduct additional settlement discussions with only the Joint
9 Applicants due to the extensive number of issues that needed to be addressed. Staff informed the
10 intervenor parties that they should attempt to negotiate directly with the Joint Applicants in order to
11 resolve the issues raised by intervenors in the prior meetings.

12 As indicated above, following a Procedural Conference held on January 17, 2003, the
13 Administrative Law Judge issued a Procedural Order on February 7, 2003 that, among other things,
14 required a final Settlement Agreement to be filed by April 1, 2003 and scheduled a hearing to
15 commence on May 1, 2003.

16 On March 31, 2003, Staff held a final meeting with the intervenors to explain the primary
17 components of the Agreement reached by Staff and the Joint Applicants. On April 1, 2003, the final
18 Settlement Agreement was filed with the Commission (Ex. S-1, at 1-2).

19 During the hearing, the intervenors expressed concern with the process that lead to the final
20 Settlement. For example, RUCO witness Marylee Diaz Cortez testified that, although RUCO
21 supported most of the terms of the Settlement, she was concerned that the intervenors, including
22 RUCO, were left out of the "dynamics" of the settlement discussions that were conducted between
23 Staff and the Joint Applicants (Tr. 558-560). As a result, Ms. Diaz Cortez believes that the Joint
24 Applicants were unwilling to grant any further concessions to address the intervenors' concerns (*Id.*).
25 She conceded that RUCO had the opportunity to negotiate with the Joint Applicants in February and
26 March (Tr. 569), but maintained that it would have been difficult to negotiate without knowing what
27 terms and conditions Staff and the Joint Applicants had agreed to (Tr. 571-572).

28 The other intervenors also raised concerns about the negotiation process. The Counties and

1 Nogales, as well as Mr. Magruder, argued that when the settlement process began they believed that
2 all parties would be involved in negotiations (Tr. 333-342). However, the final Settlement
3 Agreement was negotiated only between Staff and the Joint Applicants, thereby leaving the
4 intervenors to seek a separate resolution of the issues with which they were concerned.

5 Staff argues in response that all intervenors were made aware in late January of Staff's intent
6 to negotiate only with the Joint Applicants, and suggested to the intervenors that they could discuss
7 their issues directly with the Joint Applicants (Tr. 338). Staff indicated that no intervenors objected
8 to this procedure until the hearing began (Tr. 287).

9 We find that the negotiation process leading up to the Settlement Agreement between Staff
10 and the Joint Applicants was appropriate under the facts and circumstances presented by this
11 consolidated proceeding. No party disputes that Staff advised the parties early in the negotiation
12 process that Staff intended to negotiate directly with the Joint Applicants due to the number of parties
13 in this case and the number of issues presented in this consolidated proceeding. All parties concede
14 that they were not precluded from negotiating separately with the Joint Applicants to address issues
15 with which they were concerned (Tr. 338-343) and, indeed, Joint Applicant witness Steven Glaser
16 testified that UniSource met separately with Mr. Magruder, the Counties, and Nogales, and attempted
17 to meet with RUCO (*Id.* at 125-126). Moreover, the record reflects that, prior to the hearing, no party
18 objected to the process that was established for engaging in settlement discussions (*Id.* at 142-143,
19 287).

20 The intervenors were also afforded the opportunity to present testimony in opposition to the
21 settlement. In the February 7, 2003 Procedural Order, the Administrative Law Judge rejected the
22 Joint Applicants' proposed schedule and extended the timelines for filing testimony in order "to
23 accommodate the need for all parties to be afforded due process" (February 7, 2003 Procedural
24 Order, at 2; *See also*, January 17, 2003 Procedural Conference Tr. 29-32). For whatever reason,
25 RUCO was the only intervenor that timely filed testimony² regarding the Settlement and, with the
26 exception of two issues, RUCO's testimony was generally supportive of the Stipulation. Neither the

27 ² Although Staff and intervenor testimony was due by no later than April 21, 2003, Mr. Magruder filed testimony on April
28 30, 2003, the day before the hearing was scheduled to begin. However, over the objections of the Joint Applicants, AULA
and Staff, Mr. Magruder's untimely testimony was not stricken (Tr. 66-68) and was later admitted (Tr. 581).

1 Counties nor Nogales filed testimony in opposition to the Settlement, relying instead solely on cross-
2 examination and legal arguments to make their cases.

3 We believe each of the parties in this matter was given due process and the opportunity to be
4 heard regarding their relevant concerns. Each of the substantive terms of the Settlement Agreement
5 is discussed below and the reasonableness of the Agreement will be decided based on the evidentiary
6 record that is before the Commission.

7 **III. SETTLEMENT AGREEMENT**

8 The Settlement Agreement entered into April 1, 2003 by the Joint Applicants and Staff
9 ("Signatory Parties") encompasses a number of issues presented by each of the three consolidated
10 cases. Specific terms of the Settlement are discussed below.

11 The largest benefit of the Settlement cited by the Signatory Parties is the "forgiveness" of
12 "under-recovered" purchased power costs that are currently contained within Citizens' PPFAC bank
13 balance. The PPFAC balance is estimated to be at least \$135 million by the time of the scheduled
14 closing date, July 28, 2003. Staff estimates that this provision of the Stipulation will save Citizens'
15 current electric customers approximately \$12 per month compared to a full recovery of the PPFAC
16 balance.

17 Other major benefits of the Agreement cited by Staff and the Joint Applicants include a
18 reduction in the gas rate increase from \$21.0 million requested in Citizens' application to \$15.2
19 million under the Settlement; reduction of future rate base for the gas and electric divisions of \$30.7
20 million and \$93.6 million, respectively, to recognize a "negative acquisition premium" of the lower
21 than book value price negotiated by UniSource for Citizens' assets; an additional \$10 million
22 permanent disallowance to gas rate base to recognize excessive costs associated with Citizens' Build-
23 Out Program; a three-year moratorium on filing subsequent gas and electric base rate cases; a
24 requirement that UniSource file a plan to bring retail electric competition to electric customers
25 acquired from Citizens by the end of 2004; agreement by UniSource to permanently forgo recovery
26 of any potential stranded generation costs associated with the acquisition; and the agreement by
27 UniSource to share 60 percent of any savings achieved by renegotiation of the June 1, 2001
28 purchased power contract between Citizens and Pinnacle West Capital Corporation.

1 A. PPFAC Balance

2 As indicated above, Citizens' PPFAC balance is estimated to total more than \$135 million by
3 the end of July 2003. The Stipulation provides that none of the "under-recovered" PPFAC bank
4 balance, through the date of closing of the acquisition by UniSource, may be recovered by Citizens,
5 UniSource, or any of its subsidiaries. This "forgiveness" of the PPFAC balance is touted by the
6 signatory parties as a principal benefit of the Agreement for ratepayers.

7 The Joint Intervenorers argue that, in evaluating the reasonableness of the Settlement, the
8 Commission should not accord this "benefit" significant weight because the purchased power costs
9 incurred by Citizens have never been determined to be recoverable from ratepayers. The Joint
10 Intervenorers have suggested that, until a decision has been rendered by the Commission or the FERC
11 approving the requested PPFAC costs, the Commission should not consider the PPFAC provision of
12 the Stipulation as a benefit to ratepayers. Nogales goes so far as to label the PPFAC forgiveness
13 provision of the Agreement as a "sham" (Nogales Brief at 2).

14 We disagree with the Joint Intervenorers' assertions that the permanent forbearance of all
15 PPFAC costs (incurred as of the closing of the acquisition by UniSource) does not provide a real and
16 substantial benefit to Citizens' current electric customers. The Agreement provides that the \$87
17 million of under-recovered PPFAC costs incurred under the "Old Contract"³ and approximately \$48
18 million attributable to the under-recovered PPFAC balance under the "New Contract,"⁴ through the
19 end of July 2003, will not be recoverable by Citizens, UniSource, or any of UniSource's affiliates.
20 Although it is possible that some portion of the requested PPFAC balance would have been subject to
21 disallowance, Staff's analysis indicates that it is likely customers would have been required to pay a
22 "significant" amount of the under-recovered PPFAC balance under the Old Contract (Ex. S-1 at 36).
23 Staff also points out that it would have been difficult to prevail at the FERC on the issue of
24 imprudence of the New Contract, because the terms of that contract had previously been approved by
25 FERC (*Id.* at 37). In any event, the Settlement Agreement removes the uncertainty surrounding
26 interpretation of the Old Contract, and ensures that ratepayers will not be required to pay for any of

27 _____
28 ³ The Old Contract refers to the purchased power contract in effect from 1995 to June 1, 2001 between Citizens and APS.

⁴ The New Contract is the purchased power contract between Citizens and PWCC that went into effect on June 1, 2001.

1 the PPFAC balance through the closing of the transaction.

2 Staff also compared the Stipulation to "worst case" and "best case" scenarios. Under the
3 worst case, Staff assumed that the estimated \$135 million PPFAC balance would be fully recovered,
4 and future carrying costs and all costs associated with the New Contract would be approved. The
5 best case outcome assumed that the FERC would rule in favor of Citizens in its contract dispute with
6 APS, thereby reducing the under-recovery from the Old Contract by \$70 million, and that the
7 Commission would deny 25 percent of the under-recovery under the New Contract (Ex. S-1, at 40-
8 42). Based on its analysis, Staff concluded that Citizens' current electric customers' rates would be
9 approximately 12 percent lower under the Stipulation compared to Citizens' original PPFAC
10 proposal (*Id.*). We agree with Staff that the Joint Applicants' agreement not to seek recovery of any
11 portion of the under-recovered PPFAC balance confers a substantial benefit on customers by
12 eliminating the uncertainty surrounding the disputed PPFAC amounts. Although there is a possibility
13 that some of the PPFAC balance could have been reduced through litigation, the Settlement
14 Agreement achieves the best possible outcome by completely eliminating the opportunity for any of
15 the approximately \$135 million balance to be recovered from ratepayers.

16 B. Transfer of Assets and Certificates

17 UniSource intends to create one or more subsidiaries to own and operate the electric and gas
18 assets being acquired from Citizens. These yet to be formed subsidiaries are referred to in the
19 Stipulation as "ElecCo" and "GasCo".

20 The Signatory Parties request authority, pursuant to A.R.S. §40-285, to transfer Citizens'
21 electric and gas assets to ElecCo and GasCo, respectively. The Agreement further provides that
22 Citizens' electric and gas CC&Ns will be transferred to the UniSource affiliates, along with any
23 necessary franchises, licenses and similar authorizations. Copies of such franchises, licenses and
24 authorizations will be submitted to the Commission within 365 days of approval of the Stipulation.
25 The Settlement also states that ElecCo and GasCo will be entitled to recover \$1.8 million and \$2.7
26 million, respectively, of the anticipated "transaction costs" associated with the acquisition, as an
27 offset to the negative acquisition premium (see Negative Acquisition Premium discussion below), so
28 that the transaction costs may be capitalized in accordance with Generally Accepted Accounting

1 Principles ("GAAP"). The Agreement provides that UniSource may, at its discretion, form a holding
2 company ("HoldCo") to finance and hold ownership in ElecCo and GasCo.

3 Citizens seeks to exit the electric and gas service business, not only in Arizona but in other
4 areas of the country (Joint App. Ex. 10, at 8-9). It is significant that Citizens is being acquired by
5 UniSource, a company that operates exclusively within the State of Arizona and which has a proven
6 track record as the parent company of Tucson Electric Power. Witnesses for the Joint Applicants,
7 Staff, AUIA and RUCO testified that UniSource is a fit and proper entity to acquire and operate the
8 gas and electric assets currently owned by Citizens (See, e.g., Joint App. Ex. 1, at 2-3; Tr. 286, 512,
9 537). UniSource has indicated that it intends to retain substantially all of the approximately 370
10 employees employed by Citizens (Tr. 448) and to hire additional employees in Arizona to perform
11 certain administrative duties currently done by Citizens employees in New Orleans (Tr. 118).

12 Based on these factors, we believe that UniSource is a fit and proper entity to acquire the gas
13 and electric assets owned by Citizens in Arizona. We also find that the transfer of Citizens' gas and
14 electric CC&Ns to UniSource is in the public interest and should be approved.

15 C. Electric Purchased Power and Fuel Adjustor Clause

16 The Stipulation provides that, as of the date of closing of the acquisition of the Citizens
17 electric assets by UniSource, the purchased power adjustor rate will be set at \$0.01825 per kilowatt
18 hour ("kWh"). Adding the current base rate for purchased power of \$0.05194 per kWh to the
19 adjustor rate would result in a total purchased power rate of \$0.07019 (See Appendix C of Settlement
20 Agreement).

21 The Joint Intervenors raised concerns with this provision of the Settlement because they
22 believe the new PPFAC adjustor rate is based on an excessive purchased power price that is
23 contained in the New Contract. For example, Mr. Magruder testified that the wholesale electricity
24 rate in the New Contract of \$58.79 per MWh⁵ is almost twice the rate available recently on the spot
25 market (Magruder Ex. 2, at 18-24). Mr. Magruder believes that the New Contract rate is excessive
26

27 ⁵ The New Contract price of \$0.05879 per kWh is the generation supply component. The total purchased power rate of
28 \$0.07019 kWh is determined by adding the \$0.05879 generation component to the line loss (\$0.06583) and transmission
(\$0.00436) components (Joint App. Ex. 6, App. C). For purposes of comparing market prices for generation, it is
appropriate to use the \$0.05879 kWh price.

1 because it was negotiated during a period of volatility in the California and western energy markets
2 (*Id.* at 22).

3 The Joint Applicants and Staff dispute Mr. Magruder's contentions. Staff contends that the
4 purchased power price should be evaluated on a going-forward basis because, even though the New
5 Contract was for a seven-year term (from June 1, 2001), under the Settlement Agreement customers
6 will not be required to pay for the first two years of PPFAC costs. Staff witness Lee Smith also
7 discussed the benefits of the "load-following" nature of the contract, the risk premium associated
8 with a long-term contract such as the one Citizens entered into with PWCC, the cost of long-distance
9 transmission, and the cost of ancillary services (Tr. 300-304). Based on recent spot prices from the
10 Palo Verde index, Ms. Smith concluded the purchased power price in the New Contract is reasonable.
11 She indicated that, even if market manipulation created an expectation of higher prices when the New
12 Contract was negotiated in 2001, the relevant comparison is to evaluate the New Contract to current
13 market prices on a going-forward basis, including the appropriate adders for following load, risk
14 premium, ancillary services and transmission (*Id.* at 306-308). RUCO's witness also testified that the
15 New Contract is reasonable on a going-forward basis, based on an analysis that was similar to the one
16 undertaken by Staff (*Id.* at 576).

17 Joint Applicant witness DeConcini also described the benefits of the New Contract. He
18 explained that the New Contract is a full requirements supply agreement that requires PWCC to meet
19 the instantaneous demand of Citizens' customers. Due to the full requirements nature of the contract,
20 as well as the inclusion of network transmission and ancillary services, Mr. DeConcini believes that
21 the New Contract is a reasonable agreement (Joint App. Ex. 9, at 2-4). He also claims that, compared
22 to other contracts entered into in 2001 and the cost of constructing generation facilities at that time or
23 in today's market, the New Contract provides a reasonable price for power supplied to Citizens'
24 customers, especially considering the benefit to customers associated with the forfeiture of the first
25 two years' PPFAC costs (*Id.* at 5-8; Tr. 140, 184).

26 We agree with the Joint Applicants, Staff and RUCO that the price contained in the New
27 Contract is not an unreasonable rate for electricity considering all relevant factors. As described by
28 the Staff and Joint Applicant witnesses, the appropriate evaluation of market prices must include

1 consideration of the full-requirements, load-following nature of the contract, and the inclusion of
2 necessary transmission and ancillary services. Based on all of these factors, as well as the
3 Stipulation's requirement that the Joint Applicants may not seek recovery of PPFAC costs for a more
4 than two-year period under the New Contract (June 1, 2001 to the expected closing date of July 28,
5 2003), we find that the new purchased power adjustor rate of \$0.01825 is not unreasonable.
6 Although we conclude that the new adjustor rate included in the Stipulation is not unreasonable,
7 given current market conditions we believe that UniSource should continue to negotiate with PWCC
8 for additional concessions.

9 D. Renegotiation of New Contract

10 Regarding the June 1, 2001 purchased power contract between Citizens and PWCC.
11 UniSource agrees to attempt to renegotiate the contract. Under the Settlement, any savings flowing
12 from a successful renegotiation of the contract with PWCC would be shared by ElecCo's customers
13 and UniSource. The Agreement provides that 60 percent of savings would go to ratepayers and 40
14 percent of savings would go to UniSource.

15 The Joint Intervenors strongly oppose any sharing of savings associated with a renegotiated
16 contract. In effect, they argue that UniSource has a duty to negotiate the best possible price for
17 electricity provided to customers, and that any additional savings received from a renegotiated
18 contract should be allocated entirely to customers.

19 RUCO generally agrees with the Joint Intervenors' position on this issue. Ms. Diaz Cortez
20 stated that the 60/40 split in the Settlement would provide a windfall to UniSource which is not
21 necessary. Instead, RUCO recommends that any savings achieved from renegotiation should be split
22 with 10 percent going to UniSource and 90 percent to benefit ratepayers (RUCO Ex. 1, at 10-11).

23 Although Staff and the Joint Applicants contend that the 60/40 split is needed to provide an
24 incentive for renegotiating the New Contract, we agree with RUCO that limiting the flow back to
25 UniSource to 10 percent of any renegotiated savings will provide a sufficient incentive to the
26 company to actively negotiate for additional savings while providing customers the vast majority of
27 the savings. Moreover, the introduction of retail competition in the near future should provide an
28 incentive to PWCC to bargain in good faith in order to avoid losing the wholesale load associated

1 with serving retail customers located in Santa Cruz and Mohave Counties. For these reasons, we will
2 amend the Stipulation consistent with RUCO's recommendation. If after 90 days from the effective
3 date of this Decision, UniSource believes that negotiations are not proceeding in a timely fashion or
4 that PWCC is not negotiating in a good faith manner, UniSource shall use the FERC's Alternative
5 Dispute Resolution Service to the extent such service is available, for purposes of renegotiating the
6 current contract with PWCC.

7 E. Opening ElecCo's Service Territories to Retail Electric Competition

8 The Signatory Parties agree that, within 120 days of approval of the Settlement, UniSource
9 must file for Commission approval a plan to open ElecCo's service territories to retail electric
10 competition. Under this provision, UniSource is required to address, at a minimum: unbundled
11 tariffs; system benefits charges; assisting new suppliers in using transmission; and reliability must-
12 run generation. The implementation of retail competition in ElecCo's service territories must be
13 accomplished by no later than December 31, 2004. The Settlement also provides that UniSource will
14 not oppose municipal aggregation in principle as part of any plan for retail access in ElecCo's service
15 territories.

16 Certain intervenors suggested that competitive retail access should be available by no later
17 than the end of 2003. As explained by the Staff witness, offering access to retail customers will
18 require a number of modifications, including unbundling the transmission and generation rate
19 components, implementing accounting measures associated with retail access, and developing billing
20 for customers that choose a competitive supplier (Tr. 347). However, UniSource has indicated that it
21 will attempt to implement retail competition prior to the end of 2004, if possible (Tr. 299, 350). Staff
22 witness Smith also indicated that the chance of a successful introduction of retail access in the
23 ElecCo areas is more likely than in another areas in Arizona due to the higher access credit that is
24 likely to be available for ElecCo customers (Tr. 299, 346).

25 We believe it is reasonable to require UniSource to file, within 120 days of the effective date
26 of this Decision, an application for approval of a plan to open ElecCo's service territories to retail
27 electric competition by no later than December 31, 2003. UniSource's plan shall address, at a
28 minimum, unbundled tariffs, system benefits charges, assisting new suppliers in using transmission,

1 and reliability must-run generation.

2 Related to the issue of retail access, the Stipulation states that ElecCo's stranded costs are
3 equal to zero. The Agreement indicates that stranded costs are limited to generation costs, including
4 costs associated with the June 1, 2001 purchased power contract between Citizens and PWCC and
5 Citizens' generation units located in Santa Cruz County. These provisions of the Settlement, as
6 modified herein, provide substantial benefits to the current Citizens electric customers who will be
7 served by ElecCo after completion of the acquisition by UniSource.

8 F. Consolidation of Santa Cruz Division with TEP

9 The Stipulation also states that, in TEP's next general rate case filing, TEP and UniSource
10 will submit a feasibility study and consolidation plan or, in the alternative, a plan for coordination of
11 operations of ElecCo in Santa Cruz County with TEP. The Settlement indicates that the
12 consolidation plan must address the ability of TEP to retain two-county bond financing or, if such
13 financing could not be retained, a comparison of the benefits of operational consolidation with the
14 benefits of redeeming the two-county financing.

15 Under the requirement of Decision No. 62103, TEP's next general rate case is expected to be
16 filed in June 2004. This provision of the Stipulation may result in benefits to Santa Cruz County
17 customers, in the form of improved reliability and economies of scale, to the extent that TEP
18 develops a workable plan for consolidating the Santa Cruz Division within TEP's operations (Tr.
19 393-394).

20 G. Negative Acquisition Premium

21 Under the Settlement, UniSource agrees to permanently credit customers for the "negative
22 acquisition adjustments"⁶ of \$30,700,000 for GasCo and \$93,624,000 for ElecCo, until those amounts
23 are fully amortized over the life of the plant related to the Agreement. The resulting net plant in
24 service for the electric assets acquired by UniSource will be \$93,800,000, as of October 29, 2002
25 (See Appendix B, Schedule 4, of the Settlement Agreement). UniSource will be precluded from
26

27 ⁶ The negative acquisition premium or adjustment refers to the amounts under book value that UniSource has agreed to
28 pay for Citizens' gas and electric assets. Pursuant to the terms of the Stipulation, the \$30.7 million and \$93.6 million
"negative acquisition adjustments" will result in permanent reductions to GasCo's and ElecCo's future fair value rate
bases.

1 seeking any other treatment of the negative acquisition premium amounts. The accounting treatment
2 for these adjustments will be conducted in accordance with the guidelines set forth in Paragraph 35 of
3 the Settlement.

4 Nogales raises the argument on brief that the claimed rate reduction is simply a "public
5 relations" effort because the Commission has no assurance that UniSource will not subsequently sell
6 the system for a higher price, which could lead to a later buyer seeking to "recover the difference
7 between the UniSource purchase price and a subsequent purchase price" (Nogales Brief at 3-4).
8 Contrary to Nogales' assertion, if UniSource seeks to sell all or part of the gas and electric systems it
9 is acquiring from Citizens, the subsequent transaction would require Commission approval. As such,
10 the Commission will have a full opportunity to evaluate any subsequent proposed purchase of the
11 UniSource gas and electric assets. Thus, Nogales' concern that it could be disadvantaged by a
12 subsequent sale of the assets is, at a minimum, premature.

13 It is unclear why the City of Nogales would oppose UniSource's agreement to eliminate from
14 rate base in future rate bases over \$30 million and \$93 million in gas and electric system plant assets,
15 respectively, given RUCO's estimate that these negative acquisition premiums will result in annual
16 revenue reductions of approximately \$17 million for electric customers and \$5.5 million for gas
17 customers (RUCO Ex. 1, at 4-6). In any event, the permanent rate base reductions set forth in the
18 Settlement constitute a significant benefit to the current Citizens gas and electric customers (Tr. 297).

19 H. Rate Moratorium

20 The Stipulation further provides that neither ElecCo nor GasCo may file a general rate case
21 for a period of at least three years from the date of the Commission Order approving the Settlement.
22 However, ElecCo and GasCo may seek rate relief sooner than the three-year moratorium period in
23 the event of circumstances that constitute an emergency, or due to material changes to cost of service
24 as a result of federal, tribal, state or local laws, regulatory requirements, judicial decisions, actions, or
25 orders.

26 The effect of the rate moratorium provision is that gas and electric base rates for the
27 customers acquired by UniSource will not be increased until mid-2007, at the earliest (three-year
28 moratorium plus additional year for processing rate application). Combined with the remaining five

1 years on the New Contract for purchased power, the customers acquired by UniSource will enjoy
2 relative rate stability in base rates and purchased power rates⁷ for at least the next several years. We
3 find that the base rate moratorium provision provides a significant benefit to affected ratepayers.
4 However, we believe the Settlement Agreement should be modified slightly to make it clear that
5 GasCo and ElecCo shall not be permitted to increase their gas or electric base rates prior to August 1,
6 2007.

7 1. Terms of Gas Rate Case Agreement

8 The Signatory Parties agree that, for ratemaking purposes, the Fair Value Rate Base
9 ("FVRB") for the Citizens' gas assets to be acquired by GasCo is \$142,132,013, as of October 29,
10 2002 (See Appendix B, Schedule 2, of Settlement Agreement). The Signatory Parties further agree
11 that, for ratemaking purposes, a reasonable rate of return on the stipulated FVRB equals 7.49 percent.
12 The stipulated rate of return is based on a total cost of capital of 9.05 percent, derived from a cost of
13 equity of 11.00 percent and a cost of debt of 7.75 percent for original cost rate base (See Appendix B,
14 Schedule 1, of Settlement Agreement). The Settlement provides that GasCo's increase in revenues
15 will equal \$15,191,276 (See Appendix B, Schedule 1, of Settlement Agreement). The Agreement
16 also sets forth a rate design for the new gas rates that includes, among other things, that the monthly
17 customer charge will increase from \$5.00 to \$7.00 and the base cost of gas implicit in the commodity
18 rates for all tariff classes will be \$0.400 per therm (See Appendix B, Schedule 3, of Settlement
19 Agreement).

20 The Signatory Parties further agree that the purchased gas adjustor ("PGA") bank balance will
21 not be affected by the Agreement and that UniSource and/or GasCo will comply with all prior
22 Commission orders regarding treatment of the PGA bank balance. With respect to the new stipulated
23 \$0.400 per therm base cost of gas, the Settlement provides that the existing \$0.100 per therm (over 12
24 months) fluctuation limit, without Commission approval, shall be increased to \$0.150 for 12
25 consecutive months after approval of the Settlement. At the end of that period, the PGA rate would
26 revert to the current \$0.100 per therm fluctuation limit.

27 _____
28 ⁷ Purchased power rates could be reduced during this period if UniSource is successful in renegotiating the New Contract with PWCC.

1 Although they did not present any testimony on the gas rate issues, the Joint Intervenors
2 generally oppose the Stipulation's gas base rate increase because of the approximately 21 percent
3 average increase that would be experienced by customers. No testimony or evidence was presented
4 in opposition to the stipulated FVRB, expenses, rate of return or rate design tariff issues. For the
5 reasons discussed below, we believe the Settlement provides a reasonable resolution of the relevant
6 issues raised by Citizens' gas rate application.

7 With respect to Citizens' gas rate application, Staff initially identified Citizens' "Build-Out"
8 program as the most significant issue. Staff noted that Citizens invested approximately \$133 million
9 in gas plant since its last gas rate case in 1995. In Decision No. 57647 (November 26, 1991), the
10 Commission directed Citizens to conduct a Build-Out program, a plant addition program designed to
11 expand Citizens' gas service to relatively remote, low density areas that require higher investments
12 than more densely populated areas. The Commission approved Citizens' Build-Out program in
13 Decision No. 58664 (June 16, 1994). The Signatory Parties recommend that the Commission not
14 conduct any further prudency reviews of the Build-Out program, based on the Stipulation's \$10
15 million reduction from rate base. The Signatory Parties also propose that the Commission not
16 conduct any prudency reviews of Citizens' gas procurement practices, accounting practices, or
17 balances existing on or before October 29, 2002. The \$10 million reduction represents a permanent
18 disallowance and write-down to gas rate base, and is intended to reflect the Signatory Parties'
19 compromise in lieu of a full prudency review of the Build-Out program.

20 The Commission initially supported the Build-Out program, as evidenced by the approval of a
21 surcharge for such investment in Citizens' 1993 rate case (Decision No. 58664). Staff later became
22 concerned with the level of costs incurred by Citizens in continuing the program and undertook an
23 investigation in this proceeding of the reasons for cost overruns experienced by Citizens (See, Ex. S-
24 1, at 13-18).

25 Based on its analysis, Staff concluded that the cost overruns were attributable to a number of
26 factors, including: underestimation by Citizens of costs originally presented to the Commission; new
27 environmental regulations; unforeseen rock that increased installation expenses; responsibility for
28 installation and maintenance of facilities located on customers' property; and changes in right-of-way

1 requirements. Staff concluded that most of the cost overruns were outside of Citizens' control, with
2 the exception of whether additional geological surveys should have been undertaken prior to pursuing
3 construction in certain areas affected by underground rock formations (*Id.* at 17-18).

4 As described above, the Stipulation provides for a \$30.7 million negative acquisition
5 adjustment associated with UniSource's agreement to purchase the Citizens gas assets for less than
6 the net plant in service proposed by Citizens in the gas rate case. Staff observed that the purchase
7 agreement for less than the net depreciated original cost book value is very unusual and, as a result,
8 Staff believes that this negative acquisition adjustment is attributable, at least in part, to the cost
9 overruns of the Build-Out program (*Id.* at 19).

10 We agree with Staff that the \$30.7 million negative acquisition premium could be viewed as
11 the equivalent of a "rate case disallowance" that may have occurred if the issue had been litigated
12 before the Commission. In addition, the Stipulation provides for an additional \$10 million permanent
13 gas plant disallowance that is specifically attributable to the Build-Out program. We believe that the
14 total gas plant disallowance of more than \$40 million reflects a reasonable treatment of the Build-Out
15 program issues that would likely have been raised if the gas rate case had gone forward on its own
16 merits.

17 J. Financing Provisions

18 The Settlement requests that ElecCo and GasCo be authorized, pursuant to A.R.S. §§40-301
19 *et seq.*, A.R.S. §40-285, and A.A.C. R14-2-801 *et seq.*: (1) to issue or guarantee up to \$175 million of
20 debt securities to fund a portion of the purchase price and for initial working capital; (2) to issue or
21 guarantee additional debt securities, when appropriate, under the terms of a new revolving credit
22 agreement; (3) to enter into indentures or security agreements which grant liens on some or all of the
23 ElecCo and GasCo properties; (4) to issue common stock to UniSource or HoldCo; and (5) to acquire
24 bridge financing as described in Appendix A to the Stipulation.

25 The Signatory Parties also agree that TEP should be authorized to loan up to \$50 million to
26 UniSource (the "TEP loan") to assist in UniSource's purchase of the Citizens electric and gas assets.
27 The term of the TEP loan would be no longer than four years and would be secured by UniSource
28 with a pledge of 100 percent of the HoldCo, ElecCo, and GasCo common equity. Other specific

1 terms of the TEP loan include: (1) the interest rate on the loan shall be 383 basis points above a four-
2 year United States Treasury Security on the date of the loan; (2) 264 basis points of the interest
3 income received by TEP shall be treated as a deferred credit to offset rates in the future and the
4 remaining interest income will be used toward increasing TEP's equity capitalization. The
5 Settlement further provides that TEP's ratepayers will be held harmless from any demonstrable
6 increase in TEP's cost of capital as a result of the TEP loan, including but not limited to a decline in
7 bond rating.

8 The Agreement also states that ElecCo and GasCo will be authorized to issue common stock
9 to UniSource or HoldCo to evidence their ownership interest. UniSource would also be authorized to
10 capitalize ElecCo and GasCo in the amount of \$75 million to \$125 million.

11 The Signatory Parties claim that the Settlement provides UniSource with the necessary
12 flexibility to consummate the acquisition of Citizens in a timely manner, while also ensuring the
13 viability of the new electric and gas subsidiaries and TEP (Joint App. Ex. 7, at 2). As indicated
14 above, UniSource intends to create an intermediate holding company and two operating companies,
15 ElecCo and GasCo. UniSource seeks to achieve a 60/40 debt to equity ratio for the operating
16 companies, which goal UniSource claims will be furthered by the Agreement's prohibition against
17 ElecCo and GasCo issuing dividends to UniSource or HoldCo in amounts that total more than 75
18 percent of their respective earnings, until equity capitalization equals 40 percent of total capital. The
19 Agreement also raises the existing threshold for TEP of 37.5 percent equity capitalization to 40
20 percent, consistent with the ElecCo and GasCo requirements.

21 Staff initially expressed concerns with the \$50 million loan permitted under the Settlement
22 from TEP to UniSource. However, Staff believes that the Stipulation includes sufficient protections
23 to ensure that ratepayers are not harmed by any such loan transaction. Staff distinguishes the facts in
24 this case from prior cases at the Commission and the FERC that placed limits on financing by
25 regulated companies of non-regulated entities (*See, e.g.*, Decision No. 65796, at 5; FERC Docket No.
26 ES02-51-000, 102 FERC ¶61,186). Staff points out that the \$50 million TEP loan would be used
27
28

1 exclusively to fund the acquisition of regulated assets in Arizona⁸.

2 Staff also contends that the \$50 million TEP loan would benefit TEP ratepayers because a
3 percentage of the interest earned on the loan will be earmarked to offset future rate increases and to
4 boost TEP's equity capitalization. According to Staff's witness, the amount of the benefit to TEP's
5 ratepayers could be as much as \$6 million (Tr. 314-315). The Stipulation also includes a hold
6 harmless provision that Staff believes will protect TEP customers from any negative consequences as
7 a result of the loan.

8 We believe that the financing provisions of the Stipulation will provide UniSource with the
9 necessary flexibility to finance the acquisition in a cost-effective manner while protecting customers
10 from adverse effects of the transaction. Based on the totality of provisions in the Settlement
11 Agreement, as well as the analyses contained in the testimony at hearing and in the Late-Filed
12 Exhibit, we find that sufficient protections will be in place to ensure that ratepayers will be protected
13 from financial harm. As set forth in the Agreement, the financing arrangements should also afford
14 TEP customers benefits in the form of mitigated rate increases and continued improvement in TEP's
15 capital structure. For these reasons, we conclude that the financing provisions of the Settlement
16 Agreement are in the public interest and should be approved.

17 K. Capital Structure Issues

18 An ancillary financing issue is addressed in the Settlement's provision regarding capital
19 structure issues. In Decision No. 60480 (November 25, 1997), as amended by Decision No. 62103
20 (November 30, 1999), the Commission required UniSource to invest at least 30 percent of the
21 proceeds of future stock issuances in TEP. The Settlement provides that UniSource and TEP would
22 be granted a waiver of that prior requirement in order for UniSource to finance the acquisition of
23 Citizens' electric and gas assets.

24
25 ⁸ On May 20, 2003, the Joint Applicants and Staff submitted a Late-Filed Exhibit that provides a cash flow analysis for
26 HoldCo under various scenarios involving the \$50 million TEP loan and a \$50 million revolving credit line (Exhibit A).
27 The Exhibit also includes an analysis containing a balance sheet, income statement, and other financial ratios based on the
28 assumption that UniSource would borrow \$90 million from a third party to finance its equity investment in HoldCo
(Exhibit B). The Late-Filed Exhibit shows that, even under the most conservative financing assumptions (i.e., the \$50
million TEP loan and \$50 million revolving line of credit are loaded entirely onto HoldCo, and UniSource borrows \$90
million to fund its equity investment in HoldCo in addition to HoldCo's estimated \$140 million of debt for operations, the
interest coverage ratios and credit metrics remain healthy.

1 Under the Agreement, TEP would be precluded from issuing dividends to UniSource in an
2 amount that comprises more than 75 percent of TEP's earnings, until such time as TEP's equity
3 capitalization reaches 40 percent of total capital. In addition, until ElecCo's and GasCo's respective
4 equity capitalization equals 40 percent of total capital, they will not issue dividends to HoldCo or
5 UniSource in an amount that comprises more than 75 percent of ElecCo's or GasCo's earnings.

6 We find the capital structure provisions of the Stipulation properly balance UniSource's need
7 for financing flexibility with the need to maintain the financial health of regulated utilities. As Staff
8 points out, the Agreement's capital structure incentives are based on conditions imposed by prior
9 Commission Orders that have helped TEP dramatically improve its debt/equity ratio. We believe the
10 Settlement's imposition of similar controls for ElecCo and GasCo will help ensure that the new
11 electric and gas utilities formed by UniSource will achieve an appropriate mix of debt and equity
12 consistent with financially healthy utility companies.

13 L. Pipeline Safety Provisions

14 The Settlement contains a number of provisions related to maintaining gas pipeline safety.
15 Among those terms are the following: (1) UniSource will not allow the acquisition to diminish
16 staffing that would result in service and/or safety degradation in the NAGD or SCGD service areas;
17 (2) UniSource will continue to maintain fully operational current local field offices in the NAGD and
18 SCGD services areas to maintain quality of service and ensure pipeline safety; (3) UniSource will
19 continue Citizens' current practice of not using contract personnel for performance of operation and
20 maintenance functions such as leak surveys and valve maintenance; (4) UniSource will adopt the
21 most recent version of Citizens' operation and maintenance manuals and procedures, including
22 Citizens' emergency plan, and will make revisions and updates only as necessary, with such revisions
23 or updates to be provided to the Commission's Chief of the Office of Pipeline safety; (5) UniSource
24 will make all reasonable efforts to prevent degradation in the quality of service to current Citizens gas
25 customers; and (6) GasCo will independently inspect all work done by contract personnel regarding
26 installation of new service lines and main extensions.

27 No party opposed these provisions of the Stipulation and we find that they are reasonable
28 terms to ensure that UniSource's operations will adhere to gas pipeline safety requirements.

1 M. Other Miscellaneous Provisions of Settlement

2 The provisions of the Settlement Agreement described below were not opposed by any party
3 to the proceeding. We believe these terms are reasonable as part of the overall Settlement package
4 negotiated by the Signatory parties.

5 1. Additional Acquisition Costs

6 The Signatory Parties agree that ElecCo's and GasCo's ratepayers will be held harmless from
7 any recovery directly related to the increase in acquisition costs resulting under the purchase
8 agreements between UniSource and Citizens if the transaction does not close by October 29, 2003.

9 2. Capital Expenditures

10 The Signatory Parties agree that work orders closed after October 29, 2002 through the date
11 of closing of the transaction between UniSource and Citizens will be included in the rate base for
12 ElecCo and GasCo (subject to prudence review) on a dollar-for-dollar basis (not reduced by the
13 negative acquisition adjustment) in the companies' next rate filings.

14 3. Revised Line Extension Tariff

15 The Settlement further provides that GasCo's revised gas facilities service line and main
16 extension tariff, as set forth in Appendix D to the Settlement Agreement, should be amended and
17 implemented upon Commission approval of the Stipulation.

18 4. Approval Limitation

19 The Settlement states that UniSource must re-apply for Commission approval of the
20 Agreement and the Joint Application if the transaction between UniSource and Citizens is not
21 consummated within six months following the Commission's approval of the Agreement. UniSource
22 may, however, apply for an extension of the six-month time limitation, subject to UniSource
23 demonstrating why the transaction was not consummated and why approval of the extension is in the
24 public interest.

25 5. Tariff Filings

26 The Agreement provides that UniSource will file, within 30 days of the Commission's
27 approval of the Settlement, tariffs reflecting all Commission-approved changes contained in the gas
28 rate filing. Under this provision, the gas rate tariffs would be effective from the date of closing the

1 transaction.

2 UniSource would also be required to file, within 60 days of Commission approval of the
3 Agreement, an application for Commission approval of tariffs regarding the negotiated sales program
4 and gas transportation issues.

5 6. Notice to Customers

6 Within 60 days of approval of the Settlement, UniSource agrees to provide in bills sent to
7 customers of ElecCo and GasCo a notice regarding the revised rates, terms, and conditions of service
8 as set forth in the Agreement. The bill inserts will also inform customers that the Commission
9 remains the regulatory agency responsible for overseeing ElecCo's and GasCo's operations, and that
10 customer complaints that cannot be resolved by the companies may be directed to the Commission's
11 Consumer Services Division.

12 N. Other Intervenor Issues

13 1. Demand-Side Management

14 Both RUCO and Mr. Magruder raised the issue of increased funding for demand-side
15 management ("DSM") programs. Ms. Diaz Cortez advocates increasing DSM funding from
16 Citizens' current level of \$175,000 per year to \$600,000 annually, with an increase to \$1,000,000 if
17 the purchased power rate in the PWCC contract is reduced through renegotiation (RUCO Ex. 1, App.
18 II). Mr. Magruder recommends that customers should be given financial incentives to "load shape"
19 in order to move usage from peak to off-peak periods (Magruder Ex. 2, at 30-31).

20 The Joint Applicants oppose increasing DSM spending based on their claim that Citizens'
21 current level of per customer DSM funding is comparable to other electric utilities in Arizona. Joint
22 Applicant witness Steven Glaser testified that the current per customer DSM funding level is \$0.44
23 for APS, \$3.62 for TEP, and \$2.25 for Citizens. Under RUCO's proposal to ultimately increase
24 spending to \$1,000,000 per year, ElecCo's annual per customer spending level would increase to
25 \$12.85 (Joint App. Ex. 5, at 6).

26 We agree with the Joint Applicants that RUCO's DSM proposal would result in placing
27 upward pressure on customer rates, whether or not the actual DSM programs were successful in
28 reducing customer usage (Tr. 573). We believe the better means of addressing the issue of DSM is

1 through a generic investigation of the costs and benefits of such measures. In Decision No. 65743
 2 (March 14, 2003), the Commission directed Staff to "facilitate a workshop process to explore the
 3 development of a DSM policy and an environmental risk policy" and to file a report within 12
 4 months from the date of that Decision. Since a broader policy investigation into DSM is already
 5 underway, it is appropriate to consider the issues raised by RUCO and Mr. Magruder within the
 6 framework of that proceeding.

7 2. Filing of Franchise Agreements

8 As described above, the Settlement Agreement requires UniSource to file copies of the
 9 franchises for ElecCo and GasCo within 365 days of the Commission's Decision in this proceeding.
 10 This one-year period is typical of the requirement imposed in other cases before the Commission and
 11 allows the utility time to negotiate franchise agreements with appropriate municipalities and
 12 governmental agencies (Tr. 354).

13 Nogales has suggested that the Commission should condition UniSource's CC&N on its
 14 ability to negotiate and submit the appropriate franchise agreements within 365 days⁹. Nogales
 15 recommends on brief that failure to submit the required franchise agreements within that time period
 16 should result in an automatic Show Cause Order from the Commission as to why UniSource's CC&N
 17 should not be revoked (Nogales Brief at 12).

18 We do not believe that the recommendation made by Nogales is necessary, at this time. To
 19 the extent that UniSource fails to comply with the directive to file the necessary franchise agreements
 20 within 365 days, the Commission will determine what remedy is appropriate. However, it is
 21 premature to decide what consequences should result from noncompliance. Leaving the issue of
 22 enforcement action open will afford the Commission greater flexibility to fashion a remedy at the
 23 appropriate time.

24 **IV. CONCLUSION**

25 The Settlement Agreement proposed in this proceeding results in a gas base rate increase of

26 ⁹ At the hearing, Nogales' request was granted to take Administrative Notice of Decision No. 61793 (June 29, 1999)
 27 wherein the Commission adopted a Settlement Agreement between Nogales and Citizens that required, in part, for those
 28 parties to negotiate a 25-year franchise to submit to the City's voters for approval. Although no witness was presented on
 this issue, Nogales' attorney argued at the hearing that negotiations with Citizens had failed to produce a franchise
 agreement (Tr. 356-358).

1 approximately 21 percent and an increase in the PPFAC adjustor of approximately 22 percent.
2 Although we understand and appreciate the concerns expressed by the Joint Intervenors and in
3 customer letters submitted in this docket, we believe the totality of the Settlement is in the public
4 interest.

5 As outlined above, the long-term benefits of the Settlement Agreement are numerous,
6 including: allowing Citizens to exit the gas and electric business in Arizona by selling its assets to a
7 jurisdictional entity that has operated successfully in this state for a number of years; resolving and
8 removing the uncertainty surrounding the PPFAC issue with a result that holds ratepayers harmless
9 for more than \$135 million sought by Citizens for the under-recovered PPFAC bank balance;
10 requiring UniSource to renegotiate the existing purchased power contract and to pass 90 percent of
11 the savings resulting from renegotiation to ratepayers; requiring UniSource to file a plan within 120
12 days to open its electric service areas to retail competition by the end of 2003; requiring UniSource to
13 reduce electric and gas rate base by more than \$93 million and \$40 million, respectively; and
14 providing future rate stability through a moratorium on electric and gas base rate increases until at
15 least August 1, 2007.

16 For these reasons, we will approve the Settlement Agreement, subject to the requirements and
17 limitations discussed herein.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On September 28, 2000, the Arizona Electric Division of Citizens Communications
23 Company filed with the Commission an application (Docket No. E-01032C-00-0751) to change
24 Citizens' current Purchased Power and Fuel Adjustment Clause rate, to establish a new PPFAC bank,
25 to begin accruing carrying charges and to request approved guidelines for the recovery of costs
26 incurred in connection with energy risk management initiatives. Citizens filed an amended
27 application on September 19, 2001, and errata to the amended application on September 26, 2001.

28 2. Citizens' AED serves approximately 59,000 customers in Mohave County and 16,000

1 customers in Santa Cruz County.

2 3. On August 6, 2002, Citizens' Arizona Gas Division filed an application (Docket No.
3 G-01032A-02-0598) for authority to increase AGD revenues by \$21,005,521, an increase of
4 approximately 28.75 percent.

5 4. Citizens' AGD is made up of a Northern Arizona Gas Division, which provides
6 natural gas service to approximately 118,000 customers in portions of Coconino, Mohave, Navajo,
7 and Yavapai Counties, and a Santa Cruz Gas Division which serves approximately 7,000 customers
8 in Santa Cruz County.

9 5. On December 18, 2002, Citizens and UniSource Energy Corporation, on behalf of
10 itself, Tucson Electric Power Company and UniSource's designated affiliates, filed a Joint
11 Application (Docket Nos. E-01933A-02-0914, E-01032C-02-0914 and G-01032A-02-0914). The
12 Joint Application requested authority for UniSource to acquire Citizens' gas and electric assets in
13 Arizona, to transfer Citizens' gas and electric Certificates of Convenience and Necessity to
14 UniSource, to obtain certain financing approvals, and to consolidate the above-captioned dockets.

15 6. UniSource is the parent company of TEP, which provides electric service to more than
16 360,000 customers in southern Arizona.

17 7. The above-captioned cases were consolidated by ruling at a Procedural Conference
18 conducted on January 17, 2003.

19 8. Santa Cruz and Mohave Counties, the City of Nogales, Marshall Magruder,
20 Southwest Gas Corporation, the International Brotherhood of Electrical Workers, Local 769, and the
21 Residential Utility Consumer Office were granted intervention in the consolidated dockets.

22 9. Pursuant to Procedural Order issued February 7, 2003, any proposed Settlement
23 Agreement was to be filed by April 1, 2003; intervenor and Staff testimony was to be filed by April
24 21, 2003; Joint Applicant rebuttal testimony was due to be filed by April 28, 2003; a hearing was
25 scheduled to begin on May 1, 2003; and post-hearing briefs were to be filed by May 15, 2003.

26 10. Public Comment sessions regarding this consolidated proceeding were conducted by
27 the Commission in Flagstaff and Prescott on March 5, 2003; in Lake Havasu City on March 25, 2003;
28 in Kingman on March 26, 2003; in Nogales on April 3, 2003; and in Show Low on April 25, 2003.

1 11. A Settlement Agreement signed by the Joint Applicants and Staff was filed on April 1,
2 2003 to resolve all issues presented in the consolidated proceeding.

3 12. A Staff Report explaining and supporting the Settlement Agreement was filed on April
4 21, 2003. RUCO filed testimony on April 21, 2003 generally supporting the Settlement, with the
5 exception of two issues. AUIA also filed testimony on April 21, 2003 in support of the Settlement.

6 13. The Joint Applicants filed rebuttal testimony on April 28, 2003 in support of the
7 Settlement Agreement.

8 14. Mr. Magruder filed testimony opposing the Settlement Agreement on April 30, 2003.

9 15. An evidentiary hearing was conducted in this matter on May-1, 2, and 5, 2003.

10 16. Post-hearing briefs were filed on May 15, 2003.

11 17. On May 20, 2003, the Joint Applicants and Staff submitted a Late-Filed Exhibit
12 analyzing the financial condition of UniSource and TEP under various financing scenarios.

13 18. It is in the public interest, pursuant to A.R.S. §40-285, for UniSource to acquire the
14 electric and gas assets of Citizens in Arizona, including acquisition of Citizens' CC&Ns governing its
15 gas and electric service areas.

16 19. It is in the public interest for UniSource to create subsidiaries to own and operate the
17 electric and gas utility assets purchased from Citizens and, if necessary, to form an intermediate
18 holding company to finance and own the electric and gas subsidiaries.

19 20. It is in the public interest for UniSource and its subsidiaries, and Citizens, to forfeit all
20 rights to recover from retail ratepayers any of the under-collected PPFAC balance through the closing
21 date of the acquisition transaction.

22 21. It is in the public interest to grant an increase in gas operation revenues in accordance
23 with the Settlement Agreement, including the stipulated rate design and tariff modifications related to
24 service line and main extension policies.

25 22. A fair value rate base of \$142,132,013 and rate of return of 7.49 percent are
26 reasonable for the gas operations of Citizens that are to be acquired by UniSource pursuant to the
27 terms of the Settlement Agreement.

28 23. It is in the public interest to establish a new PPFAC adjustor rate of \$0.01825 per kWh

1 for the UniSource electric subsidiary.

2 24. It is in the public interest to allow ElecCo and GasCo to recover up to \$1.8 million and
3 \$2.7 million, respectively, as an offset to the negative acquisition premium, in order for such costs to
4 be capitalized in accordance with GAAP.

5 25. It is reasonable to require UniSource to file, within 120 days of the effective date of
6 this Decision, an application for approval of a plan to open ElecCo's service territories to retail
7 electric competition by no later than December 31, 2003. UniSource's plan shall address, at a
8 minimum, unbundled tariffs, system benefits charges, assisting new suppliers in using transmission,
9 and reliability must-run generation.

10 26. UniSource shall renegotiate the existing PWCC purchased power contract and 90
11 percent of savings from renegotiation will flow to ratepayers, rather than the 60 percent provided for
12 in the Stipulation. All other terms of the Settlement Agreement are reasonable and in the public
13 interest, and shall be approved.

14 CONCLUSIONS OF LAW

15 1. Citizens and UniSource, and UniSource's subsidiaries TEP, ElecCo, and GasCo, are
16 public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S.
17 §§40-301 *et seq.*, A.R.S. §§40-281 *et seq.*, and A.A.C. Rules R14-2-803 and R14-2-804.

18 2. The Commission has jurisdiction over Citizens and UniSource, and over UniSource's
19 subsidiaries, and over the subject matter of the issues raised in the consolidated applications
20 addressed herein.

21 3. Notice of the applications was provided in the manner prescribed by law.

22 4. Pursuant to A.R.S. §§40-301 *et seq.*, the Joint Applicants' proposed financing
23 arrangements, including bridge financing, bond financing, and revolving credit financing by
24 UniSource's electric and gas subsidiaries, and the issuance of stock by those companies, are
25 approved.

26 5. The financings approved herein are for lawful purposes within UniSource's and its
27 subsidiaries' corporate powers, are compatible with the public interest, with sound financial practices,
28

1 and with the proper performance by UniSource and its subsidiaries of service as public service
2 corporations, and will not impair Unisource's or its subsidiaries' abilities to perform that service.

3 6. The financings approved herein are for the purposes stated in the applications and are
4 reasonably necessary for those purposes and such purposes are not, wholly or in part, reasonably
5 chargeable to operating expenses or to income.

6 7. Pursuant to A.A.C. R14-2-804, TEP is authorized to loan up to \$50 million to
7 UniSource for the sole purpose of funding the purchase of Citizens' gas and electric business, subject
8 to the terms and conditions set forth in the Settlement Agreement.

9 8. Pursuant to A.A.C. R14-2-803, UniSource is authorized to capitalize the new electric
10 and gas subsidiaries, subject to the terms of the Settlement Agreement.

11 9. Pursuant to the terms of the Settlement Agreement, a waiver shall be granted to
12 Decision No. 60480, as amended by Decision No. 62103, which requires UniSource to invest at least
13 30 percent of the proceeds of a public stock issuance in TEP. This waiver is granted for the sole
14 purpose of allowing UniSource the ability to finance the acquisition of Citizens' gas and electric
15 assets under the terms of the Settlement.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the Settlement Agreement between the Joint Applicants
18 and Staff is approved, subject to the terms and conditions set forth herein.

19 IT IS FURTHER ORDERED that UniSource and its subsidiaries, and Citizens, shall forfeit
20 all rights to recover from retail ratepayers any of the under-collected PPFAC balance through the
21 closing date of the acquisition transaction.

22 IT IS FURTHER ORDERED that, pursuant to the terms of the Settlement Agreement,
23 UniSource shall permanently credit customers in future base rate proceedings for the "negative
24 acquisition adjustments" of \$30,700,000 for GasCo and \$93,624,000 for ElecCo, until those amounts
25 are fully amortized over the life of the plant related to the Agreement.

26 IT IS FURTHER ORDERED that, pursuant to A.R.S. §40-285, UniSource is authorized to
27 acquire the electric and gas assets of Citizens in Arizona, including acquisition of Citizens' CC&Ns
28 governing its gas and electric service areas.

1 IT IS FURTHER ORDERED that UniSource is authorized to create subsidiaries to own and
2 operate the electric and gas utility assets purchased from Citizens and, if necessary, to form an
3 intermediate holding company to finance and own the electric and gas subsidiaries.

4 IT IS FURTHER ORDERED that, pursuant to A.R.S. §§40-301 *et seq.*, the proposed
5 financing arrangements are approved, including bridge financing, bond financing, and revolving
6 credit financing by UniSource's electric and gas subsidiaries, and the issuance of stock by those
7 companies.

8 IT IS FURTHER ORDERED that, pursuant to A.A.C. R14-2-804, TEP is authorized to loan
9 up to \$50 million to UniSource for the sole purpose of funding the purchase of Citizens' gas and
10 electric business, subject to the terms and conditions set forth in the Settlement Agreement.

11 IT IS FURTHER ORDERED that, pursuant to A.A.C. R14-2-803, UniSource is authorized to
12 capitalize the new electric and gas subsidiaries, subject to the terms of the Settlement Agreement.

13 IT IS FURTHER ORDERED that, pursuant to the terms of the Settlement Agreement, a
14 waiver shall be granted to Decision No. 60480, as amended by Decision No. 62103, which requires
15 UniSource to invest at least 30 percent of the proceeds of a public stock issuance in TEP. This
16 waiver is granted for the sole purpose of allowing UniSource the ability to finance the acquisition of
17 Citizens' gas and electric assets under the terms of the Settlement.

18 IT IS FURTHER ORDERED that the fair value rate base of \$142,132,013 and rate of return
19 of 7.49 percent are reasonable for the gas operations of Citizens that are to be acquired by UniSource
20 pursuant to the terms of the Settlement Agreement.

21 IT IS FURTHER ORDERED that the stipulated increase in gas operation revenues in
22 accordance with the Settlement Agreement, including the stipulated rate design and tariff
23 modifications related to service line and main extension policies, are approved.

24 IT IS FURTHER ORDERED that UniSource's proposed operating company subsidiaries,
25 ElecCo and GasCo, shall not file a general rate case increase for a period of at least three years from
26 the effective date of this Decision and the rate increase resulting from this general rate increase
27 application shall not become effective prior to August 1, 2007, subject to the exceptions set forth in
28 the Settlement Agreement.

1 IT IS FURTHER ORDERED that a new PPFAC adjustor rate of \$0.01825 per kWh for the
2 UniSource electric subsidiary is approved.

3 IT IS FURTHER ORDERED that, pursuant to the terms of the Settlement Agreement,
4 UniSource shall attempt to renegotiate the existing purchased power contract with PWCC and any
5 savings associated with the renegotiated contract shall be allocated in a ratio of 90 percent to
6 ratepayers and 10 percent to shareholders.

7 IT IS FURTHER ORDERED that UniSource shall commence renegotiation of the existing
8 purchased power contract within 30 days from the effective date of this Decision, and shall file
9 progress reports in accordance with existing confidentiality agreements regarding its renegotiation
10 efforts every 60 days thereafter until further Order of the Commission. UniSource shall serve
11 redacted copies of such progress reports on all other parties of record in this proceeding.

12 IT IS FURTHER ORDERED that, in the event UniSource completes renegotiation of the
13 current purchased power contract with PWCC, the terms and the proposed savings associated with
14 the contract shall be submitted to the Commission within 30 days of finalization.

15 IT IS FURTHER ORDERED that, at least 30 days prior to implementation of retail
16 competition, UniSource shall conduct retail aggregation workshops and informational seminars in
17 order to enable residential and small commercial customers to be educated regarding options that will
18 provide meaningful opportunities for participating in the retail access process. UniSource shall
19 conduct at least one such workshop or seminar in each Santa Cruz and Mohave County.

20 IT IS FURTHER ORDERED that UniSource's proposed operating company subsidiaries,
21 ElecCo and GasCo, shall be authorized to recover up to \$1.8 million and \$2.7 million, respectively,
22 as an offset to the negative acquisition premium, in order for such costs to be capitalized in
23 accordance with GAAP.

24 IT IS FURTHER ORDERED that UniSource shall file, within 30 days of the effective date of
25 this Decision, tariffs reflecting all Commission-approved changes contained in the gas rate filing.
26 The gas rate tariffs shall be effective from the date of closing the transaction.

27 IT IS FURTHER ORDERED that UniSource shall file, within 60 days of the effective date of
28 this Decision, an application for Commission approval of tariffs regarding the negotiated sales

1 program and gas transportation issues.

2 IT IS FURTHER ORDERED that UniSource shall re-apply for Commission approval of the
3 Settlement Agreement and the Joint Application if the transaction between UniSource and Citizens is
4 not consummated within six months following the effective date of this Decision. UniSource may,
5 however, apply for an extension of the six-month time limitation, subject to UniSource demonstrating
6 why the transaction was not consummated and why approval of the extension is in the public interest.

7 IT IS FURTHER ORDERED that GasCo's revised gas facilities service line and main
8 extension tariff, as set forth in Appendix D to the Settlement Agreement, shall be amended and
9 implemented within 60 days of the effective date of this Decision.

10 IT IS FURTHER ORDERED that UniSource shall file copies of the franchises for its
11 proposed operating company subsidiaries, ElecCo and GasCo, within 365 days of the Commission's
12 Decision in this proceeding.

13 IT IS FURTHER ORDERED that Tucson Electric Power shall, in its next general rate case
14 filing, submit a feasibility study and consolidation plan or, in the alternative, a plan for coordination
15 of operations of UniSource's proposed electric operating company subsidiary in Santa Cruz County
16 with Tucson Electric Power.

17 IT IS FURTHER ORDERED that UniSource shall file, within 120 days of the effective date
18 of this Decision, an application for approval of a plan to open ElecCo's service territories to retail
19 electric competition by no later than December 31, 2003. UniSource's plan shall address, at a
20 minimum, unbundled tariffs, system benefits charges, assisting new suppliers in using transmission,
21 and reliability must-run generation.

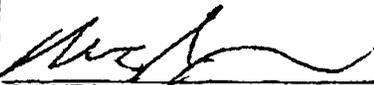
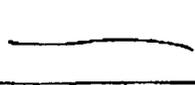
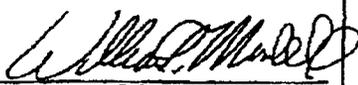
22 IT IS FURTHER ORDERED that, within 60 days of the effective date of this Decision,
23 UniSource shall provide in bills sent to customers of ElecCo and GasCo a notice regarding the
24 revised rates, terms and conditions of service as set forth in the Agreement. The bill inserts shall also
25 inform customers that the Commission remains the regulatory agency responsible for overseeing
26 ElecCo's and GasCo's operations, and that customer complaints that cannot be resolved by the
27 companies may be directed to the Commission's Consumer Services Division.

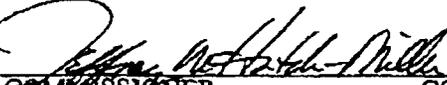
28 IT IS FURTHER ORDERED that UniSource shall include in its notice to all former Citizens'

1 gas and electric customers information regarding all available low-income programs, net metering,
2 time-of-use services, DSM or energy conservation programs, renewable resource programs, and any
3 other similar services or programs that are currently available that may assist customers in reducing
4 their energy bills. Such notice shall be made available in both English and Spanish.

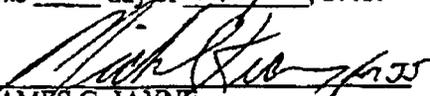
5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8  _____  _____ 
9 CHAIRMAN COMMISSIONER COMMISSIONER

10  _____ 
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, JAMES G. JAYNE, Interim
13 Executive Secretary of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 3RD day of JULY, 2003.

17 
18 JAMES G. JAYNE
19 INTERIM EXECUTIVE SECRETARY

20 DISSENT _____
21 DISSENT _____
22 DDN:dap

28

1 SERVICE LIST FOR:

CITIZENS COMMUNICATIONS COMPANY

2 DOCKET NOS.:

E-01032C-00-0751; G-01032A-02-0598; E-01933A-02-0914; E-01032C-02-0914 and G-01032A-02-0914

3
4 L. Russell Mitten
CITIZENS COMMUNICATIONS COMPANY
5 Three High Ridge Park
Stamford, CT 06905

Deborah R. Scott
CITIZENS COMMUNICATIONS COMPANY
2901 N. Central Ave., Suite 1660
Phoenix, Arizona 85012

6 Steven W. Cheifetz
7 Robert J. Meth
CHEIFETZ & IANNITELLI, P.C.
8 3238 North 16th Street
Phoenix, AZ 85016

Scott Wakefield
Daniel W. Pozefsky
RUCO
1100 West Washington St., Suite 220
Phoenix, Arizona 85007

9 John D. Draghi
HUBER, LAWRENCE & ABELL
10 605 3rd Avenue
New York, New York 10158

Susan Mikes Doherty
HUBER, LAWRENCE & ABELL
605 3rd Avenue
New York, New York 10158

11 John White
Deputy County Attorney
12 Mohave County Attorney's Office
P.O. Box 7000
13 Kingman, Arizona 86402

Thomas H. Campbell
Michael T. Hallam
LEWIS & ROCA, LLP
40 N. Central Avenue
Phoenix, Arizona 85004

14 Walter W. Meek
AUIA
15 2100 N. Central Ave., Suite 210
Phoenix, Arizona 85004

Andrew Bettwy
Assistant General Counsel
Southwest Gas Corporation
5241 Spring Mountain Road
Las Vegas, Nevada 89150

16 Holly J. Hawn
Martha S. Chase
17 Santa Cruz Deputy County Attorneys
2150 N. Congress Drive, Ste. 201
18 Nogales, AZ 85621

Jose Machado, City Attorney
Hugh Holub, Attorney
City of Nogales
777 North Grand Avenue
Nogales, Arizona 85621

19 Marshall Magruder
Lucy Magruder
20 P.O. Box 1267
Tubac, AZ 85646-1267

Robert A. Taylor, City Attorney
City of Kingman
310 North 4th Street
Kingman, Arizona 86401

21 Nicholas J. Enoch
LUBIN & ENOCH, P.C.
22 349 North Fourth Avenue
Phoenix, Arizona 85003

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

23 Gary Smith
CITIZENS COMMUNICATIONS COMPANY
24 2901 W. Shamrell Blvd., Suite 110
Flagstaff, Arizona 86001

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

25 Raymond Mason
26 Director, Corporate Regulatory Affairs
3 High Ridge Park
27 Stamford, Connecticut 06905

28

K

2498 Airway Avenue
Kingman, Arizona 86401-3657
928.681.4100



November 8, 2004

Mr. Thomas Longtin
Manager of Operations & Engineering
Mohave Electric Cooperative
1999 Arena Drive
Bullhead City, AZ 86442

Re: CTI Request for Service

Dear Tom:

I appreciated the opportunity to meet with you on November 4th to discuss the request for electric service that both our companies have received from Central Trucking, Inc. (CTI). As you know, CTI is in critical need of electricity to conduct its business, and the quickest way to provide service would be for Mohave Electric and UNS Electric to enter into an agreement that would permit UNS Electric to provide electric service.

UNS Electric has the facilities in the area, and is ready, willing and able to move forward in the provision of service to CTI. To that point, enclosed you will find an Electric Authorization Agreement that has been executed by UNS Electric. Upon execution by MEC, our attorney is ready to file it for approval at the Arizona Corporation Commission. Therefore, please execute the agreement, and return it to me as soon as possible, so that we can meet the electric needs of CTI.

Sincerely,

Thomas J. Ferry
Vice President & General Manager

Enclosure: Electric Authorization Agreement

cc: Janie Woller, ACC
Geneva Davis, CTI
Keith Roberts, CTI

ELECTRIC SERVICE AUTHORIZATION AGREEMENT
Between
MOHAVE ELECTRIC COOPERATIVE, INC.
And
UNS ELECTRIC, INC.

THIS ELECTRIC SERVICE AUTHORIZATION AGREEMENT ("Agreement") is entered into by UNS ELECTRIC, INC. (UNS Electric), an Arizona corporation, and MOHAVE ELECTRIC COOPERATIVE, INC. (MEC), an Arizona corporation.

RECITALS:

1. The real property described in the attached Exhibit A (the "Subject Area") is within the area of MEC's Certificate of Convenience and Necessity, which was issued by the Arizona Corporation Commission (Commission);
2. Central Trucking Inc. (CTI) has requested that electric service be provided to the Subject Area;
3. A customer located in the Subject Area must actually receive power through UNS Electric's existing facilities because MEC does not have a means of transmitting power to the Subject Area;
4. MEC hereby gives Written Authorization whereby UNS Electric may provide electric service to CTI the Subject Area; and
5. It is in CTI's best interest for MEC to permit UNS Electric to provide electric service to CTI's real property and UNS Electric is willing to provide electric service to the CTI.

THEREFORE, the Parties agree as follows:

6. UNS Electric is hereby authorized by MEC to enter the Subject Area, certificated to MEC, and construct and maintain electric service lines and facilities necessary to serve CTI.
7. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest and assigns, whether arising voluntarily or by operation of law.
8. This Agreement shall become effective when approved by the Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNS ELECTRIC, INC.
an Arizona corporation

Signature: *[Handwritten Signature]*

Title: *VP & General Manager*

Date: *11/9/04*

MOHAVE ELECTRIC COOPERATIVE, INC.
an Arizona corporation

Signature: _____

Title: _____

Date: _____

L

2901 W. Shamrell Boulevard., Suite 110
Flagstaff, Arizona 86001-9402
928.774.4592

UniSourceEnergy
SERVICES

October 15, 2004

Mr. Bob Broz
Mohave Electric Cooperative
P.O. Box 1045
Bullhead City, Arizona 86430

Dear Bob:

This will confirm our phone conversation of today regarding the position of UniSource Energy Services ("UES") on the subject of borderline agreements.

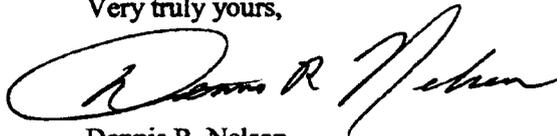
As in the past, UES remains willing to enter into borderline agreements on a case by case basis as necessary to accommodate specific customer situations. Currently, UES and MEC are engaged in discussions to complete a borderline agreement for the purpose of providing service to CTI Trucking in the Kingman area.

In our conversation of today, you stated MEC's preference as being one of a "master agreement" under which all UES - MEC borderline service requests would be handled. Although I am not familiar with the master borderline agreement concept, I will review this with our regulatory staff and contact you if we believe there is a basis for further discussion.

In the meantime, we have also communicated our position on individual customer borderline agreements to both the ACC staff and to CTI Trucking.

Please let me know if you have any questions.

Very truly yours,



Dennis R. Nelson
Senior Vice President and
Chief Operating Officer

Copy: Tom Ferry
Steve Glaser
Dave Couture
Deb Scott