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January 17, 2005

Arizona Corporation Commission
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Chairman Jeff Hatch-Miller
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Commissioner Kristen K. Mayes
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

E-04230A-04-0798

E-04204A-04-0824
E-01750A-04-0824

Re: Mohave Electric Cooperative, Inc.'s Consent to UNS Electric's Service of Commercial Trucking Inc. /
Docket Nos.: ~~E-04230A-04-0798, E-0424A-04-0824 AND E-0175A-04-0824~~

Dear Chairman and Commissioners:

This letter provides further explanation of Mohave Electric Cooperative, Inc.'s ("MEC") efforts to secure electric service for Commercial Trucking, Inc. ("CTI"). As discussed more fully below, MEC is taking steps to provide CTI electric service directly and commits to have such service available to CTI within fourteen (14) days.

To summarize, MEC has offered and continues to offer CTI electric service on its standard terms and conditions. CTI has declined the offer, apparently for economic reasons associated with the cost of extending MEC's facilities. MEC has also sought power from UNS Electric (direct purchase or wheeling) to eliminate CTI's need to advance the cost of an extension of MEC's facilities. Previously, Citizens (UNS Electric's predecessor-in-interest) had sold power to MEC at this location, but UNS Electric has shown no willingness to do so because "UNS Electric wants the CC&N for this area." UNS Electric is willing to serve CTI directly, so long as it is under the Electric Service Authorization Agreement it has proposed. Unfortunately, the Agreement is patently inappropriate as an "interim" solution. For example, MEC would

unconditionally and permanently authorize UNS Electric, as well as any successor or assign of UNS Electric, to serve CTI. There is no provision dealing with transferring the customer back to MEC. There is no limit to whom UNS Electric could assign its rights. There is no provision in the agreement relating to preserving MEC's (or UNS Electric's) rights. In contrast, MEC has proposed a System-wide Borderline Agreement that would resolve these issues, not only for CTI, but for all other similarly situated prospective customers.[1] Draft Principles of a System-wide Borderline Agreement were provided to UNS Electric on January 12, 2005.

On January 14, 2005, after receiving clear direction at a January 12, 2005 procedural conference to get CTI service immediately, MEC reviewed its options. As noted above, the Agreement tendered by UNS Electric was patently defective as an "interim" document. Moreover, it did not encourage the parties to explore a negotiated resolution of the issues between them. Therefore, MEC prepared and filed a fully executed Conditional Consent consenting to UNS Electric's provision of service to CTI for up to 9 months. (Copy enclosed) With the consent in hand, the Arizona Corporation Commission could immediately authorize the UNS Electric's provision of service to CTI within MEC's certificated area. In return, MEC wants assurance that the Consent, and actions taken pursuant thereto, do not prejudice MEC in the pending Commission matters (MEC has no objection to the same assurances being provided UNS Electric, but such assurances are not a condition of its consent. In addition, during the pendency of the Commission matters, MEC wants assurances that UNS Electric will work in good faith with MEC (i) on a mutually acceptable system-wide borderline agreement and (ii) on MEC's requests for power from UNS Electric.

Not surprisingly, UNS Electric wants to dictate the terms upon which it is allowed to enter into MEC's certificated area and serve CTI. During the January 14, 2005 telephone conference with ALJ Nodes and by letter dated January 18, 2005, UNS Electric (as has been its practice over the last several months in an effort to use the situation to leverage its claim to a part of MEC's certificated area) has summarily rejected MEC's Conditional Consent stating "it is clear after months of discussion that [the issues of certification and a system-wide borderline agreement] are only going to be resolved in litigation." MEC has no such mindset. But as they say, it takes two to tango. As discussed above the one alternative acceptable to UNS Electric (MEC's execution of the Electric Service Authorization Agreement offered by UNS Electric) is totally inappropriate as an "interim' solution and, therefore, is unacceptable to MEC.

While MEC prefers to provide service to CTI from the MEC grid (but CTI has declined to advance the cost of this solution) or to purchase power from UNS Electric (but UNS Electric refuses to sell MEC power to permit this solution), and while MEC was even willing to conditionally consent to UNS Electric's provision of service of CTI on an interim basis, these

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[1] UNS Electric, Inc. (formerly Citizens) has a certificate of convenience and necessity that engulfs the certificated area of MEC. Much of their respective certificated areas are currently sparsely populated. As a result, from time to time, borderline customers can be more efficiently served with power provided by the uncertificated utility. Due to the population growth being experienced in Mohave County, the frequency with which borderline customers will request interim relief can be expected to increase. When Citizens held the certificate, these occurrences were addressed through the sale of power to the certificated entity by the uncertificated entity. UNS Electric has demonstrated an unwillingness make sales to MEC.

efforts have been scuttled by UNS Electric and by CTI's unwillingness to fund the extension of MEC's facilities. However, to accommodate the directive MEC received January 12, 2005, MEC agrees to provide CTI electric service at MEC's standard applicable rates. In order to do so, MEC will initially secure power through the use of one or more generators.

Conclusion

MEC has, in good faith, promptly responded to the strong suggestion made at the January 12, 2005 procedural conference, that CTI receive service immediately. On January 14, 2005, MEC executed and filed a consent, subject to reasonable conditions. The conditions are those deemed necessary by MEC to protect MEC's existing property rights and to move the parties toward a negotiated permanent resolution. On January 18, 2005, UNS Electric notified MEC and the Commission of its refusal to provide CTI electric service subject to the Conditional Consent. As a result, the Conditional Consent is rescinded and MEC commits to within 14 days make electric service available to CTI at MEC's standard rates utilizing a generator. MEC believes its commitment to make service available to CTI makes any interim action by the Commission unnecessary. If you have any questions, please do not hesitate to contact our office.

Very Truly Yours,

Michael A. Curtis
William P. Sullivan
For The Firm

WPS/mw

Enclosures: Conditional Consent
Principals for System-wide Borderline Agreement

cc: Docket Control Arizona Corporation Commission (28 copies of this letter with enclosures – HAND DELIVERED)
Jason Gellman, Esq. (hand-delivered w/ enclosures)
Thomas H. Campbell, Esq. (via facsimile w/ enclosures
Terrance G. O'Hara (via facsimile w/ enclosures)
Client

1234/-7-46/letters/JHatch-Miller

CONDITIONAL CONSENT
OF MOHAVE ELECTRIC COOPERATIVE, INC.
TO UNS ELECTRIC, INC.'S PROVISION OF ELECTRIC SERVICE
TO CENTRAL TRUCKING, INC.

I. **RECITALS:**

A. Central Trucking, Inc. ("CTI") has requested electric service be provided at the real property described in the attached Exhibit A (the "Subject Area").

B. The Subject Area is within Mohave Electric Cooperative, Inc.'s ("MEC") certificate of convenience and necessity granted by the Arizona Corporation Commission ("Commission").

C. MEC has offered to provide electric service to CTI under its standard service regulations, but CTI has declined to provide the funding to construct extensions of MEC's existing facilities.

D. MEC has also requested UNS Electric, Inc. ("UNS") to provide power to MEC for resale to CTI, or alternatively to wheel MEC's power to CTI to minimize the cost of initiating service to CTI, but, to date, the requested service from UNS has not been provided to MEC.

E. MEC has also requested UNS to enter into a system-wide borderline agreement that would encompass service to CTI, but, to date, UNS has not agreed to meet to discuss such an agreement.

F. MEC filed a complaint with the Commission in Docket No. E-042301A-04-0798 seeking Commission assistance in securing cooperation from its neighboring utility in rendering electric service to CTI.

G. UNS subsequently filed an application with the Commission in Docket Nos. E-0424A-04-0824 and E-01750A-04-0824 requesting UNS receive a portion of MEC's certificated area, including the Subject Area.

H. UNS recently offered to provide CTI electric service directly without MEC waiving or prejudicing any right or argument in any of the Commission proceedings referenced above.

I. At a procedural conference on the Commission matters referenced above conducted January 12, 2005, Administrative Law Judge Dwight Nodes and the Commissioners in attendance encouraged MEC to consent to UNS Electric's provision of electric service to CTI pending resolution of the Commission matters.

NOW, THEREFORE, Mohave Electric Cooperative, Inc. hereby provides its conditional consent as follows:

II. Conditional Consent

Mohave Electric Cooperative, Inc. gives its consent to UNS Electric, Inc. to provide electric service to CTI and to enter into the Subject Area, certificated to MEC to provide and construct and maintain electric service lines and facilities necessary for the provision of electric service to CTI under the following conditions:

A. The Commission authorizes UNS Electric, Inc. to provide electric service to CTI within the Subject Area subject to the conditions set forth in this Conditional Consent.

B. MEC's consent and the provision of electric service to CTI by UNS Electric shall not prejudice or waive any claim or argument MEC may otherwise have with regard to the matters and issues raised in Commission Docket Nos. E-042301A-04-0798, E-0424A-04-0824 and E-01750A-04-0824.

C. UNS Electric agrees to work, in good faith, with MEC to develop a mutually acceptable system-wide borderline agreement as soon as possible that will render this Conditional Consent unnecessary.

D. UNS Electric agrees to work, in good faith, on MEC's request for a source of power from UNS Electric that will render this Conditional Consent unnecessary.

E. MEC's consent provided herein shall automatically expire the earlier of:

1. Nine months from the date of this consent;
2. Execution of a System-wide Borderline Agreement between UNS and MEC that renders this Conditional Consent unnecessary;
3. Extension of MEC's facilities to the Subject Property; or
4. MEC secures a power source from UNS, or otherwise, that has a delivery point at the Subject Property.

Dated this 14th day of January, 2005.

Robert Broz, CEO
Mohave Electric Cooperative, Inc.

System-wide Borderline Agreement
Principles

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1. Reciprocal - Applies to both utilities the same.

2. Creates uniform guidelines under which one utility will consent to the other providing electric service to a customer within its certificated area.

3. The System-wide Borderline Agreement is submitted to the Commission for review and approval as in the public interest.

4. Upon approval of the System-wide Borderline Agreement by the Commission, the utilities apply the Agreement by entering into separate consent agreements that are submitted to the Utility Division for summary review for consistency with the Agreement.

5. Only applies to prospective retail customers, not existing customers or wholesale customers.

6. Not available due to a difference in retail rates (i.e., the retail rates of the uncertificated utility are lower than the certificated utility).

7. The customer is located no more than a specified distance (e.g., 1 mile) from the non-certificated entity's existing facilities (or facilities that are planned of immediate construction without regard to the borderline customer's request for service).

8. There is a demonstrated public benefit provided by the uncertificated utility providing service because either:

   a. The certificated utility has an inadequate power supply to meet the service request and will not have one available on a permanent basis within 60 days; or
   b. Under each entity's normal extension policies, the cost <u>to the customer</u> for extending or improving the certificated entity's facilities will be a minimum amount (e.g., 2 1/2 times or a dollar amount) greater than the cost to the customer for extending or improving the non-certificated entity's facilities.

9. When the certificated entity's facilities reach the area, it will have the right to serve the customer upon payment to the non-certificated utility of the value of the facilities (calculated as at a 50/50 weighting of original cost less depreciation and reconstruction new less depreciation), plus a fixed percentage (e.g., 5%) for overhead costs.

10. Once service is extended, the uncertificated utility must continue service on the same terms and conditions of any other customer of the utility seeking the same class of service (borderline customers will not be a separate rate classification). In other words, a customer may only be terminated for nonpayment or violation of applicable rules and regulations.

11. If there is disagreement over whether service is available under the System-wide Borderline Agreement which the utilities have not resolved within 45 days after a customer makes a written request for immediate service under the System-wide Borderline Agreement, either utility or the customer may have the Utilities Division make an interim decision, without hearing, but subject to the appeal of dissatisfied utility or customer to the full Commission.

12. The System-wide Borderline Agreement and any application thereof shall not be admissible as evidence in any court or commission proceeding for any purpose other than the enforcement of the System-wide Borderline Agreement and in particular such shall not be admitted to support a contention that the certificated utility is unable or unwilling to provide service to prospective customers at reasonable rates within its certificated area.

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