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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED

MAY 27 2005

DOCKETED BY

KW

ARIZONA CORPORATION COMMISSION
CORP. COMMISSION
CONFLICT CONTROL
MAY 27 P 1:53

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

DOCKET NOS. E-01750A-04-0798
E-04204A-04-0798
E-04230A-04-0798

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR AN ORDER
APPROVING A TRANSFER OF A PORTION
OF A CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NOS. E-04204A-04-0824
E-01750A-04-0824

Arizona Corporation Commission Staff ("Staff") responds to the motion from Mohave Electric Cooperative, Inc. ("MEC") filed May 20, 2005, as follows:

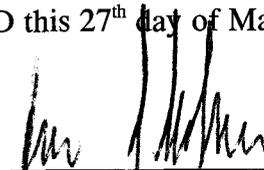
Staff does not believe the information requested – in Staff Data Request Sets 3 and 4 – is confidential. Those data requests have been attached as Exhibit 1. As a public agency, the decision to treat information as confidential is a decision Staff cannot take lightly. Public records laws in Arizona are very broad and Staff is becoming increasingly sensitive about keeping documents withheld from the public, as part of a state government agency, unless there is a compelling reason to do so. MEC has failed to convince Staff that any of the information requested in the data requests at issue rises to the level of "customer information, account information and related proprietary information" under A.R.S. § 202(C)(5). In addition, that statute is discussing the Commission's authority to adopt rules, not about protective agreements.

Furthermore, Staff strongly opposes an order compelling Staff to sign a Protective Agreement. This is what Staff believes MEC's motion is requesting. Staff informed MEC that it would not enter into a protective agreement with MEC, but if the Administrative Law Judge determined that the information sought by Staff should be treated as confidential, then Staff would abide by the terms and conditions of a protective order. But a protective order is different

1 than an order compelling Staff to sign a protective agreement.

2 Finally, Staff believes that an in camera review by the ALJ of the data responses by MEC
3 is an appropriate means for the ALJ to determine confidentiality. If the ALJ believes the
4 information sought should be confidential, Staff would request that the terms and conditions of
5 confidentiality be the same as what is usually contained in recent protective agreements for
6 matters before the Commission. A generic version of those terms and conditions is attached as
7 Exhibit B.

8 RESPECTFULLY SUBMITTED this 27th day of May 2005.

9
10 
11 _____
12 Jason D. Gellman
13 Attorney, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17 (602) 542-3402

14 The original and thirteen (13) copies
15 of the foregoing were filed this
16 27th day of May, 2005 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

18 Copies of the foregoing were
19 mailed/hand-delivered this
20 27th day of May, 2005 to:

20 Michael A. Curtis
21 William P. Sullivan
22 Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
23 2712 North Seventh Street
24 Phoenix, AZ 85006-1090

23 Thomas H. Campbell
24 Lewis & Roca, LLP
25 40 N. Central Avenue
26 Phoenix, AZ 85004-4429

26 Michelle Livengood
27 Legal Department
28 Tucson Electric Power Company
One South Church Avenue
P.O. Box 711
Tucson, AZ 85702-3664

1 Terrence G. O'Hara
2 Vice President Western Division
3 Central Trucking Inc.
4 P.O. Box 6355
5 Kingman, AZ 86401

6 Lyn Farmer
7 Chief, Hearing Division
8 Arizona Corporation Commission
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Ernest G. Johnson
12 Director, Utilities Division
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Christopher C. Kempley
17 Chief, Legal Division
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 
22 Angela L. Bennett
23 Angela L. Bennett secretary to
24 Jason D. Gellman
25
26
27
28

**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS FOR
MOHAVE ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-04230A-04-0798
MAY 10, 2005**

PKB 3-1 Please provide a copy of your existing four-year Construction Work Plan 2002-2005.

**ARIZONA CORPORATION COMMISSION STAFF'S
FOURTH SET OF DATA REQUESTS FOR
MOHAVE ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-04230A-04-0798
MAY 12, 2005**

- PKB 4-1** Provide a copy of the contract of service with AEPCO, WAPA, NSS, Nucor, and other loads (such as Road Runner, etc.), and tariff rates under which such service was or is being provided.
- PKB 4-2** Provide information on MW and MWH supplied to each customer, and total amount of their respective bills, separately on a monthly basis from November 30, 1994 to April 30, 2005.
- PKB 4-3** Provide a detailed list of all materials, including the original cost of each material, engineering, installation and actual total cost of transmission and distribution facilities that add up to \$82,000.
- PKB 4-4** Explain how the electric facilities (depreciated at \$58,000) proposed to be transferred to UNS will be used and useful and in the public interest up to December 31, 2010.

§1. **Non-Disclosure.** Except with the prior written consent of the party originally designating a document to be stamped as Confidential Information, or as hereinafter provided under this Agreement, no Confidential Information may be disclosed to any person. This requirement does not prohibit Staff from using and disclosing Confidential Information provided by Company in reports or documents that aggregate all information gathered from the parties to this docket, provided Company's individual disclosure is indiscernible from the aggregate report. In addition, where Confidential Information provided by Company is confidential solely as a result of either disclosing individual customer information, or disclosing specific prices, this Agreement shall not prohibit Staff from the public disclosure of such information in an aggregated form, where no individual customer or specific individual price can be ascertained.

§2. **Designation of Confidential Information.** For purposes of this Agreement, all documents, data, information, studies and all other written, printed, transcribed, audio-taped or video-taped materials furnished to Staff that Company claims to be a trade secret, or of a proprietary, confidential, or legally protected nature, shall be designated and referred to herein as "Confidential Information." Access to and review of Confidential Information shall be strictly controlled by the terms of this Agreement.

All Confidential Information provided to Staff pursuant to this Agreement shall be so marked by Company with a designation indicating its alleged trade secret, proprietary, confidential or legally protected nature. The Company shall memorialize any Confidential Information disclosed verbally by Company in writing within five (5) business days of its verbal disclosure, and the writing shall be marked by the Company with the appropriate designation. Any Confidential Information disclosed verbally by Company shall be safeguarded by Staff and its contracting consultants only during the five (5) business day period during which memorialization may be provided. Company agrees that it will carefully consider the basis upon which any information is claimed to be trade secret, proprietary, confidential, or otherwise legally protected. Company shall designate as Confidential Information, only such information as it has a good faith basis for claiming to be legally protected. Where a part of a document, or only a part of an informational submittal may reasonably be considered to be trade secret, proprietary, confidential, or otherwise legally protected, Company shall

only designate that part of such information submittal as Confidential Information under this Agreement. Information that is publicly available from any other source, shall not be claimed as Confidential Information under this Agreement.

§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.

Execution of this Agreement by the parties and performance of their obligations hereunder shall not result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential or legally protected nature of the Confidential Information provided. Neither shall the limited provision of Confidential Information by Company pursuant to this Agreement, nor the limited provision by Staff of Confidential Information pursuant to Section 6 of this Agreement constitute public disclosure of it.

§4. Access to Confidential Information. Prior to reviewing any Confidential Information, any Commission Staff member or independent contracting consultant shall first be required to read a copy of this Protective Agreement, and to certify by his/her signature on Exhibit A of this Agreement, that he/she has reviewed the same and has consented to be bound by its terms. Exhibit A of this Agreement shall contain the signatory's full name, business address and employer, and the signatory's position with, or relationship to, the Arizona Corporation Commission ("Commission"). Upon execution, any and all Exhibits shall be promptly provided to counsel for Company.

§5. Use of Confidential Information. All persons who are signatories to this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or for any purposes other than those necessary for the disposition of this docket, including preparation for and the conduct of any administrative or legal proceeding. All persons entitled to review or afforded access to Confidential Information shall keep it secure as trade secret, confidential, or legally protected information in accordance with the purposes and intent of this Agreement.

§6. Non-Signatories Entitled to Review. The information provided pursuant to this Protective Agreement may be disclosed to other members of the Staff and to the Commission by any Commission signatory to this Agreement only to the extent that disclosure is necessary to the

disposition of this docket. Such disclosure may be made only if the non-signatory is provided with a copy of this Agreement and agrees to be bound by its terms.

§7. Disclosure of Information to the Public. The Confidential Information provided pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in this docket, or in any other administrative or legal proceeding unless: Staff provides Company five (5) business days written notice that information designated by Company as Confidential Information shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from the date written notice is received by Company, any Confidential Information identified in the notice as subject to disclosure shall become part of the public record in this docket, unless Company initiates a protective proceeding under the terms of this Agreement.

§8. Protective Proceedings to Prevent Disclosure to the Public. In the event that Company seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7 above, Company shall file within five (5) business days of receipt of Staff's written notice, a motion presenting the specific grounds upon which it claims that the Confidential Information should not be disclosed or should not be made a part of the public record. Staff shall have an opportunity to respond to the motion. Company's motion may be ruled upon by either the Commission or an assigned Commission Administrative Law Judge ("ALJ"). Company may provide to the Commission or the ALJ the Confidential Information referenced in the motion without waiver that the information should remain confidential under the terms of this Agreement. Any Confidential Information so provided shall be kept under seal for the purpose of permitting inspection by the Commission or the ALJ prior to ruling on the motion.

Notwithstanding any determination by the ALJ or the Commission that any Confidential Information provided pursuant to this Agreement should be made a part of the public record or otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that Company may seek judicial relief from the ALJ or the Commission's decision. Upon expiration of the five (5) day period, the Commission shall release the information to the public unless Company has received a stay or determination from a court of competent jurisdiction that the records, data,

information or study are proprietary and are not public records subject to disclosure under A.R.S. § 39-101 et seq.

§9. **Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the Commission, ALJ or Staff determines that disclosure is not appropriate, in any judicial action against the Commission and/or Commissioners by the party seeking disclosure of the information, unless specifically named, Company, as the real party in interest, shall join in the action as a co-defendant. Company also agrees to indemnify and hold the Commission harmless from any assessment of expenses, attorneys' fees or damages under A.R.S. § 39-121.02 or any other law, resulting from denial of access by the Commission to the information, data, records or study subsequently found to be non-confidential.

In the event that the Commission becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Commission shall provide Company with prompt written notice of such requirement so that Company may seek an appropriate remedy and/or waive compliance. Company agrees that upon receipt of such notice, Company will either undertake to oppose disclosure of the Confidential Information or waive compliance with this Agreement. In the event that disclosure of the Confidential Information is ordered, the Commission agrees to furnish only that portion of the Confidential Information that is legally required.

§10. **No Preclusion of Evidentiary Objections.** In the event that disclosure of Confidential Information occurs, the provision of such information by Company pursuant to this Agreement shall not limit the right of Company to object to its relevance or admissibility in proceedings before the Commission.

§11. **Return of Confidential Information.** Upon the final disposition of any administrative or legal proceeding arising in or from this docket, within 90 days Company shall submit a written request for the return of all Confidential Information, copies thereof, and notes made by signatories to this Agreement. If such a request is not received within the stated 90 days, Staff shall destroy all Confidential Information, copies thereof, and notes made by signatories to this

Agreement, or return to Company all Confidential Information, copies thereof, and notes made by signatories to this Agreement, following written notice to Company of Staff's intent to return.

§12. **No Admission of Privileged or Confidential Status.** By participating in this Agreement, Staff and its contracting consultants are neither admitting nor agreeing with Company that any of the materials or communications designated as Confidential Information are, either in fact or as a matter of law, a trade secret or of a proprietary, confidential or legally protected nature.

§13. **Breach of Agreement.** Company, in any legal action or complaint it files in any court alleging breach of this Agreement shall, at the written request of the Commission, name the Arizona Corporation Commission as a Defendant therein.

§14. **Non-Termination.** The provisions of this Agreement shall not terminate at the conclusion of this proceeding.