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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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

2005 MAY 20 1 P 3:13  
AZ CORP COMMISSION  
DOCUMENT CONTROL

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 11, 2005, as follows:

Staff does not understand why MEC decided to docket what can only be interpreted to be a settlement offer and why MEC attempted to impose a "take it or leave it" deadline to that offer. It is highly unusual for a settlement offer to become a matter of public record under any circumstances, but especially before any settlement negotiations get underway. Furthermore, for MEC to simply impose a deadline, Staff believes, is counterproductive toward reaching a fair and efficient resolution to this matter.

Staff, of course, is willing to consider any settlement offer and is willing to engage in negotiations in accordance with Commission policy and practice. That practice includes having all intervening parties being engaged in ongoing dialogue with regards to any settlement offer. Staff was contacted by MEC about the possibility of entering into settlement negotiations. But it was unclear - before the May 11, 2005 filing - whether UNS or any other intervening party to this matter was ever contacted about this offer. No negotiations had occurred between Staff and MEC before MEC decided to make this matter public. Staff has, to date, not provided any response to MEC's offer and will not do so here. While MEC has the right to "withdraw" its

1 offer, to simply mandate Staff to advocate a position prematurely is inappropriate and inapposite  
2 to normal Commission practice regarding settlement.

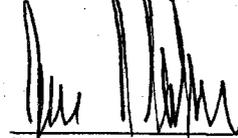
3 In any event, any settlement of this case will be subject to a full evidentiary hearing before  
4 the Administrative Law Judge in addition to this item being part of an Open Meeting after the  
5 record has been closed. Since this matter concerns the public interest, it is vital that the  
6 Commission have a full evidentiary record before reaching a decision on matters like these,  
7 regardless of whether a "meeting of the minds" is obtained. Of course, MEC is free to pursue any  
8 settlement with UniSource Energy Corporation ("UNS"), with or without Staff as a signatory to  
9 any resulting agreement. But any agreement will be subject to Commission approval and Staff  
10 retains the right to provide testimony commenting and/or criticizing any settlement reached  
11 between the other parties.

12 Staff will not be compelled by MEC into prematurely taking a position on the substance of  
13 MEC's pleading. Staff would need to have a full opportunity to conduct discovery on MEC's  
14 "offer." Because this case has a strong public interest element, Staff cannot simply decide to  
15 blindly accept MEC's offer by some artificial deadline. To do so, would run afoul of Staff's duty  
16 to ensure the public interest.

17 MEC's decision to publicly docket a settlement offer conjures the issue of how to treat the  
18 pleading. Clearly, the content in the pleading is not evidence and is merely argument. But the  
19 offer in the pleading is now of public record and Staff, as well as any other party to this case,  
20 should have the opportunity to explore the offer in discovery and to comment about it in  
21 testimony. While there may be issues that prevent the entirety of the proposal from being  
22 approved as part of a Commission decision, the publicly-disclosed offer is now relevant to the  
23 matters in these dockets. While MEC cannot be compelled to "settle" the case on these or any  
24 other terms, it cannot simply state that the offer has been withdrawn in hopes that its offer will be  
25 completely forgotten. In fact, by voluntary docketing the offer, MEC has waived any objection it  
26 normally would have under Rule 408 of the Arizona Rules of Evidence regarding settlement  
27 offers. So, regardless of whether a settlement is reached, MEC's offer is now a part of the public  
28 record for purposes of discovery, pre-filed testimony, evidentiary hearing, and the Open Meeting

1 in these matters.

2 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of May 2005.

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11 The original and thirteen (13) copies  
12 of the foregoing were filed this  
13 20<sup>th</sup> day of May, 2005 with:

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

18 Copies of the foregoing were  
19 mailed/hand-delivered this  
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