

OPEN MEETING ITEM  
ORIGINAL



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



ARIZONA CORPORATION COMMISSION

DATE: SEPTEMBER 19, 2005  
DOCKET NOS: E-01750A-04-0798, E-04204A-04-0798, E-04230A-04-0798, E-01750A-04-0824, and E-04204A-04-0824  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

MOHAVE ELECTRIC COOPERATIVE, INC.  
vs. UNISOURCE ENERGY CORPORATION and UNS ELECTRIC, INC.  
(COMPLAINT/TRANSFER PORTION OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

September 22, 2005  
Parties have waived the 10 days for filing of exceptions

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for a Commission's Open Meeting to be held on:

SEPTEMBER 27, 2005 and SEPTEMBER 28, 2004.

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE COMPLAINT OF  
9 MOHAVE ELECTRIC COOPERATIVE, INC.  
10 AGAINST UNISOURCE ENERGY  
11 CORPORATION AND UNS ELECTRIC, INC.

DOCKET NO. E-01750A-04-0798  
DOCKET NO. E-04204A-04-0798  
DOCKET NO. E-04230A-04-0798

12 IN THE MATTER OF THE APPLICATION OF  
13 UNS ELECTRIC, INC. FOR AN ORDER  
14 APPROVING A TRANSFER OF A PORTION OF  
15 A CERTIFICATE OF CONVENIENCE AND  
16 NECESSITY FROM MOHAVE ELECTRIC  
17 COOPERATIVE, INC.

DOCKET NO. E-01750A-04-0824  
DOCKET NO. E-04204A-04-0824

18 DECISION NO. \_\_\_\_\_

19 **OPINION AND ORDER**

20 DATE OF HEARING:

August 2, 2005

21 PLACE OF HEARING:

Phoenix, Arizona

22 ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

23 APPEARANCES:

Mr. Thomas H. Campbell, LEWIS & ROCA,  
LLP, on behalf of UNS Electric, Inc.;

Mr. William P. Sullivan, CURTIS, GOODWIN,  
SULLIVAN, UDALL & SCHWAY, on behalf  
of Mohave Electric; and

Mr. Jason Gellman Staff Attorneys, Legal  
Division, on behalf the Utilities Division of the  
Arizona Corporation Commission.

24 **BY THE COMMISSION:**

25 \* \* \* \* \*

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

28 **FINDINGS OF FACT**

1. On November 5, 2004, Mohave Electric Cooperative, Inc. ("Mohave") filed with the

1 Arizona Corporation Commission (“Commission”) a Complaint in Docket No. E-04230A-04-0798  
 2 (“Complaint Docket”) against UniSource Energy Corporation (“UniSource”) alleging, among other  
 3 things, that UniSource has improperly refused to provide wholesale service to Mohave under an Open  
 4 Access Transmission Tariff (“OATT”), and that UniSource refused to negotiate in good faith a  
 5 system-wide border area agreement with Mohave. Mohave is a not for profit rural electric  
 6 cooperative that provides electric service in portions of Mohave, Yavapai, and Coconino counties.  
 7 Mohave claimed in its Complaint that UniSource’s actions have rendered Mohave unable to provide  
 8 electric service in an economically feasible manner to a customer, Central Trucking, Inc. (“CTI”),  
 9 which seeks to construct a building to conduct business in Mohave’s certificated service area<sup>1</sup>.

10 2. On November 15, 2004, UNS Electric, Inc. (“UNS”) filed with the Commission an  
 11 application in Docket Nos. E-04204A-04-0824 and E-01750A-04-0824 (“Transfer Dockets”) seeking  
 12 to have territory that was previously within the certificated service territory of UNS’ predecessor,  
 13 Citizens Utilities Company (“Citizens”), “revert” to UNS<sup>2</sup>. Mohave currently holds the Certificate of  
 14 Convenience and Necessity (“CC&N”) for the territory that is in dispute, and in which CTI’s  
 15 property is located, pursuant to Decision No. 58798 (October 14, 1994)<sup>3</sup>. UNS concedes that the  
 16 disputed territory is currently within Mohave’s CC&N area, but contends that Mohave was granted  
 17 the portion of the service area in question solely for the purpose of serving a specific customer, North  
 18 Star Steel Company (“North Star”), which is no longer in business. UNS argued that because the  
 19 disputed area was previously served by Citizens, and North Star Steel is no longer in business, the  
 20 CC&N area in which CTI is located should revert to UNS as Citizens’ successor in interest.

21 3. On November 29, 2004, UNS filed an Answer to the Complaint and Motion for  
 22 Dismissal. UNS denied the material allegations in the Complaint and argued that the Complaint

23 <sup>1</sup> Mohave claimed that it had agreed to provide service to CTI upon payment of approximately \$600,000, which is the  
 24 cost for Mohave to extend its facilities to CTI’s location.

25 <sup>2</sup> UNS is a subsidiary of UniSource that provides electric service in Mohave County. UNS acquired the Certificate of  
 Convenience and Necessity of Citizens’ Mohave Electric Division pursuant to Decision No. 66028 (July 3, 2003).

26 <sup>3</sup> In Decision No. 58798, the Commission transferred the portion of Citizens’ CC&N to Mohave described in that Order  
 27 and stated that the transferred CC&N area “shall not revert to Citizens Utilities Company under any circumstances  
 28 without prior Commission approval” (*Id.* at 6). The CC&N in question encompasses an area of approximately 1,000  
 acres near the McConnico interchange of I-40, approximately 5 miles south of Kingman, Arizona. The CC&N contains  
 an idle manufacturing plant owned by Nucor, which was originally owned and operated by North Star Steel, located east  
 of I-40, and the site now owned by CTI east of I-40, on which CTI is constructing a trucking terminal (UNS Ex. 1, at 3-  
 4).

1 should be dismissed because Mohave is attempting to have the Commission approve a new rate  
2 outside of a rate case, and because borderline agreements should be established on a case-by-case  
3 basis to accommodate specific customer situations.

4 4. Mohave filed a Response to UNS' Motion for Dismissal on January 3, 2005. Mohave  
5 contends that a system-wide borderline agreement would provide uniform guidelines between the two  
6 companies upon a showing that such an agreement is in the public interest. Mohave also argues that  
7 its Complaint does not seek a rate increase but is instead asking for authority to recover any increased  
8 costs associated with serving a single customer through a specific surcharge mechanism. Mohave  
9 claims that the Commission has jurisdiction to hear and resolve the allegations raised in the  
10 Complaint and requests that the Motion for Dismissal be denied.

11 5. On January 31, 2005, the Commission issued an Emergency Order for Provision of  
12 Electric Service ("Emergency Order") (Decision No. 67535). In the Emergency Order, the  
13 Commission directed UNS to immediately provision electric service to CTI, on an interim basis, until  
14 the issues raised in the above-captioned dockets could be resolved. Decision No. 67535 stated that  
15 the provision of interim service by UNS would not prejudice any claims or arguments that either  
16 UNS or Mohave would raise in the dockets.

17 6. By Procedural Order issued February 18, 2005, UNS' Motion to Dismiss was denied,  
18 a hearing was scheduled for August 2, 2005, and other procedural deadlines were established.

19 7. By Procedural Order issued June 7, 2005, a revised procedural schedule was set for  
20 filing testimony in order to allow the parties additional time to pursue settlement discussions.

21 8. On June 15, 2005, Mohave and UNS filed a Stipulation and Proposed Resolution  
22 ("Stipulation" or "Settlement").

23 Terms of the Settlement Agreement

24 9. Pursuant to the Settlement Agreement, UNS and Mohave request that the Commission  
25 issue a Decision that provides as follows:

- 26 1. Contingent upon UNS' payment to Mohave of \$48,070<sup>4</sup> for  
27 facilities previously installed by Mohave, the portion of Mohave's

28 <sup>4</sup> The \$48,070 was determined by taking the cost of the facilities (\$67,400) depreciated on a straight-line basis with a 25-year remaining life using a 35-year life span.

1 CC&N granted in Decision No. 58798 would be transferred to  
2 UNS, with the exception of the Nucor plant site<sup>5</sup>;

- 3
- 4 2. Approval of the transfer of the Mohave facilities to UNS;
- 5
- 6 3. Transfer of the Nucor plant site to UNS, without the need for a  
7 further Commission Order, the earlier of (emphasis original):  
8 a. December 31, 2010; or  
9 b. On the date specified by Mohave in a written notification to  
10 UNS and the Commission's Director of Utilities that the  
11 customer's electric needs no longer can be met by the  
12 existing Mohave contractual arrangements, with written  
13 notification to be provided not less than 6 calendar months  
14 prior to the date specified in the written notice; and
- 15 4. Dismissal, with prejudice, all issues raised in Mohave's Complaint  
16 and UNS' Application as they relate to the Nucor site, and that the  
17 dismissal will have no precedential effect beyond the Nucor site.

18 10. On June 24, 2005, UNS filed the Direct Testimony of Thomas Ferry (UNS Ex. 1) and  
19 Mohave filed the Direct Testimony of Aaron Stallings (MEC Ex. 1) in support of the Settlement.

20 11. On July 22, 2005, Staff filed its Staff Report recommending approval of the proposed  
21 Stipulation.

22 12. The hearing was held as scheduled on August 2, 2005. At the hearing, Mr. Stallings  
23 and Mr. Ferry testified in support of the Settlement. Staff's witness, Prem Bahl, testified regarding  
24 Staff's findings and recommended approval of the Stipulation.

25 13. UNS has facilities on the CTI site, and its existing CC&N surrounds the area. UNS  
26 currently serves several customers in areas immediately adjacent to the CTI location. The UNS  
27 facilities that traverse the area include two 69 kV transmission lines, which originate at the Griffith  
28 transmission substation south of the area and the Hilltop transmission substation north of the area.  
The substations are interconnected to the Western Area Power Administration ("WAPA") and  
provide most of the electrical power for UNS' Kingman District (UNS Ex. 1, at 5). UNS currently  
serves the CTI location from local area distribution lines, and its witness stated that UNS could  
establish a delivery point at the McConnico transmission substation to serve the load currently served  
by Mohave at the Nucor plant site. As set forth in the Settlement, the CC&N for the Nucor site

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<sup>5</sup> The "Nucor site"

1 would transfer from Mohave to UNS under terms established in the agreement. With respect to the  
2 facilities installed by Mohave to serve the CTI property, UNS witness Thomas Ferry testified that the  
3 facilities will be useful to UNS and the price established in the Stipulation (\$48,070) is reasonable.  
4 UNS believes that Stipulation is a reasonable resolution of the issues raised in this proceeding and  
5 will allow UNS to continue to serve CTI and any new customers in the area, as well as the Nucor site  
6 in the future (Id. At 6).

7 14. Mohave witness Aaron Stallings also supports adoption of the Stipulation. He  
8 testified that Mohave's proposed sale of various facilities that were installed approximately 10 years  
9 ago<sup>6</sup> were valued at \$48,070 based on the original book value less 10 years of depreciation. Mr.  
10 Stallings stated that both Mohave and UNS believe their positions have merit, but the proposed  
11 settlement reflects a resolution of the issues without establishing a precedent regarding the disputed  
12 issues, and avoids the expenditure of significant resources participating in contested hearings and  
13 possible appeals. Mr. Stallings testified that the proposed resolution provides all customers, existing  
14 and prospective, with ready access to an electric service provider. He described other benefits of the  
15 Stipulation as: continuation of service by Mohave to the Nucor site until the end of 2010; receipt of  
16 fair value by Mohave for the facilities being sold to UNS; and the ability to readily integrate those  
17 facilities by UNS into its existing system. Mohave submitted a legal description of the CC&N area to  
18 be transferred to UNS pursuant to the Settlement (MEC Ex. 2).

19 15. In the Staff Report, Staff agreed that the Stipulation should be approved as a  
20 reasonable resolution of the issues raised in these dockets. However, Staff recommends that Nucor or  
21 its successor should be provided notice at least 6 months prior to the transfer of service from Mohave  
22 to UNS, and that a copy of the notice be filed with Docket Control within 30 days of notice being  
23 provided to Nucor or its successor (Ex. S-1, at 4). At the hearing, UNS and Mohave agreed to  
24 comply with this condition (Tr. 10, 14).

25 ...

26 ...

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28 <sup>6</sup> The facilities being purchased by UNS under the terms of the Settlement consist of approximately one mile of distribution lines, including a transformer and appurtenant facilities (MEC Ex. 1, at 2).

1 Conclusion

2 16. We believe that the Stipulation represents a reasonable resolution of the disputed  
3 issues raised in the above-captioned dockets and, subject to compliance with the notice provision  
4 recommended by Staff, the Settlement is in the public interest and should be approved. We commend  
5 UNS and Mohave for seeking an amicable solution regarding these previously contentious issues, and  
6 we trust that both parties will continue to work together to provide electrical service in the area in a  
7 manner that is the best interests of current and future customers. Accordingly, the Stipulation shall be  
8 approved.

9 CONCLUSIONS OF LAW

10 1. Mohave Electric Cooperative, Inc. and UNS Electric, Inc. are public service  
11 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-246, 40-  
12 281, 40-282 and 40-285.

13 2. The Commission has jurisdiction over Mohave and UNS, and the subject matter of the  
14 above-captioned Complaint and Transfer Dockets.

15 3. The proposed Stipulation filed by Mohave and UNS represents a reasonable resolution  
16 of the issues raised by the parties in the above-captioned dockets, and approval of the Settlement is in  
17 the public interest.

18 ORDER

19 IT IS THEREFORE ORDERED the Stipulation and Proposed Resolution filed by Mohave  
20 Electric Cooperative, Inc. and UNS Electric, Inc. is reasonable and shall be approved.

21 IT IS FURTHER ORDERED that, contingent upon UNS' payment to Mohave of \$48,070 for  
22 facilities previously installed by Mohave, the portion of Mohave's CC&N granted in Decision No.  
23 58798 shall be transferred to UNS, with the exception of the Nucor plant site.

24 IT IS FURTHER ORDERED that the Mohave facilities identified in the Stipulation shall be  
25 transferred to UNS in accordance with the terms of the Settlement.

26 IT IS FURTHER ORDERED the Nucor plant site shall be transferred to UNS, without the  
27 need for a further Commission Order, the earlier of December 31, 2010 or the date specified by  
28 Mohave in a written notification to UNS and the Commission's Director of Utilities that the

1 customer's electric needs no longer can be met by the existing Mohave contractual arrangements,  
2 with written notification to be provided not less than 6 calendar months prior to the date specified in  
3 the written notice.

4 IT IS FURTHER ORDERED that all issues raised in Mohave's Complaint and UNS'  
5 Application as they relate to the Nucor site, shall be dismissed, with prejudice.

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1 IT IS FURTHER ORDERED that, in accordance with Staff's recommendation, Mohave shall  
2 provide written notice to Nucor, its successor in interest, or the then-current owner of the current  
3 Nucor site discussed herein, at least 6 months prior to the transfer of the CC&N from Mohave to  
4 UNS pursuant to the terms of the Stipulation. A copy of such notice shall be filed with Docket  
5 Control as a "Compliance Item" in the above-captioned dockets within 30 days after providing the  
6 required notice to Nucor, its successor in interest, or the then-current owner of the current Nucor site  
7 discussed herein.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10  
11  
12 CHAIRMAN

COMMISSIONER

13  
14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15  
16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
17 Director of the Arizona Corporation Commission, have  
18 hereunto set my hand and caused the official seal of the  
19 Commission to be affixed at the Capitol, in the City of Phoenix,  
20 this \_\_\_\_ day of \_\_\_\_\_, 2005.

21  
22 \_\_\_\_\_  
23 BRIAN C. McNEIL  
24 EXECUTIVE DIRECTOR

25  
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28  
22 DISSENT \_\_\_\_\_

24 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: MOHAVE ELECTRIC COOPERATIVE, INC. and  
2 UNS ELECTRIC, INC.

3 DOCKET NOS.: E-01750A-04-0798, E-04204A-04-0798, E-04230A-04-  
4 0798, E-01750A-04-0824, and E-04204A-04-0824

4 Michael A. Curtis  
5 William P. Sullivan  
6 CURTIS, GOODWIN, SULLIVAN,  
7 UDALL & SCHWAB, P.L.C.  
8 2712 North Seventh Street  
9 Phoenix, AZ 85006-1090

10 Thomas H. Campbell  
11 Michael T. Hallum  
12 LEWIS & ROCA LLP  
13 40 N. Central Avenue  
14 Phoenix, AZ 85004

15 Michelle Livengood  
16 Legal Department  
17 Tucson Electric Power Company  
18 One South Church Avenue  
19 P.O. Box 711  
20 Tucson, AZ 85702-3664  
21 Attorneys for UNS Electric, Inc.

22 Terrence G. O'Hara  
23 Central Trucking, Inc.  
24 Vice President, Western Division  
25 P.O. Box 6355  
26 Kingman, AZ 86401

27 Christopher Kempsey, Chief Counsel  
28 Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

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