

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



ARIZONA CORPORATION COMMISSION



0000030159

EXECUTIVE SECRETARY

RECEIVED

2001 JUL -9 P 1:42

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: JULY 9, 2001
DOCKET NO: E-01824A-00-0504
TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED

JUL - 9 2001

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

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:

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.
(SALE/TRANSFER 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:

JULY 18, 2001

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 the Commission's Working Session and Open Meeting to be held on:

JULY 24, 2001 AND JULY 25, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

A handwritten signature in black ink, appearing to read "Brian C. McNeil".

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF THE JOINT APPLICATION
BETWEEN CONTINENTAL DIVIDE ELECTRIC
7 COOPERATIVE, INC. AND THE NAVAJO
TRIBAL UTILITY AUTHORITY FOR THE
8 APPROVAL OF THE SALE OF ELECTRIC
UTILITY PROPERTIES AND TRANSFER OF
9 CERTIFICATE OF CONVENIENCE AND
NECESSITY

DOCKET NO. E-01824A-00-0504

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 4, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
13 APPEARANCES: Mr. Louis Denetsosie and Mr. Warren Denetsosie, on
14 behalf of Navajo Tribal Utility Authority;
15 Mr. Dennis Francisch, on behalf of Continental Divide
16 Electric Cooperative, Inc.;;
17 Mr. Christopher Kempley, Chief Counsel, Legal
18 Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

19 **BY THE COMMISSION:**

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

22 **FINDINGS OF FACT**

23 1. On July 14, 2000, Continental Divide Electric Cooperative, Inc. ("Continental") filed
24 an application with the Commission seeking authority for Continental to sell and transfer all of its
25 electric transmission and distribution systems in Arizona to the Navajo Tribal Utility Authority
26 ("NTUA").
27
28

1 2. Pursuant to a Procedural Order issued April 26, 2001, public notice of the application
2 and hearing date was published on May 14, 2001. Proof of publication was filed on June 4, 2001.
3 No requests for intervention or opposition to the application were received.

4 3. Continental is a New Mexico-based electric cooperative that provides electric service
5 to New Mexico and Arizona customers. Continental serves approximately 25,000 customers, 1,691
6 of which are located in Arizona. Continental's Arizona customers include 837 customers located
7 within the Navajo Nation Indian Reservation and 854 customers located outside the reservation.
8 Continental's Arizona customers are located in Apache County, along the Arizona-New Mexico
9 border. The divisional office serving the Arizona customers is located in Gallup, New Mexico.

10 4. NTUA was formed in 1965 by the Navajo Nation, a federally recognized Indian Tribe.
11 NTUA's service area covers approximately 25,000 square miles within the Navajo Indian
12 Reservation in Arizona, New Mexico, and Utah. NTUA provides utility service to approximately
13 31,000 electric customers, 7,000 gas customers, and 26,000 water/wastewater customers.

14 5. On April 13, 2000, Continental and NTUA entered into a purchase agreement under
15 which NTUA will acquire Continental's transmission and distribution systems in Arizona. Under the
16 agreement, Continental will transfer 38 miles of 69kV line; 172 miles of single-phase distribution
17 line; 98 miles of three-phase distribution line; a fenced substation site; a power transformer
18 (7.5mVA); and 45 various breakers. These assets represent less than six percent of Continental's
19 total assets. The purchase price of the assets is \$2,300,000, compared to a book value of
20 approximately \$2,113,163. NTUA will pay for the acquisition out of its general funds.

21 6. Continental currently provides electric service in Arizona to Navajo Nation residents
22 pursuant to a 25-year franchise agreement executed in 1964. At the end of the term of the agreement,
23 the Navajo Nation exercised its option to purchase Continental's facilities. Continental has continued
24 to serve the Navajo Nation customers under several extensions to the Franchise Agreement while
25 negotiations regarding the sale of the facilities were conducted.

26 7. Continental currently charges a monthly system/service charge of \$5.00, plus
27 \$0.07680 per kilowatt hour ("kWh"). Based on average usage of 372 kWh, a residential Continental
28 customer pays \$33.57 per month.

1 8. NTUA's tariff schedules impose a monthly system/service charge of \$3.00 plus
2 \$0.0660 per kWh. Based on the same usage, the average monthly bill would be \$27.55, a savings of
3 \$6.02 compared to Continental.

4 9. NTUA intends to provide outage and maintenance service to the former Continental
5 customers from its Ft. Defiance office. The Ft. Defiance office is 15 miles closer than Continental's
6 current service crew that is located in Gallup, New Mexico. As a result, it is expected that service
7 response time and overall quality of service under NTUA will be equal or better than the service
8 currently provided by Continental. In addition, NTUA will combine electric, water, and wastewater
9 charges on one billing statement to those customers receiving such services from NTUA.

10 10. Security deposits on accounts for Arizona customers of Continental will be applied to
11 the customers' final bills and any credit balances will be refunded by Continental to customers.
12 Existing Continental customers will not be required to pay any fees to NTUA to commence service.
13 However, new customers of NTUA added after the close of the transaction will be subject to NTUA's
14 normal deposit and connection fees.

15 11. Under the Continental Cooperative structure, net margins from operations are used for
16 improvements or paid out to the member/customers as Capital Credit refunds. Capital Credits are
17 accrued based on the amount of electricity purchased, and are paid out on a twenty-year rotation
18 cycle. Therefore, as an example, if the sale of Continental's assets is finalized in 2001, and the
19 Arizona customers' accounts are terminated in 2001, the current Arizona customers will receive
20 Capital Credit disbursements in 2021 based on usage in 2001.

21 12. Continental does not track the System Average Interruption Frequency Index
22 ("SAIFI"), which is the average number of times a customer's service is interrupted. However,
23 according to information provided to Staff, Continental's average outage time for Arizona was 0.211
24 hours in 1999, and ranged from 0.001 hours to 0.993 hours in the previous five years. The
25 Commission's Consumer Services Division has not received any complaints regarding Continental in
26 the past two years.

27 13. Because NTUA is a nonjurisdictional entity, there is no formal record of complaints
28 against the utility. Although NTUA does not track SAIFI, according to information provided to Staff

1 NTUA's average outage time in 1999 was 3.08 hours, and ranged from 2.93 hours to 4.46 hours in
2 the previous five years. This outage range is within the Rural Utility Service guideline of 5.0 hours
3 per year. NTUA indicated that it has no complaints pending.

4 14. In order to facilitate an orderly transition for current Continental customers, NTUA
5 conducted a number of community meetings during October and November 2000. Based on an
6 outline provided to Staff, customers were briefed regarding NTUA's budget payment plan, current
7 rates, discounts for senior citizens, life-support care, safety, energy conservation, and utility service
8 requests. Witnesses for both Continental and NTUA indicated that the primary concern expressed at
9 the community meetings was with respect to potential discrimination by NTUA against customers not
10 located on the Navajo Nation Reservation. According to the witnesses, those concerns were
11 alleviated based on representations by NTUA that all customers would be treated equally, whether or
12 not they reside within the boundaries of the Reservation or are members of the Navajo Nation. The
13 Continental and NTUA witnesses also stated that they were not aware of any telephone calls or letters
14 that had been received concerning the proposed transfer from Continental to NTUA. No customers
15 appeared at the hearing to present comments regarding the proposed transaction.

16 15. Although NTUA is not regulated by this Commission, there are several agencies that
17 oversee the utility's operations. The Government Services Committee of the Navajo Nation Council
18 oversees NTUA's rates and operations while the Budget and Finance Committee receives financial
19 and annual reports and has authority to order an audit of NTUA. NTUA is also subject to
20 environmental, health, and safety laws imposed by the Navajo Nation Environmental Protection
21 Agency. Finally, NTUA is subject to rules and regulations imposed by the Rural Utilities Service
22 ("RUS") of the United States Department of Agriculture, to the extent that its projects are built with
23 federal financial assistance. NTUA has no immediate plans to participate in electric restructuring or
24 competition.

25 16. Based on an independent auditor's report prepared for NTUA in 1999, as well as
26 documents submitted to RUS, Staff believes NTUA is financially sound and is capable of acquiring
27 and operating Continental's electric assets in Arizona. According to Staff's calculations, NTUA had
28 a times interest earned ratio ("TIER") of 2.50 in 1998 and 1.59 in 1999. A TIER of at least 1.50 is

1 generally preferred. The TIER measures the number of times earnings will cover interest payments.
2 NTUA's ratio of current assets to liabilities was 1.39 in 1999. This ratio indicates the extent to which
3 current liabilities are covered by the company's assets expected to be converted to cash in the near
4 future. A ratio above 1.0 indicates an ability to meet current liabilities in times of financial hardship.
5 Other financial indicators show that NTUA's total equity was approximately \$120 million and debt
6 was \$32 million in 1999, representing an equity/debt ratio of 79 to 21 percent. Staff believes that
7 NTUA's capital structure represents little financial risk and is consistent with sound financial health.

8 17. Staff recommends that the Commission approve the proposed sale of assets from
9 Continental to NTUA based on NTUA's experience in providing utility service, lower rates that will
10 be experienced by current NTUA customers, and the closer proximity of NTUA's service center to
11 those customers. NTUA is financially sound and customers should receive service that is equal or
12 superior to service currently provided by Continental. Further, customers may ultimately benefit
13 from reduced administrative and overhead costs as a result of economies of scale attributable to
14 NTUA's operations in Arizona.

15 CONCLUSIONS OF LAW

16 1. Continental is a public service corporation within the meaning of Article XV of the
17 Arizona Constitution and an electric distribution utility pursuant to A.R.S. Section 40-201.

18 2. The Commission has jurisdiction over Continental and over the subject matter of the
19 application pursuant to A.R.S. Sections 40-252 and 40-285(A).

20 3. The transfer of Continental's electric utility assets in Arizona to NTUA, and the
21 concomitant cancellation of Continental's Certificate is in the public interest.

22 4. Staff's recommendation in Finding of Fact No. 16 is reasonable and shall be adopted.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of Continental Divide Electric
25 Cooperative be, and hereby is, granted.

26 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative be, and hereby is,
27 authorized to transfer all of its electric utility assets to the Navajo Tribal Utility Authority.

28

1 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative's Certificate of
2 Convenience and Necessity is hereby cancelled.

3 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative shall file, within
4 15 days of the close of escrow, an affidavit verifying that the sale has been consummated

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

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, 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 ____ day of _____, 2001.

12

13

14

15

BRIAN C. McNEIL
EXECUTIVE SECRETARY

16

17

DISSENT _____
DDN:dap

18

19

20

21

22

23

24

25

26

27

28

1 SERVICE LIST FOR: CONTINENTAL DIVIDE ELECTRIC
2 COOPERATIVE, INC.

3 DOCKET NO.: E-01824A-00-0504

4 Louis Denetsosie
5 P.O. Box 2544
6 West Highway 264
7 Window Rock, Arizona 86515-2544
8 Attorney for Navajo Tribal Utility Authority

9 Dennis Francisch
10 5400 Lomas NE
11 Albuquerque, New Mexico 87110
12 Attorney for Continental Divide Electric Co-op, Inc.

13 Christopher Kempley, Chief Counsel
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Deborah R. Scott, Director
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21
22
23
24
25
26
27
28