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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

APR - 3 2000

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DOCKETED BY: *sd*

IN THE MATTER OF THE APPLICATION OF  
UTILITY.COM FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE COMPETITIVE RETAIL ELECTRIC  
SERVICES AS AN ELECTRIC SERVICE  
PROVIDER PURSUANT TO A.A.C. R14-2-1601  
*ET SEQ.*

DOCKET NO. E-03778A-99-0513

DECISION NO. 62418

OPINION AND ORDER

DATE OF HEARING: February 14, 2000

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Stephen Gibelli

APPEARANCES: Mr. Chris King, Chief Executive Officer, on behalf of UTILITY.COM;

Mr. Michael Grant, GALLAGHER AND KENNEDY, on behalf of Arizona Electric Power Cooperative, Graham County Electric Cooperative, and Duncan Valley Electric Cooperative; Trico Electric Power Cooperative, Inc. (for Russell Jones); Sulphur Springs Valley Electric Cooperative, Inc. (for Christopher Hitchcock);

Ms. Janet F. Wagner, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On September 10, 1999, the application of Utility.com ("Applicant") for a Certificate of Convenience and Necessity ("CC&N" or "Certificate") to provide retail electric services in Arizona was docketed with the Arizona Corporation Commission ("Commission").

On November 8, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter.

By Procedural Order dated November 30, 1999, all the Affected Utilities as defined by the Electric Competition Rules were joined as parties in this matter with the opportunity to respond to Utility.com's Application, and were given notice that if the Application is granted, the Certificates of

1 Convenience and Necessity ("Certificates" or "CC&Ns") of the Affected Utilities would have  
2 rescinded, altered, or amended pursuant to A.R.S. § 40-252. Those parties so joined and noticed  
3 include Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities  
4 Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric  
5 Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs  
6 Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and  
7 Morenci Water and Electric Company, and are referred to collectively herein as "Affected Utilities."

8 On December 28, 1999, Utility.com requested a continuance of the scheduled February 9,  
9 2000 hearing and agreed to waive any time clock limitations.

10 Subsequently, on January 6, 2000, by Procedural Order, a hearing was scheduled for February  
11 14, 2000.

12 On January 7, 2000, Avistar, Inc. ("Avistar") filed an application for Leave to Intervene.

13 On January 25, 2000, Avistar was granted intervention.

14 This matter came before a duly authorized Hearing Officer of the Commission at  
15 Commission's offices in Phoenix, Arizona on February 14, 2000. At the conclusion of the hearing,  
16 the matter was taken under advisement pending submission of a Recommended Opinion and Order to  
17 the Commission.

18 \* \* \* \* \*

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

21 **FINDINGS OF FACT**

22 1. On September 10, 1999, Utility.com filed its application requesting certification as an  
23 Electric Service Provider ("ESP") with authority to provide competitive retail electric service in all  
24 areas of the State of Arizona which the Commission has designated as open to retail electric  
25 competition.

26 2. Utility.com is a Delaware corporation, authorized to do business in Arizona since  
27 1999.

28 3. On November 8, 1999, Staff filed its Staff Report in this matter, recommending that

1 Utility.com be granted a CC&N as an ESP with authority to provide competitive retail services  
2 statewide.

3 4. By Procedural Order dated November 30, 1999, the Affected Utilities were joined as  
4 parties in this matter with the opportunity to respond to the Application, and were given notice that if  
5 the Application is granted, the CC&Ns of the Affected Utilities will be rescinded, altered, or  
6 amended pursuant to A.R.S. § 40-252.

7 5. On January 14, 2000, Utility.com filed Direct Testimony which updated the status of  
8 various applications in other states and changed the officers of the Company.

9 6. Avistar, Inc., requested and was granted intervention by Procedural Order on January  
10 25, 2000.

11 7. Utility.com caused notice of the hearing in this matter to be published in the Arizona  
12 Republic on January 21, 2000.

13 8. On February 2, 2000, Utility.com's Notice of Filing Application for a Certificate of  
14 Convenience and Necessity was docketed with the Commission.

15 9. On February 14, 2000, a public hearing was held as scheduled, at which Mr. Chris  
16 King for the Applicant and Mr. Kevin Mosier for Staff, presented evidence. Arizona Electric Power  
17 Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico  
18 Electric Cooperative, and Sulphur Springs Valley Electric Cooperative presented no evidence, but did  
19 cross-examine witnesses.

20 10. Utility.com is a licensed ESP in California, Pennsylvania, Nevada, and  
21 Massachusetts.

22 11. Utility.com testified that its maximum rate will be \$25 per kWh.

23 12. Staff's Report recommended approval of the Application subject to the following  
24 conditions:

25 (a) Utility.com shall be required to file tariffs in compliance with A.A.C. R14-2-1611  
at least 30 days prior to the provision of service;

26 (b) Utility.com shall not be authorized to provide competitive service in the  
27 certificated area of an Affected Utility until the Commission has reached a final  
28 resolution in that Affected Utility's respective stranded cost filing;

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- (c) Utility.com must have a service acquisition agreement with the Utility Distrib Company in each service area to be served that is approved by the Director, Utilities Division, prior to the provision of service in a service area;
- (d) Utility.com must either be approved by the Arizona Independent Scheduling Administrator as its own Scheduling Coordinator, or have a service agreement with a Scheduling Coordinator that has been approved by the Arizona Independent Scheduling Administrator before it provides service;
- (e) Utility.com shall acquire all necessary licenses prior to actually providing service;
- (f) Utility.com shall, prior to providing any billing and collection service in the service areas regulated by the Commission, file a tariff setting forth a maximum price for billing and collection service; and
- (g) Utility.com will provide the Director, Utilities Division with evidence indicating that the UDC has found it credit worthy prior to provision of any certificated service.

13. Utility.com testified at the hearing that it had no objections to Staff's recommendations as stated in Findings of Fact No. 12.

14. Staff's recommendations in Findings of Fact No. 12 above are reasonable and necessary.

15. Staff also recommended that Utility.com maintain an escrow account for any prepayments or deposits collected from the Company's customers.

16. Utility.com possesses the requisite technical and financial capability to provide competitive retail electric services within the State of Arizona.

**CONCLUSIONS OF LAW**

1. Utility.com is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Utility.com and the subject matter of the application.

3. Notice of the hearing was given in accordance with law.

4. The Arizona Legislature and the Commission have made it clear that competition is the public policy of Arizona.

5. Utility.com should receive a CC&N as an ESP authorized to provide MRSP services.



1 within 30 days of the effective date of this decision a complete set of tariffs, as mod  
2 demonstrating compliance with R14-2-1611.

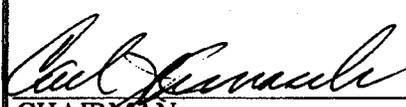
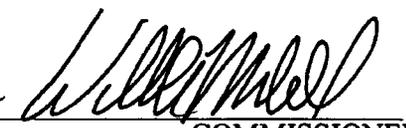
3 IT IS FURTHER ORDERED that Utility.com is not authorized to collect any prepayments or  
4 deposits. If Utility.com desires to initiate such charges, it must establish an escrow account equal to  
5 the amount of any prepayments or deposits.

6 IT IS FURTHER ORDERED that Utility.com is hereby authorized to resell Meter Services  
7 and Meter Reading Services to its customers.

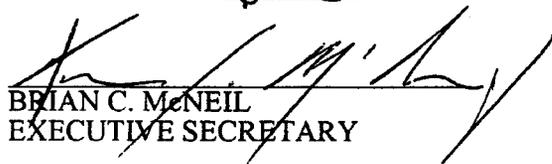
8 IT IS FURTHER ORDERED that Utility.com shall not be authorized to provide Competitive  
9 Services in any certificated area of any Affected Utility until the Certificate of Convenience and  
10 Necessity of the respective Affected Utility has been amended.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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15 CHAIRMAN COMMISSIONER COMMISSIONER  
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17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
18 Secretary of the Arizona Corporation Commission, have  
19 hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this 3rd day of April, 2000.

22   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

23 DISSENT \_\_\_\_\_  
24 SG:bbs

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1 SERVICE LIST FOR: UTILITY.COM  
2 DOCKET NO. E-03778A-99-0513  
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24 Copies also mailed to:  
Electric Competition Service List – Docket No. RE-00000C-94-0165  
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