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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
AZ CORP COMMISSION DOCKETED
DOCUMENT CONTROL

AUG 22 2001

DOCKETED BY *mae*

IN THE MATTER OF THE)
APPLICATION OF NAVOPACHE) **DOCKET NO. E-01787A-01-0063**
ELECTRIC COOPERATIVE, INC., AN)
ARIZONA NON-PROFIT) NAVOPACHE ELECTRIC
CORPORATION FOR A FINDING OF) COOPERATIVE, INC.'S OPPOSITION
FAIR VALUE OF ITS PROPERTIES) TO INTERVENOR TOWN OF
AND A FAIR RATE OF RETURN) SPRINGERVILLE'S MOTION FOR
THEREON, AND FOR APPROVAL OF) EXTENSION
RATES AND CHARGES, AND FOR)
APPROVAL OF CHANGES TO ITS)
POLICY MANUAL)

Navopache Electric Cooperative, Inc. ("Navopache") hereby files its opposition to Intervenor Town of Springerville's Motion for Extension of Time to File Testimony and Associated Exhibits.

THE MOTION IS UNTIMELY AND FAILS TO DEMONSTRATE GOOD CAUSE

On March 3, 2001, a Procedural order was entered governing this matter. Counsel for the Town of Springerville (the "Town") made an appearance in this matter on May 8, 2001 on behalf of another intervenor. Subsequently on June 28, 2001 (the very last day to intervene), the Town moved to intervene.

The Town made its first and only informal request for data (a load curve) on July 18, 2001. Navopache provided the curve on July 23, 2001 and

1 requested all future data requests go through its legal counsel. Two full weeks later,
2 on August 6, 2001,¹ the Town indicated it was “working on a discovery request” that
3 would be submitted to Navopache’s legal counsel “in the near future.” The
4 undersigned responded on the same date confirming Navopache had responded to
5 the Town’s only data request. (Copies of these e-mails are attached as Exhibit “A”.)
6

7 On August 9, 2001, only five working days prior to the deadline for
8 filing its direct testimony, and without making any attempt to discuss the matter with
9 Navopache, the Town filed a Motion for Extension of Time.² The Motion requests
10 45 additional days in which to file testimony and associated exhibits. The sole basis
11 stated for the extension was the Town’s desire “to consider Navopache’s responses
12 to the Discovery request prior to filing its testimony and associated exhibits.”
13 Motion at page 1. However, at the time the Motion was filed, no Discovery request
14 even existed. In fact, Navopache did not receive a Discovery request for another
15 nine calendar days (i.e., August 20, 2001) and five days after testimony was due.
16 Therefore, Navopache’s responses are not due until August 30, 2001 (15 days after
17 testimony was due, and only thirteen days before Navopache’s rebuttal testimony is
18 due).
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22 1 August 6, 2001 was also five weeks after the Town filed for intervention and, more than three months
23 after notice of the rate case was provided to all Navopache’s customers, but just nine calendar days prior
24 to the deadline for filing testimony.

25 2 The Motion indicates Navopache’s general manager was served, but the address was incorrect so the
26 Motion was never received. Further, the Town failed to serve Navopache’s legal counsel, even though
Rule 5(c) of the Arizona Rules of Civil Procedure and Rule 4.2 of the Rules of Professional Conduct
require such communication to be made through legal counsel.

1 The foregoing timeline demonstrates the Town failed to make a good
2 faith effort to pursue discovery and timely file its testimony. The Town makes no
3 attempt to demonstrate how the information sought in this late discovery request was
4 critical to the filing of its testimony. A copy of the Town's 23 data requests (without
5 the 2½ pages of introductory/definitional material) is attached as Exhibit "B". The
6 Town must not be permitted to use the ruse of a belated discovery request to secure
7 additional time to file testimony.
8

9 The present Motion should be treated similarly to a motion to continue
10 under a matter on the inactive calendar under Rule 38.1 of the Arizona Rules of Civil
11 Procedure (formally Rule V of the Uniform Rules of Superior Court) because both
12 the procedural orders governing rate cases and Rule 38.1 are designed "to promote
13 the most expeditious and inexpensive manner of disposing of the matter." *See,*
14 *Hyman v. Arden-Mayfair, Inc.*, 150 Ariz. 444, 449, 724 P.2d 63, 69 (App. 1986)
15 (regarding the policy behind Rule V). In *Hyman*, the Court found that even the
16 Stipulation of the parties and an unopposed Motion to Continue were insufficient to
17 justify continuing a matter where the Plaintiff's failure to return to her physician for a
18 necessary examination was unexplained. The Court reasoned:
19
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21

22 However, we cannot say in any event that plaintiff's own
23 unexplained failure to assist her counsel by obtaining a necessary
24 medical evaluation itself constituted "good cause" for delaying the
25 litigation. Parties to litigation must be made aware they have a
26 responsibility to the court and their counsel to assist in permitting their
litigation to proceed in timely fashion, and be held responsible for

1 doing so. Otherwise, they might frustrate the trial court's efforts to
2 keep litigation current by their own inattention, delay or obstruction.
3 *Id.* (Emphasis added.)

4 Here, the Town has provided no explanation for its failure to timely
5 pursue discovery. A continuance is sought by the Town due solely to the Town's
6 inaction. The Town's own inaction cannot be used by the Town to justify extension
7 of deadlines set by the March 3, 2001 Procedural Order for the benefit of the Town.
8 Granting extensions to remedy a party's own inaction only serves to delay and add
9 cost to the rate proceeding.

10
11 For the reasons set forth above, the Motion for Extension is wholly
12 without merit and should be summarily denied.

13 Respectfully submitted this 22nd day of August, 2001.

14
15 MARTINEZ & CURTIS, P.C.

16
17 

18 William P. Sullivan, Esq.
19 Paul R. Michaud, Esq.
20 2712 North Seventh Street
21 Phoenix, Arizona 85006-1090
22 Attorneys for Navopache
23 Electric Cooperative, Inc.
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**PROOF OF SERVICE AND
CERTIFICATE OF MAILING**

I hereby certify that on this 22nd day of August, 2001, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

With copies of the foregoing hand-delivered this 22nd day of August, 2001 to:

Lyn Farmer, Chief Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Deborah R. Scott, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

With copies of the foregoing mailed this 22nd day of August, 2001 to:

Amy Mignella, Special Counsel
White Mountain Apache Tribe
P.O. Box 64792
Tucson, Arizona 85728-4792

Douglas V. Fant, Esq.
500 West Illinois, Suite 300
Midland, Texas 79701
Attorney for Intervenors,
Centerfire Inns, L.L.C.
and Town of Springerville

Leonard Gold
L.S. Gold and Associates
398 S. Mill Road, Suite 306
Tempe, Arizona 85281

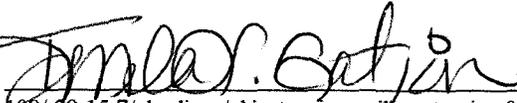

109/-29-15-7/pleadings/object springerville extension.0821.01

EXHIBIT A

William Sullivan

From: William Sullivan
Sent: Monday, August 06, 2001 4:35 PM
To: 'Doug Fant'
Subject: RE: Rate Filing Data

Doug,

Thank you for understanding and cooperating with the request to go through our office. It is my understanding that the 7/23/01 e-mail from Dennis Hughes responded to the only data request you have made to date. If this is incorrect, please notify me immediately.

Sincerely,

William P. Sullivan
Martinez & Curtis, P.C.
2712 N. Seventh Street
Phoenix, AZ. 85006-1090
(602) 248-0372 (Phone)
(602) 266-8290 (Fax)
wsullivan@martinezcurtis.com (e-mail)

-----Original Message-----

From: Doug Fant [mailto:DFant@cbtd.com]
Sent: Monday, August 06, 2001 11:33 AM
To: dhughes@navopache.org
Cc: Paul Michaud; William Sullivan
Subject: Re: Rate Filing Data

Dennis and Bill, Will do. Michael Curtis had called me up and made the offer to contact Navopache directly. However from this point forward I'll route requests through the proper ACC channels so that we do not lose track of documents.

I'm working on a discovery request instead which I'll forward in the near future....

Sincerely,

Doug F.

>>> Dennis Hughes 07/23/01 02:59PM >>>

Dear Mr. Fant,
Attached you will find an Excel spreadsheet which graphs the load curve relationship between NEC and PNM. Following a conversation with our legal counsel, Martinez & Curtis, P.C., I have been advised that all data requests should be routed through their firm as they are NEC's representative in this legal proceeding. Thank you in advance for complying with this request. I'm sure that you can address your requests through the mail or via fax and have included that info for your information.

Martinez & Curtis, P.C.

2712 N. 7th Street
Phoenix, Arizona 85006-1090
602-248-0372 voice telephone
602-266-8290 fax line

Please address any future inquiries to William Sullivan or Paul Michaud
of the
firm.

Thank you for your cooperation and best regards,
Dennis W. Hughes

NOTE FILE NO. 109-29-15-7
XEROX ALL PLEADINGS
COPIES TO MAC PRM, WFS

BEFORE THE ARIZONA CORPORATION COMMISSION

STAMPED DATE 8/28/01
ROUTED TO MAC PRM, WFS
DO NOT FILE UNTIL
ALL ITEMS CHECKED
AND INITIALED DS

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF
NAVOPACHE ELECTRIC COOPERATIVE FOR
A RATE INCREASE

DOCKET NO. E-01787A-01-0063

INTERVENOR, TOWN OF SPRINGVILLE FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: **Navopache Electric Cooperative, Inc.**, by and through its attorney of record, William P. Sullivan, Esq., Martinez & Curtis, P.C.

Pursuant to Rule 14-3-101 of the Arizona Corporation Commission, Intervenor The Town of Springerville by and through its attorney of record, hereby serves these Interrogatories and Request for Production upon Navopache Electric Cooperative (Navopache), the answers to which shall be made in accordance with the rules, under oath, separately and fully in writing, within fourteen (14) days from the service of these Interrogatories and Request for Production. The answers are to be delivered and served upon the attorney of record for Intervenor.

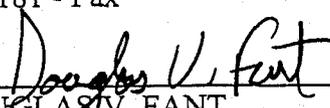
Navopache is hereby notified that the Interrogatories propounded to it in the above entitled and numbered cause, and the answers thereto, may be offered in evidence upon the trial of this cause.

RECEIVED
AUG 20 2001
MARTINEZ & CURTIS

Respectfully submitted, **

Douglas V. Fant
500 West Illinois, Suite 300
P.O. Box 2776
Midland, Texas 79702-2776
(915) 685-8582
(915) 684-3181 - Fax

By: _____

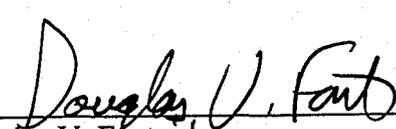

DOUGLAS V. FANT
State Bar No. 005217

ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of August, 2001, a true and correct copy of the above and foregoing instrument has been forwarded via certified mail, return receipt requested to attorney of record:

William P. Sullivan, Esq.
Paul R. Michaud, Esq.
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090


Douglas V. Fant

INTERROGATORIES

1. With respect to Navopache Electric Cooperative ("Navopache") please identify all executives and indicate for each individual their salaries, bonuses, stock or equity account-related options if any, and other forms of compensation for the Years 1998- 2001.

ANSWER:

2. With respect to executives and directors of Navopache please identify for each individual the expenses reimbursed by Navopache such as travel and education expenses for the years 1998-2001

ANSWER:

3. Please identify whether Navopache has implemented any achievement-based contracts ("ABC contracts") for executive or director business performance and whether any sums have been paid under any such contract to any executive or director for the years 1998-2001.

ANSWER:

4. Please indicate across Navopache's business area how customer-requested facility or distribution line expansions are paid for. What percentage of the expansion costs are borne by the customer requesting the expansion? If that figure is not a single rate across the Navopache business area, then please state the percentage range for each customer class and geographic area if the percentage varies on that basis too.

ANSWER:

5. Please state whether the Navopache Articles of Incorporation or By Laws authorize Navopache to retain funds or earnings in excess of the operating expenses. What is the amount of any such funds currently retained by Navopache?

ANSWER:

6. Please state whether Navopache retains funds in any equity account other than those listed in response to Interrogatory No. 5, what those amounts are per account, and what the purpose for retaining the funds is.

ANSWER:

7. Please provide Navopache's average cost of purchased power for the years 1998-2001. Please also provide copies of Navopache's power supply contracts from 1999 to date and indicate whether power has been purchased thereunder.

ANSWER:

8. Please indicate how much of Navopache's annual total purchased power supply has been purchased in spot market transactions for the years 1998-2001. Please indicate the average monthly price for the power for the years 1998-2001. Please also indicate whether Navopache uses any financial hedges or hedge strategies to limit its exposure to spot market power costs.

ANSWER:

9. Please list what specific items go into Navopache's retail rates for various rate classes beyond the purchased power costs, and accounts for the difference between the purchased power costs and the retail rates.

ANSWER:

10. Please indicate what is the demarcation point between transmission and distribution lines in the Navopache system, and how Navopache accounts for the costs of any transmission line expansion. If any expenses have been incurred for the period 1998-2001 in order to add new transmission or upgrade existing transmission lines, the please identify the project, its location, and total cost to date.

ANSWER:

11. Please indicate by geographic region within Navopache's business area total expenses for addition of distribution lines and upgrades of existing lines for each year for the

period 1998-2001. What percentage of total distribution line costs are recovered in each of these business areas?

ANSWER:

12. Please explain the rationale behind Navopache's use of a 6:00 a.m- 9:00 p.m. peak pricing period and whether its actual system-wide power costs vary, on an hourly basis within that period.

ANSWER:

13. Identify each person you have consulted or from whom you have sought expert advice or opinion relating to the subject matter of this proceeding, if such consultant's or expert's work product has been reviewed by an expert you expect to call as a witness, and for each such person, identify the work product, opinion(s) or conclusion(s) which were reviewed, and provide summary of the grounds for each opinion or conclusion.

ANSWER:

14. Identify the person(s) answering these interrogatories, as well as the person(s) assisting in answering these interrogatories.

ANSWER

15. Produce all documents identified by you in your answers to the above Interrogatories, including copies of any ABC contracts.

ANSWER:

16. Please produce all documents provided to any expert witness who may be called to testify at the trial of this case or whose report, conclusion, impression, or finding has been reviewed by an expert who may be called to testify at trial.

ANSWER:

17. Please produce any and all expert reports which have been prepared in connection with this lawsuit and where the expert who prepared them is expected to or may testify in this cause. If there is any expert who has not prepared a report, request is hereby made that one be prepared and furnished to Intervenor with this Request for Production.

ANSWER:

18. Please produce any and all reports which are reviewed, in whole or in part, by any expert you expect to call or may call to testify at the trial of this case.

ANSWER:

19. Please produce any and all work papers, notes, documents, or data base prepared in connection with this lawsuit by or for any expert witness who may be called to testify at the trial of this case or whose report, conclusion, impression, or finding has been reviewed by an expert who may be called to testify at trial, or who may be called to testify at trial.

ANSWER:

20. Please produce the current resume or curriculum vitae of each expert named in your answers to Interrogatories.

ANSWER:

21. Please produce any and all photographs, videotapes, audio tape recordings or other evidence, referring or relating in any way, to the subject matter of this litigation.

ANSWER:

22. Please produce any and all statements or documents that relate to, reflect, or are evidence of reports made by you to any person, entity, or government agency regarding the matters made the basis of this lawsuit.

ANSWER:

