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BEFORE THE ARIZONA CORPORATION CO[illegible]

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF THE ARIZONA ELECTRIC DIVISIN OF CITIZENS COMMUNICATIONS COMPANY TO CHANGE THE CURRENT PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE RATE, TO ESTABLISH A NEW PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE BANK, AND TO REQUEST APPROVED GUIDELINES FOR THE RECOVERY AND COST INCURRED IN CONNECTION WITH ENERGY RISK MANAGEMENT INITIATIVES.	**Docket No. E-01032C-00-0751**
IN THE MATTER OF THE APPLICATION OF CITIZENS COMMUNICATIONS COMPANY, ARIZONA GAS DIVISION, FRO A HEARING TO DETERMINE THE FAIR VALUE OF ITS PROPERTIES FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, AND TO APPROVE RATE SCHEDULES DESIGNED TO PROVIDE SUCH RATE OF RETURN.	**Docket No. G-01032A-02-0598**
IN THE MATTER OF THE JOINT APPLICATION OF CITIZENS COMMUNICATIONS COMPANY AND UNISOURCE ENERGY CORPORATION FOR THE APPROVAL OF THE SALE OF CERTAIN ELECTRIC UTILITY AND GAS UTILITY ASSETS IN ARIZONA, THE TRANSFER OF CERTAIN CERTIFICATES OF CONVENIENCE AND NECESSITY FROM CITIZENS COMMUNICATIONS COMPANY TO UNISOURCE ENERGY CORPORATION, FOR APPROVAL OF THE FINANCING FOR THE TRANSACTIONS AND OTHER RELATED MATERS.	**Docket No. E-01933A-02-0914** **Docket No. E-01032C-02-0914** **Docket No. G-01032A-02-0914** **MARSHALL MAGRUDER** **SUMMARY BRIEF** **May 15, 2003**

This Summary Brief presents my concerns with respect to the actions for these Applications, including Amendments, with primary emphasis on electric service and rates in Santa Cruz County. It is arranged in three parts: Part I – Summary of Issues; Part II – Conclusions; Part III – Recommendations.

Respectfully submitted this 15th day of May 2003.

MARSHALL MAGRUDER

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Summary Brief of Marshall Magruder

May 15, 2003

This brief summarizes these three cases into three parts:

Part I – Summary of the Issues

Part II – Conclusions

Part III – Recommendations

Part I – Summary of the Issues

1.1 Purchase Power and Fuel Adjustment Clause (PPFAC) Case Issues.

As the filed and actual Testimony indicated, this case has three parts. None adjudicated to date, with probable serious future implications.

The first issue involves the "Old" Arizona Public Service (APS), now Pinnacle West Capital Corporation (PWCC)[1], wholesale electricity purchase power Agreement ("Old Agreement") with the Citizens Utilities (now Citizens Communications) Company. An unresolved billing dispute between Citizens and PWCC started prior to 1999 and continued for the summer of 2000 energy crises. This caused abnormally high charges to be levied by PWCC for Citizens' purchased power. These billings were "paid under protest," declared as "excessive charges" in multiple Citizens' testimonies, news releases and Security and Exchange Commission (SEC) filings,[2] and were the cause of the September 2000 original PPFAC Case Application. Citizens' proposed to solve this dispute with PWCC with a detailed cost analysis for PWCC's "excessive" charges. These have been claimed to exceed $87 million by this summer. PWCC refused to participate with Citizens in this analysis. The result of this dispute was to negotiate a New Agreement.[3]

The second issue concerns Arizona Corporation Commission approval of this New Agreement, signed on 15 July 2000, retroactive to billings from 1 June 2000. This agreement provided seven years of stable prices based on a fixed wholesale price of $58.79 per MW-hr. This resulted in a proposed 22%

[1] Throughout this Summary Brief, PWCC will be use to include APS. APS signed the Old Agreement but transferred it to PWCC prior to the summer of 2000. During various PWCC and Citizens correspondence, this electric contract was described as the largest single wholesale contract in Arizona (but has not been verified).

[2] See Magruder Testimony, dated 27 April 2003, Exhibit B-1. NB. My testimony is in Attachments A and B of my letter of that date, with Attachment A being referred to as "Magruder Testimony" and Attachment B as "Errata to Magruder Testimony" herein. During Evidentiary Hearings on 5 May 2003, some Testimony Corrections were proposed and accepted.

[3] Filed with Citizens Amended Application on 19 September 2001, as Exhibit 2, known as PWCC "Market-Based Rate Tariff, Service Agreement, Schedule FERC No. 4," issued on 16 July 2001, effective 1 June 2001.

average residential rate increase, with large businesses increasing over 31%. According to UniSource, the Arizona wholesale electricity futures are in the $32 to $37 range for 2004 and 2005 time frame.[4] UniSource testimony indicated an additional 10 to 15% should be added to account for additional bulk wholesale to full-service charges.[5] The proposed $58.79 rate should also be considered as excessive, while a $35 to 40 is fair and reasonable.

Citizens' never has "markup" purchase power and such a precedent should not be set for a distribution utility. If the Commission authorized UniSource to pay PWCC, within this range, for purchased power,[6] then the only company being impacted by lower rates would be PWCC. PWCC has never appeared before these hearings. PWCC is the primary cause for the Old Agreement issues. The only beneficiary of the excessive charges under the New Agreement is PWCC.

The ratepayers are not usually responsible for unwise or imprudent management decisions as the shareholders usually have that responsibility.[7]

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[4] See Magruder Testimony at 18(16) through 24(16) with Table 6 at 22(8) containing a summary of local wholesale electric rates. To easily compare with the New Agreement, the "year around the clock" values account for both firm on-peak and off-peak rates. Firm on-peak rates are the highest bulk electric rate. Off-peak rates, which are also discussed in the above Testimony, account for about half of the "all around" time, with lower demands, and lower than the on-peak rates. For a full-service contract, all demands will be for firm, uninterrupted delivery; so non-firm rates were not considered. See UniSource response to Magruder Data Request MM-5.31 for $37.00 for "around the clock" futures for the 2004-2005 timeframe used by TEP
These Hearings Transcripts (TR) are in three volumes for 1, 2 and 5 May 2003, respectively. TR consecutively numbered pages, hereafter "TR" at "page(lines)" are used for reference purposes.
The DeConcini Testimony at 4(18) to 5(18) discussed a series of California bulk-rate contracts, summarized in a table. Details of these four factors were not proven in TR at 150(13) to 154(19), in addition, in later testimony, his testimony at TR (__) indicated that these four examples were not deemed relevant to our situation. The dates for the first three where during the Stage One Alerts and rolling blackouts in California, the last three were 'on-peak' which omitted the "all-around" cost lowering impacts of using off-peak for over 50% of the time each week. None were quotes for July 2001, when overall rates nearly were half those two months earlier. This analysis failed to prove anything. Mr. DeConcini failed to mention about 30% of Arizona's electricity comes from Palo Verde, where last year's "around the clock" production costs are about $12.80, the 300 MW power plant all appears high; however, a rebuttal was not possible. This testimony was received the evening before delivery.

[5] See these Hearings Transcripts Mr. Michael DeConcini (UniSource Senior VP of Investments and Planning, TEP COO of Energy Resources), Joint Applicants Exhibit JA-9, hereafter "DeConcini Testimony" of 28 April 2003, at 3 (7-20). The four factors he listed are:
(1) Firm Capacity and Energy;
(2) Network Transmission charges;
(3) Transmission losses; and
(4) Ancillary services.
The first is covered by Firm "year around" rates plus experience to manage load, a PWCC core competency. The second and third are 4.95% for WAPA and 10.96% for transmission losses and <u>have already been added to (1)</u> the Firm charges (Joint Application Appendix C). The fourth is minor, a fixed basic charge, and is a general rate issue and is not a PPFAC factor. Thus, the DeConcini estimate of an additional 10 to 15% to cover demand risk management could reasonable (although PWCC experience level in Arizona and with Citizens for over three decades should be considerably lower than that estimate). This party used Fifteen percent.

[6] See A.R. S. §40-203, quoted in Magruder Testimony at 23(footnote 45) clearly gives ratemaking authority to this Commission.

[7] See Magruder Testimony, Section 5(all), at 15(18) through 18(6).

The third issue concern implementation the proposed "risk management" initiatives, to prevent such charges occurring in the future and to help ratepayers avoid such high charges.

1.2 Results from the three PPFAC Case issues:

The first issue led to the following results:

a. Citizens filed to stop a prior rebate to ratepayers due to earlier PWCC overcharges.
b. Citizens attempted to analyze the reasons for overcharges by PWCC.
c. PWCC indicated it would "vigorously" oppose any attempt by Citizens to resolve.
d. Citizens prepared draft filings to litigate at the Federal Energy Regulatory Commission (FERC).
e. Citizens letter of 27 April 2001 to PWCC resulted in a proposal to "settle"
f. Citizens assumed uncollected, under-recovered charges, with interest, from the Old Agreement would be collected, using the PPFAC Bank process, from ratepayers.[9]
g. Citizens reported in its quarterly SEC reports that it was "allowed to recover these charges form ratepayers through the Purchase Power and Fuel Adjustment clause... with interest."[10]
h. Citizens requested $87 million for "under-collected" PPFAC bank balance.[11]
i. Citizens "settled" this billing dispute with PWCC with a New Agreement.

The second issue led to the following results:

a. Citizens signing a seven-year fixed price power purchase "New Agreement" with PPWC on 15 July 2001 that expires on 31 May 2008.
b. The New Agreement increased the base charge from $48.02 to $58.79 per MW/hr [12] that has resulted in about $50 million in possible unrecovered purchase power costs since 1 June 2001.[13]

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[8] In Article 4 of the New Agreement, the buyer is required to maintain various credit ratings. Tucson Electric does not meet this minimum, thus creditworthiness is a major reason for the complex financial and organizational arrangements in the proposed Settlement Agreement. Article 5 of the New Agreement discusses default and remedies for not meeting creditworthiness minimums in Article 4.

[9] See Citizens original (Sept. 2000) and revised (Sept. 2001) Applications for Case E-01032C-00-0751.

[10] See Magruder Testimony Exhibit B-1 (entire). Citizens Amended Application at 12(11-12) requested "implementation of a monthly accrual of carrying charges on the accumulated bank balance at a six percent interest rate."

[11] See Citizens Amended Application (19 Sep. 2001) at 12(10-11).

[12] See Mr. Jason Gellman, ACC Staff comments in TR at 43(7), where he erred in stating the old base rate (minus WAPA transmission) was $58.79 (5.8¢ per kW-hr) and again in TR at 151 (19). He did use the correct rate at 164(19). The old base rate minus WAPA transmission of $48.02 (4.8¢ per kW-hr) is contained in Appendix C to the Joint Application in this case. Both DeConcini and Gellman seem to forget that this contract is for the remaining five years, and hourly, daily, monthly and even annual spikes get leveled out. For example, see Gellman/DeConcini discussion in TR at 152(3) to 154(14) avoid decades of customer data are available to PWCC to manage these four factors in DeConcini 's Testimony at 3(8-19) which amount to approximately an increase of 15% over Palo Verde Dow Jones Index ("PVDJI"). Thus, the difference between PVDJI and "full service" is about 15%. Thus, if PVDJI was $27.00 for "all year" (2002) as quoted on 8 February 2003 by Mr.

c. Citizens to continue to receive "full service" at $58.79 per MW/hr from PWCC.

d. During the New Agreement negotiations between Citizens and PWCC, the California 2000-2001 energy market was described as "dysfunctional" by RUCO[14] and wide-spread manipulated during this period by FERC in recent decisions and orders on 27 March 2003.[15]

e. The minimum New Agreement creditworthiness financial and operational consequences were not evaluated by the ACC Staff not considered in the proposed Settlement Agreement.

f. The New Agreement is now before this Commission, for approval, as part of these cases.

The third issue has lead to abandonment of any risk management measures that could positively impact the utility company's shareholder or its customer ratepayers.[16]

1.3 Unintended Consequences of the PPFAC Case:

a. On 28 April 2002, Citizens agreed to being purchased by UniSource at about 60% of its book value. Mr. Pignatelli described this as "a fire sale."[17]

b. Under a proposed Settlement Agreement ("SA") for these combined cases, Citizens loses all rights to recover what was paid as disputed charges to PWCC under the Old Agreement[18] and forfeits all future rights to collect any refunds from PWCC under the New Agreement.[19]

c. UniSource's proposal to purchase Citizens Arizona assets will have the right to pursue refunds or rebates from PWCC, which makes this purchase price considerably lower what it is paying for these assets.

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is for the remaining five years, and hourly, daily, monthly and even annual spikes get leveled out. For example, see Gellman/DeConcini discussion in TR at 152(3) to 154(14) avoid decades of customer data are available to PWCC to manage these four factors in DeConcini 's Testimony at 3(8-19) which amount to approximately an increase of 15% over Palo Verde Dow Jones Index ("PVDJI"). Thus, the difference between PVDJI and "full service" is about 15%. Thus, the PVDJI was $27.00 for "all year" (2002) as quoted on 8 February 2003 by Mr. Pignatelli and in the UniSource Fourth Quarter SEC Form 10-Q. This 15% increase is about $4.05 over $27.00 or $31.05 for long-term 2002 billings and refutes Mr. Pignatelli in TR at 81(7-8) "you could not buy this for $35 a megawatt hour in the marketplace." A markup rate of $31.05 is considerably less than $58.79 and fails to be fair and reasonable.

13 Many testified to that number. For example, see Citizens Revised Application of 19 Sept. 2001 at 12(11).

14 See Ms. Cortez Diaz Testimony at 2(20) to 3(2) which stated "Due to the dysfunctional electric markets during 2000 to 2001 time frame that drove the cost of power to unprecedented highs, Citizens electric division has accrued a liability of approximately $138 million in unrecovered power costs" and at 11(4-9).

15 See www.ferc.gov under "Western Markets."

16 The proposed Settlement Agreement fails to meet the first three mitigation measures in the Citizens Amended PPFAC Application of 19 September 2001 at 3(6 to 13). The other mediation measure is a 'new power supply contract with APS.'

17 Considered "highly unusual" by Ms. Lee Smith, ACC Staff Expert Witness on 2 May 2003.

18 Mr. DeConcini testimony TR 136(19) and later indicated that neither he nor UniSource had analyzed the Old Agreement. He implied that he had not even read the Old Agreement.

19 See SA, at 15(¶27, last sentence).

d. UniSource, in confidential spreadsheets,[20] is taking a $93 million charge for less than book value.[21] It has declared this as Goodwill to amortize over 37 years. This favorably impact ratepayers during future rate cases. More importantly, this impacts the UniSource "bottom line" for this entire transaction with lower taxes. At present, Citizens pays largest property tax bill in Santa Cruz County. Any reduction significantly impacts public schools, fire districts and county government.

e. Citizen' lost $93 million in book value and is not eligible to reclaim any of the $87 million (Old Contract) nor $50 million (New Contract) from PWCC, to whom they dutifully paid their bills "under protest."[22] Mr. Walter Meet, Arizona Utility Investor Association testified that Citizens shareholders lost about $250 million in the proposed Settlement Agreement.

f. UniSource will <u>increase</u> average electric rates 22% in the proposed SA to meet the new base rate of $58.79/MW-hr in the New Agreement. As Magruder Exhibit One shows, the three other major Arizona utilities (APS, SRP, TEP) have <u>reduced</u> overall rates between 3.1% and 5.6% since 1998. They are frozen until 2004.[23] <u>UniSource, in the proposed SA, will be the only major utility raising retail rates since 1998.</u>

g. The SA failed to propose any measures previously proposed by Citizens to mitigate the impacts of these rate increases on the customer base, in particular the commercial and industrial rate categories, which have higher rates than residential customers, due additional "demand" charges. The public comments confirmed these negative impacts on business, growth and overall economic development.[24]

h. UniSource's response to RUCO's request for increasing demand side management (DSM) was not reflected in the SA as some future ACC meeting may be held related to that subject. That means NO mitigation action(s) can occur for at least three years during a general "rate moratorium" to mitigate the impacts of the requested and imminent rate increases.[25]

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[20] See UniSource response to ACC Staff Data Request JMR 1-42 (November 2002 and ver. 25 of April 2003).

[21] See SA, Appendix B, Schedule 4, line 3, for Adjustment for Purchase, ($93,624,000).

[22] See Magruder Testimony, Exhibit B-1 (all).

[23] See public comments by Mr. Roy Dunton, Kingman, in TR at 58(9-12). He adds Mohave Electric to reducing costs. "Citizens was asking for the 41 to 45 and a half percent increase."

[24] See public comments by Mr. Donald Van Bryant, Mohave County Economic Development Director (retired), in TR at 54 where he compares Citizens residential, commercial and industrial rates to other options. For example he showed for industrial rates, 10.6 ¢/kW-hr for Citizens versus 5.85, 5.81, and 6.21 ¢/kW-hr for TEP, Mohave Rural Cooperative, and TEP, respectively. Mr. Bryant indicated that the "demand rate nearly equals their use rate' at TR 55(1-3). These high electricity non-residential rates, as quoted in Nogales Mayor Carlos Lopez letter to the Commission, have prevented significant enterprises from relocating in that city and will significantly impact the present economic situation.

[25] Mr. Glaser's Rebuttal Testimony of 28 April 2003 disagreed with the RUCO goals for DSM at 2(4-5) and considered RUCO's goals as unreasonable at 2(7-6). He further deviates from the issue by discussing renewable energy sources and the Environmental Portfolio Standard (EPS). These are different subjects. Citizens customers are already paying EPS charges, so SA at 14 (¶14) adds nothing. If achieving goals higher

i. Future rate increases due to the proposed backup transmission line may result in at least another 40% rate increase in Santa Cruz County.[26] This is not an issue today, but it is a significant known, planned, and expected rate increase to "former Citizens" customers, in all probability, just in Santa Cruz County.

1.4 Proposed Settlement Agreement Issues.

No parties to these hearings, other than the Joint Applicants and the ACC Staff, have signed the proposed SA. Each of the other parties does not agree with one or more of the conditions in the proposed SA. The following are open issues, other than additional hearings discussed in 1.3 above:

a. It was unfortunate the other parties to these proceedings were not invited to participate in the analysis, drafting or actively participate after some initial meetings in January 2003. As RUCO testified, the group dynamics of participation, situational understanding, and "group buy-in" were missed in this process. All agree some parts are acceptable; however, individual clauses need to be improved to satisfy these concerns. My Testimony contained 10 pages[27] of proposed changes, some minor, others significant.
b. My draft conditions to Staff and Joint Applicants effectively ignored the resultant SA conditions. In particular, no emphasis on the third PPFAC issue, reducing risk and impacts on customers are in the proposed SA. These are the basis of many conclusions and recommendations.[28]

Part II – Conclusions

2.1 Purchase Power and Fuel Adjustment Clause (PPFAC) Case Conclusions.

The following are conclusions from testimony in these proceedings:

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than the EPS 0.2% per year were proposed, that would be significant. I did recommend much earlier in these proceedings to exceed EPS by 0.5%. See SA at 19(¶39) for Rate Moratorium details that have several general exceptions to earlier filing of a new general electric or gas rate case.

[26] There will be at least two more future rate hearings to add the transmission line charges, one for PPFAC for "wheeling" charges, which my Testimony Corrections indicated would be an increase of 19.4% or $9.44 per customer per month ($1.7 million per year). Mr. Pignatelli stated the capital costs of these lines would also be "absorbed" on the Citizens ratepayers in the next general rate case at TR 90(17-21) at about $2 to $3 million per year, or about $11 to $17 per year or between $20 and $26 per year per customer in Santa Cruz County. This is over a 40% rate increase for backup power, used, on an average, of 2.04 hours per year. These calculations assume none of these increases are to be passed on to the Mohave County electric customers. In addition, UniSource has testified that hearings will be held soon to discuss TEP's failure to meet the mandated 31 December 2003 operational date for these backup transmission lines. These hearing will need to discuss the overruns by at least $9 million and the ratepayer distribution plans for rebates of the ACC imposed $30,000 per month penalties for not meeting the 31 December 2003 date.

[27] See Magruder Testimony Table 5 at 33 to 42.

[28] See Magruder Testimony, Exhibit B-2 for proposed settlement conditions, Exhibit B-3 for the Applicants response, and Exhibit B-4 for my initial (overnight) comments on the SA (called Data Request Six), and Exhibit B-5 for the Applicant's response to Data Request Six.

a. PWCC has not been cited, summoned, or approached to show rationale, to explain, or to repay any of the disputed "excessive" charges to Citizens under the Old or New Agreements.

b. UniSource will never be able to collect from PWCC the disputed purchase power billings.[29]

c. UniSource can achieve greater financial benefits in the purchase than low book value as any possible refunds from PWCC for the period before closing will go only to UniSource.

d. Future PPFAC costs, about $9.44 per customer, are anticipated in the next PPFAC hearing for the proposed backup transmission lines plus another $11 to $17 per customer in Santa Cruz County in the next general rate case.[30]

e. UniSource failed to prove that a new base rate of $58.79 was both fair and reasonable.

2.2 <u>Proposed Settlement Agreement Conclusions.</u>

Based on the proposed Settlement Agreement (SA):

a. The SA failed to reach closure on all three PPFAC Case issues (PPFAC balance is unknown, New Agreement rates to be negotiated, no proposed risk management initiatives).

b. An overall electric rate <u>increase</u> of 22% is proposed. An equivalent rate <u>decrease</u> of about that magnitude is fair and reasonable based a long-term electric contract.

c. No rate or risk mitigation measures are included. The original and amended PPFAC applications requested these to benefit the utility and ratepayers.

d. DSM is ignored along with demand load shifting, conservation, efficiency and other established TEP programs, such as TEP's Guaranteed Home, solar product discounts, and Green Watt choices by customers. Another hearing will be necessary to implement these.

e. "Opening to competition" while undergoing the expected merger and acquisition changes anticipated during the early days of this acquisition appear poorly timed. Experience has shown both management and major policy changes simultaneously increase customer resistance to change.[31]

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[29] See TR for questions by the presiding ALJ Nodes question in TR at 208(20-25) who asked, "I've heard you say that you believe it's a reasonable agreement, that it's fully justified. How then can you expect APS would be willing to renegotiate that contract, given your position that it is a reasonable agreement?" Since UniSource repeatedly testified this strategy that the New Agreement is the "best" possible under the SA, how can UniSource use these proceedings to negotiate a lower rate? Has UniSource already conceded lowering rates cannot be an outcome? This acceptance strategy from which UniSource should make nothing on a "pass through" (other than a "fee") is very detrimental for its future customers and ratepayers.

[30] See Testimony by Mr. Pignatelli response to Santa Cruz County attorney, Ms. Holly Hawn's question in TR at 90(17-21), "my recollection is that that portion of the line was something on the order of $20 million. The revenue requirement on $20 million would be 2 or $3 million a year."

[31] Open competition will add additional instability in these Citizens areas for the new management team to implement changes for UniSource practices, policies, and procedures, and to implement these competitive changes that have not been proved successful elsewhere.

f. The SA will split rate reduction savings between UniSource (40%) and ratepayers (60%),[32] considered "windfall profits" by RUCO's testimony.[33] This is precedent setting request by UniSource. Purchase power has always been "passed-through" with **no profit** to this distribution utility. This action will surprise to ratepayers.

2.3 Additional Actions required to Conclude Remaining Open Issues from these Cases.

Mr. Pignatelli testified he wanted the SA to "tie up" all the lose ends with the joint Settlement Agreement or he would "walk away" from this deal. The following remain as future hearings that will be necessary to determine:

Mr. Pignatelli testified that he wanted the SA to "close up" all the lose ends in the Settlement Agreement. The following require future hearings and/or cased will be necessary.

a. Wheeling charges for backup transmission line – a PPFAC issue (next case after 31 May 2008).[34]
b. Capital costs for the backup transmission line – General rate case (at least 3 years).[35]
c. Report on status of the backup transmission line – to explain lack of progress, to determine how to rebate the TEP penalty of $30,000 per month to ratepayers, and to achieve the "no change" conditions in the Transmission Line ACC Order.
d. Additional DSM, "TEP's" Guaranteed Home, solar product discounts, and Green Watt program options for customers. – Special hearing or general rate case (at least three years after closing).[36]
e. Deregulation hearings, based on a forthcoming "feasibility study"[37] to commence prior to 31 December 2004 – special hearing for the 120-day feasibility study.[38]
f. Consolidation of TEP and Santa Cruz County assets to cover the "two county" rule – special hearing and general rate case.[39]

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32 See SA at 15 and 16(¶28).
33 See Ms. Diaz Cortez, RUCO Testimony of 21 April 2003, at 10(13-15) and 10(17) to 11(2).
34 PPFAC charges are fixed under the proposed PWCC "new" Agreement until 31 May 2008, thus no new PPFAC cases until after this "fixed" price contract expires or is changed with PWCC. Since this could be for internal UniSource "wheeling" charges, resolution may not be possible until then.
35 See SA at 19 (¶39).
36 This prevents these actions from impacting today's customers. As Mr. Pignatelli testimony TR at 112(3-12) "we will look into these programs." However, additional hearings in the future will be necessary to implement.
37 Since the SA firmly establishes deregulation to begin by 31 December 2004, then more than a "feasibility" study is necessary. An Implementation Plan title would be more appropriate.
38 As presently worded in SA at 4 ¶(e) and ¶(f) and at 8 and 9 (¶11 and ¶12), there are no alternatives other than implementation.

g. Possible reductions in PPFAC charges by PWCC – a PPFAC issue.[40]

h. Nogales franchise or condemnation proceeding – a special hearing to transfer those Cans.[41]

Part III – Recommendations

The following are recommended to resolve issues in these cases:

3.1 Recommendations to close the PPFAC Case. Based on the three issues, the following are recommended:

a. To resolve the Old Contract issues concerning PPFAC bank balance reconciliation:

(1) UniSource and Citizens shall agree that the ratepayers are not to be considered for reimbursement of these charges.

(2) UniSource shall not be permitted to take "goodwill" or get other accounting credits for Citizens expenses.

(3) UniSource cease claiming to "forfeit" the disputed billings. UniSource paid none of it.

(4) Citizens shall be permitted to recover from PWCC these charges.

(5) The PPFAC bank balance shall be zero on the closing date of the sale between Citizens and UniSource.

b. To resolve the New Contract issues concerning purchased power price:

(1) UniSource shall have a signed agreement with PWCC or another supplier prior to closing these proceedings for not more than $35.00 per megawatt-hour. If this level can not be met, incentives shall be included that will benefit consumers by lowering rates through

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[39] See SA at 9, ¶13. Mr. Pignatelli testimony TR at 100(20) to 10218), confirmed that many challenges exist to fully meet is vision of one vertically-integrated company, in particular at 102(6-9) "at some point in time, if we could get away from two-county financing, I could see them integrated." Most, including myself, would want to see a fully vertically integrated company; however, he continued at 102(11-18) to state that the rates will be different higher for present Citizens customers. "... frankly, whether we like it or not, it costs more to serve rural and sparsely populated areas. So even if we encompassed all of these under one company, even if Citizens was part of TEP as opposed to being separated, rates would have to be based on cost of service studies which reflected the differential in costs associated with serving different publics."

[40] Mr. Glaser, TEP's COO, said that he would bring any savings to the Commission for rapid adjudication.

[41] The SA, at 7 to 8, ¶8 and ¶9, requires copies of franchises to be provided to the Commission within 365 days of closing. Franchise agreements are readily available and should be reviewed as part of the overall picture. Further, any such requirement after closing loses both importance and action. This issue must be resolved to meet Santa Cruz County's comprehensive planning, overall economic development goals and to assure contractors that power and natural gas infrastructure will be available, adequate, and reliable to meet their clients needs.

efficiency measures (issue "c" below), to a maximum cost to UniSource of no more than $40.00 per MW-hr. Energy losses are not included in these wholesale base cost values.

(2) Any resultant agreement shall meet b(1) above effective on the closing date.

(3) There shall be a franchise agreement accepted by the City of Nogales City Council prepared for voters before closing.

c. To make meaningful reductions of customer expenses, a concerted effort by UniSource shall be added to the Settlement Agreement to reduce cost risk:

(1) A significant demand side management (DSM) program shall be developed and implemented so ratepayer electricity demands shown in table 1 below.

Table 1 – Demand Side Management Goals for Electric and Gas Customers.

By the month after closing	UniSource (former Citizens) Customers Electrical demand reduction (kw/customer) for each classification)
End of the 12th month	5 percent
End of the 48th month	10 percent
By the month after closing	**UniSource (former Citizens) Customers Gas demand reduction (therms/customer) for each classification)**
End of the 48th month	5 percent

Failure to meet these demand reduction goals, measured as "average per customer for each customer category," shall result in lower electric and/or gas utility rates by the exact same percentage as these DSM goals are missed in each customer category. This will continue with changes recorded and rates changed per month, after the months shown in the table.

(2) Exceeding these goals, by customer category, shall be shared 50/50 between UniSource and customers. For example, by the end of 48 months, electric demand savings have been reduced by an average of 14.2% per residential category customer. This would result in a 2.1% increase in "rates" per residential customer; however, the customer's demand was reduced by 14.2% so the average customer will experience an overall 12.1% reduction in overall energy charges. In this example, ElecCo receives a 2.1% automatic rate increase. This could also be computed on a monthly basis to make it dynamic. Note, there are no increases for UniSource unless the goals in c(1) above are exceeded.

(3) Renewable energy programs shall be implemented by UniSource in these Citizens service areas, including permission to engage in selling solar water and space heating devices. UniSource will support counties that adapt solar water heating ordinances and shall meet goals listed in the table 2 below.

Table 2 – Solar Hot Water Heating Goals.

By the month after closing	UniSource (former Citizens) Customers with solar hot water heaters
End of the 12th month	1 percent
End of the 36th month	3 percent
End of the 48th month	6 percent
End of the 60th month	10 percent

Half of the energy savings under this condition c(3) may be used for DSM credit in c(1). This would provide 0.5%, 1.5%, 3.0%, and 5.0% from this condition to supplement to achieve to required DSM goals and also be used for the "bonus discussed in c(2).

(4) UniSource shall propose additional energy efficiency programs, preferably same as with TEP to add economy of scale in a revision to the proposed SA.

(5) These programs shall implement a feedback mechanism so customers, in all rate categories, can actively participate in making recommendations and suggesting changes necessary to achieve these modest goals. A group of not less than ten ratepayers in Mohave and Santa Cruz Counties shall monitor these programs and provide a written Attachment to each Semi-Annual DSM report submitted by UniSource. This shall describe how public interaction is progressing and to provide public feedback, lessons learned, and ideas to the ACC staff and for Docket Control, so that aggressive programs can be aggressively implemented statewide. UniSource shall provide meeting facilities, administrative support, including their review of related flyer in monthly billings, when this group so recommends.

3.2 Reimbursement Recommendations:

Ratepayer reimbursements are recommended as following:

(1) All disputed purchase power fuel costs under the Old Agreement – Zero[42]

(2) For non-disputed purchase power fuel costs (PPFAC) under the Old Agreement – after a judgment from a third party, a future hearing should adjudicate "fair and reasonable."[43]

(3) For interest on disputed PPFAC Bank loan costs (Citizens requested 6%) under the Old Agreement – None, same as discussed in the above footnote.

(4) For increases in rates from the New PPFAC Agreement – to a value equal to the Old Agreement ($48.02) rate to closing, e.g., no change for Citizens and for ratepayers.[44]

[42] See Magruder Testimony, Table 1, at 16 to 18, for a listing of at least 19 imprudent decisions made by Citizens top management that involves various issues in the PPFAC case. The proposed SA at 3 at ¶(a), states "regardless of the actual amount of the PPFAC balance that exists at the time of closing of the purchase..." indicates that this value needs additional analysis, discussion, and judgment to determine.

[43] The Western Area Power Agreement (WAPA) rate increase is not included.

[44] That rate, $48.02, is what is presently being used for billing ratepayers.

(5) For the WAPA rate increase – as requested, with Citizens being reimbursed.[45]

6) For risk management programs – based on present DSM information, zero; however, incentives above should permit both a win-win situation for UniSource and ratepayers.

3.3 Additional Recommendations.

a. If UniSource receives a reduction in wholesale costs from PWCC, that all such savings shall be passed directly to the ratepayers. As an incentive for UniSource, a negotiation fee, equal to 40% of the first six months of savings, shall be provided to UniSource on a monthly basis, and 60% applied to lower0for those months. Afterward, 100% of the savings shall be passed through to the ratepayers. Based on this formula and pre-determined process, only a review by the Commissioners of this clause shall be necessary; however, if more than just changing the value of $58.79 to a lower number, then an application shall be submitted for administrative law judge review, who is not restricted from calling for hearings. This process should be completed within 30 days of achieving an agreed lower wholesale cost by passing on lower rates to customers.

b. Any accounting for "under recovered" charges will require detailed proof, since no recovery from ratepayers can be made without an audited balance. No retail ratepayer recovery could be started until an independent third party has determined the amount to be recovered to solve the billing dispute.[46]

c. Valencia turbines, in Nogales, should be free to be used by UniSource however it pleases. The New Agreement has some restrictions.[47]

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[45] No party has challenged the Western Area Power Agreement (WAPA) rate increase of $0.44 per MW/hr during these hearings. This WAPA charge should be reimbursed to Citizens.

[46] See Magruder Testimony at 5(16) to 9(9), for various dispute resolution options that could be used to resolve the dispute. Changing the New Agreement will require a usual review by FERC.

[47] See Magruder Testimony at 24(18) to 26(3).

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