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Arizona Corporation Commission
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Arizona Corporation Commissioners
1200 W. Washington Street
Phoenix, AZ 85007

Re: Docket # E-01032c-00-0071, et al.

Dear Sirs,

I have carefully reviewed the Staff Report and the Proposed Settlement Agreement. I feel the Staff Report should have been received by the interveners and the public before being heard by the Commissioners.

The following are my comments on the Staff Report and the summary of the changes I see needed to properly protect the ratepayers of Mohave County, and allow economic development.

On page 2, staff says on lines 14 thru 18:

**" By far, the single most significant benefit is the "forgiveness" or permanent write down of the "under-recovered" purchased power costs included within the AED's PPFAC bank balance at the time of the closing of the asset purchase transaction. The current balance is $124.0 million and rising. It is estimated to reach at least $135 million by July 28, 2003. The forgiveness of this amount by UniSource saves the AED's residential customers approximately $12 per month."**

This assumes that the ACC would have found the ratepayers instead of Citizens and its shareholders liable for the $135 million. Why?

On page 2 lines o\20 thru 23 and page 3 lines 1 thru 3:

**"The Settlement Agreement also includes a provision whereby the ratepayers will benefit immediately if UniSource is able to renegotiate its purchased power contract with Pinnacle West Energy. Pursuant to the agreement, 60 percent of the savings from the renegotiated contract will flow through to the ratepayers. In contrast, because Tucson Electric Power Company and Arizona public Service Company do not currently have a purchased power or fuel adjustor mechanism in place, they are able to keep any savings from renegotiated power and fuel contracts. Their customers would only receive such a benefit after a full rate case."**

If Citizens pass thru agreement is to stay in effect, how can UniSource keep 40% of electrical power cost. What kind of precedence would it establish?

On page 3 lines 21 thru linc 4, page 4:

**"Electric competition remains at the forefront of Arizona's regulatory issues. The Settlement Agreement contains a provision whereby within four months of approval of the agreement, UniSource will file a plan to open the AED's service territory to retail electric competition by December 31, 2004. The Agreement, then, requires actions on the part of UniSource that may accelerate the timing of the implementation of retail competition in the AEC territory. Electric competition could be especially of great benefit to the Cities Of Nogales and Kingman in reducing the cost of electricity for their citizens."**

With no stranded cost to figure and citizens having already been obligated to retail competition, why can't this date be moved to December 31, 2003. Commercial and industrial expansion and growth are already at a standstill in Mohave County due to high electrical costs.

On page 4 lines 6 thru 11:

**"Also related to the acceleration of electric competition in the AED territory, the issue of stranded generation costs was addressed by the Settlement Agreement. Approval of the agreement will eliminate the time and expense of the separate proceeding. Pursuant Settlement Agreement, UniSource to permanently forego recovery of any potential stranded generation costs. It is doubtful that a separate proceeding could result in a more favorable result for the ratepayers."**

Citizens has repeatedly said they have no stranded costs, stranded costs elsewhere affect Mohave County, if so why?

On page 4, lines 13 thru 22;

**"The Sale of Citizens Arizona Gas and Arizona Electric Division Assets UniSource. The current purchase agreement to sell the AED to UniSource is not the first purchase agreement entered into by Citizens to sell those assets. In May 2000, Citizens applied for approval to sell the AED assets to Cap Rock Energy Corporation, a Texas-based electric cooperative. The sales price in the transaction was $210.0 million while the book value of the assets was $163.0 million resulting in an acquisition premium of $47 million. The current purchase price offered by UniSource is $92 million while book value is $187 million resulting in an acquisition discount of $93.8 million including the effect of transaction costs. It is reasonable to assume that if Cap rock had consummated the purchase, there would have been efforts to recover the acquisition premium."**

If a "premium" of $47 million" made it reasonable to assume a higher cost to the rate payers had Cap Rock purchased Citizens, why then isn't it reasonable to expect a rate payers reduction, due to the "discount "of $93 million being proposed by UniSource.

On page 5, lines 6 thru 9:

**"The proposed UniSource/Citizens transaction contrasts favorably with the Citizens Cap Rock transaction. Had the commission approved the Cap Rock transaction, a financial burden may have eventually been placed on the AED's rate payers related to CAP Rock's high financing costs and large acquisition premium."**

Again, staff recognizes the burden that may have been placed on rate payers by Cap Rock proposed $47 million premium but don't consider a reduction for ratepayers due to discount of $93.8 million.

On page 10 lines 7 thru 14:

**"Summary of Citizens' August 2002 Base Rate Application. During the 1990's, Citizens filed several rate applications with the ACC to increase retail electric and gas rates. Citizens' rate requests could be broadly characterized as "aggressive." Typically proposing a significant larger increase than ultimately proved to be justified. In fact, through much of the 1990s,**

**Citizens obtained through negotiation settlements or ACC orders in contested case, increases that represented a relatively small fraction of various initial Citizens requests. Utilizing such historical Citizens rate cases results as a benchmark, the settlement rates being recommended herein may, at first glance, appear "excessive."**

In light of this paragraph how can staff keep referring to rates and ACC settlements that are based on what if this or what if that had happened?

On page 31 lines 7 thru 10:

**"Customers will not see any increase in the PPFAC rate from the portion of the under-covered PPFAC balance to the Old Contract ($87 million plus requested carrying costs) because UniSource and Citizens will forfeit their rights to this under-recovered amount."**

Again, staff in this wording "under-recovered" is assuming FERC and ACC would have granted full recovery when in fact that issue was never heard or settled.

On page 31, lines 12 thru 16:

**"Customers will also avoid any increase in the PPFAC rate costs resulting from the under-recovered PPFAC balance related to the New Contract ($48 million plus requested carrying costs). These costs have accumulated up to the date of closing of the asset sale. UniSource and Citizens have agreed to forfeit their rights to this amount."**

Again staff assumes part or all of PPFAC in dispute would have been granted by FERC or ACC, why? Had Citizens followed proper procedures to protect its customers thru F.E.R.C., A.P.S. could have just as easily lost.

On page 32, lines 4 thru 6;

**"Customers will have the ability to choose alternative power suppliers in less than two years because the Settlement Agreement requires that the service territories for the present AED/the future ElecCo be open to retail electric competition by December 31. 2004."**

Why, when Citizens should have already accomplished this, does Mohave County have to wait until December 31, 2004? Far too many businesses and industries in Mohave County are suffering now from too high cost for electricity. An added 25 to 31 % for 18 months will result in too great a burden for many. The added 25 to 31 % purposed on pages 41 and 42 of the staff report will totally stop all new industry. If this Settlement

Agreement is to be, we must move the retail competition electrical date up to December 31, 2003.

On page 32, lines 11 thru 13:

**"An incentive in the Settlement Agreement provides for electrical customers to receive sixty (60) percent of any savings as a result of any successful renegotiations with Pinnacle West Capital Corporation ("PWCC") of the New Contract."**

The ratepayers are entitled to 100% of any savings. How will the ratepayers be assured that the 40% retained by UniSource will not set a president for future negotiations? ACC recently forced APS to go to public bidding process on their requirement for summer peaking power needs. Will ACC require UniSource in future purchase power contracts to shop for and find the lowest source available or can they just take what APS offers as Citizens did?

On page 32, lines 22 thru line 12 on page 33:

**"The Settlement Agreement and acquisition by UniSource of Citizens electric assets will resolve all issues from Citizens' PPFAC case, Docket No. E-01032C-00-0751, in which Citizens requested major changes to its PPFAC. Citizens had originally requested full recovery of the under-recovered balance for purchase power costs that Citizens incurred. These costs were mainly due to a contract signed between Citizens and APS in 1995 (herein referred to as the Old Contract) Citizens had requested a rate increase to collect the under-recovered balance (approximately $87 million as of June 2001) over a seven-year period. Citizens also requested recovery of all purchased power costs related to a new agreement that was negotiated between Citizens and PWCC effective June 1, 2001 (herein referred to as the New Contract), plus a six (6) percent carrying charge for the under-recovered balance from the Old and New Contract. This total under-recovery is projected to be at least $135 million by July 28, 2003. In addition, Citizens requested an increase in the adjustor rate from $0.000 per kWh to $0.01825 per kWh to accommodate the costs of purchased power under the New Contract, as well as to reflect increased transmission costs."**

What part of the $0.01825 is transmission cost and what part is PPFAC? When and where has it been determined that ratepayers should pay the $0.01825?

On page 33, lines 14 thru 16:
**"The foregoing requests, taken together, would have resulted in an adjustment factor sufficient to cover the costs of the New Contract plus the total amount projected to be under-recovered as of July 2003 (plus future carrying costs) of approximately $.0320 per kWh."**
Another assumption the public had no opportunity to be heard on. It could have been $.032 Per kWh if ACC had approved all Citizens requests which they most likely would not have done.

On page 33, lines 18 thru 2 on page 34:
**"The major issues in the PPFAC case were whether Citizens should be allowed to collect all of its under-recovered balance, and whether costs under the New Contract should be fully recoverable. While there was no order in the PPFAC case, it is likely that the Commission's decision would have been influenced by the positions supported by the Company, by Staff, and by others. The Company requested recovery of its under-recovered PPFAC balance over seven years with a carrying cost charge of 6 percent. Staff's proposals, which are discussed in section B below, would have resulted in a larger increase than will result in a larger increase than will result from the Settlement."**
Who are the "others" supporting the "Company" position? Most certainly not the ratepayers or the public in general. Again staff assumes larger increases, why? Based on what?

On page 35, lines 7 thru 12:
**"Citizens, in its testimonies in support of its request for an increase in its PPFAC, indicated that, based on Citizens' interpretation of the SIC provisions, it is to be believed APS had misinterpreted the SIC and other terms of the contract, and that Citizens' own interpretation of the contract would have resulted in lower power costs and a much lower under-recovered balance. However, in the PPFAC case before the Commission, Citizens indicated that it had no plans to appeal to the FERC for an interpretation of the contract that might have reduced power costs and, therefore, its under-recovered balance.**

Citizens still has obligations to its ratepayers to appeal to FERC. If they had won we wouldn't be looking at $0.01825. It assumes that because Citizens didn't do their job ratepayers shouldn't pay.

On page35, lines 16 thru line3 on page 36;

**"The New contract, which took effect June 2001, supplanted the old contract and contains a very simple and stable pricing mechanism. The price of power was set at a fixed rate of $0.05879 per kWh for generation cost. The New Contract has a seven-year term starting June 1, 2001 and is with Pinnacle West corporation ("PWCC"). APS' parent. Furthermore, the New Contract only requires Citizens to purchase power for those customers who purchase power from Citizens (as evidenced in the definition of "Buyer's Full Load Requirements" in Exhibit A to the contract), whereas the old Contract required that Citizens purchased fixed amounts of power. This means that Citizens and its successors will be able to allow customers choice of generation supplier with no stranded costs."**

If Citizens (UniSource) has a fixed rate of $0.05879 for full load requirements why is there a need for a "demand charge." With all the foregoing being in place, why can't UniSource open the area to retail competition by December 31, 2003?

On page 36, lines 6 thru 13:

**"In the PPFAC proceeding, Staff faulted Citizens' *management* of its power costs on a number of issues. Staff's recommendations would have resulted in a reduction of the allowed recovery from that requested by the Company, and might have resulted in a reduction of the under-recovered total amount. Staff's recommendations also would have resulted in an elimination of carrying costs on the under-recovered balance. However, even if Staff's recommendations were accepted by the Commission, the result would have been that customers would have been asked to pay some *significant* amount toward the existing under-recovered balance."**

But would the Commission after a proper public hearing have followed staff or would the public input (not yet heard) have been given equal consideration thus forcing Citizens to pay all the bill due to their proven poor management practices that allowed it to happen.

On page 36, lines 15 thru line 3 on page 37:

**"Staff recommended an immediate and complete disallowance of 7 million of the under-recovered power costs. Staff argued that**

**Citizens should be required to defer collection of the amount of dollars for which it had made claims that it had been over billed (as much as $70 million) because of APS' misinterpretation of the Old Contract, until it had made every effort to obtain relief from FERC or the courts. So, while the requested disallowance of $7 million and of carrying costs might have been ordered by the Commission, the final result of Staff's other recommendations would not have been known, because the results would depend on findings by the FERC. In short, the customers of the AED could still have been assessed this additional $70 million depending on the outcome at FERC. The Settlement Agreement eliminates this uncertainty via forfeiture by UniSource of the under-collected amount discussed above."**

Again, we can not assume that FERC and/or the courts would have allowed these costs and be passed on to the rate payers.

On page 37. Lines 5 thru 9:

**"With regard to the New Contract, Staff criticized the process by which the Company analyzed and committed to this contract. Staff did not agree that the New Contract itself was imprudent, but rather suggested the Commission should consider the New Contract in a further proceeding. However, Staff expected that there would be some significant increase in power costs, since electric prices were higher than the amount of power costs in base rates."**

The New Contract was and is imprudent. There was at that time and still is power available to Citizens (UniSource) at a less price. If this is not so, why then does staff repeatedly refer to renegotiation of the New contract with APS? Is the carrot of renegotiation being held out to the public only to get them to sanction this proposal Settlement Agreement?

On Page 37, lines 11 thru 13:

**" Reducing power costs below those resulting from the New Contract would have been difficult. First, modifying the contract would have been extremely difficult, given that it had been approved by FERC."**

The idea that ACC would force Citizens to sell power to ratepayers for less than APS was charging Citizens amounts to an effort to blackmail ACC to granting an increase based on an imprudent contract. Had Citizens appealed to FERC as it had an obligation to the public to do there would not have been a reason to renegotiate the APS contract at that time.

Page 37, lines 13 thru line 17:

**"Any disallowance or imprudence finding would certainly have been appealed, delaying resolution still further. Second, even if Citizens had defaulted on this contract it would have had to find a replacement contract or contracts; and given the chaotic state of the western power market in the last two years, no assurance existed that a less expensive power source could have been found."**

There is nothing to substantiate this statement contrary to Citizens at the time no effort was made to find lower power cost and it was available.

On page 37, lines 17 thru line 6 on page 38:

**"In short, the price of purchased power in the New Contract might have appeared high but was not unreasonable given the volatile and expensive electricity environment that existed at the time the New Contract was negotiated. The Settlement Agreement will ensure that two years of under-recovered costs due to the New Contract would not be collected from electric customers, leaving at a maximum five years of higher purchased power costs under the New Contract.**

**At the present time, there are only five years remaining on the New Contract. While the price for purchased power under the New Contract, viewed in late 2001, might have seemed somewhat high, the same price is a better price today and for the next four years. Although the Western power market has settled down, gas costs, which are crucial in determining electric market prices, are distinctly higher than they were in 2001, and electric prices have been rising over the last year."**

The price agreed on in the New Contract in 2001 was not the best available rate. Prices when the new contract was signed were already on their way down. Their old contract had not expired, there was no reason to renegotiate at that time. The spot price on the day Citizens agreed on the New Contract was 3.5 cents per kWh.

Page 38, lines 8 thru 14:

**"It is Staff's opinion that the lowest cost resolution from a Commission decision regarding the New Contract, from a ratepayer standpoint, would not have resulted in more than 25 percent disallowance of the under-recovered amount resulting from the New Contract. Thus, we expect that the PPFAC case**

**would have resulted in an increase in the under-recovered balance directly resulting from the New Contract."**
This again is an assumption that doesn't take into account that if Citizens had gone to PERC for resolution of their dispute with APS they had a better than even chance of winning, look at California with the price fixing and the fraud found during that period of time.

On page 38, line 21 thru line 2 on page 39:
**"Although we cannot know for certain what the exact resolution of the PPFAC case would have been, it is clear that it would have resulted in an increase in power costs and customer bills significantly above what is contemplated in the Settlement Agreement."**
Again this is an assumption that does not take into account public opinions and ratepayer's outrage. It recognizes none of the interveners or their testimony.

Page 39, line 19 thru 23:
**"When considering the impact of the increase in rates that would result from the New Contract, we should keep in mind that Citizens' customers have been paying the same rates since the fall of 2001, and rates that were only slightly lower for a number of years. Thus, during a period in which power prices in the West in general went haywire, and the customers of most other utilities experienced some level of price increase, Citizens' customers have had stable rates."**
This is not so during that period of time in 2001, Mohave Electric Coop, APS, ASRP ratepayers received a rate reduction while Citizens rate payers got a raise.

Pages 41 and 42 "Rate Impacts of Potential Outcomes." Staff in their analysis does not take into account the demand charge paid by commercial and industrial ratepayers. We have electric bills from hundreds of commercial and industrial users and the cost on the bill not including line 1 customer charge$10.10, line 5, 12 state sales tax, line 6 Mohave County sales tax, or line 7 AZ Corp Commissions Assessment is from $0.106 to $.1901 per kWh. This is not an assumption, guess, or what if. It's taken from actual bills paid by real ratepayers.

On page 42, lines 2 thru 9:
**"Customers will be better off under the Settlement Agreement than any of the expected outcomes of the PPFAC case. On average, customers' rates will be lower by about 12 percent for the next seven years under the Settlement Agreement than they would have been under the Company's PPFAC proposal. Also,**

**there is a provision in the Settlement Agreement that encourages UniSource to renegotiate the price of purchased power under the New Contract with APS/PWCC. This provision of the Settlement Agreement further provides that customers will receive 60 percent of the savings associated with any reduced price of purchase power under the New Contract. UniSource is currently attempting to renegotiate with APS/PWCC."**
The mere fact that UniSource believes they can renegotiate the APS contract is added proof that the signing of the "New Contract" by Citizens was an imprudent act.

Beginning on page 42, line 14 thru line 6 on page 43:
**"The Settlement Agreement includes provisions designed to convey long term benefits. Specifically, these include provisions regarding a reduction in the electric rate base, a commitment not to increase base rates for at least three years, and a possible consolidation of operations.**
**The negative acquisition premium of $93 million has the effect of removing half of the electric systems rate base. This will reduce the return and depreciation component of rates by about $15 million, reducing the electric revenue requirement by this amount. This will be to the electric ratepayers' benefit in future ElecCo rate case. This reduction in the return will offset increases in other system costs, either delaying when a rate case can be filed or reducing the amount requested,"**
If the negative acquisition premium of $93 million has the effect of removing half of the electric systems rate base, why isn't there an immediate reduction in ratepayer's electric bills? Why can't the reduction in rate be used to offset the $0.01825 increase being proposed in the Settlement Agreement?

On page 43, line 8 thru 10;
**"The commitment to not file for an increase in base rates for three years means that even if costs might justify an increase, even after the rate base reduction, the Company will not file a rate case during this period. This may delay the next possible increase in rates."**
Could the commitment not to file for a rate increase for three years be because the $93.8 million reduction in rates base would result in a reduction in ratepayer's costs?

On page 43, line 19 thru line 4 on page 44:

**"The Settlement Agreement includes a provision that TEP commits to establishing a process for opening up the new ElecCo's territories to retail competition by December 31, 2004. In the Settlement Agreement, Unisource agrees that stranded costs resulting from retail access shall be zero. This is implicit in the new Contract but this Settlement Agreement term provides additional customer protection. Since there will be no stranded costs, if there are lower cost power providers available, there will be one less obstacle to customers changing their generation provider from ElecCo to less expensive providers. This term is the ultimate reality check on the New Contract. If the New contract is priced above market prices, customers will be able to escape its terms by choosing alternative suppliers."**

The opening of the area to retail competition without stranded cost is the primary benefit to Mohave County ratepayers but why should they have to wait a year and one half to receive this benefit? Why can't it become effective by December 31, 2003?

Sincerely,

Buster D. Johnson
Mohave County Supervisor District 3
Signed as a private citizen