

**ORIGINAL**  
**OPEN MEETING AGENDA ITEM**



0000078112

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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Arizona Corporation Commission

**DOCKETED**

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AZ CORP COMMISSION  
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7  
8 IN THE MATTER OF THE APPLICATION OF  
9 UNS GAS, INC. FOR THE ESTABLISHMENT  
10 OF JUST AND REASONABLE RATES AND  
11 CHARGES DESIGNED TO REALIZE A  
12 REASONABLE RATE OF RETURN ON THE  
FAIR VALUE OF THE PROPERTIES OF  
UNSGAS, INC. DEVOTED TO ITS  
OPERATIONS THROUGHOUT THE STATE  
OF ARIZONA.

Docket No. G-04204A-06-0463

13 IN THE MATTER OF THE APPLICATION OF  
14 UNS GAS, INC. TO REVIEW AND REVISE  
ITS PURCHASED GAS ADJUSTOR.

Docket No. G-04204A-06-0013

15  
16 IN THE MATTER OF THE INQUIRY INTO  
17 THE PRUDENCE OF THE GAS  
PROCUREMENT PRACTICES OF UNS  
GAS, INC.

Docket No. G-04204A-05-0831

**NOTICE OF FILING**

19 The Residential Utility Consumer Office ("RUCO") files these exceptions to the  
20 Recommended Opinion and Order ("ROO") issued on October 15, 2007 regarding UNS Gas,  
21 Inc.'s ("UNS Gas" or "Company") rate application. While not every position advocated by  
22 RUCO was adopted, RUCO's exceptions are limited to only a single issue—accumulated  
23 depreciation. The ROO concludes that a black box settlement in the Company's last rate case  
24

1 “implicitly” approved new depreciation rates.<sup>1</sup> It would be poor public policy for the  
2 Commission to adopt an order suggesting that its prior order “implicitly” granted an approval.  
3 The Commission should act only through its explicit statements. Because the Commission’s  
4 prior order undisputedly did not explicitly approve new depreciation rates, RUCO’s adjustment  
5 in this proceeding should be adopted.

6  
7 **BACKGROUND**

8 The Commission established new depreciation and amortization rates for Citizens  
9 Communications Company’s (“Citizens”) Arizona Gas Division in Decision No. 58664 (June 16,  
10 1994). Citizens proposed revised depreciation and amortization rates in its 2002 gas rate  
11 application.<sup>2</sup> That application was resolved in a settlement agreement approved in Decision  
12 No. 66028, which also approved Citizens’ application to sell its operations to Unisource Energy  
13 Corporation (“Unisource”) and approved the creation of a Unisource subsidiary that later  
14 became known as UNS Gas. Neither the settlement agreement nor Decision No. 66028  
15 makes any reference to adopting new depreciation or amortization rates.

16 The Company’s current rate application includes accumulated depreciation balances  
17 computed, based on the assumption that the Commission had approved new depreciation and  
18 amortization rates in Decision No. 66028.<sup>3</sup> Likewise, the Company has amortized the negative  
19 acquisition adjustment it booked as a result of the settlement agreement, based on an  
20 amortization rate that Citizens had requested in its 2002 rate application, rather than the  
21 amortization rate authorized by Decision No. 58664.<sup>4</sup> RUCO proposed adjustments to

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23 <sup>1</sup> ROO at 14.  
<sup>2</sup> Exh. RUCO-3 at 13 (Moore direct).  
24 <sup>3</sup> *Id.*  
<sup>4</sup> Exh. RUCO-5 at 7 (Diaz Cortez direct).

1 accumulated depreciation (\$2,855,454)<sup>5</sup> and accumulated amortization (\$248,887)<sup>6</sup> based on  
2 continued application of depreciation and amortization rates as approved by the Commission  
3 in Decision No. 58664. The ROO rejects RUCO's proposed adjustments.

4  
5 **THE COMMISSION SHOULD NOT DECLARE THAT IT PREVIOUSLY ADOPTED NEW  
6 DEPRECIATION RATES BY IMPLICATION**

7 The Commission's rules provide that changes to depreciation rates are not effective  
8 until authorized by the Commission.<sup>7</sup> The terms of the 2002 settlement agreement were  
9 specifically stated in the agreement. Nowhere in the settlement agreement, or in the  
10 Commission's order, is there an explicit endorsement of the Citizens' proposed depreciation  
11 rates. Depreciation and amortization rates are simply not addressed in the settlement  
12 agreement or Decision No. 66028. The ROO correctly recognizes that the settlement  
13 agreement was a "black box."<sup>8</sup> The ROO nonetheless concludes that the Commission *implicitly*  
14 authorized the requested depreciation rates because an accounting schedule describing the  
15 basis of the underlying revenue requirement was attached to the settlement.

16 The adoption of the ROO would suggest that the Commission is comfortable with the  
17 idea that its prior orders could be "reinterpreted" on the basis of what one might later argue can  
18 be inferred from them. This is a dangerous road to travel. The Commission takes great care  
19 to act with precise language, so as to avoid future disputes about what its orders mean. It  
20 should not open the door to attempts to reshape a prior decision based on an argument that  
21 the Commission acted by inference.

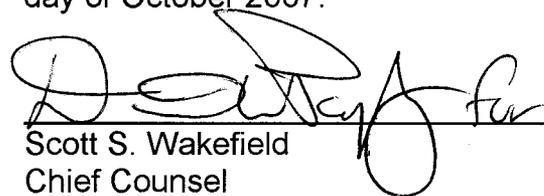
22  
23 <sup>5</sup> Exh. RUCO-3 at 14 (Moore direct).  
24 <sup>6</sup> Exh. RUCO-5 at 7 (Diaz Cortez direct).  
<sup>7</sup> A.A.C. R14-2-102(C)(4).  
<sup>8</sup> ROO at 14.

1 Arizona law requires that the government's administrative actions be adopted by written  
2 order.<sup>9</sup> That requirement is based on several important public policies. First, it is consistent  
3 with the concept of open government. Second, it is important so that parties that may be  
4 adversely affected by the action are clearly on notice of the action taken. Without such clear  
5 notice, parties might forgo opportunities to appeal an administrative action for lack of  
6 understanding of the action due to an agency's failure to speak with clarity. The Commission  
7 should not undermine the requirement that it act through written decisions by adopting a ROO  
8 that suggests that the Commission's orders can authorize approval of a request even though  
9 they may not explicitly say so.

10 Decision No. 66028 approved the settlement agreement's revenue requirement, but did  
11 not explicitly approve any particular ratemaking treatment on any issue, including depreciation  
12 and amortization rates. The Commission should not open the door to post-hoc arguments that  
13 the Commission's orders *imply* approval of a request that was not explicitly granted.

14 RUCO has attached Exhibit A, which is an amendment that would approve RUCO's  
15 adjustments of \$2,855,454 to accumulated depreciation, and \$248,887 to accumulated  
16 amortization, based on continued application of depreciation and amortization rates as  
17 approved by the Commission in Decision No. 58664. The amendment leaves in place the  
18 ROO's explicit approval of new depreciation rates on a going forward basis.<sup>10</sup>

19 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of October 2007.

20  
21   
22 Scott S. Wakefield  
23 Chief Counsel

24 <sup>9</sup> See, e.g., A.R.S. § 41-1063.  
<sup>10</sup> See ROO at 36.

1 AN ORIGINAL AND SEVENTEEN COPIES  
of the foregoing filed this 24<sup>th</sup> day  
2 of October 2007 with:

3 Docket Control  
Arizona Corporation Commission  
4 1200 West Washington  
Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/  
6 mailed this 24<sup>th</sup> day of October 2007 to:

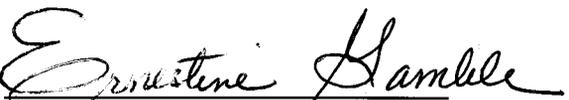
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1 **Exhibit A**

2

3 **RUCO's Proposed Amendment**

4 **Accumulated Depreciation**

5

6 Page 13, line 7, after "(Docket No. G-0132A-02-0598)."

7 **INSERT footnote** "RUCO proposed a corresponding adjustment of \$248,887 to  
8 accumulated amortization."

9 Page 14

10 **DELETE** lines 1-12

11 **INSERT** "We agree with RUCO that Decision No. 66028 was a black  
12 box settlement that did not explicitly approve the new  
13 depreciation rates Citizens had requested. We will not infer  
14 after-the-fact authorizations that were not specifically set forth  
15 in a previously-approved settlement agreement. We therefore  
16 adopt RUCO's adjustments to accumulated depreciation and  
17 accumulated amortization."

18 and conforming changes.

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