

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION



0000090270

Arizona Corporation Commission
DOCKETED

NOV 10 2008

RECEIVED

2008 NOV 10 A 9:44

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY *mm*

COMMISSIONERS
Mike Gleason, Chairman
William A. Mundell
Jeff Hatch-Miller
Kristin K. Mayes
Gary Pierce

IN THE MATTER OF THE APPLICATION
OF UNS ELECTRIC, INC. FOR
APPROVAL OF THE ESTABLISHMENT
OF JUST AND REASONABLE RATES
AND CHARGES DESIGNED TO REALIZE
A REASONABLE RATE OF RETURN ON
THE FAIR VALUE OF THE PROPERTIES
OF UNS ELECTRIC, INC.

Docket No. E-04204A-06-0783

Motion to
Demand Compliance with
ACC Orders
7 November 2008

This motion demands UNS Electric comply with ACC Orders 61793, 82011 and 70360 with respect to the Settlement Agreement between the City of Nogales and Citizens (now UNS Electric) with regard to funding "for four-year, interest free loans for Santa Cruz County high school graduates" that is in arrears some \$104,000 in 2008. ACC Order 61793 (29 June 1999) ordered these four-year "scholarship" loans at \$3,000 per year. This has never been fulfilled by Citizens nor UNS Electric. ACC Order 82011 (2 November 1999) also ordered compliance with ACC Order 61793. ACC Order 70360 (27 May 2008) ordered UNS Electric "to file within 90 days of the effective date of this decision, a statement regarding suggested resolution of the concerns raised by Mr. Magruder with respect to the student loans and scholarships issue." On 5 November 2008, the Nogales City Council rejected the a proposal by UNS Electric that also failed to comply with ACC Order 61793 and specifically did not meet the public interest and economic development requirements in this Settlement Agreement.

Throughout the entire proceedings in this case, UNS Electric has continually avoided resolution, acknowledged compliance with ACC Order 61793, and never has approached the \$12,000 annual funding level. The latest proposal ignored the \$104,000 shortfall, limited funding to only \$8,000 per year, and set a time limit on this program, and other parts of this Settlement Agreement.

Respectfully submitted on this 7th day of November 2008

MARSHALL MAGRUDER

By *Marshall Magruder*

Marshall Magruder
PO Box 1267
Tubac, Arizona 85646-1267
(520) 398-8587
marshall@magruder.org

Service List

Original and 18 copies are filed this date:

Docket Control (13 copies)
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Dwight Nodes, Administrative Law Judge (1 copy)
Tenna Wolfe, Administrative Law Judge (1 copy)
Ernest G. Johnson, Director Utilities Division (1 copy)
Janice Alward, Chief Legal Counsel (1 copy)
Maureen Scott, Senior Staff Counsel (1 copy)

Additional Distribution (1 copy each):

Michael W. Patten, Attorney for the Applicant
Roshka, DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004-2262

Raymond S. Heyman, Corporate Counsel
Michelle Livengood, Attorney
UniSource Energy Services
One South Church Avenue, Ste 200
Tucson, Arizona 85701-1621

Daniel Pozefsky, Chief Counsel
Residential Utility Consumer Office (RUCO)
1110 West Washington Street, Ste 220
Phoenix, Arizona 85007-2958

Interested Parties (1 copy each) are filed this date by mail:

Santa Cruz County Supervisors:
Manny Ruiz, Chairman
Bob Damon, Supervisor
John Maynard, Supervisor
Louis Parra, Assistant Santa Cruz County Attorney
Santa Cruz County Complex
2150 North Congress Drive
Nogales, Arizona 85621-1090

City of Nogales
Jaime Fontes, City Manager
Jose Machado, Acting City Attorney
Mike Masse, Assistant City Attorney
Nogales City Hall
777 North Grand Avenue
Nogales, Arizona 85621

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

**MOTION TO
DEMAND COMPLIANCE WITH**

ACC ORDERS

BY

MARSHALL MAGRUDER

7 November 2008

**In the matter of
the**

**APPLICATION
OF UNS ELECTRIC, INC.,
FOR THE APPROVAL OF THE
ESTABLISHMENT OF JUST AND REASONABLE
RATES AND CHARGES
DESIGNED TO REALIZE A
REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF THE PROPERTIES OF
UNS ELECTRIC, INC.**

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Notice of Filing	1
Service List.....	2
Title Page.....	3
Table of Contents	4
1. Introduction	5
2. Discussions with the Company since June 2008.....	6
3. Earlier Discussions of Article 9 of the City of Nogales Settlement Agreement.....	7
4. Latest UNS Electric Proposals.....	7
5. Motion and Recommendations.....	8
<u>Attachments</u>	
1. City of Nogales Settlement Agreement – Article 9, Education Support.....	9
2. Previous Non-Compliance Issues Raised in the Case.....	10
3. Arizona Revised Statutes Section 40-202.....	12

Motion to Demand Compliance with ACC Orders

1. Introduction.

In 1999, Citizens (now UNS Electric) and the City of Nogales entered into a Settlement Agreement¹ to resolve unreliable electrical service issues with prejudice. This Agreement provided a series of measures intended to improve both the reliability and relationships between the Company and the City. This Settlement Agreement was approved by the Commission and implemented in ACC Order No. 61793 on 29 June 1999.² Provisions included establishing a Citizens Advisory Council to receive input from the public and discuss alternatives to community issues, and to keep the public informed, and submission of a plan to improve reliability implemented in a later ACC Staff-Citizens Settlement Agreement. Most Articles in the City of Nogales agreement have been fully implemented.

The student scholarship/loan Article³ has several conditions including

- a. an annual award funded by the Company
- b. a four-year, \$3000 award
- c. to a high school student in Santa Cruz County,
- d. providing the student attend an Arizona university, and that

This scholarship/loan is in the form of a loan and "forgiven" if awardees return to work in the County for two years. Otherwise this interest-free loan would have to be repaid to the Company. The Company is to work with others to expand this local scholarship/loan into a long-term program.

A key provision of this program is to reduce the local "brain drain" because many local students leave for college and never return to Santa Cruz County.⁴

To date, no scholarship/loans have been awarded. UNSE CEO Mr. James Pignatelli testified that he had complied. Since acquisition by UniSource Energy in August 2003, only one \$1,000 scholarship has been awarded The Company in 2008 is now \$104,000 in arrears of such awards and is noncompliant in most areas.⁵

¹ This agreement was filed in this docket in the "Magruder Late-Submitted Exhibits" of 24 December 2007, in Magruder Exhibit M-A. The Magruder Exhibit M-A is the entire ACC Order 61793, which included the City of Nogales Settlement Agreement as an exhibit.

² Ibid.

³ This Article is repeated herein as Attachment 1.

⁴ As stated in my testimonies, briefs and exceptions filings in this docket, this county has a low percentage of citizens with higher levels of education, where 19.4% of its citizens over 25 years old have less than a ninth-grade education and 60% have not graduated from high school.

⁵ Areas of prior non-compliance are summarized in Attachment 2 from the Magruder Late-Submitted Exhibits" of 24 December 2007, pages 7-8. Table 1 was updated to include the single \$1,000 scholarship awarded by UNS Gas/UNS Electric in the spring of 2008. In 2007, the program was \$93,000 in arrears.

1 Mr. Magruder recommended in his Testimonies, Briefs and Exceptions that two or more annual
2 scholarship loans until the Company makes up its deficiency.

3
4 2. Discussions with the Company Since June 2008.

5 As directed by ACC Order 70360,⁶ UNSE met with Mr. Magruder on Friday, 28 June 2008, the
6 31 days after the order. Mr. Magruder insisted that the City of Nogales and school districts be
7 included in this meeting since any results could impact the existing Settlement Agreement and the
8 local high schools. The City Manager Jaime Fontes, Assistant City Manager John Kissinger, Assistant
9 City Attorney Mike Masse, County School Superintendent, and one district Assistant Superintendent,
10 and a former Mayor/Superintendent/High School Principal Dr. Marcey Varona represented the City.
11 UNSE was represented by two managers and a secretary. After introductions and a brief overview of
12 why we were where meeting, Mr. Magruder covered the basis of the Settlement Agreement and
13 summarized his testimony in this case. The UNSE representatives stated that they did NOT believe
14 the Settlement Agreement applied to UNSE and offered some educational material to assist various
15 schools that had previously been presented to the Commission during the utility Acquisition hearings
16 in 2003.

17 Mr. Magruder disagreed with this UNSE assessment of the situation.

18 Both UNSE and Mr. Masse agreed to resolve applicability of this agreement.

19 UNSE attorney Michelle Livengood verbally stated a Memorandum of Understanding (MOU)
20 had been agreed between UniSource Energy and Citizens, during the purchase process, that these
21 two parties agreed that the City of Nogales Settlement Agreement was not applicable after the
22 purchase when the sale was consummated in August 2003.

23 By Tuesday, 2 July 2008, Mr. Magruder provided to Nogales Attorney Masse a copy of all the
24 relevant documentation that showed ACC Order No. 61793 was transferred from Citizens to
25 UniSource Energy. Mr. Magruder determined that the Purchase Agreement between UniSource
26 Energy and Citizens in October 2002 specifically listed as "assumed liabilities" (1) the City of Nogales-
27 Citizens Settlement Agreement and ACC Order 61793, and (2) ACC Order 62011.⁷ Even after
28 providing this evidence, UNSE still insisted that Citizens confirm that the liabilities did not continue
29 after the sale.

30
31 ⁶ See ACC Decision No. 70360, Order and Opinion, page 87, from 8 to 10.

32 ⁷ The "Asset Purchase Agreement by and between Citizens Communications Company, as seller, and
33 UniSource Energy Corporation, as buyer, dated October 29, 2002", section 2.3, "Assumed Liabilities",
34 Schedule 2.3(i), Assumed Actions and Proceedings, paragraph 2, stated "Order of the Arizona Corporation
35 Commission (Decision No. 61793), dated June 29, 1999, re: Revised Settlement Agreement, dated June 1,
1999, between the City of Nogales, Arizona, and Citizens Communications Company" clearly shows that
UNSE assumed the liabilities of the City of Nogales Settlement Agreement. Paragraph 1 included ACC
Order 62011 and the ACC Staff-Citizens Settlement Agreement of 9 August 1999.

1 The Company has never stated it would comply with ACC Order 61793.

2 UNSE claimed that the City was not meeting its obligations under the Settlement Agreement.
3 A review of A.R.S. section 40-202A and 40-202I, as quoted in Attachment 3, requires the utility to fully
4 comply with ACC Orders.

5 There is NO evidence that any actions were made by UNSE until late in this case. In
6 November 2007, UNSE Operations Manager Mr. Ferry met with Mr. Magruder to discuss this and
7 other issues. He offered a similar program that was rejected by the City Council on 5 November 2008.

8
9 3. Earlier Discussions of Article 9 of the City of Nogales Settlement Agreement.

10 For the record, this is NOT a new issue raised in this rate case but was presented in detail
11 during the re-opened ACC Decision No. 62011 hearings that concerned electric reliability in Santa
12 Cruz service area.⁸ This article⁹ and several others¹⁰ were presented in my Direct Testimony of 8 July
13 2005. During my presentations, cross examinations and oral testimony, the Administrative Law Judge
14 told me that these hearings were not the place to raise these noncompliance issues and that during
15 the next rate case, these issues would be proper. This is the reason why it was brought forth in these
16 hearings.

17
18 4. Latest UNS Electric Proposals.

19 The City Council rejected the City Staff-UNSE proposal for UNSE to fund one annual \$4,000
20 scholarship for one Nogales High School student and one annual \$4,000 scholarship for Rio Rico
21 High School student for the next 15 years. This is not compliant with the City of Nogales Settlement
22 Agreement since:

- 23 a. It funds only \$8,000 per year instead of \$12,000. There is no reason to reduce the annual
24 funding.
- 25 b. It lacks the no-interest loan provision. If the Company wrote a "criteria for the selection of
26 awardees" by the high school scholarship foundations and a "loan/scholarship agreement" for
27 the awardee that included this provision using direct deposit to a directed bank account, etc.
28 then the administration of this program should be less than 4 or so hours per year. It might
29 take an attorney a few hours to write these two documents.

30
31
32 ⁸ See Marshall Magruder Direct Testimony, 8 July 2005 in ACC docket No. E-01032A-99-0401.

33 ⁹ Ibid, §E.1.2 page 132, "Compliance with 'Funding Four-Year Scholarships" which stated
34 "A review of the scholarships sections in recent *Nogales International* newspapers has not listed any
35 scholarships from UniSource, UES or UNS Electric, Inc. This Settlement Agreement, in Article 9, stated
"Each year, the program will select..." which is clear this is an annual scholarship program. This has NOT
been continued." [underlined in the original]

¹⁰ Ibid, see Appendix E, Reliability Improvements Agreed to by Citizens in 1999 and Subsequent
Compliance," pages 131 to 172.

- 1 c. It does not require a graduate to return to Santa Cruz County to work and live for two years.
2 This continues the Santa Cruz County "brain drain".
3 d. It stops after 15 years. There is no limit on this program, but even after 15 years, at \$8,000 x
4 15 = \$120,000. This is \$60,000 less than the present agreement).
5 e. It does not makeup any of the \$104,000 that is not in arrears. There is no valid reason to
6 forgive a Company for non-compliance.
7

8 5. Motion and Recommendations.

9 **I move that the existing agreement remain that the Company be ordered to comply.**

10 The following are a recommendation to make up for the deficit in awards and to establish a simple
11 way to manage this program.

- 12 a. That UNSE fund one four-year loan, for \$3000 per year, for a student from Rio Rico High School
13 and one four-year loan, for \$3000 per year, for a student from Nogales High School annually.
14 b. That the above two loans will continue until the \$104,000 in arrears has been fully allocated.
15 c. When b has been fully met, then one four-year loan, for \$3000 per year, be awarded,
16 alternatively between Rio Rico and Nogales High Schools.
17 d. That the Rio Rico High School Foundation and Nogales High School Foundation be provided
18 with a "selection criteria" and "student loan/scholarship agreement" that meets all the criteria in
19 Article 9 of the City of Nogales Settlement Agreement. The "selection criteria" shall specify all the
20 criteria in Article 9 so the respective foundation selection committee understands how to select
21 awardees. The "student loan/scholarship agreement" shall be written as a legally binding
22 document that meets the criteria of Article 9.
23 e. That the Company provides the annual funding to the respective foundations to ensure the funds
24 is sent directly to the college to cover allowable expenses in Article 9.
25 f. That the Company establishes a bank account to receive any non-interest payments for awarded
26 that do not return and work and live for two years (24 months) in Santa Cruz County.
27 g. Annually, on 1 July, the Company will file a report with the Commission, the City of Nogales, the
28 Santa Cruz County School Superintendent, Superintendent of Nogales Unified School District
29 No. 1, Superintendent of the Santa Cruz Valley Unified School District No. 35, Nogales High
30 School Scholarship Foundation, and Rio Rico High School Scholarship Foundation. This report
31 shall include the annual funding, the total actual funding since 1999, the total required funding
32 since 1999, and if in arrears the plan to makeup funding, a list of awardees, schools attended,
33 and if their loan was forgiven by returning to Santa Cruz County or the status of loan
34 repayments, and other fundraising accomplished by UNSE for this program. A ten-year,
35 \$100/month, schedule is appropriate for a full \$12,000 loan.

1 **Attachment 1**

2
3 **City of Nogales Settlement Agreement**
4 **Article 9, Education Support**

5
6 Quote:

7
8 **9. Educational Support**

9 A skilled, knowledgeable work force will be a key to Santa Cruz County's success in
10 the 21st century. Following the Parties' execution of this Revised Settlement Agreement,
11 the City and Citizens [now UNSE] will work together to develop an educational assistance
12 program to assist worthy Santa Cruz County high-school seniors attend the Arizona college
13 of their choice. Each year, the program will select one County senior for a four-year, interest
14 free loan to assist with tuition, books, and miscellaneous college expenses. If, following
15 graduation, the student returns to Santa Cruz County to live and work, the loan will be
16 forgiven. Citizens will contribute \$3000 per year, per student, toward this program. Other
17 contributions will be solicited from other benefactors to expand this program even further,
18 such as to cover some portion of room and board, graduate school, or vocational programs.

19 Endquote
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

1 **Attachment 2**

2
3
4 **Previous Non-Compliance Issues Raised in the Case**

5
6 In the Magruder Late-Filed Exhibits on 24 December 2007, the following was
7 submitted [note: Table 1 is updated to include the \$1,000 scholarship awarded in 2008]:

8
9 Quote:

10 NON-COMPLIANCE to Article 9 in **Exhibit M-A** which was verified by this new evidence:

- 11
- 12 1. No scholarships are for four-years.
 - 13 2. No scholarships have been awarded since 2003 as all were awarded by Citizens.
 - 14 3. No scholarships were awarded by UNS Electric.
 - 15 4. All scholarships were awarded to same High School, none to Rio Rico High School
 - 16 5. Three of the 7 scholarships were awarded to students attending Arizona colleges.
 - 17 6. Two of the 7 scholarships are the "Jose Cañez Memorial/Citizens Energy Scholarships"
(included but considered doubtful if associated with the Settlement Agreement)
 - 18 7. The scholarship "loan" provision to return to Santa Cruz County upon completion was not
implemented.
 - 19 8. There is no evidence that either Citizens or UNS Electric established a "program" to achieve
the non-financial requirements of this Article, such as soliciting additional funds, etc.
 - 20 9. See Table 1 for the total financial details of the scholarship loan program to date.

21 **Table 1 – Financial Status of the Scholarship Loan Program.**

22

Year	Number Awards	Attend Arizona college	Total Awarded this Year	Total To Be Awarded this Yea	Total Awarded To Date	Total To be Awarded to Date	Total Deficient
1999	1	No	\$1,250	\$12,000	\$1,250	\$12,000	\$10,750
2000	2	Yes, Yes	\$4,250	\$12,000	\$5,500	\$24,000	\$18,500
2001	1	No	\$3,000	\$12,000	\$8,500	\$36,000	\$27,500
2002	1	No	\$3,000	\$12,000	\$11,500	\$48,000	\$36,500
2003	2	Yes, No	\$3,500	\$12,000	\$15,000	\$60,000	\$45,000
2004	none	none	0	\$12,000	\$15,000	\$72,000	\$57,000
2005	none	none	0	\$12,000	\$15,000	\$84,000	\$69,000
2006	none	none	0	\$12,000	\$15,000	\$96,000	\$81,000
2007	none	none	0	\$12,000	\$15,000	\$108,000	\$93,000
2008	1	Unknown	\$1,000	\$12,000	\$16,000	\$120,000	\$104,000
ANNUALLY, thereafter				\$12,000			

23
24
25
26
27
28
29
30

31
32 10. The proposed Company's offer in its Reply Post-Hearing Brief limits scholarships to only the
33 next four years. This fails to comply with the ACC Order or the Settlement Agreement. This
34 is a \$3,000 ANNUAL four-year scholarship loan program the Company was aware cost
35 \$12,000 per year when it signed the Agreement, unless the student did not return and it then
converted into an interest-free loan.

1 11. No scholarship "loans" have been paid back to the Company by awardees that failed to
2 return to Santa Cruz County after graduation, contrary to the specified intent established by
3 the City of Nogales when it created this program. At least three named in Exhibit M-B have
4 NOT returned to Santa Cruz County.

5 Conclusions. UNS Electric awarded NO scholarship loans and none awarded by Citizens were
6 compliant with the City of Nogales – Citizens Agreement or ACC Order.

7 Recommendations. That a plan to reduce the scholarship award deficit in Table 1 (suggest two four-
8 year \$3,000 scholarship loans per year) be implemented and the ""program" mandated by the
9 Settlement Agreement and ACC Order be implemented as intended.

10 End Quote
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

1 **Attachment 3**

2
3
4 **Arizona Revised Statutes Section 40-202**

5 Quote:

6
7 40-202. Supervising and regulating public service corporations; telecommunications
8 promotion; competitive electricity market; rules; duty to comply; exemptions for electric
9 generation; unlawful practice

10 A. The commission may supervise and regulate every public service corporation in the state
11 and do all things, whether specifically designated in this title or in addition thereto, necessary
12 and convenient in the exercise of that power and jurisdiction. ...

13 **L. A public service corporation shall comply with every order, decision, rule or**
14 **regulation made by the commission in any matter relating to or affecting its**
15 **business as a public service corporation and shall do everything necessary to**
16 **secure compliance with and observance of every such order, decision, rule or**
17 **regulation.**

18 End Quote

19 (Emphasis added. Note, omitted words the between §40-202A and §40-202L concern electric
20 deregulation and telecommunications. Previously, §40-202I followed §40-202A as §40-202B.)
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35