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BEFORE THE ARIZONA CORPORATION COMMISSION

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KRISTIN K. MAYES, Chairman
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2009 MAR 16 P 4: 08

Arizona Corporation Commission

DOCKETED

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

MAR 16 2009

DOCKETED BY [Signature]

IN THE MATTER OF THE FORMAL
COMPLAINT OF MARSHALL MAGRUDER
FILED WITH THE ARIZONA CORPORATION
COMMISSION ON DECEMBER 5, 2008.

DOCKET NO. E-04204A-08-0589

PROCEDURAL ORDER

BY THE COMMISSION:

On December 5, 2008, Marshall Magruder filed a Formal Complaint with the Arizona Corporation Commission ("Commission") against UNS Electric, Inc. ("UNSE"), in which he alleged that UNSE failed to comply with provisions of Decision Nos. 70360 (May 27, 2008) (UNSE's last rate case), 61793 (June 29, 1999) (dismissing Complaint brought by the City of Nogales against Citizens Utilities' ("Citizens")), and 62011 (November 2, 1999) (approving settlement agreement between Citizens and the Commission's Utilities Division ("Staff") regarding Citizens' Plan of Action ("POA") to rectify service problems in Santa Cruz County).

On December 29, 2008, UNSE filed a Response to Mr. Magruder's Complaint.

On January 6, 2009, Mr. Magruder filed a Reply.

On February 17, 2009, Mr. Magruder filed a Motion for Prehearing Conference.

By Procedural Order dated February 18, 2009, a Procedural Conference was scheduled for March 2, 2009.

On February 26, 2009, UNSE filed a Response to Mr. Magruder's Motion.

On March 2, 2009, a Procedural Conference convened with Mr. Magruder appearing on his own behalf, and UNSE and Staff appearing through counsel.

Mr. Magruder alleges in his Complaint that UNSE violated Decision Nos. 61793, 62011 and

1 70360 by: 1) failing to fund interest-free student loans to Santa Cruz County high school students; 2)
2 failing to replace poles and underground cables as agreed; and 3) failing to identify customers on life
3 support equipment so that public safety agencies can check on them during power outages. Mr.
4 Magruder raised all of these issues in UNSE's last rate case, which resulted in Decision No. 70360.

5 In Decision No. 70360, with respect to the customers on life support, the Commission found
6 as follows:

7 Although we do not believe Mr. Magruder's suggested remedies are
8 necessarily the best way to address the issue he raises, given Mr.
9 Pignatelli's commitment to work with appropriate agencies, we direct the
Company to file within 90 days of the effective date of this Decision a
statement regarding suggested changes to its procedures that may address
the concerns raised by Mr. Magruder on this issue.¹

10 On August 25, 2008, UNSE filed a "Compliance Filing Regarding Procedures for Outage
11 Notification for Life Support Customers (Decision No. 70360)." The Company reported that it
12 currently identifies "life support" customers through a Customer Assistance Residential Energy
13 Support Low-Income Medical Life Support Program ("C.A.R.E.S.-M"). UNSE stated it currently
14 does not notify life support customers of outages, but uses its best efforts to reconnect life support
15 customers first in the event of an outage. UNSE stated further that it has discussed the issue with the
16 Santa Cruz County Sheriff's Department, which has indicated that it would like to be aware of
17 customers with sensitive electric load requirements to use as a cross-reference for safety purposes.
18 UNSE stated that the Sheriff's Department has agreed to retain a list of life support customers'
19 names, but has not assumed the obligation to contact life support customers. UNSE states that it was
20 in the process of contacting the C.A.R.E.S.-M customers to inform that that with their written
21 permission, UNSE will give their names and other information to the Santa Cruz County Sheriff's
22 Department.

23 At the March 2, 2009, Procedural Conference, Mr. Magruder was dissatisfied that UNSE's
24 efforts have been limited to the C.A.R.E.S.-M program participants, and not extended to all life
25 support customers.

26 With respect to the student loan/scholarship issue, the Commission concluded in Decision
27

28 ¹ Decision No. 70360 at p 59.

1 No. 70360 as follows:

2 In is not entirely clear from the evidentiary record, or the extra-record,
3 late-filed exhibits submitted by Mr. Magruder, whether UNSE is in
4 compliance with its obligations under the prior Settlement Agreement
5 between the City of Nogales and Citizens. Mr. Magruder contends that
6 UNSE is deficient regarding several matters, while the Company
7 maintains that it has complied fully with its responsibilities. No other
8 party has alleged that UNSE is not in compliance with the Commission
9 Order cited by Mr. Magruder. Given that some of the information upon
10 which Mr. Magruder relies was not available at the time of the hearing,
11 we believe the most efficient means of addressing his concerns is to
12 direct UNSE to meet with Mr. Magruder and, if necessary, request that
13 Staff be included in the discussions to provide an objective perspective
14 regarding these issues. Therefore, UNSE should initiate a meeting with
15 Mr. Magruder within 30 days of the effective date of this Decision, and
16 file within 90 days of the effective date of this Decision a statement
17 regarding suggested resolution of the concerns raised by Mr. Magruder
18 on this issue.²

11 On August 25, 2008, UNSE filed in the rate case docket, a "Compliance filing Regarding
12 Citizens Utilities' Educational Assistance Program (Decision No. 70360)." UNSE states therein that
13 the education assistance program in the 1999 Settlement Agreement between Citizens and the City of
14 Nogales provided that Citizens and Nogales would work together to develop a program to assist
15 worthy Santa Cruz county high school seniors to attend an Arizona college of their choice, and each
16 year the program was to select one Santa Cruz County senior for a four-year interest-free loan to
17 assist with tuition, books, and other miscellaneous college expenses, and that if following graduation,
18 the student returned to Santa Cruz County to live and work, the loan would be forgiven. Citizens was
19 to contribute \$3,000 per year, per student toward this program and additional contributions were to be
20 solicited from other benefactors by the City of Nogales to expand the program. UNSE stated that
21 after reviewing the program, it identified several deficiencies, including the following: students were
22 not required to attend Arizona schools; students were not required to return to Santa Cruz County to
23 live and work; program funding had been inadequate; and no student had been selected after 2003.
24 UNSE reported that during the summer of 2008, it met with officials of the City of Nogales and the
25 Superintendent of the Nogales and Rio Rico High School districts and requested input from the City
26 and school officials to insure that any program to be implemented is meaningful and beneficial. In

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28 ² Decision No. 70360 at pp 61-62.

1 its August 2008 Compliance filing, UNSE stated it was awaiting program feedback.

2 With regard to pole and underground cable replacement, the Commission found in Decision
3 No. 70360 as follows:

4 It is unclear from the record whether there are uncompleted requirements
5 related to the Citizens POA, as Mr. Magruder claims. However, we do not
6 necessarily agree that the remedy proposed by Mr. Magruder is
7 appropriate, and we believe additional information is needed before any
8 further action is taken. We will therefore direct UNSE to file a detailed
9 response to Mr. Magruder's allegations on this issue, within 60 days of the
10 effective date of this Decision. Replies to the Company's response shall
11 be filed by Mr. Magruder, Staff and RUCO within 30 days thereafter.³

12 On July 28, 2008, UNSE filed as a compliance item in the rate case docket, a "Response to
13 Mr. Magruder's Concerns." UNSE stated therein that based on Citizens' records, the 20 pole
14 replacement and 12 underground cable replacement projects identified in the POA have been
15 completed. UNSE attached a table showing the poles and underground cables replaced. UNSE states
16 that Citizens completed all of the projects except for the Mt. Hopkins cable replacement project, but
17 that UNSE completed that project in 2003 at a cost of \$140,377. In addition, UNSE claims it has
18 made substantial capital investments in Santa Cruz County to improve system reliability.

19 In response to UNSE's compliance filing in the rate case, Staff issued a memorandum on
20 August 26, 2008, that verified that UNSE complied with the requirement to file a response to Mr.
21 Magruder's concerns. Staff's August 26, 2008, filing did not comment on the substance of UNSE's
22 filings.

23 On September 15, 2008, Mr. Magruder filed a Notice of Filing of his Rebuttal to the UNSE
24 Compliance Response to his Concerns. Mr. Magruder charged that the UNSE Response was
25 incomplete, erroneous and failed to provide details concerning the 32 projects, and argued that not all
26 of the projects were completed. Mr. Magruder provided details for each pole and cable replacement
27 project, showing the analysis for his conclusions.

28 On November 10, 2008, in the rate case docket, Mr. Magruder filed a "Motion to Demand
Compliance with ACC Orders." Therein, he moved that UNSE comply with Decision Nos. 61793,

³ Decision No. 70360 at p. 60.

1 62011 and 70360. In essence, his Motion raises the same demands he brings forth in this Complaint.

2 A review of the rate case docket, shows that no responses or other action was taken in
3 response to Mr. Magruder's post-Decision Motion. It appears that UNSE complied with the filing
4 requirements of Decision No. 70360 by docketing the required reports in a timely fashion. There is
5 no indication, however, that the Commission has reviewed the filings to determine if the information
6 contained therein is satisfactory. Staff's compliance verifications to date do not appear to have
7 focused the content of the filings. It is understandable that Mr. Magruder felt compelled to bring his
8 Complaint after receiving no response to his earlier filings. It appears, however, that expending the
9 resources on a second proceeding may not be the most appropriate or efficient way to resolve the
10 issues Mr. Magruder has raised. These issues are already before the Commission as a result of the
11 findings in Decision No. 70360, and should be addressed as compliance matters in that docket.

12 With respect to the pole and cable replacements, both parties are adamant in their positions--
13 the Company that the replacements were made and Mr. Magruder that they were not. During the
14 March 2, 2008, Procedural Conference, counsel for Staff suggested that by meeting with the parties
15 Staff may be able to resolve the dispute, or at least be able to identify the source of the disagreement
16 and clarify the issues. We agree that in an attempt to resolve the disputes, Staff should meet with the
17 parties. Such meetings may be more fruitful and require less resources than a formal complaint
18 proceeding.

19 Staff will be directed to review the compliance filings with respect to the issues discussed
20 herein and file a report containing its findings about whether UNSE has complied with its obligations
21 under the 1999 Settlement Agreement with the City of Nogales with respect to the pole and cable
22 replacement projects and student loan/scholarship obligations. Staff should file a report on its
23 findings and recommendations in the rate case docket as well as in the Complaint docket. In the
24 interim, the Complaint will be held in abeyance pending Staff's analysis.

25 In its Response to the Complaint, UNSE reports that it, the City of Nogales and the school
26 district officials plan to submit a program for City Counsel approval in early 2009, and that once the
27 scholarship program has been fully developed and approved by the parties, UNSE will provide a
28 copy to Staff. In the event the City of Nogales and UNSE are able to develop a new scholarship/loan

1 program, UNSE should file an update to its compliance filings in the rate case and file a copy in the
 2 Complaint docket as well.

3 IT IS THEREFORE ORDERED that the Complaint filed by Mr. Magruder on December 5,
 4 2008, shall be held in abeyance pending Staff's investigation into UNSE's compliance with Decision
 5 Nos. 70360, 61793 and 62011.

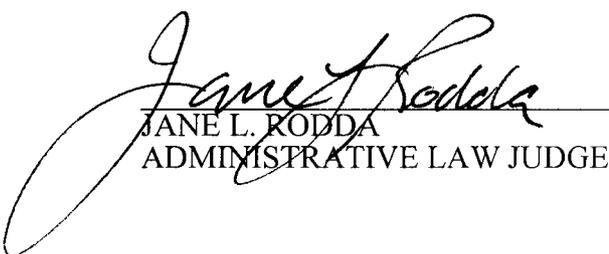
6 IT IS FURTHER ORDERED that Staff shall meet with the parties in an attempt to resolve the
 7 disputes.

8 IT IS FURTHER ORDERED that **Staff shall file a report of its findings and**
 9 **recommendations** concerning UNSE's compliance with Decision Nos. 70360, 61793 and 62011 in
 10 Docket No. E-04204A-06-0783 (the rate case) as well as Docket No. E-04204A-08-0589 (the
 11 Complaint) by **June 19, 2009**.

12 IT IS FURTHER ORDERED that UNSE shall update its compliance filing in the rate case,
 13 with a copy filed in the Complaint docket, with the results of its discussions with the City of Nogales
 14 concerning the student loan/scholarship program as new information becomes known.

15 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
 16 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

17 DATED this 12th day of March, 2009.

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 20 
 21 JANE L. RODDA
 ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed
 this 12th day of March, 2009 to:

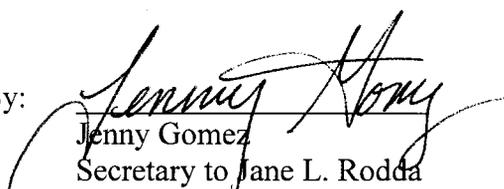
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Jenny Gomez
Secretary to Jane L. Rodda