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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AZ CORP COMMISSION  
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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

Filed 20 June 2009

Notice and Filing a

Motion to Quash the UNS Electric Request for  
Dismissal of the Formal Complaint of 5 December 2008

On 5 December 2008, I filed a Formal Complaint against UNS Electric, Inc., for failing to comply with at least three ACC Decision and Order Nos. 61793, 62011 and 70360.<sup>1</sup> UNS Electric, Inc. (UNSE) responded to these charges on 29 December 2008<sup>2</sup> to which this party filed a response on 5 January 2009.<sup>3</sup> On 14 February 2009, this party filed a motion for a prehearing Conference and Hearing Schedule.<sup>4</sup> On 19 February 2009, a Procedural Order was issued that ordered a Procedural Conference for 2 March 2009.<sup>5</sup> After this Conference, another Procedural Order was issued on 12 March 2009<sup>6</sup> that included several "orders".

#1. The complaint was ordered, "held in abeyance pending Staff's investigation into USNE's compliance with Decision no. 70360, 61793, and 62011."<sup>7</sup>

#2. It was ordered "Staff shall meet with the parties in an attempt to resolve the disputes" and that "Staff shall file a report of its finding and recommendations concerning UNSE's compliance with Decisions No. 70360, 61793, and 62011 in Docket No. E-

<sup>1</sup> Marshall Magruder "A Formal Complaint Against UNS Electric, Inc." of 5 December 2008, hereafter "Complaint".

<sup>2</sup> UNS Electric, Inc.'s "Response to Marshall Magruder's [Formal] Complaint" of 29 December 2008, hereafter "UNSE Response", page 1 at 20-23.

<sup>3</sup> Marshall Magruder "Notice and filing of the Marshall Magruder Reply to UNS Electric's Response to the Formal Complaint of 5 December 2008.

<sup>4</sup> Marshall Magruder "Filing a Motion for a Prehearing Conference and Hearing Schedule" of 14 February 2009.

<sup>5</sup> Administrative Law Judge Jane Rodda "Procedural Order" of 18 February 2009.

<sup>6</sup> Administrative Law Judge Jane Rodda "Procedural Order" of 12 March 2009.

<sup>7</sup> *Ibid*, 6 at 4-5.

1 24204A-06-0783 (the rate case) as well as Docket No. E-04204A-08-0589 (the  
2 Complaint) **by June 19, 2009.**<sup>8</sup> [Bold in original]

3 #3. It was also “ordered that UNSE shall update its compliance filing in this case, with a  
4 copy filed in the Complaint docket, with the results of its discussions with the City of  
5 Nogales concerning student loan/scholarship program as new information becomes  
6 known.”<sup>9</sup>

7  
8 On 5 June 2009, a nearly four-hour conference call was held with Mr. Magruder, during  
9 which the Staff requested background information, such as docket numbers, key filings and  
10 issues involved in the Complaint and then called in the Staff Attorney who had the UNSE  
11 attorneys on line for conference call and results in a “Staff Update and Request for  
12 Continuance” of 18 June 2009. Staff also requested a follow-up status conference to be held  
13 in approximately 30 days.<sup>10</sup>

14 On 18 June 2009, on the same date at the Staff “Status Update and Request for  
15 Continuance”, UNSE requested that the Magruder Complaint be dismissed.<sup>11</sup>

16 This party received both the Staff and UNSE filings on 19 June 2009.

17  
18 Rationale to Quash the Request for Dismissal.

- 19 a. The UNSE “Status Update and Request for Dismissal” partially addressed a sampling  
20 of an element of one of the three issues in the Complaint (replacement of 3,060  
21 known defective utility poles during approximately 1999-2003), but did not address in  
22 #1 either ACC Order No. 61793 or No. 62011. These ACC Orders, and others after  
23 UniSource Energy acquired this utility, approved a detailed Plan of Action including  
24 32 distribution reliability projects the utility proposed in a Staff Agreement with the  
25 company, and the Commission ordered to company to comply. It remains  
26 inconceivable that this company does not have maps or records that show where and  
27 when it placed its utility poles. How were these poles depreciated in the last rate case  
28 without this minimal level of fundamental data?  
29  
30 b. The Staff Report, in #2 above, has not been issued. The Staff has included an  
31 additional meeting between the parties and requested a 30-day continuance.  
32

33 <sup>8</sup> *Ibid.* 6 at 6-11.

34 <sup>9</sup> *Ibid.* 6 at 12-14.

35 <sup>10</sup> Mr. Kevin O. Torry, ACC Legal Division, Attorney, “Status Update and Request for Continuance”, filed in ACC Docket No. E-04204A-06-0783 as of 18 June 2009. As indicated in the conference call, a draft was filed earlier on 11 June 2009.

<sup>11</sup> UNSE, “UNS Electric, Inc.’s Status Update and Request for Dismissal” of 18 June 2009.

1 c. The Company has not reported any action, as ordered in #3.

2 Since this Staff investigation is ongoing, areas not yet investigated or resolved, any  
3 premature "Request to Dismiss" is out of order, as this party remains firm in the Complaint.  
4 Any such jester by the company to interrupt this process should be quashed as deliberate  
5 interference with an on-going Staff Investigation to carry out a valid Procedural Order.  
6

7 Further, the Commission should unfavorably view such interference with this  
8 investigation as interference with this party's attempt to have heard:

- 9 (1) How this company has failed to provide evidence it completed all 32 distribution  
10 reliability projects of extreme importance for this service area,  
11 (2) How this company has failed in agreed-to obligations to our high school seniors for  
12 \$104,000 in student awards in the past decade (Table 1 below), and  
13 (3) How this company has failed to set up a simple way to notify ALL of its customers on  
14 life support equipment during an electrical outage.  
15

16 Therefore, quashing a baseless Request to Dismiss the Complaint is fair and just.  
17

18 **Table 1 – Financial Status of the Scholarship/Loan Program through end of 2008.**

19

Year	Number Awards	Attend Arizona college	Total Awarded this Year	Total To Be Awarded this Year	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	0	0	0	\$12,000	\$15,000	\$72,000	\$57,000
2005	0	0	0	\$12,000	\$15,000	\$84,000	\$69,000
2006	0	0	0	\$12,000	\$15,000	\$96,000	\$81,000
2007	0	0	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			

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27

28 Respectfully submitted on this 20<sup>th</sup> day of June 2009

29  
30 MARSHALL MAGRUDER

31 By 

32  
33 Marshall Magruder  
34 PO Box 1267  
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1 **Service List**

2 Original and 16 copies of the foregoing are filed this date:

3 **Docket Control** (13 copies)

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5 1200 West Washington Street

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7 **Lynn Farmer**, Chief Hearing Officer (1 copy)

8 **Ernest G. Johnson**, Director Utilities Division (1 copy)

9 **Janice Alward**, Chief Counsel (1 copy)

10 Additional Distribution (1 copy each):

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16 **Michelle Livengood**, UNSE Attorney

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

22 Santa Cruz County Supervisors:

23 **John Maynard**, **Manual Ruiz** and

24 **Rudy Molera**, Supervisors

25 **Holly Hawn**, Assistant Santa Cruz

26 County Attorney

27 Santa Cruz County Complex

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**Mayor and Council (7)**

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