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In the Matter of Arizona Public Service
Company and Verizon California, Inc.'s
Joint Petition for the Establishment of an
Underground Conversion Service Area

) Docket No. E-01345A-07-0663
) Docket No. T-01846B-07-0663

) **VERIZON CALIFORNIA, INC.'S
) REPLY BRIEF**

INTRODUCTION

On July 21 and 22, 2009, an evidentiary hearing was held in this matter at the Commission's offices in Phoenix, Arizona. At the conclusion of the hearing, the ALJ requested that the parties file closing briefs and reply briefs addressing five specific issues. On August 26, 2009, Arizona Public Service Company ("APS"), Verizon California, Inc. ("Verizon"), Hillcrest Bay, Inc. ("HBI"), and Commission's Staff each filed closing briefs. Pursuant to the ALJ's request, Verizon files this reply brief.

I. What is the standard of approval for a petition to establish a UCSA and has it been met in this case?

The standard of approval for a petition to establish a UCSA is set forth in various sections of the UCSA statutes.¹ The analysis starts with an inquiry into whether the petitioners have satisfied certain threshold criteria, including a petition supported by at

¹ See A.R.S. § 40-341, *et seq.*

1 least 60% of the property owners who own at least 60% of the land in the proposed UCSA.
2 Verizon concurs with Staff's analysis of the requirement in A.R.S. § 40-346(A) that "no
3 more than forty per cent of the owners ... have not objected" to the formation of the
4 UCSA. Staff concludes that the most common sense interpretation of the statute is that the
5 legislature wanted to ensure "that more than a simple majority of the property owners in a
6 proposed UCSA understand the costs of conversion and are willing to pay."² Staff
7 implicitly concludes that this requirement is essentially identical to the requirement in
8 A.R.S. § 40-343(A) that at least 60% of the owners of at least 60% of the property within a
9 proposed UCSA support a petition for its establishment. As noted by Staff, this is how the
10 Commission has interpreted the phrase in prior cases.³

11 HBI's argument for a two-step, burden-shifting process to synthesize the 60%
12 support requirement of A.R.S. § 40-343(A) with the no more than 40% opposition
13 requirement of A.R.S. § 40-346(A) does not clarify the statutory scheme. HBI argues that
14 A.R.S. § 40-343(A) requires 60% support "at the time of the petition" and that A.R.S.
15 § 40-346(A) requires no more than 40% opposition "at the hearing".⁴ However, this
16 argument fails to address the fact that A.R.S. § 40-344(A) provides that the deadline for
17 both (a) requests to withdraw signatures from the petition and (b) objections to the
18 formation of a UCSA is ten days before the hearing. As a result, this deadline is the
19 logical date for determining whether the standard is satisfied. As it is not possible to have
20 60% support and more than 40% opposition on the same date, the common sense approach
21 supported by Staff, Verizon, and APS and supported by the Commission in prior
22 proceedings is the appropriate and best reading of these statutes.

23 ...

24 _____
25 ² Staff's Opening Brief, at 8 (Aug. 26, 2009).

26 ³ *Id.* at 6-8.

⁴ Hillcrest Bay, Inc.'s Post-Hearing Brief, at 8 (Aug. 26, 2009).

1 After finding that the threshold criteria have been satisfied, the Commission may
2 use its discretion in deciding whether to grant or deny the petition, but must consider the
3 factors in A.R.S. § 40-346(A), including, most significantly, the economic feasibility of
4 the project for the affected property owners. In this case, the residents of Hillcrest Bay
5 provided substantial testimony on the issue of economic feasibility and this evidence
6 should be the focus of the Commission's analysis in making its determination.

7 **II. How should the Commission analyze the validity of withdrawals of signatures**
8 **and objections given the language of A.R.S. § 40-345(1) and Decision No.**
9 **67437?**

10 The Commission should reject HBI's arguments regarding the invalidity of
11 withdrawals and objections based on A.R.S. § 40-345(1). Despite HBI's arguments, it is
12 not reasonable to expect the property owners in this case to have complied with A.R.S.
13 § 40-345(1) given that the public notice did not instruct them to do so and given that the
14 Commission's prior practice has not required it. Decision No. 67437 in Docket No. T-
15 01051B-04-0276 demonstrates that the Commission has, in the recent past, held that
16 requests for withdrawals of signatures from a petition to establish a UCSA and objections
17 to the petition complied with A.R.S. § 40-345(1) even when submitted without an
18 accompanying affidavit from another property owner.

19 **III. Did the new hearing provide property owners a renewed opportunity to make**
20 **timely withdrawals of signatures and objections?**

21 A.R.S. § 40-344 clearly assumes the Commission will hold only one hearing on
22 each petition and that it will be held between 30 and 60 days after the Commission
23 receives the petition. In this case, the Commission provided for the possibility of a second
24 evidentiary hearing approximately 16 months after the initial hearing on January 18,
25 2008.⁵ It is unclear whether the statute allows for an additional hearing after the 60 day

26 ⁵ Procedural Order at 3 (July 3, 2008) ("IT IS FURTHER ORDERED that if additional filings contemplated by this Procedural Order are made by May 1, 2009, the Hearing Division shall determine whether additional hearing is necessary in this matter.").

1 limit has passed. There is no case law that addresses this issue, and the statute is silent
2 regarding any tolling provision. If the Commission determines that the hearing timeframe
3 was tolled, it would appear that the deadline for objections and withdrawals should be
4 reset accordingly.⁶ No party to this proceeding would be unfairly prejudiced by setting the
5 deadline for withdrawals and objections at ten days before the latest hearing and the
6 purpose of the deadline would not be defeated.⁷ Even if the deadline was not reset by the
7 Commission's order providing for an additional hearing, however, the Commission should
8 consider these objections and requests for withdrawals as part of its economic feasibility
9 analysis.

10 **IV. Is dismissal of the case appropriate based on the current level of support for**
11 **the petition?**

12 It would be appropriate for the Commission to dismiss the petition based on its
13 current lack of support from property owners within the proposed UCSA. A threshold
14 requirement for the approval of a petition is the support of at least 60% of the owners who
15 own at least 60% of the land in the proposed UCSA.⁸ Under the holding of the
16 Recommended Opinion and Order issued on May 16, 2008, this requirement was not met
17 in this case.⁹ In addition, depending on how it determines various remaining issues, the
18 Commission could also conclude that this requirement was not satisfied based on current

19 _____
20 ⁶ The Commission clearly intended property owners be allowed to change their position during this interim
21 period. Procedural Order at 2-3 (July 3, 2008) (“IT IS FURTHER ORDERED that APS, Verizon, and
22 Hillcrest Bay owners may file, no later than May 1, 2009, documentation going to the issue of the
23 economic feasibility of the UCSA for the Hillcrest Bay owners. If the parties supporting the UCSA make
such a filing, they shall ensure that it contains at least the following: ... (4) a new petition listing each
parcel, indicating whether the owner/s of each parcel support or oppose the UCSA, and including the dated
signature of an owner of each parcel ...”).

24 ⁷ See Arizona Public Service Company and Verizon California, Inc's Brief Pursuant to Procedural Order
Dated May 11, 2009, at 5-6 (July 6, 2009) (discussing the importance of procedural deadlines to the proper
functioning of government).

25 ⁸ A.R.S. §§ 40-343(A) and 40-346(A).

26 ⁹ Recommended Opinion and Order, at 48 (May 16, 2008) (concluding that “[p]roperty owners owning
59.690 percent of the total square footage of the proposed UCSA support the establishment of the UCSA”).

1 levels of support for the petition.¹⁰ Despite HBI's arguments regarding the procedural
2 impropriety of the motion to dismiss, the Commission has previously dismissed a UCSA
3 petition after the hearing has been completed upon a finding that the petitioning public
4 service corporation's request to dismiss was "reasonable and should be granted".¹¹ Even if
5 the Commission determines that dismissal is inappropriate, a denial of the petition on any
6 grounds would not prevent the parties from refileing the petition if all statutory
7 requirements are met.

8
9 **V. Under the statutes, can service costs be allocated on a square footage basis as
was done by Tades?**

10 As discussed in more detail by Verizon in its Closing Brief, absent unanimous
11 agreement by property owners within a proposed UCSA,¹² service costs must be allocated
12 on a lot-specific basis as provided by the UCSA statutes.¹³

13 ...

14 ...

15 ...

16 ¹⁰ See Arizona Public Service Company and Verizon California, Inc.'s Brief Pursuant to Procedural Order
17 Dated May 11, 2009, at 6 (July 6, 2009) (calculating current support for the petition of 55.23% and
55.03%); and Staff's Responsive Brief, at 5 (July 6, 2009) (calculating maximum support for the petition at
54.7% and 54.2%).

18 ¹¹ *In the Matter of Qwest Corporation's Petition for the Establishment of an Underground Conversion*
19 *Service Area*, Docket No. T-01051B-04-0276, Opinion and Order, at 7 (Dec. 3, 2004).

20 ¹² A.R.S. § 40-347(A) (providing for the payment of undergrounding costs on a different basis than that
provided in the statutes "by agreement with all the owners of property in an underground conversion
service area").

21 ¹³ A.R.S. §§ 40-342(D) (requiring the Joint Report to "indicate the estimated cost to be assessed to each lot
22 or parcel ... for placing underground the facilities of the public service corporation ... located within the
boundaries of each parcel or lot"); 40-342(F) (requiring public service corporations to mail property
23 owners within a proposed UCSA "[a] summary of ... the estimated costs to be assessed to each lot or
parcel of real property for placing underground the facilities of the public service corporation ... located
24 within the boundaries of each parcel or lot"); 40-347(A)(4) (providing that underground service costs
include "[i]f not paid in full as provided in section 40-348, the actual cost of converting to underground the
25 facilities from the public place to the point of delivery on the lot or parcel owned by each owner receiving
service [(electrical facilities)], or to the connection point within the house or structures [(communications
26 facilities)], less any credit which may be given such owner under the line extension policy of the public
service corporation"); and 40-348(A) (requiring service facilities be placed "at the expense of the owner").

1 RESPECTFULLY SUBMITTED this 9th day of September, 2009.

2
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