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BEFORE THE ARIZONA CORPORATION

Arizona Corporation Commission
COMMISSIONERS

Kristin K. Mayes

Gary Pierce

Sandra D. Kennedy

Paul Newman

Bob Stump

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DEC 23 2009

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ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85701

Docket No. E-04204A-08-0589

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

21 December 2009

**Motion to Compel UNS Electric to
Respond to Discovery Data Requests**

This party has submitted two sets of Data Requests to UNS Electric in this docket. The first set was submitted on 31 August 2009 with a response dated 29 October 2009. The second set was submitted on 2 November 2009 with a response dated 12 November 2009. As filed on the 13th of November 2009, this party included these Data Requests and Responses for each set as they were deemed inadequate and evasive. During the Procedural Conference on 18 November 2009, I was prepared to discuss each disputed DR.

Further, as specified in the Commission's Procedural Order of 8 December 2009, this Motion to Compel responses is being filed to clarify why this party feels the company's responses to specific Data Requests were inadequate or evasive in the Attachment. Most responses should have been a simple "yes" or "no".

It is respectfully requested that the company be directed to respond.

I certify this filing has been mailed or delivered to parties on the Service List this date.

Respectfully submitted on this 21st day of December 2009.

MARSHALL MAGRUDER

By

Marshall Magruder

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AZ CORP COMMISSION
DOCKET CONTROL

1 **Service List**

2 Original and 14 copies of the foregoing are filed this date:

3 **Docket Control** (13 copies)

4 **Arizona Corporation Commission**

5 1200 West Washington Street

6 Phoenix, Arizona 85007-2927

7 ACC Staff (1 copy)

8 **Kevin Torres**, Legal Department

9 **Jane L. Rodda**, Administrative Law Judge (1 copy)

10 Hearing Division, Arizona Corporation Commission, Room 218

11 Arizona Regional Offices

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13 Tucson, Arizona 85701-1347

14 Additional Distribution (1 copy each):

15 **Michael W. Patten**, Attorney for Applicant

16 Roshka, DeWulf & Patten, PLC

17 One Arizona Center

18 400 East Van Buren Street, Suite 800

19 Phoenix, Arizona 85004-2262

20 **(without attachments)**

Dan Pozefsky, Chief Counsel

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(RUCO)

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

22 Santa Cruz County, Board of
23 Supervisors:

24 **John Maynard**, Chairman

25 Santa Cruz County Complex

26 2150 North Congress Drive

27 Nogales, Arizona 85621-1090

City of Nogales:

Jaime Fontes, City Manager

John Kissinger, Assistant City Manager

Jose Machado, City Attorney

Michael Masee, Deputy City Attorney

Nogales City Hall

777 North Grand Avenue

Nogales, Arizona 85621-2262

1 Attachment

2 **Rationale to Compel Adequate Responses for**
3 **Data Requests in Sets One and Two**

4 **Summary.** This attachment provides rationale in two categories: one for a group of Data Requests (DRs) that
5 included the same repeated objection and one for the DRs in numeric order. There are three issues in this
6 mater, so the DRs were sequentially numbered with a prefix based for each issue, for Issue 1 (student loans),
7 Issue 2 (replacement cable/pole projects), and Issue 3 (notification of all on life support during an outage). The
8 second number for each DR was its sequence number, for example, MM DR 1-1, was the first DR for Issue 1
(student loans).

9 Further, for each DR, the company should include information provided herein in its supplemental
10 responses.

11
12 **Part I. Rationale to Compel Responses to DRs with the Same Objection.**

13 **The Repeated Objection.** The company used a repeated objection generally stated as follows:

14 ***"UNS Electric objects to the request to the extent it calls for a legal interpretation"***

15
16 This expression was in the company's responses to MM DRs 1-6, 1-7, 1-8, 1-10, 1-11, 1-13, 1-15, 1-16, 1-17, 2-
17 17, 2-18, 2-19, 3-5, 3-6, 3-8, and 3-9.

18 Upon review of each of these DRs, this party sees no justification for such a comment.

19 If a legal interpretation is required, then the attorney for the company should have provided that
20 interpretation and not be evasive in its response or fail to respond to clearly obvious requests. As shown
21 below, responses for these DRs mostly remain OPEN.

22 **MM DR 1-6.** This DR requested the company acknowledge that the sentence, "***This Revised Settlement***
23 ***Agreement binds the successor and assign of the Parties.***" Is found in this document in Article 10 on page
24 8. A simple "yes" or "no" was intended response.

- 25 a. Further, the company's response is erroneous as ACC Decision No. 61793 clearly incorporates the
26 Settlement Agreement on page 2, lines 23-23 that states "***A copy of the Revised Settlement***
27 ***agreement in attached hereto as Exhibit A, and incorporated by reference***".
- 28 b. The company response indicated that the City of Nogales Formal Complaint to the Commission has
29 been dismissed with prejudice, thus, the City of Nogales cannot file again for the same claim. This
30 response is not relevant to this DR.
- 31 c. This party provided a copy of this agreement in a 24 December 2007 filing in the Electric Rate Case.
- 32 d. The intended response to DR 1-6 should have been "yes". If no, then an explanation should be
33 provided that states why the company does not agree that the quoted sentence does not exist in the
34 Settlement Agreement? It should be noted that the definition for "successor" was not requested, only
35 that the company acknowledge the above sentence is present.
- e. This and many other DRs have the Respondent indicated as "Regulatory Services". In the company's
supplement response to this DR, could the company please define this organization and state the
name of the person who responded? Further, if that person is a qualified attorney this should be
stated for that person's first DR response. Most of the DRs in Part II below included the name of the
Respondent.
- f. Request this DR be responded as requested.

1 **MM DR 1-7.** This DR requested that UNS Electric acknowledge that it is the successor, as a public service
2 corporation, to "Citizens" which has changed its name several times between 1999 and when acquired by
3 UniSource Energy in August 2003.

- 4 a. This party omitted the decision number in the acquisition case that was No. 66028 of 3 July 2003,
5 however, the question without that number was clear, is UNS Electric the successor to "Citizens"?
6 b. A definition for the term "successor" was not requested. Thus, common usage is intended.
7 c. The expected response to DR 1-7 should have been "yes"; however, its prior response to DR 1-6 makes
8 this expectation doubtful. Thus, an explanation is necessary to clarify why UNS Electric will not state
9 that it is the successor to "Citizens".
10 d. Request this DR be responded as requested.

11 **MM DR 1-8.** This DR contains quotes from the Asset Purchase Agreement, in particular the title of paragraph
12 2.3(i) and its associated "Schedule 2.3(i)" that specified as an "*assumed liability*" the City of Nogales-
13 Citizens Revised Settlement Agreement.

- 14 a. Both of these references use the term "assumed liability".
15 b. A definition of this term was not requested. Thus, common usage is intended.
16 c. If these documents and associated schedules "speak for themselves" why is there even a
17 "waiver" to such an objection indicated?
18 d. Let's try to reword this, "Will the company acknowledge that the City of Nogales Revised Settlement
19 Agreement was considered an assumed liability based on the company's filings that lead to ACC Order
20 No. 66028 of 3 July 2003, in the acquisition case of "Citizens" by UniSource Energy"?
21 g. The intended response to DR 1-8 or the reworded DR above still should have been "yes". If not, then
22 an explanation is necessary.
23 h. Request this DR be responded as requested.

24 **MM DR 1-10.** This DR requested the company acknowledge that the sentence quoted, "*The provisions of this
25 Revised Settlement Agreement are not severable*" is in Article 10 on page 8.

- 26 a. Further, the response provided is also erroneous as ACC Decision No. 61973 does incorporate the
27 Settlement Agreement on page 2, lines 23-23 that states "A copy of the Revised Settlement
28 agreement in attached hereto as Exhibit A, and incorporated by reference".
29 b. The intended response to DR 1-10 should have been "yes". If no, then an explanation should be
30 provided that states why the company does not agree that the quoted sentence does not exist in the
31 Settlement Agreement?
32 c. A simple "yes" or "no" was intended response.
33 d. Request this DR be responded as requested.

34 **MM DR 1-11.** If the company's responses to DRs 1-6 through 1-10 above were yes, then logically, UNS Electric
35 is obligated to meet the requirements ordered in paragraph 13(g) of the ACC Decision No. 61793 that
stated, "*Citizens will fund ... four-year, interest free loans for Santa Cruz County high school seniors*". A
simple "yes" or "no" was intended response.

- a. If ACC Decision ordered "Citizens" to "fund four-year, interest free loans for Santa Cruz County high
school graduates" and this "assumed liability" includes the Settlement Agreement, and UNS Electric is
the "successor" to "Citizens" does UNS Electric have an obligation to comply with paragraph 13(g) of
ACC Decision No. 61793? The answer to this question is critical for this case and I can see no reason
for the company not to respond.
b. The company's response stated that the ACC Decision No. 61793 "speaks for itself", therefore is their
any remaining rationale for any objection to this DR?

- 1 c. The intended response to DR 1-11 should have been "yes". If no, then an explanation should be
2 provided that states why the company "denies" that the quoted sentence does not exist in the
3 Settlement Agreement and that it does not have such an obligation?
4 d. Further, in a supplemental response, the company is further requested to state if it has or has not
5 made any "offers to compromise" to date?
6 e. Request this DR be responded as requested.

7 **MM DR 1-13.** This DR requested correspondence between the City of Nogales and the company that involved
8 implementation of Article 9 of the Settlement Agreement, titled "**Educational Support**".

- 9 a. If the company did not consider that the City of Nogales was upholding the agreement,
10 correspondence concerning issues about the implementation concerning Article 9 was requested.
11 b. As UNS Electric succeeded Citizens in August 2003 by the assumption of the CC&N for this service
12 area, what correspondence exists that shows the company requested to meet with the City
13 concerning its participation according to Article 9 and any other issues concerning this Article.
14 c. Based on this party's participation in the acquisition case in the Spring of 2003, where DRs were
15 submitted to determine if ACC Order No. 61793 obligations were to be continued by the company and
16 during Santa Cruz reliability hearings in the re-opened ACC Order No. 62011 during the 2005, and in
17 the recently concluded UNS Electric Rate case, the company presented no evidence that ANY
18 discussions between the City and the company concerning Article 9.
19 d. As stated in this party's rate case filing on 24 December 2007, no student educational awards by
20 Citizens or by UNS Electric have conformed to Article 9, and none since have conformed.
21 e. There were no student educational awards by either Citizens or UNS Electric between 2002 and 2008.
22 f. The intended response to DR 1-13 should have included such correspondence, but referred to Rule
23 408 (Compromise and Offers to Compromise) in the Arizona Rules of Evidence. The correspondence
24 concerning compromise was not requested in this DR, only correspondence involving "implementation
25 of Article 9."
26 g. The intended response to DR 1-10 should have included documentation between the City of Nogales
27 and the company concerning implementation of Article 9. If no correspondence is provided, then this
28 party can only conclude that no such documentation concerning implementation of Article 9 exists
29 prior to the Rate Case exists.
30 h. Request this DR be responded as requested.

31 **MM DR 1-15.** This DR concerns the "parties" involved with Article 9 discussions.

- 32 a. The company's response agrees that only the City of Nogales and Citizens were parties to the
33 Settlement Agreement.
34 b. The company has acknowledges it has been holding discussions with schools and districts, none of
35 which are parties in the Settlement Agreement.
36 c. The DR also requested that the company provide its recommendations at to "which school
37 organizations would UNS Electric recommend being parties" that was not answered.
38 d. Request that this above missing response be provided.

39 **MM DR 1-16.** This DR requested that the company confirm that the statement "**Citizens' activities under this
40 Revised Settlement Agreement remain subject to the continuing jurisdiction of the Commission by virtue
41 of Citizens' status as a public service corporation under Arizona law**" is in Article 10. Upon additional
42 review, the request includes, in the last sentence, please "explain as to why the Commission's statement
43 not be valid." The word "Commission's" was used in error and should be deleted, thus the last sentence
44 should read: "If no, please explain why the above statement is not valid."
45

- 1 a. No "legal interpretation" should be necessary for the company to acknowledge that a statement is
2 contained in an agreement. Interpretation of this statement is not included this request, only that the
3 company acknowledges that this statement is in the agreement.
4 b. The intended response to DR 1-16 should have been "yes". If no, then an explanation should be
5 provided that states why the company does not agree that the quoted sentence does not exist in the
6 Settlement Agreement.
7 c. Request this DR be responded as requested.

7 **MM DR 1-17.** This DR requested, that the company confirm if "*it has any obligations to presently fund four-*
8 *year no-interest student loans to high school seniors at \$3,000 for each year and that such loans are*
9 *forgiven if the graduate returns to Santa Cruz County for employment.*" The cite should be for Article 9.

- 9 a. The response stated the Settlement Agreement speaks for itself.
10 b. The response continued, "denies each and every allegation made and/or implied in the request."
11 c. Other than requiring a legal interpretation, which this party cannot provide, but one an attorney can
12 provide, as to why such a statement in this request is not an accurate restatement of paragraph 13(g)
13 of ACC Decision No. 61793 and the Settlement Agreement.
14 d. Request this DR be responded as requested.
15 e. The intended response to DR 1-17 should have been "yes". If no, then an explanation should be
16 provided that states why the company "denies each and every allegation made and/or implied in the
17 request".
18 f. Request this DR be responded as requested.

17 **MM DR 2-17.** This DR contains quotes from the Asset Purchase Agreement, in particular the title of paragraph
18 2.3(i) and its associated "Schedule 2.3(i)" that specified as an "assumed liability" the ACC Order No. 62011
19 of 2 November 1999 and its incorporated Settlement Agreement between Commission Staff in Docket No.
20 E-01032A-99-0401 as an "assumed liability."

- 20 a. Both of these references use the term "assumed liability".
21 b. The definition of this term was not requested.
22 c. If these documents and associated schedules "speak for themselves" why is there even a "waiver" to
23 such an objection indicated?
24 d. The intended response to DR 2-17 should have been "yes".
25 e. Request this DR be responded as requested.

24 **MM DR 2-18.** This DR contains quotes from ACC Order No. 62011 in Finding of Fact No. 15 that stated "*The*
25 *[Commission Staff-Citizens] Settlement Agreement commits Citizens to a Plan of Action that is in*
26 *compliance with Decisions No. 61383 and 61793 and incorporates Staff Recommendations. The*
27 *Settlement Agreement states that the Plan of Action includes Citizens' submittal of April 15, 1999, as*
28 *supplemented on May 7, 1999 and July 13, 1999".* This DR requested that UNS Electric acknowledge that
29 this statement exists.

- 29 a. The company stated, "ACC Decision No. 62011 (November 2, 1999) speaks for itself."
30 b. If this document "speaks for itself" why is there even a "waiver" to such an objection indicated?
31 c. The intended response to DR 2-18 should have been "yes".
32 d. Request this DR be responded as requested.

32 **MM DR 2-19.** This DR requested that the company acknowledge that ACC Order No. 62011 contains a
33 "*Severability Provision*".

- 34 a. The company stated, "ACC Decision No. 62011 (November 2, 1999) speaks for itself."
35 b. If this document "speaks for itself" why is there even a "waiver" to such an objection indicated?
c. The intended response to DR 2-19 should have been "yes".

1 d. Request this DR be responded as requested.

2 **MM DR 3-5.** This DR requested that the company acknowledge that Arizona Administrative Code R14-2-
3 203(A)(1)(j) permits utility companies to obtain information from customers on the "type and kind of life-
4 support equipment, if any, used by the customer."

- 5 a. The company's response for this DR stated "that A.A.C. R14-2-203(A)(1)(j) speaks for itself."
6 b. If this quote "speaks for itself" why is there even a "waiver" to such an objection indicated?
7 c. The request indicated that an earlier DR 3-1 was not answered, and that the above request was
8 argumentative.
9 d. The intended response to DR 3-5 should have been "yes".
10 e. Request this DR be responded as requested.

11 **MM DR 3-6.** This DR requested that the company acknowledge that Arizona Administrative Code R14-2-
12 203(A)(2) permits "law enforcement and public agencies" to have access to customer information. This
13 information would be used so First Responders can notify those on life support during an outage.

- 14 a. The company's response for this DR stated "that A.A.C. R14-2-203(A)(2) speaks for itself."
15 b. If this quote "speaks for itself" why is there even a "waiver" to such an objection indicated?
16 c. The intended response to DR 3-6 should have been "yes".
17 d. Request this DR be responded as requested.

18 **MM DR 3-8.** This DR concerns conditionality of correspondence involved in setting up the notification
19 program for those on life support. The DR also requested that correspondence concerning this program be
20 reviewed and all relevant correspondence and information provided to this party.

- 21 a. The company cites Arizona Rules of Evidence Rule 408 as justification for keeping this information
22 privileged.
23 b. The company appears to not have reviewed this correspondence as requested.
24 c. There is no competition, no cost other than *de minus*, for setting up this program. This party in this
25 request requested no customer data nor does this party want such information.
26 d. Therefore, what is to be negotiated that cannot be shared and how could that information possibly be
27 privileged or confidential.
28 e. This party presently holds a US Secret security clearance from the Department of Defense that could
29 be provided; however, it is doubtful if the company has such a clearance. This party has held much
30 higher security clearances that could be reactivated but that will take a few months and administrative
31 matters, again doubtful if the company could meet these criteria.
32 f. This party has discussed this program with the County Sheriff on many occasions, the Chief of the City
33 of Nogales Fire Department, County Emergency Preparedness Department, Border Patrol Agent-in-
34 Charge at the Nogales Station, and others with none giving any hint of privacy issues involved in
35 setting this program up.
36 g. The company seems concerned that this party is trying to accomplish this as a volunteer known by all
37 the major players involved. As our county is slowly shutting down due to lack of funds, many county
38 activities are being transferred from paid county employees to volunteers, as the county
39 unemployment was 16.9% based on the last BOS meeting, and increasing monthly, while only one
40 county is increasing at a higher rate than Santa Cruz County.
41 h. Request this DR be responded as requested.

42 **MM DR 3-9.** This DR requested that the company acknowledge that the outage notification program was
43 related to safety and that such a program should easily meet the prudency test and thus be an allowable
44 expense.

- 1 a. The company's response was that it was "beyond the scope of this proceeding, is irrelevant, and is not
2 likely to lead to the discovery of admissible evidence."
3 b. This party disagrees on all three points. As safety is a key issue for utility companies and it was raised
4 during the rate case thus is in scope of this case and is relevant. An acknowledgment that cost and risk
5 of not being approved as a valid expense, are both very low from the company and is excellent
6 evidence that this program should be implemented ASAP.
7 c. A simple "yes" was anticipated for this request. If no, then an explanation should be provided.
8 d. Request this DR be responded as requested.

9 **Part II. Rationale to Compel Responses to the Remaining DRs in Sequential Order.**

10 **Issue 1. Meeting the Requirements of ACC Decision No. 61793 and Article 9 of the City of Nogales**
11 **Settlement Agreement.**

12 The company's response DR 1-12 was adequate.

13 The following Data Requests involving Issue 1 remain in dispute.

14 **MM DR 1-1.** This DR requests a copy of company correspondence sent to and from the City of Nogales on this
15 issue.

- 16 a. The company's response implies that ALL such correspondence was privileged pursuant to Rule 408.
17 b. The company's response further indicated that this party should already have this information since
18 he represents the City. This statement is not true and is not relevant to obtaining this information.
19 c. This party did not have Rule 408 that discussed request for privileged information concerning
20 "compromise and offers to compromise", the title of Rule 408. That information was not the focus but
21 information about implementation issues soon after UNS Electric became the electric utility for the
22 City and most of the County is critical for this case. This correspondence would point out what the
23 company was doing to ensure compliance with Article 9.
24 d. This party cannot "represent" the City of Nogales, as I am not an attorney, as only an attorney can
25 represent an organization before this Commission. This party was appointed to the Energy
26 Commission by a letter of appointment signed by the Mayor of Nogales in early 2001 and I work
27 closely with County Supervisors and the City Manager. In that role, this Energy Commissioner position
28 is a member of the public role, without compensation, primarily volunteer support for the City and
29 County that has very limited funds. In some cases, I volunteered to intervene and keep the County and
30 City informed specifically because neither has funds for an attorney, either from the City or from
31 outside resources. If I had not intervened, many of the benefits now being implemented by the gas,
32 electric and water companies would not be in place. Some of these benefits have included lowering
33 the small business electric rates by over 8% through rate consolidation with Mohave County,
34 implementation of "net metering" by UNS Electric in 2003 (one of the first in Arizona), changes in
35 various UNSE/UNSG Demand Side Management programs, removal as UNSE/UNSG bill payment
agencies at various "payday" loan companies throughout the service areas for each utility, increasing
from three to four rate tiers for our local water company, removal of hundreds of thousands of
"expenses" claimed by various utilities during rate cases, and other many others results.
e. Never has my role in prior cases been questioned as has occurred in this case.
f. Since 1999, there have been at least 5 different Mayors, 10 different City Managers and the City
Attorney's office holder has also changed many times. In August 2003, UNS Electric replaced Citizens
as the local electricity company. All of these factors have made continuity a challenge on this issue. It
also appears that this party has more continuity on this issue than anyone else.

- 1 g. In particular, this DR requested correspondence concerning *implementation* of Article 9 of the
2 Settlement Agreement between Citizens (now UNS Electric) and the City of Nogales, in particular UNS
3 Electric correspondence between 2003 and 2008 and Citizens between 1999 and 2003 would be of
4 special interest.
5 h. This request for correspondence is to establish or fail to establish, that the company tried to work with
6 the City to implement Article 9. At present, no such information has been presented to verify if any
7 action was taken by UNS Electric or by Citizens, prior to the 2007-2008 Electric Rate Case.
8 e. Request this DR be responded as requested.

9 **MM DR 1-2.** This DR requests the status of ongoing negotiations concerning Issue One, with whom UNS
10 Electric is conducting negotiations, and copies of all correspondence related to this issue including drafts
11 and/or proposed agreements.

- 12 a. The company response indicated that such information is privileged as indicated for MM DR 1-1.
13 b. As worded, this DR did request negotiations information; however, the status of such negotiations
14 could have been provided, as to when completion is expected, how the agreement will be executed
15 and implemented, and other non-critical factors.
16 c. This DR was replaced later in Data Request Set Two, and no response is deemed necessary at this
17 time.

18 **MM DR 1-3.** This DR requested the company's position on the statement made by this party that the issue of
19 "severability" would prevent changes to the Settlement Agreement during the 23 July 2009 Procedural
20 Conference. This party also indicated during this conference and in this DR that he would help "with
21 negotiations any agreement that met the conditions of Article 9, to avoid the 'severability' issue."

- 22 a. The company response was that there is an issue concerning "whether UNS Electric is a successor" to
23 Citizens. As this party intervened in the UniSource Acquisition of Citizens in 2003, there is no doubt
24 that UNS Electric succeeded Citizens.
25 b. The company also stated there was a question as to "the enforceability of the language in the
26 Settlement Agreement including Agreement [sic] #9" and it "would be subject to review by court of
27 competent jurisdiction." This is refuted by Article 10 of the Agreement that stated this Agreement
28 would remain under the jurisdiction of the Corporation Commission.
29 c. This party can only state that I was appointed by the Mayor to the Joint City of Nogales and Santa Cruz
30 County Energy Commission in 2001, which the County dissolved its role in August of 2009. The present
31 City Manager and City Attorney have both told me that the City of Nogales has not dissolved this
32 Commission. Therefore, I remain an Energy Commissioner for the City of Nogales.
33 d. The company has not requested and documentation to indicate this party is negotiating for the City of
34 Nogales.
35 e. It would be most helpful if the company would state
36 i. Evidence that show why UNS Electric is not the successor to Citizens
37 ii. Evidence that shows why "the enforceability language in the Settlement Agreement" is questioned,
38 as this is in Article 10 of the agreement.
39 iii. Evidence that the Commission is not the appropriate place to adjudicate this issue, again based on
40 the ACC Decision No. 61793 and Article 10 of the agreement.
41 f. Request this DR be responded as requested.

42 **MM DR 1-4.** This DR requested a copy of a draft version of a "UNS Electric Student Loan Program Description
43 and Application" and a "UNS Electric Loan Program Agreement" or similar documents for review and
44 comment. Further, if the company chose not to provide, then would the company be willing to collaborate
45 with this party in developing these two essential forms of documents to manage such a program.

- 1 a. The company response stated on this matter, any agreement is strictly between UNS Electric and the
- 2 City of Nogales.
- 3 b. As I have raised the Settlement Agreement issues since the UniSource-Citizens acquisition case in
- 4 2003, in the reliability docket in 2005 and in the recent rate case during 2008 and 2009, there has
- 5 been no progress shown to resolve this issue.
- 6 c. As stated in various testimony, such documents as described in the DR, could easily manage this
- 7 program using the high school foundations to manage.
- 8 d. Again, I have offered to use my relationships with key personnel in this county and the City of Nogales
- 9 to collaborate and work together to resolve this issue.
- 10 e. The company's response avoided answering the request.
- 11 f. Request this DR be responded as requested.

12 **MM DR 1-5.** This DR concerned the term "standing" in this case.

- 13 a. The company responded that it understood the Energy Commission no longer exists. As stated during
- 14 the recent Procedural Conferences and elsewhere, the Nogales element of this commission remains,
- 15 according to the City Manager.
- 16 b. Further, no request for documentation concerning the existence of the Energy Commission has been
- 17 requested from this party. If such a request is received, I will then go to the City to obtain such a
- 18 document to satisfy the request.
- 19 c. As a rate payer and intervenor, I have a legal standing in the rate case docket as documented by a
- 20 Motion to Intervene on 12 March 2008 as approved by a subsequent Procedural Order in the rate case
- 21 docket.
- 22 d. Furthermore, the definition of "standing" from *Black's Law Dictionary, fifth edition*, states, "**One's**
- 23 **place in the community in the estimation of others; his relative position in social, commercial, or**
- 24 **moral relations; his repute, grade, or rank.**" This also would indicate that Marshall Magruder has
- 25 "standing" in this community who is the local information source by many in this community
- 26 concerning local matters involving electric, gas and water utilities.
- 27 e. This party has never claimed to be an attorney or to "practice law" as that is not what I want to do,
- 28 but may have to in order to conclude this issue, However, when in the military, he performed roles as
- 29 the President of the Court, as the Judge and Jury, and as both the Prosecutor and Defending Counsels
- 30 in all three levels of Courts Martial: Summary, Special, and General, both with and without a
- 31 Magistrate, a member of the JAG Corps. I did take a one-week military justice course at the Naval
- 32 Justice School in Newport, RI. None of this is relevant in this response but is stated to ensure the
- 33 company understands his background.
- 34 f. As a concerned ratepayer, knowing that my utility has an agreement to provide a \$3,000 per year,
- 35 interest-free loan to a high school graduate in this county is very important to me. Further, this
- agreement was well publicized for well over a year in the local newspapers. The Commission was
- actively involved in this agreement, including requiring that it be revised to make it stronger and more
- enforceable.
- g. What is requested for a response to this DR would be acceptance of this party with standing in this
- case.
- h. Request this DR be responded as requested so this issue concerning 'standing" can be resolved.

36 **MM DR 1-9.** This DR requested that the company acknowledge that Marshall Magruder is a UNS Electric

37 ratepayer, lives in Santa Cruz County and is a party in the UNS Electric rate case.

- 38 a. The company response stated agreed with this DR; however, based on other responses, will the
- 39 company additional acknowledge
- 40 i. That Marshall Magruder has the rights and responsibilities afforded to such parties by law and by
- 41 the Arizona Administrative Code?

- 1 ii. That Marshall Magruder has the rights of a party to include receiving information concerning the
2 impact on him as a UNS Electric customer, ratepayer in Santa Cruz County, including electricity
3 reliability and safety issues?
4 iii. That Marshall Magruder was also a party in the Citizens Acquisition Case that resulted in ACC Order
5 No. 66028 which included an in-depth review of the purchase of Citizens by UniSource Energy, Inc.,
6 during 2002 and 2003?
7 iv. That Marshall Magruder as a UNS Electric customer and rate payer has the right to expect his utility
8 company will comply with Orders and Decisions issued by the Commission including to improve
9 electricity reliability, to enforce electrical safety for all its customers, and to meet the company's
10 agreed obligations to between it and political entities and between the company and the
11 Commission Staff?
12 v. That Marshall Magruder should expect that when an obligation becomes difficult to meet or that it
13 might not be met by the company, that alternative approaches may be necessary to meet such an
14 obligation, that the company will normally discuss this challenge with the other party in order to
15 resolve impacting issues leading to a solution?

16 **MM DR 1-14.** This DR requests the dates and participants of meeting that involved implementation of Article
17 9 and ACC Order No. 61793 paragraph 13(g), or a revisions to it or proposed changes. This DR specifically
18 did NOT request information itself, only the dates and participants during these discussions.

- 19 a. The company's response for this DR did not include the "legal interpretation" sentence but only that
20 such a request was "unduly burdensome and overbroad".
21 b. This response is strange as UNS Electric only has less than a handful of people that are working this
22 issue, there are only 3 school districts in this service area, and there are limited people in this county
23 that could be involved. Thus, this DR is not overly burdensome or broad.
24 c. Specifically, when did these discussions begin and who were the organizations involved.
25 d. Request this DR be responded as requested.

26 **MM DR 1-18.** This DR provided information from this party that "Based on prior testimony by this party, it
27 appears that at least \$104,000 funding for student loans has not been met since the Commission
28 approved ACC Order No. 61793 of 29 June 1999." This DR then asks, "What does UNS Electric propose to
29 meet these unfunded obligations and does UNS Electric agree that funding two such students in this
30 program a year for the next ten years would meet this obligation?"

- 31 a. The company's response was that "UNS Electric denies each and every premise and allegation made
32 and/or implied in this request and objects to the same."
33 b. Does UNS Electric consider it has any obligations under ACC Decision No. 61793?
34 c. What does UNS Electric consider as its funding obligations under ACC Decision No. 61793?
35 d. What suggestions does UNS Electric feel are appropriate to resolve this issue?
e. If the company response with the reasons for its response to "b", "c", and "d" above, these substitute
questions are a replacement requests for company responses.
f. Request that the company respond to this revised DR, as requested in "e" above.

36 **MM DR 1-19.** This DR tried to correct the company's comments concerning the Joint City of Nogales and Santa
37 Cruz County Energy Commission that was recessed in June of 2001, awaiting a call to resume, if requested.
38 In the time between then and the end of the County's participation in September 2008, on at least two
39 occasions, I started preparation for this Commission to reconvene. Unfortunately, two of the three
40 County Commissioners opposed two Referenda that I was one of hundreds of active participants that
41 overturned the Board of Supervisors with 72% voting in opposition to these two Supervisors. It was rather
42 obvious that dissolution of the County's role was a personal attack on this party. Further, in discussions

1 during the past year with the City of Nogales Attorney and City Manager, they both have told me that I
2 was still on the Commission as the City's participation remains.

- 3 a. The company's comment about whom Marshall Magruder represents is not relevant to this DR.
4 b. After clarifying the status of the Commission above, the intention of the DR, I withdraw the DR.

5 **Issue 2, Replacement of Defective Utility Poles and Underground Cables in 32 Projects.**

6
7 The company's responses to MM DRs 2-2, 2-3, 2-4, 2-5, 2-7, 2-8, 2-10, 2-13, 2-14, 2-15, and 2-16
8 were adequate. The initial responses for DR 2-6 in Data Request Set One were re-worded or
9 changed as a new DR in Data Request Set Two, as the initial response did not contain the expected
10 information.

11 The following Data Requests involving Issue 2 remain in dispute.

12 **MM DR 2-1.** This DR requested that the process for determination when a utility pole requires replacement be
13 provided.

- 14 a. The company response was that it uses a biannual line patrol on all distribution circuits where all poles
15 and equipment are visually inspected.
16 b. This party was looking for a documented "process" or procedure that established and sustained a
17 continuing program for pole maintenance, such as contained in RUS Bulletin 1730B-121 or equivalent.
18 c. A later DR was included in the Second Data Request Set.
19 d. No further action is necessary for this DR.

20 MM DR

21 **MM DR 2-9.** This DR requested the company's policy, practice, or equivalent and a sample checklist used
22 for the infrared feeder gateway terminal test process being used by the company to detect underground
23 cable anomalies. An earlier DR had determined this was how underground cables were tested.

- 24 a. Even though this party indicated an earlier data response was not answered, this was not written in an
25 argumentative tone as implied by the company.
26 b. As this was a follow-on DR, a reasonable response would have provided an explanation of how the
27 company used the infrared process, as it was obvious from the request that this party was trying to
28 give the company a way to respond with some details.
29 c. As indicated in the response to DR 2-10, no abnormalities using this infrared feeder gateway terminal
30 test have been found that corresponded to outages during the "relevant time period."
31 d. Since Issue 2 was shown to be impossible to determine if the known defective cables in the designated
32 projects were, in fact, replaced, I have decided not to pursue Issue 2 further; however, I would like to
33 state that the Empty Saddles project, where my home is located, has not had any distribution cables
34 replaced other than part of one that failed prior to reaching the service box for my home in 2005.
35 e. Therefore additional response is not being requested herein for this DR.

36 **MM DR 2-10.** This DR requested if UNS Electric determined reliability at the substation level as required by
37 WECC/NERC Operational Reliability Criteria. This issue had been raised in the 2005 Santa Cruz County
38 reliability hearings without resolution.

- 39 a. A simple yes with reliability data would have been sufficient; or a "no" that reliability was not being
40 determined at the substation level.
41 b. Since Issue 2 was shown to be impossible to determine if defective utility poles were, in fact, replaced
42 in the designated projects, I have decided not to pursue Issue 2 any further.
43 c. Therefore additional response is not being requested herein for this DR.

- 1
2 **MM DR 2-11.** This DR requested a "**Service Outage Map**" as required by Section 11(d) of the Franchise
3 Agreement between the City of Nogales and UNS Electric. This section was quoted in the DR.
4 a. The company responded that an "outage service map" was not required and an Excel spread sheet
5 was provided in response to DR 2-6.
6 b. The title of Section 11(d) is "Service Outage Map" which implies that a map of the City showing where
7 outages that "lasted for longer than one (1) hour" had occurred.
8 c. Further, the City Manager does not remember any Annual Reports crossing his desk with the contents
9 or that UNS Electric has requested to present this annual Report to the City Council to comply with
10 Section 11(d) of the Franchise Agreement.
11 d. As indicated above in DR 2-10, an additional response is not being requested herein for this DR.

12 **Issue 3, Notification of those on Life Support during an Electrical Outage.**

13 The company's responses to MM DRs were adequate.

14 **MM DR 3-1** This DR requested that only information from the company concerning those on life
15 support be provided to law enforcement or public agencies (specifically fire departments with EMT
16 units) as allowed by A.A.C. R14-2(A)(1)(j).

- 17 a. The company's response was that this section of the A.A.R "does not authorize the utility to
18 unilaterally release collected personnel and confidential information to a third part".
19 b. The company did not respond to the request, as this section of the A.A.R. is for "law
20 enforcement or public agencies" that handle personal and confidential information all the time.
21 c. This is not a unilateral release but a very specific release that involves safety of customers
22 and reduces reaction time by First Responders during an outage.
23 d. The purpose of this DR was to ensure that the company would release specific information
24 concerning those on life support to law enforcement and fire departments.
25 e. Upon receipt of an outage report from the utility, the county dispatcher would look at this list
26 and use the prearranged First Responder to notify the customer during an outage. This list
27 should be derived by the utility, and arranged by feeder circuits so that all the Tucson Control
28 Center needs to say, is "We have an outage for next four hours, please notify number 82 to 94
29 on the list." The Sheriff's County Dispatcher will look at 82 to 94 on the same list, determine
30 the priority of those between 82 and 94 based on type of life support equipment battery life,
31 and then order first responders in that order. A fire station might be called to notify 85 and 86,
32 they open the list, call on the phone first, then, if not contacted or there is a problem, they go
33 visit the location next, until all have been notified. Note, only one call, with a unified list in a
34 "confidential" folder is all that is required. The company knows when it loses a feeder or more
35 that one feeder and/or substation. If the whole system goes down, a process will have been worked
out in advance under the supervision of the County Sheriff.
f. Request this DR be responded as requested.

36 **MM DR 3-2.** This DR provided a non-voluntary approach for resolving this issue by requiring electric utilities in
37 Santa Cruz County to establish such a program for all electricity customers.

- 38 a. The company response was that this was hypothetical and not relevant to UNS Electric's current
39 obligations.
40 b. This DR concerned a future requirement and way to "force" the company to set up such a program. I
41 work to get such an ordinance through the system, even by referendum, if necessary. But there is a
42 much better way to accomplish this task.

- 1 c. This DR requested what some of the company responses to a County Ordinance that required
2 notification of all customers on life support during an electric outage.
3 d. Request this DR be responded as requested.

4 **MM DR 3-3.** This DR requested that a copy of all correspondence concerning this issue between the company,
5 the county and the city organizations be provided.

- 6 a. The company's response was that the request is "vague and ambiguous".
7 b. This is a very straightforward request, one that I have used on many other occasions without any
8 problems. There are probably just a few UNS Electric personnel who have worked on this issue;
9 therefore, such correspondence should be very easy to obtain.
10 c. The company also indicated that this information is confidential and/or privileged.
11 d. Please provide evidence that this information (without customer listings) is confidential and/or
12 privileged.
13 e. Request this DR be responded as requested.

14 **MM DR 3-4.** This DR requested that a draft Memorandum of Understanding (MOU) be provided as a starting
15 point to establish a working arrangement between the Sheriff and the company. The DR stated this party
16 has volunteered to collaborate with the company to establish this program.

- 17 a. The company responded that the request is vague and ambiguous.
18 b. There is nothing vague about implementing a MOUs between two different organizations, to define
19 interfaces, define security (an important issue), remove liability issues between parties, etc.
20 c. The Sheriff has told me on more than one occasion that such a MOU is essential to ensure a process is
21 agreed between the company and his law enforcement and other agencies he coordinates.
22 d. His personnel have told the company that a MOU is required when it met with the company. In fact,
23 establishment of such a program for the UNS Service Area requires a MOU before he will agree to set
24 up this program.
25 e. The company seems to believe it "has met all of its obligations regarding customers using life
26 support:" **This is not true.**
27 f. The company did not respond to my request to collaborate with them to get this going before
28 someone dies. If anyone does die who was on life support and an outage occurred, I will be the first
29 one in line with a suit against this company.
30 g. Request this DR be responded as requested.

31 **MM DR 3-7.** The DR requested that the company acknowledge that ALL persons on life support would
32 benefit by the proposed program and not just those in the lower-income CARES rate category. And if the
33 company did not agree, it was requested that the reason why the company wants to limit this program to
34 the few that have lower incomes.

- 35 e. The company's response stated, "UNS Electric denies the allegations and assertions made in the
request and object to the same".
f. The company stated it complied with ACC Decision No. 70360 of 27 May 2009, as stated in its
response of 29 December 2009.
g. It is noted that ACC Decision No. 70360 does not limit this program to those on life support to only
those in the CARES rate category. The company has imposed this limitation.
h. Again, the question asked was not answered, as no reason were provided why the company does not
want to provide such notification to all its customer on life support. It should be noted that law
enforcement and first responders would do this notification.
f. Request this DR be responded as requested.

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MM DR 3-8. This DR concerns conditionality of correspondence involved in setting up the notification program for those on life support. The DR also requested that correspondence concerning this program be reviewed and all relevant correspondence and information provided to this party.

- a. The company cites Arizona Evidence Rule 408 as justification to keep this information privileged.
- b. The company appears to not have reviewed this correspondence as requested.
- c. There is no cost other than *de minus*, for setting up this public safety program. This party requested no customer data nor does this party need such information.
- d. What information concerning this issue cannot be shared with this party?
- e. How could that information possibly be privileged or confidential?
- f. This party presently holds a US Department of Defense Secret security clearance that could be provided. This party has held higher security clearances that also could be reactivated. That will take a few months and based on security matters, if is doubtful that this company could meet these criteria.
- g. This party has discussed this program with the County Sherriff on many occasions, the Chief of the City of Nogales Fire Department, County Emergency Preparedness Department, Border Patrol Agent-in-Charge at the Nogales Station, and others. None giving any concern that privacy issues in setting this program up would not be adequate to alleviate the company's concerns.
- h. The company seems concerned that this party is trying to accomplish this as a volunteer known by all the major players involved. As our county is slowly shutting down due to lack of funds, many county activities are being transferred from paid county employees to volunteers, as the county unemployment was 16.9% based on the last BOS meeting, and increasing monthly, while only one county is increasing at a higher rate than Santa Cruz County.