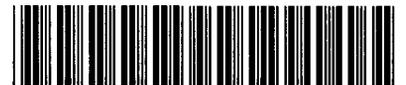


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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 NOV 10 P 12:46
AZ CORP COMMISSION
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Arizona Corporation Commission

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NOV 10 2009

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0494

JON SANDLER,

COMPLAINANT,

vs.

UNS ELECTRIC, INC.

RESPONDENT.

DOCKET NO. E-04230A-09-0245

UNISOURCE ENERGY CORPORATION'S RESPONSE TO FORMAL COMPLAINT AND MOTION TO DISMISS

UNS Electric, Inc. ("UNS Electric" or the "Company"),¹ through undersigned counsel, responds to the formal complaint filed by Mr. Jon Sandler on October 19, 2009 ("Formal Complaint"). UNS Electric respectfully requests that the Arizona Corporation Commission ("Commission") dismiss Mr. Sandler's complaint because UNS Electric is not responsible for customer equipment damaged due to a service outage. Moreover, to the extent Mr. Sandler's complaint also is alleging UNS Electric did not timely respond to service connection requests, his allegations are inaccurate and the service requests have been completed.

I. COMPLAINT ALLEGATIONS.

Mr. Sandler's complaint presents ambiguous allegations and claims. First, it appears Mr. Sandler does intend to allege that his personal property was damaged during an electric service outage and that he is expressly seeking relief for that claim.

¹ UNS Electric, Inc., not UniSource Energy Corporation, provides electric service to complainant.

1 Second, during his discourse on his views of UNS Electric's quality of service, Mr.
2 Sandler asserts in passing that it took UNS Electric twelve (12) days to turn on electric service
3 for several of his properties. However, it is unclear whether Mr. Sandler is actually asserting a
4 claim regarding those service requests. Indeed, Mr. Sandler acknowledges the service requests
5 were fulfilled and Mr. Sandler does not seek any specific relief regarding those concerns.

6 UNS Electric has already responded to Mr. Sandler during the informal complaint process
7 in which Mr. Sandler made the similar allegations. ACC Staff found no fault with UNS
8 Electric's practices with respect to Mr. Sandler. Please see Complaint Nos. 80409 and 81231,
9 attached hereto as Exhibit A and incorporated by reference, for copies of UNS Electric's
10 response to Mr. Sandler's complaints.

11 **II. COMPANY'S RESPONSE.**

12 A. Alleged Personal Property Damage.

13 Mr. Sandler's complaint requests that UNS Electric arrange for the repair of his aging
14 amplifier switch that he alleges was damaged by an electric outage. However, as UNS Electric
15 Claims Analyst Patty Tilghman explained to Mr. Sandler on August 19, 2009, UNS Electric is
16 not responsible for any damage or claim resulting from any cause against which the Company
17 could not have reasonably foreseen.² Further, the Company is not responsible for any damage or
18 claim of damage resulting from interruptions of service necessary to permit repairs or changes to
19 be made in the Company's electric generating, transmission or distribution equipment.³ Pursuant
20 to UNS Electric's Rules and Regulations, as approved by the Commission, Mr. Sandler's request
21 for relief regarding his "damaged equipment" should be dismissed.

22 B. Service Requests.

23 To the extent Mr. Sandler has intended to complain about the timeliness of UNS
24 Electric's fulfillment of service requests, he appears to acknowledge that the requests have been
25 completed and he had not requested any particular relief. Moreover, his allegations about
26

27 ² See UNS Electric's Rules and Regulations, Section 7(C)(1), attached hereto as Exhibit B.

³ *Id.* at 7(E)(1)

1 timeliness are inaccurate. UNS Electric received ten (10) faxes for service requests from Mr.
2 Sandler regarding his business properties (the "Grant Properties") on June 29, 2009 at 5:05 pm.
3 UNS Electric contacted Mr. Sandler through a fax to confirm the request on July 1, 2009. Once
4 the confirmation fax was issued, eight (8) of the service requests were completed within five (5)
5 business days and the remaining two (2) service requests were completed within six (6) business
6 days of July 1, 2009. It is important to note that July 3, 2009 was a holiday. Mr. Sandler's
7 allegation that it took UNS Electric twelve days to complete the service requests is wrong.
8 Therefore, the claim regarding service requests, to the extent it was raised, should also be
9 dismissed.

10 **III. CONCLUSION.**

11 Based upon the foregoing, UNS Electric hereby respectfully requests the Commission to
12 dismiss Mr. Sandler's complaint.

13 RESPECTFULLY SUBMITTED this 10th day of November 2009.

14 UNS Electric, Inc.

15 By 

16 Chiara Durando
17 UNS Electric, Inc.
18 One South Church Avenue, Ste 200
Tucson, Arizona 85701

19 and

20 Michael W. Patten
21 Roshka DeWulf & Patten PLC
22 400 East Van Buren, Suite 800
Phoenix, Arizona 85004

23 Attorneys for UNS Electric, Inc.

24 Original and 13 copies of the foregoing
25 filed this 10th day of November 2009 with:

26 Docket Control
27 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Copy of the foregoing hand-delivered/mailed
2 this 10th day of November 2009 to:

3 Jon Sandler
4 P. O. Box 4515
5 Rio Rico, Arizona 85648

6 Lyn A. Farmer, Esq.
7 Chief Administrative Law Judge
8 Hearing Division
9 Arizona Corporation Commission
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Janice Alward, Esq.
13 Chief Counsel, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Steve Olea
18 Director, Utilities Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

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By Mary J. Joplin

EXHIBIT A

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Richard Martinez

Phone: (520) 628-6555

Fax: (520) 628-6559

Priority: Respond Within Five Days

Complaint No. 2009 - 80409

Date: 7/15/2009

Complaint Description: 01Z Billing - Other
05Z Quality of Service - Other

First:

Last:

Complaint By: John

Sandler

Account Name: Grand Properties

Home: (520) 377-0205

Street: 1192 Zircon, #1

Work:

City: Rio Rico

CBR:

State: AZ Zip: 85648

is:

Utility Company: Unisource ** Energy Services (UNS)

Division: Electric

Contact Name: Brenda Bevard

Contact Phone: (520) 884-3651

Nature of Complaint:

Customer is not happy since the day Unisource took over and purchased Citizens. Customer said he is very frustrated with Unisource's lack of customer services. Customer has to have this staff call and wait from five minutes up to and over one hour to speak with a customer services representative. Once customers reach Unisource the customer is only allowed to give the Unisource representative no more than three orders at one time and then the customer has to repeat the tedious task of possibly waiting an additional hour on the phone two more separate times.

Customer is also upset that the other day customer faxed over ten orders to Unisource on June 29th. Unisource confirmed they received this order for ten transfers of services. The orders were not worked until July 10th long after the services were already disconnected. Customer is upset that years ago when customer wanted to put his units on a Landlord Lease Agreement ("LLA") customer was told that LLA were not permitted in Santa Cruz County?

Customer is not happy in Unisource's poor customer services skills whenever he calls.

Please investigate as to why customer is not on a LLA?

Has customer requested this in the past?

Is Unisource only taking three orders per call?

Why can't a business such as this customers" be assigned a business representative where customer could place a call directly to this designated person?

Please report your findings to the ACC.

End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Pending
End of Comments

Date Completed:

Complaint No. 2009 - 80409

BeVard, Brenda

From: ACC Complaints - All
Sent: Monday, July 20, 2009 11:11 AM
To: 'Richard Martinez'
Subject: ACC Complaints: Sandler, John - SC UNSE Complaint No. 80409: 01Z Billing - Other Acct# 8072549450
Attachments: rpt_Complaint_EmailPDF.pdf

Brenda BeVard, UNS Electric, Inc. ("UNSE") Representative, spoke with Mr. Sandler on July 17, 2009 regarding his service with UNSE.

On June 29, 2009 UNSE received ten faxes from Grant Properties with request to establish ten separate services. The request to establish service at 1192 Zircon Court, 1, was disconnected on June 29, 2009 at the request of the previous party, which was also the date the service establishment that was requested by Grant Properties. UNSE faxed a confirmation of receipt to Grant properties on July 1, 2009 and informed the customer that the service was scheduled to be connected on July 10, 2009. Please refer to UNSE Rules and Regulations, Section No. 3.E.2 (page 12).

E. Service Establishments, Reestablishment or Reconnection Charge

2. Should service be established during a period other than the Company's regular business hours at the Customer's request, the Customer may be required to pay an after-hour charge for the service connection. Where the Company's scheduling will not permit service establishment on the same day as requested, the Customer can elect to pay the after-hour charge for establishment that day, or his service will be established on the next available working day. The after-hour charge is set forth in the Statement of Additional Charges at Section 14. Even so, a Customer's request to have the Company establish service after-hours is subject to the Company having Staff available; there is no guarantee that the Company will have the staffing available for service establishment or reestablishment outside of regular business hours.

All service request orders are accepted during the initial call from customers; however, Grant Properties faxes their request individually for each order.

Previous to April 2007, UNSE did not offer its customers electric landlord agreements. In April 2007 UNSE converted to a new billing system and began to offer its customers electric landlord agreements.

Question: Please investigate as to why customer is not on a LLA?

Since April 2007, UNSE has not received a signed landlord agreement from Grant Properties.

Question: Has customer requested this in the past?

UNSE has no record of Grant Properties requesting a landlord agreement prior to a request made on July 8, 2009.

Question: Is Unisource only taking three orders per call

No.

Question: Why can't a business such as this customers" be assigned a business representative where customer could place a call directly to this designated person?

Service establishments and disconnection orders are placed through the UNSE Customer Care department. Also, requests made by Grant Properties are for residential service and not commercial.

From: Richard Martinez [mailto:RMartinez@azcc.gov]

Sent: Wednesday, July 15, 2009 3:59 PM

11/5/2009

To: ACC Complaints - All

Subject: ACC Complaints: Sandler, John - Complaint No. 80409

Please see the attached complaint. It is in PDF format.

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ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Richard Martinez

Phone: (520) 628-6555

Fax: (520) 628-6559

Priority: Respond Within Five Days

Complaint No. 2009 - 81231

Date: 8/18/2009

Complaint Description: 04D Service - Not Working
N/A Not Applicable

Complaint By: **First:** Jon **Last:** Sandler

Account Name: Jon Sandler **Home:** (520) 377-0205

Street: 1192 Zircon, #1 **Work:**

City: Rio Rico **CBR:**

State: AZ **Zip:** 85648 **Is:**

Utility Company: Unisource ** Energy Services (UNS)

Division: Electric

Contact Name: Brenda Bevard **Contact Phone:** (520) 884-3651

Nature of Complaint:

Customer wants the following questions answered by UNS Energy.

I have 3 things I could use additional help with in getting Unisource to respond-

1) approx. 3 weeks ago I filed a complaint with Unisource after one of their many power outages damaged my stereo amplifier and DVD player. I have followed up twice with Customer Service (what a misnomer that is with UNS) only to be told that they have a record of my calls and someone will call me. No one ever does and it's getting ridiculous. I don't want to wait anymore. In years past, they sent you a form and then sent you a check. This isn't rocket science.

2) at approx. 8:45 am Saturday 8/15/09, the community I live in, Tubac, Az., had another of our power outages. It goes off so often it's crazy. Assuming it was just a normal problem, I did not call it in. When power was not restored by 9:45, I called "emergency" and was told there had been no other calls so it must be my house. I checked all breakers and called back to say I found no problem and requested immediate service to restore electricity on a day that was to be at least 95 degrees. By 11:40 am, still no one had shown up and when I called in to find out why (again "emergency"), they now said it was community wide but had no idea when power would be restored. At 11:55, I was pulling out of my driveway and a UNS truck went past so I chased him down. He was looking for my house and told me he had not been alerted to a problem until after 11 am! Power was not restored until approx. 4 pm-over 7 hours without electricity! I would like answers to the following questions-

-what caused the outage?

-what took so long to restore power?

-I called at 9:45. Why was the guy not alerted until after 11 am and didn't show until 12? What is the benefit of calling "emergency" if it is not treated like an emergency?

-how can UNS not know when hundreds of homes suddenly go dead and off the grid? What can be done to alert them when there is a problem and not many people call to report it?

-most importantly, why does our power go out so often and what can be done to prevent this from happening so often?

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

3) Power went off again sometime in the afternoon yesterday! I came home to all the clocks flashing again. What caused this?

I would appreciate any help you can be in getting Unisource to respond as a normal business (which had some competition) would/should. I would like my stereo equipment repaired or replaced and I would like to replace my frozen food which sat without electricity for 8 hours on Saturday.

Did Risk Management contact this customer since the time he filed for a damage/loss report?

What is causing the outages as described by this customer and what caused this huge delay in restoration of power?

Please contact customer and explain to him the reasoning behind the non-contact with customer and the fact that UNS continues to lose electrical services to its customers.

Please report your findings to the ACC.
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

Pending
End of Comments

Date Completed:

Complaint No. 2009 - 81231

BeVard, Brenda

From: ACC Complaints - All
Sent: Thursday, August 20, 2009 4:27 PM
To: 'Richard Martinez'
Subject: ACC Complaints: Sandler, Jon - SC UNSE Complaint No. 81231: 04D Service - Not Working Acct# 3680220000
Attachments: rpt_Complaint_EmailPDF.pdf

Patty Tilghman, UNS Electric, Inc. ("UNSE") Claims Analyst spoke with Mr. Sandler on August 19, 2009 and explained that UNSE will not make a payment for damage claims related to a problem the Company could not have reasonably foreseen.

Please refer to UNSE Rules and Regulations, Section No. C (page 66).

C. Continuity of Service

The Company will make reasonable efforts to supply a satisfactory and continuous level of service. However, the Company will not be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:

1. Any cause against which the Company could not have reasonably foreseen, or made provision for (see Subsection 7.E.);
2. Intentional service interruptions to make repairs or perform routine maintenance; or
3. Curtailment, including brownouts or blackouts.

Brenda BeVard, UNSE Representative and Angelica Orta-Madrigal, UNSE Distribution Supervisor, spoke with Mr. Sandler on August 20, 2009 regarding outages; a request for a damage claim; and to answer Mr. Sandler's questions and concerns.

Customer's Questions:**What caused the outage?**

Bad underground cable.

What took so long to restore power?

Emergency cable had to be installed between the transformer and the overhead line.

Why was the guy not alerted until after 11 am and didn't show until 12? What is the benefit of calling "emergency" if it is not treated like an emergency?

The first no power call UNSE received was at 8:55 am and a crew was dispatched to the area at 9:01 am. UNSE crews do not show up to individual houses (premise), they're routed to where the problem is located with the Company's facilities. It also takes time to locate the problem, especially when the problem is in the underground system. An additional crew was also dispatched to this location at a later time to assist with installation for emergency cable to restore power.

How can UNS not know when hundreds of homes suddenly go dead and off the grid? What can be done to alert them when there is a problem and not many people call to report it?

Generally when hundreds of premises are without power, UNSE receives a high volume of calls to report the outage. In this case, there were sixteen (16) premises without power. The first no power call was reported at 8:55 am. Power was restored for ten (10) premises at 12:41 pm and the remaining six (6) premises were restored at 4:14 pm.

Most importantly, why does our power go out so often and what can be done to prevent this from happening so

11/5/2009

often?

There has been a variety of reasons for power outages, some localized, others wide spread. Some outages can be explained others cannot be. Unfortunately, that is the nature of the electric system. It is not until a pattern develops that further investigation is warranted. Nonetheless, the Company understands that our customers are burdened when experienced with any type of outage. UNSE takes outages very serious and works as quickly as possible to restore power.

Power went off again sometime in the afternoon yesterday! I came home to all the clocks flashing again. What caused this?

A temporary outage was required to remove the emergency cable and to repair and install the replacement cable.

Question by the Commission:

Question: What is causing the outages as described by this customer and what caused this huge delay in restoration of power?

These outages that have affected this service area are caused by a variety of reasons like equipment failure, which UNSE may not reasonably foresee, storms or safety hazards. In the case of the outage on August 15, 2009, a bad underground cable needed to be temporarily replaced by an emergency cable installed from the overhead line. This is a time consuming process.

From: Richard Martinez [mailto:RMartinez@azcc.gov]
Sent: Tuesday, August 18, 2009 11:04 AM
To: ACC Complaints - All
Subject: ACC Complaints: Sandler, Jon - Complaint No. 81231

Please see the attached complaint. It is in PDF format.

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EXHIBIT B

SECTION 7
PROVISION OF SERVICE
(continued)

C. Continuity of Service

The Company will make reasonable efforts to supply a satisfactory and continuous level of service. However, the Company will not be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:

1. Any cause against which the Company could not have reasonably foreseen, or made provision for (see Subsection 7.E.);
2. Intentional service interruptions to make repairs or perform routine maintenance; or
3. Curtailment, including brownouts or blackouts.

D. Service Interruptions

1. The Company will make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur.
2. The Company will make reasonable provisions to meet emergencies resulting from failure of service and will issue instructions to its employees covering procedures to be followed in the event of emergencies in order to prevent or mitigate interruption or impairment of service.
3. In the event of a national emergency or local disaster resulting in disruption of normal service, the Company may, in the public interest, interrupt service to other Customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.
4. When the Company plans to interrupt service for more than four (4) hours to perform necessary repairs or maintenance, the Company will attempt to inform affected Customers at least twenty-four (24) hours in advance of the scheduled date and estimated duration of the service interruption. These repairs will be completed in the shortest possible time to minimize the inconvenience to the Customers of the Company.
5. The ACC will be notified of interruption in service affecting the entire system or any significant portion thereof. The interruption of service and cause will be reported by telephone to the ACC within two (2) hours after the responsible Company representative becomes aware of said interruption. The Company will then issue a written report to the ACC.

SECTION 7
PROVISION OF SERVICE
(continued)

E. Interruption of Service and Force Majeure

1. The Company will make reasonable provision to supply a satisfactory and continuous electric service, but does not guarantee a constant or uninterrupted supply of electricity. The Company will not be liable for any damage or claim of damage attributable to any temporary, partial or complete interruption or discontinuance of electric service attributable to a force majeure condition as set forth in Subsections 7.E.4. or 7.E.5., or to any other cause that the Company could not have reasonably foreseen and made provision against. Further, the Company will not be liable for any of the above-described interruptions if, in the Company's judgement, it is necessary to permit repairs or changes to be made in the Company's electric generating, transmission, or distribution equipment, or to eliminate the possibility of damage to the Company's property or to the person or property of others.
2. Whenever the Company deems a condition exists that warrants interruption or limitation in the service being rendered, this limitation or interruption will not constitute a breach of contract and will not render the Company liable for damages suffered by the Customer. Further, the Customer will not be excused from further fulfillment of the contract.
3. The use of electric energy upon the Customer's premises is at the risk of the Customer. The Company's liability will cease at the point where its facilities are connected to the Customer's wiring.
4. Neither the Company nor the Customer will be liable to the other for any act, omission, or circumstances (including, but not limited to, the Company's inability to provide electric service) due to the following:
 - a. flood, rain, wind, storm, lightning, earthquake, fire landslide, washout or other acts of the elements;
 - b. accident or explosion;
 - c. war, rebellion, civil disturbance, mobs, riot, blockade or other act of the public enemy;
 - d. acts of God;
 - e. interference of civil and/or military authorities;
 - f. strikes, lockouts, or other labor difficulties;

SECTION 7
PROVISION OF SERVICE
(continued)

- g. vandalism, sabotage, or malicious mischief;
 - h. usurpation of power, or the laws, rules, regulations, or orders made or adopted by any regulatory or other governmental agency or body (federal, state or local) having jurisdiction of any of the business or affairs of the Company or the Customer, direct or indirect;
 - i. breakage or accidents to equipment or facilities;
 - j. lack, limitation or loss of electrical or fuel supply; or
 - k. any other casualty or cause beyond the reasonable control of the Company or the Customer, whether or not specifically provided herein and without limitation to the types enumerated, and which by exercise of due diligence the Company or the Customer is unable to overcome.
5. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees will not be considered to be a matter within the control of the Company.
6. Nothing contained in this Section will excuse the Customer from the obligation of paying for electricity delivered or services rendered.