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BEFORE THE ARIZONA CORPORATION



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COMMISSIONERS
Kristin K. Mayes
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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~~

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR APPROVAL OF
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF UNS ELECTRIC, INC.

Docket No. E-04204A-06-0783

Filing of Miscellaneous Documents

18 November 2009

On November 18, 2009, a Procedural Conference was held on these matters. During the conference, this party mentioned a letter from the City of Nogales to UNS Electric, of 24 June 2008, that is in Attachment 1. Also, this party discussed but didn't present, some possible corrections to a Procedural Order of 2 September 2009, for consideration, that are in Attachment 2.

I certify this filing has been mailed or delivered to parties on the Service List this date.
Respectfully submitted on this 18th day of November 2009.

MARSHALL MAGRUDER

Arizona Corporation Commission
DOCKETED
NOV 20 2009

By Marshall Magruder
Marshall Magruder
PO Box 1267
Tubac, Arizona 85646
(520) 398-8587
marshall@magruder.org

DOCKETED BY

Attachments:

- 1 - Nogales Deputy City Attorney Michael Masee ltr to UNS Electric, Inc's, Ms. Michelle Livengood of 24 June 2008 (copy from email, original on City of Nogales letter paper)
- 2 - Review Of Recommended Corrections To Procedural Order Of 2 September 2009

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Service List

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

Docket Control (13 copies)
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

ACC Staff (1 copy)
Kevin Torres, Legal Department

Jane L. Rodda, Administrative Law Judge (1 copy)
Hearing Division, Arizona Corporation Commission, Room 218
Arizona Regional Offices
400 West Congress
Tucson, Arizona 85701-1347

Additional Distribution (1 copy each):

Michael W. Patten, Attorney for Applicant
Roshka, DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004-2262
(without attachments)

Dan Podzefsky, Chief Counsel
Residential Utility Consumer Office (RUCO)
1110 West Washington Street, Ste 220
Phoenix, Arizona 85007-2958

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

Santa Cruz County Board of Supervisors:
John Maynard, Chairman
Santa Cruz County Complex
2150 North Congress Drive
Nogales, Arizona 85621-1090

City of Nogales
Jaime Fontes, City Manager
Michael Masee, Deputy City Attorney
Nogales City Hall
777 North Grand Avenue
Nogales, Arizona 85621-2262

1 Attachment 1

2 **Nogales Deputy City Attorney Michael Masee Letter to**
3 **UNS Electric, Inc's., Ms. Michelle Livengood of 24 June 2008**

4
5 June 24, 2008

6
7 Michelle Livengood
8 Regulatory Counsel
9 Tucson Electric Power Co.
10 One South Church Avenue, Suite 100
11 P.O. Box 711
12 Tucson, AZ 85702

13 Re: Settlement Agreement Between City of Nogales and Citizens Utilities Co.

14 Dear Michelle:

15 Thank you for emailing me today the Memorandum of Understanding Re Miscellaneous Closing
16 Issues dated August 11, 2003. Unfortunately, this document raises more issues than it resolves.

17 Pursuant to its terms, this document memorializes certain agreements between UNS Electric, Inc.
18 and Citizen's Communications Company regarding the Asset Purchase Agreement dated
19 October 29, 2002. The Asset Purchase Agreement was prominently mentioned in the Settlement
20 Agreement between ACC Utilities Staff and the parties in Docket Nos. G01032A-02-0598 ("Gas
21 Rate Case"), E-01032C-00-0751 ("PPFAC Case") and E-01933A-02-0914, E-01302C-02-0914,
22 G-01302C-02-0914 ("Joint Application") and the subsequent Opinion and Order entered in these
23 matters (Decision No. 66028). Importantly, neither the Settlement Agreement nor the Opinion
24 and Order reference the Memorandum of Understanding, which appears to be a later document
25 not yet in existence at the time the Settlement Agreement and Decision were entered. Thus, I
26 question whether such a document can be binding on anyone other than the parties thereto in
27 such a highly-regulated and exhaustively litigated environment. (As an aside, the parenthetical
28 assertion made in Schedule 2.3(i) of MOU that there were no issues current with the City's
29 complaint, which it asserts to have been dismissed with prejudice, does not appear to be factually
30 correct. Pursuant to the terms of the City's Settlement Agreement, jurisdiction in the ACC was
31 reserved for enforcement purposes, as certain provisions created long-term obligations. Thus,
32 this self-serving statement does nothing to affect the binding nature of the Settlement Agreement
33 or its express terms).

34 Moreover, there appears to have been an earlier version of Schedule 2.3(i) that did not include
35 the strikeouts and parenthetical language that appear in the MOU you emailed me. I am
36 enclosing herewith another version of Schedule 2.3(i), which is identified with Bates No. JA/0401-
37 00000896. This document was produced to Marshall Magruder in response to his Second Set of
38 Data Requests in Docket No. E-01032A-99-0401, and was the response of the Joint Applicants to
39 Mr. Magruder's question regarding the transition or changeover plan ensuring all prior
40 commitments of Citizens were addressed. Thus, it appears that at one time UNS Electric did
41 intend to assume Citizens' obligations under the Settlement Agreement with the City, and openly
42 told this to Mr. Magruder. This obviously creates further doubts about what if any legal effect to
43 be given to the MOU you emailed me.

44 At any rate, I think we can agree that the document trail that I have outlined above is anything but
45 clear as to how Citizens and UNS Electric intended to deal with the continuing obligations created

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by the Settlement Agreement. In this situation, the terms of the Settlement Agreement should apply, which is that it bound not only Citizens but its "successors and assigns." If UNS Electric or its related entities disagree, then the burden should be on them to show why they should not be bound, and the MOU, either in isolation or in context with the other documents that I mention above, does not appear to carry that burden.

What I am contemplating is proposing to the City Counsel that the City seek to re-open Docket No. E-01032B-98-0621 (its complaint against Citizens) and request either a status conference or an order to show cause hearing, naming both UNS Electric and Citizens Communications as joint respondents. Clearly, one of the two is responsible for complying with the terms of the Settlement Agreement's clause regarding the on-going obligation to fund scholarships or no-interest loans to students in Nogales and Rio Rico. At this point, it would not appear to matter which should be compelled to comply with this term, so long as there is an entity declared to be responsible. This appears to be the best approach to avoid the possibility of inconsistent results should the City pursue either UNS Electric/Unisource or Citizens Communications separately.

If the City elects to pursue this option, it would likely engender some publicity due to the perception that it was adopting an openly adverse position to that of UNS Electric/Unisource with respect to funding student scholarships. This would be unfortunate as it is a truly laudable goal that should not be a point of contention among the parties. Therefore, I look forward to receiving your reply at your earliest opportunity to learn from you where in the above analysis I have erred, or how you propose to resolve this issue amicably. By copy of this letter to Hillary Glassman, Citizens Communication's counsel, I am also requesting a reply from Citizens Communications regarding its position on this issue.

Sincerely yours,

Michael Masee
Deputy City Attorney

MJM/jvh
(enclosures)

cc: Hillary Glassman, Esq.

1 **Attachment 2**

2 **Review Of Recommended Corrections To Procedural Order Of 2 September 2009**

- 3
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- 5 1. On page 1, line 22, after Settlement add, "Agreement and Plan of Action"
- 6 2. On page 1, line 22, change "City of Nogales" to "Commission Staff"
- 7 3. On page 1, line 23, change "scholarships" to "student loans"
- 8 4. On page 1, line 23, delete "the Plan of Action adopted as a result of"
- 9 5. On page 1, line 24, between "of customers" insert "all"
- 10 6. On page 1, line 25, after "support" add "during an electrical outage" before the period.
- 11 7. On page 2, line 11, after 1999 before the comma, insert "and as indicated in the Commission Order
- 12 No. 70360"
- 13 8. On page 2, line 15, change "scholarships" to "student loans"
- 14 9. On page 2, line 24, after "Magruder" change "did not disagree with the recommendation" to
- 15 "agreed to support any recommendation that complied with the Settlement Agreement."
- 16 10. On page 2, line 28, add new sentence, "Mr. Magruder stated that the Commission Order No. 70360
- 17 on pages 58-59 and 88 did not limit notification to any special rate category but was to be
- 18 applicable for all ratepayers and customers."
- 19 11. On page 3, line 8, add a new sentence to read "However, Mr. Magruder believes this issue has
- 20 been heard and that only implementation of a process that allows customers to signup for such
- 21 notifications and that the county/city law enforcement organizations enter into an agreement with
- 22 the company on information sharing to make this a reality."
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