0000107484

Transcript Exhibit(s)

Docket #(s): T-20447A-09-0179

Exhibit # : S1

RECEIVED
2010 JAN -4 A 11:59
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
JAN -4 2010
DOCKETED BY

EXHIBIT
S-1
ADMITTED

LEGAL

RECEIVED

2009 SEP 22 A 9:31

AZ CORP COMMISSION
DOCKET CONTROL

MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

SEP 22 2009

DATE: September 22, 2009

RE: **STAFF REPORT** - IN THE MATTER OF THE APPLICATION AS AMENDED OF AGL NETWORKS, LLC FOR APPROVAL OF A PETITION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20667A-09-0179)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Point-to-Point Private Line Telecommunications Services

Staff is recommending approval of the Application, with conditions.

SMO:LLM:tdp

Originator: Lori Morrison

Attachment: Original and Thirteen copies

FILE COPY

SERVICE LIST FOR: AGL NETWORKS, LLC
DOCKET NO.: T-20667A-09-0179

Mr. Kennard B. Woods, Esq.
Mr. Norman B. Gerry, Esq.
Friend, Hudak & Harris, LLP
Three Ravinia Drive, Suite 1450
Atlanta, Georgia 30346-2117

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

STAFF REPORT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AGL NETWORKS, LLC

DOCKET NO. T-20667A-09-0179

IN THE MATTER OF THE APPLICATION AS AMENDED OF AGL NETWORKS, LLC FOR APPROVAL OF A PETITION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES

SEPTEMBER 22, 2009

STAFF ACKNOWLEDGMENT

The Staff Report for AGL Networks, LLC, Docket No. T-20667A-09-0179, was the responsibility of the Staff member listed below. Lori Morrison was responsible for the review and analysis of AGL Networks, LLC Application requesting approval for a Certificate of Convenience and Necessity to provide Point-to-Point Private Line Telecommunications Service within the State of Arizona and a petition for a determination that its proposed services should be classified as competitive.

Lori Morrison

Lori Morrison
Public Utilities Analyst I

TABLE OF CONTENTS

PAGE

1. **INTRODUCTION** 1

2. **TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES** 1

3. **FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES** 2

4. **ESTABLISHING RATES AND CHARGES** 2

5. **REVIEW OF COMPLAINT INFORMATION** 3

6. **COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES** 5

   6.1 Private Line Services 5
   6.2 Description of Requested Services 5
   6.3 A Description of the General Economic Conditions That Exist That Make the Relevant Market For the Service One That is Competitive. 5
   6.4 The Number of Alternative Providers of the Service. 5
   6.5 The Estimated Market Share Held by Each Alternative Provider of the Service. 6
   6.6 The Names and Addresses of Any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, as Defined in A.A.C. R14-2-801. 6
   6.7 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms, and Conditions. 6

7. **RECOMMENDATIONS** 6

8. **RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE** 7

1. INTRODUCTION

On April 14, 2009, AGL Networks, LLC ("AGLN" or "Applicant") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide local point-to-point high capacity private line telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. Included in its original application, AGLN also submitted a proposed tariff for the services it is requesting the authority to provide.

On June 25, 2009, the Applicant filed an amended application clarifying it was seeking a CC&N to provide both local and long distance point-to-point high capacity private line telecommunications services within the State of Arizona. Included in the amended application was a revised tariff to replace the one filed with the initial application. On July 21, 2009, the Applicant filed to replace the two previous tariffs with a final revised tariff containing revisions and corrections made at the request of Staff.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

AGLN is a privately held, foreign, limited liability company organized under the laws of Delaware, headquartered in Atlanta, Georgia, and is a wholly-owned subsidiary of AGL Resources, Inc., a publicly traded energy services holding company. The telecommunications experience of AGLN's top five executives exceeds a combined total of 70 years.

The Applicant will be providing non-switched, facilities-based private line services to business customers in Arizona. These services include point-to-point, point-to-multipoint and multipoint-to-multipoint services, dark fiber and last-mile dedicated connectivity between intrastate locations. Currently, the Applicant owns, operates and maintains a 255 mile fiber network in the metro Phoenix area which covers the central business district, midtown, I-17 corridor, airport, south Tempe, Chandler, Scottsdale, Mesa and Paradise Valley areas. AGLN provided Staff information indicating it currently has 3 employees located in Arizona who are engaged in sales, engineering, project management, operations and maintenance as well as contracts with Arizona-based companies to assist with on-site fiber installations. The Applicant has a 24/7 Network Operations Center located in Atlanta, Georgia that handles all customer concerns, complaints and repair inquires.

The Applicant is currently providing telecommunications services in four (4) other jurisdictions. In the amended application, AGLN states it is authorized to provide facilities-based private line services in Georgia, Missouri, Nevada and North Carolina.

Based on the above information, Staff believes AGLN possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided updated audited financial statements of AGL Resources, Inc. and subsidiaries, including AGLN Networks, LLC, for the twelve months ending December 31, 2007 and twelve months ending December 31, 2008. The audited consolidated financial statements ending December 31, 2007, list total assets of $6,258,000,000; total equity of $1,661,000,000; and a net income of $211,000,000. The audited consolidated financial statements ending December 31, 2008, list total assets of $6,710,000,000; total equity of $1,652,000,000; and a net income of $217,000,000. The audited financial statements and accompanying notes were included in the amended application as Attachment D.

The Applicant states in its proposed Commission Tariff No.1, Original Page 26, Section 2.13.1 that advance payments may be required. Section 2.13.2, on the same page, states that deposits may be required.

AGLN's intends to provide service to other telecommunications service providers and large business entities upon request. AGLN will not provide service to small business or residential customers. Due to the nature of AGLN's current and future customer market, Staff does not believe a performance bond or Irrevocable Sight draft Letter of Credit ("ISLC") is necessary for the high capacity fiber optic private line services that AGLN proposes to offer in Arizona.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. In Attachment G of its amended application, AGLN estimates its expected net book value or fair value rate base after the first twelve months of operation to be $20,000,000. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Applicant, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for competitive services. AGLN will not provide service to small business or residential end users. AGLN provides non-switched private line services, and also proposes to offer customized private line services to meet the individual needs of carriers, government and large business entities in Arizona. AGLN's customers will be sophisticated government and business customers and telecommunications carriers that typically negotiate contract rates through a competitive process with the ultimate rates provided on an individual case basis ("ICB") by AGLN. Business customers who do not need individualized offerings and do not require an ICB contract to meet their needs will be able to purchase services at the rates contained in AGLN's proposed tariff.

Staff has reviewed the proposed rates to be charged by the Applicant. AGLN's rates are for highly competitive services and the services are targeted for large business and telecommunications companies. These carriers and companies have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services. The proposed tariff rates are similar to those charged by AGLN in other states and are similar to the tariffed rates of other providers of point to point services in Arizona. The rate charged for a service shall not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. Therefore, Staff believes that AGLN's proposed rates are just and reasonable.

5. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for service denied in any state. However, as indicated in response to section (A-11) in the amended application, the Applicant explains a situation in which the Staff of the Missouri Public Services Commission ("MPSC") filed a complaint against the Applicant and the events that eventually led to a MPSC determination that AGLN's initial certification of service authority in the State of Missouri was null and void.

On October 11, 2002, AGLN indicates it was granted certification of service authority to provide both interexchange and non-switched local exchange services in Case No. XA-2003-0060 by the MPSC. On January 29, 2004, a complaint was filed on behalf of the MPSC Staff against AGLN for failing to file an annual report in Case No. TC-2004-0314. The MPSC directed Staff General Counsel to seek penalties in Circuit Court against AGLN. The eventual outcome of the complaint case was an agreement by the parties:

a. that AGLN never exercised its authority pursuant to its certification,
b. that in subsequent cases the MPSC had found that companies that never exercised their certificate of service authority were not responsible for submitting annual reports and,
c. in cases where the MPSC Staff had filed complaints against companies (who had never exercised authority pursuant to its certification) for not having filed their annual reports, the MPSC had denied Staff's complaints.

Thus, the Staff General Counsel advised AGLN that the General Counsel's office would not pursue any penalty action against the company. After this agreement was reached, on January 11, 2005, the MPSC Staff initiated Case No. XD-2005-0222 in which it filed a motion requesting the MPSC to find AGLN's certificate of service authority null and void as AGLN had never provided service in Missouri or filed tariffs. AGLN filed a response supporting MPSC Staff's motion on January 18, 2005. On February 16, 2005, the MPSC granted the request and effective February 26, 2005, AGLN's certificate was null and void. The order also stated that MPSC Staff noted AGLN did not owe the MPSC any assessments and AGLN had submitted all outstanding annual reports. Finally, March 24, 2008, in Case No. CA-2008-0306, AGLN filed a new application to provide local and non-switched services in Missouri. On April 30, 2008, an order was issued granting AGLN a certificate of service authority effective May 10, 2008.

The Applicant states that it has filed its annual report for 2008 and the other compliance required by the MPSC as well as the tariffs required. The Applicant further states the circumstances described in the complaint and motion proceedings described above should not recur. Staff researched the events and cases described above, verified the information with the MPSC Staff and found nothing that contradicted the complaint information provided by AGLN.

Staff sought information from the four Public Utility Commissions[1] in which AGLN is currently operating and found, aside from the situation described above, only one billing complaint in Georgia in 2007 that was resolved. The Utilities Division Consumer Services section reports no complaint history within Arizona from January 1, 2006 to present. No complaint information filed against AGLN was found on the Federal Communications Commission ("FCC") website.

In response to section (A-12) in the application, the Applicant indicates there is a current civil complaint filed against it. On December 29, 2008, Southwest Gas Corporation ("Southwest Gas") filed a complaint in the Superior Court of Maricopa Count, Arizona, against the City of Tempe, AGLN, Speedy Gonzalez Construction, Inc., Does 1-10 and Roe Corporations I-X, in Case No. CV2008-032658. Southwest Gas seeks damages that allegedly resulted from breakage of a 24-inch water main by a contractor for AGLN. The complaint is pending and thus, no judgment has been entered in the case. In addition, AGLN and its contractor, Speedy Gonzalez Construction, Inc., have filed a cross claim and third party complaint against the City of Tempe for its failure to properly locate and mark underground facilities in an amount equal to the claim against AGLN. The Commission's Pipeline Safety Section found that Speedy Gonzalez Construction, Inc. followed all applicable underground facility laws and cited the City of Tempe for not properly identifying a 24-inch water main line that was ruptured. The Pipeline Safety Section issued a Notice of Violation Warning to the City of Tempe as "Owner of underground facility failed to properly identify or mark underground facility".

[1] Georgia, Missouri, Nevada, North Carolina.

The Applicant, in response to Staff Data Request STF 1.1, provided copies of the cover letter and the Notice of Violation 15546 to the City of Tempe, the Commission's Pipeline Safety Blue Stake Field Data Report which detailed the incident, the Commission's Pipeline Safety Telephonic Incident Report and the report diagram of each of the underground facilities indicating where the Contractor had bored and the location of unmarked pipeline that was ruptured. Staff verified this information with the Pipeline Safety Section and confirmed the situation and citation discussed above.

Aside from this pending civil complaint, Staff researched and found neither the Applicant nor any of its officers, directors, partners, or managers have been or are currently involved in any other civil or any criminal investigations within the last ten (10) years. The Corporations Division of the Arizona Commission has indicated that AGLN is in good standing.

6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

6.1 Private Line Services

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 Description of Requested Services

AGLN proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

6.3 A Description of the General Economic Conditions That Exist That Make the Relevant Market For the Service One That is Competitive.

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, ILECs and a number of CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

6.4 The Number of Alternative Providers of the Service.

IXCs are providers of private line service in the State of Arizona. ILECs and a number of CLECs also provide private line service.

6.5 The Estimated Market Share Held by Each Alternative Provider of the Service.

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

6.6 The Names and Addresses of Any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, as Defined in A.A.C. R14-2-801.

None.

6.7 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms, and Conditions.

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in its respective service territories. Similarly, many of the CLECs offer substantially similar services.

7. RECOMMENDATIONS

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends and concludes:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;

2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;

3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address, or telephone number;

4. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;

5. That the rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from AGLN indicating that its net book value or fair value rate base at the end of 12 months of operation would be $20,000,000. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other wholesale transport providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value

rate base information submitted by the Applicant, the fair value information provided was not given substantial weight in this analysis;

6. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. If it does not do so, the Applicant's CC&N shall be null and void after due process.

8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Therefore, Staff recommends that the Applicant's proposed services be classified as competitive.