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REFER TO FILE NO: 109-12-15-3

May 25, 2010

Arizona Corporation Commission
DOCKETED

MAY 25 2010

DOCKETED BY

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MAY 25 P 1:22
AZ CORP COMMISSION
DOCKET CONTROL

HAND DELIVERED
Chairman Mayes and Commissioners
Ms. Nancy LaPlaca
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Expedited Request by Navopache Electric Cooperative, Inc. to Amend Decision No. 68691 pursuant to A.R.S. § 40-252 (Involving Previously Approved \$32,231,000 Loan); Placement on Staff Open Meeting Agenda; Docket No. E-01787A-05-0719

Dear Chairman and Commissioners:

After discussion with Finance, Utilities and ALJ Wolfe, Navopache Electric Cooperative, Inc. ("Navopache") respectfully requests that its motion to amend Decision No. 68691 pursuant to A.R.S. § 40-252 be placed on a Staff Open Meeting Agenda at the earliest possible date. In particular, Navopache is requesting an order either (i) approving the amendment of Decision No. 68691 to authorize the use of up to \$7,000,000 of loan proceeds on a much needed Operations Facility or (ii) directing the Utilities Division and/or Hearing Division to consider Navopache's Motion (enclosed) and make a recommendation on an expedited basis.

In 2006 the Commission by Decision No. 68691 authorized Navopache to borrow \$32,231,000 to implement its Work Plan. Changing priorities, due in large part to the state of the economy, has resulted in management seeking and the Rural Utilities Service ("RUS") approving the delay of certain distribution related projects and the construction of a much needed Operation Working Facility (not for Administration purposes). These changes involve approximately \$7,000,000 of the \$32,231,000 loan approved by Decision No. 68691 after discussions in November with Staff. Navopache filed the enclosed Motion to secure Commission authorization to use the loan funds for the Operation Facility. Importantly under the terms of the loan, the facilities must be substantially constructed and the funds drawn by October 3, 2010. Navopache has secured favorable bids for the project, but cannot proceed pending Commission action on its Motion. Therefore, expedited consideration is needed.

Chairman Mayes and Commissioners

May 25, 2010

Page 2

At a procedural conference held Monday May 24, 2010, with intervenor IBEW Local 387 in attendance, we were advised neither the Utilities Division nor the Hearing Division had authority to consider Navopache's Motion without express Commission authorization. Therefore, Navopache respectfully requests the Commissioners place this request on the first available Staff Open Meeting Agenda and enter an order either (i) approving the amendment of Decision No. 68691 to authorize the use of up to \$7,000,000 of loan proceeds on an Operations Facility or (ii) directing the Utilities Division and/or Hearing Division to consider Navopache's Motion and submit a recommendation on an expedited basis.

The Commission's expedited consideration of this request is deeply appreciated.

Very truly yours,



Michael A. Curtis
William P. Sullivan
For the Firm

WPS/maw

Enclosures: Navopache's May 18, 2010 Motion

cc: Duplicate original and 13 copies to Docket Control (with enclosure)
Nicholas Enoch, Esq. (with enclosure)
Robin Mitchell, Esq. (with enclosure)
Ms. Teena Wolfe, ALJ (with enclosure)
Mr. Steve Olea (with enclosure)
Mr. David Plumb, CEO, Navopache Electric Cooperative, Inc. (with enclosure)

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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS
KRISTIN K. MAYES, CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MAY 18 P 3:43
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE
APPLICATION OF NAVOPACHE
ELECTRIC COOPERATIVE, INC. AN
ARIZONA NON-PROFIT
CORPORATION, FOR APPROVAL
OF A RUS GUARANTEED FFB
LOAN IN THE AMOUNT OF
\$33,231,000 TO FUND
CONSTRUCTION OF FACILITIES

DOCKET NO. E-01787A-05-0719

NAVOPACHE ELECTRIC COOPERATIVE,
INC.'S SUPPORT FOR PROCEDURAL
CONFERENCE; MOTION FOR
DETERMINATION THAT NO AMENDMENT
TO DECISION NO. 68691 IS NECESSARY,
OR, IN THE ALTERNATIVE, APPROVAL OF
AN AMENDMENT OF DECISION NO. 68691

(EXPEDITED ACTION REQUESTED)

Navopache Electric Cooperative, Inc. ("Navopache") supports the request of
IBEW Local 387 for a procedural conference and asks that it be set as quickly as possible. As
previously explained in its filings, Navopache's operation facilities are located on leased land
and subject to be evicted upon 90 days notice. It is critical to Navopache that the Arizona
Corporation Commission ("Commission") make an expedited determination whether an
amendment of Decision No. 68691 is necessary in order to authorize Navopache to expend up
to \$7,000,000 of a previously Commission authorized \$33,231,000 loan on the operation
facilities, including a warehouse, meter shop, crew room, transformer shop and vehicle
maintenance facility and, if so, to grant the necessary amendment to Decision No. 68691
forthwith pursuant to A.R.S. § 40-252.

Arizona Corporation Commission
DOCKETED
MAY 18 2010

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1 The terms of the loan requires all draws to be made by October 3, 2010. In
2 order to eliminate the adverse consequences if Navopache loses access to the land it currently
3 leases, to complete construction of the operation facilities prior to the onset of winter and to
4 secure draws under the existing loan, Navopache recently requested proposals to construct the
5 operation facilities and its Board is scheduled to consider the responses and possibly let
6 construction contracts at its May 26, 2010 Board meeting. It is critical for Navopache to
7 understand the process and timing for handling this matter as soon as possible.

8 **I. BACKGROUND AND NEED**

9 A. Decision No. 68691.

10 On October 12, 2005, Navopache filed its application for authorization to secure
11 a \$33,231,000 loan from the Federal Financing Bank ("FFB") guaranteed by the Rural
12 Utilities Service ("RUS"). The funds were to be used "to fund construction of facilities to
13 serve its member-customers" as reflected in its RUS approved 2005-2009 Work Plan. The
14 components of the Work Plan as it then existed were summarized on the Form 740C
15 submitted with the Application. By Decision No. 68691, the Commission authorized
16 Navopache to borrow \$33,231,000, to grant a lien on its properties and to execute documents
17 to effectuate the transaction. The Commission further ordered that Navopache use the
18 financing "for the purposes set forth in the application."

19 B. The Work Plan is Implemented and Reviewed/
20 Portion of Work Plan Deferred, Modified and Canceled.

21 Navopache proceeded to construct the facilities set forth in its Work Plan. At
22 the beginning of the final year of the four-year Work Plan, Navopache's management assessed
23 the status of the construction of and need for the distribution facilities included in its 2005-
24 2009 Work Plan. As a result of the assessment, it was determined that, due largely to the
25 economic slow down in 2008 and 2009, but also due to development of different solutions for
some system issues, approximately \$7,000,000 worth of distribution facilities included in the

1 Work Plan could be and should be deferred, modified and included in Navopache's 2010 –
2 2014 Work Plan and in some cases cancelled. A listing of the affected distribution projects is
3 attached hereto as Exhibit A, together with their estimated cost and when the projects are now
4 expected to be constructed.

5 C. Existing Operation Facilities Inadequate.

6 At the same time, Navopache's management identified an immediate and critical
7 need to develop a new operation facility, including a warehouse, meter shop, crew room,
8 transformer shop and vehicle maintenance facility ("Operation Facility") at the approximate
9 cost of \$7,000,000 as soon as possible. As should be readily evident, adequate and accessible
10 facilities for warehousing inventory, a meter shop, a transformer shop, maintaining its service
11 fleet and warehousing its inventory is a central backbone component of conducting field
12 operations. Without adequate and accessible operation facilities, Navopache's field personnel
13 can not timely and reliably address extensions, additions, improvements, maintenance and
14 repairs to Navopache's distribution system. The dependability of meters is adversely
15 impacted. Vehicle maintenance suffers, impairing Navopache's ability to get employees and
16 supplies to work sites. Navopache's ability to repair and maintain transformers is reduced.
17 All of the foregoing impacts Navopache's ability to provide reliable electric service to its
18 member-customers.

19 Navopache's existing operation facilities, while allowing Navopache to meet the
20 service needs of its member-customers, are less than optimal. Navopache's principle base of
21 operations has remained at the same location since the 1950s. Over the last 30 years (1981 to
22 now), Navopache's metered customer base has doubled from 19,106 to 40,010. Over the
23 years, as the need for operational facilities increased to meet a growing customer base and
24 changing technical and regulatory requirements, Navopache converted warehouse space and
25 parking area originally located on Navopache owned land into an expanded meter shop, a

1 transformer shop, a truck shop and a crew room. Since the early 1980s Navopache has leased
2 more than 5 acres of land adjoining its administrative offices to accommodate its operation
3 facilities. In an effort to maximize the space, while minimizing investing in permanent
4 improvements to the leasehold property, Navopache constructed two 3-sided storage buildings
5 on the leased land and utilizes five (5) shipping containers and three (3) semi-trailers to
6 augment what is otherwise an inadequate warehouse facility. One of the semi-trailers and one
7 container is used by the transformer shop to store materials, parts and supplies used by the
8 transformer shop and substation crew. The last 3-sided storage facility was constructed in
9 1996. The limited open space available at the site is also utilized, weather permitting.
10 Equipment and inventory is shuttled in and out of covered spaces temporarily in order to
11 increase the working space available (e.g., to perform transformer maintenance) to complete
12 work in a timely fashion.

13 The existing warehouse space is approximately 3,000 sq. ft., including
14 warehouse personnel office space. The existing meter shop area is approximately 1,400 sq. ft.
15 The new warehouse space will be approximately 9,000 sq. ft. of floor space for material,
16 approximately 3,200 sq. ft. of storage space on a mezzanine, and approximately 1,900 sq. ft.
17 of office area (including break room, men and women restrooms, and storage closets). The
18 new meter shop area will be approximately 2,500 sq. ft.

19 The existing operation facilities need to be expanded and updated in order to
20 permit Navopache to continue to meet the service needs of its member-customers.

21 D. Operation Facilities on Revocable Leasehold on 90 Day Notice.

22 Navopache's existing operation facilities are, in part, located on over 5 acres of
23 leased land. The lease is revocable upon 90-day written notice. As a result, Navopache can
24 be forced to vacate the land on as little as 90-days notice. Last year Navopache was informed
25 that the owner was negotiating the sale of the leased land. While the sale was not

1 consummated, the tenuous nature of Navopache's leasehold and the need to find a long term
2 alternative was highlighted. Attempting to move Navopache's operation facilities over a 90-
3 day period would create a major logistical problem for Navopache and would significantly
4 hinder Navopache's ability to provide service to its member-customers, directly and adversely
5 impacting Navopache's ability to extend, improve, maintain and repair its distribution system
6 and to otherwise provide reliable electric service to its member-customers.

7 E. RUS Approved Amendment to Work Plan.

8 In view of the real and immediate need for new operation facilities and in view
9 of management's decision to defer, modify and cancel portions of the improvements originally
10 set forth in the 2005-2009 Work Plan, Navopache requested, and RUS approved in late 2009,
11 an amendment of the 2005-2009 Work Plan authorizing the transfer of \$7,000,000 from
12 distribution facilities (Purpose 1) to headquarters facilities (Purpose 4). The amendment
13 constitutes RUS authorization to both construct the Operation Facility and the use of loan
14 funds for that purpose. If funds had not been available under the existing loan authorized by
15 Decision No. 68691 for the new Operation Facility, Navopache's management was prepared
16 to recommend to the Navopache Board that it seek authority to secure new and additional
17 financing to proceed as expeditiously as possible with the new Operation Facility. However,
18 the aforementioned deferral, modification and cancellation of certain distribution projects
19 contained in its 2005-2009 Work Plan leaves funding available under the existing loan for the
20 Operation Facility.

21 F. No 'Glitzy' New Offices Involved.

22 In its recent pleading, IBEW Local 387 contends Navopache intends to use loan
23 funds "to build [Navopache's management] glitzy new offices in Pinetop-Lakeside" which
24 "does little in the way of actually bolstering Navopache's ability to provide safe and reliable
25 service to its patrons." Reply In Support of Application to Intervene at 2. The contention is

1 false and the hyperbole inappropriate. Navopache's management will continue to occupy the
2 same headquarters building it has occupied for over 50 years. The funds will be used for a
3 new Operation Facility benefitting Navopache's field personnel, including approximately 35
4 members of the IBEW Local 387, and ensuring an essential cog to the provision of safe and
5 reliable service to Navopache's member-customers is maintained.

6 G. Navopache Owns a Suitable Site for the New Operation Facilities.

7 Navopache already owns land which it acquired for the development of a new
8 headquarters building and operations facilities. The proposed site was acquired as part of a
9 land exchange with the City of Pinetop-Lakeside. The land previously owned by Navopache
10 is to be developed as a community park, while Navopache acquired a parcel in a planned
11 commercial zone off the Highway 260 corridor (where Navopache and most commercial
12 development is currently located). The City of Pinetop-Lakeside is desirous of developing
13 local businesses off the Highway 260 corridor and is supportive of Navopache locating its new
14 operations and equipment storage facilities, and eventually its administrative offices, in the
15 proposed location as a method of stimulating commercial development in the area and within
16 the City.

17 H. Advantages of Proceeding Now with the Construction.

18 In evaluating whether to go forward with this project during this economic
19 downturn, the Navopache Board considered the ailing local construction industry, the
20 reduction in construction costs and the fact that the expenditure is not tied to a request for a
21 rate increase as factors that also supported proceeding now. The bid specifications for the
22 project mandate that at least 50% of the subcontractors be local businesses and provides credit
23 for use of up to 70% local subcontractors.
24
25

1 **II. NOTICE VERSUS AMENDMENT.**

2 A. Notice Filed after Consultation with Staff.

3 After first informally discussing with Commission Staff Navopache's need for
4 the Operation Facility and the RUS approval to transfer funding allocation in the Navopache
5 2005-2009 Work Plan to reflect the new Operation Facility, Navopache on January 28, 2010
6 filed a Notice of Amended Work Plan. Unfortunately, the document was docketed incorrectly
7 and a revised, more detailed, Notice of Amendment to the Navopache's 2005-2009 Work Plan
8 ("Notice") including a listing of the deferred, modified and cancelled distribution facilities
9 was filed in this docket on April 14, 2010.

10 B. Notice Informs of Amended Work Plan and Seeks Direction.

11 The Notice specifically informed the Commission of RUS's approval of the
12 amendment to Navopache's Work Plan transferring \$7,000,000 from distribution facilities
13 category to the headquarters facilities category to reflect the Operation Facility. The Notice
14 also informed the Commission that under the loan documents previously executed pursuant to
15 Decision No. 68691 loan funds could be expended on the Operation Facility and that none of
16 the terms or conditions of the loan, including the amount, would be altered as a result of the
17 amendment. Both Navopache's 2005 Application and Decision No. 68691 are based upon the
18 RUS approved Work Plan. Therefore, a reasonable interpretation of Decision No. 68691 and
19 Navopache's 2005 financing application is that RUS approved amendments of Navopache's
20 Work Plan are impliedly included in the Commission's authorization for Navopache to
21 execute and expend a \$33,231,000 RUS guaranteed FFB loan, at least where no changes are
22 required in the loan and mortgage documents and the total amount of the approved loan will
23 not be increased and Navopache provides the Commission notice of and reasonable
24 opportunity to evaluate the RUS approved amendment. The Notice filed by Navopache was
25 intended to serve the notice function and specifically requested the Commission advise if any

1 additional filing was necessary in order for Navopache to utilize the loan funds in accordance
2 with the amended RUS approved Work Plan (i.e., for the Operation Facility). Notice at p. 6.

3 C. Expedited Commission Action Needed.

4 Relying upon the interpretation of Decision No. 68691 and its application
5 discussed with Commission Staff, and because Navopache's management deems
6 expeditiously proceeding with the Operation Facility to be critical to ensure Navopache's
7 continued ability to provide safe and reliable electric service to its member-customers, and
8 because it is difficult to commence this type of construction during the winter months in the
9 Pinetop-Lakeside area, and because the deadline for committing funds under the current loan
10 is October 3, 2010 and because Navopache had not received any indication from the
11 Commission suggesting an additional filing was necessary, Navopache has proceeded to the
12 final stages of bidding and contracting for the construction of the Operation Facility with
13 action on the contracts currently scheduled for May 26, 2010. However, no loan funds have
14 been utilized for the Operation Facility, but such funding must be drawn by October 3, 2010 to
15 comply with the present loan terms.¹

16 IBEW Local 387 has intervened and argued that a formal amendment of
17 Decision No. 68691 is necessary for the loan funds to be expended on the Operation Facility.
18 Navopache agrees it is necessary for the loan funds to be expended on purposes specified by
19 the Commission. Therefore, in the event the Commission agrees that further Commission
20 action is necessary in order for Navopache to utilize up to \$7,000,000 of the proceeds of the
21 loan authorized by Decision No. 68691 for the Operation Facility, Navopache then requests an
22 amendment to Decision No. 68691 be granted expeditiously and not later than July 8, 2010 to

23
24 ¹ RUS guaranteed FFB loan funds usually are available only to reimburse the cooperative after
25 cooperative funds are expended on projects included in an RUS approved Work Plan. Navopache
intends to seek reimbursement from the existing loan for internal funds it spends up-front on the
construction of the Operation Facility up to a maximum of \$7,000,000, subject to the direction of the
Commission.

1 ensure that construction can be completed and all reimbursement requests can be submitted
2 prior to October 3, 2010.

3 WHEREFORE, Navopache respectfully requests:

- 4 1. A determination that no further action is necessary in order for
5 Navopache to use up to \$7,000,000 of the funds available under the
6 \$33,231,000 loan authorized by Decision No. 68691 for design and
7 construction of the Operation Facility; or, in the alternative,
8 2. Decision No. 68691 be amended pursuant to A.R.S. § 40-252 no later
9 than July 8, 2010 authorizing Navopache to use up to \$7,000,000 of the
10 funds available under the \$33,231,000 loan authorized by Decision No.
11 68691 for design and construction of the Operation Facility; and
12 3. Such other relief as the Commission deems just and appropriate under the
13 circumstances.

14 RESPECTFULLY SUBMITTED this 18 day of May, 2010.

15 CURTIS, GOODWIN, SULLIVAN
16 UDALL & SCHWAB, P.L.C.

17 By 
18 Michael A. Curtis
19 William P. Sullivan
20 501 East Thomas Road
21 Phoenix, Arizona 85012-3205
22 Attorneys for Navopache Electric
23 Cooperative, Inc.
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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 18th day of May, 2010, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

DOCKET CONTROL
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

With a copy emailed this 18th day of May, 2010 to:

Teena Wolf, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

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

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

Nicholas J. Enoch
Lubin & Enoch, P.C.
349 North Fourth Avenue
Phoenix, AZ 85003

By Nancy Walker
109\12-15-3\Pleadings\Motion to Amend Dec 68691 05 18 10

EXHIBIT A

EXHIBIT A

The following list of projects was taken from Navopache Electric Cooperative, Inc.'s 2005 -2009 Construction Work Plan. These projects will be carried into the next Construction Work Plan or cancelled if it is determined there are better alternative projects. The costs shown reflect the present construction costs estimates for these projects.

| <u>RUS Code</u> | <u>Project Description</u> | <u>Estimated Cost</u> |
|-----------------|--|-----------------------|
| 200.01 | Build 1.2 miles of line. Revise the original project from 477kcmil ASCR to 4/0 ACSR from Concho Sub to Concho Country Club. | \$350,000 |
| 200.02 | Build 0.1 miles of line. Project has been modified from the original to include sectionalizing the two affected circuits, balancing the loads on the main feeder lines and adding line reclosers/fuses for improved reliability. This project will be completed 4th Quarter of 2010. | \$225,000 |
| 300.40 | Reconductor 2.4 miles of line. This project was to be constructed in conjunction with project code 200.01 but will be cancelled with the new alternative solution. | \$150,000 |
| 400.01 | Mobile substation. Modify the project to purchase a new mobile substation instead of building a mobile substation utilizing an older spare substation transformer. | \$1,700,000 |
| 500.01 | Move transformer, add circuit bay. This project was to be constructed in conjunction with project code 200.01 but will be cancelled with the new alternative solution. | \$275,000 |
| 500.02 | Rebuild Heber Substation. This project will be delayed for construction in the 2 nd Quarter of 2011. | \$2,200,000 |
| 500.04 | Add second transformer and two additional feeder bays at Springer Mountain Substation. This project will be delayed for construction 4 th Quarter 2011. | \$650,000 |
| 500.05 | Add second transformer and four additional feeder bays at Wagon Wheel Substation. This project will be delayed for construction 3 rd - 4 th Quarter of 2011. | \$1,350,000 |
| 1000.09 | Coronado transformer. Fire protection was completed and a temporary oil containment was installed. The permanent oil containment structure may be installed in 2011 based on negotiations with Salt River Project on transformer ownership. | \$100,000 |
| TOTAL | | \$7,000,000 |