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BEFORE THE ARIZONA CORPORATION C

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ALL CORP COMMISSION
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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

7 September 2010

**Filing by Marshall Magruder in Reply to
UNS Electric's Motions to
Dismiss with Prejudice and to Stay the Procedural Schedule**

This Marshall Magruder's Reply to the UNS Electric, Inc.'s (UNSE) Motion to Dismiss with Prejudice and Motion to Stay the Procedural Schedule in the Matter of 12 April 2010 involving three complaints filed on 5 December 2008 as required by the Commission's Procedural Order of 16 April 2010, as modified by the Procedural Order of 9 August 2010.

This Reply concerns the following issues:

1. UNSE's failure to comply with Commission Decision No. 61793 (29 June 1999) that ordered annual, four-year interest-free \$3,000 loans to Santa Cruz County High School seniors to attend an Arizona school of higher learning who return to live and work in this county.
2. UNSE's failure to complete 32 projects involving replacement of defective underground cables and utility poles; however, the company's records are incomplete with respect to completion of these projects, so it can not be pursued further; however, the Staff may continue.
3. UNSE's failure to provide a process whereby anyone living in its service area that is on life-support equipment could apply to be notified during an electrical outage.

The Magruder Direct Testimony of 22 March 2010 on these three issues resulted in UNSE's Motions to Dismiss and to Stay these proceedings was filed on 12 April 2010. Resolution of these Motions, including Mr. Magruder's standing and authority to present his case, is in this Reply.

Errata to this Magruder Testimony are in this filing.

No response has been received from the Commission's Utilities Division requested in the Procedural Order of 16 April 2010 that requested the "interpretation of Commission Decisions". Decision No. 61793 pertains directly to the first issue and with Decision No. 62011 directly with the second issue, and Decision No. 70360 indirectly to the third issue as presented in this filing.

Respectfully submitted on this 7th day of September 2010.

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SEP 8 2010

MARSHALL MAGRUDER

By *Marshall Magruder*
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3 **Marshall Magruder's**

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6 **REPLY TO**
7 **UNS ELECTRIC'S**

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10 **MOTION TO DISMISS WITH PREJUDICE**

11
12 **AND**

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14 **MOTION TO STAY THE PROCEDURAL SCHEDULE**

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27 **7 September 2010**

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30 In the
31 Matter of the Formal Complaint of
32 Marshall Magruder filed with the
33 Arizona Corporation Commission
34 on 5 December 2008
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Section 1
BACKGROUND AND THE ISSUES

1.1 Background

During 1998 and 1999 there were a serious of extended periods when electricity was out in parts or all of Santa Cruz County that were of such significance and local damage that the City of Nogales declared an Emergency and filed a Complaint with the Arizona Corporation Commission against Citizens, the local electric utility company. The Commission Staff worked with the City and the utility, including holding hearings in Nogales, to develop a Settlement Agreement. The Commissioner's sent back the initial agreement to be changed so that its provisions will remain under the jurisdiction of the Commission and, because Citizens was for sale, that the successor organization would be bound by the same agreement because some articles have long-term consequences.

1.2 Commission Decision No. 61793 and the Revised Settlement Agreement.

The Revised Settlement Agreement was approved by the City Council and incorporated into Commission Decision No. 61793 in August 1999, with ten articles, with some that required financial compensation to the City and ratepayers for damages. One article was for educational assistance and another required that Citizen develop a Plan of Action to correct numerous reliability deficiencies.

1.3 Commission Staff-Citizens Settlement Agreement.

The Commission Staff, RUCO and Citizens developed an extensive and detailed Plan of Action to remedy deficiencies in the Citizens electricity system serving Santa Cruz County. One major element was the correction of known distribution deficiencies by replacing defective underground cables and defective utility poles. This Agreement also had additional compensation for damages, such as a penalty of \$30,000 per month if a second transmission line was not operational by 31 December 2003, as was specified in the Arizona Power Plant and Transmission Line Siting Committee Case No. 111 and its associated Certification of Environmental Compatibility (CEC).

1.4 Commission Decision No. 62011.

This decision in November of 1999 implemented the Plan of Action and committed Citizens (and successor) to the Plan of Action developed with the Commission Staff.

1.5 Commission Decision No. 66028.

This decision approved the purchase of Citizens assets by UniSource Energy, Inc., effective on 11 August 2003.

1.6 Re-Opened Commission Decision No. 62011 Proceedings.

Due to many factors, the second transmission line was not constructed so hearings were held to review and update the actions in Decision No. 62011 after UniSource Energy had purchased the Citizens

1 assets with the UNS Electric, Inc., the public service corporation providing electricity services in Santa
2 Cruz and Mohave Counties. These hearings concerned the reliability status in Santa Cruz County.

3
4 **1.7 UNS Electric Rate Case and Commission Decision No. 70360.**

5 This was the first rate case for UNS Electric filed in December 2996 and decided on 27 May 2008.

6 **1.8 Mr. Magruder Formal Complaint.**

7 Mr. Magruder participated in most of these prior proceedings. In 2001, he participated in Line Siting
8 Case No. 111 where parts of Commission Order No. 62011 were being implemented.

9 During the purchase of Citizens by UniSource Energy hearings in early and mid-2003, Mr. Magruder
10 and other intervenors asked several times during those proceedings if all of the obligations, including
11 Decisions No. 61793 and 62011, were being transferred to UniSource Energy without change. The
12 Company assured these parties that all obligations would remain as before the sale.

13 Decision No. 62011 was reopened in 2004 with evidentiary hearings in 2005. Mr. Magruder
14 complained that the Educational Assistance (Article 9 of the Revised Settlement Agreement) and the
15 replacement of defective poles and underground cables from the Plan of Action in Decisions No. 61793
16 and 62011 were not being accomplished. He was told to defer these issues to the next rate case.
17 During these "reliability" hearings, the Commission Chairman asked Mr. Magruder what would he do if
18 power were lost for those on life-support equipment; however, at that time, Mr. Magruder had not
19 developed a proposal for this contingency at that time.

20 In the 2006 and 2007 UNS Electric Rate Case, Mr. Magruder had several areas of concerns that
21 included the failure to fund student loans from Decision No. 61793; and failure to complete most, if not
22 all, of the 32 distribution reliability projects with a budget exceeding \$15 million in the Plan of Action
23 incorporated in the Staff-Citizens Agreement and implemented in Decision No. 62011. He also
24 proposed a way to reduce the safety concerns for those on life-support during an electrical outage.

25 This Rate Case Decision No. 70360 of May 2008 included these three issues. However, none were
26 closed when this decision was made. The post-Decision No 70360 actions performed by the Company
27 for each of these three issues was not to be satisfactory. Mr. Magruder submitted detailed responses
28 for each of the Company's "compliance" letters to the Commission.

29 Continual concerns resulted in Mr. Magruder filing a Motion to Demand Compliance in November
30 2008, without a response from the Commission. In December 2008, a Formal Complaint was filed for
31 these three issues. During 2009, through a series of procedural conferences and procedural orders,
32 each of these three issues were discussed; however, it was not until March of 2010 when Mr. Magruder
33 was required and to file his Testimony concerning these three issues. Instead of Responding to this
34 Testimony, the Company filed a Motion to Dismiss. This filing is the Rely to the Motions.
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Section 2
REPLY TO
“MR. MAGRUDER CAN ONLY REPRESENT HIMSELF IN THIS PROCEEDING”
(Issue I)¹

The Company implies in its Motion that Mr. Magruder is practicing law as an attorney. Mr. Magruder has never made such claim and he has repeatedly said that represents himself, as a UNS Electric customer and ratepayer and as a citizen of Santa Cruz County, Arizona. He was an appointed Commission and Vice Chairman of the Joint Santa Cruz County/City of Nogales Energy Commission from January 2001 through August 2008, but also has repeatedly stated he is not representing this Commission, Santa Cruz County, or the City of Nogales. He does keep these elected officer holders current with the status of energy issues in the County and the City.

He acknowledges he does not provide “legal” advise or services. He is not a member of the Arizona Bar. He is not being paid and is self-funded (but would greatly appreciate coverage just of his direct expenses).

Mr. Magruder has not considered this matter to be an issue during these proceedings as there is no basis for the Company to make it an issue.

Conclusions.

1. This is never been an issue.
2. Mr. Magruder is not an attorney nor is he representing the City of Nogales, Santa Cruz County or the Energy Commission.

Recommend.

That this allegation be dismissed.

¹ UNS Electric Motion to Dismiss with Prejudice and Motion to Stay the Procedural Schedule of 12 April 2010, hereafter “UNSE Motion” or the “Motion”, section I at 2:10-21, designated as “Issue I” in this Reply.

1
2 This issue was presented in detail in the Magruder Testimony in Section 3 as "Issue 2 – Incomplete
3 Replacement Utility Pole/Cable Replacement Projects" at 31 to 35 and Exhibits MM-1 and its Exhibits
4 M-D, M-E; and Exhibits MM-5, MM-9 to MM-12.

5 **b. Incomplete Company records do not permit verification of project completion.**

6 The conclusion in the Magruder Testimony for this issue was stated as:

7 "Based on the inability of UNS Electric to know when and where a utility pole has been installed or cable
8 replaced, due to lack of records, there is no way to verify completion of these projects. Therefore, I have
9 withdrawn my complaint on this issue.

10 "I find it absolutely appalling and totally unsatisfactory that this company does not have records that show
11 which pole is located where and when it was installed. The same goes for underground cables." [Magruder
12 Testimony at 35:27-35]

13 This Magruder Testimony conclusion is clear. Without the Company providing records to review,
14 there is no way to verify these mandated distribution reliability projects in the Plan of Action have been
15 completed as ordered in Decision No. 62011.

16 It is noted that the Commission Staff and RUCO are authorized by law with significant rights to
17 review and examine these company records that can verify if all 32 Commission-approved projects,
18 were actually completed as specified in the Commission-mandated Plan of Action. Mr. Magruder does
19 not have these same legal rights as those obligations are assigned to the Commission and RUCO.

20 **c. Some of the 32-distribution reliability projects have not been completed.**

21 For example, one underground replacement project (#8, Empty Saddle Estates) for my subdivision
22 of 22 parcels is to replace 8,140 feet of defective underground cable between 1999 and 2003 for a cost
23 of \$327,000,⁶ during the period I have lived in this subdivision. Project #8 was never started. During the
24 proceedings when Commission Order No. 62011 was reopened in Docket No. E-01302A-99-0401, a
25 phase cable failed to his service transformer a few days prior to testifying. He brought a section of the
26 defective underground cable to the hearing and used it in his oral testimony as evidence that Project #8
27 has not had these defective underground cables replaced. Without being a legal expert, this kind of
28 direct evidence by an injured party, must be acceptable to show that defective cables were not replaced
29 in this subdivision.

30 **d. The Company understands that Citizens developed these project plans.**

31
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34
35 ⁶ Magruder Testimony, Exhibit MM-1's Exhibit M-D at 3, Excerpt from Attachment IV of the Plan of Action, "Pole
and Cable Replacements Santa Cruz Electric District, 1999-2003 approved in Decision Nos. 61793 and 62011.
The expected annual budget for Project #8 was \$65,440 for years 1999 through 2003, for a total of \$327,200.
There is no way I would have not observed that amount of work in my small development!

1 The Company acknowledged that Citizens developed the Plan of Action and that this Plan of Action
2 was approved in Decision No. 61793.⁷ Other Decisions refer to this Plan of Action.⁸

3 For example, Decision No. 62011 states:

4 "[Finding of Fact] 15. The [Commission Staff-Citizens] **Settlement Agreement commits Citizens to a Plan of**
5 **Action that is in compliance with Decisions Nos. 61383 and 61793.**"

6 [Magruder Testimony Exhibit M-10 at 2:25-26, emphasis added]

7 **e. The Company assumed liabilities under Decision No. 61793 to complete these projects.**

8 The UNSE Motion has an excerpt from the Asset Purchase Agreement (APA) between Citizens
9 and UniSource Energy of 29 October, 2002. Section 2.3, Assumed Liabilities, in subparagraph (i), it
10 states for such a liability:

11 "(i) actions and proceeding based on conduct, actions, circumstances or conditions arising or occurring on or
12 after the Closing Date, actions and proceedings described in Schedule 2.3(i), actions and proceedings arising
13 from or directly related to any other Assumed Liability, and generic or industry-wide actions and proceedings
14 outstanding on or arising on or after the Closing Date that are applicable to the Business." [UNSE Motion,
15 Exhibit 3 at 18]

16 Schedule 2.3(i), Assumed Actions and Proceedings, shows that Commission Decision No. 62011
17 of 2 November 1999 was an assumed action as of 11 August 2003.⁹

18 **f. The Commission Staff has been requested to interpret Commission Decisions.**

19 It is noted that a review by the Commission Staff of this matter was requested in the Commission
20 Procedural Order (PO) of 16 May 2010. This PO stated:

21 "Because the [UNSE] Motion [to Dismiss] may involve interpretation of Commission Decisions, the participation
22 of the Commission's Utilities Division ("Staff") may assist in resolution of the Motion. **Staff should review the**
23 **matter to determine if its participation in the matter would benefit the Commission's resolution of the**
24 **matter, and may file any appropriate pleadings.**" [PO at 2:6-9, bold emphasis in the PO]

25 As of this date, this party has not received verification that the Decisions cited above and the
26 Magruder Testimony has been reviewed by the Commission Staff or by RUCO. Thus, Staff may
27 participate in this case at a later date, in any or all three of the issues; therefore Issue 2 should remain
28 open. However, Marshall Magruder is not in a position to resolve it due to known non-compliance by the
29 Company and is presently not pursuing it in this case, other than for continuity, but the Staff could.

30 The Magruder Testimony showed that the Plan of Action in Decision No. 62011 to improve
31 distribution reliability, with 32 pole and cable replacement projects, was never finished.

32 **Conclusion.**

33 ⁷ Magruder Testimony, **Exhibit MM-11**, UNSE's Response to Mr. Magruder's Concerns filed on 28 July 2008 at
34 1:20-23. For clarification, the City of Nogales-Citizens Settlement Agreement of 1 June 2008, in which Citizens
35 agreed to develop a Plan of Action, was approved in Decision No. 61793. It was Decision No. 62011 that
ordered Citizens to comply with the Staff-Citizens Settlement Agreement that included the Plan of Action and its
Attachment IV, the Pole and Cable Replacements Santa Cruz Electric District, 1999-2003.

⁸ Decision No. 66615 (9 Dec 2003) at 4:4-11.

⁹ UNSE Motion, Exhibit 3, Schedule 2.3(i) at 12, paragraph 1.

1 Issue 2 remains open but Mr. Magruder is presently not pursuing it in this case.

2 Recommendations.

- 3 1. That the Commission Staff and RUCO review the Magruder Testimony and it's concerns.
4 2. That Commission Decisions be reviewed therein that "ordered compliance" to a Plan of Action.
5 3. That this Plan of Action has been verified as being or not being completed.
6

7 **3.2 Mr. Magruder's Alleged Claim Regarding Notifying Customers on Life Support Fails as a**
8 **Matter of Law (Issue II.B)**¹⁰

9 a. **Any customer on life-support can to apply to be notified during an outage.**

10 The Motion states:

11 "Mr. Magruder's third claim appears to request that the Company be ordered to identify all customers that have
12 life support equipment and provide that information to local law enforcement."¹¹ [UNSE Motion 3:19-11]

13 This comment misstated what was in the Magruder Testimony, as follows:

14 "The recommendations in **Exhibit MM-13** remain which states:

15 "1. That UNSE design and provide annually a new life-support customer application for all customers
16 including an "opt out" provision and information release statement to law enforcement, at least
17 once a year, in customer billing statements and on the company website.

18 "2. That UNSE enter into a mutual support agreement with the County Sheriff to provide notifications of life-
19 support customers.

20 "3. That any resultant County-UNSE mutual support agreement(s) be implemented.

21 "That UNSE notify all parties in this case as 1, 2 and 3 are accomplished."

22 [**Exhibit MM-13**, p. 6, emphasis in original.] [Magruder Testimony 39:22-40:3]

23 This did NOT say that the Company be ordered to "identify all customers on life support" to law
24 enforcement. All customers would receive an application so they could apply for notification during an
25 outage only if they were on life-support equipment that such an outage would impact. Such notifications
26 by First Responders would be only for customers on life-support.

27 Conclusion.

28 The Company misunderstood. Customer information would be provided only for those who

29 (a) Are on life-support equipment and

30 (b) Had applied for notification during an electrical outage.

31 Based on the local situation this customer would be notified by the appropriate First Responder by
32 phone or dispatched from the Sheriff's Dispatching Center similar to a "911" call.

33 Recommendation.

34 That **ALL** customers on life-support equipment are eligible to apply for notification during an
35 outage.

¹⁰ UNSE Motion, subsection II.B, 3:8-19, designated as "Issue II.B" in this Reply and was designated "Issue 3" in the Magruder Testimony.

¹¹ UNSE Motion at 3:9:11 footnote 8 that reads: "See Direct Testimony of Marshall Magruder at 39."

1 **b. Mr. Magruder is not presently on life-support equipment.**

2 The Motion continues:

3 "Since Mr. Magruder, and anyone in his household, is not enrolled in the Company's life-support program, Mr.
4 Magruder cannot meet the standing requirement regarding this issue." [UNSE Motion 3:11-13]

5 On 16 March 2010, Mr. Magruder had a minor stroke and within 15 minutes was on life-support
6 equipment at the Tubac Fire Department. It is understood that one could not apply for such notification
7 without actually being on life-support. However, when he was on life-support, he could not apply for this
8 program because:

- 9 (1) No such program exists for him to apply, that is, nothing is on the Company's website and if
10 he called the "call center" he would find that because he is not in the CARES-M program, he
11 was not eligible for this program.
12 (2) Mr. Magruder's income exceeds the maximum income for CARES-M, so he could never be
13 notified if he was on life-support.

14 The Reply to the "Standing requirement" in the above quote is presented in 3.2.1 below.

15 **Conclusion.**

16 The existing program is income limited. Only for customers in CARES-M rate category can
17 apply for such notifications. This is not fair or safe for those who cannot qualify for this rate category.

18 **Recommendation.**

19 That all customers, not just the limited number of CARES-M customers, be allowed to apply for
20 notification by First Responders during an outage.

21 **c. Electrical service to Customers on Life-Support involves Safety issues and Rules.**

22 The Motion continues:

23 Further, Mr. Magruder has failed to identify any specific statute, Commission rule or Commission order that the
24 Company has violated, as is required for a complaint before this Commission under A.R.S. §40-246.¹² [UNSE
25 Motion at 3:13-15]

26 The Arizona Administrative Code (A.A.C.) provides rules that pertain to the priority associated
27 customer health and safety procedures, in R14-2, under Curtailment, that states

28 When the availability of service is so restricted that the reduction of service on a proportionate basis to all
29 customer classes will not maintain the integrity of the total system, the **utility shall develop procedures to**
30 **curtail service giving service priority to those customers and customer classes where health, safety**
31 **and welfare would be adversely affected.** [A.A.C. R14-2-208.F at 61, emphasis added]

32 This issue involves service to customers where health and safety are adversely impacted by a loss
33 of electric service. The A.A.C. also adds rules with emphasis on the safety of those on life-support by
34 stating service shall not be terminated for those on life-support and states:

35 ¹² A.R.S. §40-246.A states "Complaint may be made by the commission of its own motion, or by any person or
association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be
done by a public service corporation in violation, or claimed to be a violation, of any provision of law or order or
rule of the commission ... [remainder pertains to complaints concerning rates]."

1 "A utility shall not terminate residential service where the customer has an inability to pay and:

- 2 a. The customer can establish through medical documentation that, in the opinion of a licensed medical
3 physician, termination would be especially dangerous to the health of a customer or a permanent resident
4 residing on the customer's premises, or
5 b. **Life supporting equipment used in the home that is dependent on utility service for operation of
6 such apparatus.** [A.A.C. R14-2-211.A.5 at 65, emphasis added]

7 Further, upon Establishment of Service, the A.A.C. provides rules for the minimum information that
8 can be obtained from the customer concerning life-support, and states:

9 "A utility may obtain the following **minimum information** from each new applicant for service:...

- 10 j. **Type and kind of life-support equipment**, if any, used by the customer. [A.A.C. R2-302.A.1.j at 70]

11 Also, that service be maintained under the continuity of service provisions and that loss of service to
12 customers could reasonable be foreseen as provisions could be made, as stated in the A.A.C. rules:

13 "C. Continuity of Service. Each utility shall make reasonable efforts to supply a satisfactory and continuous
14 level of service. However, no utility shall be responsible for any damage or claim of damage attributable to any
15 interruption or discontinuation of service resulting from:

- 16 1. **Any cause against which the utility could not have reasonably foreseen or made provision for**, that
17 is, force majeure.
18 2. Intentional service interruptions to make repairs or perform routine maintenance."
19 [A.A.C. R-2-208.C at 61, emphasis added]

20 **d. Proposal for consideration in Santa Cruz County for customer notifications.**

21 The notification of customers on life-support who have applied to be notified by the First
22 Responders from the Sheriff's Dispatch "911" Center is a reasonable and prudent procedure for events
23 (such as an outage) that could have been foreseen under this rule.

24 The Santa Cruz County Sheriff has the primary responsibility for the safety of all persons in this
25 County and is willing to make such notifications; however, the Company needs to do the following:

- 26 (1) Notify the Dispatch Center, similar to a 911 call, when there is an outage,
27 (2) Indicate the residences with customers on life-support equipment¹³ who want to be notified, and
28 (3) Agree to a Memorandum of Understanding (or equivalent) so that actions to be taken by both
29 the Company and his Department are clearly understood by both sides of the agreement and
30 that a liability clause is included in case the situation precludes such notification.

31 The Company, as shown above in A.A.C. R12-2-302.A.1, is able to collect the necessary
32 information from customers on life-support to provide the information needed in (2) above.

33 **Conclusion.**

34 Customers on life-support-equipment have safety concerns.¹⁴ The unique status of these
35 customers in the referent regulations and rules concerning electric utilities are such that procedures

¹³ The Company has indicated in its Compliance Letter of 25 August 2008, that it does not know where its
customers live; however, the address or location of the electricity meter used by that customer (and what is put
on the Application) should be adequate for First Responders in order to resolve this concern.

¹⁴ In recent Commission hearings in Tucson involving another utility (SSVEC), several customers made public
comments about their concerns of the problems of outages and its impacts on life-support equipment.

1 should be developed to improve the safety of these customers in the event of an outage, with
2 notification by a First Responder, being what is requested in this Complaint. There should be no income
3 restrictions for customers on life-support equipment to be excluded from this safety procedure. Mr.
4 Magruder's proposal is not the only solution; however, his "key" concern is that ALL customers be
5 allowed to participate and not so much as the procedure to be implemented to make this happen.
6

7 Recommendation.

- 8 1. That the existing A.A.C. rules and regulations pertain to the safety procedural issues.
9 2. That the Company should be directed to implement procedures to establish a procedure where
10 ALL customers on life-support could apply to be notified during an electric outage.

11 Concerns in the Motion related to Decision No. 70360 are addressed in 3.2.3 and 3.3.4 below.

12 **3.2.1 Mr. Magruder Lacks Standing to Pursue this Claim – (Sub-Issue II.B.1)**¹⁵

13 This sub-issue is similar to that also presented in 3.3.1 below.

14 **a. Mr. Magruder is NOT required to have direct damage to make a complaint.**

15 The Motion continues:

16 "Mr. Magruder lacks standing because he cannot show he is part of an aggrieved class or how he has been
17 injured. To gain standing to bring an action, a plaintiff must allege a distinct and palpable injury; an allegation
18 of generalized harm is insufficient.¹⁶ ... Thus, this lack of standing requires dismissal of this claim." [UNSE
19 Motion at 3:21-23, 4:8-9]

20 Mr. Magruder, although recently on life-support discussed in 3.2b above, would be injured since the
21 conditions established for the existing CARES-M rate category-limited notification program excludes
22 him because his family's annual income exceeds 150% of the poverty level required to be a CARES-M
23 rate category customer. What is more compelling in responding is from the Arizona Revised Statute
24 (A.R.S.) § 40-246B, that states:

25 "B. All matters upon which complaint maybe founded may be jointed in one hearing, and a complaint is not
26 defective for misjoinder or nonjoinder or parties or causes, either before the commission, or on review by the
27 courts. The commission need not dismiss a complaint because of the absence of direct damage to the
complaint." [A.R.S. 40-246.B, emphasis added]

28 It is clear from this law that direct damage is not grounds for automatic dismissal of a complaint.

29 **b. Mr. Magruder should be granted third-party standing.**

30 Mr. Magruder should have "third-party standing"¹⁷ because he is claiming, "to protect the rights of
31 others," in particular, the rights and safety of those customers on life-support that might suffer horrific
32 injuries during an electrical outage to their place of residence. The aggrieved class for this issue is all
33

34 ¹⁵ UNSE Motion, subsection II.B at 3:20-4-9, designated as "Sub-Issue II.B.1" in this Reply.

35 ¹⁶ UNSE Motion at 3, footnote 9 that reads: "*Sears v. Hull*, 192 Ariz.65, 69, 961 P.2d 1013, 1017 (1998)."

¹⁷ *Black's Law Dictionary, abridged, 7th ed.*, hereafter *Black's*, at 1136, defines "third-party standing. Standing held by someone claiming to protect the rights of others." [Emphasis in original]

1 those UNS Electric customers on life-support equipment that cannot apply for notification during an
2 electric outage, in particular, those who are not eligible for the CARES-M program that is only available
3 for lower income customers.

4 Conclusion.

5 Mr. Magruder is trying to protect the rights of others, in particular, customers on life-support who
6 are not in the CARES-M rate category. He should be granted, as a minimum third-party standing so he
7 can present his case that involves customer safety involving customers on life support so the
8 Commission can make a decision in this matter.

9 Recommendations.

- 10 1. That Mr. Magruder be granted third-party standing or any restrictions for such standing to
11 protect the rights of customers on life-support in Santa Cruz County are waived.
12 2. That this accusation be dismissed.

13
14 **c. This is not a case that involves an "actual dispute".**

15 The Motion continues with

16 "While the Arizona Constitution does not contain a "case or controversy" provision, Arizona courts have
17 consistently required a party to possess standing to maintain an action - as a matter of judicial restraint.¹⁸ Only
18 in cases of "great public importance that are likely to recur" have courts been willing to forego the standing
requirement.¹⁹ [UNSE Motion 3:23-4:4]

19 Since the Arizona Constitution does not have a "case or controversy"²⁰ provision, this is interpreted
20 to mean that a direct dispute is not required to be involved for a complaint in Arizona. Outages will recur
21 annually hundreds of times in Santa Cruz County. Further, A.R.S. § 40-246B removes the requirement
22 direct damage to the complainer.

23 Conclusion.

24 No actual dispute is necessary according to Arizona laws including A.R.S. § 40-246B.

25 Recommendation.

26 That this accusation be dismissed.

27
28 **d. Mr. Magruder is representing himself in this claim.**

29 And the Motion continues:

30 "Because Mr. Magruder must be representing himself in this proceeding, he cannot claim to represent any
31 group of customers on life support equipment who are allegedly harmed by the Company's current policy."
32 [UNSE Motion 4:6-8]

33 ¹⁸ UNSE Motion at 3, footnote 9 that reads: "See *Fernandez v. Takata Seat Belts, Inc.*, 138, 149, 108 P.3d 917,
34 919 (2005)."

35 ¹⁹ UNSE Motion at 4, footnote 10 that reads: "*Circle K Corp. v. Industrial Comm'n of Arizona*, 179 Ariz. 422, 425,
880 P.2d 642, 645 (App. 1993)."

²⁰ *Black's*, at 170, defines "**case-or-controversy requirement**. The constitutional requirement that, for a federal
court to hear a case, the case must involve an actual dispute." [Emphasis in original]

1 As stated above in Section 2, only an attorney can “represent” others. Mr. Magruder isn’t one.

2 Conclusion.

3 Mr. Magruder is not representing others.

4 Recommendation.

5 That this accusation be dismissed.

6
7 **3.2.2 The Third Claim is Deficient Because it Does Not Sufficiently Allege a Violation of any**
8 **Provision of Law or of a Commission Rule or Order (Sub-Issue II.B.2)**²¹

9 a. **Mr. Magruder claims that provisions of Commission Rules are not being followed.**

10 The Motion states:

11 “Neither the Complaint nor the March 22 filing identify any specific provisions of law or any specific Commission
12 rule or order that the Company has violated with respect to notification of customers with life support equipment
13 in the event of an outage.” [UNSE Motion at 4:12-14]

14 As presented in 3.2c above, Mr. Magruder claims that Company procedures for the unique safety
15 concerns and status from the regulations and rules concerning electric utilities should be developed to
16 improve the safety of all such customers in the event of an outage, with notification by a First
17 Responder being what is requested in this Complaint.

18 The same Conclusions and Recommendations of 3.2c also apply here.

19 b. **Mr. Magruder responded to the Commission’s Chairman to resolve this issue.**

20 The Motion continues

21 “Mr. Magruder does refer to the 2006 UNS Electric rate case docket and a question posed by Commissioner
22 Gleason, but never alleges a specific violation of the order in that case (Decision No. 70360). As a result,
23 the claim fails under A.R.S. § 40-246.” [UNSE Motion 4:14-17]

24 This issue first arose in the re-opened Commission Order No. 62011 hearings in 2005 when the
25 Commission Chairman ask “what do you going to do for someone on life-support during an electrical
26 outage”. His response was presented during the UNS Electric rate case in Docket No. E-04204A-06-
27 0783.

28 c. **Commission Decision No. 70360 requested a statement about Mr. Magruder’s concerns**
29 **about the Company’s notification program.**

30 Mr. Magruder presented a notification process as a possible solution to the Chairman’s request
31 during the UNS Electric rate hearings that lead up to Decision No. 70360. This Decision stated:

32 “UNS Electric, Inc. shall file to file (sic) within 90 days of the effective date of this Decision, **a statement**
33 **regarding suggested changes to its procedures that may address the concerns raised by Mr.**
34 **Magruder customer on life support equipment.**” [Decision No. 70360]²² [Emphasis added]

35
²¹ UNSE Motion, subsection II.B at 4:10-17, designated as “Sub-Issue II.B.2” in this Reply.

²² Magruder Testimony at 38:4-6.

1 The Magruder Testimony stated

2 "The most important suggestion was that the notification program be for ALL UNS Electric customers on life-
3 support and not just the a very limited subset who are in the CARES-M rate category." [Magruder Testimony
4 at 38:7-10]

5 The key word concerning this issue is ALL. That is, ALL customers on life-support should be able
6 to apply for notification during an electric outage. That is this issue. Easy suggestions for resolution
7 have been provided; however, implementation remains a Company process and procedure.

8 **d. The Company's Statement to Decision No. 70360 has not been implemented.**

9 The Company's response of 25 August 2008 included the below:

10 "UNS Electric currently does not notify life support customers of outages. Instead, UNS Electric uses
11 its best efforts to reconnect life support customers first in the event of an outage." [Exhibit MM-13, p. 2.
12 emphasis underlined] [Magruder Testimony at 38:19-21]

13 This response clearly stated that the Company does NOT notify customers on life-support during an
14 outage but tries to get its electrical system corrected. The latter efforts are expected for any electric
15 company but failure to comply with Order No. 70360, as quoted above, is unsatisfactory.

16 **e. The Company's Statement to Decision No. 70360 blames the Sheriff for not complying.**

17 The Company blames the Santa Cruz County Sheriff for failure to establish this program, when it
18 stated:

19 "However, as of this date, the Sheriff's Department has not assumed the obligations to contact life
20 support customers." [Exhibit MM-13, p. 2. Emphasis added] [Magruder Testimony at 38:25-27]

21 Decision No. 70360 did not order the Santa Cruz County Sheriff to assume any obligations;
22 however he wants to solve this public safety issue by making an agreement with the Company.

23 **f. The Company's Statement to Decision No. 70360 says it will update its website.**

24 The Company's letter of 25 August 2008 stated:

25 "UNS Electric will also be adding appropriate text to its website indentifying this addition to the C.A.R.E.S-M
26 Program." [UNSE letter of 25 August 2008, in Magruder Testimony, Exhibit MM-13, 2:25:27]

27 As of 2 September 2010, the Company's website has not been updated to provide how this
28 procedure can be used, even for the limited number of customers in the CARES-M program.

29 From the above quotes from Decision No. 70360 and the Company's response of 25 August 2008,
30 the Company admits it is NOT currently notifying customers who are life support, which is a basic
31 assumption in the quote from the above Decision, "to modify their procedures to its procedures that
32 may address the concerns raised by Mr. Magruder," blames the County Sheriff for not complying, and
33 has not provided the public any information to learn about this program.
34

35 **Conclusion.**

USN Electric is currently not notifying any customers on life-support in Santa Cruz County,

1 including those who have applied for such notification. There is no procedure for anyone on life-
2 support equipment to apply to be notified.

3 Recommendation.

4 That UNS Electric be ordered, with follow-up by Commission Staff, to immediately establish an
5 effective procedure to collect information from any customer on life-support and implement a process
6 so any customer on life-support can have an opportunity to be notified during an outage.
7

8 **3.2.3 If Mr. Magruder is Alleging the Company is Not in Compliance with Decision No. 70360,**
9 **then the Doctrine of Claim Preclusion Bars his Claim (Issue II.B.3)**²³

10 a. **Decision No. 70360 deferred a final decision in the key issue in this matter.**

11 The Motion states:

12 "Claim preclusion applies when a party has brought an action and final, valid judgment is entered after
13 adjudication.²⁴ Claim preclusion protects parties from the burden of re-litigating the same claim and
14 preventing needless litigation, promoting finality and deterring harassment.²⁵ If Mr. Magruder is alleging that
15 Decision No. 70360 requires the Company must provide the certain notification to customers with life
16 support equipment, the December 8, 2009 Procedural Order²⁶ decided that claim to the contrary.
17 Specifically, that Procedural Order stated that "Decision No. 70360 did not adopt Mr. Magruder's proposal
18 and does not require additional action by [UNS Electric]."²⁷ [UNSE Motion 4:20-5:3, underlined for
19 emphasis]

20 First, there as nothing in the Procedural Orders (PO) of 8 December 2009 that said it was a final
21 judgment, in fact, the PO for this docket stated:

22 "The Compliant docket remains the appropriate forum for addressing his allegations, and thus will be re-
23 activated." [PO of 8 December 2009, at 1:26-27]

24 Second, there was some confusion on my part if this notification issue remained open and I
25 submitted a "Response to a Procedural Order and a Motion to that One Issue Remain Open" in Docket
26 No. E-04204A-06-0783, the UNS Electric rate case docket, where the compliance review was done. It is
27 attached to this Reply as **Exhibit MM-17**.

28 Third, the scope of who should be notified, other than "all", was not resolved in the rate case that
29 lead to Decision No. 70360. As shown in the quote from that Decision, in the Finding of Fact we read:

30 "Outages for Customers on Life Support Equipment

31 "Mr. Magruder proposed that UNSE be required to identify **all customers** that have life support equipment,
32 its type and battery capabilities, and provide that information to local law enforcement offices so that public
33 safety agencies would be able to check on such customers during power outages.

34 "UNSE responded that it is opposed to sharing customer information with third parties but, even if it could
35 share such information, the Company is not able to reliability track where specific customers are located on its

33 ²³ UNSE Motion, subsection II.B at 4:18-5:20, designated as "Sub-Issue II.B.3" in this Reply.

34 ²⁴ UNSE Motion at 4, footnote 12 that reads: "*Circle K Corp., v. Industrial Comm'n of Arizona*, 179 Ariz. 422, 425,
35 880 P.2d 642, 645 (App. 1993)."

²⁵ UNSE Motion at 4, footnote 13 that reads: "*Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (1999)."

²⁶ UNSE Motion at 4, footnote 14 that reads: "Docket No. E-04204A-06-0783."

²⁷ UNSE Motion at 5, footnote 15 that reads: "See Procedural Order in Docket No. E-04204A-06-0783 (December 8, 2009) at 3.

1 system (Ex. A-22, at 6). UNSE claims that it uses outage status recordings to inform customers, but the
2 Company has no way of knowing whether every specific customer has a sufficient backup supply for a certain
3 period of outage. However, UNSE witness James Pignatelli stated that the Company is willing to work with
4 safety response agencies regarding this issue (TR 71-72).

5 "Although we do not believe Mr. Magruder's suggested remedies are necessarily the best way to address
6 the issue he raised, given Mr. Pignatelli's commitment to work with appropriate agencies, we direct the
7 Company to file within 90 days of the effective date of this Decision a statement regarding suggested changes
8 to its procedures that may address the concerns raised by Mr. Magruder on this issue." [Decision No. 70360 at
9 58:24-59:14, emphasis added]

10 Fourth, as is obvious, Decision No. 70360 did NOT decide on the key issue, if "all" customers on
11 life-support should have an opportunity to apply to be notified of an electric outage, as this was deferred
12 to actions AFTER the Decision itself was signed and implemented.

13 Conclusion.

14 UNS Electric filed a "compliance" letter ordered by Decision No. 70360 but it did not establish
15 ANY program that will notify any customer on life-support during an electric outage. Decision No. 70360
16 did not determine a "final" judgment but deferred it so that the Company may comment on changes to
17 its procedures that address the concerns of Mr. Magruder.

18 Recommendations.

- 19 1. That "claim preclusion" does not apply to Decision No. 70360 as a "final" judgment in this claim.
- 20 2. That Mr. Magruder present his case and conduct cross-examination of Company's witnesses

21 **b. The Compliance Letter is based on a non-final Decision No. 70360.**

22 The Motion continues with

23 "The Commission's Compliance Section had already found that the Company complied with Decision No.
24 70360, including the ordering provision regarding the outage notification issue."²⁸ [UNSE Motion at 4:3-5]

25 The "compliance" letter of 25 August 2008, as discussed in 3.2.1c, 3.2.1d, 3.2.1e, 3.2.1f, and 3.2.3a
26 above, clearly show that this program was never been implemented. This is significantly different than
27 "filing" a final letter of compliance when additional actions are required to be taken after the date of
28 letter necessary to establish and continue such a program. This has not been done.

29 Conclusion.

30 At best, the referenced "compliance" letter is for a "partial", not full compliance.

31 Recommendation.

32 ²⁸ UNSE Motion at 5, footnote 16 that reads: "See the Compliance Memorandum from Commission Staff –
33 attached as Exhibit 1 to this Motion. Further, UNS Electric explained (in its August 25, 2008 Compliance Filing
34 in the rate case docket) how the Company met with representatives of the Santa Cruz County Sheriff's
35 Department. The Sheriff's Department has not assumed the obligations to contact life support customers in the
even of an outage. Further, only nine *out of 48 C.A.R.E.S-M* Program participants agreed to have their
information released to the Sheriff's Department. That filing details the attempts made to contact these
customers as well as discussions with the Sheriff's Department. See UNS Electric's Response to Marshall
Magruder's Complaint (December 29, 2008) at 4 and Exhibit C (which is UNS Electric, Inc.'s Compliance Filing
Regarding Procedures for Outage Notification for Life Support Customers dated August 25, 2008)." [Also in
Magruder Testimony as **Exhibit M-13**]

- 1
2
3
1. That the "compliance" letter of 25 August 2008 be considered for "partial" compliance.
 2. That "claim preclusion" does not apply to Decision No. 70360 for a final judgment of this claim.

4 **c. Mr. Magruder continues to claim that of Commission Rules were not being followed.**

5 The Motion continues

6 "A companion procedural order issued in this docket (also on December 8, 2009) allowed Mr. Magruder to file
7 testimony because "Mr. Magruder continues to believe that [UNS Electric] is not in compliance with earlier
8 Commission orders or rules";²⁹ but, as noted above, Mr. Magruder has failed to identify any such violations. Mr.
9 Magruder's attempt to relitigate whether UNS Electric is required to provide the notification desired by Mr.
10 Magruder is now barred." [UNSE Motion 5;5-10]

11 These rules have been presented above in 3.2 plus additional claim that Decision No. 70360 orders
12 have not been implemented, even excluding the key provision that all customers on life-support should
13 be able to apply to be notified during an electrical outages.

14 Conclusion.

15 The argument presented by UNS Electric in this sub-issue have no basis since the Company
16 has never implemented the basic requirements assumed in Decision No. 70360.

17 Recommendation.

18 That this accusation be dismissed.

19 **3.2.4 If Mr. Magruder is Alleging that the Company Should Identify All Customers with Life
20 Support Equipment, then the Doctrine of Issue Preclusion Bars his Claim (Sub-Issue II.B.4)**³⁰

21 **a. Decision No. 70360 deferred the final decision in the Key issue in this matter.**

22 The Motion states

23 "If Mr. Magruder's allegation regarding life support notification is independent of Decision No. 70360, then
24 that allegation is also barred due to the doctrine of issue preclusion. Issue preclusion occurs when (1) the
25 issue to be litigated was actually litigated in a prior proceeding; (2) a final judgment was entered; (3) the
26 party that issue preclusion is to be invoked against had a full opportunity to litigate the issue; (4) that party
27 did litigate the issue; and (5) the issue was essential to the final judgment.³¹ Here, Mr. Magruder litigated the
28 issue regarding whether the Company should identify all customers with life-support equipment and provide
29 that to law enforcement in UNS Electric's last rate case. Decision No. 70360 did not adopt his proposal. Mr.
30 Magruder was given full and fair opportunity to present his position in that rate case as an intervening
31 party." [UNSE Motion at 4:13-5:2, underlined for emphasis]

32 As previously presented in 3.2.3a above, Decision No. 70360 was not a final decision. Further, the
33 issue of "all on life-support could apply" for such a program compared to the limited number customers
34 in the CARES-M rate category was not an essential to Commission Decision No. 70360 that was
35 primarily concerned with the financial complexities of an electric utility rate case.

36 ²⁹ UNSE Motion at 5, footnote 17 that reads: "See Procedural Order (December 8, 2009) in this Docket. The
37 procedural schedule was amended on February 3, 2010 through a subsequent procedural order."

38 ³⁰ UNSE Motion, subsection II.B at 5:11-6:7, designated as "Sub-Issue II.B.4" in this Reply.

39 ³¹ UNSE Motion at 5, footnote 18 that reads: "Circle K, 880 P.2d at 645; see also *Campbell v. SZL Properties, Ltd.*, 204 Ariz. 221, 223, 62P.3d 966, 968 (App. 2003)."

1 Conclusion.

2 This issue has not had a "final judgment" therefore issue preclusion does not apply.

3 Recommendation.

4 That this issue remains open so that Mr. Magruder can present his case and conduct cross-
5 examination with the Company's witnesses.

6
7 **b. Mr. Magruder did not propose that the Company identify and report to law enforcement**
8 **all of its customers on Life-Support.**

9 The prior Motion quote implied Mr. Magruder "litigated the issue regarding whether the Company
10 should identify all customers with life-support equipment and provide that to law enforcement". This is
11 not true.

12 What was proposed, as repeatedly stated, was that the Company give all of its customers on life-
13 support equipment an opportunity to apply to be notified during an outage through the Santa Cruz
14 County Dispatch Center, usually with "911" First Responders, as the situation determines. The Sheriff
15 operates the County Dispatch Center that is also tied in with the City of Nogales Dispatch Center
16 operated by the Chief of Police for 911 calls. The issue here is not law enforcement but public safety, a
17 primary task for law enforcement personnel. If a customer on life-support does not want to participate,
18 then they do not have to apply. The Company has continually misrepresented Mr. Magruder's proposal.

19 Conclusion.

20 Mr. Magruder proposal has been misrepresented by the Company in the rate case, in the
21 Complaint proceedings, and now in this Motion.

22 Recommendation.

23 That the Company understands the Magruder key issue and his proposal before it misstates its
24 intention; therefore, this accusation should be dismissed.

25 **c. This is a Public Safety Issue.**

26 This is a public safety issue and is not directly related to rates; however, one comment I have tried
27 to make clear is that any Company expenses to develop and implement such a program should be
28 considered as allowable expense that involves public safety, as long as they are prudent. This could be
29 considered similar to the "Blue Stake" program and its allowable expenses.

30 Conclusion.

31 This is a public safety issue.

32 Recommendation.

33 That this public safety program to permit an opportunity for all on life-support to participate
34 should be considered as an allowable expense, as long as expenses are prudent.

35 **d. Issue Preclusion does not apply as neither judgment rejected the Magruder proposal.**

1 The Motion continues

2 "Thus, this issue is precluded as the Commission has already entered two judgments rejecting Mr. Magruder's
3 claim that the Company has this obligation." And the issue of whether UNS Electric should be obligated or was
4 required to such notification must have been decided for the determinations to be rendered in both Decision No.
5 70360 and the subsequent December 8, 2009 Procedural Order.' [UNSE Motion at 6:3-7]

6 Decision No. 70360 did not provide a final decision on Mr. Magruder's proposal or did Procedural
7 Order of 21 December 2009 that determined the Company had complied with Decision No. 70360.

8 The Magruder Testimony is the first complete presentation of this issue that included the
9 Company's post-Decision No. 70360 responses. Mr. Magruder should be allowed to present his
10 Testimony and its evidence and cross-examine witnesses concerning this safety issue. The lack of the
11 ability to participate in the "present" [and apparently not implemented] notification program for the
12 limited number of CARES-M rate category customers who agreed to have their information passed to
13 the Sheriff (with the attendant fears about law enforcement in this community) is the 'key' concern of Mr.
14 Magruder. He's offered a procedural way to implement that the Sheriff's point of contact agrees is very
15 simple and the Company's failure to develop a MOU on this issue lays blame back on the Company,
16 and not blame the County Sheriff, for the Company's failure to implement such a program.

17 Conclusion.

18 The proposal from Mr. Magruder needs to be presented, which has not happened in any of
19 these prior procedures, and witnesses cross-examined to determine how to establish a program where
20 all customers on life-support can have an opportunity to be notified during an electric outage.

21 Recommendations.

- 22 1. That issue preclusion does not exist.
23 2. That Mr. Magruder is permitted to make his case.

24 **3.3 Mr. Magruder's Allegations Related to a Student-Loan Program Suffer from Multiple Legal**
25 **Deficiencies (Issue II.C)**³²

26 **a. The Company is NOT funding interest-free loans in violation of Decision No. 61793.**

27 The Company's Motion states:

28 "Mr. Magruder accuses the Company of failing to fund interest-free loans to graduating seniors of high schools
29 within Santa Cruz County, apparently in violation of Decision No. 61793." [UNSE Motion at 6:10-12]

30 This is what this Complaint charges. The Company has NOT funded such loans as stated three
31 times in Decision No. 61793. First,

- 32 "13. Under the terms of the Revised Settlement Agreement, Citizens will:
33 (a) fund direct payments of \$15 to all customers in Santa Cruz County;
34 (b) provide a neutral claims resolution procedure for all customers in Santa Cruz County;
35 (c) fund low income relief for Nogales residents;

³² UNSE Motion, subsection II.B at 6:8-17, designated as "Issue II.C" in this Reply and was designated "Issue 1" in the Magruder Testimony.

- 1 (d) fund Santa Cruz County economic-development efforts; and
2 (e) **fund four-year, interest free loans for Santa Cruz County high graduates.**
3 [Decision No. 61793, Finding of Fact 13 at 3:1-8, Emphasis added]³³

4 And second in Exhibit A of this Decision No. 61793, the Revised Settlement Agreement between the
5 City of Nogales, Arizona, and Citizens Utilities Company, the Recitals stated:

6 **"B. Citizens will be providing compensation to the City and its customers for past damages related to
7 its provision of electric service by:**

- 8 1. Funding direct payments to all customers in Santa Cruz County (Article 1);
9 2. Providing a neutral claims resolution procedure for all customers in Santa Cruz County (Article 2);
10 3. Funding low income relief for City Residents (Article 6);
11 4. Funding Santa Cruz County economic-development efforts (Article 7);
12 5. **Funding four-year, interest-free, loans for Santa Cruz County high school graduates that will
13 be forgiven if the student returns to live and work in Santa Cruz County** (Article 9)." [Decision
14 No. 61793, Exhibit A, Revised Settlement Agreement at 1-2, Emphasis added]³⁴

15 And the third time in Exhibit A of Decision No. 61793, the Revised Settlement Agreement between
16 the City of Nogales, Arizona, and Citizens Utilities Company, in Article 9 states:

17 **"[Article] 9. Educational Support.**

18 "A skilled, knowledgeable work force will be a key to Santa Cruz County's success in the 21st century.
19 Following the Parties' execution of this Revised Settlement Agreement, the City and Citizens will work
20 together to develop an educational assistance program to assist worthy Santa Cruz County high-school
21 seniors attend the Arizona college of their choice. Each year, the program will select one County senior for a
22 four-year, interest free loan to assist with tuition, books, and miscellaneous college expenses. If, following
23 graduation, the student returns to Santa Cruz County to live and work, the loan will be forgiven. Other
24 contributions will be solicited from other benefactors to expand this program even further, such as to cover
25 some portion of room and board, graduate school, or vocational programs."³⁵ [Emphasis in original, Decision
26 No. 61793, Exhibit A, Revised Settlement Agreement at 7]

27 **b. The Company is Approximately \$118,000 in Arrears in Funding these Loans.** Table 1 shows
28 the status of awards to high school seniors in Santa Cruz County by Citizens before 11 August 2003
29 then by UNS Electric. It should be noted that Citizens did provide some funding each year for
30 scholarships including \$3,500 in 2003, after the sale had been announced and prior to the Closing.
31 However, UNS Electric did not fund ANY awards for the first four years, from 2004, 2005, 2006 and
32 2007. During these years, in particular in 2002 and 2003 during the acquisition hearings, in 2004 and
33 2005 during the "reliability in Santa Cruz County" and the Sahuaro acquisition hearings, in 2006 and
34 2007 in the UNS Electric rate case, Mr. Magruder and others asked during cross-examination if all of
35 Citizens obligations, in particular Decisions No. 61793 and No. 62011, would continue after the

33 Also in Magruder Testimony **Exhibit MM-1's Exhibit M-A** at 3:1-8.

34 Decision No. 61793, Exhibit A, Revised Settlement Agreement between City of Nogales, Arizona, and Citizens
Utilities Company, hereafter "Revised Settlement Agreement"; Magruder Testimony, 11:23-32; and **Exhibit MM-
1's Exhibit M-A** at 8-9.

35 Also in Magruder Testimony at 11:23-32; **Exhibit MM-1's Exhibit M-A** at 14.

1 acquisitions of UniSource Energy of Citizens assets? The answer was always affirmative: UNS Electric
 2 would carry out all these obligations; however responses to Data Requests were not as positive.³⁶
 3

4 **Table 1 – Status of the Scholarship-Loan Program through end of 2010.**³⁷

Calendar Year	Number of Awards	Attended Arizona college	Total Awarded this Year	Total To Be Awarded this Year	Total Awarded To Date	Total To be Awarded to Date	Total Deficient
Awards by Citizens, BEFORE Acquisition by UniSource Energy							
1999	1	No	\$1,250 (1)	\$12,000	\$1,250	\$12,000	\$10,750
2000	2	Yes, Yes	\$4,250 (1)	\$12,000	\$5,500	\$24,000	\$18,500
2001	1	No	\$3,000	\$12,000	\$8,500	\$36,000	\$27,500
2002	1	No	\$3,000	\$12,000	\$11,500	\$48,000	\$36,500
2003	2	Yes, No	\$3,500	\$12,000	\$15,000	\$60,000	\$45,000
Awards AFTER the Acquisition by UNS Electric (2) [UniSource Energy, Inc. purchased Citizens on 29 October 2002, effective 11 August 2003]							
2004	0	NO AWARDS	\$ 0	\$12,000	\$15,000	\$72,000	\$57,000
2005	0	NO AWARDS	\$ 0	\$12,000	\$15,000	\$84,000	\$69,000
2006	0	NO AWARDS	\$ 0	\$12,000	\$15,000	\$96,000	\$81,000
2007	0	NO AWARDS	\$ 0	\$12,000	\$15,000	\$108,000	\$93,000
2008	1	Unknown	\$1,000 (3)	\$12,000	\$16,000	\$120,000	\$104,000
2009	4	Unknown	\$8,000 (4)	\$12,000	\$24,000	\$132,000	\$108,000
2010	1	Unknown	\$2,000 (4)	\$12,000	\$26,000	\$144,000	\$118,000
2011				\$12,000		\$156,000	
ANNUALLY, thereafter				\$12,000			

19 Notes:

- 20 (1) These awards are annotated "Jose Cañez Memorial/Citizens Energy" in **Exhibit M-B** that were advertised by Citizens
 21 in the *Nogales International* in 1999 as \$5,000 annual scholarships in memory of a Citizens employee named Joes B.
 22 Cañez as described in **Exhibit MM-8**. This program was started prior to the Settlement Agreement.
 23 (2) UniSource Energy acquired Citizens and created a new electric public service company, UNS Electric, Inc., a
 24 subsidiary of UniSource Energy Services (UES), a holding company.
 25 (3) Awarded by UNS Electric and UNS Gas, the two public service companies held by UES, a holding company.
 26 (4) Awarded by UniSource Energy Services (UES). The awards indicated were listed in the *Nogales International* annual
 27 "Graduation" Issue.

28 **c. No Interest-Free Loans have been awarded, only Scholarships.** All of these are one-year
 29 "scholarships" without conditions to attend an Arizona school or to return to work and live in Santa Cruz
 30 County. Neither Citizens³⁸ nor UNS Electric had "conditions" on their scholarship awards that were
 31 apparently to meet the requirements specified in Article 9 of the Revised Settlement Agreement.

32 It is this party's experience that any grants to students going to college need some conditions, to
 33 ensure that the money is used to meet the student's educational needs. It is not just "free money." There
 34 are significant differences between a scholarship and an interest-free loan that is forgiven if the student

34 ³⁶ Magruder Testimony, **Exhibit MM-1's Exhibit M-C**, UNS Electric Data Request Responses (some)

35 ³⁷ Updated for 2010 and 2011 from Magruder Testimony, Table 1 – Status of Scholarship/Loan Program through
 end of 2009 at 13:7-25.

³⁸ Magruder Testimony, **Exhibit MM-1's Exhibit M-B**, at 2, lists the awards in the "Citizens Energy Scholarship"
 program.

1 returns to work and live in Santa Cruz County or the City of Nogales. Table 2 shows some of these
 2 differences. See Section 4 for additional details on the UNS Electric Scholarship Agreement
 3

Table 2 - Student Loans in the Commission Decision No. 61793 vs. UNS Electric Scholarships.

Factor	Student Loans in the Existing Decision No. 61793	UNSE Scholarship Agreement (Exhibit MM-18)
Goals to benefit community	<ul style="list-style-type: none"> • Long-term approach, >10 years • Increase college graduates in Santa Cruz County/Nogales 	<ul style="list-style-type: none"> • Short-term, less than 2 years • No local goals
Award Type	<ul style="list-style-type: none"> • Interest-Free Loan • Forgiven if return to SCC/Nogales to work/live 	<ul style="list-style-type: none"> • Cash
Loan or Cash	Recommend the existing agreement: <ul style="list-style-type: none"> • Return to work/live in SCC/Nogales within 24 months of graduation, then forgiven • If not, then repay via direct deposit to a bank account • NHS Foundation sends funds to school, not student. Loan managed by Foundation Scholarship Committee 	<ul style="list-style-type: none"> • Cash given to student at award ceremony
High School Senior	<ul style="list-style-type: none"> • Any HS in UNSE area including NHS, RRHS, Lourdes, Pierson, charter 	<ul style="list-style-type: none"> • Same (assumed changed)
Annual Student Funding	<ul style="list-style-type: none"> • \$3,000 per student for 4 years 	<ul style="list-style-type: none"> • \$3,000 for 3 students for 1 year
Annual UNSE Funding	<ul style="list-style-type: none"> • \$12,000 	<ul style="list-style-type: none"> • \$9,000 (receive \$3,000 less every year)
Number of years	<ul style="list-style-type: none"> • Four years for each student 	<ul style="list-style-type: none"> • One year for each student
Expiration of Program	<ul style="list-style-type: none"> • None, to continue annually 	<ul style="list-style-type: none"> • 20 years then nothing
Funds Go To	Recommend funds go to County Superintendent, to forward 100% to Nogales Educational Foundation and/or Scholarship Committee to select and award	<ul style="list-style-type: none"> • Nogales Educational Foundation • RRHS and Pierson Scholarship Committees
School location	<ul style="list-style-type: none"> • Arizona only 	<ul style="list-style-type: none"> • Arizona only
Funds to meet in Arrears Debt	<ul style="list-style-type: none"> • Support 2 new student loans a year until caught up, then 1 loan a year (about \$118,000) 	<ul style="list-style-type: none"> • "Let bygones be bygone" = \$0.00, forget all past due loans
Type of student	<ul style="list-style-type: none"> • For types of employment available in SCC/Nogales: Teachers, attorneys, nurses, produce managers, journalists, ranchers, city/county staffs, law enforcement, international finance, etc 	<ul style="list-style-type: none"> • Any, including areas of study not in SCC, such as a thermonuclear physicist
Probability of Student Graduating and Returning	<ul style="list-style-type: none"> • High, est. about 75-85% when funding for 4 years 	<ul style="list-style-type: none"> • Low, less than 50% (present U of A dropout rate) if only for 1 year

25
 26 Conclusion.

27 The conditions in Order No. 61793 for interest-free (with forgiveness) loans will benefit our
 28 communities in the long-term more than the UNS Electric Scholarship Agreement.

29 Recommendations.

- 30 1. That Student Loans, as specified Decision No. 61793, be continued and annual loans funded.
 31 2. That the \$118,000 funding for loans in arrears be funded.

32 **d. Mr. Magruder can prevail based on evidence in this Reply.**

33 The Motion continues with

34 "Further, Mr. Magruder cannot amend his complaint to resolve these deficiencies and no factual basis can be
 35 established where Mr. Magruder can prevail." [UNSE Motion at 6:15-17, underlines added]

1 This statement shows the Company believes the four sub-issues below cannot be resolved. As
2 shown below, none of these four allegations are valid.

3 Conclusion.

4 None of these allegations have merit or are valid. They have no basis. The Company has NOT
5 followed the requirements of Decision No. 61793 nor the Revised Settlement Agreement.

6 Recommendation.

7 That this accusation be dismissed.

8
9 The Motion further states four Sub-Issues discussed that continue in 3.3.1 to 3.3.4 below.

10
11 **3.3.1 Mr. Magruder Lacks Standing to Pursue this Claim (Sub-Issue II.C.1)**³⁹

12 a. **Specific financial injury exists for Mr. Magruder and all ratepayers.** The Motion states that
13 Mr. Magruder has not suffered any specific distinct or palpable injury⁴⁰ because of the failure of the
14 Company to fund student loans as required by Decision No. 61793.

15 As a ratepayer in Santa Cruz County when Commission Decision 61793 was decided, the Company
16 is required to "provide compensation to the City and its customers for past damages relating to its
17 provision of electric service,"⁴¹ as specified in paragraph 13 of the Decision, and according to the
18 Revised Settlement Agreement, these were specified in Articles 1, 2, 6, 7 and 9.⁴²

19 This Complaint specifically refers to failure to annually compensate Article 9 to "its customers for
20 past damages." This compensation for past damages has always had an annual monetary value of
21 \$12,000 from Decision No. 61793 and its Exhibit A. During the Company's presentation to the Nogales
22 City Council, Mr. Larry Lucero representing UNS Electric, when asked about compensation for past
23 damages, answered, "Let bygones be bygones" and shrugged it off as a loss for ratepayers. UNS
24 Electric does not have such authority; only the Commission can change a Commission Decision.

25 The UNS Electric customers should either (1) have their rates lowered by an amount equivalent to
26 \$12,000 a year or (2) another equivalent amount determined.⁴³ The compensation for damages in
27

28
29 ³⁹ UNSE Motion, subsection II.B, 6:18-7:2, designated as "Sub-Issue II.C.1" in this Reply.

⁴⁰ UNSE Motion at 6:19-20, 23-24.

⁴¹ Decision No. 61793 at 3:1-7 and Exhibit A, Revised Settlement Agreement, Recitals, paragraph B; Magruder
30 Testimony at 11:23-32 and **Exhibit MM-1's Exhibit M-A** at 3, 8-9.

⁴² The original Settlement Agreement between the City of Nogales and Citizens was rejected by the Commission
31 specifically because the Commissioners were concerned about the long-term commitments promised by
32 Citizens and that Citizens was "for sale" at the time. The "Revised" Settlement Agreement specifically added
33 Article 10 to cover this contingency. UNS Electric has not assumed these continuing mandates of Decision No.
61793.

⁴³ Due to the long-term (annual) requirements for Article 9, one consideration for compensation be to provide a
34 \$500.00 discount to the City of Nogales and \$500.00 to Santa Cruz County's monthly electric bills. This must
35 not be an allowable expense as compensation for damages is above the line. This compensation is NOT from
the ratepayers in order to be fair. Compensation for damage is treated differently than a donation for tax
purposes. At a 33% corporate tax rate, a \$9,000 donation is a \$6,000 expense that ratepayers should not fund.

1 arrears from Table 1 is approximately \$118,000 for funding that has not been met⁴⁴ and when such
2 compensation needs to be determined in this case. Section 4 has alternatives to remedy these
3 outstanding financial obligations.

4 Further, A.R.S. § 40-246B states "because of the absence of direct damage to the complaint" the
5 Commission "need not dismiss a complaint" as presented in 3.2.1a above.

6 Conclusion.

7 Mr. Magruder and all ratepayers in Santa Cruz County have been injured by the Company for its
8 failure to fund these student loans. Direct damage is not required to make a complaint.

9 Recommendations.

- 10 1. That Mr. Magruder is granted standing in this issue because of financial injury.
11 2. That UNS Electric (and possibly Citizens) is required to makeup all funding in arrears.
12

13 **b. Mr. Magruder is Not a High School Senior.**

14 The Motion states that Mr. Magruder has not suffered any specific distinct or palpable injury⁴⁵
15 because of the failure of the Company to fund student loans as required by Decision No. 61793;
16 however, annually at one high school senior in Santa Cruz County has NOT benefited from the
17 program. Mr. Magruder is not a high school senior injured by UNS Electric lack of funding the loans.

18 If all of the planned awardees returned to work and live here since 1999, our county and City would
19 have almost ten more college graduates. A lack higher education of the local population injures this
20 county because the knowledge and skills needed for the "21st century" as stated in Article 9.

21 Conclusion and Recommendation.

22 See next for Conclusion and Recommendation.

23 **c. Mr. Magruder should be granted Third-Party Standing.** Mr. Magruder should have "third-
24 party standing"⁴⁶ because he is trying to protect the rights of others, in particular the rights of high
25 school seniors in Santa Cruz County to receive these loans and ratepayers who have not been
26 compensated for damages.
27

28 Conclusion.

29 Mr. Magruder is trying to protect the rights of others, in particular, the local high school seniors.
30 He should be granted Standing so he can present his case and the Commission can make a decision.
31

32 ⁴⁴ This is generous interpretation, as all "scholarships" to date were counted for the funding; however, none of the
33 awards met the conditions in Decision No. 61793 in Magruder Testimony **Exhibit MM-1**, Marshall Magruder
34 Late Submitted Exhibits of 24 December 2007 at 7:31-8:27. In a filing by UNS Electric on 25 August 2008, in
35 Magruder Testimony **Exhibit MM-6**, at 2:6-10, implies it was a surprise to UNS Electric that these conditions
had not been met, in particular that UNS Electric had not funded any awards from August 2003 to August 2008,
a period of five years when UNS Electric funded no awards.

⁴⁵ UNSE Motion at 6:19-20, 23-24.

⁴⁶ *Black's Law Dictionary, abridged, 7th ed.*, hereafter *Black's*, at 1136, defines "third-party standing. Standing held by someone claiming to protect the rights of others." [Emphasis in original]

1 Recommendations.

- 2 1. That Mr. Magruder be granted third-party standing or any restrictions for such standing to protect
3 the rights of high school seniors in Santa Cruz County are waived.
4 2. That this accusation that Mr. Magruder be denied.
5

6 **d. The Revised Settlement Agreement is not a Private contract.**

7 The Motion further states

8 "This involves what is essentially a provision of a private contract between parties and where he was not
9 representative of either of those parties. Moreover, Mr. Magruder is not a representative of the City of Nogales
and can only represent himself in these proceedings."⁴⁷ [UNSE Motion at 6:20-23]

10 This is not a "private"⁴⁸ agreement but is a very public agreement to settle injury claims for failure to
11 compensate for damages from a Complaint by the City of Nogales that involved the Mayor and City
12 Council and the Corporation Commission that adjudicated the Compliant, all in public. See Section 2
13 above as Mr. Magruder is representing himself.

14 Conclusion.

15 Mr. Magruder is not a party to the City of Nogales and UNS Electric negotiations about the
16 Revised Settlement Agreement incorporated into Decision No. 61973. This is not a private contract.

17 Recommendation.

18 That this accusation be denied as Mr. Magruder is not representing the City of Nogales.
19

20 **e. Mr. Magruder should pursue a Breach of the Revised Settlement Agreement.**

21 The Motion states

22 "He cannot pursue or enforce a perceived breach of the Revised Settlement Agreement between the City of
23 Nogales and Citizens Utilities Company ("Citizens") to which he is not a party. Therefore, he simply cannot
meet the standing requirement. And there is no justification to waive that requirement." [Motion 6:24-7:2]

24 Assuming third-party standing, then Mr. Magruder can pursue a breach of the Revised Settlement
25 Agreement that injures high school seniors and ratepayers in Santa Cruz County. There is no reason to
26 waive anything if Mr. Magruder has third-party standing. If not, then such a waiver is so requested.
27

28 Conclusion.

29 Mr. Magruder should be allowed to pursue a breach of the Revised Settlement Agreement when
30 granted third-party standing. Even if not granted third-party standing, then a waiver to grant third-party
31 standing is requested. Further, Mr. Magruder is an injured ratepayer whose financial compensation for
32 damages from Decision No. 61793 remains, as presented in 3.3.1a above

33 Recommendations (same as 3.3.1a above):

34 ⁴⁷ UNSE Motion at 6:20-23.

35 ⁴⁸ *Black's*, at 972, defines "**private**. *adj.* 1. Relating or belonging to an individual, as opposed to the public or the government. 2. (Of a company) no having shares that are freely available on an open market. 3. Confidential, secret." [Emphasis in original] None of these definitions apply to how this word is used in the Motion.

- 1 1. That Mr. Magruder have third-party standing or any restrictions for such standing is waived.
- 2 2. That this accusation be denied.
- 3 3. That Mr. Magruder or City of Nogales files a Breach of the Revised Settlement Agreement.

4
5 **3.3.2 Mr. Magruder Misinterprets Decision No. 61793 – Sub-Issue II.C.2.**⁴⁹

6 **a. Dismissed with Prejudice was misinterpreted by UNS Electric.** The Motion stated:

7 "Decision No. 61793 only dismissed the complaint by the City of Nogales against Citizens with prejudice...
8 Further, the Decision states "the parties have resolved their differences and the Complaint should be
9 dismissed with prejudice."⁵⁰ [UNSE Motion at 7:4-5]

10 The Company, not Mr. Magruder, seems to have misinterpreted the word "prejudice" in the above.
11 In general, as used when resolving a complaint, it is dismissed with or without "prejudice." Thus, in
12 Decision No. 61793 that dismissed the City of Nogales Complaint "with prejudice" means that the City
13 of Nogales cannot re-file the same complaint.⁵¹ The Settlement Agreement between both parties
14 resolved the City's Complaint so that complaint cannot be refilled.

15 Conclusion.

16 These two statements have no impact on these proceedings.

17 Recommendation.

18 That this accusation be dismissed.

19 **b. The Commission did adopt the Revised Settlement Agreement and its requirements.**

20 The Motion continues

21 "It [Decision No. 61793] did not, as Mr. Magruder alleges, adopt any of the provisions within the Revised
22 Settlement Agreement (between the City and Citizens) as Commission requirements.⁵² Nowhere did it state
23 that the Commission intended to adopt those requirements; thus, the Revised Settlement Agreement remains
24 as a private contract between the parties. As a result, there is no violation of Decision No. 61793. Any issue of
25 contention regarding the alleged student-loan program would be a breach of contract issue that is best left to
26 the courts, particularly because this issue is not one where the Commission's specialized expertise or
27 experience is necessary. In other words, this is not a case where the doctrine of primary jurisdiction demands
28 Commission adjudication."⁵³ [UNSE Motion at 7:5:14, underlined for emphasis]

29 The Decision No. 61793 states:

30 ⁴⁹ UNSE Motion, subsection II.B, 7:3-14, designated as "Sub-Issue II.C.2" in this Reply.

31 ⁵⁰ UNSE Motion at 7, footnote 20 that reads: "See Decision No. 61793 at 4 (stating "IT IS THEREFORE
32 ORDERED that the Amended Complaint filed by the City of Nogales against Citizens Utilities Company be
33 dismissed with prejudice.") Decision No. 61793 is attached to this Motion as Exhibit 2."

34 ⁵¹ *Black's* at 380 defines "**dismissal with prejudice**. A dismissal, usu. after an adjudication of the merits, barring
35 the plaintiff from prosecuting any later lawsuit on the same claim." The City of Nogales was the 'plaintiff' in the
36 initial Complaint filing with the Corporation Commission. The above continues, "If, after a dismissal with
37 prejudice, the plaintiff files a later suit on the same claim, the defendant in the later case can assert the defense
38 of res judicata (claim preclusion)."

39 ⁵² UNSE Motion at 7, footnote 21 that reads: "Decision No. 61793 at 4, (Conclusion of Law No. 3)."

40 ⁵³ UNSE Motion at 7, footnote 22 that reads: "*Compare with Campbell v. Mountain State Tel. and Tel. Co.*, 120
41 Ariz. 426, 430, 586 P.2d 987 991 (App. 1978) (*quoting Far East Conference v. U.S.*, 342 U.S. 570, 574-75
42 (1952))."

1 "On June 2, 1999, Nogales filed a Motion to Dismiss Amended Complaint with Prejudice and a copy of the
2 Revised Settlement Agreement between the parties. **A copy of the Revised Settlement Agreement is**
3 **attached hereto as Exhibit A, and incorporated by reference.** In its Motion, Nogales asserts that the
4 Revised Settlement Agreement resolves all outstanding claims that were brought or might have been brought
5 in its Amended Complaint against Citizens and requests that the Commission dismiss the Amended Complaint
with prejudice."⁵⁴ [Decision No, 61793 at 2:21-27, Finding of Fact No. 12, emphasis added]

6 The words "incorporated by reference"⁵⁵ in the Settlement Agreement mean that the Revised
7 Settlement Agreement should be treated as if it were contained within Decision No. 61793.

8 The Company's statement is erroneous, as all provisions of the Revised Settlement Agreement are
9 to be treated as if they were contained within the Decision.

10 Conclusion.

11 The Commission adopted in Decision No. 61793 and the Revised Settlement Agreement.

12 Recommendation.

13 That this accusation be denied as it is erroneous.

14 **c. Jurisdiction continues under the Corporation Commission.**

15 The issue concerning "private" contract is erroneous as the Revised Settlement Agreement states:

16 "Citizens' activities under this Revised Settlement Agreement remain subject to the continuing jurisdiction
17 of the Commission by virtue of Citizens' status as a public service corporation under Arizona law." [Decision
18 No. 61793 Exhibit A, Revised Settlement Agreement at 7, in Article 10. Miscellaneous, underlined for
19 emphasis]

20 Therefore, any breach of Decision No. 61793 remains within the jurisdiction of the Commission and
21 is not "left to the courts." This sentence was one of the primary reasons why the original Settlement
22 Agreement was revised. The Commission knew that there were problems in Nogales, and the
23 Commission understood these problems, including the details of the Settlement Agreement so it did not
24 want these kinds of issues to be adjudicated by others that the Commission. Since Citizens was on the
25 market to be sold, adding this clause was a prudent change along with the succession clause were
26 changed by the Commission, Staff and RUCO, who all participated with the City of Nogales. The result
27 was a "Revised" Settlement Agreement.

28 Conclusion.

29 There is no merit in these erroneous statements. Jurisdiction remains with the Commission.

30 Recommendation.

31 That this accusation be dismissed.

32
33
34 ⁵⁴ UNSE Motion at 8, footnote 24 that reads: "See the Revised Settlement Agreement (attached to Decision No.
61703 as Exhibit A) at 7." This shows the Company understood this agreement is a part of (attached to) the
Decision; however, the Company's text says otherwise.

35 ⁵⁵ *Black's* at 614 defines "**incorporation by reference**. A method of making a secondary document part of the
primary document by including in the primary document a statement that the secondary document should be
treated as if it were contained within the primary one."

1 **3.3.3 UniSource Energy Corporation (and thereafter UNS Electric) did not Assume Obligation**
2 **under the Revised Settlement Agreement (Sub-Issue II.C.3)**⁵⁶

3 a. **UNS Electric agreed to assume Liability under Decision No. 61793.**

4 The Motion states

5 "Neither UNS Electric, nor any of its affiliates (or ultimate parent UniSource Energy Corporation) adopted, as
6 an assumed liability, the Revised Settlement Agreement referred to in Decision No. 61793.⁵⁷ To the contrary,
7 Mr. Magruder points to no evidence showing that the Company assumed the obligations under the agreement.
8 While Mr. Magruder's testimony is littered with his own opinions and conclusions on this issue, he refers to no
9 empirical facts supporting his assertions. In short, Mr. Magruder provides no facts that can be substantiated
10 that UNS Electric agreed to take on that obligation." [UNSE Motion at 7:17-8:2, emphasis added]

11 First, the Revised Settlement Agreement states:

12 **"This Revised Settlement Agreement binds the successors and assigns of the Parties. The provisions**
13 **of this Revised Settlement Agreement are not severable.**" [Decision No. 61793 Exhibit A, Revised
14 Settlement Agreement at 8, in Article 10. Miscellaneous, underlined for emphasis]

15 These words are very clear and unambiguous. No other interpretation could be made.

16 **Conclusion.**

17 UniSource Energy, a holding company, and its regulated company, UNS Electric, are now
18 bound to exactly the same provisions that the Revised Settlement Agreement bound Citizens. Also, the
19 provisions of this Agreement are not severable.

20 **Recommendation.**

21 That this accusation be dismissed.

22 **b. An Asset Purchase Agreement does not change a Commission Decision.**

23 Second, the Asset Purchase Agreement (APA) was a key document in the UniSource Energy
24 purchase of Citizens. Mr. Magruder was a party in that case that also consolidated several dockets.⁵⁸
25 Footnote 23 in the Motion stated the "Revised Settlement Agreement was intentionally deleted" in
26 Schedule 2.3(i) of Assumed Actions and Proceedings, in the APA as shown in Exhibit 3 of the Motion.
27 This deletion is reproduced below:

- 28 2. ~~Order of the Arizona Corporation Commission (Decision No. 61793), dated June 29, 1999, re:~~
29 ~~Revised Settlement Agreement, dated June 1, 1999, between City of Nogales, Arizona, and~~
30 ~~Citizens Communications Company. Intentionally deleted. (Note: No issues are open~~
31 ~~regarding this matter. The Nogales complaint was dismissed with prejudice.~~
32 [Emphasis in original, UNSE Motion, Exhibit 3 at 12]

33 ⁵⁶ UNSE Motion, subsection II.B at 7:15-8:5, designated as "Sub-Issue II.C.3" in this Reply.

34 ⁵⁷ UNSE Motion at 7, footnote 23 that reads: "See relevant excerpts from Asset Purchase Agreement and
35 Schedule 2.3(i) (October 29, 2002) attached as Exhibit 3. While UniSource assumed certain liabilities from
Citizens, the Revised Settlement Agreement was intentionally deleted from that portion of the Asset Purchase
Agreement because no issues were open regarding the matter and the City of Nogales' complaint was
dismissed with prejudice."

⁵⁸ Docket Nos. E-01933A-02-0914, E-01032C-02-0914, G-01032C-02-0914 (Joint Application), E-01032C-00-
0751 (PPFAC Case), and G-01032A-02-0598 (Gas Rate Case) with Decision No. 66028 approving the sale of
Citizens assets to UniSource Energy. The APA was incorporated therein by reference.

1
2 This deletion was by a Memorandum of Understanding (MOU) Re: "Miscellaneous Closing Issues
3 between Citizens and UniSource" on the date of closing, 11 August 2002. This two-company MOU
4 cannot change a Commission Decision or agreements with the City of Nogales. This MOU appears to
5 be the only basis for UNS Electric failure to assume its legal obligations in August 2003 to fund the
6 annual student loans. It was provided to the City of Nogales on 24 June 2008 and was first seen by this
7 party in the Motion as its Exhibit 3.⁵⁹ The entire MOU has NOT been made available, only this
8 excerpt.⁶⁰

9 Conclusion.

10 Two companies cannot modify an agreement between other parties, including Commission
11 Orders or Settlement Agreements with the City of Nogales and/or with the Commission Staff.

12 Recommendation.

13 That this accusation be denied as it is erroneous.

14
15 **c. City of Nogales Does Not Agree with UNS Electric.**

16 Third, in response, a letter in Magruder Testimony, **Exhibit MM-2** from the Deputy City of Nogales
17 Attorney succinctly summarizes this concern upon receipt of this Citizens-UniSource MOU:

18 "Thank you for mailing me today the Memorandum of Understanding Re Miscellaneous Closing Issues dated
19 August 11, 2003. Unfortunately this document raises more issues that it resolves.

20 "Pursuant to its terms, this document memorializes certain agreements between UNS Electric, Inc. and Citizen's
21 Communications Company regarding the Asset Purchase Agreement dated October 29, 2002. The Asset
22 Purchase Agreement was prominently mentioned in the Settlement Agreement between ACC Utilities Staff and
23 the parties in Docket Nos. 601032A-02-0598 ("Gas Rate Case"), E-01032C-00-0751 ("PPFAC Case") and E-
24 01933A-02-0914, E-01302C-02-0914, G-01302C-02-0914 ("Joint Application") and the subsequent Opinion and
25 Order entered in these matters (Decision No. 66028). Importantly, neither the Settlement Agreement nor the
26 Opinion and Order reference the Memorandum of Understanding, which appears to be a later document not
27 yet in existence at the time the [Citizens asset sale] Settlement Agreement and Decision [No. 66028] were
28 entered. Thus, I question whether such a document can be binding on anyone other than the parties thereto
29 in such a highly-regulated and exhaustively litigated environment. (As an aside, the parenthetical assertion made
30 in Schedule 2.3(i) of MOU that there were no issues current with the City's complaint, which it asserts to have
31 been dismissed with prejudice, does not appear to be factually correct. Pursuant to the terms of the City's
32 Settlement Agreement, jurisdiction in the ACC was reserved for enforcement purposes, as certain provisions
33 created long-term obligations. Thus, this self-serving statement does nothing to affect the binding nature of the
34 Settlement Agreement or its express terms).

35 "Moreover, there appears to have been an earlier version of Schedule 2.3(i) that did not include the
strikeouts and parenthetical language that appear in the MOU you emailed me. I am enclosing herewith
another version of Schedule 2.3(i), which is identified with Bates No. JA/0401- 00000896. This document was
produced to Marshall Magruder in response to his Second Set of Data Requests in Docket No. E-01032A-99-

33
34 ⁵⁹ A new paragraph, number 4 was added in this MOU for the "Joint Application" of TEP and Citizens or their
35 assignee(s) for a CEC for a proposed 345 kV transmission line in Line Siting Case No. 111 as an assumed
action. In other ACC proceedings, the Company denied, under oath, that this Joint Application is relevant since
the purchase of Citizens by UniSource Energy in August 2003. It is first noted here only for the record.

⁶⁰ The Scholarship Agreement herein as **Exhibit MM-18**, paragraph IV, waives any rights for the City of Nogales
that are in this MOU; however, this entire MOU has not been provided to the Commission or any parties.

1 0401, and was the response of the Joint Applicants to Mr. Magruder's question regarding the transition or
2 changeover plan ensuring all prior commitments of Citizens were addressed. Thus, it appears that **at one time**
3 **UNS Electric did intend to assume Citizens' obligations under the Settlement Agreement with the City,**
4 **and openly told this to Mr. Magruder**. This obviously creates further doubts about [sic] what if any legal effect
5 to be given to the MOU you emailed me.

6 "At any rate, I think we can agree that the document trail that I have outlined above is anything but clear as to how
7 Citizens and UNS Electric intended to deal with the continuing obligations created by the Settlement Agreement.
8 In this situation, the terms of the Settlement Agreement should apply, which is that it bound not only Citizens but
9 its "successors and assigns." **If UNS Electric or its related entities disagree, then the burden should be on**
10 **them to show why they should not be bound**, and the MOU, either in isolation or in context with the other
11 documents that I mention above, does not appear to carry that burden." [Emphasis added]⁶¹

12 Exhibit 3 from the UNS Electric Motion is an excerpt from the MOU. Mr. Magruder received Bates
13 No. JA/0401-00000896 in an UNSE response to a data request (DR) without any markup. The
14 Company has not referenced this DR response in this case but was provided a copy by the City.

15 Conclusion.

16 Neither company can modify Commission Decision No. 61793 without Commission approval.
17 One party cannot modify a Revised Settlement Agreement without concurrence of the other party.

18 Recommendation

19 That this accusation be denied as it is without any basis.

20 **d. Citizens Does Not Agree with UNS Electric.**

21 Fourth, in a response to a letter from the Assistant City of Nogales Attorney to Citizens of 24 June
22 2008, the Associate General Counsel for Citizens Communications Company, in a letter of 31 July
23 2008, states

24 "More importantly, the Revised Settlement Agreement with the City of Nogales was listed in Schedule 4.11(a)
25 – Certain Seller Material Agreements – in the original Asset Purchase Agreement and the Memorandum of
26 Understanding signed at the closing. Schedule 4.11(a) lists each "Assigned Agreement" to be assigned and
27 assumed by UniSource. Under Section 2.3(a) of the Asset Purchase Agreement, UniSource assumed "all
28 liabilities of [Citizens] arising on or after the Closing Date under the Assigned Agreements." The **Revised**
29 **Settlement Agreement is an Assigned Agreement and Assumed Liability which UniSource assumed**
30 **and is required to fulfill**. Accordingly, **it is Citizens' position that UniSource assumed responsibility for**
31 **the annual scholarship funding under the Revised Settlement Agreement after the closing on August**
32 **11, 2003.**"⁶² [Emphasis added]

33 Citizens' position is clear: UniSource assumed responsibility for annual scholarship funding under
34 the Revised Settlement Agreement at the closing on August 11, 2003. UniSource does not agree, as it

35 ⁶¹ Magruder Testimony, **Exhibit MM-2** at 3, from Magruder Filing of Miscellaneous Documents on 18 November
2008, Attachment 1, letter from the City of Nogales Deputy City Attorney to Tucson Electric Power Co. of 24
June 2008.

⁶² Magruder Testimony, **Exhibit MM-3** at 2, letter from Kevin Saville, Associate General Counsel, Citizens
Communications Company of 31 July 2008 at 2, first paragraph.

1 has decided to award future scholarships (not the required interest-free student loans) on a year-to-year
2 basis.⁶³ This is a deliberate breach of the Revised Settlement Agreement.

3 Conclusions.

4 The Company should be admonished for making a false claim in its Motion after being clearly
5 informed by the City that its position was invalid.

6 Recommendation.

7 That this erroneous accusation be denied.

8
9 **3.3.4 Mr. Magruder Misrepresents the Revised Settlement Agreement (Sub-Issue II.C.4)**⁶⁴

10 These concerns primarily have to do with implementation of the Revised Settlement Agreement,
11 initially by Citizens and then by UNS Electric after 11 August 2003.

12 **a. Citizens implemented a Scholarship Program to benefit High School Seniors.**

13 The Motion states

14 "Mr. Magruder also misinterprets Section 9 of the Revised Settlement Agreement itself. The applicable
15 language clearly states that the City of Nogales and Citizens are **both jointly** responsible for implementing a
16 program to benefit high school seniors in Santa Cruz County."

17 **Magruder Testimony, Exhibit MM-1's Exhibit M-B**⁶⁵ shows Citizens annually awarded scholarships
18 each year from 1999 through and including 2003 through the Nogales Educational Foundation, an IRS-
19 certified tax-exempt organization. The first two awards in 1999 and 2000 were called the "Jose Cañez
20 Memorial/Citizens Energy." Starting in 2000, and annually, awards were made each year in the "Citizen
21 Energy Scholarship" program with the local Citizens Manager, Mr. Ernesto Ojeda, presented these
22 awards through the Educational Foundation. Citizens implemented a program for awarding scholarships.
23 UNS Electric failed to continue this or, any other program, after 12 August 2003.

24 Conclusion.

25 A program was established when Citizens was responsible but as shown in Table 1 above, not
26 continued, after the ownership changed to UNS Electric. UNS Electric did NOT make any awards for its
27 first five years of ownership, from August 2003 through 2007. The first UNSE award was a \$1,000
28 scholarship in 2008 that was \$11,000 below the required annual funding level.

29 Recommendations.

- 30 1. That the Nogales Educational Foundation continues to manage these awards.
31 2. That an "Application for an UNS Electric Scholarship Loan" and an "UNS Electric Scholarship
32 Award Agreement" be developed that will clearly specify the conditions for award, during
33 matriculation, and upon completion of education. A draft of some criteria that might be
34

35 ⁶³ Magruder Testimony, **Exhibit MM-4** at 2, UNS Electric, Inc., Status Update filed on 13 July 2009 in Docket No. E-04202A-08-0589 at 2:1.

⁶⁴ UNSE Motion, subsection II.B at 8:6-9:2, designated as "Sub-Issue II.C.4" in this Reply.

⁶⁵ Magruder Testimony, **Exhibit MM-1's Exhibit M-B** at 2.

1 considered for these two documents is included as **Exhibit MM-15** and **Exhibit MM-16**.

2
3 **b. UNS Electric inaction continued for five more years without any student awards.**

4 The UNS Electric Motion states

5 Despite Mr. Magruder's many accusations, he cannot substantiate with any evidence that UNS Electric has
6 failed to work with the City of Nogales. Assuming the other deficiencies with this claim could be cured; Mr.
7 Magruder has not provided any testimony or documentation showing how the Company has failed to work
8 with the City of Nogales.⁶⁶ [UNS Electric Motion at 8:15-18]

9 This is an accusation to substantiate when there is nothing to substantiate. During the course of this
10 Complaint and during prior cases, attempts were continually made to obtain information about
11 implementation of this program as referenced below.⁶⁷ Data Requests were submitted and rejected and
12 then simplified and resubmitted and again rejected.⁶⁸ In the course of this Complaint a DR was
13 requested for all information about the first four or so year after UNS Electric assumed this obligation
14 and again refused. In July 2005, within two years after UniSource Energy acquired Citizens, this party
15 stated

16 "A review of the scholarships sections in recent *Nogales International* newspapers has not listed any
17 scholarships from UniSource, UES or UNS Electric, Inc.. This [Revised] Settlement Agreement, in Article 9,
18 stated 'Each year, the program will select ...'⁶⁹ which is clear that this is an annual scholarship program. This
19 has NOT been continued."⁷⁰ [Emphasis in original]

20 No letters or telephone conversations or notes are available to see it UNS Electric even contacted
21 the City of Nogales about this issue.⁷¹ Nothing is available to show that the Company contacted the City
22 of Nogales before 20 June 2008.⁷² This is almost five years AFTER it acquired Citizens' obligation to

23 ⁶⁶ UNS Motion at 8, footnote 25, which reads as follows: "UNS Electric made a compliance filing with the
24 Commission noting several deficiencies with the current educational assistance program. The filing also
25 highlighted how UNS Electric representatives met with officials from the City of Nogales, city and county school
26 officials and Commission Staff to implement a new College Assistance Program to be funded by UNS Electric.
27 See UNS Electric's Response to Marshall Magruder's Complaint (December 29,2008) at 3, and Exhibit B (which
28 is UNS Electric, Inc's Compliance Filing Regarding Citizens Utilities Educational Assistance Program dated
29 August 25, 2008). Moreover, UNS Electric voluntarily awarded (in May of 2009) four \$2,000 scholarships to
30 graduating seniors from Nogales High School and Rio Rico High School - selected by the Nogales Education
31 Foundation and Rio Rico High School. See UNS Electric, Inc Status Update (July 13,2009)."

32 ⁶⁷ During the last electric rate case (Docket No. E-04204A-06-0783), no information was provided other than Mr.
33 Pignatelli's erroneous statement that UNSE "had awarded seven scholarships." UNS Electric awarded none as
34 all seven were Citizens-awarded scholarships. This UNSE Reply Brief said these Citizens awards were by the
35 Nogales Educational Foundation. This post-Reply Brief information became the Magruder Late Filed Exhibits of
24 December 2007, after all Reply Briefs had been filed, and is in Magruder Testimony as **Exhibit MM-1**.

31 ⁶⁸ Magruder Testimony, **Exhibit MM-1's Exhibit M-C**, UNS Electric Data Request Responses (some).

32 ⁶⁹ Marshall Magruder Testimony of 8 July 2005 in Docket No. E-01032A-99-0401 footnote 103 that reads: "See
33 City of Nogales-Citizens Settlement Agreement, p. 7, Article 9 (Educational Support)."

33 ⁷⁰ Marshall Magruder Testimony of 8 July 2005 in Docket No. E-01032A-99-0401 at 132:13-17.

34 ⁷¹ Data Requests were submitted in this docket but were refused due to Rule 308 concerning negotiations;
35 however, the data requested were for years before UNS Electric had shown any interest in this issue.

35 ⁷² Magruder Testimony, **Exhibit MM-6** at 2:12-15. It should be noted that Mr. Magruder setup the first meeting
with the Nogales City Manager, Assistant City Manager, Assistant City Attorney, former City Mayor and School
Principal and Superintendent, Assistant Superintendent for the Santa Cruz Valley School District. This meeting,
required by Decision No. 70360, ordered the Company to "meet" with Mr. Magruder, was unsatisfactory. The

1 fund these student loans, and nearly three years after the above quote from Marshall Magruder
2 Testimony of 8 July 2005 who testified "This [program] has NOT been continued" statement.

3 Further, when questioned during cross-examination by Mr. Magruder in 2007 during an UNSE rate
4 case, the UniSource Energy CEO and also UNS Electric CEO, Mr. James Pignatelli, about this program
5 indicated that he did not know anything but would find out during an break. After the break and my turn
6 at cross-examination, he supplemented his testimony by saying that UNS Electric had awarded seven
7 scholarships. This is not true as shown in Table 1. UNS Electric had not funded any high school
8 students as of the date of that response. That one erroneous comment was the total information about
9 the status of this program until the Company's Reply Brief of 19 November 2007.⁷³

10 Between the above cross-examination and the Reply Brief, the rate case ALJ suggested Mr.
11 Magruder meet with a Company official concerning this matter. In October of 2007, I met with the UNSE
12 Operations Manager from Kingman at the Tucson airport. He was unaware of this program even though
13 he had been in top-level management positions with Citizens in Arizona during for over two decades. I
14 provided him a copy of Decision Nos. 61793 and 62011, the Revised Settlement Agreement, and the
15 Plan of Action from the Commission Staff-Citizens Settlement Agreement. A few weeks later, I called
16 him to see if he had any comments from our meeting but he had retired from the Company.

17 Conclusion.

18 UNS Electric did nothing to resolve this issue from 11 August 2003 (actually had knowledge of
19 this liability on 29 October 2002 when it signed the APA) to 20 June 2008, for a period between five and
20 six years. At \$12,000 per year, between \$60,000 and \$72,000 was not awarded to high school seniors in
21 Santa Cruz County by this continual inaction.

22 Recommendation.

23 That UNS Electric is admonished for deliberate refusal to comply with a Commission Decision.

24
25 **c. The City of Nogales Can't Bring Action Against UNS Electric in "Court"**

26 The Motion continues:

27 "Again, if the City of Nogales believes that UNS Electric has failed to meet its obligations under the Revised
28 Settlement Agreement, it could bring an action against UNS Electric in court. As noted above, Mr. Magruder is
29 not the proper party to attempt to enforce any legal rights that the City of Nogales may have against UNS
30 Electric under the Revised Settlement Agreement nor can he represent the City's interest in this proceeding."
31 [UNSE Motion 8:18-9:2]

32 Company started off saying they had no reason to fund any educational programs because of their agreement
33 with Citizens (e.g., the MOU excerpt in the Motion Exhibit 3). UNSE offered some computer based training
34 material instead. Since the Company had an assigned note-taker for minutes, a copy was requested and
35 another meeting expected several weeks later. No notes were provided and this party has not been invited to
any further discussions on this issue with the Company.

⁷³ UNS Electric Reply Post-Hearing Brief of 19 November 2007 in Docket No. E-04204A-06-0783 said the awards had been through the Nogales Educational Foundation. After research, the Foundation administrator was contacted. Her response is in Magruder Testimony, **Exhibit MM-1's Exhibit M-B**.

1 First, this statement stated that Nogales would have to go to "court" to enforce its legal rights under
2 the Revised Settlement Agreement. As shown in paragraph 3.3.2c above, jurisdiction under Decision
3 No. 61793 remains with the Commission. That statement is erroneous.

4 Second, the constant badgering of the former City Manager with "court" costs, estimated at
5 somewhere between \$50,000 and \$100,000 in Superior Court in his discussions with this party and that
6 the City does not have the funds for such litigation are the primary reasons why Mr. Magruder worked so
7 hard to protect these high school seniors in Santa Cruz County while not costing the City any money.

8 Third, as shown in Section 2 above, Mr. Magruder cannot represent the City of Nogales, however, if
9 granted third-party standing, as requested in 3.3.1c (and 3.2.1b) above, then the rights of high school
10 seniors can be defended by Mr. Magruder.

11 Conclusion.

12 The City cannot afford litigation via Superior Court. If granted third-party standing by the
13 Commission, Mr. Magruder is defending the rights of these high school seniors and as a ratepayer
14 injured by the failure of the Company to compensate for damages awarded in Decision No. 61793.

15 Recommendation.

16 That Mr. Magruder continue to defend the rights of these high school seniors and as a citizen
17 harmed by the failure of the Company to compensate for damages awarded in Decision No. 61793.
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Section 4
THE UNISOURCE ENERGY SERVICES ACHIEVEMENT
SCHOLARSHIP AGREEMENT

4.1 Background.

As indicated in its Compliance letter of 25 August 2007,⁷⁴ the Company was trying to establish a scholarship program for high school students in Santa Cruz County.

Over two years later, in November of 2009, the Company presented a scholarship program, in Magruder Testimony **Exhibit MM-7** (attached), to the City of Nogales Council for approval. It was rejected by a vote of 4-3.

In June of 2010, the Company presented a version of this program to the City of Nogales Council for approval. After comments from the public and an Executive Session, it was tabled to September.

On 1 September 2010, the Company presented another version that incorporated the comments from the prior presentation to the City Council, and after comments from the public and an Executive Session; it was passed with a vote of 5-1.⁷⁵

4.2 Comments and Open Issues Concerning this Scholarship Agreement.

There are some areas of concern that this Scholarship Agreement presents when compared to Decision No. 61793:

- a. It waives the all the rights of ratepayers and the City who have not been compensated for damages by no awarding up to \$118,000 in prior years (article IV). This averages about \$6.00 per customer that has not been funded by either Citizens or UniSource since 1999.
- b. It changed the annual funding for UNS Electric from \$12,000 to \$9,000 without any justification for reducing this compensation amount.
- c. It limited the program from "annual" to 20 years without any justification for such limits.
- d. It changes the Company's funding from a non-deductable "compensation for damages" that cannot be charged to ratepayers to a tax-deductible "charity" contribution with additional benefits for the Company and none for ratepayers.
- e. It changed the focus of these funds from a "long-term, community-orientation" to a "short-term" cash award with no payback to the community and its ratepayers.
- f. It changed the awards from four-years to one-year awards that will fund about 20-25% of the average length of time to obtain a bachelor's degree.

⁷⁴ Magruder Testimony, **Exhibit MM-6** at 2:12-22.

⁷⁵ This is the City of Nogales Resolution Order No. 2010-09-084, UniSource Energy Service Achievement Scholarship Agreement, Agenda Item Nol. 13, of 1 September 2010, hereafter Scholarship Agreement, was approved on 1 September 2010 and is **Exhibit MM-18** herein.

1 **4.2.1 Ratepayer Compensation for Damages.**

2 No awards under Decision No. 61793 have met its conditions, primarily because these conditions
3 were not provided to the Nogales Educational Foundation. Assuming all the possible "scholarships"
4 awarded from both Citizens and UNS Electric, as of the end of 2010, approximately \$118,000 is in
5 arrears. As shown in Table 1 above, annually the deficient funding continues to increase. During the
6 five-year period from 1999 through 2003, with Citizens' total funding of \$15,000, the deficit increased to
7 \$45,000. When UNS Electric succeeded Citizens, no annual funding requirements were met for the first
8 five years.⁷⁶ From 2004 through 2010, the deficit grew another \$73,000 from UNS Electric's failure to
9 fund awards.

10 This is not a voluntary funding program but a mandated and ordered program in compensation of
11 damages to the ratepayers and to the City of Nogales The total amount in arrears is owed to the
12 ratepayers in Santa Cruz County and has been ordered in Decision No. 61793 to be paid.

13 Question.

14 How and when will this \$73,000 loss in compensation from UNS Electric for damages to
15 ratepayers and the City be awarded, to students or ratepayers or another entity?⁷⁷

16 How and when will the \$45,000 loss in compensation from Citizens for damages to ratepayer
17 and the City be made?
18

19 **4.2.2 Reduction in Annual Compensation for Damages.**

20 Future awards under the Scholarship Agreement are \$3,000 less than under Decision No. 61793 for
21 the next 20-years. During this period, ratepayers in the form of Student Scholarships will receive
22 \$60,000 less in compensation for damages.

23 Question.

24 How will this \$60,000 loss in compensation for damages to ratepayers and the City be awarded,
25 to students or ratepayers or another entity?
26

27 **4.2.3 Limit the Program from Annually to only 20-years.**

28 During discussion with the City of Nogales Council on 1 September 2010, they were told there was
29 no time limit in the existing Decision No. 61793 and in Revised Settlement Agreement Article 9. It is
30 noted there is no time limit when customers sign an electric service contract with the Company.
31 Customers cannot arbitrarily reduce the length of their contracts with the Company as the Company has
32 done in with the Scholarship Agreement. This will result in \$12,000 less being awarded annually to high
33 school seniors in Santa Cruz County after 2031.

34 ⁷⁶ Magruder Testimony, Table 1 at 13; Exhibits MM-1 through MM-7.

35 ⁷⁷ Since the high school students are about evenly divided between the City of Nogales and Santa Cruz County, if
this funding was donated 50% to the City of Nogales and 50% to Santa Cruz County, it would remove some
stress on its present financial challenges.

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3 **Section 5**
4 **CONCLUSIONS AND RECOMMENDATIONS**
5 **FOR THE TWO MOTIONS**

6 **5.1 For the Motion to Dismiss with Prejudice.**

7 Conclusion.

8 For the rationale presented in Sections 2, 3, and 4 above, and the conclusions in those sections,
9 the Motion to Dismiss has no basis for additional consideration.

10 Recommendation.

11 That the Motion to Dismiss with Prejudice be denied based on the above Conclusion and the
12 Recommendations in Sections 2, 3, and 4 above.

13
14 **5.2 For the Motion to Stay the Procedural Schedule.**

15 Conclusion.

16 If the Motion to Dismiss is denied at the 6 October 2010 Procedural Conference, the procedural
17 schedule should be resumed.

18 Recommendation.

19 If the Motion to Dismiss is denied at the 6 October 2010 Procedural Conference, the Company
20 should provide its rebuttal to the Magruder Testimony within two-weeks of the date of a decision
21 to deny. A hearing should be held about two-weeks later with a Pre-Hearing Conference two
22 days before when witness lists will be exchanged.
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LIST OF EXHIBITS

- 1
- 2
- 3 **MM-7 (Rev) UNS Electric New College Scholarship Program**
- 4 **MM-15 Application for an UNS Electric Scholarship Loan**
- 5 **MM-16 UNS Electric Scholarship Loan Award Agreement**
- 6 **MM-17 Response to a Procedural Order and a Motion that One Issue Remain Open of 21**
- 7 **December 2009**
- 8
- 9 **MM-18 UNS Electric Scholarship Agreement (1 September 2010)**
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EXHIBIT MM-7 (Revised)
UNS Electric New College Scholarship Program
(November 2009)

This replaces the Exhibit MM-7 in the Magruder Testimony.



UniSource Electric
College Assistance Program
In partnership with Nogales High School Foundation
and Rio Rico High School Foundation

Purpose:

To further educational success for youth in Santa Cruz County, UniSource Electric will donate funds to each school district for the purpose of assisting college preparatory activities and to fund one scholarship each at Rio Rico High School (RRHS) and Nogales High School (NHS) to an eligible high school graduate.

Duration and Amount:

- ◆ For the first five years (2009- 2013) each high school will receive \$1000 each to use at the Superintendent's (or Principal?) direction for activities that will prepare RRHS and NHS students for college, including test or tutoring fees.
- ◆ UNS will grant a \$3,000 scholarship to each high school for one eligible senior (details outlined in selection section below). Scholarships to be granted starting May, 2009 and ending May 2013. Funds will be granted annually and not retroactively. (\$8000 annually ¹x 5 years = \$40,000)
- ◆ Years six through ten (2014-2018), UNS will annually grant a \$4000 scholarship to one eligible NHS (or Santa Cruz?) senior (\$4000 x five years = \$20,000).

Scope:

- ◆ UNS college prep grant funds must be used at the high school designated for the specific purpose of preparing a student for college, including testing and tutoring. Funds cannot be transferred to other schools or other purposes.
- ◆ Scholarship grants are for tuition and fees at certified Arizona Universities or community colleges. Out of state institutions are not eligible.
- ◆ Scholarship funds will be granted to the school designated for specific the student. School administration assumes responsibility for sending scholarship funds to designated college bursar office for students' tuition and fees.

Eligibility for Scholarship:

- ◆ Senior graduating from Nogales High School or Rio Rico High School in same calendar year as scholarship;
- ◆ Student plans to attend an Arizona University or Arizona community college;
- ◆ Student is pursuing degree in math, science, engineering or education;
- ◆ Student has at least a 2.5 GPA;
- ◆ Preference should be given to students with financial need.
- ◆ If committee receives no applications from eligible students, the high school may hold the funds for the next year's graduating class.

The Selection of Scholarship recipient:

- ◆ A committee of up to five persons, representing both high schools, UNS and the City of Nogales, will review applicants and make a selection. The timeline shall follow the model set forth by the Nogales Education Foundation.

¹ To accommodate student's testing needs the college prep assistance funds may be awarded in one calendar year and carried over to the next.



Concept B

UniSource Electric College Assistance Program *In partnership with Nogales High School Foundation and Rio Rico High School Foundation*

Purpose:

To further educational success for youth in Santa Cruz County, UniSource Electric will donate funds to each school district for the purpose of assisting college preparatory activities and to fund one scholarship each at Rio Rico High School (RRHS) and Nogales High School (NHS) to an eligible high school graduate.

Duration and Amount:

- ◆ For the first five years (2009- 2013) each high school will receive \$500 each to use at the Superintendent's (or Principal?) direction for activities that will prepare RRHS and NHS students for college, including test or tutoring fees.
- ◆ UNS will grant a \$3,500 scholarship to each high school for one eligible senior (details outlined in selection section below). Scholarships to be granted starting May, 2009 and ending May 2013. Funds will be granted annually and not retroactively. (\$8000 annually ¹x 5 years = \$40,000)
- ◆ Years six through ten (2014-2018), UNS will annually grant a \$4000 scholarship to one eligible NHS (or Santa Cruz?) senior (\$4000 x five years =\$20,000).

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¹ To accommodate student's testing needs the college prep assistance funds may be awarded in one calendar year and carried over to the next.



Application Process:

Interested students should contact their high school counselors for applications and guidelines on the selection process. UNS and the high school guidance counselors will develop scholarship application if needed (existing Nogales Education Foundation application could be adapted?). Every effort will be made to have the student notified in a timely matter.

Acknowledgement:

Each High School Principal or designee will invoice UNS annually and provide notification of how funds will be used. Acknowledgement of UNS funding in program materials, as appropriate, is appreciated. UNS would like to participate in the scholarship presentation event if possible.



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Purpose:

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EXHIBIT MM-17

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 Pozefsky, 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 Sheriff Department:

Tony Estrada, County Sheriff

Santa Cruz County Complex

2150 North Congress Drive

Nogales, Arizona 85621-1090

City of Nogales

Jaime Fontes, City Manager

John Kissinger, Assistant City Manager

Jose Machado, City Attorney

Mike Masee, Deputy City Attorney

Nogales City Hall

777 North Grand Avenue

Nogales, Arizona 85621-2262

1 EXHIBIT MM-17

2 Although we do not believe Mr. Magruder's suggested remedies are necessarily the best way
3 to address the issue he raised, given Mr. Pignatelli's commitment to work with appropriate
4 agencies, we direct the Company to file within 90 days of the effective date of this Decision a
5 statement regarding suggested changes to its procedures that may address the concerns
6 raised by Mr. Magruder on this issue.

7 End quote. [Emphasis added in the first line of the first paragraph above, not in original]

8 ACC Decision No. 70360 implemented the above on page 80 of this decision as quoted below:

9 Quote

10 IT IS FURTHER ORDERED that UNS Electric, Inc., shall file to file, within 90 days of the
11 effective date of this Decision, a statement regarding suggested changes to its procedures
12 that may address the concerns raised by Mr. Magruder customers on life support
13 equipment.

14 End Quote.

15 3. The remaining open issues. There are two.

- 16 a. The company has not designed this program to meet the needs of **all customers**, as stated in line of
- 17 the first quote from the ACC Decision. It has implemented a program that is only for lower income
- 18 customers that have also applied for lower rates as described in the CARES program. This
- 19 deficiency has not been remedied; therefore complete compliance has not been met.
- 20 b. The company has not made any agreements with the County law enforcement agencies, as a
- 21 Memorandum of Understanding (MOU) need to be jointly developed by the Sheriff and the
- 22 company. Sheriff Estrada has told me this is required before for such a program can be put
- 23 implemented.

24 4. Discussion concerning issue (a) above.

25 There are no restrictions in the ACC Decision to only implement a program for customers in the
26 CARES program, which is not mentioned in this part of the Decision. Further, as shown in Enclosure
27 (1),⁷⁹ at least 27% of the customers are in the lower income category; however, only 6.1% of these
28 eligible customers are CARES program customers. Therefore, 93.9% of the UNS Electric customers are
29 not included in the group of customers eligible for being notified during an electrical outage. There are
30 no income limitations for anyone on life support equipment.

31 Separate from this docket, but in ACC Docket No. E-04204A-08-0589, additional Data Request
32 responses are being reviewed. Based on the outcome, a clear picture will be provided to all parties.

33 This party has volunteered to use my good offices to facilitate development of a MOU and design an
34 Application to gather the necessary data. The company has not responded positively to my requests.

35 The Commission Procedural Order of 8 December 2009 did not address this issue.

⁷⁹ Enclosure (1) is UNSG Exhibit 44 in the ongoing UNS Gas rate case, ACC Docket No. 04204A-08-0571. UNS Gas service territory is for additional counties than Santa Cruz; mostly with higher income levels than this county. Thus, 27% appears to be lower than the actual percent eligible for CARES. Qualifications for UNSE and UNSG CARES is identical.

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7 ITEM No. 13
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9 ORDER No. 2010-09-084
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11 UNISOURCE ENERGY SERVICES
12 ACHIEVEMENT SCHOLARSHIP AGREEMENT
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**UNISOURCE ENERGY SERVICES
ACHIEVEMENT SCHOLARSHIP AGREEMENT**

This UniSource Energy Services Achievement Scholarship Agreement (“Agreement”), effective the 1st day of January, 2011 (“Effective Date”), is hereby entered into by and between UNS Electric, Inc., an Arizona corporation (“UNS Electric”), the City of Nogales (“Nogales”), the Nogales Unified School District and the Santa Cruz Valley Unified School District (together “the School Districts”). UNS Electric, Nogales and the School Districts may be referred to individually herein as a “Party” and collectively as the “Parties.”

AGREEMENT

I. TERM OF AGREEMENT.

The term of this Agreement shall commence January 1, 2011, and shall terminate on December 31, 2031 (the “Term”).

II. UNISOURCE ENERGY SERVICES ACHIEVEMENT SCHOLARSHIP.

UNS Electric seeks to encourage Santa Cruz County high school students’ post-secondary education while emphasizing community service and volunteerism. To accomplish this goal, UNS Electric will fund the UniSource Energy Services Achievement Scholarship Program (the “Program”) in the amount of \$9,000.00 each calendar year during the Term, as more specifically described below.

A. Scholarship Program.

1. A total of three (3) UniSource Energy Services Achievement Scholarships (“Scholarships”), in the amount of \$3,000.00 each, will be awarded each calendar year during the Term, beginning in May 2011. One (1) Scholarship each will be awarded to one (1) graduating senior from Nogales High School, one (1) graduating senior from Rio Rico High School, and one (1) graduating senior from Pierson Alternative High School. The Scholarship recipient for Nogales High School will be determined each year during the Term during the spring

semester by the Nogales Educational Foundation. The Scholarship recipient for Rio Rico High School will be determined each year during the Term during the spring semester by the Rio Rico Scholarship Committee. The Scholarship recipient for Pierson Alternative High School will be determined each year during the Term during the spring semester by the Pierson Alternative Scholarship Committee. Scholarships will be awarded to qualified graduating high school seniors based on the following criteria:

- (i) academic achievement;
- (ii) financial need; and
- (iii) a demonstrated interest in volunteerism.

In order to receive the Scholarship, each recipient must enroll in and attend a university, college (including private and community colleges), or an accredited trade school located in Arizona within twelve (12) months of receiving the Scholarship.

2. In the event that (i) no student is eligible to receive a Scholarship during a given academic year, or (ii) the Scholarship recipient does not enroll and attend an Arizona university, college or accredited trade school within the required twelve (12) month time period, the Nogales Educational Foundation, the Rio Rico Scholarship Committee, and the Pierson High School Scholarship Committee may:

- (a) in the case of 2 (ii) above, recover the Scholarship from the original recipient and award the Scholarship to another qualified applicant for that academic year; or
- (b) allow the affected high school to carry-over the unused Scholarship for that academic year to the following academic year and award two (2) Scholarships to graduating seniors in such following year.

In no event shall any Scholarship money paid by UNS electric hereunder be used for any purpose other than to fund the Scholarships pursuant to the terms of this Agreement.

B. Scholarship Funding.

UNS Electric will pay \$3,000.00 to the Nogales Educational Foundation, \$3,000.00 to Rio Rico High School, and \$3,000.00 to Pierson Alternative High School for a total contribution of \$9,000.00 in April of each year of the Term. UNS Electric's annual funding obligation under this Agreement is limited to such annual \$9,000.00 contribution each April. In the event that Rio Rico High School creates an educational foundation similar to that of Nogales High School, and upon written consent of Rio Rico High School and written notice to UNS Electric, UNS Electric will thereafter pay the Rio Rico High School annual \$3,000.00 contribution directly to that educational foundation instead of the high school. In the event that Pierson Alternative High School creates an educational foundation similar to that of Nogales High School, and upon written consent of Pierson Alternative High School and written notice to UNS Electric, UNS Electric will thereafter pay the Pierson Alternative High School annual \$3,000.00 contribution directly to that educational foundation instead of the high school.

C. Management and Monitoring of Program.

The responsibility for ensuring that Scholarship funds are used by Scholarship recipients in compliance with the terms of this Agreement rests solely with the School Districts. Should a Scholarship award recipient fail to enroll in and attend a college, university or accredited trade school located in Arizona within the stated time period, as required herein, or otherwise fail to comply with the terms of the Scholarship Program, the School Districts shall, in their discretion, be solely responsible for recovering any funds paid to or on behalf of the Scholarship recipient. UNS Electric shall have no obligation to track or monitor students for compliance with the terms of the Program, or

to fund any additional amounts above the annual \$9,000.00 contribution described above should a Scholarship recipient misuse awarded funds or for any other reason.

D. Noncompliance with the Program.

In the event that either School District fails to enforce the Scholarship eligibility requirements or otherwise abide by the terms of this Agreement, UNS Electric may suspend funding of the Scholarship Program for the offending School District. Such suspension may continue until the School District provides UNS Electric adequate assurance that it has remedied the failures, that procedures are in place to monitor compliance, and that it will enforce the Scholarship eligibility requirements and abide by the terms of this Agreement.

III. JOINT PRESS RELEASE.

The Parties agree to issue a joint press release announcing the Agreement.

IV. ENTIRE AGREEMENT.

This Agreement contains the entire and complete understanding between the Parties with respect to the subject matter hereof and supersedes any prior agreements, representations, provisions, understandings, or inducements between the Parties written or oral, including but not limited to, the Educational Assistance (interest-free loan) Program identified in the Revised Settlement Agreement between the City of Nogales and Citizens Utilities Company dated June 1, 1999, the Asset Purchase Agreement by and between Citizens Communications Company ("Citizens") and UniSource Energy Corporation dated October 29, 2002, and Memoranda of Understanding by and between Citizens and UNS Electric dated August 11, 2003. Except as expressly stated in this Agreement, each Party hereby irrevocably and conditionally waives any and all rights and/or actual or potential claims against any other Party pertaining to any scholarship or student loan program under the agreements set forth in the preceding sentence or any other agreements and/or Arizona Corporation Commission decisions and hereby releases

every other Party from any present or future claims with respect to any such scholarship or student loan program.

V. HOLD HARMLESS AND INDEMNITY.

Each of the Parties (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Parties, including their respective directors, officers, employees, agents and entities affiliated with or under common control of the respective Parties (the "Indemnified Parties") for, from and against any and all liability, injury, loss or damage including, without limitation, damage to property of any kind or nature, which any Indemnified Party may suffer as a result of any claim, demand, cost or judgment against it arising out of or in any way connected with the Indemnifying Party's action(s) or inaction(s) in connection with this Agreement.

VI. ASSIGNMENT AND SUCCESSORS.

This Agreement shall be binding upon and inure to the benefit of the Parties and their legal representatives, respective successors and permitted assigns, as the case may be.

VII. MODIFICATION AND WAIVER.

This Agreement may not be modified or amended except by an instrument in writing signed by each of the Parties. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement except by written instrument signed by the Party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

VIII. ASSIGNMENT.

This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by any Party in whole or in part without the express prior written consent of the other Parties.

IX. ATTORNEYS' FEES AND COSTS.

In the event a Party to this Agreement brings an action to enforce any part of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

X. GOVERNING LAW.

This Agreement and its validity, interpretation, performance, and enforcement shall be governed by the laws of the State of Arizona without regard to the conflict of laws provisions thereof.

XI. CAPTIONS; TERMS.

The captions of this Agreement are for convenience only and shall not be construed to limit, define or modify the substantive terms hereof.

XII. NOTICES.

All notices under this Agreement shall be in writing and shall be given by personal service, or by certified or registered United States mail, return receipt requested, or by receipted confirmed facsimile, or by e-mail with electronic confirmation or by recognized overnight courier service, to the individuals at the addresses set forth below. Any notice shall be deemed given: (i) upon delivery if delivered in person, (ii) upon the date of receipt if sent by United States mail; (iii) upon receipt of confirmation if sent by facsimile; (iv) upon delivery if delivered by commercial courier service; or (v) upon receipt if delivered by e-mail with electronic confirmation. All notices related to this Agreement shall be given in writing to the Parties at their respective addresses listed on page 7 of 8.

To UNS Electric:
Regulatory Counsel
Mail Stop UE2003
One South Church Avenue
Tucson, Arizona 85701
Email: mgilkey@tep.com

To the City of Nogales:
ATTN: City Attorney
777 N. Grand Avenue
Nogales, Arizona 85621

To the Nogales Unified School District:
ATTN: Superintendent
310 W. Plum Street
Nogales, Arizona 85621

To the Santa Cruz Valley Unified School District:
ATTN: Superintendent
1374 West Frontage Road
Rio Rico, Arizona 85648

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement and it shall
become effective on the Effective Date.

UNS ELECTRIC, INC.

By _____
Thomas McKenna
Vice President

CITY OF NOGALES

By _____
Shane Dille
City Manager

NOGALES UNIFIED SCHOOL DISTRICT

By _____
Shawn McCollough
Superintendent

SANTA CRUZ VALLEY UNIFIED SCHOOL DISTRICT

By _____
Dan Fontes
Superintendent