



0000154606

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONERS
BOB STUMP, CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER-SMITH

2014 JUL -9 P 4:42

Arizona Corporation Commission
DOCKETED

JUL 9 2014

ORIGINAL

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE
REORGANIZATION OF UNS
ENERGY CORPORATION.

Docket No. E-04230A-14-0011
Docket No. E-01933A-14-0011

MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED'S POST-HEARING BRIEF

Mohave Electric Cooperative, Incorporated ("Mohave"), through undersigned counsel, submits its post-hearing brief pursuant to direction of Administrative Law Judge Jane Rodda.

Background and Action Requested

Mohave participated in the settlement discussions that occurred at the offices of the Arizona Corporation Commission on May 5, 2014, but did not file any pre-filed testimony in this matter.¹ The settlement discussions were open and inclusive.² Mohave takes no position relating to the Settlement Agreement, as submitted.³ However, Mohave is very concerned that the five-year prohibition on the sale or transfer of any portion of the Regulated Utilities⁴ contained in Condition No. 19⁵ will inhibit instead of encourage discussions between neighboring utilities

¹ Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. represents Intervenor, Navopache Electric Cooperative, Inc. ("Navopache"), as well as Mohave, in these proceedings. Navopache did not participate in the Settlement discussions, although its legal counsel was present – on behalf of Mohave. Prehearing Transcript, p. 17, ll.2-9.

² Hearing Transcript ("HTr."), p. 69, ll. 1-3.

³ HTr., p. 69, ll.4-13.

⁴ The Settlement Agreement defines "Regulated Utilities" as Tucson Electric Power, UNS Electric and UNS Gas. Exhibit JA-5, p.1, ¶1.

⁵ Exhibit JA-5, Appendix A, p. 4. Condition No. 19 provides:

1 (such as UNS Electric and Mohave) aimed at facilitating efficiencies in the utilities' operations,
2 especially if such efficiencies are achieved through the acquisition or joint ownership of facilities
3 or amendment of certificated areas.⁶

4 During the hearing conducted June 16 and 17, 2014, Mohave's participation was focused
5 on clarifying Condition No. 19. As discussed herein, the record evidence supports the Decision
6 including a finding, conclusion or other statement as follows:

7 Fortis, UNS Energy and the Regulated Utilities are encouraged to engage in
8 discussions aimed at facilitating safer, more reliable, and/or cost effective
9 electric service within the State of Arizona, and that nothing in the
10 Settlement is intended to and does not preclude such discussions with other
Arizona electric cooperatives, even where it might involve the sale of a
portion of the Regulated Utilities systems.⁷

11 **Clarification Is Needed**

12 Mr. Olea on behalf of Commission Staff testified that Condition No. 19 was included at
13 the request of Staff and that the phrase "unless modified by the Commission" "is intended to
14 provide an opportunity to allow sales or transfers to be approved within that five-year period."⁸
15 He explained that if some neighboring utilities believed a sale or transfer was beneficial for both
16 or either utility and its customers, they could come back to the Commission within the five-year
17 period.⁹ Condition No. 19 is not intended to restrict neighboring utilities from discussing potential
18

19
20 There shall be no sale or transfer of ownership of UNS Energy or any of the Regulated
Utilities, or a portion thereof, for 5 years after the closing unless modified by the
21 Commission. Fortis acknowledges that Commission approval must be obtained in
advance for any sale or transfer of ownership of UNS Energy or any of the Regulated
22 Utilities. Any sale of assets of the Regulated Utilities shall be in accordance with
A.R.S. Section 40-285.

23 ⁶ HTr., p. 69, ll.4-13.

24 ⁷ HTr., pp. 69, l.22 - 70, l.6.

25 ⁸ HTr., p. 201, ll. 6-10.

⁹ HTr., pp. 201, l.10 – 202, l.3.

1 sales or transfers of portions of their systems, especially if it would enhance the safety, reliability
2 or cost effectiveness of either utility.¹⁰

3 Yet, Barry Perry, Vice President of Finance and Chief Financial Officer of Fortis, Inc.,
4 testified that he reads Condition 19 as precluding “even thinking about” selling any portion of the
5 Regulated Utilities for five years.¹¹ Mr. Perry explained:

6 “I think the intent of the settlement agreement is to have no transactions
7 occur in the five-year period. . . .[W]hen I read the clause, I read it as we
8 are agreeing not to transact [a sale or transfer of] in any part of the
organization for the five-year period.”¹²

9 Mr. Perry advocates the foregoing interpretation of Condition No. 19 despite
10 acknowledging the focus of UNS Energy and Fortis as providing safe, reliable, and cost effective
11 service to customers and that the acquisition of a system or a portion of a system can create an
12 opportunity to provide safer, more reliable and more cost effective service to customers,¹³
13 especially as part of a synergy-driven transaction.¹⁴ Any Decision approving the settlement must
14 include language to ensure such an erroneous interpretation of Condition No. 19 is not advocated
15 to or mistakenly adopted by some future Commission. Mohave’s suggested language serves this
16 purpose.

17 **Sales and Transfers Among Neighboring Utilities Can Further the Public Interest**

18 Mr. David Hutchens, President and CEO of UNS Energy, UniSource Energy Services and
19 the Regulated Utilities, testified that it is the obligation of neighboring utilities to sit down and
20 discuss opportunities to provide safer, more reliable and more cost effective service to their
21

22 ¹⁰ HTr., p. 202, LL. 7-13.

23 ¹¹ HTr., p. 115, ll.1-6.

24 ¹² HTr., p. 130, ll.1-10.

25 ¹³ HTr., p. 131, l. 12- 132, l.2

¹⁴ HTr., p. 132, l.21 – 133, l.2.

1 customers, including the possible sale or transfer of utility assets, customers and/or territory.¹⁵ In
2 fact, engaging in such discussions is part of the joint applicants' willingness to continue to work
3 constructively with stakeholders.¹⁶

4 Mr. Hutchens further testified that both UNS Electric and Tucson Electric Power are
5 bounded in numerous places by Arizona electric cooperatives, including Mohave, Sulphur
6 Springs Electric Cooperative and Trico Electric Cooperative.¹⁷ These boundary areas, specifically
7 in Mohave County, can be characterized as fairly rural, resulting in long distribution lines and few
8 customers.¹⁸ System reliability, in part, is a function of response times, number of crews, location,
9 distance, and the information system's ability to locate outages.¹⁹ The staff of UNS Electric is
10 located primarily in the Lake Havasu and Kingman areas, and not in the Bullhead City area.²⁰
11 Therefore, crews normally would have to travel from either Lake Havasu or Kingman in order to
12 service UNS Electric customers in and around Bullhead City.²¹ According to Mr. Hutchens, UNS
13 has a duty to consider a border line agreement or a potential sale or transfer of assets in a
14 circumstance where a single line, with a few UNS Electric customers is located in close proximity
15 to Mohave. He emphasized, it is absolutely incumbent on the utility to find the best way to
16 provide safe and reliable power.²² The phrase "unless modified by the Commission" in Condition
17 No. 19 is intended to provide the opportunity to bring such sales and transfers to the Commission

18
19 _____
15 HTr., p. 282, ll. 3-8

20 16 HTr., p. 282, ll. 15-18.

21 17 HTr., p. 283, ll. 1-13.

22 18 HTr., p. 283, ll. 14-17.

23 19 HTr., p. 284, ll. 18-25.

24 20 The Commission can take administrative notice that Bullhead City is the location of Mohave's
headquarters and its highest density customer base.

25 21 HTr., p. 284, ll. 6-13.

22 22 HTr., p. 285, ll. 2-13.

1 during the five-year period.²³

2 **Conclusion**

3 Condition No. 19 was initially proposed by Staff to deal with a quick re-sale or transfer of
4 UNS Energy or the Regulated Utilities by Fortis. It was never intended to inhibit neighboring
5 utilities, like UNS Energy and Mohave, from discussing, and with the Commission's permission,
6 consummating sales or transfers of portions of the UNS Electric system to Mohave, especially
7 where such sale or transfer enhances the safety, reliability and/or cost effectiveness of the
8 provision of electric service to retail customers. Unfortunately, some might argue Condition No.
9 19 not only discourages, but totally prohibits Fortis, UNS Energy and the Regulatory Utilities
10 from even thinking about entering into such discussions for a five year period. Certainly Mr.
11 Perry testified Condition No. 19 supports such interpretation. Therefore, in order to ensure
12 neighboring utilities can fulfill their obligations to the public by exploring all options to provide
13 safe and reliable power to their customers, any Commission Decision approving the settlement
14 should include language similar to that proposed by Mohave.

15 DATED this 9th day of July, 2014.

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

18 By: 

19 Michael A. Curtis
20 William P. Sullivan
21 Larry K. Udall
22 501 East Thomas Road
23 Phoenix, Arizona 85012-3205
24 Attorneys for Mohave Electric Cooperative,
25 Incorporated

23 HTr., p. 286, ll. 1-7. Mr. Grijalva, Mr. Yaquinto and Mr. Olea all testified that the phrase "unless modified by the Commission" also permits the Commission to authorize the sale or transfer of utility assets during the five-year period without obtaining the consent of the other parties to the Settlement.

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 9th day of July, 2014, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing hand delivered/
mailed this 9th day of July, 2014 to:

Jane L. Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress, Room 222
Tucson, Arizona 85701

Patricia Lee Refo
Snell & Wilmer, LLP
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004
Attorneys for Fortis Inc.

Steve Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Daniel W. Pozefsky
Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

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

C. Webb Crockett
Patrick J. Black
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016-3429
Attorneys for Freeport-McMoran and AECC

Bradley Carroll
UNS Energy Corporation
88 East Broadway Boulevard, MS HQE910
Tucson, Arizona 85702

Lawrence V. Robertson, Jr.
P.O. Box 1448
Tubac, Arizona 85646

Michael Patten
Roshka Dewulf & Patten, Plc
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
Attorneys for UNS Energy Corporation

Attorneys for Noble Americas Energy
Solutions LLC

1 Thomas Mumaw
2 Melissa Krueger
3 Pinnacle West Capital Corporation
4 P.O. Box 5399, MS 8695
5 Phoenix, Arizona 85072

6 Meghan Grabel
7 P.O. Box 53999, MS 9708
8 Phoenix, Arizona 85072

9 Cynthia Zwick
10 2700 North Third Street, Suite 3040
11 Phoenix, Arizona 85004

12 Nicholas Enoch
13 Jarrett J. Haskovec
14 Lubin & Enoch, PC
15 349 North Fourth Avenue
16 Phoenix, Arizona 85003

17 Timothy M. Hogan
18 ARIZONA CENTER FOR LAW
19 IN THE PUBLIC INTEREST
20 202 E. McDowell Rd., Suite 153
21 Phoenix, Arizona 85004

22 Jeff Schlegel
23 SWEEP Arizona Representative
24 1167 W. Samalayuca Dr.
25 Tucson, Arizona 85704-3224

Michael M. Grant
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Gary Yaquinto, President & CEO
Arizona Investment Council
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

24
25 