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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 12 2014

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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IN THE MATTER OF THE REORGANIZATION
OF UNS ENERGY CORPORATION.

DOCKET NO. E-04230A-14-0011
DOCKET NO. E-01933A-14-0011

DECISION NO. 74689

OPINION AND ORDER

DATE OF HEARING:

June 16 and 17, 2014

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Michael W. Patten, Roshka, DeWulf & Patten,
PLC, and Bradley S. Carroll, UNS Energy
Corporation, for UNS Energy Corporation;

Patricia Lee Refo, Snell & Wilmer, LLP, for
Fortis, Inc.;

Daniel Pozefsky, Chief Counsel, Residential
Utility Consumer Office;

C. Webb Crockett, Fennemore Craig, PC, for
Freeport McMoRan Copper & Gold, Inc. and
Arizonans for Electric Choice and Competition;

Michael M. Grant, Gallagher & Kennedy, PA,
for Arizona Investment Council;

Cynthia Zwick, for Arizona Community Action
Association;

Lawrence V. Robertson, Jr., Of Counsel, Munger
Chadwick, PC, for Noble Americas Energy
Solutions and the Southern Arizona Home
Builders Association;

Michael Masee, Deputy City Attorney, City of
Nogales;

Jarrett J. Haskovec, Lubin & Enoch, PC, for
IBEW Locals 387, 769 and 1116;

1 William P. Sullivan, Curtis, Goodwin, Sullivan,
2 Udall & Schwab, PLC, for Mohave Electric
Cooperative, Inc.;

3 Garry D. Hays, Law Offices of Garry D. Hays,
4 PC, for Arizona Solar Deployment Alliance;

5 Court S. Rich, Rose Law Group, PC, for the
Alliance for Solar Choice; and

6 Brian E. Smith, Staff Attorney, Legal Division,
7 for the Arizona Corporation Commission
Utilities Division.

8
9 **BY THE COMMISSION:**

10 **I. Procedural History**

11 On January 10, 2014, UNS Energy Corporation (“UNS Energy”) on behalf of itself and its
12 affiliates, UniSource Energy Services (“UES”), Tucson Electric Power Company (“TEP”), UNS
13 Electric, Inc. (“UNS Electric”) and UNS Gas, Inc. (“UNS Gas”),¹ and Fortis Inc. (“Fortis”) on behalf
14 of itself and its affiliates, Fortis US Holdings Nova Scotia Limited (“Fortis US Nova Scotia”), a
15 wholly-owned subsidiary of Fortis, Fortis US Inc. (“FortisUS”), a wholly-owned subsidiary of Fortis
16 US Nova Scotia, and Color Acquisition Sub, Inc. (“Color Acquisition”), a wholly-owned subsidiary
17 of FortisUS, (collectively, “Joint Applicants”) filed with the Arizona Corporation Commission
18 (“Commission”), pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-803, a Joint Notice of
19 Intent to Reorganize (“Joint Notice”).

20 The Joint Notice indicates that on December 11, 2013, UNS Energy, Fortis, Fortis US and
21 Color Acquisition entered into an Agreement and Plan of Merger (“Merger Agreement” or “Merger
22 Transaction”). The Merger Agreement provides that subject to various conditions such as
23 shareholder and regulatory approval, Color Acquisition would merge with UNS Energy, with UNS
24 Energy being the surviving entity and becoming a wholly-owned subsidiary of FortisUS, with Fortis
25 as the ultimate parent. Under the Merger Agreement, direct ownership of UNS Energy’s affiliates
26 remains at UNS Energy.

27 ...

28 ¹ TEP, UNS Electric, and UNS Gas are collectively referred to herein as the “Regulated Utilities”.

1 Intervention in this matter was granted to the Residential Utility Consumer Office (“RUCO”),
2 Freeport McMoRan Copper and Gold, Inc., and Arizonans for Electric Choice and Competition
3 (collectively, “AECC”); Arizona Investment Council (“AIC”), Arizona Public Service Company
4 (“APS”), Arizona Community Action Association (“ACAA”) and Cynthia Zwick, Noble Americas
5 Energy Solutions (“Noble Solutions”), the Southern Arizona Home Builders Association
6 (“SAHBA”), International Brotherhood of Electrical Workers Locals 387, 769 and 1116
7 (collectively, “IBEW”), Mohave Electric Cooperative, Inc. (“MEC”), Navopache Electric
8 Cooperative, Inc. (“Navopche”), the Southwest Energy Efficiency Project (“SWEEP”), City of
9 Nogales (“City” or “Nogales”), Arizona Solar Deployment Alliance (“ASDA”), The Alliance for
10 Solar Choice (“TASC”), Sulphur Springs Valley Electric Cooperative, Inc. (“SSVEC”), and Solar
11 Energy Industries Association (“SEIA”).

12 On January 24, 2014, UNS Energy and Fortis filed Direct Testimony.

13 By Procedural Order issued January 28, 2014, the matter was set for hearing and other
14 procedural guidelines established, including a form of notice, a time frame for settlement discussions,
15 and deadlines for filing written testimony with a settlement track and non-settlement track.

16 On April 30, 2014, RUCO, AIC, IBEW, Noble Solutions, SAHBA, ACAA and Ms. Zwick,
17 and the Commission’s Utilities Division (“Staff”) filed Direct Testimony. On May 1, 2014, Nogales
18 filed Direct Testimony.

19 Pursuant to the dates of the January 28, 2014 Procedural Order, and the Notice of Settlement
20 Discussions filed by Staff on April 30, 2014, all parties were invited to participate in settlement
21 discussions on May 5, 2014, at the Commission’s offices in Phoenix, Arizona.

22 On May 16, 2014, Staff filed a proposed Settlement Agreement, signed by UNS Energy,
23 Fortis, Staff, RUCO, AECC, AIC, AECC, Noble Solutions, SAHBA, IBEW, and ASDA.

24 On June 2, 2014, the Joint Applicants, RUCO, Noble Solutions, SAHBA, AIC, IBEW and
25 Staff filed testimony in support of the proposed Settlement Agreement.

26 No party filed testimony in opposition to the Settlement Agreement.

27 A pre-hearing conference convened as scheduled on June 13, 2014, at the Commission’s
28 Tucson offices, to discuss the conduct of the hearing. The following parties appeared: Fortis, UNS

1 Energy, RUCO, AECC, AIC, APS, ACAA, Noble Solutions, SAHBA, IBEW, Navopache, MEC,
 2 SWEEP, ASDA, SSVEC, SEIA and Staff. At the pre-hearing conference, the following intervenors
 3 requested, and were granted, leave to be excused from further participation in the hearing: SWEEP,
 4 APS, SSVEC, Navopache and SIEA;² the excused intervenors confirmed that they had been invited
 5 to participate in settlement discussions and had no position on the proposed Settlement Agreement.

6 The hearing convened as scheduled on June 16, 2014, at the Commission's Tucson offices.
 7 Barry Perry, Vice President and Chief Financial Officer of Fortis,³ testified for Fortis; David
 8 Hutchens, Chief Executive Officer and President of UNS Energy, TEP, UES, UNS Electric and UNS
 9 Gas, testified for UNS Energy and the Regulated Utilities; Frank Grijalva, Business
 10 Manager/Financial Secretary for Local 1116, testified for the IBEW; Gary Yaquinto, President and
 11 CEO of AIC, testified for AIC; Patrick Quinn, Director of RUCO, testified for RUCO; and Steve
 12 Olea, Director of the Commission's Utilities Division, testified for Staff. The City of Nogales did not
 13 present a witness in support of or against the Settlement Agreement, but offered two witnesses – John
 14 Kissinger, Deputy City Manager, and Nubar Hanessian, Vice Mayor, as part of a rebuttal case
 15 concerning the terms of the City's franchise agreements with UNS Electric and UNS Gas.⁴ The pre-
 16 and post-settlement testimonies of Ralph Smith on behalf of RUCO, Greg Bass for Noble Solutions
 17 and David Godlewski for SAHBA were admitted into evidence by stipulation, as was the pre-
 18 settlement testimony of Cynthia Zwick on behalf of ACAA, Lon Huber for RUCO, Gerald Becker for
 19 Staff, and Paul Bonavia, Kevin Larson, Stanley Marshall, and John Reed for the Joint Applicants.

20 Jeff Schlegel on behalf of SWEEP filed pre-settlement testimony, but because SWEEP
 21 withdrew from further participation in the proceeding without taking a position on the Settlement
 22 Agreement, Mr. Schlegel's testimony is considered as public comment.⁵ Counsel for Nogales stated
 23 that the City did not have a position on the Settlement Agreement, and did not offer a witness in
 24 support of its pre-filed pre-settlement testimony, which was also treated as public comment.⁶

25 ² June 13, 2014, Pre-Hearing Conference Transcript ("PH Tr.") at 13-19. TASC did not attend the pre-hearing conference,
 26 but requested to be excused from the proceeding at the start of the hearing on June 16, 2014. June 16, 2014 Hearing
 Transcript ("Hrg Tr.") at 11.

27 ³ Mr. Perry became President of Fortis effective June 30, 2014.

28 ⁴ Hrg Tr. at 365-386.

⁵ PH Tr. at 14.

⁶ Hrg Tr. at 14-15.

1 On July 2, 2014, the City of Nogales filed a Closing Brief.

2 On July 8, 2014, a Post-hearing Brief was filed by Noble Solutions and SAHBA, and on July
3 9, 2014, Closing Briefs were filed by the Joint Applicants, RUCO, Staff, IBEW, MEC, ACAA, and
4 Staff. The same date, AECC filed a statement that it would not be filing a Closing Brief, but stated
5 that it supported the Settlement Agreement as being in the public interest.

6 The Commission received six written comments opposed to the merger, and twelve members
7 of the public provided comment at the commencement of the hearing. Those filing written comments
8 were generally opposed to the merger unless there would be customer service improvements or the
9 utilities would demonstrate a benefit for consumers, or were opposed to foreign ownership of an
10 electric utility; those appearing in person were primarily concerned about the effect of the merger on
11 the use of coal and the environmental impacts of the fuel mix.

12 **II. Background**

13 **A. UNS Energy and the Regulated Utilities**

14 UNS Energy was incorporated in 1998 and is a utility services holding company providing
15 electric generation and energy delivery services. UNS Energy owns 100 percent of TEP and UES.
16 UES holds the common stock of UNS Electric and UNS Gas. TEP, incorporated in Arizona in 1963,
17 is UNS Energy's largest operating subsidiary, representing approximately 81 percent of UNS
18 Energy's operating revenues and 84 percent of UNS Energy's total assets at December 31, 2013.⁷
19 TEP is a vertically integrated utility that generates, transmits and distributes electricity to
20 approximately 413,000 retail electric customers in Pima and Cochise Counties, Arizona. TEP sells
21 electricity to other utilities and power marketing entities, located primarily in the western United
22 States, and operates Springerville Generating Station ("SGS") Unit 3 on behalf of Tri-State
23 Generation and Transmission Association and SGS Unit 4 on behalf of Salt River Project Agriculture
24 Improvement and Power District ("SRP").⁸

25 UNS Electric generates, transmits and distributes electricity to approximately 93,000 retail
26 customers in Mohave and Santa Cruz counties in Arizona, and UNS Gas is a gas distribution

27 _____
28 ⁷ UNS Energy's December 31, 2013 10K filed with the Securities and Exchange Commission.

⁸ *Id.*

1 company which serves approximately 150,000 retail customers in Mohave, Yavapai, Coconino,
2 Navajo and Santa Cruz Counties in Arizona.

3 At December 31, 2013, TEP had 1,398 employees of which approximately 678 were
4 represented by IBEW Local No. 1116. A collective bargaining agreement between IBEW and TEP
5 was entered into in January 2013 and expires in January 2016.⁹ UNS Electric had 143 employees, of
6 which 27 were represented by the IBEW Local No. 387, and 87 were represented by IBEW Local
7 No. 769. The existing agreements with IBEW Locals No. 387 and No. 769 expire in February 2017
8 and June 2016, respectively. UNS Gas had 188 employees, of which 109 were represented by IBEW
9 Local No. 1116, and 5 by IBEW Local No. 387. The agreements with IBEW Local No. 1116 and No.
10 387 expire in June 2015 and February 2017, respectively.¹⁰

11 UNS Energy is traded on the New York Stock Exchange under the symbol "UNS." Moody's
12 Investor Service ("Moody's") rates UNS Energy's unsecured bonds as Baa3, which is equivalent to a
13 Standard and Poor's ("S&P") rating of BBB.¹¹ TEP is rated BBB by S&P, and TEP, UNS Electric
14 and UNS Gas are rated Baa2 by Moody's.¹²

15 **B. Fortis**

16 Fortis is an established utility holding company headquartered in St. Johns, Newfoundland
17 and Labrador, Canada.¹³ Fortis' subsidiaries provide electric and gas services to approximately 2.5
18 million customers in New York State, five Canadian provinces and two Caribbean countries. Fortis'
19 regulated utilities account for approximately 90 percent of its total assets.¹⁴ In June 2013, Fortis
20 completed the acquisition of Central Hudson Gas & Electric Corporation located in the mid-Hudson
21 River Valley of New York.¹⁵ Fortis' common shares are traded on the Toronto Stock Exchange
22 under the ticker symbol "FTS". Approximately 60-70 percent of Fortis' shares are held by a diverse
23 group of retail shareholders, with no single shareholder owning, controlling or directing more than 10

24 ⁹ *Id.*

25 ¹⁰ *Id.*

26 ¹¹ Ex JA-8 Larson Dir at 3.

27 ¹² *Id.*

28 ¹³ Ex JA-6 Bonavia Dir at 6. Newfoundland Power, Inc., one of Fortis' subsidiaries, has been providing electric service since the late 1800s.

¹⁴ Ex JA-12 Perry Settlement Testimony at 2.

¹⁵ Ex JA-9 Marshall Dir. At 3.

1 percent of Fortis' issued and outstanding common shares.¹⁶ Fortis is the largest investor-owned
 2 electric and gas distribution utility in Canada with total assets of approximately C\$18.6 billion as of
 3 March 31, 2014, and fiscal 2013 revenues exceeding C\$4.0 billion. Since 2013, Fortis has raised
 4 approximately \$3.3 billion in the capital markets.¹⁷

5 As a publically traded company in Canada, Fortis is subject to financial reporting and
 6 continuous disclosure requirements established by the Canadian Securities Administrators ("CSA")
 7 which the Joint Applicants claim are substantially similar to those of the Securities and Exchange
 8 Commission ("SEC") in the United States. The Joint Applicants state that the SEC and CSA have
 9 adopted a Multijurisdictional Disclosure System which permits eligible Canadian and U.S. issuers to
 10 raise capital in cross-border public financings, conduct various cross-border M&A transactions and
 11 make continuous disclosure filings while complying primarily with their home country securities
 12 regulations.¹⁸ Fortis has an A- credit rating by S&P and an A(low) rating by Dominion Bond Rating
 13 Service ("DBRS"),¹⁹ which the Joint Applicants claim is evidence of Fortis' strong financial standing
 14 and stable risk profile and makes it one of the highest credit rated utility holding companies in North
 15 America.²⁰

16 Fortis states that its long-term business objective is to manage and grow its investment in
 17 regulated electric and gas utilities, and that its acquisition of UNS Energy reflects its long-standing
 18 philosophy of investing in well-run North American regulated utilities. Fortis asserts that it has never
 19 sold a utility that it has purchased.²¹ Fortis' regulated utilities are governed, managed, operated and
 20 financed on a stand-alone basis.²² Fortis' management asserts that their operating philosophy is to
 21 main strong relationships with regulators and communities to provide a high level of customer
 22 service and to maintain a strong financial position.²³ Each of Fortis' regulated utilities has its own
 23

24 ¹⁶ Ex JA-12 Perry Settlement Testimony at 5; Hrg Tr. at 104-05.

25 ¹⁷ Ex JA-12 Perry Settlement Testimony at 4.

26 ¹⁸ Joint Applicant's Closing Brief at 7, *citing* Ex JA-12 Perry Settlement at 5.

27 ¹⁹ Ex JA-12 Perry Settlement Testimony at 5. The Fortis ratings are at least two notches above the credit ratings of UNS
 28 Energy and TEP. Hrg Tr. at 106 and 265. According to the Joint Applicants only 13 out of 55 U.S. electric utility holding
 companies maintain a credit rating of A- or higher. Ex JA-8 Larson Direct at 3.

²⁰ Ex JA-12 Perry Settlement Testimony at 5; Hrg Tr. at 105.

²¹ Hrg Tr. at 113.

²² Ex JA-12 Perry Settlement Testimony at 3.

²³ *Id.*

1 senior management team that lives in the area, and those senior managers also serve as the direct
 2 contacts and decision-making authorities for regulatory matters.²⁴ Fortis does not use a shared service
 3 model, but encourages its utilities to share best operating practices.²⁵ To encourage management
 4 sharing, each utility board of directors includes at least one CEO from an affiliated regulated utility.²⁶

5 **III. The Settlement Agreement**

6 The Settlement Agreement, entered into by twelve parties,²⁷ contains 66 conditions
 7 (“Conditions” or “Settlement Conditions”) for the approval of the Merger Transaction. A copy of the
 8 Settlement Agreement is attached hereto as Exhibit A, and incorporated herein by reference. By
 9 entering into the Settlement Agreement, the Signatories agree that, with the Conditions, the merger
 10 will not impair the financial status of UNS Energy or the Regulated Utilities, otherwise prevent UNS
 11 Energy or the Regulated Utilities from attracting capital at fair and reasonable terms, or impair the
 12 ability of the Regulated Utilities to provide safe, reasonable and adequate service. The Signatories
 13 agree that the merger is expected to improve the financial status of UNS Energy and the Regulated
 14 Utilities, improve their access to capital at more favorable terms and enhance the ability of the
 15 Regulated Utilities to continue providing safe, reasonable and adequate service to their customers.
 16 The Signatories agree that approval of the merger, subject to the Conditions, is in the public
 17 interest.²⁸

18 In addition, Section 3 of the Settlement Agreement acknowledges that certain of the
 19 conditions set forth in Decision No. 60480 (November 25, 1997) (the “TEP Holding Company
 20 Order”) have been modified or waived in subsequent Decisions, or otherwise no longer apply.²⁹ The
 21 Signatories agree that the Conditions adopted in this proceeding should supersede the conditions in
 22 the TEP Holding Company Order, and that the conditions of that earlier Decision, as they have been
 23 subsequently modified, should be vacated. The late-filed exhibit filed on July 2, 2014, compares the
 24

25 ²⁴ *Id.*

26 ²⁵ *Id.*

27 ²⁶ Ex JA-12 Perry Settlement Testimony at 3-4.

28 ²⁷ The Settlement Agreement is signed by Joint Applicants, Staff, RUCO, Freeport-McMoRan and AECC, IBEW, SAHBA, ACAA, AIC, Noble Solutions and ASDA (the “Signatories”).

29 ²⁸ Settlement Agreement § 2.

30 ²⁹ In Decision No. 60480, the Commission authorized TEP to organize a public utility holding company subject to 28 conditions. The TEP Holding Company Order pre-dates UNS Energy’s acquisition of UNS Electric and UNS Gas.

1 conditions adopted in the TEP Holding Company Order with the Conditions contained in the
2 proposed Settlement Agreement.³⁰

3 Further, in Section 1.9 of the Settlement Agreement, the Signatories request that the
4 Commission approve the Merger Transaction and Settlement Agreement no later than September 18,
5 2014, in order to allow the Merger Transaction to close by September 30, 2014.

6 **A. Settlement Conditions**

7 Attachment A to the Settlement Agreement contains the 66 Settlement Conditions.

8 **1. Consumer Benefits and Protections – Conditions 1-15**

9 Condition 1 states that UNS Energy will provide \$30 million in ratepayer credits over five
10 years; \$10 million to be provided in the first year with \$5 million applied as a credit to the customer
11 charge and \$5 million passed through as a credit to the per kWh or per therm charge through the
12 Regulated Utility's Purchased Power and Fuel Adjustor Clause ("PPFAC") or "Purchased Gas
13 Adjustor ("PGA"). In years two through five, a total of \$5 million annually will be credits to the
14 monthly customer charge. All customer classes receive the bill credits. The bill credits will
15 commence October 1st of each year and be completed within six months. One of the reasons the Joint
16 Applicants hope to have Commission approval of the merger transaction before September 30, 2014,
17 is to allow the bill credits to commence October 1, 2014. The estimated bill impact of the credits for
18 residential customers is as follows:³¹

19 Year 1	TEP	UNS Electric	UNS Gas
20 Monthly Charge Credit	\$1.07	\$1.15	\$1.19
21 PPFAC/PGA Credit	\$0.56	\$0.69	\$1.66
22 Total Credit	\$1.63	\$1.84	\$2.85

23 Condition 2 provides that within 60 days of the closing, Fortis will inject \$220 million of
24 equity into the Regulated Utilities through UNS Energy.³² The Joint Applicants expect to utilize the
25 equity infusion to help fund TEP's and UNS Electric's purchase of the Gila River Power Plant and/or

26 ³⁰ Ex JA-17.

27 ³¹ Ex JA-13 Hutchens Settlement Testimony at DGH-3. The credits are only applied for the six months from October 1
through March 31 each year. The PPFAC/PGA impact is based on the average monthly usage October 1 through March
31: 700 kWhs for TEP and UNS Electric and 63 therms for UNS Gas.

28 ³² This is an increase from the originally proposed equity infusion of \$200 million.

1 TEP's purchase of a 35 percent interest in Unit 1 of the SGS and TEP's purchase of the SGS coal
2 handling facilities.

3 Other claimed benefits and/or ratepayer protections among the Settlement Conditions include:
4 tax credit benefits from the sale and buyback of treated coal will be passed on to TEP ratepayers
5 through the PPFAC; in all rate cases through 2020, the Regulated Utilities will show that the
6 proposed rate increases are "demonstratively lower" than they otherwise would have been absent the
7 acquisition; the Joint Applicants will not seek the recovery of an acquisition premium or goodwill in
8 future rate proceedings; "Fortis specific" costs will not be allocated to the Regulated Utilities in a rate
9 case for five years; the Joint Applicants will not seek the recovery of transaction, transition or
10 litigation costs associated with the merger; Fortis will hold the Regulated Utilities harmless from
11 impacts of foreign exchange fluctuations, and acknowledges that the Commission may act to protect
12 the Regulated Utilities from material adverse impacts from a future Fortis acquisition.³³ In addition,
13 the Regulated Utilities will not include any increase in the total compensation of senior management
14 in future rate cases with test years earlier than December 31, 2017; Fortis will share material "follow-
15 on merger savings" that are reasonably applicable to the Regulated Utilities on a 50/50 basis between
16 ratepayers and shareholders; the Joint Applicants will exclude any goodwill or transaction costs of
17 this acquisition from rate base, operating expenses or capital structure, and UNS Energy and the
18 Regulated Utilities will prepare a final schedule of the external costs of the Merger Transaction as a
19 demonstration that there will be no recovery in future rate cases.³⁴

20 **2. Credit Quality and Capital Requirements – Conditions 16-25**

21 This section of the Settlement Conditions seeks to promote the stand-alone credit worthiness
22 of the Regulated Utilities and protect them from the other activities of Fortis or its affiliates. The
23 Settlement Conditions provide that the Regulated Utilities will not pay dividends to UNS Energy or
24 UniSource Energy Services in an amount greater than 60 percent of annual earnings for a period of 5
25 years or until their respective equity capitalizations reach 50 percent of total capital, whichever is
26

27 _____
28 ³³ Conditions 3-10.

³⁴ Conditions 11-15.

1 earlier.³⁵ UNS Energy will maintain a capital structure separate from Fortis’; neither UNS Energy nor
 2 the Regulated Utilities will pledge or encumber assets of the Regulated Utilities or guarantee any
 3 indebtedness for the benefit of Fortis or Fortis’ other affiliates, nor will the Regulated Utilities lend
 4 to, guarantee or financially support Fortis or its affiliates unless authorized by the Commission, and
 5 the Regulated Utilities will maintain separate banking and credit facilities from UNS Energy, Fortis
 6 and other affiliates.³⁶ Fortis agrees to hold UNS Energy and the Regulated Utilities for at least five
 7 years,³⁷ and Fortis acknowledges the Regulated Utilities’ continuing need for capital, and commits to
 8 provide equity capital when required.³⁸

9 **3. Quality of Service – Conditions 26-30**

10 Fortis and UNS Energy agree to ensure that sufficient senior management resides in Arizona
 11 to make decisions pertaining to the Regulated Utilities’ customer service issues.³⁹ The Regulated
 12 Utilities commit to maintain the current level of employees for at least 4 years.⁴⁰ The Regulated
 13 Utilities commit to use their best efforts to maintain or improve their quality of service as measured
 14 by System Average Interruption Duration Index (“SAIDI”), System Average Interruption Frequency
 15 Index (“SAIFI”), Customer Average Interruption Duration Index (“CAIDI”) and the average number
 16 of complaints.⁴¹ The Regulated Utilities intend to maintain and improve safe and reliable electric and
 17 gas service and will continue to comply with all of their commitments and obligations, and UNS
 18 Energy and Fortis agree to support the Regulated Utilities to provide a high level of customer service,
 19 safe, reliable service and a safe workplace.⁴²

20 **4. Customer Programs – Conditions 31-35**

21 UNS Energy, TEP, UNS Electric and UNS Gas, and FortisUS agree to continue support for
 22
 23

24 ³⁵ Condition 16. This Condition was contingent on receiving consent from lenders, which UNS Energy received on June
 11, 2014. Ex JA-14.

25 ³⁶ Conditions 18, 23-25. The Regulated Utilities will be registered with credit rating agencies and Fortis and UNS Energy
 will support the objective of maintaining an investment grade rating. Conditions 21 and 22.

26 ³⁷ Condition 19.

³⁸ Condition 20.

³⁹ Condition 26.

⁴⁰ Condition 27.

⁴¹ Condition 28.

28 ⁴² Conditions 29 and 30. The Regulated Utilities commit to engage in workforce planning.

1 the Regulated Utilities' low income assistance programs at or above current levels.⁴³ In addition, TEP
 2 and UNS Electric will propose a pilot program for a "buy through" tariff available to Large Light and
 3 Power Service and Large Power Service customers, and TEP will not propose any material
 4 modifications to its existing Line Extension Tariff in its next rate case.⁴⁴ The Regulated Utilities will
 5 continue their energy efficiency programs and renewable energy programs as approved by, or may be
 6 approved by the, the Commission.⁴⁵

7 **5. Corporate Governance – Conditions 36-42**

8 This section imposes additional "ring fencing" measures addressing the management of the
 9 Regulated Utilities and is designed to protect the Regulated Utilities and their ratepayers from any
 10 financial distress that may be encountered by Fortis or its other affiliates. In appointing the UNS
 11 Energy Board of Directors, Fortis will ensure that a majority of the board members will have had a
 12 permanent residence in Arizona for at least three years, and also that a majority of the members are
 13 independent.⁴⁶ In addition, one independent person, a resident of Arizona for at least three years, will
 14 hold a "golden share" and will be required to consent for UNS Energy or any of its Regulated
 15 Utilities to file for voluntary bankruptcy.⁴⁷ The UNS Energy Board of Directors commits to give first
 16 priority to the needs of the Regulated Utilities to meet their regulatory obligations to serve their
 17 customers.⁴⁸ Management of the Regulated Utilities will remain with their local boards of directors
 18 and managers, and it will be the boards of the Regulated Utilities who will make decisions on capital
 19 budgets, staffing levels, dividends and capital requirements, and who will continue to be the direct
 20 contact and decision-making authority in regulatory matters.⁴⁹ UNS Energy will retain its corporate
 21 headquarters in Tucson,⁵⁰ and it and the Regulated Utilities will continue to support local charitable
 22 programs at current levels for at least five years.⁵¹ The Regulated Utilities will amend their

23 _____
 24 ⁴³ Condition 35. The Settlement Agreement does not provide an expiration date for this commitment, although Condition
 66 allows the Joint Applicants to seek modification of the Conditions after five years.

25 ⁴⁴ Conditions 31 and 32. These commitments are directly responsive to the concerns expressed by Noble Solutions and
 SAHBA, respectively.

26 ⁴⁵ Conditions 33 and 34.

27 ⁴⁶ Condition 37.

28 ⁴⁷ Condition 38.

⁴⁸ Condition 39.

⁴⁹ Condition 41.

⁵⁰ Condition 40.

⁵¹ Condition 41iii.

1 organizational documents to provide protections to ensure legal separateness from UNS Energy and
2 Fortis.⁵²

3 **6. Financial Transparency and Reporting Requirements- Conditions 43-51**

4 This section provides that UNS Energy and the Regulated Utilities will maintain their books
5 and records in Arizona and separate from Fortis.⁵³ It imposes an annual reporting obligation on the
6 status of the Settlement Conditions for five years.⁵⁴ Fortis and UNS Energy agree to provide Staff and
7 RUCO full access to all books, accounts, and records of their affiliates regarding any transactions the
8 Commission, Staff or RUCO determines might have some direct or indirect effect on the Regulated
9 Utilities' financial health, customer rates, or operations.⁵⁵ Fortis agrees to make its employees,
10 officers and agents available to testify before the Commission and to cooperate with Staff's or
11 RUCO's audits relevant to matters within the jurisdiction of the Commission.⁵⁶ UNS Energy and the
12 Regulated Utilities will continue to use U.S. GAAP, and will provide the Commission with the
13 annual Affiliated Interest Report filing with Fortis' financial statements for Fortis, FortisUS and its
14 major regulated and unregulated energy company subsidiaries in the United States.⁵⁷

15 **7. Acknowledgement of Arizona Laws and Procedures – Conditions 52-57**

16 Fortis agrees to fully comply with applicable Arizona and federal statutes and Commission
17 rules, and acknowledges the need to secure Commission approval when the Regulated Utilities incur
18 debt, issue equity and sell assets as required by Arizona law.⁵⁸ UNS Energy will not share the
19 Regulated Utilities' customer specific information with Fortis affiliates for purposes other than the
20 management of UNS Energy and the Regulated Utilities, and Fortis will secure confidentiality
21 agreements from any affiliate with which it shares customer information.⁵⁹ The Regulated Utilities
22 agree to reasonably evaluate long term power purchase and tolling agreements when preparing future

23 ⁵² Condition 42.

24 ⁵³ Condition 46.

25 ⁵⁴ Condition 43. The annual reporting will include any significant adjustment to fringe benefits, and wages and benefits of
contract works of the Regulated Utilities. Condition 44. Fortis and UNS Energy will also report to the Commission and
RUCO within 10 days any changes in the credit ratings of Fortis, UNS Energy or the Regulated Utilities. Condition 45.

26 ⁵⁵ Condition 47.

27 ⁵⁶ Conditions 48 and 49.

28 ⁵⁷ Condition 51.

⁵⁸ Conditions 52 and 53.

⁵⁹ Condition 54. Fortis is on notice of the rule making docket in Docket No, RU-00000A-14-0014 regarding the sharing of
customer information.

1 resource plans and selecting supply side resources in a manner consistent with applicable statutes and
 2 regulations so that the Commission can make a proper assessment between alternative resources,
 3 including comparison against company owned proposals.⁶⁰ Fortis acknowledges that the Commission
 4 has the jurisdiction to approve the costs to be recovered through retail rates including, but not limited
 5 to, all expenses (including income taxes), cost of equity, rate of return and capital structures for the
 6 Regulated Utilities.⁶¹ Fortis, UNS Energy, and the Regulated Utilities will continue to abide by the
 7 conditions set forth in the Citizens Acquisition Order in Decision No. 66026 (July 3, 2003), as
 8 modified by the Commission, until further order of the Commission.⁶²

9 **8. Miscellaneous – Conditions 58-66**

10 Fortis and UNS Energy will file proposed procedures for valuing and allocating intercompany
 11 transactions between affiliates within 60 days of approval of the merger and will comply with all
 12 applicable Commission and Federal Energy Regulatory Commission (“FERC”) requirements for
 13 affiliate transactions.⁶³ Fortis, UNS Energy, and the Regulated Utilities agree to maintain up-to-date
 14 organizational charts and job position descriptions (including any horizontal reporting/coordination
 15 among affiliates and whether positions work for, or benefit, more than one entity), and at the time of
 16 any rate case filing, will disclose each service function that it does not fully staff or which it relies in
 17 whole or in part upon Fortis and/or UNS Energy.⁶⁴ All employees of UNS Energy or the Regulated
 18 Utilities below Vice President who work for more than one department or responsibility area or more
 19 than one of UNS Energy or the Regulated Utilities will keep detailed time sheets.⁶⁵ UNS Energy and
 20 the Regulated Utilities will keep track of time spent on mergers and acquisitions and new business
 21 development to allow evaluation of costs in a future rate case.⁶⁶ UNS Energy and the Regulated
 22 Utilities agree to provide documents related to royalty agreements or service agreements, strategic
 23 business plans, and marketing, etc. to Staff and RUCO upon request.⁶⁷

24 ⁶⁰ Condition 55.

25 ⁶¹ Condition 56.

26 ⁶² Condition 57. Decision No. 66026 approved UNS Energy’s acquisition of the gas and electric assets of Citizens
 Communication Company in Arizona.

26 ⁶³ Conditions 58 and 59.

27 ⁶⁴ Conditions 60-62.

27 ⁶⁵ Condition 63.

28 ⁶⁶ Condition 64.

28 ⁶⁷ Condition 65.

1 Finally, Condition 66 provides that Joint Applicants can seek relief from any of the
2 Conditions after five years from the date of the Order in this Docket.

3 **B. Arguments in Support of the Merger Transaction and the Settlement Agreement**

4 **1. Joint Applicants**

5 **a. Settlement Agreement is a balanced result of a fair process**

6 The Joint Applicants note that the Settlement Agreement is supported by a diverse range of
7 interests including themselves, Staff, RUCO, labor unions, low income consumer advocates, home
8 builders, solar installers and representatives of large industrial and mining customers. They assert that
9 the settlement process was open, transparent, and fair, allowing all interested parties an opportunity to
10 participate and to be heard. They state that parties who could not participate in discussions in person
11 were able to participate telephonically, and were given access to all documents discussed at the
12 meeting. They believe that the process contributed to a final Settlement Agreement that is balanced,
13 fair, just and reasonable, and in the public interest, and to which no party has filed any opposition.⁶⁸

14 Joint Applicants assert that the Settlement Conditions address the vast majority of comments
15 raised in the parties' direct testimonies, and are a combination of the conditions proposed by Staff,
16 RUCO and other intervenors, as well as those initially proposed by the Joint Applicants. They argue
17 that the Settlement Conditions represent a fair balancing of interests, as supported by the testimony of
18 the parties.⁶⁹ Specifically, they note that Staff sought to ensure that the Regulated Utilities' financial
19 positions were strengthened and protected by strong ring fencing, which concerns are addressed in
20 Settlement Conditions 16, 17, 18, 23, 24, 25, 36 and 45; Staff and RUCO sought direct tangible
21 benefits for customers, which are provided in Settlement Conditions 1 and 3 which provide bill
22 credits and the pass through of tax benefits; IBEW raised issues about employment levels and union
23 relations, which are addressed in Settlement Conditions 27, 30 and 41(ii); SAHBA raised issues
24 about future line extension tariffs and the local composition of the Board, which are addressed in
25 Settlement Conditions 32 and 37; Noble Solutions suggested a pilot program for a "buy through"

26 ⁶⁸ Joint Applicants' Closing Brief at 10, citing Ex RUCO -1 Quinn Settlement Testimony at 3, and Ex S-2 Olea
27 Settlement Testimony at 7-8.

28 ⁶⁹ Ex S-2 Olea Settlement Testimony at 7-8; Ex RUCO-1 Quinn Settlement Testimony at 6-7; Ex IBEW-2 Grijalva
Settlement Testimony at 1; Ex SAHBA-2 Godlewski Settlement Testimony at 2; Ex NS-2 Bass Settlement Testimony at 2.

1 tariff that is addressed in Settlement Condition 31; and ACAA raised concerns about the impact on
 2 low income customers which is addressed in Settlement Condition 35 wherein low income customer
 3 assistance programs are maintained at current levels (including the \$150,000 annual TEP
 4 contribution), as well as the Condition 1 bill credits which have a slightly higher percentage impact
 5 for customers on low income tariffs. The Joint Applicants note that even though the City of Nogales
 6 is not a signatory to the agreement, Conditions 28 and 29 address the City's issues concerning service
 7 quality.⁷⁰

8 **b. Settlement Agreement provides for stronger utilities**

9 The Joint Applicants assert that the Merger Transaction improves the Regulated Utilities'
 10 access to capital and helps them to maintain safe, reliable service while enhancing their ability to
 11 address emerging energy industry challenges. They point to a number of changes affecting the
 12 electric utility landscape that create significant near-term challenges for relatively small local utilities,
 13 such as the Regulated Utilities, including: (1) lower sales growth as consumption is reduced by
 14 improvements in energy efficiency and increased distributed generation; (2) the need to balance
 15 generation portfolios by replacing coal resources with natural gas, renewables and energy efficiency;
 16 (3) impacts of existing and anticipated environmental regulations addressing, among other things,
 17 regional haze, carbon dioxide emissions and coal ash; (4) innovations in the nature of delivery and
 18 usage of electricity service; (5) integration of distributed generation and other technology resources
 19 into the utility grid; (6) increased cyber-security and physical security requirements; and (7) investing
 20 to enhance and expand the transmission and distribution system in order to reduce reliance on carbon-
 21 intensive generation and deliver increased renewable energy to customers.⁷¹ Joint Applicants state
 22 that in order to meet these challenges, as well to maintain and upgrade infrastructure to maintain safe
 23 and reliable service, will require access to significant capital. To that point, the capital investment
 24 budget for UNS Energy on a consolidated basis for the period 2014-2018 exceeds \$2.0 billion.⁷² In
 25 addition to these industry challenges, the Joint Applicants point to consolidation in the energy utility
 26 industry (with fewer than 50 shareholder-owned electric utilities in the United States today, as

27 ⁷⁰ Joint Applicants' Closing Brief at 16; Hrg Tr. at 336.

⁷¹ Joint Applicants' Closing Brief at 3, *citing* Ex JA-1 Joint Notice at 3; Ex JA-6 Bonavia Dir at 3-5; Hrg Tr. at 261-64.

28 ⁷² Ex JA-13 Hutchens Settlement at 3-4.

1 compared to approximately 100 in the mid-1990's),⁷³ and assert that UNS Energy and the Regulated
 2 Utilities are having to compete for capital with utilities having much larger balance sheets and a
 3 wider geographic reach.

4 The Joint Applicants assert that the Settlement Agreement and Merger Transaction will create
 5 substantial benefits by financially strengthening UNS Energy and the Regulated Utilities when they
 6 become part of a larger, more diverse and financially secure company with a stronger credit rating.
 7 They state that the Regulated Utilities will gain improved capital structures, preserve or improve their
 8 credit ratings, and will gain improved access to capital markets, which will enhance their ability to
 9 provide safe and reliable service.⁷⁴ The Joint Applicants anticipate that TEP will receive a credit
 10 rating upgrade shortly after the close of the transaction.⁷⁵ Fortis will inject \$220 million of new equity
 11 into the Regulated Utilities upon closing, which the Joint Applicants state will assist TEP and UNS
 12 Electric with several immediate capital investment needs, including: (1) TEP's and UNS Electric's
 13 \$219 million purchase of Gila River Unit 3, anticipated to close in December 2014; (2) TEP's \$65
 14 million purchase of a 35 percent interest in Unit 1 of the SGS, anticipated to close in December 2014;
 15 and (3) TEP's \$73 million purchase of the SGS fuel handling facilities, anticipated to close in April
 16 2015.

17 **c. Settlement Agreement provides other benefits and protections.**

18 In addition to the improved financial strength, the Joint Applicants note the following
 19 "substantial benefits and protections" of the Settlement Conditions:⁷⁶

- 20 • Customer credits of \$30 million over 5 years, including \$10 million of credits in the first year,
 21 commencing October 1, 2014;
- 22 • Protections against any adverse impact from costs associated with the Merger Transaction;
- 23 • Credit quality and capital structure provisions;
- 24 • Support of existing levels of contributions to charitable and community programs;
- 25 • Maintenance of existing low-income customer assistance programs;

26
 27 ⁷³ Joint Applicants' Closing Brief at 4, *citing* Ex JA-11 Reed Dir at 3, 5.

⁷⁴ Joint Applicants' Closing Brief at 13.

⁷⁵ Joint Applicants' Closing Brief at 14; Ex JA-13 Hutchens Settlement at 4-5; Hrg Tr. at 266.

28 ⁷⁶ Joint Applicants' Closing Brief at 14-15.

- 1 • Maintenance of existing employment and employee benefit levels for a period of at least four
- 2 years;
- 3 • Maintenance of the existing local management of UNS Energy and the Regulated Utilities and
- 4 their control over operations;
- 5 • Maintenance of the headquarters of UNS Energy and the Regulated Utilities in Tucson;
- 6 • Requirements that the new UNS Energy Board of Directors have a majority of independent
- 7 board members and that a majority of the board members will reside in Arizona;
- 8 • Financial transparency and reporting requirements; and
- 9 • Corporate governance requirements to protect the Regulated Utilities from any potential
- 10 adverse impacts of the acquisition.

11 Under the terms of the Settlement Agreement, direct ownership of the Regulated Utilities
 12 remains unchanged at UNS Energy, with UNS Energy and the Regulated Utilities continuing to be
 13 operated, managed and governed locally.⁷⁷ Fortis expects UNS Energy's current management to
 14 continue in their roles following the merger, and has agreed to appoint a Board of Directors
 15 comprised of a majority of Arizona residents. Thus, the Joint Applicants argue that the Merger
 16 Transaction offers UNS Energy and the Regulated Utilities new financial strength to address future
 17 challenges, while maintaining the benefits of local control over capital and operating plans, dividend
 18 policy, financing requirements, employment levels, union negotiations and relationships, hiring
 19 practices, design and delivery of low-income customer assistance, energy efficiency and renewable
 20 energy programs, community involvement, and regulatory matters.⁷⁸ Although this merger is not
 21 driven by synergistic opportunities, the Joint Applicants assert that UNS Energy and the Regulated
 22 Utilities will benefit from being able to draw upon the technical, operational, financial and regulatory
 23 expertise of Fortis' North American operations, and may experience some cost savings from reduced
 24 public company costs and lower insurance costs.

25 The Joint Applicants assert that "Fortis is respectful of regulatory oversight and believes that
 26 responsiveness to, and cooperation with, regulators is critical to successful utility operations and the

27 _____
 28 ⁷⁷ Joint Applicants' Closing Brief at 5, *citing* Ex JA-12 Perry Settlement at 8 and Hrg Tr. at 108.

⁷⁸ Joint Applicants' Closing Brief at 5; Ex JA-12 Perry Settlement at 8; Hrg Tr. at 101.

1 overall success of the enterprise.”⁷⁹ Fortis also asserts that it has met every commitment it has made
 2 to a regulatory body, and that it is a cornerstone of its management philosophy that local management
 3 deal respectfully and responsibly with local regulators.⁸⁰

4 **d. TEP Holding Company Order**

5 The Joint Applicants assert that the TEP Holding Company Order contains a variety of
 6 conditions that were relevant in 1997, but given the significant changes at UNS Energy and in the
 7 industry that have been made meaningless, ineffective, or inappropriate.⁸¹ The Joint Applicants state
 8 that Staff carefully reviewed the TEP Holding Company Order conditions and agreed which ones
 9 should continue in force and included among the Settlement Conditions.⁸²

10 **e. Standard of Review**

11 The Joint Applicants submit that the Commission considers two standards when deciding
 12 whether to approve a reorganization brought pursuant to A.A.C. R14-2-803: (1) whether the
 13 reorganization will impair the utilities, and (2) whether the reorganization is in the public interest.
 14 They argue that the evidence in this docket supports the conclusion that the Merger Transaction and
 15 Settlement Agreement meet both standards and should be approved.⁸³

16 A.A.C. R14-2-803(C) provides that “[a]t the conclusion of any hearing on the organization or
 17 reorganization of a utility holding company, the Commission may reject the proposal if it determines
 18 that it would impair the financial status of the public utility, otherwise prevent it from attracting
 19 capital at fair and reasonable terms, or impair the ability of the public utility to provide safe,
 20 reasonable and adequate service.” The Joint Applicants argue that the acquisition of UNS Energy
 21 and the Regulated Utilities by Fortis will not impair the financial status of any of the Regulated
 22 Utilities, nor prevent them from attracting capital at fair and reasonable terms, and further, that the
 23 evidence supports the conclusion that the acquisition will improve the financial strength of the
 24 Regulated Utilities and allow them to access the capital markets on more favorable terms. Moreover,
 25 the Joint Applicants argue that the Merger Transaction will enhance the Regulated Utilities’ ability to

26 ⁷⁹ Joint Applicants’ Closing Brief at 9; Ex JA-12 Perry Settlement at 4.

27 ⁸⁰ Joint Applicants’ Closing Brief at 9.

28 ⁸¹ Joint Applicants’ Closing Brief at 12.

⁸² Hrg Tr. at 229; Ex JA-17 (Condition Matrix).

⁸³ Joint Applicants’ Closing Brief at 17.

1 continue providing safe and reliable service because Fortis' stand-alone operating philosophy will
2 keep the local management team and local decision-making while enhancing their access to the
3 capital markets.

4 In addition, the Joint Applicants argue that the Merger Transaction is in the public interest
5 because the financial and operational benefits of the transaction coupled with the extensive
6 commitments of the Settlement Conditions provide tangible benefits to the customers and employees
7 of the Regulated Utilities and their communities.⁸⁴ They claim that Fortis has established a solid track
8 record of owning well-run, locally-managed utilities, and the Settlement Conditions contain
9 substantial provisions to protect the Regulated Utilities from any potential detrimental effects or costs
10 of the merger.

11 The Joint Applicants note that there is no opposition to the Settlement Agreement, and that
12 the Vice Mayor of Nogales testified that he believed the merger would be good for the community
13 and ratepayers even if it does not result in UNS Electric or UNS Gas accepting cash payments in
14 Nogales.⁸⁵

15 Finally, the Joint Applicants assert that having this matter before the Commission no later
16 than its September 18, 2014 Open Meeting, and closing the Merger Transaction by September 30,
17 2014, would create several benefits, including that the PPFAC credit could go into effect on October
18 1, 2014, partially offsetting the TEP PPFAC increase scheduled to take effect the same day, and the
19 PGA credit for UNS Gas customers could go into effect as bills begin to rise for the winter heating
20 season. Another benefit of closing the transaction by September 30, 2014, is that the equity infusion
21 will reduce the amount of debt financing required for the purchase of the Gila River Unit 3 and the
22 SGS. According to the Joint Applicants, the equity infusion coupled with the anticipated credit rating
23 upgrade, will result in lower interest costs and an improved financial profile for the Regulated
24 Utilities. They assert that because they have received all other regulatory approvals necessary to close
25 the transaction, the Merger Transaction is able to close upon Commission approval.⁸⁶

26 ...

27 ⁸⁴ Joint Applicants' Closing Brief at 18.

28 ⁸⁵ Joint Applicants' Closing Brief at 19; Hrg Tr. at 380, 383 and 385.

⁸⁶ Joint Applicants' Closing Brief at 20.

1 **2. ACAA**

2 ACAA reviewed, and joins in, the Joint Applicants' Post-hearing Brief.⁸⁷ ACAA states that its
3 interests focus on the treatment and consideration of the low-income customers following the
4 reorganization, and that based on the settlement discussions and the language in the Settlement
5 Agreement, ACAA believes that the interests of ACAA and the low-income customers will be
6 protected and programs serving low-income customers will continue to be supported after the
7 reorganization. ACAA supports the Settlement Agreement as written and believes that approval of
8 the Settlement Agreement is in the public interest.

9 **3. AIC**

10 AIC joins in the Joint Applicants' Closing Brief. AIC believes that the Merger Transaction
11 not only meets, but exceeds the "no impairment" standard of A.A.C. R14-2-803, and is also in the
12 public interest.⁸⁸ AIC President, Gary Yaquinto, testified about AIC's primary reason for supporting
13 the Merger Transaction:

14 The transaction will strengthen UNS Energy and its Arizona Utilities . . . leading
15 to improved credit ratings and a lower cost of capital. Among other things, Fortis'
16 injection of \$200 million of capital will strengthen UNS' balance sheet, providing
17 funds for TEP's and UNS Electric's diversification of their generation portfolios.
18 The merger with a financially strong Fortis will also facilitate access to capital
19 markets on more favorable rates, terms and conditions . . . [t]he \$200 million
20 Fortis equity infusion will be a major component of the financing needed to
21 complete the purchase of the Gila River Power Plant [which] is critical to TEP's
22 and UNS Electric's plans to serve customers reliably and cost effectively.⁸⁹

19 From AIC's point of view, a key component of the Settlement Agreement is to increase
20 Fortis' infusion of equity to \$220 million, as it further enhances the Merger Transaction's "positives"
21 for the Regulated Utilities and their customers.⁹⁰

22 **4. IBEW**

23 IBEW reviewed a nearly final draft of the Joint Applicants' post-hearing brief and "generally
24 speaking," joins in the arguments for approval of the Settlement Agreement.⁹¹ The IBEW locals
25

26 ⁸⁷ ACAA's Post-Hearing Brief at 1. The parties were given the opportunity to join in the Joint Applicants' Post-Hearing
27 Brief, but were requested to file a brief statement setting forth their particular perspective. Hrg Tr. at 390-91.

28 ⁸⁸ AIC's Post-Hearing Brief at 1.

⁸⁹ Ex AIC-1 Yaquinto Dir at 2-3 (filed prior to the Settlement Agreement and the increased equity infusion commitment).

⁹⁰ AIC's Post-Hearing Brief at 2.

⁹¹ IBEW's Post-Hearing Brief at 1.

1 support the Settlement Agreement in its entirety. They state that they participated in the negotiations
 2 that lead to the agreement, that during negotiations, numerous parties were able to raise any issues
 3 and concerns that they may have had about the acquisition, and that this process resulted in the
 4 inclusion of several new and enhanced conditions.⁹² The IBEW believes that a Settlement Agreement
 5 signed by a dozen parties with diverse interests is a remarkable feat.

6 IBEW's primary concerns resulted in enhanced Conditions 27, 30 and 41(ii). IBEW notes that
 7 Condition 27 extends the Joint Applicants' original commitment to maintain employment levels at
 8 the Regulated Utilities from two to four years, which IBEW asserts will ensure continuity in staffing
 9 and that necessary human resources are maintained to continue the provision of safe and reliable
 10 services in a post-merger environment.⁹³ Condition 30 commits the Joint Applicants to, *inter alia*,
 11 support the Regulated Utilities in providing safe, reliable service and to continue to engage in
 12 workforce planning. IBEW argues that this condition will aid the Regulated Utilities to prepare for,
 13 and meet challenges associated with anticipated workforce retirements and other matters.⁹⁴
 14 Condition 41(ii) provides in part that the Regulated Utilities' local management will continue to
 15 make decisions regarding staffing levels and hiring practices and to negotiate future collective
 16 bargaining agreements. The IBEW argues that all other things being equal, local managers are more
 17 likely to be sensitive to, and in touch with, local concerns and realities and more invested in their
 18 communities than absentee managers.⁹⁵ The IBEW asserts that the merger terms and the enhanced
 19 conditions contained in the Settlement Agreement are just, reasonable and in the public interest.⁹⁶

20 **5. Noble Solutions and SAHBA**

21 Noble Solutions and SAHBA each participated in settlement discussions and both submitted
 22 pre-settlement and post-settlement testimony.⁹⁷ Noble Solutions and SAHBA support the Settlement
 23 for reasons both general and specific to their respective circumstances and interests. From a general
 24

25 ⁹² IBEW's Post-Hearing Brief at 2.

⁹³ Ex IBEW-2 Grijalva Settlement at 3.

26 ⁹⁴ Ex IBEW-2 Grijalva Settlement at 3-4.

⁹⁵ Ex IBEW-2 Grijalva Settlement at 4.

27 ⁹⁶ IBEW's Post-Hearing Brief at 3.

28 ⁹⁷ Noble Solutions and SAHBA are separate entities with individual concerns surrounding the Merger Transaction. They are grouped together here because they are represented in this matter by the same counsel who submitted a single post-hearing brief.

1 perspective, these parties believe that the Settlement Agreement reflects the results of good faith and
 2 spirited arms-length negotiations, with the balancing of a variety of interests, and that the process was
 3 transparent and inclusive.⁹⁸

4 From the specific perspective of Noble Solutions, the Settlement Agreement addresses Noble
 5 Solutions' suggestion that TEP and UNS Electric implement a program that would offer customers a
 6 broader array of choices in price and quality of service. Condition 31 provides that "in their next rate
 7 cases, TEP and UNS Electric will propose a pilot program for a 'buy through' tariff available to large
 8 light and power and large power service customers, respectively." Noble Solutions states that it
 9 appreciates the positive response to this provision by the parties to the Settlement Agreement.⁹⁹
 10 Noble Solutions believes that the willingness of UNS Energy and Fortis to affirmatively commit to
 11 proposing a "buy through" program is consistent with the "broad public interest." Noble Solutions
 12 also believes that Settlement Condition 41(iii), which provides in part that UNS Energy and its
 13 subsidiaries will support "economic" and "consumer partnerships", supports its belief that Noble
 14 Solutions and TEP and UNS Electric could "partner" to structure a "buy through" program(s) to meet
 15 the needs of some customers.¹⁰⁰

16 From its specific point of view, SAHBA states that Settlement Conditions 32 and 37 address
 17 SAHBA's concerns as expressed in Mr. Godlewski's pre-settlement testimony. One of SAHBA's
 18 concerns pertained to TEP's current line extension policies which have direct impact on the
 19 homebuilder industry. Condition 32 provides that "TEP will not propose any material modifications
 20 to its existing Line Extension tariff in its next rate case and TEP will abide by the Line Extension
 21 tariff as approved by, or may be approved by, the Commission." SAHBA states that from its
 22 perspective, this language provides in effect that SAHBA will have advance notice of any material
 23 change in line extension policies, and (ii) an opportunity to express its views on any proposed
 24 change.¹⁰¹ Based on the historic collaborative relationship between TEP and SAHBA, SAHBA
 25 anticipates that TEP will engage in constructive dialogue with SAHBA before proposing any changes

26 _____
 27 ⁹⁸ Noble Solutions' and SAHBA's Post-Hearing Brief at 2.

⁹⁹ Noble Solutions' and SAHBA's Post-Hearing Brief at 4.

¹⁰⁰ Noble Solutions' and SAHBA's Post-Hearing Brief at 4-5.

¹⁰¹ Noble Solutions' and SAHBA's Post-Hearing Brief at 5-6.

1 to its current line extension policy.

2 A second area of interest for SAHBA is the future size and composition of the Boards of
3 Directors of TEP and UNS Energy. SAHBA believes that the boards should allow for a diverse
4 mixture of background and experience and provide members who are personally familiar with the
5 business conditions and relationships of the service areas.¹⁰² SAHBA believes that Condition 37
6 satisfactorily addresses the size and composition of the Boards of Directors and that it, along with
7 Condition 41(iii), is another example of the stated intent of the Joint Applicants to “continue to work
8 constructively with various stakeholders.”¹⁰³

9 **6. RUCO**

10 RUCO states that it has reviewed the Joint Applicants’ Closing Brief and joins in the
11 positions stated therein, including the legal analysis of A.A.C. R14-2-803 (C)(3).¹⁰⁴ The terms of the
12 Settlement Agreement of most importance to RUCO in providing ratepayer benefits include: the \$30
13 million of ratepayer credits (Condition 1); the infusion of \$220 million in equity and resultant
14 improvement in the utilities’ equity ratios (Condition 2); the greater access to financial markets which
15 should result in lower rates overall; the inclusion of tax benefits in TEP’s PPFAC (Condition 3); that
16 all future rate cases filed through 2020 will show that the proposed rate increases are lower than they
17 would have been absent the acquisition (Condition 4); the inclusion of several provisions that protect
18 ratepayers from costs associated with the acquisition (Conditions, 5-11 and 13); those conditions that
19 improve UNS Energy’s capital structure and credit quality (Conditions 28-30); and a commitment to
20 retain corporate governance in Tucson (Conditions 39-42).

21 RUCO asserts that the Settlement Agreement satisfies the public interest in that it provides
22 favorable terms and key protections for residential consumers, and that as a whole, the Settlement
23 Conditions mitigate the risks identified in the testimonies of Ralph Smith and Lon Huber. RUCO also
24 believes that the Settlement Agreement is in the public interest by providing a fair and balanced
25 approach to the acquisition, allowing the post-merger company the opportunity to succeed, and
26

27 ¹⁰² Noble Solutions’ and SAHBA’s Post-Hearing Brief at 6.

28 ¹⁰³ Hrg Tr. at 120 -21 and 280.

¹⁰⁴ RUCO’s Closing Brief at 1.

1 improving the utilities' financial position.¹⁰⁵

2 **7. Staff**

3 Staff reviewed the Joint Applicants' draft brief and believes that the Joint Applicants have
4 "thoroughly and accurately" delineated Staff's positions regarding the Settlement, including, but not
5 limited to, "the fair, open and transparent nature of the negotiations leading to the Settlement
6 Agreement; that the negotiations provided all interested parties an opportunity to participate and be
7 heard on the terms and conditions of the Settlement Agreement; the Settlement Agreement's terms
8 including the 66 Conditions contained therein and the treatment of the 1997 TEP Holding Company
9 Order conditions; protection of the respective interests of the numerous and varied parties hereto;
10 maintenance and/or improvement of the financial conditions of [the Regulated Utilities]; maintenance
11 of the management teams and principal place of business of the Regulated Utilities in Arizona;
12 protection of the independent nature of the Regulated Utilities, and the continued support for low
13 income customer assistance programs."¹⁰⁶ Staff asserts "that the Merger Transaction, subject to the
14 terms of the Settlement Agreement, balances the interests of the public, the Applicants, the Regulated
15 Utilities and their customers and employees; meets the standard required by A.A.C. R14-2-803(C);
16 and, is in the public interest."¹⁰⁷

17 **9. AECC**

18 AECC signed the Settlement Agreement, but did not file testimony or a post-hearing brief.
19 AECC states that it supports the Settlement Agreement as being in the public interest and meeting the
20 requirements of A.A.C. R14-2-803(C).¹⁰⁸

21 **10. ASDA**

22 ASDA signed the Settlement Agreement, but did not file testimony or submit a Closing
23 Brief. During the hearing, counsel for ASDA stated that ASDA believes that the merger is in the
24 public interest and is "very supportive" of the merger.¹⁰⁹

25 ...

26

¹⁰⁵ RUCO's Closing Brief at 3.

27 ¹⁰⁶ Staff's Post-Hearing Brief at 2.

27 ¹⁰⁷ *Id.*

28 ¹⁰⁸ AECC's Notice of Not Filing Post-Hearing Brief.

28 ¹⁰⁹ Hrg Tr. at 57-58.

1 **C. Non-Signatory Concerns**

2 **1. MEC**

3 MEC participated in the settlement discussions, but did not file any pre-filed testimony in this
 4 matter, and is not a Signatory. MEC states that the settlement discussions were open and inclusive,
 5 but MEC takes no position relating to the Settlement Agreement.¹¹⁰ MEC expressed one concern
 6 about the Settlement Agreement which it believes requires clarification. MEC is concerned that the
 7 five-year prohibition on the sale or transfer of any portion of the Regulated Utilities contained in
 8 Condition 19 will inhibit discussions between neighboring utilities aimed at facilitating efficiencies in
 9 utility operations, such as the acquisition or joint ownership of facilities or amendment of certificated
 10 areas.¹¹¹

11 MEC states that during the hearing, Mr. Olea testified that Condition 19 was included at
 12 Staff's request and that the phrase "unless modified by the Commission" "is intended to provide an
 13 opportunity to allow sales or transfers to be approved within that five-year period."¹¹² Based on this,
 14 MEC asserts that Condition 19 is not intended to restrict neighboring utilities from discussing
 15 potential sales or transfers or portions of their systems, especially if it would enhance safety,
 16 reliability or cost effectiveness of either utility.¹¹³ MEC believes that Condition 19 needs
 17 clarification, as Mr. Perry, testifying for Fortis, stated that he read Condition 19 as precluding "even
 18 thinking about" selling any portion of the Regulated Utilities for five years.¹¹⁴

19 MEC asserts that the evidence supports the conclusion that the acquisition of a system or
 20 portion of a system can create an opportunity to provide safer, more reliable and more cost-effective
 21 service to customers.¹¹⁵ MEC recommends that any Decision approving the Settlement Agreement
 22 must include language to ensure that Condition 19 is not erroneously interpreted as prohibiting
 23

24 ¹¹⁰ MEC's Post-Hearing Brief at 1.

25 ¹¹¹ MEC's Post-Hearing Brief at 1-2. Condition 19 provides: "There shall be no sale or transfer of ownership of UNS
 26 Energy or any of the Regulated Utilities, or a portion thereof, for 5 years after the closing unless modified by the
 Commission. Fortis acknowledges that Commission approval must be obtained in advance for any sale or transfer or
 ownership of UNS Energy or any of the Regulated Utilities. Any sale of assets of the Regulated Utilities shall be in
 accordance with A.R.S. Section 40-285."

27 ¹¹² Hrg Tr. at 201.

¹¹³ MEC Post-Hearing Brief at 3. Hrg Tr. at 202.

¹¹⁴ Hrg Tr. at 115.

28 ¹¹⁵ Hrg Tr. at 131-32, 202, 282.

1 neighboring utilities from engaging in the sale or transfer of assets that promote safe and reliable
 2 service. MEC suggests a finding as follows:

3 Fortis, UNS Energy and the Regulated Utilities are encouraged to engage in
 4 discussions aimed at facilitating safer, more reliable, and/or cost effective electric
 5 service within the State of Arizona, and that nothing in the Settlement is intended
 6 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 **2. City of Nogales**

8 The City of Nogales did not sign the Settlement Agreement. The City states that it does not
 9 contend that the proposed merger or proposed Settlement Agreement fail to meet the standards of
 10 A.A.C. R14-2-803(C); however, it argues that the public interest would be best served if the
 11 Settlement Agreement also resolved Nogales' claim that UNS' closure of that portion of its Nogales
 12 customer service office that accepted payments violates the franchise agreement with the City.¹¹⁶ The
 13 City argued that by no longer accepting cash payments at its local customer service office, UNS
 14 Electric and UNS Gas have forced customers who pay in cash to incur service charges between \$1
 15 and \$1.50 from retail establishments. The City argues that because cash-payers tend to be
 16 disproportionately lower income persons, the burden of the decision to stop taking cash payments at
 17 its customer service office falls disproportionately on the poor. Nogales states that this issue has been
 18 the subject of negotiations between Nogales and UNS Energy, and believes that raising the issue in
 19 this proceeding should have resulted in a quick resolution of the matter.¹¹⁷ Nogales asserts that any
 20 ruling recommending approval of the Settlement Agreement should be conditioned on the Joint
 21 Applicants taking meaningful and concrete measures to resolve this issue with Nogales.¹¹⁸ Nogales
 22 believes that such condition is consistent with the Joint Applicants' statement that they are committed
 23 to working constructively with all stakeholders in their service areas.

24 ...

25 ¹¹⁶ Nogales Closing Brief at 2. Nogales contends that the closure violates Section 8 of the UNS franchise agreements
 26 approved in the 2004. Ex Nogales 1 at 5. Section 8 provides as follows: "The Company shall maintain an office within
 27 the corporate limits of the City, provide a toll free telephone number, and shall provide prompt, reasonable responses to
 customers' service requests. The office must be sufficient in size and staffing to serve the needs of its customers
 throughout its local service territory. The Company shall provide a 24-hour toll free telephone number for emergency use
 that is available seven (7) days a week."

28 ¹¹⁷ Nogales Closing Brief at 2.

¹¹⁸ Nogales Closing Brief at 3.

1 **3. Joint Applicants' Response to Nogales**

2 The Joint Applicants believe that the issue regarding whether UNS Electric or UNS Gas must
3 accept cash payments in Nogales is a good faith legal dispute over the interpretation of a franchise
4 agreement that is outside the Commission's jurisdiction, and is not relevant to the issues of this
5 proceeding.¹¹⁹

6 **IV. Analysis and Conclusion**

7 The Joint Applicants bring this application before us pursuant to A.A.C. R14-2-803. Rule
8 803(C) provides the standard for reviewing such applications for the reorganization of a public utility
9 holding company. However, in addition to evaluating the proposed transaction under Rule 803(C),
10 the Commission also must consider the broader public interest.¹²⁰

11 **A. Rule 803(C)**

12 Rule 803(C) is essentially a "no harm" standard, and provides:

13 At the conclusion of any hearing on the organization or reorganization of a utility
14 holding company, the Commission may reject the proposal if it determines that it
15 would impair the financial status of the public utility, otherwise prevent it from
16 attracting capital at fair and reasonable terms, or impair the ability of the public
17 utility to provide safe, reasonable and adequate service.

18 The evidence in this proceeding supports the finding that the proposed Merger Transaction, as
19 conditioned by the Settlement Agreement, will not impair the financial status of UNS Energy or the
20 Regulated Utilities; will not otherwise prevent them from attracting capital at fair and reasonable
21 terms; and will not impair the ability of the public utilities to provide safe, reasonable and adequate
22 service. Indeed, the evidence supports a finding that the proposed Merger Transaction, as conditioned
23 by the Settlement Agreement, will enhance UNS Energy's and the Regulated Utilities' financial
24 status, will improve their abilities to attract capital at fair and reasonable terms, and assist them to
25 provide safe, reasonable and adequate service. Our finding is supported by the following transaction
26 attributes:

- Fortis is the largest investor-owned utility holding company in Canada with a S&P

119 Joint Applicants' Closing Brief at 19, fn 109, citing Hrg Tr. 152-53, 155, 385-86.

120 Art 15, §3, Ariz. Constitution. The Commission shall make and enforce orders for the convenience, comfort and safety, and the preservation of the health of the employees and patrons of public service corporations. See Decision No. 67454 (January 4, 2005); Decision No. 72232 (March 10, 2011); see also, *Ariz. Corp Com'n v State ex rel. Woods*, 171 Ariz. 286 (1992).

1 credit rating of A-;

- 2 • Since 2013, Fortis raised \$3.3 billion in the capital markets;
- 3 • Fortis has a history of acquiring and holding regulated energy companies in North
4 America;
- 5 • Fortis will infuse \$220 million of equity into UNS Energy and the Regulated Utilities;
- 6 • It is anticipated that TEP's credit ratings will be upgraded following the merger;
- 7 • The Regulated Utilities are protected from the activities of Fortis and Fortis' other
8 subsidiaries;
- 9 • Fortis acknowledges the Regulated Utilities' potential need for additional capital and
10 commits to providing such support.

11 **B. The Public Interest**

12 We find that the proposed Merger Transaction, as conditioned by the Settlement Agreement,
13 is in the public interest. In addition to the enhanced financial strength provided to the Regulated
14 Utilities, the public interest is further supported by the following:

- 15 • Customers of the Regulated Utilities will receive direct benefits totaling \$30 million
16 over the five years following the transaction;
- 17 • Fortis has experience owning and operating regulated utilities in Canada and the
18 United States, with a reputation for honoring regulatory commitments;
- 19 • The new UNS Energy Board of Directors will be comprised of a majority of Arizona
20 residents and will have a majority of independent directors;
- 21 • UNS Energy's and the Regulated Utilities' current senior management is expected to
22 remain;
- 23 • Decisions regarding capital and operating plans, dividend policy, financing
24 requirements, employment levels, union negotiations and relationships, hiring
25 practices, design and delivery of low-income customer assistance, energy efficiency
26 and renewable energy programs, community involvement, and regulatory matters will
27 be made by local management and local Boards of Directors;
- 28 • Ratepayers are protected from the effects of the merger, as the Regulated Utilities are

1 required to show that the proposed rates are “demonstrably lower” than they would
2 have been absent the merger, goodwill will not be included in rate base or expenses
3 for rate-making purposes, and any increase in the salaries of senior management will
4 not be recovered in rates for any rate case with a test year on or before December 31,
5 2017;

- 6 • Current workforce levels will be maintained for four years; and
- 7 • Low income assistance and charitable contributions will remain at least at current
8 levels for five years.

9 The evidence supports a finding that Fortis is well-qualified to own and operate UNS Energy
10 and the Regulated Utilities. The evidence also supports the conclusion that by joining a larger
11 multinational family of energy companies, UNS Energy and the Regulated Utilities will be better
12 situated financially to address the current challenges facing the energy industry, and that the
13 Regulated Utilities’ ratepayers, employees and service territory communities will benefit from their
14 enhanced financial status.

15 **C. Concerns of the City of Nogales**

16 The City of Nogales asserts that the public interest would be promoted if its franchise dispute
17 with UNS Electric and UNS Gas is resolved as part of this proceeding. While we agree that a
18 consensual resolution of this dispute would likely be in the public interest, this franchise dispute is
19 not related to the transaction as it pre-dates the announced Merger Transaction, and it is not an issue
20 that can be resolved in this proceeding. Regardless of who owns UNS Energy stock, it is the type of
21 dispute that is, and will continue post-Merger to be, handled by local utility management. We
22 encourage UNS Electric and UNS Gas to continue to discuss possible solutions with the City. Under
23 the terms of the Settlement Agreement, UNS Electric and UNS Gas agree to support a high level of
24 customer service (Condition 39). However, we do not find that the existence of a good faith legal
25 dispute of this nature impacts the determination of whether the proposed Merger Transaction is in the
26 public interest.

27 This proceeding was not intended to be, or noticed as, an investigation of the adequacy of
28 UNS Electric’s or UNS Gas’ service to the City of Nogales. In his pre-filed testimony for the City

1 which is being treated as public comment, Mr. Dille alleged a number of complaints about the
 2 operations of UNS Electric and UNS Gas in Nogales. The evidence presented in this proceeding
 3 concerning the quality of service that UNS Electric and UNS Gas provide in Nogales is not sufficient
 4 for us to draw conclusions about whether their level of service is adequate under our Rules.¹²¹ If the
 5 City of Nogales has complaints about the quality of service it receives, the City is entitled to bring its
 6 complaints before the Commission for either informal mediation or in a formal complaint proceeding.
 7 From the evidence presented in this proceeding, such complaints are independent of, and unrelated to,
 8 the proposed Merger Transaction, and we find no cause to prevent or delay the Merger as presented
 9 while these issues are resolved.

10 **D. Concerns of MEC**

11 Condition 19 appears aimed at preventing Fortis from selling UNS Energy or the Regulated
 12 Utilities in the near-term, rather than preventing neighboring utilities from engaging in normal
 13 borderline agreements or improving efficiency in operations by engaging in the joint ownership of
 14 facilities or transfers of assets. Although Condition 19 already allows for Commission modification
 15 of the prohibition on the sale of assets, we clarify here that nothing in this Order or in the Settlement
 16 Agreement is intended to preclude, nor does it preclude, Arizona utilities from engaging in
 17 discussions that might result in the sale or transfer of assets from one utility to another in the interest
 18 of facilitating safer, more reliable or cost-effective service. Any agreement for the transfer of assets
 19 resulting from such negotiations must be brought to the Commission for approval, in the manner that
 20 such transactions are currently handled.

21 **E. TEP Holding Company Order**

22 The Signatories intend that this Order supersede the requirements of the TEP Holding
 23 Company Order. The current TEP Holding Company Order conditions that are not continued in the
 24 Settlement Conditions are:

- 25 • The Holding Company and sister companies shall not conduct material business
- 26 • Any business TEP finds to be necessary, reasonably incidental or economically

27 _____
 28 ¹²¹ The City of Nogales chose not to file testimony concerning the Settlement and did not provide a witness to sponsor Mr. Dille's pre-filed pre-settlement testimony.

appropriate to utility operation will remain at TEP.

- The Holding Company, TEP and sister companies will adopt marketing standards and will not engage in coercive or misleading advertising.
- Regardless of what tax allocation procedure or methodology is employed for assigning consolidated current and deferred income tax expense and accumulated deferred income taxes for financial statement purposes, TEP agrees to maintain standalone federal and state current and deferred income tax expense calculations for all years subsequent to formation of the Holding Company calculated on a standalone TEP basis which considers all available elections that produce the presumed lowest cost of service revenue requirements for TEP's regulated retail customers.
- The cost rate assigned to the notes issued TEP by UniSource in return for TEP's transfer of its unregulated investments to UniSource shall be at 9.78 percent, or a rate that will afford TEP the opportunity to earn at least its currently authorized 7.72 percent after-tax return.
- For five years from commencement of operations of the holding company, the following proceeds will be used to reduce TEP's debt or added to TEP's equity accounts: a) 60 percent of any public equity issuance (including dividend reinvestment or employee stock plans) undertaken by the holding company; b) two percent of the net after-tax profits attributable to the holding company's equity interest in sister companies; and c) in compensation for the use of ratepayers' cash flow and because ratepayers are at the base of whatever creditworthiness the company has, the two percent herein will be split 50 percent to reduce TEP's debt or added to TEP's equity accounts and 50 percent to directly lower rates.
- TEP will target attainment of 37.5 percent equity ratios in its capital structure by December 31, 2000. If that capital structure goal is not attained, and the equity ratio is less than 37.5 percent by that date, the Commission may set rates for TEP based on its actual capital structure at that date rather than the hypothetical 37.5 percent equity/62.5 percent debt capitalization currently included in rates.
- Unisource (and sister companies) will not invest an amount greater than \$60 million without Commission approval.

The Commission implemented A.A.C. R14-2-801 through R14-2-806 in response to diversifications by various utilities in the early 1980s which placed several Arizona utilities in financial distress and close to bankruptcy.¹²² When TEP filed its 1997 request to form a holding company it asserted that a holding company was necessary to provide the flexibility that would allow it to compete in an increasingly competitive electric energy business. When the Commission considered the 1997 request, it was concerned, *inter alia*, how the holding company structure would affect the Commission's ability to review unregulated investments, and how a holding company might be detrimental to the goal of improving TEP's financial condition as income from unregulated investments would no longer flow to TEP.¹²³

The Commission approved the new utility holding company with 28 conditions intended to promote the public interest by protecting TEP ratepayers from unregulated activities similar to those

¹²² Decision No. 56844 (March 14, 1990).

¹²³ At the time, TEP was the only utility.

1 that occurred in the 1980s and which almost led to TEP's bankruptcy; encouraging the holding
2 company to build TEP's equity and credit ratings; and by preventing cross-subsidization of
3 competitive and regulated activities creating a fair playing field for the envisioned competitive
4 marketplace, among other things. TEP and UNS Energy are different entities than they were, or were
5 envisioned to be, in 1997; and the structure of and challenges affecting the electric industry in
6 Arizona are different than was envisioned in mid-1990s. The TEP Holding Company Order
7 conditions not being continued in the Settlement Agreement were aimed at protecting TEP ratepayers
8 from risky unregulated diversification, to promote fair practices in a competitive market, and to give
9 clarity or guidance on how certain costs would be viewed in future rate cases. The passage of time
10 and the changed circumstances of UNS Energy have made these particular conditions unnecessary.
11 UNS Energy's and the Regulated Utilities' management have demonstrated a commitment to creating
12 financially strong utilities, and have operated successfully under a holding company structure for
13 over 15 years. TEP's equity as a percentage of its total capital has improved from 13 percent in 1997
14 to 43 percent in 2013.¹²⁴ TEP has had several rate cases since the TEP Holding Company Order,
15 without significant issues concerning cost allocations among its affiliates. The Commission retains
16 authority over the Regulated Utilities and their investments in or divestment of any subsidiaries or
17 assets,¹²⁵ and can re-implement conditions as necessary to protect ratepayers. Based on the totality of
18 circumstances, we concur with the parties that the above conditions are no longer required to protect
19 TEP ratepayers.

20 Other conditions in the TEP Holding Company Order are being adopted as part of the
21 Settlement Conditions. These include Settlement Conditions 39, 48, and 59 through 65. A third
22 category of TEP Holding Company Order conditions are those that are not expressly continued
23 among the Settlement Conditions but addressed therein in some manner. These include the
24 following:

- 25 ● The Holding Company will not pledge TEP common stock as collateral or security for
26 the debt of the Holding Company (addressed in Settlement Condition 23).
- 27 ● TEP will account for, bill and otherwise treat transactions with the Holding Company

28 ¹²⁴ See Decision No. 60480 at 12, and Ex JA-8 Larson Dir. at 6.

¹²⁵ A.A.C. R14-2-804 and A.R.S. §40-285.

1 and sister companies in the same manner as it customarily treats similar transactions
 2 with nonaffiliates. The Holding Company and sister companies will pay for services
 3 received from TEP by check or wire on the same terms offered to nonaffiliates. TEP
 4 will pay for services received from the Holding Company and sister companies in the
 same manner and on the same terms customarily applied to nonaffiliated vendors.
 Separate bank accounts will be maintained by the Holding Company and sister
 companies. The Holding Company and sister company funds will not be commingled
 in TEP bank accounts (addressed in Settlement Conditions 24 and 58).

- 5 • The Board of Directors of the Holding Company will establish procedures to review
 affiliated transactions between the Holding Company, TEP and sister companies
 (addressed in Settlement Condition 58).
- 6 • The Holding Company will provide the Commission Staff, upon request with
 appropriate notice, all information needed to verify compliance with the conditions
 7 authorized in this proceeding and any other information relevant to the Commission's
 8 ratemaking, financing, safety, quality of service and other regulatory authority over
 TEP (addressed in Settlement Conditions 43, 47 and 49).
- 9 • TEP will not guarantee the notes, debentures, debt obligations or other securities of
 any of the Holding Company or sister companies, or enter into any "make-well"
 10 agreements without prior Commission approval (addressed in Settlement Conditions
 11 18, 23 and 25).
- 12 • The Commission will be furnished with the Holding Company's quarterly annual
 financial statements, which will consolidate the financial statements of the Holding
 Company, TEP and all sister companies, and any other SEC filings, and individual
 13 quarterly and annual financial statements for TEP and each sister company
 individually (partially waived by Decision Nos. 62103 and 71256 and addressed in
 Settlement Condition 51).
- 14 • Until such time as TEP's equity ratio equals 37.5 percent of total capital, TEP will not
 issue dividends to the parent (Unisource) which comprise more than 75 percent of
 15 TEP's earnings (addressed in Settlement Condition 16).

16 The conditions of the Settlement Agreement are crafted to address the current configuration of
 17 the UNS Energy and its subsidiaries and the issues and concerns of the Merger Transaction, and are
 18 appropriate to protect the Regulated Utilities and their ratepayers from the activities of Fortis and
 19 Fortis affiliates.¹²⁶ We approve Section 3 of the Settlement Agreement that vacates the conditions
 20 approved in the TEP Holding Company Order and provides that they are superseded by the
 21 conditions adopted herein.

22 This section of the Settlement Agreement illustrates the complexity of the Commission's

23 _____
 24 ¹²⁶ The following conditions contained in the TEP Holding Company Order were waived by Decision Nos. 62103 and
 71256, and are not included in the Settlement Agreement:

- 25 • The Holding Company and TEP will strive to charge the lower of fully allocated costs or market when
 goods or services are provided to TEP, and the higher of fully allocated cost or market whenever TEP
 26 sells/provides goods or services to the Holding Company or sister companies.
- 27 • The Commission will be furnished annually, a report identifying any non-clerical TEP personnel
 moved to the Holding Company or its subsidiaries on a full-time basis.
- 28 • The capitalization of the sister companies (debt and equity) may not exceed 30 percent of TEP's
 capitalization unless otherwise approved by the Commission.

1 oversight over UNS Energy and the Regulated Utilities. In TEP's 2008 Rate Case, the Commission
 2 approved a settlement that contained a provision that TEP would file an application with the
 3 Commission seeking a determination whether all the waivers provided to TEP in its 1999 Rate Case
 4 were still appropriate and in the public interest. In Decision No. 71256, the Commission evaluated
 5 TEP's resultant filing, and made a number of findings and orders about whether particular waivers
 6 from Commission rules remained appropriate. Given the new entity that will emerge as a result of
 7 the Merger Transaction, we believe that it is appropriate to re-evaluate any waivers of Commission
 8 Rules that have been granted in prior Decisions. Thus, we direct UNS Energy and the Regulated
 9 Utilities to compile and file with Docket Control as a compliance filing, a comprehensive list of all
 10 waivers of Commission Rules that remain in effect as well as any conditions imposed on the utilities
 11 as a result of other prior Commission Orders, and address whether the waivers and conditions are
 12 necessary and in the public interest. We direct Staff to review the filing and file a Staff Report
 13 indicating whether Staff concurs with the analysis and recommendations of UNS Energy and the
 14 Regulated Utilities or whether Staff recommends that additional Commission action is necessary to
 15 promote the public interest.

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
 18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On January 10, 2014, Joint Applicants filed with the Commission pursuant to A.A.C.
 21 R14-2-803, a Joint Notice which indicates that on December 11, 2013, UNS Energy, Fortis, Fortis
 22 US and Color Acquisition entered into a Merger Agreement. The Merger Agreement provides that
 23 Color Acquisition would merge with UNS Energy, with UNS Energy being the surviving entity and
 24 becoming a wholly-owned subsidiary of FortisUS, with Fortis as the ultimate parent. Direct
 25 ownership of UNS Energy's affiliates will remain at UNS Energy.

26 2. On January 16, 2014, Staff filed a Request for Procedural Schedule, which included a
 27 proposed schedule with a settlement track and non-settlement track.

28 3. On January 17, 2014, RUCO filed an Application to Intervene, and a Response to

1 Staff's Request for a Procedural Schedule requesting a modification of Staff's proposed schedule to
2 allow more time for discovery and filing testimony.

3 4. On January 24, 2014, UNS Energy and Fortis filed the Direct Testimony of H. Stanley
4 Marshall, Barry V. Perry, Paul Bonavia, David Hutchens, Kevin Larson and John Reed in support of
5 the Joint Notice.

6 5. On January 23, 2014, Joint Applicants filed a Request for Revised Procedural
7 Schedule, which accommodated RUCO's concerns.

8 6. On January 27, 2014, AECC filed an Application for Leave to Intervene.

9 7. By Procedural Order dated January 28, 2014, the matter was set for hearing on June
10 16, 2014, deadlines for filing testimony were established, and RUCO was granted intervention.

11 8. On January 31, 2014, UNS Energy and Fortis filed a Notice of Errata to correct the
12 Direct Testimony of Kevin Larson and Barry Perry.

13 9. On February 10, 2014, AECC was granted intervention.

14 10. On February 11, 2014, Noble Solutions filed an Application for Leave to Intervene.

15 11. On February 18, 2014, Cynthia Zwick and ACAA, and APS filed Motions to
16 Intervene. The same date, Joint Applicants filed a response to Noble Solutions' Application to
17 Intervene, objecting to the intervention on the ground it would expand the scope of the proceeding.

18 12. On February 21, 2014, Noble Solutions filed a Reply.

19 13. On February 24, 2014, IBEW Locals 387, 769 and 1116 filed an Application for
20 Leave to Intervene.

21 14. On March 4, 2014, SWEEP filed a Motion to Intervene.

22 15. On March 6, 2014, APS, ACAA and Ms. Zwick were granted intervention; IBEW
23 Locals 387, 769 and 1116 were granted intervention on March 8, 2014.

24 16. Noble Solutions was granted intervention by Procedural Order dated March 10, 2014.

25 17. On March 12, 2014, AIC filed a Motion to Intervene.

26 18. On March 14, 2014, SWEEP was granted intervention, and on March 24, 2014, AIC
27 was granted intervention.

28 19. On March 21, 2014, MEC filed a Motion to Intervene.

1 20. On March 25, 2014, the City of Nogales filed for Leave to Intervene.

2 21. On March 25, 2014, Joint Applicants filed a Notice of Filing Affidavits of Publication
3 and Mailing. Notice of the hearing was published in the *Arizona Daily Star* on March 4, 2014, in the
4 *Arizona Daily Sun* on March 4, 2014, in the *Camp Verde Journal* on March 5, 2014, in the *Prescott*
5 *Valley Tribune* and *Chino Valley Review* on March 5, 2014, in the *Cottonwood Journal Extra* on
6 March 5, 2014, in the *Green Valley News* on March 5, 2014, in the *Tribune-News* (Navajo County)
7 on March 5, 2014, in the *Kingman Daily Miner* on March 3, 2014, in the *Nogales International* on
8 March 4, 2014, in the *Courier* on March 3, 2014, in the *Sedona Red Rock News* on March 5, 2014, in
9 the *Silver Creek Herald* on March 5, 2014, in the *Today's News-Herald* on March 3, 2014, in the
10 *Verde Independent* on March 5, 2014, in the *White Mountain Independent* on March 4, 2014, and in
11 the *Williams-Grand Canyon News* on March 5, 2014; and was mailed to customers from February 14,
12 2014 to March 14, 2014.

13 22. On March 26, 2014, AIC was granted intervention.

14 23. On March 27, 2014, Joint Applicants filed Supplemental Information in Support of the
15 Application, submitting a copy of the 8-K that was filed with the SEC regarding UNS Energy
16 shareholder approval of the acquisition of UNS Energy by Fortis.

17 24. On April 1, 2014, TASC filed for Leave to Intervene.

18 25. On April 3, 2014, Joint Applicants filed Supplemental Information in Support of
19 Application, submitting an order issued by FERC on April 2, 2014, providing the requisite
20 authorization for the acquisition of UNS Energy by Fortis.

21 26. On April 4, 2014, MEC and the City of Nogales were granted intervention.

22 27. On April 7, 2014, SSVEC filed an Application for Leave to Intervene.

23 28. On April 9, 2014, Navopache filed a Motion to Intervene.

24 29. On April 10, 2014, TASC was granted intervention.

25 30. On April 14, 2014, SAHBA and ASDA filed Applications for Leave to Intervene.

26 31. On April 15, 2014, SEIA filed an Application for Leave to Intervene.

27 32. On April 16, 2014, Staff filed a Motion for Revised Procedural Schedule, which
28 requested additional time to file direct testimony.

1 33. On April 18, 2014, intervention was granted to SSVEC and Navopache, and a
2 Procedural Order was issued that granted the request to revise the deadlines for filing testimony.

3 34. On April 25, 2014, SAHBA, ASDA and SEIA were granted intervention.

4 35. On April 30, 2014, RUCO filed the Direct Testimony of Lon Huber and Ralph Smith,
5 Noble Solutions filed the Direct Testimony of Greg Bass, SAHBA filed the Direct Testimony of
6 David Godlewski, IBEW filed the Direct Testimony of Frank Grijalva, AIC filed the Direct
7 Testimony of Gary Yaquinto, ACAA filed the Direct Testimony of Cynthia Zwick, SWEEP filed the
8 Direct Testimony of Jeff Schlegel, and Staff filed the Direct Testimony of Gerald Becker. On May 1,
9 2014, Nogales filed the Direct Testimony of Shane Dille.

10 36. On April 30, 2014, Staff filed a Notice of Settlement Discussions, which pursuant to
11 the Procedural Schedule would commence on May 5, 2014, at the Commission's offices in Phoenix
12 Arizona.

13 37. On May 16, 2014, Staff filed a Proposed Settlement Agreement.

14 38. On May 22, 2014, Joint Applicants filed Supplemental Information in Support of their
15 Application, submitting the determination of the Committee on Foreign Investment in the United
16 States that there are no unresolved national security concerns with the proposed Fortis acquisition of
17 UNS Energy.

18 39. On June 2, 2014, Direct Testimony in Support of the Settlement Agreement was filed
19 by UNS Energy and Fortis for Barry Perry and David Hutchens, by IBEW for Frank Grijalva, by
20 SAHBA for David Godlewski, by Noble Solutions for Greg Bass, by RUCO for Patrick Quinn and
21 Ralph Smith, and by Staff for Steve Olea.

22 40. On June 4, 2014, Staff filed a Notice of Errata correcting Mr. Olea's Testimony in
23 Support of the Proposed Settlement.¹²⁷

24 41. On June 6, 2014, RUCO filed a Motion to Allow Witness to Appear Telephonically.

25 42. On June 9, 2014, Joint Applicants filed a Response in Support of RUCO's Motion.

26 43. On June 11, 2014, SWEEP filed a Request to be excused from participating in the
27

28 ¹²⁷ One of the corrections was a typographical error in the Settlement Agreement. The ending date for the six month period of bill credits should be March 31st, not March 1st. Settlement Agreement §A.1.c.

1 hearing.

2 44. On June 11, 2014, Joint Applicants filed a Notice of Filing of Lender Consent to
3 Condition 16 of the proposed Settlement Agreement concerning dividend restrictions.

4 45. On June 13, 2014, Joint Applicants filed a Notice of Filing Supplemental Information
5 in support of their Application, submitting notice that the United States Federal Trade Commission
6 granted UNS Energy's request for early termination of the waiting period with respect to the
7 proposed acquisition by Fortis under the Hart-Scott-Rodino Act.

8 46. On June 13, 2014, pursuant to the Procedural Schedule, a Pre-Hearing Conference
9 convened for the purpose of discussing the conduct of the hearing. Pursuant to their requests, the
10 following intervenors, which had no position with respect to the Settlement Agreement, were
11 excused: SWEEP, APS, SSVEC, Navopache, SEIA and TASC.

12 47. The hearing convened as scheduled on June 16, 2014, at the Commission's Tucson
13 offices. Barry Perry, then Vice President and Chief Financial Officer of Fortis, and now its President,
14 testified for Fortis; David Hutchens, Chief Executive Officer and President of UNS Energy, TEP,
15 UES, UNS Electric and UNS Gas, testified for UNS Energy and the Regulated Utilities; Frank
16 Grijalva, Business Manager/Financial Secretary for Local 1116, testified for the IBEW; Gary
17 Yaquinto, President and CEO of AIC, testified for AIC; Patrick Quinn, Director of RUCO, testified
18 for RUCO; and Steve Olea, Director of the Utilities Division, testified for Staff. The City of Nogales
19 did not present a witness in support of or against the Settlement Agreement, but offered two
20 witnesses – John Kissinger, Deputy City Manager, and Nubar Hanessian, Vice Mayor, as part of a
21 rebuttal case concerning the terms of a franchise agreement with the City. The pre- and post-
22 settlement testimonies of Ralph Smith on behalf of RUCO, Greg Bass for Noble Solutions and David
23 Godlewski for SAHBA were admitted into evidence by stipulation, as was the pre-settlement
24 testimony of Cynthia Zwick on behalf of ACAA, Lon Huber for RUCO, Gerald Becker for Staff, and
25 Paul Bonavia, Kevin Larson, Stanley Marshall, and John Reed for the Joint Applicants.

26 48. The pre-settlement testimonies of the City of Nogales and SWEEP were treated as
27 public comment.

28 49. On July 2, 2014, the City of Nogales filed a Closing Brief.

1 50. On July 8, 2014, a Post-hearing Brief was filed by Noble Solutions and SAHBA, and
2 on July 9, 2014, Closing Briefs were filed by the Joint Applicants, RUCO, IBEW, MEC, ACAA, and
3 Staff. The same date, AECC filed a statement that it would not be filing a Closing Brief, but stated
4 that it supported the Settlement Agreement as being in the public interest.

5 51. The Commission received six emailed comments, generally opposed to the proposed
6 merger. Twelve members of the public provided comment at the hearing, and were primarily
7 concerned with how the merger would affect the environment.

8 52. No opposition was filed to the Settlement Agreement.

9 53. The City of Nogales believes that it is in the public interest to require UNS Energy and
10 UNS Electric and UNS Gas to resolve the dispute with the City over the terms of their franchise
11 agreement. However, as discussed herein, the dispute appears to be a good faith legal dispute over
12 which the Commission cannot resolve as part of this proceeding.

13 54. The settlement process utilized in this proceeding was fair, open and transparent.

14 55. The terms and conditions of the Settlement Agreement, attached hereto, are fair and
15 reasonable.

16 56. In approving the terms of the Settlement Agreement, we clarify that with respect to
17 Condition 19, nothing in this Order or in the Settlement Agreement is intended to preclude, nor does
18 it preclude, Arizona utilities from engaging in discussions that might result in the sale or transfer of
19 assets from one utility to another in the interest of facilitating safer, more reliable or cost-effective
20 service. Any agreement for the transfer of assets resulting from such negotiations, must be brought to
21 the Commission for approval, in the manner that such transactions are currently handled.

22 57. It is reasonable and in the public interest that the Conditions adopted in this
23 proceeding replace and supersede the conditions adopted in Decision No. 60480, the TEP Holding
24 Company Order, and thus, the conditions in Decision No. 60480 should be vacated.

25 58. As discussed herein, it is reasonable to direct UNS Energy and the Regulated Utilities
26 to compile and file with Docket Control as a compliance filing, a comprehensive list of all waivers of
27 Commission Rules that remain in effect as well as any conditions imposed on the utilities as a result
28 of other prior Commission Orders, and address whether the waivers and conditions are necessary and

1 in the public interest. We direct Staff to review the filing and file a Staff Report indicating whether
2 Staff concurs with the report or whether Staff recommends that additional Commission action is
3 necessary to promote the public interest.

4 59. As discussed herein, the Merger Transaction, as conditioned by the Settlement
5 Agreement, is in the public interest.

6 **CONCLUSIONS OF LAW**

7 1. TEP, UNS Electric and UNS Gas are public service corporations pursuant to the
8 Arizona Constitution Article 15, Arizona Revised Statutes, Title 40 generally, and A.A.C. R14-2-801
9 et seq.

10 2. UNS Energy is a Public Utility Holding Company pursuant to A.A.C. R14-2-801.4.

11 3. The Commission has jurisdiction over UNS Energy and the Regulated Utilities and the
12 subject matter of the application.

13 4. UNS Energy provided public notice of the Joint Notice and hearing as required by
14 law.

15 5. The proposed Merger Transaction, as described and conditioned in the Settlement
16 Agreement, does not impair the financial status of the public service corporations or UNS Energy,
17 otherwise prevent them from attracting capital at fair and reasonable terms, or impair their abilities to
18 provide safe, reasonable and adequate service.

19 6. The proposed Merger Transaction, as described and conditioned in the attached
20 Settlement Agreement, is in the public interest.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the Joint Notice of Intent to Reorganize filed by UNS
23 Energy Corporation on behalf of itself and its affiliates, UniSource Energy Services, Tucson Electric
24 Power Company, UNS Electric, Inc. and UNS Gas, Inc., and Fortis Inc. on behalf of itself and its
25 affiliates, Fortis US Holdings Nova Scotia Limited, a wholly-owned subsidiary of Fortis, Fortis US
26 Inc., a wholly-owned subsidiary of Fortis US Nova Scotia, and Color Acquisition Sub, Inc., a wholly-
27 owned subsidiary of FortisUS, pursuant to Arizona Administrative Code R14-2-803, as conditioned
28 by the Settlement Agreement entered into on or about May 16, 2014, and attached hereto as Exhibit

1 A, is hereby approved.

2 IT IS FURTHER ORDERED that with respect to the effect of Condition 19 of the Settlement
3 Agreement, nothing in this Order or in the Settlement Agreement is intended to preclude, nor does it
4 preclude, Arizona utilities from engaging in discussions that might result in the sale or transfer of
5 assets from one utility to another in the interest of facilitating safer, more reliable or cost-effective
6 service, and any agreement for the transfer of assets resulting from such negotiations, must be
7 brought to the Commission for approval, in the manner that such transactions are normally handled.

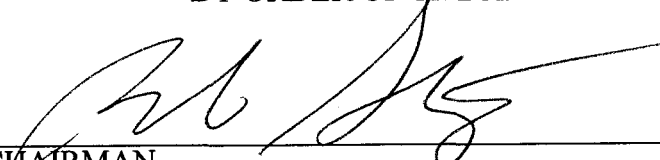
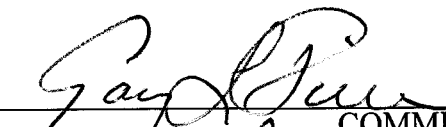
8 IT IS FURTHER ORDERED that the conditions adopted in Decision No. 60480 are vacated
9 and superseded by the conditions adopted herein.

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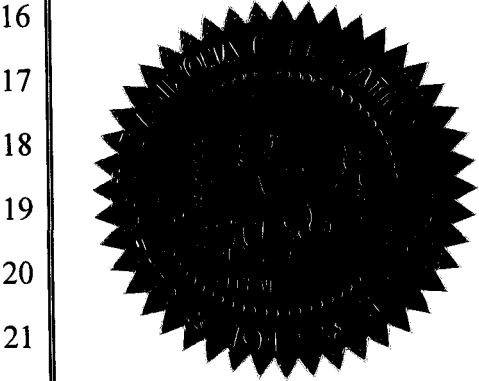
1 IT IS FURTHER ORDERED that UNS Energy and Tucson Electric Power Company, UNS
2 Electric, Inc. and UNS Gas, Inc. shall compile and file with Docket Control as a compliance filing
3 within 120 days of the effective date of this Decision, a comprehensive list of all waivers of
4 Commission Rules that remain in effect as well as any conditions imposed on the utilities as a result
5 of other prior Commission Orders, and address whether the waivers and conditions are necessary and
6 in the public interest. We direct Staff to review the filing and file a Staff Report indicating whether
7 Staff concurs with the report or whether Staff recommends that additional Commission action is
8 necessary to promote the public interest.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

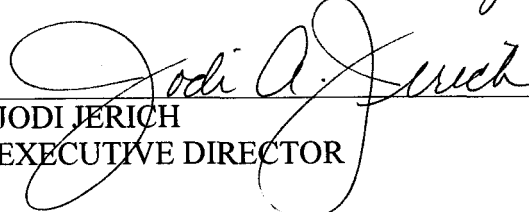
10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11 
12 _____
13 CHAIRMAN  _____
COMMISSIONER

14  _____
15 COMMISSIONER  _____
COMMISSIONER COMMISSIONER



17 IN WITNESS WHEREOF, I, JODI JERICH, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 12th day of August 2014.

22 
23 _____
24 JODI JERICH
25 EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____
28 JR:ru

1 SERVICE LIST FOR:

UNS ENERGY CORPORATION

2 DOCKET NOS.:

E-04230A-14-0011 AND E-01933A-14-0011

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Phoenix, Arizona 85007

28

EXHIBIT A

UNS ENERGY CORPORATION AND FORTIS INC.

JOINT NOTICE OF REORGANIZATION

SETTLEMENT AGREEMENT

DOCKET NOS. E-04230A-014-0011 and E-01933A-14-0011

MAY 16, 2014

DECISION NO. 74689

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SETTLEMENT AGREEMENT

**IN THE MATTER OF THE REORGANIZATION OF UNS ENERGY
CORPORATION**

DOCKET NOS. E-04230A-014-0011 AND E-01933A-14-0011

The purpose of this Settlement Agreement (“Agreement”) is to settle all issues related to the Joint Notice of Intent to Reorganize under A.A.C. R14-2-803 (“Joint Notice”) filed with the Arizona Corporation Commission (“Commission”) on January 10, 2014, in Docket Nos. E-04230A-014-0011 and E-01933A-14-0011, and involving the following entities:

1. UNS Energy Corporation (“UNS Energy”), on behalf of itself and its affiliates Unisource Energy Services, Inc. (“UES”), Tucson Electric Power Company (“TEP”), UNS Electric, Inc. (“UNS Electric”) and UNS Gas, Inc. (“UNS Gas”) (TEP, UNS Electric and UNS Gas are referred to collectively as the “Regulated Utilities”); and,

2. Fortis Inc. (“Fortis”), on behalf of itself and its affiliates, FortisUS Holdings Nova Scotia Limited (“FortisUS Nova Scotia”), a wholly-owned subsidiary of Fortis, FortisUS Inc. (“FortisUS”), a wholly-owned subsidiary of FortisUS Nova Scotia, and Color Acquisition Sub Inc. (“Color Acquisition”), a wholly-owned subsidiary of FortisUS.

UNS Energy and Fortis are referred to collectively as the “Joint Applicants.”

This Agreement is entered into by the following entities:

Joint Applicants
Commission Utilities Division Staff (“Staff”)
Residential Utility Consumer Office (“RUCO”)
Freeport-McMoRan Copper & Gold Inc.
Arizonans for Electric Choice and Competition
IBEW, Local Unions 387, 769 and 1116 (“IBEW”)
Southern Arizona Homebuilders Association
Arizona Community Action Association
Arizona Investment Council
Noble Americas Energy Solutions LLC
Arizona Solar Deployment Alliance

These entities shall be referred to collectively as “Signatories;” a single entity shall be referred to individually as a “Signatory.”

1. RECITALS.

- 1.1 On December 11, 2013, UNS Energy, Fortis, FortisUS and Color Acquisition entered into an Agreement and Plan of Merger (“Merger Agreement”).
- 1.2 Joint Applicants filed the Joint Notice on January 10, 2014, requesting approval of the Merger Agreement under A.A.C. R14-2-803. As set forth in the Joint Notice, Color Acquisition will merge with UNS Energy. UNS Energy will be the surviving entity, becoming a wholly-owned subsidiary of FortisUS with Fortis as its ultimate parent. In effect, UNS Energy’s existing shareholders will be replaced by FortisUS as the sole shareholder of UNS Energy (“Merger Transaction”).
- 1.3 On January 24, 2014, the Joint Applicants filed Direct Testimony in support of the Joint Notice.
- 1.4 Subsequently, the Commission approved applications to intervene filed by RUCO, Freeport-McMoRan Copper & Gold Inc., Arizonans for Electric Choice and Competition, IBEW, Southern Arizona Homebuilders Association, Arizona Community Action Association, City of Nogales, Arizona Investment Council, Noble Americas Energy Solutions LLC, Mohave Electric Cooperative, Inc., Navopache Electric Cooperative, Inc., Sulphur Springs Valley Electric Cooperative, Inc., The Alliance for Solar Choice, Solar Energy Industry Association, Arizona Solar Deployment Alliance, Southwest Energy Efficiency Project and Arizona Public Service Company (collectively “Parties”).
- 1.5 On April 30, 2014, Staff, RUCO and other Intervenors filed Direct Testimony in the docket.
- 1.6 Staff filed a Notice of Settlement Discussions on April 30, 2014. Settlement discussions began on May 5, 2014. The settlement discussions were open, transparent, and inclusive of all Parties to this Docket who desired to participate. All Parties to this Docket were notified of the settlement discussion process, were encouraged to participate in the negotiations, and were provided with an equal opportunity to participate.

- 1.7 The terms of this Agreement are just, reasonable, fair, and in the public interest in that they provide a just and reasonable resolution of the issues arising from this Docket and, among other things, establish appropriate conditions to ensure quality of service by the Regulated Utilities, enhance the financial strength of UNS Energy and the Regulated Utilities, retain local control of the Regulated Utilities, improve access to capital for UNS Energy and the Regulated Utilities, and avoid unnecessary litigation expense and delay.
- 1.8 The Signatories believe that this Agreement balances the interests of the public, UNS Energy, the Regulated Utilities and their customers and employees, and Fortis. Further, the Agreement and the Merger Transaction provide substantial and material benefits including, but not limited to:
- a. Providing \$30 million of direct customer benefits over 5 years through bill credits of \$10 million payable in year 1 and \$5 million per year payable in years 2 through 5.
 - b. Financially strengthening UNS Energy and the Regulated Utilities, which will enhance the Regulated Utilities' ability to provide safe, reasonable and adequate service, improve their individual capital structures, and preserve or improve their credit ratings by:
 - i. immediately injecting \$220 million of equity capital into UNS Energy for the benefit of UNS Energy and the Regulated Utilities;
 - ii. becoming part of a larger, more diverse and financially secure company with a stronger credit rating;
 - iii. establishing appropriate ring fencing measures that will serve to protect each of the Regulated Utilities and its customers; and,
 - iv. improving access to capital markets that will enhance the Regulated Utilities' ability to obtain sufficient capital to meet their needs, including access to debt capital at lower cost.

- c. Continuing strong local utilities by:
 - i. maintaining existing employee levels at the Regulated Utilities and employee benefits for a period of at least 4 years, continuing to perform under the existing collective bargaining agreements for the Regulated Utilities, and ensuring that all future decisions on staffing, employment practices and labor relations at the Regulated Utilities continue to be made by local management of the Regulated Utilities;
 - ii. retaining senior management of UNS Energy and the Regulated Utilities, and maintaining their headquarters in Tucson, Arizona;
 - iii. appointing a Board of Directors of UNS Energy, with oversight over UNS Energy and the Regulated Utilities, a majority of whom will be independent and a majority of whom will be resident in Arizona; and,
 - iv. becoming part of a more diverse family of utilities with the ability to draw upon expanded operational, technical and regulatory expertise while remaining a strong locally-based utility.
 - d. Continuing to support low income assistance programs at or above current levels; sustaining their contributions to charitable and community programs; and continuing to provide energy efficiency and renewable energy programs as approved, or may be approved, by the Commission.
 - e. Enhancing the Commission's regulatory oversight of the financial and operational stability of UNS Energy and the Regulated Utilities.
- 1.9 The Signatories agree to ask the Commission: (1) to find that the terms and conditions of this Agreement are just and reasonable and in the public interest, along with any and all other necessary findings; and (2) to approve the Agreement as soon as practicable, but no later than September 18, 2014.

TERMS AND CONDITIONS

2. CONDITIONS OF APPROVAL.

- 2.1 The Signatories agree to the conditions of approval set forth in Attachment A to this Agreement ("Conditions").
- 2.2 The Signatories agree that the Merger Transaction, subject to the Conditions, would not impair the financial status of UNS Energy or the Regulated Utilities, otherwise prevent UNS Energy or the Regulated Utilities from attracting capital at fair and reasonable terms, or impair the ability of the Regulated Utilities to provide safe, reasonable and adequate service.

The Signatories also agree that the Merger Transaction is expected to improve the financial status of UNS Energy and the Regulated Utilities, improve their access to capital at more favorable terms and enhance the ability of the Regulated Utilities to continue providing safe, reasonable and adequate service to their customers.

- 2.3 The Signatories agree that approval of the Merger Transaction, subject to the Conditions, is in the public interest.

3. CANCELLATION OF TEP HOLDING COMPANY ORDER CONDITIONS.

- 3.1 The Signatories acknowledge that certain conditions set forth in the TEP Holding Company Order, Decision No. 60480 (November 25, 1997), may no longer apply. The Signatories further acknowledge that the Commission has modified or waived several of those conditions in subsequent orders to reflect changed circumstances.
- 3.2 The Signatories agree that: (i) the Conditions adopted in this Docket shall supersede the conditions set forth in the TEP Holding Company Order, Decision No. 60480, as subsequently modified by the Commission and (ii) the conditions set forth in the TEP Holding Company Order, Decision No. 60480, as subsequently modified, should be vacated.

4. COMMISSION EVALUATION OF SETTLEMENT AGREEMENT.

- 4.1 All currently filed testimony and exhibits shall be offered into the Commission's record as evidence.
- 4.2 The Signatories recognize that Staff does not have the power to bind the Commission. For purposes of proposing a settlement agreement, Staff acts in the same manner as any party to a Commission proceeding.
- 4.3 The Signatories recognize that the Commission will independently consider and evaluate the terms of this Agreement. If the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Signatories shall abide by the terms as approved by the Commission.
- 4.4 If the Commission fails to issue an order adopting all material terms of this Agreement, any or all of the Signatories may withdraw from this Agreement, and such Signatory or Signatories may pursue, without prejudice, their respective remedies at law. For purposes of this Agreement, whether a term is material shall be left to the discretion of the Signatory choosing to withdraw from the Agreement. If a Signatory withdraws from the Agreement pursuant to this paragraph and files an application for rehearing, the other Signatories, except for Staff, shall file a document with the Commission that supports approval of the Agreement in its entirety. Staff shall not be obligated to file any document or take any position regarding the withdrawal or legal remedy sought by any other Signatory.

5. MISCELLANEOUS PROVISIONS.

- 5.1 This case has attracted a large number of participants with widely diverse interests. To achieve consensus for settlement, many participants are accepting positions that, in any other circumstances, they would be unwilling to accept. They are doing so because this Agreement, as a whole, is consistent with their long-term interests and with the broad public interest. The acceptance by any Signatory of a specific element of this Agreement shall not be considered as precedent for acceptance of that element in any other context.

- 5.2 No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.
- 5.3 Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, and/or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except to secure approval of this Agreement and enforce its terms.
- 5.4 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.
- 5.5 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable. The captions in this Agreement and Attachment A hereto are included for convenience of reference only and in no way define, delineate and/or restrict any of the provisions hereof or otherwise affect their construction or effect.
- 5.6 The Signatories shall make reasonable and good faith efforts necessary to obtain a Commission order approving this Agreement. The Signatories shall support and defend this Agreement before the Commission. Subject to Paragraph 4.4 above, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.
- 5.7 This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.
- 5.8 All filings required by the terms of this Agreement shall be made in Docket Control in this Docket unless otherwise specified.

ATTACHMENT A

SETTLEMENT CONDITIONS
DOCKET NOS. E-04230A-14-0011 AND E-01933A-14-0011

A. Customer Benefits & Protections

1. Ratepayer Benefits/Savings - Ratepayer Benefits/Savings - UNS Energy shall provide ratepayer credits totaling \$30 million over 5 years, to be shared by the customers of TEP, UNS Electric and UNS Gas (referred to collectively as the "Regulated Utilities") as follows:
 - (a) A total of \$10 million in year one (commencing October 1, 2014) with \$5 million being payable to customers as a bill credit to be applied to the monthly customer charge in an amount proportional to the average customer charge in each class¹ and \$5 million to be passed through to customers as a per kWh or per therm credit through the Regulated Utility's Purchased Power and Fuel Adjustor Clause ("PPFAC") or Purchased Gas Adjustor ("PGA").
 - (b) A total of \$5 million per year in years 2 through 5 payable to customers as a bill credit to be applied to the monthly customer charge in an amount proportional to the average customer charge in each class.
 - (c) All bill credits payable under subsections (a) and (b) hereof shall commence October 1st of each applicable year and be completed within six (6) months, i.e., by the following March 31st.
2. Within sixty (60) days of the closing, Fortis shall make an equity infusion through UNS Energy into the Regulated Utilities totaling \$220 million. However, if the transaction closes after September 30, 2014, the equity infusion may be made into UNS Energy to retire debt.
3. Fortis and UNS Energy agree and commit that benefits from the sale of coal, that would otherwise be used for TEP generation, to third parties for treatment to generate Internal Revenue Code Sec. 45 credits and to buy-back treated coal for burn at Springerville 1 and 2 (and any other TEP coal-fired generating plants where such arrangements are established) will be passed onto TEP ratepayers through the PPFAC.
4. In all rate cases filed by the Regulated Utilities through 2020, with a test year ending on or after December 31, 2015, the Regulated Utilities shall show that the proposed rate increases are demonstratively lower than those that would have been proposed absent the acquisition of UNS Energy by Fortis.

¹ TEP's customer classes consist of Residential Service, Small General Service, Large General Service, Large Light and Power Service and Lighting; UNS Electric's customer classes consist of Residential Service, Small General Service, Large General Service and Large Power Service and Lighting; UNS Gas' customer classes consist of Residential Service, Small Volume Service and Large Volume Service.

5. Fortis, UNS Energy and/or the Regulated Utilities shall not seek recovery of or on the acquisition premium or any goodwill amount in any future rate proceeding nor shall ratepayers of the Regulated Utilities be responsible in any manner for the recovery of said premium.
6. Fortis shall not allocate any Fortis specific costs to the Regulated Utilities for possible recovery in a future rate proceeding for 5 years after the closing. Fortis shall file notice with Docket Control of any intent to use a shared services model whereby central office or general office costs would be allocated to the Regulated Utilities. Fortis and UNS Energy shall file a code of conduct regarding UNS Energy and the Regulated Utilities' affiliate transactions within 60 days after the closing. Fortis and UNS Energy shall file with the Commission within 60 days after the closing its procedures for managing any intercompany transactions.
7. Fortis and UNS Energy shall not pass any costs of the shareholder litigation related to the merger to ratepayers of the Regulated Utilities.
8. Fortis, UNS Energy, and/or the Regulated Utilities shall not seek recovery of or on the transaction and transition costs associated with the merger, and agree that any Change of Control and Retention payments related to the merger will not be borne by the ratepayers of the Regulated Utilities.
9. Fortis shall hold the Regulated Utilities' ratepayers harmless from the impacts of any fluctuations in foreign exchange rates and any incremental taxes arising from its international ownership structure.
10. Fortis acknowledges and agrees that if a future acquisition by Fortis causes a material adverse impact on the Regulated Utilities, Fortis agrees that the Commission may act, as it deems necessary, to protect the Regulated Utilities, as permitted by law, upon notice and opportunity to be heard. Materiality shall be at the sole discretion of the Commission.
11. The Regulated Utilities shall not include in their revenue requirements any increase in the total compensation of the Senior Management Personnel (the 11 executives at the date of closing) in any rate increase request using a test year ending December 31, 2017, or earlier. If the number of Senior Management Personnel in a test year ending December 31, 2017 or earlier is less than 11, the aforementioned total compensation will be reduced proportionately.
12. In the event that Fortis completes any additional mergers or acquisitions within the United States before the Commission adopts an order approving new rates for the Regulated Utilities, Fortis must share the follow-on merger savings that are reasonably applicable to the Regulated Utilities and their customers between shareholders and ratepayers, on a 50/50 basis, to the extent the portions of such savings realized by Fortis are material (i.e., 5 percent or more of UNS Energy's consolidated net income on an after-tax basis). UNS Energy must submit, within 90 days of the follow-on merger

closing, a comprehensive and detailed proposal to share the follow-on merger savings, to begin on the closing date of the follow-on merger.

13. UNS Energy, the Regulated Utilities and FortisUS agree that the goodwill and transaction costs of this acquisition will be excluded from the rate base, expenses, and capitalization in the determination of rates and earned returns of the Regulated Utilities and for Arizona state regulatory accounting and reporting purposes.
14. To the extent permissible under U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), no goodwill or transaction costs associated with this acquisition will be reflected on the books of the Regulated Utilities. Should U.S. GAAP, including any future accounting changes, require that the goodwill associated with the acquisition be "pushed down" and therefore reflected in the accounts of the Regulated Utilities, the goodwill will not be reflected in the regulated accounts of the Regulated Utilities for purposes of determining rate base, setting rates, establishing capital structure or other regulatory accounting and reporting purposes.
15. UNS Energy and the Regulated Utilities will prepare a final schedule of the external costs to achieve the merger following consummation of the transaction as a demonstration that there will be no recovery requested in the Regulated Utilities' rates, or recognition in the determination of rate base of any legal or financial advisory fees, or other external costs associated with the FortisUS acquisition of UNS Energy, and indirectly, the Regulated Utilities.

B. Credit Quality and Capital Requirements

16. TEP will be precluded from paying dividends to UNS Energy in an amount that comprises more than 60 percent of TEP's annual earnings, for a period of 5 years or until such time as TEP's equity capitalization reaches 50 percent of total capital, excluding any goodwill required to be recorded on TEP's books, in accordance with U.S. GAAP, whichever is earlier. Each of UNS Electric and UNS Gas will be precluded from paying dividends to UNS Energy or UniSource Energy Services in an amount that comprises more than 60 percent of their respective annual earnings, for a period of 5 years after closing or until such time as its respective equity capitalization reaches 50 percent of total capital, excluding any goodwill required to be recorded on their books, in accordance with U.S. GAAP, whichever is earlier. These restrictions are contingent upon receiving necessary consents of lenders in the UNS Energy credit facility. Notification of lender consent will be filed in Docket Control within five (5) days of being received. If lender consent is not achieved by July 1, 2014, the Regulated Utilities shall file an application with the Commission by August 1, 2014, to address this issue.
17. UNS Energy shall maintain a capital structure that is separate from that of Fortis.
18. UNS Energy and the Regulated Utilities shall not pledge or encumber any assets of the Regulated Utilities for the benefit of Fortis or Fortis' other affiliates, nor shall the Regulated Utilities guarantee any indebtedness of Fortis or Fortis' other affiliates.

19. 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 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 Utilities. Any sale of assets of the Regulated Utilities shall be in accordance with A.R.S. Section 40-285.
20. UNS Energy, FortisUS and Fortis acknowledge the Regulated Utilities' need for capital to continue to deliver service to their customers. FortisUS commits to providing the equity capital, when required, to UNS Energy, to the extent necessary for the Regulated Utilities to continue to provide safe and reliable service to their customers pursuant to the Regulated Utilities' rights and obligations as public service corporations under Arizona law.
21. The Regulated Utilities will be registered with at least one of the following credit rating agencies: Fitch, Moody's or S&P. The Regulated Utilities will continue to maintain separate debt instruments as well as their own corporate and debt credit ratings with at least one of these nationally recognized rating agencies.
22. Fortis, FortisUS and UNS Energy will continue to support the objective of maintaining and supporting an investment grade credit rating for each of the Regulated Utilities.
23. The Regulated Utilities will not lend to, guarantee or financially support Fortis or any of its affiliates, or any subsidiary or other joint venture of UNS Energy or the Regulated Utilities except as authorized by the Commission. Furthermore, the Regulated Utilities will not engage in, provide financial support to or guarantee any non-regulated businesses, except as authorized by the Commission.
24. The Regulated Utilities shall maintain banking, committed credit facilities and cash management arrangements which are separate from UNS Energy, FortisUS, Fortis and other affiliates.
25. Neither FortisUS nor Fortis may, at closing of the approved acquisition of UNS Energy, and indirectly the Regulated Utilities, have any cross default provision that affects the Regulated Utilities in any manner. Neither Fortis nor FortisUS, nor any of their affiliates may enter into any cross default provision following the closing that affects the Regulated Utilities in any manner.

C. Quality of Service

26. Fortis and UNS Energy will ensure that sufficient Senior Management Personnel will reside or live in Arizona on a continuing basis to make decisions on behalf of UNS Energy pertaining to the Regulated Utilities' customer service issues.

27. The current level of employees of the Regulated Utilities will be maintained for a period of at least 4 years following closing under their respective current conditions of employment, subject to changes in the ordinary course of business.
28. The Regulated Utilities shall use best efforts to maintain or improve their quality of service based upon the following criteria until otherwise directed by the Commission: Tucson Electric Power and UNS Electric shall maintain a rolling 3-year average System Average Interruption Duration Index ("SAIDI"), System Average Interruption Frequency Index ("SAIFI"), and Customer Average Interruption Duration Index ("CAIDI") at a maximum of the 3-year averages for each of those measures for the period 2011 through 2013 as reported to the Commission in Docket Nos. E-00000A-11-01113 and E-00000V-13-0070. UNS Gas shall use best efforts to maintain or improve a rolling 3-year average number of customer complaints with the Commission's Consumer Services group at a maximum of the 3-year average of number of complaints for the period 2011 through 2013.
29. The Regulated Utilities intend to continue their steady efforts to maintain and improve safe and reliable electric and gas services and will continue to comply with all of their commitments and obligations.
30. UNS Energy, Fortis and FortisUS acknowledge and agree to support the Regulated Utilities in maintaining a high level of customer service, providing safe, reliable service to the Regulated Utilities' customers, and providing a safe workplace for employees. Consistent with this condition, the Regulated Utilities will continue to engage in workforce planning processes to address workforce needs, such as anticipated retirements, training and other relevant factors.

D. Customer Programs

31. In their next rate cases, TEP and UNS Electric will propose a pilot program for a "buy through" tariff available to Large Light and Power Service and Large Power Service customers, respectively.
32. TEP will not propose any material modifications to its existing Line Extension tariff in its next rate case and TEP will abide by the Line Extension tariff as approved by, or may be approved by, the Commission.
33. The Regulated Utilities will continue their energy efficiency programs as approved by, or may be approved by, the Commission.
34. The Regulated Utilities will continue their renewable energy programs as approved by, or may be approved by, the Commission.
35. UNS Energy, TEP, UNS Electric, UNS Gas and FortisUS commit to continue support for the Regulated Utilities' low income assistance programs at or above current levels.

E. Corporate Governance

36. Ring Fencing - Appropriate ring fencing measures as described herein shall be implemented to protect each of the Regulated Utilities and its ratepayers from any financial distress that may be incurred by Fortis or its other affiliates. These shall include, but are not limited to, maintaining the existence of separate capital structures, the establishment of a 'golden share' to be held by one independent person residing in Arizona (the consent of whom would be required in order for UNS Energy to file for voluntary bankruptcy protection), the establishment of an independent Board of Directors for UNS Energy, dividend restrictions on the Regulated Utilities, and prohibitions on intercompany loans and guarantees burdening the Regulated Utilities.
37. Fortis shall have appointed the Board of Directors of UNS Energy which shall have oversight over UNS Energy and the Regulated Utilities no later than 1 year after the closing. A majority of the directors of UNS Energy shall have and shall have had permanent residence in Arizona for at least 3 years prior to appointment. A majority of directors of UNS Energy shall be independent.
38. Within 1 year following the close of the transaction, UNS Energy shall establish a 'golden share' to be held by one independent person who shall have and shall have had permanent residence in Arizona for at least three (3) years prior to appointment. The consent of the holder of the golden share would be required in order for UNS Energy or any of its Regulated Utilities to file for voluntary bankruptcy protection.
39. The requirements of the Regulated Utilities as determined to be necessary to meet their regulatory obligations to serve their customers shall be given first priority by the UNS Energy Board of Directors.
40. The corporate headquarters for UNS Energy shall remain in Tucson, Arizona.
41. The Regulated Utilities shall be governed, managed and operated as follows:
- i. The board of directors of the Regulated Utilities will be responsible for management oversight generally, including the approval of annual capital and operating budgets; establishment of dividend policy; and determination of debt and equity requirements. The UNS Energy and Regulated Utilities' board of directors will have an audit committee, the majority of whom will also be independent. The responsibility of this committee will include the oversight of the ongoing financial integrity and effectiveness of internal controls of UNS Energy and the Regulated Utilities.
 - ii. The Regulated Utilities' local management will continue to make decisions regarding staffing levels and hiring practices; will continue to negotiate future collective bargaining agreements; will continue to be the direct contact and decision making authority in regulatory matters; and, will continue to represent the Regulated Utilities in all future regulatory matters.

- iii. UNS Energy and its subsidiaries shall continue to support and, where appropriate, enhance (a) existing charitable and community corporate "giving programs," (b) educational, environmental, economic and philanthropic partnerships and (c) consumer partnerships. For a period of five (5) years from closing, UNS Energy and the Regulated Utilities shall make annual charitable contributions within the communities served by the Regulated Utilities not less than the level of charitable contributions made by UNS Energy and the Regulated Utilities for the fiscal year that ended December 31, 2012, and otherwise maintain a level of involvement in community activities in the State of Arizona not less than the level of community involvement and related activities carried on by UNS Energy and the Regulated Utilities for the fiscal year that ended December 31, 2012.
42. Upon closing, TEP, UNS Electric and UNS Gas will amend their respective organizational documents to provide protections to ensure legal separateness from UNS Energy and FortisUS.

F. Financial Transparency and Reporting Requirements

43. Annual reporting – The conditions ordered by the Commission herein shall be tracked and reported annually for a period of 5 years following the close of the transaction. UNS Energy will file a report in Docket Control by April 1 of each year, beginning April 1, 2016, reporting on the prior calendar year's status of the conditions. The report will, at a minimum, provide a description of the performance of each condition that has quantifiable results. If any condition is not being met, the report shall provide proposed corrective measures and target dates for completion of such measures.
44. Any significant adjustment to fringe benefits or significant adjustment to wages and benefits paid to contract workers of the Regulated Utilities shall be included as part of the Regulated Utilities' annual information filing referred to in paragraph 43 above.
45. Fortis and UNS Energy shall report to the Commission and RUCO within ten (10) business days any changes in the credit ratings of Fortis Inc., UNS Energy or the Regulated Utilities.
46. UNS Energy will maintain its own accounting books and records separate from Fortis'. All UNS Energy financial books and records will be maintained in Arizona. UNS Energy's financial books and records and state and federal utility regulatory filings and documents will continue to be available to the Commission, Staff and RUCO upon request, at UNS Energy's Arizona offices.
47. Fortis will provide the Commission, Staff and RUCO full access to all books of accounts, as well as all documents, data and records of their affiliates regarding any transactions the Commission, Staff or RUCO determines might have some effect, direct or indirect, on the Regulated Utilities' financial health, customer rates, or operations.

48. Fortis, UNS Energy, and their subsidiaries shall make their employees, officers, and agents available to testify before the Commission to provide information relevant to the matters within the jurisdiction of the Commission.
49. Fortis agrees to cooperate fully with the Commission's, Staff's or RUCO's audits of the accounting records of UNS Energy, the Regulated Utilities, and Fortis and its subsidiaries relevant to matters within the jurisdiction of the Commission.
50. UNS Energy and the Regulated Utilities will, for purposes of its financial accounting and financial reporting, continue to use the generally accepted accounting principles which include, but are not limited to determinations by the Financial Accounting Standards Board ("FASB"), or any successor entity, for U.S. publicly accountable enterprises (i.e., "U.S. GAAP" or simply "GAAP").
51. Commencing for the year in which the closing takes place, the Regulated Utilities will provide the Commission with the annual Affiliated Interest Report filing Fortis' financial statements, including balance sheets, income statements, and cash flow statements for Fortis, and FortisUS and its major regulated and unregulated energy company subsidiaries in the United States. U.S. business entities with annual revenues less than ten percent of total Fortis revenues may be aggregated, provided that each entity included is fully identified. Aggregated U.S. business entities shall be identified as either regulated or unregulated. To satisfy this filing requirement, Fortis' U.S. GAAP, Canadian dollar denominated, quarterly and annual Financial Reports, including Management Discussion and Analysis, which have been filed publicly with Canadian securities regulators, will be filed with the Commission by the Regulated Utilities.

G. Acknowledgement of Arizona Laws & Procedures

52. Fortis shall take notice of and agrees to fully comply with applicable Arizona and federal statutes and Commission rules including, without limitation, the affiliated interest rules as set forth in the Arizona Administrative Code.
53. Fortis affirmatively acknowledges the need to secure Commission approval when the Regulated Utilities incur debt, issue equity instruments, and sell assets as required by Arizona law.
54. UNS Energy will not share the Regulated Utilities' customer specific information with Fortis affiliates for purposes other than the management of UNS Energy and the Regulated Utilities and provision of electric and/or natural gas service to customers. Fortis shall secure confidentiality agreements from any affiliate with which it shares customer information. Fortis is on notice of a rule making docket in Docket No. RU-00000A-14-0014 regarding the sharing of customer information.
55. The Regulated Utilities agree to reasonably evaluate long term power purchase and tolling agreements when preparing future resource plans, including those required by Commission rule, and selecting supply side resources in a manner that is consistent

with applicable statutes and regulations so that the Commission can make a proper assessment between alternative resources, including comparison against company owned proposals.

56. Fortis acknowledges that the Commission has the jurisdiction to approve the costs to be recovered through retail rates including, but not limited to, all expenses (including income taxes), cost of equity, rate of return and capital structures for the Regulated Utilities.
57. UNS Energy and the Regulated Utilities will continue to abide by the conditions set forth in the Citizens Acquisition Order in Decision No. 66028 (July 3, 2003) (as modified or waived by subsequent Commission orders) until further order of the Commission. Fortis and FortisUS acknowledge these conditions and will abide by them as applicable.

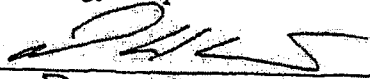
H. Miscellaneous

58. Fortis and UNS Energy shall file for Commission approval within 60 days after the closing its proposed procedures for valuing and allocating intercompany transactions related to the transfer of assets and to the provision of goods and services to and between affiliates. The Company's proposed procedures shall address, at a minimum, transfers of goods and services between the Regulated Utilities and other affiliates similar to provisions in TEP's existing Commission approved Code of Conduct and could involve making appropriate updates to the Code of Conduct.
59. Fortis, UNS Energy, the Regulated Utilities, and affiliates shall comply with all applicable Commission and Federal Energy Regulatory Commission ("FERC") requirements relating to affiliate transactions.
60. Fortis, UNS Energy, and the Regulated Utilities shall maintain up-to-date organizational charts that illustrate the vertical chain of command and, when applicable, horizontal reporting/coordination requirements in and among affiliates.
61. Fortis, UNS Energy, and the Regulated Utilities shall maintain up-to-date, job position descriptions which clearly delineate duties and responsibilities. The job descriptions will state whether the position can be expected to work for more than one entity (i.e., Fortis, UNS Energy or the Regulated Utilities). If the position is at the Fortis or UNS Energy level, the position description will state whether the duties relate to corporate governance functions and whether the duties and responsibilities of the position benefit more than one subsidiary.
62. The Regulated Utilities will each disclose at the time of any rate case filing each service function (i.e., accounting, treasury, human resources, information technology, risk management, etc.) that it does not fully staff, or which it relies in whole or in part upon Fortis and/or UNS Energy.
63. All employees of UNS Energy or the Regulated Utilities below the Vice President level,

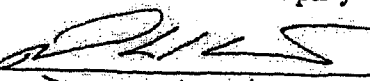
who work for more than one department or responsibility area or who may be called on to work for more than one of UNS Energy or the Regulated Utilities, shall keep detailed time sheets on a "positive" time sheet. The time sheets should provide weekly time reports with daily entries for time worked. Time would be broken out between the various entities for whom work was performed, and area of activity where relevant. Further, Vice Presidents, Senior Vice Presidents, and the Presidents of the Regulated Utilities should provide "exception" time reports.

64. All time that UNS Energy and the Regulated Utilities' employees spend on mergers, acquisitions ("M&A") and new business development will be tracked for below-the-line recording and/or assignment to a newly acquired or newly developed business. However, if the new business development or M&A activity is primarily and substantially for the benefit of the Regulated Utilities, the Regulated Utilities are permitted to record the item above-the-line, subject to disallowance in a future rate case proceeding.
65. UNS Energy and/or the Regulated Utilities will provide the following documents to Staff upon request. Any documents provided to Staff will also be provided to RUCO upon request:
- All royalty agreements, licensing agreements or other agreements entered into between Fortis and any of its affiliates, on the one hand, and UNS Energy or the Regulated Utilities, on the other hand, for the purpose of compensating for the use of any tangible assets, including trademarks, trade names, software systems, etc.
 - All operating and service agreements entered into between Fortis and any of its affiliates, on the one hand, and UNS Energy or the Regulated Utilities on the other hand.
 - All new, revised and/or updated strategic business plans for UNS Energy or the Regulated Utilities.
 - Description of any and all marketing/promotional campaigns between Fortis, UNS Energy and the Regulated Utilities.
 - Examples of all joint marketing work products (i.e., newspaper ads, magazine ads, TV and radio ad transcripts, etc.) shared between Fortis, UNS Energy and/or the Regulated Utilities.
 - Narrative description of all joint or common services shared between Fortis, UNS Energy and/or the Regulated Utilities.
 - All logos, trademarks and trade names registered by Fortis, UNS Energy and/or the Regulated Utilities.
 - Narrative description of all products and services offered by UNS Energy and/or the Regulated Utilities.
 - Listing of the Board of Directors and executive officers of UNS Energy and the Regulated Utilities.
66. Except as otherwise provided herein, nothing shall preclude the Joint Applicants from seeking relief from the Commission from any of the conditions after five years from the date of the order in this Docket.

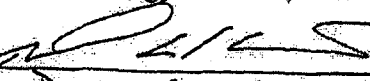
UNS Energy Corporation

By 
Title President + CEO
Date 5/16/14

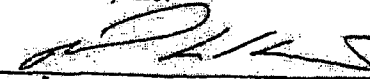
Tucson Electric Power Company

By 
Title President + CEO
Date 5/16/14

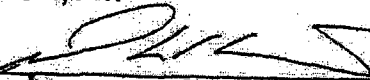
UniSource Energy Services, Inc.

By 
Title President + CEO
Date 5/16/14

UNS Electric, Inc.

By 
Title President + CEO
Date 5/16/14

UNS Gas, Inc.

By 
Title President + CEO
Date 5/16/14

Fortis Inc.

Barry Perry

By: Barry V. Perry
Vice President, Finance & CFO
May 16, 2014

FortisUS Holdings Nova Scotia Limited

Barry Perry

By: Barry V. Perry
Vice President, Finance & CFO
May 16, 2014

FortisUS Inc.

Barry Perry

By: Barry V. Perry
Vice President, Finance & CFO
May 16, 2014

Color Acquisition Sub Inc.

Barry Perry

By: Barry V. Perry
Vice President, Finance & CFO
May 16, 2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

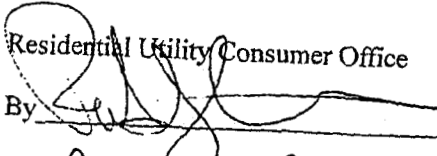
Commission Utilities Division Staff

By 

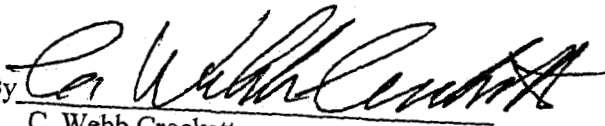
Title Utilities Division Director

Date 5-16-14

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

Residential Utility Consumer Office
By 
Title Director RUCO
Date 5/16/2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

By 
C. Webb Crockett
Patrick J. Black
Fennemore Craig, P.C.
Attorneys for Freeport-McMoRan Copper & Gold
Inc.

Date May 16, 2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

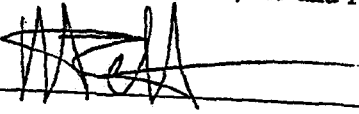
By 

C. Webb Crockett
Patrick J. Black
Fennemore Craig, P.C.
Attorneys for Arizonans for Electric Choice
and Competition

Date May 16, 2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

IBEW, Local Unions 387, 769 and 1116

By  _____

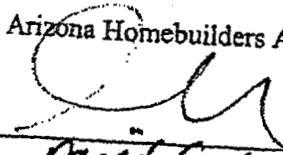
Title Attorney for IBEW locals 387, 769

Date May 16, 2014

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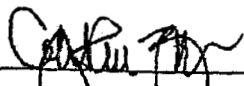
Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket Nos. E-04230A-14-0011 and E-01933A-14-0011

Southern Arizona Homebuilders Association

By 
Title David Godlewski
President
Date 5/15/14

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

Arizona Community Action Association

By 

Title Executive Director

Date May 16, 2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

Arizona Investment Council

By 

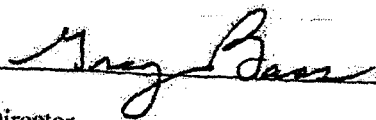
Printed Name Gary M. Vazquez

Title President & CEO

Date 5/15/2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket Nos. E-04230A-14-0011 and E-01933A-14-0011

Noble Americas Energy Solutions LLC

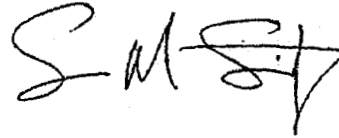
By 

Title Director

Date May 15th, 2014

Signatory to May 16, 2014, UNS Energy Corporation/Fortis Settlement Agreement
Docket No. E-04230A-14-0011

Arizona Solar Development Alliance



By _____

Title PRESIDENT

Date 15-May-2014