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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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OCT 09 2014

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IN THE MATTER OF THE APPLICATION) DOCKET NO. E-04204A-13-0447
OF UNS ELECTRIC, INC. AND UNS GAS, INC.) NO. G-04204A-13-0447
FOR A FINANCING ORDER AUTHORIZING)
VARIOUS FINANCING TRANSACTIONS) **COMMENTS ON STAFF REPORT**
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UNS Electric, Inc. (“UNS Electric”) and UNS Gas, Inc. (“UNS Gas”) (together the “Companies”), through undersigned counsel, submit their comments on the Staff Report filed in this docket on September 17, 2014 (“Staff Report”). As set forth below in detail, although the Companies agree with most of the Staff’s recommendations in the Staff Report, specific language included in two of the recommendations create significant concerns. Moreover, the Companies require additional ordering language (beyond the Staff recommendations and consistent with the Companies’ request in the application in this docket) in order to be able to fully utilize the authority recommended by Staff.

Overview

The Companies have reviewed the Staff recommendations set forth at pages 8-9 of the Staff Report. The Companies appreciate Staff’s detailed analysis of its application in this docket and agree with most of the Staff recommendations. However, specific language included in two of the recommendations¹ could result in the unintended consequences of precluding or inhibiting the use of

¹ The Companies also seek minor clarification regarding two of the recommendations.

1 the financing authority that Staff supports. After reviewing the recommendations, the Companies
2 consulted with Staff to discuss potential modifications or clarifications to certain of the Staff
3 recommendations.

4 Set forth below is a summary of the Companies' position on Staff's recommendations.
5 Additionally, the Companies have attached Exhibit A which reflects the Companies' initial proposed
6 ordering paragraphs modified to the extent necessary to incorporate Staff's recommendations and to
7 address the Companies' concerns. Staff has authorized the Companies to represent on its behalf that
8 Staff does not object to the Commission's adoption of the ordering paragraphs in Exhibit A.
9 Accordingly, the Companies request that the Commission adopt such ordering paragraphs in
10 connection with the approval of the financing authority requested in this docket.

11 **Comments on Staff Recommendations**

12 The Companies agree with Staff Recommendations 1, 2, 3, 6, 7, 9, 10 and 12. With respect
13 to Staff Recommendations 4 and 5, the Companies request minor clarification. With respect to
14 Recommendations 8 and 11, the Companies have more significant concerns as discussed below. All
15 of the Companies concerns are resolved by the ordering language set forth in Exhibit A:

16 17 **Staff Recommendation 4**

18 "Authorize the Companies to increase the amount of long-term indebtedness
19 outstanding at UNS Electric by up to \$80 million and at UNS Gas by up to \$50 million."

20 **Companies' Comment:**

21 The Companies agree with this recommendation. UNS Electric would like to include
22 language clarifying that the \$80 million is in addition to the \$35 million of debt that could be
23 issued for acquisition of the Gila River Unit 3 Generating Station ("Gila River").

24 25 **Staff Recommendation 5**

26 "Authorize the Companies to finance the purchase of an interest in Gila River Unit 3
27 by allowing UNS Electric to issue additional debt up to \$35 million and accept new equity

1 contributions up to \$35 million”

2 **Companies’ Comment:**

3 The Companies agree with this recommendation. UNS Electric would like clarifying
4 language to make clear that it could refinance the debt initially issued for the Gila River purchase.
5 This addition is important because the initial Gila River debt financing may be short or intermediate-
6 term. Being able to timely refinance to long-term debt will reduce debt costs.

7
8 **Staff Recommendation 8**

9 “The Commission cancel all previously authorized but unused borrowing authority.”

10 **Companies’ Comment:**

11 As written, Staff recommendation #8 could inadvertently have the effect of canceling the
12 Companies’ unused revolving credit capacity under the existing revolving credit facility at time the
13 new financing order is issued. If the Companies cannot use their existing revolving credit facility,
14 which was previously authorized in Commission Decision No. 71917, they would have to
15 immediately arrange for new credit facilities. Establishing a new credit facility could take several
16 weeks and leave the Companies with insufficient liquidity during that time. In addition, arranging
17 for a new credit facility is unnecessary as the Companies’ current facility does not expire until
18 November 2016.

19
20 **Staff Recommendation 11**

21 “That any authority granted herein be conditioned upon the Companies having at
22 least 40 percent equity and that the Companies are in full compliance with their debt covenants
23 including but not limited to the required "Interest Earned Ratio" of 2.50.”

24 **Companies’ Comment:**

25 As written, complying with these new financial ratio tests could restrict the Companies’
26 ability to access their revolving credit facility when needed. If these new ratio tests are adopted,
27 the Companies believe that additional ordering language (similar to that in the Companies’ most

1 recent financing order (Decision No. 71917)) should be included to specify exactly how those ratios
2 would be calculated. This will help clarify the application of the ratio tests.

3 This approach – and the additional ordering paragraphs – has been adopted in the past and is
4 still reasonable and prudent. The Companies would note that the ordering language from the
5 Companies’ most recent financing order (page 18 of Decision No. 71917) specifically limited the
6 financial ratio test to the issuance of new long-term debt. Financial ratio tests have not been
7 previously required for revolving credit loans, refinancing transactions, or contributions of parent
8 company equity in prior Commission orders for the Companies. Therefore, the Companies seek to
9 clarify that only issuances of new long-term debt are subject to the equity ratio and interest
10 coverage tests.

11 Further, as noted on page 5 of the Staff report, revolving credit loans are already limited by
12 financial covenants contained in the Companies’ revolving credit agreement. Specifically, that
13 agreement requires that each Company limits its total debt to less than 65% of total capital (or
14 conversely, to maintain equity capital at a level of at least 35% of total capital). Thus, the
15 Companies cannot request revolving credit loans that would result in equity being lower than 35%.

16 **Conclusion**

17 On the basis of the foregoing, the Companies request that the Commission approve the
18 financing authority requested in this docket and issue an order containing the ordering language set
19 forth in Exhibit A.

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RESPECTFULLY SUBMITTED this 9th day of October, 2014.

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UNS GAS, INC.

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Original and 13 copies of the foregoing
filed this 9th day of October, 2014, with:

Docket Control
Arizona Corporation Commission
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1 Copy of the foregoing hand-delivered/mailed
2 this 9th day of October, 2014, to:

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Exhibit A

PROPOSED ORDERING LANGUAGE

WHEREFORE, for all of the foregoing reasons, UNS Electric and UNS Gas request that the Commission issue an Order:

1. Finding and concluding that the approval of this Application is in the public interest;
2. Authorizing UNS Electric and UNS Gas to enter into one or more credit agreements with terms of up to five years, and to enter into agreements to refinance any such credit or reimbursement agreements with new terms of up to five years, which may consist of one or more revolving credit facilities so long as, after giving effect to the entry of such a facility, the amount of credit available under such facilities to each company, individually, does not exceed \$100 million;
3. Authorizing UNS Electric and UNS Gas to issue long-term debt to refinance long-term debt maturing in August 2015;
4. Authorizing UNS Gas to issue up to \$50 million of additional long-term debt;
5. Authorizing UNS Electric to issue up to \$80 million of additional long-term debt for purposes other than purchasing a share of Gila River;
6. Authorizing UNS Electric to issue new debt up to \$35 million and accept new equity contributions from parent up to \$35 million, for the specific purpose of purchasing a share of Gila River;

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- 7. Authorizing UNS Electric to issue long-term debt to refinance debt issued under the authority set forth in (6) above;

- 8. Authorizing UNS Electric and UNS Gas to provide security for any such financing transactions;

- 9. Conditioning the issuance of long-term indebtedness under the authority set forth in (4), (5) and (6) above upon: (i) the borrowing entity having equity equal to at least 40 percent of total capital and (ii) the borrowing entity being in full compliance with its debt covenants, including an Interest Coverage Ratio (ICR) of at least 2.50 times;

- 10. Conditioning any borrowing under a credit agreement authorized in (2) above upon the borrowing entity being in full compliance with the covenants contained in such agreement, which based upon the terms of the credit agreement in effect as of the date of the Order, would be expected to contain a limitation on indebtedness that is approximately equivalent to a requiring equity equal to or greater than 35% of total capital;

- 11. Specifying that for purposes of the Order, the equity ratio and ICR shall be determined on a pro forma basis after giving effect to the issuance of the long-term debt to be issued pursuant to the authority and the discharge of any debt being refunded or refinanced thereby (with the ICR calculated, in the case of indebtedness bearing a floating rate of interest, at the rate initially in effect on the date of issuance thereof);

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- 12. Specifying that for purposes of the Order, the equity ratio shall be the ratio of (a) common stock equity to (b) total capitalization, using the most recently audited financial statements as adjusted for capital contributions, distributions, and issuances, repayment or purchases of debt or equity occurring after the most recently audited financial statements;

- 13. Specifying that for purposes of the Order, the total capitalization shall be defined as the sum of common stock equity, preferred stock, long-term debt (including current maturities), short-term debt and capital lease obligations (including current obligations under capital leases);

- 14. Specifying that for purposes of the Order, the ICR for a Company shall be the ratio of (a) Consolidated Net Income Available for Interest Charges for a period of four consecutive fiscal quarters ending prior to that date of issuance to (b) Interest Charges for the same four consecutive fiscal quarters, each as defined in such Company's most recent long-term debt agreement as in effect on the date the Order is issued;

- 15. Ordering that in the event that either Company's equity percentage falls below 40 percent, the Companies shall file an equity improvement plan with the Commission within 60 days;

- 16. Specifying that for purposes of this Order, any future changes in GAAP that have the effect of lowering a Company's equity will be exempted from the equity and interest coverage tests until the Commission makes a determination. The Company shall make a filing with the Commission requesting such a determination within 60 days following the end of the fiscal quarter in which the GAAP change occurs;

- 17. Establishing as a compliance item in this matter, a requirement for Companies to file with Docket Control, within 60 days of the execution of any financing

1 transaction authorized herein, a notice confirming that such execution has
2 occurred and a certification by an authorized officer that the terms of the
3 financing fully comply with the authorizations granted;

4 18. Ordering the Companies to make available to Staff, upon request, a copy of
5 any loan documents executed pursuant to the authorization granted herein;

6
7 19. Authorizing the execution, delivery and performance by UNS Electric and UNS Gas
8 of all contracts, agreements, and other instruments which are incidental to any or all
9 of the foregoing or otherwise deemed by UNS Electric and UNS Gas to be necessary,
10 desirable or appropriate in connection therewith;

11 20. Ordering that the authorization to issue long-term debt, enter into one or more credit
12 agreements for revolving credit facilities in the Order shall replace the existing
13 authorization of Decision No. 71917, and that such authorization terminate upon the
14 effective date of the Order except that all existing agreements and obligations
15 incurred under lawful authorizations shall remain valid;

16 21. Ordering that the Order be deemed effective upon issuance and that UNS Electric and
17 UNS Gas may enter into the transactions authorized under the Order through
18 December 31, 2019;

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20 22. [Granting any other relief that the Commission determines to be appropriate and in
21 the public interest at this time.]
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