



0000170273

ORIGINAL

RECEIVED

2016 MAY 11 P 4: 34

AZ CORP COMMISSION  
DOCKET CONTROL

1 MOYES SELLERS & HENDRICKS  
Jay I. Moyes, AZ Bar No. 7207  
2 Jason Y. Moyes, AZ Bar No. 25864  
1850 North Central Avenue, Suite 1100  
3 Phoenix, Arizona 85004  
Telephone: (602) 604-2141  
4 [jimoyes@law-msh.com](mailto:jimoyes@law-msh.com)  
[jasonmoyes@law-msh.com](mailto:jasonmoyes@law-msh.com)

5 *Attorneys for Fresh Produce Association*  
6 *of the Americas*

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 **COMMISSIONERS**  
9 **DOUG LITTLE – CHAIRMAN**  
10 **BOB STUMP**  
11 **BOB BURNS**  
12 **TOM FORESE**  
13 **ANDY TOBIN**

Arizona Corporation Commission

**DOCKETED**

MAY 11 2016

DOCKETED BY

12 IN THE MATTER OF THE  
13 APPLICATION OF UNS ELECTRIC,  
14 INC. FOR THE ESTABLISHMENT OF  
15 JUST AND REASONABLE RATES AND  
16 CHARGES DESIGNED TO REALIZE A  
17 REASONABLE RATE OF RETURN ON  
18 THE FAIR VALUE OF THE  
19 PROPERTIES OF UNS ELECTRIC, INC.  
20 DEVOTED TO ITS OPERATIONS  
21 THROUGHOUT THE STATE OF  
22 ARIZONA.

DOCKET NO. E-04204A-15-0142

**FRESH PRODUCE ASSOCIATION OF  
THE AMERICAS' REPLY BRIEF**

19 The Fresh Produce Association of the Americas (“FPAA”) hereby files its reply to  
20 the initial post-hearing briefs filed on April 25, 2016. FPAA relies upon and incorporates  
21 the arguments set forth in its pre-filed testimony, the testimony of FPAA witnesses at  
22 hearing, and FPAA’s Initial Post-Hearing Brief on file herein.

23 FPAA reiterates its assertion that the demand ratchet imposed on the LGS and  
24 MGS classes is unfair and punitive to counter-seasonal, low-load factor customers. When  
25 UNS Electric, Inc. (“UNSE” or “Company”) formulated the demand ratchet during its last  
26 rate case, the Company knew ahead of time that it would hurt some more so than others.

1 According to Company witness Craig Jones:

2 I think there was some concern, at least some discussion, on the overall  
3 impact of the demand charge on certain small, and actually even large users,  
4 who had a low load factor, because the demand charge would affect them  
potentially disproportionately to the overall class as a whole.<sup>1</sup>

5 In fact, the Company “identified a group of customers who might experience an increase  
6 above 25 percent on their bill” specifically due to the demand ratchet.<sup>2</sup> Yet despite being  
7 authorized for only a 9% increase on the rate class, which included FPAA members,  
8 UNSE went ahead with the implementation of the demand ratchet, applying it to all of the  
9 large industrial customers without exception. The results were predictable. And now,  
10 three years later, with many FPAA members having experienced those extra-harmful  
11 effects of the demand ratchet that the Company anticipated, FPAA is seeking relief.

12 FPAA has argued that universal application of a demand ratchet to the commercial  
13 and industrial classes is not appropriate and that exceptions can and should be made for  
14 counter-seasonal agricultural businesses, the same way they are exempted by Commission  
15 rule in Texas. The Texas Public Utilities Commission ruled:

16 The Commission **acknowledges the unique characteristics of seasonal**  
17 **agricultural customers, and grants an exemption to the establishment of**  
18 **generic ratcheted distribution charges for these customers;** the design  
19 for each customer class that includes seasonal agricultural customers shall  
contain a provision for the recovery of distribution charges without the use  
of a demand ratchet for those customers.<sup>3</sup>

20 Texas has since further modified its rules on exempting seasonal agricultural  
21 businesses from demand ratchets, by creating a definition of such business, based on their  
22 load-factor, and allowing such companies to self-certify to their host utilities that they  
23 qualify for an exemption. The Texas Commission found that “it should be apparent in the  
24 bills or historical usage for a customer, whether electric load has significant variations and

25 <sup>1</sup> Transcript, p. 2043, lines 18-23.

26 <sup>2</sup> *Id.* at p. 2044, lines 21-22.

<sup>3</sup> Texas PUC Order No. 40, Docket No. 22344.

1 is therefore a seasonal operation as contemplated by the definition” and “[any] effect on a  
2 [host utility’s] overall rate of return that results from applying this definition should be  
3 small.”<sup>4</sup>

4 In response, UNSE has argued that removal of the demand ratchet for FPAA  
5 members would cause unfair cost-shifts onto other customers. FPAA does not believe this  
6 is a valid argument as FPAA has already been cross-subsidizing the other members of the  
7 LGS class by paying disproportionately higher bills during the months of July, August and  
8 September. For the rest of the members of the LGS (and now MGS class) who  
9 consistently contribute to the Company’s peak demand periods, a ratchet may be  
10 appropriate. For FPAA members it is not.

11 In its opening brief, UNSE proposed an optional MGS rate tariff where customers  
12 would “receive a credit equal to 50% of the standard MGS kW rate multiplied by the  
13 amount that measured kW is less than the ratchet demand for the summer months.”<sup>5</sup>  
14 While FPAA appreciates the Company’s efforts to propose creative solutions to the  
15 ratchet problem and recognizes this is a step in the right direction, FPAA does not believe  
16 that an average savings of \$1,600/year does nearly enough to reverse the negative effects  
17 of the ratchet on these customers over the last 3 years, let alone going forward. FPAA  
18 recognizes the problem UNSE faces with shifting revenue recovery onto other classes.  
19 But that dilemma just further highlights the inequity of the Company’s overall revenue  
20 spread. The substantial and generous subsidies paid to the residential and SGS classes by  
21 the large commercial and industrial customers have gone on long enough. And even  
22 though it doesn’t go far enough to eliminate those subsidies, FPAA generally supports the  
23 revenue allocation proposed by AECC and Noble Energy Solutions in this matter.

24

25

26

---

<sup>4</sup> Texas PUC, Project No. 34561, Order Adopting Amendment to §25.214.

<sup>5</sup> UNSE Post-Hearing Brief, p.43.

1           Nevertheless, FPAA believes UNSE has the capability to remove the ratchet from  
2 FPAA members and still recover its fixed costs. If the Company disagrees with the model  
3 that exists in Texas (which UNSE has never openly disputed or discounted in these  
4 proceedings) then it need look no further than APS for guidance. Speaking about the  
5 unusual and unexpected impacts certain APS customers experienced after a demand  
6 ratchet was implemented, APS rates manager Chuck Miessner stated:

7           [We] did extensive outreach with schools and other customers that were  
8 affected by this ratchet. And you know what, you can't get them all. So  
9 what happened? They didn't get the expected savings on their energy  
10 efficiency. We found out about it. We went out and talked to them. We  
11 have other optional rates with demand charges, but no ratchets for these  
12 types of customers. We put them on one of those.

13           And I went back just the other day after kind of hearing some of the other  
14 testimony. And this customer is saving probably their expectation, if not  
15 more, on their bill. . . .<sup>6</sup>

16 APS certainly has seasonal agricultural customers whose loads and power usage profiles  
17 are similar to that of FPAA members. Yet on recross-examination of FPAA witness Kent  
18 Simer, counsel for APS stated that "my client, APS, does not apply a demand ratchet to  
19 customers your size".<sup>7</sup> If Arizona's largest investor-owned utility can appropriately  
20 recover its fixed costs from customers that are similar to FPAA's produce coolers, there is  
21 no reason why UNSE can't do the same.

22           The economic importance of the Nogales businesses that FPAA represents cannot  
23 be overstated. Employment in the economically depressed Santa Cruz County is almost  
24 entirely dependent on three key sectors—law enforcement, maquiladora of goods, and the  
25 produce import industry. The fresh produce sector by itself accounts for nearly 25% of  
26 wages in Santa Cruz County. When you factor in the secondary economic impacts, this  
industry is responsible for more than a third of all economic output in the county. As

<sup>6</sup> Transcript, p. 3286, lines 6-17.

<sup>7</sup> *Id.* at p. 3043, line 23-24.

1 FPAA witness Lance Jungmeyer testified:

2 The produce industry has been here for well over 100 years. Our  
3 association was started in 1944. So we have – we want to be here to stay.  
4 And I think the companies that are in Nogales are many times second, third,  
5 fourth generation companies, and they want to remain. But they tell me  
6 frequently, Lance, I am feeling pressure to move to Texas, I am feeling a lot  
7 of pressure.<sup>8</sup>

8 UNSE attempts to minimize the detrimental effect of the demand ratchet by  
9 pointing to the growth of the produce industry in Nogales, even stating that “business is so  
10 good that there is now a seasonal shortage of warehouse capacity.”<sup>9</sup> While it is true that  
11 the produce import industry as a whole is growing due to growing U.S. demand for  
12 wintertime fruits and vegetables, the vast majority of that growth has been diverted to  
13 Texas, away from Arizona. FPAA has already provided ample written and oral testimony  
14 in this proceeding highlighting the exponentially higher growth of this industry in Pharr,  
15 Texas as compared to Nogales, Arizona. Furthermore, at the Public Comment Hearing  
16 held in Nogales on March 22, 2016, FPAA members Jaime Chamberlain, Walter Ram,  
17 Chris Ciruli, and Chris Martin all gave specific examples of how the demand ratchet has  
18 had a chilling effect on their ability to expand in Arizona. They know from first-hand  
19 experience how much more favorable the regulatory environment is in Texas, and some  
20 have made the business decision to redirect new dollars there instead of here. For  
21 each produce cooler that either moves its operations or decides to invest expansion monies  
22 in Texas, there is a significant trickle-down loss of employment that could have remained  
23 or materialized in Santa Cruz County. The demand ratchet just helps push those jobs out  
24 the door.

25 If Arizona utilities operated in a free-market, de-regulated environment, the  
26 demand ratchet problem would correct itself. But until the regulatory scheme in Arizona

---

<sup>8</sup> Transcript, p. 3019, lines 16-23.

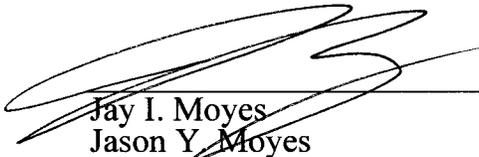
<sup>9</sup> UNS Post Hearing Brief, p. 42.

1 changes, businesses like the ones FPAA represents will be entirely reliant on the Arizona  
2 Corporation Commission to protect them and ensure that they are treated fairly.  
3 Certainly, FPAA does not believe UNSE intended to harm FPAA members with the  
4 implementation of the demand ratchet. Nor has FPAA ever argued that UNSE should not  
5 be able to recover its fixed costs and earn a fair return on its investments. To the contrary,  
6 FPAA wants UNSE to remain healthy and wishes to further a working and productive  
7 partnership going forward with the Company. But just as FPAA members need UNSE to  
8 remain financially viable, UNSE needs the produce import industry to thrive so that it can  
9 play the critical role it needs to play to sustain the viability of UNSE's southern service  
10 territory.

11 FPAA recognizes and commends UNSE for its willingness to explore new rate  
12 options that might benefit FPAA members. And FPAA remains open to continue  
13 discussions with the Company about those options prior to a final ruling in this matter.  
14 But if a workable compromise cannot be reached between the parties, FPAA requests that  
15 the Commission follow the example of Texas and create a categorical exemption from  
16 demand ratchets for seasonal, low-load factor agricultural businesses.

17 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of May 2016.

18 MOYES SELLERS & HENDRICKS

19  
20  
21   
22 Jay I. Moyes  
23 Jason Y. Moyes  
24 1850 North Central Avenue, Suite 1100  
25 Phoenix, Arizona 85004  
26 Jasonmoyes@law-msh.com  
*Attorney for Fresh Produce Association of America*

1 **ORIGINAL** and 13 **COPIES** of the foregoing  
2 filed this 11<sup>th</sup> day of May 2016, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 **COPIES** of the foregoing hand-delivered  
8 this 11 day of May 2016, to:

9 Jane Rodder, Administrative Law Judge  
10 Hearing Division  
11 Arizona Corporation Commission  
12 400 West Congress  
13 Tucson, Arizona 85701

14 Brian E. Smith  
15 Bridget A. Humphrey  
16 Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Thomas Broderick, Director  
21 Utilities Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 **COPY** of the foregoing mailed and/or emailed  
26 this 11<sup>th</sup> day of May 2016, to:

Bradley S. Carroll  
UNS Electric, Inc.  
88 East Broadway, MS HQE910  
P.O. Box 711  
Tucson, Arizona 85702

Michael W. Patten  
Timothy J. Sabo  
Jason D. Gellman  
Snell & Wilmer L.L.P.  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004

1 Daniel Pozefsky  
2 Residential Utility Consumer Office  
3 1110 West Washington Street, Ste. 220  
4 Phoenix, Arizona 85007  
5 dpozefsky@azruco  
6 **Consented To Service By Email**

7 Nucor Steel Kinsman LLC  
8 c/o Doug Adams  
9 3000 W. Old Hwy 66  
10 Kingman, Arizona 86413

11 Eric J. Lacey  
12 Stone Mattheis Xenopoulos & Brew, PC  
13 1025 Thomas Jefferson Street. NW  
14 8<sup>th</sup> Floor, West Tower  
15 Washington DC 20007-5201  
16 EJJ@smxblaw.com  
17 **Consented To Service By Email**

18 Robert J. Metli  
19 Munger Chadwick PLC  
20 2398 East Camelback Road. Suite 240  
21 Phoenix, Arizona 85016  
22 rjmetli@mungerchadwick.com  
23 **Consented To Service By Email**

24 Lawrence V. Robertson, Jr  
25 P.O. Box 1448  
26 Tubac, Arizona 85646  
tubaclawyer@aol.com

17 Court S. Rich  
18 Rose Law Group pc  
19 7144 E. Stetson Drive, Suite 300  
20 Scottsdale, Arizona 85251  
21 crich@roselawgroup.com  
22 **Consented To Service By Email**

23 Thomas A. Loquvam  
24 Melissa M. Krueger  
25 Pinnacle West Capital Corporation  
26 P.O. Box 53999. MS 8695  
Phoenix, Arizona 85072-3999  
Thomas.loquvam@pinnaclewest.com  
Melissa.Krueger@pinnaclewest.com  
**Consented To Service By Email**

25 Gregory Bernosky  
26 Arizona Public Service Company  
P.O. Box 53999. MS 9712

1 Phoenix, Arizona 85072-3999  
gregory.bernosky@aps.com

2  
3 Rick Gilliam  
4 Director of Research and Analysis  
5 The Vote Solar Initiative  
6 1120 Pearl Street, Suite 200  
7 Boulder, Colorado 80302  
8 rick@votesolar.com  
9 **Consented To Service By Email**

6  
7 Briana Kobor, Program Director  
8 Vote Solar  
9 360 22<sup>nd</sup> Street, Suite 730  
10 Oakland, CA 94612  
11 briana@votesolar.com  
12 **Consented To Service By Email**

11 Jill Tauber  
12 Chinyere A. Osula  
13 Earthjustice Washington, DC Office  
14 1625 Massachusetts Avenue, NW, Suite 702  
15 Washington, DC 20036-2212  
16 jtauber@earthjustice.org  
17 **Consented To Service By Email**

16 Ken Wilson  
17 Western Resource Advocates  
18 2260 Baseline Road, Suite 200  
19 Boulder, Colorado 80302  
20 ken.wilson@westernresources.org  
21 **Consented To Service By Email**

20 Scott Wakefield  
21 Hinton & Query, P.L.L.C.  
22 5045 N. 12<sup>th</sup> Street, Suite 110  
23 Phoenix, Arizona 85014-3302

23 Steve W. Chriss  
24 Senior Manager, Energy Regulatory Analysis  
25 Wal-Mart Stores. Inc.  
26 2011 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

1 Stephen.Chriss@walmart.com

2 Timothy M. Hogan  
3 Arizona Center for Law in the Public Interest  
4 514 W. Roosevelt Street  
5 Phoenix, Arizona 85003  
6 thogan@aclpi.org

**Consented To Service By Email**

7 Michael Alan Hiatt  
8 Katie Dittelberger  
9 Earthjustice  
10 633 17<sup>th</sup> Street, Suite 1600  
11 Denver, Colorado 80202  
12 rnhiatt@earthjustice.com  
13 kdittelberger@earthjustice.com

**Consented To Service By Email**

12 Jeff Schlegel  
13 SWEEP Arizona Representative  
14 1167 W. Samalayuca Dr.  
15 Tucson, Arizona 85704  
16 schlegelj@aol.com

17 Ellen Zuckerman  
18 SWEEP Senior Associate  
19 4231 E. Catalina Dr.  
20 Phoenix, Arizona 85018  
21 ezuckerman@swenergy.org

22 C. Webb Crockett  
23 Patrick Black  
24 Fennemore Craig, PC  
25 2394 East Camelback Road. Suite 600  
26 Phoenix, Arizona 85016  
27 wcrockett@fclaw.com  
28 pblack@fclaw.com

**Consented To Service By Email**

29 Kevin Higgins  
30 Energy Strategies, LLC  
31 215 South State Street, Suite 200  
32 Salt Lake City, Utah 84111  
33 khiggins@energystrat.com

1 Meghan H. Graber  
Osborn Maledon, PA  
2 2929 North Central Avenue  
Phoenix, Arizona 85012  
3 mgrabel@omlaw.com  
**Consented To Service By Email**

4 Gary Yaquinto, President & CEO  
5 Arizona Investment Council  
2100 North Central Avenue, Suite 210  
6 Phoenix, Arizona 85004  
gyaquinto@arizonaaic.org  
7 **Consented to Service By Email**

8 Cynthia Zwick  
9 Arizona Community Action Association  
2700 North 3<sup>rd</sup> Street, Suite 3040  
Phoenix, Arizona 85004  
10 czwick@azcaa.org  
11 **Consented To Service By Email**

12 Craig A. Marks  
13 Craig A. Marks, PLC  
10645 N. Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
14 craig.marks@azbar.org  
**Consented To Service By Email**

15 Pat Quinn  
16 President and Managing Partner  
Arizona Utility Ratepayer Alliance  
5521 E. Cholla Street  
17 Scottsdale, Arizona 85254  
patt.quinn47474@gmail.com

18 Jeffrey W. Crockett  
19 Crockett Law Group PLLC  
2198 East Camelback Road, Suite 305  
20 Phoenix, Arizona 85016  
jeff@jeffcrockettlaw  
21 **Consented To Service By Email**

22 Kirby Chapman, CPA  
23 Chief Financial and Administrative (Officer)  
Sulfur Springs Valley Electric Cooperative, Inc.  
24 311 E. Wilcox  
Sierra Vista, Arizona 85650  
25 kchapman@ssvec.com  
26 **Consented To Service By Email**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Mark Holohan, Chairman  
Arizona Solar Energy Industries Association  
2122 W. Lone Cactus Dr., Suite 2  
Phoenix, Arizona 85027

Garry D. Hays  
Law Offices of Garry D. Hays, PC  
2198 East Camelback Road. Suite 305  
Phoenix, Arizona 85016  
ghays@lawgdh.com

Vincent Nitido  
Trico Electric Cooperative, Inc.  
8600 West Tangerine Road  
Marana, Arizona 85653  
vnitido@trico.com

