

THIS AMENDMENT:		
_____ Passed _____	Passed as amended by _____	
_____ Failed	_____ Not Offered	_____ Withdrawn

MUNDELL PROPOSED AMENDMENT 1

TIME/DATE PREPARED: 11:17 AM /December 17

COMPANY: UniSource Energy Corp Reorganization AGENDA ITEM NO. 1

DOCKET NO. E-04230A-03-0933 OPEN MEETING DATE: December 20-21,2004

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Page 40, line 21, INSERT:

In their exceptions, UniSource offers additional proposals that it did not offer at the hearing. For example, UniSource is now willing to agree to all of Staff’s proposed conditions; to provide additional funding for demand side management, low income assistance, or other Commission-approved programs; to provide additional charitable contributions; and to disclose all or part of the E&Y report and the IRR studies. We have not had the benefit of seeing how the other parties will respond to these various items or of hearing cross-examination on these subjects. These various proposals, which have been provided after the conclusion of the hearing and after the preparation of the proposed order, are an attempt to change the underlying record in a way that preempts the Commission and the other parties from evaluating their effects upon the proposed transaction. The hearing in this matter encompassed substantial prefiled and live testimony over a _____ period. We decline to reopen the record to allow UniSource to provide additional testimony that it chose not to present at the hearing and that amounts to a change in its position.

UniSource also claims that our interpretation of Rule 803(C) is inappropriately broad and that the rule limits us to a consideration of the factors listed therein. We note, however, that the Constitution imposes upon us a duty to consider the public interest in all cases. UniSource’s construction of Rule 803(C) would essentially trump the provisions of the Constitution that require us to consider the public interest. We decline to adopt such a narrow and limiting view of the scope of our constitutional duties.

UniSource also complains that our use of the term “tangible benefits” creates a new legal standard and therefore violates UniSource’s due process rights. Our use of the term “tangible benefits,” however, is not intended to create a new legal standard. In this case, we have concluded that the transaction as proposed creates risks for ratepayers and that there is no tangible benefit that serves to offset these risks. Our discussion of “tangible benefits” in the context of this case is not intended as a discussion of the law; it is, instead, part of our evaluation of the facts. In response to UniSource’s claim that it was not provided with notice of the standard to be applied in this case, we would note that Article XV of the Arizona Constitution, which is the source of our constitutional duty to consider the public interest, has been in place

since Arizona's statehood. We must therefore conclude that UniSource had appropriate and adequate notice of the applicable legal standards.

UniSource also claims that our reasoning is akin to both retroactive ratemaking and an impermissible collateral attack upon prior Commission orders. However, our disposition of this matter does not change any of our prior orders or affect the rates adopted therein.