

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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IN THE MATTER OF THE REORGANIZATION )  
OF UNISOURCE ENERGY CORPORATION. )

DOCKET NO. E-04230A-03-0933

STAFF'S INITIAL CLOSING  
BRIEF

The Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") provides Staff's Initial Closing Brief in The Matter of the Reorganization ("Merger" and "Application") of UniSource Energy Corporation ("UniSource" and "Applicant"). In this Brief, Staff will discuss four main areas: 1) necessary conditions, 2) the value the conditions provide, 3) the business structure of the transaction and 4) the public interest analysis.

NECESSARY CONDITIONS

Should the Commission decide to approve the proposed Merger, the case will center on which conditions are necessary for such approval. In anticipation of such an issue, UniSource admitted at hearing Exhibit A-3 ("UniSource A-3") which contained the conditions UniSource recommended for approval. Unfortunately, the document did not include important conditions and proposed changes to conditions discussed by Staff in its testimony. Thus, Staff now provides Staff's Attachment A ("Attachment A") which is a comprehensive compilation of all the conditions that Staff has indicated are necessary in both oral and pre-filed testimony.

With regard to which conditions are necessary, Staff's position is best stated as follows:

"All the condition areas addressed by Staff are important. Therefore, the fact that differences remain [between Staff and Applicant] is very significant in our opinion to this proceeding. The differences are not immaterial, pedantic, or subtle. A failure to close the remaining gaps we [Staff] believe would leave customers unduly exposed to risks in the wake of this reorganization." (Tr. at 1068, lines 2-8).

Without appropriate conditions, Staff has stated that this matter should not be approved. (Antonuk

1 Direct at 10; *see also* Antonuk Executive Summary of Direct Testimony). To this end, the  
2 Residential Utility Consumer Office (“RUCO”) has echoed Staff’s call. (Tr. at 747-48). And the  
3 Applicant heard that call, and to a certain extent responded, but important areas of dispute still  
4 remain.

5 The following highlights the main areas of dispute by describing how the Attachment A  
6 language improves or enhances that of UniSource A-3 with regard to: Debt Reduction (1.d),  
7 Bankruptcy Protection (2.b), Service Quality (4), Non-Utility Investments (11), Partner Changes  
8 (13), and Community Support (15).

9 **DEBT REDUCTION (1.D)**

10 Comparing the debt reduction language offered by Staff and UniSource, at first blush it might  
11 appear that the dispute is merely one of dollars (\$100 million give or take). However, a review of the  
12 record shows that the dispute is far more fundamental.

13 In general, Staff believes that if this matter is approved, the conditions placed upon the  
14 approval will be essential tools for the Commission in turning the Applicant’s stated intentions into  
15 enforceable terms. Given TEP’s current “less than strong” financial position, such attention to the  
16 enforceability of terms is especially warranted.

17 Turning specifically to debt reduction, the Applicant has stated that it intends to continue to  
18 improve TEP’s financial health through this merger. (Pignatelli Direct at 1-2, 6). However, the  
19 Applicant has failed to respond with enforceable terms to inquiries raised about UniSource’s  
20 intentions to maintain minimum utility equity capital ratios or as to the measures it will take to  
21 obtain improved credit-strength for TEP.

22 Given the Applicant’s reluctance to offer conditions in these two areas of concern, Staff  
23 fashioned its condition based on the Applicant’s own representations and expectations offered to  
24 potential lenders in January 2004. In presentations to lenders, UniSource indicated an intent to spend  
25 \$263 million to pay off TEP debt in conjunction with this merger, \$138 million to pay off additional  
26 TEP first mortgage bonds, and an average of \$30 million in annual voluntary lease debt buybacks  
27 between 2005 and 2007. (Antonuk Surrebuttal at 5-6; Tr. at 1068-72).

28 The condition, as Staff proposes, merely turns UniSource’s own words about the process of

1 rebuilding the financial health of TEP into enforceable terms.

2 **BANKRUPTCY PROTECTION (2.B)**

3 With regard to bankruptcy protection, Staff's language works to achieve a key objective of  
4 ring-fencing, which is to keep the utilities (TEP, UNS Electric, and UNS Gas) from falling into  
5 jeopardy due to the actions of the affiliates, the parent, and their creditors.

6 Neither the utilities nor their customers should be exposed to bankruptcy risk due to this  
7 merger. Such risks could easily impair the financial status of any of these public utilities. Financial  
8 impairment, even the Applicant seems to agree, would provide grounds for denial of this merger.  
9 (*see*, AAC R14-2-803(C)). Yet under the Applicant's proposal, risk of such impairment remains –  
10 especially with regard to the lender agreements already negotiated.

11 UniSource suggests that Staff's language is already implied, and thus, unnecessary. (Tr. at  
12 356). Without the plain language in the agreements, UniSource has no ability to demonstrate what  
13 each creditor's intention or understanding is.

14 Alternatively, UniSource argues that Staff's language should not be placed in these  
15 agreements because the lenders will charge a premium. (Tr. at 120, line 16). A change for inserting  
16 protective language highlights the very need for such language. As discussed at hearing, the lenders  
17 are in the business of translating risk into rates. (Tr. at 1076). In order to justify commanding a  
18 higher price than previously negotiated, a lender would have to perceive an increase in the risk on its  
19 return from the protective language (that bars attachment to the utilities) than previously negotiated.

20 To place a price on this condition, places a price on the security of the utility customers for  
21 the sake of pursuing a merger that has no known benefits – especially with regard to customers.  
22 Staff believes that there has been no justification for such exposure to risk.

23 However, assuming the Applicant's suggestion of commercial non-feasibility is credible (Tr.  
24 at 354, line 22 – 356, line 21; *see also*, Tr. at 1075), Staff recommends a simple solution... insert  
25 language into Staff's recommended condition that provides the Applicant the ability to seek a  
26 waiver. The grant of such a waiver should be conditioned on providing customers some  
27 benefit/compensation for the new risk that they will shoulder in the absence of protective language in  
28 the lending agreements.

1           Once again, Staff has recommended a condition that ensures that the Applicant's stated intent  
2 (Tr. at 353, line 2-21) becomes an enforceable term.

3 **SERVICE QUALITY (4)**

4           With regard to the issue of service quality, UniSource has stated that post-merger it is  
5 committed to continuing to invest "adequate capital" in UniSource and its subsidiaries to provide  
6 safe, reliable and adequate service. (Pignatelli Direct at 3).

7           In Staff's direct testimony, Staff raised concerns about the overly vague nature of the  
8 Applicant's term "adequate capital" and the need for Staff and the Applicant to reach a common  
9 definition. (Antonuk Direct at 7, line 5-15). Unfortunately, UniSource's response was to "throw  
10 money" (*approximately \$1.5 billion for 2005-2008*) at the issue. (Pignatelli Rebuttal at 16).

11           Rather than commit to Staff's suggested method of employing a completely independent  
12 determination of "adequate capital" via a management and operational audit, the Applicant has  
13 offered a blanket dollar value. From Staff's perspective, there isn't a measure currently available to  
14 even begin to adequately assess whether UniSource's offered dollar amount is too much or too little.  
15 Staff questions the Applicant's capability to determine such – given the current lack of  
16 measurement. (Antonuk Surrebuttal at 10, line 20-23).

17           Again, Staff's recommended condition simply creates a means to enforce the Applicant's  
18 stated goal of maintaining "adequate" capital investments in the utilities.

19 **NON-UTILITY INVESTMENTS (11)**

20           The Applicant has stated an intent to financially strengthen UniSource's utilities so as to  
21 enhance their ability to provide safe, reliable and adequate service. (Pignatelli Direct at 2).

22           Staff believes that an important step to ensuring such financial strength is through a measured  
23 Commission review of non-utility investments. While the Applicant doesn't appear to be  
24 fundamentally opposed to this view, (Antonuk Surrebuttal at 9), the Applicant's language removes  
25 energy investments from Commission review without explanation. As recent history shows, the  
26 energy business is one of the country's most volatile, and certainly far more risky than the regulated  
27 utility business. Thus, the Applicant's omission of such transactions undermines the protections this  
28 condition should provide.

1 Providing the Commission the opportunity to review any non-utility investment not directly  
2 related to the provision of utility service merely aids the Applicant in accomplishing its intent by  
3 protecting against potential harm from non-utility investments to the financial strength of the  
4 utilities.

5 **PARTNER CHANGES (13)**

6 Prior to the hearing, UniSource A-3, condition 13 represented the language the Applicant  
7 recommended with regard to changes in the Limited Partners' ownership. However, after a series of  
8 questions to the Investors panel by Mr. Lawrence Robertson (Tr. at 539), UniSource offered a change  
9 to the language of condition 13 which clarified that if changes would result in any new Limited  
10 Partners obtaining in aggregate more than 10% of the economic investment in the Partnership, it  
11 would require Commission approval. (Tr. at 593-95, 597-98).

12 However, UniSource witness, Mr. Scott M. Stuart's (part of the Investors panel) testimony  
13 during Mr. Robertson's cross-examination presented a much more straightforward, simplistic view  
14 of the types of transfers that are subject to Commission approval than that of the Applicant's actual  
15 language. (Tr. at 539-44).

16 The parenthetical included in the Applicant's language provides for transfers exempt from  
17 Commission approval to such an extent that it may make the condition virtually unenforceable. For  
18 example, it provides an exemption to any affiliate of any existing Limited Partner. There is no  
19 description of how "affiliate" in this context should be defined, and no explanation why such an  
20 exemption is prudent if the intent is to provide the Commission authority over any transfer of an  
21 aggregate 10% of the economic interest.

22 Secondly, it provides an exemption for transfers to entities managed by the General Partner.  
23 The language here is vague. The term "managed" is not defined. As well, there is no explanation  
24 provided as to why this exemption doesn't interfere with the stated intent of Commission approval.

25 Finally, it extends the previously discussed exemption to entities "managed" by a member or  
26 affiliate of the General Partner. Again, such an exemption goes far afield from the stated purpose.

27 On the other hand, Staff's language in Attachment A not only includes the Applicant's agreed  
28 language change but also removes the parenthetical that would allow confusion and/or deviation

1 from the Applicant's agreed intent of the condition – which is to provide a requirement of  
2 Commission Approval for any aggregate transfer of 10% economic interest. (Tr. at 595, line 14-21).

3 **COMMUNITY SUPPORT (15)**

4 UniSource A-3, condition 15, entitled “Make firm commitments regarding community  
5 support”, provides a commitment to continue and/or enhance charitable and community corporate  
6 giving. Staff's recommended additional language simply clarifies that the Applicant's commitment  
7 extends to all the types of community support UniSource currently provides. (Antonuk Surrebuttal at  
8 17).

9 Such clarity in the condition is especially appropriate considering the number letters from  
10 community organizations depicting UniSource's community efforts, and UniSource's promise that  
11 this merger will enable the utilities to continue at least the same, if not a greater, level of support.

12 Given the Community's demonstrated interest and UniSource's statements on community  
13 support, it makes sense to use Staff's clarifying language to make the Applicant's intent (which the  
14 community is seemingly relying on) a specific enforceable term if this matter is approved.

15 **CONDITIONS SUMMARY**

16 In summary, Staff's changes accomplish (at the very least) the goal of turning each of the  
17 Applicant's described “can happen” into a “will happen”. Given the multitude of unknowns that  
18 arise if this transaction proceeds, turning possibilities into enforceable knowns is essential to the  
19 pursuit of minimizing risk and capturing potential benefit for the public.

20  
21 **THE VALUE OF THE CONDITIONS**

22 At the hearing, RUCO argued that the proposed conditions in UniSource A-3 were illusory or  
23 of little value. (Tr. at 785-86). To further its argument, RUCO admitted RUCO Exhibit 4 (“Exhibit  
24 4”), an excerpt from a RUCO data response to UniSource (which has been attached to this brief for  
25 purposes of convenience only). RUCO's response to UniSource Data Request 2-3 consists of a chart  
26 that lists a series of statutes, orders, and/or rules that RUCO submits already provide the protection  
27 described in each condition of UniSource A-3. (Tr. at 753, line 5 – 755, line 6).

28 The following provides Staff's response to each condition discussed in Exhibit 4. For

1 purposes of clarity, this response will reference the conditions as described in UniSource A-3 (unless  
2 otherwise stated) even though Staff believes that our Attachment A to this Brief is a more complete  
3 and accurate list of the necessary conditions should the Commission approve this merger.

4 **COMMITTED IMPROVEMENT TO UTILITY EQUITY CAPITAL RATIOS (1)**

5 Staff agrees that condition 1 (b) reinforces the Decision No. 66028 requirement of a 75%  
6 dividend restriction when TEP, UNS Electric and UNS Gas are each at less than 40% total capital.

7 However, the remainder of condition 1 provides enforceable terms that UniSource is  
8 currently not under a Commission obligation to accomplish.

9 While Exhibit 4 cites Decisions 60480 and 66028 along with ARS §40-424, none of these  
10 citations provide for any of the remaining obligations set forth in the condition.

11 **CHARTER AMENDMENTS TO RING-FENCE UTILITIES (2)**

12 RUCO asserts that ARS §§40-285, 40-302, 40-322, 40-202 and Decision No. 60480 currently  
13 provide condition 2's stated ring-fencing protections, designed to ensure legal separation of each  
14 regulated utility ( TEP, UNS E lectric and UNS Gas), including restrictions on bankruptcy and  
15 encumbering of utility assets.

16 However, the cited statutes merely provide jurisdiction to the Commission over the utilities.  
17 Similarly, Decision No. 60480 provides a number of safeguards for TEP in the creation of  
18 UniSource, but does not provide the same measures as condition 2.

19 **COMMISSION OVERSIGHT, AUTHORITY AND REPORTING ON FINANCIAL MATTERS (3)**

20 RUCO cited ARS §§40-202, 40-204, 40-241, and 40-425 as providing the same value as  
21 condition 3. However, these statues do not apply to the holding company and/or its affiliates. That  
22 is the value that condition (3) provides, it extends reporting requirements to UniSource, Saguario  
23 Holding, and members of the partnership.

24 Similarly, RUCO cited Decision No. 60480 which provides safeguards in the formation of  
25 the holding company, but does not provide the same requirements as this condition.

26 **MINIMUM O&M EXPENSE AND CAPITAL COMMITMENTS (4)**

27 Condition (4), in UniSource A-3, provides minimum dollar amounts to be spent on service  
28 quality. Staff agrees with RUCO that ARS §40-361 (B) requires the regulated utilities to furnish and

1 maintain adequate, efficient and reasonable service, equipment and facilities. However, this statute  
2 merely leads to the question, “how does one determine adequate investment?” This question  
3 highlights the need for Staff’s condition 4.

4 Staff’s condition requires a commission-sponsored management and operations audit. The  
5 audit will ensure that there is a rational measure to review whether “adequate” investment is being  
6 planned and made to satisfy ARS §40-361 (B).

7 **COMMITMENT TO CUSTOMER PRIVACY (5)**

8 Staff agrees with RUCO that condition 5 is similar to Section IV(A) of TEP’s Code of  
9 Conduct, dated August 2, 2000. However, the condition reaches beyond TEP and provides a  
10 prohibition to UNS Electric and UNS Gas sharing of customer information.

11 As well, the condition enhances TEP’s previous prohibition because it specifies application  
12 to the post-merger affiliates. Code of Conduct, Section IV only precludes information sharing with  
13 any Competitive Electric Affiliate or third party.

14 Furthermore, unlike a living document such as a utility’s Code of Conduct, Staff’s proposed  
15 condition (if adopted) will be a constant mandate that can only be altered with Commission  
16 Approval.

17 **REVISED COST ALLOCATION MANUAL (6)**

18 RUCO cited Arizona Administrative Code (“AAC”) R14-2-804, which provides the  
19 Commission authority over transactions between utilities and affiliates. Staff’s proposed Condition  
20 6, on the other hand, requires revision to each regulated utility’s Code of Conduct and Cost  
21 Allocation Manuals to address the process affiliate transactions will use. Thus, the condition  
22 enhances the previously established regulatory protections.

23 **WAIVERS TO AFFILIATED INTEREST RULES (7)**

24 RUCO suggested that Decision No. 60480 requires that conditions in this Decision supercede  
25 any previous Commission approved waiver to the Affiliated Interest Rules. Decision No. 60480 is  
26 completely off-point, as it addresses the creation of the holding company for TEP and does not  
27 contemplate this merger at all.

28 ...

1 **MAINTENANCE OF HEADQUARTERS (9) AND**

2 **MAINTENANCE OF ARIZONA OPERATING LOCATIONS (10)**

3 RUCO cited ARS §40-321 and §40-322 as statutes that already require the regulated utilities  
4 and UniSource to maintain: (1) their current headquarters locations unless otherwise approved by the  
5 Commission and (2) operating locations and field offices in Arizona to sustain the quality of their  
6 service. However, contrary to RUCO's assertions, outside of conditions within this order, there are  
7 no such specific regulatory requirements.

8 **COMMISSION AUTHORITY OVER NON-UTILITY INVESTMENTS (11)**

9 Condition 11 supplements and clarifies existing regulatory requirements. Staff agrees with  
10 RUCO that AAC R14-2-804 applies to TEP, UNS Electric and UNS Gas. However this condition  
11 clarifies that the approval described in the Rule applies not only to UniSource, as a holding company,  
12 but also to the Partnership and Saguaro Holdings.

13 **COMMISSION APPROVAL OF CHANGES TO GENERAL PARTNER OF SAGUARO LP (12) AND**

14 **COMMISSION APPROVAL OF MATERIAL CHANGES TO SAGUARO LP LIMITED PARTNERS (13)**

15 RUCO cited AAC R14-2-803 as requiring Commission approval of: (1) changes in the  
16 membership of the Limited Liability Company that makes up the General Partner of the Partnership  
17 involved in this merger and (2) material changes (an aggregate 10% or more) in the membership of  
18 the Limited Partners included in the Partnership. However, the cited Rule applies specifically to  
19 reorganization of the regulated utilities' holding companies, UniSource and UniSource Energy  
20 Services.

21 Condition 12 and 13, on the other hand, clarify that if this merger is approved any changes in  
22 the Limited Liability Company that is currently the proposed General Partner or any deviation to  
23 another entity as General Partner, or any material changes (aggregate of 10% or more) in Limited  
24 Partners will require Commission approval.

25 **COMMISSION ACCESS TO RECORDS (14)**

26 None of RUCO's cited authorities (Decision No. 60480, AAC R14-2-804, ARS §40-241, or  
27 ARS §40-242) specifically apply to the entities included in condition 14 (the Partnership, Sage - its  
28 General Partner, and Saguaro Holdings). Thus, the condition extends currently existing regulatory

1 requirements on the availability of records to the Partnership, Sage, and Saguaro Holdings.

2 **NO RECOVERY OF PARTNERSHIP OPERATIONS COSTS (16) AND**

3 **NO RECOVERY OF ACQUISITION PREMIUM AND TRANSACTION COSTS (17)**

4 TEP, UNS Electric and UNS Gas are precluded from seeking recovery of any of the  
5 Partnership's costs in any future rate proceeding under condition 16. The utilities are also precluded  
6 from seeking an acquisition premium or merger costs in any future rate proceeding under condition  
7 17. While Staff generally opposes recovery of such costs from rate payers, the statutes, Rule or  
8 Decision cited by RUCO are not a substitute for the conditions' prohibitions described above.

9 **VALUE SUMMARY**

10 In general, Exhibit 4 oversimplifies and mistakes the law. Both Staff and the Applicant  
11 believe that conditions will provide value to any approval in this matter.

12  
13 **BUSINESS STRUCTURE**

14 Staff now turns to the proposed post-merger business structure of this transaction. Given that  
15 an organizational chart is always helpful in examining the structure of such a merger, Staff's  
16 Attachment B is a copy of a chart prepared by Staff witness, Mr. Joel Reiker and included on page 7  
17 of his direct testimony as "Figure 2". Mr. Reiker's chart is a more complete depiction of the post  
18 merger structure than that provided at the hearing by the Applicant, as it includes all of UniSource's  
19 subsidiaries.

20 At the hearing, Mr. Stuart of the Investors panel stated, "[T]he essences of this transaction is,  
21 we are taking Jim Pignatelli and the management team's long-term plan, putting our capital structure  
22 on top...", (Tr. at 425, line 19-21) and "when you boil it all down, all we are doing is replacing one  
23 set of institutional shareholders for another." (Tr. at 426, line 1-3). Such statements might be  
24 construed to suggest that the Partnership will not gain any more power than that of the current  
25 shareholders. (Tr. at 1082). However, a review of Attachment B in combination with Saguaro Utility  
26 Group, L.P. ("Partnership") Agreement does not confirm such an interpretation. (*see, confidential,*  
27 *Antonuk Direct at 75-78*).

28 In looking at Attachment B, determining which entity actually holds control of the utilities

1 demonstrates the distinct concentration of control that will take place at the time of the merger. The  
2 General Partner of the Partnership is Sage Mountain, LLC (“Sage”) with 100% voting rights, except  
3 for the numerous exceptions described in the Partnership Agreement. (*see, confidential*, Antonuk  
4 Direct at 76, line1-15).

5 The Partnership wholly owns Saguario Utility Group 1 Corp. (“Saguario Holdings”).  
6 (UniSource Application at 3; *see also, Mr. Pignatelli states 5 to 7 percent of the ownership will be*  
7 *owned by management*, Tr. at 316-318). Sage will have 100% voting rights in the Board of Directors  
8 that consists of Sage and a chairman appointed at Sage’s leisure. (Tr. at 824-26).

9 Saguario Holdings wholly owns UniSource, in which Sage will be a member of the Board of  
10 Directors and will have sole discretion in electing the three remaining board members. (Tr. 823-32;  
11 Pignatelli Direct at 19).

12 Considering the concentration of control in the General Partner, it is important to review, as  
13 Mr. Antonuk’s testimony points out, the Partnership Agreement restrictions the on General Partner  
14 with regard to budgets, planning and transfer of ownership, as well as, the provisions for the Limited  
15 Partners’ information of and communication with the subsidiaries. The testimony goes on to point  
16 out that there is no analog to this type of structure in a publicly held utility corporation. (Antonuk  
17 Direct at 76-78). In reviewing this information, it is noteworthy that neither Mr. Fred Rentscheler  
18 (the owner of Sage) nor the Investors panel disputed the terms of the Partnership as described by  
19 Staff witness, Mr. John Antonuk’s testimony. (Tr. at 602-04, 870-71).

20 To suggest that such a concentration of control, as was just described, is akin to the current  
21 control of UniSource shareholders... misstates this Merger’s structure. Staff points out the  
22 complexity and deviation from common structure in this proposed structure to dispel any contrary  
23 perceptions Mr. Stuart’s comments might have created. As well, Staff believes that in order for the  
24 Commission to make a balanced, fully informed decision about this Application, it should consider:  
25 (1) the concentration of voting power under the General Partner of the Partnership; (2) the  
26 Partnership Agreement’s allowance for communication by the Limited Partners with subsidiaries; (3)  
27 and the Partnership Agreement’s restrictions on the General Partner.

28 It is only after careful consideration of this structure and all the “moving parts” of this merger

1 that the Commission is able to properly evaluate whether this merger is appropriate for Arizona and  
2 if so, what conditions are needed.

### 3 4 PUBLIC INTEREST

5 Once a review of the record and the recommended conditions is complete, the Commission is  
6 left to make a decision as to whether to approve the transaction. Implicit in such a decision is a  
7 determination as to the public interest.

8 The Commission has a duty to consider and act in the interest of the public that is rooted in  
9 the Arizona Constitution. Article 15 § 3 vests the Commission with the duty to make and enforce  
10 reasonable orders “for the convenience, comfort and safety, and the preservation of the health of the  
11 employees and patrons” of regulated utilities.

12 Like wise, case law clearly depicts the Commission as being required to, not only consider,  
13 but act in the public interest. (James P. Paul Water Co. v. Arizona Corporation Commission, 137  
14 Ariz. 426, 429, 671 P.2d 404, 407 (1983); *see also* Arizona Corporation Commission v. Woods, 171  
15 Ariz. 286, 296, 830 P. 2d 807, 818 (1992)).

16 With that said, determining what is in the public interest is not as simple as some  
17 mathematical formula. Instead, it is a broad consideration, on the part of the Commission, of all the  
18 evidence presented in each varied case. (Pueblo Del Sol Water Co. v. Arizona Corporation  
19 Commission, 160 Ariz. 285, 286, 772 P.2d 1138, 1139 (App. 1989)).

20 As part of its public interest analysis, the Commission may appropriately consider all  
21 applicable statues and rules. In the matter at hand, the Commission’s review should include AAC  
22 R14-2-803 of the Affiliated Interest Rules.

23 At hearing, UniSource misconstrued this Rule to limit the Commission’s review to a mere  
24 determination as to whether harm or impairment to the three listed categories within subsection (C)  
25 has been demonstrated. However, such an interpretation is not consistent with the Constitution or  
26 case law. Rather, Staff suggests that an appropriate view of this Rule is one that considers the  
27 language of (C) as examples of when this type of transaction can be found to be not in the public  
28 interest.

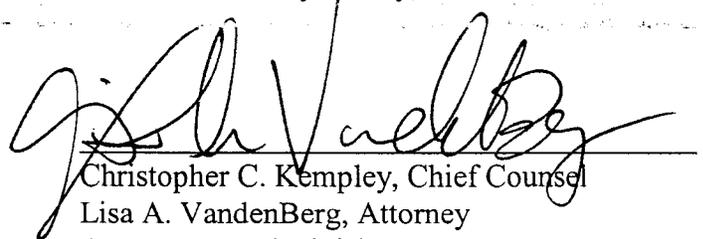
1 Turning to Staff's review, Staff submits that without conditions this Application clearly fails  
2 AAC R14-2-803(C) and thus is obviously not in the public interest. (Antonuk Direct at 5-6). As  
3 Staff points out, numerous potential risks to the utilities and/or customers exist in the merger as  
4 proposed. In order to ensure that the transaction is in the public interest and mitigate each of the  
5 potential detriments, Staff searched for mitigating conditions as well as known benefits.

6 As discussed previously, Attachment A identifies the conditions Staff believes are necessary  
7 to mitigate potential detriments from the merger. However, Staff was unable to identify any  
8 comparable benefits to consumers from the merger. While benefits are not inherent requirements for  
9 finding a transaction in the public interest, in this matter there are so many potential risks and  
10 unknowns, without such benefits it is difficult for Staff to submit that the matter is in the public  
11 interest.

### 12 CONCLUSION

13 Absent conditions, Staff recommends against approval. At a minimum, the adoption of  
14 the conditions identified in Attachment A are necessary to mitigate increased risk for and  
15 potential harm to the utilities' customers. However, even if these conditions are adopted, in the  
16 absence of comparable benefits to customers Staff is neutral regarding approval of the  
17 transaction.

18 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of July, 2004.

19  
20  
21 

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27 of the foregoing were filed this  
28 30<sup>th</sup> day of July, 2004 with:

...

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5 Copies of the foregoing were mailed  
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**STAFF  
ATTACHMENT A**

**NECESSARY CONDITIONS**

The following are the conditions Staff has indicated are necessary in order for the transaction to be appropriate for the Commission to even consider approving.

**A. Financial Integrity and "Ring-Fencing" Conditions.**

1. Committed Improvements to Utility Equity Capital Ratios.

- a. At closing, UniSource Energy will make an equity contribution of up to \$168 million and repay the \$95 million intercompany note from UniSource Energy to TEP. TEP will use this cash infusion to retire debt and thereby improve its equity capitalization from approximately 25% to 40% of total capital, calculated as stated in Decision No. 66028. (Pignatelli Rebuttal at 12-13).
- b. TEP, UNS Electric and UNS Gas, without prior approval of the Commission, will not issue dividends which comprise more than seventy-five percent (75%) of its current year's earnings if its equity capitalization equals less than 40% of total capital, calculated as stated in Decision No. 66028 (the "ACC rate case method"). (Pignatelli Rebuttal at 13).
- c. TEP will not make an equity capital distribution of any type (except for otherwise permitted distributions from earnings) that would cause TEP's equity capital, as measured under the ACC rate case method, to fall below 40% of total TEP capital or the level achieved through compliance with the TEP debt reduction condition, absent the prior approval of the Commission. (Antonuk Surrebuttal at 4, line 21-26).
- d. Unless otherwise first approved by the Commission, TEP will make total net reductions in its long-term debt and capital lease debt of at least \$500 million by the end of calendar year 2008, which includes an average of \$30 million of annual voluntary debt and lease prepayments and buybacks between 2006 and 2008<sup>1</sup>. At least \$300 million of the net reduction is long-term debt and capital-lease debt shall occur by the end of calendar year 2005, which includes \$30 million of annual voluntary debt and lease prepayments and buybacks by year-end 2005<sup>2</sup>. The required net reductions in TEP's long-term debt and capital lease debt shall be in addition to lease debt amortization included in currently scheduled capital-lease obligations. (Antonuk Surrebuttal at 4-5).

<sup>1</sup> (as offered in UniSource rebuttal testimony, page 13, James Pignatelli rebuttal testimony)

<sup>2</sup> (as offered in UniSource rebuttal testimony, page 13, James Pignatelli rebuttal testimony)

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2. Charter Amendments to Ring-Fence Utilities.

a. Upon closing, TEP, UNS Electric and UNS Gas will amend their respective organizational documents to provide protections to ensure legal separateness from UniSource Energy, Saguaro Holdings and Saguaro LP.

The amendments will provide that each utility company shall not file for bankruptcy protection without the affirmative vote of a designated independent director thereof and, further, each utility, other than in the ordinary course of business with appropriate regard to separateness and corporate formalities, shall:

- (i) not enter into any guaranty, or otherwise become intentionally liable for, or pledge its assets to secure the liability, debts or obligations of any affiliates (other than its subsidiaries);
- (ii) not hold out its credit as being available to satisfy the debts or obligations of any other entity (other than its subsidiaries);
- (iii) maintain accurate and appropriate detailed books, financial records and accounts, including checking and other bank accounts and custodian and other securities safekeeping accounts, that are separate and distinct from those of any other entity;
- (iv) maintain its books, financial records and accounts (including inter-entity transaction accounts) in a manner so that it will not be difficult or costly to segregate, ascertain or otherwise identify its assets and liabilities;
- (v) except with respect to shared expenses and corporate functions, each to be appropriately allocated under the UniSource Energy Cost Allocation Manual, not intentionally commingle any of its assets, funds, liabilities or business functions with the assets, funds, liabilities or business functions of any other entity;
- (vi) observe appropriate corporate procedures and formalities;
- (vii) cause all material transactions and agreements between it and any one or more of its affiliates (including transactions and agreements pursuant to which the assets or property of one is used or to be used by the other) to be entered into in the names of the entities that are parties to the transaction or agreement and to be formally documented in writing;
- (viii) except with respect to shared expenses and corporate functions, each to be appropriately allocated under the UniSource Energy Cost Allocation Manual, conduct transactions with third parties in its name and as an entity that is separate and distinct from its affiliates;

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- (ix) except with respect to shared expenses and corporate functions, each to be appropriately allocated under the UniSource Energy Cost Allocation Manual, pay its own liabilities, expenses and losses only from its own assets;
- (x) except with respect to shared expenses and corporate functions, each to be appropriately allocated under the UniSource Energy Cost Allocation Manual, compensate all consultants, independent contractors and agents from its own funds for services provided to it by such consultants, independent contractors and agents;
- (xi) to the extent that it and its affiliates jointly contract or do business with vendors or service providers or share overhead expenses, allocate fairly, appropriately and non-arbitrarily the costs and expenses incurred in so doing between or among such entities, with the result that each such entity bears its fair share of all such costs and expenses as provided in the UniSource Energy Cost Allocation Manual;
- (xii) to the extent that it contracts or does business with vendors or service providers where the goods or services are wholly or partially for the benefit of its affiliates, allocate fairly, appropriately and non-arbitrarily the costs incurred in so doing to the entity for whose benefit the goods or services are provided, with the result that each such entity bears its fair share of all such costs as provided in the UniSource Energy Cost Allocation Manual;
- (xiii) to the extent that it shares the same officers or other employees with its affiliates, allocate fairly, appropriately and non-arbitrarily the salaries of and expenses related to providing other benefits to such officers and other employees between or among such entities, with the result that each such entity will bear its fair share of the salary and benefit costs associated with all such common or shared officers or other employees as provided in the UniSource Energy Cost Allocation Manual;
- (xiv) to the extent that it occupies any premises in the same location or shares the use of equipment with its affiliates, allocate fairly, appropriately and non-arbitrarily any rent and overhead expenses among and between such entities with the result that each bears its fair share of all such rent and expenses as provided in the UniSource Energy Cost Allocation Manual;
- (xv) cause its representatives and agents to hold themselves out to third parties as being its representatives or agents, as the case may be, it being understood that it need not have its own dedicated employees;
- (xvi) maintain separate annual financial statements prepared in accordance with generally accepted accounting principles showing its assets and liabilities separate and distinct from those of any other entities (other than its subsidiaries);

1 (xvii) to the extent its financial statements are to be consolidated with the  
2 financial statements of any other entities (other than a subsidiary),  
3 cause to be included in such consolidated financial statements a  
4 narrative description of it and its subsidiaries' separate assets,  
5 liabilities, business functions and operations to ensure that such  
6 separate assets, liabilities, business functions and operations are readily  
7 distinguishable by any person receiving or relying upon a copy of such  
8 consolidated financial statements;

9 (xviii) pay or bear the cost of the preparation of its financial statements, and  
10 have such financial statements audited by an independent certified  
11 public accounting firm (which firm may also audit the financial  
12 statements of affiliates, subject to clause (H)(xii) above);

13 (xix) correct any known material misunderstanding regarding its separate  
14 identity;

15 (xx) not make any loans to any affiliate (other than its subsidiaries) or buy  
16 or hold any indebtedness or other obligations issued by any affiliate  
17 (other than its subsidiaries);

18 (xxi) not permit any of its assets to be held in the name of another person,  
19 except pursuant to a documented trust or similar arrangement; and

20 (xxii) maintain an arm's-length relationship with its affiliates and enter into  
21 transactions with affiliates only on a commercially reasonable basis.

22 (Pignatelli Rebuttal at 13, line 27-15, line 17)

23 b. All Saguaro and UniSource debt will include separateness covenants, which will  
24 remain effective as long as TEP and UES are owned by Saguaro and UniSource,  
25 and which will state that : (a) Saguaro and UniSource and separately TEP and its  
26 utility a affiliate UES, are being operated as separate corporate and legal entities,  
27 and that lenders to Saguaro and UniSource, in agreeing to make loans, are relying  
28 and have relied solely on the creditworthiness of Saguaro and UniSource based on  
the assets and equity interests owned by those entities. The repayment of Saguaro  
and UniSource indebtedness will be made solely from the assets of Saguaro and  
UniSource and not from any assets or pledge of assets of TEP or UES. Saguaro,  
UniSource, and their respective lenders will not take any steps for the purpose of  
procuring the appointment of an administrative receiver or the making of an  
administrative order for instituting any bankruptcy, reorganization, insolvency,  
wind up or liquidation, or any like proceeding under applicable law which includes  
TEP or UES or any of the assets or liabilities of these utilities; and (b) Saguaro and  
UniSource agree that any future material indebtedness will comply with the  
foregoing restrictions. (Antonuk Surrebuttal at 7).

Staff further recommends that if a waiver of this provision is sought and granted  
that the Commission require a specified form of compensation for the utility's  
customers. (Tr. at 1164 line 22-116, line 6).

1 3. Commission Oversight, Authority and Reporting on Financial Matters.

- 2 a. UniSource Energy, TEP, UNS Electric and UNS Gas will maintain their  
3 accounting records at UniSource Energy's corporate headquarters. (Pignatelli  
4 Rebuttal at 15).
- 5 b. Saguaro Holdings and UniSource Energy will file with the Commission: (i)  
6 quarterly financial statements and annual audited financial statements (which  
7 may be consolidated) and (ii) a copy of any filings made with the Securities  
8 and Exchange Commission or, in the event that such filings are not made, any  
9 written financial information delivered to holders of its indebtedness for  
10 borrowed money. (Pignatelli Rebuttal at 15)
- 11 c. In the event that Saguaro Holdings, Saguaro LP, any of Saguaro LP's partners  
12 or any person controlled by any of Saguaro LP's partners or any of J.P.  
13 Morgan Partners, L.L.C. ("JPMP"), Kohlberg Kravis Roberts & Co., L.P.  
14 ("KKR") and Wachovia Capital Partners ("WCP") or any person controlled by  
15 JPMP, KKR or WCP provides material services or products to TEP, UNS  
16 Electric or UNS Gas, (i) such services or products will be supplied in  
17 accordance with the provisions of the applicable utility's Code of Conduct or  
18 Cost Allocation Manual and a report will be filed annually detailing the nature  
19 of and costs associated with the transaction and (ii) Saguaro Holdings, Saguaro  
20 LP, any of Saguaro LP's partners or any person controlled by any of Saguaro  
21 LP's partners or any of JPMP, KKR and WCP or any person controlled by  
22 JPMP, KKR or WCP will provide the Commission access to their respective  
23 books and records (or copies thereof) to the degree required to audit, examine  
24 or otherwise investigate such transaction. Upon request, such books and  
25 records (or copies thereof) will be made available in Tucson, Arizona. (Exhibit  
26 A-3)

18 **B. Continued Service Quality and Reliability Conditions.**

19 4. Minimum O&M Expense and Capital Commitments.

- 20 a. TEP, UNS Electric and UNS Gas shall fund, a commission-sponsored  
21 management and operations audit to commence not more than 18 months after  
22 the ownership transition, to be conducted by Staff and a firm selected by the  
23 Commission, with the funding amount not less than \$400,000. (Antonuk Direct  
24 at 67-68).
- 25 b. UniSource shall maintain accounting and business management records in the  
26 same form as kept now, unless approved by the Commission. (Antonuk Direct  
27 at 68, line 1-3).

26 **C. Affiliate Relationships Conditions.**

27 5. Commitments to Customer Privacy.

28 TEP, UNS Electric and UNS Gas will not share with UniSource Energy, Saguaro  
Holdings, Saguaro LP, any of Saguaro LP's partners or any person controlled by any

1 of Saguaro LP's partners or any of JPMP, KKR and WCP or any person controlled by  
2 JPMP, KKR or WCP any non-aggregated information made available to it solely by  
3 virtue of the company/customer relationship, such as billing information and services  
4 received by a customer; provided, however, that such information may be shared to  
5 the extent necessary for such entities to make appropriate decisions concerning the  
6 delivery of necessary utility services to such customers and, if shared, may only be  
7 used for such purpose. (Exhibit A-3)

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15 6. Revised Cost Allocation Manual.

16 UniSource Energy, TEP, UNS Electric and UNS Gas will review and, where  
17 appropriate, revise their Codes of Conduct and Cost Allocation Manuals to include  
18 appropriate provisions to govern transactions and interactions between the utilities, on  
19 the one hand, and UniSource Energy, Saguaro Holdings, Saguaro LP, any of Saguaro  
20 LP's partners or any person controlled by any of Saguaro LP's partners or any of  
21 JPMP, KKR and WCP or any person controlled by JPMP, KKR and WCP, on the  
22 other hand. The Codes of Conduct and Cost Allocation Manuals will specifically  
23 address the provision of services or products by or to TEP, UNS Gas or UNS Electric  
24 with respect to UniSource Energy, Saguaro Holdings, Saguaro LP, any of Saguaro  
25 LP's partners and any person controlled by any of Saguaro LP's partners or any of  
26 JPMP, KKR and WCP or any person controlled by JPMP, KKR or WCP. The utilities  
27 will submit their revised Codes of Conduct and Cost Allocation Manuals to the  
28 Commission Staff for its review within 90 days of the closing of the transaction.  
(Exhibit A-3)

7. Waivers to Affiliated Interest Rules.

Any waiver of the Affiliated Interest Rules ("Waiver") previously granted to  
UniSource shall be deemed expired 60 days after an order approving the merger,  
unless UniSource has filed a request with the Commission to reconsider the waiver.  
Any waiver submitted for such reconsideration by the Commission shall remain in  
effect until an order is issued pursuant to the request. (Tr. at 115-16).

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20 **D. Governance, Oversight and Community Presence Conditions.**

21 8. Separate Utility-Level Boards with Independent Directors.

22 TEP, UES, UNS Electric and UNS Gas each will have a Board of Directors comprised  
23 of at least five (5) persons. At least two (2) of the Board members will be Arizona  
24 residents and at least two (2) will qualify as "independent" of UniSource Energy,  
25 Saguaro Holdings, Saguaro LP and, any of Saguaro LP's partners and KKR, JPMP  
26 and WCP and any entities they control, as the term "independent" is interpreted under  
27 Section 303A of the New York Stock Exchange Listing Company Manual. (Pignatelli  
28 Rebuttal at 17).

9. Maintenance of Headquarters.

UniSource Energy and TEP are headquartered in Tucson, Arizona. UNS Electric is  
headquartered in Kingman, Arizona and UNS Gas is headquartered in Flagstaff,  
Arizona. UniSource Energy, TEP, UNS Electric and UNS Gas will not, without prior

1 Commission approval, move their respective business headquarters from the cities  
2 where those headquarters are now located. (Pignatelli Rebuttal at 17).

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6 10. Maintenance of Arizona Operating Locations.

7 UniSource Energy, TEP, UNS Electric and UNS Gas will continue to maintain  
8 operating locations and field offices in Arizona, as appropriate, to sustain the quality  
9 of their service. Id.

10 11. Commission Authority Over Non-Utility Investments.

11 Saguario LP, Saguario Holdings and UniSource Energy will not, without prior  
12 Commission approval, make any new, material non-regulated, non-utility investments,  
13 other than those required to provide utility service. (Antonuk Surrebuttal at 9, line 10-  
14 23).

15 12. Commission Approval of Changes to General Partner of Saguario LP.

16 Saguario LP will not permit a direct or indirect change in its general partner or in the  
17 membership or ownership thereof without prior Commission approval, except that the  
18 limited partners of Saguario LP may, consistent with the terms of Saguario LP's  
19 agreement of limited partnership, remove Sage Mountain and appoint an interim  
20 replacement general partner without prior Commission approval upon the death or  
21 permanent disability of Sage Mountain's controlling member or a finding that Sage  
22 Mountain or its controlling member (1) has been convicted of a felony, (2) has  
23 committed fraud against Saguario LP, (3) has acted or omitted to take action on behalf  
24 of Saguario LP, which act or omission constitutes gross negligence or willful  
25 misconduct, (4) has breached any material provision of the agreement of limited  
26 partnership or any of its fiduciary duties there under, (5) is the subject of bankruptcy  
27 proceedings or otherwise has sought relief under any bankruptcy or insolvency laws,  
28 (6) has liquidated, dissolved or otherwise ceased to be in existence, (7) has suffered a  
change in control not permitted by the agreement of limited partnership or (8) has  
failed to comply with applicable laws. Following any such removal and appointment  
of an interim replacement general partner, Saguario LP will promptly seek  
Commission approval for a permanent replacement general partner and, if the  
Commission rejects such permanent replacement general partner, Saguario LP will  
undertake to find an alternate replacement general partner that is reasonably  
acceptable to the Commission. (Pignatelli Rebuttal at 17-18; *see also*, Antonuk  
Surrebuttal at 15-16).

13. Commission Approval of Material Changes to Saguario LP Limited Partners.

Saguario LP will not permit any ownership change among its limited partners without  
prior Commission approval if such change would result in any new limited partner(s)  
obtaining in aggregate more than 10% of the economic interests in Saguario LP. (Tr. at  
593-94; *see also*, Tr. 539-46; Antonuk Surrebuttal at 16, line 9-11).

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14. Commission Access to Records.

Sage Mountain, Saguaro LP and Saguaro Holdings will provide full access to any of their records on the same basis as provided by UniSource Energy, TEP, UNS Gas and UNS Electric and, upon request, will make such books and records (or copies thereof) available in Tucson, Arizona. (Pignatelli Rebuttal at 18).

15. Make firm commitments regarding community support.

Saguaro LP, Saguaro Holdings, UniSource Energy and their utility subsidiaries shall continue to support (in not only monetary contributions, but also non-cash resources made available at corporate direction and corporate support of employee community involvement) and, where appropriate, enhance charitable and community corporate “giving programs,” education, environmental, economic and philanthropic partnerships and consumer partnerships at funding levels, in the aggregate, equal to or greater than the amounts expended in calendar year 2003 from September 1, 2003 through August 31, 2004. (Antonuk Surrebuttal at 17, line 8-11).

**E. Non-Recoverability of Merger/Affiliate Costs Conditions.**

16. No Recovery of Partnership Operations Costs.

TEP, UNS Gas and UNS Electric will not seek recovery in any future Arizona rate proceeding of any costs incurred by Saguaro LP with respect to operations before or after the merger of UniSource Energy and Saguaro Acquisition. (Pignatelli Rebuttal at 18).

17. No Recovery of Acquisition Premium and Transaction Costs.

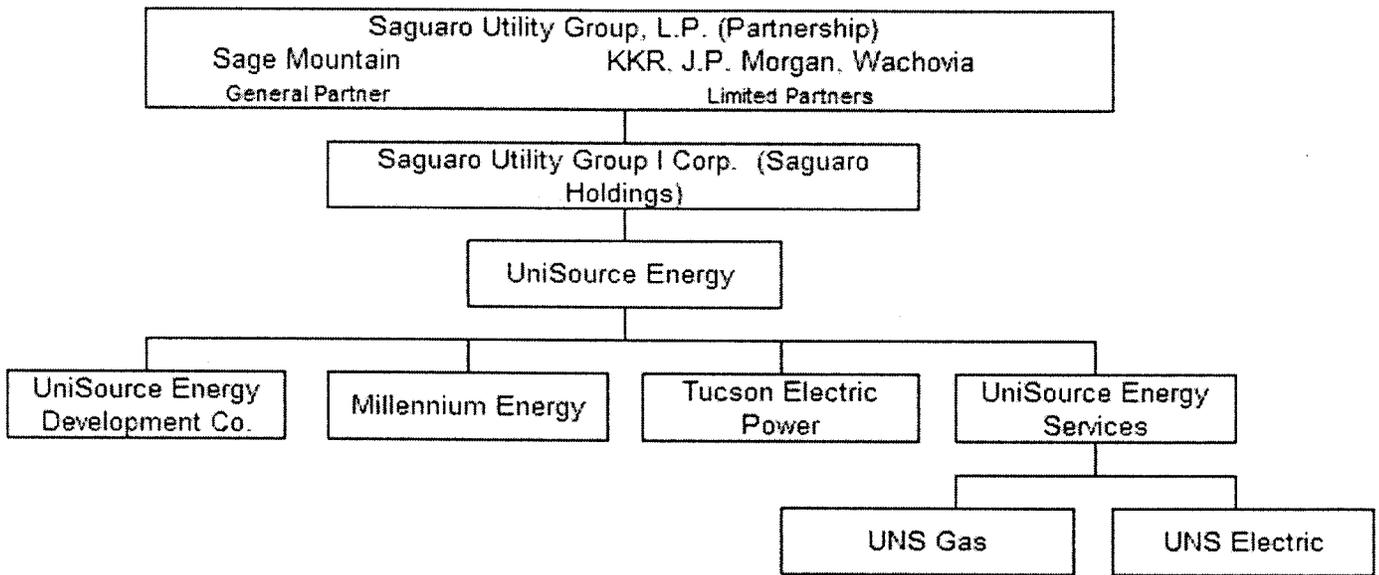
TEP, UNS Gas and UNS Electric shall not seek recovery of (i) any acquisition premium related to the merger of UniSource Energy and Saguaro Acquisition or (ii) any costs associated with the merger of UniSource Energy and Saguaro Acquisition in any future Arizona rate proceeding. Id.

**B**

**STAFF  
ATTACHMENT B**

**ORGANIZATIONAL CHART OF APPLICANT'S  
PROPOSED POST-MERGER STRUCTURE**

**Figure 2**



(Figure 2, Reiker Direct at 7).

Exhibit 4

UNISOURCE ENERGY CORPORATION  
SECOND SET OF DATA REQUESTS TO RUCO  
E-04230A-03-0933

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Q2-3. Please refer to the Rebuttal Testimony of Mr. James S. Pignatelli at page 12, line 24 through page 18, line 26 ("UniSource Energy's Proposed Conditions"). With respect to each of UniSource Energy's Proposed Conditions please separately state the following:

- a) Whether RUCO believes that UniSource Energy and each of its affiliates, Saguaro Acquisition, Saguaro Holdings, Saguaro LP or any of Saguaro LP's partners (each as defined in Mr. Pignatelli's testimony) would be legally required to perform the condition absent a Commission order adopting the condition. If so, please provide all citations to the existing legal requirement.
- b) Whether there already exists a statute, order, rule or regulation that provides the same type of requirement and/or protection contained in the condition. If so, please provide all citations to the existing statute, order, rule or regulation.
- c) Whether the condition would serve to mitigate, to any degree, any of the five (5) additional risks identified by RUCO in its direct testimony that it claims will be introduced by the Merger. Please provide a full explanation for your answer.
- d) Assuming the Commission were to approve the Merger, whether implementation of the condition by the Commission would be a benefit to the customers of UniSource Energy and each of its affiliates. Please provide a full explanation for your answer.

Response: See Attachment 2.3

CONDITION	(a)	(b)
A Financial Integrity/Ring Fencing		
1 Improvements to Capital Ratios	Dec. # 60480, Dec. # 66028, ARS 40-424	Dec. # 60480, Dec. # 66028, ARS 40-424
2 Ring-Fences	ARS 40-285, 40-302, 40-322, 40-202, Dec. #60480	ARS 40-285, 40-302, 40-322, 40-202, Dec. #60480
3 ACC Oversight, Authority, and Reporting	ARS 40-204, 40-202, 40-241, 40-425, Dec. #60480	ARS 40-204, 40-202, 40-241, 40-425, Dec. #60480
B Continued Service Quality/Reliability		
4 Minimum O&M and Capital Commitments	ARS 40-321, 40-322, 40-361	ARS 40-321, 40-322, 40-361
C Affiliate Relationships		
5 Customer Privacy	TEP Code of Conduct Sec. IV A, August 2, 2000	TEP Code of Conduct Sec. IV A, August 2, 2000
6 Cost Allocation Manual	ARS 40-241, R14-2-804	ARS 40-241, R14-2-804
7 Waivers to Affiliated Interest Rules	Dec. # 60480	Dec. # 60480
D Governance, Oversight, Community Presence		
8 Separate Utility Boards		
9 Maintenance of Headquarters	ARS 40-321, 40-322	ARS 40-321, 40-322
10 Arizona Operating Locations	ARS 40-321, 40-322	ARS 40-321, 40-322
11 ACC Authority Non-utility Investment	Dec. #60480, R14-2-804	Dec. #60480, R14-2-804
12 ACC Approval of General Partner	R14-2-803	R14-2-803
13 Acc Approval of Limited Partner	R14-2-803	R14-2-803
14 ACC Access to Records	ARS 40-241, 40-242, Dec. #60480, R14-2-804	ARS 40-241, 40-242, Dec. #60480, R14-2-804
15 Community Support		
E Non-recoverability of Merger/Affiliated Costs		
16 Saguaro Operation Costs	ARS 40-204, 40-202, 40-241, Dec. #60480, R14-2-804	ARS 40-204, 40-202, 40-241, Dec. #60480, R14-2-804
17 Acquisition Premium & Transaction Costs		

CONDITION	(c)	(d)
A Financial Integrity/Ring Fencing		
1 Improvements to Capital Ratios	No (1)	No (3)
2 Ring-Fences	No (1)	No (3)
3 ACC Oversight, Authority, and Reporting	No (1)	No (3)
B Continued Service Quality/Reliability		
4 Minimum O&M and Capital Commitments	No (1)	No (3)
C Affiliate Relationships		
5 Customer Privacy	No (1)	No (3)
6 Cost Allocation Manual	No (1)	No (3)
7 Waivers to Affiliated Interest Rules	No (1)	No (3)
D Governance, Oversight Community Presence		
8 Separate Utility Boards	No (2)	Yes
9 Maintenance of Headquarters	No (1)	No (3)
10 Arizona Operating Locations	No (1)	No (3)
11 ACC Authority Non-utility Investment	No (1)	No (3)
12 ACC Approval of General Partner	No (1)	No (3)
13 Acc Approval of Limited Partner	No (1)	No (3)
14 ACC Access to Records	No (1)	No (3)
15 Community Support	No (2)	Yes
E Non-recoverability of Merger/Affiliated Costs		
16 Saguaro Operation Costs	No (1)	No (3)
17 Acquisition Premium & Transaction Costs	No (2)	Yes

Notes

- (1) Other authority (see response to DR 2-3(b)) already exists requiring the commitment. RUCO was aware of that other authority at the time it rendered its opinion that the proposed transaction contains an unacceptable level of risk for a public service company.
- (2) Company proposed condition is not applicable to any of RUCO's five concerns.
- (3) No incremental benefit as condition is already addressed by other authority (see response to DR 2-3(b)).