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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN
COMMISSIONER

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COMMISSIONER

IN THE MATTER OF THE JOINT APPLICATION BETWEEN CITIZENS UTILITIES COMPANY; AGUA FRIA WATER DIVISION OF CITIZENS UTILITIES COMPANY; MOHAVE WATER DIVISION OF CITIZENS UTILITIES COMPANY; SUN CITY WATER COMPANY; SUN CITY SEWER COMPANY; SUN CITY WEST UTILITIES COMPANY; CITIZENS WATER SERVICES COMPANY OF ARIZONA; CITIZENS WATER RESOURCES COMPANY OF ARIZONA; HAVASU WATER COMPANY AND TUBAC VALLEY WATER COMPANY, INC., FOR APPROVAL OF THE TRANSFER OF THEIR WATER AND WASTEWATER UTILITY ASSETS AND THE TRANSFER OF THEIR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO ARIZONA-AMERICAN WATER COMPANY AND FOR CERTAIN RELATED APPROVALS.

- Docket No. W-01032A-00-0192
- Docket No. W-01032B-00-0192
- Docket No. W-01032C-00-0192
- Docket No. W-01656B-00-0192
- Docket No. SW-2276A-00-0192
- Docket No. WS-02334A-00-0192
- Docket No. WS-03454A-00-0192
- Docket No. WS-03455A-00-0192
- Docket No. WS-02013A-00-0192
- Docket No. W-01595A-00-0192
- Docket No. W-01303A-00-0192 ✓

Arizona Corporation Commission

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RUCO'S COMMENTS

The Residential Utility Consumer Office ("RUCO") files these comments on the Recommended Opinion and Order ("RO&O") issued on April 3, 2001.

Citizens' Gain on Sale

The RO&O concludes that customers should not share the \$71.2 million gain Citizens will realize from the transfer of its assets to Arizona-American. This conclusion is inconsistent with the Commission's recent decision relating to Qwest's sale of exchanges to Citizens. In

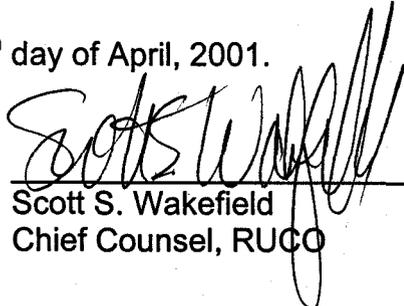
1 Decision No. 63268 (December 15, 2000), the Commission found it reasonable for Qwest to
2 share the gain it realized on its sale of exchanges. That decision followed the Commission's
3 general policy that gains should be shared with ratepayers. See Decision No. 55228, page 23.

4 Even if the Commission ultimately concludes that the gain should not be shared, the
5 Commission should use caution in selecting the language to justify its conclusion. The RO&O
6 states "We also do not believe that ratepayers bear a substantial risk by virtue of receiving
7 utility service...The utility's owners, i.e., its shareholder, ultimately bear the risks associated
8 with the utility's business. While regulation may reduce those risks relative to most non-
9 regulated businesses, regulation does not shift that risk to ratepayers, who are entitled to
10 receive utility service at rates set by the Commission." (RO&O, page 9, line 17 – page 10, line
11 2). Other jurisdictions have required gain sharing based on a conclusion that customers share
12 risks. See Democratic Cent. Com. of D.C. v. Washington M.A.T. Com'n, 485 F.2d 786, 807
13 (D.C. Cir. 1973) (risks of casualty losses and losses from premature retirement of assets
14 because of obsolescence generally fall on consumers); Wash. Gas Light Co. v. Public Service
15 Com'n, 450 A.2d 1187, 1238-39 (D.C.App. 1982) (ratepayers share in risk of catastrophic
16 losses); New York Telephone v. Public Service Com'n, 2000 N.Y. Int. 71 (App. June 13, 2000)
17 (in fully funding investment through rates, customers virtually eliminated risk to utility). The
18 quoted language may preclude the Commission from finding, in some future set of
19 circumstances, that a gain should be shared because rate regulation has shifted risk from
20 shareholders to customers. The Commission should carefully evaluate the precedential
21 impact of the language in the RO&O.

1 **Advances in Aid of Construction**

2 RUCO does not object to the RO&O's condition that the amortization of AIAC will begin
3 as of the date the transfer takes place. The Commission should take precautions, however, to
4 insure that the applicants are not permitted to undermine the benefit to customers from
5 amortization of the AIACs as provided for in the RO&O. For example, if Citizens were to
6 prepay its \$80 million in AIACs prior to the completion of the sale, there would be no remaining
7 AIACs to impute to Arizona-American. As a result, Arizona-American's rate base would be
8 \$80 million higher than Citizens' current rate base. This increase in rate base would require a
9 rate increase of approximately \$9.8 million per year in future rate proceedings. Consider
10 inserting language into the RO&O that prohibits Citizens from refunding any more than the
11 minimum amounts of AIAC as set forth in its advance agreements until the transfer to Arizona-
12 American is closed.

13 RESPECTFULLY SUBMITTED this 12th day of April, 2001.

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15 _____
16 Scott S. Wakefield
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20 AN ORIGINAL AND TEN COPIES
21 of the foregoing filed this 12th day of
22 April, 2001 with:

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