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AZ CORP COMMISSION  
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- 5 IN THE MATTER OF THE JOINT APPLICATION) Docket #E-03851A-00-0163
- 6 BETWEEN CITIZENS UTILITIES COMPANY, ) Docket #E-01032A-00-0163
- 7 INC. AND CAP ROCK ENERGY CORPORATION ) Docket #E-01032B-00-0163
- 8 FOR THE APPROVAL OF THE SALE OF ) Docket #E-01032C-00-0163
- 9 CERTAIN ELECTRIC UTILITY PROPERTIES ) **MARVIN LUSTIGER'S REPLY TO**
- IN ARIZONA AND THE TRANSFER OF THE ) **RESPONSE FROM CITIZENS TO**
- CC&N FROM CITIZENS AND THE ARIZONA ) **APPLICATION TO INTERVENE**
- ELECTRIC DIVISION TO CAP ROCK ENERGY. )

10 By my letter of March 25, 2000, I informally applied to  
 11 intervene in a number of Dockets. On April 11, the ACC wrote to  
 12 Citizens' lawyer and requested that any objection-response be  
 13 filed by April 21. Citizens' response was submitted on April 28.  
 14 By that late date, I had already filed a formal supplemental  
 15 Application to Intervene, in which I reduced the number of Dockets  
 16 in which I want to intervene.

17 The Commission will note that the certificate of service  
 18 in Citizens' response does not show my name. I did not even know  
 19 of the response until today, almost a week from the date it was  
 20 submitted by Citizens. Citizens has often shown difficulty in  
 21 acting in good faith with society's rules.

22 As predicted on Page 1, lines 25 and 26, of my Application to  
 23 Intervene, Citizens does not particularly want me to protect my  
 24 interests, or to scrutinize Citizens' numbers and its statements  
 25 to the ACC. Citizens' response, although misleading, was  
 26 nevertheless interesting.

27 My Application had set forth numerous factual assertions  
 28 concerning Citizens' prior conduct and its past and present

1 credibility. Citizens, in its response to the ACC, did not  
2 and could not deny any of those factual assertions.

3 Citizens says this proceeding will not affect rates or  
4 tariffs. That is preposterous. If, for example, Cap Rock  
5 overpays in this purchase, it will soon be coming to the ACC  
6 for rate increases, regardless of any non-binding promises  
7 its lawyers appear to make in their skilled presentation.  
8 If a public utility will fail unless it gets a rate increase,  
9 then the rates will be increased, regardless of prior propaganda.

10 Further, the details of Citizens' sale have been carefully  
11 hidden by it from the public, including the items set forth in  
12 my Application beginning on Page 6, line 27 to Page 7, line 13.  
13 These and other items will necessarily affect the rates and  
14 tariffs which will later be sought by Cap Rock.

15 Also, one of the still hidden agreements between the  
16 corporations, is how they intend to share the use and liabilities  
17 of the miles of poles which cross my lands. Each pole jointly  
18 carries what will be Cap Rock's electric lines and Citizens'  
19 telephone lines. This is but one of many major interests that  
20 I must protect in this proceeding, especially since I claim that  
21 many poles on my lands are not in any valid right of way.

22 Citizens, having been a losing defendant in the lawsuits  
23 I brought against it on account of its repeated land grabs and  
24 other unlawful conduct, knows the legal description of every one  
25 of the thousands of acres of lands I own in Mohave County. All  
26 these lands are under Citizens' certificate. Citizens knows that  
27 much of my lands have been subdivided, that many lots have been  
28 sold, and that homes and businesses have been built. The present

1 buyers and future buyers are or will be electric customers.

2 If a new power company provides even worse service than  
3 Citizens', at even higher rates, I will have difficulty in  
4 collecting monies due me on lots already sold, and I will have  
5 difficulty selling additional lots. The value of my assets will  
6 be affected by the Orders in this proceeding.

7 It is doubtful that there is a person in Arizona who will be  
8 more affected by this proceeding. Nevertheless, Citizens actually  
9 suggests in its response, that I must demonstrate my interests  
10 would not be adequately represented by the Staff or the RUCO.  
11 I respect both the Staff and the RUCO, and I thank Citizens for  
12 its suggestion, but I will represent and protect my interests.

13 Strangely enough, Citizens did not make the same demands,  
14 when the Arizona Utility Investors Association applied to  
15 intervene. That Association consists of owners of stock in  
16 various utility companies. The same as any other owner of assets,  
17 the members of that Association have a right to protect their  
18 investment. Some of those members have invested in Citizens,  
19 and quite properly they want to enhance the prospects that  
20 their stock will gain as a result of Orders in this proceeding.

21 The Association should not have been asked, and was not  
22 asked, if its members were electric customers of Citizens,  
23 or even if its members owned any property in the affected areas.  
24 No, the organization indicated its members had a financial  
25 interest in these proceedings. That should have been enough,  
26 and it was enough. Citizens did not demand that they be barred  
27 because the Staff would look out for their interests.

28 Citizens in its response to me, asserts that to intervene,

1 I must first cross the "initial threshold" of showing I am a  
2 Citizens' electric customer. It goes on to say: "The main  
3 question will be whether Cap Rock is a fit and proper entity  
4 to succeed to Citizens' CC&N."

5 Both of Citizens' assertions are wrong. The intervening  
6 Investors Association is not an electric customer. Further,  
7 it very likely does not care how fit and proper Cap Rock is,  
8 after Cap Rock pays Citizens. The Investors have investments  
9 in Citizens, not in Cap Rock.

10 It is an unfortunate exaggeration for Citizens to say that  
11 Cap Rock's fitness is the main question (and if Citizens has its  
12 way, the only question). Cap Rock's fitness would have to be  
13 a subjective call. Cap Rock is a newly-formed corporation with  
14 no real track record in Arizona, or elsewhere for that matter.  
15 It was created by the management of a moderate-sized electric  
16 co-op, which itself has never operated in Arizona.

17 Cap Rock's fitness is but one of many questions. The precise  
18 terms and conditions of the Citizens to Cap Rock Agreement, and  
19 the eventual Orders of the ACC, are of much more concern to me and  
20 others. Those terms and conditions may require certain Orders.

21 Citizens' objection to my Application is frivolous. It has  
22 no legal merit whatever. It makes demands that are contrary to  
23 precedent. It must be denied.

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RESPECTFULLY SUBMITTED this 3rd day of May, 2000.

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2 the foregoing mailed this  
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- 8 Copies of the foregoing mailed  
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