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INTERVENTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation 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)
IN ARIZONA AND THE TRANSFER OF THE)
CC&N FROM CITIZENS AND THE ARIZONA)
ELECTRIC DIVISION TO CAP ROCK ENERGY.)

10 MARVIN LUSTIGER'S APPLICATION TO INTERVENE

11 This new Application pertains to the Citizens-Cap Rock
12 Dockets cited above. Please delete from my earlier separate
13 request to intervene, some of the Dockets set forth in the
14 letter of April 11, 2000, from Debbi Person of your Commission.
15 The earlier request is to now pertain only to those other active
16 Dockets which entirely or in part deal with Citizens' electric
17 or telephone service in Mohave County.

18 I am a 70 year old layman, retired and ill, but determined to
19 fully participate in these matters. I have lived in Arizona for
20 most of my life. I intervened in public utility considerations
21 years ago. I have also appeared pro se in lawsuits.

22 Officials, lawyers and judges have opined that with respect
23 to filings and applications, I often have shown talent at finding
24 inaccurate statements, incomplete statements, and funny numbers.
25 Any party wanting a rushed, skimpy, rubber-stamped examination,
26 may be expected to vehemently object to my intervention.

27 I own thousands of acres of private, deeded properties in
28 Arizona. This includes vacant lands, subdivided lots, and

1 improved property. Most are in Mohave County, in the certificated
2 areas served by Citizens Utilities Company. I have owned the
3 properties for over forty years, that is, for half the time since
4 Arizona became a state. I have also, for the same length of time,
5 known Citizens and its methods of doing business.

6 Last month I filed a multimillion-dollar lawsuit in the
7 U.S. District Court in Phoenix against Citizens and a purported
8 subsidiary. The case number is CIV '00 0343-PHX-ROS. I appear
9 pro se. At the time the court action was filed, the undersigned
10 had no knowledge of the sale by Citizens to Cap Rock.

11 Citizens, rather than filing its Answer to the Complaint,
12 instead elected, as is its customary tactic, to delay getting to
13 the merits, by filing a Motion to Dismiss and an Affidavit. It
14 had done the same in several lawsuits I had filed against it years
15 ago. The new Motion and Affidavit was virtually word-for-word the
16 same as the old ones. I prevailed then and I expect the same now.
17 Each side has motions set to be argued in court October 16, 2000.

18 At this point, the new lawsuit is not on the Commission's
19 horizon. This Docket and that action are running on separate
20 tracks. Anyone wishing to know the nature of the several causes
21 of action in the Complaint, may read it and the subsequent
22 filings, in the Office of the Clerk of the Court.

23 I have come to intervene here because the use and value
24 of my properties, and my wallet, will be affected by Decisions
25 or Orders of the Commission in this matter. Therefore, it is
26 necessary and proper that I intervene.

27 Any company that fears close examination by a knowledgeable
28 person, should not be in the regulated public utility business.

1 The Joint Application is a masterful p. r. job, and the two
2 companies are to be congratulated. They have taken a worrisome
3 transfer, dealing with a certificated area larger than some
4 states, and somehow made it appear open and shut. Nevertheless,
5 the state should have deep concern.

6 In the Joint Application, Citizens says the crucial Agreement
7 between the companies will be filed and available for public
8 scrutiny, at some uncertain time in the future. Citizens says it
9 will meanwhile prepare a confidentiality agreement, which itself
10 is still not in the file, even though six weeks have passed since
11 Citizens filed the Joint Application.

12 Citizens implies that if the Chairman, or a Commissioner,
13 or a staff member, or an Intervenor, refuses to execute a
14 confidentiality agreement, then that person will not have access
15 to the crucial but hidden Agreement.

16 Both substance and appearance are vital in public decisions.
17 No state official should become a party to a scheme to keep
18 secret, even if "only" for months, a document upon which reliance
19 will be placed by the Commission in making its Orders. These
20 proceedings are public as a matter of law and politics. The
21 Agreement is a crucial document which must immediately be made
22 available to the public. To do otherwise would violate the public
23 trust. After reading the Agreement, other parties may apply to
24 become Intervenors. But they must read the Agreement first.

25 The public's interest will best be served if the Commission,
26 politely but forcefully, tells Citizens to go away, and to
27 resubmit the Joint Application at such time as it is ready to
28 fully, publicly and truthfully reveal all essential information,

1 with no conditions or strings attached.

2 Despite the almost total lack of meaningful information
3 in the Joint Application, the companies say the Commission's
4 approval must be completed (perhaps appropriately) by the day
5 after Halloween. They say that "shortening the transition
6 period (would) make communications among the Applicants and
7 the Commission both smoother and more efficient."

8 Of course it would. Indeed, if the Commission would only
9 agree to approve the transaction at an even earlier date, the
10 transfer of assets and of the CC&N could be as smooth and
11 efficient as when a skilled pickpocket transfers your assets.

12 In the final paragraph of the Joint Application, the
13 Commission is warned that unless it agrees to be rushed, Citizens'
14 employees and customers will suffer "uncertainty." That sounds
15 dire, almost like a life-threatening affliction.

16 "Uncertainty" over what, exactly? The Joint Application
17 assures that Cap Rock hopes and expects to retain all current
18 employees. It also says "the transaction will not affect rates
19 and tariffs." This suggests that the same service and overpricing
20 that occurred during the long reign of Citizens, will go on
21 unchanged under Cap Rock. Not much to be uncertain about there.

22 The Mohave County electric division has provided tens
23 of millions of dollars of profits for its company headquartered
24 in Stamford, Connecticut. Those profits came from the backs of
25 residents and businesses in Mohave County. If a thorough
26 examination of the transfer reveals hidden potholes and the deal
27 falls through, power will not stop. Customers will not be
28 affected, nor will employees. Life will go on, the power

1 distribution will go on, and Citizens will find a new buyer
2 for its money-making division.

3 The Joint Application is similar to the charming ads in
4 magazines, pushing the merits of new, expensive prescription
5 drugs. The ads have a beautiful picture and large print, assuring
6 the reader of the good things that will come his or her way, if
7 the reader obtains this wonder drug at once. In much smaller
8 print, the manufacturer lists worrisome side effects uncovered
9 in the clinical trials.

10 The undersigned hopes that before rushing to judgment
11 on this electric transfer, the Commission and all intervenors
12 read all small print carefully, and ask many questions. I have
13 learned in life, to be cautious when a high pressure salesman
14 tries to rush an important decision. I have also learned that
15 a corporation with Citizens' documented history with respect
16 to credibility and integrity, should not necessarily be suspected
17 of doing things for humanitarian reasons.

18 While Citizens and Cap Rock have a joint desire to rush the
19 process for their own financial benefit, the public's interest
20 cannot be served by rushing this matter. As stated above, the
21 companies have not yet even provided the crucial information
22 from which examiners will raise pertinent questions. How could
23 anyone in good conscience rush, or even start on this matter,
24 with so little necessary information yet at hand?

25 One party, Cap Rock, has no track record in Arizona whatever;
26 and the other party has a half-century track record of misleading
27 state agencies, overcharging consumers, and using "facts" and
28 numbers for rate-setting purposes that at the least have been

1 shown to be creatively inaccurate and incomplete. Indeed,
2 Citizens may not even have played fair with its own shareholders.

3 This is not conjecture. The conclusions are public knowledge
4 from Citizens' court records and from information Citizens itself
5 furnished in its 10K filings with the S.E.C. Several states have
6 disputes ongoing with Citizens, and several have already made
7 findings adverse to Citizens. Concurrently with these state
8 problems, shareholders have filed two class-action federal suits.

9 It appears that Citizens demand for a quick approval by this
10 Commission, may be in reliance on its belief that some in Arizona
11 will be glad to see the last of Citizens, the sooner the better.
12 Even if such a feeling exists among some consumers and regulators,
13 it must not be allowed to hasten what should be a thorough,
14 painstaking examination and verification of all facts and numbers
15 presented (once they are finally presented), no matter how long
16 it takes. Count the silverware before the questionable guest
17 leaves the premises, not after. Citizens should not profit from
18 its own wrongs, by getting quickly rubber-stamped just because
19 some may want to be rid of it.

20 I have no knowledge, nor apparently does the Commission,
21 as to the terms and conditions of the Agreement between the
22 companies. Citizens says it declines to now make the Agreement
23 a part of the public record, because it does not want to be open
24 and candid with prospective buyers of its natural-gas utility
25 properties services. That tells us nothing about the Agreement,
26 but it says a great deal about Citizens.

27 Neither I nor the Commission at this time has any knowledge
28 about precisely how the companies have agreed to divvy up the

1 properties, the other assets, the rights, the unused income tax
2 deductions, and the responsibilities and liabilities (including
3 such items as possible judgments, fines, income tax underpayments
4 and federal or state penalties for wrongful acts).

5 Throughout most of its certificated area in Mohave County,
6 Citizens has run its electric and telephone wires on the same
7 poles in the same rights of way. We haven't yet even been given
8 a clue as to what the secret Agreement says about how Citizens
9 and Cap Rock intend to share the costs of acquisition of rights
10 of way, and the costs of maintenance of poles and cross arms.
11 Nor have we been told how they intend to share the perhaps
12 overlapping subsidies paid by different federal agencies for
13 bringing electric and telephone services to rural areas.

14 Citizens has always specialized in serving rural areas, where
15 real competition does not exist and federal subsidies are sought
16 and received. This business plan of Citizens has provided it with
17 huge profits that in the past may not have been fully understood
18 by agencies of various states. Several states have recently
19 awakened, and issued Orders directed against Citizens.

20 On Page 3 of the Joint Application, Citizens gives several
21 reasons for its decision to move on. One reason not stated there,
22 but told by Citizens to its shareholders, is that Citizens is
23 changing the focus of its activities in part because it wishes
24 to reduce the amount of state regulation of its activities.
25 Citizens has not told its shareholders whether that decision
26 grew out of the fact that a number of regulatory boards no
27 longer offer cozy environments for Citizens' business practices.

28 We know nothing meaningful about the Cap Rock Energy

1 Corporation. Is Cap Rock well-funded and run by experienced
2 officers and directors who are dedicated to bringing better
3 service and lower prices to consumers in this state? If yes,
4 then Cap Rock could receive a warm welcome in Arizona. But this
5 process can take nothing for granted. The Commission should
6 skeptically and thoroughly examine all relevant documents, ask
7 many questions, and verify the answers. The Commission and the
8 Intervenors must not be rushed. The public has much at risk here.

9 I do not enjoy having to discuss Citizens' history and
10 credibility, but those who ignore history will surely relive it.

11 In planning for the future with Cap Rock or any other
12 successor, we must look at the history with Citizens. Scrutiny
13 must be thorough and Orders must be given to ensure that the
14 Commission, customers, taxpayers and property owners are not
15 taken for an increasingly-expensive ride.

16 But first things first. And the first order of business is
17 to instruct Citizens to resubmit the Joint Application at such
18 time as it is ready, able and willing to provide the Agreement
19 and all other relevant information. The Joint Application should
20 be rejected until the blindfolds are removed. We live in a free,
21 open, and democratic society. Citizens must live by our rules.

22 I am the person upon whom service of documents shall be made.

23

24 RESPECTFULLY SUBMITTED this 20th day of April, 2000.

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Marvin Lustiger
Marvin Lustiger, pro se
5105 North 79th Place
Scottsdale, AZ 85250-7237
Home Tel. (480) 941-1500

- 1 Original and ten copies of
the foregoing mailed this
2 20th day of April, 2000, to:
Docket Control
3 Arizona Corporation Commission
1200 West Washington
4 Phoenix, AZ 85007
- 5 Copies of the foregoing mailed
this 20th day of April, 2000 to:
6 Jerry Rudibaugh, Chief Hearing Officer
Hearing Division
7 Arizona Corporation Commission
1200 West Washington
8 Phoenix, AZ 85007
- 9 Lyn Farmer, Chief Counsel
Legal Division
Arizona Corporation Commission
10 1200 West Washington
Phoenix, AZ 85007
- 11 Deborah Scott, Director
Utilities Division
12 Arizona Corporation Commission
1200 West Washington
13 Phoenix, AZ 85007
- 14 Debbi Person
Administrative Services Officer I
Arizona Corporation Commission
15 1200 West Washington
Phoenix, AZ 85007
- 16 Craig A. Marks
Associate General Counsel
17 Citizens Utilities Company
2901 North Central Avenue, Suite 1660
18 Phoenix, AZ 85012
- 19 Michael C. Dotten
Heller, Ehrman, White & McAuliffe, LLP
Attorneys for Cap Rock
20 200 S.W. Market Street, Suite 1750
Portland, OR 97201-5718
- 21 Scott S. Wakefield, Chief Counsel
Residential Utility Consumer Office
22 2828 North Central Avenue, Suite 1200
Phoenix, AZ 85004
- 23 Walter W. Meek, President
Arizona Utility Investors Association
24 2100 N. Central Avenue, Suite 210
Phoenix, AZ 85004
- 25 John D. Parker
V.P. & Chief Financial Officer
26 Cap Rock Electric
500 West Wall, Suite 400
27 Midland, TX 79701
- 28 Marvin Lustiger