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ARIZONA CORPORATION COMMISSION

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DATE: NOVEMBER 9, 2001

DOCKET NO: E-01032A-01-0348

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

CITIZENS COMMUNICATIONS COMPANY  
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 19, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 27, 2001 and NOVEMBER 28, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
5

6 PETER AND PATRICIA GOSHIA d/b/a BURRO  
INN,

7 Complainants,

8 Vs

9 CITIZENS COMMUNICATIONS COMPANY,

10 Respondent.

DOCKET NO. E-01032A-01-0348

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

11  
12 DATE OF HEARING:

September 6, 2001

13 PLACE OF HEARING:

Tucson, Arizona

14 PRESIDING OFFICER:

Jane L. Rodda

15 APPEARANCES:

Mr. Peter Goshia, in propria persona; and

16 Mr. Todd Wiley, GALLAGHER & KENNEDY,  
17 on behalf of Citizens Communications  
Company.

18 **BY THE COMMISSION:**

19 On April 24, 2001, Peter and Patricia Goshia dba Burro Inn ("Complainants") filed a  
20 Complaint with the Arizona Corporation Commission ("Commission") against Citizens  
21 Communications Company ("Citizens" or the "Company"). On May 18, 2001, Citizens filed an  
22 Answer. By Procedural Order dated May 30, 2001, the Hearing Division set the matter for hearing  
23 on July 12, 2001. On June 14, 2001, Complainants requested a continuance to allow them additional  
24 time to gather information. Pursuant to Procedural Order dated June 21, 2001, the hearing was  
25 rescheduled for September 6, 2001, in Tucson, Arizona.

26 Complainants own and operate the Burro Inn in Tubac, Arizona. Their business consists of a  
27 restaurant and an inn with four guestrooms. Complainants' charges stem from bills for electric  
28 service that they received for service in July through September 1999. Complainants closed their

1 business for the summer that year and believe that the amount of electricity shown on those bills is  
 2 incorrect. Complainants allege that their electric meter appears to be operating incorrectly and not  
 3 utilizing the correct multiplier. They do not believe that Citizens adequately tested their meters.  
 4 They further allege that Citizens promised them a credit for demand charges, but no credit ever  
 5 appeared on their bill, and also that Citizens did not provide a complete copy of its tariffs upon their  
 6 request. In their Complaint, Complainants request that the Commission: (a) determine the multiplier  
 7 on their meter; (b) determine if the demand meter is appropriate for their use; (c) obtain information  
 8 on "missing" bills and determine start and ending kWh reading on the meter that was replaced; (d)  
 9 determine the actual corrected August 1999 bill; (e) determine the lowest applicable tariff; (f)  
 10 calculate corrected bills and alleged over-charges from 1992 to the present; and (g) require Citizens  
 11 to refund over charges times three, plus interest.

12 Mr. Goshia came to believe there was a problem with his electric meter when he received his  
 13 July 1999 bill. The bill was for the period June 17 through July 20, 1999, and showed a demand  
 14 charge of \$216.60 and an energy charge of \$195.44. Complainants assert that the charges were  
 15 unreasonable in light of the fact they were not open during the period. They allege the bills for  
 16 August and September 1999 are also unreasonable and believe that a problem with the meter has  
 17 caused them to be over-billed since they opened the business in 1992. They believe that the  
 18 conditions resulting in the alleged over-billing continue through the present. In October 1999,  
 19 Complainants requested that Citizens remove the meter and replace it with a new one. They believe  
 20 the alleged problems continue with the new meter.

21 The following is a summary of Complainants' bills for the relevant period in 1999:

<u>Date</u>	<u>Period</u>	<u>Customer Charge</u>	<u>Demand Charge</u>	<u>Energy Charge</u>	<u>Dusk to Dawn</u>	<u>Taxes</u>	<u>Current Due</u>
6/21/99	5/19-6/17	\$10.10	\$216.60	\$213.01	\$42.62	\$26.36	\$508.69
7/23/99	6/17-7/20	\$10.10	\$216.60	\$195.44	\$42.62	\$24.79	\$489.55
8/23/99	7/20-8/18	\$10.10	\$110.20	\$65.88	\$42.62	\$10.86	\$259.66

1	8/25/99 <sup>1</sup>	6/17-8/18	\$30.30	\$330.60	\$474.33	\$127.86	\$50.07	\$1,013.16
2	9/24/99	8/18-9/20	\$10.10	\$99.80	\$57.10	\$42.62	\$10.21	\$218.83

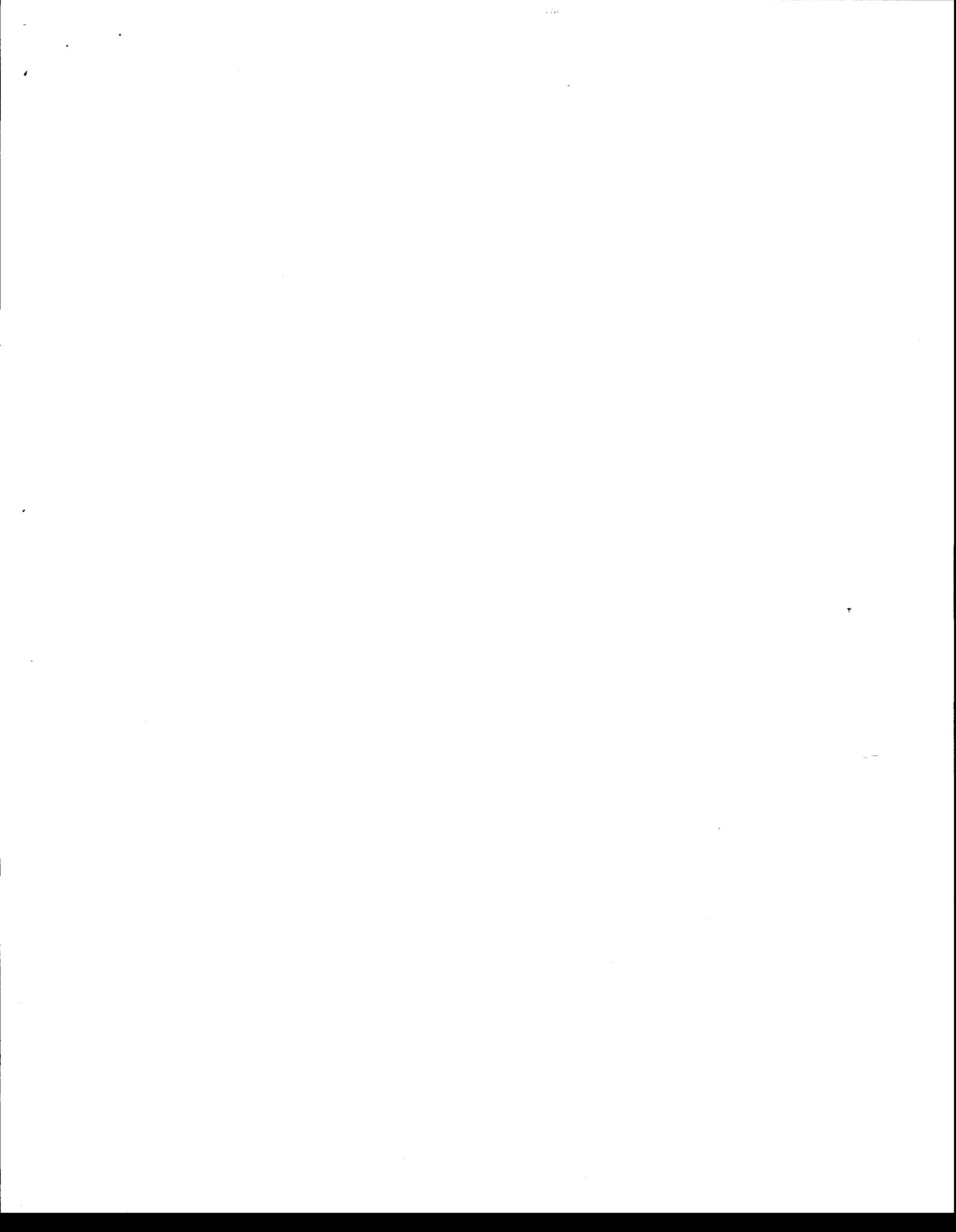
3

4           Because the inn was closed in July, Complainants believed there must have been a mistake  
5 when they received the July 23, 1999 bill. They also believed the August bill was too high given the  
6 fact they were closed. Citizens investigated and found that the bills were correct, but nonetheless, as  
7 a matter of customer relations, on August 25, 1999, Citizens gave Complainants a credit for a portion  
8 of the demand charges for June, July and August 1999, and issued a corrected bill.

9           Even at the hearing, Citizens' witness had a difficult time recreating and explaining how the  
10 August 25, 1999 bill was calculated. It is understandable that Complainants had a difficult time  
11 trying to determine how Citizens credited their account. To make the credit for past months, Citizens  
12 re-billed the Complainants for June, July and August, crediting them for \$212.80 for a portion of the  
13 demand charges for those months (i.e. reducing the demand charges from \$543.40 to \$330.30). The  
14 August 25, 1999 bill also reflects the June payment of \$537.78 (for gas and electric service),  
15 Complainants made in July 1999, but shows the payment as a negative previous balance rather than  
16 labeling it as a prior payment. It is difficult, if not impossible, to tell from the August 25, 2001, re-  
17 bill how Citizens adjusted the bill. Citizens claims that it credited Complainants for one-half the  
18 demand charges for June, July and August 1999, however, the amount of the credit, \$212.80, is not  
19 equal to half of those charges. The difficulty in understanding the bills was complicated further  
20 because the bill format at that time did not contain a separate line item for late charges. Citizens  
21 asserts that the current bill format includes a separate line for late charges.

22           Citizens asserts that it tested the old meter and it proved to be functioning 100 percent  
23 accurately. The Company asserts that it has also reviewed all bills and confirmed that they are  
24 accurate. A Commission electrical engineer made a site visit in August 2000, and verified that the  
25 meter was wired correctly and using the correct multiplier of 40. Two Commission Staff witnesses  
26 testified that Citizens has complied with Commission regulations concerning the testing of the meter

27 <sup>1</sup> The August 25, 1999, bill was a re-billing for June, July and August 1999. The total demand charges for June, July and  
28 August was \$543.40, but Citizens reduced this amount to \$330.60. After showing the June payment of \$537.78 (for gas  
and electric), the August 25, 1999, bill shows a total amount due of \$475.38 (\$1013.16 - \$537.78).



1 and billing

2 Complainants offered no evidence, except their bills, that indicates the meters were not  
3 working accurately. The bills alone are not sufficient to show that the meters were inaccurate. When  
4 Commission Staff investigated the matter, they determined that the energy used and reported on the  
5 bills was consistent with past usage. Although Complainants claim that the equipment they had  
6 running in July, August and September couldn't have used as much electricity as is reflected on the  
7 bills, they did not offer any evidence of how much electricity the equipment should have used.

8 Complainants have the burden of proof to show that their meters are not working properly,  
9 that Citizens did not test the meter correctly, or that Citizens has violated a Commission regulation or  
10 law. We find that Complainants have not met that burden of proof.

11 Part of the Complaint is that Citizens did not provide Complainants with a complete copy of  
12 its tariffs. In this case, Mr. Goshia visited the Company's Nogales office for the purpose of  
13 reviewing the Company's tariffs and was told that no one in the office knew where they were. The  
14 Company did send Mr. Goshi copies of certain pages from the tariff related to his service, but  
15 evidently did not provide him with the complete tariff. Citizens' witness testified that Mr. Goshia  
16 should have had access to the tariffs at the Company's office. Although there is no regulation  
17 addressing the issue, Citizens has elected to make its tariffs available for review at its offices. We  
18 commend the company for this policy, however, we believe that the Company should review its  
19 procedures relating to customer requests for access to tariffs and ensure that its customer service  
20 representatives know where the tariffs are located and are able to make them available for customer  
21 review.

22 Another secondary issue is the length of time it took Citizens to inform Mr. Goshia of the  
23 results of the meter test for the meter that was removed. Citizens replaced and tested the meter in  
24 October 1999 but did not send a letter about the results to Mr. Goshia until March 2000. Our rules do  
25 not address the time frame for informing customers about the results of meter tests. However, we  
26 believe the Company should review its meter testing procedures to see that it informs customers of  
27 meter test results in a timely fashion.

28 During the proceeding, Complainants appeared concerned that it was unusual for a business

1 of their size to be on a demand meter. Citizens analyzed Complainants usage and determined that  
2 being on a demand tariff would save them money. In the event Complainants still question whether  
3 they are on the appropriate tariff, Commission Staff, at Complainants' request, shall assist them to  
4 determine the best tariff.

5 Having considered the entire record herein and being fully advised in the premises, the  
6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. On April 24, 2001, Complainants filed a Complaint with the Commission against  
9 Citizens.

10 2. On May 18, 2001, Citizens filed an Answer.

11 3. By Procedural Order dated May 30, 2001, the Hearing Division set the matter for  
12 hearing on July 12, 2001.

13 4. On June 14, 2001, Complainants requested a continuance to allow them additional  
14 time to gather information.

15 5. Pursuant to Procedural Order dated June 21, 2001, the hearing was rescheduled for  
16 September 6, 2001, in Tucson, Arizona.

17 6. Complainants own and operate the Burro Inn in Tubac, Arizona. Their business  
18 consists of a restaurant and an inn with four guestrooms.

19 7. Complainants are on a commercial tariff and utilize a demand meter.

20 8. Complainants allege that they have been over-billed for electricity use because their  
21 meter is not operating properly.

22 9. Complainants first noticed that their electric usage was higher than they would have  
23 expected in July 1999, because they had closed the business that year from July through September.

24 10. At Complainants' request in October 1999, Citizens replaced their meter.

25 11. Citizens' meter test indicated that the meter was functioning properly.

26 12. Complainants allege that their electric meter appears to be operating incorrectly and  
27 not utilizing the correct multiplier. They do not believe that Citizens adequately tested their meters.  
28 They further allege that Citizens promised them a credit for demand charges, but no credit ever

1 appeared on their bill, and also that Citizens did not provide a complete copy of its tariffs upon their  
2 request. In their Complaint, Complainants request that the Commission: (a) determine the multiplier  
3 on their meter; (b) determine if the demand meter is appropriate for their use; (c) obtain information  
4 on "missing" bills and determine start and ending kWh reading on the meter that was replaced; (d)  
5 determine the actual corrected August 1999 bill; (e) determine the lowest applicable tariff; (f)  
6 calculate corrected bills and alleged over-charges from 1992 to the present; and (g) require Citizens  
7 to refund over charges times 3, plus interest.

8 13. A Commission electrical engineer inspected the Complainants meter and determined  
9 that it was wired correctly.

10 14. There is no evidence that the multiplier on the Complainants' meter is incorrect or that  
11 the meter was or is operating improperly or that Citizens did not test the meter properly.

12 15. Although there was no requirement to do so, on August 25, 1999, Citizens credited  
13 Complainants' account for \$212.80, representing a portion of the demand charges for June, July and  
14 August 1999.

15 16. Commission regulations do not require that the Company make its tariffs available at  
16 its offices, however, Citizens testified that it keeps copies of its tariffs in its offices and they are made  
17 available to customers upon request.

18 17. Citizens should review its internal procedures and ensure that its employees  
19 understand where tariffs are located in the office so they can be made available to customers upon  
20 request and that meter test results are conveyed to customers in a timely fashion.

21 18. Complainants should contact Commission Staff if they want assistance in determining  
22 the best tariff available.

23 **CONCLUSIONS OF LAW**

24 1. Citizens' is a public service corporation within the meaning of Article XV of the  
25 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

26 2. The Commission has jurisdiction over the Citizens and the subject matter of the  
27 Complaint.

28 3. Notice of this proceeding was provided as required.

1 4. Complainants have not shown by a preponderance of the evidence that Citizens has  
2 violated any Commission regulation or Order, or Arizona statute, or that the Company is operating  
3 contrary to its approved tariffs.

4 5. The evidence shows that Citizens has not over-charged Complainants.

5 **ORDER**

6 IT IS THEREFORE ORDERED that the Complaint filed by Peter and Patricia Goshia dba  
7 Burro Inn against Citizens Communications Company shall be dismissed.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10  
11  
12 CHAIRMAN

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this \_\_\_\_ day of \_\_\_\_\_, 2001.

18 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

19 DISSENT \_\_\_\_\_

JR:dap

1 SERVICE LIST FOR: PETER AND PATRICIA GOSHIA dba BURRO INN

2 DOCKET NO.: E-01032A-01-0348

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