

WILLIAM A. MUNDELL
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OPEN MEETING



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EXECUTIVE SECRETARY

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DATE: SEPTEMBER 19, 2001
DOCKET NOS.: W-01032B-00-1043 and SW-03454A-00-1043

TO ALL PARTIES:

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

CITIZENS COMMUNICATIONS COMPANY
(AGUA FRIA DIVISION) and
CITIZENS WATER SERVICES COMPANY
(CC&N EXTENSION)

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 **12:00** p.m. on or before:

SEPTEMBER 28, 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:

OCTOBER 2, 2001 and OCTOBER 3, 2001

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

Arizona Corporation Commission

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKET NO. W-01032B-00-1043

IN THE MATTER OF THE APPLICATION OF
CITIZENS COMMUNICATIONS COMPANY,
AGUA FRIA DIVISION, FOR (1) AN EXTENSION
OF THE AREA COVERED BY ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY, (2) APPROVAL OF THE
CATERPILLAR PROPERTY
WATER/WASTEWATER AGREEMENT, (3)
APPROVAL OF THE TARIFF FOR THE WATER
FACILITIES HOOK-UP FEE, (4) APPROVAL OF
THE TARIFF FOR GENERAL NON-POTABLE
WATER SERVICE, AND (5) APPROVAL OF
RULE NO. 12 APPLICABLE TO NON-POTABLE
WATER SERVICE.

IN THE MATTER OF THE APPLICATION OF
CITIZENS WATER SERVICES COMPANY OF
ARIZONA FOR (1) AN EXTENSION OF THE
AREA COVERED BY ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WASTEWATER SERVICE, (2)
APPROVAL OF THE CATERPILLAR PROPERTY
WATER/WASTEWATER AGREEMENT, AND (3)
APPROVAL OF THE TARIFF FOR THE
WASTEWATER FACILITIES HOOK-UP FEE.

DOCKET NO. SW-03454A-00-1043

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: August 23, 2001
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
APPEARANCES: Todd C. Wiley, GALLAGHER & KENNEDY, on
behalf of Citizens Communications Company;
Teena Wolfe, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On December 20, 2000, Citizens Communications Company, Agua Fria Division ("Citizens")

1 and Citizens Water Services Company of Arizona ("DistCo") filed with the Arizona Corporation
2 Commission ("Commission") a joint application for approval to extend their respective existing
3 Certificates of Convenience and Necessity ("Certificates" or "CC&Ns") to provide water and
4 wastewater service for property in west central Maricopa County, Arizona, as more fully described in
5 Exhibit A hereto.

6 On July 10, 2001, a Procedural Order was issued setting the matter for hearing on August 23,
7 2001 and ordering that public notice of the hearing be accomplished in accordance with the
8 Procedural Order.

9 On July 25, 2001, the Commission's Utilities Division Staff ("Staff") filed a Staff Report in
10 this matter.

11 On July 30, 2001, Citizens filed a Notice of Certification of mailing verifying that its notice of
12 hearing had been sent to each property owner in the affected area.

13 On August 23, 2001, a public hearing was convened before a duly authorized Administrative
14 Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff entered
15 appearances through counsel.

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

18 **FINDINGS OF FACT**

19 1. Citizens is a Delaware corporation and diversified public utility that provides electric,
20 natural gas, telecommunications, water and wastewater service to approximately 1.8 million
21 customers in 20 states, including Arizona. Citizens provides water and wastewater services to
22 portions of Maricopa, Mohave, and Santa Cruz Counties in Arizona.

23 2. On December 20, 2000, Citizens and DistCo filed a joint application for extensions of
24 their respective existing CC&Ns to provide water and wastewater service to an area in west central
25 Maricopa County currently within the town of Buckeye corporate limits and adjacent to and within
26 the White Tank Mountains. The application reflects the continued development of an area known as
27 Whitestone by a developer named DMB White Tank, LLC ("DMB"). DMB requested that Citizens
28 and DistCo provide water and wastewater service, respectively, to Whitestone. The proposed service

1 area is not currently served by any other certificated utility company.

2 3. Citizens, DistCo and DMB have entered into the Caterpillar Property
3 Water/Wastewater Agreement ("Agreement"), which provides that DMB will construct the initial
4 backbone facilities to serve the development and advance the facilities to Citizens and DistCo.
5 Citizens and DistCo will, in turn, refund the advances to DMB based on a fixed fee per service
6 connection. The Agreement also provides that subsequent water/wastewater facilities will be funded
7 through non-refundable hook-up fees assessed to builders within the development. Under the
8 Agreement, the rate base for the backbone facilities should be approximately half of what the rate
9 base would otherwise be absent a hook-up fee arrangement.

10 4. The DMB Whitestone development is expected to be an 8,800 acre master planned
11 community within the town of Buckeye's corporate limits, and adjacent to the White Tank Mountain
12 Regional Park as well as State and Bureau of Land Management land. Whitestone is located at the
13 northwest corner of 203rd Avenue and McDowell Road, and the property rises more than 2,500 feet
14 from an elevation of approximately 1,100 feet to 3,671 feet at its highest point. It is expected that
15 Whitestone will eventually include more than 14,000 residential dwelling units and approximately
16 four million square feet of commercial and industrial use space. DMB plans to develop Whitestone
17 in 7 phases, with initial residential construction commencing in 2003 and full build-out expected
18 within 15 years. At build-out, the number of water and wastewater customers is expected to translate
19 to 9,589 equivalent residential units ("ERUs") and 2,056 commercial equivalent units.

20 5. The Agreement further provides, among other things, that the Citizens companies will
21 review and approve the DMB Master Plan prior to construction of the water/wastewater facilities by
22 DMB. The Citizens companies will inspect the construction of Phase I off-site facilities and the on-
23 site backbone facilities and each phase of the facilities will become the property of the Citizens
24 companies upon issuance of an operational acceptance by the companies. The Agreement may be
25 assigned by a party to a parent corporation or other entity in which it has a controlling interest. The
26 Citizens companies are permitted to assign the Agreement to American Water Works Company, Inc.,
27 Arizona-American Water Company, or any subsidiary thereof.

28 6. Staff's analysis indicates that, since there are no identified off-site service wells or

1 water lines that could be extended to the site, an independent potable water supply and delivery
2 system must be developed. Staff states that the general overall groundwater quality in the area is
3 good, with the exception of elevated nitrate concentrations in several wells. The groundwater will be
4 pumped from the well sites to a mixing facility and, in the event the groundwater requires treatment,
5 a treatment plant will be constructed in lieu of the mixing tank. The first well site is an existing well
6 site that is currently pumping 600 gallons per minute ("gpm"). A second well site has been drilled to
7 920 feet. Due to the slope of the property, 17 pressure zones will be created in order to maintain a
8 pressure range of 35 psi at 80 feet and 56 psi at 130 feet.

9 7. The developer has completed a groundwater investigation for the project that indicates
10 production rates for new production wells of 1,000 to 1,500 gpm. It is estimated that the project will
11 require the development of three potable production wells for the Phase I maximum day flow of
12 potable water, plus supplemental golf course irrigation at full build-out. Staff notes that one of the
13 three potable production wells is required for redundancy, and one effluent recovery well will be
14 needed to optimize the utilization of effluent for golf course irrigation.

15 8. Citizens has not been designated as having an assured water supply pursuant to A.R.S.
16 § 45-576(D). Until Citizens has been designated by the director of the Arizona Department of Water
17 Resources (ADWR) as having an assured supply, the developer or associated builders must seek and
18 obtain Certificates of Assured Water Supply from ADWR prior to subdividing and developing the
19 property. Citizens will execute Notices of Intent to Serve in accordance with ADWR requirements,
20 and will enter into contracts as are required by the Central Arizona Groundwater Replenishment
21 District, pursuant to A.R.S. §§ 48-3772(B) and 48-3774(C).

22 9. The Agreement provides that potable water services will be provided by Citizens in
23 accordance with the Company's approved rates and tariffs. Non-potable water service will be
24 provided to the development under the same rates and terms in effect currently for the Citizens
25 Anthem Project (\$0.62 per 1,000 gallons). DistCo will provide wastewater services to the
26 Whitestone development under its current rates and tariffs approved by the Commission.

27 10. Based on its review of the Application and related documents, Staff recommends that
28 the Commission approve:

- 1 a. the Caterpillar Property Water/Wastewater Agreement, as modified;
- 2 b. the Agreement's tariff applicable to non-potable water service, as amended on
- 3 July 23, 2001;
- 4 c. the Agreement's July 23, 2001 amended hook-up fee tariff to be charged by
- 5 Citizens for subsequent water facilities; and
- 6 d. the Agreement's July 23, 2001 amended hook-up fee tariff to be charged by
- 7 Citizens for subsequent wastewater facilities.

8 Staff also recommends that the Commission require all hook-up fees collected under the tariffs to be
9 placed in separate interest bearing accounts and used only for the installation of backbone off-site
10 facilities. Staff further recommends that the Commission require Citizens and DistCo to file annual
11 reports on the hook-up fee accounts disclosing: the name of each entity paying a hook-up fee; the
12 amount of the hook-up fee paid by each entity; a description of the utility plant constructed with
13 hook-up fee funds; the balance of the hook-up fee account; interest earned on the hook-up fee
14 account; and any other information required by Staff. In addition, Staff recommends that the
15 Commission require the hook-up fees to be considered non-refundable contributions. Staff
16 recommends that the Commission require Citizens and DistCo to charge their existing rates, except
17 for hook-up fees and non-potable water for which no current tariffs exist. Finally, Staff recommends
18 that the Commission require Citizens to file all related municipal agreements within 365 days of this
19 Decision.

20 11. Citizens did not file any objections to the Staff Report prior to the hearing, as directed
21 by a July 10, 2001 Procedural Order. However, at the hearing Citizens stated opposition to Staff's
22 recommendation that the hook-up fee funds should be maintained in a separate interest bearing
23 account and the recommendation that Citizens should be required to file annual reports on the hook-
24 up fee balances. Citizens witness Ray Jones testified that Staff's recommendation was unnecessary
25 because, except in the first few years of the project, the hook-up fees will be disbursed faster than
26 they are received. Mr. Jones stated that the hook-up fees are only expected to account for half of total
27 cost of the backbone facilities and, once the first large facility is constructed, there will never be
28 funds collected in excess of those expended (Tr. 17-18). Mr. Jones also testified that the separate

1 account requirement would be detrimental to current customers because, rather than allowing
2 Citizens to record the hook-up fees immediately as contributions which would reduce rate base and
3 depreciation expense, the separate account would earn only minimal interest. Additionally, Mr. Jones
4 indicated that requiring the funds to be maintained in a separate account would be burdensome to
5 Citizens because the Company receives and disburses cash on a centralized basis at the corporate
6 level. Finally, Mr. Jones stated that, because Citizens is a large company with assets exceeding \$6
7 billion, there should be no concern by the Commission regarding the availability of funds for
8 construction of facilities (*Id.* at 19-20).

9 12. Staff witness Jim Fisher testified at the hearing that, despite the reasons stated by
10 Citizens, Staff believes the hook-up fees should be maintained in a separate account. He indicated
11 that "hook-up fees are not a normative program for a utility" and, therefore, such funds should be
12 maintained separately to ensure that they are available to be spent only on infrastructure requirements
13 (Tr. 34-35). Mr. Fisher also stated that maintaining hook-up fees in a separate account would guard
14 against possible accounting errors and would aid regulatory compliance. He testified that Staff's
15 recommendation in this case is consistent with the Commission's policy in prior proceedings,
16 although he was not aware of any instances where a company as large as Citizens had sought a hook-
17 up fee tariff for a large development. However, he stated that the separate account requirement for
18 hook-up fees had been applied consistently for all companies that had previously been authorized to
19 collect such fees (*Id.* at 42-44).

20 13. We agree with Staff that the hook-up fees collected by Citizens and DistCo should be
21 maintained in separate accounts, consistent with past decisions by the Commission. As Staff points
22 out, inclusion of the hook-up fees in separate accounts will help ensure that the funds are readily
23 available for their intended purpose, *i.e.*, the construction of backbone facilities necessary to serve the
24 Whitestone development. Further, the separate accounts will assist Staff in future rate cases in
25 auditing the flow of funds in and out of the accounts (for purposes of determining the proper crediting
26 of these contributions in aid of construction against the Applicants' rate bases). This may be
27 especially important given the pending sale of Citizens' assets to American Water Works Company.
28 We do not believe that maintaining these funds in separate accounts represents an undue
administrative burden on the Company and, indeed, the separate accounting treatment may assist

1 Citizens' ability to track capital expenditures for this project.

2 14. Aside from the hook-up fee issues discussed above, Citizens and DistCo agree to
3 comply with and abide by all of the recommendations contained in the Staff Report. Accordingly,
4 Citizens, DistCo, and Staff agree that the proposed tariffs, as amended by Hearing Exhibit A-2,
5 should be approved and that Citizens and DistCo should charge their existing rates and charges for
6 potable water service and wastewater service, and the Citizens Anthem Project rates for non-potable
7 water, in the area described in Exhibit A attached hereto.

8 **CONCLUSIONS OF LAW**

9 1. Citizens Communications Company, Agua Fria Division (Citizens), and Citizens
10 Water Services Company of Arizona (DistCo) are public service corporations within the meaning of
11 Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12 2. The Commission has jurisdiction over Citizens and DistCo and the subject matter of
13 the application.

14 3. Notice of the application was provided in accordance with law.

15 4. There is a public need and necessity for water and wastewater utility services in the
16 proposed extension area.

17 5. Citizens and DistCo are fit and property entities to receive an extension of their water
18 and wastewater Certificates which, as proposed, would encompass an area currently within the town
19 of Buckeye corporate limits, at the northwest corner of 203rd Avenue and McDowell Road, in west
20 central Maricopa County, as more fully described in Exhibit A attached hereto.

21 6. Staff's recommendations set forth in Findings of Fact No. 10 and 12 are reasonable
22 and should be adopted.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the application of Citizens Communications Company,
25 Agua Fria Division, and Citizens Water Services Company of Arizona for an extension of their
26 Certificates of Convenience and Necessity to include an area in west central Maricopa County,
27 Arizona, as set forth in Exhibit A hereto, be, and hereby is granted.

28 IT IS FURTHER ORDERED that the Caterpillar Property Water/Wastewater Agreement

1 between Citizens Communications Company, Agua Fria Division, Citizens Water Services Company
2 of Arizona, and DMB White Tank, LLC, is hereby approved.

3 IT IS FURTHER ORDERED that the proposed tariffs for Citizens Communications
4 Company, Agua Fria Division, and Citizens Water Services Company of Arizona, as amended,
5 including the hook-up fees for water and wastewater facilities, as well as the tariffs for potable and
6 non-potable water service, are approved.

7 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
8 and Citizens Water Services Company of Arizona shall comply with Staff's recommendation to
9 maintain all water and wastewater hook-up fees related to this project in a separate interest bearing
10 account, and to file annual reports in accordance with Staff's recommendation.

11 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
12 and Citizens Water Services Company of Arizona treat all water and wastewater hook-up fees related
13 to this project as non-refundable contributions.

14 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
15 and Citizens Water Services Company of Arizona charge their existing rates and charges for
16 customers in the Whitestone development, with the exception of hook-up fees and non-potable water
17 charges, which shall be assessed in accordance with the tariffs contained in the Application and
18 Hearing Exhibit A-2, and as amended by the Staff Report.

19 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
20 and Citizens Water Services Company of Arizona shall file water and wastewater tariffs in
21 compliance with this Decision within 30 days.

22 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
23 and Citizens Water Services Company of Arizona shall file copies of all required permits and
24 approvals to the Utilities Division Director within 18 months of the date of this Decision.

25 IT IS FURTHER ORDERED that Citizens Communications Company, Agua Fria Division,
26 and Citizens Water Services Company of Arizona shall file a copy of all related municipal franchise
27 agreements within 365 days of the effective date of this Decision.

28 IT IS FURTHER ORDERED that, in the event Citizens Communications Company, Agua

1 Fria Division, and Citizens Water Services Company of Arizona fail to meet the above conditions
2 within the time specified, the extension of the Companies Certificates of Convenience and Necessity
3 shall be deemed to be denied, without further Order of the Arizona Corporation Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN COMMISSIONER COMMISSIONER
9

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2001.

14 BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
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SERVICE LIST FOR:

CITIZENS COMMUNICATIONS COMPANY

DOCKET NOS.:

W-01032B-00-1043 and SW-03454A-00-1043

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