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**BEFORE THE ARIZONA CORPORATION COMMIS**

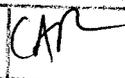
Arizona Corporation Commission

COMMISSIONERS

**DOCKETED**

JUN 25 2003

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

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ARIZONA CORPORATION  
COMMISSION

2003 JUN 25 A 11:13

RECEIVED

IN THE MATTER OF THE APPLICATION OF THE ARIZONA ELECTRIC DIVISION OF CITIZENS COMMUNICATIONS COMPANY TO CHANGE THE CURRENT PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE RATE, TO ESTABLISH A NEW PURCHASED POWER AND FUEL ADJUSTMENT CLAUSE BANK, AND TO REQUEST APPROVED GUIDELINES FOR THE RECOVERY AND COST INCURRED IN CONNECTION WITH ENERGY RISK MANAGEMENT INITIATIVES.

**Docket No. E-01032C-00-0751**

IN THE MATTER OF THE APPLICATION OF CITIZENS COMMUNICATIONS COMPANY, ARIZONA GAS DIVISION, FRO A HEARING TO DETERMINE THE FAIR VALUE OF ITS PROPERTIES FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, AND TO APPROVE RATE SCHEDULES DESIGNED TO PROVIDE SUCH RATE OF RETURN.

**Docket No. G-01032A-02-0598**

IN THE MATTER OF THE JOINT APPLICATION OF CITIZENS COMMUNICATIONS COMPANY AND UNISOURCE ENERGY CORPORATION FOR THE APPROVAL OF THE SALE OF CERTAIN ELECTRIC UTILITY AND GAS UTILITY ASSETS IN ARIZONA, THE TRANSFER OF CERTAIN CERTIFICATES OF CONVENIENCE AND NECESSITY FROM CITIZENS COMMUNICATIONS COMPANY TO UNISOURCE ENERGY CORPORATION, FOR APPROVAL OF THE FINANCING FOR THE TRANSACTIONS AND OTHER RELATED MATERS.

**Docket No. E-01933A-02-0914**

**Docket No. E-01032C-02-0914**

**Docket No. G-01032A-02-0914**

**MARSHALL MAGRUDER**

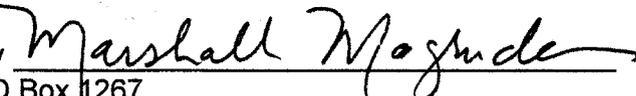
**RESPONSE TO ALJ'S  
RECOMMENDATIONS**

**June 25, 2003**

This presents Marshall Magruder's response with respect to the Recommended actions by Administrative Law Judge Dwight D. Nodes to the Commissioners on 6 June 2003.

Respectfully submitted this 25<sup>th</sup> day of June 2003.

MARSHALL MAGRUDER

By   
PO Box 1267

Tubac, Arizona 85646

Original and Copies are certified filed this date as shown on the Service List (last page)

1 **FIRST ISSUE: RESOLUTION OF THE BILLING DISPUTE<sup>1</sup> FOR PROBABLE EXCESSIVE**  
2 **CHARGES BY APS UNDER THE OLD AND NEW AGREEMENTS.<sup>2</sup>**  
3

4 Reference: Quote from Page 3 of the ALJ's Recommendations:

5 "Because APS did not own sufficient generating capacity to meet its full load  
6 requirements, it purchased power on the spot market and charged Citizens the highest cost  
7 of market power that it purchased every hour under the "floor price" provision of the contract.  
8 The impact of the floor price provision was not evident to Citizens until May 2000 when the  
9 spot market became volatile and APS began to assess Citizens significantly higher bills  
10 under the purchase power contract. APS and Citizens disagreed regarding how the System  
11 Incremental Cost provision of the contract should be interpreted. After analyzing its options,  
12 Citizens decided not to submit the contract interpretation dispute to the FERC but, instead,  
13 renegotiated the contract with APS. Ultimately, Citizens entered into a "New Contract" with  
14 APS' parent company, Pinnacle West Capital Corporation ("PWCC"), effective June 1, 2001,  
15 that contained a simple fixed purchase power rate."  
16

17 **Discussion.**

18 1. The above is a summary of the dispute that caused the PPFAC case. Questions:  
19 How could APS charge "highest cost or market power that it purchased every hour" to  
20 Citizens? APS serviced Citizens reasonably for about 30 years. What caused this abrupt  
21 change? Obviously, the formula used to make Citizens pay for APS's insufficient generation  
22 capabilities provided a subsidy to APS's shareholders. This is blatantly unfair, unreasonable  
23 and as close to fraudulent business practice as one could imagine by a public service  
24 company. APS has never been called, questioned, or summoned to these proceedings,  
25 neither by the ACC Staff nor by the ALJ. Why?  
26

27 2. Mr. Pignatelli, UniSource's CEO, testified that even he was leery of trying to negotiate  
28 a new, purchase power agreement with PWCC/APS. What is wrong with fair, honest, and  
29 open business relationships, where the "best" wins based on performance, not regulatory  
30 trickery or deceitful business practices? If APS is causing an unfair situation, the

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<sup>1</sup> This is the term originally used by the Administrative Law Judge (ALJ) Procedural Order of 18 April 2002 where, at 9(12-21), states "... the contract dispute issue is inextricably intertwined with this case because the Staff and RUCO advocate litigation against APS with respect to the contract billing dispute... Staff contends that an objective observer could conclude that Citizens' decision to abandon litigation against APS is an indication **that Citizens and APS have simply agreed to let ratepayers bear the PPFAC costs** and avoid the necessity of litigation. Staff adds that, contrary to Citizens' assertions, the Commission's review of this issue does not constitute an attempt to regulate the practice of law, but instead involves the **Commission's legitimate concern with the fairness of its proceedings.**" [Emphasis has been added]. It should be noted that UniSource's DeConcini testified times that, UniSource never evaluated the Old Agreement.

<sup>2</sup> This issue is related to the first issue in Magruder Summary Brief of 15 May 2003, at 3(15-25) and at 5(6-17).

1 Commission should, after investigation, halt passing on excessive costs to defenseless  
2 ratepayers.<sup>3</sup>

3  
4 3. My testimony listed nineteen, apparently, imprudent decisions that Citizens made in  
5 events leading up to and including these hearings.<sup>4</sup> Most of these decisions are related to the  
6 failure to pursue what's right to collect from PWCC/APS. PWCC/APS has been listed, and is  
7 under investigation, by FERC for possibly manipulating the western energy markets in 2000  
8 and 2001, the time period the outrageous charges.

9  
10 4. The only company making "windfall profits" from the Citizens purchased power  
11 contracts is a non-party. PWCC/APS has collected all of the \$135 million it billed. Citizens  
12 paid these monthly bills, as required by its agreements.

13  
14 5. Until PWCC/APS is brought into an open hearing, with its data laid out for all to view,  
15 PWCC/APS will always, in my opinion, have something to hide from this Commission and the  
16 parties to the PPFAC case, and possibly from the Western Market manipulation  
17 investigations.<sup>5</sup> The Commission should conduct the analysis and investigation of the factors  
18 leading to the billing dispute, started by Citizens in the fall of 2000, and continued to present.  
19 Arizona ratepaying citizens and smaller companies such as Citizens deserve and expect  
20 protection from predatory companies. Large companies have no special dispensation from  
21 the "fair and reasonable" requirements set forth for the Commission in Arizona Statutes.

22  
23 6. As presently worded, the ALJ's Recommendations none of the under-recovered  
24 "PPFAC bank balance... may be recovered by Citizens, UniSource or any of its subsidiaries."  
25 This actually lets PWCC/APS go without requiring any effort toward recovering the \$135  
26 million.<sup>6</sup>

27  

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<sup>3</sup> See Magruder Testimony of 27 April 2003, Exhibit A, for SEC Form 10-K and 10-Q excerpts that denounced APS charges excessive.

<sup>4</sup> See Magruder Testimony of 27 April 2003, Table 1 at 15(18) to 18.

<sup>5</sup> See *Final Report on Price Manipulation in Western Markets – Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, of 26 March 2003, FERC Docket No. PA02-2-000 at ES-16, VI-19, and VI-36, which include Arizona Public Service Company's possible roles.

<sup>6</sup> See ALJ's Recommendation at 9(1-6).

1 7. Why haven't these charges been investigated? Where is our Attorney General? Are  
2 there high-level conflicts of interest or is there some "horse-trading" by utility industry  
3 members going on?<sup>7</sup> As shown in Magruder Exhibit One, and after the California energy  
4 crisis, Citizens service area is referred to as "Little California". I can only wonder why.  
5

6 8. There are two "billing dispute" temporal periods result: (1) Before 1 June 2001 and (2)  
7 After 1 June 2001, when the "Old" Agreement was replaced to the "New" Agreement.

8 (1) For the first period, all overcharges resulting in refunds by APS should be refunded to  
9 Citizens, up to the amount "unrecovered" by Citizens from its ratepayers. If there are  
10 additional refunds from the Old Agreement, these should be refunded to ratepayers. If  
11 any regulatory body assessed fines or penalties, these should be refunded to the  
12 ratepayers or prorated between Citizens and ratepayers.

13 (2) For the period after 1 June 2001, any PWCC/APS refunds should be prorated as  
14 under the Old Agreement until the date of "transfer" to UniSource, or any other entity,  
15 occurs. At transfer, a new purchase power rate should be used (as discussed below).

16 If it were found, that refunds are due, none of the recovery from any judicial or government  
17 investigatory proceeding should be allocated to UniSource.  
18

19 **Recommendations:**

- 20 a. That the ACC (or another Arizona state entity) should continue the investigation  
21 started by Citizens and complete as suggested in paragraphs 5 to 8 above.  
22 b. See Magruder Summary Brief at 11(11-19) for additional recommendations.  
23

24 ***SECOND ISSUE: NEW AGREEMENT PURCHASED POWER RATES.***  
25

26 **Reference:** Quote from Pages 11 and 12 of the ALJ's Recommendations:

27 "The Stipulation provides that, as of the date of closing of the acquisition of the Citizens  
28 electric assets by UniSource, the purchase power adjustor [sic] rate<sup>8</sup> will be set at \$0.01825  
29 per kilowatt hour ("kWhr"). Adding the current base rate for purchase power of \$0.05194 per  
30 kWhr to the adjustor [sic] rate would result in a total purchased power rate of \$0.79019 (See  
31 Appendix C of Settlement Agreement).

32 "The Joint Intervenors raised concerns with this provision of the Settlement because they  
33 believe the new PPFAC adjustor [sic] rate is based on an excessive purchase power price that is

<sup>7</sup> Even the ACC Staff is suspicious. See Footnote 1 above.

<sup>8</sup> The tem from the title of the PPFAC case uses "adjustment" instead of the informal term "adjustor."

1 contained in the New Contract. For example, Mr. Magruder testified that the wholesale electricity  
2 rate in the New Contract of \$58.79 per MWh<sup>9</sup> is almost twice the rate available recently on the  
3 spot market (Magruder Ex. 2, at 18-24). Mr. Magruder believes that the New Contract rate is  
4 excessive because it was negotiated during a period of volatility in the California and western  
5 energy markets (*Id.* at 22).

6 "The Joint Applicants and Staff Dispute Mr. Magruder's contentions. Staff contends that the  
7 purchased power price should be evaluated on a going-forward basis because, even though the  
8 New Contract was for a seven-year term (from June 1, 2001), under the Settlement Agreement  
9 customers will not be required to pay for the first two years of PPFAC costs. Staff witness Lee  
10 Smith also discussed the benefits of the "load-following" nature of the contract, the risk premium  
11 associated with a long-term contract such as the one Citizens entered into with PWCC, the cost of  
12 long-distance transmission, and the cost of ancillary services. (Tr. 300-304). Based on recent spot  
13 prices from the Palo Verde index, Ms. Smith concluded the purchased power price in the New  
14 Contract was reasonable. She indicated that, even if market manipulation created an expectation  
15 of higher prices when the New Contract was negotiated in 2001, the relevant comparison is to  
16 evaluate the New Contract to current market prices on a going-forward basis, including the  
17 appropriate adders for following load, risk premium, ancillary services and transmission (*Id.* at  
18 306-308). RUCO's witness also testified that the New Contract was reasonable on a going-  
19 forward basis, based on an analysis that was similar to the one undertaken by Staff (*Id.* at 576).

20 "Joint Applicant witness DeConcini also described the benefits of the New Contract. He  
21 explained that the New Contract is a full-requirements supply agreement that requires PWCC to  
22 meet the instantaneous demand of Citizens' customers. Due to the full requirements nature of the  
23 contract, as well as the inclusion of network transmission and ancillary services, Mr. DeConcini  
24 believed that the New Contract is a reasonable agreement (Joint App. Ex. 9, at 2-4). He also  
25 claims that, compared to other contracts entered into in 2001 and the cost of constructing  
26 generation facilities at that time or in today's market, the New Contract provides a reasonable  
27 prices for power supplied to Citizens' customers, especially considering the benefit to customers  
28 associated with the forfeiture of the first two years' PPFAC costs (*Id.* at 5-8; Tr. 140, 184).

29 "We agree with the Joint Applicants, Staff and RUCO that the price contained in the New  
30 Contract is not an unreasonable rate for electricity considering all the relevant factors. As  
31 described by the Staff and Joint Applicant witnesses, the appropriate evaluation of market prices  
32 must include consideration of the full-requirements, load-following nature of the contract, as the  
33 inclusion of necessary transmission and ancillary services. Based on all of these factors, as well  
34 as the Stipulation's requirements that the Joint Applications may not seek recovery of PPFAC  
35 costs for a more than two-years period under the New Contract (June 1, 2001 to the expected  
36 closing date of July 28, 2003), we find that the new purchase power adjustor [sic] rate of \$0.01825  
37 is not unreasonable. Although we conclude that the new adjustor [sic] rate is the Stipulation is not  
38 unreasonable, given current market conditions we believe that UniSource should continue to  
39 negotiate with PWCC for additional concessions."  
40

#### 41 **Discussion.**

42 9. The Commission ratemaking responsibility and authority determine, establish and  
43 enforce "fair and reasonable" utility rates for both ratepayers and utility companies, no more,  
44 no less. The ALJ did not state in his Recommendations that the New Agreement rates were  
45 "fair and reasonable." At the present time, the "New" Agreement is exorbitant using every

<sup>9</sup> The New Contract price of \$0.05879 per kWhr is the generation supply component. The total purchased power rate of \$0.07019 kWh is determined by adding the \$0.05879 generation component t the line loss (\$0.06583) and transmission (\$0.00436) components (Joint App. Ex. 6, App. C). For purposes of comparing market prices for generation, it is appropriate to use the \$0.05897 kWh price.

1 possible measure. The Applicants did not prove that the wholesale purchase power rate of  
2 \$58.79 per MW-hour was justified, or that the new rate should be applicable for the  
3 remaining part of the "new" PWCC agreement, as will be discussed below. Therefore, this  
4 rate should not be permitted to stand. Let's review the points found in the above quote.

- 5
- 6 a. "Generation Rate." This is the price Citizens (or UniSource) would pay PWCC/APS to  
7 purchase wholesale electricity (Purchase Power Price). It was increased from \$48.20  
8 (Old Agreement) to \$58.79 (New Agreement). This is the "rate" being disputed. The  
9 others below are not disputed and are already accounted for in the \$58.79.
- 10 b. Network Transmission Charges and Transmission (energy) Loss. These are accounted  
11 for separately when determining PPFAC. See quoted ALJ footnote. These are not  
12 disputed.
- 13 c. Ancillary Services. This cost is not PPFAC related, but appears more appropriate in a  
14 General Rate Case.

15

16 10. As shown in my Testimony at 22-23, at least six other "pressures" were impacting  
17 Citizens during these negotiations. In addition, Citizens' McCarthy testified he did not have  
18 an energy market staff as other companies, such as TEP had, during the PWCC/APS  
19 negotiations. A Citizens response to a Staff Data Request stated Citizens did not debate,  
20 negotiate or even question the \$58.79 when first presented by PWCC/APS during  
21 negotiations. It was never deconstructed, zero-based or evaluated, just taken as presented.  
22 Distribution electric utilities are not directly impacted by purchase power costs, which are  
23 passed directly to ratepayers, without markups by the distribution utility company. Purchase  
24 power "pass-through" should continue if UniSource acquires Citizens.

25

26 11. On 8 February 2003, TEP's Chief Financial Officer Larsen, during an "investor's"  
27 Conference Call, stated that the "annual wholesale electricity forecast was \$32.00 and  
28 \$34.00 per MW-hr for 2003.<sup>10</sup> This agrees with "going-forward" rates discussion by Ms. Lee  
29 Smith,<sup>11</sup> the Staff, RUCO and Mr. DeConcini. This and Table 6 (Magruder Testimony at 22)  
30 clearly show comparisons of "around the clock" plus firm and on-peak market values.

<sup>10</sup> See Magruder Summary Brief at 4(1-5) and Magruder Testimony at 19(1-5).

<sup>11</sup> Smith appears confused in her testimony, as she used \$42 per MW-hr then added transmission, risk and ancillaries to arrive at \$58. See Tr. at 304 (20-25). It needs to be noted that \$58.79 is the "New" Agreement

1 12. Smith discussed a "load-following" adder as a means for PWCC/APS to account for  
2 the variable load, based on Citizens demand.<sup>12</sup> APS has been Citizens sole-source power  
3 provider for the past 30 years. With this experience, knowledge, and the statistical records,  
4 matching the several delivery points for Citizens, load following should not be challenging for  
5 a professional energy generation company. By this time, Citizens should have been treated  
6 as a "regular" customer and service delivered as demanded. This is not like delivery to a  
7 highly variable customer, as there are few industrial and commercial/business customers  
8 with highly variable loads. The Citizens pricing structure with its "demand charges" has  
9 benefited the residential customers at the detriment of these other customer categories.<sup>13</sup>  
10

11 13. Smith testified a "risk premium" adder for a long-term contract needs to be included.  
12 Other than during the May 2000 to July 2001 time period, when the wholesale market was  
13 out-of-control, annual around-the-clock purchase power cost in Arizona have not exceeded  
14 \$35.00 per MW-hr. UniSource's *Annual Report for 2001* stated the year-around wholesale  
15 purchase power cost was \$91.00 during this turbulent period. Yes, that's high, but the market  
16 was being manipulated, not managed, and the primary wholesale regulatory agency, FERC,  
17 was unwilling to stop it, until late in the fall of 2000. For a seven-year contract (one year at  
18 \$91 and seven years at \$35 averages \$43 per year). Thus, an anomaly such as \$91 is  
19 averaged out. Note \$43 is considerably less than \$58.79. As my Summary Brief indicated,  
20 adding \$5 or so for risk should be fair and reasonable.<sup>14</sup>  
21

22 14. DeConcini discussed "full requirements" to meet instantaneous demands as "firm  
23 capacity and energy" requirements, similar to Smith's "load following" challenge discussed  
24 above. From a wholesale pricing viewpoint, "firm" delivery is required, thus "firm" prices  
25 should be used for any comparisons. DeConcini failed to do this in his examples.

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generation purchase power base with adders for transmission, risk and ancillaries. Her \$42 compares closely to Larsen's \$32-34, if one adds about \$5 to his for risk premium. Magruder Summary Brief (15 May 2003) discussed this as issue two at 5(19) to 6(7) and 11(21) to 12(5).

<sup>12</sup> The New Agreement requires Citizens to provide predicted peak load estimates.

<sup>13</sup> Unfortunately, the ACC Staff has not recognized this. The "Staff's Notice of Errata – Supplemental Exhibit" of 3 June 2003, still fails to account for "demand charges" which make Citizens business, commercial and industrial charges increasingly higher than residential rates. This is contrary to good business practices, detrimental for business development and economic growth, as was clearly stated during Public Comment Sessions in both Nogales and Phoenix.

<sup>14</sup> See Magruder Summary Brief, footnote 12, which indicated about 15% added to the wholesale generation rate would be reasonable ( $\$35 \times .15 = \$5.25$ ). Using \$58.79, gives a markup of \$31.05, which is neither reasonable nor fair.

1 15. DeConcini presented four comparisons that were all rebutted during his testimony.  
2 The Applicant's Final Brief failed to reply or question my oral or written testimony. First, each  
3 of his examples was from California, which had, in 2001, the third highest state electricity  
4 rates, about 50% more than Arizona (13.6¢ versus 8.3¢/kW-hr) according to EIA. Second,  
5 please see Transcript for details concerning non-relevance for his four examples. No  
6 example he used compared the factors necessary for Arizona with similar dates, firm  
7 delivery, around-the-clock. Third, July 2001 was the operative month (when the New  
8 Agreement was signed), but three of the four examples were in Jan. and Feb. 2001 when  
9 rolling-blackouts were simultaneously occurring in California. Fourth, "year-round" firm  
10 delivery requirements should have been used. It most interesting that Pignatelli and Larsen  
11 both discussed year-around values in his February 8, 2003, Conference Call<sup>15</sup> Fifth,  
12 DeConcini's discussion about a new power plant was not relevant to the New Agreement.  
13

14 16. The applicants repeatedly claimed the New Agreement was "approved" by the  
15 FERC.<sup>16</sup> This stretches the stated FERC position that it "reviews" for compliance with  
16 applicable electrical interconnections, tariffs, and laws. This is discussed in FERC's response  
17 to PWCC's New Agreement.  
18

19 17. Citizens determined, in the fall and winter of 2000, that the FERC rarely got involved  
20 in "rate" issues and that such details were usually left to the States to negotiate, litigate in  
21 order to resolve the implementation of Federal Power Act's requirements for "fair and  
22 reasonable." This appears to have been the primary reason Citizens came to the ACC for  
23 resolution of the billing dispute with APS instead of the FERC.  
24

25 18. There is the mandate in A.R.S. §40-203, for the Commission to "set" utility rates in our  
26 State. This authority needs to be exercised in this case. In my testimonies of 27 April 2003,  
27 8 November 2002, 28 September 2002 and 13 March 2002, I have provided ample statistics  
28 to show that \$58.79 is excessive, out of bounds of reality by any measure, and fails to meet

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<sup>15</sup> See Magruder Testimony, 27 April 2003, Table 6 – Various Wholesale Rates, page 22. See UniSource Forms 10-K and 10-Q for additional quotes for year-round wholes sale prices. Further, the ALJ implies I used spot market data, which is not accurate. Please see the table and my other submissions.

<sup>16</sup> See page 9 at 23-25 which states "Staff also points out that it would have been difficult to prevail at the FERC on the issue of imprudence of the New Contract, because the terms of that contract had previously been approved by FERC (*Id.* At 37)." This is a significant change in the ACC Staff's position. See Footnote 1 above.

1 "fair and reasonable" standards. The joint applications have no reason to be concerned with  
2 these rates since Citizens is a "distribution" company which "passes through" purchase  
3 power costs, with no profit or fees for this service.  
4

5 19. Thus, there is no reason, other than "other transactions" beyond this case that could  
6 have any impact on UniSource, no matter what purchase power cost. Just like Citizens,  
7 UniSource has no stake in this issue; however, APS (or PWCC) is directly involved.  
8

9 20. Since APS declined to participate in the analysis proposed by Citizens to determine  
10 the "bottoms-up billing" for purchase power, it must be that APS refuses to disclose means it  
11 uses. The forward market should be the basis to determine future cost for purchase power.  
12 In no year, other than May 2000-July 2001, has the year-around cost for purchase power  
13 exceeded \$35.00 per MW-hr. Recently, UniSource's CFO Mr. Keith Larson stated that using  
14 "between \$32 to \$34 per MW-hr" for 2003,<sup>17</sup> thus a reasonable and conservative value of  
15 \$35.00 per WM-hour, would appear to be quite reasonable to ensure APS (PWCC) has a fair  
16 and reasonable profit and customers pay fair and reasonable prices for electricity.  
17

18 21. Therefore, by the authority under A.R.S. §§40-203, APS should be directed to change  
19 \$58.79 to \$35.00, in its New Agreement with Citizens (or successor), starting 1 August 2003  
20 until 31 May 2007 and that Citizens, UniSource or succeeding entity be required to pay APS  
21 only \$35.00 per MW-hour starting 1 August 2003.  
22

23 **Recommendations:**

- 24 a. That PWCC/APS be informed that its New Agreement is being modified, effective 1  
25 August 2003, by changing "\$58.79" to read "\$35.00."  
26 b. That UniSource, or other purchaser of Citizens, be directed to pay PWCC/APS \$35.00  
27 per MW-hr instead of \$58.79, starting 1 August 2003.  
28 c. That the Commissioners write a letter to the FERC explaining that the purchase power  
29 rate change was made to ensure fair and reasonable rates in Arizona.  
30

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<sup>17</sup> Please see the discussion, facts and proof concerning rates in Magruder Testimony, 27 April 2003, 18 to 24. This is the same as Issue Three in Magruder Summary Brief at 6(9-10), 12(7) to 13(17), Tables 1 and 2.

1 **THIRD ISSUE – RATE INCREASE MITIGATION MEASURES<sup>18</sup>**

2  
3 Reference. Quote from page 24 of ALJ's Recommendations:

4 "Both RUCO and Mr. Magruder raised the issue of increased funding for demand-side  
5 management ("DSM") programs. ... Mr. Magruder recommends that customers should be  
6 given financial incentives to "load shape" in order to move usage from peak to off-peak  
7 periods (Magruder Ex. 2, at 30-31). ...

8 "... We believe the better means of addressing the issue of DSM is through a generic  
9 investigation of the costs and benefits of such measures. In Decision No. 65743 (March 14,  
10 2003), the Commission directed Staff to 'facilitate a workshop process to explore the  
11 development of a DSM policy and an environmental risk policy' and to file a report within 12  
12 months from the date of that Decision. Since a broader policy investigation into DSM is  
13 already underway, it is appropriate to consider the issues raised by RUCO and Mr. Magruder  
14 within the framework of that proceeding."  
15

16 Discussion.

17 22. Unfortunately, the ALJ missed a main issue, which was to provide ways for ratepayers  
18 to reduce the impacts of the proposed rate increase.

19  
20 23. The DSM, energy efficiency and proactive performance-based goals established in my  
21 Summary Brief were more aggressive than the present ACC DSM program.

22  
23 24. Waiting for at least three (really four) years and a General Rate Case will not help  
24 those immediately impacted by rate increases. Without such a program, with 31% below the  
25 poverty line and high seasonal unemployed (up to 25%) in Santa Cruz County service area,  
26 its customers will have significant burdens to pay their utility bills, especially in the winter  
27 since most homes are electrically heated.

28  
29 Recommendation.

30 That consideration be given to implementing rate mitigation measures in my Summary  
31 Brief for possible concurrent implementation with any rate increases.  
32

33 **FOURTH ISSUE – WHY ARE CITIZENS RATES BEING INCREASED WHEN THE OTHER MAJOR**  
34 **UTILITIES ARE DECREASING THEIRS?**  
35

1 **Discussion.**

2 25. See Magruder Exhibit One which has an article concerning "Little California" where the  
3 electric rates are increasing by 22% since 1997 and on the other side, an article about the  
4 three other Arizona utilities having rate decreases between 5.6% and 3.1% since 1997.<sup>19</sup>  
5

6 **Recommendation.**

7 That Staff provide the Commission and parties an analysis as to why Citizens rates  
8 should be increased by 22% while the others three companies decreased during the same  
9 time period.  
10

11 ***FIFTH ISSUE – CITY OF NOGALES ISSUES***

12  
13 **Discussion.**

14 26. There has been a continual lack of progress in obtaining a franchise with Citizens and  
15 unsatisfactory negotiations with UniSource. Based on this and the 22% increase in electric  
16 rates and 20.9% increase in natural gas rates, the City of Nogales is looking at condemning  
17 all Citizens (or UniSource) resources in Santa Cruz County as an option, based on the  
18 results of the scheduled 9 September 2003 election in Nogales.  
19

20 27. Such actions will significantly impact the future makeup of UniSource's subsidiary and  
21 clauses in the Settlement Agreement.  
22

23 **Recommendation.**

24 That UniSource be directed to complete a Franchise Agreement with the City of Nogales  
25 prior to closing its purchase of Citizens.  
26

27 ***MINOR ISSUES:***

- 28 1. The ALJ did not "order" UniSource to submit a retail electricity deregulation plan within  
29 120 days or to implement it not later than 31 December 2004. Rationale for such an  
30 omission is unknown and is perceived as an oversight.  
31 2. Typo, at 2(6), change "2003" to read "2002"

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<sup>19</sup> See Summary Brief at 7(11-15).

## Service List

**ORIGINAL and 15 COPIES of the foregoing filed this 25<sup>th</sup> day of June 2003, with:**

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