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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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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 OF COSTS INCURRED IN  
CONNECTION WITH ENERGY RISK  
MANAGEMENT INITIATIVES.

DOCKET NO. E-1032C-00-0751

RESPONSE TO MARSHALL  
MAGRUDER'S REPLY TO  
CITIZEN'S REQUEST TO STRIKE  
MARSHALL MAGRUDER'S DATA  
REQUEST THREE

By motion filed October 28, 2002, the Arizona Electric Division of Citizens Communications Company ("Citizens") moved to strike Marshall Magruder Data Request Three ("Data Request Three") in its entirety. By reply dated November 2, 2002, Mr. Magruder requested that Citizens' motion be denied. Although Citizens believes that its motion has explained fully the basis upon which Data Request Three should be stricken, this response will address briefly certain of the arguments raised in Mr. Magruder's reply.

**Timeliness of Data Request Three**

Mr. Magruder has provided no proper basis for serving his 43 pages of detailed questions at this time. First, Citizens should not be penalized for Mr. Magruder's late intervention in this proceeding. The party intervening in the case shortly before hearings should take the record of that proceeding as it exists. Furthermore, Mr. Magruder fails to address why he is now serving 43 pages of detailed data requests when, under the Procedural Order of August 27, 2002, August 30, 2002 was the date set for "submission of First Set of

1 Supplemental Data Requests.” If Mr. Magruder was going to attempt to revisit basic issues  
2 upon which discovery could have been done long ago, he at least should have done so in  
3 August, and not waited until October 20, 2002.

4 Mr. Magruder argues that his basic requests were proper because “the adjective,  
5 ‘Supplemental’ was not used by Staff Data Requests.” Staff’s decision to number its data  
6 requests consecutively, rather than group them by “supplemental” and otherwise, can have  
7 no impact on what is permissible under the Procedural Order.

8 Mr. Magruder attempts to minimize the impact of the delay that would be caused by  
9 responding to his data request by saying that whether his data request would delay the  
10 proceeding “at great cost to Citizens” is an issue that this case will decide. There is,  
11 however, no question that Citizens has built up over \$110 million in the PPFAC bank and that  
12 amount at the present time does not have any carrying charges on it. Since even Staff’s  
13 witness proposes that Citizens have some recovery on this amount, it is clear that a delay is,  
14 in fact, at great cost to Citizens.

15 Mr. Magruder also attempts to bolster his belated request by saying supplemental data  
16 requests at a minimum should be expected to involve a review of Brown & Bain’s data. These  
17 documents were produced on August 26, 2002 and any questions related to such documents  
18 should have been raised months ago. It is difficult to see how any of Mr. Magruder’s current  
19 data requests depended upon a review of Brown & Bain materials, which concerned the time  
20 required bringing a case to judgment in courts in Arizona.

21 Mr. Magruder also claims that he certainly does not agree with the position that there  
22 should be limitations on discovery. Despite his certainty, the administrative law judge and the  
23 attorneys for the parties to this proceeding must be aware that if justice is ever to be achieved,  
24 discovery must be finite. Without some practical limitations on discovery, a case would rarely  
25 reach hearings.

26

1 Mr. Magruder refers to a statement in Citizens' First Set of Data Requests to Mr.  
2 Magruder, that the "data requests are continuing," to support his tardy data requests. Mr.  
3 Magruder misunderstands the significance of the term. The use of that standard  
4 admonishment does not indicate that a party may continue to file basic data requests at any  
5 time through out the proceeding, but simply that if a responding party obtains additional  
6 information that is responsive to an earlier question, the responding party should supplement  
7 its response with the additional information.

8 Finally, Mr. Magruder fails to grasp the import of the due date for responses to final  
9 supplemental requests, which due date is seven days after the last day for making a demand.  
10 It is difficult to believe that the administrative law judge, in issuing this schedule, expected  
11 that a party operating under this schedule could issue 43 pages of questions, most of which  
12 could have been asked long ago, and that Citizens would nevertheless be required to answer  
13 within seven days.

#### 14 **Particular Defects**

15 Although Citizens will not attempt to repeat here the defects in each group of questions  
16 in Data Request Three, certain comments by Mr. Magruder deserve a response.

17 MM 3.1(5) asks whether Citizens has any Department of Energy or emergency  
18 interconnection purchases and asks for a description of any agreements for such purchases.

19 This question would more properly be asked in the proceeding concerning the reliability of  
20 the service to the area potentially impacted, rather than in a proceeding to recover the cost of  
21 power purchased under already executed power purchase agreements. Section 3.1(9) asks for  
22 information about wheeling charges associated with a transmission line that is not scheduled  
23 to be operational for another year. Section 3.1(10) also asks about future wheeling charges.

24 In a proceeding that involves as many facts as the current proceeding, there is no reason to  
25 enter into areas that are irrelevant to a decision and are not yet ripe for decision.

26

1 MM 3.1(12) asks Citizens to provide information on whether Pinnacle West Capital  
2 Corporation has "reviewed/or participated in any discussions concerning the impact of this  
3 additional purchase of power from Santa Cruz County," and asks Citizens to discuss and  
4 provide documentation from such discussions. There is no way that Citizens could give a  
5 complete answer to this question, since it involves the activities of a completely unrelated  
6 company.

7 MM 3.2(20) inquires about energy losses. Questions concerning such energy losses  
8 are more properly addressed in a rate case than in a proceeding to pass along cost incurred  
9 under an established PPFAC.

10 Questions 3.2(22-23) pertain to additional source of distributed generation. This is not  
11 a proper proceeding in which to raise issues and the question about distributed generation is,  
12 therefore, irrelevant.

13 MM 3.2(25-38) asks questions about filings made with the Securities and Exchange  
14 Commission during 2000 and 2001. Obviously questions concerning these public filings could  
15 have been asked long ago. Furthermore, if Mr. Magruder is allowed to conduct extensive  
16 discovery on documents filed long ago in other jurisdictions, the possibility of ever getting to  
17 hearings in this proceeding becomes even more remote.

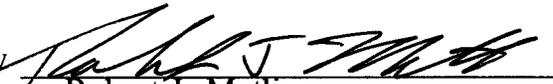
18 MM 3.17(1-23) are completely improper inquires. Questions concerning the ACC's  
19 rules are better answered by the ACC. Questions concerning Citizens' personnel policies on  
20 training its employees have no place in the current proceeding. Finally, Mr. Magruder, in his  
21 attempt to create a problem where there is none, confuses Ms. Scott's recusal of herself from  
22 substantial participation in any Citizen's matter while she was at the ACC with activity  
23 following her departure from the ACC. Since she did not have substantial participation in the  
24 Citizens PPFAC proceeding while at the ACC, and is not appearing in the proceeding now,  
25 no problem is presented.

26

1 **Conclusion**

2 Mr. Magruder's Data Request Three comes too late and is laden too heavily with  
3 irrelevant or improper questions to deserve an answer. Citizens should not be left to sort  
4 through these questions to determine whether any of them may be proper. The entire Data  
5 Request Three should be stricken.

6 RESPECTFULLY SUBMITTED this 7 day of November, 2002.

7  
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20 Original and eleven (11) copies of the foregoing  
21 filed this 8<sup>th</sup> day of November, 2002, with:

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25 Phoenix, Arizona 85007

26 Copies of the foregoing hand-delivered  
this 8<sup>th</sup> day of October, 2002, to:

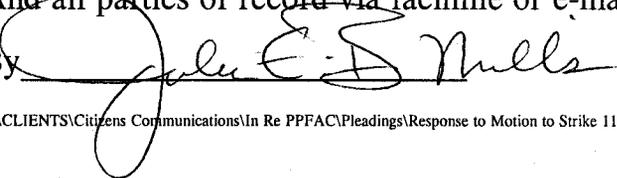
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7 And all parties of record via facimile or e-mail.

8 By 

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