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THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED

SEP 25 2002

2002 SEP 25 P 4: 38

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY	<i>CR</i>
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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-01032c-00-0751

**CITIZENS' RESPONSE TO STAFF'S  
MOTION TO AMEND PROCEDURAL  
DATES AND CONTINUE HEARING**

The Arizona Electric Division of Citizens Communications Company ("Citizens") hereby responds to the Staff's September 24<sup>th</sup> Motion to Amend Procedural Dates and Continue Hearing.

This proceeding was commenced by application filed September 28, 2000. Extensive discovery was done and the hearing was to begin on March 25, 2002. This hearing date was initially derailed by a motion to disqualify Citizens' chosen counsel because one of his partners was on the board of directors of a company not participating in this proceeding. It was further delayed by the disqualification of Citizens' substitute counsel, not on the basis of any legal rule, but because of an expressed concern about safeguarding the propriety of the proceedings.

On August 27, 2002, following a procedural conference in which all parties participated, the Administrative Law Judge adopted a schedule under which this case was to proceed to hearings on November 6, 2002. No party dissented from that schedule.

1 The schedule provided for the submission of a first set of supplemental data requests  
2 on August 30, 2002 and submission of a second set of supplemental data requests by  
3 September 13, 2002. As the title implies, these data requests were to be "supplemental."  
4 They were intended to allow updates on information previously produced. They were not  
5 intended for discovery that easily could have been conducted prior to March 25, 2002.

6 Staff did not serve a first set of supplemental data requests, nor did it serve a second  
7 set of supplemental data requests by the September 13, 2002 due date. Instead, by letter  
8 dated September 20, 2002, a week after the last date for service of a second set of  
9 supplemental data requests, Staff served upon Citizens its fifteenth set of data requests.  
10 Staff's data requests LS 15.1 through LS 15.5 seek documents related to Mohave and Santa  
11 Cruz Counties' first supplemental data request. The remaining data requests – LS 15.6  
12 through LS 15.25 - ask questions that easily could have been asked prior to March 25, 2002,  
13 and in no way appear to be based on anything that has transpired between that time and the  
14 present.  
15

16 In attempting to justify the delay it seeks to impose on Citizens, Staff claims that "there  
17 have been two primary causes for the failure of the schedule." Staff says that the "major  
18 cause" is that a significant amount of information had not previously been provided. Staff  
19 makes no allegation that it ever made any request for such information, nor does it specify  
20 what important documents have been missing.

21 The second cause alleged by Staff to justify its proposed delay is that "a number of  
22 documents responsive to that (the Counties') Set of Data Requests, as well as certain data  
23 requests submitted by Intervenor Marshall Magruder, were not submitted as a result of  
24 confidentiality claims asserted by Citizens on behalf of Arizona Public Service Company  
25 ("APS")" (Staff Motion, p. 2). Finally, Staff claims that "there are a large number of  
26 documents that Citizens claims to be too voluminous to produce." (Staff Motion, p. 2).

27 Staff's claim is devoid of substance. First, Staff points to no relevant documents that  
28 had not previously been provided. Second, Staff long ago signed a Confidentiality  
29 Agreement with APS that allowed Staff to review documents that Citizens was obliged by its

1 own Confidentiality Agreement with APS to keep confidential. Therefore, the confidentiality  
2 restrictions imposed by Citizens' agreement with APS have not prevented Staff from  
3 reviewing the documents. The voluminous documents referred to by Staff, which are open to  
4 inspection by any party that has executed an appropriate confidentiality agreement with APS,  
5 are available in the offices of Cheifetz & Iannitelli, Citizens' co-counsel in this proceeding.  
6 Staff has not visited the document room to review of the voluminous documents, nor has it  
7 indicated any intention of doing so.

8 By its motion, Staff seeks to penalize Citizens for responding to irrelevant data  
9 requests rather than objecting to such requests. The fact that Citizens has produced  
10 documents requested, however limited their relevance may be, in an effort to finally get to  
11 hearing, should not be used as a basis for further postponing this hearing. (It seems clear  
12 that if Citizens had objected to the data requests, Staff would claim that a postponement of  
13 the schedule was necessary in order to allow the discovery dispute to be litigated.).  
14

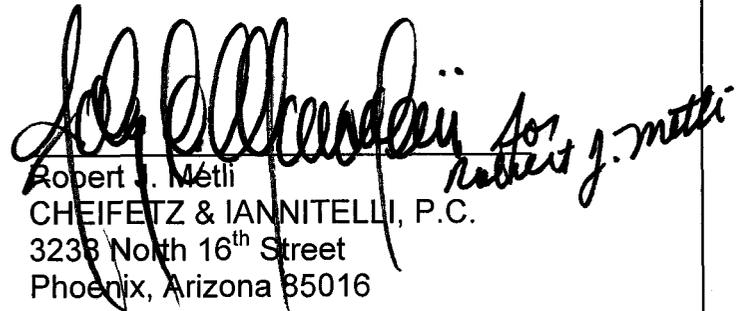
15 In concluding its attempt to justifying a delay of these proceedings, Staff states, "In  
16 addition to the volume of discovery, these recent disclosures (and continued non-disclosures)  
17 by Citizens bring forth new questions and issues pertinent to this case. Staff believes that  
18 these issues must now be addressed in supplemental testimony." (Staff Motion, p. 3). Staff  
19 does not specify a single "recent disclosure," nor, despite its allegation of "continued non-  
20 disclosures," does it allege that Citizens has failed to respond to a single Staff data request.  
21 While Staff claims that these disclosures and non-disclosures bring forth new "questions and  
22 issues" pertinent to the case, it does not mention a single new issue or question. Under the  
23 Procedural Order Staff has the right to file supplemental testimony by September 27, 2002. If  
24 Staff has additional testimony, it may file it by that date.

25 Citizens is losing \$25,000 to \$30,000 a day for every day this proceeding is delayed.  
26 In its responses to discovery requests, Citizens has gone above and beyond what should be  
27 expected of a company appearing before the Commission and has raised no objections to  
28 the discovery demands issued since the last procedural order, despite the clear irrelevance of  
29 many of them.

1 Staff said that it was ready for hearings in March of this year; it is now almost October.  
2 Staff's most recent set of data requests is its fifteenth. Under Staff's approach, no case of  
3 any significance would ever reach hearings. To postpone the hearings scheduled for  
4 November 6 on the basis of the allegations contained in Staff's motion would wrongfully deny  
5 Citizens of its property.

6 At the argument of the motion to disqualify the law firm of Brown & Bain, Commission  
7 Spitzer said, "[W]e have a delay which is prejudicial to the applicant as well as providing  
8 uncertainty to rate payers, neither of which are good." (Transcript of oral argument, p. 41).  
9 Both Citizens and its ratepayers are entitled to a final decision in this case. Staff's motion  
10 should be denied in its entirety and this case should proceed to hearings on November 6<sup>th</sup>.

11 Respectfully submitted this 25<sup>th</sup> day of September, 2002.

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15   
16 Robert J. Metli  
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25 Attorneys for Citizens Communications  
26 Company Arizona Electric Division

27 Original and ten copies filed this  
28 25<sup>th</sup> day of September, 2002, with:

29 Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Copies of the foregoing mailed/delivered  
this 25<sup>th</sup> day of September, 2002, to:

**CERTIFICATE OF SERVICE**

Original and eleven (11) copies of the foregoing filed this 25<sup>th</sup> day of September, 2002, with the:

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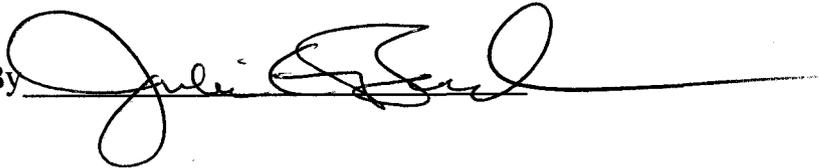
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By

A handwritten signature in black ink, appearing to read "Jason Gellman", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.