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WILLIAM A. MUNDELL
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COMMISSIONER

DOCKETED BY CAR

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
COSTS INCURRED IN CONNECTION WITH
ENERGY RISK MANAGEMENT INITIATIVES.

Docket No. E-01032C-00-0751

REPLY TO
CITIZENS' REQUEST TO STRIKE
MARSHALL MAGRUDER'S DATA
REQUEST THREE

NOVEMBER 2, 2002

9 Citizens filed a Motion to Strike on 28 October 2002, received via email on 29 October
10 2002.

11 There are what I believe to be several errors in Citizens' Motion. Herein is some additional
12 information that you are requested to please consider as during your review of Citizens' Motion.

13 Citizens repeatedly stated Marshall Magruder had discovery opportunity, prior to the
14 hearing planned for 25 March 2002. Unfortunately, this is incorrect. Petitions to intervene were filed
15 in a timely manner by Marshall Magruder and Lucy Magruder. We failed to send Citizens our
16 petition because the newspaper article describing this case did not specify that. The Administrative
17 Law Judge provided our intervention requests to Citizens. Citizens, then, objected to our
18 participation, delaying our admittance as Parties. This prevented participating in discovery as
19 testimony was due 19 February 2002. Upon admittance on 20 February 2002, the Administrative
20 Law Judge directed Citizens to provide copies of their documentation. A list of all documents held
21 was submitted to Citizens attorney 24 February 2002. Citizens provided their documents we did
22 not have; however, many other documents, unknown to us, were not received, including Data
23 Request responses.

24 Citizens' second attorney repeatedly stated all discovery was completed by the 25 March
25 2002 hearing. At that time, although ACC Staff continued to submit Data Requests, they went

1 unanswered. Citizens' continued to object stating discovery was over. It was clear, no Data
2 Requests from us would be considered by Citizens either.

3 Upon seating the present Citizens' attorney, Citizens provided many new documents
4 including responses to various data requests. From these documents, one could see that Citizens
5 had substantial documentation necessary for all parties to review, which resulted in the latest
6 delay. Reviews of this new documentation led to successive Data Requests including some about
7 earlier documents. A numbering scheme used in Attachment B of each Magruder Data Request
8 shows the relationship between requests. Each was titled "Data Request" and sequentially
9 numbered, similar to ACC Staff's. Omission of the word "supplemental" in the title seems irrelevant
10 and insignificant.

11 Participation was impossible during the telephonic conference that led to the current
12 Procedural Order. An email announcing this conference call was received after the fact. There
13 were about 90 minutes between the time the email was sent and the conference. The current
14 Procedural Order stated more time was needed for discovery and provided an opportunity to
15 respond to the results of the succeeding data requests instead of a single Final Data Request.

16
17 **Specific Comments on Subject Motion:**

18 Page 1 - Line 17¹: October 22 was the due date for Data Requests. Data Request Three
19 was received in time by mail. An earlier delivery by e-mail failed due to e-mail misaddressing,
20 which was corrected as soon as known.

21 Line 18: "emphasis added" refers to a Final Supplemental. Comments from the Staff imply
22 discovery does not "stop" during a hearing, and the adjective "Supplemental" was not used by Staff
23 Data Requests, which were consecutively numbered during the supplemental discovery period.

¹ A printed version of subject Motion has not been received, "line" numbers may differ slightly due to electronic processing. Thus, all line numbers should be used as aid; they may not be exact.

1 Line 22: Data Request Three was received according to schedule and was "timely." Line 23: Most
2 requests went into much detail – and provided quotes for everyone's convenience – showing why
3 the questions are indeed relevant to the case.

4 Line 26: "delayed at great cost to Citizens" is an issue this case will decide.

5 On Page 2, Line 1: "disqualification of Citizens substitute counsel" has no relevance to Data
6 Request Three. Line 4: "ready for hearings" is questionable. Certainly, we did not have the
7 information then, which is necessary to understand the issues. Substantial background information
8 was finally sent as a response to the First Set of Supplemental Data Requests by the Counties in
9 September 2002. Lines 4 to 6: "supplemental data requests" involved more than "the numbers,"
10 but, as a minimum, a review of the Brown & Bain's data was to be expected.

11 Line 8: "volume of documents" provided new and essential material not seen previously by
12 Intervenor Parties. The 13,000 pages of documents were not expected, and the information
13 resulted in many new questions. Line 12: "to get to the hearings," obviously, must not limit critical
14 discovery. Line 14: "present schedule adopted" is the schedule that was an acceptable alternative
15 to Parties participating in the telephonic conference. In my situation, Citizens responses to Data
16 Request Two led to additional questions requiring a Third Data Request and Supplemental
17 Testimony to come. We did not participate in planning the "present schedule." We have previous
18 plans, so I will only be able to be present the first few days of the December hearing. A few
19 questions planned for Citizens' witnesses are in Data Request Three.

20 Line 15: "improper data requests" is not explained. All submittals have emulated formats of
21 other Parties. Line 16: "grossly improper" is also neither explained nor defined.

22 Line 17: The word "demand" was not used in Data Request Three. Line 18 "first discovery
23 opportunities," is explained above. Line 19: ""basic issues are raised" and this, it seems, could
24 always occur, no matter how far into any proceeding. Basic issues in every proceeding maybe
25 "understood" and, after investigation, become clearer. They can still be questioned later. Line 20:
26 "admits to prior opportunities to conduct discovery" Again, as information became available,

1 different paths towards discovery developed. Lines 20 to 21: "present schedule does not allow for
2 basic issues," says there should be limitations on discovery, with which I certainly do not agree.
3 Lines 21 and 22: "The time for discovery on those issues passed long ago" implies that only new
4 issues can be raised. The Staff has argued against that position. In addition, the Staff's data
5 request numbering scheme was followed. Further, a 26 October 2002 letter from Citizens' attorney
6 forwards Citizens' "first set of data requests to Marshall Magruder" which states:

7
8 "These data requests are continuing, and your answers, any documents supplied in response to
9 these data requests should be supplemented with any additional information or documents that
10 come to your attention after you have provided your initial response."

11 Therefore, Citizens' agrees that discovery as a continuing event and not final after an initial
12 response.

13 Lines 22 to 23: "schedule allows only a final supplemental data request ... does not fit that
14 description" would have implied that Data Requests One, Two and Three should have been
15 submitted as one request on or before 22 October 2002. Parties need information from early
16 responses to decide next step. This intervenor certainly did need sequential responses, in order, to
17 ask follow-on questions. Lines 22: "rambling" implies unorganized, I may not have the language
18 skills that most attorneys have, but did try to organize the questions logically. Section titles were
19 used to group the questions. In many instances, rationale for questions was explained. Reference
20 material was provided to facilitate response. All of this was to make this process more efficient and
21 to elicit clear responses by the Applicant. It is unfortunate this attempt was misunderstood. Line 23:
22 The "160 questions" include a large number could be answered by a single word "yes/no." Further,
23 Data Requests Two contained many questions about confidentiality requirements of documents
24 that were not answered in the response. This question was reworded in Data Request Three

25 Lines 24 to 25: "A review of subsequent dates in the agreed-upon Procedural Order shows
26 how misplaced Mr. Magruder's current demands are" seems to imply Mr. Magruder agreed to the
27 current Procedural Order to be able to arrange participation. Again, I did not have adequate
28 notification of the Procedural Order conference, Unaware of these changes, I submitted Testimony

1 by a previous Procedural Order, on 27 September 2002, coordinated via e-mail with Mrs.
2 Magruder.

3 Lines 25 and Page 3, line 1: "Responses to final supplemental data requests are due
4 October 29, 2002, seven days after the last day for making a demand." Citizens agreed to the
5 current schedule. Page 3, Lines 3 and 4: "Clearly, this is not the type of supplemental data request
6 the parties had in mind when establishing the schedule." The extended schedule provided time for
7 additional documentation review, which led to these questions.

8 Line 5: "Mr. Magruder's rambling, unfocused demand" is an unfortunate description of a
9 repetitive comment discussed above.

10 Lines 5 to 16: "violates the spirit... to end of A.A.R. 14-3-105(B) quote" is debatable. I feel
11 each question was asked within that "spirit." These hearings will determine whether the Applicant
12 receives compensation from ratepayers for **excessive** charges occurring under an old **disputed**
13 and propose a new Agreement with PWCC (APS) that impact this intervenor with additional
14 "**excessive**" costs for at least seven years.

15 Lines 9 and 10: "[H]e did not receive permission to unduly broaden the issues presented
16 [...]" This is past history. It was a result of my initial misunderstanding concerning the difference
17 between a "general rate" and PPFAC hearing. As worded, and elaborated upon, it appears this
18 single issue was resolved months ago. Lines 13 and 14: "only seeks discovery upon matters upon
19 which discovery was long ago concluded" seems to misrepresent the situation. Most questions in
20 Data Request Three were based upon Citizens responses from Data Request Two. Line 15: "even
21 when the subject matter of the requests might be relevant," indicates Citizens understands that
22 some requests are relevant; therefore, answers were requested without haste. Lines 15 and 16:
23 "the requests are unduly vague. (Ten requests ask that Citizens "discuss" a topic.)" I apologize for
24 this unfortunate wording. This is due to a lack of experience in such proceedings. Where
25 appropriate, rewording can be provided, if preferred.

1 **Particular Defects:**

2 Page 3, Lines 18 to 22 (first paragraph). Data Request MM-3.1 new Items (5) to (21) are
3 primarily about the New Citizens-PWCC Agreement(s) which concern specific impacts of the
4 proposed PWCC Agreement, a major element of this Application, The Applicant's responses could
5 impact PPFAC charges; making their responses relevant. Significant PPFAC increases could
6 result. Matters in the Old APS-Citizens Agreement are questioned in items (19a to 19c). Assessing
7 potential PPFAC charge variations by county, if any, is covered in Items (20) and (21).

8 Going into more detail about, MM-3.1, answers to Items (5) to (7) may be one word or short
9 answers. Item (8) requests a future date (unless within this PPFAC hearing) that could start
10 another "rate" clock. Item (9a) requests a "date" when these PPFAC charges will commence and
11 Item (9b) questions if such charges will be delayed until another hearing. Item (10) is relevant to
12 Mohave County ratepayers. Item (11) asks if the proposed PWCC Agreement conflicts with this
13 Citizens-TEP Agreement and Item (12) asks if PWCC has been involved with the Citizens-TEP
14 power and transmission Agreement. Item (13) asks to classify the proposed Citizens-TEP
15 Agreement within the context of the PWCC-Citizens Agreement and maybe prevent a future round
16 of Citizens-PWCC disputes. Item (14) asks if there are other impacts on the PWCC-Citizens
17 Agreement. Item (15), covers a specific substation that services our residence. Items (16) and (17)
18 asked for additional clarification about Northern Santa Cruz County and PPFAC fuel charges and
19 reliability. Item (18) requests a summary of above impacts. Items (19a, 19b) indicated a 15%
20 "adder" term, which failed to be defined, so a definition was requested. Further, impacts of Item
21 (19c) are unclear. Items (20) and (21) concern potential PPFAC charge differences between
22 Mohave and Santa Cruz County.

23 Page 3, lines 23 to Page 4 line 4 (Second paragraph) appear to be relevant, because Data
24 Request MM-3.2 (7) to (36) ask questions about specific impacts of the Citizens PPFAC Account
25 and "Loan." These questions resulted from the updated "numbers" provided by Citizens counsel in
26 August 2002. Upon their review, questions concerning the dollar-values for Recovered and Cost

1 Not Recovered categories for the Disputed Charges and Not Disputed Charges arose, as
2 discussed in the summary before MM-3.2 Items (7) to (17), for the period under the Old APS-
3 Citizens Agreement and during the transition from "Old" to "New" PWCC-Citizens Agreements in
4 Items (18) to (21). These could not have been asked prior to 25 March 2002, as the information
5 was not available.

6 In reviewing the material referred to in MM-3.2 (7) to (21) above, including various number
7 tables from the Application(s)² conflicted repeatedly. I was unable to derive specific the dollar
8 values for Recovered, Cost Not Recovered, Disputed, and Not Disputed charges that this PPFAC
9 Application requested reimbursement. Significant effort was used to show how these four cost
10 categories were "backed out" of the presented data. In the end, too much data were missing or
11 obscured by "PPFAC Bank" interest charges, to complete this task. See Item (24) which points out
12 a few of the many divergent/conflicting values in Citizens Application(s) and Testimony. Corrected
13 values of these four are essential for realistic recommendations.

14 MM-3.2 Item (20) is clearly relevant. "Energy losses" are included in PPFAC calculations
15 and are related to Citizens' performance since last tested--over six years ago. A 10.96% loss and
16 the WAPA 4.95% are almost a 16% additional PPFAC charge passed on (through) to the
17 ratepayers. Citizens should optimize control, effectively manage, and strive to minimize these
18 energy losses as long-term savings.

19 MM-3.2 Items (21) to (23) pertain to adding additional, distributed generation sources as a
20 way to reduce "energy losses" described in Item (20) above. One performance measure of such an
21 improvement would be number of PURPA Qualified Facilities (QFs) in Citizens' service territory.

22 MM-3.2 Items (25) to (38) are essential to these hearings. These formal, legal and required
23 public filings with the Security and Exchange Commission ensure the public, shareholder, financial
24 and investor communities understand all significant factors that currently impact a company's
25 economic outlook. The excerpts with MM-3.2 and resultant questions are Items (25) to (38). These

² Application(s) is used to include the Original Application, Revised Application, errata and all supplemental changes.

1 pertain to continual declarations by Citizens that **excessive** and **disputed charges** were imposed
2 on Citizens by APS. These company-reported SEC statements, quoted verbatim, were provided in
3 Citizens' response to Data Request Two MM-2.2 items.

4 Page 4, lines 5 and 6 (third paragraph) covers Data Requests MM-3.6 (9) and (10),
5 Valencia Turbines. The proposed PWCC-Citizens Agreement limits these turbines to 30 – 35 MW.
6 They are capable of greater than 45 MW of generated power and Item (9) questions this
7 restriction. Under these conditions, if the New PWCC-Citizens Agreement is a "market-based tariff"
8 in Item (10).

9 Page 4 lines 7 to 10 (fourth paragraph) covers Data Request MM-3.7 (6) to (8), Number of
10 Customers. Understanding the impact upon present and future customers, for the seven years of
11 the proposed PWCC-Citizens Agreement is relevant. Impacts of these proceedings may be
12 effective for over seven years. Further information is requested in Items (6) to (8). In Data Request
13 Two Responses, MM-2.7 (4), Citizens indicated it had no "forecasts." Citizens testimony indicates
14 otherwise. Only factors, which impact either a continuation of the Old APS-Citizens Agreement or a
15 proposed New PWCC-Citizens Agreement, were questioned in Item (6). Defining the number of
16 customers, and impact of such rate increases, per customer, is the bottom line here. When the
17 number of "streetlight" customers continues to show variations in the "thousands," impact per
18 residential, business, or industrial customer becomes less clear. A follow-on "streetlight" customer
19 question is Item (7). Clarification of a new customer category is requested in Item (8) with the
20 PPFAC impacts on each customer category needed to clarify this issue. Cost per customer of
21 PPFAC impacts are important.

22 Page 4 lines 11 to 21 (fifth paragraph) covers Data Request MM-3.16A (1 to (4), Effective
23 Confidentiality Agreement and Disclosure. Data Request MM-2.16A requested a copy of the
24 present Citizens-APS (PWCC) Confidentiality Agreement, which was provided. This agreement
25 **expired** in June 2002. Apparently, no APS-Citizens Confidentiality Agreement is now effective. A
26 copy of the operative words in that agreement is in MM-3.16A discussion. It appears meaningless

1 to sign an expired agreement. Neither Data Request Two nor Three asked for confidential
2 documents, but only to confirm (verify) they met the disclosure requirements of an “effective”
3 Confidentiality Agreement. Citizens’ response was to sign an APS Confidentiality Agreement. The
4 response failed to answer most of MM-2.16B or 3.16B items. Four further questions concerning
5 this expired Agreement were asked in MM-3.16A Items (1) to (4).

6 In Data Request MM-3-16B, covers Effective “APS-Citizens Confidential Information and
7 Disclosure. Based on specific confidential definitions in the “expired” APS-Citizens Confidentiality
8 Agreement, for Items (62) to (71), (75), (78), (79) (81), (82), (85), (88), (90), (93) to (95), (97), (98),
9 (111) to (116), and (118), it was requested to ensure these documents contained material which
10 was specifically designated as Confidential information. Items (72) and (73) asked, “Why is a letter
11 originated by Citizens, that disputes APS charges, classified Confidential?” Such a letter would
12 probably reflect favorably upon Citizens if provided. Item (74) asks if the “confidential” information
13 could be removed and the rest provided in redacted form. Questions including Items (76), (77),
14 (80), (81), (82), (83), (84), (86), (87), (89), (91), (94), (94), (96), and (112) ask for information about
15 documents that do not require disclosure of any information listed as classified, for example, a date
16 of a document or number of pages.

17 Bates Numbers CCC007347-7348 and Responses to MM-2.16B (46) to (51) are notes from
18 an APS (PWCC)-Citizens meeting involved the proposed PWCC-Citizens Agreement. New Data
19 Requests MM-3.16B (97) to (99) asked who led each side’s team during these fixed priced
20 negotiations. Item (100) requested information about “hedges” PWCC would be using for
21 wholesale electricity sales, which would impact their pricing schemes with respect to Citizens.
22 Upon review of the proposed PWCC-Citizens Agreement Article 4, details concerning Credit
23 Ratings are a significant issue because they affect possible contract termination. Stability of the
24 proposed agreement in this Application is therefore contingent upon Credit Ratings. Items (101) to
25 (106) requested Citizens’ assessments of possible outcomes from these hearings on Credit
26 Ratings and other credit factors necessary to complete this proposed PWCC-Citizens Agreement.

1 Citizens' assessments of potential impacts on their Credit Ratings should be considered by the
2 Commission.

3 Citizens' response to MM-2.16B (51) indicated "possible buyout of the power purchase
4 agreement by Citizens" discussions were ongoing. Items (107), (108) with Item (109) concern
5 these "and not to hedges" and "Clarification of the Citizens contract option" from these APS-
6 Citizens meeting notes were requested in Item (110). Item (117) asks about changes to other APS
7 contracts and Item (119) specifically pertains to the Valencia Turbines.

8 Page 4, lines 22 to Page 5, line 6 (sixth paragraph) covers Data Request MM-3.17 (1) to
9 (23), Possible Conflict of Interest. Item (1) was answered in the subject Motion, saying these two
10 persons are identical. Therefore, it appears that MM-3-17 (2) to (23) should be answered. The
11 Arizona Revised Statute, Title 38, has specific limitations that prohibit employment after leaving
12 certain state positions. If Article 38-504.B (Prohibited Acts) is involved, it appears that the
13 statement from the subject Motion quoted below is inadequate:

14
15 "The Commission is well aware that Ms. Scott was employed by Citizens prior to her tenure as
16 Director of the Commission's Utilities Division. For that reason, while Director, Ms. Scott recused
17 herself from personal and substantial participation in any Citizens matter, including the PPFAC
18 proceeding. Ms. Scott has not entered an appearance and will not represent Citizens in this
19 proceeding." [Underlined for emphasis] (Motion, page 5, lines 2 to 6)

20
21 Does less than "substantial" participation possibly violate an Arizona statute or regulation?
22 Without answers to Data Request Three, we may not know. For example, please see Bates
23 CCC017061, an in-house attorney's notes of a PPFAC meeting, in the upper right corner the "Deb"
24 notation as an attendee.

25 Page 5, lines 7 to 14 (seventh paragraph) covers MM-3.18 (1) to (16), FERC Investigations
26 with Respect to Possible Illegal Energy Charges. A series of public and private investigations are
27 ongoing. I understood that PWCC is a participant in at least one, which may result in a "refund" of
28 **excessive** charges from the summer of 2000--the period during which Citizens disputed and paid
29 under protest charges that it considered, and apparently still does, consider **excessive**. Among

1 other reasons, Citizens' inputs as to the impact of various options available to the Arizona
2 Corporation Commission are necessary for the Commission to judge reasonableness and fairness
3 to Citizens.

4 **Conclusion and Recommendation:**

5 It is requested the Motion to Strike Marshall Magruder Data Request Three be denied.
6

7 Respectfully submitted this 2nd day of November, 2002.

8 MARSHALL MAGRUDER

9
10 By  _____
11

12 Marshall Magruder
13 PO Box 1267
14 Tubac, Arizona 85646
15

16 **Original and Copies are certified mailed or e-mailed this date as shown on the**
17 **Service List**

1 **Service List**

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4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007
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8 **With COPIES of the foregoing e-mailed this 2nd day of November 2002 to:**

9 Mr. Metli, please forward to Mr. Draghi whose e-mail URL is unknown.
10
11
12

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