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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION  
DOCUMENT CONTROL

APR 24 2002

DOCKETED BY

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' OBJECTIONS TO  
PROCEDURAL ORDER AND  
REQUEST FOR FULL  
COMMISSION REVIEW**

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For the reasons set forth below and in its prior filings on the issue of disqualification, Citizens objects to the Administrative Law Judge's (ALJ) April 18, 2002 Procedural Order (the "Order"). The ALJ has misapplied the law and misstated the facts pertaining to the motion to disqualify Gallagher & Kennedy ("G&K" or the "Firm") as counsel for Citizens in this PPFAC proceeding. Citizens requests that the Commission review the Order and deny the motion for disqualification.

**I. THE COMMISSION SHOULD REJECT THE ALJ'S PROCEDURAL ORDER.**

Without a shred of supporting evidence and despite actions which not only meet but exceed the standards of the Rules of Professional Conduct, the ALJ has concluded that G&K's representation of Citizens somehow jeopardizes the integrity of this

1 PPFAC proceeding. Precisely how it does that is never explained. The ALJ bases the  
2 recommendation solely on perceived appearances, possibilities and conjecture. His  
3 determination has no basis in law or fact.

4           The Commission should carefully consider the ramifications of the Order  
5 and disqualification based on nothing other than vague notions of “public suspicion.”  
6 Rules and statutes exist for a reason. They allow conduct to be conformed for the  
7 protection of both public and private interests with assurance that rights will be preserved.  
8 For example, the Conflict of Interest statutes at A.R.S. § 38-501 et seq. set down  
9 permissible time lines, pecuniary interests and activities which, if adhered to, allow public  
10 officers and employees to function in performance of their duties. Allowing standards  
11 such as these and the Rules of Professional Conduct to be trumped by an “eye of any  
12 possible beholder test” is, to say the very least, dangerous precedent.

13           Certain “public suspicions” will never be allayed – the facts and adherence to  
14 professional standards notwithstanding. Other “public suspicions” don’t even exist except  
15 in theoretical constructs. That is why our Supreme Court has warned against using them as  
16 a basis to disqualify counsel because they likely are “an impropriety which exists only in  
17 the minds of imaginative lawyers.”<sup>1</sup>

18           The ALJ has determined that G&K’s representation of Citizens allegedly  
19 taints the PPFAC proceedings because of Citizens’ decision not to sue Arizona Public  
20 Service relating to the 1995 Power Supply Agreement (PSA)--even though G&K played

21 \_\_\_\_\_  
22 <sup>1</sup> Alexander v. Superior Court, 141 Ariz. 157, 165, 685 P.2d 1309, 1317 (1984).

1 no role in advising Citizens relating to its PSA dispute and independent FERC counsel  
2 specifically advised Citizens not to sue APS. He makes this ruling despite the following  
3 undisputed factual record<sup>2</sup>:

- 4 • G&K has not represented Citizens, PWC or APS in any of their contractual  
5 disputes or negotiations. Instead, Citizens retained separate counsel for those  
6 matters including Troutman Sanders, Wright & Talisman and Brown & Bain.
- 7 • The key decisions concerning investigation and analysis by Citizens of its  
8 contractual claims against APS were made months before G&K's  
9 representation commenced in the PPFAC docket.
- 10 • As a member of the PWC and APS Boards of Directors, Firm policy  
11 precludes Mr. Gallagher from involvement in any matters concerning or  
12 affecting PWC or APS. Prior to the filing of the motion to recuse, Mr.  
13 Gallagher was not even aware of the Firm's PPFAC representation of  
14 Citizens. In his position on the PWC and APS Boards, Mr. Gallagher was  
15 present for four general informational updates relating to Citizens – the first  
16 occurring a few months before the representation even commenced and the  
17 last occurring well after the 2001 PSA was executed. Mr. Gallagher does not  
18 recall those general updates and he never discussed those updates with any  
19 attorneys for the Firm. The PWC and APS Boards never took action on any  
20 Citizens power supply matters. None of the issues involved in this PPFAC  
21 proceeding have been discussed with Mr. Gallagher.
- 22 • Although PWC and APS are not parties to this PPFAC proceeding, G&K  
23 nonetheless complied with ER 1.7 of the Rules of Professional Conduct by  
24 disclosing its representation of Citizens in the PPFAC proceeding and Mr.  
25 Gallagher's position on the APS/PWC Boards to Citizens, PWC and APS  
26 and obtaining their consent to G&K's representation. APS and PWC  
27 consented to G&K's representation of Citizens in the PPFAC matter –  
28 including their consent even if that representation may be adverse to  
29 APS/PWC.
- 30 • Finally, G&K's disqualification would cause substantial and irreparable  
31 harm to Citizens. By contrast, there is absolutely no evidence of any harm or

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<sup>2</sup> The ALJ is bound by the affidavits and factual record presented by Citizens. The other parties and intervenors didn't submit any contrary evidence, affidavits or testimony. Because there is no contrary evidence or testimony, RUCO, Staff's and the ALJ's recommendations for disqualification all are based solely on issues of alleged public perception and appearances of impropriety. Nothing more.

1 prejudice to ratepayers or the public by G&K's continued representation of  
Citizens.

2 Because of that undisputed record, the ALJ's sole argument for disqualification is that  
3 G&K's representation of Citizens somehow leads to public suspicion by the "class of  
4 ratepayers who Citizens seeks to be held responsible for the PPFAC costs." See  
5 Procedural Order, p. 11, lines 6-7. That is the sum total of the ALJ's decision.

6 The ALJ's Order is premised on the flawed assumption that this PPFAC  
7 proceeding involves building "a record that will be helpful in subsequent proceedings  
8 against APS." (Order, p. 11, lines 3-4.) It does not. Rather, from Citizens' standpoint,  
9 this case involves building a record which fully justifies recovering from ratepayers the  
10 cost of electricity it unarguably purchased and paid for on their behalf.

11 Citizens aggressively studied the possibility of instituting legal action against  
12 APS on the 1995 PSA. G&K played absolutely no role in that analysis and offered no  
13 advice to Citizens on its course of action (Mitten March 28 Affidavit, ¶ 7). As explained  
14 in Mr. Breen and Mr. Flynn's testimony, in the spring of 2001 the Company decided not to  
15 pursue a contract challenge but instead to negotiate a stable, low price, long-term  
16 replacement contract for three primary and compelling reasons:

- 17 1. Legal action on the contract would take several years during which  
18 Citizens and its ratepayers would continue to be exposed to high  
19 market prices which by last spring had continued unabated for a full  
20 year.
- 21 2. Based on FERC precedent and input from outside experts, a legal  
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challenge filed by Citizens against APS was not likely to succeed.

3. If a legal action was brought and failed, APS would have absolutely no incentive to renegotiate the 1995 PSA. Citizens and its ratepayers would then continue to be exposed to high market prices through contract termination in 2010.<sup>3</sup>

This PPFAC proceeding involves building and presenting that case. It does not involve building a record against APS. On that issue, the facts and testimony speak for themselves. Citizens made its decision not to sue APS based on advice and decisions by others – a process in which the Firm played no role. If the Order is not overturned, subsequent counsel will present precisely the same case.

Far from building public confidence in the Commission’s process, the ALJ’s Order to disqualify counsel of Citizens’ choice amounts to a fundamental denial of due process. It effectively announces to the public that the Commission does not like the course of action Citizens chose, so we are disqualifying your attorneys.

In the Order, the ALJ also mistakenly states that “Gallagher & Kennedy’s representation in this case is restricted to presenting a case that is not adverse to APS.” See Order, p. 10, lines 23-24. The ALJ concludes that “Gallagher & Kennedy is precluded by the consent agreement from pursuing a legal strategy that advocates litigation by Citizens against APS” and “Citizens will have been unable to build a record that will be helpful in subsequent proceedings against APS.” Id. at pp. 10-11. First, as already

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<sup>3</sup> Staff, RUCO, the Counties and, apparently, the ALJ treat a potential APS lawsuit as a panacea. In reality, it was the most risky and potentially dangerous option for Citizens and its ratepayers.

1 explained, this PPFAC proceeding does not involve building such a record. The only way  
2 Citizens could build such a record in this matter would be to ignore its own filed  
3 testimony, the analysis of consulted experts and its FERC counsel.

4           Additionally, the ALJ has misread the December 14, 2000 consent waiver  
5 from APS. In that waiver, APS specifically and unconditionally consented to G&K's  
6 representation of Citizens in the PPFAC docket. The PPFAC docket is the primary reason  
7 G&K sought the waiver letter from APS. The first sentence of its second paragraph  
8 specifically states that G&K may represent Citizens "in matters where Citizens' interests  
9 may be adverse to those of PWC and APS." See December 14, 2000 letter from Nancy  
10 Loftin. Thus, G&K has APS' consent to represent Citizens in the PPFAC proceeding even  
11 to the extent that such representation may be adverse to APS/PWC. The only power  
12 supply related limitations are that G&K may not act as Citizens' counsel in any "legal  
13 action directly adverse to PWC, APS" and G&K may not represent Citizens "in  
14 negotiations with APS concerning the long term contract..."<sup>4</sup> Id. The December 14, 2000  
15 letter, along with the various affidavits filed by Citizens in this matter, simply don't  
16 support the ALJ's conclusions regarding limitations on G&K's PPFAC representation of  
17 Citizens.

18           The ALJ also misstates the record relating to Mr. Gallagher being "briefed  
19 regarding the Citizens' billing dispute on at least four separate occasions." See Order, p.

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21 <sup>4</sup> A plain reading of the letter and the underlying circumstances demonstrates that APS/PWC consented to  
22 G&K's representation of Citizens in the PPFAC even if this docket involved issues adverse to APS/PWC. But  
APS/PWC didn't want G&K representing Citizens in long-term contract negotiations against APS/PWC and they  
didn't want G&K suing APS/PWC in a power supply related "legal action" on behalf of Citizens.

1 11. The ALJ implies that Mr. Gallagher received detailed or confidential information  
2 about Citizens' dispute with APS. That simply is not the case. The affidavits of Mr.  
3 Gallagher (March 22/March 28), Ms. Smith (March 22) and Ms. Papietro (March 26)  
4 demonstrate that the APS and PWC Boards and relevant committees never voted on the  
5 power supply matters involving Citizens. Four "general and informational" updates were  
6 provided to the Board. "No action from the Board of Directors relating to these  
7 discussions was requested, nor was any action taken by the Board of Directors relating to  
8 these discussions." (Papietro Affidavit ¶ 6.) Mr. Gallagher does not recall those updates  
9 nor making any comments or asking any questions about them. Further, Mr. Gallagher has  
10 never discussed any APS or PWC Board matters with the Firm attorneys representing  
11 Citizens in this matter.

12 The ALJ's analysis of this issue is also legally flawed. The ALJ concludes  
13 that Mr. Gallagher had a "fiduciary duty to act in the best interest of the shareholders of  
14 APS/PWC." See Order, p. 11. He then attempts to impute that fiduciary duty to G&K and  
15 relies on William H. Raley Co., Inc. v. Superior Court, 149 Cal. App. 3d 1042 (1983) for  
16 disqualification. Raley doesn't support disqualification of G&K. If anything, it supports  
17 Citizens' arguments and position. Raley like most of the other distinguishable case law  
18 cited in this matter involved a firm on both sides of litigation between two existing clients.<sup>5</sup>

19  
20 <sup>5</sup> In Raley, the law firm represented a lessor plaintiff in an action filed against a defendant lessee. The  
21 defendant lessee was wholly owned by a bank as trustee. A partner in the law firm sat on the bank's board of  
22 directors. That partner also was a member of the bank's trust investment committee which had responsibility and  
authority to settle lawsuits involving wholly owned companies such as the defendant lessee. There, the law firm  
represented the plaintiff and simultaneously included among its partners a member of the governing entity responsible  
for settling lawsuits on behalf of the defendant. To say the law firm was on both sides of the case is an

1           The crux of the Raley decision was that “[the partner’s] fiduciary  
2 relationship with Raley and the Trust through his positions with the Bank and the  
3 Committee, on the one hand, and his partnership status with Gray, Cary on the other hand,  
4 places Gray, Cary on both sides of Carrol’s lawsuit.” Raley, 149 Cal. App. 3d at 1047.  
5 The partner’s role in settling and evaluating lawsuits against the defendant lessee also  
6 raised the specter of “accessibility to confidential information about Raley which may be  
7 pertinent to Carrol’s lawsuit.” Id. For those reasons, the California court disqualified the  
8 law firm.

9           This case isn’t even remotely analogous. The record is clear that G&K is not  
10 on both sides of any litigation matter between Citizens and APS/PWC; it actively took  
11 steps to avoid precisely that situation; and it made disclosures and obtained consents from  
12 both parties as to the PPFAC representation. Application of the Raley standard to these  
13 facts mandates denial of the motion to recuse. “A member of the State Bar shall not  
14 represent conflicting interests, except with the written consent of all parties concerned.”  
15 Id. at 1046. Further, Mr. Gallagher received no confidential information relating to  
16 Citizens’ power supply matters and Mr. Gallagher took no action on the dispute. Finally,  
17 Raley doesn’t support the notion of imputing Mr. Gallagher’s fiduciary duties as an  
18 APS/PWC Board member to G&K. It stands for the proposition that a law firm can’t  
19 actively represent and make decisions for clients on both sides of a lawsuit without written

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21 understatement. Raley also didn’t involve any client consents and the law firm sought to continue representation over  
22 the defendant lessee’s objection.

1 consent from the parties. The ALJ's citation and reliance on Raley is not only misplaced,  
2 the case affirmatively supports denial of the motion.<sup>6</sup>

3 Finally, in support of his public perception argument, the ALJ cites concerns  
4 raised by Mr. Magruder and voiced by the former director of the Mohave County  
5 Economic Development Authority relating to Citizens' decision not to sue APS. See  
6 Order, p. 8. The ALJ's reliance on those concerns is misplaced for two reasons. First, as  
7 explained repeatedly, Citizens' decision not to sue APS has absolutely nothing to do with  
8 G&K. Second, Mr. Magruder himself was satisfied with the affidavits and evidence  
9 proffered by Citizens:

10 I was specifically looking for a signature from the Citizens company that  
11 they understand the situation, which is what I believe that rule [ER1.7] calls  
12 for....With that -- I believe Mr. Grant has done all that I could possibly see  
that he would have to do to show ... that he has not had a conflict of interest  
in my mind, and I'm just a pro se intervenor in this case.

13 See Transcript from March 22, 2002 Procedural Conference, pp. 8-9. In fact, on March  
14 22, all parties expressed their "satisfaction" with Citizens' filings on the "conflict of  
15 interest" issue. Id. at pp. 10-15. Likewise, Mohave and Santa Cruz Counties agree that  
16 disqualification isn't warranted in this case. The ALJ's unsupported and speculative  
17 concerns about "public perception" don't justify disqualification of G&K. The ALJ does  
18 not and cannot cite any way in which G&K's continued representation of Citizens will  
19 harm the integrity of the PPFAC docket or the public interest.

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22 <sup>6</sup> Raley also has been distinguished, questioned or explained by other courts in ten decisions since 1983.



1 process itself, nor the public's perception of it, is affected in any way by G&K's  
2 representation.

3 The ALJ acknowledged, correctly, that a decision to disqualify for the  
4 appearance of impropriety must be evaluated in light of the four-factor test in Gomez: (1)  
5 whether the motion is made for the purposes of harassing the defendant; (2) whether the  
6 party bringing the motion will be damaged in some way if the motion is not granted; (3)  
7 whether there are any alternative solutions, or is the proposed solution the least damaging  
8 under the circumstances; and (4) whether the possibility of public suspicion will outweigh  
9 any benefits that might accrue due to continued representation. 149 Ariz. 223, 226, 717  
10 P.2d 902, 905 (1986). But, the ALJ then proceeds to misapply the four factors.

11 First, Gomez does not require, as the ALJ erroneously asserts, that the party  
12 bringing the motion to disqualify actually intend to harass or act in bad faith. In Gomez, as  
13 in this case, there was no evidence that the motion was brought for an improper purpose.<sup>8</sup>  
14 Regardless, in finding that disqualification was improper, the Supreme Court in Gomez  
15 noted that the **result** of disqualification - retention of different counsel resulting in  
16 inconvenience, delay and increased costs – would be harassment. Id. The ALJ  
17 specifically rejected the “result” analysis in Gomez and focused only on the intent of Mr.

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21 <sup>8</sup> Citizens has no idea what Mr. Magruder's subjective intent is and therefore has not attempted to argue  
22 malice. However, it notes that he argued strenuously against Citizens' attempt to comply with the Commission  
ordered second line in the Santa Cruz line siting case. Citizens also objected to and successfully limited his  
intervention in this case. See February 20, 2002 Procedural Order.

1 Magruder in filing the Motion. See Procedural Order, p. 7.<sup>9</sup> In so doing, the ALJ ignored  
2 the Supreme Court's precise holding as to the result of disqualification on Citizens – delay,  
3 loss of G&K's institutional knowledge and increased costs. Applied correctly, the first  
4 factor of Gomez mandates denial of the motion.

5           The ALJ also ignores the second Gomez factor and focuses on speculative  
6 damage to the public interest instead of the damage to Mr. Magruder. The ALJ is  
7 compelled to take this course, because he concedes that, “there is nothing in the record that  
8 indicates that Mr. Magruder will be personally damaged by Gallagher & Kennedy's  
9 continued representation.” Id. at 8. The Supreme Court in Gomez focused only on the  
10 effect on the State – the party bringing the motion to disqualify. The Court concluded that  
11 there was no adverse effect to the State if the motion was not granted, as there was no  
12 showing that the State's witnesses would be reluctant to testify if the attorney was not  
13 disqualified. Gomez, 149 Ariz. at 226, 717 P.2d at 905. Upon finding that the State would  
14 not be damaged, the Court did not then, as the ALJ improperly has here, go on to evaluate  
15 whether the public interest would be damaged. As in Gomez, and as conceded by the ALJ,  
16 there is no damage to Mr. Magruder or any other party if G&K continues to represent  
17 Citizens. Speculative damage to the public interest has nothing to do with the evaluation  
18 of this factor. Properly applied, the second Gomez factor mandates denying the motion.

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21 <sup>9</sup> Specifically, the ALJ found: “Although Citizens claims that the result of Gallagher & Kennedy's  
22 disqualification would amount to “harassment,” Gomez requires only that an evaluation be made as to whether the  
motion was made for purposes of harassment.” Id. That is incorrect.

1           The ALJ's evaluation of the third Gomez factor is also flawed - a cursory  
2 rebuke of the Counties' argument that the Citizens' waiver is an adequate protection. The  
3 ALJ refers to the Counties' position as the "only alternative" presented, ignoring Citizens'  
4 position that the waivers, no G&K representation of either party in the power supply  
5 dispute and full compliance exceeding ethical standards are a more than adequate  
6 alternative to disqualification. In addition, the ALJ ignores the second portion of this test -  
7 that the solution be "the least damaging possible under the circumstances." Id. There is no  
8 discussion about whether disqualification is the least damaging solution to the alleged  
9 appearance of impropriety. To the contrary, as demonstrated by the record,  
10 disqualification is the most damaging solution. Applied correctly, Gomez third factor  
11 mandates denial of the motion.

12           The ALJ incorrectly dispatches the first three Gomez factors in conclusory  
13 style in order to move quickly to the fourth Gomez factor - whether the possibility of  
14 public suspicion outweighs the benefits from continued representation. The ALJ's  
15 determination that an appearance of impropriety exists is anchored by what he perceives as  
16 the Gomez court's concern for "public perception." See Order, p. 8. The Gomez court did  
17 not share his concern. In fact, the Supreme Court acknowledged that while "some public  
18 suspicion might be raised" by the continued representation in Gomez, such suspicion did  
19 not outweigh the right of the party to an "attorney in whom they have expressed  
20 confidence and whose disqualification could possibly cause them harm." Gomez, 149  
21 Ariz. at 226, 717 P.2d at 905. In Gomez, the Court resolved exactly that issue:  
22

1 Ethical conduct which only incidentally creates the appearance of  
2 professional impropriety in the minds of the public should not, absent  
some other factors, be proscribed.

3 Id. at 225, 717 P.2d at 904. In this case, there is absolutely no appearance of professional  
4 impropriety and Gomez does not support the ALJ's Order.

5 **III. THE ALJ ERRONEOUSLY IGNORED THE SUBSTANTIAL PREJUDICE**  
6 **TO CITIZENS RESULTING FROM DISQUALIFICATION OF G&K.**

7 The ALJ has glossed over the undisputed evidence relating to the substantial  
8 prejudice to Citizens from disqualification of G&K. The ALJ has ignored Citizens' right  
9 and entitlement to counsel of its choice and cites no evidence justifying denial of that  
10 fundamental right. See Security General Life Ins. Co. v. Superior Court, 149 Ariz. 332,  
11 335, 718 P.2d 985, 988 (1986); In re Estate of Epstein, 680 N.Y.S.2d 655 (N.Y.App.  
12 1998); F.D.I.C. v. Amundson, 682 F. Supp. 981, 987 (D. Minn. 1988).

13 Because of the importance assigned to this right, anyone seeking  
14 disqualification has the burden to "show sufficient reason" why disqualification is  
15 appropriate. Alexander v. Superior Court, 141 Ariz. 157, 161, 685 P.2d 1309, 1313  
16 (1984). "Whenever possible the courts should endeavor to reach a solution that is least  
17 burdensome upon the client or clients." Id. On these issues, all the ALJ can muster is  
18 unfounded speculation and surmise about public perception.

19 By contrast, however, there is substantial evidence relating to actual  
20 prejudice to Citizens if the Commission disqualifies G&K. As demonstrated in the  
21 affidavit of L. Russell Mitten submitted on April 15, 2002, disqualifying G&K will  
22 severely prejudice Citizens. Citizens will be deprived of G&K's familiarity and expertise

1 with the substance and procedural history of this PPFAC matter. It will necessitate another  
2 delay of at least several weeks before the matter can be heard in order to seek court relief  
3 from the Order and/or to allow new attorneys time to prepare. It will result in additional  
4 and unnecessary attorneys' fees and costs. The delay occasioned by disqualification also  
5 will cost Citizens even more money in lost carrying charges on the PPFAC  
6 undercollection. Those charges are accruing at the rate of \$750,000 per month.

7 Further, the ALJ's statement in footnote 1 on page 6 of the Order that "this  
8 matter proceeded in a routine manner" after the filing of the Amended Application is  
9 factually and procedurally incorrect. Under the November 17, 2000 Procedural Order  
10 which the ALJ cites, Staff, RUCO and other parties were supposed to file testimony within  
11 four weeks of the filing of the Amended Application on September 19, 2001. They did  
12 not. The Procedural Order also provided for rapid hearing scheduling consistent with  
13 normal Commission PPFAC processing procedures. That did not occur either. Instead,  
14 over Citizens' objections, this matter was initially scheduled for an early March hearing  
15 which was continued again on a Staff Motion and which has been delayed substantially by  
16 this Motion. Citizens has been prejudiced and continues to be harmed by all of these  
17 factors.

18 Disqualification ignores this substantial harm and doesn't remedy or cure  
19 anything. Appeasing some undefinable notion of public perception is not an appropriate  
20 reason to disqualify G&K. The Order exceeds the Commission's authority, violates  
21 applicable law and constitutes reversible error.  
22

1 **III. CONCLUSION.**

2 The Motion to Recuse must be denied. This record affirmatively  
3 demonstrates prejudice to no one by the Firm's continued representation and adherence to  
4 high professional standards by all concerned.

5 DATED this 24th day of April, 2002.

6 GALLAGHER & KENNEDY, P.A.

7  
8 By: Michael M. Grant  
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11 2575 East Camelback Road  
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14 Company

12 **ORIGINAL** and **TEN** copies filed this  
13 24th day of April, 2002, with:

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington  
17 Phoenix, Arizona 85007

18 **COPY** of the foregoing hand-delivered  
19 this 24th day of April, 2002 to:

20 Chairman William Mundell  
21 Arizona Corporation Commission  
22 1200 West Washington  
Phoenix, AZ 85007

20 Commissioner Jim Irvin  
21 Arizona Corporation Commission  
22 1200 West Washington  
Phoenix, AZ 85007

1 Commissioner Marc Spitzer  
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10 **COPY** of the foregoing mailed  
this 24<sup>th</sup> day of April, 2002, to:

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**EXHIBIT "A"**

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

RECEIVED  
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UTILITY DIVISION  
REGULATORY OFFICE

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 POWE AND  
FUEL ADJUSTMENT CLAUSE BANK, AND TO  
REQUEST APPROVED GUIDELINES FOR THE  
RECOVERY OF COSTS INCURRED IN  
CONNECTION WITH ENERGY RISK  
MANAGEMENT ALTERNATIVES.

DOCKET NO. E-01032C-00-0751

PROCEDURAL ORDER

**BY THE COMMISSION:**

On September 28, 2000, the Arizona Electric Division ("AED") of Citizens Communications Company ("Citizens") filed an application with the Arizona Corporation Commission ("Commission") to change the current Purchase Power Adjustor Clause ("PPFAC" or "adjustor") rate; to freeze and amortize over a period of three years, the balance in the existing PPFAC bank as of September 30, 2000, to establish a new PPFAC Bank that would track power supply costs prospectively based on a twelve-month rolling average basis and to begin accruing carrying charges on the accumulated balance of over or under-recovered power supply costs. AED also requested approval to implement energy risk management initiatives intended to improve rate stability by reducing the volatility of power supply costs associated with competitive wholesale power markets. AED requested the Commission establish guidelines that would be applied to recover costs associated with the implementation of the initiatives.

At the November 8, 2000 Open Meeting, the Commission reset the PPFAC rate to zero on an interim basis. Additionally, the remaining issues were to be addressed in a hearing. During the Open Meeting discussions, AED indicated they were in the process of performing an audit of its full requirement contract with Arizona Public Service Company ("APS"). At the same time, the Residential Utility Consumer Office ("RUCO") and the Utilities Division Staff ("Staff") of the

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1 Commission indicated they could not finalize their recommendations/testimony until seeing the result  
2 of the audit.

3 Based on the above, we will set the date for filing of Staff, RUCO and any other intervenor(s),  
4 recommendations/testimony to be due on or before four weeks from the date AED completes its audit  
5 and files an update to its application to incorporate the findings of the audit. In turn, AED will be  
6 required to file any rebuttal testimony on or before six weeks from the date of its updated application.  
7 Subsequently, a procedural conference and hearing will be set within one week of the rebuttal  
8 deadline. An amended procedural order will be issued to establish dates consistent with the above  
9 discussion after AED completes the audit and files its update. At that time, a notice will also be set  
10 forth for Citizens to provide to its customers regarding this matter.

11 IT IS THEREFORE ORDERED that a hearing, pre-filed testimony, deadlines and other  
12 procedural guidelines on the above-captioned matter shall be set forth in a subsequent procedural  
13 order consistent with the above discussions.

14 IT IS FURTHER ORDERED that Citizens shall file an update to its application to incorporate  
15 the results of its audit of the APS power contract.

16 DATED this 17th day of November, 2000.

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20 JERRY L. RUDIBAUGH  
CHIEF ADMINISTRATIVE LAW JUDGE

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22 Copies of the foregoing mailed/delivered  
this 17th day of November, 2000 to:

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16 Debbi Person  
17 Secretary to Jerry L. Rudibaugh  
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