



0000055127

25FD

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

2002 MAY 16 P 1:20

MAY 16 2002

AZ CORP COMMISSION
DOCUMENT CONTROL

- 1
- 2 WILLIAM A. MUNDELL
CHAIRMAN
- 3 JIM IRVIN
COMMISSIONER
- 4 MARC SPITZER
COMMISSIONER
- 5

DOCKETED BY	<i>mac</i>
-------------	------------

6 IN THE MATTER OF THE APPLICATION OF
7 THE ARIZONA ELECTRIC DIVISION OF
8 CITIZENS COMMUNICATIONS COMPANY TO
9 CHANGE THE CURRENT PURCHASED POWER
10 AND FUEL ADJUSTMENT CLAUSE RATE, TO
11 ESTABLISH A NEW PURCHASED POWER AND
12 FUEL ADJUSTMENT CLAUSE BANK, AND TO
13 REQUEST APPROVED GUIDELINES FOR THE
14 RECOVERY OF COSTS INCURRED IN
15 CONNECTION WITH ENERGY RISK
16 MANAGEMENT INITIATIVES.

DOCKET NO. E-01032C-00-0751

PROCEDURAL ORDER

BY THE COMMISSION:

12 On September 28, 2000, the Arizona Electric Division ("AED") of Citizens Communications
13 Company ("Citizens") filed with the Arizona Corporation Commission ("Commission") an
14 application to change the current purchased power and fuel adjustment clause rate ("PPFAC"), to
15 establish a new PPFAC bank, and to begin accruing carrying charges and to request approved
16 guidelines for the recovery of costs incurred in connection with energy risk management initiatives
17 ("Application").

18 By Procedural Order issued April 18, 2002, the law firm of Gallagher & Kennedy was
19 disqualified from representing Citizens in this matter. Citizens was directed file an appearance of
20 substitute counsel as soon as practicable.

21 On May 2, 2002, the law firm of Brown & Bain, P.A. ("Brown & Bain") entered an
22 appearance as counsel on behalf of Citizens.

23 On May 9, 2002, Mohave and Santa Cruz Counties ("Counties") filed an Objection to Notice
24 of Appearance of Substitute Counsel. The Counties argue that, because Brown & Bain previously
25 advised Citizens regarding its purchase power dispute with Arizona Public Service Company, one or
26 more of Brown & Bain's attorneys will likely be required to appear as a witness in this case. The
27 Counties contend that this creates an impermissible conflict under Arizona Rules of Supreme Court
28

1 Rule 42 (ER 3.7), which proscribes representation by an attorney who is also likely to be a witness,
2 subject to certain exceptions.

3 On May 14, 2002, Staff filed a Joinder in the Counties' objection to Brown & Bain's
4 representation. Staff agrees with the Counties that, because Brown & Bain attorney Joseph Mais is a
5 potential witness, Brown & Bain is foreclosed from representing Citizens in this case.

6 IT IS THEREFORE ORDERED that responses to the Counties' Objection to Notice of
7 Appearance of Substitute Counsel, and to Staff's Joinder therein, should be filed by no later than May
8 22, 2002.

9 DATED this 16th day of May, 2002.

10
11 

12 DWIGHT D. NODES
13 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

14
15 Copies of the foregoing mailed/delivered
16 this 16th day of May, 2002 to:

17 Joseph E. Mais
18 Anthony L. Marks
19 BROWN & BAIN, P.A.
20 2901 North Central Avenue
21 P.O. Box 400
22 Phoenix, Arizona 85001-0400
23 Attorneys for Citizens Communications Company

24 Daniel W. Pozefsky
25 RUCO
26 2828 N. Central Ave., Suite 1200
27 Phoenix, Arizona 85004

28 Christine L. Nelson
Deputy County Attorney
P.O. Box 7000
Kingman, Arizona 86402

1 Walter W. Meek
2 AUIA
3 2100 N. Central Ave., Suite 210
4 Phoenix, Arizona 85004

5 Holly J. Hawn
6 Santa Cruz Deputy County Attorney
7 2150 N. Congress Drive, Ste. 201
8 Nogales, AZ 85621
9 Attorneys for Santa Cruz County

10 Raymond S. Heyman
11 Michael W. Patten
12 ROSHKA HEYMAN & DeWULF
13 400 East Van Buren Street, Ste. 800
14 Phoenix, AZ 85004
15 Attorneys for Mohave and Santa Cruz Counties

16 Marshall Magruder
17 Lucy Magruder
18 P.O. Box 1267
19 Tubac, AZ 85646-1267

20 Christopher K. Kempley
21 Legal Division
22 ARIZONA CORPORATION COMMISSION
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 Ernest G. Johnson
26 Utilities Division
27 ARIZONA CORPORATION COMMISSION
28 1200 W. Washington Street
Phoenix, Arizona 85007

29 By: 
30 Debbi Person
31 Secretary to Dwight D. Nodes
32
33
34
35
36
37
38