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BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

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

MAY 23 2002

2002 MAY 23 A 11: 27

DOCKETED BY *[Signature]*

AZ CORP COMMISSION
DOCUMENT CONTROL

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 By Procedural Order issued May 16, 2002, responses to the Counties and Staffs' objection to
7 Brown & Bain's appearance as substitute counsel were directed to be filed by May 22, 2002.

8 On May 16, 2002, Brown & Bain filed a Notice of Readiness to Proceed with Evidentiary
9 Hearing. Brown & Bain stated that it would be prepared to proceed to hearing by September 9, 2002.

10 On May 22, 2002, the Residential Utility Consumer Office filed a joinder in the Counties'
11 opposition to Brown & Bain's appearance as counsel for Citizens in this case.

12 On May 22, 2002, Brown & Bain filed a Reply in Support of Its Notice of Appearance of
13 Substitute Counsel. Brown & Bain argues that it offered only limited procedural legal advice to
14 Citizens regarding the purchase power dispute with APS, and that its attorneys are not necessary
15 witnesses in this proceeding. Brown & Bain asserts that its appearance on behalf of Citizens in this
16 case is not prohibited by any ethical rule or legal precedent.

17 IT IS THEREFORE ORDERED that responses to Brown & Bain's Reply in Support of Its
18 Notice of Appearance of Substitute Counsel should be filed by no later than May 29, 2002.

19 DATED this 23rd day of May, 2002.

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21 

22 _____
23 DWIGHT D. NODES
24 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
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1 Copies of the foregoing mailed/delivered
this 23rd day of May, 2002 to:

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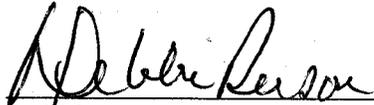
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11 By: 
12 Debbi Person
13 Secretary to Dwight D. Nodes
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