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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

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ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

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DOCKET NO. E-01032C-00-0751

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.

PROCEDURAL ORDER

BY THE COMMISSION:

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

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

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

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

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 On May 23, 2002, a Procedural Order was issued requesting responses to Brown & Bain's
18 Reply.

19 Responses were filed on May 29, 2002 by the Counties, Staff, and RUCO.

20 On June 3, 2002, Brown & Bain filed a Surreply in Support of its Notice of Appearance of
21 Substitute Counsel.

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1 IT IS THEREFORE ORDERED that an oral argument regarding Brown & Bain's Notice of
2 Appearance of Substitute Counsel on behalf of Citizens shall be scheduled for July 2, 2002, at 11:00
3 a.m., at the offices of the Commission.

4 DATED this 11th day of June, 2002.

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6 

7 DWIGHT D. NODES
8 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 11th day of June, 2002 to:

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12 Anthony L. Marks
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18 By: Debbi Person
Debbi Person
19 Secretary to Dwight D. Nodes

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