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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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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

RESPONSE TO THE COUNTIES' MOTION FOR FINDINGS OF FACT; OR IN THE ALTERNATIVE, A STAY OF PROCEEDINGS

The Residential Utility Consumer Office ("RUCO") supports Mohave County's and Santa Cruz County's (collectively the "Counties") motion for findings of fact; or in the alternative, a stay of proceedings. However, RUCO opposes the alternative prayer for relief.

RUCO opposes the Counties' invitation that Citizens seek relief at FERC and *return to the ACC for further relief if not satisfied*. RUCO's position remains that Citizens' has so completely betrayed the public interest this Commission has no choice but to pronounce a point of no return.

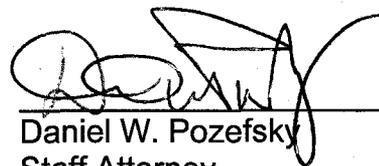
Moreover, Citizens' waiver of the attorney-client privilege reinforces RUCO's position that Citizens' remedy is no longer before this Commission. Citizens' created this dilemma by failing to diligently prosecute the contract dispute at the earliest instance and dithering while costs mounted exponentially. Now, faced with the exposure of its imprudent conduct and its

1 likely consequences, Citizens' responds out of desperation and compounds the offense by
2 waiving the attorney-client privilege for advice that admittedly undermines Citizens' position
3 vis-à-vis the APS contract. The waiver cements Citizens' interests to those of APS and
4 severely compromises the parties' ability to prosecute a true case and controversy before the
5 FERC.

6 Nonetheless, before deciding the Counties' motion the Commission may conclude that it
7 should determine why Citizens' waived the privilege. This inquiry would give the Commission
8 a complete record and understanding of Citizens' decision. Specifically, the Commission could
9 explore the following issues: who decided to waive the privilege, what considerations
10 influenced the decision, and what discussions, if any, occurred concerning the public interest.
11 For administrative economy the Commission could call the preliminary hearing in lieu of
12 additional discovery.

13 In the event the Counties' motion is granted, the Commission should address various
14 remaining issues, including but not limited to the total amount of the prudently-incurred
15 purchase power costs, whether the new PSA is in the public interest, the approved outstanding
16 balance in the PPFAC, and any adjustments to the PPFAC.

17 RESPECTFULLY SUBMITTED this 15th day of April, 2002.

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21 Daniel W. Pozefsky
22 Staff Attorney
23
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1 AN ORIGINAL AND TEN COPIES
of the foregoing filed this 15th day
2 of April, 2002 with:

3 Docket Control
Arizona Corporation Commission
4 1200 West Washington
Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/
6 mailed this 15th day of April, 2002 to:

7 Lyn Farmer
Chief Administrative Law Judge
8 Hearing Division
Arizona Corporation Commission
9 1200 West Washington
Phoenix, Arizona 85007

10 Christopher Kempley, Chief Counsel
11 Legal Division
Arizona Corporation Commission
12 1200 West Washington
Phoenix, Arizona 85007

13 Ernest Johnson, Director
14 Utilities Division
Arizona Corporation Commission
15 1200 West Washington
Phoenix, Arizona 85007

16 Walter W. Meek
17 Arizona Utility Investors Association
2100 North Central Ave., Suite 210
18 Phoenix, Arizona 85004

19 Holly J. Hawn
Deputy County Attorney
20 Santa Cruz County Attorney's Office
2150 N. Congress Drive, Suite 201
21 Nogales, Arizona 85621

22
23 By Linda Reeves
Linda Reeves

Jose L. Machado
City Attorney
777 North Grand Ave.
Nogales, Arizona 85621

Michael M. Grant
Todd C. Wiley
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Raymond S. Heyman
Michael W. Patten
Roshka Heyman & DeWulf, PLC
One Arizona Center
400 East Van Buren St., Suite 800
Phoenix, Arizona 85004

Christine L. Nelson
John White
Mohave County Attorney's Office
P.O. Box 7000
Kingman, Arizona 86402-7000

Marshall and Lucy Magruder
Post Office Box 1267
Tubac, Arizona 85646-1267

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