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Arizona Corporation Commission
DOCKETED

MAR - 5 2003

DOCKETED BY	
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BEFORE THE ARIZONA CORPORATION COMMISSION

9
 10 IN THE MATTER OF THE APPLICATION
 11 OF ARIZONA WATER COMPANY, AN
 12 ARIZONA CORPORATION, FOR
 13 ADJUSTMENTS TO ITS RATES AND
 14 CHARGES FOR UTILITY SERVICE
 15 FURNISHED BY ITS EASTERN GROUP
 16 AND FOR CERTAIN RELATED
 17 APPROVALS.

Docket No. W-01445A-02-0619

**ARIZONA WATER COMPANY'S
 RESPONSE TO STAFF'S MOTION TO
 CONTINUE ALL PROCEDURAL
 DEADLINES, CONTINUE HEARING
 AND FOR TOLLING OF THE RATE
 CASE TIME CLOCK**

15 Arizona Water Company ("Arizona Water" or the "Company") hereby responds to
 16 Staff's motion for a 105-day extension of all procedural deadlines as well as the hearing date,
 17 and to generally suspend A.A.C. R14-2-103, and urges the Administrative Law Judge to reject
 18 Staff's motion. As explained below, none of Staff's grounds for this unprecedented and
 19 draconian relief has merit. In fact, Staff's contentions are, to be blunt, inaccurate and
 20 misleading. The Company has responded timely to all of Staff's data requests, and the
 21 information Staff claims it needs is either not available or could be obtained by Staff from a
 22 sister agency. Therefore, Staff has failed to satisfy the standard set forth in A.A.C. R14-2-
 23 103(B)(11)(e), governing when the "time clock" may be suspended. Staff has provided no basis
 24 for delaying this general rate case application for more than three months – a delay that could
 25 cost Arizona Water in excess of \$1 million.

26

1 **I. PROCEDURAL BACKGROUND.**

2 The Company's general rate case application was originally docketed August 14, 2002,
3 utilizing a December 31, 2001 Test Year. Staff issued a deficiency letter on September 13, 2002.
4 Affidavit of Ralph J. Kennedy ("Kennedy Aff.") at ¶ 23. The Company then provided additional
5 information in support of its application, and on October 11, 2002, Staff issued its finding that
6 the Company's filing was sufficient. A procedural order was subsequently issued on October 23,
7 2002, setting a hearing on June 23, 2002, and establishing deadlines for pre-filed testimony.
8 Staff's direct testimony is currently due on April 9, 2003.

9 On October 21, 2002, Staff began serving data requests on the Company. Kennedy Aff.
10 at ¶ 4. However, the majority of Staff's data requests were not served until after January 8, 2003.
11 Since that date and through February 14, Staff has served 12 sets of data requests consisting of
12 150 questions not including sub-parts. Kennedy Aff. at ¶¶ 4-5. In fact, during the week of
13 February 10 through 14, 2003, Staff served a set of data requests on the Company each day. In
14 each case, the Company delivered responses to Staff within the deadline set by the procedural
15 order. Kennedy Aff. at ¶ 5.

16 Staff did raise some of the concerns set forth in its Motion to Continue with the Company
17 when several Staff members and Staff's counsel met with the Company's legal counsel on
18 February 19, 2003. On the very next day, Arizona Water's representatives contacted Staff to
19 arrange a meeting to discuss Staff's concerns. Kennedy Aff. at ¶ 13. Staff's representatives
20 claimed they could not meet that day or the next, and Staff has not yet contacted the Company's
21 representatives to arrange for a meeting. *Id.* Arizona Water ultimately wrote a detailed letter to
22 Staff on February 27, 2003, responding to all of Staff's concerns and explaining why such
23 concerns were unwarranted, a copy of which is attached to Staff's Motion To Continue at Exhibit

24 In short, the Company has done a remarkably complete job of responding to all of Staff's
25 data requests in a timely manner, particularly given the barrage of data requests served by Staff
26 in February. Some responses have been supplemented and others will be when the Company

1 closes out its 2002 books in the next week. Kennedy Aff. at ¶¶ 6, 12 and 14. There have also
2 been a number of instances where the Company has had to inform Staff that it lacked knowledge
3 or other information responsive to Staff's data requests. E.g., Kennedy Aff. at ¶ 21. Virtually all
4 of the data requests to which the Company was unable to respond concern certain litigation
5 pending in federal court, brought under the Water Quality Assurance Revolving Fund
6 ("WQARF") and involving the so-called Pinal Creek Group ("PCG"), which is discussed below.
7 However, contrary to Staff's assertions, the Company has complied with the procedural order, as
8 evidenced by the fact that until now, no disputes have arisen about the data requests.

9 **II. STAFF HAS FAILED TO ESTABLISH ANY BASIS FOR THE REQUESTED**
10 **EXTENSION.**

11 The various deadlines and other procedural requirements for rate proceedings are
12 governed by A.A.C. R14-2-103, the current version of which was adopted by the Commission in
13 1992. Decision No. 57875 (May 18, 1992). The subpart of the rule that is relevant to the instant
14 motion is R14-2-103(B)(11)(e), which sets forth the criteria for suspending or restarting the so-
15 called "time clock," i.e., the deadlines for the completion of various events and the ultimate
16 completion of the rate proceeding. In explaining the circumstances under which relief may be
17 granted, the Commission explained:

18 We have pondered the various definitions and criteria offered by
19 the comments for determining whether the time clock should be
20 reset and find that they should not be adopted. We believe that
21 the language of the proposed rule already places reasonable
22 constraints on the Commission's discretion. **A recomputation of
23 the applicable time period will not even be considered unless
24 an amendment to a utility's filing changes the amount of rate
25 relief requested or substantially alters the underlying facts, or
26 unless an extraordinary event has occurred. This is intended
to be a higher standard to meet than "good cause".**

24 Decision No. 57875, Attachment B (Concise Explanatory Statement) at 29-30 (emphasis added).
25 Thus, Staff must satisfy a very high threshold to obtain relief. For the reasons set forth below,
26

1 Staff cannot satisfy this test.¹

2 Staff's request for a 105-day extension is premised on four separate "concerns," which
3 are based on a distorted and misleading description of events.² None of the concerns advanced
4 by Staff justifies delaying these proceedings under the applicable standard.

5 **A. Staff Already has Sufficient Information to Analyze the Company's PTYPA.**

6 Arizona Water has proposed including in rate base certain post test year plant additions
7 ("PTYPA") placed in service by December 31, 2002, i.e., within 12 months from the end of the
8 Test Year and over four months before Staff's direct testimony is due. Kennedy Aff. at ¶ 7. The
9 Company does not seek, as Staff erroneously argues, to include all PTYPA installed through the
10 date of the hearing. In fact, as the Company's direct testimony makes clear, the Company
11 specifically selected December 31, 2002, as the cut-off date because it is well in advance of the
12 hearing and would allow Staff and any other party ample time to confirm that all plant additions
13 have been placed in service and to verify their construction cost before their testimony is filed.

14 Id.

15 The Company has provided Staff detailed information concerning its PTYPA and has
16 responded to numerous data requests concerning PTYPA. Kennedy Aff. at ¶¶ 8-12. The
17 Company identified a number of post test year construction projects and provided estimated
18 costs for all such projects. Staff now has everything it requested concerning PTYPA. In short,
19 Staff has had ample time to analyze the Company's request and prepare its recommendations. Of
20 course, Staff's direct filing will address the Staff's recommendations about whether and to what

21 _____
22 ¹ The rule also allows the time clock to be suspended if the utility amends its application. Arizona Water
has not done so in this case.

23 ² In its motion Staff also suggests for the first time that the Company's test year is "stale." Motion to
24 Continue at 1. This is nonsense; the Company's test year is not stale. Kennedy Aff. at ¶ 23. The
25 Commission's regulations state that the end of the test year shall be the most recent practical date prior to
the filing. A.A.C. R14-2-103. The Company's books for calendar year 2001 were closed the middle of
26 March 2002, which allowed 5 months to assemble a rate case filing. Indeed, calendar year 2001 was the
most recent period for which the Company had audited financial statements. Id. In any case, a delay of
105 days will only exacerbate this purported problem, again raising questions about Staff's real motive.

1 extent the Company's proposed PTYPA should be adopted in TY rate base. But the Commission
2 will ultimately decide whether the Company has satisfied the burden of proof on this issue. In
3 either case, there is no basis for any extension of time.

4 **B. Staff's Request for 2002 Actual Expenses does not Support Delay.**

5 The Test Year in this proceeding is the calendar year ending December 31, 2001. The
6 Company has therefore used its 2001 operating expenses and revenues, with certain pro forma
7 adjustments based on known and measurable changes. See R14-2-103(A)(3)(i) (definition of pro
8 forma adjustments). Verification of the Company's pro forma adjustments merely requires
9 understanding the basis on which they were calculated, and Staff has been provided documents
10 and data needed to do so. Kennedy Aff. at ¶¶ 14-15.

11 However, Staff has requested data concerning the Company's total 2002 operating
12 expenses, information that Staff knew would not be available until approximately mid-March.
13 While the relevancy of this data is questionable, the Company has furnished most of this data to
14 Staff already, the 2002 monthly operating reports for every month except December 2002 (which
15 will be provided by March 14, 2003). Kennedy Aff. at ¶ 14. Expense data for December 2002 is
16 not required to evaluate the Company's pro forma adjustments to its 2001 operating expenses.
17 Staff's report will deal with this issue. To the extent Staff disagrees with the Company's pro
18 forma adjustments, the Commission can weigh the parties' positions and determine which party
19 has met its burden of proof. In either case, no extension of time is warranted.

20 **C. Arizona Water is not Required and does not Intend to Change its Proposed**
21 **Depreciation Rates.**

22 Staff's claim that the Company's use of "incorrect" depreciation rates further justifies an
23 extension is misleading. Motion to Continue at 2. The Company informed Staff that it used
24 depreciation rates from a 1987 depreciation study, rather than a 1990 study for purposes of
25 calculating its pro forma depreciation adjustments and that it had intended to use all 1990
26 component rates. Kennedy Aff. at ¶ 16. The impact of using rates from the 1987 study is that

1 the revenue requirement is reduced by about \$31,000 (\$50,000 minus the income tax effect).
2 Kennedy Aff. at ¶ 17. Staff's claimed concern over a \$31,000 change to pro forma operating
3 expenses totaling \$12.7 million is exaggerated at best. The Company has informed Staff that it
4 will use the depreciation rates from the 1987 study and accept the reduction in revenues. Id.
5 Most importantly, the relief being sought by the Company has not changed, and no new or
6 additional schedules are required from the Company.

7 Once again, Staff is free to accept the depreciation rates from 1987 report or to propose
8 other depreciation rates in its filing. Staff frequently recommends changes in a utility's
9 depreciation rates. Consequently, no additional time is needed for Staff to decide whether to
10 recommend use of the Company's proposed depreciations rates, recommend use of the
11 depreciation rates from the 1990 study, or recommend different depreciation rates altogether.

12 **D. The Company Does Not Have the Information Staff Seeks Regarding the**
13 **Pinal Creek WQARF Litigation.**

14 Staff also claims it needs an additional 105 days in order to obtain information from the
15 Company relating to ongoing litigation in federal district court involving the Pinal Creek
16 WQARF Site. This excuse is clearly a red herring. The Company has responded to numerous
17 data requests concerning the 1998 settlement it made with the Pinal Creek Group ("PCG"),
18 which consists of various mining companies believed to be responsible for groundwater
19 contamination and other problems in the Pinal Creek watershed, in the vicinity of Miami,
20 Arizona. Kennedy Aff. at ¶ 20. The Company has repeatedly advised Staff that it is not a party
21 to this litigation, and cannot provide information regarding the litigation, including the various
22 claims asserted by and against the PCG and any third parties. Kennedy Aff. at ¶ 21.

23 The Company did negotiate a settlement agreement in 1998 (well outside of the 2001
24 Test Year) resolving any potential claims that the Company may have against the various mining
25 companies relating to historic and current groundwater contamination and related problems.
26 Kennedy Aff. at ¶¶ 18-19. As Staff is well aware, the settlement agreement includes a strict

1 confidentiality provision, setting forth specific procedures that the Company must follow before
2 providing any information to other parties. The Company has provided the settlement agreement
3 to Staff subject to a protective agreement, and, as stated, has responded to numerous data
4 requests concerning that agreement. Kennedy Aff. at ¶ 20. However, the Company is simply
5 unable to provide a “detailed narrative” regarding litigation to which it is not a party, or certain
6 of the other information sought by Staff because it does not possess this information.

7 Again, this appears to be a situation where the Staff is unwilling to help itself. The
8 Company has made arrangements for Staff to meet with representatives of the Arizona
9 Department of Environmental Quality (“ADEQ”), which has information about the PCG and the
10 litigation pending in federal court. See Motion to Continue, Exhibit 6 at 2. Apparently, Staff is
11 unwilling to meet with its sister agency to inform itself of the background information it is
12 seeking which the Company does not have. Again, this raises serious questions regarding Staff’s
13 real motive in seeking a 105-day extension of time. It certainly does not support any extension
14 of time.

15 **E. The Irreparable Economic Injuries to The Company Substantially**
16 **Outweighs the Purported Inconvenience to Staff.**

17 As the foregoing demonstrates, none of the grounds asserted by Staff supports any
18 extension of time, much less an extension of some three and one-half months, which would
19 postpone the hearing until sometime in October 2003. This sort of draconian delay, which
20 effectively punishes the Company, is granted only under truly extraordinary circumstances. See
21 Decision No. 57875, supra. For example, in a rate proceeding involving the Maricopa County
22 water and wastewater systems of Citizens Utilities Company, the Hearing Division extended the
23 deadlines by 167 days as a result of certain extraordinary events, which included repeated
24 failures to provide timely responses to discovery requests, violations of procedural orders and
25 similar problems that simply are not present in this case. Decision No. 60127 (May 7, 1997)
26 (relevant portions attached hereto as Exhibit 1). None of these factors are present in this case.

1 In addition to failing to demonstrate the existence of an extraordinary event, Staff also
2 contends that it may be unable to meet its own “internal deadline” for the production of an initial
3 draft of testimony, arbitrarily set for March 17, 2003. Motion to Continue at 4. The Company
4 has been unable to locate any sort of “internal deadline” in any of the Commission’s rules
5 governing rate proceedings, and assumes that this deadline can be adjusted by Staff. More
6 importantly, the bulk of the information that Staff claims is missing is not needed for Staff to
7 prepare the “first draft” of its direct testimony. Instead, as explained above, the information that
8 will be available no later than March 14, 2003, would simply serve as a basis to check the
9 calculations and other information that the Company has already furnished. In other words, this
10 additional information is not necessary for Staff to prepare a first draft of its direct filing. Under
11 these circumstances, Staff’s self-imposed, internal deadline cannot be used as a justification for
12 postponing the hearing or extending any deadlines. See, e.g., Decision No. 57875 (May 18,
13 1992), Attachment B (Concise Explanatory Statement) at 26 (“it would be fundamentally unfair
14 to grant Staff any decision-making authority over the legally established time periods [for rate
15 proceedings] and the rights of the other parties.”).

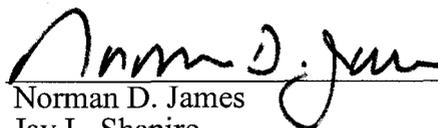
16 Finally, the Administrative Law Judge should weigh the weak and unsupported grounds
17 offered by Staff against the impact a delay will cause on Arizona Water. The overall increase in
18 revenues for the eight Eastern Group systems sought in this proceeding is approximately \$4.2
19 million per year. Accordingly, a three month delay in implementing new rates would result in a
20 permanent loss of revenues of more than \$1 million. Kennedy Aff. at ¶ 25. A delay of only 30
21 days would result in permanent revenue losses in excess of \$330,000. This is a very significant
22 impact to Arizona Water, as these revenues cannot be recovered, but will instead be permanently
23 lost by virtue of a delay in approving new rates. When weighed against the misleading and
24 unsupported grounds asserted by Staff, there is simply no basis for the draconian delay Staff now
25 seeks.

26 **III. CONCLUSION.**

1 For the foregoing reasons, Arizona Water respectfully requests that the Administrative
2 Law Judge deny Staff's motion. For the reasons explained above, the grounds set forth in Staff's
3 motion do not satisfy the standard set forth in A.A.C. R14-2-103(B)(11)(e). The deadlines
4 contained in this rule may not be modified in the absence of an extraordinary event. The
5 Commission itself has explained that this is intended to be a very high standard, and cannot be
6 lightly disregarded. Staff has failed to meet this burden, and the injuries that will be suffered by
7 the Company far outweigh any inconvenience to Staff. Therefore, Staff's motion must be
8 denied.

9 RESPECTFULLY SUBMITTED this 5th day of March, 2003.

10 FENNEMORE CRAIG

11
12 By 
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Arizona Water Company

17 An original and 13 copies of the
18 foregoing were delivered this 5th day of
March, 2003 to:

19 Docketing Supervisor
20 Docket Control
21 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

22 A copy of the foregoing was delivered/mailed* this 5th
day of March, 2003 to:

23 Teena Wolfe, Administrative Law Judge
24 Hearing Division
25 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

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Casa Grande, AZ 85222

By: Mary House

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EXHIBIT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 07 1997

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

DOCKETED BY *CLW*

IN THE MATTER OF THE APPLICATION OF
CITIZENS UTILITIES COMPANY, AGUA FRIA
WATER DIVISION, FOR A HEARING TO
DETERMINE THE FAIR VALUE OF ITS
PROPERTIES FOR RATEMAKING PURPOSES
TO FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, AND TO APPROVE
RATE SCHEDULES DESIGNED TO PROVIDE
SUCH RATE OF RETURN.

DOCKET NO. E-1032-95-417

IN THE MATTER OF THE APPLICATION OF
SUN CITY SEWER COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF ITS PROPERTIES FOR
RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN
THEREON, AND TO APPROVE RATE
SCHEDULES DESIGNED TO PROVIDE SUCH
RATE OF RETURN.

DOCKET NO. U-2276-95-417

IN THE MATTER OF THE APPLICATION OF
SUN CITY WATER COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE
OF ITS PROPERTIES FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN THEREON,
AND TO APPROVE RATE SCHEDULES
DESIGNED TO PROVIDE SUCH RATE OF
RETURN.

DOCKET NO. U-1656-95-417

IN THE MATTER OF THE APPLICATION OF
SUN CITY WEST UTILITIES COMPANY FOR
A HEARING TO DETERMINE THE FAIR
VALUE OF ITS PROPERTIES FOR
RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN
THEREON, AND TO APPROVE RATE
SCHEDULES DESIGNED TO PROVIDE SUCH
RATE OF RETURN.

DOCKET NO. U-2334-95-417

...

...

...

1 IN THE MATTER OF THE APPLICATION OF)
2 TUBAC VALLEY COMPANY FOR A)
3 HEARING TO DETERMINE THE FAIR VALUE)
4 OF ITS PROPERTIES FOR RATEMAKING)
5 PURPOSES, TO FIX A JUST AND)
6 REASONABLE RATE OF RETURN THEREON,)
7 AND TO APPROVE RATE SCHEDULES)
8 DESIGNED TO PROVIDE SUCH RATE OF)
9 RETURN.)

DOCKET NO. U-1595-95-417

6 IN THE MATTER OF THE APPLICATION OF)
7 SUN CITY SEWER COMPANY FOR REVIEW)
8 OF ITS SEWER TREATMENT SURCHARGE.)

DOCKET NO. U-2276-95-420

9 IN THE MATTER OF THE APPLICATION OF)
10 SUN CITY WATER COMPANY FOR AN)
11 EXTENSION OF ITS CERTIFICATE OF)
12 CONVENIENCE AND NECESSITY TO SERVE)
13 THE TOWN OF YOUNGTOWN, ARIZONA.)

DOCKET NO. U-1656-96-282

13 IN THE MATTER OF THE APPLICATION OF)
14 SUN CITY SEWER COMPANY FOR AN)
15 EXTENSION OF ITS CERTIFICATE OF)
16 CONVENIENCE AND NECESSITY TO SERVE)
17 THE TOWN OF YOUNGTOWN, ARIZONA.)

DOCKET NO. U-2276-96-282

DECISION NO. 60172

OPINION AND ORDER

17 PUBLIC COMMENTS:

May 15, 1996 (Phoenix, Sun City, and Surprise, Arizona);
June 7, 1996 (Nogales, Arizona).

18 DATES OF HEARING:

19 March 20, April 17, and April 30, 1996 (pre-hearing
20 conferences), October 29, 30, 31; November 1, 4, 5, 6, 7,
21 8, 12, 13, 14, and 15, 1996.

21 PLACE OF HEARING:

Phoenix, Arizona

22 PRESIDING OFFICER:

Lyn Farmer

23 IN ATTENDANCE:

Renz D. Jennings, Chairman
24 Marcia Weeks, Commissioner
25 Carl J. Kunasek, Commissioner

26 APPEARANCES:

27 Ms. Beth Ann Burns and Ms. Susan Mikes Redner,
28 Associate General Counsels, on behalf of Citizens Utilities
Company;

Mr. James P. Beene and Mr. Paul R. Michaud, Staff
Attorneys, on behalf of the Residential Utility Consumer
Office;

1 **BY THE COMMISSION:**

2 On August 17, 1995, Citizens Utilities Company, Agua Fria Water Division, Sun City Sewer
3 Company, Sun City Water Company, Sun City West Utilities Company and Tubac Valley Company,
4 (collectively "Company", "Citizens", or "Maricopa W/WW") filed applications with the Arizona
5 Corporation Commission ("Commission") for rate increases ("Joint Rate Applications").

6 Between September 15, 1995 and October 2, 1995, the Company revised the application and on
7 October 3, 1995, the Commission's Utilities Division ("Staff") found that the Company had met the
8 filing requirements of A.A.C. R14-2-103 and was classified as a Class A utility.

9 On October 3, 1995 Sun City Sewer Company filed an application for review of its sewer
10 treatment charges, and on November 3, 1995 the sewer treatment surcharge application was consolidated
11 with the Joint Rate Applications.

12 On May 8, 1996, Sun City Water and Sun City Sewer filed a Joint Application for extensions to
13 their Certificates of Convenience and Necessity ("Certificate" or "CC&N").

14 On July 17, 1996, Staff filed a Motion requesting consolidation of the Joint Rate Applications a:
15 the Joint CC&N Applications and by Procedural Order issued on August 2, 1996, the consolidation was
16 granted.

17 During the period between October 3, 1995 through June 12, 1996, the following requested and
18 were granted intervention status: the Sun Village Community Association ("SVCA"); Centurion
19 Management Company ("Centurion"); Bell West Ranch Limited Partnership and Surprise 222 Limited
20 Partnership ("Partnerships"); Shea Homes Limited Partnership ("Shea Homes"); the Residential Utility
21 Consumer Office ("RUCO"); the City of Glendale; Mr. Lester E. Merydith; the Property Owners and
22 Residents Association of Sun City West ("PORA"); Mr. Richard Kithil; Mr. Anthony Pavone; the Tubac
23 Golf Resort ("Tubac"); the Santa Cruz Valley Citizen's Council, Inc. ("SCVCC"); the Sun City Home
24 Owners Association ("SCHOA"); the Sun City West Recreation Centers, Inc. ("SCWRC"); the Sun City
25 Taxpayers' Association ("SCTA"); the Central Arizona Water Conservation District ("CAWCD"); the
26 Happy Trails Community Association ("HTCA") through its Manager, Mr. Leon Rye; the Tubac Fire
27 District Board ("TFDB"); the City of Surprise; and the Arizona Department of Water Resourc
28 ("ADWR").

1 Subsequently, there were numerous discovery disputes between primarily RUCO, Staff, and other
 2 parties on the one hand and the Company on the other hand. Oral arguments on the discovery disputes
 3 occurred on March 5, March 20, April 3, and April 23, 1996. The Presiding Officer issued the following
 4 decision at the March 15, 1996 oral argument, and a Procedural Order was issued on March 22, 1996
 5 which set forth the following:

6 We find that pursuant to A.A.C. R14-2-103(B)(11)(e)(ii) there are clearly
 7 extraordinary events in this case, including:

- 8 (1) Citizens has knowingly failed to respond to discovery requests in
 9 a timely manner. On October 11, 1995, Staff filed its Request for
 10 Procedural Order. On October 23, 1995, the Company filed a
 11 Response, stating that the proposed discovery schedules do not
 12 allow it a reasonable and adequate opportunity to prepare
 13 responses and objections to discovery. Our October 25, 1996
 14 Procedural Order rejected the Company's arguments and clearly
 15 specified a time frame of ten days in which to respond to
 16 discovery requests. Citizens did not appeal this ruling. Citizens
 17 readily admits that it has been late in responding to data requests,¹
 18 and continues to be late in its responses, even after the Procedural
 19 Conference.
- 20 (2) Citizens failed to comply with the March 5, 1996 bench ruling as
 21 set forth in the March 6, 1996 Procedural Order. Citizens did not
 22 immediately respond to all outstanding data requests.
- 23 (3) Citizens has not shown that it has taken steps to modify its internal
 24 process to insure compliance with the October 25, 1995 or the
 25 March 6, 1996 Procedural Orders.
- 26 (4) the Motion For Stay filed by Citizens on March 12, 1996.
- 27 (5) Citizens' announcement of an "amended application"/"corrected filing"
 28 to be filed no later than the end of the week (March 8, 1996), and then its
 decision announced at the March 20, 1996 Procedural Conference not to
 make the filing.
- (6) Citizens' filing three rate cases within several weeks of each other,
 including this rate case, which is actually six applications combined into
 one proceeding.
- (7) During a similar discovery Procedural Conference in Docket No. E-1032-
 95-433, Citizens' pending electric rate application, the Commission
 suspended the Timeclock Rules.

While we find each of the above is an extraordinary event by itself, cumulatively
 we find it even more compelling.

We find that the Company's clear, repeated violations of the Commission's
 rulings and orders has harmed Staff, RUCO, and the other Intervenors'
 opportunity to analyze data and fully present their case(s). As a result, Staff and
 RUCO's Motions are granted, and the Timeclock Rules are suspended.

¹ At the March 5, 1996 Procedural Conference, it indicated that it was an average of 12 days
 late in responding to Staff and RUCO data requests. Staff indicated that the Company was an average
 of 14 days late, with some data requests being as late as 40 days. At the March 20, 1996 Procedural
 Conference, the Company indicated that its average "lateness" was improving.

1 By Procedural Order issued May 9, 1996, the stay of the Timeclock Rules was lifted and the
2 hearing was rescheduled for October 29, 1996. The May 9, 1996 Procedural Order determined that the
3 time-clock rules were extended by 167 days as a result of the extraordinary events.

4 This consolidated matter came before a duly authorized Hearing Officer of the Commission at
5 the Commission's offices in Phoenix, Arizona on October 29, 1996. Citizens, RUCO, and various
6 intervenors appeared through counsel and Staff appeared through counsel. At the conclusion of the
7 hearing, the matter was adjourned pending submission of simultaneous initial and reply briefs on
8 December 18, 1996 and January 17, 1997, respectively. On February 21, 1997, the Company, Staff, and
9 RUCO filed composite schedules.

10 DISCUSSION

11 I. NATURE OF APPLICANT'S OPERATIONS AND PROPOSED INCREASES

12 Citizens is a Delaware corporation and diversified public utility which, through its operating
13 divisions and subsidiaries, provides electric, natural gas, telecommunications, water and wastewater
14 service to approximately 1.8 million customers in 20 states. Citizens is engaged in the business of
15 providing public utility water and wastewater service to approximately 90,000 customers in Maricopa
16 and Santa Cruz Counties pursuant to Certificates of Public Convenience and Necessity granted by the
17 Commission. Maricopa W/WW includes six operations with individual rate structures and separate
18 accounting records. They include the Agua Fria Water Division ("Agua Fria"), Citizens' wholly-owned
19 subsidiaries Sun City Sewer Company ("Sun City Sewer"), Sun City Water Company ("Sun City
20 Water"), Sun City West Utilities Company water operations ("Sun City West Water") and wastewater
21 operations ("Sun City West Wastewater"), and Tubac Valley Water Company.

22 In its application, Citizens requested an increase in operating revenues of approximately \$3.68
23 million. During the course of the proceeding, Citizens revised its request to approximately \$2.1 million.
24 For each of the operations, the rate relief requested now is as follows: Sun City Water Company,
25 \$364,780; Sun City Sewer Company, \$404,392; Sun City West water operations, \$127,492; Sun City
26 West wastewater operations, \$994,602; Citizens Agua Fria Water Division, \$148,555; and Tubac Valley
27 Water Company, \$51,662. Staff recommended an overall decrease of \$420,162 and RUCO
28 recommended an overall increase in the Company's operating revenues of \$525,071.