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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

**DOCKETED**

JAN 07 2002

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AZ CORP COMMISSION  
DOCUMENT CONTROL

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IN THE MATTER OF THE APPLICATION ) DOCKET NO. E-01032C-00-0751  
 OF THE ARIZONA ELECTRIC DIVISION OF )  
 CITIZENS COMMUNICATIONS COMPANY ) **STAFF'S REPLY TO APPLICANT'S**  
 TO CHANGE THE CURRENT PURCHASED ) **RESPONSE TO STAFF'S MOTION**  
 POWER AND FUEL ADJUSTMENT CLAUSE ) **TO EXTEND TIME**  
 BANK, AND TO REQUEST APPROVED )  
 GUIDELINES FOR THE RECOVERY OF )  
 COSTS INCURRED IN CONNECTION WITH )  
 ENERGY RISK MANAGEMENT ACTIVITIES )

Staff for the Utilities Division of the Arizona Corporation Commission ("Staff") hereby respectfully requests that Staff's original motion to extend time be granted. Citizens Utilities ("Citizens"), in its response to Staff's motion, claims that its discovery responses have been satisfactory and that any delay will prejudice Citizens' interests. To the contrary, recent disclosures indicate that Citizens' previous discovery responses have been incomplete. To force Staff to go forward with incomplete information prejudices Staff, not Citizens. Ultimately, it is the ratepayers who will suffer if Citizens is allowed to manipulate the administrative process to prevent Staff from thoroughly evaluating all the facts.

In this case, Citizens seeks to recover approximately eighty-two million dollars from ratepayers as a direct result of electricity purchased via its purchase power agreement with Arizona Public Service Company ("APS"). This amount is the under-collected balance. Naturally, Staff wants to determine whether Citizens has confirmed that it was billed correctly under its contract with APS. To determine such, Staff needs all material information associated with the audit of the power bills charged to Citizens by APS.

Numerous discovery requests by Staff and by RUCO have requested information and backup on the audit. (See e.g. WPD3-22) On December 21, 2001, consultants for Staff and consultants for Citizens discussed information related to the audit that had been provided to Staff on a computer

1 disk. This disk contained raw data about APS' purchases and sales of power but lacked any files  
2 related to Citizens' analysis of that data. During a December 21, 2001 telephone call, Staff learned  
3 from Citizens of the existence of files that analyze the APS data. Staff needs these files as part of its  
4 analysis. On December 21, Citizens agreed to provide copies of these files to Staff. As of January  
5 7, 2002 Staff has not received this information.

6 In addition to the issue of the newly-discovered files, Staff first learned of other information  
7 necessary for its analysis during telephonic conferences with Citizens on both December 19 and 21,  
8 2001. For instance, Staff learned of other recent information regarding the relationship between the  
9 memorandum of understanding (MOU) between Citizens and APS and the operation of Citizens'  
10 Valencia generating units. To explore this information, Staff requires written responses to data  
11 requests submitted on December 28, 2001 on information disclosed or clarified during these  
12 Technical Conferences. Staff needs additional time to explore and analyze this and other newly-  
13 discovered information.

14 Discovery rules in Arizona civil proceedings provide for parties to obtain 'discovery of  
15 information regarding any matter, not privileged, which is relevant to the subject matter involved in  
16 the pending action . . ." ARCP 26(b)(1). This includes information likely to produce evidence likely  
17 to be admissible. *Id. See also Banta v. Superior Court of Maricopa County*, 112 Ariz. 544, 545, 544  
18 P.2d 653, 654 (1976). The fact that the information requested must be compiled and researched does  
19 not impede its discoverability. *Cornet Stores v. Superior Court In and For Yavapai County*, 108  
20 Ariz. 84, 89, 492 P.2d 1191, 1196 (1972). Clearly, in an administrative hearing such as a rate case,  
21 the rules of evidence are relaxed to the degree that most documents relevant and material to the  
22 determination of rates would be admissible. Equally as clear is the constitutional authority of the  
23 Commission to establish and review rates. This factor should give Commission Staff and those  
24 employed to work for the Commission even broader discretion to request and require materials  
25 associated with rates.

26 Despite Citizens "Herculean" efforts to respond to Staff's requests, the mere fact that it has  
27 responded does not automatically mean that Citizens has provided all the information needed for  
28 Staff to make a full and fair recommendation in this case. The fact remains that Citizens has

1 information related to the audit of APS' bills that it has not provided to Staff. Because Staff has yet  
2 to receive this information, an extension of the procedural schedule is appropriate.

3 Staff understands that Citizens might incur additional carrying costs to its under-collected  
4 bank balance. However, in order to ensure that the public interest is guaranteed, Staff must verify  
5 that Citizens' requested purchased power costs are fair, appropriate, and in accordance with  
6 applicable Arizona law. To put it mildly, it would be unfair for Citizen's ratepayers to be saddled  
7 with an eighty-two million dollar burden if Citizens failed to act prudently. In order to achieve that  
8 aim, Staff must be provided with all the information it needs to perform its analysis. To date, Staff  
9 has not received information critical to its assessment.

10 Discovery issues aside, Staff needs additional time in order to fully and completely gather  
11 and analyze the voluminous information it needs to conduct a thorough analysis. Since Citizens  
12 waited several months to file an amendment to its application detailing very significant  
13 developments in its dispute with APS, it seems appropriate to grant Staff a mere three-week  
14 extension to ensure that the public interest is protected. For all of the above reasons, Staff  
15 respectfully requests that its original motion to extend be granted.

16  
17 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January, 2002.

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23 The original and ten copies of the  
24 foregoing filed this 7<sup>th</sup> day of  
January, 2002, with:

25 Docket Control  
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28 ...

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2 mailed this 7<sup>th</sup> day of  
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