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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

2001 FEB 27 P 1:17

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

FEB 27 2001

AZ CORP COMMISSION
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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.

MOTION FOR PROTECTIVE ORDER

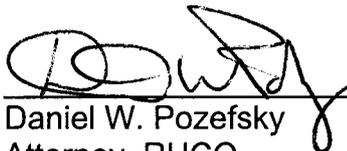
The Residential Utility Consumer Office ("RUCO") moves for a Protective Order due to Citizens Communications Company's ("Citizens") inability to provide RUCO with timely responses to its Discovery requests. For the following reasons, RUCO is requesting that the Commission issue a Protective Order in the attached form addressing the exchange of confidential information given the unique circumstances of this case.

During the course of this Docket, RUCO has submitted various Data Requests to Citizens requesting information, which Citizens indicates is confidential and subject to a Protective Agreement entered into between Citizens and Arizona Public Service ("APS"). In order to obtain access to that information, RUCO has also entered into a Protective Agreement with APS. That agreement provides that confidential information provided by Citizens to RUCO shall first be made available to APS and then provided to RUCO.

1 RUCO has requested and has yet to receive certain confidential information, which
2 Citizens has indicated it does not wish to disclose to APS. This information is necessary for
3 RUCO to complete its investigation into this matter.

4 WHEREFORE, RUCO requests a Protective Order in the attached form addressing the
5 exchange of confidential information in this Docket.

6 RESPECTFULLY SUBMITTED this 27th day of February, 2001.

7 
8 Daniel W. Pozefsky
9 Attorney, RUCO

10 AN ORIGINAL AND TEN COPIES
11 of the foregoing filed this 27th day of
12 February, 2001 with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 COPIES of the foregoing hand delivered/
18 mailed this 27th day of February, 2001 to:

19 Lyn Farmer, Chief Administrative Law Judge
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22 1200 West Washington
23 Phoenix, Arizona 85007

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12 By Cheryl Froulov

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1 (b) Use of Confidential Information. All persons who may be entitled to
2 review, or who are afforded access to any Confidential Information by reason of this Order
3 shall neither use or disclose the Confidential Information for purposes of business or
4 competition, or any purpose other than the purpose of preparation for and conduct of this
5 proceeding and then solely as contemplated herein, and shall keep the Confidential
6 Information secure as trade secret, confidential or proprietary information and in accordance
7 with the purposes and intent of this Order.

8 (c) Persons Entitled to Review. Access to information shall be limited to (1)
9 attorneys employed or retained by a party in this proceeding and the attorneys' staff; (2)
10 experts, consultants and advisors who need access to the material to assist a party in this
11 proceeding; (3) employees of any party (including in-house counsel) who are directly involved
12 in these proceedings; (4) Commissioners and all Commission Administrative Law Judges and
13 staff members to whom disclosure is necessary.

14 (d) Nondisclosure Agreement. Confidential Information shall not be disclosed
15 to any person who has not signed a nondisclosure agreement in the form, which is attached
16 hereto and incorporated herein as Exhibit "A." Court reporters shall also be asked to sign an
17 Exhibit "A."

18 The nondisclosure agreement (Exhibit "A") shall require the person to whom
19 disclosure is to be made to read a copy of this Protective Order and to certify in writing that
20 they have reviewed the same and have consented to be bound by its terms. The agreement
21 shall contain the signatory's full name, employer, business address and the name of the party
22 with whom the signatory is associated. Such agreement shall be delivered to counsel for the
23 providing party before disclosure is made, and if no objection thereto is registered to the
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1 Commission within five (5) days, then disclosure shall follow. An attorney who makes
2 Confidential Information available to any person listed in paragraph (c)(1)-(3) above shall be
3 responsible for having each such person execute an original of Exhibit A and a copy of all such
4 signed Exhibit "A" shall be circulated to all other counsel of record promptly after execution.

5 2. Two (2) copies of the Confidential Information requested by the parties shall be
6 provided.

7 3. Return of Confidential Information. All Confidential Information, copies thereof,
8 and notes made by signatories of the Nondisclosure Agreement, which have not been received
9 into evidence shall be returned to the providing party within thirty (30) days after the final
10 disposition of this matter, including administrative or judicial review.

11 4. Objections to Admissibility. The furnishing of any document, information, data,
12 study or other materials pursuant to this Protective Order shall in no way limit the right of the
13 providing party to object to its relevance or admissibility in proceedings before the
14 Commission.

15 5. Challenge to Confidentiality. This Order establishes a procedure for the
16 expeditious handling of information that a party claims is confidential; it shall not be construed
17 as an agreement or ruling on the confidentiality of any document. Any party may challenge the
18 characterization of any information, document, data or study claimed by the providing party to
19 be confidential in the following manner.

- 20 (a) A party seeking to challenge the confidentiality of any materials pursuant
21 to this Order shall first contact counsel for the providing party and attempt
22 to resolve any differences by informal stipulation;

- 1 (b) In the event that the parties cannot agree as to the character of the
2 information challenged, any party challenging the confidentiality shall do
3 so by appropriate pleading. This pleading shall:
- 4 (1) Designate the document, transcript or other material challenged in
5 a manner that will specifically isolate the challenged material from
6 other material claimed as confidential; and
- 7 (2) State with specificity the grounds upon which the documents,
8 transcript or other material are deemed to be nonconfidential by the
9 challenging party.
- 10 (c) A ruling on the confidentiality of the challenged information, document,
11 data or study shall be made by an Administrative Law Judge after
12 proceedings in camera, which shall be conducted under circumstances
13 such that only those persons duly authorized hereunder to have access to
14 such confidential materials shall be present. This hearing shall commence
15 no earlier than five (5) business days after service on the providing party
16 of the pleadings required by subparagraph 5 (b) above.
- 17 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL -
18 SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. E-01032C-00-
19 0751." Court reporter notes of such hearing shall be transcribed only
20 upon agreement by the parties or Order of the Administrative Law Judge
21 and in that event shall be separately bound, segregated, sealed, and
22 withheld from inspection by any person not bound by the terms of this
23 Order.
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1 (e) In the event that the Administrative Law Judge should rule that any
2 information, document, data or study should be removed from the
3 restrictions imposed by this Order, no party shall disclose such
4 information, document, data or study or use it in the public record for five
5 (5) business days unless authorized by the providing party to do so. The
6 provisions of this subparagraph are entered to enable the providing party
7 to seek a stay or other relief from an order removing the restriction of this
8 Order from materials claimed by the providing party to be confidential.

9 6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence
10 in this proceeding of Confidential Information in the following manner:

11 (1) At least five (5) days prior to the use of or substantive reference to
12 any Confidential Information, the parties intending to use such
13 information shall make that intention known to the providing party.

14 (2) The requesting party and the providing party shall make a good-
15 faith effort to reach an agreement so the information can be used in
16 a manner which will not reveal its trade secret, confidential or
17 proprietary nature.

18 (3) If such efforts fail, the requesting party shall separately identify
19 which portions, if any, of the documents to be offered or referenced
20 shall be placed in a sealed record.

21 (4) The copy of the documents to be placed in the sealed record shall
22 be tendered by counsel for the requesting party to the Commission,
23 and maintained in accordance with the terms of this Order.
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1 (b) Seal. While in the custody of the Commission, materials containing
2 Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE
3 ORDER IN DOCKET NO. E-01032C-00-0751," and shall not be examined by any person
4 except under the conditions set forth in this Order.

5 (c) In Camera Hearing. Any Confidential Information that must be orally
6 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera
7 hearing, attended only by persons authorized to have access to the information under this
8 Order. Similarly, any cross-examination on or substantive references to Confidential
9 Information (or that portion of the record containing Confidential Information or references
10 thereto) shall be received in an in camera hearing, and shall be marked and treated as
11 provided herein.

12 (d) Access to Record. Access to sealed testimony, records and information
13 shall be limited to the Administrative Law Judge and persons who have signed an Exhibit "A,"
14 unless such information is released from the restrictions of this Order either through agreement
15 of the parties or after notice to the parties and hearing, pursuant to the ruling of an
16 Administrative Law Judge, the order of the Commission and/or the final order of a court having
17 final jurisdiction.

18 (e) Appeal. Sealed portions of the record in this proceeding may be
19 forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as
20 designated herein for the information and use of the court. If a portion of the record is
21 forwarded to a court under seal for the purpose of an appeal, the providing party shall be
22 notified which portion of the sealed record has been designated by the appealing party as
23 necessary to the record on appeal.

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1 (f) Return. Unless otherwise ordered, Confidential Information, including
2 transcripts of any depositions to which a claim of confidentiality is made, shall remain under
3 seal, shall continue to be subject to the protective requirements of this Order, and shall be
4 returned to counsel for the requesting party within thirty (30) days after final disposition of this
5 matter, including administrative or judicial review.

6 7. Use in Pleadings. Where references to Confidential Information in the sealed
7 record or with the providing party is required in pleadings, briefs, arguments or motions (except
8 as provided in Paragraph 5), it shall be by citation of title or exhibit number or some other
9 description that will not disclose the substantive Confidential Information contained therein.
10 Any use of or substantive references to Confidential Information shall be placed in a separate
11 section of the pleading or brief and submitted to the Administrative Law Judge or the
12 Commission under seal. This sealed section shall be served only on counsel of record and
13 parties of record who have signed the nondisclosure agreement set forth in Exhibit "A." All of
14 the restrictions afforded by this Order apply to materials prepared and distributed under this
15 Paragraph.

16 8. Summary of Record. If deemed necessary by the Administrative Law Judge, the
17 providing party shall prepare a written summary of the Confidential Information referred to in
18 the Order to be placed on the public record.

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EXHIBIT "A"

I have read the foregoing Protective Order dated _____, 2001, in Docket No. E-01032C-00-0751 and agree to be bound by the terms and conditions of this Order.

Name

Employer or Firm

Business Address

Party

Signature

Date