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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

AZ CORP COMMISSION  
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COMMISSIONERS

AUG 13 2018

TOM FORESE, CHAIR  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

DOCKETED BY

IN THE MATTER OF THE FORMAL COMPLAINT  
AGAINST ARIZONA PUBLIC SERVICE  
COMPANY FILED BY STACEY CHAMPION AND  
OTHER ARIZONA PUBLIC SERVICE COMPANY  
CUSTOMERS.

(Jane Rodda, Hearing Officer)

DOCKET NO. E-01345A-18-0002

**RICHARD GAYER's  
RESPONSE TO THE  
NEW SCHEDULING ORDER  
With Alternative  
MOTION FOR STAFF  
TO FILE BY SEP. 11th**

Richard Gayer hereby responds to the New Scheduling Order that deprives him and other parties and intervenors of the ability to respond in writing to the filings of the Staff of the Arizona Corporation Commission. He states that the removal of Staff from this case or the rescission and abrogation of Decisions 76295 and 76374 is mandatory, in view of Staff's unnecessary signing of the Settlement Agreement containing Section 40.6.

In the alternative, Gayer moves change the date for Staff's filings to September 11, keeping the present date of September 21 for all Parties and Intervenors for filing responses.

ARGUMENT

**I. The Settlement Agreement Prevents Staff from Being Unbiased This Case.**

The Settlement Agreement is an essential part of Decision 76295. Section 40.6 thereof provides as follows.

"The Signing Parties shall make reasonable and good faith efforts necessary to obtain a Commission order approving this Agreement. The Signing Parties shall support and defend this Agreement before the Commission. Subject to subsection 40.5, if the Commission adopts an order approving all material terms of the Agreement, the Signing

1 Parties will support and defend the Commission's order before any court or regulatory  
2 agency in which it may be at issue.”

3 In an attachment to the Agreement, Elijah Abinah, representing the “ARIZONA  
4 CORPORATION COMMISSION” as “Acting Director, Utilities Division”, affixed his  
5 signature. As a result, Staff must “support and defend the Commission’s order before any court  
6 or regulatory agency”. Abinah’s signature was not required, but it cannot be ignored.  
7 (Otherwise, a Staff Director’s signature would be worthless.) As a result, any evidence or  
8 argument presented by Staff cannot be unbiased, or trusted to be unbiased, because even the  
9 evidence as well as expert opinion offered by Staff must support the Decision.

10 That order, in relevant part, provides that the rate increase is an average of 4.54% for all  
11 residential customers. See Decision, Findings of Fact, Determinations, paragraph 334. But  
12 Champion and other parties, including Gayer, have shown that the true increase, at least for the  
13 Transition rates, is over 15 percent, and APS’s own data show that thousands of customers are  
14 suffering from increases as high as 33 percent. Staff must support the notion of a 4.54% bill  
15 impact because it is precluded by its signature from offering any evidence or argument to the  
16 contrary.

17 Worse yet, the Commission by Chairman Forese and its Staff by Maureen Scott appear to  
18 be motivated by political concerns. The November election is approaching, and Forese is on the  
19 ballot. It appears that their strategy is to postpone any decision in this case by delaying it until  
20 after the election, so that the Commission will not have to publish its decision until after Forese  
21 is probably reelected. At the hearing on July 25, Scott defiantly refused to be bound by the  
22 September 25<sup>th</sup> Hearing date, saying Staff may request an extension. An odor of mendacity has  
23 come to permeate the proceedings in this case since Staff has become involved.

24 Therefore, Staff must not be allowed to participate further in this case and Judge Rodda  
25 should issue a formal recommendation to Commissioner Forese that he withdraw his request for  
26 Staff’s participation because Staff cannot be unbiased.

27 If not, then the only alternative is to rescind and abrogate Decisions 76295 and 76374 and  
28 return APS and its customers to the rates that existed before those Decisions were issued.

1           **II. In the Alternative, Gayer's Motion To Advance Staff's Filing Date Should Be**  
2 **Granted.**

3           The dates in the New Procedural Order of 10 August 2018 sets September 17, 2018 for  
4 Staff's filings and September 21, 2018 for filing responses to Staff. That allows only four days  
5 for reading and researching Staff's filings and writing responses, with part of the fourth day used  
6 to file an original and 13 copies at 1200 West Washington.

7           That is unfair to Champion and all other Parties and Intervenors. Staff was able to start  
8 preparing its materials on July 25, the date of the last hearing in this case. Therefore, over one  
9 month should suffice for Staff to prepare and file its materials.

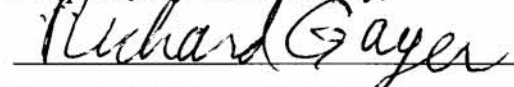
10           The New Order allows Staff to file its material on September 17, only eight days before  
11 September 25, the date of the scheduled hearing. The time allotted for Staff is excessive, since  
12 Staff already has had from July 25 to date (August 13), nineteen days so far, to prepare its  
13 filings. September 17 should be changed to September 11, thereby giving Staff a generous total  
14 of 47 days and, with the present September 21 date for responses, only ten days for Parties and  
15 Intervenors. That represents only minimal fairness.

16  
17 **CONCLUSION**

18           Staff must not participate in this case. If not, then Staff should be required to file by  
19 September 11, 2018.

20  
21 Dated: 13 August 2018

Respectfully submitted by,



RICHARD GAYER, Party  
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22  
23  
24  
25 **CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

26           On 13 August 2018, I served copies of this document via electronic mail on everyone  
27 on the Service List in this case.

