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 ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

DOCKETED

NOV 7 2018

8 Attorneys for Arizona Public Service Company

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10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 COMMISSIONERS

12 TOM FORESE, Chairman
 BOB BURNS
 13 ANDY TOBIN
 BOYD DUNN
 14 JUSTIN OLSON

16 IN THE MATTER OF:

17 STACEY CHAMPION, et al.,

18 Complainant,

19 v.

20 ARIZONA PUBLIC SERVICE COMPANY,
 an Arizona Public Service Corporation,

21 Respondent.

DOCKET NO. E-01345A-18-0002

**ARIZONA PUBLIC SERVICE
 COMPANY'S RESPONSE TO
 STACEY CHAMPION'S REQUEST
 FOR AN EXTENSION OF FILING
 DEADLINE**

23 On October 26, 2018, APS responded to requests from two Commissioners for
 24 information, including correspondence filed by Commissioner Dunn on October 3, 2018
 25 and Commissioner Tobin's request made during the hearing itself. See October 3, 2018
 26 Correspondence from Commissioner Boyd Dunn; Hearing Transcript, Vol. IV (Sept. 28,
 27 2018) at 682-84. Complainant now attempts to use APS's responses to those two
 28 Commissioner requests to extend the briefing schedule, and further intimates that she

1 may use this information to request additional discovery and/or reopen the hearing to
2 question APS's witnesses about these filings. APS's responses to the Commissioners'
3 inquiries should not provide Complainant with a basis for additional discovery or to
4 reopen the evidentiary hearing. While APS does not oppose a reasonable extension of
5 the deadline for filing reply briefs, Complainant's requested extension is excessive and
6 all other potential relief should be rejected for the reasons discussed below.

7 **I. ANY EXTENSION OF THE POST-HEARING REPLY BRIEF DEADLINE**
8 **SHOULD BE LIMITED.**

9 At the conclusion of the evidentiary hearing, the parties and Administrative Law
10 Judge specifically discussed the briefing schedule and Complainant's need to do some
11 "number crunching" in advance of filing her reply brief. Hearing Transcript, Vol. V
12 (Oct. 1, 2018) at 953. Thus, the resulting, **stipulated** briefing schedule expressly took
13 Complainant's need to review such information into consideration. Complainant now
14 seeks a four-week extension of the schedule, extending the deadline for the reply brief to
15 seven weeks, nearly double the time allotted the parties to prepare their initial post-
16 hearing briefs.

17 Complainant's request to delay the brief schedule this long is curious and appears
18 inconsistent with Complainant's previous insistence that this matter move forward
19 expeditiously. Indeed, when faced with a request to extend the hearing schedule to
20 facilitate Staff's intervention and analysis (requested by a Commissioner),
21 Complainant's attorney stated that further delay would be an "injustice" and his "client
22 vehemently opposes moving the hearing [M]y client's been slogging through this
23 for the past nine months. She's ready for it to be over with." Transcript, Procedural
24 Conference (Jul. 25, 2018) at 6 and 18; *see also* Complainant's Response to Staff's
25 Motion for an Extension of Time To File Testimony/Staff Report (Sept. 17, 2018)
26 (objecting to a two week extension for Staff to file testimony or a report in the docket).
27 Like Complainant, APS would like to see this matter resolved expeditiously. Indeed,
28 APS originally proposed that the hearing be conducted in June (Procedural Order (April

1 16, 2018) at 3), but Complainant objected, insisting that she needed until late September
2 to conduct discovery and prepare her case. Notwithstanding its desire to get this matter
3 resolved, and in the spirit of cooperation and professional courtesy, APS does not
4 oppose a narrowly tailored, limited extension that does not reopen discovery or
5 unnecessarily delay a conclusion of these proceedings. APS offered Complainant a
6 November 30, 2018 deadline for the parties' simultaneous reply briefs and is still
7 agreeable to that extension.

8 **II. NO BASIS EXISTS TO CONTINUE DISCOVERY OR REOPEN THE**
9 **HEARING.**

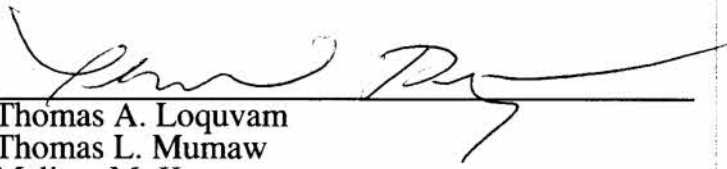
10 The deadline for serving discovery requests was September 3, 2018. *See*
11 Procedural Order (Apr. 16, 2018) at 6. APS received over 80 discovery requests
12 (excluding subparts), including 45 requests from Complainant. In response, APS
13 produced voluminous data and responses, including over 80 attachments, containing the
14 requested data and information, including responses to Complainant's discovery
15 requests on customer communications. Complainant chose not to conduct any discovery
16 about actual customer bill impacts in 2018. Had Complainant felt that the information
17 subsequently requested by Commissioners Dunn and Tobin was germane to her claims
18 and theories, she had ample time to request that information from APS prior to the
19 hearing, should have done so, and could have conducted additional discovery and
20 analysis before the discovery cut-off. Her failure to do so suggests that such information
21 was not needed to support her theory of the case. For Complainant to pivot now and
22 pursue a new theory would be unjust and a violation of APS's due process rights,
23 including the right to notice of Complainant's claims so that APS may properly defend
24 itself. For this reason, Complainant (like other complainants) may not raise new
25 theories so late in these proceedings or in a reply brief. *See, e.g., Airfreight Express Ltd.*
26 *V Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 109, ¶17 (App. 2007); *Union Rock &*
27 *Materials Corp. v. Scottsdale Conference Ctr.*, 139 Ariz. 268, 272-73 (App. 1983).

1 More importantly, for the reasons discussed at length in APS's Initial Post-
2 Hearing Brief (at 32-49), the Commission has already determined that the rates at issue
3 are just and reasonable, and those rates are presumed valid and supported by substantial
4 evidence. Complainant cannot collaterally challenge those rates or seek retroactive
5 relief. The Commission, of course, may look prospectively at steps it may wish to take
6 in future rate cases to improve the process. However, Complainant cannot use this
7 process to develop new issues or arguments.

8 **III. CONCLUSION**

9 For these reasons, APS respectfully requests that the Complainant's request for
10 an extension of the parties' simultaneous reply brief deadline be limited to no later than
11 November 30, 2018 for all parties. In addition, no requests for further discovery or
12 hearing days should be granted.

13
14 RESPECTFULLY SUBMITTED this 7th day of November 2018.

15
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21 ORIGINAL and thirteen (13) copies
22 of the foregoing filed this 7th day of
November 2018, with:

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28

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