

# EXCEPTION

OPEN MEETING AGENDA ITEM



0000028514

**ORIGINAL RECEIVED**

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2005 SEP 19 P 3:51

AZ CORP COMMISSION  
DOCUMENT CONTROL

## BEFORE THE ARIZONA CORPORATION COMMISSION

7 \_\_\_\_\_ )  
 8 IN THE MATTER OF THE APPLICATION )  
 OF JOHNSON UTILITIES COMPANY, LC )  
 9 FOR AN EXTENSION OF ITS )  
 CERTIFICATE OF CONVENIENCE AND )  
 10 NECESSITY FOR WATER AND )  
 WASTEWATER SERVICE. )

DOCKET NO. WS-02987A-04-0288

**EXCEPTIONS TO  
 ADMINISTRATIVE LAW  
 JUDGE'S  
 RECOMMENDED ORDER**

11  
 12 1. Johnson Utilities Company, ("Johnson" or the "Company") hereby files its  
 13 Exceptions to the Recommended Order issued by Judge Nodes on September 9, 2005 regarding  
 14 his recommendations pertaining to: (1) the requirement to file a Rate Case, (2) the posting of the  
 15 Performance Bond, (3) the Curtailment Tariff filing, and (4) the Pinal County Franchise filing, all  
 16 for the reasons set forth herein.

### RATE CASE FILING

17  
 18 2. The condition regarding the Rate Case Filing at Paragraph 49 on Page 12, Lines  
 19 26 through Page 13, Line 5, and the related Ordering Paragraph as contained on Page 15, Lines 5  
 20 and 6, should be stricken from the Recommended Order for the following reasons:

- 21 a) Although the Commission may have jurisdiction over the Company and the  
 22 subject matter, there is no basis in the record of this proceeding for reaching  
 23 the conclusion regarding the Rate Case Filing or the posting of a Performance

1 Bond, or for imposing either of those conditions. There was no stated basis in  
2 the Company's Application, in the Staff Report, or in any testimony or  
3 evidence in the proceeding supporting or recommending such conditions or  
4 alleging the need for those conditions.

5 b) The Company did not have an opportunity to defend itself regarding those  
6 conditions or rebut any supposed basis for those requirements. It is submitted  
7 that the Commission cannot place the burden of filing a full Rate Case Filing  
8 on the Company without some factual basis that is developed in the context of  
9 the proceeding or a Commission instituted Order to Show Cause proceeding in  
10 which the Company has had an opportunity to defend itself, and from which  
11 there is the record supporting the need for such burdensome requirements.

12 c) Assuming, arguendo, that a Rate Case Filing was supported in the record, a  
13 Rate Case Filing for Johnson based upon Test Year 2005 is premature for  
14 several reasons: 1) the Company has expended approximately \$500,000 to  
15 absorb the AUSS operations, and those capital expenditures are not complete,  
16 2) the Company is still widely diversified and the system will not be fully  
17 integrated for some time, 3) the Company's CC&N has expanded substantially  
18 in the last 12 to 18 months and has three CC&N Applications presently  
19 pending before the Commission, with another three applications to be filed  
20 within the next six months, and 4) the Company will build a three new  
21 wastewater treatment plants in 2006 and four new domestic wells will go into  
22 service within the next six months. None of the plant, revenues, nor the  
23 expenses associated with the future customers in those areas are reflected in

1 the 2005 Financial Statements. 2005 is simply not a representative Test Year  
2 of the Company's operations.

### 3 **PERFORMANCE BOND**

4 3. The condition regarding Performance Bond at Paragraph 48 on Page 12 Lines 12  
5 through 25, and the related Ordering Paragraph as contained on, Page 14, Line 27 through Page  
6 15, Line 4, should be stricken from the Recommended Order and a paragraph added to the  
7 Discussion of that issue, all for the following reasons:

8 a) In addition to the due process arguments set forth above, Johnson is not a  
9 party to the cited litigation and its customers have **no** exposure from the La  
10 Osa or Sonoran litigation. No evidence of the potential total claim from either  
11 litigation, or any potential joint and several liability of the Company regarding  
12 any such speculative award against George Johnson, the Company, or the  
13 Company's affiliated entities, has been provided

14 b) This case is not similar to the Palo Verde case cited in the Recommended  
15 Order in that: (i) the alleged La Osa offenses have no claim based on utility  
16 operations or construction, (Those claims are land-use issues related to a  
17 ranching operation), (ii) the Principals of Palo Verde had filed bankruptcy  
18 following the \$43 million judgment (which is substantially larger than  
19 combined subject litigation exposure) before Palo Verde received a CC&N.  
20 Therefore, all assets were in the names of their spouses and unavailable to the  
21 utility, and (iii) the Company is substantially larger than Palo Verde. The  
22 Company's Annual Reports demonstrate that Johnson has a substantial  
23

1 customer base and cash flows that will assure the Company's ability to pay the  
2 operation and maintenance expenses.

3 c) A Performance Bond of the proposed magnitude for a corporation of the  
4 Company's size is inappropriate, if not ineffective. A Performance Bond for a  
5 small, unsecured, startup company may provide some protection, but not in  
6 this instance. Several events must all occur prior to the bonding company  
7 providing operating proceeds under the Bond. First, the litigation must  
8 proceed. Second, the plaintiffs must prevail in that litigation. There must be a  
9 judgment against the utility company, and that judgment must withstand  
10 appeal. Next, one needs to assume that the Company fails to perform, and the  
11 bonding company can prove to its satisfaction that the failure to perform was a  
12 result of the judgment. Finally, the bonding company must successfully attach  
13 the assets of George Johnson and the Affiliates that secure the Bond. It is  
14 submitted that the likelihood of all of those events occurring adverse to the  
15 Company is small, and that even if those events did occur, it would be many  
16 years before the Bond would payoff. It is submitted that the Bond is of little  
17 "protection against any potential detrimental impact on customers".

18 d) In the event a bond is required, the Recommended Order is not at all clear  
19 regarding the mechanics of that Bond. It does not specify what event, or non-  
20 event, would justify execution on the Bond. Nor does the Recommended  
21 Order specify the type or nature of proof of the default, or who presents that  
22 information to the Bonding Company for collection on the Bond. Further, the  
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1 Recommended Order does not provide for the release of the Bond upon  
2 settlement of the litigation or a prescribed time period.

3 e) The record is clear and uncontested that George Johnson and the Affiliates  
4 have insurance and liquidity sufficient to insulate the Company and its  
5 customers from any such litigation exposure. (See Recommended Order  
6 Paragraph 45)

7 f) On August 23, 2005, the Company filed a letter with the Commission in  
8 Docket No. WS-02987A-05-0089 demonstrating the insurance coverage of the  
9 Defendant's and the Defendant's subcontractors insuring against a potential  
10 losses to the Defendants in those proceedings. Although filed in another  
11 Johnson Docket, the Commission may take administrative notice of that filing.  
12 A new sentence or paragraph should be added at the end of Finding of Fact 45  
13 at Page 10, Line 2, to the effect: "The Company provided to the Commission  
14 by correspondence dated August 23, 2005, evidence of the insurance coverage  
15 testified to by Mr. Tompsett. The Commission takes administrative notice of  
16 that filing, and determines that coverage is adequate for the protection of the  
17 Company's customers."

#### 18 **CURTAILMENT TARIFF**

19 4. The Ordering Paragraph regarding the filing of a Curtailment Tariff at Page 14,  
20 Lines 9 and 10 should be stricken from the Recommended Order because that requirement has  
21 been met. On June 6, 2005 the Company filed a form of Curtailment Tariff with the  
22 Commission Staff, which was ultimately approved by the Staff on September 6, 2005.

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1 A copy of the foregoing  
mailed/hand delivered this  
2 ~~14<sup>th</sup>~~ day of September 2005, to:

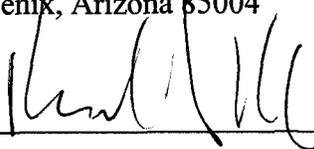
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