

OPEN MEETING ITEM



COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: OCTOBER 19, 2006

Arizona Corporation Commission  
DOCKETED

DOCKET NO: WS-02987A-05-008<sup>8</sup>

OCT 19 2006

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES COMPANY  
(AMEND DECISION NO. 68235)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 30, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 21, 2006 and NOVEMBER 22, 2006

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION  
DOCUMENT CONTROL

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES COMPANY FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR WATER  
AND WASTEWATER SERVICE.

DOCKET NO. WS-02987A-05-0088  
DECISION NO. \_\_\_\_\_

**OPINION AND ORDER AMENDING  
DECISION NO. 68235**

DATE OF HEARING: August 25, 2006  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes  
IN ATTENDANCE: William Mundell, Commissioner  
Mike Gleason, Commissioner  
Kristin K. Mayes, Commissioner  
APPEARANCES: Mr. Richard L. Sallquist, Attorney, SALLQUIST,  
DRUMMOND & O'CONNOR, on behalf of Johnson  
Utilities Company; and  
Mr. Christopher Kempley, Chief Counsel, Legal  
Division, on behalf of the Utilities Division of the  
Arizona Corporation Commission.

**BY THE COMMISSION:**

On October 25, 2005, the Arizona Corporation Commission ("Commission") issued Decision No. 68235 which granted Johnson Utilities Company ("JUC" or "Company") an extension of its Certificate of Convenience and Necessity ("Certificate") to provide water and wastewater service in Pinal County, Arizona.

Decision No. 68235 required JUC to, among other things, "procure a \$500,000 performance bond, with proof of such performance bond filed in Docket Control, as a compliance item in this docket, prior to retail service being provided to any customers in the CC&N extension area."

On March 14, 2006, JUC filed an Application to Amend Decision No. 68235. In its Application, JUC stated that it has obtained a Letter of Credit for \$500,000 in lieu of a Performance

1 Bond and therefore seeks an amendment to Decision No. 68235 to allow substitution of the Letter of  
2 Credit for the Performance Bond.

3 On April 21, 2006, the Commission's Utilities Division Staff ("Staff") filed a Response to  
4 Motion to Amend Decision No. 68235. Staff indicated that the irrevocable Letter of Credit obtained  
5 by JUC "conforms sufficiently to the ordered Performance Bond to be acceptable." Staff therefore  
6 recommended that Decision No. 68235 be amended to permit substitution of the Letter of Credit for  
7 the Performance Bond.

8 JUC's request to substitute a Letter of Credit for the required Performance Bond was  
9 discussed during the Commission's May 31/June 1, 2006 Open Meeting. During its discussion, the  
10 Commission determined that a hearing on JUC's request should be conducted at a subsequent Open  
11 Meeting.

12 On July 27, 2006, Commissioner Mundell filed a letter in the docket stating that he believed  
13 an evidentiary hearing should be conducted by an Administrative Law Judge in order to advance the  
14 decision making process regarding this issue.

15 On July 31, 2006, Commissioner Mayes filed a letter expressing agreement with  
16 Commissioner Mundell's request to conduct a hearing.

17 On August 9, 2006, Chairman Hatch-Miller's policy advisor filed a letter indicating that the  
18 Chairman did not oppose sending these matters to hearing for development of an evidentiary record.

19 By Procedural Order issued August 11, 2006, a hearing was scheduled for August 25, 2006<sup>1</sup>,  
20 and JUC and Staff were directed to file simultaneous Direct Testimony by August 21, 2006.

21 On August 21, 2006, JUC filed the Direct Testimony of Brian Tompsett (JUC's Executive  
22 Vice President) and Larry Davis (Chief Credit Officer of National Bank of Arizona), and Staff filed  
23 the Direct Testimony of William F. Haug (Staff's expert consultant with respect to surety bonds).

24 On August 24, 2006, JUC filed the Revised Direct Testimony of Larry Davis.

25 The hearing was held as scheduled on August 25, 2006, before a duly authorized  
26 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of

27 \_\_\_\_\_  
28 <sup>1</sup> A hearing was scheduled for the same time in Docket Nos. WS-02987A-04-0889 and WS-02987A-04-0288 regarding  
identical requests by JUC for substitution of a Letter of Credit for Performance Bond.

1 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion  
2 and Order.

3 \* \* \* \* \*

4 Having considered the entire record herein and being fully advised in the premises, the  
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 1. JUC is a public service corporation that provides water and wastewater service in  
8 portions of Pinal County, Arizona pursuant to an original CC&N granted by Decision No. 60223  
9 (May 27, 1997). Subsequent CC&N extensions for water and/or wastewater service were granted to  
10 JUC in a number of other dockets.

11 2. On October 25, 2005, the Commission issued Decision No. 68235 in the above-  
12 captioned docket, which granted JUC an extension of its CC&N to provide water and wastewater  
13 service to an area of approximately 100 acres in Pinal County, Arizona.

14 3. Decision No. 68235 required JUC to, among other things, “procure a \$500,000  
15 performance bond, with proof of such performance bond filed in Docket Control, as a compliance  
16 item in this docket, prior to retail service being provided to any customers in the CC&N extension  
17 area.” The bond requirement was imposed on JUC “as a means of protection against any potential  
18 detrimental impact on customers that may occur as a result of a judgment against Mr. [George]  
19 Johnson and/or [JUC] affiliates” [in the so-called La Osa or Sonoran litigation<sup>2</sup>] (Decision No.  
20 68235, at 9). In the event JUC is named as a defendant in either the La Osa or Sonoran lawsuits, the  
21 Company was required to increase the required bond amount to \$1 million (*Id.* at 10).

22 4. On March 14, 2006, JUC filed an Application to Amend Decision No. 68235. In its  
23 Application, JUC stated that it has obtained a Letter of Credit for \$500,000 in lieu of a Performance  
24 Bond and therefore seeks an amendment to Decision No. 68235 to allow substitution of the Letter of  
25 Credit for the Performance Bond requirement.

26 5. According to JUC witness Brian Tompsett, the Company contacted various banks and  
27

28 <sup>2</sup> Respectively, Maricopa Superior Court Case Nos. CV2005-002692 and CV2005-002548.

1 bonding companies but was unable to secure a Performance Bond containing language required by  
2 Staff. Mr. Tompsett stated that, even if JUC had been able to obtain a performance bond, the annual  
3 premium would be approximately \$10,000. As a result, the Company obtained an irrevocable Letter  
4 of Credit from the National Bank of Arizona ("NBA") which contains the language proposed by  
5 Staff. JUC docketed a copy of the Letter of Credit on January 23, 2006.

6 6. JUC witness Larry Davis testified that the irrevocable Letter of Credit issued by NBA  
7 provides greater protection for the Commission than a Performance Bond. Mr. Davis explained that  
8 a Performance Bond is essentially an insurance policy that would require the issuing entity to  
9 conduct an investigation of the merits of a claim prior to the beneficiary (*i.e.*, the Commission) being  
10 able to collect on the bond, whereas an irrevocable Letter of Credit would require the issuing bank to  
11 honor a draw request by the Commission upon presentation of a "sight draft" accompanied by the  
12 original Letter of Credit. He indicated that a draw request is typically honored within 48 hours of  
13 presentation. Mr. Davis also stated that a Letter of Credit has an advantage with respect to the  
14 assets and solvency of the issuing entities. He described NBA as a \$42 billion company that is  
15 financially secure, compared to an insurance company that may have a lesser degree of solvency  
16 (JUC Ex. A-2, at 4-7).

17 7. According to Mr. Davis, although a Letter of Credit typically requires an annual  
18 premium of one to three percent of the face amount, in this instance NBA issued the \$500,000 Letter  
19 of Credit without charge due to the relationship between the bank and Mr. Johnson. He stated that  
20 the Letter of Credit is fully secured by cash on deposit by Mr. Johnson and/or various entities  
21 controlled by Mr. Johnson (Tr. 35-36).

22 8. Mr. Davis explained that the Letter of Credit currently in effect for JUC combined  
23 language from a typical "sight draft" Letter of Credit with the Performance Bond language required  
24 by Staff (*i.e.*, that failure by JUC to provide "competitive<sup>3</sup> water and wastewater services" would  
25 allow the Commission to make a claim) (Tr. 37-38). A pure sight draft Letter of Credit, which  
26 requires no quantitative judgment on the part of the bank to honor a claim from the beneficiary of

27 <sup>3</sup> JUC's current Letter of Credit, which requires the Company to provide "competitive" water and wastewater services is,  
28 by definition, ambiguous because JUC holds an exclusive CC&N in its service area and thus does not provide competitive  
services.

1 the surety, is a much cleaner instrument from the bank's perspective because it would simply pay the  
2 face value of the Letter of Credit to the beneficiary upon demand. The bank would then look to the  
3 requestor of the Letter of Credit (*i.e.*, JUC) for reimbursement (Tr. 39-41). However, because such  
4 irrevocable Letters of Credit are typically guaranteed by cash that is unavailable to the requestor  
5 during the term of the surety, there is no real risk to the bank with respect to collection of the funds  
6 (Tr. 50).

7 9. Mr. Davis testified that, once an irrevocable Letter of Credit is issued, the requestor  
8 may not cancel the instrument during its term. Letters of Credit are typically renewed on an annual  
9 basis, with the one to three percent premium assessed each year (Tr. 42-44), although some may be  
10 for terms up to two years (Tr. 48). In the event the Letter of Credit is not renewed, a 30-day notice  
11 is provided to both the requestor and the beneficiary (*Id.*).

12 10. Staff witness Haug expressed concerns with the existing JUC Letter of Credit due to  
13 the ambiguity that exists from trying to combine the Performance Bond and Letter of Credit  
14 concepts. He stated that the two instruments are entirely different types of sureties that should not  
15 be combined. Mr. Haug explained that, under a Performance Bond, both the principal (requesting  
16 party) and the surety (issuer of the bond) could raise a defense to making any payment on the  
17 instrument. Under a Letter of Credit, however, neither the principal nor the bank could raise a  
18 defense to payment upon demand by the beneficiary. Therefore, Mr. Haug believes the Letter of  
19 Credit would provide greater protection to the Commission in the event it would be necessary to  
20 demand payment (Ex. S-1, Declaration, at 2).

21 11. Mr. Haug attached to his testimony two examples of straightforward Letters of Credit  
22 that he recommends be employed by the Commission. As amended at the hearing (Tr. 53-55), the  
23 first sample would allow payment on the instrument upon sight, without condition, while the second  
24 example would contain the additional requirement of "a certification of default by the Commission"  
25 prior to payment by the issuing bank (Ex. S-1, Ex. 2, Attachs. 1 and 2). Mr. Haug indicated a  
26 preference for the first example because it is a cleaner instrument, without the need for any  
27 certification by the Commission (Tr. 78-79).

28 12. Mr. Haug also indicated that there may be an issue regarding the Commission's ability

1 to retain proceeds from a Letter of Credit (or a Performance Bond) for the benefit of the utility's  
2 customers due to state law that may require such funds to be deposited into the state's general fund  
3 (*Id.* at 3). He agreed, however, that inclusion of explicit language in both the Commission's Order  
4 and the surety instrument, that the surety is issued for the benefit of the utility company's customers  
5 as opposed to the Commission in general, could be beneficial as a means of allowing the  
6 Commission to use the proceeds to assist customers (Tr. 60-61). Mr. Haug and Staff counsel  
7 suggested that the best resolution of the issue would be provided by passage of legislation to make  
8 clear that funds obtained from surety instruments could be used for the benefit of the utility's  
9 customers directly, rather than reverting to the general fund.

10 13. Mr. Haug and Mr. Davis agreed that, although the Letter of Credit option would  
11 provide the Commission and affected customers a greater level of protection, not all companies  
12 would be able to secure a Letter of Credit due to the requirement that it must be backed in its  
13 entirety by cash. For smaller companies, in particular, a Performance Bond may be the only type of  
14 surety instrument available for compliance with a Commission Order (*See*, Tr. 44-45; 80-81).

15 14. At the conclusion of the hearing, JUC and Staff were directed by the Administrative  
16 Law Judge to discuss possible mutually acceptable language for inclusion in the Order in this docket.

17 15. On October 5, 2006, JUC filed a letter indicating that despite negotiations with Staff,  
18 no consensus language was achieved. JUC states that it is concerned with the following aspects of  
19 Staff's proposal (as discussed below): inclusion of reference to the Sonoran litigation (which JUC  
20 claims has now been dismissed); reference to an "Interim Operator" which JUC states presumes facts  
21 not in evidence; and lack of language that allows the Company to cure any service defect prior to  
22 permitting the Commission to draw on the Letter of Credit. JUC proposes that the Commission adopt  
23 the following ordering paragraph in its Decision:

24 IT IS FURTHER ORDERED that the Company shall docket copies of the  
25 Letter of Credit with the Commission's Docket Control, and provide the  
26 original Letter of Credit to the Director of the Utilities Division, in a form  
27 acceptable to the Director, which Letter of Credit shall provide that in the  
28 event the Commission finds, (1) that as a result of a judgment occurring in  
the La Osa lawsuit the Company is not providing adequate service to its  
customers within the expansion area as set forth in this Decision, and (2),

1 that the Commission has confirmed that the Company's Members are  
2 neither willing nor able to invest such additional funds necessary to assure  
3 adequate service to the customers, then and upon the occurrence of those  
4 events as certified by the Commission, the Commission may draw upon  
5 the Letter of Credit by directing the proceeds to be paid directly to a trust  
6 account of the Company to be utilized for the operation of the Company  
7 for providing adequate service to the customers within the subject  
8 expansion area. The Company shall be required to use the proceeds of any  
9 funds drawn upon solely for the purpose as described in the Company's  
10 agreement with the Commission, or any Decision in that regard. Any  
11 excess funds existing at the time of termination of the agreement shall be  
12 returned to the Company's general fund.

13  
14 16. On October 10, 2006, Staff filed its proposal for amending Decision No. 68235,  
15 including a proposed ordering paragraph and an amended proposed form of Letter of Credit<sup>4</sup>. Staff's  
16 proposed amended ordering paragraph is as follows:

17 IT IS FURTHER ORDERED that the Company shall docket copies of the  
18 Letter of Credit with the Commission's Docket Control, and provide the  
19 original Letter of Credit to the Director of the Utilities Division, in a form  
20 acceptable to the Director, which Letter of Credit shall provide that in the  
21 event the Commission finds that, as a result of a judgment occurring in the  
22 La Osa or Sonoran lawsuits the Company is not providing adequate  
23 service to its customers within the expansion area as set forth in this  
24 Decision, then and upon the occurrence of those events as certified by the  
25 Commission, the Commission may draw upon the Letter of Credit by  
26 directing the proceeds to be paid directly to the trust account of the interim  
27 operator designated by the Commission to be utilized for the operation of  
28 the Company for providing adequate service to the customers within the  
subject expansion area. The interim operator shall be required to use the  
proceeds of any funds drawn upon solely for the purpose as described in  
the interim operator's agreement with the Commission. Any excess funds  
existing at the time of the termination of such an interim operator  
agreement shall be returned to the Company.

17. Having considered the testimony and exhibits presented at the hearing, we conclude  
that Decision No. 68235 should be amended to permit JUC to substitute a Letter of Credit for the  
Performance Bond requirement set forth in that Decision. However, we agree with Mr. Davis and  
Mr. Haug that a Letter of Credit that does not contain conditional language should be obtained in a  
form consistent with the first example described by Mr. Haug and attached to his testimony (Ex. S-1,

<sup>4</sup> Staff's proposed form of Letter of Credit is attached hereto as Exhibit 1 (as amended).

1 Ex. 2, Attach. 1, as amended at hearing). We believe Staff's post-hearing proposed form of Letter of  
2 Credit (Exhibit 1 hereto) is consistent with the testimony of Mr. Davis and Mr. Haug and JUC  
3 should, within 30 days of the effective date of this Decision, substitute such a sight draft Letter of  
4 Credit for the current instrument. The attached irrevocable Letter of Credit should also include  
5 additional language indicating that the Commission is the Beneficiary "on behalf of, and for the sole  
6 benefit of Johnson's customers" (see modification to Exhibit 1 hereto). Consistent with Decision No.  
7 68235, the Letter of Credit should be increased to \$1 million in the event JUC is named as a  
8 defendant in either the La Osa or Sonoran<sup>5</sup> lawsuits.

9       18. With respect to the competing ordering paragraphs submitted by JUC and Staff, we  
10 find JUC's proposed language to be unacceptable because it changes significantly the purpose of the  
11 original performance bond requirement. As set forth in the Company's proposal, the Commission  
12 would be able to draw on the Letter of Credit only after the following events have occurred: a  
13 judgment is entered against JUC in Superior Court in the La Osa lawsuit; JUC is found not to be  
14 providing adequate service; JUC's Members are given an opportunity to remedy the inadequate  
15 service; and the Members are found by the Commission to be unwilling or unable to invest additional  
16 funds to assure adequate service. In addition, JUC's proposal would require that the funds drawn  
17 from the Letter of Credit would be deposited into a trust account maintained by the Company. Thus,  
18 JUC's proposal would effectively undermine the purpose of the Letter of Credit because it would  
19 allow the Company an unspecified period of time to remedy system deficiencies and then, would  
20 require the Commission to deposit the Letter of Credit funds into an account under JUC's control.

21       19. Although we find Staff's proposed language to be more consistent with the concept of  
22 customer protection, we believe Staff's proposed language should be modified. The modified  
23 language in the ordering paragraph below provides the Commission greater flexibility to protect  
24 customers in the event that circumstances require the Commission to draw on the Letter of Credit.

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28 <sup>5</sup> Although JUC represented in its October 5, 2006 filing that the Sonoran lawsuit has been dismissed, no testimony was presented on that issue and we have no confirmation on the record of the status of that litigation.

**CONCLUSIONS OF LAW**

1  
2 1. JUC is a public service corporation within the meaning of Article XV of the Arizona  
3 Constitution and A.R.S. §40-281 *et seq.*

4 2. The Commission has jurisdiction over JUC and the subject matter of the application.

5 3. Amendment of Decision No. 68235 in the manner described herein is in the public  
6 interest.

**ORDER**

7  
8 IT IS THEREFORE ORDERED that Decision No. 68235 is hereby amended to permit  
9 Johnson Utilities Company to substitute a Letter of Credit, as described herein, for the Performance  
10 Bond requirement set forth in that Decision.

11 IT IS FURTHER ORDERED that a Letter of Credit shall be obtained in a form consistent  
12 with Staff's post-hearing proposed form of Letter of Credit (Exhibit 1 hereto) and JUC shall, within  
13 30 days of the effective date of this Decision, substitute such a sight draft Letter of Credit for the  
14 current instrument. The irrevocable Letter of Credit shall also include additional language indicating  
15 that the Commission is the Beneficiary "on behalf of, and for the sole benefit of Johnson's  
16 customers" (see modification to Exhibit 1 hereto). Consistent with Decision No. 68235, the Letter of  
17 Credit shall be increased to \$1 million in the event JUC is named as a defendant in either the La Osa  
18 or Sonoran lawsuits.

19 IT IS FURTHER ORDERED that Johnson Utilities Company shall docket copies of the  
20 Letter of Credit with the Commission's Docket Control, as a compliance item in this docket, and  
21 shall provide the original of the Letter of Credit to the Commission's business office for safekeeping.  
22 The Commission may draw on the Letter of Credit, on behalf of, and for the sole benefit of Johnson's  
23 customers, in the event the Commission finds, in its discretion, that Johnson Utilities Company is not  
24 providing adequate service to its customers. The Commission may use the Letter of Credit funds to  
25 protect the Company's customers and the public interest and take any and all actions the Commission  
26 deems necessary, in its discretion, including, but not limited to, appointment of an interim operator.  
27 The irrevocable Letter of Credit shall be renewed by Johnson Utilities Company on an annual basis,  
28 for a term of no less than a one-year term for each renewal, until further Order of the Commission.

1 Any funds received by the Commission from the Letter of Credit shall not revert to the State of  
2 Arizona's general fund, and any excess funds shall be returned to the Company in the Commission's  
3 discretion upon a determination that such funds are not necessary to protect the public interest and  
4 provide adequate service to the Company's customers.

5 IT IS FURTHER ORDERED that, consistent with Decision No. 68235, the Letter of Credit  
6 shall be increased to \$1 million in the event Johnson Utilities Company is named as a defendant in  
7 either the La Osa or Sonoran lawsuits.

8 IT IS FURTHER ORDERED that, upon securing the substitute Letter of Credit described  
9 herein and complying with all other conditions set forth in Decision No. 68235, Johnson Utilities  
10 Company is authorized to provide service to customers in the extension area certificated by Decision  
11 No. 68235.

12 IT IS FURTHER ORDERED that Johnson Utilities Company shall immediately notify the  
13 Commission, by filing a letter in this docket and serving the letter on all Commissioners and the  
14 Director of the Utilities Division, if Johnson Utilities Company, any of its affiliated companies, or  
15 George Johnson files a petition for bankruptcy protection. Notice to the Commission shall be  
16 provided within seven (7) days of filing of any such petition for bankruptcy protection.

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IT IS FURTHER ORDERED that, in all other respects, Decision No. 68235 shall remain in full force and effect.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: JOHNSON UTILITIES COMPANY

2 DOCKET NO.: WS-02987A-05-0088

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4 Richard L. Sallquist  
SALLQUIST, DRUMMOND & O'CONNOR  
4500 S. Lakeshore Drive, Ste. 339  
5 Tempe, AZ 85282  
Attorneys for Johnson Utilities Company, LLC

6

7 Brian Tompsett, Exec. Vice President  
Johnson Utilities Company, LLC  
5230 East Shea Blvd.  
8 Scottsdale, AZ 85254

9

Jeffrey W. Crockett  
SNELL & WILMER, L.L.P.  
10 One Arizona Center  
Phoenix, Arizona 85004-2202

11

Christopher Kempley, Chief Counsel  
12 Legal Division  
ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
Phoenix, AZ 85007

14

Ernest G. Johnson, Director  
15 Utilities Division  
ARIZONA CORPORATION COMMISSION  
16 1200 West Washington  
Phoenix, AZ 85007

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ATTACHMENT 2 DOCKET NO. WS-02987A-05-0088  
STAFF'S PROPOSED LETTER OF CREDIT  
IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_

Date \_\_\_\_\_

Arizona Corporation Commission (or designee's trust account) (Beneficiary)  
1200 West Washington Street  
Phoenix, AZ 85007

Gentlemen:

At the request of Johnson Utilities Company, L.L.C. dba Johnson Utilities Company ("Johnson") and the Arizona Corporation Commission ("Beneficiary"). We, National Bank of Arizona, have opened an IRREVOCABLE LETTER OF CREDIT in favor of The Arizona Corporation Commission (or designee) for \$500,000.

We warrant to you that all your drafts under this IRREVOCABLE LETTER OF CREDIT will be duly honored and paid to the Arizona Corporation Commission, or the trust account of its designee as identified in such draft upon presentation of a sight draft by only the Commission on us at:

National Bank of Arizona  
Documentation Department AZ 7013  
6001 N. 24<sup>th</sup> Street  
Phoenix, Arizona 85016

*(on behalf of, and for the sole benefit of Johnson's customer.*

*the Executive Director of*

on or before the expiration date or on or before any automatically extended date set forth below.

Except as stated herein, this IRREVOCABLE LETTER OF CREDIT is not subject to any condition or qualification and is our individual obligation which is in no way contingent upon reimbursement.

This IRREVOCABLE LETTER OF CREDIT is effective \_\_\_\_\_, \_\_\_\_\_ and expires on \_\_\_\_\_, but will be automatically extended without amendment for successive one-year periods from the current expiration date and any future expiration dates unless at least 60 days prior to expiration date we notify you by registered letter that we elect not to renew for such additional one-year periods. Such notification shall be to the attention of the Bond Department at the above address.

Unless otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, established by The International Chamber of Commerce Publication, applicable on the date of this Letter of Credit.

Very truly yours,

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)