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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 APR 15 P 2: 36
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
APR 15 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE
IN ITS WATER AND WASTEWATER RATES
FOR CUSTOMERS WITHIN PINAL
COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180
STAFF'S MOTION TO COMPEL

The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby files this Motion to Compel the release of the Audit Workpapers prepared in connection with the external audit of the financial statements of Johnson Utilities, LLC dba Johnson Utilities Company ("Johnson" or "Company"), conducted by the public accounting firm of Henry & Horne, LLP, for the year ended December 31, 2006, and dated June 26, 2007.

Introduction

As part of documentation previously provided by the Company in response to a Data Request, Staff received a copy of the above referenced audit report, addressed to the Board of Directors of Johnson Utilities. (See Attachment A). In Data Request JMM 14-1, issued March 13, 2009, Staff asked the Company to "[m]ake the necessary arrangements for [its] review of the audit workpapers prepared in connection with [that] audit." The Company responded that "Johnson Utilities did not commission the Henry & Horne, LLP external audit and does not have access to the workpapers prepared in connection therewith." (See Attachment B).

After speaking with counsel for intervenor Town of Florence ("Florence"), it is Staff's understanding that, while the audit report was addressed to the Johnson Utilities Board of Directors, the audit was part of a study commissioned by Florence. Staff further understands that any documents associated with those audited financial statements are subject to a protective agreement

1 between Florence and Company. Therefore, Florence is reluctant to arrange for access to the
2 documents without either the Company's consent or a judge's order.

3 On March 24, 2009, Staff made an informal request of Company to provide the necessary
4 consent; the Company never responded. Accordingly, on April 7, 2009, Staff issued Data Request
5 JMM 16-1 to the Company, formally asking for cooperation in gaining access to the documents. (A
6 similar request was sent to Florence). The Company's reply was non-responsive, at best. Staff's
7 request indicated that the Company holds some necessary authority over access to the workpapers
8 and requested that the Company make any necessary arrangements pursuant to that authority. The
9 Company's reply ignored the actual request and simply restated its previous response that "Johnson
10 Utilities did not commission the Henry & Horne audit." The reply further asserted the Company's
11 opinion that the external audit was somehow biased and not relevant to this case. (See Attachment
12 C).

13 Discussion

14 First, Staff notes that, in the course of discovery, the Company has already provided the audit
15 itself; therefore, it is inappropriate at this time to now claim a lack of relevance as a basis for the
16 refusal to provide access to the additional related documents requested. And, in any event, relevance
17 is a determination to be made by the factfinder in this case, not by the Company's witness.

18 Second, the Company's claim of bias in the audit is unfounded. The audit was conducted by
19 an external public accounting firm, employing certified public accountants. The report is titled
20 "Independent Auditors' Report." The auditors' report further avows that it was conducted in
21 compliance with generally-accepted auditing standards and included examining the Company's
22 supporting documentation, assessing accounting principles used, and evaluating the overall statement
23 presentation, and was conducted for the purpose of formulating an opinion regarding whether the
24 statements were free of material misstatement. There is nothing to indicate that the audit was either
25 biased or not independent; in fact, the evidence is quite to the contrary.

26 Last, any claims by any party on the basis of confidentiality must fail. Johnson, who holds
27 partial authority over the control of the requested documents, has entered into a protective agreement
28

1 with Staff in this case and Florence, who also holds some authority over the control, is a formal party
2 in this case.

3 **Relief Requested**

4 Although the procedural order of August 15, 2008, directs that a party seeking resolution of a
5 discovery dispute pursue the alternative of requesting a hearing, because of the shortness of time
6 before the actual evidentiary hearing in this case, Staff now files this Motion to Compel. Thus, for all
7 the reasons stated, Staff respectfully requests an order directing that Johnson and/or Florence
8 immediately make arrangements for Staff's review of the referenced audit workpapers.

9 RESPECTFULLY SUBMITTED this 15th day of April, 2009.

10

11

Nancy Scott

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Arizona Corporation Commission
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16 Original and thirteen (13) copies
17 of the foregoing filed this
15th day of April, 2009, with:

18 Docket Control
19 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

20

21 Copies of the foregoing mailed this
15th day of April, 2009, to:

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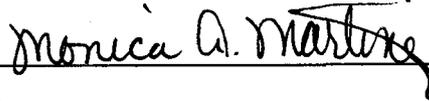
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Attachment

A

JOHNSON UTILITIES, LLC

FINANCIAL STATEMENTS

Year Ended December 31, 2006

JOHNSON UTILITIES, LLC

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INDEPENDENT AUDITORS' REPORT

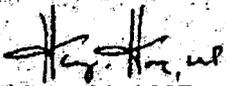
To the Board of Directors
Johnson Utilities, LLC
Scottsdale, AZ 85254

We have audited the accompanying balance sheet of Johnson Utilities, LLC as of December 31, 2006, and the related statements of income, members' capital and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Because of the inadequacy of accounting records for the years prior to 2006, we were unable to form an opinion regarding the amounts at which utility plant in service and accumulated depreciation are recorded in the accompanying balance sheet at December 31, 2006 (stated at \$168,974,434 and \$8,930,075, respectively), or the amount of depreciation expense for the year then ended (stated at \$1,799,271).

In our opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had prior-year records concerning property and equipment and related accumulated depreciation been adequate, the financial statements referred to in the first paragraph present fairly, in all material respects, the financial position of Johnson Utilities, LLC as of December 31, 2006, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.


June 26, 2007

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JOHNSON UTILITIES, LLC
BALANCE SHEET
DECEMBER 31, 2006

ASSETS

UTILITY PLANT

Plant in service	\$ 168,974,434
Accumulated depreciation	(8,930,075)
NET UTILITY PLANT IN SERVICE	<u>160,044,359</u>

Construction work in progress

NET UTILITY PLANT	<u>10,276,488</u>
	<u>170,320,847</u>

CURRENT ASSETS

Cash	28,851,047
Accounts receivable, less allowance for doubtful accounts of \$861,507	2,103,021
Inventory	287,327
Developer receivables	<u>1,186,534</u>

TOTAL CURRENT ASSETS	<u>32,427,929</u>
----------------------	-------------------

OTHER ASSETS

	<u>14,474</u>
--	---------------

TOTAL ASSETS

	<u>\$ 202,763,250</u>
--	-----------------------

See accompanying notes.

MEMBERS' CAPITAL AND LIABILITIES

MEMBERS' CAPITAL	<u>\$ 19,583,538</u>
CONTRIBUTIONS IN AID OF CONSTRUCTION	
Contributions in aid of construction	15,260,808
Hook-up fees	61,635,083
Accumulated amortization	<u>(3,916,046)</u>
	<u>72,979,845</u>
LONG-TERM DEBT	<u>772,000</u>
CURRENT LIABILITIES	
Accounts payable	715,515
Current portion of advances in aid of construction	667,000
Due to related parties	10,583,358
Customer deposits	378,138
Accrued taxes	<u>803,870</u>
	<u>13,147,881</u>
TOTAL CURRENT LIABILITIES	<u>13,147,881</u>
NONCURRENT LIABILITIES	
Advances in aid of construction, less current portion	<u>96,279,986</u>
TOTAL MEMBERS' CAPITAL AND LIABILITIES	<u>\$ 202,763,250</u>

JOHNSON UTILITIES, LLC
 STATEMENT OF INCOME
 YEAR ENDED DECEMBER 31, 2006

OPERATING REVENUE	
Water sales	\$ 10,903,900
Sewer fees	8,065,114
Other revenue	<u>1,020,848</u>
TOTAL REVENUE	<u>19,989,862</u>
EXPENSES	
Purchased water	1,060,115
Purchased power	1,116,494
Repairs and maintenance	168,886
Outside services	8,361,446
Water testing	121,753
Rents	61,150
Insurance	34,667
Sludge removal	64,868
Wastewater treatment	128,625
Water treatment	25,971
Miscellaneous operating expense	949,586
Depreciation and amortization	1,799,271
Taxes other than income	2,677
Property taxes	<u>424,257</u>
	<u>14,319,766</u>
OPERATING INCOME	<u>5,670,096</u>
OTHER INCOME (EXPENSE)	
Interest expense	(98,070)
Interest income	<u>815,467</u>
	<u>717,397</u>
NET INCOME	<u>\$ 6,387,493</u>

See accompanying notes.

JOHNSON UTILITIES, LLC
STATEMENT OF MEMBERS' CAPITAL
YEAR ENDED DECEMBER 31, 2006

BALANCE, BEGINNING OF YEAR	\$ 7,260,129
Prior period adjustment	<u>(1,214,355)</u>
BALANCE, BEGINNING OF YEAR, RESTATED	\$ 6,045,774
Net income	6,387,493
Contributions	10,000,000
Distributions	<u>(2,849,729)</u>
BALANCE, END OF YEAR	<u>\$ 19,583,538</u>

See accompanying notes.

JOHNSON UTILITIES, LLC
 STATEMENT OF CASH FLOWS
 YEAR ENDED DECEMBER 31, 2006

Net Income	\$ 6,387,493
Adjustments to reconcile net income to net cash provided by operating activities:	
Depreciation and amortization	1,799,271
Bad debt expense	587,139
Decrease (Increase) in:	
Accounts receivable - trade	(1,029,934)
Other receivables	(1,148,534)
Inventory	(287,327)
Prepaid expenses	31,075
Deposits	50,646
Increase (Decrease) in:	
Accounts payable	(2,517,142)
Customer deposits	81,573
Accrued taxes	275,290
NET CASH PROVIDED BY OPERATING ACTIVITIES	<u>4,229,550</u>
CASH FLOWS FROM INVESTING ACTIVITIES	
Purchase of plant additions	<u>(32,682,053)</u>
NET CASH USED BY INVESTING ACTIVITIES	<u>(32,682,053)</u>
CASH FLOWS FROM FINANCING ACTIVITIES	
Payments for advances in aid of construction	(791,532)
Net increase in contributions in aid of construction	26,311,872
Member contributions	10,000,000
Member distributions	(2,849,729)
Net borrowings from related party	6,250,354
NET CASH PROVIDED BY FINANCING ACTIVITIES	<u>38,920,965</u>
NET CHANGE IN CASH	10,468,462
CASH BALANCE - BEGINNING OF YEAR	<u>18,382,585</u>
CASH BALANCE - END OF YEAR	<u>\$ 28,851,047</u>

SUPPLEMENTAL DISCLOSURE:

Interest paid	\$ 98,070
Amortization of contributions in aid of construction	(1,424,890)
See accompanying notes.	

JOHNSON UTILITIES, LLC
NOTES TO FINANCIAL STATEMENTS
December 31, 2006

NOTE 1 NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT
ACCOUNTING POLICIES

Organization

Johnson Utilities, LLC (Company) provides water and sewer utility service to residents in and around the Johnson Ranch area of Pinal County, Arizona. The company serves a total of approximately 20,000 customers.

Cash Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a remaining maturity of three months or less at date of acquisition to be cash equivalents.

Inventory

Inventories are comprised of water meters and the parts related to those meters. Inventories are stated at the lower of cost, determined by the first-in, first-out method, or market.

Accounts Receivable

Receivables for utility billings are carried at the outstanding balance less an allowance for doubtful accounts. The amount of the allowance is based on management's evaluation of the collectibility of the accounts receivable, including trends in historical loss experience, economic conditions, and other risks inherent in the utility industry.

Interest income and late fees are recognized when an account becomes past due which is 30 days from the invoice due date.

Property and Equipment

Property and equipment are recorded at cost. Depreciation is computed using the straight-line method over the estimated useful lives of 40 years.

Expenditures for major renewals and betterments that extend the useful lives of property and equipment are capitalized. Expenditures for maintenance and repairs are charged to expenses as incurred. When items of property or equipment are sold or retired, the related cost and accumulated depreciation are removed from the accounts and any gain or loss is included in income.

JOHNSON UTILITIES, LLC
NOTES TO FINANCIAL STATEMENTS
December 31, 2006

NOTE 1 NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT
ACCOUNTING POLICIES (Continued)

Advances in Aid of Construction

Advances in aid of construction represent a liability incurred when utility plant in service is conveyed to the Company by developers. These advances are repaid in annual installments equal to 5% of annual revenues of affected service areas until the liability is fully repaid.

Contributions in Aid of Construction

Contributions in aid of construction represent amounts contributed by developers in the form of additions to utility plant in service. These contributions are amortized over the life of the assets. This results in a reduction in depreciation expense.

Hook-up Fees

Hook-up fees are a component of contributions in aid of construction. These are amounts paid from developers to allow the Company to recover amounts paid for offsite infrastructure. These fees are amortized over the life of the assets. This results in a reduction in depreciation expense.

Income Taxes

The Company files a partnership tax return and does not incur income taxes; instead, its earnings are included in the members' personal income tax returns and taxed depending on their personal tax situations. The financial statements, therefore, do not include a provision for income taxes.

Use of Estimates in Preparation of Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value of Financial Instruments

The company believes that the fair value of its financial instruments, excluding advances in aid of construction approximates the book value and as such no disclosure has been made regarding the fair value of such instruments. The fair value of advances in aid of construction is undeterminable due to the contingencies associated with the repayment terms.

JOHNSON UTILITIES, LLC
NOTES TO FINANCIAL STATEMENTS
December 31, 2006

NOTE 2 SIGNIFICANT CONCENTRATIONS OF CREDIT RISK

The carrying amount of the Company's cash at December 31, 2006 totaled \$28,851,047 and the bank balance was \$28,973,732. Federal Depository Insurance covered the Company's deposits to the extent of \$100,000. At December 31, 2006, the Company's uninsured cash balance totaled \$28,873,732. The Company has not experienced any losses in accounts at that financial institution. Management believes the Company is not exposed to any significant credit risk related to cash.

Concentrations of credit risk with respect to trade receivables are limited due to the large number of customers comprising the Company's customer base though their customers are all from one geographic area.

NOTE 3 RELATED PARTY TRANSACTIONS

The majority owner of Johnson Utilities, LLC is also the majority owner in other companies which have contracts with Johnson Utilities, LLC to perform the duties enumerated below. The operating results or the financial position of the Company could be significantly different from those that would have been obtained if the following enterprises were autonomous.

The operations of the Company are managed by a related entity, Shea Utilities Services Company, Inc. The Company pays Shea Utilities a monthly management fee that is dependent upon the number of customers of the Company. Total management fees incurred by the Company for the year ended December 31, 2006 amounted to \$7,099,333. At December 31, 2006, the Company has a payable to Shea Utilities in the amount of \$713,255.

Central Pinal Contracting, LLC contracts to perform substantially all of the water and sewer system construction for the Company. Total charges relating to the construction agreements for the year ended December 31, 2006 amounted to \$27,602,598. At December 31, 2006, the Company has a payable to Central Pinal Contracting in the amount of \$9,849,791.

At December 31, 2006, the Company has a receivable from General Hunt Properties, Inc. in the amount of \$9,688.

Specific Engineering, LLC performs engineering services for the Company. Total charges relating to these engineering services for the year ended December 31, 2006 amounted to \$24,843.

Utility Contracting Services, LLC writes contracts for the Company. Total charges relating to these contracts for the year ended December 31, 2006 amounted to \$525,000. At December 31, 2006, the Company has a payable to Utility Contracting Services, LLC in the amount of \$30,000.

JOHNSON UTILITIES, LLC
 NOTES TO FINANCIAL STATEMENTS
 December 31, 2006

NOTE 3 RELATED PARTY TRANSACTIONS (continued)

The long-term debt reported on the balance sheet represents a cash loan provided to the Company by its majority owner. Interest is charged at 8% per year. Interest-only payments are made quarterly. Interest paid on the note for the year ended December 31, 2006 amounted to \$61,790. The principal is due in 2009.

The Company leases office space from the majority owner of the Company. The related lease expense for the year ended December 31, 2006 amounted to \$55,150.

NOTE 4 CONTRIBUTIONS IN AID OF CONSTRUCTION

The following schedule presents the components of contributions in aid of construction for the year ending December 31, 2006:

	<u>Water</u>	<u>Sewer</u>
Contributions in aid of construction	\$ 3,387,685	\$ 11,873,123
Hook-up fees	27,547,764	34,087,319
Accumulated amortization	<u>(1,811,748)</u>	<u>(2,104,298)</u>
	<u>\$ 29,123,701</u>	<u>\$ 43,856,144</u>

The amortization amount for the year ended December 31, 2006 totals \$658,662 for the water utility and \$766,228 for the sewer utility.

During 2006, the Arizona Corporation Commission conveyed infrastructure to the Company with a fair market value of \$6,029,551. This is presented as a component of the sewer portion of the contributions in aid of construction and as an addition to utility plant in service.

NOTE 5 LETTERS OF CREDIT

The company has standby letters of credit with National Bank of Arizona. The letters of credit total \$801,000 and are required by Arizona Department of Environmental Quality.

JOHNSON UTILITIES, LLC
NOTES TO FINANCIAL STATEMENTS
December 31, 2006

NOTE 6 COMMITMENTS

The Company has committed to extending service to approximately 50,000 additional customers. The costs associated with these service extensions are difficult to estimate as they will be fulfilled over a period of 20 or more years.

NOTE 7 PRIOR PERIOD ADJUSTMENT

Members' equity at the beginning of 2006 has been reduced to account for an error in recording depreciation expense in prior years. The correction has no effect on the results of the current year's activities; however, the cumulative effect decreases beginning retained earnings for 2006 by \$1,214,355.

Attachment B

**ARIZONA CORPORATION COMMISSION
STAFF'S THIRTEENTH SET OF DATA REQUESTS TO
JOHNSON UTILITIES, L.L.C.
DOCKET NO. WS-02987A-08-0180
March 13, 2009**

JMM 14-1 Audit Workpapers – Make the necessary arrangements for our review of the audit workpapers prepared in connection with the external audit of the Company's financial statements by Henry & Horney, LLP for the year ended December 31, 2006, and dated June 26, 2007. Staff would like to review these audit workpapers by March 25, 2009.

Response: Johnson Utilities did not commission the Henry & Horney, LLP external audit and does not have access to the workpapers prepared in connection therewith.

Prepared by: Brian Tompsett, Executive Vice President
 Johnson Utilities, LLC
 5230 East Shea Boulevard
 Scottsdale, Arizona 85254

Attachment C

**ARIZONA CORPORATION COMMISSION
STAFF'S SIXTEENTH SET OF DATA REQUESTS TO
JOHNSON UTILITIES, L.L.C.
DOCKET NO. WS-02987A-08-0180
April 7, 2009**

Audit workpapers – This is a follow-up to data request JMM 14-1, which asked:

Make the necessary arrangements for our review of the audit workpapers prepared in connection with the external audit of the Company's financial statements by Henry & Horne, LLP for the year ended December 31, 2006, and dated June 26, 2007. Staff would like to review these audit workpapers by March 25, 2009.

And to which you responded:

Johnson Utilities did not commission the Henry & Horne, LLP external audit and does not have access to the workpapers prepared in connection therewith.

It is Staff's understanding that, while the above-referenced audit report was addressed to the Board of Directors of Johnson Utilities, the audit was part of a study commissioned by the Town of Florence ("Florence"). Staff further understands that any documents associated with those audited financial statements are subject to a protective agreement between Florence and Company; therefore, Florence will not arrange for access to the documents without either the Company's consent or a judge's order. Staff also notes that a confidentiality agreement has been executed between Staff and Company in this docket. On March 24, 2009, Staff made an informal request of Company to provide the necessary consent, but Company has not responded. Accordingly, Staff makes the following formal data request.

JMM 16.1 Audit workpapers – To the extent that Company holds the necessary authority to allow review of documents associated with its 2006 audited financial statements and, in light of the Company's confidentiality agreement with Staff in this matter, please make any necessary arrangements for our review of the audit workpapers prepared in connection with the external audit of the Company's financial statements by Henry & Horne, LLP for the year ended December 31, 2006, and dated June 26, 2007. Staff would like to review these audit workpapers by April 16, 2009.

Response: As previously stated in the response to Staff Data Request JMM 14.1, Johnson Utilities did not commission the Henry & Horne audit and does not have access to the work papers prepared in connection therewith. Further, the Henry & Horne audit should have no bearing on the pending rate case because Henry & Horne was employed by the Town of Florence as its expert in connection with the Town's abandoned efforts to purchase Johnson Utilities' water and wastewater systems. As such, the Henry & Horne audit was not an independent or unbiased audit of the utility company and its infrastructure, and it has no place in the rate case.

**ARIZONA CORPORATION COMMISSION
STAFF'S FIFTEENTH SET OF DATA REQUESTS TO
JOHNSON UTILITIES, L.L.C.
DOCKET NO. WS-02987A-08-0180
March 27, 2009**

Prepared by: Thomas J. Bourassa
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