

OPEN MEETING ITEM



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

ARIZONA CORPORATION COMMISSION

ORIGINAL

Arizona Corporation Commission  
**DOCKETED**

MAY - 7 2010

DATE: MAY 7, 2010  
DOCKET NO.: WS-02987A-08-0180  
TO ALL PARTIES:

DOCKETED BY *mm*

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

JOHNSON UTILITIES, L.L.C. dba  
JOHNSON UTILITIES COMPANY  
(RATES)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 17, 2010

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 Open Meeting to be held on:

MAY 26, 2010 and MAY 27, 2010

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 Director's Office at (602) 542-3931.

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1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES - Chairman  
5 GARY PIERCE  
6 PAUL NEWMAN  
7 SANDRA D. KENNEDY  
8 BOB STUMP

9 IN THE MATTER OF THE APPLICATION OF  
10 JOHNSON UTILITIES, L.L.C., DBA JOHNSON  
11 UTILITIES COMPANY FOR AN INCREASE IN  
12 ITS WATER AND WASTEWATER RATES FOR  
13 CUSTOMERS WITHIN PINAL COUNTY,  
14 ARIZONA.

DOCKET NO. WS-02987A-08-0180

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

15 DATES OF HEARING:

January 27, February 26 (Procedural Conferences);  
April 20, (Pre-Hearing Conference); April 23, 24, 27  
(Hearing); July 23 (Procedural Conference/Oral  
Arguments); September 21, 24, 25, October 1, 2, 5, 6,  
and 7, 2009 (Hearing).

16 PLACE OF HEARING:

Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

18 APPEARANCES:

Mr. Jeffrey W. Crockett, Mr. Bradley S. Carroll and  
Mr. Robert Metli, SNELL & WILMER, on behalf of  
Johnson Utilities, LLC;

Mr. Craig A. Marks, CRAIG A. MARKS, PLC, on  
behalf of Swing First Golf, LLC;

Ms. Jodi Jerich, Director, Mr. Daniel Pozefsky, Chief  
Counsel and Ms. Michelle Wood, Staff Attorney, on  
behalf of the Residential Utility Consumer Office;

Mr. James E. Mannato, Town Attorney, on behalf of  
the Town of Florence; and

Ms. Nancy Scott, Ms. Ayesha Vohra, and Ms. Robin  
Mitchell, Staff Attorneys, Legal Division, on behalf of  
the Utilities Division of the Arizona Corporation  
Commission.

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1 **BY THE COMMISSION:**

2 **I. INTRODUCTION**

3 On March 31, 2008, Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson,"  
4 "Johnson Utilities," or "Company") filed with the Arizona Corporation Commission  
5 ("Commission") a rate application for its water and wastewater utility services, using a test year  
6 ended December 31, 2007.

7 Johnson is a water and wastewater provider serving portions of Pinal County, Arizona. The  
8 Company served approximately 17,541 water customers and 21,525 wastewater customers during  
9 the test year. This is the first rate case filed by Johnson since the grant of its original Certificate of  
10 Convenience and Necessity ("CC&N") in Decision No. 60223 (May 27, 1997). Decision No. 60223  
11 set initial rates for the Company's water and wastewater services and ordered the Company to file a  
12 rate review 36 months from the date it first provided service to any customer. On October 25, 2005,  
13 in Decision Nos. 68235, 68236, and 68237, Johnson was ordered to file a rate case by May 1, 2007,  
14 using a 2006 test year. Prior to that date and on several occasions thereafter, the Company docketed  
15 filings requesting an extension of the filing date.<sup>1</sup> No action was taken on the requests for an  
16 extension of time. The Company filed the instant rate case on a date supported by the Commission's  
17 Utilities Division ("Staff").<sup>2</sup>

18 On August 1, 2008, following Staff's issuance of two Letters of Deficiency and filings by  
19 Johnson to address the items required to deem the application sufficient for processing, Staff filed a  
20 Letter of Sufficiency informing the Company that the application had met the Commission's  
21 sufficiency requirements and classifying the Company as a Class A utility.

22 On August 15, 2008, a Rate Case Procedural Order was issued setting a hearing on the rate  
23 application to commence on April 23, 2009, and setting associated procedural deadlines, including  
24 public notice requirements.

25 Intervention in this matter was granted to Swing First Golf, LLC ("Swing First"), the Town  
26 of Florence ("Florence"), and the Residential Utility Consumer Office ("RUCO"). The hearing

27 <sup>1</sup> See, e.g., December 6, 2007 Letter to Docket Control and accompanying attachments in Docket No. WS-02987A-04-  
0288.

28 <sup>2</sup> See *id.*

1 commenced as scheduled on April 23, 2009 before a duly authorized Administrative Law Judge of  
 2 the Commission. The Company, Swing First, Florence, RUCO, and Staff appeared through counsel  
 3 and cross-examined witnesses. The Company, Swing First, RUCO, and Staff presented evidence in  
 4 the form of testimony and exhibits. At the hearing on April 27, 2009, an exhibit was presented  
 5 which necessitated the suspension of the hearing schedule to allow time for briefing and oral  
 6 argument on the admissibility and confidentiality of the exhibit. The hearing resumed on September  
 7 21, 2009, and concluded on October 7, 2009. The parties filed post-hearing briefs, and the matter  
 8 was taken under advisement pending the submission of a Recommended Opinion and Order  
 9 (“ROO”) for the Commission’s consideration.

## 10 II. APPLICATION

11 For its water division, Johnson is requesting a decrease in revenues of \$2,879,022 from  
 12 adjusted test year revenues of \$13,172,899, or a decrease of 21.86 percent, for a total revenue  
 13 requirement of \$10,293,877.<sup>3</sup> RUCO is recommending a decrease in revenues of \$73,718 from  
 14 adjusted test year revenues of \$13,172,899, or a decrease of 0.56 percent, for a total revenue  
 15 requirement of \$13,099,181.<sup>4</sup> Staff is recommending a decrease in revenues of \$3,016,800 from  
 16 adjusted test year revenues of \$13,172,899, or a decrease of 22.90 percent, for a total revenue  
 17 requirement of \$10,156,099.<sup>5</sup>

18 For its wastewater division, Johnson is requesting an increase in revenues of \$2,325,720 over  
 19 adjusted test year revenues of \$11,354,826, or an increase of 20.48 percent, for a total revenue  
 20 requirement of \$13,680,546.<sup>6</sup> RUCO is recommending a decrease in revenues of \$515,397, or a  
 21 decrease of 4.54 percent, from adjusted test year revenues of \$11,354,014, for a total revenue  
 22 requirement of \$10,838,617.<sup>7</sup> Staff is recommending a revenue decrease of \$895,100, or a decrease  
 23 of 7.88 percent, from adjusted test year revenues of \$11,354,014, for a total revenue requirement of  
 24

26 <sup>3</sup> Company Water Division Final Schedule A-1.

27 <sup>4</sup> RUCO Final Water Schedule SURR RLM-1.

28 <sup>5</sup> Staff Final Schedule JMM-W1.

<sup>6</sup> Company Wastewater Division Final Schedule A-1.

<sup>7</sup> RUCO Final Wastewater Schedule SURR RLM-1.

1 \$10,458,914.<sup>8</sup> Florence requested that Staff's final schedules be adopted.<sup>9</sup> Florence stated that  
 2 having considered the testimony of each party's witnesses in this matter, Florence believes that  
 3 Staff's recommendations will promote equity in the provision of water and wastewater treatment  
 4 services rendered to the citizens of the Town of Florence.<sup>10</sup>

### 5 **III. RATE BASE**

6 For its water division, the Company proposes a fair value rate base ("FVRB"), which is its  
 7 original cost rate base ("OCRB"),<sup>11</sup> of \$3,539,562.<sup>12</sup> RUCO recommends a FVRB of  
 8 (\$5,556,766).<sup>13</sup> Staff recommends a FVRB of (\$13,863,166).<sup>14</sup>

10 For its wastewater division, the Company proposes a FVRB of \$17,479,735.<sup>15</sup> RUCO  
 11 recommends a FVRB of \$11,252,776.<sup>16</sup> Staff recommends a FVRB of \$136,562.<sup>17</sup>

#### 12 **A. Plant in Service**

13 For its water division, the Company proposes net utility plant in service of \$69,177,566.<sup>18</sup>  
 14 RUCO recommends net utility plant in service of \$68,574,918.<sup>19</sup> Staff recommends net utility plant  
 15 in service of \$56,916,360.<sup>20</sup>

17 For its wastewater division, the Company proposes net utility plant in service of  
 18 \$115,454,166.<sup>21</sup> RUCO recommends net utility plant in service of \$109,672,733.<sup>22</sup> Staff  
 19 recommends net utility plant in service of \$89,190,774.<sup>23</sup>

21 <sup>8</sup> Staff Final Schedule JMM-WW1.

22 <sup>9</sup> Florence Br. at 1.

23 <sup>10</sup> *Id.* at 1-2.

24 <sup>11</sup> The Company did not prepare schedules showing the elements of Reconstruction Cost New Rate Base ("RCND").

25 <sup>12</sup> Company Water Division Final Schedule A-1.

26 <sup>13</sup> RUCO Final Water Schedule SURR RLM-1.

27 <sup>14</sup> Staff Final Schedule JMM-W1.

28 <sup>15</sup> Company Wastewater Division Final Schedule A-1.

<sup>16</sup> RUCO Final Wastewater Schedule SURR RLM-1.

<sup>17</sup> Staff Final Schedule JMM-WW1.

<sup>18</sup> Company Water Division Final Schedule B-2, p. 1.

<sup>19</sup> RUCO Final Water Schedule SURR RLM-2.

<sup>20</sup> Staff Final Schedule JMM-W2.

<sup>21</sup> Company Wastewater Division Final Schedule B-2, p. 1.

<sup>22</sup> RUCO Final Wastewater Schedule SURR RLM-2.

## 1. Inadequately Supported Plant

Staff is recommending a 10 percent disallowance of plant for inadequately supported plant costs, for a disallowance of \$7,433,707 for the water division<sup>24</sup> and \$10,892,391 for the wastewater division.<sup>25</sup> Staff calculated its proposed 10 percent disallowance on plant balances after first deducting the disallowances Staff recommended, as discussed further below, for plant not used and useful and for excess capacity plant.<sup>26</sup> Staff also proposed corresponding adjustments to accumulated depreciation balances<sup>27</sup> and depreciation expense.<sup>28</sup> Staff's witness testified that rather than disallowing the entire cost of unsubstantiated plant, Staff believes a minimal 10 percent disallowance is warranted.<sup>29</sup> RUCO took no position on the issue.<sup>30</sup> The Company argued that the 10 percent disallowance proposed by Staff is arbitrary, and that Staff should instead have identified and removed specific unsupported or inadequately supported plant costs.<sup>31</sup>

Staff stated that the Company failed to provide complete and authentic information in regard to its plant in accordance with Commission rules.<sup>32</sup> Staff's witness testified that for independent third-party transactions, complete and authentic information is source documentation that includes but is not limited to vendor invoices for materials, supplies and labor, contracts, cancelled checks, time sheets, and reliable accounting records.<sup>33</sup> Staff stated that such information would allow identification of what was purchased and whether the item was allowable, and further, would allow

<sup>23</sup> Staff Final Schedule JMM-WW2.

<sup>24</sup> Staff Br. at 7; Staff Final Schedule JMM-W3, p. 1 of 2.

<sup>25</sup> Staff Br. at 7; Staff Final Schedule JMM-WW3, p. 1 of 2.

<sup>26</sup> Staff Br. at 7.

<sup>27</sup> Staff Final Schedules JMM-W9, JMM-WW9.

<sup>28</sup> Staff Br. at 7; Staff Final Schedules JMM-W22, JMM-WW20.

<sup>29</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 14.

<sup>30</sup> RUCO Br. at 4; RUCO Reply Br. at 1.

<sup>31</sup> Co. Br. at 6; Co. Reply Br. at 5-6, 17-18.

<sup>32</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.

A.A.C. R14-2-610(D)(1) and A.A.C. R14-2-411(D)(1) each provide, in part:

D. Accounts and records

1. Each utility shall keep general and auxiliary accounting records reflecting the cost of its properties, operating income and expense, assets and liabilities, and all other accounting and statistical data necessary to give complete and authentic information as to its properties and operations.

<sup>33</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.



1 Staff to identify the amount of the purchase and whether the amount was reasonable.<sup>34</sup> Staff stated  
 2 that in the case of transactions with affiliates, Staff would request source documents in addition to  
 3 fair competitive bids.<sup>35</sup> For Class A utilities such as Johnson, the Commission's Affiliate Interests  
 4 Rules<sup>36</sup> require the affiliate to provide all source documentation.<sup>37</sup>

5 The Company's witness asserted that Johnson "provided contracts, invoices, cancelled  
 6 checks and/or main extension agreements which supported all but \$885,064 of the \$79,591,151 in  
 7 plant in service."<sup>38</sup> The Company argued that the documentation that the Company provided, line  
 8 extension agreements, construction agreements, invoices, receipts and other supporting  
 9 documentation, are the types of documentation that a utility would traditionally submit to  
 10 substantiate plant costs.<sup>39</sup> In the Company's rejoinder testimony, the Company provided a table  
 11 representing a summary of its claimed plant costs listed by the type of supporting documentation  
 12 provided to Staff.<sup>40</sup> Staff did not dispute that the Company submitted voluminous documents, but  
 13 stated that Staff's audit and analysis could not verify the Company's claims.<sup>41</sup> Staff stated that its  
 14 audit process was made difficult in this case by the Company's failure to keep its records in  
 15 accordance with the National Association of Regulatory Utility Commissioners ("NARUC")  
 16  
 17

18 \_\_\_\_\_  
 19 <sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> A.A.C. R14-2-801 *et seq.*

<sup>37</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.

<sup>38</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 12.

<sup>39</sup> Co. Reply Br. at 6.

<sup>40</sup> Rejoinder Testimony of Company witness Thomas Bourassa (Exh. A-4) Vol. II at 13-14. The table the Company's witness provided is reproduced here, without footnotes, as it was reproduced on page 6 of the Company's closing brief:

Type of Documentation	Cost Booked
LXA only	\$ 23,126,031
LXA plus back-up	\$ 15,402,986
Invoices	\$ 5,703,569
Contracts, Cancelled Checks, Bank Statements	\$ 29,222,823
Plant costs booked in earlier year but subsequently removed and not in test year rate base	\$ 81,087
Total	\$ 73,536,516
Total requested by Staff	\$ 74,421,579
Missing documentation	\$ 885,064

1 Uniform System of Accounts (“USOA”) and Commission rules.<sup>42</sup> While the USOA requires plant  
2 records to be kept by plant account, the documentation the Company provided was not provided by  
3 plant account, but instead by project, which could span several years. Staff’s witness testified that  
4 the Company provided canceled checks showing the amount that Johnson paid to its affiliate, as  
5 opposed to the actual cost of the asset, and did not provide any evidence that costs charged by the  
6 affiliates were supported by competitive bids.<sup>43</sup> The Company also provided Staff with advances in  
7 aid of construction (“AIAC”) agreements that pertained to the years 2000 to 2007, most of which  
8 were filed with the Commission in 2008.<sup>44</sup> Staff stated that while most of the AIAC agreements are  
9 with affiliates of Johnson, indicating that nearly all of the Company’s plant was constructed by  
10 affiliates, Johnson did not maintain complete invoices and records to support the transactions with its  
11 affiliates.<sup>45</sup>

12  
13 Staff further stated that the difficulty presented by the Company’s failure to properly keep its  
14 records was compounded by the lack of timeliness of the Company’s response to Staff’s data  
15 requests.<sup>46</sup> During the course of its plant audit, Staff sent the Company additional data requests  
16 attempting to obtain information that the Company was not providing to Staff, and some of the  
17 Company’s responses were vague or non-responsive, which in turn, resulted in more data requests.<sup>47</sup>  
18 In one instance, the Company supplemented its response to an August 2008 data request on April 21,  
19 2009, after Staff had filed its direct testimony, and 21 days before Staff’s surrebuttal testimony was  
20 due.<sup>48</sup> That supplemental data response included documents relating to water and sewer  
21  
22  
23

---

24 <sup>41</sup> Staff Br. at 7-8.

25 <sup>42</sup> *Id.*, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 13.

26 <sup>43</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 12-13.

27 <sup>44</sup> *Id.*

28 <sup>45</sup> Staff Br. at 8; Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11-12.

<sup>46</sup> Staff Br. at 7-8, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 13.

<sup>47</sup> Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12 and (Exh. S-45) at 14.

<sup>48</sup> Staff Br. at 8, citing to Hearing Exhibit S-46 (cover letter to copies of documents provided to support water and sewer infrastructure for 17 subdivision projects).

1 infrastructure for 17 subdivision projects.<sup>49</sup> Staff's witness testified that despite the late provision of  
2 the documents, Staff did nevertheless attempt to review them.<sup>50</sup>

3 The Company argued that Staff should have identified and removed each specific plant item  
4 that was unsupported by the documentation it provided, and that because Staff's proposed  
5 disallowance does not apply to specific plant items, the Company "never received sufficient  
6 information to challenge the disallowance or raise a reasonable defense regarding the plant costs that  
7 were disallowed."<sup>51</sup> As Staff pointed out, however, this argument presupposes that it is the  
8 Commission's Staff that bears the burden of proof. Staff argues that its conclusion regarding the  
9 inadequacy of the Company's documentation is corroborated by a similar conclusion reached in the  
10 2006 audit report prepared by Henry & Horne.<sup>52</sup>

11 We find no basis in the record to support the Company's allegation that the 10 percent  
12 disallowance proposed by Staff is arbitrary. On the contrary, we find that it is a reasonable solution  
13 to a problematic situation created by the Company's failure to demonstrate the actual cost of its  
14 properties, all of which are being reviewed for the first time in this rate case, in a form that provides  
15 complete and authentic information for public audit. While the Company argued that it made  
16 "herculean" efforts to supplement the documents requested by Staff,<sup>53</sup> and that Staff, and not the  
17 Company, was at fault for failing to organize the disparate and incomplete pieces of information the  
18 Company eventually provided when prodded by Staff,<sup>54</sup> it is clear from the record that the  
19 Company's records were inadequately kept, and could therefore not be produced in the manner  
20  
21  
22

23 <sup>49</sup> Hearing Exhibit S-46 (cover letter to copies of documents provided to support water and sewer infrastructure for 17  
24 subdivision projects).

<sup>50</sup> Tr. at 1712-1713.

<sup>51</sup> Co. Br. at 6-7.

25 <sup>52</sup> Staff Reply Br. at 3. Staff's witness testified that the Henry & Horne audit found the following: "Because of the  
26 inadequacy of accounting records for the years prior to 2006, we were unable to form an opinion regarding the amounts  
27 at which utility plant in service and accumulated depreciation are recorded in the accompanying balance sheet at  
28 December 31, 2006 (stated at \$168,974,434 and \$8,930,075 respectively), or the amount of depreciation expense from  
the year then ended (stated at \$1,799,271)." Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12-13  
and (Exh. S-45) at 15.

<sup>53</sup> Co. Reply Br. at 8.

1 necessary to demonstrate the actual cost of its properties in a form that provides complete and  
2 authentic information for public audit. It is incumbent upon all regulated utilities to keep the records  
3 necessary to demonstrate the actual cost of its properties in a form that provides complete and  
4 authentic information. The evidence in this case demonstrates that the Company has not complied  
5 with regulatory accounting requirements, and has not met its burden of proof regarding the actual  
6 cost of its properties. While additional evidence is not necessary to support a conclusion that the  
7 Company failed to meet its burden, we find that the conclusion of Henry & Horne, an independent  
8 accounting firm employing certified public accountants, regarding the adequacy of the Company's  
9 accounting records, provides additional evidence corroborating Staff's position that the Company  
10 failed to maintain accounting records sufficient to provide complete and authentic information to  
11 support its plant additions.<sup>55</sup> It is reasonable and in the public interest to require the Company to  
12 keep its records in accordance with the NARUC USOA and Commission rules in a manner that will  
13 support its filings with the Commission. In future proceedings, if the Company again fails to  
14 produce adequate records demonstrating the cost of plant additions, it may be reasonable to consider  
15 a greater disallowance than that proposed by Staff in this case or a penalty for noncompliance with  
16 Commission rules and Orders. Staff's recommended adjustment to plant in service to reflect  
17 unsupported plant costs is reasonable and will be adopted.

20 a. AIAC and CIAC Related to Unsupported Plant

21 The Company argued that Staff's adjustment for inadequately supported plant is one sided  
22 because it failed to consider corresponding adjustments associated with AIAC and Contributions in  
23 Aid of Construction ("CIAC").<sup>56</sup> The Company argued that to ignore the necessary corresponding  
24  
25  
26

27 <sup>54</sup> See Co. Reply Br. at 8-16.

28 <sup>55</sup> Staff Reply Br. at 2.

<sup>56</sup> Co. Br. at 7; Co. Reply Br. at 7, 18-19.

1 adjustments to AIAC or CIAC associated with disallowed plant would create a mismatch and result  
2 in an understatement of rate base to the detriment of the Company.<sup>57</sup>

3 Staff accepted the Company's adjustments to CIAC and AIAC associated with the  
4 disallowances for excess capacity, for plant found not used and useful, and for certain items of post  
5 test year plant, discussed further below.<sup>58</sup> Staff stated that for inadequately supported plant, due its  
6 lack of confidence in the Company's records, it made no corresponding adjustments to CIAC and  
7 AIAC.<sup>59</sup> We agree with Staff that it is inappropriate to make adjustments to CIAC or AIAC when  
8 plant has been disallowed due to inadequate documentation, and make no such adjustment in this  
9 case.  
10

## 11 2. Post-Test Year Plant

12 Staff disputed the Company's proposal to include \$3,222,494 in plant in service related to  
13 post test year plant for the wastewater division.<sup>60</sup> According to the Company, the plant additions  
14 were not invoiced and paid until 2008.<sup>61</sup> The \$3,222,494 total disputed amount consists of: (1)  
15 fourteen separate items, totaling \$2,201,386, classified as post test year plant in the Company's  
16 application, but reclassified, in the Company's rebuttal testimony, to test year plant in service; and  
17 (2) \$1,201,108 classified as post test year plant by the Company, comprised of \$486,714 for the  
18 Parks lift station and \$534,394 for the Queen Creek leach field.<sup>62</sup>  
19

20 The disputed plant in service amount of \$2,201,386 was originally presented in the rate  
21 application as \$2,684,888 of post test year plant.<sup>63</sup> In a data response, the Company indicated that  
22 the \$2,684,888 was incurred for the Hunt Highway South force main project.<sup>64</sup> According to the  
23

24 <sup>57</sup> Co. Br. at 7.

25 <sup>58</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

26 <sup>59</sup> Staff Reply Br. at 5; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12 and (Exh. S-45) at 15.

27 <sup>60</sup> Co. Final Schedules B-2 Page 3 and 3.4.

28 <sup>61</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

<sup>62</sup> Co. Br. at 21; Rebuttal Testimony of Company witness Bourrassa (Exh. A-2) Vol. III at 14-15; Company Final Schedules B-2, page 3 and 3.4.

<sup>63</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 8.

<sup>64</sup> *Id.*

1 Company's accounting witness, the plant items were recorded in construction work in progress  
 2 ("CWIP") at the end of the test year, and had not been transferred into plant in service when the  
 3 application was filed.<sup>65</sup> The Company's witness testified that the Hunt Highway South force main,  
 4 which connects its Section 11 wastewater treatment plant ("Section 11 WWTP") to its Anthem  
 5 wastewater treatment plant ("Anthem WWTP"), was used during the test year to redirect flows from  
 6 the Anthem WWTP to the Section 11 WWTP when the Anthem WWTP was not yet ready for  
 7 operation.<sup>66</sup>

8  
 9 The Company presented the Parks lift station and the Queen Creek leach field as post test  
 10 year plant on its final schedules.<sup>67</sup> The Parks lift station was constructed initially for a shopping  
 11 center that was started in 2007.<sup>68</sup> The Company asserted that without its construction, the Company  
 12 would have had to implement a costly process of vaulting and hauling the shopping center's  
 13 wastewater to its Pecan wastewater treatment plant ("Pecan WWTP").<sup>69</sup> In regard to the Queen  
 14 Creek leach field, the Company's witness testified that during the test year, all excess effluent flows  
 15 from the Pecan WWTP that required disposal were sent to the Trilogy Encanterra development, and  
 16 because the effluent flows were well in excess of the demands needed for the Encanterra golf course  
 17 in 2007, Johnson constructed the Queen Creek leach field to dispose of the excess effluent.<sup>70</sup>

18  
 19 RUCO did not oppose the inclusion of the disputed plant items from plant in service.<sup>71</sup> Staff  
 20 recommended a disallowance of the entire disputed amount of \$3,222,495 as post test year plant,  
 21  
 22  
 23

24 <sup>65</sup> Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. III at 14.

25 <sup>66</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

26 <sup>67</sup> Co. Final Schedules B-2 Page 3.4.

27 <sup>68</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

28 <sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 35.

<sup>71</sup> Co. Br. at 24; RUCO Br. at 4; RUCO Reply Br. at 1; RUCO Final Schedules SURR RLM-3. The Company claimed on brief that RUCO accepted the Company's post test year plant of \$2,684,888 from the Company's direct filing plus RUCO's proposed increase based on the Company's rebuttal filing, and RUCO did not refute the Company's claim in its reply brief. RUCO's final schedules show an adjustment increasing plant in service by \$490,896 for post test year plant.

1 with an accompanying adjustment to reduce CIAC.<sup>72</sup> Staff stated that the inclusion of post test year  
2 plant would result in a mismatch of that plant with the revenues, expenses, and rate base of the test  
3 year.<sup>73</sup> Staff's witness testified that matching is one of the most fundamental principles of  
4 accounting and ratemaking, and the absence of matching distorts the meaning of operating income  
5 and rate of return for measuring the fairness and reasonableness of rates.<sup>74</sup> Accordingly, Staff  
6 explained, post test year plant should be recognized in rate base only in special and unusual  
7 circumstances where failure to do so would create an inequity.<sup>75</sup> Staff stated that it has traditionally  
8 recognized two scenarios in which recognition of post test year plant is appropriate: (1) when the  
9 magnitude of the investment relative to the utility's total investment is such that not including the  
10 post test year plant in the cost of service would jeopardize the utility's financial health; and (2) when  
11 certain conditions exist as follows: (a) the cost of the post test year plant is significant and  
12 substantial, (b) the net impact on revenue and expenses for the post test year plant is known and  
13 insignificant or is revenue-neutral, and (c) the post test year plant is prudent and necessary for the  
14 provision of services and reflects appropriate, efficient, effective, and timely decision-making.<sup>76</sup>  
15  
16

17 The Company stated that all the plant was necessary to serve the test year level of customers,  
18 and that Staff's engineering testimony noted that the Hunt Highway South force main was in use  
19 during the test year.<sup>77</sup> The Company's accounting witness testified that the Company believes that  
20 the post test year Parks lift station and the Queen Creek leach field projects are revenue neutral and  
21 are necessary for reliability purposes, to serve the test year end level of customers.<sup>78</sup> The Company  
22 argued that the Commission has allowed *pro forma* adjustments, including post-test year plant, in  
23

24 <sup>72</sup> Staff Final Schedules JMM-WW3 Page 1 of 2; JMM-WW4; Surrebuttal Testimony of Staff witness Jeffrey Michlik  
25 (Exh. S-39) at 3.

26 <sup>73</sup> Staff Br. at 10.

27 <sup>74</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 8.

28 <sup>75</sup> *Id.*

<sup>76</sup> Staff Br. at 10, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 9.

<sup>77</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 35, referring to Direct Testimony of Marlin Scott Jr. (Exh. S-36), Exhibit MSJ at 31.

1 order to ensure a proper matching of plant to test year customers and to more accurately reflect  
2 reality during the period the rates will be in effect.<sup>79</sup>

3 Staff argued that the Company's request to include post test year plant in rate base is  
4 inconsistent with the Commission's normal treatment of post test year plant.<sup>80</sup> Staff acknowledged  
5 that the Company, in rebuttal testimony, reclassified \$2,201,386 of plant from post test year plant to  
6 test year plant. Staff explained, however, that because Staff lacked confidence in the Company's  
7 documentation, Staff continued to classify it as post test year plant.<sup>81</sup> While the Company charged  
8 that "Staff failed to follow-up to determine whether such plant was in fact put into service in  
9 2007,"<sup>82</sup> Staff responded that the burden of proof lies with the Company, and not with Staff.<sup>83</sup> Staff  
10 stated that the invoices the Company provided for post test year plant were from a Company  
11 affiliate, Central Pinal Contracting, LLC ("Central Pinal").<sup>84</sup> The Company, contending that Central  
12 Pinal is no longer a Company affiliate, did not allow Staff to verify the underlying affiliate records.<sup>85</sup>  
13 Staff therefore could not verify the invoices for the construction performed by the affiliate.<sup>86</sup> Staff  
14 stated that it had little confidence in the integrity of some of the Company's records.<sup>87</sup> For example,  
15 Staff stated that its confidence in the reliability of the Company's invoices was further diminished by  
16 the disclosure of the invoice that was created to charge a Company employee for water that he  
17 neither used nor was a guarantor for on the Swing First account.<sup>88</sup> In regard to the Company's  
18 claims that the post test year plant was revenue neutral (i.e., will not add to test year revenues), Staff  
19 asserted that the Company's claim is unsubstantiated, and that in the absence of reliable cost  
20  
21  
22

23 <sup>78</sup> Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. III at 15, citing to "Rebuttal Testimony of  
24 Brian Tompsett."

25 <sup>79</sup> Co. Br. at 23.

26 <sup>80</sup> Staff Br. at 9.

27 <sup>81</sup> Staff Reply Br. at 6.

28 <sup>82</sup> Co. Br. at 22.

<sup>83</sup> Staff Reply Br. at 6.

<sup>84</sup> Staff Reply Br. at 6, Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 6.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Staff Reply Br. at 6.



1 documentation, it is difficult to determine whether any pro forma adjustments to rate base also  
2 include known and measurable changes to revenues and expenses.<sup>89</sup> Staff argued that the Company  
3 provided no credible evidence that the Parks lift station was necessary to serve the test year end level  
4 of customers, other than conclusory statements that it was necessary to resolve potential problems.<sup>90</sup>

5 It is undisputed that the Company did not incur the costs of the \$3,222,494 of plant during  
6 the test year. The Company did not produce requested records necessary to verify the claimed plant  
7 values, and in addition, failed to quantify the effects of the items of post test year plant on test year  
8 revenues. Aside from the Company's statements that the Parks lift station and the Queen Creek  
9 leach field are revenue neutral, the Company presented no evidence demonstrating their claimed  
10 revenue neutrality. While Staff stated that the Parks lift station was used and useful during the test  
11 year, Staff also noted that the Company did not perform some of the tasks that are performed when  
12 installing an upgrade to a lift station, such as retiring plant that was replaced with the upgraded  
13 plant.<sup>91</sup> It is the Company's burden to provide reliable, accurate documentation showing the cost of  
14 post test year plant and the Company did not meet that burden. The Company also failed to present  
15 evidence demonstrating that the post test year plant would not add to revenues. The \$3,222,494  
16 should therefore not be included in test year plant in service. The Company will have an opportunity  
17 to request inclusion of this plant in its next rate case.  
18  
19

### 20 3. Plant Not Used and Useful

21 Staff stated that an inspection of the Company's water and wastewater systems revealed plant  
22 that was not used and useful, and therefore recommended disallowance of \$4,127,019 of plant in the  
23 water division and \$4,595,298 of plant in the wastewater division, with corresponding adjustments to  
24  
25  
26

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27 <sup>88</sup> Staff Reply Br. at 6.

<sup>89</sup> Staff Br. at 10-11, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 9.

<sup>90</sup> Staff Br. at 11, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

28 <sup>91</sup> See Staff Reply Br. at 6, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 5.

1 CIAC and AIAC.<sup>92</sup> RUCO accepted Staff's findings with respect to Staff's analysis of plant that is  
 2 not used and useful.<sup>93</sup> Johnson accepted some of Staff's adjustments to remove plant Staff found not  
 3 used and useful, but disagreed with Staff and RUCO's recommended removal of \$731,125 for 4  
 4 miles of 12-inch mains (the "Rickey Main") from its water division.<sup>94</sup> For its wastewater division,  
 5 the Company disagreed with Staff and RUCO's recommended removal of \$690,186 for  
 6 approximately 4 miles of 8-inch sewer force mains ("Magma Sewer Force Main") and \$1,696,806  
 7 for the Precision Wastewater Treatment Plant ("Precision WWTP").<sup>95</sup>

8  
 9 a. Rickey Main

10 The Company agreed that the Rickey Main is not being used to serve customers, but argued  
 11 that it should be included in rate base nonetheless, because the Company "acted prudently in order to  
 12 provide service."<sup>96</sup> The Company stated that it was contractually obligated to construct the Rickey  
 13 Main pursuant to the Silverado Ranch Master Utility Agreement; that the plant was constructed  
 14 within a roadway already paved by the developer, and that the plant is in place, ready to provide  
 15 water to customers within Silverado Ranch, once homes are constructed.<sup>97</sup> The Company claimed  
 16 that it would be "inappropriate and inequitable" to deny inclusion of the Rickey Main in rate base.<sup>98</sup>

17  
 18 Johnson has acknowledged that the \$731,125 Rickey Main is not being used to serve  
 19 customers.<sup>99</sup> It is therefore not used and useful, and should not be included in rate base. Once the  
 20 plant is being used to serve customers, the Company can request its inclusion in rate base in a rate  
 21 proceeding. Staff's adjustments to plant in service and the corresponding CIAC and AIAC  
 22 adjustments<sup>100</sup> are appropriate and will be adopted.

23  
 24 <sup>92</sup> Staff Br. at 3; See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

25 <sup>93</sup> RUCO Br. at 4; RUCO Reply Br. at 1; Rebuttal Testimony of RUCO witness Rodney Moore (Exh. R-2) at 4-5.

26 <sup>94</sup> Co. Reply Br. at 2; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. II at 11-12.

27 <sup>95</sup> Co. Br. At 19; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

28 <sup>96</sup> Co. Br. at 8; Co. Reply Br. at 2-3.

<sup>97</sup> Co. Br. at 8; Rejoinder Testimony of Company witness Brian Tompsett (Exh. A-7) at 14.

<sup>98</sup> Co. Br. at 8.

<sup>99</sup> Tr. at 922-923.

<sup>100</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

b. Magma Sewer Force Main

Johnson disagreed with Staff's recommended removal of \$690,186 for approximately 4 miles of 8-inch sewer force mains to serve the Silverado Ranch development.<sup>101</sup> Johnson acknowledged that the Magma Sewer Force Main is not currently serving customers, but argued that it should be included in plant in service because the Company was obligated to construct the plant and acted prudently in order to provide service.<sup>102</sup>

Johnson has acknowledged that the \$690,186 Magma Sewer Force Main is not being used to serve customers.<sup>103</sup> It is therefore not used and useful, and should not be included in rate base. Once the plant is being used to serve customers, the Company can request its inclusion in rate base in a rate proceeding. Staff's adjustments to plant in service and the corresponding CIAC and AIAC adjustments<sup>104</sup> are appropriate and will be adopted.

c. Precision WWTP

Johnson disagreed with Staff's recommended removal of a total of \$1,696,806 for the cost of the Precision WWTP.<sup>105</sup> The Company argued that the Precision WWTP should be considered used and useful because the Arizona Department of Environmental Quality ("ADEQ") required the plant to be constructed as a condition of issuing subdivision approvals to developers within Johnson Ranch and other developments.<sup>106</sup>

The Company also proffered the argument that because construction of the Precision WWTP was a prerequisite to the issuance of additional subdivision approvals in Johnson Ranch, the plant

<sup>101</sup> Co. Br. at 19; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 11.

<sup>102</sup> Co. Br. at 19-20; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

<sup>103</sup> Tr. at 922-923.

<sup>104</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

<sup>105</sup> Co. Br. at 19-20; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

<sup>106</sup> Co. Br. at 19-20; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12; Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 36.

1 was needed to serve the 2007 test year level of customers.<sup>107</sup> We disagree. Johnson acknowledged  
 2 that the Precision WWTP is not being used to serve customers.<sup>108</sup> It is therefore not used and useful,  
 3 and should therefore be excluded from plant in service. Once the plant is being used to serve  
 4 customers, the Company can request its inclusion in rate base in a rate proceeding. Staff's  
 5 adjustments to plant in service and the corresponding CIAC and AIAC adjustments<sup>109</sup> are  
 6 appropriate and will be adopted.

#### 7 **4. Excess Capacity**

8 Staff recommended a disallowance of \$1,127,065 for Johnson's water system, and  
 9 \$5,443,062 for the wastewater system, due to excess plant capacity.<sup>110</sup> RUCO accepted Staff's  
 10 findings with respect to Staff's analysis of plant that constitutes excess capacity.<sup>111</sup> Staff's witness  
 11 testified that in evaluating capacity, Staff classifies plant which will be necessary within a five year  
 12 planning period using peak demand factors and growth projections to be "extra capacity," and plant  
 13 which will not be necessary within a five year planning period to be "excess capacity."<sup>112</sup> The five  
 14 year planning period Staff used in this case began with the end of the Company's 2007 test year.<sup>113</sup>

##### 15 a. Anthem System Well and Storage Capacity

16 The Company's Anthem at Merrill Ranch ("Anthem") water system has two 600 gallon per  
 17 minute ("GPM") wells and one 300 GPM well, for a total of three wells with total production  
 18 capacity of 1500 GPM. The Anthem water system has one 1.0 million gallon ("MG") and one 0.5  
 19 MG storage tank, for total storage capacity of 1.5 MG.<sup>114</sup> At the end of the test year, the Anthem  
 20 system served 857 customer connections.<sup>115</sup> In its analysis, Staff utilized peak demand factors from  
 21  
 22  
 23

24 <sup>107</sup> Co. Reply Br. at 3-4.

25 <sup>108</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 36.

26 <sup>109</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

27 <sup>110</sup> Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 3, 9.

28 <sup>111</sup> RUCO Brief at 4; Rebuttal Testimony of RUCO witness Rodney Moore (Exh. R-2) at 4-5.

<sup>112</sup> Tr. at 1423.

<sup>113</sup> Staff Br. at 5.

<sup>114</sup> Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 9.

<sup>115</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5), Exhibit B.

1 the Company's Johnson Ranch system of 400 GPD per service connection for storage capacity and  
 2 0.35 GPM per service connection for well capacity.<sup>116</sup>

3 1) Anthem System Well Capacity

4 Staff determined that pursuant to its peak demand and growth projections, the capacity of the  
 5 Anthem system's Rancho Sendero Well No. 1 will not be needed within five years from the 2007  
 6 test year, and therefore constitutes excess capacity that should be excluded from plant in service.<sup>117</sup>

7 Staff's recommended removal of the Anthem Rancho Sendero Well No. 1, a 600 GPM well, would  
 8 reduce plant in service by \$693,827.<sup>118</sup>

9 Staff's recommendation to remove the 600 GPM Anthem Rancho Sendero Well No. 1 from  
 10 plant in service would leave the Anthem system with 900 GPM of well capacity in plant in service,  
 11 which would allow for 2,571 connections, equating to the addition of 342 new service connections  
 12 per year from 2008 through 2012.<sup>119</sup> Johnson proposed to instead the use of a growth rate of 366  
 13 new service connections per year, which is the actual known increase in customers for the year 2008,  
 14 in order to calculate capacity needs.<sup>120</sup> Use of Johnson's growth estimate would yield 2,687  
 15 customers at the end of 2012.<sup>121</sup> Johnson's witness testified that use of the actual increase in  
 16 Anthem system customers in 2008 as the growth rate to calculate capacity needs through 2012 is  
 17 reasonable because "2008 was a disastrous year for the housing industry."<sup>122</sup>

18 Johnson also argued that the Rancho Sendero Well No. 1 is "necessary and integral to the  
 19 operation of the Anthem at Merrill Ranch water system," and that "[a]ll three wells . . . are necessary  
 20 to provide safe and reliable water service to Anthem at Merrill Ranch."<sup>123</sup> Johnson stated that if  
 21  
 22  
 23

24 <sup>116</sup> Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36), Exhibit MSJ at 9.

25 <sup>117</sup> Staff Br. at 5.

26 <sup>118</sup> Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 12; Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 3; Tr. at 1464, 1468.

27 <sup>119</sup> Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 4.

28 <sup>120</sup> Co. Reply Br. at 4, citing Rebuttal Testimony of Brian Tompsett (Exh. A-5) at 8.

<sup>121</sup> Rebuttal Testimony of Brian Tompsett (Exh. A-5) at 8.

<sup>122</sup> *Id.*

<sup>123</sup> Co. Br. at 9.

1 Staff's recommendation to "remove the 600 GPM Rancho Sendero Well No. 1 as excess capacity"  
 2 were adopted, and the other 600 GPM well were out of service for any reason, it would "leave the  
 3 Company with only the 300 GPM Rancho Sendero Well #2 to serve all of Anthem at Merrill  
 4 Ranch."<sup>124</sup> Johnson argued that because taking Anthem Rancho Sendero Well No. 1 out of service  
 5 would create safety and reliability concerns for the Company and its customers, it should not be  
 6 excluded from rate base as excess capacity.<sup>125</sup> Staff disagreed with the Company's arguments that  
 7 exclusion of the Rancho Sendero Well No. 1 from rate base due to excess capacity would cause  
 8 reliability concerns.<sup>126</sup> Staff also disagreed with the Company's arguments that it is inequitable to  
 9 exclude excess capacity from rate base because the plant in question remains connected to the  
 10 system.<sup>127</sup> Staff stated that exclusion of plant in service due to excess capacity is not an uncommon  
 11 occurrence,<sup>128</sup> and that it would be inequitable to include plant in rate base when the plant capacity  
 12 exceeds what is needed to serve customers.<sup>129</sup> We agree with Staff that excluding well capacity  
 13 from plant in service does not require physical removal of the plant, and therefore does not cause  
 14 reliability concerns. We also agree with Staff that it is inequitable to require ratepayers to pay rates  
 15 that include a return on more plant than is reasonably projected to be required to serve customers  
 16 during a reasonable planning horizon. The Company's arguments that the configuration of the  
 17 Anthem system makes it "inequitable" to exclude plant from rate base are not convincing.  
 18 Ratepayers should not be made to pay for unnecessary plant capacity due to the Company's chosen  
 19 plant configuration.

20  
 21  
 22  
 23 There was no dispute in this proceeding regarding either the daily peak demand or the five  
 24 year planning period Staff used in its excess capacity analysis for the Anthem system. In addition,

25  
 26 <sup>124</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 9; Co. Br. at 10.

<sup>125</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 7; Co. Br. at 11.

<sup>126</sup> Staff Reply Br. at 4-5.

<sup>127</sup> Staff Reply Br. at 5, citing Tr. at 1484.

<sup>128</sup> Tr. at 1472.

<sup>129</sup> Staff Reply Br. at 5.

1 no arguments were raised in response to the Company's assertions that its proposed growth  
 2 projection of 366 new customers per year is reasonable. As Staff pointed out, utilizing the  
 3 Company's proposed growth rate, under the Company's growth projection, the Anthem system's  
 4 300 GPM well constitutes excess capacity.<sup>130</sup> Based on the evidence in this proceeding we find that  
 5 the 300 GPM Rancho Sendero Well No. 2 constitutes excess capacity, and that it is reasonable to  
 6 exclude its cost from plant in service, along with the corresponding CIAC and AIAC adjustments.  
 7 The actual cost of the 300 GPM Rancho Sendero Well No. 2 was not available in the record. We  
 8 find it reasonable and appropriate to use half the documented cost of the 600 GPM Anthem Rancho  
 9 Sendero Well No. 1, as a means of calculating a reasonable estimate of the cost of the 300 GPM  
 10 Rancho Sendero Well No. 2 for purposes of excluding its excess capacity from plant in service.  
 11 Therefore, \$346,914 will be excluded from the Company's water division plant in service as excess  
 12 capacity, along with the corresponding CIAC and AIAC adjustments.  
 13

## 14 2) Storage Capacity

15 Staff determined that pursuant to its peak demand and growth projections, the capacity of the  
 16 Anthem system's Rancho Sendero 0.5 MG storage tank will not be needed within five years from  
 17 the 2007 test year.<sup>131</sup> Staff's recommended removal of the Anthem Rancho Sendero 0.5 MG  
 18 storage tank would reduce plant in service by \$433,238.<sup>132</sup> Staff relied on A.A.C. R18-503(B)<sup>133</sup> in  
 19 making its excess storage capacity determinations for the Anthem water system.  
 20  
 21  
 22

23 <sup>130</sup> Staff Br. at 6, citing to Tr. at 1469. Based on Staff's undisputed proposed peak load of 0.35 GPM per service  
 24 connection, at Johnson's proposed growth rate of 366 new connections per year, the Anthem system would require 940  
 25 GPM well capacity by the end of 2012, instead of Staff's recommended well capacity of 900 GPM.

26 <sup>131</sup> Staff Br. at 5.

27 <sup>132</sup> Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 12; Surrebuttal Testimony of Staff  
 28 witness Marlin Scott, Jr. (Exh. S-37) at 3; Tr. at 1464, 1468.

<sup>133</sup> A.A.C. R18-5-503 provides as follows:

### R18-5-503. Storage Requirements

A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.

1 Johnson asserted that the Rancho Sendero 0.5 MG storage tank is “necessary and integral to  
 2 the operation of the Anthem at Merrill Ranch water system,” and that “both storage tanks are  
 3 necessary to provide safe and reliable water service to Anthem at Merrill Ranch.”<sup>134</sup> The Company  
 4 argued that because it is not possible to pump water from the Rancho Sendero Well No. 2 into the  
 5 distribution system without first pumping it into the 0.5 MG storage tank, it would be inequitable to  
 6 remove it from plant in service as excess capacity.<sup>135</sup> The Company also argued that its storage  
 7 requirement for the Anthem at Merrill Ranch subdivision is 1,397,240 gallons.<sup>136</sup> The Company  
 8 reached this figure based on a two-day storage capacity, using a customer usage amount of 260  
 9 gallons per customer per day, which the Company stated that it uses for system design and planning  
 10 purposes, and multiplying that number by the Company’s projected 2,687 customers at the end of  
 11 2012.<sup>137</sup>

13 Staff based its capacity allowance for the Anthem at Merrill Ranch subdivision on the  
 14 requirements of A.A.C. R18-503(B), and determined that the necessary storage requirement for this  
 15 system is 714,800 gallons per day for the five year planning period following the test year.<sup>138</sup> Staff  
 16 disagreed with the Company’s arguments that it is inequitable to exclude excess capacity from rate  
 17 base because the plant in question remains connected to the system.<sup>139</sup> Staff argued that it is not an  
 18 uncommon occurrence,<sup>140</sup> and that it would be inequitable to include plant in rate base when the  
 19 plant capacity exceeds what is needed to serve customers.  
 20

21 The Company’s arguments that the configuration of the Anthem system makes it  
 22 “inequitable” to exclude plant from rate base are not convincing. We agree with Staff that excluding  
 23

---

24 B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that  
 25 serves a residential population or a school may be reduced by the amount of the total daily production capacity  
 minus the production from the largest producing well.

26 <sup>134</sup> Co. Br. at 9.

27 <sup>135</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 11; Co. Br. at 12.

28 <sup>136</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 10-11; Co. Br. at 12.

<sup>137</sup> *Id.*

<sup>138</sup> Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 5.

<sup>139</sup> Staff Reply Br. at 5, citing Tr. at 1484.



1 storage capacity from plant in service does not require physical removal of the plant, and therefore  
 2 does not cause reliability concerns. We also agree with Staff that it is inequitable to require  
 3 ratepayers to pay rates that include a return on more plant than what is reasonably projected to be  
 4 required to serve customers during a reasonable planning horizon. Ratepayers should not be made to  
 5 pay for unnecessary plant capacity due to the Company's chosen plant configuration.

6 We find, based on the evidence presented, that the Anthem system's Rancho Sendero 0.5  
 7 MG storage tank constitutes excess capacity and will exclude its \$433,238 cost from plant in service  
 8 in this case, along with the corresponding CIAC and AIAC adjustments.<sup>141</sup>

9  
 10 b. San Tan WWTP

11 Staff stated that the Santan Water Reclamation Plant ("San Tan WWTP") contains excess  
 12 capacity because according to information provided by the Company, the 1.0 MGD Phase II  
 13 capacity, at a cost of \$5,443,062, is not needed based upon growth projections for the five year  
 14 planning period.<sup>142</sup> The Company asserted that "the Phase II capacity will be put to use by late 2009  
 15 to treat wastewater flow that will be redirected from Johnson Utilities' Pecan WWTP, which is  
 16 currently nearing constructed capacity."<sup>143</sup> The Company's witness testified that the Company "is  
 17 currently planning/engineering upgrades to the Morning Star Farms and Circle Cross lift stations,  
 18 and planning/engineering the construction of one mile of new force main which will enable the  
 19 Company to redirect flows from the Pecan WWTP to the Santan WWTP. By so doing, Johnson  
 20 Utilities can delay the costly construction of an additional 2.0 MGD at the Pecan WWTP."<sup>144</sup>  
 21 Johnson argued that its decision to redirect wastewater flows to the Santan WWTP was prudent,  
 22 because it gives the Company greater operational flexibility in treating wastewater flows in its  
 23  
 24  
 25

26 <sup>140</sup> Tr. at 1472.

<sup>141</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

27 <sup>142</sup> Tr. at 1425; Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p 35; Surrebuttal  
 Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 9-10.

28 <sup>143</sup> Co. Br. at 24; citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 38.

<sup>144</sup> Co. Br. at 24; Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 39.

1 service area, and it allows the Company to obtain the maximum benefit from its combined  
 2 wastewater treatment capacity.<sup>145</sup>

3 We make no determination at this time on whether Johnson's operational decisions regarding  
 4 the Pecan WWTP described in its witness' testimony are prudent. As Staff's witness testified, the  
 5 construction proposed by the Company would occur almost two years beyond the end of the 2007  
 6 test year, and would result in completely new flow data which would not match the test year flow  
 7 data.<sup>146</sup> It is undisputed that the Company's planned redirection of the wastewater flows from the  
 8 Pecan WWTP did not occur during the test year, and had yet to occur at the time of the hearing.<sup>147</sup>  
 9 The evidence demonstrates that Phase II of the Santan WWTP was excess capacity during the test  
 10 year. Staff's adjustments to plant in service for the Phase II excess capacity and the corresponding  
 11 CIAC and AIAC adjustments<sup>148</sup> are appropriate and will be adopted.

### 13 5. Affiliate Profit

14 This case presents us with the issue of a utility's transactions with its affiliates or related  
 15 parties and how their profit should be treated in a ratemaking context. This Commission has  
 16 addressed the issue of affiliate profit by disallowing affiliate companies' profits, in the form of both  
 17 capitalized costs and expenses.<sup>149</sup> As previously discussed, the Company was unable to provide  
 18 adequate documentation to clearly show its plant costs, and the Company did not provide adequate  
 19 documentation of the profit charged to the Company by affiliates or related parties. The Company  
 20 did not dispute Staff's position that affiliate transactions require greater scrutiny than non-affiliate  
 21  
 22  
 23  
 24  
 25

26 <sup>145</sup> Co. Reply Br. at 5, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 38.

<sup>146</sup> See Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 10.

<sup>147</sup> Staff Br. at 7.

<sup>148</sup> See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

<sup>149</sup> Staff Br. at 17, citing to Decision No. 69164 (December 5, 2006) (Black Mountain Sewer Corporation) and Decision No. 69664 (June 28, 2007) (Gold Canyon Sewer Company).

1 transactions,<sup>150</sup> and did not dispute the Commission's authority to exclude affiliate profit from plant  
 2 in service.<sup>151</sup> RUCO did not brief this issue.

3 Two issues are in dispute in regard to an affiliate profit adjustment: (1) the amount of plant  
 4 in service that should be subject to the adjustment; and (2) the appropriate percentage of the  
 5 adjustment. Staff recommended that an affiliate profit adjustment of 7.5 percent should be applied  
 6 to the Company's entire plant in service balance. The Company recommended that an affiliate profit  
 7 adjustment of 1.75 percent be applied only to the amount of plant that the Company acknowledges  
 8 was constructed by affiliates.  
 9

10 Staff's recommended adjustments to remove capitalized affiliate profit from plant in service  
 11 are \$5,017,752 for the water division, and \$7,352,364 for the wastewater division.<sup>152</sup> Staff made the  
 12 adjustments to plant in service balances following its other recommended adjustments. Staff's  
 13 proposed affiliate profit removal adjustment was applied to plant in service balances of \$66,903,360  
 14 for the water division, and \$98,031,517 for the wastewater division.<sup>153</sup>  
 15

16 Johnson proposed affiliate profit removal adjustments to plant in service of \$469,832 for the  
 17 water division and \$800,179 for the wastewater division.<sup>154</sup> Johnson's proposal is based on the  
 18 amount of plant in service it acknowledged was constructed by affiliates: \$26,847,516 for the water  
 19 division, and \$45,724,508 for the wastewater division.<sup>155</sup>  
 20

21 a. Affiliate/Related Party Constructed Plant in Service

22 In the course of analyzing the Company's application in regard to plant in service, Staff  
 23 determined that Company affiliates constructed substantially all the Company's plant.<sup>156</sup> The  
 24

<sup>150</sup> Co. Reply Br. at 23.

<sup>151</sup> *Id.* at 24.

<sup>152</sup> Staff Final Schedules JMM-W3, page 1 of 2, JMM-W-8, JMM-WW3, page 1 of 2, JMM-WW8.

<sup>153</sup> Staff Final Schedules JMM-W-8, JMM-WW8.

<sup>154</sup> Co. Br. at 4, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 4, Vol. III at 5; Co. Reply Br. at 24; Company Final Schedules Water B-2, page 3.1, Wastewater B-2, page 3.1.

<sup>155</sup> Company Final Schedules Water B-2, page 3.1, and Wastewater B-2, page 3.1.

<sup>156</sup> Staff Br. at 12; Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 12; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 12.

1 Company argued that Staff “improperly assumed that all plant recorded on the Company’s books  
2 was constructed by affiliates” and that its lower percentage affiliate profit adjustment should be  
3 applied only to the plant the Company contends was constructed by affiliates.<sup>157</sup> However, with the  
4 exception of contributed plant, which is excluded from rate base, the Company failed to demonstrate  
5 that any entity other than Company affiliates or related parties constructed the Company’s water or  
6 wastewater plant between 1998 and 2007.

7  
8 Staff stated that the canceled checks and bank statements provided by the Company for the  
9 purpose of supporting payments made for plant showed that payments were made to a Company  
10 affiliate, and to no other construction entity.<sup>158</sup> The Company provided no documentation showing  
11 any major construction performed by any entity other than affiliates since 1998.<sup>159</sup> Staff stated that  
12 its audit of the Company’s bank records could not verify the amount that the Company claimed  
13 represented affiliate-constructed wastewater plant, and that documentation provided by the Company  
14 conflicted with some Company responses to data requests.<sup>160</sup> The 2006 external audit report of the  
15 Company’s financial statements, prepared by Henry & Horne, specified in Note 3 that “substantially  
16 all of the water and sewer construction for the Company” was affiliate contracted.<sup>161</sup>  
17

18 The Company argued that there was a “lack of consistency” between a Staff witness’ prefiled  
19 testimony that “[t]he Company used affiliates to construct approximately all plant after 1998” and  
20 the witness’ negative response on cross-examination to a question regarding whether “100 percent of  
21 Johnson Utilities’ plant was constructed by affiliates.”<sup>162</sup> We find that there was no inconsistency  
22  
23  
24

25 <sup>157</sup> Co. Br. at 4, 15, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 4-5, Vol. III at 5; Co.  
26 Reply Br. at 24.

<sup>158</sup> Staff Br. at 15-16; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 11-12; Staff Reply Br. at 2.

<sup>159</sup> Surrebuttal Testimony of Staff witness Jeffrey Michlik (S-45) at 12.

<sup>160</sup> Staff Br. at 15-16; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 11-12; Staff Reply Br. at 2.

<sup>161</sup> Staff Reply Br. at 2; citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 14.

<sup>162</sup> Co. Reply Br. at 25, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 12 and Tr. 1576.

1 between the witness' response, which explained that some plant developer-contributed plant was not  
2 constructed by affiliates, and the prefiled testimony.<sup>163</sup>

3 (1) Affiliate/Related Party Ownership

4 Johnson is organized as a limited liability corporation, and its membership is comprised of  
5 the George Johnson Revocable Trust, George and Jana Johnson, co-trustees,<sup>164</sup> and Connorg, LLC  
6 ("Connorg").<sup>165</sup> The members of Connorg are Brian Tompsett, Executive Vice President of Johnson  
7 Utilities, and his wife Susan Tompsett.<sup>166</sup>

8  
9 During its analysis of the application, Staff requested information from the Company  
10 regarding the contracting companies that constructed plant for the Company's water and wastewater  
11 divisions for the years 1997-2007.<sup>167</sup> Staff asked the Company to identify the owners of the  
12 contracting companies, and to indicate whether or not the contracting company or companies were  
13 affiliated with Johnson Utilities, and if so, how.<sup>168</sup> The Company provided information for the years  
14 1998 through 2007, and stated that no plant was constructed prior to 1998.<sup>169</sup> For the years 1998  
15 through 2003, Boulevard Contracting Company, Inc., which was owned by George Johnson,  
16 constructed water and wastewater plant for the Company.<sup>170</sup> For the years 2004 through 2006, the  
17 Company identified Central Pinal as the contracting company that constructed plant for the  
18 Company's water and wastewater divisions.<sup>171</sup> The Company identified the owners of Central Pinal  
19 from 2004 through 2006 as Crisbar, LLC, Connorg, Chris Johnson Family Trust, Barjo LLC, and  
20  
21  
22

23 <sup>163</sup> Tr. at 1576.

24 <sup>164</sup> Jana Johnson is George Johnson's wife. Tr. at 862.

25 <sup>165</sup> Hearing Exh. SF-1.

26 <sup>166</sup> Tr. at 867; Exh. S-20.

27 <sup>167</sup> Exh. S-20.

28 <sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Exh. S-20. Corporations Division records show that Boulevard Contracting Company, Inc. was incorporated on December 18, 1998, with George Johnson and Jana Johnson as officers, and that it was administratively dissolved for failure to file its annual report. Staff Br. at 12.

<sup>171</sup> Exh. S-20.

1 Margaret Bullard.<sup>172</sup> The members of Crisbar, LLC are Atlas Southwest, Inc. and the George H.  
 2 Johnson Revocable Trust.<sup>173</sup> Atlas Southwest, Inc.'s officers and directors are George H. Johnson  
 3 and Jana S. Johnson.<sup>174</sup> For the year 2007, the Company also identified Central Pinal as a  
 4 contracting company that constructed plant for the Company, but indicated that in 2007 Central  
 5 Pinal was owned by the Roadrunner Trust.<sup>175</sup> Prior to January 2007, the manager of Central Pinal  
 6 was Atlas Southwest, Inc.,<sup>176</sup> and the member was Crisbar, LLC.<sup>177</sup> In January of 2007, Barbara A.  
 7 Johnson and Christopher Johnson, the daughter and son of George Johnson,<sup>178</sup> became the managers  
 8 of Central Pinal, and the sole member of Central Pinal became the Roadrunner Trust, with Barbara  
 9 A. Johnson and Christopher Johnson, co-trustees.<sup>179</sup>

11 Other Johnson affiliates that have provided services to the Company are Specific  
 12 Engineering, LLC ("Specific") and Shea Utility Services, Inc. ("Shea").<sup>180</sup> From 2004 through  
 13 2008, Specific's member and manager were Atlas Southwest, but in 2008, its membership was  
 14 changed to the Roadrunner Trust.<sup>181</sup> Shea currently provides management services and operations  
 15 for the Company.<sup>182</sup> In a 2004 annual report, George and Jana Johnson were listed as Shea's  
 16 president and secretary/treasurer, respectively, Brian Tompsett was listed as executive vice  
 17 president, and George and Jana Johnson were listed as directors.<sup>183</sup> In January of 2007, however,  
 18 George Johnson's children, Christopher and Barbara Johnson, took office as president, secretary, and  
 19 treasurer, and as directors, of Shea.<sup>184</sup>

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22 <sup>172</sup> *Id.*

23 <sup>173</sup> Exh. S-10.

24 <sup>174</sup> Exh. S-9.

25 <sup>175</sup> Exh. S-20.

26 <sup>176</sup> Atlas Southwest, Inc.'s officers and directors are George H. Johnson and Jana S. Johnson. Exh. S-9.

27 <sup>177</sup> Staff Br. at 12; citing to Exhs. S-3 and S-4.

28 <sup>178</sup> Tr. at 856.

<sup>179</sup> Exh. S-4.

<sup>180</sup> Exh. S-2.

<sup>181</sup> Staff Br. at 13; Exhs. S-5, S-6.

<sup>182</sup> Tr. 864.

<sup>183</sup> Exh. S-12.

<sup>184</sup> Exh. S-13.

b. Reasonableness of Affiliate/Related Party Transactions

Staff stated that it could not determine whether the transactions between Johnson and its affiliates were arm's length transactions.<sup>185</sup> Staff was concerned by the fact that Mr. Tompsett was both an executive of the Company and an owner of its affiliate Central Pinal while Central Pinal was building water and wastewater plant for the Company.<sup>186</sup> The fact that Mr. Tompsett was compensated for his roles both at Shea and the Company<sup>187</sup> also caused Staff to question the arm's length nature of transactions between the Company and its affiliates.<sup>188</sup> Staff was unable to conduct an audit on the Company's affiliate construction project bids to determine whether they were fair and protected ratepayers from being charged too much for plant, because while the Company claims that it competitively bid its construction projects, the Company did not retain any bids.<sup>189</sup>

The Company, contending that Central Pinal is no longer a Company affiliate, did not allow Staff to verify the underlying affiliate records associated with documentation regarding plant construction by Central Pinal.<sup>190</sup> The Company's witness testified that the change of membership and management of Central Pinal renders it no longer an affiliate of Johnson Utilities.<sup>191</sup> According to Staff, the Company also contended that it was not required to disclose any transactions with Specific, because in 2008, it ceased being an affiliate of Johnson.<sup>192</sup>

Staff argued that even accepting the Company's contention that Central Pinal, Shea and Specific are no longer Company affiliates due to the changes in ownership, family relationships make any transactions between the Company and these entities related party transactions, which should be subject to greater scrutiny.<sup>193</sup> Staff asserted that because the son and daughter of the

<sup>185</sup> Staff Br. at 15.

<sup>186</sup> Staff Br. at 15-16.

<sup>187</sup> Tr. at 864.

<sup>188</sup> Staff Br. at 13.

<sup>189</sup> Staff Br. at 15, citing to Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 12.

<sup>190</sup> Staff Reply Br. at 6, Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 6.

<sup>191</sup> Tr. at 857.

<sup>192</sup> Staff Br. at 13.

<sup>193</sup> Staff Br. at 15.

1 owner and founder of Johnson Utilities are owners of the entity that provides construction services to  
 2 the Company, transactions between the Company and Central Pinal are related party transactions  
 3 within the definition provided by the Financial Accounting Standards Board ("FASB") in its  
 4 Statement of Financial Accounting Standards No. 57 ("FAS 57").<sup>194</sup> Staff argued that although a  
 5 transaction between related parties is not *per se* unreasonable, the Company has the burden of  
 6 proving that resulting costs are reasonable.<sup>195</sup>

7  
 8 There is no dispute that the Company reported Central Pinal, Shea, and Specific Engineering,  
 9 LLC as affiliates for the calendar year ending December 31, 2006.<sup>196</sup> The Commission's Public  
 10 Utility Holding Companies and Affiliated Interests Rules ("Affiliated Interests Rules") define  
 11 "affiliate" as follows:

12 "Affiliate," with respect to the public utility, shall mean any other entity directly  
 13 or indirectly controlling or controlled by, or under direct or indirect common  
 14 control with the public utility. For purposes of this definition, the term "control"  
 15 (including the correlative meanings of the terms "controlled by" and "under  
 16 common control with"), as used with respect to any entity, shall mean the power  
 17 to direct the management policies of such entity, whether through ownership of  
 18 voting securities, by contract, **or otherwise**.  
 19 A.A.C. R14-2-801(1) (emphasis added).

20 The Company denied that it engaged in any related party transactions.<sup>197</sup> The Company  
 21 disagreed that "certain entities with which the Company has done business should be treated as  
 22 affiliates based solely upon the familial relationships of members of these entities and members of  
 23 Johnson Utilities."<sup>198</sup> The Company argued, without citation, that "[o]nly an entity which can be  
 24 directed is deemed to be an affiliate" and that "[a]bsent sufficient ownership of voting securities,

25 <sup>194</sup> Staff Br. at 15, citing to FAS 57, which provides guidance for accounting disclosure of related party transactions.  
 26 FAS 57 provides examples of related party transactions, including transactions between (a) a parent company and its  
 27 subsidiaries; (b) subsidiaries of a common parent; (c) an enterprise and trusts for the benefit of employees, such as  
 28 pension and profit-sharing trusts that are managed by or under the trusteeship of the enterprise's management; (d) an  
 enterprise and its principal owners, management, or members of their immediate families; and (e) affiliates.

<sup>195</sup> Staff Br. at 15, citing to *Florida Power Corp. v. Cresse*, 413 So.2d 1187 (Fla. 1982) at 1191.

<sup>196</sup> Exh. S-2.

<sup>197</sup> Exh. S-18; Tr. at 897-900.

<sup>198</sup> Co. Reply Br. at 23.



1 contract or some other right to direct management policies, the other entity is not an affiliate."<sup>199</sup>  
 2 The Company then argued that other than "alleged family relations," no evidence was provided that  
 3 the Company has any control over "these separate entities."<sup>200</sup> For its proposition that control cannot  
 4 be imputed through family attribution, the Company cited to two United States Court of Appeals  
 5 opinions involving decedents' estates.<sup>201</sup>

6 The Company's arguments, including the cited cases, are not relevant to the issue in this case  
 7 of the appropriate ratemaking treatment of profit provided by a utility company to an affiliate or  
 8 related party, which has been brought to the fore by the Company's failure to produce adequate plant  
 9 documentation. Although given the opportunity to do so, Johnson Utilities presented no evidence  
 10 that the costs of the utility plant were determined as a result of arm's length transactions. Neither  
 11 has the Company presented evidence demonstrating that Central Pinal, which it formerly reported as  
 12 an affiliate,<sup>202</sup> and which currently shares common or familial ties with the owners and directors of  
 13 Johnson Utilities,<sup>203</sup> is not subject to direct or indirect control by the Company's members.

14  
 15 c. Affiliate/Related Party Profit Adjustment

16  
 17 As Staff pointed out, a regulated utility has a duty to serve its customers in a fair and  
 18 equitable manner, and this includes the obligation to get the best price for services to its  
 19 customers.<sup>204</sup> A regulated utility has an obligation not to promote profitability for itself or another  
 20 interested company in a transaction that may not be at arm's length to the detriment of its  
 21 customers.<sup>205</sup> Fair competitive bids protect ratepayers from being charged too much for plant.  
 22 While the Company claimed that there was a competitive bidding process for construction of its  
 23

24 <sup>199</sup> Company Reply Br. at 23-24.

25 <sup>200</sup> Co. Reply Br. at 23.

26 <sup>201</sup> *Propstra v. U.S.*, 680 F.2d 1248 (9<sup>th</sup> Cir. 1981) (without an explicit directive from Congress, courts cannot require  
 27 executors to make inquiries into the feelings, attitudes, and anticipated behavior of those holding undivided interests in  
 28 property owned by estates, legatees, or heirs), and *Bright v. U.S.*, 658 F.2d 999 (5<sup>th</sup> Cir. 1981) (no element of control  
 could be attributed to decedent in determining value of decedent's interest in stock).

<sup>202</sup> Exh. S-2.

<sup>203</sup> Exhs. S-4 (Central Pinal), S-6 (Specific Engineering, LLC), and S-13 (Shea).

<sup>204</sup> See Staff Br. at 15.

1 plant, which was subsequently all completed by entities who were either affiliates or related parties,  
2 the Company's claim cannot be verified, as the Company stated that it did not retain any bids. As  
3 Staff argued, the reasonableness of affiliate costs must be determined using some independent  
4 standard, and the Company could have done much more to gather sufficient, competent and reliable  
5 evidence to meet its burden of production.<sup>206</sup> Due to the Company's failure to present bids for  
6 regulatory inspection, no audit could be conducted to determine whether the transactions conducted  
7 by the Company with affiliates or related parties were at arm's length. The evidence presented  
8 shows that an executive of the Company was an owner of Central Pinal, which constructed the plant  
9 which the Company is requesting be put in plant in service at full cost. The fact that ownership of an  
10 affiliate changed after relevant costs were incurred does not release the Company from its obligation  
11 to provide the Commission with adequate information about its transactions, be they affiliate  
12 transactions, related party transactions, or otherwise, for ratemaking purposes. The Company failed  
13 to keep adequate records of its affiliate/related party transactions to demonstrate that the costs the  
14 Company paid for plant were reasonable and appropriate, and were not detrimental to ratepayers.  
15

16  
17 Because the Company failed to produce adequate documentation, the record in this case does  
18 not allow us to find that the amounts the Company paid to affiliates/related parties were competitive,  
19 fair and reasonable. In order to achieve just and reasonable rates for the Company's ratepayers, an  
20 adjustment must be made to remove the inflated cost associated with the profit the Company paid to  
21 affiliates/related parties for plant construction. Staff proposed adjustments subtracting affiliate profit  
22 from the Company's water and wastewater plant in service, after all other plant in service  
23 adjustments. After considering all the evidence presented, we find that Staff's proposed adjustment  
24 is a necessary and reasonable means to exclude excessive plant costs from the Company's rate base  
25 and to achieve just and reasonable rates for the Company and its ratepayers, and we will adopt it.  
26

---

27  
28 <sup>205</sup> See *id.*

<sup>206</sup> See Staff Br. at 16.

d. Appropriate Percentage for Affiliate Profit Adjustment

Staff recommended a 7.5 percent reduction to the entire plant in service balance as a disallowance of affiliate profit.<sup>207</sup> The Company argued that Staff's recommended 7.5 percent reduction is overstated.<sup>208</sup> The Company supported an affiliate profit reduction of only 1.75 percent.<sup>209</sup> The Company argued that the mark-up of 5 to 10 percent on affiliate contracts provided to Staff included both affiliate profit and overhead, not affiliate profit alone.<sup>210</sup> The Company further argued that because the affiliate added 10 percent to the base contract cost to cover overhead and profit, affiliate profit represented only 2 percent of the base contract cost with its affiliate.<sup>211</sup> The Company then argued that in order to calculate the 2 percent affiliate profit on the base contract amount, the total contract price must be multiplied by only 1.75 percent, because the total contract costs included not only the base contract costs, but taxes, overhead, and profit.<sup>212</sup> The Company also argued that even if Staff were correct and affiliate profit was 7.5 percent, that the 7.5 percent should apply only to the base contract costs, and the correct percentage to apply to the total contract cost would be only 6.7 percent.<sup>213</sup>

Staff stated that its proposed 7.5 percent disallowance is reasonable and is based on information provided by the Company. Staff stated that most of the contracts provided by the Company in response to a data request included a mark-up of 10 percent, while only a few had a 5 percent mark-up, and that Staff selected the mid-point, 7.5 percent, as an appropriate representation

<sup>207</sup> Staff Br. at 12; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 12; Staff Final Schedules JMM-W3, page 1 of 2, JMM-W-8, JMM-WW3, page 1 of 2, JMM-WW8.

<sup>208</sup> Co. Br. at 4, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 4-5, Vol. III at 5; Co. Reply Br. at 24.

<sup>209</sup> Co. Br. at 4, 16, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 5, Vol. III at 5; Co. Reply Br. at 24-25; Company Final Schedules Water B-2, page 3.1, Wastewater B-2, page 3.1.

<sup>210</sup> Co. Br. at 5, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 6; Co. Reply Br. at 24.

<sup>211</sup> Co. Br. at 5, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 6; Co. Reply Br. at 24.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

1 of affiliate profit.<sup>214</sup> Staff stated that given the fact that the Company could not adequately  
 2 document its break-out of what was profit and what was overhead, a 7.5 percent disallowance is  
 3 reasonable.<sup>215</sup> We agree, and will adopt Staff's recommendation to apply a 7.5 percent reduction to  
 4 the Company's plant in services balances, net of other plant in service adjustments, in order to  
 5 disallow from rates excessive costs associated with affiliate/related party transactions.

6 e. Affiliate/Related Party Transactions

7 The Company, as a Class A Utility, is subject to the Commission's Affiliate Interests Rules.  
 8 As set forth in the discussion above, the Company recently restructured several of its affiliates. In  
 9 the course of this proceeding, no party made a recommendation regarding a finding whether the  
 10 Company is in compliance or non-compliance with the Affiliate Interests Rules, and we make none  
 11 at this time. We note, however, that evidence in this proceeding indicates that the Company used the  
 12 fact that Central Pinal had been restructured as the basis for its refusal to provide documentation  
 13 from Central Pinal to Staff upon Staff's request. The Company offered no explanation or argument  
 14 regarding the reasons for any of the restructuring.  
 15

16 The affiliate profit adjustment is necessary in this case due to the Company's lack of  
 17 adequate record keeping and its failure to document competitive bids. As a regulated utility, it is  
 18 incumbent upon the Company to ensure that its dealings are arm's length, transparent, and well-  
 19 documented. Based on the evidence in this proceeding, we find that it is reasonable and appropriate  
 20 to require the Company to prepare an action plan that indicates the specific steps it will take to  
 21 demonstrate, by means of its day to day record keeping regarding transactions between the Company  
 22 and all entities with which it conducts business, including, but not limited to, its affiliates and related  
 23 parties, that its dealings are arm's length, transparent, and well-documented. We will require the  
 24 Company to file the plan for Staff's review, and will require Staff to assess the plan and its  
 25  
 26  
 27

28 <sup>214</sup> Staff Br. at 16, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 11-12; Staff Reply Br.,  
 citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 13.

1 adequacy, and to file a report with Staff's findings and recommendations on the action plan  
 2 accompanied by a Recommended Order for Commission approval or disapproval of the Company's  
 3 action plan. In order to allow adequate time for the Company to retain a consultant to assist it in the  
 4 preparation of its action plan, we will allow the Company 90 days to prepare the plan and make the  
 5 filing.

6 **B. Contributions in Aid of Construction ("CIAC") - Unexpended Hook-Up Fees**  
 7 **("HUF")**

8 Johnson opposed the recommendation of Staff and RUCO to include unexpended hook-up  
 9 fees ("HUFs") in rate base in the amount of \$6,931,078 for the water division and \$16,505 for the  
 10 wastewater division.<sup>216</sup> Johnson collects HUFs in advance of the time the Company will be expected  
 11 to provide service to the customers for whom the HUFs are credited, and the time between collection  
 12 of the HUFs, the time the capital improvements to provide capacity are constructed, and the date the  
 13 customer connects to the system can be one year or longer.<sup>217</sup> The Company argued that including  
 14 unexpended HUFs in rate base creates a mismatch in rate base and gives existing ratepayers a  
 15 windfall because they get credit for HUFs collected on behalf of future customers who have not yet  
 16 connected to the system.<sup>218</sup> The Company argued that its advance collection of HUFs ensures that  
 17 funds are available for new and needed capacity when construction begins.<sup>219</sup> The Company argued  
 18 that the HUFs are restricted and can only be spent on new capacity; that the Company does not  
 19 benefit from excluding unexpended HUF from rate base; and existing ratepayers are not harmed by  
 20 it.<sup>220</sup> The Company argued that Staff's recommendation to exclude CIAC and AIAC related to  
 21 excess capacity and not used and useful supports the Company's position that HUFs should be  
 22  
 23  
 24

25 <sup>215</sup> Staff Br. at 16, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 11-12.

<sup>216</sup> Co. Br. at 13-14, 26.

26 <sup>217</sup> Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 15.

<sup>218</sup> Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 15-16; Co. Reply Br. at 26.

27 <sup>219</sup> Co. Reply Br. at 26, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 16.

28 <sup>220</sup> Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 16-17;

Co. Reply Br. at 26.

1 excluded from rate base.<sup>221</sup> The Company also argued that according to the NARUC Uniform  
 2 System of Accounts, Section 271, contributions are not CIAC until they offset used and useful  
 3 plant.<sup>222</sup> The Company argued that there is a transition period from the time a utility receives  
 4 contributed money and the time the contributed money has been spent and is reflected as an offset to  
 5 used and useful plant, and that because unexpended dollars and associated construction work in  
 6 progress are not used and useful plant, the associated CIAC is technically in transition, and should  
 7 therefore be excluded from rate base.<sup>223</sup>

8  
 9 RUCO argued that “advances represent customer-supplied funds that are properly deducted  
 10 from the Company’s rate base.”<sup>224</sup> RUCO recommended that the Company be afforded the same  
 11 rate base treatment of CIAC as other Arizona utilities, with contributions being booked as CIAC  
 12 when they are received, and treated as a deduction to rate base.<sup>225</sup> RUCO framed the dispute as a  
 13 timing argument as to when the HUFs should be treated as CIAC, noting that a utility typically  
 14 builds infrastructure in advance and then collects HUFs for each new connection.<sup>226</sup> RUCO stated  
 15 that normal accounting procedure for HUFs should not be changed to accommodate the Company’s  
 16 choice to collect HUFs prior to providing service.<sup>227</sup> RUCO stated that neither the NARUC  
 17 definition of CIAC nor the Commission’s rules differentiate when the contributions are received and  
 18 when the contributions are expended.<sup>228</sup>

21  
 22 <sup>221</sup> Co. Br. at 14-15, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-4) Vol. II at 11.

23 <sup>222</sup> Co. Reply Br. at 26. The NARUC USOA provides as follows:

24 271. Contributions in Aid of Construction

25 A. This account shall include:

- 26 1. Any amount or item of money, services or property received by a utility from any person or governmental  
 27 agency, any portion of which is provided at no cost to the utility, which represents and addition or transfer to the  
 28 capital of the utility, and which is utilized to offset the acquisition, improvement to offset the utility’s property,  
 facilities or equipment used to provide utility services to the public.

26 <sup>223</sup> Co. Reply Br. at 26.

27 <sup>224</sup> RUCO Reply Br. at 2, citing to Decision No. 70011 (November 27, 2007) (UNS Gas, Inc.).

27 <sup>225</sup> RUCO Br. at 4-5.

27 <sup>226</sup> RUCO Reply Br. at 2-3.

28 <sup>227</sup> RUCO Reply Br. at 3.

28 <sup>228</sup> RUCO Reply Br. at 2.

1 Staff stated that removal of unexpended CIAC from the Company's CIAC account is  
 2 inconsistent with the NARUC USOA.<sup>229</sup> Staff stated that this Commission recently rejected, in  
 3 Decision No. 71414 (December 8, 2009), the very treatment of unexpended CIAC proposed by the  
 4 Company.<sup>230</sup> Staff stated that Decision No. 71414 also discontinued that utility's authority to collect  
 5 HUFs, as Staff is recommending in this case.<sup>231</sup>

6 We are not persuaded by the Company's arguments in favor of departing from the normal  
 7 ratemaking treatment of CIAC. We agree with Staff that the NARUC USOA definition of CIAC  
 8 does not hinge upon whether or not CIAC is expended or unexpended, as the Company argued, but  
 9 on whether or not (1) the CIAC was provided by someone other than the owner, (2) the CIAC is  
 10 non-refundable, and (3) the purpose of the CIAC is to fund plant.<sup>232</sup> We recognize that the Company  
 11 collects HUFs well in advance of providing service to customers for whom the HUF is credited, and  
 12 that it is the Company's practice in regard to the timing of its HUF collection that is responsible in  
 13 part for the resulting magnitude of CIAC balances in the test year. As Staff and RUCO argued, the  
 14 actual test year end balances of CIAC should be included in rate base, and Staff's adjustments for the  
 15 water and wastewater divisions will therefore be adopted.

### 18 C. Fair Value Rate Base Summary

19 Based on the discussion of rate base issues set forth above, we find the Company's OCRB  
 20 for its water division to be (\$13,682,831) and for its wastewater division to be \$136,562. As the  
 21 Company did not prepare RCND schedules, the OCRB for its water and wastewater divisions  
 22 constitute its FVRB.

23  
 24  
 25  
 26 \_\_\_\_\_  
 27 <sup>229</sup> Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 18.

<sup>230</sup> Staff Reply Br. at 5.

<sup>231</sup> Staff Br. at 5.

1 **IV. OPERATING INCOME ISSUES**

2 **A. Central Arizona Groundwater Replenishment District ("CAGRDR")**

3 The CAGRDR was established in 1993 by the Arizona legislature to serve as a groundwater  
 4 replenishment entity for its members.<sup>233</sup> The CAGRDR is operated by the Central Arizona Water  
 5 Conservation District, which operates the Central Arizona Project.<sup>234</sup> The CAGRDR provides a  
 6 mechanism for landowners and designated water supply providers such as Johnson Utilities to  
 7 demonstrate a 100-year water supply under Arizona's assured water supply rules ("AWS Rules"),  
 8 which became effective in 1995.<sup>235</sup> Members of the CAGRDR must pay the CAGRDR to replenish (or  
 9 recharge) any groundwater pumped by the member that exceeds the pumping limits imposed by the  
 10 AWS rules.<sup>236</sup> The CAGRDR includes the Phoenix, Tucson and Pinal County active management  
 11 areas ("AMAs").<sup>237</sup> Johnson Utilities completed the process for becoming a Member Service Area  
 12 of the CAGRDR on or about June 9, 2000.<sup>238</sup> Joining the CAGRDR is one of the steps in the process of  
 13 becoming a designated provider, which means a water provider that has demonstrated to the Arizona  
 14 Department of Water Resources ("ADWR") that it has a 100-year water supply.<sup>239</sup> The AWS Rules  
 15 were designed to protect groundwater supplies within each AMA and to ensure that people  
 16 purchasing or leasing subdivided land within an AMA have a water supply of adequate quality and  
 17 quantity.<sup>240</sup> The AWS Rules require new subdivisions to demonstrate to ADWR that a 100-year  
 18 water supply is available to serve the subdivision before home sales can begin.<sup>241</sup> An assured water  
 19 supply can be demonstrated in one of two ways: the subdivision owner can prove an assured water  
 20  
 21  
 22

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23 <sup>232</sup> Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 18; citing to NARUC USOA 271, Contributions in Aid of  
 24 Construction.

25 <sup>233</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 17.

26 <sup>234</sup> Co. Br. at 28.

27 <sup>235</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 17.

28 <sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 18.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*



1 supply for the specific subdivision and receive a certificate of assured water supply (CAWS") from  
 2 ADWR; or alternatively, a subdivision owner can receive service from a city, town, or private water  
 3 company that has been designated by ADWR as having a designated water supply.<sup>242</sup>

4 The costs of the CAGR D are covered by a replenishment assessment levied on CAGR D  
 5 members.<sup>243</sup> Designated water supply providers such as Johnson Utilities that serve a Member  
 6 Service Area pay a replenishment tax directly to the CAGR D according to the number of acre-feet of  
 7 "excess groundwater" they deliver within their service areas during a year.<sup>244</sup> The amount due the  
 8 CAGR D is based on CAGR D's total cost per acre-foot of recharging groundwater, including the  
 9 capital costs of constructing recharge facilities, water acquisition costs, operation and maintenance  
 10 costs and administrative costs.<sup>245</sup> By statute, the replenishment tax must be calculated separately for  
 11 each AMA.<sup>246</sup> Johnson Utilities is a designated provider in both the Phoenix and Pinal County  
 12 AMAs.<sup>247</sup> Johnson had a CAGR D assessment of \$883,842 in the test year.<sup>248</sup> Instead of recovery of  
 13 the test year amount of CAGR D expense, Johnson requested approval of a CAGR D adjustor  
 14 mechanism in this case.<sup>249</sup>

15  
 16  
 17 The Company, RUCO and Staff agreed that the CAGR D is an important tool in Arizona's  
 18 groundwater conservation efforts, and that the Company should recover its CAGR D expenses. The  
 19 Company's ratepayers and the general public benefit from the Company having a designation of  
 20 assured water supply, because such designations result in more efficient regional planning than the  
 21 alternative of requiring individual developers within a certificated area to each obtain a CAWS.<sup>250</sup>  
 22  
 23

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24 <sup>242</sup> *Id.*

25 <sup>243</sup> *Id.*

26 <sup>244</sup> *Id.* at 18-19.

27 <sup>245</sup> *Id.* at 19.

28 <sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> Staff Br. at 20.

1 As RUCO stated, the issue before us is not whether to allow the Company to recover its  
 2 CAGRDR expense, but the manner of the expense recovery.<sup>251</sup> Staff recommended that an adjustor  
 3 mechanism be established, but with specific conditions that would require the Company to keep the  
 4 Commission closely informed of the CAGRDR fee calculation and would allow the Commission to  
 5 closely monitor the Company's collection of CAGRDR fees and the Company's treatment of monies  
 6 collected to pay the CAGRDR fees. The Company was in favor of the establishment of a CAGRDR  
 7 recovery mechanism, but was unwilling to agree to abide by the conditions that Staff argued are  
 8 necessary to safeguard the Company's ratepayers.  
 9

### 10 1. Staff Proposed Adjustor and Conditions

11 Staff recommended that the Company recover its CAGRDR tax assessment through the use of  
 12 an adjustor mechanism, subject to specific enumerated conditions. Staff recommended that the  
 13 CAGRDR adjustor mechanism only be authorized with the following conditions attached:

- 14 1. The initial adjustor fee shall apply to all water sold after the date new  
 15 rates from this case become effective. In order to calculate this initial  
 16 fee, the Company shall submit the 2008 data, as per condition No. 7  
 below, within 30 days of the date of the final order in this matter.
- 17 2. The Company shall, on a monthly basis, place all CAGRDR monies  
 18 collected from customers in a separate, interest bearing account  
 ("CAGRDR Account").
- 19 3. The only time the Company can withdraw money from the CAGRDR  
 20 Account is to pay the annual CAGRDR fee to the CAGRDR, which is due  
 21 on October 15<sup>th</sup> of each year.
- 22 4. The Company must provide to Staff a semi-annual report of the  
 23 CAGRDR Account and CAGRDR use fees collected from customers and  
 24 paid to the CAGRDR, with reports due during the last week of October  
 and the last week of April each year.
- 25 5. The Company must provide to Staff, every even-numbered year (first  
 26 year being 2010) by June 30<sup>th</sup>, the new firm rates set by the CAGRDR  
 for the next two years.

27  
 28 <sup>251</sup> RUCO Reply Br. at 5.

- 1           6.    The CAGR D adjustor fees shall be calculated as follows: The total  
2           CAGR D fees for the most current year in the Phoenix AMA shall be  
3           divided by the gallons sold in that year to determine a CAGR D fee per  
4           1,000 gallons. Similarly, the total CAGR D fees for the most current  
5           year in the Pinal AMA shall be divided by the gallons sold in that year  
6           to determine a CAGR D fee per 1,000 gallons.
- 7           7.    By August 25th of each year, beginning in 2010, the Company shall  
8           submit for Commission consideration its proposed CAGR D adjustor  
9           fees for the Phoenix and Pinal AMAs, along with the calculations and  
10          documentation from the relevant state agencies to support the data used  
11          in the calculations. Failure to provide such documentation to Staff  
12          shall result in the immediate cessation of the CAGR D adjustor fee.  
13          Commission-approved fees shall become effective on the following  
14          October 1st.
- 15          8.    If the CAGR D changes its current method of assessing fees (i.e. based  
16          on the current volume of water used by customers) to some other  
17          method, such as, but not limited to, future projection of water usage, or  
18          total water allocated to the Company, the Company's collection from  
19          customers of CAGR D fees shall cease.
- 20          9.    As a compliance item, the Company shall submit a new tariff reflecting  
21          the initial adjustor fee as per Condition No. 1 above and shall annually  
22          submit a new tariff reflecting the reset adjustor fee prior to the fee  
23          becoming effective.<sup>252</sup>

## 2. Company Arguments Against Conditions

24           The Company opposed or requested modification of Staff's recommended Condition Nos. 3,  
25           4,5, 7, and 8. Staff opposed the Company's requested modifications to Staff's recommended  
26           conditions.<sup>253</sup>

### a. Condition No. 3

27           The Company stated that it is concerned that Condition No. 3 lacks sufficient flexibility to  
28           allow for changes in CAGR D's payment policies and other policies with regard to the use of  
29           CAGR D monies.<sup>254</sup> The Company submitted that it should be permitted to withdraw funds from the

<sup>252</sup> Staff Br. at 20-21, citing to Revised Surrebutta! Testimony of Jeffrey Michlik (Exh. S-43) at 4.

<sup>253</sup> Staff Reply Br. at 21-23.

<sup>254</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

1 CAGR account as necessary to comply with the conditions of its membership in the CAGR, as  
 2 those conditions exist now or as they may be modified in the future.<sup>255</sup>

3 Staff stated that the Company's requested modification of Condition No. 3 should be  
 4 disregarded, as the Company should not be allowed to spend funds in the CAGR account for any  
 5 purpose other than the CAGR expense item than has been analyzed in this proceeding and that the  
 6 proposed adjustor is designed to recover.<sup>256</sup>

7  
 8 b. Condition No. 4

9 The Company argued that a single annual report, instead of the semi-annual report required  
 10 by Condition No. 4, would be sufficient for Staff's verification of the accounting for CAGR  
 11 monies collected and remitted.<sup>257</sup> Staff opposed the Company's requested modification of Condition  
 12 No. 4 because Staff believes it is important for the Commission to have the ability closely monitor  
 13 the Company's collection of CAGR fees and the state of the CAGR Account.<sup>258</sup>

14  
 15 c. Condition No. 5

16 The Company opposed Condition No. 5, arguing that the information it requires is publicly  
 17 available and it would be more efficient for Staff to obtain the information directly from CAGR.<sup>259</sup>  
 18 The Company also argued that compliance with regulatory conditions adds costs that are ultimately  
 19 borne by the ratepayers and should only be imposed as necessary to achieve important regulatory  
 20 objectives.<sup>260</sup>

21 Staff opposed modification of Condition No. 5 because the rates established by the CAGR  
 22 involve calculations with many variables that may or may not be accessible or publicly available on  
 23

24  
 25  
 26 <sup>255</sup> *Id.*

<sup>256</sup> Staff Br. at 21.

<sup>257</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

<sup>258</sup> Staff Br. at 22.

<sup>259</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

<sup>260</sup> *Id.* at 20-21.

1 the CAGR D's website now or in the future.<sup>261</sup> Staff stated that because the Company will be in  
 2 possession of the information as part of its own record keeping and compliance requirements, it will  
 3 therefore be in the best position to provide the Commission and Staff with the information.<sup>262</sup> Staff  
 4 indicated that as a result of this rate case, it lacks confidence in the Company's record keeping  
 5 abilities, and the submittal required by Condition No. 5 is necessary to confirm that the Company is  
 6 charging its customers the correct rates.<sup>263</sup>

7  
 8 d. Condition No. 7

9 The Company stated that it is not clear what consideration or approval the Commission  
 10 would exercise with regard to the assessment, and therefore opposes Condition No. 7.<sup>264</sup> The  
 11 Company argued that this requirement is unnecessary as the CAGR D assessments are fixed by  
 12 CAGR D and are not subject to interpretation.<sup>265</sup>

13 Staff stated that Condition No. 7 is important because it allows the Company to receive the  
 14 required documentation first from CAGR D, and Staff and the Commission must have the ability to  
 15 review the calculations and documentation, including the CAGR D invoice.<sup>266</sup> Staff stated that the  
 16 language "for Commission consideration" should not be changed because it is standard language that  
 17 allows the Commission to monitor and ultimately approve the exact adjustor fee charged to  
 18 customers.<sup>267</sup> Staff stated that the Commission review and approval process each year would ensure  
 19 that the Company is submitting data to ADWR that is consistent with annual reports filed with the  
 20 Commission, that the Company is not misinterpreting the correct assessment rate, and that the  
 21 Company is calculating the customer fee correctly.<sup>268</sup>

22  
 23  
 24  
 25 \_\_\_\_\_  
 26 <sup>261</sup> Staff Br. at 22.

27 <sup>262</sup> *Id.*

28 <sup>263</sup> Staff Reply Br. at 8.

<sup>264</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 21.

<sup>265</sup> *Id.*

<sup>266</sup> Staff Br. at 22; Tr. at 912.

e. Condition No. 8

The Company opposed Condition No. 8's requirement that the collection of fees cease should the CAGRDR change its current method of assessing fees.<sup>269</sup> The Company argued that if the CAGRDR changes its method of assessing fees, that Johnson would likewise change the way it passes through the fee to its customers, consistent with the CAGRDR changes.<sup>270</sup>

Staff stated that Condition No. 8 should be retained because it is unlikely that CAGRDR would change the assessment methodology without notice, and if it were changed, the Company could request a modification of the approved methodology.

### 3. RUCO Proposed Expense Adjustment and Opposition to Adjustor

RUCO asserted that the use of an adjustor mechanism is not a necessary or appropriate means for the recovery of CAGRDR expense.<sup>271</sup> RUCO argued that the circumstances of the CAGRDR assessment do not warrant an adjustor mechanism because it is a routine yearly expense and because its progressive increase is not volatile.<sup>272</sup> RUCO stated that rate stability is important in today's economic environment, and because adjustors lead to changes in residential ratepayers' rates, they should be approved only in extraordinary circumstances.<sup>273</sup> RUCO also argued that oversight of Staff's proposed adjustor would unnecessarily and inappropriately increase the Staff's workload.<sup>274</sup>

RUCO recommended that the CAGRDR be treated as an expense, and proposed a normalization adjustment to test year expenses based on the known and measurable costs of the Company's CAGRDR assessments through 2010.<sup>275</sup> RUCO's proposed adjustment is based on the Company's test year water sold and a 2009-2010 composite of Phoenix AMA and Pinal AMA

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<sup>267</sup> Staff Br. at 22.

<sup>268</sup> Staff Reply Br. at 8.

<sup>269</sup> Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 21.

<sup>270</sup> *Id.*

<sup>271</sup> RUCO Br. at 8-14; Reply Br. at 5.

<sup>272</sup> RUCO Br. at 12-13.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

1 CAGR D fees per thousand gallons.<sup>276</sup> RUCO asserted that because the Company has stated an  
 2 intention to file a new rate case every three years, RUCO's recommended adjustment would provide  
 3 the Company with complete recovery of the CAGR D expense without requiring extraordinary  
 4 ratemaking treatment for a routine cost.<sup>277</sup>

5 In support of its recommendation that a CAGR D adjustor mechanism be put in place for the  
 6 Company, Staff stated that the CAGR D assessment represents a significant annual expense for the  
 7 Company, which is anticipated to progressively increase, and that in order to keep its membership in  
 8 the CAGR D, the Company must pay the fee.<sup>278</sup> Staff asserted that the CAGR D assessment is  
 9 amenable to an adjustor mechanism because the assessment, unlike a pass-through tax, is not easily  
 10 calculated and assigned.<sup>279</sup> Staff noted that the Commission has approved adjustor mechanisms  
 11 where appropriate in order to advance important policy concerns that protect the public interest.<sup>280</sup>  
 12 Staff stated that the Commission has approved adjustors for expenses that are not extremely volatile  
 13 for Demand Side Management and the Renewable Energy Standards Tariff, based on a  
 14 determination that the advancement of energy conservation programs and the move to renewable  
 15 sources of energy were necessary policy considerations to advance the public interest.<sup>281</sup> Staff  
 16 opined that it would be appropriate, in the Commission's support of groundwater conservation, to  
 17 adopt the Staff's recommendation regarding an adjustor for the Company's CAGR D assessment.  
 18  
 19

#### 20 4. Conclusion

21 We agree with Staff that this Commission has in the past approved adjustor mechanisms  
 22 where appropriate to advance important policy concerns that protect the public interest. The  
 23 CAGR D adjustor mechanism that Staff designed, inclusive of all eight conditions without  
 24

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25 <sup>275</sup> RUCO Br. at 8; 14; Tr. at 205; Direct Testimony of RUCO witness Rodney Moore (Exh. R-1) at 16-17; RUCO  
 26 Final Schedules RLM 7 and RLM-16.

27 <sup>276</sup> RUCO Final Schedule RLM-16.

28 <sup>277</sup> RUCO Br. at 14.

<sup>278</sup> Staff Br. at 20, citing to Revised Surrebuttal Testimony of Jeffrey Michlik (Exh. S-43) at 1.

<sup>279</sup> *Id.*

1 modification, appears to be a just and reasonable means of dealing with the costs of the CAGR D.  
 2 However, while we do not disagree with the premise of the arguments Staff made in support of the  
 3 CAGR D adjustor mechanism, we find that it would be inappropriate to authorize a CAGR D adjustor  
 4 mechanism for the Company at this time. The Company has not demonstrated the record keeping  
 5 ability necessary to administer a CAGR D adjustor mechanism. The record in this case is replete  
 6 with evidence of the Company's demonstrated inability to produce documentation in the standard  
 7 format required for a regulated utility during the processing of a rate case. In addition, the Company  
 8 has very clearly expressed an unwillingness to comply with the requirements necessary for proper  
 9 administration and oversight of the proposed CAGR D adjustor mechanism. The Company's stated  
 10 unwillingness, coupled with the Company's shoddy record keeping behavior to date, demonstrate  
 11 that it would not be wise at this time to grant the Company authority to implement a complex  
 12 adjustor mechanism. We will therefore not approve Staff's recommended CAGR D adjustor  
 13 mechanism for this Company at this time.  
 14

15 We find RUCO's recommended normalization of the Company's CAGR D expense to be a  
 16 just and reasonable means to allow the Company to recover its CAGR D expenses until its next  
 17 anticipated rate case filing, and will adopt it.  
 18

19 **B. Rate Case Expense**

20 The Company requested recovery of \$100,000 in rate case expense.<sup>282</sup> There was no  
 21 disagreement on the amount of expense. Staff recommended normalization of the expense over  
 22 three years, and the Company agreed.<sup>283</sup> RUCO recommended an amortization of five years to  
 23 reflect the Company's propensity for not timely filing rate applications.<sup>284</sup> The Company pointed  
 24 out that RUCO's CAGR D expense normalization assumed that the Company would be filing a rate  
 25

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26 <sup>280</sup> Staff Reply Br. at 7-8.

27 <sup>281</sup> *Id.*

28 <sup>282</sup> Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 23.

<sup>283</sup> *Id.*



1 case in three years.<sup>285</sup> We find that the three year normalization period is appropriate, and will adopt  
2 it.

3 **C. Income Tax Expense**

4 The Company is seeking recovery of income tax expense in the amount of \$1,185,679. As  
5 an LLC, the Company does not pay taxes at the corporate level.<sup>286</sup> Instead, its taxes are passed  
6 through to the owners of the Company and accounted for when its member owners file their tax  
7 returns. The Company reimburses its member owners for their tax liabilities.<sup>287</sup> The Company  
8 argued that because the income tax liability of its members “arises from the taxable income of  
9 Johnson and it is directly attributable to Johnson Utilities” that the Company should be allowed to  
10 collect the expense from ratepayers.<sup>288</sup>

12 The Company disagreed with the recommendations of RUCO and Staff to reject the  
13 Company’s request to recover income tax expense. Johnson argued that denying recovery in rates of  
14 the members’ pass through income tax liability results in inequities because Johnson will have a  
15 lower revenue requirement than a C-Corp, and ratepayers will “receive an unjustified windfall from  
16 the lower revenue requirement and operating income when income taxes are excluded.”<sup>289</sup>

18 Staff and RUCO both asserted that the Company voluntarily chose to organize as an LLC,  
19 which is a pass through entity for purposes of income tax liability.<sup>290</sup> Staff argued that it would be  
20 unfair to award the Company an expense it does not pay.<sup>291</sup> RUCO emphasized that the Company’s  
21 chosen corporate organization confers a tax benefit on its shareholder members not enjoyed by “C”  
22 corporation shareholders.<sup>292</sup> RUCO stated that while a “C” corporation must pay income taxes prior  
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24 <sup>284</sup> RUCO Br. at 7.

25 <sup>285</sup> Co. Br. at 31.

26 <sup>286</sup> Tr. at 9.

27 <sup>287</sup> Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. III at 28.

28 <sup>288</sup> Co. Br. at 32, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 23.

<sup>289</sup> *Id.*

<sup>290</sup> RUCO Br. at 7; Staff Reply Br. at 9.

<sup>291</sup> Staff Br. at 19.

<sup>292</sup> RUCO Reply Br. at 7.

1 to the distribution of any profits to its shareholders as LLC shareholders, the tax liability of an LLC's  
 2 shareholder members passes directly to the shareholders, such that they avoid double taxation.<sup>293</sup>  
 3 Regarding the agreement between the Company and its members for the Company to reimburse their  
 4 personal tax liability, as testified to by the Company's witness,<sup>294</sup> Staff argued that the ratepayers are  
 5 not a party to the agreement,<sup>295</sup> and RUCO argued that just like the Company's corporate status  
 6 election, the Company's election to reimburse its shareholders' tax liability is voluntary.<sup>296</sup>  
 7

8 The Company argued that its tax situation is analogous to a subsidiary of a "C" corporation  
 9 utility of a parent holding company whose tax return is consolidated with the parent.<sup>297</sup> Staff and  
 10 RUCO both disagreed. RUCO stated that the Company's situation is not analogous, because the  
 11 Company is not a subsidiary of a parent company that files a consolidated return.<sup>298</sup> Staff stated that  
 12 the Company's tax status is distinguishable from the case of a subsidiary "C" corporation utility of a  
 13 parent holding company whose tax return is consolidated with the parent, because in that case, there  
 14 is evidence of the tax rate, but in this case, there is no such evidence.<sup>299</sup> Staff argued that the  
 15 Company provided no evidence regarding the tax rates of its members or that its members even paid  
 16 any taxes.<sup>300</sup>  
 17

18 Johnson cited to several cases in which pass through taxes have been allowed rate  
 19 recovery,<sup>301</sup> but acknowledged that state Commissions vary as to whether income taxes for pass-  
 20 through entities are allowed in cost of service.<sup>302</sup> Johnson argued that inclusion or exclusion of  
 21 income tax expense should not be affected by technical distinctions, but that the appropriate inquiry  
 22  
 23

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24 <sup>293</sup> RUCO Br. at 7.

25 <sup>294</sup> Tr. at 1352.

26 <sup>295</sup> Staff Reply Br. at 9.

27 <sup>296</sup> RUCO Br. at 7.

28 <sup>297</sup> Co. Br. at 32, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 24.

<sup>298</sup> RUCO Br. at 7-8.

<sup>299</sup> Staff Reply Br. at 9.

<sup>300</sup> *Id.*

<sup>301</sup> Co. Br. at 34-36.

<sup>302</sup> Co. Br. at 33.

1 should consider whether the outcome is fair and non-discriminatory.<sup>303</sup> We agree that the tax  
 2 liability issue should receive fair and non-discriminatory ratemaking treatment, but disagree with the  
 3 Company that its chosen organizational form is a “technical distinction.” As RUCO and Staff argue,  
 4 the Company freely chose to be organized as an LLC, and we must assume that its choice was an  
 5 informed choice that imparts certain advantages to the Company. We do not share the Company’s  
 6 view that inclusion of the Company’s members’ pass-through tax liability in customers’ rates would  
 7 lead to a fair, equitable, and non-discriminatory result. As we determined in Decision No. 71445  
 8 (December 23, 2009), it is not appropriate or in the public interest to allow pass through entities such  
 9 as the Company to recover income tax expenses through rates.<sup>304</sup> The Company’s request is not  
 10 reasonable and will be denied.  
 11

12 **D. Operating Income Summary**

13 Based on the discussion of operating income issues set forth above, we find the adjusted test  
 14 year operating expenses and operating income for its water and wastewater divisions to be as  
 15 follows:  
 16

	Water Division	Wastewater Division
17 Adjusted test year revenues	\$13,172,899	\$11,354,014
18 Test year operating expenses	\$11,769,046	\$9,432,270
19 Test year operating income	\$1,403,853	\$1,921,744

20 **V. COST OF CAPITAL/OPERATING MARGIN**

21 **A. Company’s Position**

22 The Company recommended that its proposed weighted average cost of capital (“WACC”) of  
 23 11.89 percent be used as the Company’s rate of return to be applied to its proposed fair value rate  
 24 base (“FVRB”) to compute the Company’s required operating income.<sup>305</sup>  
 25  
 26

27 <sup>303</sup> Co. Br. at 32-33; Co. Reply Br. at 27.

28 <sup>304</sup> Decision No. 71445 at 29-37.

<sup>305</sup> Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. I at 3.

1 The Company proposed a cost of equity of 12.0 percent.<sup>306</sup> The Company's witness Thomas  
 2 Bourassa reached this recommendation based on his discounted cash flow ("DCF") and capital asset  
 3 pricing model ("CAPM") results using data from a sample of six water utilities selected from the  
 4 Value Line Investment Survey.<sup>307</sup> The Company's proposed cost of debt is 8.0 percent.<sup>308</sup> The  
 5 Company used its actual capital structure to calculate its proposed WACC, and disagreed with  
 6 RUCO's proposed hypothetical capital structure of 40 percent debt and 60 percent equity.<sup>309</sup> The  
 7 Company stated that at the end of the test year, the Company had adjusted total capital of  
 8 \$25,897,122, consisting of \$722,000 long term debt and \$25,175,122 common equity, for a capital  
 9 structure of 2.8 percent debt and 97.2 percent common equity.<sup>310</sup>

#### 11 B. RUCO's Position

12 RUCO recommended that its proposed WACC of 8.18 percent be applied to rate base to  
 13 determine the required operating income for the Company's wastewater division.<sup>311</sup> RUCO's  
 14 recommended cost of equity for the Company's wastewater division is 8.31 percent, and is based on  
 15 the analysis of its witness William Rigsby. Mr. Rigsby used the average of his CAPM and DCF  
 16 model results to reach his cost of equity estimate.<sup>312</sup> Like the Company, RUCO recommended a cost  
 17 of debt of 8.0 percent based on the Company's existing debt cost.<sup>313</sup> RUCO stated that because the  
 18 Company's actual capital structure consists of almost all equity, it used a hypothetical capital  
 19 structure of 40 percent long term debt and 60 percent common equity to calculate its proposed  
 20 WACC.<sup>314</sup>

24 <sup>306</sup> *Id.*

25 <sup>307</sup> Direct Testimony of Company witness Thomas Bourassa (Exh. A-1) Exhibit F at 4.

26 <sup>308</sup> Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. I at 3.

27 <sup>309</sup> Co. Br. at 47.

28 <sup>310</sup> Direct Testimony of Company witness Thomas Bourassa (Exh. A-1) Exhibit F at 2; Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. I at 3.

<sup>311</sup> Direct Testimony of RUCO witness William Rigsby (Exh. R-9) at 5.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> RUCO Br. at 15.

1 For the Company's water division, RUCO recommended a negative rate base, and proposed  
 2 an operating margin of 8.18 percent to determine its recommended revenue requirement for the  
 3 water division.<sup>315</sup>

4 **C. Staff's Position**

5 Staff did not present a cost of capital analysis or recommendation for the Company. Due to  
 6 the size of the rate base for the wastewater division and the negative rate base for the water division,  
 7 Staff recommended that an operating margin should be used to determine both revenue  
 8 requirements. Staff recommended that an operating margin of 10 percent be used in order to  
 9 determine a revenue requirement for both the water and wastewater divisions.<sup>316</sup>

11 **D. Conclusion**

12 The Company's FVRB for its water division is negative and the FVRB for its wastewater  
 13 division is \$136,562. Due to the size of the rate bases for the Company's two divisions, there is  
 14 insufficient investment upon which to grant the Company a return. Authorizing an operating margin  
 15 for a utility the size of the Company is problematic.<sup>317</sup> Any part of an operating margin that is not  
 16 used to cover legitimate utility expenses would accrue to the utility as income. Allowing a utility to  
 17 collect an operating margin in rates has the potential to allow the utility to accrue a net income  
 18 similar to the return earned by a utility that has made an investment in plant. In other words,  
 19 authorizing an operating margin when there is no rate base investment has the potential of allowing  
 20 the utility to realize a profit without making any investment, creating a windfall for the utility,  
 21 without the utility having put any capital at risk.

22 We do not wish to reward the Company for having a negative or negligible rate base.  
 23 However, neither do we wish to have the Company's customers placed in jeopardy as they might be  
 24  
 25

26  
 27 <sup>315</sup> Direct Testimony of RUCO witness William Rigsby (Exh. R-9) at 3.

<sup>316</sup> Staff Br. at 19; Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 31 and (Exh. S-44) at 29.

28 <sup>317</sup> In the absence of a FVRB, the Arizona Constitution does not require the Commission to authorize rates to allow the Company to collect any revenue in addition to its operating expenses.

1 if the Company is unable to meet its legitimate operating expenses. Therefore, in order to protect the  
2 Company's customers, we will adopt Staff's recommendation to authorize an operating margin of 10  
3 percent for both its water and wastewater divisions. The operating margin will allow the Company  
4 to meet its legitimate operating expenses while it works to build its equity investment.

5 The issue of whether an operating margin remains suitable, and whether the size of the  
6 operating margin is appropriate for a Class A Utility, will be re-evaluated in the Company's next rate  
7 filing. If, in the Company's next rate filing, the Company still has a negative rate base such that  
8 authorizing an operating margin in lieu of a rate of return calculation would be necessary in order to  
9 prevent operating losses, we will closely examine and give great consideration to the strength of the  
10 Company's efforts to improve its rate base prior to again using an operating margin to determine the  
11 revenue requirement.  
12

## 13 **VI. AUTHORIZED INCREASE/DECREASE**

### 14 **A. Water Division**

15 The adjusted test year operating income for the water division was \$1,403,853. A 10 percent  
16 operating margin for the Company's water division results in operating income of \$1,307,438.  
17 Based on our findings herein, we determine that the Company's gross revenue for its water division  
18 should decrease by \$98,522.  
19

### 20 **B. Wastewater Division**

21 The adjusted test year operating income for the wastewater division was \$1,921,744. A 10  
22 percent operating margin for the Company's wastewater division results in operating income of  
23 \$1,045,913. Based on our findings herein, we determine that the revenues for the Company's  
24 wastewater division should decrease by \$895,100.  
25

26 ...

27 ...

28

**VII. RATE DESIGN**

Staff recommended an inverted three-tiered rate design for the Company's 3/4 and 5/8 inch meter residential water customers and an inverted two-tiered rate design for all other water customers.<sup>318</sup> For wastewater customers, Staff recommended a single monthly minimum charge based on meter size for all zones and classes of customers.<sup>319</sup> There was no dispute regarding rate design. Staff's recommendations regarding rate design are reasonable and will be adopted.

**VIII. OTHER ISSUES**

**A. Discontinuance of Hook-Up Fees**

Staff recommended that the Company's HUF tariffs be discontinued, due to the fact that there is comparatively little equity in the Company's capital structure.<sup>320</sup> Staff stated that according to the independent auditor's report, at the end of 2006, the percentage of members' capital in the Company was 9.65 percent.<sup>321</sup> Staff noted that while it is supportive of the use of HUFs, there should be a balance between the amount of equity the Company is investing in plant and what customers are investing in plant through HUFs.<sup>322</sup> For a utility the size of Johnson, Staff recommends an equity range of between 40 to 60 percent and debt between 40 to 60 percent, and in addition, that no more than 30 percent equity should be from AIAC and CIAC.<sup>323</sup> Staff further recommended that in the future, if the Company wishes to apply for a HUF tariff, that it have a Certified Public Accounting firm attest to the Company's membership equity level of 40 percent.<sup>324</sup>

The Company opposed Staff's recommendation. The Company argued that in the coming years it will fund plant capacities with equity, and that the \$6,931,078 balance in the water HUF account at the end of the test year was collected on developments where construction has stopped

<sup>318</sup> Staff Final Schedule JMM-W26.

<sup>319</sup> Staff Final Schedule JMM-WW24.

<sup>320</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 35.

<sup>321</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 34-35 and (Exh. S-44) at 32-34.

<sup>322</sup> Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 34-35 and (Exh. S-44) at 32-34.

<sup>323</sup> *Id.*

1 due to current market conditions.<sup>325</sup> The Company also argued that in 2006, the Company was  
2 informed that a Staff audit had not disclosed anything unusual or improper regarding the way the  
3 Company was collecting, using and accounting for HUFs.<sup>326</sup>

4 We agree with Staff that under the circumstances of this case, in the interest of attaining a  
5 balance for the Company between equity investment in plant and customer contributions to plant, it  
6 is reasonable and in the public interest to discontinue the Company's authority to collect HUFs for  
7 both its water and wastewater divisions. We further find it reasonable and in the public interest to  
8 require, as a prerequisite to approval of a new hook up fee tariff for the Company in the future, that  
9 the Company provide certification by a Certified Public Accounting firm that the Company has a  
10 membership equity level of at least 40 percent.  
11

12 **B. Water Loss for Johnson Ranch System**

13 Staff recommended that the Company be ordered to conduct a twelve month water loss  
14 monitoring exercise for the Johnson Ranch water system including monitoring and reporting water  
15 gallons sold, gallons pumped, and gallons purchased per month.<sup>327</sup> The information the Company  
16 initially provided to Staff showed that this system's 2007 water loss was 19.4 percent.<sup>328</sup> The  
17 Company subsequently indicated that the number of gallons sold that it initially reported was  
18 inaccurate because it did not include construction water and irrigation water sales.<sup>329</sup> Staff further  
19 recommended that the Company docket the results of the system monitoring as a compliance item in  
20 this case. Staff recommended that if the reported water loss for a one year period is greater than 10  
21 percent, the Company be required to prepare a report containing detailed analysis and plan to reduce  
22 water loss to 10 percent or less. Staff recommended that if the Company believes it is not cost  
23  
24

25 <sup>324</sup> Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 15 and (Exh. S-45) at 17.

26 <sup>325</sup> Co. Reply Br. at 59, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 31.

27 <sup>326</sup> Co. Reply Br. at 59, citing to Rejoinder Testimony of Company witness Brian Tompsett (Exh. A-7) at 7.

28 <sup>327</sup> Tr. 1425-1426; Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) Exhibit MSJ at 8-9; Tr. at 1419; Reply Br. at 24.



1 effective to reduce water loss to less than 10 percent, it should submit a detailed cost benefit analysis  
 2 to support its opinion. Staff recommended that such report be docketed as a compliance item for this  
 3 proceeding for review and certification by Staff. Staff recommended that in no case should water  
 4 loss be greater than 15 percent, and that Staff be authorized to initiate an Order to Show Cause  
 5 against the Company if water loss is not reduced to less than 15 percent.<sup>330</sup>

6 The Company argued that the actual percentage of non-account water for the Johnson Ranch  
 7 system for 2007 was under 10 percent, and that it addressed the issue in its 2008 water use data sheet  
 8 submitted with its 2008 annual report.<sup>331</sup> Staff responded that because the Company did not provide  
 9 sufficient support for its claim, including a breakdown of the gallons sold per month, that Staff's  
 10 recommendation remains the same following the Company's submission of the 2008 water use data  
 11 sheet.<sup>332</sup> Staff's recommendations are reasonable and will be adopted.

### 13 C. ADEQ Compliance

14 Swing First presented evidence in this proceeding concerning fourteen Notices of Violation  
 15 ("NOVs") issued to the Company by ADEQ, dating back to September 2004.<sup>333</sup> Five of the NOVs  
 16 were issued in 2008 and two were issued in 2009.<sup>334</sup> Some of the NOVs remain open.<sup>335</sup>

18 Staff recommended that any increases in rates and charges authorized in this matter not go  
 19 into effect until the Company comes into full compliance with ADEQ by resolving all outstanding  
 20 NOVs including, but not limited to, the outstanding NOV associated with the Pecan, San Tan, and  
 21 Section 11 Wastewater Treatment plants.<sup>336</sup> Staff recommended, however, that if rate decreases are  
 22

23 <sup>328</sup> Staff Br. at 23, citing to Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at 8, Surrebuttal Testimony of  
 24 Staff witness Marlin Scott, Jr. (Exh. S-37) at 6, and Tr. at 1456.

<sup>329</sup> Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 6.

<sup>330</sup> Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at 8-9; Tr. at 1419.

<sup>331</sup> Co. Br. at 60, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 32 and Rejoinder  
 26 Testimony of Company witness Brian Tompsett (Exh. A-7) at 15.

<sup>332</sup> Staff Br. at 24, citing to Tr. at 1457 and Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 7.

<sup>333</sup> RUCO Br. at 22, citing to Exh. SF-9.

<sup>334</sup> *Id.*

<sup>335</sup> RUCO Br. at 22, citing to Tr. at 85-117.

<sup>336</sup> Tr. at 1430.

1 authorized, as recommended by Staff, that such decreases should not be postponed until the  
2 Company comes into full compliance with ADEQ.<sup>337</sup>

3 RUCO stated that it is very concerned about the public's health and safety and the  
4 Company's attitude toward the subject, and believes it is necessary for the Commission to take  
5 action to assure the public's safety.<sup>338</sup> RUCO recommended that the Company be required to  
6 provide the Commission twice a month or monthly confirmation that it is in compliance with all  
7 rules and regulations of ADEQ and notice of any new alleged violations whether written or oral.<sup>339</sup>  
8 RUCO recommended that its proposed filing include all correspondence, oral and written, that the  
9 Company has with ADEQ during the time period.<sup>340</sup> RUCO recommended that the Company be  
10 ordered to report any leaks, overflows or any other incidents no matter how minor to the  
11 Commission immediately after they occur.<sup>341</sup> Finally, RUCO recommended that the Commission  
12 should, resources permitting, put into place both scheduled and unannounced visits by its Staff to the  
13 Company's service area for the purpose of on-site inspections, and require Staff to file with the  
14 Commission, with copies to the parties, reports of any inspection made.<sup>342</sup> RUCO recommended  
15 that its proposed requirements remain in place for a minimum of six months but not be removed  
16 until the Company can prove that all open NOV's are closed.<sup>343</sup>

17  
18  
19 Staff stated that it shares the concerns of RUCO, but that it does not have the resources  
20 available to commit to additional inspections of Johnson's facilities.<sup>344</sup> Staff noted that it receives  
21 notification from the Company when spills occur, and that any additional inspection and reporting  
22 requirements would be duplicative of the work performed by ADEQ.<sup>345</sup>  
23

24 <sup>337</sup> Tr. at 1520-21.

25 <sup>338</sup> RUCO Br. at 29.

26 <sup>339</sup> *Id.*

27 <sup>340</sup> *Id.*

28 <sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 29-30.

<sup>343</sup> RUCO Br. at 30.

<sup>344</sup> Staff Reply Br. at 12.

<sup>345</sup> *Id.*

1 We agree with Staff and RUCO that the evidence presented in this case regarding both the  
 2 quantity of NOV's and the nature and character of the NOV's, especially the NOV designated by  
 3 ADEQ as Case ID #103357 involving the Company's Section 11 WWTP, are cause for concern. As  
 4 RUCO argued, if the Commission finds, based on the preponderance of the evidence, that the  
 5 Company's manner of providing service jeopardizes the public's safety and health, this  
 6 Commission's remedies cannot be punitive as might be the case with ADEQ, but rather must focus  
 7 on remedying the situation.<sup>346</sup> The evidence presented this proceeding regarding the NOV's issued  
 8 by ADEQ is of great concern to this Commission. However, the evidence was not first-hand  
 9 investigative evidence such as would be required for a Commission finding by the preponderance of  
 10 the evidence, as urged by RUCO in its closing brief, that the Company's operations are jeopardizing  
 11 the public's safety and health. ADEQ is the state agency in Arizona charged with the responsibility  
 12 to, and provided with the resources and expertise required to, investigate and prosecute entities who  
 13 violate Arizona's environmental laws. The evidence elicited by Swing First was of the nature of  
 14 reporting on the investigative and enforcement activities of ADEQ. We are in agreement with  
 15 RUCO that the roles of ADEQ and the Commission should not be duplicative,<sup>347</sup> but unlike RUCO,  
 16 we believe that implementing RUCO's recommendations would lead to just such a result.

19 Staff's recommendation to require that any increases in rates and charges authorized in this  
 20 matter not go into effect until the Company comes into full compliance with ADEQ by resolving all  
 21 outstanding NOV's including, but not limited to, the outstanding NOV associated with the Pecan, San  
 22 Tan, and Section 11 Wastewater Treatment plants is reasonable. However, the rates approved herein  
 23 constitute a rate reduction for the Company's water and wastewater divisions. We will require  
 24 instead that the Company file, within 30 days, a list of outstanding NOV's issued against it by  
 25 ADEQ, and to list (1) the procedural status of each NOV; and (2) steps the Company is taking to

27 \_\_\_\_\_  
 28 <sup>346</sup> See RUCO Br. at 23.

<sup>347</sup> See *id.*

1 come into compliance with ADEQ requirements. We will also require the Company to notify the  
2 Commission at such time that the Company comes into full compliance with all ADEQ  
3 requirements, including resolving all outstanding NOVs. We will require that Staff, within 60 days  
4 of receipt of such filing, review the filing, verify the Company's compliance, and file a status report  
5 in this docket indicating that the Company has come into full compliance with all ADEQ  
6 requirements.

7  
8 **D. Swing First Golf's Recommendations**

9 Swing First, a customer of Johnson, owns and operates The Golf Club at Johnson Ranch. On  
10 January 25, 2008, Swing First filed a complaint against Johnson in Docket No. WS-02987A-08-0049  
11 ("Complaint Docket"). The Complaint Case is currently pending.

12 Swing First's witness Sonn Rowell made nine recommendations in her testimony, as follows:

- 13 1. Utility should not be allowed to increase its rates until its  
14 management and financial practices are investigated.
- 15 2. Utility should be required to immediately reduce its water rates and  
16 make refunds.
- 17 3. The Company should be required to refund – in cash, not credits – its  
18 illegal superfund tax collections.
- 19 4. Utility's Pecan Wastewater Treatment Plant should not be included in  
20 rate base.
- 21 5. Utility should be required to dismiss all pending defamation lawsuits  
22 against its customers, and pay all of their court costs and legal fees.
- 23 6. Utility should be fined for its blatant disregard of its public service  
24 obligations, environmental laws, and explicit commission orders.
- 25 7. Utility should be penalized with a reduced rate of return on equity.
- 26 8. Following the completion of the independent management and  
27 financial audits, the Commission should require Utility to  
28 demonstrate why it should not surrender its certificate of convenience  
and necessity.

9. The Commission should bifurcate this case into two phases.<sup>348</sup>

The Company responded to Swing First's recommendations in its closing brief. In its reply brief, the Company responded to arguments Swing First made on brief in support of its recommendations.<sup>349</sup>

Staff stated that it does not support the recommendations made by Swing First in this docket,<sup>350</sup> and noted that a number of actions Swing First recommended are beyond the constitutional and statutory authority of the Commission to implement.<sup>351</sup> Staff stated that the Company has been charging rates authorized in Decision No. 60223, and thus has charged its customers rates that were deemed just and reasonable, until further determination by the Commission.<sup>352</sup> Staff stated that to require the Company to refund its customers from 2007 forward, as recommended by Swing First, raises issues of retroactive ratemaking, and that generally, the rule against retroactive ratemaking prohibits the retroactive adjustment of rates to account for unexpected expenses or revenues.<sup>353</sup> Staff also commented that the Commission does not have authority to order the Company to dismiss all pending defamation lawsuits against its customers and to pay all of their court costs and legal fees.<sup>354</sup> Staff noted, however, that Swing First's intervention in this matter helped bring to Staff's attention certain irregular billing practices and other customer service issues.<sup>355</sup> Staff stated that because it was made aware of the Company's practice of under-billing Oasis Golf Course, Staff was able to make an adjustment to correct it.<sup>356</sup>

<sup>348</sup> Direct Testimony of Swing First witness Sonn Rowell (Exh. SF-40) at 15.

<sup>349</sup> Co. Reply Br. at 30-46.

<sup>350</sup> Staff Br. at 24.

<sup>351</sup> Staff Reply Br. at 12.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> Staff Br. at 24, citing to (Exh. SF-40) at 9, Tr. at 584-590, and (Exh. A-6) at 16.

<sup>356</sup> Staff Br. at 24-25, citing to (Exh. SF-38) at 15, and Tr. at 473 and 1704.

1 Staff recommended that the remaining customer service issues that Swing First has alleged  
 2 be adjudicated and resolved in the pending Complaint Case.<sup>357</sup> RUCO stated that it believes Swing  
 3 First's billing dispute would be better addressed in the Complaint Docket.<sup>358</sup> The Company agreed  
 4 that the appropriate forum for the billing dispute is the Complaint Docket.<sup>359</sup>

5 We agree with RUCO, the Company, and Staff that the customer service and billing issues  
 6 raised by Swing First in this docket are best addressed in the pending Complaint Docket. We further  
 7 agree with Staff that it would not be appropriate to adopt Swing First's other recommendations in  
 8 this proceeding.

9 \* \* \* \* \*

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

12 **FINDINGS OF FACT**

13 1. On March 31, 2008, Johnson filed a rate increase application for water and  
 14 wastewater with a 2007 test year.

15 2. Johnson is a public service corporation that provides water and wastewater service in  
 16 Pinal County, Arizona pursuant to a CC&N originally granted in Decision No. 60223 (May 2,  
 17 1997), which authorized its current rates and charges. Johnson is organized as an Arizona limited  
 18 liability company and is in good standing. Its principal place of business is 5230 East Shea Blvd.,  
 19 Suite 200, Scottsdale, Arizona 85254.

20 3. In Decision Nos. 68235 (October 25, 2005), 68236 (October 25, 2005), and 68237  
 21 (October 25, 2005), Johnson was ordered to file a rate application for both water and wastewater by  
 22 May 1, 2007, based on a 2006 test year. Prior to May 1, 2007, Johnson filed a request to extend  
 23 that filing date. On September 18, 2007, Staff recommended that the Company be required to file  
 24 the rate application by March 31, 2008, using a 2007 test year.

25 4. On April 29, 2008, Staff filed a Letter of Deficiency stating that the rate application  
 26 did not meet the sufficiency requirements as outlined in A.A.C. R14-2-103, and listing the items

27 <sup>357</sup> Staff Br. at 25.

28 <sup>358</sup> RUCO Reply Br. at 10.

<sup>359</sup> Co. Reply Br. at 46.

1 Staff required to deem the application sufficient for processing.

2 5. On May 13, 2008, existing Counsel for the Company filed a Motion Requesting

3 Permission to Withdraw as Counsel, and new Counsel for the Company filed a Notice of

4 Substitution of Counsel.

5 6. On May 14, 2008, the Company filed revised schedules and other documents to  
6 address the items identified in Staff's April 29, 2008, Letter of Deficiency.

7 7. On May 16, 2008, a Procedural Order was issued granting the May 13, 2008, Motion  
8 Requesting Permission to Withdraw as Counsel.

9 8. On June 11, 2008, a letter from Commissioner Mundell to the Commission was  
10 docketed.

11 9. On June 11, 2008, Swing First filed a Motion to Intervene. By Procedural Order  
12 issued June 23, 2008, Swing First's Motion to Intervene was granted.

13 10. On June 13, 2008, Staff filed a Second Letter of Deficiency.

14 11. On June 23, 2008, a letter from Commissioner Mundell to the Company was  
15 docketed, indicating that Commissioner Mundell docketed all the material that Johnson provided to  
16 the Commissioners regarding the sanitary sewer overflows from the Pecan WWTP during the  
17 weekend of May 17-18, 2008.

18 12. On June 24, 2008, a letter from Commissioner Mundell to the Commission was  
19 docketed.

20 13. On July 3, 2008, Johnson filed responses to the data requests contained in Staff's  
21 Second Letter of Deficiency.

22 14. On August 1, 2008, Staff filed a Letter of Sufficiency informing the Company that the  
23 application had met the Commission's sufficiency requirements and classifying the Company as a  
24 Class A utility.

25 15. On August 15, 2008, a Rate Case Procedural Order was issued setting a hearing on  
26 the rate application to commence on April 23, 2009, and setting associated procedural deadlines,  
27 including public notice requirements.

28 16. On September 25, 2008, Johnson filed a Motion to Revise Procedural Schedule.

1 17. On November 21, 2008, Swing First filed a Motion to Compel.

2 18. On November 25, 2008, Johnson filed a Request for Extension of Time to Respond to  
3 Motion to Compel.

4 19. On December 2, 2008, Johnson filed a Notice of Filing Affidavit of Publication.

5 20. A total of 159 public comments concerning the rate application were filed in this  
6 docket.

7 21. On December 2, 2008, Johnson filed a Response to Swing First's Motion to Compel.

8 22. On December 4, 2008, RUCO filed an Application to Intervene. RUCO was granted  
9 intervention by Procedural Order issued December 16, 2008.

10 23. On December 5, 2008, Swing First filed a Reply to Johnson's Response to Motion to  
11 Compel.

12 24. On December 17, 2008, Florence filed a Motion for Leave to Intervene. Florence  
13 was granted intervention by Procedural Order issued December 31, 2008.

14 25. On December 17, 2008, Staff filed a copy of a letter to the Company indicating  
15 Staff's concerns with late or incomplete Company responses to Staff's data requests. The letter  
16 stated that "Staff must now insist that the Company file all responses to all outstanding and current  
17 data requests by January 8, 2009. Staff will make adjustments according to the information  
18 received as of January 8, 2009. Staff reserves the right to disregard any responses to current and  
19 outstanding data requests received after January 8, 2009. Staff further reserves the right to issue  
20 more data requests as needed." The letter included a listing of all data requests to which Staff stated  
21 Company responses were incomplete.

22 26. On January 21, 2009, a Procedural Order was issued setting a Procedural Conference  
23 for January 27, 2009, for the purpose of allowing the parties to present their arguments regarding  
24 Swing First's Motion to Compel Discovery.

25 27. On January 27, 2009, the Procedural Conference was held as scheduled. Swing First  
26 and Johnson presented their arguments regarding Swing First's Motion to Compel, and during the  
27 Procedural Conference, Johnson was directed to provide some of the requested information to  
28 Swing First.



1           28.    On January 29, 2009, Florence filed a Motion for Extension of Time to File  
2 Testimony.

3           29.    On February 3, 2009, Staff filed a Response to Florence's Motion for Extension of  
4 Time to File Testimony.

5           30.    On February 3, 2009, Swing First filed direct testimony of David Ashton.

6           31.    On February 4, 2009, RUCO filed direct testimony of William A. Rigsby and Rodney  
7 L. Moore.

8           32.    On February 4, 2009, Staff filed direct testimony of Jeffrey M. Michlik and Marlin  
9 Scott, Jr.

10          33.    On February 5, 2009, a Procedural Order was issued extending the deadline for  
11 Florence to file its direct testimony to February 17, 2009.

12          34.    On February 6, 2009, Swing First filed a Motion for Date Certain requesting that a  
13 date and time certain be set for the testimony of its witness David Ashton.

14          35.    On February 17, 2009, a Procedural Order was issued scheduling Mr. Ashton to  
15 appear on April 17, 2009, at 9:30 a.m. to testify.

16          36.    On February 17, 2009, Swing First filed its Motion for Leave to File Supplemental  
17 Direct Testimony and Emergency Motion to Prohibit Inappropriate Contact.

18          37.    On February 19, 2009, a Procedural Order was issued ordering Johnson to file, by  
19 February 24, 2009, a response to Swing First's Emergency Motion to Prohibit Inappropriate  
20 Contact, and setting a Procedural Conference for February 26, 2009 for the purpose of allowing the  
21 parties to present their arguments regarding Swing First's Emergency Motion to Prohibit  
22 Inappropriate Contact.

23          38.    On February 19, 2009, Johnson made two filings: a Motion to Strike Pre-Filed Direct  
24 Testimony of David Ashton on Behalf of Intervenor Swing First Golf and Response to Swing First  
25 Golf's Motion for Leave to File Supplemental Direct Testimony, and a Motion to Compel  
26 Discovery.

27          39.    On February 20, 2009, a Procedural Order was issued stating that the Procedural  
28 Conference set for February 26, 2009 would be expanded to allow the parties to address all

1 outstanding motions and responses.

2 40. On February 20, 2009, Johnson filed a Notice of Inappropriate Discovery and  
3 Litigation Tactics.

4 41. On February 24, 2009, Johnson filed its Response to Emergency Motion to Prohibit  
5 Inappropriate Contact.

6 42. On February 25, 2009, Swing First filed its Response to Johnson's Motion to Compel.

7 43. On February 25, 2009, Swing First filed its Notice of Partial Witness Substitution;  
8 Response to Johnson's Motion to Strike; and Reply to Johnson's Response to Swing First's Motion  
9 for Leave to File Supplemental Direct Testimony.

10 44. On February 26, 2009, Johnson filed its Response and Motion to Strike Intervenor  
11 Swing First's Notice of Inappropriate Discovery and Litigation Tactics.

12 45. On February 26, 2009, a Procedural Conference was held as scheduled.

13 46. On February 27, 2009, Johnson filed its Request Regarding Deadline for Filing  
14 Rebuttal Testimony to Swing First's Direct Testimony.

15 47. On March 2, 2009, Swing First filed its revised direct testimonies of Swing First  
16 witnesses David Ashton and Sonn S. Rowell.

17 48. On March 5, 2009, a Procedural Order was issued granting Johnson's request for an  
18 extension of time, to March 23, 2009, to file rebuttal to the revised direct testimonies of Swing First  
19 witnesses David Ashton and Sonn S. Rowell.

20 49. On March 5, 2009, Johnson filed a Motion for Extension of Time to File Rebuttal  
21 Testimony.

22 50. On March 10, 2009, Johnson filed rebuttal testimony of Thomas J. Bourassa  
23 (Volumes I, II, and III) and Brian Tompsett.

24 51. On March 23, 2009, Johnson filed supplemental rebuttal testimony of Brian  
25 Tompsett.

26 52. On March 24, 2009, Johnson filed supplemental rebuttal testimony of Thomas J.  
27 Bourassa.

28 53. On March 31, 2009, RUCO filed surrebuttal testimony of William A. Rigsby and

1 Rodney L. Moore.

2 54. On March 31, 2009, Staff filed surrebuttal testimony of Jeffrey M. Michlik and  
3 Marlin Scott Jr.

4 55. On April 15, 2009, Staff filed a Motion to Compel. Staff requested an order directing  
5 that Johnson and/or Florence be directed to immediately make arrangements for Staff's review of  
6 the workpapers associated with an audit previously provided to Staff by Johnson in response to a  
7 Data Request. A copy of the audit was attached to the Motion as an exhibit.

8 56. On April 16, 2009, a Procedural Order was issued directing Johnson and Florence to  
9 be prepared to discuss Staff's Motion to Compel at the prehearing conference, if they had not, by  
10 the time the scheduled prehearing conference commenced, made the arrangements requested by  
11 Staff for its review of the workpapers associated with the Henry and Horne, LLP audit dated June  
12 26, 2007, that had previously been provided to Staff.

13 57. On April 20, 2009, the prehearing conference was held as scheduled. At the  
14 prehearing conference, Staff withdrew its Motion to Compel.

15 58. On April 17, 2009, Johnson filed the rejoinder testimony of Thomas J. Bourassa  
16 (Volumes I, II and III) and Brian Tompsett.

17 59. On April 20, 2009, Swing First filed testimony summaries of its witnesses.

18 60. On April 21, 2009, Swing First filed testimony summaries of its witnesses.

19 61. On April 22, 2009, RUCO filed testimony summaries of its witnesses.

20 62. On April 24, 2009, Staff filed testimony summaries of its witnesses.

21 63. On April 23, 2009, the hearing commenced as scheduled. Appearances were entered  
22 by Johnson, intervenors Swing First, Florence, RUCO, and Staff. No members of the public  
23 appeared to provide public comment.

24 64. On Monday, April 27, 2009, at the commencement of the third day of hearing,  
25 counsel for Johnson informed the Commission that Swing First had informed counsel for Johnson  
26 over the weekend of the existence of a transcript of a recorded conversation between Swing First  
27 witness Mr. David Ashton and Johnson employee Mr. Gary Larson ("Ashton Transcript"). Counsel  
28 for Johnson indicated that counsel for Swing First intended to offer the transcript into evidence, and

1 requested that it be excluded. Counsel for Swing First had marked a copy of the Ashton Transcript  
2 as an exhibit.

3 65. The Administrative Law Judge conducted an in camera review of the Ashton  
4 Transcript, and subsequently ordered briefing on its admissibility. Discovery was reopened to  
5 allow additional discovery prior to the briefing deadline. The parties were informed that the Ashton  
6 Transcript would be treated as confidential and kept under seal pending a ruling on its admissibility,  
7 and that parties who wished to submit briefs on the transcript's admissibility could accomplish  
8 access to the Ashton Transcript by entering into a confidentiality agreement with Johnson. The  
9 timeclock for processing this matter was suspended pending a ruling on the admissibility of the  
10 Ashton Transcript.

11 66. On May 8, 2009, Pulte Homes filed a letter in the docket.

12 67. On May 11, 2009, RUCO filed its opening brief of the admissibility of the Ashton  
13 Transcript.

14 68. On May 22, 2009, Johnson, Swing First, and Staff filed opening briefs regarding the  
15 admissibility of the Ashton Transcript.

16 69. On May 29, 2009, Johnson, RUCO, and Swing First filed reply briefs regarding the  
17 admissibility of the Ashton Transcript.

18 70. On May 29, 2009, Swing First filed a Notice of Availability of Witness and Counsel,  
19 indicating that counsel for Swing First would be unavailable from June 8 through June 19, 2009,  
20 and that Swing First's witness David Ashton would be available to testify on July 9-10, 2009.

21 71. On June 1, 2009, Johnson docketed a filing in reply to issues raised in Swing First's  
22 May 29, 2009 reply brief.

23 72. On June 30, 2009, a Procedural Order was issued setting a procedural conference to  
24 commence on July 17, 2009, at 1:30 p.m., for the purpose of taking oral argument on the issues  
25 raised in the parties' briefings on the admissibility of the Ashton Transcript.

26 73. On the morning of July 17, 2009, counsel for Swing First contacted the Hearing  
27 Division to request authority to participate telephonically in the oral argument due to an unforeseen  
28 medical issue. Counsel for Swing First also informed the Hearing Division that counsel for the

1 Town of Florence would not be in attendance for the scheduled oral argument. Subsequently, on  
2 July 17, 2009, at 10:30 a.m., a telephonic procedural conference was held to address the issue.

3 Counsel for Johnson, Swing First, RUCO, and Staff attended. At the telephonic procedural  
4 conference, counsel for the parties were informed that under the circumstances, the oral argument  
5 would be continued to a later date.

6 74. On July 20, 2009, a Procedural Order was issued setting a date of July 23, 2009 for  
7 the continuance of the procedural conference originally set for July 17, 2009.

8 75. On July 23, 2009, a procedural conference was convened as scheduled. Johnson,  
9 Swing First, RUCO and Staff appeared through counsel and provided oral argument regarding the  
10 admissibility of the Ashton Transcript. After oral argument was taken, the Administrative Law  
11 Judge issued a preliminary ruling on admissibility of the Ashton Transcript, which had not yet been  
12 moved into evidence. It was ruled that portions of the Ashton Transcript might be admitted if  
13 offered for the purpose of impeachment; and that portions of the Ashton Transcript might be  
14 admitted as direct evidence in regard to (1) customer service issues, (2) billing issues, and (3)  
15 revenue issues. It was ruled that because allegations that Johnson attempted to drive Swing First  
16 out of business are not relevant to this rate case proceeding, the transcript would not be admissible  
17 in this proceeding for the purpose of supporting those allegations.

18 76. On July 24, 2009, a Procedural Order was issued setting a date of September 21,  
19 2009, for the continuance of the hearing, and setting deadlines for Staff's filing of revised  
20 surrebuttal testimony on the CAGWD assessment issue as requested by Staff, and for the Company  
21 to file rejoinder testimony in response. On July 27, 2009, a Procedural Order was issued correcting  
22 an incorrectly stated deadline in the July 24, 2009 Procedural Order.

23 77. On July 28, 2009, Staff filed revised surrebuttal testimony on the CAGWD  
24 assessment issue.

25 78. On August 17, 2009, Swing First filed a Motion for Date Certain requesting that Mr.  
26 Ashton's testimony be confined to Thursday, September 24 and Friday, September 25, 2009.

27 79. On August 27, 2009, a Procedural Order was issued denying the August 17, 2009  
28 Motion for Date Certain due to the possibility that Mr. Ashton's testimony might be required

1 beyond Friday, September 25, 2009, in order to allow sufficient time for his cross-examination.

2 80. On September 8, 2009, Johnson filed supplemental rejoinder testimony on the issue  
3 of the CAGWD assessment issue.

4 81. The hearing resumed as scheduled on September 21, 2009, and concluded on October  
5 1, 2009.

6 82. On October 26, 2009, Swing First filed a Motion to Admit Late-Filed Exhibits.

7 83. On October 29, 2009, RUCO filed a response to Swing First's October 26, 2009  
8 motion, and stated that RUCO had no objection to the admission of the proposed late-filed exhibits.

9 84. On October 30, 2009, the Company, RUCO, and Staff filed their final post-hearing  
10 schedules.

11 85. On October 30, 2009, Johnson filed a Response and Objection to Swing First's  
12 October 26, 2009 motion. Johnson objected to the admission of the proposed late-filed exhibits,  
13 and stated that if they are admitted, Johnson wishes to have the opportunity to provide additional  
14 testimony and documentary evidence to supplement the evidentiary record and to rebut certain  
15 statements in the October 26, 2009 motion.

16 86. On November 3, 2009, a Procedural Order was issued denying Swing First's October  
17 26, 2009 motion. The Procedural Order stated that the record in this proceeding is closed; that both  
18 Swing First and Johnson are parties to Docket No. WS-02987A-08-0049, which is a complaint filed  
19 by Swing First against Johnson; and that Swing First may wish to pursue the subject matter of its  
20 proposed late-filed exhibits in that docket.

21 87. On November 20, 2009, the Company, Florence, Swing First, RUCO, and Staff filed  
22 opening post-hearing briefs.

23 88. On December 11, 2009, the Company, Swing First, RUCO, and Staff filed reply post-  
24 hearing briefs.

25 **Water Rates**

26 89. The Company's FVRB for its water division is (\$13,682,831).

27 90. The Company's present rates and charges for its water division produced adjusted test  
28 year operating revenues of \$13,172,899 and adjusted test year operating expenses of \$11,769,046,

1 for a test year operating income of \$1,403,853.

2 91. For its water division, the Company requested rates that would result in total revenues  
3 of \$10,293,877, a revenue decrease of \$2,879,022, or 21.86 percent. RUCO recommended rates  
4 that would yield total revenues of \$13,099,181, a decrease of \$73,718, or 0.56 percent. Staff  
5 recommended total revenues of \$10,156,009, a decrease of \$3,016,800, or 22.90 percent.

6 92. Because the Company's adjusted FVRB for its water division is negative, a rate of  
7 return calculation is not meaningful. Based on the unique circumstances of this case, it is  
8 appropriate to use an operating margin to set fair and reasonable rates, and to allow a 10 percent  
9 operating margin, for revenues of \$13,074,377. This represents a \$98,522, or 0.75 percent, revenue  
10 decrease from \$13,172,899 to \$13,074,377. If, in the Company's next rate filing, the Company still  
11 has a negative rate base such that authorizing an operating margin in lieu of a rate of return  
12 calculation would be necessary in order to prevent operating losses, we will closely examine and  
13 give great consideration to the strength of the Company's efforts to improve its rate base prior to  
14 again granting an operating margin.

15 93. The Company's gross revenue for its water division should decrease by \$98,522.

16 94. Average and median usage during the test year for the Company's 3/4 inch meter  
17 residential water customers were 6,931 and 6,000 gallons per month, respectively.

18 95. Under the Company's proposed rates, an average usage (6,931 gallons/month)  
19 residential water customer on a 3/4-inch meter would experience a decrease of \$8.51,  
20 approximately 19.99 percent, from \$42.59 per month to \$34.08 per month. The Company's  
21 proposed rates do not include its requested adjustor for CAGR expenses and thus do not show the  
22 total amount customers would pay if the Company's requested CAGR adjustor mechanism were  
23 implemented.

24 96. Under the rates adopted herein, an average usage (6,931 gallons/month) residential  
25 water customer on a 3/4-inch meter would experience a monthly rate decrease of \$4.66,  
26 approximately 10.94 percent, from \$42.59 per month to \$37.93 per month. These rates include  
27 recovery of the Company's normalized CAGR expenses.

28 ...





1 to approval of a new hook up fee tariff for the Company in the future, a certification by a Certified  
2 Public Accounting firm that the Company has a membership equity level of at least 40 percent.

3 105. It is reasonable and in the public interest to require the Company to begin a 12-month  
4 monitoring exercise of the Johnson Ranch water system, to comply with the Staff recommendations  
5 regarding the docketing of the system monitoring results as a compliance item in this case, and to  
6 prepare and file a report as recommended by Staff if the reported water loss for the period from July  
7 1, 2010 through July 1, 2011, is greater than 10 percent. In no case should water loss be allowed to  
8 remain at 15 percent or greater. If for any reason the water loss for the Johnson Ranch water  
9 system is not reduced to less than 15 percent by August 1, 2011, Staff should be required to initiate  
10 an Order to Show Cause against the Company.

11 106. It is reasonable and in the public interest to require the Company to keep its records in  
12 accordance with the NARUC USOA and Commission rules in a manner that will support its filings  
13 with the Commission.

14 107. It is reasonable, appropriate, and in the public interest to require the Company to  
15 prepare an action plan that indicates the specific steps it will take to demonstrate, by means of its  
16 day to day record keeping regarding transactions between the Company and all entities with which  
17 it conducts business, including, but not limited to, its affiliates and related parties, that its dealings  
18 are arm's length, transparent, and well-documented; to require the Company to file the plan within  
19 90 days for Staff's review; and to require Staff to assess the plan and its adequacy, and file a report  
20 with Staff's findings and recommendations on the action plan accompanied by a Recommended  
21 Order for Commission approval or disapproval of the Company's action plan, within 60 days of  
22 receipt of the Company's action plan.

23 108. It is reasonable and in the public interest to require the Company to file, within 30  
24 days, a list of outstanding NOV's issued by ADEQ, and to list (1) the procedural status of each  
25 NOV; and (2) steps the Company is taking to come into compliance with ADEQ requirements.

26 109. It is reasonable and in the public interest to require the Company to notify the  
27 Commission at such time that the Company comes into full compliance with all ADEQ  
28 requirements, including resolving all outstanding NOV's. We will require that Staff, within 60 days

1 of receipt of such filing, review the filing, verify the Company's compliance, and file a status report  
2 in this docket indicating that the Company has come into full compliance with all ADEQ  
3 requirements.

4 **CONCLUSIONS OF LAW**

5 1. Johnson Utilities, LLC, dba Johnson Utilities Company is a public service corporation  
6 pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-203, 40-204, 40-250 and 40-  
7 251.

8 2. The Commission has jurisdiction over the Company and the subject matter of the  
9 application.

10 3. Notice of the proceeding was provided in conformance with law.

11 4. The fair value of the Company's water division rate base is (\$13,682,831), and  
12 therefore a rate of return analysis is not reasonable. Authorizing an operating margin of 10 percent  
13 produces rates and charges that are just and reasonable.

14 5. The fair value of the Company's wastewater division rate base is \$136,562, and  
15 therefore a rate of return analysis is not reasonable. Authorizing an operating margin of 10 percent  
16 produces rates and charges that are just and reasonable.

17 6. The rates and charges approved herein are reasonable.

18 7. The Company should be required to file, within 30 days, a list of outstanding NOV's  
19 issued by ADEQ, and to list (1) the procedural status of each NOV; and (2) steps the Company is  
20 taking to come into compliance with ADEQ requirements.

21 8. It is reasonable and in the public interest to require the Company to notify the  
22 Commission at such time that the Company comes into full compliance with all ADEQ  
23 requirements, including resolving all outstanding NOV's, and to require that Staff, within 60 days of  
24 receipt of such filing, review the filing, verify the Company's compliance, and file a status report in  
25 this docket indicating that the Company has come into full compliance with all ADEQ requirements.

26 9. It is reasonable and in the public interest to discontinue the Company's authority to  
27 collect additional hook up fees for both its water and wastewater divisions.

28 10. It is reasonable and in the public interest to require, as a prerequisite to approval of a

1 new hook up fee tariff for the Company in the future, certification by a Certified Public Accounting  
2 firm that the Company has a membership equity level of at least 40 percent.

3 11. It is reasonable and in the public interest to require the Company to begin a 12-month  
4 monitoring exercise of the Johnson Ranch water system; to comply with the Staff recommendations  
5 regarding the docketing of the system monitoring results as a compliance item in this case; to  
6 prepare and file a report as recommended by Staff if the reported water loss for the period from July  
7 1, 2010 through July 1, 2011, is greater than 10 percent; but in no case to allow water loss to remain  
8 at 15 percent or greater.

9 12. It is reasonable and in the public interest to require Staff to initiate an Order to Show  
10 Cause against the Company if for any reason the water loss for the Johnson Ranch water system is  
11 not reduced to less than 15 percent by August 1, 2011.

12 13. It is reasonable and in the public interest to require the Company to keep its records in  
13 accordance with the NARUC USOA and Commission rules in a manner that will support its filings  
14 with the Commission.

15 14. It is reasonable, appropriate, and in the public interest to require the Company to  
16 prepare an action plan that indicates the specific steps it will take to demonstrate, by means of its  
17 day to day record keeping regarding transactions between the Company and all entities with which it  
18 conducts business, including, but not limited to, its affiliates and related parties, that its dealings are  
19 arm's length, transparent, and well-documented; to require the Company to file the plan within 90  
20 days for Staff's review; and to require Staff to assess the plan and its adequacy, and file a report with  
21 Staff's findings and recommendations on the action plan accompanied by a Recommended Order for  
22 Commission approval or disapproval of the Company's action plan, within 60 days of receipt of the  
23 Company's action plan.

24 15. It is reasonable and in the public interest to approve the depreciation rates set forth in  
25 Exhibit A attached hereto and to require their use by the Company on a going-forward basis.

26 **ORDER**

27 IT IS THEREFORE ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
28 shall file with the Commission, on or before June 1, 2010, the schedules of rates and charges attached

1 hereto and incorporated herein as Exhibit A, which shall be effective for all service rendered on and  
2 after June 1, 2010.

3 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
4 shall notify its water and wastewater division customers of the revised schedules of rates and charges  
5 authorized herein by means of an insert, in a form acceptable to Staff, included in its next regularly  
6 scheduled billing.

7 IT IS FURTHER ORDERED that if, in Johnson Utilities, LLC, dba Johnson Utilities  
8 Company's next rate filing, the Company still has a negative rate base such that using an operating  
9 margin in lieu of a rate of return calculation would be necessary in order to prevent operating losses,  
10 we will closely examine and give great consideration to the strength of the Company's efforts to  
11 improve its rate base prior to again granting an operating margin.

12 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
13 shall file, with docket control as a compliance item in this docket, within 30 days, a list of  
14 outstanding NOV's issued by ADEQ, and to list (1) the procedural status of each NOV; and (2) steps  
15 the Company is taking to come into compliance with ADEQ requirements.

16 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
17 shall notify the Commission at such time that the Company comes into full compliance with all  
18 ADEQ requirements, including resolving all outstanding NOV's. Upon receipt of such filing, the  
19 Commission's Utilities Division shall, within 60 days, review the filing, verify the Company's  
20 compliance, and file a status report, as a compliance item in this docket, indicating that the Company  
21 has come into full compliance with all ADEQ requirements.

22 IT IS FURTHER ORDERED that the authority previously granted to Johnson Utilities, LLC,  
23 dba Johnson Utilities Company to collect hook-up fees is hereby discontinued for both its water and  
24 wastewater divisions.

25 IT IS FURTHER ORDERED that in order to receive approval of a new hook up fee tariff for  
26 either its water or wastewater division, Johnson Utilities, LLC, dba Johnson Utilities Company shall  
27 demonstrate, by means of a certification by a Certified Public Accounting firm, that it has attained a  
28 membership equity level of at least 40 percent.

1 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
2 shall begin a 12-month monitoring exercise of its Johnson Ranch water system, and shall docket the  
3 results of the system monitoring as a compliance item in this case by August 1, 2011. If the reported  
4 water loss for the period from July 1, 2010 through July 1, 2011, is greater than 10%, Johnson  
5 Utilities, LLC, dba Johnson Utilities Company shall prepare a report containing a detailed analysis  
6 and a plan to reduce water loss to 10% or less, and if it believes it is not cost effective to reduce water  
7 loss to less than 10%, the report shall include a detailed cost benefit analysis to support its opinion.  
8 This report shall be docketed as a compliance item for this proceeding for review and certification by  
9 Staff. The report or cost benefit analysis, if required, shall be docketed by September 30, 2011. In  
10 no case shall the Company allow water loss to remain at greater than 15%. If water loss is not  
11 reduced to less than 15% by August 1, 2011, Staff shall initiate an Order to Show Cause against the  
12 Company.

13 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
14 shall keep its records in accordance with the National Association of Regulatory Utility  
15 Commissioners Uniform System of Accounts and Commission rules in a manner that will support its  
16 filings with the Commission.

17 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
18 shall prepare an action plan that indicates the specific steps it will take to demonstrate, by means of  
19 its day to day record keeping regarding transactions between the Company and all entities with which  
20 it conducts business, including, but not limited to, its affiliates and related parties, that its dealings are  
21 arm's length, transparent, and well-documented. The Company shall file the plan with the  
22 Commission's Docket Control Center as a compliance item in this case within 90 days for Staff's  
23 review. Staff shall assess the plan and its adequacy, and shall file, with the Commission's Docket  
24 Control Center as a compliance item in this case, within 60 days of Staff's receipt of the Company's  
25 action plan, a report with Staff's findings and recommendations on the action plan accompanied by a  
26 Recommended Order for Commission approval or disapproval of the Company's action plan.

27 ...

28 ...

1 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company  
2 shall, on a going-forward basis, use the depreciation rates set forth in Exhibit B attached hereto.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
5  
6

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

8  
9 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

10  
11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
12 Executive Director of the Arizona Corporation Commission,  
13 have hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

16 \_\_\_\_\_  
17 ERNEST G. JOHNSON  
18 EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_

20 DISSENT \_\_\_\_\_  
21  
22  
23  
24  
25  
26  
27  
28

1 SERVICE LIST FOR: JOHNSON UTILITIES, L.L.C., DBA JOHNSON  
2 UTILITIES COMPANY

3 DOCKET NO.: WS-02987A-08-0180

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24  
25  
26  
27  
28

**EXHIBIT A****WATER DIVISION****MONTHLY USAGE CHARGE:**

5/8" x 3/4" Meter	\$ 11.00
3/4" Meter	16.50
1" Meter	27.50
1-1/2" Meter	55.00
2" Meter	88.00
3" Meter	176.00
4" Meter	275.00
6" Meter	550.00
8" Meter	880.00
10" Meter	1,265.00

**COMMODITY RATES**

(Residential, Commercial, Industrial)

All Meter Sizes

Gallons Included in Minimum 0

**5/8" x 3/4" Meter Residential**

0 to 4,000 Gallons	\$ 2.7500
4,001 to 10,000 Gallons	3.5600
Over 10,000 Gallons	4.0310

**3/4" Meter Commercial, Industrial,  
Irrigation and Public Authority**

0 gallons to 10,000 gallons	\$ 3.5600
Over 10,000 gallons	4.0310

**1" Meter**

From 1 to 32,000 gallons	3.5600
Over 32,000 gallons	4.0310

**1-1/2" Meter**

From 1 to 88,000 gallons	3.5600
Over 88,000 gallons	4.0310

**2" Meter**

From 1 to 156,000 gallons	3.5600
Over 156,000 gallons	4.0310

**3" Meter**

From 1 to 339,000 gallons	3.5600
Over 339,000 gallons	4.0310

**4" Meter**

From 1 to 545,000 gallons	3.5600
Over 545,000 gallons	4.0310

**6" Meter**

From 1 to 1,120,000 gallons	3.5600
Over 1,120,000 gallons	4.0310

**8" Meter**

From 1 to 1,800,000 gallons	3.5600
Over 1,800,000 gallons	4.0310

**10" Meter**

From 1 to 2,600,000 gallons	3.5600
Over 2,600,000 gallons	4.0310

**Construction Water** \$ 4.0310**Central Arizona Water** See Tariff



**EXHIBIT A****SERVICE LINE AND METER INSTALLATION CHARGES:**  
(Refundable Pursuant to A.A.C. R14-2-405)

	Service Line	Meter Installation	Total
5/8" x 3/4" Meter	\$ 385.00	\$ 135.00	\$ 520.00
3/4" Meter	385.00	215.00	600.00
1" Meter	435.00	255.00	690.00
1-1/2" Meter	470.00	465.00	935.00
2" Turbine Meter	630.00	965.00	1,595.00
2" Compound Meter	630.00	1,690.00	2,320.00
3" Turbine Meter	805.00	1,470.00	2,275.00
3" Compound Meter	845.00	2,265.00	3,110.00
4" Turbine Meter	1,170.00	2,350.00	3,520.00
4" Compound Meter	1,230.00	3,245.00	4,475.00
6" Turbine Meter	1,730.00	4,545.00	6,275.00
6" Compound Meter	1,770.00	6,280.00	8,050.00
8" & Larger	COST	COST	COST

**SERVICE CHARGES**

Establishment	25.00
Establishment (After Hours)	40.00
Reconnection (Delinquent)	50.00
Reconnection (Delinquent, After Hours)	N/A
Meter Test (If Correct)	25.00
Deposit (Residential)	(a)
Deposit (None-Residential)	(b)
Deposit Interest (b)	6.00%
Re-establishment (Within 12 Months)	(c)
Re-establishment (After Hours)	(c)
NSF Check	15.00
Deferred Payment, Per Month	1.50%
Meter Re-read (If Correct)	5.00
Customer Requested Per Rule 14-2-405B	Cost
After-hours Service, Per Rule R14-2-403D	Refer to Above Charges
Late Charge, Per Month	1.50%
CAP Hook-up Fee	(d)

- (a) Residential: two times the average bill.  
Non-Residential: two and one-half times the maximum monthly bill.
- (b) Interest per Rule R14-2-403(B)
- (c) Minimum charge times number of months off the system, per rule R14-2-103(D).
- (d) New water installations: May be assessed only once per parcel, service connection, or lot within a subdivision.

IN ADDITION TO THE COLLECTION OF REGULAR RATES, THE UTILITY WILL COLLECT FROM ITS CUSTOMERS A PROPORTIONATE SHARE OF ANY PRIVILEGE, SALES, USE AND FRANCHISE TAX, PER RULE 14-2-409(D)(5).

**EXHIBIT A****WASTEWATER DIVISION****MONTHLY USAGE CHARGE:**

5/8" Meter	\$ 32.3100
3/4" Meter	35.5430
1" Meter	45.2300
1-1/2" Meter	58.1616
2" Meter	93.7000
3" Meter	355.4300
4" Meter	678.5500
6" Meter	937.0500
8" Meter	1,184.4700
10" Meter	1,895.3300
Effluent: per 1,000 gallons	\$ 0.5724
Per acre foot	184.6400

**SERVICE CHARGES**

	<b><u>Staff</u></b>
Establishment	\$ 25.00
Establishment (After Hours)	40.00
Deposit (Residential)	(a)
Deposit (None-Residential)	(a)
Deposit Interest (b)	(b)
Re-establishment (Within 12 Months)	(c)
Re-establishment (After Hours)	(c)
NSF Check	15.00
Deferred Payment, Per Month	1.50%
After-hours Service, Per Rule R14-2-403D	Refer to Above Charges
Service Line Connection Charge	350.00
Late Charge, Per Month	40.00
Main Extension Tariff, per rule R14-2-606B except refunds shall be based upon 5% of gross revenues from bonafide customers, until all advances are fully refunded to the Developer.	Cost

- (a) Residential: two times the average bill.  
Non-Residential: two and one-half times the maximum monthly bill.
- (b) Interest per Rule R14-2-403(B)
- (c) Minimum charge times number of months off the system, per rule R14-2-103(D).

IN ADDITION TO THE COLLECTION OF REGULAR RATES, THE UTILITY WILL COLLECT FROM ITS CUSTOMERS A PROPORTIONATE SHARE OF ANY PRIVILEGE, SALES, USE AND FRANCHISE TAX, PER RULE 14-2-409(D)(5).

**EXHIBIT "B"**

## Wastewater Depreciation Rates

NARUC Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	20	5.00
360	Collection Sewers – Force	50	2.0
361	Collection Sewers- Gravity	50	2.0
362	Special Collecting Structures	50	2.0
363	Services to Customers	50	2.0
364	Flow Measuring Devices	10	10.00
365	Flow Measuring Installations	10	10.00
366	Reuse Services	50	<b>2.00</b>
367	Reuse Meters & Meter Installations	12	<b>8.33</b>
370	Receiving Wells	30	3.33
371	Pumping Equipment	8	12.50
374	Reuse Distribution Reservoirs	40	<b>2.50</b>
375	Reuse Transmission & Distribution System	40	2.50
380	Treatment & Disposal Equipment	20	5.0
381	Plant Sewers	20	5.0
382	Outfall Sewer Lines	30	3.33
389	Other Plant & Miscellaneous Equipment	15	6.67
390	Office Furniture & Equipment	15	<b>6.67</b>
390.1	Computers & Software	5	<b>20.0</b>
391	Transportation Equipment	5	20.0
392	Stores Equipment	25	<b>4.0</b>
393	Tools, Shop & Garage Equipment	20	5.0
394	Laboratory Equipment	10	10.0
395	Power Operated Equipment	20	5.0
396	Communication Equipment	10	<b>10.0</b>
397	Miscellaneous Equipment	10	<b>10.0</b>
398	Other Tangible Plant	----	----

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**EXHIBIT "B"**

## Water Depreciation Rates

NARUC Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
304	Structures & Improvements	30	3.33
305	Collecting & Impounding Reservoirs	40	2.50
306	Lake, River, Canal Intakes	40	2.50
307	Wells & Springs	30	3.33
308	Infiltration Galleries	15	6.67
309	Raw Water Supply Mains	50	2.00
310	Power Generation Equipment	20	5.00
311	Pumping Equipment	8	12.5
320	Water Treatment Equipment		
320.1	Water Treatment Plants	30	3.33
320.2	Solution Chemical Feeders	5	20.0
330	Distribution Reservoirs & Standpipes		
330.1	Storage Tanks	45	2.22
330.2	Pressure Tanks	20	5.00
331	Transmission & Distribution Mains	50	2.00
333	Services	30	3.33
334	Meters	12	8.33
335	Hydrants	50	2.00
336	Backflow Prevention Devices	15	6.67
339	Other Plant & Misc Equipment	15	6.67
340	Office Furniture & Equipment	15	6.67
340.1	Computers & Software	5	20.00
341	Transportation Equipment	5	20.00
342	Stores Equipment	25	4.00
343	Tools, Shop & Garage Equipment	20	5.00
344	Laboratory Equipment	10	10.00
345	Power Operated Equipment	20	5.00
346	Communication Equipment	10	10.00
347	Miscellaneous Equipment	10	10.00
348	Other Tangible Plant	10	---

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