

ORIGINAL

**EXCEPTION**

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

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Arizona Corporation Commission

DOCKETED

KRISTIN K. MAYES, Chairman 2010 MAY 17 P 4: 38  
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MAY 17 2010

A.C. CORP COMMISSION  
DOCKET CONTROL

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

DOCKET NO. WS-02987A-08-0180

**STAFF'S EXCEPTIONS TO  
RECOMMENDED OPINION AND  
ORDER**

Pursuant to A.A.C. R14-3-110 (B), the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") files exceptions to the Recommended Opinion and Order ("ROO") in the above captioned matter. Staff believes that overall, the ROO is fair, well-reasoned and should be approved by the Commission. However, Staff continues to recommends that the Company be allowed to recover from its customers the Central Arizona Groundwater Replenishment District ("CAGRDR") fees through the implementation of an adjustor mechanism, subject to specific enumerated conditions. Further, as discussed below, should the Commission adopt normalization of the CAGRDR fees, Staff would recommend, as an alternative, the method discussed below.

**I. OVERVIEW OF CAGRDR.**

Costs of the CAGRDR will be covered by a replenishment tax or replenishment assessment levied on CAGRDR members.<sup>1</sup> Water providers will pay a replenishment tax directly to the CAGRDR according to the number of acre-feet of excess groundwater they deliver within their service areas during a year. The fee is calculated each year by applying the CAGRDR rate to the excess groundwater as reported for the prior year. The CAGRDR must replenish (or recharge) in each Active Management Area the amount of groundwater pumped by or delivered to its members which exceeds the pumping limitations imposed by the Assured Water Supply Rules. This category of water is referred to as "excess groundwater".<sup>2</sup>

<sup>1</sup> See <http://www.cagrdr.com/general-information/executive-summary/access-to-groundwater/>

<sup>2</sup> Id.

1 **II. STAFF'S RECOMMENDATION PROVIDES A MORE ACCURATE**  
2 **CALCULATION OF THE CENTRAL ARIZONA GROUNDWATER**  
3 **REPLENISHMENT DISTRICT ("CAGR") FEES.**

4 Staff believes that the CAGR assessment is more properly classified as an adjuster and not a  
5 pass-through tax. Staff witness Jeffrey Michlik explains the basis of Staff's recommendation:

6 A true pass-through, like a sales tax for example, is one which is known and  
7 measurable and easily calculated and assigned. The CAGR assessment fee, on the  
8 other hand, entails a complicated calculation involving several variables which are  
9 based on prior years' data. Also more like an adjuster, the assessment represents a  
10 significant annual expense for the Company, which is anticipated to progressively  
11 increase. In order to keep its membership in CAGR, the Company must pay this  
12 fee.<sup>3</sup>

13 The complicated nature of the fee calculation is evident in a review of the Residential Utility  
14 Consumer Office ("RU") recommendation. In its calculation, RU applied the CAGR rate to  
15 the total gallon sold, rather than to the excess ground water. During the test year, the Company sold  
16 over 2.6 million 1,000-gallons, while its excess groundwater was a little over 1.2 million 1,000-  
17 gallons. RU's calculation, as reflected in its final schedules, provides over \$1 million in excess of  
18 Johnson's actual CAGR fee of \$883,842, (i.e., 119% higher than necessary).

19 **III. STAFF'S CONDITIONS ADDRESS THE COMPANY'S INABILITY TO MAINTAIN**  
20 **ADEQUATE DOCUMENTATION.**

21 The ROO cites the Company's inability to properly maintain its books and records as one of  
22 the reasons for not adopting the Staff's recommendation of an adjuster. The calculation of the  
23 adjuster is detailed in Condition 6, below. To ensure that the appropriate calculation is made and to  
24 address the Company's lack of proper record keeping, Staff continues to recommend that the  
25 CAGR adjuster mechanism be authorized, but only upon the imposition of the following  
26 conditions:

- 27
- 28 1. The initial adjuster fee shall apply to all water sold after the date new rates from this  
case become effective. In order to calculate this initial fee, the Company shall submit  
the 2008 data, as set forth in condition No. 7 below, within 30 days of the date of the  
final order in this matter.

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<sup>3</sup> Ex. S-43 at 1:20-25.

- 1           2.     The Company shall, on a monthly basis, place all CAGR D monies collected from  
2           customers in a separate, interest-bearing account ("CAGR D Account").
- 3           3.     The Company can only withdraw money from the CAGR D Account to pay the annual  
4           CAGR D fee to the CAGR D, which is due on October 15th of each year.
- 5           4.     The Company must provide to Staff a semi-annual report of the CAGR D Account and  
6           CAGR D use fees collected from customers and paid to the CAGR D, with the reports  
7           due during the last week of October and the last week of April of each year.
- 8           5.     The Company must provide to Staff, every even-numbered year (first year being 2010)  
9           by June 30th, the new firm rates set by the CAGR D for the next two years.
- 10          6.     The CAGR D adjustor fees shall be calculated as follows: The total CAGR D fees for  
11          the most current year in the Phoenix AMA shall be divided by the gallons sold in that  
12          year to determine a CAGR D fee per 1,000 gallons. Similarly, the total CAGR D fees  
13          for the most current year in the Pinal AMA shall be divided by the gallons sold in that  
14          year to determine a CAGR D fee per 1,000 gallons.
- 15          7.     By August 25th of each year, beginning in 2010, the Company shall submit for  
16          Commission consideration its proposed CAGR D adjustor fees for the Phoenix and  
17          Pinal AMAs, along with the calculations and documentation from the relevant state  
18          agencies to support the data used in the calculations. Failure to provide such  
19          documentation to Staff shall result in the immediate cessation of the CAGR D adjustor  
20          fee. Commission-approved fees shall become effective on the following October 1st.
- 21          8.     If the CAGR D changes its current method of assessing fees (i.e. based on the current  
22          volume of water used by customers) to some other method, such as, but not limited to,  
23          future projection of water usage, or total water allocated to the Company, the  
24          Company's collection from customers of CAGR D fees shall cease."
- 25          9.     As a compliance item, the Company shall submit a new tariff reflecting the initial  
26          adjustor fee as set forth Condition No. 1 above and shall annually submit a new tariff  
27          reflecting the reset adjustor fee prior to the fee becoming effective.<sup>4</sup>

28                 Staff believes that the conditions are necessary to ensure close monitoring of the Company  
and provide the Commission with necessary information. Because of the complexity of the  
calculation of the CAGR D fees, an adjustor mechanism is appropriate. Without implementation of  
the preceding nine conditions, Staff does not support implementation of the adjustor mechanism fee.

**IV. FOR NORMALIZATION, STAFF WOULD RECOMMEND USING THE COMPANY'S ACTUAL FEE ASSESSMENT.**

Normalizati on of expenses is an appropriate ratemaking tool that insures that unusual levels of  
expense in a test year do not skew expense recovery, and is used not only in cases where test year

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<sup>4</sup> Ex. S-43 at 4.

1 expenses are abnormally high, but also in cases where test year expenses are abnormally low.<sup>5</sup> If the  
2 Commission decides to normalize the Company's CAGR fees, Staff would recommend using the  
3 Company's actual fee assessment. The test year amount is known; the CAGR can provide the  
4 Company's actual fee assessment for 2008, 2009. Staff would recommend the average of the actual  
5 fees for the last years 2007, 2008 and 2009.

6           RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of May, 2010.

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9 Robin R. Mitchell, Attorney  
10 Ayesha K. Vohra, Attorney  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, AZ 85007  
14 (602) 542-3402

15 Original and thirteen (13) copies  
16 of the foregoing were filed this  
17 17<sup>th</sup> day of May, 2010 with:

18 Docket Control  
19 Arizona Corporation Commission  
20 1200 West Washington Street  
21 Phoenix, Arizona 85008

22 Copy of the foregoing mailed this  
23 17<sup>th</sup> day of May, 2010 to:

24 Jeffrey W. Crockett  
25 Bradley S. Carroll  
26 Kristoffer P. Kiefer  
27 SNELL & WILMER LLP  
28 One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004  
Attorneys for Johnson Utilities, LLC

<sup>5</sup> In the matter of Chaparral City Water Company, Docket No. W-02113A-04-0616, Decision No. 68176 at 10-11 (reversed in part, on other grounds)

1 Craig A. Marks  
2 CRAIG A. MARKS, PLC  
3 10645 North Tatum Blvd., Suite 200-676  
4 Phoenix, Arizona 85028  
5 Attorney for Swing First Golf, LLC

6 Daniel Pozefsky, Chief Counsel  
7 RESIDENTIAL UTILITY  
8 CONSUMER OFFICE  
9 1110 West Washington Street, Suite 220  
10 Phoenix, Arizona 85007-2958

11 James E. Mannato, Town Attorney  
12 TOWN OF FLORENCE  
13 P.O. Box 2670  
14 775 North Main Street  
15 Florence, Arizona 85232-2670

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