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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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7
8 IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC FOR AN
9 INCREASE IN ITS WATER AND
WASTEWATER RATES FOR CUSTOMERS
10 WITHIN PINAL COUNTY, ARIZONA.

Docket No. WS-02987A-08-0180

**RUCO'S RESPONSE TO
JOHNSON'S PETITION TO
AMEND DECISION NO. 71854**

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12 The Residential Utility Consumer Office ("RUCO") hereby files its Response to
13 Johnson's Petition to Amend Decision No. 71854. RUCO objects to Johnson's request to
14 impute income tax expense for all of the reasons cited in the underlying case as well as
15 Commissioner Brenda Burn's Dissenting Opinion on the subject in Decision No. 71854.
16 Requiring Johnson's ratepayers to pay for a "phantom tax" which Johnson as a corporate
17 entity itself does not pay is not only unfair, it is wrong and will not result in fair nor
18 reasonable rates.

19 Moreover, the Commission's methodology for calculating the tax allowance is
20 contrary to the weight of authority in the few states that have authorized an income tax
21 allowance for pass through entities. Johnson's shareholders are not required to produce
22 their actual income tax statements. The Commission's new policy will allow Johnson to
23 recover an amount that is not even based on Johnson's shareholder's actual income taxes
24 paid. In other words, Johnson will be able to recover an amount that the Company not only

1 does not pay itself but is guaranteed to be different than the actual amount of taxes its
2 shareholder's pay.

3 Johnson's request highlights the problems and the unfairness associated with the
4 Commission's policy. The Commission's policy requires the utility to compute the effective
5 tax rate for each owner based upon their proportionate share using applicable federal and
6 state income taxes. Because the shareholders are not required to file their actual returns,
7 there is no way to verify the numbers. Nonetheless, Pima Utilities recently filed a similar
8 Petition for its Water and Wastewater divisions. PIMA's ownership, like Johnsons, consists
9 mainly of entities that are married filing jointly. In the PIMA case, the effective combined
10 federal and state tax rate for the Water Division, as reported by Pima, is 22.5658% and the
11 Wastewater Division is 24.5716%. On a \$9.1 million FVRB for the Water Division, PIMA
12 seeks combined taxes of \$150,622. On a \$9.8 million FVRB for the Wastewater Division,
13 PIMA seeks combined taxes of \$166,458.

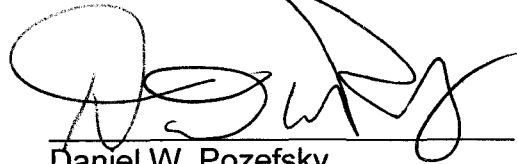
14 By comparison, in the Johnson Petition, the effective combined federal and state tax
15 rate for the Water Division, as reported by Johnson is 37.1862% and for the Wastewater
16 Division is 37.3223%. On a (\$2.4) million FVRB for the Water Division, Johnson seeks
17 combined taxes of \$118,648. On a \$17.2 million FVRB for the Wastewater Division,
18 Johnson seeks combined taxes of \$731,189. While it is truly difficult to make sense out of
19 the rates and the tax totals, one thing is for sure – now is not a good time to be a Johnson
20 customer.

21 If the Commission will not consider using the shareholder's actual taxes it should at
22 least come up with a methodology that provides consistency in its application – and not
23
24

1 allow for such disparate rates. Clearly, the approval of Johnson's Petition, under no
2 circumstances, is in the public interest.

3 Finally, RUCO would join Staff in its objection to a stay-out. Given the level of
4 increase being requested, as well as the past history of this Company before the
5 Commission, RUCO would advise against a stay-out.

6 RESPECTFULLY SUBMITTED this 4th day of April, 2013

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9 Daniel W. Pozefsky
10 Chief Counsel

11 AN ORIGINAL AND THIRTEEN COPIES
12 of the foregoing filed this 4th day of April,
13 2013.

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