

ORIGINAL



0000146686

BEFORE THE ARIZONA CORPORATION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

RECEIVED

BOB STUMP-Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JUL 26 2013

2013 JUL 26 P 1:32

DOCKETED BY
NR

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. DBA
JOHNSON UTILITIES COMPANY, FOR AN
INCREASE IN ITS WATER AND WASTE-
WATER RATES FOR CUSTOMERS WITHIN
PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

JOHNSON UTILITIES' PETITION FOR
REHEARING PURSUANT TO A.R.S.
§ 40-253

Brownstein Hyatt Farber Schreck, LLP
One East Washington, Suite 2400
Phoenix, AZ 85004

On July 16, 2013, the Arizona Corporation Commission ("Commission") issued Decision 73992 granting the request of Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") to amend Decision 71854 pursuant to A.R.S. § 40-252 to increase its rates and charges to recover income tax expense in its cost of service. In Decision 73992, the Commission adopted the recommendation of Utilities Division Staff ("Staff") to require that Johnson Utilities file a rate case for its water and wastewater divisions by June 30, 2015, using a 2014 calendar year test year.¹ In its Response to the Staff Report dated May 28, 2013, Johnson Utilities opposed the rate case filing requirement recommended by Staff.² As discussed below, the Company has only now obtained required corrections to the rates and charges that were originally approved in Decision 71854, and planned plant improvements and expansions will not be completed by 2014, thereby ensuring that the Company will be required to file back-to-back rate cases. Thus, Johnson Utilities hereby petitions the Commission for rehearing of Decision 73992 pursuant to A.R.S. § 40-253 (the "Petition for Rehearing") for the limited purpose of reconsidering the rate case filing requirement included in the decision. Specifically, Johnson Utilities requests that the Commission modify the rate case filing requirement in Decision 73992

¹ Decision 73992 at p. 6, lines 1-2.

² Johnson Utilities' Response to Staff Report at pp. 1-3.

1 to permit the Company to file a rate case for its water and wastewater divisions by June 30,
2 2017, using a 2016 calendar year test year, consistent with the amendment incorporated by the
3 Commission in Decision 73993 (July 16, 2013) for Pima Utility Company.³

4 BACKGROUND

5 On August 25, 2010, the Commission issued Decision 71854 which ordered decreases in
6 the rates and charges of Johnson Utilities for both its water and wastewater divisions retroactive
7 to June 1, 2010. Decision 71854 also authorized the Company to implement a Central Arizona
8 Groundwater Conservation District (“CAGR”) adjustor fee, subject to conditions proposed by
9 Staff. Johnson Utilities filed proposed CAGR adjustor fees with the Commission on
10 September 23, 2010. The Commission approved the CAGR adjustor fees for the Company in
11 Decision 72089 issued January 20, 2011 for customer billings for water sold subsequent to
12 October 1, 2010.⁴

13 On February 28, 2011, Johnson Utilities filed a Petition to Amend Decision 71854
14 Pursuant to A.R.S. § 40-252 to correct what the Company believed were several errors in the
15 decision.⁵ On September 15, 2011, the Commission issued Decision 72579 which increased the
16 Company’s sewer rates for billings after October 1, 2011, to address a correction in the
17 Company’s wastewater rate base and established an 8% rate of return for the Company’s
18 wastewater division.⁶ Decision 72579 also modified the late fee for wastewater service and
19 reinstated the Company’s hook-up fees tariffs for the water and wastewater divisions.

20 Decision 72579 further amended Decision 71854 by ordering that “in the event the
21 Commission alters its policy to allow S corporation and LLC entities to impute a hypothetical
22 income tax expense for ratemaking purposes, Johnson Utilities may file a motion to amend this
23 Order prospectively, and Johnson Utilities’ authorized revenue requirement hereunder, pursuant

24 ³ Decision 73993 at p. 6, lines 6-7.

25 ⁴ In Decision 72634 (October 14, 2011), the Commission authorized the inclusion of annual membership
26 dues charged by the CAGR pursuant to A.R.S. § 48-3779 in the CAGR adjustor fees for customer
27 billings for water sold subsequent to October 1, 2011.

28 ⁵ The Petition to Amend Decision 71854 Pursuant to A.R.S. § 40-252 was subsequently amended in a
filing docketed on July 26, 2011.

⁶ Decision 72579 also changed the wastewater late fee from \$40 per month to 1.5% per month and
reinstated the Company’s hook-up fees for the water and wastewater divisions.

1 to A.R.S. § 40-252, to reflect the change in Commission policy.”⁷ In Decision 73739 issued
2 February 22, 2013, the Commission adopted an Income Tax Policy Statement stating that it is in
3 the public interest to allow tax pass-through entities to include income tax expense as a part of
4 their cost of service. Immediately thereafter, on March 8, 2013, Johnson Utilities filed a Petition
5 to Amend Decision 71854 Pursuant to A.R.S. § 40-252 to increase its test year revenue
6 requirement by including income tax expense. The Commission approved the Company’s
7 request in Decision 73992 issued July 16, 2013. The new increased rates will go into effect in
8 August 2013.

9 **THERE IS NO BASIS FOR SELECTING A 2014 CALENDAR YEAR TEST YEAR**
10 **OVER ANOTHER TEST YEAR**

11 In its April 26, 2013 Staff Report and Proposed Order, Staff stated that “[b]ecause of the
12 length of time between rate cases that would occur if the Company did not file a new rate case
13 application for several years, Staff recommends that the Company be ordered to file a full rate
14 case application for its water and wastewater divisions by no later than June 30, 2015, using a
15 2014 calendar year test year.” However, Staff provided no analysis or any basis for selecting a
16 2014 test year as opposed to any other test year. As described above, Johnson Utilities’ rates
17 and charges were lowered in Decision 71854 retroactive to June 1, 2010, but were subsequently
18 modified as follows:

- 19
- 20 • New CAGR adjustor fees were implemented pursuant to Decision 72089
for customer billings for water sold after October 1, 2010.
 - 21 • Sewer rates were increased pursuant to Decision 72579 for billings after
22 October 1, 2011.
 - 23 • Increases in water and sewer rates to include income tax expense were
24 approved pursuant to Decision 73992 for billings for service provided
after August 1, 2013.

25 Johnson Utilities has been back before the Commission almost continuously regarding
26 its rates and charges since Decision 71854 was issued in the fall of 2010. Although the rates
27 initially approved in Decision 71854 went into effect in 2010, Johnson Utilities had to address

28 ⁷ Decision 72579 at p. 6, lines 4-8.

1 the erroneous removal of more than \$18 million of wastewater plant in that decision, which
2 caused the sewer division to have a negative rate base. That error was not corrected by the
3 Commission until it issued Decision 72579 a year later in September 2011.⁸ Then, the Company
4 filed its petition seeking inclusion of income tax expense which was only approved this month.
5 The new rates approved in Decision 73992 will not go into effect until August 2013. Thus, it is
6 only now that the rates and charges approved pursuant to Decision 71854 are being
7 implemented.

8 Staff has provided no analysis or basis for selecting a 2014 test year over any other year.
9 For the reasons discussed herein, Johnson Utilities requests that the Commission reconsider the
10 requirement in Decision 73992 that the Company file a rate case by June 30, 2015, using a 2014
11 calendar year test year. As discussed below, Johnson Utilities is requesting that the Commission
12 adopt a 2016 test year requirement as it did for Pima Utility Company.

13 **THE COMMISSION ORDERED A 2016 CALENDAR YEAR TEST YEAR FOR PIMA**
14 **UTILITY COMPANY IN DECISION 73993**

15 In Decision 73993, the Commission approved Pima Utility Company's March 29, 2013,
16 Petition to Amend Decision 73573 to include income tax expense in Docket W-02199A-11-
17 0329 *et al.* In that case, like this case, Staff recommended that Pima Utility Company file a rate
18 case by June 30, 2015, using a 2014 calendar year test year. Pima Utility Company opposed the
19 Staff recommendation on the grounds that (i) Staff failed to "state any reasons for this
20 recommendation or provide any explanation except to state that it will put four years between
21 rate case test years;"⁹ and (ii) a required refinancing of a five-year loan would necessarily result
22 in Pima Utility Company filing rate cases back-to-back. Pima Utility Company stated that
23 "Staff's recommendation, if adopted, will ensure that the Company and its customers go through
24 two rate cases in roughly four years, burdening the customers with the cost of both proceedings
25 and the parties with the burden of administration."¹⁰ At the Open Meeting held June 27, 2013,

26 ⁸ Decision 72579 at p. 4, lines 12-13.

27 ⁹ Pima Utility Company's Comments to Staff Report and Recommended Order (Docket W-02199A-11-
28 0329 *et al.*) at p. 2, lines 20-21.

¹⁰ *Id.* at p. 3, lines 6-9.

1 the Commission approved an amendment to Staff's Proposed Order for Pima Utility Company
2 extending the rate case filing deadline to June 30, 2017, using a 2016 calendar year test year.

3 Johnson Utilities, like Pima Utility Company, believes it will face a similar burden if
4 required to file a rate case using a 2014 calendar year test year. Over the next two to three years,
5 the Company will be investing in significant plant improvements and expansions, including a
6 major expansion of a wastewater treatment plant. Much of this planned construction will not be
7 completed by the end of 2014. In addition, Johnson Utilities is experiencing significant
8 increases in power costs, and the Company is preparing for the implementation of the Patient
9 Protection and Affordable Care Act (informally known as ObamaCare), the full financial impact
10 of which will not be known until after the current 2014 test year. Thus, requiring the filing of a
11 rate case using a 2014 calendar year test year will very likely lead to Johnson Utilities filing
12 back-to-back rate cases, which would be burdensome for the Company and its customers.

13 Johnson Utilities acknowledges and understands the legitimate interest of the
14 Commission and Staff in having utilities file periodic and regular rate cases. However, given
15 that Staff has provided no basis for selecting a 2014 calendar year test year over another year,
16 and given that Johnson Utilities has articulated several reasons why the Commission should
17 push back the test year to 2016, the Company requests that the Commission modify Decision
18 73992 by ordering a 2016 calendar year test year instead of a 2014 calendar year test year. This
19 would be consistent with the Commission's treatment of Pima Utility Company in Decision
20 73993.

21 REQUESTED RELIEF

22 For the reasons set forth herein, Johnson Utilities requests that the Commission grant its
23 Petition for Rehearing for the limited purpose of modifying Decision 73992 to require a rate
24 case filing by June 30, 2017, using a calendar year 2016 test year. Specifically, the Company
25 requests that the Commission revise Conclusion of Law 7 on page 5 and the first ordering
26 paragraph at the top of page 6 of Decision 73992, as follows:

1 7. Staff's recommendations are reasonable and hereby approved, except that we
2 will not adopt Staff's recommendation in Finding of Fact 21 requiring the
3 Company to file a full rate case no later than June 30, 2015, using a 2014 calendar
4 year test year. We will, however, require the Company to file a full rate case no
5 later than June 30, 2017, using a 2016 calendar year test year.

6 * * *

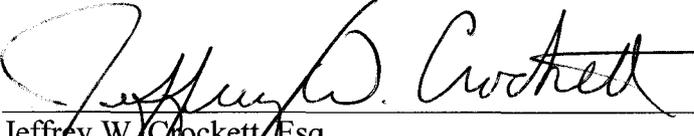
7 IT IS FURTHER ORDERED that the recommendations of Staff discussed in
8 Findings of Fact 19 ~~through 21~~ and 20 are reasonable and are hereby adopted.¹¹

9 In addition, a new ordering paragraph should be added on page 6, as follows:

10 IT IS FURTHER ORDERED that the Company shall file a full rate case for both
11 its water and wastewater divisions by no later than June 30, 2017, using a 2016
12 calendar year test year.

13 RESPECTFULLY submitted this 26th day of July, 2013.

14 BROWNSTEIN HYATT FARBER SCHRECK LLP

15 
16 Jeffrey W. Crockett, Esq.
17 One East Washington Street, Suite 2400
18 Phoenix, Arizona 85004
19 Attorneys for Johnson Utilities, L.L.C.

20 ORIGINAL and thirteen (13) copies of the foregoing
21 filed this 26th day of July, 2013, with:

22 Docket Control
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 COPY of the foregoing hand-delivered
27 this 26th day of July, 2013, to:

28 Lyn Farmer, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

¹¹ Deleted text is denoted by a strike-through and added text is denoted by underscoring.

Brownstein Hyatt Farber Schreck, LLP
One East Washington, Suite 2400
Phoenix, AZ 85004

1 Janice Alward, Chief Counsel
2 Legal Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

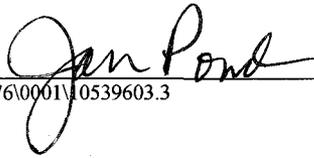
6 Steve Olea, Director
7 Utilities Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Copy of the foregoing sent via e-mail and first
12 class mail this 26th day of July, 2013, to:

13 Daniel Pozefsky, Chief Counsel
14 RESIDENTIAL UTILITY CONSUMER OFFICE
15 1110 West Washington Street
16 Phoenix, Arizona 85007

17 Craig A. Marks
18 CRAIG A. MARKS, PLC
19 10645 N. Tatum Blvd. Suite 200-676
20 Phoenix, Arizona 85028

21 James E. Mannato, Town Attorney
22 TOWN OF FLORENCE
23 P.O. Box 2670
24 775 N. Main Street
25 Florence, Arizona 85232-2670

26
27
28

014676\0001\10539603.3