

ORIGINAL



0000148412

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

RECEIVED

2013 SEP 20 P 1:03

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 20 2013

DOCKETED

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

**PROCEDURAL ORDER**  
**(Setting Procedural Conference)**

BY THE COMMISSION:

On March 31, 2008, Johnson Utilities, LLC, dba Johnson Utilities Company (“Johnson Utilities” or “Company”) filed with the Arizona Corporation Commission (“Commission”) an application for an increase in its water and wastewater utility rates.

The parties to this docket are the Johnson Utilities, Swing First Golf, LLC (“Swing First”), the Town of Florence (“Florence”), the Residential Utility Consumer Office (“RUCO”), and the Commission’s Utilities Division (“Staff”).

On August 25, 2010, the Commission issued Decision No. 71854, approving new rates and implementing a Central Arizona Groundwater Replenishment District Adjustor Mechanism for Johnson Utilities.

On September 15, 2011, the Commission issued Decision No. 72579. Decision No. 72579 amended Decision No. 71854 by increasing the wastewater division’s fair value rate base, adopting an 8.0 percent rate of return for the wastewater division, increasing the revenue requirement for the wastewater division and authorizing an increase in wastewater rates, authorizing new hook-up fee tariffs, and ordering that in the event the Commission alters its policy to allow S-corporation and LLC entities to impute a hypothetical income tax expense for ratemaking purposes, Johnson Utilities may file a motion to amend Decision No. 72579 prospectively to increase the Company’s authorized revenue requirement to reflect the change in Commission policy.

1 On February 21, 2013, the Commission issued Decision No. 73739 in Docket No. W-  
2 00000C-06-0149. Decision No. 73739 adopted a policy which allows imputed income tax expense in  
3 the cost of service for limited liability companies, S-corporations, partnerships, and sole  
4 proprietorships. The policy states that it will be applied in pending and future rate cases, and allows  
5 companies previously denied recognition of income tax expense to make a filing under A.R.S. § 40-  
6 252 to modify the revenue requirement authorized in their most recent rate case in order to include  
7 income tax expense prospectively. The policy also includes a 7-step protocol for determining the  
8 income tax expense.

9 On March 8, 2013, the Company filed a petition to amend Decision No. 71854 pursuant to  
10 A.R.S. § 40-252, requesting that the Commission amend Decision No. 71854 to increase the  
11 Company's test year revenue requirement and rates to reflect the inclusion of income tax expense  
12 based upon the policy set forth in Decision No. 73739 ("Petition"). The Petition included certain rate  
13 schedules, and requested approval without a hearing, following verification of the included  
14 information and schedules by Staff.

15 On April 4, 2013, RUCO filed a Response to the Petition, objecting to the Company's  
16 recovery of income tax expense and to the methodology proposed for calculating the expense  
17 amount.

18 On April 19, 2013, Swing First filed a Response to the Petition, asserting that the Company's  
19 request should not be considered until the Company comes into full compliance with the Arizona  
20 Department of Environmental Quality requirements, and resolves existing issues with Swing First.

21 On April 26, 2013, Staff filed a Staff Report and Proposed Order recommending approval of  
22 the requested rate increase and associated rate design. Staff also recommended that the Company  
23 provide notice of the Petition via a special direct mailing to all of its customers and to all parties to  
24 the case, and that the Company be ordered to file a full rate case application for both its water and  
25 wastewater divisions by no later than June 30, 2015, using a calendar year 2014 test year.

26 On May 10, 2013, the Company filed an Affidavit of Mailing Public Notice indicating that it  
27 mailed a copy of notice of the Petition on or about May 7, 2013, in a special direct mailing to all of  
28

1 the Company's customers and to all parties on the service list for this docket, indicating the effects  
2 that approval of the Petition would have on customers' rates.

3 Numerous public comments were filed opposing the Petition.

4 On May 28, 2013, the Company filed a Response to Staff Report, objecting to Staff's  
5 recommendation that the Company be required to file a rate case using a calendar year 2014 test year,  
6 and stating that the Company's requested income tax expense recovery should be treated as an  
7 imputed cost of service expense rather than as an allowance that increases the fair value rate of  
8 return.

9 On June 18, 2013, Swing First filed a supplemental Response to the Petition, reiterating the  
10 concerns from its April 19, 2013, filing.

11 On July 16, 2013, the Commission issued Decision No. 73992. Decision No. 73992 increases  
12 the Company's rates to reflect recovery of income tax expense as requested by the Company,  
13 classifies the income taxes as an imputed expense, and requires the filing of a rate case as  
14 recommended by Staff.

15 On July 26, 2013, Johnson Utilities filed a petition for rehearing of Decision No. 73992  
16 pursuant to A.R.S. § 40-253. Johnson Utilities requests that the Commission grant its rehearing  
17 request for the limited purpose of modifying Decision No. 73992 to require a rate case filing by June  
18 30, 2017, using a calendar year 2016 test year, rather than the dates recommended by Staff and  
19 adopted in Decision No. 73992.

20 On July 31, 2013, RUCO filed an application for rehearing of Decision No. 73992 pursuant to  
21 A.R.S. § 40-253. RUCO disagrees with Decision No. 73992 as a matter of public policy, and claims  
22 that Decision No. 73992 violates Arizona's Constitution by increasing rates based on a new expense  
23 without a meaningful fair value analysis, citing to *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578  
24 P.2d 612 (Ariz. App. 1978). RUCO also claims that the manner in which Decision No. 73992  
25 imputes the income tax expense is arbitrary, capricious, and an abuse of discretion, because the  
26 expense amount is not based on the Company shareholders' actual income taxes.

27 At the Commission's August 15, 2013, Staff Open Meeting, the Commission voted to grant  
28 both Johnson Utilities' and RUCO's requests to rehear Decision No. 73992 pursuant to A.R.S. § 40-

1 253; directed the Hearing Division to hold proceedings on rehearing and prepare a Recommended  
2 Opinion and Order for Commission consideration; and directed that the rehearing issue first be  
3 brought back to a future Open Meeting, in order to provide further direction to the Hearing Division.

4 At a the Commission's September 11, 2013, Staff Open Meeting, the Commission approved a  
5 motion to reopen this docket pursuant to A.R.S. § 40-252, for purposes of considering whether to  
6 modify any Commission Decisions entered in this docket related to determinations in the Decisions  
7 that may be implicated by RUCO's and Johnson Utilities' applications for rehearing of Decision No.  
8 73992, in order to ensure that RUCO and Johnson Utilities have an opportunity to address the matters  
9 raised in the rehearing applications. The motion directed the Hearing Division to conduct  
10 proceedings and hold evidentiary hearings in order to take evidence in accordance with the *Scates*  
11 opinion and Arizona law.<sup>1</sup>

12 A procedural conference should be held to discuss the procedural schedule for the  
13 presentation of evidence in the rehearing proceeding in accordance with the *Scates* opinion and  
14 Arizona law.

15 IT IS THEREFORE ORDERED that that a procedural conference shall be held on **October 4,**  
16 **2013, commencing at 1:30 p.m., or as soon thereafter as practicable,** at the Commission's offices,  
17 **Hearing Room No. 2,** 1200 West Washington Street, Phoenix, Arizona 85007, to discuss procedural  
18 issues related to the rehearing of Decision No. 73992, including a schedule for the presentation of  
19 evidence in accordance with the *Scates* opinion and Arizona law.

20 ...  
21 ...  
22 ...  
23 ...  
24 ...  
25 ...

26 \_\_\_\_\_  
27 <sup>1</sup> Commissioner Bob Burns, who made the motion, explained that the purpose of his motion was to ensure that RUCO and  
28 Johnson Utilities have the opportunity to address the matters raised in their applications for rehearing, and that they are  
not foreclosed from pursuing any matter raised in their rehearing applications because of the Commission's prior  
determinations in this docket.

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
2 or waive any portion of this procedural order either by subsequent procedural order or by ruling at  
3 hearing.

4 DATED this 20<sup>th</sup> day of September, 2013.

6   
7 TEENA JIBILIAN  
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 20<sup>th</sup> day of September, 2013 to:

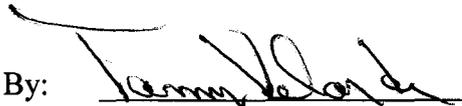
11 Jeffrey W. Crockett  
12 BROWNSTEIN HYATT FARBER  
13 SCHRECK, LLP  
14 40 North Central Avenue, 14th Floor  
Phoenix, AZ 85004  
Attorneys for Johnson Utilities, LLC

Steve Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007-2927

15 Craig A. Marks  
16 CRAIG A. MARKS, PLC  
17 10645 North Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
Attorney for Swing First Golf, LLC

ARIZONA REPORTING SERVICE, INC.  
2200 N. Central Ave., Suite 502  
Phoenix, AZ 85004-1481

18 Daniel Pozefsky, Chief Counsel  
19 RESIDENTIAL UTILITY  
20 CONSUMER OFFICE  
21 1110 West Washington Street, Suite 220  
Phoenix, AZ 85007-2958

By:   
Tammy Velarde  
Assistant to Teena Jibilian

22 James E. Mannato, Town Attorney  
23 TOWN OF FLORENCE  
24 P.O. Box 2670  
775 North Main Street  
Florence, AZ 85232-2670

25 Janice Alward, Chief Counsel  
26 Legal Division  
27 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
28 Phoenix, AZ 85007-2927