

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2013 NOV -4 P 4.47
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
NOV 04 2013

DOCKETED BY

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

**NOTICE OF FILING
SETTLEMENT AGREEMENT
AND
REQUEST FOR MODIFIED
PROCEDURAL ORDER, OR IN THE
ALTERNATIVE, REQUEST FOR
PROCEDURAL CONFERENCE**

On July 16, 2013, the Arizona Corporation Commission (“Commission”) issued Decision 73992 authorizing an increase in the water and wastewater rates of Johnson Utilities, LLC (“Johnson Utilities” or the “Company”) to include imputed income tax expense and requiring that the Company file a full rate case for both its water and wastewater divisions no later than June 30, 2015, using a 2014 test year. On July 26, 2013, Johnson Utilities filed a Petition for Rehearing Pursuant to A.R.S. § 40-253 (the “Rehearing Petition”) requesting that the Commission modify the rate case filing requirement to permit the Company to file a rate case for its water and wastewater divisions by June 30, 2017, using a 2016 calendar year test year. On July 31, 2013, the Residential Utility Consumer Office (“RUCO”) filed an Application for Rehearing of Decision No. 73992 (the “Rehearing Application”) because RUCO opposed the Commission’s authorization of imputed income tax expense in the case of Johnson Utilities as set forth in the Rehearing Application. On November 1, 2013, Johnson Utilities and RUCO entered into a Proposed Settlement Agreement (the “Settlement Agreement”) fully resolving the issues raised in RUCO’s Rehearing Application and the Company’s Rehearing Petition. A copy of the Settlement Agreement is attached hereto as Attachment 1.

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

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1 If approved, the Settlement Agreement will fully resolve the issues raised by RUCO in
2 its Rehearing Application. Thus, if approved, the Settlement Agreement will obviate the need
3 for Johnson Utilities to file fair value rate base schedules as required in the procedural order
4 issued October 5, 2013. Accordingly, Johnson Utilities requests that the administrative law
5 judge (“ALJ”) stay the required filing of schedules by the Company and the filing of responses
6 by RUCO and Staff pending action on the Settlement Agreement.

7 Johnson Utilities further requests that the ALJ issue a modified procedural order that:
8 (i) sets a deadline for a filing by Staff regarding the Settlement Agreement; and (ii) sets a
9 deadlines for responses by Johnson Utilities and RUCO to Staff’s filing. Alternatively, if the
10 ALJ desires to hear from the parties before modifying the procedural order, then Johnson
11 Utilities requests that the ALJ schedule a procedural conference at the earliest opportunity.

12 I. **OVERVIEW OF SETTLEMENT AGREEMENT.**

13 The Settlement Agreement between Johnson Utilities and RUCO fully resolves all
14 disputes between the two parties pertaining to Decision 73992, and likewise, resolves all
15 issues between the parties raised in RUCO’s Rehearing Application and the Company’s
16 Rehearing Petition. The Settlement Agreement provides the following benefits:

- 17 • Requires independent verification that the actual weighted average
18 income tax rate of the members of Johnson Utilities is at least equal
19 to or higher than the imputed income tax rate of 25% for the
20 wastewater division which the parties agree to in the Settlement
21 Agreement.
- 22 • Reduces the applicable imputed income tax rate from 36.6558% to
23 25.00% for the wastewater division, resulting in lower wastewater
24 rates and combined annual savings for wastewater customers of
25 close to \$300,000.
- 26 • Requires Johnson Utilities to file a rate case by June 30, 2016, using
27 a 2015 test year as opposed to filing a rate case by June 30, 2017,
28 using a 2016 test year as requested in the Company’s Rehearing
Petition.
- Requires Johnson Utilities to file yearly earnings reports, in the form
of the schedules attached as Exhibit A to the Settlement Agreement,

1 for the years 2013 and 2014 prior to the next rate case.

- 2
- Avoids further litigation and cost for both parties.
 - Does not impair the right of RUCO to challenge or the right of Johnson Utilities to support future determinations regarding the imputation of income tax for limited liability companies, subchapter S corporations, and other forms of tax pass-through entities.
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Pursuant to Section 2.2 of the Settlement Agreement, within 30 days of Commission approval, Johnson Utilities would file a revised tariff with the new lower wastewater rates. The new wastewater rates would be effective for all billings on and after the date of the Commission's order approving the Settlement Agreement. The Settlement Agreement does not affect the rates for water service approved in Decision 73992 which shall remain in effect.

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Pursuant to Section 3.1, the Settlement Agreement serves as a procedural device by which the parties submit their proposed settlement to the Commission for approval. The parties acknowledge that the Commission will independently consider and evaluate the terms of the Settlement Agreement.

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16 **II. REQUEST FOR MODIFIED PROCEDURAL ORDER, OR**
17 **ALTERNATIVELY, REQUEST FOR PROCEDURAL CONFERENCE.**

In the October 5, 2013 procedural order, the ALJ ordered that Johnson Utilities docket, on or before November 4, 2013, "a filing indicating the type of schedules on fair value rate base, revenues, expenses, operating income, and the resulting rate of return, for both its divisions, that the Company plans to present in this proceeding, and when it plans to file that evidence." The ALJ further ordered that RUCO and Staff each file, on for before November 26, 2013, a response to the November 4, 2013 filing. If approved, the Settlement Agreement will fully resolve the issues raised by RUCO in its Rehearing Application. Thus, if approved, the Settlement Agreement will obviate the need for Johnson Utilities to file fair value rate case schedules as required in the November 4, 2013 procedural order. Accordingly, Johnson Utilities requests that the ALJ stay the required filing of schedules and the filing of responses by RUCO and Staff pending action on the Settlement Agreement.

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1 The Settlement Agreement also resolves all issues between Johnson Utilities and RUCO
2 pertaining to the Company's Rehearing Petition. In its Rehearing Petition, Johnson Utilities
3 requested a 2016 test year, but in the Settlement Agreement with RUCO, the Company has
4 agreed to a 2015 test year.

5 With the filing of the Settlement Agreement, neither RUCO nor Johnson Utilities
6 believes that a hearing is necessary on either RUCO's Rehearing Application or the Company's
7 Rehearing Petition. Thus, Johnson Utilities requests that the ALJ issue a modified procedural
8 order that: (i) sets a deadline for a filing by Staff regarding the Settlement Agreement; and
9 (ii) sets a deadlines for responses by Johnson Utilities and RUCO to Staff's filing.
10 Alternatively, if the ALJ desires to hear from the parties before modifying the procedural order,
11 then Johnson Utilities requests that the ALJ schedule a procedural conference at the earliest
12 opportunity.

13 RESPECTFULLY submitted this 4th day of November, 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.

19 ORIGINAL and thirteen (13) copies filed
20 this 4th day of November, 2013, with:

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

25 COPY of the foregoing hand-delivered
26 this 4th day of November, 2013, to:

27 Lyn Farmer, Chief Administrative Law Judge
28 Hearing Division
29 ARIZONA CORPORATION COMMISSION
30 1200 West Washington Street
31 Phoenix, Arizona 85007

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 mailed and e-mailed
12 this 4th day of November, 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

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ATTACHMENT 1

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

The purpose of this Settlement Agreement ("Agreement") is to settle all issues related to Docket No. WS-02987A-08-0180 to RUCO's Motion to Rehear Decision No. 73992. This Agreement is entered into by the following entities:

Johnson Utilities, LLC
Residential Utility Consumer Office

These entities shall be referred to collectively as "Signatories;" a single entity shall be referred to individually as a "Signatory."

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

I. RECITALS

- 1.1 On September 15, 2011, the Arizona Corporation Commission ("Commission") established the rates for Johnson Utilities, LLC ("Johnson" or the "Company") in Decision No. 72579. Decision No. 72579 amended the rates that had been set for Johnson in Decision No. 71854 issued on August 25, 2010.
- 1.2 On March 8, 2013, the Company filed a petition to amend Decision No. 71854 under §40-252 to allow for imputed income taxes. On June 27, 2013, the Commission issued Decision No. 73992 which approved the Company's request to amend Decision No. 71854 to impute income taxes.
- 1.3 On July 26, 2013, the Company filed a Petition for Rehearing of Decision No. 73992 ("Petition") requesting the Commission to modify the rate case filing requirement in Decision No. 73992 to June 30, 2017, using a 2016 test year.
- 1.4 On July 31, 2013, the Residential Utility Consumer Office ("RUCO") filed an Application for Rehearing of Decision 73992 ("Application") requesting that the Commission reconsider its decision to allow imputed income tax expense in the rates of Johnson.
- 1.5 The Commission subsequently granted both the Company's Petition and RUCO's Application. Thereafter, RUCO and the Company met for the purpose of settling the matter and arrived at an agreement ("Agreement"), as set forth herein.
- 1.6 The Signatories believe that this Agreement is a fair resolution to this matter and all things considered is in the public interest. The benefits include:
 - Independent verification that the Company's member's actual weighted average tax rate is at least equal to or higher than the imputed rate of 25% that the Signatories are agreeing to in this Agreement.
 - Will reduce the applicable income tax rate to from 36.6558% to 25% for the wastewater division.
 - Will require the Company to file its next rate case by June 30, 2016, using a 2015 test year as opposed to filing by June 30, 2017, using a 2016 test year as requested by the Company in its Petition.

PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180

- Will require the Company to file yearly earnings reports for the years 2013 and 2014 prior to the next rate case.
- Avoids further litigation and cost to both Signatories.
- Will not impair RUCO's right to challenge or the Company's rights to support future determinations regarding the imputation of income tax for limited liability companies, subchapter S corporations, and other forms of tax pass-through entities.

II. TERMS AND CONDITIONS

- 2.1 The Company shall provide verification prior to the filing of this Agreement with the Commission through an independent third party certified public accountant (CPA) that the weighted average of the income taxes paid by all of the Company's shareholders for the 2007 test year is at least equal to or greater than 25%.
- 2.2 The applicable income tax rate for purposes of determining the amount of income tax to be imputed shall be reduced to 25% for the Company's wastewater division. Within thirty days of Commission approval of this Agreement, the Company will file a revised tariff with the new lower wastewater rates. The new wastewater rates shall be effective for all billings by the Company on and after the date of the Commission order approving this Agreement. This Agreement shall not affect the rates for water service approved in Decision 73992, which shall remain in effect.
- 2.3 The Company shall file a yearly earnings report starting with 2013 by the last day of the following February for each year prior to the next rate case filing. The Company shall make such filings in the form of the schedules attached hereto as Exhibit A.
- 2.4 The Company shall file its next rate case by June 30, 2016 and shall use the 2015 calendar test year.
- 2.5 If the Commission approves this Agreement, neither Signatory will thereafter challenge Commission's Decision 73992 for any reason.
- 2.6 The purpose of this Agreement is to resolve RUCO's Application and the Company's Petition and not to act as precedent and impair or impede in any manner either Signatory's right to challenge and/or support any future decision of the Commission in any other case on any of the issues that are the subject of this Agreement. The Signatories understand and accept that future positions of the Signatories in other cases on the same issues which are inconsistent or adverse to the positions taken by the Signatories in this Agreement do not constitute a breach of this Agreement for failure to support the terms and conditions of this Agreement, or any other reason.

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

III. COMMISSION EVALUATION OF PROPOSED SETTLEMENT

- 3.1 This Agreement will serve as a procedural device by which the Signatories will submit their proposed settlement to the Commission.
- 3.2 The Signatories recognize that the Commission will independently consider and evaluate the terms of this Agreement. If the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Signatories shall abide by the terms as approved by the Commission.
- 3.3 If the Commission fails to issue an order adopting all material terms of this Agreement, either Signatory may withdraw from this Agreement, and such Signatory may pursue without prejudice its respective remedies at law. For purposes of this Agreement, whether a term is "material" shall be left to the discretion of the Signatory choosing to withdraw from the Agreement.

IV. MISCELLANEOUS PROVISIONS

- 4.1 The acceptance by any Signatory of a specific element of this Agreement shall not be considered as precedent for acceptance of that element in any other context.
- 4.2 No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.
- 4.3 Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, and or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except to secure approval of this Agreement and enforce its terms.
- 4.4 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

- 4.5 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable.

- 4.6 The Signatories shall make reasonable and good faith efforts necessary to obtain a Commission order approving this Agreement. The Signatories shall support and defend this Agreement before the Commission. Subject to paragraph 3.2 above, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.

- 4.7. This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.

RESIDENTIAL UTILITY CONSUMER OFFICE

By 
Title Director - RUCO
Date 10/30/2013

JOHNSON UTILITIES, LLC

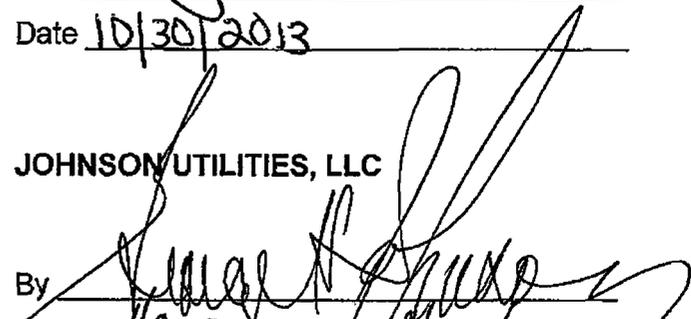
By 
Title Managing Member
Date 11-10-13

EXHIBIT A

Johnson Utilities - WW Division

SCHEDULE NO. 1

Rate Base

Docket No. _____

RATE BASE

1	PLANT		
2	Plant in Service	_____	
3	Less: Accumulated Depreciation	_____	_____
4	Net Plant		
5			
6	DEDUCTIONS		
7	Advances in Aid of Construction	_____	
8			
9	Contributions in Aid of Construction ("CIAC")	_____	
10	Accumulated Depreciation of CIAC	_____	
11	Net CIAC		
12			
13	Customer Meter Deposit	_____	
14			
15	Customer Security Deposits	_____	
16			
17	Accumulated Deferred Income Taxes ("ADIT")	_____	
18			
19			
20	ADDITIONS		
21	Deferred Regulatory Assets (Liabilities)	_____	
22			
23	Allowance for Working Capital	_____	_____
24			
25	Net Additions and Deductions		
26			
27	TOTAL RATE BASE		=====
28			
29			
30			
31	RATE OF RETURN		
32	Fair Value Rate Base - Ln 27 Above	_____	
33			
34	Operating Income - Schedule 3 Ln 30	_____	
35			
36	Current Rate of Return Ln 34 / Ln 32	_____	
37			
38	Approved Rate of Return - Last Rate Case	_____	
39			
40	Number of Customers - Last Rate Case	_____	
41			
42	Number of Customers - This Filing	_____	

Balance Sheet

Docket No. _____

WW DIVISION BALANCE BALANCE SHEET

1	<u>CURRENT AND ACCRUED ASSETS</u>		
2	Cash	_____	
3	Working Funds	_____	
4	Temporary Cash Investments	_____	
5	Customer Accounts Receivable	_____	
6	Notes/Receivables from Associated Companies	_____	
7	Plant Materials and Supplies	_____	
8	Prepayments	_____	
	Miscellaneous Current / Accrued Assets	_____	_____
9	Total Current and Accrued Assets		_____
10			
11	<u>FIXED ASSETS</u>		
12	Utility Plant In Service	_____	
13	Property Held far Future Use	_____	
14	Construction Work in Progress	_____	
15	Accumulated Depreciation - Utility Plant	_____	
16	Non-Utility Property	_____	
17	Accumulated Depreciation - Non Utility	_____	_____
18	Total Fixed Assets		_____
19			
20	TOTAL ASSETS		=====
21			
22	<u>CURRENT AND ACCRUED LIABILITIES</u>		
23	Accounts Payable	_____	
24	Notes Payable (Current Portion)	_____	
25	Notes / Accounts Payable to Assc Company	_____	
26	Security Deposits	_____	
27	Accrued Taxes	_____	
28	Accrued Interest	_____	
29	Miscellaneous Current / Accrued Liabilities	_____	_____
30	Total Current Liabilities		_____
31			
32	<u>LONG TERM DEBT</u>	_____	
33			
34	<u>DEFERRED CREDITS</u>		
35	Unamortized Premium on Debt	_____	
36	Advances in Aid of Construction	_____	
37	Accumulated Deferred Tax Credits	_____	
38	Contributions in Aid of Construction	_____	
39	Less: Amortizations of Contributions	_____	
40	Contributions in Aid of Construction - PHFU	_____	
41	Accumulated Deferred Income Tax	_____	
42	Total Deferred Credits		_____
43			
44	TOTAL LIABILITIES		_____
45			
46	<u>EQUITY</u>		
47	Common Stock Issued	_____	
48	Paid in Capital in Excess of Par Value	_____	
49	Retained Earnings	_____	
50	Proprietary Capital (Partnerships)	_____	
51	Total Equity		_____
52			
53	TOTAL LIABILITIES AND EQUITY		=====

Operating Income

Docket No. _____

SCHEDULE OF INCOME

1	<u>OPERATING REVENUES</u>		
2	Metered Water Revenue	_____	
3	Annualized Revenues from 40-252 Tax Case	_____	
4	Unmetered Water Revenue	_____	
5	Other Water Revenues	_____	_____
6	Total Operating Revenues		
7			
8	<u>OPERATING EXPENSES</u>		
9	Salaries and Wages	_____	
10	Purchased Water	_____	
11	Purchased Power	_____	
12	Sludge Removal	_____	
13	Chemicals	_____	
14	Repairs and Maintenance	_____	
15	Office Supplies and Expense	_____	
16	Outside Services	_____	
17	Water Testing	_____	
18	Rents	_____	
19	Transportation Expenses	_____	
20	Insurance Expense	_____	
21	Reg. Commission Expense	_____	
22	Bad Debt Expense	_____	
23	Miscellaneous Expense	_____	
24	Depreciation	_____	
25	Taxes Other Than Income	_____	
26	Property Taxes	_____	
27	Income Tax	_____	_____
28	Total Operating Expenses		
29			
30	<u>OPERATING INCOME (LOSS)</u>		_____
31			
32	<u>OTHER INCOME (LOSS)</u>		
33	Interest and Dividend Income	_____	
34	Non-Utility Income	_____	
35	Miscellaneous Non-Utility Income	_____	
36	Interest Expense	_____	_____
37	Total Other Income (Loss)		
38			
39	<u>NET INCOME (LOSS)</u>		_____
40			