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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

Arizona Corporation Commission  
**DOCKETED**

FEB 10 2014

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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

PROCEDURAL ORDER  
(Setting Rehearing Schedule)

**ORIGINAL**

**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 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 July 16, 2013, after notice to the parties to this docket and to Johnson Utilities’ customers informing them of an opportunity to intervene, the Commission issued Decision No. 73992, amending Decision Nos. 71854 (August 25, 2010) and 72579 (September 15, 2011) pursuant to A.R.S. § 40-252. Decision No. 73992 increased the Company’s rates to reflect recovery of income tax expense as requested by the Company, and classified the income taxes as an imputed expense. Decision No. 73992 also requires the Company to file a full rate case for both its water and wastewater divisions no later than June 30, 2015, using a 2014 test year.

Johnson Utilities and RUCO each requested, on different grounds, rehearing of Decision No. 73992 pursuant to A.R.S. § 40-253. The Commission granted both requests, and also reopened this docket pursuant to A.R.S. § 40-252. The Commission directed the Hearing Division to conduct proceedings and hold evidentiary hearings in order to take evidence in accordance with the *Scates*

1 opinion<sup>1</sup> and Arizona law.

2 On October 4, 2013, a procedural conference convened as scheduled to discuss the schedule  
3 for presentation of evidence in the rehearing proceeding in accordance with the *Scates* opinion and  
4 Arizona law. Johnson Utilities, RUCO, and Staff appeared through counsel and discussed the  
5 evidence to be presented.

6 On October 8, 2013, a Procedural Order was issued setting initial filing dates for the rehearing  
7 proceeding, in accordance with the discussion at the October 4, 2013 procedural conference.

8 On November 4, 2013, Johnson Utilities and RUCO filed a Settlement Agreement.

9 The Settlement Agreement calls for two changes to Decision No. 73992: 1) a decrease in  
10 wastewater rates due to a reduction in the income tax rate of 36.6558 percent approved by Decision  
11 No. 73992 to 25.00 percent; and 2) a change in the requirement that Johnson Utilities file a full rate  
12 case no later than June 30, 2015, using a 2014 test year. The Settlement Agreement contemplates a  
13 full rate case filing one year later - no later than June 30, 2016, using a 2015 test year.

14 On November 19, 2013, a Procedural Order was issued setting a procedural conference to  
15 allow the parties to discuss an appropriate procedural schedule.

16 On December 5, 2013, a procedural conference convened as scheduled. Johnson Utilities,  
17 RUCO, and Staff appeared through counsel, and set forth their positions on the need for an  
18 evidentiary hearing and a possible hearing schedule. No other parties appeared.

19 On December 31, 2013, Johnson Utilities filed, in Docket No. WS-02987A-13-0477, an  
20 application for approval of a sale and transfer of assets and conditional cancellation of its Certificate  
21 of Convenience and Necessity ("CC&N").

22 On January 17, 2014, Johnson Utilities and RUCO each filed in this docket Direct Testimony  
23 of their respective witnesses in support of the Settlement Agreement.

24 On January 22, 2014, a Procedural Order was issued setting a procedural conference for the  
25 purpose of allowing the parties to discuss an appropriate date for the rehearing of Decision No.  
26 73992.

27

28 <sup>1</sup> *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (Ariz. App. 1978).

1 On January 30, 2014, a procedural conference convened as scheduled. Johnson Utilities,  
2 RUCO, and Staff appeared through counsel. Counsel for Johnson Utilities provided an update on  
3 steps the Company is taking toward completing the sale and transfer of assets it outlined in the  
4 December 31, 2013, application Johnson Utilities filed in Docket No. WS-02987A-13-0477.

5 Discussion by the parties at the procedural conference indicated that the parties have not  
6 changed their positions on the need for an evidentiary rehearing based on the December 31, 2013  
7 application filed in Docket No. WS-02987A-13-0477. Staff supports the rate decrease in the  
8 Settlement Agreement, but opposes a change to the rate case filing requirement. RUCO requests a  
9 resolution of the substantive issues in the rehearing applications at the earliest possible date, and  
10 Johnson Utilities is not opposed to RUCO's position.

11 Accordingly, a date for the evidentiary rehearing of Decision No. 73992 should be set at this  
12 time, along with associated procedural deadlines.

13 IT IS THEREFORE ORDERED that the **rehearing** in the above-captioned matter, pursuant  
14 to A.R.S. §§ 40-252 and 253, is hereby scheduled to commence on **March 13, 2014, at 10:00 a.m.**,  
15 or as soon thereafter as practicable, at the Commission's offices, 1200 West Washington Street,  
16 **Hearing Room No. 1**, Phoenix, Arizona 85007.

17 IT IS FURTHER ORDERED that **rebuttal testimony and associated exhibits to be**  
18 **presented at hearing by Staff<sup>2</sup>** shall be reduced to writing and filed on or before **February 14,**  
19 **2014.**

20 IT IS FURTHER ORDERED that **surrebuttal testimony and associated exhibits to be**  
21 **presented by Johnson Utilities and RUCO** shall be reduced to writing and filed on or before  
22 **February 28, 2014.**

23 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m. on the date the**  
24 **filing is due.**

25 IT IS FURTHER ORDERED that any **objections to testimony or exhibits that have been**  
26 **prefiled as of February 28, 2014, shall be filed on or before March 6, 2014.**

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28 <sup>2</sup> Direct Testimony in support of the Settlement Agreement was filed by the signatories to the Settlement Agreement on  
January 17, 2014.

1 IT IS FURTHER ORDERED that all testimony filed shall include a table of contents which  
2 lists the issues discussed.

3 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to  
4 prefiled testimony shall be reduced to writing and filed no later than five calendar days before the  
5 witness is scheduled to testify.

6 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the  
7 prefiled testimony of each of their witnesses and shall file each summary at least two working days  
8 before the witness is scheduled to testify.

9 IT IS FURTHER ORDERED that copies of summaries shall be served upon the  
10 Administrative Law Judge, the Commissioners, and the Commissioners' aides as well as the parties  
11 of record.

12 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
13 regulations of the Commission, except that any objection to discovery requests shall be made within  
14 5 calendar days of receipt<sup>3</sup> and responses to discovery requests shall be made within 7 calendar days  
15 of receipt. The response time may be extended by mutual agreement of the parties involved if the  
16 request requires an extensive compilation effort.

17 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a  
18 receiving party requests service to be made electronically, and the sending party has the technical  
19 capability to provide service electronically, service to that party shall be made electronically.

20 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
21 discovery, any party seeking resolution of a discovery dispute may telephonically contact the  
22 Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery  
23 dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and  
24 that the party making such a request shall forthwith contact all other parties to advise them of the  
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28 <sup>3</sup> The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. MST  
will be considered as received the next business day.

1 hearing date and shall at the hearing provide a statement confirming that the other parties were  
2 contacted.<sup>4</sup>

3 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are  
4 not ruled upon by the Commission within 20 calendar days of the filing date of the motion shall be  
5 deemed denied.

6 IT IS FURTHER ORDERED that any responses to motions shall be filed within five calendar  
7 days of the filing date of the motion.

8 IT IS FURTHER ORDERED that any replies shall be filed within five calendar days of the  
9 filing date of the response.

10 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
11 Communications) applies to this proceeding and shall remain in effect until the Commission's  
12 Decision in this matter is final and non-appealable.

13 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
14 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

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

18 DATED this 10<sup>th</sup> day of February, 2014.

19  
20   
21 TEENA JIBILIAN  
22 ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 10<sup>th</sup> day of February, 2014 to:

25 Jeffrey W. Crockett  
26 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
27 40 North Central Avenue, 14th Floor  
Phoenix, AZ 85004  
Attorneys for Johnson Utilities, LLC

28 <sup>4</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

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