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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - CHAIRMAN
GARY PIERCE
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SUSAN BITTER SMITH

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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC, DOING
BUSINESS AS JOHNSON UTILITIES
COMPANY, FOR APPROVAL OF SALE AND
TRANSFER OF ASSETS AND
CONDITIONAL CANCELLATION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. WS-02987A-13-0477

**STAFF'S RESPONSE TO COMMISSIONER
BITTER SMITH'S LETTER DATED
MARCH 24, 2014**

ORIGINAL

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files its response to Commissioner Susan Bitter Smith's letter of March 24, 2014, to the parties to the above-referenced docket.

1. Do the parties agree that Johnson Utilities currently serves customers who reside or are located outside the municipal boundaries of the Town of Florence? If so, please provide an estimate of the number of such customers.

Response: There are customers who reside or are located outside the municipal boundaries of the Town of Florence. According to the recently filed Direct Testimony of Daniel Hodges, as of December 2013, Johnson Utilities served approximately 20,780 water connections and 28,825 sewer connections that were outside the municipal boundaries of the Town of Florence.

2. Should provisions be made to ensure that existing customers who reside or are located outside the municipal boundaries of the Town of Florence will be served by the Town of Florence? Why or why not?

Response: By statute, a municipal utility has certain responsibilities to its non-resident customers. A.R.S. § 9-516 was enacted, in part, by the legislature to govern water service to non-residents by a municipality. The statute prohibits a city from discontinuing water service to non-residents.

1 The court in *Jung v City of Phoenix*, 160 Ariz. 38, 770 P.2d 342 (1989), interpreted A.R.S.
2 §9-516(C) to hold a municipality to a reasonableness standard in the setting of rates. In *Jung*, the
3 plaintiffs were nonresident customers of the City of Phoenix water department, challenging the
4 validity of an ordinance that was enacted in 1985, which doubled water rates for those residing
5 outside of the geographical boundaries of the city.

6 The court in *Jung*, found that the implication of reasonable rates must be read into A.R.S. § 9-
7 516(C), and that the statute placed upon a city the legal duty to continue water service to non-
8 residents at a reasonable rate.

9 The reasonableness standard was codified by A.R.S. § 9-511.01(D), which provides that rates
10 must be just and reasonable, any increases must be justified in a written report available to the public
11 and a hearing must be held. Non-resident customers are protected by statute from being charged
12 unreasonable rates.

13 In Arizona Attorney General Opinion No. 62-7 (January 8, 1962) ("AG Opinion"), the
14 Arizona Attorney General ("AG") responded to Commission questions about the Commission's
15 jurisdiction to hold a hearing regulating the transfer of assets from a privately owned water utility to
16 a municipality and to enter an order approving or disapproving such a transfer. The Commission
17 also asked about the scope of the Commission's inquiries, if such a hearing were permissible, and
18 about the effect of what is now A.R.S. § 9-516(D) on the Commission's jurisdiction. The AG
19 determined that the Commission has jurisdiction over a public service corporation's sale of assets to
20 a municipality because A.R.S. § 40-285 requires a public service corporation to obtain Commission
21 approval before it may dispose of its assets, but that the Commission's inquiries essentially must be
22 limited to whether the proposed transfer will be injurious to the rights of the public and whether any
23 person will thereby be left without service.

24 The AG Opinion further stated that the voluntary agreement by a municipality to purchase a
25 privately owned public utility does not subject that municipality to the jurisdiction of the
26 Commission. The seller-utility must obtain Commission approval to make the transfer, the purpose
27 being to permit the Commission to make sure that the rights of the customers of the utility will be
28

1 adequately protected. The duties and powers of the Commission are limited to the necessary
2 hearings and orders to make sure that sale by the utility will not leave persons without service by the
3 utility or the municipality.

4 The AG Opinion concluded that by virtue of A.R.S. § 9-516, the Commission still retains
5 jurisdiction over the utility and the utility still has an interest as holder of a certificate of convenience
6 and necessity, until the sale has been approved and the municipality is servicing the entire area and
7 there is no area requiring certification or service by any private utility. The AG Opinion concluded
8 that a municipality is bound to honor the order of the Commission with respect to the sale and that
9 the Commission may not enter an order denying the public utility the right to dispose of its assets
10 except upon the grounds that the utility is not in fact terminating its function in the service of its
11 customers, the effect of A.R.S. § 40-285(C). If the municipality refuses to serve customers in the
12 area taken over, the Commission retains the power to investigate such refusals and issue a new
13 certificate if necessary to provide service.

14 **3. If customers outside the municipal boundaries will be served by the Town**
15 **of Florence, should provisions be made to ensure that such are treated on**
16 **an equal footing with those customers who reside or are located within the**
municipal boundaries? Why or why not?

17 **Response:** The Commission has considered several cases where a municipality acquires
18 the assets of a water or wastewater provider and has customers who reside outside of the municipal
19 boundaries. Most recently, the Commission approved the transfer of assets of H2O, Inc. to the Town
20 of Queen Creek. In that matter, there were H2O customers who resided outside of the Queen Creek
21 municipal boundaries. The Town of Queen Creek committed to provide the same level of service to
22 the non-resident customers, as is provided to its residents. The Town of Queen Creek proposed to
23 charge the H2O customers its then current rates, which resulted in a minimal increase for customers
24 who use up to 10,000 gallons. H2O customers who use more than 10,000 would see a slight decrease.
25 In Decision No. 74085 (September 23, 2013), the Commission approved the transfer.

1 In 2006 Desert Hills Water, filed an application to transfer its assets to the Town of Cave
2 Creek, Arizona.¹ Desert Hills provided water service to approximately 1,600 customers. The Desert
3 Hills customers were outside the boundaries of the Cave Creek. Cave Creek intended to form a
4 citizens advisory board, consisting of four members from the Desert Hills area, five from Cave Creek,
5 and one from the Carefree area (an area that is being served by Cave Creek Water, soon to be
6 purchased by the Town), and their meetings would be open to the public.² It was the Town's
7 intention to model the board after the Citizens Water Advisory Committee of the City of Tucson.
8 Cave Creek also committed to provide notice and hold a public hearing in Desert Hills if a rate
9 change was being contemplated. Cave Creek had agreed to freeze the current rates for one year
10 following the close of the transaction. The Commission found that with the commitments made by
11 Cave Creek, the transfer was in the public interest.³

12 **4. If such provisions should be made, please provide some recommendations**
13 **regarding the nature and substance of methods or processes to ensure**
14 **equal treatment.**

15 **Response:** The City of Tucson, as a part of its overall water management strategy,
16 created the Citizens Water Advisory Committee (Tucson Code, Sec. 27-60 et. seq.). The
17 Committee advises and assists the Mayor and City Council in the development of policies and the
18 setting of rates. City residency is not required and the members are appointed by the Mayor and
19 Council and are also nominated by the City Manager. If the Town of Florence models its board
20 after the Tucson model, the non-resident customers of its water systems should have an adequate
21 voice to promote the concerns of the non-residents.

22 If the Commission is concerned about the ability of non-residents to have a voice in utility
23 rates, Staff suggests that the Town of Florence create a citizens advisory board as has been done in
24 other cases where a similar concern arose.

25 **5. I note that in the application, Johnson Utilities states "For a period of 18**
26 **months following the acquisition the Town has no plans to change the**
27 **rates charged to existing customers of Johnson Utilities." Please provide**
28 **comments regarding the duration and specific terms of this commitment.**

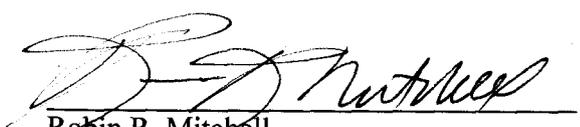
¹ Docket No. W-02124A-06-0717.

² Decision No. 69575 (May 21, 2007) at 9.

³ *Id.* at 11.

1 **Response:** Staff notes that in the Desert Hills matter, the Town of Cave Creek committed
2 to no change in rates for 1 year following the approval of the transaction. In the H20 matter, the
3 Town of Queen Creek charged the H20 customers the Town of Queen Creek's current rates.

4 RESPECTFULLY SUBMITTED this 3rd day of April, 2014.

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13 Original and thirteen (13) copies of
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15 April, 2014, with:

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19 4th day of April, 2014, to:

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