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BEFORE THE ARIZONA CORPORATIO

COMMISSIONERS

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

Arizona Corporation Commission

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AZ CORP COMMISSION
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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

STAFF'S INITIAL CLOSING BRIEF

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files its initial post-hearing brief in the above-captioned matter.

I. INTRODUCTION

Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson" or "Company") is a Class A water and wastewater public service provider. The Company is headquartered in Scottsdale, Arizona but its service area encompasses various areas of Pinal County, Arizona. On March 31, 2008, Johnson filed an application for an increase in its water and wastewater utility rates ("Rate Case docket"). In the test year, ending December 31, 2007, the Company served an average of 17,541 water customers and 21,596 wastewater customers.

On July 16, 2013, after notice to the parties to the Rate Case docket and to Johnson's 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.¹

Johnson and the Residential Utility Consumer Office ("RUCO") each requested, on different grounds, rehearing of Decision No. 73992 pursuant to A.R.S. §40-253.² The Commission granted

¹ See Decision No. 73992 at 5.

² See Company's Petition for Rehearing dated July 26, 2013; See RUCO's Application for Rehearing dated July 31, 2013.

1 both requests, and also reopened this docket pursuant to A.R.S. §40-252. The Commission directed
2 the Hearing Division to conduct proceedings and hold evidentiary hearings in order to take evidence
3 in accordance with the *Scates* decision and Arizona law.³

4 Johnson and RUCO entered into settlement discussions regarding the income tax recovery
5 issue. On November 4, 2013, Johnson Utilities and RUCO filed a Settlement Agreement.⁴ Staff did
6 not participate in the negotiations, nor did it sign the Settlement Agreement.

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

12 On December 31, 2013, Johnson Utilities filed an application for approval of a sale and
13 transfer of assets and conditional cancellation of its Certificate of Convenience and Necessity
14 (“CC&N”).⁵

15 **II. STAFF RECOMMENDS APPROVAL OF THE TAX RECOVERY DECREASE BUT**
16 **RECOMMENDS DENIAL OF THE ALTERNATIVE FILING REQUIREMENT**

17 Staff recommends approval of the income tax recovery level decrease noted in the Settlement
18 Agreement.⁶ However, Staff recommends denial of the alternate filing requirement of a rate case
19 noted in the Settlement Agreement.⁷ As noted in Decision No. 73992, Staff’s recommendation to the
20 Commission in that case was, because of the length of time between rate cases for Johnson, that
21 Johnson be required to file a rate case in June, 2015 using a 2014 test year.⁸ Staff’s recommendation
22 was in response to Johnson’s recommendation that it not file a rate case until 2019, 20 years after the
23 grant of its CC&N.⁹ Staff’s recommendation was adopted by the Commission in that Decision.¹⁰

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³ Commission Staff meeting held on August 15, 2013.

25 ⁴ Settlement Agreement, Ex. A-4.

26 ⁵ Docket No. WS-02987A-13-0477.

27 ⁶ Carlson Respon. Test., Ex. S-1 at 3.

28 ⁷ *Id.*

⁸ Staff’s response dated March 29, 2013.

⁹ Johnson’s Petition to Amend Decision No. 71854 dated March 8, 2013.

¹⁰ See Decision No. 73992.

1 The Settlement Agreement between RUCO and Johnson recommends a change in the filing
2 requirement. Staff is concerned about that particular requirement of the Settlement Agreement.
3 During the hearing, Staff witness Darron Carlson expressed support for the Commission's decision in
4 Decision No. 73992.¹¹ Mr. Carlson further testified that because some utilities would be requesting a
5 reopening of a rate case decision for the recovery of income tax expense, because of the passage of
6 time between the decision and the rehearing, Staff would need to examine that utility's expenses and
7 other charges.¹²

8 RUCO argues that a new rate case would mean an increase in rates.¹³ However, RUCO's
9 witness, Robert Mease, acknowledges that it is possible that a company filing a rate application could
10 request a decrease in rates.¹⁴ The Company argues that because it would be adding significant plant
11 in the next several years, and to require it to come in before 2016, might require the Company to file
12 back to back rate cases.¹⁵ As Mr. Carlson explained, one of the reasons to have a utility file a rate
13 case after the implementation of the Commission's policy on income tax recovery, would be to
14 conduct an examination of the expenses.¹⁶

15 The Commission has indicated that it would prefer to see utilities file rate applications
16 timelier, than wait a long time between rate cases. For example, in Decision No. 73254, the
17 Commission noted that if Sunland had come in more regularly, it would not have operated for years
18 at a loss nor would its ratepayers be seeing such a huge increase in rates.¹⁷ Either filing requirement
19 becomes moot if the Town of Florence purchases Johnson.¹⁸

20 **III. IF EITHER OF THE PARTICIPANTS REFUSES TO BIFURCATE THESE TWO**
21 **ISSUES, STAFF RECOMMENDS DENIAL OF THE SETTLEMENT AGREEMENT**

22 Staff recognizes the benefit to the ratepayer of the reduction in wastewater rates proposed by
23 the Settlement Agreement. Because of this benefit, Staff has recommended that the two issues be

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25 ¹¹ Tr. at 79:15-22.

26 ¹² Tr. at 94:1-18.

27 ¹³ Tr. at 11:21-25.

28 ¹⁴ Tr. at 46:9-19.

¹⁵ Hodges Surrebut, Ex. A-2 at 2.

¹⁶ Tr. at 94:7-18.

¹⁷ Great Prairie Oasis dba Sunland Water Co., Decision No. 73254 at 17.

¹⁸ Carlson Resp. Test., Ex. S-1 at 4; Tr. At 112:1-5.

1 bifurcated.¹⁹ It appears that the rate reduction is of importance to all parties and such a benefit should
2 not be withheld because of a disagreement over a filing date. However, during the hearing, Johnson
3 and RUCO testified to their disagreement with this recommendation. As RUCO witness Patrick
4 Quinn pointed out for RUCO, it was a give and take that flows during the negotiation of a settlement
5 that RUCO agreed to the filing requirement²⁰, and thus would not be interested in bifurcation.²¹
6 However, Mr. Mease testified that RUCO would be in agreement with bifurcation in order to obtain
7 approval of the reduction in revenues.²² The Company opposed any bifurcation, citing the give and
8 take nature of negotiating a settlement as one of its reasons.²³

9 **IV. CONCLUSION**

10 If the parties are not willing to bifurcate and they have each testified that they are not willing,
11 Staff recommends that the Commission not approve the Settlement Agreement.²⁴

12 RESPECTFULLY SUBMITTED this 18th day of April, 2014.

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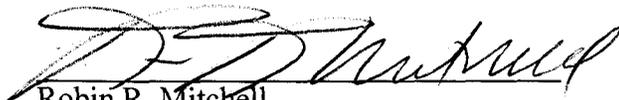
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Original and thirteen (13) copies of
the foregoing filed this 18th day of
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¹⁹ Carlson Resp. Test., Ex. S-1 at 5.

²⁰ Quinn Settlement Test., Ex. R-1 at 6.

²¹ Tr. at 67:5-13.

²² Mease Surreb. Test., Ex. R-2 at 6.

²³ Hodges Surrebut Test., Ex. A-2 at 6.

²⁴ Carlson Respon. Test., Ex. S-1 at 6.

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