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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

Arizona Corporation Commission

AZ CORP COM

**DOCKETED**

DOCKET COR

BOB STUMP—Chairman

GARY PIERCE

BRENDA BURNS

BOB BURNS

SUSAN BITTER SMITH

MAY 23 2014

2014 MAY 23 PM 12 27

DOCKETED BY

**ORIGINAL**

**DOCKET NO. WS-02987A-13-0477**

**MOTION TO WITHDRAW APPLICATION**

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.

Johnson Utilities, L.L.C. (“Johnson Utilities” or the “Company”) hereby moves to withdraw its Application for Approval of the Sale and Transfer of Assets and Conditional Cancellation of its Certificate of Convenience and Necessity filed December 31, 2014, and requests that this docket be closed. For reasons that are detailed in the May 22, 2014, letter from George Johnson to the Florence Town Manager, a copy of which is attached hereto as Attachment 1, the sale and transfer of the Company’s water and wastewater assets to the Town of Florence will not be moving forward. Johnson Utilities is very mindful of the amount of work that has gone into this proceeding by the Utilities Division Staff, the Hearing Division, the Administrative Law Judge and the intervenors in this docket, and the Company does not file this motion without careful consideration of all of the relevant facts. Contemporaneous with the filing of this motion, the Company is filing notices in the other active Johnson Utilities dockets requesting that the Commission move forward with those dockets.

RESPECTFULLY submitted this 23<sup>rd</sup> day of May, 2014.

BROWNSTEIN HYATT FARBER SCHRECK LLP

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1 ORIGINAL and thirteen (13) copies of the foregoing  
2 filed this 23<sup>rd</sup> day of May, 2014, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered  
8 this 23<sup>rd</sup> day of May, 2014, to:

9 Lyn Farmer, Chief Administrative Law Judge  
10 Hearing Division  
11 ARIZONA CORPORATION COMMISSION  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Janice Alward, Chief Counsel  
15 Legal Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Steve Olea, Director  
20 Utilities Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Copy of the foregoing mailed and e-mailed  
25 this 23<sup>rd</sup> day of May, 2014, to:

26 Daniel Pozefsky, Chief Counsel  
27 RESIDENTIAL UTILITY CONSUMER OFFICE  
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# **ATTACHMENT 1**

# *JOHNSON UTILITIES, L.L.C.*

5230 East Shea Boulevard, Suite 200 • Scottsdale, Arizona 85254

PH: (480) 998-3300; FAX: (480) 483-7908

22 May 2014

Charles Montoya  
Florence Town Manager  
Town of Florence  
P.O. Box 2670  
Florence, AZ 85132

Re: Johnson Utilities, L.L.C., an Arizona limited liability company ("Company")/The Town of Florence, Arizona, an Arizona municipal corporation ("Town")-Sale of Assets

Dear Charles,

This letter is in response to your letter to Johnson Utilities, which was not on Town letterhead, dated May 15, 2014 and to more recent actions of the Town.

Based on your testimony and the May 21, 2014 closing statement of the Town Attorney to the Arizona Corporation Commission, it is clear that the Town has turned down the offer of Johnson Utilities to sell its assets to the Town.

Johnson Utilities and the Town reached agreement on the price and terms of the sale of the assets in 2013 in anticipation of a February, 2014 closing, but in no event later than the Town's fiscal year end of June 30, 2014. This was sufficient to cause Johnson Utilities to file its application with the Arizona Corporation Commission on December 31, 2013. Very recent changes in the Town's position have baffled Johnson Utilities. For example, the information requested in your May 15, 2014 letter has only recently been a condition to the Town considering the Asset Purchase Agreement (see your April 9, 2014 testimony at the Arizona Corporation Commission which mentioned no such condition).

Both the Arizona Corporation Commission and The Industrial Development Authority of the City of Phoenix, Arizona required a signed Asset Purchase Agreement for the transaction to move forward. The Town filed a recent application with the Authority which further indicated to Johnson Utilities that it had proceeded in good faith in filing its application with the Arizona Corporation Commission and in its continued dealings with the Town. The Town never varied the testimony it prefiled with the Arizona Corporation Commission nor moved to alter the Commission's April 4, 2014 Procedural Order.

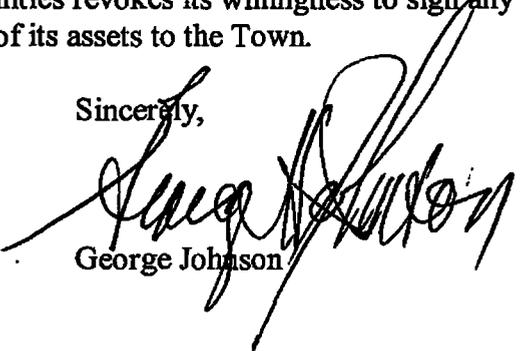
Over the months of discussions the Town changed its mind on many issues. The Town's changes were difficult to deal with, e.g., initially filing the Asset Purchase Agreement with the Arizona Corporation Commission using its Municipal Property Corporation and then changing its mind (that is why we negotiated two separate Asset Purchase Agreements), insisting that the Town can only pledge gross revenues instead of net revenues, then changing its mind to being uncomfortable with a Bond Trustee distributing money for operating expenses, the Town being agreeable with a Bond Trustee then desiring the use of a Bond Trustee for less than 30 years (Johnson Utilities then agreed to 20 years), then the Town being uncomfortable with a Bond Trustee at all, etc. It was only on May 20, 2014, that Johnson Utilities officially learned that the Town had changed its mind on needing to close the transaction by the end of its June 30, 2014 fiscal year end, when you so testified at the Arizona Corporation Commission. Other key changes in the Town's position materially impacted the financing of the sale.

As to the substance of your requests, Johnson Utilities wants to point out that the Town's expert consultants have previously reviewed most of the agreements requested in your May 15, 2014 letter at our offices. Other documents that you have belatedly requested are normally produced after agreements are reached. For example, no one normally prepares preliminary title reports until an agreement is reached (and, the Town could have ordered such reports any time it wished as it has the complete list of the assets).

As noted in my earlier letter to you, Johnson Utilities offered its assets (system) for sale and allowed the Town the first opportunity to purchase. We agreed on the purchase price, the assets to be conveyed, a management transition and even provided that the Town would not have to cover any cash shortfall for years. After months of negotiations, we have learned from your testimony and the Town Attorney's closing statement at the Arizona Corporation Commission that the Town apparently disagrees with substantive terms and conditions of the purchase.

Johnson Utilities has satisfied all of its obligations to the Town. The voters of the Town have approved the sale in the May 20, 2014 election; presumably based on the Asset Purchase Agreement presented to the Town Council and to the Arizona Corporation Commission in late March and early April 2014. The Town has withdrawn its offer of purchase after having been given the first opportunity. In order to be clear on the import of the Town's conduct, Johnson Utilities revokes its willingness to sign any agreement with the Town concerning the sale of its assets to the Town.

Sincerely,

  
George Johnson

CC: Florence Town Council