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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

AUG 12 2014

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, LLC FOR AN
INCREASE IN ITS WATER AND
WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

DECISION NO. 74695

OPINION AND ORDER
ON REHEARING OF DECISION
NO. 73992

DATE OF HEARING:

October 4 and December 5, 2013, January 30,
2014 (procedural conferences), and March 13,
2014 (rehearing)

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Jibilian

APPEARANCES:

Mr. Jeffrey Crockett, BROWNSTEIN HYATT
FARBER SCHRECK, LLP, on behalf of
Johnson Utilities, LLC;

Mr. Daniel W. Pozefsky, Chief Counsel, on
behalf of the Residential Utility Consumer
Office; and

Ms. Robin Mitchell, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

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BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. 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.

2. 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”).¹

3. On August 25, 2010, the Commission issued Decision No. 71854, approving new rates for Johnson Utilities.

4. On September 15, 2011, the Commission issued Decision No. 72579. Decision No. 72579 amended Decision No. 71854 by increasing the wastewater division’s fair value rate base, adopting an 8.0 percent rate of return for the wastewater division, increasing the revenue requirement for the wastewater division and authorizing an increase in wastewater rates, authorizing new hook-up fee tariffs, and ordering that in the event of an alteration in the Commission policy that would allow S-corporation and LLC entities to impute a hypothetical income tax expense for ratemaking purposes, Johnson Utilities could file a motion to amend Decision No. 72579 prospectively to increase the Company’s authorized revenue requirement to reflect the change in Commission policy.

5. On February 21, 2013, the Commission issued Decision No. 73739 in Docket No. W-00000C-06-0149. Decision No. 73739 adopted a policy which allows imputed income tax expense in the cost of service for limited liability companies, S-corporations, partnerships, and sole proprietorships. The policy states that it will be applied in pending and future rate cases, and that it

¹ Only Johnson Utilities, RUCO, and Staff participated in the rehearing and post-hearing briefing.

1 allows companies previously denied recognition of income tax expense to make a filing under A.R.S.
2 § 40-252 to modify the revenue requirement authorized in their most recent rate case in order to
3 include income tax expense prospectively. The policy includes a 7-step protocol for determining
4 income tax expense.

5 6. On March 8, 2013, the Company filed a petition to amend Decision No. 71854
6 pursuant to A.R.S. § 40-252, requesting that the Commission increase the Company's test year
7 revenue requirement and rates to reflect the inclusion of income tax expense based upon the policy
8 set forth in Decision No. 73739 ("Petition"). The Petition included information and schedules, and
9 requested consideration and approval without a hearing, following verification of the information and
10 schedules by Staff.

11 7. On April 4, 2013, RUCO filed a Response to the Petition, objecting to the Company's
12 recovery of income tax expense and to the methodology proposed for calculating the expense
13 amount.

14 8. On April 19, 2013, Swing First filed a Response to the Petition, asserting that the
15 Petition should not be considered until the Company was in full compliance with the Arizona
16 Department of Environmental Quality requirements and existing issues with Swing First were
17 resolved.

18 9. On April 26, 2013, Staff filed a Staff Report and Proposed Order recommending
19 approval of the requested rate increase and associated rate design. Staff also recommended that the
20 Company provide notice of the Petition via a special direct mailing to all of its customers and to all
21 parties to the case, and that the Company be ordered to file a full rate case application for both its
22 water and wastewater divisions by no later than June 30, 2015, using a calendar year 2014 test year.

23 10. On May 10, 2013, the Company filed an Affidavit of Mailing Public Notice indicating
24 that it mailed a copy of notice of the Petition on or about May 7, 2013, in a special direct mailing to
25 all of the Company's customers and to all parties on the service list for this docket, which indicated
26 the effects that approval of the Petition would have on customers' rates. Numerous public comments
27 were filed opposing the Petition.

28 ...

1 11. On June 18, 2013, Swing First filed a supplemental Response to the Petition,
2 reiterating the concerns stated in its April 19, 2013, filing.

3 12. On July 16, 2013, the Commission issued Decision No. 73992. Decision No. 73992
4 amended Decision Nos. 71854 (August 25, 2010) and 72579 (September 15, 2011) pursuant to
5 A.R.S. § 40-252. Decision No. 73992 adopted Staff's recommendation to increase the Company's
6 rates to reflect recovery of income tax expense as requested by the Company, and to classify the
7 income taxes as an imputed expense. Decision No. 73992 also adopted Staff's recommendation to
8 require the Company to file a full rate case for both its water and wastewater divisions no later than
9 June 30, 2015, using a 2014 calendar test year.

10 **Rehearing Procedural History**

11 13. On July 26, 2013, Johnson Utilities filed a petition for rehearing of Decision No.
12 73992 pursuant to A.R.S. § 40-253. Johnson Utilities requested that the Commission grant its
13 rehearing request for the limited purpose of modifying Decision No. 73992 to require a rate case
14 filing by June 30, 2017, using a calendar year 2016 test year, two years later than the June 30, 2015
15 deadline using a 2014 calendar test year.

16 14. On July 31, 2013, RUCO filed an application for rehearing of Decision No. 73992
17 pursuant to A.R.S. § 40-253. RUCO stated that it disagreed with Decision No. 73992 as a matter of
18 public policy, and claimed that Decision No. 73992 violates Arizona's Constitution by increasing
19 rates based on a new expense without a meaningful fair value analysis, citing to *Scates v. Ariz. Corp.*
20 *Comm'n*, 118 Ariz. 531, 578 P.2d 612 (Ariz. App. 1978). RUCO also claimed that the manner in
21 which Decision No. 73992 imputes the income tax expense is arbitrary, capricious, and an abuse of
22 discretion, because the expense amount is not based on the Company shareholders' actual income
23 taxes.

24 15. At the Commission's August 15, 2013, Staff Open Meeting, the Commission voted to
25 grant both Johnson Utilities' and RUCO's requests to rehear Decision No. 73992 pursuant to A.R.S.
26 § 40-253; directed the Hearing Division to hold proceedings on rehearing and prepare a
27 Recommended Opinion and Order for Commission consideration; but also directed that the rehearing
28

1 issue first be brought back to a future Open Meeting, in order to provide further direction to the
2 Hearing Division.

3 16. At the Commission's September 11, 2013, Staff Open Meeting, the Commission voted
4 to approve a motion to reopen this docket pursuant to A.R.S. § 40-252, for purposes of considering
5 whether to modify any Commission Decisions entered in this docket related to determinations in
6 those Decisions that might be implicated by RUCO's and Johnson Utilities' applications for
7 rehearing of Decision No. 73992, in order to ensure that RUCO and Johnson Utilities would have an
8 opportunity to address the matters raised in their rehearing applications. The motion directed the
9 Hearing Division to conduct proceedings and hold evidentiary hearings in order to take evidence in
10 accordance with the *Scates* opinion and Arizona law.²

11 17. On September 20, 2013, a Procedural Order was issued setting a procedural
12 conference to discuss procedural issues related to the rehearing of Decision No. 73992, including a
13 schedule for the presentation of evidence in accordance with the *Scates* opinion and Arizona law.

14 18. On September 25, 2013, Swing First filed Notice that it would not be participating in
15 the rehearing proceeding.

16 19. On October 4, 2013, Johnson Utilities filed Comments Regarding Rehearing of
17 Decision Nos. 73992 and 73993.

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

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

25 22. On October 17, 2013, Johnson Utilities filed tariffs in compliance with Decision No.
26

27 ² Commissioner Bob Burns, who made the motion, explained that the purpose of his motion was to ensure that RUCO and
28 Johnson Utilities would have the opportunity to address the matters raised in their applications for rehearing, and that they
would not be foreclosed from pursuing any matter raised in their rehearing applications because of the Commission's
prior determinations in this docket.

1 73992, with an effective date of July 16, 2013.

2 23. On November 4, 2013, Johnson Utilities and RUCO filed a Proposed Settlement
3 Agreement and Request for Modified Procedural Order, or in the Alternative, Request for Procedural
4 Conference. A copy of the Proposed Settlement Agreement is attached hereto and incorporated
5 herein as Exhibit A.

6 24. On November 19, 2013, a Procedural Order was issued setting a procedural
7 conference for discussion of an appropriate procedural schedule.

8 25. On December 5, 2013, a procedural conference convened as scheduled. Johnson
9 Utilities, RUCO, and Staff appeared through counsel, and set forth their positions on the need for an
10 evidentiary hearing and a possible hearing schedule.

11 26. On January 17, 2014, Johnson Utilities filed Direct Testimony in support of the
12 Proposed Settlement Agreement of its witness Daniel Hodges, and RUCO filed Direct Testimony in
13 support of the Proposed Settlement Agreement of its witness Patrick J. Quinn.

14 27. On January 22, 2014, a Procedural Order was issued. The Procedural Order noted that
15 Johnson Utilities had filed with the Commission on December 31, 2013, in Docket No. WS-02987A-
16 13-0477, an application for approval of the sale and transfer of all of its utility assets in Pinal County,
17 Arizona to the Town of Florence, and for conditional cancellation and extinguishment of Johnson
18 Utilities' Certificate of Convenience and Necessity ("Asset Sale Application"). The Procedural
19 Order set a procedural conference for discussion of an appropriate date for scheduling the rehearing
20 of Decision No. 73992.

21 28. On January 30, 2014, a procedural conference convened as scheduled. Johnson
22 Utilities, RUCO, and Staff appeared through counsel. Counsel for Johnson Utilities provided an
23 update on activity related to the Asset Sale Application. The parties indicated no change in their
24 positions regarding the need for an evidentiary rehearing, and discussed an appropriate date for its
25 scheduling.

26 29. On February 10, 2014, by Procedural Order, the rehearing was scheduled for March
27 13, 2014, and associated procedural deadlines were established.

28 30. On February 12, 2014, Staff filed Responsive Testimony of its witness Darron W.

1 Carlson.

2 31. On February 28, 2014, the Company filed Surrebuttal Testimony of its witness Daniel
3 Hodges, and RUCO filed Surrebuttal Testimony of its witness Robert B. Mease.

4 32. The rehearing convened as scheduled on March 13, 2014. The Company, RUCO and
5 Staff appeared through counsel, presented evidence through witnesses, and cross-examined
6 witnesses.

7 33. On April 18, 2014, Johnson Utilities, RUCO, and Staff filed Initial Closing Briefs.

8 34. On May 2, 2014, Johnson Utilities filed a Reply Closing Brief. RUCO and Staff each
9 filed a Notice indicating that they did not intend to file Reply Briefs.

10 35. On May 19, 20, and 21, 2014, a hearing was held in Docket No. WS-02987A-13-0477
11 on the Asset Sale Application. On May 23, 2014, Johnson Utilities filed a motion in that docket
12 requesting authority to withdraw the Asset Sale Application and closure of the docket, which was
13 granted by Procedural Order issued June 18, 2014.

14 **Rehearing Proposed Settlement Agreement**

15 36. By their Proposed Settlement Agreement, the Company and RUCO request two
16 modifications to Decision No. 73992: 1) a decrease in wastewater rates to reflect a reduction in the
17 imputed income tax rate of 36.6558 percent approved by Decision No. 73992, down to 25 percent;
18 and 2) a one year extension to the requirement that Johnson Utilities file a full rate case no later than
19 June 30, 2015, using a 2014 calendar test year, to June 30, 2016, using a 2015 calendar test year.

20 37. In addition to the two modifications, the Proposed Settlement Agreement would add a
21 new requirement that the Company file yearly earnings reports starting with 2013 by the last day of
22 the following February for each year prior to the next rate case filing, in the form of the Schedules
23 attached as Exhibit A to the Proposed Settlement Agreement.

24 38. The Proposed Settlement Agreement provides that within 30 days of Commission
25 approval of the Proposed Settlement Agreement, Johnson Utilities will file a revised tariff for its
26 wastewater division with the new lower rates resulting from a reduction in the rate for imputed
27 income tax expense from 36.6558 percent to 25 percent, effective for all billings by the Company on
28 and after the date of a Commission Order approving the Settlement Agreement.

1 **Parties' Positions**

2 39. The Company and RUCO agree to their two requested modifications to Decision No.
3 73992 only if the two modifications are made together.

4 40. Staff agrees to the decrease in wastewater rates proposed in the Settlement Agreement.
5 However, Staff opposes the one year extension of time for the rate case filing. Staff states that it
6 recognizes the benefit to ratepayers of the reduction in wastewater rates, and would like to see the
7 two proposed modifications to Decision No. 73992 bifurcated. Based on Johnson Utilities' and
8 RUCO's stated unwillingness to bifurcate the two modifications, and on Staff's opposition to the one
9 year time extension for the rate case filing, Staff recommends that the Proposed Settlement
10 Agreement not be approved, which would leave the requirements of Decision No. 73992 unchanged.

11 41. The Company and RUCO state that the Proposed Settlement Agreement fully resolves
12 all disputed issues between the Company and RUCO, and that the terms of their Settlement
13 Agreement provide benefits by:

- 14 • reducing the Company's authorized imputed income tax rate from 36.6558 percent
15 to 25 percent for the wastewater division, resulting in lower wastewater rates and
16 combined annual savings for wastewater customers of approximately \$286,000;
- 17 • requiring independent verification, prior to the filing of the Proposed Settlement
18 Agreement, that the weighted average of the income taxes paid by all of the
19 Company's shareholders for the 2007 test year was at least equal to or greater than
20 25 percent;
- 21 • requiring Johnson Utilities to file a rate case by June 30, 2016, using a 2015
22 calendar test year;
- 23 • requiring Johnson Utilities to file yearly earnings reports starting with 2013 by the
24 last day of the following February for each year prior to the next rate case, using
25 the form of the schedules attached as Exhibit A to the Proposed Settlement
26 Agreement; and
- 27 • avoiding further litigation and costs for RUCO and Johnson Utilities.

28 ...

1 42. RUCO contends that the terms of the Proposed Settlement Agreement are fair to both
2 the consumer and to Johnson Utilities, and are in the public interest under the current Commission
3 policy on income tax expense allowance. RUCO notes that under the terms of the Settlement
4 Agreement, RUCO retains the right to challenge the imputation of income tax expense in future rate
5 case filings.

6 43. In regard to the proposed one year delay in the rate case filing requirement of Decision
7 No. 73992, RUCO contends that the \$286,000 annual savings to the Company's wastewater division
8 ratepayers outweighs any potential harm associated with the later rate case filing. RUCO argues that
9 the terms of the Proposed Settlement Agreement provide a bona fide benefit to ratepayers, and that
10 Staff's proposed rejection of the terms of the Proposed Settlement Agreement should not be adopted.

11 44. The Company contends that the provision in the Settlement Agreement for a one year
12 delay in the deadline set by Decision No. 73992 for the Company to file a rate case is reasonable.
13 The Company asserts that the evidence in this proceeding supports the extension of time, based on
14 the testimony of the Company's witness Mr. Hodson that Johnson Utilities plans to invest in
15 significant plant improvements over the next two or three years. The planned improvements include
16 a major wastewater treatment plant expansion and installation of new wells and water storage. Mr.
17 Hodson testified that much of the planned construction will not be completed by the end of 2014, and
18 that delaying the test year from 2014 to 2015 will allow the Company to include significant
19 additional plant investment in its rate case filing.

20 45. The Company contends that Staff's position opposing the proposed one year delay in
21 the rate case filing requirement of Decision No. 73992 is not supported by any formal or informal
22 analysis. The Company argues that as opposed to the seven years between test years ordered in
23 Decision No. 73992, the proposal in the Settlement Agreement would put eight years between test
24 years, and that Staff did not demonstrate that a one year delay in the test year filing requirement
25 would harm the Company or its ratepayers.

26 **Resolution**

27 46. The Commission is appreciative of the efforts put forth by the Company and RUCO to
28 resolve their disagreements with Decision No. 73992. We also appreciate Staff's concerns regarding

1 the length of time that has passed since the Company's last test year. However, we agree with RUCO
2 that the benefits of the Proposed Settlement Agreement, as set forth in Findings of Fact No. 41 above,
3 outweigh any potential harm associated with the later rate case filing.

4 47. Based on the rehearing record in this docket, it is reasonable and in the public interest
5 to approve the Proposed Settlement Agreement.

6 48. Based on the rehearing record in this docket, we find that it is reasonable and in the
7 public interest to modify Decision No. 73992 to: 1) decrease the Company's wastewater rates to
8 reflect a reduction in the imputed income tax rate of 36.6558 percent down to 25 percent; 2) require
9 Johnson Utilities to file a full rate case no later than June 30, 2016, using a 2015 calendar test year in
10 lieu of June 30, 2015, using a 2014 calendar test year; and 3) require Johnson Utilities to file a yearly
11 earnings report for 2013 no later than August 29, 2014, a yearly earnings report for 2014 no later than
12 February 27, 2015, and a yearly earnings report for 2015 no later than February 29, 2016, using the
13 form of the schedules attached as Exhibit A to the Proposed Settlement Agreement.

14 CONCLUSIONS OF LAW

15 1. Johnson Utilities is a public service corporation within the meaning of Article XV of
16 the Arizona Constitution and A.R.S. Title 40.

17 2. The Commission has jurisdiction over Johnson Utilities and the subject matter of the
18 application.

19 3. Notice of the rehearing was given in accordance with law.

20 4. Based on the rehearing record in this docket, it is reasonable and in the public interest
21 to approve the Proposed Settlement Agreement.

22 5. Based on the rehearing record in this docket, it is reasonable and in the public interest
23 to modify Decision No. 73992 to: 1) decrease the Company's wastewater rates to reflect a reduction
24 in the imputed income tax rate of 36.6558 percent down to 25 percent; 2) require Johnson Utilities to
25 file a full rate case no later than June 30, 2016, using a 2015 calendar test year in lieu of June 30,
26 2015, using a 2014 calendar test year; and 3) require Johnson Utilities to file a yearly earnings report
27 for 2013 no later than August 29, 2014, a yearly earnings report for 2014 no later than February 27,
28

1 2015, and a yearly earnings report for 2015 no later than February 29, 2016, using the form of the
2 schedules attached as Exhibit A to the Proposed Settlement Agreement.

3 6. The rates, charges and conditions of service established herein are just and reasonable
4 and in the public interest.

5 **ORDER**

6 IT IS THEREFORE ORDERED that the Proposed Settlement Agreement attached hereto as
7 Exhibit A is hereby approved.

8 IT IS FURTHER ORDERED that Decision No. 73992 is hereby modified to decrease
9 wastewater rates authorized for Johnson Utilities, LLC, dba Johnson Utilities Company, to reflect a
10 reduction in the imputed income tax rate of 36.6558 percent down to 25 percent.

11 IT IS FURTHER ORDERED that Decision No. 73992 is hereby modified to require Johnson
12 Utilities, LLC, dba Johnson Utilities Company to file with the Commission's Docket Control Center,
13 as a compliance item in this matter, a full rate case no later than June 30, 2016, using a 2015 calendar
14 test year in lieu of June 30, 2015, using a 2014 calendar test year.

15 IT IS FURTHER ORDERED that Decision No. 73992 is hereby modified to require Johnson
16 Utilities, LLC, dba Johnson Utilities Company to file with the Commission's Docket Control Center,
17 as a compliance item in this matter, on or before August 29, 2014, a yearly earnings report for 2013,
18 using the form of the schedules attached as Exhibit A to the Proposed Settlement Agreement.

19 IT IS FURTHER ORDERED that Decision No. 73992 is hereby modified to require Johnson
20 Utilities, LLC, dba Johnson Utilities Company to file with the Commission's Docket Control Center,
21 as a compliance item in this matter, on or before February 27, 2015, a yearly earnings report for
22 2014, using the form of the schedules attached as Exhibit A to the Proposed Settlement Agreement.

23 IT IS FURTHER ORDERED that Decision No. 73992 is hereby modified to require Johnson
24 Utilities, LLC, dba Johnson Utilities Company to file with the Commission's Docket Control Center,
25 as a compliance item in this matter, on or before February 29, 2016, a yearly earnings report for
26 2015, using the form of the schedules attached as Exhibit A to the Proposed Settlement Agreement.

27 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
28 shall file with the Commission's Docket Control Center, as a compliance item in this matter, on or

1 before August 31, 2014, revised schedules of rates and charges for its wastewater division to reflect a
2 reduction in the imputed income tax rate of 36.6558 percent down to 25 percent.

3 IT IS FURTHER ORDERED that the revised schedule of rates and charges shall be effective
4 for all service rendered on and after August 1, 2014.

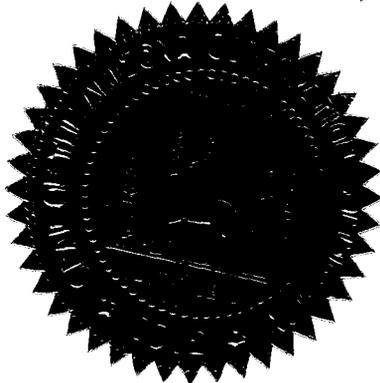
5 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
6 shall provide notice to its customers of the revised rates and charges, in a form acceptable to the
7 Commission's Utilities Division Staff, in its next regularly scheduled billing.

8 IT IS FURTHER ORDERED that all other findings and requirements of Decision No. 73992
9 remain in full force and effect.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
 13 
 14 CHAIRMAN  COMMISSIONER
 15  COMMISSIONER  COMMISSIONER  COMMISSIONER
 16



18 IN WITNESS WHEREOF, I, JODI JERICH, Executive
19 Director of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this 12th day of August 2014.

23 
24 JODI JERICH
25 EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____
28 TJ:tv

1 SERVICE LIST FOR:

JOHNSON UTILITIES, LLC

2 DOCKET NO.:

WS-02987A-08-0180

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**EXHIBIT A
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.

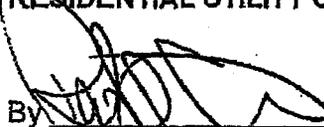
IV. MISCELLANEOUS PROVISIONS

- 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 - RUCCO
Date 10/30/2013

JOHNSON UTILITIES, LLC

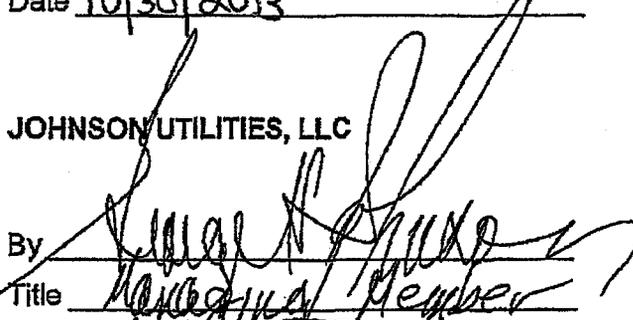
By 
Title Managing Member
Date 11-10-13

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	_____	

Johnson Utilities - WW Division

SCHEDULE NO. 2

Balance Sheet

Docket No. _____

WW DIVISION 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 for 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		_____

Johnson Utilities - WW Division
 Operating Income
 Docket No. _____

SCHEDULE NO. 3

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			