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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

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2015 SEP 22 P 1:44

AZ 0022 COMMISSION
DOCKET CONTROL

IN THE MATTER OF STAFF'S INQUIRY
INTO THE TERMINATION OF
STANDPIPE SERVICE BY JOHNSON
UTILITIES, L.L.C.

DOCKET WS-02987A-15-0284

**MOTION TO AMEND PROCEDURAL
ORDER AND MOTION TO
ACCELERATE**

Johnson Utilities, L.L.C. ("Company") moves that the Procedural Order issued by the Administrative Law Judge on September 10, 2015 be amended as follows:

Johnson Utilities L.L.C.'s Petition for Declaratory Order and Request for Relief, filed August 25, 2015 ("Petition"), should not, and cannot, "be held in abeyance," see Procedural Order, page 2, lines 23-25. Doing so results in unfairness to the Company (Staff goes first even though this matter was improperly commenced and may result in the need for two evidentiary proceedings).

The Commission's rules support the Company's position. "In all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona shall govern." A.A.C. R14-3-101, 216. A filing by the Company seeking relief cannot be summarily ignored. The Petition seeks to bring to the fore the issue of whether a tariff for the standpipe exists, the legality of the Staff's position that former tariffs can survive forever in some unspecified circumstances (or, as in this case, by Staff fiat), the other issues set forth herein and others.

Holding this matter in abeyance also amounts to an injunction. A.R.S. § 12-1802 provides that an injunction shall not be granted to "stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a

Arizona Corporation Commission

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multiplicity of such proceedings.” In this case, “abeyance” leads to multiple proceedings.

The docket concerns not only the reconstruction of a standpipe not in the most recent tariff, but legal and policy issues not raised in the skimpy Staff filing which commenced this matter. The Petition is designed to raise the needed issues in order that they be properly noticed, subject to discovery and decided.

An understanding of the factual underpinnings of this matter illustrates the need to promptly consider the Petition, order a response to the Petition and to proceed on an accelerated basis.

The former standpipe was not only used by unregulated public service companies, with some water being delivered and sold outside of the Company’s CC&N, it was used to serve areas without modern services, such as the Bonanza area.

The Bonanza area is a district of what are commonly referred to as “wildcat subdivisions.” The area was subdivided/lot split without what are now considered normal platting standards, which include utility extensions. The Bonanza area is generally located south of Hunt Highway bounded on the west by Thompson Road and Brenner Pass Road and on the east by Gary Road.

One of the goals of State law is to bring these areas up to modern standards. This is a goal that the ACC should support. The provision of wildcat utility services through the standpipe, which may be subsidized by regular customers, is antithetical to such goals. As is the allowance of the Company’s CC&N water to be routinely be distributed outside the CC&N.

The public policy issues are in part demonstrated by certain comments received in this docket indicating that some standpipe users want to continue receiving the subsidized water rather than paying line extension, hook up, and regular water fees and charges. There is a major difference between dealing with what Staff tries to characterize as simply reinstalling the construction water standpipe and allowing its use as a permanent potable water source, subsidized by tens of thousands of rate payers, which is the Staff’s apparent “simple” approach. Staff’s position raises huge issues of fairness to the ratepayers who subsidize the standpipe users, looking backwards to all prior tariffs, public safety and health, liability, the legal status of water haulers and many more issues.

1 The Petition brings many of these issues forward. The Company's extension of water
2 mains plays an important role in the issues.

3 The aerial photo below shows the Bonanza area.



24 The comparison of the wildcat areas with the modern subdivisions along the Hunt
25 Highway is stark. As stark as the need for the Commission to properly decide whether to follow
26 the policies of Arizona that encourage modernization of wildcat areas, not perpetuation of the lack
27 of modern services.

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The Petition was filed to raise these issues. Holding the Petition in abeyance is improper, imprudent and will lead to a tainted and unenforceable result coming from the currently scheduled hearing. Then, all will have to start over.

The Company respectfully moves that the Procedural Order be amended to order a response to the Petition and its inclusion in the process of this matter.

The Company further moves that consideration of this motion be accelerated with any responses and replies due within five business days and a ruling within seven business days.

Dated this 22d day of September, 2015.

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1 **ORIGINAL** and thirteen (13) copies
filed this 22d day of September, 2015, with:

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

5 **COPIES** of the foregoing hand-delivered
this 22d day of August, 2015, to:

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