



0000162159

BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

COMMISSIONERS

SUSAN BITTER SMITH – Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

2015 MAY 22 P 2:41
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
MAY 22 2015

ORIGINAL

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C., DBA
JOHNSON UTILITIES COMPANY, FOR AN
INCREASE IN ITS WATER AND WASTE-
WATER RATES FOR CUSTOMERS
WITHIN PINAL COUNTY, ARIZONA.

DOCKETED BY 
DOCKET NO. WS-02987A-08-0180

**PETITION TO AMEND DECISIONS
74695 AND 74701 PURSUANT TO A.R.S.
§40-252**

Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Suite 2400
Phoenix, AZ 85004

Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") hereby submits this Petition to Amend Decisions 74695 and 74701 pursuant to A.R.S. § 40-252 ("Petition"). With regard to Decision 74695, Johnson Utilities requests that the Commission remove the rate case filing requirement and allow the Company to determine the timing of its next rate case. In the event the Arizona Corporation Commission ("Commission") elects not to remove the rate case filing requirement, then the Company requests that the Commission modify Decision 74695 to extend the deadline for filing the next rate case from June 30, 2016, using a 2015 test year to June 30, 2017, using a 2016 test year.

With regard to Decision 74701, Johnson Utilities requests the modification of its Central Arizona Groundwater Replenishment District ("CAGRDR") adjuster to remove the limitation which requires the Company to reimburse itself for advancing shortfalls in the CAGRDR account at the rate of 1/12th of the shortfall per month.

Johnson Utilities requests that this Petition be approved without a hearing.

I. RATE CASE FILING REQUIREMENT.

In its April 26, 2013, Staff Report and Order on the Company's request for an allowance of income tax expense in this docket, Staff recommended that Johnson Utilities file a rate case using a 2014 test year. Johnson Utilities opposed Staff's recommendation because (i) it was

1 unnecessary and (ii) it would cause the Company to apply for a rate increase earlier than would
2 otherwise be the case. In Decision 73992, the Commission approved the Company's requested
3 inclusion of income tax expense in rates but also adopted Staff's recommendation regarding a
4 rate case filing requirement using a 2014 test year.

5 The Residential Utility Consumer Office ("RUCO") requested a rehearing of Decision
6 73992 because it opposed the allowance of income tax expense in the rates of limited liability
7 companies. Johnson Utilities also requested rehearing of Decision 73992 to oppose the
8 requirement that it file a rate case using a 2014 test year. The Company's opposition was based
9 upon the following points:

- 10 • Over the next two to three years (2014-2016), Johnson Utilities would be
11 investing in significant plant improvements and expansions, including a
12 major expansion of a wastewater treatment plant. Much of this planned
13 construction would not be completed by the end of 2014.
- 14 • Johnson Utilities was experiencing significant increases in power costs.
- 15 • Johnson Utilities was working on the implementation of the Patient
16 Protection and Affordable Care Act, the full financial impact of which
17 would not be known until after 2014.
- 18 • Requiring the filing of a rate case using a 2014 year test year would likely
19 lead to the filing of back-to-back rate cases, which would be burdensome
20 for Johnson Utilities and its customers. Johnson Utilities requested that
21 the Commission modify Decision 73992 by ordering a 2016 test year
22 instead of a 2014 test year.

23 RUCO and Johnson Utilities subsequently entered into a Settlement Agreement which
24 resolved RUCO's issue regarding the allowance for income tax expense and provided that the
25 Company would file its next rate case by June 30, 2016, using a 2015 test year. While Johnson
26 Utilities believed that the filing of a rate case using a 2015 test year was premature, the
27 Company acquiesced to a 2015 test year. Staff continued to recommend a 2014 test year.

28 In testimony filed by Johnson Utilities in support of the Settlement Agreement, the
Company explained why Staff's recommendation regarding a 2014 test year should be rejected,
summarized as follows:

- The Commission approved new rates and charges for Johnson Utilities in
Decision 71854, as modified and/or amended by Decisions 71910, 72089,
72533, 72579, 72634, 73284 and 73617. The rates that are in effect today
were not fully adopted and implemented until August 2013.

- 1 • Staff's recommendation was based upon conjecture that Johnson Utilities
2 "will not file a new rate application for several years." Obviously, this
3 possibility exists with all public utilities and the Commission does not
4 typically order a utility to file a rate case by a date certain.
- 5 • Rate cases are expensive to prepare, file and prosecute, and rate case
6 expense is ultimately borne by the customers.
- 7 • In the absence of some credible evidence by Staff that there is a need to
8 file a rate case, a public utility should determine the timing for filing for
9 new rates and charges based upon a careful consideration of all of the
10 relevant facts.
- 11 • Staff provided no analysis or any basis for selecting a 2014 test year as
12 opposed to any other test year. The recommendation of a 2014 test year
13 was arbitrary.

14 Additionally, the Company's witness explained why a delay in the rate case filing
15 requirement would make a material difference to Johnson Utilities, summarized as follows:

- 16 • Over the next two or three years (2015-2017), Johnson Utilities will be
17 investing in significant plant improvements and expansions.
- 18 • The Company will be expanding the capacity of its Pecan wastewater
19 treatment plant as well as constructing a bypass of wastewater flows from
20 the Pecan WWTP to the San Tan WWTP. The costs of this construction
21 will exceed \$5,000,000.
- 22 • The Company will be constructing three new water wells and additional
23 new water storage at a total cost of more than \$1,500,000.

24 In 2013, Johnson Utilities filed an application to sell all of the Company's utility assets
25 to the Town of Florence and cancel its Certificate of Convenience and Necessity. At the request
26 of the Town, Johnson Utilities delayed construction projects while negotiations proceeded over
27 the sale of the assets. When the Town was unwilling to honor the terms that had been agreed to
28 by the Town Manager, Johnson Utilities cancelled the transaction in 2014.

In addition to the projects previously identified, Johnson Utilities will be moving forward
with the following additional infrastructure projects in the next two to three years:

- 29 • Expanding the Section 11 wastewater treatment plant ("WWTP").
- 30 • Constructing effluent recharge wells at the Pecan WWTP and the Section
31 11 WWTP.
- 32 • Rehabilitating 5-6 wells to reduce nitrate levels.

33 Delaying the filing of the rate case until 2017 using a 2016 test year would allow
34 Johnson Utilities to include significant additional plant investment in rate base and additional
35 expenses in operating expenses. Alternatively, requiring the filing of a rate case using a 2015

1 year test year would likely force the Company to file back-to-back rate cases, which would be
2 burdensome and costly for the Johnson Utilities and its customers.

3 Staff has asserted previously that it believes that due to growth in the customer count, the
4 Company's "revenue and also most likely expenses have changed significantly, but not
5 necessarily proportionately."¹ While it is true that Johnson Utilities has had growth in the
6 number of customers, it is important to keep in mind that the Company effectively has four
7 separate systems and the cost per customer has not gone down simply due to growth. The
8 Company's service area is spread from Apache Junction to Queen Creek to Florence, which is
9 over 20 miles between them.

10 RUCO supported a delay in the test year for Johnson Utilities, stating that "[f]rom
11 RUCO's perspective, unless there is a compelling reason, we are in no hurry to get rate increases
12 for our customers. So if we can delay an extra year, from our perspective that makes sense."²
13 While the RUCO witness acknowledged under cross-examination from Staff that a rate case
14 filing could result in a rate decrease, he testified that "I would expect that 99 percent of the time,
15 if you looked, they are increased."³

16 It also bears noting that Johnson Utilities currently has a 3% operating margin for its
17 water division and the authorized rate of return for its wastewater division is 8%. When the
18 Company comes in again for a rate case it will almost certainly be seeking an increase in its rates
19 and charges.

20 Johnson Utilities requests that the Commission eliminate the rate case filing requirement
21 in Decision 74695 and allow the Company to determine the timing of its next rate case. If the
22 Commission is not prepared to eliminate the rate case filing requirement, the Company requests
23 that the Commission modify Decision 74695 to extend the deadline for filing the next rate case
24 from June 30, 2016, using a 2015 test year to June 30, 2017, using a 2016 test year.

27 ¹ Testimony of Darron Carlson Regarding Settlement Agreement (November 4, 2013), at 4. lines 18-19
(Docket WS-02987A-08-0180).

28 ² Rehearing Transcript at 11-12.

³ *Id.* at 46, lines 16-25.

1 **II. MODIFICATION OF CAGR D ADJUSTER.**

2 The Commission approved a CAGR D adjuster for Johnson Utilities in Decision 71854.
3 On June 2, 2014, Johnson Utilities petitioned the Commission, pursuant to A.R.S. § 40-252, to
4 amend Decision 71854 to include language clarifying the Company’s duties and responsibilities
5 regarding the CAGR D account. In Decision 74701, the Commission modified one of the
6 conditions of the CAGR D adjuster with the following revised condition:

7 3. The only time the Company can withdraw money from the CAGR D Account
8 is to pay the annual CAGR D fee to the CAGR D, which is due on October 15th of
9 each year, or to reimburse the Company for advancing a shortfall in the CAGR D
10 Account needed to make the previous year’s CAGR D payment. In the event of a
11 shortfall, the Company shall only reimburse itself by withdrawing each month
12 from the CAGR D Account an amount not to exceed 1/12th of the shortfall
13 advanced by the Company until the full amount of any advance has been returned
14 to the Company.

15 Johnson Utilities requests that the Commission modify this condition to allow the
16 Company to be reimbursed in full for any advances made by the Company to cover a shortfall in
17 the CAGR D account as soon as funds are available in the account. In other words, the Company
18 is requesting the elimination of the portion of the condition which limits reimbursements to
19 1/12th of the shortfall amount per month. Because Johnson Utilities is effectively making and
20 interest free loan to its customers by covering a shortfall in the first instance, there is no
21 equitable basis to require the Company to wait for full reimbursement for a full year. Therefore,
22 Johnson Utilities requests that the condition be modified as follows:

23 3. The only time the Company can withdraw money from the CAGR D Account
24 is to pay the annual CAGR D fee to the CAGR D, which is due on October 15th of
25 each year, or to reimburse the Company for advancing a shortfall in the CAGR D
26 Account needed to make the previous year’s CAGR D payment. ~~In the event of a
27 shortfall, the Company shall only reimburse itself by withdrawing each month
28 from the CAGR D Account an amount not to exceed 1/12th of the shortfall
 advanced by the Company until the full amount of any advance has been returned
 to the Company.~~

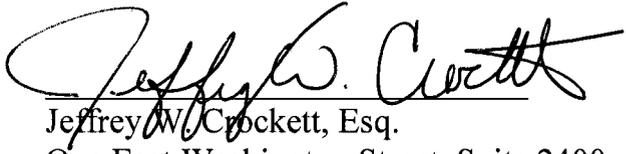
29 **III. CONCLUSION.**

30 For the reasons set forth herein, Johnson Utilities requests that the Commission grant its
31 petition to amend Decision 74695 to remove the rate case filing requirement and allow the
32 Company to determine the timing of its next rate case. In the alternative, the Company requests

1 that the Commission modify Decision 74695 to delay the rate case filing requirement for one
2 additional year from June 30, 2016, using a 2015 test year to June 30, 2017, using a 2016 test
3 year. With regard to Decision 74701, Johnson Utilities requests that the Commission authorize
4 the Company to be reimbursed for advances to cover a shortfall in the CAGR account as soon
5 as funds are available in the account, without limiting the reimbursement to 1/12th of the
6 shortfall per month until repaid. Finally, Johnson Utilities requests that this petition be approved
7 without a hearing.

8 RESPECTFULLY submitted this 22nd day of May, 2015.

9 BROWNSTEIN HYATT FARBER
10 SCHRECK, LLP

11 

12 Jeffrey W. Crockett, Esq.
13 One East Washington Street, Suite 2400
14 Phoenix, Arizona 85004
15 Attorneys for Johnson Utilities, L.L.C.

16 ORIGINAL and thirteen (13) copies of the
17 foregoing filed this 22nd day of May, 2015, with:

18 Docket Control
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Copy of the foregoing hand-delivered
23 this 22nd day of May, 2015, to:

24 Commissioner Susan Bitter Smith, Chairman
25 ARIZONA CORPORATION COMMISSION
26 1200 W. Washington Street
27 Phoenix, Arizona 85007
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

James E. Mannato, Town Attorney
TOWN OF FLORENCE
P.O. Box 2670
775 N. Main Street
Florence, Arizona 85232-2670

Christina Neely
014676\0001\1221\326.1

Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Suite 2400
Phoenix, AZ 85004