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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

3 SUSAN BITTER SMITH - Chairman

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AZ CORP COMMISSION
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5 TOM FORESE

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ORIGINAL

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

DOCKET NO. WS-02987A-15-0284

PROCEDURAL ORDER

9 BY THE COMMISSION:

10 On August 7, 2015, the Arizona Corporation Commission's Utilities Division ("Staff") filed
11 with the Arizona Corporation Commission ("Commission") a request and Proposed Order seeking
12 authorization to make inquiries into the termination of standpipe service by Johnson Utilities, L.L.C.
13 ("Johnson" or "Company"). Staff's request arose out of an informal complaint filed by the owner of
14 San Tan Water Hauling ("San Tan"), alleging that Johnson had denied San Tan access to standpipe
15 water without notice. Staff alleged that Johnson's abrupt termination of standpipe service was not
16 reasonable and created a substantial inconvenience to customers. Staff requested, among other
17 things, Commission approval of a Preliminary Order requiring Johnson to continue offering standpipe
18 service until the Commission could resolve this matter.

19 On August 11, 2015, a petition containing the signatures of 220 standpipe customers was filed
20 in this docket, requesting that the Commission require Johnson to re-establish standpipe service.

21 On August 13, 2015, Johnson filed Comments of Johnson Utilities Re: Staff Memorandum
22 and Proposed Order, stating that the Company strongly opposed Staff's Proposed Order; requesting
23 that the Commission reject the Proposed Order; arguing that the Company does not have a tariff for
24 standpipe service; and requesting closure of this docket.

25 On August 18, 2015, at the Commission's Open Meeting, and upon motion offered by
26 Commissioner Burns, the Commission directed Staff to send an engineer to inspect the standpipe
27 apparatus to determine a repair timetable and to report its findings to the Commission as soon as
28 possible. The Commission also directed the Hearing Division to conduct an expedited proceeding to

1 discuss an appropriate procedural schedule for this matter, and to hold an expedited hearing to
2 address whether Johnson's standpipe service lawfully may be discontinued. Further, the Commission
3 acknowledged Johnson's agreement to immediately allow water haulers access to the Company's
4 main facility to receive standpipe service, on an interim basis, until this matter is resolved.

5 On August 20, 2015, by Procedural Order, a procedural conference was scheduled to
6 commence on August 25, 2015.

7 On August 25, 2015, a procedural conference was held as scheduled. Staff and the Company
8 appeared through counsel. The parties provided an update on Johnson's standpipe service and
9 discussed a proposed procedural schedule for the hearing in this matter.

10 On the same date, Attorney Thomas K. Irvine filed a Notice of Appearance on behalf of
11 Johnson. Further, Johnson filed a Petition for Declaratory Order and Request for Relief, seeking a
12 Commission order stating that the sale of water from the standpipe is not a tariffed service under the
13 Company's tariff, that the standpipe service is not a regulated service, and that the Company has a
14 right to discontinue operating the standpipe. The Petition requested that the Commission adopt the
15 Company's proposed Temporary Order.

16 On August 26, 2015, the Commission issued Decision No. 75223, approving Staff's Proposed
17 Order.

18 On August 27, 2015, the Company filed Tariffs and Information.

19 On August 28, 2015, Staff filed a Notice of Filing Proposed Public Notice.

20 On August 31, 2015, Staff filed a Notice of Clarification, stating that Decision No. 75223 had
21 been issued by mistake due to a clerical error and that the Commission had not voted on Staff's
22 Proposed Order.

23 The issues raised in Johnson's Petition are in dispute. Accordingly, Johnson's petition for a
24 declaratory order will be held in abeyance until the evidence and testimony is presented in this
25 matter. Further, it is appropriate to set this matter for hearing.

26 Pursuant to A.A.C. R14-2-103 and A.A.C. R14-3-101 *et seq.*, the Commission now issues this
27 Procedural Order to govern the preparation and conduct of this proceeding.

28

1 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall
2 commence on **November 9, 2015, at 10:00 a.m.**, or as soon thereafter as is practicable, at the
3 Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona, and
4 shall continue on **November 10, 2015**, if necessary.

5 IT IS FURTHER ORDERED that a **pre-hearing conference** shall be held on **November 6,**
6 **2015, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's Offices, 1200 West
7 Washington Street, Hearing Room No. 2, Phoenix, Arizona.

8 IT IS FURTHER ORDERED that the **direct testimony and associated exhibits** to be
9 presented by **Johnson** at hearing shall be reduced to writing and filed on or before **October 2, 2015**.

10 IT IS FURTHER ORDERED that the **direct testimony and associated exhibits** to be presented
11 at hearing by **Staff and/or intervenors** shall be reduced to writing and filed on or before **October 23,**
12 **2015**.

13 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be
14 presented at hearing by **Johnson** shall be reduced to writing and filed on or before **November 2,**
15 **2015**.

16 IT IS FURTHER ORDERED that **surrebuttal testimony and associated exhibits** may be
17 presented at the hearing.

18 IT IS FURTHER ORDERED that **any objections to testimony or exhibits** that have been
19 filed as of **November 2, 2015**, shall be made on or before **November 6, 2015**.

20 IT IS FURTHER ORDERED that **any substantive corrections, revisions, or supplements**
21 **to the pre-filed testimony** shall be reduced to writing and filed no later than **November 6, 2015**.

22 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
23 except that all **Motions to Intervene** must be filed on or before **October 9, 2015**.

24 IT IS FURTHER ORDERED that **any objections to intervention** shall be filed on or before
25 **October 23, 2015**.

26 IT IS FURTHER ORDERED that **Johnson** shall provide public notice of the hearing in
27 this matter, in the following form and style, with the heading in no less than 12-point bold type and
28 the body in no less than 10-point regular type:

**PUBLIC NOTICE OF THE ARIZONA CORPORATION COMMISSION
UTILITIES DIVISION'S INQUIRY INTO THE TERMINATION
OF STANDPIPE SERVICE BY JOHNSON
UTILITIES, L.L.C.
(DOCKET NO. WS-02987A-15-0284)**

In a letter dated July 24, 2015, Johnson Utilities, L.L.C. ("Johnson" or the "Company") notified users of the water standpipe located at 27931 N. Edwards Road, San Tan Valley, Arizona 85143 that the Company's standpipe would be permanently closed on August 5, 2015, due to continued problems, liabilities and multiple costly vandalism repairs. On or about July 30, 2015, the standpipe was vandalized and rendered non-operational. Johnson later dismantled the standpipe, and it has not operated since that time.

On August 7, 2015, the Arizona Corporation Commission ("Commission") Utilities Division's Staff ("Staff") filed with a request and Proposed Order seeking Commission authorization to make inquiries into the closure of the standpipe. Staff asserted that Johnson may not lawfully close the standpipe without prior Commission approval. Johnson has responded that it does not have a standpipe tariff and that the Company may lawfully close the standpipe without prior Commission approval. The Commission ordered that an evidentiary hearing be held.

The Commission will hold a hearing on this matter beginning **November 9, 2015, at 10:00 a.m.** at the Commission's offices at 1200 West Washington, Phoenix, Arizona 85007 in Hearing Room No. 1, and continuing on November 10, 2015, if necessary. Public comments will be taken on the first day of the hearing.

Written public comments may be submitted by mailing a letter **referencing Docket No. WS-02987A-15-0284** to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on the Commission's website (www.azcc.gov) using the "Submit a Public Comment for a Utility" function. If you require assistance, you may contact the Consumer Services Section at 602-542-4251 or 1-800-222-7000.

If you do not intervene in this docket, you will not receive further notice of the proceedings in this docket. However, all documents filed in this docket are available on-line (usually within 24 hours after docketing) at the Commission's website at www.azcc.gov using the e-Docket function located on the website homepage. RSS feeds are also available through e-Docket.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. Anyone who wishes to intervene must file an original and 13 copies of a written motion to intervene with the Commission's Docket Control Center no later than **October 9, 2015**, and send a copy of the motion to Johnson or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. The docket number for the case: WS-02987A-15-0284;

27 ...
28 ...

- 1 3. A short statement explaining:
 - 2 a. Your interest in the proceeding (e.g. a customer or potential
 - 3 customer of Johnson, a member or shareholder of Johnson,
 - 4 etc.);
 - 5 b. How you will be directly and substantially affected by the
 - 6 outcome of the case; and
 - 7 c. Why your intervention will not unduly broaden the issues in
 - 8 the case;
- 9 4. A statement certifying that you have served a copy of the motion to intervene
- 10 on Johnson or its counsel and on all other parties of record in the case; and
- 11 5. If you are not represented by an attorney who is an active member of the
- 12 Arizona State Bar, and you are not representing yourself as an individual,
- 13 sufficient information and any appropriate documentation to demonstrate
- 14 compliance with Arizona Supreme Court Rules 31, 38 and 42, as applicable.

15 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
 16 that all motions to intervene must be filed on or before **October 9, 2015**. If
 17 representation by counsel is required by Arizona Supreme Court Rule 31, intervention
 18 will be conditioned upon the intervenor obtaining counsel to represent the intervenor.
 19 Information about intervention is available on the Commission's at www.azcc.gov,
 20 through the "Intervention in Utility Cases" function. The granting of intervention,
 21 among other things, entitles a party to present sworn evidence at the hearing and to
 22 cross-examine other witnesses. However, failure to intervene will not preclude any
 23 interested person or entity from appearing at the hearing and providing public
 24 comment or from filing written comments in the record of the case.

25 Copies of the parties' filings are available for public inspection during regular
 26 business hours at Johnson's offices located at 968 E. Hunt Highway, San Tan Valley,
 27 Arizona 85143, and at the Commission's Docket Control Center at 1200 West
 28 Washington Street, Phoenix, Arizona 85007. All documents filed in this matter are
 also available on the Commission's website (www.azcc.gov) using the e-Docket
 function and entering Docket No. WS-02987A-15-0284.

The Commission does not discriminate on the basis of disability in admission to its
 public meetings. Persons with a disability may request a reasonable accommodation,
 such as a sign language interpreter, as well as request this document in an alternative
 format, by contacting the ADA Coordinator, Shaylin Bernal, e-mail
sabernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as
 early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that by **September 28, 2015**, Johnson shall mail a copy of the
 above notice to each standpipe customer and shall cause the above notice to be published in a
 newspaper(s) of general circulation in the affected standpipe service territory.

IT IS FURTHER ORDERED that Johnson shall file certification of mailing and
 publication as soon as practicable after mailing/publication has been completed, but no later than on

1 **October 23, 2015.**

2 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication,
3 notwithstanding the failure of an individual customer to read or receive the notice.

4 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and
5 regulations of the Commission, except that **until November 2, 2015**, any objection to discovery
6 requests shall be made within 7 calendar days of receipt¹ and responses to discovery requests shall be
7 made within 10 calendar days of receipt. Thereafter, objections to discovery requests shall be made
8 within 5 calendar days, and responses shall be made within 7 calendar days. The response time may
9 be extended by mutual agreement of the parties involved if the request requires an extensive
10 compilation effort or for other good cause.

11 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a
12 receiving party requests service to be made electronically, and the sending party has the technical
13 capability to provide service electronically, service to that party shall be made electronically.

14 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
15 discovery, any party seeking resolution of a discovery dispute may telephonically contact the
16 Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery
17 dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and
18 that the party making such a request shall forthwith contact all other parties to advise them of the
19 hearing date and shall at the hearing provide a statement confirming that the other parties were
20 contacted.²

21 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
22 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
23 motion shall be deemed denied.

24 IT IS FURTHER ORDERED that any response to a motion, other than a response to a motion
25 to intervene, shall be filed within five calendar days of the filing date of the motion.

26

27 ¹ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona
time will be considered as received the next business day.

28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before
seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that any reply to a motion shall be filed within five calendar
2 days of the filing date of the response to the motion.

3 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to
4 this matter may opt to receive service of all filings in this docket, including all filings by parties and
5 all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
6 Commission's Hearing Division, via email sent to an email address provided by the party rather than
7 via U.S. Mail. To exercise this option, a party shall:

- 8 1. Ensure that the party has a valid and active email address to which the party has
9 regular and reliable access ("designated email address");
- 10 2. Complete a Consent to Email Service form, available on the Commission's website
11 (www.azcc.gov);
- 12 3. File the original and 13 copies of the Consent to Email Service form with the
13 Commission's Docket Control, also providing service to each party to the service list;
- 14 4. Send an email, containing the party's name and the docket number for this matter, to
15 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to
16 allow the Hearing Division to verify the validity of the designated email address;
- 17 5. Understand and agree that service of a document on the party shall be complete upon
18 the sending of an email containing the document to the designated email address,
19 regardless of whether the party receives or reads the email containing the document;
20 and
- 21 6. Understand and agree that the party will no longer receive service of filings in this
22 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
23 and until the party withdraws this consent through a filing made in this docket.

24 IT IS FURTHER ORDERED that a party's consent to email service shall not become
25 effective until a Procedural Order is issued approving the use of email service for the party. The
26 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the
27 Hearing Division has verified receipt of an email from the party's designated email address.

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1 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this
2 matter via email does not change the requirement that all filings with the Commission's Docket
3 Control must be made in hard copy and must include an original and 13 copies.

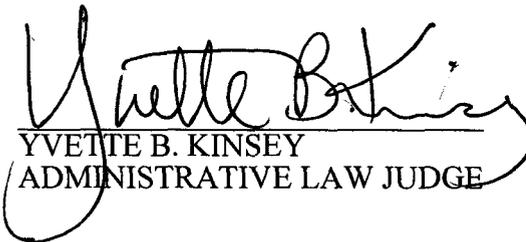
4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
5 Communications) applies to this proceeding and shall remain in effect until the Commission's
6 Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
8 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

9 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
10 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
11 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
12 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
13 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
14 Law Judge or the Commission.

15 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
16 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
17 hearing.

18 DATED this 10th day of September, 2015.

19
20
21 
YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

22 COPIES of the foregoing mailed/delivered
23 this 10th day of September, 2015, to:

24 Jeffrey W. Crockett
25 CROCKETT LAW GROUP PLLC
1702 East Highland Avenue, Suite 204
Phoenix, AZ 85016-4665

26 Thomas K. Irvine
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By: Rebecca Unquera
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Assistant to Yvette B. Kinsey