

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DATE: OCTOBER 27, 2015

DOCKET NO.: WS-02987A-15-0284

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

JOHNSON UTILITIES, L.L.C.
(TERMINATION OF STANDPIPE SERVICE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 5, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

NOVEMBER 17, 2015 and NOVEMBER 18, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI JERICH
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

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

DOCKET NO. WS-02987A-15-0284

DECISION NO. _____

9 ORDER

10 Open Meeting
11 November 17 and 18, 2015
12 Phoenix, Arizona

13 **BY THE COMMISSION:**

14 This Order comes before the Arizona Corporation Commission ("Commission") as a Motion to
15 Close this docket without prejudice. We conclude that it is in the public interest to administratively
16 close this docket without prejudice.

17 * * * * *

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

20 FINDINGS OF FACT

21 Procedural History

22 1. On August 7, 2015, the Arizona Corporation Commission's Utilities Division ("Staff")
23 filed with the Commission a request and Proposed Order ("Request") seeking authorization to make
24 inquiries into the termination of standpipe service by Johnson Utilities, L.L.C. ("Johnson" or
25 "Company"). Staff's Request arose out of an informal complaint filed by the owner of San Tan Water
26 Hauling ("San Tan"), alleging that Johnson had denied San Tan access to standpipe water without
27 notice. Johnson is an Arizona public service corporation that provides water utility service in the San
28 Tan Valley area. Johnson's standpipe was located at 27931 North Edwards Road, in San Tan Valley,
Arizona ("Edwards Standpipe").

1 2. Staff stated that Johnson had provided notice to all Edwards Standpipe customers that
2 it would discontinue its standpipe service on August 5, 2015, but that Johnson abruptly discontinued
3 its standpipe service on July 30, 2015. Johnson subsequently disassembled the Edwards Standpipe.
4 Staff alleged that Johnson's abrupt termination of standpipe service was not reasonable and created a
5 substantial inconvenience to customers. Staff requested, among other things, Commission approval of
6 a Preliminary Order requiring Johnson to continue offering standpipe service until the Commission
7 could resolve this matter.

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

11 4. On August 13, 2015, Johnson filed Comments of Johnson Utilities Re: Staff
12 Memorandum and Proposed Order. Johnson stated that the Company strongly opposed Staff's
13 Proposed Order, requested that the Commission reject Staff's Proposed Order, argued that the
14 Company does not have a tariff for standpipe service, and requested closure of this docket.

15 5. On August 18, 2015, at the Commission's Open Meeting, the Commission directed Staff
16 to send an engineer to inspect the standpipe apparatus to determine a repair timetable and to report its
17 findings to the Commission as soon as possible. The Commission also directed the Hearing Division
18 to conduct an expedited proceeding to discuss an appropriate procedural schedule for this matter, and
19 to hold an expedited hearing to address whether Johnson's standpipe service lawfully may be
20 discontinued. Further, the Commission acknowledged Johnson's agreement to immediately allow
21 water haulers access to the Company's main facility, located at E. Hunt Highway in San Tan Valley,
22 to receive standpipe service, on an interim basis, until this matter is resolved.

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

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

28 ...

1 8. On the same date, Attorney Thomas K. Irvine filed a Notice of Appearance on behalf
2 of Johnson. Further, Johnson filed a Petition for Declaratory Order and Request for Relief, which
3 sought a Commission order stating that the sale of water from the standpipe is not a tariffed service
4 under the Company's tariff, that the standpipe service is not a regulated service, and that the Company
5 has a right to discontinue operating the standpipe. The Petition requested that the Commission adopt
6 the Company's proposed Temporary Order.

7 9. On August 26, 2015, the Commission issued Decision No. 75223, approving Staff's
8 Proposed Order.

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

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

11 12. On August 31, 2015, Staff filed a Notice of Clarification, stating that Decision No.
12 75223 had been issued by mistake due to a clerical error and that the Commission had not voted on
13 Staff's Proposed Order.

14 13. On September 10, 2015, by Procedural Order, the hearing in this matter was scheduled
15 to commence on November 9, 2015, and other procedural deadlines were established. Further,
16 Johnson's Petition for Declaratory Order and Request for Relief was held in abeyance until the evidence
17 was presented in a hearing in this matter.

18 14. On September 22, 2015, Johnson filed a Motion to Amend Procedural Order and Motion
19 to Accelerate.

20 15. On September 24, 2015, a telephonic procedural conference was held at the joint request
21 of the Company and Staff. Staff and Johnson appeared telephonically through counsel. During the
22 procedural conference, the parties stated that they had been engaged in discussions to resolve the issues
23 raised in this docket and that the parties believed resolution was possible. The parties jointly requested
24 that the procedural deadlines, including publication of notice, be vacated in an effort to allow the parties
25 to continue settlement discussions. The parties stated that they believed they would docket a stipulated
26 agreement within one week of the procedural conference. At the conclusion of the conference, the
27 parties' joint request to vacate the procedural schedule was granted.

28 ...

1 Discussion

2 16. Staff and Johnson did not file a stipulated agreement. Subsequent to the procedural
3 conference, Johnson docketed a letter stating that Johnson had been working at an expedited pace to
4 extend water distribution mains in the standpipe service area, that Johnson had completed one mile of
5 transmission mains in the area, that no person or entity had filed a formal complaint regarding closure
6 of the standpipe, that no person or entity had sought intervention in this docket,¹ that neither Johnson
7 or Staff had received reports that any person or entity was without access to potable water, and that
8 based on the above facts this docket should be closed with prejudice (“Letter”).

9 17. Johnson’s Letter outlined a proposed construction timeline for the completion of the
10 installation of water lines needed to bring potable water to customers in the vicinity of the Edwards
11 Standpipe. Johnson’s Letter stated that construction would be completed in approximately 16 phases
12 and would eventually consist of an estimated 93,000 linear feet of transmission mains. Johnson’s Letter
13 stated that Johnson had completed two of the estimated 16 phases needed to complete construction of
14 the transmission mains.

15 18. Instead of a joint stipulation, Johnson attached to its Letter a proposed stipulation,
16 whereby Johnson agreed to stipulate with Staff that: 1) Staff’s inquiry in this docket regarding the
17 standpipe should be administratively closed; 2) Johnson maintains its position that it does not have a
18 tariff for standpipe service and it did not need Commission approval to close the standpipe; and 3) Staff
19 reserves the right to propose a tariff for standpipe service for Johnson in the Company’s next rate case.
20 Johnson requested that based on its proposed stipulation, that this docket be administratively closed
21 with prejudice.

22 19. Staff has filed a Motion requesting that this docket be administratively closed without
23 prejudice (“Motion”). In the Motion, Staff concurs with Johnson’s statements that no person or entity
24 who previously used Johnson’s standpipe is without access to potable water, that no person or entity
25 has filed a formal complaint regarding closure of the standpipe, no person or entity has sought
26 intervention in this docket, that no person or entity has contacted Staff or Johnson to report they are

27 ¹ The September 10, 2015, Procedural Order established, among other things, publication and intervention deadlines for
28 this matter. However, Johnson and Staff jointly requested that the procedural deadlines be vacated prior to notice of the
intervention deadlines being published.

1 without access to a source of potable water. Staff states that Johnson is "ready and willing" to provide
 2 access to water haulers for standpipe service who agree to abide by Johnson's terms and conditions.²

3 20. Staff also stated that the Town of Florence ("Florence") and the Apache Junction Water
 4 Utilities Community Facilities District ("CFD") both operate standpipe service 24-hours-a-day, seven-
 5 days-a-week, in the vicinity of the Edwards Standpipe.

6 21. In its Motion, Staff stated that based on the above facts there is no need for this docket
 7 to remain open or to proceed with an evidentiary hearing in this matter. Staff requests that the
 8 Commission: 1) administratively close this docket without prejudice; 2) reserve Staff's right to address
 9 any similar issues with regard to the matters raised in this docket should they subsequently arise; and
 10 3) reserve Staff's right to propose a tariff for standpipe service for Johnson in the Company's next rate
 11 case.

12 22. Staff initiated the inquiry into Johnson's standpipe termination arising from an informal
 13 complaint filed by a Johnson standpipe customer who alleged that Johnson had denied the customer
 14 service. Additionally, a petition with more than 200 signatures was filed in this docket requesting that
 15 Johnson's standpipe service be reinstated and numerous other inquiries were filed in opposition to the
 16 termination of Johnson's standpipe service.

17 23. Johnson continues to maintain its position that it does not have a tariff for standpipe
 18 service and that it did not need Commission approval to close the standpipe.

19 24. No evidence was presented in this matter and the issues have not been adjudicated.

20 25. While we recognize Johnson's efforts to expeditiously bring potable water service to
 21 homeowners in the area, it is reasonable to reserve Staff's ability to address any similar issues raised
 22

23 ² Johnson's agreement requires water haulers to:

- 24 1) Establish an account with Johnson Utilities and pay for water at the construction water rate;
- 25 2) Provide a certificate of insurance in the minimum amount of \$2 million naming Johnson Utilities as an additional insured;
- 26 3) Sign an affidavit that it is in compliance with all applicable Arizona laws and that it is using NSF/ANSI-approved equipment for hauling potable water;
- 27 4) Indemnify Johnson Utilities from all liability arising in any way from the delivery or use of the water purchased from Johnson Utilities;
- 28 5) Sign an affidavit that no water purchased from Johnson Utilities will be delivered or sold to any person who will use the water outside of the Company's CC&N; and
- 6) Provide a log of all points of delivery for the purchased water prior to the water hauler's equipment leaving Johnson Utilities' premises.

1 in this docket that may subsequently arise. Further, we find it reasonable and appropriate to grant
2 Staff's request to reserve Staff's ability to propose a tariff for standpipe service in Johnson's next rate
3 case. Therefore, it is appropriate to grant Staff's Motion and we find that it is in the public interest to
4 administratively close this docket without prejudice.

5 **CONCLUSIONS OF LAW**

6 1. Johnson is a public service corporation within the meaning of Article XV of the Arizona
7 Constitution and A.R.S. §40-246.

8 2. The Commission has jurisdiction over Johnson and the subject matter of this docket.

9 3. It is reasonable to reserve Staff's ability to address any similar issues raised in this
10 docket that may subsequently arise.

11 4. It reasonable and appropriate to grant Staff's request to reserve its ability to propose a
12 tariff for standpipe service in Johnson's next rate case.

13 5. It is in the public interest to grant Staff's Motion to administratively close this docket
14 without prejudice.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the Commission's Utilities Division's Motion to
17 administratively close this docket without prejudice is hereby granted.

18 IT IS FURTHER ORDERED that the Commission's Utilities Division's request to reserve its
19 ability to address any similar issues raised in this docket that may subsequently arise is hereby granted.

20 ...
21 ...
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1 IT IS FURTHER ORDERED that the Commission's Utilities Division's request to reserve its
2 ability to propose a tariff for standpipe service in Johnson Utilities, L.L.C.'s next rate case is hereby
3 granted.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 _____
CHAIRMAN

COMMISSIONER

9
10 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
13 of the Arizona Corporation Commission, have hereunto set my
14 hand and caused the official seal of the Commission to be affixed
15 at the Capitol, in the City of Phoenix, this _____ day
16 of _____ 2015.

17 _____
JODI JERICH
EXECUTIVE DIRECTOR

18 DISSENT _____
19

20 DISSENT _____
21 YBK:tv
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28

1 SERVICE LIST FOR:

JOHNSON UTILITIES, L.L.C.

2 DOCKET NO.:

WS-02987A-15-0284

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