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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

AUG 25 2016

DOCKETED BY *[Signature]*

DOCKET NO. WS-02987A-16-0181

2 COMMISSIONERS

3 DOUG LITTLE – Chairman
4 BOB STUMP
4 BOB BURNS
5 TOM FORESE
5 ANDY TOBIN

6
7 NICK MYERS,

8 Complainant,

9 vs.

10 JOHNSON UTILITIES, LLC,

11 Respondent.

PROCEDURAL ORDER
(Sets Hearing)

12 **BY THE COMMISSION:**

13
14 On June 7, 2016, Nick Myers (“Mr. Myers” or “Complainant”) filed with the Arizona
15 Corporation Commission (“Commission”) a Formal Complaint (“Complaint”) against Johnson
16 Utilities, LLC (“Johnson” or “Company” or “Respondent”), alleging that Johnson has abandoned a
17 previous commitment to construct distribution lines to provide potable water service to customers that
18 previously relied upon service from the Company’s discontinued standpipe operation. Mr. Myers
19 further alleges that the termination of the standpipe operation was in violation of A.A.C. R14-2-402(C).
20 As relief, Mr. Myers requests that the Commission order the Company to install the aforementioned
21 distribution lines in an expedited manner. In the alternative, Mr. Myers requests that the Commission
22 order the Company to restore its discontinued standpipe operation.

23 On June 13, 2016, Mr. Myers filed a Motion for Expedited Processing requesting that the
24 Commission process this matter in an expedited manner and schedule a hearing as soon as possible.

25 On June 16, 2016, the Company filed a Response to Nick Myers’ Motion for Expedited
26 Processing arguing that emergency circumstances do not exist because no customers are currently
27 without water. According to the Company, this matter should be processed in the normal course of
28 formal complaints.

1 On June 21, 2016, Mr. Myers filed a Request for Email Service consenting to service of all
2 future filings in this docket by email.

3 On June 24, 2016, Mr. Myers filed a Rebuttal to Johnson Utilities' Response to Motion for
4 Expedited Processing.

5 On June 29, 2016, a Procedural Order was issued scheduling a procedural conference to
6 commence on July 14, 2016.

7 On July 1, 2016, the Company filed a Motion to Dismiss the Complaint.

8 On July 7, 2016, Mr. Myers filed a Response to the Motion to Dismiss.

9 On July 11, 2016, the Company filed a Motion to Continue the Procedural Conference and a
10 Notice of Intent to File a Reply in Support of the Motion to Dismiss on or Before July 19, 2016.

11 On July 12, 2016, the Company filed a Request to Appear Telephonically at the July 14, 2016
12 Procedural Conference.

13 On July 14, 2016, the procedural conference was held as scheduled, with Mr. Myers appearing
14 *pro se*, and the Company and the Commission's Utilities Division ("Staff") appearing through counsel.
15 At that time, a discussion occurred regarding the status of potable water service within the Company's
16 service territory. No evidence was taken during the procedural conference. The parties were informed
17 that the Company's Motion to Dismiss would be taken under advisement following the filing of the
18 Company's Reply in Support of the Motion to Dismiss.

19 On July 18, 2016, Mr. Myers filed a Response to Comments made at the procedural conference.

20 On July 19, 2016, the Company filed a Reply in Support of its Motion to Dismiss.

21 On July 25, 2016, a Procedural Order was issued denying the Company's Motion to Dismiss;
22 directing the Company to file its Answer to the Complaint no later than August 16, 2016; and
23 scheduling a procedural conference to commence on August 18, 2016.

24 On August 16, 2016, the Company filed its Answer to Formal Complaint.

25 On August 18, 2016, the procedural conference was held as scheduled, with Mr. Myers
26 appearing *pro se*, and the Company appearing through counsel. At that time, the parties agreed to an
27 appropriate hearing schedule to govern the preparation and conduct of this proceeding. The parties
28 further agreed to disclose the information contained in Arizona Rules of Civil Procedure Rule 26.1(a).

1 The hearing schedule and discovery process agreed upon by the parties is reasonable and should
2 be granted.

3 One of the issues presented in this proceeding concerns whether a customer within a certificated
4 area of a utility is required to sign a main extension agreement as a condition of service. Since further
5 information on this issue is necessary, it is reasonable under the circumstances to require Staff to file a
6 brief responsive to the following issues: (1) what is the standard (i.e. requirements or prerequisites)
7 for a customer within the certificated area of a water utility to obtain service; and (2) may a utility
8 require some customers to enter into main extension agreements, but allow other customers to obtain
9 service without such agreements? It is further reasonable to allow the parties an opportunity to file a
10 response to Staff's brief.

11 **Consent to Email Service**

12 **The Commission is appreciative of parties' requests to receive service by email.**

13 **The Commission has implemented a procedure whereby all filings made by a**
14 **Commissioner, the Commission's Executive Director, or a Commission Division will**
15 **automatically be served via email on parties who have consented to email service. The email will**
16 **contain a link to access the filing online.**

17 **Parties who do not consent to email service will not be provided documents filed by a**
18 **Commissioner, the Commission's Executive Director, or a Commission Division via an email. In**
19 **addition, they may not be able to receive some documents, such as Amendments to Open Meeting**
20 **Agenda items.**

21 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall
22 commence on **December 8, 2016, at 10:00 a.m.**, or as soon thereafter as is practical, at the
23 Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona.

24 IT IS FURTHER ORDERED that **Complainant shall disclose** in writing, **to the extent**
25 **applicable**, the information described in Rule 26.1(a) to Respondent no later than **September 8, 2016**.

26 IT IS FURTHER ORDERED that **Respondent shall disclose** in writing, **to the extent**
27 **applicable**, the information described in Rule 26.1(a) to Complainant no later than **September 22,**
28 **2016.**

1 IT IS FURTHER ORDERED that the duty to disclose the information required by Rule 26.1(a)
2 shall be continuing, and each party shall make additional or amended disclosures whenever new or
3 different information is discovered or revealed.¹

4 IT IS FURTHER ORDERED that **direct testimony and associated exhibits to be presented**
5 **by Complainant** at the hearing shall be reduced to writing and filed on or before **October 21, 2016**.

6 IT IS FURTHER ORDERED that **direct testimony and associated exhibits to be presented**
7 **by Respondent** at the hearing shall be reduced to writing and filed on or before **November 21, 2016**.

8 IT IS FURTHER ORDERED that **Staff shall file**, no later than **October 6, 2016**, a **brief**
9 responsive to the following issues:

- 10 (1) What is the standard (i.e. requirements or prerequisites) for a customer within the
11 certificated area of a water utility to obtain service; and
12 (2) May a utility require some customers to enter into main extension agreements, but allow
13 other customers to obtain service without such agreements?

14 IT IS FURTHER ORDERED that **the parties** shall file any **response to Staff's brief** no later
15 than **November 3, 2016**.

16 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m.** on the date the filing
17 is due.

18 IT IS FURTHER ORDERED that the parties shall attempt to resolve discovery disputes through
19 informal, good-faith negotiations prior to seeking Commission resolution of the controversy.

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

27
28 ¹ The parties are not required to file their disclosures, including any additional or amended disclosures, with Docket Control.

1 IT IS FURTHER ORDERED that any motion(s) filed in this matter that are not ruled upon by
2 the Commission within 20 days of the filing date of the motion shall be deemed denied.

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

5 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five days
6 of the filing date of the response to the motion.

7 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
8 pursuant to Rule 6(a) or (e) of the Arizona Rules of Civil Procedure.

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

12 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
13 31, 38, 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

- 25 1. Ensure that the party has a valid and active email address to which the party has regular
26 and reliable access ("designated email address");
- 27 2. Complete a Consent to Email Service using the form available on the Commission's
28 website (www.azcc.gov) or a substantially similar format;

- 1 3. File the original and 13 copies of the Consent to Email Service with the Commission's
- 2 Docket Control, also providing service to each party to the service list;
- 3 4. Send an email, containing the party's name and the docket number for this matter, to
- 4 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to allow
- 5 the Hearing Division to verify the validity of the designated email address;
- 6 5. Understand and agree that service of a filing on the party shall be complete upon the
- 7 first of the following to occur: (1) the sending, to the designated email address, of an
- 8 email containing an electronic copy of the filing or a link to access the filing online; or
- 9 (2) for a filing made by a Commissioner, the Commission's Executive Director, or a
- 10 Commission Division, the making of the filing with a service certification including
- 11 coding indicating that an automatic service email for the filing shall be sent to each party
- 12 whose consent to email service has been approved;
- 13 6. Understand and agree that the party may provide additional email addresses on the
- 14 Consent to Email Service for individuals to whom the party desires to have service
- 15 emails sent as a courtesy, but that these courtesy email addresses are not the designated
- 16 email address and will not be verified; and
- 17 7. Understand and agree that the party will no longer receive service of filings in this
- 18 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
- 19 and until the party withdraws this consent through a filing made in this docket.

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

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

27 ...

28 ...

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

4 DATED this 25th day of August, 2016.



5
6 SCOTT M. HESLA
7 ADMINISTRATIVE LAW JUDGE

8
9 On this 25th day of August, 2016, the foregoing document was filed with Docket Control as a
10 Procedural Order – Sets a Hearing, and copies of the foregoing were mailed on behalf of the Hearing
11 Division to the following who have not consented to email service. On this date or as soon as possible
12 thereafter, the Commission’s eDocket program will automatically email a link to the foregoing to the
13 following who have consented to email service.

13 Jeffrey W. Crockett
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24 **Consented to Service by Email**

24 By: RTallman
25 Rebecca Tallman
26 Assistant to Scott M. Hesla
27
28