

ORIGINAL

BEFORE THE ARIZONA CORPORATION



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COMMISSIONERS

Arizona Corporation Commission

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TOM FORESE, Chairman  
BOB BURNS  
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JUSTIN OLSON

MAR 28 2018

2018 MAR 28 P 4:49

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MP

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, LLC, FOR A  
DETERMINATION OF THE FAIR VALUE  
OF ITS WATER AND WASTEWATER  
UTILITY PLANT AND PROPERTY, FOR  
INCREASES IN ITS RATES AND CHARGES  
FOR WATER AND WASTEWATER  
UTILITY SERVICE, ANDE FOR RELATED  
APPROVALS.

DOCKET NO. WS-02987A-17-0392

JOHNSON UTILITIES' REPLY IN  
SUPPORT OF MOTION FOR  
CONTINUANCE AND STAY

(Expedited Ruling Requested)

(Oral Argument Requested)

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In examining Staff's Response to Johnson Utilities' Motion to Stay this case, one question repeatedly comes to mind: where's the proverbial fire? It is important to remember a couple of important premises here. First, this case was filed because the Commission ordered Johnson Utilities to do so *because of* the presence of the indictment issued in the *United States v. Pierce* case. Now Staff opposes staying the same rate case until a determination is made in *Pierce*. Second, the *Pierce* trial will occur this summer, mere months from now. Third, in the *Pierce* case, there is a Protective Order that forbids the disclosure of certain information and witness examination. Is there any question that Mr. Johnson, a party subject to the protective order in that case and past manager of Johnson Utilities, will be asked to provide evidence and/or testimony with regard to the issues pending on this docket? Of course he will – such a notion is inherently rhetorical – but yet he'll be unable under a Court Order to do so while the *Pierce* case is pending. Simply put, efficiency dictates that a stay be granted in this case, just as it did in the *Munday* case before the Commission, and the *Castillo* case before the United States District Court.

At the outset, the Response makes a couple of factual statements that merit correction. First, the Response states that George Johnson was "the Company's owner." See Response, at 1:19. This is incorrect. Johnson Utilities, L.L.C. is owned by the George H. Johnson Revocable Trust, of which Mr. Johnson serves as its trustee. This trust is separate and distinct in the eyes of

1 the law, and should be seen as such here. Second, the Response states that “[a]s of May 26, 2017,  
2 George Johnson was removed as manager of Johnson Utilities . . . .” This, too, is erroneous. Mr.  
3 Johnson was not removed as manager. Despite strongly opposing the allegations in the indictment  
4 levied against him, he voluntarily resigned his managerial role in the best interests of the company.  
5 This distinction should also not get lost here.

6 Against that backdrop, there is nothing provided in the Response – nor does any basis  
7 exist – that somehow the requested stay is anything other than an appropriate use of the  
8 Administrative Law Judge’s discretion as the most efficient management of these proceedings.

9 **A STAY IS APPROPRIATE FOR EFFICIENCY REASONS.**

10 The Commission – in its Order directing Johnson Utilities to file this rate case – noted its  
11 desire to favor judicial economy above unnecessarily wasting resources. See August 8, 2017  
12 Memorandum and Proposed Order to Amend Decision 75747 (“This course of action [the direction  
13 to file a rate case] favors judicial economy.”). And there is no good faith basis to argue that the  
14 requested stay – which requests a delay in the litigation of the rate case until the conclusion of the  
15 *United States v. Pierce* case a mere four months from now – is somehow judicially inefficient.

16 First, the filing of this case was directed by the Commission as a result of the indictment  
17 at issue in the *Pierce* case. Put another way, the Commission would not have directed the filing  
18 of this case if the indictment did not exist. Why not stay the case mere months until the conclusion  
19 of that action this summer, when the findings therefrom could guide many of the premises on  
20 which the Commission will decide this rate case (and most certainly on which the Commission  
21 ordered this case’s filing)?

22 Second, if the requested stay is not granted, there will be discovery issues which prevent  
23 the Commission from having access to all of the information it needs in order to make a well-  
24 informed decision as to the matters at bar. As all are aware, there is a Protective Order in place in  
25 the *Pierce* matter that prevents the parties thereto – including Mr. Johnson – from providing certain  
26 information. This would necessarily include information pertinent to the Commission’s ultimate  
27 determinations here. A decision without the benefit of the universe of relevant information would  
28 do a disservice – and potentially prejudice – Johnson Utilities, the Commission itself, and the

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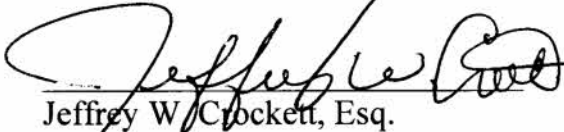
1 citizens the Commission is obligated to protect. And again, the Response is devoid of any stated  
2 basis that a four-month stay would prejudice anyone.

3 **CONCLUSION.**

4 The issue here is simple. This rate case is the third case filed which relies on, and is  
5 premised upon, what occurs in the *Pierce* case. And all will know what happens in that matter in  
6 a matter of months. Under this same logic, both the Commission and the United States District  
7 Court have stayed other matters based upon the same premise. The Commission should follow its  
8 own precedent and that of the Federal Court. For the foregoing reasons, Johnson Utilities  
9 respectfully requests that all activity in this case be stayed pending a final disposition of the Federal  
10 Case.

11 RESPECTFULLY submitted this 28<sup>th</sup> day of March, 2018.

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17 ORIGINAL and thirteen (13) copies filed  
18 this 28<sup>th</sup> day of March, 2018, with:

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