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AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

JUL 13 2004

Attorneys for Johnson Utilities Company

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF APPLICATION OF
ARIZONA UTILITY SUPPLY & SERVICES
FOR THE TRANSFER A PORTION OF THE
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO JOHNSON UTILITIES,
L.L.C.

DOCKET NO. SW-04002A-02-0837
DOCKET NO. WS-02987A-02-0837

IN THE MATTER OF THE APPLICATION
OF ARIZONA UTILITY SUPPLY &
SERVICES, L.L.C., TO TRANSFER ITS
ASSETS AND CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
JOHNSON UTILITIES, LLC.

DOCKET NO. SW-04002A-04-0465
DOCKET NO. WS-02987A-04-0465

**JOHNSON UTILITIES, L.L.C.'S
RESPONSE IN OPPOSITION TO
REQUEST FOR POSTPONEMENT OF
HEARING**

On July 12, 2004, Centex Homes ("Centex") filed its Request for Postponement of Hearing and Request for Intervention ("Centex Request") in the above-referenced matter. Johnson Utilities, L.L.C. ("JUC") strongly opposes Centex's request to postpone the hearing scheduled for July 16, 2004 in this matter. In fact, from the face of Centex's request, it is clear that Centex's intervention will not only delay these proceedings, it will also unduly broaden the issues presented. See Centex Request at 1-2 (discussing alleged contract breaches by AUSS and Centex security interest in AUSS). Accordingly, intervention by Centex should be denied, eliminating the need for postponement of the proceedings.

RESPONSE IN OPPOSITION TO CENTEX REQUEST

JUC is presently providing limited bulk wastewater utility services to applicant, AUSS, under a temporary agreement. The public interest, as well as the interests of JUC, which, as a

1 good corporate citizen, has voluntarily agreed to assist with the resolution of the AUSS problem,
2 a problem for which JUC bears no responsibility, warrants that this temporary arrangement be
3 terminated at the earliest possible date. Towards that end, AUSS and JUC, along with
4 Commission Staff and the Arizona Department of Environmental Quality have been working
5 diligently to address the issues raised by the relief requested in this matter and to prepare this
6 matter for the hearing scheduled on July 16, 2004.

7 Meanwhile, Centex's intervention is based on claims of breach of contract and a claimed
8 security interest in AUSS, issues well beyond the scope of these proceedings. Indeed, resolution
9 of those claims may be beyond the scope of the Commission's jurisdiction. Either way, while
10 Centex may feel it needs additional time to evaluate the impact of the deletion of AUSS's CC&N
11 on its claimed interests, Centex alleged interests should not override and prejudice the needs of
12 other interested persons, including other developers and existing AUSS customers that need JUC
13 to commence full-scale, permanent wastewater utility service in the area presently covered by
14 AUSS's CC&N at the earliest possible date. None of those parties are concerned with Centex's
15 claimed security interest or allegations of breach of contract by AUSS and they should not have
16 to suffer a delay so that Centex can assess and protect its alleged interests.

17 This is particularly true given that there are other available remedies for Centex.
18 Specifically, in addition to any remedies Centex may have at law against AUSS, Centex's
19 "certain properties and parcels in the service territory of AUSS" (Centex Request at 1) can be
20 removed from the scope of these dockets. Then, there will be no possibility that Centex's
21 interests will be prejudiced by the relief granted by the Commission with respect to AUSS and
22 JUC and Centex will be afforded the opportunity to evaluate and protect its interests, without the
23 necessity of delaying these proceedings to the prejudice of all other interested parties. This
24 would, in turn, eliminate the need for Centex's intervention in these dockets. Of course, Centex
25 would always be free to initiate a later proceeding requesting that AUSS's CC&N for Centex's
26 properties be deleted, at which time JUC would be free to consider whether it is willing to extend

1 wastewater utility services to Centex's properties.

2 Thus, in summary, Centex's Request does not meet the applicable standard for
3 intervention. Centex's intervention will unduly broaden the proceedings and cause unnecessary
4 and prejudicial delays, which, in turn, threaten the public interest in resolving the AUSS problem
5 at the earliest possible time. In contrast, to the extent Centex has interests, any impact on those
6 interests can be eliminated by removing Centex's properties from the scope of these proceedings.
7 Clearly, this latter remedy is preferable to the request for delay by Centex.

8 DATED this 13th day of June, 2004.

9 FENNEMORE CRAIG, P.C.

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11 By: _____

Jay L. Shapiro
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Attorneys for Johnson Utilities Company

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