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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DOCKETED

DEC 02 2004

MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2004 DEC -2 P 4: 46

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF THE 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

JOINT FILING OF REVISED
EXHIBIT J-2

Applicant Johnson Utilities Company ("JUC") and Utilities Division Staff ("Staff") hereby file the attached revised Exhibit J-2, which Staff and JUC will move for admission into evidence in the record in this matter when the hearing resumes on December 9, 2004 to replace the previously admitted Exhibit J-2.

By way of brief explanation, Exhibit J-2 set forth certain conditions precedent to the extension of JUC's CC&N. Such conditions are necessary for two primary reasons. First, JUC and the developers in the AUSS service territory must identify and then transfer title to all of the utility assets, easements, rights-of-way and permits or approvals currently held by AUSS or the developers and necessary for JUC to extend permanent wastewater utility service to the area currently certificated to AUSS. Second, JUC indicated, during the hearing, that before JUC can extend permanent service to the area currently certificated to AUSS, certain governmental approvals must be obtained. The conditions set forth in Exhibit J-2, as previously admitted into evidence were designed by JUC to allow time for these steps to be taken. During the hearing, however, Staff expressed certain concerns about Exhibit J-2. Thereafter, Staff and JUC have worked diligently to come up with a modified approach to the problem and, as a result will jointly introduce the revised Exhibit J-2 attached hereto when the hearing resumes.

1 In short, the approach recommended by Staff and JUC relies on A.R.S. § 40-282.D, which
2 statute both parties submit grants the Commission the authority to issue an order preliminary to issuing a
3 certificate of convenience and necessity. Specifically, A.R.S. § 40-282.D provides that:

4 If a public service corporation desires to exercise a right or privilege under
5 a franchise or permit which it contemplates securing, but which has not yet
6 been granted to it, the corporation may apply to the commission for an
7 order preliminary to the issue of the certificate. The commission may take
8 an order declaring that it will thereafter, upon application, under rules it
9 prescribes, issue the desired certificate, upon terms and conditions it
10 designates, after the corporation had obtained the contemplated franchise or
11 permit or may make an order issuing a certificate on the condition that the
12 contemplated franchise or permit is obtained and on other terms and
13 conditions it designates. If the commission makes an order preliminary to
14 the issuance of the certificate, upon presentation to the commission of
15 evidence that the franchise or permit has been secured by the corporation,
16 the commission shall issue the certificate.

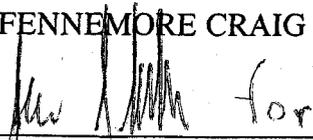
17 Accordingly, by approving the conditions jointly recommended by Staff and JUC, the
18 Commission can issue an order that moves forward the process of substituting JUC as the wastewater
19 utility service provider in the area presently certificated to AUSS while simultaneously allowing JUC
20 and others the time it needs to complete the steps precedent to JUC becoming the permanent provider of
21 such service in the area.

22 RESPECTFULLY SUBMITTED this 2nd day of December 2004.

23 ARIZONA CORPORATION COMMISSION

24 
25 _____
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28 Phoenix, Arizona 85007
29 Attorney for Arizona Corporation Commission Staff

30 FENNEMORE CRAIG

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34 3003 North Central Avenue, Suite 2600
35 Phoenix, Arizona 85012
36 Attorney for Johnson Utilities, L.L.C.

37 The original and fifteen (15) copies
38 of the foregoing were filed this
39 2nd day of December, 2004 with:

1 Docket Control
2 Arizona Corporation Commission
3 1200 West Washington Street
4 Phoenix, Arizona 85007

5 A COPY was delivered this 2nd day
6 of December, 2004 to:

7 Dwight Nodes, Administrative Law Judge
8 Hearing Division
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

12 COPY mailed/faxed* this 2nd day of December, 2004 to:

13 Maurice Lee, Managing Member
14 Arizona Utility Supply & Services, Inc.
15 4002 E. Taro Lane
16 Phoenix, Arizona 85050

17 Todd Wiley
18 Gallagher & Kennedy
19 2575 East Camelback Rd.
20 Phoenix, Arizona 85016-9225

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23 Post Office Box 17
24 Glorieta, New Mexico 87535

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26 DYER & FERRIS, LLC
27 3550 North Central Ave, #1801
28 Phoenix, Arizona 85012-2114

George Johnson
Johnson Utilities Co., LLC
5230 East Shea Blvd.
Phoenix, Arizona 85253

24 
25 Angela L. Bennett secretary to
26 Jason D. Gellman

Since JUC and certain developers require certain ADEQ approvals in order for JUC to extend permanent wastewater utility service in the service territory currently certificated to AUSS, Staff recommends that JUC be issued an Order Preliminary to the Issuance of a Certificate, as authorized under A.R.S. § 40-282(D). Per that statute, the Commission can proscribe the rules to which JUC can get its CC&N extended into the service area currently served by AUSS. Hence, Staff recommends that JUC receive an order preliminary to an issuance of a certificate now, that it shall extend its CC&N only in accordance with the following rules detailed below.

A. JUC shall be required to satisfy the following conditions before its CC&N will be extended into areas presently served by AUSS:

1. JUC has acquired the assets identified in Exhibit A attached hereto ("Utility Assets") free and clear of any liens or other encumbrances.
2. The Utility Assets are located within either public rights-of-way to which JUC shall have authorized access and/or within granted easements, the rights to both of which will be transferred to JUC along with any franchise rights AUSS has under a franchise or similar agreement with Pinal County; to the extent such franchise or other rights are needed by JUC to serve.
3. The Utility Assets being acquired in order for it to commence service in the area currently certificated to AUSS can be operated by JUC in accordance with all necessary governmental approvals, including, without limitation, approvals required by ADEQ and Pinal County, and that, to the extent required, all such approvals have been transferred from AUSS to JUC.
4. JUC shall also satisfy each of the following requirements by filing each of the following five items listed below with the Commission in Docket Nos. WS-02987A-02-0837 and/or WS-02987A-04-0465:
 - a. ADEQ's written confirmation affirming that JUC's Pecan wastewater reclamation plant (ADEQ Permit No. P-105324) located at 38539 Gantzel Road, Queen Creek, Pinal County, Arizona ("Pecan Plant") has adequate wastewater treatment capacity for JUC to provide wastewater treatment services to each of the subdivisions listed in Exhibit B attached hereto.
 - b. ADEQ's written confirmation affirming that the Pecan Plant, as constructed and planned, conforms to all applicable requirements for setbacks.
 - c. ADEQ's written approval of the transfer of the existing reuse permit to discharge effluent on the Links Golf Course to JUC without additional conditions or modifications.

- d. ADEQ's issuance of an Engineering Certificate of Completion ("ECC") for the existing 6-inch pipeline located in Section 20 of Township 2 South, Range 8 East and approval to allow conversion of this 6-inch pipeline from an effluent delivery line to a wastewater force main and approval of the modifications to the lift stations located at the Links WWTP to allow the bypass of the treatment plant.
 - e. All ADEQ requisite approvals for construction and operation of a lift station at the site of the former Links WWTP to allow the bypass of the Links WWTP.
 - f. ADEQ's written indication that it shall not hold JUC responsible for any violations of any law or regulation and/or odor and operational problems related to the Utility Assets, or any other facilities owned or operated by AUSS, to the extent such violation arises out of any ownership and/or operation before the transfer of such assets to JUC. This condition is not intended to relieve JUC of its obligation to operate and maintain the Utility Assets in accordance with applicable law and regulation after conveyance, including the obligation to provide safe, reliable and reasonable service in accordance with A.R.S. § 40-321. Nor does this waive the regulatory authority of the Commission to ensure that JUC is providing safe, reliable and reasonable service per the Arizona Constitution, Article XV, Section 3 and A.R.S. §§ 40-202, 40-203, 40-321.
- B. Upon receipt of all the above items, JUC shall make a subsequent filing in this docket, attaching written proof that all of the above conditions have been complied with. Once Staff verifies that JUC has met all of the above conditions, the Commission shall then, at a subsequent open meeting, approve the following three things:
- Deletion of AUSS' CC&N.
 - Extension of JUC's CC&N into the area presently served by AUSS and consistent with the attached legal description upon notice of closing the transfer with AUSS.
 - Approval of the transfer of the Utility Assets to JUC.
- C. Until a showing by JUC that all the above conditions are met, JUC cannot and shall not serve in any of AUSS' service territory, except to provide bulk wholesale wastewater and/or bulk effluent treatment and disposal service per one or more agreements entered into by JUC as supported by Staff.

- D. Approval of JUC's extension into the area presently served by AUSS shall also be subject to the following conditions:
- That JUC shall provide wastewater utility services in the extension area under its existing rates and charges.
 - JUC shall file with Docket Control documentation of the transfer of the Utility Assets within 180 days of the decision approving the items in Section B above. The documentation shall include a detailed list of all of the assets transferred to JUC.
 - That JUC shall provide safe and reliable service per all applicable Commission regulations and Arizona law.
- E. In addition, JUC shall be allowed to defer the following costs into Account 186 – Miscellaneous Deferred Debits (i) any amounts for bulk wastewater treatment and effluent treatment and disposal services provided to AUSS and/or customers in the AUSS service territory for which JUC has not been paid and (ii) all reasonable costs associated with the acquisition of the Utility Assets and extension of JUC's CC&N to include the area presently certificated to AUSS. All such amounts shall be subject to verification by Staff and review by the Commission in JUC's next general rate filing to determine what costs are prudent and reasonable for future recovery and/or inclusion in rate base.
- F. Since AUSS has filed for Chapter 7 Bankruptcy, in Bankruptcy Case No. 4:04-bk-03873-JMM, any transaction involving the transfer of the Utility Assets will be subject to the approval of the United States Bankruptcy Court, District of Arizona. Any Commission order that involves transfer of the Utility Assets will not take effect until all requisite approvals required by the Bankruptcy Court are obtained. Until all requisite approvals are obtained in all applicable jurisdictions, including from the Commission and from the United State Bankruptcy Court, AUSS will still be obligated to provide safe, adequate and reliable service to all of its certificated area.

EXHIBIT A

AUSS SERVICE AREA INVENTORY		PROJECT	ADEQ NO.	LINEAL FOOTAGE OF PIPE, NO. OF MANHOLES AND CO'S, NO. OF SERVICE TAPS			
ITEM				15" S.L.	12 S.L.	10" S.L.	8" S.L.
1	Southwood Trunk Sewer		20030316	3648	7116	0	0
2	Los Praderas Collection system		20010265	0	0	0	10356
3	Los Praderas Lift Station & Force main			0	0	0	0
4	Cambria Parcel 1 thru 6			0	0	1805	26829
5	Cambria Lift Station		20000570	0	0	0	0
6	Meadow Vista Phase 1 & 2		990573	0	0	0	3618
7	Castlegate Facilities Unknown						
8	Other Infrastructure Necessary for JUC to Serve						
9	Easements, Rights-of-way and Permits Necessary for JUC to Serve						

EXHIBIT B

LIST OF SUBDIVISIONS TO BE SERVED AT PECAN PLANT

Subdivision Name	ADEQ File No.
Pecan Creek N. - Parcel 1	20020580
Pecan Creek N. - Parcel 2	20020581
Pecan Creek N. - Parcel 3	20020582
Pecan Creek N. - Parcel 4	20020583
Pecan Creek N. - Parcel 5	20020584
Pecan Creek N. - Parcel 6	20020585
Pecan Creek N. - Parcel 7	20020586
Pecan Creek N. - Parcel 8	20020587
Castlegate Parcel 1	20020619
Castlegate Parcel 2	20020620
Castlegate Parcel 3	20010494
Castlegate Parcel 4	20020621
Castlegate Parcel 5	20010491
Castlegate Parcel 6	20010496
Castlegate Parcel 7	20010493
Castlegate Parcel 8	20030185
Castlegate Cottages P1	20010492
Castlegate Cottages P2	20010495
Castlegate Villages	20010507
Vineyard Estates	20030155
Wayne Ranch	20030492
Circle Cross Ran Parcel 1	20020420
Circle Cross Ran Parcel 2	20020421
Circle Cross Ran Parcel 3	20020422
Circle Cross Ran Parcel 4	20020423
Circle Cross Ran Parcel 5	20020424
Circle Cross Ran Parcel 6	20030122
Skyline Ranch Ph2, Parc A	20040301
Skyline Ranch Ph2, Parc B	20040303
Skyline Ranch Ph2, Parc C	20040305
Skyline Ranch Ph2, Parc D	20040306
Skyline Ranch Ph2, Parc E	20040349
Skyline Ranch Ph2, Parc F	20040350
Skyline Ranch Ph2, Parc G	20040351
Skyline Ranch Ph2, Parc H	20040304
Las Praderas, Ph 1 & 2	20010265
Meadow Vista SD	20040400
Cambria Parcel 1	20010092
Cambria Parcel 2	20000633
Cambria Parcel 3 Ph 1	20010093
Cambria Parcel 3 Ph 2	20010223
Cambria Parcel 4	20000416
Cambria Parcel 5	20000419

Cambria Parcel 6
Cambria Parcel 7
Laredo Ranch
Links Estates Ph 1
Links Estates Ph 2

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