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1 FENNEMORE CRAIG, P.C.
2 A Professional Corporation
3 Jay L. Shapiro (No. 014650)
4 3003 North Central Avenue
5 Suite 2600
6 Phoenix, Arizona 85012
7 Telephone (602) 916-5000

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Arizona Corporation Commission
DOCKETED

MAR 11 2005

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5 Attorneys for Johnson Utilities Company

BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION
8 OF H2O, INC., FOR AN EXTENSION OF
9 ITS EXISTING CERTIFICATE OF
10 CONVENIENCE AND NECESSITY.

DOCKET NO. W-02234A-00-0371

11 IN THE MATTER OF THE APPLICATION
12 OF JOHNSON UTILITIES, L.L.C., DBA
13 JOHNSON UTILITIES COMPANY FOR AN
14 EXTENSION OF ITS CERTIFICATE OF
15 CONVENIENCE AND NECESSITY TO
16 PROVIDE WATER AND WASTEWATER
17 SERVICE TO THE PUBLIC IN THE
18 DESCRIBED AREA IN PINAL COUNTY,
19 ARIZONA.

DOCKET NO. W-02987A-99-0583

20 IN THE MATTER OF THE APPLICATION
21 OF JOHNSON UTILITIES, L.L.C., DBA
22 JOHNSON UTILITIES COMPANY FOR AN
23 EXTENSION FOR ITS CERTIFICATE OF
24 CONVENIENCE AND NECESSITY TO
25 PROVIDE WATER AND WASTEWATER
26 SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION
OF DIVERSIFIED WATER UTILITIES,
INC. TO EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION
OF QUEEN CREEK WATER COMPANY
TO EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01395A-00-0784

**JOHNSON UTILITIES' RESPONSE TO
RENEWED APPLICATION OF
DIVERSIFIED WATER UTILITIES TO
AMEND DECISION NO. 63960, AS
AMENDED AND REQUEST FOR
EXPEDITED ACTION**

As requested by the Assistant Chief Administrative Law Judge, Johnson Utilities

1 Company ("JUC") hereby responds to Diversified's renewed Application of Diversified Water
2 Utilities to Amend Decision No. 63960, As Amended And Request For Expedited Action
3 ("Renewed Application").¹ JUC opposes Diversified's application for the reasons briefly set
4 forth herein. In short, Diversified's asks that the Commission rely on a four-year old evidentiary
5 record to now make a decision that it declined to make four years ago. To make matters worse,
6 Diversified now seeks "expedited action" on that decision and, as represented at the recent
7 procedural conference, Diversified seeks relief without a hearing. Diversified's request offends
8 fundamental notions of due process.

9 That A.R.S. § 40-252 is intended to comport with such notions of due process is clear on
10 its face. Specifically, A.R.S. § 40-252 provides the Commission the power to alter or amend its
11 prior decisions "upon notice to the corporation affected, and after an opportunity to be heard as
12 upon a complaint." There were several parties (i.e., affected corporations) to the docket resulting
13 in Decision No. 63960 and JUC submits that each party is entitled to the opportunity to be heard
14 as upon a complaint. JUC further asserts that such right is not fulfilled, as counsel for Diversified
15 suggested during the recent procedural conference, by merely allowing the party to appear before
16 the Commission at an Open Meeting. Evidence is not taken by the Commission at its Open
17 Meetings; rather, evidence is taken during evidentiary hearings overseen by an administrative law
18 judge.

19 Given the now four (or more) year-old evidentiary record before the Commission in
20 Decision 63960, the only way the Commission can ensure the public interest is served is to hold
21 an evidentiary hearing, take evidence from the parties, including evidence reflecting current
22 circumstances, and then render its decision upon such evidentiary record. In fact, Diversified's
23 request for an amendment of Decision 63960 rests on Diversified's attempt to submit evidence of
24 events occurring after the issuance of Decision 63960. See, e.g., Diversified Application at ¶¶ 10-

25 ¹ Just prior to filing this response, JUC received another pleading from Diversified seeking to consolidate
26 the application to amend with the pending CC&N extension requests. However, JUC's position, as
expressed herein, that the application to amend should be denied as unnecessary is not changed.

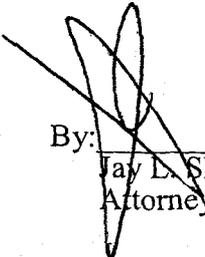
1 12. It would be patently unfair to allow Diversified to base its request on new evidence, while at
2 the same time precluding others the opportunity to challenge the relief sought through the
3 development of an evidentiary record. Thus, at a minimum, an evidentiary hearing is required
4 under the circumstances presented by Diversified's renewed application.

5 In this case, however, holding an evidentiary hearing on Diversified's application for
6 amendment of Decision No. 63960 would result in substantial duplication of efforts already
7 underway in Docket Nos. W-029859A-04-0844 and WS-02987A-0869 (Consolidated). Put
8 simply, an evidentiary hearing on Diversified's application to amend Decision 63960 would focus
9 on whether there is a need and whether Diversified is a fit and proper entity to provide such
10 service. The same question will be asked in the consolidated docket, at which time JUC's
11 competing application and its fitness as a provider will also be addressed. Thus, the opportunity
12 for the Commission to consider whether Diversified or JUC should be granted an extension of its
13 CC&N to serve the subject area already exists. In that forum, the parties will be given an
14 adequate opportunity to present their case and all due process requirements would be fulfilled.
15 Holding an additional evidentiary hearing regarding Diversified's application for leave to amend
16 would unnecessarily duplicate efforts and waste the resources of the Commission and parties.

17 Accordingly, JUC reurges its request that Diversified's application for leave to amend
18 Decision 63960 be denied, and the parties be allowed to continue to prosecute their competing
19 applications for CC&N extensions.

20 DATED this 11th day of March, 2005.

21 FENNEMORE CRAIG, P.C.

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24 By: 
Jay L. Shapiro
25 Attorney for Johnson Utilities Company
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Original and 21 copies of the foregoing
Delivered this 11th day of March, 2005:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY hand-delivered this 11th day of March, 2005:

Dwight Nodes, Chief Assistant Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jason Gellman, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

William P. Sullivan, Esq.
David M. Lujan, Esq.
Curtis, Goodwin, Sullivan, Udall & Schwab
2712 N. 7th St.
Phoenix, AZ 85006
Attorneys for Diversified Water Utilities, Inc.

By: Mary House
1645055