

ORIGINAL



0000018004

MEMORANDUM

30

TO: Docket Control  
Arizona Corporation Commission

Arizona Corporation Commission

**DOCKETED**

FROM: Ernest G. Johnson  
Director  
Utilities Division

MAR - 4 2005

DOCKETED BY

Date: March 4, 2005

RE: JOHNSON UTILITIES COMPANY - APPLICATION FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICE, IN PINAL COUNTY, ARIZONA (DOCKET NO. WS-02987A-04-0889)

Attached is the Staff Report for the above referenced application. Staff is recommending approval.

EGJ:JEF:cal

Originator: Jim Fisher

Attachment: Original and Thirteen Copies

AZ CORP COMMISSION  
DOCUMENT CONTROL

2005 MAR - 4 A 8:58

RECEIVED

Service List for: Johnson Utilities Company  
Docket No. WS-02987A-04-0889

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

JOHNSON UTILITIES COMPANY

DOCKET NO. WS-02987A-04-0889

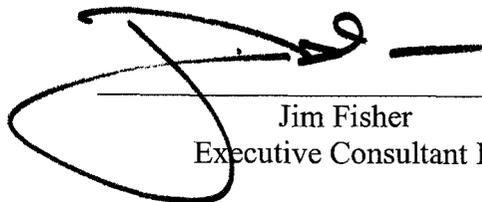
APPLICATION FOR AN EXTENSION OF ITS  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE  
WASTEWATER SERVICE  
IN PINAL COUNTY

MARCH 2005

## STAFF ACKNOWLEDGEMENT

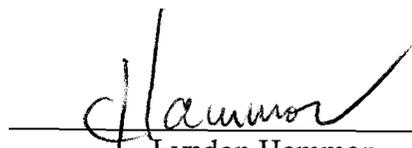
The Staff Report for Johnson Utilities Company (Docket No. WS-02987A-04-0889) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analysis of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



---

Jim Fisher  
Executive Consultant II



---

Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY  
JOHNSON UTILITIES COMPANY  
DOCKET NO. WS 02987A-04-0889**

On December 14, 2004, Johnson Utilities Company ("Johnson Utilities" or "Company"), an Arizona public service company, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity ("CC&N") in Pinal County, Arizona.

Johnson Utilities is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson Utilities with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&N's in Decision Nos. 61069 (August 7, 1998), 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001). According to Johnson Utilities' most recent Annual Report filing with the Commission's Utilities Division, Johnson Utilities has installed approximately \$26.3 million in water and wastewater plant to serve the current and future customers in the service area.

By this application, Johnson Utilities is seeking to extend its current CC&N to include approximately 640 acres which are currently intended to be developed into 1,129 lots owned by the respective developers.

The proposed extension area will be served by the newly constructed Pecan Wastewater Reclamation Plant ("Pecan WRP"). The Pecan WRP was issued an Aquifer Protection Permit ("APP") by the Arizona Department of Environmental Quality ("ADEQ") on May 7, 2004.

The Pecan WRP has an existing capacity of 1 million gallons per day ("MGD") and is expandable to 4 MGD in 1 MGD phases. Current daily average flows vary from 150,000 gallons/day to 250,000 gallons/day. Flow projections indicate that the second 1 MGD phase will not be needed until 2010. The major flows at the Pecan WRP are presently the diverted wastewater flows from the Links and Meadow Vista treatment plants in the AUSS service area.

The Pecan WRP is still in a start-up mode, and a formal ADEQ compliance inspection has not yet occurred. Therefore a formal compliance determination is not yet available. However, the Pecan WRP was visited by Commission and ADEQ Staff in August of 2004, and again by Department of Environmental Quality ("DEQ") staff in October of 2004. Reports from both visits substantiated that the Pecan WRP was operating in conformance with its design and permit conditions. Staff concludes that the proposed wastewater system has or can reasonably be expected to develop the necessary sewage treatment capacity to serve the proposed CC&N extension area.

Staff recommends that the Commission approve the Johnson Utilities Company application for an Extension of its CC&N to provide wastewater service to Section 17, Township 2 South, Range 8 East, subject to the following:

1. That Johnson Utilities file with Docket Control a copy of Pinal County Franchise inclusive of the proposed extension area within 365 days of any decision in this matter.
2. That Johnson Utilities file with Docket Control a copy of Arizona Department of Environmental Quality 4MGD Aquifer Protection Permit authorized for the Pecan treatment plant by August 1, 2006.
3. That Johnson Utilities file with Docket Control a copy of the CAAG Section 208 Plan approval inclusive of the extension area by August 1, 2006.
4. That Johnson Utilities file with Docket Control a quarterly report on the status of the pending litigation in CV2005-002692.
5. That Johnson Utilities file with Docket Control the Affiliate Interest reports as required under Arizona Administrative Code R-14-2-801 et al.

Staff further recommends that the Commission's Decision granting this extension of the Certificate of Convenience and Necessity to Johnson Utilities be considered null and void without further order from the Commission should Johnson Utilities fail to comply with above conditions 1, 2 and 3 within the time specified.

**TABLE OF CONTENTS**

|  | <b><u>PAGE</u></b> |
|--|--------------------|
| <b>INTRODUCTION.....</b>                 | <b>1</b>           |
| <b>BACKGROUND .....</b>                  | <b>1</b>           |
| <b>THE PROPOSED EXTENSION AREA .....</b> | <b>1</b>           |
| <b>FINANCE OF PLANT .....</b>            | <b>3</b>           |
| <b>PLAN 208 APPROVAL .....</b>           | <b>3</b>           |
| <b>ADEQ PERMITS.....</b>                 | <b>4</b>           |
| <b>AQUIFER PROTECTION PERMIT .....</b>   | <b>4</b>           |
| <b>PECAN CAPACITY.....</b>               | <b>5</b>           |
| <b>ADEQ COMPLIANCE WASTEWATER.....</b>   | <b>6</b>           |
| <b>ACC COMPLIANCE .....</b>              | <b>6</b>           |
| <b>LA OSA RANCH LITIGATION .....</b>     | <b>6</b>           |
| <b>PROPOSED RATES .....</b>              | <b>7</b>           |
| <b>PINAL COUNTY FRANCHISE .....</b>      | <b>7</b>           |
| <b>RECOMMENDATIONS.....</b>              | <b>7</b>           |

## **Introduction**

On December 14, 2004, Johnson Utilities Company ("Johnson Utilities" or "Company"), an Arizona public service company, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity ("CC&N") in Pinal County, Arizona.

On January 5, 2005, Staff informed the Company that the application was sufficient for administrative purposes.

## **Background**

Johnson Utilities is an Arizona Limited Liability Company. Johnson Utilities is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson Utilities with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&N's in Decision Nos. 61069 (August 7, 1998), 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

According to Johnson Utilities' most recent Annual Report filing with the Commission's Utilities Division, Johnson Utilities has installed approximately \$26.3 million in water and wastewater plant to serve the current and future customers in the service area. Johnson Utilities reports a combined water and wastewater revenue of \$2.6 million, and reports a combined long term debt of less than \$1 million.

By this application, Johnson Utilities is seeking to extend its current CC&N to include approximately 640 acres which are intended to be developed into 1,129 lots in four separate adjoining subdivisions.

## **The Proposed Extension Area**

Johnson Utilities has been requested to provide service to Section 17, Township 2 South, Range 8 East. The property is contiguous to the northern boundary of the problematic Arizona Utility Supply and Service ("AUSS") CC&N. The developers had originally intended to receive service from AUSS; however, due to AUSS's inability to continue operations, the developers have requested Johnson Utilities to provide service. (See Docket Nos. SW-04002A-02-0837, WS-02987A-02-0837, SW-04002A-04-0465 and WS-02987A-04-0465)

The proposed extension area, Section 17, is essentially divided into four (4) subdivisions, Vineyard Estates, Wayne Ranch, Milagro and Taylor Ranch.

Vineyard Estates is composed of 39 acres under development by Vineyard Holdings LLC, an affiliate of Elite Homebuilders, Inc. The property is to become 161 residential lots. The developer began construction with an understanding that AUSS would extend its service territory to include the property.

On June 14, 2004, Vineyard Homeowners Association ("HOA"), an Arizona Non-Profit Corporation, entered into a bulk service agreement with Johnson Utilities to ensure wastewater from model homes and possible new residences were appropriately treated. According to the terms of the service agreement, Johnson Utilities agreed to provide limited bulk wastewater treatment service to the HOA. Once the subject development is included in the Johnson Utilities CC&N, the HOA will relinquish all rights as a non-profit corporation to directly serve its members.

On November 3, 2004, the developer entered into facilities construction agreements to finance the on-site and off-site wastewater facilities. The agreements require the developer to construct and convey utility facilities consistent with Arizona Department of Environmental Quality. Johnson Utilities will receive payments consistent with its approved tariffs and refund five (5) percent of the annual revenue associated with development to the developer until the advanced facility is fully refunded. Wastewater facilities agreements do not require Staff review or Commission approval per the Arizona Administrative Code.

Wayne Ranch is comprised of 115 acres under development by Richmond-American Homes of Arizona, Inc. and WR Development LLC. The property is designed to become 423 residential lots. On November 11, 2004, the developers entered into facilities construction agreements to finance the on-site and off-site wastewater facilities consistent with Johnson Utilities approved tariffs.

The Milagro subdivision is comprised of a 37 acre parcel, under development by Milagro Investors, LLC, an affiliate of Century Pacific Homes of Arizona, Inc. The property is designed to become 140 residential lots. On June 23, 2004, the developer made formal request for service. Johnson Utilities and the developer are discussing the terms of a facilities construction agreement to finance the on-site and off-site wastewater facilities.

Taylor Ranch is composed of 118 acres under development by Pulte Homes Corporation. Taylor Ranch is designed to become 405 residential lots. On June 14, 2004, the developer requested Johnson Utilities to extend its CC&N to include Taylor Ranch. Taylor Ranch has not begun construction. The developers have entered into facilities construction agreements with Johnson Utilities to finance the on-site and off-site wastewater facilities.

The Section 17 properties will be served by the newly constructed Pecan Wastewater Reclamation Plant ("Pecan WRP"). Wastewater from the subdivisions will be collected to existing 12 inch and 8 inch wastewater lines that will then flow by gravity to the Pecan WRP, located about 1 mile to the south. The Pecan WRP was issued an Aquifer Protection Permit ("APP") by the Arizona Department of Environmental Quality ("ADEQ") on May 7, 2004.

## **Finance of Plant**

The required utility facilities will be financed in part in accordance with Arizona Administrative Code R14-2-606. Arizona Administrative Code R14-2-606 established the minimal acceptable criteria for line extension agreements between wastewater utilities and private parties.

Main extension agreements generally require the developer to design, construct and install (or cause to be), all facilities to provide adequate service to the development. Upon acceptance of the facilities by the utility, the developer will convey the wastewater facilities by way of a warranty deed.

Johnson Utilities will refund five (5) percent of the annual revenue associated with development to the developer until the advanced facility is fully refunded. Wastewater facilities agreements do not require Staff review or Commission approval per the Arizona Administrative Code.

The developers will also be required to fund off-site facilities in accordance with Johnson Utilities approved tariffs.

## **Plan 208 Approval**

The Federal Water Pollution Control Act as amended by the Water Quality Act of 1987 ("Clean Water Act") is a commitment by the federal government to the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control.

In Arizona, six (6) Councils of Government, ("COGs") have been designated by the Governor as "Water Quality Management Planning Agencies" under Section 208, of the Clean Water Act. The Central Arizona Associations of Governments ("CAAG") is designated by the Governor and the Environmental Protection Agency ("EPA") as the area wide water quality management planning agency for Pinal County.

The guidelines for 208 planning set forth in the Clean Water Act are fairly broad so that the various water quality issues in different areas of the nation can be addressed appropriately. Each 208 Plan must identify the water quality management needs in its planning area and provide a program to develop solutions. The CAAG 208 planning process is an ongoing effort in response to changing water resource issues, regulations, treatment technologies and changing demographics.

On the federal level, the EPA has the responsibility of overseeing the planning efforts necessary to meet the specific requirements of Section 208. ADEQ administers both the basin-wide planning and water quality monitoring programs. In addition, ADEQ is responsible for reviewing and enforcing water quality standards for the State. For the CAAG 208 Program, the

EPA and ADEQ provides guidance in the terms of policy, procedure and review of documents to assure adherence to the requirements of the Clean Water Act.

A major effort of the 208 Plan is the Point Source Plan. Point Source Planning is primarily directed at compiling the preferred wastewater collection and treatment system for the affected area through the year 2020. Toward that end, the Point Source Plan examines population and wastewater flow projections, wastewater treatment plant siting, treatment methods, effluent disposal, reclaimed water reuse and sludge management.

### **ADEQ Permits**

The objective of a Point Source Plan is to identify the preferred wastewater collection and treatment and effluent reuse or disposal systems for the affected area. The regulatory framework for management of water quality is comprised of permit compliance and monitoring of protected uses. The ADEQ defines, monitors and enforces water quality standards for protected uses of surface waters, aquifers and public water supplies. The ADEQ permit framework for point source management consists of three primary elements consisting of the Arizona Pollutant Discharge Elimination System ("AZPDES"), the APP and the reclaimed water reuse permit program.

The purpose of the AZPDES permit program is to regulate the quality of point source discharges into the waters of the nation. Based on specific criteria, discharges to rivers, tributaries to the rivers, dry washes and various lakes and canals within the affected area are subject to the AZPDES permit program provisions.

The ADEQ has established Surface Water Quality Standards ("SWQS") as required to meet the goals of the federal Clean Water Act and to protect the quality of surface waters in the state. The EPA incorporates the SWQS and federal regulation related to surface water quality and effluent discharge quality into the AZPDES permits. Pollutant levels established by the AZPDES permit programs vary among wastewater reclamation facilities depending upon the designated use of reclaimed water. Permits are typically issued for a term of five years.

### **Aquifer Protection Permit**

The APP was established by the Environmental Quality Act of 1986 and implemented by rule in 1989. The purpose of the APP program is to protect the groundwater quality and public health from potential environmental risks posed by the facilities that discharge pollutants to the land surface, underlying soil, or groundwater that have a potential to reach an aquifer.

The APP permitting requirements are determined based on the type of facility or land use, capacity of the facility, and/or the type of discharges that the facility will produce. The most crucial requirements for obtaining an APP are demonstrating that the Best Available Demonstrated Control Technology ("BADCT") will be used to minimize the discharge of

pollutants, Aquifer Water Quality Standards will not be violated and that the facility possesses the financial and technical capability to comply with the permit conditions.

The Environmental Quality Act requires that all domestic wastewater and disposal facilities requiring an APP use BADCT as part of their wastewater treatment process. The ADEQ adopted BADCT requirements for new sewage treatment facilities. The design review of sewage treatment facilities has been consolidated into the APP application review process. BADCT requirements are defined within the rules which require secondary treatment, removal for new facilities and expansion of existing facilities. The revision of the APP rule took effect January 2001.

The reclaimed water use permit program, established in 1985, allows the reuse of reclaimed water for a variety of applications such as agriculture, urban lakes, golf course irrigation, ponds and industrial uses. Water reclamation plants are required by rules to have a reuse permit for the release of reclaimed water for reuse purposes.

There are two main categories of reclaimed water reuse including direct non-potable reuse and indirect reuse. Direct reuse consists of irrigation and makeup water for urban lakes. The indirect reuse of reclaimed water usually involves recharge to an aquifer for storage and future recovery. The reclaimed water is typically allowed to infiltrate through the dry soils above the aquifer allowing additional treatment. Recharge projects using reclaimed water are required to obtain an APP.

### **Pecan Capacity**

The Pecan WRP has an existing capacity of 1 million gallons per day ("MGD") and is expandable to 4 MGD in 1 MGD phases. Current daily average flows vary from 150,000 gallons/day to 250,000 gallons/day. Flow projections indicate that the second 1 MGD phase will not be needed until 2010. The major flows at the Pecan WRP are presently the diverted wastewater flows from the Links and Meadow Vista treatment plants in the AUSS service area.

The Pecan WRP was issued an APP by ADEQ on May 7, 2004. The Pecan WRP is still in a start-up mode, and a formal Department of Environmental Quality ("DEQ") compliance inspection has not yet occurred and a formal compliance determination is not yet available. However, the Pecan WRP was visited by Commission and ADEQ Staff in August of 2004, and again by DEQ staff in October of 2004. Reports from both visits substantiated that the Pecan WRP was operating in conformance with its design and permit conditions.

On November 24, 2004, Johnson Utilities filed an application ADEQ to expand the capacity of the Pecan WRP from 1 MGD to 4 MGD. Based on the above data, Staff concludes that the proposed wastewater system has or can reasonably be expected to develop the necessary sewage treatment capacity to serve the proposed CC&N extension area.

On January 28, 2004, CAAG regional council approved AUSS as a regional provider, inclusive of Section 17, conditioned upon AUSS obtaining CC&N for the subject property. As discussed above, AUSS is no longer able to provide service to the public. Johnson Utilities is in the process of obtaining certain assets of AUSS subject to compliance with various conditions including CAAG §208 Water Quality Plan consistency.

### **ADEQ Compliance Wastewater**

ADEQ has informed Staff that the Johnson Utilities is in compliance with the rules for operation, reporting and discharge limits for wastewater facilities.

### **ACC Compliance**

A check with the Utilities Division Compliance Unit showed no outstanding compliance issues.

### **La Osa Ranch Litigation**

Johnson Utilities majority shareholder is Mr. George Johnson. In addition to ownership of a public service company, Mr. Johnson also has ownership in real estate, live stock and agriculture.

On February 14, 2005, the Arizona Attorney General's office filed a civil lawsuit against various financial affiliates of Johnson Utilities alleging trespass, breach of grazing lease, destruction of native plants on state and private land, water quality discharge violations and unlawful killing of bighorn sheep.

The litigation is primarily focused on Mr. Johnson's actions as a property owner of La Osa Ranch, a 10,000 acre property in southern Pinal County, adjacent to state trust lands and the Ironwood National Forest Monument.

According to the complaint, Mr. Johnson failed to obtain permits to clear private property, trespassed and cleared state lands of natural vegetation and destroyed archaeological sites located in the Los Robles Wash floodplain.

The State also alleges that Mr. Johnson failed to abide by the terms of the U.S. Bureau of Land Management grazing lease by allowing domestic goats in close contact with Desert Big Horn Sheep, infecting the sheep, causing 21 to die from malnutrition, falls or failure to evade predators.

The Arizona Attorney General's office filed the civil lawsuit in Maricopa County Superior Court in conjunction with the Department of Environmental Quality, the Department of Agriculture, the Land Department, the Board of Regents, and the Game and Fish Commission. The lawsuit named Mr. Johnson, his spouse, the George H. Johnson Revocable Trust, Johnson

International, Inc., the Ranch at South Fork, L.L.C., General Hunt Properties, Inc., Atlas Southwest, Inc. and other individuals.

Johnson Utilities was not named in the civil lawsuit. None of the allegations include actions taken as a public service company. However, a civil lawsuit against Johnson Utilities financial affiliates by the Attorney General and five state agencies requires the Commission be provided the information necessary to protect Johnson Utilities customers from any potential adverse ruling against its financial affiliates.

Johnson Utilities has informed Staff that it intends to provide information on the financial relationship between Johnson Utilities and Johnson International at the scheduled hearing. Johnson Utilities also proposed to Staff that, while it does not yet meet the definition of a Class A utility per revenue received, Johnson Utilities intends to meet the reporting requirements of the Affiliated Interest rules to ensure the Commission is fully informed consistent with the Arizona Administrative Code. Therefore, Staff recommends that Johnson Utilities be required to file Affiliate Interest reports as required under Arizona Administrative Code R14-2-801 et al. In addition to the above, Staff also recommends that Johnson Utilities be required to file quarterly reports on the status and events in the La Osa Ranch litigation in CV2005-002692.

### **Proposed Rates**

Johnson Utilities is proposing to extend service to the property at its tariffed rates.

### **Pinal County Franchise**

The requested extension area is not within Johnson Utilities current Pinal County Franchise.

### **Recommendations**

Staff recommends that the Commission approve the Johnson Utilities Company application for an Extension to its CC&N to provide wastewater service to Section 17, Township 2 South, Range 8 East, subject to the following:

1. That Johnson Utilities file with Docket Control a copy of Pinal County Franchise inclusive of the proposed extension area within 365 days of any decision in this matter.
2. That Johnson Utilities file with Docket Control a copy of Arizona Department of Environmental Quality 4MGD Aquifer Protection Permit authorized for the Pecan treatment plant by August 1, 2006.

3. That Johnson Utilities file with Docket Control a copy of the CAAG Section 208 Plan approval inclusive of the extension area by August 1, 2006.
4. That Johnson Utilities file with Docket Control a quarterly report on the status of the pending litigation in CV2005-002692.
5. That Johnson Utilities file with Docket Control the Affiliate Interest reports as required under Arizona Administrative Code R-14-2-801 et al.

Staff further recommends that the Commission's Decision granting this extension of the Certificate of Convenience and Necessity to Johnson Utilities be considered null and void without further order from the Commission should Johnson Utilities fail to comply with above conditions 1, 2 and 3 within the time specified.