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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

FEB 22 2002

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AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF H2O, INC., FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONEINENCE AND NECESSITY

DOCKET NO. W-02234A-00-0371

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

DOCKET NO. WS-02987A-99-0583

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 W-02859A-00-0774

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

DOCKET NO. W-01395A-00-0784

PROCEDURAL ORDER

**BY THE COMMISSION:**

On September 4, 2001, the Arizona Corporation Commission ("Commission") issued Decision No. 63960 which was subsequently amended by Decision No. 64062 on October 4, 2001 in which it approved the extension of the Certificate of Convenience and Necessity ("Certificate") of Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC" or "Applicant") and the other above-captioned utilities subject to a number of conditions. One condition required of the respective utilities is to cure any minor or major violations cited by the Arizona Department of Environmental Quality ("ADEQ") within 90 days from the date of notice or their respective parcel extensions would be rendered null and void without further Order of the Commission.

1 On October 16, 2001, ADEQ issued and mailed to Mr. George Johnson, JUC's manager, a  
2 Notice of Violation ("NOV"). The NOV issued by ADEQ alleges four violations which were  
3 discovered during a review of JUC's file completed on October 5, 2001. The four violations relate to  
4 the provision of service by JUC with respect to its Sun Valley Farms Unit V, Public Water System as  
5 follows: the failure of JUC, on two occasions, to secure an Approval of Construction ("AOC"); the  
6 failure of JUC to secure an Approval to Construct ("ATC"); and the failure of JUC to maintain a log  
7 of all onloading, chlorine disinfectant additions and residual free chlorine measurements.

8 On October 24, 2001, Mr. Patrick C. Williams, the Manager of the Commission's Compliance  
9 and Enforcement Section for its Utilities Division ("Staff"), sent a letter to JUC requesting  
10 notification of compliance with ADEQ's NOV. Subsequently, the Commission did not receive any  
11 comments or responses from JUC.

12 On January 18, 2002, Mr. Williams sent another letter to JUC informing it that, pursuant to  
13 the Decision No. 63960 as amended, due to Applicant's failure to timely cure the deficiencies cited by  
14 ADEQ, JUC's extension of its Certificate granted therein was null and void as of January 16, 2002.  
15 In his letter, Mr. Williams cited a discussion he had with an ADEQ official.

16 On January 24, 2002, JUC responded stating that it believed it was in compliance with  
17 Decision No. 63960 as amended.

18 On January 28, 2002, JUC filed a request for a retroactive extension of time to comply with  
19 Decision No. 63960 as amended and for an Order declaring that the Decisions remained in full force  
20 and effect since their issuance. In its request, JUC stated that it did not receive Mr. Williams' letter  
21 of October 24, 2001 and that on January 23, 2002, counsel for JUC had written the Commission  
22 advising it that he believed that all violations had been "cured" prior to the expiration of the 90 day  
23 deadline required in the Commission's Decision as amended.

24 Attached to JUC's request for a retroactive extension were copies of an ATC and an AOC  
25 issued by ADEQ and what appears to be a partially complete chlorination log for the system in  
26 question. JUC also attached a copy of an affidavit of Mr. Michael L. Denby, an attorney for the  
27 Applicant who indicated that he had been informed by William DePaul, the Environmental  
28 Enforcement Coordinator at ADEQ who had signed the NOV and who Mr. Williams had spoken with

1 earlier, that ADEQ neither required nor expected JUC to undertake any additional actions to comply  
2 with the October 16, 2001 NOV. However, Mr. Denby went on to state in his affidavit that Mr.  
3 DePaul had further indicated the matter was not closed and ADEQ would continue to pursue some  
4 form of order to finalize and close the NOV. JUC failed to submit any documentation from ADEQ  
5 that the matter involving the October 16, 2001 NOV had been concluded. In closing, JUC requested  
6 a prompt resolution as certain developers, in order to secure their financing, will be required to show  
7 that the Company's Certificate is in full force and effect in order to secure financing.

8 On February 6, 2002, Staff filed a response to JUC's request for a retroactive extension of  
9 time in order to comply with Decision No. 63960 as amended. In its response, Staff indicates that it  
10 does not oppose a limited extension of time for JUC to document that the NOV has been  
11 satisfactorily resolved. Staff points out that, in order to do this satisfactorily, JUC will have to  
12 provide documentation from ADEQ that its October 16, 2001 NOV has or will be resolved to  
13 ADEQ's satisfaction. Staff is recommending that JUC be given a retroactive extension of time for  
14 compliance until February 22, 2002 and that JUC be ordered to notify all parties in the above-  
15 captioned proceeding of its requested extension by serving a copy of its request on all parties to the  
16 proceeding and to provide certification of same to the Commission. Additionally, Staff is  
17 recommending that, if JUC does not submit written documentation from ADEQ by February 22,  
18 2002 stating that all violations cited in the October 16, 2001 NOV have been cured, the Certificate  
19 issued to JUC in Decision No. 63960 as amended shall remain null and void.

20 On February 8, 2002, JUC filed its response to that of Staff. Therein, Applicant attached  
21 documentation in the form of a copy of a letter from Mr. DePaul to Mr. Williams. The letter states  
22 that events resulting in the violations "had been addressed and were no longer continuing to accrue  
23 daily penalties. However, the NOV identifying the violations remains unresolved . . ." because the  
24 parties have not yet held face to face meetings. JUC also attached a copy of an ADEQ Compliance  
25 Status Report dated January 24, 2002, for its Sun Valley Public Water System that is marked, "No  
26 Major Deficiencies," and that states the system's water met the requirements of the Safe Drinking  
27 Water Act.

1 As of February 22, 2002, Staff has filed no further comments on this matter<sup>1</sup>.

2 After a review of JUC's request herein, a reasonable extension of time is appropriate for Staff  
3 to review the documentation filed by JUC. The extension of time will be authorized retroactively and  
4 will extend beyond that date recommended by Staff in order to allow additional time for further Staff  
5 clarification of the status of JUC with respect to the violations cited in the NOV. Lastly, Staff's  
6 request that JUC notify all parties in the above-captioned proceeding of its request by providing them  
7 with a copy of same is reasonable and will be ordered hereinafter.

8 IT IS THEREFORE ORDERED that the request of Johnson Utilities, L.L.C. dba Johnson  
9 Utilities Company for an extension of time to comply with Decision No. 63960 as amended shall be  
10 granted until March 29, 2002.

11 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company  
12 shall provide to Staff a written statement from the Arizona Department of Environmental Quality that  
13 all violations cited in the October 16, 2001 Notice of Violation have been cured.

14 IT IS FURTHER ORDERED that the Utilities Division shall file, by March 15, 2002, its  
15 response to the documentation filed by Applicant and whether the violations cited by the Arizona  
16 Department of Environmental Quality in its Notice of Violation have been cured.

17 IT IS FURTHER ORDERED that, upon the filing of the Utilities Division's response to  
18 Applicant's documentation and further review, a further Procedural Order shall be issued to address  
19 whether the Arizona Department of Environmental Quality's violations have been cured or if other  
20 steps will have to be taken to resolve the issue of the validity of the Certificate.

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28 <sup>1</sup> On February 11, 2002, Mr. Williams wrote a letter to Mr. DePaul requesting clarification whether the violations cited in the NOV had been "cured."

1 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company  
2 shall mail copies of its request herein to all parties of record and file certification of same within 20  
3 days of the date of this Procedural Order.

4 DATED this 22<sup>nd</sup> day of February, 2002.

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8 MARC E. STERN  
9 ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered  
11 this 22<sup>nd</sup> day of February, 2002 to:

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By:

  
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Secretary to Marc E. Stern