

ORIGINAL

OPEN MEETING AGENDA ITEM



0000021112

BEFORE THE ARIZONA CORPORATION COMMISSION

25FD

COMMISSIONERS

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

2005 JUN -3 A 8:06

JUN - 3 2005

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES COMPANY FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR  
WASTEWATER SERVICE.

DOCKET NO. WS-02987A-04-0889

PROCEDURAL ORDER

**BY THE COMMISSION:**

On December 14, 2004, Johnson Utilities Company ("Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide wastewater service.

A hearing was held in this matter on April 11, 2005.

On May 9, 2005, a Recommended Opinion and Order was issued and exceptions were due to be filed by May 18, 2005. The Recommended Order was tentatively scheduled for the May 24 and 25, 2005 Open Meeting agenda.

On May 12, 2005, counsel for Johnson, Jay Shapiro of Fennemore Craig, P.C., filed a "Notice of Withdrawal as Counsel of Record" ("Notice of Withdrawal"). The Notice of Withdrawal stated that Richard Sallquist will be taking over representation of Johnson and all future correspondence should be directed to Mr. Sallquist.

On May 13, 2005, Mr. Sallquist filed, on behalf of Johnson, a pleading entitled "Substitution of Counsel and Motion to Continue Open Meeting Matter" ("Substitution of Counsel").

Although the Notice of Withdrawal and subsequent Substitution of Counsel filings appear to assume that the proposed change of counsel may be accomplished without further action, the Commission's rules clearly require that such a request must be approved by the Commission. A.A.C. R14-3-104(E) states:

Withdrawal of attorney. The Commission or presiding officer *may* permit

1 the withdrawal of an attorney from any proceeding *upon written*  
2 *application and good cause shown* under such terms, conditions, and  
3 notices to clients and other parties as the Commission or presiding officer  
4 may direct. Oral application for withdrawal may be made during any open  
5 proceeding which is being recorded. (emphasis added)

6 This rule contemplates that withdrawal is permitted only with the approval of the  
7 Commission or the Administrative Law Judge following submission of an "application" and  
8 explanation why "good cause" exists for granting such application. Simply filing a Notice of  
9 Withdrawal or Substitution of Counsel does not satisfy the requirements of the rule and, absent the  
10 Commission's approval, Mr. Shapiro continues to be Johnson's counsel of record for this proceeding.

11 IT IS THEREFORE ORDERED that counsel of record for Johnson Utilities Company, Jay  
12 Shapiro of Fennemore Craig, P.C., shall file by June 17, 2005 an Application for Withdrawal as  
13 Counsel which includes an explanation of the reason for the proposed withdrawal and why good  
14 cause exists to grant the request.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
16 Communications) applies to this proceeding as the matter is now set for public hearing.

17 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
18 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
19 hearing.

20 DATED this 3<sup>rd</sup> day of June, 2005.

21 

22 DWIGHT D. NODES  
23 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed/delivered  
25 this 3 day of June, 2005 to:

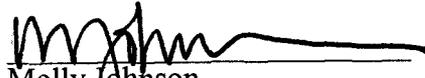
26 Jay L. Shapiro  
27 Patrick J. Black  
28 FENNEMORE CRAIG  
3003 N. Central Avenue, Ste. 2600  
Phoenix, AZ 85012  
Attorneys for Johnson Utilities Company

1 Richard Sallquist  
SALLQUIST & DRUMMOND  
2 4500 S. Lakeshore Drive, Ste. 339  
Tempe, AZ 85282

3 Christopher Kempley, Chief Counsel  
Legal Division  
4 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
5 Phoenix, Arizona 85007

6 Ernest G. Johnson, Director  
Utilities Division  
7 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
8 Phoenix, Arizona 85007

9  
10  
11 By:

  
Molly Johnson  
Secretary to Dwight D. Nodes

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28