



BEFORE THE ARIZONA CORPORATION COMMISSION

57

JEFF HATCH-MILLER, CHAIRMAN
MARC SPITZER, COMMISSIONER
WILLIAM A. MUNDELL, COMMISSIONER
MIKE GLEASON, COMMISSIONER
KRISTEN K. MAYES, COMMISSIONER

2005 JUN 30 P 4: 55

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF DIVERSIFIED
WATER UTILITIES, INC. TO EXPAND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO INCLUDE ALL OF
SECTION 13, 14, 15, 23 AND THAT
PORTION OF SECTION 16 EAST OF
RAILROAD TRACKS ALL IN T3S, R83,
PINAL COUNTY, ARIZONA.

DOCKET NO.: W-02859A-04-0844

Arizona Corporation Commission

DOCKETED

JUN 30 2005

DOCKETED BY

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

DOCKET NO. WS-02987A-04-0869

**JOINT SETTLEMENT STATEMENT
OF JOHNSON UTILITIES COMPANY
AND DIVERSIFIED WATER
UTILITIES, INC.**

Johnson Utilities, LLC, d.b.a. Johnson Utilities ("Johnson") and Diversified Water Utilities, Inc. ("Diversified") (collectively the "Companies") file this joint settlement statement in conjunction with submitting to the Arizona Corporation Commission (the "Commission") their Letter of Mutual Understanding, Cooperation and Settlement dated June 20, 2005, a copy of which is attached.

Johnson and Diversified hold certificates of convenience and necessity to provide domestic water service in Pinal County, Arizona. Johnson also holds a certificate of convenience and necessity to provide sewer service. Their respective certificated areas are in close proximity to one another. Over the past five years, the Companies have both sought to

1 extend their certificated areas to encompass the same territory. The competing applications
2 have caused the Companies to incur significant costs and created uncertainty on the part of
3 landowners as to which Company would provide water service.

4 In order to allow both Companies to concentrate on the operation of their
5 respective systems, to serve their existing customers and to focus on integrating the
6 substantial growth of the area into those systems, including economies of scale, Diversified
7 and Johnson have agreed that it is most effective, efficient and beneficial for all concerned,
8 including the public and the appropriate regulators, for the Companies to cooperate with each
9 other. The Letter of Mutual Understanding, Cooperation and Settlement sets forth the
10 principles by which Johnson and Diversified agree to cooperate on a going forward basis.
11 The settlement permits both Companies to devote their energies and resources to operating
12 their respective Companies instead of challenging each other before the various agencies and
13 courts. The settlement also ensures that the two Companies will avoid unnecessary
14 duplication of water facilities and eliminates confusion as to which entity is willing to
15 provide water service within delineated planning areas.

16 The Companies agree that the appropriate demarcation of the southern
17 boundary of Diversified and the northern boundary of Johnson for water service planning is a
18 line running from west to east along Bella Vista Road along the Bella Vista Road alignment
19 between the Union Pacific Railroad (the "Tracks") and the Central Arizona Project Canal (the
20 "Canal"). The western boundary of Diversified and the eastern boundary of Johnson will be
21 the Tracks, north of Bella Vista Road. The eastern boundary of Diversified and the western
22 boundary of Johnson on the east for the area south of Skyline Road will be the Canal north of
23 Bella Vista Road. There is a vast area of land owned by the State of Arizona east of the
24 Canal and north of Skyline Road, which is not addressed by the Companies' settlement.
25

1 The Companies also agree that they will not seek to extend their certificates or
2 operations within the other's planning area. The Companies have further agreed that in
3 furtherance of public interest and economies of scale, they will not support the provision of
4 domestic water service by any other water provider within their respective planning areas.

5 Consistent with the Letter of Mutual Understanding, Cooperation and
6 Settlement:

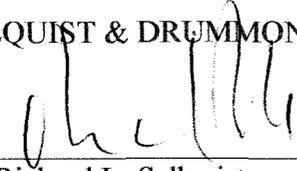
- 7 1. Johnson hereby supports Diversified's request to extend its CC&N to
8 encompass all of sections 13, 14 and 15 and that portion of section 16
9 east of the Tracks, all in T3S, R8E G&SRB&M, Pinal County, Arizona;
10 and
11 2. Diversified hereby supports Johnson's request to extend its CC&N to
12 encompass section 23, T3S, R8E, G&SRB&M, Pinal County, Arizona.

13 The Companies further support the amendments of their respective applications
14 to comport with the Letter of Mutual Understanding, Cooperation and Settlement.

15 Further the Companies respectfully request that the Commission, as part of its
16 Order entered in these dockets, acknowledge the efforts of the Companies and find that the
17 Letter of Mutual Understanding, Cooperation and Settlement is consistent with the public
18 interest.

19 RESPECTFULLY SUBMITTED this 30th day of June, 2005.

21 SALLQUIST & DRUMMOND, P.L.L.C.

22 By: 

23 Richard L. Sallquist
24 2525 East Arizona Biltmore Circle, #117
25 Phoenix, Arizona 85016
Attorneys for Johnson Utilities L.L.C.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By: 

William P. Sullivan
2712 North Seventh Street
Phoenix, Arizona 85006-1090
Attorneys for Diversified Water
Utilities, Inc.

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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 30th day of June, 2005, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and seventeen (17) copies of the above to:

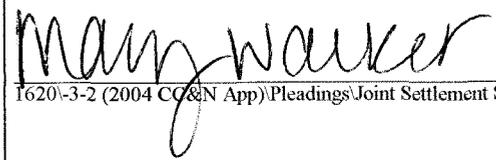
Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered this 30th day of June, 2005 to:

Dwight D. Nodes, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jason Gellman, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007



T620-3-2 (2004 CC&N App)\Pleadings\Joint Settlement Statement.doc

JOHNSON UTILITIES COMPANY L.L.C

5230 East Shea Boulevard * Scottsdale, Arizona 85254
PH: (480) 998-3300; FAX: (480) 483-7908

June 20, 2005

Mr. Scott W. Gray
Diversified Water Utilities, Inc
2850 E. Camelback Road, Suite 200
Phoenix, Arizona 85016-4316

Re: Letter of Mutual Understanding, Cooperation, and Settlement

Dear Scott:

I enjoyed meeting with you and Bill Sullivan on Thursday, May 12, 2005, to discuss the common interests of Johnson Utilities, L.L.C. ("Johnson") and Diversified Water Utilities, Inc. ("Diversified"). Johnson and Diversified (collectively referred to as the "Companies") enjoy the benefits and burdens of operating utilities in one of the fastest growing areas in the country.

To allow both companies to concentrate on the operation of their respective systems to serve their existing customers, and to focus on integrating the substantial growth of the area into those systems, including economies of scale, we agree that it would be most effective, efficient and beneficial to all concerned, including the public and the appropriate regulators, that the Companies cooperate with each other in serving this area consistent with the settlement principles set forth in this letter (the "Agreement").

Given the fact that there are pending, and/or soon-to-be filed, Certificate of Convenience and Necessity ("CC&N") Applications by both Companies before the Arizona Corporation Commission (the "Commission"), there appears to be a logical planning area for the respective companies that we can both support and that will settle any potential disputes in that regard. Again, this will permit both Companies to devote their energies and resources to operating the Companies instead of challenging each other before the various agencies and courts.

The water utility plant required to serve the area between the two existing utilities will be very expensive to construct. The duplication of water facilities by the Companies in this area would be a disservice to the Companies and future customers. Based upon our combined knowledge of the present and future demand for water and wastewater services in the area, as well as the existing utility plants of the Companies, we have agreed that the best and most effective development of the area consistent with the public interest would be to establish Planning Areas to ensure water and sewer needs of future growth can be met in an economical and reliable fashion.

Based on the foregoing considerations, the Companies agree that the appropriate demarcation of the southern boundary of Diversified, and the northern boundary of Johnson, for water service planning, would be a line running West to East along the Bella Vista Road alignment between the Union Pacific Railroad (the "Tracks") and the Central Arizona Project Canal (the "Canal"). The western boundary of Diversified, and the eastern boundary of Johnson will be the Tracks, north of Bella Vista Road. The eastern boundary of Diversified, and the

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JUN 29 2005

CURTIS, GOODWIN, SULLIVAN

western boundary of Johnson on the East for the area South of Skyline Road will be the Canal north of Bella Vista Road. This letter does not address water utility service to the vast area of land owned by the State of Arizona East of the Canal and North of Skyline Road. The above-described lines define and divide what will hereinafter be referred to as the Planning Areas of the Companies. A sketch of the boundaries of the respective Planning Areas is depicted on the map attached hereto as Exhibit A.

The Planning Areas being agreed upon by the Companies, and with the pending CC&N Applications of the Companies in their various procedural postures, the parties have entered into this Agreement and to the following actions:

1. As soon as practicable, Diversified will file an Application to Intervene and intervene in the Johnson CC&N Application, Docket No. WS-02987A-05-0088, regarding the approximate 100 acre parcel located at the southeast corner of Bella Vista Road and Quail Run Lane, which intervention will not be opposed by Johnson.

2. Diversified and Johnson will not object to the May 11, 2005 Procedural Order issued in the competing CC&N Applications of Diversified and Johnson in Docket Nos. W-02859A-04-0844 and WS-02987A-04-0869, except as may be necessary to pursue and implement this Agreement.

3. On or before June 30, 2005, the parties shall jointly file this Agreement and a Joint Settlement Statement in all three of the above Dockets pursuant to which:

(a) The boundaries of and the rationale for the foregoing Planning Areas will be set out and the Companies, their officers, directors and employees will: (i) take no action to provide water service within the other Company's Planning Area; (ii) not oppose and, if requested, will support, the provision of water service by Diversified within Diversified's Planning Area and by Johnson within Johnson's Planning Area; and (iii) not support the provision of domestic water service by any other water provider within the Planning Areas.

(b) Diversified will modify its CC&N Application in Docket No. WS-02859A-04-0844 to be consistent with the Diversified Planning Area and as otherwise required under this Agreement.

(c) Johnson will withdraw its CC&N Application for Section 13 West of the CAP Canal, in Township 3 South, Range 8 East, G&SRB&M, Pinal County Arizona ("Section 13") and withdraw its objections to Diversified's modified CC&N Application in Docket No. WS-02859A-04-0844 with respect to the Diversified Planning Area. Johnson will support the modified Application of Diversified in Docket No. WS-02859A-04-0844.

(d) Diversified will withdraw its objections to Johnson's CC&N Application in Docket No. WS-02987A-04-0869 as modified by the deletion of Section 13 and as otherwise required under this Agreement. Diversified will support the modified Application of Johnson in Docket No. WS-02987A-04-0869, as well as the Application of Johnson in Docket No. WS-02987A-05-0088.

(e) Johnson will file an application for an extension of its wastewater CC&N for all areas within Diversified's CC&N for which Johnson has received a request for sewer service.

(f) Johnson will continue to pursue and file new sewer CC&N applications for areas within Diversified's existing water CC&N when Johnson receives a request for sewer service.

(g) The parties will use their best reasonable efforts and work jointly with the Commission Staff to effectuate the above Settlement.

5. The parties will work jointly with the Arizona Department of Environmental Quality ("ADEQ") and the Commission Staff to effectuate a water interconnect agreement and design for emergency service requirements. Though each company will use commercially reasonable efforts to enter into a water interconnect agreement that is mutually acceptable to both parties, this agreement is not contingent upon obtaining a water interconnect agreement between the parties.

6. Diversified shall modify, amend or if necessary file a CC&N Application for the area described in Paragraph 3(a) above. Johnson believes it is in the public interest to recognize and operate within the Planning Areas and will support Diversified and use its commercially reasonable efforts to assist Diversified in obtaining formal Requests for Service from the property owners in the Planning Area of Diversified as modified and set forth in this agreement. Johnson will not use the affidavits previously filed with the Commission on or about April 29, 2005 in conjunction with Johnson's Motion to Continue. Any costs or expenses associated with the actions taken by each party under Paragraph (6), shall be the responsibility of the individual party.

7. So as to permit the development of Diversified's water CC&N area, Johnson will file appropriate applications for wastewater CC&Ns for developments for which Johnson does not now hold a CC&N, and which are within Diversified's existing or proposed CC&N area. Johnson will file those applications as the property owners of those areas request wastewater service. Johnson does not propose to extend wastewater CC&N applications for areas within Diversified's existing or proposed CC&N areas that are currently or will receive wastewater service via septic tank systems.

8. Johnson and Diversified will file a Termination of Water Service Tariff, substantially in the form attached hereto, that will permit Diversified to assist Johnson in collection of delinquent wastewater billings to Johnson's wastewater-only customers who also

receive water service from Diversified. Diversified will assist Johnson in identifying customers within the existing and proposed CC&N areas of Diversified for wastewater service requirements. The Termination of Water Service Tariff will apply to existing and proposed Diversified CC&N areas. Johnson and Diversified agree to work jointly to ensure that each company collects its appropriate Commission approved reconnection charge for every water service and sewer terminated under the appropriate tariffs, due from the customer so terminated. Johnson and Diversified agree to forward or compensate the other Company for reconnection charges that are due the other company.

9. Johnson and Diversified will, now and in the future, cooperate with each other in all regulatory and operating aspects as may reasonably be requested by the other for the purposes of implementing this Agreement.

10. Neither party shall acquire any wells within the Planning Area or existing water CC&N service area of the other without the written permission of the other, which permission shall be at the sole discretion of the party with the Planning Area or existing water CC&N service area.

11. Neither party, including their owners, members, directors and officers or their agents, shall promote, organize, encourage or participate in a county improvement district or like governmental entity attempting to provide utility services within the service area or Planning Area of the effected party currently provided by the effected party.

12. The term of this Agreement shall be for a thirty (30) year period and shall be renewed automatically for up to ten successive five (5) year terms unless terminated prior to the start of the five year term by providing written notice of termination to the other Company.

13. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.

14. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between the Companies, and it shall be construed liberally to fulfill its purpose.

15. In the event suit is brought or an attorney is retained by either Company to this Agreement to enforce the terms of this Agreement or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

16. Nothing herein shall be deemed an attempt to modify an Order, Decision, Tariff, rule or regulation of the Arizona Corporation Commission, but this Agreement does constitute the mutual commitment of Diversified and Johnson to work together and obtain Orders, Decisions, Tariffs, rules and/or regulations that are consistent with this Agreement.

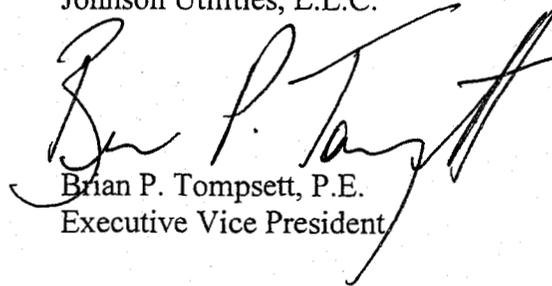
17. In the event that any provision of this Agreement is waived at any time or times by either party or is rendered invalid or unenforceable by any court of competent jurisdiction, such waiver shall not be deemed a waiver of any other provision of this Agreement or a waiver for any other time or times and no such holding shall invalidate or render unenforceable any other provision hereof. Waiver of a provision related, by its terms, to a specific act of either party, or to a specific event, shall not be deemed to be a waiver of any other acts or events contemplated by such provision.

18. This Agreement constitutes the entire Agreement between the parties. All prior agreements between the parties related to the subject matter of this Agreement made either orally or in writing shall be deemed to be superseded hereby.

If the above properly and completely states the agreement between the Companies regarding operations within the respective Planning Areas, please acknowledge both copies of this Letter of Understanding, Cooperation, and Settlement as indicated below and return one to me. In executing this letter, the undersigned represent and warrant that they are fully authorized to enter into this Agreement and to bind the Company, its officers, directors, employees and agents to the terms and conditions set forth above.

We are looking forward to working cooperatively with your Company for the benefit of all of our customers and the community at-large.

Sincerely,
Johnson Utilities, L.L.C.

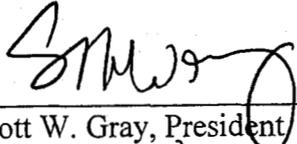


Brian P. Tompsett, P.E.
Executive Vice President

ACKNOWLEDGED AND AGREED:

I hereby acknowledge and agree that this Letter of Mutual Understanding, Cooperation and Settlement properly represents the Agreement between the parties.

Diversified Water Utilities, Inc.

By: 

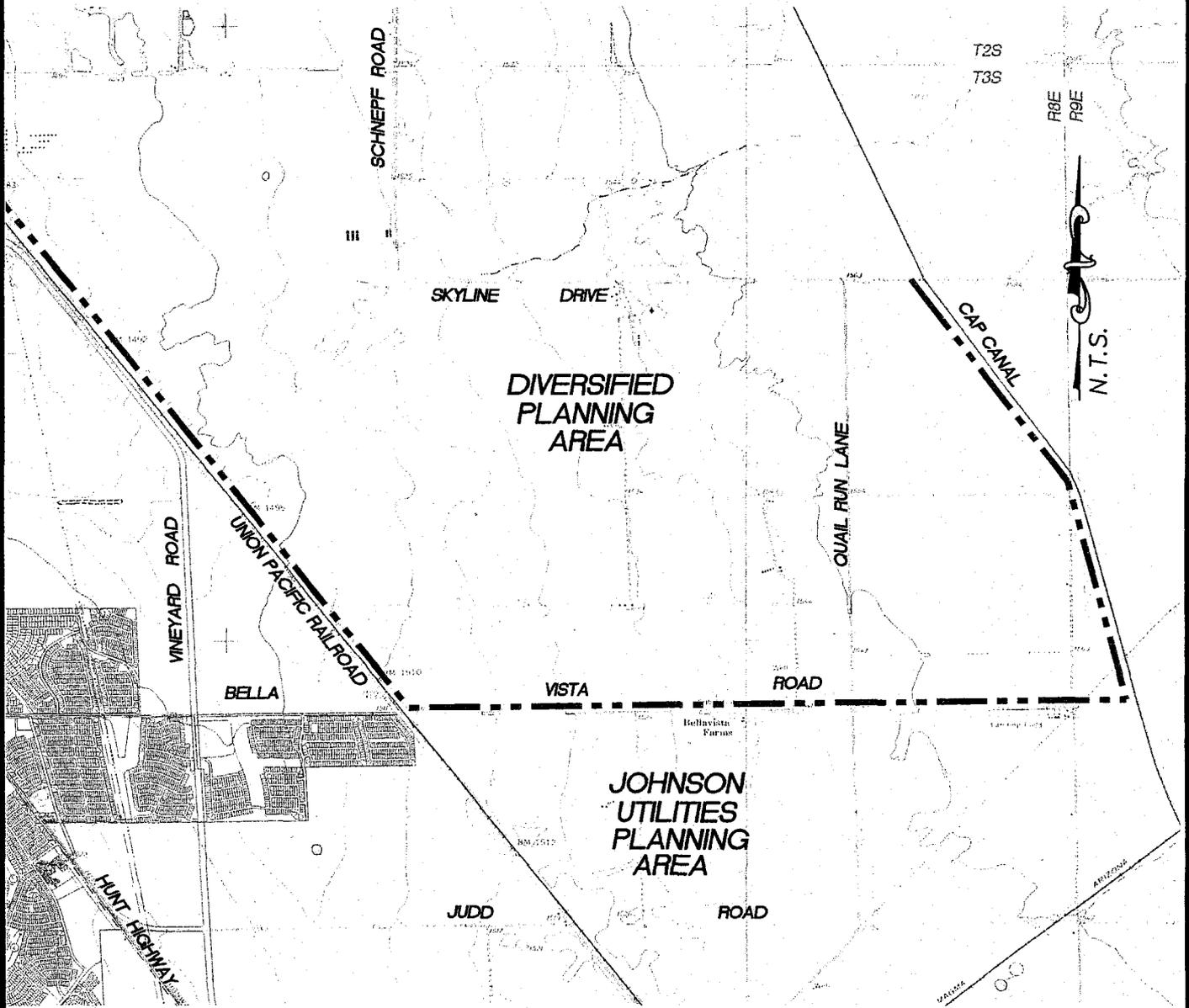
Scott W. Gray, President

Dated: 6/24/05

Enclosures

cc: William P. Sullivan
Richard L. Sallquist

S:\SUNBELT_JOBS\3009_MJC-General\ACAD_DRAWINGS\F-overcraft\water\brian-exhibit.dwg Plot: Jun 24, 2005



LEGEND

PLANNING AREA BOUNDARY



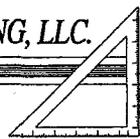
EXHIBIT A

DRAWN
 DATE 6-20-2005
 SCALE



SPECIFIC ENGINEERING, LLC.

5230 E. SHEA BOULEVARD SUITE 220
 SCOTTSDALE, ARIZONA 85254
 Phone: (480) 596-6335
 FAX: (480) 596-6437



DIVERSIFIED WATER UTILITIES, INC. TARIFF REVISIONS

TERMINATION OF WATER SERVICE FOR NON-PAYMENT OF WASTEWATER BILL

- I. Company customers who also receive wastewater service from Johnson Utilities Company ("JUC") are hereby notified that the Companies have been authorized by the Commission that in the event the wastewater bill of JUC is not paid in a timely fashion, and following notice by both Companies, the water service from Diversified may be terminated. Water service will not be restored until the customer pays to JUC the delinquent balance, plus all-Reconnection of Service and Deposit Requirements pursuant to the JUC Tariff, and the payment to the Company of the applicable Reconnection of Service charges pursuant to the Company's Tariff. Please see the JUC Tariff in this regard.

Renumber to conform——

JOHNSON UTILITIES L.L.C. dba JOHNSON UTILITIES COMPANY
TARIFF REVISION

PART FOUR- SECTION III. TERMINATION OF WATER SERVICE FOR NON-
PAYMENT OF WASTEWATER BILL

- III. Those Company customers who also receive water service from either H2O, Inc. ("H2O") or Diversified Water Utilities, Inc ("Diversified") are hereby notified that the Companies have been authorized by the Commission that in the event the wastewater bill of the Company is not paid in a timely fashion, and following notice by both Companies, the water service from H2O or Diversified may be terminated. Water service will not be restored until the customer pays to the Company the delinquent balance, plus all Reconnection of Service and Deposit Requirements pursuant to PART THREE, SECTION III of this Tariff, and the payment to H2O or Diversified of the applicable H2O or Diversified Reconnection of Service charges. Please see the H2O or Diversified Tariff, as applicable, in this regard.

Renumber to conform