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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP. COMMISSION
WASTEWATER CONTROL

WILLIAM A. MUNDELL
Chairman

Arizona Corporation Commission

DOCKETED

JIM IRVIN
Commissioner

NOV 14 2001

MARC SPITZER
Commissioner

DOCKETED BY
mac

APPLICATION OF ARIZONA UTILITY
SUPPLY AND SERVICES, LLC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE SEWER
SERVICE TO PORTIONS OF PINAL
COUNTY, ARIZONA

Docket No. SW-04002A-01-0228

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

Docket No. WS-02987A-01-0295

Application for Order Prohibiting
AUSS from Constructing Utility Plant
and Offering Public Utility Service
Pending a Ruling on CC&N
Applications and Request for Expedited
Hearing

Application

Johnson Utilities L.L.C. dba Johnson Utilities Company ("Johnson Utilities") files this application in an effort to stop Arizona Utility Supply and Services, L.L.C. ("AUSS") from constructing wastewater treatment plants and related infrastructure, including distribution lines ("Facilities"), and offering public utility service without having obtained a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("Commission").

1 Johnson Utilities' application is made pursuant to A.R.S. § 40-202 (authorizing the
2 Commission to supervise and regulate public service corporations and do all things necessary and
3 convenient in the exercise of such power and jurisdiction), § 40-203 (authorizing the Commission
4 to determine and prescribe contracts and practices of public service corporations if unjust,
5 discriminatory, preferential, illegal or insufficient) and § 40-281(A) (requiring a public service
6 corporation to first obtain a certificate of public convenience and necessity before beginning
7 construction of plant or facilities).

8 This application is supported by the record in these proceedings and the following
9 memorandum.

10 **Memorandum**

11 **Introduction**

12 Under the clear statutory prohibition of A.R.S. § 40-281(A), AUSS should be prohibited
13 from constructing Facilities and providing service prior to receiving a CC&N. AUSS implicitly
14 acknowledges as much by its CC&N application in these proceedings, yet its conduct continues to
15 flout the statutory prohibition and this Commission's jurisdiction even while its CC&N
16 application is pending. To ensure the integrity of these proceedings, to preserve the status quo
17 and to protect the interests of the ultimate customers, Johnson Utilities respectfully requests that
18 the Commission issue an order prohibiting any further construction of Facilities, provision of
19 service and related activities until the Commission has ruled on the pending CC&N applications
20 of both AUSS and Johnson Utilities.

21 Failure to prohibit continuing illegal conduct will encourage other utility providers to offer
22 services to developers and initiate construction of Facilities before obtaining approval from the
23 Commission. If the statutory prohibition is not enforced, the result will be to subvert Commission
24 authority and make a mockery of the CC&N process. The failure to exercise jurisdiction and
25 enforce the statute will likewise contribute to investment of millions of dollars in plants and
26 infrastructure – behind a thin veil of puppet nonprofit homeowners' associations – with

1 prearranged “deals” to transfer ownership of these Facilities to public service companies-in-
2 waiting that have yet to obtain any CC&N.

3 **Procedural History**

4 Both Johnson Utilities and AUSS have pending before the Commission applications for
5 CC&Ns for wastewater services pertaining to portions of northern Pinal County. Johnson seeks
6 an extension of its certification to provide wastewater service in northern Pinal County and the
7 Queen Creek area (Docket No. WS-02987A-01-0295). AUSS seeks certification to provide
8 service to portions of Pinal County (Docket No. SW-04002-A-01-0228). The parties’ respective
9 applications are, in part, competing. Specifically, with respect to Pinal County Sections 19, 20,
10 21, 22, 29 and 30 of Township 2 South, Range 8 East, the applications overlap (the “overlap
11 area”). The applications have been consolidated, were the subject of hearings on August 15 and
12 16, 2001, and are currently under advisement by the Administrative Law Judge, Marc E. Stern.

13 **AUSS’ Conduct¹**

14 Despite the pendency of the parties’ competing applications to serve the overlap area,
15 AUSS has taken and continues to take actions that are prohibited by statute, threaten to undermine
16 the Commission’s authority and injure Johnson Utilities’ rights to a fair hearing and to protection
17 of its prospective economic advantage. While its own CC&N application – which acknowledges
18 the Commission’s authority to regulate providers of wastewater service – is pending, AUSS
19 simultaneously seeks to bypass the Commission’s authority by “handshake deals” and other
20 arrangements with developers to construct multiple, fragmented wastewater systems through a
21 puppet nonprofit homeowners’ association. If AUSS’ CC&N application is approved, the
22 handshake deals will be consummated – the homeowners’ association’s veneer of “ownership”
23 will immediately be replaced by a prearranged transfer of ownership to AUSS. AUSS will have
24 succeeded, through a grand shell game, in building a utility system without first having obtained
25 from the Commission a certificate of public convenience and necessity.

26

¹ A more detailed chronology of events is attached as Exhibit A.

1 There are at least five specific actions that AUSS continues to take that this Commission
2 must stop. First, Johnson Utilities has been informed by a developer in the area that AUSS has
3 represented to interested parties that AUSS *already has obtained* a CC&N for the overlap area.
4 AUSS is evidently claiming that the Commission somehow failed to act within applicable
5 licensing time-frames and, consequently, the Commission no longer has jurisdiction to award to
6 the most qualified candidate the right to serve the overlap area and – by default or self-proclaimed
7 fiat – AUSS has secured a “right” to serve.

8 Second, AUSS continues to operate as a wastewater service provider in northern Pinal
9 County in contravention of Commission statutes. The shell game AUSS has played to hide its
10 true ownership interests in Facilities was revealed at the August 2001 hearings. Since that time
11 AUSS has done nothing to clarify, correct or distance itself from the presumption that it is a
12 regulated utility operating without the approval of the Commission. Rather, AUSS continues to
13 work behind the scenes to assist its partner-developers to build and sell homes without a proper
14 and professionally planned solution to their wastewater needs that has been reviewed and
15 approved by the Commission. In fact, as explained below, AUSS is currently serving the Cambria
16 development using the Links plant.

17 Third, AUSS has apparently duped both the Commission and the Arizona Department of
18 Environmental Quality (“ADEQ”) regarding AUSS’ true interest in various sewer assets in the
19 overlap area. AUSS effectively owns two wastewater Facilities in the area in which it seeks, but
20 has not been granted, a CC&N. AUSS sent an April 16, 2001 letter to ADEQ acknowledging
21 ownership of the Links plant. *See Exhibit B.* That ownership was confirmed in an earlier letter
22 from an AUSS consultant. *See Exhibit C.* Similarly, AUSS has an apparent “handshake” deal
23 with Woodside Homes wherein AUSS will obtain ownership of the \$1.5 million Cambria
24 wastewater treatment plant from Woodside Homes *for free* – if its CC&N application is approved.
25 In effect, AUSS is charging developers hook-up fees and other charges to build Facilities without
26 a Commission approved tariff authorizing those fees and charges.

1 Fourth, on August 10, 2001, ADEQ issued a Cease and Desist letter to AUSS stating that
2 construction of the Cambria plant was in violation of ADEQ rules. AUSS has sought to subvert
3 ADEQ's order by attempting to install smaller unregulated systems on an "interim" basis until it is
4 granted approval to continue construction of the Cambria plant. AUSS' continued tinkering with
5 wastewater systems in the overlap area adversely affects Johnson Utilities' prospective interests as
6 well as jeopardizes the integrity of these proceedings and the Commission's authority generally.

7 Finally, AUSS made misrepresentations that homebuilders then relied on in obtaining a
8 subdivision approval for Cambria parcels 4 & 6 that are connected to the Links wastewater
9 treatment plant. These subdivision approvals are based on the assumption that wastewater from
10 the Cambria subdivision[s] can be treated at the Links wastewater treatment plant. But the Links
11 plant is only permitted to receive flows from the Links subdivision – not from Cambria. AUSS
12 must seek the proper modification to the existing 208 application before the Links plant can
13 accept sewage from an off-site source. More importantly, the Links facility is purportedly owned
14 by a homeowners' association, but the Cambria development is not within the homeowners'
15 association; therefore, the Links facility is providing public utility service outside the
16 homeowners' association area without a CC&N in violation of Commission authority.

17 While the 208, CC&N and wastewater approval processes can be protracted and, therefore,
18 troubling to home developers, these processes are statutorily-mandated and vitally important to
19 maintaining control over development. For that reason, parties like AUSS should be prohibited
20 from "gaming" these processes through "deals" and other arrangements with anxious home
21 developers.

22 **The Stakes**

23 The stakes here are high. The ongoing gamesmanship of AUSS circumvents the authority
24 of the Commission. Indeed, AUSS undercuts the Commission's authority even while it seeks the
25 Commission's approval of its own pending CC&N application.

26 AUSS' conduct also jeopardizes the prospective economic interests of Johnson Utilities.
For example, Johnson Utilities will be prejudiced in these proceedings if AUSS is allowed to

1 continue to construct Facilities in violation of A.R.S. § 40-281(A) and then parlay its continuing
2 statutory violations into an argument that it is better able to meet utility service needs in the
3 overlap area because of its already-existing Facilities (albeit illegally constructed). In fact, at the
4 CC&N hearing, two developers supported AUSS' application because AUSS already had
5 Facilities in this area. Further, if Johnson Utilities is certificated to provide utility service in the
6 overlap area, Johnson Utilities will have had no ability to inspect the design, materials or
7 installation of the AUSS-orchestrated and prematurely constructed Facilities. Nor will Johnson
8 Utilities have had an opportunity to address warranty, title, easement and an array of other issues
9 critical to Johnson Utilities' operation and maintenance requirements and integral to applicable
10 rate making criteria. Also, the AUSS Facilities in the overlap area may not be consistent with
11 Johnson Utilities' master plan to serve the larger area for which it seeks certification – resulting in
12 expensive and disruptive redesign, removal and replacement of Facilities.

13 The mandate of A.R.S. § 40-281(A) is clear:

14 A public service corporation ... shall not begin construction of a
15 ... line, plant, service or system, or any extension thereof, without
16 first having obtained from the commission a certificate of public
convenience and necessity.

17 AUSS' conduct repudiates the statute, infringes on this Commission's authority, threatens the
18 integrity of these proceedings and interferes with Johnson Utilities' prospective economic
19 advantage.

20 The failure of the Commission to act immediately to halt AUSS' conduct will reward
21 corporate gamesmanship and encourage companies, like AUSS, to hide behind puppet nonprofits
22 to achieve their own economic ends. Future development will rest not on compliance with
23 Arizona statutes, but instead on the success of the shell-games among aspiring utilities,
24 homebuilders and their puppet nonprofits.
25
26

1 **Relief Requested**

2 AUSS will not be damaged if the Commission enters the relief requested by Johnson
3 Utilities. The requested relief merely ensures that A.R.S. § 40-281(A) will be observed and that
4 the status quo will be maintained pending final determination of the parties' competing CC&N
5 applications to serve the overlap area. The issuance of the relief sought by Johnson Utilities will
6 help to reestablish the proper, fair and lawful competitive positions of the parties, as well as
7 protecting the integrity of this Commission's proceedings and regulatory authority.

8 Johnson Utilities requests, pending final determination of the parties' respective CC&N
9 applications, that this Commission immediately enter an order prohibiting AUSS, either directly
10 or indirectly, whether alone or in concert with others, from doing any of the following:

11 A. Constructing any line, plant, sewer or system, or any extension thereof, within the
12 overlap area of the parties' pending CC&N applications;

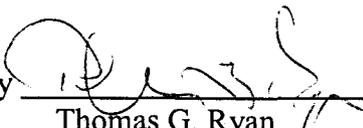
13 B. Providing utility service, directly or indirectly, within the overlap area of the
14 parties' pending CC&N applications; and

15 C. Representing that it already has obtained the right to serve the overlap area.

16 Alternatively, Johnson Utilities requests that an expedited hearing before this Commission
17 be conducted to address the matters herein and the relief sought by Johnson Utilities.

18 RESPECTFULLY SUBMITTED this 14th day of November, 2001.

19
20 LEWIS AND ROCA LLP

21 By 

22 Thomas G. Ryan
23 Thomas H. Campbell
24 Michael L. Denby

25 Attorneys for Johnson Utilities L.L.C.
26 dba Johnson Utilities Company

LEWIS
AND
ROCA
LLP
LAWYERS

1 ORIGINAL and 10 copies of
2 the foregoing filed this *14th*
3 day of November, 2001, with:

3 The Arizona Corporation Commission
4 Docket Control – Utilities Division
5 1200 West Washington Street
6 Phoenix, Arizona 85007

6 COPY of the foregoing
7 hand delivered this *14th*
8 day of November, 2001, to:

8 Marc E. Stern
9 Administrative Law Judge
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, Arizona 85007

11 Janice Alward
12 Legal Department
13 Arizona Corporation Commission
14 1200 W. Washington Street
15 Phoenix, Arizona 85007

14 Jim Fisher
15 Utilities Division
16 Arizona Corporation Commission
17 1200 W. Washington Street
18 Phoenix, Arizona 85007

17 William A. Mundell, Chairman
18 Arizona Corporation Commission
19 1200 W. Washington Street
20 Phoenix, Arizona 85007

20 Jim Irvin, Commissioner
21 Arizona Corporation Commission
22 1200 W. Washington Street
23 Phoenix, Arizona 85007

22 Marc Spitzer, Commissioner
23 Arizona Corporation Commission
24 1200 W. Washington Street
25 Phoenix, Arizona 85007

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COPY of the foregoing
mailed this 14th
day of November, 2001, to:

Jeffrey C. Zimmerman
Brad K. Keogh
Moyes Storey Ltd.
3003 N. Central Avenue
Suite 1250
Phoenix, Arizona 85012



A

CHRONOLOGY OF EVENTS

BUILDING AND OWNING UTILITY FACILITIES WITHOUT A CC&N: Ownership of the Links and Cambria

AUSS does not have a CC&N, yet it owns both the Links at Ocotillo Wastewater Treatment Plant ("Links") and the Cambria Wastewater Treatment Plant ("Cambria").

The Links:

- 1) On March 14, 2001, Terry L Moore, AUSS's consultant sent a letter to ADEQ stating that AUSS "owns the Links at Ocotillo wastewater treatment plant." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 2) On April 16, 2001, Maurice Lee followed up with his own letter to ADEQ wherein he asserted that AUSS is the owner of the Links wastewater treatment plant. That letter stated: "Please be advised that Arizona Utility Supply and Services, L.L.C., has taken over and has been assigned the ownership of the Links at Ocotillo wastewater treatment plant as well as the lift station under the above captioned file number." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 3) At the hearing, Jim Fisher, executive consultant for the Utilities Division of the Corporation Commission, was asked whether in drafting the Staff Report it was the Commission's understanding that AUSS owned the Links wastewater treatment plant. Mr. Fisher stated that it was his understanding that AUSS owns the Links wastewater treatment plant. *Transcript at 350.*

Cambria:

- 1) In March, 2001, AUSS filed a 208 Water Quality Plan Amendment entitled "Arizona Utility Supply and Services LLL Wastewater Treatment Facilities." In its request for a 208 amendment, AUSS stated that "AUSS owns the Cambria WWTF site." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 4.*
- 2) In a March 1, 2001 letter from Maurice Lee to Jim Lee and Harry Redman at Madison Diversified, AUSS states that it "is building the treatment plant (Cambria) and will also own the entire treatment and collection system." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab D.*

- 3) At the hearing, Jim Fisher was asked whether in drafting the Staff Report it was the Commission's understanding that AUSS owned the Cambria wastewater treatment plant. Mr. Fisher stated that it was his understanding that AUSS owns the Cambria plant. *Transcript at 348.* At no time before, during or after the hearing did AUSS take any steps to disabuse or correct this understanding by the Commission. In fact, AUSS embraced and supported this incorrect position in its exceptions to Staff Report by not correcting Staff's misunderstanding, instead focusing on concerns about Johnson Utilities' "construction costs." *Arizona Utility Supply Services LLC Exceptions to Staff Report.*
- 4) Although Maurice Lee has asserted throughout the hearing process that AUSS does not presently own the Cambria WWTP, he did concede that he was building the Cambria WWTP for AUSS if AUSS receives a CC&N. *Transcript at 94.*

Although AUSS denies that it owns the Links and Cambria wastewater treatment plants and claims that it is not subject to Commission regulation, its own statements contradict those assertions. AUSS acknowledges that it is Public Service Corporation subject to Commission jurisdiction, yet it operates without a CC&N.

- 1) In its 208 Water Quality Plan Amendment, AUSS states that "The Company (AUSS), as the facility owner, has requested that the Arizona Corporation Commission (Commission) issue a Certificate of Convenience and Necessity for wastewater service for the entire development. As a **public service corporation**, the Company is required to obtain prior approval of all long-term financing pursuant to A.R.S. 40-301 et. seq." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 10, 18 and 26 (emphasis added).*
- 2) The 208 also states: "The processing of the financing application will be contemporaneous with the processing of the Certificate of Convenience and Necessity application." *Id. at 10.* In his testimony, Maurice Lee acknowledged that the Cambria plant is 60% complete (*Transcript at 87*) and that the facility will cost approximately \$1.5 million. *Transcript at 91.* He stated that the monies have come from Woodside Homes and Madison Diversified and that there is no repayment agreement. *Transcript at 89.*

Although AUSS asserted at the hearing that the facilities are owned by homeowners' associations, the documents filed in support of the Cambria subdivision contradict that claim and establish that a private wastewater company will serve this development. Nowhere in the public files do the Cambria developers seek to have a homeowners' association provide their wastewater service. Under Commission statutes, private wastewater companies must obtain a CC&N before they can serve developments like Cambria.

- 1) Sewer service for Cambria is being provided not by a homeowners' association, but by Sunbelt Sanitation Group (which transferred all its ownership interests to AUSS). *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 2) Pursuant to ADEQ forms for the Cambria development, when asked to provide the "name of sewer system or municipality," Maurice Lee inserted "Sunbelt Sanitation Group," and signed on its behalf. Maurice Lee did not list or even reference the potential for a homeowners' association to provide wastewater service. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 3) The Public Report issued by the Department of Real Estate ("DRE") states on page 5 that Sewage Disposal will be provided by Sunbelt Sanitation Group and does not reference any homeowners' association as wastewater provider. *Arizona Department of Real Estate, Public Report, Registration No. DM01-027112, Cambria Parcel 4.*
- 4) In the Cambria Parcel 4 application to DRE, the applicant clearly anticipates that Sunbelt Sanitation Group will provide wastewater service to the development and never even intimates that ownership will be by homeowners' association. *Application for Public Report, Section III, Questionnaire, Subdivided Lands, Dated February 21, 2001 pages 19-21.*
- 5) If AUSS, which now holds all interests of Sunbelt Sanitation, is not the correct wastewater provider as AUSS has tried to assert during the hearing, then DRE should suspend home sales and issue a new Public Report identifying the true wastewater provider for the Cambria development. *Arizona Administrative Code Title 4, Chapter 28.*

At the same time that AUSS has been telling ADEQ, the County and others that it owns the Links and Cambria wastewater treatment plants, it has been crafting documents and entering into "handshake" agreements that appear to provide for ownership of the wastewater treatment plants.

- 1) Pursuant to discovery requests, AUSS produced a written contract which appears to be dated February 1, 2001 among DJSP, LLC, "the current owner of the equipment used and located" at the Links, the Links at Ocotillo Homeowners' Association, and AUSS, that appears to try to allocate the ownership of the Links wastewater treatment plant. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*
- 2) Under this agreement, AUSS has the option to purchase for \$10, "all right, title, claim, and interest of the Association in the (Links) Plant." *Id.*

- 3) Although the agreement appears to be among three parties, there are only two signatories – Maurice Lee for AUSS and Stephen Kohner for DJSP, LLC and The Links at Ocotillo Homeowners' Association. *Id.* A closer examination of corporate records shows that Mr. Lee and Mr. Kohner together also make up 100% of the interest in AUSS, the party acquiring the Links wastewater plant for \$10. *Testimony at 113-114.* This is the equivalent of a “contribution.” Therefore, AUSS will have no rate base so it cannot earn anything other than its documented expenses. Mr. Lee’s and Mr. Kohner’s “salary” must be for work performed. They have no incentive to be in the wastewater business unless it is for management fees or for selling houses.
- 4) According to Mr. Lee’s testimony, “The building of the Cambria plant was very loosely, almost on a handshake.” *Id.* Pursuant to this loose, handshake agreement, if AUSS receives the CC&N for the contested area, AUSS will get the Cambria plant for free. If AUSS does not receive the CC&N, AUSS will not receive the plant. *Id. at 92.* Although Mr. Lee has asserted throughout this hearing process that AUSS does not presently own the Cambria WWTP, he did concede that he was really building the Cambria WWTP for AUSS if AUSS receives its CC&N. *Id. at 94.*
- 5) AUSS also produced an amendment to the February 1, 2001 contract that provided Woodside Homes developers with an ownership right in the Links wastewater treatment plant as well. Therefore, what was purportedly owned by a homeowners’ association is now owned by the association and a developer, with AUSS having an option to purchase the facility for \$10. *Arizona Utility Supply and Service LLC’s Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*

The Commission Staff acknowledges that AUSS owns the Links and Cambria wastewater treatment plants.

- 1) On July 10, 2001, Staff issued its Staff Report for the applications in this matter. *Staff Report, Utilities Division, Arizona Corporation Commission, Docket No. SW-04002A-01-0228 and Docket No. WS-02987A-01-0295.*
- 2) The Staff Report states that “AUSS is a sewer utility based in Phoenix, Arizona, seeking authority to provide services to 5 Sections Southeast of Phoenix, in Queen Creek, Arizona.” *Id.* at 1 (emphasis added). It is clear from the Staff Report that the Commission Staff considers AUSS a “sewer utility” even though AUSS claims that it is not a utility, but only an operator of the Links wastewater treatment plant.

- 3) The Staff Report also states: "The developers have installed the physical treatment plant and transferred it to AUSS." *Id. at 1.*
- 4) Additionally, the Staff Report refers to the Links wastewater treatment plant as "the AUSS Links Wastewater Treatment System." *Id.*
- 5) The Staff Report also clearly acknowledges that AUSS was building the Cambria plant without the appropriate permits, yet seemed to overlook this violation: "Although ADEQ has not issued either a Certificate of Approval to Construct or an APP for the Cambria Plant, AUSS has started construction of the plant. Staff observed the construction activity on June 13, 2001 during a site inspection. Staff also observed housing construction activity in the Cambria Subdivision during its site inspection." *Id.*

AUSS has made it clear to the Commission and others involved in this process that it does not intend to allow the Commission to control which entity will provide wastewater service to the area and that it will forestall any competition for service in the area.

- 1) The agreement among Woodside Homes, The Links and AUSS states: "Should AUSS not be able to obtain the CC&N for sewer service to Association or Woodside, the parties shall promptly and in good faith negotiate further amendments . . . to provide for ownership of the Plant and other wastewater treatment facilities by the Association and the Cambria property owners association, and operation of the Plant and other facilities by AUSS." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.*
- 2) Furthermore, in its response to discovery requests, AUSS asserts that "With respect to the Cambria plant, it will be owned by a nonprofit homeowners association(s) unless AUSS is granted the CC&N for the appropriate area." Moreover, "[A]ny plants that are constructed in the future will be owned by nonprofit homeowners associations unless AUSS is granted the CC&N for the appropriate area." *Arizona Utility Supply & Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company, at paragraph 4.*
- 3) During cross-examination, Maurice Lee acknowledged to the Administrative Law Judge that, if the CC&N is awarded to AUSS, AUSS would obtain ownership interest in the Links. However, if AUSS is not awarded the CC&N, it will remain a homeowners' association. *Transcript at 115.*

- 4) In the past homeowners' associations have been used to assist small single developer developments meet the needs of a small group of homeowners. The four sections of land AUSS seeks to serve will comprise four wastewater treatment plants, four planned developments, over a section of land that presently has no planned developments, a multitude of developers and dozens of homebuilders. In fact, Mr. Lee testified that there would be approximately 25,000 houses in this area. *Testimony at 121*. Clearly, AUSS' actions in this area are anything but a homeowners' association banding together to provide itself wastewater service. This is exactly the type of large development that is in need of Commission oversight.

ACTING AS A PUBLIC SERVICE CORPORATION: Arrangements with Developers

Regardless of the statements AUSS made at the hearing relating to its lack of ownership interest in Cambria and The Links, its actions speak volumes. AUSS has acted and continues to act as a Public Service Corporation.

Imposing Rates and Charges and Agreeing to Serve

- 1) AUSS has collected hook-up fees from developers and set rates for sewage service, all without having a Commission approved tariff on file. In response to discovery, AUSS provided the Commission with a series of letters wherein AUSS requests assessments of \$677 per lot with a monthly rate of \$30 per lot. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab D, March 1, 2001 letter from Maurice Lee to Mr. Jim Lee and Harry Redman at Madison Diversified*.
- 2) When questioned about these charges, Maurice Lee acknowledged that Madison Diversified has paid AUSS even though AUSS had not filed a tariff with the Commission. *Transcript at 108*.
- 3) In response to discovery, AUSS also produced a two-part agreement between AUSS and Summer Ridge LLC. Summer Ridge appears to be the location of the proposed Castlegate wastewater treatment plant. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company*.
- 4) The first part of the agreement between AUSS and Summer Ridge is a 21 page document entitled Lease Agreement. Pursuant to this agreement, for the first four years, AUSS will pay \$12,000 per year for use of the land. After the fourth year, this rent is increased to \$36,000 per year and incrementally increased after that. Additionally, AUSS

agrees to pay "percentage rent" which appears to be a payment to Summer Ridge based upon the gross proceeds of AUSS. *Id.*

- 5) The Lease Agreement also states: "Tenant (AUSS) acknowledges that the Premises currently consist of vacant land. Tenant, at **its sole expense**, shall construct, furnish and make such improvement to the Premises as are necessary for Tenant's use of the Premises, including, without limitation, a wastewater treatment facility." *Id.* (emphasis added).
- 6) The second part of the agreement between AUSS and Summer Ridge is entitled Agreement Regarding Wastewater Services. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company.*
- 7) The Agreement Regarding Wastewater Services again sets forth numerous fees and charges associated with the building, ownership and operation of the Castlegate wastewater treatment plant or, in lieu thereof, fees to be paid should AUSS decide not to build the facility on Summer Ridge's property, additional fees related to gross proceeds of AUSS, assignment of all effluent to Summer Ridge, and the purchase by AUSS of "existing plans" for \$87,204. *Id.*

Filing a 208 Amendment

- 8) In March 2001, AUSS filed a 208 Water Quality Plan Amendment for Arizona Utility Supply and Services LLC Wastewater Treatment Facilities. *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services LLC Wastewater Treatment Facilities.*
- 9) In this 208 Amendment, AUSS clearly states its intent to construct three wastewater treatment plants and its intent to serve the developments planned in the four sections of land proposed in its 208. *Id. at 2.*

Building Wastewater Treatment Plants

- 10) AUSS is building the Cambria wastewater treatment plant and has contracts to build the Castlegate wastewater treatment plant. *Arizona Utility Supply and Service LLC's First Revised and Supplemented Response to First Set of Data Requests from Johnson Utilities Company.*

Negotiating with ADEQ for Approvals

- 11) AUSS has negotiated and continues to negotiate with ADEQ regarding the permitting and approval of various aspects of the Cambria and The Links operations. *Arizona Utility Supply and Service LLC's Response*

to First Set of Data Requests from Johnson Utilities Company, at Tab D.

AUSS CORPORATE SHELL GAME: Avoiding Commission Jurisdiction

A brief review of the history of AUSS and its acquisition of rights from Sunbelt Sanitation Group reveals a chain of ownership interests with common characters and characteristics. The two members of AUSS, Mr. Lee and Mr. Kohner, have used these corporate shells in various deals with developers to position AUSS as the owner of four wastewater treatment plants in the contested area while hiding behind a veil of nonprofit homeowners' associations.

- 1) To date, providing wastewater service by AUSS to the four sections of land at issue has involved the following people and corporate forms: Maurice Lee, Stephen Kohner, Ron Kohner, Judith Lee, Robert Turpin, Ken Bennett, John Bruner, Richard Weiss, K.T. Management Group LLC, K and T Management LLC, K&L Sanitation Services, LLC, Sunbelt Sanitation Group, LLC, Links Sunbelt Partners, LLC, DJSP LLC, Sunbelt Utility Services, LLC, Links at Queen Creek/DJSP, The Links at Ocotillo, LLC, The Links at Ocotillo Homeowners' Association and AUSS.
- 2) AUSS is owned 50% by Maurice Lee and 50% by Mr. Stephen Kohner.
- 3) Sunbelt Sanitation Group consists of Stephen A. Kohner, Maurice Lee, K and T Management, LLC, K & L Sanitation Services LLC, and Links Sunbelt Partners, LLC. *Arizona Corporation Commission State of Arizona Public Access System, 8/13/2001.*
- 4) Mr. Lee stated in his testimony that "Sunbelt Sanitation Group was a corporation that was originally formed to act as a utility company to Cambria subdivision." *Testimony at 72-73.*
- 5) In response to why Sunbelt Sanitation Group had assigned its interests to AUSS, Mr. Lee stated: "The original intent was to build the Cambria plant. When I was involved in it, there was (sic) other parties, and they wanted out of it, and I said I had an existing corporation called Arizona Utility Supply and Services, L.L.C. And I required that everything be transferred to that corporation as an existing corporation so that we could do business that way." *Id. at 73.*
- 6) During cross-examination Mr. Lee admitted that, even though Sunbelt Sanitation Group had assigned all its rights in the contested area to

AUSS, he continues to use Sunbelt Sanitation Group to obtain various permits and approvals for this contested area. *Id. at 81.*

- 7) Curiously absent from the hearings, but clearly represented in the issues associated with ownership of The Links and Cambria wastewater treatment plants is Stephen Kohner. Mr. Kohner is not only a 50% owner of AUSS, he is part owner of Sunbelt Sanitation Group LLC, K.T. Management Group LLC, K&L Sanitation Services, LLC, The Links at Ocotillo Homeowners' Association, The Links at Ocotillo, LLC, Links at Queen Creek/DJSP, LLC, and DJSP LLC. *Arizona Corporation Commission State of Arizona Public Access System, August, 2001.*
- 8) All of the entities mentioned above (with respect to which Mr. Kohner is a member) have played or continue to play a roll in the corporate shell game played by AUSS. It is clear that Mr. Kohner is manipulating the shells in an attempt to self-deal and that Mr. Lee is somehow getting ownership interests in assets while contributing no capital. For example, when AUSS entered into its agreement with The Links regarding the right of AUSS to acquire the Links wastewater treatment plant for \$10, Mr. Kohner signed on behalf of not only DJSP, which claimed to own the Links wastewater treatment plant, but he also signed on behalf of the Links at Ocotillo Homeowners' Association, the location of the plant. Mr. Lee signed on behalf of AUSS. *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.* When the Links agreed to give up the additional capacity at its wastewater treatment plant so that Cambria could use the capacity, again Mr. Kohner signed not only for DJSP, which claimed to own the Links wastewater treatment plant, but also for the Links at Ocotillo Homeowners' Association, the location of the plant. Mr. Lee signed on behalf of AUSS. *Id.* Finally, when Sunbelt Sanitation Group (to which both Mr. Lee and Mr. Kohner are members) agreed to sign its interests over to AUSS, Mr. Kohner and Mr. Lee signed on behalf of Sunbelt Sanitation Group and Mr. Lee alone signed on behalf of AUSS. *Id.*
- 9) Mr. Kohner's direct relationship to Mr. Lee, The Links at Ocotillo, the Links at Ocotillo Homeowners' Association, Sunbelt Sanitation Group, DJSP and AUSS evidences a clear intent to manipulate the regulatory system designed to control and regulate the installation and operation of wastewater service providers. Rather than waiting until the Commission has rendered a decision on whether to issue a CC&N for this area, Mr. Kohner, Mr. Lee and the developers have engaged in a shell game, trying to hide the true intent of their dealings behind the shield of nonprofit homeowners associations.

The corporate shell game undertaken by AUSS, its members and local developers has confused even those involved in the shell game.

- 1) On April 16, 2001, Maurice Lee sent a letter to ADEQ that claimed AUSS was the owner of the Links wastewater treatment plant: "Please be advised that Arizona Utility Supply and Services, L.L.C., has taken over and has been assigned the ownership of the Links at Ocotillo wastewater treatment plant as well as the lift station under the above captioned file number." *Transcript at 85-86.*
- 2) When questioned why he told ADEQ that AUSS was the owner of the Links wastewater treatment plant, Mr. Lee's only comment was that the statement signed by him must have been in error. *Id.*
- 3) On March 14, 2001, Terry L Moore, AUSS' consultant at the time, sent a letter to ADEQ stating that AUSS "owns the Links at Ocotillo wastewater treatment plant." *Arizona Utility Supply and Service LLC's Response to First Set of Data Requests from Johnson Utilities Company, at Tab B.*
- 4) In its request for a 208 amendment, AUSS stated that "AUSS owns the Cambria WWTF site." *CAAG 208 Water Quality Plan Amendment for Arizona Utility Supply and Services, LLC Wastewater Treatment Facilities, March 2001 at 4.*
- 5) However, in response to written discovery, Mr. Zimmerman, counsel for AUSS states: "The current owner (of the Cambria plant) is Woodside." *August 9, 2001 letter from Mr. Jeffrey C. Zimmerman to Mr. Michael T. Hallam, Re: Arizona Utility Supply & Service LLC ("AUSS")/ Supplement to Response to First Set of Data Requests from Johnson Utilities.*
- 6) In public comment at the August 15, 2001 hearing, Kip Gilleland commented that "it was apparent to us that AUSS had a facility located near the property and that the sewer provider would more than likely be AUSS due to the location of their current plans (sic) and ability to construct a new plant." *Transcript at 7.*
- 7) Steve Flaggman also spoke at the hearing and stated that "because of the location of AUSS, they are best able to serve that area." *Transcript at 10.*
- 8) John Poulsen testified at the hearing that at the time he met with AUSS he considered "AUSS to be a provider of sewer to the area." *Transcript at 31.*

- 9) However, under cross-examination, Mr. Lee stated that “AUSS has no ownership interest in it (the Links wastewater treatment plant) at this time” or the Cambria plant. *Transcript at 111, 116.* Mr. Lee also stated that he did not hold himself out as a public service provider for the area. *Transcript at 118.*
- 10) In fact, AUSS is incorporated for the very purpose of being a public service provider. *Transcript at 73.*
- 11) In his cross-examination, Mr. Lee was unsure if DJSP, LLC, the Links at Ocotillo Homeowners’ Association or Woodside Homes was the owner of the Links wastewater treatment plant, or if there was some combination of ownership between or among them. *Transcript at 84.* This is the very plant that Mr. Lee asserts AUSS does not own today, but pursuant to contract Mr. Lee and AUSS will acquire in the future for \$10, yet he professes not to know who actually owns the plant.

INTENT OF AUSS: Speculating in the wastewater business.

Without developers’ money, it would appear that AUSS has neither the money nor financing available to operate one or more of these plants without putting the homeowners at great risk of being unable to respond to financial obligations.

- 1) Amid the corporate shell game, AUSS’ intentions were made very clear at the hearing. Mr. Lee and Mr. Kohner are attempting to speculate in the wastewater business. According to the testimony of Mr. Johnson, Mr. Lee has been “trying to sell his interest to me four different times in the last two months.” *Transcript at 238.*
- 2) Additionally, Mr. Lee acknowledged that this contested area is the only business operation that AUSS has at this time: “This is the only thing we’re doing right now other than small other operations that Sunbelt is doing, but AUSS is not.” *Transcript at 95.*
- 3) AUSS has not provided any evidence in this hearing to establish that it has the financial ability to operate as a public service corporation. It would appear that on the mere basis of a “handshake,” AUSS will obtain 100% ownership of the Cambria plant. *Transcript at 91.* Should this “deal” fall through, AUSS has not evidenced any means of raising the \$1.5 million required to purchase it.
- 4) AUSS has also produced documents that indicate that for \$10 it can acquire the Links plant. *Arizona Utility Supply and Service LLC’s Response to First Set of Data Requests from Johnson Utilities Company, at Tab A.* However, Mr. Lee acknowledged at the hearing

that he is not certain who owns the Links at this time. Again, should this deal fail, AUSS has not evidenced any means of raising the capital required to purchase it.

B

AZUSS
Arizona Utility Supply & Services, LLC
4545 E. Shea Blvd. #164 Phoenix, AZ 85028.
(602) 923-9134 FAX (602) 923-9142

April 16, 2001

Mr. Mohamed A. Hegazy, Ph.D.
Wastewater Design Review Unit, WPS, WQD
Arizona Dept. of Environmental Quality
3033 N. Central Ave.
Phoenix, AZ 85012

RE: Engineering Review file No. 20000370
***Cambria Homes Lift Station**
Pinal County, Arizona

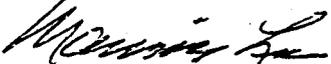
Dear Mr. Hegazy:

Please be advise that Arizona Utility Supply & Services, LLC has taken over and has been assigned the ownership of The Links at Ocotillo Wastewater Treatment Plant as well as the lift station under the above captioned file number.

Please find herewith enclosed the revised plans for the lift station showing the 100 year flood plain elevation as well as a copy of the signed conceptual County Approval Form from Pinal County.

Please advise as to when the plans can be issued the "Approval to Construct.

Very truly yours,
ARIZONA UTILITY SUPPLY & SERVICES, LLC


Maurice Lee
Member/Manager

cc: Terry Moore, P.E.
Anita Pritchard, E.I.T. ADEQ Engineering Design Unit

C

Terry L. Moore P.E., R.L.S.

**MOORE &
ASSOCIATES**
CONSULTING ENGINEERS
inc.

March 14, 2001

Ms. Anita Pritchard, E.I.T.
Wastewater Design Review Unit
Arizona Dept. of Environmental Quality
3033 N. Central Ave.
Phoenix, AZ 85012

**RE: Cambria Subdivision ADEQ File Nos. 20000633, 20000416, 20000419
20000417, and 20000487**

Dear Ms. Pritchard:

As you know, I do all the engineering for Arizona Utility Supply and Services, LLC who owns the Links at Ocotillo wastewater treatment plant.

We are in the process of designing the Cambria wastewater treatment plant which will be submitted to the Aquifer Protection Permit unit on April 2, 2001 for your Department's approval. The design for the expansion for the Links treatment plant has been completed and will be submitted to your office no later than Friday of this week. The corrections to the Cambria lift station have been completed and will also be submitted to your office no later than Friday of this week as well.

All of the parts and equipment are on site for the expansion of the Links WWTP of which Arizona Utility Supply & Services, LLC will start construction of the expansion on March 19, 2001. This facility will be ready to operate when your department issues the Approval to Operate. There is already an existing Aquifer Protection Permit issued (ADEQ No. P102976) for 75,000 gallons per day. A Reuse application has already been filed with your office for approval to re-use the effluent on the golf course adjacent to The Links Estates. The expansion of the Links treatment plant will be ready to operate on Sept. 1, 2001

The basins and equipment for Phase 1 of the Cambria wastewater treatment plant are on the site at this time. Arizona Utility Supply & Services, LLC. will begin fencing the site immediately and will start the installation of the plant with in the next month. With ADEQ's approval, it is anticipated that the first phase of 450,000 gallons per day will be complete by November 1, 2001. Phase 2 of the plant will be complete by January 1, 2002. The balance of the Cambria wastewater treatment plant and the closing of the Links treatment plant should be completed by May, 2002

For your reference, we have enclosed herewith an "Exhibit A" which shows the projected homes closings as supplied by Kip Gilleland of Woodside Homes. That exhibit also shows the anticipated flows coming into the links plant and capacity left while Arizona Utility Supply & Services completes the remaining phases of each plant.

Arizona Utility Supply & Services, LLC is performing daily monitoring of the system. Any time there is a threat to the capacity of the Links treatment plant, Arizona Utility Supply and Services, LLC will notify Woodside Homes to cease any further closings and we will advise your office as well.