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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

1 WILLIAM A. MUNDELL
2 CHAIRMAN
3 JIM IRVIN
4 COMMISSIONER
5 MARC SPITZER
6 COMMISSIONER

Arizona Corporation Commission

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AZ CORP COMMISSION
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7 IN THE MATTER OF ARIZONA UTILITY)
8 SUPPLY AND SERVICES, LLC FOR A) DOCKET NO. SW-04002A-01-0228
9 CERTIFICATE OF CONVENIENCE AND)
10 NECESSITY TO PROVIDE SEWER SERVICE)
11 TO PORTIONS OF PINAL COUNTY, ARIZONA.)

12 IN THE MATTER OF THE APPLICATION OF)
13 JOHNSON UTILITIES, L.L.C., DBA JOHNSON) DOCKET NO. WS-02987A-01-0295
14 UTILITIES COMPANY FOR AN EXTENSION)
15 FOR ITS CERTIFICATE OF CONVENIENCE)
16 AND NECESSITY TO PROVIDE WATER AND)
17 WASTEWATER SERVICE TO THE PUBLIC IN)
18 THE DESCRIBED AREA IN PINAL COUNTY,)
19 ARIZONA.)

ARIZONA UTILITY SUPPLY & SERVICES, LLC's CLOSING MEMORANDUM

20 Arizona Utility Supply & Services, LLC ("AUSS") hereby respectfully submits its
21 Closing Memorandum in this matter.

22 I. THE EVIDENCE PRESENTED AT THE HEARING SUPPORTS THE STAFF'S
23 RECOMMENDATIONS.

24 The Staff Report recommends granting AUSS' application and denying the
25 application of Johnson Utilities Company ("JUC"). The reasons stated in the Staff Report
26 for these recommendations were borne out in all respects at hearing. First, AUSS has
27 demonstrated a need for service in the area it requests. In addition to the service request

1 letters included in AUSS's application for a wastewater CC&N, representatives of three
2 major residential subdivisions that are actually under development in the requested area
3 testified, either in the public comment portion of the hearing or as witnesses in the hearing,
4 that they need service and they want it from AUSS. By their own testimony and that of
5 Maurice Lee, the manager of AUSS, they will go to incredible lengths to avoid getting
6 service from JUC, by building sewer systems and plants owned by their homeowner
7 associations if necessary.
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9 Second, AUSS has demonstrated an ability to serve the immediate needs of the area
10 through expansion of the existing Links Estates wastewater treatment plant and the
11 construction of the Cambria and Castlegate plants.
12

13 Third, AUSS has demonstrated an ability to serve the future needs of the area
14 through construction of a regional plant that will replace the smaller initial plants in
15 conformance with the policies of Pinal County and the Central Arizona Association of
16 Governments ("CAAG"). AUSS has timely supplied ACC staff with all plans and
17 information requested by staff to confirm that AUSS has concrete and feasible plans for
18 immediate and future service.
19

20 The issue ADEQ recently raised concerning AUSS' 208 Plan amendment presents a
21 minor timing problem that should be resolved within a matter of a few months at most. Per
22 the testimony of Maurice Lee, CAAG has already informed AUSS that it will continue
23 processing the amendment at its meeting scheduled for September 26. A copy of the agenda
24 for that meeting is attached. JUC has not even applied for its 208 Plan amendment for the
25 contested area and would be months, if not years, behind AUSS in meeting the immediate
26

1 needs of development in that area even if the developers agreed to accept service from JUC
2 – which they say they will not.

3 In strong contrast to this showing by AUSS, JUC has not demonstrated any need for
4 service in the extensive areas it has requested nor any plans for immediate or future service
5 sufficient to show that it can meet the needs of those areas. Despite the bald assertion by
6 George Johnson in his sworn testimony under penalty of perjury in the hearing that JUC has had
7 3 or 4 developer requests for service, not a single developer has been identified by JUC to the
8 ACC or AUSS, and by letter dated July 9th, 2001, from JUC's attorneys to ACC staff, JUC
9 confirmed that there are none.
10

11 JUC's plans for service are woefully incomplete and an ever-moving target. JUC
12 submitted one vague description of its immediate and future service plans in its CC&N
13 application. It presented a second and very different, but equally vague and inadequate, plan
14 in its response to the ACC staff's data request. Then, at hearing, without any prior notice to
15 AUSS or ACC staff, it presented yet a third, very different, and equally vague plan. It still has
16 not presented any concrete and feasible plan about how it would serve the contested area.
17 JUC's engineer testified that maybe JUC could take over operation of the existing Links Estates
18 plant and the Cambria plant and then they could figure out a way to move sewage from the area
19 many miles to an existing, but decommissioned, JUC plant . That's a big maybe. George
20 Johnson testified that JUC could start service with two package plants, and then build a force
21 main many miles to move sewage to some unidentified JUC plant. There is no consistency
22 even among JUC's witnesses, nor have any of the alternatives advanced by JUC been shown
23 to be practical and feasible.
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1 II. JUC'S REQUEST FOR EXTENSION OF ITS WASTEWATER CC&N TO INCLUDE
2 TERRITORY SURROUNDING AUSS' REQUESTED SERVICE AREA MUST BE
3 DENIED.

4 In a move that is clearly intended to improperly choke off any possible future expansion
5 of AUSS' service territory, JUC has applied for a CC&N completely surrounding the area
6 requested by AUSS as well as over the same area requested by AUSS. This portion of JUC's
7 application, everything lying to the north and west of AUSS's application, must be denied.

8 JUC's application for a CC&N in this area is premature. It has presented no requests
9 for service nor does it have any plans for service for this area. Additionally, after AUSS secures
10 its original CC&N, AUSS would be better suited to serve this additional area, the flows from
11 which could easily be directed to AUSS's nearby regional wastewater treatment plant.

12 JUC has repeatedly raised the issue of regional wastewater service and planning and implies
13 that only JUC can provide regional service. This is nonsense. AUSS' current application and
14 anticipated future expansion to the north and west are also regional service and its plans have
15 been carefully tailored to meet the actual needs of the area. Its planned facilities are state-of-
16 the-art plants that will produce the highest quality effluent for reuse or recharge, which avoids
17 the problems everyone recognizes with small package plants that are not properly maintained
18 by homeowners after the developer leaves the area. The sketchy plans JUC has described for
19 service to its requested expansion area include multiple regional treatment plants on a scale
20 similar to that proposed by AUSS.

21 It is ludicrous for JUC to assert that it can fill the planning role (assuming that it is even
22 proper for a private utility company to assume this essentially governmental function). Its track
23 record on planning is abysmal. JUC did not properly plan for service in its original service
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1 territory. It had the biggest emergency "vault and haul" sewage disposal scheme ever allowed
2 by ADEQ due to improper planning of its initial wastewater treatment plants. In the instant
3 case, it has not been able to provide plans for even the territory it is requesting now. JUC says
4 only that it's too early to provide the plans. AUSS, by contrast, provided its plans with no
5 difficulty.
6

7 Through its requests for huge service territories, JUC is putting itself in position to
8 monopolize sewer service in a large portion of Pinal County and thereby control development
9 in that entire area. George Johnson owns a lot of land in that area and will have the ability to
10 stifle competition by other land owners and developers by how JUC treats its customers.
11

12 III. JUC HAS NOT DEMONSTRATED AN ABILITY TO PROVIDE TIMELY SERVICE

13 AUSS believes that an important element of choosing the better entity to provide public
14 wastewater service in this case is the relative abilities of AUSS and JUC to provide service in
15 a timely manner in accordance with the needs and requests of the customers. AUSS has already
16 received Pinal County franchises for the area it intends to serve. It has all of its major permits
17 in connection with that service either in hand or pending and soon to be approved. It expects
18 to be able to provide service through the Links Estates plant expansion immediately upon
19 receiving its CC&N, with service through the Cambria plant to follow shortly. It has worked
20 closely with the developers within its requested service territory to meet all of their timing needs
21 in connection with the development of their properties.
22

23 JUC, by contrast, has had a history of delay in providing requested service. Jon Poulsen
24 of Providence Homes testified that this was one of the reasons Providence did not want service
25 from JUC. Hearing Transcript V. I, pp. 29-30. JUC admits in this proceeding that it has not
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1 started any of the permit processes necessary to provide service to the contested area. The
2 earliest it could provide service to the contested area, taking into account the permit processes
3 and construction, is 1-3 years out. It can't simply move package plants into the contested area
4 or build miles-long force mains and pumping stations without first obtaining its 208 Plan
5 amendment and ADEQ permits, each of which take at least several months to secure. JUC
6 hasn't even committed to trying to serve the contested area promptly. It has told the ACC staff
7 that it will start building the treatment plant necessary to serve this area sometime before 2006
8 – so that the start of construction might not even occur for as long as 5 years out. The
9 developers in the contested area need service now, not in 5 or more years!

11 JUC affiliates have even been sued over JUC service delays. Notwithstanding George
12 Johnson's testimony that the complaint filed against JUC affiliates by Homes by Judi in
13 Maricopa County Superior Court has nothing to do with JUC or delays in service, the complaint
14 alleges in pertinent part as follows:
15

16 “Accordingly, the parties modified the Agreement [for the sale
17 by Fox Hunt Properties owned by George Johnson and his wife
18 to Homes by Judi of approximately 1,120 acres of vacant real
19 property located in Pinal County, known as the Mystic Lake
20 Ranch property in JUC's water and wastewater CC&N] by orally
21 agreeing, among other things, to extend the date for closing the
22 sale transaction until such time as (A) Fox Hunt and its affiliate,
23 Johnson Utilities LLC, were able to provide fully operational,
24 approved and permitted water and waste water facilities to
25 service the Property consistent with standards required and
26 approved by the Arizona Corporation Commission and the
27 ADEQ; or (B) Fox Hunt provided Homes by Judi with an
28 assurance bond, together with a personal guaranty from the
Johnsons, in a form reasonably acceptable to Homes by Judi, to
assure performance of timely installation of the approved water
and wastewater infrastructure to the proposed development.”

1 Paragraph 16 of the Complaint, which is behind Tab 1 of Exhibit A-1, Arizona Utility Supply
2 & Services, LLC's Trial Brief and Pre-Filed Evidence. [Emphasis added.] The complaint goes
3 on to allege that,

4 "Homes by Judi repeatedly told Fox Hunt that it was prepared to
5 close the transaction if and when Fox Hunt satisfied its
6 obligations as set forth above. However, Fox Hunt neither
7 provided the necessary water and wastewater facilities to service
8 to the Property, nor did it provide Home[s] by Judi with an
9 assurance bond or guaranty."

10 Paragraph 18 of the Complaint. Fox Hunt is not a public service corporation. JUC is and this
11 property is in its water and wastewater CC&N areas. It's obvious from the face of the
12 complaint that it involves allegations of lack of, or delay in, service by JUC.

13 To a developer, a delay in anticipated service can be devastating. It results in increased
14 financing costs, the possibility of losing the financing altogether, and the possibility that the real
15 estate market will change or go into a downturn, leaving the developer holding the bag. A
16 sewer company that wants to control as much territory as JUC does better be prepared to meet
17 all service requests promptly. JUC's track record shows that it is not.

18 III. JUC'S COMPLIANCE HISTORY MAKES IT LESS QUALIFIED TO SERVE THAN
19 IS AUSS

20 JUC has had numerous and serious ADEQ compliance issues. Some of these
21 violations have directly threatened public health, such as the delivery to its customers of
22 drinking water that does not meet the federal and state standards for nitrates, fecal coliform
23 and total coliform. These violations can result in death or serious illness. They extended
24 over a period of many months. JUC knew about them but did not promptly fix them nor
25 notify its customers of the problems. It has had 3 consent orders in 3 years, something that
26

1 perhaps no other utility company in Arizona has ever had. Hearing Transcript V. I, pp. 42-
2 43. These are in addition to numerous notices of violation. It had the largest, and possibly
3 the only, emergency vault and haul sewage disposal system ever temporarily allowed by
4 ADEQ for a subdivision, with related wastewater penalties in excess of \$100,000 that were
5 later forgiven by ADEQ for reasons not appearing in the public record. Hearing Transcript
6 V. I pp. 47, 48, 52, 53.
7

8 By contrast to JUC's compliance record, AUSS' record as an operator of treatment
9 plants has been good. The only compliance issues AUSS or its principal Maurice Lee have
10 faced have been minor. They posed no threat to public health or the environment and they
11 were promptly remedied. Hearing Transcript V. I p. 41. AUSS received notices from
12 ADEQ twice this year that its operation of the Links Estate plant was in full compliance
13 with ADEQ requirements.
14

15 AUSS only received notice from ADEQ that there was an issue about 208 Plan
16 amendment compliance with respect to construction of the Cambria plant on August 10, just
17 prior to the hearing of this matter. Promptly upon receiving the notice, AUSS stopped
18 construction, secured the area with fences and signs to avoid danger to the public, and
19 notified ADEQ that it was doing so. AUSS stopped work even though it had started
20 construction of the Cambria plant in good faith reliance on an ADEQ assurance that it could
21 do so. As explained at the hearing, even JUC's existing plants are out of compliance with
22 208 Plan requirements. The 208 Plan amendment issue should be resolved shortly.
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24 V. JUC'S CASE LACKS VERACITY

25 It's hard to know what to believe and what not to believe in the information JUC and
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1 George Johnson have presented to the ACC. JUC presented at least 3 different versions of
2 its plans to serve the expansion area in preparation for the hearing, the last version being
3 presented without prior notice at the hearing itself. Providence Homes refused to accept an
4 offer of wastewater service from JUC after George Johnson told Jon Poulsen of Providence
5 that he could lay the necessary sewer line and start service within 90 days, something that to
6 Jon Poulsen as an experienced developer was a clear impossibility. Hearing Transcript V. I,
7 p28. George Johnson claims that he “insisted” on entering into consent agreements with
8 ADEQ that resulted in thousands of dollars of penalties paid to ADEQ – a claim that is
9 absurd and contradicted by the terms of the consent agreements themselves, which certainly
10 don’t indicate that as a basis for the consent agreements. Hearing Transcript V. II, p278.
11 George Johnson claims that there is no connection between the lawsuit filed against him and
12 his affiliate Fox Hunt Properties by Homes by Judi and sewer service by JUC. Hearing
13 Transcript V. II, p.237. This directly contradicts the language of the complaint, quoted
14 above. George Johnson testifies that JUC has had requests for service from 3 or 4
15 developers in the expansion area. But no developers are identified anywhere in the record,
16 and a letter filed with the ACC by JUC’s own attorney just a month before the hearing states
17 that there are no requests. Hearing Transcript V. II, pp. 267, 328- 329. George Johnson
18 testified that he would notify JUC’s customers about any failure to meet drinking water
19 standards even if the law didn’t require it – and then admitted that he had not sent out
20 notices specifically required by ADEQ! Hearing Transcript V. II, p. 312. George Johnson
21 insists that all of JUC’s compliance problems are someone else’s fault – ADEQ’s fault for
22 changing its mind during the permitting process and for losing important records about JUC;
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1 his operator's fault because he was having personal problems; various contractors' fault for
2 cutting JUC utility lines; the homeowners' fault when JUC bought a water system from
3 them. Nothing is George Johnson's responsibility or JUC's fault. All of these things
4 happen to other water and wastewater systems, yet rarely result in compliance agreements.
5 George Johnson and JUC say what seems expedient at the moment to get their way. JUC
6 should not be rewarded for this by being granted its requested CC&N extension.
7

8 VI. AUSS IS IN COMPLIANCE WITH ACC REQUIREMENTS

9 The timing of starting service by a new company that wants to become a public
10 service corporation is difficult, especially when developers need immediate service for their
11 properties. To avoid problems during the start-up process, AUSS met with ACC staff, at
12 AUSS' request, prior to the scheduling of the hearing in this matter to make sure that the
13 structure of its arrangements with the developers was acceptable. It then made sure that its
14 arrangements with the developers complied with the outcome of the discussion. AUSS has
15 clearly made a good faith effort to comply with the laws governing the start-up of public
16 service corporations, and the complications of doing so are irrelevant to a determination of
17 whether AUSS is the better entity to serve the contested area.
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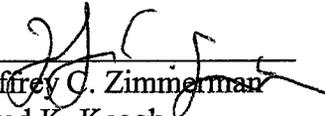
20 VI. PROMPT DISPOSITION OF THIS CASE IS CRITICAL TO AUSS' FUTURE
21 CUSTOMERS.

22 It is critical to the developers who have requested service from AUSS that this
23 matter be finally decided as soon as possible. Homes are under construction now in the
24 Cambria subdivision and there is only limited capacity in the Links Estates plant to serve
25 them. The delay caused by JUC's effort to steal this territory from AUSS already threatens
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1 the huge investments made by the developers, and additional delay could be devastating to
2 their projects.

3 RESPECTFULLY SUBMITTED this 10th day of September, 2001.

4
5 MOYES STOREY LTD.

6
7 By 
8 Jeffrey C. Zimmerman
9 Brad K. Keogh
10 3003 N. Central Ave., Suite 1250
11 Phoenix, Arizona 85012
12 602-604-2141
13 Attorneys for Applicant

14
15
16
17 **PROOF OF SERVICE AND**

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on this 10th day of September, 2001, I caused the
20 original and 10 copies of the foregoing document to be filed with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 W. Washington
24 Phoenix, AZ 85007

25 Copies also hand-delivered to:

26
27 Marc E. Stern
28 Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

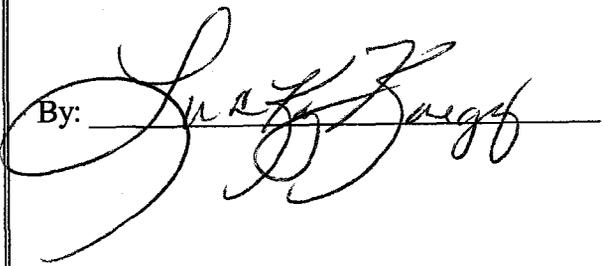
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and copies of the foregoing were
mailed this 10th day of September
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Regional Council Meeting
Wednesday, September 26, 2001 - 6:30 p.m. Ⓛ
Merrill Gardens
2000 S. Ironwood Drive
Apache Junction, Arizona

AGENDA



GILA COUNTY
GOOSE
HIDDEN
MIAMI
PRISON
WINKELMAN

PINAL COUNTY
APACHE JUNCTION
CASA GRANDE
COOLIDGE
ELOY
FLORENCE
KEARNY
MAMMOTH
QUEEN CREEK
SUPERIOR

- I. CALL TO ORDER - Chair Paul Prechal**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL & INTRODUCTION OF GUESTS**
- IV. PRESENTATION: Chris Udall, Field Representative, Cong. I.D. Hayworth's Office**
- V. CONSENT ITEMS:** P-F-T
All items indicated by an asterisk (*) will be handled by a single vote as part of the consent agenda, unless a Councilmember or the Executive Director objects at the time of this vote. (Reports & updates on the consent agenda may be accepted as written without verbal presentation.)
- VI. APPROVAL OF MINUTES - June 29, 2001** P-F-T
- VII. FINANCIAL REPORT — Yvonne Kube** P-F-T
- VIII. DIRECTOR'S REPORT - Maxine Leather** P-F-T
- IX. OLD BUSINESS - Regional Council** P-F-T
 - A. 206 Areawide Water Quality Management Plan Update Amendment - Maxine Leather**
Arizona Utility Supply & Services, LLC
- X. NEW BUSINESS - Regional Council**
 - A. Confirm Regional Council Voting Membership - Maxine Leather** P-F-T
 - B. Confirm Regional Council Private Representation - Maxine Leather** P-F-T
 - C. Request From Pinal County Regarding Package Sewer Treatment Plants - Maxine Leather** P-F-T
 - D. 208 Areawide Water Quality Management Plan Update Amendment - Maxine Leather** P-F-T
No. 4 for Johnson Utilities Company, LLC
 - E. Bid Requirements for CAAG Purchasing & Sole Source Purchasing - Maxine Leather** P-F-T
 - F. Formula for Determining CAAG Yearly COLA - Maxine Leather** P-F-T
 - G. Title VI Plan Update - Brent Billingsley** P-F-T
 - H. 2002-06 TIP Amendment Approval - Brent Billingsley** P-F-T
 - I. TTAC Statewide Program Requests - Brent Billingsley** P-F-T

Ⓛ

The City of Apache Junction will be providing dinner for invited guests, Regional Council, Management Committee, and staff during the meeting.

Regional Council
September 26, 2001
Page 2 of 2

- J. Transportation Planning Update - Brent Billingsley Info
- K. Retired & Senior Volunteer Program (RSVP) Update - Joan Stevenson Info
- L. Election of Officers - Maxine Leather P-F-T
- XI. TRANSFER OF GAVEL
- XII. LEGISLATIVE UPDATE - CAAG Staff
- XIII. RESOLUTIONS
- XIV. DATE - TIME - LOCATION of the Next Meeting
November 28, 2001 — Hosted by Gila County
- XV. CALL TO THE PUBLIC
- XVI. ADJOURNMENT


Approved by

THIS FACILITY DOES FULLY ACCOMMODATE PERSONS WITH DISABILITIES, HOWEVER, PERSONS WITH DISABILITIES REQUIRING ACCOMMODATION MAY CONTACT GAIL FLORES, CENTRAL AMERICA ASSOCIATION OF GOVERNMENTS, (503) 520-5004, (503) 732-1445 VTDD, (520) 520-5008 TDD. IF POSSIBLE, SUCH REQUESTS SHOULD BE MADE 72 HOURS IN ADVANCE.