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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2006 MAR 24 P 4: 46

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

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE COMMISSION ON ITS OWN MOTION INVESTIGATING THE FAILURE OF JOHNSON UTILITIES L.L.C. DBA JOHNSON UTILITIES COMPANY, AN ARIZONA PUBLIC SERVICE CORPORATION, TO COMPLY WITH COMMISSION DECISION NO. 65840.

DOCKET NOS. W-02234A-00-0371
WS-2987A-99-0583
WS-02987A-00-0618
W-02859A-00-0774
W-01395A-00-0784

**NOTICE OF FILING
COMPLAINT AND PETITION FOR
ORDER TO SHOW CAUSE**

Arizona Corporation Commission Staff hereby provides notice that it is filing the attached complaint and petition for order to show cause.

RESPECTFULLY SUBMITTED this 24th day of March, 2006.

David Ronald

David M. Ronald
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing were filed this 24th day of March, 2006 with:

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

Copy of the foregoing mailed this 24th day of March, 2006 to:

Mr. Richard L. Sallquist
Sallquist & Drummond
2525 East Arizona Biltmore Circle, Suite A117
Phoenix, Arizona 85016
Attorneys for Johnson Utilities, L.L.C.

Mr. Jay Shapiro
Ms. Karen E. Errant
Fennemore Craig, P.C.
3003 North Central, Suite 2600
Phoenix, Arizona 85012
Attorneys for H2O Water Company

1 H2O, Inc.
2125 East Fifth Street, Suite 208
2 Tempe, Arizona 85281
3 Mr. Charles A. Bischoff
Jordan & Bischoff
4 7272 East Indian School Road, Suite 205
Scottsdale, Arizona 85251
5 Attorneys for Queen Creek Water Company
6 Mr. William Sullivan
Martinez & Curtis, P.C.
7 2712 North Seventh Street
Phoenix, Arizona 85008
8 Petra Schadeberg
9 Pantano Development Ltd. Partnership
3408 North 60th Street
10 Phoenix, Arizona 85018
11 Mr. Richard N. Morrison
Salmon, Lewis & Weldon
12 4444 North 32nd Street, Suite 200
Phoenix, Arizona 85018
13
14

Ms. Kathy Aleman, Manager
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1121 West Warner Road, Suite 109
Tempe, Arizona 85284
Mr. Richard Tobin
Deputy Director
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Mr. Bill DePaul
Enforcement Coordinator
Drinking Water Compliance and Enforcement
Unit
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

15 Roseann Osorio
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE COMMISSION ON ITS
OWN MOTION INVESTIGATING THE FAILURE
OF JOHNSON UTILITIES L.L.C. DBA JOHNSON
UTILITIES COMPANY, AN ARIZONA PUBLIC
SERVICE CORPORATION, TO COMPLY WITH
COMMISSION DECISION NO. 65840.

DOCKET NOS. W-02234A-00-0371
WS-2987A-99-0583
WS-02987A-00-0618
W-02859A-00-0774
W-01395A-00-0784

**COMPLAINT AND PETITION FOR
ORDER TO SHOW CAUSE**

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint and Petition for Order to Show Cause against Johnson Utilities Company, L.L.C. dba Johnson Utilities Company ("JUC"), an Arizona Public Service Corporation, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. JUC, is a Public Service Corporation as defined by Article XV, § 2 of the Arizona Constitution and was issued a Certificate of Convenience and Necessity ("CC&N") in Pinal County via Decision No. 60223 dated May 27, 1997. The CC&N was conditioned upon compliance with Arizona Law and the Commission's Rules.

FACTUAL BACKGROUND

3. On November 6th and November 8th respectively, H2O, Inc. ("H2O") and JUC filed requests with the Commission for retroactive extensions of time to comply with Decision No. 63960, dated September 4, 2001, as amended by Decision No. 64062, dated October 4, 2001. The

1 extension requests were necessary for the firms to file required Arizona Department of
2 Environmental Quality ("ADEQ") compliance documents.

3 4. Upon completion, the above referenced case resulted in Decision No. 65840, which
4 ordered that the following Notice of Violation ("NOV") compliance be performed by JUC:

5 "In the event that JUC receives any Notices of Violation ("NOV") from ADEQ it
6 will, within seven days from receipt of such notice, provide a copy of such NOV to
the Utilities Division Director ("Director")."

7 "It is further ordered that if JUC fails to file the required documentation from
8 ADEQ within the required time-frame, or fails to timely provide the Director with
copies of any NOV as required herein, the Director shall, upon becoming aware of
9 such failure, commence an Order to Show Cause Proceeding against JUC forthwith,
seeking such sanctions and Orders as the Director deems appropriate."

10 5. On January 5, 2006, the Director of the Utilities Division ("the Director") received
11 a letter from JUC (see Exhibit 2) communicating the following:

12 "On December 23, 2005, Johnson Utilities, L.L.C. received a letter from the
13 Arizona Department of Environmental Quality ("ADEQ") dated December 15,
2005, regarding the issuance of a Notice of Violation ("NOV") for the unpermitted
14 discharge of approximately 2,500-5,000 gallons of effluent on November 13, 2005
into Queen Creek."

15 6. Based on JUC's January 5, 2006 letter, Staff has determined that JUC received the
16 ADEQ NOV on December 23, 2005, and provided a copy to Staff on January 5, 2006. The
17 interval between JUC's receipt of the NOV from ADEQ and their providing a copy to the
18 Commission was 13 days. Per Decision No. 65840, JUC is to provide a copy of any ADEQ NOV
19 to the Commission within seven days of its receipt of such notice.

20 7. The 13 day interval between JUC's receipt of the ADEQ NOV and its provision to
21 the Commission represents a violation of the seven day requirement stated in Decision No. 65840.

22 8. Staff requested that the Company provide an explanation of the lateness of the
23 NOV filing and the Company responded with a January 17, 2006 letter (see Exhibit 3) to the
24 Director stating its interpretation of the seven day requirement in Decision No. 65840 and a
25 request regarding that requirement:

26 "We interpreted this as business days rather than calendar days. The filing was
27 submitted seven business days after receipt of the NOV in the mail after taking into
consideration the weekends, Christmas and the New Year holidays."

28 ...

1 “With such a short compliance due date, JUC requests that the compliance due date
2 be clarified to mean 7 business days in case of future extenuating circumstances
3 such as holidays, weekends etc....as long as the difference in a day or two has no
4 negative impact on the commission. If the Commission still interprets this deadline
5 as 7 calendar days, we would appreciate that clarification also so we can maintain
6 Commission compliance.”

7 9. Although Staff disagrees with the Company interpretation that the Commission’s
8 seven day requirement in Decision No. 65840 was referring to “business days”, Staff determined
9 that the filing was made within seven business days when consideration is provided for weekends
10 and the year end holidays.

11 10. In order to gather additional information, Staff investigated previous JUC NOV’s
12 and the time interval between JUC receiving an ADEQ NOV and providing it to the Director.
13 Based on JUC’s previous NOV filings, Staff found that, in addition to the currently discussed
14 NOV violation, there have been two other, older incidents where JUC failed to provide the NOV
15 within the seven day time requirement. The current incident and those previous are outlined
16 below:

<u>ADEQ Violation</u>	<u>Date JUC Received NOV</u>	<u>Date Provided to Commission</u>	<u>Time Interval in Calendar Days</u>	<u>Time Interval in Business Days</u>
1. Unpermitted discharge	December 23, 2005	January 5, 2006	13	7
2. Unauthorized discharge	April 8, 2005	April 18, 2005	10	6
3. Fecal coliform levels	January 6, 2005	January 20, 2005	14	9

17 Item Nos. 2 and 3, above (showing 10 and 14 day intervals between JUC receiving an
18 NOV and providing it to the Commission), also represent violations of Commission Decision No.
19 65840.

20 11. In light of the specific language in Commission Decision No. 65840 and the clear
21 violation of the seven day notice requirement, Staff believes that it did not have the discretion to
22 avoid proceeding with this OSC item.

23 12. For each of the NOV’s listed above, JUC has addressed the concerns of ADEQ and
24 received a Notice of Closure letter which communications that the Company is now in compliance
25 with ADEQ requirements on those incidents.

26 ...

COMPLAINT**Count One****(violation of Commission Decision No. 65840)**

13. Staff incorporates the allegations of Paragraphs 1-11 into this count.

14. Per Commission Decision No. 65840, JUC was required to provide copies of ADEQ NOV's to the Director within seven days of JUC's receipt of the NOV.

15. As noted in the January 5, 2006 and January 17, 2006 letters, the current NOV was received by JUC on December 23, 2005 and provided to Staff on January 5, 2006 – thereby failing to meet the seven day requirement of Decision No. 65840.

16. Although JUC's January 17, 2006 letter states that the Company interprets the seven day requirement to be business days, Staff does not concur as Decision No. 65840 clearly states that the NOV should be provided to the Director "within seven days from receipt" and does not mention "business" days.

17. As determined by Staff, JUC also had two other, older incidents where the NOV was not provided to the Director within the seven day requirement of Decision No. 65840.

18. The failure of JUC to provide these other two NOV's within the seven day requirement of Decision No. 65840 also represent violations of Decision No. 65840.

Count Two**(violation of A.R.S. § 40-204)**

19. Staff incorporates the allegations of paragraphs 1-18 into this count.

20. Under A.R.S. § 40-204, public service corporations are required to provide all reporting information required by the Commission in the manner in which the Commission requires it:

"Every public service corporation shall furnish to the commission, in the form and detail the commission prescribes, tabulations, computations, annual reports, monthly or periodical reports of earnings and expenses, and all other information required by it to carry into effect the provisions of this title ..."

21. Per Commission Decision No. 65840, JUC was required to provide written notification of the NOV's to the Director within seven days of receiving the NOV from ADEQ.

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22. As noted in the January 5, 2006 and January 17, 2006 letters, the current NOV was received by JUC on December 23, 2005 and provided to Staff on January 5, 2006 – thereby failing to meet the seven day requirement of Decision No. 65840.

23. As determined by Staff, JUC also had two other, older incidents where the NOV was not provided to the Director within the seven day requirement of Decision No. 65840.

24. The failure to provide the written notification in the manner ordered by the Commission (within seven days of receiving the NOV from ADEQ) represents a violation of A.R.S. § 40-204, in that JUC failed to provide information in the form required by Decision No. 65840.

RELIEF

WHEREFORE, Staff prays that the Commission issue:

- 25. An **ORDER TO SHOW CAUSE** directing the Respondent to show cause:
 - a. why its actions and compliance notification letters do not constitute a violation of Decision No. 65840;
 - b. why its actions do not represent a violation of A.R.S. § 40-204.

- 26. After the conclusion of appropriate proceedings, a final **OPINION AND ORDER**:
 - a. finding that the above mentioned entity has violated Commission Decision No. 65840;
 - b. ordering the above mentioned entity to adhere strictly to the seven calendar day NOV requirement outlined in Decision No. 65840 for all occurrences in the future;
 - c. finding that the above mentioned entity has violated A.R.S. § 40-204;
 - d. ordering the above mentioned entity to adhere to A.R.S. § 40-204 for all occurrences in the future;
 - e. ordering such other relief as the Commission may find just and reasonable.

...
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...
...
...

1 Mr. Richard N. Morrison
Salmon, Lewis & Weldon
2 4444 North 32nd Street, Suite 200
Phoenix, Arizona 85018
3
4 Ms. Kathy Aleman, Manager
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6
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Quality
3033 North Central Avenue
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Arizona Department of Environmental
Quality
3033 North Central Avenue
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Roseann Osorio

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE COMMISSION ON ITS
OWN MOTION INVESTIGATING THE FAILURE
OF JOHNSON UTILITIES L.L.C. DBA JOHNSON
UTILITIES COMPANY, AN ARIZONA PUBLIC
SERVICE CORPORATION, TO COMPLY WITH
COMMISSION DECISION NO. 65840.

DOCKET NOS. W-02234A-00-0371
WS-2987A-99-0583
WS-02987A-00-0618
W-02859A-00-0774
W-01395A-00-0784

ORDER TO SHOW CAUSE

DECISION NO. _____

**OPEN MEETING
APRIL 4 AND 5, 2006
PHOENIX, ARIZONA**

BY THE COMMISSION:

On March 24, 2006, Staff ("Staff") of the Utilities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Complaint and Petition for Order to Show Cause against Johnson Utilities L.L.C. dba Johnson Utilities Company ("JUC"), an Arizona Public Service Corporation. Staff seeks various relief, including the issuance of an Order to Show Cause against the Respondent as required by Decision No. 65840.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. On November 6th and November 8th respectively, H2O, Inc. ("H2O") and JUC filed requests with the Commission for retroactive extensions of time to comply with Decision No. 63960, dated September 4, 2001, as amended by Decision No. 64062, dated October 4, 2001. The extension requests were necessary for the firms to file required Arizona Department of Environmental Quality ("ADEQ") compliance documents.

...

1 2. Upon completion, the above referenced case resulted in Decision No. 65840, which
2 ordered that the following Notice of Violation ("NOV") compliance be performed by JUC:

3
4 "In the event that JUC receives any Notices of Violation ("NOV") from ADEQ it
5 will, within seven days from receipt of such notice, provide a copy of such NOV to
6 the Utilities Division Director ("Director")."

7 "It is further ordered that if JUC fails to file the required documentation from ADEQ
8 within the required time-frame, or fails to timely provide the Director with copies of
9 any NOV as required herein, the Director shall, upon becoming aware of such failure,
10 commence an Order to Show Cause Proceeding against JUC forthwith, seeking such
11 sanctions and Orders as the Director deems appropriate."

12 3. On January 5, 2006, the Director of the Utilities Division ("the Director") received a
13 letter on from JUC communicating the following:

14 "On December 23, 2005, Johnson Utilities, L.L.C. received a letter from the Arizona
15 Department of Environmental Quality ("ADEQ") dated December 15, 2005,
16 regarding the issuance of a Notice of Violation ("NOV") for the unpermitted
17 discharge of approximately 2,500-5,000 gallons of effluent on November 13, 2005
18 into Queen Creek."

19 4. Based on JUC's January 5, 2006 letter, Staff has determined that JUC received the
20 ADEQ NOV on December 23, 2005 and provided a copy to Staff on January 5, 2006. The interval
21 between JUC's receipt of the NOV from ADEQ and its providing a copy to the Commission was 13
22 days. Per Decision No. 65840, JUC is to provide a copy of any ADEQ NOV to the Commission
23 within seven days of their receipt of such notice.

24 5. The 13 day interval between JUC's receipt of the ADEQ NOV and its provision to the
25 Commission represents a violation of the seven day requirement stated in Decision No. 65840.

26 6. Staff requested that the Company provide an explanation of the lateness of the NOV
27 filing and the Company responded with a January 17, 2006 letter to the Director stating its
28 interpretation of the seven day requirement in Decision No. 65840 and a request regarding that
requirement:

...
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"We interpreted this as business days rather than calendar days. The filing was
submitted seven business days after receipt of the NOV in the mail after taking into
consideration the weekends, Christmas and the New Year holidays."

1 “With such a short compliance due date, JUC requests that the compliance due date
2 be clarified to mean 7 business days in case of future extenuating circumstances such
3 as holidays, weekends etc....as long as the difference in a day or two has no negative
4 impact on the commission. If the Commission still interprets this deadline as 7
5 calendar days, we would appreciate that clarification also so we can maintain
6 Commission compliance.”

7 7. Although Staff disagrees with the Company interpretation that the Commission’s
8 seven day requirement in Decision No. 65840 was referring to “business days”, Staff determined that
9 the filing was made within seven business days when consideration is provided for weekends and the
10 year end holidays.

11 8. In order to gather additional information, Staff investigated previous JUC NOV’s and
12 the time interval between JUC receiving the ADEQ NOV and providing it to the Director. Based on
13 JUC’s previous NOV filings, Staff found that, in addition to the currently discussed NOV violation,
14 their have been two other, older incidents where JUC failed to provide the NOV within the seven day
15 time requirement. The current incident and those previous are outlined below:

14 ADEQ Violation	Date JUC Received NOV	Date Provided to Commission	Time Interval in Calendar Days	Time Interval in Business Days
15 1. Unpermitted discharge	December 23, 2005	January 5, 2006	13	7
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18 Item Nos. 2 and 3, above (showing 10 and 14 day intervals between JUC receiving an NOV and
19 providing it to the Commission), also represent violations of Commission Decision No. 65840.

20 9. In light of the specific language in Commission Decision No. 65840 and the clear
21 violation of the seven day notice requirement, Staff believes that it did not have the discretion to
22 avoid proceeding with this OSC item.

23 10. For each of the NOV’s listed above, JUC has addressed the concerns of ADEQ and
24 received a Notice of Closure letter which communications that the Company is now in compliance
25 with ADEQ requirements on those incidents.

26 11. Staff requests that we issue an Order to Show Cause directing JUC to show cause:

- 27 a. why its actions and compliance notification letters do not constitute a violation
28 of Decision No. 65840;
- b. why its actions do not represent a violation of A.R.S. § 40-204.

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IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

BKB:lhm\DMR:ro

1 Service List for: H2O, Inc. and Johnson Utilities, L.L.C. dba Johnson Utilities Company
Docket Nos. W-02234A-00-0371 et al

2

3 Mr. Richard L. Sallquist
Sallquist & Drummond
4 2525 East Arizona Biltmore Circle, Suite A117
Phoenix, Arizona 85016
5 Attorneys for Johnson Utilities, L.L.C.

6 Mr. Jay Shapiro
Ms. Karen E. Errant
7 Fennemore Craig, P.C.
3003 North Central, Suite 2600
8 Phoenix, Arizona 85012
Attorneys for H2O Water Company

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10 2125 East Fifth Street, Suite 208
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13 Scottsdale, Arizona 85251
Attorneys for Queen Creek Water Company

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27

28

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Deputy Director
2 Arizona Department of Environmental Quality
3033 North Central Avenue
3 Phoenix, Arizona 85012

4 Mr. Bill DePaul
Enforcement Coordinator
5 Drinking Water Compliance and Enforcement Unit
Arizona Department of Environmental Quality
6 3033 North Central Avenue
Phoenix, Arizona 85012

7
8 Mr. Christopher C. Kempley
Chief Counsel, Legal Division
Arizona Corporation Commission
9 1200 West Washington Street
Phoenix, Arizona 85007

10
11 Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
12 1200 West Washington Street
Phoenix, Arizona 85007

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JOHNSON UTILITIES, L.L.C

5230 East Shea Boulevard * Scottsdale, Arizona 85254

PH: (480) 998-3300; FAX: (480) 483-7903

EXHIBIT

2

2006 JAN -5 P 4: 06

January 5, 2006

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

RECEIVED
AZ CORP COMMISSION
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AZ Corporation Commission
Director of Utilities

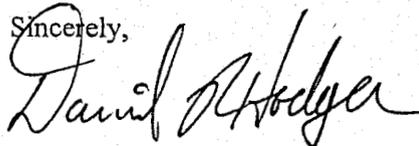
RE: Johnson Utilities, H2O, Diversified Water Utilities, Queen Creek Water Company:
Compliance with Decision No. 65840
Notice of Violation from ADEQ dated December 15, 2005
WS-02987A-99-0583; WS-02987A-00-0618; W-02234A-00-0371; W-02859A-00-0774;
W-01395A-00-0784

Dear Mr. Johnson:

On December 23, 2005, Johnson Utilities, L.L.C. received a letter from the Arizona Department of Environmental Quality ("ADEQ") dated December 15, 2005, regarding the issuance of a Notice of Violation ("NOV") for the unpermitted discharge of approximately 2,500-5,000 gallons of effluent on November 13, 2005 into Queen Creek. A copy of the letter and NOV dated December 15, 2005, is attached hereto as Attachment 1. Also attached hereto is a response to the NOV from Mr. Brian Tompsett, Executive Vice President of Johnson Utilities, dated December 19, 2005 as Attachment 2. ADEQ has since issued a closure of the NOV in a letter dated January 3, 2006; an unsigned copy is attached hereto as Attachment 3. As soon as a signed copy is received, Johnson Utilities will submit a copy to the Commission.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,



Daniel Hodges
Johnson Utilities, LLC

Cc: Steve Olea, Assistant Director
Brian Bozzo, Compliance Manager
Dick Sallquist, Sallquist, Drummond & O'Connor
Brian Tompsett, Johnson Utilities
Docket Control

JOHNSON UTILITIES, L.L.C

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

Mr. Ernest Johnson
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

January 17, 2006

RE: Johnson Utilities, L.L.C.: Compliance with Decision No. 65840
RE: Notice of Violation from ADEQ dated December 15, 2005
WS-02987A-99-0583; WS-02987A-00-0618; W-02234A-00-0371; W-02859A-00-0774; W-01395A-00-0784

Dear Mr. Johnson:

On January 5, 2006 Johnson Utilities, L.L.C. ("JUC") submitted an Arizona Department of Environmental Quality (ADEQ) Notice of Violation (NOV), that was received on December 23, 2005. The submittal package also included our response to the violation and the Notice of Closure issued by ADEQ. The filing was made per ACC Decision No. 65840. The order stated that "In the event JUC receives any Notices of Violation ("NOV") from ADEQ it will, within seven days from receipt of such notice, provide a copy of such NOV to the Utilities Division Director ("Director)". We interpreted this as business days rather than calendar days. The filing was submitted seven business days after receipt of the NOV in the mail after taking into consideration the weekends, Christmas and the New Year holidays. It was brought to our attention by Mr. Brian Bozzo on the day of our filing that the Commission interpreted the order to mean exactly 7 days from the receipt of the letter. Mr. Bozzo indicated to Daniel Hodges of my office, at that time, that the filing may be out of compliance. In retrospect, we should have called the Commission staff for clarification, rather than making an assumption and we will do that in the future.

As you can see from the documentation submitted to the Commission on January 5, 2005, this was a very small effluent spill. The effluent is of a high quality. The spill was reported to ADEQ by Johnson Utilities personnel as a matter of standard practice. The effluent had already been treated when the ADEQ inspection occurred.

The Commission filing was made as late as possible to include all of the pertinent data associated with the NOV, so as to provide the Commission with a complete explanation of the situation. The filing was made on the last day of Johnson Utilities' understanding of the compliance deadline filing date. Attached to this correspondence as Attachment 1 is a copy of an email from Mr. William Hare of ADEQ to me. Mr. Hare informed us that he received our response to the NOV and a closure letter had been drafted and was waiting for the Director's, Joan Card's, return to the office the week of December 26th, 2005. Since we anticipated a signature on the closure the first part of the week of December 26th, 2005 we elected to wait for that document to include in the Commission package. Our desire was to include the signed NOV closure along with the Commission filing in an attempt to close this matter.

RECEIVED

JAN 18 2006

Arizona Corporation Commission
Director of Utilities

JOHNSON UTILITIES, L.L.C

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

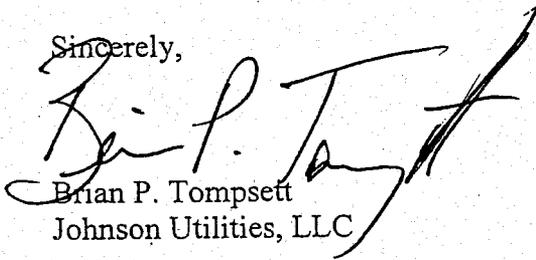
The closure process normally takes longer than a few days or weeks. This closure was issued rapidly because this was a minimal incident that had been remedied by JUC immediately. Johnson Utilities' policy is to immediately submit an NOV and this issue has not come to light before now.

ACC order No. 65840 also states that JUC will provide the Director "the steps JUC takes to come into compliance, until the ultimate resolution of the NOV". As you can see from the ADEQ inspectors report, JUC had already taken actions to prevent a reoccurrence of the ADEQ compliance issue.

Also attached for your reference, as Attachment No. 2, is the signed NOV closure from ADEQ. As you can see, the document is dated January 3, 2006, but was not received by my office until the afternoon of January 12, 2006.

With such a short compliance due date, JUC requests that the compliance due date be clarified to mean 7 business days in case of future extenuating circumstances such as holidays, weekends etc....as long as the difference in a day or two has no negative impact on the Commission. If the Commission still interprets this deadline as 7 calendar days, we would appreciate that clarification also so we can maintain Commission compliance. If you would like to discuss this matter further please contact me. Thank you for your time and consideration in this matter.

Sincerely,



Brian P. Tompsett
Johnson Utilities, LLC

Cc: Brian Bozzo, Compliance Manager
Richard Sallquist, Sallquist, Drummond & O'Connor