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OPEN MEETING ITEM



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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 24<sup>th</sup> 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  
24<sup>th</sup> day of March, 2006 with:

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

Copy of the foregoing mailed this  
24<sup>th</sup> day of March, 2006 to:

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5 Attorneys for Queen Creek Water Company  
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11 Mr. Richard N. Morrison  
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Mr. Bill DePaul  
Enforcement Coordinator  
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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 6<sup>th</sup> and November 8<sup>th</sup> 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  
9 copies of any NOV as required herein, the Director shall, upon becoming aware of  
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,  
14 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."

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          ...

1 COMPLAINT

2 Count One

3 (violation of Commission Decision No. 65840)

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

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

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

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

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

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

18 Count Two

19 (violation of A.R.S. § 40-204)

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

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

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

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





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*Barbara 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  
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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 6<sup>th</sup> and November 8<sup>th</sup> 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:

          "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
16 2. Unauthorized discharge	April 8, 2005	April 18, 2005	10	6
17 3. Fecal coliform levels	January 6, 2005	January 20, 2005	14	9

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:lm\DMR:ro

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

3 Mr. Richard L. Sallquist  
4 Sallquist & Drummond  
5 2525 East Arizona Biltmore Circle, Suite A117  
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10 Mr. Ernest G. Johnson  
11 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) 463-7903

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  
DOCUMENT CONTROL

JAN 05 2006

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 26<sup>th</sup>, 2005. Since we anticipated a signature on the closure the first part of the week of December 26<sup>th</sup>, 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

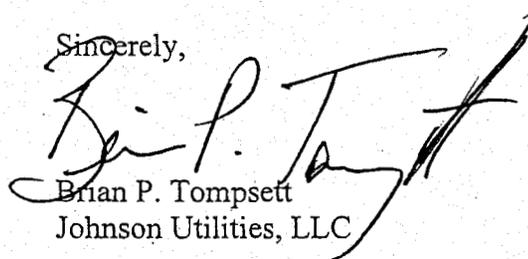
The closure process normally takes longer than a few days or weeks. This closure was issued rapidly because this was a minimal incident that had been remedied by JUC immediately. Johnson Utilities' policy is to immediately submit an NOV and this issue has not come to light before now.

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