

OPEN MEETING ITEM



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ORIGINAL



COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

SEP - 7 2006

DOCKETED BY NR

DATE: September 7, 2006
DOCKET NO: W-02859A-04-0844 and WS-02987A-04-0869
TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES COMPANY, LLC
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 15, 2006

10-day period for filing of exceptions has been waived.

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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AZ CORP COMMISSION
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

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

DOCKET NO. W-02859A-04-0844

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

DOCKET NO. WS-02987A-04-0869

DECISION NO. _____

OPINION AND ORDER

20 DATE OF HEARING:

April 18, 2006

21 PLACE OF HEARING:

Phoenix, Arizona

22 ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

23 APPEARANCES:

William P. Sullivan, CURTIS, GOODWIN,
SULLIVAN, UDALL & SCHWAB, on behalf of
Diversified Water Utilities, Inc.;

Richard L. Sallquist, SALLQUIST, DRUMMOND &
O'CONNOR, on behalf of Johnson Utilities Company;
and

Jason Gellman, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

24 **BY THE COMMISSION:**

25 On November 24, 2004, Diversified Water Utilities, Inc. ("Diversified") filed with the
26 Arizona Corporation Commission ("Commission") an application in Docket No. W-02859A-04-0844
27 for an extension of its Certificate of Convenience and Necessity ("CC&N") in Pinal County by either
28 amending Decision No. 63690 (September 4, 2001)¹ or alternatively by treating the filing as a new

¹ Decision No. 63690 was amended by Decision No. 64062 (October 4, 2001) and Decision No. 65840 (April 22, 2003).

1 application (“Diversified Application”).

2 On December 3, 2004, Johnson Utilities Company (“JUC”) filed an application (“JUC
3 Application”) for an extension of its CC&N in Pinal County. The area originally sought by Johnson
4 overlapped with a portion of the extension area requested by Diversified.

5 By Procedural Order issued March 2, 2005, the above-captioned dockets were consolidated.

6 By Procedural Order issued May 11, 2005, JUC’s Motion to Continue the hearing date was
7 granted, and a Procedural Conference was scheduled for October 17, 2005 to address the status of the
8 consolidated proceedings.

9 On October 6, 2005, Diversified filed a Motion to Continue the Procedural Conference due to
10 a conflict in the schedule of Diversified’s counsel.

11 On October 7, 2005, Johnson filed an Amended Application and Request for Tariff Approval.
12 By its Amended Application filing, Johnson seeks to include only “Section 23” from its original
13 request. JUC also sought approval of a proposed tariff amendment that would permit the water
14 provider in areas where Johnson provides only wastewater service to terminate water service in the
15 event that the same customer fails to pay Johnson for wastewater service².

16 By Procedural Order issued October 12, 2005, the Procedural Conference was rescheduled for
17 December 12, 2005.

18 On November 30, 2005, Diversified filed an Amended and Supplemented Application
19 requesting to serve areas consistent with an agreement Diversified entered into with JUC regarding
20 their respective service areas for provision of water service.

21 On December 12, 2005, the Procedural Conference was held as scheduled. At the Procedural
22 Conference, Diversified and JUC requested that this proceeding be bifurcated so that the amended
23 JUC application would proceed and the Diversified amended application would be continued for
24 approximately 6 months.

25 By Procedural Order issued December 13, 2006, Diversified’s application (Docket No. W-
26 02859A-04-0844) was continued for 180 days and JUC’s application (Docket No. WS-02987A-04-
27

28 ² At the April 18, 2006 hearing, JUC withdrew its request for approval of the wastewater disconnect tariff in this docket.

1 0869 was set for hearing on April 18, 2006. JUC was also directed to publish notice of the hearing
2 and mail notice to the affected property owners in the proposed CC&N area.

3 On February 17, 2006, JUC filed an Affidavit of Publication attesting to its publication of the
4 required notice in the *Florence Reminder* and *Blade-Tribune*.

5 On March 17, 2006, Staff filed its Staff Report recommending approval of JUC's application
6 subject to certain specified conditions.

7 On April 17, 2006, JUC filed Comments and Objections to the Staff Report, and provided
8 additional documentation in support of the application.

9 On April 18, 2006, the hearing was convened, as scheduled, before a duly authorized
10 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of
11 the hearing, the matter was taken under advisement pending issuance of a Recommended Opinion
12 and Order.

13 FINDINGS OF FACT

14 1. On December 3, 2005, JUC filed an application for an extension of its Certificate of
15 Convenience and Necessity ("CC&N") with the Arizona Corporation Commission ("Commission")
16 to provide public water utility service to various parts of Pinal County, Arizona, more fully described
17 in Exhibit A hereto.

18 2. JUC is a public service corporation that provides water and wastewater service in
19 Pinal County, Arizona pursuant to an original CC&N granted in Decision No. 60223 (May 27,
20 1997). A number of CC&N extensions for water and/or wastewater service have been approved for
21 JUC in subsequent years. JUC served approximately 11,500 customers as of the end of July, 2005,
22 and its customer base is expanding at a pace of approximately 500 new service connections per
23 month.

24 3. Staff filed its Staff Report on March 17, 2006, recommending approval of the
25 application subject to certain conditions.

26 4. By its application, JUC seeks authority to extend its current CC&N to include a 640
27 acre development in Pinal County called Bella Vista, which is expected at build out to be comprised
28 of approximately 2,200 residential lots. JUC anticipates approximately 767 new connections in the

1 extension area within five years. Section 23 also includes two commercial parcels (17 acres and 19
2 acres) that are not expected to be developed until after the residential lots start to be developed (Tr.
3 48-49).

4 5. JUC currently has a Curtailment Tariff in effect.

5 6. The extension area would be served by JUC's public water system number 11-128.
6 The total production capacity of the Company's wells is 5,082 gallons per minute ("gpm"). The JUC
7 systems are also comprised of booster pumps, pressure tanks, a distribution system, and
8 approximately four million gallons of storage capacity. Staff's engineering analysis concluded that
9 the Company's system has adequate production and storage capacity to serve the existing and
10 proposed extension area, and can reasonably be expected to develop additional storage and
11 production as required in the future (Ex. S-1, at 1).

12 7. Staff stated that JUC's cost analysis indicates that, over the next five years, the
13 additional water plant needed to serve the extension area will total approximately \$1,051,939. The
14 Company expects that the facilities needed to serve the extension area will be financed through
15 advances in aid of construction and hook-up fees (*Id.*).

16 8. The Arizona Department of Environmental Quality ("ADEQ") indicated that JUC's
17 water system is currently delivering water that meets water quality standards required under A.A.C.
18 Title 18, Chapter 4 (Ex. S-1, at 1). In addition, all of the Company's wells are in compliance with the
19 new arsenic maximum contaminant levels established by the United States Environmental Protection
20 Agency (Tr. 55-58).

21 9. The Staff Report indicates that JUC is located within the Phoenix Active Management
22 Area ("AMA") and is in compliance with reporting and conservation requirements. Because the
23 extension area is located in the Phoenix AMA, each developer would be required to demonstrate an
24 assured water supply from the Arizona Department of Water Resources ("ADWR") for the entire
25 development. Since JUC currently holds a "Designation of Assured Water Supply" for its existing
26 area, Staff assumes the Company will continue to elect this alternative, thus requiring the Company
27 amend its Designation to include the extension area (*Id.*, Engineering Report at 2).

28 10. In the Staff Report, Staff pointed out that Decision Nos. 68235 (October 25, 2005),

1 68236 (October 25, 2005), and 68237 (October 25, 2005) required JUC to obtain a \$500,000
 2 performance bond “as a means of protection against any detrimental impact on customers that may
 3 occur as a result of a judgment against Mr. Johnson and/or Johnson Utilities affiliates” related to the
 4 so-called “La Osa”³ and “Sonoran”⁴ litigation. In lieu of obtaining a performance bond, JUC instead
 5 secured an Irrevocable Letter of Credit which the Company seeks to have considered as an
 6 appropriate substitute for the performance bond requirement set forth in the Decisions cited above⁵.

7 11. Based on its investigation, as amended during the hearing, Staff recommended
 8 approval of JUC’s application, subject to compliance with the following recommendations:

- 9 a. The current rates and charges set forth in the tariffs of JUC shall be
 10 applied to all customers in the CC&N extension area approved herein
 11 until the rates and charges are changed by Commission Order;
- 12 b. A copy of JUC’s Designation of Assured Water Supply from ADWR
 13 to include the extension area should be filed within one year of the
 14 effective date of the Decision in this matter⁶; and
- 15 c. In the event JUC fails to comply with the above-stated conditions
 16 within the times specified, the CC&N extension approved herein
 17 would, after due process, be deemed null and void.

18 12. Staff’s recommendation for approval of the application is reasonable and shall be
 19 adopted, subject to compliance with the conditions discussed herein. In addition, we will require that
 20 JUC continue to comply with the reporting requirements for both the La Osa and Sonoran litigation
 21 set forth in prior Decisions.

CONCLUSIONS OF LAW

22 1. JUC is a public service corporation within the meaning of Article XV of the Arizona
 23 Constitution and A.R.S. §40-281 *et seq.*

24 2. The Commission has jurisdiction over JUC and the subject matter of the application.

25 ³ Maricopa County Superior Court Case No. CV2005-002692

26 ⁴ Maricopa County Superior Court Case No. CV2005-002548

27 ⁵ A hearing on JUC’s request to amend Decision Nos. 68235, 68236, and 68237, to permit substitution of the Letter of
 28 Credit, was held on August 25, 2006 and is currently pending issuance of a Recommended Opinion and Order.

⁶ Although JUC agreed at the hearing to file a late-filed exhibit documenting that JUC’s Designation of Assured Water
 Supply includes the extension area (Tr. 68-69), it does not appear that any such exhibit was filed. Staff’s original
 recommendation for JUC to file documentation of the Designation for the extension area, within one year from the
 effective date of this Decision, shall therefore be adopted.

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IT IS FURTHER ORDERED that Diversified Water Utilities, Inc. shall file, within 60 days of the effective date of this Decision, a statement indicating whether it wishes to pursue its currently deferred application in Docket No. W-02859A-04-0844.

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

BY 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 the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: DIVERSIFIED WATER UTILITIES, INC. and
2 JOHNSON UTILITIES COMPANY

3 DOCKET NO.: W-02859A-04-0844 and WS-02987A-04-0869

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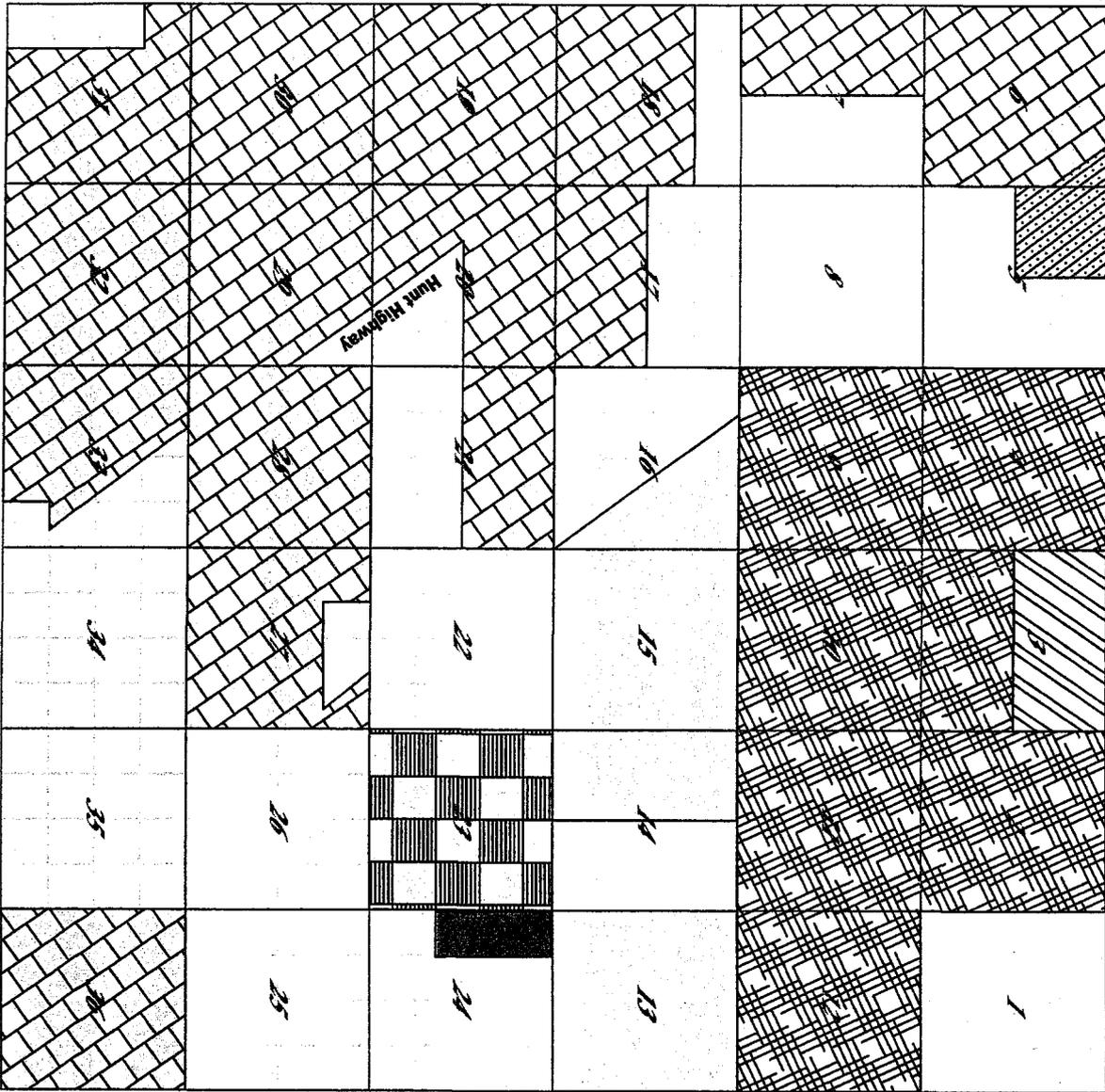
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COUNTY OF Pinal

RANGE 8 East



TOWNSHIP 3 South

-  W-2859 (3)
Diversified Water Utilities, Inc.
-  W-2234 (2)
H₂O, Inc.
-  WS-2987 (6)
Johnson Utilities Company
-  W-2425 (2)
Sun Valley Farms Unit VI Water Company
-  Johnson Utilities Company (Water)
Docket No. WS-2987-04-869
Application for Extension
-  Johnson Utilities Company (Water)
Docket No. WS-2987-05-088
Application for Extension
-  Sewer

Legal Description
Bella Vista Farms

Section 23, Township 3 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona