

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: October 3, 2006
DOCKET NO: SW-04002A-02-0837
WS-02987A-02-0837
TO ALL PARTIES: SW-04002A-04-0465
WS-02987A-04-0465

Arizona Corporation Commission

DOCKETED

OCT - 3 2006

DOCKETED BY [Signature]

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

ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.
(CC&N TRANSFER)

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:

OCTOBER 12, 2006

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:

OCTOBER 17 AND 18, 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

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EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
ARIZONA UTILITY SUPPLY & SERVICES,
L.L.C. FOR THE TRANSFER OF A PORTION OF
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY TO JOHNSON UTILITIES, L.L.C.

DOCKET NO. SW-04002A-02-0837
DOCKET NO. WS-02987A-02-0837

IN THE MATTER OF THE APPLICATION OF
ARIZONA UTILITY SUPPLY & SERVICES,
L.L.C. TO TRANSFER ITS ASSETS AND
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO JOHNSON UTILITIES, L.L.C.

DOCKET NO. SW-04002A-04-0465
DOCKET NO. WS-02987A-04-0465

DECISION NO. _____

FINAL ORDER

Open Meeting
October 17 and 18, 2006
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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 8, 2002, Arizona Utility Supply & Services, LLC, ("AUSS") filed with the Arizona Corporation Commission ("Commission") an application in Docket Nos. SW-04002A-02-0837 and WS-02987A-06-0837 ("02-0837 Dockets") for the transfer of a portion of its Certificate and Convenience and Necessity ("CC&N") to Johnson Utilities, LLC, dba Johnson Utilities Company ("JUC").

2. By Procedural Order issued June 17, 2004, the hearing date in the 02-0837 Dockets was rescheduled for July 16, 2004, at the request of all parties, and the applicable time clock rules were extended accordingly. The Procedural Order referenced the fact that an emergency situation

1 involving potential overflows of wastewater on the AUSS system had been temporarily averted by
2 JUC's agreement to accept wastewater and effluent from AUSS pending consideration of the pending
3 application. Johnson's agreement to accept wastewater and effluent from the AUSS system was
4 facilitated by the Commission's Utilities Division Staff ("Staff") and the Arizona Department of
5 Environmental Quality ("ADEQ").

6 3. On June 22, 2004, AUSS filed an application in Docket Nos. SW-04002A-04-0465
7 and WS-02987A-04-0465 ("04-0465 Dockets") seeking authority to transfer all assets and the
8 entirety of its CC&N to JUC.

9 4. By Procedural Order issued June 30, 2004, the above-captioned cases were
10 consolidated and a hearing was scheduled for July 16, 2004. On July 16, 2004, the hearing was held
11 as scheduled. At the conclusion of the July 16, 2004 hearing, the parties requested additional time to
12 engage in settlement discussions regarding certain issues that arose shortly before and during the July
13 16, 2004 hearing.

14 5. On August 4, 2004, AUSS filed a Chapter 7 bankruptcy petition in U.S. Bankruptcy
15 Court for the District of Arizona ("Bankruptcy Court") (Case No. 4:04-bk-3873-JMM). By
16 Procedural Order issued August 9, 2004, a hearing was scheduled for August 25, 2004 in the
17 consolidated AUSS/JUC CC&N transfer application cases.

18 6. On August 18, 2004, the Commission issued a Show Cause Order against AUSS in
19 Docket No. SW-04002A-04-0600 regarding alleged deficiencies at two of the Company's wastewater
20 treatment facilities (Decision No. 67101). The Order also directed Staff to appoint an interim
21 manager to operate the AUSS system in order to protect the health, safety, and welfare of AUSS
22 customers¹.

23 7. Following a number of telephonic procedural conferences, by Procedural Order issued
24 December 2, 2004, a hearing was scheduled for December 9, 2004 to address the remaining issues
25 related to transfer of the AUSS assets and CC&N to JUC. On December 2, 2004, JUC and Staff filed

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27 ¹ A detailed description of the violations involving the AUSS system is set forth in Decision No. 67586. Those violations
28 include failure to operate and monitor a wastewater treatment plant and improper discharge of effluent. As described in
the Order Preliminary, AUSS' treatment ponds were on the verge of overflowing when JUC agreed to accept wastewater
and effluent from the AUSS system, thereby narrowly averting a serious health and safety incident.

1 an exhibit which set forth a number of requirements that JUC must satisfy as a condition of approval
2 of the transfer of the AUSS assets to JUC.

3 8. The December 9, 2004 hearing was held as scheduled. At the conclusion of the
4 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
5 Order.

6 9. In Decision No. 67586 (February 15, 2005), the Commission issued an Order
7 Preliminary, pursuant to A.R.S. §40-282(D), to allow JUC to acquire specified assets of AUSS with
8 the approval of the Bankruptcy Court, and to take a number of other actions to enable JUC to
9 eventually provide retail wastewater service to most of the AUSS service area.

10 10. This proceeding has a lengthy and sordid history and presents a number of unusual
11 facts and circumstances. As described in Decision No. 67586, by early 2004 AUSS' treatment
12 facilities had deteriorated to the point that they were, at best, functioning on only an intermittent
13 basis. Due to multiple and ongoing ADEQ violations, ADEQ and the Commission's Staff attempted
14 to find both short-term and long-term solutions for what was becoming, by mid-2004, a significant
15 health and safety concern for residents in the AUSS service territory. Through the efforts of ADEQ
16 and Staff, and the willingness of JUC and homebuilders in the area to take on the issues raised by the
17 malfunctioning AUSS system, a public health crisis in the area was narrowly averted.

18 11. Other complicating factors in this proceeding were the eleventh-hour claims raised by
19 third party creditors and the bankruptcy filing by AUSS, which ultimately resulted in a liquidation of
20 its assets. Staff, JUC, and the developers/homebuilders, led primarily by Centex, negotiated a
21 settlement with the bankruptcy trustee, which was approved by the Bankruptcy Court.

22 12. In Decision No. 67586, we indicated that, given the number of unresolved issues,
23 including acquisition of necessary rights of way, compliance with ADEQ regulations, and final
24 approval by the Bankruptcy Court, an Order Preliminary was appropriate. As described above, the
25 Order Preliminary issued by the Commission allowed JUC to proceed with its plans to acquire the
26 AUSS assets under the settlement approved by the Bankruptcy Court. The Order Preliminary also
27 imposed specific requirements on JUC that must be satisfied prior to issuance of a subsequent Final
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1 Order formally deleting the AUSS Certificate and transferring a portion of the CC&N to JUC².

2 13. With respect to the process for obtaining a Final Order from the Commission, we
3 required Staff to review JUC's compliance with the various conditions and, once Staff determined
4 JUC's compliance with those conditions, Staff was directed to make a recommendation prior to
5 issuance of a Final Order in this proceeding.

6 14. In Decision No. 67586, we stated appreciation for JUC's willingness to serve the
7 AUSS territory under difficult circumstances, while recognizing that the existing AUSS customers
8 would experience an increase in wastewater rates once we have issued a Final Order approving JUC's
9 acquisition of the AUSS assets and CC&N. AUSS customers are currently billed \$30.00 per month
10 for wastewater service under a bulk wastewater agreement that was negotiated by AUSS and JUC
11 prior to the AUSS bankruptcy. Under the agreement approved in the Order Preliminary, JUC's
12 current wastewater rate of \$38.50 per month would be applied to the AUSS customers once the
13 CC&N transfer is completed. Given this proposed change from AUSS rates to JUC's rates for
14 current AUSS customers, JUC was ordered to notify the affected customers that rates will increase to
15 \$38.50 once a Final Order is issued granting JUC the CC&N for the AUSS service area³.

16 15. On May 26, 2006, JUC filed a Request for Issuance of a Final Order and attached
17 documentation to support its claim that the conditions set forth in the Order Preliminary had been
18 satisfied.

19 16. On August 18, 2006, Staff filed a Memorandum stating that JUC has satisfied the
20 conditions required for issuance of a Final Order. Set forth below are the ordering paragraphs
21 contained in the Order Preliminary (Decision No. 67586) that required action by JUC, followed by a
22 summary of Staff's findings regarding compliance with the conditions:

- 23 a) **IT IS FURTHER ORDERED that, prior to issuance of a final**
24 **Order, Johnson Utilities Company must acquire the Utility**
25 **Assets specified in [Decision No. 67586] free and clear of any**

26 ² Sections 19 and 30 of AUSS' former CC&N area are not being transferred. As stated in the Order Preliminary, no
27 customers are currently being served in those areas, and the Town of Queen Creek has indicated that it intends to provide
28 service to those areas at some point in the future.

³ JUC filed on May 5, 2006 a copy of the notice that was sent to AUSS customers, in the form approved by Consumer
Services Staff. In response to the notice, seven customer contacts were received objecting to the increase associated with
JUC's acquisition of the AUSS service area.

liens or other encumbrances.

JUC filed on May 26, 2006, a Bill of Sale signed by the bankruptcy trustee conveying to JUC, free and clear of liens, the property described in Exhibit A [attached to Decision No. 67586]. Staff recommends that this requirement be considered to be satisfied.

- b) **IT IS FURTHER ORDERED** that, prior to issuance of a final Order, Johnson Utilities Company shall have authorized access to the acquired Utility Assets within either public rights-of-way and/or the Utility Assets must be within granted easements, the rights to both of which will be transferred to Johnson Utilities Company along with any franchise rights Arizona Utility Supply & Services, L.L.C. has under a franchise or similar agreement with Pinal County, to the extent such franchise or other rights are needed by Johnson Utilities Company to serve.

JUC filed an easement agreement between JUC, the Links at Ocotillo HOA, and DJSP, LLC, which grants JUC ingress and egress and utility operational access across certain property as a means of accessing a sewer line, a lift station and a road in Cambria Parcel 3. JUC also filed an Access and Utility Easement between JUC and the Cambria Ocotillo HOA which gives JUC access to a lift station and two roads in Cambria Parcel 3. JUC filed an expansion and amendment to its Pinal County water and sewer franchise that covers the areas transferred from AUSS to JUC. Staff recommends that this requirement be considered to be satisfied.

- c) **IT IS FURTHER ORDERED** that, prior to issuance of a final Order, the Utility Assets being acquired by Johnson Utilities Company in order for it to commence service in the area currently certificated to Arizona Utility Supply & Services, L.L.C. must be operated by Johnson in accordance with all necessary governmental approvals, including, without limitation, approvals required by ADEQ and Pinal County, and that, to the extent required, all such approvals must be transferred from Arizona Utility Supply & Services, L.L.C. to Johnson Utilities Company.

Staff stated that it is satisfied that compliance with the other ordering paragraphs results in satisfaction of this ordering paragraph's requirements.

- d) **IT IS FURTHER ORDERED** that, prior to issuance of a final Order, Johnson Utilities Company must also satisfy each of the following requirements by filing each of the items listed below:

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- (i) **ADEQ's written confirmation affirming that Johnson Utilities Company's Pecan wastewater treatment plant has adequate wastewater treatment capacity for Johnson Utilities Company to provide wastewater treatment services to each of the subdivisions listed in [Decision No. 67586];**

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Staff stated that JUC has complied with this requirement by filing the ADEQ General Permits for 46 of the 48 listed subdivisions (two of the listed subdivisions were never built). According to Staff, the General Permits verify that adequate wastewater treatment capacity is available to serve the expanded area, and this requirement should be considered fulfilled.

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- (ii) **ADEQ's written confirmation affirming that the Pecan Plant, as constructed and planned, conforms to all applicable requirements for setbacks;**

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Staff stated that JUC has complied with this ordering paragraph by filing the signed Aquifer Protection Permit dated June 1, 2005, giving JUC approval to construct and operate the Pecan Plant facilities.

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- (iii) **ADEQ's written approval of the transfer of the existing reuse permit to discharge effluent on the Links Golf Course to Johnson Utilities Company without additional conditions or modifications;**

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Staff stated that JUC has complied with this ordering paragraph by filing the ADEQ Verification of General Permit Conformance and Authorization to Discharge, issued to JUC on July 19, 2005.

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- (iv) **ADEQ's issuance of an Engineering Certificate of Completion for the existing 6-inch pipeline located in Section 20 of Township 2 South, Range 8 East and approval to allow conversion of this 6-inch pipeline from an effluent delivery line to a wastewater force main and approval of the modifications to the lift stations located at the Links Plant to allow the bypass of the treatment plant;**

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Staff stated that JUC has complied with this ordering paragraph by filing the ADEQ Verification of General Permit Conformance (Engineering Certificate of Completion) for the Links Plant, issued to JUC on June 29,

2005.

- (v) **all ADEQ requisite approvals for construction and operation of a lift station at the site of the former Links Plant to allow the bypass of the Links Plant.**

Staff stated that JUC has complied with this ordering paragraph by filing the ADEQ Verification of General Permit Conformance for the Links Plant Lift Station Replacement project, issued to JUC on December 16, 2005.

17. Based on its analysis, Staff concluded that JUC has complied with all requirements set forth in the Order Preliminary. Staff therefore recommends that the Commission issue a Final Order approving the transfer to JUC of the AUSS assets and CC&N described in Decision No. 67586. No opposition to Staff's recommendations was filed.

18. Staff's recommendations are reasonable and shall be adopted.

CONCLUSIONS OF LAW

1. AUSS and JUC are public service companies within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over AUSS and JUC, and the subject matter of the applications.

3. Notice of the applications was given in the manner required by law.

4. In accordance with the Order Preliminary issued pursuant to A.R.S. §40-282(D), JUC has complied with all conditions set forth therein.

5. Pursuant to A.R.S. §40-282(D), it is appropriate to issue a Final Order.

6. The CC&N previously granted to AUSS is cancelled and the former AUSS assets and sections of the CC&N more fully described in the Order Preliminary are transferred to AUSS.

7. JUC is authorized to charge its currently authorized rates and charges to the former AUSS customers.

ORDER

IT IS THEREFORE ORDERED that Johnson Utilities Company has satisfied the requirements described in the Order Preliminary for issuance of a Final Order pursuant to A.R.S.

1 §40-282(D).

2 IT IS FURTHER ORDERED that the CC&N previously granted to Arizona Utility Supply &
3 Services, LLC, is hereby cancelled and revoked.

4 IT IS FURTHER ORDERED that the portions of the CC&N previously granted to Arizona
5 Utility Supply & Services, LLC, and described in Decision No. 67586, are hereby transferred to
6 Johnson Utilities Company.

7 IT IS FURTHER ORDERED that Johnson Utilities Company is authorized, effective
8 November 1, 2006, to charge its current rates and charges to all former customers of Arizona Utility
9 Supply & Services, LLC, located in the CC&N area transferred in accordance with this Decision.

10 IT IS FURTHER ORDERED that Johnson Utilities Company shall notify the former Arizona
11 Utility Supply & Services, L.L.C. customers of the increased rates associated with acquisition of the
12 AUSS CC&N by Johnson Utilities Company, in a form approved by Staff, within 30 days of the
13 effective date of this Decision.

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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18 CHAIRMAN _____ COMMISSIONER _____

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20 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

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

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____

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SERVICE LIST FOR:

ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.,
and JOHNSON UTILITIES, L.L.C.

DOCKET NOS.:

SW-04002A-02-0837; WS-02987A-02-0837; SW-
04002A-04-0465; and WS-02987A-04-0465

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