

OPEN MEETING AGENDA ITEM



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

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ARIZONA CORPORATION COMMISSION

2006 NOV -2 P 2:03

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DATE: NOVEMBER 2, 2006

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKET NO: WS-02987A-06-0077

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES, L.L.C. dba JOHNSON UTILITIES  
(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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 13, 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 Commission's Working Session and Open Meeting to be held on:

NOVEMBER 21, 2006 and NOVEMBER 22, 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 Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
DOCKETED

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BRIAN C. McNEIL  
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  
JOHNSON UTILITIES, L.L.C., dba JOHNSON  
UTILITIES, FOR APPROVAL TO EXTEND ITS  
EXISTING CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. WS-02987A-06-0077

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: September 26, 2006  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
APPEARANCES: Mr. Richard L. Sallquist, SALLQUIST, DRUMMOND  
& O'CONNOR, on behalf of Johnson Utilities, L.L.C.;  
Mr. Jeffrey Crockett, SNELL & WILMER, on behalf of  
Fulton Homes; and  
Mr. David Ronald, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On February 8, 2006, Johnson Utilities, L.L.C. ("Johnson" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N"), to include an area encompassing the development known as Ironwood Crossing and Section 7, Township 2 South, Range 8 East, G&SRM. The application also requests that some revisions be made to the tariffs of Johnson, and H2O, Inc., to allow the termination of water services by H2O, Inc., a water only provider, for the non-payment of the wastewater service.

On March 9, 2006, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter listing the areas in the application that Staff determined did not meet the sufficiency requirements set forth in the Arizona Administrative Code ("A.A.C.").

1 On April 28, 2006, Johnson submitted additional information in response to Staff's  
2 Insufficiency Letter.

3 On May 16, 2006, Staff filed its second Insufficiency Letter listing the areas in the application  
4 that Staff determined did not meet the sufficiency requirements set forth in the A.A.C.

5 On June 21, 2006, Johnson submitted additional information in response to Staff's  
6 Insufficiency Letter.

7 On July 19, 2006, Staff filed a Sufficiency Letter in this docket indicating that the Applicant's  
8 application had met the sufficiency requirements as outlined in the A.A.C.

9 On July 26, 2006, a Procedural Order was issued setting the hearing to commence on  
10 September 26, 2006, and also setting associated procedural deadlines including the publication of  
11 notice of the hearing.

12 On August 25, 2006, Johnson filed an Affidavit of Mailing and Affidavit of Publication.

13 On August 25, 2006, Staff filed its Staff Report recommending approval of the application,  
14 subject to certain conditions.

15 On September 25, 2006, the Town of Queen Creek ("Queen Creek") docketed a letter dated  
16 February 24, 2006, stating that it would oppose Johnson's application for any areas that would  
17 encroach on Queen Creek's adopted wastewater service area by any private utility company.

18 On September 26, 2006, a full public hearing was held before a duly authorized  
19 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Johnson and Staff  
20 appeared through counsel and presented evidence and testimony. A representative from Fulton  
21 Homes was present and gave public comment in support of this matter. At the conclusion of the  
22 hearing, all matters were taken under advisement.

23 On September 26, 2006, Queen Creek docketed a letter in this matter, stating that the town's  
24 council had amended the town's sewer service area map by deleting sections 7 and 18, Township 2  
25 South, Range 8 East and the west quarter strips of Sections 8 and 17 of Township 2 South, Range 8  
26 East. The letter further stated that as a result of the council's actions, Queen Creek was now in  
27 support of Johnson's application in this docket.

28 \* \* \* \* \*

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

3 **FINDINGS OF FACT**  
4

5 1. Johnson is an Arizona Corporation that provides water and wastewater utility services  
6 in portions of Pinal County, Arizona and currently serves approximately 16,500 wastewater  
7 customers and approximately 14,300 water utility customers.

8 2. Johnson is an Arizona corporation, in good standing with the Commission's  
9 Corporation Division.

10 3. Johnson was initially granted its Certificate in Decision No. 60223 (May 27, 1997).

11 4. According to Staff's Report, Johnson had, for the year ending December 31, 2005,  
12 wastewater and water utility plant in service of approximately \$40 million and \$32 million,  
13 respectively and annual revenues of \$2.3 million and \$2.3 million, respectively for the same period.

14 5. On February 8, 2006, Johnson filed an application to extend its CC&N to provide  
15 wastewater service to an area encompassing a development known as Ironwood Crossing  
16 ("Ironwood") and the Church of Jesus Christ of Latter Day Saints ("LDS"), in Pinal County and  
17 which is more fully described in Exhibit A, attached hereto and incorporated herein by reference.

18 6. At hearing, Chris Webb, from Fulton Homes presented public comment in support of  
19 the application. Mr. Webb stated that he is the project manager for the Ironwood development,  
20 which represents Section 18 in the proposed CC&N extension area. Further, he stated that the  
21 Ironwood project encompasses approximately 700 acres and will consist of approximately 2,100  
22 single-family homes, a 50 acre commercial center and an elementary school. (Tr. Pg. 11, lines 10-16)

23 7. Mr. Webb further stated that Fulton has owned the property since 2003 and their plan  
24 is to break ground on the development immediately following a favorable decision in this matter and  
25 the company anticipates beginning selling homes in the fourth quarter of 2007.

26 8. Mr. Webb also stated that there are no golf courses planned for Ironwood; however,  
27 the development will have an aquatic center with a 5,000 square foot pool and "tot lots" throughout.  
28 He also testified that the Ironwood project had been designed to assure full compliance with any

1 Groundwater Management Act requirements. (Tr. Pg. 35 lines 6-10)

2 9. According to Johnson's application, the company is seeking to extend its wastewater  
3 service to include 1 ¼ square-miles to Johnson's existing 73 square miles of wastewater certificated  
4 area and to revise the tariffs of Johnson and H2O, Inc., to allow termination of water services by H2O,  
5 Inc., a water only provider, for non-payment of wastewater service.

6 **Wastewater System**

7 10. According to Staff's Report, Johnson operates three wastewater systems within Pinal  
8 County. The proposed extension area will be served by Johnson's Pecan system, which consists of a  
9 4.0 million gallons per day ("MGD") extended aeration wastewater treatment plant that serves  
10 approximately 7,300 connections.

11 11. Staff's Report shows that based on historical growth rates, Johnson's Pecan System  
12 could grow to approximately 7,900 connections at the end of five years. Additionally, Johnson  
13 predicts that they will add 1,664 connections in the proposed extension area within a five year period  
14 with a customer base of 9,560 connections over the same time period.

15 12. The LDS property, located within section 7 of the proposed extension area, is not  
16 planned for development in the near future; however, Johnson anticipates that it will use a gravity  
17 system to transport flow to its Pecan system.

18 13. Staff concluded that Johnson's existing Pecan system could serve approximately  
19 21,400 connections and therefore could adequately provide service for both its existing and proposed  
20 customer base within a five year period. Additionally, Johnson can reasonably be expected to develop  
21 additional wastewater treatment as required in the future.

22 14. Johnson proposes to install on-site and off-site wastewater facilities to serve the  
23 proposed extension area called Ironwood Crossing located within Section 18 at an anticipated cost of  
24 \$4,644,896. The development will be funded through advances in aid of construction and hook-up  
25 fees. Staff reviewed the proposed costs and found them to be reasonable, but did not make a "used  
26 and useful" determination of the proposed plant facilities for rate making or rate base purposes.

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1           15.     At hearing, Johnson's witness<sup>1</sup>, testified that water will be provided in the proposed  
2 extension area by H2O, Inc. (Tr. Pg. 18, lines 7-10) Additionally, he indicated that although the  
3 company had requested to revise its tariffs and the tariffs of H2O in its application, the company  
4 decided to withdraw that portion of its application because Staff recommended that a separate tariff  
5 application needed to be filed.

6           16.     According to Staff's Report, Johnson has not submitted to the Arizona Department of  
7 Environmental Quality ("ADEQ") its Certificate of Approval to Construct ("ATC") for the facilities  
8 to serve the extension area. Therefore, Staff recommends that Johnson file with Docket Control, as a  
9 compliance item in this docket, within two years of the effective date of an order, copies of the  
10 ADEQ ATC, for Phase 1, for wastewater facilities needed to serve the Ironwood Crossing  
11 development.

12          17.     ADEQ has reported that Johnson's Pecan wastewater system is in compliance with  
13 ADEQ regulations.

14          18.     Staff reported that Johnson was issued an amended Aquifer Protection Permit ("APP")  
15 on June 1, 2005, for its Pecan wastewater treatment plant.

16          19.     According to Staff's Report, the Utilities Division Compliance Section found no  
17 outstanding compliance issues for Johnson.

18          20.     Johnson will provide service to the proposed extension area at its existing rates and  
19 charges on file with the Commission.

20          21.     Johnson has a franchise agreement with Pinal County which includes the proposed  
21 extension area.

22          22.     Staff recommends approval of Johnson's application for an extension of its CC&N to  
23 provide wastewater utility service in Pinal County subject to the following conditions:

24               (a.)     That Johnson charge its authorized rates and charges in the extension area;

25               (b.)     That Johnson file with Docket Control, as a compliance item in this docket,  
26 within two years of the effective date of an order in this matter, copies of the ATC for Phase 1 for  
27

28 <sup>1</sup> Johnson's witness was Brian P. Tompsett, executive vice president for Johnson.

1 wastewater facilities needed to serve the Ironwood Crossing development.

2 23. Staff further recommended that if Johnson fails to comply with the conditions stated  
3 above, within the time-frames specified, the CC&N should be considered null and void, after due  
4 process.

5 24. Staff recommendations as stated above are reasonable and should be adopted.

6 25. Because an allowance for the property tax expense is included in Johnson's rates and  
7 will be collected from its customers, the Commission seeks assurances from Johnson that any taxes  
8 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the  
9 Commission's attention that a number of water and wastewater companies have been unwilling or  
10 unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as  
11 many as twenty years. It is reasonable, therefore, that as a preventive measure Johnson shall annually  
12 file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is  
13 current in paying its property taxes in Arizona.

14 **CONCLUSIONS OF LAW**

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

17 2. The Commission has jurisdiction over Johnson and the subject matter of the  
18 application.

19 3. Notice of the application was provided in accordance with the law.

20 4. There is a public need and necessity for wastewater utility service in the proposed  
21 extension area as set forth in Exhibit A, attached hereto and incorporated herein by reference.

22 5. Subject to compliance with the above stated conditions, Johnson is a fit and proper  
23 entity to receive an extension of its Certificate, for the proposed extension area, as set forth in Exhibit  
24 A.

25 6. Staff's recommendations are reasonable and should be adopted.

26  
27 **ORDER**

28 IT IS THEREFORE ORDERED that the application of Johnson Utilities, L.L.C., d/b/a

1 Johnson Utilities for an extension of its Certificate of Convenience and Necessity to provide  
2 wastewater utility service in Pinal County as described in Exhibit A, attached hereto and incorporated  
3 herein by reference, is approved subject to the conditions and requirements recommended by Staff  
4 and set forth in the following ordering paragraphs.

5 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., d/b/a Johnson Utilities shall  
6 charge its existing rates and charges currently on file with the Commission in the extension area, until  
7 further Order of the Commission.

8 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., d/b/a Johnson Utilities shall file  
9 with Docket Control, as a compliance item in this docket, within two years of the effective date of  
10 this Order, copies of the Arizona Department of Environmental Quality Approval to Construct, for  
11 Phase 1, for facilities needed to serve the Ironwood Crossing development.

12 IT IS FURTHER ORDERED that if Johnson Utilities, L.L.C., d/b/a Johnson Utilities fails to  
13 comply with the above stated conditions within the required time-frames, the Certificate of  
14 Convenience and Necessity conditionally granted herein shall become null and void, after due  
15 process.

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1 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., d/b/a Johnson Utilities shall  
2 annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is  
3 current on paying its property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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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: JOHNSON UTILITIES, L.L.C. dba JOHNSON  
2 UTILITIES

3 DOCKET NO.: SW-02987A-06-0077

4 Richard L. Sallquist  
5 SALLQUIST, DRUMMOND & O'CONNOR  
6 4500 South Lakeshore Drive, Ste. 339  
7 Tempe, AZ 85282

8 Jeffrey Crockett  
9 SNELL & WILMER  
10 400 E. Van Buren  
11 Phoenix, AZ 85004  
12 Attorneys for Fulton Homes

13 Christopher Kempley, Chief Counsel  
14 Legal Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
17 Phoenix, AZ 85007

18 Ernest G. Johnson, Director  
19 Utilities Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington  
22 Phoenix, AZ 85007

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## EXHIBIT A

A PART OF  
SECTION 7, T. 2 S., R. 8 E.  
Legal Description

A parcel of land, being within Section 7, Township 2 South, Range 8 East, Gila and Salt River Meridian, Pinal County, Arizona, described as follows:

Beginning at the Southeast corner of said Section 7;

thence S 89° 49' 45" W, along the South line of said Section 7, a distance of 2,642.05 feet to the South Quarter corner of Section of said Section 7;

thence S 89° 47' 24" W, a distance of 3,395.41 feet to the Southwest corner of said Section 7;

thence N 00° 27' 22" W, along the West line of said Section 7, a distance of 2,651.88 feet to the West Quarter corner of said Section 7;

thence N 00° 16' 00" W, continuing along the West line of said Section 7, a distance of 137.00 feet;

thence N 88° 35' 57" E, a distance of 3,406.50 feet to a point on the North-South midsection line of said Section 7;

thence N 00° 15' 06" W, along the North-South midsection line a distance of 2,580.52 feet to the North Quarter corner of said Section 7;

thence N 89° 46' 10" E, along the North line of said Section 7, a distance of 2,641.43 feet to the Northeast Corner of said Section 7;

thence S 00° 15' 39" E, along the East line of said Section 7, a distance of 2,638.98 feet to the East Quarter corner of said Section 7;

thence S 00° 15' 28" E, continuing along the East line of said Section 7, a distance of 2,644.30 feet to the True Point of Beginning;

Containing 533 Acres +/-

EXHIBIT "A"  
 FULTON HOMES  
 WITH COMMERCIAL SITE  
 LEGAL DESCRIPTION

That portion of Section 18, Township 2 South, Range 8 East of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

**BEGINNING** at an aluminum cap accepted as the Northwest corner of said Section 18 from which a 2-1/2" GLO brass cap accepted as the North quarter corner thereof bears North 89 degrees 53 minutes 02 seconds East a distance of 3395.56 feet;

Thence along the north line of the Northwest quarter of said Section 18, North 89 degrees 53 minutes 02 seconds East a distance of 3395.56 feet to the North quarter corner of said Section 18;

Thence along the north line of the Northeast quarter of said Section 18, North 89 degrees 49 minutes 42 seconds East a distance of 2642.05 feet to the Northeast corner of said Section 18;

Thence along the east line of said Northeast quarter, South 00 degrees 11 minutes 57 seconds East a distance of 2642.94 feet to the East quarter corner of said Section 18;

Thence along the east line of the Southeast quarter of said Section 18, South 00 degrees 13 minutes 40 seconds East a distance of 2640.26 feet to the Southeast corner of said Section 18;

Thence along the south line of said Southeast quarter, South 89 degrees 50 minutes 19 seconds West a distance of 2642.33 feet to the South quarter corner of said Section 18;

Thence along the south line of the Southwest quarter of said Section 18, South 89 degrees 50 minutes 20 Seconds West a distance of 2642.76 feet to the east line of lot 10;

Thence along said east line, North 00 degrees 12 minutes 26 seconds West a distance of 1320.03 feet to the north line of said lot 10;

Thence along said north line, South 89 degrees 50 minutes 16 seconds West a distance of 731.26 feet to a point on the west line of said Southwest quarter;

Thence along said west line, North 00 degrees 31 minutes 02 seconds West a distance of 1138.87 feet to the East quarter corner of Section 13, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona;

Thence along the east line of the Northeast quarter of said Section 13, North 00 degrees 31 minutes 47 seconds West a distance of 2618.40 feet to the Northeast corner of said Section 13;

Thence along the east line of the Southeast quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona, North 00 degrees 27 minutes 37 seconds West a distance of 208.19 feet to the POINT OF BEGINNING.

Site area contains 30,862,676 Square Feet or 708.5096 Acres, more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

Prepared by: CMX LLC.  
7740 N. 16th Street, Suite 100  
Phoenix, AZ 85020  
Project No. 6987.01  
August 30, 2005

