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Attorneys for Johnson Utilities Company

BEFORE THE ARIZONA CORPORATION COMMISSION

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7 IN THE MATTER OF THE COMPLAINT
8 OF DIVERSIFIED WATER UTILITIES,
9 INC. AGAINST JOHNSON UTILITIES
10 COMPANY AND H2O, INC. FOR
11 POTENTIAL INTERFERENCE WITH
12 THE OPERATIONS OF AN EXISTING
13 LINE, PLANT OR SYSTEM

DOCKET NO. W-02234A-00-0775
W-02987A-00-0775
W-02859A-00-0775

JOHNSON UTILITIES COMPANY'S
RESPONSE TO DIVERSIFIED, INC.'S
NOTICE OF DISMISSAL OF H2O, INC.
WITHOUT PREJUDICE AND MOTION TO
HOLD COMPLAINT IN ABEYANCE

14 Johnson Utilities Company ("JUC") hereby responds to Diversified, Inc.'s ("Diversified")
15 above referenced motion. For reasons stated herein, the Administrative Law Judge should reject
16 Diversified's motion to hold its complaint against JUC in abeyance.

17 As recognized in the June 26, 2003, Procedural Order, the Commission has already
18 addressed and administratively resolved issues alleged in Diversified's December 2000 complaint
19 against JUC in Commission Decision Nos. 63960 (September 4, 2001) and 64062 (October 4,
20 2001) as amended in 65840 (April 22, 2003). Diversified's complaint was consolidated into
21 competing requests for extensions of certificates of convenience and necessity filed by
22 Diversified, JUC, H2O Inc. and Queen Creek Water Company in 2000 and 2001. *See Docket No.*
23 *W-02234A-00-0371 et al.* Because Diversified failed to timely request a rehearing of Decision
24 Nos. 64062 and 65840 pursuant to A.R.S. § 40-253, the issues contained in its December 2000
25 complaint against JUC are administratively moot. *See State ex rel. Church v. Arizona*
26 *Corporation Commission* (1963) 94 Ariz. 107, 382 P.2d 222.

1 Further, Diversified's claims against Pinal County in the Board of Supervisor's formation
2 of the Skyline Domestic Water Improvement District ("District") are currently before the
3 Superior Court in CV2002-003724 and CV2002-00245. The issues contained therein (i.e. District
4 formation, business interference) are outside the Commission's jurisdiction. As such, these issues
5 cannot provide a basis for the Commission to grant Diversified's motion to hold its complaint
6 against JUC in abeyance, though Diversified freely admits that it is requesting the Commission to
7 do so. *See* Diversified Motion to Hold Complaint in Abeyance at ¶ 8.

8 Diversified's claims of business interference by JUC were rejected by the Commission
9 over two years ago. *See* Transcript, December 6, 2000 ("...and if you're saying the company,
10 one company is interfering with your company's business, don't bring it to the Commission. Go
11 to Court.") at p. 63. Diversified's most recent attempt to re-assert its claims against JUC, through
12 its litigation with Pinal County and the District, occurred within the context of JUC's application
13 for retroactive extension of time to comply with Commission Decision No. 64062. In its
14 December 13, 2002 Exceptions to the Recommended Order and Opinion, Diversified argued that
15 JUC was "unfairly interfering in the business operations of Diversified." *See In the Matter of the*
16 *Applications of H2O, Inc. and Johnson Utilities Company for an Extension of Their Certificate of*
17 *Convenience and Necessity, et al.*, Diversified Exceptions at pp. 4-7. Indeed, the Commission
18 flatly rejected Diversified's business interference claims against JUC at both its December 17,
19 2002, and April 22, 2003, Open Meetings.

20 Although Diversified continues to pursue its claims against JUC in the actions before the
21 Superior Court, Diversified seeks also to cloak them under the guise of the public interest –
22 ignoring the Commission's numerous admonitions to the contrary. The Commission's regulatory
23 oversight over JUC is considerable given the requirements of Decision No. 64062 as amended,
24 and Diversified's complaint does nothing to enhance this oversight or further the public interest.
25 Therefore, the Commission should reject Diversified's motion based on the legal, administrative
26 and policy arguments contained herein.

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RESPECTFULLY SUBMITTED this 21st day of July, 2003.

FENNEMORE CRAIG, P.C.

By 

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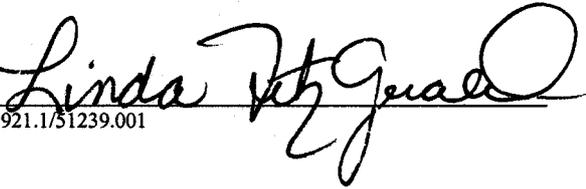
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