



28
ORIGINAL

RECEIVED
AZ CORP COMMISSION

AUG 8 4 34 PM '00

Arizona Corporation Commission
DOCKETED
BEFORE THE ARIZONA CORPORATION COMMISSION
AUG 08 2000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Carl Kunasek
Chairman

DOCKETED BY

Jim Irvin
Commissioner

William Mundell
Commissioner

IN THE MATTER OF THE APPLICATION
OF H2O, INC., FOR AN EXTENSION
OF ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET # W-02234A-00-0371

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C., DBA
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION FOR ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA.

DOCKET # W-02987A-99-0583

**JOHNSON UTILITIES' REPLY
TO H2O'S RESPONSE TO
STAFF'S MOTION TO
CONSOLIDATE**

Johnson Utilities Company ("Johnson") files this reply to H2O's response to the Arizona Corporation Commission Staff's motion to consolidate.

H2O continues to ignore the obvious. Two presently certificated water companies filed applications for certificate extensions into the same area. H2O seeks to expand from the north and Johnson from the south and southwest. The Commission must compare

1 these two requests and select one of the companies to provide service in the contested area.
2 H2O apparently feels that because it filed its request a few weeks before the Johnson
3 request¹ that H2O should be awarded the new area and the Commission should not even
4 consider Johnson's request. In H2O's view, the public interest is determined simply by
5 which company filed first. Needless to say, this "first-filed" doctrine is contrary to past
6 Commission orders and practice and is not in the public interest.
7

8 H2O protests that consolidation will slow down the hearing on the contested areas.
9 Significantly, Johnson also wants prompt resolution of these matters and has regularly
10 requested expedited treatment for the contested area portion of its application.
11 Nevertheless, Johnson believes that the Staff's processing of the uncontested areas (many
12 of which have been pending since 1999) will not inordinately delay processing the
13 contested areas.
14

15 H2O apparently wants to rush through its application before the Staff and
16 Commission have an adequate opportunity to compare the two companies and the interests
17 of the property owners. It is not surprising that H2O wants to avoid a comparison with
18 Johnson. Johnson's superior financial strength, ability to provide sewer as well as water
19 service and its designation of assured water supply make it a better candidate to serve the
20 contested areas. Many of the owners and developers in the contested areas appreciate
21 these factors and, as a result, prefer Johnson.
22
23
24
25

26 ¹ The Johnson application has been deemed sufficient by the Staff.

1 The issues with respect to the competing certificate areas are substantially the same
2 and no party's rights will be prejudiced by this consolidation. Both companies want
3 expedited treatment. Both companies want to provide water in the same service area to the
4 same property owners. Such consolidation is consistent with A.A.C. R14-3-109(H).
5
6 Thus, as the Staff recommended, these proceedings must be consolidated.

7 H2O makes some inaccurate statements in its response that should be corrected.

8 First, H2O claims that the Staff did not define or otherwise indicate what issues are
9 "uncontested" and what are "contested." This argument is a red herring. Clearly the
10 contested issues relate to the overlapping certificate requests and the uncontested issues
11 relate to those areas and services that are not overlapping.
12

13 Second, H2O states that "Staff has provided no basis for affording this special
14 treatment to Johnson." There is no special treatment. The Johnson and H2O applications
15 that overlap will be processed at the same time, as they must be. H2O presumably has no
16 interest in the uncontested areas that will be processed first.
17

18 Third, H2O mentions Johnson's purported "history of noncompliance and ongoing
19 difficulties with the Arizona Department of Environmental Quality ("ADEQ")." Johnson
20 will have an opportunity to provide a fuller record during the hearing but suffice it to say
21 that Johnson has worked constructively and successfully with the ADEQ. In fact, a recent
22 favorable ADEQ report allowed the Arizona Department of Water Resources ("ADWR")
23 to issue to Johnson a Designation of Assured Water Supply. While addressing regulatory
24
25
26

1 compliance issues, H2O of course conveniently fails to mention its own tax problems with
2 Pinal County.

3 Finally, H2O's counsel references the *Centex* complaint proceeding.² The
4 Commission is separately processing that complaint and Johnson anticipates that it will be
5 resolved successfully for Johnson.
6

7 Johnson respectfully requests that the Commission grant Staff's motion for
8 consolidation and set expedited hearings on both the uncontested and contested areas.
9

10 DATED this 8th-day of August, 2000.

11 LEWIS AND ROCA LLP

12 

13 Thomas H. Campbell
14 Gregory Y. Harris
15 40 N. Central Avenue
16 Phoenix, Arizona 85007
Attorneys for Johnson Utilities Company

17 ORIGINAL and ten (10) copies
18 of the foregoing filed this 8th day
of August, 2000, with:

19 Docket Control
20 Arizona Corporation Commission
21 1200 W. Washington Street
Phoenix, Arizona 85007

22
23
24
25
26 ² It should be noted that H2O's counsel represents Centex in that matter.

1 COPY of the foregoing hand-delivered
2 this 8th day of August, 2000, to:

3 Karen Nally, Hearing Officer
4 Hearing Division
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007

8 Mark DiNunzio
9 Utilities Division
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, AZ 85007

13 Teena Wolfe, Attorney
14 Legal Division
15 Arizona Corporation Commission
16 1200 W. Washington Street
17 Phoenix, AZ 85007

18 Robert Metli
19 Legal Division
20 Arizona Corporation Commission
21 1200 W. Washington Street
22 Phoenix, AZ 85007

23 Steve Olea
24 Assistant Director, Utilities Division
25 Arizona Corporation Commission
26 1200 W. Washington Street
Phoenix, AZ 85007

27 COPY of the foregoing mailed
28 this 8th day of August, 2000, to:

29 Richard L. Sallquist, Esq.
30 Sallquist & Drummond, P.C.
31 2525 East Arizona Biltmore Circle
32 Suite 117
33 Phoenix, Arizona 85016

LEWIS
AND
ROCA
LLP
LAWYERS

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Norman D. James
Karen E. Errant
Fennemore Craig
3003 N. Central Avenue
Phoenix, Arizona 85012-2913

Betty J. Griffin