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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
AN EXTENSION OF THEIR)
CERTIFICATES OF CONVENIENCE AND)
NECESSITY)

DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583

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

DOCKET NO. WS-02987A-00-0618

MOTION IN OPPOSITION TO
APPLICATIONS AND TO
CONTINUE HEARINGS

Diversified Water Utilities, Inc. ("Diversified") hereby opposes the above-referenced applications and moves to continue the hearings scheduled for October 19, 2000.

This motion is supported by the following facts and authorities.

1. Diversified is a public service corporation certificated by the Arizona Corporation Commission ("Commission") to provide domestic water service to all or portions of Sections 27, 34 and 35, T2S, R8E and Sections 2, 3, 4, 9, 10, 11 and 12 T3S, R8E, Pinal County, Arizona.

2. Diversified acquired its certificate from Quail Hollow Water Company and addressed the numerous regulatory deficiencies that existed in the system. In furtherance of the

1 public interest and in the performance of its obligations as a public service corporation,
2 Diversified has constructed, and is constructing lines, plant and system to render water service to
3 existing and future customers. Diversified is ready, willing and able to serve customers, in
4 accordance with the rules and regulations of the Commission, in areas both within and in the
5 vicinity of its certificated area.

6 3. Although certificated to serve all or portions of 10 sections of land, and
7 although the area has been certificated for almost four decades, less than 200 customers are served
8 by Diversified. Obviously, Diversified has experienced only nominal growth to date. In
9 preparation of anticipated growth over the next few years, Diversified has installed 8" and 12"
10 lines, has designed a new storage tank, and has applied to the Water Infrastructure Financing
11 Authority ("WIFA") to fund the tank and a new well. WIFA has listed Diversified in the fundable
12 range for 2000-2001 and Diversified will shortly be filing an application with the Commission to
13 approve financing.

14 4. Diversified is ready, willing and able to provide water service, under the
15 terms and conditions specified by the Commission, both within and in the vicinity of the existing
16 certificated area including, without limitation, Sections 28, 29, 32 and 33, T2S, R8E and Sections
17 13, 14, 15, and 16, T3S, R8E, Pinal County, Arizona. Diversified has received requests and
18 inquiries regarding providing service in those areas within the last year, many of which were
19 speculative at best, but others that are more immediate.

20 5. Johnson Utilities, L.L.C., dba Johnson Utilities Company ("Johnson") and
21 H2O, Inc. ("H2O") have filed applications to extend their respective certificated areas, all as more
22 fully set forth in the above-referenced Dockets. The applications include numerous sections
23 contiguous to, or in the vicinity of areas certificated to Diversified including, without limitation,
24 Sections 28, 29, 31, 32, 33 and 34, T2S, R8E and Sections 13, 14, 15, and 16, T3S, R8E, Pinal
25 County, Arizona.
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6. Despite being an existing water provider in the area and despite Johnson seeking to be certificated to provide sewer service within its certificated area and despite Johnson and H2O seeking to be certificated to provide water service in the sections contiguous to Diversified's existing certificated area, Diversified received no notice of the applications filed by Johnson or H2O; nor did Diversified receive notice of the hearings scheduled for October 19, 2000 on the applications. Diversified only learned of the pending applications the evening of September 24, 2000, one business day prior to the date Commission Staff was required to file its Staff Report and just one week before Intervenors' direct testimony and associated exhibits are due. Diversified has read the applications and Staff Reports and will be irreparably injured if either application is granted and, therefore, opposes both the applications in their entirety and the recommendations of Staff. Diversified is simultaneously herewith filing Motions to Intervene, a competing Application for Extension and a Complaint pursuant to A.R.S. § 40-281.

7. Because of the lack of notice, Diversified has had no opportunity to propound discovery, prepare direct testimony and associated exhibits, or otherwise prepare for the hearings presently scheduled for October 19, 2000 in the above-referenced Dockets. Further, Staff Reports make no evaluation of the public interest *vis-à-vis* service by Diversified rather than either Johnson or H2O. Nor has Staff had an opportunity to review, and incorporate into its Reports and recommendations, the Complaint and competing application of Diversified. As a result, Diversified respectfully requests that the matter be remanded back to Staff for further investigation and review and that the times for completing discovery, filing testimony and for the hearing be continued not less than ninety (90) days to afford Staff time to re-evaluate the above-referenced applications and to provide Diversified some time, albeit minimal, to prepare for hearing. Failure to grant this request would constitute a violation of Diversified's due process rights.

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8. Unless Diversified is permitted to properly prepare and present evidence in the above-referenced matters, the Commission cannot properly fulfill its obligation to the public and to Diversified, a regulated monopoly under its jurisdiction, to determine whether Johnson and H20 are fit and proper to receive the extensions they have requested, whether the public will be served by granting the extensions requested or whether the grant of the extensions will interfere with Diversified's lines, plant and system.

9. Since acquiring its initial Certificate of Convenience and Necessity from the Commission, Johnson has aggressively expanded its certificated area with questionable need or necessity for service in the areas to which it has expanded. According to Staff's September 26, 2000 Report, Johnson is already certificated to serve approximately 45 square miles of discontinuous areas stretching from the southern boundary of Queen Creek Water Company's certificated area to Florence, Arizona. Johnson's existing certificated territory, and the areas it seeks to extend into, are largely uninhabited or composed of farmland. In addition to the expanse territory and sparse population already encompassed within Johnson's certificated area, there are natural and institutional barriers to Johnson developing a contiguous certificated area in proximity to Diversified's certificated area: (i) geographic features, such as washes, create natural divisions, (ii) state land acts as a buffer; and (iii) Johnson's certificated area already extends into both the Phoenix and Pinal Active Management Areas, thereby subjecting Johnson two different standards for demonstrating an assured water supply and two different management plans.

10. According to Staff's September 26, 2000 Report, Johnson's existing 45 square mile certificated territory is currently serviced by two discontinuous service areas, separated by many miles. Johnson Ranch Distribution System covers approximately two square miles and services approximately 419 customers while the Sun Valley Farms V Water Distribution System covers approximately 1 square mile and services only approximately 37

1 customers. A third discontinuous system, according to Staff, is being constructed two miles south
2 of the Sun Valley Farms V System, but is not currently in service.

3 11. The Staff Report also indicates Johnson has failed to comply with the
4 requirements of the Arizona Department of Environmental Quality, without limitation, in timely
5 performing sampling, in notifying the public of potential health hazards created both by its failure
6 to timely take samples and where tests indicate the existence of contaminants that may pose a
7 danger to the health and safety of the public. Although the prior reported deficiencies have been
8 remedied, the ability and willingness of Johnson to comply with regulatory requirements mandate
9 further scrutiny.

10 12. Johnson now seeks to extend its monopoly over another 26 1/2 square
11 miles (or approximately another 18,495 acres) of more largely uninhabited and/or farm lands.
12 The Commission must closely examine the impacts of its regulated utilities investing heavily in
13 plant for speculative developments. It is the ratepayers that, through rates, pay the cost of
14 operating uneconomical plant and providing a return on the public service corporation's
15 investment.

16 13. Johnson's existing certificated area, as well as the vast territory sought to
17 be added thereto, is located in unincorporated areas of Pinal County and is currently a hotbed of
18 land speculation (i.e., persons acquire options on relatively inexpensive land, create paper
19 development rights by securing zoning and approvals of development plans, for the purpose of
20 selling the package at a profit). The Commission must be careful not to encourage such land
21 speculation by certificating public utilities over vast territories where actual need for service is
22 nonexistent or sparse, at best. The role of the Commission is to protect the public, not to increase
23 land valuations so speculators can turn a quick profit. The Commission's records are full of
24 certificated entities and areas that were never developed or are developing at pace much slower
25 than represented to the Commission. The Commission must closely examine whether it is the
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1 public interest or solely the monopolistic interests of a single entity that will be served by granting
2 the pending applications.

3 14. Where a service entity expands too quickly, invests significantly in plant,
4 has only a few customers (when compared to the service territory and investment in plant) and is
5 obligated to provide service to a vast undeveloped territory, as is the case with Johnson, the risk
6 placed on the ratepayer is enormous and unjustified, especially where Diversified is an alternative
7 and more economical water provider ready, willing and able to serve in all or portions of the areas
8 sought to be certificated in a manner that protects and serves the public interest.

9 15. The Commission must carefully weigh whether the public interest is best
10 served (i) by encouraging landowners to seek service from Diversified through an economical
11 extension or other improvements to Diversified's system (thereby improving the reliability of
12 Diversified's water service and lowering Diversified's cost of providing service generally) or (ii)
13 by encouraging Johnson to continue to spread its service obligations, resulting in only a greater
14 number of uneconomical discontinuous systems unduly burdening both the landowner seeking
15 service and the existing Johnson and Diversified ratepayer. We believe the answer is obvious.

16 16. Similar evaluations must be made between H2O and Diversified such as
17 the natural barrier between Diversified and H2O created by the Queen Creek Wash; a lack of
18 service requests for the area will block Diversified's ability to loop its system and block
19 Diversified's ability to maximize its economies of scale. Until Staff makes such evaluations and
20 Diversified is afforded a reasonable opportunity to prepare for hearing, this matter must be
21 continued.

22 WHEREFORE, Diversified Water Utilities, Inc. respectfully opposes the above-
23 referenced applications of Johnson and H2O and further requests the Administrative Law Judge
24 or the Commission enter an order or orders:
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1. Directing the above matters be remanded to Staff
 - a. For further evaluation and consideration of the public interest;
 - b. To more fully investigate the fitness of Johnson Utilities to provide service, the need for service in the area and the impacts of Diversified's readiness, willingness and ability to provide water service in the area sought to be certificated by either Johnson Utilities and/or H2O Water Company;
 - c. To examine geographic and institutional barriers that may constitute natural division points for the competing certificated entities;
 - d. To examine the potential adverse impacts of granting the applications on both the operational and economic viability of Diversified; and
 - e. To examine any other issue the Administrative Law Judge deems relevant to the inquiries mandated by A.R.S. §§ 40-281 and 40-282 and A.A.C. R14-2-402.
2. Consolidate or to consider concurrently the applications of Johnson, H2O and Diversified for extensions of certificated areas and Diversified's Complaint against Johnson and H2O.
3. Continue the time frames for discovery, filing testimony and for hearing for a period of not less than ninety (90) days;
4. Upon due consideration and after hearing, to deny the applications of Johnson and H2O in their entirety and to grant the relief requested in Diversified's Complaint and to grant Diversified's application to extend its certificated area; and
5. To grant such other relief as deemed just and proper.

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Respectfully submitted this 2nd day of October, 2000.

MARTINEZ & CURTIS, P.C.



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I hereby certify that on this 2nd day of October, 2000, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

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With copies of the foregoing
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