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March 10, 2003

Arizona Corporation Commission
DOCKETED

MAR 10 2003

BY HAND DELIVERY

Chairman Marc Spitzer
Commissioner Jim Irvin
Commissioner William A. Mundell
Commissioner Jeff Hatch-Miller
Commissioner Mike Gleason

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Re: Johnson Utilities, L.L.C. dba Johnson Utilities Company
Docket No. [REDACTED] WS-02987A-00-0618
Decision No. 64062 (October 4, 2001)

Dear Chairman Spitzer and Commissioners Irvin, Mundell, Hatch-Miller and Gleason:

This law firm now represents Johnson Utilities, L.L.C., dba Johnson Utilities Company ("JUC") in the above-referenced dockets. We are writing to each of you today in an effort to call to your attention an issue that we respectfully suggest the Commission has thus far overlooked, resulting in continued regulatory uncertainty for JUC, as well as Pinal County and numerous third party developers. To date we have discussed this matter with the Chief Legal Counsel and Assistant Director of the Utilities Division, but those discussions have not yielded satisfactory results. Unfortunately, we believe that the Commission has failed to adequately address our client's concerns. We also remain convinced there exists an open question concerning the legality of JUC's present water and wastewater service in areas covered by the extended certificate of convenience and necessity ("CC&N") granted to JUC in Decision No. 64062 (October 4, 2001).

On September 4, 2001, the Commission issued Decision No. 63960, subsequently amended by Decision No. 64062, which, among other things, granted JUC an extension of its existing CC&N in certain portions of Pinal County. As a condition of that extension, the Commission required two years of annual filings by JUC, within 30 days of the anniversary date of the Decision, containing documentation from the Arizona Department of Environmental Quality ("ADEQ") indicating that JUC has been in compliance with ADEQ regulations for each year. Under the Order, the time for compliance to file the appropriate documentation was November 4, 2002.

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On November 8, 2002, JUC filed with the Commission a request with Staff for a retroactive extension of time to comply with Decision No. 64062. H2O, Inc. ("H2O") had filed a similar request on November 6, 2002. On November 12, 2002, Staff filed a response in which it did not oppose either H2O's or JUC's request for an extension of time to file the required ADEQ documentation with the Commission. On December 4, 2002, Administrative Law Judge ("ALJ") Marc Stern issued his recommended order for approval of both H2O's and JUC's requests, and the matters were set for the Commission's December 17 and 18, 2002, Regular Open Meeting.

At issue is whether there has been final action, or a vote, by the Commission on JUC's November 8, 2002 request addressed in the ALJ's December 4, 2002 Recommended Opinion and Order. During the December 17, 2002, Open Meeting, there was considerable discussion amongst the Commission (Chairman Mundell and Commissioner Spitzer were present) with respect to Agenda Item No. U-13, JUC's request. We understand the position of the Commission's Legal Division to be that some form of final action did occur. Although minutes of this meeting have not been drafted or approved by the Commission, we have reviewed the audiotape forwarded upon request from the Executive Secretary. While the audiotape is of very poor quality, it contains enough information to rebut any argument that the Commission affirmatively acted to deny the relief sought by JUC, including the fact that there was no vote.

In fact, no less than twice during the session, Commissioner Spitzer refused to move the item. In response to JUC's offer to make a supplemental filing to address the questions raised by the Commission, then Chairman Mundell responded, "We'll obviously review that pleading and make a determination how we want to proceed." Following this direction, JUC filed a Motion to Amend Recommended Order ("Motion to Amend") on January 14, 2003, requesting that the matter be addressed at the February 11, 2003 regular open meeting. To date, no action has been taken.

Both the Utilities Director and Chief Legal Counsel take the position that a decision has already been made by the Commission, and that the matter will not be placed on any open meeting. Unfortunately, this calls into question the nature of that decision, if indeed already made, and whether there has been a violation of the State's Open Meeting laws in this regard.

As an itemized matter on the December 17, 2002 Open Meeting agenda, the ALJ's Recommended Opinion and Order requests legal action (approval or rejection) by the Commission, as set forth in A.A.C. R14-3-110. The recommendation had been submitted and Exceptions were filed. A.A.C. R14-3-110(A) states that, "A proceeding is submitted for decision by the Commission after taking evidence, the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer." Indeed, A.R.S. §38-431 et seq., which

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requires that any legal action¹ by public bodies must be made in public, is prominently displayed in all notices of regular and special open meetings of the Commission for precisely this purpose.

We believe that the Commission should adhere to the spirit of Arizona's Open Meeting law, which states:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe any provision of this article in favor of open and public meetings.
A.R.S. §38-431.09

The only legal action that the Commission took with respect to Item No. 13 on the December 17, 2002 Open Meeting Agenda was to direct the Hearing Division to issue a procedural order granting H2O's similar request. No final action had taken place with respect to JUC's request, leaving the matter suspended in regulatory uncertainty. Without a final order or decision of the Commission, JUC is being deprived of due process, including not only its right to a decision, but its rights under A.R.S. §40-253 and A.R.S. §40-254, respectively.

We recognize that this is not the place to debate whether JUC's request should be granted. Nevertheless, the Company remains confident that it can demonstrate to the Commission that the public interest favors granting the relief sought. Accordingly, on behalf of our client, we simply request that the Commission schedule this matter for an open meeting so the Company can be given an opportunity to present its case and demonstrate that the public interest will be served by granting JUC's original request to extend the compliance deadline.

Absent this relief, JUC respectfully submits that its due process rights will be violated. If that occurs, the Company will have no choice except to initiate legal action to compel the Commission to take action. Towards that end, attached for review by the Commission's Legal Division is a draft petition for Special Action review. Obviously, JUC prefers to avoid such measures. However, the Commission's failure to adjudicate the Company's request, and the impact of that omission on JUC, its customers, third-party landowners and Pinal County would leave no other recourse.

¹ A.R.S. §38-431 defines legal action as "a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state."

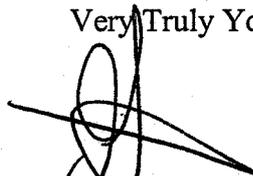
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Because time is of the essence, the Company respectfully requests a formal response indicating the Commission's position on this issue no later than March 18, 2003, with a commitment to consider JUC's request no later than April 1, 2003, if the Commission decides to schedule the matter for open meeting.

Thank you each for your time and consideration.

Very Truly Yours,



Jay L. Shapiro

Enclosure

cc: Brian McNeil, Executive Secretary
Ernest Johnson, Utilities Director
Steve Olea, Assistant Director
Chris Kempley, Chief Counsel
Marc Stern, Administrative Law Judge

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