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BEFORE THE ARIZONA CORPORATION

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2011 JUN 23 P 4: 18

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 23 2011

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES L.L.C. D/B/A JOHNSON  
UTILITIES COMPANY FOR AN EXTENSION  
OF ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR  
WATER AND WASTEWATER SERVICE.

DOCKET NO. WS-02987A-04-0288

**RENEWED PETITION TO AMEND  
DECISION 68237 PURSUANT TO  
A.R.S. §40-252  
AND  
NOTICE OF SUBSTITUTION OF  
COUNSEL**

BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
40 North Central Avenue, 14th Floor  
Phoenix, AZ 85004  
602.382.4040

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In Decision 68237 (October 25, 2005), the Arizona Corporation Commission ("Commission") conditionally approved the application of Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") to extend its certificate of convenience and necessity ("CC&N") to provide water and wastewater services for two developments known as Anthem at Merrill Ranch and Sonoran Villages. One of the conditions in Decision 68237 requires the Company to file a copy of the aquifer protection permit ("APP") for the planned but as yet unconstructed Copper Basin regional water reclamation plant ("Copper Basin WRP"). For the reasons set forth in this petition, Johnson Utilities respectfully requests that the Commission amend Decision 68237 to remove the requirement that the Company file a copy of the APP for the Copper Basin WRP. Alternatively, the Company requests that the Commission extend the deadline for filing a copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

The requirement that Johnson Utilities file a copy of the APP for the Copper Basin WRP also appears in Decision 68235 (Docket WS-02987A-05-0088) and Decision 68961 (Docket WS-02987A-05-0695). Contemporaneous with the filing of this petition, Johnson Utilities is filing petitions to amend Decisions 68235 and 68961 on the same grounds.

1 **INTRODUCTION AND BACKGROUND**

2 In Decision 68237, the Commission conditionally approved the extension of Johnson  
3 Utilities' water and sewer CC&Ns to include the first phase of Anthem at Merrill Ranch  
4 (approximately 6,000 homes) and the Sonoran Villages planned area development (approximately  
5 1,600 homes). In the decision, the Commission ordered that "Johnson Utilities ... file with  
6 Docket Control, as a compliance item in this docket, a copy of the Unified (Aquifer Protection)  
7 Water Quality Permits [issued] by ADEQ for both the Merrill Ranch Wastewater Treatment  
8 Facility and the Copper Basin Regional Wastewater Treatment Facility, within 24 months of the  
9 effective date of this Decision," or October 25, 2007.<sup>1</sup> The decision further ordered that if the  
10 Company did not comply with the specified time for compliance, the CC&N extension would be  
11 deemed null and void.

12 On October 4, 2007, Johnson Utilities timely filed with Docket Control a copy of the APP  
13 for the Anthem at Merrill Ranch wastewater treatment plant ("Anthem WRP") which serves  
14 Anthem at Merrill Ranch. In the same filing, the Company requested a two-year extension of the  
15 compliance deadline for filing a copy of the APP for the planned Copper Basin WRP, to October  
16 25, 2009. The Company explained in the filing that although the APP application for the facility  
17 was submitted to the Arizona Department of Environmental Quality ("ADEQ") on May 4, 2006,  
18 processing of the permit was unexpectedly delayed due to title problems associated with the  
19 proposed plant site property. Johnson Utilities was forced to file a lawsuit in Pinal County  
20 Superior Court Case No. CV2006-1607 to obtain clear title to the plant site property, and the  
21 Company ultimately obtained clear title to the property. The Company also informed Staff in  
22 subsequent conversations that the plant site property was zoned for industrial use and not for use  
23 as a wastewater treatment plant site, which was another issue that needed to be addressed. For  
24 these reasons, Johnson Utilities requested an extension of the original compliance deadline for  
25 submitting the APP for the Copper Basis WRP until October 25, 2009.

26 In a Staff Memorandum dated December 20, 2007, Staff recommended that the due date  
27 for Decision 68237 be extended to October 25, 2009, as requested by Johnson Utilities. On

28 <sup>1</sup> Decision 68237 at page 14, lines 19-22.

1 December 27, 2007, the Company filed a Notice of Filing and Request for Order to Release and  
2 Extend Certain Compliance Requirements of Decision No. 68237 requesting, among other things,  
3 that the Hearing Division issue a procedural order or recommended opinion and order extending  
4 the compliance date for filing a copy of the APP for the Copper Basin WRP as recommended by  
5 Staff. The Commission approved the requested extension of the compliance date in Decision  
6 70411 in Docket WS-02987A-06-0667, ordering as follows:

7 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., is hereby granted an  
8 extension of time, until October 25, 2009, to file the Aquifer Protection Permits  
9 for the Copper Basin Regional Wastewater Treatment facility, as ordered in  
Commission Decisions Nos. 68235 and 68237.<sup>2</sup>

10 In a letter to the Commission's Utilities Division Director dated September 15, 2009, and  
11 docketed September 21, 2009, Johnson Utilities requested an additional extension of the  
12 compliance deadline for filing the APP for the Copper Basin WRP. The Company explained that  
13 due to the market slowdown, construction of the Copper Basin WRP would not be needed for  
14 over five years. The Company further stated that ADEQ requires that construction commence  
15 within one year of the issuance of an APP, and that it would not be in the best interest of the  
16 Company to finish the process of obtaining the APP when construction of the Copper Basin WRP  
17 would not begin before the permit would expire. The Company requested that the filing  
18 requirement regarding the Copper Basin WRP be removed as a compliance item, in accordance  
19 with A.R.S. §40-252.

20 Because the September 15, 2009, letter referenced A.R.S. §40-252, Staff did not respond  
21 to the request, but instead, proceeded under the belief that it was incumbent upon the Commission  
22 to first decide whether to reopen and amend Decision 68237. Similarly, having submitted the  
23 written request to Staff, the Company assumed that Staff would respond to the request in the  
24 docket. As a result, the request to amend Decision 68237 simply fell between the cracks and has  
25 never been addressed. Given the passage of time since the request, the Company determined that  
26 the best approach would be to file this renewed petition to amend Decision 68237.

27  
28 <sup>2</sup> Decision 70411 at page 12, lines 17-19.

**RELIEF REQUESTED**

Johnson Utilities is currently providing water and sewer services to customers located within the Anthem at Merrill Ranch master planned community, which is within the extension area granted in Decision 68237. The Anthem WRP has been constructed and is fully operational. Johnson Utilities' sewer system has been designed and constructed so that wastewater flows coming from the Sonoran Villages development can be properly treated at the Company's Section 11 wastewater treatment plant until such time as the Copper Basin WRP is needed. With the exception of filing an APP for the Copper Basin WRP, Johnson Utilities has fully complied with all of the other conditions of Decision 68237.<sup>3</sup> The severe economic downturn that has battered the Arizona real estate market has persisted and delayed the start of many planned residential developments, including Sonoran Villages. As a result, the Copper Basin WRP will not be needed for over five years. For all of these reasons, Johnson Utilities requests that the Commission amend Decision 68237 by removing the condition that the Company file a copy of the APP for the Copper Basin WRP. As there are currently more than 1,800 customers receiving water and sewer service in the extension area, the public interest will be served by vesting the CC&N granted in Decision 68237. Alternatively, Johnson Utilities requests that the Commission extend the deadline for filing a copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

**NOTICE OF SUBSTITUTION OF COUNSEL**

Notice is hereby given that Johnson Utilities has changed its legal counsel in this docket, and future communications, pleadings, procedural orders and other filings in this docket should be addressed as follows:

Jeffrey W. Crockett, Esq.  
Brownstein Hyatt Farber Schreck LLP  
40 North Central Avenue, 14th Floor  
Phoenix, Arizona 85004  
E-mail: [jcrockett@bhfs.com](mailto:jcrockett@bhfs.com)  
Direct: (602) 382-4062  
Fax: (602) 382-4020

<sup>3</sup> Decision 71723 (June 3, 2010) in this docket acknowledges that "Johnson [Utilities] has filed and Staff has confirmed all of the required compliance filings of Decision No. 68237.

BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
40 North Central Avenue, 14th Floor  
Phoenix, AZ 85004  
602.382.4040

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With a copy to:

George H. Johnson            johnsongh@qwest.net  
cc to Michelle E. Belaski    mbelaski@qwest.net  
5230 E. Shea Boulevard #200  
Scottsdale, Arizona 85254  
phone: (480) 998-3300  
fax: (480) 483-7908

RESPECTFULLY submitted this 23rd day of June, 2011.

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP



Jeffrey W. Crockett, Esq.  
40 N. Central Ave., 14<sup>th</sup> Floor  
Phoenix, Arizona 85004  
Attorneys for Johnson Utilities, L.L.C.

ORIGINAL and thirteen (13) copies filed  
this 23rd day of June, 2011, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered  
this 23rd day of June, 2011, to:

Lyn A. Farmer, Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Steve Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION**  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
40 North Central Avenue, 14th Floor  
Phoenix, AZ 85004  
602.382.4040

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Copy of the foregoing mailed via first class  
mail this 23rd day of June, 2011, to:

Sheryl A. Sweeney, Esq.  
RYLEY, CARLOCK & APPLEWHITE  
One N. Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
Attorneys for Pulte Home Corporation

  
\_\_\_\_\_  
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