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COMMISSIONERS

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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
WATER AND SEWER SERVICES.

DOCKET NO. WS-02987A-12-0136
COMMENTS OF JOHNSON UTILITIES
ON STAFF REPORT

Pursuant to the Procedural Order dated March 12, 2013, Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") submits the following comments on the Staff Report dated April 2, 2012, in the above-captioned docket.

1. Staff Recommendation No. 1--Order Preliminary.

Utilities Division Staff ("Staff") recommends that the Arizona Corporation Commission ("Commission") grant an order preliminary to the issuance of a certificate of convenience and necessity ("CC&N") for the various phases within the requested extension areas for Bella Vista Farms and Merrill Ranch Expansion One.¹ Pursuant to the process proposed by Staff, Johnson Utilities would make a compliance filing for each separate phase of the developments and Staff would, within 30 days of each filing, docket a response in the form of a proposed order that would then be scheduled for a Commission vote.² However, Johnson Utilities believes the proposed process is overly administrative and cumbersome.

Merrill Ranch Expansion One encompasses approximately one-half square mile and includes 13 planned phases. The development is part of the Anthem at Merrill Ranch master-planned development, portions of which are already included in the Company's CC&N. In fact, Johnson Utilities has existing certificated territory adjacent to the Merrill Ranch Expansion One on the north and west, with additional certificated territory just south of the development. Thus,

¹ Staff Report at p. 5, Recommendation 1.

² Staff Report at p. 7, Recommendation 9.

1 it appears clear that this additional portion of the master-planned development would naturally
2 be served by Johnson Utilities.

3 Similarly, Bella Vista Farms encompasses approximately two square miles and includes
4 five planned phases with 13 parcels. Bella Vista Farms is already in the Company's CC&N for
5 wastewater, and Johnson Utilities has existing certificated territory on three sides of Bella Vista
6 Farms. Thus, like Merrill Ranch Expansion One, it appears clear that the Bella Vista Farms
7 development would naturally be served by Johnson Utilities.

8 Under Staff's proposed process, Staff would be required to prepare 18 separate orders to
9 be considered and approved by the Commission at 18 Open Meetings in order to include the
10 Merrill Ranch Expansion One and Bella Vista Farms developments. With a requested extension
11 area of only 2.5 square miles, this works out to one order per 89 acres.³ This will create an
12 undue burden on the Company, Staff and the Commission. Johnson Utilities believes that a
13 more efficient way to ensure compliance with all of Staff's recommendations is to issue a
14 conditional CC&N and require that the Company demonstrate compliance with each Staff
15 recommendation before the Company can begin serving a customer in a new phase of a
16 development. For example, Staff recommendation 2 already calls for the issuance of a
17 conditional CC&N with regard to the submission of an Approval to Construct for the water and
18 wastewater facilities needed to serve the first parcel in each of the requested extension areas.⁴

19 For the reasons set forth above, Johnson Utilities requests that the Commission approve a
20 conditional CC&N for the entire requested extension area as opposed to an order preliminary as
21 proposed by Staff.

22 **2. Staff Recommendations Nos. 4, 5 and 7—ADEQ Compliance Status Reports.**

23 Staff Recommendations 4, 5 and 7 are substantially the same and require that Johnson
24 Utilities "file updated ADEQ Compliance Status Reports indicating that all water systems are in
25 compliance with ADEQ regulations by December 31, 2014." The Company does not oppose
26 this recommendation, and reports that its water systems are fully compliant with the rules and

27 ³ Calculated as follows: 2.5 square miles times 640 acres per square mile divided by 18 orders equals 89
28 acres per order.

⁴ Staff Report at 5, Recommendation 2.

1 regulations of the Arizona Department of Environmental Quality (“ADEQ”) at this time. Thus,
2 Johnson Utilities is providing safe and reliable drinking water.

3 This Staff recommendation arises out of a Notice of Violation (Case ID # 133837) dated
4 October 9, 2012, (“NOV”) for the Johnson Ranch water system. According to ADEQ, an NOV
5 serves the following purpose:

6 [An NOV] is an informal compliance assurance tool used by ADEQ to put a
7 responsible party (such as a facility owner or operator) on notice that the
8 Department believes a violation of an environmental requirement has occurred. It
9 describes the facts known to ADEQ at the time of issuance and cites the
10 requirement that ADEQ believes the party has violated.

11 Although ADEQ has the authority to issue appealable administrative orders
12 compelling compliance, an NOV has no such force or effect. Rather, and NOV
13 provides the responsible party an opportunity to do any of the following before
14 ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the
15 facts surrounding the violation, (2) demonstrate to ADEQ that no violation has
16 occurred, or (3) document that the violation has been corrected.⁵

17 Johnson Utilities met twice with ADEQ to discuss the facts surrounding the NOV, and
18 the Company documented that no violations occurred in six letters to ADEQ dated November 5,
19 2012, November 21, 2012, December 5, 2012, December 10, 2012, December 17, 2012, and
20 January 2, 2013. Thus, contrary to the statement in the Staff Report,⁶ there are no major
21 deficiencies in the Company’s operations or maintenance. Johnson Utilities anticipates that
22 ADEQ will shortly close the NOV without any further action.

23 With regard to the Emergency Response Plan (“ERP”)⁷ referenced in the Staff Report,⁸
24 Johnson Utilities has made minor updates to the ERP and submitted the plan to ADEQ for
25 approval. ADEQ reviewed the ERP in March and verbally informed Johnson Utilities that the
26 ERP complies with ADEQ’s requirements and no other updates are required at this time.

27 **3. Open Notices of Violation for the Pecan and Sections 11 WTPs.**

28 The Staff Report notes in Conclusion “E” on page 5 that “the Pecan and Section 11
wastewater systems are not in compliance due to five (5) open Notice of Violations.” However,

⁵ Letter dated October 9, 2012, from ADEQ to Johnson Utilities re Case ID 133837.

⁶ Staff Report at p. 5, Conclusion “C.”

⁷ ADEQ misidentifies the Emergency Response Plan as the Emergency Operations Plan in the NOV,
which Staff then picks up in the Staff Report. The plan is called the Emergency Response Plan.

⁸ *Id.*

1 there does not appear to be a Staff recommendation associated with this conclusion. For the
2 reasons discussed below, Johnson Utilities does not believe there need be a recommendation or
3 condition associated with notices of violation.

4 The Commission previously addressed the compliance status of the Company's
5 wastewater treatment plants in Decision 73236 (June 26, 2012) in Docket WS-02987A-09-0083.
6 Decision 73236 states, in relevant part, as follows:

7 36. Staff submitted evidence which included updated ADEQ Compliance
8 Reports (dated March 3, 2012 and April 4, 2012) for all of Johnson's
9 WRPs. The updated reports show that the Pecan WRP had met the
10 compliance conditions of the NOV's, but that ADEQ is in discussions with
11 the Company to resolve the Company's liabilities for the violations cited
12 in the NOV's, and that the NOV's will remain in the open status until a
resolution is reached. The report also indicated that there are no on-going
environmental issues for the San Tan WRP and that the Anthem WRP is
in compliance with ADEQ.

13 37. Regarding the Section 11 WRP, the updated ADEQ Compliance Reports
14 indicated that the system has not met the compliance conditions for two
15 NOV's and that ADEQ is in discussions with Johnson regarding the
16 assessment of liabilities related to the violations. The report also stated
17 the NOV's would remain open until a determination as to liabilities is
resolved, but that there are no other ongoing environmental regulatory
issues concerning maintenance and operations for the Section 11 WRP
facility.

18 38. Based on the updated ADEQ Compliance Reports, Staff stated it believes
19 the Company's water and wastewater systems are currently in compliance
20 with ADEQ. Therefore, Staff eliminated its recommendation that
21 approval of Johnson's application for a CC&N extension be conditional on
the Company filing updated ADEQ Compliance Status Reports.⁹

22 Further, footnote 56 of Decision 73236 provided this additional information:

23 On July 25, 2011, the Commission issued Decision No. 72502, amending
24 Decision No. 70849 (March 17, 2009), which required Johnson to file, among
25 other things, documentation from ADEQ demonstrating that the Pecan WRP was
26 in full compliance by December 31, 2009, and that the NOV's issued on March 4,
2008 and June 5, 2008, had been closed. Based on documentation submitted by
the Company, Decision No. 72502 deemed the above conditions to have been
satisfied.¹⁰

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28 ⁹ Decision 73236 at pp. 8-9, Findings of Fact 36-38 (citations omitted).

¹⁰ *Id.* at p. 8.

1 Based upon Staff's findings, the Commission included the following ordering paragraph
2 in Decision 73236:

3 IT IS FURTHER ORDERED that Johnson Utilities, LLC shall file, as a
4 compliance item in this docket, within 30 days of said event, a notice to the
5 Commission that Johnson Utilities, LLC's negotiations with the Arizona
6 Department of Environmental Quality have concluded, the amount of any fines
7 and/or penalties assessed by Arizona Department of Environmental Quality,
8 Johnson's plan for paying such fines and/or penalties, and updating the
9 Commission on the status of the Notices of Violations issued on March 4, 2008
10 and June 5, 2008.¹¹

11 Johnson Utilities is obligated to comply with this requirement of Decision 73236
12 regarding the resolution of the outstanding notices of violations. Thus, the Company submits
13 there is no need for a recommendation or condition regarding the compliance status of its Pecan
14 or Section 11 wastewater treatment plants in this docket.

15 **4. Staff Recommendation 3—Separate Wastewater Descriptions.**

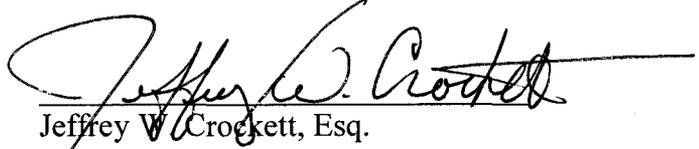
16 Staff Recommendation 3 requires Johnson Utilities to provide separate wastewater
17 descriptions for each wastewater system (for example, separate wastewater flows including peak
18 flow and average flow) in future Commission Annual Reports, beginning with the 2013 Annual
19 Report filed in 2014. The Company does not oppose this recommendation and will comply, but
20 the Staff Report is not clear whether the recommendation is part of a conditional CC&N or an
21 order preliminary, or simply a requirement that is not a condition attached to the granting of the
22 requested CC&N extensions. Because Johnson Utilities opposes the grant of an order
23 preliminary in this case for the reasons discussed above, the Company requests that Staff
24 Recommendation 3 be included as part of a conditional CC&N if, in fact, it is Staff's intention
25 that the recommendation be a condition of granting the requested CC&N extensions.
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¹¹ *Id.* at p. 11, lines 16-21.

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RESPECTFULLY submitted this 12th day of April, 2013.

BROWNSTEIN HYATT FARBER SCHRECK LLP



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ORIGINAL and thirteen (13) copies of the foregoing filed this 12th day of April, 2013, with:

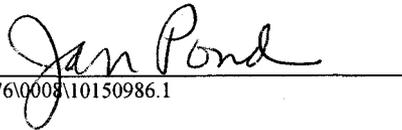
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Copy of the foregoing hand-delivered this 12th day of April, 2013, to:

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