



0000155753

EXCEPTION

OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 BOB STUMP-Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

RECEIVED

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2014 SEP -5 A 11:39

Arizona Corporation Commission

DOCKETED

SEP 5 2014

DOCKETED BY

8 IN THE MATTER OF THE APPLICATION
9 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

EXCEPTIONS OF JOHNSON
UTILITIES, L.L.C

ORIGINAL

Brownstein Hyatt Farber Schreck, LLP
One East Washington, Suite 2400
Phoenix, AZ 85004

10 On August 27, 2014, the Administrative Law Judge issued a Recommended Opinion and
11 Order (“ROO”) recommending an order preliminary for the requested CC&N extension areas in
12 this docket on the erroneous grounds that the Pecan and Santan wastewater treatment plants
13 (“WTPs”) operated by Johnson Utilities, L.L.C., (“Johnson Utilities” or the “Company”) are not
14 currently in compliance with the requirements of the Arizona Department of Environmental
15 Quality (“ADEQ”). Attached hereto as Attachments 1 and 2 are updated Wastewater
16 Compliance Status Reports issued by ADEQ on August 27, 2014, showing that the Company is
17 in operational compliance with ADEQ requirements. The unresolved compliance with ADEQ
18 pertains only to a determination of the Company’s financial liability, if any, for past notices of
19 violation (“NOVs”) involving the Pecan and Santan WTPs, and not for any ongoing violation of
20 ADEQ requirements applicable to the safe and reliable operation of the WTPs. ADEQ has
21 confirmed (with written evidence of such confirmation filed in the docket) that Johnson Utilities
22 has met all compliance conditions of the past NOVs, and those NOVs remain open only because
23 the Company and ADEQ are still discussing the Company’s financial liability for the NOVs.
24 There have been no new NOVs issued to the Company. Thus, there is no basis for an order
25 preliminary and Johnson Utilities requests that the Arizona Corporation Commission
26 (“Commission”) issue a certificate of convenience and necessity (“CC&N”) with conditions for
27 the Bella Vista Farms North and Anthem at Merrill Ranch Expansion One areas as requested by
28 Johnson Utilities and the owners of those developments. For the Commission’s consideration

1 and convenience, the Company has attached a Proposed Amendment #1 to the ROO as
2 Attachment 3.

3 **Bella Vista Farms North.**

4 Bella Vista Farms North includes approximately two square miles and is located within
5 Johnson Utilities' existing wastewater CC&N. The developer has requested that the property
6 also be included in the Company's water CC&N, which is the subject of this docket.
7 Wastewater from Bella Vista Farms North will be treated at the Company's Section 11 WTP and
8 the development will receive water service from the Company's Johnson Ranch Water System.
9 A Drinking Water Compliance Status Report dated February 7, 2014, and filed by Johnson
10 Utilities in this docket on July 1, 2014, shows that the Johnson Ranch Water System is in
11 compliance with ADEQ requirements. Wastewater Compliance Status Reports filed by Johnson
12 Utilities on July 1, 2014, and by Staff on July 24, 2014, likewise show that the Section 11 WTP
13 is in compliance with ADEQ requirements. Accordingly, Finding of Fact 43 of the ROO
14 acknowledges that the water and wastewater facilities that will serve Bella Vista Farms North
15 are in compliance with ADEQ requirements.

16 **Anthem at Merrill Ranch Expansion One.**

17 The Anthem at Merrill Ranch Expansion One includes approximately one-half square
18 mile and Johnson Utilities currently provides water and wastewater service to earlier phases of
19 the master-planned Pulte Homes development. Wastewater from Anthem at Merrill Ranch
20 Expansion One will be treated at the Company's Anthem at Merrill Ranch WTP and the
21 development will receive water service from the Company's Anthem Water System. A
22 Drinking Water Compliance Status Report dated February 7, 2014, and filed by Johnson
23 Utilities in this docket on July 1, 2014, shows that the Anthem Water System is in compliance
24 with ADEQ requirements. Wastewater Compliance Status Reports filed by Johnson Utilities on
25 July 1, 2014, and by Staff on July 24, 2014, show that the Anthem at Merrill Ranch WTP is in
26 compliance with ADEQ requirements. Accordingly, Finding of Fact 43 of the ROO
27 acknowledges that the water and wastewater facilities that will serve the Anthem at Merrill
28 Ranch Expansion One are in compliance with ADEQ requirements.

1 **Compliance Status of the Pecan WTP and the Santan WTP.**

2 The ROO incorrectly states in Findings of Fact 42, 43 and 44 that Johnson Utilities has
3 ongoing ADEQ compliance issues at its Pecan and Santan WTPs. Attached hereto as
4 Attachments 1 and 2 are updated Wastewater Compliance Status Reports for the Pecan and
5 Santan WTPs which show that those WTPs are, in fact, in operational compliance. With regard
6 to the Pecan WTP, the attached ADEQ status report dated August 27, 2014 (which supersedes
7 the status report dated July 14, 2014, which was filed by Staff in this docket on July 24, 2014),
8 states that “[b]ased upon the data submitted by the facility, ADEQ has determined that this
9 facility was not in violation at a level at which ADEQ would take an action or issue a Notice of
10 Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment
11 for the review period that is noted.”¹ The status report further states as follows:

12 ADEQ confirms that Johnson Utilities, LLC has met the “Compliance
13 Conditions” for case ID Nos. 92021, 97512 and 120285. ADEQ is in discussion
14 with Johnson Utilities, LLC to resolve the company’s liabilities cited in the
15 NOVs, and will maintain the open status of the NOVs until a resolution is
16 reached.²

17 What the report shows is that the Pecan WTP is materially compliant with ADEQ
18 requirements, but that ADEQ is still in discussions with Johnson Utilities to resolve the
19 Company’s financial liability, if any, for the past NOVs regarding the facility. Thus, it is not
20 accurate to characterize the Pecan WTP as having ongoing compliance issues. There are no
21 ongoing violations or deficiencies at the Pecan WTP, and this is confirmed by ADEQ. Thus, the
22 ROO is inaccurate when it states in Findings of Fact 43 and 44 that the Company has “ongoing
23 noncompliance” and “ongoing ADEQ compliance issues,” and this language should be
24 eliminated from the ROO.

25 Likewise, with regard to the Santan WTP, the attached ADEQ status report dated August
26 27, 2014 (which supersedes the status report dated July 14, 2014, which was filed by Staff in
27 this docket on July 24, 2014), states as follows:

28 ¹ See Attachment 1, page 2 (emphasis added).

² *Id.* at page 1 (emphasis added).

1 There is an open Notice of Violation (NOV) issued 5/30/2013. ADEQ confirms
2 that Johnson Utilities, LLC has met the “Compliance Conditions” for case ID No.
3 140548. ADEQ is in discussion with Johnson Utilities, LLC to resolve the
4 company’s liabilities cited in the NOV’s, and will maintain the open status of the
5 NOV’s until a resolution is reached.³

6 While this status report indicates that the Santan WTP is not in compliance, it makes
7 clear that “[t]he significant deficiencies were addressed and resolved under Case ID 140548.”⁴
8 Thus, just like the Pecan WTP, the Santan WTP is currently compliant with ADEQ
9 requirements, and ADEQ is still in discussions with Johnson Utilities to resolve the Company’s
10 financial liability for the past notice of violation regarding the facility. There are no ongoing
11 violations or deficiencies at the Santan WTP, and this is confirmed by ADEQ. Thus, again, the
12 ROO is inaccurate when it states in Findings of Fact 43 and 44 that the Company has “ongoing
13 noncompliance” and “ongoing ADEQ compliance issues,” and this language should be
14 eliminated from the ROO.

15 With the submission of the updated Wastewater Compliance Status Reports for the
16 Pecan and Santan WTPs attached hereto as Attachments 1 and 2, as well as other compliance
17 filings by the Company in the docket, the record is clear that all of Johnson Utilities’ water and
18 wastewater facilities and plants are operating in compliance with ADEQ requirements at this
19 time, with no material violations that would prompt ADEQ to issue an NOV or take any
20 enforcement action. Moreover, Johnson Utilities notes again that neither the Pecan WTP nor the
21 Santan WTP will provide wastewater service to Bella Vista Farms North or Anthem at Merrill
22 Ranch Expansion One. Because the recommendation in the ROO for an order preliminary is
23 based upon an inaccurate finding that the Pecan and Santan WTPs have ongoing noncompliance,
24 the Commission should modify the ROO by issuing a CC&N with conditions for each of the
25 requested CC&N extension areas rather than an order preliminary.

26 Further, the references in the ROO to the Commission’s concern about the Company’s
27 commitment to provide safe and reliable service are unwarranted and not supported by the
28 record in this and other dockets pertaining to the Company. Johnson Utilities takes seriously its

³ See Attachment 2 at page 1 (emphasis added).

⁴ *Id.* at page 2 (emphasis added).

1 obligation to provide safe and reliable service to its current and future customers, and the
2 Company believes that its record reflects this commitment. The language in the ROO
3 questioning the Company's commitment to safety and reliability is inconsistent with the many
4 past findings by this Commission that Johnson Utilities is a fit and property entity to hold a
5 CC&N, and is inconsistent with the same finding in this ROO as set forth in Conclusion of Law
6 5. Thus, Johnson Utilities requests that the Commission amend the ROO as set forth in the
7 Proposed Amendment #1 attached hereto as Attachment 3 and issue a CC&N with conditions
8 for the requested extension areas.

9 RESPECTFULLY submitted this 5th day of September, 2014.

10 BROWNSTEIN HYATT FARBER SCHRECK LLP

11 

12 Jeffrey W. Crockett, Esq.
13 One East Washington Street, Suite 2400
14 Phoenix, Arizona 85004
15 Attorneys for Johnson Utilities, L.L.C.

16 ORIGINAL and thirteen (13) copies of the
17 foregoing filed this 5th day of September, 2014, with:

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

20 COPY of the foregoing hand-delivered
21 this 5th day of September, 2014, to:

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

24 Janice Alward, Chief Counsel
25 Legal Division
ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, Arizona 85007
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ATTACHMENT 1



**Wastewater Compliance Status Report
Water Quality Compliance Section
1110 W. Washington
Phoenix, AZ 85007**

Facility Name: JOHNSON UTILITIES – PECAN WRP	Date: 8/27/2014 (Supersedes compliance status report on 7/14/2014)
Permit Issuance Date: APP: 2/22/2012	Permit #: N/A 105324 <input type="checkbox"/> AZPDES <input checked="" type="checkbox"/> Aquifer Protection Permit (APP)
LTF #: APP: 48606 AZPDES: N/A	Place ID: 18583
Date of Last Inspection: 3/25/2014	Compliance Period: 4/1/2013 – 3/31/2014
Evaluation Completed by: TRACY BUNCH	Phone: 602-771-4571

Overall Compliance Status General Statement

The following is the evaluation of the compliance status for the above named facility. Please note that the compliance status of a facility may change based upon subsequent monitoring results or a facility inspection. This compliance review is based on information available as of the date of this document.

ADEQ confirms that Johnson Utilities, LCC has met the "Compliance Conditions" for case ID Nos. 92021, 97512 and 120285. ADEQ is in discussion with Johnson Utilities, LCC to resolve the company's liabilities cited in the NOV's, and will maintain the open status of the NOV's until a resolution is reached.

Comments:

Review of the APP reporting requirement and monitoring results that have been submitted for this period indicate the facility self-reported the following monitoring and reporting violations:

- 1 daily exceedance for Fecal Coliform in 1st quarter 2014 at monitoring point 91561, at Phase II Effluent Pump Station.
- 7 daily exceedances for Fecal Coliform 4 of 7 Samples 1st quarter 2014 at monitoring point 91561, Phase II Effluent Pump Station.
- 1 daily exceedance for Fecal Coliform (Reuse) in 1st quarter 2014 at monitoring point 91564, Class A+ - Effluent Pump Station.
- 5 daily exceedances for Fecal Coliform (Reuse) 4 of 7 Samples in 1st quarter 2014 at monitoring point 91564, Class A+ - Effluent Pump Station.

Compliance Review: Check All That Apply			
<input type="checkbox"/>	Self-Monitoring Report Form Deficiencies (APP)	<input type="checkbox"/>	Notice of Opportunity to Correct
<input type="checkbox"/>	Self-Monitoring Report Form Missing Parameter (APP)	<input type="checkbox"/>	Notice of Violation
<input checked="" type="checkbox"/>	Self-Monitoring Report Form Discharge Limit Exceedances (APP)	<input type="checkbox"/>	Administrative Order
<input type="checkbox"/>	Discharge Monitoring Report Form Missing Parameter (AZPDES)	<input type="checkbox"/>	Consent Judgment
<input type="checkbox"/>	Discharge Monitoring Report Form Deficiencies (AZPDES)	<input type="checkbox"/>	Other:
<input type="checkbox"/>	Discharge Monitoring Report Form Exceedances (AZPDES)	<input type="checkbox"/>	
<input type="checkbox"/>	Late Report Submittal	<input type="checkbox"/>	
<input type="checkbox"/>	Non-Submittal		



Wastewater Compliance Status Report
Water Quality Compliance Section
1110 W. Washington
Phoenix, AZ 85007

<input type="checkbox"/>	Based upon the data submitted by the facility, ADEQ has determined that as of this date this facility was currently in compliance for the review period noted above.
<input checked="" type="checkbox"/>	Based upon the data submitted by the facility, ADEQ has determined that this facility was not in violation at a level at which ADEQ would take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period noted above.
<input type="checkbox"/>	Based upon the data submitted by the facility, ADEQ cannot determine the compliance status until the facility corrects missing and/or deficient data for the review period noted above.
<input type="checkbox"/>	Based upon the data submitted by the facility noted above, ADEQ has determined this facility was not in compliance with its permit(s), wastewater regulation, and/or Order/Judgment for the review period above.

ATTACHMENT 2



**Wastewater Compliance Status Report
Water Quality Compliance Section
1110 W. Washington
Phoenix, AZ 85007**

Facility Name: JOHNSON UTILITIES – SANTAN WRP	Date: 8/27/2014 (Supersedes compliance status report on 7/14/2014)
Permit Issuance Date: APP: 10/24/2007	Permit #: N/A 105325 <input type="checkbox"/> AZPDES <input checked="" type="checkbox"/> Aquifer Protection Permit (APP)
LTF #: APP: 43235 AZPDES: N/A	Place ID: 18584
Date of Last Inspection: 12/5/2013	Compliance Period: 4/1/2013 – 3/31/2014
Evaluation Completed by : TRACY BUNCH	Phone: 602-771-4571

Overall Compliance Status General Statement

The following is the evaluation of the compliance status for the above named facility. Please note that the compliance status of a facility may change based upon subsequent monitoring results or a facility inspection. This compliance review is based on information available as of the date of this document.

Comments

Review of the APP reporting requirement and monitoring results that have been submitted for this period indicate the facility self-reported the following monitoring and reporting violations:

- 4 daily exceedances for Turbidity in 2nd quarter 2013 at monitoring point 114123, Class A+.
- 6 daily exceedances for Daily Ave Turbidity in 2nd quarter 2013 at monitoring point 114123, Class A+.
- 14 daily exceedances for Daily Ave Turbidity in 4th quarter 2013 monitoring point 11423, Class A+
- 3 daily exceedances for Daily Ave Turbidity in 1st quarter 2014 monitoring point 114123, Class A+
- 1 daily exceedances for Turbidity in 1st quarter 2014 monitoring point 114123, Class A+

There is an open Notice of Violation (NOV) issued 5/30/2013. ADEQ confirms that Johnson Utilities, LCC has met the "Compliance Conditions" for case ID No. 140548. ADEQ is in discussion with Johnson Utilities, LCC to resolve the company's liabilities cited in the NOV's, and will maintain the open status of the NOV's until a resolution is reached.

Compliance Review: Check All That Apply			
<input type="checkbox"/>	Self-Monitoring Report Form Deficiencies (APP)	<input type="checkbox"/>	Notice of Opportunity to Correct
<input type="checkbox"/>	Self-Monitoring Report Form Missing Parameter (APP)	<input checked="" type="checkbox"/>	Notice of Violation CASE # 140548
<input checked="" type="checkbox"/>	Self-Monitoring Report Form Discharge Limit Exceedances (APP)	<input type="checkbox"/>	Administrative Order
<input type="checkbox"/>	Discharge Monitoring Report Form Missing Parameter (AZPDES)	<input type="checkbox"/>	Consent Judgment
<input type="checkbox"/>	Discharge Monitoring Report Form Deficiencies (AZPDES)	<input type="checkbox"/>	Other
<input type="checkbox"/>	Discharge Monitoring Report Form Exceedances (AZPDES)	<input type="checkbox"/>	
<input type="checkbox"/>	Late Submittals	<input type="checkbox"/>	
<input type="checkbox"/>	Non-Submittal		



Wastewater Compliance Status Report
Water Quality Compliance Section
1110 W. Washington
Phoenix, AZ 85007

<input type="checkbox"/>	Based upon the data submitted by the facility, ADEQ has determined that as of this date this facility was currently in compliance for the review period noted above.
<input type="checkbox"/>	Based upon the data submitted by the facility, ADEQ has determined that this facility was not in violation at a level at which ADEQ would take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period noted above.
<input type="checkbox"/>	Based upon the data submitted by the facility for the review period noted above, ADEQ cannot determine the compliance status until the facility corrects missing and/or deficient data.
<input checked="" type="checkbox"/>	Based upon the data submitted by the facility, ADEQ has determined this facility was not in compliance with its permit(s), wastewater regulation, and/or Order/Judgment for the review period noted above.

The significant deficiencies were addressed and resolved under Case ID 140548.

ATTACHMENT 3

PROPOSED AMENDMENT # 1

DATE PREPARED: September 3, 2014

COMPANY: Johnson Utilities, L.L.C.

DOCKET NO.: WS-02987A-12-0136

OPEN MEETING DATES: September 9, 2014

AGENDA ITEM: U-16

Page 6, line 26,

ADD the following new text:

On September 4, 2014, Johnson filed Exceptions which attached updated Wastewater Compliance Status Reports dated August 27, 2014, for the Pecan and San Tan WTPs which show that those plants are operating in compliance with applicable requirements of ADEQ, with no material violations that would prompt ADEQ to take enforcement action.

Page 14, line 19,

ADD a new FINDING OF FACT 38, as follows:

38. On September 4, 2014, Johnson filed copies of updated ADEQ Wastewater Compliance Status Reports dated August 27, 2014, showing that the Pecan and Santan WTPs are operating in compliance with applicable requirements of ADEQ, with no material violations that would prompt ADEQ to take enforcement action. In addition, the updated status reports show that Johnson has met the compliance conditions associated with the May 30, 2013, NOV at the San Tan WRP.

RENUMBER the existing Finding of Fact 38 and the remaining Findings of Fact.

Pages 15 and 16,

DELETE FINDINGS OF FACT 42 through 45 and REPLACE with the following new FINDING OF FACT 42:

42. Johnson's most recent filing shows that the Company's Pecan and San Tan WRPs are operating in compliance with applicable ADEQ requirements, with no material violations that would prompt ADEQ to take enforcement action. In addition, the filing shows that the Company has met the compliance conditions associated with the May 30, 2013, NOV at the San Tan WRP. Therefore, we will not adopt Staff's recommendation for the issuance of an OP.

RENUMBER the remaining Findings of Fact.

Page 16, lines 14-15,

DELETE the words “once the Company establishes that all of its water and wastewater systems are in compliance with ADEQ regulations.”

Page 17, line 1,

DELETE from CONCLUSION OF LAW 5 the words “an Order Preliminary” and replace with “a Conditional CC&N.”

Page 17, line 5,

DELETE from the ORDERING PARAGRAPH the words “an Order Preliminary” and replace with “a Conditional CC&N.”

Page 17, lines 9-21,

DELETE the three ORDERING PARAGRAPHS.

Make all other conforming changes.

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