

OPEN MEETING AGENDA ITEM
BEFORE THE ARIZONA CORPORATION CO.



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
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BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. FOR APPROVAL
TO EXTEND ITS CERTIFICATES OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
UTILITY SERVICES IN ARIZONA.

DOCKET NO. WS-02987A-12-0136

**REQUEST FOR CLARIFICATION OF
RECOMMENDED OPINION AND
ORDER**

Arizona Corporation Commission Staff ("Staff") hereby requests clarification of the Recommended Opinion & Order ("ROO") regarding the application of Johnson Utilities, L.L.C., ("Johnson" or "Company") for approval to extend its Certificate of Convenience and Necessity ("CC&N") to provide water services to the area known as Bella Vista North (located approximately 0.7 miles from the Town of Florence) and to provide water and sewer services to Merrill Ranch Expansion One (located within the limits of the Town of Florence).

Staff has reviewed the ROO and requests clarification of Finding of Fact No. 46 and Conclusion of Law No. 4, as well as the resulting order set forth below:

[Finding of Fact] 46. Staff's modified recommendations carve out four Units in the Merrill Ranch Expansion One extension area that are to remain subject to an OP even after ADEQ compliance is shown. When asked to clarify Staff's reasoning for the continuing need for an OP once Johnson establishes it is in compliance with ADEQ requirements, Staff filed a Status Update stating, "Staff has not changed its position or rationale from what was expressed in the closing and reply briefs that were filed on May 22, 2013 and August 6, 2013 respectively in this docket." We can find no discussion or explanation by Staff as to why Units 59A, 59C, 59D, and 59E should remain subject to an OP once ADEQ compliance is demonstrated. Without an articulable basis for issuing a continuing OP for the four areas within an 18-phase extension area, we find it appropriate to subject these areas to the same requirements as the remainder of the extension areas. As such, once the Company establishes that all of its water and wastewater systems are in compliance with ADEQ regulations, these four areas should be reviewed for a conditional CC&N along with the remainder of the extension areas....

[Conclusion of Law] 4. There is a public need and necessity for water and wastewater service in the proposed extension areas described in Exhibit A, attached hereto and incorporated herein by reference....

1 IT IS FURTHER ORDERED that Staff shall file, within thirty days of the Company's
2 filing indicating that all water and wastewater systems are in compliance with Arizona
3 Department of Environmental Quality regulations, a Staff response in the form of a
4 Proposed Order confirming compliance and granting a conditional CC&N for an
5 extension to include the areas included in the Order Preliminary; and that the Proposed
6 Order confirming compliance should then be scheduled as soon as possible for
7 Commission vote.

8 As the ROO recognizes, this matter has had a lengthy and mutating history, resulting from the
9 ever-changing status of the Company's compliance with the requirements of the Arizona Department
10 of Environmental Quality (ADEQ) and the Company's 2013 application to sell its assets and cancel
11 its CC&N, now withdrawn. From the filing of its Staff Report of April 2, 2013, and continuing
12 through the hearing and post-hearing filings, Staff has consistently recommended Orders Preliminary
13 (as opposed to Conditional CC&Ns or CC&Ns subject to conditions) on two different bases: the
14 Company's non-compliance with ADEQ requirements and the resulting Notices of Violation
15 ("NOV"s) and the absence of engineering data and/or ADEQ issued Approvals to Construct ("ATC")
16 water and wastewater facilities for the first parcel of each specified unit.¹

17 Staff's recommended requirement regarding the ATCs was based on the requirements for
18 issuance of a CC&N as set forth in of A.A.C. R14-2-402(B)(5)(n) before a CC&N can be issued, to
19 wit:

20 A complete description of the facilities proposed to be constructed, including a
21 preliminary engineering report with specifications in sufficient detail to describe each
22 water system and the principal components of each water system (e.g., source, storage,
23 transmission lines, distribution lines, etc.) to allow verification of the estimated costs
24 provided under subsection (B)(5)(o) and verification that the requirements of the
25 Commission and the Arizona Department of Environmental Quality can be met.

26 Staff presented evidence via both its Staff Report and its hearing testimony in support of both
27 conditions. The Company submitted an engineering analysis an updated Preliminary Engineering
28 Analysis ("Analysis") dated May 18, 2013, for the Merrill Ranch Expansion One extension area,
Units 53A, 53B, 55A, 55B, 55C, 57A, 57B, 59A, 59B, 59C, 59D, 59E and Phase I11 of the Merrill
Ranch Expansion One area. As Staff's closing brief was due the following day, Staff was unable to
address that filing in its initial brief. However, it did so in its reply of August 6, 2013.

¹ Staff Report, at pages 5-6.

1 This matter remained idle from December 31, 2013, when the Company filed an application
2 to transfer its assets and cancel its CC&N, until May 23, 2014, when the Company sought to
3 withdraw that application. On June 25, 2014, the Hearing Division issued a procedural order
4 directing, inter alia, that Staff docket a filing on or before July 2, 2014, “updating and clarifying its
5 position and its rationale as it pertains to the status of Johnson’s NOV’s from October 12, 2012 and
6 May 30, 2013 as well as Staff’s continued recommendation for an Order Preliminary, once the NOV’s
7 reach resolution, for a portion of the extension area for updated engineering analysis or ADEQ-
8 ATCs.”

9 Given the fact that only the status of the NOV’s continued to be updated, Staff read the
10 procedural order as requiring an update as to the issues of both the NOV’s and the engineering
11 analyses and ATCs but required clarification only as regarding the NOV’s. Thus Staff provided
12 updates on the NOV’s and further stated that, as to the engineering analyses and ATC, affirmed its
13 position as set forth in the August 6, 2013, Notice of Filing Reply. Based on the ROO issued herein, it
14 now appears that further clarification of Staff’s position of the engineering issues was being
15 requested.

16 Again, as noted, Staff has consistently recommended the issuance of ATCs before certain
17 projects, to occur some years in the future, in order to comply with the apparent intent of A.A.C. R14-
18 2-402(B)(5)(n) as revised by this Commission in 2010. Staff witness Bob Gray testified on this point
19 at hearing on April 18, 2013, noting Staff’s concerns that for certain of the projects far in the future,
20 some as far as 2022, the type of detail required by A.A.C. R14-2-402(B)(5)(n) simply did not exist.²

21 Staff believes that this testimony and the recommendations contained in the Staff Report and
22 in the August 6, 2013, filing constitute an articulable basis for issuing a OPs regarding certain units
23 which lack both ATCs and engineering analyses once ADEQ compliance is demonstrated.
24 Furthermore, Staff clarified in its August 6, 2013, filing which units should remain subject to an OP,
25 stating: “When the Company resolves the NOV’s Staff recommends that the Company receive
26 conditional CC&N for all requested extension areas **except** Merrill Ranch Expansion One Units 59A,
27

28

² TR at page 88 lines 2-16.

1 59C, 59D and 59E.³ The units are not scheduled to begin construction until June 2019, June 2020,
2 December 2019, and December 2020, respectively, reflecting Staff's concern regarding the granting
3 of a conditional CC&N for areas far into the future.⁴

4 Staff proposes that Finding of Fact No. 46 be clarified as follows:

5 [Finding of Fact] 46. Staff's modified recommendations carve out four Units in the
6 Merrill Ranch Expansion One, Units 59A, 59C, 59D and 59E, extension area that are
7 to remain subject to an OP until an Arizona ADEQ ATC water and wastewater
8 facilities for the first parcel of each specified Unit are four Units in the Merrill Ranch
9 Expansion One, Units 59A, 59C, 59D and 59E, docketed, even after ADEQ
10 compliance is shown. We find it appropriate to except these areas from the
11 requirements as the remainder of the extension areas. As such, only when the
12 Company establishes that all of its water and wastewater systems are in compliance
13 with ADEQ regulations and an Arizona ADEQ Approval to Construct water and
14 wastewater facilities for the first parcel of each specified Unit are docketed, each of
15 these four areas should be reviewed for a conditional CC&N.

12 Staff recommends that Conclusion of Law No. 4 be clarified as follows:

13 [Conclusion of Law] 4. There is a public need and necessity for water and wastewater
14 service in the proposed extension areas described in Exhibit A, attached hereto and
15 incorporated herein by reference, except for four Units in the Merrill Ranch Expansion
16 One, Units 59A, 59C, 59D and 59E.

16 Staff recommends that the ordering paragraph of the ROO at page 17, lines 13 – 18 be
17 clarified and replaced by the following:

18 IT IS FURTHER ORDERED that that the Company docket as a compliance item in
19 this docket no later than May 1, 2019 for Unit 59A; November 1, 2019 for Unit 59D;
20 May 1, 2020 for Unit 59C; and November 2020 for Unit 59E, a copy of the ADEQ-
21 ATC for water and wastewater facilities needed to serve the first parcel in each Unit.

21 IT IS FURTHER ORDERED that Staff shall file, within thirty days of the Company's
22 filing indicating that all water and wastewater systems are in compliance with Arizona
23 Department of Environmental Quality regulations, a Staff response in the form of a
24 Proposed Order confirming compliance and granting a conditional CC&N for an
25 extension to include the areas included in the Order Preliminary except four Units in
26 the Merrill Ranch Expansion One, Units 59A, 59C, 59D and 59E; and that the
27 Proposed Order confirming compliance should then be scheduled as soon as possible
28 for Commission vote.

26 IT IS FURTHER ORDERED that for any of the four Units in the Merrill Ranch
27 Expansion One, Units 59A, 59C, 59D and 59E, Staff shall file, within thirty days of

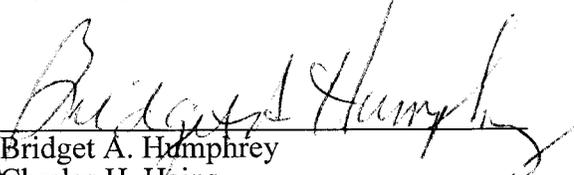
28 ³ Staff's Notice of Filing Reply, August 6, 2013, at page 2, lines 2- 4 (emphasis added).

⁴ Staff Report, Exhibit 1 Engineering Memorandum, at page 5.

1 the Company's filing indicating that all water and wastewater systems are in
2 compliance with Arizona Department of Environmental Quality regulations or that an
3 ADEQ Approval to Construct water or wastewater facilities for the first parcel of each
4 specified Unit has been issued, whichever occurs later, a Staff response in the form of
5 a Proposed Order confirming compliance and granting a conditional CC&N for an
6 extension to include the areas included in the Order Preliminary; and that the Proposed
7 Order confirming compliance should then be scheduled as soon as possible for
8 Commission vote.

9 Staff believes that its recommendations regarding the ATCs and engineering issues are
10 consistent with the intent of A.A.C.R14-2-402(B)(5)(n). Staff apologizes for its misunderstanding of
11 the June 25, 2014, Procedural Order.

12 RESPECTFULLY SUBMITTED this 5th day of September, 2014.

13 
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21 Original and thirteen (13) copies
22 of the foregoing filed this
23 5th day of September, 2014 with:

24 Docket Control
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, Arizona 85007

28 Copy of the foregoing mailed and/or emailed this
5th day of September, 2014 to:

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