

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: December 4, 2001
DOCKET NO: SW-0402A-01-0228 et al.
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA UTILITY AND SUPPLY SERVICES ET AL.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 13, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 18 AND 19, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A.MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
ARIZONA UTILITY SUPPLY AND SERVICES,
LLC FOR A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE SEWER
SERVICE TO PORTIONS OF PINAL COUNTY,
ARIZONA.

DOCKET NO. SW-0402A-01-0228

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. DBA JOHNSON
UTILITIES COMPANY FOR AN EXTENSION OF
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
SERVICE TO THE PUBLIC IN THE DESCRIBED
AREA IN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-01-0295

DECISION NO. _____

OPINION AND ORDER

DATES OF HEARING:

August 15 and 16, 2001

PLACE OF HEARING:

Phoenix, Arizona

PRESIDING ADMINISTRATIVE LAW JUDGE:

Mr. Marc E. Stern

APPEARANCES:

Moyes Storey, by Mr. Brad K. Keogh
and Mr. Jeffrey C. Zimmerman, on
behalf of Arizona Utility Supply and
Services, LLC;

Lewis and Roca, L.L.C., by Mr. Thomas
H. Campbell, Mr. Michael L. Denby and
Mr. Michael Hallam, on behalf of
Johnson Utilities, L.L.C., dba Johnson
Utilities Company; and

Ms. Janice Alward, Assistant Chief
Counsel, Legal Division, on behalf of the
Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On March 15, 2001, Arizona Utility Supply and Services, LLC ("AUSS") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide public wastewater utility service to various parts of Pinal

1 County, Arizona.

2 On April 10, 2001, Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC") filed an
3 application for an extension of its Certificate to provide public wastewater utility service to various
4 parts of Maricopa and Pinal Counties, Arizona.

5 On April 20, 2001, JUC filed an application to intervene, or in the alternative, request for
6 consolidation ("Motion") stating that JUC had recently filed an application to expand its wastewater
7 Certificate in the above-captioned docket and that its application overlapped, to a certain extent, the
8 application of AUSS herein.

9 On April 26, 2001, the Commission's Utilities Division ("Staff") filed its response to JUC's
10 Motion indicating that it did not oppose intervention or consolidation on the overlapping areas
11 involving the wastewater applications.

12 On May 1, 2001, AUSS filed its response to JUC's Motion indicating that it did not object to
13 the intervention or consolidation.

14 On May 2, 2001, JUC filed an amendment to its application in order to include some
15 additional parcels for which it is requesting the Commission's approval to provide wastewater
16 service.

17 Subsequently, the applications of AUSS and JUC were deemed administratively complete.

18 On May 29, 2001, by Procedural Order, the Commission consolidated the AUSS application
19 and the JUC application as amended for purposes of hearing.

20 The parties were also ordered to provide notice of the applications and hearing thereon.

21 On August 15, 2001, a full public hearing was commenced before a duly authorized
22 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. AUSS, JUC, and
23 Staff appeared with counsel. At the outset of the proceeding, public comment was taken from several
24 members of the public who are developers in portions of the areas involved in the proceeding.
25 Testimony was taken from various witnesses and numerous exhibits were admitted into evidence
26 during the course of the proceeding. Following the conclusion of the hearing and the filing of closing
27 briefs, the matter was taken under advisement pending submission of a Recommended Opinion and
28

1 Order to the Commission¹.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. AUSS is an Arizona limited liability company which, on March 15, 2001, filed an
7 application for a Certificate to provide wastewater service to slightly more than five sections of land
8 in various parts of Pinal County, Arizona. As a result of Decision No. 63960 (September 4, 2001),
9 which approved an area known as Pecan Ranch for wastewater service by JUC, AUSS deleted those
10 areas from its initial application herein and filed a revised legal description for the requested parcels
11 which area is more fully described in Exhibit A attached hereto.

12 2. AUSS has two members, one of whom, Mr. Maurice Lee, acts as its manager. The
13 other member of AUSS, Mr. Stephen Kohner, was involved with the development of the Links at
14 Ocotillo ("Links"), a 100 unit manufactured home subdivision. Mr. Kohner was responsible for the
15 construction of the Links treatment plant and its transfer to the Links Homeowner's Association
16 ("Association") which retained AUSS to operate and maintain the facility.

17 3. If AUSS' application is approved, it has an option to purchase the Links' plant.

18 4. JUC, pursuant to authority granted by the Commission, is certificated to provide both
19 water and wastewater utility service to over 650 customers in an area consisting of more than 50
20 square miles southeast of Queen Creek in various portions of Pinal County, Arizona.

21 5. On April 10, 2001, and as amended on May 2, 2001, JUC filed an application for an
22 extension of its existing Certificate to provide wastewater service in various parts of Maricopa and
23 Pinal Counties, a portion of which includes all of the same areas in Pinal County sought by AUSS.
24 With the instant application, JUC is seeking to provide wastewater utility service to approximately 31
25 more sections of land containing approximately 19,800 acres which area is more fully described in

26 _____
27 ¹ On November 14, 2001, JUC filed what was captioned, "Application for Order Prohibiting AUSS from Constructing
28 Utility Plant and Offering Public Utility Service Pending a Ruling on CC&N Applications and Request for Expedited
Hearing" ("Application for Order of Prohibition"). On November 30, 2001, AUSS filed its response to JUC's
Application for Order of Prohibition requesting that it be denied arguing that the issue had been presented in this
proceeding.

1 Exhibit B attached hereto.

2 6. Notice of the above-captioned applications was given in the manner prescribed by law.

3 AUSS APPLICATION

4 7. During the public comment portion of the proceeding, representatives of Woodside
5 Homes ("Woodside") and Great Western Homes, developers who are in the process of constructing
6 in excess of 1,500 homes, spoke in support of the application by AUSS. Additionally, the owner and
7 developer of a number of mobile home parks commented that he had previously retained Mr. Lee and
8 was highly satisfied with the work he performed at one of these facilities, a 770 unit trailer park in
9 Apache Junction, Arizona.

10 8. In support of its application, AUSS called the following witnesses to testify on its
11 behalf: Mr. John Poulsen, a representative of Providence Development, Inc. ("Providence"), a
12 developer; Mr. Jack Bale, a former compliance manager for the Arizona Department of Environment
13 Quality ("ADEQ"); and Mr. Maurice Lee.

14 9. Mr. Poulsen testified that his company is in the process of developing 930 lots on
15 approximately 280 acres in what is known as the Castlegate subdivision. Providence has requested
16 wastewater service from AUSS.

17 10. Mr. Poulsen indicated that he was familiar with JUC's manager, Mr. George Johnson,
18 and has heard of problems that he has experienced in the provision of wastewater service in the
19 Johnson Ranch area.

20 11. Mr. Poulsen recalled that Mr. Johnson had contacted him about providing service to
21 Providence's development approximately 6 months earlier. At that time, Mr. Johnson had predicted
22 that he could extend sewer service to the development within 90 days. Based on his experience, Mr.
23 Poulsen believed this to be impossible and stated that he had "greater confidence that the Cardinals
24 will win the Super Bowl this year."

25 12. Mr. Bale recalled working with Mr. Lee during a time when Mr. Lee contracted with
26 ADEQ to renovate a deficient wastewater treatment facility in order to bring it into compliance with
27 ADEQ's rules.

28 13. Mr. Bale praised Mr. Lee's work done for ADEQ, stating that Mr. Lee did an

1 "excellent job."

2 14. Mr. Bale also recalled the work performed by Mr. Lee to renovate the Sierra Entrada
3 project in Apache Junction in order to bring it also into compliance with ADEQ rules after the owner
4 of the package wastewater system serving a trailer park let it deteriorate to the point that raw sewage
5 was flowing off the property.

6 15. At the request of Mr. Lee and AUSS, Mr. Bale had reviewed ADEQ records with
7 respect to JUC's and AUSS facilities. He stated that with respect to AUSS that although there were
8 four to five violations, they were of a minor nature and resolved within 30 days. With respect to
9 JUC, there were notices of violations involving a three year period that resulted in a series of three to
10 four consent agreements between ADEQ and JUC.

11 16. Mr. Bale described the consent agreements between ADEQ and JUC as "the only way
12 that the Department legally has of allowing the facility time beyond according to the policy the 90
13 days, I believe, which is the maximum to allow a facility to work to set right a violation." Mr. Bale
14 went on the state that these violations threatened the public health in terms of excessive nitrates and
15 coliform material. The records established that JUC failed to provide notice to its customers of these
16 water quality problems as required by ADEQ's rules.

17 17. Mr. Bale found that fines levied against JUC's water division were slightly in excess
18 of \$10,000.

19 18. Mr. Bale also referenced a consent agreement between ADEQ and JUC with respect to
20 its sewage operations to vault and haul sewage from over 100 homes. This was a practice which was
21 not generally allowed when he had been involved with ADEQ as its compliance manager.

22 19. Under cross-examination, Mr. Bale described the vault and haul process as a method
23 utilized whereby sewage collects in a sewer utility's collection system because its treatment plant
24 cannot process the waste material and the collected material is pumped into trucks that transport it to
25 a wastewater treatment plant.

26 20. Mr. Bale went on to describe a situation presently existing between AUSS and ADEQ
27 involving the construction by AUSS of what is known as the Cambria Sewage Treatment Facility
28 ("Cambria") for Woodside. Cambria has a design capacity of 500,000 gallons per day of treatment

1 and is 60 percent complete, but AUSS is subject to a notice from an ADEQ manager of its water
2 quality enforcement unit advising Mr. Lee and AUSS that construction of the Cambria facility was in
3 violation of ADEQ rule R18-5-303 because AUSS had not secured a Certified Area-wide Water
4 Quality Management ("208") Plan ("208 Plan") before construction of any sewage treatment facility.
5 Additionally, the ADEQ letter points out that the operation of the Cambria facility without a Aquifer
6 Protection Permit ("APP") would violate Arizona law and the APP cannot be issued without the
7 approval of its 208 Plan by the area authority, in this case, the Central Arizona Association of
8 Governments ("CAAG").

9 21. Although AUSS had previously applied for a 208 Plan with the CAAG, the notice
10 from ADEQ directs AUSS and Mr. Lee to stop construction on the remaining 40 percent of the
11 Cambria facility until its 208 Plan is approved as a precursor to receiving its APP.

12 22. Mr. Bale went on to state that it was his understanding that the new State rules adopted
13 in January allowed an applicant to construct, but not to operate until it receives approval of the 208
14 Plan. However, Mr. Bale went on to further state there is much confusion on the issue by stating
15 "everybody's out of compliance with that issue."

16 23. AUSS has also received requests to provide wastewater service from Woodside,
17 Madison Diversified Corporation ("Madison") and the Association at the Links.

18 24. Originally, the facility constructed for the Links was to serve only its 100 lot
19 subdivision and a golf course, but due to requests for service by Woodside to serve its Cambria
20 subdivision, it was expanded to provide service for 107 more lots. However, the Links facility cannot
21 be expanded beyond its present capacity.

22 25. Because of the restrictions on the Links facility, AUSS has begun construction of the
23 Cambria facility for Woodside. It is estimated that the Cambria facility will ultimately serve a
24 population in excess of 4,000 people. This facility is approximately one mile south of the Links
25 facility.

26 26. Woodside/AUSS has not received either a Certificate of Approval to Construct
27 ("CAC") or an APP for the Cambria facility because they must first secure a 208 Plan approval from
28 the CAAG.

1 27. According to AUSS' manager, Mr. Lee, after AUSS receives its Certificate, Cambria's
2 developer ("Woodside") is going to contribute the land and the facility which has an expected value
3 of more than \$1,500,000 to AUSS.

4 28. Mr. Lee indicated that he has been involved in the operation of various sewage
5 treatment plants for more than 20 years and had been operating the Links facilities for the
6 Association since it was constructed in 1995. The system is being operated in total compliance with
7 a ADEQ rules.

8 29. Since receiving the notice from ADEQ with respect to 208 Plan compliance, AUSS
9 has suspended construction at Cambria and has fenced the facility off.

10 30. AUSS has further plans to build a separate treatment plant known as the Castlegate
11 Wastewater Treatment Plant ("Castlegate") with which it plans to serve an estimated population of
12 approximately 4,800 residences in an area adjacent to the Town of Queen Creek ("Town"), but no
13 development is currently going on in the area and AUSS does not have a 208 Plan, its CAC or a APP
14 for this plant.

15 31. AUSS also has plans to build a large regional treatment facility to process 3 million
16 gallons of sewage per day in what is presently an agricultural area, but no additional development is
17 going on in the area and AUSS has not yet acquired the land necessary for the regional plant to serve
18 that area.

19 32. According to Mr. Lee, JUC's closest treatment facility is approximately 12 miles from
20 the area which AUSS is seeking for its Certificate.

21 33. If the plants to be utilized by AUSS are constructed as projected, they will result in
22 costs of more than \$9,500,000.

23 34. Presently, AUSS does not have an office at the Links, and all business contacts are
24 made by telephone from customers either to its office in Phoenix or to an emergency number that is
25 answered by an answering service which then makes necessary contacts.

26 35. According to Mr. Lee, the Links wastewater facility is presently owned by the
27 Association and Woodside; however, Mr. Lee indicated that a third entity, DJSP, L.L.C. also has an
28 interest in the equipment used to treat the wastewater at the Links.

1 36. According to Mr. Lee, Woodside will assign the Cambria facilities to AUSS without
2 charge after the completion of construction if AUSS is successful in securing a Certificate from the
3 Commission.

4 37. Based on the record, AUSS has collected approximately \$185,000 in hook-up fees
5 from a developer, Madison, without authorization from the Commission.

6 38. Under cross-examination, Mr. Lee indicated that although AUSS had collected the
7 approximately \$185,000 in hook-up fees, there were no houses connected to the system.

8 39. Mr. Lee indicated that AUSS would refund the hook-up fees collected prior to the
9 issuance of a Certificate by the Commission if the Commission conditioned the issuance of a
10 Certificate upon AUSS making such a refund.

11 40. AUSS began construction of the Cambria facility for Woodside upon the advice of its
12 engineer who told them that construction was permissible, but that AUSS could not operate the plant
13 until it secured its 208 Plan and APP.

14 41. Ultimately, according to Mr. Lee, if AUSS is granted a Certificate, once the Cambria
15 wastewater system is completely built out, the smaller Links facility would be closed.

16 42. There is a sewage line that connects Cambria to the Links that will be used to transfer
17 the Links sewage to the completed Cambria facility.

18 43. AUSS has secured a Pinal County franchise for at least part of the area for which it is
19 seeking a Certificate herein.

20 44. Because AUSS and JUC are presently seeking overlapping areas to be certificated
21 herein, there have been resultant delays in securing approval for a 208 Plan.

22 45. Mr. Lee acknowledged that AUSS had requested an area to be certificated in excess of
23 the areas for which he had received specific requests for service, so that he could plan and build a
24 regional system in compliance with requests from officials with Pinal County.

25 JUC APPLICATION

26 46. JUC, with the instant application, is seeking an extension of its Certificate to provide
27 wastewater service to include approximately 31 sections of land including all of the certificated water
28 service areas of H2O, Inc. ("H2O"), Diversified Water Company ("Diversified") and certain portions

1 of the certificated service area of Queen Creek Water Company ("Queen Creek").

2 47. There is no evidence that JUC has received requests for service from any individual
3 property owners or developers, but instead is reacting to area water utilities requesting JUC to secure
4 a Certificate to be able to provide wastewater service in their certificated service areas.

5 48. To provide service to the contested area, JUC is contemplating making use of what it
6 terms will be called the Circle Cross Wastewater Treatment Plant ("Circle Cross") located in an
7 extension area approved in Decision No. 63960, on what is now an empty parcel of land.

8 49. JUC has not submitted either its construction plans or sought an APP from ADEQ for
9 Circle Cross and although JUC has submitted its 208 Plan to CAAG and ADEQ, it has not yet been
10 approved. It was not disclosed whether JUC has submitted its 208 Plan to the Maricopa County
11 Association of Governments ("MAG") for approval of those parcels located within Maricopa County.

12 50. JUC does not have definite plans for construction to serve the areas sought to be
13 certificated herein other than indicating that construction will begin before 2006.

14 51. In support of its application, JUC called the following witnesses to testify on its
15 behalf: Mr. Brian Tompsett, a licensed professional engineer who consults with JUC; Mr. Paul
16 Gardner, the president of Queen Creek; and Mr. Johnson, JUC's manager.

17 52. Because of the distance from JUC's existing wastewater treatment facilities, Mr.
18 Tompsett explored a number of options which JUC could conceivably utilize to provide service to the
19 contested areas in which service has been requested from AUSS in the vicinity of the Links, Cambria,
20 and Castlegate. However, the options that were explored by Mr. Tompsett were speculative in nature
21 and a definite plan to provide service was not in place.

22 53. Options such as JUC purchasing the Links facility and/or utilizing package sewage
23 treatment facilities which it presently owns were also discussed².

24 54. Mr. Tompsett maintained that JUC does not do all of the planning which a developer
25 would do until it is necessary because the utility must rely on the developers to provide a construction
26 timeframe. He maintained that it was not cost effective for the utility to spend a substantial sum on

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28 ² Staff objected to some of Mr. Tompsett's testimony on the basis that JUC had not previously disclosed any of this information to Staff.

1 projections because of the unknown factor of what may or may not be served ultimately by the utility.

2 55. Mr. Tompsett indicated that JUC also has a 208 Plan pending which has been
3 submitted to the CAAG and ADEQ which would have to be amended if JUC received an extension of
4 its Certificate for the areas requested herein.

5 56. Mr. Tompsett confirmed that JUC's main wastewater treatment plant is located at least
6 10 miles to the south of the area at issue in this proceeding, but indicated that it would be integrated
7 into an expanded system if JUC's application is granted.

8 57. Mr. Tompsett acknowledged that JUC's two portable package wastewater treatment
9 plants are only able to treat up to 25,000 gallons a day of raw sewage each and at best could only
10 provide service to 200 residences, far less than the 2,000 homes that are to be encompassed in the
11 Cambria and Castlegate subdivisions.

12 58. While testifying, Mr. Tompsett was unable to satisfactorily explain why JUC failed to
13 provide Staff with timely information concerning engineering plans for the areas sought to be
14 certificated herein.

15 59. Mr. Tompsett conceded that JUC would be dependent on the Links and Cambria
16 facilities in order to provide service to the contested areas requested to be certificated herein and
17 assumes that JUC would be able to conclude some form of management agreement and/or purchase
18 the facilities. According to Mr. Tompsett, the population to ultimately be served in JUC's requested
19 expansion area herein could approach 50,000 connections, and take 20 years for a build-out to occur.

20 60. Queen Creek's president, Mr. Gardner, testified that he had requested JUC to apply for
21 an expanded Certificate to encompass all of its water service area outside of the Town's planning
22 area. This area is southeast of the Town and landowners in that area would prefer to have higher
23 density of development which will require sewer treatment service, but they do not wish to be
24 annexed into the Town, which has its own sewage facilities.

25 61. Queen Creek is requesting JUC to pursue its application herein to include Queen
26 Creek's water service area in order to alleviate problems which could develop due to excess septic
27 tank usage such as the excessive discharge of nitrates. It was explained that excessive nitrates in
28 water can be harmful to unborn children, infants and the elderly.

1 62. Mr. Gardner went on to describe long range urban planning for the area stating that it
2 would facilitate matters if JUC would become certificated and would develop into a large regional
3 provider of wastewater treatment services because of previous problems encountered by small
4 wastewater treatment facilities.

5 63. Although the evidence indicated that Pinal County frowns on the use of package
6 sewage plants, Mr. Johnson testified that JUC would utilize its two package plants to serve the public
7 when an instant need arose until the utility could construct a force main which would connect a
8 service area to an existing plant.

9 64. Mr. Johnson testified that JUC is capable of expanding its certificated service area in
10 order to provide wastewater treatment service to both the contested areas and to the uncontested areas
11 in this proceeding.

12 65. According to Mr. Johnson, with respect to the sewage treatment consent order entered
13 into with ADEQ, it was at JUC's insistence that the order be effectuated because a representative of
14 ADEQ did not keep his word to JUC. This resulted in the consent order which permitted JUC to
15 vault and haul its sewage in order to haul the untreated effluent to the Town of Florence Treatment
16 Facility.

17 66. In all respects, Mr. Johnson maintained that when regulatory problems arose which
18 involved violations of State law and ADEQ rules, JUC voluntarily met with ADEQ and requested
19 consent orders be entered to resolve disputes and to establish penalties.

20 67. Mr. Johnson stated that JUC's motivation for requesting a large area for an extension
21 of its wastewater treatment Certificate is because Pinal County has directed that the utility should
22 plan as a "regional" provider of wastewater treatment and not a small provider.

23 68. During cross-examination, Mr. Johnson referred to the Staff Report stating, "I think
24 it's all garbage." This opinion was stated on more than one occasion.

25 69. Mr. Johnson was unclear as to what the status of JUC's Circle Cross Plant was during
26 the proceeding with respect to its construction schedule and whether it could provide service to the
27 expansion area without further discussions with his consultants. At one point, Mr. Johnson
28 speculated that it could take 6 years to complete phase one of the Circle Cross project.

1 70. Mr. Johnson admitted that JUC had not received any requests for service in the
2 contested expansion areas.

3 71. Mr. Johnson admitted that JUC, in providing water utility service to Sun Valley Farms
4 Unit 5 ("Sun Valley") from June 9, 2000 through June 14, 2000, exceeded the MCLs for nitrates as
5 was stated in an ADEQ compliance order that further went on to state that JUC failed to provide
6 public notice of this violation³.

7 72. ADEQ's compliance order also stated that JUC exceeded the MCLs for total coliforms
8 for 13 days, from October 1, 1999 through October 13, 1999, and that there was no documentation of
9 public notice made to JUC's customers.

10 73. With respect to its violations of ADEQ rules, Mr. Johnson acknowledged that JUC had
11 failed to publish a form of public notice provided by ADEQ in local newspapers for violating its
12 rules.

13 74. There was evidence of at least three instances of such failure to publish public notice
14 as required by ADEQ's rules.

15 75. With the filing of the Staff Report on July 10, 2001, Staff essentially recommended
16 the approval of the application by AUSS because of the public necessity for sewer service in the areas
17 requested by AUSS based on requests for service. However, Staff pointed out that, due to Decision
18 No. 63960, its recommendation was amended with respect to the Pecan Ranch parcel which had been
19 approved for wastewater service by JUC and that parcel should be deleted from AUSS's application
20 herein consistent with the Commission's approval in Decision No. 63960 to avoid a conflict.

21 76. Staff found that the areas requested by AUSS are under development and will need
22 service shortly.

23 77. With respect to Staff's recommendation that AUSS be granted a Certificate, Staff is
24 also recommending the following:

- 25
- 26 • that AUSS file, within 365 days of the effective date of this Decision, a copy of its
27 Pinal County franchise for the areas for which it receives a Certificate;

28 ³ On October 16, 2001, ADEQ issued another Notice of Violation to JUC with respect to the operation of its Sun Valley water system.

- 1 • that AUSS file, within 365 days of the effective date of this Decision, a copy of its
- 2 approved 208 Plan and APP;
- 3 • that AUSS file, within 365 days of the effective date of this Decision, a copy of its
- 4 ADEQ approval to construct the Cambria plant;
- 5 • that AUSS file, within 2 years of the effective date of this Decision, a copy of the
- 6 ADEQ approval to construct the Castlegate plant; and
- 7 • that AUSS file, within 5 years of the effective date of this Decision, a copy of the
- 8 ADEQ approval to construct for its regional wastewater treatment plants.

7 78. Staff further indicated that AUSS should file a tariff indicating its basic monthly
8 service charge of \$30 and any other additional fees and charges which must be approved by Staff
9 prior to their implementation within 30 days of the effective date of this Decision⁴.

10 79. With respect to JUC's application herein, Staff recommended its denial, but in the
11 event the Commission determined that it was in the public interest to grant JUC's application, Staff
12 recommended the following conditions:

- 13 • that JUC file, within 365 days of the effective date of this Decision, its ADEQ
- 14 approval to construct its Circle Cross plant;
- 15 • that JUC file, within 365 days of the effective date of this Decision, its 208 Plans
- 16 from both MAG and CAAG;
- 17 • that JUC file, within 365 days of the effective date of this Decision, its APP for the
- 18 Circle Cross plant; and
- 19 • that JUC file, within 365 days of the effective date of this Decision, a copy of its
- 20 franchise for its extended certificated service area within Maricopa County.

20 80. Staff's position with respect to JUC's application is based on JUC's failure to disclose
21 relevant information to Staff and conflicting positions presented by its representatives and witnesses
22 during the application process.

23 81. With respect to the unauthorized hook-up fees being charged by AUSS on behalf of
24 Cambria's owner/developers, Mr. Fisher stated that AUSS had not requested approval of such a fee
25 and did not recommend its approval.

26 82. Under the circumstances, we will adopt Staff's recommendations with respect to
27 AUSS provided that all of the conditions made by Staff are met along with any additional conditions

28 ⁴ On September 4, 2001, AUSS filed its proposed sewer tariff with Staff which filed no objections.

1 which we adopt hereinafter. Of primary concern to us is the unauthorized hook-up fee which has
 2 been collected by AUSS in the approximate amount of \$185,000 which we believe should be
 3 refunded to Madison within 60 days of the effective date of this Decision or the authorization granted
 4 hereinafter should be void.

5 83. We shall further require AUSS to file documentation which clearly establishes that it
 6 has acquired all Links wastewater assets of related parties and the Association including copies of
 7 recorded deeds transferring the property upon which the facilities are located and related bill of sale.
 8 We shall also require AUSS to provide the same additional documentation or satisfactory alternatives
 9 to Staff as they become available to it upon the transfer of the Cambria facilities from Woodside.
 10 Failure to secure and file this documentation should result in the authorization granted hereinafter
 11 becoming void.

12 84. With respect to JUC's application herein, due to both conflicting testimony and a lack
 13 of evidence in this proceeding, we believe at this time that a public need and necessity has not been
 14 established for JUC to receive approval for an extension of its wastewater Certificate. This is in part
 15 due to JUC's failure to cooperate with Staff by providing required information that would enable
 16 Staff to analyze the application and the acrimony exhibited by JUC's representatives during the
 17 proceeding and because JUC has not received any requests for service in the requested areas from
 18 any developers or prospective customers. Further supporting our denial of JUC's application herein
 19 is the evidence of its repeated violations of ADEQ's rules including its failure to publish notice
 20 addressing health concerns which have been ignored.

21 CONCLUSIONS OF LAW

22 1. AUSS, upon approval of its application herein, will become a public service
 23 corporation within the meaning of Article XV of the Arizona Constitution in A.R.S. §§ 40-281 and
 24 40-282.

25 2. The Commission has jurisdiction over AUSS and JUC and the subject matter of the
 26 applications herein.

27 3. Notice of the applications was given in the manner prescribed by law.

28 4. The public convenience and necessity require the public would benefit by the approval

1 of a Certificate for AUSS to provide wastewater treatment service in the area more fully described in
2 Exhibit A.

3 5. AUSS is a fit and proper entity to receive a Certificate which encompasses the areas
4 set forth in Exhibit A.

5 6. Staff's recommendations with respect to the application of AUSS as set forth in
6 Findings of Fact Nos. 77 and 78 should be approved, and subject to the additional conditions that
7 AUSS satisfies the requirements of Findings of Facts Nos. 82 and 83.

8 7. The application of JUC for an extension of its Certificate and its Application for
9 Prohibition should be denied.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the Application of Arizona Utility Supply and Services,
12 LLC for a Certificate of Convenience and Necessity for the operation of a wastewater treatment
13 utility in the areas more fully set forth in Exhibit A attached hereto subject to the Arizona Utility
14 Supply and Services, LLC satisfying the conditions described in Findings of Fact Nos. 77, 78, 82 and
15 83 and Conclusions of Law Nos. 5 and 6 above.

16 IT IS FURTHER ORDERED that Arizona Supply and Services, LLC shall file with the
17 Director of the Commission's Utilities Division, within 60 days of the effective date of this Decision,
18 copies of all documents related to the transfer of the Links and Cambria treatment systems consisting
19 of deeds, bills of sale or alternatives satisfactory to the Director or the Certificate of Convenience and
20 Necessity granted herein shall be rendered null and void without further Order by the Commission.

21 IT IS FURTHER ORDERED that in the event that Arizona Utility Supply and Services, LLC
22 fails to meet any of the above-described conditions in a timely fashion, then the Certificate of
23 Convenience and Necessity granted herein shall be rendered null and void without further Order of
24 the Commission.

25 IT IS FURTHER ORDERED that Arizona Utility Supply and Services, LLC shall charge
26 those customers in its certificated service area those rates and charges as set forth in its proposed
27 tariff and filed with the Director of the Commission's Utilities Division, within 30 days of the
28 effective date of this Decision.

1 IT IS FURTHER ORDERED that the application of Johnson Utilities L.L.C. dba Johnson
2 Utilities Company application for a Certificate of Convenience and Necessity and its Application for
3 Prohibition be, and are hereby, denied.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6			
7			
8	CHAIRMAN	COMMISSIONER	COMMISSIONER

9
10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2001.

14
15 BRIAN C. McNEIL
EXECUTIVE SECRETARY

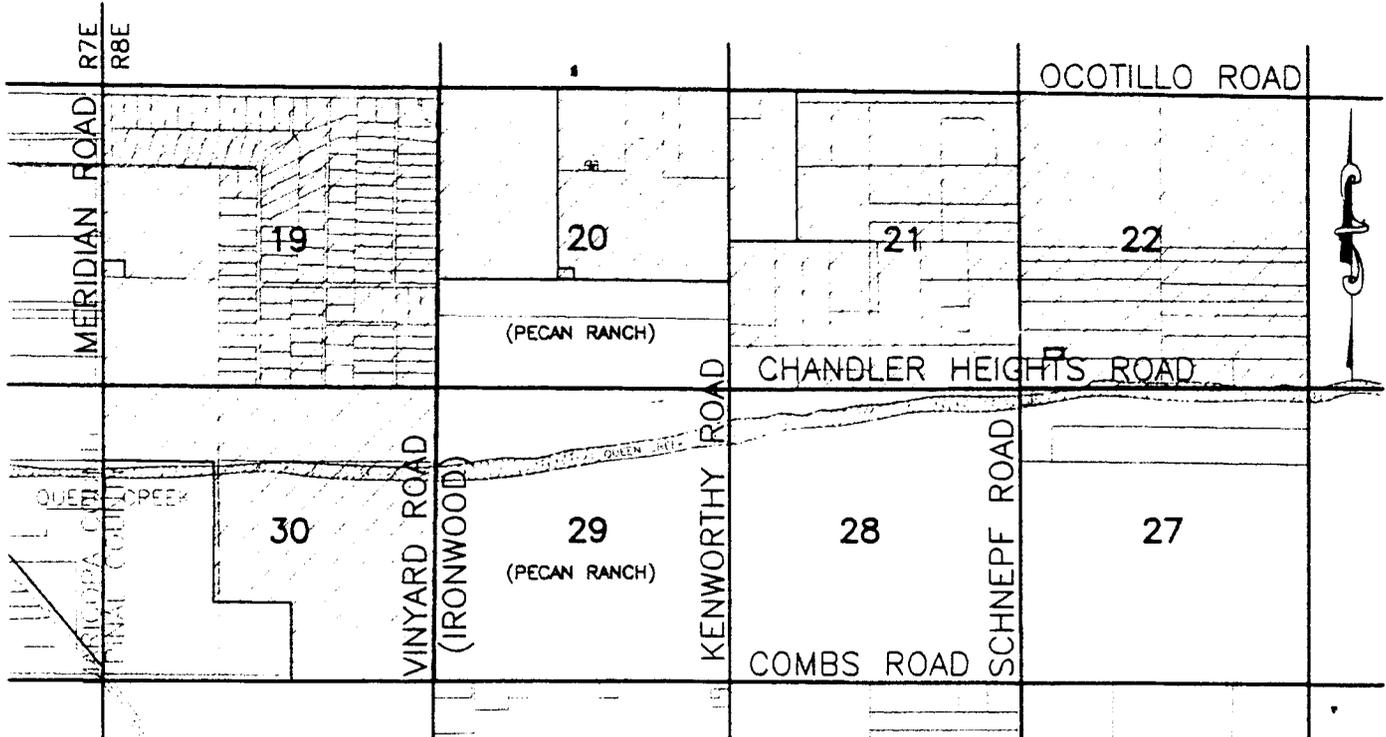
16 DISSENT _____
17 MES:mlj

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1 SERVICE LIST FOR ARIZONA UTILITY SUPPLY AND SERVICES,
2 L.L.C. and JOHNSON UTILITIES, L.L.C.
3 DOCKET NOS. SW-04002A-01-0228 and WS-02987A-01-0295
4 Jeffrey W. Crockett
5 SNELL & WILMER
6 One Arizona Center
7 Phoenix, AZ 85004-2202
8 Attorneys for Arizona Utility and Supply Services, L.L.C.
9 Thomas H. Campbell
10 LEWIS AND ROCA
11 40 North Central
12 Phoenix, AZ 85004-4429
13 Attorneys for Johnson Utilities, L.L.C.
14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
18 Phoenix, AZ 85007
19 Ernest Johnson, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 W. Washington Street
23 Phoenix, AZ 85007
24
25
26
27
28

ARIZONA UTILITY SUPPLY & SERVICES, LLC

LEGAL DESCRIPTION
FOR
PENDING CC&N APPLICATION
DOCKET NO. SW-04002A-01-0228



LEGAL DESCRIPTION

ALL OF SECTIONS 19,20,21,22 AND 30, T. 2S., R. 8E. OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THAT PORTION OF SECTION 30 IN THE TOWN LIMITS OF QUEEN CREEK AS DESCRIBED AS FOLLOWS:

Lots Four (4), Five (5), Eight (8), Nine (9), Ten (10), Eleven (11), and Twelve (12) of Section 30, T. 2 S., R. 8 E., G. & S. B. & M., Pinal County, Arizona, and a portion of the East 1/2 of Section 25, T. 2 S., R. 7 E., G. & S. R. B. & M., Maricopa County, Arizona, more particularly described as follows:

Beginning at the Southwest corner of Lot 10, Section 30, T. 2 S., R. 8 E., G. & S. R. B. & M., Pinal County, Arizona, said point also being the Southwest corner of said Section 30; and the Southeast corner of said Section 25; thence Westerly along the South line of said Section 25 to a point 55.00 feet West of said Southeast corner of Section 25; thence Northerly along a line 55.00 feet West of the East line of Section 25 to a point on said line intersecting with the Western extension of the North line of Lot 4, Section 30, T. 2 S., R. 8 E.; thence Easterly 55.00 feet to a point on the East line of said Section 25 said point also lying on the West line of said Section 30; thence continuing Easterly along the North line of Lots 4 and 5, Section 30 to the Northeast corner of said Lot 5; thence Southerly along the East line of Lots 5 and 8, Section 30 to the Southeast corner of said Lot 8; thence Easterly along the North line of Lot 12, Section 30 to the Northeast corner of said Lot 12; thence Southerly along the East line of Lot 12 to the Southeast corner of Lot 12; thence Westerly along the South line of Lot 12 and the South line of Lots 10 and 11, Section 30 to the Southwest corner of Lot 10, said point also being the Southeast corner of Section 25 and THE POINT OF BEGINNING.

Johnson Utilities Company
CC&N Expansion

WASTEWATER

Property located in Sections 13, 24, 25, 26, 27, 34, 35, and 36, Township 2 South, Range 7 East, G. & S.R.M., Maricopa County, Arizona, being more particularly described as follows:

All of Section 13,
All of Section 24,
All of Section 25,
All of Section 26,
The South half of Section 27,
All of Section 34,
All of Section 35,
And
All of Section 36;
All in Township 2 South, Range 7 East, G. & S.R.M., Maricopa County, Arizona

Property located in Sections 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, and 30, Township 2 South, Range 8 East, G. & S.R.M., Pinal County, Arizona, being more particularly described as follows:

All of Section 7,
All of Section 8,
The East half of Section 9,
All of Section 16,
All of Section 17,
All of Section 18,
All of Section 19,
The North half of Section 20,
All of Section 21,
All of Section 22,
And
All of Section 30;
All in Township 2 South, Range 8 East, G. & S.R.M., Pinal County, Arizona

First Amendment to
Johnson Utilities Company
CC&N Wastewater Expansion

Property located in Sections 27 and 35, Township 2 South, Range 8 East, G. & S.R.M., Pinal County, Arizona, being more particularly described as follows:

All of Section 27,
And
All of Section 35,

All in Township 2 South, Range 8 East, G. & S.R.M., Pinal County, Arizona.

Property located in Sections 2, 3, 4, 9, 10, 11, 12, 14, and 16 Township 3 South, Range 8 East, G. & S.R.M., Pinal County, Arizona, being more particularly described as follows:

All of Section 2,
The South half of Section 3,
All of Section 4,
All of Section 9,
All of Section 10,
All of Section 11,
All of Section 12,
The East half of Section 14,
And

That portion of Section 16 South and West of the Southern Pacific Railroad right-of-way,

All in Township 3 South, Range 8 East, G. & S.R.M., Pinal County, Arizona.

Property located in Section 18, Township 3 South, Range 9 East, G. & S.R.M., Pinal County, Arizona, being more particularly described as follows:

All of Section 18,

All in Township 3 South, Range 9 East, G. & S.R.M., Pinal County, Arizona.