ORIGINAL

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

Open Meeting Item

0000190097

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

JUL 12 2018

DOCKETED BY

DATE: JULY 12, 2018

DOCKET NO.: WS-02987A-18-0050

TO ALL PARTIES:

Enclosed please find the recommendation of the Assistant Chief Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES, L.L.C.
(ORDER TO SHOW CAUSE)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 23, 2018

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 Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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Jane L Rodda

JANE RODDA
CHIEF ADMINISTRATIVE LAW JUDGE

On this 12th day of July, 2018, the following document was filed with Docket Control as a Recommended Opinion and Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE – Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

IN THE MATTER OF THE COMMISSION'S INVESTIGATION OF THE BILLING AND WATER QUALITY ISSUES OF JOHNSON UTILITIES, LLC	DOCKET NO. WS-02987A-18-0050 DECISION NO. _____ **OPINION AND ORDER**

DATE/S OF HEARING:	March 29, 2018; April 16, 17, 18, 19, 20, 23, 25, and 27, 2018; May 1, 2, 4, 7, and 9, 2018[1]
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Sarah N. Harpring
APPEARANCES:[2]	Jeffrey W. Crockett, CROCKETT LAW GROUP PLLC, and Daniel E. Fredenberg and Christian Beams, Fredenberg Beams, on behalf of Johnson Utilities, LLC; Daniel W. Pozefsky, Chief Counsel, on behalf of the Residential Utility Consumer Office; Kevin Costello, Assistant County Attorney, on behalf of Pinal County; Albert Acken, RYLEY, CARLOCK & APPLEWHITE, P.A., and Scott Holcomb, DICKINSON WRIGHT, P.L.L.C., on behalf of the Town of Queen Creek; Albert Acken, RYLEY, CARLOCK & APPLEWHITE, P.A., and Clifford Mattice, Town Attorney, on behalf of the Town of Florence;

[1] On March 29, 2018, the Commission convened the hearing in this matter in an Open Meeting only for the purpose of accepting public comment. On April 16, 2018, the Commission commenced the evidentiary hearing in an Open Meeting, which continued on each subsequent day of hearing. The evidentiary hearing was the sole agenda item for the Open Meeting that began on April 16, 2018.

[2] Daron Thompson appeared early in the hearing but did not offer testimony or other evidence. No appearances were made during the hearing by intervenors Swing First Golf, LLC; Fernando Zapata; and Warren Moffatt. Mike Ross, Gallagher & Kennedy, appeared on behalf of George Johnson, who is a witness and not a party to this matter. Tim Sabo, Snell & Wilmer, appeared on behalf of Global Water Resources, which also is not a party to this matter, because its Chief Executive Officer, Ron Fleming, had been subpoenaed by Commissioner Dunn. Jason Gellman, General Counsel, EPCOR Water Arizona, appeared because EPCOR's Vice President of Corporate Services, Shawn Bradford, had been subpoenaed by Commissioner Dunn. Additionally, Leon Silver, Gordon Rees Scully Mansukhani, appeared on behalf of Christopher Johnson, who had been subpoenaed by Commissioner Tobin.

John Dantico, pro se;

Catherine Labranche, pro se;

Daron Thompson, pro se; and

Robin Mitchell, Assistant Chief Counsel, Naomi E. Davis, Staff Attorney, and Wesley Van Cleve, Senior Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

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BY THE COMMISSION:

This matter resolves an Order to Show Cause ("OSC") brought against Johnson Utilities, L.L.C. ("JU"), by the Arizona Corporation Commission ("Commission") in Decision No. 76618 (March 16, 2018).

DISCUSSION

I. Procedural History

A. Generally

On December 29, 2017, in Docket No. WS-02987A-17-0392 ("Rates Docket"), Johnson Utilities, LLC ("JU") filed an Application for a Determination of the Fair Value of its Water and Wastewater Utility Plant and Property, for Increases in its Rates and Charges for Water and Wastewater Utility Service, and for Related Approvals ("Application").

The Commission's Utilities Division ("Staff") issued a Sufficiency Letter in the Rates Docket on January 29, 2018, finding that JU's Application had met the sufficiency requirements of Arizona Administrative Code ("A.A.C.") R14-2-103 and had been classified as a Class A utility.

On January 30, 2018, a Procedural Order was issued scheduling the hearing on the Application to commence on October 23, 2018, and, *inter alia*, requiring JU to post conspicuously and prominently on its website public notice of six Public Comment Sessions to be held by the Commission in San Tan Valley, Arizona, on February 20 and 21, 2018.

On February 20 and 21, 2018, the Commission held the Public Comment Sessions in San Tan Valley.[3] During the Public Comment Sessions, the Commission received comments from approximately 184 individuals who identified themselves as customers of JU. The individuals provided comments primarily regarding the following topics—health and safety concerns regarding the quality of JU's drinking water, health and safety concerns regarding the alleged release of hydrogen sulfide gas from JU's wastewater treatment plants, JU's meter reading and billing practices and the resulting bills that were perceived as excessive, and JU's allegedly shutting off service without justification and charging reconnection fees to resume service.

[3] In addition to requiring Johnson to post notice of the Public Comment Sessions on its website, the Commission provided public notice of the Public Comment Sessions as Special Open Meetings.

On February 21, 2018, Chairman Tom Forese issued to Staff's Director and the Commission's Chief Counsel a letter directing Staff to open a new docket to investigate the billing and water quality issues raised during the Public Comment Session on February 20, 2018. As a result, Staff filed a memorandum, to which the Chairman's letter was attached, requesting the opening of this docket.

On February 22, 2018, the Commission held a Staff Open Meeting at which it discussed conducting an investigation of JU's system as to health and safety-related complaints, billing-related complaints, complaints of retaliatory conduct by JU, and water pressure complaints. The Commission further discussed the best course of action to address any emergent public health concerns found, as well as any other issues detected.[4] Staff indicated that a Staff engineer would be sent out the next day, with personnel from the Arizona Department of Environmental Quality ("ADEQ") to perform a site inspection and sampling of JU's water and effluent. The Director of ADEQ's Water Quality Division stated that JU's water system was currently in compliance with safe drinking water standards, although it has had compliance issues in the past; that ADEQ has received many odor complaints regarding JU's wastewater treatment system and has hired a consultant to assist in ADEQ's review of JU's Section 11 Plant to determine the cause of the odors; and that ADEQ would be participating in the Commission's investigation to determine the current compliance status of JU's systems. The Commission directed Staff immediately to conduct a site inspection and water and effluent sampling as part of an investigation into health and safety issues with JU's systems and to prepare a report with a substantive proposal for the Commission's consideration at the Open Meeting on March 13, 2018, or sooner. Staff was also directed to begin investigating the items that were not directly related to health and safety, although on a non-emergent basis.

On February 23, 2018, a site inspection and water and wastewater sampling were performed by Staff and ADEQ.

On February 26, 2018, Commissioner Bob Burns filed a copy of his opening comments made at the Staff Open Meeting on February 22, 2018.

On February 28, 2018, a Procedural Order Regarding Consent to Email Service was filed.

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[4] The Staff Open Meeting Notice included the following language for the JU item: "Commission Discussion, Consideration, and Possible Vote Regarding: Investigation into Water Quality and Billing Complaints at Johnson Utilities, Possibility of Order to Show Cause, and Possibility of Appointment of an Interim Manager."

On March 2, 2018, Swing First Golf, LLC ("Swing First") filed a Motion to Intervene, stating that Swing First is one of JU's largest effluent customers as well as a water and wastewater service customer. Swing First made a number of assertions regarding what Swing First described as a ten-year history of "abuse" by JU. Swing First's filing included a Consent to Email Service.

On March 7, 2018, JU filed a Consent to Service by Email. JU's Consent to Email Service was approved by Procedural Order on March 9, 2018.

On March 7 and 8, 2018, the Commission's Executive Director filed in this docket an Open Meeting Agenda and a Revised Open Meeting Agenda for the Open Meeting to be held on March 13, 2018. The Revised Open Meeting Agenda included the following language regarding consideration of this matter:

> **In the matter of the Commission's Investigation of the Billing and Water Quality Issues of Johnson Utilities, LLC** (WS-02987A-18-0050): Staff update on investigation into billing issues, water quality, wastewater facility issues, and related health and safety issues; Commission discussion, consideration, and possible vote regarding order to show cause and the appointment of an interim manager.

On March 8, 2018, Staff filed an Open Meeting Memorandum.[5] Staff enumerated its findings on JU's regulatory compliance status; recommended that JU take a number of remedial actions to resolve those issues, including completing specific water and wastewater system repairs and installations by April 16, 2018; and recommended that the Commission direct Staff to initiate an Order to Show Cause ("OSC") no later than April 20, 2018, in order to appoint an interim manager for the Commission's consideration at a future Open Meeting if JU failed to make those water and wastewater system repairs and installations by April 16, 2018.

On March 9, 2018, Commissioner Bob Burns filed a letter to the docket expressing concern with Staff's recommendation to wait until April 20, 2018, to institute an OSC, stating that an OSC should be commenced as soon as possible. Commissioner Burns provided specific recommended language to include in any Decision issued in this matter as a result of the Commission's March 13, 2018, Open Meeting.

Also on March 9, 2018, Staff filed a Notice of Filing Proposed Order, stating that the Proposed

[5] Although Staff's Memorandum stated that a proposed order accompanied it, there was not a proposed order included in the filing.

Order was to accompany the Staff Open Meeting Memorandum filed on March 8, 2018.

On March 12, 2018, a Revised Open Meeting Agenda was filed for the Open Meeting on March 13, 2018; Commissioner Justin Olson filed a letter to the docket proposing that the Commission consider a more expedited timeline for an OSC and appointment of a temporary or long-term interim manager; Commissioner Boyd Dunn filed Dunn Proposed Amendment #1; and JU filed Initial Comments Regarding the Staff Memorandum Dated March 8, 2018. *Inter alia*, JU stated that it would timely comply with all of Staff's recommendations from the Staff Open Meeting Memorandum.

On March 13, 2018, Commissioner Andy Tobin filed his Proposed Amendment No. 1; and JU filed a Maricopa County Superior Court Order Setting Hearing on Application for Temporary Restraining Order and Preliminary Injunction, in a case filed by JU against the Commission and the individual Commissioners, showing that a hearing was to be held on March 16, 2018, regarding JU's Application for Temporary Restraining Order and Preliminary Injunction.

At the Open Meeting on March 13, 2018, the Commission discussed and considered the Proposed Order, amended the Proposed Order, and adopted an Order that, *inter alia*, (1) required Staff to file, no later than March 15, 2018, an Application for an Order to Show Cause ("Application for OSC") as to why an interim manager should not be appointed; (2) required that JU file its response to the Application for OSC by March 26, 2018, at 5:00 p.m.; (3) required that an evidentiary hearing on the Application for OSC be held on March 29, 2018, at 10:00 a.m., with an Administrative Law Judge ("ALJ") presiding and the Commissioners prepared to consider the matter at that time; and (4) required that the ALJ prepare a conforming order for the OSC on or before April 6, 2018.

On March 14, 2018, an Open Meeting Agenda for March 16, 2018, was filed, showing that this matter was the only agenda item for Commission consideration, discussion, and possible vote regarding Staff's Application for OSC.

On March 15, 2018, Staff filed a Complaint; Petition for an Order to Show Cause, setting forth five counts of complaint and requesting that the Commission issue an OSC against JU to demonstrate why an interim manager should not be appointed and, further, impose fines and penalties pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, § 19 of the Arizona Constitution and grant such other relief as the Commission deems appropriate. Staff included a Proposed OSC Order with the

Application for OSC.

Also on March 15, 2018, by Procedural Orders, Swing First's Motion to Intervene was granted, and its Consent to Email Service was approved.

On March 16, 2018, at Open Meeting, the Commission discussed and considered Staff's Application for an OSC and Proposed Order and adopted the Proposed Order, which (1) required JU to file its response to Staff's Complaint and Petition by March 26, 2018; (2) required JU to appear and show cause at 10:00 a.m. on March 29, 2018, to defend eight enumerated items; and (3) required the Hearing Division forthwith to schedule any additional appropriate proceedings. During their discussions, the Commission indicated that JU should be required to provide notice of the March 29, 2018, hearing date and that intervention should be allowed in this matter. Decision No. 76618 was issued the same date.[6] Decision No. 76618 required JU to appear and show cause defending against the following:

a. Why its actions do not represent a violation of A.R.S. § 40-361(B);
b. Why its actions do not represent a violation of A.A.C. R14-2-607(A);
c. Why its actions do not represent a violation of A.A.C. R14-2-607(C);
d. Why its actions do not represent a failure to provide just and reasonable service;
e. Why an Interim Manager should not be appointed to guarantee [that] the necessary technical expertise and managerial experience to run a public utility is met;
f. Why Johnson Utilities should not cooperate with and indemnify, defend and hold the Interim Manager harmless;
g. Why other relief deemed appropriate by the Commission should not be ordered[; and]
h. Why fines and penalties should not be imposed pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, [§] 19 of the Arizona Constitution.[7]

Also on March 16, 2018, a Procedural Order was issued that (1) scheduled the evidentiary hearing in this matter to commence on March 29, 2018, at the Commission's offices in Phoenix and to continue, if necessary, at an additional date and time to be identified at the evidentiary hearing; (2) required that all motions to intervene be filed by March 26, 2018; (3) required JU to provide specified

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6 Official notice is taken of this Decision.
7 Decision No. 76618 at 15.

public notice of the evidentiary hearing by posting the notice in a prominent and conspicuous location on its website; (4) required JU, by March 26, 2018, to file an affidavit regarding posting of the notice, along with a photo showing the notice posted on the website; (5) required that JU provide any objection to a motion to intervene by March 28, 2018, or by orally providing the objection at the hearing on March 29, 2018; and (6) provided that any outstanding motions to intervene would be ruled on at the hearing on March 29, 2018.

On March 20, 2018, a Procedural Order was issued requiring each party to file the following, by March 26, 2018: (1) a list of the witnesses the party intends to call at hearing, with a brief description of the subject matter the witness's testimony is expected to cover; and (2) pre-labeled copies of the exhibits that the party intends to offer at hearing. The Procedural Order further required each party to supplement its witness and exhibit filings, if necessary, as soon as possible after the information included therein becomes incomplete and no later than at the commencement of the hearing on March 29, 2018.

Also on March 20, 2018, Staff filed a request for issuance of a Subpoena for George H. Johnson, the ultimate owner of JU.

On March 21, 2018, Staff filed an Affidavit of Service and executed Subpoena for George Johnson.

On March 22, 2018, JU filed an affidavit of notice and a screenshot showing the posting of the notice document on the main page of its website; and Staff filed a request for issuance of Subpoenas to Michael Sundblom, Pinal County Air Quality District ("PCAQ"), and David Dunaway, ADEQ.

On March 23, 2018, Staff filed requests for issuance of Subpoenas to Jeff Tannler, ADWR, and Trevor Baggiore, ADEQ.

On March 26, 2018, Staff filed Affidavits of Service and executed Subpoenas for Mr. Baggiore, Mr. Dunaway, Mr. Sundblom, and Mr. Tannler; Swing First filed a Notice of Non-Appearance, stating that Swing First would not be appearing or otherwise participating in the hearing scheduled for March 29, 2018, due to a scheduling conflict of Swing First's counsel, and would not be providing testimony

or sponsoring exhibits;[8] and JU filed as Exhibits J-1 through J-4, respectively, the Direct Testimony of Gary Drummond, the Direct Testimony and Exhibits of Brad Cole, the Direct Testimony and Exhibits of Stephanie Poulin, and the Direct Testimony and Exhibits of James Taylor. JU also filed the remainder of its hearing exhibits (Exhibits J-6 through J-12) as well as its witness list and Response to the OSC. JU listed the following witnesses: Mr. Drummond, Mr. Cole, Ms. Poulin, Mr. Taylor, Mr. Baggiore, Mr. Tannler, and Connie Walczak of Staff.

On March 27, 2018, Staff filed its list of witnesses and its intended exhibits (Exhibits S-1 through S-24), listing the following witnesses: Mr. Dunaway; Mr. Baggiore; Randall Matthis of ADEQ; Mr. Tannler; Mr. Sundblom; George Johnson; and Staff personnel Ms. Walczak, Andrew Smith of Staff, and Elijah Abinah; Christian C.M. Beams and Daniel E. Fredenberg, of Fredenberg Beams, filed a Notice of Appearance stating that they were to serve as co-counsel of record for JU with Jeffrey Crockett of Crockett Law Group PLLC; counsel for George Johnson filed a Motion to Quash Staff's Subpoena ("Motion to Quash"); and JU filed Certificates of Service for Subpoenas served on Mr. Baggiore and Ms. Walczak.

On March 28, 2018, the Commission issued an Open Meeting Agenda for March 29, 2018, including two items for this matter; JU customer Mike Rizuto filed a Request to Intervene and Consent to Email Service; Mr. Beams and Mr. Fredenberg filed an Amended Notice of Appearance as co-counsel for JU; Staff filed a Response to the Motion to Quash, a Notice of Filing Staff's Amended Exhibit 24, a Notice of Filing Staff's Supplement to Exhibits 17 and 19, and a Motion to Compel Discovery Responses directed at JU; JU filed a Supplemental Notice of Filing Hearing Exhibit, providing an Exhibit J-13; and Staff and JU filed a Joint Proposal for the Commission to consider as a resolution to the OSC ("Joint Proposal"), asserting that the Joint Proposal "[would] effectively accomplish the same result as the appointment of an interim manager but . . . in a manner . . . agreeable to both [JU] and Staff."

Also on March 28, 2018, a telephonic procedural conference was held, with JU and Staff appearing through counsel and counsel for George Johnson participating regarding George Johnson's

[8] Because Swing First did not request to withdraw as an Intervenor, it is still considered to be a party in this matter.

Motion to Quash. Discussion was had regarding Mr. Rizuto's Request to Intervene, the Motion to Quash, the discovery dispute that was the subject of Staff's Motion to Compel Discovery Responses, and the Joint Proposal. As no party objected to Mr. Rizuto's intervention, it was determined that his Request to Intervene would be granted. Additionally, the Motion to Quash was denied, and it was determined that George Johnson would appear as the first witness at the hearing on March 30, 2018. A resolution of the discovery dispute was also reached, and the parties explained the process that they would like to follow if the Commission were to determine that the Joint Proposal should be explored in lieu of the OSC.

On March 29, 2018, the Commission held an Open Meeting as scheduled for this matter. After an executive session and discussion, the Commission, pursuant to A.R.S. § 40-252, revised the process for this matter (which had been adopted in Decision No. 76618) by:

1. Removing the requirement for the ALJ to issue a conforming order by April 6, 2018;
2. Extending the deadline for intervention to April 16, 2018;
3. Allowing for the evidentiary hearing to convene on March 29, 2018, only to receive public comment; and
4. After the public comment, recessing the evidentiary hearing until April 16, 2018.

The Commission then accepted public comment and recessed the evidentiary hearing until April 16, 2018.

Also on March 29, 2018, JU customer Fernando Zapata filed a Request to Intervene and a Consent to Email Service; Catherine Labranche filed a Request to Intervene and an incomplete Consent to Email Service; PGTL Combs Ranch Limited Partnership filed a letter stating that it has been working with JU for more than 2.5 years toward obtaining service for a new residential development and that it needs for JU to be granted an extension of its Certificate of Convenience and Necessity ("CC&N") and to provide sewer service for the development in the near future; and the Residential Utility Consumer Office ("RUCO") filed an Application to Intervene and a Consent to Email Service.[9]

Also on March 29, 2018, a Procedural Order was issued granting Mr. Rizuto's Request to

[9] Because RUCO's Director had previously sent correspondence to the Commission's Executive Director requesting that RUCO, as a fellow state agency, be deemed to have consented to email service in each docket in which it is involved now or becomes involved in the future, no action needed to be taken on RUCO's Consent to Email Service.

Intervene.

On March 30, 2018, JU customers Warren Moffatt and E. John Carlson filed Requests to Intervene; Commissioner Bob Burns filed (1) a letter requesting that JU file, by April 9, 2018, responses to an attached list of questions and (2) a separate letter requesting that Staff file responses to an attached list of questions within the same time period; and JU filed a Certificate of Service for the Subpoena served on Mr. Sundblom.

Also on March 30, 2018, a Procedural Order was issued vacating the hearing dates of March 30 and April 2, 2018; setting the hearing to reconvene on April 16, 2018, and to continue, as necessary, on April 17, 18, and 20, 2018; establishing a new intervention deadline of April 16, 2018; requiring responses to Requests to Intervene to be filed within 5 days of the filing date of the Request; requiring Staff, JU, and each Intervenor, by April 13, 2018, to file a list of witnesses with a description of testimony and copies of exhibits, to the extent that the party had not yet done so; requiring parties to supplement these witness and exhibit filings if they become incomplete; and allowing each party to file written testimony in lieu of the required witness list.

On April 2, 2018, JU customer Gary Bria filed a Request to Intervene; and the Commission's Executive Director filed a Notice containing information for the public to access videos of the February 20 and 21, 2018, public comment sessions; to access the documents for this matter; to access the documents filed in JU's rate case docket; and to contact the Commission's Communications Director with any questions.

On April 3, 2018, JU filed a Response to RUCO's Application to Intervene, questioning RUCO's authority to do so under A.R.S. § 40-464(A)(2) and characterizing such intervention as *ultra vires*, but stating that JU would not object if the Commission were inclined to grant RUCO's Application.

Also on April 3, 2018, a Procedural Order was issued requiring RUCO, by April 6, 2018, to file a Reply to JU's Response, in which RUCO was to address both A.R.S. § 40-464(A)(2) and Attorney General Opinion I87-053.

On April 4, 2018, the Commission's Chief Counsel[10] filed Notices of Filing Affidavits of Service and Executed Subpoenas for Subpoenas issued by Commissioner Andy Tobin to Brent Billingsley, Town Manager, Town of Florence; Pinal County Supervisor Todd House; and Pinal County Supervisor Steve Miller.

On April 5, 2018, a Procedural Order was issued adding April 19, 2018, as an additional hearing continuation date, if needed; providing additional information about intervention; and requiring that any party who desires to present any portion of the party's case using videoconferencing file, by April 12, 2018, a request that includes specified information.

Also on April 5, 2018, Staff filed its responses to the questions posed by Commissioner Burns in his March 30, 2018, letter; and the Commission's Chief Counsel filed a Notice of Filing Records Produced in Response to Public Records Request to City of Coolidge (the public records request had been made by Commissioner Tobin).

On April 6, 2018, RUCO filed its Reply to JU's Response to RUCO's Application to Intervene, asserting, *inter alia*, that RUCO has the authority to intervene in this matter pursuant to A.R.S. § 40-464(A)(2), and in light of Attorney General Opinion I87-053, because this matter partially concerns JU's billing practices, which are related to JU's revenues, which are related to ratemaking.

Also on April 6, 2018, Commissioner Burns filed four letters, directed to Arizona Water Company ("AWC"), Southwest Gas Corporation ("SWG"), Arizona Public Service Company ("APS"), and EPCOR, requesting for calendar year 2017 their respective average numbers of customers per month and average numbers of delinquent bill disconnect notices issued per month; and the Commission's Chief Counsel filed (1) Notices of Filing Affidavits of Service and Executed Subpoenas for Subpoenas issued by Commissioner Boyd Dunn to Shawn Bradford, EPCOR Water Arizona, Inc. ("EPCOR"); and Ron Fleming, Global Water Resources; (2) a Notice of Filing Records Produced in Response to Public Records Request to Town of Florence (the public records request had been made by Commissioner Tobin); and (3) a Notice of Filing Affidavit of Service and Executed Subpoena for a Subpoena issued by Commissioner Andy Tobin to the Town of Queen Creek.

[10] In this matter, the Commission's Chief Counsel, who is also the Director of the Commission's Legal Division, is serving in an advisory capacity to the Commission as "A-Team" and is not involved in the Legal Division's litigation of this matter as counsel for Staff.

Also on April 6, 2018, two Procedural Orders were issued—one granting intervention to Mr. Zapata, Ms. Labranche, Mr. Moffatt, Mr. Carlson, and RUCO, and the other approving Mr. Zapata's Consent to Email Service.

On April 9, 2018, the Commission's Chief Counsel filed a Notice of Filing Records Produced in Response to Public Records Request to Town of Queen Creek (the public records request had been made by Commissioner Tobin).

On April 10, 2018, Mr. Carlson filed a Request for Withdrawal as an Intervenor; Commissioners Tobin and Olson filed a letter to the docket proposing for consideration an outline of a settlement agreement that could be entered between JU and the Commission to resolve the OSC in this matter; JU filed its responses to the questions posed by Commissioner Burns in his letter of March 30, 2018; and Staff filed pages of information taken from Excel files provided to the Commissioners, Staff, and the Legal Division by Matt O'Connell, who was involved in creating an online form for residents of the area near JU's Section 11 Wastewater Treatment Plant to log odor/sewer gas complaints.[11]

Also on April 10, 2018, two Procedural Orders were issued—one granting intervention to Mr. Bria, and the other granting Mr. Carlson's Request for Withdrawal.

On April 11, 2018, the Commission's Chief Counsel filed a Notice of Witnesses for Town of Queen Creek ("Queen Creek"), stating that Queen Creek had been subpoenaed by Commissioner Tobin and had advised in response that it would make available the following witnesses: John Kross, Town Manager; Paul Gardner, Utilities Director; and Scott McCarty, Finance Director.

On April 12, 2018, Commissioner Burns filed a letter expressing appreciation for the letter regarding a settlement agreement filed by Commissioners Tobin and Olson and providing a list of some details that Commissioner Burns would need to see satisfactorily addressed before he could consider voting to approve a settlement agreement; Pinal County filed a Motion to Intervene and Consent to Email Service as well as Pinal County's Witness List, showing that Pinal County intended to present the following witnesses: Mr. Sundblom; Celeste Garza, Manager, Pinal County Public Works; and Himanshu Patel, Director, Pinal County Community Development; JU customer Daron Thompson

[11] Mr. O'Connell explained the nature of the logs in a public comment filed on April 13, 2018.

filed an Individual Residential Customer Intervention Request; Southwest Gas Corporation filed a letter answering Commissioner Burns's questions regarding its average customers and delinquent bill disconnect notices per month during 2017; AWC filed a letter answering Commissioner Burns's questions regarding its average customers and delinquent bill disconnect notices per month during 2017; Staff filed JU's responses to Staff's seventh set of Data Requests; Queen Creek filed an Application to Intervene and Consent to Email Service; the Town of Florence ("Florence") filed an Application to Intervene and Consent to Email Service; Global Water Resources, Inc. ("Global") filed a Motion to Testify by Telephone, requesting that Global's President, Ron Fleming, who had been subpoenaed by Commissioner Dunn, be permitted to testify by telephone because he would be out of the country from April 17 to 21, 2018, and neither Commissioner Dunn's office nor JU objected to having Mr. Fleming testify by telephone; the Commission's Executive Director issued Notice of an Open Meeting to commence on April 16, 2018, for which the evidentiary hearing in this matter was the only agenda item; and JU filed a Request for Recusal, asking that Commissioner Burns recuse himself from this matter. JU questioned Commissioner Burns's ability to serve as an impartial decisionmaker because Commissioner Burns and his wife had been interviewed by the Federal Bureau of Investigation ("FBI") regarding the FBI's case against George Johnson and former Commissioner Gary Pierce and could be called to testify in the criminal trials,[12] and because of other statements made.

On April 13, 2018, JU customers Darlene and James Bjelland filed a Request to Intervene in Johnson Utilities Rate Case & Consent to Email Service;[13] JU customer John Dantico filed an Individual Residential Customer Intervention Request and a Consent to Email Service; Staff filed Daron Thompson's request to appear via WebEx, along with copies of his exhibits; RUCO filed its witness list and exhibits; JU filed its Second Supplemental Notice of Filing Hearing Exhibits; Staff filed its Amended Witness List and Exhibits as well as the Direct Testimony of Mr. Smith, Ms. Walczak, and Mr. Abinah; Queen Creek filed its Notice of Witnesses and Exhibits; Florence filed its Notice of Witnesses and Exhibits; and APS filed a response to Commissioner Burns's Data Request

[12] Commissioner Burns had revealed the FBI information at the Open Meeting on March 29, 2018, and had requested that any party with an objection to his participation file a statement of their objections in the docket.

[13] The Hearing and Docket Division's administrative staff called the Bjellands to determine whether the Bjellands intended to file for intervention in the currently pending Rates Docket, but Ms. Bjelland stated that they were concerned with JU's billing practices and intended to file in this docket.

regarding APS's average number of customers and average delinquent bill disconnect notices per month in 2017.

Also on April 13, 2018, a Procedural Order was issued announcing that the currently pending intervention applications will be addressed when the hearing reconvenes on April 16, 2018, and granting Global's Motion to Testify by Telephone.

On April 16, 2018, the evidentiary hearing portion of this matter commenced. The evidentiary hearing and post-hearing procedures are described further in Section I.B. below.

Also on April 16, 2018, Staff filed Staff's Notice of Filing Supplements to Staff's Exhibits; JU filed its Third Supplemental Notice of Filing Hearing Exhibits; RUCO filed its Amended Witness List, in which it stated that it would like for its witnesses to testify through videoconferencing from San Tan Valley and to receive a date certain for its witnesses; counsel for JU filed an emailed request received by him from Gary Bria, in which Mr. Bria asked to be removed from the list of intervenors for this matter; counsel for JU filed an email received by him from Mr. Rizuto, in which Mr. Rizuto stated that he was in the process of withdrawing his intervention; Mr. Rizuto filed a Request to Withdraw as an intervenor; and JU filed a Notice of Filing Judgment, including a copy of a Judgment issued by the Maricopa County Superior Court in *Johnson Utilities, L.L.C. v. Town of Queen Creek et al.*, in Docket CV 2018-005640, on April 12, 2018.[14] The Judgment denied JU's application for a temporary restraining order, preliminary injunction, and permanent injunction, but issued "a temporary restraining order that expires at 5:00 p.m. on April 19, 2018 barring Defendant from releasing the disputed documents."[15] The Judgment also found, *inter alia*, that the disputed documents are public records.[16]

On April 17, 2018, Staff filed another Notice of Filing Supplements to Staff's Exhibits; Pinal County filed Pinal County Board of Supervisors Resolution No. 032818-ACC-JU, dated March 28, 2018, in which Pinal County expressed support for the Commission "to fully investigate and address the water quality, billing, wastewater facility issues and related health and safety issues for Johnson Utilities" and further directed Pinal County staff to continue to cooperate fully with the Commission

[14] Official notice is taken of this Maricopa County Superior Court Judgment ("Judgment").
[15] Judgment at 2.
[16] Judgment at 3.

in the conduct of its investigation;[17] Betty Mason filed an Individual Residential Customer Intervention Request;[18] and Commissioner Burns filed a letter responding to JU's request for him to recuse himself. In his letter, Commissioner Burns stated that after reviewing applicable legal authorities and the Commission's Code of Ethics, and consulting with the Commission's Ethics Officer, he did not believe that his recusal was warranted in this matter.

On April 18, 2018, Staff filed another Notice of Filing Supplements to Staff's Exhibits, and Florence filed Notice of Filing Supplemental Exhibits.

On April 19, 2018, Queen Creek filed Notice of Filing Supplemental Exhibits.

On April 20, 2018, in response to a request made of ADEQ by Commissioner Dunn at the hearing on April 18, 2018, Staff filed a Notice of Filing that included documentation related to and including an administrative search warrant issued for ADEQ to obtain access to JU facilities; Staff filed a Notice of Filing Corrections to the Direct Testimony of Mr. Abinah; Staff filed a Notice of Filing Supplements to Staff's Exhibits; and Steve Olea, current Policy Advisor to Commissioner Burns and former Utilities Division Director, filed a letter to the docket announcing that he had been interviewed by the FBI on April 12, 2018, as part of the investigation of George Johnson and former Commissioner Pierce, and stating that this would not affect his ability to provide impartial advice to Commissioner Burns based on the record in this matter.

On April 24, 2018, Queen Creek filed a Notice of Filing Supplemental Exhibits.

On April 25, 2018, JU filed its Fourth Supplemental Notice of Filing Hearing Exhibits.

On April 27, 2018, Staff filed another Notice of Filing Supplements to Staff's Exhibits.

On April 30, 2018, the Commission's Chief Counsel filed a Notice of Issuance and Service of Subpoena regarding Christopher Johnson ("Chris Johnson"), George Johnson's son; and Pinal County filed a Notice of Filing Amended Witness List and Exhibits, including a certified excerpt of the Pinal County Board of Supervisors' meeting of June 21, 2017, at which it had voted to file a complaint against JU in Pinal County Superior Court for enforcement of the PCAQ Code of Regulations but to delay the complaint and not file the complaint if an Order of Abatement was reached by August 15,

[17] Official notice is taken of this Pinal County Board of Supervisors Resolution.

[18] Because the deadline for intervention had passed on April 16, 2018, and Ms. Mason was not present at the hearing to speak to her intervention request, the intervention request was denied from the bench on April 17, 2018.

2017.

On May 1, 2018, JU filed its Fifth Supplemental Notice of Filing Hearing Exhibits; Staff again filed Notice of Filing Supplements to Staff's Exhibits; and Queen Creek filed Notice of Filing Supplemental Exhibits.

Also on May 1, 2018, Commissioner Tobin filed a letter emphasizing concerns about potential public health and safety events occurring in JU's territory on or around March 26, April 17, and April 26, 2018 and expressing an expectation that JU had already taken immediate action and that no further such occurrences would occur during this matter; and Commissioner Dunn filed a letter disclosing that on October 11, 2016, his candidate committee had received a $2,500 contribution from Barbara Johnson and a $2,500 contribution from Chris Johnson and Margaret Johnson. Commissioner Dunn stated that although the letter had not been required by the Commission's Code of Ethics, he felt that the contributions should be disclosed. Commissioner Dunn further stated that the contributions would not affect his impartiality or ability to act as a neutral decisionmaker in this matter.

On May 2, 2018, Staff again filed a Notice of Filing Supplements to Staff's Exhibits; and the Commission issued a Notice and Agenda for a Staff Open Meeting to be held on May 8, 2018, at which the Commission would receive an update from the Commission's Chief Counsel regarding procedural issues and pending outside litigation related to this matter.

On May 3, 2018, Pinal County filed Notice of Filing Testimony and Exhibits of Pinal County, including the testimony of the Clerk for the Pinal County Board of Supervisors regarding her review of the Board's minutes related to the PCAQ's OAC with JU and the pertinent excerpt from those minutes; and Commissioner Tobin filed a letter to the docket describing his office's unsuccessful attempts to obtain from JU records that Commission Tobin considered relevant to this matter.

On May 4, 2018, JU filed its Sixth Supplemental Notice of Filing Hearing Exhibits; and Queen Creek filed Notice of Filing Supplemental Exhibits.

On May 7, 2018, JU filed its Seventh Supplemental Notice of Filing Hearing Exhibits; Pinal County filed Notice of Filing Supplements to its Exhibits; and Staff filed Notice of Filing Supplements to Staff's Exhibits.

On May 8, 2018, the Commission held a Staff Open Meeting to receive an update from the

Commission's Chief Counsel regarding procedural issues and pending outside litigation related to this matter. The Commission went into executive session and did not issue an order as a result of this Staff Open Meeting.

On May 9, 2018, JU filed its Eighth Supplemental Notice of Filing Hearing Exhibits, and Staff filed another Notice of Filing Supplements to Staff's Exhibits.

B. Evidentiary Hearing & Post-Hearing

On April 16, 2018, the evidentiary portion of the evidentiary hearing in this matter commenced before a duly authorized ALJ of the Commission, with Chairman Tom Forese and Commissioners Bob Burns, Andy Tobin, Boyd Dunn, and Justin Olson in attendance. At the commencement of the evidentiary hearing, the requests for intervention filed by Pinal County, Queen Creek, Florence, Mr. Thompson, and Mr. Dantico were granted. Additionally, the Bjellands' request for intervention was denied, as neither of the Bjellands was present, and Mr. Rizuto's and Gary Bria's motions to withdraw from intervention were granted. Eight individuals provided public comment on the first day of hearing, a number of them in support of JU.

The evidentiary hearing in this matter continued on April 17, 18, 19, 20, 23, 25, and 27 and May 1, 2, 4, 7, and 9, 2018. During the hearing, Staff, RUCO, Pinal County, Queen Creek, Florence, Ms. Labranche, and JU presented evidence in the form of witness testimony and exhibits. Mr. Dantico presented exhibits but did not present witness testimony. The remaining intervenors did not present evidence.[19] Staff presented the testimony of JU customers Jerod Miller, Ted Leach, Donovan Adamczyk, and Ben Melesio, Jr.; Mr. Baggiore, Director of ADEQ's Water Quality Division; Mr. Dunaway, ADEQ's Value Stream Manager for Groundwater Protection and Water Reuse; Mr. Tannler, ADWR's Statewide Active Management Area Director; Mr. Sundblom, PCAQ Director; Mr. Smith, Staff Engineer; Ms. Walczak, Staff Consumer Program Manager; and Mr. Abinah, Staff Director. RUCO provided the testimony of JU customers Sandra Bennett, Philip Grafft, and Connie Mays. RUCO also assisted JU customer Ms. Labranche in the presentation of her testimony. Queen Creek presented the testimony of Mr. Kross, Mr. Gardner, and Mr. McCarty. Florence presented the

[19] Mr. Thompson appeared via WebEx early in the hearing but did not provide testimony or other evidence.

testimony of Brent Billingsley, Florence Town Manager. JU presented the testimony of James Taylor, Senior Project Manager, Water & Wastewater Operations, GHD, Inc.[20] ("GHD"); Stephanie Poulin, employed by Hunt Mgt., L.L.C. ("Hunt") as JU's Office Manager; Brad Cole, Hunt's Chief Operating Officer ("COO"); and Gary Drummond, JU's Manager. Additionally, pursuant to subpoenas from Commissioner Tobin, testimony was presented by George Johnson, co-owner and former manager of JU; Chris Johnson, co-owner and manager of Hunt, Ultra Management, L.L.C. ("Ultra"), and several other entities (as described further below); Pinal County Supervisor Todd House; and Pinal County Supervisor Steve Miller.

On May 2 and 9, 2018, the parties were directed that initial briefs would be due by May 25, 2018, and responsive briefs by June 1, 2018. The parties were advised that their briefs were to address the legal authority for appointment of an Interim Manager/Interim Operator and the managerial interference doctrine and, further, that they were to provide proposed Findings of Fact. JU and Staff were also directed to file specified late-filed exhibits by May 21, 2018.

On May 21, 2018, JU filed its late-filed exhibit ("JU LFE").

On May 21 and 23, 2018, Staff filed its late-filed exhibits ("Staff LFE-1 and Staff LFE-2").

On May 25, 2018, initial briefs were filed by JU, RUCO, Florence and Queen Creek (jointly), Mr. Dantico, and Staff. Florence and Queen Creek (jointly) and Staff also filed their proposed findings of fact.

On May 29, 2018, Pinal County filed its initial brief and proposed findings of fact, JU filed its proposed findings of fact, and JU filed another LFE ("JU LFE 2") including data for water pumped and sold in 2016, 2017, and 2018 year-to-date. JU also filed a Request to Extend the Deadline for Filing Reply Briefs, requesting that the deadline be extended by one business day to allow JU adequate time to respond to the other parties' initial briefs and stating that the other parties JU had contacted successfully did not object.[21]

On May 31, 2018, a Procedural Order was issued granting JU's request to extend the reply brief

[20] Mr. Taylor described GHD as "one of the world's leading professional services companies operating in the global markets of water, energy and resources, environment, property and buildings, and transportation" and stated that GHD provides engineering, architecture, environmental, and construction services to public and private sector clients. (Ex. J-4 at 2.)

[21] Counsel for JU did not get a response from Mr. Zapata.

deadline from June 1, 2018, to June 4, 2018.

On June 1, 2018, Florence and Queen Creek filed Notice of Filing Additional Public Records and Publicly Available Documents, including seven different documents that were not included in the evidentiary record for this proceeding and had not been requested as LFEs.[22]

On June 4, 2018, responsive briefs were filed by JU, RUCO, Pinal County, Mr. Dantico, Florence and Queen Creek (jointly), and Staff; and Chairman Forese filed correspondence stating that he had been informed that JU had pulled more than 30 water meters across San Tan Valley, without notice, causing multiple construction projects to stop, and that a JU well motor had failed the week of May 28, 2018, causing the well to go offline and possibly causing reported lower-than-usual water pressures. Chairman Forese stated that he would like JU to explain why the failed well motor did not have a built-in redundancy system and why it did not have replacement equipment onsite to address the system failure. Chairman Forese further stated that it was apparent JU is still struggling to operate a reliable water system and provide the level of customer service expected by the Commission.

On June 6, 2018, Staff filed a Request for Procedural Conference, stating that Commissioner Olson had requested on June 1, 2018, that Staff perform an investigation and site visit to JU in response to customer complaints regarding low water pressure and a JU notice to its customers that a well pump had failed;[23] that Chairman Forese's letter to the docket had requested that JU provide information regarding these incidents; and that Staff had performed an investigation and site inspection on June 4, 2018. Staff requested the procedural conference to discuss how best to make this new information part of the evidentiary record so that it could be considered by the Commission in this matter.

On June 7, 2018, Florence and Queen Creek (jointly "the Towns") filed a Joinder in Staff's Request for Procedural Conference ; and JU filed a Joinder in Staff's Request for Procedural Conference, stating that JU also had new and additional information that should be presented to supplement the record in this matter, including a JU announcement that it would construct a new regional wastewater treatment plant and close the Section 11 Wastewater Treatment Plant and the status of three wells that JU was to bring on line in the next 7 to 10 days to add substantially to its water

[22] Although the receipt of these documents is acknowledged, they have not been considered because they are not evidence of record within this docket.

[23] This request was made in the form of a June 1, 2018, Press Release from Commissioner Olson's office.

production capacity.

Also on June 7, 2018, the Commission's Chief Counsel filed a copy of an email that had been sent by a RUCO employee to the Commissioners and two Commissioner Advisors to provide an update to "the San Tan Heights HOA water issue." The RUCO email forwarded two emails from the manager of the San Tan Heights Homeowners Association.[24]

On June 11, 2018, the Commission issued a Notice and Agenda for a Staff Open Meeting to be held on June 12, 2018, to consider, *inter alia*, two items related to JU described as follows:

1. **In the matter of the Commission's investigation of the billing and water quality issues of Johnson Utilities, LLC (WS-02987A-18-0050)** – Commission discussion, consideration, and possible vote regarding re-opening evidentiary proceeding to include new evidence of water service issues

2. **In the matter of the Commission's investigation of Johnson Utilities, LLC. Water Outages (WS-02987A-18-0151)** – Commission discussion, consideration, and possible vote regarding how to proceed

On June 12, 2018, the Commission held its Staff Open Meeting to consider the JU agenda items listed above. After some discussion, followed by an executive session, the Commission voted not to reopen the evidentiary record for this matter and, additionally, voted to proceed with an emergency evidentiary hearing in the new docket (WS-02987A-18-0151) and to have the Recommended Opinion and Order therein issued by July 31, 2018.

II. JU's Organization and General Operations

A. JU Generally & Pertinent Prior Commission Decisions

JU is an Arizona limited liability company and public service corporation and a Class A utility that provides water and wastewater utility services in Pinal County, Arizona[25] pursuant to Certificates of Convenience and Necessity ("CC&Ns") granted by the Commission in Decision No. 60223 (May

[24] This RUCO email was an inappropriate ex parte communication from RUCO to the Commissioners and is not a part of the evidentiary record in this matter, and its substance has not been considered by the Commission in reaching its Decision in this matter.

[25] Although a portion of Johnson's service area is within the Phoenix Active Management Area ("AMA"), the entire service area is within Pinal County. (Tr. at 3059-60.) A portion of the Phoenix AMA extends into Pinal County. (Tr. at 1442.)

27, 1997)[26] and subsequently extended multiple times. JU's service area includes portions of Queen Creek and the unincorporated San Tan Valley area as well as portions of Florence.[27] (*See* Tr. at 1149-50, 1798; Ex. FL-1.[28]) JU's only member is The George H. Johnson and Jana S. Johnson Revocable Trust, dated July 9, 1987 ("GJ Trust"), of which George Johnson and Jana Johnson, his wife, are Trustees.[29] (*See* Tr. at 876; Ex. S-19, pt. 2; Ex. S-99.) As the owner of JU, the GJ Trust receives distributions from JU; it also receives loan payments from JU for an outstanding $600,000 loan. (Ex. S-99.)

In Decision No. 60223, the Commission found that JU was to be managed by George Johnson and his wife; that George Johnson had approximately 25 years of real estate development experience; that George Johnson had previously been involved in the ownership and operation of another public service corporation furnishing water and wastewater (Foothills Water Company, which had been sold); and that because of George Johnson's experience, a performance bond was not necessary. (Decision No. 60223 at 3, 10.) Decision No. 60223 further found that Johnson International, Inc. ("Johnson Int'l"), for which George Johnson was President and Chief Executive Officer ("CEO"), was developing the requested CC&N service area (approximately 3,200 acres located on both sides of the Hunt Highway southeast of Queen Creek in Pinal County) as Johnson Ranch, which was to be built out to include approximately 10,000 residences over 10 to 15 years as well as a golf course. (*Id.* at 2-3.) Decision No. 60223 further found that JU was to have two classes of membership interests, managing memberships that would be owned by George Johnson and his family and would include voting rights, and associate memberships that would be owned by five or six major developers of the project and would not include voting rights. (*Id.* at 3, 9.) Decision No. 60223 authorized JU to assess specified water and wastewater rates and charges, to include hook-up fees of $750 for water customers and $1,000 for wastewater customers; to sell up to $1.35 million in managing memberships; to sell associate

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[26] Official notice is taken of this Decision, which was issued in consolidated Docket Nos. U-2987-95-284 and U-2987-95-285. JU was represented in the consolidated matter by Richard L. Sallquist of Sallquist & Drummond, P.L.L.C. (Decision No. 60223 at 1.)

[27] Between 6,000 and 7,000 Florence residents receive water and wastewater service from JU; they reside within Anthem at Merrill Ranch and Wild Horse Estates. (Tr. at 1804, 1829-30.) JU has agreements to serve a number of other developments in Florence, some of which will soon begin construction. (Tr. at 1830.)

[28] Florence's exhibits are identified as "Ex. FL-1," etc.

[29] Chris Johnson stated that he is not a member of the GJ Trust, although he believes that he is a beneficiary. (Tr. at 2304.)

memberships at $967,500 each; and to incur up to $772,000 in a combination of short and long-term debt. (*Id.* at 11-14.) Decision No. 60223 also required JU, *inter alia*, to notify Staff's Director at least 15 days before serving its first customer and to file for rate review within 36 months from the date it first served any customer. (*Id.* at 14-15.)

To date, JU has filed only two rate case applications, one in Docket No. WS-02987A-08-0180 ("2008 Rate Docket"), which resulted in Decision No. 71854 (August 25, 2010);[30] and one in Docket No. WS-02987A-17-0392 ("Pending Rate Docket"), which is currently pending. In Decision No. 71854, the Commission found that Decision Nos. 68235 (October 25, 2005), 68236 (October 25, 2005), and 68237 (October 25, 2005)[31] had all required JU to file, by May 1, 2007, a water and wastewater rate application based on a 2006 test year. (Decision No. 71854 at 58.) Decision No. 71854 found that JU had, before May 1, 2007, requested an extension of the filing deadline, and that Staff recommended that JU be required to file a rate application by March 31, 2008, using a 2007 test year.[32] (*Id.* at 58-59.) JU filed its rate application on March 31, 2008, using a 2007 test year. (*Id.* at 58.) Decision No. 71854 found, *inter alia*, that JU's water division had a fair value rate base ("FVRB") of negative $2,414,613 and should have a gross revenue reduction of $3,398,960 or 25.80 percent; that JU's wastewater division had an FVRB of $136,562 and should have a gross revenue reduction of $1,667,019 or 14.68 percent; and that JU's authority to collect hook-up fees should be discontinued and that a new hook-up fee tariff should not be approved until JU presented a certification by a Certified Public Accounting firm that JU had a membership equity level of at least 40 percent.[33] (*Id.* at 67-68.) Decision No. 71854 also denied a JU request to allow its members' pass-through tax liability to be recovered as operating expenses and authorized JU to implement a Central Arizona Groundwater Replenishment District ("CAGRD") Adjustor Mechanism to recover its CAGRD replenishment tax expenses each year. (*Id.* at 35-44, 47, 73.) Additionally, Decision No. 71854 required JU to file a list of outstanding NOVs issued by ADEQ, with the procedural status of each NOV and the steps JU was

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[30] Official notice is taken of this Decision.

[31] Official notice is taken of these Decisions, which were issued in Docket Nos. WS-02987A-05-0088, WS-02987A-04-0889, and WS-02987A-04-0288, respectively, all of which were CC&N extension dockets.

[32] Decision No. 71854 does not include a finding that the Commission granted JU an extension, and the Discussion portion of the Decision indicates that the Commission took no action on multiple JU requests.

[33] Because of the lack of equity investment in JU, the Commission established JU's revenue requirement using a minimal operating margin of 3 percent. (*Id.* at 49-51.)

taking to come into compliance with ADEQ requirements and, further, to notify the Commission when JU came into full compliance with all ADEQ requirements, including resolution of all outstanding NOVs. (*Id.* at 72.) Decision No. 71854, which included significant discussion regarding JU's dealings with related entities, also ordered the following:

> IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company shall prepare an action plan that indicates the specific steps it will take to demonstrate, by means of its day to day record keeping regarding transactions between the Company and all entities with which it conducts business, including, but not limited to, its affiliates and related parties, that its dealings are arm's length, transparent, and well-documented. The Company shall file the plan with the Commission's Docket Control Center as a compliance item in this case within 90 days for Staff's review. Staff shall assess the plan and its adequacy, and shall file, with the Commission's Docket Control Center as a compliance item in this case, within 60 days of Staff's receipt of the Company's action plan, a report with Staff's findings and recommendations on the action plan accompanied by a Recommended Order for Commission approval or disapproval of the Company's action plan.

(*Id.* at 73; *see id.* at 23-33.) JU filed a "JU Record Keeping Plan" in the 2008 Rate Docket on November 24, 2010.[34]

Since Decision No. 71854, the Commission has issued numerous decisions in the 2008 Rate Docket, a number of them related to JU's CAGRD Adjustor Mechanism. The following subsequent Decisions in the 2008 Rate Docket are most pertinent for the instant matter:

- Decision No. 72579 (September 15, 2011)[35] amended Decision No. 71854, *inter alia*, to allow JU to request income tax expense prospectively in a future A.R.S. § 40-252 Petition should the Commission change its policy on imputed income tax expense; to increase JU's wastewater plant in service by $18,244,755, resulting in a wastewater FVRB of $17,270,554, by including $10,892,391 that had been disallowed for inadequately supported plant and $7,352,364 that had been disallowed related to affiliate profit; to approve a new revenue requirement for JU's wastewater division based on an 8.0 percent rate of return, representing an increase of $1,904,867; and to reinstate JU's hook-up fee tariffs for its water and wastewater divisions.

[34] Official notice is taken of this filing.
[35] Official notice is taken of this Decision

Decision No. 72579 also prohibited JU from filing for a rate increase using a test year ending earlier than December 31, 2012.

- Decision No. 73992 (July 16, 2013) granted a JU petition to amend Decision No. 71854 pursuant to A.R.S. § 40-252 filed on March 8, 2013, after the Commission issued Decision No. 73739 (February 21, 2013) in a different docket[36] to adopt a policy allowing every utility entity other than a subchapter C corporation or tax-exempt entity to seek to include in its cost of service an income tax allowance based on the lower of comparable subchapter C corporate income tax expense or the combined personal income tax obligation created by the distribution of the utility's profits.[37] Decision No. 73992 modified Decision Nos. 71854 and 72529 to authorize JU recovery of income taxes, resulting in increased revenue of $125,071 for JU's water division and of $747,274 for JU's wastewater division. Decision No. 73992 also ordered JU to file a full rate case application for its water and wastewater divisions no later than June 30, 2015, using a 2014 calendar year test year.
- Decision No. 74695 (August 12, 2014)[38] resulted from a rehearing of Decision No. 73992, granted pursuant to rehearing applications filed by both JU (seeking to obtain a later rate case filing deadline and test year) and RUCO (claiming that Decision No. 73992 was unconstitutional because it increased rates based on a new expense without a meaningful fair value analysis and that the manner in which it imputed income tax expense was arbitrary, capricious, and an abuse of discretion because the expense amount was not based on shareholders' actual income taxes). Decision No. 74695 approved a Settlement Agreement between JU and RUCO (Staff was not a signatory), modifying Decision No. 73992 by decreasing JU's wastewater rates to reflect a reduction in the imputed income tax rate from 36.6558 percent to 25 percent; requiring JU to file a full rate case application by June 30, 2016, using a 2015 calendar year test year (a one-year extension); and requiring JU to file yearly earnings reports for 2013, 2014, and 2015 in a specified format.

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[36] Decision No. 73739 was issued in Docket No. W-00000C-06-0149.
[37] Official notice is taken of both of the referenced Decisions.
[38] Official notice is taken of this Decision.

- Decision No. 75130 (June 26, 2015)[39] amended Decision No. 74695, pursuant to a JU request, to extend the deadline for JU to file its next rate case application by one year—to June 30, 2017—and to require JU to use a 2016 calendar year test year.
- Decision No. 75515 (April 22, 2016)[40] amended Decision No. 74695, pursuant to a JU request, to extend by three months the deadline for JU to file its 2015 earnings report.
- Decision No. 75747 (September 19, 2016)[41] amended Decision No. 75130, pursuant to a JU request, to eliminate the requirement for JU to file a rate case application by June 30, 2017.
- Decision No. 75872 (January 3, 2017)[42] found that JU had, from 2011 through 2015, under-collected through its CAGRD Adjustor Mechanism in the amount of $4,415,308.93 for its service area within the Phoenix AMA and in the amount of $461,401.69 for its service area within the Pinal AMA. Decision No. 75872 authorized JU to collect a CAGRD fee of $4.19 per thousand gallons (a fee increase of 63 percent) from its customers in the Phoenix AMA and of $2.43 per thousand gallons (a fee increase of 98 percent) from its customers in the Pinal AMA for all customer billings for water sold after December 1, 2016.
- Decision No. 76336 (August 23, 2017)[43] amended Decision No. 75747, pursuant to a Staff recommendation,[44] to require JU to file a full rate application by December 31, 2017, using a test year ending June 30, 2017, and if JU failed to do so, to require Staff to file an order to show cause to begin the process for installing an interim manager.

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[39] Official notice is taken of this Decision.
[40] Official notice is taken of this Decision.
[41] Official notice is taken of this Decision.
[42] Official notice is taken of this Decision.
[43] Official notice is taken of this Decision.
[44] Staff's recommendation arose out of Docket No. WS-02987A-17-0184, which was opened on June 14, 2017, pursuant to a Commission directive made at the Open Meeting on June 13, 2017, for the purpose of examining the books and records of JU and its affiliates, subsidiaries, and holding companies. (Decision No. 76336 at 2.) After considering bids for the review of books and records and discussing the matter with JU, Staff recommended that a full rate case rather than a rate review be required. (*Id.*) No procedural schedule has been established, and no Decision has been issued in Docket No. WS-02987A-17-0184. In the Pending Rate Docket, by a Procedural Order issued on April 12, 2018, a JU Motion for Continuance and Stay of the proceeding was held in abeyance pending the outcome of this matter. Then, by Procedural Order issued on May 15, 2018, the requirement for the parties to file written testimony and associated exhibits was suspended, until further order of the Commission, and the deadlines associated with testimony were vacated. Currently, the pre-hearing conference in the Pending Rate Docket is scheduled to be held on October 18, 2018, and the hearing is scheduled to commence on October 23, 2018. Per a filing made in the Pending Rate Docket on May 21, 2018, JU has provided its customers notice of the October 23, 2018, hearing date.

- Decision No. 76590 (February 26, 2018)[45] found that JU's cumulative under-collections from 2011 through 2016 were $4,173,384.14 for JU's Phoenix AMA service area and $539,281.71 for JU's Pinal AMA service area and approved new CAGRD fees of $2.35 per thousand gallons for customers in the Phoenix AMA service area (a fee decrease of 43 percent) and $1.91 per thousand gallons for customers in the Pinal AMA service area (a fee decrease of 21 percent), effective for all customer billings for water sold after January 1, 2018.

B. Management of JU & Its Operations

1. JU's Manager & Sole Employee

From its inception in 1997 until late in May 2017, JU was managed by George Johnson, and George Johnson was JU's only employee. (*See* Tr. at 877, 2943.)

On May 23, 2017, George Johnson was indicted in the United States District Court for the District of Arizona[46] on charges of conspiracy, fraud, and bribery, along with former Commissioner Gary Pierce; his wife, Sherry Pierce; and Jim Norton. (*See* Ex. S-13; Ex. S-20; Ex. S-22.)

On May 26, 2017, JU made a filing in the 2008 Rate Docket to notify the Commission that George Johnson had removed himself from all management of JU in response to the indictment. (Ex. S-21.)

On June 7, 2017, JU filed in the 2008 Rate Docket a Supplemental Notice Regarding Management of Johnson Utilities, L.L.C., ("Management Notice") notifying the Commission that Gary A. Drummond had replaced George Johnson as manager of JU effective May 26, 2017; that Articles of Amendment to JU's Articles of Incorporation had been filed with the Commission on June 5, 2017, to show Mr. Drummond as the new manager of JU; that George Johnson had been removed from all facets of the operation, decision-making, and management of JU; and that George Johnson would have no further contact with Commissioners or Commission employees on behalf of JU. (Ex. S-22.) The Management Notice also pointed out that JU had not been indicted in *U.S. v. Pierce*. (Ex. S-22.) The Management Notice included a copy of the Articles of Amendment for JU, filed with the Commission's Corporations Division on June 5, 2017, showing that Gary A. Drummond had been substituted for

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[45] Official notice is taken of this Decision.

[46] The case is *U.S. v. Pierce, et al.*, CR-17-00713-PHX-JJT ("*U.S. v. Pierce*").

George H. Johnson as manager of JU. (*Id.*) The Articles of Amendment do not include any changes to the membership for JU.[47] (*Id.*) The Management Notice described Mr. Drummond as an attorney with more than 36 years of experience representing Arizona clients in commercial real estate, business, corporate, and public utilities matters and as an Arizona State Bar certified specialist in Real Estate. (*Id.*)

Currently, Mr. Drummond is JU's only employee.[48] (Tr. at 2943.) Mr. Drummond described his primary responsibilities for JU as follows:

> As the name implies, I am responsible for the management of [JU]. As Manager, I review and analyze the financial and capital improvement needs of [JU] and plan for future growth and expansion. In addition, I work with [JU's] management company to implement capital improvements, coordinate the delivery of utility services and provide quality customer service. I also represent the Company in regulatory matters with the Commission, ADEQ, [ADWR], and Pinal County, Arizona. Additionally, I work with land developers and commercial and residential builders relative to their future plans and their utility needs.[49]

Mr. Drummond describes his managerial role as more of a business role, versus operations, because he has acquired a working knowledge of the operations, but relies upon the expertise of Mr. Cole, the engineers, in-house and outside counsel, and now Mr. Taylor and GHD. (Tr. at 3459-61.) Mr. Drummond also said that he serves as the "macro-type person, . . . trying to oversee the entirety of the operations, everything from service to the customers to capital improvements to working with the employee leasing company . . . and its employees." (Tr. at 3339.) For his work as manager of JU, Mr. Drummond is directly compensated $10,000 per month, as agreed with George Johnson. (Tr. at 3406, 3477.)

Mr. Drummond has Bachelor of Arts degrees in Business Administration and Psychology, a Juris Doctor, and licenses to practice law in Arizona and Illinois. (Ex. J-1 at 3.) For approximately the past 35 years, he has practiced in Arizona as a transactional attorney in business, corporate, finance, real estate, utility, regulatory, and employment matters. (Ex. J-1 at 3.) His clients have included

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[47] The Arizona Corporation Commission Corporations Division Website Entity Detail for JU, accessed on May 18, 2018, shows that Mr. Drummond is the manager and statutory agent of JU and that the "George H. Johnson Rev Trust" is the only member of JU. Official notice is taken of this document, hereinafter referred to as "JU Corps Info."

[48] This contrasts with George Johnson's testimony that JU had 90 to 100 employees, which is believed to have been erroneous, and which he later corrected by saying that JU only had one employee. (*See* Tr. at 882-83, 937.)

[49] Ex. J-1 at 2.

political subdivisions, real estate developers, utilities, manufacturers, wholesalers, and retailers. (Ex. J-1 at 3.) He has also been a partner in two different law firms that represented public service providers (Ex. J-1 at 3.) Although he does not have any prior experience working in the water and wastewater utility industry himself, Mr. Drummond believes that he is qualified to act as manager of JU for three reasons: (1) he has been JU's legal counsel for more than 20 years (since 1996) and is familiar with JU's owners and "the employees of its management company"[50]; (2) he has experience representing utility companies and has been a partner in law firms that specialized in utility law and regulation; and (3) as a transactional attorney, he is a problem solver and has provided legal services for a wide variety of businesses on numerous legal issues and has a reputation for trust and fair dealing. (Ex. J-1 at 3-4; Tr. at 3336-38.)

In addition to serving as manager of JU, Mr. Drummond maintains a private law practice in Phoenix. (Tr. at 3335.) Mr. Drummond stated that he works approximately 12-hour days and that, during the months of April and May 2018, the vast majority of that time was spent on JU. (Tr. at 3454.) In more normal times, however, Mr. Drummond stated that he works approximately 20 to 30 hours per week on JU. (Tr. at 3454.) Mr. Drummond primarily performs his work for JU from his law office because he desires to avoid being in the same office with George Johnson.[51] (Tr. at 3341-43.) Mr. Drummond said that he has counseled George Johnson that it is more important for George Johnson to attend to his own personal situation (the federal case)[52] than to JU and suggested to George Johnson that "from an appearance standpoint, it wouldn't look good" if they communicated frequently because George Johnson had stepped down as JU's manager. (Tr. at 3340.) Mr. Drummond communicates with Mr. Cole by email and by phone throughout the day as well as with Chris Johnson and sometimes field personnel. (Tr. at 3342.) Mr. Drummond also attends the JU operational meetings on Fridays and has met with regulators at the JU offices. (Tr. at 3342.) Mr. Drummond seldom goes to the JU

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[50] At hearing, Mr. Drummond phrased this differently—"familiar with the employees of Hunt Management, which provides the employees to the management company for Johnson Utilities." (Tr. at 3337.)

[51] George Johnson owns the building where the JU offices are located and has a personal office there. (Tr. at 3343.)

[52] Mr. Drummond expressed concern that there is a possibility that the Commissioners may not be fair with JU because of George Johnson's having been indicted. (Tr. at 3490.) Mr. Drummond also expressed concern about having a fair hearing in this matter, although he stated that he had no concerns about how the presiding ALJ had conducted the hearing. (Tr. at 3491-92.) Mr. Drummond was concerned about having participants in this matter, such as Commissioners, called as witnesses against George Johnson in the federal case. (Tr. at 3491-92.)

field office in San Tan Valley and estimated that he had been there only four times in the past 11 months. (Tr. at 3494-95.) Mr. Drummond also has not inspected all of JU's facilities, although he has been to a number of the facilities, primarily the wastewater treatment plants. (Tr. at 3495.)

George Johnson testified that he selected Mr. Drummond because he has known him for more than 20 years, and Mr. Drummond "has done extensive work for us in the legal end and helping me in the business end." (Tr. at 880.) He clarified that Mr. Drummond has represented him in his personal capacity in the past, not as the manager of JU. (Tr. at 945.) George Johnson described Mr. Drummond as a "brilliant attorney in business matters" and "very structured" and said that Mr. Drummond has the respect of both the legal and business communities. (Tr. at 880-81.) When George Johnson was asked whether he was concerned about Mr. Drummond's lack of experience operating a utility, he responded:

> No, I wasn't, because we had people like Greg Brown who had a master's in engineering and wastewater and all that and a master's in chemistry. We had Grade 4 operators. We had staff that was – understood a very complex system. And I was sure that Mr. Drummond could improve on that.
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> . . . .
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> Improve on me.[53]

Mr. Drummond stated that since he took over as manager of JU, he has implemented weekly operations meetings with Hunt representatives, including Mr. Cole, Hunt's in-house engineer, Katherine Nierva, and Hunt's water and wastewater field managers (Matt Hipsher and Jed Lant), to review capital improvement projects, water and wastewater service delivery, and customer service. (Ex. J-1 at 4; Tr. at 3343-45.) Mr. Drummond stated that from those meetings, the management team has developed a checklist of projects—capital improvements to complete, tank sites or well sites to acquire, etc.—that the team reviews, adds to, and updates each week. (Tr. at 3344.) Mr. Drummond believes that the changes he has implemented have resulted in a more integrated utility, where everyone has a pretty good working knowledge of what projects are underway. (Tr. at 3360.) Additionally, he said that Hunt has good personnel—that he has the utmost confidence in Mr. Cole, Mr. Hipsher, and Mr. Lant—and will only become stronger with Mr. Taylor. (Tr. at 3360.) Mr. Drummond stated that he meets with Chris Johnson more than he meets with Barbara Johnson and that the meetings focus on

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[53] Tr. at 881.

the checklist and day-to-day operations. (Tr. at 3455-56.) Mr. Drummond stated that the "day-to-day nuts and bolts" fall to the operations personnel leased from Hunt. (Tr. at 3456.)

Mr. Drummond stated that he has access to the financial resources needed to run JU properly, that a number of capital improvements have been made, that capital improvements continue to be made, and that "money is not an obstacle." (Tr. at 3360.) Mr. Drummond stated that JU has spent between $3 and $5 million in cash on improvements since he became manager and is comfortable continuing to proceed in that manner. (Tr. at 3442.) He also stated that JU has funds to accomplish what it has planned for the future. (Tr. at 3360-61.) Mr. Drummond does not believe that he needs to obtain George Johnson's approval before moving forward with capital improvements. (Tr. at 3441-42.) Mr. Drummond suggested, however, that he might not be comfortable obtaining financing to fund improvements without obtaining George Johnson's approval. (*See* Tr. at 3442-43.) He also believes that a lender would require the owner of JU (of the security pledged) to consent to any loan and perhaps even to guarantee the loan. (Tr. at 3518-19.)

Mr. Drummond stated that as JU's manager, he has worked with ADEQ to perform a root cause analysis and create an action plan for JU's sanitary sewer overflows ("SSOs") and is involved in quarterly telephonic and/or in-person meetings with ADEQ to review the results of the action plan. (Ex. J-1 at 4-5.) Mr. Drummond stated that one of his first meetings as manager was with ADEQ, where he assured Mr. Baggiore that ADEQ will never again be excluded from a JU site (as it was in December 2016) and that Mr. Drummond wants to work with ADEQ on the SSOs and any other issues JU has with ADEQ. (Tr. at 3347-48.) Mr. Drummond stated that JU now has a good relationship with ADEQ.[54] (Tr. at 3348.) He asserted that Mr. Baggiore called him after a recent ADEQ visit at the Section 11 WWTP, which Commissioner Tobin and PCAQ had also attended;[55] thanked Mr. Drummond for the visit; and complimented Mr. Lant and Mr. Hipsher. (Tr. at 3447.) Mr. Drummond stated that JU also has a good relationship with PCAQ, which he described as JU's "partner" in addressing odor-related and H_2S -related issues with the Section 11 WWTP. (Tr. at 3349-50.) Mr.

[54] George Johnson stated that ADEQ employees are "good people" and "very professional" and avoided answering how he would characterize his relationship with ADEQ during his tenure as manager of JU. (Tr. at 891.) He stated that he could not recall whether JU had filed a lawsuit against ADEQ. (Tr. at 891-92.)

[55] Mr. Drummond testified that he was pleased that Commissioner Tobin attended the joint inspection. (Tr. at 3511.)

Drummond stated that JU has also had a number of meetings with ADWR regarding the certificates of assured water supply in the Pinal AMA, which have been delayed by ADWR's water modeling, and is working with JU's water rights attorneys and ADWR to ensure the CAWS continues. (Tr. at 3350-51.) Mr. Drummond stated that he hopes to foster a good relationship with the Commission as well. (Tr. at 3350.)

Mr. Drummond acknowledged that George Johnson hired Mr. Drummond and can dismiss Mr. Drummond as the manager of JU at will. (Ex. S-99 at 6.)

2. Hunt & Ultra

Aside from Mr. Drummond, all of the individuals who regularly perform work in support of JU's day-to-day operations are employed by Hunt. (*See, e.g.,* Tr. at 2566, 2683, 2750, 2767, 2776-77, 2942-43, 3337, 3339, 3414, 3444-45.) Hunt is an Arizona limited liability company ("LLC"), formed on November 13, 2009, and owned by its members—The Chris Johnson Family Trust dated September 14, 2000 ("CJ Trust"), for which Chris Johnson and Margaret Johnson[56] are Co-Trustees, and Barjo LLC, which is owned and controlled[57] by Barbara Johnson. (Ex. S-99 at 7-8; Ex. S-100; Tr. at 2255, 2962-63, 2265.) Chris Johnson and Barbara Johnson are the son and daughter of George Johnson. (Ex. S-99 at 8; Tr. at 2281.) JU does not consider Hunt to be an "affiliate" of or "affiliated" with JU, based upon the Commission's definition of an "affiliate" in A.A.C. R14-2-801.[58] (*See, e.g.,* Tr. at 3108-09.) According to Mr. Drummond, JU "does not have any subsidiaries or affiliated entities" because a familial relationship does not equate to the power to direct the management of an entity.[59] (Tr. at 3391-92.)

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[56] This Margaret Johnson is Chris Johnson's wife, not his sister. (Tr. at 2962-63.)

[57] The Arizona Corporation Commission Corporations Division Website Entity Detail for Barjo LLC, accessed on May 18, 2018, shows that Barbara A. Johnson is the manager of Barjo LLC, that Mr. Drummond is the statutory agent of Barjo LLC, and that The B.A.J. Living Trust (Barbara A. Johnson, Trustee) is the only member of Barjo LLC. Official notice is taken of this document, hereinafter referred to as "Barjo Corps Info."

[58] A.A.C. R14-2-801(1) states:

> "Affiliate," with respect to the public utility, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise.

[59] Mr. Abinah confirmed that JU is required to file annual reports of its transactions with affiliated entities, and he believes that JU does so. (Tr. at 2239.)

Chris Johnson attended ASU for a couple of years, majoring in Business with a concentration in Accounting; no information was provided regarding Barbara Johnson's background. (Tr. at 2314-15.) Hunt's named manager is December Companies Inc. ("December"). (Ex. S-100; Tr. at 2962-63.) According to the Management Notice, December is an Arizona corporation, with Chris Johnson and Barbara Johnson as its only directors, Chris Johnson as its President/Secretary/Treasurer, and Barbara Johnson as its Vice President. (Ex. S-22.) Barjo LLC and the CJ Trust are December's only named shareholders.[60] According to the Management Notice, George Johnson has no direct or indirect ownership or control of Hunt or December. (Ex. S-22.) Chris Johnson confirmed that he and Barbara Johnson are the only owners of December, although he could not recall when or why it was set up, except that it is a holding company. (Tr. at 2261-62.)

The Management Notice reports that Mr. Cole,[61] as COO of Hunt, is to continue overseeing the day-to-day operations of JU pursuant to a "management services agreement" under which Hunt provides to JU "all certified operators, field technicians, laborers, customer service personnel, meter reading personnel, billing and collection personnel, [and] bookkeeping and accounting personnel, as well as various services." (Ex. S-22.) The Management Notice reports that Mr. Cole has more than 25 years of experience working in the water and wastewater industry, listing entities with which he has been employed, and further asserts that Mr. Cole joined JU well after the date of the alleged events underlying the indictment against George Johnson.[62] (*Id.*)

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[60] The Arizona Corporation Commission Corporations Division Website Entity Detail for December Companies, Inc., accessed on July 3, 2018, shows this information. Official notice is taken of this document, which is hereinafter referred to as "December Corps Info."

[61] Mr. Cole is engaged to Margaret Johnson, who is one of George Johnson's daughters. (Ex. S-99 at 8.) Margaret Johnson is a school teacher, and Mr. Cole believes that she does not have an ownership interest in JU, Hunt, Ultra, or any of the other Johnson-related entities. (Tr. at 2778-79, 3084.) Mr. Cole also testified that he does not have an ownership interest in JU, Hunt, or Ultra. (Tr. at 2778-79.)

[62] Mr. Cole has worked in the water utility industry since approximately February 1990, first with California-American Water Company for 15 years, beginning as a field laborer and working his way up to district operations manager for a 22,000-customer water system. (Tr. at 2767-68.) Mr. Cole then transferred to Arizona-American Water Company ("Arizona-American"), which is now known as EPCOR, serving first as a production manager and working his way up to director of operations in approximately 2008 or 2009. (Tr. at 2768-70.) Mr. Cole then took a job with CH2M-Hill as a water/wastewater project manager for the Pine/Strawberry Water Improvement District, a small water utility in Gila County, where he worked for five years before taking his position with Hunt. (Tr. at 2770.) Mr. Cole stated that both through his employers and at college, he has completed courses in water science, water and wastewater management, water treatment, wastewater treatment, and distribution and collection systems. (Tr. at 2771.) Mr. Cole stated that he holds both a bachelor's degree and a master's degree in business administration. (Tr. at 2776.) Mr. Cole also stated that he previously held ADEQ Operator Certifications—Grade 4 Water Distribution and Grade 3 Water Treatment—but has allowed them to expire. (*See* Tr. at 2915.) Mr. Cole is not a professional engineer. (Tr. at 2914.)

In his pre-filed testimony in this matter, Mr. Cole described the business of Hunt as follows:

> Hunt [] is a management services company. Hunt [] has a management services agreement whereby it provides [JU] with certified operators, field technicians, laborers, customer service personnel, meter reading personnel, billing and collection personnel, bookkeeping and accounting personnel, as well as various other services. I oversee the provision of employees and services to [JU] on behalf of Hunt [].[63]

Mr. Cole described his primary responsibilities for Hunt as follows:

> My primary responsibilities for Hunt [] include overseeing a staff of skilled professionals in the operation, maintenance and management functions of [JU]. I provide guidance and direction to field staff on operational and maintenance matters affecting both the water and wastewater divisions. I am responsible for the financial performance of [JU]. I provide oversight and approval for expenditures at the utility and oversee capital improvements. I also regularly represent the Company at industry functions and in regulatory matters before the Commission.[64]

In a subsequent filing, Mr. Drummond stated that what Mr. Cole meant when he stated that he was responsible for the financial performance of JU was that the manner in which Hunt performs services for JU directly impacts JU's financial performance. (Ex. S-99 at 7.)

Mr. Cole testified that as the COO of Hunt, he reports directly to the owners of Hunt and reports indirectly to Mr. Drummond regarding the results of JU's operations. (Tr. at 2766.) Mr. Cole has worked for Hunt since March 2015 and at hearing described his job as "oversee[ing] the provision of employees that are assigned to [JU], Club at Oasis Golf Course, Roadrunner Transit, and the corporate office, employees directly employed by Hunt." (Tr. at 2767.) Mr. Cole did not have a comprehensive review of JU's facilities and operations conducted when he came to work for Hunt, although he did have experts come in to determine what repair and maintenance was needed. (*See* Tr. at 3204-05.) Mr. Cole reported that he receives a paycheck only from Hunt and was hired by Chris and Barbara Johnson, not by George Johnson. (Tr. at 2767, 2914.) Mr. Cole reported that he, along with Chris and Barbara Johnson, has authority over all Hunt employees, including the authority to fire any Hunt employee. (Tr. at 3204.)

Hunt's corporate office is located in Scottsdale and is the work location for Mr. Cole, Mr.

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[63] Ex. J-2 at 2.
[64] Ex. J-2 at 3.

Drummond (when not at his private law office), Hunt's human resources personnel, some of Hunt's accounting personnel, Hunt's controller, and a construction manager. (Tr. at 2749.) The Hunt office is not in the same building as the JU office. (Tr. at 3514.) Rather, the JU home office is in the same building in Scottsdale where George Johnson has his personal office and where Chris Johnson and Barbara Johnson have their offices. (Tr. at 3226, 3514.) The office Mr. Cole reports to for work has a sign that reads "Johnson International." (Tr. at 3003.) JU's field office, where customer service activities take place, is in San Tan Valley. (Tr. at 3494-95.)

Mr. Cole identified the following as Hunt "clients other than Johnson Utilities, L.L.C.": Slash/J, L.L.C. ("Slash/J");[65] Dogwood 178, LLC ("Dogwood");[66] Johnson Ranch Estates, L.L.C. ("Johnson Ranch Estates");[67] The Club at Oasis, L.L.C. ("Club at Oasis");[68] Southwest Environmental Utilities, L.L.C. ("SWE");[69] Roadrunner Transit, L.L.C. ("Roadrunner");[70] La Camarilla, Inc. ("La Camarilla");[71] Central Arizona Solid Waste, Inc. ("CASW");[72] Johnson Int'l;[73] Athena Group, L.L.C.

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[65] Mr. Cole stated that Hunt provides accounting services for Slash/J, which is involved in ranching. (Tr. at 2974-75; Ex. S-102.) Slash/J's sole member is the GJ Trust, its manager is George Johnson, and its statutory agent is Mr. Drummond. (Ex. S-102.)

[66] Mr. Cole stated that Hunt provides Dogwood with accounting services as well as two ranch hands. (Tr. at 2976.) Dogwood's sole member is the GJ Trust, its manager is George Johnson, and its statutory agent is Mr. Drummond. (Ex. S-103.)

[67] Mr. Cole stated that Hunt provides primarily accounting functions for Johnson Ranch Estates, although in the future, Hunt may provide some engineering and management services. (Tr. at 2978-79; Ex. S-105.) Johnson Ranch Estates' sole member is GHJ, its manager is George Johnson, and its statutory agent is Mr. Drummond. (Ex. S-105.)

[68] According to Mr. Cole, Club at Oasis is the name of a nine-hole golf course in San Tan Valley owned by Club at Oasis, and Hunt provides Club at Oasis with labor and accounting. (*See* Tr. at 2980-81; S-106.) Hunt is the only member of Club at Oasis, and Chris Johnson is its manager. (Tr. at 2981; Ex. S-106.) Club at Oasis receives effluent from JU pursuant to an end user agreement with JU but does not pay for the effluent. (Tr. at 2981-82.) Club at Oasis does pay for its water and sewer services from JU. (Tr. at 2982.) Additional information for Club at Oasis is shown in the table in Section II.C.

[69] Mr. Cole stated that SWE did not yet have any customers and thus did not really receive any services from Hunt, although Mr. Cole expects that Hunt will provide its labor and accounting services. (Tr. at 2982.) SWE's sole member is the GJ Trust, its manager is Mr. Drummond, and its statutory agent is Mr. Drummond. (Ex. S-107.)

[70] Mr. Cole stated that Hunt provides Roadrunner with labor (employees) and accounting functions and provides direct invoices for those services. (Tr. at 2983-85; Ex. S-108.) Additional information for Roadrunner is shown in the table in Section II.C.

[71] Mr. Cole stated that Hunt provides accounting services to La Camarilla. (Tr. at 2988.) La Camarilla's shareholders are the GJ Trust; the CJ Trust, and Barjo LLC; its Directors are Chris Johnson, Barbara Johnson, and George Johnson; and its statutory agent is Mr. Drummond. (Ex. S-110.)

[72] Mr. Cole stated that Hunt provides accounting services to CASW, which is a billing company that performs billing services for Republic Services, a large national refuse collection and transfer company, and has agreements with a couple of homeowners associations to provide billing for them, (Tr. at 2989-93.) CASW's sole shareholder is the GJ Trust, its Directors are George Johnson and Jana Johnson, and its statutory agent is Mr. Drummond. (Ex. S-111.)

[73] Mr. Cole stated that Johnson Int'l is an "umbrella corp for George Johnson" and that Hunt provides it with accounting services, for which it direct bills. (Tr. at 2993; Ex. S-112.) Additional information about Johnson Int'l is provided in the table in Section II.C.

("Athena");[74] GHJ Investments, L.L.C. ("GHJ");[75] Rancho Sendero, L.L.C. ("Rancho Sendero");[76] and Ultra Racing, L.L.C. ("Ultra Racing")[77] (Ex. S-99 at 7.) Mr. Cole also testified that Hunt provides accounting services to Annuity Holdings, L.L.C. ("Annuity Holdings"). (Tr. at 3002; Ex. S-120.) Mr. Cole testified that Hunt does not provide services to any entities that are not somehow owned either by George Johnson or his family members. (Tr. at 2973-74.) Mr. Cole testified that he believes Hunt issues bills to the entities for which it provides services, and that those bills are paid, but he does not know for certain. (Tr. at 3001-02.)

On a typical day as the COO of Hunt, Mr. Cole stated, he spends a lot of time discussing operations with his staff, periodically visits "out there," reviews reports, writes reports, writes letters, writes articles, and does "anything a manager does [for] water and wastewater operations." (Tr. at 3228-29.) Mr. Cole acknowledged that to a lesser extent, he is also involved in some of George Johnson's other business ventures. (Tr. at 3228-29.) Mr. Cole estimated that he spends 20 to 30 hours per week on communications with Mr. Drummond—written, verbal, and in person—regarding the operations of JU. (Tr. at 2780-81.) Mr. Cole stated that Mr. Drummond takes advice from Mr. Cole on what might be prudent for JU, based on Mr. Cole's experience, and consults with field operations managers, but is not taking direction on the running of JU from George Johnson and is ultimately making the decisions regarding the operation of JU. (Tr. at 2781-82.) Mr. Cole stated that he finds Mr. Drummond accessible when he is needed and discusses JU issues with him, but primarily discusses issues, operations, and personnel with Chris Johnson. (Tr. at 2782, 3225.)

Mr. Cole described Chris and Barbara Johnson as "extremely active" owners of Hunt and stated that he sees Chris Johnson all day almost every day and sees Barbara Johnson every afternoon. (Tr. at

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[74] Mr. Cole stated that Athena owns solar fields and leases them to JU and that Hunt provides it with accounting services, for which Hunt bills directly. (Tr. at 2996-97; Ex. S-113.) Additional information about Athena is provided in the table in Section II.C.

[75] Mr. Cole stated that Hunt provides GHJ with accounting services; Mr. Cole believes that it is an investment vehicle for George Johnson. (Tr. at 2997-98; Ex. S-114.) Additional information about GHJ is provided in the table in Section II.C.

[76] Mr. Cole stated that Rancho Sendero owned land and recently sold it to JU, specifically a 15-acre parcel in the Anthem at Merrill Ranch area that is going to be used for a new 15-acre recharge facility. (Tr. at 2999-3000; Ex. S-115.) Mr. Cole believes that there was a land purchase agreement between the seller, George Johnson, and the buyer, George Johnson. (Tr. at 3000.) Mr. Cole stated that he was not aware of any other sales of land between George Johnson-related entities. (Tr. at 3000.) Additional information about Rancho Sendero is provided in the table in Section II.C.

[77] Mr. Cole stated that he believes Ultra Racing owns a racehorse and cattle, and Hunt provides it with accounting services. (Tr. at 3000-01; Ex. S-116.) Ultra Racing's member is the GJ Trust, its manager is George Johnson, and its statutory agent is Mr. Drummond. (Ex. S-116.)

3225.) When asked then why Chris Johnson referred so many questions about Hunt to Mr. Cole, Mr. Cole could not explain. (Tr. at 3225-26.) Mr. Cole testified that Chris Johnson helps him co-manage Hunt and "performs a lot of functions" and helps with the day-to-day management of Hunt when Mr. Cole is not available, such as by communicating with the Hunt workers at JU and addressing whatever needs they had while Mr. Cole attended the hearing in this matter. (Tr. at 2963-64.) Mr. Cole stated that Chris Johnson and Barbara Johnson also sign any checks issued by Hunt and that Barbara Johnson is involved in managing Hunt "to a degree," although he and Chris Johnson would be better able to speak to the management of Hunt. (Tr. at 2964.)

When Chris Johnson testified,[78] he identified his current occupation as manager for Hunt, along with his sister Barbara Johnson, and stated that he had been with Hunt for nine years, although he could not remember his exact title. (Tr. at 2252-53.) Chris Johnson stated that he was not involved with JU and is not compensated by JU but that as manager of Hunt, he reports to Mr. Drummond, who, as the manager of JU, is Hunt's client. (Tr. at 2253-55.) Chris Johnson stated that Hunt primarily does employee leasing and billing for JU, including payroll, benefits, etc., and that he and his sister formed Hunt in 2009, with advice from their attorneys, for the main purpose of leasing employees and providing billing and other services for JU. (Tr. at 2254.) Chris Johnson stated that Hunt also maintains JU's financial books and records, including records of income received and expenses incurred; pays JU's expenses from revenues that JU receives from its customers; and contacts JU's customers regarding payment of their bills. (Tr. at 2282.) Chris Johnson stated that Hunt does not have any customers aside from JU.[79] (Tr. at 2254.) Chris Johnson also stated that George Johnson was not involved in creating Hunt, is not an owner of Hunt, and has no interest in Hunt and, further, that he has not talked to George Johnson about JU since approximately May 2017. (Tr. at 2256-57, 2274.) Chris Johnson did recall attending one meeting in September 2017, along with George Johnson, regarding the sale of JU to Queen Creek, stating that he went because George Johnson asked him to be there. (Tr. at 2278-79.) Chris Johnson described his duties with Hunt as follows: "I sit down on a weekly basis with Gary Drummond, Brad Cole, our entire management staff weekly. Brad kind of reviews with us

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[78] Barbara Johnson was not a witness in this matter.

[79] This is in contrast to Mr. Cole's testimony. (*See* Tr. at 2767.)

what is going on out in the field. That's basically it."[80] (Tr. at 2301.) Chris Johnson stated that Barbara Johnson's duties are the "same thing," although she is not usually at those weekly meetings, and that he and Barbara Johnson also get a weekly management report from Mr. Cole. (Tr. at 2301.) Chris Johnson reported that neither he nor Barbara Johnson has any other employment. (Tr. at 2302.) For approximately 14 questions related to Hunt's operations and JU's operations, including a number of questions related to Ultra,[81] Chris Johnson deferred to Mr. Cole, although he also stated that Mr. Cole is not involved in Ultra. (*See* Tr. at 2251-2319.) Chris Johnson stated that his annual salary from Hunt is $120,000 and that he also receives the revenues that Hunt receives for its services provided to Ultra and JU. (Tr. at 2276, 2283.)

According to Mr. Cole, "Hunt does everything that is needed for [JU] except be the ultimate manager of [JU]."[82] (Tr. at 2960.) Hunt has approximately 100 employees. (Tr. at 2255, 3461.) Hunt employs a registered professional engineer who performs work for JU and also uses the services of a consulting engineer, who is a former ADEQ and Hunt employee, to inspect and evaluate JU's assets for Hunt. (Tr. at 2914-15.) Hunt employs 12 ADEQ-certified Water Distribution Operators who are assigned to serve JU (one Grade 1, eight Grade 2, one Grade 3, and two Grade 4), 13 ADEQ-certified Water Treatment Operators who are assigned to serve JU (three Grade 1, eight Grade 2, one Grade 3, and one Grade 4);[83] nine ADEQ-certified Wastewater Collection Operators who are assigned to serve JU (three Grade 1, three Grade 2, one Grade 3, and two Grade 4), and eight ADEQ-certified Wastewater Treatment Operators who are assigned to serve JU (four Grade 1, zero Grade 2, three Grade 3, and one Grade 4). (Ex. S-99 at 19-20.)

On April 10, 2018, Mr. Drummond provided the following responses to Commissioner Burns's March 30, 2018, letter:

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[80] We note that Chris Johnson's description of his involvement with Hunt indicates much less involvement than Mr. Cole's testimony suggests.

[81] For example, Chris Johnson was asked about JU's agreement with Club at Oasis, the management fees charged to JU, the purpose of Ultra, what Ultra does, Ultra's revenues and profits, and what Ultra does with its revenues. (*See* Tr. at 2251-2319.)

[82] In addition to performing work for JU, Hunt also provides labor for Roadrunner and Club at Oasis and accounting and administrative services for the other entities that Chris Johnson and Barbara Johnson own. (Tr. at 2960-61.) Mr. Cole stated that the majority of services are provided to JU, technically to Ultra for JU. (Tr. at 2961.) Mr. Cole believes that Hunt only provides services to entities that are somehow owned by George Johnson or his family members. (Tr. at 1973-74.)

[83] JU stated that there were 11 but listed operators totaling 13. (*See* Ex. S-99 at 20.)

34. How is contracting with Hunt Mgt., LLC beneficial to Johnson Utilities, L.L.C. customers?

RESPONSE: Johnson Utilities believes that contracting with Hunt Mgt., L.L.C. provides greater economies of scale, risk mitigation, greater operational flexibility and lower operating costs.

RESPONDENT: Gary Drummond

35. Why would it not be more beneficial to Johnson Utilities, L.L.C. customers to have the utility directly employ the personnel it needs instead of going through an affiliated entity?

RESPONSE: The decision to utilize Hunt Mtg., [sic] L.L.C., was a [sic] made pursuant to the management discretion of Johnson Utilities based upon an analysis of the specific circumstances of Johnson Utilities. Johnson Utilities believes there are benefits to using Hunt Mtg., [sic] L.L.C., as set forth in the response to question 34 above.

RESPONDENT: Gary Drummond[84]

Although a number of statements made by the witnesses in this matter, and statements made previously in Commission Open Meetings,[85] indicated or suggested that JU contracts with Hunt for management services, that is not the case. (*See, e.g.*, Ex. J-1 at 3 (regarding Mr. Drummond's familiarity with the owners of JU and "the employees of its management company"); Ex. J-2 at 2 (regarding Hunt having "a management services agreement" to provide JU with workers); Ex. J-3 at 2 (regarding Hunt having "a management services agreement whereby it provides" JU with workers); Ex. S-99 at 7 (referring to JU as a client of Hunt); Tr. at 937 (referring to Hunt as "the management company [that] had the employees"); Tr. at 2966.) Ms. Poulin believed that Hunt leased employees

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[84] Ex. S-99 at 14.

[85] Mr. Cole acknowledged that representatives for JU have said in Open Meeting that JU is managed by Hunt. (*See* Tr. at 3231.) Mr. Cole also acknowledged that documents submitted to the Commission by Mr. Cole on behalf of JU have not identified him as the COO of Hunt rather than JU, saying that "[t]hat's something we need to do better at," and that JU's newsletters have sometimes identified him as the COO of JU. (Tr. at 2943, 3085-86; Ex. RUCO-10; Ex. RUCO-11.) Mr. Drummond acknowledged that he has heard counsel for and representatives of JU state in Open Meeting that JU is managed by Hunt and that when he took over as manager, he directed Mr. Cole to be diligent and precise about it, and he has told Mr. Cole that Hunt employees should wear the attire of the entity for which they are working on a specific day, a message that Mr. Cole has shared with Hunt's employees. (Tr. at 3520-21, 3541.) Mr. Drummond believes that non-attorneys do not always understand the significance of identifying the correct entity in a legal document or other context. (Tr. at 3521.) He stated that his own failure to correct or have JU's counsel correct such misstatements in Open Meeting was an oversight and may have been because he was not paying attention. (Tr. at 3521.)
Ms. Poulin, who has been working for JU since 2007, believed that she had been employed by Hunt during all that time and was not aware that Hunt did not lease employees directly to JU. (*See* Tr. at 2683-85; Ex. J-3 at 2.) Ms. Poulin was not aware that Hunt was not formed until 2009 and could not recall any other entity employing her to provide services for JU. (Tr. at 2685-86.)

directly to JU. (Tr. at 2683.) Even George Johnson initially testified that JU has between 90 and 100 employees, that Hunt is the managing entity of JU, and that he did not know how many employees Hunt has.[86] (Tr. at 882-83.)

JU does not contract with Hunt for the provision of workers but instead contracts with Ultra, which leases Hunt's employees to provide services to JU. (Tr. at 2966; Ex. S-121, Ex. S-77.) Hunt bills Ultra for the services Hunt provides and the expenses Hunt incurs. (Tr. at 2967.) Mr. Cole could not remember precisely how much of the management fees paid to Ultra (approximately $16 million in the test year for the pending rate case) were paid to Hunt for its services, but he estimated that it was between $6 and $7 million. (Tr. at 3107-08.) Mr. Cole does not review Ultra's books, and he does not know what Ultra does with the remainder of the revenues received. (Tr. at 3107.)

The existence of Ultra as the entity that contracts with JU was first revealed in this matter on April 12, 2018, in response to Staff's Seventh Set of Data Requests. (*See* Ex. S-77.) JU's response included the following exchange, along with the attachments referenced therein:

> **STF 7.1** **Please provide a copy of the Management Services Agreement between Johnson Utilities, L.L.C. and Hunt Mgt., L.L.C. Cf. pre-filed direct testimony of Stephanie Poulin, p. 2**
>
> Response: Johnson Utilities, L.L.C., contracts with Ultra Management, L.L.C., and Ultra Management, L.L.C., contracts with Hunt Mgt., L.L.C. Enclosed are (i) a copy of the Restatement and Amendment to Administrative Services Agreement dated January 1, 2014, between Ultra Management, L.L.C., and Johnson Utilities, L.L.C.; and (ii) a copy of the Leased Employee Agreement dated March 29, 2013[,] between Ultra Mangement [sic], L.L.C., and Hunt Mgt., L.L.C.
>
> Prepared by: Gary Drummond, Manager
> Johnson Utilities, L.L.C.
> 5230 E. Shea Blvd., Suite 200
> Scottsdale, Arizona 85254[87]

Ultra is a foreign limited liability company formed in Delaware on December 29, 2010.[88] (Ex. S-101.) Like Hunt, Ultra is owned and managed by Chris Johnson and Barbara Johnson. (*See* Ex. S-

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[86] George Johnson later said that this had been incorrect and that JU has only one employee. (Tr. at 937.) We note that a recess had been taken between the original statement and the corrected statement. (*See* Tr. at 908.)

[87] Ex. S-77 at 2.

[88] We note that this is just over a year after Hunt was formed. (*See* Ex. S-100.)

100; Ex. S-101.) Both Barbara Johnson and Chris Johnson are named as managers for Ultra, and Pinetop Trust II is named as its sole member. (Ex. S-101.) Chris Johnson testified that he and Barbara Johnson are Trustees of Pinetop Trust II, along with four or five others that he could not recall.[89] (Tr. at 2279.) Chris Johnson and George Johnson both testified that George Johnson is not a Trustee of Pinetop Trust II. (Tr. at 885, 2279.) Chris Johnson could not recall when Ultra was formed but stated that it was formed to be the "go-between" for Hunt and JU, based upon advice from his and Barbara Johnson's attorneys, for the purpose of serving JU. (Tr. at 2257-60.) Chris Johnson testified that he manages Ultra along with his sister Barbara Johnson. (Tr. at 2257.) Ultra has no employees and performs all of its services using Hunt employees. (Tr. at 2259, 2294.)

JU originally entered into an "Administrative Services Agreement" with Ultra on March 29, 2013 ("2013 Ultra Contract"). (Ex. S-121.) The 2013 Ultra Contract was signed by George Johnson for JU and Robert E. Travers as "Mgr." for Ultra and described the services to be provided by Ultra (the "Provider") to JU (the "Recipient") as follows:

> 2. Description of Services. Provider shall be responsible for performing the administrative functions related to the operation of the Business (the "Services"), including, without limitation, the following:
>
> (a) Provider shall be responsible for maintaining the financial books and records of income received by the Business and expenses incurred by the Business.
>
> (b) Provider shall prepare and mail invoices to Recipient's customers, receive payments on invoices and contact Recipient's customers for payment. Provider shall solely use Recipient's published rates when managing the invoices to and receipts from Recipients' [sic] customers.
>
> (c) Provider shall pay expenses of the Business, as directed by Recipient, from payments received from Recipient's customers.
>
> (d) Provider shall locate, interact with and, if necessary, contract with accountants, lawyers and other professionals (including, without limitation, technical consultants, bookkeepers and administrative staff) with respect to matters that affect the financial dealings, books and records of the Business.
>
> (e) Provider shall assist Recipient as needed in the preparation of all tax returns relating to the Business for timely filing, including extensions, if necessary.
>
> (f) Provider shall maintain a separate system of records,

[89] No documentation was provided regarding the formation or governance of Pinetop Trust II.

books and accounts for each Business managed for Recipient.

(g) Provider shall undertake such other tasks as required by Recipient.[90]

The 2013 Ultra Contract provided that for its services, Ultra was to receive a fee of $25 per water utility customer and $17 per wastewater utility customer, which was to "be calculated at the end of each accounting period and [was to] be considered an expense attributable to that period."[91] (Ex. S-121 at 2.) Additionally, the 2013 Ultra Contract provided that Ultra was to be reimbursed for costs:

> (b) Reimbursable Costs. Provider shall be entitled to obtain reimbursement from Recipient for all costs incurred by Provider in performing its duties under this Agreement (collectively "Reimbursable Costs"), including, without limitation, all actual and necessary direct expenses incurred by Provider for:
>
> (i) legal, accounting, technical consulting and similar services,
>
> (ii) local and long distance telephone, facsimile and high speed internet service, and
>
> (iii) bank charges, postage, and supplies.[92]

The 2013 Ultra Contract provided that payment was to be made to Ultra on or before the 30th day following the close of each month. (Ex. S-121 at 2.)

The 2013 Ultra Contract had no specified duration and stated that it commenced on the effective date and continued "until terminated by Provider upon thirty (30) days prior written notice to Recipient or by Recipient for 'cause', [sic] effective immediately upon giving written notice of termination to Provider." (Ex. S-121 at 3.) "Cause" was defined to include Ultra's materially breaching any obligation under the 2013 Ultra Contract or any written direction from JU; Ultra's violating "the Standard" or any state or federal law; Ultra's dereliction in its performance of the Services, as determined by JU in its reasonable discretion; or, essentially, Ultra's voluntary or involuntary involvement in bankruptcy proceedings. (*Id.* at 3.) "The Standard" was Ultra's obligation to perform the Services diligently and to devote sufficient time and use its best efforts to ensure that JU's books, records, reports, and returns were sufficiently maintained and provided as required by JU, JU's lenders,

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[90] Ex. S-121 at 1-2. The 2013 Ultra Contract identifies Ultra as the Provider, JU as the Recipient, and a water and wastewater utility business in Arizona as the Business. (*Id.* at 1.)

[91] The accounting period was monthly. (*See* Ex. S-121 at 2; Tr. at 2967, 3211.)

[92] Ex. S-121 at 2.

and/or the Internal Revenue Service ("IRS"). (*Id.* at 2.)

On January 1, 2014, JU and Ultra entered into a "Restatement and Amendment to Administrative Services Agreement" ("2014 Ultra Contract"), which was signed by George Johnson for JU and Barbara Johnson for Ultra. (Ex. S-77 at 2014 Ultra Contract; Tr. at 981.) The provisions of the 2014 Ultra Contract appear to be the same as those of the 2013 Ultra Contract except in two respects: (1) the fees for Ultra's services are changed to $22.10 per water utility customer and $19.90 per wastewater utility customer;[93] and the 2014 Ultra Contract no longer includes a statement that "[n]o third party is intended to be a beneficiary of any provision of [the] Agreement." (*See* Ex. S-121; Ex. S-77 at 2014 Ultra Contract.) Chris Johnson confirmed that the 2014 Ultra Contract was signed by George Johnson and Barbara Johnson and that he and his sister essentially negotiated the 2014 Ultra Contract with their father. (Tr. at 2306.) Chris Johnson stated that he believed he and his sister Barbara, along with their attorneys, negotiated the Ultra Contracts; that he could not recall how the per connection charges listed in the Ultra Contracts were reached; that he could not remember what attorneys gave the advice regarding Ultra;[94] and that he and Barbara Johnson are not paid by Ultra because they are paid by Hunt, although they serve as controllers for Ultra. (Tr. at 2259-60, 2275-76.) Chris Johnson also confirmed that Ultra does not serve any function other than to be the "interface" between Hunt and JU. (Tr. at 2305.)

On March 29, 2013, the same day the 2013 Ultra Contract was formed, Hunt and Ultra entered into a "Leased Employee Agreement" ("Hunt Contract"), under which Hunt (the "Provider") agrees to provide to Ultra (the "Recipient") "full-and/or part-time Leased Employees to assist Recipient in the orderly operation of its business." (Ex. S-77 at Hunt Contract at 1.) The Hunt Contract was signed by Chris Johnson as "Manager" of Hunt and by Robert E. Travers as "Mgr" of Ultra. (Ex. S-77 at Hunt Contract at 10.) Chris Johnson stated that Mr. Travers was the controller "for us" and was an employee

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[93] JU's current approved monthly base rate for water utility service for a customer with a 5/8" meter is $11.27, and its current approved monthly base rate for wastewater utility service for a customer with a 5/8" water meter is $37.27. This information was obtained from JU's approved Water and Wastewater Tariff on file with the Commission, labeled as effective on January 1, 2018, and issued on February 26, 2018, of which official notice is taken. The Tariff is available on the Commission's website at http://www.azcc.gov/Divisions/Utilities/Tariff/Water/Johnson%20Utilities,%20L.L.C.pdf.

[94] Chris Johnson agreed that he relied on attorneys to tell him what was good for him to do with the Ultra Contracts. (Tr. at 2315.) Chris Johnson also agreed that he had a lot of confidence in those attorneys, although he could not remember who they were because "we have had so many attorneys." (Tr. at 2315.) Chris Johnson did recall that Mr. Drummond was not one of the attorneys involved. (Tr. at 2315.)

of Hunt; Chris Johnson also acknowledged that the Hunt Contract was essentially negotiated between Hunt, owned by Chris Johnson and Barbara Johnson, and Ultra, also owned by Chris Johnson and Barbara Johnson.[95] (Tr. at 2307.)

Unlike the 2013 Ultra Contract and 2014 Ultra Contract, the Hunt Contract states that it begins on March 29, 2013, and shall continue on a month-to-month basis unless terminated earlier. (Ex. S-77 at Hunt Contract at 2.) Additionally, the Hunt Contract allows either Hunt or Ultra to terminate the contract upon 30 days' written notice. (*Id.*) The Hunt Contract requires Ultra to pay Hunt "an amount equal to only those Payroll Fees applicable to the Leased Employees,"[96] for which Hunt must invoice Ultra on or around the end of each regular or special payroll period. (*Id.*)

The Hunt Contract provides that Ultra and Hunt have the following rights and obligations related to Hunt's employees:

- Ultra is "responsible for the primary supervision, direction, and control of Leased Employees" and to provide training if a position requires certain knowledge or abilities particular to Ultra's operation;
- Ultra may terminate a Leased Employee's services to Ultra for any reason, provided that Ultra gives written notice to Hunt, but must coordinate with Hunt on the warning, discipline, and termination of the Leased Employee's services;
- Ultra is responsible for "maintain[ing] records of actual time worked by Leased Employees in the service of [Ultra] and . . . verify[ing] the accuracy of the payroll information entered by and for the Leased Employees";
- Ultra is responsible for complying, at its own expense, with all safety, health, and work laws, regulations, and rules; for ensuring compliance with safe work practices and use of protective equipment required by laws and regulations;

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[95] Chris Johnson indicated that he relied on the same attorneys who were involved in the Ultra Contracts to tell him what was good for him to do with the Hunt Contract. (*See* Tr. at 2315.)

[96] "Payroll Fees" is defined to mean "all compensation and benefits paid or incurred with respect to any Leased Employee for services provided to Recipient during the term of [the] Agreement, including all costs associated with insurance, welfare benefits, pension plans, salary, wages, payroll taxes, workers' compensation, and other employment related contributions or payments required to be made to any governmental entity, and any other fringe benefits or direct costs relating to the employment of such Leased Employees." (Ex. S-77 at Hunt Contract at 1.) The definition of "Payroll Fees" goes on to include specifics related to welfare benefits plan costs, pension benefit costs, and periods during which a Leased Employee is absent from work. (*See id.*)

- Ultra is required to report to Hunt whenever an accident or incident involving a Leased Employee could give rise to a claim under safety, health, or safe work laws, regulations, or rules, and to "cooperate with [Hunt's] workers' compensation carrier who shall have the right to inspect [Ultra's] work locations";
- Ultra is required to comply with and apply policies and procedures adopted by Hunt and provided to Ultra and to report to Hunt any incident involving a Leased Employee that could give rise to a claim under such a policy or procedure;
- Hunt is required to recruit, interview, test, select, hire, train, ensure legal authorization to work, ensure ability to perform essential functions, and provide and pay for any reasonable accommodations necessary for the Leased Employees who provide services to Ultra;
- For the Leased Employees under Ultra's primary supervision, Hunt is required to:
    - Pay wages as reported by Ultra;
    - Collect, report, and pay applicable federal, state, and local payroll taxes and for unemployment coverage;
    - Administer and pay for insurance policies related to the Leased Employees, including employee benefits plans, workers' compensation, and comprehensive general liability insurance;
    - Complete, report, and maintain payroll and benefit records, except for the actual hours worked that must be maintained and verified by Ultra; and
    - Perform any other services agreed to in writing by Hunt;
- Hunt is required to maintain and apply policies and procedures designed to assist Ultra in human resource management of Leased Employees, including within specified areas;
- Hunt is solely responsible for counseling, disciplining, reviewing, evaluating, determining pay rates for, and terminating Leased Employees, except that Ultra also has the right to terminate services;
- Hunt is required to designate certain Leased Employees to perform payroll processing duties for all Leased Employees;
- Hunt is required to obtain, at Hunt's cost, any required federal, state, county, or municipal

license or permit required in connection with a Leased Employee's employment or services and ensure that any required license is held and that any supervision by a licensed person or entity is provided; and

- Hunt is required to maintain all necessary payroll and employment records for Leased Employees, generally and as specifically necessary to comply with insurance company general liability audits.[97]

The Hunt Contract also states that the Leased Employees to perform the operations and functions of Ultra are identified on an Exhibit A, attached to the Hunt Contract. (Ex. S-77 at Hunt Contract at 1.) According to Ms. Poulin, the list of Leased Employees included as Exhibit A is not current. (Tr. at 2761-62.)

Hunt bills Ultra on a monthly basis for the services Hunt employees provide and the expenses Hunt incurs, plus a 20-percent margin, which Mr. Cole states Hunt uses to cover "some other incidental insurance requirements, liability and stuff that aren't borne to JU but that comes [sic] out of that margin"—"expenses that Hunt would incur as a single entity." (Tr. at 2967, 3211.) Mr. Cole testified that Hunt makes very little profit, although he could not remember the 2017 profit, not even whether it was in the range of five or six figures. (Tr. at 2971, 3211-12.) Mr. Cole testified that the 20-percent margin is used for staffing, insurance, leasing vehicles, and other invoices and that he does not know whether profits are then distributed to Hunt's owners. (Tr. at 2971, 3211-13.) Mr. Cole also testified that Hunt's controller, Todd Stewart, who is responsible for Hunt's overall accounting, would know the profit figures and whether profits were distributed to the owners of Hunt every year.[98] (Tr. at 2971-72, 3212-13.) It is a Hunt employee who, on behalf of Ultra, writes the check to Hunt for its services, which is then signed by Chris or Barbara Johnson for Ultra. (Tr. at 3111, 3208-09.)

Chris Johnson did not recall whether Hunt was involved in a competitive bidding process to provide services to JU or whether there was any sort of gauge used to determine whether the amount Ultra was going to charge was comparable to what other similarly situated companies would charge for those services, although he thought that it was. (Tr. at 2280-81.) Chris Johnson believes that the

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[97] Ex. S-77 at Hunt Contract at 2-4.

[98] Mr. Stewart was not called as a witness in this matter.

revenues generated by JU flow to Ultra through the per connection charges in the 2014 Ultra Contract and then flow to Hunt; that Mr. Stewart calculates the fee per customer each month; and that Mr. Cole determines the costs to be reimbursed. (Tr. at 2280, 2295.) Chris Johnson agreed that he does not have any job duties for Ultra other than holding "annual corporate meetings and stuff like that." (Tr. at 2260, 2303.) When asked how much revenue Ultra receives per year, Chris Johnson deferred to Mr. Cole, at the same time acknowledging that Mr. Cole has no role with Ultra, because Mr. Cole is "more into the day-to-day activities" than Chris Johnson is. (Tr. at 2286-87.) Chris Johnson later agreed that Ultra receives approximately $15 million annually as a result of the 2014 Ultra Contract but stated that he did not have any knowledge about where the $15 million then goes, although he also stated that he and his sister Barbara control Ultra's bank accounts and that the revenues from Ultra ultimately come to him and to his sister as the owners. (Tr. at 2295-97, 2300.) Chris Johnson testified that he had "no idea" how much money he and Barbara received in 2017 as the owners of Ultra—not even whether it was five or six figures.[99] (Tr. at 2297.) Chris Johnson acknowledged, however, that all of the revenues received by JU are from customers and that approximately $15 million of those revenues flow through Ultra annually. (Tr. at 2298-99.) In its LFE, JU stated:

> The compensation received by Ultra [] is used to pay the expenses of Ultra [] incurred under the [2014 Ultra Contract] as well as other expenses incurred by Ultra [] in operating its business. Revenues which remain after paying expenses and maintaining an appropriate cash reserve are available for distribution on an annual basis to the sole member of Ultra [], Pinetop Trust II.[100]

When asked what benefit JU ratepayers receive from the arrangement with Ultra, Chris Johnson stated, "I think we provide good service to them"; then clarified that he was talking about the services provided by Hunt; then deferred to Mr. Cole to answer the question. (Tr. at 2299-2300.) Chris Johnson testified that he could not answer why Ultra exists—why there is not just a contract between Hunt and JU—stating that it was based on advice from his and Barbara's attorneys. (Tr. at 2282.) He could not remember whether he understood the purpose at the time it was being formed. (Tr. at 2302.) Chris

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[99] Chris Johnson was not sure whether he signs Ultra and Hunt's tax returns or whether his accountant just submits them electronically and stated that he relies upon the accountant for their contents. (*See* Tr. at 2313-14.)

[100] JU LFE filed May 21, 2018, at att. 2.

Johnson also could not recall why there was a switch from Shea Utilities Service Company[101] to the current arrangement involving Ultra and Hunt. (Tr. at 2283.)

George Johnson testified that he did not remember anything about the different agreements and arrangements that structure how JU is run from a legal perspective. (Tr. at 983.) George Johnson stated that he was unfamiliar with Ultra and with the 2014 Ultra Contract and did not know what it was for or what Ultra does for JU, although he conceded that it appeared he had signed the 2014 Ultra Contract for JU. (Tr. at 884, 960, 981.) He also confirmed that the other signature on the 2014 Ultra Contract appeared to be that of his daughter Barbara Johnson. (Tr. at 981.) George Johnson also testified that he did not recognize the Hunt Contract, although he recognized the signature thereon for Hunt to be that of his son Chris Johnson. (Tr. at 982-83.) The other signature on the Hunt Contract, for Ultra, was Robert Travers, and George Johnson was not sure for whom Mr. Travers worked at that time. (Tr. at 983.) George Johnson appeared to attribute his confusion and lack of knowledge regarding the Ultra and Hunt arrangements to "the tax attorneys [and] regular attorneys" who prepared the documents and "the damn tax attorneys and all and the way they set you up." (Tr. at 960, 982.)

Mr. Drummond testified that JU pays Ultra for its administrative services using the format in the 2014 Ultra Contract, that Hunt leases employees to Ultra, and that Ultra is invoiced by Hunt for the cost of the employees plus a factor of 20 percent. (Tr. at 3497.) Mr. Drummond believes that JU pays Ultra based upon the number of customers in any given month and was unsure whether Ultra issues any invoices to JU. (Tr. at 3497.) Mr. Drummond stated that Ultra's administrative services include bookkeeping and the other administrative services set forth in the 2014 Ultra Contract. (Tr. at 3498.)

Mr. Drummond stated that he did not form Ultra and does not represent or provide any legal services to Ultra, but believes that the theory behind creating Ultra was to protect the assets of the successful business, JU, from the liabilities that might arise by virtue of the operations of that business, a theory with which he does not disagree. (Tr. at 3361, 3459, 3462.) He stated that if JU were to incur a $100 million judgment, it would presumably affect customers' rates. (Tr. at 3362-63.) He also stated:

[101] Chris Johnson testified that Shea Utilities Service Company is owned by him and his sister Barbara; was formed in approximately 1998; previously served the same function as Hunt; and is inactive now, having gone inactive when Hunt began to serve. (Tr. at 2271-72, 2312.) Chris Johnson stated that the employees of Shea Utilities Service Company were leased only to JU. (Tr. at 2272.) Chris Johnson could not remember whether Shea Utilities Service Company contracted directly with JU or used an intermediary such as Ultra when it was providing employees for JU. (Tr. at 2280.)

"So the concept of Ultra Management, again, is to isolate the management of the operations of the Company from the assets and the customers of the Utility Company." (Tr. at 3363.) He acknowledged that there may also be tax planning or estate planning concepts behind Ultra's formation. (Tr. at 3363.) When asked if Ultra was just a "shell corporation," he said that it is not unusual for a corporation to be a shell corporation and that there is nothing wrong with that. (Tr. at 3462-63.) Mr. Drummond indicated that he did not know enough about Ultra to comment on it, although he believed that Ultra has no employees. (Tr. at 3463-64.) Mr. Drummond believes that Ultra was formed for a legitimate purpose, that it is being operated in a legitimate way, and that it is a legitimate company. (Tr. at 3466-67.) Mr. Drummond did not know what gets invoiced by Hunt to Ultra and stated the following: "What Hunt invoices Ultra for, I don't know, I haven't seen, and at this point I really don't care, because I've got other priorities." (Tr. at 3464-66.)

Mr. Drummond testified as follows in response to questions related to how the Ultra arrangement benefits JU customers and whether it is consistent with his fiduciary duties to JU:

> Q. What benefit does Ultra provide to [JU] customers?
>
> A. Well, again, I think – I think the benefit is that, again, based upon the structure of the companies, it provides asset protection to [JU] and it insulates the customers from a catastrophic event and potential liability to [JU] that might then be an expense of the – factored into the rates and become borne, then, by the rate payers, by the customers.
>
> Q. What assets are protected?
>
> A. You have the physical assets that are protected.
>
> Q. Aren't they owned by [JU]?
>
> A. They are. They are. And that's why we want to separate the ownership of the assets from the potential liabilities of the field operations.
>
> Q. Okay. So bear with me.
>
> A. Sure.
>
> Q. We have [JU] that owns all of the actual in-the-ground facility to provide services, right?
>
> A. Correct.
>
> Q. We have Hunt [], who is providing all of the employees who actually do things?
>
> A. Correct.
>
> Q. Except for you, you're the only [JU] employee?

A. That's correct.

Q. Everybody else works for Hunt, right?

A. The people that work for Hunt, work for Hunt, correct.

Q. Right. Everyone else who does things for [JU] on a regular basis as a [JU] worker is a Hunt [] employee?

A. Correct.

Q. So under what circumstances would Ultra do anything that could result in liability to Ultra, when Hunt [] employees do all of the work?

A. The Hunt [] employees are leased to Ultra, so Ultra is providing administrative services. And so hence that layer of separation between [JU], by having its management performed – or, having the administrative services performed by Ultra [], under the administrative services agreement, utilizing employees leased from Hunt [].

Q. Doesn't it just add another entity that could be added to any lawsuit based on malfeasance by a Hunt worker working on behalf of [JU]?

A. It would from the perspective of Hunt []. But my duty is to [JU], and I'm concerned about isolating [JU].

Q. Right. I guess – But wouldn't [JU] also be protected and its assets also be protected if Ultra weren't there, because all of the workers actually are employed by Hunt?

A. Well, you know, bear in mind that Hunt [] provides employee leasing to more than Ultra [].

Q. Okay.

A. Okay. So Hunt – Excuse me. Ultra [] is not the employee leasing company; it's the management company. So it's critical for [JU] to have – And I think the theory is, and again, I'm not the architect of this, is to have a separate management company.

So Hunt [] is not a management company; it's a leasing company. It's an employee leasing company that leases employees not only to Ultra [], but to other companies.

So could you collapse it? Yes. But at the end of the day, if you collapse it, I think what you're saying is that Hunt [] is the management company, but it's not. It's simply an employee leasing company that leases employees to, for instance, Club at Oasis and Hunt Management [sic] and other companies.

Q. What management services happen at the Ultra level?

A. Well, again, I think the management of the Utility Company is me.

Q. Right. And you're not at the Ultra level?

A. I am not at the Ultra level.

So they provide the services described in the administrative services agreement.

Q. I'm having a lot of trouble wrapping my head around what Ultra does that adds value. Can you tell me what Ultra does that adds value?

A. Well, I think you have to take a look at –

Q. And I mean value to [JU] and its customers. I don't mean value to whoever the individuals are who own it and created it for tax purposes or whatever reason.

A. Understood. You know, aside from tax planning, estate planning purposes, again, I think that the commonly accepted rationale for that type of arrangement is asset protection, is to isolate the value of the assets, the value of the customers, from the liabilities inherent in the operation.

Now, is that a tool that's always used? No. It's a tool that's used where I think you have the potential for catastrophic events. And for [JU] we're talking about handling hazardous – we're talking about human waste, we're talking about things that are considered to be hazardous materials. So it's a big potential liability that we're trying to protect the asset base and the customer base from.

So in terms of the value to the customers of [JU], it's one way of trying to ensure that those types of catastrophic events will not affect their rates.

Q. This is one of my questions.

You said earlier that it's not uncommon to see leased employee arrangements, right?

....

...Is it common to have the business arrangement that is in existence with [JU] and Ultra and Hunt, where the public business, if you will, Legal Entity 1, is managed by Legal Entity 2, that has no employees, who leases employees from Legal Entity 3? Is that a common arrangement also or not?

A. I would say separately they're common. There's certainly a lot of employee leasing companies in town, as you know, some of which are utilized by the State of Arizona. And there are a lot of situations where you have separate management companies. Here we have – maybe it's a more unique situation, because we really have two things going at once.

How common that is for other industries and other businesses, I really can't say. I do see things – I do see both. I may not see both together all the time. But again, these are – these are the things that are talked about at seminars with attorneys, and have been for decades. They're, again, commonly accepted legal tools. It's not intended to be a sham of any sort.

...

> I mean, we've recognized corporations, which are fictional entities, for centuries. That's what we do as attorneys, we think of the what-ifs and try and protect the client and protect the client's assets, and in this case we're also trying to protect the customers with that type of arrangement.
>
> Q. Have you ever seen this type of arrangement before?
>
> A. Again, I've seen the arrangements individually.
>
> Q. I heard you.
>
> A. But I don't recall seeing them collectively.
>
> Q. Okay.
>
> A. But that doesn't mean that they don't exist.
>
> ....
>
> Q. You're a fiduciary – You have fiduciary duties to [JU], right?
>
> A. I do.
>
> Q. Do you think that the Ultra arrangement is appropriate? As a fiduciary, do you think that?
>
> A. I do. You know, it's a vehicle that protects [JU] in theory, and hopefully in practicality it would, so that if, in fact, if there were a field event involving a Hunt [] employee, we have distanced ourselves, as [JU], from exposure to that type of liability. It doesn't prevent [JU] from being sued, but it gives us legal arguments to make that the liability rests with Hunt [] or with Ultra [], but not with [JU].
>
> And so for those reasons, I don't have any disagreement with how the companies are structured. To me it makes sense, especially in a society where we tend to be somewhat litigious.[102]

Mr. Drummond also testified that he has not tried to modify or cancel the 2014 Ultra Contract since he became manager and has not looked into retaining a management services company other than Ultra to provide employees and administrative services to JU. (Tr. at 3447-48, 3477-78.) Mr. Drummond stated that he is trying to deal with present problems and to chart the future and is not looking back. (Tr. at 3448.) When asked whether he would sever the ties between JU and Ultra and find another management company to operate JU if he found that Ultra was not meeting its obligation to provide safe, reliable service on behalf of JU, Mr. Drummond stated that because of his fiduciary duty as

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[102] Tr. at 3498-3506. Mr. Drummond acknowledged that after a Hunt employee allegedly driving an Ultra Leasing vehicle allegedly struck and killed a pedestrian on the highway, the driver was charged, and Hunt and JU were both sued. (Tr. at 3583, 3587.) Mr. Drummond believes that JU ultimately will not be responsible for any damages due to the structure of the businesses. (Tr. at 3583-84.) He could not recall whether Ultra was also named in the lawsuit. (Tr. at 3586.)

manager of JU, he would provide Ultra with whatever notice and opportunity to cure it has under the 2014 Ultra Contract.[103] (*See* Tr. at 3448-49, 3497.) But, Mr. Drummond added, he believes that things have improved. (Tr. at 3449.) Mr. Drummond also stated that if the Commission determined that JU was not providing safe and reliable service to its customers, he would look to retaining a different management services company after fully exploring with the Commission what the concerns are and what alternatives are available. (Tr. at 3449-50.) Mr. Drummond stated that he does not have any direct authority over Hunt because there is no contractual relationship between JU and Hunt and that he does not have any authority to hire or fire Hunt employees. (Tr. at 3496-97.)

Mr. Cole testified that neither the Hunt Contract nor the 2014 Ultra Contract has been put out for rebid since he came to Hunt in 2015. (Tr. at 3187.) He said that if Mr. Drummond was not happy with something Hunt did for JU, he would approach Mr. Cole and tell him to do it better or differently. (Tr. at 3188.) When asked why Mr. Drummond would not go to Ultra, Mr. Cole said that "nobody works directly with Ultra." (Tr. at 3188.) Mr. Cole said that Ultra does not provide Hunt annual goals or targets but that Mr. Drummond establishes performance standards for Hunt, such as reducing or eliminating SSOs, enhancing customer service capabilities, or making capital investments to reduce overall O&M expenses. (Tr. at 3188-89.) Mr. Cole said that Hunt has been successful on the financial side in reducing O&M expenses, has done capital projects that have reduced SSOs, and was in the process of completing a capital project that will increase the water supply to the heart of its system. (Tr. at 3189.)

Mr. Cole stated that Hunt keeps separate accounts for each entity to which it provides services, that he reviews the financial reports generated by Hunt for JU because it is Hunt employees who are spending money on behalf of JU, and that he does not review the financial reports generated by Hunt for other entities, which are reviewed by Hunt's controller and "the business owner." (Tr. at 3190-91.) Mr. Cole reviews the monthly income statements generated for JU to see if there is anything unexpected and to explore the causes for unexpected items; he also approves the invoices for the majority of

[103] Mr. Drummond did not recall that the 2014 Ultra Contract did not have an expiration date, did not provide JU an opportunity to terminate other than for good cause, and did provide Ultra an opportunity to terminate at any time upon notice, but stated that those terms did not cause him any concern because Ultra is performing. (Tr. at 3522-23.) Mr. Drummond indicated that those terms would cause him concern if Ultra were not performing, because the terms may not provide the flexibility that would be in the best interests of JU and its customers. (Tr. at 3522-23.)

expenses incurred for JU. (Tr. at 3192-93.) Mr. Cole requires Hunt employees to provide him justification for capital improvements for JU, which recommendations he then takes to Mr. Drummond for approval. (Tr. at 3191.)

Mr. Cole stated that he envisions that the benefits to JU's ratepayers from the Hunt-Ultra relationship are asset protection and isolation of JU's assets from liability, although he would let Mr. Drummond be the final word on that. (Tr. at 2969, 3292.) When asked if he has ever questioned the logic of the business and financial structure of JU, Ultra, and Hunt, he answered: "I would not say questioned, but why so many damn companies? Yeah." (Tr. at 3193.) He added that George Johnson is involved with a lot of ongoing and new entities and that a lot of them are for estate planning and tax purposes. (Tr. at 3193.) Mr. Cole said that he has enough business knowledge to understand that there are reasons to do that for the owner's benefit, even down to the type of organization selected. (Tr. at 3193-94.)

Ms. Poulin had heard of Ultra before, had never seen the 2014 Ultra Contract, and stated: "I don't really know a lot about the relationship between everything. I can say that I know that I work for Hunt Management." (Tr. at 2683.) Ms. Poulin understood that Hunt has employees and believed that Hunt leases those employees to JU. (Tr. at 2683.) Ms. Poulin was unaware that Hunt had not yet been legally formed when she was hired in 2007 and did not believe that she had worked for JU while employed by any entity other than Hunt. (Tr. at 2685-86.) Ms. Poulin stated that she was hired to work for JU after responding to an online job posting and completing an interview in Scottsdale; she does not recall what company name appeared on her paychecks in the beginning but stated that her work email address has always included "@johnsonutilities.com." (Tr. at 2687-88.)

Mr. Drummond stated that there are economies of scale with having all the employees for the different Johnson-related entities under one entity because there are savings on insurance and benefits. (Tr. at 3461, 3542.) Mr. Drummond also stated that he has a number of clients who use leased employees and that the practice is popular in the restaurant industry. (Tr. at 3461.) Because there is daily contact between Hunt and JU, Mr. Drummond does not believe that there is a level of separation between JU and its management. (Tr. at 3462.)

. . .

3. George Johnson's Current Involvement with JU

As Mr. Drummond stated, George Johnson is "still the owner" of JU. (Tr. at 3339.) Mr. Drummond stated that George Johnson probably calls him more than he calls George Johnson but that when he first assumed the manager position, he had questions that he thought only George Johnson could answer—about why "we" did things certain ways or things that Mr. Cole could not answer because of his short time with Hunt. (Tr. at 3339-40.) Mr. Drummond described George Johnson as a "wealth of information" and said that he will consult him when he cannot find the answer or about issues that preceded Mr. Cole's time with JU, but that he does not regularly interface with him concerning JU's operations. (Tr. at 3456-57.) Mr. Drummond also stated the following: "And despite George's age, he still has a very young mind, he has a very good memory, and he's forgotten more about this Company than I'll ever know." (Tr. at 3457.) When asked to explain George Johnson's inability to recall the Ultra arrangement with JU, Mr. Drummond stated that he believes George Johnson's memory is more geared toward JU's operations than its legal documentation because he leaves that to the attorneys. (Tr. at 3523-24, 3563.) Mr. Drummond also opined that George Johnson's focus may have been elsewhere because of the federal case. (Tr. at 3524-25.)

Mr. Drummond estimated that George Johnson calls him once or twice a week to ask how JU is doing and how Mr. Drummond's sons are. (Tr. at 3340.) Mr. Drummond said that George Johnson does not direct Mr. Drummond in any way and that most of Mr. Drummond's communications about JU are with Mr. Cole or Chris Johnson. (Tr. at 3341.) Mr. Drummond also stated that George Johnson does not have the ultimate say on the direction JU takes on any particular issues, whether the issue involves capital improvements or day-to-day operations, but does have the right to know what is happening because he is the owner of JU. (Tr. at 3401.) Mr. Drummond stated that George Johnson has assured him that he supports what Mr. Drummond is doing; Mr. Drummond also stated that if someday George Johnson does not support what Mr. Drummond is doing, George Johnson will remove Mr. Drummond as manager because Mr. Drummond serves at the will of JU's members. (Tr. at 3401-02.) Mr. Drummond stated that he has known George Johnson for approximately 24 years and that he

considers George Johnson, like all of his clients,[104] to be a friend. (Tr. at 3403-04.) Mr. Drummond has interacted with George Johnson socially on occasion and has performed some legal services for him as an individual, although George Johnson's transactions typically are done through an entity he owns rather than as an individual. (Tr. at 3404.) Mr. Drummond stated that the legal work he has done for George Johnson and entities that George Johnson owns in whole or in part has been in the areas of corporate law, business law, utility law, and real estate law. (Tr. at 3405.)

George Johnson stated that he did not remember when he was last involved in the operations and management of JU. (Tr. at 902.) During George Johnson's testimony in this matter, he used "we" frequently when talking about JU and its plans for improvement and acknowledged that he is still very interested in its operations and plans.[105] (Tr. at 976.) George Johnson stated that he sees Mr. Cole almost every day, unless George Johnson is on one of his cattle ranches or elsewhere, but that he does not talk to Mr. Cole about JU very much, although he does ask him questions once in a while. (Tr. at 977.) George Johnson said that he goes to lunch with Mr. Cole, and Mr. Cole will tell him about problems with JU, with George Johnson "there to listen as an owner and not a manager to give orders." (Tr. at 888-89.) George Johnson said that Mr. Drummond and Mr. Cole are there to run JU and are doing a good job. (Tr. at 977.) George Johnson stated that he asks Mr. Drummond how things are going "as an owner" and "would never tell him what to do." (Tr. at 889.) George Johnson believes that Mr. Drummond is doing a better job than he did himself. (Tr. at 889-90.) George Johnson also stated that Mr. Drummond represents George Johnson in reference to other companies he owns and that they talk to each other quite a bit, although George Johnson does not really give Mr. Drummond any advice or guidance on the management of JU. (Tr.at 977.) According to Mr. Drummond, George Johnson does not receive any compensation as the manager or an employee of JU, although he still receives distributions from JU as an owner (trustee of the trust that owns JU). (Tr. at 3457-58.)

George Johnson stated that he does not know what Hunt does internally and whether Hunt made

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[104] Mr. Drummond stated that he considers George Johnson to be an existing client of his firm, although the firm has not been performing services for him personally since May 2017. (Tr. at 3475.) JU is also considered to be an existing client. (Tr. at 3475.) Chris Johnson and Barbara Johnson are former clients. (Tr. at 3475-76.) Ultra has never been a client. (Tr. at 3476.) Hunt is an existing client. (Tr. at 3476.) The firm does not perform work for any trust. (Tr. at 3476.) Club at Oasis is an existing client. (Tr. at 3477.) Johnson Int'l is a former client. (Tr. at 3488.)

[105] George Johnson stated that when he uses "we," he could mean himself or 25 people. (Tr. at 941-42.)

any changes to its employees after he stepped down from JU. (Tr. at 940.) He stated that he has no relationship with Hunt other than a "fraternal/paternal" relationship. (Tr. at 959.) George Johnson acknowledged that Hunt was created essentially to operate JU. (Tr. at 960.)

George Johnson testified that JU rents part of a building that George Johnson owns and in which he keeps his own personal office. (Tr. at 890.) George Johnson stated that if he is seen going into that building, it is because he is going to his office, not the JU office. (Tr. at 890.)

Mr. Cole stated that he last spoke with George Johnson about JU within a couple of weeks before May 7, 2018, when George Johnson asked him how the hearing was going. (Tr. at 3203.) Mr. Cole does not believe that he has ever discussed Hunt with George Johnson. (Tr. at 3203.)

George Johnson stated that he was in contact with a municipality or other entity regarding the sale of JU after he stepped down as JU's manager. (*See* Tr. at 890.) When asked by Commissioner Tobin if he recalled being in a September 2017 meeting with Queen Creek, George Johnson stated that he did not. (Tr. at 907, 909.) When further asked if he remembered having any meetings at all with any of the municipalities in the JU area since his resignation, George Johnson stated that he did not. (Tr. at 909-10.) George Johnson then testified that "there were a lot of people in that"; that he believed Queen Creek had sent a follow-up letter to him because the GJ Trust owns JU; and that if he was there, he was there as an owner looking after his assets. (Tr. at 910.) Subsequently, George Johnson stated that he has been at two or three meetings with Queen Creek and that he "was just there as manager," and one of these was the meeting referenced by Commissioner Tobin.[106] (Tr. at 961.) When asked whether since he ceased being JU's manager, he had also had a phone call with Florence's town manager on behalf of JU, George Johnson stated, "I probably did," and agreed that the call could have been regarding ADEQ granting JU a permit to dump sludge on some farmland in Florence. (Tr. at 961-62.) George Johnson stated that he owns the farmland, that it is one of three ranches he owns, that the farm grows feed, and that "here everyone is taking their sludge down to the landfill, crapping up the landfill, and it's toxic[, a]nd on top of that, people pay a lot of money for a dumping fee." (Tr. at 962-

[106] When asked whether there was only one meeting with the City of Queen Creek, George Johnson answered: I don't remember. There were – I'm not sure. Two or three. I was just there as manager. The management company and Brad and our other – their consultants dealt with Queen Creek." (Tr. at 961.) When asked if that meeting was the one that Commission Tobin had referred to, George Johnson said, "Yes." (Tr. at 961.)

63.) George Johnson stated that he has alfalfa fields and a cattle-feeding operation and had gotten permits from ADEQ to apply sludge, which saves JU money, saves himself fertilizer money, and benefits the environment.[107] (Tr. at 963.) George Johnson stated that he was sure he talked to Mr. Billingsley to see if Florence wanted to "come into the program" because Florence was paying a lot of money in dumping fees and trucking fees too and could experience a substantial savings, potentially in the hundreds of thousands of dollars. (Tr. at 963.)

Mr. Kross observed that although George Johnson is not very involved with JU's technical matters, he "had a firm grasp of the operations" of JU in the fall 2017 meetings. (Tr. at 1195.) From his observation of George Johnson's testimony at the hearing in this matter, Mr. Kross found that George Johnson's demeanor was generally consistent with how it had been in their prior encounters in 2017, although Mr. Kross opined that at the 2017 meetings, George Johnson had "more information or at least a little bit better grasp of some of the details of things," although he was very deferential to his technical staff. (Tr. at 1196.) Mr. Kross stated that George Johnson had a lot of knowledge about JU, its operations, and its historical value and served as Queen Creek's primary contact for information during the 2017 process. (Tr. at 1215.) Mr. Kross did not evaluate whether George Johnson was actively involved in the day-to-day operations or management of JU at the time of the negotiations. (Tr. at 1215.)

Mr. McCarty recalled that he was at one of the fall 2017 meetings about Queen Creek's possible purchase of JU and that George Johnson was in attendance, but Mr. McCarty did not pay attention to whether George Johnson appeared to be involved in the day-to-day operations of JU; Mr. McCarty was focused on understanding the tax consequences of different financing structures for the purchase. (Tr. at 1872-73, 1900-01.) Mr. McCarty stated that George Johnson appeared to have a command of the subject matter discussed and appeared to be able to remember things and to respond to questions. (Tr. at 1873.) He also understood George Johnson to be the decision maker concerning the sale and purchase price, which Mr. McCarty did not find unusual. (Tr. at 1946-47.) According to Mr. McCarty, Queen Creek was not aware of the 2014 Ultra Contract at that time and only became aware of it after

[107] Mr. Taylor opined that it is not unusual for sewage sludge to be used as fertilizer for cropland and noted that there are strict regulatory requirements and approvals, involving testing and monitors, to allow this to be done. (Tr. at 2384.) ADEQ approval would be required. (Tr. at 2384-85.)

the consultants hired by Queen Creek to do the due diligence pro forma financial analysis, Willdan and Associates and Pat Walker Consulting, noticed the payments to Ultra on JU's books. (Tr. at 1902-03.)

Mr. Drummond stated that his own participation in the meetings regarding possible acquisition of JU by Queen Creek was in his capacity as manager and that he had intended to engage independent legal counsel to represent JU in connection with the sale, had it become necessary. (Tr. at 3425-26.)

Mr. Billingsly stated that he had a discussion with George Johnson regarding JU on or around January 9, 2018, in a phone call from George Johnson during which George Johnson informed Mr. Billingly that ADEQ had approved a permit allowing JU to take JU's sludge[108] and apply it to 400 acres of land in Florence owned by George Johnson.[109] (Tr. at 1805-07.) Mr. Billingsly stated that George Johnson told him that JU would save approximately $250,000 from hauling the wet waste to Florence and disking[110] it into the ground and, further, that George Johnson offered Florence the opportunity to join in the process[111] so that Florence could also save money. (Tr. at 1811-12.) Mr. Billingsly declined to participate, stating that Florence "would never want to take our solid waste from our wastewater plant and disk it into the ground upstream of our watershed," which is the area where George Johnson wanted to put it. (Tr. at 1812.) Mr. Billingsly acknowledged that George Johnson was not suggesting anything unlawful. (Tr. at 1823.) Mr. Billingsly has also talked to Mr. Cole approximately four or five times since May 2017, which was not unusual, and had never met or conversed with Mr. Drummond prior to the hearing in this matter. (Tr. at 1808-09.)

Supervisor House, Chairman of the Pinal County Board of Supervisors, testified that he last communicated with George Johnson about JU issues in May or June 2017 regarding an H_2S exceedance

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[108] Sludge is the waste product from a sewage treatment process, which is typically further treated, dewatered, and sent to a landfill; it is also known as cake. (Tr. at 1811.)

[109] Mr. Billingsly found the call from George Johnson to be "odd" because George Johnson had been involved in litigation in the past arguing that a copper mine in Florence would pollute JU's water supply, and George Johnson was proposing to disk in wet sludge from wastewater plants upstream of the JU and Florence water supplies, which Mr. Billingsly considered to be a potential health or safety concern. (Tr. at 1808, 1815-16.) Mr. Billingsly had never before heard of wet application of sludge out of a plant, although he had heard of dry application after excessive drying, Bac-T testing, and mixing with other fertilizer products. (Tr. at 1818.) Mr. Billingly verified that ADEQ had approved the process, as George Johnson had told him. (Tr. at 1816.) Mr. Billingsly stated that George Johnson owns a lot of real estate in Florence, and Mr. Billingsly understood that George Johnson intended to apply the sludge to 400 acres of his own land encompassing two separate farms and a feed lot. (Tr. at 1821-22.)

[110] Disking is done by a mechanical piece of farm equipment, hydraulically controlled on the back of a tractor, that turns the ground using 18-inch to 24-inch disks. (Tr. at 1814.)

[111] Mr. Billingsly appeared to understand that this meant Florence would also sell its sludge for this use, although he and George Johnson did not get into specifics. (1822-23.)

at the Section 11 WWTP. (Tr. at 1708-09.) He does not believe that he has had any meetings with George Johnson related to JU since George Johnson resigned from JU. (Tr. at 1709.) Supervisor House has, however, had dinner meetings with George Johnson since May 2017 that did not involve discussions about JU because George Johnson contributes to a diaper drive that Supervisor House holds each year, and George Johnson and his wife have dined with Supervisor House and his wife. (Tr. at 1714-16.) Supervisor House recalls discussing San Tan Valley incorporation and annexations with George Johnson, but not anything to do with JU. (Tr. at 1716.) Supervisor House believes that George Johnson is no longer involved in the management, direction, and operation of JU and said that his communications about JU since George Johnson resigned have been mainly with Mr. Cole and occasionally Chris Johnson. (Tr. at 1738.)

Supervisor Miller testified that since May 2017, he has had one meeting with George Johnson concerning JU, toward the end of November 2017. (Tr. at 1744.) The meeting was requested by Mr. Cole, and Mr. Cole, Mr. Drummond, and George Johnson attended; the meeting was held in Supervisor Miller's office in Casa Grande. (Tr. at 1744, 1776-77.) The discussions at the meeting concerned things that JU had done to correct their odor and H_2S issues as well as concerns that JU had about recharge of its effluent discharges and not getting credits for its recharge. (Tr. at 1745-46, 1777-78.) When asked whether George Johnson actively participated, Supervisor Miller stated that "[h]e did engage in discussion about it, yes . . . he didn't not talk." (Tr. at 1745.) Supervisor Miller was "aware that something had taken place" with JU's management but did not consciously think that George Johnson was not supposed to speak for JU. (Tr. at 1747.)

George Johnson acknowledged that when he resigned as manager of JU, he stated that he was not going to be participating in JU's management in any way. (Tr. at 911.) George Johnson asserted that JU and Hunt are "doing a good job" without him and that "they're always upgrading plants." (Tr. at 942-43.) He stated that "they" fill him in, as an owner, on things that are going to happen and that he asks questions but does not give directives. (Tr. at 943.) When asked whether he ever expresses his preference on strategy decisions, George Johnson stated that it was "a tough question" and that "[g]lobally, yes, maybe" he does. (Tr. at 943.) He stated that he mostly asks questions, such as about things that he has read in the newspaper. (Tr. at 943.) George Johnson testified that he does not intend

to resume managing JU.[112] (Tr. at 891.)

Ms. Poulin stated that she last saw George Johnson in January 2018, when he stopped in at the JU office and said hello and wished her a happy new year. (Tr. at 2568.) Ms. Poulin also stated that she has not had any other communication with George Johnson since May 2017, and she has no knowledge of JU making payments to George Johnson. (Tr. at 2568, 2727.)

C. Johnson-Related Entities Involved with JU

1. Generally

Johnson family members (George Johnson, his wife Jana Johnson, Chris Johnson, his wife Margaret Johnson, and Barbara Johnson, individually and in different combinations through different entities and trusts) have ownership interests in and control over numerous legal entities, some of which currently have or have had dealings with JU, Hunt, and/or Ultra. (*See* JU LFE at att. 3.) The following table shows the data for JU, Hunt, Ultra, and the additional entities that are most relevant to this matter:[113]

Entity	Member/s	Manager/s or Directors	Statutory Agent	Relationship to JU, Ultra, or Hunt
JU	GJ Trust	Mr. Drummond	Mr. Drummond	JU
Hunt	CJ Trust; Barjo LLC	December Companies Inc.	Mr. Drummond	Provides leased employees who perform all JU work, through 2014 Ultra Contract
Ultra	Pinetop Trust II	Barbara Johnson; Chris Johnson[114]	WAS Inc.	Provides "administrative services" to JU

[112] George Johnson testified that he does intend to continue managing SWE, however, for which he also holds a CC&N. (Tr. at 895-96, 975-76.) This conflicts with Mr. Cole's testimony that George Johnson named Mr. Drummond as manager of SWE at the same time as he was named manager of JU and the Website Entity Detail for SWE, which shows Mr. Drummond as manager since June 5, 2017. (*See* Tr. at 2983; Ex. S-107.) George Johnson stated that SWE is "in the infancy stage" and has one customer, and he was unsure whether SWE was in compliance with Commission rules and regulations. (Tr. at 895-96, 975.) The CC&N area granted to Southwestern Environmental Utilities is located within Florence. (Tr. at 1799; Ex. FL-2.) Mr. Billingsly understands that George Johnson plans to develop a project in the southern area of Florence, to be called Johnson Estates, and to be served by SWE. (Tr. at 1824.)

[113] *See* JU Corps Info; Ex. S-100; Ex. S-101; Barjo Corps Info; December Corps Info; Ex. S-120; Ex. S-106; Ex. S-108; Ex. S-115; Ex. S-114; Ex. S-113; Ex. S-112; Tr. at 2980-85, 2993, 2996-3000; JU LFE. Hunt provides services to additional entities related to Johnson family members, as described above in Section II.B.2.

[114] As of August 2, 2013, Application for Registration of Foreign LLC, Barbara Johnson, Chris Johnson, Mr. Drummond, Robert Travers, and Jeff Schneidman were Managers. (Ex. S-101.) Chris Johnson and Barbara Johnson were dropped as managers on June 26, 2014. (*Id.*) Chris Johnson and Barbara Johnson were added and Mr. Drummond and Mr. Schneidman were dropped as managers on April 27, 2015. (*Id.*) Mr. Travers was dropped as manager on April 15, 2016. (*Id.*)

				through the 2014 Ultra Contract and leases the employees who perform work for JU from Hunt through the Hunt Contract.
Barjo LLC	The B.A.J. Living Trust (Barbara Johnson Trustee)	Barbara Johnson	Mr. Drummond	Co-owner of Hunt (with CJ Trust)
December Companies Inc.	Barjo LLC; CJ Trust	Chris Johnson; Barbara Johnson (Directors)	Mr. Drummond	Manager of Hunt
Annuity Holdings	CJ Trust; Barjo LLC	Barbara Johnson	Mr. Drummond	Purchases, at a discount, developers' rights to refunds on advances in aid of construction ("AIAC") under developers' line extension agreements with JU and thus receives refunds from JU on full AIAC amounts
Club at Oasis	Hunt	Chris Johnson	Mr. Drummond	Golf course receives effluent from JU at no cost, is a paying water and sewer service customer of JU, receives free advertising from JU on newsletters, and receives services from Hunt
Roadrunner	CJ Trust; Barjo LLC	Barbara Johnson; Chris Johnson	Mr. Drummond	Hauls sludge for JU; hauls JU water to customers (not on behalf of JU); receives workers and other services from Hunt
Ultra Leasing, L.L.C.[115]	GJ Trust	George Johnson	Mr. Drummond	Leases vehicles to Hunt for use by JU
Rancho Sendero	GHJ	George Johnson	Mr. Drummond	Sold JU a 15-acre parcel to be used as

[115] JU LFE at att. 3.

				effluent recharge facility for Anthem
GHJ	The Johnson Legacy Trust U/T/A dated December 26, 2012	George Johnson; Jana Johnson	WAS Inc.	Owns Rancho Sendero and receives services from Hunt
Athena	GJ Trust	George Johnson	Mr. Drummond	Leases solar fields to JU under lease agreement making JU responsible to maintain solar fields; also receives services from Hunt
Johnson Int'l	GJ Trust	George Johnson; Jana Johnson	Mr. Drummond	Serves as George Johnson's umbrella corporation; receives services from Hunt; receives refunds of AIAC from JU under line extension agreements

2. Specific Relationships—Roadrunner, Annuity Holdings, & Club at Oasis

Roadrunner hauls sludge for JU under a contract with JU; obtains all of its workers from Hunt; and provides water hauling services (not on behalf of JU) primarily to customers in the Bonanza service area. (Tr. at 2262-63, 2984.) Roadrunner has a commercial account with JU and pays JU directly for the potable water that Roadrunner hauls to Roadrunner's customers. (Tr. at 3209.) JU pays Roadrunner for the sludge hauling based on documentation of deliveries to the landfill, and Hunt handles the payment process, which is done electronically. (Tr. at 3210.) Until recently, Roadrunner's truck had been operating with a JU DOT number shown on its door, although the truck is owned by Ultra Leasing, L.L.C. ("Ultra Leasing") and has been since October 2014. (*See* Tr. at 2985-87, 3245-47; Ex. J-76; Ex. S-109.) Roadrunner received its own DOT number in March 2016 but failed to replace the old JU DOT number on the truck with the new Roadrunner DOT number. (Tr. at 2986-87, 3245-46; Ex. J-75.) The DOT number on the truck was updated after Amy McInteer-Simpon pointed out in a Commission Open Meeting that the truck was operating with a JU DOT number. (Tr. at 3248-49.) Roadrunner's workers come from the same pool of 100 Hunt employees as JU's workers do. (Tr. at 2263.) According to Chris Johnson, Roadrunner was formed for tax and asset protection reasons. (Tr. at 2262, 2264.) Chris Johnson further testified that he does not receive compensation from Roadrunner,

only from Hunt, and does not have any role at Roadrunner, although he subsequently confirmed that he receives the revenues associated with the services that Roadrunner performs. (Tr. at 2262, 2264, 2276-77.)

Chris Johnson testified that Annuity Holdings holds "the line extension agreements [("LXAs")] that we have with the developers." (Tr. at 2269-70.) Chris Johnson stated that he and Barbara formed Annuity Holdings based upon the advice of their attorneys and that Chris and Barbara have not had any conversations with George Johnson about Annuity Holdings in relation to JU. (Tr. at 2270.) Chris Johnson stated that he could not recall exactly how Annuity Holdings holds the LXAs—whether it enters into the LXAs with the developers on behalf of JU or not—stating that it was set up through the attorneys—or how many LXAs Annuity Holdings holds or with whom. (Tr. at 2277-78, 2287-88.) He also was unable to recall whether Annuity Holdings entered into an agreement with JU to hold the LXAs. (Tr. at 2310.) Chris Johnson agreed that Annuity Holdings receives payment from JU, but did not know how much annual revenue Annuity Holdings receives or whether the money received through the LXAs is retained by Annuity Holdings or flows elsewhere, first stating that he would have to check with the attorneys and subsequently stating that Mr. Cole could answer better than he could. (Tr. at 2278, 2287-88.) Chris Johnson acknowledged that Mr. Cole does not have an official role with Annuity Holdings, but stated, "Hunt Management has a contract with Ultra, and Mr. Cole is my chief operating officer . . . [who] runs the whole company for me." (Tr. at 2288.)

Mr. Cole indicated that between water and sewer, JU has thousands of LXAs and that there is a secondary market that purchases the revenue streams from LXAs—the right to receive the refund payments for AIAC. (Tr. at 2883-84, 3220.) Mr. Cole stated that he is familiar with the Annuity Holdings arrangements because he approves Hunt's calculation of the refund and approves the refund check. (Tr. at 2884-85.) He stated that the refund checks go from JU to Annuity Holdings. (Tr. at 2885.) Mr. Cole stated that the water LXAs, which are approved by Staff, generally provide "us" the right of first refusal should a developer want to sell the revenue stream from the LXA. (Tr. at 2884.)

JU's LFE shows that in January 2007, Annuity Holdings began acquiring from developer/builders the rights to receive refunds of AIAC (refunds paid by JU) under water LXAs and, between January 1, 2007, and September 5, 2008, acquired from five different developer/builders, for

the total price of $532,708.50, the rights to receive refunds from a total of 32 water LXAs with total refundable AIAC of $5,606,173.80. (JU LFE at att. 5.) JU's LFE further shows that Annuity Holdings acquired from nine or 10 different developer/builders,[116] for the total price of $673,796.13, the rights to receive the refunds from a total of 40 sewer LXAs with total refundable AIAC of $8,615,155.06. (JU LFE at att. 5.) As a result of these acquisitions, which could have been made by JU had JU decided to purchase the discounted refund streams under its "right of first refusal,"[117] for $532,708.50 paid to developer/builders, Annuity Holdings is entitled to receive $5,606,173.80 from JU under water LXAs, and for $673,796.13 paid to developer/builders, Annuity Holdings is entitled to receive $8,615,155.06 from JU under sewer LXAs. (*See* JU LFE at att. 5.) None of the developer/builder entities named as sellers of their LXA refund streams have been identified in the record as entities that are owned or controlled by George Johnson, Jana Johnson, Chris Johnson, Barbara Johnson, or any of their various owned and/or controlled entities. (*See* JU LFE at att. 5, att. 3.) Johnson Int'l, as a developer, however, holds four water and wastewater LXAs with JU under which it receives refunds of AIAC from JU. (JU LFE.) Mr. Cole testified that he is not aware of any construction or development companies currently in JU's service territory that are owned directly or indirectly by George Johnson or his relatives. (Tr. at 2910.)

Chris Johnson testified that Club at Oasis is the golf course owned by him and his sister Barbara and that he cannot recall when it was formed. (Tr. at 2270-71.) Chris Johnson also confirmed that Club at Oasis receives effluent from JU to water the golf course, although he did not know whether Club at Oasis has a contract with JU for effluent, deferring to Mr. Cole for that information. (Tr. at 2277.) Chris Johnson stated that Hunt provides all of Club at Oasis's workers and pays the workers

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[116] This includes different groups of developer/builders. (JU LFE at att. 5.)

[117] JU's water LXAs and sewer LXAs include, as standard language, the following:

> **Company's Right of First Refusal.** Before selling or transferring the obligation of the Company under this Agreement to refund the Advance, Developer shall first give the Company, or its assigns, reasonable opportunity to purchase the same at the same price and upon the same terms as contained in any bona fide offer which Developer has received from any third person or persons which he may desire to accept.

(Ex. J-72 at 7; Ex. J-77 at 7.) Although the language is somewhat inartful, as it speaks to selling the obligation of JU to refund rather than the right to receive the refund, it is understood to refer to sale or transfer of the right to receive the refunds from JU and to provide JU the opportunity to purchase that right before anyone else, which would eliminate JU's obligation to pay the refunds.

from golf course revenues. (Tr. at 2312-13.) Chris Johnson also stated that he does not receive any compensation from Club at Oasis, although he confirmed that he receives the revenues produced by Club at Oasis through the golf course. (Tr. at 2270-71, 2277.)

Chris Johnson testified that he only receives compensation from Hunt. (Tr. at 2274-75.) He also stated that Commission Tobin would have to ask his sister Barbara if she also only receives compensation from Hunt. (Tr. at 2275.) Ultimately, Chris Johnson acknowledged that the revenues generated by each entity for which he and his sister are owners go to him and to Barbara, although he stated that he could not remember how much revenue they receive on an annual basis from the different entities. (Tr. at 2298.) Chris Johnson stated that all of the named entities discussed have annual meetings and that no other children of George Johnson work in the businesses that he discussed in his testimony. (Tr. at 2281, 2303.)

3. Mr. Drummond's Involvement

Mr. Drummond testified that he was involved in the creation of some of the Johnson-related entities, in the sense that he prepared articles of incorporation or articles of organization for them at the request of his client, although he did not recall which ones and stated that he was not involved in deciding whether to create the entities. (Tr. at 3412-20.) Hunt was among those for which Mr. Drummond prepared documents. (Tr. at 3416-17; Ex. S-100.)

Mr. Drummond said that he briefly served as a manager of Ultra so that "there would be ample bodies to sign documents" in case Chris Johnson and Barbara Johnson were unavailable; that he did not actively participate in Ultra; and that as a manager of Ultra, he was only required to sign one check and did not consider himself to have the same authority as Chris Johnson and Barbara Johnson, although he acknowledged that on paper there was no distinction in his authority versus theirs. (Tr. at 3419-25; Ex. S-101.) Mr. Drummond stated that he was not involved in the preparation of the 2013 Ultra Contract or the 2014 Ultra Contract, although he was still a manager of Ultra when the 2014 Ultra Contract was formed. (Tr. at 3419-23; Ex. S-101; Ex. S-77.)

Mr. Drummond acknowledged that he is the statutory agent for a number of the Johnson-related entities, as George Johnson requested him to serve in that capacity a number of years ago to simplify things. (Tr. at 3414-15.)

D. Water Systems

1. Generally

JU has two active water systems—Johnson Ranch (ADWR PWS No. 11-128) and Anthem at Merrill Ranch (ADWR PWS No. 11-136). (Ex. S-13 at 2.) As of March 31, 2018, Johnson Ranch and Anthem at Merrill Ranch ("Anthem") combined served a total of approximately 26,559 water customers and had a total of approximately 331.24 miles of water mains. (Ex. S-99 at 2, 19.) As of early March 2018, Staff reported that Johnson Ranch had 14 wells producing approximately 8,355 gallons per minute ("GPM"), 28 storage tanks totaling 7.25 million gallons, and a distribution system serving approximately 22,200 service connections. (Ex. S-13 at 2.) At the same time, Staff reported that Anthem had 2 wells producing 900 GPM, 2 storage tanks totaling 1.5 million gallons, and a distribution system serving approximately 2,510 service connections. (Ex. S-13 at 2.) From January 1, 2010, through April 30, 2018, JU's total water customer counts increased as follows:[118]

2010	2011	2012	2013	2014	2015	2016	2017	2018
20,224	20,777	21,422	20,046	22,954	23,589	24,431	25,962	27,033

2. Issues

JU's water meters are all read remotely from MXUs[119] that are located with the meters, using a laptop in a vehicle that drives around the service area. (Tr. at 2593, 2614.) JU began transitioning to digital smart meters approximately 2 ½ years ago. (Tr. at 2694.) Approximately 5,000 of JU's meters are Sensus iPERL meters; JU also uses other models of Sensus meters. (Tr. at 2794.) During the hearing in this matter, Mr. Gardner testified concerning Queen Creek's experience with malfunctioning Sensus iPERL meters and Queen Creek's discovery that the meter manufacturer was aware that Sensus iPERL meters manufactured during specific periods of time have been known to malfunction in two different ways. (Tr. at 1345-46.) The malfunctioning meters either spiked unexpectedly by tens of

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[118] JU LFE at att. 1.

[119] An MXU includes both a battery and a radio that produces a signal that can be read remotely from a tower or a handheld device. (Tr. at 1325.) An MXU can also be touch read, and a meter can also be visually read. (Tr. at 1324-25.) The distance at which the meter/MXU can be read is determined by the type and age of the MXU, with older MXUs requiring greater proximity to read. (Tr. at 1325-26.)

thousands of gallons due to moisture getting into the meter through a failed seal or ceased to function altogether (recording no use and having a black screen display) because the battery had been turned on in the warehouse and wore out when it had only been in service a short time and should have had a great deal of life left.[120] (*See* Tr. at 1304-06, 1327-28, 1345-46, 1388-89.) Mr. Gardner estimated that 300 of Queen Creek's 27,000 meters had had the problem with spiking usage caused by moisture and that a few hundred of Queen Creek's meters had blacked out due to dead batteries. (Tr. at 1389.) Mr. Gardner indicated that Queen Creek had to identify the malfunctioning meters and send them back to the manufacturer for replacement. (Tr. at 1345-46.)

Before the hearing, neither Mr. Taylor nor Mr. Cole was aware that there had been problems with Sensus iPERL meters malfunctioning. (Tr. at 2524, 2794, 2879.) Mr. Taylor understands the Sensus meters used by JU to be electromagnetic flow measuring meters that he thought were great prior to the hearing. (Tr. at 2476-77.) After learning of the problem during the hearing, Mr. Taylor researched the problems with the iPERL meters and found other situations in which Sensus iPERL meters had experienced those types of failures.[121] (Tr. at 2416, 2480.) Mr. Taylor then testified that JU was looking at the issue of the failure of certain Sensus iPERL meters and that he was assisting in that effort. (Tr. at 2515.) Mr. Cole and Mr. Drummond asked Mr. Taylor to determine whether any of the JU meters in service are of the type known to malfunction, and this inquiry is part of the scope of GHD's newly contracted work for JU. (*See* Tr. at 2417, 2794-95.) Mr. Taylor asserted that JU was completely committed to identifying whether there are problems with any of its meters and correcting any problems that exist. (Tr. at 2515-16.) Mr. Taylor believes that if JU determines that it has mischarged a customer, JU has the responsibility to credit the customer for any inaccurate charges. (Tr. at 2417.)

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[120] Queen Creek experienced both of these issues on its system and ultimately learned from the manufacturer that the problems occurred because of manufacturing problems and that the problems affected a certain segment of meters, from approximately August 2013 to January 2014. (Tr. at 1304-06.) Sensus has since "changed their whole manufacturing methods." (Tr. at 1304.)

[121] JU provided a Chicago Tribune article from July 25, 2015, entitled "Another suburb reports problems with digital water meters," in which it was reported that fewer than 10 "smart" digital water meters out of thousands had been determined to show usage when they were not even hooked up, something the manufacturer, Sensus reported having remedied in newer meters. (Ex. J-70.) The article stated that Sensus had determined that water had gotten into the meter's electronics. (Ex. J-70.) JU also provided an article posted on the Smart Grid Awareness website on July 28, 2015, referencing the Chicago area findings as well as occurrences in Saskatchewan reported in October 2014, in which moisture and contaminant intrusion into Sensus smart meters caused "catastrophic meter failures and ensuring fires." (Ex. J-70.)

After hearing about the Sensus iPERL meter problems at hearing, Mr. Cole reached out to Hunt's field manager for JU, Matt Hipsher, and learned that Mr. Hipsher had already been aware of both problems with the Sensus iPERL meters. (Tr. at 2879.) Mr. Hipsher informed Mr. Cole that JU had had some of the meters that ceased to operate and that the manufacturer's representative, Dana Kepner, had replaced them for JU in 2014. (Tr. at 2880.) Additionally, Mr. Hipsher informed Mr. Cole, Dana Kepner had informed Mr. Hipsher of the moisture intrusion/meter spiking problem and that JU had approximately 12 meters with that issue, which were replaced in 2013 and 2014 before they were ever installed. (Tr. at 2880-82, 2904.) Mr. Cole stated that Mr. Hipsher reported to him that the affected JU meters had spiked by hundreds of thousands of gallons rather than tens of thousands of gallons. (Tr. at 2881.) Mr. Cole testified that Mr. Hipsher told him that for a period of time after these problems were revealed, Mr. Hipsher had tested each meter received before installation to ensure proper measurement. (Tr. at 2882.) Mr. Cole does not believe that JU currently has any meters with the moisture intrusion/spiking problem but stated that JU will continue investigating whether there are additional known issues with the meters and would agree to report that information to the Commission. (Tr. at 2882-83.) Mr. Cole added that Mr. Hipsher contacted Dana Kepner after the February 2018 public comment sessions to inquire about additional Sensus meter issues and reported back that Dana Kepner was not aware of any additional issues. (Tr. at 2905.) A May 8, 2018, letter from Dana Kepner to JU states that Dana Kepner has worked cooperatively with JU and Mr. Hipsher since 2013 to resolve a small number of manufacturing issues with the Sensus iPERL meters purchased by JU; that the high/low read exception parameters built into JU's billing system enabled JU to identify a defective meter before a bill was sent to the customer with incorrect usage; and that in those few cases, JU immediately created a work order to remove the defective meter and turn it in to Dana Kepner to be sent back to Sensus for warranty replacement. (Ex. J-79.)

Aside from the incidents Mr. Cole has become aware of through this matter, Mr. Cole is not aware of any other JU customers who have complained of unusual spikes in the usage shown on their bills. (Tr. at 3253.)

George Johnson stated that he had heard about customers who had seen their water consumption spike by 10,000 to 20,000 gallons or more for just one month, but could not speak to why that would

be, although he thinks that a lot of people drain and fill up their pools. (Tr. at 979.)

Ms. Poulin testified that if JU determined that there were problems with some customers' meters, such as were previously detected for the Sensus iPERL meters, JU would credit the customers for any usage that was in dispute. (Tr. at 2657.) Mr. Cole also testified that Hunt would either provide refunds or credit customers' bills if it was determined that the customers may have been overcharged as a result of meter malfunction. (Tr. at 2795-96.) Likewise, George Johnson stated that JU would pay customers back if it were proven that they overpaid and further stated, "I don't have to lie, cheat, or steal to feed my family." (Tr. at 903-04.) George Johnson stated that he was "sure there were bills that were wrong on our part." (Tr. at 948.)

Mr. Drummond stated that JU wants to charge people for what they actually use, not to overcharge them, and that JU was revisiting the issue of malfunctioning Sensus iPERL meters so that it can assure its customers that there are not problems with their meters.[122] (Tr. at 3363-64.) Mr. Drummond believes that none of JU's customers have malfunctioning meters at this time. (Tr. at 3531.)

JU's other water system issues are described at length in Section III.A and Section IV below.

E. Wastewater Systems Generally

1. Generally

JU has four active wastewater systems—Section 11, San Tan, Pecan, and Anthem. (Ex. S-13 at 2.) The Section 11 Wastewater Treatment Plant ("Section 11 WWTP") is permitted to treat a maximum monthly average of 1.6 million gallons per day ("MGD") under Aquifer Protection Permit ("APP") No. 103081, the San Tan Water Reclamation Plant ("San Tan WRP") is permitted to treat a maximum monthly average of 2.0 MGD under APP No. 105325, the Pecan Water Reclamation Plant ("Pecan WRP") is permitted to treat a maximum monthly average of 2.0 MGD under APP No. 105324, and the Anthem Water Reclamation Plant ("Anthem WRP") is permitted to treat a maximum monthly

[122] Mr. Drummond also recounted his personal experience with a slab leak at his home, which increased water usage at his home but was not detected when his irrigation system was checked by a professional and was only detected when the moisture content of the slab was checked for flooring installation and the footings of the house were dug around. (Tr. at 3365-66.) JU also provided a May 2018 article from www.azfamily.com recounting that an EPCOR customer had received a bill for 150,000 gallons of usage and $1,500, which the customer stated was 10 times her normal bill and not explained after a plumber, two landscapers, and a pool maintenance worker investigated and found no major leaks or problems. (Ex. J-78.) The article stated that EPCOR believed the problem to be caused by a faulty irrigation valve, which could waste tens of gallons of water, and that EPCOR had agreed to reduce the customer's bill by $500. (Ex. J-78.)

average of 1.5 MGD under APP No. 105646. (Ex. S-13 at 2.) As of March 31, 2018, JU's four wastewater systems combined served a total of 36,817 customers and had a total of approximately 364.8 miles of sewer mains and 12.4 miles of reclaimed water mains and 37 lift stations. (Ex. S-99 at 2, 20; Tr. at 2917.)

JU's wastewater CC&N service area is larger than its water CC&N service area. (Ex. J-1 at 1-2.) From January 1, 2010, through April 30, 2018, JU's total wastewater customer counts have increased as follows:[123]

2010	2011	2012	2013	2014	2015	2016	2017	2018
26,441	27,239	28,194	29,235	30,901	31,955	33,201	37,282	37,290

2. Issues

JU's wastewater system issues are described at length in Section III.B and C and Section IV below.

F. JU's Customer Service Operations

1. Generally

Ms. Poulin serves as JU's office manager and in that capacity oversees "customer service, collections, the meters department, [the] sewer department, pretty much everything in the office." (Tr. at 2566.) Ms. Poulin supervises 20 or 21 Hunt employees who work for JU. (Tr. at 2566, 2691.) Ms. Poulin testified that she has been employed by Hunt for 11 years, first as accounting manager for approximately three years, and then as office manager.[124] (Tr. at 2566-67.) Ms. Poulin reports to Chad Small, Hunt's Operation Manager at the JU office, who reports to Mr. Cole. (Tr. at 2568-69.) Ms. Poulin stated that Mr. Small oversees a lot of the construction and "just oversees kind of everything in the office down there." (Tr. at 2690.)

The JU field office in San Tan Valley is staffed with 12 customer service representatives ("CSRs"), two of them in the front lobby area to assist walk-in customers, and 10 answering phones in

[123] JU LFE at att. 1.

[124] As stated previously, Ms. Poulin was unaware that Hunt had not yet been formed when she was hired to work at JU's office in 2007.

a call center area that also has the call center supervisor present.[125] (Tr. at 2578.) The JU field office also includes approximately eight additional workers, in accounting, the meters department, and collections, and those workers act as back-ups for the CSRs during times when call volumes are very high. (Tr. at 2578-79.) Ms. Poulin stated that most of the workers started in customer service and that those who did not are cross-trained in customer service. (Tr. at 2579.) The turnover rate for CSRs fluctuates; at the time of the hearing, the most senior CSR had worked for JU for approximately 2 ½ years, and the newest CSR had worked for JU for approximately four months. (Tr. at 2692.)

JU's CSRs receive in-house training during which they "piggyback" more senior CSRs who go over the billing software with them and allow them to monitor customer calls using a secondary headset until the new CSR is comfortable with taking calls, at which time the senior CSR monitors the new CSR's calls and assists the new CSR as necessary. (Tr. at 2579-80.) This "piggyback" training generally lasts three to five days, but its duration is based on the comfort level of the new CSR and the senior CSR's assessment of the new CSR's ability to handle the duties alone. (Tr. at 2580, 2754-55.) There is also a JU customer service book that provides step-by-step instructions on how to open an account, close an account, take a payment, etc. (Tr. at 2580.) Most CSRs copy key instructions from the book and hang them in their cubicles for quick reference. (Tr. at 2580.) Ms. Poulin reported that there is no standardized course of training and that the CSRs do not have scripts that they use when communicating with customers, just steps for how to do things, and stated that she believes such scripts should be created. (Tr. at 2580-81, 2693, 2731.) Ms. Poulin added that the call center supervisor is always available and can get involved in a call if a CSR requests supervisor assistance for any reason or the customer requests to speak to a supervisor. (Tr. at 2581.) The call center supervisor can also "barge into" a phone call by hitting a button on her phone so that she can hear and participate in the call while it is occurring. (Tr. at 2583.) Ms. Poulin states that she herself samples phone calls when she has an opportunity to do so. (Tr. at 2619-20.)

JU records all of its phone calls and retains those recordings "forever."[126] (Tr. at 2582, 2633.)

[125] Ms. Poulin stated that the number of CSRs was increased from 8 to the current 12 nearly two years ago. (Tr. at 2691-92.)

[126] JU records all incoming and outgoing phone calls locally through its phone system, and those recordings are automatically imported to a "drop box type" service through which Ms. Poulin and Maria, the call center supervisor, can access the recordings on their computers. (Tr. at 2633.)

Ms. Poulin has received complaints from customers regarding CSRs and, when that happens, will review the phone call in question and determine whether the CSR behaved appropriately. (Tr. at 2582.) If Ms. Poulin determines that the CSR behaved inappropriately, the CSR is required to review the call with Ms. Poulin and the call center supervisor, and disciplinary action is taken as needed. (Tr. at 2582.) Ms. Poulin also walks through the office frequently, and she can hear a lot of the conversations with customers live, as can the call center supervisor. (Tr. at 2582.) Ms. Poulin testified that she has not heard rudeness in passing and described her staff as "genuinely pretty caring, understanding," and desiring to do their best to help JU customers. (Tr. at 2582, 2620.) Disciplinary action has not been needed often and mostly has been limited to verbal warnings that are documented and kept in employees' files. (Tr. at 2696.) Ms. Poulin stated that most of her employees maintain their professionalism pretty well. (Tr. at 2696.) She conceded that there was a situation in the past year when a customer was upset in the lobby, and the conversation with the CSR became confrontational; the CSR was pulled back and spoken to immediately about the inappropriateness of his behavior, and the call center supervisor stepped in and assisted the customer. (Tr. at 2696.) Ms. Poulin did not know the name of the customer involved. (Tr. at 2696.)

Ms. Poulin testified that whenever a JU CSR has any communication with a customer, in person or telephonically, whether to take a payment, address a customer concern, or for any other reason, the CSR enters notes regarding the communication into JU's billing software, so that the notes are visible within the customer's account. (Tr. at 2576, 2579.) Customer notes are recorded and retained from the time a customer's account is opened. (Tr. at 2576, 2578.) A CSR can also set up a work order with notes through the billing software, so that the work order goes to a technician who will perform whatever is asked of him or her while doing his or her route. (Tr. at 2576-77.) A work order is done whenever a JU technician is sent to the field. (Tr. at 2576-77.) While out in the field, a technician enters the results of a work order, including the technician's findings, into the billing software using a tablet. (Tr. at 2577.) Each day, the technician returns to the office and downloads the day's notes from the tablet so that they are also captured in the account notes. (Tr. at 2577-78.)

If JU receives a customer complaint from the Commission, a JU CSR first looks for the account notes for the customer to see if the customer has previously contacted JU and, if the customer has

contacted JU previously, reviews the notes and any attached documents, such as copies of service orders or work orders, to see what has been said and done previously. (Tr. at 2575.)

Ms. Poulin stated that there are five or six days each month where the JU office has an "extremely high volume" of calls; because JU uses two billing cycles, those days include the two due dates,[127] the two disconnection dates, and the Monday before each disconnection date. (Tr. at 2584.) According to Ms. Poulin, the JU office's call volume on a slow day would be 300, on a typical day would be 800, and on a high call volume day could be more than 2,000. (Tr. at 2584, 2735.) Ms. Poulin stated that the call volumes are high on due dates because customers are calling in to make payments by phone. (Tr. at 2584-85.) Many of the calls on the Monday before a disconnection day are also to make payment or to make payment arrangements using JU's program called "promise to pays," which provides an extra two weeks for a customer to make payment.[128] (Tr. at 2585.) Ms. Poulin stated that there are many customers who use "promise to pay" every month and that the "promise to pay" payment deadline is also a high call volume day. (Tr. at 2586, 2739.) The JU office also receives a large number of walk-in customers making payments on high call volume days. (Tr. at 2586.) Ms. Poulin estimated that on a high call volume day, JU could use 18 CSRs, while on a slow day, JU only needs four or five, but that it is "really difficult" to hire people to work only on the high call volume days. (Tr. at 2735.) JU's phone software produces daily reports of the number of calls received, the average hold time, and the average conversation length. (Tr. at 2736.) This year, the average phone calls per day range between 300 and 2000, the average hold time is approximately 20 minutes, and the average conversation duration is approximately 3½ minutes. (Tr. at 2736.) Ms. Poulin stated that JU has already gone from one to two billing cycles based on growth and believes that a third billing cycle will be added if necessary to level out customer service demand with additional growth. (Tr. at 2736-37.)

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[127] Customers are provided 15 days to pay their bills. (Tr. at 2737.)

[128] Ms. Poulin said that JU is "pretty generous and lenient" with its customers and that payment deadlines are "kind of extend[ed] . . . to try and help customers." (Tr. at 2739.) For example, if payment is due on the 15th, the disconnection notice would not be sent until the 17th or 18th and would provide 10 days to pay; the disconnection would not actually be scheduled until the next Wednesday; and, if the customer communicated with JU before that Wednesday, JU would not actually disconnect unless payment still had not been made by the Friday of the following week. (Tr. at 2748-49.) If payment is not made by the ultimate due date, JU charges a late fee of 1.5 percent, which is typically approximately $2 for a water and sewer customer. (Tr. at 2740.)

Regarding the experience some customers have reported of being required to leave a message after an extended hold time, Ms. Poulin stated that the current phone system allows 100 calls in a queue and allows a customer to stay on hold for approximately 30 minutes before automatically transferring the customer to voicemail. (Tr. at 2586-87, 2733.) Alternatively, the customer can choose immediately to select the "call back" option, through which the system retains the customer's phone number and then calls the customer back when it is the customer's turn in the queue. (Tr. at 2586-87.) Ms. Poulin stated that all voicemails are sent to an email that goes to the call center supervisor and that every voicemail is listened to and responded to "the exact same day" because the queue of voicemail messages is cleared each day. (Tr. at 2587.) If a CSR returning a customer's call gets the customer's voicemail, the CSR leaves a voicemail message and enters a note in the account that the customer's message has been received, the customer's call returned, and a voicemail message left. (Tr. at 2587-88.) Ms. Poulin acknowledged that customers are upset when they are required to leave a voicemail after being on hold for 30 minute, and that she would be upset by that as well and does not believe it is acceptable. (Tr. at 2732, 2734.) She emphasized that JU's new phone system to be implemented is expected to alleviate that issue. (Tr. at 2732-33.)

George Johnson testified that if he found that any of the JU workers were rude to customers, he would fire them because they are there to serve the people. (Tr. at 978.) He has heard complaints about JU workers not being responsive to customers and believes that it generally has to do with calls to the office on billing due dates. (Tr. at 978-79.)

2. Customer Relations Issues

Ms. Poulin attended the first public comment session in February 2018 and watched portions of the other public comment sessions on Facebook. (Tr. at 2581-82.) Ms. Poulin stated that she honestly does not know why so many people seem to be unhappy with JU and was "pretty surprised and curious" about it. (Tr. at 2710.) She was "really happy" when the Commission submitted 45 data requests concerning customer comments because it gave her an opportunity to look into the accounts. (Tr. at 2710.) She found that some of the customers had never raised concerns with JU and that some had been resolved through informal complaints with the Commission. (Tr. at 2710.)

Chris Johnson knew that public comment sessions regarding JU were held on February 20 and

21, 2018, and that "people were complaining" about customer service, billing issues, and interactions with JU's CSRs, but he did not attend or listen to them. (Tr. at 2308-09.) Chris Johnson stated that it does concern him if customers are complaining and that Hunt is implementing the new Paymentus system, which Hunt will pay for without reimbursement from JU, to improve customer service. (Tr. at 2309.)

Mr. Drummond attended the two evening public comment sessions and stated that there were a number of common themes as well as a couple of people who appeared at more than one session and spoke more than once. (Tr. at 3355.) Mr. Drummond stated that he came away from the sessions realizing that there are a lot of opinions concerning the Section 11 WWTP, customer service, and bills with spiking usage believed to be inaccurate. (Tr. at 3355-56.) He stated that JU will continue to address the issues, that Mr. Drummond has some ideas himself, that Mr. Taylor is thinking about the issues, and that they will reach out to other water and wastewater utilities to get their thoughts on those types of issues. (Tr. at 3356.) Mr. Drummond also stated that he is intrigued by Queen Creek's handling of high usage bills. (Tr. at 3355.)

Mr. Cole attended all six public comment sessions in February 2018 and is concerned that so many people attended, but also believes that it was somehow orchestrated by someone, although he does not know by whom. (Tr. at 3013-14.) He pointed out that JU has not received that many complaints from its customers, that JU received four times as many complaints in 2017 as it had in prior years, and that the vast majority of complaints were received after the federal indictment. (Tr. at 3014, 3185-86.) He also said that a "certain politician" had put signs up around town using the government's logo and calling the public comment sessions "hearings" and had made various written and recorded statements encouraging people to complain about JU. (Tr. at 3186.) He did not challenge the customers' rights to come and provide comment to the Commissioners. (Tr. at 3186.)

Mr. Cole testified that JU and Hunt take customer complaints seriously. (Tr. at 2790.) Mr. Cole attended all six of the February 2018 public comment sessions and, in light of those public comment sessions, Hunt developed a list of issues to look into and follow up on, which is part of the reason Hunt contracted with GHD. (Tr. at 2790.) Initially, Hunt took steps to understand the foundation of customers' complaints. (Tr. at 2790-91.) Then, on April 15, 2018, JU entered into a

second contract with GHD[129] for the performance of two tasks ("April GHD Contract"), the first of which is described as follows:

> **Task 1000**
>
> Customer Service and Billing – in detail, review and analyze the customer service and billing functions of [JU], with specific attention to the categories of customer complaints alleged at the public comment sessions in Pinal County on February 20 and 21, 2018. Make recommendations for improvement based on industry best management practices. Analysis should include an evaluation of the customer service management system, work order system, conflict resolution and field investigation of customer complaints. Support Hunt [] with the implementation of the recommendations for improvement by providing GHD sponsored training and/or assistance with developing a scope and selecting a third-party vendor to provide employees with the recommended training.[130]

Although the April GHD Contract is limited to $250,000, unless prior written authorization is provided to exceed that amount, Mr. Cole believes that JU is willing to spend more than that if necessary and to expand the scope of the April GHD Contract if new things come to light. (Tr. at 2792.) Mr. Cole stated that it is important to Hunt that GHD analyze the customer complaints. (Tr. at 2792-93.) Mr. Cole stated that Mr. Taylor has told him that he will "call it like he sees it" and will tell Mr. Cole the truth regardless of whether Mr. Cole likes it. (Tr. at 2793.) GHD's scope of work does not include evaluating the manner in which JU obtains its workers and services. (Tr. at 2414.)

Mr. Taylor stated that his awareness of the customer comments at the February 2018 public comment sessions came from what he heard during the hearing because he did not attend the public comment sessions. (Tr. at 2401.) Mr. Taylor understands that a lot of people were very upset. (Tr. at 2402.)

George Johnson asserted that hundreds of people came to the February 2018 public comment sessions because one of the Pinal County Supervisors put out large boards with the Pinal County emblem asking people please to come to the meetings and "blast[ed]" out the same message on

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[129] The first contract with GHD was for an assessment of JU's systems and is discussed below.

[130] Ex. J-24 at ex. A. In addition to Mr. Taylor, the GHD team will include other subject matter experts in specialized fields related to water and wastewater. (Tr. at 2392-93.) Mr. Taylor will serve as the senior project manager. (Tr. at 2393.) Mr. Taylor anticipates keeping "a pretty tight team" with himself as the lead and using lower-rate employees when appropriate. (Tr. at 2393-94.) Under the second contract, JU would be billed by GHD based on hourly rates for GHD employees, which range from $65 per hour for a clerical worker to $215 per hour for the Principal/Engineering Manager. (Ex. J-24 at ex. A.) Mr. Taylor's work, as the Senior Project Manager, would be billed at $180 per hour. (*Id.*) The contract shows 15 classifications of GHD employees who may perform work, with 13 of them having hourly rates of $100 or more. (*Id.*)

"illegitimate . . . sites." (Tr. at 971.) George Johnson stated that lately JU has received quite a few letters that have identical language but are signed by different people. (Tr. at 946.) He also stated that for the past six years or more, a handful of people have "kind of ganged up" on him, he thinks because of his opposition to incorporation, which people took personally. (Tr. at 947.) He believes that some of the complaints against JU have been politically motivated because of his opposition to incorporation and added that "we have one supervisor in Pinal County that . . . has gotten out of line quite a bit." (Tr. at 949.) Mr. Johnson also asserted that while 362 complaints about JU to the Commission in 2017 "probably" indicates "some management problems," it probably also is related to the pro-incorporation people and other people. (Tr. at 951.) He did "not totally" agree that it is a "conspiracy," but said that JU has always tried to do a good job and has had good projects and been considered "a pretty decent firm wanting to do what's right," and now people, including Supervisor Goodman, have united against JU. (Tr. at 971-72.) George Johnson said that it is "very, very serious" and that JU is "doing things in the public relations field" and has "hired investigators to go out and find out how many of these complaints are legitimate."[131] (Tr. at 973.) He stated that "we" had to have the FBI come out because "we" were threatened by "one of these national terrorist groups over the incorporation, and we had a Molotov cocktail thrown in our office out there." (Tr. at 951-52.) George Johnson stated that first he and then Mr. Drummond and Mr. Cole increased surveillance and implemented a 24-hour presence "out there." (Tr. at 952.) He expressed skepticism that the customer complaints were genuine and "legal" and not prompted by "an ulterior motive." (Tr. at 986.) George Johnson stated that he thinks "one complaint is too high" and that he would like to see zero complaints, although he knows that will never happen. (Tr. at 950, 987.)

George Johnson stated that he had not heard that some of JU's customers had expressed fear that he would retaliate against them if they complained about JU's service or billing. (Tr. at 977-78.) He stated that he did not know why anyone would have complained about that to the Commission. (Tr. at 978.)

Mr. Cole acknowledged that some customers expressed fear of retaliation from JU, but said that

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[131] Mr. Cole, Mr. Drummond, and Ms. Poulin have no knowledge of George Johnson actually hiring private investigators (or anyone) to conduct investigations into customer complaints and motivations. (*See* Tr. at 2744-45, 3213-14, 3480.)

he has never seen any retaliation during his three years working for JU. (Tr. at 3014.) Mr. Cole believes that the fear of retaliation stems from previous lawsuits brought by JU against customers who made false accusations. (*See* Tr. at 3014-15.) He believes that the lawsuits were necessary to stop false claims that were being made publicly. (Tr. at 3015.) Further, Mr. Cole believes that some of the claims made by customers at the public comment sessions were false, such as the claim by one customer that she is receiving yellow water, because none of her neighbors are receiving yellow water. (Tr. at 3015.) Mr. Cole also said, in reference to the photos of the dirty filter presented by Ted Leach, that the discoloration means that the filter is doing what it is supposed to do, and all water filters get discolored because they block everything. (Tr. at 3015-16.) Mr. Cole added that he saw the actual filter at the public comment session and that the discoloration could have been because Mr. Leach did not clean his water heater. (Tr. at 3016.)

Ms. Poulin was not aware of any retaliation made by JU against customers who criticized JU or complained about how its business is run. (Tr. at 2704.) Ms. Poulin stated that she has not retaliated against any JU customer, has never observed anyone in JU's customer service department retaliate against a JU customer, was unaware of any retaliatory behavior by anyone else within the JU organization, and would not tolerate such retaliatory behavior in the office. (Tr. at 2619, 2748.) She stated that she had not personally heard that customers are afraid of retaliation by JU's management or employees for speaking out against JU, but that she had heard about people saying that they were concerned their bills would be increased. (Tr. at 2704.) Ms. Poulin stated that she was familiar with Emily Hughes, who showed on the news that she had discolored water at her property several years ago but was not aware of JU suing Ms. Hughes for making disparaging postings online with the intent to defame JU. (Tr. at 2704-05.) Ms. Poulin denied any knowledge of JU allegedly suing two other women for the same reason, although she did recognize one of their names. (Tr. at 2705-06.)

Mr. Cole characterized a letter written by him to Karyn Christian on May 13, 2016, as a response refuting some allegation that Ms. Christian had made in a particular docket. (Tr. at 3016-17; Ex. S-25.) In the letter, *inter alia*, Mr. Cole stated that "Ms. Christian has a long sordid history of lashing out against [JU] and rabble rousing the community against anything related to [JU]." (Ex. S-25.) Mr. Cole questioned Ms. Christian's motives and stated that the Commission should be suspicious of all

communications from her because she has an "emotional disdain" toward JU and is "stirring the pot." (Ex. S-25.) Mr. Cole also took Ms. Christian to task for calling Roadrunner an "affiliate" of JU in what he stated was an attempt "to intentionally mislead the reader into thinking that Roadrunner is an affiliated company and regulated by the Commission." (Ex. S-25.) Mr. Cole closed the letter with "Enough is enough." (Ex. S-25.) Mr. Cole stated that Ms. Christian is currently a JU water and wastewater customer in the Anthem service area. (Tr. at 3017.)

Mr. Cole acknowledged that he had received a July 20, 2017, letter from Dennis Rule, Manager of the groundwater replenishment function of the Central Arizona Water Conservation District ("CAWCD"), requesting assistance regarding numerous complaints from JU customers received by CAGRD staff because of the significant increase in JU's CAGRD adjustor fees. (Tr. at 3018; Ex. S-118.) The letter stated that JU's CSRs had been providing JU's customers inaccurate information about the origin and purpose of the CAGRD fees and that the JU customers had not been given accurate information about the reasons for the recent increase in the fees. (Ex. S-118.) The letter requested that JU correct the information it was providing its customers by sending information to customers, posting information on its website, and providing its CSRs with correct information through a script or other informational document; Mr. Rule further requested that CAWCD be permitted to review and comment on the information developed. (Ex. S-118.) Mr. Cole is not aware of JU's CSRs telling JU customers to contact the CAWCD. (Tr. at 3018-19.) He stated that he and Mr. Rule co-authored the FAQs document that provides correct information about the CAGRD fees, which was included in a monthly newsletter and is posted permanently on JU's website. (Tr. at 3020-21.)

3. High Usage Process

JU's billing system identifies and flags high usage on an account when the meter read for a month shows usage that is 200 percent higher than the average for the account over the life of the account.[132] (Tr. at 2588.) Each account that is flagged for high usage is included on a printed report

[132] In contrast, approximately 50 percent of Queen Creek's meters are now part of a tower system that allows Queen Creek to get a meter read in a minute and that alerts Queen Creek if a meter has not stopped running for a specified period of time, like four hours or 24 hours. (Tr. at 1301.) This gives Queen Creek the opportunity to reach out to let the customer know and help determine what is happening. (Tr. at 1301-02.) Queen Creek also provides a one-time leak adjustment under which the customer is billed for all of the water consumption, but at the lowest tier rate. (Tr. at 1302, 1390-91.) Queen Creek anticipates implementing a system in approximately one year called "back end portal" that will allow customers to see their own information and set their own thresholds to receive alerts that something is happening. (Tr. at 1303.) Queen

that goes to the meters department. (Tr. at 2588.) When an account is flagged for high usage, the meters department sends a technician out to the property to verify that the meter read is correct by looking at the meter and the register. (Tr. at 2589.) The meters department will also attempt to contact the customer by phone to let the customer know that the high usage was identified and verified, so the customer has an opportunity to fix the situation causing the high usage. (Tr. at 2589.) The meters department calls the customer before the customer's bill is generated. (Tr. at 2590.) Ms. Poulin stated that while some customers are already aware of the high usage, many are not. (Tr. at 2589.)

Ms. Poulin confirmed that when a customer calls with concerns about high usage, the CSR will ask the customer whether they could have a leak[133] or could be having their water stolen,[134] as part of an investigation process.[135] (Tr. at 2590.) First, however, the CSR will typically review usage with the customer,[136] as that is the first thing that should be done, to see whether the usage is abnormal or has occurred before. (Tr. at 2575, 2590, 2592.) According to Ms. Poulin, CSRs go through how to check a toilet for leaks, how to check for irrigation leaks, and sometimes even how to find and read a meter. (Tr. at 2592.) If a CSR generates a work order for a technician to go out and check on high water usage, JU encourages the technician to speak to the customer while on site as a more effective way to try and determine what is occurring. (Tr. at 2593-94.) When a customer is not satisfied after speaking to the CSR, the case is moved to the customer service supervisor or the meters department,

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Creek can print out data obtained from their smart meters. (Tr. at 1303.) Queen Creek uses Sensus iPERL meters. (Tr. at 1304.)

[133] Ms. Poulin testified that it is the customer's responsibility to find and address leaks on the customer's side of the meter and JU's responsibility to find and address leaks up to the customer's meter and ensure that the meter is working correctly and registering usage accurately. (Tr. at 2716.) Ms. Poulin stated that JU's CSRs and technicians go further than that, however, because they try to assist the customer in finding leaks. (Tr. at 2716.)

[134] Ms. Poulin stated that although it is unusual for water theft to occur, JU has had customers call to inform JU that their water was being stolen by a neighbor, usually through the hose spigot outside, and JU technicians have on occasion noted that hoses have been laying across backyard fences, which also suggests water theft. (*See* Tr. at 2715.) George Johnson also testified that he knows of contractors putting a hose into a yard and using a winter visitor's water on the contractor's construction job to avoid getting a meter right away. (Tr. at 946.) Mr. Cole also testified that not at JU, but at prior utilities, he knew of instances when people had been caught stealing water from their neighbors, although it was rare. (Tr. at 2928.) Mr. Cole agreed that it would be fairly obvious if 70,000 gallons of water was being stolen from a residence in one month, provided that the customer lived in the home. (Tr. at 2928-29.) Per Mr. Gardner, Queen Creek does not get complaints of water theft and occasionally sees customers with consumption spikes of 10,000 gallons or more. (Tr. at 1300.)

[135] Mr. Taylor stated that at both the utilities he worked for previously, asking about possible water theft or leaks at the customer's home is part of the investigation when a customer calls about high water usage. (Tr. at 2402-03.)

[136] Ms. Poulin stated that a CSR might not review a customer's usage with them if the customer is "extremely upset and not willing" to do the review with the CSR. (Tr. at 2591-92.)

so that data logs, meter tests, etc. can be discussed with the customer.[137] (Tr. at 2593-94.) If the technician has obtained a data log from the customer's MXU, JU provides the customer a copy of the data log in hard copy or by email, to help the customer identify when the water usage occurred, down to the hour. (Tr. at 2591-93.) After reviewing the data available, if the customer still believes that the customer's meter is not reading correctly, then JU sends the meter for testing.[138] (Tr. at 2591.) The investigation stops if the meter test comes back as accurate or under-reading. (Tr. at 2591.) Each meter test result is emailed to the customer; Ms. Poulin believes that the meters department also does a follow-up phone call to the customer. (Tr. at 2595-96.)

In a typical month, JU will test two or three meters, and that is the level JU is experiencing currently. (Tr. at 2596.) In 2017, JU did many more meter tests because there were many more high usage calls. (Tr. at 2596.) Ms. Poulin believes that the increases in high usage calls and informal complaints made with the Commission in 2017 were the result of the CAGRD fee increase[139] as well as a lot of social media "misinformation" about JU and encouragement to file complaints. (*See* Tr. at 2596-97, 2702, 2752.) Ms. Poulin personally responds to each informal complaint received. (Tr. at 2597.)

4. Billing & Payment

Each month on average, JU sends out approximately 37,000 bills and approximately 10,000 disconnection notices (these are also referred to as late notices).[140] (Tr. at 2599.) The disconnection notices are generally sent out a couple of days after the payment due date. (Tr. at 2599.) So far in 2018, JU has been disconnecting an average of between 400 and 450 customers each month. (Tr. at

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[137] Ms. Poulin testified that the CSRs are aware of the meter testing option, and that the option should be communicated to customers, but that meter testing is more typically discussed with customers by meters department personnel. (Tr. at 2594.)

[138] There is a meter testing form that a customer must complete to request meter testing, and the CSRs have that form and can provide it in person or by email. (Tr. at 2594-95.) JU sends meters out for testing either to the Commission or to Dana Kepner. (Tr. at 2645.) Ms. Poulin stated that meter testing is completed with "a really fast turn-around." (Tr. at 2645.)

[139] George Johnson believes that customers who are concerned that JU is overcharging them for their water consumption are not reading their bills correctly because they do not understand the CAGRD fees, which most people pay through their property taxes rather than through their utility bills, and because the CAGRD was high for the one-year period in which JU was permitted to make up for its prior years' under-collections. (Tr. at 979, 1232-33.)

[140] When JU stated that it issues an average of 10,000 disconnect notices per month, it was referring to disconnect notices provided to its more than 63,000 water and wastewater accounts. (Ex. S-99 at 16.) For December 2017 through February 2018, JU had much lower disconnect notice numbers: December 2017 – 611, January 2018 – 463, and February 2018 – 493. (Ex. S-99 at 16.)

2600.) According to Ms. Poulin, disconnections are generally done on Wednesdays because a lot of customers make payments over the weekend, and JU wants to ensure that any payments made over the weekend have been entered into the system; JU avoids doing disconnections on Fridays so that customers are not left without water for the weekend. (Tr. at 2600.) Ms. Poulin also stated that JU tries to reconnect service on the same day that a customer brings his or her account current and has workers stay late to accomplish this if necessary, although same-day reconnection is not possible during a water emergency. (Tr. at 2600-01.)

Ms. Poulin has heard recently of customers indicating that they do not receive regular paper bills from JU and has found that some of those customers have signed up for electronic bills ("e-bill") and either forgotten or locked themselves out of their account. (Tr. at 2597-98.) Because all disconnection notices are sent out by U.S. mail, such customers would only receive hard-copy disconnection notices. (Tr. at 2598.) If a customer requests it, a CSR can discontinue the customer's e-bill enrollment or can reset the customer's password so that the customer can access their account online. (Tr. at 2598-99.)

Ms. Poulin has been concerned about JU's current online payment processing because it can take up to three days for JU to receive a payment, although payment is usually received the day after it is made by the customer. (Tr. at 2601.) According to Ms. Poulin, JU has to advise its customers that payment processing can be delayed. (Tr. at 2601.) Also, Ms. Poulin stated, customers sometimes are confused about their own banks' bill pay processes, believing that when they make payment to JU through their bank's online bill pay system, the payment happens immediately, when the money is taken from their bank account, although payment generally is made using a check mailed to JU by the bank. (Tr. at 2601-02.) Ms. Poulin stated that it sometimes takes 14 days for JU to receive a bank's check, and JU must explain to the customer why payment might be late although the money has been taken from the customer's bank account. (Tr. at 2601-02.) JU tries to input all checks on the day they are received or, if that is not possible, within 24 hours. (Tr. at 2602.) Ms. Poulin has researched the services of vendors that can eliminate the need to issue a check when bank bill pay is used but said that none of them included all of the larger banks from which JU receives checks, and Ms. Poulin did not want to have five new processes from different vendors that had to be run daily by the accounting team.

(Tr. at 2741.) Ms. Poulin has not explored hiring an information technology worker to perform those daily processes. (Tr. at 2742.)

JU also offers a payment drop box that is accessible to customers at all times, allowing customers to drop off payment when the JU office is closed. (Tr. at 2606-07.) JU processes drop box payments on the next business day. (Tr. at 2607.)

The main page of JU's website provides links to "My E-Bill," "Pay My Bill," and "Auto Pay" screens, in addition to a number of other links such as "Services," "Rates," "Alerts," Public Notices, and "FAQ's." (Ex. J-73.) The main page also includes the address, contact information, and hours for JU's office in San Tan Valley. (Ex. J-73.) The "Auto Pay" screen includes links to establish and to terminate Auto Pay along with information about attaching a voided check. (Ex. J-73.) The "Pay My Bill" screen includes a pop-up to alert customers making a payment online through the JU website that the payment can take up to three days to receive and requires the customer to click that the customer understands and accepts that in order for the customer to proceed to make a payment. (Tr. at 2603.) Ms. Poulin testified that the pop-up alert regarding processing time for payment has been on the JU website for at least the past four years and was added when JU experienced customers making payment on the night before disconnection. (Tr. at 2604.) Ms. Poulin testified that JU's bills do not include any information about contacting the Commission if a customer has a complaint. (Tr. at 2747.)

Ms. Poulin believes that JU meets its objective to issue accurate bills to its customers and that it corrects mistakes and issues appropriate refunds whenever mistakes are detected. (Tr. at 2678.)

Ms. Poulin testified that she is excited about JU's upcoming relationship with Paymentus, which is partnered with the company that provides JU's billing software and offers a number of options for customers to make payments, including IVR, an automated phone payment system that allows customers to make payments by phone at any time and will reflect the payment in the customer's account without delay. (Tr. at 2604-05; *see* also Ex. S-99 at 17; Ex. J-1 at 5.) Ms. Poulin stated that Paymentus also offers an improved website payment option, using a customer portal that will allow a customer to make payments that will be processed in real time, to change contact information, and to see the customer's meter reads. (Tr. at 2605.) Ms. Poulin stated that the customer portal will also be accessible by cell phone. (Tr. at 2605.) At the time of hearing, Ms. Poulin expected the Paymentus

functionality to be available between early June and July, because the contract with Paymentus had already been signed by the Hunt corporate office. (Tr. at 2605.) Ms. Poulin hopes that the new payment options with Paymentus will reduce the number of customer phone calls to CSRs to make payments, resulting in shorter hold times and more time for CSRs to discuss customers' concerns about other issues they may have. (Tr. at 2606.) Ms. Poulin believes that Hunt has been considering use of a system like Paymentus for "[q]uite a few years," but had to wait for the contract with its existing payment processor to expire. (Tr. at 2606.)

George Johnson was aware that Mr. Cole and Mr. Drummond were bringing in different payment options that would eliminate the delay in processing payments. (Tr. at 948.) He also stated that it costs money to send out disconnect notices, to go put notices on doors, to cut off water and sewer, and to go back out and turn it on, and that JU would rather work with people to avoid that. (Tr. at 949.) He is optimistic that Mr. Drummond and Mr. Cole will eliminate billing problems. (See Tr. at 949.) George Johnson also stated that he does not believe JU averages 10,000 disconnect notices each month and that, if it does, something might be wrong. (Tr. at 950-51.)

5. JU Newsletters & Website

Nearly every month, JU sends out a newsletter along with its bills—either by mail or as a link in an email for those customers enrolled in e-bill. (Tr. at 2611.) In the newsletter, JU tries to include information that customers may find helpful, such as how to flush a water heater, bill pay options, how meters are read, and water conservation tips. (Tr. at 26111-14.) JU also posts its newsletters on its website. (Tr. at 2611.) Ms. Poulin sometimes influences newsletter content but does not create the newsletter; an information technology "guy" is paid to assemble and submit the newsletter for publication. (Tr. at 2712, 2759-60.) Ms. Poulin acknowledged that an article included in the May 2017 newsletter could have spurred complaints from JU customers who support Pinal County Supervisors but stated that she did not write that article or know who wrote it.[141] (Tr. at 2713, 2728.) Although

[141] The article, which occupied the entire first page of JU's May 2017 newsletter was entitled "Queen Creek Annexation Good for Everyone" and described the "pro incorporation folks from the San Tan Valley" as a "minority voice" that "squeak[s] very loudly" and "may have done more harm than good." (Ex. RUCO-9.) The article goes on to describe the pro-incorporation advocates' demands as "absurd, petty and unprofessional"; to accuse them of "trying to bully the Town into making decisions" against its best interests and of alienating their neighbors; to call out Supervisor Goodman as someone who "should probably be the most ashamed of [his] behavior" and who is "doing a disservice to the residents of Pinal County"; and to question whether Supervisor Goodman's advocacy "was even legal." (Ex. RUCO-9.) The article

Ms. Poulin was aware of Supervisor Mike Goodman's name and that he has been a vocal critic of JU, she has not met him and does not get actively involved in local politics. (Tr. at 2728-29, 2743-44.) Ms. Poulin did not know how the newsletter expenses are allocated. (Tr. at 2715.) She did not recall that any newsletters had been retracted.[142] (Tr. at 2742-43.)

Mr. Cole acknowledged that he was the author of the May 2017 newsletter article that advocated for Queen Creek annexation. (Tr. at 3049.) He said that he drafts a lot of the newsletters sent with customers' bills and that he believes Hunt used to pay for them but that JU now pays. (Tr. at 3047, 3196, 3293.) Mr. Cole does not know whether JU has recovered postage through rates as an expense item, but he assumes that JU has included it as an expense in the pending rate case. (Tr. at 3048, 3195.) Mr. Cole stated that Mr. Drummond directed, and that he and Mr. Drummond are both committed, that the newsletter is not to be used for political purposes. (Tr. at 3048-49, 3196-3200.) Mr. Cole understands that the purpose of the newsletter is to inform customers about issues affecting the utility. (Tr. at 3085.) Mr. Drummond stated that he was aware of the opinion articles when they occurred but had not been asked for his opinion about them. (Tr. at 3359.) However, once he became manager, Mr. Drummond ended the practice, stating that if the owner of JU wants to express his opinion, he can create his own newsletter but that those will not be included in the JU newsletter. (Tr. at 3359-60.)

The newsletters include advertising, for which people do not pay. (Tr. at 3318.) In the

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also asserts that Supervisor Goodman "ha[s] not been a very successful business person" and admonishes him to "stop the bullying." (Ex. RUCO-9.) In conclusion, the article advocates for annexation as "best for the area." (Ex. RUCO-9.) Mr. Cole acknowledged that he was the author of the article. (Tr. at 3049.) Mr. Cole disagreed that the article suggested that Supervisor Goodman had violated the law. (Tr. at 3119.) Mr. Cole also stated that he had estimated that incorporation would have cost JU's ratepayers approximately $2 million more per year. (Tr. at 3197.)

[142] The JU newsletter for February 2017 was published in two different versions—the first contained a cover article entitled "HB2088 – Incorporation; urbanized areas: The 'right to vote' theme is a scam." (Ex. JKD-14.) *Inter alia*, it stated that the "bill is being promoted by an egotistical self-serving individual who was fired as Chamber President by the San Tan Valley Chamber of Commerce for actions detrimental to the Chamber" and that "[p]romoting a bill that creates so much harm is shameful." (Ex. JKD-14.) The second version included an article entitled "Why does Johnson Utilities oppose incorporation?**" and included the following notice:

> **This report replaces the email, newsletter, website and Facebook posting, now deleted, of February 6, 2016 [sic], which addressed incorporation and H.B. 2088. Though all discussions in the earlier communications are well sourced the overall discussion was too opinionated; we hope to adopt the Sgt. Joe Friday approach, "Just the facts ma'am, just the facts," in these reports of issues of interest to our community and rate payers. Therefore, we retract the earlier communication and look forward to a more focused continued dialog regarding issues.

(Ex. JKD-15.)

newsletters reviewed during the hearing, the advertising was from Club at Oasis.[143] (*See* Ex. RUCO-9; Ex. JKD-14;[144] Ex. JKD-15; Ex. J-73.) Mr. Cole stated that the advertising space has been offered to Pinal County, which once had an article included. (Tr. at 3318.)

The FAQs screen on JU's website includes a 3 ½ page document answering 15 listed questions about the CAGRD and CAGRD Adjustor Fees. (Ex. J-73.) Ms. Poulin testified that the FAQs screen was added in 2017 after numerous customers expressed concerns about the increased CAGRD adjustor fees. (Tr. at 2610.) The FAQs document was developed jointly by JU and the CAGRD. (Tr. at 2610.) According to Ms. Poulin, the CSRs are trained to refer customers with CAGRD-related questions to the FAQs document and will either scan and email the document or provide it to the customer at the JU office. (Tr. at 2610.) Ms. Poulin has received positive customer feedback related to the FAQs document. (Tr. at 2610.) She stated that before the FAQs document was created, the CSRs had been provided other documentation explaining the increase in the CAGRD adjustor fees. (Tr. at 2695.) When the FAQs were created, the CSRs had "some pretty extensive meetings a couple times a week" to go over the FAQs. (Tr. at 2695.) Ms. Poulin did not believe that any CSR would have referred a JU customer to the Central Arizona Project ("CAP") for an explanation of the CAGRD, and thought that the CSRs would not even have a number for CAP, but said that a CSR might have referred JU customers to a CAGRD website. (Tr. at 2695.)

JU's website also includes links to its water quality reports, and CSRs refer customers to those reports. (Tr. at 2615-16, 2618.) On the "Alerts" screen of the JU website, Ms. Poulin posts alerts and notices, generally received from Mr. Cole, concerning subjects such as H_2S at the Section 11 WWTP, nitrate exceedances, and facilities breaks and repairs. (*See* Tr. at 2616; Ex. J-73.) At the time of the hearing, JU's website also included public notice of its Pending Rate Docket and a link to a complete copy of JU's rate application therein.[145] (Tr. at 2616-17; Ex. J-73.)

Ms. Poulin described JU's website as "a little stagnant" for nearly the past year, since their information technology employee left and she took over maintaining the website. (Tr. at 2699.) In addition to maintaining the website, Ms. Poulin responds to all private Facebook messages sent to JU

[143] As noted previously, Hunt is the member of Club at Oasis, and Chris Johnson is its manager. (Ex. S-106.)
[144] Mr. Dantico's exhibits are identified as "Ex. JKD-1," etc.
[145] JU also has a complete copy of JU's rate application available for customer review at the JU office. (Tr. at 2617.)

and has occasionally posted things such as customer appreciation day announcements on JU's website, but a new person named Sheryl, who does not work out of the JU office and for whom Ms. Poulin does not manage payroll, is now responsible for maintaining the Facebook page. (Tr. at 2706-07.)

Aside from the specific notice of the pending rate case, none of the regular JU website screens reviewed included the Commission's contact information; nor did any reviewed JU website screen advise customers that complaints regarding JU can be made to the Commission. (*See* Ex. J-73.) Ms. Walczak testified that the Commission's rules do not require that water utilities include the Commission's contact information on their bills. (Tr. at 2066.) She further indicated that Consumer Services prefers that customers contact the utility with any problems before contacting the Commission. (Tr. at 2105.)

III. JU's Regulatory Compliance

A. JU's Water Systems

1. Current & Recent ADEQ Compliance Status

a. *Current Status*

As of the hearing in this matter, JU's two water systems were providing water that complied with Safe Drinking Water standards, and Mr. Baggiore testified that JU's water had also been in compliance with Safe Drinking Water Standards during the prior year and that JU had been performing all ADEQ-required testing of its water. (Tr. at 622, 623-24.) In late February to early March 2018, ADEQ took approximately 234 water samples, including residential samples, from JU's systems for testing. (*See* Ex. J-6; Tr. at 615, 618.) None of the tests revealed violations of the Safe Drinking Water Act, although the water from one well exceeded the maximum contaminant level ("MCL") for arsenic, and the water from two other wells exceeded the MCL for nitrates.[146] (Tr. at 616-18.) The testing ADEQ completed in March 2018 was more than usual, because it included testing for pollutants that are not subject to routine testing under the ADEQ Monitoring Assistance Program ("MAP"), in which

[146] The MCL compliance standards apply at the entry points to the distribution system ("EPDS") rather than at the wells. (*See* Tr. at 616.) Per Mr. Baggiore, it is not unusual to find nitrates in the groundwater in the Phoenix metropolitan area, and nitrates can come from multiple sources, primarily agricultural sources and septic systems. (Tr. at 625-26.) If a utility has an ADEQ-approved blending plan, water that exceeds an MCL can be blended with water that does not exceed the MCL to bring the overall concentration of a pollutant at the EPDS to a level below the MCL. (Tr. at 618-19.) Mr. Baggiore testified that he believed JU has several ADEQ-approved blending plans but that blending was also occurring in two locations not yet approved by ADEQ. (Tr. at 619, 704.)

JU participates; included distribution system sampling, which is ordinarily done only by the utility; and included sampling from wells that would not ordinarily be sampled on a regular basis. (Tr. at 621.)

On February 23, 2018, Staff Engineer Jian Liu inspected JU's water systems along with ADEQ personnel. (Ex. S-13 at 4.) Mr. Liu noted the following minor operation and maintenance issues for the water systems, which he stated would typically be classified by ADEQ as Notice of Opportunity to Correct: (1) a ladder and hatch were not secured/locked at the storage tank located at EPDS No. 007, and a hatch lacked a proper gasket; (2) one well's casing was not properly sealed around the electrical conduit; (3) another well's slab was cracked; (4) another different well's slab had an opening where the well casing and slab meet; and (5) yet another well had a square cover on a round well casing. (Ex. S-13 at 14.) Mr. Smith agreed with Mr. Liu that the water system issues were minor and believed that they had been addressed as of the hearing. (Tr. at 1665.)

b. *October 2017 Consent Order – Johnson Ranch*

On February 1, 2018, ADEQ issued a Termination of Consent Order for a Consent Order for the Johnson Ranch water system that had been entered on October 3, 2017 ("10/2017 Consent Order").[147] (Ex. S-122.) In the 10/2017 Consent Order, in which JU did not admit to any civil or criminal liability or to the validity of any of ADEQ's Determinations and Findings, ADEQ found that JU had done the following:

- Failed to obtain ADEQ's written approval for blending plans used to achieve compliance with the nitrate MCL for EPDS 001, in violation of A.A.C. R18-4-217(A)(2);
- Failed to obtain an ADEQ Approval to Construct ("ATC") before redirecting two wells to EPDS 001 (which already had an approved blending plan as to two other wells that included Reverse Osmosis treatment ("RO") system), and not having an RO system in place as required, in violation of A.A.C. R18-5-505(B);
- Failed to provide a timely Tier 1 public notice after learning that the system had exceeded the MCL for nitrate at EPDS 001 on November 21, 2016, in violation of 40 CFR § 141.202(a)(2)(b)(1) and A.A.C. R18-4-119; and

[147] Mr. Drummond signed for JU. (Ex. S-122.)

- Failed to allow ADEQ to inspect features of the water system on December 5, 2016,[148] when JU denied ADEQ access to sample its Skyline well, which is associated with EPDS 010, in violation of 40 CFR § 142.34 and A.A.C. R18-4-207.[149]

In a January 2018 letter to ADEQ regarding compliance with the 10/2017 Consent Order, Mr. Cole had explained that JU had submitted the required system inventory and maps to ADEQ on November 13, 2017, and had notified ADEQ on November 20, 2017, that JU was no longer using blending for EPDS 001 (the Main Yard Water Plant) because JU had instead ceased using the wells

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[148] It was Mr. Cole who denied the ADEQ inspector access to the Skyline well for sampling during an inspection on December 5, 2016. (Ex. S-83 at 4.) ADEQ then obtained a search warrant from the Maricopa County Superior Court and provided it to JU at a follow-up inspection on December 9, 2016, during which samples were taken from the Skyline well and JR #4. (Ex. S-82; Ex. S-84; Ex. S-85.) Mr. Cole does not believe that ADEQ needed to obtain a warrant to gain access. (Tr. at 3027-28, 3031.) He stated that ADEQ had indicated that they wanted to come out to inspect a particular JU site; Hunt had made arrangements and relocated personnel to accommodate ADEQ's visit to that site; and then while ADEQ was at that site, ADEQ stated that they also wanted to inspect other sites. (Tr. at 3027-31.) According to Mr. Cole, the Hunt employees said that they did not have time for that and asked the ADEQ employees to come back the next day; Hunt and ADEQ employees called Mr. Cole to discuss the issue; Mr. Cole said that there were not resources available to accommodate the ADEQ request that day; ADEQ insisted that the visit had to occur at that time rather than the next day; and Mr. Cole said sorry, but no. (Tr. at 3027-31.) Then ADEQ sought the search warrant and returned with the warrant a couple of days later. (Tr. at 3028, 3033-37; *see* Ex. S-82; Ex. S-83; Ex. S-84; Ex. S-85.) Mr. Cole stated that he did not contact ADEQ before the warrant was obtained to invite them to return. (Tr. at 3029.) Mr. Cole is not aware of any requirement that ADEQ be supervised while on site, but said that the sites ADEQ wanted to visit were locked facilities—one of the wells was off line and out of production, another well was off line and air gapped due to nitrates, and the third well was locked out and tagged out for electrical reasons—and that ADEQ could not have gained access to them without a Hunt employee. (Tr. at 3030, 3032.) Mr. Cole does not know why ADEQ felt the need to inspect them right away. (Tr. at 3031-32.) Mr. Cole stated that JU is committed to always allow ADEQ or any other regulatory agency access to its facilities and has told ADEQ that the issue will never occur again. (Tr. at 3028, 3040.)

George Johnson stated that ADEQ was denied access because they had indicated that they wanted to inspect just one well and then said that they wanted to inspect three or four more wells, and it was late in the day, and the employees had other important duties that needed to be done, and someone told ADEQ that the JU workers did not have time to go and open access to the wells that day but would do it the next day or another time. (Tr. at 893-94.) George Johnson was told that the ADEQ employee was "quite rude" and insisted to see the other wells "right now." (Tr. at 894.) He understands that ADEQ sought a warrant to gain access and said that "they didn't have to do that" and that they could have just called and come out. (Tr. at 894.) When asked by counsel for RUCO whether he supported management's decision to exclude ADEQ, George Johnson suggested that RUCO was "overblowing this whole thing" and stated that the ADEQ representative, whose salary was paid by taxpayers, should have come back the next day. (Tr. at 896-97.) George Johnson stated that he was not consulted before the ADEQ representative was excluded. (Tr. at 897-98.) George Johnson said that JU has never denied access except that one time, which he does not consider to be a denial of access because the ADEQ representative was simply asked to come back the next day. (Tr. at 898.)

Mr. Baggiore testified that it was unlikely JU could have used the extra time between the denial of access and the return inspection with the warrant to fix any deficiencies that sampling would have revealed because to do that would have required deepening a well or implementing treatment or blending to cure. (Tr. at 734-36.)

[149] Ex. S-122. Under the 10/2017 Consent Order, JU was required to submit a complete system inventory with locations of all facilities (active and inactive) and a map showing flow; to submit an administratively complete application and fees for an ATC for the blending plan for EPDS 001 that added the two additional wells and removed the RO system; to submit an administratively complete application for an Approval of Construction ("AOC") for the blending plan described in the Consent Order after receiving the ATC; and to respond to any deficiencies in the AOC application within the time prescribed by ADEQ. (Ex. S-122.) The 10/2017 Consent Order also provided that upon presenting credentials to authorized personnel on duty, ADEQ may at any time enter the premises at the facility to observe and monitor compliance with the 10/2017 Consent Order. (Ex. S-122.)

that were high in nitrates (JR #3, JR #4, and JR #5),[150] and the two additional wells (Attaway and Hardison) have nitrate levels below the MCL. (Ex. S-62.) Mr. Cole further stated that JU had, on January 9, 2018, submitted the application for an ATC for removal of the RO system, along with a blending plan demonstrating that compliance is achieved with the Hardison and Attaway wells, and, on January 24, 2018, submitted design drawings showing the removal of the RO unit at the Main Yard Water Plant, as part of the ATC application. (Ex. S-62.)

2. Past ADEQ Compliance Status

a. *2016 & 2017 Nitrate Exceedances – Johnson Ranch*

JU's Johnson Ranch system experienced nitrate MCL exceedances on October 27, 2016, and in a conforming sample taken on November 21, 2016, the date that JU was notified of the October 2016 exceedance and of the requirement to take a conforming sample. (Ex. S-63.) According to ADEQ, JU did not issue timely public notice after learning on November 29, 2016, that its conforming sample had also exceeded the nitrate MCL. (Ex. S-63.)

ADEQ notified JU in January, February, and March 2017 that its EPDS 008, EPDS 001, and EPDS 010 were subject to increased nitrate monitoring due to detected sample levels. (Ex. S-63.)

On April 21, 2017, an ADEQ Drinking Water Compliance Status Report concluded that while the Johnson Ranch system was delivering water that met water quality standards, the system was not in compliance because of the reporting deficiency (failure to issue the public notice). (Ex. S-63.)

JU experienced a nitrate exceedance on April 24, 2017, for which it provided public notice on April 26, 2017, through direct hand delivery to customers. (Ex. S-23.)

JU experienced a nitrate exceedance on June 27, 2017, for which it provided public notice on June 28, 2017, through distribution of a press release and public notice to newspapers, television stations, and public officials. (Ex. S-63.) The June 28, 2017, public notice included information about

[150] July 2017 correspondence from JU to ADEQ stated that JU had removed several wells from service to mitigate the nitrate exceedances at EPDS 001. (Ex. S-63.) JU also stated that it had engaged the services of an outside engineering firm to design a 16-inch pipeline to bring water from the northeast part of its system to the EPDS 001 storage tank, that surveying had commenced along the proposed 6-mile route, and that JU would go out to bid on the project after obtaining the design, permitting, and any necessary easements. (Ex. S-63.) JU also explained plans to put into beneficial use a couple of under-used wells, with low nitrate levels, in the northeast part of the its CC&N service area. (Ex. S-63.) JU stated that it would be submitting a blending plan for approval after the new transmission main and wells were available for service. (Ex. S-63.)

the exceedances on October 27, 2016, and November 21, 2016, as well as the exceedance on June 27, 2017. (Ex. S-63.)

b. *2013 Insufficient Pressure – Johnson Ranch*

On June 17, 2013, ADEQ issued an NOV for the Johnson Ranch system because it was failing to maintain a pressure of at least 20 pounds per square inch ("psi") at ground level at all points in its potable water distribution system under all conditions of flow. (Ex. S-64.) ADEQ had detected the inadequate pressure through data loggers, installed during a complaint inspection, that measured pressure at two-minute intervals from June 7 to 12, 2013. (Ex. S-64.) This NOV was closed on January 2, 2014, at which time the Johnson Ranch system was back in compliance. (Ex. S-64.) Subsequent ADEQ Drinking Water Compliance Status Reports for the Johnson Ranch system on January 16 and June 3, 2015, show compliance. (Ex. S-64.)

c. *2012 Total Coliform & E. Coli Exceedances – Johnson Ranch*

On or around October 12, 2012, ADEQ issued JU an NOV for the Johnson Ranch system that alleged seven violations related to an August 2012 event when 25 samples tested positive for total coliform bacteria, three of them also testing positive for E. coli bacteria. (Ex. S-65.) In addition to alleging that JU had distributed water that exceeded the MCL for total coliform and that contained E. coli, ADEQ also alleged, *inter alia*, that JU had failed to provide public notice as required and had failed to implement an Emergency Operations Plan in an emergency situation. (Ex. S-65.) JU strenuously denied the alleged violations. (*See* Ex. S-65.) On February 5, 2013, ADEQ stated in a Drinking Water Compliance Status Report that the system was back in compliance after several months of proper sampling for total coliform and E. coli, but also that JU still needed to provide ADEQ an updated Emergency Operations Plan and information on training its staff. (Ex. S-65.) On March 22, 2013, JU emailed ADEQ additional compliance-related information. (Ex. S-65.)

d. *2007 & 2008 Lack of On-Site Operator—Johnson Ranch*

On October 8, 2008, ADEQ issued JU an NOV for failing to provide a certified operator of the proper type and grade to operate a water distribution system, as ADEQ records showed that JU did not employ an on-site operator holding a Grade 3 Distribution Operator certification. (Ex. S-67.) ADEQ previously (on October 2, 2007) had issued JU a Notice of Opportunity to Correct for the same

violation, which had been detected during an ADEQ inspection on July 6, 2007. (Ex. S-67; Ex. S-68.) On October 28, 2008, JU sent ADEQ notice that JU had, on January 1, 2008, hired a contractor with Grade 4 Water Distribution and Water Treatment Operator certifications to serve as on-site operator and had, on August 4, 2008, hired a former consultant with Grade 4 Water Distribution and Water Treatment Operator certifications as the full-time on-site operator. (Ex. S-67.) The NOV was closed on September 8, 2011. (Ex. S-67.)

e. *2003 Lack of Microbiological Site Sampling Plan—Johnson Ranch*

On July 30, 2003, ADEQ issued JU an Opportunity to Correct Deficiencies regarding information detected during ADEQ inspections on November 1 and December 20, 2002, and January 3 and 13, 2003. (Ex. S-70.) The Opportunity to Correct Deficiencies stated that JU did not have a microbiological site sampling plan for Johnson Ranch, that there was no indication such a plan had been submitted to ADEQ as of the inspection, and that JU had submitted such a plan after the inspection. (Ex. S-70.)

f. *1999 NOV & Consent Order for 25 Alleged Violations—Johnson Ranch*

On December 8, 1999, ADEQ issued an NOV to JU for Johnson Ranch that alleged 25 different violations, some detected as a result of an inspection on December 2, 1999. (Ex. S-70.) A number of the alleged violations related to JU's water exceeding the MCL for nitrates on August 31, 1999; JU's failure to do required nitrate confirmation sampling; JU's failure to provide ADEQ various required notices; and JU's failure to provide various required public notices. (Ex. S-70.) A number of the alleged violations concerned JU's water testing positive for total coliform on several occasions and JU's failure to do additional required total coliform testing; to provide related notices to ADEQ; and to provide related public notices. (Ex. S-70.) The remaining allegations concerned JU's failure to maintain records of backflow-prevention assembly installations and tests performed on them; to develop an Emergency Operations Plan; to obtain an AOC before operating a newly constructed facility (Well #3); and to obtain an AOC before operating a newly constructed facility (Well #5). (Ex. S-70.) According to a September 1999 letter from JU to ADEQ, the Johnson Ranch system had a "begin date of June 1, 1999." (Ex. S-70.)

On June 2, 2000, ADEQ and JU entered into a Consent Order concerning the allegations in the

December 1999 NOV. (Ex. S-70.) In the Consent Order, JU was required to pay a civil administrative penalty of $4,900. (Ex. S-70.) The Consent Order stated that the Johnson Ranch system served fewer than 100 persons year-round as of December 1999. (Ex. S-70.)

3. Compliance with Commission Requirements

On March 19, 2018, JU's Johnson Ranch water system experienced a water outage. (Tr. at 1600-01.) The water outage occurred during planned replacement of an inoperable gate valve stuck in the open position; the replacement was not expected to result in an outage. (Ex. S-16; Ex. J-67; Tr. at 2850.) The unplanned outage began as soon as JU shut off the water main to repair the inoperable gate valve and was caused by an unrelated gate valve that had been blocked when a developer's construction crew covered the area to access the valve with asphalt. (Ex. S-17; Ex. J-67; Tr. at 2860-61.) The blocked gate valve prevented water from flowing as it should have. (Tr. at 2856-57.) The outage began at approximately 12:30 p.m., lasted for almost 4 hours, and affected 498 customers in the Copper Basin subdivision. (Ex. S-16; Ex. J-68; Tr. at 1979, 2849, 2852-53.) Staff learned of the outage after a customer called the Commission's Communications Director, who shared the information with Staff.[151] (Tr. at 1978.) Staff then confirmed the outage through a call to Mr. Cole, who had not yet been informed of the outage. (Tr. at 1978, 2858, 2892.) Mr. Cole does not know whether other Hunt employees were aware of the outage before that time. (Tr. at 2892.)

JU submitted a report on the outage to the Commission through a web-based Water Outage Form sent at 4:31 p.m. on March 19, 2018, within minutes after service was restored. (Tr. at 2854; Ex. J-68.) JU did not notify its customers of the outage because the outage was unplanned. (Tr. at 2856.) JU initially dispatched Hunt employees to find and open the gate valve and ultimately restored service by putting a repair clamp on the pipe that had been cut to drain. (*See* Tr. at 2857.) Mr. Cole believes that JU's actions complied with A.A.C. R14-2-407(D)(4) and (5). (Tr. at 2856-59.) He agreed that the Copper Basin subdivision could be considered a major division of the system for notification purposes. (Tr. at 2891-92.) He also stated that the notification rule has been reviewed with the water staff. (Tr.

[151] The Commission's water utility rules require advance notice to customers when a water utility plans an interruption of service to last for more than four hours, but not when an interruption of service is unplanned. (*See* A.A.C. R14-2-407(D)(4); Tr. at 2856.) The rules require a utility to notify the Commission by phone within four hours after becoming aware of any interruption of service affecting the entire system or any major division of the system and to follow up with a written report. (A.A.C. R14-2-407(D)(5); Tr. at 1972-73.)

at 2859.)

After the outage, to ensure against future outages caused by the same problem, JU workers went through the entire Copper Basin subdivision and raised the gate valves so that they are accessible and open. (Tr. at 2860.) During this process, JU workers found approximately 12 gate valves that had been paved over. (Tr. at 2860-61.) Mr. Cole also instructed JU's inspectors to do a better job of verifying that all gate valves have been raised by the developer prior to final acceptance of construction. (*See* Tr. at 2861.) Mr. Cole does not believe that the same problem exists in any other parts of JU's service area, as it has never before been found. (Tr. at 2862.) He does not know when the gate valves were paved over but stated that they had all been painted blue (prophylactically) to signal that they should not be paved over. (*See* Tr. at 2893.)

Some testimony referred to a water outage that occurred on April 9, 2018, although no details were provided. (*See, e.g,* Tr. at 1677.)

Mr. Cole testified that he believes JU has very few water outages, as he could recall only three or four since he came to Hunt in 2015. (Tr. at 2862.)

4. Compliance with ADWR Requirements

a. *Current & Recent ADWR Consent Status*

JU has two service area rights that authorize it to pump water to serve customers—one within the Phoenix AMA and the other within the Pinal AMA—and operates in each AMA a community water system that is designated by ADWR as having an assured water supply.[152] (Tr. at 1414-15, 1432-33, 1437.) ADWR requires each community water system to have a system water plan, which includes a water supply plan, a drought plan, and a conservation plan. (Tr. at 1443.) If a community water system is designated, the provider is not required to submit a water supply plan, only a drought plan and conservation plan, and the conservation plan is addressed in annual filings. (Tr. at 1443-44, 1449.)

As of ADWR Water Provider Compliance Reports prepared on March 1, 2018, the Johnson

[152] The designation of assured water supply means that JU has taken steps to ensure a 100-year assured water supply for everything that they currently serve and that they are committed and expected to serve in the future. (Tr. at 1437-38.) To obtain each designation of assured water supply, JU would have to establish physical availability of water, that JU had financial capability to operate, that the water was of adequate quality and continuously and legally available, and that JU was going to comply with the AMA management plan and goal. (Tr. at 1438-40.) Mr. Tannler testified that it is prudent planning for a water provider to obtain a designation of assured water supply. (Tr. at 1441.)

Ranch and Anthem systems were both out of compliance with ADWR's requirement for a community water system to have a system water plan because their drought plans needed to be updated. (Ex. S-11; Ex. S-12; Tr. at 1443, 1446-49.) On March 15, 2018, however, both water systems came into compliance by filing their five-year system water plan updates with ADWR. (Ex. J-11; Tr. at 1417-19, 1446-48, 2863, 2894-95; Ex. J-2 at ex. Cole-10.) Mr. Tannler testified that ADWR has not taken any enforcement action against JU since he became statewide AMA director in 2013; that ADWR did not intend to take any enforcement action against JU for the late filing of its system water plan updates; and that it is not unusual for a water utility to be late in filing its five-year update. (Tr. at 1420, 1448-49.) Mr. Tannler also testified that all three elements of a system water plan are important and that not having a plan for drought as it occurs or continues would raise a public health and safety concern. (Tr. at 1449.)

Mr. Cole testified that as of May 4, 2018, JU was in full compliance with ADWR requirements. (Tr. at 2862.) He conceded that the system water plan updates had been due on January 1, 2018, and had been submitted late. (Tr. at 2864.)

b. *Past ADWR Compliance Status*

i. *2007 & 2008 Excess Withdrawals*

A Citation and Notice of Violation issued to JU by ADWR on June 26, 2009 ("2009 ADWR Citation"), states that JU withdrew groundwater in excess of the permitted volume for three different wells—by 331.32 acre-feet and 400.19 acre-feet in 2007 and 2008, respectively, for the first well; by 458.9 acre-feet in 2008 for the second well; and by 109.58 acre-feet and 187.42 acre-feet in 2007 and 2008, respectively, for the third well.[153] (Ex. S-80.) The 2009 ADWR Citation required JU to submit an Application to increase the permitted volume of each well with excess withdrawals and to pay a civil penalty in the amount of $7,500. (*Id.*)

ii. *2001 Consent Order for Multiple Alleged Violations*

On September 28, 2001, ADWR issued a Stipulation and Consent Order against George

[153] According to Mr. Tannler, the risk from having a well exceed its annual permitted volume is that it may adversely affect the water levels of surrounding wells. (Tr. at 1426-27.) When a large well is drilled, a hydrologic study is conducted based on the proposed annual volume of water to come from the well, to ensure that the new well will not unduly impact other wells in the surrounding area. (Tr. at 1426.)

Johnson, General Hunt Properties, Inc. ("General Hunt"),[154] 1580 Santan Mountain, L.L.C.,[155] and the GJ Trust ("2001 ADWR Consent Order"), which George Johnson signed on behalf of the listed Respondents and again on behalf of Johnson Int'l and JU (although they were not listed as Respondents). (Ex. S-69.) The 2001 ADWR Consent Order shows that it was entered into to settle "issues concerning compliance with the Arizona Groundwater Code and [ADWR's] rules and management plans adopted thereunder" and that the Respondents did not admit any criminal guilt. (Ex. S-69.) The 2001 ADWR Consent Order focused on acts and omissions occurring in 1999 and 2000, providing that Respondents George Johnson and General Hunt had caused four wells to be drilled for the Oasis Golf Course[156] without valid permits, had withdrawn 454 acre-feet of groundwater from two wells without legal authority, had failed to maintain adequate records of and failed to report the withdrawals and use of groundwater from two wells, had failed to equip two wells with approved water measuring devices, and had failed to file well completion reports. (*Id.* at 10.) As to the Johnson Ranch system, the 2001 ADWR Consent Order provided that Respondents George Johnson, 1580 Santan Mountain, L.L.C., and the GJ Trust had withdrawn 29 acre-feet of groundwater from a well in excess of its permitted volume, had withdrawn 47 acre-feet of groundwater from another well without a valid well permit, had failed to separately measure turf-related watering, and had used a total of 408 acre-feet of water on turf-related facilities in excess of the maximum annual water allotments. (*Id.* at 11.) The 2001 ADWR Consent Order stated that $200,000 would be a reasonable civil penalty for the violations described, but waived $113,000 of the penalty, requiring General Hunt to pay the remaining $87,000. (*Id.* at 12.)

B. JU's Wastewater Systems

1. Collective Sanitary Sewer Overflows ("SSOs")

A Sanitary Sewer Overflow ("SSO") is "a spill of raw sewage from the collection system of a

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[154] General Hunt Properties, Inc. has as its sole shareholder Atlas Southwest Recreation Co.; has Chris Johnson, George Johnson, and Jana Johnson as its Directors (since February 5, 2001); and has Mr. Drummond as its statutory agent. (JU LFE at att. 3.) The Arizona Corporation Commission Corporations Division Website Entity Detail for Atlas Southwest Recreation Company, accessed on July 3, 2018, shows that George Johnson and Jana Johnson are its shareholders and Directors and that Mr. Drummond is its statutory agent. Official notice is taken of this document.

[155] 1580 Santan Mountain, L.L.C. is managed by its members, who are the GJ Trust, the CJ Trust, and Barjo LLC. (JU LFE at att. 3.) Mr. Drummond is its statutory agent. (*Id.*)

[156] We understand this to mean Club at Oasis's golf course, although Club at Oasis was not formed until 2003. (*See* Ex. S-106.)

wastewater treatment facility"[157] and poses a danger to public health and the environment because it introduces raw sewage to the environment, with the main concern being exposure to biological pathogens such as E. coli. (*E.g.*, Tr. at 401, 512, 516-17, 603, 608, 688-89.) When an SSO occurs, the utility's wastewater treatment facility is required to notify ADEQ. (Tr. at 401.) ADEQ logs the SSO notices received, whether they come from the utility or a member of the public, and whether they involve a private utility such as JU or a municipal utility such as the City of Phoenix ("Phoenix"). (Tr. at 401-02.) If ADEQ becomes aware of an SSO from a member of the public, it follows up with the utility to make sure notification requirements are met. (Tr. at 402.) An SSO that reaches Waters of the U.S. (such as the Queen Creek Wash) is regulated under the Clean Water Act in addition to ADEQ's regulations related to aquifer protection. (*See* Tr. at 688.)

Between 2010 and April 30, 2018, approximately 78 SSOs related to JU's wastewater systems were reported to ADEQ by JU or others. (*See* Ex. S-27; Ex. S-28; Ex. S-29; Ex. S-30; Ex. S-31; Ex. S-32; Ex. S-33; Ex. S-34; Ex. S-35; Ex. S-36; Ex. J-63; Ex. J-64; Ex. S-123.) Those 78 SSOs are described in Exhibit A, which is attached hereto and incorporated herein;[158] the number of SSOs per year shown in Exhibit A is as follows:

2010	2011	2012	2013	2014	2015	2016	2017	2018
7	9	5	9	10	16	14	6	2[159]

Over the past three years, JU has had the highest number of SSOs of any private sewer utility in Arizona and the second highest number of SSOs among all Arizona sewer utilities (with only Phoenix having a higher number). (Tr. at 3444.) Mr. Baggiore testified that JU "experiences more SSOs than any other private entity"; that a number of JU's SSOs could have been prevented through

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[157] In contrast, an unauthorized discharge of treated wastewater, or "effluent," may or may not be a danger to the public health and environment because the treated wastewater may or may not meet the standard for reclaimed water to be used in irrigation or for other purposes. (Tr. at 606, 693.)

[158] Aside from the longer period of time included, there are some differences between the list of SSOs in Exhibit A hereto and the list of SSOs provided by Staff in Exhibit S-13, the March 8, 2018, Staff Open Meeting Memorandum, which is the list Mr. Cole broke down in Exhibit J-10. The list of SSOs in Exhibit A was created from ADEQ's logs of all reported SSOs, with the exercise of some discretion in determining when multiple SSO reports covered the same event.

[159] According to JU, another SSO occurred on May 10, 2018, after the close of the evidentiary record, which would bring this number to 3. (JU Proposed Findings of Fact at 22.) However, we are limited to the evidentiary record at hand, which shows 2 SSOs thus far in 2018.

appropriate planning and maintenance;[160] and that JU has not handled every reported SSO in a timely and appropriate manner without intervention from ADEQ, as evidenced by NOVs, consent orders, and compliance orders issued for SSOs. (Tr. at 402, 481-82, 691.)

Mr. Drummond testified that he would like to have a perfect record of no SSOs and pointed out that the SSOs have dramatically reduced since he took over as JU's manager. (Tr. at 3359.) Mr. Drummond stated that eliminating the SSOs has been a priority since he took over because his goal is for JU to provide safe service to the public. (Tr. at 3359.) Mr. Drummond does not believe that the two SSOs in 2018 occurred due to operational or management issues because one was caused by a blockage and the other by an equipment failure. (Tr. at 3450.)

Mr. Cole testified that SSOs are not acceptable to Hunt, that Hunt has worked to reduce the number of SSOs occurring within JU's systems, and that Hunt has made progress toward reducing them. (Tr. at 2798-99.)

In early 2017, after a meeting with ADEQ, Mr. Cole did a root cause analysis for SSOs using an Ishikawa (or fishbone) diagram, shared the root cause analysis with ADEQ, and then developed an action plan to reduce or eliminate the causes identified.[161] (Tr. at 2799-2800, 3008-09, 3102.) As part of his root cause analysis process, Mr. Cole broke down by cause the SSOs listed by Staff for 2015 through 2017 in the March 8, 2018, Staff Open Meeting Memorandum. (*See* Ex. J-10; Tr. at 2826-28.) Mr. Cole's analysis, which incorporated information provided by Hunt's engineer, determined that the SSOs broke down by cause as follows:[162]

	Pipe Failure	Equipment Corrosion	Clogging	Equipment Failure	Damage by Others	Unknown	Annual Total
2015	8	1	1	3	2	1	16
2016	2	0	5	4	2	0	13
2017	3	0	4	0	0	0	7

[160] Mr. Baggiore testified that at the time JU's facilities were approved, they met ADEQ's standard requirements, including its collection system design requirements, but that over time, things wear out, and JU's systems have used some materials that are not standard best practice and that make them more susceptible to problems. (Tr. at 506-07.) Additionally, Mr. Baggiore testified, some of JU's challenges from an infrastructure perspective have been preventable. (*Id.*)

[161] Mr. Cole stated that when dealing with SSOs on a case by case basis, it is possible to become "a little myopic" so that "you don't see the whole picture" and that the root cause analysis exercise brought the whole picture to light for him. (Tr. at 3102.) Mr. Cole was excited by the Ishikawa diagram, with which he had not previously been familiar, and thought it would be valuable. (*See* Tr. at 3008-09, 3102.)

[162] *See* Ex. J-10; Tr. at 2826-28.

Total #:	13	1	10	7	4	1	36
% of Total:	**36%**	**3%**	**28%**	**19%**	**11%**	**3%**	

Mr. Cole stated that to address areas, such as Hunt Highway and Felix Road, where pipe failures have caused SSOs, Hunt analyzed its as-built plans; checked whether what was in the field matched the as-built plans; and determined that on Hunt Highway and Felix Road, air pressure relief and vacuum breaker valves had not been installed or were no longer there, and their absence caused 12 SSOs over the years. (Tr. at 2804, 3089.) Mr. Cole stated that in late 2017 to early 2018, Hunt installed the needed valves and replaced that section of the line to get rid of 12 previous repairs and that Hunt has not had breaks on those lines since. (Tr. at 2804, 3089-90.)

Mr. Cole stated that Hunt has also increased video and jetting activities for areas that have had a high frequency of clogs from grease and baby wipes, has acquired a second and more powerful jetting machine to clear clogs, and at the time of the hearing, was in the process of acquiring a new video camera that would allow recording rather than just the ability to see an obstruction in the system. (Tr. at 2801-03, 3098-3100.) At the time of the hearing, Hunt had also ordered a sewer line rapid assessment tool ("SLRAT"), which uses acoustic sounding technology to quickly detect clogs or partially obstructed segments of sewer collection system line. (Tr. at 2803, 3100, 3358.) According to Mr. Cole, the SLRAT will be able to link up to Google Earth, will show segments completed graphically, and will produce reports. (Tr. at 2804.) JU has also procured a new truck to go with the new equipment and is bringing on two new staff members who will be dedicated full-time to analyzing sewer collection mains. (Tr. at 3101.) Because "flushable" or "disposable" wipes in sewer systems are now causing clogging problems for JU's systems, like they are for the industry as a whole, Mr. Cole said, JU has also increased its communication with customers through its newsletter. (Tr. at 2803, 3098-3100.) Additionally, Mr. Cole noted that the Castle Gate area, which used to have a high frequency of SSOs, is a high producer of grease and that its lines were installed by Arizona Utility Supply and Service, not by JU.[163] (Tr. at 2805-06.)

[163] Mr. Cole noted that the Commission had requested that JU take over Arizona Utility Supply and Service's operations. (Tr. at 2805-06.)

Mr. Cole added that Hunt workers provide maintenance and repair to JU's lift stations through a program under which the wastewater collections crew visits each lift station weekly and performs maintenance—from site clean up to removing or breaking up fat, oil, and grease ("FOG"),[164] to examining the electrical and any water connections that might be there. (Tr. at 2814-15.)

Mr. Cole believes that JU's SSOs have reduced as a result of Hunt's efforts to reduce them, but that Hunt needs to remain vigilant because 90 to 95 percent of its system is gravity fed,[165] and people dump things down the drains that can cause problems. (Tr. at 2807.)

The second task of the April GHD Contract charges GHD with analyzing the causes of SSOs in JU's systems and developing practices and procedures to prevent SSOs. (Tr. at 2815, 3351-52.) GHD's scope of work regarding SSOs is described as follows:

> **Task 2000**
>
> Sanitary Sewer Overflows – in detail, review and analyze the operation and maintenance practices of the field sewer collection department. Make recommendations for improvement based on industry best management practices. Analysis should review and determine the root cause of previous sanitary sewer overflow events and develop practices and procedures to prevent sanitary sewer overflows from occurring. Support Hunt [] with the implementation of the recommended improvements by providing GHD sponsored training and/or assistance with developing a scope and selecting a third-party vendor to provide employees with the recommended training.[166]

Mr. Cole and Mr. Drummond have both indicated a commitment to implementing the recommendations GHD makes to address SSOs. (Tr. at 2815, 3353-54, 3448, 2378.) Mr. Drummond has "the utmost faith in Brad Cole and his management team," is optimistic regarding JU's performance with the involvement of Mr. Taylor of GHD, and observed that JU's record has improved during his tenure as manager of JU. (Tr. at 3447.) Mr. Drummond stated that he has not considered retaining a different management services company to provide employees and administrative services because his focus has been to deal with the present problems and plan for the future. (Tr. at 3447-48.)

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[164] JU has a pretreatment program under which it inspects known grease-producing entities like restaurants that have grease traps, but the grease clogging JU's pipes is believed to come from residential areas, which JU does not inspect. (Tr. at 2959-60.)

[165] Mr. Gardner does not consider JU's system to be a gravity-fed system. (Tr. at 1342.) He conceded that on paper, 90 percent of JU's system is probably gravity fed, with each subdivision gravity feeding down to a low point where a lift station is and from which it is pumped to a different location. (Tr. at 1377.) To be what Mr. Gardner considers a gravity-fed system, the lift station would be replaced with pipe that would go below grade, possibly very far below grade, to have gravity move the flow to the treatment plant. (*See* Tr. at 1377-78.)

[166] Ex. J-24 at ex. A. The other task in this GHD contract relates to customer service and billing complaints.

Mr. Cole agrees that an SSO can pose a health hazard to the public if the public is exposed but stated that JU responds quickly to SSOs by cleaning up the spill, cordoning off the area, and mitigating the potential hazard in accordance with ADEQ standards so that the public is not exposed. (Tr. at 3092-93, 3284.) He believes that the potential hazard is minimized for employees because they are trained to deal with it. (Tr. at 3092-93.) Mr. Cole also believes that NOVs are not acceptable and pointed out that JU receives very few on the water side. (Tr. at 3110.) He stated that he cannot answer why JU has received so many on the wastewater side, but that JU has completely new personnel running the Section 11 WWTP than it had one year ago and perhaps "fell short on training them," although they are now "fully trained." (Tr. at 3110.) Mr. Cole stated that he believes JU will not have any more NOVs. (Tr. at 3110.)

George Johnson said that the SSOs and NOVs are "very much" a concern and that he "won't be happy unless we get to zero." (Tr. at 956, 964.) But he also said that on a national basis, JU's number of SSOs ranks in the lower 20th percentile.[167] (Tr. at 956.) George Johnson agreed with a statement made by Mr. Baggiore that some of the NOVs and SSOs were preventable if appropriate planning and maintenance had occurred. (Tr. at 952-53.) George Johnson also stated that there were planning and maintenance upgrades happening all the time, but that the area was growing, and subdivisions were spreading out, and JU "took care of all the builders" and "all the people" and had to train help because there was so much going on. (Tr. at 953.) George Johnson stated that JU has brought in sewer consultants from Texas and Kansas and has a nationally recognized consulting firm working to straighten things out but that "implementation has been too slow." (Tr. at 953-54.) He added that a lot of the reported SSOs were not really SSOs and that a lot of them were caused by people digging rather than by anything JU did or failed to do. (Tr. at 954.) He also added that it is not fair to count them all as though JU has only one wastewater system, because JU has four separate wastewater systems. (Tr. at 955.) He referred to the actions Mr. Cole and Mr. Drummond have implemented, such as using a fluoroscope to detect blockages and a special jet truck to clear them before they are a total

[167] This statement was not substantiated by the documents provided in the JU LFE. (*See* JU LFE at att. 7.) However, RUCO provided a JU newsletter from December 2016 in which it was reported that JU's "spill events" per 100 miles of sewer were significantly lower than the national and region 9 averages, and the comparison figures were provided. (*See* Ex. RUCO-12; Tr. at 3090-91.)

stoppage. (Tr. at 955.) George Johnson believes that there is a need for capital improvements, environmental improvements, maintenance improvements, and billing improvements. (Tr. at 964.) He agreed that JU is willing to hire whatever consultants may be needed to address these issues. (Tr. at 964-65.) He also stated that although there is steady growth in JU's CC&N area, JU's "able administrators are doing a good job," and JU can "more than handle" the growth. (Tr. at 988-89.)

George Johnson testified that he does not believe JU had an excessive amount of NOVs while he was its Manager. (Tr. at 886.) George Johnson also does not think that the NOVs were the result of a design problem because JU had good engineers who worked with all the different regulatory agencies, and the facilities were "inspected and reinspected." (Tr. at 887.) He attributed the NOVs to subcontractors dropping asphalt, lumber, and mops into manholes; households putting grease and baby wipes into the wastewater system; and "some deficient pipe," which he stated was replaced with the inclusion of air relief valves. (Tr. at 887-88.) George Johnson also suggested that some of the past NOVs and SSOs might not have really been NOVs and SSOs and that the condition behind each one would need to be reviewed to determine what caused them, but he also refuted testimony by Brian Tompsett[168] in the 2008 Rate Docket, who had stated that ADEQ had been engaging in selective enforcement and making a special effort to issue violations to JU rather than other utilities. (Tr. at 898-901.) George Johnson does not believe that JU is being treated unfairly by ADEQ. (Tr. at 900.)

2. Pecan WRP

a. *Current & Recent ADEQ Compliance Status*

i. *November 2017 NOV & March 2018 Consent Order*

On November 6, 2017, ADEQ issued JU an NOV for the Pecan WRP ("2017 Pecan NOV"), for (1) discharging without an APP by delivering effluent into four recharge basins without being permitted to impound effluent under JU's APP;[169] and (2) failing to properly operate and maintain three of five vadose zone recharge wells in the area of the northeast basin by failing to inspect and maintain the structural integrity of the vadose zone recharge wells (the three non-operational vadose zone

[168] Mr. Tompsett was one of Mr. Cole's predecessors. (Tr. at 3564; *see* Ex. RUCO-8.)

[169] The APP for the Pecan WRP allowed JU to use effluent to irrigate pecan trees that were located in the four basins at issue, but no longer allowed JU to impound the effluent in the basins once the pecan trees had died and been removed because irrigation was no longer occurring in the absence of the trees. (Tr. at 639-41, 2873.)

recharge wells were clogged).[170] (Ex. S-4; Ex. S-55; *see* Staff LFE-2.) An ADEQ inspector identified the violations during a complaint inspection conducted on September 12, 2017.[171] (Ex. S-55; *see* Staff LFE-2.) With regard to the unauthorized recharge basins, the 2017 Pecan NOV noted that ADEQ had met with JU in April 2017 to review non-compliance found during a December 2016 ADEQ inspection, JU had agreed to submit an APP amendment to include the recharge basins in the Pecan WRP, and JU had then failed to remedy the previously identified non-compliance items. (Ex. S-55; *see* Staff LFE-2.) The 2017 Pecan NOV further noted that JU had failed to identify in its on-site inspection log that the non-operational vadose zone wells needed to be repaired. (Ex. S-55; *see* Staff LFE-2.) The 2017 Pecan NOV required JU to submit[172] a written report assessing the working condition of 22 vadose zone recharge wells and determining the root cause analysis for the clogging, the potential cause for not meeting recharge rates, and corrective actions taken or to be taken to address the problems with the vadose zone recharge wells and prevent recurrence of the non-compliance; and either (1) documentation to demonstrate that unpermitted impoundment at the recharge basins had stopped, along with an updated standard operating procedure ("SOP") reflecting changes to prevent a recurrence and proof of training on the new SOP; or (2) an administratively complete and accurate APP application reflecting the addition of the basins as recharging basins. (Ex. S-55; *see* Staff LFE-2.)

On February 23, 2018, Mr. Smith, along with ADEQ personnel, performed a site inspection at the Pecan WRP; Mr. Lant[173] was present for JU. (Ex. S-72 at 2; Tr. at 2125, 2932.) Mr. Smith observed that JU was still using the recharge basins at the Pecan WRP that are not included in its APP. (Ex. S-72 at 3; Tr. at 2126.) ADEQ's Water Quality Complaint Inspection Report dated February 23, 2018, also observed that there was white disinfectant powder around the lift station (which Mr. Lant said was because of little sewage spills when the dewatering pump was connected or disconnected), that the bar screen needed to be cleaned of excess solids, and that aeration trains had excess solids on the surface.

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[170] Mr. Cole stated that clogging is a frequent problem with vadose zone wells. (Tr. at 2946.) Mr. Cole stated that the wells are inspected periodically or when they show signs of not percolating water into the ground as well as they should. (Tr. at 2946-47.)

[171] ADEQ had received several complaints about unpleasant odors and excess mosquitoes in the areas where basins impounded effluent. (Ex. S-55; *see* Staff LFE-2.)

[172] Each ADEQ NOV allows the recipient to submit evidence that a violation did not occur or to submit compliance items. For the sake of brevity, we do not include the language regarding the ability to submit evidence that a violation did not occur.

[173] Mr. Lant oversees all four of JU's wastewater treatment facilities. (Tr. at 2932.)

(Ex. S-89.) The February 23, 2018, Water Quality Complaint Inspection Report included the following under comments and potential deficiencies: (1) JU should follow maintenance procedures so that unauthorized discharges do not occur when the dewatering pump to the lift station is connected and disconnected; (2) JU must follow the communication and recordkeeping requirements of the APP for sewage spills from the lift station, which are considered unauthorized discharges; and (3) JU should meet compliance with the 2017 Pecan NOV and submit an APP significant amendment to allow for the four discharging facilities to be used as recharge basins and must meet the compliance conditions agreed in the Pre-Application meeting on March 1, 2018. (Ex. S-89; Tr. at 2126-27, 2143-44.) Mr. Smith confirmed that the public does not have access to the area inspected, which is surrounded by walls. (Tr. at 2144.)

On March 21, 2018, ADEQ and JU entered into a Consent Order concerning the 2017 Pecan NOV ("2018 Pecan Consent Order"). (Ex. S-24.) In the 2018 Pecan Consent Order, JU does not admit to any civil or criminal liability and does not admit the validity of any ADEQ determinations or findings contained therein. (Ex. S-24.) In pertinent part, the 2018 Pecan Consent Order found the following:

- The Pecan WRP has the ability to deliver effluent to four recharge basins, which are considered discharging facilities under A.R.S. § 49-241(1), although the Pecan WRP is not permitted to impound effluent under its APP; and
- After ADEQ issued the 2017 Pecan NOV, JU failed to meet one of the two NOV conditions established to return to compliance by failing to submit an administratively complete APP application by February 7, 2018.[174]

In the 2018 Pecan Consent Order, JU agreed to withdraw the APP application already filed; to conduct a ring infiltration test at each of the four recharge basins at the Pecan WRP, with prior notice to ADEQ so ADEQ could observe, and post-test notice to ADEQ after completion; and to schedule an administrative completeness review meeting and submit an administratively complete APP application within three days after finalizing the ring infiltration tests. (Ex. S-24 at 3.) Additionally, JU agreed to submit a written status report to ADEQ every 30 days until termination of the 2018 Pecan Consent

[174] Ex. S-24 at 2-3.

Order. (Ex. S-24 at 3-4.) The 2018 Pecan Consent Order further provided ADEQ with right of entry to the premises of the Pecan WRP, upon presentation of credentials to JU personnel, to observe and monitor compliance with the 2018 Pecan Consent Order. (Ex. S-24 at 4.)

On April 18, 2018, Mr. Baggiore testified that JU had completed the requirements of the 2018 Pecan Consent Order and that he expected the 2018 Pecan Consent Order to be closed soon, signifying that ADEQ's concerns from the 2017 Pecan NOV had all been resolved. (Tr. at 634, 637-38.) Mr. Dunaway also testified that the Pecan WRP was in compliance with ADEQ requirements. (Tr. at 741.)

ii. *April 2018 NOV*

On April 30, 2018, ADEQ issued an NOV for the Pecan WRP ("April 2018 Pecan NOV") regarding an SSO that occurred on March 26, 2018, at 9:30 p.m. when approximately 65,000 gallons of untreated wastewater overflowed from a manhole at the corner of Kelly Lane and Harold Drive in the Pecan North Subdivision, traveling from the manhole to the stormwater drainage channel and into the Queen Creek Wash. (Ex. S-123.) JU reported the SSO to ADEQ via voicemail on March 27, 2018, and then via an SSO Report submitted to ADEQ on April 18, 2018. (Ex. S-123.) When ADEQ inspectors met with Mr. Lant on March 28, 2018, regarding the SSO, no standing sewage was observed, JU had placed caution tape around the spill area and damp soils from the SSO, and JU's cleaning activities had been completed. (Ex. S-123.) JU reported to ADEQ that the SSO had been caused by malfunction of a sensor unit at the Pecan WRP influent lift station.[175] (Ex. S-123.) On April 26, 2018, ADEQ conducted a follow-up inspection with Dewain Kasen, Operator of the Pecan WRP, and observed paper and other non-stormwater materials (such as toilet paper and sanitary products) within the concrete stormwater spillway. (Ex. S-123.)

The April 2018 Pecan NOV stated that JU had violated A.R.S. § 49-255.01(A) by adding a pollutant to navigable waters from a point source without a permit and, further, that JU "has reported at least 4 other unauthorized discharges at this location occurring on December 24, 2007, May 17-18,

[175] JU had determined in 2017 that the influent lift station needed to be upgraded and had a vendor rip out the several different independent systems that had been installed for the Pecan WRP influent lift station and put in a new computerized program logic controller ("PLC") to monitor and control everything (using "if this, then that" logic), which slowed down incidents there. (Tr. at 3096-97.) This SSO occurred when the new laser level monitor was reading 7 feet although levels were actually rising, which was a failure of the new equipment; the manufacturer has since replaced the defective level monitor. (Tr. at 3097-98.) Mr. Cole stated that the malfunction was atypical for that type of monitor, because it is a well known reliable type of monitor. (Tr. at 3279-81.)

2008, September 6, 2011, and December 2, 2016." (Ex. S-123.) The April 2018 Pecan NOV requires JU to submit the following, within specified time periods: (1) documentation to demonstrate that the concrete spillway and other affected areas have been properly cleaned up and disinfected and all SSO-related materials disposed of properly; (2) an engineering design assessment to evaluate the Pecan WRP and sewage collection system to identify improvements that can be implemented to prevent mechanical and operational and maintenance problems from causing sewage backups and SSOs to occur in residential neighborhoods and into Queen Creek Wash, with specific requirements for the plan and any engineering solution; and (3) documentation demonstrating that an SSO Response Plan has been developing for addressing and resolving discharges that have a reasonable likelihood of adversely affecting human health or the environment, with the SSO Response Plan to include guidelines for response, clean up and disinfection, and reporting.[176]

b. *Past Compliance Status*

Between 2005 and 2010, ADEQ issued six NOVs, one Compliance Order, and one Consent Order regarding non-compliance issues related to the Pecan WRP.[177] Those ADEQ actions are described in Exhibit B, which is attached hereto and incorporated herein. The ADEQ actions indicate, *inter alia*, that the Pecan WRP had 64 fecal coliform exceedances in the second half of 2004; failed to monitor turbidity during the second half of 2004; had an unauthorized discharge of effluent into Queen Creek in 2005; had a very large unauthorized discharge of effluent in 2007 that caused sink holes; had an SSO into Queen Creek in 2007; had two SSOs into Queen Creek during the same weekend in 2008, which resulted in standing water with levels of E. coli greatly exceeding surface water quality standards; had replaced pumps in its Pecan WRP lift station with much smaller pumps without ADEQ authority (discovered by ADEQ in 2008); and, in 2010, failed to provide ADEQ notice of its intent to cease operating a facility in 2010, failed to submit well installation reports, again replaced pumps in the Pecan WRP lift station with smaller pumps without ADEQ authority, and disposed of effluent in the pecan groves in a manner that was not considered beneficial reuse (the same issue that was addressed in the 2017 Pecan NOV). (*See* Ex. S-40; Ex. S-42; Ex. S-43; Ex. S-44; Ex. S-45; Ex. S-48;

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[176] Ex. S-123.

[177] The APP for the Pecan WRP is identified by permit number 105324. (See, e.g., S-48.)

Ex. S-58; Ex. S-59; Staff LFE-2.)

3. Section 11 WWTP

a. *Current & Recent ADEQ Compliance Status*

i. *February 2018 NOV*

JU's APP for the Section 11 WWTP requires that the recharge basin and equalization basin freeboard, the difference between the top of a berm and the top of a water line, be at least two feet, that inspection of the freeboard be done weekly, and that reporting on the freeboard be done quarterly. (Tr. at 916-17; Ex. JKD-7 at 7, 39.) The Section 11 WWTP APP further requires that the APP holder report the freeboard monitoring results in the Self-Monitoring Reporting Form ("SMRF"); record the results of the weekly freeboard inspections in a log book; report any violation or exceedance of the freeboard to ADEQ in writing within five days of becoming aware of it and in a written report within 30 days of becoming aware of it; and include in its log book and reports which structure exceeded the freeboard requirement. (Ex. JKD-7 at 13, 14-15, 39.)

On January 25, 2018, in response to approximately 40 complaints of sewage odors and one complaint of discharge of odorous water, ADEQ conducted an announced site inspection of the Section 11 WWTP and found the following deficiencies, which were included on a Water Quality Complaint Inspection Report ("January 2018 Inspection Report"): (1) Recharge Basin No. 4 was overflowing at the northwest corner, and effluent was flowing west toward the dirt road; (2) Recharge Basins No. 4 and 5 had no freeboard; (3) Effluent was overflowing at the southeast corner of Recharge Basin No. 7, and the drainage pattern and soil erosion indicated that effluent was flowing toward a wash identified as a storm-water detention basin; (4) Recharge Basin No. 5 had saturated soil outside the basin, indicating previous overflowing; (5) JU had failed to notify ADEQ of freeboard exceedances for the recharge basins; (6) neither an Operations and Maintenance ("O&M") Manual nor a current APP were on site, although JU's APP requires both to be on site; (7) a strong sewage odor was experienced outside and within the property limits of the Oasis Sunrise Lift Station; and (8) an oil stain was observed on the soil adjacent to the wet well at the Oasis Sunrise Lift Station. (Ex. S-1 at 1-3.)

In the January 2018 Inspection Report, ADEQ noted that the same overflow conditions for Recharge Basin No. 7 had been observed on March 6, 2015; that ADEQ had issued an NOV for that

on May 11, 2015; and that the NOV had been closed after JU responded on July 21, 2015, with documentation that employee training had been conducted a week earlier to make operators aware of effluent disposal rules and the SOP for the Section 11 WWTP.[178] (Ex. S-1 at 2, Att.) On the January 2018 Inspection Report, ADEQ also noted that Mr. Lant had been unable to quantify the amount of effluent that had overflowed from Recharge Basin No. 7 and that Mr. Lant had indicated that the Section 11 WWTP was not disposing of enough effluent, which was causing the recharge basins to overflow, because there is lower demand for reclaimed water by end users during the winter season.[179] (Ex. S-1 at 2.) ADEQ further noted that JU had not developed any corrective action to stop discharging effluent to the detention basin from the recharge basin; that Mr. Lant had reported that operators contained the effluent within the Section 11 WWTP property boundaries when overflowing occurred to avoid discharge beyond the property; and that Mr. Lant had said he was unaware of the reporting requirements for freeboard exceedances. (Ex. S-1 at 2-3.)

On February 27, 2018, ADEQ issued JU an NOV regarding the findings from the January 25, 2018, site inspection of the Section 11 WWTP ("2/2018 Section 11 NOV"). (Ex. S-2; S-56.) The 2/2018 Section 11 NOV alleged the following violations:

- Failure to maintain a copy of the up-to-date O&M Manual at the WWTP at all times (violation of APP), as no hard copy was available and an electronic copy was inaccessible because a new computer was being installed;
- Failure to prevent unauthorized discharges (violation of APP), as ongoing or previous overflows were detected from Recharge Basin Nos. 4, 5, and 7;
- Failure to notify ADEQ as required after becoming aware of the recharge basins' freeboard exceedances (violation of APP);
- Failure to promptly attempt to cease an unauthorized discharge, to isolate the discharged

[178] Mr. Cole testified that the only named employee still employed by Hunt is Mr. Lant. (Tr. at 2941-44.)

[179] Mr. Cole believes that every wastewater provider has greater challenges disposing of effluent in the winter months, when the demand is lower. (Tr. at 2933.) Mr. Cole stated that JU is solving the problem by applying to ADEQ for authority to build another recharge basin at the Section 11 WWTP. (Tr. at 2934.) He added that during his time at Hunt, JU has increased the reconditioning of its recharge pond so that it is able to percolate more during the winter months. (Tr. at 2934.) Mr. Cole stated that JU has separate pipes through which it can divert excess effluent or raw sewage to the Anthem WRF, but that the amount JU can send is limited by the size of the pipes. (Tr. at 2934-35.) Typically, though, JU will request that the golf course take more effluent, because it is closer and thus an easier fix. (Tr. at 2935-36.)

material, to remove the discharged material, and to clean up the site as soon as possible (violation of APP), as Mr. Lant reported that no corrective action had been implemented or planned to stop the discharge of effluent from Recharge Basin No. 7 into the storm-water detention basin, although the overflow had initially been detected by JU on January 22, 2018;

- Failure to maintain a signed copy of the APP at the Section 11 WWTP and to maintain a log book of inspections and measurements where day-to-day decisions are made regarding operation of the facility (violation of APP), as no copy of the APP was available on site, and the logbook was incomplete and included no annotations regarding damage or malfunction at the plant, such as unauthorized discharges and freeboard exceedances; [180]
- Failure to record information in the logbook for the freeboard on the recharge basins and equalization basins (violation of the APP), as Mr. Lant stated that it was not standard procedure for operators to document recharge basin freeboard measurements in the log book and that there are no historic records of such measurements;
- Failure to ensure that lift stations are designed to prevent odor from emanating beyond the lift station site (violation of A.A.C. R18-9-E301(D)(5)(vi)), as ADEQ had received approximately 90 complaints of a persistent sewage odor in January 2018 and, on January 25, 2018, confirmed the strong odor emitted approximately 150 feet outside of the Oasis Sunrise Lift Station property;
- Failure to minimize septic conditions in a sewage collection system (violation of A.A.C. R18-9-E301(B)(7)), because the sewage odor detected during the January 25, 2018, inspection indicated the presence of H_2S as a result of a septic condition in the collection system; and
- Failure to operate the Section 11 WWTP facility so that it does not emit an offensive odor on a persistent basis beyond the setback distances specified in A.A.C. R18-9-B201(I) (violation

[180] Mr. Cole stated that a 2017 monsoon storm had destroyed the trailer JU had at the site previously, which JU replaced with a "much smaller Conex box." While there was no office location, the documents were kept at the Anthem WRF. (Tr. at 2936-37.) At the time of the inspection, the documents had not yet been transferred back to the Section 11 WWTP. (Tr. at 2937.) On the date of the inspection, Mr. Cole gave his copy of the APP to the Section 11 WWTP. (Tr. at 2937.) Mr. Cole agreed that JU was required to maintain the APP and O&M Manual on site and that he, Mr. Lant, and the plant operators were all responsible. (Tr. at 2937-38.) Mr. Cole was unsure whether anything was placed in personnel files about this. (Tr. at 2938.) Mr. Cole also attributed the logbook deficiency to the monsoon storm, stating that a lot of records are kept electronically, but that they do not count as a logbook. (Tr. at 2940.)

of A.A.C. R18-9-B201(J)), because the ADEQ inspector confirmed the strong odor emitted approximately 1,700 feet outside the Section 11 WWTP while driving on Hunt Highway.[181] The 2/2018 Section 11 NOV noted that the failure to notify ADEQ regarding the freeboard exceedances was a repeat violation from an NOV issued on January 13, 2017, related to discharge limit violations observed during a December 14, 2016, inspection. (Ex. S-2 at 2.) The 2/2018 Section 11 NOV also noted statements by Mr. Lant that operators conduct a daily visual inspection and communicate verbally if there is an issue at the Section 11 WWTP, although the logbook does not reflect this information. (Ex. S-2 at 3.)

The 2/2018 Section 11 NOV requires JU to submit the following within prescribed deadlines: (1) specific documentation that O&M manuals are kept and available at the facility; (2) specific documentation that a signed copy of the APP is kept at the facility; (3) specified documentation that the logbook is complete and includes inspections and measurements required by Section 2.7.2 of the APP; (4) a written report according to Section 2.7.3.2 of the APP, which refers to submitting a report within 30 days after becoming aware of a violation of the permit condition; (5) a training agenda and sign-in sheet to demonstrate that all operators have been trained and are knowledgeable about O&M manuals used in Section 11 WWTP (including performance criteria for all WWTP components, recharge basins, and wetlands) and an updated SOP that reflects the training and will be used as reference material; (6) a training agenda and sign-in sheet to demonstrate that all employees involved in Section 11WWTP operations have been trained and are knowledgeable about APP requirements, including response to unauthorized discharges, awareness of the contingency and emergency plan for permit violation conditions, awareness of specific contingency measures preapproved by ADEQ for emergency response for unauthorized discharges, reporting requirements (including 5-day and 30-day notification requirements for permit violations), and required recordkeeping in the logbook (including weekly facility inspections), along with an updated SOP that incorporates the training and will be used as reference material; (7) a detailed root cause analysis of the observed unauthorized discharge at Section 11 WWTP, including specified analyses and historical information; (8) documentation

[181] S-56 at 1-4.

demonstrating that the logbook is in use, including at least four weeks of recordkeeping requirements information per Section 2.7 of the APP; (9) a training plan to mitigate potential adverse operational deficiencies and have a functional facility, to include specified topics; (10) documentation from a third-party engineering company stating that the Oasis Sunrise lift station meets proper engineering controls and best design practices and including how JU is addressing the 2018 Section 11 NOV problems so that they do not reoccur; (11) documentation from a third-party engineering company stating that the Section 11 WWTP meets proper engineering controls and best design practices and including how JU is addressing the 2018 Section 11 NOV problems so that they do not reoccur; and (12) specified documentation showing that the training plan has been implemented and proposed milestones have been achieved at the Section 11 WWTP. (Ex. S-56 at 4-6.)

Early in March 2018, JU provided ADEQ documentation for compliance items 1 through 6 of the 2/2018 Section 11 NOV. (*See* Ex. S-3.) On March 26, 2018, ADEQ provided JU with an insufficiency letter for compliance items 1 through 6. (*See* Ex. J-69.)

Mr. Baggiore testified that as of April 17, 2018, JU had provided responses for compliance items 1 through 6, that responses for compliance items 7 and 8 were due that week, and that responses for compliance items 9 through 12 were not yet due. (Tr. at 377.) Mr. Baggiore further testified that the documentation JU provided for compliance item 4 was satisfactory, while the documentation provided for compliance items 1 through 3 was insufficient. (Tr. at 377.) Mr. Baggiore stated that personnel from his office had determined that the response for either compliance item 5 or 6 was satisfactory (and the other insufficient), but he could not remember which. (Tr. at 378.) ADEQ does not extend deadlines for compliance items, so any insufficient compliance items are considered overdue. (Tr. at 378.)

On April 19, 2018, JU provided ADEQ additional information for compliance items 1, 2, 3, and 4. (Ex. J-69.) The additional information included, *inter alia*, a Standard Operating Procedure for the Section 11 WWTP, a log for recharge basin berm integrity/freeboard, and training agendas and attendance for two trainings provided to a new operator on April 18, 2018. (Ex. J-69.)

As of the close of the evidentiary record in this matter, the 2/2018 Section 11 NOV was still open.

ii. *Recordkeeping Deficiencies & Discrepancies*

In the February 2018 NOV for the Section 11 WWTP, ADEQ asserted that JU had failed to record information for the recharge basin and equalization freeboards in the Section 11 WWTP's logbook as required by the APP, which was detected after ADEQ requested a copy of the logbook and was informed by Mr. Lant that recharge basin freeboard measurements were not recorded in the logbook and that there were no historic records of these freeboard measurements. (Ex. JKD-8 at 3, § 6.) In spite of the lack of any historic records of the freeboard measurements for the Section 11 WWTP's recharge basins, JU's SMRFs submitted to ADEQ for the 1st, 2nd, 3rd, and 4th quarters of 2016 and the 1st quarter of 2017 reported recharge basin freeboard measurements of 2 feet for each week of each quarter. (Ex. JKD-1 at 58; Ex. JKD-2 at 58; Ex. JKD-3 at 58; Ex. JKD-4 at 58; Ex. JKD-5 at 58; *see* Ex. JKD-8 at 3, § 6.) Each SMRF was submitted to ADEQ by JU with a signature made under the following certification:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information I believe the submitted information is true accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment."[182]

The SMRFs submitted for the 1st, 2nd, 3rd, and 4th quarters of 2016 were signed by George Johnson, and the SMRF submitted for the 1st quarter of 2017 appears to have been signed by Mr. Cole. (*See* Ex. JKD-1; Ex. JKD-2; Ex. JKD-3; Ex. JKD-4; Ex. JKD-5.) George Johnson testified that he did not recall how frequently he went to the Section 11 WWTP while he was the manager of JU, that he did not think that he inspected the freeboards of the recharge ponds, and that he did not recall seeing anything equipment or freeboard related that he thought needed to be included in a log book. (Tr. at 935-36.) George Johnson stated that he does not lie and that he relied on what employees told him and does not remember whether he consulted log books or inspection forms or anything else before he signed the SMRFs. (Tr. at 936.)

Additional recordkeeping deficiencies and discrepancies are described below for the April 2018 Section 11 WWTP NOV.

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[182] Ex. JKD-1; Ex. JKD-2; Ex. JKD-3; Ex. JKD-4; Ex. JKD-5.

iii. *February 2018 Joint Inspection*

On February 23, 2018, Mr. Smith inspected JU's wastewater systems along with ADEQ personnel; Mr. Lant was present for JU. (Ex. S-72 at 2.) The Water Quality Complaint Inspection Report for the inspection and Mr. Smith's testimony noted the following potential deficiencies:

- The four aerated lagoons did not meet the required 2-foot freeboard requirement, and some areas were overtopping the freeboard;
- There was visual evidence that soil had previously been saturated outside of the aerated lagoons;
- One of the lagoons "was observed overloaded, as it had a milky appearance, potentially approaching septic conditions";
- The recharge basins were observed exceeding the 2-foot freeboard requirement and were at risk of overflowing; and
- Some recharge basins were observed overflowing into another basin; and
- There was a strong sewage order at the Main Yard Lift Station.[183]

When Mr. Smith asked Mr. Lant about the cause of the unauthorized discharges at the Section 11 WWTP (approximately six dating back to 2016 according to Mr. Lant at the time of the site inspection), Mr. Lant indicated that the Section 11 WWTP lacked a monitoring or automated control system to notify JU when levels of influent or effluent were elevated. (Ex. S-72 at 3.) Staff was concerned about the absence of such a system and believes that JU should implement a monitoring and control system to reduce the risk of future unauthorized discharges at the Section 11 WWTP. (Ex. S-72 at 3.)

iv. *February and March 2018 Sampling*

On February 23 and 27 and March 20, 2018, ADEQ conducted sampling of recharge basins at the Section 11 WWTP and of surface water at the Oasis Magic Ranch golf course. (*See* Ex. J-7.) Mr. Cole testified that ADEQ did not find any violations of applicable standards in connection with any of the samples taken. (Tr. at 2870.) ADEQ tested the various samples for nitrates, fecal coliform, E Coli, metals, and/or solid organic compounds. (*See* Ex. J-7.) A sample taken from Recharge Basin No. 3 on February 27, 2018, tested positive for E. Coli, but no evidence was received indicating that the level

[183] Ex. S-72 at 3; Ex. S-86.

detected was in violation of ADEQ standards. (*See* Ex. J-7 at 8 (field notes), TestAmerica Analytical Report at 5-7; Tr. at 2870.)

v. *April 2018 NOV*

On April 17, 2018, Staff conducted a site inspection at the Section 11 WWTP and observed that although the recharge basins were meeting their freeboard requirement, the aerated lagoons were overflowing, as had been observed during the joint inspection in February 2018. (Tr. at 1608-09, 1617, 1665-66; Ex. S-87; Ex. S-86; Ex. S-1.) According to Mr. Smith, because the aeration lagoons are a very early step in the treatment process, the wastewater in the aeration lagoons is only very lightly treated wastewater and not yet effluent/reclaimed water. (Tr. at 1618.) Mr. Smith contacted Mr. Dunaway for ADEQ and spoke to him and Isa Valdez regarding the specific findings of the site visit and was told that his call would be handled as a complaint and that an ADEQ site visit would be done the same day. (Tr. at 1611.) During the hearing, Mr. Smith expressed concern about the Section 11 WWTP's apparent inability to handle flows that are well below design capacity, as evidenced by the treatment lagoons' being filled to capacity. (Tr. at 1612.) Mr. Smith believes that there should be an investigation into the cause of the lagoons' regularly being at capacity although the treatment flows are only approximately half of design capacity. (Tr. at 1611-12, 1681-82.) Additionally, Mr. Smith observed that although most wastewater treatment plants have some sort of monitoring of influent flows, to provide alerts if an influent overflow occurs, the Section 11 WWTP does not and relies upon personnel at the plant to observe when an overflow occurs. (Tr. at 1625-26.)

On April 19, 2018, ADEQ conducted an inspection at the Section 11 WWTP. (Ex. S-90.) ADEQ's Water Quality Complaint Inspection Report from April 19, 2018 ("April 19 Inspection Report"), confirmed that an unauthorized discharge had occurred at Lagoon No. 1, as had been observed by Staff on April 17, 2018; noted a comment from Mr. Lant that he had reported to ADEQ on April 17, 2018, that the Section 11 WWTP's April sampling showed a discharge limit total nitrogen exceedance; and noted that although the O&M manuals, logbook, and APP were on site, the logbook did not include required entries for the corrective actions regarding the unauthorized discharge at

Lagoon No. 1.[184] (Ex. S-90 at 2-3.) Additionally, ADEQ noted that a review of ADEQ's compliance and permitting data conducted as part of the inspection process revealed that JU had reported the exact same sequence of flow data results for the 2nd, 3rd, and 4th quarters of 2017.[185] (Ex. S-90 at 3.) ADEQ further stated that in JU's Excel workbook titled "Sect 11 Daily Reads Sheet," the daily total flow readings recorded for 1st quarter 2017 were nearly identical to the flows reported on the 1st quarter 2017 SMRF (*i.e.*, the daily flows reported were off by one day in the JU internal workbook, which happened to omit March 5, 2017), and the flow readings for the 2nd and 3rd quarters in the workbook did not match the data reported on the SMRF for those periods. (Ex. S-90 at 3.) ADEQ also observed that JU had submitted a 4.01 General Permit application on February 8, 2018, for a force main alignment and included in the application a table showing sewage flow commitment totals that exceed the permitted discharge capacity for the Section 11 WWTP. (Ex. S-90 at 4.)

ADEQ listed three potential deficiencies on the April 19 Inspection Report: (1) unauthorized discharge of partially treated sewage; (2) failure to follow recordkeeping requirements to document any malfunctions of the WWTP and its components; and (3) failure to submit monitoring records that reflect WWTP operations, including submittal of inaccurate monitoring data to ADEQ. (Ex. S-90 at 4.) Photos accompanying the April 19 Inspection Report showed that the berms that had been breached on April 17 had been rebuilt and that the overflow areas had been cleaned. (Ex. S-90 at att. B.)

A root cause analysis questionnaire completed by ADEQ using data provided in an interview with Mr. Lant stated that the Oasis Sunrise (aka Mirage) lift station had failed during October, November, and December 2017, causing the Section 11 WWTP to receive all of the influent usually diverted to another WWTP, but that account was disputed by Mr. Cole,[186] who stated that the lift station was never down and that failure of the lift station for more than one day would have resulted in sewage

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[184] Mr. Cole stated that the logbook was present, but that the records did not reflect the event that ADEQ sought to review. (Tr. at 2948-49.) Mr. Cole stated that keeping a logbook does not seem like it would be a difficult task and that he has been assured by Mr. Lant that JU is now 100 percent compliant. (Tr. at 2949.) Mr. Cole could not explain why the events in the logbook were not in chronological order but said that it was likely someone forgot to enter something when they should have and did it later. (Tr. at 2950.) He said that workers are expected to enter records into the logbook as soon as practical and that they do not forget to make those entries anymore. (Tr. at 3174.) Mr. Cole does not review the logbooks; Mr. Lant does. (Tr. at 3175.)

[185] Mr. Cole stated that Hunt's engineer said that she does not know what happened, but that the data was inadvertently copied over from one quarter to the next, making the reporting inaccurate, although the data in JU's records was accurate. (Tr. at 2945.) The engineer resubmitted the reports with the correct data. (Tr. at 2945.)

[186] Mr. Cole first became aware of the error during the hearing in this matter. (Tr. at 2999-89.)

spilling all over the neighborhood. (Ex. S-90 at att. D; Tr. at 2829-33.) Mr. Cole stated that the Oasis Sunrise lift station continued to function throughout that period, although it was being incrementally upgraded by increasing the size and horsepower of two pumps in the vault along with the electrical and controls for them, and that there must have been a misunderstanding or miscommunication that led to ADEQ's description. (Tr. at 2832-40, 2886-88; Ex. J-65; Ex. J-66.) Mr. Cole reported that the repairs were completed by the end of December 2017 and that the upgrades were made to better handle approximately 400,000 gallons a day of raw sewage that is diverted away from the Section 11 WWTP, flows through the Oasis Sunrise lift station, and is pumped down to the Anthem WRP. (Tr. at 2839-40; Ex. J-65; Ex. J-66.) While the Oasis Sunrise lift station was being upgraded, some of the sewage that would normally be diverted instead was allowed to flow to the Section 11 WWTP, resulting in the Section 11 WWTP receiving approximately 400,000 gallons per day more than it would ordinarily. (Tr. at 2841, 2886-88.)

On April 27, 2018, ADEQ issued an NOV to JU for the Section 11 WWTP ("April 2018 Section 11 NOV"), regarding the violations discovered by ADEQ during its inspection on April 19, 2018. (Ex. S-119.) The April 2018 Section 11 NOV alleged the following:

- JU had an unauthorized release of partially treated sewage from aeration Lagoon No. 1 to the land surface on April 15 to 17, 2018, caused by Lagoon No. 3's impaired performance and the subsequent routing of sewage to Lagoon Nos. 1, 2, and 4, which was:
    - A bypass of the WWTP's Best Available Demonstrated Control Technology ("BADCT") and a prohibited release of partially treated sewage, in violation of A.A.C. R18-9-B201(F); and
    - An unpermitted discharge of non-hazardous material and a bypass of the WWTP's approved BADCT, in violation of the APP (§ 2.3.3);
- JU failed to notify ADEQ of the unauthorized discharge of non-hazardous material from aeration Lagoon No. 1 within 24 hours, in violation of the APP (§ 2.6.5.3);
- JU failed to maintain and repair the Oasis Sunrise lift station, which resulted in an

equipment failure for the months of October through December 2017,[187] an operational deficiency which led to the discharge of sewage to the land surface in violation of A.A.C. R18-9-E301(B)(3);

- JU failed to record in its logbook that there was a discharge of sewage from aeration Lagoon No. 1 or that corrective actions were taken to clean up the spill, in violation of the APP (§ 2.7.2), a repeat violation, as JU had been notified of a failure to maintain adequate logbook recordkeeping in the 2/2018 Pecan NOV; and
- JU failed to monitor and report monthly average effluent flows and total daily effluent flows at Sampling Point No. 2 and to report those flows to ADEQ via SMRFs, in violation of the APP (§ 6.7), as evidenced by the repeating monthly average flow data reported for the 2nd, 3rd, and 4th quarters of 2017, coupled with the inconsistencies between the total daily flow data reported in the SMRFs and the flow readings recorded by JU's operators in JU's "Sect 11 Daily Reads Sheet."[188]

The April 2018 Section 11 NOV requires JU to submit the following within prescribed time periods: (1) a detailed report in response to the effluent flow monitoring and reporting violation, with specified minimum information to be included; (2) documentation that JU has registered all wastewater treatment facilities that submit SMRFs with ADEQ's electronic reporting platform; (3) a report containing (a) logbook entries that account for the discharge of sewage from aeration Lagoon No. 1 and any subsequent corrective actions taken, and (b) an explanation of why the APP requirements for logbook recordkeeping were not met, including why the internal trainings JU conducted to mitigate this reoccurring APP violation have not succeeded; and (4) a notice of intent to discharge, pursuant to A.A.C. R18-9-A301(B) or A.A.C. R18-9-C305(C), to develop and implement a Capacity, Management, Operation, and Maintenance ("CMOM") Program for JU's collection system as defined by A.A.C. R18-9-C305.[189]

Mr. Cole testified that the problems with the aerated lagoons stemmed from a low spot on the edge of one and the higher levels in three of them, which existed because the flow to the discolored

[187] This is disputed by Mr. Cole, as noted above.
[188] Ex. S-119 at 1-3.
[189] Ex. S-119 at 4.

lagoon had been slowed to mitigate the overloading that caused the discoloration. (Tr. at 3095-96.) Mr. Cole also stated that the current options to address the problems with the Section 11 WWTP going forward were (1) to leave it as is, using chemicals to mitigate the alleged odor issues; (2) to change the plant from a lagoon style plant to a Biolac plant; or (3) to eliminate the plant, send effluent elsewhere for treatment, and turn the land into a new Tres Rios Wildlife Habitat and use it for recharge. (Tr. at 3261.) Mr. Cole said that no engineering analysis had been completed as to option number 3, but that he thought it would require expansion of another wastewater treatment plant. (Tr. at 3261-62.)

As of the closing of the evidentiary record in this matter, the April 2018 Section 11 NOV was still open.

b. *Past Compliance Status*

Between September 2004 and January 2017, ADEQ issued six NOVs regarding non-compliance issues related to the Section 11 WWTP. Those ADEQ actions are described in Exhibit B, which is attached hereto and incorporated herein. The ADEQ actions indicate, *inter alia*, that the Section 11 WWTP had 58 fecal coliform exceedances in effluent in 2nd quarter 2004 and took no immediate steps to investigate them; had total nitrogen exceedances in effluent in December 2003, January 2004, and February 2004 and failed to conduct required total nitrogen verification sampling; had 29 fecal coliform exceedances in effluent in 3rd quarter 2004; exceeded the discharge limit for effluent monitoring for fecal coliform on at least four occasions in July 2004; discharged approximately 30,000 gallons of sewage to a roadside ditch and nearby stormwater impoundment without surface impoundment authority on or around April 6, 2005; had total nitrogen exceedances for five consecutive months from January through May 2005; buried biosolids (sludge) and other debris in disposal pits at the Section 11 WWTP in approximately September 2008; and had total nitrogen exceedances for three different quarterly monitoring points in July, August, and September 2016 and failed to report them to ADEQ, to immediately investigate their cause, and to submit to ADEQ a report summarizing an investigation into the cause and the remedial actions taken. (*See* Ex. S-37; Ex. S-38; Ex. S-39; Ex. S-41; Ex. S-46; Ex. S-54.)

Mr. Baggiore testified that he believed JU had demonstrated compliance with all of the prior NOVs issued by ADEQ. (Tr. at 508.)

4. San Tan WRP

No evidence was offered to show that the San Tan WRP is not currently in compliance with ADEQ requirements.

Between May 2013 and December 2015, ADEQ issued three NOVs regarding non-compliance issues related to the San Tan WRP.[190] Those ADEQ actions are described in Exhibit B, which is attached hereto and incorporated herein. The ADEQ actions indicate, *inter alia*, that in May 2013, the San Tan WRP's operator failed to reset compressors after a power outage, resulting in turbidity exceedances for multiple days, failure to operate and maintain the WRP as per the engineering design (the WRP's O&M Manual and Contingency and Emergency Response Plan did not provide procedures to follow after a power failure), and failure to prevent unauthorized discharges resulting from failure or bypassing of pollutant control technologies (the turbidity exceedances were caused by bypassing of aeration treatment);[191] that in August and September 2015, the San Tan WRP had a "treatment process upset" that allowed inadequately disinfected sludge to enter effluent pumped to the San Tan Heights HOA irrigation lake, resulting in violations for unauthorized discharge and for failing to comply with various reporting requirements; and that in December 2015, the San Tan WRP was cited for not having an end user agreement with the San Tan Heights Community HOA regarding end user obligations for the use of reclaimed water and for resulting noncompliance by the HOA. (*See* Ex. S-50; Ex. S-52; Ex. S-53.)

5. Anthem WRP

No evidence was offered to show that the Anthem WRP is not currently in compliance with ADEQ requirements or has in the past been out of compliance with ADEQ requirements.

6. Other JU-Related Locations

a. *Current & Recent ADEQ Compliance Status*

On or around April 25, 2018, JU released an excessive quantity of effluent from the Section 11 WWTP to the Oasis Magic Ranch golf course,[192] causing standing water to pool in different areas of

[190] The APP for the San Tan WRP is APP No. 105325. (See, e.g., S-50.)
[191] ADEQ also noted inconsistencies in JU's reporting related to the incident. (*See* Ex. S-50.)
[192] The Oasis Magic Ranch golf course is located just south of the Section 11 WWTP. (Tr. at 2162.)

the course. (Ex. QC-16;[193] Tr. at 2290, 2497.) Chris Johnson stated that Matt Hipsher had asked for effluent to be delivered to the golf course lake, that the effluent was delivered overnight, that an employee forgot to turn the irrigation system back on, and that the failure to turn on the irrigation system caused the overflow because the irrigation system did not draw water from the lake to irrigate the turf. (Tr. at 2290-92, 2296-97.) Mr. Taylor stated that he had encouraged one of JU's workers to use as much of the irrigation water from the Section 11 WWTP as possible to help bring down the levels and maintain the freeboard requirements. (Tr. at 2496-97.) Mr. Taylor also stated that if the effluent is maintained within the golf course property, he does not believe that it would be characterized as an unauthorized discharge by JU, although maybe it could be for the golf course. (Tr. at 2525-26.) He acknowledged that there are likely restrictions on the use of the effluent on the golf course, and human exposure to the effluent, as the effluent from the Section 11 WWTP is B+ rather than A+. (Tr. at 2529-30.) Mr. Cole stated that he is not involved in the decision about how much effluent goes from the Section 11 WWTP to the golf course and thought that the decision to receive more probably would have been made by the golf course manager. (Tr. at 3216-17.)

As of the close of the evidentiary record in this matter, ADEQ had not taken any action related to this occurrence.

b. *Past Compliance Status*

Between 2009 and 2013, ADEQ issued three NOVs regarding non-compliance issues for other JU-related locations. Those ADEQ actions are described in Exhibit B, which is attached hereto and incorporated herein. The ADEQ actions indicate, *inter alia*, that in 2009, JU, as the owner/operator of the Oasis Golf Course,[194] was cited for failing to use irrigation application methods that reasonably precluded human contact with reclaimed water because there were several feet of standing reclaimed water on portions of the golf course; in 2012, JU was cited for operating a surface impoundment without an APP at the Circle Cross Well; and in May 2013, as a result of a San Tan WRP incident that resulted in a separate NOV, JU was cited for failing to ensure that reclaimed water discharged to the San Tan Heights HOA and Johnson Ranch Golf Course met turbidity standards. (*See* Ex. S-47; Ex. S-49; Ex.

[193] Queen Creek's exhibits are identified as "Ex. QC-1," etc.
[194] This is believed to be a reference to Club at Oasis's golf course.

S-51.)

C. Air Quality Issues – PCAQ Compliance

1. PCAQ Standards & Monitoring

Although the PCAQ does not regulate the operation of JU's wastewater treatment facilities, it does regulate the air emissions from sources at those facilities. (Tr. at 1456.) The Pinal County Board of Supervisors, under A.R.S. §§ 49-479 and 49-480, has adopted a rule establishing a maximum permissible ambient level of H_2S concentration of 0.03 ppm and, under A.R.S. § 49-473, has authorized PCAQ to carry out investigations and inspections and to enforce the rule. (Ex. S-6 at 1; Tr. at 1457.) To Mr. Sundblom's knowledge, the 0.03 ppm level is not matched to a health standard but instead represents a nuisance-based level. (Tr. at 1470-71, 1584.) Mr. Sundblom was not able to name a level at which H_2S presents a health and/or safety risk to people, although he is aware that there are state and federal ambient air quality guidelines for different averaging periods.[195] (Tr. at 1532-33.)

Beginning in late December 2015, in response to consumer odor complaints, PCAQ began monitoring ambient H_2S levels in the air near the Section 11 WWTP,[196] using portable battery-operated H_2S monitors called OdaLoggers. (Tr. at 1475, 1477, 1505-06.) Each H_2S monitor produces averaged readings in 10-minute blocks of time, and PCAQ averages four 10-minute blocks (with each block including approximately 6 to 7 minutes of actual sampling time due to the cycling operations of the

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[195] H_2S is a highly corrosive gas that negatively affects electrical components and that erodes concrete; electrical equipment must be sealed to keep gases from dramatically reducing the lifecycle of components, and concrete must be sealed to prevent erosion. (Tr. at 2379, 2483.) Mr. Taylor testified that he has read several studies regarding oil field workers and others who were constantly subjected to low dose H_2S exposure (less than 1 ppm); the studies concluded that there were no health risks associated with that. (Tr. at 2484, 2491.) Mr. Cole stated that the Occupational Safety and Health Administration ("OSHA") allows workers to work an eight-hour period while exposed to H_2S at 20 ppm and identifies 100 ppm as immediately dangerous to life and health. (Tr. at 314-410; Ex. JKD-9.) He also stated that he is not an expert on H_2S, but that it is an "inherent off gas" of wastewater treatment and found in collection systems, manholes, and treatment plants. (Tr. at 3140-41.) Mr. Cole stated that JU has a number of H_2S monitors to alert its workers for levels when they must enter confined spaces. (Tr. at 3141-42.) He also agreed that the US Environmental Protection Agency ("EPA") has identified H_2S as harmful to humans at low levels but also noted that the EPA did not define what a "low level" is. (*See* Tr. at 3169-70; Ex. JKD-10.)

[196] The Section 11 WWTP is located within approximately 140 to 150 feet of the homes nearest to it and was there before the homes were built. (Tr. at 3176.) Mr. Cole believes that the homeowners in the nearby subdivisions were required to acknowledge in their subdivision disclosure reports, prepared by the developer, that they were buying homes adjacent to a potentially dust-producing, noise-producing, odor-producing source and might experience dust from truck traffic and could have insects and flies associated with the source's activities. (Tr. at 3177-78.) Mr. Cole testified that he has seen four different subdivision disclosure reports for homes around the Section 11 WWTP and found that language in each of them. (Tr. at 3178.) Mr. Cole added that although JU was not required to obtain waivers from any of the property owners because the Section 11 WWTP was there first, he believes JU would be required to obtain waivers from homeowners if JU were to make major modifications to the Section 11 WWTP. (Tr. at 3180-82.)

instrument) to calculate a 30-minute average. (Tr. at 1531-32.) PCAQ owns four H_2S monitors, two of which were purchased in January 2018. (Tr. at 1518.) PCAQ generally places a monitor behind a gate or in a residential backyard, in a location where it can be hung, but does not further secure the monitor. (Tr. at 1545.) At the hearing, PCAQ reported that there were three monitors placed to the south of the Section 11 WWTP and no monitors placed to the north, east, or west of the Section 11 WWTP. (Tr. at 1518-19.) One of the monitors is owned by JU and located as required by a PCAQ Order of Abatement by Consent discussed further below; the second monitor is owned by PCAQ and is co-located with (directly next to) the monitor that JU was required to install, to provide verification of readings at the location, as PCAQ had received communications from individuals expressing concern that JU's monitor readings were not being verified by PCAQ;[197] and the third monitor is owned by PCAQ and placed at different locations as PCAQ deems appropriate. (Tr. at 1525-27; 1559.) JU is responsible for the calibration and maintenance of the monitor owned by JU, and PCAQ is responsible for the calibration and maintenance of the monitors owned by PCAQ.[198] (Tr. at 1526, 1563.)

At the time of the hearing, the third monitor was placed at a residence on Oasis Boulevard, in the maximum concentration area identified through air quality modeling conducted by ADEQ.[199] (Tr. at 1520, 1528-29, 1533-34.) According to Mr. Sundblom, the third monitor's location had been selected based on complaints received and is approximately 130 to 140 feet from the fence line for the Section 11 WWTP, a location that PCAQ believed would result in the highest concentration levels in the area. (Tr. at 1533-34.) Although he acknowledged that PCAQ has received H_2S odor complaints from areas to the north and east of the Section 11 WWTP, where residential development exists, and has previously located the third monitor to the north of the Section 11 WWTP, Mr. Sundblom testified that he believed the current monitoring[200] was sufficient to demonstrate concentrations in a populated

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[197] The results from the co-located monitors are not always the same, which is not unexpected according to Mr. Sundblom, and PCAQ intends to keep the co-located monitor next to JU's monitor for as long as JU's monitor is in place. (Tr. at 1526-27.) The data from the co-located PCAQ and JU monitors is collected by PCAQ employee Josh DeZeeuw. (Tr. at 1529.)

[198] PCAQ and JU recently began calibrating the monitors using a similar six-month schedule. (Tr. at 1563.)

[199] ADEQ conducted modeling studies in 2018 to identify where the H_2S would travel from the Section 11 WWTP, determining that the highest concentrations would be on the south side of the WWTP. (Tr. at 1513-14.) Mr. Sundblom explained that an ambient impact analysis/modeling exercise uses a computer model with inputs of meteorology and potential emissions from a facility to predict where concentrations would occur. (Tr. at 1516-17.) It does not include inputs regarding where exceedances have occurred in the past. (Tr. at 1514-17.)

[200] This includes the JU monitor, the co-located PCAQ monitor, and the third monitor located at a residence approximately 130 to 140 feet from the Section 11 WWTP fence line. (Tr. at 1560.)

area around the Section 11 WWTP. (Tr. at 1522, 1533.) It does concern Mr. Sundblom that if the wind is blowing north, east, or west, PCAQ and JU will not know whether excess H_2S is being emitted by the Section 11 WWTP because there are no monitors located to detect it. (Tr. at 1519.)

2. PCAQ Order of Abatement by Consent

On August 21, 2017, PCAQ entered into an Order of Abatement by Consent with JU ("PCAQ OAC"), reflecting a negotiated settlement between PCAQ and JU to address multiple alleged violations of PCAQ's rules. (Tr. at 1457; Ex. S-6.) The PCAQ OAC was signed by Mr. Sundblom as Director for PCAQ and by Mr. Drummond as Manager of JU. (Ex. S-6 at 9.) The PCAQ OAC lists the following alleged violations of the Pinal County rule for ambient H_2S concentrations, based on readings obtained from PCAQ H_2S monitors:

- January 17, 2016: two 30-minute average maximum readings of 0.04 ppm, at a residence located 0.2 miles north of the Section 11 WWTP;
- February 10 through 18, 2016: four 30-minute average maximum readings of between 0.04 and 0.08 ppm, at a residence located 0.2 miles north of the Section 11 WWTP;
- June 8 through 22, 2016: 15 30-minute average readings of between 0.05 and 0.22 ppm, at a residence located 0.2 miles north of the Section 11 WWTP;
- June 23, 2016, through April 9, 2017: 95 30-minute average maximum readings of between 0.04 and 0.23 ppm, at a residence located 0.2 miles north of the Section 11 WWTP;
- May 3 through 31, 2017: 10 30-minute average maximum readings of between 0.04 and 0.08 ppm, at a residence located 0.1 miles south of the Section 11 WWTP; and
- June 2 through July 24, 2017: 31 30-minute average maximum readings of between 0.04 and 0.15 pm, at a residence located 0.1 miles south of the Section 11 WWTP.[201]

The PCAQ OAC also detailed the actions taken by JU during this time period to address the exceedances, which included requesting a meeting with PCAQ upon receiving notice of the January 2016 exceedances; attending a February 26, 2016, meeting with PCAQ at which Mr. Lant outlined

[201] Ex. S-6 at 2-5. Mr. Sundblom testified that the residence located 0.2 miles north of the Section 11 WWTP was very likely Mr. Dantico's residence because the monitor was placed at his home many times. (Tr. at 1544.)

JU's plan to cover the headworks, utilize a chemical additive, and monitor the Section 11 WWTP to determine whether additional control equipment would be needed; enclosing the headworks and ordering an activated carbon scrubber unit in early April 2016; installing the activated carbon scrubber unit in early May 2016 and, after a pump failed due to the installation, ordering and installing a new pump by early June 2016; purchasing additional bacterial additives to control H_2S formation by mid-June 2016; hiring a consultant by early August 2016 to evaluate the Section 11 WWTP and help determine a compliance plan; adding an additional chemical additive (Thioguard) recommended by the consultant by early October 2016; placing a notice regarding odor issues on the JU website by mid-November 2016; adding two additional chemical additives (ferric chloride and potassium permanganate) to the treatment system by mid-December 2016; and keeping PCAQ informed of JU's efforts through regular contacts. (Ex. S-6; Tr. at 1546-57.) At the time the PCAQ OAC was entered, JU had not had any exceedances for nearly one month. (*See* Ex. S-6.)

In the PCAQ OAC, JU did not admit that any of the exceedances detailed above had occurred or that it had committed any violations. (Ex. S-6 at 5, 7.) Nonetheless, JU agreed to submit to PCAQ, within 60 days after the PCAQ OAC, a written compliance plan for the Section 11 WWTP, including engineering analysis and such additional controls necessary to reduce H_2S emissions to a level complying with PCAQCD Code § 5-24-1030.H, and further agreed to commence implementation of the plan within 180 days and diligently continue work until the plan was fully implemented. (Ex. S-6 at 6.) JU also agreed to submit a stationary source permit application to PCAQ if the engineering analysis demonstrated the potential to emit more than one ton per year or 5.5 pounds per day of H_2S from any point source and to pay a stipulated penalty per day if it failed to submit the compliance plan by the agreed deadline, failed to commence implementation of the compliance plan within the agreed deadline, or unnecessarily delayed work on implementation of the compliance plan. (Ex. S-6 at 6.) Additionally, JU agreed to pay PCAQ $20,000 by September 18, 2017.[202] (Ex. S-6 at 7.)

PCAQ agreed that JU's "submission of a written compliance plan, full implementation of the

[202] The PCAQ OAC states that, under A.R.S. §§ 49-502 and 49-513, a person violating a provision of state air quality law is subject to a civil penalty of up to $10,000 per day per violation. (Ex. S-6 at 6.) PCAQ does not have the authority to impose civil penalties unilaterally for violation of a regulation, however, and must obtain Superior Court approval for any penalty with which a regulated entity has not agreed. (Tr. at 1528, 1530, 1536.) JU paid the $20,000 penalty right away. (Tr. at 3285.)

compliance plan and full payment . . . of the total sum required . . . w[ould] constitute a complete satisfaction of the violations alleged" in the PCAQ OAC. (Ex. S-6 at 7.) PCAQ and JU also agreed that the PCAQ OAC resolved June 23, 2016, and June 2, 2017, NOVs that had been issued to JU by PCAQ.[203] (Ex. S-6 at 7.)

On October 20, 2017, JU submitted its compliance plan to PCAQ, which responded with a November 3, 2017, letter notifying JU that its compliance plan was insufficient because it did not include an engineering analysis to support the identified H_2S controls and stationary source permit evaluation. (Ex. S-7.) On December 4, 2017, JU provided PCAQ a revised compliance plan, which Mr. Sundblom testified fully addressed the November 2017 letter. (Ex. S-8; Tr. at 1464-65.)

JU's compliance plan identified the following actions JU planned to take to address the H_2S exceedance allegations in the PCAQ OAC:

- Adding Chemical Treatment, to include the following:
    - Thioguard, which increases the pH of the water stream, thereby preventing the formation of H_2S, to be added both at the Main Yard and at the First Weir Box at the Section 11 WWTP using continuously feeding peristaltic chemical feed pumps at the rate of 150 gallons per day;
    - Ferric Chloride, which binds sulfur compounds and causes them to precipitate out, thereby preventing H_2S from forming, to be added at the First Weir Box at the Section 11 WWTP using a peristaltic chemical feed pump at 50 gallons per day;
    - Magnesium Oxide, a powder form of Thioguard, to be used as a backup to the Thioguard and applied to the headworks splitter box as needed; and
    - Sodium Hypochlorite, which acts as an oxidizer, causing sulfur compounds to be consumed by hydrochlorous acid and released as oxygen, to be used as a backup and applied at the effluent lift station located at the Section 11 WWTP;
- Covering the Headworks Basin, the point at the Section 11 WWTP where all of the flows from

[203] Mr. Cole acknowledged that he was aware of PCAQ's fining ability and was concerned about potential fines from the first H_2S exceedance. (Tr. at 3061-62.) Although Mr. Cole recalled that he spoke to George Johnson about the issue before Mr. Drummond took over as manager, Mr. Cole stated that he was focused on addressing the issue rather than worrying about the fines and only realized the potential extent of the fines—approximately $1 million—when a letter was received from PCAQ at approximately the time that Mr. Drummond became manager of JU. (Tr. at 3064-67.)

the various lift stations in the collection system join and enter the WWTP, using a sealed lid that was custom constructed in place on June 15, 2017, to prevent odors from escaping the basin by trapping the odors inside;[204] and

- Adding Purafil Odor Scrubbers to the treatment process at three locations—one at the Mirage lift station in the neighborhood immediately adjacent to the Section 11 WWTP, one at the Section 11 WWTP headworks basin, and one at the Section 11 WWTP effluent pump station vault—to scrub the air by vacuuming the air out of an enclosed chamber and running the air through carbon-based media, to which the H_2S attaches, permanently removing it from the air.[205]

In its compliance plan, JU also stated that according to its H_2S emissions testing at the Section 11 WWTP headworks basin, conducted between September 1 and 5, 2017, the potential H_2S emissions will average 1.35 pounds per day or 492.75 pounds per year, meaning that a stationary source permit is not required. (Ex. S-8 at 5.) JU further stated that it had already fully implemented its compliance plan and that it would continue to use the chemical additives and to monitor and report H_2S levels to PCAQ until it was no longer necessary to do so. (Ex. S-8 at 5.) JU stated that fence line monitoring was being conducted 24 hours a day, 7 days a week, within the secured boundaries in the northwest corner of the Golf Club at Oasis Maintenance Shop, which JU referred to as "the agreed upon compliance monitoring location." (Ex. S-8 at 6.) JU stated that JU had demonstrated full compliance with PCAQ's H_2S emissions rule since July 24, 2017. (Ex. S-8 at 6.) JU further stated that it had made full payment of the total sum required by the PCAQ OAC. (Ex. S-8 at 6.)

JU also stated in its compliance plan that its APP provides prior approval to upgrade the Section 11 WWTP's treatment technology from a lagoon style plant to a mechanical plant ("Biolac plant"), but that the Biolac plant conversion was not to be considered part of JU's compliance plan and would instead be implemented by JU to provide a long-term solution to odor issues. (Ex. S-8 at 6.) JU stated that the Biolac plant conversion had originally been planned for when the flows to the Section 11 WWTP necessitated an increase in treatment capacity, but that partial design for the upgrade had been

[204] Mr. Cole stated that the headworks are the "most smelly part" of a wastewater treatment plant. (Tr. at 3172.) This lid was a significant upgrade from the lid that had originally been used to cover the headworks in 2016. (Tr. at 3230-31.)
[205] Ex. S-8 at 4-5.

completed, and outside engineers were surveying the site and performing the required geotechnical studies to allow the design of the Biolac plant upgrade to be completed. (Ex. S-8 at 6.)

The PCAQ OAC states that it "does not relieve Johnson Utilities, L.L.C. from their [sic] obligation to comply with all applicable federal, state, and local environmental laws, regulations, and permit conditions." (Ex. S-6 at 7.) Regarding future monitoring, the PCAQ OAC states the following:

> Upon execution of the Order, Johnson Utilities L.L.C. shall conduct fence line hydrogen sulfide monitoring at the following location: within the secured boundaries of the Golf Club at Oasis' [sic] Maintenance Shop in the northwest corner. The monitoring shall be conducted continuously until the District determines that the compliance plan identified in paragraph 37 has been fully implemented. Monitoring data shall be collected on at least a weekly basis. Results of the hydrogen sulfide measurement shall be reported to the District on a weekly basis in electronic format and include Quality Assurance Documentation (as hereinafter defined) for each period. In the event that any monitored period exceeds a 30 minute average hydrogen sulfide concentration of 0.03 parts per million, Johnson Utilities L.L.C. shall: 1) notify the District in writing within 24 hour [sic] and describe measures taken to mitigate the elevated value, and 2) notify the effected [sic] public by posting notice on Johnson Utilities L.L.C.'s web site and its Facebook page within 48 hours that an elevated concentration has occurred and describe measures taken by Johnson Utilities L.L.C. to mitigate the elevated concentration.
>
> For purposes of this Order, "Quality Assurance Documentation" shall be defined as the submission of the following: 1) instrument calibration records (manufacturers' [sic] recommended schedule); 2) written explanation for any missing data during the collection period, if any; 3) a log of setup/takedown, data collection, and maintenance performed during the period; and 4) confirmation that data collected has been reviewed by the other.[206]

JU and PCAQ disagree concerning the meaning of the above-quoted language regarding future monitoring—JU asserts that it means JU's compliance with the H_2S standard is to be determined only using the monitor that it was required to install in the location specified by the PCAQ OAC, not using any other monitor or any other location, and PCAQ asserts that JU's compliance can be determined using any monitor placed by PCAQ in any location complying with the Pinal County rules, which require that the monitor be placed in an occupied location. (*See* Tr. at 1506, 1561, 2912-13.) JU installed the H_2S monitor required by the PCAQ OAC at the maintenance shed at the golf course the

[206] Ex. S-6 at 7.

day after the PCAQ OAC was signed. (Tr. at 3257.) PCAQ has co-located an H_2S monitor there, and JU and PCAQ share monitoring results each week.[207] (*See* Tr. at 3289, 3575.)

3. January 2018 PCAQ NOV

On January 23, 2018, PCAQ issued an NOV to JU ("1/2018 PCAQ NOV") listing the following alleged violations of the Pinal County rule for ambient H_2S concentrations, based on readings obtained from PCAQ H_2S monitors and readings reported by JU:

- January 14, 2018: 12 30-minute average readings exceeding the standard of 0.03 ppm, with a maximum 30-minute average reading of 0.07 ppm, at the maintenance building located south of the Section 11 WWTP (readings from the co-located PCAQ monitor); and
- January 17, 2018: "nine exceedances of the 0.03 ppm hydrogen sulfide standard[, with a] maximum 30-minute average reading [of] 0.06 ppm" (JU-reported readings from the JU monitor).[208]

In response to the 1/2018 PCAQ NOV, JU met with PCAQ staff and counsel, who suggested that JU submit a written response, which JU had not yet done as of the hearing in this matter. (Tr. at 1570, 2958.) JU reported to PCAQ that the exceedances on January 14, 2018, could have resulted from a clogged pump that prevented the addition of Thioguard to the system. (Tr. at 1569.) Mr. Cole stated that there had been a failure in the Thioguard injection station at the main yard lift station, which was detected by the operator and corrected and mitigated before the exceedance report came out several days later. (Tr. at 3314-15.) JU and PCAQ discussed having JU monitor the Thioguard pumping system more closely to prevent clogging and also potentially using Wet Well Wizards in lift stations. (Tr. at 1570-71.) At the time of the meeting, JU had ordered Wet Well Wizards to evaluate. (Tr. at 1571.) According to Mr. Sundblom, the 1/2018 PCAQ NOV is not yet officially closed because PCAQ wants to finish the discussion concerning Wet Well Wizards as a potential next step toward a solution. (Tr. at 1572.) Mr. Sundblom did not believe that PCAQ would be seeking a penalty or Order of

[207] The data from the co-located monitors frequently does not match exactly but is usually off by a very small amount. (Tr. at 3289.) JU has done additional spot monitoring on its own by taking a monitor to the fenceline between the Section 11 WWTP and the neighboring houses, around the headworks, around the odor scrubber, around various other parts of the Section 11 WWTP such as the wetlands, and around the Sunrise Oasis lift station. (Tr. at 3289-90.) (

[208] Ex. S-9; Tr. at 1567-68.

Abatement by Consent regarding the 1/2018 PCAQ NOV. (Tr. at 1572.)

4. February 2018 PCAQ NOV

On February 9, 2018, PCAQ issued another NOV to JU ("2/2018 PCAQ NOV") alleging the following exceedances recorded on a PCAQ monitor located at a residence ("the third monitor"): January 31, 2018—three 30-minute average readings exceeding the standard of 0.03 ppm, with a maximum 30-minute average reading of 0.043 ppm, at a residence located on East Oasis Boulevard south of the Section 11 WWTP, approximately 130 feet from the Section 11 WWTP fence line. (Ex. S-10; Ex. PC-4;[209] Tr. at 1573.)

As of the hearing, JU had not yet had time to provide PCAQ a written response to the 2/2018 PCAQ NOV. (Tr. at 1573, 2912.)

Mr. Cole disagrees with the 2/2018 PCAQ NOV because the readings are from the third monitor, not from the JU monitor that JU considers to be the sole official compliance monitor per the PCAQ OAC. (*See* Tr. at 2903, 2912-13.) Mr. Cole does not dispute that PCAQ's monitors have picked up H_2S gases that exceed the allowable limits in Pinal County, but says that it cannot be established that the H_2S came from JU's plant, and that it could have come from another source, such as a farming operation. (Tr. at 2899-2900.)

5. Additional PCAQ-Recorded H_2S Exceedances

PCAQ recorded additional H_2S exceedances on April 4 and 9, 2018, one involving the co-located PCAQ monitor and the other the third monitor, although no NOVs had yet been issued for those exceedances as of the conclusion of the hearing in this matter. (Tr. at 1467, 1578-79.) Mr. Sundblom was not sure whether NOVs would be issued because he had not yet had a chance to discuss the exceedances with his staff. (Tr. at 1467, 1579.) Mr. Sundblom stated that NOVs are not always issued after an exceedance but are generally used to make a company aware that an exceedance has been recorded. (Tr. at 1467-68.)

PCAQ also recorded exceedances on April 25, 2018—a total of five 30-minute average readings exceeding the standard of 0.03 ppm (four in the morning and one in the afternoon), with a maximum

[209] Pinal County's exhibits are identified as "Ex. PC-1," etc.

30-minute average reading of 0.053 ppm, recorded on the third monitor at the Oasis Boulevard site. (Ex. PC-5; Ex. PC-6.) PCAQ Air Quality Manager Joshua DeZeeuw notified Mr. Cole of these exceedances via emails on April 26 and May 3, 2018, noting in the second email that neither of the monitors at the maintenance yard site had recorded exceedances during the same period. (Ex. PC-5; Ex. PC-6.)

Mr. Cole acknowledged that PCAQ alleges the additional H_2S exceedances, but said that they are not based on readings from the "agreed -upon compliance point" specified in the PCAQ OAC. (Tr. at 3113-14.) Mr. Cole said that he and Mr. Drummond had met with PCAQ and its counsel and determined that JU will write PCAQ a letter in response to the newest alleged H_2S exceedances, after which PCAQ will decide on its next move. (Tr. at 3259-60.)

6. JU's Perspective & Efforts to Eliminate H_2S Exceedances

Mr. Cole and Mr. Drummond both assert that the PCAQ OAC identified a "negotiated compliance point" and that the JU monitor is the agreed-upon official monitor and the only monitor that can result in an H_2S exceedance because JU can secure it and has a reasonable assurance that it could not be tampered with. (Tr. at 2912-13, 3255, 3316-17, 3574.) Mr. Cole and Mr. Drummond both acknowledged that the term "compliance point" does not appear in the PCAQ OAC but maintained that PCAQ's representatives and JU's representatives mutually agreed to a single point where JU's monitor would be located for compliance purposes. (Tr. at 3114-15, 3575; Ex. S-6.)

Aside from the PCAQ monitor that is co-located with JU's monitor, JU does not know specifically where PCAQ's other meters are located or what steps are taken to secure them and to prevent tampering. (Tr. at 3257-60.) Mr. Cole does not dispute that PCAQ has the authority to place monitors as it sees fit but testified that he does not trust the PCAQ monitors because he considers their locations to be unsecure.[210] (Tr. at 2912-14.) Mr. Cole did not testify that the PCAQ monitors have been tampered with but stated that JU "can't say that they weren't." (Tr. at 2913.) Mr. Cole expressed concern that someone could hold an H_2S-emitting source near a monitor in someone's yard even if it were locked in a cage. (Tr. at 3311-12.) He was not able to identify measures that PCAQ could take,

[210] The monitors are checked on a weekly basis. (Tr. at 1557.) When asked whether PCAQ's monitors ever malfunction, Mr. Sundblom stated that PCAQ has seen battery loss. (Tr. at 1557.) Mr. Sundblom was not aware whether the monitors were locked in any way. (Tr. at 1589.)

short of Pinal County staff watching the monitor at all times or possibly 24-hour video surveillance, to ensure that the H_2S readings on the non-JU monitors were accurate. (Tr. at 3310-12.) Additionally, Mr. Cole stated that he is not confident that JU facilities are causing the exceedances, suggesting instead that someone could be placing an H_2S source near the meter purposely to cause exceedances or that exceedances could be caused by another H_2S source in the vicinity of the Section 11 WWTP, such as a farming operation because both a dairy farm and a feedlot are located somewhere in the vicinity of the Section 11 WWTP. (Tr. at 1580, 2899-2900, 3145-46.)

Mr. Cole acknowledged that Pinal County requires that H_2S not exceed 0.03 ppm, but would not agree that readings in excess of 0.03 ppm from a monitor other than the monitor identified in the PCAQ OAC would represent a JU violation unless PCAQ was able to establish that the emissions came from JU and that the monitor was tamperproof and controlled. (*See* Tr. at 3115-16.) Mr. Cole stated that if PCAQ OAC "could establish that it absolutely came from [JU], it would be not acceptable." (Tr. at 3117.) But Mr. Cole reiterated that JU does not know if the meters other than JU's "compliance meter" can be tampered with and, further, that it has "never been determined that the odors are coming from [JU]." (Tr. at 3118.) Mr. Cole stated that there is a lift station in the neighborhood that also has the potential to produce odors and be the cause of any H_2S exceedances and conceded that an H_2S exceedance caused by a lift station would still be a violation by JU. (Tr. at 3155-57.) According to Mr. Cole, he never encountered any H_2S violations while working for other utilities. (Tr. at 3159.)

Mr. Drummond considers the PCAQ OAC to be the entire agreement between the parties relative to H_2S emissions at the Section 11 WWTP and questioned what the purpose of the PCAQ OAC was if it left the door open for PCAQ to place monitors in other locations and begin fining JU for those exceedances. (Tr. at 3575-76.) Mr. Drummond stated that PCAQ can put up 100 other monitors if they want to, but he believes that under the PCAQ OAC, the enforcement of any violations that may be registered by those 100 monitors is not within the scope of the PCAQ OAC. (Tr. at 3576.) Mr. Drummond stated that JU entered into the PCAQ OAC to avoid litigation because litigation was not going to solve the problem. (Tr. at 3577.)

Mr. Cole stated that there is no reason to believe that JU workers would tamper with the compliance point meter because PCAQ has one right next to it at the maintenance shed location, and

the two monitors are providing nearly identical results. (Tr. at 3154-55.) When asked how PCAQ is supposed to know that nobody is putting a large garbage bag over them to make their readings inaccurate, Mr. Cole said that he assumes PCAQ is checking on them periodically and, further, asserted that PCAQ has a "watchdog guy" (a resident who keeps a close eye on the monitors) living a couple of houses down from the compliance point location. (Tr. at 3155.)

Mr. Cole said that JU first took action to reduce the H_2S emissions in 2016 or 2017, before there was an NOV from PCAQ, by examining its process to see if there was a source of H_2S odors and contacting an influent expert from Texas, who is an expert on lagoon style plants and chemicals and was recommended by JU's chemical supplier, to address potential H_2S odor issues. (Tr. at 2900-01.) According to Mr. Cole, starting in 2017, JU made a number of improvements to reduce the emissions of H_2S from the Section 11 WWTP:

- Covering the headworks at the Section 11 WWTP;
- Adding an odor scrubber to the headworks at the Section 11 WWTP;[211]
- Adding Thioguard in the Section 11 WWTP;[212]
- Adding ferric chloride in the Section 11 WWTP;
- Using a powder form of Thioguard as a backup at the Section 11 WWTP;
- Adding Thioguard at the main yard lift station;
- Adding Wet Well Wizard aerators at five different locations, including at the Oasis Sunrise lift station and in two other lift stations that feed into it;
- Adding an odor scrubber at the Oasis Sunrise lift station; and
- Adding a thick rubber mat over the vault lid for the Oasis Sunrise lift station.[213]

Mr. Cole believes that these actions have had a positive effect on the number of H_2S exceedances that occur. (Tr. at 2868-69.) Mr. Cole stated that JU has been working to reduce the H_2S exceedances for a "good year or more" and that JU communicates frequently with PCAQ and has communicated once or twice with ADEQ about the H_2S emissions. (Tr. at 2869.) Mr. Cole also stated

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[211] Mr. Cole stated that JU tests the carbon media for the odor scrubbers on at least a monthly basis to determine whether there is any breakthrough indicating that it needs to be changed or regenerated. (Tr. at 3282-83.)

[212] The influent expert recommended that JU start using Thioguard and ferric chloride. (Tr. at 2902.)

[213] Tr. at 2866-68.

that Mr. Drummond "hit the ground running" in June 2017 in terms of addressing and resolving the PCAQ violations. (Tr. at 3062-64.) Mr. Drummond stated that he agrees with the actions Mr. Cole has taken thus far to address the H_2S exceedances and that he does not believe Mr. Cole gives himself enough credit for what has been accomplished. (Tr. at 3356-57.) He added that Mr. Cole not only flew out the consulting group from Texas, but also reached out to the original designers of the plant, and through these efforts has come up with a number of the solutions that JU has implemented thus far. (Tr. at 3357.) Mr. Drummond stated that they are continuing to try to address the issues and that the H_2S exceedances and PCAQ violations are not acceptable to him as the manager of JU. (Tr. at 3357-58.) Mr. Drummond would like to start having quarterly meetings with PCAQ like JU does with ADEQ and has suggested that to Mr. Sundblom. (Tr. at 3358.)

According to Mr. Cole, as of May 4, 2018, JU's "compliance meter" had had only one 80-minute violation since the middle of June 2017 (an exceedance recorded by the JU meter on January 14, 2018).[214] (Tr. at 2869, 2903.) Mr. Drummond is aware of the 1/2018 PCAQ NOV and the 2/2018 PCAQ NOV but said that they are allegations and that JU and PCAQ "agreed to have one compliance point to monitor hydrogen sulfide exceedances in the future relative to the Section 11 Plant." (Tr. at 3574-75.) Mr. Drummond testified that based on the readings of its "compliance monitor," JU does not have any ongoing H_2S violations. (Tr. at 3573.) Mr. Drummond further stated that JU and PCAQ have agreed to disagree for the time being and that the more important thing is that JU is continuing to take action to minimize odors and H_2S exceedances. (Tr. at 3578.)

George Johnson stated that JU is contemplating using recharge wells for some of the effluent from the Section 11 WWTP, is working with chemical companies, is installing new aeration equipment (Wet Well Wizards) into lift stations, and is planning to expand the lakes on the golf course so that they can hold more effluent. (Tr. at 965-66.) He stated that Mr. Drummond and Mr. Cole "are on a hard, fast track to cut that down to nothing." (Tr. at 966.)

When asked how he would assess the H_2S levels emanating from the Section 11 WWTP, Mr. Taylor stated that he would perform an odor study by installing monitoring equipment at representative

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[214] We are not certain that Mr. Cole intended to say January 14, 2018, and suspect that he might have intended to say January 17, 2018.

points throughout the system to determine the levels, essentially surrounding the facility.[215] (Tr. at 2481, 2525.) He estimated that for a 100-acre facility such as the Section 11 WWTP, it would take 20-40 monitoring devices to determine the levels from each location, as opposed to the two monitors currently in place. (Tr. at 2482.) Mr. Taylor has not recommended an odor study and believes that JU should perform whatever air monitoring is required by PCAQ. (Tr. at 2536.)

7. PCAQ's Perspective

Mr. Sundblom testified that he has worked with JU representatives over the past couple of years regarding complaints about odors at the Section 11 WWTP, that Mr. Cole has been accessible when he has needed to talk to him, and Mr. Drummond has been accessible to attend meetings with PCAQ. (Tr. at 1456, 1540-41.) Mr. Sundblom emphasized that PCAQ's priority is to solve the H_2S exceedances. (Tr. at 1504-05.) PCAQ does not believe that JU has fixed its H_2S problem, as PCAQ has recorded a number of exceedances during 2018. (Tr. at 1535-36.) PCAQ did not expect entering into the PCAQ OAC to result in perfect compliance right away but expected reductions in the number of exceedances and that JU would ultimately get to full compliance with no exceedances. (Tr. at 1564-65.) According to Mr. Sundblom, PCAQ has not seen a utility experience this many H_2S exceedances in the past, and the exceedances have been an ongoing concern for PCAQ since it began looking at the issue in late December 2015. (Tr. at 1468, 1472.) Mr. Sundblom agreed that the numbers of exceedances are down significantly as a result of actions taken by JU to address H_2S levels. (Tr. at 1574.) Mr. Sundblom would not state that the violations are the result of negligent or willful behavior by JU, instead stating that he believes the violations are the result of a facility that has operational issues.[216] (Tr. at 1503-04, 1528.) Mr. Sundblom acknowledged that PCAQ has received approximately 350 to 400 complaints via email regarding both odors attributed to JU's Section 11 WWTP operations and the number and location of H_2S monitors. (Tr. at 1520-21.) Mr. Sundblom also acknowledged that he has been directed by Pinal County Manager Greg Stanley not to communicate directly with certain residents because of

[215] Mr. Cole regrets that JU did not place 50 monitors to do an air study to determine whether the alleged H_2S emissions were coming from the Section 11 WWTP and instead moved forward under the assumption that JU was producing some H_2S or odor emissions. (Tr. at 3266.)

[216] Mr. Sundblom conceded that no one at PCAQ has expertise in the operation or design of wastewater treatment plants, and that PCAQ's rules do not impose design requirements; rather, he said, the PCAQ rules impose a requirement to meet the air quality limit, and the purpose of the PCAQ OAC monitoring requirement is to verify that the compliance plan is working. (Tr. at 1534-35.)

the accusatory tone of the residents' communications and because PCAQ has already answered many questions and intends to provide further information through its website. (Tr. at 1520-21.)

IV. Assessments of JU's Facilities &/or Operations

A. ADEQ & Westland Resources' Assessment

In February 2018, because of odor complaints, ADEQ retained WestLand Resources, Inc. ("WestLand"), an engineering firm, to assist ADEQ by performing an evaluation of the Section 11 WWTP and the associated collection system, specifically in regard to the processes and equipment JU has been using to control odor and H_2S. (Ex. S-24 at Technical Memorandum ("TM") at 1-2; Tr. at 476-77.) ADEQ personnel and WestLand met to discuss the project on February 23, 2018, and WestLand conducted a site visit of the Section 11 WWTP and collection system facilities on March 2, 2018. (Ex. S-24 at TM at 1.) WestLand found the following:

- The current processes and equipment, and those that are planned, in the collection system for odor and H_2S control are current best management practices;
- For the treatment system, the addition of magnesium hydroxide and ferric chloride to the waste stream before it enters the wetlands, while never seen before and of some concern regarding long-term effects on the wetlands and precipitate buildup therein, appears to be working to reduce odors from the wetlands;
- Also for the treatment system, getting plants back into the second cell of each wetland would help with odor control and add nitrification capacity;
- No operational deficiencies were noted in the collection system;
- Two operational deficiencies were noted in the Section 11 WWTP:
  - Freeboard in the aerated lagoons[217] was at 1 to 1.5 feet, and the recharge basins were full; and
  - The second cell of each wetland lacked plants;
- JU staff seemed forthcoming in all responses, knowledgeable in the operation of the Section 11 WWTP and the collection system, and cognizant of the problems they were facing in

[217] Mr. Smith stated that the aerated lagoons are the first step in the treatment process. (Tr. at 2140.)

each system;

- To address low dissolved oxygen in the aerated lagoons, a study should be done to determine the effect of adding additional aeration to the aerated lagoons (something that the operator stated he was planning to pilot test already); and
- To address recharge capacity that is too low for winter months, until new recharge facilities still in the planning stage are added, an emergency overflow pond should be used as an interim solution to prevent spills and allow proper freeboard for the aerated lagoons.[218]

WestLand also noted that "there was a problem this winter with an additional 400,000 gallons to recharge from the Anthem plant." (Ex. S-24 at TM at 4.)

Mr. Dunaway confirmed that the Westland evaluation went only to odor generation by the Section 11 WWTP and the associated collection system and whether JU was on the right track to resolve its odor issues. (Tr. at 791-92, 799.) It was not intended to be a review of JU's entire wastewater system. (Tr. at 838-39.)

When asked whether he would have a concern for his health and/or safety if he lived in the immediate vicinity of the Section 11 WWTP, Mr. Baggiore stated that he would not; however, he also stated that he would have a "public health and environment concern near any facility" that had SSOs. (Tr. at 714-15.) Mr. Baggiore believes that most wastewater treatment companies need some sort of outside assistance to run their wastewater treatment plants and collection systems. (Tr. at 709.) When asked if JU was "struggling," he stated that JU obviously does have violations and things that they are not doing appropriately. (Tr. at 709-10.) Mr. Baggiore did not take a position on whether JU needed an interim manager. (Tr. at 709.)

Mr. Dunaway agreed that an SSO presents a risk to human health and that JU has an abnormally high frequency of SSOs. (Tr. at 840, 842.) When asked whether JU has trouble staying in compliance with ADEQ's standards, Mr. Dunaway testified that it does, as evidenced by JU's receipt of NOVs, notices of opportunity to correct, and Consent Orders from ADEQ. (Tr. at 842.) Mr. Dunaway stated that ADEQ records show that JU received 18 notices of opportunity to correct and NOVs combined

[218] Ex. S-24 at TM at 2-3.

since 2012, which was more than any other utility under ADEQ's jurisdiction; the next highest number for the same time period was six. (Tr. at 775.) Mr. Dunaway agreed that the high number of NOVs received by JU would be consistent with a pattern of JU not complying with ADEQ requirements until told to do so through an enforcement mechanism. (Tr. at 776-77.) Mr. Dunaway testified that he believes it is prudent for any drinking water or wastewater system to audit itself regularly through the use of third-party companies and agreed that it would be beneficial for JU to have a consultant to aid it in maintaining compliance with ADEQ rules and regulations. (Tr. at 776-77.) However, Mr. Dunaway stated, ADEQ does not have rules that would allow it to take a position on whether an interim manager should be appointed for JU. (Tr. at 830.)

B. Queen Creek's Assessment

JU's CC&N service area abuts and overlaps into Queen Creek from the east, in an area that Queen Creek expects may double in population as Queen Creek itself expects to double in population over the next 20 years. (Tr. at 1161-62; Ex. QC-8 at 2.) Approximately 9,000-10,000 of Queen Creek's residents receive water utility service from Queen Creek and wastewater utility service from JU.[219] (Tr. at 1149-50, 1192, 1277, 1347.) Queen Creek receives complaints from Queen Creek residents regarding JU relatively frequently, in various ways, but does not keep a log of those complaints. (Tr. at 1150-52, 1222, 1251, 1272.) Queen Creek itself is not a JU customer, but has concerns regarding the availability of adequate water supply and pressure because of its mutual aid agreement with Rural Metro Fire Department, under which Queen Creek's fire department assists to provide services to residents in the vicinity of Queen Creek's far eastern boundary. (Tr. at 1150-51, 1193.) Mr. Kross acknowledged that Queen Creek's fire department personnel had not actually complained that there was inadequate water pressure in the area and that Queen Creek's concerns arose as a result of an engineering analysis rather than a particular incident. (Tr. at 1193-94.) Queen Creek has in the past had unsuccessful discussions with George Johnson about trading portions of Queen Creek's service area for portions of JU's service area. (Tr. at 1185-86.) Queen Creek has not had discussions about developing joint facilities to be used by Queen Creek and JU. (Tr. at 1186-87.)

[219] Queen Creek's water service area extends outside of its town limits. (Tr. at 1165-66; Ex. QC-8 at 16.) Queen Creek's town limits encompass approximately 28 square miles, and its water service area is approximately 40 to 45 square miles. (Tr. at 1225.)

In the spring or summer of 2017, Mr. Cole approached Queen Creek Town Council Member Jeff Brown concerning whether Queen Creek intended to acquire JU.[220] (Tr. at 1167-68, 1194, 1212, 3219.) Queen Creek was interested in acquiring the JU systems because JU's location is desirable for the development of a regional consolidated utility system[221] through annexation and because of Queen Creek's concerns related to environmental issues due to the proximity of JU's system to Queen Creek's system as well as concerns about water capacity, overall growth and development, and orderly development within the area.[222] (Tr. at 1150, 1152-53, 1162-64, 1167, 1196-97.) Queen Creek is downstream from JU and is concerned about the impact of JU's SSOs, particularly because of a 2008 SSO within one mile of Queen Creek's border that involved a major spill with flows into the Queen Creek Wash; Queen Creek has a public trail system and a public park adjacent to neighborhoods that are adjacent to the Queen Creek Wash. (Tr. at 1167, 1174-75, 1200.) Queen Creek owns the Queen Creek Wash, although it is considered to be Waters of the U.S. (Tr. at 1309.) Mr. Gardner[223] testified that SSOs that impact the Queen Creek Wash are "very concerning" because the Queen Creek Wash "is the headwaters" for the Queen Creek area, anything that is in the Queen Creek Wash can be carried

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[220] Mr. Cole approached Mr. Brown because he had read an article in the newspaper suggesting to him that Queen Creek might intend to condemn JU. (Tr. at 3219.) Mr. Cole then offered to ask George Johnson if he was interested in selling to Queen Creek. (Tr. at 3219.) This was the second time Queen Creek had been approached about purchasing JU—the first was in mid-2014, when George Johnson approached Queen Creek. (Tr. at 1233-34.)

[221] Mr. Kross suggested that it would be "much more sensible" for JU to be incorporated into the regional wastewater system that is already in place involving Queen Creek, Mesa, and Gilbert, all of which are served by the Greenfield Regional Water Reclamation Plant. (Tr. at 1230-31.) Mr. Kross conceded that JU participates in the 208 planning process and would have obtained authority from the regional planning authority before building its wastewater treatment plants. (Tr. at 1227-29.)

[222] Queen Creek has received requests for consolidated service from residents and from landowners who would like to develop, and JU is an impediment to Queen Creek's ability to provide consolidated service in some areas. (Tr. at 1196-97.)

[223] As Queen Creek's Director of Utilities, Mr. Gardner oversees both the water and sewer systems. (Tr. at 1270.) Mr. Gardner began working for Queen Creek in 2008 when Queen Creek acquired the Queen Creek Water Company, for which Mr. Gardner was the president for more than 20 years. (Tr. at 1235, 1270.) Mr. Gardner has been involved in the lengthy planning processes involved with the Greenfield WRP. (Tr. at 1374-75.) Mr. Gardner has also served as the president of the Water Utility Association of Arizona, as the vice chair of WIFA, and as a member of three water commissions appointed by three different governors. (Tr. at 1270-71.) Mr. Gardner has a team of engineers at Queen Creek and works with at least eight outside engineering companies. (Tr. at 1375.) Queen Creek has never had an SSO. (Tr. at 1294.)

Mr. Gardner testified that he first met George Johnson when Johnson Ranch was started and that early on George Johnson had "many run-ins or violations with both ADEQ and ADWR," which impacted Mr. Gardner because when news coverage referred to a utility in Queen Creek with a violation, Queen Creek Water Company's customers would assume that the problem was with Queen Creek Water Company and would call and ask about it. (Tr. at 1278-79.) Mr. Gardner stated that after approximately two years of that, in approximately 2000, he decided to help George Johnson; that for a few years, he worked for George Johnson, helping him to hire an office manager and an outside manager, with the result being that the NOVs stopped; and that George Johnson let Mr. Gardner go in approximately 2003, after which the NOVs started again. (Tr. at 1278-79.) George Johnson stated that he has known Mr. Gardner "since he had that little system," that "[h]e wasn't doing a very good job," and that he let Mr. Gardner go. (Tr. at 968.) George Johnson added that JU tries to work with everyone and that "they're all good people out there." (Tr. at 968-69.)

downstream, and Queen Creek has a bike path that crisscrosses the Queen Creek Wash. (Tr. at 1274-75.)

To evaluate the potential acquisition of JU, Mr. Kross assembled an internal team that hired consultants to do an in-depth review of JU—one specializing in water and sewer infrastructure engineering to perform an engineering analysis (Carollo Engineers ("Carollo")) and two financial services companies (Willdan and Associates and Pat Walker Consulting, as noted above). (Tr. at 1168-69, 1213, 1238-39, 1902-03.) Mr. Kross served as the primary liaison with JU, primarily George Johnson. (Tr. at 1168-69.) Mr. Kross testified that between September 6 and October 30, 2017, the Queen Creek team had four different meetings with the JU "team" to discuss the acquisition. (Tr. at 1169, 1189.) The JU team included George Johnson, Mr. Drummond, Mr. Cole, Danny Hodges, and Chris Johnson. (Tr. at 1191, 3425.) Mr. Kross testified that George Johnson attended all four meetings and was actively involved in the discussions at the meetings. (Tr. at 1187-89.) Mr. Kross understood George Johnson to be participating as the owner of JU. (Tr. at 1194.) The acquisition would have been a complete asset purchase of JU by Queen Creek. (Tr. at 1209.) Queen Creek completed its "due diligence process" within approximately 90 days, during which time Queen Creek learned of the 2014 Ultra Contract. (Tr. at 1188, 1208.)

According to Mr. Kross, Queen Creek decided not to purchase JU for three primary reasons: (1) the asking price of $150 million was too high,[224] (2) JU's outstanding AIAC obligations of $112 million were too high, and (3) the revenues produced by JU's current rates were not sufficient to cover the substantial infrastructure replacement and upgrade costs necessary to bring JU's systems "to municipal standard."[225] (*See* Tr. at 1170-73, 1197-99, 1852-53.) Queen Creek determined that in light of expenses, the revenues generated by JU's current rates would not be sufficient to cover the annual debt service payments (approximately $15 million) for the acquisition cost of $150 million; the AIAC refunds (estimated at $1 million per year) and the reinvestment needed to bring JU's infrastructure to

[224] Mr. Cole stated that this was a negotiated figure discussed, that no final agreement was reached on price, and that the book value of JU's assets is $256 million. (Tr. at 3219-20, 3262-63.) He stated that a couple of years earlier, when JU was in discussions for Florence to acquire JU, a third-party consultant hired by Florence had evaluated the assets, based on replacement cost new less depreciation, in the range of $300 million plus. (Tr. at 3220.)

[225] Mr. Kross stated that "municipal standards" means "a best practices approach to operating, maintaining, and installing infrastructure for utilities that is common amongst municipalities." (Tr. at 1236.)

"acceptable shape," which were sizable for the size of JU's systems. (Tr. at 1173, 1205-06, 1217, 1942-43.)

However, Queen Creek's team determined that the revenues coming into JU should have provided more than enough money to pay for all employees, to pay for all operations and maintenance, and to complete capital improvements, and that it was "almost unconscionable" that JU spent only $700,000 or $800,000 combined in 2016 on operations and maintenance for water and wastewater when they had $31 million in revenue and $200 million in assets. (Tr. at 1204-05, 1259-60, 1288.) Queen Creek was concerned about the 2014 Ultra Contract, which requires approximately 50 percent of the rates paid by JU customers to flow to Ultra—an "extremely high" amount—and because it was unclear what was being done with the funds because Queen Creek did not find that there had been a lot of reinvestment into JU's system.[226] (Tr. at 1182-83, 1851-52) Queen Creek determined that the issue with JU is not a revenue issue, it's an expenditure issue—specifically the nearly 50 percent of revenues that go straight to Ultra—because JU's revenues are sufficient to pay the bills and reinvest in the system. (Tr. at 1853-54, 1879-80.) Mr. McCarty stated that not only has JU not been reinvesting, but JU also does not have cash on hand.[227] (Tr. at 1881-82.) Mr. McCarty would not go so far as to say that JU is being "financially mismanaged," but said that having half of its revenues leave JU without knowing what is being received in return "is very concerning" and that to the extent JU is not reinvesting in its system, "that's a component of being mismanaged." (Tr. at 1884-85.) Mr. McCarty stated that he did not see that Ultra has an active role in performing services to JU customers; he characterized it as "just a go-between" because it appeared that Hunt employees working for JU "don't seem to have any particular interaction with Ultra." (Tr. at 1888-89.) He conceded that the 2014 Ultra Contract states that Ultra is performing administrative functions. (Tr. at 1889.) With the exception of the portion of revenues that are going to personnel costs (approximately $2-3 million), Queen Creek could not identify the value added by the Ultra and Hunt arrangement. (Tr. at 1261-63.) Queen Creek was never able to ascertain where the $15.5 million from JU went after it went to Ultra, including how

[226] In contrast, approximately 20 percent of Queen Creek's budget is allocated to the operations of its Utilities Department, and approximately 25 percent of its budget is allocated to Utilities capital projects. (*See* Tr. at 1163; Ex. QC-8 at 14.)

[227] This contrasts with Mr. Cole's statement that Hunt will pay for the capital improvements identified in the August 2017 letter to Commissioner Tobin using JU's funds and that JU has cash on hand greater than $5 million but less than $10 million. (Tr. at 3207-08.)

much actually went to Hunt. (Tr. at 1890-91, 1899.) The consultants hired by Queen Creek asked those questions, but JU did not answer them. (Tr. at 1904-05.) The consultants did not review Ultra's books or Hunt's books. (Tr. at 1906.) According to Mr. McCarty, if Queen Creek had purchased JU, Queen Creek would not have continued the current arrangements with Ultra and Hunt. (Tr. at 1925-27.) Queen Creek believed that it could operate the JU system for approximately $8 million per year, leaving approximately $22 million for reinvestment. (Tr. at 1925, 1927-28.) Queen Creek believed that the risks to it, even though it would operate the JU system without any involvement from Ultra and Hunt, were that the JU customers would essentially have to pay for the system twice, and at a $150 million purchase price, the costs to Queen Creek would outweigh any benefits received. (Tr. at 1928-29, 1931-32.) Mr. McCarty stated that Queen Creek performed a "very complicated analysis." (Tr. at 1932-33.)

Mr. McCarty has experience with setting rates for Queen Creek's utilities and also for several other local municipalities over the course of his career. (Tr. at 1882-83.) He opined that JU's rates "should absolutely not be increased" because ratepayers are being required to pay for the system twice already. (Tr. at 1855, 1876, 1891-92, 1915-17.) He also sees JU's rates as a regional issue because they impact the affordability of living and conducting business in the area. (Tr. at 1884.) Mr. McCarty pointed out that JU's pending rate application shows that JU's test year management fees expense for water of $6.8 million, representing the revenues received by Ultra per customer account, comprise more than half of the total operating expenses of $12.3 million and more than half of the total revenues of $11.6 million. (Tr. at 1859-61; Ex. QC-12.) Mr. McCarty noted that additional operating expense items also represent payments to Ultra because the 2014 Ultra Contract allows for reimbursement of legal, accounting, and other operational costs. (Tr. at 1861.) Mr. McCarty stated that with the complex structure of the Johnson-related entities, including JU as "the mother ship" and 10 related companies that provide management services, waste removal services, vehicle and equipment leasing services,[228] and other functions,[229] it is difficult to tell where JU's revenues are going for the other 10 companies,

[228] Mr. Cole stated that Hunt leases its vehicles from Ultra Leasing. (Tr. at 3249-50, 3270.) JU does not lease any vehicles; with the possible exception of one vehicle owned by JU, the vehicles used for JU are leased by Hunt, which then charges Ultra for them as part of Hunt's services. (Tr. at 3275-76.)

[229] Mr. McCarty stated that there are eight in addition to Ultra and Hunt that provide all of the services that JU uses. (Tr. at 1906.) He could not remember their names but stated that they provide office leasing, a transfer station, vehicle leasing,

but very easy to tell for Ultra. (Tr. at 1862, 1874, 1877-78.) Mr. McCarty made a similar analysis for wastewater, with approximately $8.7 million paid in management fees, $18.7 in total operating expenses, and $18.4 in total revenues. (*See* Tr. at 1862-63; Ex. QC-13.) Mr. McCarty stated that under the 2014 Ultra Contract, the amounts paid to Ultra as operating expenses rise as the number of customer accounts increases regardless of whether the increase in customer accounts actually causes an increase in the cost to operate. (Tr. at 1863-64.) Mr. McCarty determined that the 2014 Ultra Contract creates difficulty in managing expenses, in managing rates, and in ensuring that enough cash is reinvested in the system. (Tr. at 1864, 1898-99.) In his opinion, it is clear that JU has not sufficiently reinvested in its system and, thus, its ratepayers are essentially being asked to pay for the system twice. (Tr. at 1864-65.) Mr. McCarty pointed out that the test year expenses for repairs and maintenance ("R&M") were also very low in relation to the amount of depreciation and amortization ("D&A"), with R&M of approximately $308,000 and D&A of approximately $2.1 million for water and R&M of approximately $579,000 and D&A of approximately $4.7 million for wastewater. (*See* Tr. at 1865-67; Ex. QC-12; Ex. QC-13.) In Mr. McCarty's opinion, this amount of R&M may not even represent the bare minimum to repair and maintain the system; he would expect to see R&M of $1 to $1.5 million per year for a utility of JU's size. (Tr. at 1893-94.) Queen Creek did not share its concerns about JU's finances with JU during negotiations. (Tr. at 1895.)

According to Mr. Kross, Carollo's engineering analysis of JU determined that there were a number of deficiencies with respect to virtually all aspects of JU's system and that significant aspects of the system did not meet municipal safety standards. (Tr. at 1175, 1214, 1249-50.) As a result of its due diligence process, Queen Creek concluded that there are "some very pressing issues" caused by deficiencies in JU's water system, that there are maintenance issues, and that there are "general practices" that cause "major concerns." (Tr. at 1249-50.) Mr. Kross testified that Carollo's analysis identified "a number of code issues," a lot having to do with maintenance and some having to do with JU's actual infrastructure. (Tr. at 1255.) Queen Creek did not share its concerns about the systems

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equipment leasing, sludge hauling, etc. (Tr. at 1906-07.) He did not know whether contracts exist but stated that monies flow from JU to all of the related entities in one way or another. (Tr. at 1907.) Queen Creek did not try to quantify all of those payments shown in JU's income statements and did not evaluate whether JU was spending too much or too little for things like leasing property and vehicles. (Tr. at 1908, 1913.)

with JU and did not provide JU with a copy of the Carollo report.[230] (Tr. at 1239, 1250, 1253.) Mr. Kross believes that "JU is aware of" the issues already. (Tr. at 1250.) Queen Creek also did not inform JU why Queen Creek decided not to move forward with the acquisition of JU. (Tr. at 1252.) According to Queen Creek, Carollo found that JU's facilities have not been properly maintained for the past decade and specifically found, *inter alia*, that JU's backup generators for its lift stations had been acquired at the end of their useful lives; that JU's lift stations did not have proper coating, resulting in H_2S eating at them and exposing rebar; that the Anthem WRP, the newest plant in the system, had a metal roof that "look[ed] like Swiss cheese" because it was being eaten away by H_2S (probably because it has insufficient flows for its size); that JU has a catch basin with broken concrete that allows chemicals to overflow and trail off into the soil; and that that some sites were missing booster pumps, which was disconcerting because it could have indicated that JU lacked the money to put them in, that the system could not deliver, or that JU simply neglected to install them. (Tr. at 1283, 1292, 1339-41, 1393.) Queen Creek was also troubled by the size of JU's water wells, most of which are 12 inches in diameter, which Mr. Gardner considers to be "test well" size, in contrast to Queen Creek's wells that are 24

[230] The Carollo report was one of the documents that Queen Creek was prohibited from disclosing under the April 2018 temporary restraining order obtained by JU. (Tr. at 1253.) As of the hearing, Queen Creek had not provided a copy of the report to JU, although the Carollo report includes recommendations of things for JU to do. (Tr. at 1253, 1399.) Mr. Cole took offense at Queen Creek saying that there were issues with JU's facilities when Queen Creek had not provided JU a copy of the Carollo report and had Hunt's engineer, Kathleen Nierva, file a records request for the Carollo report with Queen Creek. (Tr. at 3232.) Mr. Cole did not think about the temporary restraining order when he had Ms. Nierva submit the records request. (Tr. at 3232.) Mr. Gardner indicated that Mr. Drummond and Mr. Cole are doing some of the things that are on the Carollo report's list of recommendations. (Tr. at 1399.) As part of their negotiations toward the acquisition of JU, Queen Creek and JU entered into a confidentiality or nondisclosure agreement. (Tr. at 1313-14.) Mr. Drummond stated that he assumes the Carollo report includes information based upon proprietary information JU provided and that it is his fiduciary duty to JU to protect that information, because disclosure could adversely affect JU's ability to sell its assets or ownership interests in the future. (Tr. at 3427-29, 3509.) Mr. Drummond was willing to review the Carollo report to see if it contained any sensitive or proprietary information but said that Queen Creek had been unwilling to allow that. (Tr. at 3429.) Mr. Drummond was unable to explain how engineering analyses of JU's systems used to provide utility service could be proprietary information, stating that he does not know the scope of the Carollo report; he also stated that he did not think the onus should be on him to justify why he does not want the contents of the Carollo report disclosed when he does not know what is in it. (Tr. at 3431-33.) Mr. Drummond was very surprised when he heard that the Carollo report included negative information because Brad Cole had believed that the Carollo engineers were favorably impressed when they inspected the JU facilities with him. (Tr. at 3432-34.) Mr. Drummond indicated that he was not comfortable with executing a confidentiality agreement or obtaining a protective order to allow the Carollo report to be disclosed to the Commission for its review, without disclosure to the public, because he is currently in a "fight" with Queen Creek regarding its disclosure in spite of their mutual nondisclosure agreement. (Tr. at 3434-35.) Mr. Drummond believes that the nondisclosure agreement trumps any public records law requirements to release documents. (Tr. at 3510.) He also stated that if there were a health and safety issue, JU would be above board and open and transparent about it. (Tr. at 3511.)

inches in diameter and pump more than 2,500 gallons per minute.[231] (Tr. at 1292.) Also, Mr. Gardner believes that some of JU's booster pumps are undersized at 10 horsepower and that JU has a lack of redundancy at its sites. (Tr. at 1293.) Mr. Gardner believes that these issues show a lack of management. (*See* Tr. at 1341.) Mr. Gardner also believes that there are portions of JU's sewer system that present a danger to public health and safety. (Tr. at 1341.) Mr. Gardner acknowledged that JU has begun installing polymer manholes, which are resistant to degradation from H_2S, and agrees with that decision. (Tr. at 1376.) He also acknowledged that JU's collection system uses PVC, which is a desirable way to build a collection system and not outdated technology. (Tr. at 1376.)

Mr. Gardner asserted that "the operation and maintenance that [has] not occurred over the last decade [is] quite alarming." (Tr. at 1283, 1287-88.) For example, Mr. Gardner stated, it appears that JU's storage tanks have not been recoated since they were originally installed, although all but one tank are 10 to 20 years old; he questioned whether they have gone without inspection as well.[232] (*See* Tr. at 1286; Ex. QC-4.) Mr. Gardner stated that in addition, the exteriors of JU's tanks have not been painted, and they appear to be in disrepair, which he believes shows a lack of pride and undercuts people's confidence in the system. (Tr. at 1320.)

One of Queen Creek's major issues with JU's system is that it uses 36 lift stations, each of which Queen Creek considers potentially to be a single point of failure and to require a lot of maintenance, when contrasted with a gravity-fed system such as Queen Creek's system. (Tr. at 1240, 1280-81.) Mr. Gardner testified that the lift station model saves money upfront because the developer puts in the lift station and runs a smaller pipe miles down the road, four feet deep and 8 or 10 inches in diameter, with force mains and no connections from point A to point B at not a lot of cost, resulting in a second- or third-class sewer system, whereas with a gravity-feed system, it is necessary to put the line 18 or 20 feet in the ground and to have manholes approximately every 500 feet. (*See* Tr. at 1342-44.) Mr. Kross acknowledged that lift stations reduce system costs because the overall mainline cost of having larger pipes to allow for gravity feed can be a lot more expensive to run at much greater

[231] Mr. Gardner stated that the Queen Creek Water Company's wells were between 20 and 24 inches in diameter and between 1,000 and 2,000 feet deep; most of them were irrigation wells that were converted to potable wells. (Tr. at 1386.)

[232] In contrast, Queen Creek dives and inspects all of its storage tanks every three years. (Tr. at 1287.) Mr. Gardner conceded that 15 years is a standard interval for recoating storage tanks and that a number of JU's storage tanks are not yet 15 years old. (Tr. at 1384.)

lengths. (Tr. at 1242.) Mr. Gardner opined that under prior management, JU-related entities benefitted from putting in sewer systems that could only be served by lift stations because they were cheaper to build.[233] (Tr. at 1368-69.) Mr. Gardner believes that George Johnson failed to plan on the utility side. (Tr. at 1371-72.) Mr. Gardner credited George Johnson as being something of a visionary in terms of developing housing in the area and said that the systems installed were adequate for the developments created in multiple separate locations, but that George Johnson years ago should have anticipated what would happen in the long-term and should have gone in another direction with the utility infrastructure. (Tr. at 1369-72.) Mr. Gardner stated that while JU's 36 lift stations may be "necessary," lift stations are points of failure that must be equipped with backup power,[234] must be closely monitored all the time, are costly, are easily gummed up, and do not allow for much response time when there is a problem. (Tr. at 1280-81.) According to Mr. Gardner, his first priority when he took over Queen Creek's wastewater system was to eliminate its two lift stations, and the day they were gone was "the happiest day of [his] life." (Tr. at 1280.) Mr. Gardner stated that because of the way JU's systems have been engineered, new lift stations will need to be added every time a new subdivision is added, unless JU converts to a gravity-feed centralized sewer system. (Tr. at 1281.) Mr. Gardner stated that it is important to "maintain these things upstream so that you're not clogging them up" and, further, that in his opinion, there is a direct correlation between the number of JU lift stations and the number of JU SSOs. (Tr. at 1280-81.) Mr. Gardner believes that having as many SSOs as JU does is not consistent with industry standards.[235] (Tr. at 1281-82.)

Mr. Gardner also asserted that the Section 11 WWTP represents "an antiquated way to treat

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[233] George Johnson stated that the wastewater systems were set up as they were because they are "cheaper to build" that way, with the use of lift stations, and that "if you do the right things, which the people are trying to do now," JU "can keep . . . stoppages down to next to nothing." (Tr. at 966-67.)

[234] Mr. Gardner stated that JU's backup generators at its lift stations had been acquired at the end of their useful lives, which did not make him confident that they would operate to prevent SSOs in the event of power failure, which is more common in JU's service area than in the central part of the valley. (Tr. at 1339.)

[235] Mr. Gardner acknowledged that Mr. Drummond and Mr. Cole have installed air relief and pressure vacuum breaker valves, have replaced 1,500 feet of force main, have increased video and jetting activities, and have increased communication with customers and developers, but indicated that he does not know whether they are moving fast enough or whether they have the funds available to do everything that needs to be done to the system. (Tr. at 1349.) Specifically, Mr. Gardner stated that he believes JU needs to do routine maintenance on a regular basis, to replace all of their lift station pumps and even install two pumps at each lift station to provide redundancy, to replace their generators, and update their electrical wiring. (Tr. at 1349-50.) He added that they also need to build a lot more treatment capacity on the wastewater side. (Tr. at 1350-51.)

wastewater" that he "can't believe" is operating. (Tr. at 1330-31.) He said that it can be difficult to control odor with Queen Creek's gravity-feed sewer system and that he "cannot imagine an open environment that covers the amount of area" the Section 11 WWTP does because it does not take much for a wastewater treatment plant's microbiology to be altered by something that comes into it. (Tr. at 1331-32.) He stated that either homes should not be allowed within five miles of the Section 11 WWTP or a different type of plant should be used.[236] (Tr. at 1331-32.) If Mr. Gardner were the owner or manager of JU, his first priority would be to shut down the Section 11 WWTP, send the effluent elsewhere, and "build a real plant"; this was Queen Creek's intention if it acquired JU. (Tr. at 1332.) According to Mr. Gardner, Carollo recommended bypassing and closing down the Section 11 WWTP. (Tr. at 1356.) Mr. Gardner was bemused that the Section 11 WWTP was approved but acknowledged that JU would have participated in the 208 planning process and obtained approval of the location and construction of JU's wastewater treatment plants and collection infrastructure, including its lift stations. (*See* Tr. at 1372-74.) Mr. Gardner also acknowledged that "lift stations have their place" and that he is sure Queen Creek's system someday will have one or more, although Queen Creek will "do everything [it] can to avoid them." (Tr. at 1365.) Mr. Gardner stated that ADEQ's approval of a lift station does not mean that it is best practice, pointing out that ADEQ still uses bulletins that have not been revised since 1978. (*See* Tr. at 1366-67.) Mr. Gardner further stated that according to the EPA, lift stations also generate H_2S gases. (Tr. at 1343, 1367.)

Mr. Gardner testified that Queen Creek was "really optimistic" that it would be "acquiring a robust system" by acquiring JU. (Tr. at 1273.) Queen Creek had hoped that purchasing JU and combining its system with JU's system would allow Queen Creek to save money by avoiding the installation of additional infrastructure it would otherwise need to install to meet growth and would provide redundancy on both sides. (Tr. at 1273-74, 1312-13.) Queen Creek also thought that it made a lot of sense to combine the two from an efficiency and a long-term planning perspective because the costs of improvements could be spread over a much larger customer base. (Tr. at 1347-48.) Queen

[236] Mr. Gardner acknowledged that there is a setback buffer required by law (ADEQ) and added that the buffer surrounding JU's ponds must meet the legal requirements. (Tr. at 1356-57.) He added that with the Greenfield Water Reclamation Plant, everything in the plant is sealed, and there is a very large buffer of 400-600 feet before getting to the road, to help prevent odor issues. (Tr. at 1357.) According to Mr. Gardner, the Greenfield WRP has not had any H_2S violations or notices of opportunity to correct, and it has emitters installed that check for H_2S. (Tr. at 1357-58.)

Creek had hoped to spend only $20 million total to combine the systems, and Mr. Gardner stated that Queen Creek had been led to believe that JU had excess capacity, which it determined was not accurate. (Tr. at 1289, 1314-15.) Through the Carollo analysis, Queen Creek determined that it would need to spend $36 million on water system improvements and $78 million on wastewater system improvements to bring the facilities up to standards (including eliminating most of the lift stations and instead using a gravity-flow system for wastewater) plus another $35 million on water system improvements and $48 million on wastewater improvements to get ahead of the growth expected to occur in the next five to 10 years.[237] (*See* Tr. at 1288-89, 1314-16.) Mr. Gardner opined that based on the amount of money needed to bring JU's system up to Queen Creek's standards, JU's system "has been neglected where what you would call standard operation and maintenance, repair, replacement was not done like you would normally see it in a standard operating utility." (Tr. at 1316.) When asked if that indicated a lack of management capability, Mr. Gardner responded as follows:

> In our view, there was enough money in the utility that even if they had left, out of the [$]15 or $16 million a year they were taking out, just 5 million behind over the prior decade, that we wouldn't be looking at that large of an amount to have to upgrade and to maintain – and to bring it into maintenance. In other words, they could still keep 10 million to do whatever they were going to do with all their service management, whether it was their personnel or whatever else they're doing with the leftover money. But if they left 5 million of that dollars behind just for continual upgrade and improvement, $50 million worth of assets on both sides would have been improved, we think then you're not so far behind the 8 ball. That's what we got out of that.[238]

Mr. Gardner opined that "somebody is making a lot of money off of the management fees" at the expense of the customers because there would have been enough money to complete the maintenance and slight improvements needed over the past 10 years to keep the system in good condition. (*See* Tr. at 1338, 1355-56.) Mr. Gardner is confident that JU's long-term plan is to close down the Section 11 WWTP and replace it with something else. (Tr. at 1344.) But he added that if JU's revenues continue going outside the company, then nothing is going to change. (Tr. at 1344.)

Mr. Gardner described Mr. Drummond and Mr. Cole as "very professional people." (Tr. at

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[237] In assessing expected growth requirements, Queen Creek relied upon growth projections provided by JU. (Tr. at 1353.) The figures for bringing the facilities up to standards were from engineering estimates and, for wastewater, would have included eliminating 31 of JU's 36 lift stations and converting to a gravity-feed system that would flow to the Greenfield WRP. (Tr. at 1385-86.)

[238] Tr. at 1316-17.

1282.) He said that they are "behind the 8 ball" and "doing a lot of work out there" and "doing a great job" and "doing the best they can because they're moving forward." (Tr. at 1284-85, 1287.) Mr. Gardner stated that on the water side, JU is getting a handle on things by constructing the new pipeline to bring in a bunch of wells that should help with water volume and quality. (Tr. at 1348.) However, Mr. Gardner also stated that because JU has a number of wells with water supplies close to the nitrates MCL, JU should manage them better by having those wells run at all times to keep the nitrates level in check, as cycling them on and off exacerbates water quality issues. (Tr. at 1348-49.) Mr. Gardner stated that the customer complaints about discolored or dirty water are signs that additional supply and/or storage is needed because the discoloration or dirt can be caused by failure to maintain pressure that results in water coming back and forth and stirring up sediment in pipes; by failure to properly maintain or flush fire hydrants to eliminate the sediment; or by over-pumping that draws sand out of the bottom of storage tanks, through booster pumps, and to customers.[239] (Tr. at 1291-92, 1321-23.) Mr. Gardner added that complaints of low pressure also indicate that additional supply and/or storage is needed. (Tr. at 1291-92.) Mr. Gardner believes that JU does a "great job" with delivering water from October to April, but has pressures "below industry standards" during summer months and "will have a very difficult time" meeting peak summer demand in July unless it adds new sources of water. (Tr. at 1283.) He added that if JU's largest well were out of service, JU would be "in a negative." (Tr. at 1283, 1291.) Although Mr. Gardner acknowledged that JU was working very hard on installing 7.75 miles of new 16-inch line from east to west to bring in a wellfield, he did not believe that it would be completed in time for summer. (Tr. at 1285-86, 1317-18; Ex. QC-7.) He added that while the water customer counts between JU and Queen Creek are close to the same, JU has less than 10 million gallons of storage, while Queen Creek has 20 million gallons of storage and is adding 6 to 8 million gallons more, and JU's production capacity is slightly under 10 million gallons per day, while Queen Creek's is more than 22 million gallons per day and will soon be 33 million gallons per day. (*See* Tr. at 1287, 1293; Ex. QC-6.) Mr. Gardner believes that JU has not prepared for growth and is "well behind the curve" but "will catch up sometime." (Tr. at 1287.)

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[239] Mr. Gardner acknowledged that discoloration can also be caused on the customer side by customer water softeners or RO systems. (Tr. at 1322.)

When asked if he believes failure to have sufficient storage or production indicates failure of management and/or operations, Mr. Gardner answered as follows:

> Yes. I think that from a management standpoint, you should be updating your water and your wastewater master plans anywhere from every two to three years. And the reason why you get into that is because things change. So if you have a master plan for buildout, you want to look and say, okay, this is what's happening in our area. What do we need to update and change. So that's part of things for planning. But the other thing is just having an operation and maintenance plan for taking care of all your facilities. If you have a scale of 1 to 5 of what a lift station should look like and 5 is pristine, you should never let it get down to 1. That's just a failure of running the operation and maintenance program. It's got to start with the management. It's not the field personnel. They're not the ones making the decisions. They may be reporting it, but it comes from management giving them the dollars to be able to go ahead and maintain these things.
>
> So you have [an] operation and maintenance plan. You have a water and wastewater master plan. You should have – in this day and age, a recharge and recovery plan with your treated effluent. Those are all things that should be part of this whole issue of running a utility today.[240]

When asked whether he believed appointing an interim manager for JU or requiring JU to hire a consultant would help ensure that JU makes necessary infrastructure improvements, such as those needed to be ready for summer peaks, in a more timely manner, Mr. Gardner responded as follows:

> Yes. I think if they had – if the interim manager, whoever it might be, had full control, they could make the decisions knowing what they need to do probably after about 60 days of reviewing what the – how the system is and going forward in a short order of probably a 24-month period, they could have enough of these infrastructure projects in the ground and working on to pull them out of the hole.[241]

One of the reasons Queen Creek was interested in acquiring JU was because Queen Creek expected that there would be economies of scale from the enlargement of its utility operations, as it had

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[240] Tr. at 1323-24. Mr. Cole stated that he believes each JU wastewater treatment plant has a permit from ADWR allowing JU to recharge up to a specified maximum quantity of effluent per year, with the Pecan WRF's being 4,280 acre-feet. (Tr. at 3054-55.) He also stated that JU now provides only effluent to Swing First Golf's course. (Tr. at 3052-53.) He stated that JU has an end-user agreement with a golf course and that its first priority is to supply the golf course with all of the effluent that they need. (Tr. at 3055.) Mr. Cole stated that JU produces too much effluent in the winter and not enough in the summer and that it prioritizes providing effluent to its customers first and then recharging second. (Tr. at 3056.) Because the recharge basins at the Section 11 WWTP could not hold all of the effluent produced and not needed by customers, the freeboard was exceeded in the recharge basins, and JU is now in the permit and public notification phase to create a new 3.5-million-gallon recharge facility at the Section 11 WWTP and in the design process for an additional 15-acre site at Anthem that will also be able to receive Section 11 WWTP effluent. (Tr. at 3056-57.) He believes that both facilities will be constructed by the end of the summer. (Tr. at 3057.) Mr. Cole stated that you can recharge effluent from one AMA in the other AMA, and can send withdrawn water from the Phoenix AMA to the Pinal AMA, but cannot send Pinal AMA withdrawn water to the Phoenix AMA. (Tr. at 3058.) All JU customers are in Pinal County, although its service area falls within both the Phoenix AMA and the Pinal AMA. (Tr. at 3059-60.)

[241] Tr. at 1319-20.

experienced when it acquired Queen Creek Water Company and H_20. (Tr. at 1849-50.) Queen Creek also believes that those acquisitions led to lower and more stable rates for customers. (Tr. at 1850.) Additionally, Queen Creek has been approached by landowners who desire to receive consolidated water and wastewater service from Queen Creek but are unable to do so.[242] (Tr. at 1850.)

Mr. Kross characterized Queen Creek's relationship with JU as "very positive," stating that Queen Creek has "a very solid, professional working relationship" with "Brad Cole, the general manager." (Tr. at 1194-95.) Mr. Kross stated that Queen Creek also has a good relationship with George Johnson. (Tr. at 1195.)

Nonetheless, Queen Creek supports appointment of an interim manager, is willing to serve as the interim manager of JU, and asserts that it could do so without imposing any additional fees on JU's customers. (Tr. at 1176-77, 1244.) If Queen Creek were to become interim manager, it would not use the services of Hunt or Ultra to operate JU, but might conclude that retaining JU's existing personnel would be appropriate long-term. (Tr. at 1208-10, 1258.) Queen Creek has had discussions with Florence regarding a partnership under which the two towns would jointly serve as interim manager. (Tr. at 1244-45.) Queen Creek would have concerns if the Commission wanted to impose, as a condition of appointment, that an interim manager could not consider acquiring JU for a specified period of time and would have concerns if another entity "that does not have a reporting requirement to a local elected group of officials" were appointed as interim manager. (Tr. at 1256.). Queen Creek believes that it could add value to JU's operations, benefiting JU's customers, because Queen Creek can produce water, ensure JU customers have water to meet peak day demand, ensure that effluent reuse is at its highest level and that credits go to the groundwater program, and provide service under current rates. (Tr. at 1857-58.)

C. GHD's Assessment

In March 2018, in anticipation of the hearing in this matter, JU hired Mr. Taylor of GHD[243] as

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[242] George Johnson stated that there is one person whose property is half within JU's service area and half within Queen Creek's service area and who wanted service solely from Queen Creek, in response to which Queen Creek "was pretty hard-nosed." (Tr. at 968.)

[243] Mr. Taylor personally has worked with GHD for approximately six years and, prior to that, in the operation, maintenance, and management of water and wastewater facilities for more than 20 years. (Ex. J-4 at 3.) Between 1994 and 2011, Mr. Taylor worked as Operations Supervisor for American Water Company, as Operations Project Manager for Arizona-American Water Company (now EPCOR), and as Operations Manager for Global Water Resources. (Ex. J-4 at 3-

a consultant to evaluate JU's water production and distribution facilities and wastewater collection and treatment facilities in order to evaluate JU's managerial and technical capabilities. (Ex. J-4 at 9; Tr. at 2328-29, 2390.) Mr. Taylor had never before worked for JU, and George Johnson was not involved in setting the scope of work for Mr. Taylor's evaluation.[244] (Tr. at 2328-29.) For his consulting work, Mr. Taylor is compensated by GHD and not by JU.[245] (Tr. at 2391.)

On March 17 and 18, 2018, Mr. Taylor inspected all four JU wastewater treatment facilities and a representative sample of wastewater collection facilities (including lift stations),[246] water production facilities, and water distribution, storage, and booster stations.[247] (Ex. J-4 at 9; Tr. at 2330-32.) Mr. Taylor also interviewed Hunt employees working for JU, reviewed operation inspection records, audited "many of the programs implemented" by JU, and talked to a couple of JU customers.[248] (Ex. J-4 at 9; Tr. at 2332-33.) Mr. Taylor stated that JU provided him with a substantial amount of information to review in preparation for his inspection, although he did not know if it was a complete record of regulatory compliance actions. (Tr. at 2438-40.) Mr. Taylor compiled his findings into a Utility Assessment Report ("Taylor Report"). (Ex. J-4 at 9; *see* Ex. J-5.) According to Mr. Taylor, the entire process took about three to four weeks, and he had free and unfettered access to JU's facilities.

6.) Mr. Taylor holds the following licenses and certifications: ADEQ Operator Certifications (Wastewater Treatment, Grade 2; Wastewater Collection, Grade 2; Water Treatment, Grade 3; and Water Distribution, Grade 4); California Water Treatment and Distribution Operator Certifications; Texas Water Operator Certification; and a Class A Arizona Contractor's License. (Ex. J-4 at 6.) Mr. Taylor has also held leadership roles with the AZ Water Association's Construction and Safety Committee and the Tri-State Seminar Conference and received the American Water Works Association Operations Supervisor of the Year Award in 2016. (Ex. J-4 at 7.) Mr. Taylor was also selected by the Commission to act as the interim operator for Sabrosa Water Company. (Ex. J-4 at 8.)

Mr. Cole worked for Arizona-American at the same time that Mr. Taylor did, although in separate divisions, and considered Mr. Taylor to have strong technical capabilities; the two have had only a professional and not a social relationship. (Tr. at 2389, 2512, 2534-35, 2772.) Approximately 18 months ago, Mr. Cole contacted Mr. Taylor to offer him a position with Hunt, which Mr. Taylor declined. (Tr. at 2772-73, 3011.) It was during this contact that Mr. Cole learned about Mr. Taylor's employer, GHD, and its capabilities. (Tr. at 2773.)

[244] Mr. Taylor stated that he once saw George Johnson at a meeting at JU, and George Johnson instructed him to follow Mr. Cole and Mr. Drummond's directions and to let him and them know if he needed any additional resources to perform his evaluation. (Tr. at 2328-29.)

[245] Mr. Drummond indicated that JU will seek to recover the costs incurred for retaining GHD's services, to the extent those costs are allowable in rates. (Tr. at 3436.)

[246] Mr. Taylor inspected 16 lift stations, including the incoming lift station for each wastewater treatment plant and the Oasis Sunrise (Mirage) lift station near the Section 11 WWTP. (Ex. J-5 at 4.)

[247] Mr. Taylor inspected 7 water plants and 10 wells, with a sampling from each water system. (Ex. J-5 at 4.)

[248] Mr. Taylor said that a number of the JU customers told him about odor emissions from the Section 11 WWTP, indicating that the odors are unacceptable but had been dramatically improved for the past couple of months. (Tr. at 2345-46.) Subsequently, when Mr. Taylor was asked to which customers he had spoken, he identified only Matt O'Connell and Mr. Dantico. (Tr. at 2404.)

(*See* Tr. at 2333, 2437.) Mr. Taylor's analysis did not include a capacity evaluation of the water system. (Tr. at 2374.) Nor did Mr. Taylor contact ADEQ, ADWR, or PCAQ to ask about JU's current and past compliance issues, instead relying upon information provided by JU. (Tr. at 2394-95.) Nor did Mr. Taylor's evaluation include looking into the financial dealings of JU, such as regarding the Hunt Contract and the 2014 Ultra Contract. (Tr. at 2403-04.) Mr. Taylor agreed that to the extent JU did not provide him with information, he would not have known about it unless it was information that he was able to collect during his inspections; he estimated that 80 percent of his assessment was based on his inspection and 20 percent on information provided by JU. (Tr. at 2407-08, 2411.) Mr. Taylor did not ask for a list of planned capital projects and said that a review of planned capital projects was not within the scope of his work. (Tr. at 2455.)

Based upon his review of JU's facilities and operations, Mr. Taylor formed the opinion that JU "is operating in substantial material compliance with applicable federal, state and county laws and regulations" and is "in no way whatsoever posing any risk to [the] public health and safety." (Ex. J-4 at 9; Tr. at 2335, 2383.) Mr. Taylor believes that a utility can have potential deficiencies and still be operating a facility compliantly and testified that "substantial material compliance" means that JU is not in perfect compliance, but that JU's noncompliance is not actionable from a regulatory perspective. (Tr. at 2443, 2499.) Mr. Taylor's opinion did not change after hearing testimony regarding JU's prior and current regulatory compliance issues, as many of them had been corrected. (Tr. at 2396-97.) Mr. Taylor identified some areas of improvement in his report. (Tr. at 2335.)

In his pre-filed testimony, Mr. Taylor stated his findings as follows:

> • [JU] is actively implementing corrective actions to address concerns raised by regulators and correct [NOVs] and consent orders issued by regulatory agencies.
>
> • Corrective actions implemented to date have improved the service [JU] delivers to its customers.
>
> • [JU] maintains customer interaction tracking systems and account information to allow the utility to respond to customer concerns.
>
> • [JU] maintains adequately trained customer service team members to investigate and address concerns related to billing, quality of service and water quality, in addition to other concerns.
>
> • [JU] shows a commitment to community and public outreach and utilizes its website and social media to perform outreach and public

education.

- [JU] maintains adequate emergency planning and emergency response procedures to communicate with customers.
- [JU] has identified the mission of the organization and continues to develop and implement methods to improve performance.
- [JU] tracks costs to operate the system efficiently and assesses capital improvement needs.
- [JU] tracks and maintains assets to improve the service level to customers and extend asset lifecycles.
- [JU] shows a commitment to improving the level of service provided to customers by leveraging innovations in technology including investments into computerized maintenance management systems.
- [JU] has established programs to reduce or eliminate discharges and [SSOs]. Since implementing additional maintenance and inspection procedures, the Company has dramatically reduced the number of events and continues to seek ways to eliminate [SSOs.] For example, the Company has replaced several sections of sanitary sewer force main lines and has provided protection to assets such as air relief valves in order to prevent discharges related to hit or failed lines.
- [JU] maintains adequate procedures, notification systems, staffing, training and equipment to quickly respond to and correct discharge events.
- [JU] tracks and documents maintenance requirements and maintenance performed.
- [JU] has established operating procedures, inspection procedures, and SCADA systems[249] to verify operations and proactively address operational and maintenance needs.
- [JU] inspects and maintains the collection and distribution systems and maintains drawings and mapping to locate and identify assets.
- [JU] demonstrates pride in ownership by maintaining its facilities in a neat and orderly condition.
- [JU] maintains records so as to satisfy retention requirements and maintain regulatory compliance.
- [JU] maintains the required documentation and programs to meet regulatory requirements, perform proper planning and maintenance of system assets, and to meet financial planning needs for the utility.
- [JU] is adequately staffed and personnel are trained to provide safe and reliable water and wastewater services to its customers.[250]

Mr. Taylor noted that JU "has experienced exceptional growth" and stated that JU thus "has

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[249] SCADA means supervisory control and automated data acquisition systems. (Ex. J-5 at 18.) SCADA systems are used to monitor remote facilities and to notify personnel of failures and emergency conditions; they are computers that are generally programmed to provide alarms at predetermined levels. (Tr. at 2468-70.)

[250] Ex. J-4 at 10-11.

experienced challenges with program development and policy updates," but opined that JU meets regulatory compliance and has the necessary managerial and technical expertise to operate its water system and wastewater system compliantly and safely. (Ex. J-4 at 11-12; Tr. at 2337.) Mr. Taylor also opined that while JU has "experienced some growing pains" and has some "opportunities for improvement," JU is committed to implementing corrective action plans to address identified issues and to improving service to its customers. (Ex. J-4 at 12.) Mr. Taylor stated that JU "poses no safety risk and is operating compliantly with applicable federal, state and county laws and regulations." (Ex. J-4 at 12.) He also stated that it is fair to say that municipalities have operating service levels that may exceed the minimum requirements that regulatory agencies provide. (Tr. at 2346.)

Mr. Taylor stated that he found the lift stations and water production and distribution facilities that he inspected to be "exceptionally well maintained and operating compliantly." (Tr. at 2347.) He did not find what he would describe as "reactionary maintenance" performed only because something had failed. (Tr. at 2349.) Mr. Taylor does not believe that there is a history of a lack of maintenance of JU's facilities, instead asserting that the equipment is operating and maintained within life cycle expectations. (Tr. at 2370-71.) He also did not find a lack of willingness to replace facilities that have reached the end of their useful life, although JU does not replace components unless they need to be replaced, which he asserted is prudent. (Tr. at 2381.) Mr. Taylor initially agreed that if a lift station fails, that means it has not been properly maintained, but subsequently stated that this was not so, because even the best maintained lift station could fail due to power outage or something getting into the lift station that suddenly causes it to fail. (Tr. at 2407, 2411-12, 2511.) Mr. Taylor also agreed that a lift station that is not properly maintained can pose a threat to public health and safety. (Tr. at 2407, 2411-12.) Mr. Taylor does not know whether JU actually follows its operation and maintenance plans, but indicated that to the extent he reviewed the operations and maintenance schedules at the wastewater treatment plants, he found them to be followed and current. (Tr. at 2412, 2516-17.)

Mr. Taylor stated that if he were to learn that JU had not obtained ADEQ approvals needed to install the Thioguard feed system, while that would be an item of noncompliance, he would not view JU as not operating compliantly because he would view it as JU being proactive to reduce the H_2S problem with the Section 11 WWTP. (Tr. at 2449-50.) Also, Mr. Taylor was not confident that the

addition of a chemical feed system would be a "major modification" of the system under JU's APP. (Tr. at 2450-51.)

Mr. Taylor seemed to agree that using gravity flow is preferable to using a lift station, if possible. (*See* Tr. at 2365.) Mr. Taylor stated that lift stations may be necessary in a certain time and place and that the alternative is creating collection systems with depths that create hazards to workers during installation and construction and while performing maintenance. (Tr. at 2347-48.) He added that most municipalities in the Phoenix area use lift stations, including multiple lift station systems networked together to get flow to a centralized or regional wastewater treatment plant. (Tr. at 2348.) He disagreed with Mr. Gardner's assertion that lift stations need to be "baby-sat," stating that there are remote monitoring capabilities that most utilities use for their collection systems and that JU has that type of monitoring on its lift stations to indicate high wet well levels so that emergency personnel can respond. (Tr. at 2364-65.) Mr. Taylor said that with hindsight, it is always possible to identify parts of a system that might be designed differently, but that when "leapfrog development" occurs, and communities branch out, sometimes a piecemeal approach is unavoidable. (Tr. at 2365-66.) Mr. Taylor does not believe that it would have been possible for JU to develop a gravity feed system flowing to a central sewer plant to serve all of JU's service area because development came in stages and phases. (Tr. at 2366.) He also stated that reconstructing the collection system now into a centralized gravity flow system would be a "monumental task" that is unnecessary and that he would not recommend. (Tr. at 2366-67, 2371.) Mr. Taylor asserted that lift stations are an industry-recognized tool that provide safe, clean, and reliable service to their customers when operated and maintained safely, while there is a risk of employee exposure from maintaining, repairing, and operating equipment on a gravity feed system that includes manholes 30 to 50 feet deep. (Tr. at 2371.) He said that the JU lift stations he inspected all appeared to be well maintained, in a manner better than most, and operating normally. (Tr. at 2379.) Regarding backup power at the lift stations, Mr. Taylor stated that there was backup power and, additionally, that JU has mobile generating units that can be used in an emergency. (Tr. at 2367.) He found that the generators were "not pretty" and were approaching the end of their useful lives under normal conditions, but said that they could have "tremendously longer" lives because they are only used for backup. (Tr. at 2380-81.) He added that the lift stations provide additional collection

system capacity during a power outage, which could reduce the likelihood of an SSO. (Tr. at 2367-68.)

Mr. Taylor did not see any evidence that the collection system was not designed properly. (Tr. at 2456.) He said that even a properly designed collection system will overflow if it has a blockage. (Tr. at 2457.) Mr. Taylor also indicated that the polymer manholes that JU is now adding were not available when the facilities were initially installed and that the roof of the Anthem WRP had been replaced. (Tr. at 2379-80, 2382.)

Mr. Taylor did not find any deficiencies in water pressure throughout JU's water distribution system, obtaining readings between 50 and 100 psi, well over the minimum of 20 psi. (Tr. at 2368-69.) He conceded that the March days during which he monitored water pressure were not equivalent to peak summer usage but stated that on those days temperatures were warmer and water usage was higher than is normal for March. (Tr. at 2492-93.) Mr. Taylor also stated that JU's water storage tanks had been inspected within the past year and that while some tanks needed routine maintenance, the tanks' asset life cycle was consistent with their age. (Tr. at 2370.) Mr. Taylor stated that some tanks needed light sediment removal, which was subsequently performed. (Tr. at 2370.)

Mr. Taylor did find that there were booster pumps missing from some sites and, when he inquired as to why, learned that the pumps had failed and been removed for repair, which he did not find unusual. (Tr. at 2372-73.) Mr. Taylor stated that because water systems are designed to maintain redundant components, there were other components that allowed the facilities to remain in service when a booster pump or other component failed. (Tr. at 2373.)

Mr. Taylor did not believe that the diameter of JU's wells was relevant because, he said, wells are designed to meet the capacity that they are able to provide, and drilling a bigger hole does not necessarily result in the production of more water. (Tr. at 2373-74.)

In the Taylor Report, Mr. Taylor made a number of recommendations for things JU should do:

- JU should develop a strategy to optimize efforts, periodically review progress, and make revisions as needed to improve its communications and customer relations plan, to keep it relevant to JU's need to communicate with its customers and promote positive customer relations. (Ex. J-5 at 8 at § 6.2.)

- JU should use a record-keeping system to maintain documentation of the necessary operating permits and licenses it obtains to meet applicable regulatory requirements. (Ex. J-5 at 11 at § 6.3.5.) Mr. Taylor testified that JU has a system, but he recommended formalizing it into a single networked database. (Tr. at 2457-59.)
- JU should monitor and adjust chemicals added to the water and wastewater for disinfection, H_2S reduction, odor control, root control, FOG control, and rodent control, to ensure compliance with regulatory requirements. (Ex. J-5 at 12, § 6.3.11.) Mr. Taylor testified that JU is not noncompliant now, but that industry best management practice is to use an automated system. (Tr. at 2459-60.)
- JU should include in the security portion of its system management plan elements addressing protection of its water production and distribution systems, its wastewater collection and treatment systems, its personnel, and public health and the environment. (Ex. J-5 at 12, § 6.3.13.) Mr. Taylor testified that JU already meets American Water Works Association safety and security recommendations but recommended that JU expand its current plan to meet best management practices. (Tr. at 2460-62.)
- JU should formalize its training programs and improve applicable employee training for safety, operations, and specific hazards of a process, something that JU is in the process of doing, and should require that attendance be taken. (*See* Ex. J-5 at 12, § 6.3.15; Tr. at 2462-63.) Mr. Taylor noted that JU does provide pay incentives for operational staff to obtain additional ADEQ certifications. (Tr. at 2473.) He added that JU, like any utility, should formalize employee development and training programs as well. (Tr. at 2465.)
- JU's personnel performing work system operations should be competent on the basis of appropriate education, training, skills, test requirements, and experience. (Ex. J-5 at 13, § 6.3.17.) Mr. Taylor testified that this was intended to have JU demonstrate that JU verifies that its employees have current and valid ADEQ certifications at the required level when hired. (*See* Tr. at 2465.)
- JU should develop a computerized maintenance management system or maintenance management system with practices to sustain uninterrupted performance, something that he said

JU is in the process of doing. (*See* Ex. J-5 at 14, § 6.4.1; Tr. at 2445-46, 2466.)

- JU should develop procedures to operate, maintain, monitor, and troubleshoot components of the pump/lift stations to assist operators to consistently manage the pump/lift stations and should annually review all communication and operational protocols established to guarantee conformity to equipment and facility upgrades. (Ex. J-5 at 15, § 6.4.2.5.)
- JU should inspect pump/lift stations on a consistent schedule, should consider general site daily inspections/monitoring to guarantee safe operation and security, should ensure that information identified while physically monitoring stations confirms SCADA data, and should document all inspection and monitoring activity as part of its maintenance records. (Ex. J-5 at 15, § 6.4.2.6.) Mr. Taylor described JU's monitoring system and did not identify anything unmonitored that he thought should be monitored but said that because SCADA technology is continuously evolving, there are opportunities for improvements to JU's SCADA systems. (Tr. at 2468-71.)
- JU should maintain all components of each pump/lift station in a manner consistent with the manufacturer's recommendations and should properly plan and perform all repair, rehabilitation, and replacement activities in a safe and efficient manner with minimal disruption to customers. (Ex. J-5 at 15, § 6.4.2.8.)
- JU should maintain an adequate record-keeping system so that compliance with records and reporting requirements can be measured. (Ex. J-5 at 18, § 7.1.) The Taylor Report made specific observations regarding the need for documented procedures for records retention and control; for accepting new, rehabilitated, and/or replaced infrastructure; for changes to the maintenance schedule for any new, repaired, rehabilitated, and/or replaced assets; and for ensuring inspections are performed prior to the expiration of the warranty period for new, repaired, rehabilitated, and/or replaced components. (Ex. J-5 at 19, §§ 7.1.3, 7.1.4, 7.1.4.1, 7.1.4.2.)

Mr. Taylor also opined that there is a tremendous opportunity for JU to improve the automation of its operating and maintenance reports. (Tr. at 2472.)

Mr. Taylor testified that he operated lagoon style wastewater treatment plants early in his career.

(Tr. at 2487.) He stated that some negatives with lagoon style wastewater treatment plants are that they have much larger footprints than other types of plants and cannot handle process upsets that change conditions as well as other types of plants. (Tr. at 2488.) But, he said, excess H_2S is not a problem unique to lagoon style wastewater treatment plants. (Tr. at 2488.) He also stated that the residences surrounding the Section 11 WWTP are much closer to the facility than you would normally see with a wastewater treatment plant. (Tr. at 2528-29.) He agreed that replacing the Section 11 WWTP with an enclosed plant would probably ameliorate that lack of setback. (Tr. at 2536.)

Mr. Taylor was aware of the number of H_2S exceedances recorded near the Section 11 WWTP. (Tr. at 2339.) In his opinion, both the Section 11 WWTP and associated lift stations are sources of the H_2S emanations. (Tr. at 2487.) Based on the information that he had reviewed, Mr. Taylor believed that there had been substantial reductions in the H_2S levels at the Section 11 WWTP and in the surrounding community, which he attributed to the actions taken by JU to address emissions, although he reported that he had received a text from customer Matt O'Connell during the week of May 1, 2018, informing him that odors had gotten worse over the prior week. (Tr. at 2489, 2493-94, 2522.) Mr. Taylor did not know how many odor complaints had been submitted to ADEQ in the first few months of 2018. (Tr. at 2494.) Mr. Taylor believes that JU should perform inspections of the new chemical feed equipment two to three times daily to ensure that the dosage levels and feed rates for the chemicals are maintained correctly. (Tr. at 2491.)

Mr. Taylor does not believe that the number of NOVs JU has received indicate a lack of necessary technical and managerial expertise; he also opined that the NOVs for JU he reviewed were not outside the range of normal operations. (Tr. at 2338-39.) Mr. Taylor stated that he had made a number of visits to the Section 11 WWTP, most recently on April 30, 2018,[251] and that he found the facility to be operating compliantly with no deficiencies and did not find the violations asserted by ADEQ in the April 2018 NOV. (Tr. at 2339, 2501.) When asked whether he found a lack of maintenance and repair at the Section 11 WWTP, Mr. Taylor stated that he found "opportunities for improvement," but not noncompliance. (Tr. at 2341-42.) He stated that ADEQ had also been at the

[251] Mr. Taylor's April 30, 2018, visit was made at 8:00 p.m. and lasted approximately 10 minutes, during which time he performed an inspection through the fence to verify that freeboard requirements were being met. (Tr. at 2521-22.)

Section 11 WWTP on April 30, 2018, and had informed the JU workers there that there were no longer deficiencies (as the freeboard requirements were being met) and had even complemented them on their progress. (Tr. at 2339-40.)

Mr. Taylor agreed that the overflowing of recharge basins and failure to meet freeboard requirements, as described in the January 2018 Inspection Report, could pose health or safety concerns. (Tr. at 2420-22.) Mr. Taylor was unaware that the same type of incident had occurred in 2015. (Tr. at 2423.) He also agreed that the overtopping of freeboard in the aerated lagoons found by ADEQ during its February 23, 2018, inspection could result in a health and safety concern. (Tr. at 2426.) Likewise, Mr. Taylor agreed that a septic condition would present a health and safety concern. (Tr. at 2427.) Based on the January 2018 Inspection Report and the February 23, 2018, Inspection Report, Mr. Taylor agreed that JU appears to have repeated overflow events and violations of the freeboard requirement. (Tr. at 2428, 2527; Ex. S-1; Ex. S-86.) Mr. Taylor stated that both SSOs and unauthorized discharges of effluent can present health and safety concerns because they present the possibility of exposing people to pathogens that could harm public health. (Tr. at 2429, 2430, 2506.) He also stated that he believes a safety concern is raised when freeboard requirements are not met and that JU needs to address maintaining proper freeboard requirements at Section 11 WWTP and operating the Section 11 WWTP compliantly. (Tr. at 2435, 2441.) But, Mr. Taylor added, a number of the unauthorized discharges occurred on the Section 11 WWTP property where only Hunt employees and inspectors would potentially be exposed. (Tr. at 2517-18, 2520.)

Mr. Taylor believes that JU is moving in a very positive direction in terms of reducing its SSOs. (Tr. at 2522.) Mr. Taylor did not believe that JU has underreported its SSOs or unauthorized discharges of effluent. (Tr. at 2359.) He also stated that standard remediation of an SSO involves cleaning, washing down, and disinfecting the area, and that this is what JU does. (Tr. at 2374-76.) Mr. Taylor said that one of JU's opportunities for improvement is in performing a root cause analysis to prevent recurrence of SSOs. (Tr. at 2376.) He cited the flushing of sanitary wipes as a "huge problem" that utilities are encountering as a cause of SSOs, adding that JU is using its website and social media to educate its customers about the issue. (Tr. at 2385-86.) He opined that the number of SSOs JU has experienced is not outside of the norm for a utility of JU's size. (Tr. at 2398.) Mr. Taylor was

concerned that some unauthorized discharges of effluent have been mischaracterized as SSOs. (Tr. at 2399.) Mr. Taylor stated that JU is a utility that is continually improving and reducing its SSOs and that he would not characterize JU's history of SSOs and of not maintaining freeboard requirements as a pattern of noncompliance. (Tr. at 2401, 2502.) He also stated that the overflows of the treatment ponds at the Section 11 WWTP and the failure to meet the required freeboard requirements for the effluent holding ponds at the Section 11 WWTP could be caused by improper operation or by inadequate design, and he did not know to which they should be attributed because his focus was on identifying issues that needed to be corrected and recommending corrective action. (Tr. at 2506-08.) Mr. Taylor did not see anything that raised concerns about JU not properly maintaining, repairing, and upgrading its water and wastewater infrastructure, although, he said, many of JU's water storage tanks could use a coat of paint. (Tr. at 2342.) Mr. Taylor stated that the backup generators at the lift stations were maintained and operating correctly, based on his "superficial inspection," although he did not physically operate any of them and only performed checks to ensure that filters had been changed and maintenance had been performed. (Tr. at 2343.) He stated that the backup generators are scheduled to operate weekly on an auto exercise program, which is consistent with industry standard. (Tr. at 2344.) Mr. Taylor acknowledged that he saw some exposed rebar at one lift station and that this was a concern because there should be planning for how to address the corrosion that caused the rebar exposure, but he said that the repairs would not be a major operation. (Tr. at 2344-45.)

On the water side, Mr. Taylor stated that JU's distribution system flushing is performed by the fire department, which uses a hydrant steamer port to release water, pursuant to an arrangement that allows the fire department to do the flushing and requires it to report to JU any deficiencies identified when the hydrants are operated. (Tr. at 2377, 2531-33.) Mr. Taylor said that using the fire department to do the flushing can go well or not, depending on whether the fire department flushes each hydrant until it is completely clear, because otherwise, sediment gets stirred up within the distribution system and creates water quality issues for customers. (Tr. at 2485-86.) JU water distribution system staff reported to Mr. Taylor that in the past, JU has had a problem with the fire department not flushing until clear. (Tr. at 2486.) Mr. Taylor recommended that JU personnel accompany the fire department in the future when flushing is to occur. (Tr. at 2533.)

Mr. Taylor also stated that JU has an operations and maintenance plan. (Tr. at 2377.) Mr. Taylor found that JU has room for improvement in formalizing and updating some of its operations and maintenance plans and stated that his second contract with GHD is intended to assist with that. (Tr. at 2378.) Mr. Taylor acknowledged that having the exact same flow data reported for three quarters in a row, as described in the April 2018 Section 11 NOV, would be "an exceptionally unusual anomaly" that he has never seen, and that it is probably inaccurate data. (Tr. at 2502-04.) He also acknowledged that if the information JU gave him was incorrect, he would not be able to testify that JU was operating compliantly, although he stated he had no reason to believe the information JU provided him was incorrect. (Tr. at 2505.) Mr. Taylor agreed that if no logbook was present at the Section 11 WWTP, it would be noncompliant, and that a pattern of not having a logbook would be concerning, but he had no recollection of inspecting for that. (Tr. at 2441-42, 2500.)

Mr. Taylor stated that the JU workers demonstrated a genuine desire to improve the service provided to JU's customers and sought feedback from Mr. Taylor about how to do that. (Tr. at 2348.) He also stated that when he worked for American Water, there was a different entity that provided employees for the utility and that when he worked with Global Water, he was an employee of Global Water Management, which provides services to Global Water. (Tr. at 2413-14.)

Mr. Taylor stated that the outcome of his review was not influenced by his prior working relationship with Mr. Cole, that neither Mr. Cole nor anyone at JU had asked him to modify his findings in any way or not to report anything that he found, that he had not been limited in his ability to investigate and obtain information, and that he had been encouraged to make sure he brought anything that he found to their attention so that it could be addressed. (Tr. at 2512-13, 2523.) Mr. Taylor also stated the following:

> I do understand that this utility has demonstrated some problems and challenges in the past. I performed a very detailed inspection of the assets and representative sampling of the system. I found the equipment to be exceptionally well maintained, and identified several issues at Section 11 that were being proactively addressed.[252]

Mr. Taylor expressed confidence in JU's current management's ability to complete the necessary improvements and upgrades to operate in a fully compliant manner and asserted that JU has the

[252] Tr. at 2513-14.

technical ability and managerial staff to operate the facility compliantly. (Tr. at 2514.) Mr. Taylor also found that JU was willing to expend the necessary resources, including capital, needed to address issues, citing JU's addition of monitoring systems for the collection system to reduce SSOs, of equipment designed to reduce H_2S emissions from lift stations, and of Thioguard treatment at the Section 11 WWTP. (Tr. at 2514-15.) Mr. Taylor stated that he did not leave out of his report any deficiency that he identified, but acknowledged that "other things have come to light, such as the meter issue, that weren't addressed in the report." (Tr. at 2530.)

Mr. Taylor does not believe that JU is a candidate for an interim manager, which he said should only be used as a last resort for a utility that has been abandoned or that is nonoperational.[253] (Tr. at 2349.)

V. Customer Issues

A. Comments, Complaints, & Inquiries Received by Commission

As set forth in Section I, the Commission received approximately 184 customer comments regarding JU, all negative, during its six public comment sessions held in San Tan Valley in February 2018 for the Pending Rate Docket.

Personnel from Staff's Consumer Services Section ("Consumer Services") attended all six of the public comment sessions that the Commission held for JU customers on February 20 and 21, 2018, and estimated that approximately 600 people attended the public comment sessions altogether.[254] (Ex. S-73 at 5; Tr. at 1965, 2064-65.) After the public comment sessions, Staff issued data requests to JU requesting all billing information and complaints associated with 44 named customers who spoke at the public comment sessions. (Ex. S-73 at 5; Ex. S-15(a) and (b); Tr. at 1974-76, 2007.) Staff's requests focused on customers who had asserted that JU told them that their property must have a water leak or that someone must have stolen water from their property. (*See* Ex. S-15; Tr. at 2007.) JU

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[253] Mr. Taylor has served as an interim manager, for Sabrosa Water Company, which had been abandoned and was out of water and not providing service. (Tr. at 2349-50.)

[254] According to Ms. Walczak, Consumer Services personnel were not of the opinion that there was a conspiracy of any kind that motivated the customers to attend. (Tr. at 2065-66.) Ms. Walczak did opine that JU's customers may have started looking at their bills more closely during the summer of 2017 and that this could help explain the increase in complaints to the Commission and the attendance at the public comment sessions. (Tr. at 2071-72.) Ms. Walczak stated that in her experience, the customers who attend public comment sessions are the unhappy customers, not the happy customers. (Tr. at 2104.)

provided extensive data for each customer identified in the data requests. (*See* Tr. at 2009; Ex. S-15(a); Ex. S-15(b).) Ms. Walczak reviewed the information provided by JU in response to Staff's data requests and evaluated JU's responses but did not contact the customers. (Tr. at 2010-11.) Ms. Walczak was pleasantly surprised by JU's responses because so much had been done, and Consumer Services has not previously received that much information even in response to informal complaints, which these customers' comments were not. (Tr. at 2011-13.) In Ms. Walczak's opinion, JU's responses show that JU has responded to the customers. (Tr. at 2012-13.)

Staff also contacted or attempted to contact 277 individuals who filled out speaker slips for the public comment sessions, many of whom had not chosen to speak, to inquire whether the individuals were interested in becoming intervenors or witnesses in this matter. (Ex. S-73 at 5; Tr. at 1968-69, 2001-02, 2104-05, 2064, 2085, 2104-05.) When Staff contacted each individual, Staff used a script advising that the individual's comments had been provided in the Pending Rate Docket and that there was a separate investigation docket in which the individual could intervene or testify as a witness. (Tr. at 2108-09.) Consumer Services also assisted customers with submitting informal complaints if the customers indicated that they wanted to do so. (Tr. at 2002-03.) Ms. Walczak testified that Staff had been directed to assist customers that desired to submit something to or intervene in this docket, or to have exhibits copied, by making filings and copies on behalf of the customers. (Tr. at 2108.)

During the public comment portion of the Open Meeting on March 16, 2018, regarding this matter, five customers spoke in opposition to JU. During the public comment portion of the Open Meeting for this matter that commenced on March 29, 2018, the Commission received comment from five customers, four of whom opposed JU and one of whom supported JU. As of June 8, 2018, the Commission has also received approximately 69 written public comment filings regarding this matter, two of them positive toward JU and the rest negative, as well as a copy of a petition to the Pinal County Board of Supervisors that includes more than 2,000 names and is fairly characterized as negative.[255]. On the first day of the evidentiary hearing in this matter, the Commission received eight comments from JU customers, four in support of JU and four opposed to JU. (*See* Tr. at 82-104.) One of the JU-

[255] The petition appears to ask for a referendum to be placed on the next ballot to allow voters to decide whether JU should change the Section 11 WWTP to an enclosed system and eliminate its lift stations in order to control odors.

supportive customers described JU's supportive customers as the "silent majority." (Tr. at 86.)

Ms. Walczak reported that Consumer Services received the following numbers of informal complaints against JU and against other Class A utilities in 2016, 2017, and 2018 (through April 6, 2018):[256]

	2016	2017	2018 (through 4/6/18)
JU	56	362	54
Arizona Water Company	43	35	6
EPCOR	33	52	17
Liberty Utilities (Litchfield Park Water & Sewer)	0	3	1

According to Ms. Walczak, JU is the smallest utility on this list. (Tr. at 2110.) She agreed that nothing jumped out about the number of complaints received about JU in 2016. (Tr. at 1995-96.)

Ms. Walczak's testimony shows that JU received a total of 530 complaints[257] from January 1, 2015, through April 6, 2018. (Ex. S-73 at 3.) Consumer Services broke those complaints down by category as follows:[258]

Type of Complaint	2015	2016	2017	2018 (through 4/6/18)	Total by Type
High or disputed bills	16	24	280	10	**330**
Quality of service	64	21	63	6	**154**
Disconnect notices and service termination	12	11	16	2	**41**

[256] Ex. S-73 at 2-3. Informal complaints originate with a call, email, web submission, or letter from a customer to Consumer Services; are followed by Consumer Services issuing the complaint to the utility with a requirement that the utility respond to the customer and Consumer Services within five days. (Tr. at 1990-91.) After receiving the utility's response, Consumer Services may ask the utility to provide additional information, based on its own review of the response or customer input, and ultimately hopes to get all of the customer's questions answered so that the complaint can be closed. (Tr. at 1991-93.) Consumer Services may ask a utility to consider actions the utility could take as a courtesy to a complaining customer, such as a one-time bill adjustment. (Tr. at 2015-16.) Not all complaints are resolved in the manner that the customer sought; sometimes, the issue is with the customer, and the resolution may be to explain the situation and applicable laws rather than to provide what the customer wanted. (Tr. at 1993.) If an informal complaint remains open, it is because Consumer Services is waiting for something. (Tr. at 1993.) The next step for a dissatisfied customer would be to go through mediation with Consumer Services, which can be followed by a formal complaint if the mediation does not resolve the customer's issues to the customer's satisfaction. (Tr. at 1994.) Customer input provided on a particular case or investigation would be filed as a "comment" in the pertinent docket and would not be counted as a complaint, even though it might include griping. (Tr. at 2062-63.)

[257] Although Ms. Walczak's testimony stated that there were 566 complaints during this time period, the broken down complaints add up to 530, not 566, and it is unclear what caused this discrepancy. (*See* Ex. S-73 at 2-4.)

[258] Ex. S-73 at 4.

Customer deposit refunds	2	0	3	0	**5**
Total By Year	**94**	**56**	**362**	**18**	

Ms. Walczak testified that based on Staff's investigation of complaints stemming from billing disputes, specifically allegations of over-billing from June through August 2017, Staff believes that the increased number of complaints resulted largely from increases in JU's CAGRD Adjustor, which significantly increased bills with normal levels of usage. (Ex. S-73 at 6; Tr. at 1985, 1996.) Ms. Walczak stated that Consumer Services also received a number of complaints about bills spiking and then going down, from customers who said that JU told them that they must have leaks or were having their water stolen. (Tr. at 1997.) Mr. Billingsly reported that since he became Florence Town Manager in 2015, Florence has pretty consistently received complaints regarding JU's services, primarily concerning billing, with an uptick in complaints in 2017 and 2018. (Tr. at 1801, 1832.) Based on his conversations with some complaining customers, Mr. Billingsly also believed that many of the billing complaints had to do with the CAGRD Adjustor fees. (Tr. at 1833-34.)

Ms. Walczak agreed that complaints about JU were trending higher for 2018 but did not have an opinion as to why that would be. (Tr. at 2001.) She agreed that complaints can be higher when a company has a rate case pending, but also stated that those customer contacts are generally categorized as opinions rather than informal complaints. (Tr. at 2003-04.) Ms. Walczak stated that JU did not have a significant number of complaints open as of her testimony on April 27, 2018. (Tr. at 2004-05.) She was aware of one open longer standing informal complaint that involves a customer who refuses to pay his bill due to a prior bill that showed a late charge and JU's inability to generate a corrected bill. (Tr. at 2005-07.)

As to quality of service, Staff determined that a number of the complaints were from customers alleging that they experienced long hold times when calling JU, were disconnected after long hold times, did not have their calls to JU answered, were subjected to rude or confrontational attitudes from JU workers, or received inaccurate information from JU. (Ex. S-73 at 6; Tr. at 1971-72.) Ms. Walczak testified that there is not a Commission standard for hold times and that the Commission does not track utilities' hold times in any way, just the numbers of complaints Consumer Services receives on the issue. (Tr. at 2059.) Ms. Walczak also indicated that the 63 complaints about quality of service

received in 2017 suggest that JU needs assistance in improving its customer service. (*See* Tr. at 2114-15, 2119-20.) Ms. Walczak stated that when Staff contacts JU regarding a quality of service complaint, JU resolves the dispute and issues an apology. (Ex. S-73 at 7.) Staff stated that customer complaints regarding disconnection notices and terminations largely involved customer complaints about JU's billing system from customers who had made payments before bills were due but still received disconnection notices because JU did not process the payments until after the bills were due. (Ex. S-73 at 7.)

In addition to the above informal complaints, in 2016 and 2017, Consumer Services received a total of 129 inquiries about JU that were related to ADEQ issues—22 in 2016 and 107 in 2017. (Ex. S-73 at 3, 6.) Ms. Walczak stated that these would have been sewer-related and that the number for 2017 was not typical and indicates that there was an issue. (Tr. at 2093-96, 2098.) Ms. Walczak stated that when Consumer Services receives one of these calls, it contacts the utility to find out what is happening, contacts Staff engineers to see what they know, and refers the calling customer to ADEQ. (Tr. at 2096-97, 2099-2100.) If additional calls come in on the same issue, Consumer Services contacts ADEQ because ADEQ should have more information. (Tr. at 2096-97, 2099-2100.) Consumer Services shares with calling customers any information that it has obtained. (Tr. at 2099.) Ms. Walczak stated that JU is not the only utility about which Consumer Services receives inquiries about odor issues; Consumer Services has received many odor-related inquiries about other utilities as well. (*See* Tr. at 2097.) Consumer Services does not report odor inquiries to PCAQ. (Tr. at 2100.)

Consumer Services also reported that it has received calls from anonymous callers who identify as JU customers and express concerns about JU retaliating against them if JU finds out that they have complained to the Commission. (Ex. S-73 at 3, 6; Tr. at 1985-86.) Anonymous calls are considered to be "inquiries" rather than complaints and are not provided to JU because JU cannot investigate them without customer data. (*See* Tr. at 1985-86, 2061-62.) At the ALJ's request, Staff provided an LFE with "copies of all inquiries received by the Commission from [JU] customers who requested to remain anonymous," including five anonymous inquiries received between March 8, 2017, and April 5, 2018, concerning suspicion of bills with higher than normal usage, displeasure with political content included in bills and on the JU newsletter, suspicion that meters are not read and that any readings taken are

rounded up, conviction that the water is unsafe for children, displeasure that the standpipe was out of order when visited, and concern that George Johnson is still managing JU because he goes to the office daily. (Staff LFE-1.) Ms. Walczak testified that JU has sued customers for defamation in the past, although she provided no details about those lawsuits in her testimony.[259] (Ex. S-73 at 6.)

Ms. Walczak stated that she has had a "good experience" interacting with JU personnel over the years—she is able to reach the right person at JU relatively easily, gets a call back when necessary, receives assurances that issues she raises will be handled, and finds that "things get taken care of." (Tr. at 1989-90.) Ms. Walczak stated that she primarily works with Mr. Cole and that other Consumer Services personnel work more with Ms. Poulin than she does. (Tr. at 1989-90.)

B. Specific Customers' Concerns

During their testimony in this matter, JU customers Mr. Miller, Mr. Leach, Mr. Adamczyk, Mr. Melesio, Ms. Bennett, Mr. Grafft, Ms. Mays, and Ms. Labranche, described their own experiences with JU, which focused on high-usage bills, sewage odors, SSOs, quality of water, difficulties encountered when trying to reach JU representatives by phone, and perceived rudeness from JU representatives.

1. Jerod Miller

Mr. Miller, whose wife is listed as the customer on the water and wastewater bills for their home in San Tan Valley, testified that he believes there is something wrong with the water metering at their current home because it is not possible for them to have used as much water as is shown on their bills. (Tr. at 141, 147.) Mr. Miller questioned how his family's usage could be as high as the level shown on some of the bills (54,000 to 74,000 gallons) when the pool at their new home is smaller than at their old home, where he said their highest bill was only $111.[260] (Tr. at 154-57.) The Millers have contacted JU with their concerns. (Tr. at 147.) Mr. Miller testified that JU personnel suggested that the Millers might have a leak at their home, possibly in their swimming pool or irrigation system, or that someone could be stealing water from them. (Tr. at 147-48.) Mr. Miller, who owns a pool servicing company, stated that leaks in a pool can be detected through the pool's chemistry, and were not detected in his pool, and that he also had a landscaping company and plumber check for leaks, with

[259] Mr. Cole indicated that the lawsuits were against customers who had made false accusations against JU. (Tr. at 3014-15.)

[260] Mr. Miller reported that Queen Creek provided the water service for his family's former home. (Tr. at 173.)

no problems found. (Tr. at 148-49, 175, 209-10.) He pointed out that usage of 74,000 gallons would have filled his family's swimming pool four times and said that leaks resulting in that level of water usage would cause standing water or sinkholes. (Tr. at 149, 176-77, 209.) Mr. Miller acknowledged that his family's current home has a 0.54-acre lot, which is much larger than the lot for his former home, and that the home itself is also larger, but stated that it has the same number of bathrooms. (Tr. at 175, 179, *See* Ex. J-40.) Mr. Miller also acknowledged that his yard has grass in both the front and back yards,[261] that he and his wife have six kids, and that the family does a lot of laundry. (Tr. at 178, 198.) Mr. Miller further reported that the former occupant of their current house also had high water bills that he believed not to be accurate; Mr. Miller believed that the former occupant's meter was tested and failed. (Tr. at 181-82, 192.)

Mr. Miller stated that since he spoke at one of the February 2018 public comment sessions, JU has contacted him and sent out a worker who pulled data from his meter system. (Tr. at 159-60.) Mr. Miller reported that he has not received a copy of that data, although he requested it, and recalled that the technician showed him multiple dates where 500 gallons of water were used at around 11:23 p.m., which he said was probably about right.[262] (Tr. at 197-98.) He added that his sprinkler system runs at night. (Tr. at 218.) Mr. Miller also stated that JU has offered to test his meter, but that he has declined because he considers the meter to be proof of what happened; does not trust JU to submit the actual meter for testing; and believes that the meter is working properly now that he is monitoring it regularly and receiving lower consumption bills. (*See* Tr. at 162-64, 191, 200, 202, 207, 222-23.) Mr. Miller expressed distrust of JU based on the sewage spills observed from his prior home and questions JU's competence. (Tr. at 222.) Mr. Miller disputed portions of JU's consumer services representative notes about prior contacts with his wife, although he acknowledged that he has never asked her specifically whether JU personnel have reviewed usage data with her, and also denied that he had received a meter test authorization form from JU via email. (Tr at 187-90, 199.)

Additionally, Mr. Miller presented a video, taken when his family lived in their prior home in

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[261] Pinal County records show that the Miller's home is 3,634 square feet located on 0.54 acres. (Ex. J-40.) An aerial photograph of the Miller's home shows dark green grass in both the front and back. (Ex. J-40.)

[262] JU's logs of consumption at the Millers' home from February 21 through March 28, 2018, show total consumption of 15,827.97 gallons and that on March 22, 24, 25, and 27, 2018, consumption spiked during the 11:00 p.m. hour into the range of 527.67 to 547.77 gallons. (Ex. J-39.)

the Pecan Creek North area of San Tan Valley, near the Queen Creek Wash and JU's nearby wastewater treatment plant, to which his yard backed up. (Tr. at 149-50.) Mr. Miller stated that on June 6, 2016,[263] he went out the front door of that house to find a "river" of sewage running next to his house, apparently from a manhole that was "spraying" sewage. (Tr. at 149-51, 171.) Mr. Miller stated that the sewer water ran for approximately 20 to 30 minutes, leaving toilet paper and excrement all over the ground all the way down to the Queen Creek Wash, into which the sewer water flowed. (Tr. at 151, 206.) Mr. Miller stated that he reported the situation to JU, who responded quickly (within an hour to an hour and a half) by sending a large water truck to flush the area and personnel to clean up the debris. (Tr. at 152.) Mr. Miller reported that the personnel used calcium hypochlorite, a powdered form of chlorine, on the ground to disinfect the area, which concerned him because children play in the area, and he does not consider it safe for children to be exposed to the chlorine powder.[264] (Tr. at 152-53, 212-14.) Mr. Miller stated that none of the contaminated soil was removed after the spill. (Tr. at 207.) Mr. Miller testified that similar sewage overflows occurred two or three more times while his family lived in that house. (*See* Tr. at 166-67.) He further reported that his family frequently experienced foul odors from the nearby wastewater treatment plant when living in that home. (See, e.g., Tr. at 172.)

JU's records for the Millers' current home show that the account was opened on June 23, 2017; that a JU CSR reviewed usage with the customer during a call to make payment on November 7, 2017; and that Mrs. Miller called to pay the bill on December 12, 2017, and told the CSR that she knew the usage was high. (Ex. J-39.) JU's records also show that an informal complaint for Mr. Miller was submitted to JU on February 26, 2018, and that JU responded with a letter to Consumer Services on March 21, 2018, describing the 2017 contacts and additional contacts made by JU on March 15, 20, and 21, 2018, regarding high usage concerns. (Ex. J-39.) Mr. Miller acknowledged the contact on March 15 and the visit from a JU technician, but did not recall some of the information allegedly

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[263] Two SSOs were reported to have occurred on June 5, 2016. (*See* Exhibit B hereto.) JU's records show that Mr. Miller contacted JU on June 7, 2016, asking when JU was going to clean up the spill on the side of his house. (Ex. J-39.) The Millers' prior home was located on Harold Drive, which is mentioned as a cross street for two separate SSOs in Exhibit B. (*See id.*)

[264] Mr. Baggiore testified that chlorination is used to disinfect when there has been an SSO and that ADEQ does not and cannot legally require that earth be removed, although there are times when they would like for that to be done by JU. (Tr. at 688-90.) Mr. Baggiore added that when discharges occur to waters of the U.S., it is not possible to just dig up the dirt, as there are permitting requirements through the Corps of Engineers. (Tr. at 690.) It is Mr. Baggiore's understanding that sewage is not considered to be "hazardous waste." (Tr. at 690.)

discussed during the contacts with JU or having received an emailed meter test form. (Tr. at 190-99.) Ms. Poulin testified that the Millers have not contacted JU since JU emailed the Millers a meter test form on March 21, 2018, after speaking to Mr. Miller about the findings from the work order. (Tr. at 2666-67; Ex. J-39.)

The Millers' bills dated August 5, 2017, through January 5, 2018, show monthly usage between 30,000 and 74,000 gallons, while the bills dated February 5 through April 5, 2018, show monthly usage between 7,000 and 11,000 gallons. (Ex. J-58.) JU's records also show that at their prior home, between December 8, 2015, and June 23, 2017, the Millers had monthly usage that ranged between 6,000 and 56,000 gallons, with usage at or above 30,000 gallons 7 times. (Ex. J-39.) Further, JU's records show that the previous customer who lived in the Millers' current home between December 2015 and June 2017, had monthly usage ranging from 5,000 gallons to 56,000 gallons, with usage at or exceeding 49,000 gallons five times. (Ex. J-40.)

Ms. Walczak opined that because it has a swimming pool and a substantial amount of grass in the front and back yards, would use more water than a house without those features. (Tr. at 2052-53.)

2. Ted Leach

Mr. Leach testified that he has lived in central California, northern Idaho, and South Dakota and owned his own well while in northern Idaho. (Tr. at 230.) At his current home, Mr. Leach uses a filtration system that takes his water through a 5 micron filter and a 1 micron filter before it goes through a water softener and then into the house. (Tr. at 232-35; Ex. S-75.) Mr. Leach stated that he installed the system as soon as he could because his realtor had advised him that the water was very hard and kind of dirty, and he "hated the taste of the water" when it was unfiltered. (Tr. at 234, 273.) Mr. Leach also installed an RO system at his kitchen sink. (Tr. at 235.) Mr. Leach stated that the filters are white when new, and he provided a photo of a 5 micron filter that had turned "absolutely brown," as an example of how dirty the first filter in his system gets between changes, which Mr. Leach does approximately every six months as recommended by the manufacturer. (Tr. at 232-33, 236, 242, 250; Ex. S-75.) Mr. Leach stated that according to people in the water filtration industry to whom he has spoken, the filter should not get that brown. (Tr. at 250.) Mr. Leach offered to let ADEQ test the water coming into the first filter canister to determine what is causing the filter to turn brown, but ADEQ has

not done so and, Mr. Leach said, told him that the color is caused by "biologics." (Tr. at 242, 251.) Mr. Leach brought a dirty filter to one of the public comment sessions in February 2018 and offered to give it to Staff or ADEQ, but neither of the people to whom he offered it chose to take it. (Tr. at 250-51.) Mr. Leach believes that the water supplied by JU presents a health risk. (Tr. at 243.) Mr. Leach agreed that the hardness of the water in San Tan Valley is naturally occurring but stated that he believes JU should control it better, such as by releasing water through fire hydrants, as JU did in December 2013 after Mr. Leach called to inquire about the level of hardness in his water. (Tr. at 252, 254-55, 265-69.) Mr. Leach stated that the water operations manager who came to his house was a "very nice person" who explained how the hardness of water travels and stayed while Mr. Leach tested his water after the hydrant was flushed, at which time the hardness had dropped dramatically. (Tr. at 266-67.)

Mr. Leach called JU about low water pressure in July 2017, during a period when JU had taken a well off-line due to nitrates, and again about low pressure in August 2017, when he requested a credit because he said the low water pressure was causing him to use more water through his sprinklers. (Tr. at 269-70.) Mr. Leach stated that the CSR was courteous but did not understand the problem with the operation of the sprinklers and also denied the requested credit. (Tr. at 270.) Mr. Leach also called on November 1, 2017, about a disconnection notice that he believed he should not have received because his payment was made just before or on the due date, although it was processed after the due date. (Tr. at 270-71.) He acknowledged that he should have submitted his payment a day or two sooner. (Tr. at 271.)

Mr. Leach described his bills as 'pretty good" and "cyclical" until January 2018, when his usage "spiked" to 10,000 gallons, only to fall to 6,000 gallons for February 2018, which he found inexplicable. (Tr. at 233-34.) Mr. Leach's billing history from March 2016 through March 2018 shows monthly usage ranging from 6,000 gallons (occurring once in February 2018) to 16,000 gallons (occurring once in July 2016), with an average of 9,400 gallons. (*See* Ex. S-75.)

Mr. Leach also stated that he complained to JU twice, approximately four years ago, about its payment software, which he said incorrectly populates the customer street address into the state field on one screen, but the problem still exists. (Tr. at 230-31.) Mr. Leach stated that JU's inability to "fix something as simple as that" makes him lack confidence in their ability to fix things. (Tr. at 263.)

3. Donaven Adamczyk

Mr. Adamczyk testified that he received a bill from JU on April 25, 2017, for $257.27, including sewer service and 29,000 gallons of water usage. (Tr. at 293.) Mr. Adamczyk stated that because his average bill showed usage of approximately 8,000 gallons per month, he contacted JU and spoke to a CSR who acknowledged that the usage was "really high"; told him that he likely had a water leak or had someone stealing his water; explained to him how to test his toilets for leaking; and, further, told him that he had used more than 5,000 gallons in five days. (Tr. at 293-94, 297, 298-99.) Mr. Adamczyk had a plumber inspect his home for leaks, finding none, and also had a JU technician inspect his home, also finding none. (Tr. at 294.) Mr. Adamczyk testified that the JU technician told him that the CSR had given him erroneous information about usage because he had only used 2,000 gallons since the last reading, and CSRs cannot see usage. (Tr. at 294-95.) This prompted Mr. Adamczyk to make a complaint to the Commission, which resulted in JU determining that his bill was valid. (Tr. at 295.) Mr. Adamczyk also testified that the JU CSR had told him that she could print a statement showing his daily usage and send it to him, but then called a day or two later and stated that JU would not do that.[265] (Tr. at 295.) JU also offered to have his meter tested, but Mr. Adamczyk declined because the JU technician stated that the meter appeared to be working correctly after he had conducted the five-gallon test and he and Mr. Adamczyk had observed that the meter had no movement thereafter. (Tr. at 299-300, 325.) Mr. Adamczyk reported that he has not had another bill with such high usage since the April 2017 bill. (Tr. at 301.) He also reported that every JU representative with whom he has spoken has been "really, really helpful" and "understanding" and "wanted to do what they could to try and help with the situation." (Tr. at 306.)

Mr. Adamczyk further reported that before moving to his current home in San Tan Heights, he lived in Anthem in Florence for approximately eight years, during which he received service from JU without "any real issues."[266] (Tr. at 295-96, 304.) Mr. Adamczyk reported that his current home is 2,930 square feet, has three bathrooms, is on a lot of 0.14 acres, has a front yard with "pretty much

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[265] JU's customer service records show that the JU customer service representative informed Mr. Adamczyk on June 1, 2017, that a data log for his meter could not be provided because his meter has an older MXU. (Ex. J-53.)

[266] Mr. Adamczyk testified that his Anthem home was 1,867 square feet in size, with a yard of 0.14 acres that included approximately 1,400 square feet of grass. (Tr. at 309.)

desert landscaping" and a back yard with a "relatively small patch of grass" that was dormant and not being watered in April 2017, and does not have a swimming pool. (Tr. at 296, 297, 309-10.) He also stated that he has a drip irrigation system, for which he checked every portion of the line himself, finding no leaks. (Tr. at 296-97.) Mr. Adamczyk believes that there would be no way for 29,000 gallons of water to leak at his home undetected and that it would be very difficult for someone to steal that quantity of water without being noticed. (Tr. at 297.)

JU's customer service records show that Mr. Adamczyk's account for his Anthem home was opened in January 2008 and stopped in April 2017 and was disconnected for nonpayment in February 2016, September 2016, and February 2017. (Ex. J-28.) Mr. Adamczyk does not remember being disconnected and stated that he usually pays his bill based on having received a disconnect notice because he does not consistently receive paper bills, although he has been receiving them more consistently lately. (Tr. at 316-17, 322.) Mr. Adamczyk also stated that he was unaware e-bills were an option. (Tr. at 317-18.) JU's customer service records show that Mr. Adamczyk's account for his current home was opened in September 2016. (Ex. J-28.) JU's records for Mr. Adamczyk's account also show that during the months in which there was usage at his Anthem home, Mr. Adamczyk's monthly usage ranged from 4,000 gallons to 33,000 gallons and was 20,000 gallons or more 12 times. (Ex. J-53.) With the exception of the 29,000 gallons of usage billed in April 2017, JU's records for Mr. Adamczyk's current home for September 2016 through February 2018 show monthly usage ranging from 4,000 gallons to 15,000 gallons, with average usage of 8,294 gallons. (Ex. J-53.) JU's records show that Mr. Adamczyk has not contacted JU since June 1, 2017, when a JU CSR contacted Mr. Adamczyk to tell him that it was not possible to pull a data log for his account, and he stated that he no longer wanted to speak to CSRs and only wanted to speak to JU's technician supervisor because he felt that he was not receiving accurate information and believed that his meter reads are incorrect. (Ex. J-53.)

Ms. Walczak testified that she believed JU had done what it needed to do to address Mr. Adamczyk's concerns. (Tr. at 2048-49, 2088.)

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4. Ben Melesio

Mr. Melesio is a JU customer in the Circle Cross Ranch community in San Tan Valley,[267] where he has lived for approximately nine years, and his primary issue with JU concerned his attempts to pay his bill telephonically, because he would generally be "caller No. 61 or caller No. 56"; would stay on hold for more than 15 minutes; and then when he was only caller No. 3 or 4, would be required to leave a message rather than remaining on hold,[268] after which he stated he "would never get anybody calling [him] back." (Tr. at 327-28, 336.) Because he would fail to reach a person, Mr. Melesio stated, he "would have to go in and make the payment in the office." (Tr. at 328.) Mr. Melesio stated that after he provided comment during a February 2018 public comment session, when he called in March 2018, he was caller No. 9 and succeeded in speaking to a person and paying his bill telephonically. (Tr. at 328-29.) He also acknowledged that he generally pays his bill close to the due date because he waits until he receives his Social Security check by the 14th of the month and that call volumes would be higher at that time. (Tr. at 345-46.) Mr. Melesio tried paying online before but found that his payment did not get registered until approximately the 18th when he did that. (Tr. at 345.)

Mr. Melesio testified that he had no problems with JU until April or May 2017; that he has consistently received his bills in the mail, except for the April 2018 bill; and that he believes that his bills have all been accurate, except for his bill from April or May 2017, which "jumped up" by 7,000 gallons and from approximately $88 to $150. (Tr. at 329, 337, 344.) Mr. Melesio testified that he contacted JU about it, that JU sent out a technician who checked everything at his home, and that the JU technician stated that he had found nothing wrong and that there was a possibility that Mr. Melesio's neighbors were stealing his water. (Tr. at 329, 354.) Mr. Melesio finds this hard to believe, as there is a six-foot block fence around his back yard, there is a lock on his front gate, he has two dogs, and he believes that most of his neighbors are "snowbirds" and "a lot better off" than he is. (Tr. at 329-30.) At the JU office, Mr. Melesio was provided a printout of his meter reads and was offered a meter test but declined. (Tr. at 354-56.) Mr. Melesio stated that when he spoke to his next door neighbor about

[267] The JU account is in the name of his wife, Karen Melesio. (Ex. J-54.)

[268] Mr. Melesio testified that he once received a number in the 30s and got all the way to No. 1 before being required to leave a message. (Tr. at 347.) He estimated that he has called and had to leave a message on four to eight occasions and that he had never reached a person by phone until April 2018. (Tr. at 347-48.) Mr. Melesio also stated that he has visited the office many times. (Tr. at 352.)

his higher bill, his neighbor also reported having received one bill that jumped $100 around the same time, although she never contacted JU about it. (Tr. at 330, 357.)

Mr. Melesio testified that when he went to JU's office to complain about his bill and related issues, the female JU CSR he dealt with was "very, very . . . unprofessional." (Tr. at 331.) Mr. Melesio stated that they "got into a pretty good little argument back and forth, back and forth about . . . responsibilities"; that the JU representative told him that he "should go somewhere else" if he did not like how JU did business; and that it was "none of [her] business" if Mr. Melesio did not have another option. (Tr. at 331.) Mr. Melesio testified that the next time he went to the JU office to pay his bill, the JU representatives were "jovial . . . happy-go-lucky and laughing and joking and everything else . . . [and] it was a pleasant experience for the first time." (Tr. at 332.) Mr. Melesio also testified that the JU technician who came to his home had been very courteous and professional. (Tr. at 342.)

Mr. Melesio also stated that when he first moved into his home, water usage was high because too much water pressure was coming through the drip irrigation system installed by the builder and had blown the nozzles off of most of the water lines. (Tr. at 330.) To remedy this, Mr. Melesio disconnected the irrigation system. (Tr. at 331.)

Finally, Mr. Melesio stated that the water in his aquariums has a "very high bacteria count" that creates "a real heavy slime on the top of the water," which was never a problem during the 50 years that he lived in the Midwest. (Tr. at 333, 364.) He reported that he is "scared to death" to drink the water from his faucets, although he would drink water from the faucet or hose in the midwest. (Tr. at 333-34, 364.) Mr. Melesio has taken courses on water treatment and wastewater treatment at Gateway Community College and has some understanding of water and water chemistry. (Tr. at 333, 362.)

JU's records show that the Melesio account was opened in May 2009 and that the Melesios first contacted JU in June 2012 regarding another customer's payment that was applied to the Melesio account, upsetting the Melesios. (Ex. J-54.) The next contact the Melesios had with JU was on June 23, 2017, when Mr. Melesio contacted JU with concerns about April 2017 usage. (Ex. J-54; Tr. at 2647.) JU's records show that a technician met Mr. Mrlesio at his home on the same date and verified that the meter read was correct, that the meter was not spinning, and that the irrigation valve was off and explained to Mr. Melesio how he could track usage by reading his meter. (Ex. J-54.) Then, in

December 2017, when he was in the JU office paying his bill, Mr. Melesio asked about his usage, and a CSR provided him with a copy of his meter reads. (Ex. J-54.) Mr. Melesio disagreed that his home had used 14,000 gallons in April 2017, the CSR explained that the meter could be tested for accuracy, and Mr. Melesio took his paperwork and left. (Ex. J-54.) JU does not have a record of Mr. Melesio requesting a meter test or a data log or contacting JU since that time. (Tr. at 2650, 2652.)

JU's records show that between May 2009 and March 2018, the Melesios have had monthly usage ranging from 3,000 gallons to 20,000 gallons and have had monthly usage of 14,000 gallons or more on seven occasions. (Ex. J-54.) Ms. Poulin testified that she believes Mr. Melesio was likely concerned about the 14,000 gallons of usage not because that level of usage has never occurred in the past, but because he has not previously had a bill as high as the bill for April 2017 due to the consumption level and the higher 2017 CAGRD adjustor fee. (Tr. at 2651.) The Melesios' bill for April 2017 was $152.53, of which $58.66 was the CAGRD fee. (Ex. J-54.) The Melesios' most recent prior bill with usage of 14,000 gallons was in August 2013 for $116.09, $21.14 of which was for the CAGRD fee. (Ex. J-54.)

Ms. Walczak stated that in Consumer Services' consideration of a customer's assertion that the customer's usage could not be as high as shown on the customer's bill, Consumer Services would compare usage at the same time of year in previous years. (*See* Tr. at 2038-39.) Ms. Walczak also stated that it sounded as though JU had done all that it could do regarding Mr. Melesio's concerns, particularly as he chose not to have his meter tested or to monitor the readings on his meter. (Tr. at 2039-41, 2088.) Ms. Walczak did not believe that Consumer Services would have suggested a one-time adjustment for Mr. Melesio's situation. (Tr. at 2042-43.)

5. Sandra Bennett

Ms. Bennett has been a JU customer for the past 2 ½ years and provided bills showing that while all of her other bills ranged from 3,000 gallons to 10,000 gallons of monthly usage, in August 2017 and January 2018, her bill spiked to 28,000 gallons of usage. (Ex. RUCO-5; Tr. at 992-94.) After receiving the August 2017 bill, Ms. Bennett went to JU's office to ask why her usage would have gone up so much, and she stated that JU's CSRs did not really have a response. (Tr. at 993.) Ms. Bennet paid the bill and then waited to see what would happen, and her subsequent bills went down to a normal

level until the spike in January 2018. (Tr. at 994.) Ms. Bennett again went to the JU office to discuss the bill and was told by a JU CSR that part of the cost was because of the CAGRD tax, which would be lower starting the next month, and did not address usage. (Tr. at 994.) Ms. Bennett has no idea why her usage spiked like this, as she said that she did not do anything different those months, and would like an explanation of how her usage could change so much from one month to the next. (Tr. at 995.) Ms. Bennett acknowledged that she probably had some company during the two months when usage spiked, including one person who stayed for a week in August 2017, but was not aware of the person taking a lot of showers or baths or doing a lot of laundry and did not recall coming across a running toilet. (Tr. at 1001-02.) Ms. Bennett reported that she has also had guests at her home when her usage was lower. (Tr. at 1002.) She also stated that she doubts her water could have been stolen because she knows her neighbors. (Tr. at 1002.)

Ms. Bennett testified that when she spoke to the JU CSR about her August 2017 bill, she also paid the bill, and the CSR did not review Ms. Bennett's prior usage with her, talk to her about having her meter tested, or offer to have a technician come out to reread her meter. (Tr. at 997.) Ms. Bennett testified that on the second occasion, she also paid her bill, and the CSR again did not discuss her usage, talk to her about a meter reread, or talk to her about having her meter tested. (Tr. at 998-99.) Ms. Bennett generally pays her bill using the dropbox, so she is not familiar with the personnel at the JU office and was unsure whether she spoke to the same individual both times. (Tr. at 998.) The two times she went in to address her high usage bills were the only two times that she has gone into the JU office. (Tr. at 998.)

Ms. Bennett stated that she does not have a swimming pool, although she does have landscaping and had new irrigation installed when she moved in, with drip lines and watering to some of the major plants. (Tr. at 1000.)

Ms. Bennett also testified that she had taken her January 2018 bill to Supervisor Goodman's office and showed it to his secretary, learned that Supervisor Goodman's office was seeking intervenors for this matter, and was asked by Supervisor Goodman's secretary whether she would be willing to testify. (Tr. at 1000.)

JU's records show that Ms. Bennett has not contacted JU to address concerns about high usage

on her account and that no work orders or investigations have been done for her account. (*See* Ex. J-45; Tr. at 2668.) Ms. Poulin stated that the only notes in Ms. Bennett's account pertained to drop box payments. (Tr. at 2668; Ex. J-45.) JU's records show that Ms. Bennett's account was opened in October 2015 and that the monthly usage on her account from October 2015 to March 2018 ranged from 2,000 gallons to 28,000 gallons and was less than 10,000 gallons in all but four of the 29 complete months billed (with usage for those four somewhat scattered months at 11,000, 28,000, 28,000, and 10,000 gallons). (Ex. J-45.)

Ms. Walczak described the type of spike in usage seen for Ms. Bennett's account as "the anomaly"—the type of situation where the customer does not get a satisfactory resolution because no explanation is found. (Tr. at 2080-82.)

6. Philip Grafft

Mr. Grafft has been a JU customer for a little more than two years; the bill for the home he shares with Chloe DuFurrena comes in Ms. DuFurrena's name. (Tr. at 1004-05.) Ms. DuFurrena's account shows monthly usage for July 2016 through June 2017 ranging from 3,000 gallons to 8,000 gallons and averaging 4,500 gallons. (Ex. RUCO-6.) In July 2017, Ms. DuFurrena's billed usage spiked to 71,000 gallons (from 6,000 gallons the month before), resulting in a total bill of $544.14.[269] (Tr. at 1005; Ex. RUCO-6.) Then, in August 2017, Ms. DuFurrena's billed usage dropped back down to 6,000 gallons. (Ex. RUCO-6.) Mr. Grafft has no explanation for the spike in usage and immediately called JU when he saw the July 2017 bill to express his concern. (Tr. at 1007, 1010.) Mr. Grafft testified that the JU CSR suggested that there was probably a leak in the swimming pool or irrigation system or a flood or some other problem in the house. (Tr. at 1007-08.) At the time, Mr. Grafft and Ms. DuFurrena were in Nevada, as they only came to Arizona during the winter months,[270] so they called people to check on the inside of the house, the pool, and the irrigation system (including the individuals who service their pool and irrigation system), but nothing was found to explain the water

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[269] The CAGRD fee for this bill was $297.49. (Ex. RUCO-6; Tr. at 1006.) According to Mr. Taylor, assuming an average flow rate through a 5/8" meter is about 10 gallons a minute, it would take more than three days to fill up a truck from a hose bib on a house. (Tr. at 2403.)

[270] Mr. Grafft testified that the house was locked up in the summer of 2017 and that his neighbor across the street has a key and can access the house. (Tr. at 1012.) There was inconsistent testimony about whether a plumber checked the inside of the house for leaks. (Tr. at 1018-19.)

usage. (Tr. at 1007-08, 1018.) Mr. Grafft testified that JU sent someone out a few days later to check the meter. (Tr. at 1008.) Mr. Grafft called JU again after speaking to the people who checked on the house, pool, and irrigation system to report that no problems were found at the house and that there would have been approximately 2,366 gallons of water usage and leakage per day to produce water consumption of 71,000 gallons. (Tr. at 1009.) Mr. Grafft and Ms. DuFurrena paid the $544.14 bill and have not since seen a spike in consumption. (Tr. at 1010.)

Ms. Poulin testified that the 71,000 gallon monthly usage was inconsistent with the usage before and after that month and was flagged by JU as high usage. (Tr. at 2670-71.) JU's records show that a JU tech was sent out to the Grafft-DuFurrena home on July 24, 2017, to check the meter because of the high usage and that the JU technician verified that the read was correct, that the meter was not spinning at the time of the visit, and that there were no visible leaks. (Ex. J-46.) JU's records also show that a JU CSR called "customer" and left a voicemail stating that the high usage had been detected and verified; Mr. Grafft could not recall this, but stated that it could have happened. (Ex. J-46; Tr. at 1014-15.) Mr. Grafft did recall calling JU on July 25, 2017, as noted in JU's records, to say that he would have someone out to check on the pool. (Tr. at 1015.) Mr. Grafft was unsure about a third phone call that JU records show occurred on July 26, 2017, but acknowledged that it could have occurred. (Tr. at 1016; Ex. J-46.) Mr. Grafft remembered having the next conversation noted in JU's records, on July 31, 2017, when he reported that his house had been checked out and no leaks had been found, and he questioned the accuracy of the meter. (Tr. at 1016-17; Ex. J-46.) Mr. Grafft believes that he requested to have his meter tested for accuracy, although he did not recall receiving or completing a meter test form. (Tr. at 1017, 1019-20.) Mr. Grafft testified that he had no further interaction regarding the issue after July 31, 2017, because he "gave up" and did not know that contacting the Commission with his concerns was an option. (Tr. at 1018.)

Mr. Grafft stated that he has had "a little trouble with the communication, getting back and forth with" JU and with "the rudeness of some of the people." (Tr. at 1010-11.) Mr. Grafft reported that JU has "got some really good people and . . . a couple that were really rude." (Tr. at 1011.) Mr. Grafft also stated that he stopped calling because he got tired of having to "wait for hours." (Tr. at 1011.)

JU's records show that the account for Ms. DuFurrena was opened on March 18, 2016, and that,

aside from the 71,000 gallons of usage for July 2017, the highest usage for the Grafft-DuFurrena home between March 21, 2016, and March 15, 2018, was 9,000 gallons in September 2017 and October 2017. (Ex. J-46.) JU's records also show that no additional contact has been made by Mr. Grafft or Ms. DuFurrena since July 31, 2017. (Ex. J-46.) There is no indication that JU pulled a data log for the month in which 71,000 gallons was used; Ms. Poulin thinks that could have been because older MXUs do not support data logs. (Tr. at 2721.) With an older MXU, there is no USB port to allow for the downloading of historical data. (Tr. at 2721-22.) The newer MXUs record data for the past 30 days, on a rolling basis, so no data earlier than the past 30 days is available, and any data is available only if it is manually downloaded using the USB port on the MXU. (Tr. at 2721-22, 2753.) Ms. Poulin does not know why the MXU data is limited to the past 30 days and wishes that older data were also available.[271] (Tr. at 2755-56.) According to Ms. Poulin, there is no charge to change out an MXU. (Tr. at 2722.) Ms. Poulin had no explanation for the 71,000 gallon spiked usage and said that "it is really frustrating and difficult" when that happens without explanation and the customer honestly says that nothing has changed in terms of usage. (Tr. at 2725.) Ms. Poulin also agreed that a leak would not "fix itself." (Tr. at 2725.) But according to Ms. Poulin, JU did not take any steps other than what was in its notes because there is really nothing further JU can do if the customer chooses not to have their meter tested. (Tr. at 2726.)

Mr. Cole stated that he had no explanation for what would cause a spike in usage of that kind, aside from water theft or a leak, but that once JU verifies the read is correct and the meter is working properly, it is not possible for JU to determine what the customer did with the water, which puts JU in a "difficult spot." (Tr. at 2905-06.) Mr. Cole stated that JU does forgive a customer for unexplained usage "from time to time" and that JU could consider having a one-time leak adjustment available, like Queen Creek does and as he believes his prior employer utilities have had, but that Mr. Drummond will need to make that decision. (*See* Tr. at 2908-09.) Mr. Cole stated that he believes it would be good public policy and that he would discuss it with Mr. Drummond. (Tr. at 2930, 3251.) He agreed

[271] Mr. Gardner testified that with its new iPERL meters, Queen Creek can get 45 days of data off the meter; that it can get 60 days of data from the MXU; and that with its new FlexNet technology, Queen Creek can go back and have six months or even a year's worth of hourly usage data. (Tr. at 1388.) He said that Queen Creek generally encourages customers to read their meters on a daily basis so they can track their usage and that "[s]ometimes you have to just agree to disagree" with a customer who will not accept that usage occurred. (Tr. at 1388.)

that the 71,000-gallon usage was "pretty atypical" and that a leak of that volume would usually be noticeable unless it was a leaking toilet. (Tr. at 2930-31.) Mr. Drummond indicated that he was "intrigued" by the one-time leak adjustment but would want to ensure that there are protections in place so that a customer could not fill their pool and then claim an adjustment. (*See* Tr. at 3530.)

Ms. Walczak indicated that like the spike seen for Ms. Bennett's account, the spike in usage shown for the Grafft/DuFurrena account was an "anomaly"—the type of situation where the customer does not get a satisfactory resolution because no explanation is found. (Tr. at 2080-82.) She added that these types of complaints (where there has been a pattern of relatively low usage except for a very large spike) were received more frequently in 2017 and are the types of complaints that may move on to mediations or formal complaints. (Tr. at 2082-83.)

7. Connie Mays

Ms. Mays has been a JU customer for 17 years; the bill for the home she shares with Richard Troska comes in Mr. Troska's name. (Tr. at 1024, 1031.) Ms. Mays stated that her issues with JU began in May 2017 when she received a $472.06 bill for 58,000 gallons of usage in April 2017.[272] (Tr. at 1024, 1072.) Ms. Mays testified that she went to the JU office "because, unfortunately, trying to call them is impossible," and was told by the JU CSR that her neighbor could be stealing her water or there must be a leak. (Tr. at 1024-25.) Ms. Mays denied that the JU CSR had discussed how to check for leaks with her, although JU's records state that such a discussion occurred. (Tr. at 1064.) Ms. Mays reported that she nonetheless checked for leaks in her toilets and did not find any. (Tr. at 1064.) Ms. Mays also had her pool service check for leaks, and they found none. (Tr. at 1025-26.)

On the due date for the April 2017 bill, Ms. Mays stated, she returned to the JU office and was told that if she chose not to pay the bill, her water service would be turned off and she would be charged a $50 fee to have water service turned back on. (Tr. at 1026.) Ms. Mays paid the bill, filed a complaint with the Commission, and contacted JU again. (Tr. at 1026.)

Ms. Mays stated that JU sent out a technician who spent at least an hour at her home testing every water source and walking the lot to detect leaks, deciding that they must have a leak in their pool

[272] The CAGRD fee constituted $243.02 of the bill. (Tr. at 1073.)

because there were no other leaks. (Tr. at 1025, 1066-67.) Ms. Mays reported that the JU technician who came to her home, Ramon, was "extremely nice" and "very thorough" and that he told her that JU ordinarily will receive only one or two high-use calls per week but was receiving more than 30 high-usage calls per week during that May 2017 time period. (Tr. at 1030, 1070-71.) JU's records show that the JU technician installed a new MXU[273] on her meter on May 24, 2017, so that a data log could be run; Ms. Mays does recall something being installed. (Tr. at 1067; Ex. J-47.)

Ms. Mays stated that JU provided her a data log but that no one at the JU office knew how to interpret it when she picked it up, so she twice called and spoke to someone named Aida who twice told her she would investigate and twice never called back. (Tr. at 1026, 1057-58.) Ms. Mays stated that the JU CSR who provided her the data log did not tell her that she could come back for an appointment with someone who could help her understand it, and Ms. Mays did not request to come back. (Tr. at 1058.) Ms. Mays did not recall reviewing the data with someone at JU, although an email from JU to Staff reports that such a review occurred and that Ms. Mays "was not happy." (Tr. at 1058-59.)

Ms. Mays recalled that her meter had been tested, but did not recall filling out a meter accuracy test form after meeting with the JU meters department to review the data log for her home, although JU's customer service records report that this occurred on June 17, 2017, and that the meter was pulled for testing on June 19, 2017. (Tr. at 1067-68.) Ms. Mays recalled that JU told her that her meter could be tested, although she would have to pay $25 if it was accurate, and that she was unwilling to pay to have the meter tested; Ms. Mays believes that her meter was tested at no charge because she had filed the complaint with the Commission. (Tr. at 1026-27, 1066, 1069.) Ms. Mays said that she was told the meter test results showed that her meter was "pretty accurate" and that she had received some free water, but she did not recall that someone from JU had called her to discuss the meter test results. (Tr. at 1027, 1069-70.) Ms. Mays did not recall receiving a call to talk about the meter test results, although a JU email to Staff reports such a call. (Tr. at 1060; Ex. J-52.)

Then, Ms. Mays said, her bills for June and July 2017 usage dropped to 5,000 gallons, although

[273] An MXU is the equipment that transmits the signal from a meter to the technician's laptop when the technician is reading meters. (Tr. at 2593.) The newer MXUs have USB ports through which a technician can download up to 30 days of hourly usage. (Tr. at 2593.)

nothing at her home had changed. (Tr. at 1027.) Ms. Mays reported that her bill for August 2017 was 60,000 gallons, although "absolutely no changes" had occurred in her household of two people. (Tr. at 1027.) Ms. Mays testified that she went to JU again to dispute the August bill and told part of her story to someone identified by a JU CSR as "a manager," only to have the person tell her that she had "just punched out for lunch" and walk away. (Tr. at 1027.) Ms. Mays stated that she then asked for the name and phone number of the person running JU and was told by the "manager" that "she had no idea who was running the company." (Tr. at 1027.)

In late September 2017, Ms. Mays called Mr. Cole and left him a voicemail. (Tr. at 1027.) Mr. Cole returned her call and, after hearing her story, asked for a few days to investigate. (Tr. at 1027.) When a week had passed with no call from Mr. Cole, Ms. Mays called him again and, she said, Mr. Cole again stated that an investigation would be done, but Ms. Mays has never heard back from JU. (Tr. at 1027-28.) Ms. Mays attempted to call Mr. Cole again at a later date and was unsuccessful in reaching him. (Tr. at 1028.) Ms. Mays testified that 12 News had been out to her area for a story about water billing issues and that she heard Mr. Cole quoted on 12 News as having stated that the investigation of her water usage had been completed, that nothing wrong had been found, and that the information had been communicated to Ms. Mays. (Tr. at 1028.) Ms. Mays disagrees that her billing dispute was resolved, stating that she either had to pay the bill or lose her service. (Tr. at 1077.)

Ms. Mays stated that there are only two people living in her house, both of whom work all day, and that they even turned off the sprinklers for their grass in September 2017 and allowed it to go dormant but still received a bill for September usage of between 40,000 and 50,000 gallons. (Tr. at 1029.) Ms. Mays acknowledged that her back yard has a "good amount" of grass, that she has a swimming pool, and that her parcel is 0.83 acres in size. (Tr. at 1034; Ex. J-48.) She also acknowledged that she had received bills with usage spikes in 2016 but did not really do anything about her concerns that the bills were inaccurate until 2017. (Tr. at 1035-36.) Ms. Mays testified that she expected the JU bills for June and July 2016 to be high due to summer grass that is watered frequently;[274] recalled that

[274] Ms. Mays stated that the sprinkler system for her lawn is automatic, set at the beginning of summer to run on a schedule. (Tr. at 1037-38.)

her JU bills in June and July 2017 showed usage of only 10,000 gallons in spite of her summer grass;[275] and then decided that something was wrong when her next bill showed usage of 60,000 gallons.[276] (*See* Tr. at 1035-37; Ex. J-47.) Ms. Mays stated that she believed using 60,000 gallons in 30 days would result in "a bog" or have her "swimming across [her] backyard." (Tr. at 1037.) Ms. Mays acknowledged that JU switched out the meter for her home after completing the meter test, for which she was not charged. (Tr. at 1053-55.) The meter test on Ms. Mays' meter showed that the meter was under-registering at all three flow levels checked, meaning that she was being undercharged for her water usage. (Ex. J-52; Tr. at 2676-77.)

Ms. Mays reported that for January, February, and March 2018, her bills had "normalized" and were well below 10,000 gallons. (Tr. at 1030.)

Ms. Mays expressed uncertainty when answering whether she had been generally satisfied with JU's services before 2016, first saying that she couldn't answer and then saying, "yes, I guess." (Tr. at 1035.) According to Ms. Mays, her JU bill is the only mail she opens at the mailbox—to determine whether she should go in her house or go to JU about the bill. (Tr. at 1030.) She stated that the absence of the CAGRD fee on her high-usage bills in prior years may have been one reason why she did not complain, but that she also did not complain because not paying the bill would result in loss of water service and because she did not know that there was any other recourse, having never dealt with a similar issue in 30-plus years living in Arizona. (Tr. at 1074-75.) In response to a question from Mr. Dantico, Ms. Mays testified that it would have been useful for the JU website to include videos describing what the Commission does, how to complain to the Commission, and things like that to educate customers. (Tr. at 1075-76.) She also conceded that if she had had a better understanding of what was occurring, some of her negative feelings toward JU might have been avoided. (Tr. at 1076.) Ms. Mays agreed that it would be useful for JU to include information about how to complain on all of its customer communications, including newsletters, and, further, to include educational videos for its customers on its website. (Tr. at 1076.)

Ms. Mays testified that she visits the JU office more than she calls JU and estimated that she

[275] JU's records show that Ms. Mays's meter was changed out on June 22, 2017, and that her usage from May 19 to June 22, 2017, was 5,000 gallons and from June 22 to July 27, 2017, was 5,306 gallons. (Ex. J-47.)

[276] JU's records show that Ms. Mays's usage from July 23 to August 23, 2017, was 59,783 gallons. (Ex. J-47.)

had been to the JU office about billing issues or disagreements seven or eight times in the past year. (Tr. at 1061.) Ms. Mays said that she has spoken to someone with JU on the phone twice but has attempted to call on other occasions without successfully getting through, being caller No. 50, 90, or 110 in the queue. (Tr. at 1061.)

JU's records show that between May 2003 and March 2018, the monthly water consumption at Ms. Mays' home has been between 50,000 and 59,999 gallons 18 times, has reached or exceeded 60,000 gallons 16 times, peaked at 87,000 gallons for the period from May 16 to June 18, 2013, and has very rarely been lower than 10,000 gallons. (*See* Ex. J-47.) When shown bills from prior years that had usage of 60,000 gallons or more, Ms. Mays acknowledged that the bills were for her home, but stated that she did not believe they had used that much water. (Tr. at 1048-51.) JU considers the Mays-Troska informal complaint to be closed, as JU has provided all of the requested information to the Commission. (Tr. at 2677.)

Ms. Walczak agreed that the aerial photo of Ms. Mays's residence showed a relatively large backyard, grass that was greener than her neighbors' grass, and a swimming pool and opined that these would suggest relatively higher water usage. (*See* Tr. at 2019-20.) Ms. Walczak also confirmed that Ms. Mays's home has a one-inch water meter, which is larger than most, and would have been installed based on the number of facilities in the home. (Tr. at 2021.) She also confirmed that Ms. Mays's meter passed its meter test, which showed that it was under-registering within acceptable parameters; that JU sent out a technician who spent more than an hour at the home; and that JU provided a data log. (Tr. at 2022-30.) Ms. Walczak indicated that she could not think of anything else that JU could do to be responsive to Ms. Mays and Mr. Troska and that the Mays/Troska complaint is the type of informal complaint that would be closed out. (Tr. at 2031, 2088.)

8. Catherine Labranche

Ms. Labranche has been a JU customer for 18 months, since retiring to Arizona from California to obtain a cheaper cost of living. (Tr. at 1083.) Ms. Labranche testified that ever since she moved to Arizona, her family's water bills have shown high usage, until recently when the usage dropped "tremendously." (Tr. at 1083.) Ms. Labranche's bills, for usage from December 5, 2016, through March 5, 2018, show monthly usage ranging from 7,000 gallons to 33,000 gallons, with usage below

10,000 gallons only in the first month;[277] usage of between 20,000 and 29,999 gallons four times; and usage of 30,000 gallons or higher three times. (Ex. J-15; Ex. J-16.) At the hearing, Ms. Labranche testified that she had just received the April 2018 bill, which showed usage of 12,000 gallons, down from 21,000 gallons the month before. (Tr. at 1087, 1092.)

Ms. Labranche questioned how she and her husband could use 33,000 gallons of water because their property is not large, they do not have a swimming pool, they do not drink the water, they mostly cook outside, they use paper plates and plastic cutlery, they do their laundry at their granddaughter's home, they do not use their irrigation system in the front or back yards and maintain their own yard, their gates are locked, and they have a keyed lock on their hose bib out front. (*See* Tr. at 1084, 1116-17, 1121, 1122, 1127.) Ms. Labranche stated that her son-in-law, who is a plumber, checked out everything at her house and found no leaks. (Tr. at 1089.) Ms. Labranche also testified that while they have "quite a bit of grass" in the back yard, they only water twice a week by running the sprinklers for four minutes each time and do not use the irrigation system to water the grass. (Tr. at 1094, 1099, 1113.) Ms. Labranche stated that she did not know whether the spaghetti lines to her irrigation system are missing their caps, and that the irrigation is all closed off and is "just a little drip." (Tr. at 1113.)

Ms. Labranche testified that the first time she went to the JU offices to ask about her high bills, possibly in August 2017,[278] "they were very rude" and suggested that someone was stealing her water, which she does not believe because their water is locked and cannot be unlocked without a key that only she and her husband have. (Tr. at 1089, 1105.) After the initial visit, because of the rudeness, Ms. Labranche only telephoned JU, which she said required her "to sit on the phone all day before … get[ting] ahold of anybody" or to leave a message for a call back that never came. (Tr. at 1090, 1104.) Ms. Labranche stated that the most recent time she called, she was caller No. 29 and then was disconnected after becoming caller No. 26. (Tr. at 1106.)

Ms. Labranche expressed her concerns at one of the February 2018 public comment sessions and gave her paperwork to a Staff member who asked if the Labranches had ever filed a complaint and

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[277] The first bill that shows usage actually reflects only partial usage because the Labranches did not move into the home until December 17, 2016, which was 12 days into the billing period. (Tr. at 1096-97.)

[278] Ms. Labranche did not initially contact JU about the bills because she thought maybe the bills were normal, until she started talking to members of her husband's family and asking about their bills, which were much lower. (Tr. at 1105.)

then said that the Staff member would file a complaint on their behalf. (Tr. at 1090-91.) A complaint on behalf of Antonio Labranche, Ms. Labranche's husband and the named JU account holder, was filed with the Commission on March 15, 2018. (*See* Ex. J-16.) The complaint stated that the Labranches' water bill increased after Mr. Labranche's name appeared in the newpaper as a speaker at the JU public comment sessions; that Mr. Labranche wanted proof that they were using the amount of water shown in the bill, and that JU had said the Labranches' meter would be replaced but had not yet replaced it. (Ex. J-16.)

Ms. Labranche stated that the first time Maria called,[279] Maria left a voicemail message saying that she was from the Commission. (Tr. at 1108-09.) Then, on March 16, 2018, while the Labranches were in California, Maria called again and spoke first to Mr. Labranche and then Ms. Labranche. (Tr. at 1108-09.) During the second call, Ms. Labranche said, Maria stated that she was a JU representative and that either the Labranches had leaks at their home or had had their water stolen. (Tr. at 1107-09.) During this call, while Ms. Labranche responded to explain to Maria why that was not possible, Ms. Labranche noticed that Maria was no longer on the line. (Tr. at 1091, 1107-08, 1112.) Ms. Labranche did not call JU back after that and considered Maria to have been "nasty" to her, although Ms. Labranche stated that she herself had not been nasty. (Tr. at 1091, 1112-13.) Ms. Labranche was bothered by JU's focus on leaks or stolen water because she believes they should be more helpful to customers in determining why their bills are high. (Tr. at 1111-12.)

Ms. Labranche also testified that after her husband "started checking out things," they received a call from Supervisor Goodman's secretary, who arranged an appointment with Supervisor Goodman. (Tr. at 1090.) Ms. Labranche gave copies of their JU bills to Supervisor Goodman's secretary, and the secretary sent Ms. Labranche the intervention paperwork so that she could fill in her name and sign; Ms. Labranche stated that the letter requesting intervention was not prepared by her and was just a form provided by the secretary who also "filed the paperwork." (Tr. at 1090, 1101-02.) Ms. Labranche's request for intervention was filed on March 29, 2018, and included at least one statement that Ms. Labranche testified was not consistent with her experience. (*See* Ex. J-15; Tr. at 1101-02.)

[279] Maria is JU's customer service supervisor. (Tr. at 2632.)

In April 2018, Ms. Labranche delivered to JU a form requesting that JU change out and test her meter, which happened within a few days. (Tr. at 1088.) Ms. Labranche stated that she then received notice that there was nothing wrong with the meter and that she would be changed $25 on her next bill.[280] (Tr. at 1088.) She did not have confidence in the results of the meter test, however, although she saw that it was conducted by the Commission, because it did not take as long to complete as she had been told it would. (Tr. at 1118-21.)

Ms. Labranche receives her bills via email and has payments for them taken out of her bank account automatically. (Tr. at 1092.) She was concerned about the April 2018 payment because the amount withdrawn from her account was less than the amount stated on the bill, and she was afraid that her water would be cut off due to the difference. (Tr. at 1117-18.) She then received an email explaining the difference, which dispelled her concern. (Tr. at 1117-18.)

Recently, Ms. Labranche has been tracking the usage at her home by monitoring the meter and has found that the water consumption is different day to day. (Tr. at 1093.) She believes that it is "ridiculous" for water bills to be as high as hers, which are higher than her electric bill, and intends to move to a different home as soon as her lease expires. (Tr. at 1122-23.) She contrasted her experience with that of her family members who live in Johnson Ranch "right up the street" and have only $60 water bills although they have a pool and seven people living in their home. (Tr. at 1124.) Ms. Labranche understood that a large portion of her bill was for the CAGRD fees and why those are charged and acknowledged that it had gone down. (Tr. at 1126.)

Ms. Labranche stated that sometimes when she turns on the water, "brown stuff" comes out, and sometimes when she goes outdoors, there is a "bad odor" in the air. (Tr. at 1102.) She also described the water as "disgusting" and emphatically stated that she will not drink it. (Tr. at 1127.)

Ms. Labranche agreed that it would be very helpful and nice for JU to have more information on their website, bills, and other communications to educate their customers about JU's way of doing things and inform customers how to complain to JU and the Commission. (Tr. at 1125-26.) Ms. Labranche stated that she has never seen a JU newsletter and was not aware that they were available

[280] The meter test showed that the Labranches' meter was slightly under-registering at low flow, indicating that they were being slightly undercharged. (Tr. at 2645; Ex. J-23.)

on JU's website; she only uses JU's website to view her bill. (Tr. at 1125-27.)

JU's records do not show that the Labranches contacted JU with concerns at any time between the opening of their account on November 30, 2016, and the filing of the complaint with the Commission on March 15, 2018. (Ex. J-16.) They also show that Maria attempted to contact the Labranches by phone three times on March 16, 2018—leaving a "second" message in the morning regarding their Commission complaint, reaching and speaking to both of the Labranches in the afternoon, and leaving a message for them moments later in the afternoon to say that their call may have been disconnected and ask for a return call. (JU LFE at att. 4.) During the hearing, recordings of Maria's three calls to the Labranches were played.[281] (*See* Tr. at 2634-36; JU LFE at att. 4.) In the recordings, Maria stated that she was from JU and maintained a calm and professional tone even when, during the phone conversation, Mr. Labranche stated, "[t]hat's bullshit . . . you guys are nothing but liars, and that's why people should sue you guys," and Ms. Labranche argued with Maria about whether there was an MXU for their meter.[282] (*See* Tr. at 2634-40; JU LFE at att. 4.) Additionally, it should be noted that the call disconnected while Maria was speaking, not while Ms. Labranche was speaking. (JU LFE at att. 4.)

JU's records also show that the JU technician who checked the Labranches' meter and checked for leaks on March 22, 2018, noted that many of the caps on the spaghetti lines were missing. (Ex. J-16.) JU's records also show that on March 29, 2018, Maria sent the Labranches an email explaining how meter reading is done and including the Meter Test Authorization Form. (Ex. J-16.) Finally, JU's records show that a technician went to the Labranches' home on April 4, 2018, and verified that the meter numbers shown in JU's billing software for the Labranches and their next door neighbors were accurate, because the Labranches and their next door neighbors share an MXU. (*See* Tr. at 2643-44; Ex. J-16.) Ms. Poulin testified that she is aware of prior incidents in which customers with a shared MXU erroneously had their usage attributed to each other's accounts, but that the technician

[281] Ms. Poulin testified that she retrieved the recordings from the drop box system by entering Mr. Labranche's phone number into the drop box system using her computer; the system then pulled up every phone call that has been received from or placed to that phone number. (Tr. at 2640.) Ms. Poulin stated that there were five phone calls total, and the two recordings not played were Maria's initial call and message left for the Labranches and a call from Mr. Labranche in which he asked for Maria and the call then disconnected. (Tr. at 2640.)

[282] Ms. Labranche was correct when she stated that her meter did not have a separate MXU. (*See* Ex. J-16.)

determined on April 4, 2018, that no such error has been occurring for the Labranches and their next door neighbors. (Tr. at 2644.)

Ms. Walczak opined that the Labranches' water usage appeared normal in that it showed higher usage in the summer months. (Tr. at 2033-34.) She did not believe that Consumer Services would suggest a bill adjustment for the Labranches' situation. (Tr. at 2043-44.)

C. Staff Recommendations on Customer Issues

Staff recommended that JU retain a customer service advisor to ensure resolution of the issues raised by customers. (Ex. S-73 at 7; Tr. at 1987-88, 2055-56.) Ms. Walczak stated that this would be a person who would be able to work with JU's customer service personnel who answer questions both because a number of complaints were that JU's CSRs provide different information and responses and because there were complaints of discourteous or confrontational behavior. (Tr. at 1986-87, 2088-90.) Staff believes that if JU proactively identifies issues it is having (such as with CAGRD Adjustor charges) and then trains all of its CSRs to provide the same information on the issue, it would increase customer confidence and, additionally, would enable Staff to align with JU regarding the issue. (Tr. at 1987.) Previously, Consumer Services asked JU to provide Staff the script that JU was using with its customers on the CAGRD Adjustor and, after receiving it, was able to align Staff's responses to customers with JU's responses. (Tr. at 1987.) Ms. Walczak believes that having a customer service advisor would be a good step toward JU customers' faith in JU. (Tr. at 2090.) Ms. Walczak also stated that Ms. Poulin works very hard and has to respond to a lot of calls and that it takes time away from her ability to proactively put together this type of information. (Tr. at 1988.) Ms. Walczak is optimistic that the Paymentus system described by JU's witnesses will be beneficial to JU, JU's customers, and Consumer Services. (*See* Tr. at 2055.)

VI. Staff's Recommendations & JU Response

A. Staff's Recommendations

Staff's primary recommendation is for the Commission to direct Staff to appoint an interim manager to help JU come into compliance with all relevant regulatory agencies.[283] (Tr. at 2174-75; Ex.

[283] In its responsive brief, Staff asserted that the interim manager should be in place for two years or until the conclusion of JU's pending rate case, whichever comes later. (Staff R. Br. at 17.)

S-74 at 24.) Mr. Abinah testified that Staff believes that JU is not well run and that JU either lacks the managerial and technical ability to operate a water and wastewater utility or intentionally ignores the rules and regulations and only complies when directed to do so. (Tr. at 2188-89.) Mr. Abinah stated that an interim manager would have total control of JU except as to ownership and would be able to look at everything necessary to make sure JU is run the way it should be run. (Tr. at 2193-94.) Mr. Abinah testified that if an interim manager were appointed, the interim manager would participate in the Pending Rate Docket, and Staff would work with the interim manager to determine JU's infrastructure needs and would make Staff's recommendations accordingly, which could include a recommendation for the interim manager to file a financing application. (Tr. at 2212-14.) Mr. Abinah believes that an interim manager would have the authority to file a rate application or a financing application, but not to sell JU. (Tr. at 2213-14.) Mr. Abinah also stated that any entity appointed as interim manager would be entitled to a management fee and that the ratepayers would ultimately pay that fee, out of existing revenues if sufficient, or out of a rate increase or surcharge if not. (*See* Tr. at 2179, 2185, 2219-20.)

Mr. Abinah acknowledged that the Commission considers appointment of an interim manager to be "extraordinary relief" but asserted that the evidence in this matter establishes extraordinary circumstances that require the Commission to direct Staff to appoint an interim manager. (Tr. at 2190-91.) Mr. Abinah conceded that in two prior decisions in which the Commission appointed interim managers, the Commission stated that an interim manager should only be appointed when there is no other viable option, and that Staff had described a similar standard in a 2013 Staff Memorandum,[284] but he emphasized that the Commission considers each case on its own merits and that the Commission can accept, reject, or modify Staff's recommendations in any case. (*See* Tr. at 2203-07.)

Mr. Abinah conceded that JU was not out of compliance with ADEQ drinking water standards as of his testimony on April 27, 2018, and that he did not believe JU has charged its customers any unauthorized rates. (Tr. at 2196, 2198, 2238-39.) Mr. Abinah believed that JU had no outstanding

[284] The Decisions were Decision No. 66241 (September 16, 2003) and Decision No. 65858 (April 25, 2003). The Staff Memorandum was filed on April 15, 2013, in response to a letter from Commissioner Susan Bitter-Smith in Docket No. WS-03478A-12-0307, involving Far West Water & Sewer, Inc. Official notice was taken of these three documents during the hearing in this matter. (Tr. at 2208-09.)

customer informal complaints before the Commission at the time of the hearing. (Tr. at 2228-29.) Mr. Abinah also agreed, based on Mr. Sundblom's testimony that the number of H_2S exceedances declined from 2016 and 2017 to 2018, that JU has made progress in that regard since May 2017. (Tr. at 2227-28.) Mr. Abinah stated that he believes JU has made positive progress since May 2017 and that the Commission should take everything into consideration when making its Decision in this matter, but that Staff still does not believe that JU is being operated appropriately and thus still recommends that an interim manager be appointed. (Tr. at 2230, 2237.) Mr. Abinah added that at the time Staff filed the Petition for an OSC, Staff was not aware of the infrastructure issues raised by Queen Creek during its due diligence process and to which Mr. Gardner testified, which Mr. Abinah believes solidify Staff's recommendation for an interim manager to be appointed for JU. (Tr. at 2235.)

Mr. Abinah believes that there may potentially be a conflict if either Queen Creek or Florence were to be appointed as interim manager because each has been interested in acquiring JU and as interim manager would have complete control of JU and access to all of JU's information. (Tr. at 2178-79, 2191-92.) However, Mr. Abinah also indicated that it might be possible to put a safeguard in place to make it appropriate to appoint Queen Creek or Florence as interim manager. (Tr. at 2179, 2191-92.) Mr. Abinah suggested that one potential safeguard would be to prohibit the interim manager from trying to acquire JU for a period of five years. (Tr. at 2221.) Mr. Abinah stated that he has received a couple of calls from entities who might be interested in serving as interim manager for JU—specifically from Arizona Water Company and from a representative from Queen Creek, who suggested that Pinal County, Florence, and Queen Creek could jointly serve as interim manager. (Tr. at 2221-23.)

Mr. Abinah stated that because Staff has in the past encountered challenges and experienced difficulties in finding an interim manager, Staff suggests an alternative, which Mr. Abinah explained is intended to accomplish the same result as appointment of an interim manager—getting JU into compliance—and should be used if there is no qualified interim manager available due to conflict or any other reason. (Ex. S-74 at 19.) Staff's proposed alternative would require the following:

- That JU retain both a technical advisor and a customer service advisor, both of whom must be independent third parties;
- That JU be responsible for all of the costs associated with retaining the technical advisor and

customer service advisor and prohibited from seeking recovery of those costs from its customers;

- That JU, "in conjunction with Staff," enter into a contract with an engineering firm acceptable to the Commission, for the technical advisor's services, within 30 days of a Decision in this matter, with the agreement to expire after two years or upon conclusion of the pending rate application,[285] whichever comes later, only if the Commission is satisfied that all issues have been satisfactorily resolved;
- That the technical advisor devote at least 30 hours per week to the JU project, attend JU's weekly operations meeting, meet with Staff and ADEQ representatives each month, and provide Staff with a monthly written status report for review 14 days before providing the report to JU;
- That JU file each monthly written status report with Docket Control;
- That the scope of work include at least the following:
    - A complete engineering review of all wastewater treatment facilities and collections systems to determine what modifications or corrections need to be made;
    - A comprehensive plan to reduce SSOs;
    - An odor evaluation conducted at each wastewater treatment facility; and
    - A complete engineering review of all water treatment facilities and transmission and distribution systems;
- That JU agree to implement the recommendations of the technical advisor and Staff, with a limit on capital expenditures during the term, as agreed upon by Staff and JU;
- That JU provide financial assurance of its commitment to the technical advisor agreement in the form of a letter of credit or other mutually agreeable instrument;
- That Mr. Drummond file a monthly attestation that there have been no discussions with George Johnson regarding the day-to-day operations of JU;
- That JU not terminate the technical advisor agreement without the prior written consent of the Commission;

[285] Mr. Abinah believes that the issues raised regarding JU's infrastructure needs and transactions with affiliates or related entities could be addressed in a rate case and suggested that Staff likely would have discovered these issues if JU had come in for a rate case sooner rather than requesting extensions of the rate case filing deadline. (*See* Tr. at 2181-83.)

- That the technical advisor be required to provide 60 days' prior written notice of a termination;
- That JU immediately notify Staff if a notice of termination is received;
- That JU, with the approval of Staff, identify and retain a successor technical advisor within 30 days following the date a notice of termination is received;
- That Staff be authorized to appoint an interim manager, without being required to provide JU additional notice and an opportunity to be heard, if JU breaches the technical advisor agreement;
- That the customer service advisor perform the billing functions for JU, and train JU's service representatives in matters such as how to respond appropriately to customer complaints;
- That JU consider hiring Bonnie O'Connor of Southwest Utility Management, Inc., Nancy Miller of Sunstate Environmental Services, or Don Bohlier of Granite Springs Water Co., LLC as the customer service advisor; and
- That the customer service advisor evaluate JU's billing processes and be allowed to implement improvements and to make appropriate recommendations regarding billing software to eliminate or significantly reduce monthly disconnection notices.[286]

Mr. Abinah stated that Staff's recommendation is that it be authorized to appoint an interim manager and, additionally, as a contingency, if Staff is unable to appoint an interim manager, that Staff be authorized to implement its proposed alternative described above. (Tr. at 2231.) Mr. Abinah conceded that the proposed alternative is a viable alternative intended to accomplish the same thing as appointment of an interim manager. (Tr. at 2210-11.) Mr. Abinah also stated that the proposed alternative is similar to the joint proposal that JU and Staff filed in this matter, although the proposed alternative would impose additional requirements. (Tr. at 2216-17.)

When asked whether Staff supports the settlement terms proposal that was filed by Commissioner Tobin and Commissioner Olson in this matter, Mr. Abinah stated that Staff's role is to move ahead with whatever three Commissioners decide, and that Staff would not have any objection or issues with the Commissioners' proposal if the Commission were to approve it. (Tr. at 2224-25.) Mr. Abinah stated that the Commissioners' proposal is consistent with the job and responsibilities of

[286] *See* Ex. S-74 at 19-24, ex. B; Tr. at 2184-88, 2210.

an interim manager. (Tr. at 2231.)

B. JU's Response

Mr. Drummond testified that Staff's proposed alternative, presented by Mr. Abinah, is something that JU could accommodate and to which he is open and, further, that he believes it would provide benefits to JU's customers superior to the benefits of appointing an interim manager. (Tr. at 3376-78.) Mr. Drummond stated that he believes, practically speaking, that an interim manager would "have no clue" where to start. (Tr. at 3377.) Additionally, Mr. Drummond believes that an interim manager would have to obtain the owner's consent to access capital by borrowing money because banks would require it. (Tr. at 3377.) He believes that an interim manager could also cause Hunt employees to believe that their jobs were at risk, which could result in "more of a catastrophic situation than a better situation." (Tr. at 3377.) Mr. Drummond testified that he believes there are "inherent difficulties" in appointing an interim manager for a company the size of JU that provides both water and wastewater service and that it would be easier to bring in a consultant, as JU has done with GHD, to work with present management to improve the utility's performance, instead of trying to change everything and start over. (Tr. at 3378.) Mr. Drummond does not believe that JU's "situation is so dire that an interim manager needs to be appointed." (Tr. at 3378.) He agrees that there are ongoing issues that need to be resolved but does not believe that they are insurmountable. (Tr. at 3378.) Further, Mr. Drummond stated, he does not believe that the public health and safety are currently at risk. (Tr. at 3378.)

Mr. Drummond asserted that the hiring of GHD is working and that he would like to go down that path rather than the path of interim manager appointment, which is not warranted. (Tr. at 3379, 3556-57.) Mr. Drummond thinks that the retention of an outside consultant by JU is a more viable alternative than is appointing an interim manager because it would probably take an interim manager 60 days to become familiar with JU, and JU "can't wait 60 days" due to the impending summer months and its ongoing capital projects. (Tr. at 3379.) Mr. Drummond stated that JU would work with Staff to implement the Staff proposed alternative, although he would like to see Staff work with JU by accepting GHD as the consultant. (*See* Tr. at 3379-80.) Mr. Drummond also testified that if JU is presented with the option of hiring Mr. Taylor as its consultant, JU would be willing to absorb the costs

of that (by not seeking rate recovery), assuming that there are no other elements to the proposal. (*See* Tr. at 3439-40.) But without knowing what all the elements of the proposed alternative are, Mr. Drummond would not commit to whether JU would ask for those costs to be allowed in a rate case. (Tr. at 3440.) Mr. Drummond did not consider Staff's proposed alternative to be finalized enough for him to commit to agreeing with it, and Mr. Drummond was under the misimpression that it had already been rejected by the Commission. (*See* Tr. at 3440-41.) Mr. Drummond added that the learning curve is such that it makes more sense to leave the present management in place, with the consultant hired and adding value to JU, because present management has made improvements, and there is not a present health and safety issue. (Tr. at 3553-54.)

Mr. Drummond also asserted that the impetus for this matter was water quality concerns, which were not substantiated, and that the inquiry morphed into concerns about H_2S exceedances, odors, and billing issues. (Tr. at 3554.) Mr. Drummond expected the Paymentus system to address the billing issues, which would allow JU to focus on "real issues" instead of just fielding payment calls. (Tr. at 3554.) Mr. Drummond believes that JU has made significant progress in the past 11 months, and he would like to have the opportunity to continue the improvements. (Tr. at 3554-55.)

According to Mr. Drummond, JU would consider challenging the appointment of an interim manager, although it would work with an appointed interim manager if all legal avenues had been exhausted. (Tr. at 3556-57.)

VII. The Counts of the OSC

In Decision No. 76618, the Commission ordered JU to appear and show cause to defend the following:

- Why its actions do not represent a violation of A.R.S. § 40-361(B);
- Why its actions do not represent a violation of A.A.C. R14-2-607(A);
- Why its actions do not represent a violation of A.A.C. R14-2-607(C);
- Why its actions do not represent a failure to provide just and reasonable service;
- Why an Interim Manager should not be appointed to guarantee the necessary technical expertise and managerial experience to run a public utility is met;
- Why JU should not cooperate with and indemnify, defend, and hold harmless the Interim

Manager;

- Why other relief deemed appropriate by the Commission should not be ordered; and
- Why fines and penalties should not be imposed pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, § 19 of the Arizona Constitution.

A. The Standards Referenced & Implied by the Counts of the OSC

A.R.S. § 40-361(B) provides: "Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable."

A.A.C. R14-2-607(A) provides, in pertinent part: "Utility responsibility[:] Each utility shall be responsible for the safe conduct and handling of the sewage from the customer's point of collection."

A.A.C. R14-2-607(C) provides:

> **C.** Continuity of service. Each utility shall make reasonable efforts to supply a satisfactory and continuous level of service. However, no utility shall be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:
>
> 1. Any cause against which the utility could not have reasonably foreseen or made provision for, i.e., force majeure
> 2. Intentional service interruptions to make repairs or perform routine maintenance
> 3. Any temporary overloading of the utility's collection or treatment facilities.

A.R.S. § 40-321(A) authorizes the Commission to determine whether a utility's service is "unjust, unreasonable, unsafe, improper, inadequate or insufficient"; to determine "what is just, reasonable, safe, proper, adequate or sufficient[;] and [to] enforce its determination by order or regulation."

B. Discussion & Resolution

The first four bulleted items for which the Commission ordered JU to appear and show cause in Decision No. 76618 all involve JU's provision of service to its customers—whether that service promotes the safety, health, comfort, and convenience of its customers, employees, and the public and is in all respects adequate, efficient, and reasonable; whether that service constituted safe conduct and

handling of sewage from the customer's point of collection; whether that service demonstrates reasonable efforts to supply satisfactory and continuous levels of service; and whether that service is just, reasonable, safe, proper, adequate, or sufficient. Because of the interrelationship of these inquiries, we address them together. We note that the remaining bulleted items in Decision No. 76618 refer to remedial actions the Commission may take. That topic is discussed below, in Section VIII.B.3 and in Section IX.

The evidence in this matter establishes that JU has an extensive history of violations of ADEQ rules and regulations, including more SSOs than any other private Arizona wastewater utility and, at least since 2012, more notices of opportunity to correct and NOVs than any other Arizona utility. The evidence is incontrovertible that each SSO represents a potential threat to the health of any individual who comes into contact with the raw sewage. Additionally, the evidence shows that JU's SSOs since 2010 have resulted in spillage of at least 483,265 gallons of raw sewage into the environment, 83,100 gallons of that since January 1, 2017. (*See* Exhibit A hereto.) There is also evidence that several of JU's SSOs, including the one that spilled 65,000 gallons on March 26, 2018, have reached the Queen Creek Wash, thereby expanding the potential exposure and health risk through infiltration of the surface water. We are also concerned by JU's unauthorized discharges, which likewise represent a potential health risk, to the workers and any regulators at JU's facilities if not to others; its lack of adequate recordkeeping, which suggests either a lack of training, a lack of resources, or a lack of interest; its submission to ADEQ of inconsistent information, which suggests either an attempt to cover for a lack of recordkeeping or carelessness; and its repeat violations, which suggest either a lack of resources to correct or a disinterest in correction.

Mr. Gardner provided credible evidence that the design of JU's wastewater plant facilities, due to the extensive use of lift stations, exacerbates the risk of SSOs and that all of JU's plant facilities reflect a decade of neglect in terms of both repairs and maintenance and capital improvements. We found Mr. Taylor's assessment to be less valuable because he had not examined all of JU's facilities, was not fully aware of JU's past noncompliance with ADEQ regulations, and seemingly accepted without scrutiny or verification the information he received from JU representatives. We are concerned that Mr. Taylor's approach may have been due, at least in part, to the nature of JU's arrangement with

GHD, under which JU compensates GHD based upon the time spent by GHD's workers, mostly at rates in excess of $100 per hour and for Mr. Taylor at the rate of $180 per hour. We believe that this type of hourly billing arrangement may not promote the type of engagement with JU's operations that JU needs. We feel similarly about Mr. Drummond's current management arrangement with JU, which finds him largely absent from JU's office and almost completely absent from JU's field office.

While we recognize that JU is now actively making strides to improve its plant facilities, the years of neglected repairs and maintenance (which we acknowledge mostly preceded Mr. Drummond and also Mr. Cole) have created a steep uphill climb for JU to do so. We are concerned that JU's current efforts may not suffice to prevent serious operational issues, such as water shortages during periods of peak summer usage, which would also represent a health risk, particularly in Arizona, where temperatures frequently exceed 100 degrees Fahrenheit.

We are troubled by the extensive evidence of JU's inability to adequately control the odors associated with its Section 11 WWTP and the associated collection system, in spite of its significant recent efforts to do so. While there is insufficient evidence for the Commission to determine whether the levels of H_2S detected create a health hazard for those exposed at their homes, there is abundant evidence that the levels of H_2S represent a nuisance for the people who live or spend time in the vicinity of the Section 11 WWTP. One can question the wisdom of allowing houses to be built so close to an open lagoon plant, but now that the homes are there, JU is required to ensure that its operations do not create H_2S emissions that violate PCAQ standards. That JU still has not been able to do, in spite of its extensive efforts, causes us to question whether the Section 11 WWTP and associated collection system must be more substantially modified to gain control over the situation. That JU has chosen to argue with PCAQ concerning the validity of H_2S levels detected on monitors that JU does not control, as opposed to focusing more intently on how to correct the situation long term, causes us to question JU's priorities as well as its management's judgment, as the PCAQ OAC expressly does not relieve JU of its obligation to comply with PCAQ regulations.

Ms. Poulin presented credible evidence concerning JU's customer service efforts and her desire to provide excellent customer service. However, we are struck by the apparent lack of adequate resources provided for JU's customer service function. That JU has not previously either upgraded its

technological telephone and billing functionality or ensured that JU has sufficient personnel to answer the phones promptly during high call volume periods demonstrates either a lack of adequate resources to make such improvements or a lack of sufficient managerial interest in ensuring the adequacy of the customer service function. It is unreasonable to require a caller to spend 30 minutes on hold when calling to pay a bill or ask a question and completely unacceptable to kick a caller over to a voicemail system after the caller has been on hold for that long. We anticipate that the Paymentus system will dramatically improve the situation, as Ms. Poulin expects, but note that JU should not have waited for so long before implementing such an improved system, in light of the obvious deficiencies of its existing system.

Finally, we are extremely concerned by the 2014 Ultra Contract and by JU (and Hunt's) practice of obtaining equipment and services from Johnson-related entities rather than based upon arms'-length negotiations. The evidence shows that the 2014 Ultra Contract results in the transfer of an excessive amount of JU's revenues to Ultra, in return for no services from Ultra (because Hunt does all of the work); renders JU virtually incapable of controlling its operating expenses; provides no value to JU or its ratepayers[287] while providing excessive value to Chris Johnson and Barbara Johnson; and has left JU with inadequate resources to make sufficient capital improvements and to perform sufficient repairs and maintenance to its systems. The evidence also shows that the 2014 Ultra Contract empowers Ultra to terminate the arrangement at any time for any reason, while requiring JU to establish good cause for doing so (which is narrowly defined). That Mr. Drummond shows no interest in altering the 2014 Ultra Contract to benefit JU and its ratepayers causes us grave concern, as do his attorney-client relationships with the various members of the Johnson family. The evidence also shows amply that JU has a practice of entering into business arrangements with Johnson-related entities rather than with third parties through arms' length negotiations—with Ultra, through Ultra (and possibly before Ultra existed) with Hunt, with Ultra Leasing, with Club at Oasis, with Roadrunner, with Athena, with Rancho Sendero, with Annuity Holdings, and with Johnson Int'l. JU's allowing Annuity Holdings to purchase the rights to receive refunds of AIAC from JU at deeply discounted prices, rather than choosing to purchase the

[287] Mr. Drummond's testimony concerning the value presented by the 2014 Ultra Contract was not credible, except to the extent that it acknowledged an estate planning benefit.

rights itself to extinguish the obligations, is particularly offensive. JU's manager should prioritize JU's interests over those of its owners and its owners' family members. Mr. Drummond, like Johnson family members, has thus far shown a disinclination to do this.

For all of these reasons, based upon the extensive evidence recounted in the Discussion portion of this Decision, we conclude that JU has violated A.R.S. § 40-361(B), A.A.C. R14-2-607(A), and A.A.C. R14-2-607(C) and that JU's actions represent a failure to provide just and reasonable service.

VIII. Legal Issues

A. Does the Commission Have Legal Authority to Appoint an Interim Manager?

1. Constitutional Authority

Art. 15, § 3 provides:

> 3. Power of commission as to classifications, rates and charges, rules, contracts, and accounts; local regulation
>
> Section 3. The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations; Provided further, that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said corporation commission may from time to time be amended or repealed by such commission.

Article 15, § 6 provides:

> 6. Enlargement of powers by legislature; rules and regulations
>
> Section 6. The law-making power may enlarge the powers and extend the duties of the corporation commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the commission may make rules and regulations to govern such proceedings.

2. Statutory Authority

The Arizona Revised Statutes cited by the parties provide, in pertinent part, as follows:

> 40-202. Supervising and regulating public service corporations; telecommunications promotion; competitive electricity market; rules; duty to comply; exemptions for electric generation; unlawful practice

A. The commission may supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of that power and jurisdiction. . . .

. . . .

L. A public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation.

40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; surety; utility surety fund

A. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

B. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity, and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

40-331. Power of commission to order additions, improvements or changes in plant of public service corporations; additions or changes made jointly

A. When the commission finds that additions or improvements to or changes in the existing plant or physical properties of a public service corporation ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, the commission shall make and serve an order directing that such changes be made or such structure be erected in the manner and within the time specified in the order. If the commission orders erection of a new structure, it may also fix the site thereof.

40-361. Charges by public service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or service required to be just and reasonable

A. Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful.

B. Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.

C. All rules and regulations made by a public service corporation affecting or pertaining to its charges or service to the public shall be just and reasonable.

3. Caselaw

In *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 300 (1914) ("*Tucson Gas*"), the Arizona Supreme Court considered whether a statute prohibiting public service corporations, *inter alia*, from selling gas, electricity, or water except by meter measurement was unconstitutionally void because it attempted to fix rates for the products named. The *Tucson Gas* court determined that the statute was unconstitutional because the Arizona Constitution has vested the Commission with the full and exclusive power, "with the command to exercise it" to prescribe just and reasonable classifications to be used; to prescribe just and reasonable rates and charges to be made and collected; and to prescribe reasonable rules, regulations, and orders by which public service corporations shall be governed in the transaction of business in Arizona. (15 Ariz. at 304, 307-308.) In so deciding, the *Tucson Gas* court observed that although Article 3 of the Arizona Constitution divides the powers of Arizona state government into the legislative, executive, and judicial departments, the "functions of the Corporation Commission are not confined to any of the three departments named, but its duties and powers pervade them all" and that "it is, in fact, another department of government, with powers and duties as well defined as any branch of the government." (15 Ariz. at 305, 306.) The *Tucson Gas* court stated that where the Commission "is given exclusive power[,] it is supreme [and] may not be invaded by either the courts, the legislative, or executive." (15 Ariz. at 306.) The *Tucson Gas* court also noted that the Commission has been "clothed . . . with full power to investigate, hear, and determine disputes and controversies between public utility companies and the general public . . . primarily for the interest of the consumer." (15 Ariz. at 308.)

In *Arizona Eastern R. Co. v. State*, 19 Ariz. 409 (1918) ("*Arizona Eastern*"), the Arizona Supreme Court considered whether a statute regulating the length of railroad trains traveling through Arizona was unconstitutional, as the appellant railroad, which had been cited and fined under the statute, asserted that Art. 15, § 3 had given the Commission the exclusive authority to regulate in the area. The *Arizona Eastern* court, after discussing *Tucson Gas* and principles of constitutional and statutory construction, determined that while the first part of Art. 15, § 3 is "mandatory and compelling," the second part (regarding regulation "for the convenience, comfort, and safety, and the preservation of the health of the employees and patrons" of public service corporations) is "permissive

and discretionary." (19 Ariz. at 410-13.) The *Arizona Eastern* court concluded that Art. 15, § 3 did not directly or implicitly vest exclusively in the Commission the police power over railways as public highways or over railroad corporations as common carriers, and that the legislature also had the authority to exercise power over a railway as a public highway and over a railroad corporation as a common carrier. (19 Ariz. at 415-16.)

In *Ariz. Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159 (1939) ("*Pacific Greyhound*"), the Arizona Supreme court considered whether the Commission had authority to amend a CC&N held by a common carrier to include a specified route over the objections of another existing common carrier that also provided service over the specified route and without first ordering that existing common carrier to improve its service over the route. The Commission had approved the CC&N amendment in spite of a session law providing that another CC&N could be issued for a route only when the existing common carrier with the route would not provide services deemed satisfactory by the Commission. (54 Ariz. at 165-66.) The Commission argued that the session law was unconstitutional because it conflicted with Art. 15, § 3, and relied upon the language of Art. 15, § 3 as interpreted by the *Tucson Gas* court. (54 Ariz. at 166-67.) The *Pacific Greyhound* court stated that the *Tucson Gas* court had used language "broader than the specific issue involved" and that "strictly speaking, the case is authority only as to the powers of the commission over classification, rates and charges." (54 Ariz. at 167-68.) The *Pacific Greyhound* court discussed several other Arizona Supreme Court cases involving the Commission's authority and stated:

> It will be seen from the foregoing recital that our decisions have not been entirely consistent in all respects, and particularly in some of the reasoning and language used. But running all through them we find an emphatic statement, whenever the Tucson Gas Company case is referred to, that the decision therein only affirms the exclusive power of the corporation commission in so far as charges, rates, classifications and regulations pertaining thereto are concerned.[288]

The *Pacific Greyhound* court concluded that "the paramount power to make all rules and regulations governing public service corporations not specifically and expressly given to the commission by some provision of the constitution, rests in the legislature" and that the session law thus was constitutional. (54 Ariz. at 176-77.)

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[288] 54 Ariz. at 176.

In *Corporation Comm'n v. Consolidated Stage Co.*, 63 Ariz. 257 (1945) ("*Consolidated Stage*"), the Arizona Supreme Court considered whether the Commission had authority to approve the transfer of an individual's stock and "interest" in a motor carrier corporation from the individual to another individual, in spite of the corporation's objections and under circumstances that the *Consolidated Stage* court described as "disregard[ing] the legal entity of the corporation." (63 Ariz. at 258-59.) The *Consolidated Stage* court determined that the Commission had "infring[ed] upon the power given by the legislature to private corporations . . . and interfered directly and materially with [the corporation's] business and its relationship with its stockholders" because neither the Arizona Constitution nor Arizona statutes give the Commission jurisdiction, explicitly or implicitly, "to control the internal affairs of corporations," and the Commission only has the jurisdiction and powers expressly or implicitly conferred upon it. (63 Ariz. at 260-262 (citing, *e.g., Pacific Greyhound*).) The *Consolidated Stage* court declared:

> In the case at bar the commission has and exercises plenary power over the corporation in the matter of fixing and regulating its rates, facilities, time schedules, territory traversed; its accounting system; its tariff schedules and reports; and supervises and regulates all relations between it and the public. . . . [B]ut, . . . the commission has no authority or jurisdiction to control the internal affairs of the corporation. It cannot dictate who its officers shall be, whom it shall employ, who may invest money in it, nor what provisions it shall make for the recognition of its shareholders, nor the manner of transferring shares of stock upon its books.[289]

In *Ethington v. Wright*, 66 Ariz. 382 (1948) ("*Ethington*"), the Arizona Supreme Court considered the constitutionality of a session law that required the Commission "as soon as practicable" to ascertain the fair value of the property of public service corporations furnishing gas or electricity for profit, for the purpose of establishing rate base; "without delay" to initiate negotiations with the Federal Power Commission ("FPC") and enter into any agreements or issue any orders or rules necessary to cooperate with the FPC on determining the property valuations; and to use the fair value determinations as the public service corporations' rate bases for ratemaking purposes. (66 Ariz. at 392-94.) The *Ethington* court recognized that prior caselaw established that the Commission has full and exclusive power to prescribe classifications, rates, and charges and to make rules, regulations, and orders concerning classifications, rates, and charges. (66 Ariz. at 390-92 (citing *Tucson Gas* and *Pacific*

[289] 63 Ariz. at 262-63.

Greyhound).) The *Ethington* court further recognized that ascertaining the fair value of the property of a public service corporation is a necessary step for ratemaking and thus within the exclusive power of the Commission. (66 Ariz. at 392.) Thus, the *Ethington* court determined, because the session law would have compelled the Commission to perform fair value determinations for specified public service corporations, to coordinate those with the FPC, and to use those fair value determinations as rate base, without allowing the Commission any choice, it was an unconstitutional and void encroachment by the legislature upon the Commission's constitutional ratemaking authority. (66 Ariz. at 394-95.)

In *Southern Pacific Company v. Arizona Corp. Comm'n*, 98 Ariz. 339 (1965) ("*Southern Pacific*"), the Arizona Supreme Court considered whether the Commission had the authority to require a railroad to restore discontinued train service without first finding that the train service was necessary because the railroad's service was inadequate without it. The Commission had initially entered an *ex parte* order directing the railroad to maintain the discontinued service, then vacated that order and replaced it with an order to show cause directing that a hearing be held on a specified date, then continued the hearing, and then refused to allow the railroad to present any evidence at hearing and instead voted to order the railroad to restore the discontinued service immediately. (98 Ariz. at 341-42.) Before analyzing the Commission's specific authority, the *Southern Pacific* court observed that it is not the purpose of a regulatory body "to manage the affairs of the corporation"; that the state "is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership"; and that "a public utility may, *in the first instance*, in the exercise of its managerial functions, determine the type and extent of service to the public within the limits of adequacy and reasonableness." (98 Ariz. at 343.) The *Southern Pacific* court then turned to the Commission's assertion that its authority was found in A.R.S. § 40-367, which required, *inter alia*, that a public service corporation not make any changes in its service except after 30 days' notice to the Commission and the public. (98 Ariz. at 343-44.) The *Southern Pacific* court then considered the Commission's power to prevent violations of A.R.S. § 40-367, stating that because "the Commission has no implied powers," the Commission's power to make the order must be "derived from a strict construction of the Constitution and the implementing statutes." (98 Ariz. at 345.) The *Southern*

Pacific court followed *Pacific Greyhound* regarding the interpretation of Art. 15, § 3, finding that the Commission's order could not be sustained under constitutional authority, and then turned to the Commission's assertion that its order was authorized under A.R.S. § 40-324, which authorized the Commission to "make any order reasonably necessary to accommodate and transport the traffic, passengers or freight" if the Commission found, *inter alia*, that a railroad did not run its trains with sufficient frequency. (98 Ariz. at 346.) The *Southern Pacific* court found that the statutory authority would have authorized the Commission's order if the Commission had found that the discontinued service had rendered the railroad's service inadequate or insufficient, but that the statute did "not contemplate that the Commission shall promulgate orders upon a finding of facts by means of a crystal ball." (98 Ariz. at 346.) The *Southern Pacific* court stated:

> The corporation commission in rendering its decision acts judicially. The legislature must have contemplated a determination in accordance with due process of law, otherwise the statute would be unconstitutional. We have repeatedly held in a variety of circumstances that due process of law under the Fourteenth Amendment of the Constitution of the United States requires that there be notice of hearing, a hearing, the right to produce witnesses, examine adverse witnesses and to have a full consideration and determination according to evidence before the body with whom the hearing is held.
>
> Petitioner . . . was entitled to introduce evidence at a hearing to establish that its service was reasonable and adequate and to have an impartial determination on the evidence. . . . The right to such a hearing is one of 'the rudiments of fair play' assured to every litigant by the Fourteenth Amendment as a minimal requirement. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored.
>
> Other courts have held that if a commission is exercising a juridical or quasijudicial function due process of law requires that there be a hearing before a decision. We do not construe A.R.S. § 40-324 as authorizing the Commission to enter an order without a hearing at which a party may introduce evidence and have a decision according to law.[290]

The *Southern Pacific* court then scrutinized the Commission's assertion that its order had been authorized by A.R.S. § 40-202(A):

> Clearly this statute does no more than confirm that which the Commission already possessed under the Constitution; namely, the general right to supervise and regulate public service corporations. The right to supervise and regulate and do those things necessary and convenient in the exercise of its power of supervision and regulation does not in and of itself grant

[290] 98 Ariz. at 346-48 (citations omitted).

> additional powers to the Commission beyond that which the legislature specifically has set forth. Section 40-202 means that the Commission may supervise and regulate under the authority granted by the Constitution and statutes and, in addition, has the power to do those things necessary and convenient in the exercise of the granted powers. The legislature has not given the Commission the right to rearrange petitioner's train service without a judicial determination that the service so provided is inadequate.[291]

The *Southern Pacific* court concluded that because the Commission's order was an attempt to apply the railroad's property to public use without showing that it was necessary because service was otherwise inadequate, which amounted to an unconstitutional deprivation of the railroad's property without due process of law, the Commission's order was a nullity. (98 Ariz. at 348-49.) The *Southern Pacific* court observed, however, that if the Commission found after a hearing that the change in service resulted in inadequate service, the Commission "plainly has the authority to order an intrastate train operated as the public convenience and necessity requires." (98 Ariz. at 349.)

In *Ariz. Corp. Comm'n v. Palm Springs Util. Co., Inc.*, 24 Ariz. App. 124 (App. 1975) ("*Palm Springs*"), the Arizona Court of Appeals, Division 1, considered whether the Commission could require a utility to furnish water of a specified quality to its customers when that quality was specified by an order pertaining to the utility only and was not included in a rule or regulation of general applicability. The *Palms Springs* court discussed Art. 15, § 3 and A.R.S. §§ 40-202(A) and (B), 40-321(A), and 40-361(B), as well as the *Pacific Greyhound* case and concluded:

> Two pertinent generalizations may be drawn from the constitutional and statutory provisions which we have thus far discussed in this opinion. First, the regulatory powers of the Commission are not limited to making orders respecting the health and safety, but also include the power to make orders respecting comfort, convenience, adequacy and reasonableness of service, which is what was done by the Commission in the decision hereunder consideration. Second, both in the Constitution and the statutes, the lawmakers recognized that in regulating public service corporations the Commission might accomplish some goals by the use of rules and regulations of general applicability, but would have to accomplish others by the use of orders pertaining to particular situations or to particular public service corporations.[292]

The *Palm Springs* court observed that administrative law favors promulgation of rules and regulations of general applicability over the generation of policy through individual adjudicatory orders but also that an administrative agency must be able to act by general rule or individual order and must have the

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[291] 98 Ariz. at 348.
[292] 24 Ariz. App. at 128.

discretion to determine which course of action is appropriate under the circumstances. (24 Ariz. App. at 128-29.) Thus, the *Palms Springs* court determined, while A.R.S. § 40-321(B) mandates adoption of regulations governing conditions under which customers are entitled to receive certain services, it does not prohibit the Commission from dealing with specialized situations on a case-by-case basis, provided that there is a rational statutory or constitutional basis for the Commission's action, and the action is not so discriminatory as to constitute a denial of the equal protection clause. (24 Ariz. App. at 129-30.)

In *James P. Paul Water Company v. Arizona Corp. Comm'n*, 137 Ariz. 426 (1983) ("*James P. Paul*"), the Arizona Supreme Court considered under what circumstances the Commission may make changes to a utility's CC&N, after the Commission had deleted a portion of James P. Paul Water Company's ("James P. Paul's") CC&N service area in favor of another utility that held a CC&N to an adjacent area and desired to serve the portion of CC&N area deleted. The Commission's process had included an OSC requiring James P. Paul to show why the requested deletion should not be granted, hearings had been held, and the Commission had reached its Decision by comparing the facilities of the two utilities and determining that the other utility was better poised to provide service to the area. (137 Ariz. at 428, 430-31.) The *James P. Paul* court determined that the Commission had erred because a "certificate holder ha[s] a right to provide service to its certificated area until the Commission [has been] shown that the certificate holder was unable or unwilling to provide adequate service at a reasonable rate" after being "presented with a demand for service which is reasonable in light of projected need." (137 Ariz. at 429, 430.) The *James P. Paul* court stated that this is what the public interest requires, observing, *inter alia*, that a certificated water utility has taken on the risks and obligations of holding the CC&N, including the responsibility to comply with the Commission's orders and regulations promulgated in the public interest, as well as A.R.S. §§ 40-321, 40-322, 40-331, 40-332, 40-336, and 40-338. (137 Ariz. at 429-30.)

In *Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 296 (1992) ("*Woods*"), the Arizona Supreme Court considered whether the Commission's Affiliated Interest Rules (A.A.C. R14-2-801 through R14-2-806) were authorized by the Commission's constitutional ratemaking authority and thus could not be refused certification by the Arizona Attorney General. The *Woods* court

described the substantive issue as "whether article 15, section 3 of the Arizona Constitution gives the Commission power to require a public service corporation to report information about, and obtain permission for transactions with, its parent, subsidiary, and other affiliated corporations." (171 Ariz. at 287.) The *Woods* court recounted that the Commission adopted the Affiliated Interest Rules after Arizona Public Service Company ("APS") created a utility holding company, now known as Pinnacle West Capital Corporation ("Pinnacle"); the Commission issued an order requiring APS and Pinnacle's predecessor to report transactions between APS and Pinnacle and information regarding Pinnacle's diversification plans and activities with subsidiaries, both of which were challenged; the Arizona Court of Appeals held that the Commission could require information from APS but not Pinnacle; and the Arizona Supreme Court held that the Commission could also require reports from Pinnacle. (171 Ariz. at 289-90.) The *Woods* court noted the Commission's concerns, expressed in the APS case, that its regulatory authority over public service corporations would be "weakened and bypassed by the establishment of holding companies" and that the Commission had indicated that it planned to adopt rules to "insure reliable utility service at fair and reasonable rates and to safeguard against such practices as the misuse of public utilities' assets or credit by a non-regulated affiliate." (171 Ariz. at 290.) The *Woods* court also took notice that the "corporate conglomerate" formed by Pinnacle allegedly had faced serious financial problems, including threat of a Pinnacle bankruptcy, and that reorganization of Tucson Electric Power Company and its affiliates also allegedly led to insolvency or near insolvency. (171 Ariz. at 290 n.4.) The *Woods* court discussed the Arizona Constitution's framers' intent in adopting Art. 15; the broad language used in Art. 15, § 3 to describe the Commission's powers; cases that expansively construed the Commission's authority (*Tucson Gas* and *Arizona Eastern*); and cases that contracted the Commission's authority (*Pacific Greyhound* and "its progeny"); and concluded that although the *Pacific Greyhound* court "apparently misconstrue[ed] the holding in Arizona Eastern" and was to be examined "critically in light of the history and text of the constitution," the *Woods* court would "not readily overturn it" and thus "measure[d] the Commission's regulatory power by the doctrine apparently established by *Pacific Greyhound* and its progeny—that the Commission has no regulatory authority under article 15, section 3 except that connected to its ratemaking power." (171 Ariz. at 290-94.) The *Woods* court then considered the Commission's

ratemaking power, in light of cases in which the Arizona Supreme Court recognized that "the Commission's power goes beyond strictly setting rates and extends to enactment of the rules and regulations that are reasonably necessary steps in ratemaking,"[293] that the Commission constitutionally "may exercise all powers which may be necessary or essential in connection with the performance of its duties,"[294] and that "[t]he commission in exercising its rate-making power of necessity has a range of legislative discretion,"[295] and concluded that deference must be given to the Commission's determination of what is reasonably necessary for effective ratemaking. (171 Ariz. at 294.) The *Woods* court reviewed the Affiliated Interest Rules as an entire regulatory scheme, "interpret[ing] necessity in light of the framers' intent of the Commission's function . . . to protect consumers from abuse and overreaching by public service corporations," and concluded that because transactions with affiliates could have a "direct and devastating impact on rates," the Commission's had authority to require both the reporting of information regarding and approval of all transactions between a public service corporation and its affiliates that "may significantly affect economic stability and thus impact the rates charged" by the public service corporation. (171 Ariz. at 295.) The *Woods* court dismissed "invasion of management" arguments, stating that they "fail[ed] to recognize the special relationship between affiliated companies and the strong potential that transactions between affiliates will affect rates." (171 Ariz. at 296.) The *Woods* court stated:

> The Commission was not designed to protect public service corporations and their management but, rather, was established to protect our citizens from the results of speculation, mismanagement, and abuse of power. To accomplish these objectives, the Commission must have the power to obtain information about, and take action to prevent, unwise management or even mismanagement and to forestall its consequences in intercompany transactions significantly affecting a public service corporation's structure or capitalization. It would subvert the intent of the framers to limit the Commission's ratemaking powers so that it could do no more than raise utility rates to cure the damage from inter-company transactions.
>
> Thus, we do not believe the Proposed Rules so interfere with management functions that they constitute an attempt to control the corporation rather than an attempt to control rates. The Commission must certainly be given the power to prevent a public utility corporation from engaging in transactions that will so adversely affect its financial position that the ratepayers will have to make good the losses, and it cannot do so in any

[293] 171 Ariz. at 294 (citing *Ethington v. Wright*, 66 Ariz. 382, 392-94 (1948) (declaring unconstitutional a statute that mandated the Commission establish fair property values in a certain manner)).
[294] 171 Ariz. at 294 (citing *Garvey v. Trew*, 64 Ariz. 342, 346-47 (1946)).
[295] 171 Ariz. at 294 (citing *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 154 (1956)).

> common-sense manner absent the authority to approve or disapprove such transactions in advance. To put it simply, the Commission was given the power to lock the barn door before the horse escapes.[296]

In light of its determination that the Affiliated Interest Rules were authorized under the Commission's constitutional ratemaking authority, the *Woods* court found it unnecessary to consider the Commission's arguments regarding statutory authority for the rules. (171 Ariz. at 297.)

In *Phelps Dodge Corp. v. Arizona Elec. Power Co-op*, 207 Ariz. 95, 111, 83 P.3d 573, 589 (App. 2004) ("*Phelps Dodge*"), the Arizona Court of Appeals for Division 1 considered challenges to the Commission's authority to adopt its Retail Electric Competition Rules (A.A.C. R14-2-1601 through R14-2-1616) ("Competition Rules"), which the Commission had, in reliance on its constitutional ratemaking authority, adopted without certification from the Attorney General under A.R.S. § 41-1044. The *Phelps Dodge* court first found unconstitutional a rule deeming as just and reasonable rates for competitive services that were set by the market, finding that this rule violated the Commission's duty under Arizona Constitution Art. 15, § 14 to make a fair value determination when setting rates and was an unlawful delegation of the Commission's duty under Art. 15, § 3 to set just and reasonable rates. (207 Ariz. at 102-08.) *Inter alia*, the *Phelps Dodge* court then considered whether the Commission exceeded its authority by adopting rules requiring Affected Utilities to use specific tactics to provide nondiscriminatory and open access to transmission and distribution facilities, to divest themselves of competitive assets and services, and to develop "anti-competitive codes of conduct." (207 Ariz. at 111.) In discussing the Commission's authority to promulgate the Competition Rules, the *Phelps Dodge* court initially stated the following:

> The Commission does not possess any inherent powers, but instead exclusively derives its power from the constitution and the legislature. The Commission's ratemaking authority granted by Article 15, Section 3, of the Arizona Constitution extends beyond setting rates to include the promulgation of rules and regulations that are "reasonably necessary steps in ratemaking." The legislature retains power to govern public service corporations in matters unrelated to this ratemaking authority. However, the legislature can delegate authority to the Commission, thereby enlarging the Commission's powers and duties.[297]

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[296] 171 Ariz. at 296-97.

[297] 207 Ariz. at 111 (citations omitted). The *Phelps Dodge* court cited *Williams v. Pipe Trades Indus. Program*, 100 Ariz. 14, 17 (1966); *US West Communications, Inc. v. Arizona Corp. Comm'n*, 197 Ariz. 16, 23 (App. 1999); *Woods*, 171 Ariz. at 294; *Pacific Greyhound*, 54 Ariz. at 176-77; and Arizona Const. Art. 15, § 6. (*See* 207 Ariz. at 111.)

The *Phelps Dodge* court examined these provisions of the Competition Rules in light of the Commission's above-stated authority as well as the Commission's assertion that some of the rules were authorized under A.R.S. § 40-202(A). (207 Ariz. at 112.) Regarding the rule requiring each Affected Utility to create an independent scheduling administrator and a scheduling coordinator to oversee fair access to transmission services in a manner prescribed by the Commission, the *Phelps Dodge* court determined that these provisions were not reasonably necessary steps to ratemaking, were not authorized by A.R.S. § 40-202(A) (based on *Southern Pacific*), and were not implicitly authorized by other statutory language concerning electric competition (stating, "we will not infer [a] grant of authority to interfere with the Affected Utilities' management decisions beyond the 'clear letter' of the statute"). (207 Ariz. at 112-13.) The *Phelps Dodge* court then considered a rule requiring Affected Utilities to divest themselves of competitive generation assets and competitive services and transfer them to an unaffiliated party of a separate corporate affiliate, with the proviso that any assets transferred to an affiliate must be sold for a fair and reasonable value as determined by the Commission. (207 Ariz. at 113.) The *Phelps Dodge* court concluded that the provision requiring an Affected Utility choosing to transfer its competitive assets to an affiliate to do so at a fair and reasonable price as determined by the Commission was authorized by the Commission's constitutional ratemaking authority; the *Phelps Dodge* court deferred to the Commission's determination that the provision was a necessary step for effective ratemaking in a competitive market and reasoned that allowing the assets to be transferred for an unfair price could provide the affiliate an unfair advantage in the competitive market by enabling it to charge rates that were not needed to cover the cost of the assets and that the provision, thus, was aimed at controlling rates rather than controlling the Affected Utilities. (207 Ariz. at 113-14.) The *Phelps Dodge* court made the opposite finding regarding the provisions requiring divestiture of competitive generation assets, finding that the provisions were aimed at controlling the Affected Utilities rather than the rates and thus were outside of the Commission's plenary ratemaking authority. (207 Ariz. at 114.) The *Phelps Dodge* court also found that these provisions were not authorized under A.R.S. § 40-202. (207 Ariz. at 114.) The *Phelps Dodge* court then considered the Commission's authorization to adopt a provision requiring Affected Utilities planning to offer competitive service through affiliates to propose and file with the Commission for approval codes of

conduct with specified content. (207 Ariz. at 114.) The *Phelps Dodge* court found that for the same reasons the Commission has constitutional authority to regulate the pricing of competitive assets transferred from an Affected Utility to a competitive affiliate, the Commission has plenary constitutional authority to require a code of conduct designed to prevent cross-subsidization, as such a requirement is aimed at controlling rates rather than controlling the Affected Utility. (207 Ariz. at 114 (citing *Woods*). The *Phelps Dodge* court also rejected an argument that the code of conduct provision conflicted with statutes allowing electric utility cooperatives to jointly market their services, because the other branches of government cannot interfere with the Commission's exclusive ratemaking authority. (207 Ariz. at 115.)

In *Miller v. Arizona Corp. Comm'n*, 227 Ariz. 21 (App. 2011) ("*Miller*"), the Arizona Court of Appeals, Division 1, considered a challenge to the Commission's Renewable Energy Standard and Tariff Rules (A.A.C. R14-2-1801 to R14-2-1816) ("REST Rules") brought by Arizona Public Service Company ("APS") customers, who alleged that the Commission lacked the authority to adopt the REST Rules. The *Miller* court found that the Commission had acted within its plenary ratemaking authority under Art. 15, § 3 when it adopted the REST Rules. (227 Ariz. at 22.) In reaching its determination, the *Miller* court reviewed the caselaw concerning the scope of the Commission's authority (*e.g., Tucson Gas*, *Arizona Eastern*, *Pacific Greyhound*, *Ethington*, *Woods*). (227 Ariz. at 24-26.) The *Miller* court also considered the "managerial interference doctrine" discussed in *Consolidated Stage* and *Woods*, noting that the doctrine is "a judicial construct designed to protect regulated corporations from over-reaching and micro-management of their internal affairs by the Commission" and determining that the APS customers lacked standing to apply it (APS was not challenging the REST Rules). (227 Ariz. at 26-27.) The Commission had asserted that the REST Rules were fully authorized by the Commission's plenary ratemaking power under Art. 15, § 3 and, in the alternative, that they were authorized by the "permissive concurrent authority found in the second half" of Art. 15, § 3. (227 Ariz. at 27.) The *Miller* court declined to determine whether the REST Rules were "permissible pursuant to concurrent authority with the legislature or legislative authorization" because of its determination that they were authorized by the Commission's exclusive constitutional ratemaking authority. (227 Ariz. at 27.) In

declaring that the REST Rules were within the Commission's ratemaking authority, the *Miller* court, relying upon *Woods*, provided the following analysis:

> The record here establishes a sufficient nexus between the REST rules and ratemaking. Prophylactic measures designed to prevent adverse effects on ratepayers due to a failure to diversify electrical energy sources fall within the Commission's power "to lock the barn door before the horse escapes." Indeed, as *Woods* found in the context of inter-company transactions, "[i]t would subvert the intent of the framers to limit the Commission's ratemaking powers so that it could do no more than raise utility rates to cure the damage."
>
> In formulating the REST rules, the Commission considered price fluctuations, transportation disruptions, and shortages associated with conventional fuel sources, noting that renewable resources are not subject to these same vagaries. Its findings connect the identified risks to the financial stability of utilities and, therefore, to consumer electric rates. The Commission also found that Arizona's anticipated load growth requires the identification and development of new sources of electrical generation to ensure adequate service to utility customers. It concluded that diversification through the use of renewable energy is directly linked to the "security, convenience, health and safety" of utility customers and the general public.
>
> The record demonstrates a relationship between the REST rules and electric rates. If anything, the ratemaking connection is stronger here than with the affiliated interest rules at issue in *Woods*.[298]

The *Miller* court went on to consider the Commission's authority for two specific rules challenged by the APS customers, determining that the APS customers' arguments were based on the managerial interference doctrine, for which they had no standing, and that the two rules were properly promulgated under the Commission's ratemaking authority. (227 Ariz. at 29-31.)

4. Parties' Arguments Regarding the Commission's Authority

Staff, RUCO, Pinal County, the Towns, and Mr. Dantico assert that the Commission has authority to appoint an interim manager pursuant to Art. 15, § 3; statutes enacted to implement the Commission's constitutional authority; and existing caselaw (*e.g., Woods*, *Palm Springs*, and *Tucson Gas*). (*See* Staff Br. at 1-3; RUCO Br. at 24-25; Pinal County ("PC") Br. at 8; PC R. Br. at 3-4; Towns Br. at 3-4; Mr. Dantico ("JKD") R. Br. at 2-4.[299]) Staff, RUCO, Pinal County, and the Towns further assert that the Commission not only has the authority to appoint an interim manager, but a duty to

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[298] 227 Ariz. at 29 (citations omitted).

[299] Initial briefs are cited as "Br." and responsive briefs as "R. Br."

appoint an interim manager in this case. (*See* Staff Br. at 1-3; Staff R. Br. at 1-2; RUCO Br. at 24-25; RUCO R. Br. at 2-3; Towns Br. at 1-4; PC R. Br. at 5-6.)

Staff argues that Art. 15, § 3 and A.R.S. § 40-321(A) grant the Commission the authority to determine whether JU's performance has been inadequate and to determine suitable remedies to correct the issues, with the Commission's authority extending not just to regulation directed at health and safety concerns but also regulation "respecting comfort, convenience, adequacy and reasonableness of service." (Staff Br. at 1, 3 (citing *Palm Springs*).) Staff argues that because *Woods* established that the Commission was designed to protect Arizona citizens from "the results of speculation, mismanagement, and abuse of power," and not to protect public service corporations and their management, the Commission's power must include the power to appoint an interim manager when warranted because, otherwise, the Commission would be unable to fulfill its constitutional mandate of protecting the public interest. (Staff R. Br. at 3 (quoting *Woods*, 171 Ariz. at 296).) Staff argues that the Commission has a duty to appoint an interim manager to take over JU's management and operations to protect the health, safety, and welfare of JU's customers and the public health and safety. (*See* Staff Br. at 1-3; Staff R. Br. at 1-2.)

According to Staff, appointment of an interim manager in this matter would be fully authorized by the Commission's constitutional ratemaking authority under Art. 15, § 3 because the substantive issues in this case are related to ratemaking—both the payments JU makes to Ultra and JU's apparent failure to invest properly in its facilities are directly related to JU's rate base, JU's revenue requirement, and the rates that JU's customers are ultimately required to pay. (Staff R. Br. at 5.) Staff invokes the Commission's authority to "lock the barn door before the horse escapes" under *Woods* and argues that through JU's financial transactions, "the proverbial horse is attempting to escape, if it hasn't already." (Staff R. Br. at 5.) Staff further argues that because JU is either unable or unwilling to share financial information to which the Commission is entitled, including rate-base-related information that would allow the Commission to better understand JU's financial obligations and need to invest in infrastructure, appointment of an interim manager appears to be the only way to protect the public and help ensure that JU is able to operate for the public good. (Staff R. Br. at 5.)

Staff refutes JU's argument that the Commission's constitutional authority is limited to

ratemaking and reasonably necessary steps to ratemaking and points out that Art. 15, § 3, on its face, also grants the Commission permissive, concurrent authority to make and enforce rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of public service corporations' employees and customers, as has been acknowledged in some Arizona cases. (Staff R. Br. at 4-6 (citing *Woods*, *Arizona Eastern*, and *Palm Springs*.) Thus, Staff argues, even if it were determined that the Commission lacks the authority to appoint an interim manager pursuant to its constitutional ratemaking authority, the Commission nonetheless has the authority to appoint an interim manager pursuant to the Commission's permissive, concurrent authority granted by Art. 15, § 3. (Staff R. Br. at 6.) Staff acknowledges the limiting language of *Phelps Dodge* and *Pacific Greyhound*, but argues that *Pacific Greyhound* is distinguishable because it involved a conflict between a specific Commission order and a statute and thus necessitated a determination of which governmental branch had controlling authority. (Staff R. Br. at 6.) Additionally, Staff asserts, the *Pacific Greyhound* court's holding did not address the scope of the permissive language of Art. 15, § 3. (Staff R. Br. at 6.) Staff acknowledges that no appellate opinions or memorandum decisions address the Commission's legal authority to appoint an interim manager but points out that one superior court has determined that the Commission possesses both constitutional and statutory authority to appoint an interim manager. (Staff R. Br. at 7 (citing Minute Entry: Order Denying Motion for Reconsideration and Setting Oral Arguments on Form of Judgment and Decree,[300] issued August 13, 1998, in *Arizona Corp. Comm'n v. George M. Papa, d.b.a. George M. Papa Water Company*, Navajo County Superior Court Case No. 97-00039 ("*Papa* Minute Entry").)

Staff agrees with the Towns' argument that because the Commission has the power to grant CC&Ns and to revoke or delete CC&Ns under the appropriate circumstances and after due process, logically, the Commission also has the authority to take lesser action, such as temporary appointment of an interim manager (for a specific period or until a utility is able to operate for the public good). (Staff R. Br. at 3.)

Staff argues that appointment of an interim manager would not offend the management

[300] Staff included a copy of this Minute Entry as Attachment A to its Initial Brief.

interference doctrine, which is typically raised as a defense when the Commission has mandated a specific change and which requires that the Commission's actions constitute regulation of a utility rather than management of a utility. (Staff Br. at 4-5.) Staff cites *Consolidated Stage*, *Woods*, *Southern Pacific*, and *Phelps Dodge* for the principle that the management interference doctrine "is not a hurdle for the Commission to overcome." (Staff Br. at 5.) Staff asserts that under *Southern Pacific*, the Commission may interfere with the management of a public utility while exercising its regulatory power whenever the public interest so demands. (Staff Br. at 6 (citing *Southern Pacific*, 98 Ariz. at 343).) Staff further states that the management interference doctrine allows for different levels of acceptable interference depending on the circumstances, pointing out that in *Consolidated Stage*, the doctrine was applied to prohibit the Commission from requiring a corporation to transfer stock from one shareholder to another, while in *Woods*, the doctrine was not allowed to keep the Commission from using its constitutional ratemaking authority to promulgate the Affiliated Interest Rules. (Staff R. Br. at 8.) Staff asserts that in this matter, the circumstances involve the Commission's "core mandate"—to regulate public service corporations so that they provide safe, reliable, and adequate service. (Staff R. Br. at 8.) Staff adds that according to *Woods*, the permissibility of Commission interference must be viewed in the light of the framers' intentions to have the Commission protect consumers from abuse and overreaching by public service corporations. (Staff R. Br. at 8.) Staff reasons that because the framers desired for the Commission to serve this protective role, it would be illogical for the Commission to be required to "sit idly by while a public service corporation it regulates chronically endangers the public and fails to adequately maintain it[s] facilities so that they can be operated as the public good requires." (Staff R. Br. at 8.)

Staff also argues that appointment of an interim manager would not constitute a taking under the Takings Clause of the Fifth Amendment to the U.S. Constitution. (Staff Br. at 6.) Staff states that the first inquiry in a Takings Clause analysis is whether the action at issue is a valid exercise of the state's police power. (Staff Br. at 7 (citing *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005) ("*Lingle*")).) Staff reasons that the Commission's appointment of an interim manager would be a valid exercise of its police power under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because the ability of a state to regulate public utilities is one of the regulatory functions

traditionally associated with a state's police powers. (Staff Br. at 7 (citing *Arkansas Elec. Coop. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983)).) Further, Staff asserts, as permitted under Article 15, § 6 of the Arizona Constitution, the Arizona Legislature, through A.R.S. §§ 40-202, 40-321, and 40-361, has expanded the Commission's police power by authorizing it to determine the adequacy of the facilities and service of a public service corporation to ensure that it provides safe and reliable service. (Staff Br. at 7.)

Staff states that the next Takings Clause inquiry is whether the appointment of an interim manager would be a "per se" taking, which exists when the state has caused a permanent physical invasion of an owner's property or has completely deprived an owner of all economically beneficial use of the owner's property. (Staff Br. at 7 (citing *Lingle*, 544 U.S. at 538).) Because appointment of an interim manager is only for a set period of time, until a utility is providing safe and reliable service, and does not change the ownership of the utility, Staff reasons, it would not be a "per se" taking. (Staff Br. at 7-8 (citing Ex. S-74).) In the absence of a "per se" taking, Staff says, the state's action must be examined using the factual inquiry set forth by the U.S. Supreme Court in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), which dictates that a court must examine all the relevant circumstances of a case, including the economic impact of the regulatory act on the entity and the extent to which the regulatory act has interfered with distinct investment-backed expectations, as well as the character of the regulatory act—*i.e.,* whether it is a physical invasion or merely affects an owner's property interest through a public program that adjusts the benefits and burdens of economic life to promote the common good. (Staff Br. at 8 (citing *Lingle*, 544 U.S. at 538).) Staff reasons that although JU has a property right in the assets used in providing service, it does not have a property right to the future customer payments to be made in consideration of the provision of safe and reliable water and wastewater services. (Staff Br. at 8.) Staff additionally asserts that appointment of an interim manager would be made to promote the common good, would not impact JU's owner's ability to sell JU's assets (with Commission approval), and would not impact JU's owner's right to receive any revenues generated in excess of expenses incurred, thus leaving JU's owner with the same rights after appointment of an interim manager as the owner had before appointment of an interim manager. (Tr. at 8-9.)

In response to JU's assertion that the Commission is prohibited from appointing an interim manager under separation of powers principles, Staff asserts that the Commission is not subject to Article 3 of the Arizona Constitution, which provides that the "powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial" because the Commission's functions are not confined to any of the three departments listed, but instead include features of each. (Staff R. Br. at 4 (quoting Ariz. Const. Art. 3; citing *Tucson Gas*).) Staff further argues that as established in *Tucson Gas*, the Commission's area of exclusive jurisdiction (regulation of ratemaking and matters necessary to the ratemaking process) cannot be invaded by the courts, the legislature, or the executive branch. (Staff R. Br. at 4, 5.)

Staff also dismisses JU's argument that the Arizona Legislature has established through A.R.S. §§ 12-1241 and 12-1242 that the Superior Court rather than the Commission has authority to appoint a third party to take over management of an entity under scrutiny. (Staff R. Br. at 7.) Staff points out that those statutes address receiverships and that receiverships are different than the appointment of an interim manager—a receiver is appointed for an insolvent corporation, partnership, or individual to preserve assets for the benefit of affected parties—not to ensure that a utility can continue to provide services to its customers for the public good. (Staff R. Br. at 7-8.)

RUCO asserts that the Commission has an obligation to act when a public service corporation operates in such a manner that its service is no longer safe, reasonable, adequate, or sufficient; that the Commission has the power to act to assure safe, reliable, and adequate service; and that one of the actions the Commission may take is appointment of an interim manager. (RUCO Br. at 24-25.) RUCO argues that the Commission is obligated to act in this case by the Arizona Constitution, permitted to do so by statute, and not prohibited from doing so as argued by JU because JU's interpretation of caselaw ignores the broad language in Art. 15, § 3 regarding Commission regulation to preserve convenience, comfort, safety, and health. (RUCO R. Br. at 2-3 (citing Art. 15, § 3; A.R.S. § 40-361(B); *Phelps Dodge*).)

RUCO asserts that the management interference doctrine does not prevent the Commission from approving an interim manager in this case because the doctrine cannot trump the Commission's authority and obligation to act, should not be interpreted so broadly as to conflict with the

Commission's constitutional and statutory authority, and is a judicial construct designed to protect regulated corporations from over-reaching and micro-managing of their internal affairs by the Commission. (RUCO Br. at 26-27 (citing *Miller* and *Consolidated Stage*).) RUCO essentially argues that because the appointment of an interim manager would be done to protect the health and safety of the public from JU's inability to operate and manage its systems in a safe, reliable, and reasonable way, and would be temporary, the management interference doctrine is not invoked. (*See* RUCO Br. at 26-28.)

Pinal County argues that under A.R.S. § 40-321 and *Woods*, the Commission must take action in this matter because JU is acting in a manner that is unjust, unreasonable, unsafe, improper, inadequate, or insufficient and because citizens need protection from mismanagement and abuse of power caused by unjust and preferential affiliated party transactions. (PC R. Br. at 5-6.) Pinal County argues that, under *Woods*, the Commission has the power to take action to prevent unwise management or mismanagement and prevent the consequences of intercompany transactions that significantly affect a public service corporation's structure or capitalization and that, under *Palm Springs*, the Commission has the authority to make orders respecting comfort, convenience, adequacy, and reasonableness of service and to accomplish its goals by the use of orders as to particular situations or particular public service corporations. (PC R. Br. at 3-4.) Further, Pinal County asserts, the Commission has authority to appoint an interim manager under A.R.S. §§ 40-361(B) and 40-202(A). (PC R. Br. at 2-3.) Pinal County also points to Decision No. 73885 (May 8, 2013) ("Black Mountain") as an example of the Commission exercising its authority to order the closure of an existing wastewater treatment plant because of its long history of noxious odors, notwithstanding evidence that the plant was in compliance with Maricopa County and ADEQ standards. (PC R. Br. at 4.)

Pinal County asserts that the management interference doctrine, set forth in *Southern Pacific*, establishes that an owner has the initial right to determine what service to provide and that a Commission order requiring a change to the service requires a finding that the service provided is inadequate, made after the utility is given due process and an opportunity to be heard. (PC Br. at 9-10.) Pinal County states that *Southern Pacific*'s requirement for a finding of inadequate or insufficient service is consistent with the standard of A.R.S. § 40-321(A) and that JU has been provided "absolutely

every right to be heard in this proceeding" but has failed to establish that the status quo should be maintained. (PC Br. at 10.)

The Towns suggest that a conclusion that the Commission lacks authority to stop the abuses and mismanagement by JU would mean that the Commission does not have any meaningful powers or duties and that there is no one with the ability to stop a monopoly's abuses of power and privilege. (Towns Br. at 24.) The Towns assert that, under Art. 15, § 3 and *Woods*, the Commission has a duty to protect JU's ratepayers from "recalcitrant utility mismanagement, self-dealing, and abuses of power that affect rates and services" and that unless the Commission appoints an interim manager, JU's management and owners will continue to abuse their powers and mismanage the utility to unjustly enrich the Johnson family, undermining JU's economic wellbeing and ultimately impacting JU's rates. (Towns Br. at 1-4.) The Towns also cite A.R.S. § 40-202(A) as the source of Commission authority to take actions necessary and convenient in the exercise of the Commission's statutory authority. (Towns Br. at 3-4.) The Towns also argue--*major continet in se minus*[301]--that because the Commission has the authority to eliminate a company's CC&N upon a showing that the CC&N holder has failed to supply service at a reasonable cost to its customers, the Commission must also have the lesser authority to appoint an interim manager. (Towns Br. at 4 (citing *James P. Paul*, 137 Ariz. at 429).) The Towns further assert that unless JU's CC&N is revoked, an action for which the Towns argue the evidence is more than adequate under *James P. Paul*, the only way for the Commission to supervise and regulate JU's ownership and management is through appointment of an interim manager. (Towns Br. at 4-5; Towns R. Br. at 6.) The Towns argue that JU is "the threat that the Arizona Supreme Court warned of in *Woods*" when it stated that the Commission needed to be able to "lock the barn door before the horse escapes" by having the authority to approve or disapprove transactions that adversely affect a public utility's financial position to the extent that ratepayers must cover the losses. (Towns Br. at 20 (quoting *Woods*, 171 Ariz. at 297, 830 P.2d at 818).) The Towns further argue that Mr. Drummond has shown that he will not remedy the "rampant self-dealing and excessive fees for nonexistent services that siphon the Company's revenue" and that an interim manager is "critically necessary" because of the "prolific

[301] This translates to "the greater includes the less."

mismanagement and abuses of power" by JU's owners and management. (Towns Br. at 20-21.)

The Towns assert that the management interference doctrine does not and cannot prevent the Commission from taking action that is just and necessary to protect rates and ratepayers from the "worst abuses of utility mismanagement." (Towns Br. at 5.) The Towns rely upon the *Woods* court's reasoning concerning how the Affiliated Interest Rules are related to ratemaking because of the "special relationship between affiliated companies and the strong potential that transactions between affiliates will affect rates" as well as the *Woods* court's observance of the "various threats to consumers" posed by public utility holding companies according to the Federal Trade Commission. (Towns Br. at 5-6 (quoting *Woods*, 171 Ariz. at 295-96).)

The Towns refute as a "logical fallacy" JU's argument that the Commission lacks the authority to appoint an interim manager because the Arizona Constitution and statutes do not expressly provide the Commission such authority. (Towns R. Br. at 3.) The Towns reason, based on tenets of statutory interpretation,[302] that the language in A.R.S. § 40-202 granting the Commission authority "to do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of" its authority over public service corporations must be given meaning. (Towns R. Br. at 3.) The Towns also point to the language in A.R.S. § 40-321 authorizing the Commission to determine what is "just, reasonable, [and] safe" and to enforce its determination by order or regulation, reasoning that if JU's argument were accepted, this statute would be meaningless because it does not include an explicit list of allowable options for the Commission to consider. (Towns R. Br. at 4.) Further, the Towns point out, no court has found that the Commission lacks the authority to appoint an interim manager. (Towns R. Br. at 4.) The Towns also refute JU's receivership argument, asserting that because of the Commission's plenary power over public service corporations, "the Commission does not need to go hat in hand and ask the Courts to appoint a receiver." (Towns R. Br. at 5.) The Towns urge the Commission not to fear the appeal that JU has promised because "if this is not the case

[302] The Towns cite *Snyder v. Lena*, 145 Ariz. 583, 585 (App. 1985) ("In construing a statute, the court will favor that construction which gives meaning to every word."); *Scenic Ariz. v. City of Phx. Bd. of Adjustment*, 228 Ariz. 419, 432 (App. 2011) ("[W]e must strive not to construe statutory schemes in a way that renders portions of them superfluous.") (See Towns R. Br. at 3-4.)

to confirm the Commission's authority, then which case could ever provide such confirmation?" (Towns R. Br. at 4.)

The Towns also agree with Staff's position that appointment of an interim manager would not constitute a taking and, further, assert that appointment of an interim manager would instead preserve and maintain JU's property, "something the Company's management has shown it is unwilling or unable to do." (Towns R. Br. at 5 n.3.)

Mr. Dantico asserts that the Commission has both constitutional and statutory authority to appoint an interim manager. (JKD R. Br. at 2-4. (citing Art. 15, § 3 and A.R.S. §§ 40-202, 40-203, 40-321, and 40-361).) Mr. Dantico additionally asserts that in light of the manner in which JU has chosen to structure its business operations—so that approximately one-third of total annual revenues collected from ratepayers flow to George Johnson's children through Ultra, leaving insufficient funds for JU's capital improvements, maintenance, and proper management—the Arizona Supreme Court's reasoning and concerns in *Woods* are analogous to the present situation with JU, and the Commission has the constitutional authority to appoint an interim manager as it had the authority to adopt the Affiliated Interest Rules. (JKD R. Br. at 8-12.)

JU states that the Commission only has the legal authority to do what the Arizona Constitution or Arizona Legislature authorize it to do and that no statutory or constitutional language expressly authorizes the Commission to appoint an interim manager. (JU R. Br. at 2.) JU asserts that *Phelps Dodge* controls the resolution of this issue because it dictates how statutes must be interpreted to determine the scope of the Commission's authority. (JU R. Br. at 2.) JU states that the court in *Phelps Dodge* made it clear that the Arizona Legislature has the power to govern public service corporations in matters unrelated to the Commission's constitutional ratemaking authority and that any delegation of authority to the Commission must be explicit, not assumed, implied, or gleaned. (JU R. Br. at 3.) JU quotes the following passage concerning what the Commission is authorized to do: "Although the line separating permissible Commission acts and unauthorized managerial interference can be difficult to precisely discern, our supreme court has suggested that the line is drawn between rules that attempt to control **rates**, which **are permissible**, and rules that attempt to **control the corporation**, which **are impermissible**." (JU R. Br. at 3 (quoting *Phelps Dodge*, 207 Ariz. at 113 (emphasis added)).) JU

asserts that RUCO simply ignores *Phelps Dodge* because RUCO attempts to infer authority by broadly reading A.R.S. §§ 40-202, 40-321, 40-331, and 40-361, although the *Phelps Dodge* court found A.R.S. § 40-202 to be too broad to confer specific authority on the Commission, A.R.S. § 40-321 to be a statute that allows the Commission to determine what is safe without mentioning any power to force a remedy on a utility, and A.R.S. §§ 40-331 and 40-361 to be statutes that authorize the Commission to direct a utility to perform a function. (JU R. Br. at 4.) JU asserts that Staff also ignores *Phelps Dodge*, disputing a Staff assertion that the Arizona Constitution and Arizona statutes expressly authorize the Commission to act to preserve the health and safety of the public. (JU R. Br. at 5.) JU also criticizes Staff for citing the *Papa* Minute Entry, stating that to do so is a violation of Arizona Supreme Court Rule 111(c)(1) and that, even if it were not, the *Papa* Minute Entry would have been abrogated by *Phelps Dodge*. (JU R. Br. at 5.) JU asserts that the Towns' initial brief misstates the evidence presented and the facts in the case as well as the Commission's legal authority and criticizes the Towns for stating that the Commission has intrinsic powers, which JU states is directly contrary to the *Phelps Dodge* court's conclusion that the Commission has no inherent powers, and for their reliance on A.R.S. § 40-202 and cases that include similarly broad language that JU asserts refers only to the Commission's ratemaking authority. (JU R. Br. at 6.) JU also asserts that the Towns' "*major continet in se minus*" argument fails to pass "the straight face test" and that *James P. Paul* is distinguished from this case because this case does not involve any changes to JU's CC&N. (JU R. Br. at 6.) JU concludes that the Commission has no legal authority to install an interim manager if a utility objects; JU also clearly states that it objects. (JU R. Br. at 7.)

JU asserts that because the Arizona Constitution's separation of powers clause prohibits one branch of government from exercising the powers properly belonging to another branch, and neither the Arizona Constitution nor Arizona statutes have explicitly granted the Commission authority to appoint an interim manager, the Commission lacks that authority, and only the Arizona Legislature has that power. (JU Br. at 1-3 (citing Ariz. Const. Art. 3; *Tucson Gas*; *Phelps Dodge*).) JU asserts that Staff's reliance upon A.R.S. §§ 40-202, 40-203, 40-321, 40-322, and 40-361(B) for implicit authority is an attempt at "an end-around" because none of those statutes expressly authorize the Commission to install an interim manager. (JU Br. at 3-5.) Further, JU asserts, there is no Arizona caselaw recognizing

that the Commission has legal authority to unilaterally install an interim manager. (JU Br. at 3.) According to JU, this matter is *ultra vires*[303] and should be closed. (JU Br. at 1, 3.) JU adds that the Arizona Legislature has granted to the Superior Court, not the Commission, the authority to appoint a third party to take over management of a scrutinized entity. (JU Br. at 5 (citing A.R.S. §§ 12-1241, 12-1242 (concerning appointment of a receiver)).)

JU also asserts that the management interference doctrine prohibits the Commission from controlling the management affairs of a utility and interfering in the relationship between a utility and its customers so as to protect utilities from Commission "over-reaching and micro-management of their internal affairs," which is what JU states the Commission would be doing if it were to replace JU's management and replace it with management selected by the Commission. (JU Br. at 5-6 (citing *Phelps Dodge*; *Miller*; *Consolidated Stage*).) JU states that when the Commission relies upon its statutory authority rather than its constitutional ratemaking authority, Arizona courts will not infer authority over a utility's management decisions beyond that clearly in statute. (JU Br. at 6 (citing *Phelps Dodge*; *Southern Pacific*).)

5. Resolution

As recognized in *James P. Paul*, a certificated utility is obligated to provide adequate service at reasonable rates and to comply with Commission rules, Commission orders, and the statutes imposing obligations on public service corporations contained in A.R.S. Title 40, Chapter 2. Additionally, *James P. Paul* recognized that the Commission has the authority to amend or revoke a utility's CC&N if the utility fails to provide adequate service at reasonable rates after having been presented with a reasonable demand for service. Although the *James P. Paul* court did not mention the fact, we observe that there is no express constitutional or statutory authority for the Commission to amend or revoke a public service corporation's CC&N, only to grant or deny it.[304] From this, we

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[303] *Ultra vires* means "beyond strength" and is used to signify a lack of legal power or authority.

[304] The *James P. Paul* court stated: "The Commission's authority to grant a certificate of convenience and authority is controlled by the public interest, A.R.S. § 40-282(C). Therefore, its authority to delete and reassign a parcel of land is controlled by the same because reassignment is equivalent to granting a certificate anew." (137 Ariz. at 428 n.2.) A.R.S. § 40-282(C) states, in pertinent part:

> The commission may, after a hearing, issue the certificate or refuse to issue it, or issue it for the construction of only a portion of the contemplated street railroad, line, plant or system, or extension

conclude that in spite of language in some cases to the contrary, the Arizona Supreme Court considers the Commission to have some inherent authority to act when doing so is in the public interest. We believe that A.R.S. § 40-321(A) is a source of this authority, as the *James P. Paul* standard—that service must be adequate to retain a CC&N—is consistent with A.R.S. § 40-321(A), which authorizes the Commission to determine "what is just, reasonable, safe, proper, adequate or sufficient" and requires the Commission to "enforce its determination by order or regulation." The Commission's authority under this statutory provision has not been narrowed through case law. (*See, e.g., Campbell v. Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 431 (App. 1978).) Consistent with the argument of the Towns and Staff, we believe that the Commission's revocation of a CC&N is the most severe action the Commission can take in the event of a public service corporation's failure to do "what is just, reasonable, safe, proper, adequate or sufficient" and that the Commission is inherently authorized to take the lesser actions of amending the CC&N or taking control of the public service corporation's provision of services under the CC&N by installing an interim manager. JU did not provide a compelling argument in response to the Towns' *major continet in se minus* argument, instead choosing only to ridicule it and observe that JU's CC&N is not at issue.

Although we conclude that the Commission has the legal authority to appoint an interim manager as described above, we also find that the Commission has constitutional authority to appoint an interim manager under specific circumstances. As recognized in *Woods*, the Commission's ratemaking authority, under Art. 15, § 3, authorizes it to protect ratepayers in situations when it is necessary to "prevent [] unwise management or even mismanagement and to forestall its consequences" because "the Commission's ratemaking powers [are not so limited] that it could do no more than raise utility rates to cure the damage from inter-company transactions." (*Woods*, 171 Ariz. at 296.) In *Woods*, the Commission's ratemaking authority was determined to be sufficient to require

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thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of rights granted by the certificate terms and conditions it deems that the public convenience and necessity require.

The Arizona Supreme Court also recognized the Commission's authority to grant, amend, or cancel a CC&N in *Application of Trico Elec. Co-op., Inc.*, 92 Ariz. 373 (1962) ("*Trico*"), although the *Trico* court oddly stated, "[t]he Commission's power to grant, amend or cancel certificates of convenience and necessity is limited to that expressly granted by the Constitution and laws of Arizona" and followed with recitation of the language of A.R.S. § 40-252, with the requirements for notice and an opportunity to be heard highlighted. (92 Ariz. at 381.)

reporting and approval of affiliate transactions, as those were identified as potentially disastrous to utilities and their ratepayers. Likewise, the *Miller* court recognized that the Commission's ratemaking authority can be used to protect ratepayers outside of the context of a rate case when it determined that the Commission's ratemaking authority was sufficient to require electric utilities to obtain a portion of their energy through renewable resources, as lack of a diversified portfolio and overreliance on fossil fuel resources was determined to make Arizona's electric utilities more vulnerable to fuel shortages and fuel price fluctuations that could place a severe strain on a utility's financial condition and cause its rates to increase.

Consistent with *Woods* and *Miller*, the Commission concludes that its ratemaking authority also provides it the power to replace a utility's current manager, on an interim basis, with a Commission-appointed manager when the Commission determines that doing so is necessary to protect ratepayers (and possibly also the utility itself) from management that has made or is making decisions that place a severe strain on the utility's financial condition and are likely to cause its rates to increase. The Commission determines that appointing an interim manager under these circumstances would be fully authorized under its exclusive and plenary constitutional ratemaking authority as a reasonably necessary step to ratemaking and an exercise of the Commission's "power to lock the barn door before the horse escapes." (*See Woods*, 171 Ariz. at 297.) We are not persuaded that *Phelps Dodge* requires a different outcome,[305] as appointment of an interim manager in this context would be done to protect ratepayers from the rate impacts that are likely to result from harmful management decisions, and the *Phelps Dodge* court acknowledged that the "Commission possesses plenary power" to impose requirements "aimed at controlling rates rather than the corporation" (including requiring that a transfer of assets from a utility to an affiliate be for a just and reasonable price and requiring that a utility have a code of conduct designed to prevent cross-subsidization). (*See Phelps Dodge*, 207 Ariz. at 114.)

Additionally, the Commission concludes that the Commission's appointment of an interim manager in this context would not run afoul of the managerial interference doctrine because the appointment would be made for the purpose of controlling rates, would not run afoul of the Separation

[305] We note that *Woods* is an Arizona Supreme Court decision, while *Phelps Dodge* and *Miller* are both Arizona Court of Appeals decisions and, further, that both *Phelps Dodge* and *Miller* relied upon the *Woods* language regarding the Commission's protective role.

of Powers clause because the Separation of Powers clause does not apply to the Commission, and would not run afoul of the Takings Clause because ownership of the utility would not be impacted and the benefits of ownership should only be enhanced through appointment of an interim manager who would ensure that the utility retained sufficient resources to perform all necessary and prudent maintenance and capital improvements.

Although we have determined that the Commission has both statutory and constitutional authority to appoint an interim manager when appropriate, we would be remiss if we failed to note, in response to JU's argument regarding no express Commission authority to appoint an interim manager, that the existence of interim managers in Commission cases has been recognized by Arizona's legislative branch, and the Commission's appointment of interim managers has been recognized by Arizona's judicial branch. A.R.S. § 49-355, which establishes the small drinking water systems fund in the Water Infrastructure Finance Authority of Arizona ("WIFA") provides that on the recommendation of ADEQ in consultation with the Commission, WIFA may approve a grant from the fund to an interim operator, an interim manager, or an owner of a small drinking water system for the purpose of correcting or avoiding an interruption in water service or complying with A.R.S. Title 40, Chapter 2 or a rule adopted under A.R.S. Title 40, Chapter 2 or Title 49, Chapter 2, and Arizona Supreme Court Rule 31(d)(28) provides that under specified conditions in matters before the Commission, a public service corporation, "an interim operator appointed by the Commission," or a non-profit organization may be represented by an individual who is not an active member of the Arizona bar. The Commission believes that both of these provisions recognize that the Commission has authority to appoint interim managers/interim operators for public service corporations.

B. What Is the Standard for Appointment of an Interim Manager & Has It Been Met?

1. Prior Decisions

In Decision No. 65858 (April 25, 2003),[306] an OSC and Order for Interim Relief issued against

[306] Official notice of this Decision was taken at the hearing. In the language preceding the Findings of Fact for the Decision, the Commission stated that it had previously appointed managers in Decision No. 63136 (November 16, 2000), Decision No. 63547 (April 4, 2001), and Decision No. 65236 (October 2, 2002). (Decision No. 65858 at 2.) Official notice is taken of these Decisions.

In Decision No. 73136, the Commission made permanent a temporary order authorizing Staff to install an interim manager to operate Sabrosa Water Company ("Sabrosa") and do any and all things to bring Sabrosa into full compliance with Arizona law and Commission rules and orders. (Decision No. 63136 at 8.) The Commission did not make a finding

Sonoita Valley Water Company, Inc. ("Sonoita") as well as Sonoita's president/sole shareholder and his wife, Staff sought authority to appoint an interim manager due to Sonoita's history of water shortage problems, 19 informal complaints received over three years about Sonoita's inadequate water quantity or pressure, Sonoita's president's unfulfilled assurances to Staff for several years that remedial action would be taken to correct the inadequate water pressure and system outages, and Sonoita's administrative dissolution by the Corporations Division 10 years earlier. (Decision No. 65858 at 2-3.) The Commission found that Sonoita's operation of the water system without an interim manager "constitute[d] a clear and present danger to the public health and safety" and that the "threat of such operation [was] imminent." (Decision No. 65858 at 3.) The Commission also concluded:

> The operation of Sonoita's water system in a manner that presents a clear and present danger to the public health and safety . . . constitutes unjust and unreasonable service. Moreover, failure to provide water or to provide adequate water pressure constitutes unjust and unreasonable service. Pursuant to A.R.S. §§ 40-202; 40-203; 40-321; 40-322; and Article XV § 3 of the Arizona Constitution, the Commission may prohibit unjust and unreasonable service. Because there is an imminent threat of such unjust and unreasonable service, the Commission may grant the requested interim relief against Sonoita described in Finding of Fact 12.[307]

The interim relief described in Finding of Fact 12 was for an interim manager to be appointed

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of clear and present danger or regarding the legal authority for appointing an interim manager but did find that Sabrosa was in violation of A.R.S. § 40-321 and A.A.C. R14-2-407(C), (E), and (F) and R14-2-409(A). (*Id.* at 7-8.)

In Decision No. 63547, the Commission authorized Staff to install an interim manager to operate Diamond Valley Water User's Corporation ("Diamond") after finding that Diamond's current management was not capable of operating its water system in accordance with the Decision in which it received its CC&N, applicable Commission regulations, and state law. (Decision No. 63547 at 11.) The Commission had found that Diamond had had various billing problems, including consistently issuing incorrect and inflated bills to its customers; had failed to provide at least one customer a meter and service for which the customer had already paid; had stopped paying the bills issued by its water supplier; and had been the subject of 122 informal complaints and 22 formal complaints to the Commission over a period of one year and 10 days. (*Id.* at 8-10.) The Commission concluded that Diamond had violated A.R.S. § 40-321; A.A.C. R14-2-409(A) and R14-2-411(D); and the Decision granting its CC&N (by failing to make various filings, failing to maintain its books in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts, and failing to properly bill its customers). (*Id.* at 11-12.) The Commission did not make a finding or reach a conclusion regarding clear and present danger or the legal authority for appointing an interim manager. (*See id.* at 5-12.)

In Decision No. 65236, the Commission appointed an interim manager for the Casitas Bonitas System ("Casitas") apparently owned by American Public Service Company ("APSC") after finding that APSC's operation of Casitas without the assistance of its existing interim manager (installed by agreement in anticipation of a sale of Casitas to a new community facilities district) constituted a clear and present danger to the public health and safety and that the threat of such operation was imminent (the existing interim manager had provided notice of its intent to terminate the agreement). (Decision No. 65236 at 4-5.) The Commission further concluded that operation of Casitas in a manner presenting a clear and present danger to the public health and safety constituted unjust and unreasonable service, which the Commission could prohibit under A.R.S. §§ 40-202, 40-203, 40-321, 40-322, and Art. 15, § 3. (*Id.* at 6-7.) The Commission also ordered that APSC could apply at any time to terminate the appointment of the interim manager upon a showing that APSC had acquired sufficient technical, financial, and managerial capabilities to operate Casitas. (*Id.* at 8.)

[307] Decision No. 65858 at 4-5.

for Sonoita pursuant to reasonable terms and conditions agreed between the interim manager and Staff; for the interim manager to have full authority to conduct the business and affairs of Sonoita's water system; and for Sonoita and its president to indemnify, defend, and hold harmless the interim manager for all claims relating to its management of Sonoita's water system. (Decision No. 65858 at 3.) In the language preceding its Findings of Fact, the Commission also stated: "We remain mindful that the appointment of an interim manager is an extraordinary remedy which should only be employed when no other option is available." (Decision No. 65858 at 2.)

In Decision No. 66241 (September 16, 2003),[308] an Order to Show Cause and Order for Interim Relief issued against Johnny A. McLain (with seven dba[309] water companies and his marital community) (collectively "McLain") as well as Miracle Valley Water Company, Inc., Staff sought authority to appoint an interim manager because ADEQ had issued "several NOVs against all seven" of McLain's water systems; McLain's water systems all had major deficiencies per ADEQ Compliance Status Reports; Staff had received a number of informal complaints regarding water outages and/or inadequate pressure in two of McLain's systems; McLain had not resolved the water quantity and water pressure problems despite assurances to Staff and ADEQ that he would; and Staff was concerned that without remedial action, the customers of all seven water systems would not receive adequate service. (Decision No. 66241 at 5.) The Commission found that the "only reasonable and practical solution to the problems facing" the McLain systems was appointment of an interim manager. (Decision No. 66241 at 6.) The Commission reached a conclusion using almost the identical language quoted above from Decision No. 65858 and appointed an interim manager for the seven McLain systems, under the same terms as in Decision No. 65858. (Decision No. 66241 at 8, 10-11.) As it had in Decision No. 65858, the Commission also stated before its Findings of Fact: "We remain mindful that the appointment of an interim manager is an extraordinary remedy which should only be employed when no other option is viable." (Decision No. 66241 at 2.) In Decision No. 66897 (April 6, 2004),[310] which

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308 Official notice of this Decision was taken at the hearing.
309 As used here, "dba" refers to an entity name used by a person.
310 Official notice is taken of this Decision.

was issued in the same docket after oral argument,[311] the Commission considered McLain's argument that under *Southern Pacific*, the Commission lacked the authority to appoint an interim manager and, further, that an interim manager could not be appointed because Staff had not claimed that there was a "clear and present danger" to public health and safety, which McLain asserted would require "that the substantive evil must be extremely serious and the degree of imminence extremely high." (Decision No. 66897 at 5-6.) Staff distinguished *Southern Pacific*, stating that there had been no evidence therein that Southern Pacific's revised schedules had violated its statutory obligations. (Decision No. 66897 at 7-8.) Staff also argued that an imminent threat to water customers had been shown due to the major deficiencies in McLain's water systems and that the "clear and present danger" standard was not applicable to appointment of an interim manager. (Decision No. 66897 at 8.) The Commission found that Decision No. 66241 was a valid Order of the Commission that should be enforced as issued and that the Commission had authority to appoint an interim manager. (Decision No. 66897 at 9, 16-17.) The Commission distinguished *Southern Pacific* because therein the Commission had relied on an order that conflicted with a statute, whereas for Decision No. 66241, the Commission had relied on valid Commission Decisions and ADEQ regulations that McLain had allegedly violated. (Decision No. 66897 at 11-12.) The Commission further stated that Staff had met its threshold showing that there was sufficient danger to the public health and safety to justify appointment of an interim manager for McLain as a temporary measure until the Commission could hold a full evidentiary hearing. (Decision No. 66897 at 12.) The Commission further stated: "We find **no requirement that Staff's showing rise to the level of clear and present danger**. . . . When dealing with issues of water quality and adequacy of service, the potential danger to the public's health and safety warrants such remedial interim actions." (Decision No. 66897 at 12 (emphasis added).) The Commission found that A.R.S. § 40-202(A) provided it authority to appoint an interim manager. (Decision No. 66897 at 16.)

In Decision No. 69865 (August 23, 2007), an OSC issued against American Realty and Mortgage Company, Inc. dba Hacienda Acres Water System ("Hacienda"), the Commission directed Staff to obtain an agreement with an interim manager who was to assume operation of Hacienda as

[311] Oral argument had been granted in response to a McLain Motion to Stay Appointment of Interim Manager. (Decision No. 66897 at 3.) Although an interim manager agreement had been entered by Staff and Southwestern Utility Management, Inc., the interim manager had been advised by Staff not to commence management of McLain's systems. (*Id.* n.3.)

soon as possible pending further order of the Commission and ordered Hacienda to cooperate fully with the interim manager.[312] Decision No. 69865 found that Hacienda had told its customers that it was likely no water service would be available at times during the summer and that Hacienda was on the verge of bankruptcy, had had access to its back-up well terminated due to nonpayment (although the back-up well was owned by a related entity), and per ADEQ was producing water that exceeded the MCL for nitrates and had failed to complete bacteria testing required by law. Decision No. 69865 did not discuss the standard for appointing an interim manager, but included the following finding of fact: "Based on discussion occurring at the Commission's Open Meeting, the circumstances at Hacienda are dire and justify the immediate removal of current management and appointment of an interim manager by the Commission on an interim basis, pending further order of the Commission in the docket." (Decision No. 69865 at 5.) In Decision No. 70609 (November 19, 2008),[313] issued in the same docket after an evidentiary hearing, the Commission found that all of the violations alleged in the OSC had been substantiated and that Hacienda had failed to maintain facilities and provide service that was adequate, efficient, sufficient, reasonable, satisfactory, safe, and proper and had violated state law and regulations and failed in its legal obligation to render competent and adequate service, thereby endangering the public health and the safety of its customers. The Commission also pierced the corporate veil to reach Hacienda's secretary/treasurer and attorney, Joseph Lee, whom the Commission found had been operating Hacienda as his "alter ego" although his mother was the sole shareholder and his brother was the president, and had intentionally damaged system facilities. The Commission revoked Hacienda's CC&N; ordered Hacienda and Mr. Lee, jointly and severally, to pay a fine of $41,000, which would be waived if Hacienda transferred its utility assets within a specified time to another entity that held or had applied for a CC&N; ordered Staff to refer the matter for potential criminal prosecution; and ordered that the interim manager be retained until a permanent solution was in place.

2. Parties' Arguments Regarding the Standard & Whether It Has Been Met

Staff asserts that it has established, by a preponderance of evidence, that an interim manager

[312] Official notice is taken of this Decision.
[313] Official notice is taken of this Decision.

should be appointed for JU because JU has had the most NOVs and the most SSOs of any utility regulated by ADEQ and has continued to experience violations during the hearing and the post-hearing briefing period[314] in this matter in spite of JU's efforts to correct its health and safety issues. (Staff R. Br. at 1.) To support its conclusion that JU's performance is inadequate, Staff alleges that JU has had two decades of regulatory noncompliance (evidenced by 27 ADEQ NOVs to JU and 73 SSOs since 2010), lacks candor in dealing with regulating agencies, is unwilling to accept responsibility for its historic and current problems, and has diverted ratepayer-generated revenues to unregulated entities owned by George Johnson and members of the Johnson family. (Staff Br. at 1.) Staff concedes that the appointment of an interim manager is an "extraordinary remedy" typically applied in the absence of another viable option but asserts that it is the Commission that decides what options are viable, not any party, and that the threshold for appointment is established with a showing of sufficient danger to the public health and safety. (Staff Br. at 2; Staff R. Br. at 2.) Staff argues that JU's asserted standard for appointment—the presence of an imminent and immediate threat to public health and safety—is met because JU's regulatory violations are longstanding and continuous in nature, and JU seemingly is unable or unwilling to institute remedial measures, as evidenced by ADEQ's April 19, 2018, report finding deficiencies at JU's Section 11 WWTP during the pendency of this matter. (Staff Br. at 4 (citing Ex. S-90).)

Staff characterizes JU's argument that there is a viable option because JU is making improvements to its facilities, addressing issues with its customers, and retaining GHD and Mr. Taylor to assist it with its efforts as "too little too late," asserting that there is little evidence of what Mr. Taylor will do beyond what JU has already done and is already doing and that JU's actions have not corrected its chronic health and safety issues. (Staff R. Br. at 2.) Regarding JU's pointing to the Staff alternative recommendation described by Mr. Abinah as a viable alternative, Staff argues that JU did not express interest in it. (Staff R. Br. at 2.) Staff agrees with JU that this matter included almost no discussion of alternatives to an interim manager and attributes this to a lack of alternatives that would ensure JU provides safe and reliable service. (Staff R. Br. at 2.)

[314] The evidentiary record for this matter does not include information regarding any alleged post-hearing violations.

Staff argues that JU's assertion that Staff has failed to meet its burden of proof ignores the evidence of record, which Staff states demonstrates that JU is chronically unable to protect and has a disregard for the environment, its ratepayers, and regulation and which includes substantial evidence that would allow a reasonable person to reach the conclusion that an interim manager must be appointed. (Staff R. Br. at 11.) Further, Staff asserts, Staff has shown by a preponderance of the evidence that JU has violated ADEQ rules and regulations and PCAQ regulations and has failed to remedy NOVs. (Staff R. Br. at 11.) In support, Staff alleges that JU has had 36 SSOs between January 1, 2015, and April 18, 2018, and has had 5 SSOs and unauthorized discharges in 2018 alone. (Staff R. Br. at 11.) Staff calls JU's distinction between SSOs and unauthorized discharges "meaningless," as any unauthorized discharge is a violation of ADEQ rules and JU's APP. (Staff R. Br. at 111-12.) Staff further asserts that the evidence revealed deficiencies with JU's operating practices for maintenance, completing reports, maintaining logbooks, and providing required notice to ADEQ. (Staff R. Br. at 12.) Staff also criticizes Mr. Drummond for not visiting all of JU's facilities and for spending 80 percent of his time at his private law office and only 20 percent of his time at JU's office, stating that Mr. Drummond's failure to realize that JU needs more than a part-time manager is a "lapse of his fiduciary duty" to JU and shows that he lacks the managerial capability to operate JU. (Staff R. Br. at 13.) Staff criticizes Mr. Cole as well, for performing work for other related entities such as Club at Oasis rather than focusing solely on the operations of JU. (Staff R. Br. at 13.) Staff also asserts that the record "suggests financial mismanagement" under Mr. Drummond's tenure due to the relationships between Ultra, Hunt, and JU, which "have no demonstrable benefits" to JU's ratepayers. (Staff R. Br. at 13.) According to Staff, it is "unfathomable" that Mr. Drummond and Mr. Cole, the two people in charge of JU, possessed so little knowledge about the specifics of the amounts paid to Ultra by Hunt, even though the Ultra fees are JU's largest expense. (Staff Br. at 14.) Staff also criticizes JU's position that JU, Ultra, and Hunt are not "affiliates" under the Commission's Affiliated Interest Rules and asserts that the transactions between them are detrimental to ratepayers and represent a "disturbing" level of financial mismanagement. (Staff R. Br. at 15-16.) Staff argues that it is necessary for the Commission to appoint an interim manager to ensure the preservation of records so that a thorough review and audit can be conducted in JU's pending rate case. (Staff R. Br. at 16.)

RUCO argues that JU is a poorly run and high-risk operation that has not been regulated effectively by state or local government agencies, which have focused on obtaining compliance while imposing few or no consequences on JU, and that JU thus has developed a culture that allows for continuing, repeated, and frequent environmental violations without effectively remedying the root cause of the violations. (RUCO Br. at 1-2.) RUCO asserts that these violations have created health and safety concerns for JU's customers and the people who work and live in and around JU's service area. (RUCO Br. at 2.) RUCO argues that JU's wastewater system has been run into the ground and set up to fail as a result of JU's management by shell corporations that funnel unwarranted and extreme amounts of management fees to themselves and ultimately to George Johnson's family and friends. (RUCO Br. at 2.) RUCO further argues that the excessive cost of JU's management has left JU with inadequate revenues to cover the repairs and improvements needed to address system inadequacies and that JU's financial and operations personnel, regardless of how good they may be, cannot adequately address the system's inadequacies without sufficient financial resources. (RUCO Br. at 2.) RUCO calls upon the Commission to "put an end to the nonsense" by appointing an interim manager. (RUCO Br. at 3.)

RUCO asserts that JU has a long history of the same and/or similar environmental issues, including 14 NOVs issued by ADEQ between September 2004 and April 2009 for unlawful disposal of sewage, sludge, and/or other bio solids at the Section 11 WWTP; SSOs at the Pecan WRP; and a total of 87 occurrences of fecal coliform exceedance. (RUCO Br. at 6.) RUCO also asserts that it was genuinely concerned for the health and safety of JU's customers in the 2008 Rate Case but that JU "dodged another bullet" when the Commission did not adopt RUCO's recommendations for more regulatory oversight of JU. (RUCO Br. at 6-7.) RUCO argues that JU continues to violate local and state environmental standards at an alarming rate, as evidenced by the SSOs that occurred between January 2015 and November 2017; the January 25, 2018, ADEQ inspection of the Section 11 WWTP and the resulting NOV; the February 23, 2018, inspection of the Pecan WRP that revealed unauthorized discharges; two unauthorized discharges that occurred on March 7, 2018; another unauthorized discharge that occurred on March 13, 2018; an SSO that occurred on March 26, 2018; an SSO that occurred on March 13, 2018; and an unauthorized discharge that was first detected by JU on April 15,

2018, and then confirmed by Staff and ADEQ on April 17 and 19, 2018, which resulted in an NOV on April 27, 2018. (RUCO Br. at 8-15.) RUCO discounts as premature JU's assertions regarding significant reductions in SSOs over the past three years. (RUCO Br. at 10-11.) RUCO also criticizes JU for including in its newsletter that it has fewer SSOs than the regional and national averages, which RUCO suggests indicates that JU believes it does not have an SSO problem. (RUCO Br. at 16.)

RUCO argues that JU's ongoing environmental violations continue to jeopardize the health and safety of its customers and support appointment of an interim manager, stating that Staff has presented overwhelming evidence of ongoing environmental violations, which continued even during the hearing, and that Queen Creek has provided forensic insight into JU's dysfunctional financial and managerial operations. (RUCO Br. at 7, 16.) Further, RUCO argues, even if JU's management were effective, it would still be "boot-strapped" by financial obligations to JU's "familial management fees." (RUCO Br. at 7.) RUCO expresses alarm at how little the principals of JU, Ultra, and Hunt know about the purpose and finances of these entities; asserts that JU has not explained or made any financial sense of any of it; and asserts that the Commission needs to reevaluate JU's organizational structure because it directly affects the operation and maintenance of JU's water and wastewater systems and JU's ability to provide safe, reliable, and adequate service at a reasonable price. (RUCO Br. at 7-8.) According to RUCO, while a utility generally has the right to organize its business in any way it sees fit, a utility operating as a monopoly cannot set up and operate and manage its business in a way that undermines its customers, as JU has done. (RUCO Br. at 17.) To support this idea, RUCO cites, *inter alia*, JU's lack of employees, JU's management by an attorney who does not have much of a technical background, the 2014 Ultra Contract and the payments required thereunder, Ultra's lack of employees, Chris Johnson's inability to recall when Ultra was formed or how much revenue he receives annually from Ultra, the Hunt Contract, Chris Johnson's salary from Hunt, Queen Creek's assessment of JU's infrastructure upgrade and repair needs, Queen Creek's inability to determine where JU's revenues go after they are paid to Ultra, Queen Creek's assessment that there has not been much reinvestment in JU's infrastructure considering its annual revenues, Queen Creek's assessment that it is JU's expenses under the 2014 Ultra Contract rather than JU's revenues that create JU's resource problem, Queen Creek's assessment that JU has spent only minimally on repairs and maintenance, the "complete lack

of transparency associated with the management fee structure," and JU's failure (in spite of the ALJ's request) to explain in its LFE what Ultra does with the $10 million it retains. (RUCO Br. at 16-24.) RUCO also argues that the Commission should take into consideration JU's PCAQ H_2S exceedances going back to 2016, and continuing into 2018, which RUCO asserts demonstrate "a pattern of continued managerial and operational ineptitude; the dissatisfaction of some of JU's customers, including those who have complained of spikes in their monthly usage that cannot be explained; and JU's focus on discrediting customers' claims rather than acknowledging problems and proposing solutions. (RUCO Br. at 28-32.) RUCO recommends that the Commission appoint an interim manager for JU. (RUCO Br. at 33.)

RUCO also supports Staff's concern that JU's current management will not facilitate Staff's review in the pending rate case by providing unfettered access to JU's books, records, and water and wastewater systems and will thereby hinder and impact the integrity of the rate case process. (RUCO R. Br. at 3-4.) RUCO concedes that it believes Mr. Drummond acted lawfully when he chose to have JU prevent the release of the Carollo report but points out that the impact of JU's action is that the Commission has been denied information about JU's financial position and infrastructure, which is relevant information critical to the Commission's performance of its job. (RUCO R. Br. at 3-4.) RUCO also reiterates its concern about JU's failure to provide in its LFE the requested information about what Ultra does with the $10 million it retains; RUCO states that JU instead side-stepped the obvious intent of the request, which was for the Commission to receive an accounting for the $10 million. (RUCO R. Br. at 4.) RUCO argues that the "Commission should be suspect and should factor the Company's position in its decision." (RUCO R. Br. at 4.)

Pinal County asserts that JU's service is inadequate and insufficient and that the Commission must put in place some form of independent oversight because the evidence shows that JU has a history of violating every significant regulatory program with oversight of its operations, that JU continues to violate environmental regulations, that JU's facilities have been inadequately maintained, that the Section 11 WWTP may be unable to meet permitted capacity, that JU's water systems may be unable to meet peak daily water demand in the summer, and that JU's management is structured in an "unsustainable" way that diverts large amounts of revenue to a company with no employees and

questionable benefit to JU's customers. (PC Br. at 1-2.) Pinal County argues that the testimony demonstrates that JU is either unable or unwilling to comply with applicable regulatory standards, citing JU's approximately 36 SSOs between 2015 and 2017, JU's 18 NOVs since 2012, JU's delinquency in meeting compliance deadlines imposed by ADEQ, JU's repeated occurrences of the same or similar violations, JU's apparent failure to train its personnel adequately concerning notification and recordkeeping requirements under its APP, JU's failure to maintain compliance in spite of its regular meetings with ADEQ to address ongoing issues, JU's failure to maintain compliance with PCAQ standards for H_2S levels, and JU's failure to maintain compliance with ADWR requirements. (PC Br. at 2-6.) As a result of these, Pinal County states, JU's service is unreasonable, improper, inadequate, and insufficient. (PC Br. at 4, 5, 6.) Pinal County further asserts that Mr. Gardner's review of JU's facilities revealed that the lack of regular maintenance to its system was "alarming." (PC Br. at 6.) Pinal County also asserts that JU is experiencing capacity issues with its wastewater system, as evidenced by JU's attribution of the unauthorized discharges at its Section 11 WWTP to an inability to handle the amount of effluent produced by the system, although the evidence shows that the Section 11 WWTP flows are equal to only half of its permitted capacity; Pinal County asserts that this situation is consistent with Mr. Gardner's testimony that JU's system is in disrepair due to a failure to perform proper maintenance. (PC Br. at 7.) According to Pinal County, these issues also support the position that JU's current management is not providing adequate or sufficient service to its customers and that the Commission must take action. (PC Br. at 7.)

Pinal County also asserts that JU's management arrangement—contracting with Ultra for all operations, while Ultra contracts with Hunt for all employees, with approximately 50 percent of every dollar of JU revenue going to Ultra, although Ultra does no work for JU and has no employees—deprives JU of the ability to benefit from economies of scale or manage its expenses; "bleeds" $8 to $9 million from JU annually; and rather than protecting JU from loss as asserted by Mr. Drummond, appears to ensure that JU will incur a substantial loss of revenue each year. (PC Br. at 7-8.)

Pinal County does not take a position regarding whether independent oversight should come in the form of an appointed interim manager or a retained independent consultant but asserts that the status quo is unacceptable. (PC Br. at 2.) Pinal County urges the Commission to act in an open and

transparent manner, to require frequent reporting, and to allow for citizen input. (PC Br. at 2.)

Pinal County refutes JU's assertion that there must be a clear and present danger to the public for the Commission to appoint an interim manager, pointing out that Decision No. 66897 (McLain) expressly stated that there is no requirement for Staff to show a clear and present danger. (Pinal County R. Br. at 4 (citing Decision No. 66897 at 8).) Pinal County further states that if Staff were required to show a clear and present danger, the standard would be met by the evidence in this matter, as multiple witnesses and hundreds of pages of exhibits have established JU's historic and repeated failure to perform adequate maintenance of its facilities and to comply with environmental and other regulations as well as JU's inability to meet the anticipated peak demand during the summer. (Pinal County R. Br. at 4-5.) Additionally, Pinal County asserts, JU's management arrangement with Ultra and Hunt takes so much of JU's revenues away from the operations and maintenance of its water and wastewater systems that it would be difficult for JU's current management to address the existing issues if inclined to do so. (Pinal County R. Br. at 5.)

According to the Towns, appointment of an interim manager is necessary and reasonably related to the Commission's plenary authority over rates because JU has systematically engaged in transactions with Johnson-family entities that charge excessive fees to JU, siphon JU's revenue, and impede JU's ability to pay for needed capital improvements and maintenance. (Towns Br. at 6.) The Towns assert that JU's "rarely-maintained, poorly-designed, cheaply-built system fails regularly, frustrating and failing its customers and leading to never-ending battles with regulators" because JU has not invested wisely, effectively, or sufficiently in infrastructure and maintenance and is unable to meet the bare minimum standards of care, service, and regulatory compliance. (Towns Br. at 6-7.) The Towns attribute JU's failure to invest adequately in its system primarily to JU's arrangement with Ultra, under which, the Towns assert, Ultra receives approximately $16 million per year in exchange for services performed by Hunt that are worth no more than $5 million. (Towns Br. at 6-8.) The Towns criticize George Johnson and Chris Johnson for not being able to recall what Ultra was or did, Mr. Cole for not being able to provide insight into Ultra, and Mr. Drummond for essentially not caring enough about the arrangement with Ultra. (*See* Towns Br. at 7-8.) The Towns assert that there are also other examples of self-dealing at the expense of JU's ratepayers—JU's giving away effluent to the Oasis Golf Course

owned by Chris and Barbara Johnson rather than maximizing recharge to mitigate CAGRD fees through offset, and JU's failing to exercise its right of first refusal on line extension agreements to reduce its AIAC refund obligations and instead allowing Annuity Holdings to obtain the rights to the AIAC refunds so that JU's refund obligations would remain the same but Johnson family members would financially benefit.[315] (Towns Br. at 8-9.) The Towns argue that JU's defense of the Annuity Holdings acquisitions—that the Commission approved the line extension agreements allowing them—indicates that JU believes it can do anything that the Commission does not specifically prohibit. (Towns Br. at 9.)

The Towns state that Mr. Drummond is at best "an unqualified, absentee, part-time manager" who is also practicing law and who conducts his work for JU from his law office rather than a JU office or Hunt office. (Towns Br. at 10.) The Towns criticize Mr. Drummond for unquestioningly relying on Hunt and not taking the time to understand the reports he signs, such as the 2017 ADWR reports that he signed in April 2018, which the Towns state failed to account for 2,574.86 acre-feet of effluent. (Towns Br. at 10, 17; Towns R. Br. at 8.) The Towns further assert that Mr. Drummond is unwilling or unable to address the financial mismanagement of JU by unwinding the self-dealing that undermines JU's financial position and impacts JU's rates. (Towns Br. at 10-11.) The Towns characterize Mr. Drummond as "hopelessly conflicted" by his representation of George Johnson, JU, and Hunt and his past representation of Chris and Barbara Johnson, which the Towns assert renders Mr. Drummond unable to manage JU independently without regard for his current and former clients' interests. (Towns Br. at 10-11; Towns R. Br. at 7.) Additionally, the Towns note, Mr. Drummond serves at the will of George Johnson. (Towns Br. at 11; Towns R. Br. at 7.) Additionally, the Towns assert, even if Mr. Drummond were independent, he has failed to exercise his independence because he has expressed disinterest in the Ultra arrangement, thereby signifying that he does not care about JU's financial wellbeing. (Towns R. Br. at 7-8.)

The Towns assert that JU's infrastructure is "woefully inadequate and under maintained"; that its water system barely meets water pressure standards and, thus, does not meet industry norms and

[315] The Towns ask, "Who would not pay down a debt obligation of over $14 million at a cost of $1.2 million?" and respond, "The answer is Johnson Utilities. After all, why would Johnson Utilities act in its own interests or for the benefit of its ratepayers if it could instead enrich the Johnson family?" (Towns Br. at 9.)

inevitably will produce discolored and dirty water; that JU does not have a sufficient water supply to meet summer's expected demand; and that the lack of maintenance to JU's system is "alarming." (Towns Br. at 11.) According to the Towns, JU's records show that it spends approximately $700,000 annually to maintain $31 million in assets, which Mr. Gardner characterized as "almost unconscionable" and Mr. McCarty characterized as wholly inadequate in light of JU's assets and annual depreciation. (Towns Br. at 11-12.) JU is just now commencing water system maintenance that should have been conducted for years, the Towns state, and has itself identified approximately $35 million in necessary system improvements (Queen Creek estimated that $114 million in improvements would be needed to bring JU's systems to industry standards). (Towns Br. at 12.)

The Towns criticize the Section 11 WWTP as a "relic from the 1950s that should be decommissioned as soon as possible" and point out that JU has acknowledged the "antiquated" nature of the plant and the need to convert it to a Biolac plant, but "strangely" changed its mind after executing the PCAQ OAC and now asserts that the plant does not need to be converted. (Towns Br. at 13.) The Towns also assert that JU designed and built its system infrastructure as cheaply as possible, pointing to the 36 lift stations in its wastewater system, Mr. Gardner's testimony that lift stations directly correlate with SSOs and contribute to H_2S gas formation and thus odors, and George Johnson's admission that some of the SSOs could have been prevented with appropriate planning and maintenance. (Towns Br. at 13.) The Towns also assert that JU's recent SSO in which 65,000 gallons of raw sewage was discharged to the Queen Creek Wash presented a serious threat to public health and the environment because Queen Creek is just downstream from the wash and has recreational facilities that cross over the wash. (Towns Br. at 13-14.) The Towns also challenge JU's assertion that it responds properly to SSOs, pointing out that the ADEQ NOV noted that inspectors had found toilet paper and sanitary products within the concrete storm water spillway one month after the 65,000-gallon spill. (Towns R. Br. at 10 (citing Ex. S-123).) The Towns also question how JU can assert that it is proactively and expeditiously addressing the issues described in the February 27, 2018, NOV for the Section 11 WWTP when the same overflowing recharge basin violations had resulted in a May 2015 NOV to which Mr. Cole responded in July 2015. (Towns R. Br. at 11.)

The Towns strongly suggest that JU only hired GHD after it "determined it had no other choice"

due to the February 2018 public comment sessions. (Towns Br. at 14.) The Towns also argue that the statements in Mr. Taylor's report should not be relied upon because Mr. Taylor prepared the report in reliance on information provided by JU and reached conclusions that are "demonstrably false" regarding JU's tracking of costs and maintaining records to maintain regulatory compliance. (Towns R. Br. at 11-12.)

The Towns argue that Mr. Drummond is not up to the task of ensuring compliance with regulatory requirements, as evidenced by JU's continuing ADEQ NOVs and SSOs (occurring in spite of its quarterly compliance meetings with ADEQ) and JU's continuing PCAQ H_2S exceedances. (Towns Br. at 17.) The Towns call out as "absurd" and "preposterous" JU's argument that as a result of the PCAQ OAC, PCAQ cannot regulate JU's Section 11 WWTP using any H_2S monitor other than the one maintained by JU. (Towns Br. at 17.) The Towns also criticize Mr. Drummond for stating that JU is doing the best it can with the resources it has because JU has been "squandering tens of millions of ratepayer money" under Mr. Drummond's and his predecessor's direction for years rather than building and maintaining "First World" infrastructure. (Towns Br. at 14.)

The Towns further assert that JU has unnecessarily antagonistic relationships with its regulators and has proven itself incapable of complying with basic regulatory requirements. (Towns Br. at 14.) The Towns criticize JU for not timely submitting complete and accurate reports to regulatory entities, not performing required recordkeeping, and not providing notice to ADEQ when required. (Towns Br. at 15.) The Towns also criticize JU for its continuing unlawful discharges of wastewater, its continuing SSOs, and its continuing H_2S exceedances, which the Towns assert create a clear and present danger to public health and the environment.[316] (Towns Br. at 16; Towns R. Br. at 6.) The Towns also criticize Mr. Cole for excluding ADEQ personnel from a JU site in 2016, after which ADEQ obtained a search warrant, stating that this type of thing "just does not happen in the normal course of events, for regulated entities that understand their regulatory obligations as duties to meet, not annoyances to be ignored." (Towns Br. at 16-17.)

[316] In their reply brief, the Towns also cite JU's inability to meet water demands this summer as another imminent clear and present danger to JU's customers, asserting that it is already happening. (Towns R. Br. at 6-7.) This information is not part of the evidentiary record, however, which establishes only that Mr. Gardner predicted JU would be unable to meet peak summer demand. (*See* Tr. at 1283, 1291.)

Additionally, the Towns argue, JU abuses its power over its customers by investigating and questioning the motives of customers who complain, telling customers with unexplained usage spikes that their neighbors must be stealing their water, and sending out more than 10,000 disconnect notices every month (which even George Johnson stated showed that something was wrong). (Towns Br. at 18; Towns R. Br. at 13.) The Towns criticize JU for not more thoroughly investigating Ms. DuFurrena's single anomalous spike in usage from less than 10,000 gallons to 71,000 gallons before sending out the bill and for not providing a one-time leak adjustment or offset (because the Commission does not require it). (Towns Br. at 19-20; Towns R. Br. at 13.) The Towns also criticize JU's management for showing no interest in understanding the reasons for billing spikes, being completely unaware of problems with certain meters until Mr. Gardner testified, and using standard operating procedures that ensure JU does not preserve daily meter reading logs that could explain spikes in usage. (Towns Br. at 19-20; Towns R. Br. at 13.)

According to the Towns, appointment of an interim manager is the only viable remedial action that would be effective to protect JU's customers and the southeast valley region. (Towns R. Br. at 19.) The Towns assert that Staff's alternative proposal was made before the full extent of JU's "financial mismanagement and abuses" were exposed and would not be an effective remedy because there is no reason to believe that JU would not provide a consultant with inaccurate and incomplete information such as it did with GHD. (Towns R. Br. at 19.) The Towns advocate for the interim manager to have a regional view and argue that the interim manager must have broad authority to unwind the harmful financial agreements that involve self-dealing, through court action if necessary, and to make capital improvements that have been put off by JU. (Towns Br. at 21, 23.) The Towns reiterate that they are willing to work together and jointly serve as interim manager, stating that neither seeks to gain an informational advantage over JU or other potential acquirers of JU and that each of the Towns, through prior due diligence efforts, has already acquired knowledge of the design and condition of JU's infrastructure. (Towns Br. at 21-22.) The Towns also state that they welcome the opportunity to work with an independent third-party interim manager appointed by the Commission and will provide assistance in developing regional solutions, such as the closure of the Section 11 WWTP, which they describe as "a daily odiferous insult to its neighbors" that needs to be retired as soon as possible.

(Towns Br. at 22-23.)

Mr. Dantico asserts that there are multiple reasons why the Commission should adopt Staff's recommendation and appoint an interim manager for JU, among them the following:

- JU has numerous documented and repeated violations of regulatory standards designed to protect human health and the environment, although JU is aware of the regulatory standards and has agreed to comply with them. (JKD Br. at 2-3.)
- JU waits for violations to occur, learns of violations through an outside entity (citizen or regulatory entity), fails to report violations, performs only "marginal remedial actions" to mitigate the consequences of violations, receives NOVs that prescribe corrective actions, takes the prescribed actions, and intentionally ignores rules and regulations and complies only when directed to do so. (JKD Br. at 3-4.)
- "JU fails to adequately plan for or make strategic structural changes in capital improvement projects, or management practices to avoid violations and stay in compliance" and fails to implement more prospective plans "once the specter of significant penalties has been waived." (JKD Br. at 5-6.)
- JU does not acknowledge PCAQ's authority to monitor for H_2S violations at multiple locations and does not obtain prior approvals from ADEQ when it makes changes in its operations. (JKD Br. at 5-6.)
- JU has poor quality customer relations, reportedly has rude and confrontational CSRs, has "posted excoriating character assassination pieces in [its] newsletter against political opponents," and has customers who express fear of retaliation by JU if the customer complains about JU to regulatory entities. (JKD Br. at 6.)
- JU does not have adequate management, recordkeeping, and training systems in place. (JKD Br. at 7-8.)
- JU uses "multiple layers of related companies, owned by various family members and family trusts," to provide service, with the Ultra arrangement in particular resulting in a "deleterious effect on ratepayers and JU's infrastructure" and being inexplicable as to its purpose or benefits by the companies' principles and managers. (JKD Br. at 8-11.)

- JU failed to provide detailed financial records for Ultra despite having been requested to do so by the ALJ. (JKD Br. at 8-9.)
- Mr. Drummond has failed to look into other management arrangements for JU during his time as manager of JU in spite of his fiduciary duty to JU, the amount of JU's revenues that go to Ultra, the amount that is paid by Ultra to Hunt, and Mr. Drummond's lack of direct authority over Hunt. (JKD Br. at 13-15.)
- JU has made insufficient investments in its infrastructure not because JU lacks sufficient revenues to do so but because of the amount of revenues that JU pays to Ultra, which make it impossible for it to control its expenses and, if unchanged, will essentially result in ratepayers buying the system twice. (JKD Br. at 15-16.)

Mr. Dantico argues that JU's operations present a clear and present danger to public health and safety that is currently happening, as ADEQ continues to identify violations, such as the SSO that occurred during the hearing, and PCAQ continues to identify violations for H_2S, which Mr. Dantico asserts is harmful even in low levels.[317] (JKD R. Br. at 13.)

JU argues that even if the Commission has the authority to install an interim manager, Staff has failed to meet its burden of proof, because Staff was required to show, consistent with prior Decisions appointing interim managers, that JU's operations constitute a clear and present danger to the public health and safety and an imminent threat, and that appointment of an interim manager is the only viable option. (JU Br. at 6-7 (citing Decision No. 66241; Decision No. 65858; and an April 15, 2013, Staff Memorandum filed in Docket No. WS-03478A-12-0307[318]).) JU asserts that Staff has not shown that

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[317] Mr. Dantico also referred to current water pressure issues and an inadequate water supply. (JKD R. Br. at 14.) However, the evidentiary record does not include that information.

[318] Official notice of this April 15, 2013, Staff Memorandum filed in Docket No. WS-03478A-12-0307 was taken, at JU's request, during the hearing. The Staff Memorandum concerned Far West Water & Sewer, Inc. ("Far West") and responded to a letter in which then-Commissioner Susan Bitter-Smith requested information including the process for appointment of an interim manager and Staff's recommendation for appointment of an interim manager. The Staff Memorandum stated that typically a Staff petition for appointment of an interim manager is supported by affidavits "usually stat[ing] that there is a clear and present danger to the public health and safety requiring the appointment of an interim manager to ensure that the public is protected." The Staff Memorandum also stated that "appointment of an interim manager is considered extraordinary relief by the Commission, ordered when no other options exist" and that it is "intended to be a temporary measure used to ensure safe and reasonable service."

Although we have taken official notice of this Staff Memorandum and its content, we note that the Staff Memorandum is not a Commission Decision or Order and thus is considered to be a statement of Staff's position rather than the Commission's position.

there is no other viable option because there are viable alternative options to the appointment of an interim manager that JU believes would provide superior benefits to JU's customers—among them (1) Staff's "alternative to the appointment of an interim manager" set forth in Mr. Abinah's pre-filed testimony in this matter, which Mr. Abinah stated "will accomplish the same result as an Interim Manager," and (2) the Joint Proposal from Staff and JU filed on March 28, 2018,[319] which did not include appointment of an interim manager but instead proposed that JU would enter into a two-year consulting agreement with an engineering firm acceptable to Staff, with additional specified conditions. (JU Br. at 7-8 (quoting Ex. S-74 at 20, 24); JU R. Br. at 7-10.) JU also points out that the March 8, 2018, Staff Memorandum in this matter did not recommend appointment of an interim manager and instead included seven recommendations, each of which JU has timely addressed.[320] (*See* JU R. Br. at 7-9.) Because of the viable alternatives, JU argues, the extraordinary relief of installing an interim manager is not appropriate. (JU Br. at 8.) JU asserts that if the Commission were to adopt the Joint Proposal, the concerns of the Commissioners and Staff would be addressed to the same or a greater extent than if an interim manager were appointed, "with the added benefit that it would avoid the likely jurisdictional contest." (JU R. Br. at 10-11.) JU concedes that the Joint Proposal was not discussed by Staff or the Commissioners at hearing but states that JU still fully supports the Joint Proposal. (JU R. Br. at 11.) JU further points to Mr. Abinah's testimony indicating that it can be difficult to find an interim manager willing to run a utility the size of JU and that potential conflicts may narrow the list of appropriate interim manager candidates. (JU R. Br. at 12-13.) Additionally, JU suggests that its "strong objection" to having an interim manager would hinder the Commission's ability to find one. (JU R. Br. at 12.) JU expresses support for Staff's alternative option, as presented in Mr. Abinah's pre-filed testimony, stating that it is difficult to understand how appointment of an interim manager over JU's strong objections would provide superior benefits or results and noting that the alternative option (unlike the Joint Proposal) would prohibit JU from recovering the costs of the third-party consultant in rates. (JU R. Br. at 13-15.) JU asserts that the Commission should move forward with either the Joint

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[319] Although the Joint Proposal was not offered into evidence, because it figures prominently in JU's argument and was accessible to all parties as a filing in the docket, official notice is taken of the Joint Proposal.

[320] JU acknowledges that the March 8, 2018, Staff Memorandum recommended that the Commission direct Staff to initiate an OSC no later than April 20, 2018, in order to appoint an interim manager, if JU did not, by April 16, 2018, make the necessary water and wastewater system repairs and installations described in the Staff Memorandum. (*See* JU R. Br. at 9.)

Proposal or Staff's alternative option, either of which JU would support, rather than with appointment of an interim manager, which JU strongly opposes. (JU R. Br. at 17.)

JU states that Staff has failed to prove by a preponderance of the evidence that JU has inadequate managerial and planning capability; that JU lacks independent management discretion; or that George Johnson continues to be involved in the operation, decision-making, and management of JU. (JU Br. at 10-11.) JU asserts that the evidence shows that Mr. Drummond is responsible for the overall management of JU, that George Johnson has not been involved in JU's day-to-day operations since June 2017 and is not directing Mr. Drummond or Mr. Cole, that George Johnson has been to JU's office in San Tan Valley only once since May 2017, and that Mr. Drummond has attended meetings and participated in phone calls since May 2017 and has been actively participating in the management of JU. (JU Br. at 11-12.) JU states that Staff has also failed to establish that Mr. Drummond has insufficient technical expertise and management experience to run JU appropriately and that, to the contrary, the evidence shows that Mr. Drummond and Mr. Cole have made significant progress since May 2017. (JU Br. at 12.) JU quotes Mr. Drummond's testimony concerning his qualifications to manage JU and points out that there is no requirement in Arizona for a public utility manager to possess technical training, technical expertise, or technical experience in operation a utility, something that JU says Staff has acknowledged;[321] JU further states that Mr. Drummond possesses the education, professional background, skill sets, and experience needed to successfully carry out responsibilities as manager of JU. (JU Br. at 13-14.) JU asserts that Staff's concern that Mr. Drummond may lack sufficient managerial experience is unfounded and unsupported by the evidence. (JU Br. at 14.)

In response to Staff's allegations regarding JU's provision of unjust and unreasonable service; failure to provide and maintain service, equipment, and facilities that promote public health and safety; violation of A.A.C. R14-2-607(A); and violation of A.A.C. R14-2-607(C)—all of which JU states are based upon JU's SSOs and violations at the Section 11 WWTP and Pecan WRP—JU asserts that Staff has failed to meet its burden of proof. (JU Br. at 15-31.) JU first addresses its SSOs since 2015, which Staff asserts are excessive and constitute unjust and unreasonable service, and argues that there are no

[321] JU referenced Staff's April 5, 2018, response to questions posed by Commissioner Burns in a March 30, 2018, letter; both documents were filed in the docket for this matter, although neither appears to have been offered into evidence.

objective criteria or industry standards established for the number of SSOs that a utility can experience without being determined to provide unjust and unreasonable service. (JU Br. at 15.) JU does not dispute that it has had a significant number of SSOs, although it states that the exact number is in dispute. (Ju R. Br. at 26.) JU points out, however, that the evidence shows that SSOs have also been experienced by 47 named municipalities, towns, or communities (and on numerous occasions by some municipalities, including Phoenix) and by at least 10 private utilities. (JU Br. at 15.) JU questions whether these utility providers also present a clear and present danger to public health and safety. (JU Br. at 15.) JU also notes that there is a distinction between an SSO and an unauthorized discharge and that JU has succeeded in reducing the occurrence of both. (JU Br. at 16.) According to JU, the Commission should focus on what JU is doing to minimize future SSOs and unauthorized discharges and how JU responds in the event of an SSO or unauthorized discharge rather than on the past. (JU Br. at 16.) JU agrees with the other parties that SSOs and unauthorized discharges present a threat to public health and safety, but adds that the risk can be attenuated with a prompt response and proper remediation and, further, that no evidence was presented showing that any JU SSO or unauthorized discharge had resulted in actual harm or injury to anyone. (JU R. Br. at 28-29.)

JU lists the following actions taken or to be taken to reduce SSOs: performance of a root cause analysis; development of an action plan; installation of air relief and vacuum breaker valves; replacement of 1,500 feet of 10-inch PVC force main; designing and obtaining ADEQ construction authorization for a 4.7-mile pipeline so that two lift stations will have dedicated lines and no longer cause water hammering; replacement of separate monitoring systems at the Pecan WRP lift station with a new Program Logic Controller ("PLC") that operates and monitors all controls; improvements to the emergency back-up trash pump at the Pecan WRP lift station to maintain flow if the PLC fails; addressing clogs caused by customers through increased video inspection and jet rodding activities and increased communications with customers; replacement of four corroded sewer manholes with polymer concrete sewer manholes; addressing clogs caused by subcontractors in new developments through meetings with developers, increased inspections in new developments, and discussing the issue in early planning stage meetings between Hunt engineering staff and developers; purchase of a second and more powerful jetting machine; planning to purchase a new video camera with recording capabilities;

ordering of a sewer line rapid assessment tool ("SLRAT") that is able to locate clogs using acoustics; and entering into an Agreement for Professional Services with GHD. (JU Br. at 16-18.) JU asserts that the actions it has taken are working because the number of SSOs has been dropping, with 16 in 2015, 13 in 2016, 7 in 2017, and 3 so far in 2018 (one of which JU states occurred post-hearing on May 10, 2018).[322] (JU Br. at 19.) According to JU, the reduction in SSOs shows that JU possesses the requisite technical expertise and managerial experience to operate the wastewater system. (JU Br. at 19; JU R. Br. at 28.) JU also asserts that, as Mr. Cole testified, JU uses the same remediation process for SSOs and unauthorized discharges that Mr. Baggiore described in his testimony, which Mr. Taylor stated is consistent with industry standards for remediation. (JU Br. at 19-21.)

JU urges the Commission to concentrate not on the number of NOVs that JU has received from ADEQ but instead on JU's current status, which includes two open NOVs and one open consent order. (JU R. Br. at 17-18.) JU points out that Mr. Baggiore testified that an NOV is "an informal enforcement tool" and that NOVs are common. (JU Br. at 22-23.) Further, JU asserted, both of its water systems and its other two wastewater treatment plants (the San Tan WRP and the Anthem WRP) were operating compliantly; the Section 11 WWTP and the Pecan WRP operate compliantly most of the time; and JU has moved quickly and in good faith to address the substance of the NOVs received. (JU Br. at 22, 28.) JU added that the compliance conditions for the Pecan WRP Consent Order had been satisfied, as was acknowledged in the testimony of Mr. Baggiore, Mr. Dunaway, and Mr. Smith; that Staff's February 23, 2018, inspection of the Pecan WRP did not result in any operational or maintenance issues documented in the March 8, 2018, Staff Memorandum; and that JU is in the process of responding to the Pecan WRP NOV issued on April 30, 2018, for the SSO on March 27, 2018, which occurred due to the atypical equipment malfunction of a new hydro sensor installed with the PLC in a lift station at the Pecan WRP, which has since been replaced by the manufacturer. (JU Br. at 25-26; JU R. Br. at 18.) JU asserts that it is in the process of providing its required documentation in response to the NOV. (JU R. Br. at 19.)

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[322] The evidence of record does not include any information regarding a post-hearing SSO. In its reply brief, however, JU stated that at the end of the hearing on May 9, 2018, JU had had two SSOs and five unauthorized discharges in 2018, and that another SSO had occurred on the day after the hearing concluded, bringing the total SSOs in the first half of 2018 to three. (JU R. Br. at 28.)

Concerning the Section 11 WWTP NOV issued on February 27, 2018, which included eight different issues, JU asserts that corrections had already been completed and proof sent to ADEQ for Items 1 through 6 and that JU was working diligently with ADEQ and PCAQ to address Items 7 through 9, concerning odors from lift stations, septic conditions in the sewage collection system, and offensive odors, by adding chemical treatment, covers, and Wet Well Wizard aerators. (JU Br. at 26 (citing Ex. J-2 at 19-20); JU R. Br. at 19-21.) JU states that Mr. Baggiore agrees with JU's plan to prevent future effluent basin overflows (Item 2) through construction of an additional recharge basin, and that JU has already had a pre-application meeting, presented ADEQ its engineering plans, and submitted a sufficient application to amend its APP to include the new recharge basin. (JU Br. at 27; JU R. Br. at 19-21.) JU also points out Mr. Baggiore's testimony that the Section 11 WWTP met design standards and was approved by ADEQ when it was constructed. (JU Br. at 27 (quoting Tr. at 681).) JU argues that the evidence contradicts Staff's assertions that JU is unwilling to accept responsibility for its historic and current problems, asserting that JU is addressing the compliance matters in the open enforcement actions and pointing to Mr. Baggiore's testimony that JU had demonstrated compliance with all of its historic NOVs. (JU R. Br. at 21.) JU also points to Mr. Dunaway's testimony that it is not unusual for a utility to miss NOV compliance deadlines and that JU's timeliness has improved since it started meeting with ADEQ 18 months ago. (JU R. Br. at 22.) JU asserts that because it has resolved all of its historic ADEQ NOVs and has substantially addressed the two open NOVs and one open consent order, JU's operations do not constitute a clear and present danger to public health and safety, and the appointment of an interim manager cannot be justified. (JU R. Br. at 22-23.) JU also notes Mr. Baggiore's testimony that "ADEQ [d]oes not have a position on whether an interim manager should be appointed." (JU R. Br. at 22.)

JU downplays the penalties that it has been required to pay to regulators, noting that the first was paid to ADEQ pursuant to a June 2000 Consent Order, the second was paid to ADWR pursuant to a 2001 Stipulation and Consent Order, the third was paid to ADWR pursuant to a 2009 citation, and the fourth was paid to PCAQ pursuant to the 2017 PCAQ OAC. (JU R. Br. at 23-24.) JU points out that it did not admit in the PCAQ OAC that any of the alleged violations had occurred and, further, that Mr. Sundblom testified that he found no evidence of willful actions or negligent behavior by JU. (JU

R. Br. at 24.) Pointing to the Westland Memorandum's favorable assessment of its work and plans, JU further asserts that due to its diligent work since February 2016, the once almost daily H_2S violations (in June 2016) have been virtually eliminated (based on readings taken from the compliance point). (JU R. Br. at 24.) JU argues that past penalties for violations that have been resolved cannot support a finding of a current clear and present danger to public health and safety. (JU R. Br. at 25.)

As further support for its argument that JU is operating compliantly, and that Staff has failed to meet its burden of proof, JU points to Mr. Taylor's conclusion that JU's system "is operating in substantial material compliance with applicable federal, state and county laws and regulations" and Mr. Taylor's more specific findings, which were overwhelmingly positive in nature. (JU Br. at 29-31.) JU further points out that ADEQ's sampling of JU's wastewater facilities in March 2018 showed that JU's wastewater and reclaimed water was meeting expected or appropriate standards. (JU Br. at 31.)

Although allegations regarding violations of PCAQ standards were not included in Staff's Complaint and Petition that led to the OSC, because of the testimony and evidence at hearing concerning the PCAQ OAC and two subsequent PCAQ NOVs issued on January 23 and February 9, 2018, JU also addresses the issues concerning air emissions at the Section 11 WWTP. (JU Br. at 31-32.) JU takes issue with a Staff-proposed finding of fact stating that JU has a history of noncompliance with PCAQ, which JU states is an unfair mischaracterization because JU's "history of noncompliance" only started on February 2, 2016, when PCAQ notified JU of two exceedances that had reportedly occurred on January 17, 2016. (JU R. Br. at 29.) JU asserts that because of the reductions in H_2S exceedances since 2016, its actions reflect not a history of noncompliance but a record of sustained and good faith effort to achieve compliance with H_2S emission standards. (JU R. Br. at 29.) JU continues to object to having any monitor other than the monitor required by the PCAQ OAC used for compliance purposes and states that it is unfair to say that JU refuses to acknowledge occurrences from other locations. (JU R. Br. at 29-30.) JU argues that the PCAQ OAC could have specified multiple monitoring locations and could have specified that monitoring would take place at any location selected by PCAQ, but did not. (JU R. Br. at 29-30.) Thus, JU does not concede the validity of results from monitors that were not installed pursuant to the PCAQ OAC and asserts that it would be unreasonable to require JU to do so. (JU R. Br. at 30.) JU also denies that JU refuses to acknowledge the occurrences

detected by other monitors, stating that every action JU has taken to address Section 11 WWTP H_2S emissions has acknowledged the occurrences, and questions why else JU would be working so hard to reduce H_2S. (JU R. Br. at 30.) JU points to the actions described by Mr. Cole as well as Mr. Sundblom's testimony that JU was interested and that there was quite a bit of work and interaction between JU and PCAQ. (JU R. Br. at 30-32.) JU again states that its actions have been largely successful, adds that no party has identified an appropriate action that JU has not taken, and adds that there was little if any evidence of serious odor issues at any facilities other than the Section 11 WWTP and the Oasis lift station. (JU R. Br. at 32.) JU asserts that the evidence shows JU has worked cooperatively and in good faith with PCAQ to address concerns regarding H_2S emissions at the Section 11 WWTP and its surrounding lift stations and that the number of alleged H_2S exceedances has decreased significantly since 2016 due to actions taken by JU. (JU Br. at 31-32.) JU states that Staff has failed to demonstrate by a preponderance of the evidence that the alleged H_2S exceedances set forth in the PCAQ OAC would pose a threat to public health and safety and has failed to show that JU lacks the technical expertise or management experience needed to respond to the alleged exceedances. (JU Br. at 32.)

As evidence of its good faith attempts to address air quality concerns, JU lists the actions it has taken to address the H_2S and odor issue: Mr. Lant requested a meeting with PCAQ when he was notified of the alleged violations; Mr. Lant met with PCAQ staff and outlined a JU plan to cover the headworks, use a chemical additive, and continue to monitor the site to determine if additional measures would be needed; Mr. Lant notified PCAQ that the headworks had been enclosed and that an activated carbon control unit had been ordered; JU installed the activated carbon control unit, incorrectly, causing a pump to fail; JU installed a new pump; JU hired a third-party consultant to evaluate the Section 11 WWTP and help determine a treatment plan; JU informed PCAQ that it had hired the consultant and that the consultant had recommended adding Thioguard; JU began using Thioguard in treatment; Mr. Cole notified PCAQ that JU also planned to add both ferric chloride and potassium permanganate to the system; JU began adding both additional chemicals to the system; JU entered into the PCAQ OAC; JU submitted a written compliance plan to PCAQ; and JU modified the compliance plan in response to feedback from PCAQ and submitted a revised version of the compliance plan. (JU Br. at 33-35.)

Additionally, JU points out, it has made improvements to its Oasis Sunrise lift station, its Copper Basin #1 lift station, its Johnson Ranch Unit 29 (Trunkline) lift station, and the Oasis at Magic Ranch lift station, adding Wet Well Wizard aerators that provide oxygen to the water and emulsify FOG. (JU Br. at 36.) JU asserts that it has worked diligently and continuously since February 2016 to target the cause of the alleged H_2S exceedances and that its efforts have almost eliminated further exceedances. (JU Br. at 35, 36.) JU points to the Westland Memorandum as support for its actions taken to address H_2S exceedances (called "current best management practices") and for the technical and managerial capabilities of JU personnel at the Section 11 WWTP. (JU Br. at 37-38.) JU also emphasizes that Mr. Sundblom testified that the alleged H_2S exceedances were not the result of negligent or willful conduct by JU and that JU had fully satisfied the PCAQ OAC; that PCAQ understood that there would probably be additional exceedances after the PCAQ OAC; that JU went almost six months without an exceedance; that the January 17, 2018, exceedance was caused by malfunctioning equipment; that the alleged exceedances on January 31, April 4, and April 9, 2018, were not recorded at the location specified in the PCAQ OAC (*i.e.*, the "compliance point"); that the April 2018 exceedances had not resulted in an NOV; that JU did not admit any liability for the alleged exceedances included in the PCAQ OAC, the veracity of which has not been adjudicated; and that no definitive evidence has been presented in this matter regarding whether the alleged H_2S exceedances by JU pose a threat to public health and safety. (JU Br. at 37-41.)

JU asserts that no credible evidence was presented to show that JU lacks the technical or managerial expertise to operate its water systems, as JU is supplying drinking water that meets Safe Drinking Water Act requirements, something that was verified by ADEQ through the testing of 234 water samples. (JU Br. at 41-42.) JU acknowledges that minor operation and maintenance issues were noted in the Staff Report dated March 8, 2018, but also points to Mr. Smith's testimony that they had all been addressed by JU. (JU Br. at 43.)

JU also asserts that it is currently in compliance with ADWR requirements, although it acknowledges that it was not in compliance when Staff filed the Complaint and Petition for an OSC because its System Water Plan update had not been timely filed. (JU Br. at 43-44.) JU points out Mr. Tannler's testimony that it is not unusual for a System Water Plan update to be submitted three months

late, as JU's was, and that JU has not had any ADWR violations that resulted in enforcement action since Mr. Tannler became the statewide active management area director for ADWR in 2013. (JU Br. at 44.) JU also noted Mr. Tannler's testimony that obtaining a designation of assured water supply, as JU has, is prudent planning. (JU Br. at 44.)

JU also addresses the customer complaints received during the six public comment sessions held in February 2018. (JU Br. at 45.) JU points out that Ms. Walczak was pleasantly surprised by how much JU had done to respond to the allegations and concerns of 44 customers for whose public comments Staff had requested JU responses. (JU Br. at 45-47.) JU also quotes Ms. Walczak's testimony that JU "had responded to these customers." (JU Br. at 47.) JU asserts that no party has shown by a preponderance of the evidence that JU has overcharged for water, failed to deliver water meeting the requirements of the Safe Drinking Water Act, or otherwise violated any of the material terms and conditions of its tariff. (JU Br. at 47.) Furthermore, JU asserts, because it is committed to providing a high level of service to its customers, JU has entered into an Agreement for Professional Services to have GHD review and analyze JU's customer service and billing functions, with specific attention to the categories of customer complaints alleged at the February 2018 public comment sessions, and to make recommendations and support Hunt in implementing those recommendations. (JU Br. at 47.) Additionally, JU notes, Mr. Drummond's testimony described additional measures JU is taking to enhance its customers' experiences. (JU Br. at 48 (citing Ex. J-1 at 5-6).)

JU also challenges a Staff-proposed finding of fact stating that JU has intentionally failed to report to the Commission affiliated entities that fall within the definition in the Affiliated Interest Rules. (JU R. Br. at 34.) JU asserts that this statement is untrue and unsupported by the evidence and further states that JU files the diversification plan required by the Affiliated Interest Rules every year and in each plan identifies all "affiliates" of JU in accordance with the definition in A.A.C. R14-2-801(1). (JU R. Br. at 34-35.) JU asserts that it has identified six affiliates[323] and, further, points out that the Affiliated Interest Rules allow the Commission to request additional information or order a hearing, or both, if the Commission concludes that the business activities would impair the utility's financial status,

[323] JU identified the following affiliates: GJ Trust, Johnson Int'l, CASW, Athena, GHJ, and Rancho Sendero. (Ex. S-19 at STF 3.3.)

prevent the utility from attracting capital at fair and reasonable terms, or impair the utility's ability to provide safe, reasonable, and adequate service. (JU R. Br. at 35.) JU disputes that Roadrunner, Hunt, and Ultra are affiliates of JU as that term is defined in A.A.C. R14-2-801(1), stating that their ownership is distinct from JU's ownership, that JU does not "directly or indirectly control" them and is not directly or indirectly controlled by them, and that they are not all under direct or indirect common control. (JU R. Br. at 36-38.) Additionally, JU asserts, JU does not have the power to direct the management policies of Roadrunner, Hunt, or Ultra, and none of them have the power to direct the management policies of JU. (JU R. Br. at 38.) JU argues that Staff has cited to no evidence in the record, Commission Decisions or policy statements, or legal opinions that support its position and that the difference of opinion between JU and Staff as to the meaning of affiliate does not establish that JU is guilty of obstruction. (JU R. Br. at 36-38.) JU further disputes Staff's proposed finding of fact stating that JU has intentionally set up ownership of entities that do business with JU so as to avoid the reporting requirements of the Affiliated Interest Rules. (JU R. Br. at 38.) JU calls this assertion both reckless and demonstrably false, stating that JU did not set up Roadrunner, Hunt, or Ultra; that there is no evidence to the contrary; that there is no evidence that JU has done anything to avoid the reporting requirements; and that it is not possible for Staff to know what was in the minds of the incorporators of the entities that do business with JU. (JU R. Br. at 38-39.)

Likewise, JU challenges Staff's proposed finding of fact stating that JU's management is obstructing the Commission's ability to regulate JU, asserting that the statement is "ridiculous" and contrary to the record in this matter as well as JU's history before the Commission. (JU R. Br. at 34.) JU states that it has fully cooperated in this case and in all cases before the Commission and has complied with all Commission Decisions and orders. (JU R. Br. at 34.)

JU also takes issue with Staff's proposed finding of fact stating that during the March 13, 2018, Open Meeting, JU intentionally misrepresented and/or failed to disclose to the Commission the entity with which it has entered into a management services agreement as well as its relationship with Roadrunner, as well as Staff's proposed finding of fact stating that prior to disclosure of the Ultra arrangement, JU had represented that Hunt provided management services to JU. (JU R. Br. at 39.) JU asserts that those findings of fact pertain to a different case than this one and criticizes Staff for

supporting its statement with a link to a video recording of the Open Meeting without specifying which JU statements on the recording are believed to be misrepresentations and/or failures to disclose relevant information and for failing to raise these allegations during the hearing when JU would have been able to develop the record.[324] (JU R. Br. at 39.) JU denies that there were "material misrepresentations or failures to disclose relevant information" at the Open Meeting and asserts that those proposed findings of fact should be rejected. (JU R. Br. at 39-40.)

Likewise, JU takes issue with Staff's proposed finding of fact stating that JU failed to disclose the existence of the management services agreement with Ultra until it was compelled to do so by a direct data request issued during the hearing, stating that the Staff data request for which Staff argues the Ultra arrangement should have been disclosed did not actually ask about the management services agreement. (JU R. Br. at 40.) JU states that when Staff did later ask for a copy of the management services agreement, JU provided both the 2014 Ultra Contract and the Hunt Contract. (JU R. Br. at 41.)

JU also disputes Staff's proposed finding of fact stating that JU's noncompliance with the Commission is ongoing, as evidenced by JU's unchanged position regarding its affiliated entities and lack of transparency with respect to information relating to its water and wastewater systems, for which JU states Staff did not provide any citations to evidence of record. (JU R. Br. at 41.) JU states that there are no facts to support Staff's assertion, as JU fully cooperated in this docket, met all the expedited deadlines in the procedural schedule, worked cooperatively with Staff to submit the Joint Proposal, responded to seven Staff data requests, and allowed Staff unfettered access to JU's systems. (JU R. Br. at 41-42.)

JU also refutes Staff's proposed finding of fact stating that JU has demonstrated that it lacks the ability to financially manage the utility, asserting that Staff presented no financial analysis or testimony in this proceeding even though Staff had access to JU's pending rate application and, additionally, that it is unclear what Staff means by "ability to financially manage." (JU R. Br. at 42.)

JU also argues that Staff's proposed findings of fact regarding the per-connection charge paid

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[324] We note that there was testimony from both Mr. Drummond and Mr. Cole acknowledging prior JU statements in Open Meetings indicating that JU was managed by Hunt. (*See* Tr. at 3231, 3520-21, 3541.)

by JU under the 2014 Ultra Contract and the need for Staff to have affiliate information for purposes of processing JU's pending rate case and to guarantee the integrity of the rate case are more appropriately topics for the pending rate case rather than this docket. (JU R. Br. at 42-43.)

JU also argues that Staff's proposed finding of fact stating that it has been demonstrated that JU failed to adequately invest in the upkeep and upgrading of its systems in order to provide safe and reliable service until required to do so to be compliant with regulatory agencies is "fully discredited" by the unrebutted findings of the Taylor Report and should be rejected. (JU R. Br. at 43-46.)

JU also expressed disappointment with Staff's assertion that JU's engagement of an outside consultant is evidence that JU is suffering from severe and chronic operational difficulties, arguing that Staff should applaud the engagement, which shows prudent management. (JU R. Br. at 46.) JU points out that Mr. Dunaway testified that it is prudent for any water or wastewater system to audit itself through the use of third-party consultants and that Mr. Baggiore testified that most wastewater treatment companies need some sort of outside assistance to run their plants and collection systems. (JU R. Br. at 47.)

JU argues that it has not been established by a preponderance of the evidence that JU overcharged for water, failed to deliver water meeting the requirements of the Safe Drinking Water Act, or otherwise violated any material term or condition of its tariffs. (JU R. Br. at 47.) JU further observes that it responded fully to Staff's requests for information regarding customers who had spoken at the February 2018 public comment sessions as well as in pre-filed and live testimony in this matter. (JU R. Br. at 47.) JU asserts that the evidence clearly demonstrates that JU investigates customer complaints and provides appropriate follow-up including meter re-reads, leak checks, meter testing, and meter replacement, fully addressing the concerns of Staff set forth in the Complaint and Petition for an OSC. (JU R. Br. at 47.)

JU objected to numerous additional proposed findings of fact of Staff and intervenors, which need not be repeated here for a full understanding of JU's arguments and position in this matter. (JU R. Br. at 47-49.)

3. Resolution

As evidenced by the discussion of prior Commission Decisions above, the Commission has not

been consistent in stating the standard to determine whether an interim manager should be appointed. Although JU would have us rely on Decision No. 66241, Decision No. 65858, and the April 2013 Staff Memorandum regarding Far West, we find that it is more appropriate to look to our more recent Decisions and not to rely upon the Staff Memorandum because it is not a Commission Decision. Decision No. 69865, the most recent Decision appointing an interim manager that has been discussed herein, did not make a finding of a "clear and present danger" or an "imminent threat" and did not make a finding that no other viable option existed before finding that an interim manager should be appointed for Hacienda. Rather, the Commission made the following finding of fact: "Based on discussion occurring at the Commission's Open Meeting, the circumstances at Hacienda are dire and justify the immediate removal of current management and appointment of an interim manager by the Commission on an interim basis, pending further order of the Commission in the docket." (Decision No. 69865 at 5.)

In Decision No. 66897, the Commission discussed the standard for appointment of an interim manager and expressly rejected McLain's argument that Staff was required to make a showing of "clear and present danger" before the Commission could appoint an interim manager. (Decision No. 66897 at 12.) Rather, while acknowledging the "severity of the requested interim relief," the Commission described the threshold to be met both as "sufficient danger to the public health and safety that the Commission was justified in appointing the Interim Manager" and "potential danger to the public's health and safety [that] warrants such remedial interim actions." (Decision No. 66897 at 12.)

In light of these prior Decisions, we believe that the correct inquiry to use in determining whether appointment of an interim manager is appropriate is twofold: (1) Have the utility's operations under its current management resulted in service that is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient, or is there an unreasonable risk that the utility's operations under its current management will result in such service? (2) Is appointment of an interim manager necessary to ensure that the utility's service is just, reasonable, safe, proper, adequate and sufficient? We believe that this inquiry is more appropriate than application of a test that depends on jargon ("clear and present danger" and "imminent threat") that lacks a well-established meaning in this context. Further, because one of the Commission's primary powers and obligations is to ensure that utilities have and charge just

and reasonable rates, and the management decisions made for a utility have a direct impact on the economic well-being of the utility and the rates that are ultimately approved for and charged by it, we believe that looking at health and safety alone is insufficient to meet the Commission's obligation under Art. 15, § 3. Rather, we believe that it is also necessary and appropriate for the Commission, when determining whether a utility's management should be replaced on an interim basis to protect its customers, to consider the economic risk to the utility's customers presented by the utility's continued operations under its existing management. If the Commission were not able to include such an economic consideration in its inquiry, it would not be able to appoint an interim manager to take the place of a manager who has allegedly misappropriated or lost a substantial portion of the utility's funds, for example. Yet in that circumstance, appointment of an interim manager might be the most expedient or even the only way for the Commission to "lock the barn door before the horse escapes"—to prevent or at least mitigate the extent of the resulting economic injury to the utility and the potentially severe economic burden that would be imposed on the utility's customers to enable the utility to continue operating.[325] The Commission instead would need to wait until the lack of funds had resulted in an apparent or known risk to the health and safety of the utility's customers and the public. Such a restriction on the Commission's authority to act would not best serve the public interest and also would not be consistent with the Commission's duty under A.R.S. § 40-321 to determine what is just, reasonable, safe (financially here), proper, adequate, and sufficient and to enforce that determination by order.

Thus, we must determine whether JU's service is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient or whether its operation under current management presents an unreasonable risk of service that is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient. In this matter, the Commission has grave concerns regarding the provisions of the 2014

[325] We recognize that criminal prosecution may also result under these circumstances and that every individual is innocent until proven guilty. However, if it is determined that a large portion of a utility's funds is missing, and the manager is the individual who had the ultimate control over and responsibility for those funds, it might be appropriate to ensure that the manager is no longer the individual with ultimate control over and responsibility for the funds, whether the absence of the funds is due to malfeasance, negligence, or another reason. While we believe this type of situation would arise only rarely, we also believe it imperative that the Commission be able to take such a risk to customers into account when considering whether it is appropriate to appoint an interim manager. In other cases, we have seen the dire results that the apparent financial malfeasance, negligence, or ineptitude of management can have upon a utility and its ratepayers, which often linger for years.

Ultra Contract (and its predecessor, the 2013 Ultra Contract), the apparent multi-year lack of adequate capital investment in JU's systems, the apparent multi-year lack of adequate maintenance of JU's systems, the numerous compliance problems JU has encountered this year and in recent years with some JU facilities (some of which even George Johnson acknowledged were preventable), JU's apparently strained relationships with some regulators, JU's practice of entering into business arrangements with JU-related entities rather than seeking out third-party vendors and arm's length arrangements, JU's apparent unwillingness to reveal to the Commission what has happened to the substantial portion of JU's revenue that is paid annually to Ultra under the 2014 Ultra Contract and never paid to Hunt, Mr. Drummond's potential conflicts of interest due to his role with JU and his past and present relationships with members of the Johnson family and various Johnson-related entities, and Mr. Drummond's acknowledged lack of interest and potential lack of ability to replace the 2014 Ultra Contract appointment of an interim manager. With the possible exception of Mr. Drummond's potential conflicts of interest and JU's strained relationships with some regulators, these issues are clearly related to ratemaking—the Ultra arrangement has allegedly caused such an extensive portion of JU's revenues to leave JU that capital investments and maintenance have been neglected,[326] compliance problems have allegedly resulted from that neglect, and current management is not interested in and may be unable to terminate the 2014 Ultra Contract so that JU can regain control over its revenues and ensure the resources needed to make adequate investments into the maintenance and improvement of its systems.

Although we acknowledge that JU has been making efforts recently to remedy its compliance issues and prevent future compliance issues, it is apparent that JU's management is not willing to scrutinize the extent to which the arrangement with Ultra has resulted in JU's noncompliance due to the lack of funds available to implement appropriate maintenance and capital improvement plans. We are mindful that as JU's manager, Mr. Drummond has fiduciary duties to JU, not to individual members of the Johnson family or the other related entities with which those Johnson family members are involved. Mr. Drummond's fiduciary duties include honesty, loyalty, fair play, fair dealing, good faith,

[326] It is striking how little JU spends toward R&M in comparison to how much it spends toward management fees and how much D&A it has at its disposal.

and due care.[327] While the evidence has not provided any reason to question Mr. Drummond's satisfaction of his other duties to JU, we are concerned that he may be experiencing difficulty in satisfying his duties of loyalty and due care, which we believe would require him to show a greater interest in determining whether the 2014 Ultra Contract in any way benefits JU (as opposed to George Johnson and Chris and Barbara Johnson) and to do something about it if he determines that the arrangement is not beneficial to JU. Thus far, Mr. Drummond has demonstrated that he is not willing to do that. The evidence in this matter supports a conclusion that the Ultra arrangement does not benefit JU in any way, is completely superfluous for purposes of JU's operations (because everything is done by Hunt employees), is simply a way to provide revenues to Chris and Barbara Johnson, and is actually detrimental to JU's financial well-being and the adequacy of its service and operations. We concede that Mr. Drummond may believe that he would be unable to terminate the 2014 Ultra Contract, in light of its very one-sided provisions, but conclude that JU's manager must be willing to try to improve its financial arrangements in order to improve its service.

Additionally, as stated above, we are gravely concerned about JU's numerous and continuing ADEQ and PCAQ violations, which we believe have been caused in large part by JU's lack of adequate maintenance and improvements, which in turn has been caused at least partially by JU's lack of financial resources due to the Ultra arrangement. While JU is now making strides to correct the system issues that cause the ADEQ and PCAQ violations, we agree with Mr. Gardner's and Mr. Johnson's testimony that at least some violations could have been prevented. It is clear that a number of JU's unauthorized discharges have been caused by a failure to properly plan and build for the flows anticipated; that a number of SSOs have been due to JU's failure to detect valve blockages, to adequately maintain pipes, and to monitor its pipes for clogs; and that in spite of JU's protestations to the contrary, H_2S is still being emitted from its Section 11 WWTP and/or collection system.[328] Each SSO, unauthorized discharge, and H_2S emission is a potential threat to the health and safety of those who encounter it, whether they are Hunt employees working for JU, customers of JU, or other residents

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[327] *See Mohave Elec. Co-op., Inc. v. Byers*, 189 Ariz. 292, 307 (App. 1997) (citing *McCallister Co. v. Kastella*, 170 Ariz. 455, 457 (App. 1992)); *Estate of P.K.L. v. JKS*, 189 Ariz. 487 (App. 1997); *Simms v. Rayes*, 234 Ariz. 47 (App. 2014).

[328] We are not in the least persuaded by JU's position that there is a single H_2S "compliance point" as a result of the PCAQ OAC.

of or visitors to the area impacted.

Finally, we are very concerned about JU's failure, prior to this time, to remedy the situation with its phone system, which obviously created a great deal of acrimony with its customers and has been inadequate for years. Ms. Poulin's testimony was credible, and we believe that she has been trying as hard as she can to make the JU customer experience a positive one, but her efforts appear to have been crippled by the resources JU provides for telecommunications and payments. It is unacceptable in this era to have customers wait on hold for 30 minutes to speak to a CSR, whether to pay a bill or for any other reason, only to have them kicked over to a voicemail system without speaking to anyone. Likewise, it is unacceptable for the only instant payment methods available to require either a visit to the office or a successful telephone call (if auto-payment is not being used). The ire of some JU customers is understandable in light of these conditions. We believe that JU's moving to a more modern and customer-friendly integrated phone and payment system should help tremendously with its customer relations, but also believe that the time to make such a move passed a long time ago.

After considering the totality of the circumstances, as described above, we conclude that JU's service is unjust, unreasonable, unsafe, improper, inadequate, and insufficient and that appointment of an interim manager is necessary to make it just, reasonable, safe, proper, adequate, and sufficient.

C. Has JU Been Denied Due Process in this Case?

1. What Does Due Process Require?

a. *Substantive Due Process*

Regarding a standard to be applied to a person by the government, substantive due process requires that the standard must not be "so vague that men of common intelligence must guess at its meaning and differ as to its application" and "must be sufficiently definite so that those who are to execute the law may do so in a rational and reasoned manner. (*Cohen v. State*, 121 Ariz. 6, 9 (1978) ("*Cohen*") (citing *Southwest Engineering Co. v. Ernst*, 79 Ariz. 403, 413 (1955); *Hernandez v. Frohmiller*, 68 Ariz. 242, 249 (1949)).) Additionally, to succeed on a claim that denial of substantive due process has occurred, the claimant must have a vested right that has been adversely impacted by the government's action. (See, e.g., *Cohen*, 121 Ariz. at 10.) The Arizona Supreme Court has established that a CC&N is a property interest. (*See, e.g., James P. Paul*, 137 Ariz. at 428-29.)

Additionally, "'liberty,' as a part of due process, includes [the] right to earn and pursue a livelihood." (*Vong v. Aune*, 235 Ariz. 116, 120 (2014) ("*Vong*") (citing *Allgeyer v. Louisiana*, 165 U.S. 578 (1897)).) When the act at issue allegedly deprives a person of an economic or professional pursuit, the test to apply is the rational basis test—whether the governmental act is rationally related to furthering a legitimate governmental interest, and the means employed are reasonably related to achieving that interest. (*Vong*, 235 Ariz. at 119.) "In general, a legislative enactment has a legitimate purpose when the government acts within its police powers by regulating to protect the public health, morals, and welfare." (*Vong*, 235 Ariz. at 121 (citing *Berman v. Parker*, 348 U.S. 26, 32 (1954)).) "Furthermore, it is well established that the right to pursue a profession is subject to the paramount right of the state under its police powers to regulate business and professions in order to protect the public health, morals, and welfare." (*Cohen*, 121 Ariz. at 10 (citing *Arizona State Bd. of Dental Examiners v. Hyder*, 114 Ariz. 544, 546 (1977)).)

b. *Procedural Due Process*

In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("*Mathews*"), the U.S. Supreme Court explained procedural due process as follows:

> Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. . . .
>
> This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."[329]

In *Goldberg v. Kelly*, 397 U.S. 254 (1970) ("*Goldberg*"), the U.S. Supreme Court set forth the elements necessary to satisfy the demands of "rudimentary due process": (1) the hearing must provide the person impacted an opportunity to be heard at a meaningful time and in a meaningful manner,

[329] *Mathews*, 424 U.S. at 332-33 (citations omitted).

which requires that the person have timely and adequate notice[330] and an effective opportunity to confront and cross-examine adverse witnesses and to present arguments and evidence; (2) the person must be permitted to be represented by counsel if the individual so desires; (3) the decisionmaker's conclusion concerning the outcome of the dispute must rest solely on the legal rules and evidence adduced at the hearing;[331] and (4) the decisionmaker must be impartial. (397 U.S. at 267-71.)

In *McLeod v. Chilton*, 132 Ariz. 9 (App. 1981) ("*McLeod*"), the Arizona Court of Appeals, Division 1, considered whether a state veterinarian had been denied procedural due process when he was dismissed from state service after a public meeting of the Livestock Board that included a discussion conducted in executive session. The *McLeod* court explained that procedural due process protections apply if a public employee can demonstrate a property or liberty interest in the employee's job. (132 Ariz. at 18.) Because the veterinarian's employment was at will, however, the *McLeod* court concluded that the veterinarian had no property interest in his employment, stating: "No property right is involved when the individual has only an abstract need or desire for the job, rather than a legitimate claim of entitlement to that particular employment based on contract, statute, or regulation." (132 Ariz. at 18.) The *McLeod* court next considered whether the veterinarian had a liberty interest, explaining that "[a] liberty interest arises where the dismissal imposes upon the employee a stigma or reputational harm which forecloses further employment opportunities or results in significant damage to the employee's standing in the community" and that the stigma attached to mere dismissal or dismissal without a stated reason does not create a liberty interest. (*Id.*) The *McLeod* court explained that if there also were no liberty interest involved, the veterinarian would not be entitled to any procedural due process protections regarding the dismissal. (*Id.* at 18-19.) The *McLeod* court concluded that the veterinarian also had no liberty interest and that, even if he had, he would not have been entitled to a pre-termination hearing because "the interests of the Livestock Board and the public in maintaining a loyal and efficient operation to protect the public from the distribution of unwholesome meat products" outweighed his interest in clearing his name. (*Id.* at 19.)

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[330] In *Goldberg*, the government had provided seven-day notice, which the Court stated was not constitutionally insufficient per se, but might be unfair in another case.

[331] The Court stated that the decisionmaker should state the reasons for the determination and indicate the evidence relied upon.

2. Parties' Arguments Regarding Due Process

JU asserts that in spite of the narrow description of the docket as opened at Chairman Forese's request ("investigation of the billing and water quality issues" of JU), JU has been required to respond, within an "extremely compressed time period," to a wide scope of topics that cover virtually all aspects of its operations.[332] (JU Br. at 8.) Additionally, in response to Staff's assertion that the number of SSOs alone demonstrates JU's lack of the necessary managerial and technical capabilities to run the utility appropriately, JU asserts that there is no support for "this purely subjective pronouncement [that] is not based on any objective criteria or standard for evaluating the number of SSOs of an entity" and that it is "fundamentally unfair and a violation of due process rights" to hold JU or any utility responsible for violating an unknown and unarticulated standard for the number of SSOs that are permissible and to move to install an interim manager without providing an opportunity to address the alleged violation.[333] (JU Br. at 21.) Likewise, in response to Staff's assertion that JU's failure to bring the Section 11 WWTP and Pecan WRP into compliance constitutes unjust and unreasonable service to the public, JU acknowledges that the Section 11 WWTP currently has a pending NOV and that the Pecan WRP currently has a Consent Order and a pending NOV, but responds that no objective criteria have been established to measure when a utility has received too many NOVs and that it is "fundamentally unfair and a violation of due process rights" to hold JU or any utility responsible for violating an unknown and unarticulated standard for the number of NOVs that are permissible and then to move to install an interim manager without providing an opportunity to address the alleged violation. (JU Br. at 22, 28.)

Staff asserts that appointing an interim manager in this matter would not result in a denial of either procedural or substantive due process for JU. (Staff R. Br. at 9, 10.) Staff asserts that substantive due process protects against unreasonably arbitrary government actions, while procedural due process protects against procedurally defective government processes. (Staff R. Br. at 9.) Staff states that unless a fundamental right is involved, such as a First Amendment right, Arizona courts apply the rational basis test when reviewing a substantive due process claim. (Staff R. Brief at 9-10.) According

[332] We believe that with this language, JU is suggesting that it believes it has been denied procedural due process.
[333] We believe that with this language JU is asserting violations of its substantive and procedural due process rights.

to Staff, under the rational basis test, a government action must be upheld (1) if it does not "transgress 'some basic and fundamental principle'" or (2) "'if it is not arbitrary, capricious, or unreasonable, and if the means selected have a real and substantial relation to the goals sought to be obtained.'" (Staff R. Br. at 9-10 (quoting *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, 7 P.3d 136 (Ariz. Ct. App. 2000) and citing *American Fed'n of Labor v. American S. & D. Co.*, 67 Ariz. 20 (1948); *Martin v. Reinstein*, 195 Ariz. 293 (Ariz. Ct. App. 1999)).) Staff reasons that appointment of an interim manager for JU would not "shock the conscience" or be arbitrary, capricious, or unreasonable, both because the appointment would be only temporary and because of JU's violations of ADEQ and PCAQ standards, which JU has failed to correct in spite of having been provided "every opportunity" to do so and which Staff asserts have caused continuous harm. (Staff R. Br. at 9-10.)

Staff further asserts that JU has not been denied procedural due process because the evidence in this matter was taken over 12 days, and JU was given the opportunity to produce witnesses and to engage in significant cross-examination of Staff and other parties' witnesses. (Staff R. Br. at 10.) Additionally, Staff says, when asked whether JU was provided a full and fair opportunity to present its case, counsel for JU acknowledged that JU was given the opportunity to present evidence and witnesses. (Staff R. Br. at 10-11.)

The Towns assert that JU's due process rights have not been violated because the government need not provide "[a]bsolute certainty and clarity" regarding its standards, only notice that would allow a person of common intelligence to understand what is prohibited. (Towns R. Br. at 8-9 (citing *Planned Parenthood of Central & Northern Ariz. v. Arizona*, 718 F.2d 938, 948 (9th Cir. 1983)).) The Towns reason that if JU is "bewildered" and does not comprehend that having more SSOs than any wastewater provider other than Phoenix and more NOVs than any other water or wastewater utility is unacceptable, then JU's management lacks the capacity to manage the utility effectively. (Towns R. Br. at 8-9.)

3. Resolution

Although JU has done little more than made the bare assertion, JU appears to have asserted or at least suggested, that both its substantive and procedural due process rights have been violated by the Commission in this case. JU's substantive due process complaints are expressly based upon assertions made by Staff that the sheer number of JU's SSOs and the sheer number of JU's NOVs justify

appointment of an interim manager. We remind JU that these statements were made by Staff, not by the Commission, and were made as a part of Staff's advocacy in this matter. We further remind JU that the OSC set forth in no uncertain terms the statutes and rules that JU was alleged to have violated. Under the circumstances, we do not believe that Staff's statements represent government action as that is contemplated under either the federal or state Due Process Clause. Nonetheless, because JU has raised the Due Process issue, we will briefly examine it here.

As a threshold inquiry, we consider what liberty or property interest JU asserts would be impacted by appointment of an interim manager. JU clearly has a property interest in its CC&N, but this matter does not contemplate Commission action against JU's CC&N, in spite of the Towns' assertion that such action is warranted. Appointment of an interim manager would not change JU's ownership and would have no impact upon JU's CC&N. Because it raised the substantive due process issue, JU must consider itself to have a protected liberty interest at stake.[334] We were unable to find any cases regarding whether the ability to choose whom to hire as a manager constitutes a liberty interest under Arizona law. Assuming that there were such a liberty interest held by JU, the analysis would be under the rational basis test—whether the Commission's act (appointing an interim manager) is rationally related to furthering a legitimate governmental interest and reasonably related to achieving that interest. (*See Vong*, 235 Ariz. at 119.) The Commission's interest, which falls within its police power, is to protect the public health, safety, and welfare.[335] And the Commission's possible act—appointing an interim manager—is reserved for those situations when the Commission determines that a utility's management presents a risk to the public health, safety, and welfare, based on health and safety-related violations of Commission or other regulatory agencies' statutes and/or rules or on the management's handling of the utility's finances in a manner that creates or exacerbates public health and safety-related violations (which we believe goes to customers' welfare). We find that the Commission's purpose is legitimate and that its possible act is both rationally and reasonably related to the harm against which the Commission intends to protect the general public and the utility's customers. JU's substantive due process rights have not been violated and would not be violated if the

[334] We assume that JU is not arguing that Mr. Drummond's substantive due process rights have been violated.

[335] The Commission protects the public health, safety, and welfare by ensuring that a utility's service is just, reasonable, safe, proper, adequate, and sufficient.

Commission were to appoint an interim manager in this matter.

Turning to JU's apparent assertion that its procedural due process rights have been violated, we point out the following:

- JU received many different notices of this matter, its potential scope, and the possibility that an interim manager could be appointed, most notably including the following:
  - At the Staff Open Meeting on February 22, 2018, for which the Staff Open Meeting Notice had included the following language for the Johnson item: "Commission Discussion, Consideration, and Possible Vote Regarding: Investigation into Water Quality and Billing Complaints at Johnson Utilities, Possibility of Order to Show Cause, and Possibility of Appointment of an Interim Manager."
  - In the Open Meeting Agenda and Revised Open Meeting Agenda for the Open Meeting to be held on March 13, 2018. The Revised Open Meeting Agenda included the following language regarding consideration of this matter:

    In the matter of the Commission's Investigation of the Billing and Water Quality Issues of Johnson Utilities, LLC (WS-02987A-18-0050): Staff update on investigation into billing issues, water quality, wastewater facility issues, and related health and safety issues; Commission discussion, consideration, and possible vote regarding order to show cause and the appointment of an interim manager.
  - At the Open Meeting on March 13, 2018, when the Commission discussed and adopted an Order that, *inter alia*, (1) required Staff to file, no later than March 15, 2018, an Application for OSC as to why an interim manager should not be appointed; (2) required that JU file its response to the Application for OSC by March 26, 2018, at 5:00 p.m.; (3) required that an evidentiary hearing on the Application for OSC be held on March 29, 2018, at 10:00 a.m., with an ALJ presiding and the Commissioners prepared to consider the matter at that time; and (4) required that the ALJ prepare a conforming order for the OSC on or before April 6, 2018.
  - In the Open Meeting Agenda for the March 16, 2018, Open Meeting, which included this matter as the only agenda item for Commission consideration, discussion, and possible vote regarding Staff's Application for OSC.

- In Staff's Complaint; Petition for an OSC, filed on March 15, 2018, in which Staff set forth five counts of complaint and requested that the Commission issue an OSC against JU to demonstrate why an interim manager should not be appointed and, further, impose fines and penalties pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, § 19 of the Arizona Constitution and grant such other relief as the Commission deems appropriate. Staff included a Proposed OSC Order with the Application for OSC.
- At the Open Meeting on March 16, 2018, when the Commission discussed and considered Staff's Application for an OSC and adopted the Proposed OSC Order, which (1) required JU to file its response to Staff's Complaint and Petition by March 26, 2018; (2) required JU to appear and show cause at 10:00 a.m. on March 29, 2018, to defend eight enumerated items; and (3) required the Hearing Division forthwith to schedule any additional appropriate proceedings. During their discussions, the Commission indicated that JU should be required to provide notice of the March 29, 2018, hearing date and that intervention should be allowed in this matter. Decision No. 76618 was issued the same date. Decision No. 76618 required JU to appear and show cause defending against the following:

  a. Why its actions do not represent a violation of A.R.S. § 40-361(B);
  b. Why its actions do not represent a violation of A.A.C. R14-2-607(A);
  c. Why its actions do not represent a violation of A.A.C. R14-2-607(C);
  d. Why its actions do not represent a failure to provide just and reasonable service;
  e. Why an Interim Manager should not be appointed to guarantee the necessary technical expertise and managerial experience to run a public utility is met;
  f. Why Johnson Utilities should not cooperate with and indemnify, defend and hold the Interim Manager harmless;
  g. Why other relief deemed appropriate by the Commission should not be ordered[; and]
  h. Why fines and penalties should not be imposed pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, section 19 of the Arizona Constitution.

- JU next received notice regarding this matter when, on March 16, 2018, a Procedural Order was issued that, *inter alia*, scheduled the evidentiary hearing in this matter to

commence on March 29, 2018, at the Commission's offices in Phoenix and to continue, if necessary, at an additional date and time to be identified at the evidentiary hearing.

- Through the parties' many filings concerning witnesses and exhibits, made beginning on March 26, 2018, and continuing into the hearing dates, as well as multiple Subpoena filings that identified additional witnesses not listed by any party.
- At the Commission's Open Meeting on March 29, 2018, at which the Commission, after an executive session and discussion and pursuant to A.R.S. § 40-252, revised the process for this matter (which had been adopted in Decision No. 76618) by:
  1. Removing the requirement for the ALJ to issue a conforming order by April 6, 2018;
  2. Extending the deadline for intervention to April 16, 2018;
  3. Allowing for the evidentiary hearing to convene on March 29, 2018, only to receive public comment; and
  4. After the public comment, recessing the evidentiary hearing until April 16, 2018.

- JU was provided an opportunity to be heard at a meaningful time and in a meaningful manner because in addition to the timely and adequate notice described above, JU was permitted to cross-examine every witness that JU did not present, was permitted to present its own witnesses (over 5 days), was permitted to enter into the evidentiary record more than 50 exhibits, and had official notice taken for several additional documents. Neither JU nor any other party was limited in its direct or cross-examination time, or in its ability to have relevant and credible exhibits admitted. Additionally, JU was permitted to provide an opening statement, an initial closing brief, and a reply brief, with no limitations placed on time or page length.
- JU was represented by counsel at each proceeding for this matter.
- The Recommended Opinion and Order and Decision to be reached in this matter is based entirely on the extensive evidentiary record, which involved 13 days of testimony (from 27 witnesses and approximately 200 exhibits), and existing law.
- The decisionmakers in this matter are impartial, as evidenced by the extensive discussion and consideration herein of the information provided by JU and all of the other parties to this matter.

Based on the above, we conclude that JU has not been denied procedural due process in this matter.

IX. Conclusion

Although JU's current manager may have sufficient managerial skills to operate the utility at the macro level, with the support of Mr. Cole and other experienced and qualified operational personnel to provide the necessary technical expertise at the micro level, JU has a culture that accepts as normal the unique arrangement involving JU, Ultra, and Hunt, under which more than half of JU's revenues go to Ultra, and more than half of the revenues that go to Ultra are used to enrich Chris Johnson and Barbara Johnson rather than to provide JU with workers through Hunt or to maintain and improve JU's infrastructure and operations. (*See, e.g.,* Tr. at 1859-61, 1862-63; Ex. QC-12; Ex. QC-13.) Additionally, at least at the upper management level,[336] there are indications of a culture that is distrustful of and sometimes combative/oppositional with its customers and regulators, as evidenced for example by Mr. Cole's distrust of customers who have complained, JU's approach to PCAQ's H_2S monitoring after the PCAQ OAC, and JU's position concerning its lack of affiliates. This culture does not serve JU or JU's customers well and is not in the public interest. As manager, Mr. Drummond has not changed JU's culture, and he shows insufficient interest in doing so. This is to the detriment of both JU and its customers, and it should not be allowed to continue.

The evidence amply demonstrates that while JU currently is making strides to improve its systems and operations under the leadership of Mr. Drummond and Mr. Cole, JU neglected these types of improvements for a decade. Additionally, JU's failure to correct repeat issues related to recordkeeping and reporting speaks to a lack of adequate training and resources, also symptoms of neglect. It is this neglect and the associated lack of long-term planning that has created JU's recent and current inability to maintain regulatory compliance with ADEQ, PCAQ, and the Commission. At this time, it is necessary for the Commission to ensure that safeguards are established to prevent the continued enrichment of Johnson family members at the expense of JU ratepayers and to ensure that JU continues on its trajectory of improvement. The Commission has the legal authority and legal justification to appoint an interim manager for JU, and the Commission should do so to protect JU,

[336] Ms. Poulin appears to have a sincere desire to help customers and not to assume that they are incorrect or dishonest.

JU's ratepayers, and the public interest. Although the Commission has determined that JU has violated A.R.S. § 40-361(B), A.A.C. R14-2-607(A), and A.A.C. R14-2-607(C) and that JU's actions represent a failure to provide just and reasonable service, the Commission does not believe that it is necessary at this time to impose financial penalties upon JU. Rather, the Commission desires for JU to be able to use its financial resources toward resolution of its regulatory violations, improvement of its services, and payment for the interim manager to be appointed.

* * * * * * * * * *

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

FINDINGS OF FACT

1. The procedural history for this matter set forth in Section I of the Discussion portion of this Decision is accurate and is adopted as though set forth fully here.

2. JU is an Arizona limited liability company and public service corporation and a Class A utility that provides water and wastewater utility services in Pinal County, Arizona, pursuant to CC&Ns granted and extended by the Commission, and in areas that include portions of Queen Creek and the unincorporated San Tan Valley as well as portions of Florence.

3. JU is owned by the GJ Trust, its only member, of which George Johnson and Jana Johnson are the trustees.

4. In JU's only completed rate case, for which Decision No. 71854 was issued in August 2010, the Commission found that JU's water division had a negative rate base and that JU's wastewater system had a rate base of less than $140,000, which indicated a lack of equity investment. Because the Commission found that JU had had extensive dealings with related entities, the Commission required JU to prepare and file an action plan to demonstrate "that its dealings are arm's length, transparent, and well-documented." Additionally, the Commission found that JU was out of compliance with ADEQ requirements and subject to multiple ADEQ NOVs.

5. In Decision No. 72579, issued in September 2011, the Commission amended the prior JU rate case decision to allow in rate base more than $18 million in wastewater plant that had previously been excluded as either inadequately supported plant or representative of disallowed affiliate profit and

approved a new revenue requirement approximately $1.9 million higher than had previously been approved.

6. JU currently has a rate case application pending in a separate docket, with a test year ending June 30, 2017. JU's pending rate application shows that JU's water and wastewater divisions combined had annual test year revenues of approximately $30 million, paid approximately $15.5 million of those revenues toward management fees, had depreciation and amortization expense in excess of $6.8 million, and spent $887,046 on repairs and maintenance.

7. From JU's inception in 1997 until late May 2017, George Johnson was JU's manager and sole employee.

8. On May 23, 2017, George Johnson, along with a former Commissioner, the Commissioner's wife, and a lobbyist, was indicted in the U.S. District Court for the District of Arizona on charges of conspiracy, fraud, and bribery related to the former Commissioner's actions as a Commissioner. No verdict has yet been issued in the federal criminal case.

9. On May 26, 2017, George Johnson voluntarily removed himself as manager and employee of JU and made Gary A. Drummond JU's manager and sole employee.

10. George Johnson, as a co-trustee of the GJ Trust, is one of JU's owners and has the authority to remove Mr. Drummond as JU's manager at will.

11. Mr. Drummond is a licensed attorney with a private transactional law practice in Phoenix and does not have either an educational background in water treatment and distribution or wastewater collection and treatment or prior experience working in the water or wastewater utility industry. Mr. Drummond has known George Johnson for more than 20 years, has been JU's legal counsel since 1996, and has done extensive legal work for George Johnson and for entities owned and/or controlled by George Johnson. Mr. Drummond has also performed legal services for Chris Johnson and Barbara Johnson, who are George Johnson's children, and for entities owned and/or controlled by them.

12. As manager of JU, Mr. Drummond spends approximately 80 percent of his time at his Phoenix law office and approximately 20 percent of his time at JU's Scottsdale main office, but communicates with Brad Cole, Hunt's COO, on a daily basis and spends approximately 20 to 30 hours

working for JU per week. As JU's manager, Mr. Drummond has been to JU's field office in San Tan Valley approximately four times and has not inspected all of JU's facilities.

13. Aside from Mr. Drummond, all of the individuals who regularly perform work in support of JU's day-to-day operations are employed by Hunt, which is an Arizona limited liability company formed on November 13, 2009, and owned by the CJ Trust (Chris and Margaret Johnson trustees) and Barjo LLC (owned and controlled by Barbara Johnson). Hunt's named manager is December, which is an Arizona corporation that has the CJ Trust and Barjo LLC as its only named shareholders and Chris and Barbara Johnson as its only directors.

14. On multiple occasions in past communications with the Commission, including oral communications at Open Meetings and in written communications filed in JU-related dockets, JU has both expressly stated and otherwise indicated that JU is managed by Hunt.

15. Mr. Cole has been the COO of Hunt since March 2015 and is responsible for overseeing the Hunt employees assigned to work for JU, providing guidance and direction to field staff on operational and maintenance matters for both of JU's divisions, overseeing and approving JU's expenditures, overseeing JU's capital improvements, and representing JU at industry functions and in regulatory matters before the Commission. Mr. Cole also has some responsibility for JU's financial performance.

16. Mr. Cole also oversees employees assigned to other Johnson-related entities and identified 14 Johnson-related entities other than JU for which Hunt provides services, primarily accounting services. Mr. Cole believes that Hunt issues bills to the Johnson-related entities for which it provides services, and that those bills are paid, but does not know for certain.

17. Hunt has approximately 100 employees, including a registered professional engineer, 12 ADEQ-certified Water Distribution Operators, 13-ADEQ-certified Water Treatment Operators, nine ADEQ-certified Wastewater Collection Operators, and eight ADEQ-certified Wastewater Treatment Operators. Hunt's engineer and its certified operators are assigned to work for JU.

18. Mr. Cole reports directly to Hunt's owners (Chris and Barbara Johnson) and indirectly to Mr. Drummond regarding JU's operations. Mr. Cole, Chris Johnson, and Barbara Johnson have hiring and firing authority over Hunt employees, while Mr. Drummond does not.

19. Chris Johnson's primary work for Hunt is attendance at a weekly meeting with Mr. Drummond, Mr. Cole, and the rest of Hunt's management team at which Mr. Cole provides informational updates. During his testimony, Chris Johnson was not knowledgeable about Hunt's operations and referred repeatedly to Mr. Cole as the person able to answer questions about Hunt and, Ultra, and other entities owned by Chris and Barbara Johnson. Chris Johnson is paid $120,000 per year to serve as Hunt's manager, and, as a co-owner of Hunt, also receives Hunt revenues.

20. Barbara Johnson does not regularly perform work for Hunt, although she is paid a salary by Hunt.

21. JU does not contract directly with Hunt for the provision of workers but instead contracts with Ultra, which leases Hunt's employees to provide services to JU.

22. Ultra is a foreign limited liability company formed in Delaware in December 2010 and is owned and managed by Chris Johnson and Barbara Johnson. Ultra has no employees.

23. JU originally entered into the 2013 Ultra Contract in March 2013 and subsequently entered into the amended 2014 Ultra Contract on January 1, 2014. The 2014 Ultra Contract was signed by George Johnson for JU and Barbara Johnson for Ultra, although George Johnson could not recall signing it and could not recall anything about the existence or function of Ultra.

24. The 2014 Ultra Contract (like the 2013 Ultra Contract) requires Ultra to be responsible for a number of enumerated "administrative functions" for JU. In reality, Ultra performs no services or functions for JU, and Hunt performs all of the administrative functions for which Ultra is responsible on paper. Under the 2014 Ultra Contract, which is of unlimited duration and can only be terminated at will by Ultra, Ultra is entitled to receive from JU a monthly fee of $22.10 per JU water utility customer and a fee of $19.90 per JU wastewater utility customer.

25. JU's current approved monthly base rate for water utility service for a customer with a 5/8" meter is $11.27, and its current approved monthly base rate for wastewater utility service for a customer with a 5/8" water meter is $37.27.

26. On the same day JU entered into the 2013 Ultra Contract, Hunt and Ultra entered into the Hunt Contract, under which Hunt provides Ultra with leased employees "to assist [Ultra] in the orderly operation of its business." The Hunt Contract was signed by Chris Johnson for Hunt and Robert

E. Travers for Ultra (who was at that time a Hunt employee). The Hunt Contract was negotiated between Chris and Barbara Johnson for Ultra and Chris and Barbara Johnson for Hunt.

27. The Hunt Contract allows either Hunt or Ultra to terminate it at will and requires Ultra to pay Hunt "an amount equal to only those Payroll Fees applicable to the Leased Employees," for which Hunt must invoice Ultra each pay period, plus expenses.

28. Hunt bills Ultra on a monthly basis for the services Hunt employees provide and the expenses Hunt incurs, plus a 20-percent margin. It is a Hunt employee who, on behalf of Ultra, writes a check to Hunt for its services; the check is signed by Chris or Barbara Johnson for Ultra.

29. No competitive bidding process was used to determine whether JU's current management arrangement involving Ultra and Hunt was in JU's best interests.

30. No credible testimony or other evidence was received to establish that the 2014 Ultra Contract provides any benefit to JU that JU could not obtain equally from contracting directly with Hunt for the provision of employees.

31. The 2014 Ultra Contract benefits Chris Johnson and Barbara Johnson and may provide an estate planning benefit to George and Jana Johnson but does not provide any benefit to JU or to JU's ratepayers.

32. Mr. Drummond is not concerned about JU's contractual arrangements involving Ultra and Hunt and the amount of JU's revenues that flow to Ultra and are not used to pay for Hunt's employee services or JU's capital improvements or operations and has not looked into retaining an alternative management services arrangement.

33. JU's two active water systems, Johnson Ranch and Anthem, serve a combined total of approximately 26,559 customers, an increase of more than 6,000 customers since January 2010.

34. JU's four active wastewater systems, Section 11, San Tan, Pecan, and Anthem, serve a combined total of approximately 36,817 customers, an increase of nearly 11,000 customers since January 2010.

35. From January 1, 2015, through April 6, 2018, Consumer Services received a total of 530 complaints regarding JU, 330 of them related to high or disputed bills, 154 related to quality of service, 41 related to disconnect notices and service termination, and 5 concerning customer deposit

refunds. JU received relatively more complaints than other Class A water and/or wastewater utilities, particularly in 2017.

36. JU's customer service operations include Office Manager Stephanie Poulin, a call center supervisor, and 12 CSRs, two in the lobby to assist walk-in customers and 10 answering phones in a call center. JU does not currently have a formal training program or scripts for its CSRs, but the CSRs receive on-the-job training and are supervised by the call center supervisor as well as Ms. Poulin, either of whom is able to intercede in a call if necessary. JU records all of its phone calls and retains the recordings in perpetuity. JU also makes a note in a customer's account each time the customer communicates with a JU CSR and each time a JU technician performs work on the customer's account.

37. JU sends out an average of approximately 10,000 disconnect notices/late notices per month and, in the early months of 2018, was disconnecting an average of 400 to 450 customers per month.

38. As of the hearing in this matter, JU customers could only make same-day payments in person at JU's field office or by calling JU and speaking to a CSR. JU's phone system did not provide an automated telephonic payment option. Additionally, while online payments could be made, JU's billing system did not allow for the payments to be posted until days later. Other payment options included a drop box for before- or after-hours payment, which would not be posted until business hours, and an auto-payment option that would need to be arranged in advance.

39. There are approximately six days each month, based on JU's two billing and disconnection cycles, when the JU office has an extremely high call volume that results in hold times of up to 30 minutes for callers, after which the callers are kicked over to a voicemail system to leave a message for a return call, as well as some customers being unable to reach JU because there is a limit of 100 calls in a queue. This situation has caused a great deal of consternation for numerous JU customers. JU's average hold time for 2018 thus far has been 20 minutes. A caller has the option when calling of immediately leaving a message requesting a call back.

40. Although the record shows that some customers have complained of CSR rudeness, the evidence presented did not substantiate those complaints and did substantiate that some customers have

been rude to JU call center personnel. The record also substantiated that JU customers overall have found JU field technicians to be personable and professional.

41. This summer, JU is replacing its phone and payment system with a system called Paymentus that will allow for automated telephonic payments, will show telephonic and online payments in real time, and should reduce dramatically the number of customers who need to speak with CSRs regarding payment, thereby reducing call volumes and hold times for all customers.

42. JU's water systems use electronic smart meters that are read remotely using MXUs co-located with the meters. Some, but not all, of JU's MXUs save 30-days of data on a rolling basis. Older data is not available from these MXUs, and no data is saved by JU's other MXUs.

43. A number of JU's meters are Sensus iPERL meters. Some batches of Sensus iPERL meters have been determined to have issues with malfunctions that cause inaccurate readings—one issue is caused by water intrusion, and the other issue is caused by batteries that go dead unexpectedly because the meters have been operating while in storage before installation. JU does not have any of the meters from those batches in service at this time, although it did replace defective Sensus iPERL meters several years ago when JU field personnel became aware of the issues. Mr. Cole and Mr. Drummond learned about the malfunctioning Sensus iPERL meters during the hearing in this matter.

44. JU's billing system identifies and flags high usage on an account when the monthly meter read shows usage 200 percent higher than the average for the account. This flagged information is provided to the meters department, which sends out a field technician to verify that the meter is operating properly and also attempts to contact the customer by telephone to inform the customer of the high usage.

45. Several JU customers, including Ms. Bennett and Mr. Grafft, have complained to JU about unexplained usage spikes in their bills (an isolated month of usage tens of thousands of gallons higher than normal usage). In spite of its efforts, JU has been unable to determine the cause of these usage spikes. JU's Tariff does not currently provide for a bill adjustment under these circumstances, and JU has not provided bill adjustments to these customers.

46. When a customer calls JU with concerns about high usage, a CSR attempts to review the account's past usage with the customer and to assist the customer in determining the cause of the

high usage, which includes inquiring whether there could be a leak at the home or water theft. The CSRs also routinely inform customers how to check for toilet leaks and irrigation leaks and sometimes even how to find and read their meters. If a customer is not satisfied after speaking to the CSR, the case is moved to the call center supervisor or the meters department so that data logs and meter tests can be discussed with the customer.

47. To have a customer's meter tested, JU requires customer consent on a written form. JU then pulls the meter and sends it to Staff or to another third-party vendor for testing. It is extremely rare for a water meter that appears to be working normally to over-register usage; it is relatively common for a water meter that appears to be working normally to under-register usage.

48. During 2017, JU's CAGRD Adjustor fees were increased dramatically, which resulted in some customers' bills being higher than they had ever been before. This caused a number of customers to believe that they were being charged for more usage than they ever had before. The CAGRD Adjustor fees have since dropped to a more normal level.

49. JU sends out a newsletter with each customer bill. In 2017, JU sent out two newsletters that included articles written by Mr. Cole that were political and pointed in nature and that some customers found offensive. At Mr. Drummond's direction, Mr. Cole has committed not to include any such articles in the JU newsletter and has not done so since Mr. Drummond took over as JU's manager.

50. The Commission has received allegations that JU retaliates against customers who complain. While the evidence establishes that JU has in the past sued at least two customers for defamation, the evidence did not establish that JU has retaliated against its customers in the provision of its services.

51. JU has entered into a contract with GHD under which GHD will perform two tasks: (1) Task 1000, involving a detailed GHD review of JU's customer service and billing functions, recommendations, and assistance in implementing the recommendations that will include training; and (2) Task 2000, involving a detailed review of the operation and maintenance practices of JU's field sewer collection department and the root cause of SSOs, recommendations, and assistance in implementing the recommendations that will include practices and procedures and training. There is a spending limit of $250,000 for the GHD contract, which can be increased with written authorization.

The vast majority of labor under the GHD contract will be billed at hourly rates of $100 and more, with Mr. Taylor's labor billed at an hourly rate of $180.00.

52. The table in Section III.A of the Discussion portion of this Decision accurately shows the data for JU, Hunt, Ultra, and the additional Johnson-related entities that are most relevant to this matter, and it is adopted as though set forth fully here.

53. Roadrunner hauls sludge for JU under a contract with JU, obtains all of its workers from Hunt, and has a commercial account with JU through which it purchases potable water that it then hauls to Roadrunner customers. Chris Johnson and Barbara Johnson, as the ultimate owners of Roadrunner, receive the revenues from Roadrunner's operations.

54. Annuity Holdings is a limited liability company owned by Chris and Barbara Johnson (through the CJ Trust and Barjo LLC) and controlled by Barbara Johnson.

55. Between January 2007 and September 2008, Annuity Holdings acquired from developer/builders the right to receive a combined $5,606,173.80 in refunds of AIAC (refunds paid by JU) under 32 water LXAs for a total price of $532,708.50. JU had the right of first refusal to purchase these refund rights, which would have extinguished JU's refund obligations under the LXAs, but did not exercise its right and instead allowed Annuity Holdings to exercise the right.

56. During the same time period, Annuity Holdings acquired from developer/builders the right to receive a combined $8,615,155.06 in refunds of AIAC (refunds paid by JU) under 40 sewer LXAs for a total price of $673,796.13. JU had the right of first refusal to purchase these refund rights, which would have extinguished JU's refund obligations under the LXAs, but did not exercise its right and instead allowed Annuity Holdings to exercise the right. JU's failure to purchase the refund rights and extinguish its refund obligations was contrary to the interests of JU and its ratepayers.

57. Johnson International, as a developer, holds four water and wastewater LXAs with JU under which it receives refunds of AIAC from JU.

58. As of fall 2017, JU had outstanding AIAC obligations of $112 million.

59. The Club at Oasis is a limited liability company ultimately owned by Chris and Barbara Johnson (through Hunt) that operates a golf course. The Club at Oasis golf course receives free effluent from JU and free advertising in JU's newsletter.

60. Mr. Drummond asserts that JU does not have any subsidiaries or affiliated entities because a familial relationship does not equate to the power to direct the management of an entity.

61. We find that Chris Johnson and Barbara Johnson, through their ownership and control of Hunt and Ultra, and the 2014 Ultra Contract and the Hunt Contract, have the power to direct the management of JU as well as the entities that Chris and Barbara Johnson own in whole or in part and that JU thus has numerous affiliates that should be included in each annual filing made under the Affiliated Interest Rules.

62. In order to clarify the Affiliated Interest Rules and to ensure that they reach the transactions and relationships intended, the Commission should consider revising the definition of "affiliate" therein to include close familial relationships within the scope of relationships that indicate the power to control/direct the management of an entity.

63. At the time of the hearing, JU's water systems were in compliance with ADEQ regulatory requirements.

64. JU's Johnson Ranch system experienced nitrate MCL exceedances in October and November 2016, for which JU failed to issue public notice. JU's Johnson Ranch system also experienced nitrate exceedances in April and June 2017, for which appropriate public notice was provided.

65. In June 2013, ADEQ issued JU an NOV for the Johnson Ranch system for failure to maintain water pressure of at least 20 psi. This NOV was closed in January 2014 when JU came back into compliance.

66. In October 2012, ADEQ issued JU an NOV for the Johnson Ranch system due to seven alleged violations related to an August 2012 event when 25 samples tested positive for total coliform bacteria, three of them also testing positive for E. Coli bacteria. ADEQ found that JU had distributed water exceeding the MCL for total coliform and containing E. coli and that JU had failed to provide required public notice and failed to implement an emergency operations plan. ADEQ stated that JU's system was back in compliance in February 2013.

67. In October 2008, ADEQ issued JU an NOV for Johnson Ranch for not having a certified operator of the proper type and grade to operate a water distribution system because JU did not have

an on-site operator with a Grade 3 Distribution Operator certification, and ADEQ had a year earlier provided JU a notice of opportunity to correct for the same violation, which had first been detected in July 2007. ADEQ closed the NOV in September 2011.

68. In July 2003, ADEQ issued JU a notice of opportunity to correct deficiencies for Johnson Ranch because JU did not have a microbiological site sampling plan, as had been detected by ADEQ and brought to JU's attention during inspections in November and December 2002 and twice in January 2003.

69. In December 1999, ADEQ issued JU an NOV for Johnson Ranch that alleged 25 different violations, a number of them related to JU's water exceeding the MCL for nitrates in August 1999 and JU's failure to do required confirmation sampling and to provide various notices. Other alleged violations were related to JU's water testing positive for total coliform and JU's failure to do required testing and to provide various notices; to JU's failure to maintain records; to JU's failure to develop an emergency operations plan; and to JU's failure to obtain an AOC before operating two different facilities. ADEQ and JU entered into a Consent Order concerning the December 1999 NOV allegations, under which JU was required to pay a penalty of $4,900.

70. On March 19, 2018, JU's Johnson Ranch water system experienced an unplanned water outage that lasted approximately four hours during planned replacement of an inoperable gate valve. As a result of this outage, JU determined that throughout the Copper Basin subdivision, approximately 12 gate valves had been paved over, something that JU's inspectors had not detected before final acceptance of construction. Mr. Cole instructed JU's inspectors to do a better job of inspecting before providing final acceptance of construction done by developers.

71. As of the hearing in this matter, JU's water systems were in compliance with ADWR requirements, although JU had submitted its five-year system water plan updates to ADWR 2.5 months late.

72. In the past, JU's water division has distributed water that did not meet Safe Drinking Water standards, has failed to perform required testing, has failed to provide required public notice, has failed to make required reports to ADEQ, has failed to complete required recordkeeping, has failed to develop a planning document, has failed to implement a planning document, has failed to have a

required certified operator, has failed to obtain legally required ADEQ approvals before operating plant, and has failed to maintain water pressure.

73. In June 2009, ADWR issued a Citation and Notice of Violation to JU for excess withdrawal of groundwater exceeding its permitted volume, in the amount of 440.9 acre-feet in 2007 and 1,046.51 acre-feet in 2008. ADWR required JU to submit an application to increase the permitted volume of each well with excess withdrawals and to pay a penalty of $7,500.

74. In September 2001, ADWR issued a Stipulation and Consent Order against George Johnson and three Johnson-related entities to settle issues related to compliance with the Arizona Groundwater Code and ADWR's rules and management plans, because George Johnson (with the various entities) had caused four wells to be drilled for the Oasis Golf Course without permits, had withdrawn 454 acre-feet of groundwater from two wells without legal authority, had failed to maintain adequate records and to make required reports, had failed to equip two wells with approved water measuring devices, had withdrawn 29 acre-feet of excess groundwater from one well and 47 acre-feet of groundwater without a permit from another well, had failed to separately measure turf-related watering, and had used 408 acre-feet of water on turf-related facilities in excess of the maximum annual water allotments. ADWR required one of the Johnson-related entities to pay a penalty of $87,000.

75. In the past, JU and George Johnson, individually and as a representative for related entities, has withdrawn more groundwater than permitted, has withdrawn groundwater without a permit, has drilled wells without permits, has failed to maintain adequate records and to make required reports regarding groundwater withdrawn and regarding water used for turf-related watering, has used more water for turf-related watering than permitted, and has failed to equip wells with required measuring devices.

76. An SSO is a spill of raw sewage from the collection system of a wastewater treatment facility and poses a danger to public health and the environment because it involves the introduction of raw sewage to the environment, with the main concern being exposure to biological pathogens such as E. coli.

77. Between 2010 and April 30, 2018, JU's wastewater systems had approximately 78 SSOs, as described in Exhibit A hereto, which is adopted as though set forth fully here. Each of these SSOs posed a danger to public health and the environment.

78. Over the past three years, JU has had the highest number of SSOs of any private sewer utility in Arizona and the second highest number of SSOs among all Arizona sewer utilities (with only Phoenix having a higher number). JU had 16 SSOs in 2015; 14 SSOs in 2016; 6 SSOs in 2017; and as of the close of the evidentiary record in this matter, had had 2 SSOs in 2018.

79. A number of JU's SSOs could have been prevented if JU had completed appropriate planning and maintenance. Additionally, JU has not handled every reported SSO in a timely and appropriate manner without intervention from ADEQ, as evidenced by NOVs, Consent Orders, and Compliance Orders issued to JU for SSOs.

80. In early 2017, Mr. Cole did a root cause analysis for the SSOs in 2015 through 2017, which was shared with ADEQ, and then developed an action plan to reduce or eliminate the causes identified. Mr. Cole determined that 36 percent of the SSOs were due to pipe failure, 28 percent were due to clogging, 19 percent were due to equipment failure, 11 percent were due to damage by others, 3 percent were due to equipment corrosion, and 3 percent were due to an unknown cause.

81. To address the causes of the SSOs, Hunt has installed necessary air pressure relief and vacuum breaker valves and replaced a troublesome section of line that had experienced 12 previous repairs; has increased video and jetting activities for areas with a high frequency of clogs and acquired a second and more powerful jetting machine to clear clogs and a video camera with recording ability; has ordered an SLRAT, which uses acoustic technology to detect clogs and partial clogs and produces reports; has procured a new truck to go with the new equipment; is planning to bring on two new full-time employees who will be devoted to analyzing sewer collection mains; has increased communications with JU customers about what not to flush; has Hunt workers visiting and performing necessary maintenance at each lift station weekly; and has contracted with GHD as described in Findings of Fact No. 50.

82. Although the process Mr. Cole described for cleaning up an SSO is consistent with the industry standard, JU has not consistently cleaned up all of the waste (such as toilet paper and feminine sanitary items) associated with the raw sewage spilled during each SSO.

83. In November 2017, ADEQ issued JU an NOV for the Pecan WRP for discharging without an APP by delivering effluent into four recharge basins without being permitted to impound effluent under JU's APP and failing to properly operate and maintain three of five vadose zone recharge wells by failing to inspect and maintain the structural integrity of the wells. ADEQ had identified the violations during a September 2017 inspection. Regarding the four recharge basins, ADEQ previously had identified the violation in December 2016 and had met with JU about it in April 2017, at which time JU had agreed to file an APP amendment to include the recharge basins for the Pecan WRP. ADEQ also found that JU had failed to include in its on-site inspection log that the three non-operational vadose zone wells needed to be repaired.

84. During a joint inspection at the Pecan WRP conducted on February 23, 2018, Staff and ADEQ determined that JU was still using the four unauthorized recharge basins at the Pecan WRP and also determined that small sewage spills had been occurring around the lift station.

85. On March 21, 2018, ADEQ and JU entered into a Consent Order concerning the 2017 Pecan NOV, which found that the four recharge basins are discharging facilities, that the Pecan WRP's APP does not allow it to impound effluent, and that JU had failed to meet one of the compliance conditions of the 2017 Pecan NOV by failing to submit an administratively complete APP application by February 7, 2018. JU agreed to withdraw its current incomplete APP application, to complete prescribed testing for each recharge basin, to schedule an administrative completeness review meeting with ADEQ, to submit an administratively complete APP application, and to submit regular status reports. As of the hearing in this matter, JU had completed the requirements of the 2018 Pecan Consent Order, although it had not yet been closed.

86. On April 30, 2018, ADEQ issued JU an NOV for the Pecan WRP regarding an SSO that occurred on March 26, 2018, and involved approximately 65,000 gallons of untreated wastewater flowing from a manhole in a residential subdivision and traveling into Queen Creek Wash. JU reported that the SSO was caused by malfunction of a recently installed and reputedly reliable type of sensor

unit at the Pecan WRP influent lift station. When ADEQ conducted a follow-up inspection on April 26, 2018, non-storm water materials, such as toilet paper and sanitary products, were observed within the concrete storm water spillway. In the April 2018 Pecan NOV, ADEQ cited JU for violating a statutory requirement not to add a pollutant to navigable waters from a point source without a permit and noted that JU had reported at least four other unauthorized discharges at the same location in December 2007, May 2008, September 2011, and December 2016.

87. Between 2005 and 2010, ADEQ issued six NOVs, one Compliance Order, and one Consent Order regarding noncompliance issues related to the Pecan WRP. Those ADEQ actions are described in Exhibit B, which is adopted as though set forth fully here. The violations concerned, *inter alia*, fecal coliform exceedances, failure to monitor turbidity, unauthorized discharges and SSOs, E. coli exceedances, unauthorized replacement of lift station pumps with smaller pumps (on more than one occasion), failure to provide ADEQ with required notices/reports, and the same effluent discharge issue included in the 2017 Pecan NOV.

88. JU's APP for the Section 11 WWTP requires that the recharge basin and equalization freeboard be at least two feet, that inspection of the freeboard be done weekly, that the inspection results be recorded in a log book, that each freeboard exceedance be reported to ADEQ in writing within five days and then 30 days, and that the freeboard monitoring results be included in the quarterly SMRF for the facility.

89. On January 25, 2018, in response to approximately 40 complaints of sewage odors and one complaint of discharge of odorous water, ADEQ conducted a site inspection of the Section 11 WWTP and found the following deficiencies: (1) Recharge Basin No. 4 was overflowing at the northwest corner, and effluent was flowing west toward the dirt road; (2) Recharge Basins No. 4 and 5 had no freeboard; (3) effluent was overflowing at the southeast corner of Recharge Basin No. 7, and the drainage pattern and soil erosion indicated that effluent was flowing toward a wash identified as a storm-water detention basin; (4) Recharge Basin No. 5 had saturated soil outside the basin, indicating previous overflowing; (5) JU had failed to notify ADEQ of freeboard exceedances for the recharge basins; (6) neither an O&M Manual nor a current APP were on site, although JU's APP requires both to be on site; (7) a strong sewage odor was experienced outside and within the property limits of the

Oasis Sunrise Lift Station; and (8) an oil stain was observed on the soil adjacent to the wet well at the Oasis Sunrise Lift Station. ADEQ also noted that the same overflow conditions for Recharge Basin No. 7 had been observed in March 2015 and had resulted in an NOV issued in May 2015, which had been closed after JU provided documentation that employee training had been completed to make operators aware of effluent disposal rules and the SOP for the Section 11 WWTP. ADEQ also noted that Mr. Lant was unable to quantify the amount of effluent that had overflowed from Recharge Basin No. 7 and that Mr. Lant had indicated that the recharge basins had overflowed because the Section 11WWTP was not disposing of enough effluent because of a lower demand for reclaimed water during the winter season. ADEQ also noted that JU had not developed any corrective action to stop discharging effluent to the storm-water detention basin from the recharge basin, that Mr. Lant reported that operators contained the effluent within the Section 11 WWTP property boundaries when overflowing occurred to avoid discharging beyond the property, and that Mr. Lant stated that he was unaware of reporting requirements for freeboard exceedances.

90. On February 27, 2018, ADEQ issued JU an NOV for the Section 11 WWTP that included alleged violations for failing to maintain a copy of the up-to-date O&M Manual at the WWTP at all times (violation of APP); failure to prevent unauthorized discharges (violation of APP) from Recharge Basin Nos. 4, 5, and 7; failure to notify ADEQ as required after becoming aware of the recharge basins' freeboard exceedances (violation of APP); failure to promptly attempt to cease an unauthorized discharge, to isolate the discharged material, to remove the discharged material, and to clean up the site as soon as possible (violation of APP), because no corrective action had been implemented or planned to stop the discharge of effluent from Recharge Basin No. 7 into the storm-water detention basin, although the overflow had initially been detected by JU on January 22, 2018; failure to maintain a signed copy of the APP at the Section 11 WWTP and to maintain a log book of inspections and measurements where day-to-day decisions are made regarding operation of the facility (violation of APP), as no copy of the APP was available on site, and the logbook was incomplete and included no annotations regarding damage or malfunction at the plant, such as unauthorized discharges and freeboard exceedances; failure to record information in the logbook for the freeboard on the recharge basins and equalization basins (violation of the APP), as Mr. Lant stated that it was not

standard procedure for operators to document recharge basin freeboard measurements in the log book and that there were no historic records of such measurements; failure to ensure that lift stations were designed to prevent odor from emanating beyond the lift station site (violation of A.A.C. R18-9-E301(D)(5)(vi)), as ADEQ had received numerous complaints of a persistent sewage odor in January 2018 and had confirmed the strong odor emitted approximately 150 feet outside of the Oasis Sunrise Lift Station property during its inspection; failure to minimize septic conditions in a sewage collection system (violation of A.A.C. R18-9-E301(B)(7)), because the sewage odor detected during the inspection indicated the presence of H_2S as a result of a septic condition in the collection system; and failure to operate the Section 11 WWTP facility so that it does not emit an offensive odor on a persistent basis beyond the setback distances specified in A.A.C. R18-9-B201(I) (violation of A.A.C. R18-9-B201(J)), because the ADEQ inspector confirmed the strong odor emitted approximately 1,700 feet outside the Section 11 WWTP while driving on Hunt Highway. The NOV also noted that the failure to notify ADEQ regarding the freeboard exceedances was a repeat violation from an NOV issued in January 2017, related to discharge limit violations observed during a December 2016, inspection and that Mr. Lant had stated that operators conduct daily visual inspections and communicate verbally if there are any issues at the Section 11 WWTP, although the logbook does not reflect this information.

91. As of the evidentiary hearing, JU had provided satisfactory responses to ADEQ for two compliance items, had provided insufficient responses to ADEQ for four compliance items; had submitted additional information for those four compliance items; and had not yet reached its deadline for the remaining compliance items. The February 2018 NOV for the Section 11 WWTP is still open.

92. In spite of the lack of any historic records of the freeboard measurements for the Section 11 WWTP's recharge basins, JU's SMRFs submitted to ADEQ for the 1st, 2nd, 3rd, and 4th quarters of 2016 and the 1st quarter of 2017 reported recharge basin freeboard measurements of 2 feet for each week of each quarter. Although this information was submitted to ADEQ with a certification under penalty of law, there is no valid basis for JU to believe that this information is accurate.

93. On February 23, 2018, during a joint inspection of the Section 11 WWTP conducted by a Staff engineer with ADEQ personnel, the following potential deficiencies were noted: (1) the four aerated lagoons did not meet the freeboard requirement, and some were overtopping the freeboard; (2)

there was visual evidence that soil had previously been saturated outside of the aerated lagoons; (3) one of the lagoons was observed to be overloaded with a milky appearance that suggested it was approaching septic conditions; the recharge basins did not meet the freeboard requirement and were at risk of overflowing; some recharge basins were observed overflowing into another basin; and the Main Yard Lift Station had a strong sewage odor. It was also noted that Mr. Lant had reported that there had been approximately six unauthorized discharges at the Section 11 WWTP going back to 2016 and that a cause was that the Section 11 WWTP lacked a monitoring or automated control system to notify JU when levels of influent or effluent were elevated.

94. On February 23 and 27 and March 20, 2018, ADEQ conducted sampling of recharge basins at the Section 11 WWTP and of surface water at the Oasis Magic Ranch golf course. ADEQ tested the samples for nitrates, fecal coliform, E. coli, metals, and/or solid organic compounds. None of the samples violated ADEQ standards.

95. On April 17, 2018, a Staff engineer inspected the Section 11 WWTP and observed that although the recharge basins were meeting their freeboard requirement, aerated lagoons were overflowing as had been observed during the joint inspection on February 23, 2018.

96. Aeration lagoons are a very early step in the wastewater treatment process, and the wastewater in an aeration lagoon is very lightly treated and not yet effluent/reclaimed water and thus presents a greater health risk to any individual exposed to it than would effluent/reclaimed water.

97. On April 19, 2018, ADEQ conducted an inspection at the Section 11 WWTP and confirmed that an unauthorized discharge had occurred at Lagoon No. 1 as the Staff engineer had observed. ADEQ also observed that although the O&M Manuals, logbook, and APP were on site, the logbook did not include required entries for the corrective actions regarding the unauthorized discharge from Lagoon No. 1. ADEQ also noted that Mr. Lant had reported that April sampling for the Section 11 WWTP showed a discharge limit total nitrogen exceedance.

98. During its data review for the April 2018 inspection, ADEQ detected that JU had reported to ADEQ the exact same sequence of flow data results for the Section 11 WWTP for the 2nd, 3rd, and 4th quarters of 2017. ADEQ also determined that JU's own Excel record of Section 11 WWTP daily reads showed daily total flow readings for 1st quarter 2017 that were nearly identical to the flows

reported on the 1st quarter 2017 SMRF but were off by one day, as JU's Excel record had skipped March 5, 2017. ADEQ also detected that JU's Excel record of Section 11 WWTP daily reads did not match the data JU reported on its SMRF for the 2nd and 3rd quarters of 2017 and that ADEQ had submitted a 4.01 General Permit application in February 2018 for a force main alignment and included in the application a table showing sewage flow commitment totals that exceed the permitted discharge capacity for the Section 11 WWTP.

99. The April 19, 2018, Inspection Report included three potential deficiencies: (1) unauthorized discharge of partially treated sewage; (2) failure to follow recordkeeping requirements to document malfunctions of the WWTP and its components; and failure to submit monitoring records that reflect WWTP operations, including submittal of inaccurate monitoring data to ADEQ. On April 27, 2018, ADEQ issued JU and NOV for the Section 11 WWTP regarding the violations discovered, alleging the following: (1) JU had an unauthorized release of partially treated sewage from aeration Lagoon No. 1 to the land surface on April 15 to 17, 2018, caused by Lagoon No. 3's impaired performance and the subsequent routing of sewage to Lagoon Nos. 1, 2, and 4, which was (a) a bypass of the WWTP's Best Available Demonstrated Control Technology ("BADCT") and a prohibited release of partially treated sewage, in violation of A.A.C. R18-9-B201(F); and (b) an unpermitted discharge of non-hazardous material and a bypass of the WWTP's approved BADCT, in violation of the APP (§ 2.3.3); (2) JU failed to notify ADEQ of the unauthorized discharge of non-hazardous material from aeration Lagoon No. 1 within 24 hours, in violation of the APP (§ 2.6.5.3); (3) JU failed to maintain and repair the Oasis Sunrise lift station, which resulted in an equipment failure for the months of October through December 2017, an operational deficiency which led to the discharge of sewage to the land surface in violation of A.A.C. R18-9-E301(B)(3); (4) JU failed to record in its logbook that there was a discharge of sewage from aeration Lagoon No. 1 or that corrective actions were taken to clean up the spill, in violation of the APP (§ 2.7.2), a repeat violation, as JU had been notified of a failure to maintain adequate logbook recordkeeping in the 2/2018 Pecan NOV; and (5) JU failed to monitor and report monthly average effluent flows and total daily effluent flows at Sampling Point No. 2 and to report those flows to ADEQ via SMRFs, in violation of the APP (§ 6.7), as evidenced by the repeating monthly average flow data reported for the 2nd, 3rd, and 4th quarters of 2017, coupled

with the inconsistencies between the total daily flow data reported in the SMRFs and the flow readings recorded by JU's operators in JU's "Sect 11 Daily Reads Sheet." The April 2018 NOV for the Section 11 WWTP was still open at the close of the evidentiary record in this matter.

100. In October through December 2017, the Oasis Sunrise lift station was incrementally upgraded to increase the size and horsepower of two pumps in the vault along with the electrical and controls for them. During this process, approximately 400,000 gallons per day of sewage that would normally be diverted to the Anthem WRP was instead allowed to flow to the Section 11 WWTP. The evidence does not support that the Oasis Sunrise lift station was closed due to failure for this extended period.

101. Between September 2004 and January 2017, ADEQ issued six NOVs regarding non-compliance issues related to the Section 11 WWTP. Those ADEQ actions are described in Exhibit B, which is adopted as though set forth fully here. The ADEQ actions indicate, *inter alia*, that the Section 11 WWTP had 58 fecal coliform exceedances in effluent in 2nd quarter 2004 and took no immediate steps to investigate them; had total nitrogen exceedances in effluent in December 2003, January 2004, and February 2004 and failed to conduct required total nitrogen verification sampling; had 29 fecal coliform exceedances in effluent in 3rd quarter 2004; exceeded the discharge limit for effluent monitoring for fecal coliform on at least four occasions in July 2004; discharged approximately 30,000 gallons of sewage to a roadside ditch and nearby storm water impoundment without surface impoundment authority in or around April 6, 2005; had total nitrogen exceedances for five consecutive months from January through May 2005; buried biosolids (sludge) and other debris in disposal pits at the Section 11 WWTP in or around September 2008; and had total nitrogen exceedances for three different quarterly monitoring points in July, August, and September 2016 and failed to report them to ADEQ, to immediately investigate their cause, and to submit to ADEQ a report summarizing an investigation into the cause and the remedial actions taken.

102. Mr. Cole considers the current options to address the problems with the Section 11 WWTP going forward to be (1) to leave it as is, using chemicals to mitigate alleged odor issues; (2) to change the plant from a lagoon style plant to a mechanical Biolac plant; or (3) to eliminate the plant,

send effluent elsewhere for treatment, and turn the land into a wildlife habitat that can be used for recharge.

103. Between May 2013 and December 2015, ADEQ issued three NOVs regarding non-compliance issues related to the San Tan WRP. Those ADEQ actions are described in Exhibit B, which is adopted as though set forth fully here. The ADEQ actions indicate, *inter alia*, that in May 2013, the San Tan WRP's operator failed to reset compressors after a power outage, resulting in turbidity exceedances for multiple days, failure to operate and maintain the WRP as per the engineering design (the WRP's O&M Manual and Contingency and Emergency Response Plan did not provide procedures to follow after a power failure), and failure to prevent unauthorized discharges resulting from failure or bypassing of pollutant control technologies (the turbidity exceedances were caused by bypassing of aeration treatment); that JU submitted reports regarding the May 2013 incident that included inconsistencies; that in August and September 2015, the San Tan WRP had a "treatment process upset" that allowed inadequately disinfected sludge to enter effluent pumped to the San Tan Heights HOA irrigation lake, resulting in violations for unauthorized discharge and for failing to comply with various reporting requirements; and that in December 2015, the San Tan WRP was cited for not having an end user agreement with the San Tan Heights Community HOA regarding end user obligations for the use of reclaimed water and for resulting noncompliance by the HOA.

104. There is no evidence to show that the Anthem WRP is not currently in compliance with ADEQ requirements or that it has in the past been out of compliance with ADEQ requirements.

105. JU's wastewater division has had many SSOs, some of which have reached the Queen Creek Wash, which is Waters of the U.S.; has failed to perform adequate inspections and maintenance of its collection system for the Pecan WRP; has had unauthorized discharges from the Pecan WRP; has discharged water with fecal coliform exceedances from the Pecan WRP system; has failed to perform adequate inspections and maintenance of vadose zone recharge wells at the Pecan WRP, resulting in SSOs; has failed to perform required monitoring at the Pecan WRP; has replaced Pecan WRP system lift station pumps with smaller pumps without authority on more than one occasion; has failed to keep accurate records of its Pecan WRP and Section 11 WWTP operations and to provide required notices and reports to ADEQ; has failed to maintain freeboard at its Section 11 WWTP; has submitted

inaccurate reports and data regarding its Section 11 WWTP operations to ADEQ; has had multiple unauthorized discharges from various components of its Section 11 WWTP; has failed to perform adequate inspections and maintenance of its collection system for the Section 11 WWTP; has failed to take corrective action for unauthorized discharges at the Section 11 WWTP; has failed to maintain a copy of its APP at the Section 11 WWTP; has failed to ensure adequate training regarding reporting and recordkeeping requirements for its certified operators; has failed to ensure that its Section 11 WWTP system prevents odor from emanating from lift stations and beyond setback distances; has failed to ensure that septic conditions do not occur in the Section 11 WWTP system; has discharged water with fecal coliform exceedances and total nitrogen exceedances from the Section 11 WWTP; has buried biosolids and other debris in disposal pits without authorization; has failed to operate and maintain the San Tan WRP in accordance with its engineering design; has had unauthorized discharges from the San Tan WRP; has failed to provide required reports to ADEQ regarding the San Tan WRP; and has failed to enter into an end user agreement with the San Tan Heights Community HOA, resulting in noncompliant use of reclaimed water by the HOA

106. On or around April 25, 2018, JU released an excessive quantity of effluent from the Section 11 WWTP to the Oasis Magic Ranch golf course lake, which overflowed, causing standing water to pool in different areas of the course, after Mr. Taylor had encouraged one of JU's workers to use as much of the irrigation water from the Section 11 WWTP as possible to help maintain its freeboard requirements, and a JU worker neglected to turn on the irrigation system to draw water from the lake. Because the effluent from the section 11 WWTP is B+ rather than A+, human exposure to the effluent presents a health risk. As of the close of the evidentiary record in this matter, ADEQ had not taken any action related to this occurrence.

107. Between 2009 and 2013, ADEQ issued three NOVs regarding non-compliance issues for other JU-related locations. Those ADEQ actions are described in Exhibit B, which is adopted as though set forth in full here. Those ADEQ actions show that JU has in the past had standing reclaimed water on portions of the golf course demonstrating a failure to use irrigation application methods that reasonably preclude human contact with reclaimed water; has operated a surface impoundment without

an APP; and has failed to ensure that reclaimed water discharged to the HOA and the golf course met turbidity standards.

108. PCAQ regulates air emissions from sources at JU's wastewater treatment facilities and has a rule establishing a maximum permissible ambient level of H_2S concentration of 0.03 ppm, which represents a nuisance level.

109. PCAQ began monitoring ambient H_2S levels in the air near the Section 11 WWTP in late December 2015 due to consumer odor complaints. On June 23, 2016, and June 2, 2017, PCAQ issued JU NOVs regarding H_2S exceedances.

110. On August 21, 2017, PCAQ and JU entered into the PCAQ OAC to formalize a negotiated settlement regarding multiple alleged violations of PCAQ rules, specifically a total of 157 30-minute average maximum readings in excess of 0.03 ppm detected between January 17, 2016, and July 24, 2017, at residential locations 0.2 miles north and 0.1 miles south of the Section 11 WWTP, with the highest average maximum reading being 0.23 ppm. In the PCAQ OAC, although it did not admit that any of the exceedances or any violations had occurred, JU agreed to submit a written compliance plan, meeting certain criteria, for the Section 11 WWTP; to implement the plan within 180 days until fully implemented; to pay PCAQ $20,000 by September 18, 2017; and to conduct fence line H_2S monitoring at a location within the secured boundaries of the Golf Club at Oasis's Maintenance Shop in the northwest corner, with at least weekly monitoring and reporting and requirements for notice to PCAQ and the public upon an exceedance. The PCAQ OAC also states that it "does not relieve Johnson Utilities, L.L.C. from their [sic] obligation to comply with all applicable federal, state, and local environmental laws, regulations, and permit conditions."

111. JU submitted an insufficient compliance plan to PCAQ on October 20, 2017, and a sufficient compliance plan to PCAQ on December 4, 2017. JU's compliance plan identified the following actions JU had taken to address the alleged H_2S exceedances: (1) adding chemical treatment to various areas of the process, to include (a) Thioguard, (b) ferric chloride, (c) magnesium oxide, and (d) sodium hypochlorite; (2) covering the headworks basin with a custom constructed sealed lid; and (3) adding Purafil Odor Scrubbers to the treatment process in three locations.

112. JU has taken the position that because of the PCAQ OAC, PCAQ now may only cite JU for any H_2S exceedance that is detected using the H_2S monitor that JU has installed at the golf course maintenance shop, not using any other H_2S monitor in any other location. PCAQ has co-located an H_2S monitor right next to JU's monitor but has taken the position that it may cite JU for any H_2S exceedance detected using any H_2S monitor placed at an occupied location as required by PCAQ's rules.

113. On January 23, 2018, PCAQ issued JU an NOV for 12 30-minute average readings exceeding 0.03 ppm on January 14, 2018 (reading from PCAQ's co-located monitor), and 9 30-minute average readings exceeding 0.03 ppm on January 17, 2018 (reading from JU's monitor). As of the hearing in this matter, JU had not yet submitted a written response to PCAQ, although it had met with PCAQ and intended to submit such a response.

114. On February 9, 2018, PCAQ issued JU another NOV for three 30-minute average readings exceeding 0.03 ppm on January 31, 2018 (reading from a third monitor owned and placed by PCAQ). As of the hearing in this matter, JU had not yet had time to provide PCAQ a written response to this NOV but indicated that it disagrees with this NOV because the reading came from a monitor other than the compliance monitor.

115. On April 4, 9, and 25, 2018, PCAQ detected a total of seven additional H_2S exceedances, one on the co-located PCAQ monitor, and the rest on the third monitor. PCAQ has not issued an NOV for these exceedances, but had met with JU concerning them, and JU will provide PCAQ a written response. JU disagrees with these exceedances because they are not based on readings from the compliance monitor.

116. As of the hearing, JU had taken the following actions to reduce H_2S emissions: (1) covered the headworks at the Section 11 WWTP; (2) added an odor scrubber to the headworks at the Section 11 WWTP; (3) added Thioguard in the Section 11 WWTP; (4) added ferric chloride in the Section 11 WWTP; (5) started using a powder form of Thioguard as a backup at the Section 11 WWTP; (6) added Thioguard at the main yard lift station; (7) added Wet Well Wizard aerators at five different locations, including the Oasis Sunrise lift station and two other lift stations; (8) added an odor scrubber

at the Oasis Sunrise lift station; and added a thick rubber mat over the vault lid for the Oasis Sunrise lift station.

117. JU questions whether H_2S exceedances detected at locations other than the compliance point are the result of tampering with the PCAQ-owned meters or are from sources other than the Section 11 WWTP. JU has not performed an odor study to determine whether H_2S emissions are coming from the Section 11 WWTP or other areas of JU's Section 11 WWTP system (such as lift stations or the collection system). An odor study would require 20 to 40 H_2S monitors placed around the system.

118. PCAQ has not seen another utility experience as many H_2S exceedances as JU has experienced.

119. JU's efforts thus far to eliminate H_2S exceedances have resulted in detection of fewer H_2S exceedances on each of the three H_2S monitors.

120. ADEQ hired Westland, an engineering firm, to assist ADEQ in evaluating the Section 11 WWTP and its collection system solely in regard to the processes and equipment JU has been using to control odor and H_2S. In its March 2018 report, Westland expressed approval of JU's current and planned processes and equipment for odor and H_2S control in the collection system; expressed some concern regarding the long-term use of magnesium hydroxide and ferric chloride in the waste stream before the wetlands of the treatment system, but said that it appeared to be working; noted no deficiencies for the collection system; and noted aerated lagoon freeboard exceedances, full recharge basins, and that the second cell of each wetland lacked plants. Westland recommended a study concerning use of additional aeration in the aerated lagoons and the use of an emergency overflow pond to prevent spills and allow proper freeboard for the aerated lagoons. Westland found JU staff to be knowledgeable and forthcoming.

121. In fall 2017, as part of its due diligence process concerning a possible acquisition of JU, Queen Creek had consultants do an in-depth review of JU—Carollo Engineering performed an engineering analysis, and Willdan and Associates and Pat Walker Consulting performed financial analyses.

122. Based on Carollo's engineering analysis, Queen Creek concluded that JU's facilities have not been properly maintained for the past decade; that the backup generators for its lift stations were acquired at the end of their useful lives; that its lift stations do not have proper coating and have exposed rebar due to H_2S corrosion; that the Anthem WRP had a metal roof with multiple holes caused by H_2S corrosion; that JU has a catch basin with broken concrete allowing chemicals to overflow and trail off into the soil; that some sites were missing booster pumps; that JU's water wells were too small in size; that some of JU's booster pumps are undersized; that JU has a lack of redundancy at its sites; that JU's storage tanks have not been recoated since they were originally installed although all but one are 10 to 20 years old; that JU's storage tanks have not been painted and appear to be in disrepair; that JU's wastewater systems use an excessive number of lift stations (36), each of which presents a single point of failure that requires close monitoring, backup power, and a lot of maintenance; and that portions of JU's sewer system present a danger to public health and safety. Queen Creek determined that it would have needed to spend $36 million on water system improvements and $78 million on wastewater system improvements to bring the facilities up to municipal standards (including eliminating most of the list stations and instead using a gravity flow system for wastewater).

123. Having lift stations as part of a wastewater treatment system increases the system's risk of experiencing SSOs and provides additional sources of H_2S gas emissions.

124. More than half of JU's revenues are being paid to Ultra as management fees, and additional payments are begin made to Ultra as reimbursement of legal, accounting, and other operating costs. The 2014 Ultra Contract makes it difficult for JU to manage its operating expenses, manage its rates, and ensure that enough cash is reinvested in its systems.

125. Because of the amount of revenues going to Ultra, JU has not adequately maintained and repaired its systems and has not sufficiently reinvested in its systems.

126. JU is in the process of completing a new 6-mile 16-inch pipeline to increase its water supply by adding access to additional wells. Without that new water supply, JU likely would not have sufficient water supply and storage capacity to meet peak summer demands, which shows a lack of adequate planning.

127. In March 2018, in anticipation of the hearing in this matter, JU hired Mr. Taylor of GHD to evaluate JU's water production and distribution facilities and wastewater collection and treatment facilities in order to evaluate JU's managerial and technical capabilities. Mr. Taylor inspected JU's wastewater treatment facilities, a sampling of wastewater collection facilities (including 16 lift stations), water production facilities, and water distribution, storage, and booster stations. Mr. Taylor also interviewed Hunt employees working for JU, reviewed operation inspection records, audited programs implemented by JU, and spoke to a couple of JU customers. Mr. Taylor relied on information provided to him by JU, did not conduct a capacity evaluation of the water system, did not contact regulatory agencies regarding JU's compliance record, did not review planned capital projects, and did not look into JU's financial dealings (such as the 2014 Ultra Contract and the Hunt Contract). Mr. Taylor opined that JU is operating in substantial material compliance with applicable federal, state, and county laws and regulations and in no way whatsoever poses any risk to the public health and safety. Mr. Taylor disagreed with most of the criticisms Queen Creek made of JU's plant, although he did identify several operational areas for improvement, primarily concerning planning, recordkeeping, automation, scheduling and standardization of maintenance and other operational procedures, and formalization of training.

128. JU's service, equipment, and facilities do not promote the safety, health, comfort, and convenience of its patrons, employees, and the public and are not in all respects adequate, efficient, and reasonable, as required by A.R.S. § 40-361(B).

129. JU has not safely conducted and handled sewage from the customer's point of collection, as required by A.A.C. R14-2-607(A).

130. JU has not made reasonable efforts to supply a satisfactory and continuous level of service, as required by A.A.C. R14-2-607(C).

131. JU's service and equipment is not in all respects just, reasonable, safe, proper, adequate, and sufficient.

132. The Commission should appoint an Interim Manager to operate JU and require JU to cooperate with and indemnify, defend, and hold harmless the Interim Manager.

133. In order to provide funds to pay the Interim Manager, it is reasonable and in the public interest for the Commission not to impose fines and penalties on JU pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, § 19 of the Arizona Constitution.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 40-246, the Commission has jurisdiction to bring and hear complaints against public service corporations.

2. Pursuant to A.R.S. Title 40 and Article XV of the Arizona Constitution, the Commission has jurisdiction to supervise and regulate public service corporations.

3. JU is a public service corporation.

4. The Commission has jurisdiction over JU and the subject matter of this case.

5. Notice of this matter was provided as required by law.

6. JU has been afforded due process in this matter.

7. Under Article XV, § 3 of the Arizona Constitution, the Commission has authority to make and enforce reasonable rules, regulations, and orders for the comfort, safety, and preservation of the health of patrons of JU.

8. Under A.R.S. § 40-321, when the Commission finds that the service or equipment of a public service corporation is unsafe, inadequate, or insufficient, the Commission has authority to determine appropriate remedies and enforce those remedies by order or regulation.

9. The Commission has both statutory and constitutional authority to appoint an Interim Manager when a public service corporation's service is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient or its operation under current management presents an unreasonable risk of service that is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient.

10. JU has violated A.R.S. § 40-361(B).

11. JU has violated A.A.C. R14-2-607(A).

12. JU has violated A.A.C. R14-2-607(C).

13. JU has failed to provide service and equipment that is in all respects just, reasonable, safe, proper, adequate and sufficient.

14. It is just and reasonable and in the public interest for the Commission to appoint an

Interim Manager to operate JU and to require JU to cooperate with and indemnify, defend, and hold harmless the Interim Manager.

15. It is just and reasonable and in the public interest for the Commission not to impose fines and penalties on JU pursuant to A.R.S. §§ 40-424 and 40-425 and Article XV, § 19 of the Arizona Constitution.

ORDER

IT IS THEREFORE ORDERED that Staff shall immediately commence efforts to obtain an agreement with an Interim Manager who shall assume operation of Johnson Utilities, L.L.C. as soon as possible on an interim basis pending further order of the Commission in this docket.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall cooperate fully with the Interim Manager and shall supply all necessary documents, records, and other information requested by the Interim Manager, whether the documents, records, and other information are in the possession of Johnson Utilities, L.L.C. personnel or the possession of Hunt Mgt., L.L.C., Ultra Management, L.L.C., or another related entity.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall indemnify, defend, and hold harmless the Interim Manager.

IT IS FURTHER ORDERED that the Interim Manager shall have full authority to conduct the business and affairs of Johnson Utilities, L.L.C. in all respects, except as authority is expressly reserved as a right of ownership under Arizona law.

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IT IS FURTHER ORDERED that either Johnson Utilities, L.L.C. or the Interim Manager may at any time apply for the termination of the Interim Manager agreement upon a showing that the services of Johnson Utilities, L.L.C. are in all respects just, reasonable, safe, proper, adequate, and sufficient and that terminating the Interim Manager agreement would not present an unreasonable risk of service that is unjust, unreasonable, unsafe, improper, inadequate, and/or insufficient.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN FORESE COMMISSIONER DUNN

COMMISSIONER TOBIN COMMISSIONER OLSON COMMISSIONER BURNS

IN WITNESS WHEREOF, I, _____, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2018.

_____
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: JOHNSON UTILITIES, L.L.C.

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SSOs Reported for Johnson Utilities from January 1, 2010, through April 30, 2018

#	Date & Approximate Time of Incident (if specified)	Description of Incident, Including Approximate Amount of Wastewater Released and Cause (if specified)	Date/s Reported
1	2/1/10 1:00 p.m.	Less than 50 gallons spilled alongside Felix Road near Dixie, due to a minor crack on the bell and spigot of an 8" PVC force main. None reached US waters.	2/2/10
2	4/16/10	340 gallons spilled at a manhole in the Bella Vista Road right of way just west of LDS church due to grease plugging the gravity sewer line. None reached US waters.	4/16/10
3	4/17/10	A spill occurred at the force main in the Hunt Highway right of way near Johnson Ranch Boulevard, with no flowing or standing sewage, due to a leaking bell joint.	4/18/10
4	4/27/10	500 gallons spilled at a manhole in the Hunt Highway right of way across from the Anthem WRP, due to failure of the electrical panel serving the influent pumps at the Anthem WRP.	4/28/10
5	7/31/10	80 to 140 gallons spilled at A&B lift station, 1885 E. Bella Vista Road, due to failure of the electric breaker serving the submersible pumps.	8/2/10
6	11/2/10 3:30 p.m.	A spill occurred from a manhole on the Encanterra Golf Course due to a 6" plug and other debris.	11/3/10
7	11/5/10 3:30 p.m.	A spill occurred from a 10" force main in the Hunt Highway right of way between Arizona Farms Road and the Section 11 WWTP, due to a small hole on the bottom of the 10" PVC force main.	11/8/10
8	7/12/11 8:45 a.m.	Approximately 1,000 gallons spilled from a force main near Arizona Farms Road and Felix Road, in an area that is being blue staked.	7/12/11
9	8/11/11 12:00 p.m.	At least 5 gallons spilled on Hunt Highway in the area of a force main.	8/11/11
10	8/17/11	A spill of unspecified quantity occurred on Felix Road alignment due to a crack in the 8" PVC force main.	8/17/11
11	8/31/11 4:45 p.m.	A spill occurred near Oliveen Court due to a grease plug in a residential area.	9/1/11
12	9/4/11 5:00 p.m.	1,500 to 2,000 gallons spilled into the wash next to the Pecan WRF due to an earlier VFD failure and a hard-wired unit that was activated but failed.	9/6/11

13	9/6/11 11:00 p.m.	Approximately 25,000 gallons overflowed into the retention basin next to the San Tan WRP due to the earlier failure of a relay.	9/7/11
14	9/28/11	A spill occurred near prior spill on a frontage road due to a broken force main.	9/28/11
15	9/28/11 6:00 a.m.[1]	A spill occurred creating a wet area over the force main in Hunt Highway across from Johnson Ranch Road due to the 10" PVC force main leaking through a bell joint.	10/3/11
16	11/23/11 9:30 a.m.	Wastewater discharged from an overflow of Pecan WRP headworks, flowing out both doors into the yard and offsite onto the Pecan North property, where it was absorbed by the soil.	11/28/11
17	8/5/12	Sewage spilled into a ditch where it was contained.	8/5/12
18	8/5/12 10:00 a.m.	500 gallons spilled from a manhole at the cul-de-sac on Rosebud Lane.	8/9/12
19	8/19/12	200 gallons spilled into a retention area behind a lift station when the lift station's motor saver failed.	8/20/12
20	9/13/12 7:00 a.m.	5,000 gallons spilled in the dirt row just south of the Johnson Ranch subdivision near the intersection of East Omega and Bareback Trail.	9/13/12
21	12/25/12 12:00 p.m.	Approximately 16,000 gallons spilled at the northwest corner of Ironwood Road and Ocotillo Drive due to the angle stop on top of the 2" blow off coming apart.	12/28/12
22	1/8/13 1:39 p.m.	Sewage leaked into a farmer's field just south of Judd Road while the area was being blue staked.	1/8/13
23	3/1/13 10:00 a.m.	200 gallons spilled on Barnes Parkway 200 feet north of Ocotillo Drive when a landscape company planted a tree over a ¾" line feeding an air relief valve.	3/1/13, 3/6/13, 3/25/13[2]
24	4/2/13 12:00 p.m.	200 gallons spilled at the southeast corner of Laredo Ranch Loop and Salado Street when a "perc driller" hit a retention basin gravity sewer line.	4/2/13, 4/3/13[3]
25	4/4/13	A spill occurred in the vicinity of Appalachian Drive and Bella Vista Road.	4/4/13

[1] It is possible that the 9/28/11 report of a spill near a prior spill on a frontage road due to a broken force main is the same spill and that this represents a 5-day report, although that cannot be determined from the ADEQ record. (See Ex. S-29.)

[2] It is assumed that this same spill is described in varying detail in four different entries within Exhibit S-30. (See Ex. S-30.)

[3] It is assumed that this same spill is described in varying detail in two different entries within Exhibit S-30. (See Ex. S-30.)

26	4/5/13 4:00 p.m.	400 gallons spilled from a manhole at the intersection of Appalachian Trail and Lakeview Drive because the top rung of the manhole ladder fell into the channel.	4/5/13
27	6/16/13 5:00 p.m.	500 gallons spilled at Brahman Boulevard and Shorthorn Trail in the Circle Cross subdivision.	6/17/13
28	9/3/13 9:10 a.m.	A spill occurred on Hunt Highway between Magma and Johnson Ranch Boulevard, about ¼ mile south of JU's offices, due to a leaking force main.	9/3/13
29	9/3/13 7:00 a.m.	A spill occurred on Hunt Highway ½ mile south of Johnson Ranch Boulevard.[4]	9/9/13
30	12/12/13 8:00 a.m.	300 gallons spilled from manholes at Rousay Drive and Oxford Way, Oxford Way and Magnus Drive, Cape Wrath Drive and Whitehall Drive, and on Schnepf Road between Rousay Drive and Castlegate Boulevard because a force main discharge 90-degree coupling broke off and fell into a manhole channel blocking flow.[5]	12/12/13
31	1/12/14 7:45 p.m.	Approximately 10,000 gallons spilled on Felix Road approximately ¾ miles north of Arizona Farms Road.	1/15/14
32	1/12/14 8:30 p.m.	300 gallons spilled from a manhole near Morning Sun Circle and Village Lane.	1/15/14
33	5/24/14 9:30 p.m.	13,000 gallons were spilled on the east side of Hunt Highway, 100 yards south of Johnson Ranch Boulevard and traveled 150 years.	5/24/14, 5/29/14
34	5/29/14	An SSO occurred.	5/29/14, 6/2/14
35	6/5/14 7:30 a.m.	A spill occurred on the west side of Felix Road about ¼ mile north of Arizona Farms Road.	6/9/14
36	8/3/14 7:30 a.m.	A spill occurred on the east side of Hunt Highway.	8/3/14
37	8/7/14	An SSO occurred; it was related to a force main.	8/9/14
38	8/8/14	An SSO occurred.	8/11/14
39	9/16/14 7:00 a.m.	An SSO occurred on the east side of Hunt Highway, about 300 feet north of Magma.[6]	9/16/14, 9/18/14
40	10/13/14 10:30 a.m.	33,000 gallons were spilled one mile east of Gary Road on Empire Road and ¼ mile south of Farm Field Road.[7]	10/13/14, 10/16/14

[4] It is possible that this event is the same as the prior September 3, 2013, but cannot be determined due to the different location description and time. (See Ex. S-31.)

[5] It is assumed that this is the same 12/12/13 300-gallon SSO included in a phone report on 12/12/13 at 9:37 a.m. (See Ex. S-31.)

[6] It is assumed that the same 9/16/14 at 7:00 a.m. SSO on Hunt Highway was included in both a 9/16/14 email and a 9/18/14 email. (See Ex. S-32.)

[7] It is assumed that the same 10/13/14 at 10:30 am. SSO was included in both a 10/13/14 email and a 10/16/14 memo. (See Ex. S-32.)

41	2/9/15 11:00 a.m.	50 to 100 gallons spilled on corner of Empire Road and Gary Road, from a crack in a force main.	2/9/15, 2/11/15
42	2/9/15 8:00 a.m.	24,000 gallons spilled near Judd Rd. and Felix Rd., near intersection of Felix and Geronimo, resulting in approximately 8 inches of standing wastewater in an area of approximately 100 feet by 10 feet located in a farm field, due to a three-foot crack in the force main. Did not reach water of the U.S.	2/9/15, 2/11/15
43	2/22/15 7:45 a.m.	6,000 gallons spilled at intersection of Village Lane and Morning Sun Circle, because of a piece of manhole ladder rung stuck in a pump at the San Tan WRP lift station. Did not reach water of the U.S.	2/22/15, 2/25/15
44	3/1/15 4:45 p.m.	40 to 50 gallons spilled at East Hunt Highway and East Copper Mine Road, from a manhole overflowing because it was clogged with grease. The wastewater traveled 5 yards to a retention basin; the spill ceased when the manhole was unclogged.	3/1/15
45	3/1/15 4:45 p.m.	50 gallons spilled at North Muscovite Drive and Silverbell Road and traveled 20 feet to the nearest retention ditch, due to grease clogging the flow of the gravity line.	3/6/15
46	3/31/15	10,000 gallons spilled due to overflow at the Section 11 WWTP. The cause was undetermined.	4/6/15
47	4/11/15 9:00 a.m.	16,000 gallons spilled near East Arizona Farms Road and North Felix Road.	4/11/15
48	4/23/15 8:00 p.m.	19,000 gallons spilled at 525 East Hunt Highway because a 90-degree pipe broke in a manhole.	4/24/15, 4/29/15
49	5/3/15 6:30 p.m.	8,000 gallons spilled in a retention area at the intersection of Village Lane and Morning Sun Circle because an influent pump at the San Tan WRP lift station failed.	5/3/15
50	5/7/15 3:30 p.m.	12,000 gallons spilled at a gravity trench line behind the Johnson Farms lift station, near the intersection of Combs and Gantzel Road. Did not reach waters of the U.S.	5/8/15, 5/14/15
51	6/14/15 2:30 p.m.	1,500 gallons spilled from a grit chamber and flowed to a retention area next to the lift station, because submersible pumps had overheated.	6/14/15
52	7/7/15 6:30 p.m.	2,000 gallons spilled at East Arizona Farms Road and North Felix Road. Did not reach waters of the U.S.	7/8/15, 7/10/15
53	8/7/15 3:30 a.m.	10,000 gallons spilled at the force main at the intersection of Hunt Highway and Magma Road because a construction company hit a force main pipe while boring.	8/8/15, 8/13/15

54	8/12/15 3:30 p.m.	13,500 gallons spilled at the intersection of Morning Sun Circle and Village Lane because the San Tan WRP influent lift station backed up when the second pump did not turn on because of a "layer sewage cake" that prevented the float switch from turning on.[8]	8/13/15, 8/17/15
55	9/9/15 8:00 p.m.	4,000 gallons spilled at the intersection of Morning Sun Circle and Village Lane, due to a cracked force main pipe from the Main Yard lift station, flowing to the surface on the east side of Hunt Highway at the intersection of Johnson Ranch Boulevard and Hunt Highway.	9/10/15
56	10/25/15 2:00 a.m.	117,000 gallons spilled at the intersection of Tourmaline and Copper Mine Road, about ¼ mile north of Copper Mine, when the force main pipe from Copper Basin lift station #2 cracked, forming a pool of standing water approximately 1,300 feet by 8 feet and 1.5 feet deep.	10/25/15, 10/29/15
57	1/7/16	A spill occurred on the east side of Hunt Highway just south of Johnson Ranch Boulevard due to a sewer line break.	1/7/16
58	2/8/16 2:30 p.m.	9,000 gallons spilled about ¼ mile east of Rittenhouse on the south side of Combs Road, forming a pool of standing water approximately 1,200 feet by 4 feet and ¼ inch to <1 inch deep, because a construction company hit the air relief for a force main pipe from Parks lift station while grading. Did not reach waters of the U.S..	2/12/16
59	3/30/16 5:00 a.m.	8,000 gallons spilled into a retention basin near Rousay Drive and Schnepf Road, due to grease and debris build-up creating a blockage in the gravity sewer line. Did not reach waters of the U.S.[9]	3/30/16, 3/31/16, 4/1/16
60	5/20/16 6:35 a.m.	9,000 gallons spilled just west of the intersection of Schnepf Road and Rousay Drive due to a blockage caused by rocks and grease in the gravity sewer line. Did not reach waters of U.S.	5/20/16, 5/25/16
61	6/5/16 6:00 p.m.	1,500 gallons spilled when the submersible pumps to the Pecan WRP influent lift station failed due to a blown 200-amp fuse and failed motor savor, an alternator bolt breaking on the trash pump, and the belt coming off.	6/8/16

[8] It is assumed that the same 13,500-gallon spill on 8/12/15 at 3:30 p.m. involving the San Tan WRP lift station was included in both a 8/13/15 call and an 8/17/15 email and memo. (See Ex. S-33.)

[9] It is assumed that the same SSO on the morning of 3/30/16 at Schnepf and Rousay was included in 3/30/16 and 3/31/16 verbal notifications and a 4/1/16 memo notification to ADEQ. (See Ex. S-34.)

62	6/5/16 8:08 p.m.	200 gallons spilled due to a power failure at the pump house.	6/6/16
63	7/9/16 5:20 p.m.	500 gallons spilled from a manhole at the corner of Muscovite and Silverbell, forming a pool of standing water 70 feet by 2 feet and ½ inch deep in a retention area south of the intersection, because of grease and wipes caught on manhole ladder rungs.	7/10/16, 7/14/16
64	7/24/16 3:45 p.m.	300 to 500 gallons spilled from the Morning Sun Farms lift station, traveling approximately 100 feet north of the lift station property line to an open dirt field where it evaporated and percolated into the ground.	7/28/16
65	8/4/16 4:40 p.m.	3,000 gallons spilled at 35901 North Village Lane because the alternator starter failed to send a signal, which resulted in high water levels and overflow.	8/8/16, 8/11/16
66	8/18/16 10:00 a.m.	Approximately 3,000 gallons spilled about ¼ east of Rittenhouse on the south side of Combs Road because a contractor hit an air relief valve while grading.	8/22/16, 8/23/16
67	9/30/16 7:15 a.m.	100 gallons spilled from a manhole at High Dunes Road about ¼ mile south of Escape Avenue because of a build-up of grease and baby wipes at the lift station that blocked floats from sending a signal to activate pumps.	10/3/16
68	11/1/16 6:45 a.m.	Approximately 6,000 gallons spilled from a manhole in a farm field near the intersection of Ocotillo Road and Coyote Road, traveling approximately 200 feet west and 75 feet south and staying in the farm field.	11/4/16
69	11/18/16 11:30 a.m.	Approximately 400 gallons spilled along Hunt Highway about ¼ mile south of Johnson Ranch Blvd. due to a crack in a 10 inch force main.	11/22/16
70	12/2/16 8:00 a.m.	8,000 gallons spilled from a manhole at Harold Drive and Kelly Lane and traveled to waters of the U.S. (Queen Creek Wash). The EPA was notified.	12/7/16
71	1/13/17 11:30 a.m.	1,500 gallons spilled from a manhole east of the railroad tracks from the North Oasis Boulevard cul-de-sac, near the intersection of Hunt Highway and Oasis Boulevard, due to blockage of flow in a 6-inch gravity line from asphalt, branches, and construction debris.	1/17/17
72	2/1/17 11:30 a.m.	Approximately 5,000 gallons spilled from a manhole at the Ironwood Crossing gravity line just before the Ironwood Crossing lift station because a grit chamber was plugged due to mechanical plugs and debris.	2/7/17

73	2/4/17 5:45 p.m.	Approximately 11,000 gallons spilled approximately 300 feet south of the intersection of Charbray Drive and Matthews Drive, on the east side of Charbray between it and the railroad tracks, due to a crack in bell.	2/9/17
74	2/7/17 8:45 p.m.	Approximately 100 gallons spilled from a manhole at North Stonecreek and West Desert Basin into the green belt area just east of the intersection, due to a build up.	2/10/17
75	6/14/17	An unknown amount of wastewater spilled at the northeast corner of Hunt Highway and Johnson Ranch Boulevard, near the Copper Basin lift station.	6/14/17
76	11/15/17	An unknown amount of wastewater spilled near Kenworthy and Ocotillo Street.	11/15/17
77	3/26/18 9:30 p.m.	65,000 gallons overflowed from a manhole at the corner of Kelly Lane and Harold Drive in the Pecan Creek North subdivision, traveling to a stormwater drainage channel and into the Queen Creek Wash, a water of the U.S., as the result of a malfunction of the Pecan WRP Influent lift station radar level sensor unit[10]	3/27/18, 4/18/18
78	3/30/18 9:30 a.m.	Approximately 500 gallons overflowed from a manhole at East Dust Devil Drive and North Bareback Trail, traveling to a concrete channel and into a rock/grass area to the east, due to a backup in the collections system caused by rags and wipes.	4/17/18

[10] This SSO is the subject of an April 30, 2018, NOV issued by ADEQ for the Pecan WRP, which is further discussed in the section concerning the Pecan WRP's Current ADEQ Compliance Status. (See Ex. S-123.)

ADEQ NOVs, Compliance Orders, & Consent Orders for JU's Pecan WRP, Section 11 WWTP, & San Tan WRP & for Other JU-Related Locations 2005-2015

PECAN WRP		
Date	**Type of Document**	**Description of Non-Compliance**
April 28, 2005	NOV	Johnson International, as the owner/operator of the Pecan WRP, was cited for exceeding the single sample Fecal Coliform daily maximum on 44 occasions during 3rd quarter 2004 and on 20 occasions during 4th quarter of 2004 (violation of APP); and for failing to conduct turbidity monitoring during 3rd quarter and 4th quarter 2004 (violation of APP). (Ex. S-40; see Staff LFE-2.)
December 15, 2005	NOV	Johnson International, as the owner/operator of the Pecan WRP, was cited for discharging approximately 2,500 to 5,000 gallons of effluent from a reuse site to Queen Creek on November 13, 2005, after the berm of the site was breached (violation of A.R.S. § 49-255.01(A)). (Ex. S-42; see Staff LFE-2.)
August 2, 2007	NOV	Johnson International, as the owner/operator of the Pecan WRP, was cited for discharging approximately 500,000 gallons of A+ effluent onto plant grounds, with an estimated 5 to 10 percent of the effluent discharged via sub-surface methods onto Ironwood Road causing two sink holes near the Pecan WRP, on May 21, 2007, as the result of a berm failure of the Pecan WRP's southwest Pecan Orchard pond, which was application of reclaimed water to an area other than a direct reuse site (violation of A.A.C. R18-9-704(G)(3)(b)). (Ex. S-43.)
March 4, 2008	NOV	JU, as the owner/operator of the Pecan WRP, was cited as a result of a December 24, 2007, SSO of approximately 5,000 gallons of untreated sewage from a manhole located upgradient into Queen Creek through a spillway located adjacent to the manhole and not providing ADEQ notice of the SSO within 24 hours; ADEQ learned of the SSO through a citizen's complaint and contacted JU about it. JU was cited for (1) not notifying ADEQ within 24 hours after discovering a discharge that could endanger the public health or environment (violation of APP); and (2) adding a pollutant to navigable waters from a point source without a permit (violation of A.R.S. § 49-255.01(A)). (Ex. S-44.)

June 5, 2008	NOV	JU, as the owner/operator of the Pecan WRP, was cited as a result of two SSOs during the weekend of May 17 and 18, 2008, that discharged a combined estimate of 10,000 gallons or more of untreated raw sewage through a spillway into Queen Creek, which resulted in standing water with levels of E. coli > 1600 cfr/100 ml, which violated the numeric surface water quality standard for E. coli of 235 cfu/100 ml for full body contact and 576 cfu/100ml for partial body contact. JU failed to notify ADEQ within 24 hours; ADEQ learned of the SSOs from local resident emails and confirmed the incidents via email with JU. ADEQ also learned that the Pecan WRP lift station approved by JU per plans submitted on February 14, 2004, was equipped with much smaller pumps than the two 75 HP pumps included in the "as builts" (first two 20-25 HP pumps, then two 35 HP pumps at the time of the SSOs, and then one 35 HP and one 47 HP pump after the SSOs). JU was cited for (1) adding a pollutant to navigable waters from a point source without a permit (violation of A.R.S. §§ 49-255.01(A)); (2) discharge without an APP (violation of § 49-241(A)); (3) violating the numeric surface water quality standard for E. coli (violation of A.A.C. R18-11-109(A)); (4) failing to notify ADEQ within 24 hours of a discharge with potential to cause an AQL exceedance or to pose an endangerment to public health or the environment (violation of APP); (5) failing to comply with an engineering design report approved by ADEQ and incorporated by reference into the APP (violation of APP); and (6) failing to notify ADEQ within 24 hours of noncompliance that may endanger the environment or human health (violation of AZ0025445). (Ex. S-45.)
July 14, 2008	Compliance Order	This Compliance Order pertained to the May 17 and 18, 2008, SSOs and alleged that JU added a pollutant to navigable waters from a point source without a permit (violation of A.R.S. § 49-255.01(A)); discharged without an APP (violation of A.R.S. § 49-241(B)(9)); and violated the numeric surface water quality standard for E. coli (violation of A.A.C. R18-11-109(A)). In addition to the information in the NOV, the Compliance Order stated that ADEQ and JU had sampled the affected standing surface water in a portion of Queen Creek on at least 13 occasions between May 20 and July 10, 2008, revealing ongoing exceedances of the single sample maximum (235 cfr/100 ml) and the geometric mean (126 cfu/100 ml) of numeric surface

		water quality standards for partial body contact with E. coli. (Ex. S-59.)
September 13, 2008	Consent Order	This Consent Order, in which JU did not admit to civil or criminal liability or the validity of any findings of fact or conclusions of law in the Consent Order, pertained to the May 17 and 18, 2008, SSOs and resulted from JU's appeal of and expressly superseded the July 14, 2008, Compliance Order. The Consent Order concluded that JU had violated A.R.S. §§ 49-255.01(A) and 49-241(B)(9) and required JU to commence implementation of a Treatment Plan for the standing water in the affected portion of Queen Creek within 72 hours and continue treatment of the standing water until the sampling described in the Treatment Plan showed that the Arizona surface water quality standard for E. coli was met. (Ex. S-58.)
October 19, 2010	NOV	JU, as the owner/operator of the Pecan WRP, was cited for a number of its actions and omissions. First, JU ceased operating discharging facilities included in its APP (the Arizona Pollutant Discharge Elimination System ("AZPDES") Outfall and Subsurface Recharge Facility), because of a Stipulated Judgment dated February 4, 2010, entered in Case CV200801966, between JU and the Pecan Creek Community Association, under which JU agreed and was required permanently to vacate the property where the Subsurface Recharge Facility was located. JU also capped the AZPDES Outfall. JU did not provide ADEQ written notice until September 8, 2010 (violation of an APP requirement to provide written notice before ceasing operation of a facility for more than 60 days and violation of an APP requirement to give written notice of the intent to cease operations permanently). Additionally, JU was required by its APP to submit well installation reports within 60 days after installation and completion of recharge testing, with specific information to be included with the reports, and failed to do so (violation of A.A.C. R18-9-A208(A)). Additionally, JU replaced 100 HP pumps authorized for the Pecan WRP lift station under the APP with 85 HP pumps (violation of APP). Additionally, JU disposed of effluent in the pecan groves at rates constituting disposal rather than beneficial reuse "as evidenced by the number of dead pecan trees in the groves" (which constituted discharge without an APP in violation of A.R.S. § 49-241(A)).

		(Ex. S-48.)

SECTION 11 WWTP		
Date	**Type of Document**	**Description of Non-Compliance**
September 2, 2004	NOV	Johnson International, as the owner/operator of the MGD Precision Golf Course WWTP,[1] was cited for (1) exceeding the permit limit for daily Fecal Coliform monitoring of 800 cfu/100 ml on 58 occasions with results >1600 cfu/100 ml during 2nd quarter 2004 (violation of APP); (2) taking no immediate steps to investigate the cause of the 58 exceedances in April through June 2004 (violation of APP); (3) exceeding the permit limit for Total Nitrogen in effluent of 10.0 mg/L in December 2003, January 2004, and February 2004, with results of 20.36 mg/L, 15.81 mg/L, and 17.70 mg/L, respectively (violation of APP); and (4) failing to conduct verification sampling for the Total Nitrogen exceedances (violation of APP). (Ex. S-37.)
January 3, 2005	NOV	Johnson International, as the owner/operator of the MGD Precision Golf Course WWTP, was cited for (1) exceeding the single sample maximum for Fecal Coliform effluent monitoring of 800 cfu/100 ml on 29 occasions during 3rd quarter 2004, with 28 of those exceedances >1600 cfu/100 ml (violation of APP); and (2) exceeding the discharge limit for effluent monitoring for Fecal Coliform of 200 cfu on at least four occasions during the weeks of July 1, July 8, and July 29, 2004 (violation of APP). (Ex. S-38.)
April 6, 2005	NOV	Johnson International, as the owner/operator of the Section 11 WWTP, was cited for discharging approximately 30,000 gallons of sewage to a roadside ditch and nearby stormwater impoundment, which constituted operation of a surface impoundment without an APP (violation of A.R.S. § 49-241(B)(1). (Ex. S-39.)
July 26, 2005	NOV	Johnson International, as the owner/operator of the MGD Precision Golf Course WWTP, was cited for exceeding the discharge limit for Total Nitrogen of 10 mg/L in five consecutive months from January through May 2005, which constituted significant non-compliance (violation of APP). (Ex. S-41.)
October 20, 2008	NOV	JU, as the owner/operator of the Section 11 WWTP, was cited because ADEQ on September 25, 2008,

[1] The MGD Precision Golf Course WWTP was identified by the APP number and had the same address as the Section 11 WWTP. (See, e.g., Ex. S-37, S-38, S-39.) The APP for the Section 11 WWTP is APP No. 103081. (See, e.g., Ex. S-39.)

		discovered one open and two buried disposal pits containing biosolids (sludge) and other debris at the Section 11 WWTP. JU was cited for (1) discharging without an APP (violation of A.R.S. § 49-241(A)); and (2) disposing of sludge in a manner not prescribed in the APP (violation of APP). (Ex. S-46.)
January 13, 2017	NOV	JU, as the owner/operator of the Section 11 WWTP, was cited as a result of ADEQ's discovery during a December 2016 inspection that JU's Section 11 WWTP had 5 Sample Rolling Geo Mean Total Nitrogen results for three different Quarterly Monitoring Points that exceeded the 5 Sample Rolling Geo Mean Total Nitrogen limit of 10 mg/l in July, August, and September 2016, with sample results ranging from 10.14 mg/l to 16.65 mg/l. JU was cited for (1) failing to report to ADEQ and to immediately investigate to determine the cause of the Total Nitrogen exceedances (violation of APP); and (2) failing to submit to ADEQ a report including a summary of the investigation findings, the cause of the violation, and the actions taken to resolve the problem (violation of APP). (Ex. S-54.)

SAN TAN WRP		
Date	**Type of Document**	**Description of Non-Compliance**
May 30, 2013	NOV	JU, as the owner/operator of the San Tan WRP, was cited as a result of failures and exceedances that occurred after a power outage over the weekend of May 11 and 12, 2013, after which the operator on duty failed to reset compressors that supply aeration for secondary treatment processes for two days, causing turbidity exceedances in reclaimed water discharged to the San Tan Heights HOA's ponds and to Johnson Ranch Golf Course as per JU's APP. Specifically, JU was cited for (1) discharging water that exceeded the permit limit for maximum turbidity of 5.0 Nephelometric Turbidity Units ("NTU") on May 11 through 14, 2013, by discharging effluent with turbidity ranging from 20.3 NTU to 108.2 NTU (violation of APP); (2) discharging water that exceeded the permit limit for daily average turbidity of 2.0 NTU on May 10 through 16, 2013, by discharging effluent with daily average turbidity ranging from 2.1 NTU to 38.7 NTU (violation of APP); (3) failing to operate and maintain the WRP as per the engineering design, because the O&M Manual and Contingency and Emergency Response Plan did not

		provide the procedures for operators to follow in the event of a plant power failure, including the requirement to restart the aeration blowers (violation of APP); and (4) failing to operate and maintain the facility to prevent unauthorized discharges resulting from a failure or bypassing of BADCT pollutant control technologies, because the turbidity exceedances resulted from bypassing of the aeration treatment process (violation of APP). (Ex. S-50.) ADEQ noted in the NOV that JU had stated during the inspection and on a "Spill/Discharge Notification Memorandum" that effluent had been discharged on the two dates with the highest turbidity and subsequently, in its SMRF for 2nd quarter 2013, stated that effluent had not been discharged on those two dates. (Ex. S-50.)
October 28, 2015	NOV	JU, as the owner/operator of the San Tan WRP, was cited because on August 16, 2015, due to a "treatment process upset" in the San Tan WRP, unsettled sludge from the clarifier was allowed to enter the effluent collector and pass through to the reclaimed water discharge point without sufficient disinfection, and the contaminated water was then pumped to a reclaimed water outfall located at the San Tan Heights HOA irrigation lake, something that ADEQ learned about during an inspection on September 10, 2015. JU was cited for (1) failing to operate and maintain all permitted facilities to prevent unauthorized discharges resulting from failure or bypassing of applicable BADCT (violation of APP); (2) failing to notify ADEQ within 24 hours of discovering a discharge that has the potential to cause an AQL exceedance or could pose an endangerment to public health or the environment (violation of APP); (3) failing to notify ADEQ in writing within 5 days of becoming aware of an exceedance or violation of any permit condition, AQL, or DL (violation of APP); and (4) failing to submit a written report to ADEQ within 30 days of discovering an unauthorized discharge resulting from failure or bypassing of applicable BADCT (violation of APP). (Ex. S-52.)
December 16, 2015	NOV	JU, as the owner/operator of the San Tan WRP, was cited because it did not have an end user agreement with the San Tan Heights Community HOA stipulating the responsibilities of the HOA with respect to reclaimed water usage requirements. JU was cited for (1) failing to maintain a contractual agreement with

		each end user stipulating any end user responsibilities for the requirements under A.A.C. R18-9-718(A) (violation of A.A.C. R18-9-718(B)(2)); and (2) the San Tan Heights Community HOA's apparent nonconformance with Arizona reclaimed water rules, because JU as a Type 3 Reclaimed Water Agent did not have an end user agreement with the HOA to make the HOA responsible for conformance (violation of A.A.C. R18-9-718(B)(1)). (Ex. S-53.)

OTHER JU-RELATED LOCATIONS		
Date	**Type of Document**	**Description of Non-Compliance**
March 9, 2009	NOV	JU, as the owner/operator of the Oasis Golf Course, was cited because ADEQ found numerous areas of standing water on the golf course fairways, greens, and sand traps, with the sand traps located near the first hole having standing reclaimed water with an estimated depth of three to four feet. JU was cited for failing to use application methods when irrigating with reclaimed water that reasonably preclude human contact with reclaimed water (violation of A.A.C. R18-9-704(F)(1)). (Ex. S-47.)
November 29, 2012	NOV	JU, as the owner/operator of JU (Place ID 18613, 968 E. Hunt Hwy, Queen Creek), was cited for operating a surface impoundment without an APP after ADEQ observed evidence of water backwashed from the sand filter at the Circle Cross Well in an unlined impoundment during an inspection on August 24, 2012 (violation of A.R.S. § 49-241(B)(1)). (Ex. S-49.)
May 30, 2013	NOV	JU, as the owner/operator of JU (Place ID 114360, LAT: 33d, 9', 37.2979" N, LNG: 111d, 34', .506" W) was cited as a result of maximum turbidity and daily average turbidity exceedances in the effluent produced by the San Tan WRP on May 11 through 14, 2013, which was discharged under JU's reuse permit allowing JU to discharge A+ reclaimed water to the San Tan Heights HOA and Johnson Ranch Golf Course. Specifically, JU was cited for (1) failing to ensure that Class A+ reclaimed water met the 24-average turbidity standard of 2 NTUs after filtration and before disinfection (violation of A.A.C. R18-11-303(B)(1)(a)); and (2) failing to ensure that Class A+ reclaimed water met the turbidity standard of 5 NTUs after filtration and before disinfection. (Ex. S-51.)