

FORMAL COMPLAINT



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission
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AZ STATE CORP. COM. DIV.
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IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

WS-02987A-08-0049

DOCKET NO. WS-02987A-08-__

FORMAL COMPLAINT

1 Pursuant to the provisions of A.R.S. §§ 40-246 and 40-248, and A.A.C. R14-3-106(L),
2 Swing First Golf LLC ("Swing First") hereby files its formal complaint ("Complaint") against
3 Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"), and requests that the Arizona
4 Corporation Commission ("Commission") issue an order providing the relief requested herein.

5 A **BACKGROUND - UTILITIES SERVICE AGREEMENT**

6 On September 17, 1999, Utility, and various parties related to Utility, executed an
7 Agreement Regarding Utilities Service ("Utilities Services Agreement") with Johnson Ranch
8 Holdings LLC ("Holdings"), an affiliate of Sunbelt Holdings Management, Inc., an Arizona
9 Corporation ("Sunbelt").

10 On or about September 17, 1999, Holdings acquired, through Sunbelt, the 2,014-acre,
11 master-planned community known as Johnson Ranch.

12 Utility holds a certificate of convenience and necessity ("CC&N") from the Commission
13 to serve Johnson Ranch.

14 Among other things, Paragraph 9(a) of the Utilities Services Agreement provides
15 Holdings first right to purchase effluent from Utility to irrigate the Johnson Ranch Golf Courses:

16 Utility hereby grants Holdings and its successors and assigns the right to purchase
17 the first effluent generated by Utility's treatment of wastewater collected within the
18 geographic area covered by Utility's Certificate, or Exchange Water (as hereinafter
19 defined), in an amount required to irrigate the Johnson Ranch Golf Courses.

1 Paragraph 9(b) of the Utility Services Agreement provides that: "The purchase price for
2 effluent sold to Holdings hereunder shall be as determined by the Commission."

3 Paragraph 9(c) of the Utility Services Agreement defines Exchange Water and provides
4 Utility the right, at its sole discretion, to satisfy Holdings purchase in paragraph 9(a) by
5 providing either effluent, surface water, or groundwater.

6 Utility reserves the right to deliver the quantities of water that Holdings elects to
7 purchase pursuant to Paragraph 9(a) from any of the following sources: (i) effluent
8 from any wastewater treatment plant of Utility, (ii) any surface water available to
9 Utility, or (iii) groundwater (the foregoing items (i), (ii) and (iii) being hereinafter
10 referred to as "Exchange Water"). Election of such sources shall be at the sole
11 discretion of Utility.

12 On November 8, 2004, Swing First acquired The Golf Club at Johnson Ranch ("Golf
13 Club"). The Utility Services Agreement has been assigned to Swing First.

14 **II ALLEGATIONS**

15 **A FAILURE TO DELIVER EFFLUENT**

16 Utility has been generating and treating effluent within its certificated service area since
17 at least 2005. Utility's tariffed rate for effluent is \$0.62 per thousand gallons. However, despite
18 Swing First's right to the first effluent generated in the certificated service area, Utility has rarely
19 delivered effluent. Instead, it has delivered CAP water to Swing First, for which it has charged
20 \$0.83 or more per thousand gallons. As a result, Utility has overcharged Swing First by at least
21 \$0.21 per thousand gallons for millions of gallons of untreated water.

22 Utility has refused to deliver copies of bills for 2004 and 2005, which makes it difficult to
23 calculate the exact amount it overcharged as a result of its failure to deliver effluent, but Swing
24 First estimates this to be approximately \$50,000.

25 **B OVERCHARGE FOR METERS**

26 Utility has the option to deliver non-potable water from different services, but the Utility
27 Services Agreement requires that all deliveries should be priced at the effluent rate of \$0.62 per
28 thousand gallons. Thus, Utility needs only one meter to measure deliveries of non-potable water

1 to Swing First. However, Utility decided to separately meter CAP water and treated effluent.
2 Utility certainly can do this for its own purposes, but Swing First needs only one meter and
3 should pay only one monthly minimum charge, instead of the two minimums charged by Utility.

4 In January 2008, Utility arbitrarily replaced Swing First's three-inch effluent meter with
5 an eight-inch meter. However, Utility has been basing its minimum bill on two six-inch meters.
6 Swing First's monthly minimum charge should have been \$270 per month, based on the three-
7 inch meter. Instead, Utility has been charging \$1800 or more per month for the minimum bill.
8 As a result, since November 2004, Utility has overcharged Swing First at least \$58,000.

9 **C BILLING CREDIT**

10 In April of 2006 Swing First agreed to manage the Golf Club at Oasis ("the Oasis"),
11 wholly owned by Johnson International, in exchange for a water credit of 150 million gallons per
12 year to be provided by Utility. Swing First began managing the Oasis on May 1, 2006. Swing
13 First discontinued the Oasis management relationship on Nov 16, 2006, retroactive to October
14 31, 2006. During most of the six-month term of service, Utility effectuated the water credit by
15 not billing Swing First for water. In 2007, Johnson Utilities decided to reverse the 2006 credits
16 and now is improperly asking Swing First to pay for the water not billed in 2006.

17 The water credit for six months is 75 million gallons. At the effluent rate of \$0.62 per
18 thousand gallons, the value of the credit earned by Swing First is \$46,500 plus the amount of
19 Utility charged for the Superfund and Transport Privilege taxes for this amount of water.

20 **D SUPERFUND AND TRANSPORT PRIVILEGE TAXES**

21 Utility has regularly overcharged Swing First for the applicable Superfund and Transport
22 Privilege taxes.

23 **E METER READING**

24 Utility has regularly failed to read Swing First's meters, in one instance for the seven
25 months of April through November 2007.

1 **F BILLING**

2 As set forth above, Utility has failed to provide accurate bills to Swing First. Further,
3 past-due balances have suddenly appeared without explanation, even though all previous bills
4 were paid. As stated above, Utility has incorrectly calculated the applicable Superfund and
5 Transport Privilege Taxes. When Swing First has requested billing histories, the amounts shown
6 have not agreed with the bills rendered. Utility has been unable to explain charges and
7 calculations and has been forced to correct bills. Overall, Utility's customer billing service has
8 fallen far below the standards required by the Commission.

9 In addition, during 2006, at the demand of George Johnson, Utility manually changed
10 Swing First's billed rate for CAP water delivered from \$0.83 to \$3.75, in violation of
11 Commission's approved tariff rates. Billing continued for CAP water at \$3.75 for approximately
12 six months. Repeated requests by Swing First for Utility to bill at legal rates were ignored.

13 **G CUSTOMER SERVICE**

14 Utility's customer service has been abysmal. Swing First's attempts to resolve its billing
15 issues have been met with incompetence, broken promises, rudeness, and outright obscenities.

16 **H SERVICE INTERRUPTIONS**

17 In an effort to extort additional money from Swing First—and in violation of the
18 Commission's regulation— twice in November 2007 Utility cut off service to Swing First
19 without notice. Only the intercession of the Commission Staff forced Utility to resume service.
20 Since that time, Utility has continually threatened to cut off service to Swing First.

21 **III REQUEST FOR RELIEF**

22 Swing First asks:

- 23 **A.** The Commission to order Utility to continue providing service during the pendency
24 of this matter;
- 25 **B.** The Commission to hold a hearing to determine the actual amount that Utility should
26 have charged Swing First over the period of November 2004 to the present, compare

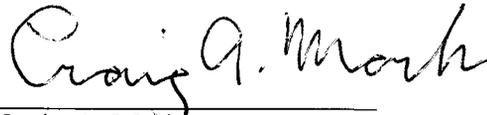
1 this to amount Swing First has paid Utility during this period, and order Utility to
2 provide an appropriate refund to Swing First, with appropriate interest;

3 **C.** The Commission to order Utility to render proper bills to Swing First each month,
4 based on actual meter reads, one 3-inch meter, effluent at \$0.62 per thousand gallons,
5 and correctly calculated Superfund and Transport Privilege taxes;

6 **D.** The Commission to order Mr. George Johnson to personally apologize to Swing First
7 and its members for its abysmal customer service and for Mr. Johnson's abusive and
8 obscene language; and

9 **E.** For such further relief as the Commission deems appropriate.
10

1 RESPECTFULLY SUBMITTED on January 25, 2008.

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15 Original and 13 copies **filed**
16 on January 28, 2008, with:

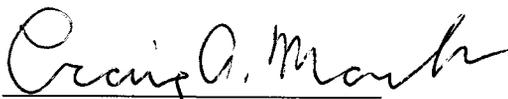
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18 Docket Control
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23 Copy of the foregoing **e-mailed**
24 on January 28, 2008, to:

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32 Copy of the foregoing **mailed**
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