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Arizona Corporation Commission

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

5 FIRST SWING GOLF, LLC, )  
 6 Complainant, )  
 7 v. )  
 8 JOHNSON UTILITIES, LLC, )  
 9 Respondent. )

DOCKET NO. WS-02987A-08-0049

**ANSWER  
AND  
COUNTERCLAIM**

10 Johnson Utilities, LLC ("Johnson" or the "Company"), by and through undersigned  
 11 counsel, hereby files it's Answer and Counterclaim to Complainant's Amended Formal  
 12 Complaint of February 5, 2008, (the "Complaint") and admits, denies, alleges and  
 13 counterclaims as follows:

14 1. The Company admits the representations set forth in Paragraph A of the  
 15 Complaint, but denies Complainant's interpretation of the Utility Services Agreement (the  
 16 "Agreement") as later presented by Complainant. The operative paragraph reads in pertinent  
 17 part as follows:

18 "Utility hereby grants Holdings and its successors and assigns the right to  
 19 purchase the first effluent generated by Utility's treatment of wastewater  
 20 collected within the geographic area covered by the Utility's Certificate,  
 21 or Exchange Water (as hereinafter defined), in an amount required to  
 irrigate the Johnson Ranch Golf Courses." (Paragraph 9(a) of the  
 Agreement)

22 The Company alleges that the "right" obtained by Complainant under that provision is  
 23 the right to receive irrigation service for its golf courses, a service not available to many  
 24

1 potential large turf irrigation customers in Arizona. It is not the right to demand a specific  
2 source of water, which would, or could, be a dereliction of the Company's obligation to most  
3 effectively and efficiently operate its water and/or wastewater utility plant and assets. The  
4 Company has delivered effluent to the Complainant when it became available. Effluent was  
5 not physically available to Complainant in 2005 as alleged. The Company further alleges  
6 that the Commission has jurisdiction to prescribe only the form of public service  
7 corporations' contracts, as opposed to the content, pursuant to the Arizona Constitution  
8 Article 15, Section 3.

9 2. As to the allegations in Paragraph IIA of the Compliant, the Company admits  
10 having produced effluent since 2005, but alleges effluent was not available in the area of the  
11 Complainant's property at that time. The Company admits that its tariffed rate for effluent  
12 service is \$0.62 per thousand gallons. The Company denies the Complainant's right to first  
13 effluent generated, or for that matter, any effluent generated by the Company, as more fully  
14 discussed below. The Company further admits having delivered CAP water to Complainant  
15 under tariffed rate of \$0.83 per thousand gallons. However, the Company denies  
16 overcharging the Complainant by any amount for any delivered water, and further denies the  
17 accuracy and relevance of Exhibit B to the Complaint.

18 The Company denies the refusal of delivery of monthly bills to Complainant, but  
19 alleges that the bills for Complainant's golf course consumption were submitted to The Club  
20 at Oasis, L.L.C. ("Oasis") for payment. Oasis had contemplated an agreement with  
21 Complainant to pay a given amount of golf course water costs for Complainant as partial  
22 consideration for Complainant's managing a golf course owned by Oasis. Moreover, the  
23 contemplated agreement was never signed because Complainant could not perform its  
24

1 contemplated duties. This is a separate unregulated agreement, an agreement to which the  
2 Company was not even proposed to be a party, and which will be further discussed below.

3 3. Pertaining to Paragraph IIB of the Compliant, the Company agrees that it has the  
4 option to deliver non-potable water to the Complainant under the Agreement as set forth in  
5 Paragraph 9(c) of the Agreement as follows:

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

13 The Company alleges that the above emphasized provision clearly grants the Company  
14 the sole discretion of providing the golf course water delivery from any source, not  
15 conditioned on availability, the lowest rate, or any other preference of the Complainant. The  
16 Company denies that the tariffed rates for “surface water” or “groundwater” are \$0.62 per  
17 thousand gallons, but alleges that those are separate and distinct services offered by the  
18 Company which are specifically authorized at different rates set by the Commission. The  
19 Company further denies that it can provide service to Complainant in accordance with the  
20 Agreement utilizing only one meter. The Company alleges that the different services and  
21 sources of water, i.e. effluent, surface water (CAP water) and groundwater, each with distinct  
22 rates, must be measured through different meters. The Company further alleges that the  
23 different sources of water, i.e. effluent and surface water are completely separate delivery  
24 systems. The Company further alleges that those different meters are necessary not only for  
25 billing purposes, but also for good utility operations and reporting of different water  
26 quantities to various other regulatory agencies. The Company alleges that for different

1 meters and different meter sizes, the Commission's Tariffs require charging only the  
2 approved Monthly Minimums associated with each specific meter.

3 The Company denies arbitrarily replacing any of the meters used to provide  
4 Complainant's service, but alleges that Complainant's water demands, both on a monthly and  
5 instantaneous basis and the point(s) of delivery dictate the appropriate number and size of  
6 meters for the various services. The existing three-inch meter that had been installed for the  
7 effluent delivery system was causing operational breakdowns in the Company's delivery  
8 system. Inspection of the effluent meter on the Complainant's service revealed that an  
9 additional restriction had been illegally installed in the delivery system. The restriction was  
10 removed and the meter was replaced for operational reasons and overall system and public  
11 safety. The existing meters are now the appropriately sized meters for the Complainant'  
12 requested services. The Company further denies charging Complainant any Monthly  
13 Minimum not associated with, and authorized for, the appropriately sized meter.

14 4. The Company denies all allegations in Paragraph IIC of the Complaint. The  
15 Company alleges that the referenced agreement has nothing to do with provision of utility  
16 service by the Company, but only who will pay for the services provided to Complainant  
17 under a separate unregulated agreement. The Company alleges that the Complainant is the  
18 customer of record on each of the subject accounts, and as such is responsible for payment of  
19 the account, notwithstanding any other contractual arrangement it may have with a third  
20 party for payment of the account. Therefore, it is respectfully submitted that the Commission  
21 has no jurisdiction over any provision of that agreement or Complainant's issues with a third  
22 party in that regard.

1           5.       The Company denies that it overcharged Complainant for any taxes associated  
2 with service provided as alleged in Paragraphs IID and IIE of the Complaint, and alleges that  
3 it charged only those taxes authorized by the Commission's approved tariffs for the  
4 Company. The Company alleges that the "Super Fund Tax" is a regulatory tax imposed on  
5 all municipal water providers by A.R.S. §42-5301 et. seq. for the benefit of the water quality  
6 assurance revolving fund. This is recoverable under the specific Company Tariff which, of  
7 course, is controlling over the general Rule, and additionally authorizes recovery of  
8 "...regulatory or other taxes and assessments...". It makes no reference to "revenues". The  
9 Company further alleges that the phrase referencing revenues cited by Complainant modifies  
10 only "or other impositions", not the listed "privilege, sales, or use taxes". The GRD Tax is:  
11 (1) a specific cost recovery procedure for the District per A.R.S. §48-3781, (2) that is a  
12 fluctuating rate, (3) imposed on the utilities' groundwater withdrawals, (i.e., the utilities'  
13 purchases, (4) that required an annual re-computation to determine the applicable rate, (5)  
14 with potentially mis-matching purchases and sales, (6) and required a "true-up" mechanism.  
15 The Super Fund Tax, on the other hand, is a set statutory rate levied on "water delivered to  
16 customers", (i.e., the utilities' sales), and has none of the above infirmities.

17           6.       As to Paragraph IIF, the Company denies that it has not read all meters for service  
18 to the Complainant in accordance with the Commission's requirements in that regard.

19           7.       The Company denies any billing irregularities as suggested in Paragraph IIG of  
20 the Complaint, and alleges that it has billed past due and late charges consistent with the  
21 accounts' performance (or non-performance) and tariffed charges. Any errors have been  
22 duly and timely corrected. The Company admits that for some inexplicable reason, one  
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1 account of Complainant's was billed for approximately three months at the Standpipe Rate of  
2 \$3.75 per thousand gallons. That error has been corrected in the billing program.

3 8. The Company denies the customer service raised in Paragraph IHH of the  
4 Complaint has been substandard, but admits that there have been heated discussions between  
5 principals regarding the contract dispute pertaining to the golf course management  
6 agreement.

7 9. The Company denies the allegations of Paragraph III of the Complaint and alleges  
8 that it delivered only the quantities of effluent that Complaint requested.

9 10. The Company denies any extortion or violation of Commission regulations  
10 alleged in Paragraph IIIJ, and alleges that all service discontinuances have been caused by  
11 Complainant's failure to pay utility service invoices in a timely manner, prompting the  
12 Company to give notice and turn off services in accordance with the Commission's Rules.

13 11. The Company admits the jurisdiction of the Commission as to setting rates as set  
14 forth in Complaint Paragraph IIK, but alleges that it has the right to fully pursue its legal  
15 remedies to collect money owed to it for services rendered.

16 12. The Company affirmatively alleges that the Complainant owes the Company  
17 \$65,749.74 for water services rendered to the Complainant as of January 31, 2008.

18 13. The Company further affirmatively alleges that Complainant is improperly  
19 making false statements and claims about the Company pertaining to the Company's service  
20 and billing to other irrigation customers of the Company, potentially causing irreparable  
21 damage to the Company's reputation and adverse financial consequences.

22 14. The Company presents its affirmative defenses, counterclaims against the  
23 Complainant, and prayer as follows:

1           A.     The Company alleges that all services to the Complainant  
2 have been provided in accordance with the Agreement, the Commission's  
3 authorized tariffs for the Company, and the Commission's Rules and  
4 Regulations.

5           B.     The Company alleges that as of January 31, 2008 the  
6 Complainant owes the Company a total of \$ 64,749.74 for water services to  
7 the Johnson Ranch Golf Course under the two contested accounts, including  
8 all tariffed interest and late charges.

9           C.     The Company requests that in the event the Complainant  
10 does not pay the subject delinquent accounts, or arrange for payment thereof  
11 within 10 days, that the Commission should instruct the Company to  
12 discontinue water service to the Complainant and pursue collection of the  
13 delinquent accounts.

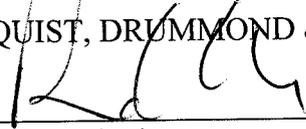
14           D.     The Company requests that the Complainant be admonished  
15 and ordered to cease and desist from making false and misleading  
16 statements to the Company's other customers or other third parties regarding  
17 the subject of this proceeding.

18           WHEREFORE, and having fully answered the Complaint, and the Company  
19 respectively requests that (1) the Complaint be dismissed, (2) the Complainant be ordered to  
20 pay the delinquent accounts as requested above, and (3) that the Commission grant such  
21 other relief as it may deem appropriate, or in the alternative set this matter for hearing as  
22 soon as possible to resolve these issues.

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RESPECTFULLY submitted this 13<sup>th</sup> day of February, 2008.

SALLQUIST, DRUMMOND & O'CONNOR, P.C.

By: 

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1 The original and fifteen copies  
of the foregoing were filed  
2 this 3 day of February, 2008:

3 Docket Control  
Arizona Corporation Commission  
4 1200 W. Washington St.  
Phoenix, AZ 85007

5 A copy of the foregoing was delivered/mailed  
6 this 3 day of February, 2008 to:

7 Hearing Division  
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8 1200 West Washington Street  
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