

WS-02987A-08-0049

ORIGINAL



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ARIZONA CORPORATION COMMIS

UTILITY COMPLAINT FORM

4700

Investigator: Brad Morton

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Expedite

Complaint No. 2007 64756

Date: 11/20/2007 Arizona Corporation Commission

Complaint Description: 01B Billing - Disputed
N/A Not Applicable

DOCKETED

MAR 17 2008

First: Last:

Complaint By: David Ashton

DOCKETED BY [Signature]

Account Name: Golf Club @Johnson Ranch/ Swing First Golf

Home: [REDACTED]

Street: n/a

Work:

City: Queen Creek

CBR: [REDACTED]

State: AZ Zip: 00000

is: Other

Utility Company: Johnson Utilities L.L.C. d/b/a Johnson Utilities Company

Division: Water

Contact Name: [REDACTED]

Contact Phone: [REDACTED]

Nature of Complaint: Account [REDACTED]

Complaint through Steve Olea

RECEIVED
2008 MAR 17 11:38
AZ CORP COMMISSION
DOCKET CONTROL

Customer has billing dispute with utility and water has been disconnected at his business. Called Gary Larson and left voicemail at 4pm today requesting that service be restored immediately and remain on until this informal complaint can be cleared.

Customer is in France at this time, available through email or telephone.

From: Dave Ashton [REDACTED]
Date: Nov 21, 2007 12:34 PM
Subject: For Brian: Checking in
To: Brian Tompsett [REDACTED]

Hi Brian: I'm sorry we're at an impasse. I don't want that, or for this situation to get worse. Is there any way we can re-engage? As far as I can tell, the following is the case:

My water bills tripled in 2006 and we have never resolved the issues associated with that. There are other obvious issues as well. Dialogue can help address them.

All of my efforts to meet with the decision makers have been rebuffed either verbally or in writing. My proposal on how to resolve and pay down this debt, no matter the amount, has not received a response. That means No.

Water to the course was turned off ten days ago with very little notice.

It has now been turned off a second time, this time without warning. Perhaps George never meant for it to be

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

turned back on? I guess that's not important.

George will not accept my calls and I must assume that you have been instructed to refer all my calls to Gary. Gary lacks the authority to resolve this situation.

Brian, I don't understand. Why is George doing this? If it was about money we would be dialoguing now and the Utility would immediately start to get its money. I am your customer. Can we dialogue so I, as your customer, can outline my understanding of what I believe I owe and why? I want to pay whatever I owe and have stated that repeatedly.

If this is about respect, George would get all the respect he seeks if he would deal with this issue honestly, straightforwardly, and within the parameters that govern his business. Surely George doesn't believe that I am truly trying to cheat him. The idea is preposterous.

If this is about time, then it can be resolved quickly if he will grant you or Gary the authority to deal with it in the way you or Gary believe is right and fair given what has occurred between us the last 18 months. You have discussed this with me openly and honestly before, so I'm certain that can happen again.

If this is just about taking advantage of me and making it impossible to run the golf course, then what choice do I have but to escalate, even if it's the last thing I want and will just cause you guys headaches when you have far more important stuff to deal with?

Brian, in the grand scheme of things I'm just not very important. I'm not worth fighting with because I'm too small of a businessman. I want to resolve this. I really do. Simple, honest dialogue can certainly help us to address the outstanding issues. I don't want a conflict with the Utility, I don't want any mudslinging, and threats will accomplish nothing. I just want to resolve it. Is there any way we can engage?

I will call you this AM but if we don't talk today, have a good Thanksgiving.

Dave
David Ashton
[REDACTED]

End of Complaint

Utilities' Response:

11/21/07

Voicemail from Brian Tompsett confirming receipt of complaint and voicemail requiring service be restored while complaint in process. Water was restored this morning at Commissions request. He is in an area where his cell phone is not working well but if we have concerns we should call.

End of Response

Investigator's Comments and Disposition:

From: Bradley Morton
Sent: Tuesday, November 20, 2007 3:48 PM
To: [REDACTED]
Subject: Johnson Utilities

Dear Mr Ashton,

I am contacting regarding your complaint with Johnson Utilities. I tried to reach you by phone but got a busy signal. I will be filing a complaint but also contact the company by phone requiring them to reinstate your water until this complaint has been satisfied. Please to email or call me [REDACTED] if you have any questions.

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Brad Morton
Public Utilities Consumer Analyst II
Arizona Corporation Commission

11/21/07

Called Brian T and left message to call me at 8:30am.

11/21/07

Returned voicemail to Brian and left voicemail to call me at 11:15am. Called Gary Larson ([REDACTED])
line busy 11am.

11/21/07 12:45pm vm

Customer received response from Brian Tompsett, water has been restored and Mr Ashton feels negotiations
are in process and would like to withdraw his complaint.

From: Dave Ashton ([REDACTED])
Sent: Wednesday, November 21, 2007 1:33 PM
To: Steven Olea
Cc: Bradley Morton
Subject: progress?

Hi Steve: FYI I finally had real dialogue with JU today (with Brian Tompsett). Their attitude was quite different
after hearing from Brad Morton, who to me is otherwise known as Superman.

JU expressed a willingness, in writing, to work through the issues we still face and were specific in committing
to do certain things necessary to recommence dialogue in good faith. I've experienced enough now to know that
this is not over, but at least now a resolution is possible. JU has committed to turn on the water today and Gary
Larsen has received the request from George Johnson. In the interest of facilitating that resolution I have
withdrawn the ACC complaint, although it is understood that if resolution is not reached I will have no choice but
to re-open it. FYI I'm very impressed with the professionalism and efficiency of the ACC. There are clearly some
good people there. You and Brad are two of them, as are Adam Stafford and Bill Mundell.

Thanks for the leadership you have provided. I will keep you apprised. Have a good Thanksgiving.

Regards,
Dave

11-26-07 At customers request on 11-21-07 CLOSED

From: Dave Ashton ([REDACTED])
Sent: Monday, December 03, 2007 4:34 PM
To: Bradley Morton
Subject: Address for complaint form

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Hi Brad: I look forward to talking with you again. My address is:

[REDACTED]
[REDACTED]
I appreciate you taking my call and for your continued professionalism.
Best regards,
Dave

Formal complaints forms mailed to the above address since negotiations have broken down.

ALL FOLLOWING DOCUMENTATION IS FOR RECORD PURPOSES ONLY

12/7/07

Voicemail received by Steve Olea from customer concerning possible water termination. Call Brian T and left voicemail at 10:45am and advised since Formal complaint in process we would like to see water remain on as long as current charges are being paid.

12/7/07

Brian T confirmed account current and there will be no shut off. If further concerns down the road Brian will contact me.

From: Dave Ashton [REDACTED]
Sent: Thursday, December 27, 2007 2:10 PM
To: Bradley Morton
Cc: Craig Marks
Subject: Update

Hi Brad: I hope you had a good Christmas. I appreciate very much the answers to my questions that you provided last week.
I am now working with Craig Marks, an attorney specializing in water issues. Both Craig and I anticipate that it will be necessary to file a formal complaint against Johnson Utilities, and are preparing that complaint now.

When we are finished with the complaint we will contact Johnson Utilities in the hope that we can resolve this matter before formal submission to the Commission. Failing that, we will submit.

Either Craig or I will keep you updated and will certainly answer any questions you have.
Thanks very much and regards,
Dave

From: Bradley Morton
Sent: Friday, January 11, 2008 12:57 PM
To: [REDACTED]
Subject: RE: Swing First Golf complaint against Johnson Utilities

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Mr Ashton,

Just checking on your Formal complaint because I have not heard from you or your attorney.

Brad Morton

From: Dave Ashton [REDACTED]
Sent: Saturday, January 12, 2008 2:34 AM
To: Bradley Morton
Cc: Craig Marks
Subject: Re: Update

Hi Brad: Thanks for your email regarding complaint status against Johnson Utilities. My attorney Craig Marks is working on the complaint now. Perhaps my email to you from Dec 27th did not go through? Regardless, it was time for another update so I appreciate you getting in touch.

I expect it will be filed soon. Craig can you update Brad from your end?
Thanks very much,
Dave

From: Brian [REDACTED]
Sent: Monday, January 14, 2008 8:04 AM
To: Bradley Morton
Subject: RE: Update

Brad-

Thanks for the update. Since Dave seemed to be making no progress, and we can't file anything with the ACC, we filed a complaint for breach of contract with the Superior Court regarding our claim for payments. I have attached a copy for your records. How do you want to proceed as far as the Commission is concerned? Please give me a call when you get a chance.

Brian P. Tompsett, P.E.

[REDACTED]

From: Dave Ashton [REDACTED]
Sent: Thursday, January 17, 2008 12:55 PM
To: December Davis
Cc: Gary Larsen; Craig Marks; Jeff Lundgren; Bradley Morton
Subject: Swing First Golf: January Water Bill

Hi December: I spoke with Gary Larsen regarding our most recent water bill, which we have just received. He told me that you have been instructed to deal with our account, rather than his office in Queen Creek. From now on I will call/email you directly when I have an issue.

I wanted to reach out so we could quickly resolve an issue that has just come up. For our January bill:

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

The Utility has billed us for 1.848m gallons of effluent water at a usage charge of \$1529.77. That is \$0.83 per thousand gallons. To comply with ACC tariffs, please bill us at \$0.62, which is the effluent water rate. We were billed last month at the correct rate, i.e \$0.62, so one must conclude that the effluent rate was changed on our account from last month to this month. Can you please ensure that it gets changed back now, permanently?

The Utility also billed us for a Superfund tax of \$12.01. The legal rate for the Superfund Tax is .0065 per thousand gallons, not .00785. The correct amount is \$9.94. Please make the change. You also billed us for a transaction privilege tax of \$102.49. The correct amount is \$76.77. Please make the change.

Also on this bill was a charge for over three thousand dollars for DR Water Usage and taxes. We spoke to Gary Larsen about this and he did not know what those charges were for. As you are handling our account now, can you please provide an explanation. As you know, we are unable to make payment on any amounts other than current charges, pending resolution of our outstanding complaint at the ACC. All current charges, when properly billed (as they were in December) will be paid in full.

We have also received a CAP water bill for around \$74,000, despite no CAP usage in November or December. The amount in question at the ACC is \$54,375, per Brian Tompsett's written communication to me dated 12/3/07. We have paid all current water charges on time and in full since that communication (and before). If you would resolve this \$20,000 discrepancy for me I would appreciate it.

Barring any response from the Utility we will remit payment to you of \$1229.97 for all water charges incurred on the latest bill, within 15 days of when the bill was mailed to us, per ACC regulations. I have also attached a formal letter to you in case that is necessary. I look forward to working with you from here forward. If I or my manager have any issues we will contact you directly from now on.

Thanks and regards,
Dave

From: Bradley Morton
Sent: Tuesday, January 22, 2008 12:51 PM
To: [REDACTED]
Subject: RE: Swing First Golf: January Water Bill

Mr Ashton,

Thanks for your recent communication, could you ask Mr Marks to contact me at [REDACTED] or provide me with a contact number for him. I would like to discuss the formal complaint status.

Brad Morton

1/22/08

Talked to Craig Marks and he confirmed formal would be filed by 1/25/08. Advised Brian Tompsett that if not filed, shut off can take place 1/28/08 since all appropriate notices have been sent. Brian requested that Steve Olea call George Johnson, email sent to Steve.

From: Dave Ashton [REDACTED]
Sent: Friday, January 25, 2008 12:57 PM
To: Craig Marks

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Cc: Bradley Morton
Subject: Re: Swing First Complaint against Johnson Utilities

Brad: Thank you for ensuring my water delivery continued as we put together this complaint. This is simply the beginning of what may be a long and difficult process. I'm very sorry that we must go through it. All I really want to do is run my business. But I'm grateful that there is an organization that we can at least turn to given the situation.

Craig, thanks for succinctly crystallizing the issues. I don't believe I could have done so myself. I'm glad you and I are on the same side.

To you both, have a good weekend.
Regards,
Dave

On Jan 25, 2008 8:21 PM, Craig Marks [REDACTED] wrote:

Dave,

From: Dave Ashton [REDACTED]
Sent: Monday, February 04, 2008 1:47 PM
To: December Davis
Cc: Jeff Lundgren; Craig Marks; Brian Tompsett; Gary Larsen; Bradley Morton
Subject: Johnson Ranch Golf Club: 18th lake/hole is flooded

Hi December: Hope you had a good weekend. I've received a report that the lake on our 18th hole is flooded with effluent water that has extended out far beyond the borders of our lake. We have taken photographs which I will forward to you shortly, showing water on the 18th fairway.

Please stop delivery of water to us until such time that our lake level is low enough to accept more. We will let you know when that is.

Please reply to acknowledge receipt. I cannot accept any more water as our fairway is flooded.
Regards,
Dave

From: Brian [REDACTED]
Sent: Tuesday, February 05, 2008 4:30 PM
To: daveashton [REDACTED] 'December Davis'
Cc: 'Jeff Lundgren'; 'Craig Marks'; 'Gary Larsen'; Bradley Morton; Dick Sallquist
Subject: RE: Johnson Ranch Golf Club: 18th lake/hole is flooded
David-

Attached are a few pictures of the 18th fairway that were taken yesterday after receipt of your email. If you have been getting reports, I'm sure you know it has been raining "on and off" in the Johnson Ranch area for the last few weeks. Our rain gauges in the area indicate that about 1-1/2 inches of rain fell over the weekend. It does not appear that the effluent has extended beyond the lake limits. The small visible puddle could easily be attributed to the rain not the effluent. Your fairway does not appear flooded.

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

You have now filed a formal complaint with the Arizona Corporation Commission alleging, among other things, service interruptions. You even requested relief asking that "The Commission to order Utility to continue providing service during the pendency of this matter". We were served with that complaint on Friday February 1, 2008. Now a mere 3 days later you now demand that "WE STOP THE DELIVERY OF WATER". Which way do you want it?

The "Agreement Regarding Utility Service" you cited in your complaint sites Minimum Monthly Purchases and also requires "that Holdings may reduce or eliminate such obligation by providing Utility notice of such reduction no less than 18 months prior to the first month in which Holding no longer elects to take such deliveries". We have no record of a notice.

I suggest that since the effluent service is now the subject of a formal complaint all correspondence should be through our attorneys.

Brian P. Tompsett, P.E.

From: Dave Ashton [REDACTED]
Sent: Wednesday, February 06, 2008 8:17 AM
To: Brian
Cc: December Davis; Jeff Lundgren; Craig Marks; Gary Larsen; Bradley Morton; Dick Sallquist
Subject: Re: Johnson Ranch Golf Club: 18th lake/hole is flooded

Hi Brian: Thanks for your note. The fairway was flooded on Saturday, before any rain came on Sunday. Pictures are attached, taken Saturday at 5pm. As you can see I was not exaggerating.

As you know, we need water to irrigate the golf course. If, however, Utility's delivery overflows the borders of the lake and floods the fairway and the Johnson Ranch community, I would be remiss if I didn't notify you. If you prefer I go through your attorneys, I'll hope that adding such an additional step will not slow down Utility's responsiveness to resolving hazards they have created. Should I also contact your attorneys directly if I find continued billing irregularities? December Davis seemed to do a reasonable job resolving the irregularities from last month. If you'd prefer I stop working with her, let me know who to contact instead and I will follow your instructions.

In compliance with our Agreement Regarding Utility Service, we wish to receive water as long as our lake can hold it. If the lake cannot hold more water then I respectfully request that no more be delivered until such time as we can accept more, at which point we will be grateful to take delivery. For the moment, additional water delivery creates a health and safety hazard, which prompted my notification. We will let you know when it's no longer a danger to the community for the course to receive more water, and would appreciate it if you would respect that request. Please let me know if you would like to talk live. I'm always happy to do so.

Best regards,
Dave

From: Brian [REDACTED]
Sent: Wednesday, February 06, 2008 10:19 AM
To: daveashton [REDACTED]
Cc: 'December Davis'; 'Jeff Lundgren'; 'Craig Marks'; 'Gary Larsen'; Bradley Morton; 'Dick Sallquist'
Subject: RE: Johnson Ranch Golf Club: 18th lake/hole is flooded

David-

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Continue to work with December on the billings if there is a question or irregularity. Lets not get dramatic about the lake. If the effluent and/or storm water exceeds the limits of the lake it is not a health and safety hazard. It is also not a danger to the community. It is merely water on the grass.

Brian P. Tompsett, P.E.
[REDACTED]

From: Dave Ashton [REDACTED]
Sent: Tuesday, February 12, 2008 1:17 PM
To: Bradley Morton
Cc: Jeff Lundgren
Subject: Flooding at Johnson Ranch

Hi Brad: I hope you're well. I'm wondering if you can advise on how to get Johnson Utilities to cease flooding the golf course? The attached photos were taken last Wed, after they had replied to my email below requesting they stop flooding. They also flooded the lake again over the weekend, on Feb 9th. Specifically:

What options do I have other than to email them? At this time I don't have control over how much water I receive. They decide that.

The flooding really does create a hazard. The HOA, residents and golfers have all complained. I'm uncomfortable paying for water that floods the golf course. It costs me money in lost business, not to mention the cost of the water. The utility has previously credited the San Tan Heights HOA for water that flooded San Tan Heights. Can I request they do the same with me? How do I measure that?

This is really bad, Brad. I just want water to irrigate and to pay the legal rate for it. If they would do this, and nothing else, we wouldn't have any issues. But I have no choice now but to appeal for redress when they continue to act this way (see below).

Please let me know how/if you can help me.
Best regards,
Dave

On Feb 6, 2008 6:18 PM, Brian [REDACTED] wrote:

David-

From: Bradley Morton [REDACTED]
Sent: Wednesday, February 13, 2008 9:17 AM
To: Brian
Subject: FW: Flooding at Johnson Ranch

Could you review this email?

From: Brian [REDACTED]
Sent: Thursday, February 14, 2008 7:25 AM
To: Bradley Morton
Subject: RE: Flooding at Johnson Ranch

Brad-

I will be onsite today and will take a look at this situation again and report back to you.

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Brian P. Tompsett, P.E.

From: Dave Ashton [REDACTED]
Sent: Thursday, February 14, 2008 8:39 AM
To: Bradley Morton
Cc: Jeff Lundgren
Subject: Re: Flooding at Johnson Ranch

Hi Brad: Thanks very much for your reply. As you know, Brian visiting the golf course will accomplish little. There's nothing wrong with the lake today. Everything is fine, and has been so for the last couple of days. What matters is:

Did they flood the lake before and is that documented? (yes)

When asked to stop, did they respond in an acceptable way? (no)

Do I have assurances that they will do their best not to flood the lake again? (no)

At this time I'm looking for them to:

Assure me in writing this will not occur again. Email is fine, from Brian Tompsett.

Not bill me for the amount of water they delivered that flooded the course.
If those two things happen then my concerns will be resolved (unless they then flood the course again). Let me know if you think I'm being unreasonable. I really just want them to act professionally.
Thanks very much,
Dave

From: Dave Ashton [REDACTED]
Sent: Thursday, February 14, 2008 8:46 AM
To: Bradley Morton
Subject: Lake Photos today

Hi Brad: Just confirming for you that everything is fine today. There is no flooding at the lake and there has not been since last weekend. As you can see by the attached photos, the lake level is very high but not unreasonably so, and the Utility is not delivering any water at this time (that's positive). Just wanted to keep you in the loop. Brian can feel free to visit the course today but I doubt he'll find anything of value related to this issue.

I'm not at all out to get the Utility. But since they've flooded the lake three times in the last several weeks I'd like them to assure me that it won't occur again. They have yet to do so.

Thanks,
Dave

From: Dave Ashton [REDACTED]
Sent: Thursday, February 21, 2008 11:05 AM
To: December Davis
Cc: Jeff Lundgren; Bradley Morton; Brian Tompsett; Craig Marks; Dick Sallquist
Subject: Re: January bill

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Jeff please make payment to Johnson Utilities for the full amount they have requested, which I believe is \$2658.15. Please put our appropriate account number(s) on the check as December Davis has requested that we do so.

December, please see attached letter to Utility in which we outline our position in writing.

Craig I have copied you so you can be aware that we now have an additional \$681.09 that is in dispute.

Best regards,
Dave

On Thu, Feb 14, 2008 at 8:37 PM, December Davis [REDACTED] wrote:

Dave, I have reviewed all five of your bills for January. All charges are correct. Please pay the amount in full. You will continue to receive late charges for all accounts you short pay.

December Davis-

From: Dave Ashton [REDACTED]

Sent: Thursday, February 14, 2008 8:55 AM

To: December Davis

Cc: Jeff Lundgren

Subject: Re: January bill

Hi December: Please let me know status on the below. If I have not heard from you by Monday I will assume you do not plan to respond, and will let the commission know that we are sending you a check for \$1977.06, which represents full payment of our latest bill, and will explain why.

The Utility is owed money for water we received in January and I want to resolve the below immediately so you can be paid in full.

Best regards,
Dave

On Tue, Feb 12, 2008 at 9:07 PM, Dave Ashton [REDACTED] wrote:

Hi December: At your request I scrutinize all our bills. Please let me know if you can resolve the following errors on our bill which arrived today, so we can pay the money you are owed:

First off, thanks for billing at the proper \$0.62 rate.

Water minimum charge of \$450. Please change it to \$270. We had a 3" effluent meter until last month, when the Utility changed it at Utility's desire. In addition, the Utility billed us for two years for a 6" meter (\$900 per month) when Utility was aware we only had a 3" meter (see my note that I sent you last month, with photos). Therefore please change back to a 3" meter at \$270 and continue billing at that rate.

Credit Water Privilege Tax of \$25.73. We paid our bill last month on time and in full so you should not owe us any credits. Please delete this credit or help me understand it.

Water Usage Charge credit of \$0.01 and Late Fee of \$0.05. This is a net difference of \$0.04. We have paid our bills on time and in full since our account became in dispute for \$54,375. Therefore we should receive no credits and no late charges. Please delete those two things.

Water Minimum of \$479.03. We should have one water minimum for \$270. Please delete this 2nd water minimum of \$479.03.

Previous balance of \$5107.51 less payment of \$4694.28, net difference of \$413.23. We will continue to pay our bills on time and in full when billed correctly. There is no previous outstanding balance, other than what is in dispute with the Corporation Commission. If you perceive that not to be the case, it may be because Utility billed

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

at the incorrect rate last month and that affected the taxes and fees that you charge on the account. Please correct the errors.

Superfund Tax: The correct rate is .65%, but Utility has charged .82% if you include a water minimum of \$450. The correct amount, with the correct water minimum amount, is \$11.97, for a difference of \$4.51. Please make the change in your computers.

Transaction Privilege Tax: Utility has charged a 6.8% rate with a water minimum of \$450. The correct rate is 6.7% including a \$270 water minimum. The difference is \$14.01. Please make the change.

By my calculations we therefore owe \$1977.06 (\$1571.70+\$270+\$123.39+\$11.97).

Please make the changes and send back your confirmation via email and we will generate a check and put our account numbers on it per your request. I would naturally prefer to resolve this without emailing and/or involving the Corporation Commission, so have not included them here. If you believe you can resolve it without their involvement, that would be great. If not, let me know and I will contact them.

Regards,
Dave

3/17/08

NOTES BY TRISH:

At the request of Brad Morton please docket this informal complaint.

Docketed in WS-02987A-08-0049

End of Comments

Date Completed: 11/26/2007

Complaint No. 2007 - 64756

Un-Substantiated

Notes: Undetermined