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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 APR 20 P 1:58

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES, LLC, DBA JOHNSON  
UTILITIES COMPANY FOR AN INCREASE IN  
ITS WATER AND WASTEWATER RATES FOR  
CUSTOMERS WITHIN PINAL COUNTY,  
ARIZONA.

DOCKET NO. WS-02987A-08-0180

**NOTICE OF FILING  
TESTIMONY SUMMARIES**

1 Swing First Golf LLC ("Swing First") hereby files testimony summaries for David  
2 Ashton and Sonn S. Rowell.

3 RESPECTFULLY SUBMITTED on April 20, 2009.

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17 **Original** and 13 copies **filed**  
18 on April 20, 2009, with

19  
20 Docket Control  
21 Arizona Corporation Commission  
22 1200 West Washington  
23 Phoenix, Arizona 85007  
24

Arizona Corporation Commission

DOCKETED

APR 20 2009

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1 **Copy of the foregoing delivered**  
2 on April 20, 2009, to:  
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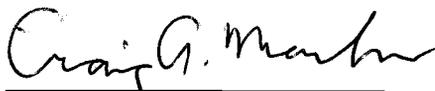
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DOCKET NO. WS-02987A-08-0180

**SUMMARY – TESTIMONY OF DAVID ASHTON**  
(Mr. Ashton is expected to testify on Monday April 27, 2009)

**In his Direct Testimony, Mr. Ashton testifies as follows:**

- 1
- 2 Mr. Ashton is the managing member of Swing First Golf, LLC, (“Swing First”) a customer of
- 3 Johnson Utilities LLC (“Utility”), including treated effluent for irrigation of Swing First’s
- 4 Johnson Ranch Golf Course.
- 5 Utility has refused to deliver effluent on many occasions, even when it was available.
- 6 Utility has routinely overcharged for the irrigation water it delivered.
- 7 Utility has routinely failed to read Swing First’s meters, at one point for six consecutive months
- 8 in 2007.
- 9 At the direction of George Johnson, Utility charged Swing First the potable water rate for
- 10 irrigation water delivered.
- 11 Utility initially provided Swing First a water credit for management services Swing First
- 12 provided to a Utility affiliate, but then reversed the credit.
- 13 Utility created a phony past-due balance as a pretence to cut off irrigation water service.
- 14 Utility failed to follow the Commission’s rules before cutting off irrigation water service.
- 15 Utility sued Swing First in court to attempt to collect the phony past-due balance.
- 16 Utility sued Mr. Ashton and his wife for defamation for discussion Utility’s billing and tariff
- 17 issues with other irrigation customers.
- 18 Utility deliberately over-delivered effluent and flooded the Johnson Ranch Golf Course.
- 19 Utility has deliberately withheld effluent during times of high irrigation demands.

1 George Johnson and Utility sent a letter to Swing First's members, which was clearly intended to  
2 intimidate them from supporting Swing First's participation in this case and in Docket No. WS-  
3 02987A-08-0049 (Swing First's complaint case against Utility).

4 Utility's letter also attacked Mr. Ashton personally, and attempted to destroy his business  
5 relationship with the other Swing First Members.

6 Utility has engaged in illegal affiliate transactions.

7 **In his Rebuttal Testimony, Mr. Ashton testifies as follows:**

8 Utility and Swing First have each treated the 1999 Utility Agreement as applying to both of us.  
9 Swing First also maintains all its rights as a tariffed effluent customer.

10 Since March 2006, Utility has produced far more effluent than it has actually sold. In fact,  
11 Utility has sold only about 42% of the effluent that it has produced since March 2006. Swing  
12 First could have satisfied essentially all of its irrigation requirements with treated effluent.  
13 Instead, Utility has withheld effluent, delivering and charging for more expensive CAP water.

14 Utility refused to sell effluent to Swing First in 2007. Total effluent sales were 10.044 million  
15 gallons for the whole year, even though Utility produced almost 185 million gallons of effluent.  
16 Instead, Utility delivered more expensive CAP water and then often charged five times the  
17 tariffed rate. At the same time, Utility was charging the San Tan Heights HOA an inflated,  
18 illegal rate for effluent, and recently acknowledged doing so. The explanation for this activity  
19 was a billing error.

20 In 2008, after Swing First filed its complaint, Utility substantially cleaned up its actions. Except  
21 for the two suspicious "line breaks," Swing First was able to provide for all its irrigation needs  
22 with treated effluent. For the entire year, Utility still only sold approximately 73% of the  
23 effluent that it produced from the Santan WWTP.

24 The Commission should investigate, at Utility's expense, what it did with the effluent it  
25 produced but withheld from Swing First and perhaps other customers.

26 Utility has not corrected for illegally withholding effluent and instead selling Swing First CAP  
27 water at a higher price. Second, Utility only made corrections after it got caught. A fair question  
28 to ask is: How many other customers have been overcharged or are still being overcharged?

29 The only way to ensure that Utility has indeed corrected any and all overcharges to past and  
30 present customers would be for the Commission to order Utility to fund an audit of its past sales  
31 and billing practices.

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**SUMMARY – TESTIMONY OF SONN ROWELL**  
(Ms. Rowell is expected to testify on Monday April 27, 2009)

**In her Direct Testimony, Ms. Rowell testifies as follows:**

Ms. Rowell first brings a large number of unusual activities to the Commission's attention.

- George H. Johnson is Utility's majority owner and is its ultimate decision maker.
- In 2007, George Johnson and his companies paid the largest civil environmental settlement in Arizona history.
- In 2008, George Johnson and his companies paid one of the largest settlements in federal history for bulldozing the San Juan River
- In 2008, Utility discharged raw sewage into a neighborhood wash. This issue is still not resolved.
- In 2008, Utility harassed customers with frivolous defamation lawsuits.
- In 2008, Utility illegally stored dangerous sewage sludge at a treatment plant.
- Utility's 2008 environmental infractions were nothing new. ADEQ and ADWR have previously imposed significant fines on Utility.
- Utility knowingly and illegally charges its customers for taxes.
- Utility may have delayed this rate filing so it could continue overcharging its water customers millions of dollars per year.

The Commission needs to deal harshly with Utility's blatant disregard for its customers, public safety, the environment, and its public service obligations. Ms. Rowell recommends that the Commission take the following actions:

- 1 • Utility should not be allowed to increase its rates until its books and management  
2 practices have been thoroughly investigated.
- 3 • Utility should be required to immediately reduce its water rates and make refunds.
- 4 • Utility should be required to refund its illegal superfund tax collections.
- 5 • Utility's pecan wastewater treatment plant should not be included in rate base.
- 6 • Utility should be required to dismiss all pending defamation lawsuits against its  
7 customers, and pay all of their court costs and legal fees.
- 8 • Utility should be fined for its blatant disregard of its public service obligations,  
9 environmental laws, and explicit commission orders.
- 10 • Utility should be penalized with a reduced rate of return on equity.
- 11 • Following completion of the independent management and financial audits, the  
12 Commission should require Utility to demonstrate why it should not surrender its  
13 certificate of convenience and necessity.
- 14 • The Commission should bifurcate this case into two phases.

15 **In her Surrebuttal Testimony, Ms. Rowell testifies as follows:**

16 The prior activities of Mr. Johnson and Utility are unprecedented, and clearly relevant to this rate  
17 case. Therefore, I testify the Commission should deal harshly with Utility by approving the nine  
18 recommendations I made in my revised direct testimony.

19 It is a legal issue whether Utility was authorized to delay its rate filing. Swing First can find no  
20 evidence that the Commission ever granted Utility's requested delay.

21 The water division and wastewater division are separate for ratemaking purposes. The  
22 Commission will set appropriate rates for each division on a stand-alone basis.

23 Mr. Bourassa's discussion concerning the Central Arizona Ground Water Replenishment District  
24 is misleading. Even so, the water district is still overearning.

25 Swing First is not advocating retroactive ratemaking. Swing First's recommendations for an  
26 immediate rate decrease and refunds are based upon Utility's failure to file its rate case as  
27 required by the Commission in Decision No. 68235. Further, based on its annual reports, the  
28 Utility should have been aware it was over-earning in 2006.

29 Swing First asked for information concerning Utility's 2006 earnings. It is Utility's  
30 responsibility to establish it was not over-earning and that it should not be required to make  
31 refunds for 2006, which was the test year ordered by Decision No. 68235. It seems likely that if  
32 Utility could have demonstrated it was not over-earning in 2006, it would have willingly  
33 provided that information.

34 There is no difference between the CAGRDR replenishment assessment, and the municipal water  
35 delivery system tax, regarding how they should be treated for ratemaking purposes.

36 Environmental infractions concerning Mr. Johnson and his other companies are relevant because  
37 Mr. Johnson was directly involved with these infractions, and he is the same individual who  
38 controls Utility, which has also repeatedly violated Arizona environmental laws.

1 On October 20, 2008, ADEQ issued two Notice of Violations, No. 102722 and Notice of  
2 Violation No. 103357 concerning Utility's illegal storage of sewer sludge on the site of its  
3 Section 11 Treatment Plant.

4 Ms. Rowell's testimony in this case is based on the unprecedented activities by Mr. Johnson and  
5 his Utility. She is not aware of behavior remotely like this by a regulated water or wastewater  
6 utility prior to this, so she has never before needed to recommend remedies like the ones she  
7 recommends in this case.

8 Ms. Rowell does not base her recommended disallowance of the Pecan Plant on a site visit or  
9 accounting audit. Rather, disallowance is appropriate because this plant has repeatedly  
10 malfunctioned, and, according to the Commission, these malfunctions "raise serious concerns  
11 regarding public safety." The Pecan Plant may be used, but it is not useful due to repeated  
12 malfunctions that endangered public safety.

13 At the Commission's March 3, 2009, Open Meeting, Utility assured the Commissioners that it  
14 had taken a number of steps to ensure that the Pecan Plant sewage discharges had been isolated  
15 incidents that would not recur. However, during the Open Meeting, Utility chose not to tell the  
16 Commissioners about February 22, 2009, sewage spills, which were very similar to the  
17 contamination incidents in 2008. Utility appears to have intentionally withheld relevant  
18 information from the Commissioners about the recent sewage spills in order to gain an extension  
19 of territory.