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BEFORE THE ARIZONA CORPORATION COMMISSION

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KRISTIN K. MAYES, Chairman  
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2009 FEB 25 P 2:58

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 25 2009

DOCKETED BY [Signature]

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

**SWING FIRST'S RESPONSE TO UTILITY'S MOTION TO STRIKE**

**SWING FIRST'S REPLY TO UTILITY'S RESPONSE TO MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL DIRECT TESTIMONY**

1 Swing First Golf LLC ("Swing First") hereby responds to two pleadings by Johnson  
2 Utilities, LLC ("Utility"), a Motion to Strike Pre-Filed Direct Testimony of David Ashton; and a  
3 Response to Swing First's Motion for Leave to File Supplemental Direct Testimony. For the  
4 reasons set forth below, both pleadings are without merit and the requested relief should be  
5 denied.

6 **I Introduction – Utility's Conduct is Unprecedented**

7 To disparage Mr. Ashton, and the extremely serious issues that he attempts to bring to the  
8 Commission's attention, Utility tosses off adjectives such as "unprecedented," "out of bounds,"  
9 and "egregious." These adjectives better apply to Utility's' unprecedented, out-of-bounds,  
10 egregious activities.

11 Swing First does not contest that Mr. Ashton's testimony is out of the ordinary.  
12 However, Utility's conduct has been so out of the ordinary, that there is simply no other way to  
13 bring these repeated, egregious, activities to the Commission's attention in this rate case.

1           And yes, this rate case is absolutely the correct forum to evaluate Utility's activities and  
2 to fashion appropriate remedies. For some issues, this will require that additional evidence be  
3 developed for the Commission's consideration. This is why Swing First recommends a two-  
4 phase procedure, so that the Commission can provide immediate relief when warranted, and then  
5 evaluate issues in the second phase.

6           Amazingly, Utility claims there is no relevance in a rate case for its interactions with its  
7 customers, its service-quality problems, its illegal billing, its illegal affiliate transactions, and its  
8 self-serving delay of this rate filing. Certainly, this is the proper case to consider all these issues.  
9 Utility has never filed a rate case, and likely would not have if the Commission had not ordered  
10 the filing. As part of the rate filing, Utility is asking for a permanent multi-million dollar rate  
11 increase. All these issues are relevant for the Commission to consider in the exercise of its broad  
12 rate-making authority.

## 13   **II     Swing First is Providing Policy Recommendations**

14           Among other things, Swing First is providing recommendations to the Commission  
15 concerning how it should deal with Utility in the context of this rate case. Swing First bases  
16 these recommendations on four sources:

- 17           1. Mr. Ashton's experience;
- 18           2. Commission records;
- 19           3. Press releases from government agencies; and
- 20           4. Local newspapers and magazine articles.

21           All four sources are appropriate for a policy witness to rely on when providing policy  
22 recommendations.

23           Utility asserts that Mr. Ashton is not qualified to provide policy recommendations.  
24 However, Utility does not suggest any particular qualifications that the Commission requires  
25 before a witness can provide policy recommendations. Mr. Aston is an experienced  
26 businessman, with a Masters Degree in Business Administration from Stanford University. Mr.

1 Ashton has personal knowledge of Utility's activities and has additional knowledge obtained  
2 from studying statutes, Commission records, government press releases, and locally published  
3 press reports.

4 Further, Swing First is today filing a notice of substitution of witness. Ms. Sonn Rowell,  
5 an experienced Commission expert, is adopting the policy portions of Mr. Ashton's testimony as  
6 her own direct testimony. Based on her education, experience, and study she offers nine  
7 recommendations on behalf of Swing First for the Commission to consider.

8 Utility objects to Swing First's discussion of government press releases and press reports.  
9 Utility's objections are off base for several reasons. First, Utility does not challenge that the  
10 press releases from the Arizona Department of Environmental Quality ("ADEQ") and the U.S.  
11 Department of Justice accurately summarize the resolution of the agencies' lawsuits against  
12 George Johnson and his affiliated companies. Second, the Commission regularly takes judicial  
13 notice of published reports, especially when they are used to form the basis of a witness' opinion.

14 Second, Utility is not prejudiced by Swing First's use of the published reports. If Utility  
15 does not believe that any portions of the published material is accurate, or that Swing First has  
16 drawn inappropriate conclusions, then Utility can provide, in its rebuttal testimony, its own  
17 version of the facts for the Commission's consideration. In this way, Utility's due-process rights  
18 are protected and the Commission can evaluate these important issues when determining whether  
19 to implement any or all of Ms. Rowell's policy recommendations.

20 Finally, Utility's objections really go to the weight of the evidence. Utility is free to  
21 cross-examine the witnesses' expertise and the basis for their opinions. It will then be up to the  
22 Commission to determine what weight to give to Swing First's policy recommendations.

### 23 **III All the Issues Raised by Swing First are Relevant**

24 As part of a rate case the Commission routinely considers virtually every aspect of a  
25 utility's service. It is difficult to understand how Utility can claim that the following issues are  
26 not relevant:

1. Whether Utility inappropriately discharged raw sewage into a neighborhood wash, whether faulty construction contributed to that discharge, and whether Utility has taken all appropriate steps to ensure that further public-safety threats don not occur;
2. Whether Utility harassed and intimidated customers—including those participating in a neighborhood protest—with frivolous defamation lawsuits;
3. Whether Utility knowingly and illegally stored dangerous sewage sludge at its treatment plant;
4. Whether Utility has been previously subject to numerous environmental fines;
5. Whether Utility knowingly and illegally charges its customers for taxes;
6. Whether Utility delayed this rate filing so it could continue overcharging its water customers millions of dollars per year;
7. Whether Utility has engaged in illegal affiliate transactions;
8. Whether, Utility failed to deliver available effluent to irrigation customers;
9. Whether Utility deliberately billed an incorrect (higher) rate for irrigation customers;
10. Whether Utility deliberately withheld irrigation water during times of high-irrigation needs;
11. Whether Utility deliberately flooded an irrigation customer’s golf course;
12. Whether Utility deliberately tried to intimidate a party from further participating in this case;
13. Whether Utility deliberately tried to embarrass Mr. Ashton by mailing copies of irrelevant court matters to Swing First’s members.

Every single one of these issues is clearly relevant for the Commission to consider during Utility’s rate case. The Commission must also evaluate each one of these to determine whether to implement any of Swing First’s recommendations.

Utility also argues that evidence of George Johnson’s prior bad acts is irrelevant. This is not correct.

Certainly, standing alone, prior bad acts by an affiliate would not necessarily concern the Commission. However, there are two reasons why the Commission should consider these prior bad acts.

1 First, they were by the same person who controls Utility and makes its ultimate decisions.  
2 Utility concedes: “Mr. Johnson owns the majority interest in Johnson Utilities, LLC, which gives  
3 him ultimate decision-making authority for the company.”<sup>1</sup> It is fair then to evaluate Mr.  
4 Johnson’s track record, both individually and as the decision maker for other Johnson  
5 companies.

6 Second, the prior bad acts reveal that Utility has behaved much like the other companies  
7 controlled by Mr. Johnson. Utility has also demonstrated a pervasive disregard for public safety,  
8 the people in its service territory, the environment, and its regulators. There seems to one  
9 common factor for all these bad acts – control by Mr. Johnson.

10 To demonstrate just how far outside the pale Utility’s conduct has been, it is worthwhile  
11 to compare Utility’s conduct to what is expected from a utility regulated by the Commission, for  
12 example Arizona Public Service Company (“APS”).

- 13 • APS would never provide free electricity to an affiliate. Utility has admitted to  
14 providing free water to an affiliate.<sup>2</sup>
- 15 • APS CEO Bill Post would never direct that an APS billing rate be illegally increased.  
16 Mr. Ashton testifies that Mr. Johnson directed an employee to raise Swing First’s  
17 irrigation rate from the lawful \$0.62/1000 gallons to \$3.75/1000 gallons.
- 18 • APS would never withhold available low-cost, environmentally-friendly electricity  
19 from a customer. The evidence so far is that Utility deliberately withheld treated  
20 effluent from Swing First in favor of high-priced water better suited for its potable  
21 water customers.
- 22 • APS would never sue a protestor for defamation to silence the protestor and  
23 intimidate future protest. Utility has done just this.

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<sup>1</sup> See Exhibit A.

<sup>2</sup> See Exhibit B.

- 1 • APS would never deliberately damage a customer's property, even after being asked  
2 to stop. Utility deliberately flooded Swing First's golf course and refused to stop  
3 when asked.
- 4 • Bill Post would never send an intimidating letter to a party's shareholders or  
5 members, threatening to sue them for defamation if they did not proactively oppose  
6 the party's participation in a rate case. George Johnson sent just such a letter to  
7 Swing First's members.
- 8 • Bill Post would never deliberately expose an irrelevant embarrassing incident from a  
9 witness' past. George Johnson sent copies of embarrassing, irrelevant court pleadings  
10 to Swing First's members.
- 11 • Bill Post would never harass a witness by falsely alleging financial impropriety by  
12 that witness. George Johnson falsely alleged financial impropriety by Mr. Ashton in  
13 his letter to the Swing First members.

14 Swing First has asked the Commission to order a second phase for this case, to, among  
15 other things, determine whether to require Utility to show cause why the Commission should not  
16 revoke Utility's certificate of convenience and necessity. To determine whether to order a show-  
17 cause hearing, the Commission will need to evaluate Management's (George Johnson's) prior  
18 bad acts, affiliates' prior bad acts, and Utility's recent bad acts. Swing First's testimony about  
19 such prior bad acts is clearly relevant.

20 **IV The Commission has Full Authority to Implement Each of Swing First's**  
21 **Recommendations**

22 Utility claims that the Commission cannot lawfully implement Mr. Ashton's  
23 recommendations. Utility is incorrect.

24 Swing First will discuss each recommendation in order. This discussion is only  
25 preliminary. The parties will have the opportunity to thoroughly discuss each recommendation  
26 in their briefs.

1           **A     Johnson Utilities Should Not Be Allowed to Increase Its Rates until Its Books**  
2           **and Management Practices Have Been Thoroughly Investigated**

3           The Commission can certainly suspend the time clock in this case until it is satisfied that  
4           Utility's books and records, and those of its transacting affiliates, are accurate. With all due  
5           respect to Staff and RUCO, their resources are limited and their audits do not normally include  
6           general ledgers of transacting affiliates.

7           **B     Johnson Utilities Should Be Required to Immediately Reduce Its Water**  
8           **Rates and Refund Its Overcharges for the Last Two Years**

9           Utility delayed its rate filing for a year, without authorization from the Commission. Its  
10          filing shows that it was overcharging water customers by millions of dollars in the 2007 test  
11          year and earning 34.07%.<sup>3</sup> Swing First's position is that Utility should immediately reduce its  
12          water rates and refund its overcharges for test-year 2007 and 2008.

13          Utility argues that this is a legal issue and that Swing First should not provide testimony  
14          concerning a legal issue. This interpretation is far too narrow.

15          First, Swing First is putting Utility on notice of Swing First's recommendation. If Utility  
16          does not wish to discuss it further in its testimony, it is free to ignore the recommendation.  
17          Second, it is true that the parties will brief the ultimate legal issue of whether Utility was  
18          authorized to delay its filing by just a letter from Staff. However, the Commission should still  
19          require evidence of whether Utility deliberately delayed its filing so that it could continue over-  
20          earning.

21          In a March 30, 2007, letter in Docket No. WS-02987A-05-0088, Utility claimed that it  
22          needed to delay the filing because it was too busy with a proposed sale to the Town of Florence.  
23          But Utility did not disclose whether it was over-earning at the time, which was almost certain to  
24          have been the case. If that information was deliberately withheld from Staff, then it could not  
25          have provided informed consent for the delay.

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<sup>3</sup> Utility makes the peculiar argument that it could not have been overcharging its customers because it did not have an authorized rate of return. However, it filed a case with a 2007 test year. Schedule A-1 shows current earnings on a fair value rate base were 34.07%, compared to its requested 10.43% return. That is undisputed evidence of over-earning. Schedule A-1 also documents the need for an immediate \$2, 233,479 rate decrease. This is clear evidence that Utility was overcharging its water customers in the test year.

1           **C       Johnson Utilities Should Be Required to Refund Its Illegal Superfund Tax**  
2           **Collection**

3           Utility concedes that this is a proper rate case issue. Staff and RUCO have in fact agreed  
4 that Utility cannot lawfully pass through this tax to its customers. However, Utility asserts that it  
5 is purely a legal issue whether to order refunds of illegal superfund taxes. That is incorrect.

6           Again, what did Utility know and when did it know it? In Decision No. 64598, dated  
7 March 4, 2002, the Commission told Utility that it could not pass another usage-based tax  
8 through to its water customers. Whether this Decision controls the similar issue in this case is a  
9 legal issue. However, additional evidence is needed for the Commission to determine whether,  
10 by charging another usage-based tax to its water customers, Utility knowingly disregarded  
11 controlling legal precedent.

12           **D       Johnson Utilities' Pecan Wastewater Treatment Plant Should Not Be**  
13           **Included in Rate Base**

14           Ms. Rowell is an expert on utility accounting. She understands that a utility earns a  
15 return on its plant investment. Based on press reports, the Pecan Plant twice discharged raw  
16 sewage during 2008. Based on Commissioner Mundell's letter, it appears that the plant may  
17 have been inadequately constructed. As next discussed, it appears that the Pecan Plant safety  
18 issues are still not resolved. For these reasons, Swing First recommends that the Pecan  
19 Wastewater Treatment Plant should not be included in rate base.

20           Again, Utility can present evidence and argument to the contrary. It certainly is capable  
21 of so doing. In Docket No. WS-02987A-07-0487, Utility applied to extend its sewer CC&N.  
22 The Pecan Water Treatment Plant's performance issues were closely considered in that case. In  
23 her February 17, 2009, Recommended Opinion and Order ("ROO"), Judge Kinsey discussed the  
24 Pecan Plant at length,<sup>4</sup> and concluded:

25           47. However, Johnson's two recent SSOs [Sewer System Overflows] raise serious  
26 concerns regarding public safety. The Company experienced two SSOs in the  
27 same location within a short time span. The homeowners in the Pecan Creek  
28 North subdivision, living adjacent to the concrete channel where the sewage from  
29 the SSOs was contained, were subjected to viewing sewage from their homes and

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<sup>4</sup> ROO at 7-11.

1 test results of the storm water in the Queen Creek wash adjacent to where the  
2 SSOs occurred continue to test positive for the presence of E. coli and coliform.  
3 Further, even though Johnson has entered into a Consent Order with ADEQ,  
4 ADEQ has not released Johnson from the twice weekly requirement to test the  
5 storm water in the Queen Creek wash and has not closed the March 2008 NOV.<sup>5</sup>

6 Judge Kinsey did not believe that Utility had fully dealt with all the Pecan Plant Issues,  
7 so her ROO contains three additional ordering paragraphs.

8 IT IS FURTHER ORDERED that Johnson Utility L.L.C., shall file by December  
9 31, 2009, with Docket Control, as a compliance item in this docket,  
10 documentation from the Arizona Department of Environmental Quality  
11 demonstrating that Johnson Utility L.L.C.'s Pecan Water Reclamation Plant  
12 (ADEQ Inventory #105324) is in full compliance and that the Notice of Violation  
13 issued on March 4,2008, and June 5,2008, have been closed.

14 IT IS FURTHER ORDERED that if Johnson Utility L.L.C. fails to meet the  
15 above timeframe, the Utilities Division Staff shall file a pleading requesting the  
16 Commission to order Johnson Utility L.L.C. to appear and show cause why the  
17 conditional extension of its wastewater Certificate of Convenience and Necessity  
18 granted herein, should not be considered null and void.

19 IT IS FURTHER ORDERED that if Johnson Utility L.L.C. achieves full  
20 compliance with the Arizona Department of Environmental Quality for its Pecan  
21 Water Reclamation Plant (ADEQ Inventory #105324) on or before December 31,  
22 2009, the extension of Johnson Utility L.L.C.'s Wastewater Certificate of  
23 Convenience and Necessity shall become effective on the first day of the month  
24 following Johnson Utility L.L.C.'s filing with Docket Control proof of its  
25 compliance and the Utilities Division Staff's confirmation of such compliance  
26 with Docket Control.<sup>6</sup>

27 If Judge Kinsey still has serious public-safety concerns about the Pecan Plant, then this is  
28 certainly a legitimate issue for the Commission to investigate in this rate-case docket. The  
29 Commission can lawfully conclude that the plant was not properly constructed and operated.  
30 The Commission can lawfully conclude that the plant was still not in environmental compliance  
31 many months after the test year. Therefore, the Commission can ultimately conclude that the  
32 Pecan Plant should not be included in rate base in this rate case.

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<sup>5</sup> ROO at 11:11-18.

<sup>6</sup> ROO at 13:25 – 14:11.

1           **E       Johnson Utilities Should Be Required to Dismiss All Pending Defamation**  
2           **Lawsuits against Its Customers, Pay All of Their Court Costs and Legal Fees,**  
3           **and Apologize to Each Customer**

4           Based on press reports, it appears that customers protested the Pecan Plant's discharges  
5 of raw sewage. It also appears that Utility sued at least two of the protesters for defamation.

6           Utility's conduct is outrageous and unprecedented. Utility's customers were frightened  
7 by two sewage discharges in their backyards, which were loaded with dangerous e-coli bacteria.  
8 They justifiably desired that Utility take all reasonable steps to clean up the raw sewage and  
9 ensure that this never happen again. The purpose of the lawsuits was clearly to silence these  
10 protestors and to intimidate further protest. Based on additional research, it also appears that the  
11 lawsuits are frivolous. Utility is very unlikely to ever recover a cent from its customers, but they  
12 will be forced to endure the additional trauma and expense of defending the lawsuits.

13           Other Utilities don't sue their customers for defamation. Counsel performed a 50-state  
14 search for appellate decisions involving utility lawsuits against customers for defamation and  
15 was unable to locate even one such appellate case.

16           Utility claims without citation that the Commission—the most powerful utility  
17 commission in the United States—cannot order utility to dismiss the lawsuits, pay court costs  
18 and legal fees and apologize. Utility is free to make this argument in its brief. However, even  
19 assuming that Utility is correct, the Commission could certainly condition any relief upon  
20 compliance with the Commission's wishes.

21           As a victim of another Utility defamation lawsuit, Mr. Ashton has personal knowledge of  
22 the pain, inconvenience, and expense associated with defending one of Utility's defamation  
23 lawsuits. Mr. Ashton can certainly make his recommendation for the Commission to consider.

24           **F       Johnson Utilities Should Be Fined for Its Blatant Disregard of Its Public**  
25           **Service Obligations, Environmental Laws, and Explicit Commission Orders**

26           Utility misreads this recommendation. Swing First was not referring only to Mr.  
27 Ashton's mistreatment by Utility (although there have been numerous such incidents), but also to  
28 the San Tan Plant issues, Utility's on-site sewage sludge storage, Utility's defamation lawsuits

1 against its customers, Utility's historical environmental record, its delayed rate-case filing, its  
2 illegal Superfund pass-through, and its illegal affiliate transactions.

3 Utility does not dispute that the Commission has the power to fine Utility for these  
4 violations. It simply does not want the Commission to consider the appropriateness of fines in  
5 this case. That is not a valid reason to strike these recommendations.

6 **G Johnson Utilities Should Be Penalized with a Reduced Return on Equity**

7 Utility claims that the Commission cannot penalize a utility with a reduced return on  
8 equity. Again, Utility is wrong.

9 The Commission has constitutional jurisdiction over rate-making. Reducing an allowed  
10 return on equity is certainly allowed, as long as the result is "fair." In any rate case, there will be  
11 testimony from many sources that will allow the Commission to determine a large zone of "fair"  
12 returns on equity. As long as the Commission's final allowed return is within the zone of  
13 fairness, the result will satisfy the constitution

14 For example, the evidence in a case may establish a zone of fair rates of return on equity  
15 from 8.0 to 12.0%.<sup>7</sup> Ordinarily, the Commission might set the allowed return somewhere in the  
16 middle of the zone, perhaps at 10%. However, for a Utility with significant public-service  
17 issues, the Commission could set the allowed return at the lowest "fair" return, or 8.0%.

18 In other states, utility commissions with much more prescribed jurisdiction than this  
19 Commission's broad jurisdiction have in fact reduced returns on equity to address utility  
20 misfeasance. The parties can more thoroughly address this issue in their briefs, but here are three  
21 citations:

- 22 • *In re Citizens Utilities Co.*, 171 Vt. 447, 769 A.2d 19 (Vt., 2000); ROE reduced by  
23 525 basis points;
- 24 • *Gulf Power Co. v. Wilson*, 597 So.2d 270 (Fla., 1992); ROE reduced from 12.5% to  
25 12.05%; and

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<sup>7</sup> These numbers are purely hypothetical.

- 1 • *Mountain Fuel Supply Co. v. Public Service Com'n of Utah*, 861 P.2d 414 (Utah,  
2 1993); ROE reduced from 12.2 to 12.1%.

3 **H Following Completion of the Independent Management and Financial**  
4 **Audits, the Commission Should Require Johnson Utilities to Demonstrate**  
5 **Why It Should Not Surrender Its Certificate of Convenience and Necessity**

6 Swing First does not dispute that the Commission does not presently have the ability in  
7 this case to require Utility to surrender its CC&N. That is why it made the next recommendation  
8 – to bifurcate the case into two phases. The second phase would be separately noticed to include  
9 the investigations. At the end of Phase II, the Commission would determine whether to institute  
10 a separate show-cause case. Utility has provided no basis to strike this recommendation.

11 **I The Commission Should Bifurcate this Case into Two Phases**

12 Utility basically argues that as long as recommendations 1-8 are being stricken, the  
13 Commission should also strike recommendation 9. Because there is no basis to strike these  
14 recommendations, there is no basis to strike recommendation 9.

15 **V Mr. Ashton's Supplemental Direct Testimony Should be Admitted**

16 Utility states: "The Supplemental Ashton Testimony pertains to matters that are far  
17 outside the scope of this rate case." To the contrary, the supplemental testimony concerns  
18 matters the Utility deliberately interjected into this rate case. Among other things, the letter:

- 19 a. Threatens to sue the member for defamation if the member fails to proactively oppose  
20 Swing First's activities at the Corporation Commission;
- 21 b. Attacks Mr. Ashton's character by attaching information concerning an irrelevant  
22 legal matter involving Mr. Ashton;
- 23 c. Disparages without basis Mr. Ashton's management of Swing First;
- 24 d. Libels Mr. Ashton by insinuating financial impropriety; and
- 25 e. Seeks to damage Mr. Ashton's business relationship with Swing First's members and  
26 investors.

1 The letter is the latest in a long series of bad acts by Mr. Johnson and his Utility. Further, it is a  
2 direct attempt to intimidate a party and a witness in this rate case by threatening legal action.  
3 This is hardly "extraneous."

4 Finally, Utility does not claim that it cannot timely respond to the Supplemental Direct  
5 Testimony as part of its rebuttal filing.

6 **VI Conclusion**

7 Utility has provided no lawful basis to strike any portion of Swing First's Direct  
8 Testimony or to oppose late-filing Mr. Ashton's Supplemental Direct Testimony. Utility's  
9 motion to strike should be denied and Mr. Ashton's Supplemental Direct Testimony admitted.

10 RESPECTFULLY SUBMITTED on February 25, 2009.

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**Original** and 13 copies **filed**  
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**Copy** of the foregoing **delivered**  
on February 25, 2009, to:

Teena Wolfe, Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
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Phoenix, Arizona 85007

1 **Copy of the foregoing mailed and e-mailed**  
2 on February 25, 2009, to:

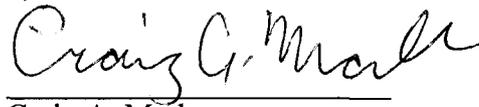
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30 Craig A. Marks

**Docket No. WS-02987A-08-0180**  
**Swing First Golf LLC**  
**Third Set of Data Requests to Johnson Utilities LLC**  
**(RATE CASE)**

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3.3 Please identify the members of Johnson Utilities LLC.

Response: The members of Johnson Utilities are The George H. Johnson Revocable Trust and Connorg, LLC.

Prepared by: Brian Tompsett, Executive Vice President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

3.4 Please admit or deny that George Johnson acts as the Chief Executive of Johnson Utilities LLC. If your answer is "deny," please explain your answer.

Response: Mr. Johnson owns the majority interest in Johnson Utilities, LLC, which gives him ultimate decision-making authority for the company.

Prepared by: Brian Tompsett, Executive Vice President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

3.5 Please admit or deny that Utility's affiliated entity and/or George Johnson filed a defamation lawsuit or counterclaim against Arizona Attorney General Terry Goddard and/or his office.

Objection: Johnson Utilities objects to this data request on the grounds that legal actions filed by affiliates of Johnson Utilities and/or George Johnson are not relevant to the rate case and are outside the scope of discovery. Johnson Utilities further asserts that legal pleadings filed in courts of law are public documents which speak for themselves.

Prepared by: Brian Tompsett, Executive Vice President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

**Docket No. WS-02987A-08-0180  
Swing First Golf LLC  
First Data Requests to Johnson Utilities LLC**

**(RATE CASE)**

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1.15. During the period of 2005 to the present did Utility deliver treated effluent to any Utility affiliate or other entity controlled by George Johnson?

Response: Yes.

Prepared by: Brian Tompsett, Executive Vice President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

1.16. If the answer to Question 1.15 is "yes" for any month, what rate did the affiliate pay for the treated effluent during that month? Please substantiate your response with copies of bills, together with cancelled checks or other evidence of payment.

Response: Johnson Utilities delivers effluent from its Section 11 WRP to a storage facility on the golf course ("Oasis Golf Course") at The Club at Oasis ("Oasis") pursuant to an Effluent Storage and Distribution Lease ("Effluent Storage Lease") dated January 1, 2006. The Oasis is an affiliate of Johnson Utilities. The Section 11 WRP generates effluent which exceeds the demand for effluent in the vicinity of the Section 11 WRP. The Effluent Storage Lease allows Johnson Utilities to deliver effluent from the Section 11 WRP to the Oasis Golf Course which exceeds the golf course's demand for effluent. Thus, at certain times effluent overflows the storage facility at the Oasis Golf Course and the course must be closed for business.

Johnson Utilities has discovered that it was not charging the Oasis Golf Course for the effluent the golf course was receiving. The golf course should have been charged a minimum for the effluent delivered. Johnson Utilities will be addressing this oversight in its rate case filing with an appropriate adjustment.

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