



0000094790

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2009 MAR 23 P 4: 56

COMMISSIONERS

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

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 23 2009

DOCKETED BY

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

**JOHNSON UTILITIES, LLC'S  
NOTICE OF FILING  
SUPPLEMENTAL REBUTTAL  
TESTIMONY**

Johnson Utilities, LLC hereby files its Supplemental Rebuttal Testimony of Brian  
P. Tompsett.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of March, 2009.

SNELL & WILMER L.L.P.

By   
Jeffrey W. Crockett  
Bradley S. Carroll  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2202  
Attorneys for Johnson Utilities, LLC

ORIGINAL and 13 copies filed this  
23<sup>rd</sup> day of March, 2009, with:

Snell & Wilmer

L.L.P.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 Docket Control  
2 ARIZONA CORPORATION COMMISSION  
3 1200 West Washington Street  
4 Phoenix, Arizona 85004

5 COPIES of the foregoing hand-delivered this  
6 23rd day of March, 2009, to:

7 Teena Wolfe, Administrative Law Judge  
8 Hearing Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 W. Washington Street  
11 Phoenix, Arizona 85007

12 Ayesha Vohra, Staff Attorney  
13 Legal Division  
14 ARIZONA CORPORATION COMMISSION  
15 1200 W. Washington Street  
16 Phoenix, Arizona 85007

17 Ernest Johnson, Director  
18 Utilities Division  
19 ARIZONA CORPORATION COMMISSION  
20 1200 W. Washington Street  
21 Phoenix, Arizona 85007

22 COPIES of the foregoing sent via e-mail and  
23 U.S. mail this 23<sup>rd</sup> day of March, 2009, to:

24 Craig A. Marks  
25 CRAIG A. MARKS, PLC  
26 10645 N. Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
Attorney for Swing First Golf, LLC

Daniel W. Pozefsky, Chief Counsel  
Residential Utility Consumer Office  
1110 West Washington St., Suite 220  
Phoenix, Arizona 85007

**Snell & Wilmer**

LLP

LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2302  
(602) 382-6000

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

James E. Mannato  
Florence Town Attorney  
775 N. Main Street  
P. O. Box 2670  
Florence, Arizona 85253



---

CROCKEJSWDMS\9726555.1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C., DBA  
JOHNSON UTILITIES COMPANY, FOR AN  
INCREASE IN ITS WATER AND WASTE-  
WATER RATES FOR CUSTOMERS  
WITHIN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

**PRE-FILED SUPPLEMENTAL REBUTTAL TESTIMONY OF BRIAN P.  
TOMPSETT**

**ON BEHALF OF**

**JOHNSON UTILITIES, L.L.C., DBA JOHNSON UTILITIES COMPANY**

**MARCH 23, 2009**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I.	INTRODUCTION . . . . .	1
II.	SUPPLEMENTAL REBUTTAL TO REVISED DIRECT TESTIMONY OF SONN ROWELL . . . . .	2
III.	SUPPLEMENTAL REBUTTAL TO REVISED DIRECT TESTIMONY OF DAVID ASHTON . . . . .	9

1 **I. INTRODUCTION.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Brian P. Tompsett. My business address is 5230 East Shea  
4 Boulevard, Scottsdale, Arizona, 85254.

5 **Q. MR. TOMPSETT, BY WHOM ARE YOU EMPLOYED AND IN WHAT**  
6 **CAPACITY?**

7 A. I am the Executive Vice President of Johnson Utilities, L.L.C., doing business as  
8 Johnson Utilities Company ("Johnson Utilities" or the "Company").

9 **Q. HAVE YOU PREVIOUSLY PRE-FILED TESTIMONY IN THIS**  
10 **DOCKET?**

11 A. Yes. On March 9, 2009, I pre-filed Rebuttal Testimony.

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**  
13 **TESTIMONY IN THIS PROCEEDING?**

14 A. The purpose of my supplemental rebuttal testimony is to address specific issues  
15 raised in the Revised Direct Testimonies of Swing First Golf ("SFG") witnesses  
16 David Ashton ("Ashton") and Sonn Rowell ("Rowell").

17 **Q. IS JOHNSON UTILITIES PRE-FILING ANY OTHER TESTIMONY IN**  
18 **RESPONSE TO THE PRE-FILED REVISED DIRECT TESTIMONIES OF**  
19 **MR. ASHTON AND MS. ROWELL?**

20 A. Yes. Simultaneous with the filing of my supplemental rebuttal testimony, Johnson  
21 Utilities witness Thomas J. Bourassa is filing supplemental rebuttal testimony  
22 addressing issues raised by SFG witness Rowell, which are not addressed herein.

23 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

24 A. Section II addresses issues raised in the Revised Direct Testimony of Sonn  
25 Rowell. Section III addresses issues raised in the Revised Direct Testimony of  
26 David Ashton.

1 **II. SUPPLEMENTAL REBUTTAL TO REVISED DIRECT TESTIMONY OF**  
2 **SONN ROWELL.**

3 **Q. MR. TOMPSETT, HAVE YOU EVER MET MS. ROWELL?**

4 **A. I have not.**

5 **Q. TO YOUR KNOWLEDGE, HAS GEORGE JOHNSON EVER MET MS.**  
6 **ROWELL?**

7 **A. No. Mr. Johnson has never met Ms. Rowell.**

8 **Q. TO YOUR KNOWLEDGE, HAS MS. ROWELL EVER INSPECTED THE**  
9 **UTILITY INFRASTRUCTURE OF JOHNSON UTILITIES OR BEEN BY**  
10 **THE OFFICE TO AUDIT JOHNSON UTILITIES BOOKS?**

11 **A. No. Ms. Rowell has not requested nor has Johnson Utilities ever granted access to**  
12 **Ms. Rowell to inspect its utility facilities.**

13 **Q. HAS MS. ROWELL EVER BEEN TO THE OFFICES OF JOHNSON**  
14 **UTILITIES TO INSPECT OR AUDIT THE COMPANY'S BOOKS AND**  
15 **RECORDS?**

16 **A. No. To my knowledge, Ms. Rowell has never been to the offices of Johnson**  
17 **Utilities.**

18 **Q. ON PAGES 3-4 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
19 **REFERENCES A DECEMBER 2007 NEWS RELEASE FROM THE**  
20 **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY ("ADEQ")**  
21 **CONCERNING A LAWSUIT AND SETTLEMENT INVOLVING GEORGE**  
22 **JOHNSON AND AFFILIATED COMPANIES AND HIS CONTRACTORS.**  
23 **WAS JOHNSON UTILITIES A PARTY TO THE LAWSUIT**  
24 **REFERENCED BY MS. ROWELL?**

25 **A. No. The lawsuit and settlement referenced by Ms. Rowell was between ADEQ,**  
26 **George Johnson, certain of Mr. Johnson's other companies, and other defendants**

1 arising out of activities that allegedly occurred on the La Osa Ranch in southern  
2 Arizona.

3 **Q. DID THE SETTLEMENT NEGATIVELY IMPACT JOHNSON UTILITIES**  
4 **OR ITS CUSTOMERS?**

5 A. No. As I stated above, the referenced settlement did not involve Johnson Utilities,  
6 nor did it have any negative impact on the Company or its customers. I note also  
7 that the news released cited by Ms. Rowell does not mention Johnson Utilities.

8 **Q. ON PAGE 4 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
9 **TESTIFIES THAT "GEORGE JOHNSON AND THE OTHER**  
10 **DEFENDANTS AGREED TO PAY A FINE OF 12.1 MILLION DOLLARS-**  
11 **THE LARGEST CIVIL ENVIRONMENTAL SETTLEMENT IN ARIZONA**  
12 **HISTORY." WAS JOHNSON UTILITIES RESPONSIBLE FOR ANY**  
13 **PORTION OF THE SETTLEMENT?**

14 A. No. As I stated above, Johnson Utilities was not a party to the ADEQ lawsuit  
15 involving the La Osa Ranch, nor was the Company responsible for any portion of  
16 the monetary settlement that resolved the lawsuit. Moreover, it should also be  
17 noted that the decision to settle the case and pay a monetary penalty without  
18 admission of liability was made by the insurance carrier of the companies that  
19 were involved.

20 **Q. ON PAGE 4 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
21 **REFERENCES A FEBRUARY 2008 ARTICLE FROM PHOENIX**  
22 **MAGAZINE WHICH DISCUSSES ACTIVITIES THAT ALLEGEDLY**  
23 **OCCURRED ON THE LA OSA RANCH. DID ANY OF THE ALLEGED**  
24 **ACTIVITIES INVOLVE JOHNSON UTILITIES OR NEGATIVELY**  
25 **IMPACT ANY OF ITS CUSTOMERS?**

26

1 A. No. The February 2008 article from Phoenix Magazine discussed activities which  
2 allegedly occurred on the La Osa Ranch. These activities did not involve Johnson  
3 Utilities, nor did they impact Johnson Utilities or its customers in any way.

4 **Q. ON PAGE 5 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
5 **DICUSSES A LAWSUIT BY THE ENVIRONMENTAL PROTECTION**  
6 **AGENCY ("EPA") AGAINST "GEORGE JOHNSON, JOHNSON**  
7 **INTERNATIONAL, GENERAL HUNT, AND CONTRACTORS" AND A**  
8 **RESULTING CIVIL PENALTY. WAS JOHNSON UTILITIES A PARTY**  
9 **TO THE REFERENCED LAWSUIT?**

10 A. No. The lawsuit involved an alleged Clean Water Act violation associated with  
11 development activities along the Santa Cruz River. Johnson Utilities was not a  
12 party to the EPA lawsuit.

13 **Q. WAS JOHNSON UTILITIES RESPONSIBLE FOR PAYING ANY**  
14 **PORTION OF THE CIVIL PENALTY?**

15 A. No. Johnson Utilities was not a party to the EPA lawsuit or the resulting  
16 settlement.

17 **Q. DID THE CIVIL PENALTY PAID TO RESOLVE THE EPA LAWSUIT**  
18 **NEGATIVELY IMPACT JOHNSON UTILITIES OR ITS CUSTOMERS?**

19 A. No. Johnson Utilities was not a party to the EPA lawsuit, nor was the Company  
20 responsible for paying any portion of the monetary settlement that resolved the  
21 lawsuit.

22 **Q. ON PAGE 5 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
23 **DISCUSSES AN ALLEGED DISCHARGE OF RAW SEWAGE IN A**  
24 **NEIGHBORHOOD AND INTO QUEEN CREEK WASH IN THE SPRING**  
25 **OF 2008. DID JOHNSON UTILITES DISCHARGE RAW SEWAGE INTO**  
26 **QUEEN CREEK WASH?**

1 A. No. Johnson Utilities strongly refutes the assertion that it discharged raw sewage  
2 into Queen Creek Wash. What occurred in May 2008 was a sewer system  
3 overflow ("SSO") in the Pecan North subdivision adjacent to Queen Creek Wash.  
4 The SSO was not the result of any negligence or malfeasance by Johnson Utilities,  
5 but of the clogging of lift station pumps with construction debris and household  
6 products, including mop heads, which should never have been discharged into a  
7 sanitary sewer in the first place. The SSO was contained in a concrete spillway  
8 adjacent to Queen Creek Wash, and Johnson Utilities does not believe that any  
9 sewage made its way into the wash. Notwithstanding, as a public service Johnson  
10 Utilities disinfected the standing storm water in Queen Creek Wash pursuant to a  
11 consent order with ADEQ. Queen Creek Wash receives storm water runoff from  
12 adjacent subdivisions on either side of the wash as well as upstream runoff.

13 **Q. DID THE SSO NEGATIVELY IMPACT SFG?**

14 A. No. The SSO occurred approximately five miles away from SFG's golf course and  
15 could not have impacted SFG's operations in any way.

16 **Q. DID THE SSO NEGATIVELY IMPACT CUSTOMERS OF JOHNSON**  
17 **UTILITIES?**

18 A. No. There are no reported or known adverse health consequences to residents in  
19 the area of the SSO. Johnson Utilities provided information to customers  
20 regarding the SSO at two customer events, and also provided written materials to  
21 the Company's customers regarding the proper use of a sanitary sewer system (*i.e.*,  
22 information regarding things which can and cannot be discharged into the sewer  
23 system).

24 **Q. ON PAGE 5 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
25 **STATES THAT "GEORGE JOHNSON'S UTILITY ENTERED INTO A**  
26 **CONSENT DECREE WITH ADEQ TO CLEAN AND DISINFECT THE**

1           **WASH." DID THE CONSENT DECREE INVOLVE SFG'S GOLF**  
2           **COURSE?**

3           A.    No.

4           **Q.    HAS JOHNSON UTILITIES FULLY COMPLIED WITH THE TERMS**  
5           **AND CONDITIONS OF THE CONSENT DECREE?**

6           A.    Yes. In response to the SSO, ADEQ issued Compliance Order No. P-57-08 dated  
7           July 14, 2008, which led to a Consent Order between ADEQ and Johnson Utilities  
8           dated September 15, 2008. Pursuant to the Consent Order, Johnson Utilities  
9           treated the standing storm water in Queen Creek Wash. On November 17, 2008,  
10          ADEQ issued a Termination of Consent Order on the basis that Johnson Utilities  
11          had demonstrated to ADEQ that the requirements imposed under the Consent  
12          Order (P-57-08) had been met. Johnson Utilities is now awaiting closure of the  
13          NOV docket by ADEQ.

14          **Q.    ON PAGES 6-7 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
15          **TESTIFIES REGARDING "THE ALLEGED ILLEGAL STORAGE OF**  
16          **SEWAGE SLUDGE BY JOHNSON UTILITIES." COULD YOU PLEASE**  
17          **EXPLAIN THIS ARTICLE?**

18          A.    Yes, the October 28, 2008, East Valley Tribune article alleges that Johnson  
19          Utilities improperly stored sewage sludge on-site at the Company's Section 11  
20          wastewater treatment plant ("Section 11 WWTP"). Johnson Utilities has and will  
21          continue to vigorously contest this allegation by ADEQ. Johnson Utilities  
22          contends that documents that have been provided to ADEQ will support the  
23          Company's position that the allegations are without merit.

24          **Q.    ON PAGE 8 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
25          **TESTIFIES: "UTILITY'S WATER BUSINESS WAS SIGNIFICANTLY**  
26          **OVEREARNING." TO YOUR KNOWLEDGE, HAD MS. ROWELL**

1           **PERFORMED AN ANALYSIS TO DETERMINE WHETHER OR NOT THE**  
2           **COMPANY WAS OVEREARNING PRIOR TO MAKING THE ABOVE**  
3           **STATEMENT?**

4   A.   No. In response to Johnson Utilities Data Request No. JU 4.22, Ms. Rowell  
5       admitted that she did not perform an earnings analysis to support her statement.  
6       Mr. Bourassa, in his Supplemental Rebuttal Testimony will address Ms. Rowell's  
7       specific allegation and will address the Company's earnings.

8   **Q.   ON PAGE 9 OF HER REVISED DIRECT TESTIMONY (LINES 3-19), MS.**  
9       **ROWELL MAKES NINE RECOMMENDATIONS. TO YOUR**  
10      **KNOWLEDGE, HAS MS. ROWELL MADE ANY OF THE NINE**  
11      **RECOMMENDATIONS IN ANY OTHER CASE IN WHICH SHE HAS**  
12      **APPEARED AS A WITNESS BEFORE THE COMMISSION?**

13   A.   No. In response to Johnson Utilities Data Request No. JU 4.23, Ms. Rowell  
14      admitted that she had never made any of the nine recommendations in any other  
15      case in which she has appeared as a witness before the Commission. In fact, Ms.  
16      Rowell admitted that she did not independently develop the nine recommendations  
17      as her own work product, but simply adopted these recommendations which were  
18      originally proposed by Mr. Ashton in the Ashton Direct Testimony.

19   **Q.   ON PAGE 9 OF HER REVISED DIRECT TESTIMONY, MS. ROWELL**  
20      **RECOMMENDS THAT "UTILITY'S PECAN WASTEWATER TREAT-**  
21      **MENT PLANT SHOULD NOT BE INCLUDED IN RATE BASE." HAS**  
22      **MS. ROWELL CONDUCTED AN ON-SITE INSPECTION OF THE**  
23      **PECAN WASTEWATER TREATMENT PLANT?**

24   A.   No. As I stated above, Ms. Rowell has not requested access to inspect any of  
25      Johnson Utilities' plant, including the Pecan wastewater treatment plant ("Pecan  
26

1 WWTP"), nor has Johnson Utilities granted access to Ms. Rowell to inspect the  
2 Pecan WWTP.

3 **Q. IS MS. ROWELLS RECOMMENDATION BASED UPON HER**  
4 **CONCLUSION THAT THE PECAN WWTP IS EXCESS CAPACITY?**

5 A. No. In response to Johnson Utilities Data Request No. JU 4.26, Ms. Rowell  
6 admitted that her recommendation is not based on any determination that there is  
7 excess capacity at the plant, but rather that the plant should be removed from rate  
8 base because ADEQ has not yet closed the Notice of Violation ("NOV") docket.  
9 Staff witness Marlin Scott previously testified that although the Pecan WWTP has  
10 adequate capacity to serve the present customer base, the plant will need an  
11 additional two million gallons of treatment capacity within the next 5 years (*See*  
12 *Direct Testimony of Marlin Scott, Exhibit MSJ, page 32*). Thus, the PECAN  
13 WWTP is necessary to serve existing customers and should properly be included  
14 in rate base. Mr. Bourassa will address the appropriateness of including the Pecan  
15 WWTP in rate base in his Supplemental Rebuttal Testimony.

16 **Q. REGARDING THE NOV AT THE PECAN WWTP, HAS JOHNSON**  
17 **UTILITIES COMPLIED WITH ADEQ'S REQUIREMENTS TO CLOSE**  
18 **OUT THE NOV?**

19 A. Yes. As I testified above, on November 17, 2008, ADEQ issued a Termination of  
20 Consent Order on the basis that Johnson Utilities had demonstrated to ADEQ that  
21 the requirements imposed under the Consent Order (P-57-08) had been met.  
22 Johnson Utilities is now awaiting final closure of the NOV docket by ADEQ.

23 **Q. WAS THE ISSUANCE OF THE NOV'S BY ADEQ BASED UPON A**  
24 **FINDING THAT THE PECAN WWTP WAS UNSAFE OR OTHERWISE A**  
25 **THREAT TO PUBLIC SAFETY?**

26

1 A. No. There has never been any finding by the Arizona Corporation Commission or  
2 ADEQ that the Pecan WWTP is a threat to public safety, or that the plant is not  
3 operating properly, and Ms. Rowell provides no evidence to the contrary. The  
4 problem which led to the NOV's was not associated with the Pecan WWTP itself  
5 but with clogged pumps in the adjacent lift station. The pumps were clogged with  
6 construction debris and other materials that were discharged into the sewer which  
7 should never have been discharged into a sanitary sewer system. Johnson Utilities  
8 replaced the pumps in the lift station with larger pumps and added screens which  
9 has eliminated further clogs of the pumps.

10 **III. SUPPLEMENTAL REBUTTAL TO REVISED DIRECT TESTIMONY OF**  
11 **DAVID ASHTON.**

12 **Q. AT PAGE 3 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON**  
13 **DISCUSSES A 1999 CONTRACT TO RECEIVE EFFLUENT FROM**  
14 **JOHNSON UTILITIES. ARE YOU FAMILIAR WITH THIS CONTRACT?**

15 A. Yes. Johnson Ranch Holdings, L.L.C., ("JR Holdings") was the developer of a  
16 master-planned community in Pinal County known as Johnson Ranch ("Johnson  
17 Ranch"). Johnson Ranch is within the certificate of convenience and necessity of  
18 Johnson Utilities. On September 17, 1999, Johnson Utilities entered into an  
19 Agreement Regarding Utility Service (the "Agreement") with JR Holdings  
20 pertaining to the provision of water and wastewater services within Johnson  
21 Ranch. Commission approval of the Agreement was not required, and the  
22 Agreement was not submitted to the Commission. On or about November 8,  
23 2004, SFG purchased the 18-hole golf course and club house at Johnson Ranch  
24 (the "Golf Club") from JR Holdings. In connection with the sale of the Golf Club,  
25 Johnson Utilities believed that the Agreement was partially assigned to SFG,  
26 which apparently is not the case, as discussed below. Johnson Utilities supplies

1 Non-Potable Central Arizona Project ("CAP") water and effluent to SFG to water  
2 the golf course pursuant to tariffs filed with and approved by the Commission in  
3 accordance with the Agreement. Johnson Utilities also provides water and/or  
4 wastewater services to SFG's club house, pro shop, hole 15 restroom facility, and  
5 maintenance facility. SFG has five separate accounts with Johnson Utilities.

6 **Q. HOW IS WATER SERVICE PROVIDED TO SFG'S GOLF COURSE?**

7 A. CAP water and effluent are delivered to Swing First Golf through two entirely  
8 separate pipeline conveyance systems, with each system having its own meter to  
9 measure the effluent or the CAP water, respectfully. In addition, effluent and CAP  
10 water are separate and distinct tariffed services authorized at different  
11 Commission-approved rates, so Johnson Utilities must separately meter those  
12 different services. Johnson Utilities' Commission-approved tariffs require a  
13 monthly minimum charge for each meter.

14 **Q. WHAT ARE THE RATES JOHNSON UTILITIES CHARGES SFG FOR**  
15 **EFFLUENT AND CAP WATER?**

16 A. Consistent with its Commission-approved tariffs and Paragraph 9(b) of the  
17 Agreement, Johnson Utilities charges SFG \$0.62 per thousand gallons of effluent  
18 delivered, when available, and \$0.83 per thousand gallons for CAP water  
19 delivered.

20 **Q. HAVE THERE BEEN ANY BILLING DISPUTES BETWEEN JOHNSON**  
21 **UTILITIES AND SFG?**

22 A. From time to time during the years 2004 through 2007, clerical and software errors  
23 occurred in the rates charged by Johnson Utilities for CAP water and effluent  
24 delivered to SFG. To the best of my knowledge, information and belief, these  
25 errors have all been corrected and proper credits have been applied to the  
26 appropriate SFG accounts.

1 Q. IS SFG AWARE THAT THESE BILLING ERRORS HAVE BEEN  
2 CORRECTED?

3 A. Yes. The correction of billing errors on invoices was the subject of multiple  
4 communications between Johnson Utilities and Mr. Ashton of SFG.

5 Q. COULD YOU PLEASE DESCRIBE THE BILLING CREDITS THAT  
6 HAVE BEEN ISSUED?

7 A. On Account No. 00119200-01 (CAP water), Johnson Utilities provided account  
8 credits of \$1,260.43 in September 2007 and \$43,358.92 in December 2007. On  
9 Account No. 00119200-02 (CAP water), Johnson Utilities provided an account  
10 credit of \$8,382.34 in December 2007. The credits applied to SFG's CAP  
11 accounts total \$53,001.69.

12 On Account No. 00120362-01 (effluent), Johnson Utilities provided  
13 account credits of \$1,938.86 in September 2007 and \$45,892.94 in December  
14 2007, totaling \$47,831.80.

15 The credits applied to SFG's CAP and effluent accounts total a little more  
16 than \$100,000. The credits reflect appropriate credits for the associated  
17 transaction privilege taxes and water quality assurance revolving fund taxes.

18 Q. ON PAGE 2 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON  
19 STATES: "MR. JOHNSON HAS USED HIS UTILITY TO TRY TO BOTH  
20 OVERCHARGE SWING FIRST AND TO CHEAT US OUT OF MONEY  
21 HE OWES US." ARE YOU SUPPRISED AT THIS ALLEGATION?

22 A. Yes. As I stated above, billing errors have all been corrected and the proper credits  
23 have been applied to the appropriate SFG accounts. In fact, in an e-mail from Mr.  
24 Ashton to me dated November 21, 2007, Mr. Ashton agreed to the \$100,000 in  
25 credits on the SFG effluent and CAP accounts. Currently, SFG has an outstanding  
26

1 combined balance on its effluent and CAP accounts of \$95,029.24, including  
2 accrued interest and late fees.

3 **Q. YOU STATED ABOVE THAT JOHNSON UTILITIES WAS UNDER THE**  
4 **BELIEF THAT THE AGREEMENT WAS PARTIALLY ASSIGNED.**  
5 **WOULD YOU PLEASE EXPLAIN?**

6 A. Johnson Utilities was under a belief that the Agreement had been assigned and  
7 only recently found out through a data request to SFG that it was not.

8 **Q. ON PAGE 3 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON**  
9 **STATES THAT: "SWING FIRST INHERITED A 1999 CONTRACT**  
10 **WHICH PROVIDES US THE FIRST RIGHT TO IRRIGATE THE**  
11 **JOHNSON RANCH GOLF COURSES WITH ANY EFFLUENT**  
12 **GENERATED BY UTILITY WITHIN ITS SERVICE TERRITORY." IS**  
13 **THAT TRUE?**

14 A. No. First, as I stated above, the Agreement was apparently never assigned to SFG  
15 so any priority language is not effective. Second, only Johnson Utilities' Santan  
16 Wastewater Treatment Plant ("Santan WWTP") is physically connected to SFG's  
17 golf course, so only effluent produced by that plant can be delivered to SFG. In  
18 addition, Johnson Utilities has two effluent customers connected to the Santan  
19 WWTP: SFG and the Santan Home Owners Association ("Santan HOA").  
20 Johnson Utilities is currently providing CAP water to the Santan HOA. Johnson  
21 Utilities has at times delivered effluent to the lakes within the Santan  
22 development. The Santan WWTP is located within the Santan development, so  
23 the Company believed it appropriate to meet the Santan HOA's irrigation needs  
24 with the less expensive effluent produced at the Santan WWTP from that  
25 community. SFG's golf course is not located within the Santan development.  
26 Moreover, I am not familiar with any rule that would permit Johnson Utilities to

1 discriminate against the Santan HOA in favor of SFG. As a result, Johnson  
2 Utilities was unable to provide SFG with all effluent produced at the Santan  
3 WWTP, as a portion of that effluent was needed by the Santan HOA. It is  
4 physically impossible to deliver effluent produced at other wastewater plants in  
5 the Johnson Utilities service area to SFG at this time.

6 **Q. ON PAGES 5-6 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON**  
7 **STATES: "BUT THE THING THAT CONCERNS ME MOST IS THAT**  
8 **UTILITY'S OWN EMPLOYEES HAVE PERSONALLY TOLD ME THAT**  
9 **THEY DON'T BILL ACCORDING TO THE LAW, BUT ACCORDING TO**  
10 **WHAT MR. JOHNSON TELLS THEM TO BILL." HAS MR. ASHTON**  
11 **IDENTIFIED THE PERSONS REFERENCED IN HIS RESPONSE?**

12 A. Yes. He identified Gary Larsen and December Davis.

13 **Q. DO YOU BELIEVE THAT MR. LARSEN AND MS. DAVIS MADE SUCH**  
14 **STATEMENTS TO MR. ASHTON?**

15 A. No. Neither Mr. Larsen nor Ms. Davis told Mr. Ashton that Johnson Utilities does  
16 not follow the law in its billing practices or that Mr. Johnson told them to conduct  
17 illegal billing practices. Specifically, Mr. Larsen and Ms. Davis each told Mr.  
18 Ashton that customers are billed according to the rates that are set forth in the  
19 tariffs approved by the Arizona Corporation Commission and that SFG is no  
20 exception. Ms. Davis has acknowledged that that since her employment  
21 commenced with Johnson Utilities, she has found a few discrepancies or  
22 inconsistencies in the Company's billing software. Some of these benefitted the  
23 Company and some benefitted the Company's customers. However, in these  
24 instances, immediate action was taken by the Company to correct billing errors,  
25 and additional accounting practices were put in place in an attempt to minimize  
26 software and human errors going forward.

1 Q. MR. ASTON HAS ALSO ASSERTED THAT JOHNSON UTILITIES HAS  
2 ILLEGALLY CHARGED SFG FOR A SUPERFUND TAX IN EVERY  
3 BILL FROM 2004 TO THE PRESENT. IS THIS TRUE?

4 A. No. Johnson Utilities collects from its customers a Water Quality Assurance  
5 Revolving Fund tax ("Superfund Tax") on water and effluent deliveries. The  
6 Superfund Tax is levied at the rate of .65 of one cent per one thousand gallons of  
7 water and effluent delivered to customers and is remitted to the State of Arizona in  
8 accordance with A.R.S. Article 42, Chapter 5 (Transaction Privilege and Affiliated  
9 Excise Taxes). Johnson Utilities legally collects the Superfund Tax pursuant to  
10 A.R.S. Article 42, Chapter 5 (Transaction Privilege and Affiliated Excise Taxes)  
11 and Part One, Section II (Taxes and Assessments) of the Company's tariff as  
12 approved by the Commission.

13 Q. MR. ASHTON HAS ALLEGED THAT BEGINNING IN MARCH 2006,  
14 JOHNSON UTILITIES BEGAN CHARGING SFG FOR TWO MONTHLY  
15 MINIMUM BILLS. IS THIS TRUE?

16 A. No. Under Johnson Utilities' tariffs, a monthly meter charge is applicable for each  
17 type of service, and this includes both effluent service and CAP water service.  
18 CAP water and effluent are delivered to SFG through two entirely separate  
19 pipeline conveyance systems, with each system having its own meter to measure  
20 the effluent or the CAP water. Because both effluent and CAP water are separate  
21 and distinct tariffed services authorized at different rates, Johnson Utilities is  
22 legally required to separately meter for each of the services provided to SFG.  
23 Johnson Utilities' Commission-approved tariffs require a monthly minimum  
24 charge for each meter.

25 Q. ON PAGE 6 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON  
26 STATES THAT: "MR. TOMPSETT HAS REFUSED IN WRITING TO

1 **PROVIDE US REPLACEMENT COPIES OF THE ORIGINAL 2005 AND**  
2 **2006 BILLS, SO I DON'T HAVE THEM." IS THIS TRUE?**

3 A. No. On October 17, 2008, Johnson Utilities provided Mr. Ashton copies of the  
4 bills from December 2004 through June 30, 2008. What Mr. Ashton was looking  
5 for was a hard copy of the original bill that was originally sent to him. Consistent  
6 with what Johnson Utilities considers to be standard business practices by many  
7 companies in today's electronic age, Johnson Utilities does not keep hard copies  
8 of "actual" bills sent to customers. The information contained in a customer's bill  
9 is stored electronically and is used to replicate a copy of a customer bill when an  
10 additional copy is requested. As of December 2008, Johnson Utilities has been  
11 sending out over 25,000 bills each month. The cost associated with the time  
12 needed to copy, and then create a computer file to store, each separate bill would  
13 be time consuming and expensive and would serve no purpose as the data is  
14 available if needed.

15 **Q. ON PAGE 10 OF HIS REVISED DIRECT TESTIMONY, DAVID ASHTON**  
16 **STATES THAT HE "SPOKE WITH ANOTHER IRRIGATION**  
17 **CUSTOMER HAVING ISSUES WITH JOHNSON UTILITIES." HAS MR.**  
18 **ASHTON IDENTIFIED THAT CUSTOMER?**

19 A. Yes. The Santan HOA.

20 **Q. WHAT IS THE RELATIONSHIP BETWEEN JOHNSON UTILITIES AND**  
21 **THE SANTAN HOA?**

22 A. Johnson Utilities has a good working relationship with the Santan HOA. There  
23 have always been good lines of communication between us. When we have had  
24 billing issues, we have worked cooperatively and have resolved those issues in a  
25 timely manner.

26

1 Q. ON PAGE 15 OF HIS REVISED DIRECT TESTIMONY, MR. ASHTON  
2 ACCUSES JOHNSON UTILITES OF ENGAGING IN ILLEGAL  
3 AFFILLIATE TRANSACTIONS. DO YOU KNOW WHAT HE IS  
4 REFERING TO?

5 A. Yes. Johnson Utilities delivers effluent from its Section 11 WWTP to the Oasis  
6 Golf Course at Oasis pursuant to an Effluent Storage and Distribution Lease  
7 ("Effluent Storage Lease") dated January 1, 2006. The Section 11 WWTP  
8 generates effluent which exceeds the demand for effluent in the vicinity of the  
9 Section 11 WWTP. The Effluent Storage Lease allows Johnson Utilities to deliver  
10 effluent from the Section 11 WWTP to the Oasis Golf Course which sometimes  
11 exceeds the golf course's demand for effluent.

12 Johnson Utilities has discovered that it was not charging the Oasis Golf  
13 Course for the effluent the golf course was receiving. Thus, there have been no  
14 bills or payments for effluent by Oasis since effluent deliveries to Oasis  
15 commenced. The Oasis Golf Course should have been charged a minimum for the  
16 effluent delivered. Johnson Utilities and Utilities Division Staff have already  
17 addressed and corrected for this oversight in the rate case.

18 Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL  
19 TESTIMONY?

20 A. Yes.

21

22 9662639.3

23

24

25

26