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AZ CORP COMMISSION
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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.

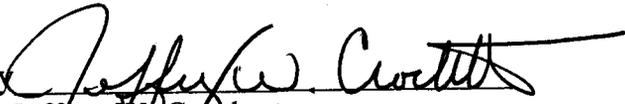
DOCKET NO. WS-02987A-08-0180

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

Johnson Utilities, LLC hereby files the Supplemental Rebuttal Testimony of
Thomas J. Bourassa.

RESPECTFULLY SUBMITTED this 24th day of March, 2009.

SNELL & WILMER L.L.P.

By 
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Arizona Corporation Commission
DOCKETED

MAR 24 2009

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1 ORIGINAL and 13 copies filed this
2 24th day of March, 2009, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85004

7 COPIES of the foregoing hand-delivered this
8 24th day of March, 2009, to:

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE
10 APPLICATION OF JOHNSON
11 UTILITIES, L.L.C., DBA JOHNSON
12 UTILITIES COMPANY, FOR AN
13 INCREASE IN ITS WATER AND
14 WASTE-WATER RATES FOR
15 CUSTOMERS WITHIN PINAL
16 COUNTY, ARIZONA

DOCKET NO. WS-02987A-08-0180

17 **PRE-FILED SUPPLEMENTAL REBUTTAL TESTIMONY OF**
18 **THOMAS J. BOURASSA**

19 **ON BEHALF OF**

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

21 **MARCH 23, 2009**

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Exhibit A: Response to Johnson Utilities Data Request No. JU 4.22

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I. INTRODUCTION.

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Thomas J. Bourassa. My business address is 139 W. Wood Drive, Phoenix, Arizona 85029.

Q. HAVE YOU PREVIOUSLY SUBMITTED PRE-FILED TESTIMONY IN THIS CASE?

A. Yes. I submitted direct testimony in support of the initial application of Johnson Utilities, L.L.C., ("Johnson Utilities" or the "Company") in this docket filed March 31, 2008, and rebuttal testimony (Volumes I-III) dated March 9, 2009.

Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL REBUTTAL TESTIMONY?

A. The purpose of my supplemental rebuttal testimony is to address specific issues raised by Revised Direct Testimony of Swing First Golf ("SFG") witness Sonn Rowell dated March 2, 2009 (the "Rowell Revised Direct Testimony"). In particular, I will address the following recommendations made by Ms. Rowell:¹

- (1) Johnson Utilities should be required to immediately reduce its water rates and make refunds;
- (2) Johnson Utilities should be required to refund, in cash not credits, its Superfund tax collections;
- (3) Johnson Utilities' Pecan Wastewater Treatment Plant ("Pecan WWTP") should not be included in rate base; and
- (4) Johnson Utilities should be "penalized" with a reduced return on equity.

¹ See Rowell Revised Direct Testimony at 9.

1 **II. THERE IS NO BASIS TO REQUIRE JOHNSON UTILITIES TO**
2 **IMMEDIATELY REDUCE ITS RATES AND MAKE REFUNDS.**

3 **Q. DO YOU AGREE WITH MS. ROWELL'S RECOMMENDATION THAT**
4 **JOHNSON UTILITIES SHOULD BE REQUIRED TO IMMEDIATELY**
5 **REDUCE ITS WATERS RATES AND MAKE REFUNDS TO**
6 **CUSTOMERS?**

7 A. No. Ms. Rowell bases her recommendation on a claim that Johnson Utilities
8 should have filed a general rate case by May 1, 2007, using a 2006 test year, as
9 originally ordered by the Commission in Decision 68235. Ms. Rowell concludes
10 that the Company's alleged delay in filing a rate case resulted in the Company
11 "substantially over-earning."² Ms. Rowell argues that the alleged "unauthorized"
12 delay in the Company's filing must have benefited the Company to the detriment
13 of its customers.³

14 Ms. Rowell's recommendation is flawed for several reasons. First, Johnson
15 Utilities received authorization to file its rate case by March 31, 2008, using a
16 2007 test year in a letter from the Arizona Corporation Commission's Chief
17 Counsel to the Company dated September 18, 2008. Moreover, the Commission's
18 Utilities Division accepted the filing and found the rate case application sufficient
19 in a letter dated August 1, 2008. This case has proceeded forward with the 2007
20 test year.

21 Second, Ms. Rowell bases her claim that Johnson Utilities is "over-earning"
22 on the Company's initial application using a 2007 test year.⁴ However, Johnson
23 Utilities' initial application actually shows that the Company is not over-earning.
24 Per the initial application,⁵ Johnson Utilities requested a decrease in water

26 ² *Id.* at 12.

27 ³ *Id.*

28 ⁴ *Id.*

⁵ Direct Schedule A-1 for water division and wastewater division.

1 revenues of approximately \$2.23 million⁶ and an increase in wastewater revenues
2 of approximately \$2.24 million, for a net increase in combined revenues of
3 approximately \$10,000 (\$2.24 million increase for wastewater division minus
4 \$2.23 million decrease for water division). In other words, the Company's
5 application showed that the wastewater division was "under-earning" and the
6 water division was "over-earning." Overall, however, the Company was not over-
7 earning but was slightly under-earning.

8 **Q. WAS THE BULK OF THE DECREASE IN WATER REVENUES BASED**
9 **UPON THE COMPANY'S PROPOSAL THAT THE CENTRAL ARIZONA**
10 **GROUNDWATER REPLENISHMENT DISTRICT TAX BE EXCLUDED**
11 **FROM OPERATING EXPENSES AND INSTEAD RECOVERED AS A**
12 **PASS-THROUGH TAX ON CUSTOMER BILLS?**

13 A. Yes. Johnson Utilities proposed to remove nearly \$1.3 million of Central Arizona
14 Ground Water Replenishment District ("CAGR") tax from operating expenses,
15 thereby lowering the revenue requirement.⁷ However, the Company proposed that
16 the \$1.3 million in CAGR taxes be collected like a sales tax, as a pass-through on
17 customer bills. In other words, the customer bill would have remained the same
18 for this particular cost. In reality, the net water revenue decrease was really less
19 than \$1 million (\$2.23 million minus \$1.3 million). Thus, based on the
20 Company's initial filing, and considering the proposed CAGR tax pass-through,
21 Johnson Utilities was under-earning (not over-earning) by over \$1.29 million
22 (\$2.39 million increase for wastewater division less \$1 million net decrease for
23 water division).

24
25
26 ⁶ The water application proposed removal of nearly \$1.3 million for Central Arizona
27 Ground Water District Tax which the Company proposed to be recovered as a pass-
28 through. The actual proposed decrease in water rates was less than \$1 million.

⁷ See Direct Testimony of Thomas J. Bourassa at 10 and Direct Schedule C-1 for the
water division.

1 **Q. BASED ON THE COMPANY'S REBUTTAL FILING IN MARCH 2009,**
2 **WAS JOHNSON UTILITIES STILL UNDER-EARNING IN 2007?**

3 A. Yes. Johnson Utilities was under-earning by approximately \$750,000 based on its
4 rebuttal filing. Per the Company's rebuttal filing, the proposed wastewater
5 revenue increase is approximately \$2.33 million and the proposed water revenue
6 decrease is approximately \$2.88 million.⁸ The Company is continuing to propose
7 the CAGR tax pass-through of approximately \$1.3 million, so the net water
8 division decrease proposed in the rebuttal filing is approximately \$1.58 million
9 (\$2.88 million minus \$1.3 million). Thus, the overall increase in revenues the
10 Company is seeking is approximately \$750,000 (\$2.33 million increase for the
11 wastewater division less \$1.58 million net decrease for the water division).

12 A third problem with Ms. Rowell's recommendation is that it constitutes
13 retroactive ratemaking which is not part any regulatory framework of which I am
14 aware. If we are to take Ms. Rowell's refund recommendation to its logical
15 conclusion, the Commission should first calculate a refund of approximately \$1.58
16 million to water customers and charge wastewater customers an additional \$2.33
17 million for 2007. The analysis should also be extended out to 2008 and part of
18 2009 to make sure the Company and/or ratepayers are made whole. And, to carry
19 this logic out to its full conclusion, the Commission should also need to go back to
20 1998 and perform the same analysis. This, of course, would be nonsense.

21 **Q. PLEASE EXPLAIN WHY RETROACTIVE RATE MAKING IS NOT**
22 **APPROPRIATE.**

23 A. In Arizona, utilities are authorized the opportunity to earn a fair rate of return on
24 the fair value of property plant and equipment used to provide service to its
25 customers. The return and the value to which it is applied are set at the time of
26 inquiry. The authorized return is not guaranteed. Because the authorized return is
27 not guaranteed there is no basis to retroactively go back and allow a utility to

28 ⁸ See Rebuttal Schedule A-1 for water division and wastewater division.

1 recover shortfalls in earnings, and conversely, take back earnings above the
2 authorized return. This is how rate regulation works. As a former member of the
3 Commission's Utilities Division Staff, Ms. Rowell should know this well.

4 Fourth, besides engaging in retroactive ratemaking, Ms. Rowell has no
5 basis to make any claim of over-earning (or under-earning for that matter) because
6 she did not perform any analysis of any prior year, including 2006, to provide a
7 basis for such a claim. (See, Response to Johnson Utilities Data Request No. JU
8 4.22, attached hereto as Exhibit A). While Ms. Rowell's summary assessment that
9 Johnson Utilities over-earned in 2007 is clearly erroneous, as I discussed above,
10 she cannot make any valid assertions about over-earning or under-earning in a
11 prior year without analyzing the Company's rate base, revenue and expenses, and
12 the required return on equity for each of the previous years. Based upon her own
13 admission as set forth in the data response cited above, Ms. Rowell never
14 conducted such an analysis.

15 **III. JOHNSON UTILITIES HAS NOT ILLEGALLY COLLECTED**
16 **SUPERFUND TAXES.**

17 **Q. DO YOU AGREE WITH MS. ROWELL'S RECOMMENDATION THAT**
18 **THE JOHNSON UTILITIES BE REQUIRED TO REFUND SUPERFUND**
19 **TAX COLLECTIONS?**

20 **A.** No. The Superfund tax to which Ms. Rowell refers⁹ is a municipal water delivery
21 system tax and it applies to businesses distributing or selling potable water. The
22 Superfund tax is levied at the rate of 0.65% of one cent for each 1,000 gallons of
23 water delivered. For example, the tax on 100,000 gallons of water is \$0.65. The
24 tax on municipal water delivery is reported on the Arizona Transaction Privilege
25 Tax Form TPT-1 under Business Class Code 041. The statutes governing
26 municipal water delivery systems are found at A.R.S., Title 42, Chapter 5, Article
27 7. Additional guidance on this tax can be found in the Arizona Department of

28 ⁹ Rowell Revised Direct Testimony at 12.

1 Revenue Transaction Privilege Tax Ruling TPR 93-20. In short, the Superfund
2 Tax is a transaction privilege sales tax and it's recovery and treatment is covered
3 under Arizona Administrative Code R14-2-209(D)(5). This rule allows a utility to
4 collect from its customers a proportionate share of any privilege, sales or use tax.

5 In my experience, all water utilities collect this tax as a pass-through tax on
6 customer bills, just like all other sales taxes. In fact, this is the first time I have
7 encountered any party to a rate case challenging the collection of this tax from
8 customers. This tax has been in effect for as long as I can remember, and Ms.
9 Rowell, being a former Staff member, should know this.

10 **IV. THERE IS NO BASIS OR PRECEDENT FOR EXCLUDING JOHNSON**
11 **UTILITIES' PECAN WASTEWATER TREATMENT PLANT FROM**
12 **RATE BASE BECAUSE OF OUTSTANDING NOVS.**

13 **Q. DO YOU AGREE WITH MS. ROWELL'S RECOMMENDATION THAT**
14 **THE PECAN WWTP SHOULD NOT BE INCLUDED IN RATE BASE?**

15 **A.** No. The basis for Ms. Rowell's recommendation is that Johnson Utilities has
16 outstanding Notices of Violation ("NOV") from the Arizona Department of
17 Environmental Quality ("ADEQ") pertaining to the Pecan WWTP.¹⁰ However,
18 this is not the standard for exclusion or inclusion of plant in rate base. The
19 standard is whether the plant is "used and useful." In this case, Utilities Division
20 Staff has clearly found the Pecan WWTP to be used and useful.¹¹ In my
21 experience, outstanding NOVs have resulted in delays in implementing new rates,
22 but have never been used as the basis for excluding plant from rate base,
23 particularly when the plant was found to be used and useful. As I understand the
24 status of the NOVs on the Pecan WWTP, Johnson Utilities has completed all
25 required action items and submitted all required confirming information to ADEQ
26 and is only awaiting formal closure of the NOVs.¹²

27 ¹⁰ *Id.*

28 ¹¹ *See* Direct Testimony of Marlin Scott Jr. at 32.

¹² *See* Pre-Filed Supplemental Rebuttal Testimony of Brian Tompsett at 6.

1 **V. THERE IS NO BASIS OR PRECEDENT FOR PENALIZING A UTILITY**
2 **WITH A REDUCED RETURN ON EQUITY.**

3 **Q. DO YOU AGREE WITH MS. ROWELL'S RECOMMENDATION THAT**
4 **THE COMMISSION SHOULD PENALIZE JOHNSON UTILITIES WITH A**
5 **REDUCED RETURN ON EQUITY.**

6 A. No. Ms. Rowell recommends that the Commission should penalize Johnson
7 Utilities by reducing its return on equity.¹³ In my experience, I have never seen
8 the Commission lower a return on equity to punish a utility. Nor, for that matter,
9 have I ever seen the Commission increase a return on equity to reward a utility for
10 good behavior. Such practices would be highly subjective, impossible to quantify,
11 and would lead to inconsistent treatment of both investors and ratepayers. While I
12 am not an attorney, I believe that lowering a utility's return on equity as a penalty
13 would violate the longstanding standards set forth in *Bluefield Water Works* and
14 *Hope Natural Gas*. Those landmark Supreme Court rulings established the basic
15 criteria applicable to determining a fair and reasonable rate of return. In short, a
16 utility's authorized rate of return should satisfy the following:

- 17 (1) The rate of return should be commensurate with returns on
18 investments in other enterprises having corresponding risk;
- 19 (2) The return should be sufficient to ensure confidence in the
20 financial integrity of the utility and to maintain and support
21 the utility's credit; and
- 22 (3) The return should enable the utility to attract capital necessary
23 for the proper discharge of its duties.

24 As I stated above, Ms. Rowell has not conducted any financial analysis of any
25 kind and therefore has no basis to opine on what rate the Commission should
26 authorize for a return on equity for Johnson Utilities.

27
28 ¹³ Rowell Revised Direct Testimony at 14.

1 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

2 A. Yes.

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EXHIBIT A

**SWING FIRST GOLF, LLC
RESPONSES TO
JOHNSON UTILITIES' FOURTH SET OF DATA REQUESTS
DOCKET WS-02987A-08-0180
MARCH 11, 2009
(RATE CASE)**

JU 4.22 On page 8 of her Revised Direct Testimony (lines 10-11), Ms. Rowell testifies that

"Utility's water business was significantly overearning." With regard to this testimony, please answer the following questions:

- (a) What is the authorized rate of return for Johnson Utilities?
- (b) Provide the Commission decision number which established the authorized rate of return for Johnson Utilities.
- (c) Has Ms. Rowell performed an earnings analysis for Johnson Utilities? If so, provide a copy of the earnings analysis and any work papers which support the analysis.

Response Provided by Sonn Rowell

- (a) I do not believe JU has a Commission authorized (set) rate of return. JU is still charging rates set in the granting of the original CC&N, and back then, the ACC did not set a rate of return during the CC&N process.
- (b) Not applicable.
- (c) No.