

ORIGINAL



0000097212

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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

2009 MAY 22 P 2:05

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 22 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

**INITIAL BRIEF CONCERNING
ADMISSIBILITY OF DOCUMENT**

1 For the following reasons, Swing First Golf LLC ("Swing First") believes that the
2 document in question should be admitted.

3 The statements in the document are not hearsay. After her *in camera* review, Judge
4 Wolfe stated: "based on my preliminary review, there may be an issue of hearsay, but it's not
5 apparent to me at this time."¹ RUCO agrees: "Mr. Larsen's statements are admissions by a
6 party-opponent and are, therefore, not hearsay."² Swing First also cannot see any hearsay issue.

7 Even in the unlikely event that the statements were treated as hearsay, they would still be
8 admissible under the Commission's more relaxed evidentiary rules, particularly given that the
9 declarant could be called directly by Utility to testify as a rebuttal witness and explain his
10 statements.³

11 The statements in the document are relevant. After her *in camera* review, Judge Wolfe
12 stated:

13 Based on my preliminary review of this document, and in conjunction with other
14 evidence that was presented on the record and admitted last week, there have been

¹ Tr. at 352:4-7.

² RUCO Brief at 4:16-17.

³ It is possible that declarant may no longer be Utility's employee, but this would be no basis to argue against the admissibility of declarant's statements.

1 some issues raised that might affect a determination on an appropriate level of test
2 year revenues in this case as well as other issues.⁴

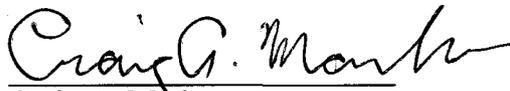
3 RUCO agreed that the statements are relevant.⁵

4 The statements are also relevant for the purpose of cross-examination of Utility witness
5 Brian Tompsett. Declarant reported directly to Mr. Tompsett.⁶ Many of Declarant's statements
6 are directly contrary to Mr. Tompsett's sworn testimony.⁷ Swing First is entitled to use the
7 document for possible impeachment. Swing First is also entitled to ask Mr. Tompsett his
8 opinion of the matters discussed by Declarant. Certainly, the Commission will want to consider
9 this evidence as part of, as Judge Wolfe stated, its "determination on an appropriate level of test
10 year revenues in this case as well as other issues."

11 Finally the statements are relevant because they corroborate portions of Mr. Ashton's
12 prefiled testimony and provide further support for Ms. Rowell's recommendations to the
13 Commission in her prefiled testimony.

14 In conclusion, the document is not hearsay and it is clearly relevant. Therefore, it should
15 be admitted into evidence.⁸

16 RESPECTFULLY SUBMITTED on May 22, 2009.

17
18
19
20
21 

22 Craig A. Marks
23 Craig A. Marks, PLC
24 10645 N. Tatum Blvd.
25 Suite 200-676
26 Phoenix, AZ 85028
27 Craig.Marks@azbar.org
28 Attorney for Swing First Golf LLC
29

⁴ Tr. at 356:8-13.

⁵ RUCO Brief at 4.

⁶ Tr. at 57:12-25.

⁷ See Tr. at 327:9 – 332:19.

⁸ To be clear, the document has not yet been offered into evidence, but Swing First intends to do so when the hearing resumes.

1 **Original** and 13 copies **filed**
2 on May 22, 2009, with

3
4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8
9 **Copy of the foregoing mailed and e-mailed**
10 on May 22, 2009, to:

11
12 Ernest G. Johnson, Director
13 Utilities Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, AZ 85007

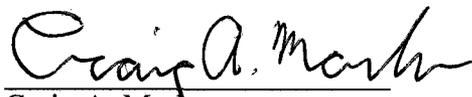
17
18 Ayesha Vohra/Nancy Scott
19 Legal Division
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, AZ 85007

23
24 Jeffrey W. Crockett/Bradley S. Carroll/Kristoffer P. Kiefer
25 Snell & Wilmer LLP
26 One Arizona Center
27 400 East Van Buren Street
28 Phoenix, AZ 85004-2202

29
30 James E. Mannato
31 Florence Town Attorney
32 775 N. Main Street
33 P.O. Box 2670
34 Florence, AZ 85232

35
36 Dan Pozefsky/Chief Counsel
37 Residential Utilities Consumer Office
38 1110 West Washington Street
39 Suite 220
40 Phoenix, AZ 85007

41
42
43
44 By:


45 Craig A. Marks