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BEFORE THE ARIZONA CORPORATI

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

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 10:03 a.m., on the 21st day of September,
6 2009.

7

8 BEFORE: TEENA WOLFE, Administrative Law Judge

9

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1 ALJ WOLFE: Good morning, and welcome back to
2 the Arizona Corporation Commission. Since it's been a
3 while since we've been in hearing, let's take appearances
4 this morning for the record.

5 MR. CROCKETT: Good morning, Judge Wolfe. Jeff
6 Crockett and Rob Metli of the law firm Snell & Wilmer
7 representing the Applicant, Johnson Utilities.

8 ALJ WOLFE: Thank you.

9 MR. MARKS: Good morning, Judge Wolfe. Craig
10 Marks representing the intervenor Swing First Golf, LLC.

11 ALJ WOLFE: Thank you.

12 MR. MANNATO: Good morning, Judge. James
13 Mannato for the Town of Florence, Arizona.

14 ALJ WOLFE: Thank you.

15 MR. POZEFSKY: Good morning, Your Honor, Daniel
16 Pozefsky on behalf of RUCO.

17 ALJ WOLFE: Thank you.

18 MS. MITCHELL: Good morning, Judge Wolfe. Robin
19 Mitchell and Ayesba Vohra on behalf of Commission Staff.

20 ALJ WOLFE: Thank you. Well, I think the first
21 thing we want to talk about today is which witness we'll
22 be hearing from. Mr. Crockett?

23 MR. CROCKETT: Judge Wolfe, I think the plan is
24 to have Mr. Tompsett back on the stand to complete his
25 cross-examination; and while I have the microphone, since

1 we met last in this case, the company has filed
2 Supplemental Rejoinder Testimony, and so what I would do
3 is suggest that first thing this morning that I introduce
4 that Supplemental Rejoinder Testimony through Mr. Tompsett
5 so he'll be available for cross-examination on that
6 testimony today as well.

7 ALJ WOLFE: Okay. Thank you.

8 Are there any other procedural matters that the
9 parties would like to discuss? Mr. Pozefsky.

10 MR. POZEFSKY: Thank you, Your Honor. Yes, I
11 was looking at the schedule the other day, and I noticed
12 that we are scheduled for Monday. Monday is a Jewish
13 holiday. It's Yom Kippur. I'm wondering if you still
14 intend to go ahead on Monday?

15 ALJ WOLFE: I'll look into it. I'm sorry, I
16 didn't really think about that whenever I scheduled it.
17 That was an overflow day anyway. I'm hoping that we can
18 finish by Friday; but if we don't, then I'll consider
19 changing that.

20 MR. POZEFSKY: Okay, thank you.

21 ALJ WOLFE: Yes, Mr. Marks.

22 MR. MARKS: Yes, Your Honor, as you know, I made
23 a procedural motion concerning Mr. Ashton's testimony, and
24 Mr. Crockett and I have had some discussions which we
25 haven't finished up yet; but just for the record,

1 Mr. Ashton will be available to testify on Thursday
2 morning at 9:30, presuming we start at 9:30 on Thursday.

3 ALJ WOLFE: Okay.

4 MR. MARKS: And I would like -- at this time I
5 would ask that we start with him on Thursday; but again,
6 that's a subject of some discussion with Mr. Crockett and
7 me.

8 ALJ WOLFE: Okay. Mr. Crockett.

9 MR. CROCKETT: Your Honor, this case is somewhat
10 unusual to the extent that it's been broken up by a delay,
11 and we feel like we would like to get our direct case on
12 in as contiguous a way as we can before we go on to other
13 witnesses in the case.

14 So what I would suggest, Mr. Marks believes that
15 we will get finished today with Mr. Tompsett on
16 cross-examination; and then I would like to put on our
17 second witness, Mr. Bourassa on Thursday. I anticipate
18 that he will be probably finished in a half day on
19 Thursday, maybe a little longer depending on how much
20 Staff and RUCO have for him.

21 And as I understand it from Mr. Marks,
22 Mr. Ashton will be available all day Thursday and all day
23 Friday. So we could get to him then on Friday and be able
24 to get through his cross-examination on Friday. I
25 understand he's got a flight out of here on Saturday

1 morning. So that's what I would like to do.

2 The reason, as Mr. Marks indicated we hadn't
3 really finished up our discussion, we thought we would see
4 how things were going today, how quickly we were getting
5 through with Mr. Tompsett, and then we could visit a
6 little bit more.

7 So again, my preference would be that we put on
8 our direct case first, and that Your Honor not make a
9 decision on Mr. Ashton at this time, until we see how
10 things go today and perhaps revisit it at the end of the
11 day.

12 ALJ WOLFE: Mr. Crockett, I assume that you do
13 want to cross-examine Mr. Ashton?

14 MR. CROCKETT: I do, Your Honor.

15 ALJ WOLFE: And if the cross-examination is not
16 finished by Friday, what do you propose?

17 MR. CROCKETT: Well, Your Honor, I think I can
18 finish my cross-examination certainly in a day or less
19 with Mr. Ashton.

20 ALJ WOLFE: But in the event that it does go
21 over -- I really don't understand why the need for you to
22 put your witnesses on all at once overrides the need for a
23 witness who has come in from, not only out of town, but
24 out of the country.

25 So I will grant the request by Swing First to

1 put their witness on beginning on Thursday morning, and it
2 would be nice if you could finish your cross-examination
3 in the time that you state of Mr. Ashton. But I don't
4 have any way of knowing how long that's going to take. So
5 we do break up witness cases very often here, and we will
6 do that this time.

7 But if the cross-examination is not finished by
8 the end of the day on Friday, Mr. Marks, you'll have to
9 bring Mr. Ashton back. You understand that, right?

10 MR. MARKS: I understood your procedural order.
11 I read it very carefully. Thank you.

12 ALJ WOLFE: Is there anything else? Mr.
13 Pozefsky.

14 MR. POZEFSKY: Just a quick note, Your Honor.
15 Mr. Rigsby also has some scheduling issues. He will be
16 here Thursday, and of course today. But Friday and next
17 week he's going to be out and unavailable. So I know that
18 doesn't help the situation; but quite frankly, I have to
19 say I think there is going to be a lot of time probably
20 spent on Mr. Tompsett. I know I have a pretty lengthy
21 cross, and I just wanted you to be aware of that.

22 ALJ WOLFE: So Mr. Rigsby will be out this
23 coming Friday and all next week?

24 MR. RIGSBY: Right.

25 MR. POZEFSKY: That's correct.

1 ALJ WOLFE: I really don't know what to say. If
2 we have to come back after that, then that's what we'll
3 have to do. This case is pretty unusual in that respect.
4 But we'll do what we need to do to get all the witnesses
5 on and get all the cross-examination that the parties
6 want.

7 MR. POZEFSKY: Thank you, Your Honor, and I
8 appreciate your consideration.

9 ALJ WOLFE: Okay. Mr. Crockett, would you like
10 to recall Mr. Tompsett?

11 MR. CROCKETT: Yes, Your Honor. The Applicant
12 calls Mr. Tompsett to the stand.

13 ALJ WOLFE: Mr. Tompsett, you've been sworn in
14 previously, haven't you?

15 MR. TOMPSETT: Yes, Your Honor.

16 ALJ WOLFE: Okay. You're still sworn.

17 MR. TOMPSETT: Good morning, Your Honor.

18 (NEXT PAGE, PLEASE.)

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1

BRIAN TOMPSETT

2

3 called as a witness herein, having been previously duly
4 sworn by the Certified Reporter to speak the truth and
5 nothing but the truth, was examined and testified as
6 follows:

7

8

DIRECT EXAMINATION

9

10 BY MR. CROCKETT:

11 Q. Good morning, Mr. Tompsett.

12 A. Good morning.

13 Q. I've placed in front of you a document --

14 MR. CROCKETT: Oh, Your Honor, I gave one too
15 many copies away. So I'm going to walk over to Staff and
16 take one back.

17 ALJ WOLFE: I have an extra one if you would
18 like to have one back.

19 MR. CROCKETT: Okay. I'm fine. Thank you.

20 BY MR. CROCKETT:

21 Q. Mr. Tompsett, I've placed in front of you a
22 piece of testimony that's been marked for identification
23 as Exhibit A-16. Do you have that?

24 A. Yes, I do.

25 Q. Would you please read the caption of that

1 pleading for the record, for identification?

2 A. Yes, it's the Prefiled Supplemental Rejoinder
3 Testimony of Brian Tompsett, dated September 8, 2009.

4 Q. Was that testimony prepared by you or under your
5 direct supervision?

6 A. Yes.

7 Q. Is the testimony contained therein true and
8 accurate, to the best of your knowledge?

9 A. Yes.

10 Q. If I were to ask you each of those questions
11 today, would your answers be substantially the same as
12 what you see in the testimony?

13 A. Yes, they would.

14 MR. CROCKETT: Your Honor, I would move the
15 admission of Exhibit A-16 at this time.

16 ALJ WOLFE: Is there any objection to A-16?

17 (No response.)

18 ALJ WOLFE: A-16 is admitted.

19 (Exhibit A-16 was admitted.)

20 MR. CROCKETT: Your Honor, I would make
21 Mr. Tompsett available for cross-examination.

22 ALJ WOLFE: Thank you. Mr. Marks, do you have
23 questions on this exhibit for Mr. Tompsett?

24 MR. MARKS: Not on this exhibit.

25 ALJ WOLFE: Go ahead with your other questions.

1 MR. MARKS: Thank You, Your Honor.

2 Your Honor, I've distributed at this time a
3 document that's been marked as Exhibit SF-32, and this is
4 a redacted version of the transcript that Your Honor
5 previously considered; and my effort was to limit the
6 portions of this testimony, limit the portions of the
7 transcript to just those issues relating to impeachment,
8 customer service issues, billing issues, and revenue
9 issues.

10 Now, I understand that this is the first time
11 that any of the other counsel or yourself have seen this
12 at this time. So what I would like to do, Your Honor, is
13 to -- I'll move it at this time, but I think it would be
14 appropriate to allow the parties some time, and perhaps we
15 could consider taking up the particular portions of this
16 later this afternoon after everybody has had a chance to
17 look at it.

18 ALJ WOLFE: Mr. Crockett?

19 MR. CROCKETT: Well, Your Honor, it was my
20 understanding from reading of your procedural order that
21 the transcript in its entirety would not be admitted as an
22 exhibit, and that relevant portions as outlined in your
23 procedural order would be admissible.

24 I'm just -- as Mr. Marks indicated, we're just
25 getting this document now to look at. I would, not

1 knowing whether all of these pages are going to end up
2 being admitted at the end of the day, I am reluctant to
3 allow it to be introduced at this point. I think perhaps
4 the relevant portions can be addressed as we go through.

5 And, I guess my problem is, at the end of the
6 day, if there are pages in here that aren't admissible, I
7 don't know what we do with those if Mr. Marks has offered
8 this up as an entire package.

9 ALJ WOLFE: Okay. I understand. Do any of the
10 other parties have comments on it at this time?

11 MR. POZEFSKY: Your Honor, whatever is your
12 discretion. I am familiar with the procedural order, and
13 like Mr. Crockett said, I haven't had a chance to see
14 SF-32 to know whether or not it comports with your
15 procedural order. So however you want to do it is okay
16 with RUCO.

17 ALJ WOLFE: Staff?

18 MS. MITCHELL: I would just echo Mr. Pozefsky's
19 comments. We just haven't had a chance to look at this
20 and determine whether the blacked-out parts really contain
21 relevant things or does it make this document not flow
22 correctly? I would have assumed that it would have been
23 discussed beforehand. But nevertheless, whatever Your
24 Honor desires is okay with Staff.

25 ALJ WOLFE: Mr. Marks, let's postpone

1 questioning on the transcript issue until after the
2 lunchtime at least. That way the parties will have a
3 chance to look it over. I can give everyone a little bit
4 longer than the regular lunch, and then we'll go and you
5 can start asking questions; but I'm not going to admit
6 this like it is at this time.

7 So if you have other questions for Mr. Tompsett
8 that don't relate to this transcript, then you can ask
9 them now, but the other questions will be delayed.

10 MR. MARKS: Thank you, Your Honor.

11

12

CROSS-EXAMINATION

13

14 BY MR. MARKS:

15 Q. Mr. Tompsett, since it's been five months since
16 you were here last, I would like to go through the
17 transcript briefly and just ask you to update a few of
18 your responses to see if they're still accurate at this
19 time, if that's all right.

20 You were asked a question on page 57 concerning
21 a gentleman named Gary Larsen and the question was, "Does
22 he work for the corporation?"

23 Your answer was, "Gary Larsen is the field
24 manager for Johnson Utilities, yes."

25 Is that still an accurate answer?

1 MR. CROCKETT: Your Honor, Mr. Tompsett does not
2 have a copy of the transcript in front of him. I'm
3 wondering if there is an extra copy of it that he could
4 look at what Mr. Marks is reading.

5 ALJ WOLFE: Mr. Marks, you could -- can you
6 provide a copy?

7 MR. MARKS: I don't have an extra copy of the
8 transcript with me. I am reading directly from the
9 transcript, or I can -- again, I can just ask the question
10 without -- I'm only giving the reference for the benefit
11 of the parties here.

12 MS. MITCHELL: I think I may have a copy. If
13 you can just give me a moment, I can provide it for
14 Mr. Tompsett.

15 ALJ WOLFE: Thank you. Mr. Crockett, you do
16 want him to have a copy of the transcript?

17 MR. CROCKETT: If Mr. Marks is going to be
18 reading from the transcript, I would like him to have a
19 copy so he can follow along.

20 ALJ WOLFE: Let's go off the record while we
21 locate one.

22 (Off the record from 10:19 to 10:20 a.m.)

23 ALJ WOLFE: Let's go back on the record. Let
24 the record reflect that Staff has provided its copy of the
25 transcript to the witness. You may proceed, Mr. Marks.

1 You may answer the question, Mr. Tompsett.

2 THE WITNESS: Could you ask the question again,
3 please? I'm not sure where you are.

4 BY MR. MARKS:

5 Q. Does Mr. Larsen still work for Johnson Utilities
6 Company?

7 A. No.

8 Q. And if you could provide a little bit of
9 additional explanation?

10 MR. CROCKETT: Objection, Your Honor. Beyond
11 giving information about the fact that Mr. Larsen is no
12 longer with the company and we can give a date for the
13 separation, it's a personnel matter, and the company's
14 policy is that they don't disclose information on
15 personnel matters publicly.

16 MR. MARKS: I can move on and just narrow it to
17 what Mr. Crockett is willing to provide.

18 ALJ WOLFE: Okay. I don't understand why the
19 witness couldn't have answered that question,
20 Mr. Crockett, but will you please allow the witness to
21 answer the questions? I don't understand what the basis
22 of that objection was.

23 MR. CROCKETT: I understood the question was for
24 Mr. Tompsett to explain about the circumstances
25 regarding --

1 ALJ WOLFE: And what was the basis of your
2 objection to the question?

3 MR. CROCKETT: The basis is that it is a
4 personnel matter, and the company does not disclose
5 information on personnel matters publicly.

6 ALJ WOLFE: As an objection, that's overruled.
7 You may answer the question, Mr. Tompsett.

8 BY MR. MARKS:

9 Q. Let me narrow it down for you, Mr. Tompsett.
10 Was Mr. Larsen terminated?

11 A. Yes, he's no longer with the company.

12 Q. Yes, he was terminated?

13 A. Again, that's employer-employee information, but
14 he is no longer with the company.

15 Q. Who first approached Mr. Tompsett about severing
16 the employment relationship?

17 A. I'm sorry, can you repeat that again?

18 Q. I'm sorry. Who first approached Mr. Larsen
19 about severing the employment relationship?

20 A. That was done in our office by Mr. Johnson and
21 myself.

22 Q. And what was the effective date of the end of
23 the employment relationship?

24 A. I don't recall specifically, but I can find out
25 the last date of his employment. I don't recall

1 specifically, but it was in the spring of this year.

2 Q. We were here last in April of 2009. Was it
3 shortly after the hearings here?

4 A. I believe it was after the last hearing, yes.

5 Q. Shortly afterward?

6 A. I don't recall the specific date, but it was
7 after the last hearing.

8 Q. After last year?

9 A. After the last hearing before this Commission.

10 Q. Thank you. You can turn to page 59 as long as
11 you're following along here.

12 A. Which copy?

13 Q. Volume I. The pages are sequential.

14 A. Okay, page 59 of Volume I?

15 Q. Yes, sir.

16 A. Okay.

17 Q. At line 15, continuing after that, you confirmed
18 that George Johnson acted as the chief executive of
19 Johnson Utilities, LLC. Is that still correct?

20 A. He owns the majority interests in Johnson
21 Utilities, yes, that's still correct.

22 Q. Turn to page 80, please.

23 A. Okay.

24 Q. And on that page, and several others in that
25 vicinity, you were asked a number of questions about the

1 May 2008 spill that affected, I believe it's the Pecan
2 Ranch subdivision. Do you remember those?

3 A. Yeah, give me a minute, I'll check this. We're
4 right around page 80, you said?

5 Q. Yes, sir.

6 A. Just give me a minute here. Okay. I recall
7 this, yes.

8 Q. And there was a notice of violation issued that
9 we discussed there in regards to that spill; is that
10 correct?

11 A. Yes.

12 Q. What is the current status of that notice of
13 violation?

14 A. The notice is still open with respect to ADEQ.
15 It hasn't been closed.

16 Q. At the bottom of page 82, I asked you some
17 questions about a lawsuit with the homeowners association
18 and Johnson Utilities about discharge of treated effluent
19 into the Queen Creek Wash. Do you remember that?

20 A. Yes. Okay.

21 Q. And at that time, you stated you weren't sure
22 what the status of the lawsuit was. This is at page 83,
23 line 10. That you weren't sure what the status was, but
24 that it was ongoing. Can you update that in any way?

25 A. Well, the lawsuit with the Pecan Creek HOA is

1 still ongoing. It has not been revolved. So it's still
2 before the Superior Court, Pinal County.

3 Q. If you would turn to page 99, please. Starting
4 on line 8, we discussed a notice of violation, ID number
5 92021, that involved the Pecan Water Treatment Plant or
6 Water Reclamation Plant, and there was a notice of
7 violation concerning that. Do you remember that?

8 A. I would have to see 92021. I don't remember
9 specifically what that was for, that case ID number.

10 Q. You answered at that time that this had to do
11 with an SSO that discharged approximately 5,000 gallons of
12 sewage into a spillway located adjacent to the manhole.
13 And that's at line 17 through 19. Does that refresh your
14 recollection?

15 A. Yeah, I think I know which one it is.

16 Q. And at that time, continuing on page 100, you
17 testified at line 16 that that NOV was still open. Is it
18 still open, or has that been closed?

19 A. If it's referring to that same one, 92021, it's
20 still open.

21 Q. Continuing on page 100, there's a discussion of
22 NOV 97512 at line 20. I'll let you take a second to get
23 there.

24 MR. CROCKETT: Your Honor, if I might ask
25 permission to provide Mr. Tompsett with a copy of Swing

1 First Exhibit 9. That's the document that has copies of
2 these various NOV's and references them by number so
3 Mr. Tompsett could have that as he's looking at -- he was
4 looking at this document when these questions were being
5 asked initially.

6 ALJ WOLFE: Certainly, that would be
7 appropriate.

8 MR. MARKS: I think that's fine.

9 BY MR. MARKS:

10 Q. Do you have that?

11 A. Yes, I have 97512 here.

12 Q. Do you know what the status of that NOV is?

13 A. Yes, this is still open.

14 Q. Thank you. And let's go to NOV 99135. Let me
15 know when you're ready.

16 A. Okay.

17 Q. And what did NOV 99135 involve?

18 A. The allegation was that we did not provide
19 documentation with respect to the certified operator.
20 We've subsequently answered that question and provided all
21 the documentation that we did have certified operators.

22 Q. Has the matter been closed?

23 A. No.

24 Q. The next one in the packet is 102722. Could you
25 describe that briefly?

1 A. ADEQ allegation is with respect to biosolids and
2 debris in the Section 11 Wastewater Treatment Plant.

3 Q. Is that still open?

4 A. Yes, it is. All of these violations that are
5 open are currently being discussed with ADEQ to attempt to
6 come to some resolution, so --

7 Q. That's a little bit more than my question asked
8 for, and you will be given the opportunity by counsel to
9 provide redirect testimony. You understand that, right?

10 A. Okay.

11 Q. I would like you to go, Mr. Tompsett, to 103357.
12 Could you briefly describe that for the record?

13 A. It's a continuation of the same allegation of
14 placement of biosolids at the Section 11 Wastewater
15 Treatment Plant.

16 Q. And this is the one with thirteen alleged
17 statutory violations; is that correct?

18 A. That's what this says, yes.

19 Q. And has this been resolved?

20 A. The NOV is still open.

21 Q. If you would turn back, please, to NOV 103956.

22 A. Okay.

23 Q. If you could briefly describe that.

24 A. The NOV is alleging that there was a solid waste
25 landfill at the Section 11 Water Reclamation Plant.

1 Q. I'm sorry, it's alleging that there was a solid
2 waste landfill?

3 A. Yes.

4 Q. And the allegation is then that no permit was
5 obtained by the operator to operate that alleged facility;
6 is that correct?

7 A. The allegation is that, yes.

8 Q. Has this NOV been resolved?

9 A. It has not been closed, no.

10 Q. Concerning these three matters related to the
11 Section 11 plant dating back to last year, has there been
12 any sort of civil enforcement or other public penalties or
13 anything of that nature issued by ADEQ in these?

14 A. No.

15 Q. If you would turn back to 106357, could you
16 briefly describe that for the record? And I'm sorry, I
17 think I said 106357. It's 106347.

18 A. Okay. ID 106347?

19 Q. Correct.

20 A. Okay.

21 Q. Could you describe that NOV?

22 A. The NOV alleged that there was a failure to use
23 reasonable methods to preclude human contact with the
24 reclaimed water when irrigating.

25 Q. And I believe you testified at page 117 that

1 this had been closed; is that correct?

2 A. That's correct.

3 Q. So there has been no further action from ADEQ
4 concerning this NOV, correct?

5 A. Correct.

6 Q. If you would turn the transcript to page 117, I
7 would appreciate it.

8 A. Okay.

9 Q. And we had quite a bit of discussion and you put
10 in some additional testimony clarifying the article that's
11 referenced there about the effluent that leaked out of the
12 holding area and into the retention basin from the Pecan
13 Water Reclamation Plant. Do you remember that?

14 A. If you'll give me a minute here. Okay.

15 Q. And at page 118, you testified that there had
16 not been an NOV issue in connection with that incident and
17 that you didn't expect one. Has in fact any NOV been
18 issued in connection with that spill?

19 A. No.

20 Q. Thank you. Has ADEQ, Arizona Department of
21 Environmental Quality, issued any other notices of
22 violation since the date of the April -- let me just give
23 you the date. Let me ask it another way. Strike that.

24 Has ADEQ issued any notices of violation against
25 Johnson Utilities that are not contained in Exhibit SF-9?

1 A. No, not since -- I believe the last one is Oasis
2 Golf Course, 106347.

3 Q. Thank you. I would like you to turn to page
4 242, and this is the last section of transcript that I'll
5 be referring to.

6 MR. CROCKETT: I believe that's Volume II, is
7 that right?

8 MR. MARKS: That is in Volume II. Thank you,
9 Mr. Crockett.

10 THE WITNESS: 242?

11 MR. MARKS: Yes, sir.

12 THE WITNESS: Okay.

13 BY MR. MARKS:

14 Q. Does Johnson Utilities have any pending
15 applications with the Department of Water Resources to
16 permit an underground storage facility, one or more?

17 A. Yes, we do.

18 Q. And are there any that would benefit the Phoenix
19 Active Management Area?

20 A. Yes.

21 Q. Do you know approximately where that is?

22 A. Well, the applications would be for -- the
23 locations would be the specific wastewater treatment
24 plants.

25 Q. And which wastewater treatment plants?

1 A. It would be for the Pecan Water Reclamation
2 Plant and the San Tan Reclamation Plant and then also
3 Section 11. I think there are three in the Phoenix AMA.

4 Q. And the San Tan facility is the one that
5 provides treated effluent to Swing First Golf and the San
6 Tan Homeowners Association; is that correct?

7 A. Yes.

8 Q. Are there any -- is that facility in operation,
9 the one related to the San Tan wastewater treatment
10 facility?

11 A. The permit is still pending, as I recall.

12 Q. So no construction has occurred yet?

13 A. As far as underground storage?

14 Q. Well, let me just back up. Do you need to do
15 any construction associated with underground storage?

16 A. Well, the only construction that would take
17 place at the facility would be in the form of recharge
18 wells. There's no -- the underground storage facility is
19 kind of a, I guess, misnomer because it's just --

20 Q. It's essentially the aquifer, isn't it?

21 A. Yeah, it's just the ground, right.

22 Q. How about recharge wells, are there any in
23 operation in connection with the San Tan facility at this
24 time?

25 A. There are, yes.

1 Q. And you intend to construct more under your
2 current application?

3 A. No, not that I'm aware of, no.

4 Q. How about recovery wells, are there any recovery
5 wells in operation associated with the San Tan facility?

6 A. Well, recovery wells aren't associated with any
7 particular facility. It's just the DWR label on them. So
8 there's no specific well, recovery well attached to the
9 San Tan Water Reclamation Plant or any other wastewater
10 plants.

11 Q. And as we discussed before, you can basically
12 use a recharge well anywhere within the Phoenix AMA and
13 then take water back out with a recovery well anywhere
14 within the Phoenix AMA; is that correct?

15 A. I think that's correct, yes.

16 Q. And you have operating recovery wells in the
17 Phoenix AMA at this time?

18 A. I believe we have some recovery wells permitted,
19 yes.

20 Q. And are you seeking to permit more?

21 A. I would have to get with our engineer, but I
22 assume we will at some point in the future, yes.

23 Q. I'm going to turn to another subject now. Thank
24 you for bearing with me to update the record.

25 Mr. Tompsett, I've provided you a copy of what's

1 been marked as Exhibit SF-42. Do you have that in front
2 of you?

3 A. Yes.

4 Q. Could you briefly describe that for the record?

5 A. It appears to be a spreadsheet, I assume
6 prepared by either you or Swing First, with respect to
7 effluent generation, sales, and production from 2006 to
8 2009.

9 Q. And you and your counsel have had an opportunity
10 to review this document, haven't you?

11 A. Yeah, I believe our counsel has reviewed it.

12 MR. MARKS: Counsel, do you have a copy of
13 SF-18?

14 MR. CROCKETT: I do.

15 MR. MARKS: Could you provide that to him just
16 to look at briefly?

17 MR. CROCKETT: Your Honor, could I ask a quick
18 question? Do we have here the exhibits from the hearing
19 last time?

20 ALJ WOLFE: Yes.

21 MR. CROCKETT: It might be easier for us if we
22 actually got the exhibits, the original exhibits in front
23 of Mr. Tompsett.

24 ALJ WOLFE: Let's go off the record to allow
25 that.

1 (Off the record.)

2 ALJ WOLFE: Let's go back on the record. The
3 witness has been provided with the exhibits.

4 BY MR. MARKS:

5 Q. Mr. Tompsett, SF-42 purports to -- let me ask it
6 another way -- is very similar to Exhibit SF-18; is that
7 correct?

8 A. Yes. It looks like the year 2009 has been added
9 to SF-18.

10 Q. And the notes at the bottom of Exhibit SF-42
11 source that data to data requests or data responses that
12 were provided by Johnson Utilities? Do you see that?

13 A. Yes, referring to SF-19 and data request 8.1 for
14 '09.

15 MR. MARKS: At this time, Your Honor, I would
16 move SF-42 as an update of Exhibit SF-18 through the end
17 of August 2009.

18 ALJ WOLFE: Are there any objections?

19 MR. CROCKETT: No.

20 MR. MANNATO: No.

21 MS. MITCHELL: No.

22 ALJ WOLFE: SF-42 is admitted.

23 (Exhibit SF-42 was admitted.)

24 BY MR. MARKS:

25 Q. Have you had a chance to look at Exhibit SF --

1 well, excuse me, I've provided the witness a copy of
2 what's been marked as Exhibit SF-36.

3 BY MR. MARKS:

4 Q. Mr. Tompsett, have you had an opportunity to
5 review this?

6 A. Yes.

7 Q. And do you remember we had some discussions
8 about a gap in meter reading concerning the Swing First
9 account, effluent account?

10 A. Yeah, vaguely, I do. I don't remember
11 specifically.

12 Q. Not to put words in your mouth, but I think you
13 agreed that there was a gap in meter reading that occurred
14 sometime in 2007?

15 A. That's what this data response is, yes.

16 Q. And at that time I couldn't find the data
17 response, if I remember correctly. So Exhibit SF-36 seeks
18 to remedy that omission on my part.

19 And you were asked to confirm that there were no
20 meter readings for account number 00120362-02 between
21 April 20 of '07 and 11-20 of '07. Could you read your
22 response, please?

23 A. The data request -- the data response was that
24 there were no meter reads on account number 120362-02
25 between the meter read on April 20 of '07 and the meter

1 read on November 20 of '07.

2 Q. And that response was prepared by you, was it
3 not, Mr. Tompsett?

4 A. Yes.

5 Q. And to your knowledge, is that still correct?

6 A. Yeah, I don't think anything has changed.

7 MR. MARKS: Your Honor, at this time, I would
8 move for the admission of Exhibit SF-36.

9 ALJ WOLFE: Is there any objection?

10 MR. CROCKETT: No, Your Honor.

11 ALJ WOLFE: SF-36 is admitted.

12 (SF-36 was admitted.)

13 BY MR. MARKS:

14 Q. Mr. Tompsett, do you agree that Johnson
15 Utilities is required to follow the Commission's rules?

16 A. I'm sorry, I was checking -- I'm sorry, say it
17 again, please.

18 Q. Do you agree, Mr. Tompsett, that Johnson
19 Utilities is required to follow the Commission's rules?

20 A. Yes.

21 Q. And who at Johnson Utilities is responsible for
22 assuring that it follows the Commission's rules?

23 A. We have multiple people that check to make sure
24 the rates are being charged correctly, the filings are
25 being made with the Commission. So there are a number of

1 individuals involved.

2 Q. Is one of those individuals you?

3 A. Yes.

4 Q. And do those other individuals report to you or
5 through other individuals to you?

6 A. Ultimately they would eventually end up with me,
7 yes.

8 MR. MARKS: I have provided Mr. Tompsett a
9 three-page excerpt from the Arizona Administrative Code
10 and marked that as Exhibit SF-37, and that includes
11 R14-2-608 through -- I'm sorry two pages, through the end
12 of R14-2-609, and I would like to ask him some questions
13 about this. But at this time I would ask Your Honor to
14 take administrative notice of this section of the Code.

15 ALJ WOLFE: Administrative notice is taken.

16 BY MR. MARKS:

17 Q. Mr. Tompsett, I would like you to, if you have
18 it up there, refer to Exhibit SF-23. I'll give you a
19 moment to look that over.

20 A. Okay.

21 Q. And at the bottom of Exhibit SF-23, there's a
22 copy of an e-mail from Brian to Mr. -- well, to Dave. Is
23 that Mr. Ashton?

24 A. That appears to be, yes.

25 Q. And it states, "The utility has discontinued

1 water delivery to the golf course for nonpayment;" is that
2 correct?

3 A. Yes.

4 Q. Was there any other notice provided to
5 Mr. Ashton at that time that you were discontinuing water
6 service?

7 A. I don't recall specifically.

8 Q. Do you have any evidence of any other notice
9 that was provided?

10 A. There were a number of e-mails sent back and
11 forth to utility -- or back and forth with Mr. Ashton
12 during that time frame; so without all those in front of
13 me, I don't know if it was or not.

14 Q. I would like you, if you would, to go back to
15 Exhibit SF-37, and refer specifically to R14-2-609, if you
16 would. Section B refers to termination of service without
17 notice. Did you purport to terminate Swing First Golf,
18 LLC's effluent service without notice?

19 A. Can you give me a minute?

20 Okay. I'm sorry. What was the question?

21 Q. Did you purport to terminate water, effluent and
22 other water service to Swing First Golf without notice as
23 it's referenced in R14-2-609.B?

24 A. Well, Exhibit 23 says that, the e-mail I sent
25 him says that the utility discontinued the water service.

1 I don't recall if there was a notice before that.

2 Q. My question to you is, was the basis for your
3 termination -- I'm sorry, was it terminated without notice
4 or with notice?

5 A. I think that's what I just answered. I don't
6 know if there was a notice prior to this one or not. I
7 don't recall.

8 Q. Is this what you would reference as notice, this
9 e-mail?

10 A. As a follow-up, looks like to be a follow-up to
11 Dave directly, yes.

12 Q. Now, Rule 609.C provides a list of A through F
13 of reasons why service could be terminated with notice.
14 If you take a minute and look at those, could you point to
15 any of those reasons as the basis for your termination?

16 A. I'm sorry, you're at 609.C?

17 Q. Yes.

18 A. Well, 609.C, Subsection 1.B says, "Failure of
19 the customer to pay a delinquent bill for utility
20 service." And this e-mail says the utility has
21 discontinued water for nonpayment.

22 Q. Again, I want you just to be careful in your
23 answer here. Looking through those, that list, A through
24 F, of the six reasons for terminating with notice, are
25 there any other of the listed reasons for which you

1 terminated Swing First Golf's service?

2 A. I don't recall anything specifically. I mean
3 this was a couple years ago.

4 Q. I would like you, Mr. Tompsett, if you would, to
5 look then into Subsection D, Rule 609, titled "Termination
6 Notice Requirements."

7 A. Okay. What was the question?

8 Q. I haven't asked it yet.

9 A. Oh, okay.

10 Q. To paraphrase, D.1 states that utility can't
11 terminate service without providing advance written
12 notice, except under the conditions specified when advance
13 written notice is not required, correct?

14 A. That's what D.1 says, yes.

15 Q. And then in D.2 it has the requirements for
16 advance written notice. I would like to go through those
17 with you, and I would like you to refer back to Exhibit
18 SF-23.

19 Subparagraph 2 states that the notice will
20 contain, at a minimum, the following information: (A) The
21 name of the person whose service is to be terminated.

22 Do you see that on SF-23?

23 A. No, I don't. But as I stated earlier, there's
24 probably other correspondence prior to this with the golf
25 course that I don't see here.

1 Q. Do you see the address where service is being
2 rendered?

3 A. Not on this e-mail, no.

4 Q. Do you see there or can you provide me any
5 evidence anywhere else of the Commission rule or
6 regulation that was violated and an explanation thereof?

7 A. I'm sorry, could you ask that again?

8 Q. Is there anywhere on Exhibit SF-23 or anywhere
9 else where you provided notice of the Commission rule or
10 regulation that was violated and an explanation thereof?

11 A. Well, like I said, I don't think they have all
12 the documents that were, correspondence that was sent to
13 Johnson Ranch. Even the bills refer to specific
14 Commission rules. But that's not part of SF-23.

15 Q. We've put into evidence, I believe, the specific
16 bills related to this account. Can you point to me
17 anywhere on those bills where it references a Commission
18 rule or regulation that was violated?

19 A. Are the bills one of these exhibits here?

20 Q. Should be SF-20 and SF -- I'm sorry, SF-21 and
21 SF-22. And if you want to take a look after lunch -- or
22 after the break or during the break, I don't have a
23 problem with that, if you want to come back after the
24 break and change your answer.

25 But for now are you aware of anywhere that you

1 referenced the Commission rule or regulation that was
2 violated and an explanation thereof?

3 A. I would have to look through, spend a little
4 more time looking through this. There's boxes of
5 documents. I don't recall specifically any.

6 Q. Is there anywhere on Exhibit SF-23 or anywhere
7 else, to your knowledge, where you reference the amount of
8 the bill which customers failed to pay in accordance with
9 the payment policy of the utility?

10 A. Not on this one particular e-mail, no. I think,
11 I said a couple times there's other correspondence with
12 Swing First Golf that happened prior to this. We would
13 have to look at those specifically.

14 Q. And can you point to me on Exhibit SF-23 or
15 elsewhere where it provides the date on or after which
16 service may be terminated?

17 A. Say that again.

18 Q. Can you provide to me anywhere on Exhibit SF-23
19 or elsewhere where you've told Swing First Golf the date
20 on or after which service may be terminated?

21 A. According to this one e-mail, it was
22 discontinued on that day, 11-6-07.

23 Q. Thank you. Part D, and since the full amount is
24 in the record, I'll paraphrase. Did you provide to Swing
25 First Golf a statement advising them that they could

1 dispute the termination of service by contacting the
2 utility to discuss the cause for termination in advance of
3 the scheduled date of termination?

4 A. Again, I still don't think we're looking at all
5 the correspondence. It doesn't say that on this one
6 e-mail, no.

7 Q. And the second sentence in Part D states that
8 the customer has the right to file a complaint with the
9 Commission concerning this termination. Did you provide
10 notice of that?

11 A. Well, the customer has filed a complaint with
12 the Commission regarding this account.

13 Q. That's not my question, Mr. Tompsett. Did you
14 provide notice prior to terminating service on November
15 6th of 2007 that he had the right to file a complaint with
16 the Commission?

17 A. I don't recall.

18 Q. There's nothing on SF-23 to that effect, is
19 there?

20 A. No, there's nothing on SF-23; but as I said a
21 couple of times, there's other correspondence with that
22 account and that customer that is not part of SF-23.

23 Q. Go on to Part E here, timing of termination with
24 notice. It says, "Each utility shall be required to give
25 at least five days advance written notice prior to the

1 termination date."

2 And we've agreed that the termination date was
3 November 6th. Did you provide the five days advance
4 notice of that termination to Swing First Golf?

5 MR. CROCKETT: Objection, Your Honor. I'm not
6 sure that Mr. Tompsett has agreed that the termination
7 date was November 6th. I'm not sure that correctly
8 characterizes his testimony.

9 ALJ WOLFE: Mr. Marks, to what are you
10 referring?

11 MR. MARKS: SF-23, the e-mail chain, at the
12 bottom states, it's dated November 6, "Dave, the utility
13 has discontinued water delivery to the golf course for
14 nonpayment." And then at the top, also dated November
15 6th -- and this e-mail was obtained from the utility's
16 files and has been admitted -- there's a correspondence
17 from Mr. Ashton to Mr. Tompsett, in the second paragraph
18 that says, "George, I received word earlier today that
19 water to the golf course has been shut off."

20 MR. CROCKETT: Your Honor, I'm not sure that
21 from those two pieces of information you can conclude that
22 the water was shut off on November 6th. That's when the
23 e-mail was sent that said it had been shut off, but I
24 don't think that was what Mr. Tompsett testified to.

25 ALJ WOLFE: The objection is sustained.

1 Mr. Tompsett, what date was the water turned off to the
2 golf course?

3 THE WITNESS: Your Honor, I don't recall
4 specifically; but based on this e-mail, it looks like it
5 was shut off on November 6th.

6 ALJ WOLFE: Go ahead, Mr. Marks.

7 MR. MARKS: Thank you.

8 BY MR. MARKS:

9 Q. And I was just looking, I believe you previously
10 testified to that effect as well, Mr. Tompsett.

11 My question was, did you provide five days
12 written notice of your intent to terminate to Swing First
13 Golf or Mr. Ashton?

14 A. I don't recall specifically. As I said, we're
15 only looking at a snapshot of one e-mail, and I'm sure
16 there's other correspondence.

17 ALJ WOLFE: Mr. Tompsett, could you bring that
18 correspondence so that we can enter it into the record?

19 THE WITNESS: That's why -- I think it's in the
20 boxes of information, Your Honor, and that's why I would
21 like to see it.

22 ALJ WOLFE: Let's take a break, and you can look
23 for it and bring it back here. We'll take a fifteen-
24 minute morning break. We'll come back here at 11:30, and
25 I hope that you can provide that information for us.

1 (Recessed from 11:12 to 11:34 a.m.)

2 ALJ WOLFE: Let's go back on the record.

3 Mr. Crockett.

4 MR. CROCKETT: Judge Wolfe, during the break, we
5 contacted the corporate office, and at this point in time
6 we've been unable to locate any computer-generated
7 termination notices. There have been some of those that
8 have been provided over the summer to Swing First. So we
9 haven't found anything in the nature of a computer-
10 generated termination notice or delinquency notice on the
11 bill.

12 There has been -- there's a lengthy set of
13 e-mails back and forth on issues between Swing First Golf
14 and Johnson Utilities that have been provided in a data
15 response. We've quickly looked through those during the
16 break, just skimming very quickly, probably an inch or
17 inch and a half thick of documents. So we haven't found
18 anything yet.

19 What we would like to do is take a look at that
20 over the break, over the lunch hour break, and then report
21 back to you this afternoon where we are on that.

22 ALJ WOLFE: That would be fine. Thank you.

23 Go ahead, Mr. Marks.

24 MR. MARKS: Thank you, Your Honor.

25 BY MR. MARKS:

1 Q. Mr. Thompson, do you still have Volume II of the
2 transcript with you up there?

3 A. Yes, I do.

4 Q. If you would turn, please, to page 301.

5 A. Okay.

6 Q. And at the bottom of the page, if you would look
7 through starting at line 24 and continuing for the next
8 several lines. We had a discussion about the November 6th
9 termination date. I would like you to look at that and
10 see if it refreshes your recollection.

11 A. Okay. Yeah, this is referring to SF-23.

12 Q. Correct. And you were asked at line 6, page
13 302 -- and this was referring to the SF-23 -- "On this
14 date you discontinued water delivery to Swing First Golf,
15 correct?"

16 And your answer says, "That is what this says,
17 yes."

18 Is that still your response?

19 A. I think that's correct, yes.

20 Q. And then we started at line 14 discussing a
21 second discontinuation on November 20th of the Swing First
22 account. Do you see that?

23 A. Yes.

24 Q. And we concluded on page 303 at the bottom of
25 the page, line 24, I'll just read the question: "And that

1 would indicate that that date of November 20, 2007, is
2 reasonably accurate for the date that the water was turned
3 off for the second time; is that correct?"

4 And your answer was, "I don't have any reason to
5 dispute that, no."

6 Is that still your answer?

7 A. Yes.

8 Q. I would like you to go back to Exhibit SF-37.

9 A. Oh, okay. All right.

10 Q. And we were discussing the requirement in
11 Subpart E.1 to provide five days advance written notice
12 prior to the termination date, and you stated through
13 counsel that you haven't found anything yet but that
14 you're going to look over the lunch hour; is that correct?

15 A. Yes.

16 Q. Now, Subpart E goes on to say in Paragraph 2
17 that the notice is considered given when a copy thereof is
18 left with the customer or posted first class in the United
19 States mail, addressed to the customer's last known
20 address.

21 Are you aware of either leaving a copy with the
22 customer or sent first class mail to the customer?

23 A. Not that I recall, no.

24 Q. Now, concerning the November 20th termination,
25 was that also for failure of the customer to pay a

1 delinquent bill for utility service?

2 A. As I recall, yes. That's SF-24.

3 Q. Did you provide advance written notice of that
4 termination?

5 A. I don't recall.

6 Q. You don't recall if you did or didn't, or you
7 just don't -- you don't what?

8 A. I don't recall.

9 Q. Do you recall if you did provide written notice?

10 A. I don't recall if we did or didn't, no.

11 Q. And is that something you can follow up on over
12 the lunch break?

13 A. We're going to try, yes. I thought when I was
14 referring to e-mail responses, I thought they were in some
15 of the data responses in either this or the complaint
16 case, so we'll try to look through those.

17 MR. MARKS: And so, Your Honor, if I might,
18 given that they're going to be looking for additional
19 documents, I would like to come back to this after the
20 lunch hour concerning the November 20th date after
21 Mr. Tompsett has had a chance to go through the files.

22 ALJ WOLFE: Okay.

23 MR. MARKS: Thank you.

24 BY MR. MARKS:

25 Q. I would like you to turn to Exhibit SF-28, if

1 you would, please.

2 A. Okay, I have SF-28.

3 Q. And remember we were asking some questions the
4 last time you were here about this exhibit?

5 A. Not specifically. It's in the transcript
6 somewhere, I assume.

7 Q. Did you review the transcript at all in
8 preparation for your testimony today?

9 A. Only briefly.

10 Q. Are you aware that on January 25, 2008, that
11 Swing First filed a formal complaint against Johnson
12 Utilities at the Commission concerning numerous issues,
13 including customer billing and meter reading issues?

14 A. Yes, there was a formal complaint filed. I
15 don't recall the specific date.

16 Q. And if you would like to refer to SF-28, when
17 did Johnson Utilities receive a copy of the formal
18 complaint? If you would like to look down, it's the
19 second paragraph from the bottom.

20 A. The second paragraph from the bottom? Oh, okay.

21 Q. Of the first page.

22 A. Yeah, okay. Okay. February 6 of '08.

23 Q. I'm sorry?

24 A. The e-mail was dated February 6 of 2008.

25 Q. But your e-mail states that you were served with

1 a complaint on Friday, February 1st; is that correct?

2 A. Yes.

3 Q. Now, turning back previously or to the next page
4 of SF-28, in the chain there's an e-mail from Mr. Ashton
5 to December Davis, and you are one of the folks copied on
6 that. Do you see that?

7 A. You're referring to the first one in the chain?

8 Q. Yes, sir.

9 A. Okay.

10 Q. Which is the last one to appear.

11 A. Understand. Okay.

12 Q. And that's an e-mail from Mr. Ashton, dated
13 February 4, where he says that he has received a report
14 that the lake on the 18th hole was flooded with effluent
15 water that's extended beyond the borders of the lake. Do
16 you see that?

17 A. Yes.

18 Q. If February 4th were a Monday, when would
19 February 1st have been?

20 A. Would have been a Friday, I think, if I did the
21 math right.

22 Q. So in fact, after receiving the customer
23 complaint on Friday, February 1st, you almost immediately
24 began delivering large quantities of effluent to Swing
25 First Golf; is that correct?

1 A. Based on this correspondence, yes, it looks like
2 there was effluent delivered over the weekend, yes.

3 Q. And based on this correspondence, these
4 deliveries continued even after Swing First employees and
5 Mr. Ashton told you that the lake was flooding and asked
6 Johnson Utilities to stop delivering the effluent,
7 correct?

8 A. Just give me a minute, please. Well, it says
9 there was -- all these are dated Monday. The answer was
10 February -- February 6th is a Wednesday; is that right?

11 Q. So you responded to Mr. Ashton's e-mail asking
12 you to stop delivering water two days later on February
13 6th; is that correct?

14 A. Yes. That's correct. And the e-mail says that
15 the lake had flooded over the weekend, over Saturday and
16 Sunday.

17 Q. And in your February 6th response, did you agree
18 to stop delivering effluent?

19 A. I don't see that I said one way or the other.

20 Q. Did you state -- did you tell Mr. Ashton that
21 you were going to cease delivering effluent?

22 A. No, it doesn't say it's going to be turned off.
23 This e-mail doesn't say that.

24 Q. Now, is this sort of retaliation typical of how
25 Johnson Utilities responds to customer complaints?

1 MR. CROCKETT: Object. Object to the question,
2 Your Honor.

3 ALJ WOLFE: Sustained.

4 BY MR. MARKS:

5 Q. Mr. Tompsett, could you see how this would
6 appear to be some sort of retaliation for filing the
7 complaint, given the timing of the complaint filing and
8 the overdeliveries of effluent immediately following that
9 complaint being received by you?

10 A. No, I don't see it as your word, retaliation. I
11 mean effluent was being delivered to the golf course, and
12 it appears it rained as well on that weekend.

13 Q. I would like you to go back to SF-42, please.

14 A. Okay. I have SF-42.

15 Q. The summary in SF-42 says -- it shows that you
16 delivered only 10 million gallons, almost 11 million
17 gallons of treated effluent for all of 2007 to Swing First
18 Golf, correct?

19 A. Yeah, subject to check or verify or whatever you
20 guys call it. Yes, it says almost 11 million gallons were
21 delivered in '07.

22 Q. Mr. Tompsett, you've had the opportunity since
23 this was put into evidence in April of checking these
24 numbers, have you not?

25 A. Yeah, I assume it's the same document, yes.

1 Q. And then in February, you delivered an amount
2 equal to half, approximately, the entire amount that you
3 delivered in all of 2007 of treated effluent, correct?

4 A. Yes.

5 Q. And that's despite the customer asking you not
6 to deliver any more; is that correct?

7 A. Well, this e-mail came and asked us to stop
8 delivering it after it was delivered.

9 Q. Are you stating that -- this seems to be
10 somewhat of a change in your testimony. Are you
11 testifying now that you stopped delivering sometime prior
12 to February 4th, that you delivered five and a half
13 million gallons over a three-day period?

14 A. No, I didn't say that. The five-and-a-half
15 million gallons is for the entire month.

16 Q. Are you stating that you stopped delivering
17 effluent sometime before February 4th?

18 A. No, I don't think I'm saying that. This e-mail
19 chain says that effluent was delivered to the lake over
20 the weekend. On Monday -- that was the 4th, so the
21 effluent would have been delivered the 1st, 2nd and 3rd, I
22 assume. But there is no way that facility can deliver
23 five-and-a-half million gallons in a three-day period.

24 Q. Well, let me ask this another way. On February
25 4th, Mr. Ashton asked you to stop delivering water,

1 correct?

2 A. Yes.

3 Q. And that would indicate you were still
4 delivering effluent water on February 4th, correct?

5 A. That's what the e-mail says, yes.

6 Q. And then on February 6th when you responded two
7 days later, there's nothing in your e-mail that says that
8 you had stopped delivering effluent at that point, is
9 there?

10 A. No. There isn't.

11 MR. CROCKETT: Your Honor, could I ask a
12 question to clarify the record? I think Mr. Marks
13 testified that there was five-and-a-half million gallons
14 delivered in February?

15 ALJ WOLFE: I hope he didn't testify.

16 MR. CROCKETT: Or -- I shouldn't say testify. I
17 didn't mean to say testify. But I thought that's what I
18 heard him say, and now I'm unclear.

19 As I read SF-42, it appears that there was
20 1.4040 million gallons delivered in February; is that
21 correct?

22 MR. MARKS: As I read it and as I understand
23 it -- I'm sorry, Your Honor, go ahead.

24 ALJ WOLFE: No, you go ahead, please.

25 MR. MARKS: Is that in 2007 there was a total of

1 10.944 million gallons delivered to Swing First Golf of
2 treated effluent. In February, there was 5.469 million
3 gallons of treated effluent delivered.

4 MR. CROCKETT: Is that 2008 you're looking at,
5 Mr. Marks, or 2007?

6 MR. MARKS: 2008. Did I say 2007?

7 MR. CROCKETT: Yes, and we're talking about --

8 MR. MARKS: We're talking about the e-mail chain
9 from 2008; and if I misspoke, this is February 2008 that
10 we're talking about.

11 MR. CROCKETT: Now I understand. But I think
12 you said the total for 2007 was approximately 11 million
13 gallons; is that right?

14 MR. MARKS: Yes, I believe that's what the
15 exhibit states.

16 MR. CROCKETT: And the total for 2008 was 127
17 million gallons.

18 MR. MARKS: 2008 February was 5.469 million
19 gallons. That's the only part of 2008 that I discussed.

20 MR. CROCKETT: Okay. I see. I understand.

21 BY MR. MARKS:

22 Q. And you understood my reference, Mr. Tompsett,
23 to be to February of 2008; is that correct?

24 A. Yeah, I think I was with you.

25 Q. Mr. Tompsett, I've provided you a copy of a

1 document that's been marked as Exhibit SF-29. Do you have
2 that before you?

3 A. Yes.

4 Q. And could you describe Exhibit SF-29?

5 A. It is a letter to, addressed to a Mr. Nick
6 Enthoven -- I'm guessing that's how that's pronounced --
7 with respect to Swing First Golf and David Ashton.

8 Q. Have you seen this letter before?

9 A. Yes.

10 Q. Did you help prepare this letter?

11 A. No. It was prepared by our staff.

12 Q. Who on your staff prepared this letter?

13 A. Mr. Johnson directed that it be prepared. One
14 of the secretaries would have typed it up.

15 Q. Anyone else besides Mr. Johnson and one of the
16 secretaries?

17 A. Not that I'm aware of, no.

18 Q. And the letter says, "Dear Swing First Golf
19 Member." Who do you understand that to refer to?

20 A. It's referring -- Mr. Enthoven must be a Swing
21 First golf member.

22 Q. So there were other letters sent to other Swing
23 First Golf members; is that correct?

24 A. I believe so, yes.

25 MR. MARKS: I would move Exhibit SF-29 at this

1 time, Your Honor.

2 ALJ WOLFE: Is there any objection?

3 MR. CROCKETT: No, Your Honor.

4 ALJ WOLFE: SF-29 is admitted.

5 (Exhibit SF-29 was admitted.)

6 BY MR. MARKS:

7 Q. I'm going to go through this in some detail,
8 Mr. Tompsett. It states in the first sentence that David
9 Ashton, as the managing member of Swing First Golf, LLC,
10 has filed a libelous complaint against Johnson Utilities,
11 LLC, with the Arizona Corporation Commission."

12 Do you know what is being referred to here?

13 A. Well, this, as I understand it, this letter is
14 part of the Superior Court case that's still pending
15 before the Superior Court, and I don't know as we can be
16 discussing another case in this.

17 Q. This letter refers to a libelous complaint
18 against Johnson, LLC, with the Arizona Corporation
19 Commission.

20 A. Yes, and that would be the complaint case, I
21 think it's referring to, with the Corporation Commission.

22 Q. And specifically, what was libelous in the
23 complaint?

24 A. We would have to look at the complaint. That's
25 part of the complaint case. I don't know that -- I need

1 to look at a copy of that.

2 Q. And it says before Mr. Ashton filed his, again
3 calling it a libelous complaint with the ACC, Johnson
4 Utilities filed a lawsuit against Swing First Golf and
5 David Ashton in the Superior Court of Arizona. Is that
6 what you were referring to?

7 A. Yes.

8 Q. And the case number for that complaint is given,
9 and it describes the complaint. Then it goes on in the
10 next paragraph. It says, "I'm writing to you now for two
11 reasons." And this "I," you understand, refers to
12 Mr. Johnson?

13 A. Mr. Johnson signed this, yes.

14 Q. And we agree he's the CEO of Johnson Utilities,
15 effectively?

16 A. Yes.

17 Q. It says that Mr. Ashton, purportedly acting on
18 behalf of Swing First Golf, continues to make libelous
19 remarks and unsubstantiated filings with the ACC in an
20 effort to slander me personally and damage Johnson
21 Utilities. Do you see that?

22 A. Yes.

23 Q. Do you know what libelous remarks are alleged to
24 have been made by Mr. Ashton?

25 MR. CROCKETT: Objection, Your Honor. I think

1 that's been asked and answered. Mr. Tompsett said he
2 would need to look at the complaint to be able to answer
3 that question.

4 MR. MARKS: I'm sorry, this is a different
5 statement, Mr. Crockett. It says he has purportedly made
6 libelous remarks and unsubstantiated filings with the ACC.
7 And I'm asking about the alleged libelous remarks.

8 ALJ WOLFE: Overruled. That means you may
9 answer.

10 THE WITNESS: I understand, Your Honor. Thank
11 you.

12 Again, this is referring to the documents that
13 have been filed as part of the complaint case that was
14 ongoing and the comments that Mr. Ashton had made to
15 Mr. Johnson personally, I believe.

16 Q. Personal comments that he made to Mr. Johnson is
17 the basis for libelous remarks? Is that what you're
18 stating?

19 A. I'm aware that Mr. Ashton and Mr. Johnson had
20 one-on-one conversations, and I think that's referring to
21 some of those.

22 Q. Are you aware of anything else?

23 A. Well, the complaint case has a number of
24 statements that could easily be construed as libelous.

25 Q. When I read "remarks" -- when I read the word

1 "remarks," I tend to think that that's something that's
2 spoken as opposed to written. Do you have a different
3 understanding?

4 A. No, I think remarks could probably include both.

5 Q. And then it says the effort is to slander me,
6 again Mr. Johnson, personally and damage Johnson
7 Utilities.

8 What basis do you have for that or does Johnson
9 Utilities have for that?

10 A. What is the question? I'm sorry.

11 Q. What basis does Johnson Utilities have for
12 making the statement that Mr. Ashton is trying to
13 slander Mr. Johnson personally and damage Johnson
14 Utilities?

15 A. Well, the document speaks for itself. Like I
16 said, there was slanderous comments made to him directly,
17 and then there's also the accusations in the complaint
18 case against Johnson Utilities.

19 Q. Do you know as a lay person the difference
20 between libel and slander?

21 A. No, I really don't.

22 Q. The next sentence goes on to say, "However,
23 because Mr. Ashton claims to be acting for SFG, and
24 therefore on your behalf..." Let me stop there at the
25 comma.

1 "On your behalf," who does that refer to?

2 A. Looks as if it's referring to the Swing First
3 Golf member.

4 Q. It says, "We." Would that be Johnson Utilities?

5 A. Appears so, yes.

6 Q. "We are considering adding all members of SFG
7 personally as defendants in the pending Superior Court
8 case."

9 Do you see that?

10 A. Yes.

11 Q. So to paraphrase, Mr. Johnson is threatening to
12 add Mr. Enthoven and other Swing First Golf members as
13 defendants in this pending Superior Court case; is that
14 correct?

15 MR. CROCKETT: Your Honor, I object to the use
16 of the term "threatening."

17 ALJ WOLFE: Sustained.

18 BY MR. MARKS:

19 Q. What do you understand Mr. Johnson to mean when
20 he states, "We are considering adding all members of SFG
21 personally as defendants in the pending Superior Court
22 case"?

23 A. The sentence seems to be stating that the
24 complaint would be amended to include all members rather
25 than just Swing First as a corporation or LLC or whatever

1 it is.

2 Q. It goes on then to say, "If you do not support
3 Mr. Ashton's actions, please let me know as soon as
4 possible."

5 Do you know if Mr. Johnson heard from any of the
6 Swing First Golf members in response to this letter?

7 A. I don't recall seeing anything in writing. I
8 don't know if Mr. Johnson talked to anybody personally or
9 not.

10 Q. Then it says, "If I do not hear from you, we
11 will assume that you support Mr. Ashton's actions, and
12 will proceed accordingly."

13 What does he mean by "proceed accordingly"?

14 A. It looks as if that would be referring to adding
15 the members in the Superior Court case, in the complaint
16 case -- or the Superior Court case.

17 Q. And do you know what basis there would be for
18 adding them as members to the court case?

19 A. I'm not a lawyer, Mr. Marks, so I don't know
20 what the basis would be.

21 Q. Do you know what Mr. Johnson was thinking as to
22 what basis he would be adding them as members?

23 MR. CROCKETT: Objection. Your Honor, I would
24 object. I don't think Mr. Tompsett knows what Mr. Johnson
25 was thinking, and I think Mr. Tompsett testified earlier

1 that he wasn't involved in the preparation of this letter.

2 ALJ WOLFE: Sustained. Please rephrase the
3 question.

4 MR. MARKS: Yes.

5 BY MR. MARKS:

6 Q. Based on your knowledge and any discussions that
7 you've had with Mr. Johnson, do you know what he meant by
8 "will proceed accordingly"?

9 A. That would be a question for the attorney
10 handling the complaint, civil complaint in the Superior
11 Court.

12 Q. No, the letter came from Mr. Johnson, so I'm
13 asking if based on your discussions with Mr. Johnson, do
14 you know what he meant by "proceed accordingly"?

15 A. No. Like I said, I'm assuming that the
16 complaint would be amended.

17 Q. Now, essentially then, he stated, to sum up this
18 paragraph, that he would sue the Swing First Golf members
19 if Mr. Ashton continued his complaint case at the
20 Corporation Commission; is that correct?

21 MR. CROCKETT: Objection, Your Honor. I don't
22 know that that characterizes the paragraph. I think what
23 Mr. Johnson objected to was libelous remarks and
24 unsubstantiated filings.

25 ALJ WOLFE: Overruled. You may answer the

1 question.

2 THE WITNESS: Could you read back the question?

3 MR. MARKS: Read it back, please.

4 (The question was read by the Certified Reporter
5 as requested.)

6 THE WITNESS: Again, paraphrasing the document,
7 that's what it says.

8 BY MR. MARKS:

9 Q. Thank you. Now, we go on to the second
10 paragraph here, and it states, "The second reason for this
11 letter is to make you aware of the nature of the character
12 of Mr. Ashton who is your appointed representative of
13 Swing First Golf." Do you see that?

14 A. Yes.

15 Q. Do you know what purpose he has for this
16 statement, Mr. Johnson?

17 A. No.

18 Q. "Attached you will find copies of complaints
19 filed against Mr. Ashton in the Superior Court of
20 Arizona." Do you see that?

21 A. Yes.

22 Q. And were copies of those complaints attached?

23 A. It looks like it, yes.

24 Q. It says, "These complaints are unrelated to
25 Johnson Utilities," correct?

1 A. Yes.

2 Q. "But, in my humble opinion, show the nature of
3 the beast we are dealing with in Mr. Ashton." Do you see
4 that?

5 A. Yes.

6 Q. Given Mr. Johnson's statement that the
7 complaints are unrelated to Johnson Utilities, for what
8 purpose has he brought these matters to light?

9 A. I don't know. I don't know.

10 Q. What does this have to do -- let me put it
11 another way. Does this revelation have anything to do
12 with the complaint case pending at the Corporation
13 Commission?

14 A. As I understand it, this -- you docketed this in
15 the rate case. I don't recall if it's docketed in the
16 complaint case.

17 MR. MARKS: Could I have that question read back,
18 please?

19 (The question was read by the Certified Reporter
20 as requested.)

21 THE WITNESS: Maybe if you could rephrase the
22 question, I'm not quite sure what the point is.

23 BY MR. MARKS:

24 Q. Let's turn back to what's attached here, which
25 is a complaint by Mr. Layton, by and through his parents

1 and guardians, against Mr. Ashton, alleging assault,
2 intentional infliction of emotional distress and battery.
3 Do you see that?

4 A. Yes.

5 Q. Now, you agree Mr. Ashton had filed a complaint
6 against Johnson Utilities on February 1, 2008, concerning
7 a number of issues, including billing and customer
8 service, correct?

9 A. Yes.

10 Q. And I'm asking you, does the attached criminal
11 complaint have anything to do with that complaint case?

12 A. Not that I'm aware of, no.

13 Q. Let me ask you the same question about this rate
14 case. Does the attached criminal complaint have anything
15 to do with the issues in this rate case?

16 A. I would say it applies to Mr. Ashton's
17 experience, whether it be in oath or testifying.

18 Q. And that would be something, if it were deemed
19 appropriate, that could be brought up on cross-examination
20 by Johnson Utilities' attorneys, correct?

21 A. I don't know. I assume so.

22 Q. And I ask you again then, what was the purpose,
23 how was sending this document with the attachment to Swing
24 First Golf members related to the issues in this rate
25 case?

1 A. Again, Mr. Marks, as I recall, we did not put
2 this into issue with the rate case. This was not docketed
3 by Johnson Utilities.

4 Q. I'll ask you again, you sent -- you've admitted
5 that Johnson Utilities sent this letter out to Swing First
6 Golf members, correct?

7 A. Yes.

8 Q. And it references the cases at the Corporation
9 Commission, correct?

10 A. It also references the civil complaint in the
11 Superior Court.

12 Q. For what purpose related to the -- is there any
13 purpose related to those cases that you've identified in
14 providing these documents to Swing First Golf's members?

15 A. I don't know.

16 Q. Let's go on to the next paragraph. "A cursory
17 review of the financials that we understand have been
18 provided to you would strongly suggest that an outside
19 independent management and financial audit be performed on
20 SFG since Mr. Ashton has been managing member." Do you
21 see that?

22 A. Yes.

23 Q. Now, you've testified that the only two people
24 involved in preparing this document were Mr. Johnson and a
25 secretary, correct?

1 A. Yes.

2 Q. Is Mr. Johnson an accountant?

3 A. Not that I'm aware of, no.

4 Q. Do you know what basis he has for making this
5 statement?

6 MR. CROCKETT: Objection, Your Honor.

7 MR. MARKS: To your knowledge?

8 MR. CROCKETT: I think that's been asked and
9 answered that Mr. Tompsett has indicated he doesn't know
10 what Mr. Johnson was thinking when he wrote the letter.

11 ALJ WOLFE: Could you read the question back
12 then, please?

13 (The question was read by the Certified Reporter
14 as requested.)

15 ALJ WOLFE: Overruled.

16 THE WITNESS: No, I don't.

17 BY MR. MARKS:

18 Q. Do you know what Mr. Johnson's education is,
19 what degrees he has?

20 A. I'm not aware if he has any degrees or not. I
21 know he has been in business for many years, looked at a
22 lot of financial statements, so --

23 Q. Do you know, again, to your knowledge, if
24 Mr. Johnson actually looked at the financials provided to
25 Swing First members?

1 A. I don't know.

2 Q. Do you know how Mr. Johnson might have obtained
3 such financials, if he did?

4 A. No.

5 Q. Do you know what Mr. Johnson might have
6 discovered in his cursory review that would strongly
7 suggest that an outside independent management and
8 financial audit be performed on SFG?

9 A. No, I don't.

10 Q. Mr. Tompsett, do you know when Mr. Ashton filed
11 his initial testimony in this case?

12 A. I would assume it would be around the time the
13 complaint case was filed.

14 Q. In this case, the rate case?

15 A. Oh, in this case? No, I don't recall
16 specifically.

17 Q. Would you accept, subject to check, that it was
18 before, shortly before the date of this letter?

19 A. Subject to check. I'm sure that's in the ACC's
20 records.

21 Q. Would you accept, subject to check, that Swing
22 First Golf recommended, prior to this letter, in its
23 testimony that the Commission consider using, consider
24 holding an independent management and financial audit of
25 Johnson Utilities?

1 A. I don't recall that specifically, but I do
2 recall something to that effect. I don't know when it was
3 filed.

4 Q. It goes on to state, "We would also suggest," we
5 being, I guess, the imperial we here, Mr. Johnson? Is
6 that correct?

7 A. It says "we." I mean that's what the document
8 says.

9 Q. Well, it's been "I" up until now. I just
10 wondered if there was any change, to your knowledge, here?

11 A. No, no comment one way or the other.

12 Q. So to your knowledge, there was no one else
13 making this suggestion besides Mr. Johnson?

14 A. No.

15 Q. "...suggest the independent financial audit
16 should not be limited to Swing First Golf, but in light of
17 the other Superior Court complaints, be extended to
18 Mr. Ashton's personal tax returns."

19 Do you know what the basis for that
20 recommendation or that suggestion was?

21 A. No. It appears to be referring to an audit of
22 all the financials.

23 Q. If you know, did Swing First Golf in its
24 testimony recommend that Mr. Johnson's personal tax
25 returns be audited?

1 A. I don't recall that, no.

2 Q. Would you accept, subject to check, that they
3 did not make that recommendation?

4 A. Subject to check. I think the documents will
5 speak for themselves if they were filed at the Corporation
6 Commission.

7 Q. Do you see any relevance to this rate case of
8 Mr. Ashton's personal tax returns?

9 A. As part of the rate case? No.

10 Q. Do you see any relevance in the complaint case
11 of Mr. Ashton's personal tax returns?

12 A. I don't know if that would have relevance in the
13 complaint case or not.

14 Q. You don't know?

15 A. No.

16 Q. You've been with Johnson Utilities, I believe
17 you said, since 2001; is that correct?

18 A. I think it's '02, but a long time.

19 Q. You've consulted before that time --

20 A. Yes.

21 Q. -- with Johnson Utilities?

22 A. Yes.

23 Q. Have you been through any complaint cases with
24 Johnson Utilities?

25 A. There was only one formal complaint case.

1 Q. Are you aware in that case of whether the
2 complainants' personal tax returns were the subject of
3 that case?

4 A. As I recall, that was a home builder, so I don't
5 know. I don't recall what got disclosed in that case at
6 all.

7 Q. Are you aware of any time that the Commission
8 has reviewed a complainant's personal tax returns?

9 A. I don't review all their complaint cases.

10 Q. Are you aware of any time in a rate case where
11 the Commission has reviewed an intervenor's personal tax
12 returns or a party representing an intervenor?

13 A. Again, I don't know. I don't review those.

14 Q. Are you aware of any time in a rate case or a
15 complaint case where the Commission has reviewed a
16 witness's personal tax returns?

17 A. Again, don't know.

18 Q. So you're not aware of any basis for
19 Mr. Johnson's suggestion here, are you?

20 A. Well, I think in the -- I don't know what the
21 rules are, but we're crossing back and forth between the
22 rate case and the complaint case; but I would think in the
23 complaint case there would be some relevance to the health
24 or the financial status of the complainant if it's having
25 to do with rates and their bills.

1 Q. The complainant is Swing First Golf, LLC,
2 correct?

3 A. I believe so, yes.

4 Q. Mr. Ashton is the managing member of Swing First
5 Golf, correct?

6 A. I think that's correct, yes.

7 Q. Again, I'm asking you about looking at
8 Mr. Ashton's personal tax returns; are you aware of any
9 relevance of that?

10 A. Like I said, I don't know if they do that or not
11 in those types of cases. I don't know if the Commission
12 looks at those or not.

13 Q. Thank you. I'm about to move on to another
14 subject here.

15 ALJ WOLFE: Okay. This would be a good time for
16 the lunch break.

17 Mr. Crockett, how much time do you need to look
18 over the things that you're planning to look over during
19 lunch?

20 MR. CROCKETT: Well, Your Honor, we also are
21 going to be looking over the exhibit, the transcript in
22 addition. So I thought if we took maybe an hour and a
23 half lunch break today.

24 ALJ WOLFE: Okay.

25 MR. CROCKETT: Maybe an hour and forty minutes,

1 come back at --

2 ALJ WOLFE: 1:30?

3 MR. CROCKETT: -- 1:30.

4 ALJ WOLFE: Okay. We'll come back here at 1:30
5 then.

6 MR. CROCKETT: 2:00.

7 ALJ WOLFE: Okay, we'll meet back here at 2:00.

8 (Recessed from 12:20 p.m. to 2:04 for lunch.)

9 ALJ WOLFE: Let's go back on the record.

10 Mr. Marks.

11 MR. MARKS: Yes, Your Honor, I wonder if we
12 could address SF-32 at this time.

13 ALJ WOLFE: Mr. Crockett.

14 MR. CROCKETT: Sure, Your Honor. That's fine.

15 ALJ WOLFE: Did you want -- are you going to go
16 ahead with your questions, Mr. Marks?

17 MR. MARKS: Your Honor, at this time I don't
18 have any questions on SF-32. In your procedural order you
19 stated that it could be admitted for either direct
20 evidence or it could be admitted for purposes of
21 impeachment, and so I think the transcript speaks for
22 itself, and there's no need to ask Mr. Tompsett any
23 questions about it.

24 ALJ WOLFE: Mr. Crockett?

25 MR. CROCKETT: Your Honor, we've been through

1 the transcript over the lunch hour, and there are some
2 areas in the transcript that we think should be further
3 redacted because it's not consistent with your procedural
4 order. We can walk through those. We didn't have as much
5 time to look at the unredacted transcript to see if there
6 were portions that need to be included for purposes of
7 making what is here accurate.

8 But I guess at this point, I would suggest
9 perhaps we go through and look at some specific areas that
10 we think should be further eliminated from this exhibit.

11 ALJ WOLFE: Have you discussed this with
12 Mr. Marks?

13 MR. CROCKETT: I have not.

14 ALJ WOLFE: Mr. Marks, are you willing to
15 discuss this with Mr. Crockett, seeing that you don't have
16 any questions to ask the witness?

17 MR. MARKS: I certainly could, Your Honor, yes.
18 And, of course, if Mr. Crockett wants to introduce any
19 additional portions of the transcript, he's free to do
20 that as part of his case.

21 ALJ WOLFE: I think that would be the better way
22 to deal with it since there are going to be no questions
23 by you.

24 Were any other parties planning to ask any
25 questions about the transcript? Mr. Pozefsky?

1 MR. POZEFSKY: I was.

2 ALJ WOLFE: And do you have portions of it that
3 you're planning to use? How were you planning to proceed?

4 MR. POZEFSKY: You know, Your Honor, I have gone
5 through over the lunch period Mr. Marks's Exhibit SF-32.
6 I was okay with that. It covered the areas that I wanted
7 to talk about; and the ones that I didn't, I sort of
8 reworked. So my intent at this point was to go ahead with
9 what was in SF-32.

10 Now, I don't know if Mr. Crockett is going to
11 have any changes to the things I was thinking of asking,
12 but so far this is fine with me.

13 ALJ WOLFE: Okay. So you were moving forward on
14 the assumption that the entirety of SF-32 would be
15 admitted?

16 MR. POZEFSKY: I was. And I don't need it all
17 to be admitted, but the parts that I wanted to cover were
18 not redacted in SF-32; so yes, I was moving forth with
19 that assumption.

20 ALJ WOLFE: In order to have your questions
21 answered, does SF-32 or any part of it need to be
22 admitted, or can you just ask questions about the
23 admission of an exhibit?

24 MR. POZEFSKY: You know, Your Honor, I would be
25 perfectly fine to just ask the questions, but I would make

1 reference to those parts of the exhibit; but I don't need
2 the whole exhibit to be admitted to ask the questions that
3 I want to ask.

4 ALJ WOLFE: That clarifies things for me a
5 little.

6 Staff, Ms. Mitchell?

7 MS. MITCHELL: Thank you, Judge Wolfe. The
8 questions that I have, I don't need this exhibit to be
9 able to ask my questions in this area. As you know, I was
10 also assigned to the complaint docket, and some of these
11 are the same issues. So I have some underlying
12 familiarity with some of the basis of this transcript.
13 But I would not need it to ask the questions that I need
14 to ask.

15 ALJ WOLFE: Okay.

16 MS. MITCHELL: But we don't oppose or suggest
17 that it be admitted. It's whatever your desire to do.

18 ALJ WOLFE: And Mr. Mannato, I didn't mean to
19 leave you out of the discussion. Do you have questions
20 for this witness related to this exhibit?

21 MR. MANNATO: No, Your Honor. On behalf of the
22 Town, we're not going to pursue the topics of this
23 exhibit.

24 ALJ WOLFE: Do you have other cross-examination
25 of Mr. Tompsett?

1 MR. MANNATO: Yes.

2 ALJ WOLFE: Let's go ahead and hear your
3 cross-examination first, and then we will move on and
4 allow Mr. Pozefsky to ask his questions and take it one
5 question at a time.

6 MR. MARKS: Your Honor, I do have questions in
7 other areas.

8 ALJ WOLFE: Oh, you do?

9 MR. MARKS: Yes.

10 ALJ WOLFE: I'm sorry, Mr. Mannato. I didn't
11 mean to put you on the spot like that.

12 MR. MARKS: This was the time we had talked
13 about taking this up after lunch, and that's the only
14 reason I brought it up.

15 ALJ WOLFE: So have you moved for the admission?

16 MR. MARKS: Yes, I did.

17 ALJ WOLFE: Okay.

18 MR. MARKS: But let me -- since my memory fails
19 me, I'm 99 percent sure I did. If I didn't, I do.

20 ALJ WOLFE: All right. Now it has been moved,
21 and I'll wait to rule on that until I see whether there's
22 a need for it. Okay.

23 You can go ahead with your other area of
24 cross-examination.

25 MR. MARKS: Thank you, Your Honor.

1 BY MR. MARKS:

2 Q. Mr. Tompsett, I've placed before you a document
3 that's been marked as Exhibit SF-30. Do you have that?

4 A. Yes, I do.

5 Q. And could you identify that for the record,
6 please?

7 A. It looks to be a letter from you to
8 Mr. Crockett, and with the attachment that says
9 Supplemental Response to Data Request JU 2.15.

10 Q. And then if you could describe the attachments?

11 A. JU -- well, the second page is JU 2.15, and it
12 says please provide copies of all written correspondence,
13 including e-mail correspondence, between David Ashton or
14 any other person representing Swing First Golf and Johnson
15 Utilities from January '04, January 1 of '04 through the
16 date of these data requests.

17 And then the supplemental response says please
18 see the attached e-mail and attachment from Gary Larsen,
19 which I forwarded to counsel. This e-mail was not
20 included in the e-mails previously provided by Utility in
21 response to Swing First's Data Request 1.8.

22 Q. And the next page?

23 A. It's a -- looks like a printout of an e-mail
24 from David Ashton to you, dated April 8, 2009, and it's an
25 e-mail forwarded from David, that he received from Gary

1 Larsen.

2 Q. Does this appear to be from Mr. Larsen's
3 personal account or his corporate account?

4 A. Both of them have Johnson Utility extensions.
5 There's two different e-mail addresses.

6 Q. That's johnsonutilities.com?

7 A. Yes.

8 Q. And then the e-mail, the message in the e-mail
9 from Mr. Larsen to Mr. Ashton states, "This was sent to me
10 from my corporate office;" is that correct?

11 A. Yes.

12 Q. The next page appears to be the "this" that's
13 referenced here, and it's a fax. It says received
14 11-20-2007, Johnson Utilities. Can you identify this
15 document?

16 A. Yes, it's a Johnson Utilities invoice.

17 Q. And who is the invoice to?

18 A. Billed to Gary Larsen at 968 East Hunt Highway.

19 Q. I have some questions on this, but at this time
20 I would move SF-30.

21 ALJ WOLFE: Are there any objections?

22 MR. CROCKETT: No, Your Honor.

23 MR. MANNATO: No.

24 ALJ WOLFE: Exhibit SF-30 is admitted.

25 (Exhibit SF-30 was admitted.)

1 BY MR. MARKS:

2 Q. I would like you to turn, if you would,
3 Mr. Tompsett, to SF-31. Have you seen this document
4 before?

5 A. I believe so, yes.

6 Q. Now, this is a letter dated April 11, 2008, from
7 me to Mr. Sallquist; is that correct?

8 A. Yes.

9 Q. And Mr. Sallquist was your attorney at that time
10 in the complaint case; is that correct?

11 A. Mr. Sallquist was our attorney for a number of
12 cases. I don't recognize the complaint case number, so I
13 assume so, yes.

14 Q. I would like you to turn to the second page
15 where it states, "For the period of January 2006 to the
16 present, please provide copies of all e-mails from any
17 Johnson Utilities employee to or from Dave Ashton, or any
18 other person affiliated with Swing First." Do you see
19 that?

20 A. Number 8?

21 Q. Yes.

22 A. Okay, yes.

23 Q. To your knowledge, was what's been admitted as
24 Exhibit SF-30, the e-mail and the invoice, was that
25 provided in response to this data request to Swing First?

1 A. No, according to your supplemental response, the
2 supplemental response states that it was not included in
3 the previous e-mails.

4 Q. Do you have any reason to disagree with that
5 statement, that it was not provided to Swing First?

6 A. No.

7 Q. I would move SF-31 at this time.

8 ALJ WOLFE: Is there any objection?

9 MR. CROCKETT: No, Your Honor.

10 MR. MANNATO: No.

11 ALJ WOLFE: SF-31 is admitted.

12 (Exhibit SF-31 was admitted.)

13 BY MR. MARKS:

14 Q. Back to page 4 of SF-30, the actual invoice that
15 we discussed a little while ago, I have a few questions on
16 that.

17 A. Okay.

18 Q. Have you seen this bill before?

19 A. Yes.

20 Q. And when did you see it first?

21 A. I don't recall specifically.

22 Q. Now, this is an invoice from Johnson Utilities,
23 LLC, to Mr. Larsen; is that correct?

24 A. Yes.

25 Q. And what is the date on this invoice?

1 A. It was dated November 20, 2007.

2 Q. And this was on or about the time that the two
3 shutoffs had occurred for the Johnson -- I'm sorry, the
4 Swing First Golf course?

5 A. I believe that's correct, yes.

6 Q. The Customer ID is given as Larsen. Do you see
7 that?

8 A. The Bill To?

9 Q. Customer ID.

10 A. Oh, yes.

11 Q. Let's go through -- good, I'm glad you brought
12 that up. The Bill To is to Gary Larsen, correct?

13 A. Yes.

14 Q. And that address, do you know what that address
15 is?

16 A. That's the Utility office, East Hunt Highway.

17 Q. And the Customer ID on the next line down is
18 identified as Larsen; is that correct?

19 A. Yes.

20 Q. And the payment terms are net 30 days; is that
21 correct?

22 A. Yes.

23 Q. And when was the invoice due for payment?

24 A. Well, the invoice date is November 20, '07. It
25 says Due Date, 12-20-07.

1 Q. Thank you. And I see descriptions here of
2 540 -- what are the units on that, do you know?

3 A. Well, the first line says effluent --

4 Q. I'm sorry, 504. I believe I said 540.

5 A. In the description it says 504 thousand gallons.
6 So the quantity would be 504 thousand gallon units.

7 Q. And that's billed at .63, and that's per
8 thousand gallons?

9 A. Yes.

10 Q. And then the amount there is just the unit price
11 multiplied by the quantity; is that correct?

12 A. That looks correct, yes.

13 Q. And that's \$317.52, correct?

14 A. Yes, that's what this invoice says.

15 Q. Next line the quantity is 720.00. Is that in
16 thousand gallons?

17 A. Yes.

18 Q. And the price that's being billed is 83 cents
19 per thousand gallons; is that correct?

20 A. Yes.

21 Q. And the amount then, again doing the math,
22 assuming this program has done it correctly, is \$597.60;
23 is that correct?

24 A. Yes.

25 Q. And then down at the bottom, the total amount

1 due is \$915.12, correct?

2 A. Yes.

3 Q. Now, was Mr. Larsen a customer of Johnson
4 Utilities?

5 A. He's an employee or was an employee of Johnson
6 Utilities at that time. I believe he was a customer as
7 well.

8 Q. Was he a customer responsible for effluent and
9 CAP water delivered to the Johnson Ranch Golf Course?

10 A. No.

11 Q. Do you know who prepared this bill?

12 A. I believe it was prepared by our corporate
13 office.

14 Q. That's pretty vague. Who was responsible for
15 having this bill issued, do you know?

16 A. I believe December Davis generated it from the
17 invoice.

18 Q. You believe. Why do you believe it was December
19 Davis?

20 A. Because she was responsible for a lot of the
21 accounting stuff, software and documents associated with
22 the utility company.

23 Q. And would December Davis routinely send out
24 bills to employees for water that they didn't consume?

25 A. Well, December does send out invoices and do

1 collections on different accounts, yes.

2 MR. MARKS: Could I have my question back,
3 please.

4 (The question was read by the Certified Reporter
5 as requested.)

6 THE WITNESS: This water was consumed by -- it
7 went to the Johnson Ranch Golf Course.

8 Q. Was Mr. Larsen the owner and responsible for
9 bills or for water consumption at Johnson Ranch Golf
10 Course?

11 A. No.

12 Q. So let me ask you again, was it routine for
13 December Davis to send out bills to employees for water
14 that they were not responsible for?

15 A. No, this was not routine, no.

16 Q. And was it normal for December Davis to do
17 nonroutine matters without direction from some other
18 Johnson Ranch or Johnson Utilities employee?

19 A. Her duties include that, you know, unusual types
20 of billings or collections or accounts. So if there was
21 something unusual that happened, yes, she would do that.

22 Q. And how would it have come to December Davis'
23 attention that she needed to send Mr. Larsen a bill for
24 water that was used on the Johnson Ranch Golf Course?

25 A. As I recall, she generated the invoice for the

1 water that was used, that was delivered to the golf course
2 when the account was closed, and this invoice was sent to
3 Mr. Larsen.

4 Q. Why was it sent to Mr. Larsen?

5 A. Someone had to be responsible for the payment of
6 the water delivered.

7 Q. Why Mr. Larsen?

8 A. Mr. Larsen was the responsible party at that
9 point.

10 Q. Why was Mr. Larsen responsible?

11 A. Because he was overseeing the utility company
12 and the deliveries of water at that time.

13 Q. And so why as part of that job description was
14 he responsible for paying bills for water consumed by a
15 customer?

16 A. I think I answered this. The water was
17 delivered, and someone had to pay for it; and at the time
18 this invoice was generated the Swing First account was
19 closed, as I recall.

20 Q. So this was routinely done at Johnson Utilities
21 when customers didn't pay their bills, that they were sent
22 to an employee then for payment?

23 A. I think I already said that this was not
24 routine.

25 Q. This was a one-time --

1 A. As far as I recall, yes.

2 Q. Then again, why did you depart from normal
3 practice to send Mr. Larsen a bill for this water?

4 A. Again, I think I answered that. I said the
5 water was delivered. The account was closed, and
6 Mr. Larsen at the time was responsible for the delivery of
7 those waters. So he was sent an invoice for that water
8 delivery.

9 Q. And how would December Davis know that
10 Mr. Larsen was the right person to send that invoice to?
11 How would she know he was, as you put it, responsible for
12 that water delivery?

13 A. She was involved in the billings and collections
14 of the Swing First account at the time.

15 Q. So it's your testimony that December Davis,
16 without any input from anybody else, decided that she was
17 going to bill Gary Larsen for water consumed at the
18 Johnson Ranch Golf Course? Is that your testimony?

19 A. I don't think I testified to that, no.

20 Q. Okay. I'm asking that question.

21 A. Okay, read the question back, please.

22 (The question was read by the Certified Reporter
23 as requested.)

24 A. She was directed to prepare the invoice, yes.

25 Q. Okay. That's a different answer. Who directed

1 her to do that?

2 A. I don't recall specifically. It would have
3 either been Mr. Johnson or myself.

4 Q. You don't recall whether you directed Miss Davis
5 to prepare this invoice?

6 A. Not specifically, no. Like I said, it would
7 have been either Mr. Johnson or myself.

8 Q. This is a one-time, as you testified, billing of
9 an employee for water consumed by a golf course, and you
10 don't remember that?

11 A. No. It was a specific instance, yes. I do
12 remember that. I don't remember specifically who
13 instructed Miss Davis to prepare the invoice.

14 Q. So it would have been either you or Mr. Johnson
15 that told Miss Davis to prepare this invoice, correct?

16 A. Yes.

17 Q. Now, in your billing system, how would you go
18 about creating this customer located at your corporate
19 office on the Hunt Highway in Queen Creek?

20 A. I'm sorry, say that again.

21 Q. How would you go about in your billing system
22 creating this customer, Gary Larsen, on the Hunt Highway
23 in Queen Creek, Arizona?

24 A. I don't know specifically how they generated
25 this invoice. I assume it was manually created. I don't

1 know for a fact.

2 Q. And Mr. Larsen doesn't reside at Hunt Highway,
3 968 East Hunt Highway, Queen Creek, Arizona, does he?

4 A. No, I think I testified that's the utility
5 office address.

6 Q. So this invoice had to be manually created; is
7 that correct?

8 A. Again, I don't know the specifics of how it was
9 created. I don't use that system, but I assume it was,
10 yes.

11 Q. And then all the rest of this information -- let
12 me ask you another question. To your knowledge, were
13 there any other invoices to Mr. Larsen for water consumed
14 by other persons than himself?

15 A. Not that I'm aware of, no.

16 Q. I want you to go back, if you would, to SF-21
17 and SF-22, briefly, and just go through those invoices to
18 Swing First Golf.

19 A. What were the exhibits?

20 Q. SF-21 and SF-22. Strike that. I'm not going to
21 ask questions about those two.

22 Somebody had to -- was this generated from the
23 billing system? What do you mean by this was manually
24 created?

25 A. I think it was -- the typical bills are

1 automatically generated by the computer, the monthly
2 residential bills. This would have -- looks to be
3 generated through the billing system, and was manually, I
4 assume it was manually created.

5 Q. By manually created, you mean the fields, the
6 input fields were manually entered and the consumption
7 fields and the various other fields in the billing system
8 were manually entered?

9 A. I believe so, yes.

10 Q. And so Johnson Utilities in this created
11 basically a phony bill, correct?

12 A. I wouldn't characterize it as a phony bill, no.
13 It was an invoice that was created for water that was
14 delivered.

15 Q. But not to this customer?

16 A. It was specific to the effluent and CAP that was
17 delivered specifically to the Johnson Ranch Golf Course.

18 Q. But not to this customer? Not to Mr. Larsen?

19 A. It was addressed to Mr. Larsen because at that
20 time he was responsible for the delivery of the water to
21 that golf course.

22 Q. Now, you say he was responsible for this. Is
23 this an opinion that you had at the time, or is this
24 something, an opinion that you formed later?

25 A. I don't recall specifically when that opinion

1 was formed.

2 Q. And why did you decide -- I know I've asked you
3 this before, but I'm really struggling with why you
4 decided that Mr. Larsen was responsible for these
5 deliveries? And again, this came at the time of the
6 shutoffs. What did these quantities relate to?

7 A. Per the invoice, it's a specific volume of
8 effluent that was delivered and a specific volume of CAP
9 water that was delivered to the golf course.

10 Q. Delivered when?

11 A. This doesn't say.

12 Q. How were the numbers calculated?

13 A. I don't know. I don't know where they -- I'm
14 assuming they came from a meter reading.

15 Q. From a --

16 A. From a meter reading.

17 Q. From what dates? From what date to what date?

18 A. I don't recall.

19 Q. Is it possible -- I believe -- let me back up.
20 We've had some testimony before that -- and I can go back
21 to the transcript if we need to, but see if you can
22 remember this -- that service was terminated on or about
23 November 6th of 2007. Do you remember that? I think
24 we've agreed that there was a termination on that date?

25 A. Yes, we had an e-mail, one of these documents

1 that -- I remember it being shut off twice in November. I
2 don't remember a specific date. If you want to find the
3 transcript, we can look at that.

4 Q. In SF-32, which is the transcript of
5 Mr. Larsen's conversation, he discusses that an employee,
6 at one point referred to as Tom, at another point referred
7 to as Bob, may have refilled, at least partially, the lake
8 after the initial shutoff and turned service back on. Do
9 you remember that?

10 A. I'm sorry, say that again. 32? What am I
11 looking at?

12 Q. 32 is the transcript of the Larsen recording.

13 A. Okay, yes.

14 Q. And there's a discussion in there about an
15 employee named Bob or Tom who may have turned the water
16 back on after November 6th and refilled, at least
17 partially, the golf course lake. Do you agree with that?

18 A. I think we talked about that last, back in April
19 sometime.

20 Q. I did ask you some questions about that.

21 A. Yeah, yes.

22 Q. You remember that discussion?

23 A. I do. To a certain degree, yes.

24 Q. Is it possible that this water represents the
25 volumes that were provided to the golf course between the

1 first shutoff on November 6th and the second shutoff on
2 November 20th?

3 A. That's possible, yes.

4 Q. And again, a reference, just ask you again to
5 note the invoice date of November 20, 2007. Does that
6 make your opinion that it's possible that this related to
7 that consumption more or less certain?

8 A. It's the right time frame, yes, and November
9 20th is the invoice date. So I'd have to verify the
10 volumes. I don't know. But it would be between those two
11 dates, yes.

12 Q. Now, this invoice that was created from the
13 billing system, Mr. Larsen did not consume those
14 quantities of water. Have we agreed on that?

15 A. No, they went to the golf course. Those
16 quantities of water were delivered to the Johnson Ranch
17 Golf Course lake.

18 Q. To your knowledge, Mr. Larsen is not an effluent
19 customer of Johnson Utilities or was not at that time?

20 A. No.

21 Q. And he was not a CAP water customer of Johnson
22 Utilities at that time, was he?

23 A. No.

24 Q. Did Mr. Larsen pay this invoice?

25 A. No.

1 Q. Why not?

2 A. I think the volumes were subsequently billed to
3 Swing First, and I assume they were ultimately paid by
4 Swing First.

5 Q. So this consumption was billed twice then
6 effectively?

7 A. No, it wasn't billed twice. It was rebilled to
8 Swing First, as I recall.

9 Q. Let me put it another way. It was invoiced to
10 Mr. Larsen. Swing First resumed service after it filed
11 its complaint, and you reinviced Swing First for the
12 amount of water that's represented in this invoice; is
13 that correct?

14 A. That's what I recall, yes.

15 Q. Effectively, Johnson Utilities sent out a bill
16 to a noncustomer with consumption and rate figures that
17 did not apply to him; is that correct?

18 A. No, the invoice was sent to a responsible party
19 for water delivered.

20 Q. And as you seem to be recollecting a bit more of
21 the circumstances as we go through this, why Mr. Larsen?
22 Why was he -- Mr. Larsen reported to you, correct?

23 A. Yes.

24 Q. On a chain of command theory, why didn't the
25 bill go to you?

1 A. I wasn't out in the field and watching the day
2 day-to-day delivery of any water at the utility office.

3 Q. So this was essentially intended to be punitive
4 to Mr. Larsen?

5 A. I don't think so, no.

6 Q. Why again was he singled out of all the
7 employees in Johnson Utilities to receive this bill?

8 A. I think we've answered this a couple times. He
9 was at the time the responsible party for that water
10 delivery.

11 Q. Yes, you have answered it just that way on
12 several occasions. What I want to know is, why was he the
13 responsible party in your mind?

14 A. He was ultimately responsible for the water
15 deliveries out in the field and on the ground.

16 Q. It seems like you've basically said the same
17 thing again. Why was he responsible? What in his job --

18 A. Because you keep asking me the same question.

19 Q. Well, I'm not satisfied with your answer. What
20 was in his job description that made you think it was
21 appropriate to send him a bill for water that he didn't
22 consume?

23 A. Maybe we're splitting hairs. I keep saying he
24 was the responsible party for the water that was
25 delivered. It ultimately was consumed by the golf course.

1 Q. And I'm asking you why was he the responsible
2 party? You state that as a fact, and I'm trying to
3 explore the basis of your opinion that he was the
4 responsible party.

5 MR. CROCKETT: Your Honor, I'll object on the
6 grounds that this question has been asked and answered.

7 ALJ WOLFE: Okay. But Mr. Tompsett, could you
8 explain then why he's not billed for all the water that
9 was delivered to every customer, if he was ultimately
10 responsible? That's the differentiation that I think that
11 Mr. Marks is looking for, and it raises the question in my
12 mind. I'm sure that it will raise the question in
13 anyone's mind.

14 THE WITNESS: Well, this was -- this was a
15 specific occurrence and on a specific account. I think I
16 testified earlier, Your Honor, this is not an everyday
17 occurrence. So typically --

18 ALJ WOLFE: What made it different from an
19 everyday occurrence?

20 THE WITNESS: The account was closed, and the
21 effluent and CAP water was not being delivered to that
22 customer at that time for nonpayment of the bill, and the
23 water was delivered in that time frame.

24 ALJ WOLFE: Mr. Marks, go ahead.

25 BY MR. MARKS:

1 Q. That's helpful. So your view was Mr. Larsen,
2 somehow or another that water got turned on again, and
3 because that's in your area of responsibility, we're going
4 to make you responsible for that water that was sent; is
5 that your testimony?

6 A. Yes.

7 Q. That's all I have on that subject.

8 MR. MARKS: I don't believe this -- correct me
9 if I'm wrong. I guess it has been, but I don't remember.
10 Mr. Crockett, you could help me out. The prefiled
11 supplemental rebuttal testimony of Mr. Tompsett, what did
12 you mark that as?

13 ALJ WOLFE: A-16?

14 MR. CROCKETT: No, I think that's -- the
15 testimony today?

16 MR. MARKS: Not the testimony today. This is
17 the supplemental rebuttal testimony of Brian Tompsett
18 dated March 23, 2009.

19 MR. CROCKETT: Let me look at my exhibit sheet.

20 ALJ WOLFE: That was marked as Exhibit A-6

21 MR. MARKS: Thank you.

22 BY MR. MARKS:

23 Q. Do you have a copy of Exhibit A-6 with you?

24 ALJ WOLFE: The court reporter can provide him
25 with a copy. Go off the record.

1 (Off the record.)

2 ALJ WOLFE: Let's go back on the record. The
3 witness has been provided with a copy of Exhibit A-6.

4 MR. MARKS: Thank you, Your Honor.

5 BY MR. MARKS:

6 Q. I would like you to turn, if you would, please,
7 to page 2 of Exhibit A-6 or actually several pages in, but
8 it's of the testimony portion, it's page 2.

9 A. Okay.

10 Q. There's a question there provided by your
11 counsel about the December 2007 news release from the
12 Arizona Department of Environmental Quality, and you were
13 asked was Johnson Utilities a party to the lawsuit
14 referenced by Miss Rowell. And your answer is, "No. The
15 lawsuit and settlement referenced by Ms. Rowell was
16 between ADEQ, George Johnson, certain of Mr. Johnson's
17 other companies, and other defendants."

18 Now, the news release was attached to Miss
19 Rowell's testimony, was it not?

20 A. I don't recall specifically.

21 Q. If you'll accept that, subject to check, was
22 there anything in the description or in the settlement --
23 in the description -- let me back up.

24 Was there anything, Mr. Tompsett, in the news
25 release that inaccurately described the settlement, to

1 your knowledge?

2 MR. CROCKETT: Your Honor, perhaps Mr. Tompsett
3 could get a copy of the news release in front of him
4 rather than trying to go from memory. It's been quite
5 some time, I think, since he's looked at the news release.

6 ALJ WOLFE: That would be fine, Mr. Marks, if
7 you could provide him with a copy of that.

8 MR. MARKS: I can.

9 BY MR. MARKS:

10 Q. I'm handing the witness what has been pre-marked
11 but not yet offered at Exhibit SF-40, Revised Direct
12 Testimony of Sonn S. Rowell on behalf of Swing First Golf,
13 LLC, and I'm asking the witness to refer to the exhibit
14 attached to that that's market SSR-2.

15 A. Okay, I've read the news release, SSR-2.

16 Q. And that's the December 2007 news release from
17 the Arizona Department of Environmental Quality, concerns
18 a lawsuit and settlement involving George Johnson and
19 affiliated companies and his contractors?

20 A. Yes, that's what it says.

21 Q. And my question again is, was the description of
22 the settlement in the news release accurate, to your
23 knowledge?

24 MR. CROCKETT: Your Honor, the news release
25 refers to both the lawsuit and it also talks about the

1 settlement. Perhaps if Mr. Marks could direct
2 Mr. Tompsett to the portion of that news release that he's
3 interested in and ask him a question about that, it would
4 help him?

5 BY MR. MARKS:

6 Q. Well, let's look at the lawsuit first. Was the
7 description of the lawsuit accurate in the news release?

8 A. Vaguely, yes. It mentions George Johnson and
9 his companies, and I believe these others were named as
10 part of the lawsuit as well.

11 Q. It's not the purpose of your testimony to take
12 issue with the accuracy of the description of the lawsuit,
13 is it?

14 A. No.

15 Q. Similarly, it's not the purpose of your
16 testimony to take issue with the accuracy of the summary
17 of the settlement agreement contained in the news release,
18 is it?

19 A. Well, the news release just says they pulled
20 some numbers out that sound roughly to be correct and they
21 were paid by insurance companies representing those
22 different entities. But I think, going back to what you
23 were asking me, is Johnson Utilities was not a party to
24 the La Osa case.

25 Q. This testimony, the question here is from your

1 counsel and you have answered it. I am asking you a
2 different question; and that is, it's not your testimony
3 here today that the summary of the settlement agreement
4 that's contained in the Department of Environmental
5 Quality press release is in any way inaccurate, is it?

6 A. I don't think I'm saying that it's inaccurate.
7 It's vague. I mean there's not a lot of details in it,
8 but it was a fairly large case. It went on for a lot of
9 years. So I'm not -- I don't think I'm testifying that
10 there's necessarily inaccuracies in the press release.

11 Q. Okay. Thank you. I would like you, now that
12 you have that in front of you, to look at -- let me have
13 you first turn to page 4 of your testimony.

14 A. A-6?

15 Q. Yes. Are you there?

16 A. Yes.

17 Q. In there you discuss -- you're asked a question
18 about Miss Rowell's discussion of a lawsuit by the
19 Environmental Protection Agency against Mr. Johnson and
20 various other parties. Do you see that?

21 A. Yes. Line 4.

22 Q. Yes.

23 A. Okay, yes.

24 Q. And Miss Rowell attached to her testimony a
25 document that was marked as Exhibit SSR-4. Could you turn

1 to that?

2 A. Okay. Yes.

3 Q. And that is a Department of Justice press
4 release, is it not?

5 A. Yes.

6 Q. And that's dated October 7, 2008?

7 A. Yes.

8 Q. And in your question and answer or otherwise in
9 this case, are you in any way testifying that any of the
10 press release from the Department of Justice is
11 inaccurate?

12 A. Give me a minute. I want to read this, just
13 make sure.

14 Okay, yeah, I'd say, in general, it's fairly
15 accurate.

16 Q. At the bottom of page 4, you're asked a question
17 starting on line 25, "Did Johnson Utilities discharge raw
18 sewage into the Queen Creek Wash?" Do you see that?

19 A. Yes.

20 Q. Your answer was, "No. Johnson Utilities
21 strongly refutes the assertion that it discharged raw
22 sewage into Queen Creek Wash." Did I read that correctly?

23 A. Yes.

24 Q. And instead, you characterize that as a sewer
25 system overflow; is that correct?

1 A. Yes.

2 Q. Now, a sewer system overflow, that was an
3 overflow of the sewer system owned by what party?

4 A. Well, the sanitary sewer lines are Johnson
5 Utilities.

6 Q. And who operates and maintains the sanitary
7 sewer lines?

8 A. Johnson Utilities.

9 Q. Turn to page 6, please. Starting on line 4, you
10 have a discussion about a consent decree between ADEQ and
11 Johnson Utilities dated September 15, 2008. Do you see
12 that?

13 A. Yes.

14 Q. And is this the same discharge that you were
15 discussing on page 5, at the top of page 5 that we just
16 had a little colloquy about?

17 A. The compliance order was associated with the May
18 2008 SSO.

19 Q. And at the bottom, the last sentence of that
20 question and answer, starting on line 12, states, "Johnson
21 Utilities is now awaiting closure of the NOV docket by
22 ADEQ." Do you see that?

23 A. Yes.

24 Q. You're still waiting, right?

25 A. Yes.

1 Q. Turn to page 8, please. Line 16, says,
2 "Regarding the NOV at the Pecan Wastewater Treatment
3 Plant, has Johnson Utilities complied with ADEQ's
4 requirements to close out the NOV?" Do you see that?

5 A. Yes.

6 Q. And you testify that you have complied and that
7 you're awaiting final closure. Do you see that?

8 A. Yes.

9 Q. Has Johnson Utilities obtained final closure of
10 the NOV docket by ADEQ?

11 A. Not as of today, no.

12 Q. Turn now to page 10 of your testimony. Line 14,
13 "What are the rates Johnson Utilities charges SFG for
14 effluent and CAP water?" Do you see that?

15 A. Yes.

16 Q. And your answer states, "Consistent with its
17 Commission-approved tariffs in Paragraph 9(b) of the
18 Agreement, Johnson Utilities charges SFG \$0.62 per
19 thousand gallons of effluent delivered, when available,
20 and \$0.83 per thousand gallons for CAP water delivered."
21 Do you see that?

22 A. Yes.

23 Q. Did I read that accurately?

24 A. Yes.

25 Q. What is Paragraph 9(b) of the Agreement?

1 A. I would have to see the agreement. I don't
2 recall.

3 Q. Do you know what agreement you were referring
4 to?

5 A. I don't recall at this time. Paragraph 9(b), is
6 this -- no, I would have to see the agreement.

7 Q. But which agreement are you referring to?

8 A. I think this is referring to the Master Utility
9 Agreement with Johnson Ranch, the golf course.

10 Q. Does that agreement specify the rates to be
11 charged for the various commodities?

12 A. I don't believe the agreement addresses the
13 rates, no. The tariff addresses the rates.

14 Q. Now, you state that -- this is present tense --
15 \$0.62 per thousand gallons for effluent and \$0.83 per
16 thousand gallons for CAP water, correct?

17 A. Yes.

18 Q. Now, there was a time in the past, I think we've
19 established that Johnson Utilities charged SFG a rate
20 higher than \$0.62 per thousand gallons for effluent; is
21 that correct?

22 A. I think we covered that in the last testimony,
23 that they did receive invoices that were subsequently
24 corrected, yes.

25 Q. So the short answer is yes, in the past, did

1 charge something more than the \$0.62?

2 A. Short answer was ultimately they got charged
3 \$0.62 for effluent.

4 Q. What were they charged -- what were they billed
5 for for a number of months for effluent?

6 A. I think that was in the previous testimony.
7 \$0.83, I think is what they had been charged, for
8 effluent.

9 Q. The CAP water rate for effluent?

10 A. Yes.

11 Q. And what were they charged per thousand gallons
12 for the CAP water that was delivered?

13 A. I believe it was still the \$0.83.

14 Q. The record would speak for itself on that?

15 A. Yes. I don't recall.

16 Q. You go on to say, "Have there been any billing
17 disputes between Johnson Utilities and SFG?" That starts
18 at line 20 of page 10. Do you see the question?

19 A. Yes.

20 Q. And you say, "From time to time during the years
21 2004 through 2007, clerical and software errors occurred."

22 Who made those errors?

23 A. Well, it says clerical and software errors.

24 Q. No, who? They don't just occur on their own.

25 Somebody has to be responsible for making an error.

1 A. Well, the software errors aren't a person.
2 That's a billing program. The clerical would have been
3 the individuals generating the invoices.

4 Q. And from time to time, how many incidents from
5 time to time from 2004 through 2007?

6 A. I don't recall specifically. They're probably
7 outlined in the complaint case.

8 Q. There were numerous errors; is that correct?

9 A. Yes, there were errors. I was seeing if this
10 was in the rate case or the complaint case. I couldn't
11 remember.

12 Q. So you agree there were numerous errors?

13 A. Yes, there were errors that were made and errors
14 that were corrected.

15 Q. When were the errors corrected?

16 A. I believe over the -- as they were discovered.

17 Q. And these were after you shut off Swing First
18 Golf's service in November or twice in November of 2007;
19 is that correct?

20 A. There were some corrections made after that
21 date, yes.

22 Q. And again, the record would speak for itself.
23 You're not trying to testify otherwise here?

24 A. No.

25 Q. Page 11, line 23, you state that in an e-mail

1 from Mr. Ashton to me, dated November 21, 2007, Mr. Ashton
2 agreed to the \$100,000 in credits on the SFG effluent and
3 CAP amounts.

4 Now, you understand that Mr. Ashton doesn't
5 agree, or he doesn't testify that he agreed to that in his
6 prefiled testimony? Let me put it another way. That's a
7 bad question.

8 Do you understand that Mr. Ashton may dispute
9 whether he agreed to pay the \$100,000 that you include in
10 your testimony here?

11 A. I don't -- I don't recall his testimony refuting
12 it at all. I assume we have the e-mail that would speak
13 for itself, I would think. That doesn't appear to be
14 attached here.

15 Q. The next page, question and answer beginning on
16 line 3. It says, "You stated above that Johnson Utilities
17 was under the belief that the agreement was partially
18 assigned. Would you please explain?"

19 Again, which agreement were you referring to
20 here?

21 A. I'm referring -- as I recall, I'm referring to
22 the agreement that was signed between Johnson Utilities
23 and the original or the previous golf course owner, which
24 was a subsidiary of Sunbelt Holdings, somewhere in there.

25 Q. And you state that Johnson Utilities was under a

1 belief that the agreement had been assigned; is that
2 correct?

3 A. Yes, I think through the course of either the
4 complaint case or this rate case, it became known or
5 aware. It at least became known that Sunbelt or the
6 previous owner had never assigned the agreement to Swing
7 First Golf.

8 Q. And until that, until you found that out,
9 Johnson Utilities was operating under the assumption that
10 the terms of the agreement applied to it, correct?

11 A. I'm sorry, could you clarify that?

12 Q. You stated that you found out at some point that
13 the agreement hadn't been assigned, correct?

14 A. Yes, that's correct.

15 Q. Was that a surprise to you?

16 A. Yes. I think it was. We assumed it had been
17 assigned. I think we were told it had been assigned.

18 Q. And until that time, you were operating
19 basically under the belief that the agreement applied and
20 then -- let me stop right there. You were operating under
21 the assumption that the agreement applied to Johnson
22 Utilities, correct?

23 A. That the agreement applied to the golf course.

24 Q. I was going to ask you about that. But let me
25 ask you, that it applied to Johnson Utilities and its

1 relationships with the golf course; is that correct?

2 A. Yes, I think so, because -- and you asked me
3 this earlier. The agreement talks about what waters or
4 what types of waters, things like that, would be delivered
5 to the golf course; but I don't recall that agreement as
6 having any specific rates for effluent or anything else in
7 it.

8 Q. And I wasn't trying to imply that it did include
9 the rates. But would it be fair to characterize that both
10 parties, to your knowledge, believed that the agreement
11 applied to them? And by both parties, I mean Johnson
12 Utilities and Swing First Golf.

13 A. Yes, I think we both thought that it had been
14 properly assigned or transferred.

15 Q. And you both conducted your conduct -- that's
16 redundant.

17 You both conducted your relationships with each
18 other under the belief that the contract -- I'm sorry, the
19 agreement applied to both of you, correct?

20 A. I think that's accurate, yes.

21 Q. Thank you.

22 Further down the page, Mr. Tompsett, starting at
23 line 20, it states, "Johnson Utilities has at times
24 delivered effluent to the lakes --

25 A. I'm sorry, are we still on page 12?

1 Q. Yes, still on page 12, I'm sorry.

2 A. All right.

3 Q. "Johnson Utilities has at times delivered
4 effluent to the lakes within the San Tan Development." Do
5 you see that?

6 A. Yes.

7 Q. And who was responsible for paying for that
8 water?

9 A. The water that's delivered to the San Tan lake?

10 Q. Yes.

11 A. That's the San Tan Homeowners Association.

12 Q. And is that -- I think we've identified this
13 before, but I can't remember for sure. We've identified
14 that at various times as Customer B from San Tan, from the
15 San Tan Wastewater Treatment Plant; is that correct?

16 A. Yes, I believe that's correct.

17 Q. You state at the bottom of 26, "Moreover, I am
18 not familiar with any rule that would permit Johnson
19 Utilities to discriminate against the San Tan HOA in favor
20 of SFG." Do you see that?

21 A. Yes.

22 Q. What do you mean by discriminate against the San
23 Tan HOA in favor of SFG?

24 A. Well, as has become apparent or testified to
25 many times, either in this or documented in this case and

1 the complaint case with the Swing First, there is only so
2 much effluent generated from the San Tan plant that can go
3 to either Swing First Golf or to the San Tan HOA. So I'm
4 not sure there's a Commission order or a Commission rule
5 or any contract that says Customer A or Customer B should
6 get more or less effluent that's generated than anybody
7 else.

8 Q. Now, is this just a hypothetical statement, or
9 is there a reason why you made this statement?

10 A. No, it's not hypothetical, because at one point
11 in the past we were trying to deliver effluent to Swing
12 First and to the San Tan HOA on an even basis. But that
13 was a number of years ago.

14 Q. Do you still have Exhibit SF-42 there,
15 Mr. Tompsett?

16 A. Yes, I do.

17 Q. And can you show me where in the past that you
18 were unable to deliver effluent to the San Tan, or you
19 were unable to deliver effluent to Swing First Golf
20 because of your commitments to the San Tan HOA?

21 A. I'm sorry, can you repeat that? I've got SF-42.

22 Q. Well, let's look at 2007. Can you show me any
23 month where, because of your commitments to the San Tan
24 HOA, that you were unable to deliver effluent to Swing
25 First Golf?

1 A. Well, there is effluent available in '07 for
2 pretty much all those months. What -- we're looking at
3 this in a vacuum. You've asked about CAP water before,
4 and Swing First was given CAP water during that year.

5 Q. I'm interested in your statement that you would
6 have been discriminating against San Tan HOA in favor of
7 Swing First Golf. Where was that an issue in 2007?

8 A. I don't know if it was an issue in 2007. I
9 know -- I don't remember the date or time specifically.

10 Q. Well, I'm asking you to look at this exhibit,
11 SF-42, and you show me somewhere in SF-42 where you were
12 asked or forced or somehow or another constrained to
13 discriminate against the San Tan HOA in favor of Swing
14 First Golf.

15 A. I guess I'm still not exactly understanding the
16 question. There was effluent that was delivered to the
17 San Tan HOA in 2007. But I don't know as the
18 discrimination applied directly to that specific month and
19 that specific year.

20 Q. Well, can you show me any month in 2007 where
21 you did not have effluent available after deliveries to
22 San Tan HOA to provide to Swing First Golf if they had
23 wanted effluent?

24 A. Oh, okay. No -- I understand that question.
25 No, there was effluent available. However, as I stated

1 earlier, CAP water was being delivered to Swing First Golf
2 based on a prior commitment for CAP water.

3 Q. Again, I'm asking you about this statement about
4 discrimination.

5 A. Yes.

6 Q. Did you in any way have to discriminate against
7 the San Tan HOA in 2007 because of commitments to deliver
8 effluent to Swing First Golf?

9 A. No. There was effluent available.

10 Q. Similarly in 2008, you had adequate effluent
11 available all months except for, there's 2008, April of
12 2008, and I believe you testified earlier that there was
13 probably a meter, billing months not matching consumption
14 months. But essentially you had additional effluent every
15 month in 2008 after providing effluent to the San Tan HOA
16 and to Swing First Golf, correct?

17 A. Yes. It looks like there's unsold effluent
18 available.

19 Q. Similarly in the first eight months of 2009, you
20 had excess effluent essentially every month?

21 A. Yes.

22 Q. I'd like you to look further down on page 13 to
23 your statement beginning on line 15. "Neither Mr. Larsen
24 nor Ms. Davis told Mr. Ashton that Johnson Utilities does
25 not follow the law in its billing practices or that

1 Mr. Johnson told them to conduct illegal billing
2 practices." Do you see that?

3 A. Yes.

4 Q. Is that still your testimony?

5 A. Yes.

6 Q. And you've reviewed SF-32, the transcript from
7 Mr. Larsen's and Mr. Ashton's meeting?

8 A. Yes.

9 Q. And that's still your testimony?

10 A. Yes.

11 Q. If you would turn, please, to page 15, line 5.
12 Let me know when you're there.

13 A. Okay.

14 Q. You state, "Consistent with what Johnson
15 Utilities considers to be standard business practices by
16 many companies in today's electronic age, Johnson
17 Utilities does not keep hard copies of actual bills sent
18 to customers." Is that correct?

19 A. Yes.

20 Q. Do you know what a PDF file is?

21 A. Yes.

22 Q. What is it?

23 A. It's a picture basically of a document. PDF is
24 the extension of the type of file.

25 Q. And that's -- is that what you call a hard copy?

1 A. It would be an electronic scan of a document.

2 Q. And in fact, in most programs, if one has Adobe
3 Acrobat, one can create a PDF directly from the source
4 document; is that correct?

5 A. Yes, some software does that, yes.

6 Q. Is there any reason why you don't keep, you
7 being Johnson Utilities, don't keep scans in either PDF
8 format or some other format of the actual bills?

9 A. I don't know if the billing software that we use
10 can actually save to a PDF without generating all the
11 bills.

12 Q. Now, the Commission maintains its files here in
13 PDF format; is that correct, to your understanding?

14 A. I know they keep some of them in PDF format,
15 yes.

16 Q. To your knowledge, are those created from a
17 scanner?

18 A. How does the Commission create them?

19 Q. Yes.

20 A. I don't know.

21 Q. Are you aware that one can create a PDF file or
22 other image file directly from a scanner?

23 A. Yes. Some software programs can do that, yes.

24 Q. Well, I'm talking about manually feeding
25 documents into a hopper and creating a PDF picture of

1 what's fed into the hopper. Are you aware that that's
2 available as an option?

3 A. Some machines can do that, yes.

4 Q. Is that something that Johnson Utilities has
5 explored to keep copies of its bills?

6 A. We've explored the possibility of having the
7 software do it directly, and I don't know if we've come to
8 a conclusion on whether or not the software can do that or
9 not. It would be extremely time-consuming to scan 20,000
10 plus documents every month that go out.

11 Q. One last portion of your testimony I would like
12 to ask you about, and that's on page 16.

13 At line 12 you state, "Johnson Utilities has
14 discovered that it was not charging the Oasis Golf Course
15 for the effluent the golf course was receiving." Do you
16 see that?

17 A. Yes.

18 Q. When did you discover this?

19 A. I believe it was during the course of the
20 Staff's review of the documents.

21 Q. In fact, didn't you receive a data request from
22 Swing First Golf concerning effluent deliveries to the
23 Oasis Golf Course?

24 A. I believe we got data requests from Swing First,
25 and I don't remember what the timing was of that.

1 Q. And --

2 A. We received a lot of data requests.

3 Q. And in response to that, didn't you state
4 effectively exactly what you're stating here, that you had
5 discovered that you're not charging the Oasis Golf Course
6 for effluent that it was receiving, and that you were
7 correcting that on a going-forward basis?

8 A. I'd have to see the specific data response, but
9 that sounds correct.

10 Q. You'll accept that, subject to check?

11 A. Yeah, if it's in the data response, it speaks
12 for itself.

13 Q. Mr. Tompsett, you earlier talked about a
14 previous complaint case against Johnson Utilities,
15 probably about five years ago. Do you remember that?

16 A. Vaguely, yes.

17 Q. Who was the complaining party, do you remember?

18 A. It was a home builder. It may -- it may have
19 been Centex Homes.

20 Q. Who represented Centex Homes in that case?

21 A. I don't know.

22 Q. The record in that case would speak for itself?

23 A. Yeah, a lot better than I could.

24 Q. Thank you, Mr. Tompsett. That's all I have for
25 you.

1 ALJ WOLFE: Mr. Mannato, do you have questions
2 for this witness?

3 MR. MANNATO: Yes, I have a few, Your Honor.
4 Thanks.

5 ALJ WOLFE: Please pull the microphone over to
6 you because some people might be listening, and they'll
7 want to hear what you're asking.

8

9

CROSS-EXAMINATION

10

11 BY MR. MANNATO:

12 Q. Good afternoon, Mr. Tompsett.

13 A. Hello, Mr. Mannato.

14 Q. How are you, sir?

15 A. Very good.

16 Q. Mr. Tompsett, do you know a gentleman named
17 Himanshu Patel?

18 A. Yes, sir, he's the Town of Florence Town
19 Manager.

20 Q. How long have you known Mr. Patel?

21 A. Oh, probably six, seven years.

22 Q. And are you acquainted with another town
23 employee named Wayne Costa?

24 A. Yes.

25 Q. Who is Mr. Costa?

1 A. I think he has two titles, but he's the Public
2 Works Director, and I believe he's the Town Engineer.

3 Q. And how long have you known Mr. Costa?

4 A. Probably about five years.

5 Q. Within that time, have you had any opportunities
6 to talk to Mr. Patel about the town's water and wastewater
7 rate methodology?

8 A. Yes, I believe we've had a number of
9 conversations about that.

10 Q. And have you had an opportunity to talk to
11 Mr. Costa about the various aspects of the town's water
12 and wastewater system?

13 A. Yes, I believe so.

14 Q. Now, notwithstanding the fact that you have a
15 CC&N, would you agree with me that the business of
16 providing water and wastewater service in Arizona can be a
17 competitive enterprise?

18 A. I'm sorry, can you repeat that?

19 Q. Would you agree that providing water and
20 wastewater service to customers in Arizona is a
21 competitive type of business?

22 A. No, not necessarily. Municipalities all set
23 their own rates. As you know, the Corporation Commission
24 sets the rates for privately-owned water and wastewater
25 providers. But once though, on the private side, once a

1 CC&N has been granted, those rates apply to everyone
2 within that CC&N.

3 Q. Has it ever been your testimony in a legal
4 proceeding, however, that Johnson Utilities does find that
5 the business of providing water and wastewater services a
6 competitive type of enterprise, at least regarding other
7 private water and wastewater companies?

8 A. Not that I recall specifically. However, if two
9 private water and sewer providers were attempting to serve
10 or expand CC&Ns into the same area, then I would think
11 that would be -- there would be a competitiveness in that.

12 Q. Do you make it a part of your normal business
13 practice, Mr. Tompsett, to maintain an understanding of
14 the rates charged by other water and wastewater providers
15 in the State of Arizona?

16 A. Yes, typically, I try to -- I mean I guarantee I
17 wouldn't be able to tell you all of them, but I try to
18 keep track of at least some of them.

19 Q. Would that include the Town of Florence?

20 A. Yes, I've got that written down somewhere.

21 Q. Do you feel you have a sufficient understanding
22 of the town's rate structure for water and wastewater
23 services to, let's say, allow you to make a comparison of
24 the rates of Johnson Utilities as against the Town of
25 Florence if you desired to do that?

1 A. As I recall, the Town of Florence has different
2 rates for different areas; but I think we've done a
3 comparison of that in the past, yes.

4 Q. Okay. Thank you. Now, does the Johnson
5 Utilities Company serve potable water, effluent and
6 provide wastewater treatment to a community known as
7 Anthem at Merrill Ranch?

8 A. Yes, we do.

9 Q. And that is located within the Town of Florence,
10 isn't it?

11 A. Yes, it is.

12 Q. Do you provide that service to that community
13 pursuant to a service agreement?

14 A. Yes, I believe we have -- well, it might be
15 titled an operating agreement. We do have an agreement
16 with the Town of Florence, yes.

17 Q. Well, do you have a master utility agreement
18 with the developer of that community?

19 A. Yes, we do.

20 Q. And it is true that you have an operating
21 agreement with the town, correct?

22 A. Yes.

23 Q. And that agreement calls for the town to receive
24 five percent of the retail revenue of Johnson Utilities as
25 its agreed-upon fee with Johnson; isn't that right?

1 A. Yeah, there is a fee associated with it. I
2 think five percent is correct.

3 Q. Okay. Would it be the case then that if the
4 utility's retail revenue decreased, then so would the
5 amount of money paid to the Town of Florence pursuant to
6 that five percent fee?

7 A. With the -- yeah, if the overall revenues drop,
8 then the percentage would drop accordingly -- or, I'm
9 sorry, the dollar amount would drop accordingly.

10 Q. Do you anticipate that Johnson Utilities will be
11 the service provider to all of the Anthem at Merrill Ranch
12 community at some point?

13 A. Our agreement with the town currently states or
14 dictates, whatever the agreement is, that approximately
15 two thirds of that master planned community will be served
16 by Johnson Utilities. The town is indicating a
17 willingness to serve the other third of the community at
18 this point, which hasn't been developed.

19 Q. Do you know how many residential utility
20 accounts Johnson Utilities currently has at the Anthem
21 Community?

22 A. You know, I should know this off the top of my
23 head, but I don't.

24 Q. If I threw out a figure to you such as
25 approximately 1,200, would that sound --

1 A. That was the number I was going to use, so
2 that's probably about right.

3 Q. Okay. So about 1,200 accounts. Would it be
4 your opinion that by the end of the year 2012, you might
5 have as many as 2,600 accounts?

6 A. Yeah, that could be a possibility. As we just
7 recently received, I believe it was just a one-page
8 document from Pulte that said they were anticipating
9 approximately 500 home sales per year for the next couple
10 years, so that would approximate to about that number.

11 Q. When you entered into the master utility
12 agreement with Pulte, did you analyze what your eventual
13 obligations would be when the community was fully
14 developed?

15 A. Obligations to -- number of homes?

16 Q. Yes.

17 A. Yes. As I recall, the agreement addressed a
18 little bit over 6,000 homes.

19 Q. Really? Are you sure about that?

20 A. No, I'm not.

21 Q. Is it possible that there may be as many as
22 eleven, in excess of 11,000 homes you might be required to
23 serve under that agreement?

24 A. That's possible. Like I said, I don't remember
25 specifically. The agreement would outline the number of

1 homes. I think -- well, we could look at the agreement.

2 Q. Now, it's true, isn't it, that the Town of
3 Florence is itself a municipal water and wastewater
4 provider, correct?

5 A. Yes.

6 Q. Does your operating agreement with the town
7 contain a limitation or limitations on the area within
8 which you can serve within the Town of Florence?

9 A. Yes and no. There is -- there is some language,
10 specific legal descriptions that cover the Anthem at
11 Merrill Ranch area; but as I recall, the operating
12 agreement has language in it that allows Johnson Utilities
13 to serve additional areas that are annexed into the town.

14 Q. Has Johnson Utilities agreed to provide water
15 and wastewater services to any other planned residential
16 subdivisions that are currently located within the town's
17 limits?

18 A. Yes, we have.

19 Q. Do you know how many?

20 A. Well, I can try to do it, you know, from memory,
21 but Walker Butte is one of the areas, I think, that we
22 have an agreement on that's within the CC&N and has been
23 annexed. There's a project called either Mesquite Trail
24 or Mesquite Grove which I believe is annexed already into
25 the town. And we have agreements with some additional

1 areas that are working through the annexation process with
2 the town that I don't know if they've been consummated
3 yet. Agreements have been signed, but I don't think
4 they've actually been annexed into the town yet.

5 Q. Did you enter into one with a development known
6 as Monterra?

7 A. Oh, yes, we did. Actually, now that you're
8 going that way, we also entered into an agreement with a
9 project called Montessa which is across the street from
10 Monterra, and I think those are the only two down there.

11 Q. Is it part of your business practice to try to
12 develop an understanding of what your obligations are
13 going to be going forward into the future when you enter
14 into these agreements?

15 A. Specifically referring to what?

16 Q. Well, do you have an idea how many units of
17 housing you'll be called upon to serve within the Town of
18 Florence in the future pursuant to these agreements that
19 you've referenced now?

20 A. Oh, yes, the master utility agreement will
21 identify the number of homes that have been approved
22 through either zoning or PADs. So we would know or have a
23 pretty good guess at what the total buildout number would
24 be. But whenever that occurs, you know, ten homes a year
25 or a hundred homes a year or five hundred homes a year,

1 that's kind of an unknown, crystal ball thing.

2 Q. Correct, the timing of it may be unknown, but do
3 you have an idea though of the number of units, if all
4 those units were to be built?

5 A. Not off the top of my head, no.

6 Q. Would it shock you if I gave you a number of
7 37,000?

8 A. No.

9 Q. No? That's within the realm of possibility?

10 A. I would think so, yes.

11 Q. Okay. All within the Town of Florence?

12 A. Yeah. I would think that would be -- that
13 sounds reasonable.

14 Q. As of the end of the test year here, 2007, was
15 the total of all your utility accounts, whether within the
16 town or outside of the town, in the nature of 17,541,
17 something like that?

18 A. I don't recall specifically, Mr. Mannato.

19 Q. Did you submit those numbers in your application
20 to the Commission?

21 A. Yes, and I think they've probably been updated
22 since the original submittal, too; but yeah, they would
23 have been in the documents.

24 Q. At that time of submitting the application, did
25 you have approximately 16,800 3/4-inch meter accounts?

1 A. Again, I don't remember specifically. Whatever
2 the application says. It sounds about right.

3 Q. Do you have a copy of the application?

4 A. Not in front of me here, no.

5 Q. Is it fair to say that the bulk of your accounts
6 are the residential 3/4-inch meter type account?

7 A. Yes.

8 Q. And you have estimated as part of your
9 application that the average residential consumption that
10 you currently see is about, it's right around 7,000
11 gallons a month, isn't it?

12 A. Yes, as I recall, it was just under that, yeah.

13 Q. Like maybe 6,931?

14 A. Something like that, yeah.

15 Q. Based on that level of consumption, under your
16 tariff as it currently stands, would the monthly bill for
17 wastewater and water be about \$81, \$81.10?

18 A. That sounds correct, yes.

19 Q. However, if your rate proposal as it was given
20 to the Commission were to be accepted, wouldn't the
21 monthly bill for a 3/4-inch meter account, using 7,000
22 gallons, be just a slight bit lower than that, \$80.60?

23 A. As the application was made, yes, that's
24 correct.

25 Q. And do you still stand in support of that

1 recommendation?

2 A. Yes, with some minor changes over the course of
3 the year with Staff.

4 Q. Would it be fair to characterize the rate
5 component basically as reducing the rates for water by
6 about 20 percent and increasing the rate for wastewater
7 treatment by about 20 percent?

8 A. Yes, that's how the application was filed, yes.

9 Q. Now, in contrast, a residential customer in the
10 Town of Florence with a 3/4-inch meter would have a much
11 lower bill; isn't that true?

12 A. I don't recall specifically what the town's
13 rates are. I'm sure Wayne or Mr. Patel could tell us.

14 Q. Well, you have looked at those, haven't you?

15 A. Yes.

16 Q. Would it surprise you if a residential customer
17 in the Town of Florence using that same amount of water,
18 about 7,000 gallons, would have a bill of about \$44 a
19 month?

20 A. Like I said, I don't recall the numbers
21 specifically, but I know the Town of Florence, their rates
22 are lower, but they are also -- the municipality
23 calculates their cost expenses for water differently than
24 a private utility.

25 Q. Yes, I understand that. I'm just trying to draw

1 a comparison here for the Commission that illustrates, you
2 know, the difference in the rates that we have in the town
3 resulting from your current rates and your rate proposal.

4 You charge a flat rate, correct, for wastewater
5 treatment?

6 A. Yes.

7 Q. And why is that?

8 A. The flat rate was calculated based on average
9 consumer or an estimated average consumer use when the
10 original application was filed. We now have a situation
11 where Johnson Utilities actually serves wastewater only to
12 certain areas within our CC&N.

13 Based on Commission rules and the operation of
14 other private water companies, we proposed to stay with
15 the same flat rate because we have no way of knowing or
16 calculating what each individual household uses waterwise
17 or generates sewerwise in an area where we are not serving
18 water.

19 Q. The vast bulk of the accounts of Johnson
20 Utilities though are residential accounts on the 3/4-inch
21 meter that use both sides of the system; isn't that true?

22 A. Yes. I think it's about three-quarters of them.

23 Q. So how do you, under a flat-rate methodology
24 that is what you support, how do you equitably charge
25 people for the amount of burden that they put on the

1 system? In other words, how do you -- somebody that uses
2 a very small amount of water is also putting a much lesser
3 amount of water into the wastewater treatment system,
4 right?

5 A. That would be true. But the number for the flat
6 rate for the residential 3/4-inch customer was calculated
7 and prorated over the entire system. So somebody who uses
8 less domestic water is going to generate less sewer, yes.

9 Q. Mr. Tompsett, are you familiar with an
10 organization called the Central Arizona Groundwater
11 Replenishment District?

12 A. Yes.

13 Q. What is that?

14 A. The CAGRD?

15 Q. Yes, what is that?

16 A. That's the agency that tracks the groundwater
17 replenishment for the state.

18 Q. And does Johnson Utilities Company have to pay
19 money to CAGRD each year?

20 A. Yes.

21 Q. Why is that?

22 A. It's part of the replenishment obligation for
23 groundwater.

24 Q. Does that amount of money that you have to pay
25 them relate to the amount of groundwater that you take out

1 of the ground?

2 A. Yes.

3 Q. And do you know of any way that you could offset
4 that obligation to pay CAGR D each year?

5 A. Well, that is part of this rate case. There is
6 a -- there are recharge projects that we can do,
7 groundwater recharge which Johnson Utilities currently
8 does. There are underground storage facility documents
9 that have been filed with the Department of Water
10 Resources that are in various stages of approval, that
11 will help offset that obligation.

12 Q. What is Johnson Utilities doing to limit its
13 exposure to CAGR D fees?

14 A. Well, just that. We have effluent recharge
15 programs. We have low water use programs that the PADs
16 and the zoning documents require. So low water use within
17 individual homes. The recharge and subsequent recovery of
18 recharged effluent will reduce that groundwater
19 obligation.

20 Q. Does the utility engage in the practice of
21 trying to obtain long-term storage credits?

22 A. We are doing that, yes.

23 Q. Do you know how many long-term storage credits
24 the utility currently has?

25 A. Not at this time, no.

1 Q. Are you familiar with the term "advances in aid
2 of construction"?

3 A. Yes.

4 Q. What is that?

5 A. That would be monies that the developers advance
6 for subdivision developments.

7 Q. Would that apply to the development we were
8 discussing earlier, the Anthem at Merrill Ranch
9 development?

10 A. Yes, it would.

11 Q. And when you enter into a master utility
12 agreement, do you become contractually required to pay
13 back those advances in aid of construction?

14 A. Are you referring to the subdivision costs or
15 the hookup fees?

16 Q. The subdivision costs.

17 A. Yes, they're repaid per the line extension
18 agreements.

19 Q. Are you required to pay those back generally at
20 the rate of five percent of the revenue that you receive
21 from the particular infrastructure advanced by the
22 developer?

23 A. That's correct, yes.

24 Q. And is there a time limit, however? Is there a
25 time limit on your obligation to repay the advances?

1 A. No. Our particular tariff requires that it be
2 repaid at five percent until fully repaid.

3 Q. Is there a cost of capital associated with that?
4 In other words, does it bear interest? Or is it just a
5 straight five percent payback?

6 A. No, there's no interest on the payback.

7 Q. Thanks, Mr. Tompsett.

8 MR. MANNATO: I have no other questions for him,
9 Your Honor.

10 ALJ WOLFE: Thank you, Mr. Mannato.

11 We're going to take a break before we go to
12 questions from RUCO.

13 But before that, Mr. Crockett, the termination
14 notice issue, were you planning to cover that on redirect?

15 MR. CROCKETT: We could do that, Your Honor,
16 on -- on redirect?

17 ALJ WOLFE: I don't know how you were planning
18 to do it. That was just --

19 MR. CROCKETT: If it's okay with Your Honor,
20 we'll deal with that on redirect.

21 ALJ WOLFE: That sounds good to me. We'll take
22 a break for fifteen minutes. Come back here about two
23 minutes after four.

24 (Recessed from 3:46 to 4:06 p.m.)

25 ALJ WOLFE: Let's go back on the record. Before

1 we get started, I did want to say that Monday next week we
2 will not be meeting. But I have scheduled this room for
3 the other days next week, Tuesday, Wednesday, Thursday and
4 Friday; and if we don't get Mr. Rigsby on the stand by the
5 end of Friday before then, we'll schedule another day the
6 following week, if necessary.

7 MR. MARKS: Your Honor.

8 ALJ WOLFE: Yes.

9 MR. MARKS: I hate to be the party pooper here,
10 but I have another hearing on Tuesday and Wednesday next
11 week in a line siting case that's been scheduled now for
12 about six weeks.

13 ALJ WOLFE: Okay, that would be September --

14 MR. MARKS: 29th and 30th.

15 ALJ WOLFE: -- 29th and 30th. Are there any
16 conflicts on October 1st or 2nd? It looks like it may
17 possibly not be an issue at all. If Mr. Rigsby is
18 available the week after that, I may go ahead and schedule
19 another couple of days. But I haven't looked at those
20 days, but the following week in October, I'll look at.

21 MS. MITCHELL: So we won't be meeting the 28th,
22 the 29th, or the 30th?

23 ALJ WOLFE: That's correct.

24 MS. MITCHELL: Okay.

25 ALJ WOLFE: We will be meeting the 1st and the

1 2nd of October.

2 Mr. Crockett, you wanted to address something
3 about SF-32 at this point?

4 MR. CROCKETT: Right, Your Honor, I had a
5 discussion with Mr. Marks during the break, and we're
6 going to get together on Wednesday of this week and see if
7 we can get to a point where we could stipulate, where the
8 company could stipulate to the admission of this exhibit.

9 There are some issues that we want to raise with
10 him on some things. So we would like to try to work on
11 that Wednesday, and then report to you the results of that
12 on Thursday.

13 ALJ WOLFE: That would be fine. But as far as
14 other parties having questions about it, that would trump
15 your discussions on Wednesday. We're not going to wait
16 until then. I don't know what the other parties have
17 planned. But yes, I would appreciate you getting together
18 and stipulating as to admission. But if something comes
19 up before then on the record, we'll cover it when it comes
20 up.

21 MR. CROCKETT: Okay.

22 ALJ WOLFE: Are there any other procedural
23 issues that the parties want to discuss before
24 Mr. Pozefsky starts his cross-examination?

25 (No response.)

1 ALJ WOLFE: Okay, Mr. Pozefsky.

2 MR. POZEFSKY: Thank you, Your Honor.

3

4

CROSS-EXAMINATION

5

6 BY MR. POZEFSKY:

7 Q. Good afternoon, Mr. Tompsett.

8 A. Hello, Mr. Pozefsky. Did I say that right?

9 Q. That was good. I would like to pick up where
10 Mr. Mannato left off on the Central Arizona Groundwater
11 Replenishment District expense issue. I'm going to be
12 referring a lot to your rebuttal testimony on page 22.

13 A. I'm sorry, Mr. Pozefsky, which exhibit?

14 Q. Your prefiled rebuttal, page 22.

15 ALJ WOLFE: Is that Exhibit A-5? There was
16 supplemental rebuttal and the first rebuttal, the one that
17 was docketed on March 10th, unless I'm reading the date
18 wrong. I believe it was March 10th.

19 MR. POZEFSKY: Right, the one I'm looking at is
20 March 9th.

21 ALJ WOLFE: Okay.

22 MR. POZEFSKY: I don't think on this issue it
23 changed much though.

24 ALJ WOLFE: That's Exhibit A-5. Your attorney
25 probably has a copy of your testimony.

1 MR. CROCKETT: Your Honor, if I might get one
2 out of the --

3 ALJ WOLFE: Yes.

4 BY MR. POZEFSKY:

5 Q. Are you there, Mr. Tompsett?

6 A. Yes, I have A-5.

7 Q. A-5, yes.

8 A. Yes.

9 Q. Mr. Tompsett, as I understand it -- and I know
10 that there has been some rejoinder testimony and some
11 supplemental rejoinder testimony; but overall, your
12 recommendation or the company's recommendation on the
13 CAGRD -- and I'll use that as the acronym -- is that it's
14 an assessment, is that it's a tax and that it's something
15 that if the company has its druthers it would like to be
16 treated as a pass-through; is that correct?

17 A. Yes, sir, that's correct.

18 Q. And you believe, from reading your testimony on
19 page 22, that the assessment is analogous to a privilege
20 sales or use tax; is that correct? I'm just covering some
21 basic background.

22 A. Yes, sir.

23 Q. And I'll hand you out what's going to be marked
24 RUCO's Exhibit R-5. Do you have a copy of RUCO's Exhibit
25 R-5, Mr. Tompsett?

1 A. Yes, I do.

2 Q. And that should be an excerpt from the rules,
3 Rule Number 14-2-409, correct?

4 A. Yes, it is.

5 Q. And you refer to Subsection D.5 of this rule
6 which is on the second page here in your testimony; is
7 that correct?

8 A. Yes, that's correct.

9 Q. And you compare the CAGR tax in this particular
10 section; is that correct?

11 A. Yes, that's correct.

12 Q. And this section provides for a pass-through for
13 the utilities for their proportionate share of any
14 privilege sales or use tax; is that correct?

15 A. That's correct.

16 Q. But there's nowhere in this particular rule that
17 provides for the pass-through of the CAGR tax
18 specifically; is that correct?

19 A. No, not that I'm aware of.

20 Q. And there's nowhere in any other rule that
21 you're aware of that provides for a specific pass-through
22 of the CAGR; is that correct?

23 A. That's correct. That's my request that that be
24 specifically addressed.

25 MR. POZEFSKY: Your Honor, I would move for the

1 admission -- actually, I would just ask that the
2 Commission take judicial notice or administrative notice
3 of R-5, which is this rule.

4 ALJ WOLFE: Has this been pre-marked? Have you
5 had the court reporter mark it?

6 MR. POZEFSKY: The court reporter, no. But I
7 did mark it.

8 ALJ WOLFE: Yes, there's the marked copy. Okay.
9 Administrative notice is taken.

10 MR. POZEFSKY: Thank you.

11 BY MR. POZEFSKY:

12 Q. You also should have before you, hopefully have
13 before you what's marked RUCO's Exhibit R-4.

14 A. Yes, I do have that.

15 Q. Just to make this easier, I'm going to pass out
16 copies of R-4.

17 ALJ WOLFE: May I have one, too? Thank you.

18 BY MR. POZEFSKY:

19 Q. Your Honor, I've already handed this exhibit
20 out. I'm just trying to move things along. I made some
21 extra copies, but apparently not enough. It's Exhibit
22 RUCO R-4.

23 Mr. Tompsett, this appears to be a copy of
24 Decision Number 64598; is that correct?

25 A. Yes, that's correct.

1 Q. And the Commission -- this decision deals with
2 this issue, the CAGR issue; is that correct?

3 A. It appears to, yes.

4 Q. And this goes back to March 4, 2002; is that
5 correct?

6 A. Yes, that's when it was docketed.

7 Q. And if you take a look, this is an attempt or a
8 request by Johnson to also at that time pass through the
9 CAGR expense, pass the cost as an expense to its
10 ratepayers at that time; is that correct?

11 A. Yes, there was a filing that we made sometime
12 before this that generated this decision by the
13 Commission.

14 Q. If you could turn to page 2, paragraph 7, just
15 have you read two short paragraphs. Can you read
16 paragraph 7, please?

17 A. Yes, it says, "Staff determined that the GRD tax
18 cannot be treated as a pass-through tax within the Arizona
19 Administrative Code R14-2-409.D.5 because it is not a
20 privilege, sales or use tax since GRD taxes are not based
21 on sales revenue. Therefore, GRD taxes do not fall within
22 the scope of the Company's current tariff."

23 Q. And if you would, jumping down to the
24 Conclusions of Law, would you read those two sentences,
25 that one sentence, the conclusion number 3?

1 A. "The Commission having reviewed the application
2 and Staff's Memorandum dated January 31, 2002, concludes
3 that the GRD tax is not the type of tax that can be passed
4 through within Arizona Administrative Code R14-2-409.D.5,
5 and is, therefore, not included in the Company's current
6 tariff."

7 Q. And since the time this decision was made, the
8 company hasn't made another request to pass this through
9 except in this application; is this correct?

10 A. That would be correct, yes. The rate case is --
11 this is the first time since that 2002 that the company
12 had requested the Commission reconsider it.

13 Q. The company did not appeal this decision; is
14 that correct?

15 A. Yeah, I think that's correct. I'm not aware
16 that they appealed it.

17 Q. Do you know why the company didn't appeal it
18 back then?

19 A. I don't recall at this time.

20 Q. Would you agree with me that nothing is changed
21 with regard to this assessment since this case was last
22 decided?

23 A. No, not necessarily. Nothing has changed with
24 respect to the wording that I see in this Arizona
25 Administrative Code that's been quoted. But I think the

1 understanding of not only the utility, but the Commission
2 Staff and the general consumer has changed and as they
3 become more informed as to what the GRD is specifically
4 for.

5 Q. But other than the rate, nothing about the
6 assessment has changed since the time this decision was
7 made; is that correct?

8 A. Well, no, the rate is still applied based on
9 usage, on the volume of water that is used; but the rate
10 does change, has changed since 2002, that's correct.

11 Q. You would agree with me then that the
12 assessments aren't based on sales, correct?

13 A. Well, the assessment is indirectly based on
14 sales because it's based on volume.

15 Q. Based on the level of water consumed, correct?

16 A. Volume of water consumed, yes.

17 Q. You would agree with me that sales taxes are not
18 voluntary, wouldn't you?

19 A. I think that would be accurate, yes.

20 Q. You would agree with me that income taxes are
21 not voluntary?

22 A. Yes, I would agree with that.

23 Q. Would you agree with me that property taxes are
24 not voluntary?

25 A. Yes.

1 Q. In general, wouldn't you agree with me that
2 taxes aren't voluntary?

3 A. In general, yes.

4 Q. Mr. Tompsett, entities who sell subdivided lands
5 in Active Management Areas must obtain certificate of
6 assured water supply, correct?

7 A. I'm sorry, would you repeat that?

8 Q. Sure. Entities who sell subdivided lands in an
9 Active Management Area must obtain a certificate of
10 assured water supply; isn't that correct? Companies,
11 entities, utilities, developers?

12 A. They would need to either have a 100-year
13 assured water supply or they would need to be under the
14 service area of a designated provider.

15 Q. And as you had discussed with Mr. Mannato,
16 developers in the AMA can meet their assured water supply
17 requirements through a variety of means, correct?

18 A. That would be correct, yes.

19 Q. Another way they could do it is through a
20 contract for CAP water, correct?

21 A. Yes, I believe they could do that.

22 Q. Wouldn't you agree with me that membership in
23 the CAGR D is not mandatory?

24 A. Well, that's correct to a certain degree. It is
25 not mandatory. However, for the purposes of a designated

1 utility, it is required that they enroll -- the Department
2 of Water Resources would require that they enroll.

3 Q. Johnson could have enrolled or could have sought
4 alternative ways to meet assured water requirement,
5 correct? Other than membership in the CAGRDR?

6 A. There are other avenues available, yes; but I
7 mean the CAGRDR is an organization we would support, and
8 that is the path we elected to go down.

9 Q. Would you agree with me that utilities that
10 don't sell subdivided land that operate in an Active
11 Management Area do not have to obtain an assured
12 certificate of assured water supply?

13 A. I'm sorry, can you repeat that?

14 Q. Utilities that are not selling subdivided land
15 do not have to obtain a certificate of assured water
16 supply; isn't that correct?

17 A. I'm sorry I asked you to repeat it because I'm a
18 little confused. In our particular case, the utility is
19 not selling any subdivided land. It's typically a
20 different -- somebody else, a developer or landowner.

21 Q. Does Johnson Utilities sell subdivided land?

22 A. No. But people that are subdividing can obtain
23 an assured water supply, and those individual homes then
24 are taxed through the County records for essentially the
25 CAGRDR fees.

1 Q. Does every utility that sells, that's in the
2 business of water, do they have to obtain assured water
3 supply?

4 A. The 100-year assured water supply is issued to
5 the landowner or the specific subdivision. In our case,
6 Johnson Utilities is not subdividing land and selling lots
7 with an assured water supply. We're a designated utility.

8 Q. But the requirement is for those utilities that
9 are in Active Management Areas, correct?

10 A. Subdividing within an AMA requires a 100-year
11 assured water supply or a designation of allocation, yes.

12 Q. Is that why Johnson Utilities has to have
13 assured water supply?

14 A. Yes.

15 Q. Isn't it true that any of the profits that
16 result from the development of the land gets passed on to
17 the shareholders in the form dividends?

18 A. Again, Johnson Utilities is not selling the
19 land -- or they're not the developer.

20 Q. I guess I'm a little confused. I'm trying to
21 follow what you said earlier.

22 Why don't we just step back and why don't you
23 just -- why is it that Johnson Utilities has to have an
24 assured water supply? Let's start from there.

25 A. Okay. Johnson Utilities has a designation which

1 serves the purpose of a 100-year assured water supply. As
2 part of that designation that was approved by the
3 Department of Water Resources, the CAGR D is a component of
4 that, that allows basically, gives the big utility a
5 bucket, a volume of water that would be assigned to
6 subdivisions as they develop, which works a little bit
7 different than 100-year assured water supply.

8 Q. Okay. Let me ask you, the costs that the
9 utilities have sought in the past, these costs typically
10 increased from year to year; is that correct?

11 A. The CAGR D fees go up every year, yes.

12 Q. And the company doesn't know what the increases
13 are going to be for 2011, 2012, 2013, 2014, correct?

14 A. Well, the CAGR D board publishes proposal rates
15 that go out for a couple years. I think they go out five
16 years. But they are subject to change as well, but they
17 typically increase every year.

18 Q. And those are the projections that you talk
19 about in your rebuttal testimony on page 21?

20 A. Yes.

21 Q. Just so we're clear, on those costs that you
22 talk about on page 21, you put them into three categories:
23 the historic costs, the firm costs, and the advisory,
24 correct?

25 A. Yes. That's using the language off of the CAGR D

1 documents.

2 Q. And the historic costs and the firm costs,
3 they're known at this time, correct?

4 A. They were known, yes. Like I said, they
5 projected some advisory costs going out for a couple
6 years. They may go past 2014 now. I don't recall.

7 Q. Just so the record is clear, RUCO is
8 recommending the inclusion of the historic and the firm.
9 It's just RUCO's objection is with the advisory; is that
10 correct?

11 A. As I recall, yes.

12 Q. And these projections, these are projections of
13 the CAGR; is that correct?

14 A. These are their numbers, yes.

15 Q. Do you know what these projections are based on?

16 A. Not specifically, no. I assume they do some
17 sort of analysis.

18 Q. Would you agree with me that the actual rates
19 for after 2010 are not known and measurable at this time?

20 A. I would agree that these numbers could change,
21 yes. But that would be a decision of the CAGR board. I
22 would have no control over that.

23 Q. Go over to page 24 of your rebuttal. On line
24 19, on page 24 of your rebuttal, you state that if the
25 CAGR taxes are treated as an expense, the company will

1 increasingly underrecover the expense every year until its
2 next rate case; is that correct?

3 A. Yes, that's what this states.

4 Q. And is this based on the CAGR's projections?

5 A. Yes, it would be.

6 Q. Aren't the actual costs though based on
7 consumption?

8 A. Yes, what we're referring to is if the firm
9 amount, I guess as we described it, were to be set for,
10 say, the test year 2007, I guess that's historic. We're
11 now in 2009. If we set that rate today, that's the
12 historic number, knowing that for every acre-foot that's
13 used, it's going to cost more, you know, this year, next
14 year, any year going forward until that rate is adjusted
15 again. The utility company would be underrecovering that
16 expense just based on the math.

17 Q. But you'll agree with me, we don't know what the
18 consumption will be in the future, correct?

19 A. Yes, I would agree with that.

20 Q. And even if the rate does go up, Mr. Tompsett,
21 isn't it possible that the consumption could go down?

22 A. The individual homeowner consumption?

23 Q. Well, the consumption that you base the CAGR
24 taxes on. The overall consumption.

25 A. Well, overall, I would say that the likelihood

1 that -- as the individual consumer becomes more aware of
2 the taxes and the water consumption, that an individual
3 homeowner's use would probably go down. But with the
4 growth in Arizona and just the number of people moving
5 into the state, I think overall, the utility will see an
6 increase in water use for the system. That was kind of
7 long-winded, I'm sorry.

8 Q. When does the company anticipate coming in for
9 its next rate case, Mr. Tompsett?

10 A. At this point we're just trying to get through
11 this one. I don't anticipate coming in for another one
12 any time soon.

13 Q. Okay.

14 ALJ WOLFE: Is that all on that issue, Mr.
15 Pozefsky?

16 MR. POZEFSKY: I just had a few more on that
17 issue, Your Honor.

18 ALJ WOLFE: Okay.

19 MR. POZEFSKY: But if you have something that
20 you want to ask, I'm looking for documents, so --

21 ALJ WOLFE: No.

22 BY MR. POZEFSKY:

23 Q. Mr. Tompsett, Staff is making a different
24 recommendation in this case; is that correct?

25 A. There has -- since the time of this rebuttal,

1 Staff has come out with a subsequent surrebuttal testimony
2 that kind of changed their original position, I believe.

3 Q. And you filed some prefiled supplemental
4 rejoinder testimony which addresses Staff's
5 recommendation; is that correct?

6 A. The document that --

7 Q. I believe it's been offered today.

8 MR. CROCKETT: It was admitted. It's
9 Applicant's Exhibit A-16.

10 MR. POZEFSKY: A-16.

11 BY MR. POZEFSKY:

12 Q. A-16?

13 A. Yes, I have A-16.

14 Q. Okay. Mr. Tompsett, you basically state in this
15 testimony that you don't have an objection to Staff's
16 recommendation. You have some clarifications or
17 modifications on a few proposals on its mechanics, but
18 overall, you don't object to an adjuster mechanism; is
19 that correct?

20 A. Yes, that's correct.

21 Q. Do you believe an adjuster mechanism is an
22 appropriate mechanism in this case to pass through the
23 CAGR assessment?

24 A. No, we thought that the adjuster for the CAGR
25 would work.

1 Q. And why don't you believe that it's an
2 appropriate mechanism?

3 A. No, no, it's the opposite. The question says,
4 "Does the company object to an adjuster to recover the
5 CAGR D assessments as opposed to a pass-through?" And we
6 said -- the answer was no.

7 Q. And that's what I'm trying to explore with you.
8 You don't object to it; is that correct?

9 A. That's correct.

10 Q. But you would still prefer that it be passed
11 through as an expense and not through an adjuster
12 mechanism, correct?

13 A. That's correct.

14 MR. POZEFSKY: Okay. Your Honor, that's all I
15 have on this subject.

16 ALJ WOLFE: Okay. I think that we've had enough
17 for today, so we'll stop there; and when Mr. Tompsett
18 comes back, you can resume your cross-examination.

19 MR. POZEFSKY: Thank you.

20 ALJ WOLFE: So we will be back here on Thursday
21 at 9:30 a.m. That's everyone's understanding? I'll see
22 you then. You're excused for now, and we'll see you back
23 here after Mr. Ashton's testimony.

24 MR. CROCKETT: Thank you, Your Honor.

25 (The proceedings adjourned at 4:37 p.m.)

1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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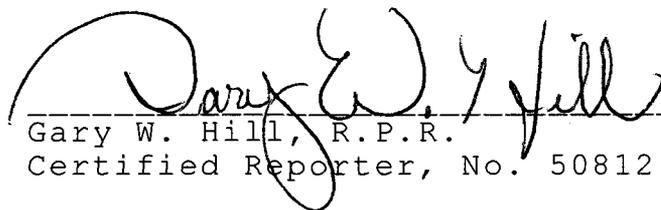
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I, GARY W. HILL, R.P.R., Certified Reporter
 No. 50812, for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, true
 and accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 22nd day of September,
 2009.



 Gary W. Hill, R.P.R.
 Certified Reporter, No. 50812