



0000103760

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

BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION OF)
 JOHNSON UTILITIES, L.L.C., DBA)
 JOHNSON UTILITIES COMPANY FOR AN) DOCKET NO.
 INCREASE IN ITS WATER AND WASTEWATER) WS-02987A-08-0180
 RATES FOR CUSTOMERS WITHIN PINAL)
 COUNTY, ARIZONA.) EVIDENTIARY
) HEARING

At: Phoenix, Arizona
 Date: September 25, 2009
 Filed: **OCT - 8 2009**

RECEIVED
 2009 OCT - 8 P 2:36
 AZ CORP COMMISSION
 DOCKET CONTROL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME VI

(Pages 677 through 874, inclusive)

CONFIDENTIAL PORTION

(Pages 795 through 798, inclusive)

Arizona Corporation Commission
 RECEIVED
 OCT - 8 2009

ARIZONA REPORTING SERVICE, INC.
 Court Reporting
 Suite 502
 2200 North Central Avenue
 Phoenix, Arizona 85004-1481

Prepared for: By: COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658

ACC

ORIGINAL

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.

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

CAUTION: These proceedings contain portions subject to a confidentiality agreement. Transcripts containing the confidential portions are bound under separate sealed cover.

Docket Control of ACC is receiving for filing transcripts without the confidential portions. The presiding officer is receiving the original transcript of the confidential portions under seal. Disks and Condensed Transcripts and Indices containing the confidential portions have been distributed to the parties only.

CONFIDENTIAL PORTION
PAGES

795 through 798

INDEX TO EXAMINATIONS

WITNESSES	PAGE
WILLIAM A. RIGSBY	
Direct Examination by Mr. Pozefsky	684
Cross-Examination by Ms. Mitchell	688
Cross-Examination by Mr. Metli	690
Redirect Examination by Mr. Pozefsky	723
BRIAN TOMPSETT	
Cross-Examination Continued by Mr. Pozefsky	730
Further Direct Examination by Mr. Crockett	762
Cross-Examination Continued by Mr. Pozefsky	768
Cross-Examination by Ms. Mitchell	808
Further Direct Examination by Mr. Crockett	824
Cross-Examination Continued by Ms. Mitchell	835

1

INDEX TO EXHIBITS

2	NO.	DESCRIPTION	IDENTIFIED	ADMITTED
3	R-6	R-6 Redacted Transcript of Recorded Conversation of Mr. David Ashton and Mr. Gary Larsen, 2/1/08	544	807
5	R-8	Prefiled Direct Testimony of William A. Rigsby	685	686
7	R-9	Prefiled Surrebuttal Testimony of William A. Rigsby	685	686
8	R-10	Company's Income Statement	735	739
9	A-23	E-mail String	823	828
10	A-23A	Account Summary	828	828
11	A-31	Effluent Bill, 8/31/09	729	--
12	A-32	CAP Bill, 8/31/09	729	--
13	A-34	5/6/05 E-mail from Ms. Overholser to Ms. Card, Response	763	767
15	S-1	A.A.C. Title 14, Chapter 2	845	admin. notice 848
17	S-2	Listing of Affiliate Filings	852	deferred 872
18	S-3	Articles of Incorporation of Central Pinal Contracting, LLC	850	872
20	S-4	Articles of Amendment Central Pinal Contracting, LLC	855	872
21	S-5	Articles of Incorporation of Specific Engineering, LLC	852	872
22	S-8	Articles of Incorporation of The Club at Oasis, LLC	860	872
24	S-11	Certificate of Disclosure of Shea Utility Services Company, Inc.	862	872
25				

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

INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED	ADMITTED
S-12	Corporate Annual Report and Certificate of Disclosure for Shea Utility Services Company	863	872
S-13	Shea Utility Services Company, Inc. Officers	865	872
S-20	Data Request JMM 4-2	868	872
S-30	Responses to Data Requests in Complaint Case	818	848

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
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 9:33 a.m. on the 25th of
6 September, 2009.

7

8 BEFORE: TEENA I. WOLFE, Administrative Law Judge

9

10 APPEARANCES:

11

For the Arizona Corporation Commission:

12

By Ms. Robin Mitchell
Ms. Ayesha Vohra
Staff Attorneys, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007

13

14

15

16 For the Applicant:

17

SNELL & WILMER, L.L.P.
By Mr. Jeffrey W. Crockett
Mr. Robert Metli
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004

18

19

20

21 For Swing First Golf, L.L.C.:

22

CRAIG A. MARKS, P.L.C.
By Mr. Craig A. Marks
10645 North Tatum Boulevard, Suite 200-676
Phoenix, Arizona 85028

23

24

25

1 APPEARANCES:

2

For RUCO:

3

RUCO

4

By Mr. Daniel Pozefsky
Chief Counsel

5

1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

6

7 For the Town of Florence:

8

TOWN OF FLORENCE

9

By Mr. James E. Mannato
775 North Main Street
Phoenix, Arizona 85232

10

11

12

13

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

14

15

16

17

18

19

20

21

22

23

24

25

1 ALJ WOLFE: Let's go back on the record.
2 Good morning. And I believe RUCO, your witness
3 is up today, Mr. Pozefsky?

4 MR. POZEFSKY: That's correct, Your Honor. At
5 this time RUCO would call Mr. Bill Rigsby.

6 MR. MARKS: Your Honor, before we start with
7 Mr. Rigsby --

8 ALJ WOLFE: Yes.

9 MR. MARKS: -- could I raise an issue?

10 ALJ WOLFE: Certainly.

11 Mr. Rigsby, you don't mind waiting there.

12 MR. MARKS: Should just take a second. Looking
13 at the remaining witness for Swing First Golf is
14 Ms. Rowell. And she has some flexibility, but not
15 infinite flexibility and typically with child care can't
16 be here on a moment's notice, but, of course, if she can
17 plan ahead a little bit she can adjust her schedule
18 accordingly. I was wondering if perhaps we could look
19 at a date certain, either next Thursday or next Friday,
20 for her. And I will be talking with her a little bit
21 later today, but I think right now either of those days
22 would be fine.

23 ALJ WOLFE: I think Friday would probably work
24 better.

25 Do any of the parties have objection to that,

1 Ms. Rowell having a date certain next Friday?

2 MR. CROCKETT: No, Your Honor.

3 MR. POZEFSKY: None, Your Honor.

4 MS. MITCHELL: No.

5 ALJ WOLFE: That way we can hopefully get
6 through the company's witness before.

7 MR. MARKS: I will confirm with her just to make
8 sure that works for her. If there is any issue, I will
9 raise it after the lunch break today. Thank you, Your
10 Honor.

11 ALJ WOLFE: Okay. Thank you.

12 Mr. Rigsby, you haven't been sworn in yet, have
13 you?

14 THE WITNESS: I don't believe so.

15

16 WILLIAM A. RIGSBY,
17 a witness herein, having been first duly sworn by the
18 Certified Reporter to speak the truth and nothing but
19 the truth, was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. POZEFSKY:

23 Q. Good morning, Mr. Rigsby.

24 A. Good morning.

25 Q. Would you please state your name for the record.

1 A. William A. Rigsby.

2 Q. Mr. Rigsby, where are you employed and in what
3 capacity?

4 A. I am employed by the Residential Utility
5 Consumer Office, and I work there as a Public Utilities
6 Analyst V.

7 Q. And Mr. Rigsby, you prepared testimony in this
8 matter?

9 A. Yes, I did.

10 Q. And before you, you should have what is marked
11 RUCO's Exhibit 8 and RUCO's Exhibit 9. RUCO's Exhibit 8
12 should be your direct testimony.

13 A. Yes, it is.

14 Q. RUCO Exhibit 9 should be your prefiled
15 surrebuttal testimony.

16 A. Yes, it is.

17 Q. And were those exhibits prepared by you or under
18 your supervision?

19 A. Yes, they were.

20 Q. Do you have any additions or do you have any
21 corrections to make to those exhibits?

22 A. No, I don't.

23 MR. POZEFSKY: Your Honor, at this time I would
24 move for the admission of RUCO Exhibit 8 and RUCO
25 Exhibit 9.

1 ALJ WOLFE: There having been no objections
2 raised at the prehearing conference, R-8 and 9 are
3 admitted.

4 (Exhibits Nos. R-8 and R-9 were admitted into
5 evidence.)

6 BY MR. POZEFSKY:

7 Q. Mr. Rigsby, could you give a brief summary of
8 your testimony.

9 A. Yes. Basically what I am recommending at this
10 time is that Johnson Utilities -- or that the Commission
11 adopt, excuse me, an 8.18 percent weighted cost of
12 capital to Johnson Utilities' fair value rate base. I
13 believe the company has chosen to use its original cost
14 rate base as its fair value rate base in this case. And
15 so for that reason, we are recommending that the
16 Commission adopt the weighted average cost of capital,
17 8.18 percent. That 8.18 percent figure, as I mentioned,
18 is the weighted average cost of my recommended cost of
19 long-term debt and my recommended cost of common equity.

20 I am recommending that the Commission adopt a
21 hypothetical capital structure comprised of 40 percent
22 long-term debt and 60 percent common equity. I am
23 recommending that the Commission adopt an 8 percent cost
24 of long-term debt. The 8 percent cost of long-term debt
25 that I am recommending represents the interest rate that

1 was associated with the promissory note for \$772,000
2 that was on the books of the company during the test
3 year. The note was entered into by Johnson and the
4 company's managing member, George Johnson, on
5 December 31st, 1999.

6 Under the terms of the loan agreement, Johnson
7 Utilities is required to make only quarterly interest
8 payments of 8 percent per annum over the 10-year life of
9 the loan, and make a balloon payment of the principal
10 amount plus any accrued interest on December 31st, 2009.

11 My cost of common equity, I am recommending that
12 the Commission adopt an 8.31 percent cost of common
13 equity. That figure is the mean average of the results
14 that I obtained from my cost of equity analysis, which
15 used both discounted cash flow and the capital asset
16 pricing model.

17 Q. Do you have anything else to add, Mr. Rigsby?

18 A. No.

19 MR. POZEFSKY: Your Honor, at this time, I would
20 tender Mr. Rigsby for cross-examination.

21 ALJ WOLFE: Thank you.

22 Mr. Marks, do you have questions for this
23 witness?

24 MR. MARKS: I do not, Your Honor. Thank you.

25 ALJ WOLFE: Mr. Mannato.

1 MR. MANNATO: No, Your Honor.

2 ALJ WOLFE: Okay. Staff?

3 MS. MITCHELL: Yes, I just have a few.

4

5

CROSS-EXAMINATION

6 BY MS. MITCHELL:

7 Q. Good morning, Mr. Rigsby.

8 A. Good morning.

9 Q. When you have a company that is heavy in equity
10 and low in debt, does that have an adverse effect on the
11 company's ratepayers?

12 A. Well, it would result in higher rates. And the
13 reason for that is because typically the cost of equity
14 is more than the cost of debt. And so when you have a
15 capital structure that is comprised of, say, either
16 100 percent common equity or, you know, a large portion
17 of it is common equity, then what would happen is it
18 would result in a larger operating income for the
19 company, and, of course, that would result in a higher
20 rate for ratepayers.

21 Q. All right. Thank you.

22 And it is RUCO's position that the company in
23 its wastewater division has a negative rate base, is
24 that correct?

25 A. Let me double-check that. I just want to make

1 sure. I think, I know one of them -- I think one of
2 them we came up with a negative rate base, and I just
3 want to make sure which one it was.

4 Let's see. Okay. It was the water district
5 that we calculated a negative rate base on. And in that
6 case, because you have a negative rate base, you can't
7 apply a regular rate of return to it. And so what we
8 have done in the case of the water division is we are
9 using the operating margin methodology that I believe
10 the Staff used for both the water and wastewater
11 divisions of the company. The only difference is I
12 believe Staff is recommending a 10 percent operating
13 margin. We are recommending an 8.31 percent -- or
14 excuse me, 8.18 percent operating margin, which is the
15 weighted average cost of capital that I have calculated
16 for the water, or the wastewater utility.

17 Q. All right. Thank you.

18 I have one other question. And it just, you
19 know how they just run away right when you get ready to
20 ask it.

21 A. Do you want me to try and jog your memory?

22 MS. MITCHELL: I wish you could. I can't
23 remember what it was now. But thank you.

24 If the judge will allow, maybe when we come back
25 around, it will come back to me, if it is okay with

1 Mr. Pozefsky if I ask a follow-up question. Thank you.

2 THE WITNESS: You are welcome.

3 ALJ WOLFE: Mr. Metli, do you have questions?

4 MR. METLI: I do, Your Honor. Thank you.

5

6

CROSS-EXAMINATION

7 BY MR. METLI:

8 Q. Good morning, Mr. Rigsby.

9 A. Good morning.

10 Q. Would you agree with me, sir, that the company's
11 actual capital structure consists of approximately
12 2.8 percent debt and 97.2 percent equity?

13 A. That's correct.

14 Q. I think you testified RUCO is recommending a
15 hypothetical capital structure of 40 percent debt and
16 60 percent equity, correct?

17 A. Yes.

18 Q. Wouldn't the use of your hypothetical capital
19 structure impute approximately 38 percent debt?
20 Wouldn't that cause your cost of capital to be
21 artificially decreased?

22 A. No, because you would -- okay. If you were
23 to -- if I were to utilize the company's actual capital
24 structure, which is much heavier in common equity, and
25 you apply a higher cost of common equity to it, then it

1 should come up with a much higher overall weighted cost
2 of capital.

3 Q. But you would agree with me that the cost of
4 debt is lower than the cost of equity, correct?

5 A. It is.

6 Q. And would you agree with me that the more debt
7 you would assume for the company, the lower the cost of
8 capital?

9 A. Yes.

10 Q. Okay.

11 A. With the overall weighted cost of capital.

12 Q. Mr. Rigsby, in developing your cost of equity,
13 as a representative group that you use, you use three
14 publicly traded water companies, is that correct?

15 A. I used three publicly traded water companies. I
16 also used a sample of 10 publicly traded natural gas
17 companies or local distribution companies.

18 Q. And going back to those, the three large water
19 companies that you used, those were the three largest
20 water companies of the six that were analyzed by
21 Mr. Bourassa in his testimony, correct?

22 A. Yes. Let me explain that. The three water
23 utilities that I used are followed by Value Line in
24 their large cap edition. The other three water
25 utilities that Mr. Bourassa used in his sample are

1 followed in the Value Line mid cap, small and mid cap
2 edition.

3 And the problem is is that the utilities, the
4 additional utilities that Mr. Bourassa used in his
5 sample which are followed in the mid cap edition, do not
6 have long-range projections, okay, as do the three that
7 I used. And for that reason, I don't consider them to
8 be as suitable. I don't consider them to be suitable
9 companies for the discounted cash flow model analysis.

10 Q. Did you use any water companies of comparable
11 size to Johnson Utilities when you were developing your
12 cost of equity?

13 A. No. The companies that I used were the three
14 that I mentioned. But of course, those companies are
15 largely a collection of systems that could be comparable
16 to Johnson Utilities. They would essentially all face
17 the same types of risks that Johnson Utilities face, and
18 for that reason, I consider them suitable for the
19 sample.

20 Q. Okay. And going back to the six water companies
21 you took issue with that Mr. Bourassa used, isn't it
22 true that in the past Staff has used those same water
23 companies in their analysis of cost of capital?

24 A. They have used those same water companies, but
25 as I mentioned earlier, the problem you have is you lack

1 the long-term projections that you have with the other
2 three. The Staff typically does not, because that
3 information is not available to them, they don't include
4 it as part of their DCF analysis. Mr. Bourassa averages
5 those results and then uses them for the other three
6 companies in his DCF analysis, which I think distorts
7 the results of the model.

8 Q. And I think you testified you also used 10
9 natural gas companies for your cost of equity analysis?

10 A. Yes.

11 Q. Mr. Rigsby, I want to ask you some questions,
12 and I want to reference the rebuttal and the rejoinder
13 testimony filed in this case by Mr. Bourassa.

14 Your Honor, those exhibits have not yet been
15 introduced. I do have copies of the pertinent testimony
16 that I can distribute if necessary. It is the -- it is
17 going to be Mr. Bourassa's rebuttal testimony, Volume I,
18 which is cost of capital, and Mr. Bourassa's rejoinder
19 testimony, Volume I. May I approach the witness?

20 ALJ WOLFE: Yes.

21 MR. METLI: Mr. Rigsby, I am going to hand you
22 two binders. I have tabbed them with yellow to make it
23 easier for you to find them.

24 THE WITNESS: Okay, thank you.

25 MR. METLI: Does anybody else need copies of

1 that testimony?

2 MR. POZEFSKY: No.

3 MR. MARKS: Rob, have you assigned exhibit
4 numbers to these yet?

5 MR. METLI: We have not.

6 They are going to be A-1 through A-4. But I
7 have to look at them because one is a two volume binder.

8 BY MR. METLI:

9 Q. Mr. Rigsby, I am going to ask you first to turn
10 to Mr. Bourassa's rebuttal testimony that I tabbed for
11 you on page 6. Let me know when you are there.

12 A. I am there.

13 MR. MARKS: Rob, excuse me. Is that the water
14 or wastewater testimony?

15 MR. METLI: This is cost of capital, so it is
16 going to be Volume I. There are -- he has three
17 volumes.

18 MR. MARKS: I have it. Thank you.

19 MR. METLI: I have extra copies.

20 MR. MARKS: I have them all with me. Thank you.

21 BY MR. METLI:

22 Q. Mr. Rigsby, in looking at Mr. Bourassa's
23 testimony on lines 4 through 6, he testifies that your
24 sample water companies that you used in your cost of
25 capital analysis has an average beta of .97 and the

1 sample gas have an average beta of .7, is that correct?

2 A. Yes. I might add those betas have dropped since
3 the testimony, since our testimony has been filed.

4 Q. In looking at those betas, sir, does that mean
5 that the equity cost for the water utility samples are
6 substantially greater than those of the gas company
7 samples?

8 A. I wouldn't say substantially. What I would say
9 is that because the beta for the water companies is
10 higher, the CAPM would produce a higher result than what
11 it would for the gas companies. However, that has
12 fluctuated. In the past I have done the same
13 calculation or same type of analysis, and the natural
14 gas companies yielded higher results than what the water
15 companies did.

16 Q. Given the fact that the betas are different,
17 does that mean that the systematic risk of these
18 companies are different?

19 A. Yes. Beta is a measurement of risk. And so the
20 larger the beta coefficient than the utility, than the
21 security for which the beta is calculated for, would
22 indicate greater risk in terms of market volatility. A
23 beta of 1 is equal to the overall market.

24 So if you were to do this calculation, if you
25 were to calculate a beta on a company and you had a beta

1 of 1.0, that would mean that you -- that company, that
2 security was, had risk equal to the market overall.
3 Anything less than that means they are less riskier.
4 Anything lower than 1 means the security has less risk
5 than the market overall, and anything greater than 1
6 means that it has risk greater than the market overall.

7 Q. So given the fact that water company sample
8 betas are higher, would that mean that those water
9 companies have more risk?

10 A. It would indicate that they have more risk.
11 However, again, that's only looking at beta in
12 isolation. There's other factors that you would look
13 at. But if you want to look at it strictly in terms of
14 beta, then that would mean that it would be, if you were
15 to compare the two samples, then yes, the water sample
16 would be slightly -- would be riskier than what the LDC
17 sample is.

18 Q. Given the fact that the water samples were
19 riskier, did you take that into account in your
20 analysis?

21 A. Well, I take a lot of information into account
22 in the analysis. As I said, I also performed the DCF
23 analysis also. Part of the problem that you have is
24 that there aren't a lot of publicly traded water
25 utilities. And so for that reason, that's why I also

1 included a sample of natural gas companies, because they
2 have similar operating characteristics to water
3 companies.

4 Q. Further down in Mr. Bourassa's testimony,
5 starting on page 6 through page 7, he references Arizona
6 Water Company's eastern group rate case Decision
7 No. 66849. Do you see that?

8 A. Yes.

9 Q. Were you a witness in that case?

10 A. Yes.

11 Q. And do you recall the case that he was referring
12 to?

13 A. The eastern group case?

14 Q. Yes.

15 A. Yes.

16 Q. On page 7, according to Mr. Bourassa's
17 testimony, he testifies that the water utility samples
18 in that case had an average beta of .59 and the gas
19 utility sample had an average beta of .69. Do you
20 recall that?

21 A. Subject to check.

22 Q. Okay. In that case, do you recall whether Staff
23 made any allowance in their cost of capital analysis
24 because of the difference in beta?

25 A. No. I haven't read -- I was just involved with

1 the Arizona -- I was just involved in a hearing with
2 Arizona Water, but I don't recall the actual -- I can't
3 recall the actual results, or I can't recall what the
4 Commission adopted in that particular order or what
5 Staff's final analysis was or what their final
6 recommendation was offhand. I believe the Commission
7 adopted it.

8 Q. Okay. Mr. Bourassa also cites Arizona Water
9 case, I think it was, Decision 67093. Do you recall
10 that case?

11 A. Which, I am sorry, which operating group was
12 that?

13 Q. Arizona Water.

14 A. Uh-huh. But they have had a number of cases and
15 they file by group.

16 Q. Would you remember it by Decision 67093?

17 A. No. The decision number doesn't ring a bell,
18 that's why I was asking.

19 MR. POZEFSKY: Actually it appears it is
20 Arizona-American Water. There is a difference.

21 THE WITNESS: Oh, Arizona-American Water, okay,
22 67093. Okay, I am sorry.

23 BY MR. METLI:

24 Q. Do you recall that case?

25 A. I probably do. Do you recall, do you know which

1 systems that involved by any chance?

2 Q. I don't, I don't.

3 A. Okay. Do you have a copy of the order?

4 Q. I probably do. Hold on.

5 (Brief pause.)

6 MR. METLI: Your Honor, I only have one copy.

7 May I approach the witness?

8 ALJ WOLFE: Yes.

9 BY MR. METLI:

10 Q. Mr. Rigsby, I handed you a copy of
11 Decision 67093. Did you have an opportunity to look at
12 that?

13 A. Yes.

14 Q. Does that refresh your recollection on that
15 case?

16 A. Yes. This was the case that involved several of
17 their operating systems, including Sun City West water
18 and wastewater and Anthem/Agua Fria.

19 Q. Do you recall in that case Staff's
20 recommendation for cost of equity?

21 MR. POZEFSKY: Your Honor, before Mr. Rigsby
22 answers that, can we get a little bit more foundation --
23 this is a case apparently that goes back to 2004; I
24 don't know much more about it -- exactly the districts
25 and some more information on it? Unless counsel can

1 provide us with a copy of it, I am just at a loss to
2 understand what case we are really talking about.

3 ALJ WOLFE: Okay. Mr. Metli, you might want to
4 ask those questions.

5 MR. METLI: Okay. Well, Your Honor,
6 foundationally, what I am interested in is Staff's
7 recommendation whether they modified their cost of
8 equity based upon the differentiation in the betas in
9 the case between gas and water companies. And I am
10 asking Mr. Rigsby if he recalls what Staff's
11 recommendation was, and if he does, then I wanted to
12 inquire about that and the difference in what his
13 testimony here today is.

14 ALJ WOLFE: Mr. Pozefsky, are you looking for
15 the test year of the case? I mean this is something
16 that we would take administrative notice of; it is a
17 prior Commission decision. I am not sure exactly what
18 it is you are...

19 MR. POZEFSKY: I just wanted to know what
20 districts it all encompassed. I don't even need to know
21 the test year, just the districts and that sort of
22 information, that sort of thing.

23 ALJ WOLFE: Ms. Mitchell.

24 MS. MITCHELL: I was going to chime in. It is
25 difficult when we don't have copies of a decision to

1 sort of follow along with the line of questioning,
2 because he is representing Staff's position. So it
3 would be helpful if we all had copies.

4 ALJ WOLFE: Or at least of that position of the
5 case. I hate to kill so many trees.

6 MS. MITCHELL: No, I don't like --

7 MR. METLI: Your Honor, I can short-circuit
8 this. It wasn't that important a point.

9 ALJ WOLFE: Okay.

10 MR. METLI: So I will withdraw the question and
11 I will take back my decision.

12 ALJ WOLFE: Or if you would like, over the
13 break, we can take a break and you can make copies.

14 MR. METLI: Again, Your Honor, it was just a
15 minor point, so I didn't want to cause all this ruckus.

16 ALJ WOLFE: Okay, all right. The company can
17 make arguments based on a past Commission decision in
18 any event. If you would like me to take administrative
19 notice of that decision, I will. It is not necessary.
20 You can cite to past decisions in a brief.

21 BY MR. METLI:

22 Q. Mr. Rigsby, what is the current cost of BAA
23 investment grade bonds?

24 A. AA investment bonds? I meant to bring my copy
25 of Value Line over here with me today and I didn't. I

1 didn't do that. They publish selected yields weekly.

2 I will give you a rough estimate. If I am not
3 mistaken, I think, and again this is just working from
4 memory, I believe it is around 5.38 or in that
5 neighborhood. The A rated utility bond published in the
6 selected yields page of the Value Line selection on
7 opinion publication, that comes out weekly.

8 Q. And that was AA you said? I am sorry.

9 A. No, that's A rated. I am sorry. I can't tell
10 you off the top of my head what AA is rated.

11 Q. Actually I asked BAA.

12 A. Oh, BAA. BAA, I think the last time I looked it
13 was 6.4.

14 Q. 6.4?

15 A. Right, or close to that, it would be close to
16 that. I wish I would have brought that over with me. I
17 thought I had it in my folder, and I actually pulled it
18 out and forgot to put it back in. I didn't notice it
19 until after I got on the stand here this morning.

20 Q. Do you know the current cost of BAA, BBB utility
21 bonds?

22 A. That's what I was just citing.

23 Q. Is that --

24 A. I was citing the utility bond rate, not the
25 corporate bond rate. Again, that's subject to check.

1 If we have a break, I can, I can get that and I can
2 provide you with those numbers.

3 Q. And how does that number for the utility bonds
4 compare with the cost of equity that you used for your
5 CAPM analysis for the gas companies, do you know?

6 A. Let me look.

7 Okay. At the time that I filed, oh, man, at the
8 time I filed my direct testimony, using an arithmetic
9 mean, my CAPM model for water companies produced an
10 expected rate of return of 8.17 percent. The natural
11 gas sample produced an expected rate of return of
12 6.36 percent. And again, that's using an arithmetic
13 mean.

14 Using a geometric mean, the water company sample
15 produced a result of 6.53 percent, and the natural gas
16 LDC average was 5.17. I am going to go back and just
17 see what the average was on that. I think it is
18 probably -- okay. The CAPM average was 6.56. So right
19 now that would, that yield -- or excuse me, that
20 expected rate of return would be higher than the two
21 utility bond yields that I think I just quoted you from
22 memory.

23 Q. Which was the 6.4 and the 5.3?

24 A. Yes, I believe. And again, that's subject to
25 check. But again, the 6.56 would exceed that BAA bond

1 yield, BBB, BAA bond yield, utility bond yield.

2 I think the important thing you have to look at
3 here is that's not the only -- those results, that's not
4 the only results I based my final number on, because we
5 also averaged in the DCF results. So essentially you
6 have got a -- the 8.31 percent cost of common equity
7 that I am recommending here is, I want to say, close to
8 200 basis points over the BAA rate that I quoted. I
9 know it has fluctuated a little bit. I think week
10 before last it was 6.27, so it varies a little bit. But
11 the final cost of equity that I am recommending here
12 does exceed the yield on a BAA rated utility bond.

13 Q. Mr. Rigsby, do you know if Johnson has a bond
14 rating?

15 A. I doubt that they do, because they are not a
16 publicly traded company, and they don't have any
17 publicly traded debt. They don't have any bond
18 issuances. The only debt that they have is the loan
19 that I stated earlier when I was reading my summary of
20 testimony.

21 Q. To your knowledge, do you know if Johnson would
22 be able to borrow at a BBB, BAA utility bond rate?

23 A. I couldn't say that for sure. Clearly, though,
24 it is possible. And the reason I say that is because
25 Arizona Water recently placed a bond issuance. And it

1 was only slightly over the BAA rated yield that was in
2 existence at the time of the issuance. So it is
3 possible. That was a private placement. And Johnson
4 Utilities, I suppose, could do the same thing if they
5 wanted to.

6 Q. Do you know whether Johnson Utilities could
7 borrow on a BAA investment grade corporate bond rate?

8 A. If they could borrow on BAA? You mean issue
9 bonds on that?

10 Q. Yes, under that type, borrow under that rate.

11 A. Yes, that's what I was just saying. I think it
12 is possible. And the reason I think it is possible is
13 because, as I just stated, in the Arizona Water case
14 that we just had a hearing on, the company testified in
15 that case that they had placed a large bond issuance in
16 the later part of last year, as a matter of fact it was
17 in September of last year, and the yield on that bond
18 issuance was very close to the prevailing BAA, BBB, BAA
19 rates that were in -- that existed at that time.

20 Q. You would agree with me that Arizona Water
21 Company is significantly larger than Johnson Utilities,
22 correct?

23 A. They are. In this particular case, though, they
24 were able to place those bonds, oh, with an insurance
25 company. As I say, it is a private placement, so I

1 don't know. It just depends on the size of the
2 issuance, whether or not Johnson would be able to
3 attract a company that would be willing to purchase the
4 debt or not. That I couldn't say offhand. I couldn't
5 say with certainty that's possible or not.

6 Q. On page 8 of Mr. Bourassa's rebuttal testimony,
7 he calculates a risk adjustment of 3.34 percent. Do you
8 see that?

9 A. Let's see.

10 Q. Page 8 on the top.

11 A. In his direct?

12 Q. No, no. In his rebuttal testimony.

13 A. Rebuttal? Okay. Page 8?

14 Q. Yes.

15 A. Okay. I am sorry, can you repeat the question,
16 please.

17 Q. Yes. On page 8 of Mr. Bourassa's rebuttal
18 testimony he calculates a risk adjustment of 3.34. Do
19 you see that?

20 A. Yes. I am looking at that now.

21 Q. Do you disagree with that calculation?

22 A. I disagree with his risk premium, his market
23 risk premium under his current market risk premium
24 calculation. I think that's way out of line.

25 Q. You are talking about the 21.3 percent?

1 A. Oh, yes. Oh, yes. I mean there is a growing
2 body of empirical work out there that says, you know,
3 market risk premium is probably around 4 percent.

4 Q. Market risk premium is 4 percent?

5 A. Yes.

6 Q. Okay. At the bottom of page 8 of Mr. Bourassa's
7 testimony he references Dr. Morin. Do you see that?

8 A. Uh-huh.

9 Q. Are you familiar with Dr. Morin?

10 A. Yes.

11 Q. I would like you just to read to yourself the
12 quote that Dr. Morin -- that we produced on page 8 to
13 page 9, because I wanted to ask you a question on that
14 quote.

15 A. That's his opinion on why he believes the
16 arithmetic mean is the better average to use as opposed
17 to geometric mean.

18 Q. And --

19 A. I have stated in my testimony why I disagree
20 with that.

21 Q. Okay. Have you read Dr. Morin's book on
22 regulatory finance?

23 A. I have read his earlier text in full. His newer
24 text, I haven't read it in full, but I have read some of
25 the pertinent chapters in it.

1 Q. Generally do you agree or do you disagree with
2 his analysis?

3 A. Regarding arithmetic means?

4 Q. Yes.

5 A. Yes, I do.

6 Q. I am sorry, you agree or disagree?

7 A. I disagree.

8 Q. Okay.

9 A. In fact, the Commission has even adopted or,
10 yes, the Commission has adopted the use of geometric
11 means in the past, particularly in the prior UNS --
12 actually it is the most current UNS Gas order that is
13 out there. And I believe they have also endorsed it in
14 the Chaparral decision, the Chaparral recommended order
15 that just came out. It hasn't been voted on by the
16 Commission yet.

17 Q. Further down on page 9, Mr. Bourassa asserts
18 that the current return used to calculate your market
19 risk premium was 5.5 percent, is that correct?

20 A. Could you direct me there.

21 Q. Line 13, lines 12, 13.

22 A. Okay. Let me read that.

23 Okay, I have read it. Do you want me to comment
24 on it?

25 Q. Well, is that a true statement?

1 A. I would -- let's see here if I understand this
2 correctly. He is saying that I used total average
3 return on intermediate -- well, all I can say is that I
4 believe that the market risk premium that I have
5 calculated is correct.

6 I don't have any problem with either the result
7 or the methodology that I used to arrive at it. In
8 fact, a number of analysts that have testified here
9 before the Commission have used that same method. And
10 in fact, as I mentioned earlier, there is a growing body
11 of empirical work out there right now that is indicating
12 that reasonable market risk premium is in the 4 to
13 5 percent range. So if that's the case, then I think I
14 am in the ballpark.

15 Q. Okay. Mr. Rigsby, I would like to ask you a few
16 questions on your discounted cash flow estimates.

17 A. Yes.

18 Q. With respect to your BR growth estimates
19 contained in your Schedule WAR-4 --

20 A. Yes.

21 Q. -- how did you compute the BR growth?

22 A. The way I computed it, and I will walk you
23 through the schedule here real quick, if you turn to my
24 Schedule WAR-5, I want to say -- just make sure I have
25 got the correct one here. Yes, let's go to Schedule

1 WAR-5, page 1.

2 Okay. If you are there.

3 Q. Yes.

4 A. Okay. What you are looking at here is data that
5 was obtained through Value Line investment survey. And
6 just for your information, that's in my Attachment A.

7 And if you will notice there on each one of the
8 companies in the sample, there is a quarterly update
9 that Value Line puts out. And there is this large array
10 of numbers there on the page. And what I have done, I
11 have inputted those numbers into my discounted cash flow
12 model spreadsheet, and I have calculated a retention
13 ratio, which is the percentage of income or earnings
14 that are actually retained by the company. That's
15 earnings that are not paid out as dividends. And then I
16 have also relied on Value Line's book returns on equity.
17 And I have done this over a historical period range from
18 2003 to 2007. And then I also relied on Value Line
19 projections for a period from 2008 through 2013.

20 And what I am doing here is I am taking, in
21 order to arrive at B times R estimate, I am taking that
22 book return on equity times the retention ratio, okay,
23 to arrive at what Value Line's analysts are projecting
24 as the dividend growth rate. And that's an internal
25 sustainable growth rate. That's one of two estimates

1 that make up the G component of the DCF model.

2 Anyway, if you look at this, what you have got
3 is an internal sustainable growth over the 2003, 2007
4 period averaging 2.51 percent. Okay? And what Value
5 Line is doing for each of those following years, 2008,
6 2009 and then the period 2011 through '13, they are
7 making estimates. They are making projections of what
8 they think that internal sustainable growth rate is
9 going to be. All right?

10 And what I do is I look at these estimates, not
11 just the last one, but I look at that, I use the
12 five-year historical period as a benchmark, and then I
13 look at those other five years or that other five-year
14 period of projected numbers, okay, to make an estimate
15 of what I believe internal -- what I believe their
16 internal sustainable growth rate, or B times R growth,
17 is going to be at the time or over that period.

18 And in the case of American States Water, I
19 calculated, or I estimated, I should say -- let me see
20 if I have a figure here. 3, internal growth, internal
21 growth I estimated 5.57 percent, and that's taking that
22 information into consideration, the 2 and a half percent
23 historical rate and then the three periods of
24 projections there that you see also.

25 I also take into consideration what we commonly

1 call optimism by us. What that is is analysts have a
2 tendency to be on the high side of their projections.
3 Okay? This is pretty well documented. There has been
4 some, again, there has been some academic research on
5 it. So that's something that you have to weigh when you
6 make your final estimate, you have to take that into
7 consideration. I believe I have. That's B times R
8 growth. Then there is the other estimate, which is
9 S times V. And that's external growth. And I will
10 leave it at that.

11 Q. Okay. Going back to Schedule WAR-4, page 1 of
12 2.

13 A. WAR-4?

14 Q. Page 1 of 2.

15 A. Yes.

16 Q. Line 1, the internal growth --

17 A. Uh-huh.

18 Q. -- you have 5.75.

19 A. That's what I estimated from that.

20 Q. How do we get to that calculation?

21 A. That's my judgment.

22 Q. That's a judgment?

23 A. That's looking -- as I explained, I use the
24 five-year historical rate as a benchmark, that year, and
25 then I look at the projections that Value Line has, that

1 their analysts have made. And then what I do after
2 that, well, I do -- I make a similar estimate on the
3 external growth figures. Okay? And that calculation,
4 you can see on Schedule WAR-4 there is an imperfection
5 in Gordon's model in regards to external growth. There
6 has to be some estimation involved. You can't do it
7 through a simple mathematical calculation. Anyway, what
8 I basically did, I looked at their, the share growth
9 numbers that you see over there in columns E and F on my
10 WAR-5 in order to come up with an external growth
11 estimate.

12 And then what I do is, after I have calculated
13 that, what I do is I compare my growth estimate to Value
14 Line data, projected data, historical data and five-year
15 compound history data. And I also compare that figure
16 against earnings estimates, earnings per share estimates
17 from Zacks Investment Research. So I am looking at both
18 Zacks and Value Line on my Schedule WAR-6.

19 And if you look in -- I don't know if you have
20 got it, if everyone is there, but if you look on
21 column A of my Schedule WAR-6, you will see my
22 estimates, my growth estimates. That's the B times R
23 plus the S times V estimates that comprise the
24 G component of the DCF model. And what I am doing there
25 is I am comparing my estimates against Zacks and Value

1 Line's.

2 Value Line I rely not only on earnings per share
3 estimates, but also dividends per share, book value per
4 share. I do that on a projected basis and historic
5 basis and a five-year compound history basis. Zacks
6 only provides earnings per share data.

7 And so what I do is, if you look in column E
8 there, I average the results, the projections, projected
9 and historic results of Value Line with Zacks. And so,
10 as you can see here, the 6.51 percent estimate, growth
11 estimate, that I have calculated for the water companies
12 is lower than just Zacks earnings per share estimates.
13 But it exceeds the Value Line projected estimates which
14 includes not only earnings per share but dividends per
15 share and book value per share as well.

16 And it also exceeds the historic Value Line
17 numbers, and it also exceeds the five-year compound
18 history. Excuse me, I am sorry. It is a little lower
19 than the five-year compound history, but it is higher
20 than the Value Line and Zacks averages of projected and
21 historic data.

22 Q. Okay. So can I just recap?

23 A. Sure.

24 Q. So the 5.75, that's an estimate?

25 A. On Arizona Water, or, excuse me, on --

1 Q. Well, my question --

2 A. -- American States Water --

3 Q. No, no.

4 A. -- Company?

5 Q. My question to you was WAR-4, page 1 of 2, I
6 asked you what composed the 5.75. Did you indicate it
7 was an estimate --

8 A. That is my --

9 Q. -- based on your analysis?

10 A. Right. Based on my analysis, we are looking
11 at -- I am looking at 5.75 internal rate of growth for
12 American States Water Company.

13 Q. And Mr. Rigsby, going down column A, you have
14 three inputs for, I believe, water companies and the
15 gas?

16 A. Yes.

17 Q. Are each of those estimated the same way you
18 described?

19 A. Yes, they are.

20 Q. Okay. I want you to turn to Mr. Bourassa's
21 rejoinder testimony. I handed you the binder.

22 A. Yes, I have it.

23 Q. Okay. On line 6 to 7, Mr. Bourassa states when
24 the market risk premium increases, it can offset
25 decreases in the interest rates.

- 1 A. I am sorry.
- 2 Q. Line 6 through 7.
- 3 A. Page 6 through --
- 4 Q. No, no, line 6 through 7 on page 4.
- 5 A. Page 4, okay.
- 6 Q. Mr. Bourassa testifies that when the market risk
7 premium increases, it can offset decreases in interest
8 rates. Do you agree with that or do you disagree with
9 that?
- 10 A. Okay. When the market risk premium
11 exceeds -- what lines are you on?
- 12 Q. It was line 6, starting the sentence when the
13 market risk premium. Do you have that?
- 14 A. Page 4?
- 15 Q. Page 4. Are you in the rejoinder?
- 16 A. Rejoinder testimony, page 4. And you say
17 line 6? Oh, wait a minute. Oh, I am sorry. I went
18 back too far.
- 19 Okay. Here we go. Page 4 of his rejoinder,
20 line 6.
- 21 Q. Line 6.
- 22 A. Okay.
- 23 Q. Would you like me to repeat the question?
- 24 A. Let me just read through this real quick.
- 25 Q. Sure.

1 A. I am a little confused by this, because, you
2 know, this -- interest rates are what they are. I mean
3 the market dictates interest rates. You know, the
4 market risk premium is a function, basically, of what
5 prevailing interest rates are at any given point in
6 time.

7 I mean, you know, what you are doing is
8 basically, the market risk premium, you are just trying
9 to estimate what the difference is in your cost of
10 common equity or the return that stock would have to
11 provide in order to make up for any perceived
12 differences in risk between a given risk free rate, so
13 to speak. In other words, the market risk premium is
14 the difference between the yield on a particular debt
15 instrument and the cost of equity. And the higher that
16 market risk premium, then the higher the perceived level
17 of risk.

18 So I am not quite sure if I understand what he
19 is saying here. But interest rates again, as I say,
20 that's a function of the market. I mean they move up
21 and down based on market conditions, the supply, supply
22 and demand of existing debt instruments and so forth.

23 I don't know if I can give you a better answer
24 than that.

25 Q. Okay. The following sentence he says if the

1 market risk premium increases, decreases to the interest
2 rates can be offset, and vice versa. Do you agree with
3 that?

4 A. I am not sure if I agree with that. I don't see
5 where he is going with this, because again, as I say,
6 interest rates are a function of the market. I mean,
7 you know, and the difference between, let's say -- let's
8 say we are talking in my case. In my CAPM model, I use
9 the five -- I use the yield on a five-year Treasury
10 instrument. Okay? And so basically there is a level
11 of, when you are dealing with common stock there is a
12 level of perceived risk. Okay? And so investors would
13 need to have a higher yield. They would have to expect
14 higher returns from the stock over that, say, five-year
15 instrument.

16 Utilities typically are, their returns are
17 closely linked to debt instruments. They tend to move
18 with interest rates. They are also perceived by the
19 investment community as pretty much low risk
20 investments. So that being the case, you wouldn't
21 expect a very high market premium, market risk premium
22 over a utility over such Treasury instrument. Okay?

23 You know, you hear, we have heard a lot about
24 this flight to quality or flight to safety that has
25 occurred over the last couple of years. What that is is

1 people are, investors are pulling their money out of
2 other types of securities, equities, you know, corporate
3 bonds, whatever it might be, and they are putting their
4 money into U.S. Treasury instruments because of their
5 perceived safety. Okay?

6 And the idea is that if they put their money
7 into those types of instruments, they will get their
8 money back out. Okay? There won't be any erosion of
9 their capital. Okay? And as a result of that, okay,
10 there is this high demand for Treasury instruments,
11 which has forced the yields down. All right?

12 As I have noted in my testimony, Value Line's
13 analysts, and they are not the only ones out there, they
14 perceive utility stocks as being very low risk
15 investments. They are actually encouraging their --
16 they are actually encouraging investors to look at them
17 as a very -- as a good investment opportunity. That
18 being the case, I don't expect a utility premium to be
19 all that much higher over bond yields, or over U.S.
20 Treasury instruments.

21 Q. I want to ask you about your hypothetical
22 capital structure --

23 A. Yes.

24 Q. -- in the case. You are proposing 40 percent
25 debt and 60 percent equity, is that correct?

1 A. Yes.

2 Q. And that's, that's significantly different than
3 their actual.

4 A. Right. The company is proposing a capital
5 structure that is almost entirely equity. I think it
6 was, if I recall the figures, it's close to 98 percent
7 equity, 2 percent debt.

8 Q. So you would agree there is, in your estimate
9 there is a 38 percent adjustment to debt?

10 A. I have increased the level of debt in the
11 capital structure. And I have done that because the
12 company's capital structure is clearly out of line with
13 capital structures of the sample companies that I have
14 used.

15 Q. Does the Commission typically impute that
16 percentage of debt to a company when they are doing a
17 hypothetical analysis?

18 A. The two cases that come to my mind are Tucson
19 Electric Power, which at one time was almost entirely
20 nothing but debt. They had almost nothing but debt in
21 their capital structure. And so the Commission
22 essentially did them a favor and adopted a capital
23 structure comprised of 50 percent debt, 50 percent
24 equity, okay, which gave the company a larger operating
25 income. It also provided them with a higher level of

1 income tax expense. So that was a step to help the
2 company build up its equity by providing it with
3 additional operating income. Okay?

4 The other case, a more recent one, involved Gold
5 Canyon sewer. In that case RUCO made a recommendation
6 that the Commission adopt a hypothetical capital
7 structure of 60 percent equity, 40 percent debt. And
8 that was because Gold Canyon was -- Gold Canyon had a
9 capital structure comprised of 100 percent equity. In
10 that decision the Commission made it clear that they
11 didn't believe that a 100 percent equity capital
12 structure was a prudent capital structure.

13 Q. And with respect to the Gold Canyon case, do you
14 know whether that case is currently under appeal?

15 A. I believe it is.

16 Q. And with respect to the TEP case you were
17 talking about, wasn't that an instance where that
18 company was on the verge of bankruptcy?

19 A. They -- yes. At that time, and I wasn't here
20 then, so I don't know all the specifics about it, but
21 TEP was having financial problems at that time. And
22 again, the adoption of a hypothetical capital structure
23 comprised of 50 percent equity, 50 percent debt was
24 designed to help the company get out of that situation.

25 Q. Do you know if Johnson Utilities could support

1 40 percent debt in its capital structure?

2 A. I don't see why it couldn't. That's entirely up
3 to the company. If they think it is advantageous to
4 issue debt, and if it is more -- if they can obtain debt
5 financing at a lower cost than it would cost to issue
6 equity or what they estimate their cost of equity to be,
7 then there is no reason why they might not. There are
8 certain tax advantages with debt that you don't have
9 with equity. So it is really just a question of whether
10 or not the company believes it is advantageous to do so
11 or whether they have the will to do it.

12 Q. Do you know what the impact of 40 percent debt
13 in Johnson Utilities' capital structure would have on
14 their cost of equity?

15 A. In theory, if you increase the cost of debt --
16 or excuse me, if you increase the level of debt in the
17 capital structure, then you would increase financial
18 risk and then there would be -- investors would demand a
19 higher return on equity.

20 But actually right now Johnson would be
21 perceived as a very, very low-risk investment because
22 they have no financial risk because they have such a low
23 level of debt. And under my recommended capital
24 structure they would still be perceived that way because
25 most of the companies in my sample -- let me just

1 double-check this. The water companies, yes, the water
2 companies, they had a pretty balanced capital structure
3 of 50 percent debt, 50 percent equity. And the natural
4 gas companies were a little higher in equity, around
5 54 percent equity, 46 percent debt. The water
6 companies, it is almost 50/50.

7 So even with my recommended hypothetical capital
8 structure of 60 percent equity, 40 percent debt, Johnson
9 would still be perceived as having lower risk than the
10 water companies in the sample, and the natural gas
11 companies, too.

12 MR. METLI: Okay. Thank you, Mr. Rigsby.

13 Your Honor, I have nothing further.

14 ALJ WOLFE: Do you have redirect, Mr. Pozefsky?

15 MR. POZEFSKY: Real brief, Your Honor.

16

17

REDIRECT EXAMINATION

18 BY MR. POZEFSKY:

19 Q. Mr. Rigsby, in your opinion, why is a capital
20 structure that is very high in equity unfair to
21 ratepayers?

22 A. Well, as I was telling Ms. Mitchell earlier,
23 because equity carries a higher cost than debt
24 typically, it would -- you would end up with a higher
25 weighted average cost of capital. And that would

1 provide the company with a higher level of operating
2 income which would be recovered in rates. And so it
3 would have the effect of pushing up the rates, it would
4 increase the rates than what it would if you had a more
5 balanced capital structure or a capital structure that
6 was heavier in debt.

7 Q. Mr. Rigsby, why do you disagree with Dr. Morin
8 and believe the geometric mean in calculating market
9 risk premium is the better approach?

10 A. Okay. Well, I cited some reasons for that in my
11 surrebuttal testimony. Geometric means are pretty
12 commonly -- or they are relied on by the investment
13 community. Morningstar, which publishes the SBBI
14 yearbook that just about every cost of capital analyst
15 relies on -- Mr. Bourassa relied on it in this case, I
16 did, too -- they publish both arithmetic and geometric
17 mean information. So it is available to investors.

18 Value Line relies on geometric means in their
19 calculations that you would see there in the quarterly
20 updates that I have included in my Attachment A. The
21 Securities and Exchange Commission relies on geometric
22 means.

23 I didn't cite it in this case, but in the
24 Arizona Water case, I even cited a paper that was
25 written by Carl Ibbotson, who was the prior publisher of

1 the SBBI yearbook before Morningstar took it over. And
2 he published a paper not too long ago on the market risk
3 premium. And he even relied on geometric means when he
4 was doing his empirical research for this paper that I
5 was just telling you about.

6 There was also an effect -- well, I don't want
7 to get too esoterical about this, but we know in
8 arithmetic means you are looking at a period of single
9 period calculations. Okay? It doesn't take into
10 consideration what is known as auto correlation. Okay?
11 That's what -- I don't want to get real esoteric, but
12 basically what that means is what has occurred in prior
13 periods has an effect on ongoing periods. Okay? And
14 that being the case, you can make an argument that an
15 arithmetic mean may not be a good measurement because it
16 doesn't take that effect into consideration.

17 Q. Mr. Rigsby, is it your opinion that the
18 company's use of the arithmetic mean is a reason why the
19 company's current market risk premium recommendation,
20 21.3 percent, is so high?

21 A. I don't think it is so much because of the
22 arithmetic mean. I think it is because of some of the
23 information that Mr. Bourassa relied on to calculate it.
24 And I think what you are looking at there is really a
25 snapshot in time, okay, versus the methodology that I

1 have relied on and a number of cost of capital analysts
2 have relied on.

3 When I calculated my market risk premium I was
4 looking at data over a period from 1926 up to, well,
5 close to the present. And I think in this case it was
6 1926 to 2008. We have the 2009 numbers available, too.
7 Or excuse me, I think 2006 to -- yes, I think I used
8 2006 through 2007, excuse me. Now we have the numbers
9 up to 2008.

10 But to make a long story short, I mean that
11 encompasses a period of economic history in this company
12 that takes into consideration The Great Depression,
13 World War II, periods of robust economic growth like we
14 had in the '50s and '60s, recessions, a number of
15 recessions, smaller wars, you know, smaller conflicts
16 that this country has been involved in over the years.
17 In other words, you are getting the full spectrum there,
18 okay, over a broad period of time.

19 So I think it is more representative, I think
20 more representative of what the market risk premium is
21 as opposed, you know, to looking at a snapshot in time.

22 Q. And could you elaborate on a little bit what you
23 mean by snapshot in time.

24 A. I think Mr. Bourassa, if I am not mistaken,
25 relied on Value Line data at a particular point in time,

1 okay, whereas as, I was saying, I am relying on the
2 Morningstar data which covers that period 1926 through,
3 I think in this case it was 2007. It was before the
4 2008 numbers were out.

5 Q. And finally, Mr. Rigsby, you also used a
6 reasonable test in your surrebuttal testimony offered by
7 Dr. Morin --

8 A. Yes, I did.

9 Q. Let me finish the question.

10 -- to check your DCF growth estimates. Can you
11 explain this and what the results were, please.

12 A. Yes. Can you point me to that page?

13 Q. Sure. Page 18 of your surrebuttal testimony.

14 A. Yes. Okay. This is a reasonableness test that
15 Dr. Morin has in his text. And that's the newer text,
16 new regulatory finance that Mr. Metli was referring to.

17 And all I have done is I have just used his
18 reasonableness test here and I have run my numbers
19 through them. And I just basically run the numbers
20 through this in order to provide a check on what I have
21 calculated. And based on the results of using
22 Dr. Morin's reasonableness check, I think it is -- I
23 think I am okay on my numbers. I think I am, as I say,
24 I think I am pretty much in the ballpark as far as the
25 market risk premium goes.

1 And as I stated earlier, also, I don't see any
2 need to revise that. What I am actually recommending
3 here is a little higher than that 4 to 5 percent number
4 that has been talked about in some of this empirical
5 research that I mentioned earlier.

6 MR. POZEFSKY: Thank you, Mr. Rigsby. That's
7 all I have.

8 ALJ WOLFE: Does Staff have any recross?

9 MS. MITCHELL: Oh, no. It was answered between
10 the two exchanges, so I am fine. Thank you.

11 ALJ WOLFE: All right. Does the company have
12 recross?

13 MR. METLI: No, Your Honor.

14 ALJ WOLFE: Okay. There is nothing else for
15 you, Mr. Rigsby. So you are excused as a witness.
16 Thank you for your testimony.

17 THE WITNESS: Thank you, Your Honor.

18 ALJ WOLFE: Let's take a break before the
19 company recalls its witness. And I believe,
20 Mr. Pozefsky, you were in the midst of your
21 cross-examination of Mr. Tompsett.

22 MR. POZEFSKY: Yes, Your Honor.

23 ALJ WOLFE: We will be back here at 11:05.

24 (A recess ensued from 10:46 a.m. to 11:05 a.m.)

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

1 Mr. Crockett.

2 MR. CROCKETT: Yes, Judge Wolfe. I just wanted
3 to mention that yesterday Johnson Utilities was asked to
4 provide copies of the most recent effluent and CAP bills
5 to Swing First Golf, and we have done that. We have
6 copied those. The effluent bill for August 31, 2009 has
7 been marked as Exhibit A-31. And the CAP bill for
8 August 31, 2009 has been marked as A-32. And I provided
9 copies of those invoices to the parties and I have
10 placed a couple in front of Your Honor.

11 ALJ WOLFE: Okay. Do you want to verify these
12 through your witness, or are you just moving them?

13 MR. CROCKETT: Your Honor, I was intending to do
14 that when I get to redirect with Mr. Tompsett, but it is
15 whatever your pleasure is.

16 ALJ WOLFE: That would be appropriate. Thank
17 you. Thanks for providing those so quickly.

18 Good morning, Mr. Tompsett.

19 MR. TOMPSETT: Good morning, Your Honor.

20 ALJ WOLFE: Mr. Pozefsky.

21 MR. POZEFSKY: Thank you, Your Honor.

22

23

24

25

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

6

7 CROSS-EXAMINATION CONTINUED

8 BY MR. POZEFSKY:

9 Q. Mr. Tompsett, I still have a few more questions
10 I want to ask you on the CAGR D before we move on. Just
11 to get a few preliminary matters on it over,
12 Mr. Tompsett, would you agree that all three parties,
13 the company, Staff, and RUCO, are proposing the company
14 recover its CAGR D assessment?

15 A. I believe that's correct, Mr. Pozefsky. And I
16 apologize when I murder your name later.

17 Q. There is no R in it.

18 A. No R, okay.

19 Q. And RUCO's proposal is that the CAGR D assessment
20 be expensed based on the test year usage, normalized to
21 recognize a 2009 and 2010 firm rate. Subject to check
22 would you agree with me on that?

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

24 Q. And the company is proposing a commodity base
25 surcharge and an annual true-up?

1 A. I believe that's correct also, yes.

2 Q. And the surcharge would be in addition to
3 Johnson's regular monthly rates?

4 A. Yes, it would.

5 Q. And do you have your prefiled supplemental
6 rejoinder testimony with you?

7 A. I am not sure.

8 ALJ WOLFE: That's Exhibit A-16 is what it has
9 been marked and admitted.

10 THE WITNESS: Yes, I have A-16.

11 BY MR. POZEFSKY:

12 Q. I am on page 2 of that testimony. Starting on
13 line 2 you state, Mr. Tompsett, that Staff is proposing
14 the methodology utilized by the company with one
15 exception, Staff recommends that the company calculate
16 the adjuster separately for the Phoenix AMA and the
17 Pinal AMA, is that correct?

18 A. Yes, that's correct.

19 Q. And you state on the first page of this
20 rejoinder testimony, starting on line 22 in the
21 question, that Staff considers its proposal an adjuster,
22 not a pass-through?

23 A. I am sorry. Can you do that again?

24 Q. Sure.

25 A. I didn't see where you were.

1 Q. I was actually looking at the question on page 1
2 of the same rejoinder testimony. And in the question
3 you state that Staff considers its proposal an adjuster,
4 not a pass-through, correct?

5 A. I am sorry. I am not finding it. At the bottom
6 of the page?

7 Q. Yes, page 1, the question.

8 A. All right.

9 Q. That's obviously how you interpret Staff's --

10 A. Yes.

11 Q. -- recommendation, correct?

12 A. Yes.

13 Q. Do you consider Staff's proposal to be an
14 adjuster, Mr. Tompsett?

15 A. No. We answer that we did not object to
16 recovering the CAGRD assessment through an adjuster as
17 opposed to a pass-through.

18 Q. But do you consider Staff's proposal an adjuster
19 mechanism?

20 A. Yes.

21 Q. Do you consider the company's proposal to be an
22 adjuster?

23 A. I believe it is now, yes.

24 Q. I want to talk to you a little bit about the
25 assessment itself. The assessment is a yearly

1 assessment, correct?

2 A. Yes, based on use.

3 Q. And the assessment increases year by year?

4 A. Typically, yes.

5 Q. And would you agree with me, Mr. Tompsett, that
6 the assessment does not fluctuate much from year to
7 year?

8 A. Well, the assessment per acre foot, the dollar
9 amount goes up every year.

10 Q. Right.

11 A. But that dollar amount per acre foot is just
12 calculated based on whatever the use is reported by the
13 water company.

14 Q. Well, you did break down the amount of
15 fluctuation in your testimony, correct? And that's on
16 the rate. And I believe that's on page 21 of your
17 prefiled rebuttal testimony.

18 A. I am sorry. Which document is that?

19 Q. Sure. It is your rebuttal testimony, page 21.

20 ALJ WOLFE: Exhibit A-5.

21 THE WITNESS: Thank you, Your Honor.

22 Okay, Mr. Pozefsky.

23 BY MR. POZEFSKY:

24 Q. I will repeat my question. And you have got
25 there on the chart the assessment rates from year to

1 year, is that correct?

2 A. Yes, that's correct.

3 Q. And going from year to year, it appears that
4 these assessment rates do increase, correct?

5 A. Yes. They typically go up every year, and they
6 are slightly different for the Phoenix AMA and the Pinal
7 AMA.

8 Q. Would you agree with me that from year to year
9 these assessed rates go up just slightly from year to
10 year? There are not wide fluctuations in the amount
11 they go up, at least not in the rate from year to year,
12 correct?

13 A. I don't know how you would define a small
14 fluctuation, but they do increase.

15 Q. I want to hand you an exhibit. And if you
16 would, Mr. Tompsett, take a second to go through that
17 exhibit.

18 ALJ WOLFE: Mr. Pozefsky, we have already
19 admitted an R-5.

20 MR. POZEFSKY: That's correct. I am sorry. I
21 must have mismarked it.

22 ALJ WOLFE: And I think you premarked an R-6
23 earlier and an R-7 has been admitted, R-8, R-9. So I
24 think we would be at R-10.

25 MR. POZEFSKY: R-10, that's correct.

1 THE WITNESS: The exhibit that I was just handed
2 is marked R-10.

3 ALJ WOLFE: Oh, okay. It was just my copy that
4 was marked differently. I apologize.

5 MR. POZEFSKY: And I apologize to you, Your
6 Honor, for having a mismarked exhibit.

7 BY MR. POZEFSKY:

8 Q. Mr. Tompsett, have you had a chance to take a
9 look at this exhibit?

10 A. Yes, if you just give me a minute, please.

11 Q. Sure.

12 A. Okay.

13 Q. Now, I know you didn't prepare this exhibit, but
14 I am not going to ask you to verify the numbers,
15 Mr. Tompsett. But this exhibit represents the income
16 statement for the company that was filed with the
17 application, correct?

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

19 Q. And you will see that there is a number marked
20 that actually has got a highlight through it of
21 \$1,295,865, correct?

22 A. Yes.

23 Q. And there is some other parts of this exhibit
24 which show that that's the amount for the CAGR
25 assessment for the test year, correct?

1 A. That's correct.

2 Q. And if you look at the expense column, the test
3 year book results for the operating expenses, you see
4 that there is a whole bunch of expenses listed there, is
5 that correct?

6 A. I am sorry, you are looking at which column?

7 Q. The column marked test year book results.

8 A. Yes, yes, I have that.

9 Q. There is a column there. And then there is also
10 various numbers that correspond with the operating
11 expenses for the company, correct?

12 A. Yes.

13 Q. And you would agree with me that there is a
14 column there for outside service expense of
15 5.528 million, correct?

16 A. Yes.

17 Q. Which is a number that is larger than the
18 1.295 million for the CAGR D fees, correct?

19 A. Yes.

20 Q. And there is also a number there for
21 depreciation expense for 1,312,201, correct?

22 A. Yes.

23 Q. And that, too, is larger than the 1,295,865 for
24 the CAGR D, correct?

25 A. Yes.

1 Q. Let me ask you, Mr. Tompsett, would you agree
2 with me that the CAGR assessment is a routine expense
3 that's payable every year?

4 A. It is an expense that recurs every year, yes.

5 Q. So it would be routine, correct, it is a yearly
6 expense?

7 A. Yes.

8 Q. And would you also agree with me that RUCO's
9 proposal is not an adjuster mechanism, as you know it?

10 A. I am sorry, ask that again, please.

11 Q. Would you also agree with me that RUCO's
12 proposal is not an adjuster mechanism, if you know?

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

14 MR. POZEFSKY: Okay. Thank you.

15 I am going to move on, but before I do, Your
16 Honor, I am at a quandary whether to ask for the
17 admission of RUCO No. 10 because it is already in the
18 record. But part of the reason I presented it, it was
19 easier to just put it together than go through all the
20 different documents.

21 ALJ WOLFE: The third page of it hasn't been
22 identified for the record, if you do plan to move it. I
23 think I can surmise what it is. But it would require
24 some identification.

25 MR. POZEFSKY: All right. Well, why don't I do

1 that, just to make it easy.

2 BY MR. POZEFSKY:

3 Q. Mr. Tompsett, if you go to the third page,
4 right, you will see that it discusses on line 13
5 adjustment number 5, is that correct?

6 A. Yes.

7 Q. Okay. And this actually is an excerpt from
8 Mr. Bourassa's direct testimony. Do you have any reason
9 to disagree with that?

10 A. Subject to check, no.

11 Q. Okay. And if you look on page 2, adjustment
12 number 5, this corresponds with page 2 where it provides
13 a little bit more detail about adjustment number 5, is
14 that correct?

15 A. Yes.

16 Q. Okay. And in specific, adjustment number 5 is
17 to remove the CAGRD tax recorded during the test year
18 expense, correct?

19 A. Yes.

20 Q. Okay. And that's also what is discussed on
21 page 3 which we have just talked about, correct?

22 A. Yes.

23 MR. POZEFSKY: Your Honor, at this time, I would
24 move for the admission of RUCO Exhibit No. 10.

25 ALJ WOLFE: Is there any objection?

1 MR. CROCKETT: No, Your Honor.

2 MS. MITCHELL: No.

3 ALJ WOLFE: R-10 is admitted.

4 (Exhibit No. R-10 was admitted into evidence.)

5 BY MR. POZEFSKY:

6 Q. Okay. Let's move on. I would like to go into
7 the subject of the violations with ADEQ, Mr. Tompsett,
8 that have been raised by testimony, and some questions
9 you were asked by Mr. Marks.

10 My first area of questions has to do with
11 Exhibit No. SF-9. Do you have that before you? That's
12 that big packet with all the notices of violation.

13 A. Yes, I do.

14 Q. Mr. Tompsett, going back to September 2nd, 2004,
15 I count 14 notice of violations in this exhibit. Are
16 there more than these notices of violation against the
17 company that are not in this exhibit?

18 A. In total for SF-9?

19 Q. Right. Are there more than the notice of
20 violations in this exhibit against the company that you
21 are aware of?

22 A. Not that I am aware of. I believe this document
23 was put together by Swing First or their counsel. I
24 don't recall going through and checking it specifically
25 for all of them one way or another, no.

1 Q. Okay. So you are not aware of any more than
2 these notice of violations, but you haven't thoroughly
3 checked that out, would that be fair?

4 A. That would be fair. There are notice of
5 violations of record at the Department of Environmental
6 Quality.

7 Q. Now, of the 14 of these violations,
8 Mr. Tompsett, I count two in 2009 and five in 2008.
9 2008 was a bad year, would that be fair to say?

10 A. I am sorry, you lost me. What were the numbers
11 again?

12 Q. I counted two in 2009 and five in 2008. 2008
13 was a bad year for these violations, would that be fair
14 to say?

15 A. I don't know as I qualify it as a bad year. I
16 haven't checked it, so I assume you did the math
17 correctly.

18 Q. Is there any particular reason why there were so
19 many violations in 2008?

20 A. Without looking at the specific violations, I
21 don't -- can't think of anything.

22 Q. What about 2009? It doesn't seem like the
23 company is off to a good start in 2009. Any particular
24 reason there have been these violations in 2009?

25 A. Well, I guess the most accurate way to describe

1 that is we have an ongoing dispute with ADEQ over the
2 issuance of notices of violation to Johnson Utilities in
3 particular. It is our opinion that they make a special
4 effort to issue violations, and selectively issue
5 violations to our company rather than others.

6 Q. So does the company feel that it is being
7 treated unfairly by ADEQ?

8 A. Short answer would be yes.

9 Q. Do you know why the company -- why ADEQ may be
10 singling Johnson Utilities out for these violations?

11 A. Well, it is our opinion that they are
12 selectively enforcing more stringently against Johnson
13 Utilities than they do against other companies across
14 the state. And we have done FOIA requests with that in
15 mind, and the evidence that has been produced by ADEQ
16 seems to suggest that that is in fact the case.

17 Q. What is the basis for your opinion?

18 A. We have reviewed documents produced by ADEQ for
19 other companies where the circumstances seem similar,
20 and NOV's were not issued to other companies or
21 municipalities for what appear to be the same types of
22 occurrences.

23 Q. Would you agree with me that the number of
24 violations that the company received in 2008 is not
25 normal?

1 A. I can't agree one way or the other. I don't
2 have a -- I don't know what a comparable company this
3 size would have received in other notices of violations
4 from DEQ.

5 Q. Let me rephrase the question. You might have
6 answered it, but let me ask it anyway.

7 Anybody looking at the number and time periods
8 of these violations, Mr. Tompsett, could easily conclude
9 that the company does not seem to be learning from its
10 past mistakes. How do you respond to that?

11 A. Well, I would disagree with that. The company
12 is a well operated company. The operations of the
13 company are, you know, we think, above other utilities
14 in the state. As I stated earlier, we are of the strong
15 opinion that ADEQ is selectively enforcing or
16 concentrating on Johnson Utilities over other utilities
17 in the state.

18 Q. Now --

19 A. They have -- I am sorry. And they have latitude
20 on which cases or which companies to enforce on and
21 which they don't.

22 Q. Well, because there are so many of these
23 violations, I don't want to go over each one. I think
24 Mr. Marks did a good job of that. But let me ask you,
25 at least for the ones in 2008 and 2009, do you think all

1 these violations or notice of violations are groundless?

2 A. I think they are overstated, yes. Now, whether
3 one -- I will address one of them. I don't know the
4 specific number on it, but we received a violation from
5 ADEQ for an SSO near the Queen Creek wash, which I think
6 we have presented a lot of documentation to not only
7 ADEQ, but this Commission regarding that specific
8 instance. But the company received a notice of
9 violation from ADEQ for that specific SSO.

10 As part of the documents produced in the FOIA
11 request that we have submitted some of those documents
12 here to the Corporation Commission, they show other
13 municipalities that have hundreds of SSOs within a year
14 and have not received any notices of violation from DEQ.

15 Q. So do you think there is any validity to any of
16 them?

17 A. The letter of the law citing specific statutes,
18 yes, there will be some validity to some of the statutes
19 that are quoted. But I don't think all of the statutes
20 that are alleged, the alleged violations are valid, no.

21 Q. What measures has the company put in place to
22 curtail new violations?

23 A. Specific to what?

24 Q. Well, the number of SSOs, just the nature of the
25 violations in general. I am trying to give you an

1 opportunity to explain what the company is doing as far
2 as preventative maintenance, if you will.

3 A. And this has, I think, been well documented as
4 part of the responses to these NOV's. We have specific
5 responses to specific allegations that are on record
6 that we filed with ADEQ.

7 But with respect to the -- again, we will just
8 talk to the one notice of violation that happened in '09
9 with respect to an SSO. There was excessive debris that
10 was occurring at the lift station that backed up. It
11 plugged the pumps, which is what caused the situation.
12 To rectify that, I can talk to that specifically, the
13 SCADA system was upgraded and hard wired for early
14 detection. The plant is being manned 24/7. The
15 screenings are still excessively heavy for that
16 particular subdivision. And we have added extra
17 personnel that are going upstream and checking that
18 particular subdivision that delivers wastewater into
19 that system. And it has prevented any further SSOs.

20 And we have also gone to great lengths to
21 educate the residents with respect to what is suitable
22 for flushing, shall we say, and what is -- just because
23 it says disposable on it doesn't mean it goes in a
24 wastewater system. It means it goes in the garbage.

25 Q. And how often was the plant manned prior to the

1 SSOs?

2 A. Two shifts rather than three.

3 Q. Mr. Tompsett, how much money has all these
4 violations cost the company to defend?

5 A. I wouldn't know off the top of my head.

6 Q. Do you know, is the company seeking to recover
7 any of these costs from ratepayers in this case?

8 A. Not specifically, no. The violations you quoted
9 to were in '08 and '09. That would be after the test
10 year application.

11 Q. What about the violations before the test year?

12 A. Well, the application would have included legal
13 expenses, but I don't recall what that number is.

14 Q. Okay. So some of those legal expenses include
15 the costs to defend these notice of violations, correct?

16 A. To defend the accusations, yes.

17 Q. Mr. Tompsett, do you think the Commission should
18 be concerned about all these violations?

19 A. I think that the Commission should be concerned
20 with the fact that a sister agency, in our opinion, is
21 not evenhandedly regulating the state.

22 ALJ WOLFE: Mr. Tompsett, why do you think, why
23 does the company believe ADEQ would selectively issue
24 NOVs to Johnson?

25 THE WITNESS: That has been our experience over

1 the last couple of years with staff and, like I said,
2 our review of other utilities that were in the same
3 situation.

4 ALJ WOLFE: Why does Johnson believe ADEQ would
5 do that? What do you think ADEQ's motivation is in your
6 opinion?

7 THE WITNESS: In my opinion, it was -- it has
8 become something of a personal, or I guess lack of a
9 better description would be a personal issue with
10 Johnson Utilities.

11 ALJ WOLFE: Personal. Could you explain that?
12 I don't understand that at all.

13 THE WITNESS: Personal would be the staff and
14 personnel at the agency.

15 ALJ WOLFE: Why would the personnel at the
16 agency selectively issue NOVs to Johnson? What would
17 make them want to do that?

18 THE WITNESS: I guess we would have to ask them
19 that. I mean that's our opinion and we have voiced that
20 opinion to DEQ on many occasions.

21 ALJ WOLFE: Okay. I am sorry, Mr. Pozefsky.
22 Please go ahead.

23 BY MR. POZEFSKY:

24 Q. Since ADEQ has gotten a new director, has your
25 opinion changed?

1 A. I have not met the new director, so I don't have
2 any personal knowledge of him. So I guess I really
3 can't comment on that one way or another. I have not
4 met Mr. Grumbles.

5 Q. Mr. Tompsett, most of the notices that have been
6 in SF-9 still remain open, is that correct?

7 A. Some of them are, yes.

8 Q. Why is that?

9 A. The notices need to be closed by DEQ. We feel
10 we have responded to all of those notices of violation.
11 But of record, the document has been filed with DEQ
12 answering each and every one of their accusations,
13 but -- be a little bit careful because they are still
14 open -- I am not sure what DEQ is going to do to close
15 them still.

16 Q. Do you feel that DEQ has been lackadaisical in
17 closing these?

18 A. I think they could have been addressed much
19 sooner than they have been, yes.

20 Q. Do you have any reason to know why they haven't
21 been addressed any sooner?

22 A. Yes. But the ADEQ has involved counsel on their
23 end and on our end. And I am not sure we can discuss in
24 this hearing what those -- what has happened in those
25 conversations.

1 Q. Do you think in general one of the reasons that
2 these violation notices haven't been closed is because
3 of your belief that the DEQ is singling out the company
4 for special treatment?

5 A. I would think that has something to do with it,
6 yes.

7 Q. Does DEQ issue other lesser types of violations
8 such as letters or concerns or warning notices?

9 A. Yes. The only thing, I believe it is called an
10 opportunity to correct and -- notice of opportunity to
11 correct -- there are some other less forceful, I guess,
12 notices that they can send out.

13 Q. Would the SSO issue be one of those things
14 that's a lesser, a lesser acknowledgment from ADEQ than
15 a notice of violation?

16 A. Well, there isn't a specific -- well, I am not
17 aware of a specific SSO violation or what the statute
18 would be. What my point was earlier was, earlier in
19 this -- earlier this year the acting water quality
20 director, her name was Joan Card, and specific to the
21 SSO she came down and testified at one of the
22 Commissioner's request, or maybe more than one, I am not
23 sure. But Ms. Card came down and testified before this
24 Commission that SSOs happen in every wastewater system.
25 They happen every year. They cannot be prevented. And

1 any utility can do a lot or can take many measures to
2 try and stop them, but they will occur.

3 So some, like municipalities, some of the
4 private utilities that are reporting SSOs to DEQ, here
5 is what we did, here is how we cleaned it up, here is
6 what happened, never receive a notice of violation for
7 that.

8 Q. I am going to ask you some more questions on the
9 SSOs, but let's just step back to something you just
10 mentioned, these notices of opportunity to correct. Has
11 the company received any of these notices this year?

12 A. Not that I recall, no.

13 Q. Has it in 2008?

14 A. Not that I recall, no.

15 Q. Do you recall when the last time the company
16 received any of these notices?

17 A. Not specifically, no.

18 Q. But the company has received notices of
19 opportunity to correct before, correct?

20 A. I believe so.

21 Q. And as regard to the SSO, what I am
22 understanding from what you are saying, they are fairly
23 common amongst wastewater companies, correct?

24 A. Yes.

25 Q. You would agree with me that nonetheless they

1 are dangerous usually, or could be, correct?

2 A. They could potentially be dangerous, but there
3 is, you know, ADEQ protocol that takes place when an SSO
4 occurs.

5 Q. How many system overflows has the company had
6 again in 2008?

7 A. I actually don't recall the specific number. I
8 know we have submitted that information to the
9 Corporation Commission.

10 Q. Do you recall it being the tens, the hundreds?

11 A. It was in the single digits.

12 Q. What about 2009 so far?

13 A. About the same thing, there were a few minor
14 ones.

15 Q. When was the last one, Mr. Tompsett?

16 A. I don't recall specifically. We have been
17 reporting any SSOs that happen within our system
18 directly to the Corporation Commission. I believe we
19 are the only utility that has been doing that. But we
20 have been reporting that directly to the Commission and
21 to ADEQ. I don't remember, recall what the last one
22 was, though. It was a few months ago.

23 Q. And of those from the last two years, 2008
24 forward, how many of those resulted in notice of
25 violations?

1 A. As I recall, two.

2 Q. Other than the AG's office and ADEQ, has the
3 company received any other notices from any other
4 governmental entity concerning a rule or statute
5 violation for any activity connected with the operation
6 of the water and/or wastewater business within the last
7 five years?

8 A. Not that I recall in the last five years, no.

9 Q. The company hasn't sued ADEQ, has it?

10 A. Not recently, no. We have in the past.

11 Q. Mr. Tompsett, in general, how would you describe
12 the company's level of service to its customers?

13 A. We think the service is excellent.

14 Q. In your opinion, Mr. Tompsett, has the company
15 ever engaged in an unsafe practice whether providing
16 water and/or wastewater service?

17 A. Define unsafe. I am not sure what you mean.

18 Q. Well, unsafe to the public health and safety to
19 the customers.

20 A. No, in my opinion, no, not that I can think of.

21 Q. Do you have before you Exhibit SF-14? It is the
22 exhibit that was the newspaper article of April 21st,
23 2009.

24 ALJ WOLFE: For the record, that has not been
25 admitted.

1 MR. POZEFSKY: Okay.

2 THE WITNESS: Yes, I have SF-14.

3 BY MR. POZEFSKY:

4 Q. Would you agree with me this exhibit appears to
5 be a newspaper article dated April 21st, 2009, correct?

6 A. Yes.

7 Q. From the Tribune, the East Valley Tribune,
8 Scottsdale, correct?

9 A. Yes.

10 Q. It says in this exhibit, this newspaper article,
11 Mr. Tompsett, that the Pecan water reclamation plant had
12 a 10,000 gallon sewage spill, correct? Second
13 paragraph.

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

15 Q. A little further down it says that the spill was
16 caused by clogged pumps, correct?

17 A. Yes.

18 Q. Is that true?

19 A. Yes.

20 Q. Is it also true that the company was cited by
21 ADEQ, and ADEQ determined elevated levels of E. coli
22 existed where the leak occurred? Reading the next
23 paragraph, the one about three-quarters or two-thirds of
24 the way down.

25 A. Yes. This is the NOV that we were talking about

1 earlier. And we have responded to that NOV and actually
2 added -- there are a number of documents that show there
3 would be elevated levels of E. coli in that stormwater
4 that was in that wash that come out of the subdivisions
5 immediately adjacent to it.

6 Q. Well, so you don't disagree that there were
7 elevated levels of E. coli that existed in that wash, do
8 you?

9 A. No, we disagree that they were.

10 Q. Elevated?

11 A. No, there were elevated levels of E. coli in
12 that wash, in that standing stormwater. But we
13 disagreed with DEQ that it was a result of anything we
14 did.

15 Q. Would you agree with me that the elevated levels
16 of E. coli presented a health and safety risk to the
17 customers in the company?

18 A. Well, elevated E. coli levels in stormwater
19 occur, you know, across the state. We have taken
20 stormwater samples from areas in Scottsdale that have
21 elevated levels of in excess of 10,000 parts
22 per million.

23 So coming in contact with E. coli would not be
24 recommended, but like I said, we disagreed with DEQ that
25 the elevated E. coli in that particular stormwater area

1 were caused by us.

2 Q. So it sounds like you are saying you would agree
3 with me that it would present a safety risk, but it is a
4 common thing that occurs?

5 A. Elevated E. coli levels are safety risks, yes,
6 and it is common, yes.

7 Q. And the fact that it is common doesn't make it
8 any less dangerous to the people, correct?

9 A. No. I think what would make it more dangerous
10 to the general public is that the general public is
11 unaware that, you know, typical stormwater has elevated
12 E. coli and fecal elevations.

13 Q. So the company disputed the allegation that the
14 leak caused the high bacterial levels, correct?

15 A. Yes.

16 Q. And again, what did the company believe caused
17 the high bacterial levels?

18 A. Any stormwater runoff that comes off the desert
19 or subdivisions or any common areas where dogs have been
20 walked, that sort of thing, any time it rains and washes
21 that water into a standing water situation has elevated
22 levels of E. coli and fecal coliforms.

23 Q. And is that something within the company's
24 control that it would be able to prevent?

25 A. Storm runoff? No.

1 Q. Okay. But that's what the company believes was
2 the reason for the elevated levels, correct?

3 A. That is what we documented, yes.

4 Q. Would you agree with me, Mr. Tompsett, that high
5 bacterial levels would be a violation of the company's
6 regulatory compact to provide safe service?

7 MR. CROCKETT: Objection; I think the question
8 is vaguely stated.

9 MR. POZEFSKY: Your Honor, I will withdraw the
10 question.

11 ALJ WOLFE: Okay.

12 MR. POZEFSKY: Probably not a great question
13 anyways.

14 BY MR. POZEFSKY:

15 Q. There was another spill in Pinal County's
16 Cambrilla Ocotillo neighborhood this past February, is
17 that correct?

18 A. Yes, that sounds correct.

19 Q. That was caused by clogged sewer lines?

20 A. As I recall, yes, there was grease and debris in
21 a pipeline.

22 Q. How many lines were clogged, Mr. Tompsett?

23 A. It was a gravity line. I don't recall if it was
24 one or two.

25 Q. What did the company do prior to this spill to

1 maintain the lines and prevent this sort of thing from
2 happening?

3 A. Well, we have company personnel that go around
4 and manually visibly pop manhole lids and check for
5 debris and grease buildup, things like that, throughout
6 the system. But the wastewater system that we have out
7 there has in excess of 5400 manholes, so it takes some
8 time to get around to all the subdivisions.

9 Q. So the company missed this one?

10 A. It had debris in it, yes. And those system
11 checks are ongoing.

12 Q. And this spill, did it also result in high
13 levels of bacteria?

14 A. I don't think any tests were taken of that, of
15 that particular spill. I don't recall any tests being
16 taken. It was cleaned up and the area was disinfected.

17 Q. But ADEQ did an investigation, correct?

18 A. No, they didn't.

19 Q. Do you know why not?

20 A. We reported the spill. It was cleaned up. It
21 was disinfected. We reported to DEQ what had occurred.
22 I don't think they followed up on an inspection on it at
23 all.

24 Q. Do you believe the spill resulted in a public
25 safety concern?

1 A. No. Our personnel were on-site the entire time.
2 They made sure nobody from the public came into contact
3 with any of the water. So there was no contact with the
4 public while the cleanup was going on.

5 Q. Now, is this a case that is the subject of the
6 company's CC&N extension application that is presently
7 before the Commission?

8 A. Could you rephrase that?

9 Q. Sure. Is this the spill that is part of the
10 case that is presently before the Commission where the
11 company is requesting a CC&N extension application?

12 MR. CROCKETT: Objection, Your Honor. The
13 spill, to my knowledge, is not in front of the
14 Commission. There is a CC&N extension case, and the
15 Commissioners inquired about the spill and information
16 was provided in that case. But to the extent the
17 question goes to whether that spill is a case before the
18 Commission, that would not be the case.

19 MR. POZEFSKY: And that's a fair -- let me
20 restate my question.

21 BY MR. POZEFSKY:

22 Q. Is this the spill that caused the -- that was a
23 concern of the Commission which was the reason why the
24 Commission held back from deciding the company's CC&N
25 extension, because of the company's failure to report

1 this spill, if you know?

2 A. Let me see if I can be clear.

3 Q. Let me ask you straightforward. Did the company
4 originally fail to report this spill to the Corporation
5 Commission?

6 A. The -- and I think I touched on this briefly,
7 but like I said, see if I can try and explain this
8 thoroughly, if there is an SSO that happens in any
9 system, that SSO gets reported to DEQ. That's the
10 governing agency. So the spill was reported to DEQ.
11 The cleanup protocol was reported to DEQ. And that all
12 occurred.

13 Prior to the Cambrilla situation with the
14 Corporation Commission, there was no protocol or
15 requirement for Johnson Utilities to report SSOs to the
16 Commission. I think I said earlier, too, that there
17 aren't any companies that I am aware of that report SSOs
18 to the Corporation Commission. Maybe they get reported
19 to ADEQ. But as a result of that occurrence at
20 Cambrilla, the company has been reporting any SSOs that
21 occur to this Commission and ADEQ.

22 So I don't know if that -- that was kind of
23 long-winded. I am not sure if that answers your
24 question or not.

25 Q. Well, let me ask you this. At the time the

1 company -- that this spill occurred, had the company had
2 an application before the Commission to extend its CC&N?

3 A. Yes.

4 Q. Okay. And the nondisclosure of that SSO to the
5 Commission was inadvertent, correct?

6 A. It was inadvertent, yes. And the Commission did
7 have questions about it, that's correct.

8 Q. And where does the issue stand now?

9 A. I don't know if there is an issue now. The CC&N
10 application is holding or in abeyance, I am not sure
11 what term they put on it, but I am not aware of any
12 outstanding issues with DEQ.

13 Q. And what is your understanding of the reason why
14 the CC&N application is pending?

15 A. My recollection is that the Commissioners wanted
16 to be more informed about the SSOs in general, how and
17 why they happen, and we provided a number of materials
18 to the Staff and the Commissioners on that issue.

19 Q. Does the company feel that the Commission is
20 treating the company unfairly in that case?

21 A. No. They ask that we report the SSOs if they
22 occur; we have been doing that.

23 MR. POZEFSKY: Okay. Your Honor, I am going to
24 move to another issue. I didn't know if you wanted to
25 break for lunch at this point.

1 ALJ WOLFE: I think that would be an excellent
2 idea. It is, very good, almost right on the nose of
3 noon. So we will come back here at 1:15.

4 MR. POZEFSKY: Thank you.

5 (A recess ensued from 11:55 a.m. to 1:16 p.m.)

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

7 We are just going to cover what Mr. Crockett
8 wants to talk about. Does it have something to do with
9 Mr. Pozefsky?

10 MR. CROCKETT: It does.

11 ALJ WOLFE: We will wait then.

12 MR. MARKS: I don't know if Mr. Pozefsky will
13 care about this. I actually have the original of the
14 bills that were sent to my client for the end of August
15 for the CAP account and the effluent account. And I
16 have compared those to the documents that were
17 previously marked as Exhibit A-31 and A-32, and they are
18 identical. So I don't see any reason for us to burden
19 the record with submitting additional exhibits from
20 Swing First, if that's okay. And we would just
21 stipulate to the admission of A-31 and A-32.

22 ALJ WOLFE: That sounds reasonable to me. Does
23 that sound reasonable to you, Mr. Crockett?

24 MR. CROCKETT: That's fine with me, Your Honor.

25 ALJ WOLFE: Okay. All right. And Mr. Crockett.

1 MR. CROCKETT: Yes, thank you, Your Honor.
2 Before lunch there was some discussion with Mr. Tompsett
3 by both Mr. Pozefsky on cross and by Your Honor
4 regarding what Mr. Tompsett had described as selective
5 enforcement against Johnson Utilities by ADEQ. And I
6 think Mr. Tompsett had indicated that they had, they did
7 have some documentation to support that. And over the
8 lunch hour, we were able to put our hands on one piece
9 of documentation to support that. And since we just
10 covered that, and I mentioned this to Mr. Pozefsky, I
11 think in the nature of clarifying Mr. Tompsett's
12 testimony on that point, I would like to introduce an
13 exhibit, and then it can be addressed on
14 cross-examination with Mr. Tompsett.

15 ALJ WOLFE: Okay. Mr. Pozefsky, do you think
16 that it is better to introduce it now than on redirect?

17 MR. POZEFSKY: Yes, Your Honor. And I have no
18 objection to it.

19 ALJ WOLFE: Ms. Mitchell.

20 MS. MITCHELL: Well, since I haven't seen it I
21 don't know if I can object to it or not, but Staff would
22 appreciate a copy, because Mr. Pozefsky's questions and
23 Mr. Tompsett's answers did pique my curiosity and I was
24 going to ask a number of questions about that.

25 ALJ WOLFE: Okay. Do we need to allow the

1 parties time to look at it before you introduce it?

2 MR. CROCKETT: Your Honor, it is like a
3 two-sentence e-mail. I don't think it will take much
4 time to review, but we are happy to let the parties take
5 a minute to review.

6 ALJ WOLFE: Why don't we go ahead and hand the
7 witness back to Mr. Crockett and you can go ahead.

8 MR. CROCKETT: Thank you, Your Honor. If I
9 might approach.

10

11

FURTHER DIRECT EXAMINATION

12 BY MR. CROCKETT:

13 Q. Good afternoon, Mr. Tompsett.

14 A. Hello, Mr. Crockett.

15 Q. Mr. Tompsett, in your testimony before lunch
16 today, do you recall addressing some questions regarding
17 your opinion that the Arizona Department of
18 Environmental Quality has selectively enforced NOV's
19 against Johnson Utilities?

20 A. Yes.

21 Q. And I believe you had indicated at that time
22 that you had obtained some information that had informed
23 your opinion on that subject?

24 A. Yes.

25 Q. I have placed in front of you a document that

1 has been marked as Exhibit A-34. Would you please
2 identify that document for the record.

3 A. Yes. This was an e-mail exchange between Sonia
4 Overholser and Joan Card. Sonia Overholser at the time
5 was an assistant attorney general, and Joan Card had
6 just recently been promoted to water quality division
7 director at ADEQ.

8 Q. And prior to being promoted to director of water
9 quality at ADEQ, had Ms. Card worked at the Attorney
10 General's Office?

11 A. I believe she did, yes.

12 Q. And is it your understanding that Ms. Card and
13 Ms. Overholser were colleagues?

14 A. That's my understanding, yes.

15 Q. And Mr. Tompsett, is this one of the pieces of
16 information that you recollected this morning when you
17 were testifying?

18 A. Yes, it is.

19 Q. Okay. And over the lunch hour did you then
20 obtain a copy of this document so it could be introduced
21 here this afternoon?

22 A. Yes, I did.

23 Q. And this, the subject line of this document says
24 re: Congratulations. Is this an e-mail from -- well,
25 is this actually two e-mails that are contained on this

1 document?

2 A. Yes, it is.

3 Q. And is the first an e-mail from Sonia Overholser
4 to Joan Card?

5 A. Yes, it is.

6 MR. MARKS: Your Honor, this witness has no
7 independent knowledge of this document. I think it
8 speaks for itself. But having him describe what it says
9 as if he has some independent knowledge, I don't think
10 the record benefits from that.

11 ALJ WOLFE: I would like for you to lay the
12 foundation for verifying this document, Mr. Crockett,
13 before you ask questions about the contents of it.

14 MR. CROCKETT: Okay. I think I was still in the
15 process of identifying the document, but I will go
16 ahead.

17 BY MR. CROCKETT:

18 Q. Mr. Tompsett, how is it that you came to have a
19 copy of this document?

20 A. I believe this was obtained through a FOIA
21 request of ADEQ.

22 Q. And it was a FOIA request of Johnson Utilities
23 to ADEQ?

24 A. I believe so, yes.

25 Q. And do you have personal knowledge of that FOIA

1 request?

2 A. It has been a few years ago, but I think that's
3 how this document came about.

4 Q. Was that FOIA request initiated either by you or
5 under your direction?

6 A. It would have been either, yes.

7 Q. And is this in fact a true and correct copy of
8 an e-mail that you received from ADEQ in response to
9 that FOIA request?

10 A. As I recall, yes.

11 MR. CROCKETT: Your Honor, is that sufficient in
12 the way of foundation?

13 ALJ WOLFE: Yes, I suppose so. We will see what
14 the other parties have to say, but I haven't heard you
15 actually move it yet so I don't know.

16 MR. CROCKETT: Okay. Then I guess at this point
17 I would move the admission of A-34.

18 ALJ WOLFE: Are there any objections?

19 MR. MARKS: Your Honor, I may want to conduct
20 some voir dire on this document as well. It has just
21 been -- I have just seen it now, but I am not sure it
22 really is useful for the proposition that it is being
23 presented for.

24 ALJ WOLFE: Well, that's something that I would
25 have to decide whenever I am looking at it and deciding

1 what weight to give it, but --

2 Yes, Mr. Crockett.

3 MR. CROCKETT: Your Honor, my response to that
4 would be that there were questions this morning
5 specifically on the point of whether or not ADEQ has
6 pursued Johnson Utilities in a selective way in
7 enforcing NOV's. And Mr. Tompsett testified that it was
8 his opinion that that is the case. And you asked him
9 and Mr. Pozefsky asked him if he could support that in
10 some way. And this document we obtained over the lunch
11 hour, we had not intended to introduce this document in
12 the case, but it is directly relevant to the questions
13 that came up this morning. And I think we have laid the
14 foundation for it, and I think it is appropriate for
15 admission in this proceeding.

16 ALJ WOLFE: Are you opposing Mr. Marks' request
17 to voir dire the witness?

18 MR. CROCKETT: I am not, Your Honor.

19 MR. MARKS: And Your Honor, I think if it is,
20 you know, having again a few more seconds to think about
21 this, I think it is fine to put it in the record as long
22 as I am allowed to ask questions on this document when
23 we go back around the room again.

24 ALJ WOLFE: You certainly would be. And I think
25 that was Mr. Crockett's intent, to allow

1 cross-examination on this, and that's why he wanted to
2 introduce it now.

3 MR. MARKS: With that understanding I don't
4 oppose it.

5 ALJ WOLFE: Are there any other objections?

6 MR. POZEFSKY: No.

7 MR. MANNATO: No.

8 ALJ WOLFE: A-34 is admitted.

9 (Exhibit No. A-34 was admitted into evidence.)

10 BY MR. CROCKETT:

11 Q. And just one more request of you, Mr. Tompsett.
12 Would you please read into the record the e-mail message
13 from Ms. Overholser of the Attorney General's Office to
14 Ms. Card.

15 A. Yes. Again from Sonia Overholser addressed to
16 Joan Card at ADEQ, Joan who we talked about earlier.
17 But the e-mail says:

18 Congratulations on being designated as a water
19 quality division director. I am looking forward to
20 working with you in this new role. We will really roll
21 on Johnson Utilities now, Sonia.

22 MR. CROCKETT: Thank you. That's all I have,
23 Your Honor.

24 ALJ WOLFE: Thank you.

25 Mr. Pozefsky, go ahead. And then, Mr. Marks, we

1 will move to you and then to Staff.

2 MR. MARKS: On just this document?

3 ALJ WOLFE: We will move back to you on this
4 document. Have you already cross-examined this witness?

5 MR. MARKS: I have cross-examined Mr. Tompsett,
6 and I prefer to just -- I mean I will do whatever you
7 want me to. I have cross-examined the witness but not
8 on this document.

9 ALJ WOLFE: Okay. Mr. Pozefsky, do you mind if
10 Mr. Marks conducts his voir dire on this document?

11 MR. POZEFSKY: Not at all, Your Honor.

12 MR. MARKS: This is cross-examination, Your
13 Honor, not voir dire.

14 ALJ WOLFE: I see. I am sorry.

15 MR. MARKS: I said with the understanding that I
16 would be allowed the opportunity to ask questions when
17 my turn came again, being this has come after I did
18 cross-examination, I can wait until that time.

19 ALJ WOLFE: Okay. We will wait.

20 Go ahead, Mr. Pozefsky.

21 MR. POZEFSKY: Thank you.

22

23 CROSS-EXAMINATION CONTINUED

24 BY MR. POZEFSKY:

25 Q. Mr. Tompsett, now that I have had the benefit of

1 lunch, I had some time to go over some more things on
2 this enforcement issue, so I do have some more questions
3 for you before we move on.

4 One of the things you said earlier, and I hadn't
5 given it much thought, I believe you said that you --
6 Johnson Utilities went into other service territories
7 when we were discussing SSOs and checked their level of
8 nitrates, is that correct? Did I hear that right?

9 A. No. I don't recall saying that.

10 Q. You didn't go into any, or the company didn't go
11 into any other utility areas to check nitrates, anything
12 like that, to take nitrate samples?

13 A. No, not nitrate samples. We did -- I think what
14 I testified to is we did take water samples of
15 stormwater in various other areas of Pinal County and
16 actually Maricopa County. But the water quality tests
17 were for E. coli and fecal coliforms.

18 Q. And why were you doing that? Why were you going
19 to other areas taking those sort of other tests?

20 A. One of the ongoing realities in Arizona is that
21 when there is a storm, monsoons in particular, they wash
22 all of the feces, nitrates, everything else out of the
23 desert, out of the subdivisions, into the local area
24 washes. Just the natural occurrence of the rainfall
25 washes fecal coliforms and E. coli into the standing

1 water bodies.

2 So we sampled a number of different locations,
3 like I said, in Pinal County and some in Maricopa
4 County, and submitted those test results to DEQ to say,
5 you know, look, this is a naturally occurring event and,
6 you know, you should be aware of it.

7 Q. Is that typically how it is done?

8 A. Typically how it is done is the county health
9 department should be responsible for doing that type of
10 work, or ADEQ.

11 Q. Okay. Another thing, Mr. Tompsett, that I kind
12 of insinuated from what you testified to earlier is you
13 have had this selective enforcement by ADEQ, and to a
14 large extent that seems to be a problem. I did want to
15 ask you about another couple of occurrences that ADEQ
16 filed notice of violations on. Do you have before you
17 SF-11?

18 A. SF-11, yes, I do.

19 Q. This appears to be an inspection report from the
20 Arizona Department of Environmental Quality with regard
21 to Section II of the company's wastewater treatment
22 plant, is that correct?

23 A. Yes.

24 Q. And the report date is October 15, 2008,
25 correct?

1 A. Yes.

2 Q. And the purpose of the report was that this was
3 an unannounced complaint inspection regarding
4 allegations that the company had unlawfully disposed of
5 sewage sludge or biosolids in this particular section of
6 the wastewater treatment plant, is that correct?

7 A. That's what this alleges, yes.

8 Q. Are you familiar with this report, Mr. Tompsett?

9 A. Yes, sir.

10 Q. If you go to the third page of this report there
11 is a couple sentences regarding the site review.

12 Apparently the company or the Department of
13 Environmental Quality came and did a site review, is
14 that correct?

15 A. Yes. This is, if I may, this is one of the NOV's
16 that Mr. Marks had asked me about at some point in the
17 past. This is still an open NOV, and it is still an
18 issue with ADEQ. And we are discussing, I mean this is
19 an open investigation with them at this time.

20 Q. And I realize that, and I recall the discussion
21 that you had with Mr. Marks. But I guess what I wanted
22 to find out from you was there were some observations
23 that were made at the site review and they had to do
24 with the biosolids and how they were viewed by the
25 inspectors. I don't want to go through all of them, but

1 I will mention a few.

2 It says here ADEQ staff walked into the pit.
3 They were below grade or standing on top of biosolids
4 that were covered with two to three inches of soil, and
5 they also talked a little bit about the biosolids were
6 dry in some of the areas that they had looked at and the
7 biosolids beneath the ground surface were very moist and
8 very odorous. And, in fact, at one point it appears
9 when they did an excavation of a particular burial site,
10 they noted that the biosolids were moist and odorous and
11 that the inspected surface area was unstable, and on
12 several occasions the ground surface collapsed and the
13 inspector sank below the ground surface one to two feet.

14 My question to you is, that's observations by
15 the Department of Environmental Quality, do you deny
16 that these things were taking place or were seen by the
17 department at the time of their site visit?

18 MR. CROCKETT: Objection, Your Honor. I am
19 going to raise an objection at this time. Mr. Tompsett
20 has indicated that this is a matter that is an open NOV.
21 It appears as of the last several weeks that the
22 resolution of this NOV may be leading toward litigation.
23 And so to the extent that there are questions about this
24 document that go into -- that affect the litigation that
25 may arise out of this NOV, then Mr. Tompsett is

1 represented by other counsel, in this case the law firm
2 of Brown & Bain, and they have indicated that he should
3 not be discussing these NOV's and the litigation around
4 the NOV's.

5 ALJ WOLFE: Okay. This exhibit was admitted to
6 the record.

7 MR. CROCKETT: That's true.

8 ALJ WOLFE: And if Mr. Tompsett chooses not to
9 answer a question on it, he is free to do that. But I
10 don't know why he wouldn't want to answer a question
11 whether he confirms or denies what was in the report.

12 MR. CROCKETT: Well, I guess I am just noting an
13 objection for the record that this is potentially
14 subject to litigation, and questions that go toward the
15 company's positions on issues in the litigation I would
16 object to.

17 ALJ WOLFE: You are not directing the witness
18 not to answer the question, are you, or are you?

19 MR. CROCKETT: I am not directing the witness
20 not to answer the question because I don't represent the
21 company in these matters. They are represented by other
22 counsel.

23 ALJ WOLFE: Are you making any requests other
24 than just making an objection for the record?

25 MR. CROCKETT: Well, I am objecting for the

1 record to questions that go to issues that are tied up
2 in the litigation of these NOV -- the potential
3 litigation of these NOVs.

4 ALJ WOLFE: Are you requesting Mr. Tompsett's
5 other counsel be present when he is being questioned on
6 this? I just want to make sure that you are doing -- I
7 don't want to cross any boundaries, but this exhibit has
8 been admitted to this proceeding already.

9 MR. CROCKETT: Well, that's correct, Your Honor.
10 This is a public document. And so I don't object to the
11 admission of this document. But questions that affect
12 or that go to issues potentially subject to litigation,
13 Mr. Tompsett should be represented by the legal counsel
14 on those things that is defending him, or potentially
15 will defend the company if litigation materializes
16 between Johnson Utilities and ADEQ.

17 ALJ WOLFE: So are you objecting to questions
18 being directed to Mr. Tompsett today on this exhibit? I
19 have to know that yes or no, because I don't know what
20 to do with your objection other than to --

21 MR. CROCKETT: Well, to the extent that
22 Mr. Pozefsky is asking Mr. Tompsett to confirm that
23 things -- I mean to confirm that this document, I guess,
24 and statements made in this document were statements
25 that were made by ADEQ, I don't object to that. But if

1 he wants to know about, dig into the underlying facts
2 around this NOV, that's where I would have a problem.

3 ALJ WOLFE: I don't see any reason not to allow
4 this witness to answer the question based on your
5 objection. So it is sustained.

6 You may answer the question, Mr. Tompsett. It
7 is overruled. I am sorry. I got it backwards. You may
8 answer the question.

9 THE WITNESS: Okay, Your Honor. I think I am
10 caught up. So if I can have Mr. Pozefsky ask his
11 question. Maybe I could have it read back. I kind of
12 lost it.

13 (The record was read by the reporter as
14 requested on page 771, line 20 to page 772, line 17.)

15 THE WITNESS: Okay. This is the report that was
16 written by ADEQ's inspectors while they were on the
17 site, and that's a pretty good synopsis of what the
18 report says.

19 What we don't have here is the responses that
20 the utility made to DEQ in writing with respect to this
21 NOV. So that was their observations at the time, and we
22 have subsequently provided ADEQ with a lot of
23 information in answer to not only their allegations, but
24 their report.

25 BY MR. POZEFSKY:

1 Q. Is it a good synopsis of what the site looked
2 like?

3 A. It was their analysis. It was their observation
4 so they wrote down what they saw.

5 Q. You really didn't answer the question,
6 Mr. Tompsett. It is a pretty simple question. Is this
7 a good synopsis of what the site looked like?

8 A. In general, I would say yes. I wasn't there at
9 the inspection.

10 Q. Do you believe the site posed a danger to the
11 public safety?

12 A. No.

13 Q. And how do you reconcile that with the statement
14 that you just made that this is a good synopsis of what
15 the site looked like?

16 A. We would have to stand on the documents that
17 have been submitted to ADEQ already. This was temporary
18 storage. It was in a limited location. And like I
19 said, all those documents have been provided to ADEQ
20 already --

21 Q. Do you believe --

22 A. -- in response --

23 Q. I am sorry.

24 A. I am sorry. And documents that were provided to
25 ADEQ in response to this.

1 Q. Do you believe this is another example of
2 selective enforcement by the Department of Environmental
3 Quality?

4 A. I believe so, yes.

5 Q. Do you believe that these conditions are common
6 of other wastewater sewer plants around the state?

7 A. As part of the FOIA request we already have done
8 with DEQ over the last couple years, there are other
9 facilities within the State of Arizona that have these
10 conditions.

11 Q. Okay. Finally --

12 ALJ WOLFE: I am sorry, I didn't hear the last
13 word you said, that have these...

14 THE WITNESS: Similar conditions.

15 ALJ WOLFE: Conditions, thank you.

16 THE WITNESS: I am sorry. I tend to talk a
17 little fast.

18 BY MR. POZEFSKY:

19 Q. Last area, Mr. Tompsett, I would like to touch
20 with you is the Swing First issues. Let me preface it
21 by saying the same thing I told Mr. Ashton yesterday,
22 that as far as RUCO is concerned on these issues, is
23 really to get down to the point of whether or not there
24 has been overbilling and if the billing is proper not
25 only for Mr. Ashton but for ratepayers in general, since

1 there have been some allegations made. So with that
2 said, let me just ask some questions.

3 You have read the transcript that, I forget the
4 number, that took place between or the conversation that
5 took place between Gary Larsen and David Ashton. And I
6 believe it was February 2008, in February 2008, correct?

7 A. Yes.

8 Q. What was Mr. Larsen's position in the utility at
9 that time, if you recall?

10 A. I think I have testified to this in the past,
11 but he was the field manager.

12 Q. Okay. And at the time were you the executive
13 vice president of the company?

14 A. Yes.

15 Q. And Mr. Larsen reported to you, is that correct?

16 A. Yes.

17 Q. You were his supervisor?

18 A. Yes.

19 Q. And you report to Mr. Johnson, is that correct?

20 A. Yes.

21 Q. When did you first become aware of this
22 conversation that took place between Mr. Ashton and
23 Mr. Larsen?

24 A. I don't recall the exact date, but it was on a
25 Saturday in April, I believe.

1 Q. And when did you first read the transcript?

2 Same time?

3 A. It was sent to me that day by my counsel.

4 Q. Were you pretty much shocked by its content?

5 A. Yes. I didn't know the document existed.

6 Q. Okay. And at that time Mr. Larsen was still an
7 employee of the company, correct?

8 A. Yes.

9 Q. I want to give you an opportunity really to
10 respond to some of the things that were said in this
11 conversation that took place. Was Johnson Utilities
12 ever billing Swing First more than the allowed rate for
13 service?

14 A. There were some instances where the Swing First
15 was charged a rate higher than the tariff rate, and
16 those were subsequently corrected.

17 Q. Was Johnson Utilities doing this intentionally?

18 A. No.

19 Q. Did Johnson Utilities ever intentionally flood
20 Swing First's golf course with water?

21 A. Not intentionally, no.

22 Q. Did it ever do it unintentionally?

23 A. We did get an e-mail with photos from Mr. Ashton
24 that showed flooding at the lake on number 18. But we
25 definitely had a difference of opinion as to whether or

1 not that was severe or dangerous.

2 Q. And what was the company's opinion?

3 A. Essentially the company's position was that --
4 let me back up. Maybe I could preface it a little bit.
5 I am an engineer. I design subdivisions, design --
6 involved in the design and construction of golf courses
7 all across the state. The Johnson Ranch golf course is
8 designed to receive and retain stormwater from the
9 subdivisions around it. So the fact that there was
10 standing water on the golf course after a rain event and
11 after effluent delivery in the company's mind was not a
12 major issue.

13 Q. Did the company believe that the rain
14 contributed to the overflow or the flooding of that
15 lake?

16 A. Yes. There was some rain at that time.

17 Q. You heard the testimony of Mr. Ashton on this
18 subject yesterday, is that correct?

19 A. I did.

20 Q. Do you agree with what Mr. Ashton testified to?

21 A. Specific to which point?

22 Q. That the amount of rain was, for the most part,
23 small and couldn't have caused the flooding conditions.

24 A. No. I think -- actually I think I responded to
25 that at some point in that time frame via e-mail.

1 Q. Okay. Mr. Tompsett, has Johnson Utilities ever
2 charged the customer more than 63 cents a gallon for
3 effluent water?

4 A. Not intentionally, no.

5 Q. That is the tariffed rate?

6 A. It is 62 cents, I believe.

7 Q. 62. Okay. Now, when you say not intentionally,
8 are you referring to the incident with Mr. Ashton?

9 A. Yes.

10 Q. Are there any other incidents where the company
11 unintentionally charged one of its customers more than
12 62 cents for effluent water?

13 A. I think there was an issue with the San Tan HOA,
14 and they had received a credit for effluent delivery as
15 well.

16 Q. Okay. Has Johnson Utilities ever charged the
17 customer more than 83 cents per gallon for CAP water?

18 A. I don't think so.

19 Q. Okay. And is 83 cents the tariffed rate?

20 A. Yes.

21 Q. Has Johnson Utilities ever charged its customers
22 for a Superfund assessment?

23 A. A Superfund tax?

24 Q. Superfund tax.

25 A. Yes.

1 Q. Is it the company's position that the Superfund
2 tax is authorized by the Commission?

3 A. Yes. It is collected by the company and sent to
4 the state along with the sales tax.

5 Q. Is the Superfund tax something that is on
6 everybody's bill?

7 A. I believe so, yes.

8 Q. Has Johnson Utilities, to the best of your
9 knowledge, ever charged any customer more than its
10 authorized rate for any other service?

11 A. Not that I can think of, no.

12 Q. Was there ever a protest organized by Johnson's
13 customers against the company?

14 A. Yes.

15 Q. When was that?

16 A. I don't know the exact date. It was in the fall
17 of 2008, I believe.

18 Q. And what were the circumstances, Mr. Tompsett?

19 A. Well, I can tell you on the company's side what
20 happened. The company was organizing what was called a
21 customer appreciation event at which the company
22 provided information on this rate case hearing, provided
23 information with respect to, saying it delicately, what
24 to flush and what not to flush, kind of a customer
25 education document. And it was a barbecue and it was

1 rock climbing and some other things.

2 Q. And what do you understand was the problem from
3 the protesters' standpoint, if you know?

4 A. We, I guess, would need to ask them, but my
5 understanding was that they were having an issue with
6 the SSO that occurred at the Queen Creek wash.

7 Q. And how did the day end?

8 A. Actually it went very well. We had anticipated,
9 oh, I think about had enough food and water for about a
10 thousand residents. At the end of the day,
11 approximately I think just over 6,000 residents had
12 attended the event, had their hot dogs and hamburgers
13 and water, and had a nice barbecue afternoon. And there
14 were three or four individuals that were protesting
15 around the perimeter, but they did not really interfere
16 in the midst, in the middle of the barbecue.

17 Q. And if you haven't said so already, how did the
18 company address the issues raised by the protesters on
19 the SSO?

20 A. Well, the -- maybe could you rephrase that?
21 Make sure I am answering the right question.

22 Q. Maybe you have answered it before, I am not
23 sure. But how did the company, if the company even did
24 at all, how did they address the issues raised by the
25 protesters on the SSO, on that particular SSO?

1 A. Well, there were previous meetings with the HOAs
2 that addressed the SSO. There were documents prepared
3 explaining the SSO. And I mean that was distributed to
4 the general public from the utility office.

5 So that information would have gone to the
6 protesters. So I guess that's how it was addressed.
7 There was no confrontation with them at the event at
8 all.

9 Q. And was that the last the company heard from the
10 protesters on the issue?

11 A. Oh, are you referring to -- there was
12 subsequently a slander lawsuit brought against a number
13 of the protesters.

14 Q. Okay. Have we discussed or have you discussed
15 that slander lawsuit here with Mr. Marks or anyone else?

16 A. I don't recall to tell you the truth. I don't
17 recall. I may have.

18 Q. How did that lawsuit end up, Mr. Tompsett?

19 A. Just to explain about that, just recently there
20 have -- a confidential settlement agreement has been
21 signed with two of the defendants. And my understanding
22 is the third remaining, the third remaining defendant
23 has signed a confidential settlement agreement and
24 mailed it to my office, but I have not seen that. That
25 was just recently.

1 Q. I would like to move on to Exhibit A-30, which
2 is the infamous invoice that was discussed in length
3 yesterday. Do you have a copy of that?

4 A. I am looking.

5 MR. MARKS: Is that SF-30, Mr. Pozefsky?

6 MR. POZEFSKY: I am sorry, SF-30. I said A-30.

7 THE WITNESS: Okay.

8 BY MR. POZEFSKY:

9 Q. Let me just get something before I ask my
10 question. I want to explore this invoice a little bit
11 more with you, Mr. Tompsett. I am a little unclear
12 about it. Let me understand. The company sent this
13 invoice to Gary Larsen, correct?

14 A. Yes.

15 Q. And I believe you testified the reason they did
16 this was because Mr. Larsen was responsible for this
17 charge, is that correct?

18 A. He was the responsible party for the water
19 delivery.

20 Q. Does that mean that David Ashton was not
21 responsible for this?

22 A. No.

23 Q. Okay. All -- I mean Ashton. Wasn't this water
24 provided to the golf course that Ashton is actually the
25 manager of?

1 A. Yes.

2 Q. And the problem from the company's perspective
3 is that Mr. Ashton wasn't paying this bill, is that
4 correct?

5 A. Well, at the time this invoice was issued, these
6 two accounts had been shut off to the golf course and
7 this invoice had not been presented to Mr. Ashton yet or
8 Swing First Golf.

9 Q. Well, then can you explain to me why the company
10 would present this invoice to Mr. Larsen first before
11 Mr. Ashton?

12 A. Like I said, the account was closed. The water
13 got delivered and we were holding Mr. Larsen responsible
14 for the delivery of that water to the golf course.

15 Q. So you don't agree with Mr. Ashton who testified
16 yesterday that this was a phony bill, correct?

17 A. I wouldn't characterize it as a phony bill, no.

18 Q. Let me ask you, Mr. Tompsett. Mr. Ashton claims
19 that this bill was phony and you claim that somehow
20 Mr. Larsen, that Mr. Larsen was responsible. But you
21 still haven't provided an explanation, a plausible
22 explanation why, which really makes Mr. Ashton's
23 testimony more plausible.

24 My question to you is: Given what is on the
25 record, why shouldn't the Commission audit the company's

1 billing practices?

2 A. Well, I think the billing practices have been
3 audited as part of this rate case. I think we also
4 testified this was a one-time occurrence, a specific
5 situation.

6 Q. Well, why didn't the company go after Mr. Ashton
7 legally for the bill before it went after or before it
8 sent it to Mr. Larsen, if you know?

9 A. Well, the water delivery was subsequently billed
10 to Swing First Golf, and it was, as I recall,
11 subsequently paid. So there was nothing to pursue at
12 that time.

13 Q. Okay. So Mr. Larsen ultimately didn't pay this
14 bill, correct?

15 A. That's correct.

16 Q. And you would agree with me that Mr. Larsen
17 holds no position with regard to the -- or at the time
18 held no position with regard to the Swing First Golf
19 course, correct, other than he was an employee for the
20 company?

21 A. I don't think he had any position with Swing
22 First, no.

23 Q. Okay. I would like to go to page 3 of the
24 transcript. Let's use RUCO's version.

25 A. Which document am I looking at?

1 Q. It should be R-6. Are you there, Mr. Tompsett?

2 A. I have R-6. What page were you?

3 Q. Page 3. Have you had an opportunity to read the
4 unredacted portion of that, Mr. Tompsett?

5 A. Yes, I have.

6 Q. And I am not going to have you read it into the
7 record; it has got some profanity, we don't need to hear
8 that. But I did want to ask you, do you know, with
9 regard to the question or the sentences from line 10
10 through 12, do you know why Mr. Larsen would say that?

11 A. No, I don't. In fact, since we are looking at
12 this, there is a lot of indecipherables in here, but not
13 specifically what you asked me to look at, no.

14 Q. Did you talk to Mr. Larsen about this invoice?

15 A. Not that I recall, no.

16 Q. You never talked to Mr. Larsen about this
17 invoice, correct?

18 A. Not at this time, no.

19 ALJ WOLFE: Have you ever talked to Mr. Larsen
20 about this invoice --

21 THE WITNESS: Yes.

22 ALJ WOLFE: -- was the question.

23 THE WITNESS: Yes.

24 BY MR. POZEFSKY:

25 Q. And when and what was the nature of the

1 conversation?

2 A. Give me just a -- what was the, I am sorry, what
3 was the Swing First document that had the invoice in it,
4 what number?

5 Q. SF-30.

6 A. Okay. I am sorry, what was the question?

7 Q. Sure. When did you speak to Mr. Larsen about
8 this invoice and what was the nature of the
9 conversations?

10 A. Somewhere, sometime after November 21st, when --
11 or November 20th, I am sorry -- when this invoice was
12 sent to Mr. Larsen, within a few days of that time and
13 the subsequent recording in February 1, we had a
14 conversation with Mr. Larsen that he was to disregard
15 that invoice and that the monies would be -- or the
16 water delivery would be billed to Swing First Golf.

17 Q. Mr. Tompsett, looking back at this do you think
18 it was a mistake to send this bill to Mr. Larsen?

19 A. In retrospect we probably could have done a
20 better job with this, yes.

21 Q. Okay. I appreciate your honesty.

22 Let's go to page 10.

23 A. Back on R-6?

24 Q. Yes, the transcript. Thank you.

25 If you look at the bottom of the page,

1 Mr. Tompsett, Mr. Larsen describes how there are two
2 screens on the company's computers. Do you see that?

3 A. Yes.

4 Q. Are you aware of that?

5 A. I am aware that there was a computer glitch now;
6 I was not at the time.

7 Q. So would the reason why there would have been
8 two screens be because there was a computer glitch?

9 A. The way I understand it now is that the -- and
10 this is used in Mr. Larsen's language of two screens --
11 the screen that the consumer service girls use is
12 interactive. They plug in the address, customer's name,
13 things like that. And 90, you know, 99 percent of the
14 accounts are residential accounts, and they plug in a
15 three-quarter inch meter and it generates, the
16 background software runs out the calculations and
17 generates the bills.

18 In the case of nonresidential bills, which is
19 effluent, the same system is followed by the software
20 that actually calculates the invoice. The bill to the
21 customer is not necessarily seen by the customer service
22 representative's information. So that's the second
23 screen that he was referring to, or what he is referring
24 to is the software portion that calculates the bill.
25 That's the way I understand it now.

1 Q. So that's how it is currently done, is that
2 correct?

3 A. Well, that's how it was being done then, too.
4 They just -- the way I understand it is that the girl,
5 the customer service reps that were actually entering
6 the information for whatever the account maybe weren't
7 aware of that.

8 Q. On page 11 at the top Mr. Larsen goes on to
9 describe how, quote, behind the scenes, unquote, your
10 rate was set up for 83 cents instead of 62 cents,
11 referring to Mr. Ashton's rate. Mr. Larsen does not
12 know how that happened. Do you know how that happened?

13 A. Again, at the time I wasn't aware of this at
14 all. Like I said, subsequent to looking into this, what
15 I have been told is that's the -- behind the scenes, or
16 the second screen that they were referring to, is the
17 calculation that's done by the software.

18 Q. Did someone authorize the 83 cent rate, if you
19 know?

20 A. I don't know.

21 Q. You have no idea why it was set at 83 cents?

22 A. No.

23 Q. Let's go to page 35 of the transcript.

24 This is the point, Your Honor, that me and
25 Mr. Crockett have a dispute as to this portion of the

1 transcript, I believe. I think what we talked about was
2 going off the record and making our arguments. I don't
3 know if that's how Mr. Crockett wants to proceed, but
4 that's my understanding.

5 MR. CROCKETT: That's right. I think we do have
6 an issue on this page. This is the only page in the
7 RUCO exhibit that we take issue with. And Mr. Pozefsky
8 and I had discussed arguing this in a, you know, without
9 having the sound equipment on in the room.

10 ALJ WOLFE: Okay. So page 35 the company is
11 claiming is confidential?

12 MR. CROCKETT: Well, the company is
13 claiming -- yes, that's -- well, yes.

14 ALJ WOLFE: Okay. It is not a different color
15 from the rest of the exhibit that has been marked.
16 That's why I am a little confused.

17 MR. CROCKETT: Well, this is not the company's
18 exhibit, this is a RUCO exhibit. And we had, the
19 transcript is a confidential document, as I understand
20 it, except to the extent that the parties have
21 stipulated to portions of the transcript that can be
22 disclosed publicly. We did that with Swing First Golf
23 on their exhibit. We did that with RUCO with the
24 exception of this one page.

25 ALJ WOLFE: Okay. It is just that when this

1 exhibit was marked and identified through Mr. Ashton
2 yesterday, this issue wasn't raised.

3 MR. CROCKETT: Your Honor, this is a different
4 exhibit. The Swing First exhibit is SF-32. This
5 exhibit is RUCO-6, and I think we did raise that issue
6 yesterday, that when we got to this point, Mr. Pozefsky,
7 we agreed that he could go through RUCO-6 and ask
8 questions on the parts that we had agreed on. But as to
9 this one page where we had not agreed, we, amongst
10 ourselves we had agreed that we would argue that issue
11 with Your Honor when we got to it in the proceeding.

12 ALJ WOLFE: Okay. And I don't have any problem
13 with that. But this was marked yesterday and
14 distributed to all the parties. I am just letting you
15 know that it has been distributed not as a confidential
16 document yesterday, at least the copy that I have that
17 is marked as Exhibit R-6.

18 Is there an R-6 in front of you, Mr. Tompsett?

19 THE WITNESS: I do have an R-6, Your Honor. It
20 says admitted.

21 ALJ WOLFE: It has not been admitted.

22 THE WITNESS: Oh.

23 MR. MARKS: Your procedural -- I don't have it
24 in front of me, but my recollection of it is you did not
25 find any portion of the entire transcript subject to

1 confidentiality.

2 And I take issue with the statement by
3 Mr. Crockett that any portion of the transcript is
4 confidential. I believe what your procedural order said
5 was it is admissible to the extent that it is related to
6 impeachment, customer service, billing, or revenue in
7 this case. And that's the threshold that I believe
8 that, that's the only threshold that Mr. Pozefsky needs
9 to get across for his argument, as I understand it.

10 ALJ WOLFE: That was my intent. But I think
11 that Mr. Pozefsky has made an agreement with
12 Mr. Crockett to discuss this on a confidential basis.

13 What about it?

14 We will turn off the mikes and talk about this.
15 This portion of the transcript will be treated as
16 confidential until I indicate otherwise on the record.

17 But I do want to note for the record that this
18 page of the transcript has already been made public. It
19 was distributed yesterday to all the parties. No party
20 was cautioned not to release this page of the
21 transcript. So there we go.

22 (The following pages contain confidential
23 information.)

24

25

CONFIDENTIAL PAGES
BOUND UNDER SEPARATE
SEALED COVER:

795 through 798

1 (Continuation of open hearing.)

2

3 ALJ WOLFE: There was a discussion about
4 questions -- a statement beginning on line page 19 of
5 page 35 of the transcript through line 25. And I am
6 going to allow Mr. Pozefsky to ask this witness a
7 question. And the witness can answer to the best of his
8 ability.

9 MR. MARKS: The system is not on.

10 (Brief pause.)

11 MR. POZEFSKY: Thank you, Your Honor.

12 BY MR. POZEFSKY:

13 Q. Mr. Tompsett, have you had an opportunity to
14 look on page 35 and read the unredacted part of RUCO
15 Exhibit 6?

16 A. Yes.

17 Q. I wanted to give you an opportunity to respond
18 to what Mr. Larsen said, Mr. Larsen who was a former
19 employee of your company. And here Mr. Larsen expressly
20 states that -- I don't need to repeat it, you know what
21 it states. Has Mr. Johnson and the company been honest
22 about its business dealings before this Commission?

23 A. Yes, I believe it has. I read this as
24 Mr. Larsen's opinion, so I am not sure what his state of
25 mind was at the time. But Mr. Johnson has over the

1 years testified before this Commission. And it is my
2 belief he was honest when he was doing that.

3 Q. So you would disagree with Mr. Larsen's
4 insinuation that Mr. Johnson is not honest in his
5 business dealings?

6 A. I would disagree, yes.

7 Q. If you could, I would like to go to page 44.
8 And looking at lines 15 through 22, if you would,
9 please, take a second to read those.

10 Have you had a chance, Mr. Tompsett, to read it?

11 A. Yes, sir.

12 Q. Here Mr. Ashton asks why the company has not
13 been honest with him, and Mr. Larsen responds that the
14 reason is because the employees are doing what
15 Mr. Johnson tells them to do. And I know that
16 Mr. Ashton -- or Mr. Larsen made some references about
17 this also in this transcript.

18 So my question is: Is there a corporate culture
19 that you are aware that employees must follow
20 Mr. Johnson's directions without question?

21 A. I am sorry.

22 Q. Sure. Is there a corporate culture at Johnson
23 Utilities that the employees must follow Mr. Johnson's
24 directions without question?

25 A. No, not that I am aware of. I mean the

1 corporation gives the employees directions on a number
2 of different issues, but nothing that would be -- we
3 don't ask them to do anything illegal or immoral.

4 Q. So you don't agree with Mr. Larsen's
5 characterization here that people are doing what they
6 are told to do and don't ask any questions about it?

7 A. I would say this was an emotional response by
8 Mr. Larsen and it is his opinion.

9 Q. Do you have any idea why Mr. Larsen would say
10 this?

11 A. No.

12 Q. I would like to go to Exhibit A-32 -- this is my
13 last area, Your Honor -- also A-31.

14 ALJ WOLFE: These are exhibits that Mr. Crockett
15 marked?

16 MR. POZEFSKY: Right.

17 ALJ WOLFE: Are there copies up on the bench for
18 the witness to look at?

19 MR. CROCKETT: I will get copies up there right
20 now.

21 ALJ WOLFE: Thank you.

22 BY MR. POZEFSKY:

23 Q. Have you had an opportunity to review these
24 bills, Mr. Tompsett?

25 A. Yes, sir.

1 Q. Are you familiar with these bills?

2 A. Yes. I believe these are the invoices we
3 brought in earlier today. They were invoices that were
4 sent to Swing First Golf last month.

5 Q. Okay. Let's start with Exhibit A-32. Can you
6 identify what this bill is?

7 A. 32?

8 Q. Yes.

9 A. Yes. This appears to be the invoice for the CAP
10 account that's still open with Swing First Golf.

11 Q. Okay. Before I ask you about this bill, let me
12 ask you, Mr. Tompsett, isn't it true that the pipe that
13 carries the CAP water to the golf course had been
14 inadvertently -- or had been cut by the company?

15 A. Last month the CAP pipe was cut, but it wasn't
16 by the company. It was disconnected by an adjacent
17 landowner.

18 Q. Okay. So at least as of last month, the
19 company's no water, or, excuse me, the golf course is no
20 water -- no longer receiving CAP water, is that correct?

21 A. They did not receive any CAP water last month,
22 that's correct.

23 Q. Okay. And the billing date on A-32 is August
24 31st, '09, correct?

25 A. Yes, sir.

1 Q. And that's for, what, the August, the August
2 amount --

3 A. August --

4 Q. -- August usage?

5 A. -- yes.

6 Q. And looking at this particular bill, is this
7 pretty much -- well, I won't ask that, because I think I
8 want to step back.

9 Let's go to the bottom. There is a little chart
10 down at the bottom, is that correct?

11 A. Consumption chart?

12 Q. Right.

13 A. Yes.

14 Q. And this consumption chart shows the amount of
15 CAP usage for the year, is that correct?

16 A. Yes.

17 Q. And I am gathering that the only consumption of
18 CAP water for this company or for the golf course was,
19 what, in November, is that correct?

20 A. That's what this indicates, yes.

21 Q. Okay. So all those other months there was no
22 CAP water supplied to the company, correct?

23 A. That's correct.

24 Q. So in each of those months would the company
25 have been paying this water minimum charge at \$900?

1 A. I am sorry, say that again.

2 Q. Sure. There is, under the column water service,
3 there is a water minimum that says \$900.

4 A. That's the minimum meter fee.

5 Q. Right. So I am assuming each of those months
6 where there is no service or no CAP water going to the
7 company, the minimum fee applied of \$900, correct?

8 A. Yes, for open account and minimum meter charge.

9 Q. Now, were you here yesterday when your counsel
10 pointed to some testimony, I don't even know who it was
11 by, it might have been by, you in the record where the
12 company had credited Mr. Ashton approximately \$100,000
13 for overcharges?

14 A. Yes, I recall that. I don't recall which
15 account it was for.

16 Q. Okay. Do you recall if a portion of that at
17 least was for the CAP?

18 A. We can go back and look at the record, but I
19 think it was.

20 Q. Let's go down back to A-32. You have a balance
21 of 103,381, right?

22 A. Yes, sir.

23 Q. Given this consumption chart, looking at how
24 much water, CAP water this golf course uses, how in the
25 world could they have a balance of \$103,381 for past

1 unpaid CAP water?

2 A. I think that balance has been carrying for a
3 number of years or been accumulated for a number of
4 years.

5 Q. Well, \$900 a month is the average for most of
6 these months. That would be a heck of a lot of years,
7 like 10. I am just trying to make sense of this bill.
8 How do you explain that balance?

9 A. Well, and it does include interest and, like I
10 said, other charges. There was -- like I said, I think
11 we have to go back and look back at the account and see
12 if there were other charges applied at that time, too.

13 Q. Well, one of the fees on here on other charges
14 is a late fee of \$1,550, correct?

15 A. Yes.

16 Q. Is that how much the company has been billed
17 every month? Is that a set fee?

18 A. I think that's an interest calculation on the
19 outstanding balance.

20 Q. And I know we saw a bill yesterday in another
21 exhibit for February 2009, \$92,000. If, in fact, the
22 golf course had been paying the bill monthly ever since
23 then, would that late fee be the explanation between the
24 90,000 and 100,000 it owes? That would be about right.

25 A. I would assume. The math is correct.

1 Q. Okay. And is that part of a contract, that late
2 fee, is that part of the contract that the golf course
3 has with the utility?

4 A. Well, the CAP water is ordered a year in
5 advance. So the utility is charged for CAP ordered for
6 the entire year, and that's prorated over 12 months.
7 So --

8 Q. Go ahead.

9 A. So the CAP fee is charged to the company whether
10 the water is actually delivered or not.

11 Q. Well, what is the basis for the late fee?

12 A. Oh, I think the late fee is just interest on the
13 unpaid balance.

14 Q. Okay. But do you know what the legal -- is that
15 part of the agreement that the golf course has with the
16 company on late charges?

17 A. Oh, no. I think that's part, that comes from
18 the tariff.

19 Q. Okay. Let me ask you, Mr. Johnson, in an effort
20 to make everyone's life perhaps a little easier, is
21 there any amount that the company would consider in lieu
22 of 105,000 to get rid of this?

23 A. We have had some discussions. They fall under
24 some lawyer rule that we can't discuss apparently with
25 Swing First, but we have not come to a resolution on

1 that.

2 MR. POZEFSKY: I think that's all.

3 THE WITNESS: Are we going to talk about A-31?

4 ALJ WOLFE: I think your counsel said that it is
5 the lawyers who ask the questions. I had to make that.

6 THE WITNESS: Things seem to have gone a little
7 unusual.

8 ALJ WOLFE: Yes, I would agree.

9 MR. POZEFSKY: Your Honor, the only thing, I
10 don't have any more questions, but I would move for the
11 admission of RUCO Exhibit 6 at this time.

12 ALJ WOLFE: Is there any objection to R-6?

13 MR. CROCKETT: No, Your Honor.

14 MR. POZEFSKY: Thank you, Mr. Tompsett.

15 ALJ WOLFE: Hearing none, R-6 is admitted.

16 (Exhibit No. R-6 was admitted into evidence.)

17 MR. POZEFSKY: Thank you, Your Honor.

18 ALJ WOLFE: And those are all the questions you
19 have for this witness?

20 MR. POZEFSKY: Yes. Thank you.

21 THE WITNESS: Can we take a bathroom break?

22 ALJ WOLFE: I was just going to say that this
23 would be a good time for us to take an afternoon break.
24 So we will come back here at 2:45.

25 (A recess ensued from 2:28 p.m. to 2:48 p.m.)

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

2 Ms. Mitchell, does Staff have questions?

3 MS. MITCHELL: Wouldn't you love for one time to
4 say we don't have any questions?

5 ALJ WOLFE: You do that sometimes.

6 MS. MITCHELL: Every now and then.

7

8

CROSS-EXAMINATION

9 BY MS. MITCHELL:

10 Q. Good afternoon, Mr. Tompsett.

11 A. Hello, Ms. Mitchell.

12 Q. I want to ask just a few question about the last
13 exhibit that Mr. Crockett introduced, Exhibit A-34. It
14 is the e-mail.

15 A. Okay. Just a minute, please. Okay.

16 Q. All right. Now, refresh my recollection, but
17 you received a copy of this e-mail pursuant to the
18 Freedom of Information Act to DEQ, is that correct?

19 A. That's my recollection, yes.

20 Q. And when did the company issue that information
21 request to ADEQ, what year?

22 A. It was a few years ago. So it was after '05,
23 but to me it has been a number of years.

24 Q. And since you mentioned '05 -- and that's the
25 date of this e-mail, that it shows that it was received

1 on May 6, 2005, is that correct?

2 A. Yes, that's correct.

3 Q. Do you have any evidence that Ms. Card was
4 influenced by the comments made by Ms. -- I can't
5 pronounce -- Overholser?

6 A. I don't, I don't recall having anything in
7 writing that specifically says she was influenced by
8 this e-mail, no.

9 Q. But it is your testimony that this e-mail,
10 combined with the number of violations that Johnson has
11 received, is evidence of some type of selective
12 enforcement by ADEQ. Is that the company's position?

13 A. Yes. The company is still of the position
14 that -- I mean it is our belief that there are, and
15 there is other, but it is our belief that there are,
16 whether they be NOV's or other actions, that are
17 specifically targeted at the Johnson Utilities that are
18 not weighed upon other utilities in the same type of
19 situation. And, you know, I have always been told
20 actions speak louder than words. So I guess we are --
21 that's where we are at.

22 Q. You did mention, I believe, I can't remember
23 whether it was in your exchange with Mr. Crockett or
24 Mr. Pozefsky, that you did do some other research on
25 other companies, perhaps similarly situated to Johnson,

1 and that showed that perhaps the -- that would support
2 your allegation that the enforcement is selective, is
3 that correct?

4 A. Yes. We have done multiple file reviews and
5 additional FOIA requests.

6 Q. Do you remember any of the companies that you
7 reviewed?

8 A. We have actually submitted some of the documents
9 that were produced in an FOIA request to this
10 Commission. There was some -- as I recall there was
11 some private companies in there and some municipalities.

12 Q. Can you remember any of the private companies?

13 A. Not specifically, no, not at this time.

14 Q. Do you know if they were Class A utilities or
15 smaller mom and pop run utilities?

16 A. No, I don't think we really concentrated on mom
17 and pop type facilities there. We were trying to align
18 apples and apples.

19 Q. Would you be surprised if there were other
20 companies that were regulated by the Commission that
21 were Class A utilities that provided water or wastewater
22 that did not have the history of violations with ADEQ
23 that Johnson has?

24 A. I am sorry. Could you ask that again, please.

25 Q. Would you be surprised to learn that there may

1 be other companies regulated by the Commission that are
2 Class A utilities that provide water or wastewater
3 services that don't have the record of violations that
4 Johnson has?

5 A. Would I be surprised? No.

6 Q. So it wouldn't surprise you if in the recent
7 Arizona-American case, Docket 08-0227, which consisted
8 of seven systems of Arizona-American, that there were no
9 ADEQ violations as of the first of 2008?

10 A. I am not familiar with the case, so no.

11 Q. And it wouldn't surprise you that Gold Canyon
12 sewer, when it was in for its last rate case, had no
13 notice of violations? Actually, they are regulated by
14 the Maricopa County Environmental Services Department.
15 But would you be surprised that as a wastewater provider
16 they had not received any notice of violations? Well,
17 they had a few, but they had corrected them.

18 A. Well, I guess that's somewhat to the point I was
19 trying to make earlier, is that NOV's get issued. They
20 are -- the purpose of the NOV is to allow the utility to
21 do corrective measures or dispute whatever the facts are
22 ADEQ is alleging. In the case we are talking about
23 here, these NOV's that are still open, we think we have
24 done that. And the NOV's have still not been closed or
25 resolved.

1 Q. Could it be that it is Johnson's long history of
2 violations with ADEQ that prompts the close scrutiny
3 rather than some allegation of selective enforcement?

4 A. That could be a part of it, yes. And I think,
5 you know, in my opinion that some of that breeds on
6 itself so that, while we had this occur, whatever, five
7 years ago, watching real closely, so it kind of is a
8 self-fulfilling prophecy, if you will.

9 Q. You would agree with me that perhaps maybe they
10 look at you a little more closely because of your
11 history of violations?

12 A. I would agree with that, yes.

13 Q. All right. I want to ask a few questions, just
14 a follow-up on the whole -- that whole Larsen billing
15 issue. I think you mentioned --

16 And, Mr. Crockett, do you have a copy of the
17 transcript from Monday's proceeding? Because I wanted
18 to ask a couple questions.

19 MR. CROCKETT: Yes, I do. Let me take a minute
20 and put my hands on it.

21 MS. MITCHELL: All right, thank you.

22 ALJ WOLFE: Is that SF-32?

23 MS. MITCHELL: No, Your Honor. It actually is
24 the transcript from the proceeding that was held on
25 Monday.

1 ALJ WOLFE: Oh, I am sorry.

2 (Brief pause.)

3 BY MS. MITCHELL:

4 Q. You know, I thought I had it marked but I can't
5 find it, but I will just ask you a couple questions.

6 I think you testified in that proceeding and in
7 some responses to Mr. Pozefsky that the reason that
8 November 15th bill was issued to Mr. Larsen was because
9 the Swing First account was closed. Was that your
10 testimony?

11 A. Yes. The water delivery had been closed, the
12 delivery of water had been stopped, it had been closed,
13 yes. I recall that.

14 Q. So I am confused. Did they still have an
15 ongoing account with Johnson?

16 A. Well --

17 Q. Was Swing First at that time a customer of
18 Johnson Utilities with an account?

19 A. Yes.

20 Q. So the account wasn't closed?

21 A. Okay, may I clarify? It was closed for delivery
22 purposes.

23 Q. But not for the purposes of receiving a bill?

24 A. No.

25 Q. So it is the utility's practice, let's say, for

1 instance, I am delinquent in my bill and you shut me off
2 and I have been disconnected. Then you would still
3 continue to send me a bill for the services. Even
4 though I have been disconnected you would send me the
5 bill and not some Johnson employee. Is that how it
6 would work?

7 A. That would be correct, yes.

8 Q. But in this case, Swing First was no longer
9 receiving water deliveries, but you sent a bill to a
10 Johnson employee?

11 A. Well, Swing First did receive the water
12 delivery. The water went to the golf course.

13 Q. The water went to the golf course, but I think
14 it is SF-30 or 31, it is 30, that shows a bill that was
15 sent to Mr. Larsen, who was an employee, for water that
16 was received by someone else. Is that the customary
17 practice of the utility, to send bills to employees for
18 water that was received and used by someone else?

19 A. I think I have already testified to this, but
20 no, this was a unique situation.

21 Q. What was unique about it?

22 A. The account had been closed. The water
23 was -- the account, there was to be no water delivered
24 to this account to the lake from -- or either one of
25 these accounts to the lake. And --

1 Q. I am sorry.

2 A. That's why I stopped. No.

3 The utility was instructed to stop delivery of
4 water to the golf course lake. The water had been
5 delivered. It was in mid month. So the standard bill
6 would not have been generated until the end of that
7 month. But, so this invoice was generated for the water
8 that had been delivered and was, I guess we established,
9 was given to Mr. Larsen as the responsible party for the
10 water delivery.

11 Q. I am just still confused by the whole situation.
12 Was Mr. Larsen some guarantor of payment for Swing
13 First?

14 A. No.

15 Q. Is there some company policy that sort of like
16 if, you know, the till runs short that employees are
17 responsible for it so you have to pay?

18 A. I am sorry, say that again.

19 Q. You know how you have in some businesses, like
20 maybe service people and waitresses in restaurants, and
21 they may come up short in a bill and their pay may be
22 docked, is there the same sort of situation, if water is
23 delivered to a customer who should not have received
24 water, that the employee becomes responsible for that
25 bill for that customer?

1 A. Essentially if the cash drawer is short --

2 Q. Yes.

3 A. -- someone is responsible?

4 Q. Yes.

5 A. No. Like I said, this was a unique situation.

6 Q. It was unique in the fact that Swing First was
7 delivered water when they should not have been delivered
8 water. Is that what makes it unique?

9 A. I would say so, yes.

10 Q. So every time -- if that happens in another
11 situation, not between Swing First, but let's just say
12 John Public accidentally receives water that they should
13 not have received, then Mr. Larsen or whoever now is
14 taking Mr. Larsen's place would receive a bill for that
15 because the delivery should not have been done?

16 A. I am not aware that it has ever happened since.

17 Q. So this just happened with this particular
18 customer under these particular set of circumstances?

19 A. Yes. I think I said it was an unusual
20 circumstance.

21 Q. All right. You have the transcript up there.
22 On page 389, if you could turn to that.

23 A. Which transcript?

24 Q. It is the one that I think Mr. Crockett just
25 handed you, the one from the proceeding on Monday.

1 A. Oh, okay.

2 Q. And if you look at line 12.

3 A. I am sorry, what page are you on, Ms. Mitchell?

4 Q. I am on page 389.

5 A. 389.

6 Q. If you look at line 12, there is a question
7 concerning the gap in the meter reading for Swing First.
8 Do you see that question?

9 A. Hang on. It is kind of hard to --

10 Q. Okay. It says: Not to put words in your mouth,
11 but I think you agreed that there was a gap in meter
12 reading that occurred sometime in 2007?

13 Does the company have any other problems with
14 reading meters for any of its other customers?

15 A. No. The majority of the meters, residential
16 meters, are all read electronically. And there are
17 rereads every month where the data won't come through
18 correctly. So out of, I don't know, 26,000 accounts or
19 so, there is always a few hundred that need to be reread
20 manually every month.

21 Q. Now, that's residential?

22 A. Correct.

23 Q. Swing First is a commercial account?

24 A. No -- yes. Commercial accounts are not read --
25 they are read manually, they are not read

1 electronically.

2 Q. All right. I have an exhibit that I would like
3 to show you. And I am sorry, I said SF-30. I meant
4 S-30, it is for Staff. Could you identify this for the
5 record, please.

6 A. This looks like a data response in the other
7 hearing. The complaint proceeding it says.

8 Q. And if you would look at the request, the data
9 request 1.7, did you prepare the response on behalf of
10 Johnson for this request?

11 A. Yes.

12 Q. And could you just read in the request for the
13 record.

14 A. The 1.7?

15 Q. Yes. Thank you.

16 A. Data request 1.7 says for the Oasis, please
17 provide copies for all bills and payments for effluent
18 during the period 2004 to present.

19 Q. All right. And could you read -- if you could
20 go to the second paragraph of your response, could you
21 read the first sentence.

22 A. Yes. Johnson Utilities has discovered that it
23 was not charging the Oasis golf course for the effluent
24 the golf course was receiving.

25 Q. When you say not charging, does that mean that

1 no meter was read in order to generate a bill to be
2 charged to the Oasis golf course?

3 A. I am sorry, could you repeat.

4 Q. I said, when it says that you discovered that it
5 was not charged, the company discovered that it was not
6 charging, so does that mean that the meter wasn't read
7 for some period of time in order to generate a bill to
8 charge the golf course?

9 A. I don't recall specifically. I think there is a
10 meter.

11 Q. And does the company have a problem with not
12 charging for water or effluent that it delivers?

13 A. No.

14 Q. But you didn't read the meter for Swing First
15 for a period of time, and so there were no charges
16 generated to Swing First. And then there were no
17 charges for effluent delivered to the Oasis golf course.
18 Wouldn't that affect the amount of revenues that a
19 company would receive if it is not reading a meter and
20 issuing a bill to receive payment for that?

21 A. It would delay the receipt of the revenue, yes,
22 because the meter, if they are in place they continue to
23 read. I mean they are manual read, so if the water is
24 flowing through them it will continue to read.

25 Q. And what would cause the company to fail to read

1 a meter, what types of circumstances?

2 A. Personnel oversight, just not physically reading
3 a meter, or reading the meter and not entering it into
4 the system.

5 Q. How many people do you have? I know you
6 mentioned that for residential bills it is all
7 electronic. How many employees do you have that are
8 responsible for going out to physically read a meter?

9 A. I would say there are, and this is a guess, but
10 there has got to be 10 to 12 different people that do
11 that.

12 Q. Is your service territory very spread out? I am
13 not really familiar with the area.

14 A. Yes, it is.

15 Q. Do they travel, what, by truck?

16 A. Yes.

17 Q. And are they on some kind of schedule with
18 reading certain areas for certain time periods?

19 A. Yes. They are on a monthly schedule.

20 Q. In the discussion, I believe it may have been
21 during the cross-examination by Mr. Marks, or may have
22 been RUCO, it has been so long now I am forgetting, but
23 there was a discussion about termination notices to
24 different customers and ability to terminate. And there
25 was specifically reference to Swing First. And I

1 believe, this is a long question but I am trying to lay
2 a little foundation, but there were a series of e-mails,
3 I believe it was in the February time frame, where the
4 company received a notice by e-mail that it was being
5 disconnected. Do you recall that scenario?

6 A. Yes, subject to check I do recall that.

7 Q. And it is in the Commission's rules that
8 termination notices can be delivered by e-mail? I was
9 looking for a copy of the rule. I think RUCO --

10 ALJ WOLFE: It is Exhibit SF-37.

11 MS. MITCHELL: Is it 37? Thank you.

12 BY MS. MITCHELL:

13 Q. I think the question was is it in accordance
14 with Commission rules to deliver termination notices by
15 e-mail.

16 A. If you could give me -- I am sorry, we are
17 looking at SF-37?

18 Q. I think, if that's the rule. I don't have a
19 copy of it. I keep looking for it.

20 Let me ask you, are you familiar with the
21 Commission's rules regarding termination of service for
22 water and wastewater customers?

23 A. In general, yes. I don't have all the rules
24 memorized, though. Refresh my memory.

25 Q. I actually have one that is actually marked

1 RUCO-5, which they introduced for another purpose. But
2 it does discuss billing and collections.

3 Does it discuss termination? It also has a
4 little bit of termination of service. But I don't think
5 it has the page that I wanted to discuss.

6 But is it the company's normal practice to
7 deliver termination notices by e-mail?

8 A. No. The typical termination notice for -- like
9 I said, 99 percent of accounts are residential accounts,
10 and those are computer generated. They are generated by
11 the system.

12 At the time, and I don't remember if it was
13 February or -- I thought the exchange we had was talking
14 about November of '07, somewhere in there, but there was
15 an active exchange between the ACC Staff, myself, and
16 Mr. Ashton, and there was a termination notice delivered
17 by e-mail somewhere in that time frame, yes, but...

18 Q. Was it done just as a courtesy to e-mail rather
19 than send it through -- I don't know how you normally
20 send your termination notices.

21 A. They are usually done in the mail. No. Well,
22 it was, like I said, there was an active e-mail exchange
23 going on at the time, so that's how it was sent. And
24 did the e-mail contain all the specific termination
25 service notices? I don't believe it did, no.

1 Q. All right. I am done with that. Thank you.

2 ALJ WOLFE: I just -- I have a question about
3 that.

4 Mr. Crockett, you were going to bring as an
5 exhibit copies of the e-mail. Are you -- do you still
6 have that?

7 MR. CROCKETT: Your Honor, I do. And I think we
8 discussed that we would be introducing those as part of
9 our redirect.

10 ALJ WOLFE: I just wanted to make sure you have
11 it, because you introduced some other things that are
12 not related. So if you have it right now, maybe we
13 should just get that on the record now. Would you mind
14 doing that?

15 MR. CROCKETT: Not at all.

16 Your Honor, I found the exhibit. I have marked
17 it as Exhibit A-23.

18 ALJ WOLFE: Okay.

19 MR. CROCKETT: And I will go ahead and
20 distribute it if it is okay.

21 ALJ WOLFE: Thank you. I would appreciate that.

22 MR. CROCKETT: Your Honor, are you looking for
23 me to introduce this?

24 ALJ WOLFE: Yes, please.

25 MR. CROCKETT: Okay.

1 FURTHER DIRECT EXAMINATION

2 BY MR. CROCKETT:

3 Q. Mr. Tompsett, I have placed in front of you a
4 set of e-mails that I have identified as Exhibit A-23.
5 Do you have those?

6 A. Yes, I do.

7 Q. And do you recall that earlier in this
8 proceeding, I don't remember if it was yesterday or
9 Monday, but we -- you received questions about the
10 disconnect of Swing First Golf's service in November of
11 2007? Do you remember those discussions?

12 A. Yes, I remember a discussion about it, yes.

13 Q. Okay. And I believe it was your testimony that
14 you had been unable to locate termination notices of the
15 type that the computer generates for your customers, is
16 that correct?

17 A. Yes, I believe so.

18 Q. And it was your recollection that there were
19 some e-mails that went back and forth regarding
20 termination of service, is that right?

21 A. That's correct.

22 Q. And did that cause you to go back and look at
23 some e-mails in that time period that you had?

24 A. I did. And I think the reason I was torturing
25 the response at that time was these e-mails were in the

1 complaint case, not in the rate case.

2 Q. Okay. And in fact, I am glad you said that,
3 because were these e-mails that make up Exhibit A-23
4 previously provided to Swing First Golf course in a data
5 response?

6 A. Yes, I believe they were. It was a data
7 response in the complaint case.

8 Q. I am just looking at my notes to identify which
9 one that is. Bear with me.

10 Mr. Tompsett, according to your recollection,
11 were those provided in response to Swing First Golf 1.8
12 in the complaint case?

13 A. I don't recall specifically. I assume you found
14 the right data request.

15 Q. Okay. And it appears, Mr. Tompsett, that we are
16 looking at one, two, maybe five e-mails in this packet,
17 maybe a few more.

18 A. About right, yes.

19 MR. CROCKETT: Your Honor, I would move the
20 admission of Exhibit A-23.

21 ALJ WOLFE: Is there any objection?

22 MS. MITCHELL: No.

23 MR. MARKS: Well, Your Honor, I guess I do only
24 because it is not complete. I looked at this same
25 e-mail chain this morning. And I note for one thing,

1 looking through this, there is no mention that I can see
2 anywhere in this chain of the amount that is owed.
3 There is a reference here to an account summary for the
4 document titled 10.30.07.xls that is not included in
5 this chain and was not turned over, I discovered this
6 morning, in response to 1-8.

7 And I don't have any objection to A-23 as it
8 stands, but I would request that the spreadsheet that's
9 referenced in this document be provided as soon as
10 possible.

11 ALJ WOLFE: Are there any objections by any
12 other parties?

13 (No response.)

14 ALJ WOLFE: Mr. Crockett, do you want to respond
15 to that?

16 MR. CROCKETT: Mr. Marks, tell me where you are
17 looking at in these documents.

18 MR. MARKS: Very first page, Mr. Crockett. It
19 says attachments.

20 MR. CROCKETT: Okay. I will go back and take a
21 look in our data response and see if that attachment was
22 attached to this.

23 MR. MARKS: It was not, at least what I received
24 of -- you can certainly look at your copy, but I will
25 represent that I looked this morning and it was not

1 there.

2 MR. CROCKETT: Okay. Then we will go back
3 tonight or over the weekend and see if we can locate
4 this attachment that's referenced on this e-mail.

5 ALJ WOLFE: Do you want to go off the record?

6 MR. CROCKETT: Maybe we can go off the record
7 and see if we can find that.

8 ALJ WOLFE: Let's briefly go off the record and
9 see if it is in your file.

10 (A recess ensued from 3:19 p.m. to 3:24 p.m.)

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

12 Mr. Crockett.

13 MR. CROCKETT: Thank you, Your Honor.

14 BY MR. CROCKETT:

15 Q. Mr. Tompsett, Mr. Marks pointed out that the
16 attachment that is referenced to the first e-mail in the
17 group of e-mails that we have marked as A-23 was
18 missing. Have you been able to locate a copy of that
19 attachment?

20 A. I thought we had -- oh. Yes. This is what I
21 had recorded as attached to that e-mail.

22 Q. Okay. And the e-mail references attachment
23 summary 10.30.07.xls. Do you see that?

24 A. Yes.

25 Q. And I have handed you a document that I have

1 marked as Exhibit A-23A. Do you have that?

2 A. Yes.

3 Q. And can you confirm, Mr. Tompsett, that the
4 document marked as A-23A is, in fact, the account
5 summary that was attached to the Tuesday October 30,
6 2007 e-mail that is the first page of Exhibit A-23?

7 A. Yes.

8 MR. CROCKETT: Your Honor, at this time I would
9 move the admission of A-23A in addition to A-23.

10 MR. MARKS: No objection.

11 ALJ WOLFE: Okay. Does that cure your objection
12 to A-23, also?

13 MR. MARKS: Yes, it does, Your Honor.

14 ALJ WOLFE: Okay. A-23 and A-23A are admitted.

15 (Exhibits Nos. A-23 and A-23A were admitted into
16 evidence.)

17 ALJ WOLFE: Okay. Do you have any further
18 questions for your witness on these, on these documents?

19 MR. CROCKETT: Your Honor, again, I had intended
20 to do this on redirect. I did have some questions on
21 these documents, and I could do that now or I can do it
22 when I redirect Mr. Tompsett.

23 ALJ WOLFE: Ms. Mitchell, since you had
24 questions on the termination notice, would you mind if
25 Mr. Crockett asked the questions on the evidence that

1 they have to present in the way of termination notice at
2 this time before you finish your cross-examination?

3 MS. MITCHELL: No, but then it may generate more
4 questions --

5 ALJ WOLFE: Well --

6 MS. MITCHELL: -- that I may have.

7 ALJ WOLFE: And that's why I ask for it to be
8 addressed now, while the subject is fresh in everyone's
9 mind.

10 So, Mr. Crockett, you may go ahead.

11 BY MR. CROCKETT:

12 Q. Okay. Mr. Tompsett, earlier this week Mr. Marks
13 asked you about an exhibit that was marked as
14 Exhibit SF-23. Do you recall that?

15 A. Okay. Yes, I have SF-23.

16 Q. To refresh everyone's recollection,
17 Exhibit SF-23 is a -- it is two e-mails on a single
18 page, an e-mail that appears to be from you to Dave, who
19 I assume is Mr. Ashton, is that correct?

20 A. Yes.

21 Q. And that's dated November the 6th, 2007?

22 A. Yes.

23 Q. And then there is a response from Mr. Ashton to
24 you dated November the 8th, is that correct?

25 A. It is to me dated November 6. Is that 6?

1 Q. Oh.

2 A. 5:20 p.m.?

3 Q. I need to put my reading glasses on. That's the
4 one, November the 6th. I am sorry.

5 A. Yes, it is his response, same day.

6 Q. And would you again read your comment to
7 Mr. Ashton at the bottom of that page.

8 A. On SF-23?

9 Q. Yes.

10 A. 11/6/07, I wrote, e-mail says Dave, the utility
11 has discontinued water service or water delivery to the
12 golf course for nonpayment.

13 Q. Okay. And do you remember Mr. Marks asking you
14 if there was any notice that preceded this e-mail?

15 A. Yes, he did.

16 Q. And do you recall your testimony that you
17 believe that there were some e-mails that had gone back
18 and forth between the parties?

19 A. Yes, I recall that.

20 Q. And are those e-mails that you recollected the
21 e-mails that have been distributed as Exhibit A-23 and
22 the attachment A-23A?

23 A. Yes. This is what I was recalling. And they
24 were apparently disclosed or placed into the complaint
25 case as part of a response to a data request.

1 Q. Okay. Would you walk us through each of those
2 e-mails in that bundle.

3 A. JU Bates No. 0256, it is dated October 30th from
4 me to Dave Ashton with an attachment, which the
5 attachment we have now printed out is A-23A, but the
6 e-mail says:

7 David, we have a problem. Attached is the
8 summary of your accounts for water. This balance is way
9 too high. Give me a call to discuss. We are going to
10 need to get this paid down now, get a payment commitment
11 or we will need to discontinue water delivery.

12 Q. Okay. And the attachment references what
13 appears to be three accounts, is that correct?

14 A. Yes.

15 Q. Or three account numbers?

16 A. Three account numbers, yes.

17 MR. CROCKETT: Your Honor, if you would, give me
18 just a minute to locate another exhibit I want to look
19 at.

20 I apologize. I wasn't quite ready to do this
21 this afternoon, so I need to get one more exhibit.

22 ALJ WOLFE: I understand. Take your time.

23 MR. CROCKETT: It has got my account numbers on
24 it.

25 BY MR. CROCKETT:

1 Q. Mr. Tompsett, I just wanted to be clear with you
2 that we know what account numbers we are talking about.
3 On the attachment, A-23A, the first account number
4 that's referenced there is 00120362-01. Is that an
5 effluent account number?

6 A. Yes, it is.

7 Q. Okay. And the other account number which is
8 00119200-01, and then the account number below it which
9 ends in 02, are those the CAP accounts for Swing First
10 Golf?

11 A. Yes, they are.

12 Q. Okay. And the account balances on those
13 accounts, would you tell me approximately what the
14 account -- the outstanding account balance is as
15 reflected on this exhibit? You can approximate it.

16 A. According to this exhibit, the 362-01 for
17 effluent showed a 120-day balance of \$45,892.94.
18 Account 200-01 had a 120-day account balance of
19 \$43,353.93 and appears to not have had any activity in
20 the last four billing periods for at least when the
21 spreadsheet was created. And account number 200-02 has
22 current billings for all five dates or all five invoice
23 periods and it shows an account balance of \$125,715.75.

24 Q. Okay. And that spreadsheet with those account
25 balances was sent to Mr. Ashton on October 30th, 2007?

1 A. Yes.

2 Q. And I believe you testified earlier in the week
3 that the water service to Swing First Golf was
4 disconnected for nonpayment on November the 6th?

5 A. Yes, I believe that's correct, or SF-23.

6 Q. Okay. And so the October 30th is how many days
7 prior to November the 6th?

8 A. Looks like seven. Is that right? Seven or
9 eight.

10 Q. Okay. More than five?

11 A. Yes, more than five.

12 Q. Okay. All right. I interrupted you. Now, on
13 the next page, which has the identifier JU-0255 at the
14 bottom, would you identify what is occurring on that
15 page.

16 A. On JU-0255, it appears Mr. Ashton responded to
17 me October 30th at approximately 2:00 p.m. and said:
18 Hi, Brian. Are you available to meet on Friday morning
19 so we can work through a payment commitment?

20 And my response was back to Mr. Ashton at 2:35
21 on October 30, '07 saying: Dave, unfortunately no. I
22 have been directed to collect all monies owed now
23 immediately. If you need to set up a payment commitment
24 with a bank or private lender, you need to do that now.
25 If I can't get a full payment, we will discontinue water

1 delivery.

2 Q. Okay. And if you will turn to the next page,
3 which is identified at the bottom at JU-0254, and
4 describe what is occurring on that page.

5 A. Same e-mail chain, with the added response from
6 Mr. Ashton on October 30th, '07 at 3:18 p.m. It says:
7 Hi, Brian. Thanks for your response. I will
8 immediately look for a solution through a private
9 lender. A good relationship with Johnson Utilities is
10 imperative.

11 Q. And then turn to the next page, please. This
12 page is marked at the bottom as JU-0252. Would you
13 please describe what that adds in the e-mail chain.

14 A. Yes. A continuation of the same e-mail chain, I
15 responded to Mr. Ashton at approximately 4:22 p.m.
16 October 30th, and said: Good luck. I would like to
17 maintain a good relationship.

18 Q. Okay. And then, if you would, skip two pages
19 back to the e-mail that is marked at the bottom of the
20 page as JU-0250.

21 A. Yes.

22 Q. And on that one it is a lengthy e-mail from
23 Mr. Ashton, but I am just going to have you read the
24 first two, the first sentence of that e-mail for me.

25 A. It appears to be a start -- oh, wait a minute.

1 Anyway, it is -- the last response at the top is from
2 Mr. Ashton dated 7:14 a.m. on November 5th, 2007. It
3 says: Hi, Brian. Thanks for your note regarding the
4 balance. I am having a hard time raising the money
5 because we have a \$250,000 line of credit that is
6 already maxed out.

7 Q. Did Swing -- do you recall if Swing First Golf
8 made a payment to Johnson Utilities by November 6th?

9 A. According to SF-23, it doesn't look like a
10 payment was made and the water was shut off.

11 MR. CROCKETT: Okay. Your Honor, I think that's
12 all I have for Mr. Ashton, or, apologies, Mr. Tompsett.
13 I will turn him back over for cross-examination.

14 ALJ WOLFE: Okay. Thank you. And thanks for
15 doing that on short notice, Mr. Crockett.

16 MS. MITCHELL: Just interrupted my flow, but
17 that's okay.

18 ALJ WOLFE: I apologize for that.

19 MS. MITCHELL: Oh, no problem. Since we are on
20 A-23, I just have a couple of questions now, since I
21 just have to ask questions about it.

22

23 CROSS-EXAMINATION CONTINUED

24 BY MS. MITCHELL:

25 Q. Prior to this series of e-mails, had a notice

1 that complied with the notice requirements by the
2 Commission rule have been sent to Swing First?

3 A. I don't recall. I don't know.

4 Q. That's all for this particular document. Well,
5 let me ask a follow-up question. But you are familiar
6 with what is required by Commission rule for termination
7 notice to a customer?

8 A. Yes.

9 Q. And you know that it is supposed to include the
10 reason for the termination, the alleged violation, you
11 know, a contact name and address, you do realize it is
12 supposed to contain all of that type of information?

13 A. Yes. The statute we looked at had a number of
14 items that should be on there, on the shut-off notice,
15 that were not in the e-mail.

16 Q. And you would agree with me that this series of
17 exchanges really doesn't comply with what is required
18 for termination notices by Commission rule?

19 A. Per the Commission statute we looked at, no.

20 Q. Thank you.

21 I want to go back before I leave, go back to
22 S-30 for a moment.

23 A. I am sorry, S-30?

24 Q. S-30. It was that data request that is in the
25 complaint docket.

1 A. Yes.

2 Q. Who owns the Oasis golf course?

3 A. Originally one of Mr. Johnson's entities owned
4 that course. I don't recall specifically which one.

5 Q. Do you know if one of those entities was the
6 owner at the time that the golf course was not being
7 charged for effluent that it was receiving?

8 A. Could you rephrase it, please.

9 Q. Do you know at the time that the Oasis golf
10 course was not receiving -- was not being charged for
11 the effluent that it was receiving, was it then owned by
12 an entity controlled by Mr. Johnson?

13 A. Yes, I believe it was.

14 Q. Yes, you believe that at the time that they
15 weren't -- I am sorry, I just want to make sure I
16 understand. At the time that Oasis golf course was not
17 being charged, the golf course was owned by a Johnson
18 controlled entity, is that a fair statement?

19 A. Not a Johnson Utilities entity, but a --

20 Q. A George Johnson --

21 A. -- George Johnson --

22 Q. -- related --

23 A. -- entity.

24 Q. -- affiliate?

25 A. Yes.

1 Q. Okay. Thank you.

2 I want to go back to some questions that
3 Mr. Pozefsky was asking you about SF-11. And I believe
4 that is an inspection report regarding one of the spills
5 at one of the treatment facilities.

6 You responded to a question from Mr. Pozefsky
7 that you provided information to DEQ. Can you just
8 summarize what that information was that you provided in
9 response to this notice.

10 A. Well, SF-11 is just the inspection report. We
11 would have -- this would have been an attachment to an
12 NOV.

13 Q. All right. Okay. Well, I misidentified the
14 document. I am sorry for that. But you did indicate
15 that the company did provide some type of response. I
16 think you said we provided a lot of information to ADEQ
17 concerning this event. Could you tell me what that
18 information was that you provided to ADEQ.

19 A. In general, yes. We provided them hauling
20 records, trucking records, weight records, things like
21 that, documents related to materials being dropped off
22 at a landfill, some aerial photographs of various years,
23 and then also a written explanation on the various
24 allegations in the NOV.

25 Q. And is that information available to the

1 Commission, what you provided to ADEQ?

2 A. Our response?

3 Q. Yes.

4 A. I think that's a public record. If the
5 Commission wants a copy of our response, I assume we can
6 get them a copy of our response.

7 Q. All right. And is this notice of violation
8 still open?

9 A. Yes.

10 Q. Have you had any discussions involved in the
11 resolution of this notice of violation?

12 A. Yes.

13 Q. And are you close to a resolution, or is this
14 close to being closed out?

15 A. That I don't know.

16 Q. All right. I think Mr. Pozefsky asked you some
17 questions about the company's customer service, and you
18 indicated that you felt that the company had excellent
19 or very good customer service. Do you recall those
20 questions?

21 A. Generally, yes.

22 Q. It has not been introduced yet, but have you had
23 a chance to review the testimony of Staff witness
24 Jeffrey Michlik, his direct testimony in the water case?
25 Have you had a chance to review that? Because they

1 list -- he lists some customer service complaints in
2 that.

3 A. I am sorry, what is that dated?

4 Q. It is Staff's direct testimony dated
5 February 4th, 2009. And I can let you have my copy
6 because I just -- it has not been marked yet because we
7 haven't had a chance to put on our witnesses yet.

8 A. Okay. I do recall reviewing Mr. Michlik's
9 testimony. I don't know if there are specifics you want
10 to point to I would need to look at.

11 Q. If it is okay with Mr. Crockett, I will just
12 kind of summarize what it says. It says in 2006 the
13 company had 12 complaints. In 2007 the company had 69
14 complaints. In 2007 consumer services received one
15 complaint regarding sewage in the street. In 2008 the
16 company had 30 complaints. Also in 2008 the consumer
17 service received complaints and one inquiry regarding
18 sewage in the streets, resulting in concerns of health
19 hazards and water contamination.

20 Do you think these are a high number of
21 violations for a company the size of Johnson, the number
22 of complaints received by the Commission?

23 A. Well, during that time of high growth, there
24 were -- I don't know what the specific number of homes
25 were for each year, but there were 20,000 plus homes in

1 the service area I think at the end of '08, maybe
2 18,500, something like that. And it sounds like that
3 equates to about one and a half, maybe two complaints
4 a month out of all of those residents. So no, I
5 wouldn't think that was unusually high.

6 Q. All right. Thank you.

7 Mr. Pozefsky asked you a question whether the
8 company had intentionally or unintentionally charged
9 more than its tariffed rate for certain, I think for
10 effluent water and CAP water. Do you recall those
11 questions?

12 A. Generally yes.

13 Q. And I think you indicated that there were some
14 billing -- there were some problems with that, but it
15 was unintentional that different rates were charged. Do
16 you recall that?

17 A. Yes.

18 Q. What caused your system to generate a wrong
19 amount other than the tariff amount? Since you said it
20 was not intentional I am assuming that -- perhaps I
21 shouldn't assume that you all had some problem with your
22 billing system.

23 A. Well, I think I covered that with Mr. Pozefsky.
24 Like I said, the residential, which is the residential
25 meters and accounts, are the majority of the accounts.

1 And so that is fairly standard. You know, that happens
2 all day every day.

3 There was software problems that we have
4 identified that were associated with accounts that were
5 outside the normal residential accounts, which were
6 effluent or CAP water, things like that. And it was, my
7 understanding was that when the background, the
8 calculations that were being done by the computer, the
9 employees did not see that, so what they thought they
10 were entering as a correct number, when the math was
11 done, wasn't right.

12 Q. Now, you keep saying residential. But I think
13 in your exchange with Mr. Pozefsky you said the San Tan
14 HOA had been billed a different rate than the tariff
15 rate. Now, they are -- I would assume they are not a
16 residential customer?

17 A. No. It was a commercial account.

18 Q. And commercial accounts are the meters. They
19 have to be physically read, or is this one of these
20 electronic --

21 A. No.

22 Q. -- magic things?

23 A. Almost all the commercial accounts in the wells
24 are manually read.

25 Q. And so it is your testimony that the company was

1 experiencing some software problems that caused the San
2 Tan HOA and Swing First to be billed a rate other than
3 the tariff rate when all the calculations were said and
4 done?

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

6 Q. And has the company corrected that problem?

7 A. I believe so, yes.

8 Q. Do you know if that problem extended to your
9 residential customers?

10 A. No, not that I am aware of.

11 Q. And residential customers don't receive
12 effluent, do they?

13 A. No.

14 Q. Because you said something like residential
15 customers and effluent and CAP water. I didn't think
16 residential yet received effluent.

17 A. No. They are all on the domestic water system.
18 And maybe this will be a time to kind of explain that
19 too, because --

20 Q. Sure.

21 A. -- they are on a different system.

22 Q. Sure.

23 A. Domestic water system is piped completely
24 different or completely separate from the effluent
25 system, which is completely separate from the CAP

1 system. So they are not interconnected at all.

2 Q. All right. I wanted to go back and just touch a
3 little on the ADEQ problems, and then I am going to move
4 on.

5 Is there something in the company's operational
6 practices that causes it to have a significant number of
7 violations? Do you need to do more training for your
8 people? Is there some problem with your wastewater
9 treatment facilities that need to be addressed? It just
10 seems that there are a number of continuing violations,
11 particularly with the wastewater. Do your operators
12 need more training, or is there some operational issue?

13 A. The short answer is no. We have employed the --
14 our senior operator and senior engineer, the gentleman
15 by the name of Greg Brown, he was the manager of the
16 water and wastewater division for DEQ for a number of
17 years. So Mr. Brown does training of the employees. We
18 have a number of high level or high grade operators that
19 are on the site at all times.

20 We have a program whereby we are encouraging all
21 of the operators and people working in the system to
22 take their tests. So they have been taking their
23 licensing exams through DEQ for their, you know, Grade 1
24 through 4 water and wastewater. The company actually
25 reimburses them when they pass their test and, you know,

1 increases their pay accordingly. So all the training is
2 there.

3 The operation of the facilities are pretty
4 straightforward. I mean the wastewater plants are
5 almost identical in that an operator from one can go to
6 the other one and they work the same. So no, I don't
7 think operationally there is an issue.

8 Like I said, I think we have a significant issue
9 with the way our operations are perceived and evaluated
10 by the regulatory agency, not the Corporation
11 Commission, but ADEQ.

12 Q. I like the way you clarified that, not the
13 Commission.

14 I want to ask a couple of questions now about
15 your affiliates. And I want to give you a copy of the
16 Commission rules on affiliated interests.

17 We are going to pass out copies.

18 Mr. Tompsett, I believe I have handed to you
19 what has been marked as Exhibit S-1. Could you identify
20 that, please.

21 A. S-1 is Arizona Administrative Code, Title 14,
22 Chapter 2.

23 Q. And if you would, look at the section that's
24 titled Article 8. Can you read what that is.

25 A. I am sorry, Article 8?

1 Q. It is in the first column down there, right
2 there, Article 8, public utility -- well, I will read it
3 for you. Public utility holding companies and
4 affiliated interests. Are you familiar with this rule?

5 A. I believe so, yes.

6 Q. When did Johnson become subject to these rules?

7 A. I think these, I think this is when the utility
8 becomes a Class A.

9 Q. And when did Johnson become a Class A utility?

10 A. I don't recall what year.

11 Q. And are you responsible --

12 A. It has been in the last couple years.

13 Q. Okay. And are you responsible for the
14 preparation of the reports that are due pursuant to this
15 rule, or are they prepared by you or under your
16 direction?

17 A. The affiliated interest?

18 Q. Yes.

19 A. Yes.

20 Q. And what is your understanding of what the
21 definition of affiliate is?

22 A. Common ownership or common -- well, common
23 ownership.

24 Q. And is common ownership or the ability to
25 control, would that be part of your understanding of

1 what an affiliate is?

2 A. Well, there is a definition here under
3 affiliate. It is referred control -- if you want to --

4 Q. Do you want to --

5 A. -- give me a minute to read that.

6 Q. Do you want to read it out loud? You can read
7 it into the record for me.

8 A. If you like.

9 Q. Thank you.

10 A. You want 1.0?

11 Q. Yes, 14-2-801.

12 A. Yes, definitions.

13 Q. All right.

14 A. Affiliate, in parentheses, with respect to the
15 public utility, shall mean any other entity directly or
16 indirectly controlling, or controlled by or under direct
17 or indirect common control with, the public utility.
18 For purposes of this definition, the term control,
19 including the correlative meanings of the terms
20 controlled by and under common control with, as used
21 with respect to any entity shall mean the power to
22 direct the management policies of such entity whether
23 through ownership of voting securities or by contract or
24 otherwise.

25 MS. MITCHELL: Thank you.

1 Your Honor, I didn't move for the admission of
2 S-30. Could I? Because I was going to ask you to take
3 administrative notice of the rule, and then it just
4 dawned on me I didn't move for the admission of that
5 exhibit. And I would like to move for that, the
6 admission, now before I forget.

7 ALJ WOLFE: I am looking for my copy of S-30 so
8 I will know what you are talking about. Can you remind
9 me?

10 MS. MITCHELL: It is the response, the data
11 response in the complaint docket.

12 ALJ WOLFE: I have it here. Are there any
13 objections to S-30 being admitted here?

14 MR. CROCKETT: No, Your Honor.

15 MR. MANNATO: No.

16 ALJ WOLFE: S-30 is admitted.

17 (Exhibit No. S-30 was admitted into evidence.)

18 BY MS. MITCHELL:

19 Q. I just want to ask you a couple questions about
20 the company's affiliated filing, and I want to show you
21 your filing from 2006.

22 ALJ WOLFE: While that is being passed, I will
23 take administrative notice of this copy of Rule
24 R14-2-801 through 806.

25 BY MS. MITCHELL:

1 Q. Mr. Tompsett, could you identify this document
2 for the record.

3 A. Yes. It is our -- re line is Johnson Utilities
4 affiliated interests annual filing. It is date stamped
5 received by the Arizona Corporation Commission Director
6 of Utilities Division April 16th, '07.

7 Q. Could you turn to the second page of this
8 document, and could you identify the title of this
9 second page, what this is.

10 A. It lists the A.R.S., or Arizona administrative
11 statute, I think we just talked about, 14-2-805(A),
12 responses for year ending December 31, '06.

13 Q. All right. And on that page, what is the -- the
14 number 1, what is that a listing of?

15 A. Number 1 says Central Pinal Contracting, LLC.

16 Q. I think number 1 contains more than that.

17 A. Oh, I am sorry. Do you want me to read all of
18 it?

19 Q. Sure.

20 A. Oh, okay. Central Pinal Contracting, LLC. Do
21 you want the addresses and all?

22 Q. No. Just are these, are these the companies
23 that you considered responsive to 14-2-805(A) as
24 affiliates of Johnson?

25 A. Yes.

1 Q. Okay. And the first one that is listed is
2 Central Pinal Contracting, LLC. Do you know who the
3 members and managers were of Central Pinal Contracting,
4 LLC, at the time this report was presented or prepared?

5 A. Not specifically, no. It would have been common
6 owner or common interest with the utility company. So
7 it would be either a George Johnson entity or myself.

8 Q. I am going to show you some records from our
9 Corporations Division. Then we won't have to guess.

10 A. Yes. I think they are all public record so...

11 Q. Mr. Tompsett, I have marked as Staff
12 Exhibit S-3 -- could you identify this exhibit.

13 A. Yes. This is the articles of organization for
14 Central Pinal Contracting, LLC.

15 Q. And if you look at Article VI, at the bottom of
16 the page --

17 A. Yes.

18 Q. -- it identifies who the managers are and each
19 member who owns 20 percent or more interest in the
20 capital or profits of the LLC. Can you tell me who they
21 are.

22 A. Yes. It says Atlas Southwest, Inc.

23 Q. As the manager?

24 A. Yes, as manager. And Crisbar, LLC as member.

25 Q. And what is the -- I think on the second

1 page you will find a date of the document. Can you tell
2 me what that date is.

3 A. This is dated or it was signed December 31st,
4 2003.

5 Q. Now, Atlas Southwest is the manager. Do you
6 know who the officers or directors are of Atlas
7 Southwest, Inc.?

8 A. No, not specifically. I would think that's of
9 public record here somewhere, too.

10 Q. Do you know who the members and managers were at
11 this time, at the time that this was prepared, of
12 Crisbar, LLC?

13 A. Again, not specifically. Like I said, I am sure
14 it is -- there will be another filing like this,
15 articles of organization here, if we have those
16 somewhere.

17 Q. Do you know how many employees Central Pinal
18 Contracting, how many employees they have?

19 A. Currently?

20 Q. Sure.

21 A. I think around eight or ten.

22 Q. Are you one of their employees?

23 A. No.

24 Q. Are you a manager or a member presently of
25 Central Pinal Contracting?

1 A. No.

2 Q. Are any of the employees of Central Pinal
3 Contracting also employed by Johnson Utilities?

4 A. No, I don't think so.

5 Q. Did Central Pinal Contracting provide services
6 to the utility?

7 A. Yes. I think we had a -- as I recall, one of
8 the data requests talked about that and they were
9 involved in some construction over some of the years. I
10 don't remember what the data request number was.

11 Q. All right. I want to ask you some questions
12 about -- I am going to go back to S-2, and that's the
13 listing of your 2006 filing on the affiliates.

14 Specific Engineering, LLC, do you know who the
15 members and the managers were at the time this was
16 prepared?

17 A. Back in '06, no, not specifically. Do you
18 have --

19 Q. I have a document for you.

20 A. Thank you.

21 Q. Yes.

22 A. Thank you.

23 Q. Mr. Tompsett, do you have a document that has
24 been marked S-5? Could you identify that, please.

25 A. Yes, I do. S-5 is the articles of organization

1 for Specific Engineering, LLC.

2 Q. And in Article VI it lists the manager and the
3 members of this LLC. Can you read those, tell me who
4 those are.

5 A. Yes. The manager is listed as Atlas Southwest,
6 Inc. and the member is Atlas Southwest, Inc.

7 Q. And on page 2 of that it lists the date. And
8 that's March 25th, 2004?

9 A. Yes, March 26, yes.

10 Q. Oh, all right. Thank you. I misread that.
11 Does Specific Engineering, LLC provide any
12 services to the utility?

13 A. Yes. It is an engineering firm that does
14 provide engineering services to the utility.

15 Q. And what type of services are those?

16 A. Civil engineering services, design service,
17 water/sewer design services. They contract with survey
18 companies, things like that.

19 Q. Do you know if any of these, the previous, the
20 Central Pinal Contracting -- and I am going to have some
21 more questions about them -- and Specific Engineering,
22 do you know if they provide services to other entities
23 other than Johnson Utilities?

24 A. Very limited.

25 Q. All right. So would you say they were primarily

1 organized to provide services to the utility?

2 A. Yes.

3 Q. Both Central Pinal Contracting and Specific
4 Engineering?

5 A. For the most part, yes.

6 Q. Who negotiates the contracts for services
7 between the utility and Central Pinal Contracting and
8 Specific Engineering?

9 A. I am sorry. Could you repeat that?

10 Q. They provide service to the utility. I think
11 you testified to that.

12 A. Yes.

13 Q. So I am assuming there is some contract
14 arrangement, whether written or oral. And who
15 negotiates those contracts between the utility and these
16 affiliated entities?

17 A. There would be contracts for specific jobs and
18 specific sites.

19 Q. Would you do negotiations of those contracts?

20 A. I have, yes.

21 Q. And do you have, is there a counterpart at each
22 of these affiliates that you negotiate the agreements
23 with?

24 A. Yes.

25 Q. Do you know how many employees Specific

1 Engineering, LLC has?

2 A. Currently I think there are only three or four.

3 Q. They are not employed by the utility and
4 Specific at the same time, are they?

5 A. No.

6 Q. All right. Before I leave, because I will
7 forget, I want to go back to Central Pinal Contracting,
8 LLC. And we had gone through who the members were at
9 the time that it was organized. Are those the same
10 members and managers today, do you know?

11 A. No, they are not.

12 Q. Do you know who the current members and managers
13 are?

14 A. No, not specifically.

15 Q. I have a document.

16 A. Okay.

17 Q. You have what has been marked as Staff
18 Exhibit S-4. Could you identify that, please.

19 A. Yes, yes. S-4 is the articles of amendment to
20 the organization of Central Pinal Contracting, LLC.

21 Q. And if you could turn to page 2 of that
22 document, it identifies the new managers and members.
23 Could you read those, please.

24 A. Yes. The managers are Chris E. Johnson and
25 Barbara A. Johnson.

1 Q. And who is the member?

2 A. I am sorry. A member is the Chris Johnson and
3 Barbara Johnson as trustees of the Roadrunner Trust.

4 Q. Now, who is Christopher Johnson?

5 A. He is George Johnson's son.

6 Q. And who is Barbara Johnson?

7 A. George Johnson's daughter.

8 Q. Daughter?

9 A. Daughter.

10 Q. And the Roadrunner Trust, do you know who the
11 beneficiaries of this trust are?

12 A. Utility is not a party to that trust at all.
13 That is a separate trust. I don't have those documents.

14 Q. That really wasn't my question. I asked you if
15 you knew who the beneficiaries of the trust were.

16 A. No.

17 Q. You don't know if it is George Johnson,
18 Christopher Johnson, or Barbara Johnson or grandchildren
19 or some other family member is the beneficiary of this
20 trust?

21 A. Well, Chris Johnson and Barbara Johnson are
22 members, trustees.

23 Q. They are trustees, but you don't know who the
24 beneficiaries of the trust are?

25 A. No. George Johnson and myself are not

1 beneficiaries of the trustee.

2 Q. So is it the company's position that with this
3 change of member and management, that Central Pinal
4 Contracting is no longer an affiliated entity of Johnson
5 Utilities?

6 A. Yes.

7 Q. Even though the son and daughter are now the
8 managers, that does not make them an affiliate?

9 A. Yes.

10 Q. All right. I want to go back to your -- the
11 2006 filing, Utility Contracting Services.

12 MR. CROCKETT: Your Honor, if I could just raise
13 an issue right now. Are we talking about Exhibit S-2?

14 MS. MITCHELL: I got so many pieces of paper
15 here.

16 MR. CROCKETT: We are talking about the
17 affiliated interest filing?

18 MS. MITCHELL: Yes.

19 MR. CROCKETT: Okay. Judge Wolfe, as I am
20 sitting here looking at Exhibit S-1, Rule 14-2-802(B)
21 says that information furnished to the Commission in
22 compliance with these rules will not be open to public
23 inspection or made public except on order of the
24 Commission or by the Commission or a Commissioner in the
25 course of a hearing or proceeding. And that has not

1 happened.

2 And this is, I mean this is nonpublic
3 information that utility companies, that in a public
4 holding company, submit to the Arizona Corporation
5 Commission. So, you know, I would raise an objection to
6 this exhibit being admitted absent an order of the
7 Commission.

8 MS. MITCHELL: You know, Mr. Crockett, when I
9 got this report nobody told me that it was confidential.
10 And I do apologize if -- I have asked for -- I have not
11 moved for the admission, so perhaps we could either -- I
12 could withdraw the submission of the report. But I do
13 believe that information on the various Johnson related
14 entities are public record through our Corporations
15 Division, and I believe I have the right to ask about
16 those affiliates if they are public record.

17 If I sit there and I look at one, it leads me to
18 information on another one, which leads me to
19 information on another one, which leads me to
20 information on another Johnson related entity. And I do
21 believe that I am not foreclosed from asking about
22 those. And, in addition, the company also submitted
23 some of these entities in response to some data
24 requests.

25 So I won't ask questions and, you know, we can

1 strike whatever part I asked about the reports. I think
2 that may be appropriate.

3 MR. CROCKETT: And, Judge, I agree with
4 Ms. Mitchell that she is entitled to ask about matters
5 that are public record and information that we have
6 provided to the Commission in the form of data
7 responses.

8 My objection was to the public disclosure of
9 this document, S-2, without an order of the Commission.
10 And, you know, to the extent that she independently can,
11 you know, develop the information that's in the report,
12 obviously we have got no objection to that. It is just
13 the report itself that we object to coming in as
14 evidence in this case.

15 ALJ WOLFE: So this hasn't been moved yet,
16 correct?

17 MR. CROCKETT: That's correct, Your Honor.

18 ALJ WOLFE: All right. Thank you.

19 MS. MITCHELL: Can I continue or were you going
20 to --

21 ALJ WOLFE: I don't have anything before me to
22 rule on.

23 MS. MITCHELL: All right.

24 BY MS. MITCHELL:

25 Q. Let me ask you about Utility Contracting

1 Services, LLC. Do you know whether they provide
2 services to the utility?

3 A. Yes, I believe they do.

4 Q. And what kind of services do they provide?

5 A. I believe they provide a contract documentation
6 service and preparation services.

7 Q. The Club at the Oasis, LLC, do you know who the
8 members and the managers of that particular organization
9 are?

10 A. Again, I assume that's going to be public
11 record. You have that?

12 Q. I do.

13 A. Thank you.

14 Q. You are welcome.

15 A. I would be guessing otherwise.

16 Q. Mr. Tompsett, I believe you have what has been
17 marked as Exhibit S-8. Could you identify that, please.

18 MR. CROCKETT: Your Honor, did we get a copy of
19 S-8? I apologize. If it is here -- it may be here. I
20 don't see it, though.

21 (Brief pause.)

22 BY MS. MITCHELL:

23 Q. Could you identify that.

24 A. Yes. This is the corporate information on The
25 Club at Oasis, LLC.

1 Q. And can you identify the members and the
2 manager. I think it is down there at the bottom. I
3 don't have my copy because Mr. Crockett has my copy.

4 A. It says the member -- member information lists
5 Barbara Johnson as the manager, George Johnson as
6 manager, Roadrunner Trust as the member.

7 Q. And what was the effective date of those
8 changes? I believe the day that they took office, it is
9 down there at the bottom in bold.

10 A. Date taken -- well, it says George as manager,
11 George Johnson, manager, taking office 7/23/03. It says
12 Barbara Johnson taking office 8/27/09. I don't know if
13 that replaces the manager, but it says the Roadrunner
14 Trust as member as effective 1/1/07.

15 Q. That's the date of the trust. If you would,
16 flip over to the second page. It is hard to get those
17 corps. printout to get on one page. But it lists --

18 A. I can see here, date of taking office, 8/27/09.

19 Q. Now, is this, The Club at Oasis, is this any way
20 affiliated with the golf course that was the subject of
21 S-30, which wasn't receiving a bill for effluent?

22 A. This would be the same golf course, yes.

23 Q. Shea Utility Services Company, Inc., do you know
24 who the officers or directors or shareholders of that
25 company, do you know who they are?

1 A. Again, not specifically. If you have the
2 document, please.

3 Q. If I showed you a document would that help?

4 A. That would help.

5 Q. Actually, I am going to give you a series of
6 documents related to Shea Utility and we will just talk
7 a little bit about each one of them. This will save a
8 lot of walking for my paralegal, back and forth. I will
9 just give you all the copies. Can you identify S-11.

10 A. Too many documents. Okay. S-11 is a
11 certificate of disclosure for Shea Utility Services
12 Company, Inc.

13 Q. And would you turn to the second page and tell
14 me the title of the second page.

15 A. Sure. Articles of incorporation of Shea Utility
16 Services Company, Inc.

17 Q. And if you could, go to the third page of that
18 document, Article VII.

19 A. Yes.

20 Q. And it indicates who the directors are. Can you
21 read who those people are.

22 A. Yes. The directors are listed as George
23 H. Johnson and Jana S. Johnson.

24 Q. And who is Jana S. Johnson?

25 A. Jana is George Johnson's wife.

1 Q. And then if you could look at S-12 for me and
2 identify that.

3 A. Corporate annual report and certificate of
4 disclosure for Shea Utility Services Company.

5 Q. And what is the date on that report? It is hard
6 to tell, isn't it? I think it is December 18th or 16th,
7 2004.

8 A. Yes. It looks like it was date stamped by the
9 Corporation Commission on December 16th or 18th,
10 something like that, of '04.

11 Q. All right. Could you turn to page 2, please.
12 And number 6 lists the shareholder who owns more than
13 20 percent of the corporation. And the shareholder is
14 George Johnson, is that correct?

15 A. That's correct.

16 Q. And number 7 lists the officers for Shea
17 Utility?

18 A. Yes.

19 Q. And it lists George Johnson as president, is
20 that correct?

21 A. Yes.

22 Q. Jana E. Johnson as secretary/treasurer?

23 A. Yes.

24 Q. And Brian F. Tompsett as executive vice
25 president?

1 A. Yes, Brian P.

2 Q. Brian P, I am sorry.

3 A. There you go.

4 Q. And it had you taken off as of January 2nd,
5 2003?

6 A. Yes.

7 Q. Do you still currently hold an office or
8 position with Shea Utility?

9 A. No.

10 Q. Does Shea Utility provide services to Johnson
11 Utilities?

12 A. Yes.

13 Q. And is that pursuant to a written contract?

14 A. Yes.

15 Q. And what type of services does Shea Utility
16 provide to the utility?

17 A. They contract with the utility for management
18 services and operations.

19 Q. And at the time you were an officer, were you
20 also holding some position of authority within Johnson
21 Utilities?

22 A. Yes. I was executive vice president.

23 Q. Did you negotiate the contract with yourself and
24 then you negotiated on behalf of Shea Utility?

25 A. No, I didn't argue with myself.

1 Q. I just thought maybe you would sit on one side
2 of the table as Shea and then you jump to the other side
3 as Johnson. That didn't happen?

4 A. No, ma'am.

5 Q. Okay. Did you receive any compensation as an --
6 during the time period you were an officer for Shea
7 Utility?

8 A. Yes, I believe so.

9 Q. And you also received compensation in your role
10 with Johnson Utilities?

11 A. I don't think I drew a salary with Johnson
12 Utilities. There was distributions.

13 Q. I will get to that question, too, by Johnson
14 Utilities in a minute. I want to talk about S-13.
15 Could you identify that, please.

16 A. It says Shea Utility Services, corporate -- and
17 then it is officer information.

18 Q. It is going to be really difficult because it
19 drifts over to the second page.

20 A. Yes.

21 Q. But would you agree with me that the officers as
22 of this printout was -- were Christopher E. Johnson and
23 Barbara A. Johnson?

24 A. Yes.

25 Q. And would you agree with me the document shows

1 that they took office January 1, 2007?

2 A. Yes, that's what this says.

3 Q. And are you still an officer of Shea Utility?

4 A. No.

5 Q. And because the officers and the directors are
6 no longer George Johnson and Jana S. Johnson, is that
7 the reason that the company takes the position that this
8 is not an affiliated entity?

9 A. Yes.

10 Q. Who are the members of Johnson Utilities? And I
11 think I have --

12 A. Paper.

13 Q. -- a paper. I do. But you already have this
14 paper. It was a document introduced by Swing First. It
15 is called, it is SF-1, it is a response to a data
16 request. I have copies if you can't find the --

17 A. No, I have --

18 Q. SF-1?

19 A. It is a bit crumpled, but yes.

20 Q. It says please identify the members of Johnson
21 Utilities, LLC.

22 A. Yes.

23 Q. And the response, could you read that, please.

24 A. The response was the members of Johnson
25 Utilities are the George H. Johnson revocable trust and

1 Connorg, LLC.

2 Q. Do you know who the members are, or the members
3 or the managers, of Connorg, LLC?

4 A. Yes.

5 Q. And who are they? Do I need a paper for that?

6 A. No, don't need a paper. That would be myself
7 and my wife.

8 Q. And does Connorg provide any services to the
9 utility?

10 A. No.

11 Q. So I don't need to show you the corporate
12 information for Connorg.

13 A. No, I know what that is.

14 Q. I would like to introduce another exhibit.

15 And before I do that, it is the one that,
16 Mr. Crockett, you and I discussed. It is the Staff data
17 request 4.3, and the company's response to 4.3.

18 And I just want to do a little lead in,
19 Judge Wolfe, because the company had marked that exhibit
20 as confidential, but in some discussions with
21 Mr. Crockett, I said that Staff would have, would
22 challenge the labeling of that as confidential because
23 some of the information, most of the information
24 contained on the document is public record. And
25 pursuant to the terms of the protective agreement, the

1 company is supposed to only mark those parts which
2 aren't public and introduce those.

3 But we worked out an arrangement, if I am
4 representing it correctly, Mr. Crockett, that I can
5 introduce this on a nonconfidential basis.

6 MR. CROCKETT: That's correct.

7 MS. MITCHELL: All right.

8 MR. CROCKETT: Can we get one of those?

9 (Brief pause.)

10 BY MS. MITCHELL:

11 Q. Mr. Tompsett, could you identify S-20 for the
12 record.

13 A. It is data request labeled JMM 4-3.

14 Q. And could you read into the record the data
15 request.

16 A. It says contractors, please provide the names of
17 the contracting companies who constructed plant for the
18 water/wastewater divisions for the years '97 through
19 2007. Please identify the owners of the companies and
20 whether or not the company is affiliated in any way to
21 the contracting companies. If the company is
22 affiliated, please state how.

23 Q. All right. And on this document, there is a
24 chart that lists the name of the contracting company and
25 the year, the name of the contractor, and then the name

1 of the owner in another column. Is that an accurate
2 representation of the company's response?

3 A. Yes.

4 Q. Now, in 2004, Central Pinal -- the company
5 identified Central Pinal Contracting is providing
6 construction of water or wastewater plant for Johnson
7 Utilities in 2004, is that correct?

8 A. Yes.

9 Q. And among the owners listed for Central Pinal
10 Contracting are Crisbar, LLC, and Connorg, LLC. Now, I
11 believe you just testified that Connorg, LLC, you and
12 your wife are the managers and the members, is that
13 correct?

14 A. Yes.

15 Q. What role do you play other than being an owner
16 in Central Pinal Contracting?

17 A. I was one of the owners of the project. I don't
18 recall who the actual manager is at that time, or what
19 the document said.

20 Q. And did you at that time, as part owner of
21 Central Pinal Contracting, have any influence over the
22 bidding process or the response to any bidding process
23 or the pricing of any services from Central Pinal to
24 Johnson Utilities?

25 A. No. They are the manager, or the operating

1 manager for the CPC would have collected bids and
2 evaluated those.

3 Q. And so you don't have any kind of day-to-day
4 influence during the years 2004 -- so you were
5 identified as an owner 2004, 2005 and 2006. You didn't
6 have any kind of day-to-day running of the operations of
7 Central Pinal Contracting?

8 A. I was typically aware what was going on with any
9 construction associated with Johnson Utilities, yes.

10 Q. And it is the company's position that Central
11 Pinal is no longer an affiliate of the utility?

12 A. Yes.

13 MS. MITCHELL: Your Honor, I am getting pretty
14 tired and I have quite a bit more cross for
15 Mr. Tompsett. Do you think we could break for the day?

16 ALJ WOLFE: Yes. I was wondering when you were
17 going to leave the subject. So there is more on this
18 issue?

19 MS. MITCHELL: I just have a little bit on this
20 issue. Then I am going to get more into the other
21 areas, going to CAGR and the company's recommended, the
22 company's response to Staff recommendation. And I have
23 some questions, too, on some of the disagreements we
24 have on plant and plant disallowances.

25 ALJ WOLFE: Okay.

1 MS. MITCHELL: I don't think I could finish
2 before 5:00.

3 ALJ WOLFE: I was giving you five more minutes.

4 MS. MITCHELL: Do you want me to move for the
5 admission of my exhibits or shall I wait until I
6 conclude my whole cross-examination with Mr. Tompsett?

7 ALJ WOLFE: It would probably be better to move
8 the exhibits today.

9 MS. MITCHELL: Let me get the exhibits together
10 so I can make sure I have all the right numbers.

11 MR. CROCKETT: Your Honor, while she is getting
12 her exhibits together, can I or can we collect the
13 Exhibits S-2s?

14 ALJ WOLFE: Yes. I was going to suggest that.

15 MR. MARKS: Before you do that, Mr. Crockett, I
16 think the record would benefit from, since so many
17 questions have been asked on S-2, I know Staff didn't
18 move it, but I will move S-2 at this point and ask the
19 judge as representative of the Commission to provide
20 this as a public record in this docket.

21 ALJ WOLFE: I haven't been faced with
22 interpretation of this rule before, so I will make a
23 ruling on it, but not today, so when we come back on
24 Thursday. In the meantime, please give all the copies
25 to Mr. Crockett.

1 I will note that this rule suffers from some
2 problems in interpretation and who the Commission is as
3 referred to in this rule. It has happened in the past.
4 So I will take a good look at it during the break.

5 MS. MITCHELL: Now my numbering scheme is going
6 to be all off. But I would like to move for the
7 admission I think of S-3, S-4, S-5, S-8, S-11, S-12,
8 S-13, and S-20.

9 ALJ WOLFE: Is there any objection to S-3, S-4,
10 S-5, S-8, S-11, S-12, S-13, or S-20?

11 MR. CROCKETT: No, Your Honor.

12 MR. POZEFSKY: No, Your Honor.

13 THE WITNESS: I have S-30 up here.

14 ALJ WOLFE: S-30 was already admitted.

15 THE WITNESS: Oh.

16 ALJ WOLFE: Thank you. S-2, S-3, S-4, S-5, S-8
17 S-11, S-12 and 13 and S-20 are admitted.

18 MS. MITCHELL: Not S-2.

19 ALJ WOLFE: Not S-2, excuse me.

20 (Exhibits Nos. S-3, S-4, S-5, S-8 S-11, S-12,
21 S-13 and S-20 were admitted into evidence.)

22 ALJ WOLFE: And according to my calendar, we are
23 meeting back here next Thursday at 9:30 a.m.

24 MR. MARKS: And, Your Honor, I did confirm with
25 Ms. Rowell that Friday morning at 9:30 works for her.

1 ALJ WOLFE: Okay. We will start with Ms. Rowell
2 on Friday morning. Hopefully we will finish up with
3 Mr. Tompsett next Thursday. We are adjourned.

4 Everyone have a nice weekend. Thank you.

5 (The hearing recessed at 4:40 p.m.)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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

I, COLETTE E. ROSS, Certified Reporter
 No. 50658 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 30th day of September,
 2009.



 COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658