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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 OCT 30 P 4: 39

COMMISSIONERS

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ARIZONA CORPORATION COMMISSION
SECRET CONTROL

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

DOCKET NO. WS-02987A-08-0180

**JOHNSON UTILITIES'
RESPONSE AND OBJECTION
TO SWING FIRST GOLF'S
MOTION TO ADMIT LATE-
FILED EXHIBITS**

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On October 26, 2009, Swing First Golf ("SFG") filed a Motion to Admit Late-Filed Exhibits (the "Motion") seeking an order admitting three late-filed exhibits. Johnson Utilities ("JU" or the "Company") objects to the admission of these untimely exhibits on the grounds that: (i) the evidentiary record in this case has closed; (ii) SFG has already had ample opportunity to make its record, cross-examine JU witnesses, and introduce evidence during eleven days of hearing in this case; (iii) SFG is using its Motion to improperly provide additional testimony through its legal counsel; and (iv) the exhibits offered by SFG do not tell the complete story without additional explanatory testimony and documentary evidence from JU. For these reasons, the Motion should be denied.

Alternatively, if the administrative law judge ("ALJ") admits SFG's late-filed exhibits, then JU requests the opportunity to provide additional testimony and documentary evidence to supplement the evidentiary record and to rebut certain of the statements contained in SFG's Motion.

Arizona Corporation Commission

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ARGUMENT

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2 The evidentiary hearing in this case which commenced in April 2009 concluded
3 on October 7, 2009. There were eleven hearing days and Company witness Brian
4 Tompsett was on the stand for portions or all of seven different days. SFG took
5 substantial time cross-examining Mr. Tompsett, and introduced more than 40 exhibits
6 during the course of the hearing. In addition, SFG propounded 7 sets of data requests to
7 which JU provided responses. The evidentiary record is extensive in this case, and the
8 time for offering exhibits and testimony has passed. Thus, the late-filed exhibits filed by
9 SFG should be rejected.

10 Further, there are statements in SFG's Motion explaining the late-filed exhibits
11 which constitute testimony by SFG's legal counsel that has not been subject to cross-
12 examination. For example, SFG's counsel states that "Mr. Tompsett did not tell the
13 truth." It would be unduly prejudicial to JU to allow this statement in the record without
14 an opportunity to cross examine SFG and to provide a Company witness to address the
15 late-filed exhibits and provide additional documentary evidence to complete the story.

16 JU finds it troubling that SFG would *sua sponte* file the new exhibits in the public
17 docket after the conclusion of the evidentiary hearing without first seeking leave of the
18 ALJ to docket the exhibits. By so doing, SFG effectively "rings a bell" which is difficult
19 to un-ring. This is a tactic that SFG has used previously in this case and which was noted
20 by the ALJ at the procedural conference held February 26, 2009. At that procedural
21 conference, counsel undersigned raised concerns regarding information that was filed in
22 the docket by SFG, and the ALJ responded as follows:

23 Well, the types of filings that I have been seeing in the docket are
24 disturbing to me, but the filings, they are made and once a filing is made, I
25 can see that the other party wants to make a response to it.
26

1 I don't know how to stop it except for the parties to just agree to just stop it.
2 I don't really see the utility in it. I can't stop something from being filed in
the docket, but once it is, I can't stop someone from responding to it.

3 The relevance of it, of some of it, is questionable. I won't know until there
4 is cross-examination. But I will say at the outset here that I hope this is the
5 last time that we will have to be here for something like that.¹

6 The late-filed exhibits offered by SFG do not tell the complete story regarding
7 effluent production at the Santan Wastewater Treatment Plant and the delivery of effluent
8 to SFG. Moreover, the ALJ rightly acknowledged at the February 26, 2009, procedural
9 conference that the relevance of evidence won't be known "until there is cross-
10 examination."² If SFG's late-filed exhibits are to be admitted, then JU requests an
11 opportunity to cross-examine SFG regarding those exhibits. In addition, JU requests an
12 opportunity to provide a Company witness to testify regarding the statements contained
13 in the Motion and the exhibits docketed with the Motion. Further, JU requests an
14 opportunity to provide exhibits which—when combined with the exhibits docketed by
15 SFG—will tell the complete story.

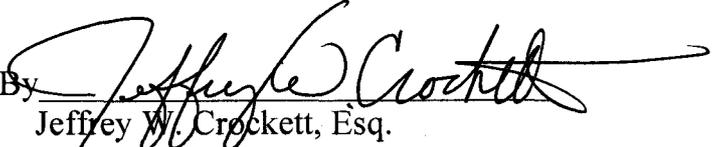
16 In conclusion, JU urges the ALJ to deny admission of the untimely exhibits
17 docketed by SFG with its Motion for the reasons set forth herein. However, if the ALJ
18 admits SFG's late-filed exhibits, JU requests leave to provide additional testimony and
19 exhibits regarding the SFG exhibits in order to provide a complete record regarding the
20 matters addressed by SFG in its Motion.

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25 ¹ *Reporter's Transcript of Proceedings*, Procedural Conference dated February 26, 2009, at p. 9 (Docket No. WS-
02987A-08-0180).
26 ² *Id.*

1 RESPECTFULLY SUBMITTED this 30th day of October, 2009.

2 SNELL & WILMER L.L.P.

3
4 By 

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