

ORIGINAL



0000111676

BEFORE THE ARIZONA CORPORATION

RECEIVED

COMMISSIONERS

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

2010 MAY 14 P 4: 46  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**

MAY 14 2010

DOCKETED BY

IN THE MATTER OF THE FORMAL  
COMPLAINT OF SWING FIRST GOLF  
LLC AGAINST JOHNSON UTILITIES  
LLC.

DOCKET NO. WS-02987A-08-0049  
**JOHNSON UTILITIES' RESPONSE  
TO SWING FIRST GOLF'S REQUEST  
FOR ATTORNEYS' FEES**

INTRODUCTION

Pursuant to the Procedural Order dated March 29, 2010, Johnson Utilities LLC, d/b/a Johnson Utilities Company ("Johnson Utilities" or the "Company") hereby responds to Swing First Golf's ("SFG") request for attorneys' fees as discussed on pages 29-31 of the pre-filed Direct Testimony of David Ashton dated December 30, 2009 (the "Ashton Testimony"). Simply stated, there is no statute or rule which authorizes the Arizona Corporation Commission ("Commission") to award attorneys' fees to a complainant in a formal complaint case or an intervenor in a rate case. Further, Arizona case law is clear that the Commission may not award attorneys' fees to a prevailing party in a complaint case or a rate case.<sup>1</sup> Additionally, from a procedural standpoint, even if attorneys' fees were awardable by the Commission (which they are not), SFG failed to preserve its rights to seek attorneys' fees by omitting a request for attorneys' fees from its complaint and subsequent amended complaint, in clear contravention of Arizona law. Finally, the award of attorneys' fees to SFG in either the complaint case or the rate case

<sup>1</sup> Johnson Utilities notes the obvious that there has been no determination in this complaint case or in Docket WS-02987A-08-0180 (the rate case) that SFG is a prevailing party.

Snell & Wilmer

LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 would establish an imprudent Commission precedent that would not serve the public  
2 interest.

3 The request for attorneys' fees in the pre-filed testimony of a lay witness, as  
4 opposed to a legal motion for attorneys' fees filed at the close of a case, is highly  
5 unusual. Obviously, because the Ashton Testimony does not include any legal analysis  
6 supporting the request for attorneys' fees, there are no legal arguments for Johnson  
7 Utilities to address. Likewise, Johnson Utilities cannot address the response and any  
8 legal analysis of Utilities Division Staff ("Staff") because the Staff response is due at the  
9 same time as the Company's response. Therefore, Johnson Utilities will provide this  
10 legal brief regarding the inapplicability of attorneys' fees in this case, but would reserve  
11 the right to reply to any legal arguments raised by SFG in its reply that is due June 15,  
12 2010, or by Staff in its response which is due May 14, 2010.

13 **DISCUSSION**

14 **I. There Is No Legal Basis to Support SFG's Attorneys' Fees Request.**

15 In general, "attorneys' fees are not recoverable either in the same or a subsequent  
16 action unless provided for by statute or by agreement of the parties." *United States*  
17 *Fidelity & Guaranty Co. v. Frohmiller*, 71 Ariz. 377, 379, 227 P.2d 1007, 1008 (1951).  
18 In this case, SFG fails to cite any legal authority – statutory or otherwise – to support its  
19 request for attorneys' fees. Thus, the Commission should deny SFG's request for this  
20 reason alone. *Cf. City of Phoenix v. Superior Court*, 144 Ariz. 172, 177, 696 P.2d 724,  
21 729 (App. 1985) (denying request for attorneys' fees where the requesting party failed to  
22 cite any authority for such a request). In addition, the allegations in the Ashton  
23 Testimony, even if assumed to be true, do not establish a legal basis for an award of  
24 attorneys' fees to SFG. Thus, SFG has failed to meet its legal burden of showing that it is  
25 entitled to an award of attorneys' fees.

1           **A. There are no statutes which authorize the Commission to award**  
2           **attorneys' fees to SFG in this complaint case.**

3           In *Frohmler*, the Arizona Supreme Court held that if “the legislature intended  
4           under the statute to authorize the payment of attorneys’ fees ... it would have included  
5           such a provision *in plain and unambiguous terms.*” *Frohmler*, 71 Ariz. at 381, 227  
6           P.2d at 1009 (emphasis added). Similarly, in *Semple v. Tri-City Drywall, Inc.*, the  
7           Arizona Court of Appeals declined to allow attorneys’ fees in an administrative  
8           proceeding under A.R.S. § 40-341.01 because “there simply is no indication that the  
9           legislature intended section 12-341.01 to apply to attorney’s fees incurred by the  
10          prevailing party in an administrative proceeding.” *Semple v. Tri-City Drywall, Inc.*, 172  
11          Ariz. 608, 611, 838 P.2d 1369, 1372 (App. 1992). “[W]ithout a *clearly expressed*  
12          *legislative mandate* to make [an individual] liable for attorneys’ fees,” the courts  
13          declined to extend the burden “beyond that imposed under the terms of the statute.” *Id.* at  
14          381, 227 P.2d at 1009 (emphasis added).

15          SFG brought its complaint “[p]ursuant to the provisions of A.R.S. §§ 40-246 and  
16          40-248, and A.A.C. R14-3-106(L).”<sup>2</sup> Neither of these statutes nor the rule make any  
17          mention of attorneys’ fees, let alone provide a “clearly expressed legislative mandate”  
18          authorizing the award of attorneys’ fees. Thus, consistent with the findings in *Frohmler*  
19          and *Semple*, “there is simply no indication that the legislature intended” to authorize  
20          recovery of attorneys’ fees in Commission complaint cases under A.R.S. §§ 40-246 and  
21          40-248. *Semple*, 172 Ariz. at 611, 838 P.2d at 1372. Absent express statutory  
22          authorization, the Commission may not award attorneys’ fees to SFG in this complaint  
23          case. Arizona case law on this point is clear.

24          In *Read v. Arizona Public Serv. Co.*, 2008 WL 4148942 (App. 2008) (not  
25          published),<sup>3</sup> the Arizona Court of Appeals, in dicta, agreed with the plaintiffs/appellants  
26          that they were “not entitled to attorneys’ fees or costs incurred in the [their] ACC action.”

27          <sup>2</sup> See SFG's Amended Formal Complaint at 1.

28          <sup>3</sup> Although *Read v. Arizona Public Serv. Co.* is an unpublished decision which may not be cited as legal  
precedent, Johnson Utilities cites it here because its legal analysis on a matter of dicta is directly on point  
to the issues under consideration in this matter.

1 *Id.* at \*3. In the *Read* case, a customer of Arizona Public Service Company (“APS”) filed  
2 a complaint in Superior Court alleging that APS used improper bill estimation and billing  
3 procedures which resulted in customers being overbilled for electricity. *Read*, 2008 WL  
4 4148942 at \* 1. The Superior Court case was subsequently dismissed, and the  
5 plaintiff/appellant Avis Read (“Mrs. Read”) filed a complaint with the Arizona  
6 Corporation Commission. *Id.* The Commission complaint issues were ultimately  
7 resolved by the parties pursuant to a settlement agreement which was approved by the  
8 Commission in Decision 68112 (Docket No. E-01345A-04-0657). *Id.*

9 As part of the settlement, the parties agreed that the “Read Complaint shall be  
10 dismissed with prejudice, provided that such dismissal shall not be deemed to preclude  
11 Mrs. Read's attorneys from seeking any attorneys’ fees *to which they might be entitled*  
12 *under applicable law.*” Decision No. 68112, Attachment A, ¶ 35 (emphasis added). The  
13 settlement agreement provided further that “[t]his paragraph shall not be construed as an  
14 admission by any party that attorneys’ fees are appropriate in *any* forum.” *Id.*

15 Mrs. Read thereafter proceeded to file a motion for attorneys’ fees with the  
16 Superior Court pursuant to A.R.S. § 12-341.01 for work associated with the court case,  
17 acknowledging therein “that the ACC ‘[did] not have any explicit authority to award ...  
18 fees and costs.’” *Read*, 2008 WL 4148942 at \*1. The Superior Court denied the motion,  
19 stating:

20 In terms of an award for and based upon the outcome over at the  
21 Corporation Commission I think it’s pretty clear that had everyone gone to  
22 the Corporation Commission and everything came out right from the  
23 beginning ... exactly the way that it’s all come out there wouldn’t have  
24 been authority for anybody to be awarded attorney’s fees.

24 *Read*, 2008 WL 4148942 at \* 2. The Court of Appeals affirmed the Superior Court,  
25 agreeing in dicta that Mrs. Read was not entitled to attorneys’ fees for work “incurred in  
26 the ACC action.” *Id.* at \*3. The court further affirmed that “A.R.S. § 12-341.01(A) does  
27 not authorize a trial court to award the prevailing party attorneys’ fees in an  
28 administrative proceeding.” *Id.* (citing *Semple*, 172 Ariz. at 611, 838 P.2d at 1372).

1 Consistent with the analysis in the *Read* case, SFG is not entitled to attorneys' fees for  
2 work that is has or will incur in the Commission complaint case.

3 In *Semple*, a case which involved an appeal of an administrative decision by the  
4 Arizona Registrar of Contractors ("Registrar"), the Arizona Court of Appeals analyzed  
5 A.R.S. § 12-341.01 which permits the recovery of attorneys' fees "in any contested  
6 action arising out of a contract." *Semple* 172 Ariz. 608, 838 p.2d 1369. The *Semple*  
7 court concluded that A.R.S. § 12-341.01 does not authorize an award of attorneys' fees  
8 for work performed in an administrative matter, because a proceeding before an  
9 administrative agency is not an "action" under the statute. *Semple*, 172 Ariz. at 611, 838  
10 P.2d at 1372. The court reasoned that the word "action" expressly refers to litigation in  
11 court, which does not encompass the quasi-judicial function of administrative agencies.  
12 *Id.* Thus, A.R.S. § 12-341.01, as confirmed by the ruling in *Semple*, precludes an award  
13 of attorneys' fees to SFG in this complaint case.

14 In *Frohmler*, the Arizona Supreme Court ruled that public officers were not  
15 entitled to attorneys' fees, even though they were the "prevailing party" in a civil action  
16 brought by a taxpayer. *Frohmler*, 71 Ariz. at 379, 227 P.2d at 1008. The Court  
17 reasoned that the statute at issue allowed a prevailing plaintiff taxpayer to collect  
18 "reasonable attorney's fees," but limited recovery by a prevailing defendant to "all  
19 damages sustained." *Id.* The Court reversed the lower court's award of attorneys' fees  
20 and held that "damages" do not include attorneys' fees. *Id.* at 381, 227 P.2d at 1009  
21 (emphasis added). The *Frohmler* case shows that statutes which authorize attorneys'  
22 fees are to be read literally, and not construed broadly.

23 Applying the cases discussed above to SFG's complaint case, it is clear that any  
24 legal basis that SFG might attempt to put forward to support its claim for attorneys' fees  
25 would be deficient. Simply put, SFG has offered absolutely no legal support for its  
26 request for attorneys' fees, and the statutes and rule that are cited in SFG's complaint do  
27 not permit the recovery of attorneys' fees. Finally, Johnson Utilities is not aware of *any*  
28

1 case where the Commission has ordered an award of attorneys' fees to a complainant in a  
2 complaint case. Thus, SFG's request for attorneys' fees must be rejected.

3 **B. The factual allegations in the Ashton Testimony do not support an**  
4 **award of attorney's fees in the complaint case.**

5 Without any legal analysis in Mr. Ashton's testimony to address, Johnson Utilities  
6 will address the factual allegations put forth in the testimony. Mr. Ashton first asserts  
7 that an award of attorneys' fees is warranted because Johnson Utilities acted maliciously  
8 toward SFG and Mr. Ashton personally. Ashton Testimony at 29, lines 16-21. However,  
9 Johnson Utilities vehemently denies that it acted maliciously toward SFG or Mr. Ashton,  
10 and submits that the facts of this case do not support any such a conclusion. Mere  
11 conclusory allegations are insufficient to form the basis of a valid claim for attorneys'  
12 fees. SFG has cited no legal authority for its position.

13 Second, Mr. Ashton asserts that SFG is entitled to attorneys' fees because Mr.  
14 Ashton "had no choice but to hire an experienced utility lawyer to file this complaint and  
15 represent [him] at the Commission." Ashton Testimony at 30, lines 5-6. Clearly, there is  
16 no Commission rule or other legal requirement that Mr. Ashton hire an attorney to  
17 represent SFG in a complaint proceeding at the Commission, and he has cited none in his  
18 testimony. Presumably, what Mr. Ashton means is that he did not believe he had the  
19 necessary experience to represent his interests or those of SFG, so he needed to hire a  
20 lawyer. However, this same argument could apply to many of the people or entities  
21 which come before the Commission, including many public service corporations. A lack  
22 of personal experience or an inability to effectively represent oneself in a case is not a  
23 recognized basis for an award of attorneys' fees. If it were, there would be no need for  
24 attorneys' fees statutes because every person or entity that hired an attorney would  
25 automatically be entitled to an award of attorneys' fees. Such an argument is not  
26 sustainable on its face.

27 Third, Mr. Ashton asserts that SFG is entitled to attorneys' fees because Johnson  
28 Utilities allegedly made it "difficult to get meaningful responses to discovery." Ashton

1 Testimony at 30, lines 7-11. SFG cites as evidence the Notice of Inappropriate Discovery  
2 and Litigation Tactics that it filed simultaneously in both the rate case docket and this  
3 complaint case. *Id.* However, Johnson Utilities refuted each and every one of SFG’s  
4 allegations in its Response and Motion to Strike Intervenor Swing First Golf’s Notice of  
5 Inappropriate Discovery and Litigation Tactics filed February 26, 2009, in the rate case  
6 docket. Moreover, there has not been any finding in this complaint docket or in the rate  
7 case docket that Johnson Utilities engaged in any abuse of discovery. Notably, SFG  
8 made no mention of attorneys’ fees in its notice filing, but rather stated that “[i]n this  
9 pleading, Swing First is not asking the Commission to take any specific actions to deal  
10 with [Johnson Utilities]....” Notice of Inappropriate Discovery and Litigation Tactics at  
11 11, lines 18-19. There is no factual or legal basis to support an award of attorneys’ fees  
12 against Johnson Utilities for discovery abuses.

13 Finally, SFG contends it will not be provided “complete relief” unless Johnson  
14 Utilities is ordered to pay its attorneys’ fees. Ashton Testimony at 30, lines 12-13. This  
15 claim is likewise legally unsupportable. The statutes and regulation under which SFG  
16 brought its complaint do not provide for attorneys’ fees. *See* A.R.S. §§ 40-246, 40-248,  
17 A.A.C. R14-3-106(L). As in *Frohmler*, the statutes should not be expanded to allow for  
18 recovery beyond the remedies explicitly identified by the legislature in the statutes. In  
19 essence, SFG requested that attorneys’ fees be awarded, if for no other reason, because  
20 SFG suffered alleged damages and needed to be made “whole.” This argument, as  
21 discussed in *Frohmler*, is unavailing. The legal reality is that the meaning of the term  
22 “reparations” in A.R.S. § 40-248 has not been expanded by the legislature to include  
23 attorneys’ fees and the Commission should not impute its own meaning on the  
24 legislatures’ behalf. *Cf. Frohmler*, 71 Ariz. at 382, 227 P.2d at 1010.

25  
26 . . . .  
27 . . . .  
28 . . . .

1           **C. The Commission lacks authority to award attorneys' fees for any**  
2           **breach of the Utility Service Agreement.**

3           To the extent SFG may try to argue that the Utility Service Agreement<sup>4</sup> provides a  
4 valid basis for the recovery of attorneys' fees (it does not), the Commission lacks  
5 authority to make that determination. The proper venue for consideration of that issue is  
6 the pending Superior Court case between SFG and Johnson Utilities (Case No. CV2008-  
7 000141). Arizona law is very clear that issues of contract interpretation are outside the  
8 scope of the Commission's jurisdiction. See *Trico Electric Coop. v. Ralston*, 67 Ariz.  
9 358, 363, 196 P.2d 470, 473 (1948); *Trico General Cable Corp. v. Citizens Utilities Co.*,  
10 27 Ariz.Ct.App. 381, 385, 555 P.2d 350, 354 (App.1976) (“[T]he construction and  
11 interpretation ... under a contract resides solely with the courts and not with the  
12 corporation commission.”). Thus, whether there was any breach of the Utility Service  
13 Agreement and, if so, whether SFG is entitled to any award of attorneys' fees, will be  
14 addressed by the Superior Court.

15           **II. SFG Cannot Recover Attorneys' Fees Incurred in the Rate Case Docket.**

16           **A. The Commission lacks authority to grant relief in this complaint**  
17           **docket for claims related to a separate docket.**

18           SFG provides no legal support for its claim that it is entitled to an award of  
19 attorneys' fees for its participation in the Johnson Utilities rate case as an intervenor. For  
20 the reasons discussed above in Section I, the Commission lacks authority to require  
21 Johnson Utilities to pay the attorneys' fees of SFG in the rate case. Thus, the  
22 Commission must deny SFG's request for recovery of its rate case attorneys' fees in this  
23 complaint case.

24           **B. SFG, as an intervenor in the rate case docket, is not entitled to recover**  
25           **its attorneys' fees.**

26           SFG argues that it is entitled to fees, because its participation in the rate case “was  
27 in the public interest.” Ashton Testimony at 31, lines 1-4. However, as a matter of

28           <sup>4</sup> Agreement Regarding Utility Service dated September 17, 1999, attached as Exhibit A to SFG's Amended Formal Complaint.

1 public policy, SFG's position is unsupportable. Putting aside the fact that (i) there is no  
2 legal authority to award attorneys' fees to intervenors in a rate case, and (ii) the  
3 Commission has never awarded attorneys' fees to an intervenor in a rate case, authorizing  
4 such recovery would open the floodgates to protracted rate case proceedings that would  
5 result in a waste of the Commission's limited resources. For example, the Commission  
6 would have to establish a secondary briefing and hearing schedule after a rate case to  
7 determine whether an intervenor is entitled to attorneys' fees and whether the request was  
8 reasonable. In addition, if an intervenor is not deemed a prevailing party in the rate case,  
9 would that intervenor be subject to paying another party's attorneys' fees? If Staff or  
10 RUCO were not the prevailing party would the Commission and/or RUCO be responsible  
11 for paying a party's attorneys' fees? *See e.g.*, A.R.S. § 12-348. Such a result would be  
12 untenable.

13 SFG's suggestion is likewise unsupportable from a legal perspective. First, no  
14 statute authorizes fees for a "prevailing" intervenor in an administrative hearing. Since  
15 the intervenor did not file the application and may only have an interest in a discrete  
16 issue, it would be difficult for the Commission to determine whether a party is entitled to  
17 fees, and if so, whether the party is entitled to its full fees or just a portion for issues on  
18 which it was "successful." In an analogous situation involving Commission  
19 consideration of a Certificate of Environmental Compatibility, courts have declined to  
20 award attorneys' fees "to private parties that intervene on the side of the state." *Grand*  
21 *Canyon Trust*, 210 Ariz. at 40, 107 P.3d at 366. In *Grand Canyon Trust*, the court noted  
22 that the State is generally precluded from recovering fees against a party challenging one  
23 of its decisions. *Id.* This is because the Legislature does not want to create "a  
24 disincentive for private parties to challenge governmental action..." *Id.* As such, the  
25 courts are not inclined to award fees to an intervenor that is advocating for the State's  
26 position, even if that position is in the public interest. *Id.*

27 As in *Grand Canyon Trust*, SFG claims to have intervened in the rate case in  
28 support of the Commission's positions, providing "the Commission relevant information

1 about Utility that it would otherwise not have considered.” Ashton Testimony at 31, lines  
2 2-4. Thus, to the extent SFG “prevails” in supporting the Commission’s decision, it is  
3 not entitled to the recovery of fees, as authorizing such recovery would have a chilling  
4 effect on private entity participation in the rate setting process.

5 It should also be noted that of the nine recommendations of SFG in the rate case,  
6 all were rejected by Staff and then, by the administrative law judge (“ALJ”) in her  
7 recommended opinion and order (“ROO”) issued May 7, 2010. In the ROO, the ALJ  
8 noted that “Staff stated that it does not support the recommendations made by Swing First  
9 in this docket, and noted that a number of actions Swing First recommended are beyond  
10 the constitutional and statutory authority of the Commission to implement.” ROO dated  
11 May 7, 2010 (Docket WS-02987A-08-0180) at 58, lines 5-7 (citations omitted). Thus, even  
12 if attorneys’ fees were awardable to a prevailing intervenor in a rate case, SFG was  
13 certainly not a prevailing intervenor.

### 14 **III. SFG’s Request for Attorneys’ Fees is Procedurally Deficient.**

15 SFG did not request attorneys’ fees in its original complaint, did not request  
16 attorneys’ fees when it amended its complaint, and did not cite any authority in the  
17 Ashton Testimony that would support an award of attorneys’ fees in this docket or the  
18 rate case docket (Docket No. WS-02987A-08-0180). SFG has failed to preserve this  
19 issue and its request for attorneys’ fees, which came nearly two years after filing the  
20 amended complaint, is untimely, unsupported and unsustainable under Arizona law.

21 The Arizona Rules of Civil Procedure, which control when Commission procedure  
22 is not established by law, rule or Commission order,<sup>5</sup> state: “A claim for attorneys’ fees  
23 *shall be* made in the pleadings.” Ariz.R.Civ.P. 54(g)(1) (emphasis added). Neither the  
24 Commission’s procedural rules nor the Arizona Revised Statutes establish a right to  
25 recover fees in matters such as this – therefore the Arizona Rules of Civil Procedure  
26 control. Under those rules, the Commission “may not award attorneys’ fees ... if the

27 <sup>5</sup> A.A.C. R14-3-101(A) (“In all cases in which procedure is set forth neither by law, nor by these rules,  
28 nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of  
Arizona as established by the Supreme Court of the state of Arizona shall govern.”).

1 moving party only makes a claim for such fees in a motion outside of the pleadings.” *Cf.*  
2 *King v. Titsworth*, 221 Ariz. 597, 599, 212 P.3d 935, 937 (App.2009) (denying fees in a  
3 superior court case, when the defendant failed to make a request in its pleading); *see also*  
4 *Roubos v. Miller*, 214 Ariz. 416, 420, 153 P.3d 1045, 1049 (App.2007) (“When a party  
5 requests fees, it not only must state the statutory or contractual basis for the award, but  
6 also must make the request in a *timely* manner.” (Emphasis added)). In *King*, the court  
7 found that since the defendant “did not make a claim for attorneys’ fees in his initial  
8 pleading or in an amended pleading, the trial court’s award of fees ... was in error and  
9 [should be] vacated.” *Id.* at 600, 212 P.3d at 938.

10 SFG claims to have “had no choice but to hire an experienced utility lawyer to file  
11 this complaint and represent [it] at the Commission.” Ashton Testimony at 30, lines 5-6.  
12 However, even with the assistance of an experienced attorney, SFG did not assert a claim  
13 for attorneys’ fees in its complaint. Moreover, when given an opportunity to amend its  
14 complaint, SFG further declined to assert a request for attorneys’ fees. It was not until  
15 one year and ten months after filing its amended complaint that SFG offered its  
16 unsupported request for attorneys’ fees in the last pages of the Ashton Testimony. As in  
17 *King*, SFG’s failure to timely request attorneys’ fees runs contrary to Rule 54(g)(1) and  
18 public policy. *See King*, 221 Ariz. at 300, 212 P.3d at 938 (The purpose of requiring  
19 attorneys’ fees requests in the pleadings “is to ‘promote settlement of disagreement out of  
20 court’ and that ‘[u]nless each party is on notice *before* each stage of the law suit that its  
21 opponent intends to ask for attorney[s]’ fees, [that] purpose cannot be served.” (Citations  
22 omitted)). Even after nearly two years, SFG could not identify any legal support for its  
23 claim. In light of SFG’s failure to properly file its request and preserve its claim for  
24 attorneys’ fees, SFG’s request should be denied as it is procedurally improper and has  
25 prejudiced Johnson Utilities.<sup>6</sup>

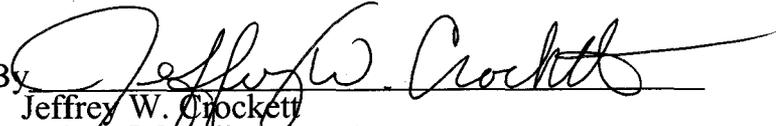
26  
27  
28 <sup>6</sup> *See also* Ariz.R.Civ.P. 54(g)(2) (provides that “the determination as to the claimed attorneys’ fees shall be made after a decision on the merits of the cause.”); A.A.C. R14-3-101(A).

**CONCLUSION**

1  
2 For all of the reasons discussed above, Johnson Utilities respectfully requests that  
3 this Commission deny SFG's request for attorneys' fees in this complaint docket and in  
4 Docket WS-02987A-08-0180 (the rate case) on the grounds that the request is  
5 unsupported by law or facts, is contrary to the public interest, and is untimely.

6 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of May, 2010.

7 SNELL & WILMER L.L.P.

8  
9 By   
10 Jeffrey W. Crockett  
11 Robert J. Meli  
12 One Arizona Center  
13 400 East Van Buren  
14 Phoenix, Arizona 85004-2202  
15 Attorneys for Johnson Utilities LLC

13 ORIGINAL and 13 copies filed this  
14 14<sup>th</sup> day of May, 2010, with:

15 Docket Control  
16 Arizona Corporation Commission  
17 1200 West Washington  
18 Phoenix, Arizona 85007

19 Copy hand-delivered this 14<sup>th</sup> day  
20 of May, 2010, to:

21 Janice Alward, Chief Counsel  
22 Legal Division  
23 ARIZONA CORPORATION COMMISSION  
24 1200 West Washington Street  
25 Phoenix, Arizona 85007

26 Ernest Johnson, Director  
27 Utilities Division  
28 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**Snell & Wilmer**

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

- 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
- 26
- 27
- 28

COPY sent via U.S. Mail and  
E-Mail this 14<sup>th</sup> day of May, 2010, to:

Craig A. Marks  
CRAIG A. MARKS, PLC  
10645 N. Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
Craig.Marks@azbar.org  
Attorney for Swing First Golf LLC

*CrumBall*

---