

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

RECEIVED

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

OCT 8 2010

2010 OCT - 8 P 3:49

DOCKETED BY

AZ CORP COMMISSION  
DOCKET CONTROL

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

DOCKET NO. WS-02987A-08-0180

NOTICE OF INAPPROPRIATE CUSTOMER COMMUNICATIONS

1 As further described below, Swing First Golf LLC ("Swing First") hereby provides  
2 notice of inappropriate communications from Johnson Utilities, LLC ("Utility").

3 **1. INTRODUCTION**

4 During the evidentiary hearings in this docket, Swing First provided evidence to the  
5 Commission concerning Utility's abysmal treatment of its customers, including:

- 6 • Suing customers for protesting Utility's sewage spills;
- 7 • Widespread overbilling for irrigation water service;
- 8 • Suing customers for discussing Utility's enormous overbilling for irrigation water
- 9 service;
- 10 • Ignoring Commission Rules and illegally cutting off water service;
- 11 • Deliberately flooding a customer's golf course; and
- 12 • Sending threatening letters to a customer's investors.

13 Now that its rate case is over, Utility is once again lowering the bar for public service.

14 **2. UTILITY IS MISLEADING ITS CUSTOMERS**

15 Exhibits A and B are copies of two recent bill inserts that Utility mailed to its customers.  
16 Exhibit A is a document headed "We Are All Facing Tough Times." The document begins by  
17 trying to influence customers to support Mr. Johnson's positions concerning two local political

1 issues. This is clearly inappropriate. Utility should not be allowed to take or encourage political  
2 positions in its bill inserts.

3 Of perhaps greater concern, Utility uses the bill insert to mislead its customers  
4 concerning this rate case. Utility says: “[W]e can tell you that your rates are going to go down in  
5 the coming months. Years of strict budget practices are beginning to payoff, even as most other  
6 utility companies are receiving large rate increases.” In other words, Utility is taking credit for  
7 the very rate decreases that it fought so hard against.

8 Exhibit B is a copy of another misleading bill insert, this time in question-and-answer  
9 format. In this insert, Utility essentially argues with the Commission Decision in this case. In  
10 some cases, as in the first question and answer, Utility deliberately mischaracterizes the issues  
11 that Staff and the Commission were concerned with:

12 There has been some talk about Johnson Utilities not providing records to the  
13 ACC staff during the rate case. Is this true?

14 In the rate case, there was no dispute that JU provided volumes of records to staff  
15 in support of \$200 million in plant cost. ACC staff took issue with the way that  
16 the documentation was organized.

17 As the Decision clearly discusses—and as Utility well knows—the issue was not how Utility’s  
18 documentation was organized. The issues were Utility’s failures to follow the Uniform System  
19 of Accounts and to provide sufficient detail to allow Staff to audit plant accounts:

20 Staff did not dispute that the Company submitted voluminous documents, but  
21 stated that Staffs audit and analysis could not verify the Company’s claims. Staff  
22 stated that its audit process was made difficult in this case by the Company’s  
23 failure to keep its records in accordance with the National Association of  
24 Regulatory Utility Commissioners (“NARUC”) Uniform System of Accounts  
25 (“USOA”) and Commission rules. ... The evidence in this case demonstrates that  
26 the Company has not complied with regulatory accounting requirements, and has  
27 not met its burden of proof regarding the actual cost of its properties.<sup>1</sup>

28 Utility should not be allowed to mislead its customers concerning a Commission  
29 Decision. An appropriate remedy would be for Utility to mail to every customer, at its own  
30 expense, a copy of the Decision, together with a Commission-approved summary.

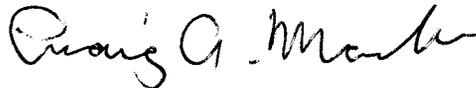
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<sup>1</sup> Decision No. 71854 at 6-7, 9.

1 **3. UTILITY IS TRYING TO SHUT DOWN A PUBLIC-DISCUSSION WEBSITE**

2 Exhibits C and D are copies of letters from Utility's attorneys. The letters seek to shut  
3 down a public-discussion website concerning Johnson Utilities, known as  
4 JohnsonsWaterStinks.com. The Commission may want to review this website and determine  
5 whether Utility's actions are appropriate.

6 RESPECTFULLY SUBMITTED on August 9, 2010.

7 

8  
9  
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15 [Craig.Marks@azbar.org](mailto:Craig.Marks@azbar.org)  
16 Attorney for Swing First Golf LLC

Original and 13 copies **filed**  
on August 9, 2010, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

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on August 9, 2010, to:

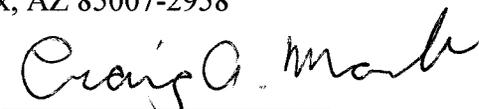
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1110 West Washington Street, Suite 220  
Phoenix, AZ 85007-2958

By:   
Craig A. Marks

## **"We are all facing tough times"**

With the end of summer upon us, I would like to update you on a number of developments over recent months regarding securing a library for our area, the subject of incorporation, and your utility rates. Tough times continue to challenge the homeowners of San Tan Valley but there are a few things that can be done to protect your hard-earned money and your tax dollars.

You have been paying taxes into a County Library District for years but none of that money has been returned to San Tan Valley. Instead, your county library taxes have been sent to fund libraries in other municipalities. This is wrong. Having access to educational and recreational reading materials is something all residents should have – regardless of whether or not our area is incorporated. Especially when we've already been paying hundreds of thousands of dollars in library taxes. I made a personal commitment to try and fix this problem by refurbishing an existing building and outfitting it as a full-service library. Unfortunately, political differences interfered with the progress of this project for quite some time. I am pleased to report however that Supervisor Martyn and I have attempted to put our differences aside with respect to providing a library for the San Tan area. We have both committed to each other to work and find a solution that will benefit the residents and taxpayers of our area. While we will continue to have our differences of opinion, we both recognize that residents of this area should not be penalized by our conflicts. I look forward to sharing more of this positive move toward bringing you a library in the coming months.

Another issue related to your tax dollars is the subject of incorporation. Most of you know I have very strong opinions on this subject. Why? *Because incorporation of the San Tan Valley area at this time is a very real threat to your survival in this tough economy.* Proponents of incorporation have pledged to lobby the Arizona Legislature and continue to aggressively push the issue. If they are successful, incorporation will happen in San Tan Valley at lightning speed. You might ask "what is so bad about that?" Two facts: this group continues to refuse to put forth any reliable budget estimates or budget projections for the initial years of the proposed city. Taxpayers deserve to know what becoming a new city will cost them but incorporation advocates won't provide this information because they are afraid the numbers will scare you. The second fact is that despite vague promises of economic development and "self-determination" YOUR taxes will immediately go up by the thousands. Can you afford this? A large percentage of homeowners I speak with are on the brink of foreclosure and at risk of losing their homes. A tax burden in the thousands will push them over the edge. You have worked hard for what you have and you have every right to keep it. This is the absolute wrong time to force even more taxes upon you. Please research the tax implications of incorporating so you can make your own educated decision on this subject. Please don't be fooled by vague promises without any facts to back them up.

Finally, I wanted to share some good news with you regarding your utility rates. Recently, Johnson Utilities filed a rate case with the Arizona Corporation Commission. We do not have final details but we can tell you that your rates are going to go down in the coming months. Years of strict budget practices are beginning to pay off, even as most other utility companies are receiving large rate increases. Once the Commission releases the final order, we will provide you with an official notice that will let you know exactly what you will be saving.

Thank you for reading this letter. I appreciate you giving me a few minutes of your time and I want you to know that I don't take this privilege for granted.

Sincerely,

George Johnson

Questions and Answers about the Rate Case

**There has been some talk about Johnson Utilities not providing records to the ACC staff during the rate case. Is this true?**

In the rate case, there was no dispute that JU provided volumes of records to staff in support of \$200 million in plant cost. ACC staff took issue with the way that the documentation was organized.

**Did JU rely solely on developers to build the infrastructure?**

The owners of this company invested significant amounts of money in the company to build infrastructure and also had developers build infrastructure in accordance with the rules and regulations of the ACC and the company's approved tariff. The use of developer built infrastructure helps keep the rates low for our customers and is the same practice that cities use for their public utilities.

**How does the Company feel about the decrease in rates?**

It is important to note that Johnson Utilities asked for a decrease in the water rates and an increase in sewer rates, and the net result of our initial filing was an overall decrease. The additional rate decrease occurred because the ACC removed significant amount of utility plant from the rate base.

**Did the Company retain any information regarding bids for construction of the plant?**

There was no reason to retain the information regarding the bids that did not receive awards. The ACC staff did not raise any concerns regarding the reasonableness of the construction costs.

**Does the Company follow the regulatory requirements set out by ADEQ and EPA?**

In accordance with EPA and ADEQ regulations, ADEQ takes regular water samples of the water system and these samples are tested by an independent lab. The water has been found to meet all state Health and Safety standards. The annual report can be found on our website at [www.johnsonutilities.com](http://www.johnsonutilities.com) showing we are in full compliance.

**Is the Company aware of a website that was disputing the quality of Johnson Utilities water?**

Yes, and Johnson Utilities takes very seriously the quality of its water supply. The company will vigorously and aggressively defend any unsubstantiated claims that the water is unhealthy and/or does not meet drinking water standards.

**Does the Company have outstanding Notice of Violations with Arizona Dept of Environmental Quality?**

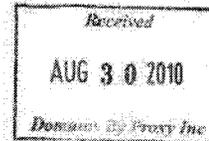
The Company has fully responded to every NOV and has complied with everything that ADEQ has asked the Company. At the present time, we are waiting for the NOV's to be closed.

Exhibit C

**Snell & Wilmer**  
L.L.P.  
LAW OFFICES

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Suite 1900  
Phoenix, Arizona 85004-2202  
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DENVER  
LAS VEGAS  
LOS ANGELES  
LOS CABOS  
ORANGE COUNTY  
PHOENIX  
SALT LAKE CITY  
TUCSON

August 27, 2010

Via Certified Mail and E-MAIL to: generalmanager@domainsbyproxy.com

Domains by Proxy, Inc.  
15111 North Hayden Road  
Suite 160, PMB 353  
Scottsdale, Arizona 85260

Dear Sir/Madam:

We are writing on behalf of our client, Johnson Utilities LLC (the "Company"), regarding false and misleading claims that have been made by one of your subscribers (the "Registrant") on a website accessed by the domain name www.johnsonswaterstinks.com (the "Site"). Because the subject matter of the Site is a public utility, and violations of public health and safety standards have been implicated, my client felt it necessary to advise you of such false and misleading claims and notify you that we are currently assessing what legal remedies we might have against you and your Registrant.

As you are aware, under section 4 of the Domain Name Proxy Agreement the Registrant entered into to use your service, you have the right to cancel your service and reveal the Registrant's true identity if the Registrant uses your service for a website that violates state or federal law. The libelous Site noted above violates numerous laws, including those of defamation as explained below. Moreover, we should remind you that your policy enables you to cancel your service within the first thirty days after registration has occurred for any reason. We are well within that 30 day window as the Registrant only registered the domain name on August 13, 2010.

The Registrant does not have the right to make false and misleading claims. In several instances throughout the Site, a claim is made that the water that the Company provides to the public is not clean and implies that the water has made people sick. If your Registrant had taken the time to check the facts, he or she would find that the Company is compliant with all water quality standards as required by all governmental laws and regulations as applied to water for public consumption. Nor has there been any instance where one of the Company's customers has become ill from drinking the water. The claims made by your Registrant are intended to

Domains by Proxy, Inc.  
August 27, 2010  
Page 2

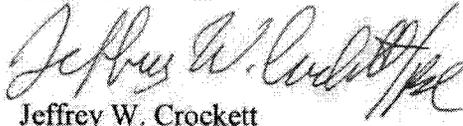
defame the Company and to scare its customers as to the cleanliness and quality of their drinking water. Additionally, we object to the website's use of the Company's trademark and logo.

Water is a crucial commodity for all of us. The quality of the Company's water and utility service is the Company's utmost priority. That is why the Company has always encouraged its customers to bring any concerns that they have directly to the Company's attention in a constructive manner. The Site is certainly anything but constructive and is designed to illicit fear and discourse through its false and misleading claims. This is why the Company felt it was necessary to take this action.

We hereby demand that you: 1) cancel your service and provide Johnson Utilities with the name and contact information of the Registrant; 2) inform the Registrant that the Company demands that the website be taken down by close of business on August 27, 2010; and 3) inform the Registrant that the Company demands that the Registrant transfer the domain name [www.johnsonswaterstinks.com](http://www.johnsonswaterstinks.com) and any other domain name under the Registrant's control incorporating the term "Johnson" or any confusingly similar terms to the Company.

Very truly yours,

Snell & Wilmer



Jeffrey W. Crockett

JWC:dcp

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September 2, 2010

DENVER  
LAS VEGAS  
LOS ANGELES  
LOS CABOS  
ORANGE COUNTY  
PHOENIX  
SALT LAKE CITY  
TUCSON

**VIA E-MAIL (generalmanager@domainsbyproxy.com & johnsonswaterstinks@gmx.com)**  
**CONFIRMATION BY CERTIFIED MAIL**

Registrant of <johnsonswaterstinks.com>  
C/O Domains by Proxy, Inc.  
15111 North Hayden Road  
Suite 160, PMB 353  
Scottsdale, Arizona 85260

Dear Sir/Madam:

This firm represents Johnson Utilities, Inc. ("Johnson"). We have become aware of your website accessed by the domain name <johnsonswaterstinks.com> (the "Website") and the Facebook® page that you have devoted to damaging the reputation of and harassing Johnson. The Website and Facebook and associated intentionally false and misleading statements infringe upon Johnson's trademark rights, and the use of the domain name subjects you to additional liability. Further, the false statements are intended solely to defame Johnson and create needless fear amongst the public. Accordingly, Johnson is contacting you by letter to give you the opportunity to address these unlawful actions immediately, otherwise Johnson will need to initiate further legal proceedings.

**Trademark Infringement/Lanham Act Violations.**

Johnson has been providing utilities to the central Arizona region for well over a decade under the trademarks JOHNSON<sup>SM</sup>, JOHNSON UTILITIES<sup>SM</sup>, and the logo that you improperly display on the "mission" page of the website (collectively the "Trademarks"). Contrary to your beliefs, Johnson has built up substantial goodwill in the Trademarks and a strong reputation in the utility industry. Based upon Johnson's long use of the Trademarks and goodwill associated therewith, Johnson has considerable rights in the Trademarks and can avail itself of remedies for trademark infringement under the federal trademark statute known as the Lanham Act.

Section 43 of the Lanham Act, 15 U.S.C. §1125, subjects you to liability for using trademarks in connection with any "false or misleading description of fact," or "false or misleading representation of fact" that "misrepresents the nature, characteristics, [or] qualities" of Johnson's water. The Website and Facebook page contains statements such as "We need your

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horror stories about Johnson Utilities Water....has it made you sick?" and "it is time for our water utility to stop pointing fingers at others and START DOING THEIR JOB - to provide CLEAN TASTY WATER at a REASONABLE PRICE."

Put simply, the Website and Facebook page state that Johnson's water is unsafe and can make people ill. This is patently false. Johnson is compliant with all water quality standards and there are no instances where anyone has become ill that has been attributed to Johnson's water. Therefore, the Website and Facebook page contain false and misleading facts about Johnson's water and subject you to liability under §1125 of the Lanham Act, exposing you to injunctive actions and liability for damages to goodwill and reputation of Johnson.

**Cybersquatting.**

Your registration and use of the domain name <johnsonswaterstinks.com> (the "Domain Name") violates the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d). This law prevents the use of a domain name that is identical or confusingly similar to another's trademark with bad faith. The Domain Name is confusingly similar to Johnson's trademarks as it incorporates the Trademark JOHNSON and the term WATER which refers to the water service that Johnson provides. Your use of numerous false and misleading statements demonstrates bad faith.

In particular, we have reason to believe that the creation of the Website and Facebook page is driven not by genuine concern about Johnson's service, but rather by your support of the incorporation of the San Tan Valley, which Johnson opposes. Pretextual use of the Domain Name to advance an extraneous agenda is conclusive evidence of your bad faith intent to profit from the Domain Name.

Given the rhetoric on the Website, we suspect you may believe that the incorporation of "stinks" within the domain name will automatically absolve you from any liability related to the Domain Name. This is not the case and we direct your attention to numerous decisions that have resulted in domain names being transferred to their rightful owner even if the domain name includes a derogatory term such as "sucks" or "stinks." By way of example, we direct your attention to *Cabella's Incorporated v. Cupcake Patrol* where it was held that "the panel does not infer that "-sucks" domain names are immune from scrutiny as being confusingly similar to trademarks to which they are appended." *Cabela's Incorporated v. Cupcake Patrol*, FA0006000095080 (Nat. Arb. Forum, 2000). See also *Wynn Resorts Holdings, LLC v. Walton*, FA0709001072983 (Nat. Arb. Forum, 2007.) and *Wal-Mart Stores, Inc. v. Walsucks, et al.* Case No. D2000-0477 (WIPO, 2000) where domain names with trademarks attached to derogatory terms were transferred back to the trademark owner.

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September 2, 2010  
Page 3

Violation of the anticybersquatting consumer protection act entitles Johnson of statutory damages up to \$100,000. You can be assured that Johnson will seek such damages if the demands set forth below are not promptly met.

**Defamation.**

The Website and Facebook page are also defamatory of Johnson. Impeaching Johnson's integrity, virtue, and reputation are considered defamatory and/or libelous under Arizona law. *Dube v. Likins et al.* 216, Ariz. 406, 167 P.3d 93 (2008). The false statements made on the Website and the Facebook page clearly defames Johnson. Moreover, a false accusation of impure water is "libel per se" and will allow Johnson to recover monetary damages even without demonstrating any actual harm. Moreover, given your pretextual motive for the Website and Facebook page (and by attempting to hide behind the Domains by Proxy service, your acknowledgement that what you are doing is wrong), Johnson will also recover punitive damages.

Johnson will not tolerate your illegal use of its trademarks and libelous remarks. Accordingly, Johnson hereby demands that you:

1. Disable the Facebook page and Website;
2. Transfer the Domain Name to Johnson and cease and desist from any further defamatory statements about Johnson;
3. Identify to us and transfer any other domain names registered to you comprised or incorporating the trademark "JOHNSON" to Johnson; and
4. Confirm your identify to us and cease hiding behind the Domains By Proxy service.

Domains by Proxy, Inc.  
September 2, 2010  
Page 4

We expect that you will confirm with our office your compliance with our demands by close of business on Thursday **September 9, 2010**. Otherwise, you will quickly learn the futility of Domains by Proxy. We await your response.

Sincerely,

  
SNELL & WILMER, LLP  
J. Damon Ashcraft

cc: Jeffrey W. Crockett, Esq. (via e-mail only)  
Lee Fraley, Esq. (via e-mail only)  
Sean O'Hara, Esq. (via e-mail)