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BEFORE THE ARIZONA CORPORATION COMMISSION

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2011 AUG -9 P 2:06

ARIZONA 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

**SWING FIRST GOLF LLC  
PROPOSED AMENDMENT**

Swing First Golf LLC ("Swing First") hereby proposes the attached amendment for consideration by the Commission should the Commission decide to provide relief in response to the "Petition to Amend Decision Pursuant to A.R.S. §40-252" filed on February 28, 2011, by Johnson Utilities, LLC ("Utility").

Utility raises issues that could be appropriate for reconsideration if they had been brought by a different company. However, Utility has done nothing to correct or even show remorse for its horrible customer service, abominable environmental record, contempt for Commission Orders, and egregious billing errors. Until such time that Utility has demonstrated that it can act as a responsible corporate citizen, the Commission should not provide relief. If the Commission does decide to provide relief, it should be conditioned on Utility's submission as a compliance filing evidence that it has resolved all its outstanding ADEQ environmental violations and customer lawsuits.

Arizona Corporation Commission

**DOCKETED**

AUG 9 2011

DOCKETED BY

**I EQUITY DOES NOT SUPPORT UTILITY'S REQUEST**

**A One Who Comes into Equity Must Come with Clean Hands**

1 Utility seeks extraordinary relief from the Commission. It is asking that the Commission  
2 amend its prior lawful Decision and provide it additional relief, the result of which would be to  
3 increase customer rates. In such a case, the maxims of equity provide guidance.

4 Equity is the name given to a set of legal maxims used to supplement or ameliorate the  
5 strict application of the law. Perhaps the most famous of the legal maxims is that "One who  
6 comes into equity must come with clean hands."

**1. Utility Must Resolve All Its Environmental Violations**

7 Utility does not have clean hands, so relief is not appropriate until its hands are clean. In  
8 its June 1, 2011, pleading in this docket, Swing First detailed the sorry environmental record of  
9 George H. Johnson, Utility's majority owner and ultimate decision maker. Further, George  
10 Johnson's Utility has also consistently disregarded its environmental responsibilities.

11 In 2003, the Arizona Department of Water Resources fined Utility \$90,000 for using far  
12 more groundwater than it was entitled to.<sup>1</sup>

13 ADEQ's issues with Utility go back even before 2003. In that year, ADEQ fined Utility  
14 \$80,000 for building and operating a water system without obtaining the necessary permits.<sup>2</sup>  
15 This followed a \$6,000 fine in 2001 for modifying a water treatment plant without obtaining  
16 construction approvals.<sup>3</sup>

17 Since 2003, ADEQ has issued Utility an amazing 14 Notices of Violations ("NOVs") for  
18 various environmental infractions.<sup>4</sup> Six of these NOVs are still open and unresolved.<sup>5</sup>

19 The Commission is well aware of the sanitary sewer overflows (SSOs) that contaminated  
20 the Queen Creek Wash was contaminated with E-coli bacteria. The Commission may not be as  
21 familiar with the far more serious violations at Utility's Section 11 Wastewater Treatment Plant.

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<sup>1</sup> Ex. SF-40 at SSR-3.

<sup>2</sup> Ex. SF-45.

<sup>3</sup> Ex. SF-46.

<sup>4</sup> Ex. SF-9; Tr. at 1025:22-24.

<sup>5</sup> Tr. at 377:22 – 382:9.

1 A surprise inspection by ADEQ caught Utility illegally storing dangerous sewage sludge  
2 at the plant.<sup>6</sup> The inspection found a large six-foot-deep depression, where biosolids had been  
3 buried along with plastic and concrete debris. When the inspectors walked onto this area, they  
4 were below grade and the biosolids were covered with only a few inches of soil. They could see  
5 dried biosolids above ground, but the biosolids below ground were “moist and very odorous.”  
6 Test borings found that “The biosolids had a strong sewage odor and were black in color.” The  
7 surface area was very unstable and in several locations, the surface collapsed under the weight of  
8 the inspectors, dropping them several feet into the hidden biosolids.

9 ADEQ took the results of the inspection very seriously. In total, ADEQ has issued three  
10 NOVs to Utility concerning its dangerous, unauthorized burial of sewage sludge.<sup>7</sup> Together, the  
11 three NOVs allege that Utility is guilty of an amazing 17 statutory or code violations.

12 The Commission should not ignore Utility’s outrageous record of environmental  
13 transgressions. These NOVs are serious. Before providing relief, the Commission should  
14 require Utility to clean its hands by resolving all outstanding NOVs to ADEQ’s satisfaction.

## 2. Utility Must Resolve Its Customer-Service and Billing Issues

15 In December 2006 Utility deliberately changed Swing First’s account numbers and began  
16 withholding effluent in favor of CAP water. At that same time, Utility began charging Swing  
17 First \$3.75/1000 gallons for CAP water instead of the lawful tariff rate of \$0.827/1000. For the  
18 little effluent delivered, Utility charged Swing First \$0.827/1000 gallons instead of the tariff rate  
19 of \$0.62/1000 gallons. The illegal billing continued from December 2006, through August  
20 2007.

21 Swing First was not the only irrigation customer charged an illegal rate. The San Tan  
22 Heights Homeowners Association began receiving effluent deliveries in January 2007. From  
23 January through June 2007, Utility charged the HOA \$3.75/1000 gallons instead of the lawful  
24 rate of just \$0.62/1000 gallons.

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<sup>6</sup> This paragraph, Ex. SF-11

<sup>7</sup> Ex. SF-9, NOVs 102722, 103357, and 103956.

1 Utility has apparently corrected its egregious over-billings for the San Tan Heights HOA,  
2 but has refused to correct Swing First's 2006-07 overbillings. Utility still has Swing First's  
3 money, yet refuses to provide Swing First any meaningful credits or refunds for its enormous  
4 overcharges for CAP water. The Commission should not provide any extraordinary relief to  
5 Utility until it has resolved its past billing issues and provided appropriate refunds.

6 Utility also deliberately flooded Swing First's Golf Course. On Friday, January 25, 2008,  
7 Swing First filed a formal complaint with the Commission (Docket No. WS-02987A-08-0049)  
8 concerning Utility's service and billing issues. Utility received a copy of the Complaint on  
9 Friday, February 1. On the same day it received the Complaint, Utility retaliated against Swing  
10 First by delivering huge amounts of effluent to Swing First, despite repeated requests to stop.  
11 This caused the lake bordering the 18th hole to overflow, which damaged the golf course.

12 Utility's deliberately flooded Swing First's golf course in clear retaliation for Swing First  
13 exercising its legal right to file a complaint with the Commission. Utility obviously believes that  
14 it is above the law. The Commission should not provide relief until Utility demonstrates that it  
15 understands that it cannot use its Commission-granted monopoly powers to deliberately retaliate  
16 against a customer for exercising its legal right to file a complaint.

17 Utility also tried to intimidate Swing First from participating in this case. On August 19,  
18 2008, Swing First filed a motion to intervene in this docket, which was granted by a procedural  
19 order dated June 23, 2008. On February 3, 2009, Swing First filed testimony in Utility's rate  
20 case docket. The Swing First testimony generally opposed the requested rate increase and  
21 sought to bring many of Utility's outrageous activities to the attention of the Commission.

22 In clear retaliation, just six days later (February 9, 2009) George Johnson and Utility sent  
23 a contemptible letter to Swing First's members ("Utility Letter"). In the second paragraph of the  
24 Utility Letter, Mr. Johnson and Utility threatened to sue the Swing First members if Mr. Ashton  
25 did not stop participating in Utility's rate case docket:

1 The Commission should not provide relief until Utility demonstrates that it understands  
2 that it cannot use its Commission-granted monopoly powers to deliberately retaliate against a  
3 customer for exercising its legal right to participate in a rate case.

4 **3. Utility Must Stop Using Lawsuits to Intimidate Customers**

5 Residents in the Pecan Ranch North subdivision were justifiably concerned with their  
6 health and safety as a result of Utility discharging raw sewage from the Pecan Plant into their  
7 neighborhood wash.<sup>8</sup> Residents organized a protest against Utility and posted pointed comments  
8 on a community web page. In retaliation, Utility sued the residents for defamation.<sup>9</sup>

9 This was not an isolated incident. Swing First filed a complaint at the Commission  
10 against Utility concerning utility's rates and charges. Swing First's manager, David Ashton, also  
11 discussed Utility's illegal overbillings with the San Tan Heights HOA, another overbilling  
12 victim. Utility retaliated by suing Mr. Ashton and his wife for defamation.<sup>10</sup>

13 This is not a new tactic from George Johnson. He also sued Attorney General Terry  
14 Goddard and his wife Monica for defamation, because Mr. Goddard had the temerity to try to  
15 bring Mr. Johnson's companies to justice for their outrageous environmental transgressions.<sup>11</sup>

16 Mr. Johnson continues to threaten lawsuits. At the Commission's August 2, 2011, Public  
17 Comment Meeting, Mr. Johnson was overheard threatening to sue a customer for defamation.  
18 What did the customer do to incite Mr. Johnson? The customer had the courage to speak against  
19 Utility on the record before the Commissioners.

20 Utility's abusive lawsuits are obviously intended to chill protests by forcing defendants to  
21 endure the emotional burden of defending a lawsuit and incur the expense of hiring attorneys to  
22 defend the lawsuits. These lawsuits are unprecedented. To counsel's knowledge, no other utility  
23 in the United States has ever sued a customer for defamation. The Commission should not allow  
this type of white-collar thuggery from one of its regulated utilities.

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<sup>8</sup> Tr. at 75:14-23.

<sup>9</sup> Tr. at 78:1-19; Ex. SF-27.

<sup>10</sup> Ex. SF-26.

<sup>11</sup> Ex. SF-40 at SSR-3.

**B One Who Seeks Equity Must Do Equity**

1 This equitable maxim requires that one who seeks equitable relief must be willing to  
2 fulfill all its own obligations as well. Before providing any relief, the Commission should  
3 require Utility to resolve all its outstanding environmental violations with ADEQ and resolve all  
4 its outstanding customer lawsuits concerning billing issues and alleged defamation.

**II CONCLUSION**

5 In return for being allowed to operate legally as a monopoly, a utility takes on certain  
6 important obligations. Among other things, the utility subjects itself to rate regulation by the  
7 Commission, and takes on the mantle of a “public service corporation.”<sup>12</sup> As the record shows,  
8 Utility has pushed its monopoly status to and beyond the legal limit, has disregarded its  
9 requirement to charge lawful rates, and flouted its public-service obligations.

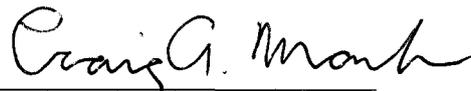
10 In Decision No. 71854, the Commission sent a strong message concerning Utility’s  
11 blatant disregard for its regulators, its customers, the public safety, the environment, and its  
12 public-service obligations. Certainly, Utility has done nothing to show that it has altered or even  
13 regrets its behavior since the Decision. George Johnson still controls and directs Utility and  
14 continues to battle both ADEQ and Swing First, one of Utility’s largest customers.

15 Until such time as Utility has resolved its long-running, multiple environmental and  
16 customer-service issues, the Commission should not amend Decision No. 71854. If the  
17 Commission does decide to provide relief to Utility by amending the Decision, it should  
18 condition that relief by requiring Utility to first resolve all outstanding environmental violations  
19 with ADEQ and all outstanding customer lawsuits concerning billing issues and alleged  
20 defamation. A proposed amendment to this effect is attached as Exhibit A.

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<sup>12</sup> Const. Art 15, §2.

1 RESPECTFULLY SUBMITTED on August 9, 2011.  
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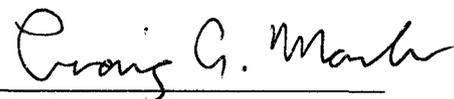
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By:   
Craig A. Marks

**PROPOSED AMENDMENT**

INSERT WHERE APPROPRIATE:

The Commission has determined that it is equitable to provide the relief set forth in this Decision. However, the Commission is mindful of the equitable maxim that: "One who comes into equity must come with clean hands." Johnson's hands are not clean. Johnson still has not resolved its multiple outstanding environmental violations with ADEQ. Also, Johnson still has not resolved its outstanding lawsuits against customers. Another equitable maxim is that: "One who seeks equity must do equity." Therefore, for the relief we provide to be effective, we will first require Johnson to submit as a compliance filing evidence that it has resolved all its outstanding ADEQ environmental violations and customer lawsuits.

We are also concerned with Johnson's history of using defamation lawsuits (as discussed in Swing First's brief and evidenced on the record) against customers who speak out against Johnson. The Commission is not aware of any other utility in the United States that has ever sued a customer for alleged defamation. Accordingly, we will require that Johnson, before filing a lawsuit against a customer for any reason, file a notice of the dispute with the Commission. This will serve two purposes. First, it will bring the alleged dispute and underlying circumstances to the Commission's attention, and second, it will provide the Commission the opportunity to mediate the dispute before the parties endure the time, expense, and emotional burden of a lawsuit.

INSERT WHERE APPROPRIATE:

IT IS FURTHER ORDERED that for the relief the Commission provides in this Decision to be effective, Johnson Utilities, LLC, dba Johnson Utilities Company, shall file with docket control as a compliance item in this docket evidence that it has resolved all its outstanding ADEQ environmental violations and customer lawsuits.

IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company, shall, before filing a lawsuit against a customer for any reason, file a notice of the dispute with the Commission, with a copy to the customer, and allow the Commission a reasonable time to informally resolve the dispute.