

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

SEP 20 2011

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

DOCKET NO. WS-02987A-08-0049

MOTION FOR CONTINUANCE

1 Swing First Golf LLC ("Swing First") hereby moves to continue this case until such time
2 as a verdict is rendered in the matter of Johnson Utilities L.L.C. v. Swing First Golf, L.L.C.
3 (Maricopa County Superior Court Docket No. CV 2008-000141). The Jury Trial is scheduled to
4 begin on March 13, 2012. Many of the issues raised in this Commission complaint are also at
5 issue in the Superior Court case. It would waste the parties' and the Commission's resources to
6 simultaneously try these issues in two forums and would risk inconsistent outcomes.

7 **I Issues Summary**

ACC Complaint Case

Superior Court Complaint

Common Issues

Water Overcharges/Appropriate Refunds

Water Overcharges/Appropriate Refunds

Oasis Management Water Credits

Oasis Management Water Credits

Effluent Withholding

Effluent Withholding

Minimum Bill Overcharges

Minimum Bill Overcharges

Overcharges for Flooding Overcharges

Overcharges for Flooding Overcharges

Line-Break Overcharges

Line-Break Overcharges

Unique Issues

Appropriate Fines/Penalties for Utility's Misdeeds, including:

Appropriate Remedies for Utility's Torts:

1. Massive Overbillings.
2. Effluent Withholding.

1. Trespass to Land.
2. Negligence.

ACC Complaint Case

Superior Court Complaint

- | | |
|---|--|
| 3. Failure to Follow ACC Disconnection Rules. | 3. Breach of Covenant of Good Faith & Fair Dealing. |
| 4. Retaliatory Flooding of Johnson Ranch Golf Course. | 4. Defamation. |
| 5. Retaliatory Letter to Swing First Investors. | 5. Interference with Business Relationship. |
| 6. Defamation Lawsuit. | 6. Pattern of Unlawful Activity Prohibited by A.R.S. § 13-2314.04(A), <i>et seq.</i> |

1 As the table shows, there are many common issues in both cases. These generally relate
2 to the contract claims concerning the amount that Swing First was overcharged and
3 compensation for management services at the Oasis Golf Course. For these issues, the Court
4 should be able to provide complete relief, including interest and attorneys' fees.

5 The second section of the table relates to Utility's tortious behavior. Although many of
6 the factual issues overlap, neither tribunal can fashion complete relief. As between Utility and
7 Swing First, the Court can provide nearly complete relief, although it is not clear whether the
8 Court could require Utility to continue to provide irrigation service. However, the Court cannot
9 provide complete relief to the public for Utility's breaches of its public-service obligations,
10 including those set forth in A.R.S. §§ 40-334; 40-361(B); 40-421(A) *et seq.*; and A.A.C § 14-2-
11 410 *et seq.* Only the Commission can fine or otherwise punish Utility for these breaches.

12 **II The Commission Case Should be Continued**

13 On September 9, 2011, Swing First filed a copy of the Court's scheduling order, which
14 shows that trial is scheduled to begin on March 13, 2012, less than six-months from now. The
15 Judge has stated that he is unlikely to allow any further delays. Until March, the parties will be
16 quite busy with depositions, dispositive motions, mediation, and trial preparation. It would
17 waste the parties' and the Commission's resources to simultaneously try many of the same issues
18 before the Commission and to risk inconsistent outcomes.

19 Further, the trial should fully resolve all the contract-related issues between the parties
20 and determine many of the facts underlying Utility's breaches of its public-service obligations.

1 Because issues will have been greatly narrowed, the Commission's complaint case will be far
2 simpler if it is continued until the Superior Court case is completed.

3 **III Requested Relief**

4 Swing First asks that the Commission continue this case until the Superior Court case is
5 completed. Swing First will docket a copy of the final judgment and asks that a procedural
6 conference then be held to determine the remaining issues to be addressed and to set a procedural
7 schedule.

8 RESPECTFULLY SUBMITTED on September 20, 2011.

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