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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BOB STUMP  
BRENDA BURNS

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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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  
SECOND UPDATE TO COMMISSIONERS**

On August 30, 2011, Swing First Golf LLC ("Swing First") filed an update to the Commissioners to remind them of long-running abuse by Johnson Utilities LLC ("Johnson") of one of its largest customers. In short, Johnson has unlawfully used its monopoly power in a campaign to put Swing First out of business.

At the September 6, 2011, Open Meeting in this docket, the Commission was clearly concerned that Johnson had not yet resolved its issues with Swing First. Before voting to approve provide Johnson the extraordinary relief that it was requesting, the Commission sought and received three important assurances from Johnson. Swing First submits this second update to demonstrate to the Commission that Johnson's word means nothing. It has broken every one of those promises.

**I Johnson Broke Its Promise to Not Oppose Withdrawal of The ACC Complaint Case**

Johnson promised that it would not oppose Swing First's withdrawal of its Commission Complaint (Docket No. WS-02987A-08-0049):

Mr. Crockett clearly stated as follows:

And I would also say as far as the update goes, Mr. Marks says in his pleading that the current complaint case "is essentially moot, given the pending trial in the lawsuit between Johnson and Swing First in Superior Court. Therefore, there is no reason to waste the Commission's resources on a moot case." We agree with

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1 that. I mean, if they want to withdraw the complaint, we will certainly not oppose  
2 that.<sup>1</sup>

3 Swing First heard Johnson's promise, and on September 27, 2011, withdrew its  
4 complaint. Yet, just seven days later, Johnson broke its promise to the Commission. On October  
5 4, 2011, it filed a pleading strenuously opposing Swing First's withdrawal.<sup>2</sup> Johnson followed  
6 this breach of promise with yet another pleading opposing the withdrawal of the complaint.<sup>3</sup> Mr.  
7 Crockett, who made the original promise to the Commission, signed both pleadings.

8 **II Johnson Will Not Honor Its Promise to Keep Providing Water Service While The**  
9 **Court Case Is Pending**

10 Mr. Crockett promised that Johnson would continue to provide water service until the  
11 Court case has been resolved:

12 We've already averred on the record and will make whatever avowals in the  
13 docket that we need to that we will continue to provide water service until the  
14 issues raised by Swing First have been resolved either by, you know, this  
15 Commission or by the Superior Court.<sup>4</sup>

16 Johnson has also backed away from this promise. In its November 30, 2011, pleading,  
17 Johnson asserts that if the Commission allows the ACC complaint to be withdrawn, Johnson  
18 should be allowed to discontinue water service to Swing First.

19 The Company would certainly be adversely affected if the Commission were to  
20 permit the withdrawal of SFGs complaint with prejudice without also releasing  
21 Johnson Utilities' from the prohibition against disconnecting water service to SFG  
22 for non-payment of the disputed bills.<sup>5</sup>

23 **III Johnson Has Broken Its Promise to Engage in Good Faith Settlement Negotiations**

24 At the Open Meeting, George Johnson promised the Commission that he would negotiate  
25 in good faith to resolve the Superior Court case.

26 **Commissioner Newman** (To Mr. Johnson): So, I am asking for a show of  
27 good faith with regard to these negotiations a little bit better than calling your

<sup>1</sup> Audio recording of September 6, 2011, Open Meeting at 1:09:22. Emphasis added.

<sup>2</sup> Johnson Utilities' Response In Opposition To Swing First Golf's Pleading Captioned Withdrawal of Complaint.

<sup>3</sup> Johnson Utilities' Request for Oral Argument and Supplemental Response In Opposition To Swing First Golf's Withdrawal of Complaint. ("Johnson November 30, 2011, Pleading")

<sup>4</sup> Audio Recording at 1:09:53. Emphasis added.

<sup>5</sup> Johnson November 30, 2011, Pleading at 6:24 - 7:1.

1 colleague, who's seeking a legal remedy a blackmailer. I am asking you not your  
2 lawyer, your lawyer would probably give me this answer, this is pretty important.

3 **George Johnson:** You know, I'm just a home-town boy. We try to do our  
4 best, and I'm calling it like it is, and I'm sorry sir.

5 **Commissioner Newman:** No, no, no, no, are you willing to negotiate in good  
6 faith, even prior to going to Superior Court, so not run up a huge bill in Superior  
7 Court as well? ... George, I'm not trying to play, I'm trying to have a real  
8 conversation.

9 **George Johnson:** We will start working with them on a separate basis that  
10 has nothing to do with this rate case. I give you my word, as George Johnson, I  
11 will do everything possible to settle this and maybe settle it a little bit to their  
12 favor, but I don't want it to be part of this hearing; I don't think it's fair. But I  
13 will sit down with them, I give you my word, I'll meet with them every day to get  
14 it resolved.

15 **Commissioner Newman:** Thank you, that's what I was looking for.<sup>6</sup>

16 Johnson has also broken this promise. The Open Meeting was on September 6, 2011.  
17 Today is December 5, 2011. In the intervening three months, Swing First has not received even  
18 one settlement offer from Johnson, let alone any communications from Johnson that it wants to  
19 sit down and attempt in good faith to resolve the Superior court case short of litigation. Instead,  
20 Swing First continues to incur huge legal fees in the Superior Court case and to deal with  
21 Johnson's broken promises in the ACC complaint case.

#### 22 **IV Requested Relief**

23 Mr. Johnson and its attorney made three promises to the Commission when they were at  
24 Open Meeting asking for extraordinary rate relief. These were promises that the Commissioners  
25 obtained before granting the requested relief. However, now that Johnson has obtained the rate  
26 relief it was seeking, it has cynically dishonored these promises.

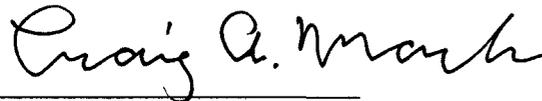
27 Johnson should not be allowed to thumb its nose at the Commission. Swing First asks the  
28 Commission to take whatever action is appropriate, up to and including a show-cause

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<sup>6</sup> Audio Recording at 1:27:59. Emphasis added.

1 proceeding, to force Johnson to honor its promises and show appropriate respect to the  
2 Commission.<sup>7</sup>

3 RESPECTFULLY SUBMITTED on December 6, 2011.

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Original and 13 copies **filed**  
on December 6, 2011, with:

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

Copies **e-mailed**  
on December 6, 2011, to:

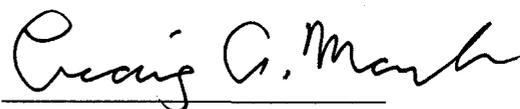
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By:   
Craig A. Marks.

<sup>7</sup> A show-cause proceeding could also address Johnson's recent water-supply and water-quality issues that were recently raised by customers in this docket, as well as Johnson's abysmal environmental compliance record with the Department of Environmental Quality.