

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

2012 FEB 24 PM 3 01

Arizona Corporation Commission

DOCKETED

FEB 24 2012

DOCKETED BY

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

DOCKET NO. WS-02987A-08-0049

1. **UPDATED ISSUES LIST**
2. **MOTION REQUESTING REPLY FILINGS**
3. **MOTION REQUESTING PROCEDURAL CONFERENCE**

1 In accordance with Judge Kinsey's February 17, 2012, Amended Procedural Order,  
 2 Swing First Golf LLC ("Swing First"), hereby files "an updated list of issues that [Swing First]  
 3 believes should be addressed by the Commission and which should be addressed by Superior  
 4 Court."

5 **1. UPDATED ISSUES LIST**

6 The following table provides Swing First's updated issues list:

Remaining Issues	Where Issue Should be Addressed	Reason
Unjust enrichment related to Swing First's provision of management services for the Oasis Golf Club	Court	The Commission has no jurisdiction to consider Swing First's unjust enrichment claim.
Breach of contract related to overcharges for CAP-Water	Court	Swing First has withdrawn its complaint concerning these issues. The Commission has no jurisdiction to consider payment counterclaims by a utility against its customer. If Swing First had not withdrawn its complaint, the Court and the Commission would have concurrent jurisdiction. The Commission could order refunds. However, the Commission could not award costs, attorneys' fees or judgment interest under

Remaining Issues	Where Issue Should be Addressed	Reason
		A.R.S. §§ 12-341, 12-341.01, and 44-1201.
Breach of contract related to overcharges for Effluent	Court	Swing First has withdrawn its complaint concerning these issues. The Commission has no jurisdiction to consider payment counterclaims by a utility against its customer. If Swing First had not withdrawn its complaint, the Court and the Commission would have concurrent jurisdiction. The Commission could order refunds. However, the Commission could not award costs, attorneys' fees or judgment interest under A.R.S. §§ 12-341, 12-341.01, and 44-1201.
Trespass related to Utility's Flooding of Swing First's Golf Course	Court	The Commission has no jurisdiction to consider tort issues.
Negligence related to Utility's Flooding of Swing First's Golf Course	Court	The Commission has no jurisdiction to consider tort issues.
Defamation related to Letter Sent by George Johnson and Utility to Swing First's Investors	Court	The Commission has no jurisdiction to consider tort issues.
Right of Utility to Cut-off Irrigation Service	Court	The only account in dispute between the parties is Swing First's CAP-Water Account. Swing First is current in all other water and wastewater accounts. <u>Utility</u> elected the remedy of suing Swing First in Superior Court to collect alleged amounts due in the CAP-Water account. The Superior Court case predates this docket. In the unlikely event that Utility prevails on this issue in Court, it would be awarded damages to <u>fully</u> compensate it for the alleged non-payments. To allow Utility to also proceed at the Commission could improperly provide Utility duplicate recovery and would waste the time, money and other resources of the Commission, Hearing Division, Utilities Division, and the parties.

Remaining Issues	Where Issue Should be Addressed	Reason
<p>Appropriate Fines/Penalties for Utility's Misdeeds, including:</p> <ol style="list-style-type: none"> <li>1. Massive Overbillings.</li> <li>2. Effluent Withholding.</li> <li>3. Failure to Follow ACC Disconnection Rules.</li> <li>4. Retaliatory Flooding of Johnson Ranch Golf Course.</li> <li>5. Retaliatory Letter to Swing First Investors.</li> <li>6. Defamation Lawsuit.</li> </ol>	Commission	Swing First has withdrawn its complaint concerning this issue. If the Commission determines that it still wants to consider fines or penalties for Utility, it could direct that a show-cause docket be opened.
Apology by George Johnson	Commission	Swing First has withdrawn its complaint concerning this issue.

1 **2. MOTION REQUESTING ADDITIONAL FILING**

2 Swing First expects that Utility's issue list will look quite different than Swing First's  
3 list. Swing First requests that it be allowed to reply to Utility's issue list and that Utility also be  
4 provided the same option. This will allow the Commission a fuller opportunity to understand the  
5 issues and the parties' positions concerning them.

6 **3. MOTION REQUESTING PROCEDURAL CONFERENCE**

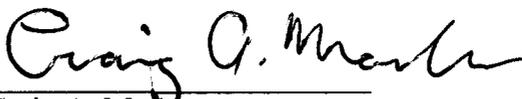
7 The February 17, 2012, Amended Procedural Order, also requires the parties to file  
8 copies of:

- 9 • [A]ll pleadings, rulings, minute entries, and orders, filed or issued in the Superior
- 10 Court Case since January 27, 2012; and
- 11 • [All subsequent] documents, rulings, minute entries, or orders filed in or issued by
- 12 Superior Court, within one business day of such documents being filed or issued in
- 13 the Superior Court Case.

14 Swing First is separately filing those documents today.

1 After Judge Kinsey has had an opportunity to review all documents required to be filed  
2 by the February 17, 2012, Amended Procedural Order, Swing First requests that a procedural  
3 conference be held to determine the appropriate next steps, if any, in this docket.

4 RESPECTFULLY SUBMITTED on February 24, 2012.  
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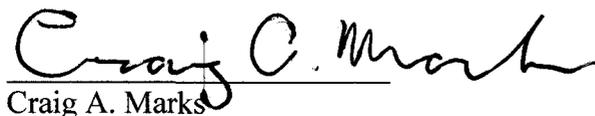
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26 on February 24, 2012, to:

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