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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
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Arizona Corporation Commission
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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
NOTICE OF FILING UPDATED LIST
OF CLAIMS PROPERTY BEFORE THE
COMMISSION

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In her Amended Procedural Order dated February 17, 2012, the administrative law judge ("ALJ") ordered the parties to "file an updated list of issues that each believes should be addressed by the Commission and which should be addressed by [the] Superior Court" in *Johnson Utilities, LLC, et al. v. Swing First Golf, LLC, et al.* (Cause No. CV2008-000141), as well as a brief description of the reason each issue should be considered by the Commission or the Superior Court. Johnson Utilities, LLC ("Johnson Utilities" or the "Company") provides this update as directed by the ALJ.

Status of Superior Court Claims and Counterclaims

In the Superior Court's recent ruling¹ dated February 9, 2012, Judge Fink partially granted Plaintiffs-Counterdefendants' Motion for Summary Judgment² and dismissed Count 1 (*Breach of Contract-Utility Services Agreement*), Count 2 (*Breach of Contract-Oasis Management Agreement*), Count 6 (*Breach of Covenant of Fair Dealing*) and Count 7 (*Specific Performance*) of SFG's First Amended Counterclaim. Previous to that, Count 3 (*Quantum Meruit*), Count 4 (*Unjust Enrichment*), Count 10 (*Interference with Business Relationship*), Count 12 (*Unlawful Use of Monopoly Power*), and Count 13

¹ A copy of the Superior Court's ruling is being filed simultaneously with the Commission in a separate filing captioned Notice of Filing Pleadings, Rulings, Minute Entries and Orders Filed in Superior Court Case since January 27, 2012.

² The Plaintiffs-Counterdefendants in the Superior Court case are Johnson Utilities, LLC, The Club at Oasis, L.L.C., George H. Johnson and Jana S. Johnson, and Brian F. Tompsett and Jane Doe Tompsett.

1 (*Racketeering*) of SFG's First Amended Counterclaim were all dismissed against
2 Johnson Utilities. Thus, of the 13 counterclaims asserted by SFG against Johnson
3 Utilities in SFG's First Amended Counterclaim, the only remaining counterclaims before
4 the Superior Court are Count 5 (*Breach of Contract-Tariff*), Count 8 (*Negligence-*
5 *Effluent*), Count 9 (*Trespass*) and Count 11 (*Defamation*).

6 On February 13, 2012, the Plaintiffs-Counterdefendants filed a Motion to Dismiss
7 for Lack of Subject-Matter Jurisdiction seeking the dismissal of Count 5 (*Breach of*
8 *Contract-Tariff*) on the grounds that the Superior Court lacks subject matter jurisdiction
9 over the claim, and that it belongs before the Commission. SFG filed its Response to the
10 Motion to Dismiss on February 21, 2012, and the Plaintiffs-Counterdefendants' reply is
11 due February 27, 2012, after which time the Superior Court will rule on the motion.³

12 Johnson Utilities asserted four claims in its Second Amended Complaint in the
13 Superior Court case, and three of those claims remain pending: Count 1 (*Breach of*
14 *Contact*), Count 2 (*Breach of Covenant of Good Faith and Fair Dealing*), and Count 3
15 (*Defamation*).

16 **Status of Arizona Corporation Commission Claims and Counterclaims**

17 SFG filed its Formal Complaint in this docket on January 25, 2008, and its
18 Amended Formal Complaint on February 5, 2008. Johnson Utilities filed its Answer and
19 Counterclaim on February 13, 2008. The reasons why the Commission—and not the
20 Superior Court—should adjudicate the claims asserted in SFG's Amended Formal
21 Complaint and Johnson Utilities' counterclaim are set forth in detail in the Company's
22 Response in Opposition to Swing First Golf's Pleading Captioned Withdrawal of
23 Complaint dated October 4, 2011, and its Supplemental Response in Opposition to
24 Swing First Golf's Withdrawal of Complaint dated November 30, 2011, which are
25 incorporated herein.

26
27 ³ A copy of the Motion to Dismiss and SFG's Response are being filed simultaneously with the
28 Commission in a separate filing captioned Notice of Filing Pleadings, Rulings, Minute Entries and
Orders Filed in Superior Court Case since January 27, 2012.

Claims and Counterclaims That Should Be Addressed by the Commission

Those claims and counterclaims which should be heard by the Commission are set forth in the following table:⁴

CLAIMS TO BE RESOLVED BY THE ARIZONA CORPORATION COMMISSION	
SFG Amended Formal Complaint § II.A	<u>Overcharges for Water Deliveries</u> <ul style="list-style-type: none"> • Delivering CAP water instead of effluent • Charging CAP rate for delivered effluent instead of effluent rate • Failing to charge the lower effluent rate for CAP water delivered
SFG Amended Formal Complaint § II.B	<u>Overcharges for Minimum Bill</u> <ul style="list-style-type: none"> • Charging for both a CAP meter charge and an effluent meter charge instead of a single meter charge • Charging for a 6" meter instead of a 3" meter
SFG Amended Formal Complaint § II.C	Failing to provide SFG a credit on its water bills for the value of golf course management services SFG allegedly provided to the Club at Oasis
SFG Amended Formal Complaint § II.D	Charging and collecting a Superfund tax
SFG Amended Formal Complaint § II.E	Overcharging transaction privilege tax
SFG Amended Formal Complaint § II.F	Failing to regularly read meters
SFG Amended Formal Complaint § II.G	Failing to provide accurate bills
SFG Amended Formal Complaint § II.H	Failing to provide good customer service

⁴ The claims listed in this table are taken from SFG's Amended Formal Complaint filed February 5, 2008 in this docket. Certain of these claims have also been raised by SFG in its First Amended Counterclaim in the Superior Court case. Johnson Utilities does not concede that the claims in this table have all been raised by SFG in the Superior Court case or that SFG has properly raised these claims in the Superior Court case. Further, Johnson Utilities does not concede the validity or merit of any of these claims.

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SFG Amended Formal Complaint § II.I	Over-delivering effluent on the weekend of February 1, 2008
SFG Amended Formal Complaint § II.J	Disconnecting water service in violation of Commission regulations
SFG Count 5 (Superior Court Case)	Breach of Contract-Tariff (this count effectively includes the claims asserted in SFG's First Amended Complaint in the Commission docket)
Johnson Utilities Count 1 (Superior Court Case)	Breach of Contract (tariff)
Johnson Utilities Count 2 (Superior Court Case)	Breach of Covenant of Good Faith and Fair Dealing

As stated in Johnson Utilities' earlier filings, the Commission is best situated with the requisite specialized expertise to address the claims listed in the table above, and Johnson Utilities would be adversely impacted if these claims are addressed in any other forum. The Commission's institutional knowledge and expertise pertaining to the regulation of public utilities cannot be matched by the courts. The Commission has its own utilities division with broad expertise in evaluating, approving, interpreting and enforcing utility tariffs, one of the central issues in this complaint case. The Commission has a consumer services section which daily addresses customer complaints regarding rates and charges on utility bills and service quality questions, and which interacts with the regulated utilities in addressing issues raised by customers. The Commission has its own legal staff—which is participating in this docket—with key knowledge regarding the legal requirements that apply to regulated utilities, including Title 14 of the Arizona Administrative Code and Title 40 of the Arizona Revised Statutes, as well as the case law interpreting the provisions of Title 40. The Commission has its own hearing division which regularly addresses disputes between utilities and customers. All of these critical resources will be brought to bear in this complaint case to reach the correct rulings on

1 SFG's claims and Johnson Utilities' counterclaims. The Superior Court simply does not
2 have the depth of background and resources that are available to the Commission.

3 Further, because the Superior Court lacks the specialized agency expertise that
4 would be brought to bear by the Commission in evaluating the claims of SFG and the
5 counterclaims of Johnson Utilities, there is a significant risk of a ruling by the court or a
6 finding by the jury that is inconsistent with the Company's tariffs or the rules, practices,
7 policies or decisions of the Commission. Thus, Johnson Utilities could become what one
8 court has described as a "victim of uncoordinated and conflicting requirements."⁵

9 **Claims and Counterclaims That Should Be Addressed by the Superior Court**

10 The remaining claims that should be addressed by the Superior Court are set forth
11 in the following table:

CLAIMS TO BE RESOLVED BY THE SUPERIOR COURT	
SFG Count 8 (Superior Court Case)	Negligence-Effluent
SFG Count 9 (Superior Court Case)	Trespass
SFG Count 11 (Superior Court Case)	Defamation
Johnson Utilities Count 3 (Superior Court Case)	Defamation

18 The claims and counterclaims listed in the table above are tort claims, and clearly
19 subject to the jurisdiction of the Superior Court.

20 RESPECTFULLY submitted this 24th day of February, 2012.

21 BROWNSTEIN HYATT FARBER SCHRECK
22 LLP

23 

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25 One East Washington Street, Suite 2400
26 Phoenix, Arizona 85004
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28 ⁵ See *Campbell v. Mountain States Tel. & Tel. Co.* 120 Ariz. 426, 430, 586 P.2d 987, 991 (App. 1978).

1 ORIGINAL and thirteen (13) copies of the
2 foregoing filed this 24th day of February, 2012, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 24th day of February, 2012, to:

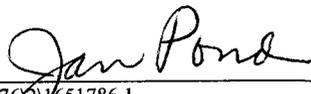
9 Yvette B. Kinsey, Administrative Law Judge
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24 COPY of the foregoing sent via e-mail and first class
25 this 24th day of February, 2012, to:

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