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COMMISSIONERS

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

DOCKET NO. WS-02987A-13-0053

REPLY IN SUPPORT OF MOTION TO
DISMISS AND MOTION TO STRIKE,
OR IN THE ALTERNATIVE,
MOTION FOR A MORE DEFINITE
STATEMENT OF CLAIM WITH
RESPECT TO COUNT “D”

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Johnson Utilities, L.L.C. (“Johnson Utilities” or the “Company”) hereby files its Reply in Support of Motion to Dismiss and Motion to Strike (the “Reply”) addressing the arguments raised in the Response to Motion to Dismiss and Motion to Strike (the “Response”) filed by Swing First Golf, LLC (“SFG”) on April 15, 2013. For the reasons set forth herein, the Commission should grant the Company’s Motion to Dismiss and Motion to Strike with regard to Counts “A,” “B” and “D” of SFG’s 2013 Formal Complaint (the “2013 Complaint”). Alternatively, if the Commission is not inclined to dismiss or strike Count “D,” then the Company moves for a more definite statement of the claim pursuant to Rule 12(e) of the Arizona Rules of Civil Procedure, as discussed herein.

I. ALLEGED WITHHOLDING OF EFFLUENT: COUNT “A” OF THE 2008 COMPLAINT AND COUNT “A” OF THE 2013 COMPLAINT RAISE THE SAME CLAIMS.

In its Response, SFG makes numerous mischaracterizations regarding Count “A” of the 2008 Amended Formal Complaint in Docket WS-02987A-13-0053 (the “2008 Formal Complaint), including, but not limited to, the following:

1 “The 2008 Complaint was strictly about making Swing First financially whole
2 from 2004 through 2007, based on its rights under the USA [Utility Services
3 Agreement].”¹

4 “Swing First did not ask the Commission to order Utility to deliver sufficient
5 effluent to meet all of Swing First’s needs.”²

6 “Swing First never amended the 2008 Complaint to ask the Commission to
7 declare that Swing First had a first right to Effluent deliveries.”³

8 Each of these assertions is flatly contradicted by the language of the 2008 Complaint and
9 the supporting pre-filed testimony of David Ashton. The 2008 Complaint alleged very clearly
10 that “despite Swing First’s right to the first effluent generated in the certificated service area,
11 Utility has rarely delivered effluent.”⁴ Mr. Ashton then further articulated SFG’s claims in his
12 pre-filed testimony, stating:

13 “Utility has withheld effluent.”⁵

14 “Utility has been selling some effluent to other irrigation customers..., but has
15 been pumping most of the effluent it produces into the ground.”⁶

16 SFG “should be receiving as much effluent as Utility can deliver, up to our
17 requirements.” This is in accordance with our rights as a tariffed effluent
18 customer, and is wise public policy.”⁷

19 Compare those claims from the 2008 Complaint and the Ashton testimony to the almost
20 identical claims found in Count “A” of the 2013 Complaint:

21 “[T]his is a problem Utility created by deliberately withholding Effluent in 2007
22 from Swing First and selling Effluent to the Santan HOA.”⁸

23 ¹ SFG Response at p. 3, lines 3-5 (emphasis in original). Johnson Utilities notes that with respect to the
24 Maricopa County Superior Court case, SFG asserted claims for billing disputes under the Company’s
25 tariff up to the date of the trial in February 2013.

26 ² *Id.* at p. 2, lines 24-25 (emphasis in original).

27 ³ *Id.* at p. 3, lines 2-3 (emphasis added). SFG’s argument is ironic in light of the fact that SFG itself
28 argued at page 3, lines 17-18 of its Response to May 15, 2010 Filings in the 2008 Complaint docket that
initial complaints need not “be amended to reflect the ultimate request for relief.” The pleadings of SFG
make clear that the ultimate request for relief regarding Count “A” of the 2008 Complaint was a finding
that SFG had a first right to the effluent of Johnson Utilities.

⁴ 2008 Complaint at p. 2, lines 20-22 (emphasis added).

⁵ Direct Testimony of David Ashton on Behalf of Swing First Golf LLC dated December 30, 2009
(Docket No. WS-02987A-08-0049) at p. 11, line 11.

⁶ *Id.* at p. 10, lines 9-11.

⁷ *Id.* at p. 5, lines 6-9 (emphasis added).

⁸ 2013 Complaint at p. 9, line 9 through p. 10, line 2(emphasis added).

1 “Swing First asks the Commission to order Utility to deliver Effluent to Swing
2 First in the quantities requested by Swing First.”⁹

3 “Only after satisfying Swing First’s requirements should Utility be allowed to sell
4 Effluent to any other customers or to pump Effluent into the ground.”¹⁰

5 SFG attempts in its Response to characterize the claim under Count “A” of the 2008
6 Complaint as a simple pricing dispute, where “Utility mispriced ... deliveries contrary to the
7 USA pricing requirements.”¹¹ In reality, however, the 2008 Complaint involved substantive
8 questions of law, including: (i) whether SFG is entitled—and on what basis—to as much
9 effluent as it requests or requires from Johnson Utilities; (ii) whether SFG has a right to the first
10 effluent generated before the Company can sell effluent to another customer such as the San Tan
11 Heights Homeowners Association; and (iii) whether Johnson Utilities was “withholding”
12 effluent from SFG when the Company sold effluent to another customer or pumped effluent into
13 the ground. These are the very same questions at issue in the 2013 Complaint.

14 SFG correctly states in its Response that the judicial doctrine of *res judicata*, or claim
15 preclusion, bars “subsequent claims [that] arise out of the same nucleus of facts.”¹² What was
16 the nucleus of facts alleged by SFG in the 2008 Complaint? They were:

- 17 • “There are two customers connected to the Santan WWTP: Swing First
18 and the Santan HOA.”¹³
- 19 • “Utility has been selling some effluent to other irrigation customers..., but
20 has been pumping most of the effluent it produces into the ground.”¹⁴
- 21 • “Utility has withheld effluent.”¹⁵
- 22 • “[D]espite Swing First’s right to the first effluent generated in the
23 certified service area, Utility has rarely delivered effluent.”¹⁶
- 24 • SFG “should be receiving as much effluent as Utility can deliver, up to
25 our requirements.”¹⁷

26 ⁹ *Id.* at p. 9, lines 22-23(emphasis added).

27 ¹⁰ *Id.* at p. 9, lines 24-25.

28 ¹¹ SFG Response at p. 3, lines 6-7.

¹² *Id.* at p. 2, lines 7-8 (citation omitted).

¹³ Direct Testimony of David Ashton at p. 11, lines 2-3.

¹⁴ *Id.* at p. 10, lines 9-11 (emphasis added).

¹⁵ *Id.* at p. 11, line 11 (emphasis added).

¹⁶ 2008 Complaint at p. 2, lines 20-22 (emphasis added)

¹⁷ Direct Testimony of David Ashton at p. 5, lines 6-9 (emphasis added).

1 In comparison, what are the facts alleged by SFG in the new 2013 Complaint? They are:

- 2 • “Since 2007, Utility has tried to maximize Effluent deliveries to the [San
3 Tan] HOA by rationing deliveries to Swing First.”¹⁸
- 4 • “[T]his is a problem Utility created by deliberately withholding Effluent in
5 2007 from Swing First and selling Effluent to the Santan HOA.”¹⁹
- 6 • “Swing First asks the Commission to order Utility to deliver Effluent to
7 Swing First in the quantities requested by Swing First.”²⁰
- 8 • “Only after satisfying Swing First’s requirements should Utility be
9 allowed to sell Effluent to any other customers or to pump Effluent into
10 the ground.”²¹

11 It is clear that the claims under Count “A” of the 2013 Complaint arise out of the same
12 nucleus of facts contained in Count “A” of the 2008 Complaint. Thus, SFG is barred under the
13 doctrine of *res judicata* from raising Count “A” of the 2013 Complaint and the count should be
14 dismissed.

15 In addition to being barred under the doctrine of *res judicata*, SFG is barred by the
16 express language of Decision 73137 from raising Count “A” of the 2013 Complaint. Finding of
17 Fact 114 in Decision 73137 states:

18 Swing First has stated it is aware that withdrawal of its Amended Complaint with
19 prejudice will foreclose Swing First from raising those claims again before the
20 Commission even if the Superior Court decides its claims are more appropriately
21 within the Commission’s jurisdiction. Therefore, Swing First has accepted the
22 risk that [the] Superior Court may or may not address the common claims raised
23 in the Amended Complaint and the Superior Court case. (emphasis added)

24 The Commission left no doubt about the preclusive and final effect of Decision 73137,
25 and the decision is an absolute bar to Count “A” of the 2013 Complaint. As the complainant, it
26 was incumbent upon SFG to prosecute the 2008 Complaint to completion and secure a decision
27 from the Commission in favor of SFG on its claims in Count “A.” When SFG withdrew the
28 2008 Complaint and the Commission dismissed its claims with prejudice, SFG agreed to look

¹⁸ 2013 Formal Complaint at p. 9, lines 14-15.

¹⁹ *Id.* at p. 9, line 9, through p. 10, line 2 (emphasis added).

²⁰ *Id.* at p. 9, lines 22-23 (emphasis added).

²¹ *Id.* at p. 9, lines 24-25 (emphasis added).

1 solely to the Maricopa County Superior Court to resolve its claims under Count “A” against
2 Johnson Utilities.

3 While the jury in the Superior Court case awarded approximately \$42,000 to SFG on its
4 claims related to bills for water deliveries from Johnson Utilities,²² there are no findings or
5 rulings in the case that (i) SFG has a priority right to effluent, (ii) Johnson Utilities must satisfy
6 the effluent requests or requirements of SFG before it can deliver effluent to other customers
7 such as the San Tan Heights Homeowners Association or pump effluent into the ground,
8 (iii) Johnson Utilities must deliver effluent in whatever quantities are requested or required by
9 SFG, or (iv) Johnson Utilities withheld effluent from SFG. Moreover, the proposed form of
10 judgment recently lodged with the Superior Court by SFG contains no such findings or rulings.

11 Now, having failed to secure such findings and rulings from the Superior Court, SFG has
12 come back to the Commission for another bite at the apple. This should not be allowed. If there
13 is ambiguity or some deficiency in the award of the Superior Court, it is up to SFG to work that
14 out with the Superior Court. As the Commission clearly warned in Decision 73137, SFG
15 accepted the risk that the Superior Court may or may not address its claims. The Commission’s
16 decision could not have been more explicit.

17 SFG attempts to downplay the effect of Decision 73137 by stating that a “hearing was
18 never scheduled” and “Utility never even filed testimony.”²³ These points are irrelevant. In
19 *Suttle v. Seely*, the Arizona Supreme Court ruled that:

20 A consent judgment entered by stipulation of the parties is just as valid as a
21 judgment resulting from a trial on the merits, and a decree of dismissal with
22 prejudice made upon that stipulation is a final determination and is *res judicata* as
23 to all issues that were raised or could have been determined under the pleadings.
24 *Cochise Hotels v. Douglas Hotel Operating Co.*, 83 Ariz. 40, 316 P.2d 290
25 (1957). Therefore since the first suit between the parties, which was dismissed by
stipulation, sought the same relief in regard to a partition of the property as does
the complaint in the present action the trial court properly treated that issue as *res*
judicata.²⁴

26 ²² The Superior Court has not issued a judgment in the case as of the filing of this Reply. The jury
27 verdict sheet states a dollar amount, but provides no explanation regarding the basis or calculation of the
award.

28 ²³ SFG Response at p. 3, lines 15-16.

²⁴ *Suttle v. Seely*, 94 Ariz. 161, 163-164, 382 P.2d 570, 572 (1963) (emphasis added).

1 Further, Johnson Utilities is compelled to point out that the 2008 Complaint docket
2 spanned more than four years. There was extensive discovery, a motion for summary judgment,
3 oral arguments, and briefing of various issues.²⁵ More importantly, SFG intervened in the
4 Johnson Utilities rate case in Docket WS-02987A-08-0180 and asserted the claims from its 2008
5 Complaint.²⁶ SFG's participation in the rate case likely doubled the length of the hearing.
6 Johnson Utilities has already expended tremendous amounts of time and money responding to
7 the claims in the 2008 Complaint.

8 There is another key mischaracterization in SFG's Response that Johnson Utilities must
9 address. SFG falsely asserts that "[t]he 2008 Complaint was strictly about making Swing First
10 financially whole from 2004 through 2007, based on its rights under the USA."²⁷ As the
11 administrative law judge will likely recall, the Utility Services Agreement (identified by SFG as
12 the USA) was a 1999 agreement between Johnson Utilities and the predecessor-in-interest to
13 SFG. However, the evidence in the 2008 Complaint case showed conclusively that the Utility
14 Services Agreement was never assigned to SFG nor was it ever intended to be assigned to SFG.
15 Thus, SFG's assertion that it had rights under the agreement was discredited.

16 Without the Utility Services Agreement, SFG nevertheless continued to pursue its claim
17 of a first right to the effluent of Johnson Utilities under a different theory, as explained in the
18 pre-filed testimony of Mr. Ashton, which stated:

19 Q. EVEN IF THE 1999 CONTRACT DID NOT EXIST, WOULD SWING
20 FIRST STILL BE ENTITLED TO RECEIVE TREATED EFFLUENT
21 FROM UTILITY?

22 A. Certainly. The Johnson Ranch Golf Course has been Utility's customer
23 for many years. We should be receiving as much effluent as Utility can
24 deliver, up to our requirements. This is in accordance with our rights as a
tariffed effluent customer, and is wise public policy.²⁸

25 ²⁵ See Johnson Utilities Response in Opposition to Swing First Golf's Pleading Captioned Withdrawal of
26 Complaint (Docket WS-02987A-08-0049) at p. 7 ("[D]uring the course of this case, the parties and Staff
27 have propounded and responded to at least 22 separate sets of data requests comprising nearly 300
28 questions exclusive of subparts....").

²⁶ Mr. Ashton stated at page 30, lines 16-18 of his pre-filed testimony that "[m]uch of the information
that we have obtained that supports our complaint was obtained in the rate case."

²⁷ SFG Response at p. 3, lines 3-5 (emphasis added).

²⁸ Direct Testimony of David Ashton at p. 5, lines 4-9 (emphasis added).

1 Thus, SFG cannot successfully distinguish the 2013 Complaint from the 2008 Complaint
2 on the grounds that Count “A” of the 2008 Complaint arose under the 1999 Utility Services
3 Agreement. Mr. Ashton acknowledged in his pre-filed testimony that Count “A” could also be
4 litigated under the tariffs of Johnson Utilities.

5 Finally, SFG states in its Response that “[s]trangely enough, Utility actually opposed
6 Swing First’s withdrawal” of the 2008 Complaint.²⁹ The reason Johnson Utilities so vehemently
7 opposed the withdrawal of the 2008 Complaint was that Johnson Utilities suspected (and rightly
8 so) that SFG would disregard Decision 73137 and return to the Commission if it did not like the
9 result from the Superior Court case. That appears to be exactly what has happened. In addition,
10 Johnson Utilities also believes that SFG filed the 2013 Complaint primarily to create leverage to
11 attempt to force a settlement with Johnson Utilities in the Superior Court case.

12 For all of the reasons set forth above, Johnson Utilities requests that the Commission
13 grant its Motion to Dismiss and Motion to Strike with respect to Count “A” of the 2013
14 Complaint.

15 **II. ALLEGED MINIMUM BILL OVERCHARGES: COUNT “B” OF THE**
16 **2008 COMPLAINT AND COUNT “B” OF THE 2013 COMPLAINT RAISE**
17 **THE SAME CLAIMS.**

18 SFG attempts to distinguish Count “B” of the 2008 Complaint from Count “B” of the
19 2013 Complaint by arguing that “each nucleus of facts is separated by at least five years.”³⁰
20 However, under the doctrine of *res judicata*, it is not the separation of time that is the
21 determining factor, but whether the subsequent claim arises “out of the same nucleus of facts” as
22 the prior claim.³¹ There is no doubt that Count “B” of the 2013 Complaint arises out of the same
23 nucleus of facts as Count “B” of the 2008 Complaint. In its 2008 Complaint, SFG alleged the
24 following facts:

- 25 • “Swing First was served with a three-inch meter until 2008. The
26 minimum bill for this sized meter is only \$270.”³²

27 ²⁹ SFG Response at p. 3, lines 12-13.

³⁰ *Id.* at p. 5, line 11.

³¹ See SFG Response at p. 2, lines 7-8.

³² Direct Testimony of David Ashton at p. 25, lines 2-3.

- 1 • “In January 2008, Utility replaced Swing First’s three-inch meter with an
2 eight-inch meter.”³³
- 3 • [It is inappropriate for Utility to charge more than \$270 per month for its
4 monthly effluent minimum bill, even after January 2008.”³⁴
- 5 • “Swing First asks ... [t]he Commission to order Utility to render proper
6 bills to Swing First each month, based on actual meter reads, one 3-inch
7 meter, the effluent rate of \$0.62 per thousand gallons, and the Transaction
8 Privilege tax of \$0.067 per thousand gallons.”³⁵

9 The facts alleged by SFG in the 2013 Complaint are clearly the same:

- 10 • “To meter Effluent service, after the effluent line to the lake was
11 completed, Utility installed a three-inch water meter.”³⁶
- 12 • “Then, in January 2008, Utility arbitrarily replaced Swing First’s three-
13 inch effluent meter with an eight-inch meter, claiming that the change was
14 needed to correct previously undisclosed delivery line problems.”³⁷
- 15 • “Swing First asks the Commission to ... [o]rder Utility to charge a
16 minimum bill for Swing First’s Effluent deliveries based on a 3-inch water
17 meter.”³⁸

18 The crux of the claims raised in both the 2008 Complaint and the 2013 Complaint is
19 whether SFG is entitled to a three-inch effluent meter and/or whether SFG is entitled to pay a
20 monthly minimum charge based on a three-inch meter even though it has an eight-inch meter.
21 These were the central questions in January 2008 when SFG filed the 2008 Complaint and they
22 remain the central questions in the 2013 Complaint. SFG’s assertion in its Response that the
23 2013 Complaint “concerns an entirely different issue” is simply ridiculous.³⁹ Obviously, the
24 nucleus of facts of both counts is the same. Thus, SFG is barred under the doctrine of *res*
25 *judicata* from raising Count “B” of the 2013 Complaint, and likewise, is barred by Decision
26 73137 from raising Count “B.” For both of these reasons, Count “B” should be dismissed.

27 ³³ 2008 Complaint at p. 4, lines 1-2.

28 ³⁴ Direct Testimony of David Ashton at p. 25, lines 6-7.

³⁵ 2008 Complaint at p. 7, lines 24-26 (emphasis added).

³⁶ 2013 Complaint at p. 10, lines 15-16.

³⁷ *Id.* at p. 10, lines 18-20.

³⁸ *Id.* at p. 13, lines 11-12.

³⁹ SFG Response at p. 5, line 3.

1 SFG asserts that “only recently Utility began charging Swing First a minimum bill based
2 on an eight-inch meter.”⁴⁰ This is not correct. Johnson Utilities commenced charging SFG a
3 monthly minimum charge based on an eight-inch meter on or about October 1, 2010, following
4 the Commission’s approval of new rates and charges for the Company in Decision 71854
5 (Docket WS-02987A-08-0180).⁴¹ Thus, it strains credibility to argue that the \$880 eight-inch
6 meter charge is a “recent” charge given that it first appeared on SFG’s bills more than two and a
7 half years ago. Moreover, SFG filed its Withdrawal of Complaint in the 2008 Complaint docket
8 on September 27, 2011, nearly a year after the eight-inch meter charge appeared on its bill. The
9 Commission then granted SFG’s motion to withdraw the 2008 Complaint in Decision 73137 on
10 May 1, 2012, more than 18 months after the eight-inch meter charge first appeared on SFG bills.

11 In explaining the doctrine of *res judicata*, SFG cites a Ninth Circuit case for the
12 proposition that “the relevant inquiry is whether [the new claim] could have been brought” in the
13 prior action.⁴² Clearly, SFG’s claim regarding the eight-inch meter charge could have and
14 should have been brought in the 2008 Complaint docket, which continued well after the higher
15 monthly minimum charge commenced. Thus, Count “B” of the 2013 Complaint is barred by
16 Decision 73137 and the doctrine of *res judicata*.

17 As the complainant, it was incumbent upon SFG to prosecute the 2008 Complaint to
18 completion and secure a decision from the Commission in favor of SFG on Count “B.” When
19 SFG withdrew the 2008 Complaint and the Commission dismissed its claims with prejudice,
20 SFG agreed to look solely to the Maricopa County Superior Court to resolve its claims against
21 Johnson Utilities. As explained above, the Commission left no doubt as to the preclusive and
22 final effect of Decision 73137 on the claims of SFG in the 2008 Complaint docket, and the
23 Commission made clear that SFG “accepted the risk that [the] Superior Court may or may not
24 address the common claims raised in the Amended Complaint and the Superior Court case.”⁴³

25
26 ⁴⁰ *Id.* at p. 5, lines 7-8.

27 ⁴¹ Johnson Utilities notes that SFG was an intervenor in the Rate Case Docket which participated fully in
the case.

28 ⁴² *See* SFG Response at p. 2, lines 8-11 (citation omitted).

⁴³ Decision 73137 at FOF 114.

1 SFG chose the Superior Court (and not the Commission) to address its claims regarding
2 the size of the effluent meter and meter charge that can be imposed by Johnson Utilities. While
3 the jury in the Superior Court case awarded approximately \$42,000 to SFG on its claims related
4 to bills for water deliveries from Johnson Utilities, there are no findings or rulings by the court
5 that SFG (i) is entitled to a three-inch meter on the effluent delivery line or (ii) that Johnson
6 Utilities may charge no more than the monthly minimum charge for a three-inch meter.
7 Moreover, the proposed form of judgment recently lodged with the Superior Court by SFG
8 contains no such findings or rulings. Having failed to secure such findings and rulings from the
9 Superior Court, SFG has come back to the Commission for another bite at the apple. This
10 should not be allowed. As discussed above, if there is ambiguity or any deficiency in the award
11 of the Superior Court, it is up to SFG to work that out with the Superior Court. As the
12 Commission clearly warned in Decision 73137, SFG accepted the risk that the Superior Court
13 may or may not address its claims.

14 **III. ALLEGED FLOODING: COUNT “D” OF THE 2013 COMPLAINT FAILS**
15 **TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

16 While SFG asserts in its Response that it is seeking “recommendations concerning how
17 to prevent future flooding” of its golf course, there is no mention of any recommendations in
18 Count “D” of the 2013 Complaint, which provides only the following opaque statements:

19 Swing First was the victim of a second flooding last fall. These incidents just
20 should not happen. Fortunately, Mr. Watkins, Utility’s field office manager did
21 provide a billing credit for the flooding.⁴⁴

22 Rule 8(a)(2) of the Arizona Rules of Civil Procedure states that a pleading which sets
23 forth a claim for relief shall contain “[a] short and plain statement of the claim showing that the
24 pleader is entitled to relief.” In addition, Rule 8(a)(3) states that the pleading must contain “[a]
25 demand for judgment for the relief the pleader seeks.” Count “D” of SFG’s 2013 Complaint
26 lacks both of these essential components. Therefore, Count “D” should be dismissed pursuant to
27 Rule 12(b)(6) of the Arizona Rules of Civil Procedure for failure to state a claim upon which
28 relief can be granted.

⁴⁴ 2013 Complaint at p. 12, lines 6-8.

1 Additionally, because Count “D” fails to state a claim upon which relief can be granted,
2 the court should be stricken pursuant to Rule 12(f) of the Arizona Rules of Civil Procedure,
3 which allows the Commission to strike “any redundant, immaterial, impertinent, or scandalous
4 matter.” Count “D” as set forth in the 2013 Complaint is “immaterial and impertinent” to the
5 resolution of any claim properly before the Commission in this docket.

6 Finally, in the event the Commission is inclined to deny Johnson Utilities’ Motion to
7 Dismiss and Motion to Strike with respect to Count “D,” the Company moves for a more
8 definite statement of the claim pursuant to Rule 12(e) of the Arizona Rules of Civil Procedure,
9 which states as follows:

10 If a pleading to which a responsive pleading is permitted is so vague or
11 ambiguous that a party cannot reasonably be required to frame a responsive
12 pleading, the party may move for a more definite statement before interposing a
13 responsive pleading. The motion shall point out the defects complained of and
14 the details desired. If the motion is granted and the order of the court is not
15 obeyed within ten days after notice of the order or within such other time as the
16 court may fix, the court may strike the pleading to which the motion was directed
17 or make such order as it deems just.

18 Count “D” of the 2013 Complaint as drafted is so vague and ambiguous that Johnson
19 Utilities cannot reasonably frame a responsive pleading. In order to respond, Johnson Utilities
20 requests key details including the date and extent of the alleged flooding, the actions of Johnson
21 Utilities which caused the alleged flooding, and the nature of any damages sustained by SFG as
22 a proximate cause of the alleged flooding.

23 **IV. RESPONSE TO SFG’S PRELIMINARY RESPONSE AND CONCLUSION.**

24 The self-serving and unsupported assertions contained in Section I (Preliminary
25 Response) and Section III (Conclusion) of SFG’s Response have nothing to do with the merits
26 of Johnson Utilities’ Motion to Dismiss and Motion to Strike. Thus, Johnson Utilities will not
27 address those assertions in this Reply except to state that the Company denies all such
28 assertions. In addition, Johnson notes that its failure to address any allegation or argument of
SFG in this Reply should not be construed as an admission or waiver with respect to such
allegation or argument.

1 **V. CONCLUSION.**

2 For the reasons set forth in Johnson Utilities' Motion to Dismiss and Motion to Strike, as
3 well as this Reply, the Company requests that the Commission dismiss or strike Counts "A,"
4 "B" and "D" of SFG's 2013 Complaint. Alternatively, if the Commission is not inclined to
5 dismiss or strike Count "D," then the Company moves for a more definite statement of the claim
6 pursuant to Rule 12(e) of the Arizona Rules of Civil Procedure. Finally, with respect to Count
7 "C" of the 2013 Complaint, Johnson Utilities will file an answer and counterclaim within ten
8 (10) days following the date of a ruling by the Commission on the Motion to Dismiss in
9 compliance with Rule 12(a)(3)(A).

10 RESPECTFULLY submitted this 26th day of April, 2013.

11 BROWNSTEIN HYATT FARBER SCHRECK LLP

12 
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16 Attorneys for Johnson Utilities, L.L.C.

17 ORIGINAL and thirteen (13) copies of the
18 foregoing filed this 26th day of April, 2013, with:

19 Docket Control
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 COPY of the foregoing hand-delivered
24 this 26th day of April, 2013, to:

25 Yvette B. Kinsey, Administrative Law Judge
26 Hearing Division
27 ARIZONA CORPORATION COMMISSION
28 1200 West Washington Street
Phoenix, Arizona 85007

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12 and e-mail this 26th day of April, 2013, to:

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