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BEFORE THE ARIZONA CORPORATION COMMISSION

2013 MAY 13 P 3:45

Arizona Corporation Commission

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

MAY 13 2013

DOCKETED BY *JM*

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

DOCKET NO. WS-02987A-13-0053

SECOND SUPPLEMENT TO
COMPLAINT

1 Swing First Golf LLC ("Swing First") hereby again supplements its Complaint against
2 Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"). On May 8, 2013, Swing First
3 supplemented its Complaint to provide additional information concerning a recent threatening e-
4 mail from Utility. As it has in the past, Utility immediately retaliated against Swing First, this
5 time by cutting already low effluent deliveries in half. Utility's effluent withholding threatens
6 the continued existence of Swing First's golf course. If Utility does not immediately resume
7 reasonable effluent deliveries, Swing First will have no choice but to ask for an Order to Show
8 Cause against Utility.

9 **I Discussion**

10 Utility has long manipulated its Effluent deliveries to as a weapon to injure Swing First.
11 In 2007, Utility stopped delivering Effluent altogether to Swing First at the same time that it was
12 charging Swing First five times the lawful rate for CAP Water. In 2008, Utility began flooding
13 Swing First's golf course with excess Effluent s on the same day that Utility was served with a
14 copy of Swing First's Corporation Commission Complaint. And this year, as soon as a jury
15 awarded damages to Swing First, Utility once again started reducing Effluent deliveries.

16 Now, Utility is once again retaliating against Swing First by slashing Effluent deliveries.
17 On May 8, 2013, Swing First supplemented its Complaint to provide additional information

1 concerning a recent threatening e-mail from Utility. The very next day, Utility cut Effluent
2 deliveries by two-thirds, as is shown by the following table:¹

<u>Date</u>	<u>2013 Deliveries</u>	<u>2012 Deliveries</u>	<u>2011 Deliveries</u>
May 6	555,000 gallons	650,000 gallons	494,000 gallons
May 7	485,000 gallons	603,000 gallons	409,000 gallons
May 8	608,000 gallons	635,000 gallons	649,000 gallons
May 9	221,000 gallons	482,000 gallons	781,000 gallons
May 10	283,000 gallons	501,000 gallons	620,000 gallons
May 11	582,000 gallons	0	831,000 gallons
May 12	271,000 gallons	157,000 gallons	454,000 gallons
May 13	278,000 gallons	796,000 gallons	562,000 gallons
Total May 6 - 13	3,283,000 gallons	3,824,000 gallons	4,800,000 gallons

3 The table also establishes two other important facts. First, 2013 deliveries are far below
4 comparable deliveries in 2012 and 2011.² Second, Utility can deliver, if it chooses to, at least
5 831,000 gallons a day of Effluent to Swing First.

6 For the five days since Swing First filed its Supplement to Complaint, Effluent deliveries
7 have averaged just 327,000 gallons per day, less than one half the amounts required to maintain
8 the golf course and keep the golf course pond above critical levels. As a result, pond levels have
9 declined significantly. Exhibit A is a photograph that shows just how far pond levels have
10 declined, even as Swing First has been forced to stop irrigating areas of the golf course. Utility
11 is already damaging the golf course and Swing First's business. As temperatures again rise
12 above 100 degrees, that damage will become irreversible.

13 **II Conclusion**

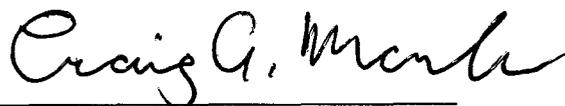
14 Utility has a monopoly, authorized by this Commission, on providing irrigation water to
15 Swing First. Absent a regulated monopoly's good will, only this Commission can restrain a
16 regulated monopoly's abuse of its monopoly power.

¹ The Effluent meter is read at 8:30 a.m.

² There was apparently a line break or some other malfunction on May 11 2012, that was not fixed until May 12. Even with two days where deliveries were restricted, 2012 deliveries were still higher than in 2013.

1 Based on its history of abusing Swing First, it seems extremely unlikely that Utility will
2 act voluntarily. However, Swing First will give Utility one more chance to do the right thing and
3 resume Effluent deliveries to at least the levels it provided in 2011 and 2012. If it has not done
4 so by Thursday, May 16, 2013, Swing First will have no choice but to file a Request for
5 Emergency Relief and for an Order to Show Cause why Utility should not deliver Swing First's
6 reasonable Effluent requirements during the pendency of Swing First's Complaint.

7 RESPECTFULLY SUBMITTED on May 13, 2013.

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20 Original and 13 copies **filed**
21 on May 13, 2013, with:

22
23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

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28 Copy **e-mailed and mailed**
29 on May 13, 2013 to:

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31 Jeffery W. Crockett
32 Brownstein Hyatt Farber Schreck
33 One East Washington Street
34 Suite 2400
35 Phoenix, AZ 85004

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37
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39 By:

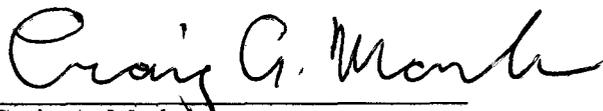
40 
Craig A. Marks

Exhibit A

