



0000145901

ORIGINAL

BEFORE THE ARIZONA CORPORATIO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

JUN 25 2013

DOCKETED BY *JM*

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

2013 JUN 25 PM 11:43

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C. DBA  
JOHNSON UTILITIES COMPANY, FOR AN  
INCREASE IN ITS WATER AND WASTE-  
WATER RATES FOR CUSTOMERS WITHIN  
PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180  
RESPONSE TO SWING FIRST GOLF'S  
SUPPLEMENTAL RESPONSE

Brownstein Hyatt Farber Schreck, LLP  
One East Washington, Suite 2400  
Phoenix, AZ 85004

On June 19, 2013, Swing First Golf LLC ("SFG") filed a Supplemental Response to Petition to Amend Decision ("Supplemental Response"). Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") hereby responds to SFG's Supplemental Response.

**1. Notices of Violation for High Turbidity.**

Johnson Utilities provides Class A+ effluent from its San Tan wastewater treatment plant ("San Tan WTP") to the San Tan Heights Homeowners Association ("San Tan Heights HOA") and the Johnson Ranch Golf Course. After a power outage on Friday evening, May 10, 2013, the San Tan WTP experienced an upset when two of the three blower pumps failed to restart automatically when power was restored. This caused high turbidity in the effluent discharging from the plant to the San Tan Heights HOA pond. The high turbidity should have been identified and addressed immediately by the weekend employee tasked with checking the plant to verify that it is operating correctly. Unfortunately, the employee failed to do so.

On Monday, May 13, 2013, the weekday operator found the plant in an upset mode and immediately diverted the effluent flow from the San Tan Heights HOA pond to the Company's onsite recharge basin. The blower pumps were manually reset and the plant quickly returned to its normal operating condition producing A+ effluent. Johnson Utilities also immediately pumped the turbid effluent from the HOA's pond back into the San Tan WTP for reprocessing.

1           Initially, there were erroneous media reports that raw sewage was discharged into the  
2 San Tan Heights HOA pond. At no time did raw sewage discharge from the San Tan WTP into  
3 the HOA's pond. Rather, the effluent was high in turbidity as a result of the failure of two  
4 blower pumps to restart automatically following the power outage. The high turbidity caused  
5 the loss of fish in the pond and the unpleasant odor.

6           The Arizona Department of Environmental Quality ("ADEQ") inspected the San Tan  
7 WTP on May 15, 2013, and issued two notices of violation ("NOVs") on May 30, 2013. Copies  
8 of NOV 140548 and NOV 140757 were filed with Docket Control by Johnson Utilities on June  
9 5, 2013, in Docket Nos. WS-02987A-99-0583, WS-02987A-00-0618, W-02234A-00-0371, W-  
10 02859A-00-0774 and W-01395A-00-0784.

11           As stated in the cover letters accompanying the NOVs, an NOV is "an informal  
12 compliance assurance tool used by ADEQ to put a responsible party ... on notice that the  
13 Department believes a violation of an environmental requirement has occurred." The cover  
14 letter further states that "an NOV provides the responsible party an opportunity to do any of the  
15 following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the  
16 facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or  
17 (3) document that the violation has been corrected."

18           Pursuant to the requirements of the "documenting compliance" sections of the NOVs,  
19 Johnson Utilities has fully documented that the issues which led to the violations for high  
20 turbidity at the San Tan WTP have been corrected. Regarding NOV 140548, Johnson Utilities  
21 provided a letter to ADEQ dated June 20, 2013, which included, in part, the following  
22 description of the measures the Company has taken to correct the situation that occurred at the  
23 San Tan WTP:

24           As we reported previously, after a power outage on Friday evening, May 10,  
25 2013, the San Tan water reclamation plant experienced an upset when two  
26 variable frequency drives (VFDs) failed to restart when power was restored. This  
27 event led to bulking MLSS that resulted in a discharge of effluent that exceeded  
28 the turbidity limits. This event should have been corrected on Saturday by the  
weekend employee, but unfortunately the employee failed to do so. This  
employee has been dismissed by JU and is no longer working for JU. On

1 Monday, May 13, 2013, the weekday operator found the plant in an upset mode  
2 and diverted the flow from the San Tan HOA pond to the onsite recharge facility.  
3 The blowers were manually reset, and the plant returned to its normal operating  
4 condition.

5 The VFDs that did not restart were programmed on Tuesday, May 14, 2013, to  
6 reset automatically after power is restored. JU tested the VFDs by turning the  
7 electric power off and on to ensure that the VFDs would restart automatically.  
8 When power was restored, all blowers started automatically.  
9 Additionally, a supervisory control and data acquisition (SCADA) system is being  
10 installed to alert staff in the event of a power failure in the future. The influent  
11 SCADA system is complete which includes a power failure alarm. Installation of  
12 the entire SCADA system is expected to be completed by the middle of July.

13 A copy of Johnson Utilities' June 20, 2013, letter to ADEQ was filed by the Company  
14 with Docket Control in the above-listed dockets on June 21, 2013. With this letter, the  
15 Company satisfied the documenting compliance section of NOV 140548.

16 Regarding NOV 140757, Johnson Utilities provided two letters to ADEQ dated June 4,  
17 2013, and June 20, 2013. In the June 4, 2013, letter, the Company reported, in part, as follows:

18 Attached are the 2<sup>nd</sup> quarter [Self Monitoring Report Form] pages for maximum  
19 turbidity and daily average turbidity. The data documents the plant's return to  
20 normal operation. Reclaimed water is currently being delivered to the Johnson  
21 Ranch Golf Course and recharge facility.

22 Copies of these letters were filed by Johnson Utilities in the above-listed dockets on June  
23 5, 2013, and June 21, 2013. With these letters, the Company has satisfied the documenting  
24 compliance section of NOV 140757.

25 SFG argues that in this case, the Commission should adopt a condition similar to one  
26 supported by Utilities Division Staff in the pending Far West Water & Sewer, Inc. ("Far West")  
27 rate case<sup>1</sup> which states that "[a]ny increase in rates and charges approved in this proceeding shall  
28 not become effective until Far West files documentation from ADEQ that Far West's  
wastewater treatment plants are in compliance with ADEQ's Consent Judgment as it may be  
amended."<sup>2</sup> However, there is simply no fair comparison between the Consent Judgment issued  
to Far West and the NOVs for high turbidity issued in the case of Johnson Utilities. According

<sup>1</sup> Docket No. WS-03478A-12-0307.

<sup>2</sup> SFG's Supplemental Response at p. 2, lines 6-9 (citing Staff's Brief dated June 11, 2013 in Docket No. WS-03478A-12-0307 at p. 18).

1 to ADEQ's Compliance & Enforcement Handbook (Version 12/1/03), a Consent Judgment is a  
2 formal enforcement tool "reserved for those violations that are particularly egregious, or for  
3 those circumstances where the responsible party is unwilling or unable to resolve a violation in a  
4 time manner after receiving an informal compliance assurance response from ADEQ."<sup>3</sup>  
5 Certainly, the violations of Far West fall under the category of "particularly egregious" as they  
6 are described in a June 21, 2010, News Release issued by ADEQ and the Arizona Attorney  
7 General's Office announcing the most recent Far West Consent Judgment:

8       The Arizona Department of Environmental Quality and Arizona Attorney  
9       General's Office announced today that Far West Water and Sewer, Inc. and  
10       H & S Developers, Inc. have agreed to a \$500,000 settlement for numerous water  
11       and air quality violations in Yuma County.

12       The Attorney General's office filed a 50-count lawsuit against Far West and  
13       H & S Developers, Inc. in September 2008 alleging violations at the seven  
14       WWTPs and drinking water treatment plant. The violations included operating  
15       plants without permits; reusing reclaimed water for golf course irrigation without  
16       proper authorization; failing to monitor and report analytical data for  
17       contaminants in both drinking water and wastewater; failing to notify ADEQ  
18       about permit violations in a timely manner; and operating the drinking water plant  
19       without a certified operator.

20       ADEQ previously took enforcement action against Far West for violations at its  
21       WWTPs during 2006, resulting in an October 2006 consent order requiring the  
22       company to upgrade and consolidate its operations, plus obtain the applicable  
23       permits. This consent order has now been superseded by the current agreement.<sup>4</sup>  
24       (emphasis added)

25       Unlike Far West, Johnson Utilities has quickly addressed the compliance matters alleged  
26       in NOVs 140548 and 140757. Johnson Utilities timely informed the Commissioners of the  
27       NOVs and filed copies of the NOVs, together with the Company's responses to ADEQ, with  
28       Docket Control. Soon after identifying the problem, the Company was again discharging A+  
29       effluent from the San Tan WTP. Based upon the circumstances, there is no basis to impose the  
30       condition requested by SFG.

<sup>3</sup> <http://www.azdeq.gov/function/forms/download/handbook/fullhandbookw.pdf> (at p. 6-1).

<sup>4</sup> <http://www.azdeq.gov/function/news/2010/download/062110.pdf>.

1     **2. Superior Court Judgment and Commission Complaint.**

2             SFG next argues that the Commission should deny Johnson Utilities “any additional rate  
3 increases until such time as Johnson Utilities has resolved all open issues with Swing First,  
4 including satisfying the Superior Court Judgment and resolving Swing First’s new Commission  
5 Complaint.”<sup>5</sup> However, SFG cites no authority to support its request and, again, there is no  
6 basis to impose SFG’s proposed condition based upon the circumstances.

7             With regard to the judgment just issued in the Superior Court case on May 15, 2013,  
8 Johnson Utilities has filed post-trial motions which must still be ruled upon by the judge.  
9 Specifically, Johnson Utilities has filed a Motion for Judgment as a Matter of Law as well as a  
10 Motion for New Trial. Briefing is not yet complete on these motions. Thus, it is absurd for SFG  
11 to assert that Johnson Utilities “is doing everything it can to delay paying the Judgment,”<sup>6</sup> a  
12 judgment which is barely a month old. Johnson Utilities believes that there were serious errors  
13 in the proceedings conducted in the Superior Court which will lead to a reversal of one or more  
14 parts of the verdict. Johnson Utilities is addressing these errors in its post-trial motions, and the  
15 Company intends to appeal the verdict if necessary should the post-trial motions be denied.  
16 There is nothing improper about a party lawfully pursuing its post-trial and appellate remedies.

17             With regard to the Formal Complaint filed by SFG on March 11, 2013, in Docket WS-  
18 02987A-13-0053, Johnson Utilities filed a Motion to dismiss three of the four counts in the  
19 complaint on April 2, 2013. The Motion to Dismiss is based largely upon Decision 73137 in a  
20 prior complaint docket wherein the Commission dismissed with prejudice two of the counts  
21 which SFG now seeks to raise in the new complaint docket. The Commission’s administrative  
22 law judge heard oral argument on the motion (as well as other matters) at a procedural  
23 conference on May 20, 2013, and the parties are currently awaiting a decision on the Motion to  
24 Dismiss. Johnson Utilities has done nothing to delay SFG’s formal complaint case, and there is  
25 certainly no basis to condition the relief requested by Johnson Utilities with regard to income tax  
26 expense on the resolution of the pending SFG complaint.

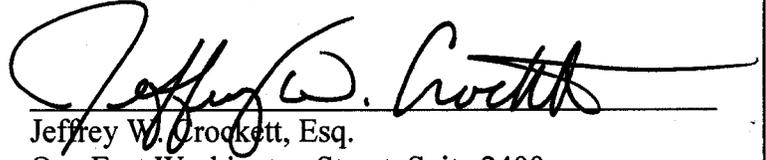
27 \_\_\_\_\_  
28 <sup>5</sup> SFG’s Supplemental Response at p. 3, lines 9-12.

<sup>6</sup> *Id.* at p. 3, lines 6-7.

1 For all of the reasons set forth above, the Commission should reject the conditions  
2 proposed by SFG in this docket.

3 RESPECTFULLY submitted this 25<sup>th</sup> day of June, 2013.

4 BROWNSTEIN HYATT FARBER SCHRECK LLP.

5 

6 Jeffrey W. Crockett, Esq.  
7 One East Washington Street, Suite 2400  
8 Phoenix, Arizona 85004  
9 Attorneys for Johnson Utilities, L.L.C.

10 ORIGINAL and thirteen (13) copies of the foregoing  
11 filed this 25<sup>th</sup> day of June, 2013, with:

12 Docket Control  
13 ARIZONA CORPORATION COMMISSION  
14 1200 West Washington Street  
15 Phoenix, Arizona 85007

16 COPY of the foregoing hand-delivered  
17 this 25<sup>th</sup> day of June, 2013, to:

18 Lyn Farmer, Chief Administrative Law Judge  
19 Hearing Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 Janice Alward, Chief Counsel  
24 Legal Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007

28 Steve Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

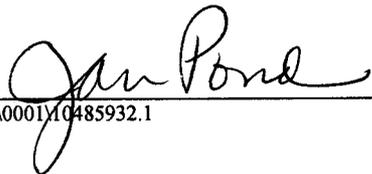
**Brownstein Hyatt Farber Schreck, LLP**  
One East Washington, Suite 2400  
Phoenix, AZ 85004

1 Copy of the foregoing sent via e-mail and first  
2 class mail this 25<sup>th</sup> day of June, 2013, to:

3 Daniel Pozefsky, Chief Counsel  
4 RESIDENTIAL UTILITY CONSUMER OFFICE  
5 1110 West Washington Street  
6 Phoenix, Arizona 85007

7 James E. Mannato, Town Attorney  
8 TOWN OF FLORENCE  
9 P.O. Box 2670  
10 775 N. Main Street  
11 Florence, Arizona 85232-2670

12 Craig A. Marks  
13 CRAIG A. MARKS, PLC  
14 10645 N. Tatum Blvd., Suite 200-676  
15 Phoenix, Arizona 85028

16   
17 \_\_\_\_\_  
18 014676\0001\10485932.1

19  
20  
21  
22  
23  
24  
25  
26  
27  
28