

ORIGINAL



0000172970

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

Arizona Corporation Commission

DOCKETED

AUG 31 2016

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 AUG 31 A 8:28

DOCKETED BY

SWING FIRST GOLF, LLC,

Complainant,

v.

JOHNSON UTILITIES, L.L.C.,

Respondent.

DOCKET NO. WS-02987A-16-0017

PROCEDURAL ORDER
(Sets Procedural Conference)

BY THE COMMISSION:

On January 19, 2016, Swing First Golf, LLC (“Swing First” or “Complainant”) filed with the Arizona Corporation Commission (“Commission”) a Formal Complaint (“Complaint”) against Johnson Utilities, L.L.C. (“Johnson” or “the Company”), alleging that Johnson had unilaterally decided to discontinue providing effluent to Swing First and other effluent customers. Swing First’s Complaint alleged that if Johnson discontinued its effluent service, Johnson’s actions would be unlawful and not in the public interest.

On February 2, 2016, Johnson filed an answer to the Complaint disputing the allegations in the Complaint.

On February 22, 2016, Johnson filed a Motion to Dismiss Swing First Golf’s Formal Complaint.

On February 25, 2016, Swing First filed a Supplement to Formal Complaint stating that Johnson had discontinued its tariffed effluent deliveries to Swing First effective February 24, 2016.

On March 21, 2016, a Procedural Order was issued scheduling a procedural conference to be held on April 6, 2016, and directing Swing First to file a response to Johnson’s Motion to Dismiss.

On March 21, 2016, Swing First filed its Response to Motion to Dismiss.

On April 4, 2016, Johnson filed its Reply in Support of Motion to Dismiss.

1 On April 6, 2016, a procedural conference was held as scheduled. Johnson, Swing First and
2 Staff appeared through counsel. During the procedural conference, Staff was directed to file a response
3 to Johnson's Motion to Dismiss

4 On April 19, 2016, Johnson filed a response to Consumer Comment filed by Karen Christian.

5 On April 29, 2016, Staff filed its Response to Motion to Dismiss.

6 Also on that date, Swing First filed its Brief Opposing Motion to Dismiss.

7 On May 9, 2016, Thomas K. Irvine filed a Notice of Appearance on behalf of Johnson.

8 Also on that date, Johnson filed a Supplemental Reply in Support of Motion to Dismiss.

9 On May 10, 2016, Swing First filed its Supplemental Filing stating that Johnson had threatened
10 to discontinue all water service to Swing First on May 20, 2016, if Swing First failed to pay for
11 groundwater delivered to the golf course between February 26 and April 25, 2016. Swing First's filing
12 stated that because Johnson had unilaterally discontinued deliveries of effluent to the golf course, and
13 is only delivering groundwater, the golf course's cost for water had quintupled. Swing First requested
14 that the Commission direct Johnson to: resume effluent deliveries; require Johnson to rebill unlawful
15 groundwater deliveries at the effluent rate; and find that Johnson may only apply to discontinue a
16 tariffed service as part of a rate case where the Commission can evaluate the requested rate's impacts,
17 customer effects, and community consequences, as part of its determination of whether the application
18 is in the public interest.

19 On May 13, 2016, Johnson filed a Response to Karen Christian's Email to Commissioner Andy
20 Tobin.

21 On May 17, 2016, by Procedural Order, Swing First's request was granted and Johnson was
22 prohibited, until further order of the Commission, from disconnecting the delivery of water to Swing
23 First. Additionally, Johnson was ordered to either resume the delivery of effluent (at the historical
24 volume received by Swing First) or continue to deliver non-effluent water as required by Swing First.

25 On June 1, 2016, the Commission's Hearing Division issued a Recommended Order,
26 recommending denial of Johnson's Motion to Dismiss.

27 On June 10, 2016, Johnson filed Exceptions to the Recommended Order.

28 On June 30, 2016, the Commission issued Decision No. 75616, denying Johnson's Motion to

1 Dismiss the Complaint.

2 On July 14, 2016, a Procedural Order was issued scheduling a procedural conference to be held
3 on August 2, 2016.

4 On July 19, 2016, Johnson filed a Motion for Rehearing pursuant to A.R.S. §40-252, requesting
5 that the Commission rehear all the issues set forth in Decision No. 75616.

6 On June 27, 2016, Swing First filed a Response to Johnson's Motion for Rehearing.

7 On August 2, 2016, a procedural conference was held as scheduled. Johnson, Swing First and
8 Staff appeared. During the procedural conference, the parties requested that the hearing in this matter
9 not be set at this time and that the parties be granted additional time to discuss whether the issues raised
10 in the Complaint could be narrowed. At the conclusion of the procedural conference, the parties were
11 directed to jointly file by September 12, 2016, an update with the Commission on the status of the case.
12 Further, an additional procedural conference was scheduled to be held on September 22, 2016, to
13 determine a procedural schedule in this matter.

14 On August 26, 2016, Swing First filed a Motion for Sanctions ("Motion") stating that Johnson
15 has failed to deliver the amount of effluent needed for Swing First to maintain irrigation of its golf
16 course. Swing First's Motion requests that the Commission fine Johnson in the amount of \$10,000 per
17 day for fourteen (14) days, or \$140,000.

18 Johnson has not filed a response to Swing First's Motion. It is appropriate to require Johnson
19 to file a response to the Motion. Further, it is appropriate to memorialize the procedural deadlines
20 established at the August 2, 2016, procedural conference.

21 **IT IS THEREFORE ORDERED that the parties shall jointly file, on or before September**
22 **12, 2016, an update with the Commission discussing the status of the case.**

23 **IT IS FURTHER ORDERED that Johnson shall file, on or before September 12, 2016, a**
24 **response to Swing First's Motion.**

25 **IT IS FURTHER ORDERED that a procedural conference in this matter shall be held on**
26 **September 22, 2016, at 1:00 p.m.** or as soon thereafter as is practicable, at the Commission's offices,
27 1200 West Washington Street, Hearing Room No. 1, Phoenix, AZ, to discuss a procedural schedule in
28 this matter.

1 IT IS FURTHER ORDERED that Staff is directed to appear for the procedural conference as
2 set forth in this Procedural Order.

3 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party
4 to this matter may opt to receive service of all filings in this docket, including all filings by parties
5 and all Procedural Orders and Recommended Opinions and Orders/Recommended Orders
6 issued by the Commission's Hearing Division, via email sent to an email address provided by the
7 party rather than via U.S. Mail. To exercise this option, a party shall:

- 8 1. Ensure that the party has a valid and active email address to which the party has
9 regular and reliable access ("designated email address");
- 10 2. Complete a Consent to Email Service form, available on the Commission's website
11 (www.azcc.gov) or a substantially similar format;
- 12 3. File the original and 13 copies of the Consent to Email Service form with the
13 Commission's Docket Control, also providing service to each party to the service
14 list;
- 15 4. Send an email, containing the party's name and the docket number for this matter,
16 to HearingDivisionServicebyEmail@azcc.gov from the designated email address,
17 to allow the Hearing Division to verify the validity of the designated email address;
- 18 5. Understand and agree that service of a document on the party shall be complete
19 upon the sending of an email containing the document to the designated email
20 address, regardless of whether the party receives or reads the email containing the
21 document; and
- 22 6. Understand and agree that the party will no longer receive service of filings in this
23 matter through First Class U.S. Mail or any other form of hard-copy delivery,
24 unless and until the party withdraws this consent through a filing made in this
25 docket.

26 IT IS FURTHER ORDERED that a party's consent to email service shall not become
27 effective until a Procedural Order is issued approving the use of email service for the party. The
28

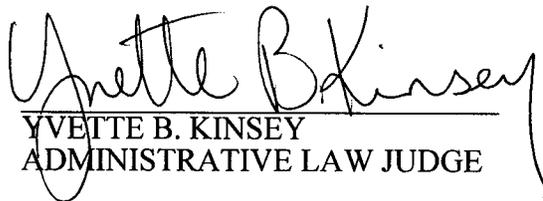
1 **Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and**
2 **the Hearing Division has verified receipt of an email from the party's designated email address.**

3 **IT IS FURTHER ORDERED that a party's election to receive service of all filings in this**
4 **matter via email does not change the requirement that all filings with the Commission's Docket**
5 **Control must be made in hard copy and must include an original and 13 copies.**

6 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
7 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
8 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
9 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
10 discussion unless counsel has previously been granted permission to withdraw by the Administrative
11 Law Judge or the Commission.

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
13 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at the
14 hearing.

15 DATED this 31st day of August, 2016.

17
18 
19 YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

20 On this 31st day of August, 2016, the foregoing document was filed with Docket Control as a
21 Procedural Order-Sets Procedural Schedule/Conference, and copies of the foregoing were mailed on
22 behalf of the Hearing Division to the following who have not consented to email service. On this date
or as soon as possible thereafter, the Commission's eDocket program will automatically email a link
to the foregoing to the following who have consented to email service.

23 Jeffrey W. Crockett
24 CROCKETT LAW GROUP PLLC
25 2198 E. Camelback Road, Suite 305
Phoenix, AZ 85016-4747
Attorney for Johnson Utilities, L.L.C.

Attorney for Swing First Golf, LLC

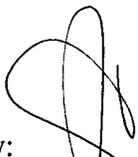
26 Craig A. Marks
27 CRAIG A. MARKS, PLC
10645 North Tatum Blvd., Suite 200-676
28 Phoenix, Arizona 85028

Thomas K. Irvine
Kelly Flood
ASU ALUMNI LAW GROUP
Two North Central Avenue, Suite 1600
Phoenix, Arizona 85004
Attorneys for Johnson Utilities

1 Janice Alward, Chief Counsel
2 Legal Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, AZ 85007

Thomas Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COASH & COASH, INC.
Court Reporting, Video and
Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

6 By: 
7 Amy Wilson
8 Assistant to Yvette B. Kinsey

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28