



0000186606

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS Arizona Corporation Commission

DOCKETED

ARIZONA CORPORATION COMMISSION  
DOCKET OFFICE

2018 MAR 16 P 2:38

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

MAR 16 2018

DOCKETED BY

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION INTO THE BILLING  
PRACTICES AND WATER QUALITY ISSUES OF  
JOHNSON UTILITIES, LLC.

DOCKET NO. WS-02987A-18-0050

**PROCEDURAL ORDER**  
**(Requiring Notice)**

**BY THE COMMISSION:**

On December 29, 2017, in Docket No. WS-02987A-17-0392 (“Rates Docket”), Johnson Utilities, LLC (“Johnson”) filed an Application for a Determination of the Fair Value of its Water and Wastewater Utility Plant and Property, for Increases in its Rates and Charges for Water and Wastewater Utility Service, and for Related Approvals (“Application”).

The Commission’s Utilities Division (“Staff”) issued a Sufficiency Letter in the Rates Docket on January 29, 2018, finding that Johnson’s Application had met the sufficiency requirements of Arizona Administrative Code (“A.A.C.”) R14-2-103 and had been classified as a Class A utility.

On January 30, 2018, a Procedural Order was issued scheduling the hearing on the Application to commence on October 23, 2018, and, *inter alia*, requiring Johnson to post conspicuously and prominently on its website public notice of six Public Comment Sessions to be held by the Commission in San Tan Valley, Arizona, on February 20 and 21, 2018.

On February 20 and 21, 2018, the Commission held six Public Comment Sessions in San Tan Valley regarding the Rates Docket. During the Public Comment Sessions, the Commission received comments from approximately 184 individuals who presented themselves as customers of Johnson. The individuals provided comments primarily regarding the following topics—health and safety concerns regarding the quality of Johnson’s drinking water, health and safety concerns regarding the alleged release of hydrogen sulfide gas from Johnson’s wastewater treatment plants, Johnson’s meter reading and billing practices and the resulting bills that were perceived as excessive, and Johnson’s

1 allegedly shutting off service without justification and charging reconnection fees to resume service.

2 On February 21, 2018, Chairman Tom Forese issued to Staff's Director and the Commission's  
3 Chief Counsel a letter directing Staff to open a new docket to investigate the billing and water quality  
4 issues raised during the Public Comment Session on February 20, 2018. As a result, Staff filed a  
5 memorandum, to which the Chairman's letter was attached, requesting the opening of such a docket.  
6 As a result, this docket was opened.

7 On February 22, 2018, the Commission held a Staff Open Meeting at which it discussed  
8 conducting an investigation of Johnson's system as to health and safety-related complaints, billing-  
9 related complaints, complaints of retaliatory conduct by Johnson, and water pressure complaints. The  
10 Commission further discussed the best course of action to address any emergent public health concerns  
11 found, as well as any other issues detected.<sup>1</sup> Staff indicated that a Staff engineer would be sent out the  
12 next day, with personnel from the Arizona Department of Environmental Quality ("ADEQ") to perform  
13 a site inspection and sampling of Johnson's water and effluent. The Director of ADEQ's Water Quality  
14 Division stated that Johnson's water system was currently in compliance with safe drinking water  
15 standards, although it has had compliance issues in the past; that ADEQ has received many odor  
16 complaints regarding Johnson's wastewater treatment system and has hired a consultant to assist in  
17 ADEQ's review of Johnson's Section 11 Plant to determine the cause of the odors; and that ADEQ  
18 would be participating in the Commission's investigation to determine the current compliance status  
19 of Johnson's systems. The Commission directed Staff immediately to conduct a site inspection and  
20 water and effluent sampling as part of an investigation into health and safety issues with Johnson's  
21 systems and to prepare a report with a substantive proposal for the Commission's consideration at the  
22 Open Meeting on March 13, 2018, or sooner. Staff was also directed to begin investigating the items  
23 that were not directly related to health and safety, although on a non-emergent basis.

24 On February 23, 2018, a site inspection and water and wastewater sampling were performed by  
25 Staff and ADEQ.

26 On February 26, 2018, Commissioner Bob Burns filed a copy of his opening comments made

27 <sup>1</sup> The Staff Open Meeting Notice included the following language for the Johnson item: "Commission Discussion,  
28 Consideration, and Possible Vote Regarding: Investigation into Water Quality and Billing Complaints at Johnson Utilities,  
Possibility of Order to Show Cause, and Possibility of Appointment of an Interim Manager."

1 at the Staff Open Meeting on February 22, 2018.

2 On March 2, 2018, Swing First Golf, LLC (“Swing First”) filed a Motion to Intervene, stating  
3 that Swing First is one of Johnson’s largest effluent customers as well as a water and wastewater service  
4 customer. Swing First made a number of assertions regarding what Swing First described as a ten-year  
5 history of “abuse” by Johnson. Swing First’s Motion to Intervene was granted by Procedural Order on  
6 March 15, 2018.

7 On March 7 and 8, 2018, the Commission’s Executive Director filed in this docket an Open  
8 Meeting Agenda and a Revised Open Meeting Agenda for the Open Meeting to be held on March 13,  
9 2018. The Revised Open Meeting Agenda included the following language regarding consideration of  
10 this matter:

11 **In the matter of the Commission’s Investigation of the Billing and**  
12 **Water Quality Issues of Johnson Utilities, LLC (WS-02987A-18-0050):**  
13 Staff update on investigation into billing issues, water quality, wastewater  
14 facility issues, and related health and safety issues; Commission discussion,  
consideration, and possible vote regarding order to show cause and the  
appointment of an interim manager.

15 On March 8, 2018, Staff filed an Open Meeting Memorandum.<sup>2</sup> Staff enumerated its findings  
16 on Johnson’s regulatory compliance status; recommended that Johnson take a number of remedial  
17 actions to resolve those issues, including completing specific water and wastewater system repairs and  
18 installations by April 16, 2018; and recommended that the Commission direct Staff to initiate an Order  
19 to Show Cause (“OSC”) no later than April 20, 2018, in order to appoint an interim manager for the  
20 Commission’s consideration at a future Open Meeting if Johnson failed to make those water and  
wastewater system repairs and installations by April 16, 2018.

21 On March 9, 2018, Commissioner Bob Burns filed a letter to the docket expressing concern  
22 with Staff’s recommendation to wait until April 20, 2018, to institute an OSC, stating that an OSC  
23 should be commenced as soon as possible. Commissioner Burns provided specific recommended  
24 language to include in any decision issued in this matter as a result of the Commission’s March 13,  
25 2018, Open Meeting.

26 On March 9, 2018, Staff filed a Notice of Filing Proposed Order, stating that the proposed order  
27

28 <sup>2</sup> Although Staff’s Memorandum stated that a proposed order accompanied it, there was not a proposed order included in the filing.

1 was to accompany the Staff Open Meeting Memorandum filed the day before.

2 On March 12, 2018, Commissioner Justin Olson filed a letter to the docket proposing that the  
3 Commission consider a more expedited timeline for an OSC and appointment of a temporary or long-  
4 term interim manager.

5 On March 12, 2018, Johnson filed Initial Comments Regarding the Staff Memorandum Dated  
6 March 8, 2018. *Inter alia*, Johnson stated that it would timely comply with all of Staff's  
7 recommendations from the Staff Open Meeting Memorandum.

8 At the Open Meeting on March 13, 2018, the Commission discussed and considered the  
9 Proposed Order, amended the Proposed Order, and adopted an Order that, *inter alia*, (1) required Staff  
10 to file, no later than March 15, 2018, an Application for an Order to Show Cause ("Application for  
11 OSC") as to why an interim manager should not be appointed; (2) required that Johnson file its response  
12 to the Application for OSC by March 26, 2018, at 5:00 p.m.; (3) required that an evidentiary hearing  
13 on the Application for OSC be held on March 29, 2018, at 10:00 a.m., with an Administrative Law  
14 Judge ("ALJ") presiding and the Commissioners prepared to consider the matter at that time; and (4)  
15 required that the ALJ prepare a conforming order for the OSC on or before April 6, 2018.

16 On March 15, 2018, Staff filed a Complaint; Petition for an Order to Show Cause, setting forth  
17 five counts of complaint and requesting that the Commission issue an OSC against Johnson to  
18 demonstrate why an interim manager should not be appointed and, further, impose fines and penalties  
19 pursuant to A.R.S. §§ 40-424 and 40-425 and Article 15, § 19 of the Arizona Constitution and grant  
20 such other relief as the Commission deems appropriate. Staff included a Proposed OSC Order with the  
21 Application for OSC.

22 On March 16, 2018, at an Open Meeting, the Commission discussed and considered Staff's  
23 Application for an OSC and Proposed Order and adopted the Proposed Order, which (1) requires  
24 Johnson to file its response to Staff's Complaint and Petition by March 26, 2018; (2) requires Johnson  
25 to appear and show cause at 10:00 a.m. on March 29, 2018, to defend eight enumerated items; and (3)  
26 requires the Hearing Division forthwith to schedule any additional appropriate proceedings. During  
27 their discussions, the Commission indicated that Johnson should be required to provide notice of the  
28 March 29, 2018, hearing date and that intervention should be allowed in this matter.

1 IT IS THEREFORE ORDERED that the **evidentiary hearing** in this matter shall commence  
 2 on **March 29, 2018, at 10:00 a.m.**, at the Commission's offices at 1200 West Washington Street,  
 3 Phoenix, Arizona 85007, and shall continue, if necessary, at an additional date and time to be identified  
 4 at the evidentiary hearing.

5 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,  
 6 except that **all motions to intervene must be filed on or before March 26, 2018.**

7 IT IS FURTHER ORDERED that **Johnson Utilities, LLC shall, by March 20, 2018, provide**  
 8 **public notice of the evidentiary hearing** in this matter, in the following form and style, with the  
 9 heading in no less than 18-point bold type and the body in no less than 10-point regular type, by **posting**  
 10 **the notice in a prominent and conspicuous location on its website:**

11 **PUBLIC NOTICE OF HEARING ON THE COMMISSION'S INVESTIGATION OF**  
 12 **THE BILLING AND WATER QUALITY ISSUES OF JOHNSON UTILITIES, LLC.**  
 13 **(DOCKET NO. WS-02987A-18-0050)**

14 **Summary**

15 On February 20 and 21, 2018, the Arizona Corporation Commission ("Commission")  
 16 held six Public Comment Sessions in San Tan Valley regarding a Johnson Utilities,  
 17 LLC rate application, which is pending in a Commission docket. During the Public  
 Comment Sessions, the Commission received comments from approximately 184  
 individuals who presented themselves as customers of Johnson and expressed  
 numerous concerns primarily related to quality of service, treatment of customers by  
 Johnson, and billing problems.

18 On February 22, 2018, the Commission held a Staff Open Meeting at which it discussed  
 19 conducting an investigation of Johnson's system as to health and safety-related  
 20 complaints, billing-related complaints, complaints of retaliatory conduct by Johnson,  
 21 and water pressure complaints. The Commission directed its Utilities Division  
 ("Staff") immediately to conduct a site inspection and water and effluent sampling as  
 part of an investigation into health and safety issues with Johnson's systems and to  
 prepare a report with a substantive proposal for the Commission's consideration at the  
 Open Meeting on March 13, 2018, or sooner.

22 On March 8 and 9, 2018, Staff filed an Open Meeting Memorandum and a Proposed  
 23 Order.

24 On March 13, 2018, the Commission held an Open Meeting during which it discussed,  
 25 amended, and adopted Staff's Proposed Order. The Commission thus required Staff to  
 26 file, by March 15, 2018, an Application for an Order to Show Cause ("OSC") requiring  
 27 Johnson to show why an interim manager should not be appointed; required Johnson  
 28 to respond to the Application for an OSC by March 26, 2018; required that an  
 evidentiary hearing on the Application for an OSC be held on March 29, 2018, at 10:00  
 a.m., with an Administrative Law Judge of the Commission ("ALJ") presiding and the  
 Commissioners prepared to consider the matter at the evidentiary hearing; and required  
 the presiding ALJ to prepare a conforming order by April 6, 2018.

1 On March 15, 2018, Staff filed a Complaint; Petition for an Order to Show Cause,  
2 setting forth five counts of complaint and requesting that the Commission issue an OSC  
3 against Johnson to demonstrate why an interim manager should not be appointed and,  
4 further, impose fines and penalties pursuant to A.R.S. §§ 40-424 and 40-425 and Article  
5 15, § 19 of the Arizona Constitution and grant such other relief as the Commission  
6 deems appropriate. With the Application for OSC, Staff included a Proposed OSC  
7 Order.

8 On March 16, 2018, the Commission held an Open Meeting at which it discussed and  
9 considered Staff's Application for an OSC and Proposed OSC Order and adopted the  
10 Proposed OSC Order. Consistent with its prior Order, the OSC Order requires Johnson  
11 to file its response to Staff's Complaint and Petition by March 26, 2018, and requires  
12 Johnson to appear and show cause at 10:00 a.m. on March 29, 2018, to defend eight  
13 enumerated items. The OSC Order also requires the Commission's Hearing Division  
14 forthwith to schedule any additional appropriate proceedings. During their discussions,  
15 the Commission indicated that Johnson should be required to provide notice of the  
16 March 29, 2018, hearing date and that intervention should be allowed in this matter.

17 **THE COMMISSION IS NOT BOUND BY THE PROPOSALS OF STAFF,  
18 JOHNSON, OR ANY INTERVENORS. THE COMMISSION WILL  
19 DETERMINE THE APPROPRIATE ACTION TO BE TAKEN IN THIS  
20 MATTER BASED ON THE EVIDENCE OF RECORD.**

#### 21 **How You Can View Documents Related to this Matter**

22 Copies of all documents related to this matter that are filed with the Commission or  
23 issued by the Commission are available at the Commission's offices at 1200 West  
24 Washington, Phoenix, Arizona 85007, for public inspection during regular business  
25 hours, and on the Internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-  
26 Docket function and **Docket No. WS-02987A-18-0050**.

#### 27 **Arizona Corporation Commission Public Hearing Information**

28 The Commission will hold a hearing on this matter beginning **March 29, 2018, at 10:00  
a.m.**, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona.

Written public comments may be submitted by mailing a letter referencing **Docket No.  
WS-02987A-18-0050** to Arizona Corporation Commission, Consumer Services  
Section, 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on  
the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using "I Want To" and "Submit a Public  
Comment." If you require assistance, you may contact the Consumer Services Section  
at 602-542-4251 or 1-800-222-7000.

#### **About Intervention**

The law provides for an open public hearing at which, under appropriate circumstances,  
interested persons may intervene. An interested person may be granted intervention if  
the outcome of the case will directly and substantially impact the person, and the  
person's intervention will not unduly broaden the issues in the case. Intervention,  
among other things, entitles a party to present sworn evidence at hearing and to cross-  
examine other parties' witnesses. **If an interested person does not intervene, the  
interested person may attend the hearing and may provide public comment, but  
may not present evidence or ask questions of witnesses at the hearing. Public  
comments are reviewed and considered by the Commission, but do not constitute  
evidence of record and cannot be relied upon by the Commission as proof of the  
matters asserted.**

1 If you desire to request intervention, you must file an **original and 13 hard copies** of a  
 2 written request to intervene with Docket Control, 1200 West Washington, Phoenix, AZ  
 3 85007, **no later than March 26, 2018**. You also **must** serve a copy of the request to  
 4 intervene on each party of record, on the same day that you file the request to intervene  
 with the Commission. Information about intervention and sample intervention requests  
 are available on the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using "I Want To" and  
 "Learn about Intervention in a Utility Case" and "Intervene in a Utility Case."

5 Your request to intervene must contain the following:

- 6 1. Your name, address, and telephone number, and the name, address, and telephone  
 number of any person upon whom service of documents is to be made, if not  
 yourself;
- 7 2. A reference to **Docket No. WS-02987A-18-0050**;
- 8 3. A short statement explaining:
  - 9 a. Your interest in the proceeding (e.g., a customer of Johnson, etc.),
  - 10 b. How you will be directly and substantially affected by the outcome of the  
 case, and
  - 11 c. Why your intervention will not unduly broaden the issues in the case;
- 12 4. A statement certifying that you have served a copy of the request to intervene on  
 Johnson or its attorney and all other parties of record in the case; and
- 13 5. If you are not represented by an attorney who is an active member of the Arizona  
 State Bar, and you are not representing yourself as an individual, sufficient  
 information and any appropriate documentation to demonstrate compliance with  
 Arizona Supreme Court Rules 31, 38, 39, and 42, as applicable.

14 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except  
 that all motions to intervene must be filed on or before **March 26, 2018**.

15 **ADA/Equal Access Information**

16 The Commission does not discriminate on the basis of disability in admission to its  
 17 public meetings. Persons with a disability may request a reasonable accommodation  
 18 such as a sign language interpreter, as well as request this document in an alternative  
 format, by contacting the ADA Coordinator, Kacie Cannon, E-mail  
 KCannon@azcc.gov, voice phone number 602-542-2247. Requests should be made as  
 early as possible to allow time to arrange the accommodation.

19 IT IS FURTHER ORDERED that **Johnson** shall, by **March 26, 2018**, file an **affidavit**  
 20 **regarding posting of the Notice on its website, along with a photo showing that the Notice is**  
 21 **prominently and conspicuously posted on the website.**

22 IT IS FURTHER ORDERED that notice shall be deemed complete upon the posted of the  
 23 Notice, notwithstanding the failure of an individual customer to read or receive the notice.

24 IT IS FURTHER ORDERED that **Johnson shall provide any objection** it may have to a  
 25 Motion to Intervene filed after the issuance of this Procedural Order either by filing an objection in the  
 26 docket for this matter by **March 28, 2018**, or by orally providing the objection at the commencement  
 27 of the hearing on **March 29, 2018**.

1 IT IS FURTHER ORDERED that any **outstanding Motions to Intervene** will be ruled on at  
2 the hearing on **March 29, 2018**.

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

9 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
10 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

11 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Procedural**  
12 **Order Regarding Consent to Email Service** issued in this matter on **February 28, 2018**, for  
13 additional information regarding the process to consent to service by email. Information regarding  
14 Consent to Email Service is also available on the Commission's website ([www.azcc.gov](http://www.azcc.gov)) by clicking  
15 on "I Want To" and then "Learn about Consenting to Email Service."

16 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
17 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

21 DATED this 16<sup>th</sup> day of March, 2018.

22  
23   
24 SARAH N. HARPRING  
25 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE  
26  
27  
28



1 On this 14th day of March, 2018, the foregoing document was filed with Docket Control as a  
2 Procedural Order – Orders a Company to Provide Notice, and copies of the foregoing were mailed on  
3 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.

4 Jeffrey W. Crockett  
5 CROCKETT LAW GROUP, LLC  
6 2198 E. Camelback Road, Suite 305  
7 Phoenix, AZ 85016  
8 Attorney for Johnson Utilities, LLC  
9 [jeff@jeffcrockettlaw.com](mailto:jeff@jeffcrockettlaw.com)  
[gdrummond@azvision.net](mailto:gdrummond@azvision.net)  
[bcole@azvision.net](mailto:bcole@azvision.net)

**Consented to Service by Email**

10 Craig A. Marks  
11 CRAIG A. MARKS, PLC  
12 10645 N. Tatum Blvd., Suite 200-676  
13 Phoenix, AZ 85028  
14 Attorney for Swing First Golf, LLC  
[CraigAMarksPLC@gmail.com](mailto:CraigAMarksPLC@gmail.com)  
[Dave@swingfirst.co](mailto:Dave@swingfirst.co)  
[Jeff@swingfirst.co](mailto:Jeff@swingfirst.co)

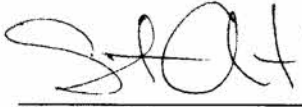
**Consented to Service by Email**

15 Andy Kvesic, Director  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, AZ 85007  
[LegalDiv@azcc.gov](mailto:LegalDiv@azcc.gov)  
[utildivservicebyemail@azcc.gov](mailto:utildivservicebyemail@azcc.gov)

**Consented to Service by Email**

20 COASH & COASH, INC.  
21 Court Reporting, Video and  
22 Videoconferencing  
23 1802 North 7<sup>th</sup> Street  
24 Phoenix, AZ 85006

**Mailed as a courtesy**

25 By:   
26 Staci Antrim  
27 Assistant to Sarah N. Harpring  
28