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



PATRICIA L. BARFIELD
Director
Corporations Division

ARIZONA CORPORATION COMMISSION

Date 09/16/2016

SWING FIRST GOLF LLC
7131 W AVENIDA DEL SOL
PEORIA, AZ 85383

Dear Sir or Madam:

Enclosed is a copy of the following document(s) that were served upon the Arizona Corporation Commission on 09/15/2015 as agent for **SWING FIRST GOLF LLC**:

Case caption: **JOHNSON UTILITIES LLC v. THE ARIZONA CORPORATION COMMISSION**,
Case number: **CV2016-014825** Court: **MARICOPA COUNTY, SUPERIOR COURT**

- ☒ Summons
- ☒ Complaint
- ☐ Subpoena
- ☐ Subpoena Duces Tecum
- ☐ Default Judgment
- ☐ Judgment
- ☐ Writ of Garnishment
- ☐ Motion For Summary Judgment
- ☐ Motion for
- ☐ Other

Sincerely,

Lynda B. Griffin
Custodian of Records

Initials **GM**File number **L-1135177-6**

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



JODI JERICH
Executive Director

PATRICIA L. BARFIELD
Director
Corporations Division

ARIZONA CORPORATION COMMISSION

CERTIFICATE OF MAILING

The undersigned person certifies the following facts:

On **09/15/2016**, **GEORGE MOYA**, an employee of the Arizona Corporation Commission ("ACC"), received on behalf of the ACC service of the following documents upon the ACC as agent for **SWING FIRST GOLF LLC**.

Case caption: **JOHNSON UTILITIES LLC v. THE ARIZONA CORPORATION COMMISSION,**

Case number: **CV2016-014825**

Court: **MARICOPA COUNTY, SUPERIOR COURT**

- | | |
|--|--|
| <input checked="" type="checkbox"/> Summons | <input type="checkbox"/> Default Judgment |
| <input checked="" type="checkbox"/> Complaint | <input type="checkbox"/> Judgment |
| <input type="checkbox"/> Subpoena | <input type="checkbox"/> Writ of Garnishment |
| <input type="checkbox"/> Subpoena Duces Tecum | |
| <input type="checkbox"/> Motion For Summary Judgment | |
| <input type="checkbox"/> Motion for | |
| <input type="checkbox"/> Other | |

On **09/16/2016**, the undersigned person placed a copy of the above listed documents in the United States Mail, postage prepaid, addressed to the entity at its last known place of business address, as follows:

SWING FIRST GOLF LLC
7131 W AVENIDA DEL SOL
PEORIA, AZ 85383

OR

The undersigned was unable to mail the above listed documents to

because that entity is not a registered corporation or limited liability company in the State of Arizona, and the Arizona Corporation Commission has no record of its known place of business.

I declare and certify under penalty of perjury that the foregoing is true and correct.

Printed name: **GEORGE MOYA**

Date: **09/16/2016**

Signature: _____

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MC8520

111 East Taylor, Suite 120

Phoenix, Arizona 85004-4467

T: 602.251.3620; F: 602.251.8055

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CROCKETT LAW GROUP PLLC

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2198 East Camelback Road, Suite 305

Phoenix, AZ 85016

Attorneys for Johnson Utilities, L.L.C.

Attorneys for Plaintiff

**SUPERIOR COURT FOR THE STATE OF ARIZONA
MARICOPA COUNTY**

**JOHNSON UTILITIES, L.L.C., an
Arizona Limited Liability Company,**

**Appellant, Plaintiff,
Petitioner**

vs.

**The Arizona Corporation Commission,
a political subdivision of the State of Arizona,**

**Appellee, Defendant,
Petitioner**

**Doug Little, Bob Stump, Bob Burns,
Tom Forese and Andy Tobin as Members of and
constituting the Arizona Corporation
Commission,**

Respondents

**Swing First Golf, L.L.C., an Arizona Limited
Liability Company,**

Real Party in Interest

No. CV 2016-014825

SUMMONS

1 THE STATE OF ARIZONA TO THE DEFENDANTS:

2
3 SWING FIRST GOLF, L.L.C.
4 c/o DAVID ASHTON
5 7131 W AVENIDA DEL SOL
6 PEORIA, AZ 85383

7 YOU ARE HEREBY SUMMONED and required to appear and defend, within the
8 time applicable, in this action in this court. If served within Arizona, you must appear and
9 defend within 20 days after the service of the Summons, Complaint, and Certificate of
10 Compulsory Arbitration upon you, exclusive of the day of service. If served out of the State
11 of Arizona, whether by direct service, by registered or certificated mail, or by publication,
12 you shall appear and defend within 30 days after the service of the Summons, Complaint,
13 and Certificate of Compulsory Arbitration upon you is complete, exclusive of the day of
14 service. Where process is served upon the Arizona Director of Insurance as an insurer's
15 attorney to receive service of legal process against it in this state, the insurer shall not be
16 required to appear, answer or plead until the expiration of 40 days after date of such service
17 upon the Director. Service by registered or certified mail without the State of Arizona is
18 complete 30 days after the date of receipt by the party being served. Service by publication
19 is complete 30 days after the date of first publication. Direct service is complete when made.
20 Service upon the Arizona Motor Vehicle Superintendent is complete 30 days after filing the
21 Affidavit of Compliance and return receipt or Officer's Return. RCP 4, 4.1, 4.2 and 12(a).

22 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend
23 within the time applicable, judgment by default may be rendered against you for the relief
24 demanded in the Complaint.

25 YOU ARE CAUTIONED that in order to appear and defend, you must file an Answer
26 or proper response in writing with the Clerk of this Court, accompanied by the necessary
27 filing fee, within the time required, and you are required to serve a copy of any Answer or
28 response upon the Plaintiff's attorney. Arizona Rules of Civil Procedure, Rules 5, 10; A.R.S.
12-311.

29 Copies of the pleadings filed herein may be obtained by contacting the Clerk of
30 Superior Court, Maricopa County, located at 201 West Jefferson, Phoenix, Arizona.

31 Requests for reasonable accommodation for persons with disabilities must be made to
32 the division assigned to the case by parties at least 3 judicial days in advance of a scheduled
33 court proceeding. Local Rules of Practice for the Superior Court, Maricopa County, Rule
34 2.5(c).

1 The name and address of Plaintiff's attorney is:

2 THOMAS K. IRVINE
3 c/o ASU ALUMNI LAW GROUP
4 MC8520
5 111 East Taylor, Suite 120
6 Phoenix, Arizona 85004-4467

7 SIGNED AND SEALED this date:

COPY

9 MICHAEL K. JEANES
10 Clerk, Maricopa County Superior Court



11 MICHAEL K. JEANES, CLERK
12 N. COTTON
13 DEPUTY CLERK

14 Deputy Clerk

ASU ALUMNI LAW GROUP
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Attorneys for Johnson Utilities, L.L.C.

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

**JOHNSON UTILITIES, L.L.C., an
Arizona Limited Liability Company,**

**Appellant, Plaintiff,
Petitioner**

vs.

**The Arizona Corporation Commission, a
political subdivision of the State of
Arizona,**

**Appellee, Defendant,
Petitioner**

**Doug Little, Bob Stump, Bob Burns, Tom
Forese and Andy Tobin as Members of
and constituting the Arizona Corporation
Commission,**

Respondents

**Swing First Golf, L.L.C., an Arizona
Limited Liability Company,**

Real Party in Interest

COPY

SEP 07 2016



**MICHAEL K. JAMES, CLERK
N. COTTON
DEPUTY CLERK**

CV 2016-014825

Case No. _____

**COMPLAINT RE DECISION OF THE
ARIZONA CORPORATION
COMMISSION (A.R.S. § 40-254);**

**COMPLAINT FOR SPECIAL ACTION
REVIEW OF ASSERTION OF
JURISDICTION BY ARIZONA
CORPORATION COMMISSION;**

**FOR REVIEW OF ADMINISTRATIVE
DECISION (A.R.S. § 12-901)**

1 Plaintiff, Johnson Utilities, LLC, ("Johnson Utilities" or the "Company"), an Arizona
2 limited liability company, respectfully submits its complaint pursuant to A.R.S. § 40-254,
3 Complaint for Special Action pursuant to the Arizona Rules of Procedure for Special Action and
4 request for review of an administrative decision pursuant to A.R.S. §§ 12-901, et. seq., as follows:
5

- 6 1. This Court has jurisdiction to hear and determine this matter pursuant to A.R.S. § 40-
7 254(A), review of Arizona Corporation Commission ("ACC" or "Commission")
8 decisions; Rule 4, Rules of Procedure for Special Actions; and A.R.S. §§ 12-901, et.
9 seq.
10
- 11 2. Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-401, 12-905(A) and (B).
12 *City of Show Low v. Owens*, 127 Ariz. 266, 268, 619 P.2d 1043, 1045 (App. 1980).
- 13 3. Pursuant to A.R.S. § 40-254 this complaint is timely filed.
- 14 4. This court has jurisdiction to review by Special Action the jurisdiction of the
15 Commission to act on the Formal Complaint below. *Mountain States Tel. & Tel. Co.*
16 *v. Arizona Corp. Comm'n*, 160 Ariz. 350, 773 P.2d 455 (1989).
- 17 5. Plaintiff is an Arizona limited liability company and during all times mentioned herein
18 was certificated by the Commission as a public service company; as relevant to this
19 action, providing water and sewer services.
- 20 6. Appellee, Defendant, Respondent Commission is a political subdivision of the State of
21 Arizona;
22
- 23 7. Respondents Doug Little, Bob Stump, Bob Burns, Tom Forese and Andy Tobin are
24 elected commissioners sitting on the Commission.
- 25 8. Real Party in Interest Swing First Golf, L.L.C. ("SFG"), an Arizona limited liability
26 company, is named pursuant to Rule of Procedure for Special Actions 2(a)(1).
- 27 9. Plaintiff files this action from the June 30, 2016, Commission Decision #75616,
28

1 accepting and adopting the Recommended Order from the Hearing Division issued on
2 June 1, 2016 and the July 19, 2016, Motion for Rehearing, deemed denied on August
3 8, 2016, by operation of law. Those decisions incorrectly determined that the
4 Commission has authority to assert jurisdiction over and to regulate Johnson Utilities'
5 use of effluent, a byproduct of its sewer service, in excess of the authority granted in
6 the Arizona Constitution and in contravention of Commission and State precedent and
7 public policy.
8

9 10. On January 19, 2016, Real Party in Interest SFG filed a formal complaint against
10 Johnson Utilities, Docket No. WS-02987A-16-0017. This was the third formal
11 complaint filed by SFG arising out of Johnson Utilities' decisions regarding the effluent
12 byproduct of its sewer utility.

13 11. On February 2, 2016, Johnson Utilities filed an Answer to the Formal Complaint.

14 12. On February 22, 2016, Johnson Utilities filed a Motion to Dismiss SFG's Formal
15 Complaint.

16 13. On February 25, 2016, SFG supplemented its Formal Complaint, stating that Johnson
17 Utilities had discontinued effluent deliveries to SFG, effective February 24, 2016.

18 14. On March 21, 2016, a procedural conference was set for April 6, 2016 and SFG was
19 directed to file a response to Johnson Utilities' Motion to Dismiss.
20

21 15. On March 21, 2016, SFG filed a response to Johnson Utilities' Motion to Dismiss.

22 16. On April 4, 2016, Johnson Utilities filed a Reply in Support of the Motion to Dismiss.

23 17. On April 6, 2016, a procedural conference was held, with SFG, Johnson Utilities, and
24 the Commission's Utilities Division Staff ("Staff") appearing through counsel. At the
25 conclusion of the conference, Staff and SFG were directed to file briefs regarding
26 preliminary issues of jurisdiction, and Johnson Utilities was given time to file an
27 additional reply brief.
28

- 1 18. On April 29, 2016, SFG filed a Brief Opposing Motion to Dismiss.
- 2 19. On April 29, 2016, Staff filed its Response to the Motion to Dismiss.
- 3 20. On May 9, 2016, Johnson Utilities filed a Supplemental Reply in Support of Motion to
- 4 Dismiss.
- 5 21. On May 10, 2016, SFG filed a Supplemental Filing, stating that Johnson Utilities had
- 6 threatened to discontinue water service to SFG if SFG failed to pay for water delivered
- 7 from February to April 2016 and the Commission must prohibit Johnson Utilities from
- 8 discontinuing the water service.
- 9
- 10 22. On May 17, 2016, the Commission ordered SFG to pay for effluent delivered to it
- 11 during the pendency of the action.
- 12 23. On June 1, 2016, the Commission's administrative law judge filed a Proposed Order.
- 13 24. On June 30, 2016, the Commission adopted the Proposed Order as Decision #75616,
- 14 denying Johnson Utilities' Motion to Dismiss and enjoining Johnson Utilities from
- 15 discontinuing the delivery of water services to SFG, pending resolution of the Formal
- 16 Complaint.
- 17
- 18 25. On July 19, 2016, Johnson filed a Motion for Rehearing as to all matters in the
- 19 Commission's June 30, 2016, decision. The Motion for Rehearing is attached hereto
- 20 as Exhibit 1.
- 21 26. The Commission did not act on the Motion for Rehearing, thus it was denied by
- 22 operation of law on August 8, 2016.
- 23 27. The Commission's Decision #75616 is not supported by substantial evidence, is
- 24 arbitrary and capricious, involves an abuse of discretion, and is contrary to law and
- 25 public policy because:
- 26
- 27
- 28

1 a. The Motion to Dismiss, Johnson's replies and the Motion for
2 Rehearing are incorporated herein as if set out in full.

3 b. The Commission Lacks Jurisdiction

4 i. While Johnson Utilities is a public service corporation
5 ("PSC"), the Commission does not and cannot regulate
6 those activities of a PSC that do not provide a utility
7 service.

8 ii. The utility "service" being provided that results in the
9 effluent that Johnson Utilities must dispose of is sewer
10 service.

11 iii. Like sewage sludge, effluent is a byproduct of a regulated
12 sewage utility. There are no statutes or rules that authorize
13 the Commission to regulate disposal of a byproduct of
14 sewer service.

15 iv. Effluent is thoroughly regulated by the Arizona Department
16 of Environmental Quality ("ADEQ").

17 v. The disposal of effluent is a matter of utility management
18 discretion.

19 vi. Johnson Utilities does not have an approved effluent tariff
20 (there is a rate for effluent but without terms and conditions
21 of service the rate is not a tariff).

22 c. Effluent Service is not a public utility service under the Arizona
23 Constitution

24 i. Management and disposal of effluent does not subject an
25 entity to regulation as a sewage public service corporation.

26 ii. Both the Supreme Court of Arizona and the Court of
27 Appeals have stated effluent is not the same as water
28 provided for public purposes.

1 iii. Supplying or managing effluent produced as a byproduct of
2 sewer service is not defined in the definition of "public
3 service corporation," Article 15, Section 2, Arizona
4 Constitution; therefore, it is not be regulated by the ACC.

5 d. Johnson is not Acting as a PSC by Delivering Effluent

6 i. The balance of factors set forth in *Natural Gas Serv. Co. v.*
7 *Serv-Yu Coop.*, 69 Ariz. 328, 213 P.2d 677 (1950), do not
8 support the contention that Johnson is acting as a PSC when
9 it delivers effluent to a user.

10 1. Effluent is not a commodity the public typically or
11 traditionally has an interest in. Johnson Utilities has
12 very few effluent users.

13 2. Similarly, Johnson Utilities has not and does not
14 intend to monopolize the territory in which it
15 provides effluent, nor could the Company lawfully
16 monopolize a territory for the delivery of effluent.

17 3. Johnson Utilities does not accept substantially all
18 requests for effluent.

19 4. Effluent is often supplied through contracts
20 between the provider and the recipient which are
21 neither submitted to nor approved by the
22 Commission.

23 5. There is no actual or potential competition with
24 other PSCs providing effluent within Johnson's
25 CC&N.

26 e. The Use and Disposal of Effluent are Matters of Management
27 Discretion

- i. In ACC Dockets SW-01428A-14-0369 and W-01427A-14-0369 regarding an Agreement for Development of Effluent Recharge Facility, Effluent Disposal and Purchase and Sale of Effluent ("Development Agreement") between Liberty Utilities (Litchfield Park Water & Sewer) Corp. and the Central Arizona Water Conservation District ("CAWCD"), CAWCD sought assurances from the Commission that the agreement was valid.
- ii. Liberty asserted that Commission approval of the agreement and sale of effluent are not required under Arizona law.
- iii. The Commission and Staff **agreed**, and stated the agreement and selling of effluent are matters of management discretion.
- iv. The ACC decision in the Liberty case must be applied to Johnson Utilities because:
 1. Effluent is not described in A.R.S. Title 40 or the Constitution.
 2. There are no Commission rules regarding the sale of effluent.
 3. Supplying effluent is not an essential and integral part of the public service provided by Johnson Utilities.
 4. The Commission cannot take inconsistent positions on the regulation of effluent.
 5. Johnson Utilities has no effluent tariff (there is a rate for effluent but without terms and conditions of service the rate is not a tariff).

f. Swing First Golf is Claim-Barred

i. SFG has twice before brought nearly identical Complaints before the Commission. Both were dismissed with prejudice (SFG purchased its golf course without a contract for effluent delivery and, thus, has been using these actions and court actions [where it lost its contention that it had a long term contract for effluent] as a method to continue effluent delivery in the face of public policy which provides for a higher and better use for effluent).

ii. Each of the prior complaints dealt with Johnson withholding effluent from SFG.

iii. The prior decisions of the Commission bar this action.

WHEREFORE, Johnson Utilities prays for judgment against the Defendants as follows:

- a. Finding that Decision #75616 is not supported by substantial evidence, is arbitrary and capricious, is an abuse of discretion, and is contrary to law
- b. Finding that effluent is not a public utility service under the definition set forth in Article 15, Section 2 of the Arizona Constitution.
- c. Finding that Johnson Utilities is not acting as a public service company by delivering effluent.
- d. Finding that the Commission does not have jurisdiction over Johnson Utilities' non-tariffed use of the effluent byproduct.
- e. Finding that SFG is collaterally estopped from re-litigating its effluent claim.

- 1 f. Reversing Decision #75616 and findings of the Commission and
2 entering judgment in favor of Johnson Utilities dismissing the
3 Formal Complaint;
4 g. Awarding Johnson Utilities its reasonable attorneys' fees and costs
5 pursuant to A.R.S. § 12-348(A)(2) and other applicable statutes;
6 and
7 h. Awarding such other relief as is just under the circumstances.

8 Dated this 7th day of September, 2016.

10 CROCKETT LAW GROUP PLLC
11 Jeffrey W. Crockett, Esq.
12 1702 East Highland Avenue, Suite 204
13 Phoenix, Arizona 85016-4665
14 Attorney for Johnson Utilities, L.L.C.

15 ASU ALUMNI LAW GROUP

16 

17 Thomas K. Irvine
18 Kyle Johnson
19 Two North Central Avenue, Suite 1600
20 Phoenix, Arizona 85004
21 Attorneys for Johnson Utilities, L.L.C.
22
23
24
25
26
27
28

COPIES of the foregoing mailed
this 7th day of September, 2016, to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

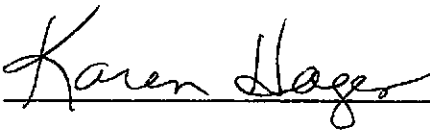
Dwight D. Nodes, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Janice M. Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Thomas M. Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing sent via First Class U.S. Mail and
E-mail this 7th day of September, 2016, to:

Craig A. Marks, Esq.
CRAIG A. MARKS, PLC
10645 N. Tatum Blvd., Suite 200-676
Phoenix, Arizona 85028



EXHIBIT

1

ORIGINAL



0000171777

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Arizona Corporation Commission

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CROCKETT LAW GROUP PLLC

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2198 East Camelback Road, Suite 305

Phoenix, AZ 85016

Attorneys for Johnson Utilities, L.L.C.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Chairman

BOB STUMP

BOB BURNS

TOM FORESE

ANDY TOBIN

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST
GOLF, LLC, AGAINST JOHNSON
UTILITIES, L.L.C.

DOCKET NO. WS-02987A-16-0017

MOTION FOR REHEARING

Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company"), pursuant to A.A.C. R17-1-512, hereby moves for rehearing of all issues set forth in Decision 75616, dated June 30, 2016 ("the Decision"). This motion seeks a rehearing for the grounds set forth in A.A.C. R17-1-512.D.8.

Summary:

For the first time, apparently, in Commission history, the Decision has the Commission asserting jurisdiction over the waste/byproducts of a utility's provision of the regulated service. In this case, the assertion of jurisdiction concerns effluent (which the Commission declared it had NO jurisdiction over in the Liberty case). Disposal of waste

1 is not under the jurisdiction of the Commission. Utilities generate a lot of waste and
2 byproducts in the day to day provision of the regulated service. In this case, the effluent
3 is a waste/byproduct of a sewer utility. The sewer utility also generates sludge, paper,
4 plastic, and other leftovers from its normal business of providing sewer service. Is all of
5 that subject to Commission regulation? If so, where is the regulation? What are the rules?
6 Why is this assertion of regulation not contained in tariffs?

7 In the Liberty case, both the Commission and Staff stated that the disposal of
8 effluent is a matter of management discretion.

9 The purpose of this motion is to allow the Commission to determine if it is indeed
10 its intent to assert regulatory control when the Arizona Constitution, the statutes,
11 Commission rules, and a recent Commission decision provide no authority for such a vast
12 expansion of the Commission's authority.

13 **Issues:**

14 The Decision improperly expands the scope of the Arizona Corporation
15 Commission's jurisdiction, and draws faulty conclusions that are contrary to law. This
16 matter should be reheard for the following reasons:

17 • The Commission Lacks Jurisdiction

- 18
- 19 ○ While Johnson Utilities is undisputedly a public service corporation
 - 20 ("PSC"), this Commission does not and cannot regulate those
 - 21 activities of a PSC that do not provide a utility service.
 - 22 ○ Like sewage sludge, effluent is a byproduct of a regulated sewage and
 - 23 wastewater utility. Sludge (among many other types of waste) is a
 - 24 byproduct. The Commission can no more regulate the sale of one than
 - 25 it may the other.
 - 26 ○ Effluent is already thoroughly regulated by the Arizona Department
 - 27 of Environmental Quality ("ADEQ").
 - 28

- The selling of effluent, as noted in Decision 74933, is a matter of utility management discretion.
- Johnson Utilities does not have an approved effluent tariff.
- Effluent Service is not a Water Service under the Arizona Constitution
 - Lost in the debate over the purity of Johnson Utilities' effluent is the principle, long grounded in the law, that management and disposal of effluent does not subject an entity to regulation as a water or sewage public service corporation.
 - Both the Supreme Court of Arizona and the Court of Appeals have stated that effluent is not the same as water provided for public purposes such as irrigation and fire protection.
 - Nor is supplying or managing effluent a sewer service as defined by Article 15, Section 2 of the Arizona Constitution.
- Johnson is not Acting as a PSC by Supplying Effluent
 - The balance of factors set forth in *Natural Gas Serv. Co. v. Serv-Yu Coop.*, 69 Ariz. 328, 213 P.2d 677 (1950) do not support the contention that Johnson is acting as a PSC in disposing of effluent.
 - Effluent is not a commodity that the public typically or traditionally has an interest in. Johnson's effluent customers can be counted on the fingers with digits to spare.
 - Similarly, Johnson Utilities has not and does not intend to monopolize the territory in which it provides effluent.
 - Johnson Utilities does not accept substantially all requests for effluent.
 - Effluent is often supplied through contracts between the provider and the recipient.
 - There is no actual or potential competition with other PSCs providing effluent within Johnson's CC&N.

- 1 • The Use and Disposal of Effluent are Matters of Management Discretion
 - 2 ○ In Dockets SW-01428A-14-0369 and W-01427A-14-0369 regarding
 - 3 an Agreement for Development of an Effluent Recharge Facility,
 - 4 Effluent Disposal and Purchase and Sale of Effluent (“Development
 - 5 Agreement”) between Liberty and CAWCD, CAWCD sought
 - 6 *assurances* from the Commission that the agreement was valid.
 - 7 ○ Liberty asserted that Commission approval of the agreement and sale
 - 8 of effluent was not required under Arizona law.
 - 9 ○ The commission and staff **agreed**, and stated that the agreement and
 - 10 selling of effluent are matters of management discretion.
 - 11 ▪ Effluent is not described in A.R.S. Title 40.
 - 12 ▪ There are no Commission rules regarding the sale of effluent.
 - 13 ▪ Supplying effluent is not an essential and integral part of the
 - 14 public service provided by Johnson Utilities.
- 15 • Swing First Golf is Claim-Barred
 - 16 ○ Swing First Golf has twice before brought nearly identical
 - 17 Complaints before the Commission. Both were dismissed with
 - 18 prejudice.
 - 19 ○ Each of the prior complaints dealt with Johnson withholding effluent
 - 20 from SFG. It is illogical to hold that SFG would only be barred from
 - 21 bringing this claim had Johnson merely temporarily stopped or
 - 22 limited service, rather than permanently stopping service.
- 23 • Johnson Utilities incorporates by this reference, as if set out in full herein,
- 24 the following arguments: i) the *res judicata* arguments, Johnson Utilities’
- 25 Motion to Dismiss, p. 4, lines 12-19; p. 6, lines 12-25; p. 7, lines 1-22; p. 8,
- 26 lines 1-25; p. 9, lines 1-19; ii) lack of effluent tariff, Johnson Utilities’ Reply
- 27 in Support of Motion to Dismiss, p. 7, lines 19-21; iii) SFG’s forced out of
- 28 business claims, Johnson Utilities’ Reply in Support of Motion to Dismiss,

1 p. 9, lines 5-18; iv) Johnson Utilities' effluent use is consistent with public
2 policy and precedent, Johnson Utilities' Reply in Support of Motion to
3 Dismiss, p. 9-10, lines 20-26, 1-12; v) effluent is not a public service,
4 Johnson Utilities' Supplemental Reply in Support of Motion to Dismiss, p.
5 3, lines 6-24; vi) Commission has no statutes or rules regarding effluent,
6 Johnson Utilities' Reply in Support of Motion to Dismiss, p. 4, lines 2-17;
7 vii) effluent price is not in *sewer* tariff, Johnson Utilities' Reply in Support
8 of Motion to Dismiss, p. 5, lines 5-7; viii) effluent is not essential and
9 integral, Johnson Utilities' Reply in Support of Motion to Dismiss, p. 5, lines
10 16-23; ix) ACC does not have jurisdiction over contract claims, Johnson
11 Utilities' Reply in Support of Motion to Dismiss, p.6, lines 1-17.

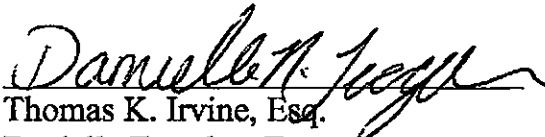
12 **Conclusion:**

13 Rehearing must be granted. The Commission should reverse its Decision 75616
14 and grant the Motion to Dismiss.
15

16 RESPECTFULLY submitted this 19th day of July, 2016.

17 CROCKETT LAW GROUP PLLC
18 Jeffrey W. Crockett, Esq.
19 2198 E. Camelback Road, Suite 305
20 Phoenix, Arizona 85016-4747
Attorneys for Johnson Utilities, L.L.C.

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25 Two North Central, Suite 1600
26 Phoenix, Arizona 85004
27
28

1 ORIGINAL and thirteen (13) copies filed
2 this 19th day of July, 2016, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered
8 this 19th day of July, 2016, to:

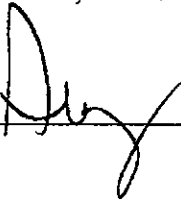
9 Dwight D. Nodes, Chief Administrative Law Judge
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Janice M. Alward, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Thomas M. Broderick, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 COPY of the foregoing sent via First Class U.S.
25 Mail and e-mail this 19th day of July, 2016, to:

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



DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

STATEMENT FOR SERVICE OF PROCESS

ENTITY NAME - give the exact name of the corporation or LLC as currently shown in A.C.C. records:

Swing First Golf, LLC

A.C.C. FILE NUMBER: L11351776

Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.gov/Divisions/Corporations>

By my signature below, I **certify under the penalty of perjury** that, upon information, knowledge, and belief, the above-named entity has either failed to appoint a statutory agent or failed to maintain a statutory agent at the statutory agent address on record with the Arizona Corporation Commission.

Scott Coslow

Signature

Scott Coslow

Printed Name

9-15-16

Date

Service of process fee: \$25.00
All fees are nonrefundable.

Mail: Arizona Corporation Commission - Records Section
1300 W. Washington St., Phoenix, Arizona 85007
Fax: 602-542-3414

Please be advised that A.C.C. forms reflect only the minimum provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.
All documents filed with the Arizona Corporation Commission are public record and are open for public inspection.
If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

Corporate Maintenance

09/15/2016

State of Arizona Public Access System

4:16 PM

File Number: L-1135177-6

Corp. Name: SWING FIRST GOLF, LLC

Domestic Address

7131 W AVENIDA DEL SOL

PEORIA, AZ 85383

Second Address

Domicile: ARIZONA

County: MARICOPA

Corporation Type: DOMESTIC L.L.C.

Life Period: PERPETUAL

Incorporation Date: 05/27/2004

Approval Date: 05/27/2004

Last A/R Received: /

Date A/R Entered:

Next Report Due:

Agent: DAVID ASHTON

Status: APPOINTED 05/27/2004

Mailing Address:

7131 W AVENIDA DEL SOL

PEORIA, AZ 85383

Agent Last Updated: 08/06/2004

Business Type:

Scott Coslow

CORPORATIONS DIVISION
RECORDS SECTION
1300 West Washington
Phoenix, Arizona 85007-2929

User Id: GMOYA
Invoice No.: 5168498

Check Batch:
Invoice Date: 09/15/2016
Date Received: 09/15/2016
Customer No.:

ATTN:
(CASH CUSTOMER)

Quantity	Description	Amount
1	SERVICE OF PROCESS L-1135177-6 SWING FIRST GOLF, LLC	\$25.00
Total Documents: \$		25.00
	CHECK 1609	\$25.00
PAYMENT		
Balance Due: \$		0.00

