

ORIGINAL

J. Stephen Gehring, Private Citizen  
Bobby Jones, Private Citizen  
Lois Jones, Private Citizen  
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In Propria Persona



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Arizona Corporation Commission  
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**COMMISSIONERS**

Gary Pierce, Chairman  
Paul Newman, Commissioner  
Brenda Burns, Commissioner  
Bob Stump, Commissioner  
Sandra D. Kenndy, Commissioner

**Before the Arizona Corporation Commission**

J. Stephen Gehring, Bobby Jones, Lois  
Jones Private Citizens, Injured Parties,  
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE  
UTILITIES INC.  
Respondents.

**DOCKET NO. W-03514A-12-0008**

**RESPONSE AND OBJECTION TO  
RESPONDENTS MOTION TO  
STRIKE COMPLAINANT'S  
REFERRAL TO EVIDENTIARY  
PARTY  
MOTION TO DENY**

**NOW COMES**, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to respond and object to Respondents Motion to Strike Complainant's Referral to Evidentiary Party and Motion to Deny.

Respondents' Motion is improperly captioned. The Respondents cannot arbitrarily alter the style of the "Formal Complaint." The current process is administered by Rules specified in Ariz. Adm. Code R14-3-106 through 111.

Complainants' object to Respondents' Motion to Strike for the following reasons:

Respondents incorrectly assume and argue that Section B, Items 23, 25, 26 and portions of Exhibits A, B, C and portions of Appendix A of the Complaint are (entirely) based upon an interview between Complainant Gehring and Martin Zabala of Martin's Trucking Service conducted on or about July 31, 2011 where in fact the material covered and evidenced in those Items of Section B and other materials mentioned are not.

The Items and Exhibits so challenged are in fact based on the reliable interviews, information, and public records and documentation obtained and disclosed in Exhibits in the Complainant which the Complainants reserve the right to submit, revise and update as additional discovery and disclosure become available for further confirmation. Furthermore, Respondents incorrectly argue that Substantial allegations are made and argument offered is related solely to the interview of Martin Zabala which alleges a business

contractual relationship with Payson Water Co. Inc. (PWC) and that PWC has no written or verbal business relationship with Martin's Trucking Service.

Section B, Items 23 of the Complaint correctly states that there exists a contractual relationship between BUI/PWC and Pearson Water Co. (i.e. Pearson Transport) whom subcontracts with Martin's Trucking Service (not a Company) to haul water for BUI/PWC to the Mesa del Caballo System. **Qui per alium facit per seipsum facere videtur** (He who acts through another is deemed to do the act himself).

BUI regularly enters into contracts with other entities and private persons for and on behalf of PWC. It may be correct that PWC may have no direct contractual relationship with Pearson Water Co./Pearson Transport or Martin's Trucking Service. However, BUI does have such a relationship as evidenced by discovered documentation already in hand and provided by the Commission. Water was hauled and delivered to the MDC System between the dates of May 1, 2011 and September 30, 2011 by Pearson Water Co./Pearson Transport by and through its subcontractor Martin's Trucking Service and as they have done for many years in the past. **Qui cum alio contrahit, vel est vel debetesse non ignarus conditionis ejus** (He who contracts with another is not, or ought not to be, ignorant of his condition);

Section B, Item 25 of the Complaint correctly states that information obtained from the interview of Martin Zabala of Martins' Trucking Service conducted by Complainant Gehring on or about July 31, 2011 and is without question. If Respondents desire copy of the notes taken by Gehring during that interview they may request them in Discovery and Disclosure.

Section B, Item 26 (a) to (n) of the Complaint correctly supports the Example given as it is based on:

- 1) Information and public Records obtained by way of a public records request submitted to the Town of Payson Water Department the documents of which are contained in Exhibit B and information obtained in interviews with the Director of the TOP Water Department, Buzz Walker;
- 2) Information obtained from the Complainant's and other Customer's Water Bills between May and October 2011;
- 3) The spreadsheets provided by BUI found in Exhibit D pages 7-14 provided by BUI/PWC in their Water Augmentation Charges Calculations for June 2011;
- 4) Information obtained from Complainant Gehring's interview with Martin Zabala on or about July 31, 2011;
- 5) Exhibit A are copy of the Complainant's water bills from May through October 2011; Appendix A consists of the information gathered at that time and is based on documented facts and calculations made based on the information that was available at that time which the Complainants reserve the right to revise as so as additional discovery and disclosure become available;
- 6) Exhibit B are copies of TOP Water Department Records;

7) Exhibit C consists of public records on file with the Commission.

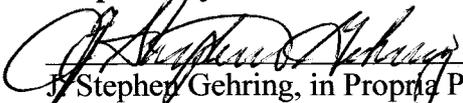
Respondents deceptive claim that they are placed in a serious disadvantage in replying to Complainant's allegation (previously admitted, not denied and now challenged) based on an entity it has no relationship with; and that they falsely claim, cannot submit data requests, ask questions, interrogate or make references to such entities that have no business relationship as it relates to the Augmentation period; is false, misleading, aboldface misrepresentation by means of a calculated deception and waste of the Commission's and Complainant time, by the Respondents, to deal with this unsustainable Motion. It should further be noted that Respondents have had since March 8<sup>th</sup>, 2012 to submit to the Complainants a Motion for Discovery and Disclosure but have failed or refused to do so thus far.

Once Respondents (Hardcastle, BUI & PWC), Pearson Water/Pearson Transport and Martin's Trucking Service comply with the Subpeona Decus Tecum they have already been or will soon be served with and depositions can be held, additional agreements, invoices, driver log books and other documents shall become available in addition to what the Complainant's have already been provided by the Commission and other sources to substantiate and support the allegations contained in the Complaint.

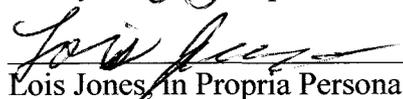
Respondents' Motion to Strike the submission of credible allegations and evidence submitted in Exhibits that Respondents previously admitted to and did not deny should not be stricken from the record and Complainants' should not be prohibited from using the information and evidence already obtain and disclosed by credible sources at Hearing for the Complainants' have established and may further establish the relevant business relationship(s) in connection with Brooke Utilities Inc./Payson Water Co. Inc. and Pearson Water/Pearson Transport and its subcontractor Martin's Trucking Service.

**Wherefore**, Complainants respectfully request of the Commission and its Administrative Law Judge to Deny the Respondents Motion to Strike Complainants' Referral to Evidentiary Party as it would be a miscarriage of justice to allow the Respondents to benefit from the gross misrepresentations of fact introduced and may possibly deny the Complainants access to additional, vital and necessary discovery and disclosure to be submitted into evidence in any future proceedings.

**Respectfully submitted** this 26<sup>th</sup> day of March, 2012

  
Stephen Gehring, in Propria Persona

  
Bobby Jones, in Propria Persona

  
Lois Jones, in Propria Persona

## CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Motion have been mailed this 26<sup>th</sup> day March, 2012 to the following:

DOCKET CONTROL  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 26<sup>th</sup> day March, 2012 to the following:

Bobby and Lois Jones  
7325 N. Caballero Rd.  
Payson, Az. 85541

Robert T. Hardcastle  
P. O. Box 82218  
Bakersfield, Ca. 93380

By: TSG