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3 Date: March 19, 2010
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5 To: **Docket Control**
6 **Arizona Corporation Commission**
7 **1200 West Washington St.**
8 **Phoenix, AZ 85007**
9

Arizona Corporation Commission
DOCKETED

APR - 2 2012

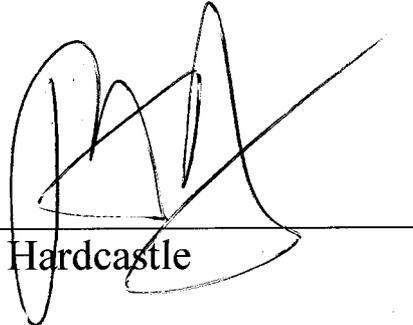
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10 From: Robert T. Hardcastle
11 Payson Water Co., Inc.
12 (661) 633-7526
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14 FOR FILING ORIGINAL AND 13 COPIES INTO:

15 **DOCKET NO. W-03514A-12-0008**
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17 **Gehring et al vs. Payson Water Co.**
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23 By: 
24 Robert T. Hardcastle
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BEFORE THE ARIZONA CORPORATION COMMISSION

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Robert T. Hardcastle
Payson Water Co., Inc.
P.O. Box 82218
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Representing Itself In Propria Persona

COMMISSIONERS

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

IN THE MATTER OF J. STEPHEN)
GEHRING, BOBBY JONES, AND LOIS)
JONES, COMPLAINANTS)
VS.)
PAYSON WATER CO., INC.,)
RESPONDENT)

Docket No. W-03514A-12-0008
REPLY TO COMPLAINANT'S
RESPONSE TO PAYSON WATER
CO.'S MOTION TO DELETE
BROOKE UTILITIES, INC. AS A
PARTY TO THE COMPLAINT

Complainants Gehring and Jones (hereafter "Complainants") have filed a Formal Complaint into Docket No. W-03514A-12-0008 based on previously submitted informal complaints number 2011-98439 and 2011-98782. On March 29, 2012 Payson Water Co., Inc. ("PYWCo") received Complainant's "Response and Objection to Respondent's Motion to Delete Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny the Deletion of Brooke Utilities, Inc. from the Complaint" (hereafter the "Response").

Complainant's further references to PYWCo's improperly captioned Motion are without merit. The Arizona Rules of Civil Procedure apply only when the Commission's rules are undeclared or silent (A.A.C. R14-3-101(A)). Complainant's misplaced citation of the Arizona Rules of Civil Procedure 17 and 19 (a) are without bearing and are meaningless since the Commission exerts jurisdiction only over regulated entities and public service corporations. In the instant Complaint the Commission has issued a

1 Procedural Order dated March 19, 2012 which govern the rules of conduct and
2 procedural compliance in this matter. Complainant's continuing inflammatory pleadings
3 encourage confrontation and polarization of the parties and the issues at hand. (see
4 Response comments as "deceptive purposes", "muddle the waters", "cloud the real issues
5 by skilled unethical and deceptive practices", "abuses", "legal fiction", "intentionally
6 false", "misleading", "ridiculous", "misrepresentations", "ranting and raving of a
7 sociopathic liar", "lashing out", "Puppet Master", "thief with a gun", "sociopathic liar",
8 "records are more than likely comingled", "frivolous", "intentionally misled", "frivolous
9 claim", "side stepping the real truth", "master owns his slave", and "slave corporation").

10 The Response provides nothing new and no further legal argument, citation,
11 references, or articulate discussion of the facts and law surrounding its support for
12 Brooke Utilities, Inc. ("Brooke") not being a party to the Complaint. Complainants
13 cannot argue *de lege ferende* as opposed to *de lege lata* (what the law ought to be as
14 opposed to what the law is). Complainant's made no compelling argument and cannot re-
15 draft the facts, circumstances, and law to support its position just because that is what
16 they desire.

17 **I. BROOKE IS NOT A PUBLIC SERVICE CORPORATION:**

18 Complainant's desperately want to believe its own argument. They fail to
19 understand the distinction between a utility and a public service corporation pursuant to
20 Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251. For example,
21 El Paso Natural Gas Co. is a utility but it is **NOT** regulated by the Arizona Corporation
22 Commission (the "Commission") because it is not a public service corporation. Duke
23 Energy is an electrical utility but is **NOT** regulated by the Commission because it is not a
24 public service corporation. Likewise, Brooke may be a utility but it is **NOT** regulated by
25 the Commission because it is not a public service corporation.

26 Complainants have an alternative to their plight – they can go to Superior Court
27 and file for declaratory relief, or the equivalent, and present evidence as to why Brooke
28 should be adjudged a public service corporation. The jurisdiction for the adjudication of

1 Brooke as a public service corporation is not the Arizona Corporation Commission (the
2 “Commission”) because Brooke is **NOT** a public service corporation.

3 Complainant’s lengthy response citing Commission Decision No. 60972
4 conveniently proves the point and makes the case *for* PYWCo. In Decision No. 60972
5 Brooke sought to reorganize its business into more efficient corporate entities segregated
6 by logical geographical areas. Without the affiliated interest rules cited in PYWCo’s
7 Motion as A.R.S. R14-2-801 (1) and A.R.S. R14-2-802 (1) Brooke would have been able
8 to reorganize its business without any review or approval of the Commission (assuming a
9 Class A public service corporation existed). As previously cited the affiliated interest
10 rules “*are applicable to all **CLASS A** investor owned utilities under the jurisdiction of*
11 *the Commission*” (emphasis added). PYWCo is Class C water utility, not a Class A water
12 utility. Regardless of how much Complainant’s desire to include Brooke as a named party
13 in the Complaint they cannot alter or misstate the facts that PYWCo is a Class C water
14 utility. Brooke, therefore, is excluded from the affiliated interest rules of the Commission
15 and cannot be included in the Complaint as a named party.

16 Brooke has not been issued certificates of convenience and necessity (“CC&N’s”)
17 by the Commission. Complainant argues that “Brooke does in fact provide water service
18 to the Complainants” within the Mesa del Caballo (“MdC”) service area. Complainants
19 allege that Brooke provides service “through the CC&N that BUI [Brooke] acquired and
20 reorganized and redistributed to its PWC [PYWCo] subsidiary”. Complainants proffer
21 their argument by providing one of several Latin lessons that may be factually correct but
22 has no support in law or the rules of the Commission and has no application to the instant
23 matter.

24 As previously cited Brooke has no customers; develops or provides no water;
25 delivers no water; Brooke it **NOT** listed on the Commission’s website as a public service
26 corporation; and, has never been issued a CC&N by the Commission. Brooke functions
27 as a utility holding company. As such Brooke provides the customers of its subsidiaries
28 with pricing and cost advantages attributed to economies of scale that allow it to make

1 business arrangements that accrue to cost savings to rate paying customers of PYWCo
2 and, consequently, MdC.

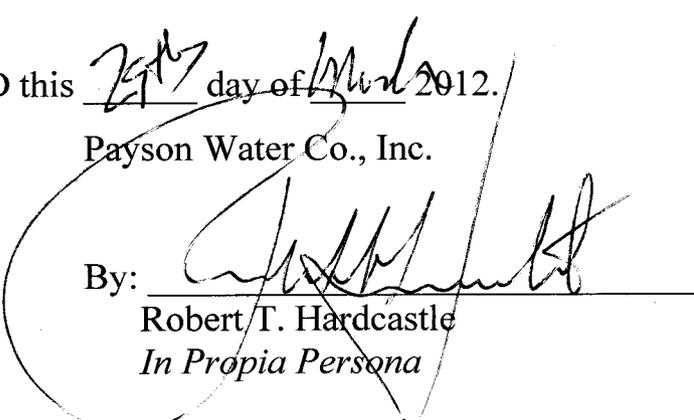
3 **II. CONCLUSION**

4 Unfortunately, as is too often the case, PYWCo finds itself arguing that the world
5 is round while the Complainant's contrive every effort possible to argue the world is flat.
6 Regardless, of how badly the Complainant's want Brooke to be a public service
7 corporation, the facts are it just isn't so. Brooke is not a public service corporation.

8 PYWCo respectfully requests the Commission and the Administrative Law Judge
9 to compel Complainant's to amend its Complaint excluding all references to Brooke as a
10 party thereto and hereafter refrain from referring to the Respondent's as anything other
11 than PYWCo.

12
13 RESPECTFULLY SUBMITTED this 21st day of March 2012.

14 Payson Water Co., Inc.

15
16 By: 
17 Robert T. Hardcastle
18 *In Propria Persona*
19

20 ORIGINAL and 13 copies filed
21 this 21st day of March, 2012, with:
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23 **Docket Control**
24 **Arizona Corporation Commission**
25 **1200 West Washington St.**
26 **Phoenix, AZ 85007**
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28 And copies mailed to the following:

29
30 Dwight Nodes, Administrative Law Judge
31 HEARING DIVISION
32 Arizona Corporation Commission
33 1200 West Washington St.
34 Phoenix, AZ 85007

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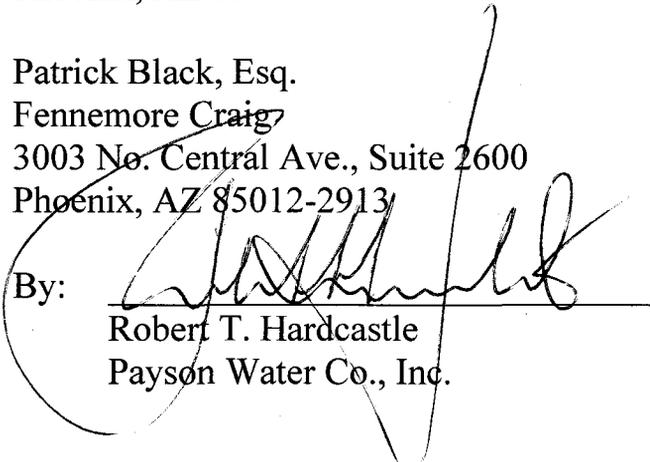
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