

J. Alan Smith, Private Citizen
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Payson, Arizona [PZ 85541]
(928) 302-8341 Hm.
(928) 951-2083 Wk.
PWC Utility Account No. 61138-24899
In Propria Persona

ORIGINAL



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Before the Arizona Corporation Commission

COMMISSIONERS

Gary Pierce, Chairman
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Bob Stump, Commissioner
Sandra D. Kenndy, Commissioner

Arizona Corporation Commission

DOCKETED

APR - 3 2012



AZ CORP COMMISSION
DOCKET CONTROL

J. Alan Smith, Injured Party
Complainant,

vs.

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

DOCKET NO. W-03514A-12-0007

**RESPONSE AND OBJECTION TO
RESPONDENTS MOTION TO QUASH
BROOKE UTILITIES, INC.
AS A PARTY TO THE COMPLAINT
AND MOTION TO DENY**

NOW COMES, the Complainant J. Alan Smith, to respond and object to Respondents Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint as Brooke Utilities Inc. has been properly Joined to the action pursuant to Ariz. Rules of Civ. Pro., Rules 17 and 19 (a) for cause that shall become evident and further, Complainant, Motion the Court to Deny Respondents Motion.

Respondents' Motion is improperly captioned. The Respondents cannot arbitrarily alter the style of the "Formal Complaint" at will for their own deceptive purposes. The current process is not played by the Respondent's deceptive and impractical rules but by Rules specified in Ariz. Adm. Code R14-3-106 through 111.

Respondents' arbitrary "Answer" to the "Formal Complaint," previously submitted failed or refused to deny in detail the allegations contained therein with a simple blanket response and thus admitted all allegations and facts contained within the Complaint.

Now, Respondents attempt to muddle the waters and cloud the real issues by skilled unethical and deceptive practices as is his/their method of corporate operation. Please Note: Mr. Hardcastle abuses the privilege of "in Propria Persona" in reference to his Corporations. A Corporation cannot proceed in Propria Persona it must be represented for it is a legal fiction. The Complainant's request clarification, is Mr. Hardcastle

qualified to represent the legal fictions in these proceedings? Furthermore, it should be noted that apparently he is not representing Brooke Utilities Inc. or denies affiliation with Brooke Utilities Inc.

The current status of the Complaint is that the Complainant and the Respondents are in Mediation.

Staff is aware of the Mediation. The current counter offer to the Respondents has not yet been answered. In any event the Respondent appears out of desperation to be jumping the gun and making an awful lot of misrepresentations and wantonly spewing forth false information and improvable claims.

RESPONDENTS ARGUMENT:

The Respondents argue the following:

- 1) The Complaint erroneously included Brooke Utilities Inc. (BUI) as a party;
- 2) BUI is not a Public Service Corporation and is not regulated by the Ariz. Corporation Commission;
- 3) BUI does not provide water service to Complainants or any customer within the Mesa del Caballo (MDC) service area and that the CC & N is issued to Payson Water Co. Inc. (PWC);
- 4) BUI has never been issued a CC & N by the Commission;
- 5) BUI has never argued before the Commission in support or on behalf of itself being a Public Service Corporation (PSC);
- 6) BUI functions only as a stock holding company of PWC and other PSC and has no Customers;
- 7) That the Complainant is desperate and embellish his position by asserting ambiguous allegations and misrepresentations and that to include BUI as a party to the Complaint is equal to or no greater;
- 8) BUI operates as a separate entity from PWC;
- 9) Does not file Annual Reports, has separate Board of Directors, employees that subsidiary water companies do not have, separate shareholder meetings and maintains separate books and records;
- 10) PWC operates within the definition of R14-2-103 (A)(3)(h) as a Class C PSC and does not meet the criteria of a (A.R.S.) R14-2-801 (1) or R14-2-802 (1) Affiliate associated with a Class A investor-owned utility under the jurisdiction of the Commission and that PWC is a Class C water utility not a Class A water utility;
- 11) The MDC water system is a Class D PSC; and, finally,
- 12) PWC requests the Commission to Direct Complainant's to amend the Complaint to exclude references to BUI as a party thereto and refrain from referring to the Respondents as anything other than PYWCo.

COMPLAINANT'S RESPONSE:

Respondents' argument appears to be intentionally false and misleading if not ridiculous and the Complainant responds to each of the items so listed accordingly by matching numbered response and as follows:

- 1) BUI is correctly Joined as a party pursuant to Ariz. Rules of Civ. Pro., Rules 17 and 19 (a). The two entities BUI and PWC function as one entity and both entities have the same President, CEO and Statutory agent who himself should also be joined for cause shown;
- 2) Respondents erroneously argue that BUI is not an Arizona Public Service Corporation pursuant to Article XV (Arizona Constitution) and A. R. S. §§ 40-250 and 251. However, Article XV § 2; defines a **“Public Service Corporation”** in part as:

“All corporations other than municipal engaged in furnishing gas, oil, or electricity for light, fuel, or power; **or in furnishing water for** irrigation, fire protection, **or other public purposes**; . . .”

The definition does include utility companies like BUI. BUI presents itself to be a public utility on the public records with the Ariz. Corp. Commission and in its 2011 Annual Report to the Commission.

Both BUI and PWC are licensed and registered with the Ariz. Corp. Com. to conduct business in the State of Arizona, as UTILITIES and list their “domestic” address and residences as 1011 So. Stover Rd. in Payson, Arizona, thus subject to regulation within the State of Arizona;

In A. C. C. Decision No. 60972 where Brooke Utilities Inc. applied for reorganization (of that recognized and admitted water utility) for the purpose to correspond with the geographical boundaries of the numerous Water Companies and Certificates of Convenience and Necessity that it (BUI) had acquired. The Commission recognized the following:

- a) The Applicant(s) (Brooke Utilities Inc. and Brooke Water LLC) filed to “reorganize” the water utility structure of Brooke Utilities Inc. and Brooke Water LLC to correspond with geographical boundaries and that there will be no change of ownership;
- b) The Applicant(s) is/are a Public Service Corporation within the meaning of Article XV Arizona Constitution and ARS § 40-281; and,
- c) The Corporation Commission determined it had jurisdiction over the Applicant(s) and the Subject Matter of the Application.

Furthermore, in A. C. C. Decision No. 60972 Brooke Utilities Inc. is referred to as the “Parent Company” of its subsidiaries (Guardian of its Minor Legal Entities) Brooke Water, Circle City Water Co. LLC, Tonto Basin Water Co. Inc., **Payson Water Co. Inc.**, Pine Water Co. Inc., Strawberry Water Co. Inc. and Navajo Water Co. Inc.; and, Respondents previously admitted in their “Answer” Exhibit 1 page 2 that the Company(ies) must comply with the requirements of (AAC) Title 14;

- 3) BUI does in fact provide water service to the Complainant and other customers within the MDC service area by and through the CC & N that BUI acquired and reorganized and redistributed to its PWC subsidiary. **Qui per alium facit per seipsum facere videtur** (He who acts through another is deemed to do the act himself); Furthermore, BUI:

- a) Issues all orders, statements, billings and collects all funds, profits and benefits for services rendered and alleged to be provided by Payson Water Co. Inc. to the Customer and this Complainant. **Quicquid acquiritur servo, acquiritur domino** (Whatever is acquired by the servant is acquired by the Master);
- b) Maintains; all books, records, water hauling logs and invoices, customer service, enters into all contracts for and on behalf of its servant, subsidiary corporation, PWC which BUI owns and by and through its agents dictates the operations of PWC from sunup to sunup 24 hours a day, 7 days a week;
- c) By and through its/their President, CEO and Statutory agent Robert T. Hardcastle, enters into contracts with other entities and private persons for and on behalf of PWC. Like the water hauling contracts particularly at issue in these proceedings between BUI and Pearson Transport (Pearson Water) including its subcontractors like Martins' Trucking Service who hauled water to the MDC System in 2011 and 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);
- 4) BUI was issued several CC & N by the Commission and formed several subsidiaries like PWC with them;
- 5) It may not be true what BUI claims however, BUI Agents have put forth bids and present argument, proposals and application for rate increases, tariffs etc. before the Commission for PWC and appear to make all decisions in the total operations and maintenance of PWC. Obviously the Respondents have forgotten the role played by BUI in A. C. C. Decision No. 60972;
- 6) BUI functions far beyond the position of a simple or mere "stock holding company" of PWC and other Public Service Corporations and has many Customers.

Indeed, BUI is joined at the hips with PWC (but this Complainant has never used the word phrase in any of his documents) in all of its functions including but not limited to its billing practices and record keeping, the enforcement of the Curtailment Plan, (which BUI employees enforce) and contracts for hauling water to the MDC System and far more. BUI is the Guardian of "protected persons (legal entities)" under its responsibility, control, direction, manipulation and domination at all times.

- 7) The comment that the Complainant is desperate and embellish his position by asserting ambiguous allegations and misrepresentations and that to include BUI as a party to the Complaint is equal to or no greater, is the mere misrepresentations, ranting and ravings of a sociopathic liar, like the Respondent who is backed into a corner, is lashing out and really deserves no other response;

- 8) BUI does not operate as a separate entity from PWC. The relationship is one of a Master and Servant relationship that functions as one entity, one team, in all of its/their operations and identification as BUI who collects all the profits and benefits attributed to its servant corporations like PWC;

The MDC System is part of PWC which is owned, operated and managed by BUI and considered a "public water system." The Companies are Public Service Corporations by the definition so stated above. BUI manipulates and dictates all of the functions of PWC like a Puppet Master manipulating the Puppet or a thief with a gun robbing a victim or a sociopathic liar manipulating his/its pray and all those around him.

- 9) PWC filed its Annual Report for 2011 as a Utility Company. The Respondents obviously lied about not filing Annual Reports because BUI filed its Annual Report for 2011 (with the Commission) as it has for many years as a Utility Company and not a "holding company" as falsely alleged. BUI is domiciled in the State of Arizona, and according to California Secretary of State Debra Bowen is doing business in the State of California as a Foreign Corporation. Arizona has Jurisdiction over BUI.

Ask any of the alleged PWC employees who they work for and they will tell you BUI not PWC, their trucks all have Brooke Utilities Inc. printed on their sides. Maybe BUI has a separate Board of Directors and employees that subsidiary water companies do not have, since they have none. Maybe there are separate shareholder meetings however, the books and records are more than likely comingled and in some rarity maintained separately to some degree but that does not explain why Customers receive statements, demands, notices etc. from BUI rather than PWC.

- 10) Respondents claim that PWC operates within the definition of R14-2-103 (A)(3)(h) as a Class C Public Service Corporation. The claim makes no sense, as the Regulation states as follows:

"Original cost rate base" -- An amount consisting of the depreciated original cost, prudently invested, of the property (exclusive of contributions and/or advances in aid of construction) at the end of the test year, used or useful, plus a proper allowance for working capital and including all applicable pro forma adjustments.

Further, the Respondents claims that PWC does not meet the criteria of a (A.R.S.) R14-2-801 (1) or (R14-2-802 (1) which does not exist) Affiliate associated with a Class A investor-owned utility under the jurisdiction of the Commission and that PWC is a Class C water utility not a Class A water utility, seems to be confused and makes no sense.

Ariz. Adm. Code (AAC not A.R.S.) R14-2-801 (1) specifically states:

"Affiliate, with respect to the public utility, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the

power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise.”

However, A. A. C R14-2-801 (4) specifically states.

“Holding Company” or “Public Utility Holding Company.” Any affiliate that controls a public utility.

- 11) The Respondents fail to make the connection with the MDC water system being a Class D Public Service Corporation that would warranted BUI being removed from the Complaint;
- 12) The Respondents request to the Commission to Direct Complainant to amend the Complaint to exclude references to BUI as a party thereto and refrain from referring to the Respondents as anything other than PYWCo., is entirely without merit.

Robert T. Hardcastle is President, CEO and Statutory Agent of both PWC and BUI. **Qui facit per alium facit per se** (He who acts through another, acts by or for himself). A fundamental maxim of agency. **Stroman Morot Co. v. Brown, 116 Okla 36, 243 P 133.** A maxim often stated in discussing the liability of employer for the act of employee. **35 Am J1st M & S § 543.** If in the nature of things the master is obliged to perform the duties by employing servants, he is responsible for their act in the same way that he is responsible for his own. **Anno: 25 ALR2d 67.**

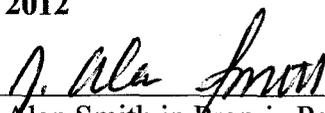
The Respondents claims and arguments appear to be frivolous and designed to intentionally mislead to prevent the Complainant from obtaining documents and records that are vital and necessary to the issues in these proceedings and that Brooke Utilities Inc. have and maintain in their possession and control.

It should further be noted that, the Complainant has reviewed and studied both A. R. S. §§ 40-250 and 251 and can find nothing relevant that would relate to or justify the Respondents frivolous claim that Brooke Utilities Inc. is not an Arizona Public Service Corporation and is not regulated by the Corporation Commission.

The claim that “Brooke” (i. e. Brooke Utilities Inc.) does not provide water service to the Complainant’s or any Customer in the Mesa del Caballo service area is side stepping the real truth and facts and the Respondents cannot justify that statement as Brooke Utilities Inc. owns and operates Payson Water Co. Inc. as one of its Subsidiaries or “servant corporation” and it is ultimately responsible as is its/their President and CEO Mr. Hardcastle who directs all operations of both. **Qui mandate ipse fecissi videtur** (He who orders or commands is deemed to have done the thing himself).

Brooke Utilities Inc. is not a mere “stock holding company” of Payson Water Co. Inc., it is not a completely separate entity, Brooke Utilities Inc. OWNS and OPERATES Payson Water Co. Inc. as a master owns his slave, Brooke Utilities Inc. owns, controls and manipulates its “slave corporation.” **Qui dat finem, dat media ad finem necessaria** (He who provides the end provides the means necessary to the end).

Respectfully submitted this 2nd day of April, 2012



J. Alan Smith in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Response, has been mailed this 2nd day April, 2012 to the following:

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

Copies of the foregoing, Response has been mailed this 2nd day April, 2012 to the following:

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

By: J.A.S.