

J. Alan Smith, Private Citizen
8166 Barranca Rd.
Payson, Arizona [PZ 85541]
(928) 302-8341 Hm.
(928) 951-2083 Wk.
PWC Utility Account No. 61138-24899
In Propria Persona

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Before the Arizona Corporation Commission

AZ CORP COMMISSION
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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

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 object to Respondents Reply to Complainant's Response and Objection to Respondent's Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint and further, Complainant, Motions the Commission to Deny Respondents Motion and other pleading.

Brooke Utilities Inc. (BUI) has been properly Joined to the action pursuant to Ariz. Rules of Civ. Pro., Rules 17 and 19 (a) for the simple fact that it is directly involved with the issues in these proceedings and the Commission has jurisdiction over all Corporations filing Articles of Incorporation in the State of Arizona. BUI files "Corporation Annual Reports & Certificate of Disclosure" pursuant to ARS § 10-11622 each year with the most recent being filed on or about 11/21/2011. BUI is incorporated within the State of Arizona; and Arizona has jurisdiction over Brooke Utilities Inc. through the Arizona Corporation Commission. "The burden is on the defendant to show the nonexistence of jurisdictional facts." Russell v. Butler (Tex Civ app) 47 S.W. 406; Gilchrist v. Oil Land Co., 21 W. Va. 115.

R14-3-101. Scope and construction of rules, special orders

A. Procedure governed. Except as may be otherwise directed by the Commission, and when not in conflict with law or the regulations or orders of this Commission, these Rules of Practice and Procedure shall govern in all cases before the Corporation Commission including but not limited to those arising out of Article XV of the Arizona Constitution, or Titles 10, 40, or 44 of the Arizona Revised Statutes. In all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil

Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona **shall govern**. Notwithstanding any of the above, neither these rules nor the Rules of Civil Procedure shall apply to any investigation by the Commission, any of its divisions or its staff.

B. Liberal construction waiver. These rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission. If good cause appears, the Commission or the presiding officer may waive application of these rules when not in conflict with law and does not affect the substantial interests of the parties.

R14-3-103. Parties

D. Respondent. Any person against whom a complaint or petition is filed or any person who may be subject to having any schedule, rate or tariff forfeited or revoked by the Commission, shall be designated as “Respondent”

ARS § 40-246(B). specifically states as follows:

B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for mis-joinder or non-joinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damage to the complainant.

BUI far and exceed the status of a mere “stock holding company” of Payson Water Co. Inc. (PWC).

BUI officers, agents, employees and equipment operate and maintain all of the water systems allegedly owned by PWC and BUI, issue all Statements to Customers for services and commodity rendered, makes all arrangements for the hauling of water, negotiates all affairs before the Commission, and enters into all Water Sharing Agreements with Private Well and Property Owners for water resources (i. e. Harmon, Behm, El Caballo Club).

Whether the Respondents like it or not BUI has been properly joined to the Complaint pursuant to ARCP Rule 19(a) and the Ariz. Adm. Codes and Statute so cited herein and is subject to the jurisdiction of the Commission in these matters.

Respondents argue that BUI is not an Arizona Public Service Corporation and that the Commission only has jurisdiction and regulatory authority over 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; . . .”

R14-2-801. Definitions: In this Article, unless the context otherwise requires:

1. "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.

2. "Commission." The Arizona Corporation Commission.

3. "Entity." A corporation, partnership, limited partnership, joint venture, trust, estate, or natural person.

4. "Holding Company" or "Public Utility Holding Company." Any affiliate that controls a public utility.

8. "Utility" or "Public Utility." Any Class A investor-owned public service corporation subject to the jurisdiction of the Arizona Corporation Commission.

R14-2-802. Applicability

A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules.

The definitions above 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 and filed its Articles of Incorporation with the Secretary of State and 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 and the jurisdiction of the Arizona Corporation Commission. If, BUI has no Customers then why do they send Statements to Customers in the MDC System in the name of BUI and not PWC? Why does BUI maintain a Customer Service Office in the name of BUI for Customers in the MDC System and every system under PWC to contact?

In A. C. C. Decision No. 60972 Brooke Utilities Inc. submitted to the authority, regulation and jurisdiction of the Commission. The Complainant has filed a Complainant with the Commission which has jurisdiction over all of BUI's and PWC's activities as corporations registered to business in the State of Arizona.

Further, the Respondents arguments that PWC does not meet the criteria of a (A.R.S.) R14-2-801 (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, does not warrant BUI from being removed from the Complaint.

The Respondent's request to the Commission to Direct Complainant to amend the Complaint to exclude all references to BUI as a party thereto and refrain from referring to the Respondents as anything other than

PYWCo., is entirely without merit. It is a deceitful ploy to deny the Complainant access to vital and necessary documents and records that are maintained by BUI and in their possession and control. Documents and records that are directly related to the issues raised in the Complaint and these proceedings.

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 Corporation and can not be regulated by the Corporation Commission and that the Commission has no jurisdiction over BUI.

Wherefore, the Complainant request of the honorable Commission and its Administrative Law Judge that, the Respondents Motion to compel the Complainant to amend their Complaint to exclude all references to Brooke Utilities Inc. as a party thereto and hereafter refrain from referring to the Respondents as anything other than PYWCo., be denied and that the Complainant be allowed to proceed further with their Complaint without any revisions whatsoever.

Respectfully submitted this 11th 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 11th 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 11th day April, 2012 to the following:

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

By: J.A.S