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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

DOCKETED

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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

OBJECTION TO RESPONDENT'S SUPPLEMENTAL MOTION TO COMPEL COMPLAINANT'S RESPONSE TO THE 1ST AND 2ND SET OF DATA REQUESTS

NOW COMES, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to Object to Respondent's Supplemental Motion to Compel Complainant's Response to the 1st and 2nd Set of "Data Requests."

On April 13, 2012 Complainant Gehring mailed the Response to Respondent's 1st and 2nd Set of "Data Requests" that were directed entirely at Complainant Gehring. Not one single Data Request was directed at Co-Complainants Bobby and Lois Jones;

Between March 31st and April 13, 2012 a Two week period, Respondents mailed Twelve (12) different pleadings to the Complainants. All are required by the Procedural Orders of March 19, 2012 to be responded to within 5 days. All but one was responded to within the Procedural Orders time frame.

1. On March 27, 2012 Respondent's "Motion to Modify Subpoena;"
2. On March 28, 2012 Respondent's "Motion to Strike Non-Affiliated Parties;"
3. On March 29, 2012 Respondent's "Reply to Complainants' Response to PWC's Motion to Strike Non-Evidentiary Party and Motion to Deny;"
4. On March 29, 2012 Respondent's "Reply to Complainants' Response to PWC's Motion to Delete BUI as a Party to the Complaint;"

5. On March 30, 2012 Respondents “Reply to Complainants Response to PWC’s Motion to Strike Non-Evidentiary Party and Motion to Deny;”
6. On March 31, 2012 Complainant Gehring received Respondent’s 1st set of “Data Requests;”
7. On April 5, 2012 Respondents “Reply to Complainants’ Response to PWC’s Motion to Strike Non-Affiliated Parties and Motion to Deny;”
8. On April 10, 2012 Respondent’s “Third Set of Data Requests;”
9. On April 10, 2012 Respondent’s “Reply to Complainants’ “Second Response” and Objection to Respondents Motion to Modify Subpoena.” Complainants filed their Objection on April 16, 2012;
10. On April 11, 2012 Complainant Gehring received Respondent’s 2nd set of “Data Requests;”
11. On April 11, 2012 Respondent’s “Motion to Compel Complainants to Comply with Discovery Request for First Set of Data Requests;”
12. On April 12, 2012 Respondent’s “Notice of PWC Treatment of BUI as a Non-Party to the Complaint;”

Generally speaking the U. S. Post Office delivered those pleadings within Two to Three days. The Commission files them on the day received giving the Complainants at best Four or Five days to respond.

It is extremely obvious that Respondent, Hardcastle has made every attempt to bury the Complainants in paperwork to harass them, mislead them and cause for them to default in compliance with the Procedural Orders of March 19, 2012 just to give him something to complain about and use against the Complainants. At the same time Respondents have shown contempt for the Commission by refusing to comply with the Subpoena issued to them and ignoring the Procedural Orders of March 19, 2012 with Hardcastle’s arrogant “Notice of PWC Treatment of BUI as a Non-Party to the Complaint” where in fact Respondent’s “Motion to Delete BUI as a Party to the Complaint” was obviously denied but he intends to treat it as if it was not denied.

Referencing the Procedural Order of March 19, 2012 “any motions which are filed in this matter and *which are not ruled upon* by the Commission *within 20 calendar days* of the filing date of the motion *shall be deemed denied.*”

If anyone is in a state of “unilateral repudiation” of the Procedural Orders of March 19th 2012 and is being “unprofessional” it is indeed the Respondent, Hardcastle and not the Complainants.

The Commission and its Administrative Law Judge now have the opportunity to review Respondent’s 1st and 2nd Set of “Data Requests” to thoroughly examine and determine for themselves the unreasonableness of the majority of those requests for information that is not relevant or material to the issues before the Commission and those requests that are immediately intrusive into the privacy and rights of Complainant Gehring.

Complainants object to Respondent’s portrayal of Complainant Gehring’s Responses to the “Data Requests” as unresponsive, unacceptable, unusable, “colorful personal characterizations” and that no documents were attached. Complainant Gehring’s responses were and are appropriate and accurate.

Every document requested by the Respondents are either already in the Respondent's hands or they have immediate access to or they refused to produce in compliance with the Subpoena or were objected to by the Complainant.

Respondents objected to complying with the Subpoena to produce records, logs, invoices and other documentation, as over burdensome. This documentation is relevant, material and directly related to the Water Augmentation Period. Respondents concealed them and would by disclosure otherwise incriminate themselves.

Respondent "may not claim privilege for corporate records, in every such case the records kept are not within the protection of the self-incrimination privilege." **Shapiro v. United States, 335 U. S. 1, 58 (1948)** "required records are also not protected by the 5th Amendment privilege against self-incrimination **Craib v. Bulmash, 777, P.2d 1120 (Cal. 1989)** "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established" **Shapiro v. United States, 335 U. S. 1, 58 (1948) Id at 33.**

"Agency subpoena power is not confined to those over whom it may exercise regulatory jurisdiction, but extends to any persons from whom it can obtain information relevant and material to its legitimate inquiry." **FCC v. Cohn, 154 F. Supp. 899, 906 (S.D.N.Y. 1957).** "For an agency to exercise subpoena power, it need not show that it has regulatory jurisdiction over the person subpoenaed." **Freeman v. Fidelity-Philadelphia Trust Co., 248 F. Supp. 487 492 (E.D. Pa. 1965).** "Testimony and records pertinent to a legitimate investigation may be subpoenaed even though the subpoena is directed to a third person who is not subject to the agency's jurisdiction and who is not the subject of the investigation." **United States v. Marshall Durbin & Co., 363 F.2d 1 (5th Cir. 1966); Freeman v. Brown Bros. Harriman & Co., 357 F.2d 741 (2d Cir. 1966).** "All that is necessary is that the records be relevant to an investigation that is within the agency's authority." **Redding Pine Mills v. State Bd., 320 P.2d 25 (Cal. App. 1958) State v. Mees, 49 N.W.2d 386 (Minn. 1951).**

"The unduly broad scope of an administrative subpoena may no longer be set up as a defense in the enforcement proceeding." **FTC v. Crafts, 355 U.S. 9 (1955) and Pope & Talbot v. Smith, 340 P.2d 960 (Ore. 1959).** "Broadness alone is not sufficient justification to refuse enforcement of a subpoena." **FTC v. Texaco, 555 F.2d 862, 882 (D. C. Cir. 1977).** The fact that compliance might call for thousands of documents is not enough to show the subpoena is unduly burdensome." **NLRB v. G.H.R. Energy Corp., 707 F.2d 110 (5th Cir. 1982).** The very purpose of the administrative subpoena is to discover and procure evidence, not to prove a pending case, but to make a case if, in the agency's judgment, the facts thus discovered should justify doing so. **EEOC v. Bay Shipbuilding Corp., 668 F.2d 304,312 (7th Cir. 1981).** Probable cause is irrelevant to administrative subpoena power because the agency may use the power to inform itself as to whether probable cause exists. An agency subpoena will be enforced even "if one were to regard the request for information as

caused by nothing more than official curiosity.” **United States v. Morton Salt Co., 338 U. S. 632 (1950) Id. at 652.**

Respondent’s analogy of the Complainant’s Response to Data Requests (DR) P1.21, P1.21.3 and P1.21.4 is absolutely false and incorrect for and because Complainant’s response to DR P1.21 “You have already been supplied with that information” is a fact. The proof of that statement is found in Complainants’ “Objection to Respondents Reply to Complainants’ Response to Respondents’ Motion to Strike Non-Evidentiary Party and Motion to Deny” and attached Exhibits of photographs and copy of Complainant’s notes on a scrap of paper and the back of Martin’s Zabala’s business card. In DR(s) P1.21.3 and P1.21.4 Jim Pearson and Martin Zabala have refused to respond to the Subpoena(s) and must be compelled to comply as must the Respondents.

Respondent’s assumption that Complainants’ had no basis for the allegation(s) made at the time the Complaint was filed is in error. The Complainants began investigating the Water Augmentation Surcharge and revised Curtailment Plan after the first billing period in July 2011. The investigation warranted the “Informal Complainant” and the “Formal Complainant.” Complainants have not unilaterally repudiated the Procedural Orders as Respondents please themselves to misrepresent. Furthermore it is most disturbing that Respondent, Hardcastle dedicated half a page of his argument to taking words and word phrase completely out of context to twist and turn them into something they are not. The Complainant was being truthful, honest and direct.

The very real reason that the Respondents can not defend themselves against the allegations made is because they are true and accurate. Complainants reserved the right to revise the Complaint once additional information is acquired including but not limited to the documents Subpoenaed that are so incriminating to the Respondents they had to concealed them.

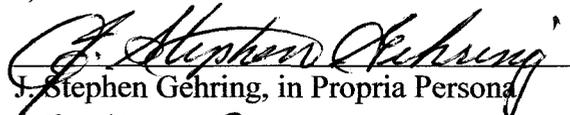
Respondent’s assumption and speculation that Complainants’ have little or no supporting documentation of their positions and cannot or will not, provide substantiation of their position or are dependent on other third party sources to hopefully provide them with documentation necessary to substantiate their position and allegations is in total error. Respondents have in hand evidence in support of the allegations and the Complainants’ position. They are the Exhibits attached to the “Formal Complaint” and other pleadings submitted in these proceedings (AAC R14-3-109 (K)(L)(O)(U)(W)(X)(Y)(Z)). Additional documentation provided in response to the Subpoena and that is still required to be provided does and will further evidence support for the allegations and the Complainants position.

Complainants are Customers and Victims and are not “professionals” they are not attorneys at law and are unaware of any prescribed professional conduct other than those prescribed in the Procedural Orders of March 19, 2012 and have not been disrespectful to the Commission. Respondent Hardcastle is upset because the Complainants have called the kettle black instead of pink as the Respondents seem to demand.

The Complainants object the Respondents' Motion to Compel and to dismiss the Complaint altogether for reason stated herein and above. They especially object to the misconduct and unprofessional conduct of Respondent, Hardcastle who has placed himself on the pedestal of "Professional" to bully Complainants to conduct themselves with "some level of professional decorum" of his own definition and if the Complainants "want to enjoy the benefits of due process in arguing their position." It is odd Hardcastle should point the finger of unprofessionalism at the Complainants since he himself cannot define it. Respondent Hardcastle does not understand "due process" and would arbitrarily deny the Complainants the right to be heard. Daniel Webster in his argument in Dartmouth College v. Woodward (US) 4 Wheat 518, 4 L Ed 629), he declared that by due process of law is meant "the law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."

Notice was given that Complainants have fully complied with Hardcastle's "Data Requests" as of April 13, 2012 he simply does not like the responses.

Respectfully submitted this 23rd day of April, 2012


J. 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 23rd day April, 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 23rd day April, 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: JSB