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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

DOCKETED

JUN 06 2012

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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

**MOTION TO COMPEL RESPONDENTS
TO COMPLY WITH DISCOVERY
REQUEST FOR 1ST SET OF DATA
REQUESTS**

NOW COMES, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to Motion the Administrative Law Judge to Compel the Respondents' to comply with the Complainants' First Set of Data Requests and that the Procedural Hearing scheduled for June 26, 2012 at 10:00 a. m. be used to resolve issues of Discovery and Disclosure particularly Respondents refusal to fully comply with the Subpoena received by them on March 20, 2012 and the Data Requests received by them on May 21, 2012..

Respondents' "Motion to Modify the Subpoena" filed on or about March 29, 2012 was not granted by the Commission.

On April 23, 2012 Complainants' filed their "Notice of Complainants' Acknowledgement of the Commission's Denial of Respondents' Motion to Modify Subpoena" which the Respondents never responded to.

On April 23, 2012 Complainants' filed their "Motion to Compel Respondents Compliance with Subpoena which they never responded to.

On May 10, 2012 the Complainants requested that a Procedural Hearing be scheduled to resolve the issues of Respondents' failure and refusal to fully comply with the Subpoena.

Throughout these proceedings the Respondents have show nothing but contempt for both the Commission and the Complainants 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 that he intends to treat 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.*"

The order further states on lines 4 to 6 that:

"Staff's filing also states that the parties discussed a date to conclude discovery of May 7, 2012. *However, Staff indicates that discovery may be continuing beyond that date, and requests that normal Commission practice be followed regarding discovery deadlines.*"

At lines 12 to 17 the Order states:

"that *discovery shall be as permitted by law* and *the rules and regulations of the Commission*, except that until June 18, 2012, any objection to discovery requests shall be made within 5 calendar days of receipt and *responses to discovery requests shall be made within 7 calendar days of receipt.*"

For once the Complainants and the Respondents can agree on one thing. There is no explanation provided in the Procedural Order of March 19, 2012 of "normal Commission practice" dealing with the current issues of discovery and discovery deadlines.

Clearly discovery has continued beyond the date of May 7, 2012 and it is vital and necessary that a continuance of the date to conclude discovery must be extended another 60 to 90 days per R14-3-109(O) and (Q) due to Respondents refusal to comply with the Subpoena received of them on March 20, 2012 and the Data Requests received of them on May 21, 2012. Furthermore, the Complainants have discovered additional evidence that shall be provided within the next three days and are waiting for additional documentation from another source that shall be disclosed as soon as they have it in hand.

These proceeding were put on something of a "fast track" and due to Respondents delays and refusals to comply with the Subpoena and Data Requests the Complainants have had to resort to other means to acquire additional documentation in support of their position and the evidence in hand to be disclosed shortly.

To date the Commission and the Administrative Law Judge have not responded to the Complainants' Request for a Procedural Hearing on Discovery and Disclosure Issues and Compliance with the Subpoena dated May 10, 2012 which the Respondents never responded to.

On May 18, 2012 The Complainants' First Set of Data Requests were mailed to the Respondents which normally they receive within 2 to 3 days. The Requests were in Respondents mail box on the 21st of May they did not check their mail until the 24th of May 2012. Respondents' response and objection are dated May 29, 2012. The response is unacceptable and designed to conceal incriminating evidence of corporate activity.

There has never been expressed or noticed to Complainants' of any restriction on the filing of any Data Requests after the filing of Direct Testimony. Therefore the Data Requests can not be shown to be untimely filed. If Respondent Hardcastle cannot explain the "normal practice" of the Commission nor interpret it from the Procedural Order how than can the Complainants explain it.

What limited documentation was provided by the Respondents had to be researched and that research led to a need for additional discovery and disclosure.

Respondents claim falsely that documents requested in the Data Request can be found in the public record or are already in the Complainants' possession. We know they are not in the public record or already in our possession and that they are contained in corporate records and were never filed in the public record nor disclosed to us. They are relevant, material and applicable to the matters in this Docket.

Questions, related in whole or in part to Brooke Utilities, Inc. is within the scope of inquiry in this Docket as Brooke Utilities, Inc. has not been excepted, excluded or "deleted" from the Complaint by order of the Commission or the Administrative Law Judge. Brooke Utilities, Inc. is under the jurisdiction of the Commission as previously shown and is not a mere "holding company" as falsely claimed. According to its Article of Incorporation it is a "Water Utilities Management Corporation." According to its Corporation Annual Reports the "character of business" is "Utilities."

Respondents Data Requests for documentation were of the majority extremely outrageous and designed exclusively to over burden the Complainants, pry into their privacy and were timely objected to.

However, nearly every document requested by the Complainants, the Respondents have in their immediate possession and direct access to. Respondents absolutely refused to produce and have concealed documentation without justifiable cause or excuse and are refuse to fully comply with the Subpoena and Data Requests because they have a lot to hide and conceal that may bring them up on felony charges.

Respondents objected to complying with the Subpoena and Data Request by falsely claiming they are over burdensome, redundant, immaterial to specific allegations of the Complaint, already provided, invasive or refer to periods outside the scope of the Complaint and are unknown.

The documentation and corporate records requested are extremely relevant, material and directly related to the Water Augmentation Period and the long trail of deception and misrepresentation made by the Respondents to the Commission, the Complainants, Customers and others whom have been made to suffer financial injury and harm for Corporation profits. Respondents concealed this documentation and records as by disclosing these materials they would otherwise incriminate themselves for their criminal activities.

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.**

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.” The reason Discovery and Disclosure is on going and continuing past the May 7, 2012 possibly unofficial deadline is for and because the Respondents refuse to comply with the Subpoena and Data Requests without justification and choose to unlawfully conceal evidence in disclosure that is extremely damaging to their position.

Respondents assume and speculate that, Complainants’ have little or no supporting documentation of their positions and are 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 disclosure is to be provided shortly by the Complainants within the next three days.

The Complainants object to the Respondents' objection to complying with Complainants' First Set of Data Requests and object to Respondents' request to deny the Data Requests.

The Complainants for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to compel the Respondents to comply with the Data Request, enforce the Subpoena, and continue discovery for 60 to 90 days. We further again request a Procedural Hearing on Discovery and Disclosure issues that remain unresolved.

Respondent Hardcastle does not understand "due process" and would arbitrarily deny the Complainants the right to be heard and to submit proof beyond any reasonable doubt. Daniel Webster in his argument in *Dartmouth College v. Woodward* (US) 4 Wheat 518, 4 L Ed 629), 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." The evidence the Respondents have knowing and intentionally concealed must be disclosed.

Respectfully submitted this 5th day of June, 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 5th day June, 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 5th day June, 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: 