

J. Stephen Gehring, Private Citizen  
Bobby Jones, Private Citizen  
Lois Jones, Private Citizen  
C/O: 8157 W. Deadeye Rd.  
Payson, Arizona [PZ 85541]  
(928) 474-9859  
FAX: (928) 474-9799  
In Propria Persona

ORIGINAL



RECEIVED

2012 JUN 12 P 2:14

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED

JUN 12 2012

DOCKETED BY  
JM

**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 CONTINUANCE  
DISCOVERY BEYOND THE  
DISCUSSED AND UNCONFIRMED  
CONCLUSION DATE AND FOR A  
CONTINUANCE OF THE DATE  
SCHEDULED FOR HEARING ON  
THE COMPLAINT**

**NOW COMES**, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, pursuant to R14-3-109 (O) and (Q) to Motion the Commission and the Administrative Law Judge to continue the "discussed" and unconfirmed May 7, 2012 "conclusion date" for Discovery and Disclosure for an additional Sixty (60) to Ninety (90) Days and to continue the date scheduled for hearing on the Complaint for and additional Sixty (60) to Ninety (90) Days for the following reasons:

1. Referencing the Procedural Order of March 19, 2012:

The order 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."

It should be noted that no Order was issued confirming the date of May 7, 2012 to "conclude" Discovery and that "normal Commission practice" in this matter was not properly defined or confirmed for a clear understanding of either the Complainants or the Respondents which has caused confusion and delays. This

has led to the Respondents erroneous reliance upon such confusion to arbitrarily refuse to comply with the Complainants' Data Requests without cause or justification.

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*.”**

2. Respondent Hardcastle has repeatedly refused without justifiable cause or excuse to fully comply with the Subpoena issued by the Commission and received by him on March 20, 2012 requesting specific documentation and records. Respondents did provide some small amount of documentation that appeared genuine and required additional research by the Complainants. However, other documents provided were clearly falsified, while still others were intentionally concealed because of their incriminating nature. Respondent Hardcastle knowingly refused to provide them without any legal justification or proof in fact for support;
3. On March 27, 2012 Respondents mailed their Motion to Modify Subpoena;
4. On April 3, 2012 Complainants mailed their Response to that Motion;
5. On April 5, 2012 Complainants mailed a Supplement to their Response on the Motion to Modify the Subpoena;
6. On April 10, 2012 Respondents mailed their Reply to Complainants' "2<sup>nd</sup> Response;"
7. On April 16, 2012 Complainants mailed their Objection to Respondents Reply to "2<sup>nd</sup> Response;"
8. As of April 16, 2012 the Commission and the Administrative Law Judge had not ruled on Respondent's Motion to Modify the Subpoena;
9. On April 23, 2012 Complainants' mailed their "Notice of Complainants' Acknowledgement of the Commission's Denial of Respondents' Motion to Modify Subpoena" pursuant to 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 Respondents never responded to that Notice;
10. On April 23, 2012 Complainants' mailed their "Motion to Compel Respondents Compliance with Subpoena. The Respondents never responded to that Motion;
11. On March 19, 2012 a Subpoena was issued by the Commission for Pearson Transport/Pearson Water;
12. On April 14, 2012 after Seventeen attempts at Service of Process the Process Server was finally able to serve process upon Pearson Transport/Pearson Water. To date Pearson Transport/Pearson Water has failed and refused to comply with the Subpoena;

13. On May 10, 2012 the Complainants mailed their request for a Procedural Hearing to be scheduled to resolve numerous Discovery issues and Respondents' failure and refusal to fully comply with the Subpoena which the Respondents, the Commission and the Administrative Law Judge never responded to;
14. On May 18, 2012 Complainants mailed their First Set of Data Requests to Respondent Hardcastle;
15. On May 29, 2012 Respondent Hardcastle mailed his Objection to Complainants' First Set of Data Requests wherein he absolutely refused to comply with the Data Request **without any justifiable cause or excuse**;
16. On June 5, 2012 Complainants mailed their Motion to Compel Respondents to Comply with Discovery Request for their First Set of Data Requests and in addition requested a continuance of the **unconfirmed** Discovery deadline date and the date set for hearing on the Complaint;
17. On June 7, 2012 Complainant Gehring pursuant to the Procedural Order of March 19, 2012 page 2, Lines 21 through 25 and Page 3, Lines 1 and 2 called the Commission's Hearing Division to request a hearing date on discovery issues and was further instructed that Judge Nodes would be notified and that the Complainants should file written motions to Continue Discovery and to Continue the Hearing on the Complaint;

Throughout these proceedings the Respondents have shown nothing other than an arrogant and egotistical contempt for the Commission, its Administrative Law Judge and the Complainants by refusing to comply with the Subpoena(s) issued to them and Pearson Transport/Water, these Complainants and their Data Requests, in the Respondents' Motions and replies to Complainants' motions, responses and are intentionally ignoring the Procedural Orders of March 19, 2012.

This is particularly evident and verifiable with Respondent Hardcastle's arrogant and obtuse refusals to comply with: a) the Complainants' First Set of Data Requests; b) fully comply with the Subpoena; and, c) his self-righteous "Notice of PWC's Treatment of BUI as a "Non-Party to the Complaint" where in fact Respondent Hardcastle's "Motion to Delete BUI as a Party to the Complaint" **was so obviously denied by the Commission and the Administrative Law Judge**. Most notably according to Hardcastle's Notice, his intentions are to treat the failure of the Commission and the Administrative Law Judge to specifically rule on his Motion in his favor as if it was not denied but granted. Mr. Hardcastle didn't get his way but intends to force his desires on all parties anyway. Is this the Respondents' "middle finger" expression of his defined conduct and contempt towards the Commission and these proceedings? If so, sanctions must surely be warranted.

If, Respondent Hardcastle's actions are not considered by the Commission and the Administrative law Judge as contempt of the Commission, the Administrative Law Judge and the Complainants then would the Commission and the Administrative Law Judge consider to specifically define what is contempt of the Commission for the Complainants? The real concern here is why have the Commission and the Administrative Law Judge not acted appropriately and responded accordingly to their prescribe duties and responsibilities.

So where does this disrespectful conduct of the Respondents leave the Complainants? Simply put, frustrated at their every effort to acquire vital and necessary discovery, disclosure and conformation in support of their Complaint. The Complainants are left unprepared for the Hearing on the Complaint scheduled for June 26, 2012 at 10:00 a. m. The Hearing Scheduled on the Complaint can not take place on that date while in fact there remain numerous Discovery and Disclosure issues unresolved and administrative process wanting.

If the Commission and the Administrative Law Judge are not prepared to perform there required duties and responsibilities as prescribed by law, administrative codes, rules and regulation, policy, practice and procedures to render timely decisions in these matters and to compel compliance with the Procedural Orders of March 19, 2012 or enforce the Subpoenas issued by the Commission or compel compliance with Data Requests and Discovery then they may be negligent in their duties and responsibilities in all of these matters to an extent to create numerous appealable issues for the Complainants to take before the Supreme Court on appeal.

Pursuant to the Arizona Code of Judicial Conduct:

**Cannon 3. A judge shall perform the duties of judicial office impartially and diligently.**

**Cannon 3 A (1).** A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

**Cannon 3 B (8).** A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Cannon 3 B (8) Commentary.

“In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

Containing costs while preserving fundamental rights of parties, also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices avoidable delays and unnecessary costs.

Prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Article 2 § 11 of the Arizona Constitution requires that “justice in all cases shall be administered openly, and without unnecessary delay.”

Article 6, § 21 provides that “Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period.”

“The administrative law judge’s role is analogous to that of a trial judge. As such, the ALJ is vested with comparable hearing and decision powers.” **Fulwood v. Heckler, 594 F. Supp. 540, 547 (D. D. C. 1984)**.

“Administrative Law Judges are not limited to the position of referee between contending parties; their function is “to see that facts are clearly and fully developed.” “They are not required to sit idly by and permit a confused or meaningless record to be made.” **Bethlehem Steel Co. v. NLRB, 120 F.2d 641, 652 (D. C. Cir. 1941)**.

“The court held that by disregarding those precedents, the Commission had acted arbitrarily and capriciously. The Commission may not decide a case one way today and a substantially similar case another way tomorrow.” **Doubleday Broadcasting Co. v. FCC, 655F.2d417, 423 (D. C. Cir. 1981).**

“There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case.” **Mary Carter Paint Co. v. FTC, 333 F.2d 654, 660 (5<sup>th</sup> Cir. 1964).**

“The courts are increasingly requiring agencies that change their minds to explain why, through a reasoned analysis indicating that prior policies are being deliberately changed.” **Moltenry v. Bond, 668 F.2d 1185 (11<sup>th</sup> Cir. 1982); Gatou Rouge Contractors v. FMC, 655 F.2d 1210 (D. C. Cir. 1981).**

The Complainants have discovered additional evidence that they are now and will continue to provide as required in disclosure and are waiting for additional documentation from another source that shall be disclosed as soon as they have it in hand.

These proceedings were put on a “fast track” from the beginning and the Respondents have acted to delay, confuse and disrupt them at every opportunity. Due to Respondents delays and refusals to comply with the Subpoena, Data Requests and frivolous motions submitted the Complainants have had to resort to alternate means to acquire some additional documentation in support of their position.

There has never been established a final due date for the conclusion of Discovery and Disclosure as the Respondents, the Commission, the Administrative Law Judge are formally and knowingly aware. To insist otherwise is simply a fraud and a total misrepresentation of material fact.

The Complainants’ Data Requests, demands for compliance with issued Subpoenas and any other requests for Discovery and Disclosure materials can not be shown nor construed to be invalid or untimely filed as the Respondents have or would misrepresent.

Any questions, related in whole or in part to Brooke Utilities, Inc. are within the scope of inquiry in these proceedings as Brooke Utilities, Inc. has never been “deleted,” excepted or excluded 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 misrepresented by Mr. Hardcastle. According to Brooke Utilities, Inc.’s Articles of Incorporation it is a “Water Utilities Management Corporation.” According to its Corporation Annual Reports the “character of business” is “Utilities.” It has Customers. It holds and owns CC & N’s. It owns all the stock in the entity, franchise and subsidiary known as Payson Water Co. Inc. so lets cut to the quick and delineate Resondent Hardcastle’s delaying and disruptive activities.

Ninety-Nine percent (99%) of every document requested by the Complainants of the Respondents by Subpoena and Data Request are not on the public record but in the immediate possession and direct control and

access of the Respondents who absolutely refuse to produce such documentation to conceal them without justifiable cause or excuse due to the sensitivity and incriminating nature of the documents.

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 the benefit of the Corporation's profits.

Previous case decisions clearly support the Complainants' Motion beyond any reasonable doubt.

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 5<sup>th</sup> 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 (5<sup>th</sup> 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 (5<sup>th</sup> 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 (7<sup>th</sup> 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 reason Discovery and Disclosure is on going and continuing past the May 7, 2012 is because the Respondents refuse to comply with the Subpoena and Data Requests without justification. Respondents have chosen to deceive and unlawfully conceal evidence in disclosure that is extremely damaging to their position.

Respondents assume and speculate that the Complainants’ have little or no supporting documentation of their positions. They are in error. Respondents have in hand evidence in support of the Complainants’ allegations and position but discovery has revealed there is much more evidence that needs to be disclosed by the Respondents.

Respondents’ objection to complying with Complainants’ First Set of Data Requests and request to deny the Data Requests is nothing less than a smoke screen and diversionary tactic.

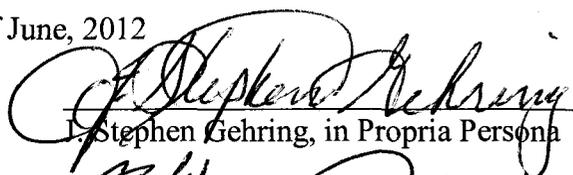
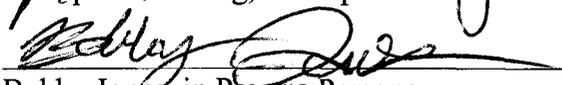
The Complainants for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to compel the Respondents to comply with the Data Request, fully comply with the Subpoena, continue discovery for 60 to 90 days and continue the Hearing on the Complaint for an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

Respondent Hardcastle does not understand “due process of law,” knowingly and intentionally conceals and denies the disclosure of evidence without any legal justification 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 and particularly Hardcastle have knowing and intentionally concealed must be disclosed as no good faith or reasonable objections have been established. The conclusion of Discovery has not been firmly and completely established in these proceedings. The Hearing date set for June 26, 2012 must be continued due to all of the reasons so stated herein and above.

**Respectfully submitted** this 11<sup>th</sup> 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 11th 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 11th 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: JSQ