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Date: August 1, 2012

To: **Docket Control
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007**

From: Robert T. Hardcastle
Payson Water Co., Inc.
(661) 633-7526

FOR FILING ORIGINAL AND 13 COPIES INTO:

DOCKET NO. W-03514A-12-0007

Smith vs. Payson Water Co.

By:



Robert T. Hardcastle

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DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

AUG 13 2012

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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Robert T. Hardcastle
Payson Water Co., Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218
Representing Itself In Propria Persona

COMMISSIONERS

Gary Pierce, Chairman
Paul Newman, Commissioner
Brenda Burns, Commissioner
Bob Stump, Commissioner
Sandra D. Kennedy, Commissioner

IN THE MATTER OF J. ALAN SMITH)	Docket No. W-03514A-12-0007
COMPLAINANT)	
)	
)	OBJECTION TO
)	COMPLAINANT'S FOURTH
VS.)	FOURTH DISCOVERY AND
)	DISCLOSURE
PAYSON WATER CO., INC.,)	
<u>RESPONDENT</u>)	

On June 9, 2011 Complainant Smith filed informal complaint 2011-95692 alleging wrongful disconnection of his water service under a Stage 3 mandatory water curtailment condition.

On December 14, 2011 informal complaint 2011-95692 was closed after the Complainant and Payson Water Co. agreed to a refund of \$200 related to reconnection of his water service. According to Staff, Complainant Smith was "pleased" to learn from Staff of the account adjustment (see Staff Report dated July 30, 2012).

On January 10, 2012 Complainant Smith (hereafter "Complainants") filed a Formal Complaint into Docket No. W-03514A-12-0007 based on previously submitted informal complaint number 2011-99889.

On February 2, 2012 Payson Water Co filed an Answer to the Complaint and a Motion to Dismiss.

1 On February 16, 2012 Complainant filed a Reply to Payson Water Co.'s Answer.

2 On February 23, 2012 a Procedural Order was issued scheduling a procedural
3 conference for March 9, 2012.

4 On March 9, 2012 a Procedural Conference was conducted with the Parties.

5 On March 29, 2012 Payson Water Co. filed a supplemental Motion to Dismiss.

6 On March 30, 2012 Payson Water Co. filed a Motion to Quash Brooke Utilities,
7 Inc. as a party to the Complaint.

8 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
9 Motion to Quash Brooke Utilities, Inc. as a party to the Complaint.

10 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
11 Motion to Dismiss and Motion to Deny.

12 On April 9, 2012 Payson Water Co. filed a Reply to Complainant's Response to
13 Payson Water Co.'s Motion to Dismiss and Motion to Deny.

14 On April 9, 2012 Payson Water Co. also filed a Reply by Payson Water Co. to
15 Complainant's Response and Objection to Respondent's Motion to Quash Brooke
16 Utilities, Inc. as a Party to the Complaint.

17 On April 13, 2012 Complainant filed a Response and Objection to Respondent's
18 Reply to Complainant's Response to Respondent's Motion to Dismiss and Deny.

19 On April 20, 2012 the Utilities Division of the Arizona Corporation Commission
20 ("Staff") filed a Notice of Filing regarding the status of a subpoena issued to Martin's
21 Trucking.

22 On May 3, 2012 Staff filed a Status of Mediation indicating that a settlement was
23 not reached by the parties and requested a hearing be scheduled.

24 On June 18, 2012 a Procedural Order was issued which set forth the hearing date
25 of August 7, 2012 and the compliance dates and deadlines as it relates to this Docket. In
26 addition, the Procedural Order provided that Payson Water Co. and Staff shall file
27 responsive rejoinder testimony no later than July 30, 2012 (see Procedural Order at page
28 2, lines 19-20).

1 On July 18, 2012 Complainant Smith filed a Notice of Complainant's Initial
2 Discovery and Disclosure.

3 On July 23, 2012 Complainant Smith filed a Notice of Complainant's Second
4 Discovery and Disclosure.

5 On July 30, 2012 Payson Water Co. timely filed its Rejoinder Testimony.

6 On July 30, 2012 the Utilities Division of the Commission's Staff timely filed its
7 Staff Response.

8 On July 30, 2012 Payson Water Co. filed its Supplemental Motion to Quash
9 Brooke Utilities, Inc. as a party to this Complaint.

10 On July 31, 2012 Payson Water Co. filed its Initial Disclosure and Discovery
11 pleading.

12 On August 1, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the
13 Complaint.

14 On August 2, 2012 Payson Water Co. filed its Initial Notice of Disclosure.

15 On August 6, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the
16 Complaint.

17 On August 7, 2012 Complainant filed its Motion to Continue Hearing on the
18 Complaint.

19 On August 7, 2012 a Hearing was conducted where various pending Motions were
20 heard, argued, and ruled upon. The Administrative Law Judge ruled that Payson Water
21 Co.'s Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint would be
22 granted subject to the same conditions granted under Docket No. W-03514A-12-008. The
23 Administrative Law Judge also denied Payson Water Co.'s Supplemental Motion to
24 Dismiss. The Administrative Law Judge also granted Complainant's Motion to Continue
25 Hearing on the Complaint for a period not to exceed 90 days. The Administrative Law
26 Judge did not issue a dispositive ruling on Complainant's Motion to Compel compliance
27 with its Subpoena of witness Jim Pearson previously filed in this matter.

28 On August 7, 2012 Complainant filed its Fourth Notice of Discovery and
29 Disclosure.

1 On August 7, 2012 Complainant filed on behalf of prospective intervenor Tresca
2 an Application for Intervention and Motion to Intervene into Docket No. W-03514A-12-
3 0007.

4 On August 7, 2012 Complainant filed its Response and Objection to Respondent's
5 Motion to Dismiss and Motion to Deny.

6 On August 8, 2012 Complainant filed its Notice of Service of Subpoena dated
7 August 2, 2012 on Payson Water Co., Inc.

8 On August 9, 2012 Payson Water Co. filed its Objection to acceptance of Dennis
9 B. Treca as an intervenor.

10 On August 9, 2012 Payson Water Co. filed its Motion to Dismiss a Portion of the
11 Complaint.

12 On August 10, 2012 Payson Water Co. filed its Objection to Complainant's Fourth
13 Discovery and Disclosure.

14 On August 16, 2012 Payson Water Co. timely filed its responses to Complainant's
15 Subpoena dated August 2, 2012.

16 **I. COMPLAINANT'S CONDUCTED EXTENSIVE INTERVIEWS OF A**
17 **WITNESS BUT INCLUDED NO AFFIDAVIT ATTESTING TO**
18 **ACCURACY.**
19

20 On August 7, 2012 a Hearing in this Docket was conducted. At the time of the
21 Hearing Complainant announced he had made a filing just prior to the Hearing captioned
22 as its Notice of Complainant's Fourth Discovery and Disclosure (the "Notice"). A copy
23 of the Notice was first distributed to the various parties attending the Hearing for cursory
24 review. Payson Water Co. was not given an opportunity to thoroughly review the Notice.
25 At the Hearing the Administrative Law Judge also took Administrative Notice of the
26 various evidence and documents filed into Docket No. W-03514A-12-0008.

27 Attached to the Notice is a telephonically conducted interview between the
28 Complainant and Jim Pearson dated July 17, 2012. An additional telephonic interview
29 was also attached to the Notice dated July 25, 2012 between the same two parties.
30 Further, a third in-person interview was attached to the Notice between the same parties

1 dated July 26, 2012. Attached to each interview was an affidavit signed by the
2 Complainant attesting to the accuracy and truthfulness of the attachment. There was no
3 affidavit signed by Interviewee Mr. Pearson attesting to accuracy and truthfulness of any
4 of the interviews. Essentially, this process allows the Complainant to attest to his own
5 version of the questions and answers conducted in the Interviews.

6 Incredibly, Complainant argued that despite the three interviews where 112
7 questions were asked and answered by Mr. Pearson, attached to the Notice, the absence
8 of Mr. Pearson at the Hearing, who was subpoenaed by the Executive Director of the
9 Arizona Corporation Commission (“Commission”), somehow affected his due process
10 rights and prejudiced the prosecution of his case. This argument was made in support of
11 his Motion to Continue which was, surprisingly, granted. It is very difficult to understand
12 how the Company’s interview of Mr. Pearson, which included approximately 60
13 questions, and Complainant’s additional 112 questions would not have discovered any
14 evidence that could only be discoverable at the Hearing. Complainant’s had three
15 separate opportunities to ask Mr. Pearson questions. It is unfathomable what question
16 Complainant’s wants to ask Mr. Pearson that can only be asked at Hearing. The merit of
17 this argument is weak and should have received far less weighting than it was.

18 Complainant’s Interviews of Mr. Pearson were not attested to and notarized by Mr.
19 Pearson. There is no way to know of the accuracy of the Interviews proffered by the
20 Complainant’s.

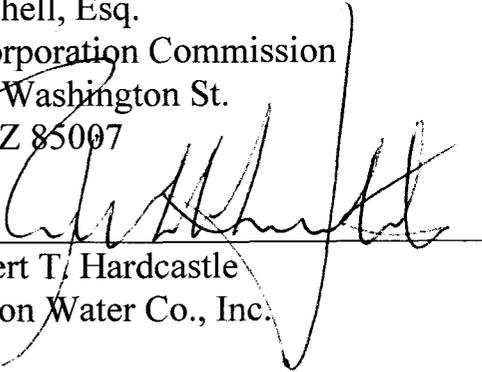
21 **II. ALL OF THE COMPANY’S INTERVIEWS HAVE BEEN REVIEWED,**
22 **SIGNED, ATTESTED TO, AND NOTARIZED AS TO THEIR**
23 **ACCURACY.**
24

25 In every case Payson Water Co. has filed, into the Docket and the Administratively
26 Noticed Docket, Interviews that have been read, reviewed, attested to, and notarized by
27 the Interviewee. The accuracy of those Interviews can be relied upon as being reviewed
28 by the Interviewee and reflective of the questions asked and answers provided.
29 Complainant’s Interview can be accorded no such regard since they have not been
30 reviewed or attested to by the Interviewee.

1 Janice Alward, Chief Counsel
2 Legal Division
3 Arizona Corporation Commission
4 1200 West Washington St.
5 Phoenix, AZ 85007

6
7 Steve Olea
8 Utilities Division
9 Arizona Corporation Commission
10 1200 West Washington St.
11 Phoenix, AZ 85007

12
13 Robin Mitchell, Esq.
14 Arizona Corporation Commission
15 1200 West Washington St.
16 Phoenix, AZ 85007

17
18 By: 
19 Robert T. Hardcastle
20 Payson Water Co., Inc.
21

22 **END**