

ORIGINAL

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



0000138517

AZ CORP COMMISSION
DOCKET CONTROL

2012 AUG 7 AM 8 05

Before the Arizona Corporation Commission

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED

AUG 07 2012

DOCKETED BY *IM*

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 DISMISS**

AND MOTION TO DENY

NOW COMES, the Complainant J. Alan Smith, to respond and object to Respondents Supplemental Motion to Dismiss and Motions the Administrative Law Judge and the Commission to Deny Respondents Motion to Dismiss.

On July 9, 2012 Respondent Hardcastle mailed to the Complainant his First Set of Data Requests which the Complainant received on or about July 12, 2012.

On July 16, 2012 the Complainant mailed his Direct Testimony.

On July 16, 2012 the Complainant mailed by certified mail his First Set of Data Requests to Respondent Hardcastle. Respondent received the Data Requests on July 20, 2012. Respondent received the Data Requests and has failed or refused to comply or properly respond.

On July 19, 2012 the Complainant mailed his responses to Respondent's First Set of Data Requests.

COMPLAINANT'S RESPONSE

Respondents' and particularly Respondent Hardcastle frivolously argues that the Complainant is not a Customer and attempts through various methods of deception to prove or verify his unfounded argument.

Respondent claims that Complainant is not a Customer and lacks standing to bring such an action.

However, **Ballentine's Law Dictionary, 3rd Edition** defines "standing" as:

Standing: “The position of a person in reference to his capacity to act in a particular instance, for example, the standing of a person to maintain a derivative action. **19 Am J2d. Corp § 559.**”

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

A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

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.

Person can include, an individual, organization, an individual man, woman or child, corporations, partnerships, officers, citizens, aliens (not sure if that includes space aliens, but more than likely), sociopaths etc.

The above definition and Statute does not distinguish between Customer, entity or a human being. The Complainant is definitely a natural person, a human being and apparently a “Person.”

Respondent, Hardcastle alleges that AAC R14-2-411 et seq. defines conditions under which a Customer gains the legal right to bring a complaint; he is absolutely wrong! Respondent, per usual takes the text of a Regulation out of context and twists it to suit himself. The Regulation sets forth no conditions under which the Customer or any other Person may file a Complaint. The Complainant questions the deceptive practices employed by Respondent Hardcastle in his Motion to Dismiss.

Respondent quotes AAC R14-2-201 (9) from regulations governing Electrical Utilities alleging it defines a customer under regulations governing a Water Utility. Respondent needs to pay attention, here.

Respondent claims that Complainant is not listed on the water utility account in his Exhibits which is a computer generated document he can change at will. However, the documents do list as the primary address and telephone number as the Complainant address and telephone number and the bills since 2007 are addressed to both the property owner and the Complainant. What in reality defies logic is the frivolous nonsense and arguments of the Respondent, pursuant to ARS § 40-246(A) & (B) the Respondent has no legal argument and no cause to justify Dismissal of the Complainant’s Complaint.

Complainant being a renter, still pays the water bill and not on behalf of the property owner, his name is on the bills. The Complainant has repeatedly requested that the Water Bill be put in his name.

The Respondents have repeatedly failed or refused to comply with AAC R14-2-410(F) landlord/tenant rule and advance notice required R14-2-410(d)(1)(2), A(1), B(1)(d), C(1)(a), E (1)(2)(4) and absolutely refused to transfer the account into the Complainant's name every time Complainant made such a request.

AAC R14-2-410(F) specifically states:

F. Landlord/tenant rule. In situations where service is rendered at an address different from the mailing address of the bill or where the utility knows that a landlord/tenant relationship exists and that the landlord is the customer of the utility, and where the landlord as a customer would otherwise be subject to disconnection of service, the utility may not disconnect service until the following actions have been taken:

1. Where it is feasible to so provide service, the utility, after providing notice as required in these rules, shall offer the occupant the opportunity to subscribe for service in his or her own name. If the occupant then declines to so subscribe, the utility may disconnect service pursuant to the rules.
2. A utility shall not attempt to recover from a tenant or condition service to a tenant with the payment of any outstanding bills or other charges due upon the outstanding account of the landlord.

The Respondents claims and arguments that the Complainant is not a Customer and has no standing to further his Complaint are and appear to be frivolous in light of the above and herein response and designed intentionally to mislead the Commission to dismiss a valid Complaint arbitrarily, without cause or justification and further to prevent the Complainant from obtaining documents and records that are vital and necessary to the issues in these proceedings and that Brooke Utilities Inc. and Payson Water Co. have and maintain in their possession and control.

The Complainant is not barred by ARS § 40-426 (A) from bringing a Complaint related to rates, charges or any other subject matter and requests that the Respondents Motion to Dismiss be denied and that the Respondents be barred from any further infliction of frivolous and pointless argument in these proceedings or that Respondents be immediately subject to sanctions by the Commission.

Respectfully submitted this 7th day of August, 2012



J. Alan Smith in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Response, has been mailed this 7th day August, 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 7th day August, 2012 to the following:

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

By: J.A.S.