

ORIGINAL

J. Alan Smith, Private Citizen
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Payson, Arizona [PZ 85541]
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PWC Utility Account No. 61138-24899
In Propria Persona



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Before the Arizona Corporation Commission

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

AUG 20 2012

DOCKETED BY *LM*

COMMISSIONERS

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

J. Alan Smith, Injured Party
Complainant,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

DOCKET NO. W-03514A-12-0007

**RESPONSE TO RESPONDENTS
OBJECTION TO TRESCA APPLICATION
FOR INTERVENTION
AND MOTION TO DENY**

NOW COMES, the Complainant J. Alan Smith, to respond to Respondents Objection to Dennis Tresca's Application for Intervention and Complainant's Motion to Deny that Objection.

Respondents' Motion is improperly captioned as usual in order to impose Hardcastle's will upon the Commission and for the ulterior motives of the Respondents. The Respondents cannot arbitrarily alter the style of the "Formal Complaint" to eliminate one party at will for their own purposes especially since there has been no ruling to allow such a change. Wherefore, the pleading is improperly entered. The current administrative process is played by the Rules specified in Ariz. Adm. Code R14-3-106 through 111 that Respondents should reference and comply with, furthermore;

On July 30, 2012 Respondents mailed their "Supplemental Motion to Quash Brooke Utilities Inc. as a party to the Complaint." When the document was filed by Docket Control is unknown at this time. The Administrative Law Judge has yet to rule on a similar motion filed in Docket No. W-03514-A-12-0008 and did not rule on that motion in favor of the Respondents at the August 7, 2012 hearing;

On July 31, 2012 and not August 1, 2012 Respondent's mailed their "Notice of Initial Disclosure." When the document was filed by Docket Control is unknown at this time;

On August 1, 2012 and not August 6, 2012 Respondents mailed their "Supplemental Motion to Dismiss" it was received by the Complainant on August 4, 2012. When the document was filed by Docket Control is unknown at this time;

On August 7, 2012 the Complainant filed his "Response and Objection to Respondent's Motion to Dismiss and Motion to Deny;" and, presented to the Judge Nodes, Staff and the Respondents at hearing copy thereof. The Motion to dismiss was denied by Judge Nodes at the hearing, on August 7, 2012;

On August 7, 2012 Complainant filed his Motion to Continue the proceedings with Docket Control and presented to Judge Nodes copy thereof. Additional copies were available for Staff and the Respondents but the Complainant misplaced them at that time, had to orally present it and did mail copy to Mr. Hardcastle on July 7, 2012. At hearing, Judge Nodes granted Complainant's "Motion to Continue" for 90 days;

On August 7, 2012 Judge Nodes took into consideration Complainant's "Motion to Compel Jim Pearson and Person Water Co. to comply with the Subpoenas" issued to them to produce documentation and to appear at the hearing scheduled for August 7, 2012 which Mr. Pearson arbitrarily refused to comply with.

Judge Nodes and Staff appeared to be in a quandary as to how to fulfill their duties and responsibilities to enforce the Subpoena as required by Constitutional and Statutory Mandate as a Court of general jurisdiction and suggested that this had never happened before.

In fact in the previous Docket W-03514A-12-0008 this same issue occurred and all of the Complainants' efforts to move the Administrative Law Judge and his Court of general Jurisdiction to enforce and compel compliance with the Subpoenas issued by the Executive Director on behalf of the Complainants' in those proceedings were not acted upon by the ALJ, Staff and the Commission. To date no justifiable cause or reason has been given for denying the Complainants the right to access vital and necessary evidence Subpoenaed or to cross-examine the witness Pearson. This has created numerous reversible errors and appealable issues for the Complainants in those proceedings;

On August 7, 2012 Complainant filed his "Fourth Notice of Discovery and Disclosure" and appropriately presented courtesy copies of that document to the Respondents, Staff, Judge Nodes and the Court Reporter;

On August 7, 2012 Mr. Tresca filed his Motion for Intervention in these proceedings and his Affidavit. The Complainant appropriately presented courtesy copies of that document to the Respondents, Staff, Judge Nodes and the Court Reporter;

On August 7, 2012 and not August 8, 2012 Complainant mailed his "Notice of Service of Process of Subpoena on Robert T. Hardcastle, Brooke Utilities, Inc. and Payson Water Co. and its corresponding certification." When the document was filed by Docket Control is unknown at this time;

On August 8, 2012 Respondents mailed and did not file their “Objection to Application of Dennis B. Tresca for Intervention into the Docket.” When the document was filed by Docket Control is unknown at this time;

On August 9, 2012 Respondents mailed their haphazard “Motion to Dismiss a Portion of the Complaint” with numerous self-incriminating Exhibits that confirm beyond any reasonable doubt that they participated in a conspiracy to make extra ordinary misrepresentations to the Commission and Staff in furtherance of a fraud upon the Complainant to cover up their misguided activities concerning the wrongful termination of Complainant’s water service.

In that pleading Mr. Hardcastle alleged falsely that on August 16, 2012 (which had not even occurred yet) the Respondents had timely filed their responses to Complainant’s Subpoena dated August 2, 2012. Such a claim is shear and utter nonsense as of August 9, 2012, the date of August 16, 2012 was Seven Days away and the Complainant has received no such response. Docket Control may reflect the actual filing of the Respondent’s response to Complainant’s Subpoena dated August 2, 2012;

On August 10, 2012 Respondents mailed their “Objection to Complainant’s Fourth, Fourth Discovery and Disclosure.” In that pleading, Respondents again alleged falsely that they had filed timely responses to Complainant’s Subpoena dated August 2, 2012 on August 16, 2012. Again such a claim is shear and utter nonsense as of August 10, 2012 the date of August 16, 2012 was Six Days away. There is a problem with Respondent Hardcastle’s credibility;

COMPLAINANT’S RESPONSE

In the Respondent’s “Objection to Application of Dennis B. Tresca for Intervention into the Docket” Respondents arbitrarily and inaccurately suggest on page 4, lines 2 and 3 that “As has Complainant and his representative Gehring in this Docket and in Docket No. W-03514A-12-0008, Applicant expresses no material facts or circumstances that are not already included into the Docket.”

Respondent Hardcastle per his standard methods of operation is clearly in error and intentionally misrepresents the real material facts in these proceedings and Mr. Tresca’s requested intervention.

- 1) Mr. Gehring is not now nor has he ever been the representative of the Complainant Smith;
- 2) Mr. Tresca by his own volition has expressed in both his Motion to Intervene and his Affidavit clearly and truthfully, material and relevant facts and issues that are not and have not been included into the current Docket, nor the previous Docket so referenced by the Respondents.

Mr. Tresca’s Affidavit is his “Eye Witness” account of activities he personally witnessed. Specifically, Mr. Tresca observed water being hauled out of Mesa del Caballo and Martin Zabola taking naps on the fender of his rig while being a sub-contractor with Jim Pearson and Pearson Water Company.

Mr. Pearson previously claimed in the previous Docket according to Mr. Pearson's sworn interview allegedly with Mr. Hardcastle and Mr. Allred that they (Jim Pearson, Chase Pearson and Martin Zabola) took no breaks whatsoever while hauling water to the MDC System and that they just hauled water continuously for 11 to 20 hours a day until the job was done without any breaks of any kind.

Obviously, those claims made by Mr. Pearson under oath are totally false, fraudulent and pure perjury per the Treasca's testimony by Affidavit and his willingness to Intervene. The testimony within Tresca's Affidavit adversely affects and challenges the previous testimony and the real credibility of witness Hardcastle, Allred and Pearson in the previous proceedings before the Administrative Law Judge in Docket No. W-03514A-12-0008 and is relevant.

The Complaint focuses on more than what the Respondents have represented and in reality are as follows:

1) There are Customer Service issues and the wrongful termination of service by and through the Company's and its employees abuse of the Curtailment Plan and "daily use" guidelines to wrongfully inflict or impose exorbitant reconnection fees and fines on the Complainant and the obvious conspiracy by the same parties to cover up those activities to give the appearance of legitimate fines and fees and to justify their actions;

2) The failure to properly account for the funds obtained by the Company through the imposition of Curtailment fines and fees and allegedly deposited into a separate, segregated, interest bearing impound account or to prove if, how or when any of those fines and fees were ever applied to off set costs associated with the hauling of water to the MDC System during the Augmentation years of 2009, 2010 and 2011 as prescribed in ACC Decisions No. 67821 and 71902;

3) The negligent acts of the employees and Company officials who directly manage and oversee the operation of a Public Service Utility and the improperly calculated water bills that include in the billings to MDC System Customers the costs of hauling diverted purchased water to other locations such as the EVP System;

4) The motive of the Company and its employees to recover costs they were prohibited from recovering and numerous violations of ACC Decision No. 71902;

5) The creation of a false emergency to justify the Company's Application for an Augmentation Tariff;

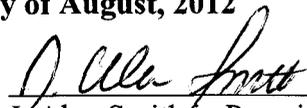
6) The System's Wells (Company and WSA) produced more than Customers consumed. There was a 824,231 gallon difference between the Well Production and total Consumption during the 2011 Augmentation Period according to Company records raising some serious questions: a) Why was 701,900 gallons of water hauled to begin with? b) Does the MDC System have a huge leak in it that the Company is aware of and negligently refuses to act on in due diligence to repair? c) Why was the Company hauling water out of the MDC System to other locations? d) How much illegal profit was

acquired by the Company during the Augmentation Period of 2011 were no profit was to be made and to what extent has the Company falsified or concealed records and influenced the testimony of the Respondent's witnesses?

The facts stated by the Applicant in his Affidavit are relevant and material to the Complaint and do add to those already existing in the prior Docket so mentioned and referenced. The Applicant's Affidavit is not hearsay and must be admitted to the record.

Complainant requests that the Application to Intervene and Affidavit be admitted to the record and that the Respondent's objection to Mr. Tresca's Application for Intervention be over ruled and denied.

Respectfully submitted this 16th 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 16th 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 16th day August, 2012 to the following:

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

By: J.A.S.