

ORIGINAL

J. Alan Smith, Private Citizen
8166 Barranca Rd.
Payson, Arizona [PZ 85541]
(928) 951-2083 Wk.
PWC Utility Account No. 61138-24899
In Propria Persona



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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
DOCKET CONTROL
DOCKETED

AUG 20 2012

DOCKETED [Signature]

J. Alan Smith, Injured Party
Complainant,

vs.

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

DOCKET NO. W-03514A-12-0007

**RESPONSE TO RESPONDENTS
MOTION TO DISMISS A PORTION
OF THE COMPLAINANT
AND MOTION TO DENY**

NOW COMES, the Complainant J. Alan Smith, to respond and object to Respondents Motion to Dismiss a Portion of the Complaint and Motion to Deny or Overrule Respondents Objection.

Respondents' Motion improperly captioned as usual to impose Hardcastle's will upon the Commission 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. The current administrative process is controled 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 it 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 sheer 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 sheer 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;

RESPONDENT'S ARGUMENTS

In the Respondent's "Motion to Dismiss a Portion of the Complaint" Mr. Hardcastle First argues according to the Informal Complainant only Two issues were asserted a) improper notice of disconnection of service, and b) wrongful disconnection of service and that since ACC Consumer Services closed the Informal Complaint on December 14, 2011 no further issues of dispute remain unresolved and that the Complainant indicated he was satisfied with the results.

Second Respondent argues that he, his Operational Staff, Customer Services and Consumer Services Department did extensive research and investigation of the Informal Complaint and the Two primary issues so stated above beginning June 17, 2011 and that the Company finally agreed to refund the Curtailment fine to the account and not to the Complainant Six months later on December 14, 2011 and that the Complainant was satisfied.

Third, Respondent argues that Complainant's Formal Complaint of January 9, 2012 the issues are: a) Improper notice of disconnection of service, b) wrongful disconnection of service, c) improper calculation of water bills and d) improper assessment of water augmentation charges.

Fourth, Respondent argues his discomfort with Mr. Gehring assisting the Complainant in any way with his Complaint which is not even an issue in these proceedings but mere "cheap shot" at Mr. Gehring.

Fifth, Respondent argues that Complainant attempts to resurrect his demands in the Complaint for a second time and that it should not be allowed and that he is attempting to re-litigate an issue already resolved and settled under the Informal Complaint and that the Commission and Administrative Law Judge should

dismiss that portion of the Complaint related to a) improper notice of disconnection of service and b) wrongful disconnection of service.

COMPLAINANT'S RESPONSE

The Formal Complaint focuses on more than what the Respondents have represented and as follows:

1) There are Customer Service issues along with the issue of wrongful termination of service by and through the Company's and its employees abuse of the Curtailment Plan and "daily use" guidelines, false accusations against the Complainant to wrongfully inflict or impose exorbitant reconnection fees and fines on the Complainant and there is the obvious conspiracy by the same parties (i.e. Hardcastle, Allred and M. Quiros) to cover up those activities to give the appearance of legitimate fines and fees to justify their actions and blow off the Complainant with a mere we're sorry for any (6 month) inconvenience this might have caused;

2) The failure to properly account for the funds obtained by the Company through the imposition of Curtailment fines and fees 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 and the Complainant, costs of hauling "diverted" purchased water from the Town of Payson to other locations such as the EVP System for additional profit;

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, rules, orders and laws of the State of Arizona;

5) The creation of a false emergency to justify the Company's Application for an Augmentation Tariff and the making of false representations to the ACC to obtain Decision No. 71902 and implement the Tariff;

6) The System's Wells (Company and WSA) produced more than Customers consumed during the entire Augmentation Period of 2011. There was an 824,231 gallon difference between the Well Production and total Consumption during that 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?

FACTS

If you will examine the Respondent's Exhibits 2 and 4 attached to their pleading to "Dismiss a Portion of the Complaint" you will discover the following facts:

Exhibit 2, pages 1 to 4 titled "PWC Response to ACC Complaint No. 2011-95692" Respondent Hardcastle claims that Complainant: a) Is a high water user under Stage 3 of the Curtailment Plan; c) Did not reduce his consumption after alleged proper notice was placed in the location nearest the door; b) Consumption was to high 130 gallons per day (3,900 gallons per month); d) Had to reduce consumption to 97 gallons per day (2,910 gallons per month); e) Was in violation of the Curtailment Tariff and the Company was justified in disconnecting the service and imposing a \$200.00 fine; and, f) That the issue of a regular monthly meter reading error by the Company is not relevant to the Complaint.

At no time were the Respondents able to prove any of the false accusations made in their Response to ACC Complaint No. 2011-95693 nor could they justify their actions but, they did spend Six months trying desperately hard to make all parties involved believe that the Company and its employees had acted appropriately and that they had not abused the terms and conditions of the Curtailment Plan or the "daily use" directives. Their conduct is known as "lying, deception, misrepresentation and consumer fraud."

If 4,000 gallons of monthly use (133.33 gallons per day) or less is by the standards set in Decision No. 71902 an example of a Customer "leading a conservative lifestyle" and commonly designated by the Company as a "low water user" and the Customer, according to the Exemption Clause of the Decision, is exempt from mandatory reduction in daily use requirements as outlined in Stage 3 to 5 of the Tariff, how then could the Company and its employees hope to prove any of their wild claims and accusations in their Response? Can the Company ignore Decision No. 71902 and set whatever "daily usage allowance" they dictate at any time?

At no time did the Respondents give proper notice to the Complainant nor were they justified in any of the adverse actions taken by them against the Complainant or to terminate his service or fine him under the Curtailment Tariff, make him suffer injury and hold his property for 6 months only to credit it to another Customer and never return it to him with any of the interest the Company earned on it.

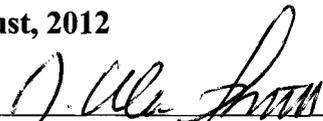
Exhibit 2, page 12 titled BUI Document History by Location (i. e. Hutchison, MESA L442) System date 6/22/11 and pages 2 and 3 of the Exhibits in Respondent's "Supplemental Motion to Dismiss" mailed August 1, 2012, titled BUI Document History of Location (i. e. Hutchison MESA L 422) System date 7/9/12. By comparison of the documents and dates for meter readings from 6/22/11 back one year and beginning at 5/21/10 none of the meter readings match. These Company generated documents indicate that Respondents can and do alter their documents and records in this Docket any time they want to satisfy their present need and just as they have done in several instances in the previous Docket No. W-03514A-12-0008.

Exhibit 2, pages 13 to 29 and Exhibit 4, pages 1 to 6 are a series of e-mail communications between Mr. Hardcastle, Mr. Allred, Ms. Quiros and Mr. Amezcua. If these Exhibits are examined thoroughly and read correctly according to the dates and times of the e-mails you will discover exactly how the Company and its employees made numerous errors and abuses of both the Curtailment Plan and "daily use" application which led to the injuries suffered by the Complainant and how their Company oriented minds and attitudes toward the Customer worked in an unreasonable attempt to justify their actions and cover up their illicit activities.

There is far more to be learned by the Administrative Law Judge, Staff and the Commission concerning the inappropriate behavior, conduct and actions of the Company, its officer and employees practiced on a daily bases, that are detrimental to their Customers, that they must be held accountable for and that they must be made to correct or suffer prescribed consequences.

WHEREFORE, the Complainant requests of the Administrative Law Judge and the Commission to overrule or deny the Respondent's Motion to Dismiss a Portion of the Complaint for the reasons noted herein and above for the cause and purpose that the Commission discover and fully examine in depth, all those inappropriate activities and practices of the Company, its officers and employees that consistently and blatantly abuse the limited authority granted to the Company in Decision No. 71902. Further, the examination must include the abusive application of the Augmentation Surcharge, the Curtailment Plan and daily use for the Company's own purposes and motivation to acquire additional profits by any means possible and on the surface available to them that they have thus far gotten away with to off set recovery of "hidden costs" they were prohibited from recovering and as prescribed to be "revenue neutral."

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 April, 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.