

1 ORIGINAL



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3 Date: August 1, 2012

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5 To: **Docket Control**
6 **Arizona Corporation Commission**
7 **1200 West Washington St.**
8 **Phoenix, AZ 85007**

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10 From: Robert T. Hardcastle
11 Payson Water Co., Inc.
12 (661) 633-7526
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Arizona Corporation Commission
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AUG 23 2012

14 FOR FILING ORIGINAL AND 13 COPIES INTO:

DOCKETED BY

15
16 **DOCKET NO. W-03514A-12-0007**

17
18 Smith vs. Payson Water Co.

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23 By:
24 Robert T. Hardcastle

1 BEFORE THE ARIZONA CORPORATION COMMISSION

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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)	
)	REPLY TO COMPLAINANT’S
)	RESPONSE TO RESPONDENTS
VS.)	MOTION TO DISMISS A
)	PORTION OF THE
PAYSON WATER CO., INC.,)	COMPLAINT
<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 On August 20, 2012 Complainant filed its Response to Respondents Objection to
17 Tresca Application for Intervention.

18 On August 20, 2012 Complainant filed its Response to Respondents Motion to
19 Dismiss a Portion of the Complaint and Motion to Deny.

20 On August 20, 2012 Complainant files its Response to Respondents Objection to
21 Complainant Fourth Discovery and Disclosure and Motion to Deny.

22 **I. COMPLAINANT'S MISCHARACTERIZATION OF THE PARTIES**

23 Despite numerous references in previous pleadings, discussion by the
24 Administrative Law Judge at Hearing on August 7, 2012, and Respondent's prior
25 reference on page 3, lines 22-24 of this pleading, Complainant continues to
26 mischaracterize the parties in this Complaint by his references in the Response to
27 Respondent's Motion to Dismiss a Portion of the Complaint and Motion to Deny (the
28 "Response").

1 At Hearing on August 7, 2012 the Administrative Law Judge decided that this
2 Complaint would go forward “on the same basis as the Gehring Complaint” in Docket
3 No. W-03514A-12-0008. Accordingly, Brooke Utilities, Inc. would not be a party to this
4 Complaint unless later required by the Commissioners because of some future
5 unexpected non-performance of Payson Water Co., Inc. That instruction was clear,
6 decisive, and conclusionary at the time of Hearing. Yet, Complainant continues to
7 wrongfully caption the Company parties in this Complaint exclusive of this
8 Administrative decision. Complainant should immediately cease from any references to
9 **any** party except Payson Water Co. To do otherwise is an obvious and blatant attempt to
10 ridicule the regulatory complaint process and defy an order of the Administrative Law
11 Judge.

12 Even worse is the Complainant’s continuous reference, personally, to the
13 undersigned. Nowhere on any pleading, document, complaint, or other filed document is
14 the undersign representative of Payson Water Co. been made a personal party to this
15 Complaint. Obviously, Complainant is aware of that but, in defiance of the regulatory
16 process, and without regard to self embarrassment, continues to characterize this
17 Complaint using personal references to the undersigned. The document which is the
18 subject of this Reply is replete with personal references, accusations, and allegations –
19 none of which are accurate or justified. Complainant should immediately cease any
20 personal reference to the undersigned. It should be elementarily and obviously pointed
21 out to the defiant Complainant that the only respondent in this matter is exclusively
22 Payson Water Co. and no other party.

23 **II. COMPLAINANT’S RESPONSES TO RESPONDENT’S ARGUMENTS**

24 Again, repeatedly, Complainant takes more pages to re-state nothing of importance,
25 offer no new facts, and make wild, inapplicable, unsupportable, and incoherent
26 arguments than Respondent has previously seen. Complainant seems to believe that if he
27 says it, and keeps saying it, that it will become so or will be regarded differently than it
28 was before. Complainant makes no substantive factual offering of evidence related to the
29 Complaint except, as previously referenced, (a) wrongful notice and disconnection of

1 water service, (b) wrongful calculation of water bills, and (c) wrongful calculation of
2 water augmentation charges associated with customer bills. Complainant can say it,
3 repeatedly, that such issues are not the case but this is the genesis of this Complaint.
4 Exactly the same issues were made by Gehring in Docket No. W-03514A-12-008 and are
5 now, again, made by Smith and his apparent representative, Gehring, in the instant
6 Complaint.

7 Complainant decries the existence of conspiracy in the wrongful notice and
8 disconnection of Complainant's water service in June 2011. This Complaint is not about
9 the personal parties referenced in the Response but, rather, about Respondent Payson
10 Water Co. If Complaint wants to bring a complaint of conspiracy he should do so in the
11 proper forum of Superior Court instead of confuse, obfuscate, and distract the record in
12 the instant Complaint with such references.

13 Respondent, repeatedly again, proffers that Informal Complaint 2011-95692 was
14 closed by the Consumers Services Department of the Arizona Corporation Commission
15 (the "Commission") and settled in favor of Complainant on December 14, 2011. The
16 instant Complaint attempts to include a portion of the Complaint that does not exist
17 because it has been previously settled and agreed to. Complainant's current argument
18 that, somehow, the Informal Complaint issue of wrongful notice and termination is now
19 resurrected by means of his "obvious conspiracy" argument is baseless.

20 Complainant's addition argument that "negligent acts" of the Company's employees
21 resulted in "improperly calculated water bills" is equally false and baseless. At the two-
22 day Hearing in Docket No. W-03514A-12-0008 Complainant Gehring had all the
23 opportunity he wanted to prove the facts related to the improper calculation of water
24 bills.¹ At the conclusion of his case Complainant Gehring announced "they did the best
25 they could" in the presentation of their case, obviously, not hopeful of having
26 successfully proved its case.

¹ At the August 7, 2012 Hearing in Docket No. W-03514A-12-0007 the Administrative Law Judge took
Administrative Notice of all documents of record related to Docket No. W-03514A-12-0008.
Docket No. W-03514A-12-0007

1 Likewise, Complainants argued in Docket No. W-03514A-12-0008 that an “artificial
2 emergency” had been fraudulently created by the Company to gain additional revenue
3 from customers. Since the Company was only partially recapturing its costs by means of
4 the water augmentation surcharge there would be no motivation for the Company to
5 create an “artificial emergency” for the sake of losing more money. Complainant
6 Gehring’s supporting arguments were shallow and non-existent then and remain so today.
7 Complainant has presented no evidence or made no arguments supporting his allegation
8 that an “artificial emergency” somehow benefited Payson Water Co. Again, Complainant
9 fails to understand that because he says it is so doesn’t necessarily make it so.

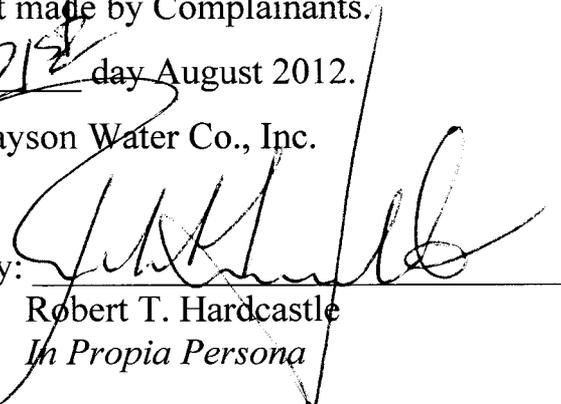
10 **III. CONCLUSION**

11 Complainant’s baseless arguments are growing very tiresome and cause limited,
12 valuable resources of the Company and Commission Staff to be spent on superfluous
13 arguments that have been made before. Complainant’s abuse of due process and the
14 regulatory privilege of an open and fair showing of their Complaint and the facts
15 supporting same (to the extent they exist) should not be squandered on time wasting
16 arguments that are not supportable. Surely, there is a time when the regulatory privilege
17 of having your day in court ceases to exist when Complainant abuses of this magnitude
18 are perpetrated.

19 Payson Water Co. respectfully requests the Commission and the Administrative
20 Law Judge approve its Motion to Dismiss a Portion of the Complaint without
21 consideration of the unsupported non-argument made by Complainants.

22 RESPECTFULLY SUBMITTED this 21st day August 2012.

23 Payson Water Co., Inc.

24
25 By: 
26 Robert T. Hardcastle
27 *In Propria Persona*
28

29 ORIGINAL and 13 copies filed
30 this 21st day August 2012, with:
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1 **Docket Control**
2 **Arizona Corporation Commission**
3 **1200 West Washington St.**
4 **Phoenix, AZ 85007**

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6 And copies mailed to the following:

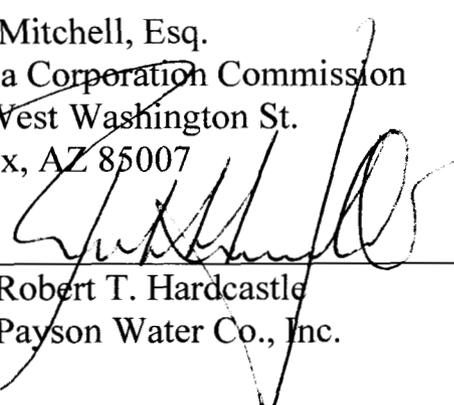
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35 By: 
36 Robert T. Hardcastle
37 Payson Water Co., Inc.

38
39 **END**