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BEFORE THE ARIZONA CORPORAT.

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BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

J. ALAN SMITH,
COMPLAINANT,

VS.

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

RESPONDENT.

DOCKET NO. W-03514A-12-0007

PROCEDURAL ORDER

BY THE COMMISSION:

On January 10, 2012, J. Alan Smith ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint against Payson Water Co., Inc. ("Payson Water" or "Company") and Brooke Utilities, Inc.

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

On February 16, 2012, the Complainant filed a Reply to Respondent's Answer.

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

On March 9, 2012, the procedural conference was held as scheduled.

On March 29, 2012, the Company filed a Motion to Dismiss.

On March 30, 2012, Payson Water filed a Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint.

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

1 On April 3, 2012, the Complainant filed a Response and Objection to Respondent's Motion to
2 Dismiss and Motion to Deny.

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

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

8 On April 13, 2012, the Complainant filed a Response and Objection to Respondent's Motion
9 to Quash Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny.

10 On April 13, 2012, the Complainant also filed an Objection to Respondent's Reply to
11 Complainant's Response to Respondent's Motion to Dismiss and Motion to Stay.

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

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

16 On June 18, 2012, a Procedural Order was issued scheduling a hearing for August 7, 2012,
17 and setting deadlines for the filing of pre-filed testimony.

18 On July 16, 2012, the Complainant filed a Notice of Complainant's Initial Discovery and
19 Disclosure.

20 On July 17, 2012, the Complainant filed his direct testimony.

21 On July 23, 2012, the Complainant filed a Notice of Complainant's Second Discovery and
22 Disclosure.

23 On July 30, 2012, Payson Water filed rejoinder testimony.

24 On July 30, 2012, Staff filed a Memorandum stating its position regarding the complaint.

1 On August 1, 2012, the Complainant filed a Notice of Complainant's Third Discovery and
2 Disclosure.

3 On August 1, 2012, the Complainant filed a Notice of Service of Process Subpoenas on Jim
4 Pearson and Pearson Water Company.

5 On August 1, 2012, the Complainant filed a Motion to Compel Jim Pearson and Pearson
6 Water Co. to Comply with Subpoenas.

7 On August 1, 2012, the Complainant filed a Motion to Compel Respondents to Comply with
8 Complainant's 1st Set of Data Requests.

9 On August 1, 2012, Payson Water filed a Supplemental Motion to Quash Brooke Utilities Inc.
10 as a Party to the Complaint.

11 On August 2, 2012, Payson Water filed a Notice of Initial Disclosure.

12 On August 6, 2012, Payson Water filed a Supplemental Motion to Dismiss.

13 On August 7, 2012, the Complainant filed a Notice of Complainant's Fourth Discovery and
14 Disclosure.

15 On August 7, 2012, the hearing in this matter was convened, and at which time the
16 Complainant requested a continuance of the hearing for 90 days. The Complainant indicated that he
17 had consulted with an attorney who had agreed to represent him in this complaint case, but the
18 attorney needed an additional 60 to 90 days to review the case file. On that basis, the hearing was
19 continued for 90 days, on the condition that the Complainant's attorney discuss with the other parties
20 an alternative hearing schedule and submit such schedule well before the 90 days were exhausted.

21 On August 7, 2012, Dennis B. Tresca filed an Application for Intervention.

22 On August 13, 2012, Payson Water filed a Motion to Dismiss a Portion of the Complaint.

23 On August 13, 2012, Payson Water filed an Objection to Complainant's Fourth Discovery and
24 Disclosure.

1 On August 13, 2012, Payson Water filed an Objection to Application of Dennis B. Tresca for
2 Intervention.

3 On August 20, 2012, Payson Water filed a Notice of Timely Compliance with Subpoena.

4 On August 20, 2012, the Complainant filed a Response to Respondent's Objection to Tresca
5 Application for Intervention and Motion to Deny.

6 On August 20, 2012, the Complainant filed a Response to Respondent's Objection to
7 Complainant's Fourth Discovery and Disclosure and Motion to Deny.

8 On August 20, 2012, the Complainant filed a Response to Respondent's Motion to Dismiss a
9 Portion of the Complaint and Motion to Deny.

10 On August 23, 2012, Payson Water filed a Reply to Complainant's Response to Respondent's
11 Motion to Dismiss a Portion of the Complaint.

12 On September 4, 2012, the Complainant filed a Response to Respondent's Reply to
13 Complainant's Challenge to Motion to Dismiss a Portion of the Complaint.

14 On September 6, 2012, Payson Water filed a Motion to Quash Subpoena.

15 On September 12, 2012, the Complainant filed a Notice of Service of Process Subpoenas on
16 Robert T. Hardcastle, Brooke Utilities, Inc., and Payson Water Co.

17 On September 13, 2012, the Complainant filed a Response and Objection to Respondent's
18 Motion to Quash Subpoena.

19 On September 13, 2012, Mary E. Hansen filed an Application for Intervention.

20 On September 17, 2012, a Procedural Order was issued scheduling a procedural conference
21 for September 28, 2012, and directing counsel for the Complainant to file a Notice of Appearance
22 prior to the procedural conference.

23 On September 24, 2012, the Complainant filed a Motion to Initiate an Action in the Superior
24 Court to Compel Jim Pearson, Pearson Transport, Robert T. Hardcastle, Brooke Utilities, Inc., and
25

1 Payson Water Co. to Comply with the Subpoenas Served Upon Them.

2 On September 28, 2012, the procedural conference was held, as scheduled, during which
3 discussions occurred regarding, among other things, the appropriate process for enforcing a subpoena
4 previously served on Jim Pearson to appear at the August 7, 2012 hearing that was subsequently
5 vacated to allow the Complainant additional time to obtain counsel. The Complainant was
6 represented at the September 28, 2012 procedural conference by Michael J. Harper, of the firm
7 Walker & Harper, P.C.

8
9 On October 3, 2012, Mr. Harper filed a formal Notice of Appearance on behalf of the
10 Complainant.

11 On January 2, 2013, Payson Water filed a Motion to Dismiss on the basis that the
12 Complainant had failed to pursue the Complaint after retaining counsel.

13 On January 10, 2013, the Complainant filed a Response to Motion to Dismiss claiming that
14 any delays were due to the failure of Mr. Pearson to comply with a previously issued Subpoena.

15 On January 10, 2013, the Complainant also filed a Notice of Submission of Demand for
16 Compliance with Subpoenas and Request for Issuance of Procedural Order Directing Compliance
17 Proceedings in the Superior Court.

18
19 On February 27, 2013, a Procedural Order was issued scheduling a procedural conference for
20 March 14, 2013 to discuss issues related to Commission enforcement of subpoenas.

21 On March 14, 2013, the procedural conference was held as scheduled.

22 On March 18, 2013, the Complainant filed a Motion to Compel Responses to Data Requests
23 and Subpoena Duces Tecum.

24 On March 20, 2013, a Procedural Order was issued Compelling Compliance with Subpoena
25 Duces Tecum to Jim Pearson and/or Pearson Water.

26
27 On March 26, 2013, Payson Water filed a Reply to Complainant's Motion to Compel
28

1 Responses to Data Requests and Subpoena Duces Tecum. The Company claims that it has provided
2 all relevant documents in either this docket or the associated Gehring complaint docket (12-0008),
3 and there is ample information available for the Complainant to address the issues raised.

4 On April 12, 2013, Staff filed a Status Update indicating that Staff counsel had contacted Mr.
5 Pearson and Mr. Pearson indicated "he had supplied all the documents in the related Docket No. 12-
6 0008." According to Staff, Mr. Pearson also stated that he had misplaced some of the documents and
7 was trying to locate them, and Mr. Pearson provided Staff with a document he claims to have faxed
8 to Mr. Smith.
9

10 On June 10, 2013, the Complainant filed a Renewed Motion to Compel Documents and
11 Information Requested by Subpoena and Data Requests/Motion for Order Requiring Jim Pearson to
12 Fully Respond to Subpoena Duces Tecum/Request for Hearing on Motions.

13 IT IS THEREFORE ORDERED that a **procedural conference shall be scheduled for July**
14 **10, 2013, at 10:00 a.m.**, at the offices of the Commission, Hearing Room No. 2, 1200 West
15 Washington, Phoenix, Arizona 85007, to discuss pending motions and procedural matters.
16

17 IT IS FURTHER ORDERED that **Jim Pearson and/or Pearson Transport/Pearson Water**
18 **shall, by no later than July 5, 2013, provide to Complainant's counsel: Michael J. Harper,**
19 **Walker & Harper, P.C., 111 W. Cedar Lane, Suite C, Payson, Arizona 85541, copies of all**
20 **documents in his/their possession described in the attached Subpoena Duces Tecum signed by**
21 **the Commission's Executive Director on July 19, 2012, and served on Pearson on July 25, 2012.**
22

23 IT IS FURTHER ORDERED that **failure to comply with this Order may result in the**
24 **issuance of a Civil Contempt Order by the Commission; imposition of fines pursuant to A.R.S.**
25 **§ 40-424; or other penalties as the Commission may determine appropriate to enforce**
26 **compliance with this Order.**

27 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
28

1 Communications) applies to this proceeding and shall remain in effect until the Commission's
2 Decision in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
4 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
5 hearing.

6
7 DATED this 26th day of June, 2013.

8
9 

10 DWIGHT D. NODES
11 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 This 26th day of June, 2013 to:

14 Jim Pearson
15 Pearson Transport/Pearson Water
16 P.O. Box 193
17 1120 Rodeo Rd.
18 Williams, AZ 86046

19 **(SERVICE BY CERTIFIED AND
20 REGULAR U.S. MAIL)**

21 J. Alan Smith
22 8166 Barranca Road
23 Payson, AZ 85541

24 Michael J. Harper
25 WALKER & HARPER, P.C.
26 111 W. Cedar Ln., Suite C
27 Payson, AZ 85541

28 Robert T. Hardcastle
BROOKE UTILITIES, INC.
P.O. Box 82218
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