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2 **ORIGINAL**

3 Date: July 10, 2013



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

9
10 From: Robert T. Hardcastle
11 Brooke Utilities, Inc.

12
13
14 FOR FILING ORIGINAL AND 13 COPIES INTO:

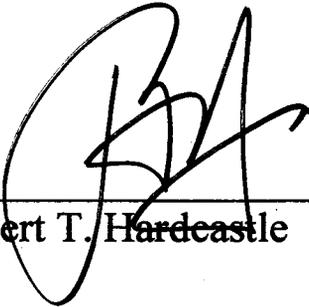
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16 **DOCKET NO. W-03514A-12-0007**

17
18 **Smith vs. Payson Water Co.**

Arizona Corporation Commission
DOCKETED
JUL 10 2013

DOCKETED BY 

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22
23 By:



24 Robert T. Hardcastle

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AZ CORP COMMISSION
DOCKET CONTROL
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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2
3 Robert T. Hardcastle
4 Brooke Utilities, Inc.
5 P.O. Box 82218
6 Bakersfield, CA 93380-2218
7 *Representing Itself In Propria Persona*

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AZ CORP COMMISSION
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8
9 COMMISSIONERS

10 Bob Stumpf, Chairman
11 Gary Pierce, Commissioner
12 Brenda Burns, Commissioner
13 Susan Bitter Smith, Commissioner
14 Bob Burns, Commissioner

15
16 IN THE MATTER OF J. ALAN SMITH) Docket No. W-03514A-12-0007
17 COMPLAINANT)
18)
19) **MOTION TO DISMISS**
20 VS.) **BROOKE UTILITIES, INC.**
21) **AS A PARTY TO THIS**
22) **DOCKET**
23 PAYSON WATER CO., INC.,)
RESPONDENT)

24
25 On June 9, 2011 Complainant Smith filed informal complaint 2011-95692 alleging
26 wrongful disconnection of his water service under a Stage 3 mandatory water curtailment
27 condition.

28 On December 14, 2011 informal complaint 2011-95692 was closed after the
29 Complainant and Payson Water Co. agreed to a refund of \$200 related to reconnection of
30 his water service. According to Staff, Complainant Smith was "pleased" to learn from
31 Staff of the account adjustment (see Staff Report dated July 30, 2012).

32 On January 10, 2012 Complainant Smith (hereafter "Complainants") filed a
33 Formal Complaint into Docket No. W-03514A-12-0007 based on previously submitted
34 informal complaint number 2011-99889.

35 On February 2, 2012 Payson Water Co filed an Answer to the Complaint and a
36 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 filed its Response to Respondents Objection to
21 Complainant Fourth Discovery and Disclosure and Motion to Deny.

22 On August 21, 2012 Payson Water Co. filed its Reply to Complainant's Response
23 to Respondents Motion to Dismiss a Portion of the Complaint.

24 On September 4, 2012 Complainant filed its Response to Respondents Reply to
25 Complainant's Challenge to Motion to Dismiss a Portion of the Complaint.

26 On September 6, 2012 Payson Water Co. filed its Motion to Quash Subpoena.

27 On September 13, 2012 Complainant filed its Response and Objection to
28 Respondents Motion to Quash the Subpoena.

1 On September 13, 2012 individual Mary Hansen filed her Application for
2 Intervention and Motion to Intervene.

3 On September 13, 2012 the Administrative Law Judge filed the Commission's
4 Procedural Order setting a date of September 28, 2012 for the Procedural Conference.

5 On September 24, 2012 Complainant files its Motion to Initiate and Action in the
6 Superior Court to Compel Jim Pearson [and other parties to compel them] to Comply
7 with the Subpoenas Served Upon Them.

8 On October 2, 2012 counsel for Complainant, Michael J. Harper, filed his Notice
9 of Appearance on Behalf of Smith.

10 On January 2, 2013 Payson Water Co. filed its Motion to Dismiss the Complaint.

11 On January 10, 2013 Complainant filed its Notice of Submission of Demand for
12 Compliance with Subpoenas and Request for Issuance of a Procedural Order Directing
13 Compliance Proceedings in Superior Court as they pertain to Jim Pearson.

14 On January 10, 2013 Complainant filed its Response to Motion to Dismiss.

15 On February 27, 2013 the Administrative Law Judge of the Commission sets a date
16 of March 14, 2013 as a date to hear argument and discuss the status of various pending
17 Motions including Complaint's Motion of January 10, 2013.

18 On February 28, 2013 Complainant filed its Renewed Request for procedural
19 Conference.

20 On March 14, 2013 a Procedural Conference was conducted as previously set to
21 discuss the status of Jim Pearson and other parties compliances with previously issued
22 Subpoena Duces Tecum.

23 On March 20, 2013 the Administrative Law Judge of the Commission filed its
24 Order Compelling Compliance with Subpoena Duces Tecum.

25 On March 26, 2013 Payson Water Co. filed its Response to this Complainant's
26 Motion.

27 On April 12, 2013 Commission Staff filed into the Docket a Status Update as to
28 the documentation subpoenaed from Jim Pearson et al including hand written comments
29 allegedly from Mr. Pearson.

1 On June 10, 2013 counsel for Smith filed its Renewed Motion to Compel
2 Documents and Information Requested by Subpoena and Data Requests, and Motion for
3 Order Requiring Jim Pearson to Fully Respond to Subpoena Duces Tecum, and Request
4 for Hearing on Motions.

5 On June 26, 2013 the Administrative Law Judge issued a Procedural Order in this
6 matter setting forth the date of July 10, 2013 at 10:00 a.m. to hear motions and procedural
7 matters in this Docket.

8
9 **I. BROOKE UTILITIES, INC. IS NOT A PARTY IN THIS DOCKET.**
10

11 Prior to conducting testimony in the Gehring Docket W-03514A-12-0007 there
12 was more than 45 minutes of oral argument and discussion among the Parties, including
13 significant legal comment from Commission Staff, regarding the appropriateness of
14 including non-regulated, non-public service corporation Brooke Utilities, Inc. At the
15 conclusion of that preliminary discussion, counsel for Brooke Utilities, Inc. asked the
16 Administrative Law Judge for clarification of his ruling on this matter:

17 **HARDCASTLE: For the benefit of clarification I want to confirm my**
18 **understanding that we will continue with this proceeding with Brooke**
19 **Utilities, Inc. as a deleted party in this Docket. (Commission Video/audio recording**
20 **dated June 26, 2012 at 39:39 minutes).**

21 **NODES (Administrative Law Judge): What we're going to do is proceed with**
22 **this Complaint against Payson Water Co. and if, at some point in the future,**
23 **the Commission determines it is necessary to pursue some action against**
24 **Brooke Utilities, Inc. it will do so. For the purposes of this proceeding we're**
25 **going to proceed against Payson Water Co. and require the Complainant's to**
26 **support their allegation in that manner. (Commission Video/audio recording dated**
27 **June 26, 2012 at 40:03).**

28 Subsequently, on August 7, 2012 and prior to conducting testimony and receipt of
29 Smith's last second Motion for Continuance, the issue of Brooke Utilities, Inc.'s

1 appropriate inclusion in the instant Docket arose once again. At the time Payson Water
2 Co. and Brooke Utilities, Inc. had a Motion to Dismiss and a Motion to Quash pending
3 before the Commission in this matter. Not surprising, and consistent with his prior ruling
4 in the Gehring Docket, Administrative Law Judge Nodes again affirmed that the Smith
5 Docket would proceed against Payson Water Co. and that Brooke Utilities, Inc. would
6 only become a future party to the extent the Commission determined was appropriate
7 because of some failure by Payson Water Co. to be fully responsible for any customer
8 remuneration that might apply.

9
10 **II. BROOKE UTILITIES, INC. NO LONGER OWNS PAYSON WATER**
11 **CO., INC.**
12

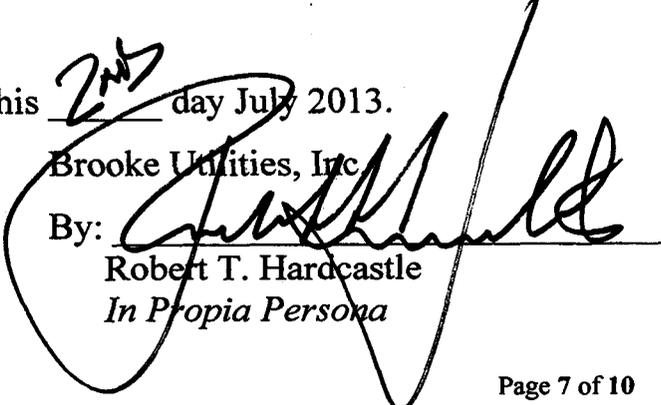
13 On May 31, 2013 Brooke Utilities, Inc. sold all of its ownership interests in Payson
14 Water Co. to JW Water Holdings LLC of Denver, CO. As such Brooke Utilities, Inc. no
15 longer has any ownership interest, common owners, common members of the Board of
16 Directors, common officers, financial control or responsibility, operational control, and
17 regulatory responsibility for Payson Water Co., Inc.

18
19 **III. CONCLUSION**

20 Accordingly, Brooke Utilities, Inc., a non-regulated, non-public service corporation
21 not subject to the jurisdiction of the Arizona Corporation Commission and has no
22 affiliation whatsoever with Payson Water Co., Inc. and must be dismissed from this
23 Complaint Docket. Further, Brooke Utilities, Inc. will no longer participate in this Docket
24 unless compelled by a proper authority having the proper jurisdiction and authority to do
25 so.

26 RESPECTFULLY SUBMITTED this 2nd day July 2013.

27 Brooke Utilities, Inc.

28 By: 

29 Robert T. Hardcastle
30 *In Propria Persona*
31

1 ORIGINAL and 13 copies filed
2 this ~~20~~ day July 2013, with:

3
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7 **Phoenix, AZ 85007**

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9 And copies mailed to the following:

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20 Payson, AZ 85541

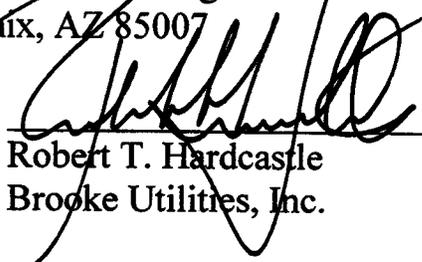
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4 By: 
5 Robert T. Hardcastle
6 Brooke Utilities, Inc.

7
8 **END**