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Attorneys for J. Alan Smith

ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

J. ALAN SMITH,

NO. W-03514A-12-0007

Complainant,

v.

RESPONSE TO MOTION TO
DISMISS BROOKE UTILITIES,
INC. AS A PARTY TO THIS
DOCKET

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

Respondent.

Plaintiff, through undersigned counsel, hereby responds to Brooke Utilities, Inc.'s Motion to Dismiss Brooke Utilities as a Party to this Docket. Brooke Utilities has been a party to this matter since its inception. Brooke's previous efforts to distance itself from this dispute have not achieved that goal. The same result is again appropriate.

Brooke's current Motion to Dismiss makes arguments similar to those contained in the "Respondent's Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint" submitted on the docket some time ago. Complaint's prior responses to that Motion are incorporated herein by this reference. Contrary to the suggestions contained in Brooke's new Motion to Dismiss, **there is no evidence in the docket that the prior Motion to Quash was granted.** Given that the request was not granted, it was denied by virtue of the passage of time. The same result is appropriate with respect to the current Motion.

1 As Brooke Utilities has often done in this Docket, the company refers to actions
2 taken in the Gehring docket. Rulings in that case are, of course, separate and apart from
3 those contained in this docket. In any event, the ruling in the Gehring docket does not
4 support the ruling now requested by Brooke. In Gehring, Mr. Hardcastle's request that
5 Brooke be deleted as a party was met with a determination that the matter would simply
6 proceed against Payson Water Company for purposes of the June 26, 2012 hearing.
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8 Jurisdiction over Brooke was maintained for purposes of the possible need to exact an
9 appropriate remedy.
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11 Nevertheless, the discussion of the issue in that docket does provide some
12 guidance. In the Gehring docket, the ACC Staff advised the Court that there were
13 circumstances in which the ACC would have jurisdiction over an entity which it might not
14 regulate. One example would be the situation where the entities were really alter egos of
15 one another. In this case, Brooke Utilities *at all relevant times accepted payments for the*
16 *water service in the area.* (See cancelled checks attached hereto as Exhibit 1.) Brooke
17 also, at all relevant times, was the face of the company for purposes of billing, customer
18 service, repairs and all other consumer interaction. Thus, at least as far as the consumer is
19 concerned, there is no real distinction between Brooke Utilities and Payson Water
20 Company. Brooke is the alter ego of Payson Water Company. Certainly, Brooke has not
21 come forward with any facts that would suggest otherwise.
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25 Brooke Utilities also remains a necessary party to this action because it has failed
26 to respond to outstanding discovery requests. (See Smith's June 7, 2013 Renewed Motion
27 to Compel Discovery.) Brooke Utilities has been a central figure in this process from the
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1 beginning. It cannot now, simply because it has sold one of its operating systems, step
2 away from the consequences of its actions which are the subject of this Complaint.

3
4 Brooke remains responsible for its actions, regardless of any sale of a portion of its assets.

5 The law also supports continued jurisdiction as to Brooke Utilities. Under R14-3-
6 101, the Arizona Rules of Civil Procedure govern in all cases where the Commission has
7 not set forth a rule addressing a particular topic. Under Rules 17 and 19(a) of the Arizona
8 Rules of Civil Procedure, the Arizona Corporation Commission has jurisdiction over all
9 corporations filing Articles of Incorporation in the State of Arizona. Brooke remains such
10 a corporation. Brooke Utilities is currently registered with the Arizona Corporation
11 Commission as a corporation engaged in the business of delivery of "utilities". (See File
12 No. 0776551-6.) Thus, there is no question that the Commission retains jurisdiction over
13 the company, which remains a "Public Service Corporation". See Ariz. Constitution, Art.
14 IV § 2. The fact that a branch of its operations has been sold does not (and should not)
15 permit the company from simply walking away from this matter. Otherwise, any
16 corporation engaged in the business of delivery of utility services could simply avoid the
17 consequences of a proceeding before the ACC by simply selling its assets (and its
18 problems) to another party. This cannot and should not be allowed, especially by a
19 company which remains in the business of the delivery of utilities.
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23 The truth is that Brooke Utilities and Mr. Hardcastle have been at the heart of this
24 dispute since its inception. Even though Brooke is a corporation, it has been represented
25 by Mr. Hardcastle (its Statutory Agent) without counsel. As described in his Motions to
26 Compel, the Respondents (both Payson Water Co. AND Brooke Utilities) have altogether
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1 failed to provide the information needed to prosecute this action. During all relevant
2 times, Mr. Hardcastle served as President, CEO and Statutory Agent for both companies.
3 During all relevant times, there was no palpable distinction between Brooke and Payson
4 Water Company. Payments to Brooke were accepted for water service to the affected
5 community. Brooke sent out the bills to its customers, paid the employees, and was the
6 face of the day-to-day operations of the water delivery company in the area. The water
7 hauling agreements with Pearson – which are central to this dispute – were entered into by
8 Brooke Utilities. To allow Brooke and Hardcastle to simply walk away from the matter
9 now would certainly not be in the interests of justice.

12 For all the foregoing reasons, Complaint respectfully requests that Brooke's
13 Motion to Dismiss be denied.

15 DATED: August 2, 2013.

17 WALKER & HARPER, PC

18 
19 _____
20 Michael J. Harper
21 Attorney for J. Alan Smith

1 Copies of the foregoing
2 mailed this 2nd day of August,
3 2013 to:

4 Robert T. Hardcastle
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EXHIBIT 1

RICHARD M. BURT
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108 E BONITA ST PMB 6
PAYSON, AZ 85541

1861
91-532/1221
41

9/28/12

Date

Pay to the Order of Brooks Utility, Inc. \$ 120.00
One hundred - twenty & ⁰⁰/₁₀₀ Dollars

 Security Features. Details on Back.



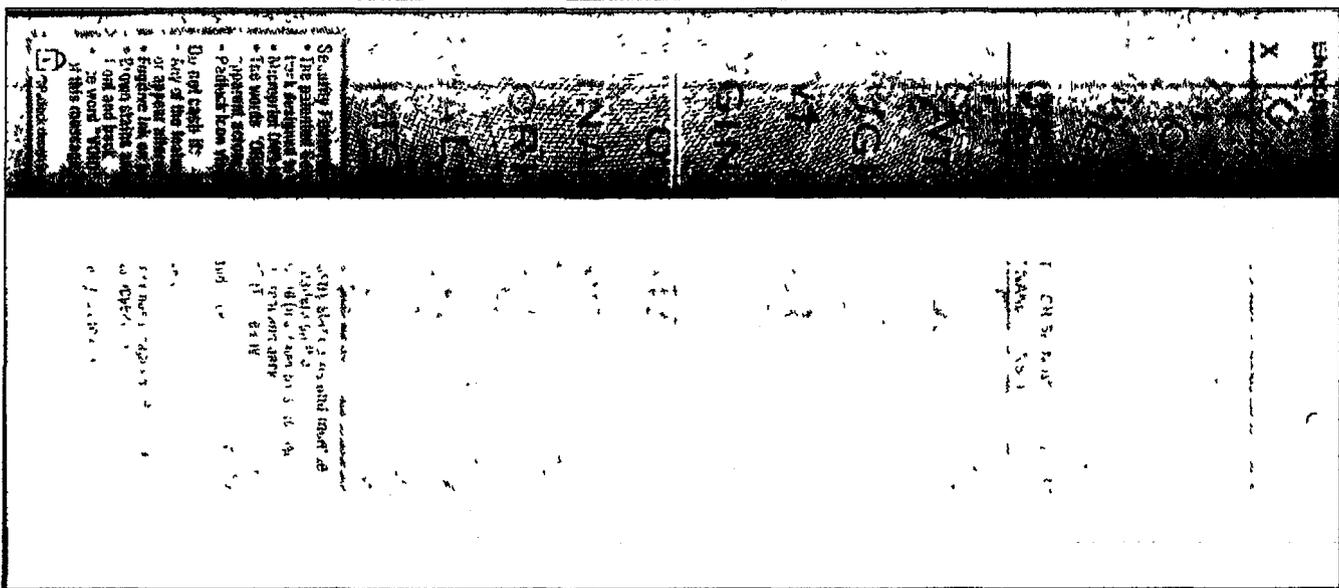
NATIONAL BANK OF ARIZONA

1-800-497-8188
www.nbarizona.com

For WATER BILL

Richard M. Burt

[Redacted signature area]



Date:10/03/12 Sequence Num:78030870 Account:413008085 Serial:1861 Amount:\$120.00 Dep Seq#:-

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RICHARD M. BURT
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PAYSON, AZ 85541

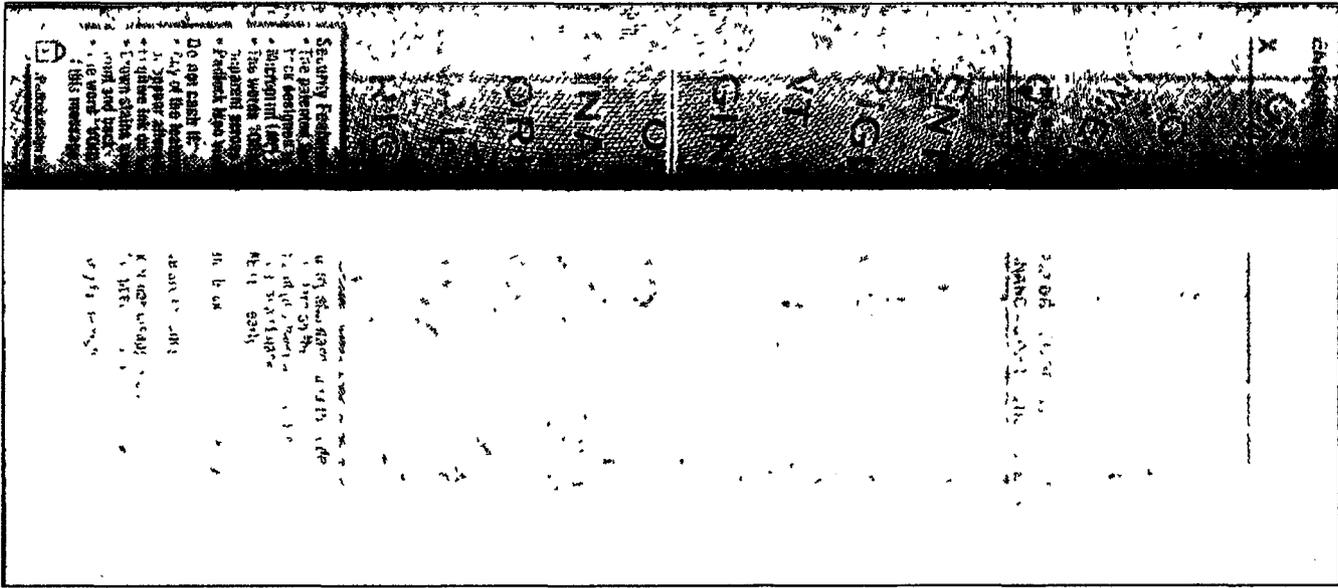
1883
91-532/1221
41

1/15/2013
Date

Pay to the Order of BROOKS UTILITY \$ 55.15
7.15 - fine and 15
100 Dollars

 NATIONAL BANK OF ARIZONA
1-800-487-6168
www.nbartons.com

For WATER BILL (12/12) Richard M. Burt



Date:01/22/13 Sequence Num:78008399 Account:413008085 Serial:1883 Amount:\$55.15 Dep Seq#:-

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