

ORIGINAL



0000147510

RECEIVED

2013 AUG 21 P 4:47

Arizona Corporation Commission

DOCKETED

CORP COMMISSION
DOCKET CONTROL

AUG 21 2013

DOCKETED BY
nr

FENNEMORE CRAIG
A Professional Corporation
Jay Shapiro (No. 014650)
Patrick J. Black (No. 017141)
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85015
Telephone (602) 916-5000

Attorneys for Payson Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE FORMAL
COMPLAINT AGAINST PAYSON WATER
CO., INC. FILED BY J. ALAN SMITH

DOCKET NO: W-03514A-12-0007

**RESPONSE TO COMPLAINANT'S
MOTION TO COMPEL**

Pursuant to A.A.C. R14-3-106(K), Payson Water Company ("Payson Water" or the "Company"), through undersigned counsel, hereby files this Response to J. Alan Smith's ("Complainant") Motion to Compel Responses to Data Requests and Subpoenas Duces Tecum ("MTC"), filed on March 18, 2013.

RESPONSE

JW Water Holdings, LLC acquired PWC on May 31, 2013. As the Commission is aware, Payson Water was previously represented in this proceeding by Robert T. Hardcastle, President of the Company's previous owner, Brooke Utilities, Inc. PWC's current counsel, Fennemore Craig, filed a Notice of Appearance on July 12, 2013. Since that time, Payson Water has been working with both Complainant's counsel and Mr. Hardcastle to resolve the current discovery dispute that was outstanding at the time of the acquisition.

PWC has been able to determine that certain invoices requested by Complainant are not available and appear to have nothing to do with PWC. Specifically, water hauling logs from Pearson Water Co. ("Pearson"), invoice numbers 8805, 8806, 8809, 8810, 8812,

1 8814, 8817, 8818, 8820, 8821 and 8825. PWC was also able to determine that the
2 remaining Pearson invoices requested, in the sequence 8803 through 8825, were filed in
3 this docket attached as exhibits to Mr. Hardcastle's March 26, 2013, responsive pleading
4 to the motion. Complainant's counsel has been advised of these facts.

5 Based on a review of Mr. Hardcastle's filing, it appears that Mr. Hardcastle
6 provided a response, or timely objection, to most if not all the outstanding data requests.
7 As a practical matter, the Company's new counsel has access to all the same documents
8 and materials filed by Mr. Hardcastle as Complainant's counsel does. Furthermore, there
9 appear to be several data requests submitted by Complainant concerning actions made on
10 the Company's behalf prior to the acquisition, and of which the new owner would have no
11 knowledge, regardless of whether Mr. Hardcastle objected to such data request on the
12 grounds of relevance or exceeding the scope of this complaint. In fact, when asked about
13 by new ownership about outstanding responses to data requests and document production,
14 Mr. Hardcastle's response has been consistent with the response he filed on March 26,
15 2013 – "all responses and responsive documents have already been provided to
16 Complainant".

17 A review of the filings made in this docket – along with what appears to be a
18 similar complaint filed by Mr. J. Stephen Gehring (Docket No. W-03514A-12-
19 0008)("Gehring Complaint") – indicates that the allegations that Payson Water violated
20 the terms set forth in Decision No. 71902 have no merit and the discovery is little more
21 than a fishing expedition. Based on responses to data requests and documents provided in
22 the Gehring Complaint, Staff has already concluded that the "Company calculated the
23 surcharge rate correctly and properly applied it to the complainant's bills." Given this,
24 several of the outstanding data requests appear to go far beyond facts necessary to
25 establish whether PWC calculated the surcharge correctly and properly billed the correct
26 amount to this Complainant.

1 Based on the foregoing, and the response filed by Mr. Hardcastle on March 26,
2 2013, PWC should be deemed to have completed the responses to Complainant's
3 outstanding discovery, and this discovery dispute should no longer preclude this matter
4 from moving towards a dispositive conclusion.

5 RESPECTFULLY SUBMITTED this 21st day of August, 2013.

6 FENNEMORE CRAIG, P.C.

7
8 By 
9 Jay. L. Shapiro
10 Patrick J. Black
11 2394 E. Camelback Road, Suite 600
12 Phoenix, Arizona 85016
13 Attorneys for Payson Water Co.

12 ORIGINAL and thirteen (13) copies of the
13 foregoing, were filed
14 this 21st day of August, 2013, to:

14 Docket Control
15 Arizona Corporation Commission
16 1200 W. Washington St.
17 Phoenix, AZ 85007

17 COPY hand-delivered/mailed/emailed
18 this 21st day of August, 2013 to:

18 Dwight D. Nodes
19 Assistant Chief Administrative Law Judge
20 Arizona Corporation Commission
21 1200 W. Washington St.
22 Phoenix, AZ 85007

21 Robin Mitchell
22 Legal Division
23 Arizona Corporation Commission
24 1200 W. Washington St.
25 Phoenix, AZ 85007

24 Steven M. Olea
25 Director, Utilities Division
26 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

J. Alan Smith
8166 Barranca Road
Payson, Arizona 85541

Michael Harper
111 W. Cedar Lane, Suite C
Payson, Arizona 85541

Jim Pearson
Pearson Transport/Pearson Water
P.O. Box 193
1120 Rodeo Road
Williams, Arizona 86046

By: *Julia Pearson*

PBLACK/8414267.1/073283.0001