



0000153739

OPEN MEETING AGENDA ITEM

ORIG

RECEIVED

PROF 7

A. Glynn Ross

June 5, , 2014

405 S. Ponderosa

Arizona Corporation Commissions

Payson Arizona

1200 W. Washington Street

808-896-5231

Phoenix Arizona 85007

2014 JUN -5 P 2:15
AZ CORP COMMISSION
85541
ST CONTROL

ORIGINAL

Before the Arizona Corporation Commission

IN THE MATTER OF THE APPLICATION OF PAYSON

DOCET NO: W-03514A-13-0111

WATER CO., INC., AN ARIZONA CORPORATION FOR

A DETERMINATION OF THE FAIR VALUE OF IT'S

UTILITY PLANTS AND PROPERTY AND FOR INCREASES

IN ITS WATER RATES AND CHARGES FOR UTILITY

SERVICE BASED THEREON

Arizona Corporation Commission

DOCKETED

JUN 05 2014

DOCKETED BY 

IN THE MATTER OF THE APPLICATION OF PAYSON

DOCKET NO: W-03514A-13-0142

WATER COMPANY. INC., AN ARIZONA CORPORATION,

FOR ATHORITY TO: (1) ISSUE EVIDENCE OF

INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED

\$1,238,000 IN CONNECTION WITH INFRASTRUCTURE

IMPROVRMRNTS TO THE UTILITY SYSTEM; AND (2) PLANT

ENCUMBER REAL PROPERTY AND PLANT AS

SECURITY FOR SUCH INDEBTEDNESS

EXCEPTIONS TO THE

RECOMMENDATIONS. OF

ADMIMISTRATIVE LAW JUDGE

BY INTERVENER GLYNN ROSS (GISELA)

Reply, Rebuttal and Disagreement to Administrative Law and Judge Nodes Opinion and Order in the Payson Water Co., Inc. (Rates/ Finance Phase 2)

This Reply is an answer to the correspondence from the Executive Director Jodi Jerich dated May 27, 2014 received by the post office in Zip Code 85007 May 28, 2014. It was received by this intervener on May 30, 2014 which mandates an answer to this 87 page document by June 5, 2014, 4:00 pm, (5) working days.

This "Gisela" intervener Glynn Ross Stands in Opposition to the above "Opinion and Order Phase 2.

I will somewhat review these documents starting with the "alleged Procedural History". Its description in its self is presented in such a way that it slants the True Facts of the matter that has been supposedly addressed throughout this Document. Starting with Page 2 line 13 through 16.

There was never a certified appraisal of said property by Brooks / Payson Water Co. of the utility plants. With the exception of the Gisela Plant, the other districts are far overrated financially because of many years and lack of having been properly maintained, The Gisela plant is exceptional because the plant was totally rebuilt approximately 2 years ago by FEMA after a flood. The US. Government spent thousands of dollars rebuilding this new plant completely. It is expected to need little or no maintenances for the next 10 years. This Intervener suspects this is another reason Brooks/ Payson **Water Company** has worked so hard to consolidate the Gisela Rate Payers with other less favorable Plants, which are located in far reaching geographical areas which have far less water availability and poorly maintained equipment.

Further, your page 3 line 25 and your comments of the phase (1) hearing notification. Your entire proceeding with the Water Hauling, alleging financial stress of the Company was deliberately and falsely reflected by outright Fraud. Attachment Exhibit (1) shows this Staff and Commission was fully aware of the Strong evidence of Fraud in the entire exaggerated need for water Hauling and did nothing about it. I am lead to believe the ACC Staff failed to properly communicate to the Commission of the fullness of this fraud. Judge Nodes and Staff knowingly and deliberately failed to act in a Proper and Timely Manner. The ACC Staffs deliberate actions further prevented the full Commission from being aware of the depth of this fraud (SEE EXHIBIT No. (1) Attached). The truth of the matter is this water Hauling Fraud was a criminal act not only causing more than 30 homes to go into foreclosure at MDC when sometimes water bills exceeded Mortgage payments causing approximately 120 children to be displaced, resulting in a very high divorce rate. I am also advised by experts that due to this fraud, a loss of more than one hundred and fifty million dollars in revenue was lost for Gila County businesses. If these False Water Hauling activities are proven to be part of the major cause of the 30 homes going into

foreclosure with an additional 10 or more homes having been forced into sales, someone should go to prison.

I believe the entire water hauling was perpetuated to further show a false image of the immediate need for the Craigan Pipeline hookup to MDC and later others. I am also reliably informed by those of the MDC fire department that Brooks Water Company/ PWC has dismantled any chance to hook up the MDC Fire Department connection, making the MDC a higher risk for fire, endangering Life and Property.

I have also this week talked to the Gisela Fire department and they have reliably informed me that two (2) years ago when FEMA replaced and "paid for the totally new Gisela Plant, after a flood, Brooks / Payson Water Co. was supposed to replace and/or rebuild the Fire Departments water hook up, the plant was then owned by Brooks/ PWC, this connection to this day has never been reinstalled, once again placing money ahead of Public Safety, This type of lack of concern for Public Health and Safety follows a pattern and practice of the parent company, JACO OIL Co. who was recently fined in California by the Water Authority for more than \$400,000.00 dollars in fines against the owners of Brooks Water/ Payson Water Co. "Jaco Oil."

Closer to home there are hundreds of complaints unanswered that never get filed. One such Complaint is attached as Exhibit.No. (2) Parents with three children living in (Gisela) who rent a small resident are told they are responsible for 114,000 gallons of water "Payment thereof" before they can get water turned on. "It still sounds like Brooks Water Company to me". The truth of the matter is, this is no more than a Shell game changing Company names, alleged sale of Company, changing owners, changing addresses, and moving money around. It's a financial fraudulent game that has played out in Arizona politics sense State Hood over Land and Water. What I don't understand is why this Elected body ("The ACC") is allowing it to happen.

We the public expect a full and complete investigation of the fraud and deception that has been over looked by this ACC Staff. The lack of information and critical records has not been forthcoming and has caused the failure of this Commission to have proper oversight of the Company's activities. This company has very cleverly played hide and seek with financial records and pertinent information that should have been furnished to this Commission and these interveners.

Part of the elusion of deception put out by Brooks/Payson Water Co. are toward the Interveners and those making strong public comments of exposing the truths. These people have been criticized for speaking out by the Company through their Attorney by making untrue Critical remarks against said persons. Many times the ACC staff or Judge Nodes will tell just half truths thereby watering down the full impact and importance of the subject matter. For example, on page 9 of this document being addressed line 20, it is mentioned that Glynn Ross

turned in a Petition "never mentioning that it was signed by 256 adult residence of the Small Gisela Community of less than 300.

Further, on February 10, 2014, rate hearing, within 5 minutes of its conclusion three (3) people in the Audience approached me and said "Did you see that", referring to (Robin Mitchell, Staff Attorney). She was coaching the witness by squinting her eyes and shaking her head Yes or No speaking of the witness Crystal Brown. I asked them are you sure and each one said yes. Later I was made aware that two of them are willing to take a polygraph exam and suggested Robin Mitchell to do so as well. I have also recently been informed the alleged investigator for this matters; Executive Director Jodi Jerich, has never contacted or talked to any of the three witnesses.

You must ask yourself why there was no evidence sought regarding the \$352,000 dollars of Missing funds which was later explained as ("a Dividend Payment") to an alleged Stock Holder, with no review or approval being asked for from the ACC. If those funds would have remained in the rate payers (Company) general account there would not have been a need for any such emergency expedited Procedural Schedule, or a 9% \$275,000 WIFA loan.

Further, if the surprised alleged sale of Brooks Water Co., to supposed PWC had not taken place, right in the middle of the Rate Hearings, without the ACC Staffs approval and review preventing their setting conditions of securing past valuable documentation and financial records, the Commission Staff could have reviewed and questioned such things as Water Hauling records. We see once again, even the simplest Computerized Accounting System may have avoided a lot of unnecessary questions, time and expense. Further, the Company accountant (Bourassa) of some 10 years testified on or about February 7, 2014, that Brooks Water Companies owner was JACO OIL Company whose address is one in the same as Brooks Water Company in Bakersfield Calif.

The lack of proper financial records is just one example that has costs a lot of Time and Money. When questioned by the Rate payers who asked for better financial accounting and Responsibility the ACC Staff once again boasts the Financial Health of the Company is of no concern of the Rate Payers. Yet we Rate payers are told that such costs will be later billed as an expense to us in future rate demands..

It is hard to comprehend why the ACC Staff would support the void in the Company's records and say the financial health of the Company is of no concerns to the Rate Payers, This leaves this ACC and Staff suspect. Further, Mr. Bourassa the bookkeeper of some 10 years, for BWC testified on or about 2/4 & 2/7 2014, that the Company keep (2) two sets of books. It is so evident that this case smells of a perpetuated Fraud and Criminal activity that is taking place here leaving literally thousands of Rate Payers and Potential Voters throughout the State wondering if we still have an effective ACC.

It is also known that many Checks made out by Rate Payers to Brooks / Payson Water Company were never deposited or accounted for in Brooks r account. Instead they were given straight to JACO Oil Company that shows a direct deposit into JACO OIL thereby possibly skimming off unrecorded profits of the Water Company. (See (4) check attached) some of which were previously presented into evidence by Richard Berg of MDC. Enclosed as Exhibit #3

Page 4 dealing with the proper notification of Mail and Published Notices of Hearings and Proceeding to Rate Payers. The notifications were never done properly until the ACC backed up and had another public meeting in Payson on April 11, 2014. At this time when all eyes were upon the ACC Staff and Company practices, the "T's" were crossed and the "I's" were dotted including the certificates of mailing. All legal procedures were adhered to. This process was never done properly before. It never seem to make any difference to the ACC Staff and Administrative Judge Nodes because they accepted what the Company alleged they had done to produce legal meeting notices without any verification which became totally acceptable. They were aware In this type of administrative proceedings the Judge is near God and his Administrative Law decisions becomes Law. This still does not make it Right, Fair or Equitable.

Here is just a few of the things that I feel were also inappropriate. There was never a proper audit and presentation of the Company financial records. Please do not give me that bull and say it was because of the Company being sold. You, as the Staff for this Commission, have the power and responsibility to make the Company produce those records. Yes, Mr. Shapiro, the Attorney for Brooks/ Payson Water, is extremely qualified and he can show this company how to wiggle through the smallest of Legal Holes with a complacent ACC Staff that has so many other unexplained reason why they allows Mr. Shapiro and the Water Company to continue to misrepresent the facts that may never be known. In today's political world it is wrong to call someone a Liar. We give them a chance, and then after they are caught, they just say "I misspoke."

Company Attorney Shapiro has made many remarks he knew were not truthful, such as when he attempted to place into the record, " Ross says water storage is trivial". Even though I was allowed to correct him on the Record he tried and he used terms to discredit others such as Kathleen Reidhead saying, she "Scorns Water Conservation" Another "Misspoken" descriptive term.

Now we look closer at just one more important void in the Document in question, the April 11, 2014, Public meeting. The first speaker and one of the most powerful speakers apposing this type of calculated rate increase in Gisela and DCV; (Gila County) was Mr. Mike Pastor, Gila County Board of Supervisor. Chairman Pastor is familiar with the history and needs of these Rate Payers as well as the hundreds of past Complaints against Brooks/ Payson Water Co... I need not repeat his most powerful concerns and words he spoke that night,

objecting to these exorbitant rate increases in Gisela and other areas. Why has that very highly regarded political figurer totally disregarded and never mentioned? I hired and paid for a professional, licensed Company to make a complete Audio/ Visual film of the entire proceedings of April 11,2014, which was a standing room only crowd held in a meeting at the very large Payson Nazarene Church. I have furnished a copy of such to the Commission through a third party. I have other copies available if needed. I personally paid for this service out of my own pocket. I now want each one of you to review Chairman Pastor's opening remarks as well as review the other 46 speakers. There were also a number of documents given to the three Commissioners that night. I hope you have received those as well.

Respectfully submitted

Glynn Ross X *Glynn Ross* Date, June 5, 2014
Three exhibits attached

**405 S Ponderosa
Payson Arizona 85541
808-896-5231**

**ORIGINAL and thirteen copies of
the forgoing were filed this ~~3~~ day
of ~~JUNE~~ 2014 with Docket Control
Arizona Corporation Commission
1200 W Washington Street Phoenix
Arizona 85007**

A Glynn Ross JUNE 5, 2014

By A Glynn Ross Intervener, Gisela Rate Payer

Copies were mailed and/or delivered this ^{5th} day ^{JUNE} of 2014 to the following.

Jay Shapiro (Attorney for Payson Water Company.,Inc.)
Fennemore Craig P.C. 2394 E, Camelback Road, Suite 600
Phoenix Arizona 85016

Robert Hardcastle
3101 State Road
Barersfield, CA 93308

William Sheppard
6250 North Central Avenue
Phoenix Ariz.85012

Thomas Bremer
6717 E. Turquoise Ave.
Scottsdale, Ariz.85253

J. Stephen Gehring & Richard M. Burt
8157 W. Deadeye Rd.
Payson Ariz. 85541

Suzanne Nee
2051 E. Aspen Drive
Tempe Ariz.85282

Kathleen Reidhead
14406 S. Cholla Canyon Drive
Phoenix Arizona 85044

Exhibit # 1
13 pages

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED

MAR 19 2014

DOCKETED BY he

J. ALAN SMITH,

COMPLAINANT,

VS.

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

RESPONDENT.

DOCKET NO. W-03514A-12-0007

DECISION NO. 74401

ORDER

Open Meeting
March 11 and 12, 2014
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 10, 2012, J. Alan Smith ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Payson Water Company, Inc. ("Payson Water" or "Company") and Brooke Utilities, Inc.
2. The Complaint alleges, among other things, that Payson Water overcharged its customers for water hauling costs. According to the Complainant, Mr. Jim Pearson of Pearson Transport/Pearson Water Company provided water hauling services to Payson Water during the time that Payson Water is alleged to have overcharged its customers for water hauling costs.
3. On June 18, 2012, a Procedural Order was issued scheduling a hearing for August 7, 2012.

1 4. On July 19, 2012, the Commission's Executive Director signed a Subpoena Duces
2 Tecum ("Subpoena").¹ The Subpoena compelled the attendance of Jim Pearson at the hearing
3 scheduled on August 7, 2012.² The Subpoena also compelled Mr. Pearson to produce and provide
4 copies of certain documents, including water hauling invoices and logs, no later than ten (10) days
5 after the issuance of the Subpoena.³

6 5. The Subpoena states that "DISOBEDIENCE OF THIS SUBPOENA constitutes
7 contempt of the Arizona Corporation Commission and may subject you to further proceedings and
8 penalties under law, pursuant to A.R.S. § 40-424."⁴

9 6. On July 25, 2012, the Subpoena was served on Mr. Pearson.⁵

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

12 8. On August 1, 2012, the Complainant filed a Motion to Compel Jim Pearson and
13 Pearson Water Co. to Comply with Subpoenas. In that motion, the Complainant requested that the
14 Commission issue an order compelling compliance with the Subpoena, or, alternatively, that the
15 Commission impose sanctions for contempt in failing to comply with the Subpoena.

16 9. On August 7, 2012, the hearing in this matter was convened, and at which time the
17 Complainant requested a continuance of the hearing for 90 days.⁶ The Complainant indicated that he
18 had consulted with an attorney who had agreed to represent him in this complaint case, but the
19 attorney needed an additional 60 to 90 days to review the case file.⁷ Jim Pearson did not attend the
20 hearing as required by the Subpoena. In addition, the Complainant stated that Jim Pearson failed to
21 produce and provide the documents described in the Subpoena.⁸ The hearing was continued for 90
22 days, on the condition that the Complainant's attorney discuss with the other parties an alternative
23 hearing schedule and submit such schedule well before the 90 days were exhausted.⁹

24 _____
¹ See Attachment A (Administrative Subpoena Duces Tecum).

25 ² *Id.* at 1:17-20.

26 ³ *Id.* at 1:20-2:19.

27 ⁴ Attachment A, at 2:23-25.

28 ⁵ Attachment A, at 3.

⁶ Tr. (8/7/2012) at 18:12-16.

⁷ Tr. (8/7/2012) at 19:11-18.

⁸ Tr. (8/7/2012) at 10:11-11:9.

⁹ Tr. (8/7/2012) at 23:8-24:9.

1 10. On September 17, 2012, a Procedural Order was issued scheduling a procedural
2 conference for September 28, 2012.

3 11. On September 24, 2012, the Complainant filed a Motion to Initiate an Action in the
4 Superior Court to Compel Jim Pearson, Pearson Transport, Robert T. Hardcastle, Brooke Utilities,
5 Inc., and Payson Water Co. to Comply with the Subpoenas Served Upon Them. In that motion, the
6 Complainant indicated that Jim Pearson was refusing to comply with the Subpoena.

7 12. On September 28, 2012, a procedural conference was held, as scheduled, during which
8 discussions occurred regarding, among other things, the appropriate process for enforcing the
9 Subpoena previously served on Jim Pearson.¹⁰ Counsel for the Complainant entered an appearance
10 and indicated that he would attempt to contact Jim Pearson and request compliance with the
11 Subpoena.¹¹ The hearing was continued pending a status update from the Complainant regarding the
12 resolution of the Subpoena issue.¹²

13 13. On January 10, 2013, the Complainant filed a Notice of Submission of Demand for
14 Compliance with Subpoenas and Request for Issuance of Procedural Order Directing Compliance
15 Proceedings in the Superior Court. In that filing, the Complainant indicated that efforts to contact
16 Jim Pearson were unsuccessful and that Mr. Pearson had not produced the documents described in
17 the Subpoena.

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

20 15. On March 14, 2013, a procedural conference was held, as scheduled, during which
21 discussions occurred regarding available options for enforcing Jim Pearson's compliance with the
22 Subpoena. The Complainant requested the issuance of an order compelling compliance with the
23 Subpoena and requested that Staff contact Mr. Pearson to explain that order.¹³ Staff agreed to contact
24 Mr. Pearson to explain the order and request his compliance with the Subpoena.¹⁴

25 16. On March 20, 2013, an Order Compelling Compliance with Subpoena Duces Tecum

26 ¹⁰ Tr. (9/28/2012) at 5:1-14.

27 ¹¹ Tr. (9/28/2012) at 13:5-23.

28 ¹² Tr. (9/28/2012) at 13:17-18:4.

¹³ Tr. (3/14/2013) at 21:23-22:4.

¹⁴ Tr. (3/14/2013) at 20:1-21:2.

1 was issued ordering Jim Pearson to immediately provide copies of all documents in his possession
2 described in the Subpoena. It was further ordered that failure to comply may result in the issuance of
3 a contempt order by the Commission including the imposition of fines or other penalties as the
4 Commission may determine appropriate to enforce compliance with that order.

5 17. On April 12, 2013, Staff filed a status update indicating that Staff counsel had
6 contacted Jim Pearson and Mr. Pearson indicated "he had supplied all the documents in the related
7 Docket No. 12-0008." According to Staff, Mr. Pearson also stated that he misplaced some of the
8 responsive documents to the Subpoena and was trying to locate them. Staff counsel advised Mr.
9 Pearson to contact the Complainant.

10 18. On June 10, 2013, the Complainant filed a Renewed Motion to Compel Documents
11 and Information Requested by Subpoena and Data Requests and Motion for Order Requiring Jim
12 Pearson to Fully Respond to Subpoena Duces Tecum and Request for Hearing on Motions. In that
13 motion, the Complainant indicated the Jim Pearson had not produced the documents described in the
14 Subpoena.

15 19. On June 26, 2013, a Procedural Order was issued scheduling a procedural conference
16 for July 10, 2013, and ordering Mr. Pearson to provide copies of documents requested by
17 Complainant's counsel. It was further ordered that failure to comply may result in the issuance of a
18 contempt order by the Commission including the imposition of fines or other penalties as the
19 Commission may determine appropriate to enforce compliance with that order.

20 20. On July 10, 2013, the procedural conference was held, as scheduled. At the
21 procedural conference, counsel for the new owner of the Company entered an appearance and various
22 procedural issues were discussed, including discovery disputes between the Complainant and the
23 Company and the continued failure of Mr. Pearson to produce the documents described in the
24 Subpoena.¹⁵ At the conclusion of the conference, the parties were directed to attempt to resolve the
25 pending discovery disputes.¹⁶

26 21. On September 23, 2013, a Procedural Order was issued scheduling a procedural
27

28 ¹⁵ Tr. (7/10/2013) at 8:4-18.

¹⁶ Tr. (7/10/2013) at 15:15-19.

1 conference for October 7, 2013 and ordering the Company to be prepared to provide copies of all
2 documents requested by the Complainant and to make reasonable efforts to acquire the requested
3 documents alleged to be in the possession of Jim Pearson.

4 22. On October 1, 2013, a Procedural Order was issued vacating the October 7, 2013
5 procedural conference and resetting the same for October 24, 2013 due to a scheduling conflict with
6 counsel for the Company.

7 23. On October 9, 2013, a Procedural Order was issued vacating the October 24, 2013
8 procedural conference and resetting the same for October 30, 2013 due to a scheduling conflict with
9 counsel for Staff.

10 24. On October 30, 2013, a procedural conference was held, as scheduled, during which
11 discussions occurred regarding, among other things, the status of Mr. Pearson's compliance with the
12 Subpoena. Counsel for the Complainant stated that Mr. Pearson had still not produced and provided
13 the documents described in the Subpoena¹⁷ and requested that the Commission compel compliance.¹⁸
14 Counsel for the Complainant noted that the requested documents are "important enough to [this]
15 case" that "a huge amount of time and money in attorneys' fees" have been expended to pursue these
16 documents.¹⁹ Counsel for the Company represented that the Company has produced copies of all
17 documents in its possession that are responsive to the document requests of the Complainant.²⁰ At
18 the conclusion of the conference, the pending discovery motions were taken under advisement.

19 25. On November 12, 2013, counsel for the Complainant filed a Motion to Withdraw as
20 Counsel of Record with Client Approval. In the motion, counsel stated that the Complainant wished
21 to return to self-representation in this case.

22 26. On December 16, 2013, a Procedural Order was issued granting counsel for the
23 Complainant's Motion to Withdraw as Counsel of Record with Client Approval.

24 27. On January 29, 2014, the Complainant filed a Notice of Complainant's Fifth
25 Discovery and Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109. In that filing, the
26

27 ¹⁷ Tr. (10/30/2013) at 4:7-8.

¹⁸ Tr. (10/30/2013) at 5:21-23.

¹⁹ Tr. (10/30/2013) at 4:25-5:3.

28 ²⁰ Tr. (10/30/2013) at 7:20-23.

1 Complainant noted, among other things, that Jim Pearson had still not complied with the Subpoena.

2 28. Jim Pearson failed to appear at the hearing held on August 7, 2012 as ordered by the
3 Subpoena. Accordingly, we find that Mr. Pearson is in contempt of the Commission for failing to
4 comply with the Subpoena.

5 29. Jim Pearson failed to produce and provide the documents as ordered by the Subpoena.
6 Accordingly, we find that Jim Pearson is in contempt of the Commission for failing to comply with
7 the Subpoena.

8 30. Jim Pearson failed to produce and provide the documents described in the Order
9 Compelling Compliance with Subpoena Duces Tecum issued on March 20, 2013. Accordingly, we
10 find that Jim Pearson is in contempt of the Commission for failing to comply with this order.

11 31. Jim Pearson failed to produce and provide the documents described in the Procedural
12 Order issued on June 26, 2013. Accordingly, we find that Jim Pearson is in contempt of the
13 Commission for failing to comply with this order.

14 32. We find that Mr. Pearson's disobedience with the Subpoena and subsequent orders of
15 the Commission, as discussed herein, is preventing the parties to this proceeding from having a full
16 and fair opportunity to present their cases. Accordingly, we believe that Jim Pearson should be
17 ordered to appear in person before the Commission and show cause to explain why his failure to
18 comply with the Subpoena and subsequent orders of the Commission does not constitute contempt
19 which would subject Mr. Pearson to fines and penalties pursuant to Article XV, section 4 of the
20 Arizona Constitution and A.R.S. § 40-424.

21 33. We note that Jim Pearson has been afforded ample time and multiple opportunities to
22 comply with the Subpoena and subsequent orders of the Commission. However, we believe that Jim
23 Pearson should have **one final opportunity to comply with the Subpoena.**

24 34. We find that the above described contempt proceeding against Jim Pearson shall cease
25 if Mr. Pearson complies with the following requirements:

26 a. Jim Pearson delivers copies of all documents in his possession described in the
27 Subpoena, to the Complainant, within thirty (30) days of the effective date of
28 this Decision. Copies of all such documents shall be filed with the Arizona

1 Corporation Commission's Docket Control Center, **1200 West Washington**
2 **Street, Phoenix, Arizona 85007, and mailed** to the Complainant's address, **J.**
3 **Alan Smith, 600 S. Oak St., Space #4, Payson, Arizona 85541; and**

- 4 b. If Jim Pearson does not possess one or more of the subpoenaed documents, he
5 shall file with Docket Control an affidavit avowing that he does not possess
6 such document(s) within thirty (30) days of this Decision. The affidavit must
7 clearly identify which document(s) Mr. Pearson does not possess and explain
8 why the document(s) are not in his possession

9 35. We further find that if Jim Pearson complies with the requirements set forth in
10 Paragraph 34 of the Findings of Fact, Mr. Pearson does **not** need to appear and show cause, as
11 discussed herein. In that event, we direct the Hearing Division to vacate the above described
12 contempt proceeding.

13 CONCLUSIONS OF LAW

14 1. The Commission has jurisdiction to hear complaints against public service
15 corporations pursuant to A.R.S. § 40-246.

16 2. Payson Water Company, Inc. is a public service corporation as defined by Article XV,
17 section 2 of the Arizona Constitution.

18 3. The Commission has jurisdiction over the subject matter of the complaint in this
19 matter.

20 4. Under Article XV, section 4 of the Arizona Constitution, the Commission "shall have
21 the power of a court of general jurisdiction to **enforce the attendance of witnesses and the**
22 **production of evidence by subpoena**, attachment, and punishment."

23 5. A.R.S. § 40-424(A) provides that "[i]f any corporation or person fails to observe or
24 comply with any order, rule, or requirement of the commission or any commissioner, the corporation
25 or person shall be in **contempt** of the commission and shall, after notice and hearing before the
26 commission, be **fin**ed by the commission in an amount **not less than one hundred nor more than**
27 **five thousand dollars**, which shall be recovered as penalties."

28 6. It is lawful and in the public interest to schedule a hearing for Jim Pearson to appear

1 before the Commission and show cause as described herein.

2 **ORDER**

3 IT IS THEREFORE ORDERED that **Jim Pearson** shall appear in person and show cause
4 before the Commission on **April 21, 2014, at 10:00 a.m.**, or as soon thereafter as is practical, at the
5 Commission's offices, 1200 West Washington Street, **Hearing Room No. 1**, Phoenix, Arizona
6 85007, to explain:

- 7 a. Why his failure to comply with the Subpoena Duces Tecum signed by the
8 Commission's Executive Director on July 19, 2012, and served on Mr. Pearson
9 on July 25, 2012, as discussed herein, does not constitute contempt of the
10 Commission;
- 11 b. Why his failure to comply with the Order Compelling Compliance with
12 Subpoena Duces Tecum issued on March 20, 2013, as discussed herein, does
13 not constitute contempt of the Commission;
- 14 c. Why his failure to comply with the Procedural Order issued on June 26, 2013,
15 as discussed herein, does not constitute contempt of the Commission;
- 16 d. Why the Commission should not impose fines and penalties pursuant to Article
17 XV, section 4 of the Arizona Constitution and A.R.S. § 40-424 for each
18 instance of contempt described above; **and**
- 19 e. Why other relief deemed appropriate by the Commission should not be
20 ordered.

21 IT IS FURTHER ORDERED that **Jim Pearson** does **not** need to appear and show cause, as
22 ordered above, if he complies with requirements set forth in Paragraph 34 of the Findings of Fact. In
23 that event, we direct the Hearing Division to vacate the above ordered hearing.

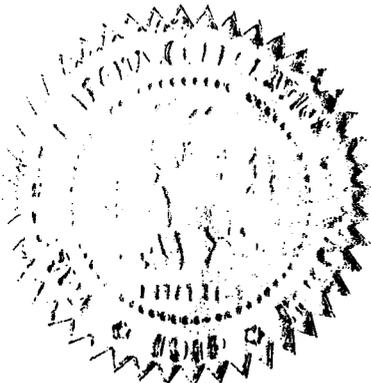
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that failure to comply with this Decision may result in the
2 imposition of fines and penalties pursuant and/or other relief as the Commission may determine
3 appropriate to enforce compliance with this Decision.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

6
7
8 *[Signature]* CHAIRMAN *[Signature]* COMMISSIONER
9 *[Signature]* COMMISSIONER *[Signature]* COMMISSIONER *[Signature]* COMMISSIONER
10



11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 19th day of March 2014.

17 *[Signature]*
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 DDN:ru

23
24
25
26
27
28

1 SERVICE LIST FOR: J. ALAN SMITH V. PAYSON WATER CO.,
2 INC./BROOKE UTILITIES

3 DOCKET NO.: W-03514A-12-0007

4 Jim Pearson
5 Pearson Transport/Pearson Water
6 1120 Rodeo Rd.
7 PO Box 193
8 Williams, AZ 86046-0193
9 (SERVICE BY CERTIFIED AND REGULAR U.S. MAIL)

10 J. Alan Smith
11 600 S. Oak St., Space 4
12 Payson, AZ 85541

13 Jay L. Shapiro
14 FENNEMORE CRAIG, P.C.
15 2394 East Camelback Rd., Suite 600
16 Phoenix, AZ 85016
17 Attorneys for Payson Water Company

18 Janice Alward, Chief Counsel
19 Legal Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, AZ 85007

23 Steve Olea, Director
24 Utilities Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, AZ 85007
28

ATTACHMENT A

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE- Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF

J. Alan Smith
Private Citizen, injured party,

Complainants,
vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.

Respondents.

DOCKET NO. W-03514A-12-0007

ADMINISTRATIVE
SUBPOENA DUCES TECUM

TO: JIM PEARSON
PEARSON TRANSPORT/PEARSON WATER
P.O. Box 193
1120 Rodeo Rd.
Williams, Arizona 86046
(928) 635-4220; (928) 853-4755

YOU ARE HEREBY COMMANDED, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109 and Ariz. R. Civ. P. 30 and 45 to appear at the Hearing scheduled for August 7, 2012 at 10:00 a. m. at the offices of the Commission, Hearing Room No. 1, 1200 West Washington St., Phoenix, Arizona 85007 and to produce and provide no later than Ten Days (10) after receipt of this Subpoena copies of the following documentation to the Complainant; J. Alan Smith; 8166 Barranca Road; Payson, Arizona 85541 in connection with the administrative proceedings in the above captioned action and as follows:

1. Any and all copies of the Books, papers, documents or other tangible things, Accounts, Water Hauling Invoices, Water Hauling Logs, Bills of Lading, Waybills, and other documents unedited and un-altered that have been billed to Brooke Utilities, Inc. and Payson Water Co. Inc. P. O. Box 8218; Bakersfield, CA 93380 according to Invoices issued by Pearson Water Co. for the hauling of water to the Water Systems of Mesa del Caballo, East Verde Park and any

1 other Water System owned and operated by Payson Water Co. during Water Augmentation
2 period May 1, 2011 through October 31, 2011 inclusive of those billing periods and all those
3 Water Hauling Invoices, Water Hauling Logs, Bills of Lading, Waybills and other documents
4 associated therewith and described herein, including but not limited to the following:

- 5 a. Invoice Numbers 8803, 8804, 8805, 8806, 8807, 8808, 8809, 8810, 8811, 8812, 8813,
6 8814, 8815, 8816, 8817, 8818, 8819, 8820, 8821, 8822, 8823, 8824 and 8825 and any and
7 all of the BUI HAULING LOGS and your records associated with these invoices. They
8 shall be copies of the originals un-altered and un-edited in any way;
- 9 b. Copy of any contract between Pearson Water Co. and Payson Water Co. or Brooke
10 Utilities Inc. to haul water from any location to any other location and particularly from
11 any location to any of the Water Systems owned and operated by Payson Water Co.
- 12 c. Disclose the locations of where any amount of water was acquired and hauled from
13 whether it was the Town of Payson or any other source to the East Verde Park Water
14 System or any other location during the Augmentation Period of May 2011 to October
15 2011;

14 **YOU HAVE BEEN SUBPOENED BY: J. Alan Smith**

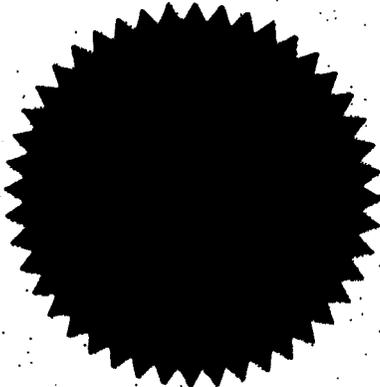
8166 Barranca Rd.

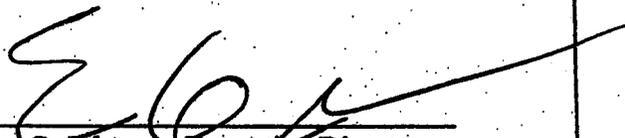
Payson, Arizona 85541

Telephone: (928) 951-2083

17 **DISOBEDIENCE OF THIS SUBPOENA** constitutes contempt of the Arizona Corporation
18 Commission and may subject you to further proceedings and penalties under law, pursuant to A.R.S.
19 § 40-424.

20 Given under by hand the seal of the Arizona Corporation Commission this, 19th day
21 of July, 2012.



22 
23 Ernest G. Johnson, Executive Director
24 Arizona Corporation Commission

27 Persons with a disability may request a reasonable accommodation such as a sign language
28 interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal,
Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail
sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the
accommodation.

CERTIFICATE OF SERVICE

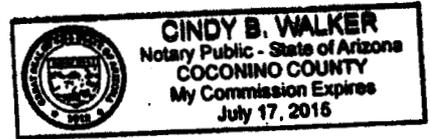
The undersigned swears (or affirms) that he/she is qualified to serve this subpoena and that he/she did so by showing the original to and informing the witness of its contents and by delivering a copy thereof to him at 7:36 a.m./p.m. on July 25, 2012 **PEARSON WATER CO.;** at **1120 Rodeo Rd. Williams, Arizona 86046.**

#W-03514A-12-0007 Debi Woskobojnik
Person Serving Subpoena
Debi Woskobojnik

Subscribed and sworn to before me on July 26, 2012

Cindy B Walker
Notary Public

July 17 2015
My Commission Expires



3

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Exhibit # 2

DEBORA SAVAGE
GILA COUNTY TREASURER &
EX-OFFICIO TAX COLLECTOR
PO Box 1093
Globe, AZ 85502-1093

WITTER LOUANN MARIE
HC1 BOX 1123
STRAWBERRY AZ 85544

BES44\$9732 H001



U.S. POSTAGE  PTNEY BOWES
ZIP 85501 \$ 000.46⁰
02 1W
0001383071MAY 09 2013

TRANSACTION REPORT

MAY/24/2013/FRI 06:11 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	MAY/24	06:10PM	1855508550718555085507	0:00:57	2	OK	G3 3906

Witter, LouAnn
 HC 1 Box 1123
 Strawberry, Arizona 85544
 May 22, 2013

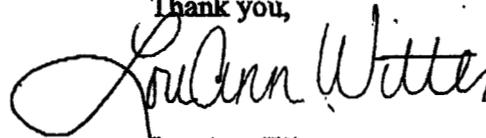
Brooke Utilities, Inc./
 Brooke Water L.L.C.
 PO Box 82218
 Bakersfield, CA 93380

RE: Joseph G. Snyder/TCS L169

To Whom It May Concern:

Joseph Snyder's move in date was April 22nd, 2013. It is my understanding that he is being charged for 114,000 plus gallons of water usage. Anything prior to April 22nd, 2013 is not his responsibility. Also, Joseph used my prepaid mastercard to pay his deposit to establish water service in his name. Joe told me that your company informed him that a lock was placed on the meter a year ago and if this is so why was there no lock when/before a customer service representative left a note stating the fact that Joe needed to contact you and get service connected? According to neighbors, each and every month someone would stop and read the meter at the residence, yet no bill was ever sent stating so. I would like this matter investigated and Joe should only be charged for the water usage he in fact used and not 114,000 gallons. You can send any/all disputes to the above address. It would be greatly appreciated and please contact Joe at (928) 978-6348 and inform him of your office receiving this information. He is simply a renter/occupant and has only been there for a month now.

Thank you,



LouAnn Witter

P.S.

I have also enclosed a copy of mail showing that I have and am no longer at TCS L169.

RICHARD M. BURT
 PH. 928-517-8401
 106 E BONITA ST PMB 6
 PAYSON, AZ 85541

1905
91-832/1221
41

4/30/2013
Date

Pay to the Order of BROOKS UTILITY \$ 60.00
Sixty and no Dollars  

 **NATIONAL BANK OF ARIZONA**
 1-800-457-6106
 www.nbaofaz.com

For WATER BILL Richard M Burt
 1905

For Deposit only to

Cust: Jaco Oil Co
 AG: Waste

Seq: 36
 Dep: 000929
 R/F: 122000661
 Date: 05/06/13

Do not cash or deposit this check if it is postdated, altered, or contains any other markings. If you are unsure, contact your bank.

Date:05/07/13 Seq #:78009729

1#:1905 Amount:\$60.00 Dep Seq #-

RICHARD M. BURT
 PTH 080-543-940T ~~925-474-9159~~
 108 E BONITA ST PMB 6
 PAYSON, AZ 86541

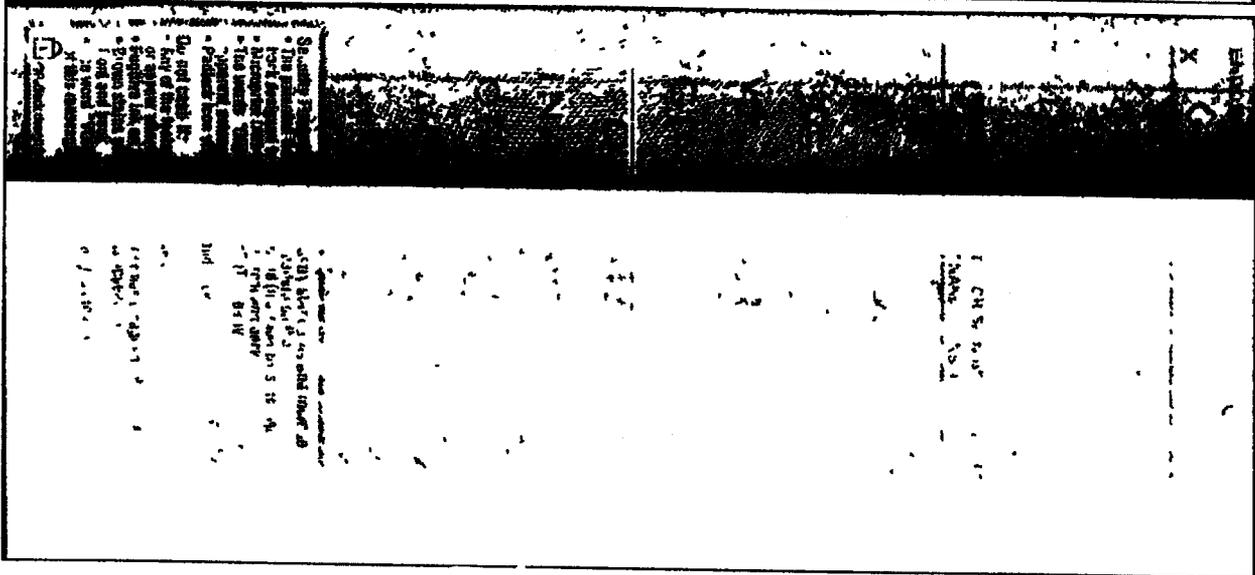
1861
91-832/1221
41

Date 9/28/12

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

 **NATIONAL BANK OF ARIZONA**
 1-800-487-8168
 www.nbaarizona.com

For WATER BILL Richard M. Burt



Date:10/03/12 Seq #:78030870

al #:1861 Amount:\$120.00 Dep Seq #:-

RICHARD M. BURT
 PH. 928-617-8401
 106 E BONITA ST PMB 6
 PAYSON, AZ 85641

1903
 01-532/1221
 41

Date 4/1/2013

Pay to the Order of BROOKS UTILITIES, Inc \$ 25.00
Twenty-five and $\frac{no}{100}$ Dollars

NATIONAL BANK OF ARIZONA
 1-800-487-8100
 www.nbaaz.com

For BILL WATER BILL Richard M Burt

1903

For Deposit only to

Cust: Jacob Oil Co
 AG: Master

Seq: 43
 Dep: 000457
 R/T: 122080661
 Date: 04/04/13

Security Features:
 • The perforated top edge of the bill is made of a special material that is difficult to copy.
 • The words "DRIVE" and "NATIONAL BANK OF ARIZONA" are printed in a special font that is difficult to copy.
 • The words "DRIVE" and "NATIONAL BANK OF ARIZONA" are printed in a special font that is difficult to copy.
 • The words "DRIVE" and "NATIONAL BANK OF ARIZONA" are printed in a special font that is difficult to copy.

Date:04/05/13 Seq #:78012839

Serial #:1903 Amount:\$25.00 Dep Seq #:-