

OPEN MEETING AGENDA ITEM



0000153740

1 J. Stephen Gehring
2 8157 W. Deadeye Rd.
3 Payson, Arizona 85541
4 (928) 474-9859
5 In Propria Persona

RECEIVED

2014 JUN -5 P 2:16

ORIGINAL

ARIZONA CORPORATION COMMISSION
BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION
10 OF PAYSON WATER COMPANY INC. AN
11 ARIZONA COPORATION, FOR A DETERMINATION
12 OF THE FAIR VALUE OF ITS UTILITY PLANTS
13 AND PROPERTY AND FOR INCREASES IN ITS
14 WATER RATES AND CHARGES FOR UTILITY
15 SERVICE BASED THEREON.

DOCKET NO. W-03514A-13-0111

Arizona Corporation Commission

DOCKETED

JUN 05 2014

DOCKETED BY

18 IN THE MATTER OF THE APPLICATION OF
19 PAYSON WATER COMPANY INC., AN ARIZONA
20 CORPORATION, FOR AUTHORITY TO: (1) ISSUE
21 EVIDENCE OF INDEBTEDNESS IN AN AMOUNT
22 NOT TO EXCEED \$1,238,000 IN CONNECTION
23 WITH INFRASTRUCTURE IMPROVEMENTS TO
24 THE UTILITY SYSTEM; AND (2) ENCUMBER REAL
25 PROPERTY AND PLANT AS SECURITY FOR SUCH
26 INDEBTEDNESS.

DOCKET NO. W-03514A-13-0142

RESPONSE TO JUDGE NODES
RECOMMENDATION, OPINION
AND ORDER; AND REQUEST
FOR A REHEARING IN THESE
MATTERS

30 COMES NOW, J. Stephen Gehring, a Customer of PAYSON WATER CO. INC. (PWC) in the
31 Mesa del Caballo System (PWS 04-030) and intervener in these matters to take exception and object to
32 ALJ Nodes Recommendation, Opinions and Orders in these matters before the Commissions and to
33 request a Rehearing.

34 Judge Nodes' "ROO" dated May 27, 2014 fails and refuses to take into consideration the evidence
35 presented to him in W-03514A-12-0007 and W-03514A-12-0008 which is directly related to this Rate
36 Case and referenced in this Intervener's pleadings and closing brief which the Company, Judge Nodes
37 and Staff have chosen to "disregard" without cause or justification. (Note: Docket No. W-03514A-12-
38 0008 has never been ruled upon nor have any recommendations been made by Judge Nodes and as of
39 June 2014 it will be 2 years since the final hearing). During the course of W-03514A-12-0008 the
40 Complainants were denied compliance with subpoenas issued because Judge Nodes and Staff claimed
41 they did not know how to enforce them. The Docket is riddled with reversible errors and appealable

1 issues. Since Mr. Smith persuade the matter even further in his Complaint (W-03514A-12-0007) some
2 progress was made by the Commission but still there has been no compliance with the subpoenas nor
3 has there been rendered an “ROO” in those two Dockets. In the middle of a rate case with no resolution
4 reached in the Complaints against the Company over numerous Water Augmentation Surcharge issues
5 the Company sells out to a new owner to deal with the “mess” created by the previous owner and
6 possibly to allow the previous owner to escape prosecution for Consumer Fraud and other felonies.

7 Judge Nodes, Staff and the Company refused to take into consideration:

- 8 1) Southwest Ground-Water Consultants, Inc. (Zonge Engineering and Research Organization
9 (Zonge)) in the Mesa del Caballo Zonge CSAMT Survey, Study, Report and particularly the
10 Letter stating the findings of facts and conclusions of the study, Dated March 30, 2010 sent to
11 and received by Bob Hardcastle from, Stephen D. Noel, R.G. (Registered Geologist) (**See:**
12 **Exhibit A-17 Sub exhibits A & B See: pages 1 & 2 of the Letter to Bob Hardcastle**). Also
13 (**See: Intervener Gehring’s Closing Brief Exhibit A and the evidence presented by the**
14 **Complainants’ in their Exhibits filed in both W-03514A-12-0007 and 0008 as well as**
15 **Gehring’s last filing disclosing newly discovered evidence**);
- 16 2) The Company and Staff’s allegation that there is no water of “production capacity” below MDC
17 or that drilling new wells or deepening current ones, would not be cost effective is in error. That
18 the Geologists’ findings debunk the Company’s and Staff’s material misrepresentations made in
19 these and previous proceedings by the drilling productive wells to the 400 foot depth or greater.
20 (**See: Intervener Gehring’s Closing Brief Exhibit B pages 1 to 6 also See: Complainants’**
21 **Exhibits filed in both W-03514A-12-0007 and 0008 as well as Gehring’s last filing disclosing**
22 **newly discovered evidence**);
- 23 3) It is proven fact beyond any reasonable doubt in Prior proceedings, that Hardcastle knowingly
24 and intentionally: a) stole water from WSA wells he did not own, b) never compensated several
25 of the well owners for the water stolen from those wells, c) lied about well production so he did
26 not have to compensate the well owner(s) and to deceive ALJ Nodes and Staff in prior
27 proceedings to obtain the ALJ’s recommendations to the Commission in favor of an
28 Augmentation Surcharge for MDC, d) deceived ADEQ and the Commission by never listing one
29 well with ADEQ as the law requires nor did he ever have it tested as required by law; e)
30 participated in an elaborate fraudulent scheme and scam with the MDC Water Committee to
31 steer the Customers in MDC in the direction he wanted them the Craigin Pipeline;

- 1 4) Hardcastle misrepresented the identification of certain WSA wells on numerous occasions and in
2 his Annual Reports to the ACC to hide its true source and location, committed perjury under oath
3 and persuaded others to do so in proceedings before ALJ Nodes and the Commission, failed and
4 refused to list WSA wells in the Company's Application for a Augmentation Surcharge for the
5 MDC System to give and create the appearance of a real Emergency Situation were in fact none
6 existed and were in fact Hardcastle created an artificial emergency;
- 7 5) Hardcastle knowing and intentionally conspired with others including Pearson, Allred and others
8 to: a) materially misrepresent well production in the MDC System, b) grossly inflate the costs of
9 drilling two new wells (**See: Intervener Gehring's Closing Brief Exhibit D compare with**
10 **Exhibit B pages 1 to 6**), c) misrepresent the cost of hauling water (by Pearson Water Co. by way
11 of long distant systems) and; d) created an "Artificial Emergency" to get authorization from the
12 ACC to impose an Augmentation Surcharge and Haul Water to the MDC System for profit
13 which the current owners may have participated in, in 2013 and to the injury of the Customers;
- 14 6) The "Emergency Situation" was proven to be artificially created by the Company and its Officers
15 and agents (**in both W-03514A-12-0007 and 0008 as well as Gehring's last filing disclosing**
16 **newly discovered evidence**). Had such Company funds been spent to drill new wells and
17 improve the system the "rate Increases" now proposed by the New Owner(s) would have been
18 far, far less;
- 19 7) During the 2011 Augmentation Surcharge period it was proven and shown beyond any
20 reasonable doubt (**See: in both W-03514A-12-0007 and 0008 as well as Gehring's last filing**
21 **disclosing newly discovered evidence**) that the total Well production of both the Company and
22 WSA Wells that was poured into the MDC system produced 824,000+ gallons more then what
23 the Community of MDC consumed. So why did the Company have to haul 790,000 gallons to
24 the MDC System. No leaks were reported or repaired yet Hardcastle claimed he was entitled to
25 10% leaks or approximately 160,000 gallons per month. If the system leaked that badly why
26 wasn't it repaired? Or was it easier and less expensive to create an Artificial Emergency, claim
27 that drought had caused water shortages and that Customers were wasting water;
- 28 8) Why did the Company in 2011 haul in excess of 84,000 gallons to East Verde Park and bill the
29 MDC Customers for it and possibly again in 2012 and 2013?

- 1 9) Why has Jim Pearson, Chase Pearson and Martin Zabola been allowed by the ALJ Nodes, Legal
2 Staff and the Commission to avoid compliance with the Subpoenas issued to them for nearly two
3 years?
- 4 10) What did Hardcastle and Allred do to persuade or assist Subpoenaed witnesses (Jim Pearson and
5 Martin Zabola in a secret meeting at Pearson's home in Williams, AZ in 2012 or encourage
6 them, to not comply with the Subpoenas issued to them by the ACC, to this day?
- 7 11) Why did ALJ Nodes arbitrarily compel Gehring and the Jones to proceed with the Hearings in
8 W-03514A-12-0008 in June 2012 knowing full well that the Subpoenas issued to Person and
9 Zabola and Hardcastle had not been complied with?
- 10 12) It was clearly evidenced by Mrs. Riedhead in her "Supplement to Pre-Filed Testimony Phase 2"
11 and more specifically **Exhibit KMR-G pages 1-69** that past and more recent Drilling by Private
12 Property owners in MDC has proven highly successful in depths to 400 ft with well productions
13 ranging from 5 gpm to 20 gpm sustainable rates as projected by Registered Geologist Noel;
- 14 13) Hardcastle's and now the New Owner(s) and his/their attorney maintain falsely and incorrectly
15 according to "Hardcastle's material misrepresentations" that there is no water below MDC and it
16 is not cost effective to drill new wells. New private wells since 2009 have proven to be cost
17 effective to the private owners, Why not the Company?
- 18 14) The Company and Judge Nodes center their decision to disregard Gehring's Closing Brief on a
19 comment made by him of Williamson's relationship to Hardcastle. How absurd to disregard the
20 real and proven truth and facts so found in W-03514A-12-0008 and 12-0008 to avoid
21 investigation and possible criminal prosecution;
- 22 15) The Company under "Hardcastle management failed or refused for decades to repair or improve
23 upon the systems, or to seek additional in system sources of water, or to petition for rate
24 increases, or for that matter to invest in those systems it owns to bring them up to standards
25 without shortages or crisis situations. This is clearly not the fault of the Customer;
- 26 16) Staff is under the impression that the Company under the previous owner(s) was some sort of a
27 benevolent benefactor and that they "subsidized" their Customers water needs, where in fact that
28 is not the case. Staff has refused to enlighten themselves to the real truth and facts;
- 29 17) The reality is, had the Corporation dealt honestly and fairly with their Customers and the
30 Commission and made the improvements, repairs and maintenance required instead of spending

1 so much time, money and effort to increase profits, they would have naturally increased profits
2 by honest means and these outrageous rate increases would not have been proposed;

3 18) The rate increase proposed is without a doubt excessive and possibly unwarranted if not
4 unreasonable and will not result in improvement to the systems to better serve the Customers.
5 “Economic injury is not the only injury that the law should recognize.”¹ The Consumers’ right is
6 not limited to cases in which they have a “pocketbook” interest; it extends to those in which the
7 agency action bears upon quality, as well as price. Only Consumers may be directly concerned
8 with deteriorations in quality. The implication is far-reaching. Administrative decisions that
9 affect environmental quality should give “consumers” of the environment the same right to be
10 heard before those decisions are made.² Where an agency makes choices, those from whom the
11 choices are made have an interest that should be protected.³ The Commission must protect the
12 Customer from excessive and unreasonable rate increases.

13 WHEREFORE Mr. Gehring requests that the ALJ Nodes recommendation to the Commission be set
14 aside and that the requested rate increases be slashed in half or at least reconsidered in a rehearing and
15 that the Commission recommend to the Attorney General to conduct a Criminal investigation into the
16 activities of the previous owner(s) abuse of the Water Augmentation Surcharge in 2011 and 2012 as well
17 as the current owner(s) implementation of the Water Augmentation Surcharge in 2013 and the conduct
18 of the ACC Staff and ALG Nodes in their performance and participation in all of the matters leading up
19 Judge Nodes’ ROO and that the Commission inquire of Judge Nodes as to why he has never issued an
20 “ROO” in Docket No. W-03514A-12-0008 including the matters from the Company’s application for a
21 Water Augmentation Surcharge for MDC begun in 2010, through the Complaints of 2011 to 2013 to the
22 current proceedings.

23 Respectfully submitted this 5th day of June 2014

24
25 
26 J. Stephen Gehring, in Propria Persona

¹ Office of Communication v. FCC, 359 F.2d 994, 1003 (D. C. Cir. 1966).

² Palisades Citizens Assn. v. CAB, 420 F.2d 188 (D. C. Cir. 1969).

³ For a case so holding, Pollack v. Simonson, 350 F.2d 740 (D. C. Cir. 1965). Compare Baptist Hosp. v. State, 500 So. 2d 620 (Fla. App. 1986); Huron Valley Hosp. v. State Health Commn., 312 N.W.2d 422 (Mich. App. 1981); Appeal of Behavior Science Inst., 436 A.2d 1328 (N. H. 1981).

CERTIFICATE OF SERVICE

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
27
28
29
30
31
32
33

34

35

The Original and 13 Copies of the foregoing has been mailed this 5th day June 2014 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington St.
Phoenix, Arizona 85007

A Copy of the Original of the foregoing has been mailed this 5th day June 2014 to the following:

Jason Williamson, President PWC
7581 E. Academy Blvd., Suite 229
Denver, CO 80203

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

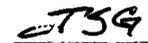
Kathleen M. Reidhead, Intervener
14406 S. Cholla Canyon Dr.
Phoenix, Az. 85044

William Sheppard, Intervener
6250 N. Central Ave.
Phoenix, Az. 85012

Suzanne Nee, Intervener
2051 E. Aspen Dr.
Tempe, Az. 85282

Jay L. Shapiro
Fennemore & Craig, P.C.
Attorneys for Payson Water Co. Inc.
2394 E. Camelback Rd., Suite 600
Phoenix, Ariz. 85016

Glynn Ross, Intervener
405 S. Ponderosa
Payson, Az. 85541


By: J. Stephen Gehring