

J. Alan Smith, Private Citizen
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PWC Utility Account No. 61138-24899
In Propria Persona



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Before the Arizona Corporation Commission

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Arizona Corporation Commission

DOCKETED

OCT 27 2014

DOCKETED BY 

AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

J. Alan Smith, Injured Party
Complainant,

vs.

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

DOCKET NO. W-03514A-12-0007

**OBJECTION TO STAFF'S
RESPONSE TO COMPLAINANT'S
RESPONSE TO STAFF'S REQUEST
FOR PROCEDURAL CONFERENCE
AND HIS REQUEST TO MODIFY**

NOW COMES, the Complainant J. Alan Smith, to object to Staff's Response to Complainant's Response to Staff's Request for Procedural Conference and His request to Modify.

Complainant objects to Staff's misrepresentations in their response and their actions in these proceedings as if they/she (Mrs. Mitchell) are representing the witness Pearson.

Staff and particularly, Robin Mitchell is not nor has Staff been hired by the witness Pearson to represent him and therefore cannot and shall not make any argument for him to appear telephonically or to solicit a decision based on hearsay that he not may produce the documentation subpoenaed. Staff and particularly Robin Mitchell has established themselves/herself as a party in interest by and through their/her actions and arguments.

Mr. Pearson and his company were hired by Brookes Utilities, Inc./Payson Water Co. Inc. to haul water. He and his company are agents of the same to carry out a specific task and to keep records for billing purposes to be passed down to the Customers of the MDC System for billing purposes related to the "Water Augmentation Tariff" imposed in ACC Decision 71902.

In fact ARS 40-110(A) the consumer services division main purpose is to provide information concerning utility rates and regulatory proceedings of public service corporations regulated by the commission.

In support of ARS 40-110(A), ARS 40-365; Under rules and regulations the commission prescribes, every public service corporation shall file with the commission, and **shall print and keep open to public inspection**, schedules showing all rates, tolls rentals, charges and classifications to be collected and enforced....

In addition ARS-40-427(A) The commission shall issue process to enforce attendance of all necessary witnesses.

Also ARS 13-2407 (A)(1,2,3,4,5) (B) & (C) give legislative commands Tampering with a public record is a class 6 felony.

INTERFERENCE WITH JUDICIAL AND OTHER PROCEEDINGS contained in Arizona Revised Statutes; Chapter 28 section 13-2801, 13-2802 and 13-2804 violations thereof are classified as class 5 and 6 felonies.

The fact that in this instant case that the Subpoena calls for the documents to be unaltered and unedited, in other words copies of the original were asked for to compare against the copies so provided in Docket No. 12-0008. Mr. Pearson has already admitted that a portion of his records were nothing more than mere chicken scratch and submitted in as evidence to keeping accurate account of water hauled into community via meter readings, even though under sworn testimony provided by David Allred (12-0008) all these documents (invoices and BUI haul logs were accurate during the date and time water was hauled into community.

Staff and particularly Robin Mitchell have/has taken personal and private interest in these proceedings to such an extent to have violated the Judicial Rules of Ethical Conduct and acted not impartially but in the interests of the Respondents/the Corporation parties and on behalf of the Corporations and their attorneys who should be making these arguments or instead, an attorney for Mr. Pearson and his Corporations and for the purposes to deny the Complaint a proper examination of the witness and the production of vital and necessary documentation that he needs and that will prove beyond any reasonable doubt that Hardcastle, Allred, Jim Pearson, Chase Pearson, Martin Zabala, BUI, PWC and others acted to defraud Customers of the MDC System during the hauling period of May 2011 to September 2011.

Complainant has no problem with the holding of a procedural conference where in fact Mr. Pearson will be sworn in on the witness stand as a witness and present the documents and records requested prior to the hearing as requested and where the Complainant shall examine and question the witness on those documents and records requested.

The request so brought forth in the subpoena is not in any way, shape or form burdensome or overwhelming as Staff and Robin Mitchell have knowingly and intentionally misrepresented in their furtherance of the interests of the Corporations and parties involved in these proceedings.

Further, Mrs. Mitchell should consider to recues herself from any further participation in these proceedings due to her unethical conduct and personal interests in these proceedings which have led to the

arbitrarily denial of the Complainant's right to discovery and disclosure and her own inability to comply with the Constitutional, Statutory, Administrative Codes and Rules of Court Procedure as prescribed.

However, Complainant ABSOLUTLEY OBJECTS TO THE WITNESS APPEARING TELEPHONICLY as Staff and Mrs. Mitchell prefer for obvious and unacceptable reasons.

The Complainant's OBJECTIONS are supported by 5 U. S. C. § 556(b) which states that an administrative law judge, "shall preside at the taking of evidence." And in the U. S. Circuit Court in *Purba v. INS*, 884 F.2d 516, 518 (9th Cir. 1989) the Court states, "It is hard to see how one can, "preside" at a hearing conducted outside ones physical presence." "Until Congress chooses to change the wording of the [APA], telephonic hearings . . . simply are not authorized by statute."

Staff and Mrs. Mitchell have not presented any statutory procedure nor any judicial precedence nor any justifiable argument that could possibly support her collateral attacks on the Complainant's position in these matters, nor justify her/Staff's telephonic examination of the witness as opposed to the required personal appearance of the witnesses, on the witness stand, at the hearing as required or her intentional misrepresentations that it is within the ALJ's discretion to conduct a telephonic examination, based on Dockets No. WS-03478A-12-0307,E-01787A-11-0186 and T-03889A-02-0796 which are not case, statutory or judicial decision law and fact. The Complainant absolutely challenges this unsupported nonsense, on the bases of law, fact and judiciary decision, which Staff and Mrs. Mitchell have not presented nor evidenced to the contrary.

Mr. Pearson and his Company may not be technically a party to this case (which cannot be shown or proven) except for the fact that he and his company and employees were acting at the directions of the Respondents as their agents and contracted employees. Even though Pearson has indicated to Staff/Mrs. Mitchell that he is willing to cooperate he has not and a telephonic examination of him at hearing will not benefit the Complainant.

Mr. Pearson has never submitted at any time in 3 years, an affidavit avowing that he does not possess any documents responsive to the Subpoena and mere conversation (hearsay) with Staff/Mrs. Mitchell that he does not have any documents responsive to the Subpoena or that he has not already provided in a related docket is an absolute lie since he has never produced one single document in any proceeding. The fact that Mr. Hardcastle and Mr. Allred tampered with this witness and persuaded him not to comply with the Subpoena is grounds for this witness to personally appear and present documentation and that Staff and Mrs. Mitchell should be sanctioned for their knowing and intentional gross misrepresentations of material facts in these proceedings.

Merely because this witness is a truck driver does not exempt him from personal appearance and grant him some unproven and alleged privilege to appear telephonically as Staff/Mrs. Mitchell has so grossly misrepresented as a person of interest and without cause or justification and so unethically.

Staff's/Mrs. Mitchell's argument that the court must balance the need for the requested discovery (and disclosure) against the expense of compliance is without merit for the fact that this witness participated in an elaborate scheme to defraud the Customers of the MDC System of thousands of dollars which obviously the Company, Staff and Mrs. Mitchell desire to cover up. If the witness has nothing to hide, demand his appearance personally at hearing, not telephonically and that he produce all documents subpoenaed or face criminal retribution. Is Staff/Mrs. Mitchell, the ALJ and the Commission that afraid to face the real truth and facts?

Staff/Mrs. Mitchell are not trying to avoid imposing undue burden or expense on a person subject to a subpoena. They are trying to avoid the real truth and facts to white wash their mistakes and this entire affair. Cowboy up, you all have jumped from the frying pan into the fire. Keep in mind "Exhaustion of Administrative Remedies," Appeal of Administrative Decisions" and Criminal Complaint for Misconduct.

The witness can assert that he has no documentation that are responsive all he wants, the fact is he has to produce them for tax purposes and compliance as a Corporation conducting business in this state. If he does not have them what did he do with them? The witness has no viable excuse not to produce them. Is Staff/Mrs. Mitchell that gullible or just plain complacent with the Company's wants and desires enough to become a party to their fraud? The cases cited in support of such a misrepresentation of material fact are but deception and intentional misrepresentation on the part of Staff and Mrs. Mitchell to affect a gross mischaracterization of justice and to deviate from the real truth and facts in these proceedings to spare the responsible parties of criminal prosecution and compensation to their victims.

IN SUMMARY

This State Agency (Arizona Corporation Commission) ensures that Customers follow the rules and regulations and that they are in compliance with Commission orders. By what authority do they not enforce the rules and regulations on the Company and its officers, employees, agents and sub-contractors?

One such order is water conservation. In this instant case Brooke Utilities/ Payson Water Co is given the legal authority to enforce Commission orders to compel Customers to conserve water. In short they are acting as police officers and regulators. They issue citations or tickets based on the taking of daily meter readings and give Customers a 24 hour notice to reduce water consumption.

If this notice is not complied with the Customer's water is then shut off and they are fined without trial or a hearing in their own defense. The Customer is required to pay an outrageous fine that financially benefits the Company and until that fine is paid the Customer has no water.

The Customer is then forced to petition the Commission in a complaint in an attempt to seek justice and some Staff members decides if he can file a formal complaint and be granted a hearing. This is not, due process of law or the proper administration of justice. State Law prohibits any party to be fined for any violations of the Commission orders, without first having a notice and hearing before anyone can be fined.

What the Customer(s) have been subjected to is more like acts of extortion one might expect from the Mafia, the Nazis or the Communists who prey upon their victims.

In this country the Citizen has the right to face his accuser in a fair and impartial trial, given the opportunity to be heard and to compel the appearance of witnesses and the production of evidence before he is fined or his property taken.

The Commission grants unlawful authority to Corporations that is in violation of State and Federal Law. As such the Commission subjects itself to both criminal and civil prosecution as do the Corporations whom they grant false authority to. Furthermore, the Commission does nothing to protect the Customer from the criminal abuses of the Companies and Staff supports these criminal acts.

Brooke Utilities, Inc., Payson Water Co. and Jim Pearson failed to comply with an order of the Commission and is not fined nor held neither accountable nor responsible. Money talks!

Brooke Utilities failed to comply with Commission order to file a timely permanent rate hike. The Company was not ordered to pay a fine.

Jim Pearson failed to comply with Commission orders.

All parties except the Customers of regulated utilities get a chance to defend themselves and bring forth a defense as to why they did not comply with an order of the Commission.

Customers have to show evidence that the Company shut the water off illegally. The Company is given 5 days to respond to a Customer's complaint. In short the Customer is fined first for allegedly violating an order of the Commission without any hearing and without due process of law. Who is the real Criminal here? The customer, the Commission or the regulated Company?

As in this instant case Customers paid for water hauling based on a finding and Order of the Commission derived at by the criminal misrepresentations made by the Company and the failure of Staff to perform a proper investigation of the alleged facts presented to them by the Company and its lawyer.

Before this order became a legal instrument Staff allegedly collected data for water hauling costs collected from the Company (its only source of information doctored as it was) and prescribed a rate as required by law, ARS 40-321(b). They allegedly looked at well data contained in Annual Reports (falsified by the Company) and compiled data for well production capabilities, water storage facilities and storage (based on the falsified facts presented) and using these alleged factors determined that there was not adequate water to supply the community of Mesa del Caballo. Yet in Docket 12-0008 it was clearly shown and proven by the Companies

own Well Production Report for the period May 1, 2011 to September 30, 2011 that the Company wells and WSA wells produced 824,200 gallons more than what was sold.

Question, why did the Company have to haul in excess of 709,000 gallons of water during this 5 month period?

- 1) Is it because they could and the scheme was to make extra profits for the Company?
- 2) Did the system have a leak consisting of 164,840 gallons per month (5,494 gallons per day) which is in excess of 10% and would have been obvious somewhere in the community and which Mr. Hardcastle claimed he was entitled to a 10% leak in the system?
- 3) If there was a leak (as indeed there is) why did not the Company fix it?
- 4) By such negligence and irresponsibility would not the Company be a "water waster" and a participant in a huge Consumer Fraud upon the Customers?
- 5) Look at PWC's "Water Consumption Loss Reports" Submitted September 16, 2014 for the months of January through August 2014 according to that report:
 - a) January 2014 a total of 194,360 gallons was lost;
 - b) February 2014 actual read offset February read by a -3.5%;
 - c) March 2014 a total of 66,230 gallons was lost;
 - d) April 2014 a total of 42,360 gallons was lost;
 - e) May 2014 a total of 36,260 gallons was lost;
 - f) June 2014 a total of 171,183 gallons was lost;
 - g) July 2014 a total of 114,324 gallons was lost;
 - h) August 2014 a total of 194,340 gallons was lost.

All these losses of water were DUE TO LEAKS IN THE SYSTEM (at an average of 117,008 gallons per month or 3,900 gallons per day) that the regulated Company refused to fix until recently under new ownership.

The regulated Company knew of these leaks since prior to 2011 and under the "Hardcastle Regime" instead of investing in maintenance and repair he choose to blame these losses due to leaks on the Customers who he alleged were wasting water.

The regulated Company falsely alleged that Customers were wasting water and petitioned to amend a water conservation policy to increase fines based on a prior order of the Commission Decision 67821 and at the same time increased profits for the Company by fraudulent means.

The regulated Company PWC both under the management of BUI/Hardcastle and now Williamson should be made to refund with interest all costs to customers for all of the hauling and water costs for the years

2011 through 2013 and any other costs for water submitted to the Customer(s) of the MDC System due to leaks not repaired until 20114.

Decision 67821 also gave the regulated Company additional revenue to cover the cost to haul water and pay for water. The revenue earmarked was fines collected from the Companies 9 different service areas. These fines were to be placed into an "Interest Trust Bearing Account" to offset the cost to haul water and pay for water. No accounting of those funds or how they were spent has ever been produced by the regulated Company.

Decision 71902 was based on an Emergency Application that Company could no longer absorb the cost to purchase and haul water into the MDC Community. Therefore the Customers were ordered to pay for the purchase of water and hauling. When Customers started to complain about water hauling charges to the regulated Company and to the Staff of the ACC, they were told these charges were correct and Company had done nothing wrong, and outside of that Customer had no evidence to prove -- otherwise until Gehring and the Jones' filed their complaint in Docket 12-0008.

The message to the community was pay until you can provide evidence that hauling charges are in error.

Staff in support of the Company has acted as counsel for the Company and its sub-contractor Pearson and provided a legal defense for them. Legal Staff of the Arizona Corporation Commission has made it clear Staff has nothing to do with these Complaints. What the Customers are facing is 2 powerful allies acting as law enforcement agents in collaboration with each other to collect revenue and taxes.

Robin Mitchell assigned as Legal Staff of the Arizona Corporation Commission stated on the record to Judge Nodes she did not know if Staff had done any accounting such as they do in a rate hike in 12- 0008 but she would check. She never reported back to the Judge. In fact Staff had completed a record on the Docket for the Emergency Application.

When Staff calculated the hauling charges there is no evidence they informed themselves on the rate the Company could charge its Customer. They simply rubber stamped the invoices. The Staff even though it was asked refused to give any evidence to Customer. They then in turn forced Complainant's in Docket No 12-0008 and 12-0007 into costly and time consuming effort of litigation to acquire evidence for facts and truth. The Staff has participated only to defend the witness the Company and have participated to hide fact and truth from the Customers.

Fast forward in 2013 Payson Water Co under New Ownership in another Emergency Rate Hike to obtain financing for a WFIA loan to end the costly water hauling which came before the Commission, with Judge Nodes and Utilities Staff heard Sworn Testimony & Oath offered by Paul Walker " Customer of the Mesa Del Caballo would no longer have to pay \$150.00 for 6,000 gallons of water".

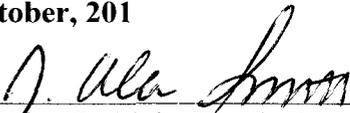
If this is indeed fact and truth for what the Customers of the MDC system paid for 3 years then this Complainant requests that Staff of the ACC and the Commission disclose all hauling logs and invoice

documentation from 2011 thru 2013 for water hauled to the MDC and EVP Systems showing the Customers this is what they paid.

When the Company wants additional revenue from the Customer Staff and Company agree that is what Customers must pay. When Customers use Staff records as documented evidence and Company documented evidence on the rates it has to pay, suddenly those records and documents are not to be relied upon as fact and truth, or they do not have them or they refuse to disclose them. As mentioned above now the facts have changed and they use this argument before the Commission to gain additional revenue and increase the cost to the Customer.

WHEREFORE, the Complainant requests that the witness Pearson be required to personally appear at the procedural conference in Phoenix and not telephonically and to have with him or preferably present to the Complainant and the Commission all of the original documentation requested in the Subpoena without any further excuse or misrepresentation of material fact or that he be held in contempt of the Commission and fined and be immediately subject to sanctions by the Commission.

Respectfully submitted this 25th day of October, 201



J. Alan Smith in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Response, has been mailed this 25th day October, 2014 to the following:

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

Copies of the foregoing, Response has been mailed this 25th day October, 2014 to the following:

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By: J. Alan Smith