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BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

Arizona Corporation Commission

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AZ CORP COMMISSION

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2014 OCT 27 PM 2 56

6
7 J. ALAN SMITH,

DOCKETED BY 

DOCKET NO. W-03514A-12-0007

8 COMPLAINANT,

9 VS.

ORIGINAL

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

12 RESPONDENT.

PROCEDURAL ORDER

13 **BY THE COMMISSION:**

14 On January 10, 2012, J. Alan Smith ("Complainant") filed with the Arizona Corporation
15 Commission ("Commission") a Formal Complaint against Payson Water Co., Inc. ("Payson Water"
16 or "Company") and Brooke Utilities, Inc.

17 On September 2, 2014, the Commission's Utilities Division ("Staff") filed a Request for
18 Procedural Conference. Staff requested that a Procedural Order be issued scheduling a date and time
19 for Jim Pearson to appear and be questioned telephonically regarding documents listed in a prior
20 subpoena.

21 On September 19, 2014, the Complainant filed a Response to Staff's Request for Procedural
22 Conference. The Complainant argued that a telephonic appearance by Mr. Pearson would not allow
23 the Complainant to show Mr. Pearson physical evidence to review, and would not satisfy the
24 requirements of the subpoena for Mr. Pearson to attend in person and produce certain documentation.

25 On October 8, 2014, Staff filed a Response to Complainant's Response. Staff stated that the
26 Commission has permitted telephonic witness appearances in numerous proceedings, and because
27 Mr. Pearson is a non-party witness, flexibility should be allowed to accommodate Mr. Pearson's
28 employment as a truck driver. Staff also claims that Mr. Pearson has indicated he does not have any

1 documents that are responsive to the subpoena.

2 On October 27, 2014, the Complainant filed an Objection to Staff's Response to
3 Complainant's Response to Staff's Request for Procedural Conference. The Complainant states,
4 among other things, that: Mr. Pearson should be required to appear in person for questioning, and
5 Mr. Pearson should bring with him all original documentation requested in the subpoena or be held in
6 contempt of a Commission Order.

7 IT IS THEREFORE ORDERED that a **procedural conference shall be scheduled for**
8 **November 17, 2014, at 10:00 a.m., at the offices of the Commission, 1200 West Washington**
9 **Street, Phoenix, Arizona 85007, Hearing Room No. 1, for the purpose of taking telephonic**
10 **testimony from Jim Pearson under oath regarding water hauling to the Mesa del Caballo**
11 **system. Mr. Pearson shall call 1-800-689-9374 at the designated time and enter passcode**
12 **415962# to be connected.**

13 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
14 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
15 *hac vice*.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
17 Communications) applies to this proceeding and shall remain in effect until the Commission's
18 Decision in this matter is final and non-appealable.

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
20 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
21 hearing.

22 DATED this 27th day of October, 2014.

23
24 

25 _____
26 Dwight D. Nodes
27 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
2 this 5th day of October, 2014 to:

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

7 J. Alan Smith
8 600 S. Oak St., Space 4
9 Payson, AZ 85541

9 Jay L. Shapiro
10 FENNEMORE CRAIG, P.C.
11 2394 East Camelback Rd., Suite 600
12 Phoenix, AZ 85016
13 Attorneys for Payson Water Company

12 Janice Alward, Chief Counsel
13 Legal Division
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15 1200 West Washington Street
16 Phoenix, AZ 85007

15 Steve Olea, Director
16 Utilities Division
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19 Phoenix, AZ 85007

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20 Videoconferencing
21 1802 North 7th Street
22 Phoenix, AZ 85006

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22 By: 
23 Tammy Velarde
24 Assistant to Dwight D. Nodes
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