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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MAY 13 2016

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

DOCKETED BY [Signature]

J. STEPHEN GEHRING, BOBBY JONES, AND
LOIS JONES,

DOCKET NO. W-03514A-12-0008

DECISION NO. 75555

COMPLAINANTS,

VS.

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

RESPONDENT.

OPINION AND ORDER

DATE OF HEARING: June 26 and 27, 2012
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes¹
APPEARANCES: Mr. J. Stephen Gehring, Pro Se;
Mr. Bobby Jones, Pro Se;
Ms. Lois Jones, Pro Se;
Mr. Robert T. Hardcastle, President, on behalf of
Brooke Utilities, Inc.; and
Ms. Robin Mitchell, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

This case concerns a Formal Complaint (“Complaint”) filed against Payson Water Co., Inc. (“Payson”) and Brooke Utilities, Inc. (“Brooke”) by J. Stephen Gehring and Bobby and Lois Jones (collectively “Complainants”), concerning water utility service provided by Payson in its Mesa del

¹ Chief Administrative Law Judge Dwight D. Nodes presided over all proceedings in this matter. The Recommended Opinion and Order was written by Administrative Law Judge Sarah N. Harpring.

1 Caballo System (“MDC”).² The Complainants’ allegations primarily relate to the implementation of
 2 a Water Augmentation Surcharge (“WAS”) tariff and a revised Curtailment Plan Tariff (“Curtailment
 3 Tariff”) authorized in Decision No. 71902 (September 28, 2010).³

4 DISCUSSION

5 I. BACKGROUND

6 Payson

7 Payson is an Arizona public service corporation engaged in providing water utility services to
 8 approximately 1,114 service connections through eight independent water systems in Gila County.
 9 (Decision No. 74175 (October 25, 2013) at 4-5.⁴) The eight systems are Geronimo Estates, Deer
 10 Creek, Meads Ranch, Whispering Pines, Flowing Springs, Gisela, East Verde Park, and MDC.
 11 (Decision No. 74567 (June 20, 2014) at 15.⁵) From 1996 through May 31, 2013, Payson was wholly
 12 owned by Brooke, which also owned other water utilities.⁶ (*Id.* at 14-15.) Robert Hardcastle served
 13 as President for both Payson and Brooke. (*Id.*) Since June 1, 2013, Payson has been owned by JW
 14 Water Holdings, LLC (“JW”), a Colorado LLC managed by Jason Williamson. (*Id.*) According to
 15 Mr. Williamson, Brooke and Mr. Hardcastle have no interest in and are no longer affiliated in any
 16 way with Payson. (*Id.* at 14.)

17 Mr. Gehring

18 Mr. Gehring operates the Houston Mesa General Store (“Store”), a small family-established
 19 business, the ownership of which was held in trust as of the hearing in this matter. (Tr. at 299-300.)
 20 The Store is located in Payson’s MDC service area and is a customer of Payson for water utility
 21 services. (*Id.*) The Store is not organized as a separate legal entity, but instead is operated as Mr.
 22 Gehring’s personal business (i.e., Steve Gehring dba Houston Mesa General Store). (*See* Tr. at 299-
 23 301.) At the time of the hearing in this matter, Mr. Gehring was involved in a group interested in
 24

25 ² Official notice is taken of the Complaint, filed in this matter on January 11, 2012, which was not offered as an exhibit
 at hearing.

26 ³ Official notice is taken of this Decision.

27 ⁴ Official notice is taken of this Decision.

28 ⁵ Official notice is taken of this Decision.

⁶ In Decision No. 60972 (June 19, 1998), seven Brooke subsidiaries were granted authority to transfer their assets and
 corresponding water utility CC&Ns to seven (mostly new) water companies, including Payson, for purposes of having the
 water company operations organized geographically. Official notice is taken of this Decision.

1 forming a "Mesa del Caballo Domestic Water Improvement District" to buy out Payson and take over
2 the provision of water utility services for MDC. (*See* Tr. at 305-08.)

3 Mr. Gehring worked as a paralegal from approximately 1988 until approximately 1999. (Tr.
4 at 294-95.) He holds an associate's degree in art and engineering, with a minor in math and physics,
5 from Northern Arizona University. (Tr. at 296-97.) He has not owned or operated a water utility and
6 does not have a water operator's certificate. (Tr. at 301.) He has, however, worked for a drilling
7 company. (Tr. at 303, 304.)

8 **Mr. and Mrs. Jones**

9 At the time of the hearing, Mr. and Mrs. Jones had lived in the MDC service area and had
10 been customers of Payson for a little more than three years. (Ex. C-12.) Mrs. Jones is the customer
11 according to the water service bills. (*See* Complaint at ex. A at 7-12.) Mr. and Mrs. Jones report
12 that, due to the location of their home at the main entrance to MDC, they are able to observe much of
13 the traffic coming into and leaving MDC. (Ex. C-12.) Mr. and Mrs. Jones also reported that a
14 member of the Commission's Utilities Division ("Staff") requested they combine their complaint
15 with Mr. Gehring's complaint because the two complaints were so similar. (*Id.*)

16 **Related Cases**

17 In Decision No. 67821, issued on May 5, 2005, in Docket No. W-03514A-04-0906
18 ("Curtailed Docket"),⁷ the Commission considered Payson's request for authority to implement a
19 Curtailment Tariff that was modeled after a tariff that had been approved for Pine Water Company,
20 Inc., another Brooke subsidiary. The Curtailment Tariff applied to all nine of Payson's systems. The
21 Curtailment Tariff included a provision for a "reconnection fee for violation" in the amount of
22 \$150.00 or more, depending on curtailment Stage and whether a first or subsequent offense. The
23 Curtailment Tariff was approved, with some amendments recommended by Staff. Additionally,
24 Payson was required to comply with the following recommendations:

25 14. Staff further recommends:

- 26 a. That the monies collected under this tariff shall be
27 deposited into a separate interest bearing trust account and
used solely for the purposes of paying for importing of

28 ⁷ Official notice is taken of this Decision.

1 water to the Company (such as hauling water or connecting
2 to and buying water from another water system).

3 b. That the Company submit a report to the Utilities Division
4 Compliance Section, beginning October 15, 2005, and on
5 May 15 and October 15 of each year thereafter, that
6 includes a running account of (up to the last day of the
7 previous month) the following information; [sic]

- 8 1) The name of each customer that has paid the
9 fine,
- 10 2) The amount of the fine paid by each
11 customer,
- 12 3) The amount of money used from the account
13 to pay for importing water, and
- 14 4) The balance in the account.⁸

15 This reporting requirement was also referenced in the Curtailment Tariff itself. (See Decision No.
16 67821 at ex. A at 6.)

17 In Decision No. 71902, issued in Docket Nos. W-03514A-10-0116 *et al.* ("WAS Docket"),
18 the Commission considered Payson's requests for authority to implement a WAS/emergency rate
19 tariff and a revised Curtailment Tariff for MDC. Payson based its requests on water shortages in
20 MDC and the costs associated with hauling water to augment supply,⁹ as Payson asserted that it had
21 incurred a cost of \$59,137 to haul water to MDC during the summer of 2009. Payson indicated that it
22 could not continue to absorb the cost of water hauling for MDC. The Commission found that Payson
23 had inadequate storage capacity and that the water production from its nine wells was poor,
24 fluctuating between 19 and 59 gallons per minute ("gpm"), which was insufficient to serve MDC
25 customers during the peak summer months, even when the wells were producing at maximum
26 capacity. The Commission concluded that Payson was facing an "emergency" and authorized Payson
27 to recover its water hauling expenses by means of a WAS based on the prior month's cost of hauling
28 water and on each customer's water usage for the month,¹⁰ with the following conditions: (1) the
29 WAS tariff could not be applied retroactively; (2) the WAS tariff would be interim, subject to refund,
30 and effective only until permanent rate relief was granted by the Commission; (3) the WAS tariff

⁸ Decision No. 67821 at 3.

⁹ Payson was exploring alternative solutions to the MDC water shortage, including drilling a new deep well for MDC or connecting MDC to a future C.C. Cragin Reservoir ("Cragin") water pipeline that would be serving the Town of Payson's water system in the future.

¹⁰ The Decision found that Staff was unable to determine the financial impact of the WAS because each month's WAS would be based on actual customer water usage and the amount of water hauled.

1 would be effective only from May 1 through September 30 of any calendar year; (4) the WAS tariff
2 would be effective only for MDC; and (5) the WAS tariff would solely cover documented expenses
3 for hauling water to MDC. In addition, the Decision required Payson to file a revised rate schedule
4 reflecting the WAS tariff within 30 days after the Decision; to mail its customers notice of the WAS
5 tariff and its effective date, in a form approved by Staff, at least 15 days before implementation; to
6 file a full rate case within 12 months after the effective date of the Decision; to file a financing
7 application concurrently with the rate application if Payson believed debt would be needed to solve
8 MDC's water shortage problem; and to post a bond in the form of a \$100 cashier's check. Payson
9 was also authorized to implement a revised Curtailment Tariff for MDC, which was included as
10 Exhibit A to the Decision. The WAS tariff was not attached to the Decision.¹¹ The revised
11 Curtailment Tariff was, and it included the reporting requirement that originated with Decision No.
12 67821. (*See* Decision No. 71902 at ex. A at 7.)

13 In Decision No. 72679 (November 17, 2011),¹² issued in the WAS Docket, the Commission
14 extended Payson's deadline for filing a permanent rate application to March 30, 2012.

15 On January 10, 2012, in Docket No. W-03514A-12-0007 ("Smith Docket"), J. Alan Smith, a
16 resident in the MDC service area, filed a Complaint against Payson/Brooke, including a number of
17 allegations concerning implementation of Payson's Curtailment Tariff and the WAS tariff.

18 On November 1, 2012, Payson filed a second request for an extension of time, until May 1,
19 2013. In Decision No. 73774 (March 21, 2013),¹³ issued in the WAS Docket, the Commission
20 denied this request and ordered Payson to file its permanent rate application within 30 days.

21 On April 22, 2013, Payson filed a permanent rate application in Docket No. W-03514A-13-
22 0111 ("Rates Docket").

23 On May 27, 2013, Payson filed, in Docket No. W-03514A-13-0142 ("Financing Docket"), an
24 application requesting permission to incur debt and to encumber real property and utility plant as
25 security for the debt, which was proposed to be a loan from the Water Infrastructure and Finance
26 Authority of Arizona ("WIFA"), in an amount not to exceed \$1,238,000, for the purpose of funding

27 ¹¹ There is no Exhibit B to Decision No. 71902.

28 ¹² Official notice is taken of this Decision.

¹³ Official notice is taken of this Decision.

1 an interconnection between MDC and the Cragin pipeline.

2 Effective June 1, 2013, JW acquired Payson and several other utilities owned by Brooke.¹⁴

3 On August 26, 2013, the Rates Docket and Financing Docket were consolidated
4 (“Consolidated Dockets”). In September 2013, a bifurcated procedural schedule was adopted to
5 allow for expedited consideration of a portion of the requested WIFA financing authority—\$275,000
6 that would be used to fund the first phase of the interconnection, which was to run from the Town
7 water distribution system to MDC.

8 On October 25, 2013, in the Consolidated Dockets, the Commission issued Decision No.
9 74175,¹⁵ authorizing Payson to borrow up to \$275,000 from WIFA for the purpose of financing the
10 construction of a new water transmission line to connect MDC to the Town’s water system;
11 authorizing Payson to implement a WIFA loan surcharge mechanism for MDC; requiring Payson,
12 within 15 days of closing on the approved WIFA loan, to file an application for elimination of the
13 WAS tariff; and requiring Payson to provide its customers notice of the changes.

14 On May 22, 2014, in the Consolidated Dockets, in response to a Staff proposal, the
15 Commission issued Decision No. 74484,¹⁶ granting Payson’s request to cancel the WAS tariff for
16 MDC and authorizing Payson to implement an interim emergency purchased water adjustment
17 mechanism (“PWAM”) designed to allow Payson to pass through to customers the costs of water
18 obtained through the newly completed first phase of the Cragin pipeline.¹⁷

19 On June 20, 2014, in the Consolidated Dockets, the Commission issued Decision No. 74567,
20 approving permanent rates and charges for Payson and, *inter alia*, making permanent the debt
21 surcharge and PWAM previously approved for MDC in Decision No. 74484.

22 On November 17, 2014, in the Smith Docket, a procedural conference was held, with Mr.
23

24 ¹⁴ Mr. Williamson has testified that neither Brooke nor Mr. Hardcastle have any interest in Payson, that Mr. Williamson
25 does not have an ongoing business or personal relationship with Mr. Hardcastle, and that Mr. Hardcastle is no longer
26 affiliated with Payson in any capacity. (Decision No. 74567 (June 20, 2014) at 14.) Official notice is taken of this
27 Decision.

28 ¹⁵ Official notice is taken of this Decision.

¹⁶ Official notice is taken of this Decision.

¹⁷ The Commission concluded that without a Commission-authorized PWAM, Payson would not be able to recover the
costs of water purchased from the Town and transported to MDC through the new pipeline because Payson had
previously been authorized to pass through only the water augmentation costs associated with hauling purchased water to
MDC.

1 Smith appearing pro se, Payson appearing telephonically through Mr. Williamson, and Staff
 2 appearing through counsel. Mr. Pearson attended telephonically and provided sworn testimony under
 3 examination from the Administrative Law Judge and Mr. Smith.¹⁸

4 On January 15 and 30, 2015, after eight procedural conferences and numerous filings, many
 5 related to persistent discovery disputes, an evidentiary hearing was held in the Smith Docket. At the
 6 evidentiary hearing, Mr. Smith appeared pro se, Payson appeared through Mr. Williamson, and Staff
 7 appeared through counsel. Mr. Smith presented documentary evidence and called as witnesses
 8 LaRon Garrett, Assistant Town Manager and Public Works Director for the Town of Payson; Mr.
 9 Williamson; Mr. Gehring; and himself. Staff presented documentary evidence and called as its
 10 witness Darron Carlson, Public Utilities Analyst Manager in Staff's Financial and Regulatory
 11 Analysis Section. Payson did not present documentary evidence or call any witnesses. The
 12 evidentiary record in the Smith Docket includes extensive documentation and testimony related to the
 13 Complaint in this matter. To ensure that the Commission uses the most thorough and robust
 14 evidentiary record possible in its consideration of the Complaint in this matter, we hereby take
 15 official notice of the entire evidentiary record in the Smith Docket.¹⁹ We note that the entire
 16 evidentiary record from this matter was also officially noticed in the Smith Docket.

17 At the Open Meeting of January 12, 2016, the Commission considered a Recommended
 18 Opinion and Order issued in the Smith Docket on November 23, 2015, along with Mr. Smith's
 19 Exceptions thereto filed on January 4, 2016. Payson and Staff appeared through counsel, but Mr.
 20 Smith did not appear. The Commission voted to approve the Recommended Opinion and Order.

21 On January 19, 2016, Decision No. 75413²⁰ was issued in the Smith Docket, finding that
 22 Payson had disconnected water service to Mr. Smith's home without providing valid prior
 23 notification, that Payson had overcharged the account for Mr. Smith's home through Payson error in
 24 reading the meter, and that Payson had charged MDC the hauling charges (specifically the travel
 25 time) for water hauled to EVP. The Decision dismissed with prejudice the remaining allegations of
 26 Mr. Smith's Complaint and ordered Payson to credit the account for Mr. Smith's home for interest on

27 ¹⁸ Mr. Pearson's sworn testimony of November 17, 2014, is part of the evidentiary record in the Smith Docket.

28 ¹⁹ Evidence from the Smith Docket will be cited as "Smith Ex. X" and "Smith Tr."

²⁰ Official notice is taken of this decision.

1 a \$200 reconnection charge from the date paid to the date credited and for the uncredited overcharge
2 amount from the date of payment to December 1, 2015. The Decision further required Payson to file
3 an amended Curtailment Tariff clarifying specific items and requiring compliance with A.A.C. R14-
4 2-410(F) when an account involves a landlord-tenant arrangement. The Decision also required both
5 Payson and Staff to make filings regarding the payment methods available to Payson's customers.
6 Finally, the Decision required Payson to credit MDC customer accounts for the cumulative amount of
7 the travel charge overages with interest, using a specified methodology based upon average total
8 MDC usage and each MDC customer's average billed account usage in the billings for July through
9 September 2011.

10 On February 19, 2016, Mr. Smith filed an Application for Rehearing, which was denied by
11 operation of law on March 10, 2016.

12 On March 18, 2016, Payson filed a Notice of Compliance including a Report on Payment
13 Methods.

14 **II. PROCEDURAL HISTORY**

15 On January 11, 2012, Complainants filed a Complaint against Payson and Brooke
16 (collectively "Payson/Brooke"), alleging, *inter alia*, that, during the period from May 1, 2011,
17 through October 30, 2011, Payson/Brooke had acted both negligently and fraudulently in its billing of
18 MDC customers under the WAS tariff approved in Decision No. 71902. Complainants alleged that
19 Payson/Brooke's actions violated specific Commission statutes and rules as well as Decision No.
20 71902 and requested multiple forms of relief.

21 On January 12, 2012, the Commission's Docket Control Center sent a copy of the Formal
22 Complaint to Payson, by Certified Mail.

23 On January 30, 2012, Payson filed an Answer to the Complaint, including a Motion to
24 Dismiss. Payson included a copy of an emailed response to Mr. Gehring's earlier informal complaint
25 regarding the WAS, which had been submitted to the Commission on August 29, 2011.

26 On February 13, 2012, Complainants filed a Reply to Payson's Answer and Motion to
27 Dismiss, asserting that Payson's failure or refusal to answer the Complaint constituted an admission
28 of the allegations in the Complaint and, further, that Payson had failed to support its Motion to

1 Dismiss.

2 On February 23, 2012, a Procedural Order was issued scheduling a procedural conference for
3 March 9, 2012.

4 On March 9, 2012, the procedural conference was held as scheduled, with each of the
5 Complainants appearing pro se; Payson appearing through Mr. Hardcastle;²¹ and Staff appearing
6 through counsel. At the conclusion of the procedural conference, the Complainants, Payson, and
7 Staff were directed to make a filing providing mutually acceptable dates for the filing of testimony
8 and an evidentiary hearing.

9 On March 12, 2012, Staff filed a Joint Proposed Procedural Schedule including proposed
10 deadlines for direct and responsive testimony and a proposed June 26, 2012, date for the hearing to
11 commence.

12 On March 19, 2012, a Procedural Order was issued scheduling a hearing to commence on
13 June 26, 2012; establishing the proposed testimony filing dates; and establishing other procedural
14 requirements and deadlines.²²

15 On March 21, 2012, Payson separately filed (1) a Motion to Delete Brooke Utilities, Inc. as a
16 Party to the Complaint; (2) a Motion to Strike Complainant's Referral to Evidentiary Party; and (3) a
17 Unanimous Written Consent in Lieu of Meeting of the Board of Directors of Payson Water
18 Company, authorizing Mr. Hardcastle to represent Payson in this matter.

19 On March 21, 2012, Complainants filed (1) a Notice of Service of Process and Affidavit of
20 Attempted Service of Process and (2) a Notice of Service of Process and Affidavit of Service of
21 Process. The documents related to Administrative Subpoenas Duces Tecum issued to Martin's
22 Trucking Service and to Mr. Hardcastle for Payson/Brooke.

23 On March 22, 2012, Payson filed a Motion to Compel Identification of Author of Data Source
24 Included as Evidentiary Exhibit.

25 On March 28, 2012, Complainants filed (1) a Response and Objection to Respondents Motion
26

27 ²¹ Mr. Hardcastle requested to have Brooke stricken as a Respondent in this matter due to its status as a separate
corporation and a nonregulated entity. The request was taken under advisement.

28 ²² The Procedural Order provided that any motion filed in this matter and not ruled upon by the Commission within 20
calendar days of the filing date of the motion shall be deemed denied.

1 to Strike Complainant's Referral to Evidentiary Party; Motion to Deny and (2) a Response and
2 Objection to Respondents Motion to "Delete" Brooke Utilities, Inc. as a Party to the Complaint and
3 Motion to Deny the Deletion of Brooke Utilities Inc. from the Complaint.

4 On March 30, 2012, Payson filed (1) a Motion to Modify Subpoena and (2) a Motion to Strike
5 Non-Affiliated Parties.

6 On April 2, 2012, Complainants filed a Response to Respondents Motion to Compel
7 Identification of Author of Data Source Included as Evidentiary Exhibit.

8 On April 2, 2012, Payson filed (1) a Reply to Complainant's Response to Payson Water Co.'s
9 Motion to Strike Non-Evidentiary Party and Motion to Deny and (2) a Reply to Complainant's
10 Response to Payson Water Co.'s Motion to Delete Brooke Utilities, Inc. as a Party to the Complaint.

11 On April 4, 2012, Complainants filed (1) a Response and Objection to Respondents Motion to
12 Modify Subpoena; Motion to Deny and Compel Compliance with the Subpoena by Order and (2) a
13 Response and Objection to Respondents Motion to Strike Non-Affiliated Parties; Motion to Deny.

14 On April 9, 2012, Payson filed a Reply to Complainant's Response to Payson Water Co.'s
15 Motion to Strike Non-Affiliated Parties and Motion to Deny.

16 On April 9, 2012, Complainants filed (1) a Motion to Compel Martin Zabala of Martin's
17 Trucking Service to Comply with Subpoena Duces Tecum; (2) an Objection to Respondents Reply to
18 Complainants' Response to Respondents' Motion to Strike Non-Evidentiary Party and Motion to
19 Deny; and (3) a Response and Objection to Respondents Motion to Modify Subpoena; Motion to
20 Deny and Compel Compliance with the Subpoena by Order.

21 On April 11, 2012, Complainants filed (1) a Response and Objection to Respondents Motion
22 to "Delete" Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny the Deletion of
23 Brooke Utilities Inc. from the Complaint and (2) an Objection to Respondents Reply to
24 Complainants' Response and Objection to Respondents Motion to Strike Non-Affiliated Parties;
25 Motion to Deny.

26 On April 12, 2012, Payson filed a Reply to Complainant's Second Response and Objection to
27 Respondents Motion to Modify Subpoena.

28 On April 13, 2012, Payson filed a Motion to Compel Complainants to Comply with

1 Discovery Request for First Set of Data Requests.

2 On April 16, 2012, Payson filed a Notice of Payson Water Co.'s Treatment of Brooke
3 Utilities, Inc. as a Non-Party to the Complaint.

4 On April 17, 2012, Complainants filed an Objection to Respondents Reply to Complainants'
5 "Supplement" (Second Response) and Objection to Respondent's Motion to Modify Subpoena.

6 On April 18, 2012, Payson filed a Motion to Compel Complainants to Comply with
7 Discovery Request for Second Set of Data Requests.

8 On April 19, 2012, Complainants filed (1) an Objection to Respondents Notice of PWC's
9 Treatment of Brooke Utilities, Inc. as a Non-Party to the Complaint and (2) a Notice of
10 Complainants' Compliance with Respondents' 1st and 2nd Data Requests.

11 On April 19, 2012, Payson filed a Supplemental Motion to Compel Complainant's Response
12 to the First and Second Set of Data Requests.

13 On April 20, 2012, Complainants filed a Notice of Service of Process and Record of
14 Attempted Service of Process. The documents related to an administrative subpoena duces tecum
15 issued to Pearson Transport/Pearson Water ("Pearson").

16 On April 20, 2012, Staff filed a Notice of Filing regarding the status of a subpoena issued to
17 Martin's Trucking Service.

18 On April 24, 2012, Complainants filed (1) a Motion to Compel Respondent's Compliance
19 with Subpoena, (2) an Objection to Respondent's Supplemental Motion to Compel Complainant's
20 Response to the 1st and 2nd Set of Data Requests, (3) a Notice of Complainants' Acknowledgement of
21 the Commission's Denial of Respondents' Motion to Modify Subpoena, and (4) a Notice of
22 Complainants' Acknowledgement of the Commission's Denial of Respondents' Motion to Strike
23 Referral to Evidentiary Party.

24 On May 9, 2012, Payson filed a Motion to Compel Complainants to Comply with Discovery
25 Request for Fourth Set of Data Requests.

26 On May 14, 2012, Complainants filed (1) a Response to Respondents' Motion to Compel
27 Complainants to Comply with Discovery Request for 4th Set of Data Requests and (2) a Request for
28 Procedural Hearing [on] Discovery and Disclosure Issues and Compliance with Subpoena.

1 On May 15, 2012, Mr. and Mrs. Jones filed a Notice of Complainants Bobby Jones and Lois
2 Jones Filing Their "Direct Testimony" per Procedural Order of March 19, 2012.

3 On May 15, 2012, Mr. Gehring filed a Notice of Complainant Gehring Filing his "Direct
4 Testimony" per Procedural Order of March 19, 2012.

5 On May 31, 2012, Payson filed an Objection to Complainant's First Set of Data Requests.

6 On June 6, 2012, Complainants filed a Motion to Compel Respondents to Comply with
7 Discovery Request for 1st Set of Data Requests. In the Motion, Complainants requested, *inter alia*,
8 that the hearing scheduled for June 26, 2012, be used to resolve discovery issues and that the
9 discovery schedule be extended for an additional 60 to 90 days.

10 On June 11, 2012, Complainants filed a Notice of Complainants' Initial Discovery and
11 Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et Seq.

12 On June 12, 2012, Complainants filed a Motion to Continuance [sic] Discovery Beyond the
13 Discussed and Unconfirmed Conclusion Date and for a Continuance of the Date Scheduled for
14 Hearing on the Complaint. Complainants requested, *inter alia*, that discovery and the evidentiary
15 hearing be continued for 60 to 90 days and that a procedural hearing on discovery and disclosure be
16 held.

17 On June 14, 2012, Staff filed a Notice of Filing Staff's Response.

18 On June 14, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
19 Disclosure No. 1 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

20 On June 14, 2012, Payson filed the Rejoinder Testimony of Payson Water Co., Inc.

21 On June 15, 2012, Payson filed Respondent's Objection to Complainant's Motion to Continue
22 Discovery and Previously Scheduled Hearing.

23 On June 18, 2012, a Procedural Order was issued denying Complainants' request for
24 continuance of the discovery deadline and hearing date.

25 On June 18, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
26 Disclosure No. 2 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

27 On June 21, 2012, Complainants filed (1) a Response to Respondents' Objection to
28 Complainants' Motion to Continue Discovery and Previously Scheduled Hearing and (2) Notice of

1 Complainants' Supplemental Discovery and Disclosure No. 3 ARCP Rule 26.1 and AAC Rule R14-
2 3-109 et. Seq.

3 On June 21, 2012, Payson filed Notice of Initial Disclosure.

4 On June 22, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
5 Disclosure No. 4 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

6 On June 26 and 27, 2012, a full evidentiary hearing was held before a duly authorized
7 Administrative Law Judge of the Commission, with each Complainant appearing pro se, Payson
8 appearing through Mr. Hardcastle, and Staff appearing through counsel. Complainants presented
9 documentary evidence and the testimony of Mr. Hardcastle; David Allred; Mary Edna Hansen;
10 Evelyn Plante; Mr. Smith; Richard Madison Burt; and Mr. Gehring. Payson presented documentary
11 evidence and the testimony of Mr. Allred; Randy Norman; and Mr. Hardcastle. Staff presented
12 documentary evidence and the testimony of Jeffrey M. Michlik. At the conclusion of the hearing, it
13 was announced that the record was considered closed pending issuance of a recommendation to the
14 Commission.

15 On July 13, 2012, Complainants filed a Notice and Motion to Submit Newly Discovered
16 Evidence Post Hearing ARCP Rule 60 and AAC Rule R14-3-109 et. Seq.

17 On July 20, 2012, Payson filed an Objection to Complainant's Late Filed Evidentiary
18 Exhibits.

19 On July 24, 2012, Complainants filed a Reply to Respondent's Objection to Complainants'
20 "Late Filed Evidentiary Exhibits."

21 On July 24, 2012, Patricia A. Behm, a property and well owner and customer in the MDC
22 service area, filed a Motion to Intervene.

23 On September 13, 2012, Mary E. Hansen, a property and well owner and customer in the
24 MDC service area, filed a Motion to Intervene.

25 On November 23, 2015, a Recommended Opinion and Order was issued in this matter.

26 On December 3, 2015, Complainants filed a Motion for an Extension of Time to Respond and
27 File Exceptions to the Recommendations of the Administrative Law Judge to the Commissioners,
28 requesting an additional 30 to 60 days to file exceptions.

1 On December 4, 2015, a Procedural Order was issued extending the deadline for exceptions
2 from December 2, 2015, to January 4, 2016.

3 On January 4, 2016, Complainants filed a Motion for an Extension of Time to Respond and
4 File Exceptions to the Recommendations of the Administrative Law Judge to the Commissioners,
5 requesting an additional extension of 60 to 90 days to file exceptions.

6 On January 11, 2016, a Procedural Order was issued extending the deadline for exceptions
7 from January 4, 2016, to March 4, 2016.

8 On March 3, 2016, Complainants filed a Notice and Demand of Intent for the Record of
9 Exhaustion of Administrative Remedies and Exceptions to the Administrative Law Judge's
10 Recommendations to the Commission.

11 This matter was included as an item on the Regular Agenda portion of the Notice and Revised
12 Notice provided for the Open Meeting of April 12 and 13, 2016. At the Open Meeting on April 12,
13 2016, however, Chairman Little announced that the item was removed from consideration at the
14 request of a Complainant.

15 **III. THE COMPLAINT**

16 **Generally**

17 The Complaint makes the following major allegations, all concerning events that occurred
18 within the period from May 1 through October 30, 2011:²³

19 Counts A, B, and C: The WAS resulted in unauthorized corporate profits and consumer fraud upon
20 the customers/complainants of MDC because Payson failed to comply with Decision No. 71902 and
21 Arizona law; fraudulently billed MDC customers for the WAS; and used a spreadsheet for the July
22 2011 WAS calculations that was false, fraudulent, and a misrepresentation of material facts and
23 evidence.

24 Count D: Payson misapplied the revised Curtailment Tariff, failed to mail out its May 2011
25

26 ²³ The bases for the Complaint were labeled A through F and herein are referred to as Counts with subcounts. To
27 reduce the repetition that would otherwise result from the interrelatedness of Counts A, B, and C, they are grouped
28 together for discussion and resolution herein. Additionally, the allegations are described in regard to alleged actions by
Payson, although the Complainants made the allegations against Payson/Brooke, essentially characterizing the two as a
single entity. The Complainants did not provide sufficient evidence to justify piercing the corporate veil in this matter.
Furthermore, Brooke is no longer involved in Payson's operations.

1 statements and then shut off customer meters for alleged nonpayment, and unnecessarily harassed
2 customers for their daily usage.

3 Count E: Payson made misrepresentations to the Commission and other regulatory agencies in
4 falsified public records to revise the Curtailment Tariff and secure a WAS by creating an artificial
5 emergency situation.

6 Count F: Information publicly disclosed by Payson at the July 21 and August 4, 2011, public
7 meetings at the 1st Church of the Nazarene was misleading and false.

8 Through these actions, Complainants assert, Payson has or may have committed violations of
9 A.R.S. §§ 40-334(A) and (B), 44-1522, and 40-202(K); A.A.C. R14-2-209 et seq.; and Decision No.
10 71902.²⁴ (See Complaint at 11-12.)

11 Complainants also assert that they “cannot be held to the arbitrary and deceitful business
12 practices, predatory fees/rates, misrepresentations and abuses” of Payson and that the “Customers and
13 Complainants cannot be held accountable to any representations or agreements made by members of
14 the MDC WC (i.e. El Caballo Club Water Committee) for any of their illegal activities.” (*Id.* at 12.)

15 Mr. Gehring individually also asserted the following:

16 [Payson/Brooke] and Mr. Hardcastle view it's/his MDC Customers and
17 these Complainants as Exploitable Indentured, Human Resources for
18 unlimited Revenue Generation by any means possible for the benefit of his
19 and the Corporate Profit much like that British King back in 1776 who
viewed the Colonists similarly and incorrectly as dumb, stupid and
ignorant “subjects” required to pay homage and servitude to the King.

20 Further, Mr. Hardcastle believes these alleged subjects must bend to the
21 King's/Corporate Will and that they must accept what ever water crumbs
22 he/it provides and submit in indentured servitude for the profane and
obscene effort. Take heart, a revolution and period of accountability is a
foot that he/it must answer to and make amends to their Victims for.²⁵

23 ...

24 _____
25 ²⁴ Complainants also referred to other statutes and some Commission rules: A.R.S. § 40-334(A) and (B), which
26 generally prohibit public service corporations from discriminating against any person or unduly differentiating between
27 localities or classes of service; A.R.S. § 44-1522, which is a consumer protection statute generally prohibiting the use of
false or misleading information or practices in the sale or advertisement of merchandise; A.R.S. § 40-202(K), which is a
28 citation error understood to refer to A.R.S. § 40-202(L), generally requiring a public service corporation to comply with
Commission decisions, rules, and orders; and A.A.C. R14-2-209 et seq., which is a reference to part of the Commission's
rules for electric utilities and is understood to be a citation error, as the Commission's rules for water utilities are found at
A.A.C. R14-2-401 et seq. (See Complaint at 11-12.)

²⁵ Complaint at 13 (paragraph numbers omitted).

1 Relief Sought:

2 In their Complaint, the Complainants sought the following relief:

- 3 1. The ACC should suspend, place a Stay of Proceedings or issue an
4 Order of Injunction on the application of the orders prescribed in ACC
5 Decision 71902 (incl. Exhibits A & B) concerning the revision of the
6 Curtailment Plan, the previous Curtailment Plan and the Water
7 Augmentation Surcharge due to and because of the obvious abuses of
8 that plan and surcharge by PWC/BU and until a proper and thorough
9 criminal investigation and accounting can be conducted into these
10 matters by the ACC legal Department and the Attorney General's
11 Office. Further, the ACC should consider the revocation of PWC/BU
12 monopoly certificate (CC&N) to be the provider of water to the
13 community of Mesa del Caballo and turn management of the MDC
14 System over to a more qualified provider in the interim, such as the
15 Town of Payson Water Department;
- 16 2. The ACC must request of ADEQ to make a full evaluation of the
17 PWC/BU's entire Mesa del Caballo System and ALL wells connected
18 to that system. All of PWC/BU's Annual Reports 2006 through 2010
19 concerning well production, water sold, water purchased in Water
20 Sharing Agreements and Water Hauling be reviewed for accuracy and
21 legality to determine the availability and quantity of all water
22 resources within that system, what it will take to bring non-producing
23 wells back into production and if in fact there exists a Real Emergency
24 or if one was Artificially created by PWC/BU;
- 25 3. Clearly PWC/BU failed or refused to abide by ACC Decision No.
26 71902 and Exhibits A & B to make a unjust profit in spite of the
27 prohibition so stated in the Decision. Therefore, PWC/BU must, make
28 corrections to and adjust all Customers and Complainant's Statements
for the period July 2011 through October 2011 and refund charges in
excess to all Customers and Complainants for the Water Augmentation
Surcharge and Taxes billed in excess. All money due to any Customer
or Complainant from the date of the July 2011 statement forward must
be paid back in full plus interest at the rate of 10% per month
compounded monthly 120% APR on any unpaid balance until full
payment has been retrieved by the Customers and Complainants and
any funds plus interest held in Trust to offset costs of hauling shall be
applied and a full accounting thereof be submitted for review;
4. The ACC should initiate a criminal investigation into all of the
criminal business activities of PWC/BU, its President, Statutory Agent
and Stock Holder, Robert T. Hardcastle and his officers, agent and
employees concerning those activities inclusive of the years 2009,
2010 and 2011 and if necessary all the way back to MDC System
acquisition and inclusive of all of the unwarranted harassment of
Customers and Complainants and all of the unreasonable
disconnections, rate increases and Curtailment Plans;
5. No Customer or Complainant must, suffer disconnection for failure to
pay May 2011 Statements due to PWC/BU negligence in trashing the
May 2011 Statements or for their refusal to pay the Water
Augmentation Surcharge and Taxes associated with it;
6. No reconnection fee should be charged to any Customer or
Complainant;

1 7. PWC/BU should be made to refund any Customer or Complainant for
 2 the inconvenience and injury caused to them by the Company's
 3 negligence in these matters. All money due to any Customer or
 4 Complainant from the date of any disconnection forward must be paid
 back in full plus 10% per month compounded monthly 120% APR on
 any unpaid balance until full payment has been received by the
 Customer or Complainant[.]²⁶

5 **Counts A, B, and C**

6 1. **The Allegations**

7 Complainants allege that the WAS resulted in unauthorized corporate profits and consumer
 8 fraud upon the Complainants and other customers of MDC because Payson failed to comply with
 9 Decision No. 71902 and Arizona law; fraudulently billed MDC customers for the WAS; and used a
 10 spreadsheet for the July 2011 WAS calculations that was false, fraudulent, and a misrepresentation of
 11 material facts and evidence.²⁷ Related to these Counts, Complainants make the following specific
 12 allegations:

13 a. Because Payson applied the WAS to all customer usage,²⁸ and Payson did not
 14 purchase and haul all of the water used by MDC customers during the period from May 1 through
 15 October 30, 2011, the WAS was not applied on a proportional basis as required, and Payson
 16 overcharged the MDC customers;

17 b. MDC customers were overcharged for the taxes associated with the WAS;

18 c. Payson unlawfully retroactively applied the WAS in the July 2011 statements by
 19 including costs for the billing period from May 17 to July 16, 2011;

20 d. Payson used "incorrect, abusive, falsified, [and] excessive" figures, invoices, and
 21 calculations for the WAS, to "effect an illicit profit for the Company" in violation of Decision No.
 22 71902; and

23 e. Payson knowingly and intentionally "padded the bill," falsified hauling records and
 24 public records submitted to the Commission, failed to apply trust money designated to offset hauling
 25 costs, and billed its MDC customers for water hauled elsewhere, all "in the course of a fraudulent

26 ²⁶ Complaint at 13-14. Mr. Gehring acknowledged that the Commission is not able to award damages. (Tr. at 312.)

27 ²⁷ See Complaint at 1-7.

28 ²⁸ According to Complainants, "Exhibit B of Decision No. 71902" set forth the proper method of calculating the WAS, based on "water hauled proportionate to water used," and did not state that customers' total water usage was subject to the WAS. (*Id.* at 3.)

1 billing practices scheme” for Payson’s “unjust enrichment,” and in violation of Decision No. 71902
2 and state and federal consumer protection and tax laws.

3 Some of the Complainants’ allegations are based upon the Complainants’ position that the
4 correct cost per round trip to haul one 6,000-gallon tanker of water from the Town’s hydrant to MDC
5 is \$187.50, that dividing the total hauling costs claimed by \$187.50 demonstrates how many gallons
6 of water were actually purchased by Payson and charged to MDC; that the Town billed Payson for
7 \$1,221.59 on July 1, 2011; and that Decision No. 71902 required Payson to apply the WAS only to
8 the percentage of a customer’s water usage equal to the ratio of total water hauled to total water used
9 by the entire system. (*See, e.g.*, Complaint at 4, 7.) The following example from the Complaint
10 illustrates the Complainants’ position:

11 a) We know that the [Town] billed [Payson] (on July 1, 2011)
12 \$1,221.59 for 189,700 gal. of water at \$6.40 per 1000 gal. and that the
13 total cost to purchase and haul 6,000 gallons of water is \$225.90. The
14 total cost per gallon purchased and hauled is \$.03765 and that [Payson’s]
15 original estimates are slightly different;

16 b) Subtracting the cost of the water (\$0.0064/gal.) from the total cost
17 of the water and hauling (\$0.03765/gal.) yields the cost of hauling to be
18 \$0.03125/gal. slightly greater than [Payson’s] original estimate;

19 c) According to the [Payson] Spreadsheet and [Town] Records and
20 Invoices, Pearson Water appears to have incorrectly invoiced and over
21 charged [Payson] \$9000.00 to haul 189,700 gal. of water during the period
22 June 23 to July 22, 2011 on 6/30 Inv. 8807, 7/7 Inv. 8807 and 7/14 Inv.
23 8812; where in fact these are probably not the actual hauling dates and
24 costs. Furthermore, the actual cost to haul 189,700 gallons, is \$6,000.00.
25 A difference of \$3,000.00 or the cost to haul an additional 96,000 gallons
26 of water;

27 d) The proportional amount of water hauled to water used
28 (consumed) in the June 17 to July 16, 2011 billing period is 189,700 gal.
(water hauled) ÷ 1,234,320 gal. (water used) = .1536%;

e) .1536% is the percentage of water hauled of the total water
consumed by all of the MDC Customers;

f) For the Customer who consumed a total of 11,330 gal. X .1536% =
1,740 gallons of hauled water that the Customer consumed which is
proportional to the Customer’s total usage;

g) Therefore, the Customer’s “Water Augmentation Surcharge”
should have been 1,740 gal. X \$0.03765 = \$65.51 on the July 2011
Statement and not \$154.09 a difference of \$88.58.²⁹

²⁹ Complaint at 6-7 (citations omitted).

1 2. The Evidence

2 The relevant documentation provided related to Counts A, B, and C includes, *inter alia*, a
3 printout from the Town showing the activity on Brooke/Payson's account from May 18, 2010,
4 through June 11, 2013, and on Payson's account from June 12, 2013, through December 29, 2014;³⁰
5 Pearson invoices and hauling logs for water purchased from the Town and hauled to MDC from June
6 7, 2011, through September 28, 2011;³¹ Pearson invoices and one hauling log for water purchased
7 from the Town and hauled to EVP from approximately July 7, 2011, through September 28, 2011;³² a
8 Payson 2011 MDC Water Augmentation Worksheet dated June 7, 2012, showing the amounts
9 charged to MDC for Town water and hauling and to EVP for Town water during the summer of
10 2011;³³ an excerpt from a February 10, 2014, Proposal for Professional Engineering Services created
11 by Tres Rios Consulting Engineers, stating that 58,873 gallons of water were hauled to EVP in
12 2011;³⁴ a Town Administrative Policy dated February 2010 regarding provision of a supplemental
13 water supply to MDC;³⁵ Brooke's MDC Water Augmentation Charges Calculation for expenses
14 billed in July 2011;³⁶ MDC customer consumption printouts from May 20, 2011, through October 16,
15 2011;³⁷ Staff's calculation of the WAS rate for June-July 2011, with supporting documents;³⁸ and a
16 copy of the WAS tariff, in its original and revised versions.³⁹ The table attached hereto and
17 incorporated herein as Exhibit 1 compiles the information provided in the Town's billing
18 information, the Pearson invoices, and the hauling logs to show the Town water purchase activity and
19 the hauling related thereto for both MDC and EVP. The information demonstrates that water
20 purchased from the Town was hauled to EVP on four separate occasions when water was also being
21 hauled to MDC. While some of the hauling logs for EVP are not available, the invoice information
22 and the gaps in the hauling logs for MDC, coupled with the quantities of water purchased from the

23 _____
24 ³⁰ See Smith Ex. C-11; Smith Tr. at 33-34, 178. Payson established its own account after the change in ownership.
(See Smith Ex. C-11.)

³¹ See Smith Ex. C-8 at 5-7, 10-11, 13-14, 16-17, 19-20, 22-23, 25-26, 28, 30-31, 33, 35, 36-37, 39-40.

³² See Smith Ex. C-4 at 31-34; Ex. C-8 at 28.

³³ See Ex. R-6.

³⁴ See Smith Ex. C-4 at 81; Smith Tr. at 177-78.

³⁵ See Smith Ex. C-4 at 23-24.

³⁶ See Smith Ex. C-10.

³⁷ See Smith Ex. C-3 at 1-48.

³⁸ See Ex. S-3.

³⁹ *Id.*

1 Town in the pertinent periods, establish approximately how much water EVP received. The Pearson
2 invoices also establish that EVP was not charged for travel time on any of these four occasions, while
3 MDC was charged \$600 in travel time for each.

4 Mr. Pearson's testimony in the Smith Docket establishes that Pearson hauled Town water
5 from a bulk hydrant meter to both MDC and EVP; billed Brooke-MDC and Brooke-EVP on an
6 hourly basis for water hauling services, not by load or by gallons hauled; and also billed Brooke-
7 MDC for the travel time from Williams to the Town and back again.⁴⁰ (See Smith Transcript of Mr.
8 Pearson's testimony at November 17, 2014, Procedural Conference ("11/17/14 Tr.") at 15, 19-20, 22,
9 24, 26-27, 38.) Pearson's drivers wrote meter readings down for each load on the hauling logs, which
10 were provided to Payson when the hauling was over. (See 11/17/14 Tr. at 15-16, 35-36.) Mr.
11 Pearson testified that while Pearson's drivers may have made mistakes in the load meter read entries,
12 the total read at the beginning and the end would have been correct. (11/17/14 Tr. at 15-16.)
13 Pearson's hauling log meter reads and load counts were provided for Payson's informational
14 purposes, not for any billing purposes; Pearson always provided the hauling logs to Payson.
15 (11/17/14 Tr. at 24, 35.) Mr. Pearson stated that each truck held approximately 6,000 or 6,500
16 gallons and that it took approximately two hours round trip for each load, including the loading and
17 unloading process. (11/17/14 Tr. at 23.) The drivers sometimes hauled for periods as long as 24
18 hours straight, without taking lunch or other breaks. (11/17/14 Tr. at 16, 27.) As Mr. Pearson recalls,
19 a Payson representative was there at the beginning to install the meter on the hydrant and take a meter
20 reading and was there at the end to take a meter reading and remove the meter. (11/17/14 Tr. at 30-
21 31, 33.)

22 According to Mr. Garrett's testimony in the Smith Docket, the Town would install the water
23 meter upon Payson's request and would provide the meter readings as well. (Smith Tr. at 47.)
24 Payson was a water customer of the Town just like any other customer and purchased water from the
25 Town on a monthly basis, paying the same rates as any other customer, but taking its water from a
26 bulk fire hydrant meter set up behind a Home Depot within Town limits. (Smith Tr. at 23-25, 45-47.)

27 ⁴⁰ Mr. Smith repeatedly used the Pearson invoices and hauling logs as evidence of the actual amounts of water hauled,
28 rather than as evidence of the cost charged by Pearson for the hauling services. (See, e.g., Smith Tr. at 98-100, 103-04;
Smith Ex. C-2 at app. A, app. B.)

1 The Town created an Administrative Policy for the provision of supplemental water to MDC in
2 February 2010, allowing Brooke to purchase up to 86,400 gallons of water daily for use by MDC
3 customers and making Brooke responsible for transporting the water to MDC. (*See* Smith Ex. C-4 at
4 23-24; Smith Tr. at 27-30.) The Administrative Policy did not mention EVP. (*Id.*) No evidence was
5 produced indicating that the Town was aware water was being hauled to EVP in 2011. (*See* Smith
6 Tr. at 48-49.)

7 Complainants have alleged that water was hauled from another system to EVP. (Complaint at
8 2, 5.) Mr. Smith made a similar allegation in the Smith Docket, although he specifically alleged that
9 water from MDC's tanks was hauled to EVP. In this matter, Ms. Plante testified that in summer
10 2011, she observed from her home near the MDC tanks property that a tanker truck appeared to be
11 empty when entering the MDC tanks property and appeared not to be empty when leaving the MDC
12 tanks property. (Tr. at 176-78.) Ms. Plante, who holds a commercial driver license ("CDL") and
13 formerly drove trucks cross-country, opined that the truck went into the MDC tanks property empty
14 and took water out of the tank instead of putting water into the tank. (*Id.* at 177-78, 179-80.) Ms.
15 Plante acknowledged that she did not have proof that water was being hauled out of MDC as a source
16 for another location, although that was her opinion. (*Id.* at 180-81.) Complainants also produced the
17 affidavit of Larry Olson, signed June 25, 2012,⁴¹ in which Mr. Olson stated that in summer 2010, he
18 observed a water truck driver with his tanker hooked up to a pump that appeared to be pumping water
19 from an MDC storage tank to the tanker, asked the driver whether he was pumping water out of the
20 tank, and left after the driver did not reply. (Ex. C-6 at 12.) Mr. Olson stated that he saw the same
21 truck on a second occasion leaving the storage facility with a load of water that sloshed off the top
22 and sides of the tanker when it went over a cattle guard and that Mr. Olson followed the tanker
23 briefly and again saw water slosh off the top and sides when it went over a second cattle guard. (*Id.*)
24 Mr. Smith also testified in this matter that he held a CDL with a tanker endorsement and that he took
25 a photo of a tanker near the MDC tanks leaving MDC with water trailing behind it. (Tr. at 185-90.)
26 Mr. Smith testified that the back of the tanker could have been trailing water either because its valve

27 _____
28 ⁴¹ Mr. Olson did not appear as a witness in this matter. Mr. Gehring stated that Mr. Olson was quite ill and could not be
at the hearing. (Tr. at 183.)

1 was not capped and the tank held residual water or because it was full of water, but that he could not
2 tell which was the case. (*Id.* at 190-91.) In the Smith Docket, Mr. Smith produced an affidavit
3 completed by Dennis Tresca, who stated that he had seen a tanker pumping water from an MDC tank
4 into the tanker in approximately late June to early July 2011.⁴² (Smith Ex. C-6 at 16.) Neither Mr.
5 Olson nor Mr. Tresca testified during a hearing.

6 Mr. Pearson testified that the tanker trucks are never completely emptied by pumping and that
7 approximately 100 gallons of water generally remain after they are unloaded. (11/17/14 Tr. at 37.)
8 He also stated that he never took water out of an MDC tank for delivery to another location and was
9 never instructed to do so. (Ex. R-4 at 5.)

10 The WAS rate for the June 2011 hauling period was calculated by taking the total amount
11 invoiced by Pearson for hauling from May 23, 2011, through July 3, 2011 (\$15,900); adding it to the
12 Town water bill from May 23, 2011, through June 23, 2011 (\$863.77); and dividing that by the total
13 consumption for MDC from June 17, 2011, through July 16, 2011 (1,234,320 gallons). (Smith Ex.
14 C-10; Ex. S-3.) The result was a WAS rate of \$0.0136 per gallon. (Smith Ex. C-10; Ex. S-3.) This
15 WAS rate was then applied to the total gallons consumed on each individual customer's bill. (*See*
16 Ex. S-3; Payson's Motion to Compel Response to Data Request by Payson Water Co., Inc., filed in
17 the Smith Docket on May 28, 2014⁴³ ("Payson MTC").) Staff determined that this was the correct
18 manner of calculating the WAS rate and of applying the WAS rate to each customer's bill. (Smith
19 Tr. at 224-25.) Further, Mr. Carlson stated that because Staff was very concerned about having
20 ratepayers reimburse the company each month for the prior month, Staff scrutinized the Payson WAS
21 calculation filings more closely than usual. (Smith Tr. at 225.) Every month, Payson sent Staff the
22 calculations and invoices, Staff checked the calculations and invoices, and Payson waited for Staff
23 approval to assess the WAS on ratepayer bills. (Smith Tr. at 220-25.) Mr. Carlson testified that Staff
24 allowed the travel time for the hauler because of a shortage of haulers in northern Arizona and the
25 absence of a hauler in Payson. (Smith Tr. at 228.)

26 The bills from the Store account show that the Store was charged a total of \$301.87 in WAS

27 _____
28 ⁴² Mr. Tresca was not called as a witness in the Smith Docket.

⁴³ Official notice is taken of this document.

1 for the period from June 16, 2011, through October 16, 2011, with the following monthly
2 breakdown:⁴⁴

3 Service Dates:	6/16/11 - 7/16/11	7/16/11 - 8/17/11	8/17/11 - 9/16/11	9/16/11 - 10/16/11
4 End Read:	2,759,570	2,769,120	2,777,800	2,789,050
5 Beginning Read:	2,748,240	2,759,570	2,769,120	2,777,800
6 Gallons Used:	11,330	9,550	8,680	11,250
7 WAS Rate per Gallon:	\$0.01360	\$0.00590	\$0.00820	\$0.00180
8 WAS Charged:	\$154.09	\$56.35	\$71.18	\$20.25

9 It is unclear how much the Jones account was charged in WAS, as the Complainants did not
10 provide a September 2011 billing statement for the Jones account.⁴⁵

11 Payson and Staff both provided a summary chart showing the Town costs and Pearson costs
12 figured into the WAS for June-July, July-August, August-September, and September-October 2011,
13 and also showing the deduction of EVP water charges. (See Ex. R-6; Ex. S-1.) The chart is attached
14 hereto and incorporated herein as Exhibit 2.⁴⁶

15 Mr. Smith produced copies of printouts from Payson, provided to Staff in 2012 in response to
16 a data request made in this matter, showing customer consumption, by meter number, for the periods
17 of April-May 2011 through September-October 2011. (See Smith Ex. C-3 at 1-48; Smith Tr. at 129-
18 30.) Adding all of the numbers for June-July 2011 reveals a total consumption for the month of
19 1,234,320 gallons. (See Smith Ex. C-3 at 17-24.)

20 Documentation⁴⁷ provided by Complainants shows the following billing-related activity for
21 the Store/Mr. Gehring and Mr. and Mrs. Jones during the period in question:

Store/Mr. Gehring

21 Billing Statement Date	5/20/11	6/22/11	7/22/11	8/24/11	9/22/11	10/22/11
22 Usage Period	4/16/11 - 5/16/11	5/16/11 - 6/16/11	6/16/11 - 7/17/11	7/16/11 - 8/17/11	8/17/11 - 9/16/11	9/16/11 - 10/16/11
23 Starting Meter Read	2,720,480	2,735,390	2,748,240	2,759,570	2,769,120	2,777,800
24 Ending Meter	2,735,390	2,748,240	2,759,570	2,769,120	2,777,800	2,789,050

25
26 ⁴⁴ See Complaint at ex. A at 1-6.

27 ⁴⁵ See Complaint at ex. A at 7-12. The Complainants included a statement from September 2010 instead. (See
Complaint at ex. A at 11.)

28 ⁴⁶ See Ex. R-6; Ex. S-1.

⁴⁷ See Complaint at ex. A at 1-12. Mr. and Mrs. Jones did not provide billing statements from May 2011 or September
2011. (See *id.*)

Read						
Usage (Gallons)	14,910	12,850	11,330	9,550	8,680	11,250
Previous Balance	\$77.87	\$89.01	\$83.08	\$214.06	\$104.07	\$117.23
Payments	\$50.00	\$60.00	\$84.00	\$214.06	\$104.07	\$117.23
Late Fee	\$0.42	n/a	n/a	n/a	n/a	n/a
Reconnection Fee	n/a	n/a	n/a	n/a	n/a	n/a
WAS	n/a	n/a	\$154.09	\$56.35	\$71.18	\$20.25
Credits	n/a	n/a	n/a	n/a	n/a	n/a
Total Amount Due	\$89.01	\$83.08	\$214.06	\$104.07	\$117.23	\$70.71
Due Date	6/4/11	7/7/11	8/6/11	9/8/11	10/7/11	11/6/11
Paid Date	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

Mr. and Mrs. Jones

Billing Statement Date	4/22/11	6/22/11	7/22/11	8/24/11	10/22/11
Usage Period	3/16/11 – 4/16/11	5/16/11 – 6/16/11	6/16/11 – 7/16/11	7/16/11 – 8/17/11	9/16/11 – 10/16/11
Starting Meter Read	800,980	816,040	825,770	830,810	840,900
Ending Meter Read	807,970	825,770	830,810	836,600	846,920
Usage (Gallons)	6,990	9,730	5,040	5,790	6,020
Previous Balance	\$42.11	\$117.74	\$83.83	\$187.72	\$240.21
Payments	n/a	\$77.92	n/a	\$105.35	\$173.19
Late Fee	\$0.62	n/a	\$1.24	\$1.22	\$0.97
Reconnection Fee	n/a	n/a	n/a	\$43.04	n/a
WAS	n/a	n/a	\$68.54	\$34.16	\$10.84
Credits	n/a	n/a	n/a	n/a	n/a
Total Amount Due	\$77.92	\$83.83	\$187.72	\$194.71	\$111.72
Due Date	5/7/11	7/7/11	8/6/11	9/8/11	11/6/11
Paid Date	5/23/11 ⁴⁸	Unclear ⁴⁹	Not noted	Not noted	10/28/11 ⁵⁰

3. The WAS Tariff

As stated previously, the language to be used for the WAS tariff was not included in Decision No. 71902. After the issuance of Decision No. 71902, Payson first filed a WAS tariff on October 28,

⁴⁸ A notation on the payment coupon appears to indicate that the total due was paid electronically on 5/23/11. (See Complaint at ex. A at 7.)

⁴⁹ A notation on the payment coupon appears to indicate that the total due was paid electronically, but no clear date is noted (there is a notation of "05.35"). (See Complaint at ex. A at 8.)

⁵⁰ A notation on the payment coupon appears to indicate that the past due charges were paid electronically on 10/28/11. (See Complaint at ex. A at 12.)

1 2010.⁵¹ The 1st WAS tariff stated that the WAS would be effective between May 1 and September
2 30 of each year, beginning in 2011 and until the conclusion of Payson's next rate case, and that it
3 applied only to MDC system customers. (See 1st WAS tariff.) It also stated the following regarding
4 calculation of the WAS:

5 *Calculation* – Each customer's monthly surcharge shall be calculated
6 based on the company's prior month's water hauling costs, and compared
7 to the customer's water usage during that particular month. The only costs
8 recovered by the company through this interim surcharge will be the cost
9 of water supply and transportation costs; there will be no administrative
10 costs or profit component of this surcharge.⁵²

11 On November 22, 2010, Payson filed a revised WAS tariff to replace the 1st WAS tariff.⁵³
12 The 2nd WAS tariff did not substantively change the calculation language quoted above or the
13 applicability and term of the WAS. (See 2nd WAS tariff.) Rather, it added an exemption for
14 customers who use 4,000 gallons or less per month based on a 12-month rolling average. (*Id.*)

15 On June 17, 2011, Staff filed stamped copies of the 2nd WAS tariff (along with the
16 Curtailment Tariff as filed with the 2nd WAS tariff).⁵⁴ The stamped copies showed an effective date
17 of September 28, 2010. The stamped WAS tariff included the exemption language. (See approved
18 tariffs filing.)

19 On August 17, 2011, Payson filed another revised WAS tariff to replace the 2nd WAS tariff.⁵⁵
20 Payson stated that the 2nd WAS tariff had erroneously exempted certain customers from the WAS,
21 although those customers were not exempted by Decision No. 71902. (3rd WAS tariff.) The 3rd
22 WAS tariff did not substantively change the applicability or calculation language, but removed the
23 exemption inserted in the 2nd WAS tariff. (See 3rd WAS tariff.)

24 On August 30, 2011, Staff filed a Notice of Compliance showing that a revised WAS tariff
25 had been approved with an effective date of September 28, 2010, but without including the

26 ⁵¹ See Payson's Notice of Compliance filed in the WAS Docket on October 28, 2010 ("1st WAS tariff"), of which
27 official notice is taken.

28 ⁵² 1st WAS tariff.

⁵³ See Payson's Notice of Compliance (Errata) filed in the WAS Docket on November 22, 2010 ("2nd WAS tariff"), of
which official notice is taken.

⁵⁴ See Staff's Notice of Compliance letter filed in the WAS Docket on June 17, 2011 ("approved tariffs filing"), of
which official notice is taken.

⁵⁵ See Payson's Notice of Correction filed in the WAS Docket on August 17, 2011 ("3rd WAS tariff"), of which official
notice is taken.

1 referenced stamped copy of the revised WAS tariff approved.⁵⁶ Based on the timing of this filing, we
2 conclude that the approved tariff language was that of the 3rd WAS tariff.

3 On its face, the calculation language quoted above lacks clarity. Complainants' allegations
4 regarding its meaning lend credence to that conclusion, as did Mr. Smith's similar assertions.
5 Because Decision No. 71902 did not provide the specific language for the WAS tariff, to understand
6 what the Commission was approving in the Decision, it is helpful to review the proposed WAS tariff
7 language that preceded the issuance of Decision No. 71902. The application for the WAS tariff
8 included as a proposed WAS tariff the document attached hereto and incorporated herein as Exhibit
9 3.⁵⁷ The App. WAS tariff provided the following regarding calculation of the WAS for each
10 customer:

11 The Water Augmentation Surcharge shall be calculated by dividing the
12 total Water Augmentation Costs incurred in a calendar month by the total
13 amount of water sold to its customers for the same period. The resulting
14 rate per 1,000 gallons of water will then be multiplied by the gallons used
15 in the same period for each customer to determine the surcharge amount
16 per 1,000 gallons. The resulting Water Augmentation Surcharge will be
17 charged to Water System customers in the immediately following period
18 as a separate line item on the customer's water bill.⁵⁸

15 While the quoted App. WAS tariff language is imprecise in its use of gallons versus 1,000 gallons, it
16 is clear as to the customer usage to which the WAS rate is to be applied—all of the gallons used in
17 the period by the customer, not just those gallons corresponding to the percentage of water hauled for
18 the system. (See Exhibit 3.)

19 4. Resolution

20 At their essence, Counts A, B, and C allege that Payson intentionally misapplied the WAS
21 tariff so as to perpetrate a fraud on MDC customers and unjustly enrich itself. The subcounts
22 identified by the Complainants concern (1) application of the WAS to all customer usage; (2) tax
23 overcharges; (3) retroactive application of the WAS in the July 2011 statements; (4) use of "incorrect,
24 abusive, falsified, [and] excessive" figures, invoices, and calculations for the WAS; and (5) "padding
25

26 ⁵⁶ See Staff's Notice of Compliance letter filed in the WAS Docket on August 30, 2011 ("2nd approved tariff filing"),
27 of which official notice is taken.

28 ⁵⁷ See Application for Approval of Water Augmentation Surcharge Tariff, filed in Docket No. W-03514A-10-0116 on
March 31, 2010, at ex. 4 ("App. WAS tariff"), of which official notice is taken.

⁵⁸ App. WAS tariff.

1 [of] the bill” by not applying trust money to offset hauling costs, billing MDC customers for water
2 hauled elsewhere, and using falsified hauling records and other records. We consider each of these
3 below.

4 Subcount (1) Application of the WAS to All Customer Usage

5 The evidence provided does not show that applying the WAS to all customer usage was
6 inappropriate. Rather, it shows that the WAS tariff calculations were performed in a manner
7 substantially consistent with the App. WAS tariff approved in Decision No. 71902 and with its less
8 clear counterparts, the 1st, 2nd, and 3rd WAS tariffs. As approved, the WAS tariff required Payson
9 to determine the total documented water augmentation costs incurred for a month, to divide that total
10 by the total amount of water sold for the month to obtain a surcharge amount per gallon or thousand
11 gallons, to apply that surcharge amount to each water customer’s consumption for the month, and to
12 bill the result as a separate line item on the customer’s bill. Payson was not permitted to include any
13 administrative costs or profits in the WAS, only documented costs. The WAS was clearly intended
14 to apply to a customer’s entire usage for the month, not just to a percentage of that usage based on
15 another calculation.

16 Subcount (1) is not substantiated.

17 Subcount (2) Tax Overcharges

18 The Complainants allege that MDC customers were overcharged taxes on their bills
19 containing WAS because the WAS figures were included in the tax calculation, which the
20 Complainants assert means that they were taxed at least twice on the amount of water purchased for
21 the month. The Complainants’ bills do show that Gila County and Arizona state taxes were
22 calculated using a total figure that included the WAS, with the tax rate at 7.6 percent, which was the
23 correct tax rate at the time.⁵⁹ Additionally, A.R.S. § 42-5063 did not in 2011 (and does not now)
24 deduct surcharge proceeds from a utility’s tax base (the gross proceeds of sales or gross income that
25 is derived from sales), to which the transaction privilege tax is to be applied.⁶⁰ Further, A.A.C. R14-

26 _____
27 ⁵⁹ The Arizona Department of Revenue’s Arizona State, County, and City Transaction Privilege and Other Tax Rate
Tables effective June 1, 2011, of which official notice is taken, show that the combined state transaction privilege tax rate
and county excise tax rate for utilities in Gila County at that time was 7.60 percent.

28 ⁶⁰ See A.R.S. § 42-5063; Laws 2010, Ch. 225, § 4. Official notice is taken of these statutes.

1 2-409(D)(5) provides: "In addition to the collection of regular rates, each utility may collect from its
2 customers a proportionate share of any privilege, sales or use tax."

3 The evidence establishes that Payson collected from its customers proportionate shares of the
4 transaction privilege/sales taxes Payson was required to collect under state and county law. This was
5 permissible under the Commission's rules.

6 Subcount (2) is not substantiated.

7 Subcount (3) The July 2011 Statements

8 The documents presented to calculate the hauling costs for the period from May 23 through
9 July 3, 2011, although representing a period longer than one month, were appropriately grouped
10 together. The Town's billing period ran from May 23 through June 23, 2011, with billing on June 28,
11 2011, and did not coincide completely with Payson's July 2011 billing period, which covered usage
12 from June 16 through July 16, 2011. In light of the differences in the billing periods, it was just and
13 reasonable for Payson to calculate the WAS in the manner it did, using the Town invoice for usage in
14 the period ending June 23, 2011; the Pearson hauling invoices for hauling completed between June 7
15 and July 3, 2011; and customer water usage data for the period from June 16 through July 16, 2011.
16 Likewise, it was just and reasonable for Payson to calculate the WAS in a similar manner for the
17 August 2011, September 2011, and October 2011 MDC customer bills.

18 Subcount (3) is not substantiated.

19 Subcount (4) Use of "incorrect, abusive, falsified, [and] excessive" figures, invoices, and
20 calculations for the WAS

21 A close review of the documents provided to Staff to support Payson's calculation of the
22 WAS for Payson's July 2011 billings and of the larger group of documents used to create Table 1 did
23 not reveal any discrepancies or signs of alteration supporting the Complainants' allegations of
24 falsification or abuse. As stated above, however, the Pearson invoices do reveal that MDC alone was
25 charged for travel time on the four occasions when Town water was hauled to both MDC and EVP.
26 Although there is no evidence to indicate that the travel time was billed to MDC at Payson's
27 direction, or that Payson could have so directed Pearson, it does support the Complainants' assertion
28 that excessive figures were used to calculate the WAS. As we concluded in Decision No. 75413,

1 MDC should have been required to pay only 50 percent of the travel time costs on the four occasions
2 when both MDC and EVP received hauled water.

3 Subcount (4) is substantiated, to the extent that MDC customers were charged for 100 percent
4 of the travel time on the four occasions when hauling to EVP also occurred. The remainder of
5 Subcount 4 is not substantiated.

6 Subcount (5) "Padding of the bill"

7 To a large extent, Complainants' allegations regarding "padding [of] the bill" are resolved
8 through Subcounts (1) through (4) above. Complainants have also raised an issue that has not been
9 addressed, however—the issue of whether curtailment fines collected pursuant to Decision No. 67821
10 were used to offset water augmentation costs as required by that Decision. In his direct testimony,
11 Mr. Gehring asserts that Mr. Hardcastle "has never disclosed where the funds were spent from
12 Curtailment Fees that are designated to offset hauling costs for any year they have been collected."
13 (Ex. C-11 at 7.) Complainants also provide some compliance reports filed by Payson as required by
14 Decision No. 67821, specifically for April 2010, April 2011, and September 2011. (Ex. C-2 at 37-
15 39.) During the hearing in the Smith Docket, Mr. Smith asked Mr. Carlson whether he knew of a
16 requirement imposed on Payson or Brooke in Decision No. 67821 for curtailment tariff fines to be
17 placed into an interest bearing trust account and used to offset hauling costs. (See Smith Tr. at 216-
18 18.) Mr. Carlson did not have knowledge of such a requirement. (See *id.*) Aside from the
19 information cited here, Decision No. 67821 does not appear to have been addressed in testimony or
20 other evidence in either this matter or the Smith Docket.

21 A review of filings in the Curtailment Docket shows that since Decision No. 67821 was
22 issued, Payson has made report filings for October 2005, May and October 2006, May and October
23 2007, May and October 2008, May and October 2009, May and October 2010, May and October
24 2011, May and October 2012, October 2013, and May 2014.⁶¹ The reports show that the Curtailment
25 Account has had the following activity:⁶²

26 _____
27 ⁶¹ Official notice is taken of the compliance filings made in the Curtailment Docket. Not all of these reports were made
on a timely basis.

28 ⁶² Reports that had no activity are not reflected. Mr. Gehring was assessed a total of \$700 in reconnection fees in 2009
and 2010.

Reporting Period	Name/s	Fines Paid	Fines Spent on Importation	Account Balance
2009	Gehring	\$100 ⁶³	\$100	\$0
	Dillon	\$50	\$50	\$0
2010	Gehring	\$600	\$600	\$0
	Dillon	\$50	\$50	\$0
2011 ⁶⁴	Paul	\$200	\$0	\$1,000 ⁶⁵
	Martin	\$200	\$0	\$1,200
	Frausto	\$200	\$0	\$1,400
	Fleishaker	\$200	\$0	\$1,600
	Egberty	\$200	\$0	\$1,800
	Morris	\$200	\$0	\$2,000
	Halsey	\$200	\$0	\$2,200
	Romero	\$200	\$0	\$2,400
2012	Paul	\$200	\$200	\$0
	Martin	\$200	\$200	\$0
	Frausto	\$200	\$200	\$0
	Fleishaker	\$200	\$200	\$0
	Egberty	\$200	\$200	\$0
	Morris	\$200	\$200	\$0
	Halsey	\$200	\$200	\$0
	Romero	\$200	\$200	\$0

The reports do not show the date that each reconnection fee was paid, making it impossible to determine definitively to what extent, if at all, reports from one year to the next are actually cumulative, something that we conclude is the case for the 2011 and 2012 reports.⁶⁶ Assuming that the 2011 and 2012 reports are cumulative, which is the most likely conclusion from the identical customers and fines listed for each year, they show that the account reached a high of \$2,400 and that \$2,400 was spent on importation of water at some time before the end of 2012. The lack of dates for any account-related activities make it impossible to determine precisely when that occurred. Additionally, it must be noted that importing water could reasonably be interpreted to mean

⁶³ The Curtailment Tariff had a minimum reconnection fee of \$150. Thus, it is unclear why these amounts were assessed.

⁶⁴ We note that Mr. Smith's reconnection fee, which was voided, was not reported here.

⁶⁵ This figure only makes sense if the total of \$800 reported as spent on importation in 2009 and 2010 was not actually spent on importation at that time.

⁶⁶ The May 2012 report shows the reconnection fees collecting up to a balance of \$1,600 in the account. The October 2012 report lists all of the same customers and reconnection fees, but shows that each reconnection fee paid was used for importation costs. We conclude that the reconnection fees shown in each 2012 report are the same, as each customer would have been assessed an escalated reconnection fee for more than a single violation within a calendar year. (See Decision No. 71902 at ex. A.) In addition, because we do not believe that only the exact same customers would have been assessed the exact same amounts two years in a row, we conclude that the 2012 reconnection fees are the same as the 2011 reconnection fees.

1 something broader than water augmentation as authorized in Decision No. 71902, which is
2 specifically referred to as water hauling.

3 It is true that the WAS calculations in evidence do not reflect any deduction for these funds.
4 Without information concerning the date when the fines were paid and funds were deposited and
5 withdrawn from the account, however, we cannot conclude that the funds were not used for
6 importation of water as required by Decision No. 67821. Complainants had the burden of proving
7 that the funds were not used as required, and they have failed to present evidence sufficient to meet
8 that burden.

9 Subcount (5) is not substantiated.

10 5. Remedy

11 In Decision No. 75413, we concluded that MDC customers had been overcharged because
12 they paid all of the travel time charges for those four occasions in 2011 on which both MDC and EVP
13 received water hauling. We also required Payson to reimburse MDC customers through bill credits
14 for the amount of the overcharge, with interest from July 22, 2011, to December 1, 2015, and
15 established the manner in which each customer's credit is to be calculated. In light of the conclusion
16 and resolution reached in Decision No. 75413, which will make MDC customers whole for the
17 overcharges, we do not adopt any further remedy herein.

18 Count D

19 1. The Allegations

20 Complainants allege that Payson misapplied the revised Curtailment Tariff, failed to mail out
21 its May 2011 statements and then shut off customer meters for alleged nonpayment, and
22 unnecessarily harassed customers for their daily usage.⁶⁷ Specifically, Complainants allege that
23 Payson (1) failed to mail out May 2011 statements and had them thrown away instead; (2)
24 disconnected customers for alleged over-usage even when their usage was below 133.33 gallons per
25 day (which is equivalent to 4,000 gallons per month); and (3) selected days that customers would

26 ⁶⁷ In a tangentially related comment, Complainants also asserted that no due process mailers were sent certified mail to
27 notice customers and Complainants of the Commission's hearings on the rate increase and curtailment plan changes after
28 September 2010. (See Complaint at 8.) We note that Decision No. 71902 required notice to be made by mail, not by
certified mail. (See Decision No. 71902 at 14.) We further note that the issue of notice was addressed fully in Decision
No. 75413, which concluded that sufficient notice was provided in the WAS Docket.

1 likely water outside as mandatory MDC water conservation days, in order to harass, threaten, and
2 intimidate customers and to extort additional revenues. (See Complaint at 7-8.) We will treat each of
3 these numbered items as a subcount.

4 2. The Evidence

5 In the Complaint, Complainants supported their allegation regarding the May 2011 statements
6 through the September 12, 2011, affidavit of Ellen Kitchen, who identified herself as an employee of
7 the U.S. Postal Service at the Payson Post Office during the period of May 14 to 23, 2011. (See
8 Complaint at ex. F.) Ms. Kitchen stated that during this time, Mike Conklin of Post Net twice
9 brought Brooke bills to the post office for mailing, something that he did routinely one or two times a
10 week. (*Id.*) Ms. Kitchen stated that on the first occasion during that period, after Mr. Conklin was
11 told that there was no money in the account to pay postage for the bills, Mr. Conklin contacted
12 Brooke, money was added to the account, and the bills were mailed. (See *id.*) Ms. Kitchen stated
13 that on the second occasion during that period, when Mr. Conklin was again told that there was no
14 money in the account, "Mike again called Brooke Utilities and was told that they were going a
15 different route and to throw those bills away." (*Id.*) No affidavit from Mr. Conklin was provided to
16 corroborate this account, and neither Ms. Kitchen nor Mr. Conklin was called as a witness in this
17 matter or the Smith Docket.

18 Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith all indicated that they did not receive their
19 May 2011 statements in a timely fashion but instead in early July, mid-August, and mid-June,
20 respectively. (See Ex. C-11 at 1; Ex. C-12 at 2; Smith Ex. C-2 at 3, ex. F.) Mr. Gehring and Mr. and
21 Mrs. Jones further stated that the May 2011 statements were received only after requests had been
22 made to Payson. (See Ex. C-11 at 1; Ex. C-12 at 2.)

23 As is shown in the billing activity tables above, neither Complainants' nor Mr. Smith's
24 accounts were charged a late fee on the billing statement dated June 22, 2011. (See Complaint at ex.
25 A at 1-12; Smith Ex. C-2 at ex. G.) Of the three accounts, only that for Mr. Smith's home was
26 charged a reconnection fee on the June 22, 2011, bill, in the amount of \$200. (See Smith Ex. C-2 at
27 ex. G.) This \$200 reconnection fee was charged for violation of the Curtailment Tariff and had
28 nothing whatsoever to do with late payment of the May 2011 billing statement. (See Smith Ex. C-2

1 at ex. A.)

2 Payson provided a list showing that only four MDC customers were disconnected for past due
3 payments on May 25, 2011, and that each was assessed a charge of approximately \$20.00. (See Ex.
4 R-6.) The list also shows that five additional MDC customers paid before they were disconnected.
5 (*Id.*) Payson served an average of 367 MDC customer connections in 2011. (Ex. S-3.)

6 The only specific evidence presented on the issue of disconnection for over-usage, in spite of
7 usage below 133.33 gallons per day, concerns the account serving Mr. Smith's home, which had its
8 service disconnected on June 8, 2011, for failure to observe the water conservation requirements of
9 the Curtailment Tariff. (See Smith Ex. C-2 at ex. A.) The Warning Notice of Disconnection for
10 Stage 3 ("Warning Notice") for Mr. Smith's home, dated June 7, 2011, shows a meter read of
11 263,690 for that day and a meter read of 263,560 for the prior day, daily use of 130 gallons,
12 maximum daily use of 97 gallons, a required usage reduction of 33 gallons, and a disconnection date
13 of June 8, 2011.⁶⁸

14 Documentation⁶⁹ provided by Mr. Smith shows the following billing-related activity for his
15 home's account:

Billing Statement Date	April 22, 2011	May 20, 2011 ⁷⁰	June 22, 2011	July 22, 2011
Usage Period	March 16, 2011- April 16, 2011	April 16, 2011- May 16, 2011	May 16, 2011- June 16, 2011 ⁷¹	June 16, 2011- July 16, 2011
Starting Meter Read	254,740	259,280	267,340	264,090
Ending Meter Read	259,280	267,340	264,090	269,060
Usage (Gallons)	4,540	8,060	-3,250	4,970
Previous Balance	\$48.77	\$27.29	\$66.34	\$24.40
Payments	\$48.77	n/a	\$252.39	n/a
Late Fee	n/a	\$0.41	n/a	\$0.37
Reconnection Fee	n/a	n/a	\$200.00	n/a

25 ⁶⁸ Under the Curtailment Tariff, this daily usage level would represent monthly water consumption of 3,900 gallons and
26 would be a violation if it did not represent at least a 30-percent reduction in use from the higher of the prior month's
27 consumption or the consumption in the same month in either of the prior two years. (See Smith Ex. C-2 at ex. C.) Mr.
Smith did not establish that the exemption for households using less than 4,000 gallons per month applied to his
household.

⁶⁹ See Smith Ex. C-2 at ex. A, ex. F, ex. G, appendix B.

⁷⁰ Mr. Smith reports that this billing statement was not received until June 16, 2011. See, e.g., Smith Ex. C-2 at 3.

⁷¹ This period includes the almost seven-day disconnection period.

1	WAS	n/a	n/a	n/a	\$67.59
	Credits	n/a	n/a	\$6.29	n/a
2	Total Amount Due	\$27.29	\$66.34 ⁷²	\$24.40	\$126.17
	Due Date	May 7, 2011	June 4, 2011	July 7, 2011	August 6, 2011
3	Paid Date	May 17, 2011 ⁷³	June 10, 2011	Not provided	July 29, 2011

4 The Curtailment Tariff provides the following regarding customers who use 4,000 gallons or
5 less per month:

6 EXEMPTIONS: Customers who use 4,000 gallons or less per month
7 based on a twelve (12) month rolling average are exempt from the
8 mandatory reduction in daily use requirements as outlined in Stage 3,
9 Stage 4 and Stage 5 of this Tariff. This is because these customers are
10 already leading a conservative water lifestyle, and mandatory percentage
11 reductions will likely require the loss of use of water essential to health
12 and safety. However, all other restrictions during mandatory conservation
13 periods will still apply.⁷⁴

14 The Curtailment Tariff defines daily use as follows:

15 For the purpose of calculating "daily use" under the Restriction section of
16 Stage 2, Stage 3, Stage 4, and Stage 5 water conservation conditions, the
17 following definition shall apply:

18 Daily use is determined by taking the customer water meter reading today
19 and subtracting from the customer's meter reading yesterday. This daily
20 use amount is multiplied by 30 days to obtain a calculated monthly use.
21 This monthly use is then compared to the higher of; (a) the immediately
22 preceding month's actual water consumption, or (b) water consumption
23 for the same month in any one of the two previous years for the same
24 service location, to determine if the customer reduced his/her water
25 consumption by at least the required Stage's percentage. The water
26 customer should reduce their daily water consumption from the higher
27 monthly water consumption of either (a) or (b).

28 Example: Customer meter reads 986654 today. Customer meter read
986354 yesterday. The difference in meter reads is 300 gallons for one
day or 9000 gallons for 30 days. Customer actual use in the immediately
preceding month was 7,000 (a) gallons. Customer's actual use in the same
month in any one of the two previous years was 6,000 (b) gallons.
Customer is in violation of Stage 3 mandatory water conservation
conditions because his/her current "daily use" calculation is greater than
his/her higher monthly use of (a) 7,000 gallons. Under Stage 3, the
customer is required to reduce consumption by 30% of the 7000 gallons or
2,100 gallons, 7,000 - 2,100 is 4,900. So the customers daily use needs to
be about 165 gallons per day.⁷⁵

⁷² This billing statement broke service into more line items than usual (*i.e.*, two lines for service charge and four lines for commodity charge), but the total amounts billed are consistent with the rates and charges effective at the time.

⁷³ This payment was past due.

⁷⁴ See Decision No. 71902 at ex. A at 1.

⁷⁵ See Decision No. 71902 at ex. A at 8.

1 The Curtailment Tariff sets out the following storage level percentage thresholds and other
 2 criteria for the Stages created therein and the following water augmentation requirements for each
 3 Stage:⁷⁶

Stage	Criteria	Augmentation
Stage 1	(a) $\geq 85\%$ and (b) No known problems with production or storage	No augmentation required
Stage 2	(a) $< 85\%$ and $> 70\%$ for at least 48 consecutive hours and (b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	No augmentation required
Stage 3	(a) $< 70\%$ and $> 60\%$ for at least 24 consecutive hours and (b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	Company must take reasonable measures to augment well production until Stage 2 conditions are achieved for 48 consecutive hours
Stage 4	(a) $< 60\%$ and $> 50\%$ for at least 24 consecutive hours and (b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	Company must take reasonable measures to augment well production until Stage 3 conditions are achieved for 48 consecutive hours
Stage 5	(a) $< 50\%$ for at least 12 consecutive hours and (b) Operational circumstances create a reasonable belief that the system will be unable to meet anticipated sustained water demand	Company must take reasonable measures to augment well production until Stage 4 conditions are achieved for 48 consecutive hours

23
 24 The Curtailment Tariff does not prohibit water augmentation during Stage 1 or 2, although the WAS
 25 tariff would not apply to allow recovery for water augmentation during Stage 1 or 2. (See Decision
 26 No. 71902 at ex. A.)

27 In the Smith Docket, Mr. Smith provided a chart showing for each date from May 1 through

28 ⁷⁶ See Decision No. 71902 at ex. A.

1 September 30, 2011, the reported Stage for MDC; the reported storage level as a percentage; what
 2 appears to be the corresponding Stage under the Curtailment Tariff;⁷⁷ and, for some dates, a statement
 3 apparently indicating action to be taken. (See Smith Tr. at 93-96; Smith Ex. C-9 at 23-24.) Mr.
 4 Smith indicated that the chart was a document that had been submitted to Staff by Payson/Brooke.
 5 (See Smith Ex. C-9 at 23-24; Smith Tr. at 93.) The chart is attached hereto and incorporated herein
 6 as Exhibit 4.

7 There is testimony from Mr. Hardcastle indicating discomfort with and a desire to get away
 8 from both water augmentation and the Curtailment Tariff:

9 Payson Water Company's long-term plans for Mesa del Caballo is try to
 10 get out of water augmentation and the water curtailment process
 11 completely as fast as we can. Nobody likes it. We don't like it. This
 12 proceeding is a good example. We wind up being cops. We don't like to
 be cops. That's not the business we are in. It is a necessary and
 unfortunate part of this business. But we would like to be out of the water
 augmentation business.⁷⁸

13 Mr. Smith also provided copies of a number of emails including the notices that Payson was required
 14 to provide under the Curtailment Tariff, which would have presented a regular administrative burden
 15 necessary only due to the Curtailment Tariff. (See Smith Ex. C-4 at 54-80.) Some of the emails sent
 16 to MDC customers, particularly those on August 10 and 11, 2011, read as pleas for MDC customers
 17 to use less water and warnings of the probable consequences if they do not reduce use.⁷⁹ (See Smith
 18 Ex. C-4 at 55-80.)

19 3. Relevant Commission Rules

20 A.A.C. R14-2-409(A)(1) requires a utility to bill monthly for services rendered and to
 21 schedule meter readings to occur every 25 to 35 days. A.A.C. R14-2-409(D)(3) provides that the
 22 failure of a customer to receive a bill or notice that was properly placed in the U.S. Mail shall not
 23

24 ⁷⁷ This is difficult to establish without a time element added to the percentage, as the criteria for each of the Stages has
 a time element component.

25 ⁷⁸ Tr. at 419-20.

26 ⁷⁹ On August 10 at 0620 hours, Payson sent an email that said "PLEASE AVOID WATER HAULING COSTS by
 conserving water. No one likes to haul water and pay for it. You CAN IMMEDIATELY EFFECT your costs by
 avoiding more water hauling costs." (Smith Ex. C-4 at 71.) Likewise, at 1525 hours on August 10, 2011, Payson's email
 27 said, *inter alia*, "PLEASE reduce water consumption to avoid ADDITIONAL water augmentation charges related to
declining water storage levels." (Smith Ex. C-4 at 72.) Then, at 0730 hours on August 11, 2011, Payson's email said:
 28 "Water storage levels declined further overnight. We are very near being required to haul water again. PLEASE avoid
 this condition and costs by conserving all the water possible." (Smith Ex. C-4 at 73.)

1 prevent the bill from becoming delinquent or relieve the customer of the obligations of the bill.
 2 A.A.C. R14-2-409(C)(1) provides: "All bills for utility service are due and payable when rendered.
 3 Any payment not received within 15 days from the date the bill was rendered shall be considered
 4 delinquent." A.A.C. R14-2-409(C)(2) provides that the date a bill is rendered can be established by
 5 either the postmark date or the mailing date shown for certified mail or a certificate of mailing.

6 A.A.C. R14-2-407(A) provides: "Each utility shall be responsible for providing potable water
 7 to the customer's point of delivery." A.A.C. R14-2-407(C) provides: "Each utility shall make
 8 reasonable efforts to supply a satisfactory and continuous level of service."

9 4. Resolution

10 Subcount (1) Failure to Mail Out May 2011 Statements

11 Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith all assert that they did not receive their May
 12 2011 billing statements in a timely fashion. Mr. Gehring and the Smiths further assert that they did
 13 not receive their May 2011 statements until they expressly requested them. Ms. Kitchen's affidavit
 14 asserts that Mr. Conklin was directed by Brooke to throw the May 2011 statements in the trash, but
 15 does not state that Ms. Kitchen observed Mr. Conklin throwing the bills away; that Ms. Kitchen was
 16 included in the communications occurring between Mr. Conklin and Brooke/Payson; or that the bills
 17 in question were for Payson or specifically for MDC. Furthermore, because neither Ms. Kitchen nor
 18 Mr. Conklin was called to testify in this matter, neither Payson nor Staff had an opportunity to cross-
 19 examine Ms. Kitchen or to ask Mr. Conklin about the accuracy of Ms. Kitchen's affidavit. Nor did
 20 the Administrative Law Judge have an opportunity to assess Ms. Kitchen's credibility.

21 The fact that only four MDC customers were disconnected for past due payments on May 25,
 22 2011,⁸⁰ and that only an additional five customers apparently were significantly late in their
 23 payments, suggests that most of the approximately 367 MDC customers received their May 2011
 24 bills. If none of them, or a sizable portion of them, had not received their bills, it seems likely that
 25 there would have been more than nine customers either disconnected or included on the list of
 26 customers who paid prior to disconnection for the month. Complainants have not established, by a
 27

28 ⁸⁰ While Mr. Smith's home was disconnected for a period in June 2011, the disconnection was not associated with nonpayment of a bill, but with violation of the Curtailment Tariff.

1 preponderance of the evidence, that Payson failed to mail May 2011 bills to some or all of its MDC
2 customers.

3 Subcount (1) is not substantiated.

4 Subcount (2) Disconnection when Usage Below 133.33 Gallons per Day

5 Complainants seem to believe that the Curtailment Tariff's exception means that a customer
6 who has water usage that is below 4,000 gallons in any month, or that is below the daily equivalent of
7 133.33 gallons on any day, is not required to curtail usage during Stages 3 through 5. This belief is
8 not consistent with the Curtailment Tariff exception, quoted above, which requires that exemption
9 eligibility be determined using a 12-month rolling average. Complainants have not alleged or
10 established that any customer with water usage below 4,000 gallons per month according to the
11 Curtailment Tariff has been required to comply with daily usage requirements under Stages 3 through
12 5. As is shown above, Mr. Smith's household usage did not appear to make his household eligible
13 for the Curtailment Tariff exemption when his water was disconnected for noncompliance with the
14 mandatory daily usage reductions. Complainants have not met their burden of proof.

15 Subcount (2) is not substantiated.

16 Subcount (3) Selection of Water Conservation Days to Harass and Extort Revenue

17 The chart in Exhibit 4 shows the reported daily Stages for the period from May 1 through
18 September 30, 2011. Because Exhibit 4 shows only one storage level percentage for each day, and
19 there is no indication whether the percentage level shown was the low for the day, at what time it was
20 taken, or for how long it lasted, it is not possible to determine definitively whether the percentage
21 shown dictates the appropriate Stage for the day. This is particularly true when the day before and
22 the day after show significantly different percentage levels. This uncertainty highlights the
23 complexity of applying the Curtailment Tariff, which requires a percentage level, a minimum
24 duration for that percentage level, and a subjective operational judgment to determine the appropriate
25 Stage. (See Decision No. 71902 at ex. A.) Additionally, it reveals the flaws in the Curtailment Tariff
26 Stage criteria—many scenarios are possible under which the day's circumstances would not fall
27
28

1 neatly within the criteria for any Stage.⁸¹ This increases the difficulty of determining whether it was
2 necessary, or simply reasonable, for Payson to decide to haul water on any particular date.

3 Exhibit 4 shows that, with the exceptions of July 3 and September 5 and 28, each incidence of
4 hauling⁸² was preceded by or started on a day when storage levels were reported at below 70 percent,
5 the threshold for Stage 3 and mandatory water augmentation.⁸³ (See Exhibit 3.) For July 3 and
6 September 5 and 28, the chart shows that for either the date of hauling or the preceding date, the
7 reported storage levels were at 72 or 74 percent. It is also noteworthy that July 3 and September 5
8 both fell within long holiday weekends, when it would be reasonable to expect greater water usage at
9 a residence.⁸⁴ These factors all support a determination that Payson applied the Curtailment Tariff in
10 a reasonable manner.

11 There are also factors that raise questions about the manner in which Payson applied the
12 Curtailment Tariff. For example, although MDC's reported storage percentage level hovered
13 between 63 and 72 percent and is shown as being at Stage 3 from July 17 through August 4, water
14 hauling was not commenced until August 5, 2011. It is possible that Payson should have hauled
15 earlier during this period. One can also question why water hauling was commenced on September
16 5, when a storage level of 74 percent was reported for September 4. Yet, as noted previously, there is
17 no indication for how long the 74 percent lasted or whether it was even the low point for the day.

18 Complainants have not provided any evidence to indicate which dates people were more
19 likely to water outdoors or that Payson would have been aware of which dates people were more
20 likely to water outdoors, or to suggest that Payson chose to use the Curtailment Tariff as a weapon.
21 Rather, the evidence suggests that Payson was reluctant to use the Curtailment Tariff and attempted
22 to avoid its use and water hauling. This is logical, as Payson's use of the Curtailment Tariff and of

23 _____
24 ⁸¹ For example, if the storage level on Day 1 at hour 1 is 71, it falls to 65 by Day 1 at hour 12, and it goes back up to 72
25 by Day 2 at hour 2, that situation would not meet the express Curtailment Tariff criteria for either Stage 3 or Stage 2.
(See Decision No. 71902 at ex. A at 2-3.)

26 ⁸² We consider a two-day period of hauling to be one incidence. The hauling dates shown on the hauling logs are
27 indicated by arrows.

28 ⁸³ We note that the hauling log corresponding to the August 31 to September 1, 2011, Pearson invoice stated that the
hauling took place on August 30, 2011, rather than August 31 to September 1, 2011, which makes more sense in light of
the water storage levels shown in Exhibit 4. (See Smith Ex. C-8 at 33.)

⁸⁴ Official notice is taken that July 4, 2011, was Independence Day and a Monday and that September 5, 2011, was
Labor Day and a Monday. We also note that July 3 and September 5 and 28 are three of the four hauling occurrences
when water was hauled to both MDC and EVP. (See Exhibit 1.)

1 water hauling resulted in additional administrative duties and expenses, none of which were
2 reimbursable under the WAS tariff.

3 Subcount 3 is not substantiated.

4 5. Remedy

5 Because Count D is not substantiated, there is no need to consider a remedy related thereto.

6 Count E

7 1. The Allegations

8 Complainants allege that Payson made misrepresentations to the Commission and other
9 regulatory agencies in falsified public records to revise the Curtailment Tariff and secure a WAS
10 tariff by creating an artificial emergency situation. Specifically, Complainants allege that (1) Payson
11 duped the Commission into issuing Decision No. 71902 by making “intentional Misrepresentations . .
12 . to coerce a prescribed decision desired by [Payson/Brooke] and the MDC Water Committee” and
13 detrimental to Complainants and other MDC customers; and (2) the MDC Water Committee
14 knowingly and intentionally misrepresented in the WAS Docket that it represented the majority of
15 MDC customers and that the Curtailment Tariff and WAS Tariff were acceptable, neither of which
16 was true. These will be addressed as subcounts (1) and (2).

17 2. The Evidence

18 To support their assertion that the Commission was duped into believing that there was an
19 emergency situation where there was not one, Complainants provided information to support the
20 ideas that the MDC system wells actually produced more water than the system needed and that the
21 MDC system wells could have produced even more water had Payson made some changes.

22 Complainants provided excerpts from Payson’s annual reports to the Utilities Division,
23 specifically those pages listing the wells on the system and their pump yields.⁸⁵ The 2011 report
24 excerpt showed that four of the MDC system’s seven wells were producing water, with a combined
25 pump yield of 17.7 gpm; that Payson had purchased 6,900,000 gallons from three other wells,⁸⁶

26 _____
27 ⁸⁵ Because Complainants provided only a single page from each annual report, the only indication of each report’s year
is a handwritten notation, apparently made by Complainants, and there is no indication of the date that each report was
prepared. (See Ex. C-4 at 14-19.)

28 ⁸⁶ The wells were identified with numbers 55-588967, 55-560398, and 55-585747. (Ex. C-4 at 14.)

1 which produced 10 to 13.3 gpm; and that Payson had purchased 873,850 gallons from the Town.
 2 (*See* Ex. C-4 at 14.) In contrast, the 2010 report excerpt showed that five out of seven MDC wells
 3 were producing water, with a combined pump yield of 26.4 gpm; that Payson had purchased no water
 4 from three other wells⁸⁷ with a combined pump yield of 16.5 gpm; and that Payson had purchased
 5 378,000 gallons from the Town.⁸⁸ (*See* Ex. C-4 at 15.) The 2009 report excerpt showed six
 6 productive MDC wells, with a combined pump yield of 39.4 gpm, and that Payson had purchased a
 7 combined total of 10,165,000 gallons from the same three wells shown for 2010. (*See* Ex. C-4 at 16.)

8 Complainants also provided MDC well production figures obtained from Payson showing
 9 production from each well during each month in 2009, 2010, and 2011. (*See* Ex. C-1 at ex. A at 3;
 10 Tr. at 70-71.) The 2011 well production figures show regular production for seven wells, with three
 11 additional wells showing no or virtually no water production during the year. (*See id.*) The
 12 production figures show the following total production for May through September of each year:

Dates	May-September 2009	May-September 2010	May-September 2011
Total Production	6,691,840 gallons	6,545,617 gallons	6,106,080 gallons

15 These figures show that production was declining each year.

16 Additionally, Complainants provided documentation related to the location and ownership of
 17 wells, including wells that are under water sharing agreements with Payson. (*See, e.g.*, Ex. C-1 at 10-
 18 14; Ex. C-3.) Complainants also provided evidence that one of the wells listed for Payson's MDC
 19 well production results was not actually a well within MDC's water system for which Payson had a
 20 water sharing agreement. (*See* Tr. at 99-103; Ex. C-4.) Mr. Hardcastle responded that there must
 21 have been errors in listing the well numbers, but that such errors do not change the fact that there are
 22 three water sharing agreements or the location and use of the well for which the wrong number is
 23 listed. (*See* Tr. at 103.)

24 Complainants do not believe that the MDC wells are decreasing in production as much as
 25 Payson reports. (Tr. at 275.) They also assert that Payson had a surplus of water because in some

27 ⁸⁷ The wells were identified with numbers 55-588967, 55-560398, and ECC 04030. (Ex. C-4 at 15.)

28 ⁸⁸ Complainants also provided a copy of an August 11, 2010, Arizona Department of Environmental Quality ("ADEQ")
 Inspection Report describing seven wells on the MDC system, six of which were apparently active. (*See* Ex. C-1 at 29-
 33.)

1 months well production exceeded total consumption; Complainants suggested that any surplus from
 2 one month would carry over to the next month. (*See, e.g., Tr. at 72-75.*) During Mr. Gehring's
 3 questioning of Mr. Hardcastle related to this area, the following exchange occurred:

4 Q. . . . [I]n the June-July, June 17th to July 16th period, billing period,
 5 total well production was 1,241,824 gallons. The total consumption was
 6 1,234,320

7 Now, at this point, you had from the previous month
 8 approximately 685,185 gallons in surplus going into this period. And your
 9 consumption, the difference there was 7,504 gallons of surplus. What I
 10 am trying to understand here is why would you even be hauling during
 11 that time period if you had over 600,000 gallons in surplus starting into
 12 that period?

13 A. There is no relationship to in surplus, and I am not quite sure I
 14 understand what your "in surplus" means, there is no relationship to water
 15 that's in surplus as opposed to the need to haul water. The need to haul
 16 water is based on water, gallons of water actually in storage. Surplus is
 17 not water that's held outside of storage. It is not held in a pool or a
 18 reservoir. It is not, it is not additional, "to be referenced" water.

19 Water hauling in all cases is keyed upon the amount of gallons
 20 actually in storage at the time. I am assuming if we haul water on June 7th
 21 or June 5th, or whatever other date we haul, we haul because the water
 22 storage levels on those particular days, in consultation with Mr. Allred,
 23 were at a level that required water storage. I don't know how else to
 24 answer your question. Water hauling is keyed on water storage, period.

25 Q. Well, my problem with this is if, if the wells are producing
 26 1,309,000 plus gallons, and the consumption is only 624,000 plus gallons,
 27 this surplus went somewhere into the system, or was it hauled out or is it
 28 leaking out of the system, what?

A. I mean, I don't know. If you are looking at an explanation for the
 difference, I don't know. I don't know the explanation. It could be a leak.
 It could have had a water main leak, could have been, could have been a
 lot of different things.

Q. Okay.

A. Could have been a problem with a storage device. It could have
 been a bypass meter. It could have been a lot of different things. That's
 the nature of the water business.⁸⁹

Staff provided a water use data sheet, dated April 4, 2012, showing monthly breakdown
 figures supporting that for February 2011 through February 2012, the MDC system sold a total of
 14,056,532 gallons, pumped a total of 7,352,000 gallons, and purchased a total of 7,466,210 gallons.
 (Ex. S-3.) The monthly breakdown figures for gallons pumped and purchased did not add up to the
 gallons sold for the month, something that we attribute to the timing differences discussed previously.

⁸⁹ Tr. at 75.

1 In the aggregate, the figures pumped, purchased, and sold are consistent and represent a water loss of
2 approximately 5.14 percent for the period, which is within the Commission's general standard for
3 water loss to be below 10 percent.⁹⁰ (*See id.*) The water use data sheet also shows that only four of
4 seven listed MDC wells are producing, with a combined pump yield of 17.9 gpm. (*Id.*)

5 Mr. Gehring acknowledged that on certain holidays in the summer, such as Memorial Day
6 weekend, MDC expects to go to Stage 4 because there is an influx of people to the area and greater
7 water consumption. (Tr. at 273-74.) Mr. Gehring also acknowledged that before the WAS tariff was
8 effective, Payson had to pay for all water hauled without any recovery and should have had an
9 incentive to produce more water rather than to have it hauled and, further, that Payson does not
10 receive a profit from the WAS, that it is just a pass-through of costs. (Tr. at 275-79.) Mr. Gehring
11 maintains, however, that Payson intentionally spent more money for hauling than was necessary to
12 show the Commission that the costs were greater than they were. (Tr. at 278.) Mr. Gehring also
13 suggested that Payson was having water hauled out of MDC and into EVP or other systems. (Tr. at
14 279-80.)

15 Complainants assert that Payson should deepen certain wells to make them more productive
16 again, as they believe a study has established that there is water available at deeper levels. (Tr. at
17 276.) Mr. Gehring reported in his direct testimony that three new wells had been drilled in MDC and
18 that they each produced between 13 and 20 gpm. (*See Ex. C-11 at 3.*) At hearing, Mr. Gehring
19 reported that a fourth well had been drilled in MDC. (Tr. at 319-20.) Mr. Gehring acknowledged
20 that these gpm numbers were spot production conclusions from the time the well was drilled rather
21 than yield production numbers determined after a standard seven-day pumping test; he did not know
22 the actual sustained yield for any of the wells. (Tr. at 320-21.)

23 Complainants also provided information regarding the use of solenoid valves and pressure
24 reducing valves ("PRVs") to increase source production, the use of air relief valves to prevent air
25 from being forced through service connections and domestic points of use, and hydro-fracking as an
26 alternative to drilling deeper wells. (*See Ex. C-1 at 16-26; Tr. at 327.*) Mr. Gehring acknowledged

27 _____
28 ⁹⁰ The figures are also consistent with the 2011 Well Production figures provided by Mr. Hardcastle pursuant to subpoena. (*See Ex. C-1; Tr. at 71.*)

1 that he does not have any experience with hydro-fracking, although he has seen a well hydrofracked
2 on one occasion. (Tr. at 325.) Complainants also elicited from Mr. Allred that Payson has looked
3 into hydro-fracking and determined that it is a “crapshoot at best”; has installed solenoid valves into
4 all the well sites with flip switches on them so that the solenoid switches are open to fill the tanks off
5 of water sharing agreement wells when there is low usage at night; has determined that PRVs should
6 not be installed because they would limit the amount of time that water from the water sharing
7 agreement wells could fill the tanks; and has looped rather than dead end lines on the higher streets.
8 (Tr. at 126-131.) Mr. Allred suggested several times that Mr. Gehring was confused concerning how
9 the solenoid valves functioned within the system. (See Tr. at 393-98.) Mr. Gehring asserted that
10 hydro-fracking had been successful on the MDC system in the past, prior to Brooke’s ownership of
11 Payson, but did not call as a witness the individual who had told him this. (See Tr. at 326-29.)

12 In response to Complainants’ assertion that the water crisis in MDC was “manufactured,” Mr.
13 Hardcastle responded as follows: “I am at a complete loss to understand how one would be
14 motivated to ‘manufacture’ a water crisis in Mesa del Caballo for the purpose of self gain using only
15 cost reimbursement.” (Ex. R-5 at Rej. Test. at 3.)

16 Mr. Allred testified that he has been the operator for Payson for 11 years. (Tr. at 148.) Mr.
17 Allred also denied that he had ever intentionally failed to operate an MDC well when it was needed
18 or that he had been instructed or directed to do so. (See Tr. at 144.) Mr. Allred further stated that
19 although it would be beneficial to rest wells, he “do[es] not have the luxury of resting wells.” (Tr. at
20 145.) Additionally, Mr. Allred testified that Payson has 105,000 gallons of water storage for the
21 MDC system, while only 75,000 to 80,000 gallons are required, because it is prudent to have an extra
22 cushion. (Tr. at 145-46.) Mr. Allred also confirmed that he was the primary person to assess and
23 make the decisions and recommendations to Mr. Hardcastle regarding the need to haul water, based
24 upon the storage levels in the MDC tanks, information that is obtained electronically. (Tr. at 146,
25 149.) For the secondary criteria, Mr. Allred looks at weather patterns, declining tank levels, tank
26 level histories, whether it is expected to be a big weekend, and things of that nature. (Tr. at 147.)

27 Mr. Norman testified concerning his participation, as a representative of the MDC Water
28 Committee, in meetings among Payson, the Salt River Project (“SRP”), and the Town regarding the

1 Cragin pipeline. (Tr. at 404-05.) Mr. Norman testified that the MDC Water Committee is a
 2 committee of the El Caballo Club and that it never has represented itself as representing every MDC
 3 community member. (Tr. at 405.) Mr. Norman also testified that the MDC Water Committee began
 4 communicating with Payson because of the severe shortages during the summer of 2009, that the
 5 Committee has held 10 or 12 community meetings and “probably dozens, if not hundreds” of
 6 meetings with Payson, particularly Mr. Hardcastle, to explore alternatives to obtain more water for
 7 MDC, including purchasing water from the Town,⁹¹ deep wells, the Cragin pipeline, and a temporary
 8 pipeline from Payson. (Tr. at 405-07.) Mr. Norman provided the following assessment:

9 In all of those meetings, in particular, Robert Hardcastle has
 10 always expressed concern for the costs of the residents of Mesa del
 11 Caballo. Virtually every time I have met with him, and I am talking
 12 hundreds of hours, thousands of phone conversations, every time it has
 13 always been a concern for the cost to the residents of Mesa del Caballo.

14 Is everything perfect out there? Absolutely not. But, you know,
 15 long way of answering, you know, every time it has been very transparent,
 16 Mr. Hardcastle has made it absolutely necessary that the community has a
 17 voice. Whether everybody agrees that we should be the voice, it is not my
 18 call.⁹²

19 3. Applicable Law

20 Persons providing information to the Commission in regard to a material issue in connection
 21 to an application or any official proceeding are required by law to do so truthfully, even when the
 22 person provides the information in an unsworn form. (See A.R.S. § 13-2704.) If a false
 23 communication regarding a material issue is made in the form of a sworn statement, the person could
 24 be subjected to prosecution for perjury. (See A.R.S. § 13-2702.) If a false communication of any
 25 kind is made in the form of a sworn statement, the person could be subjected to prosecution for false
 26 swearing. (See A.R.S. § 13-2703.)

27 Commission rules require persons appearing before the Commission or an Administrative
 28 Law Judge to conform their conduct to that expected in Arizona Superior Court and to conduct
 themselves in a respectful manner. (See A.A.C. R14-3-103(F)(1), R14-3-109(E).) Failure to do so
 could result in penalties. (See A.A.C. R14-3-104(F)(4); A.R.S. § 40-424.)

⁹¹ Payson used to purchase water not from the Town, but from locations approximately 40 miles away. (Tr. at 277-78.)

⁹² Tr. at 407.

1 4. Resolution

2 Subcount (1) Misrepresentations to Commission by Payson

3 Complainants have provided no credible evidence to establish that Payson knowingly and
4 intentionally provided any false or misleading information to the Commission in the WAS Docket.
5 At best, Complainants have uncovered what appear to be clerical errors in the recording of a well
6 number and have highlighted the discrepancies that result due to the timing differences between
7 Payson's billing schedule, the Town's billing schedule, and the calendar month.

8 Subcount (1) is not substantiated.

9 Subcount (2) Misrepresentations to Commission by MDC Water Committee

10 The MDC Water Committee is not a public service corporation regulated by the Commission
11 and is not the Respondent in this matter. Complainants have not established that the MDC Water
12 Committee is an alter ego of Payson, Brooke, or JW and, thus, cannot attribute any conduct of the
13 MDC Water Committee to any of them. Complainants do not appropriately pursue their grievance
14 against the MDC Water Committee in this matter.

15 Subcount (2) is not proper for consideration.

16 5. Remedy

17 Because neither subcount is substantiated, it is not necessary to consider a remedy for Count

18 E.

19 Count F

20 1. The Allegations

21 Complainants allege that information publicly disclosed by Payson at the July 21 and August
22 4, 2011, public meetings at the 1st Church of the Nazarene was misleading and false. Specifically,
23 Complainants allege that at the public meetings, Payson provided slides, graphs, and documentation
24 associated with water consumption and costs of water hauling and made the following representations
25 that were "false and intentionally misleading weighing the results":

- 26 a. According to ACC Decision No. 71902 the Customer can only be
27 charged for the cost of the water and the hauling of that water.
28 The rate charged to the customer is \$0.01365 per gallon of hauled
water or \$13.65 per 1000 gallon hauled. No representation was
made that all of the water used/consumed would be charged at a 3rd

1 Commodity Rate of \$13.65/1,000 gallons and Taxed a 2nd or 3rd
2 time.;[sic]

- 3 b. That the Customer is only to be billed for the cost of water
4 purchased plus the hauling costs on a proportional bases to his use;
5 c. That, during the months of June and July 2011 MDC residents
6 allegedly used 1.79 million gallons of water;
7 d. That, it cost PWC/BU approximately \$16,600.00 to purchase and
8 haul water to the MDC System during the months of June and July
9 2011; [and]
10 e. On a slide presented to the public on July 21, 2011 Mr. Hardcastle
11 represented that in June 2011 MDC Consumed 1,938,000
12 gallons[.]⁹³

13 2. The Evidence

14 In the Complaint itself, Complainants provided three slides, identified as slides from the
15 August 4, 2011, public meeting, showing consumption and production, a water and hauling cost
16 analysis, and water hauling costs. (Complaint at ex. D.) The consumption and production slide
17 shows high consumption of 1,938,000 gallons for June 2011 and low consumption of 933,000 gallons
18 for February 2009, along with well production information. (*See id.*) The “Mdc Supplemental
19 Water Cost Analysis-Daily Water Hauling” slide, dated July 26, 2011, shows, *inter alia*, that hauling
20 86,400 gallons per day would have a total cost per day of \$2,413; a total cost per month of \$72,397; a
21 total cost per month per customer of \$193, assuming 362 customers; a cost per load of \$204; a cost
22 per gallon of \$0.0314; and a cost per 1,000 gallons of \$31.00. (*See id.*) The water hauling costs slide
23 also shows that water hauling would be “[p]aid for by customers based on individual consumption –
24 use more, pay more” and that it would cost “approximately \$.01365/gallon or \$13.65 per 1000
25 gallons (variable 2011).” (*See id.*) The source of the slides as included in the Complaint is unclear.
26 (*See Tr. at 335-40.*)

27 Payson provided three complete sets of slides described as the MDC community meeting
28 presentations of July 21, August 4, and August 25, 2011. (*See Ex. R-6.*) All three sets of slides
provide information regarding MDC and its water needs as well as five water supply alternatives:
water conservation, water hauling, USFS pipeline interconnected to the Town, deep well exploration,
and the Cragin pipeline. (*See id.*) The July 21, 2011, slides do not provide cost information, but

⁹³ Complaint at 10-11 (citations omitted).

1 show a high consumption of 1,788,000 gallons for MDC (undated), a low consumption of 903,000
 2 gallons for MDC (undated), and well production figures consistent with those on the slide provided in
 3 the Complaint. (*See id.*; Complaint at ex. D.) The July slides also state that a Town “lifestyle” takes
 4 8,640 gallons per month per meter and that MDC requires an additional water supply of 68 gpm
 5 sustainable yield on a going forward basis. (*See Ex. R-6.*)

6 The slides from August 4, 2011, include the same high and low monthly consumption
 7 numbers as included in the July 2011 slides provided by Payson; show that water hauling would
 8 “[c]ost approximately \$.01365/gallon or \$13.65 per 1000 gallons (variable 2011)”; and include the
 9 same “Mdc Supplemental Water Cost Analysis-Daily Water Hauling” slide as included in the
 10 Complaint. (*See Ex. R-6.*) Cost information is also provided for three of the other four alternatives
 11 (not conservation). (*See Ex. R-6.*)

12 The slides from the August 25, 2011, community meeting stated that water hauling would
 13 “[c]ost approximately \$.00595484/gallon or \$5.95 per 1000 gallons (August 2011).” (*See Ex. R-6.*)
 14 This presentation also included the following on a “Water Hauling Calculations” slide:

15 Water transportation invoices +
 16 TOP Water supply costs =
 17 Total Water Augmentation Costs
 18
 19 Total Water Augmentation Costs /
 20 Total Period Consumption =
 21 Water Augmentation Cost/Gallon or X 1000
 22 to convert to rate per 1000 gallons
 23
 24 Water Augmentation Cost/Gallon X
 25 Customer of Gallons =
 26 Water Augmentation Cost⁹⁴

27 Mr. Hardcastle testified as follows regarding the water hauling cost information provided on
 28 the “Mdc Supplemental Water Cost Analysis-Daily Water Hauling” slide, dated July 26, 2011:

29 This was a computed hypothetical cost of daily cost of water computed on
 30 a regular basis, on a daily, monthly, and annual basis. This has nothing to
 31 do with the actual cost of water.

32 ...

33 Because this was a going forward looking analysis, not based on actual

34 ⁹⁴ Ex. R-6.

water cost hauling invoices.⁹⁵

1 The consumption/production slide provided in the Complaint has different high and low monthly
2 consumption numbers than in the complete sets of slides provided by Payson. (See Complaint at ex.
3 D; Ex. R-6.)

4 The July 2011 slides provided by Payson encourage MDC customers to become informed, to
5 participate, and to express a preference regarding the alternatives and announce upcoming meetings.
6 (See Ex. R-6.) The July 2011 slides also warn that if a customer doesn't participate, the decision may
7 be made for them, may be unaffordable, and may not be what the customer wants. (See *id.*) The
8 August 4 slides encourage customers to "Participate, participate, participate"; to provide their contact
9 information to the MDC Water Committee before leaving; and to direct questions to an El Caballo
10 Club email address or website. (See *id.*) The August 25 slides include the same directive regarding
11 questions. (See *id.*)

12 3. Commission Statutes

13 Under A.R.S. § 40-321(A), when the Commission finds the service of any public service
14 corporation to be unjust, unreasonable, or improper, the Commission shall determine what is just,
15 reasonable, and proper and shall enforce that determination by order or regulation.

16 Under A.R.S. § 40-202(C), the Commission is expressly authorized to adopt rules to protect
17 the public against deceptive, unfair, and abusive business practices and deceptive or untrue
18 advertising practices.

19 To date, the Commission has not adopted rules for water utilities that specifically address
20 such business practices or advertising practices. However, if the Commission were to find that a
21 water utility had intentionally deceived its customers in order to obtain financial gain, the
22 Commission could use its authority under A.R.S. § 40-321(A) to determine and enforce what the
23 Commission determined to be just, reasonable, and proper in relation to such customer deception.

24 4. Resolution

25 Complainants have pointed out an inconsistency as to MDC high and low consumption data
26 between the slide excerpt that was included in the Complaint and the slides that were provided by
27

28 ⁹⁵ Tr. at 79-80.

1 6. At the times relevant to the Complaint, Mr. and Mrs. Jones resided in the MDC
2 service area and had an account with Payson in Mrs. Jones's name.

3 7. On September 28, 2010, in Decision No. 71902, the Commission approved the WAS
4 for MDC as an emergency interim rate increase, with the WAS to be effective from May 1 through
5 September 30 of each following year from the effective date of Decision No. 71902 until permanent
6 rate relief was granted by the Commission, and approved a revised Curtailment Tariff for MDC.

7 8. Complainants filed the Complaint against Payson/Brooke on January 11, 2012.

8 9. The Complaint, which has been organized into Counts and subcounts for ease of
9 reference herein, made the following major allegations, all concerning events that occurred within the
10 period from May 1 through October 30, 2011:

11 Counts A, B, and C: The WAS resulted in unauthorized corporate profits and consumer
12 fraud upon the customers/complainants of MDC because Payson failed to comply with Decision No.
13 71902 and Arizona law; fraudulently billed MDC customers for the WAS; and used a spreadsheet for
14 the July 2011 WAS calculations that was false, fraudulent, and a misrepresentation of material facts
15 and evidence.

16 Count D: Payson misapplied the revised Curtailment Tariff, failed to mail out its May
17 2011 statements and then shut off customer meters for alleged nonpayment, and unnecessarily
18 harassed customers for their daily usage.

19 Count E: Payson made misrepresentations to the Commission and other regulatory
20 agencies in falsified public records to revise the Curtailment Tariff and secure a WAS by creating an
21 artificial emergency situation.

22 Count F: Information publicly disclosed by Payson at the July 21 and August 4, 2011,
23 public meetings at the 1st Church of the Nazarene was misleading and false.

24 10. The Complaint asserted that Payson has or may have committed violations of A.R.S.
25 §§ 40-334(A) and (B), 44-1522, and 40-202(K); A.A.C. R14-2-209 et seq.; and Decision No. 71902.

26 11. Complainants sought the relief set forth in Section III of the Discussion portion of this
27 Decision.

28 12. The procedural history for this matter was as described in Section II of the Discussion

1 portion of this Decision.

2 13. An evidentiary hearing for this matter was held before a duly authorized
3 Administrative Law Judge of the Commission on June 26 and 27, 2012.

4 14. The evidentiary record for this matter incorporates the evidentiary record from the
5 Smith Docket.

6 15. Exhibit 1 summarizes, for the period from May 27, 2011, through October 26, 2011,
7 and for both MDC and EVP, the evidence regarding water purchases from the Town, hauling
8 activities by Pearson, and the costs associated with each.

9 16. During the period shown in Exhibit 1, Payson purchased water from the Town for both
10 MDC and EVP.

11 17. Payson obtained the water from the Town through a bulk water hydrant meter that the
12 Town installed upon Payson's request in a location behind a Home Depot located in the Town.

13 18. Payson hired Pearson to haul the water purchased from the Town to MDC and to EVP
14 using tanker trucks.

15 19. Pearson charged for hauling at a rate of \$150 per hour and also charged for travel time
16 between Williams and the Town at a rate of \$600 per hauling period.

17 20. Pearson's hauling logs show actual or approximate meter readings for each load
18 hauled and actual meter readings for the beginning and ending of each hauling period.

19 21. On four separate occasions, as shown in Exhibit 1, Pearson hauled water to both MDC
20 and EVP during the same hauling period.

21 22. Pearson billed Payson/Brooke separately for the MDC and EVP hauling activities.

22 23. Before Payson was permitted to bill MDC customers for the WAS, Staff reviewed and
23 scrutinized all of the documentation used to calculate the WAS and approved the WAS calculation.

24 24. As approved in Decision No. 71902, the WAS tariff required Payson to determine the
25 total documented water augmentation costs incurred for a month; to divide that total by the total
26 amount of water sold for the month, obtaining a surcharge amount per thousand gallons; to apply that
27 surcharge amount to each customer's total consumption for the month; and to bill the result as a
28 separate line item on the customer's bill.

1 25. Subcount (1) of Counts A, B, and C is not substantiated.

2 26. On the bills that included WAS, Gila County and Arizona state taxes were calculated
3 using a total figure that included the WAS, with the tax rate at 7.6 percent, which was the correct tax
4 rate at the time.

5 27. In 2011, A.R.S. § 42-5063 did not exclude surcharge proceeds from a utility's tax base
6 (the gross proceeds of sales or gross income that is derived from sales), to which the transaction
7 privilege tax is to be applied.

8 28. A.A.C. R14-2-409(D)(5) authorizes utilities to collect a proportionate share of any
9 privilege, sales, or use tax from their customers.

10 29. Subcount (2) of Counts A, B, and C is not substantiated.

11 30. Payson performed the WAS calculations in a manner substantially consistent with the
12 WAS tariff approval in Decision No. 71902. The method of calculation varied only in that the time
13 periods used to determine the different variables did not match perfectly due to billing period
14 differences.

15 31. For its July 2011 billing statements, Payson performed the WAS calculations using the
16 Town bill for consumption from May 23 through June 23, 2011; the Person hauling invoices for
17 hauling completed between June 7 and July 3, 2011; and customer water usage data for the period
18 from June 16 through July 16, 2011.

19 32. It was just and reasonable for Payson to perform the WAS calculations in the manner
20 that it did, due to the differences in billing periods associated with the variables.

21 33. Subcount (3) of Counts A, B, and C is not substantiated.

22 34. The documents provided to Staff to support Payson's calculation of the WAS for
23 Payson's July 2011 billings, and the larger group of documents used to create Exhibit 1 to this
24 Decision, do not exhibit any discrepancies or signs of alteration consistent with falsification.

25 35. During the four hauling periods when both MDC and EVP received water, Pearson
26 charged MDC a total of \$2,400.00 for travel time and did not charge EVP for travel time.

27 36. Because either MDC or EVP would have been required to pay the full travel time if
28 either had been the only system to receive hauling during a hauling period, the travel time for the four

1 hauling periods when both received hauling should have been divided equally between the two.

2 37. MDC customers were overcharged \$1,200.00 in travel charges.

3 38. Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC customers
4 were overcharged for travel time in the amount of \$1,200.00. The remainder of Subcount (4) is not
5 substantiated.

6 39. In Decision No. 75413, the Commission has required Payson to credit MDC
7 customers in the amount of \$1,422.48, which represents \$1,200.00 plus interest from the July 22,
8 2011, MDC billing date to December 1, 2015. These credits will make MDC customers whole for
9 the travel time overcharge.

10 40. The original Curtailment Tariff was authorized in Decision No. 68721 for all of
11 Payson's nine water systems, including MDC.

12 41. In Decision No. 68721, Payson was ordered to use any reconnection fees collected
13 under the Curtailment Tariff to pay for importing water, such as by hauling water or connecting to
14 and buying water from another system.

15 42. Payson's compliance filings in the Curtailment Docket indicate that from 2009
16 through 2012, Payson collected a total of \$2,400.00 in reconnection fees under the Curtailment Tariff
17 and spent a total of \$2,400.00 for water importation.

18 43. Although the WAS calculations in evidence do not reflect any deductions for the
19 curtailment fine funds, insufficient evidence has been presented to show that the funds were not used
20 for water importation as reported by Payson and required by Decision No. 68721.

21 44. Subcount (5) of Counts A, B, and C is not substantiated.

22 45. Complainants have provided an affidavit stating that between May 14 and 23, 2011,
23 Brooke directed Mr. Conklin not to send billing statements out and instead to throw them away. The
24 affidavit does not identify the system to which the billing statements pertained and does not report
25 that the affiant observed Mr. Conklin throwing the billing statements away. The affiant did not
26 testify in this matter.

27 46. Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith have all reported that they did not
28 receive their May 2011 statements in a timely fashion but instead in early July, mid-August, and mid-

1 June, respectively. Mr. Gehring and Mr. and Mrs. Jones have further reported that they did not
2 receive the statements until they requested them from Payson.

3 47. In 2011, Payson's MDC system served an average of 367 customer connections.

4 48. Four MDC customers were disconnected for past due payments on May 25, 2011, and
5 another five MDC customers paid before they were disconnected.

6 49. Complainants have not established, by a preponderance of the evidence, that Payson
7 failed to mail May 2011 billing statements to some or all of its MDC customers.

8 50. Subcount (1) of Count D is not substantiated.

9 51. The Curtailment Tariff exempts from its mandatory daily use reduction requirements
10 for Stages 3 through 5 any customer who uses 4,000 gallons or less per month based on a 12-month
11 rolling average.

12 52. A customer who had water use of 133.33 gallons during a day in Stage 3, Stage 4, or
13 Stage 5 would not be exempted from the Curtailment Tariff's mandatory daily use reduction
14 requirements unless the customer used 4,000 gallons or less per month based on a 12-month rolling
15 average.

16 53. The consumption data provided for Mr. Smith for the period of April through July
17 2011 does not support his eligibility for an exemption from the Curtailment Tariff's mandatory daily
18 use reduction requirements.

19 54. Complainants have not established that any customer with water usage below 4,000
20 gallons per month according to the Curtailment Tariff has been required to comply with daily usage
21 requirements under Stages 3 through 5.

22 55. Subcount (2) of Count D is not substantiated.

23 56. Under the Curtailment Tariff, the appropriate Stage is determined using a storage
24 percentage level, which Payson acquires electronically; a minimum duration for that percentage level;
25 and a subjective operational judgment, for which Mr. Allred considers weather patterns, declining
26 tank levels, tank level histories, whether it is expected to be a big weekend, and things of that nature.
27 This set of criteria is flawed because many scenarios are possible under which the day's
28 circumstances would not fall neatly within the criteria for any Stage.

1 57. Because the storage percentage levels shown in Exhibit 4 do not include times, it is
2 unknown whether the levels shown represent the lows for the dates or for how long they lasted, and it
3 is not possible to determine definitively whether the percentage shown dictates the appropriate Stage
4 for the date.

5 58. With the exceptions of July 3 and September 5 and 28, 2011, each incidence of
6 hauling during the 2011 peak period was preceded by or started on a day when storage levels were
7 reported at below 70 percent, the threshold for Stage 3 and mandatory water augmentation.

8 59. For July 3 and September 5 and 28, 2011, the reported storage levels were at 72 or 74
9 percent. July 3 and September 5, 2011, also fell within long holiday weekends, during which it
10 would be reasonable to expect water use to increase.

11 60. Complainants have not provided any evidence to indicate which dates people were
12 more likely to water outdoors or that Payson would have been aware of which dates people were
13 more likely to water outdoors, or to suggest that Payson chose to use the Curtailment Tariff as a
14 weapon.

15 61. The evidence suggests that Payson was reluctant to use the Curtailment Tariff and
16 attempted to avoid its use and water hauling, and even that it may have been appropriate for Payson
17 to haul water during the period between July 17 and August 4, 2011.

18 62. Subcount (3) of Count D is not substantiated.

19 63. MDC well production figures for May through September in 2009, 2010, and 2011
20 show that overall well production during these peak periods has declined each year.

21 64. Payson's annual reports have not accurately identified at least one of the wells that
22 serves the MDC system.

23 65. Payson has taken measures to increase the productivity of its wells, such as installing
24 solenoid valves into all the well sites with flip switches on them so that the solenoid switches are
25 open to fill the tanks off of water sharing agreement wells when there is low usage at night, and has
26 considered others such as hydro-fracking and the use of PRVs.

27 66. Complainants have provided no credible evidence to establish that Payson knowingly
28 and intentionally provided false or misleading information to the Commission in the WAS Docket.

1 67. Subcount (1) of Count E is not substantiated.

2 68. The MDC Water Committee is not a public service corporation regulated by the
3 Commission; is not a respondent in this matter; and is not an alter ego of Payson, Brooke, or JW.

4 69. It is not appropriate for Complainants to pursue their grievance against the MDC
5 Water Committee in this matter.

6 70. Subcount (2) of Count E is not proper for consideration.

7 71. Payson held public MDC community meetings on July 21 and August 4 and 25, 2011,
8 at which Payson provided slide presentations concerning MDC and its water needs and five water
9 supply alternatives—water conservation, water hauling, USFS pipeline interconnected to the Town,
10 deep well exploration, and the Cragin pipeline.

11 72. The slides presented on August 4 and 25, 2011, provided estimated costs per gallon
12 and thousand gallons for hauling water that were consistent with the actual WAS rates billed on the
13 July 2011 and August 2011 statements.

14 73. The slides presented on August 25, 2011, provided a water hauling calculation that
15 defined total water augmentation costs as water transportation invoices plus Town water supply costs;
16 required that the total water augmentation costs be divided by the total period consumption to obtain
17 the water augmentation cost per gallon or (if multiplied by 1,000) per 1,000 gallons; and required that
18 the water augmentation cost per gallon be multiplied by the customer gallons to obtain the water
19 augmentation cost.

20 74. The public meeting slides encouraged MDC customers to become informed, to
21 participate, and to express a preference regarding the alternatives; warned that if a customer did not
22 participate, the results might be unaffordable and not what the customer would want; and encouraged
23 customers to provide their contact information to the MDC Water Committee and to direct questions
24 to an El Caballo Club email address or website.

25 75. Complainants provided a slide, said to be from the August 4, 2011, public meeting,
26 showing high consumption of 1,938,000 gallons for June 2011 and low consumption of 933,000
27 gallons for February 2009. Payson's slides for August 4, 2011, show a high consumption of
28 1,788,000 gallons (undated) and a low consumption of 903,000 gallons (undated). The source of the

1 Complainants' slide is unclear. No evidence has been provided to explain the inconsistency, to
 2 establish that the inconsistency was an intentional deception, or to establish how or why the
 3 inconsistency was material for any reason or caused harm to Complainants or any customer of MDC.

4 76. The costs provided on the slides were clearly provided as an example and not as the
 5 established prices to be applied going forward.

6 77. Count F is not substantiated.

7 78. Because only Subcount (4) of Counts A, B, and C is substantiated, and the remedy for
 8 this subcount is fully addressed in Decision No. 75413, there is no need for the Commission to
 9 approve any additional remedy herein.

10 CONCLUSIONS OF LAW

11 1. Payson is a public service corporation pursuant to Article 15 of the Arizona
 12 Constitution and A.R.S. Title 40.

13 2. The MDC Water Committee is not a public service corporation pursuant to Article 15
 14 of the Arizona Constitution and A.R.S. Title 40 and is not an alter ego of Payson, Brooke, or JW.

15 3. Mr. Gehring and Mr. and Mrs. Jones, as persons, were authorized to make a complaint
 16 against Payson under A.R.S. § 40-246.

17 4. The Commission has jurisdiction over Payson and the subject matter of this matter.

18 5. The Commission does not have jurisdiction over the MDC Water Committee.

19 6. Notice of this matter was provided in accordance with the law.

20 7. Regarding the Counts of the Compliant, we conclude as follows:

21 (a) Subcount (1) of Counts A, B, and C is not substantiated;

22 (b) Subcount (2) of Counts A, B, and C is not substantiated;

23 (c) Subcount (3) of Counts A, B, and C is not substantiated;

24 (d) Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC
 25 customers were charged for 100 percent of the travel time on the four occasions when hauling to EVP
 26 also occurred, and the remainder of Subcount 4 is not substantiated;

27 (e) Subcount (5) of Counts A, B, and C is not substantiated;

28 (f) Subcount (1) of Count D is not substantiated;

- 1 (g) Subcount (2) of Count D is not substantiated;
 2 (h) Subcount (3) of Count D is not substantiated;
 3 (i) Subcount (1) of Count E is not substantiated;
 4 (j) Subcount (2) of Count E is not proper for consideration; and
 5 (k) Count F is not substantiated.

6 8. When the Commission investigation of a complaint finds that a public service
 7 corporation has made an excessive or discriminatory charge, the Commission is legally authorized,
 8 under A.R.S. § 40-248(A), to require the public service corporation to pay the complainant
 9 reparations, with interest at the legal rate from the date of collection.

10 9. The reparations that Payson was ordered to make in Decision No. 75413 are just and
 11 reasonable, consistent with Arizona law, and in the public interest.

12 10. Under Article 15, § 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 40-425,
 13 the Commission has authority to impose monetary penalties upon a public service corporation for
 14 failure to comply with any provision of the Arizona Constitution; A.R.S. Title 40, Chapter 2; or any
 15 Commission decision, order, or rule. Under A.R.S. § 40-423(B), such penalties are payable to the
 16 State.

17 11. The Commission is not legally authorized to award damages to a complainant.

18 12. The evidentiary record for this matter does not establish that Payson behaved in a
 19 fraudulent manner or with any other form of malice.

20 13. It is just and reasonable and in the public interest not to impose penalties upon Payson
 21 in this matter.

22 **ORDER**

23 IT IS THEREFORE ORDERED, as to the Complaint filed by J. Stephen Gehring, Bobby
 24 Jones, and Lois Jones against Payson Water Co., Inc./Brooke Utilities, Inc. that:

- 25 • Subcount (1) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
 26 • Subcount (2) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
 27 • Subcount (3) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
 28 • Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC customers

were charged for 100 percent of the travel time on the four occasions when hauling to EVP also occurred, and the remainder of Subcount 4 is not substantiated and is dismissed with prejudice;

- Subcount (5) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
 - Subcount (1) of Count D is not substantiated and is dismissed with prejudice;
 - Subcount (2) of Count D is not substantiated and is dismissed with prejudice;
 - Subcount (3) of Count D is not substantiated and is dismissed with prejudice;
 - Subcount (1) of Count E is not substantiated and is dismissed with prejudice;
 - Subcount (2) of Count E is not proper for consideration and is dismissed with prejudice;
- and
- Count F is not substantiated and is dismissed with prejudice.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

OB Hunt

CHAIRMAN

[Signature]

COMMISSIONER

[Signature]

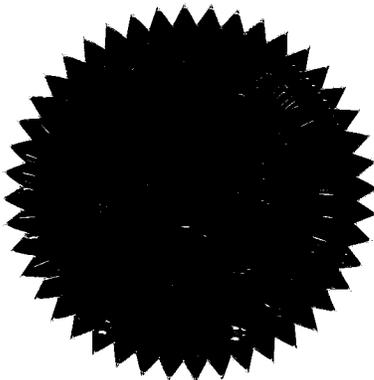
COMMISSIONER

[Signature]

COMMISSIONER

[Signature]

COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 13th day of May 2016.

[Signature]
JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: PAYSON WATER CO., INC.

2 DOCKET NO.: W-03514A-12-0008

3
4 J. Stephen Gehring
8157 West Deadeye Road
Payson, AZ 85541

5
6 Bobby and Lois Jones
7325 North Caballero Road
Payson, AZ 85541

7
8 Jason Williamson, President
PAYSON WATER CO., INC.
7581 East Academy Boulevard, Suite 229
9 Denver, CO 80230

10 Robert Hardcastle
11 P.O. Box 82218
Bakersfield, CA 93380

12 Janice Alward, Chief Counsel
13 Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
14 Phoenix, AZ 85007

15 Thomas Broderick, Director
16 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
17 Phoenix, AZ 85007

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Exhibit 1: Water Purchase and Hauling Information, 12-0008

55552 ON NOIS3D

Bill/Invoice Date	Town Meter Reading	Gallons Purchased from Town	Bill from Town	Hauling Log Start Reading	Hauling Log End Reading	Difference (Gallons)	Pearson Hauling Invoice #	Hours Billed	Amount Billed for Hauling	Amount Billed for Travel	Total Amount Billed	System Noted	Hauling Date/s
5/27/11	599,000	0	\$23.82										
6/13/11				599100 ¹	665500	66400	8803	11	\$1,650.00	\$600.00	\$2,250.00	MDC	6/7/11-6/8/11
6/21/11				665500	734400	68900	8804	20	\$3,000.00	\$600.00	\$3,600.00	MDC	6/19/11-6/20/11
6/28/11	734,400	135,400	\$863.77			135300					\$5,850.00		
6/30/11				734400	786000	51600	8807	15	\$2,250.00	\$600.00	\$2,850.00	MDC	6/24/2011
7/14/11				786000	845990	59990	8812	17	\$2,550.00	\$600.00	\$3,150.00	MDC	6/29/11-6/30/11
7/7/11				845900	898000	52100	8808	16	\$2,400.00	\$600.00	\$3,000.00	MDC	7/3/2011
				911100	924000	12900	8808						
						176590							
7/7/11				898000	911100	13100	8809	4	\$600.00	\$0	\$600.00	EVP	Not noted
						189690							
7/14/11							8811 ²		\$1,050.00		\$1,050.00	MDC	6/7/11-6/8/11
											\$10,050.00		
7/27/11	924,100	189,700	\$1,221.59										
8/16/11				924100	990672	66572	8815	18	\$2,700.00	\$600.00	\$3,300.00	MDC	8/4/11-8/5/11
8/16/11				990600 ³	1050500	59900	8816	19	\$2,850.00	\$600.00	\$3,450.00	MDC	8/1/11-8/12/11
				1056500	1062300	5800	8816				\$6,750.00		
						132272							
8/16/11				1050500	1056500	6000	8817	6	\$900.00	\$0	\$900.00	EVP	8/1/11-8/12/11
				1062300	1068300	6000	8817						
						12000							
						144272							
9/14/11 ⁴	1,068,300	144,200	\$921.77										
8/30/11				1068300	1128000	59700	8819	14	\$2,100.00	\$600.00	\$2,700.00	MDC	8/24/11-8/25/11
9/7/11				1128000	1187400	59400	8822	16	\$2,400.00	\$600.00	\$3,000.00	MDC	8/31/11-9/1/11 ⁵
9/7/11				1187400	1217000	29600	8823	13	\$1,950.00	\$600.00	\$2,550.00	MDC	9/5/11
				1241000	1264800	23800	8823				\$8,250.00		

Payson Water Co., Inc.

2011 MDC Water Augmentation Worksheet (DRE 1-1, DRE 1-2)

10-Nov-11

	2011				
	May-June	June-July	July-August	August-September	September-October
Pearson invoice 8803		\$2,250.00			
Pearson invoice 8804		\$3,600.00			
Pearson invoice 8807		\$2,850.00			
Pearson invoice 8808		\$3,000.00			
Pearson invoice 8811		\$1,050.00			
Pearson invoice 8812		\$3,150.00			
Pearson invoice 8815			\$3,300.00		
Pearson invoice 8816			\$3,450.00		
Pearson invoice 8819				\$2,700.00	
Pearson invoice 8822				\$3,000.00	
Pearson invoice 8823				\$2,550.00	
Pearson invoice 8825					\$1,950.00
TOP water supply charges	\$0	\$863.77	\$1,221.50	\$855.86	\$0.00
EVP water supply charges	\$0	\$0.00	(\$83.84)	(\$153.60)	\$0.00
Net water supply charges	\$0.00	\$863.77	\$1,137.66	\$702.26	\$0.00
Total Water Hauling Costs	\$0.00	\$16,763.77	\$7,887.66	\$8,952.26	\$1,950.00
Total Cost per Gallon	\$0.0000000000	\$0.0135813808	\$0.0059548430	\$0.0081922562	\$0.0018231796

EXHIBIT 2

DRE 1-10

1-Aug	3	64/3
2-Aug	3	66/3
3-Aug	3	64/3
→ 4-Aug	3	64/3
→ 5-Aug	3	52/4/ notice for 4
6-Aug	3	58/4/go 4
7-Aug	3	91/1/ go 3
8-Aug	3	88/2/go 2
9-Aug	2	77/2
10-Aug	2	63/3/ go 3
→ 11-Aug	3	59/4/ stay 3
→ 12-Aug	3	99/1
13-Aug	3	90/1/stay 3
14-Aug	3	80/2/stay 3
15-Aug	3	75/2/stay3
16-Aug	3	64/3
17-Aug	3	75/2/stay 3
18-Aug	3	70/3
19-Aug	3	73/3
20-Aug	3	75/2
21-Aug	3	68/3
22-Aug	3	64/3
23-Aug	3	62/3
→ 24-Aug	3	58/4/ stay 3
→ 25-Aug	3	102/1/go 2
26-Aug	2	93/1/stay 2
27-Aug	2	80/2
28-Aug	2	73/3/go3
29-Aug	3	66/3
→ 30-Aug	3	62/4/go 4
→ 31-Aug	4	101/1/go3
1-Sep	3	96/1/go to 2
2-Sep	2	85/1/stay 2
3-Sep	2	79/2
4-Sep	3	74/2/stay3
→ 5-Sep	3	90/1/go2
6-Sep	3	99/1/go 2
7-Sep	2	91/1/stay 2
8-Sep	2	81/2
9-Sep	2	82/2
10-Sep	2	81/2
11-Sep	2	81/2
12-Sep	2	80/2
13-Sep	2	82/2
14-Sep	2	83/1/stay 2
15-Sep	2	82/2

16-Sep	2	80/2
17-Sep	2	82/2
18-Sep	2	80/2
19-Sep	2	79/2
20-Sep	2	79/2
21-Sep	2	81/2
22-Sep	2	77/2
23-Sep	2	80/2
24-Sep	2	80/2
25-Sep	2	71/3 go 3
26-Sep	3	70/3
27-Sep	3	72/3
→ 28-Sep	3	83/2 go 2
29-Sep	3	94/go 2
30-Sep	2	87/1/ stay 2

Labor Day weekend

75555

DEC

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