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Date: January 2, 2015

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Arizona Corporation Commission
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Phoenix, AZ 85007

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ARIZONA CORPORATION COMMISSION
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ORIGINAL

From: Robert T. Hardcastle
Brooke Utilities, Inc.

FOR FILING ORIGINAL AND 13 COPIES INTO:

DOCKET NO. W-03515A-14-0310
IN THE MATTER OF THE APPLICATION OF TONTO BASIN WATER
CO., INC., AN ARIZONA CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY)
AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

By: _____
Robert T. Hardcastle

Arizona Corporation Commission
DOCKETED
JAN 06 2015

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 Robert T. Hardcastle
4 P.O. Box 82218
5 Bakersfield, CA 93380-2218
6 *Representing Itself In Propria Persona*

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AZ CORP COMMISSION
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7
8 **COMMISSIONERS**

9 Bob Stump, Chairman
10 Bob Burns, Commissioner
11 Brenda Burns, Commissioner
12 Gary Pierce, Commissioner
13 Sandra Bitter Smith, Commissioner
14

15 IN THE MATTER OF THE APPLICATION) **DOCKET NO. W-03515A-14-0310**
16 OF TONTO BASIN WATER CO., INC.,)
17 AN ARIZONA CORPORATION, FOR A) **BROOKE UTILITIES, INC.'S**
18 DETERMINATION OF THE FAIR VALUE) **SUPPLEMENTAL APPLICATION**
19 OF ITS UTILITY PLANTS AND PROPERTY) **FOR INTERVENTION**
20 AND FOR INCREASES IN ITS WATER)
21 RATES AND CHARGES FOR UTILITY)
22 SERVICE BASED THEREON)

23
24 Applicant Brooke Utilities, Inc. ("Brooke") filed its Application for Intervention
25 through a Motion to Intervene (the "Application") dated October 13, 2014 with Docket
26 Control of the Arizona Corporation Commission ("Commission"). The Application was
27 Docketed by the Commission on October 20, 2014.

28 On October 28, 2014 Tonto Basin Water Co., Inc. (Tonto Basin") filed its
29 Objection to Brooke's Application.

30 On November 3, 2014 Brooke filed its Response to Tonto Basin's Objection for
31 Intervention.

32 On December 22, 2014 Administrative Law Judge Jibilian of the Commission's
33 Hearing Division filed its Procedural Order approving this Supplemental Application if
34 filed into the Docket on or before January 6, 2015 further requiring Brooke to specifically
35 indicate how and why the terms of the May 31, 2013 Stock Purchase Agreement (the

1 “Agreement”) between Brooke and Tonto Basin will directly and substantially affect
2 Brooke.

3 Brooke hereafter provides specific information as to the direct and substantial
4 affect to itself and its shareholders if it is not granted intervention into the subject
5 proceeding.

6 **I. INTERVENTION ALLOWED UNDER SECTION R14-3-105 (A)**

7 As a threshold matter, Title 14 at Section R14-3-105 (A) of the Arizona
8 Administrative Code (“A.A.C.”) allows intervention of non-original parties, as follows:

9 **Intervention: Persons, *other than the original parties to the proceedings*, who**
10 **are directly and substantially affected by the proceedings, shall secure an**
11 **order from the Commission or presiding officer granting leave to intervene**
12 **before being allowed to participate. (emphasis added)**

13
14 It should be noted, that:

- 15
- 16 • R14-3-105 (A) **DOES NOT** require the Docketed matter to be one **ONLY**
17 in which fair value of utility property is being considered;
- 18 • R14-3-105 (A) **DOES NOT** require the Docketed matter to be one **ONLY**
19 in which setting rates is a conclusion of the proceeding;
- 20 • R14-3-105 (A) **DOES NOT** limit the scope of the Docketed matter to
21 **ONLY** that as defined by the original application filed by one of the parties;
- 22 • R14-3-105 (A) **DOES NOT** reject parties seeking intervention where the
23 scope of the intervention might possibly broaden the scope and extend the
24 required time of the proceedings.

25 In fact, R14-3-105 (A) exclusively defines the threshold of qualification to being
26 granted intervention as being “directly and substantially” affected by the proceedings.
27 The nature, cause, scope, and time impact are not satisfactory arguments, as argued by
28 counsel for Tonto Basin, for denying intervention into this matter.

29 **II. BROOKE HAS NO INTEREST IN BROADENING THE ISSUES AND**
30 **DELAYING ADJUDICATION BY THE COMMISSION.**

1 Tonto Basin's counsel argues that granting Brooke intervention into this matter
2 "would serve only to unduly broaden the issues and delay adjudication" by the
3 Commission. The "issues" referenced by counsel are the ones that were solely and
4 unilaterally created by JW Water Holdings LLC ("JWW"). To the contrary, Brooke
5 seeks adjudication of the rate application involving Tonto Basin as quickly as possible.
6 Brooke has every incentive to desire this proceeding be completed sooner rather than
7 later. The Agreement provides that a rate application was to be filed by Tonto Basin on or
8 before a date certain:

- 9 • **"No later than July 1, 2014 the Buyer ["JW Water Holdings LLC or
10 JWW"] shall submit rate applications on behalf of TB ["Tonto Basin"]
11 and NW ["Navajo Water Co, Inc.,"] using a test year end of December
12 31, 2013".**

13 Brooke entered into the Agreement with JWW with a fundamental interest in
14 establishing the approved rate base and operating expenses *as soon as possible*. In fact, it
15 was JWW that unilaterally delayed the adjudication of the Tonto Basin rate application
16 by not filing the application until August 22, 2014 – some 50 days later than specified
17 requirement of the Agreement.

18 **III. INCORRECT TEST YEAR USED BY TONTO BASIN**

19 As stated in section II above the Agreement between Brooke and JWW specifically
20 states that a rate application filed by Tonto Basin **must** use "a test year end of December
21 31, 2013". The consequence of that condition, thoroughly discussed by and known to the
22 Parties at the time of execution of the Agreement, would be that the January through May
23 2013 portion of the test year would be determined based on Brooke's ownership of Tonto
24 Basin and that the June through December 2013 portion of the test year would be based
25 on JWW's ownership of Tonto Basin. The Parties intended this condition to be the case
26 (I) so that an objective mix of Tonto Basin's operating expenses and rate base partially
27 owned by Brooke and partially owned by JWW during 2013 would best and most fairly
28 represent the actual incurred costs of the two holding companies during the period, and

1 (II) that use of a December 31, 2013 test year, for rate application purposes, would
2 provide JWW with more than sufficient time to prepare a rate application on or before the
3 July 1, 2014 Agreement deadline. The Parties discussed the reasonableness and
4 practicality of this condition at great length over many hours of negotiation preceding
5 completion of the Agreement on May 31, 2013. Despite the Agreement provisions, and in
6 avoidance of prior negotiations, JWW filed the Tonto Basin rate application on August
7 22, 2014 using a test year ending June 30, 2014. JWW argues the reason for this change
8 is because Commission Staff indicated “they would prefer” the modified test year.

9 It should be obvious that Commission Staff was not involved, in any manner, with
10 discussion and negotiation of the Agreement. Their preference of test years should not
11 have been considered without JWW’s full discussion with Staff of the requirements and
12 ramifications of the Agreement and prior to gaining Brooke’s approval of a changed test
13 year.

14 On July 1, 2014 JWW sought Brooke’s acceptance of this changed test year
15 condition. Brooke was clear in its response to JWW on July 17, 2014 that the
16 modification of test years could not be assessed based on the information available.
17 Brooke requested that JWW provide the necessary analysis of the impact of the proposed
18 test year as changed from the Agreement requirement. Brooke made it clear that its
19 consideration of a changed test year required some basis and analysis prior to granting its
20 approval. It is undisputed between the Parties that **Brooke never provided its approval of**
21 **a modified test year as the basis for Tonto Basin’s rate application.**

22 **IV. Structure of the Agreement**

23 As one might expect the structure of the confidential Agreement between Brooke
24 and JWW is complex with many variables, conditions, and conclusions based on existing
25 and future results. One of those results is the outcome of the rate applications for both
26 Tonto Basin and Navajo Water Company Inc. (“Navajo”).

27 The final price paid by JWW to Brooke is partially based on the rate base and
28 operating expenses allowed in a final order by the Commission. The balance of the future
29 price paid, after an initial payment, is to be paid by JWW in the form of a Note and,

1 ultimately, an Adjusted Note payable over a future period. Thus, the final price paid by
2 JWW to Brooke is calculated, in part, based on the test year designed in the Agreement
3 ending December 31, 2013 - not June 30, 2014. The sums involved are significant to both
4 Brooke and JWW. Any final determination of the Adjusted Note will be affected by the
5 outcome of the rate applications which is affected by the metrics and amounts used in the
6 applications itself. By JWW not using the Agreement basis test year the final amount of
7 the Adjusted Note cannot be determined. Obviously, JWW is incentivized for the
8 Adjusted Note balance being lower while Brooke incentivized by a higher Adjusted Note.
9 Thus, precise and accurate use of the Adjusted Note parameters specifically defined in
10 the Agreement is essential to each party in understanding the nature and amount of the
11 future obligation JWW owes Brooke. In this manner JWW's future obligation of the
12 Adjusted Note cannot be accurately determined without use of the test year defined in the
13 Agreement. In this way, Brooke's approval of a modified test year, while not necessarily
14 unreasonably withheld, cannot be ascertained except under the provisions of the
15 Agreement.

16 Expectedly, any order or conclusion reached by the Commission in this Docket
17 that ignores the requirements and obligations of the Agreement, clearly known to JWW
18 before filing of the rate application, injures both parties and will result in an Adjusted
19 Note that is meaningless and likely will result in the additional cost and effort of
20 litigation for Tonto Basin and its customers.

21 **V. TONTO BASIN'S FAILURE TO CONTROVERT BROOKE'S**
22 **EXPLANATION**

23 Throughout Tonto Basin's previous Docket filings in this matter (i.e. Opposition
24 to Brooke Utilities, Inc.'s Application for Intervention (the "Opposition")) no attempt to
25 controvert Brooke's explanation of the facts related to this matter, and stated herein, has
26 been made. There is a reason for that. The reason is that JWW and its counsel know the
27 facts stated by Brooke are accurate to which they have no retort. In this manner Tonto
28 Basin expectedly does not want additional scrutiny at hearing by Intervener Brooke as to
29 the unilateral modifications made by JWW without Brooke's approval. Brooke presumes

1 this is the “unduly broaden[ed]” and “delayed adjudication” conditions referenced by
2 Tonto Basin’s counsel.

3 **VI. CONCLUSION**

4 Based on the foregoing, Brooke’s Application for Intervention should be granted
5 because any order issued by the Commission that includes the proposed incorrect test
6 year which results in rate base and rate setting for customers will be disruptive to
7 customers of Tonto Basin. Brooke is directly and substantially affected by the proceedings
8 and should be granted intervention into this Docket.

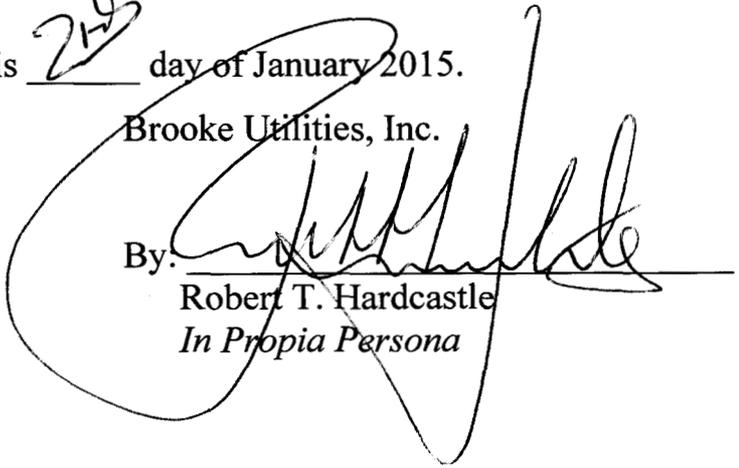
9 In the alternative Brooke respectfully suggests the Commission order Tonto Basin
10 to complete one of the following courses of action:

- 11 (1) As requested by Brooke as early as July 2014, perform an analysis that
12 calculates the impact of using any test year different than Tonto Basin’s
13 ending December 31, 2013, as provided in the Agreement with Brooke; or,
14 (2) Order Tonto Basin to withdraw its rate application and immediately re-file a
15 future rate application using December 31, 2013 as the test year.

16 Any denial of Brooke’s application to intervene or any alternative to the above
17 stated suggestions would be tantamount to the Commission encouraging one of its
18 regulated public service corporations to ignore the terms and conditions of the legally
19 binding contracts it enters into.

20
21 RESPECTFULLY SUBMITTED this 21st day of January 2015.

22 Brooke Utilities, Inc.

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24 By: 
25 Robert T. Hardcastle
26 *In Propria Persona*
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1 ORIGINAL and 13 copies filed
2 this ~~21~~ day Januray 2015, with:
3

4 **Docket Control**
5 **Arizona Corporation Commission**
6 **1200 West Washington St.**
7 **Phoenix, AZ 85007**
8

9 And copies mailed to the following:

10
11 Teena Jibilian, Administrative Law Judge
12 HEARING DIVISION
13 Arizona Corporation Commission
14 1200 West Washington St.
15 Phoenix, AZ 85007
16

17 Brian E. Smith
18 Legal Division
19 Arizona Corporation Commission
20 1200 West Washington St.
21 Phoenix, AZ 85007
22

23 Jay Shapiro
24 Fennemore Craig
25 2394 E. Camelback Road, Suite 600
26 Phoenix, Arizona 85016
27

28 Jason Williamson
29 JW Water Holdings LLC
30 P.O. Box 200505
31 Denver, CO 80220
32

33 Janice Alward, Chief Counsel
34 Legal Division
35 Arizona Corporation Commission
36 1200 West Washington St.
37 Phoenix, AZ 85007
38

39
40
41
42

1 Steve Olea, Director
2 Utilities Division
3 Arizona Corporation Commission
4 1200 West Washington St.
5 Phoenix, AZ 85007

6
7 By:

8 Robert T. Hardcastle
9 Brooke Utilities, Inc.