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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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IN THE MATTER OF THE APPLICATION OF
TONGO BASIN WATER CO., INC. FOR
APPROVAL OF AN ADJUSTMENT IN THE
EXISTING RATES CHARGED BY THE
COMPANY.

DOCKET NO. W-03515A-14-0310

RATE CASE PROCEDURAL ORDER

BY THE COMMISSION:

On August 21, 2014, Tonto Basin Water Company, Inc. ("Tonto Basin" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a rate increase based on a test year ended June 30, 2014.

On August 26, 2014 and September 10, 2014, Tonto Basin filed supplements to its rate application.

On September 22, 2014, the Commission's Utilities Division ("Staff") filed a Letter of Deficiency.

On October 7, 2014, Tonto Basin filed an additional supplement to its rate application.

On October 10, 2014, Staff filed a Letter of Sufficiency indicating that the Company's application met the sufficiency requirements of Arizona Administrative Code ("A.A.C.") R14-2-103, and classifying Tonto Basin as a Class C Utility.

On October 20, 2014, Brooke Utilities Inc. ("Brooke") filed an Application for Intervention. Brooke claims that it has a direct and substantial interest in this rate proceeding because it is a party to a transactional agreement with Tonto Basin's parent JW Water Holdings, LLC.¹ Brooke asserts that Tonto Basin's filing of this rate application does not comply with the terms of a May 31, 2013, agreement between JW Water Holdings, LLC and Brooke. Brooke contends that Tonto Basin's rate

¹ Tonto Basin's rate case application indicates that JW Water Holdings, LLC purchased Tonto Basin from Brooke on June 1, 2013, and that JW Water Holdings, LLC owns 100 percent of the shares of Tonto Basin.

1 application “may affect that Agreement” and that “the possible implications of this rate application to
2 Brooke places this Application at unknown risk.”

3 On October 28, 2014, Tonto Basin filed its Opposition to Brooke’s Application for
4 Intervention. Tonto Basin states that the May 31, 2013 agreement Brooke refers to in the Application
5 to Intervene is a Stock Purchase Agreement entered into by and among Brooke, Tonto Basin, Navajo
6 Water Co., Inc., Payson Water Co., Inc., and JW Water Holdings, LLC. Tonto Basin asserts that the
7 purpose of its rate application is to determine the fair value of its property and to set rates, and that
8 the May 31, 2013 Stock Purchase Agreement between Tonto Basin and Brooke is not at issue in this
9 rate proceeding, and is beyond the scope of this rate proceeding. Tonto Basin contends that Brooke
10 lacks any real interest in this proceeding, and that allowing Brooke to intervene would unduly
11 broaden and delay this rate case proceeding. Tonto Basin requests that Brooke’s Application to
12 Intervene be denied.

13 On November 3, 2014, Brooke filed its Response to Tonto Basin’s Opposition. Brooke
14 reiterates its claim that Tonto Basin’s rate filing contravenes the terms of the May 31, 2013 Stock
15 Purchase Agreement, and claims that Tonto Basin made the rate case filing with knowledge of
16 Brooke’s objection to the test year ending June 30, 2014. Brooke contends that its intervention
17 request “should be approved in order for it to determine the extent of the impact of JW Water’s
18 failure to abide by the terms and conditions of the Agreement related to a properly negotiated test
19 year,” and states that “in some sense a replacement application that conforms to the requirements of
20 the Agreement is not unreasonable.” Brooke argues that it should be granted intervention “in order
21 for it to determine the extent of the impact” of the test year Tonto Basin used in its rate case filing,
22 and states that if it is not granted intervention in this rate proceeding, Brooke may proceed “in a
23 manner that best protects its interests.”

24 The Commission’s Rules of Practice and Procedure provide that persons who are directly and
25 substantially affected by Commission proceedings must secure an order from the Commission or
26 presiding officer granting leave to intervene before being allowed to participate, and that no
27 application for leave to intervene shall be granted where by so doing the issues theretofore presented
28

1 will be unduly broadened, except upon leave of the Commission.²

2 Brooke does not claim to be a shareholder, or a customer, of Tonto Basin. Brooke's
3 Application to Intervene and its Response allude to a possible, but unknown, impact to Brooke
4 stemming from Tonto Basin's choice of a test year ending June 30, 2014, and to Brooke being in a
5 position to "consider seeking redress or remedies provided for in the [May 31, 2013 Stock Purchase]
6 Agreement [between Brooke and Tonto Basin], at law, or both." Brooke states in its Response that it
7 does not wish to broaden the issues of the rate application issues or delay its adjudication.

8 Based on Brooke's filings to date, the record is not clear whether Brooke will be directly and
9 substantially affected by this rate case proceeding. Without more specific information from Brooke,
10 it cannot be determined whether a basis exists for granting Brooke intervention. If Brooke wishes
11 any further consideration of its Application to Intervene, it should file a supplement to its Application
12 to Intervene, no later than November 17, 2014, that specifically indicates how and why the terms and
13 conditions of the May 31, 2013 Stock Purchase Agreement between Brooke and Tonto Basin, in
14 conjunction with Tonto Basin's current rate case filing, will directly and substantially affect Brooke.
15 Tonto Basin and Staff will be required to file a reply.

16 On October 29, 2014, Tonto Creek Trail RV Park, Inc. ("TCTRVP"), a customer of the
17 Company, filed a Motion to Intervene, signed by its owners and sole officers and directors, Gary and
18 Margaret Lantagne. There has been no opposition filed to TCTRVP's Motion to Intervene, and it
19 should therefore be granted.

20 Pursuant to A.A.C. R14-3-101, the Commission now issues this procedural order to govern
21 the preparation and conduct of this proceeding.

22 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall
23 commence on **April 20, 2015, at 10:00 a.m.**, or as soon thereafter as is practical, in Hearing Room
24 No. 1 at the Commission's offices, 1200 West Washington, Phoenix, Arizona 85007, and shall
25 continue, if necessary, beginning at **9:30 a.m. on April 21, 2015**, and on such other dates as are
26 determined if needed.

27
28 ² A.A.C R14-3-105.

1 IT IS FURTHER ORDERED that a **pre-hearing conference** shall be held on **April 16, 2015,**
2 **at 2:00 p.m.**, or as soon thereafter as is practical, at the Commission's offices, Hearing Room No. 1,
3 1200 West Washington, Phoenix, Arizona 85007, for the purpose of scheduling witnesses and
4 discussing the conduct of the hearing.

5 IT IS FURTHER ORDERED that the **Staff Report/direct testimony and associated**
6 **exhibits** to be presented at hearing by **Staff** shall be reduced to writing and filed on or before
7 **February 23, 2015.**

8 IT IS FURTHER ORDERED that the **direct testimony and associated exhibits** to be
9 presented at hearing by **intervenors** shall be reduced to writing and filed on or before **February 23,**
10 **2015.**

11 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be
12 presented at hearing by **Tonto Basin** shall be reduced to writing and filed on or before **March 16,**
13 **2015.**

14 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits** to be
15 presented at hearing by **Staff and intervenors** shall be reduced to writing and filed on or before
16 **April 6, 2015.**

17 IT IS FURTHER ORDERED that the **rejoinder testimony and associated exhibits** to be
18 presented at hearing by **Tonto Basin** shall be reduced to writing and filed on or before **April 13,**
19 **2015.**

20 IT IS FURTHER ORDERED that **all testimony** filed shall include a **table of contents** listing
21 the issues discussed.

22 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m.** on the date the
23 filing is due, unless otherwise indicated.

24 IT IS FURTHER ORDERED that **the parties shall prepare, jointly or individually, and**
25 **bring to the pre-hearing conference, copies of an issues matrix** setting forth all disputed issues in
26 the case, the position of each party on each disputed issue, whether the disputed issue remains in
27 dispute or has been resolved, and the manner in which it was resolved.

28

1 IT IS FURTHER ORDERED that **any objections to prefiled testimony or exhibits shall be**
2 **made before or at the April 16, 2015**, pre-hearing conference.

3 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
4 105, except that all motions to intervene must be filed on or before **January 15, 2015**.

5 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
6 **January 23, 2015**.

7 IT IS FURTHER ORDERED that if **Brooke Utilities, Inc.** wishes any further consideration
8 of its Application to Intervene, it **may file, no later than November 17, 2014, a supplement to its**
9 **Application to Intervene** that specifically indicates how and why the terms and conditions of the
10 May 31, 2013 Stock Purchase Agreement between Brooke and Tonto Basin, in conjunction with
11 Tonto Basin's current rate case filing, will directly and substantially affect Brooke. If Brooke is
12 granted intervention, Brooke must either be represented by counsel, or must file a copy of a board
13 resolution authorizing a specifically named officer of the corporation to represent it.

14 IT IS FURTHER ORDERED that if Brooke makes the above-authorized supplemental filing
15 to its Application to Intervene, **Tonto Basin and Staff** shall each file a **reply** thereto by **November**
16 **21, 2014**.

17 IT IS FURTHER ORDERED that Tonto Creek Trail RV Park, Inc. is hereby granted
18 intervention.

19 IT IS FURTHER ORDERED that any **substantive corrections, revisions, or supplements**
20 **to prefiled testimony**, with the exception of rejoinder testimony, shall be reduced to writing and filed
21 no later than five calendar days before the witness is scheduled to testify. Substantive corrections,
22 revisions, or supplements to prefiled rejoinder testimony shall be reduced to writing and presented on
23 the first day of hearing.

24 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
25 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
26 motion shall be deemed denied.

27 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
28 shall be filed within five calendar days of the filing date of the motion.

1 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
2 calendar days of the filing date of the response to the motion.

3 IT IS FURTHER ORDERED that **Tonto Basin shall provide public notice** of the hearing in
4 this matter, in the following form and style, with the heading in no less than 12-point bold type and
5 the body in no less than 10-point regular type:

6 **PUBLIC NOTICE OF HEARING ON THE**
7 **APPLICATION OF TONTO BASIN WATER COMPANY, INC. FOR APPROVAL OF AN**
8 **ADJUSTMENT IN THE EXISTING RATES CHARGED BY THE COMPANY**
9 **(DOCKET NO. W-03515A-14-0310)**

10 **Summary**

11 On August 21, 2014, Tonto Basin Water Company, Inc. ("Tonto Basin") filed with the
12 Arizona Corporation Commission ("Commission") an application for an approval of
13 an adjustment in its existing rates using a test year ending June 30, 2014. Tonto Basin
14 requests authorization to increase its rates to generate operating revenues of \$524,460.
15 This would constitute an increase in revenues by \$220,872, or 72.62 percent over test
16 year operating revenues of \$303,588. For information about how Tonto Basin's
17 revenue increase request would affect your individual bill, you may contact Tonto
18 Basin at [TONTO BASIN INSERT APPROPRIATE CONTACT
19 INFORMATION HERE].

20 The Commission's Utilities Division ("Staff") is in the process of auditing and
21 analyzing the application, and has not yet made any recommendations regarding Tonto
22 Basin's proposed rate increase. The Commission will determine the appropriate relief
23 to be granted based on the evidence of record in the proceeding. **THE**
24 **COMMISSION IS NOT BOUND BY THE PROPOSALS MADE BY TONTO**
25 **BASIN, STAFF, OR ANY INTERVENORS; THEREFORE, THE FINAL**
26 **RATES APPROVED BY THE COMMISSION MAY DIFFER FROM AND**
27 **MAY BE HIGHER OR LOWER THAN THE RATES REQUESTED BY**
28 **TONTO BASIN OR RECOMMENDED BY OTHER PARTIES.**

29 **How You Can View or Obtain a Copy of the Rate Proposal**

30 Copies of the application and proposed rates are available from Tonto Basin at its
31 website, www.jwwater.net/tonto, and at the Commission's Docket Control Center at
32 1200 West Washington, Phoenix, Arizona, for public inspection during regular
33 business hours, and on the Internet via the Commission's website (www.azcc.gov)
34 using the e-Docket function.

35 **Arizona Corporation Commission Public Hearing Information**

36 The Commission will hold a hearing on this matter beginning **April 20, 2015, at 10:00**
37 **a.m.**, at the Commission's offices Hearing Room No. 1, 1200 West Washington
38 Street, Phoenix, Arizona 85007. Public comments will be taken on the first day of
39 hearing.

40 Written public comments may be submitted by mailing a letter referencing Docket No.
41 W-02370A-14-0310 to Arizona Corporation Commission, Consumer Services Section,

1 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on the
2 Commission's website (www.azcc.gov) using the "Submit a Public Comment"
3 function. If you require assistance, you may contact the Consumer Services Section at
4 602-542-4251 or 1-800-222-7000.

3 **About Intervention**

4 The law provides for an open public hearing at which, under appropriate
5 circumstances, interested parties may intervene. Any person or entity entitled by law
6 to intervene and having a direct and substantial interest in the matter will be permitted
7 to intervene. Anyone who wishes to intervene must file an original and 13 copies of a
8 written motion to intervene with the Commission no later than **January 15, 2015**, and
9 send a copy of the motion to Tonto Basin or its counsel and to all parties of record.
10 Your motion to intervene must contain the following:

- 11 1. Your name, address, and telephone number and the name, address, and
12 telephone number of any person upon whom service of documents is to be
13 made if different from yours;
- 14 2. A short statement of your interest in the proceeding (e.g., a customer or
15 potential customer of Tonto Basin, a member or shareholder of Tonto Basin,
16 etc.);
- 17 3. A statement certifying that a copy of the motion to intervene has been mailed
18 to Tonto Basin or its counsel and to all parties of record in the case; and
- 19 4. If the proposed intervenor is not represented by an attorney who is an active
20 member of the Arizona State Bar, and is not an individual representing himself
21 or herself, information and any appropriate documentation demonstrating the
22 intervenor's compliance with Arizona Supreme Court Rules 31, 38, and 42, as
23 applicable.

24 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
25 that all motions to intervene must be filed on or before **January 15, 2015**. For more
26 information about requesting intervention, visit the Commission's website at
27 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.

28 The granting of intervention, among other things, entitles a party to present sworn
evidence at hearing and to cross-examine other witnesses. However, failure to
intervene will not preclude any interested person or entity from appearing at the
hearing and providing public comment on the application or from filing written
comments in the record of the case.

Intervenors' direct testimony will be due by 4:00 p.m. on February 23, 2015.
Filing deadlines are set forth in the Rate Case Procedural Order issued in this docket
on November 7, 2014.

24 **ADA/Equal Access Information**

25 The Commission does not discriminate on the basis of disability in admission to its
26 public meetings. Persons with a disability may request a reasonable accommodation
27 such as a sign language interpreter, as well as request this document in an alternative
28 format, by contacting the ADA Coordinator, Shaylin Bernal, E-mail
SAbernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as
early as possible to allow time to arrange the accommodation.

1 IT IS FURTHER ORDERED that Tonto Basin **shall, by November 28, 2014, send** a copy of
2 the above notice to each current customer by first class U.S. Mail and have the above notice
3 **published** in a newspaper of general circulation in its service territory.

4 IT IS FURTHER ORDERED that Tonto Basin shall, **by December 12, 2014, file**
5 **certification of mailing and publication** of the above notice.

6 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and
7 publication, notwithstanding the failure of an individual to read or receive the notice.

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

11 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
12 31, 38 and 42, and A.R.S. § 40-243 with respect to practice of law and admission *pro hac vice*.³

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
15 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
16 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
17 discussion unless counsel has previously been granted permission to withdraw by the Administrative
18 Law Judge or the Commission.

19 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
20 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

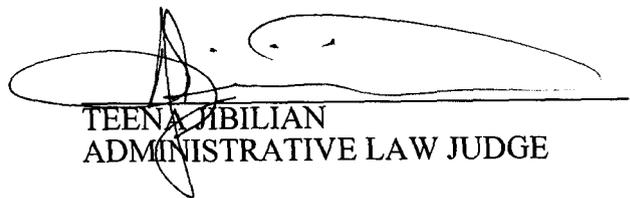
21 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
22 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
23 hearing.

24 ...

25

26 ³ If a corporation is not represented by an attorney authorized to practice law in Arizona in a proceeding before the
27 Commission, an officer of the corporation may represent the entity as long as the board of directors has authorized such
28 person to represent it in the matter and such representation is not the person's primary duty to the entity, but secondary or
incidental to other duties relating to the management or operation of the entity, and such person is not receiving separate
or additional compensation for such representation. *See* Arizona Supreme Court Rule 31(d)(11). The Commission
requires entities to docket evidence of board authorization.

1 DATED this 7th day of November, 2014.

2
3
4 
5 TEENA JIBILIAN
ADMINISTRATIVE LAW JUDGE

6 Copies of the foregoing mailed/delivered
this 7th day of November, 2014 to:

7 James Williamson, President
8 Tonto Basin Water Company, Inc.
9 JW Water Holdings, LLC
P.O. Box 200595
Denver, CO 80220

10 Tonto Creek Trail RV Park, Inc.
11 Gary & Margaret Lantagne, Owners
12 PO BOX 669
Tonto Basin, AZ 85553

13 Janice Alward, Chief Counsel
14 Legal Division
ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
Phoenix, AZ 85007

16 Steven M. Olea, Director
17 Utilities Division
ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
Phoenix, AZ 85007

19 COASH & COASH, INC.
20 Court Reporting, Video and
21 Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

22 Pending Intervention

23 Brooke Utilities, Inc.
PO BOX 82218
Bakersfield, CA 93380

24 By: R Unquera
25 Rebecca Unquera
26 Assistant to Teena Jibilian
27
28