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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

COMMISSIONERS

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- 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 FOR
NAVAJO WATER COMPANY FOR THE
APPROVAL OF A RATE ADJUSTMENT.

DOCKET NO. W-03511A-14-0304

PROCEDURAL ORDER

BY THE COMMISSION:

On August 15, 2014, Navajo Water Company ("Navajo") 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, Navajo filed supplements to the application.

On September 10, 2014, the Commission's Utilities Division Staff ("Staff") filed a Letter of Deficiency.

On September 30, 2014, Navajo filed an additional supplement to its application.

On October 10, 2014, Staff issued a letter indicating that Navajo's application had met the sufficiency requirements of Arizona Administrative Code ("A.A.C.") R14-2-103 and classifying Navajo as a Class D 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 Navajo's parent JW Water Holdings, LLC.¹ Brooke asserts that Navajo'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 Navajo's rate application "may affect that Agreement" and that "the possible implications of this rate application to Brooke places this Application at unknown risk."

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

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

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

20 The Commission's Rules of Practice and Procedure provide that persons who are directly and
21 substantially affected by Commission proceedings must secure an order from the Commission or
22 presiding officer granting leave to intervene before being allowed to participate, and that no
23 application for leave to intervene shall be granted where by so doing the issues theretofore presented
24 will be unduly broadened, except upon leave of the Commission.²

25 Brooke does not claim to be a shareholder, or a customer, of Navajo. Brooke's Application to
26 Intervene and its Response allude to a possible, but unknown, impact to Brooke stemming from
27

28 ² A.A.C. R14-3-105.

1 Navajo's choice of a test year ending June 30, 2014, and to Brooke being in a position to "consider
2 seeking redress or remedies provided for in the [May 31, 2013 Stock Purchase] Agreement [between
3 Brooke and Navajo], at law, or both." Brooke states in its Response that it does not wish to broaden
4 the issues of the rate application issues or delay its adjudication.

5 Based on Brooke's filings to date, it is not clear whether Brooke will be directly and
6 substantially affected by this rate case proceeding. Without more specific information from Brooke,
7 it cannot be determined whether a basis exists for granting Brooke intervention. If Brooke wishes
8 any further consideration of its Application to Intervene, it should make a filing, no later than
9 November 17, 2014, that specifically indicates how and why the terms and conditions of the May 31,
10 2013 Stock Purchase Agreement between Brooke and Navajo, in conjunction with Navajo's current
11 rate case filing, will directly and substantially affect Brooke. Navajo and Staff will be required to file
12 a reply. In addition, if Brooke is granted intervention in this matter, Brooke must either be
13 represented by counsel, or must file a copy of a board resolution authorizing a specifically named
14 officer of the corporation to represent it.

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

22 IT IS FURTHER ORDERED that if Brooke makes the above-authorized supplemental filing
23 to its Application to Intervene, **Navajo and Staff** shall each file a **reply** thereto by **November 21,**
24 **2014.**

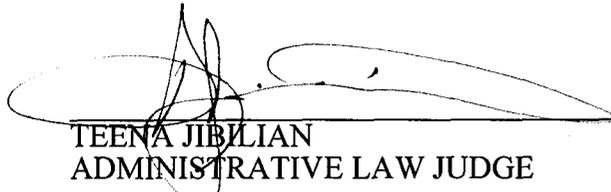
25 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
26 31, 38 and 42, and A.R.S. § 40-243 with respect to practice of law and admission *pro hac vice*.³

27 ³ If a corporation is not represented by an attorney authorized to practice law in Arizona in a proceeding before the
28 Commission, an officer of the corporation may represent the entity as long as the board of directors has authorized such
person to represent it in the matter and such representation is not the person's primary duty to the entity, but secondary or

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

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

7 DATED this 7th day of November, 2014.

8
9
10 
11 TEENA JIBILIAN
ADMINISTRATIVE LAW JUDGE

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

13 James Williamson, President
14 Tonto Basin Water Company, Inc.
15 JW Water Holdings, LLC
P.O. Box 200595
Denver, CO 80220

16 Janice Alward, Chief Counsel
17 Legal Division
ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
Phoenix, AZ 85007

19 Steven M. Olea, Director
20 Utilities Division
ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
Phoenix, AZ 85007

22 Pending Intervention

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

25 By: Rebecca Unquera
26 Rebecca Unquera
Assistant to Teena Jibilian

27 incidental to other duties relating to the management or operation of the entity, and such person is not receiving separate
28 or additional compensation for such representation. See Arizona Supreme Court Rule 31(d)(11). The Commission
requires entities to docket evidence of board authorization.