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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. W-03515A-14-0310

PROCEDURAL ORDER

(Grants Intervention)

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. The Letter of Sufficiency stated that a Procedural Order would be issued defining filing dates and would include a hearing.

On October 20, 2014, Brooke Utilities Inc. ("Brooke") filed an Application for Intervention. Brooke claimed 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 ("JWWH").¹ Brooke asserted that Tonto Basin's filing of this rate application does not comply with the terms of a

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

1 May 31, 2013, agreement between JWWH and Brooke; that Tonto Basin's rate application "may
2 affect that Agreement;" and that "the possible implications of this rate application to Brooke places
3 this Application at unknown risk."

4 On October 28, 2014, Tonto Basin filed an objection to Brooke's intervention. Tonto Basin
5 stated that the May 31, 2013 agreement Brooke referred to in the Application to Intervene is a Stock
6 Purchase Agreement entered into by and among Brooke, Tonto Basin, Navajo Water Co., Inc.,
7 Payson Water Co., Inc., and JWWH. Tonto Basin asserted that the purpose of its rate application is
8 to determine the fair value of its property and to set rates, that the May 31, 2013 Stock Purchase
9 Agreement between Tonto Basin and Brooke is not at issue in this rate proceeding, and that the Stock
10 Purchase Agreement is beyond the scope of this rate proceeding. Tonto Basin contended that Brooke
11 lacks any real interest in this proceeding, and that allowing Brooke to intervene would unduly
12 broaden and delay this rate case proceeding. Tonto Basin requested that Brooke's Application to
13 Intervene be denied.

14 On October 29, 2014, Tonto Creek Trail RV Park, Inc., a customer of the Company, filed a
15 Motion to Intervene.

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

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1 On November 7, 2014, a Rate Case Procedural Order was issued setting a hearing and
2 associated procedural deadlines, and granting intervention to Tonto Creek Trail RV Park, Inc.

3 The Rate Case Procedural Order stated that based on Brooke's filings, the record was not
4 clear whether Brooke would be directly and substantially affected by this rate case proceeding, and
5 that without more specific information from Brooke, it could not be determined whether a basis exists
6 for granting Brooke intervention. The Rate Case Procedural Order allowed Brooke, if it wished any
7 further consideration of its Application to Intervene, to file a supplement to its Application to
8 Intervene, no later than November 17, 2014, that specifically indicated how and why the terms and
9 conditions of the May 31, 2013 Stock Purchase Agreement between Brooke and Tonto Basin, in
10 conjunction with Tonto Basin's current rate case filing, would directly and substantially affect
11 Brooke. The Rate Case Procedural Order also set a deadline for parties to file a response if Brooke
12 filed a supplement to its Application to Intervene, and indicated that if Brooke is granted intervention,
13 Brooke must either be represented by counsel, or must file a copy of a board resolution authorizing a
14 specifically named officer of the corporation to represent it.

15 On November 14, 2014, Brooke made a filing requesting a revised filing deadline of
16 November 24, 2014 for the supplement to its Application to Intervene.

17 On November 19, 2014, Staff filed a response to Brooke's request for a revised filing date,
18 stating that Staff had no objection, and that Staff would request an extension of time to file Staff's
19 response.

20 On December 11, 2014, Tonto Basin filed a Request to Modify Procedural Schedule.

21 On December 19, 2014, Staff filed a Response to Tonto Basin's Request to Modify
22 Procedural Schedule.

23 On December 22, 2014, a Procedural Order was issued setting a procedural conference for
24 discussion of Tonto Basin's Request to Modify Procedural Schedule. The Procedural Order extended
25 the deadline for Brooke to file a supplement to its Application to Intervene to January 6, 2015. The
26 Procedural Order again stated that if Brooke is granted intervention, Brooke must either be
27 represented by counsel, or must file evidence of a board resolution authorizing a specifically named
28

1 officer of the corporation to represent it.²

2 On January 6, 2015, Brooke filed a Supplemental Application for Intervention.

3 On January 8, 2015, a procedural conference convened as scheduled. Tonto Basin and Staff
4 appeared through counsel. Intervenor Tonto Creek Trail RV Park, Inc. did not appear. Tonto Basin's
5 Request to Modify Procedural Schedule was discussed.

6 On January 8, 2015, a Procedural Order was issued waiving the requirement for parties to
7 prefile Surrebuttal testimony and rejoinder testimony; extending the deadline for intervention to
8 February 17, 2015; setting new deadlines for Tonto Basin to mail and publish notice of the hearing;
9 and leaving in place all other procedural deadlines set by the Rate Case Procedural Order. The
10 Procedural Order also directed that the parties strictly comply with the requirement in the Rate Case
11 Procedural Order that any substantive corrections, revisions, or supplements to prefiled testimony,
12 with the exception of rejoinder testimony, shall be reduced to writing and filed no later than five
13 calendar days before the witness is scheduled to testify, in order to ensure that any changes to the
14 parties' positions between the time testimony is prefiled and the date of the hearing will be made
15 known in the docket prior to the hearing.

16 On January 8, 2015, a Procedural Order was issued correcting a typographical error in the
17 prior Procedural Order.

18 On January 12, 2015, Tonto Basin filed its Response to Supplemental Application for
19 Intervention.

20 Also on January 12, 2015, Staff filed its Opposition to Intervention.

21 On January 26, 2015, counsel for Tonto Basin filed a Notice of Change of Address.

22 Brooke's Intervention

23 In its Supplemental Application to Intervene, Brooke states that it is directly and substantially
24 affected by this rate proceeding because, according to the confidential Stock Purchase Agreement

25 _____
26 ² 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 evidence of board authorization.

1 negotiated by Brooke and JWWH governing the sale of Tonto Basin to JWWH, the final price paid
2 by JWWH for Tonto Basin is to be based in part on the rate base and operating expenses determined
3 by the Commission on Tonto Basin's rate application. Brooke states that the Stock Purchase
4 Agreement required Tonto Basin to file a rate a rate application with the Commission on or before
5 July 1, 2014, using a test year ended December 31, 2013. According to Brooke, Brooke and JWWH
6 agreed to this condition "so that an objective mix of Tonto Basin's operating expenses and rate base
7 partially owned by Brooke and partially owned by JWW during 2013 would best and most fairly
8 represent the actual incurred costs of the two holding companies during the period."

9 Tonto Basin is concerned that Brooke might be allowed to broaden the issues in this rate case
10 to include Brooke's breach of contract claims related to the Stock Purchase Agreement. In its
11 Response to Supplemental Application for Intervention, Tonto Basin contends that the sole basis for
12 Brooke's asserted interest in this proceeding is the Stock Purchase Agreement between Brooke and
13 JWWH, a contract which Tonto Basin argues that the Commission is legally prohibited from
14 interpreting.³ Tonto Basin argues that no statute, rule or order required the filing of this rate case or
15 the selection of a specific test year, and that the Commission cannot consider or order an alternative
16 test year or rate base, as Tonto Basin claims is required by the Stock Purchase Agreement. Tonto
17 Basin argues that Brooke's supplemental filing supports Tonto Basin's request that Brooke's
18 Application for Intervention be denied.

19 Staff, in its Opposition to Intervention, states that Brooke is not a ratepayer of Tonto Basin,
20 and contends that Brooke has not demonstrated how it would be directly affected by this proceeding
21 or that the issues Brooke raises would not unduly broaden the scope of the proceeding. Staff states
22 that the Commission does not regulate or approve stock purchase agreements, and argues that the
23 contractual dispute between Brooke and JWWH would be best resolved in another forum, such as
24 Superior Court, and not in a Commission ratemaking proceeding. Staff recommends that Brooke's
25 Application to Intervene be denied.

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28 ³ Tonto Basin cites to *Gen. Cable Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976).

1 Brooke is not a customer of Tonto Basin. However, Tonto Basin does not dispute that Brooke
2 is a party to a voluntarily negotiated private Stock Purchase Agreement with JWWH; does not
3 dispute that the Stock Purchase Agreement specified the test year pursuant to which Tonto Basin
4 would file a rate case; and does not dispute that due to the terms of the Stock Purchase Agreement,
5 the purchase price of Tonto Basin will be affected by the outcome of this proceeding. Assuming
6 Brooke's alleged facts in regard to the Stock Purchase Agreement to be true, Brooke has
7 demonstrated that it will be directly and substantially affected by these proceedings. Based on its
8 claim that it will be affected by the outcome of this proceeding, Brooke will be allowed to intervene
9 and participate in this ratemaking proceeding in a manner that does not unduly broaden its scope.
10 This is not a complaint proceeding, and Brooke will not be allowed to litigate its contractual dispute
11 with Tonto Basin's shareholder in this rate proceeding. Any dispute between Brooke and JWWH
12 pertaining to their private agreement is outside the scope of this rate proceeding. Therefore, Brooke's
13 suggestions that the Commission order Tonto Basin to either (i) perform an analysis that calculates
14 the impact of Tonto Basin's chosen test year on the Stock Purchase Agreement, or (ii) withdraw its
15 rate application and immediately re-file a rate application using a test year ending December 31,
16 2013, are both inappropriate.

17 Brooke's filing was signed "Brooke Utilities Inc. By: Robert T. Hardcastle *In Propria*
18 *Persona.*" As previously stated in procedural orders issued in this matter concerning Brooke's
19 Application to Intervene, in order to participate as an intervenor in this proceeding, Brooke must
20 either be represented by counsel, or must file evidence of a board resolution authorizing a specifically
21 named officer of the corporation to represent it.

22 IT IS THEREFORE ORDERED that Brooke Utilities, Inc. is hereby granted intervention,
23 effective upon the filing of a notice of appearance by counsel or the filing of evidence of a board
24 resolution authorizing a specifically named officer of the corporation to represent it, which
25 demonstrates compliance with the requirements of Arizona Supreme Court Rule 31(d)(11).

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

1 DATED this 30th day of January, 2015.

2
3
4 
5 TEENA JIBILIAN
ADMINISTRATIVE LAW JUDGE

6 Copies of the foregoing mailed/delivered
7 this 30 day of January, 2015 to:

8 James Williamson, President
9 TONTO BASIN WATER COMPANY, INC.
10 JW Water Holdings, LLC
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12 Denver, CO 80220

13 Jay L. Shapiro
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15 1819 E. Morten Ave., Ste. 280
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17 TONTO CREEK TRAIL RV PARK, INC.
18 Gary & Margaret Lantagne, Owners
19 PO BOX 669
20 Tonto Basin, AZ 85553

21 Brooke Utilities, Inc.
22 PO BOX 82218
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