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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

FEB 02 2015

DOCKETED BY

IN THE MATTER OF THE APPLICATION FOR
NAVAJO WATER CO. INC. FOR THE
APPROVAL OF A RATE ADJUSTMENT.

DOCKET NO. W-03511A-14-0304

PROCEDURAL ORDER
(Granting Intervention)

BY THE COMMISSION:

On August 15, 2014, Navajo Water Co. Inc. ("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.

On October 28, 2014, Navajo filed its Opposition to Brooke's Application for Intervention.

On November 3, 2014, Brooke filed its Response to Navajo's Opposition.

On November 7, 2014, a Procedural Order was issued. The Procedural Order stated that based on Brooke's filings, the record was not clear whether Brooke would be directly and substantially affected by this rate case proceeding, and that without more specific information from Brooke, it could not be determined whether a basis exists for granting Brooke intervention. The Procedural Order allowed Brooke, if it wished any further consideration of its Application to

1 Intervene, to file a supplement to its Application to Intervene, no later than November 17, 2014, that
2 specifically indicated how and why the terms and conditions of the May 31, 2013 Stock Purchase
3 Agreement between Brooke and Navajo, in conjunction with Navajo's current rate case filing, would
4 directly and substantially affect Brooke.

5 On November 14, 2014, Brooke filed a Request for Extension to File Supplemental
6 Application to Intervene, requesting a revised filing deadline of November 24, 2014.

7 On December 19, 2014, Staff filed its Staff Report on Navajo's rate application.

8 On December 23, 2014, a Procedural Order was issued extending the deadline for Brooke to
9 file a supplement to its Application to Intervene to January 6, 2015. The Procedural Order stated that
10 if Brooke is granted intervention, Brooke must either be represented by counsel, or must file evidence
11 of a board resolution authorizing a specifically named officer of the corporation to represent it.¹

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

13 On January 12, 2015, Navajo filed its Response to Supplemental Application for Intervention.

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

15 On January 26, 2015, counsel for Navajo filed a Notice of Change of Address.

16 Brooke's Intervention

17 In its Supplemental Application to Intervene, Brooke states that it is directly and substantially
18 affected by this rate proceeding because, according to the confidential Stock Purchase Agreement
19 negotiated by Brooke and JWWH governing the sale of Navajo to JWWH, the final price paid by
20 JWWH for Navajo is to be based in part on the rate base and operating expenses determined by the
21 Commission on Navajo's rate application. Brooke states that the Stock Purchase Agreement required
22 Navajo to file a rate a rate application with the Commission on or before July 1, 2014, using a test
23 year ended December 31, 2013. According to Brooke, Brooke and JWWH agreed to this condition
24 "so that an objective mix of Navajo's operating expenses and rate base partially owned by Brooke
25

26 ¹ 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 and partially owned by JWW during 2013 would best and most fairly represent the actual incurred
2 costs of the two holding companies during the period.”

3 Navajo is concerned that Brooke might be allowed to broaden the issues in this rate case to
4 include Brooke’s breach of contract claims related to the Stock Purchase Agreement. In its Response
5 to Supplemental Application for Intervention, Navajo contends that the sole basis for Brooke’s
6 asserted interest in this proceeding is the Stock Purchase Agreement between Brooke and JWWH, a
7 contract which Navajo argues that the Commission is legally prohibited from interpreting.² Navajo
8 argues that no statute, rule or order required the filing of this rate case or the selection of a specific
9 test year, and that the Commission cannot consider or order an alternative test year or rate base, as
10 Brooke claims is required by the Stock Purchase Agreement. Navajo argues that Brooke’s
11 supplemental filing supports Navajo’s request that Brooke’s Application for Intervention be denied.

12 Staff, in its Opposition to Intervention, states that Brooke is not a ratepayer of Navajo, and
13 contends that Brooke has not demonstrated how it would be directly affected by this proceeding or
14 that the issues Brooke raises would not unduly broaden the scope of the proceeding. Staff states that
15 the Commission does not regulate or approve stock purchase agreements, and argues that the
16 contractual dispute between Brooke and JWWH would be best resolved in another forum, such as
17 Superior Court, and not in a Commission ratemaking proceeding. Staff recommends that Brooke’s
18 Application to Intervene be denied.

19 Brooke is not a customer of Navajo. However, Navajo does not dispute that Brooke is a party
20 to a voluntarily negotiated private Stock Purchase Agreement with JWWH; does not dispute that the
21 Stock Purchase Agreement specified the test year pursuant to which Navajo would file a rate case;
22 and does not dispute that due to the terms of the Stock Purchase Agreement, the purchase price of
23 Navajo will be affected by the outcome of this proceeding. Assuming Brooke’s alleged facts in
24 regard to the Stock Purchase Agreement to be true, Brooke has demonstrated that it will be directly
25 and substantially affected by these proceedings. Based on its claim that it will be affected by the
26 outcome of this proceeding, Brooke will be allowed to intervene and participate in this ratemaking
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28 ² Navajo cites to *Gen. Cable Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976).

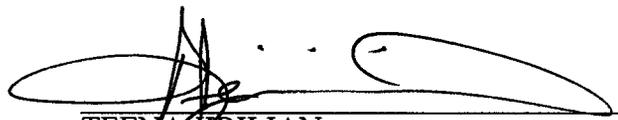
1 proceeding in a manner that does not unduly broaden its scope. This is not a complaint proceeding,
2 and Brooke will not be allowed to litigate its contractual dispute with Navajo's shareholder in this
3 rate proceeding. Any dispute between Brooke and JWWH pertaining to their private agreement is
4 outside the scope of this rate proceeding. Therefore, Brooke's suggestions that the Commission order
5 Navajo to either (i) perform an analysis that calculates the impact of Navajo's chosen test year on the
6 Stock Purchase Agreement, or (ii) withdraw its rate application and immediately re-file a rate
7 application using a test year ending December 31, 2013, are both inappropriate.

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

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

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

20 DATED this 2nd day of February 2015.

21
22
23 
24 TEENA HIBILIAN
ADMINISTRATIVE LAW JUDGE

25 Copies of the foregoing mailed/delivered
this 2nd day of February 2015 to:

26 Jason Williamson, President
27 Navajo Water Co., Inc.
28 JW Water Holdings, LLC
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