

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
THUNDER MOUNTAIN WATER COMPANY AND)
EPCOR WATER NEW MEXICO INC. FOR)
ABANDONMENT OF CCN, ISSUANCE OF CCN,)
AND APPROVAL OF NEW RATES,)
)
EPCOR WATER NEW MEXICO INC. and)
THUNDER MOUNTAIN WATER COMPANY,)
)
Applicants.)**

Case No. 13-00285-UT

PROCEDURAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) upon the application filed by EPCOR Water New Mexico Inc. (“EWNM”) and Thunder Mountain Water Company (“Thunder Mountain”)(collectively, “Applicants”) on August 28, 2013, seeking approval to abandon and terminate the certificate of public convenience and necessity (“CCN”) issued to Thunder Mountain, to expand EWNM’s CCN to encompass Thunder Mountain’s current service area, for EWNM to charge rates equal to rates charged at the time of closing by Thunder Mountain in its service area and, if necessary, for Thunder Mountain to sell and EWNM to acquire certain Thunder Mountain assets. Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. Thunder Mountain provides water utility services within the State of New Mexico. It is a public utility subject to the jurisdiction of the Commission under NMSA 1978, § 62-3-1, *et seq.* As a public utility, Thunder Mountain is required to furnish adequate, efficient

and reasonable service at just and reasonable rates in conformity with NMSA 1978, §§ 62-8-1 and 62-8-2.

2. Pursuant to NMSA 1978, § 62-9-5, Commission approval is required for a utility to abandon from Commission regulation any portion of its jurisdictional property and its service rendered to the public. Pursuant to NMSA 1978, § 62-9-1, Commission approval is required for a utility to expand its service area. Pursuant to NMSA 1978, §§ 62-6-12 and 62-6-13, Commission approval is required before a public utility can sell its public utility plant, property, or other assets and transfer its operation and maintenance to another utility or other entity.

3. On August 5, 2013, the federal Bankruptcy Court for the District of New Mexico confirmed a Joint Liquidation Plan filed by the Applicants. Pursuant to the Joint Liquidation Plan, EWNM intends to acquire Thunder Mountain's assets upon obtaining the necessary approvals from the Commission. Thunder Mountain will continue operations until the closing.

4. The Joint Application is time-sensitive because the bankruptcy proceeding cannot conclude until the Commission takes action.

5. The Applicants have discussed the issues set forth in the Joint Application with Commission Staff. Applicants are optimistic that they will be able to reach a stipulation with Staff related to the Joint Application. To enable the filing of a stipulation, the Applicants have requested that the Commission issue a procedural order that includes appropriate deadlines.

6. The Commission has jurisdiction over the Applicants and the matters presented in the Joint Application.

7. A proceeding concerning the Joint Application should be commenced, as provided by this Initial Order.

IT IS THEREFORE ORDERED:

A. Pursuant to NMSA 1978, §§ 8-8-4 and 8-8-13 and 1.2.2.29(A) & (B)(1), William Herrmann is appointed presiding officer to assist the Commission to conduct and preside over all necessary hearings and take all such actions as are necessary and consistent with Commission procedure in this matter, including determination of any preliminary motions and the public hearing.

B. On or before September 6, 2013, Thunder Mountain shall send, at its sole expense and by first class U.S. mail, a copy of the attached Notice to Customers to each of its current customers. Thunder Mountain shall promptly file an affidavit as to such mailing with the Commission.

C. On or before September 6, 2013, EWNM or Thunder Mountain shall cause at their sole expense, the Notice to Customers appended hereto and incorporated herein by reference to be published once in a newspaper of general circulation in the Thunder Mountain Service Area. EWNM or Thunder Mountain shall promptly file an affidavit as to such publication with the Commission.

D. Any person desiring to intervene to become a party (“intervenor”) to this case must file a motion for leave to intervene in conformity with NMPRC Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before September 20, 2013.

E. In the event that Applicants and Staff are able to reach a stipulation, the following deadlines shall apply:

- a. In the event that Applicants and Staff are able to reach a stipulation, the stipulation shall be filed on or before October 4, 2013.

- b. Testimony in support of the stipulation shall also be filed on or before October 4, 2013.
- c. Testimony in opposition to a stipulation shall be filed on or before October 14, 2013.
- d. Any rebuttal testimony on the stipulation shall be filed on or before October 21, 2013.

F. In the event that Applicants and Staff are not able to reach a stipulation, the following deadlines shall apply:

- a. Applicants shall notify the intervenors, if any, by electronic mail on or before October 4, 2013 that a stipulation will not be filed.
- b. Staff shall, and any intervenor may file, direct testimony, affidavits, or other evidentiary materials on or before October 14, 2013.
- c. Any rebuttal testimony, affidavits, or other evidentiary materials shall be filed on or before October 21, 2013.

G. A public hearing in this case shall be held immediately following an open meeting commencing at 1:30 P.M. on Wednesday, November 6, 2013 and continue, if necessary on such date as may be announced, at the Commission's offices in the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501, to hear and receive testimony, exhibits, arguments and any other appropriate matters relevant to this proceeding and determining whether the Commission should grant the authorizations requested in the Joint Application or a Stipulation, if applicable.

H. Unless otherwise ordered or approved, only pre-filed prepared written testimony and examination thereon shall be entertained and received in evidence at the hearing.

I. Any person whose testimony has been filed shall attend the hearing and submit to examination under oath.

J. The procedural dates and requirements provided in this Order are subject to further order of the Commission.

K. The Commission's Rules of Procedure, 1.2.2 NMAC, *et seq.*, shall apply to this case except as modified by order of the Commission. A copy of such Rules may be obtained from the offices of the Commission and are available at the official NMAC website, <http://www.nmprc.state.nm.us/nmac/>.

L. Any interested person may appear at the time and place of hearing and make written or oral comment pursuant to 1.2.2.23(F) NMAC without becoming an intervenor. Interested persons may also send written comments, which shall reference NMPRC Case No. 13-00285-UT, to the Commission at the address set out below. All such comments shall not be considered as evidence in this case.

New Mexico Public Regulation Commission
P.E.R.A. Building
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: 1.888.427.5772

M. Any interested person may examine the Joint Application and all other pleadings, testimony, exhibits and other documents filed in the public record for this case at the Commission's address set out above or at the offices of EWNM at the following address:

EPCOR Water New Mexico Inc.
539 Oliver Ross Drive NW
Albuquerque, NM 87121

N. The filing and service of pleadings and other documents in this case are subject to applicable Commission rules (*see, e.g.*, 1.2.2.10 and 1.2.2.25(H) NMAC) and pertinent rulings in this case, except that service of discovery requests and responses shall be via e-mail unless otherwise agreed or ordered. Likewise, unless otherwise agreed or ordered, exhibits to discovery responses shall be served electronically at the same time as such responses.

O. Anyone filing pleadings, testimony and other documents in this case may file either in person at the Commission's docketing office or by mail to the Commission's address set out above, and shall serve copies thereof on all parties of record and Staff via first class U.S. mail and e-mail.

P. Any such filings shall also be sent to William Herrmann via email at the following address: william.herrmann@state.nm.us. All filings shall be emailed on the date they are filed with the Commission. Whenever possible, all electronically transmitted documents shall be in Word or native format.

Q. Discovery matters and any discovery disputes shall be governed by the Commission's discovery rules, 1.2.2.25 NMAC. The parties are advised to raise any questions or concerns regarding discovery in a timely manner so that they may be considered well in advance of the hearing.

R. A Commission order is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

S. No mention regarding any discovery dispute shall be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute and were unable to do so.

T. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the Commission at least 24 hours prior to the commencement of the hearing.

U. In accordance with 1.2.2.30(B) NMAC, this Order is issued by the Commission Chairman or by a single Commissioner.

ISSUED at Santa Fe, New Mexico this 29th day of August, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION

Electronically approved

THERESA BECENTI-AGUILAR, COMMISSIONER