

[EXTERNAL] NMPRC New Case/EPCOR Application

Teresa Pacheco <tpacheco@montand.com>

Mon 11/15/2021 4:18 PM

To: Records, PRC, PRC <PRC.Records@state.nm.us>

Cc: Thomas W. Olson <tolson@montand.com>; Jeffrey Wechsler <jwechsler@montand.com>; kolson@montand.com <kolson@montand.com>; Hubbard, Sheryl <shubbard@epcor.com>; Washington, Leticia <LWashington@epcor.com>; Gellman, Jason <JGellman@epcor.com>; Daniel Bailet <dbailet@epcor.com>

📎 2 attachments (1 MB)

Application of EPCOR Water New Mexico Inc. for Authority to Issue an (01370793xB76D6).pdf; 20211115 Transmittal Letter to PRC with check for Filing Fee (01370806xB76D6).pdf;

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**IN THE MATTER OF THE APPLICATION OF EPCOR WATER
NEW MEXICO INC. FOR AUTHORITY TO ISSUE AN
UNSECURED, LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF \$5,000,000**

Case No. 21-00____-UT

**EPCOR WATER NEW MEXICO INC.,
Applicant.**

Please file the attached **Application of EPCOR Water New Mexico Inc. for Authority to Issue an Unsecured, Long-Term Promissory Note in Aggregate Principal Amount of \$5,000,000.**

Also attached is a scan of the check for the filing fee. This will be mailed to your post office box. **Please do not file the scan of the check.**

Thank you.

Teresa L. Pacheco
Legal Assistant to
Gary Kilpatric, Nancy M. King, Thomas W. Olson,
Kari E. Olson, and Kristen J. Burby
Montgomery & Andrews
P.O. Box 2307
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**MONTGOMERY
& ANDREWS**
LAW FIRM

JEFFREY J. WECHSLER

Direct: (505) 986-2637

Email: jwechsler@montand.com

www.montand.com

November 15, 2021

Via Electronic Mail

Records Bureau
New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
prc.records@state.nm.us

Re: Case No. 21- 00280 -UT
Application of EPCOR Water New Mexico Inc. for Authority to Issue an
Unsecured, Long-Term Promissory Note in Aggregate Principal Amount of
\$5,000,000

Dear Ms. Sandoval,

Please find enclosed *Application of EPCOR Water New Mexico Inc. for Authority to Issue an Unsecured, Long-Term Promissory Note in Aggregate Principal Amount of \$5,000,000* and the supporting Direct Testimony of Jon P. Boizelle. The required filing fee of \$25.00 will be mailed.

If you have any questions, please contact our office. Thank you.

Very truly yours,

/s/ Jeffrey J. Wechsler

JJW:tlp
Enclosures
cc (via email): Service List

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ISSUE AN UNSECURED,
LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF
\$5,000,000**

Case No. 21-00²⁸⁰UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

APPLICATION

EPCOR Water New Mexico Inc. (“EWNM” or “Company”) hereby petitions the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) for authorization to issue its unsecured, long-term promissory note (the “Note”) to EPCOR USA Inc. (“EUSA”) in aggregate principal amount not to exceed \$5,000,000, and to apply the proceeds therefrom to the purposes specified in this Application.

EWNM respectfully requests the Commission to waive hearing in this matter or, in the alternative, expedite any required hearings so that approvals and authorizations requested herein may be decided within thirty days of filing this Application, as provided under NMSA 1978, Sections 62-6-7 and 62-6-9.

In support of this Application, EWNM states:

1. EWNM's full legal name, mailing address, and telephone number are:

EPCOR Water New Mexico Inc.
Attn: Daniel S. Bailet, Vice President and General Manager
1515 Lomas Blvd. NW
Albuquerque, NM 87104
(505) 633-8060

2. The name, mailing address, telephone number, and email addresses of EWNM’s attorneys are:

Montgomery and Andrews, P.A.
Jeffrey J. Wechsler
Kari E. Olson
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873
jwechsler@montand.com
kolson@montand.com

3. EWNM is a New Mexico waterworks corporation engaged in the business of distributing and selling water to the public in Clovis, New Mexico and nearby areas and in Edgewood, New Mexico and nearby areas and is a public utility subject to regulation by the Commission under the New Mexico Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

4. EWNM was formerly known as New Mexico-American Water Company, Inc. (“NMAW”). The Company’s name was changed to EPCOR Water New Mexico Inc. following the acquisition of the stock of NMAW by EUSA in 2012 as authorized by the Final Order issued on December 22, 2011 in case No. 11-00085-UT.

5. As a public utility EWNM is required to furnish adequate, efficient, and reasonable service and, in order to do so, must, from time to time, raise capital from outside sources through the issuance and sale of its securities.

6. With requisite authority from the Commission, EWNM proposes to issue the Note in aggregate principal amount not to exceed \$5,000,000 to EUSA at a fixed interest rate of 3.45%, and for a term of 30 years. The Note will be in substantially the form of Exhibit A to this Application.

7. The issuance of the Note will constitute a separate Class I transaction between EWNM and EUSA. In accordance with Commission Rule 450.11, EWNM hereby notifies the Commission of this pending transaction and states:

- (1) The terms of the Note are fully set forth herein and in Exhibit A. EWNM will file an executed copy of the final Note with the Commission promptly after it is issued.
- (2) EUSA is providing the subject loan to EWNM pursuant to the terms of the Note.
- (3) In the professional judgment of senior management of EWNM, EUSA is able to access financial markets at much more favorable rates than EWNM standing alone could obtain. The Note, moreover, will be unsecured, which lowers the cost of issuance and provides more favorable terms and flexibility to EWNM in comparison to a secured loan from a third party.
- (4) By obtaining its long-term debt through EUSA in the manner described in this Application, EWNM will incur lower costs of issuance and more favorable interest rates and loan terms, thereby reducing the cost to ratepayers of debt capital needed to acquire, construct, and maintain adequate utility plant and property.

8. EWNM intends to use the proceeds from the Note to retire a \$5,000,000 note owed by EWNM to EUSA, a purpose permitted by NMSA 1978, Section 62-6-6. The outstanding \$5,000,000 promissory note was issued by NMWA pursuant to Final Order of the Commission in Case No. 11-00293-UT, has an interest rate of 3.74%, and is due December 15, 2021.

9. The aggregate amount of EWNM's aggregate securities that are outstanding or anticipated to be outstanding after issuance of the Note are less than the fair value of EWNM's utility property and business.

10. The proposed transactions are for lawful purposes consistent with the requirements of the Public Utility Act, are necessary and appropriate for the continued provision of utility service, and are consistent with the public interest.

11. Pursuant to 17.1.2.8(B) NMAC, EWNM's Application is supported by the Direct Testimony and Exhibits of EWNM witness, Jon P. Boizelle.

12. EWNM's proposed form of Notice is attached to this Application as Exhibit B.

13. As required by 17.1.2.8(B)(4)(e) NMAC, EWNM is serving a copy of this application with the supporting testimony, on the Office of the Attorney General.

14. EWNM requests that the Commission approve and authorize the issuance of the Note as soon as possible and, in any case, within the thirty-day statutory time frame.

WHEREFORE, EWNM respectfully requests that the Commission issue a Final Order at an open meeting on or before December 15, 2021, granting EWNM all authorizations, consents, and approvals required under the New Mexico Public Utility Act for the issuance of the Notes in aggregate principal amount not to exceed \$5,000,000, at an interest rate of 3.45%, and for a term of 30 years.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

/s/ Jeffrey J. Wechsler

Jeffrey J. Wechsler

Kari E. Olson

Post Office Box 2307

Santa Fe, New Mexico 87504-2307

(505) 982-3873

jwechsler@montand.com

kolson@montand.com

**ATTORNEYS FOR EPCOR WATER
NEW MEXICO INC.**

EXHIBIT A

UNSECURED SUBSIDIARY PROMISSORY NOTE

\$5,000,000.00

Phoenix, Arizona
December 15, 2021

1. **Agreement to Pay.** FOR VALUE RECEIVED, the undersigned, EPCOR Water New Mexico Inc., a New Mexico corporation (“**Borrower**”), hereby agrees and promises to pay to the order of EPCOR USA INC., a Delaware corporation, or its assigns (the “**Lender**”), in lawful money of the United States of America in immediately available funds, at Lender’s office located at 2355 W Pinnacle Peak Road, Ste. 300, Phoenix, AZ 85027, or such other place as Lender may from time to time designate, the principal sum of FIVE MILLION DOLLARS (\$5,000,000.00), or so much as may from time to time be unpaid hereon (the “**Principal Balance**”), together with interest thereon at the Interest Rate (defined below), payable in lawful money of the United States of America.
2. **Interest Rate.** The outstanding Principal Balance hereof shall bear interest at the rate of 3.45 percent per annum (“**Interest Rate**”). All interest payable hereunder shall be computed on the basis of a three hundred sixty (360) day year containing twelve (12) thirty (30) day months.
3. **Payments.** Principal and Interest upon this Unsecured Subsidiary Promissory Note (the “**Note**”) shall be due and payable as follows:
 - a. Borrower must repay the entire Principal Balance and any accrued interest thereon in full upon the earlier of the following (the “**Maturity Date**”): (i) **December 15, 2051**, or (ii) the acceleration of amounts and obligations arising under this Note following an Event of Default as permitted herein.
 - b. Borrower shall pay Lender interest semi-annually and in arrears, on June 15th and December 15th of each year commencing on June 15th, 2022.
4. **Application of Payments.** All payments shall be applied first (1st) to accrued interest at the rate or rates then in effect under the terms hereof; second (2nd) to principal.
5. **Security.** This Note is not secured by any other instrument or collateral.
6. **Default and Acceleration.** Borrower will be deemed to be in default under this Note (and an “**Event of Default**” will be deemed to exist under this Note) if Borrower fails to timely make any payment required under this Note within thirty (30) days of Borrower’s receipt of a notice of default from Lender. Upon the occurrence of an Event of Default hereunder, the entire unpaid Principal Balance together with accrued interest thereon at the respective rates provided for herein and all other obligations arising under this Note shall become, with notice to Borrower, immediately due and payable at the option of Lender.
7. **Prepayment Privilege.** The Borrower may prepay at any time all or any part of the Principal Balance.
8. **Interest Limitation.** Borrower agrees to pay an effective rate of interest which is equal to the stated rate provided for in this Note plus any additional rate of interest resulting from any charges of interest or other sums payable hereunder in the nature of interest paid or to be paid in connection with the loan evidenced by this Note. If from any circumstances Lender should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such lawful rate

of interest shall be applied to the reduction of the Principal Balance evidenced hereby and not to the payment of interest.

9. **Waivers.** Borrower and all persons and entities liable for all or a part of the Principal Balance evidenced by this Note hereby waive and renounce, to the extent permitted by applicable law, all rights to the benefits of presentment; protest; demand; notice of dishonor; notice of default or delinquency; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; notice of late charges; diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note; marshalling; and homestead now provided, or which may hereafter be provided, by the Constitution or laws of the United States of America or the state of Arizona.

10. **Limitation of Liability.** Notwithstanding anything to the contrary herein, it is expressly understood that there is no personal liability of Borrower's managers, officers, employees or members hereunder and no monetary or deficiency judgment shall be sought or enforced against Borrower's managers, officers, employees or members.

11. **Successors and Assigns.** The provisions of this Note shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of any Lender and its successors and assigns.

12. **Remedies Cumulative.** The remedies of Lender as provided in this Note and the warranties contained herein or therein shall be cumulative and concurrent, may be pursued singly, successively or together at the sole discretion of Lender, and in no event shall the failure to exercise any such right or remedy be construed as a waiver or release of such right or remedy.

13. **No Oral Modification.** This Note may not be modified or discharged orally, but only by an agreement in writing signed by Lender and Borrower.

14. **Time of the Essence.** Time is of the essence with regard to the performance of the obligations of Borrower in this Note.

15. **Governing Law.** This Note and the rights and obligations of all parties hereunder shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Borrower has executed this Note effective as of the date and year first above written.

EPCOR WATER NEW MEXICO INC.,
a New Mexico corporation

By: _____
Name: Joseph Gysel
Title: President

EXHIBIT B

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ISSUE AN UNSECURED,
LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF
\$5,000,000**

Case No. 21-00²⁸⁰-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

NOTICE

NOTICE is hereby given of the following matters in the above-captioned case pending before the New Mexico Public Regulation Commission ("Commission" or "NMPRC"):

1. On November 15, 2021, EPCOR Water New Mexico Inc. ("EWNM") an Application ("Application") with the Commission requesting approval to issue \$5,000,000 in unsecured, long-term debt to EPCOR USA Inc. at an interest rate of 3.45%, and for a term of 30 years. The proposed security transaction is more fully described in EWNM's Application, testimony and exhibits.

2. The Commission is required to act promptly on the Application.

3. Any person desiring to intervene to become a party ("intervenor") to this case shall 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 ____, 2021.

4. Staff of the Commission's Utility Division ("Staff") and any intervenors may file direct testimony on or before ____, 2021. Any rebuttal testimony shall be filed by ____, 2021.

5. A public hearing of this matter will be held on ____, 2021 beginning at __ Mountain Time (MT) to hear and receive evidence, arguments, and any other appropriate matters relevant to this proceeding to determine whether the authorizations requested in EWNM's Application should be granted by the Commission. Due to the ongoing COVID-19 pandemic, the evidentiary hearing

shall be conducted via the Zoom platform. Access to and participation in the evidentiary hearing shall be limited to party-participants, the Commissioners, and other essential Commission personal. The Zoon hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>.

6. Any interested person may submit written or oral comments pursuant to Rule 1.2.2.23(F) NMAC. Oral comment shall be taken at the beginning of the public hearing in this matter on _____, 2021 and shall be limited to 3 minutes per commenter. As part of the public hearing, public comment will be taken via the Zoom platform. Therefore, persons wishing to make an oral comment must register in advance, not later than 8:30 a.m. MT on _____, 2021, by e-mailing Ana Kippenbrock at Ana.Kippenbrock@state.nm.us. Written comments may be submitted before the Commission takes final action by sending the comment, which shall reference NMPRC Case No. 21-00244-UT, to prc.records@state.nm.us. Public comments, whether oral or written, shall not be considered as evidence in this proceeding.

7. The public hearing set for ____ 2021, may be vacated if deemed not required pursuant to 17.1.2.8(C)(3) NMAC, in which case the Commission will take public comment and dispose of the Application at an Open Meeting.

8. The procedural dates and requirement provided herein are subject to further order of the Commission or Hearing Examiner. Interested persons should contact the Commission at 505-690-4191 for confirmation of the hearing date, time and place since hearings are occasionally rescheduled or canceled if deemed not required in the discretion of the Hearing Examiner.

9. The Commission's Rules of Practice and Procedure and Rule for Utility Applications, 1.1.2 NMAC and 17.1.2.8 NMAC respectively, apply to this case except as modified by Order of the Commission or Hearing Examiner. Those and other NMPRC rules are available online at <http://www.srca.nm.gov/nmac-home/nmac-titles>.

10. Anyone filing pleadings, testimony and other documents in this case shall comply with the Commission's electronic filing policy, as amended from time to time. This includes filings in .pdf format, with electronic signatures, sent to the Records Bureau's e-mail address, as

Notice

Case No. 21-00 -UT

set out in the Commission's procedural rules at prc.records@state.nm.us or another Records Bureau address as set out on the Commission's webpage (see 1.2.2.7(R)(1) NMAC), within regular business hours of the due date in order to be considered timely filed. Documents received after regular business hours will be considered as being filed the next business day. Regular business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff. All filings shall be e-mailed by no later than 5:00 p.m. MT on the date they are filed with the Commission. Any such filing shall also be e-mailed to the Hearing Examiner at the following address: _____

11. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the offices of the Commission at 505-690-4191 at least 24 hours prior to the commencement of the hearing.

ISSUED at Santa Fe, New Mexico this ____th day of November, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ISSUE AN UNSECURED,
LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF
\$5,000,000**

Case No. 21-00 280-UT

**EPCOR WATER NEW MEXICO INC.,

Applicant.**

**DIRECT TESTIMONY

OF

JON P. BOIZELLE**

November 15, 2021

**MONTGOMERY & ANDREWS, P.A.
Jeffrey J. Wechsler
Kari E. Olson
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873**

TABLE OF CONTENTS

I. INTRODUCTION AND QUALIFICATIONS1

II. LONG TERM NOTE3

1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE**
3 **NUMBER.**

4 A. My name is Jon P. Boizelle. My business address is 2355 W. Pinnacle Peak Road, Suite
5 300, Phoenix, Arizona 85027. My business phone number is (623) 780-3780.

6

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by EPCOR USA Inc. (“EUSA”), the owner of EPCOR Water New Mexico
9 Inc. (“EWNM” or “Company”) as the Rates Manager.

10

11 **Q. PLEASE DESCRIBE YOUR PRIMARY RESPONSIBILITIES FOR THE**
12 **COMPANY.**

13 A. My primary responsibilities with EUSA are to prepare rate applications and other
14 regulatory filings consistent with the applicable regulatory agency’s filing requirements in
15 Arizona and New Mexico.

16

17 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATION.**

18 A. I joined EUSA in 2015 as a rate analyst and became the rates manager in 2020. My
19 professional experience includes more than seven years of experience with public utility
20 accounting and regulation; and another three years as an auditor of commercial and
21 manufacturing companies, employee retirement plans, and casinos.

22 For the last seven years, I have worked in the water and wastewater industry.
23 Previously, my primary areas of responsibility were full cycle accounting and reporting for

1 the monthly, quarterly, and annual operations for water and wastewater operations, as well
2 as annual budgeting and flux analysis. With EUSA, my primary responsibilities have been
3 preparing regulatory filings for changes in rates in Arizona and New Mexico, serving as an
4 expert witness for EUSA in regulatory matters, analysis of operating expenses, preparation
5 of compliance reports, and preparation and analysis of customer billing determinants for
6 regulatory filings, including rate cases.

7 I have a Masters of Accountancy from the University of Idaho and a Bachelor of
8 Science in Accounting from Brigham Young University - Idaho. I am a Certified Public
9 Accountant, licensed in the State of Arizona. I have also attended the National Association
10 of Regulatory Utility Commissioners (“NARUC”) utility rate school.

11
12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

13 **A.** Yes. I testified in EWNM’s last general rate case, Case No. 18-00124-UT.

14
15 **Q. PLEASE DESCRIBE EWNM’S BUSINESS**

16 **A.** EWNM is a New Mexico waterworks corporation engaged in the business of distributing
17 water to the public in New Mexico, and is a public utility subject to regulation by the New
18 Mexico Public Regulation Commission (“NMPRC” or “Commission”) under the New
19 Mexico Public Utility Act. More specifically, the Company provides residential,
20 commercial, and industrial water service, including fire protection, in its Clovis,
21 Edgewood, and Thunder Mountain water districts in New Mexico, and nearby areas,
22 including municipal and county facilities in all three districts. The Company has owned
23 and operated the Clovis District since 1986. It acquired the Edgewood system and began

1 operations in that district in September 2002. The Thunder Mountain system was acquired
2 in January 2014 and serves areas adjacent to the Edgewood district. Each of the districts
3 is appropriately staffed for the size and complexity of the respective systems, and the
4 Company maintains an office in Albuquerque, where there is accounting and financial
5 analysis support for district operations in Clovis, Edgewood, and Thunder Mountain.
6 EWNM was formerly known as New Mexico-American Water Company, Inc.
7 (“NMAW”). The Company’s name was changed to EPCOR Water New Mexico Inc.
8 following the acquisition of the stock of NMAW by EUSA in 2012 as authorized by the
9 Final Order issued on December 22, 2011 in Case No. 11-00085-UT.

10
11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 **A.** The purpose of my testimony is to support EWNM’s application to issue long-term debt in
13 the form of an unsecured promissory note (“Note”) in aggregate principal amount of \$5
14 million.

15
16 **II. LONG-TERM NOTE**

17 **Q. ARE YOU FAMILIAR WITH THE PROMISSORY NOTE THAT EWNM**
18 **PROPOSES TO ISSUE AND THAT IS THE SUBJECT OF THIS CASE?**

19 **A.** Yes. EWNM is seeking authority from the Commission to issue an unsecured promissory
20 note in the aggregate principal amount of \$5,000,000 at an interest rate of 3.45% and for a
21 term of 30 years.

22
23 **Q. ARE YOU FAMILIAR WITH THE CONTENTS OF EWNM’S APPLICATION?**

1 A. Yes.

2

3 **Q. ARE THE STATEMENTS CONTAINED IN THE APPLICATION TRUE TO THE**
4 **BEST OF YOUR KNOWLEDGE AND BELIEF?**

5 A. Yes.

6

7 **Q PLEASE DESCRIBE THE TERMS ON WHICH EWNM EXPECTS TO ISSUE**
8 **THE PROMISSORY NOTE.**

9 A. If approved, EWNM will issue the Note to EUSA in the total amount of the loan with a
10 term of 30 years, and at a fixed interest rate of 3.45%. EWNM will pay EUSA interest
11 semi-annually and in arrears, on June 15th and December 15th of each year commencing
12 on June 15th, 2022. The Note will be in the form of Exhibit A to the Application.

13

14 **Q. HOW WILL EWNM USE THE PROCEEDS FROM THIS TRANSACTION?**

15 A. The proceeds will be used for payment and refunding of an existing long-term note in the
16 principal amount of \$5 million which matures on December 15, 2021.

17

18 **Q. PLEASE DESCRIBE THE \$5 MILLION OF LONG-TERM DEBT THAT**
19 **MATURES ON DECEMBER 15, 2021.**

20 A. The Commission, in its Final Order issued on November 20, 2001 in Case No. 3676,
21 authorized the issuance of a \$5 million note to acquire certain land and water rights needed
22 to provide near and mid-term water supply to its Clovis service area, and to retire short-
23 term indebtedness incurred to finance construction of utility property (“2001 Note”). The

1 initial note had an interest rate of 4.92% and was due on October 31, 2006. In its Final
2 Order issued on November 28, 2006 in Case No. 06-00386-UT, the Commission authorized
3 issuance of a \$5 million note to be used to retire the 2001 Note (“2006 Note”). The 2006
4 Note had an interest rate of 5.77% and a maturity date of December 21, 2021. Finally, in
5 its Final Order issued on December 22, 2011, in Case No. 11-00293-UT, the Commission
6 authorized issuance of a \$5 million note to be used to retire the 2006 Note (“2011 Note”).
7 The 2011 Note has an interest rate of 3.74% and matures on December 15, 2021. If
8 approved, EWNM intends to use the proceeds from the Note at issue in this proceeding to
9 retire the 2011 Note.

10
11 **Q. HOW WILL EUSA RAISE THE CAPITAL TO FUND THIS LOAN?**

12 A. EUSA will source the funds to provide the loan to EWNM by borrowing the funds from
13 EPCOR Utilities Inc. EPCOR Utilities Inc. will provide these funds from its treasury.

14
15 **Q. IS EWNM OBLIGATED FOR DEBT SECURITIES ISSUED BY EUSA, EPCOR**
16 **UTILITIES INC., OR THE OBLIGATIONS OF THE OTHER OPERATING**
17 **COMPANIES AND SUBSIDIARIES OF EITHER?**

18 A. No. EWNM will only be obligated to repay the Note in accordance with its terms. It will
19 have no obligations or liability respecting other debt issued by EUSA, EPCOR Utilities
20 Inc., or the debt of any other affiliate.

21
22 **Q. WHAT ARE THE ADVANTAGES TO EWNM FROM BORROWING IN THIS**
23 **MANNER?**

1 A. On a stand-alone basis, EWNM could not achieve terms that are nearly as favorable as it
2 obtains by borrowing from EUSA in accordance with the terms of the Note. For example,
3 on a stand-alone basis EWNM's proposed debt financing is not large enough to efficiently
4 access the public market. Because of the size and financial strength of the EPCOR
5 organization, EPCOR Utilities Inc. can access capital at much more favorable rates and on
6 much more favorable terms. EUSA offers EWNM the opportunity to borrow on an
7 unsecured basis. EWNM will neither be required to mortgage its plant to secure repayment
8 of the debt, nor to undertake the operating covenants and restrictions that are typically
9 contained in a mortgage indenture.

10

11 **Q. DID EWNM SEEK FORMAL QUOTATIONS FROM SOURCES OTHER THAN**
12 **EUSA FOR THE PROPOSED LOAN?**

13 A. No, obtaining such quotations can be an expensive process. EWNM would likely have to
14 prepare a placement memorandum and would likely require the services of an investment
15 banker or broker to place the loan. Standing alone, EWNM could not borrow \$5 million
16 unsecured at a 30-year fixed interest rate of 3.45%. Without an expectation to better the
17 terms available through EUSA, incurring the expenses required to test the capital markets
18 does not seem reasonable.

19

20 **Q. IS THE BORROWING FROM EUSA A CLASS I TRANSACTION?**

21 A. I believe it is because EWNM will be borrowing from EUSA, its parent company and
22 therefore an affiliated interest. Through the petition and my testimony, EWNM has

1 provided the information concerning the transaction required by Rule 450.11. EWNM will
2 file an executed copy of the promissory note promptly after the Note is issued.

3

4 **Q. DOES A CLASS I TRANSACTION MEAN EWNM HAS THE BURDEN TO**
5 **PRODUCE EVIDENCE AND INFORMATION SUFFICIENT TO DEMONSTRATE**
6 **THAT THE CLASS I TRANSACTION RESULTED IN REASONABLE COST AND**
7 **CONTRACT CONDITIONS TO THE UTILITY?**

8 A. Yes and EWNM meets that burden. I have previously stated my opinion that EWNM
9 could not obtain terms that are nearly as favorable as it obtains by borrowing from EUSA
10 under the terms of the Note. The fixed interest rate of 3.45% that EWNM will lock in for
11 30 years is lower than the rate for the 2011 Note that EWNM intends to retire with the
12 proceeds from this transaction. Additionally, EWNM will simply be issuing an unsecured
13 note and will not have to encumber its assets with a mortgage indenture or undertake the
14 restrictive operating covenants that are typically included in a mortgage indenture. Finally,
15 because the financing will be through EUSA, there will be minimal transaction costs to
16 issue the Note.

17

18 **Q. WILL ISSUANCE OF THE PROMISSORY NOTE CHANGE EWNM'S CURRENT**
19 **CAPITAL STRUCTURE?**

20 A. No. Because the note will be used to retire a like amount of long-term debt, the aggregate
21 amount of EWNM's outstanding long-term debt will not change as a result of the issuance
22 of the Note and there will be no change to EWNM's existing capitalization ratios. EWNM

1 will have long-term debt in the amount of \$19 million before and immediately following
2 issuance of the Note.

3

4 **Q. WHAT EFFECT, IF ANY, DO YOU ANTICIPATE THIS TRANSACTION WILL**
5 **HAVE ON THE FUTURE ABILITY OF EWNM TO RAISE MONEY EITHER BY**
6 **ISSUING DEBT OR EQUITY SECURITIES?**

7 A. Issuance of the Note will not change EWNM's capital structure and will not adversely
8 affect its ability to raise either debt or equity capital in the future. The lower interest rate
9 will improve EWNM's debt coverage ratios.

10

11 **Q. ARE YOU ACQUAINTED WITH SECTION 62-6-7 OF THE NEW MEXICO**
12 **PUBLIC UTILITY ACT AND THE STANDARDS SET FORTH THEREIN?**

13 A. Yes.

14

15 **Q. AMONG OTHER THINGS, THE COMMISSION MUST FIND THAT THE**
16 **TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST AND THAT**
17 **THE PURPOSES THEREOF ARE PERMITTED BY STATUTES. DO YOU**
18 **BELIEVE THAT THESE TESTS ARE SATISFIED?**

19 A. Yes. Among the purposes for which utilities may issue securities under Section 62-6-6 is
20 lawfully refunding existing obligations. Refinancing the existing long-term note will help
21 EWNM maintain a reasonable balance in its capital structure between long-term debt and
22 equity and thereby a reasonable overall cost of capital. I therefore believe that this
23 transaction will not have a significant impact upon EWNM's ratepayers or adversely affect

1 the Commission's ability to regulate EWNM and that it is consistent with the public interest
2 and permitted under the applicable statutes.

3

4 **Q. FINALLY, IF THE COMMISSION AUTHORIZES THIS TRANSACTION,**
5 **WOULD THE AGGREGATE AMOUNT OF SECURITIES OUTSTANDING**
6 **EXCEED THE FAIR VALUE OF THE COMPANY'S PROPERTIES AND**
7 **BUSINESS?**

8 A. No. This transaction merely refinances existing long-term debt. As of the end of 2020,
9 net utility plant is \$ 67,413,250 as compared to the \$19 million of long-term debt.

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 A. Yes.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ISSUE AN UNSECURED,
LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF
\$5,000,000**

Case No. 21-00280-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

**DECLARATION OF JON P. BOIZELLE IN SUPPORT OF THE
FOREGOING DIRECT TESTIMONY TO THE APPLICATION OF EPCOR WATER
NEW MEXICO INC. FOR AUTHORITY TO ISSUE AN UNSECURED, LONG-TERM
PROMISSORY NOTE IN AGGREGATE PRINCIPAL AMOUNT OF \$5,000,000**

I, *Jon P. Boizelle*, pursuant to Rule 1-011 NMRA, state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.

2. I am over 18 years of age and have personal knowledge of the facts stated herein. I am employed by EPCOR USA Inc. (“EUSA”), the owner of EPCOR Water New Mexico Inc. (“EWNM” or “Company”) as the *Rates Manager*.

3. The foregoing Direct Testimony of Jon P. Boizelle, together with all exhibits sponsored therein and attached thereto, is true and accurate based on my knowledge and belief.

4. I submit this Declaration, based upon my personal knowledge and upon information and belief, in support of EPCOR Water New Mexico Inc.’s *Application for Authority to Issue an Unsecured, Long-Term Promissory Note in Aggregate Principal Amount of \$5,000,000*.

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2021.

/s/ Jon P. Boizelle

JON P. BOIZELLE

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ISSUE AN UNSECURED,
LONG-TERM PROMISSORY NOTE IN
AGGREGATE PRINCIPAL AMOUNT OF
\$5,000,000**

Case No. 21-00280-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Application of EPCOR Water New Mexico Inc. for Authority to Issue an Unsecured, Long-Term Promissory Note in Aggregate Principal Amount of \$5,000,000 and Direct Testimony of Jon P. Boizelle to be emailed on November 12, 2021 to the following:

Jared Morris jmorris@hbmlaw.org;
Justin Howalt jhowalt@cityofclovis.org;
Larry Blank lb@tahoeconomics.com;
Gabriella Dasheno Gabriella.Dasheno@state.nm.us;
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DATED: November 15, 2021

MONTGOMERY & ANDREWS, P.A.

By /s/ Jeffrey J. Wechsler

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