

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

| | | |
|---------------------------------------|---|-----------------------------|
| THUNDER MOUNTAIN |) | |
| WATER COMPANY, INC., |) | |
| |) | |
| Complainant |) | |
| |) | |
| v. |) | Case No. 08-00254-UT |
| |) | |
| NEW MEXICO-AMERICAN |) | |
| WATER COMPANY, INC., |) | |
| |) | |
| Respondent. |) | |
| <hr/> | | |
| IN THE MATTER OF THE COMPLAINT |) | |
| OF NEW MEXICO AMERICAN WATER |) | |
| COMPANY’S OPPOSITION TO |) | Case No. 09-00019-UT |
| THUNDER MOUNTAIN WATER |) | |
| COMPANY’S PROPOSED |) | |
| LINE EXTENSION |) | |
| <hr/> | | |

NOTICE

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

These two cases, Case No. 08-00254-UT and Case No. 09-00019-UT, concern disputes between New Mexico-American Water Company, Inc. (NMAW) and Thunder Mountain Water Company, Inc. (“Thunder Mountain”) over the rights to construct line extensions planned by each company in or near Edgewood, New Mexico. On February 26, 2009, the Commission issued an Order Designating Hearing Examiner and Consolidating Cases, in which the Commission determined that the cases involve overlapping issues of law and fact and should be consolidated in the interests of clarification and administrative

efficiency. The Commission also appointed the undersigned as Hearing Examiner to preside over the consolidated cases.

Hillcrest LLC and County of Santa Fe intervened in Case No. 08-00254-UT and are also parties to these cases.

Case No. 08-00254-UT concerns a line extension planned by NMAW to serve the Hillcrest Development located in Sections 10 and 15, Township 10 North, Range 7 East, under a Line Extension Agreement between NMAW and the developer, Hillcrest LLC. Thunder Mountain claims the right to serve the area in which the Hillcrest Development is located and complains that NMAW's extension will trespass into its certificated service area, injuriously affect Thunder Mountain, result in duplication of facilities and create economic waste. NMAW disputes Thunder Mountain's claims and contends, among other things, that the Hillcrest Development is contiguous to area that NMAW currently serves and is not currently served by another utility.

Case No. 09-0019-UT concerns a line extension planned by Thunder Mountain that will originate at a well site in Section 24, extend north to Dinkle Road, then east to Bassett Road, then north to Venus Road, then west to State Road 344. According to Thunder Mountain the purpose of the extension is to obtain a more adequate water supply for all of its customers and to improve service quality by looping its system. Although Thunder Mountain acknowledges that the extension could be used to serve NMAW's customers or service area, it maintains that such service is not within the parameters of the current proposed extension and that the proposed extension would not interfere with NMAW's service and would not cause unnecessary duplication and economic waste. NMAW claims that Thunder Mountain's proposed line extension violates the Public Utility Act because it is not contiguous to territory occupied by Thunder Mountain and is located in territory being served by NMAW; violates the Final Order and Stipulation in Commission Case No. 2303; will unreasonably interfere with NMAW's service to Sections 13 and 11; and will

unreasonably interfere with NMAW's proposed line extension and service to the Hillcrest Development. Thunder Mountain disputes NMAW's claims.

By a Procedural Order issued on March 26, 2009, the Hearing Examiner has established the following procedural schedule and requirements for this proceeding:

- A. Any person desiring to intervene to become a party ("Intervenor") to the above-captioned consolidated cases 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 April 30, 2009.
- B. NMAW shall file direct testimony in support of the NMAW Amended Complaint and Thunder Mountain may file supplemental direct testimony in support of the Thunder Mountain Complaint on or before May 1, 2009.
- C. NMAW and Thunder Mountain shall each file testimony in response to the other's direct testimony on or before June 5, 2009.
- D. Intervenors may file direct testimony on or before June 26, 2009.
- E. Staff shall file direct testimony on or before July 17, 2009.
- F. Any desired rebuttal testimony shall be filed on or before July 31, 2009.
- G. A status and pre-hearing conference shall be held commencing at 10:00 a.m. on August 26, 2009 at the Commission's offices, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico, for the purpose of addressing the following matters:
 - i. The order of presentation of the parties and their respective witnesses;
 - ii. Designation by each of the parties of the witnesses to be cross-examined and the proposed length of time of cross-examination;
 - iii. The identification of any stipulated or uncontested issues;
 - iv. The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

- v. Arrangements for exchanging exhibit lists prior to the public hearing, efforts to secure agreements on the authenticity and admissibility of exhibits, and consideration of any other means of facilitating the efficient distribution, presentation, disposition of objections to and admission of exhibits at the public hearing.
- vi. The identification and submission of any pre-hearing motions or other pleadings; and
- vii. Any other matters that may expedite orderly conduct and disposition of this proceeding.

Each party planning to present and/or cross-examine witnesses shall develop a written list setting out the information required by subparagraphs i and ii above. Stipulated or uncontested issues and admissions of fact and documents shall be specified in a separate writing prepared by a designated party or parties. All such lists and writings shall be submitted to the Hearing Examiner and distributed to all other parties by no later than August 24, 2009. The parties are expected to engage in good faith discussions of the foregoing matters among themselves prior to the commencement of this status and pre-hearing conference. In addition, interested persons are hereby advised that particular attention should be paid to confirming the location, date and time for the status and pre-hearing conference because the Commission is in the process of planning to move its personnel and facilities out of Marian Hall. At this time, it is likely that the location for the status and pre-hearing conference will be changed to the Commission's offices at the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

- H. A public hearing shall be held on September 2, 2009 commencing at 9:30 a.m. and will continue as necessary through September 4, 2009 at the Commission's offices, Marian Hall, 224 East Palace, Santa Fe, New Mexico, to hear and receive testimony, exhibits, arguments and any other appropriate matters relevant to this proceeding. Since the Commission is in the process of planning to move its personnel and facilities out of Marian Hall, particular

By stipulation of the parties, the Commission's Rules of Procedure, 1.2.2 NMAC, *et seq.* (9/1/2008), shall apply to the consolidated cases except as modified by Order of the Commission or Hearing Examiner. A copy of such Rules may be obtained from the offices of the Commission and are available at the official site of the New Mexico Administrative Code, <http://www.nmcpr.state.nm.us/nmac/>.

The procedural dates and requirements provided herein are subject to further Order of the Commission or Hearing Examiner.

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 Nos. 08-00254-UT and 09-00019-UT, to the Commission at the address set out below. All such comments will not be considered as evidence in this case.

New Mexico Public Regulation Commission
Marian Hall
224 E. Palace Avenue
Santa Fe, NM 87501
Telephone: 1-888-472-5772

Any interested person may examine the Thunder Mountain Complaint, the NMAW Amended Complaint, the answers to each and all other pleadings, testimony, exhibits and other documents filed in the public record for this case at the address set out above.

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

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.

Anyone filing pleadings, documents or testimony in this case shall serve copies thereof on all parties of record and Staff via e-mail and first class U.S. mail. Any such filings shall also be sent to the Hearing Examiner via e-mail. Whenever possible, all electronically transmitted documents shall be in Word or native format.

Interested persons should contact the Commission for confirmation of hearing dates, times and places, since hearings are occasionally rescheduled.

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.

ISSUED at Santa Fe, New Mexico this 26th day of March 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros
Hearing Examiner