

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.)	
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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)	
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PROCEDURAL ORDER FOR CONSOLIDATED CASES

THIS MATTER comes before the Hearing Examiner upon the Order Designating Hearing Examiner and Consolidating Cases issued by the New Mexico Public Regulation Commission (“Commission” or NMPRC) in the above-captioned consolidated cases on February 26, 2009. Being duly apprised, the Hearing Examiner **FINDS** and **CONCLUDES** that:

1. On August 1, 2008, Thunder Mountain Water Company, Inc. (“Thunder Mountain”) filed with the Commission a Formal Complaint in Opposition to Proposed Extension (the “Thunder Mountain Complaint”), which was docketed as NMPRC Case No. 08-00254-UT.

2. In the Thunder Mountain Complaint, Thunder Mountain requests that the Commission disapprove and prohibit the line extension proposed by New Mexico-American Water Company, Inc. (NMAW) to provide water service to the Hillcrest Development located

in Edgewood, New Mexico. Thunder Mountain alleges in the Thunder Mountain Complaint that, among other things, the proposed line extension would trespass into Thunder Mountain's NMPRC-certificated service area, would injuriously affect Thunder Mountain, would result in duplication of facilities and would create economic waste. Thunder Mountain further alleges it currently provides service to the subject area, has facilities in the service area, and the proposed extension would require NMAW to construct facilities that would traverse Thunder Mountain's existing facilities.

3. On September 22, 2008, NMAW filed an Answer to the Thunder Mountain Complaint. NMAW stated in its Answer that given the pressing need to resolve the issue of water service to the Hillcrest development it would admit the Commission has jurisdiction over the subject matter of the Complaint and waived a determination of probable cause. As to the merits of the Complaint, however, NMAW disputes the material allegations made by Thunder Mountain, avers it has the authority and capability to serve the Hillcrest Development, denies Thunder Mountain is entitled to relief and asserts the Commission should dismiss the Complaint.

4. On September 25, 2008 Hillcrest, LLC ("Hillcrest") filed a combined motion for leave to intervene in and motion for expedited consideration of Case No. 08-00254-UT.

5. In its Initial Order entered in Case No. 08-00254-UT on December 4, 2008, the Commission found it has jurisdiction over the matters alleged in the Complaint and that probable cause exists for the Complaint. The Commission therefore established Case No. 08-00254-UT for resolution of the Complaint and assigned the undersigned to preside over this matter.

6. On January 16, 2009, NMAW filed with the Commission New Mexico-American Water Company, Inc.'s Complaint in Opposition to Proposed Extension (the "NMAW Complaint"), which was docketed as NMPRC Case No. 09-00019-UT.

7. The NMAW Complaint was filed to protest a proposed line extension by Thunder Mountain Line described as crossing NMAW's facilities and NMAW's certificated area in a line Extension Notice that Thunder Mountain filed with the Commission pursuant to

8. On January 22, 2009, the Commission issued an Order Requiring Answer to Complaint in which it directed Thunder Mountain to answer the NMAW Complaint and respond to certain questions regarding its proposed extension.

9. On January 23, 2009, Thunder Mountain filed in Case No. 08-00254-UT a brief in chief in support of the Thunder Mountain Complaint. NMAW and Hillcrest filed a joint response in opposition to Thunder Mountain's brief in chief on February 6, 2009. On this date Staff also filed a brief in response to Thunder Mountain's brief in chief. On February 19, 2009, the Hearing Examiner issued an Order on Summary Judgment in Case No. 08-00254-UT which deemed Thunder Mountain's brief in chief to constitute a request for summary judgment and proceeded to deny the request.

10. On February 11, 2009, Thunder Mountain filed Thunder Mountain Water Company's Answer to Complaint in Opposition to Proposed Extension and Response to Order Requiring Answer (the "Thunder Mountain Answer") in which, among other things, Thunder Mountain provided a map of the proposed extension and stated that the extension is intended to provide Thunder Mountain access to a water source in Section 24, Township 10 North, Range 7 East, to obtain a more adequate water supply for all of its customers and to improve service quality by looping its system. According to the map, the proposed extension would 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. The Thunder Mountain response further stated the extension could be used to serve NMAW's customers or service area but 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.

11. On February 13, 2009, the County of Santa Fe ("County") filed a motion for late intervention in Case No. 08-00254-UT. The County's late intervention was opposed by

12. On February 26, 2009, the Commission issued an Order Designating Hearing Examiner and Consolidating Cases, in which the Commission determined that the above-captioned 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.

13. On March 4, 2009, a pre-hearing conference was held in this matter. Attending the pre-hearing conference were representatives of NMAW, Thunder Mountain, Hillcrest, the County, the NMPRC Utility Division (“Staff”) and the Hearing Examiner. At the pre-hearing conference the parties agreed that given the posture of the above-captioned consolidated cases, the remaining schedule for Case No. 08-00254-UT established in the Procedural Order issued in that case on January 13, 2009 should be vacated and a pre-hearing conference should be set to address scheduling and other matters in the consolidated cases. The Hearing Examiner therefore issued on March 4, 2009 an Order vacating the procedural schedule for Case No. 08-00254-UT and scheduling a pre-hearing conference in the consolidated cases on March 26, 2009.

14. On March 5, 2009, citing the information obtained from the Thunder Mountain Answer, NMAW filed its Unopposed Motion to File an Amended Complaint in Opposition to Proposed Extension, to which it attached New Mexico-American Water Company, Inc.’s Amended Complaint in Opposition to Proposed Extension (the “NMAW Amended Complaint”). On March 6, 2009, the Hearing Examiner entered an order in which he granted the motion and deemed the NMAW Amended Complaint filed.

15. The NMAW Amended Complaint alleges, among other things, 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

16. On March 6, 2009, the Hearing Examiner issued a Protective Order governing matters pertaining to confidential material in this case.

17. On March 26, 2009, a pre-hearing conference was held in this matter as previously scheduled. Attending the pre-hearing conference were representatives of NMAW, Thunder Mountain, Hillcrest, the County, Staff and the Hearing Examiner.

18. The procedural details and requirements agreed to at the March 26, 2009 pre-hearing conference and as set forth below should be adopted for this case.

The Hearing Examiner **ORDERS** that:

A. 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. The parties and interested persons are hereby advised that particular attention should be paid to confirming the location, date and time for the public hearing 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 public hearing will be changed to the Commission's offices at the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

B. NMAW shall cause, at its sole expense, a copy of the Notice appended to this Order to be published in the *Albuquerque Journal* and *The Independent* in Edgewood, New Mexico on or before April 10, 2009.

C. 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. Hillcrest and the County are hereby deemed to be Intervenors in the above-captioned consolidated cases by virtue of being formerly granted party status in Case No. 08-00254-UT.

D. 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.

E. NMAW and Thunder Mountain shall each file testimony in response to the other's direct testimony on or before June 5, 2009.

F. Intervenors may file direct testimony on or before June 26, 2009.

G. Staff shall file direct testimony on or before July 17, 2009.

H. Any desired rebuttal testimony shall be filed on or before July 31, 2009.

I. 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, since the Commission is in the process of planning to move its personnel and facilities out of Marian Hall, particular attention should be paid to confirming the location, date and time for the status and pre-hearing conference. 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.

J. 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/>.

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

L. 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.

M. 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.

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

O. 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

P. 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.

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 with the Hearing Examiner 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 motion 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. The official Certificate of Service for this case, as revised, is attached to this Order. Subject to further revision, the attached Certificate of Service shall be used for the service of paper copies of pleadings and other documents to the counsel of record listed thereon.

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

V. 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