

23-00049-UT; Order Granting Interim Rate Relief

Santillanes, LaurieAnn , PRC

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To: Records, PRC, PRC <PRC.Records@prc.nm.gov>

Cc: JA@Jalblaw.com <JA@Jalblaw.com>;Twsd.chairman@tutanota.com <Twsd.chairman@tutanota.com>;AE@Jalblaw.com <AE@Jalblaw.com>;Borman, Bradford, PRC <Bradford.Borman@prc.nm.gov>;Jeffreys, Elizabeth, PRC <Elizabeth.Jeffreys@prc.nm.gov>;Bogatko, John, PRC <John.Bogatko@prc.nm.gov>;Martinez, Richard , PRC <richard.martinez@prc.nm.gov>;Rilkoff, Ed , PRC <Ed.Rilkoff@prc.nm.gov>;Leyba-Tercero, Elisha, PRC <Elisha.Leyba-Tercero@prc.nm.gov>;Martinez-Rael, Peggy, PRC <Peggy.Martinez-Rael@prc.nm.gov>;Hurst, Elizabeth, PRC <Elizabeth.Hurst@prc.nm.gov>;Amer, Judith, PRC <Judith.Amer@prc.nm.gov>;Stephanz, Erika , PRC <erika.stephanz@prc.nm.gov>;Smith, Michael C, PRC <MichaelC.Smith@prc.nm.gov>;Santillanes, LaurieAnn , PRC <LaurieAnn.Santillanes@prc.nm.gov>;PRC-Commissioners & Assistants <PRC-Commissioners&Assistants@state.nm.us>

1 attachments (291 KB)

23-00049-UT- 2023-05-17- Order Granting Interim Relief TWSD.pdf;

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF TIMBERON WATER AND )  
SANITATION DISTRICT ADVICE NOTICE NO. 18 )  
AND ADVICE NOTICE NO. 19 )**

**Case No. 23-00049-UT**

Sincerely,  
LaurieAnn Santillanes  
Law Clerk for the Office of General Counsel  
New Mexico Public Regulation Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269  
Telephone: (505) 670-4830



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**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF TIMBERON WATER AND )**  
**SANITATION DISTRICT ADVICE NOTICE NO. 18 ) Case No. 23-00049-UT**  
**AND ADVICE NOTICE NO. 19 )**

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**ORDER GRANTING INTERIM RATE RELIEF**

**THIS MATTER** comes before the New Mexico Public Regulation Commission ("Commission") upon Advice Notice No. 18 ("AN 18") and Advice Notice No. 19 ("AN 19") filed by Timberon Water and Sanitation District ("Timberon"); upon the *Application for Interim Relief by Timberon Water and Sanitation District* filed on March 30, 2023, and the public hearing held on May 4, 2023 and May 5, 2023.

Wherefore, being duly advised, the Commission hereby grants Timberon's Application for Interim Relief based upon the following.

**THE COMMISSION FINDS AND CONCLUDES:**

1. On January 20, 2023, Timberon filed AN 18 and AN 19 consisting of various increases to their General Metered Service customers pursuant to NMAC 17.12.770 ("Rule 770").

2. Specifically, AN 18 proposed to increase the standby charge from \$50 to \$61.50 per year as well as the following changes:

- Res. Connection Charge, ¾" Meter installation fees from \$1,011.85 to \$1500.00 (48.24%)
- Comm. Connection Charge, ¾" Meter installation fees from \$1,011.85 to \$1500.00 (48.24%)
- Gen. Water Serv., Reconnect Charge from \$50.00 to \$75.00 (50%)
- Gen. Water Serv., Reconnect Charge, Less than 72-hr Notice from \$50.00 to \$100.00 (100%)
- Disconnection Charge from \$50.00 to \$75.00 (50%)
- Disconnection Charge, Less than 72-hr Notice from \$50.00 to \$100.00 (100%)
- Returned Check Fee from \$25.00 to \$30.00 (20%)
- Lien Filing Fee from \$25.00 to \$37.25 (49%)
- Water Security Deposit Charge from \$0.00 to \$130.00 (New Charge)

3. AN 19 proposed the following changes to base rates as well as set forth a 4 tier usage system including the restoration of a \$4.10 per 1000 gallons for the zero usage up to 1000 gallons per month. AN 19 would apply to all 572 customers who receive water services.

RESIDENTIAL  
(treated)

	Present Rate	Proposed Rate	Dollar Increase	Percentage
¾” Meter	50.98	66.28	\$15.30	30%
1” Meter	50.98	66.28	\$15.30	30%

COMMERCIAL  
(treated)

	Present Rate	Proposed Rate	Dollar Increase	Percentage
¾” Meter	50.98	66.28	\$15.30	30%
1” Meter	50.98	66.28	\$15.30	30%
1 ½” Meter	50.98	66.28	\$15.30	30%
2” Meter	50.98	66.28	\$15.30	30%

4. Upon review of AN 18 and AN 19, Utility Division Staff (“Staff”) recommended that AN 18 and 19 be “SUSPENDED until a formal resubmittal of AN 18 with correct and complete information pursuant to NMAC 17.12.770, AND until all previous Annual Reports from 1992 through 2022 be submitted pursuant to NMAC 17.12.1.9 and NMAC 17.12.720, AND pursuant to NMAC 17.12.770.8 A.1., TWSD returns to good standing with all applicable Commission Rules and Orders.”<sup>1</sup> Staff made a similar recommendation regarding AN 19.<sup>2</sup>

5. Pursuant to Rule 17.12.770 NMAC without a request for review from Staff and a suspension order from the Commission, Timberon’s AN 18 and AN 19 would become effective on February 15, 2023.

6. On February 14, 2023, the Commission filed an *Order Suspending Proposed Rates*

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<sup>1</sup> NMPRC Utility Division Advice Notice Memo. *Staff’s Recommendation – Timberon Water and Sanitation District, Advice Notice No. 18.* (Feb. 14, 2023).

<sup>2</sup> See generally NMPRC Utility Division Advice Notice Memo. *Staff’s Recommendation- Timberon Water and Sanitation District, Advice Notice No. 19.* (Feb. 14, 2023).

*and for Staff Response* (“Order of Suspension”). The Order of Suspension decreed that the ANs shall be “suspended pending [TWSD’s] resubmittal of the Advice Notices and compliance with all Commission Rules and Orders described herein.”

7. On March 30, 2023, Timberon, by and through counsel, filed an *Application for Interim Relief by Timberon Water and Sanitation District* (“Application”) asking that the Commission allow Timberon to begin billing AN 18 and AN 19 so Timberon may be able to improve and fix its infrastructure and to function as a utility. As support for the Application, Timberon provided its Annual Report for the period of July 2021- June 2022.

8. On April 5, 2023, the Commission filed an *Order for Staff to File a Response to the Application for Interim Relief by Timberon Water and Sanitation District and for Timberon Water and Sanitation District to File a Reply* (“Order for Response”) asking Staff to provide an update as to whether AN 18 and AN 19 had been resubmitted, whether the annual reports had been submitted, and whether it was Staff’s opinion that the Application for interim relief should be granted. The Order for Response then required Timberon to reply to Staff’s response (“Order to Reply”).

9. On April 10, 2023, Staff filed *Staff’s Response regarding Application for Interim Relief by Timberon Water and Sanitation District* (“Staff’s Response”). Staff’s Response stated that AN 18 and AN 19 had not been resubmitted as of the date of the Response. Staff stated that Timberon had only provided the Annual Reports for July 2021-2022. Staff’s Response also stated that - through its own investigation--- it discovered Timberon’s Board of Directors Resolution No. 2022/2023-009 which claimed that the water distribution system is “beginning to show signs of accelerated failure as evidenced with a current water loss rate of 70-80%”<sup>3</sup>

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<sup>3</sup> Staff Exhibit 1: Board of Directors of the Timberon Water and Sanitation District Resolution No. 2022/2023-009.  
*Order Granting Interim Rate Relief*  
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10. On April 12, 2023, Timberon filed *Timberon Water and Sanitation District's Reply to Staff's Response Regarding Application for Interim Relief* ("Timberon's Reply"), wherein they argue that the statement of the Board of Directors attached to the Application for Interim Relief demonstrated that money is needed because of water loss, and Timberon's failure to receive other funding. Further, Timberon argued that its good standing status has never been brought up before. Timberon filed the annual report on March 29, 2023, and would be willing to file annual reports with the Commission as required.

11. In response to Timberon's *Application for Interim Relief*, the Commission held a public hearing, presided over by Hearing Examiner Elizabeth Hurst. The public hearing spanned two days, May 4 and 5, 2023 wherein the Commission heard testimony from Timberon's Chairman, Michael Gonzalez, and Timberon's Interim Board-Appointed General Manager, Mark Harding. Utility Division Staff provided testimony from Gabriella Dasheno, Accounting Bureau Chief and Richard L. Martinez, Engineering Bureau Chief.

12. Relevant to the Commission's decision on the Application is Commission Rule 1.2.2.27 Interim Relief:

**A. Contents:** [...]in addition to the usual contents of a pleading, the pleading must allege such extraordinary facts of immediate and irreparable injury as would justify the commission's exercise of discretion by granting interim relief prior to a final decision.

13. We find that Timberon has demonstrated immediate and irreparable injury that justifies granting interim relief pursuant to 1.2.2.27 NMAC. For this reason, we approve Timberon's *Application for Interim Relief* subject to certain modifications and conditions set forth below.

14. Timberon’s burden of proof in this case is established as a matter of law<sup>4</sup>. The rule in administrative proceedings in general, and adjudications before this Commission in particular, is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.<sup>5</sup> The burden of proof is two-prong: it includes both the prima facie burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, unless expressly provided otherwise, a preponderance of the evidence. A “preponderance” of the evidence means that, when weighed against that opposed, it has more convincing force. A “preponderance” of the evidence has superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.<sup>6</sup>

15. We find that granting the interim relief is justified to address the immediate, daily structural water system problems presented by Timberon. Timberon’s system is actively experiencing tremendous water losses with a current water loss rate of approximately 70-84%, and the system shows “signs of accelerated failure.”<sup>7</sup> As Timberon testified: “[t]he district unfortunately hit a milestone of our highest recorded water losses in January 2023 month end with

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<sup>4</sup> See, e.g., Southwestern Public Service Company’s Application Requesting: (1) Acceptance of its 2014 Annual Energy Efficiency and Load Management Report; (2) Approval of its 2016 EE/LM Plan and Associated Programs; (3) Approval of its Cost Recovery Tariff Rider; and (4) a Determination Whether a Separate Process Should be Established to Analyze a Smart-Meter Pilot Program, Case No. 15-00119-UT, Certification of Stipulation, at 16 (Dec. 18, 2015) (citing *Gray v. State ex rel. Wyoming Workers’ Safety and Compensation Div.*, 193 P.3d 246, 251 (Wyo. 2008)); see also NMSA 1978 § 62-8-7(A)

<sup>5</sup> DAVIS, KENNETH CULP, ADMINISTRATIVE LAW TREATISE § 16.9 at 255–57 (2d ed. 1980). See *Int’l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm’n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) (“Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.”).

<sup>6</sup> *Campbell v. Campbell*, 1957-NMSC-001, ¶ 24, 62 N.M. 330, 310 P.2d 266. Black’s Law Dictionary 1431 (11th ed. 2019).

<sup>7</sup> Direct Testimony of Michael Gonzales dated April 27, 2023 at Pages 10 – 11, lines 14 -24 and lines 1-16.

a documented 83% water loss.”<sup>8</sup> Timberon further testified that the planned Tank 3 project would help its water system “begin to move to a properly managed and funded critical infrastructure need for the citizens of Timberon,” but the project is currently underfunded by \$288,000.<sup>9</sup> Timberon added that the interim rate relief would allow it to purchase much needed equipment to perform acceptable work to repair the frequent broken and leaking water lines more efficiently. Timberon concluded that the water losses and necessary tank repairs and replacements directly impacts customers and impacts the ability of Timberon to provide the community with clean, reliable and abundant drinking water and water needed for the firefighting capability.<sup>10</sup>

16. The Commission finds that Timberon provided sufficient justification of the Commission’s granting of interim rate relief because it will assist Timberon’s daily fixing of the failing water system’s deficiencies on a short-term daily basis and avoid immediate and irreparable harm to its customers. However, it is evident that the interim rate increases are insufficient to fix the major water infrastructure problems on a long-term basis. Rather, Timberon’s testimonies prove that it needs major updates to the system that would require a long-term plan to repair, improve, and maintain the water distribution plan, which Timberon has not presented.

17. Since granting interim rate relief may only assist Timberon on a day-to-day basis in fixing current and upcoming leaks in the system, we will impose the following conditions upon this approval of interim rate relief, so that Timberon will be able to file permanent rates to address both day-to-day operations and develop a long-term plan for fixing the deficiencies in the water

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<sup>8</sup> Supplemental Testimony of Mark Harding dated May 1, 2023 (Harding May 1 Testimony) at page 7, lines 7-17.

<sup>9</sup> Supplemental Testimony of Mark Harding dated May 1, 2023 (Harding May 1 Testimony) at page 7, lines 7-17.

<sup>10</sup> Direct Testimony of Michael Gonzales dated April 27, 2023 at Pages 10 – 11, lines 14 -24 and lines 1-16.

system.

18. **CONDITION NO. 1:** Timberon shall be required to file with the Commission its proposed permanent rates by no later than December 31, 2023, which rate proposal shall be accompanied by an Advice Notice and a cost-of-service study showing Timberon's audited expenses for its water services for the twelve month period ended September 30, 2023, and testimony and documents explaining how any costs shared with Timberon's other functions, such as its golf course, are allocated. Timberon shall also file with its proposed permanent rates a schedule showing its costs adjusted for any known and measurable changes that will occur by January 1, 2024, and testimony explaining and justifying each such adjustment.

19. **CONDITION NO. 2:** In the event that Timberon does not file its proposed permanent rates, along with all of the foregoing information by December 31, 2023, or does not obtain Commission approval for an extension of that deadline, Timberon's authority to continue charging the Interim Rates shall automatically terminate on January 1, 2024.

20. **CONDITION NO. 3:** In the event the permanent rates are lower than the Interim Rates approved by this Order, Timberon shall refund to its customers the difference between the revenues actually collected by Timberon during the period the Interim Rates are in effect, and the revenues that would have been received had the approved permanent rates been in effect instead of the Interim Rates during that same period. The manner in which such refunds should be made, and whether any interest should be paid on the refunded amount, shall be determined by the Commission.

21. **CONDITION NO. 4:** All revenues received by Timberon from charging its customers the Interim Rates approved herein, and all interest on past due amounts due for water services, shall be used by Timberon solely for its water operations, which may include road work



in order to repair a broken water line, but shall not include routine road repair and maintenance.

22. **CONDITION NO. 5:** Timberon shall be authorized to commence charging the Interim Rates prospectively from the date of this Order. For those rates that are charged in advance on an annual basis and have already been billed for calendar year 2023, such as the Standby Charge, Timberon is authorized to send to its Standby customers a supplemental invoice or bill for the increase in the rates approved by this Order, pro-rated from the effective date of the Interim Rates.

23. **CONDITION NO. 6:** At the time Timberon files its Advice Notices for a permanent rate increase, Timberon shall also file an engineering report that identifies and prioritizes the maintenance and improvement work needed to be done on Timberon's systems in order to provide and maintain adequate and safe water services to its customers and a financing plan to fund the maintenance and improvement work. Timberon may file an earlier prepared engineering report, conditioned upon Timberon justifying that the report is sufficient to identify and prioritize the maintenance and improvement work.

24. **CONDITION NO. 7:** Within 90 days from the date this Order is issued, Timberon shall file, in this docket, a statement showing:

- i. Timberon's plan for collecting the past due amounts from all of customers, including standby customers, and the steps that will be taken to keep its past due amounts down to a minimum in the future;
- ii. Timberon's plan for ensuring that its cost of operating its water division, including its management costs, are kept at the lowest reasonable levels consistent with good utility practices.
- iii. Timberon's plan to revamp its business practices so that its books and records are

kept and maintained in a timely and accurate manner.

25. **CONDITION NO. 8:** Condition No. 8 shall remain in effect until Timberon's permanent rate increase becomes effective. Upon the filing of Advice Notices for a permanent rate, but no later than March 15, 2024, and by the fifteenth day of each month thereafter (or the next business day if the fifteenth days falls on a weekend or holiday), Timberon shall file with the Commission and serve on the parties to this case a report showing the following information with respect to the immediately preceding calendar month:

i. An aged receivables report showing the past due amounts owed by Timberon's standby customers (but without disclosing the names of the customers), the length of time that the amounts are past due and the total amount of past due amounts collected by Timberon in the month;

ii. An aged receivables report showing the same information described in Paragraph i. above with respect to Timberon's non-standby customers;

iii. A description of the specific activities Timberon has undertaken to collect on its past due accounts;

iv. A description of Timberon's progress toward getting its books and records in an auditable form. Please provide the name and telephone number of the individual that will be conducting the FY 23 audit.

v. A brief description of all complaints submitted by Timberon's customers regarding Timberon's water service, the date each such complaint was submitted to Timberon, and whether the complaint was resolved.

26. In conclusion, the Commission finds that the Advice Notice 18 and 19 should no longer be suspended and should go into effect as of the date of this Order as interim, not permanent rate

relief, subject to the CONDITIONS set forth herein.

**IT IS THEREFORE ORDERED:**

- A. Interim rate relief is hereby granted.
- B. Advice Notice 18 and 19 are no longer suspended and shall go into effect as of the date of this Order as interim, not permanent rate relief, subject to the CONDITIONS set forth herein.
- C. This Order is effective immediately.
- D. Copies of this Order shall be served on all persons listed on the attached Certificate of Service, via e-mail to those whose e-mail addresses are known, and otherwise via regular mail.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 17<sup>th</sup> day of May, 2023.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*/s/ Gabriel Aguilera, electronically signed*  
\_\_\_\_\_  
**GABRIEL AGUILERA, COMMISSIONER**

*/s/ James F. Ellison, Jr., electronically signed*  
\_\_\_\_\_  
**JAMES F. ELLISON, JR., COMMISSIONER**

*/s/ Patrick J. O'Connell, electronically signed*  
\_\_\_\_\_  
**PATRICK J. O'CONNELL, COMMISSIONER**



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF TIMBERON WATER AND )  
SANITATION DISTRICT ADVICE NOTICE NO. 18 ) Case No. 23-00049-UT  
AND ADVICE NOTICE NO. 19 )**

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**CERTIFICATE OF SERVICE**

**I CERTIFY** that on this date I served upon the individuals listed below, via email only, a true and correct copy of the foregoing ***Order Granting Interim Relief***.

Jeffrey H. Albright	JA@Jalblaw.com;
Michael Gonzalez	Twsd.chairman@tutanota.com;
Amanda Edwards-Adrian	AE@Jalblaw.com;
Bradford Borman	Bradford.Borman@prc.nm.gov;
Elizabeth Jeffreys	Elizabeth.jeffreys@prc.nm.gov;
John Bogatko	John.Bogatko@prc.nm.gov;
Richard Martinez	Richard.martinez@prc.nm.gov;
Ed Rilkoff	Ed.rilkoff@prc.nm.gov;
Elisha Leyba-Tercero	Elisha.Leyba-Tercero@prc.nm.gov;
Peggy Martinez-Rael	Peggy.Martinez-Rael@prc.nm.gov;
Judith Amer	Elizabeth.hurst@prc.nm.gov;
Erika Avila Stephanz	Judith.amer@prc.nm.gov;
Michael C. Smith	Erika.stephanz@prc.nm.gov;
Elizabeth Hurst	MichaelC.Smith@prc.nm.gov;

**DATED** this 18<sup>th</sup> day of May, 2023.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ LaurieAnn Santillanes, electronically signed**  
**LaurieAnn Santillanes, Law Clerk**