

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE REQUEST)
OF TIMBERON WATER AND)
SANITATION DISTRICT FOR AN)
EMERGENCY INTERIM RATE INCREASE)
TIMBERON WATER AND SANITATION)
DISTRICT,)
Applicant.)**

Case No. 10-00366-UT

**ORDER SETTING HEARING ON EMERGENCY
INTERIM RATE INCREASE**

THIS MATTER comes before the Public Regulation Commission ("Commission") upon the request for the approval of an emergency interim rate increase ("Request") set forth in a letter dated November 18, 2010, and filed in this case on November 24, 2010, by Timberon Water and Sanitation District ("Timberon"). Upon consideration of the Request, and being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. In its Request, Timberon requests that, due to what it characterizes as its "dire financial situation, the Commission immediately approve the following emergency rates:

Metered Water

- Increase the base water rate from \$17.40 to \$31.90.
- Increase the per thousand gallon usage rate from \$2.69 to \$4.095.
- Impose a \$25.00 late fee for late payment of monthly water bills.

Standby Water

- Increase the annual base standby charge rate from \$36.00 to \$50.50.
- Impose a \$25.00 late fee for late payment of the standby charge.

Other Charges

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- Increase the new meter installation fee from \$675.00 to \$875.00
- Impose a \$20.00 disconnect fee.
- Increase the reconnect fee from \$45.00 to \$65.00.

2. In support of its Request, Timberon states that its proposed rate increases would generate the \$180,000 needed to provide basic, mandated services to its property owners and visitors. More specifically, Timberon asserts:

a. It has a \$180,000 projected current year operating shortfall (excluding legal costs), unpaid legal fees and judgment costs of approximately \$340,714, and a \$350,000 shortfall in funds for critically needed capital equipment improvements and repairs.

b. A court has ordered the reduction in property tax rates from 26 mils [sic] to 10 mils [sic] in 2006, adjusted Timberon's tax revenues downward from \$302,000 (rounded) in 2005/2006 to approximately \$120,000 in subsequent fiscal years. As a result, Timberon has depleted its cash reserves in meeting its operating expenses.

c. An estimated 8.35% increase in the price of goods and services has occurred since 2006, according to the Consumer Price Index (http://www.bls.gov/data/inflation_calculator.htm).

d. There will be serious impacts on Timberon and the Timberon community, including the potential for:

i. Employee layoffs that will create a loss of essential services for Timberon residents and businesses;

ii. Continued deterioration of roads where elderly, the medically challenged and children live make stretches of road impossible to residential vehicles, emergency transport vehicles, fire trucks, propane trucks, etc, and caused freezing of pipes exposed by erosion. Exposure of pipes occurred in 2006, 2008, 2009, and 2010 following precipitation events.

3. The loss of routine road maintenance and snow plowing, general facilities, grounds and infrastructure repairs and maintenance, custodial services, outside accounting and auditing services, and fire fuels reduction and maintenance on Timberon properties, including fuels slash pit maintenance.

4. 1.2.2.27 NMAC provides that any party may request interim relief by including the request in a pleading, provided that the pleading clearly indicate that such relief is requested, and the party alleges 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.

5. Although Timberon's Request does not expressly request the approval of interim rates pursuant to 1.2.2.27 NMAC, the Request does request the Commission to approve its proposed emergency rates "until a new permanent rate structure is put in place." The Commission finds that the foregoing language meets the first requirement of 1.2.2.27 NMAC.

6. Timberon has also met the requirement that alleging such extraordinary facts of immediate and irreparable injury. Although the alleged facts were not set forth in sworn prepared testimony or in an affidavit, the Commission finds that under the facts and

circumstances of this case, the Request nonetheless sets forth sufficient allegations that, at the very least, warrant setting the matter for a hearing.

7. Ordinarily, the Commission would suspend a proposed rate increase pursuant to NMSA 1978, § 62-8-7. However, because Timberon has not filed an Advice Notice or proposed an effective date in its Request as required by NMSA 1978, § 62-8-7.B, the Commission finds that it need not suspend the proposed rates. As filed by Timberon, its proposed rates will not become effective until approved by the Commission.

8. As indicated above, the Commission has determined that Timberon's proposed rates should be subject to a public hearing, to be held on December 17, 2010, and that an intervention deadline of December 15, 2010 should be set for this case.

9. Timberon shall have present at the public hearing in this case one or more witnesses that can respond to questions raised by the Commission, Commission Staff, or by any interested that is granted leave to intervene in this proceeding regarding any of the matters set forth in its Request.

10. Timberon is put on notice that if the Commission approves all or any portion of its proposed emergency interim rates, Timberon should at that time file rate schedules with the Commission in a form that complies with the requirements of 17.1.210.1 NMAC, et seq. If requested by Timberon, the Staff of the Commission's Utility Division shall assist Timberon in preparing those rate schedules.

11. Timberon shall further cause a copy of this Order to be mailed to all of Timberon's water and sewer customers, postage prepaid, by no later than December 3, 2010, and

shall file an affidavit with the Commission verifying such mailing by no later than three (3) after such mailing.

12. Timberon should further be advised that NMSA 1978, § 62-8-7.1.A provides that if a water and sewer utility with no more than 1,500 service connections in any utility operating district files proposed new rates with Commission, the proposed rates shall become effective without a hearing, provided that: A. the utility gives its ratepayers written notice of the proposed rates at least 60 days prior to filing the proposed rate change with the Commission; B. the proposed rate increase would have the effect of increasing the utility's rate by less than fifty percent in a twelve month period; and C. less than ten percent (10%) or twenty-five ratepayers, whichever is greater, file protests seeking review of the proposed rates, or if more than ten percent or twenty-five ratepayers, whichever is greater file such protest, the Commission determines that there is not just cause for reviewing the proposed rates. Assuming that Timberon has less than 1,500 service connections, Timberon may wish to consider following the procedures set forth under NMSA 1978, § 62-8-7.1.A as an alternative to requesting the Commission to approve its proposed emergency interim rates. If Timberon determines to use that alternative route to obtaining a rate increase, it should immediately advise the Commission in writing of that determination, and request the Commission to vacate the hearing set by this Order.

IT IS THEREFORE ORDERED:

A. A public hearing in this case will be held beginning at 1:00 p.m. on December 17, 2010, at the Community Center, 1 Bob White Circle, Timberon, New Mexico, for the purpose of

receiving evidence, arguments and any other appropriate matters related to this proceeding. The proceeding may be conducted during evenings and the intervening weekend of this period, consistent with the scheduling imperatives of this case.

B. Any person who desires to intervene to become a party to this case must file with the Commission a motion to intervene pursuant to 1.2.2.23.A and 1.2.2.23.B NMAC, by no later than December 15, 2010. Interested persons wishing to file motions to intervene should include a reference to Case No. 10-00366-UT in their motion, and a statement of whether they are a water and/or sewer customer of Timberon. If the person is not a customer, the person should state what interest they have in this case. Interested persons may file their motions to intervene with the Commission by emailing a copy of their motion to Robert.hirasuna@state.nm.us.

C. Any interested person may appear at the time and place of hearing and make written or oral comment pursuant to 1.2.2.32.A(2) NMAC without becoming an Intervenor. Interested persons may also send written comments, which shall reference Case No. 10-00366-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
PERA Building
1120 Paseo de Peralta
Santa Fe, NM 87501

D. Interested person should contact the Commission for confirmation of the hearing date, time and place, since hearings are occasionally rescheduled.

E. 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.

F. This Order is effective immediately.

G. Copies of this Order shall be emailed to all persons on the attached Certificate of Service if their email addresses are known, and if not known, mailed to such persons via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day of
November, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

David W. King

DAVID W. KING, CHAIRMAN



Absent

JEROME D. BLOCK, VICE CHAIRMAN

Jason A. Marks

JASON A. MARKS, COMMISSIONER

Theresa Becenti-Aguilar

THERESA BECENTI-AGUILAR, COMMISSIONER

Sandy Jones

SANDY JONES, COMMISSIONER

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TIMBERON WATER AND SANITATION DISTRICT,)
APPLICANT.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Setting Hearing on Emergency Interim Rate Increase** issued November 30, 2010, was sent on December 1st, 2010 by electronic mail and by first class postage pre-paid mail to the parties listed below.

Martin D. Moore, Ph.D.
Timberon Water and Sanitation District
P.O. Box 40
Timberon, NM 88350

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Tim Martinez
NMPRC- Utilities Gas, Waste & Water
PO Box 1269
Santa Fe, NM 87504

Hand-delivered to:

Roy Stephenson
NMPRC- Utilities Division Director
PO Box 1269
Santa Fe, NM 87504

DATED this 1st day of December, 2010

NEW MEXICO PUBLIC REGULATION COMMISSION



Ana C. Kippenbrock, Paralegal