

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
AV WATER CO., LLC AND NEW MEXICO WATER)
SERVICE COMPANY FOR THE SEVERAL)
APPROVALS AND AUTHORIZATIONS REQUIRED IN)
CONNECTION WITH THE ACQUISITION OF AV)
WATER CO., LLC’S ASSETS BY NEW MEXICO)
WATER SERVICE COMPANY; AND THE)
APPLICATION BY NEW MEXICO WATER SERVICE)
COMPANY FOR APPROVAL TO OPERATE CERTAIN)
WATER UTILITY FACILITIES)**

Docket No. 21-00188-UT

PREHEARING CONFERENCE ORDER

THIS MATTER comes before the Hearing Examiner upon his own motion, following the prehearing conference described below.

Whereupon, being duly informed,

THE HEARING EXAMINER FINDS AND CONCLUDES:

1. On July 20, 2021, AV Water Co., LLC (“AVW”) and New Mexico Water Service Company (“NMWSC”) filed their Joint Application for the Several Approvals and Authorizations Required in Connection with the Acquisition of AVW’s Assets by New Mexico Water Service Company; and the Application by NMWSC for Approval to Operate Certain Water Utility Facilities (collectively, the “Joint Application”). The Joint Application includes the Direct Testimony of Cynthia Apodaca, General Manager of NMWSC, and the Direct Testimony of C. Randel Lewis, receiver for AVW.

2. On August 18, 2021, the Commission issued its Order Appointing Hearing Examiner for Expedited Proceeding, in which the Commission appointed the undersigned as Hearing Examiner in this matter and instructed him to proceed in this matter so as to allow the Commission to issue a final order concerning the Joint Application on or before March 1, 2022.

3. On September 3, 2021, the Hearing Examiner held a prehearing conference attended by Maria O'Brien, counsel for NMWSC; John Bogatko, counsel for Staff of the Utility Division of the Commission ("Staff"); and C. Randel Lewis, the receiver for AVW, as well as Cynthia Apodaca of NMWSC and Milo Chavez of Staff.

4. The first issue discussed at the prehearing conference was the request by Mr. Lewis, the receiver for AVW, to represent AVW in this proceeding without an attorney. The request is included in the Joint Application. The request is not opposed by the other current parties to this matter. The Hearing Examiner orally granted the request and now incorporates that grant into this order. The Hearing Examiner finds that there is good cause to issue a variance from 1.2.2.9 NMAC of the Commission's Rules of Procedure to grant the request. The rule does not address the situation at hand – viz., a receiver representing a small water utility – but does allow for an officer, general manager, or general partner to represent certain small water utilities in formal proceedings before the Commission. 1.2.2.9(F)(3) NMAC. The Hearing Examiner finds that the present situation is sufficiently similar to justify a variance and that issuing the variance will serve the purpose of conserving the funds of a small water utility. Moreover, the issuance of this variance is in accordance with the Commission's decision to allow Mr. Lewis to represent AVW in its recent rate case. [Order Canceling Advice Notice No. 2 [etc.], Docket No. 19-00181-UT, *In the Matter of AV Water Co., LLC Advice Notice No. 2.*]

5. The Hearing Examiner and the parties' representatives next discussed the procedural schedule for this matter. The parties had come to an agreement as to the schedule, and the Hearing Examiner adopted the schedule, which is incorporated into this order,

6. The final topic of discussion was the notice to be provided to customers of the water system regarding this proceeding. The Joint Application includes a proposed form of notice and

a proposal to provide notice by newspaper publication. At the conference, the parties stated that they had agreed to service of notice upon the customers via bill stuffer and via a text-messaging system maintained by AVW instead of newspaper publication. The Hearing Examiner approved these methods of service of notice. The Hearing Examiner raised a few minor issues concerning the content of the proposed notice. The parties revised the proposed notice subsequent to the conference and provided the revised proposed notice to the Hearing Examiner by email. The revised proposed notice, with some further minor revisions by the Hearing Examiner, attached hereto as **Exhibit “A,”** is adopted in this Order as the notice to be served upon the customers of the water system.

7. The Hearing Examiner finds that this Order should be issued, incorporating his oral orders at the prehearing conference into a written order.

IT IS THEREFORE ORDERED:

A. A variance from 1.2.2.9 NMAC of the Commission’s Rules of Procedure is hereby ISSUED to allow C. Randel Lewis, receiver for AVW, to represent AVW in this matter in lieu of an attorney.

B. On or before September 30, 2021, AVW shall cause to be served upon all customers of its water system the notice attached hereto as **Exhibit A** via bill stuffer, and shall provide additional notice via AVW’s text-messaging system, as described above.

C. Any interested person wishing to become a party to this matter shall file a motion for leave to intervene, as per 1.2.2.23 NMAC of the Commission’s Rules of Procedure, in this docket on or before October 21, 2021.

D. Staff shall, and any intervenor may, file written direct testimony on or before November 24, 2021.

E. Written rebuttal testimony shall be filed on or before December 10, 2021.

F. The hearing in this matter will commence at 10:00 A.M. on December 16, 2021, via Zoom, and may run through December 17, 2021. The Commission's Office of General Counsel will email a Zoom invitation to the party-participants before the hearing. The Zoom invitation will include a call-in phone number for those participants who cannot directly use the Zoom platform. Only those who are parties to the case at the time of the hearing will participate via Zoom. Additional information will be provided to the parties as the hearing date approaches.

G. Any member of the public may view the hearing via streaming video. A link to the streaming video will be posted on the Commission's website at <https://www.nm-prc.org/> on the day of the hearing. The Commission will also file the transcript of the hearing in this docket.

H. An in-person public hearing may be conducted in lieu of a Zoom hearing if pandemic conditions change and lead to substantially changed guidance from public health authorities and substantially changed directions from the Governor.

I. This Order is effective immediately.

ISSUED at Santa Fe, New Mexico, this 3rd day of September 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Russell Fisk, electronically signed

RUSSELL FISK, HEARING EXAMINER

Russell.fisk@state.nm.us

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NOTICE

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

On July 20, 2021, AV Water Company, LLC (“AVW” or “AV Water”) and New Mexico Water Service Company (“New Mexico Water”) (collectively, “Applicants”) filed an Application for Commission approvals for:

1. AV Water to sell and New Mexico Water to acquire certain assets of AVW and New Mexico Water to own and operate AV Water’s facilities and water system as a public water utility, pursuant to and in accordance with the Asset and Real Property Purchase and Sale Agreement dated June 1, 2020 as amended (“Asset Purchase Agreement”), included as attachment CA-1 to the Direct Testimony of Cynthia Apodaca, in accordance with NMSA 1978, §§ 62-6-12(A) and 62-6-13;
2. AV Water to abandon its facilities used to provide water service and all services rendered by means of such facilities in accordance with NMSA 1978 § 62-9-5; and

3. New Mexico Water to acquire, own and operate AVW's facilities and system and to serve existing AVW customers pursuant to AVW's existing, approved rates and New Mexico Water's approved rules in accordance with NMSA 1978, §§ 62-9-1 and 62-9-6.

The above approvals are requested pursuant to and in accordance with the Asset Purchase Agreement for purposes of allowing Applicants to consummate the sale, acquisition and related transactions contemplated by the Asset Purchase Agreement and to authorize New Mexico Water to own and operate the AVW facilities as a division of New Mexico Water.

Any interested person may inspect the Application filed in this case on AV Water's and New Mexico Water's websites or access the Commission's website at <https://edocket.nmprc.state.nm.us>. Any inquiries should refer to the Case No. 21-00188-UT docket for this case.

The procedural schedule for this case is as follows:

A. Any person desiring to become a party ("intervenor") in this case shall file a motion for leave to intervene in conformity with Rule 1.2.2.23 NMAC on or before October 21, 2021.

B. The Commission's Utility Division Staff ("Staff") shall, and any intervenor may, file direct testimony on or before November 24, 2021.

C. Any rebuttal testimony shall be filed on or before December 10, 2021.

D. A public hearing shall be held on December 16-17, 2021.

E. The procedural dates and requirements provided herein are subject to further order of the Commission.

F. Due to the ongoing COVID-19 pandemic, the public hearing in this matter shall be conducted via the Zoom videoconference platform. Participation in the public hearing shall be limited to party-participants (i.e., counsel, witnesses, and other representatives of the parties), the

Commissioners, and other Commission personnel. Members of the public may view the hearing via a livestream on YouTube provided on the Commission's website at <https://www.nm-prc.org/>. An in-person public hearing may be conducted in lieu of a Zoom hearing if pandemic conditions change and lead to substantially changed guidance from public health authorities and substantially changed directions from the Governor.

G. The Commission's Rules of Procedure, 1.2.2 NMAC, shall apply in this case except as modified or varied by order of the Commission. The Rules of Procedure and other NMPRC rules are available online at the New Mexico Compilation Commission's website at https://nmonesource.com/nmos/nmac/en/nav_date.do.

H. Public comment shall be taken orally at the commencement of the public hearing on December 16, 2021. Public comment will be taken via the Zoom platform or in person as the case may be. In the event the hearing is via Zoom, persons interested in providing public comment must request a Zoom invitation by emailing at Isaac.Sullivan-Leshin@state.nm.us by no later than 5:00 p.m. MT on December 14, 2021. Public comments shall be limited to 3 minutes per speaker. However, pursuant to 1.2.2.23(F) NMAC, public comment shall not be considered as evidence in this case. Public comment concerning this matter may also be made at any weekly open meeting of the Commission, regularly scheduled each Wednesday. The open meetings are also being held via Zoom for the foreseeable future, and anyone wishing to comment must request a Zoom invitation by emailing at Isaac.Sullivan-Leshin@state.nm.us by no later than 5:00 p.m. MT the day before the open meeting.

I. Interested persons may also submit written comments, which shall reference NMPRC Case No. 21-00188-UT, to the Commission via its Records Bureau's email address at:

prc.records@state.nm.us. However, as noted above, pursuant to 1.2.2.23(F) NMAC, such comments will not be considered as evidence in this proceeding.

J. Anyone filing pleadings, documents or testimony in this case shall, until further notice, comply with the Commission's electronic filing policy as posted on the Commission website, as amended from time to time. This includes filings in pdf format, with electronic signatures, sent to the Records Bureau's email address at: prc.records@state.nm.us 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 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff. All filings shall be emailed on the date they are filed with the Commission.

K. Any person with a disability requiring special assistance in order to participate in the public hearing should contact the Commission's disability coordinator, Bradford Borman, at (505) 412-3502, at least 24 hours prior to the commencement of the public hearing.

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WITH THE ACQUISITION OF AV WATER CO., LLC'S)
ASSETS BY NEW MEXICO WATER SERVICE)
COMPANY; AND THE APPLICATION BY NEW)
MEXICO WATER SERVICE COMPANY FOR)
APPROVAL TO OPERATE CERTAIN WATER UTILITY)
FACILITIES)**

Docket No. 21-00188-UT

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **Prehearing**

Conference Order was sent via email to the following parties on the date indicated below:

Lonnie Garcia	Garcialonnie86@gmail.com;
Karen Northrup	Karenbond12@hotmail.com;
Elizabeth Bartley Johns	BartleyCPA@msn.com;
Randel Lewis	RLewis@foundation.consulting;
Alvinita Maestas	mamm@4starwater.com;
Gideon Elliot	gelliot@nmag.gov;
Robert Lundin	robert.lundin@state.nm.us;
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capodaca@newmexicowater.com;

DATED this 3rd day of September, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

Isaac.sullivan-leshin@state.nm.us