

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE PETITION )  
BY NEW MEXICO-AMERICAN WATER )  
COMPANY, INC. FOR AN INCREASE IN )  
WATER RATES FOR ITS CLOVIS DISTRICT )

Case No. 03-00206-UT

NEW MEXICO-AMERICAN WATER )  
COMPANY, INC. )

Petitioner. )

**FINAL ORDER APPROVING CERTIFICATION OF STIPULATION**

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Certification of Stipulation issued by Hearing Examiner Anthony Medeiros on December 12, 2003, and upon the Stipulation filed on October 15, 2003, by New Mexico-American Water Company, Inc. and the Commission Utility Division Staff. Having considered the Certification of Stipulation, the Stipulation and the record in this case and being fully apprised in the premises:

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Certification of Stipulation, attached to this Order as Exhibit 1, and all findings and conclusions contained therein whether or not numbered, are ADOPTED, APPROVED and ACCEPTED as Findings and Conclusions of the Commission.

2. The Stipulation is just, reasonable and not inconsistent with the public interest and should be approved.

**IT IS THEREFORE ORDERED:**

A. The Orders recommended by the Hearing Examiner as set forth in the Certification of Stipulation attached hereto as Exhibit 1 are incorporated by reference as if fully

set forth herein and are ADOPTED, APPROVED and ACCEPTED as Orders of the Commission.

B. This Order is effective immediately.

C. A copy of this Order shall be served on all persons listed on the attached Certificate of Service.

D. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 13th day of January, 2004.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**E. SHIRLEY BACA, CO-CHAIRWOMAN**

**DAVID W. KING, CO-CHAIRMAN**

**JEROME D. BLOCK, VICE CHAIRMAN**

**HERB H. HUGHES, COMMISSIONER**

**LYNDA M. LOVEJOY, COMMISSIONER**

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Case No. 03-00206-UT

**CERTIFICATION OF STIPULATION**

Anthony F. Medeiros, Hearing Examiner in this case, hereby certifies the attached Stipulation to the New Mexico Public Regulation Commission ("Commission" or "NMPRC") pursuant to 17.1.2.23.A(5)(b) NMAC.

**I. Statement of the Case**

On June 2, 2003, New Mexico-American Water Company, Inc. ("NM-A" or "Company") filed its Petition in this case. The Petition sought the Commission's approval of a proposed rate increase for its Clovis district customers of approximately \$487,564 or 6.88% (6.65% above its total revenues) for the twelve months ending December 31, 2002.<sup>1</sup> The proposed rate increase would affect all of NM-A's customer classifications. NM-A also requested authority to recover its investment in certain water rights by amortizing the investment over the useful lives of the water rights as projected by NM-A.

Along with its Petition, NM-A filed Advice Notice No. 16 and proposed new and revised tariffs that would implement the proposed rate increase.

<sup>1</sup> Errata Notice and Statement of Corrections filed by NM-A on July 22, 2003. See *infra* section III (Discussion), p. 5.

On July 1, 2003, the Commission issued an *Order Suspending Rates* wherein, among other things, the Commission suspended the proposed rates for a period of nine months beginning July 2, 2003 and ending April 2, 2004 and appointed the undersigned as Hearing Examiner for this case pursuant to NMAC. The Procedural Order for the rate

case. The Procedural Order established a schedule for the case and set November 18, 2003 for the date of the hearing. The Procedural Order also set a deadline for filing motions for leave to intervene and required NM-A to mail the Notice to Customers attached to the Procedural Order to its Clovis district customers and to publish the Notice in a newspaper of general circulation in every New Mexico county in which NM-A provides utility service to its Clovis district customers.

On September 18, 2003, the City of Clovis, New Mexico and the Clovis Municipal Schools District #1 (collectively "City of Clovis") filed a timely and unopposed Motion for Leave to Intervene.

On October 3, 2003, a status conference was held in this case. Participating in the conference in person or via teleconference were representatives of NM-A, Staff and the City of Clovis. NM-A and Staff reported that they were in discussions aimed at entering into a possible stipulation. Given the prospect of a possible resolution of all issues in this case, NM-A, Staff and the City of Clovis agreed on a tentative schedule for consideration of a potential stipulation pursuant to 17.1.2.23 NMAC.

On October 7, 2003, NM-A filed an Affidavit of Legal Publication reflecting that the Notice to Customers was published in the *Clovis News Journal* on August 12, 2006. On October 9, 2003, NM-A filed an Affidavit of Publication and Mailing subscribed and sworn to by Kevin Tilden, NM-A's Director of Communications. The Affidavit reflects that the Notice was published in the *Clovis News Journal* on August 6, 2003 and again on August 12, 2003. Moreover, in order to correct the transposition of numbers in the published telephone number of the Commission, the Notice was published on August 28, 2003 in the *Clovis News Journal*, this time with the correct telephone number for the Commission. Further, the Notice was mailed to NM-A's Clovis district customers on August 7, 2003. A second notice informing customers of the correct Commission telephone number was mailed to customers on August 19, 2003.

On October 15, 2003, NM-A filed the Stipulation, a copy of which is appended to this Certification.

The Hearing Examiner issued a Procedural Order Regarding Stipulation on October 17, 2003; set a public hearing for November 18, 2003 to consider the Stipulation pursuant to 17.1.2.23.A(3) NMAC; set a direct testimony deadline of October 31, 2003; set a rebuttal testimony deadline of November 7, 2003; and granted the City of Clovis' motion for leave to intervene in conformity with 17.1.2.26.D(1) NMAC.

On October 20, 2003, the City of Clovis filed a Statement of Non-Opposition to the Stipulation. The Hearing Examiner thereafter excused the Intervenors from attendance at the November 18, 2003 hearing.

On October 31, 2003, Staff filed the Prepared Direct Testimony in Support of Stipulation of Jose Daniel Sanchez ("Staff Exh. A") and the Prepared Direct Testimony in Support of Stipulation of Gary L. Brenner ("Staff Exh. B"). NM-A filed on this date the

Stipulation Testimony of F. Mark Schubert ("NM-A Exh. 1") and the Stipulation Testimony of David P. Stephenson ("NM-A Exh. 3").

No rebuttal testimony was filed.

On November 10, 2003, NM-A filed an Unopposed Motion to Excuse Witnesses Kathy A. Wright, Rodney L. Jordan, Thomas M. Zepp; Earl M. Robinson, and Michael C. Slota from appearing at the hearing on November 18, 2003 and admitting their filed, direct testimony into evidence for purposes of background and context to the Stipulation to be considered at the hearing.

On November 12, 2003, the Hearing Examiner issued an Order Granting Motion to Excuse Witnesses. The Order excused Ms. Wright and Messrs. Jordan, Zepp, Robinson and Slota from appearing at the November 18, 2003 hearing and admitted their respective testimonies into the record of this proceeding for the purposes of understanding the context in which the Stipulation was negotiated and the compromises reflected in the Stipulation.

## II. Appearances

### For NM-A:

Thomas W. Olson, Esq.  
Montgomery & Andrews, P.A.  
Santa Fe, New Mexico

### For Staff:

Nancy Burns, Esq.  
Staff Counsel  
Santa Fe, New Mexico

### Other Appearances:

None

### III. Discussion

#### A. Background

This case involves the Company's request for approval of a proposed rate increase for its Clovis district customers of approximately \$487,564 or 6.88% (6.65% above its total revenues) for the twelve months ending December 31, 2002. The rates originally proposed by the Company were intended to produce \$740,0545 in additional revenue in its Clovis district, representing an increase of approximately 10.46% in its adjusted water service revenues for the test period ending December 31, 2002.

On July 22, 2003, the Company filed an Errata Notice and Statement of Corrections, which acknowledged that NM-A's adjusted test-year revenues should have included lease payments in the amount of \$243,750 to account for farm lease rentals the Company estimated it would receive during 2004 when the proposed rates would become effective. Therefore, the addition of the lease payments reduced the annualized revenue deficiency under NM-A's current rates from an estimated \$741,271 to \$487,564, reflecting a reduction in the percentage increase in tariff revenues from 10.46% to 6.88% (6.65% in total revenue, including the lease payments). The Company submitted corrections to its testimony and a corrected set of NMPRC Rule 730 schedules to account for the error.

The revised proposed rate increase would affect all of NM-A's customer classifications in the Clovis district. NM-A also requested authority to recover its investment in certain water rights by amortizing the investment over the useful lives of the water rights as projected by NM-A.

NM-A initiated the rate case, in part, to comply with the Commission's *Final Order Approving Certification of Stipulation* issued May 21, 2002 in Utility Case No. 3631 (the

*3631 Order*). In that case, the Commission approved the implementation of a rate rider “water rights recovery” surcharge (NM-A “Rate Rider No. 8”), which allowed the Company to recover, pending a scheduled rate case, certain costs associated with the Company’s purchase from Oppliger Family, Ltd. of 4,685 non-contiguous acres of farmland with associated water rights located in southern Curry County and northern Roosevelt County (the “Oppliger property”). The Company purchased the Oppliger property for \$1490 per acre for a total purchase price of \$7,449,598. Staff Exh. A, at 11. The purchase secured approximately 14,055 acre-feet per year of additional municipal water rights. *Id.* at 11-12. Indeed, the Company’s stated purpose for acquiring the Oppliger property was to obtain additional water rights to preserve and extend service to its Clovis district customers.

The purchase and development of the Oppliger property for municipal water service addresses a fundamental problem related to the rapidly accelerating loss of productivity of the High Plains aquifer, which is no longer sustainable under current pumping conditions. NM-A Exh. 2. The High Plains aquifer constitutes the only locally available water supply for the Clovis area. The water table decline in the groundwater basin underlying the Company’s Clovis service area is primarily attributable to withdrawals for agricultural irrigation use in the region surrounding Clovis and southern Curry County. NM-A Exh. 1, at 4.

The High Plains aquifer has been receding to the southeast toward New Mexico’s border with Texas. Transcript of November 18, 2003 hearing (“Tr.”) (Schubert), at 18. As the aquifer recedes, the decline in static water levels has accelerated, thereby impacting the production capability of NM-A’s groundwater wells. Groundwater levels in the basin underlying the Clovis service area have been declining at an alarming rate in



recent years. Prior to 1992, the High Plains aquifer declined at a rate of 1 to 3 feet per year. Since 1994, the aquifer has declined at a rate of 5 to 7 feet per year and more recent data suggest the decline could be as much as 9 feet in one year. NM-A Exh. 1, at 4. Moreover, the aquifer has extremely limited infiltration and recharge characteristics. No more than approximately one-quarter inch of the estimated 11 inches in average annual rainfall in the Clovis district makes it into the aquifer, a situation which prompted a witness to describe the aquifer as a "bathtub that is slowly draining and ... not getting refilled." Tr. (Schubert), at 24.

Due in large measure to irrigation pumping and geologic inconsistencies in particular isolated areas, the production capacities of certain of the Company's existing wells have reduced significantly. In January 1998, the Company relied on 27 wells, which could deliver approximately 15.72 million gallons per day ("mgd"). By January 2000, the Company had lost the use of two wells with a total rated capacity of 1.77 mgd due to low pumping efficiency and loss of capacity. Moreover, the production capacity on the majority of the Company's existing wells had declined significantly, by about 1.12 mgd. With the addition of two new wells yielding a total rated capacity of 1.91 mgd, the Company's system production capacity in the year 2000 was 14.74 mgd. However, the aquifer level at all NM-A wells has continued to decline at an accelerated rate since 2000. The Company has drilled three new wells since 2000 and has experienced a decline in the new wells' capacity at an accelerated rate between the time of their original construction and January 2003. Thus, in January 2003, the Company had 30 wells, which could deliver about 10.90 mgd to its customers. NM-A Exh. 1, at 6-7.

As production capability of NM-A's groundwater wells has continued to decline, customer demand for water is expected to grow. The Company's highest historical

average day and maximum day demands of record are 6.72 mgd in 1998 and 14.26 mgd in July 1998, respectively. *Id.* at 5. As part of its ongoing Comprehensive Planning Study ("CPS"), the Company projects that modest customer growth and demand requirements will cause an *average* day demand of approximately 6.42 mgd in 2007, 6.60 mgd in 2012 and 6.77 mgd in 2017; the Company projects maximum day demand as being 14.11 mgd in 2007, 14.50 mgd in 2012 and 14.88 mgd in 2017. *Id.* at 18-19. Furthermore, the Company estimates that average day demand will reach 7.73 mgd by 2042, with a corresponding maximum day demand projected to be 17.00 mgd. *Id.* at 5.

Consistent with the accelerating decline in groundwater basin levels and increases in demand, the Company was compelled to draw upon available distribution storage in its Clovis system to meet customer demand in late July and early August 2003. The strain on NM-A's distribution storage system was alleviated only after a request to all customers to voluntarily conserve water caused water demands to decrease. *Id.* at 6; Tr. (Schubert), at 24-25.

In addition, the Company's well performance data for the past ten years reveals a decline in well capacity of approximately 600 gallons per minute ("gpm") per year in all NM-A wells. The average capacity decline per well is about 20 gpm per year over this ten year span. According to the report prepared for the Company by John Shomaker and Associates, Inc. ("Shomaker study", NM-A Exh. 2), the average well capacity decline is about 1000 gpm per year, which equates to a decline of about 30 gpm per well per year. However, a more dramatic capacity decline of 1800 gpm (about 60 gpm per well) occurred between the summers of 2001 and 2002, according to well performance tests. NM-A Exh. 1, at 19.

The Company hired Global Pumps and Equipment, Ltd in August 2002 to evaluate all production wells in the Clovis district. Schubert direct, Exh. FMS-6. The well system evaluation report showed that many of the Company's pumping units have been operating below acceptable efficiency levels. Therefore, the Company launched a well pump and motor equipment program in order to improve the efficiency and operating capacity of its existing wells. The Company has completed approximately three-fourths of the program and anticipates its conclusion in the spring of 2004. NM-A Exh. 1, at 20-21; Tr. (Schubert), at 28-29.

While the improvements to the Company's existing production system and other enhancements to its system are necessary elements of a plan for sustaining the Clovis district water supply, the linchpin of NM-A's development plan is the Oppliger property. The Oppliger property is well suited to redress the rapid decline in water levels in the groundwater basin underlying the Company's Clovis service area as well as the projected growth in customer demand for water in and around Clovis. Based on the results of the hydrogeologic model prepared for NM-A by Dr. Shomaker, the Oppliger property is favorably situated to take advantage of the groundwater migration from the northwest to the southeast toward Texas, which results in a greater thickness of the saturation layer of the aquifer below the property and, thus, produces a greater volume of groundwater available for use. NM-A Exh. 1, at 7-8; NM-A Exh. 2. The Oppliger property also will facilitate the construction of transmission mains toward NM-A's existing land and water rights located in northern Roosevelt County. Moreover, the conversion of the Oppliger property, one of the largest farms in the Clovis area, from a hydrologically less efficient irrigation use to municipal use should extend the life of the aquifer. Tr. (Schubert), at 22-24, 29; Staff Exh. A, at 10. In sum, the Oppliger property

should enable the Company to meet future water supply needs for its Clovis district customers for approximately the next 25 years, assuming the rate of decline in the water table does not accelerate beyond that already anticipated. NM-A Exh. 1, at 9-10.

Nevertheless, the rate of decline of groundwater levels on well pumping capacities addressed above has quickened in the last year. Tr. (Schubert), at 18. The accelerated decline impelled the Company to renegotiate a four-year leaseback for irrigated farming of portions of the Oppliger property not developed with public water supply wells. Therefore, in exchange for a 75% reduction in the total annual lease price per irrigated acre, lessor NM-A and lessee Oppliger Family, Ltd. have agreed to terminate the leaseback. Termination of the leaseback will end irrigation for agricultural purposes on the entirety of the Oppliger property at the end of the 2004 crop season, which will give NM-A control over all quarter-sections of the property required for municipal well development and, therefore, control over the entirety of the 14,055 acre-feet per year of additional water rights that otherwise would likely be used for irrigation. NM-A Exh. 1, at 15-16; NM-A Exh. 3, Amendment to Farm Lease, Exh. DPS-1Stip; Staff Exh. A, at 11.

The Company's plan for municipal well development on the Oppliger property is derived from its capital investment plan, which has been developed from capital improvements identified in the CPS. The capital projects completed or planned on the Oppliger property essentially consist of rehabilitating and redeveloping existing irrigation wells on the property and converting them to municipal use in order to maintain the Company's capacity and improve reliability to offset declining well yields. In addition to converting existing irrigation wells into municipal wells, the projects call for the development and extension of the Company's transmission network that supplies its

Norris & Brady booster station. Another intermediate step that the Company may consider as part of Dr. Shomaker's ongoing work for it is the construction of new well water storage and pumping facilities to transport water from subsequently rehabilitated and redeveloped Oppliger property wells to Norris & Brady as well as to another NM-A booster station on the western side of the Company's system. Tr. (Schubert), at 15-16, 20-21.

The Company has already placed into service two rehabilitated and redeveloped wells (Wells 54 and 55) on the Oppliger property. Rehabilitation and redevelopment work on four additional irrigation wells (Wells 56-59) is slated for completion by June 30, 2004. NM-A Exh. 1, at 10-14. However, just in order for the Company to catch up with its existing customer demand, the Company plans on rehabilitating and redeveloping six additional irrigation wells during 2005 and another three wells during 2006. Tr. (Schubert), at 19-20. Beyond that, the Company plans on extending its rehabilitation and redevelopment program to the remaining quarter-sections of the Oppliger property such that the property should be fully developed for municipal use by 2012. Tr. (Schubert), at 22.

Finally, Staff agrees with NM-A that the price paid for the Oppliger property was reasonable and that the price of the property was a prudent investment. Staff Exh. A, at 9-10, 11-13. The Public Utility Act, NMSA 1987, Section 62-8-2, requires every public utility to furnish adequate, efficient and reasonable service. NM-A is responsible for planning ahead and making the necessary investments required to provide utility service that benefits its ratepayers. Under the specific circumstances relating to the purchase of the Oppliger water rights, the purchase of the Oppliger property was prudent and in the public interest because it ensures an adequate supply of water to current NM-A

customers at a reasonable cost. As addressed above, the depletion of the High Plains aquifer that currently serves the Clovis area is occurring at an accelerated pace. The aquifer is losing productivity and does not appear to be sustainable given the current pumping conditions. Thus, additional, new water rights are needed to serve existing customers in the Clovis district.

In addition, as discussed above, the purchase of the Oppliger property has two additional benefits for NM-A ratepayers. First, the Oppliger property is located between NM-A's existing distribution system providing service to customers and NM-A's Roosevelt County property and water rights. NM-A therefore is positioned by its purchase of the Oppliger property to ultimately access its existing water rights in Northern Roosevelt County. Second, at the termination of the leaseback agreement, NM-A will control the entirety of the 14,055 acre-feet per year of additional water rights that otherwise would likely be used for irrigation. Staff Exh. A, at 12. As found above, controlling these rights should extend the life of the aquifer. Accordingly, the purchase of the Oppliger property was a reasonable resolution to the short and mid-term water supply problems affecting NM-A and its ratepayers. Staff believes the Stipulation would allow NM-A to earn a reasonable return on its investment in the Oppliger water rights by extending the water rights recovery surcharge, at the rates already approved by the Commission in the *3631 Order*, until the end of NM-A's next rate case or January 1, 2005, whichever comes first. Staff Exh. A, at 9. *See below* First Revised Rate Rider No. 8, Attachment "A" to Stipulation.

#### **B. The Stipulation**

The Company and Staff have executed and filed in this case an uncontested Stipulation (a copy of which is attached to this Certification), which, if adopted by the

Commission, would resolve all issues in this case. As discussed below, the Company and Staff also have waived their rights to file exceptions to the Hearing Examiner's Certification if approval of the Stipulation is recommended.

Paragraphs 1 through 7 of the Stipulation provide a statement of the case up to the time the Stipulation was entered. Paragraph 8 states that the purpose of the Stipulation is to settle and compromise all issues in this case. The key substantive provisions of the Stipulation are contained in paragraphs 9 through 12.

Paragraph 9 identifies a number of changes that are likely to affect the Company's service rates in its Clovis district. However, the changes are not accounted for in the corrected test year presented in this case. The four changes identified are the following: (i) NM-A's issuance of up to \$11,000,000 of long term debt in the fourth quarter of 2003, a securities transaction authorized by the Commission in the Final Order issued in Case No. 03-00338-UT on October 21, 2003; (ii) the early termination of the farm leaseback, which the Company reports will reduce its lease rentals to \$64,453.13 in 2004 as compared to rentals of \$343,750 received in 2003; (iii) NM-A's expected conclusion of an agreement to sell the land acquired in the Oppliger transaction without water rights and subject to easements allowing NM-A the use of the property for wells and associated production and transmission facilities; and (iv) the likelihood that NM-A will need to speed up its program of converting the Oppliger water rights to municipal use and connecting additional wells, coupled with the savings realized by the Company through the ability to continue rehabilitating existing irrigation wells rather than drilling new wells. NM-A Exh. 3, at 4, 7-9; Tr. (Stephenson), at 37-38.

Given these changes, in paragraph 10 NM-A and Staff join in recommending that the Commission not set new permanent rates in this case but instead allow NM-A's

existing rates, including the water rights recovery surcharge represented by First Revised Rate Rider No. 8 (*see below*), to continue in effect until the conclusion of NM-A's next rate case when the effects of the changes can be better accounted for. NM-A commits to filing a general rate case no later than June 1, 2004, using a base period of twelve months ending no later than December 31, 2003.

Paragraph 10 also provides that in its next rate case, NM-A will file, in compliance with the *3631 Order*, an accounting and reconciliation of revenues received from the water rights recovery surcharge and associated costs. NM-A has agreed to file quarterly updates to the reconciliation of the surcharge with December 31st, 2003, as a starting point for those quarterly updates. Tr. (Stephenson), at 36. Finally, paragraph 10 recognizes the Commission's authority to determine the appropriate disposition of any over-recovered or under-recovered balance associated with the water rights recovery surcharge in the upcoming rate case or in any other proceeding the Commission may initiate for that purpose.

Despite recommending that new permanent rates not be set in this case, NM-A and Staff nevertheless request in paragraph 11 that the Commission make certain findings and determinations with respect to the Company's revenues, expenses and rate base. The findings and determinations sought are as follows: (a) accounting for the Company's investment in the Oppliger property as plant held for future use and including the property in the Company's rate base in this proceeding; (b) approving the Company's change of its pension expense accounting from the "record when paid" Employee Retirement Income Security Act ("ERISA") method to the normalizing method prescribed by Financial Accounting Standard No. 87 ("FAS 87"), permitting the Company to amortize its current FAS 87 pension balance up to a maximum amount of



\$425,000, and allowing the Company to defer recording on its books the amortization of its current deferred FAS 87 pension balance until the conclusion of the next rate case; and (c) requiring the Company to amortize the actual expense of this rate case over a period of three years, but permitting it to combine the unamortized balance of this case's actual expenses with the expenses of its next rate case.

The findings and determinations proposed in paragraph 11 of the Stipulation will be addressed in turn.

**1. Inclusion of the Oppliger property in rate base as plant held for future use**

Paragraph 11(a) provides that the Company's investment in the Oppliger property to secure water rights should be accounted for as *plant held for future use* and should be included in NM-A's rate base in this proceeding. Additionally, if the Company concludes a sale of the farm land as addressed above, paragraph 11(a) makes clear that the net proceeds from the sale will be credited against the investment in the associated water rights. Further, in determining its cost of service, paragraph 11(a) states that NM-A should include all other revenues received from the Oppliger property through leases or other permitted uses.

The Commission has adopted the following standard for evaluating rate base treatment of prudent investments that will be put in use immediately or will be put in use pursuant to a definite plan:

A public utility will not be allowed to include plant held for future use in its rate base unless it affirmatively demonstrates that (1) the plan is imminent of being used and useful in the public service within a short period of time after the end of the test period, or (2) the purchase of the plant is associated with a definite plan for foreseeable future usage in providing demonstrable benefit to future ratepayers

without the imposition of an unreasonable burden upon present ratepayers.”

*Re Southwestern Public Service Co.*, 27 PUR 4<sup>th</sup> 302, 306 (1978). In *Southwestern Public Service Co.*, the Commission developed what is referred to herein as the “SPS test”, an examination that expanded on the test for inclusion of plant held for future use employed by the Commission in *Re El Paso Electric Co.*, 23 PUR 4<sup>th</sup> 131, 137 (1977). In *El Paso Electric Co.*, the Commission held, applying an “imminent use under a definite plan” test founded on rate base treatment of construction work in progress, that plant held by El Paso for future use should be excluded from rate base because there was no evidence of the use to be made by of the property nor when the plant might be placed in to public service. *Id.* The Commission’s newly expanded test was applied to SPS’ inclusion in its plant in service account the sum of \$762,901 as plant held for future use, the sum being attributable to water rights purchased by SPS for a new coal-fired generating plant for which construction was slated to begin in 1982. *Southwestern Public Service Co.*, 27 PUR 4<sup>th</sup> at 306. The Commission found that the property consisted of production water rights for generation plants “to be used under a definite plan,” *i.e.*, the majority of the water rights would be used between 1987 and 1991 while the remainder would be used between 1980 and 1982. *Id.* The Commission therefore held that SPS satisfied the test and, accordingly, SPS’ plant held for future use was included in rate base. *Id.*

Here, the Company and Staff join in asserting that there are sufficient facts to support the total investment in the Oppliger property as plant held for future use in rate base inasmuch as the Company has demonstrated a definite plan for present and foreseeable future usage of the Oppliger property that provides a demonstrable benefit

to future ratepayers without the imposing an unreasonable burden upon present ratepayers. The Hearing Examiner concurs.

As found above, the Company will develop municipal production wells utilizing the Oppliger water rights by 2012. A portion of the development plan has already been completed in that Well Nos. 54 and 55 have already been placed in service. The rehabilitation and redevelopment of Well Nos. 56-59 should be completed by June 2004. However, just in order to keep up with existing customer demand, the Company plans on rehabilitating and redeveloping six additional irrigation wells during 2005 and another three wells during 2006. The remaining quarter-sections of the Oppliger property are to be fully developed for municipal use by 2012. Moreover, the Company is three-quarters of the way done in improving its well pump equipment and will construct a new booster station within the next three years. Schubert direct, at 13 and Exh. FMS-6. Furthermore, with the ongoing implementation of the CPS, the Company will continue to analyze and develop customer demand projections, evaluate source of supply adequacy, study water quality characteristics, address reliability concerns of treatment facilities and determine the adequacy of existing storage facilities. *Id.* at 4.

Additional components of a definite plan for foreseeable future usage reside in the Company's plan to construct a deep test well in the Lower Dockum Sandstone Formation, which lies below the High Plains aquifer, to further explore alternative supply sources. Schubert direct, at 8-9. Additionally, the Company will continue to monitor declines in the aquifer. Staff Exh. A, at 15.

In sum, the Company has demonstrated a detailed and definite plan to put the Oppliger property's water rights to use for the benefit of its Clovis district customers by 2012. The Oppliger property's water rights, in fact, will be put to municipal use within a

shorter period of time than that found acceptable by the Commission in its consideration of SPS' planned use of its production water rights. Tr. (Schubert), at 28; *id.* (Sanchez), at 47.

The Company has also satisfied the SPS test's unreasonable burden standard. As discussed above, the Company estimates that its average day demand will grow from 6.42 mgd in 2007 to 6.77 mgd in 2017. The estimated maximum day demand for the same period is estimated to run from 14.11 mgd to 14.88 mgd. Staff Exh. A, at 15 and Exh. JDS-2 thereto. Consequently, given the continuing rapid decline of the High Plains aquifer and its migration to the southeast away from Clovis, the purchase of the Oppliger water rights was necessary to meet current and future demands on the Clovis district system. Accordingly, the Company's 4.5% return on the Oppliger property through the water rights recovery surcharge over and above its current rates is not an unreasonable burden on current ratepayers to secure an adequate source of supply for future ratepayers. Tr. (Sanchez), at 48; Staff Exh. A, at 15.

While Staff cautions that it does not generally recommend rate base treatment of an asset absent a corresponding increase in rates, it asserts that the specific and unique circumstances adduced in this case warrant inclusion of the Company's total investment in the Oppliger property in rate base as plant held for future use. In support of its position, Staff cites three unique considerations that have led it to conclude that it would be appropriate for the Commission to make a rate base determination regarding the Oppliger property at this time. First, Staff points out that the Commission has already approved a rate for the return on the investment by approving and implementing the water rights recovery surcharge in Utility Case No. 3631. Second, Staff notes that extensive discovery in this proceeding regarding the rate base treatment of the Oppliger

property has led Staff to determine that, having applied the facts presented in this case to the SPS test, the investment should be included in rate base as plant held for future use. It follows then that administrative efficiency and economy would not be served if this determination is relitigated in the Company's next general rate case. Third, Staff opposed the Company's option of amending its Petition a second time in order to account for the changing circumstances relating to the Oppliger property that developed during the pendency of this case. Staff's opposition to the second amendment was based on the time constraints imposed on the Commission in conducting water rate cases that the Legislature established in HB-2 (2003). Staff Ex. A, at 15-17. Therefore, the specific and unique considerations demonstrated in this case warrant a rate base determination at this time with respect to the Oppliger property.

Accordingly, the Oppliger property should be included in rate base as plant held for future use pursuant to the standard set by the Commission *Southwestern Public Service Co.*

## **2. FAS 87 pension expense accounting method**

Paragraph 11(b) of the Stipulation provides that the Commission should permit the Company to shift from the ERISA "record when paid" regulatory accounting method to the FAS 87 actuarial methodology. Paragraph 11(b) further provides that the Commission should allow the Company to amortize its current deferred FAS 87 pension balance, up to a maximum amount of \$425,000, over a period of 5 years. This paragraph would also have the Commission require the Company to reflect the amortization in the test year filed with its next rate case. However, since new service rates are not being set in this case, the Company would be permitted to defer recording the amortization on its books until the conclusion of the next rate case.

In the testimony supporting its Petition in this case, the Company reported that the largest adjustment to its operations and maintenance expense was to pension benefits with an increase to \$133,268. Jordan direct, at 5. Prior to 2002, the Company made no contributions to its pension fund due to the strong performance of its fund up that point. *Id.* With a funding requirement of zero, the ERISA method, which requires that contributions to a fund be made on a "current" or "cash funding" basis, has benefited the Company's customers because, as has been the norm in past NM-A rate cases, in test years in which there has been no ERISA funding requirement for that year, there has been no pension expense recognition in rates. Staff Exh. B, at 3.

However, in 2002, an actuarial analysis of the Company's pension funding requirements indicated that continued reliance on the ERISA method would require escalating contributions to the pension fund. Jordan direct, at 5. The Company's 2003 actuarial analysis indicates that the current pension funding requirement is due to increase given the continued diminished performance of the investments of the pension fund. Thus, the Company's 2003 contribution requirements have already been impacted and will increase "dramatically" by 2006. *Id.* Therefore, the Company has proposed a change in its pension determination to the FAS 87 basis. While the change would create an additional increase of \$76,691 in this rate case, the change in methodology should level off pension accruals and diminish the required accrual in 2006 from \$365,732 to \$214,001, a savings of \$151,731. *Id.*

Staff, for its part, agrees that the Commission should endorse the Company's proposed change in pension accounting methodology. In contrast with the cash funding basis of pension accounting dictated by ERISA, under the FAS 87 actuarial methodology the Company will begin to recognize pension expenses. Thus, the change in

accounting methodology will place pension expense for financial reporting purposes and for rate making purposes on an equal footing, which the evidence of record shows will lead to a more realistic determination of pension expense for rate making purposes than the ERISA method. Jordan direct, at 5; NM-A Exh. 3, at 20; Staff Exh. B, at 4. Moreover, Staff agrees with the Company that allowing it to switch to FAS 87 should result in lower pension costs over the next several years because the current ERISA method for funding is now causing pension funding requirements to “skyrocket.” *Id.* at 4-5. It follows, then, that permitting the Company to employ FAS 87 for ratemaking purposes will help stabilize the pension cost and thereby reduce the burden of the pension cost on the Company’s ratepayers. NM-A Exh. 3, at 20-21; Staff Exh. B, at 5, 7. Furthermore, all of the larger gas and electric utilities regulated by the Commission employ FAS 87 for both financial reporting and ratemaking purposes. NM-A Exh. 3, at 21; Staff Exh. B, at 7. Given all of the foregoing, it is in the best interests of the Company’s ratepayers to approve the change in methodology to FAS 87 for ratemaking purposes at this time.

Remaining to be determined with respect to paragraph 11(b) is whether the Company should be allowed to amortize its current deferred FAS 87 pension balance up to \$425,000 over 5 years. Staff believes it is appropriate to allow the amortization of the Company’s deferred pension liability into rates in the next rate case for four reasons. First, the Company’s ratepayers have never paid any pension expense in rates and, thus, have enjoyed a “free ride” for a legitimate business expense. Second, the amortization (and funding) of the pension liability will cause the future FAS 87 pension expense to be lower than it otherwise would be. Third, as set forth above, the resulting water service rates will be lower than they otherwise would be if NM-A continued under

the ERISA method. And fourth and finally, allowing the amortization of this pension liability into rates is not conceptually different from the amortization of the "transition obligation" that was routinely allowed when utilities first adopted FAS 87 for financial reporting and ratemaking purposes. NM-A Exh. B, at 6-7. Accordingly, the Company should be allowed to amortize its current deferred FAS 87 pension balance, up to a maximum amount of \$425,000, over a period of 5 years. As for the remaining provisions of paragraph 11(b), the Company should reflect the amortization in the test year filed with its next rate case. However, the Company should be permitted to defer recording the amortization on its books until the conclusion of the next rate case inasmuch as new service rates will not be set in this case.

### **3. Amortization of rate case expense**

When new rates are set in a rate case, such rates usually include a provision to recover the expense of the case through amortization over a reasonable period, which often is the expected life of the new rates. NM-A Exh. 3, at 20. The Company has incurred expenses associated with this case, but new rates will not be set in this case if the Stipulation is approved. Therefore, through paragraph 11(c) the Company would be allowed to begin amortizing the actual expense of this case over a period of three years beginning in the test year January 1, 2002, with any uncollected balance rolled into the rate case expense for its next general rate case. Staff Exh. A, at 17. Finally, paragraph 11(c) provides that all such expenses will be subject to review in the next case for purposes of assuring their justness and reasonableness. Given that the actual expense of a rate case most often is recovered in rates, paragraph 11(c) is a reasonable provision. However, as the Stipulation expressly recognizes, the justness and reasonable-



ness of all expenses will be subject to review and potential challenge in the next rate case.

Paragraph 12 provides that Advice Notice No. 16 and the new and revised rates filed with the Notice should be withdrawn since new rates will not be set in this case if the Commission approves the Stipulation. Moreover, if and when the Stipulation is approved, NM-A intends to file First Revised Rate Rider No. 8 in the form of Attachment "A" to the Stipulation, which will cancel original Rate Rider No. 8 and become effective immediately.

The remaining paragraphs of the Stipulation consist, for the most part, of general contractual provisions. Notable among the general provisions are the following: (i) requiring Commission approval of the Stipulation for the agreements contained in the Stipulation to become effective (paragraph 13), (ii) recognizing that the agreements set forth in the Stipulation do not constitute an endorsement by any party of any ratemaking procedure or methodology for application in any future case (paragraph 14), and (iii) not intending the findings and determinations recommended by the parties to preclude or limit the Commission's review of the subject matter of such findings and determinations as the facts and circumstances may warrant in any future case (paragraph 14). Beyond the foregoing provisions, the remaining paragraphs contain common contractual terms such as inclusion of a merger or integration clause (paragraph 15) and the parties' recognition that the Commission's approval of the Stipulation in its entirety would represent a fair, just and reasonable resolution of the issues presented in this case (paragraph 16).

Finally, attached to the Stipulation is a copy of First Revised Rate Rider No. 8. First Revised Rate Rider 8 amends the original version approved in the *3631 Order*.

The two amendments to Rate Rider No. 8 (i) specify, in the applicability section, that the surcharge applies only to water service in the Clovis district and (ii) extend the effective date or "sunset clause" of the surcharge to January 1, 2005 if the Company fails to file a rate case by June 1, 2004. Tr. (Stephenson), at 38, 44.

Although not expressly part of the Stipulation, Staff recommends, in the interest of promoting water conservation within the state of New Mexico, that any Final Order approving the Stipulation require NM-A to begin to develop a conservation plan to present to the Commission in its next general rate case. Staff Exh. A, at 18. NM-A does not oppose this recommendation. Tr. (Stephenson), at 36.

At the close of the hearing in this matter, NM-A and Staff agreed to waive their right to file exceptions to the Hearing Examiner's Certification pursuant to 17.1.2.39.C(1) NMAC if the Certification recommends approval of the Stipulation. Tr. at 62.

### **C. Recommendation**

The Hearing Examiner recommends approval of the Stipulation. Given the accelerating decline of the High Plains aquifer and its demonstrated migration away from Clovis coupled with increases in demand for water in the Clovis district for the foreseeable future, the Stipulation promotes the Commission's policy of encouraging prudent investments by public utilities, such as NM-A, to furnish - now and in the future - adequate, efficient and reasonable service. Accordingly, faced with the incontrovertible fact that water is an increasingly more "scarce resource in this part of the country" than it was when the Commission issued *Southwestern Public Service Co.* in 1978 (27 PUR 4<sup>th</sup> at 306), the Stipulation is in the public interest. The Stipulation also promotes the policy of administrative efficiency and economy by making, at this time, the above findings and determinations with respect to NM-A's revenues, expenses and rate base. Finally,

approval of the Stipulation will not in any way limit the Commission's or Staff's options to determine appropriate rate treatments in the upcoming rate case. *See* Tr. (Sanchez), at 49-50. For all of the above reasons, the Stipulation represents a fair, just and reasonable resolution of this case.

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** that:

1. The Statement of the Case and Discussion and all findings and conclusions therein are incorporated by reference herein as findings and conclusions of the Commission.
2. The Commission has jurisdiction over the parties hereto and the subject matter herein.
3. NM-A is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, and is a public utility as defined in the Public Utility Act, NMSA 1978, 62-3-1, *et seq.*
4. Due and proper notice of this case has been provided.
5. The Stipulation should be approved.
6. First Revised Rate Rider No. 8 should be approved.
7. NM-A should file quarterly updates to the reconciliation of the water rights recovery surcharge with December 31st, 2003, as a starting point for such quarterly updates.
8. NM-A should develop a conservation plan to present to the Commission in its next general rate case.
9. A reconciliation statement showing the dollar impact of the settlement and the resulting rates pursuant to 17.1.2.23.A(2) NMAC is not required in this case. The

Stipulation provides that new permanent rates will not be set in this case and calls for the withdrawal of Advice Notice No. 16 and the new and revised rates contained therein. Accordingly, the Stipulation has no new "dollar impact" as the term is used in 17.1.2.23.A(2) NMAC.

The Hearing Examiner recommends that the Commission **ORDER** that:

- A. The Stipulation is approved.
- B. First Revised Rate Rider No. 8 is approved.
- C. NM-A shall file, under a new Advice Notice, First Revised Rate Rider No. 8 in the form appended to the Stipulation as Attachment "A" thereto, which shall be effective, on an interim basis, for service commencing on and after the date of such filing, subject to compliance review by Commission Staff. To comply with Stipulation paragraph 12, NM-A shall make such filing on the date of the Commission's Final Order in this case.
- D. NM-A shall file quarterly updates to the reconciliation of the water rights recovery surcharge with December 31st, 2003, as a starting point for such quarterly updates.
- E. NM-A shall develop a conservation plan to present to the Commission in its next general rate case.
- F. NM-A shall file a general rate case as discussed above, pursuant to applicable statutes and Commission rules. Staff's positions and the Commission's decisions in said general rate case shall not be limited in any way by this Order. Moreover, the findings and determinations approved hereby shall not preclude or limit the Commission's review of the subject matter of such findings and determinations as the facts and circumstances may warrant in any future case.

- G. This Order is effective immediately.
- H. Copies of this Order shall be sent to all persons on the attached Certificate of Service.
- I. This docket is closed.

**ISSUED** at Santa Fe, New Mexico this 12<sup>th</sup> day of December 2003.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**Anthony F. Medeiros**

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**Anthony F. Medeiros, Hearing Examiner**