

**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 APPROVING EMERGENCY INTERIM RATES**

**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

- 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](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. On November 30, 2010, the Commission issued its Order Setting Hearing on Emergency Interim Rate Increase (“November 30 Order”), which set a public hearing on Timberon’s Request in Timberon, New Mexico on December 17, 2010, and set a deadline of December 15, 2010 for the filing of any motions to intervene.

5. In accordance with the November 30 Order, Mr. Arden Shug, on December 9, 2010, and Mr. Burt Rubinowitz, on December 15, 2010, emailed their motions to intervene to the Commission’s Office of General. Both movants assert that they are customers of Timberon.

6. A public hearing in this case was held on December 17, 2010, in Timberon, which was presided over by Commissioners Sandy Jones and Jason Marks. Neither Timberon nor movants were represented by an attorney. Julie Park entered her appearance as counsel for the Staff of the Commission’s Utility Division.

7. At the hearing, Mr. Virgil Beagles, who asserted that he was also a Timberon customer, orally requested leave to intervene as a party in this proceeding.

8. The Commission orally requested whether any party objected to the motions to intervene that were filed by Mssrs. Rubinowitz, Schug and Beagles. Because no one objected to any of those motions, the Commission granted all three motions to intervene.

9. Through the testimony of its General Manager, Dr. Marin Moore, and court-appointed receiver, Dennis Karnes, Timberon submitted evidence in support of its assertion that Timberon is in dire need of an immediate rate increase as the result of a number of a number of events, not least of which was the reduction in Timberon's property taxes and certain judgments that were rendered against Timberon, all of which are described in Timberon's Request. However, another significant factor that has exacerbated Timberon's financial problems is that Timberon has approximately \$275,000 in past due amounts owed by Timberon's standby customers. According to Timberon, approximately 20% of those customers' payments are in arrears.

10. The primary, if not sole, documents that provide a basis for Timberon's proposed rates were submitted into evidence as Rubinowitz Ex. 1 and Staff Ex 2. Rubinowitz Ex. 1 apparently is Timberon's proof of revenues; i.e., the document shows that Timberon's proposed rates, when multiplied by certain billing determinants, results in Timberon receiving its proposed \$180,000 rate increase. Staff Ex. 1 is a spreadsheet that purports to show the costs and revenues used, at least in part, by Timberon to determine the amount of the rate increase needed by Timberon. According to Staff Ex. 1, if Timberon is granted the requested interim rate increase, Timberon's revenues will exceed its expenses by approximately \$32,000. The expenses to be covered by the rate increase would not only cover Timberon's out-of-pocket expenses, but would

also fund a three-month operating reserve of \$20,000, an emergency reserve of \$40,000, and a capital reserve of \$75,000.

11. Mssrs. Rubinowitz and Shug supported as an alternative to Timberon's rate proposal a set of rates (the "Alternative Rate Proposal") that was approved by Timberon's then-existing board of directors in resolution 09-10-005, and submitted in, a rate proceeding before a district court. Rubinowitz Ex. 2. The alternative rate proposal consisted of the following:

A. An increase in the base water rate to \$27.40 per month, which is substantially less than the \$31.90 increase proposed by Timberon. Moreover, the alternative \$27.40 base rate would include the first 1,000 gallons of water.

B. Although the alternative rate proposal does not propose any specific commodity rates (or cost per thousand gallons), the alternative supports the use of an inclining block structure for water usage after the first 1,000 gallons.

C. An increase in the standby charge to \$56.70 per year, which is more than Timberon's proposed \$50.50 standby charge. The alternative, as described in Rubinowitz Ex. 2, further provides that if an "Infrastructure Maintenance Charge" is adopted, the standby charge shall remain unchanged at \$36.00 per year. However, the alternative proposal does not address or in any way discuss the Infrastructure Maintenance Charge, and will therefore be ignored for the purposes of acting on Timberon's Request.

D. Interest at the rate of 6% would be charged on unpaid metered water and standby charges after two months.

E. The rates for non-potable water, hooking up meters, extending water lines, turning meters off and on, and connecting and disconnecting meter would remain unchanged.

12. Based upon the record in this case, the Commission finds that Timberon has met its burden of showing extraordinary facts of immediate and irreparable injury that justifies the Commission granting Timberon interim relief pursuant to 1.2.2.27 NMAC. The Commission further finds that Timberon's rate proposal should be approved by the Commission, but adjusted and modified as discussed below and subject to certain modifications and conditions set forth in this Order.

13. Timberon's proposed rates reflect the cost of creating three separate reserves totaling \$135,000. Without determining whether that total amount should or should not be used to determine Timberon's permanent rates, the Commission finds that for the purposes of establishing Timberon's emergency interim rates, total amount of reserves should be reduced to a more moderate level and until the Commission and the parties have had the opportunity to examine and determine what the level of those reserves should be. However, as discussed below, the Commission is requiring Timberon to retain an engineer, at a cost of no more than \$40,000, to assist Timberon in identifying and prioritizing necessary system maintenance and improvement projects. In light of the foregoing, the Commission finds that Timberon's emergency interim rates should be adjusted to reflect total revenue requirements for Timberon's water operations of approximately \$430,000.

14. The Commission further finds that the Alternative Rate Proposal's inclining block rates and inclusion of the cost of the first 1,000 gallons in the Base Rate is superior to

Timberon's single block rate and should be approved as part of Timberon's emergency interim rates. The Alternative Rate Proposal's rate design not only encourages conservation, but also better meets the needs of low income customers by including the first 1,000 gallons of water usage within that lower Base Rate.

15. In order reflect the reduction of Timberon's revenue requirements and adopt the Alternative Rate Proposal's rate design for non-standby customers, Timberon's emergency interim rates for those customers should be as follows:

Base Rate	\$31.90
1 <sup>st</sup> thousand gallons	\$.00
2 <sup>nd</sup> thousand gallons	\$3.25
3 <sup>rd</sup> thousand gallons	\$4.75.

16. The Commission also finds that given the substantial amount of past due amounts owed Timberon's, Timberon's proposed \$25.00 per year late payment fee is insufficient to provide its customers an appropriate incentive to avoid or pay their past due amounts. Therefore, the Commission is replacing the \$25.00 fee with an annual rate interest of 10% in order to increase the likelihood that late-paying customers will commence to pay their past-due balances voluntarily.

17. As modified above, Timberon proposed rates are approved as its emergency interim rates until Timberon's permanent rates are approved or are terminated by the Commission, and subject to the conditions set forth in this Order. All of the approved Interim

Rates, and the assumed revenues requirements they will generate, are set forth in Exhibit A to this Order.<sup>1</sup>

18. The Commission finds that approval of the alternative rates should be subject to the following conditions:

A. Although the alternative rate proposal proposes to retain “existing” rates for non-potable water, extending water lines, and turning meters off and on, neither the alternative rates nor Timberon’s Request set forth any rates for those services. Therefore, unless and until Timberon files for and receives Commission approval for such rates, Timberon shall not be permitted to charge rates for those services.

B. Timberon shall be required to file with the Commission its proposed permanent rates by no later than September 30, 2011, which rate proposal shall be accompanied by an Advice Notice and a full cost-of-service study showing Timberon’s audited expenses for its water services for the twelve month period ended June 30, 2010, 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 measureable changes that will occur by November 30, 2010, and testimony explaining and justifying each such adjustment.

C. In the event that Timberon does not file its proposed permanent rates, along with all of the foregoing information by September 30, 2011, or does not obtain

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<sup>1</sup> As reflected in Exhibit A, for the purposes of developing the approved Interim Rates, it is assumed that the 10% interest rate would generate the same revenues as the proposed \$25.00 late fee.

Commission approval for an extension of that deadline, Timberon's authority to continue charging the Interim Rates shall automatically terminate on October 1, 2011.

D. In the event the permanent rates ultimately approved by the Commission are lower than the Interim Rates approved by this Order, Timberon shall be required to 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 at or shortly after the permanent rates are approved.

E. 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. Thus, although Timberon may use its water revenues to repair a road whose asphalt has been removed in order to repair a broken water line, Timberon may not use any of the revenues to repair roads damaged by other causes or to conduct routine repair and maintenance.

F. Timberon shall be authorized to commence charging the Interim Rates prospectively from the date it has filed an Advice Notice and rate schedules reflecting such Interim Rates and that Advice Notice and rate schedules are approved or are deemed approved by the Commission. For those rates that are charged in advance on an annual basis and have already been billed for calendar year 2011, 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. The supplemental invoice or bill shall be sent by no later than March 1, 2011.

G. As soon as practicable, Timberon shall prepare a Request for Proposals (“RFP”) to retain an engineer to assist Timberon in identifying and prioritizing 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. The RFP shall be reviewed and approved by the Staff of the Commission’s Utility Division (“Staff”) before it is issued. Additionally, once the RFP is finalized, a copy of the RFP shall be filed with the Commission in this case and served upon the parties. Unless the Commission or a party objects to the RFP within 21 days after it is filed with the Commission, Timberon shall then issue the RFP. A fully unredacted copy of the retained engineer’s final report or reports shall be provided to the Commission and Staff as soon as they are completed. Timberon shall be authorized to expend no more than \$40,000 for the engineer’s services, including all expenses and taxes

H. Within 30 days from the date this Order is issued, Timberon shall file with the Commission a statement showing:

i. Timberon’s plan for collecting the past due amounts from its 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.

I. By no later than February 15, 2011, 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, and Timberon's good faith estimate of the date that an audit of its books records covering the 12-month period ending June 30, 2010 will be completed. Please provide the name and telephone number of the individual that will be conducting that 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.

J. In the event the Commission determines that Timberon's management is not acting in a prudent or competent manner based upon the filings made pursuant to Paragraphs G and H of this Paragraph, Timberon's authority to charge the Interim Rates approved by this Order may be rescinded by the Commission.

19. Based on the record of this case, the Commission finds that Timberon's manager may not have the experience and background necessary to overcome the many years of Timberon's mismanagement and neglect (most of which, the Commission acknowledges, occurred before the manager joined Timberon), and to put Timberon on a path toward financial and operational stability. The Commission is also concerned that Timberon's court-appointed receiver and assistant receiver may not have the background, experience or ability to devote the time necessary to oversee and direct Timberon's manager. Therefore, the Commission is putting the manger, the receiver and assistant manager on notice that if the Commission finds that the management and operation of Timberon have not sufficiently improved by April, 2011, the Commission will request the District Court to replace the receiver and assistant receiver.

20. The Commission has jurisdiction over the subject matter and the parties to this case.

**IT IS THEREFORE ORDERED:**

A. The Interim Rates set forth in this Order are approved, subject to the conditions set forth in this Order.

B. Timberon shall file an Advice Notice and rate schedules reflecting the Interim Rates approved in this Order by no later than January 10, 2011. If requested by Timberon, Staff shall assist Timberon in preparing the Advice Notice and rate schedules. By no later than January 12, 2011, Staff shall review the Advice Notice and rate schedules filed by Timberon pursuant to this Paragraph. Unless otherwise notified by Staff, the revised rates shall go into effect on January 12, 2011, subject to the conditions set forth in the body of this Order.

C. This Order is effective immediately.

D. 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 30<sup>th</sup> day of  
December, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION



DAVID W. KING, CHAIRMAN





JEROME D. BLOCK, VICE CHAIRMAN



JASON A. MARKS, COMMISSIONER



THERESA BECENTI-AGUILAR, COMMISSIONER



SANDY JONES, COMMISSIONER

Case No. 10-00366-UT  
 APPROVED INTERIM RATES

	<b>Annual Billing Determinants</b>		<b>Rate/Charge</b>	<b>Revenue</b>
<b>Stand By Charges</b>	3,220	\$	50.50	\$ 162,610.00
Stand By	354	\$	25.00	\$ 8,850.00
10% Interest Rate on Past Due Amounts				
<b>Metered Water Charges</b>				
Base Rate	5,964	\$	31.90	\$ 190,251.60
Block 1	5,000	\$	-	\$ -
Block 2	5,000	\$	3.250	\$ 16,250.00
Block 3	5,104	\$	4.750	\$ 24,244.00
10% Interest Rate on Past Due Amounts	624	\$	25.00	\$ 15,600.00
<b>Other Water Charges</b>				
Disconnect Fee	22	\$	20.00	\$ 440.00
Reconnect Fee	22	\$	65.00	\$ 1,430.00
New Meter Install	12	\$	875.00	\$ 10,500.00
<b>Total Revenue</b>				<b>\$ 430,175.60</b>

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IN THE MATTER OF THE REQUEST OF TIMBERON )  
WATER AND SANITATION DISTRICT FOR AN )  
EMERGENCY INTERIM RATE INCREASE. )  
 ) Case No. 10-00366-UT  
TIMBERON WATER AND SANITATION DISTRICT, )  
APPLICANT. )

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Approving Interim Rates** issued December 30, 2010, was sent on January 3rd, 2011 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

Jeffrey Taylor, Esq.  
Assistant. Attorney General  
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PO Drawer 1508  
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Burt Rubinstein  
Jeff Taylor  
Loretta Martinez  
Arden Schug

**Hand-delivered to:**  
Robert Hirasuna  
NMPRC- Assoc. General Counsel  
P.O. Box 1269  
Santa Fe, NM 87504

**Hand-delivered to:**  
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NMPRC- Utilities Gas, Waste & Water  
PO Box 1269  
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**Hand-delivered to:**

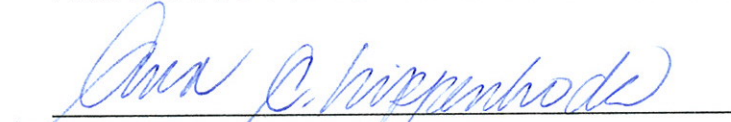
Roy Stephenson  
NMPRC- Utilities Division Director  
PO Box 1269  
Santa Fe, NM 87504

**Hand-delivered to:**

Cydney Beadles  
NMPRC-Legal Division  
P.O. Box 1269  
Santa Fe, NM 87504

**DATED this 3rd** day of January, 2011.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
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**Ana C. Kippenbrock, Paralegal**