

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

| | | |
|--|---|-----------------------------|
| IN THE MATTER OF KIT CARSON ELECTRIC COOPERATIVE, INC.'S ADVICE NOTICE NO. 57 |) | |
| |) | |
| KIT CARSON ELECTRIC COOPERATIVE, INC., |) | Case No. 10-00379-UT |
| |) | |
| Applicant. |) | |
| |) | |
| |) | |
| |) | |

ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (Commission) upon Kit Carson's October 11, 2012, filing of its Motion for Expedited Order Finding Compliance with Final Order and Dismissing Further Compliance Proceedings. Wherefore,

THE COMMISSION FINDS AND CONCLUDES:

1. The Final Order filed on September 20, 2011, stated in ¶ 51:

Because the conduct of those businesses as a division within Kit Carson, increases Kit Carson's exposure to potential liabilities associated with its Internet and broadband services, the Commission should require Kit Carson to file in this docket and serve the parties to this case, within 9 months from the date this Final Order is issued, a Report (the "*Report*") which states whether Kit Carson has spun-off its Internet and broadband services into a separate entity, and if so, the type of entity to which those businesses were transferred, and whether Kit Carson remains, or may remain, obligated to pay any liabilities of those new entities. If Kit Carson has not reorganizee[sic] those businesses into to [sic] another entity or otherwise disposed of those businesses, Kit Carson should state in the Report each and every reason why it has not do so, and why it's not doing so will not expose its utility customers to liabilities that may arise in connection with those non-utility businesses and is not otherwise detrimental to those customers' interests. Unless Kit Carson fully justifies any decision to not reorganize its Internet and broadband businesses in its Report, the Commission will at that time initiate an investigation to determine whether that reorganization should be required as a matter of protecting Kit Carson's utility customers from that liability.

2. In ¶ D of the Final Order, the Commission ordered Kit Carson to file the Report described above.

3. On October 20, 2011, Kit Carson filed a Motion for Clarification of Final Order asking for clarification of ¶ 51 and explaining that requiring it to spin off its broadband services could subject it to violations of requirements in the federal grant and loan agreements that financed the Broadband Project (hereafter “the Project”). The Commission did not act on that motion.

4. On June 20, 2012, Kit Carson filed the Report mandated by ¶ 51, and on August 9, 2012, filed a Supplement to the Report.

5. Attached to the Report and to the Supplement were the affidavits and testimony of Luis Reyes, Chief Executive Officer of Kit Carson. The testimony states that Kit Carson had not spun off its broadband services and that it had to obtain written approval from RUS to do so.

6. Members of Kit Carson then sent scores of emails to the Commission voicing a variety of concerns about the Project.

7. In response, in Orders dated August 30 and September 6, 2012, the Commission announced that a public comment hearing would be held in Taos on October 17 and that a Hearing Examiner had been appointed to preside over an evidentiary hearing. The hearings would address whether Kit Carson had complied with ¶ 51, whether ¶ 51 should be modified, and what effect, if any, ¶ 51 would have on the completion of the Project.

8. In the letter to Mr. Reyes stamped “October 10, 2012,” the RUS informed Kit Carson that it was suspending funding of the Project because the Commission’s “order to divest all broadband assets into a separate operating subsidiary has a material adverse

on the financial position of the company upon which the RUS BIP [Broadband Initiatives Program] was made.”

9. Because it is now clear from the RUS letter what the effect of ¶ 51 is on the Project, the Commission should vacate ¶ 51.

10. A letter stamped “October 10, 2012,” from the Rural Utilities Service (RUS), a federal agency providing loan and grant funds for the Project is attached as Exhibit 1 to the instant Motion. It states that RUS did not receive official nor timely written notice from Kit Carson of the Final Order, contrary to the loan/grant contract between RUS and Kit Carson.

11. The failure of Kit Carson to promptly inform the RUS of the Commission’s Final Order, particularly the conditions imposed by ¶ 51, is more than an oversight by management; rather, it demonstrates an abandonment of a fiduciary responsibility to one of its major lenders.

12. Intervenor Bence’s recent communication to the Commission on this matter should be treated as a Response to the instant Motion.

13. The Commission should order Kit Carson to file with this Commission all of the reports that Kit Carson files with the RUS pertaining to Kit Carson’s Broadband Project.

14. It is the policy and the earnest belief of this Commission that the members of Kit Carson should have reasonable access to affordable internet and broadband services. Nothing in this Order should be interpreted otherwise.

IT IS THEREFORE ORDERED:

A. Paragraph 51 of the Final Order is vacated.

B. Kit Carson shall file with this Commission all of the reports that Kit Carson files with the RUS pertaining to Kit Carson’s Broadband Project.

C. Intervenor Bence's recent communication to the Commission on this matter shall be treated as a Response to the instant Motion.

D. This Order is effective immediately.

E. Copies of this Order shall be e-mailed to all persons listed on the attached Certificate of Service whose e-mail addresses are known. Copies of this Order shall be mailed via regular mail to all other persons listed on the attached Certificate Of Service.

F. A copy of this Order shall be posted at the Commission's website.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on this 16th day of
October, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION



PATRICK H. LYONS, CHAIRMAN





THERESA BECENTI-AGUILAR, VICE CHAIR



JASON A. MARKS, COMMISSIONER



DOUGLAS J. HOWE, COMMISSIONER



BEN L. HALL, COMMISSIONER