

IN THE MATTER OF AN ORDER TO SHOW CAUSE AS)
TO WHY ROSA JOINT VENTURE, A NEW MEXICO)
PARTNERSHIP, SHOULD NOT BE FOUND IN) Docket No. 18-00214-UT
VIOLATION OF THE PUBLIC UTILITY ACT AND)
COMMISSION RULES)

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Commission’s own motion as well as Staff of the Commission’s Utility Division’s (“Staff”) Motion to Enforce Stipulation.

The Commission denies Staff's Motion to Enforce Stipulation as the Commission believes that pursuing legal remedies such as court actions will be more effective in resolving this matter than continuing to issue orders similar to those that the Commission has previously issued and that have been largely ignored.

1. On July 18, 2018, the Commission issued its Order to Show Cause and Order Appointing Hearing Examiner (“Order to Show Cause”), in which the Commission ordered RJV to show cause as to (1) why it should not be found to have violated Section 62-9-1 of the Public Utility Act (“PUA”), and 17.12.1.9(D) NMAC, for operating a public water utility without a certificate of public convenience and necessity; (2) why it should not be found to have violated the requirements of 17.12.1.9(E) NMAC, implementing design, construction and operation requirements as described in 17.12.750 NMAC; (3) why it should not be found to have violated

the requirement of 17.12.750.11 NMAC, to “furnish and maintain sufficient facilities to provide a continuous and adequate supply of water... [etc.]”; (4) why it should not be found to have violated the requirement of the Section 62-8-1 of the PUA, that “[e]very rate made, demanded or received by any public utility shall be just and reasonable”; (5) why it should not be found to have violated the requirement of Section 62-8-3 of the PUA, to maintain publicly available rate schedules; (6) why it should not be found to have violated the requirement of 17.12.1.9(A) NMAC to file annual reports, the requirement of 17.12.1.9(B) NMAC to maintain financial accounts, and the requirement of 17.12.1.9(F) NMAC to adopt customer service rules and regulations; and (7) why it should not be assessed an administrative penalty of up to \$100,000 for each of any such violations and, if a continuing violation, for each day of any such violations, pursuant to Sections 62-12-4, 62-12-5, and 62-12-6, of the PUA.¹

2. From 2019 through 2020, the former hearing examiner in this matter (“Hearing Examiner”) scheduled, vacated, and rescheduled the hearing on the Order to Show Cause several times while the ratepayers were in the process of forming a mutual domestic water consumers association, pursuant to the Sanitary Projects Act², the Sambrito Mutual Domestic Water Consumers Association (“Sambrito”).³

3. On April 8, 2021, RJV and Sambrito filed their Proposed Comprehensive Stipulation (“Stipulation”), in which they requested that the Commission approve the abandonment of the System and water service obligations by RJV and the transfer of the water

¹ Order to Show Cause (July 18, 2018) at 4-6.

² NMSA 1978, §§ 3-29-1 to -21 (1953, as amended through 2017).

³ This order summarizes relevant background. The full electronic record of this proceeding is available at <https://edocket.prc.nm.gov>.

system to Sambrito, pursuant to their proposed transfer agreement (“Transfer Agreement”), attached to the Stipulation.

4. A hearing on the Stipulation was held on May 18, 2021. The Stipulation was unopposed.

5. On May 27, 2021, the Hearing Examiner issued his Certification of Stipulation.

6. On June 15, 2021, the Commission issued its Order Adopting Certification of Stipulation.

7. On July 28, 2021, the Commission issued its Order Partially Adopting Staff’s Recommendations (“July 28th Order”), in which the Commission ordered RJV to execute the Transfer Agreement by August 16, 2021, 60 days from the date of the Commission’s order of June 15, 2021, as contemplated in the agreement.

8. On August 11, 2021, the Commission issued its Order Issuing Progressive Penalties to Rosa Joint Venture for any Continuing Noncompliance with July 28, 2021, Order of Commission (“Aug. 11th Order”), in which the Commission noted that RJV and Sambrito had failed to respond to Staff’s inquiry dated July 19, 2021, as ordered by the Commission in the July 28th Order. The Commission notified RJV that, should RJV remain out of compliance with the July 28th Order, RJV would incur ongoing monetary penalties according to the following schedule: “\$100 per business day beginning August 16, 2021, until such penalties rise to \$200 per business day beginning August 23, 2021, until such penalties rise to \$300 per business day beginning August 30, 2021.”⁴

⁴ Aug. 11th Order (Aug. 11, 2021) at 6.

9. On August 19, 2021, the Commission issued its Order Finding that Rosa Joint Venture Remains in Violation of the Commission’s July 28, 2021 Order Partially Adopting Staff’s Recommendations; Order Reducing Penalties to Nonprogressive Penalties (“Aug. 19th Order”). In that order, the Commission noted that RJV had responded to Staff’s inquiries, as required by the Aug. 11th Order, stating that the parties had not closed on the Transfer Agreement. RJV stated that certain conditions of the transfer were “outside their control, such as approval from San Juan County and the Office of the State Engineer.”⁵ The Commission further noted that, in a joint report filed by RJV and Sambrito, the parties had described their progress as follows:

In the Joint Report, they state that, as of that date, they have closed upon the transaction as to those items within their control. As the approval needed from San Juan County has not been obtained for a transfer of the fee simple interest in the relevant land, RJV has conveyed a leasehold interest to Sambrito in the interim period. They also state that the parties met with the Office of the State Engineer on August 12, and that the agency offered to assist in identifying the amount of water and the lands associated with RJV’s rights. The parties conclude that RJV ‘has taken all steps within its power at this time to transfer control and possession of the domestic water system and the wastewater system to Sambrito . . .’⁶

The Commission found an “inexcusable lack of diligence”⁷ on the part of RJV and further found that RJV remained in violation of the July 28th Order. The Commission stated that RJV “has accrued penalties pursuant to the Aug. 11th Order since August 16, 2021, continues to accrue such penalties, and will continue to accrue such penalties until the transaction has been fully closed in accordance with the terms of the parties’ stipulation and the Commission’s Order Adopting Certification of Stipulation and such closing has been properly reported to the Commission as per the July 28th Order.”⁸ The Commission noted, however, that RJV had made some progress toward

⁵ Aug. 19th Order (Aug. 19, 2021) at 4.

⁶ Aug. 19th Order at 5.

⁷ Aug. 19th Order at 6.

⁸ Aug. 19th Order at 6-7.

closing and ruled that the \$100-per-business-day penalties would continue to accrue at that rate, without increasing to a higher rate.

10. On June 15, 2022 (“June 15th Order”), the Commission issued its Order Reinstating Accrual of Fines Against Rosa Joint Venture; Ordering Rosa Joint Venture to Retain Consultant to Complete Processes with San Juan County and the Office of the State Engineer; Ordering Rosa Joint Venture to Retain Engineering Firm to Provide Updated Estimate of Costs of Repairs and Improvements Needed to Provide Safe, Reliable Water Service; Ordering Additional Investment in Rosa Joint Venture for Such Repairs and Improvements to Water/Wastewater System; Ordering Rosa Joint Venture to Complete Such Repairs and Improvements.

11. On February 22, 2024, the Commission issued its Order Referring Matter to Commission Mediator (“Feb. 22nd Order”). In that order, the Commission first reviewed RJV’s response to a recent order of the Commission. The Commission noted that RJV claimed that it could not close upon the transfer agreement because “the Commission on June 15, 2022, modified the terms of the Transfer Agreement, and thus, RJV requested that the documents not be recorded.”⁹ The Commission further noted RJV’s updates regarding the lack of progress toward obtaining a new subdivision map from San Juan County and the lack of progress toward executing a transfer of water rights to Sambrito. RJV requested that this matter be referred to a Commission mediator. The Commission granted this request.

12. On April 18, 2025, the Commission issued a bench request (“Bench Request”), in which the Commission inquired of RJV and Sambrito regarding the mediation (which had

⁹ Feb. 22nd Order (Feb. 22, 2024) at 2.

terminated), any results of the mediation, the status of the closing, and the status of any repairs to the System.

13. On April 24, 2025, Sambrito responded to the Bench Request (“Sambrito’s Response”). Sambrito stated that the mediation in this matter had not been formally terminated, noting that the mediator had stated that the matter would be referred to another Commission mediator. Sambrito further stated that RJV was continuing to exclude Sambrito from joint operation of the system. Sambrito also reported the following:

b. Sambrito continues to read meters and bill customers for corresponding water and sewer system charges. Funds collected by Sambrito are used to pay Sambrito’s portion of engineering and surveying fees and water delivery charges.

c. Despite the inability of the water system’s wells to produce an adequate water supply for residents, RJV continues to sell lots in the subject subdivision and hook-up new water and sewer connections.

d. Sambrito has a significant amount of customers who are delinquent on their water and sewer bills. RJV refuses to work cooperatively with Sambrito to lock meters of delinquent customers and refuses to allow Sambrito access to do so.

e. RJV has not made improvements to the water and sewer system required by previous Commission Orders. As a result, ongoing concerns exist because only one of the water system’s wells appears to be producing water and significant and expensive potable water deliveries are ongoing.

f. RJV does not appear to be in compliance with NMED sanitary survey requirements.

g. Concerns about health, safety and sanitation are ongoing with respect to RJV’s maintenance and operation of the sewer system and lagoons.

h. RJV has provided email versions of the water rights and real property deeds and easements to undersigned counsel that are needed to close on the Transfer Agreement. Original deeds are required for recording. Despite numerous requests, RJV has not provided the original deeds and easements for recording.

i. With respect to the subject plat in this matter, undersigned counsel worked with San Juan County and the surveyor to finalize the plat. The remaining items needed to complete the plat were payment of the plat service fee to San Juan County, which undersigned counsel offered to donate, an owner’s authorization signature by RJV, and payment of unpaid property taxes owed by RJV. Despite numerous requests to resolve the matter, the plat has not been finalized.

j. In order to pursue legislative appropriations and other available funding to repair and improve the subject water and sewer systems, Sambrito

successfully obtained funding to conduct a Preliminary Engineering Report (PER) from the Water Trust Board.

k. As a result of not being provided originals of the subject deeds and easements, Sambrito is unable to establish even equitable ownership for purposes of obtaining appropriations from the State of New Mexico or any other potential funding source to repair and improve the system. As a result of RJV's failure to provide originals of the subject deeds and easements, Sambrito was unable to utilize the legislative appropriation of \$75,000 in 2021 and, despite support from the San Juan legislative delegation, has not been eligible to receive appropriations or other grants since 2021 due the failure of RJV to provide original deeds and easements.

l. Based on information sent to the Sambrito Board President, it appears that RJV is seeking input from community members to form a separate mutual domestic controlled by the partners of RJV. In this communication, RJV claims that it will be able to obtain public appropriations under the guise of an RJV-run mutual domestic to improve the water and sewer systems.

m. Not only is such an effort contrary to the Sanitary Projects Act, NMSA 1978, § 3-29-1 et seq., and a violation of the Anti-Donation clause of the New Mexico Constitution, it signifies that RJV does not intend to:

i. Abide by its own agreements in this matter as set forth in the Transfer Agreement and Stipulation;

ii. Comply with Commission Orders in this matter; or

iii. Adhere to RJV's obligations as a public utility under the Public Utility Act.¹⁰

Sambrito further stated that "[t]he remaining items needed to effectuate closing of the Transfer Agreement, namely the provision of original deeds by RJV to Sambrito, completion of the plat, and Commission-ordered system repairs and improvements, are solely in RJV's control."¹¹ Sambrito also reiterated its request that the Commission enforce the terms of the Transfer Agreement as well as Commission orders requiring RJV to make system improvements. Sambrito added that it did not believe that further mediation would be productive. Sambrito further commented that receivership would be a better approach than continuing fines because the fines had not persuaded RJV to fulfill its obligations.

¹⁰ Sambrito's Response (April 24, 2025) at 2-5.

¹¹ Sambrito's Response at 5.

14. RJV did not file a response to the Bench Request. However, Jean Phelps, one of RJV's partners, sent an email response to the Commission on June 26, 2025, which was filed in the docket. Mr. Phelps addressed the system's chronic issues concerning leaks and low water pressure. Regarding any progress toward closing upon the Transfer Agreement, Mr. Phelps stated the following:

There have [been] issues in the beginning when we were starting up the idea of a mutual domestic water system, several residents throughout both subdivisions had mixed feelings and emotions expressed, but those issues have been resolved, the majority of the residents in both subdivisions communicate with me on a regular basis with no conflict and confusion, all the residence[s] in both subdivisions have been working together for the betterment of the community! We have come a long way from where we were and where we all plan on being in the near future, this constant divide is not helping bridge the gap with where we need to be!!! We have all of the infrastructure and functionality of the RJV WATER/SEWER SYSTEM structurally sound and operating efficiencies resolved. We passed our Sanitary Survey, we are in [the] midst of renewing the Discharge permit for the RJV sewer lagoons, the inspection has been done all that is needed is to return[] the paperwork that is needed to the NM ENVIRONMENTAL DEPARTMENT.¹²

15. On October 1, 2025, Staff filed its Motion to Enforce Stipulation. In the Motion, Staff requested that the Commission take the following actions:

- a. Order RJV to immediately comply with the stipulation by:
 1. Delivering all original water rights and real property deeds and easements in their original format to Sambrito for recording;
 2. Executing an owner's authorization signature by RJV and paying unpaid property taxes owed by RJV in order to finalize the plat; and
 3. Completing Commission-ordered system repairs and improvements.
- b. Require that RJV confirm whether it has complied with all other requirements outlined in the Stipulation adopted by the Commission on June 15, 2021. If the commitments have not been fulfilled, Staff requests that the Commission find that RJV has materially breached the Stipulation.
- c. Reinstate the previously held-in-abeyance fines and penalties, including the minimum \$1,000,000.00 penalty originally proposed by Staff, unless full compliance is demonstrated within a period of fifteen (15) days from issuance of the Commission's enforcement order; and

¹² Notice of Filing (June 26, 2025) Exhibit A at 1.

d. Grant such other relief as the Commission may deem just and proper.¹³

16. On October 16, 2025, RJV filed its Response to Staff's Motion to Enforce Stipulation ("RJV's Response"). RJV stated that "[a] number of difficulties have presented themselves in terms of full compliance with the terms of the stipulation referenced by staff, which is unworkable as it currently stands."¹⁴ RJV claimed that "[t]he current residents of the subdivisions are not supportive of the existing board and have sought to change the board."¹⁵ RJV further claimed that "[t]he residents are also not in favor of transfer of rights to the existing board, which may or may not be representing residents' interests and a majority of the residents have signed a petition to conduct a special meeting with RJV present," and proposed the "creation of a new mutual domestic association."¹⁶ RJV added that "Sambrito's finances are untenable, bordering on insolvency," and that "Sambrito's accounting and finances have long been an issue vexing both RJV and the residents of the properties."¹⁷

17. On October 16, 2025, RJV also filed a Substitution of Counsel.

18. On October 28, 2025, Staff filed a Reply in Support of Staff's Motion to Enforce Stipulation ("Staff's Reply").¹⁸ Staff argued that "RJV's Response confirms that it has not complied with the Commission-approved Stipulation and offers no legal justification for continued delay. RJV's arguments are unsupported, irrelevant, and contrary to the public interest."¹⁹ Staff

¹³ Staff's Motion to Enforce Stipulation (Oct. 1, 2025) at 7.

¹⁴ RJV's Response (Oct. 16, 2025) at 1.

¹⁵ RJV's Response at 2.

¹⁶ RJV's Response at 2.

¹⁷ RJV's Response at 2.

¹⁸ The Commission notes that Staff did not seek leave of the Commission to file Staff's Reply, as required by the Commission's Rules of Procedure. 1.2.2.12(C)(1)(d) NMAC. Nevertheless, the Commission has considered the content of Staff's Reply in this matter as it is helpful to the Commission in considering this matter.

¹⁹ Staff's Reply (Oct. 28, 2025) at 4.

further argued that “Staff respectfully requests that the Commission find RJV in material breach of the Commission approved Stipulation, reinstate all fines and penalties previously held in abeyance, and reject any further requests for delay, mediation, or limitation of the Stipulation should RJV not complete the above within the 15-day window.”²⁰

DISCUSSION

19. The record in this matter, including but not limited to sworn testimony and other competent evidence, and RJV’s own admissions, show that RJV is in violation of provisions of the PUA, Commission rules, and Commission orders. Most importantly, RJV has violated and continues to violate the Commission’s Order Adopting Certification of Stipulation, as well as the Transfer Agreement approved in that order.

FINDINGS AND CONCLUSIONS

20. The Commission finds that the Commission’s Chief of Staff’s Office should pursue any and all remedies available under applicable laws and regulations to resolve this matter, including but not limited to potential court actions.

21. The Commission further finds that the approaches to enforcement recommended by Staff in Staff’s Motion to Enforce Stipulation have proved insufficient in this matter. The Commission appreciates Staff’s attention to this matter and agrees with Staff’s general suggestion that action is warranted. The Commission has repeatedly ordered RJV to comply with the Commission’s Order Adopting Certification of Stipulation and subsequent Commission orders, to no avail. The Commission has also imposed substantial monetary penalties against RJV without

²⁰ Staff’s Reply at 4.

achieving compliance. To date, such penalties total more than \$275,000, and they continue to accrue at a rate of \$300 per business day.

22. The Commission incorporates by reference any findings and conclusions stated in the body of this Order.

IT IS THEREFORE ORDERED:

A. The Commission AUTHORIZES its Chief of Staff's Office to pursue any and all remedies available under applicable laws and regulations, including but not limited to potential court actions.

B. Staff's Motion to Enforce Stipulation is DENIED.

C. Motions for rehearing shall be timely if filed by December 1, 2025. Responses to motions for rehearing shall be timely if filed by December 8, 2025. Replies to responses shall not be filed.

D. If no motions for rehearing are filed, or if all motions for rehearing are denied by operation of law, this Docket shall close by operation of law.

E. This Order is effective when signed.

F. The Commission shall serve a copy of this Order upon all persons listed on the attached Certificate of Service via e-mail if their e-mail addresses are known, and otherwise, via regular mail.

G. In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed with the Chief Clerk of the Commission's Records Management Bureau or the Chief Clerk's designee.

SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day of
October, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Gabriel Aguilera, electronically signed
GABRIEL AGUILERA, COMMISSIONER

/s/ Greg Nibert, electronically signed
GREG NIBERT, COMMISSIONER

/s/ Patrick J. O'Connell, electronically signed
PATRICK J. O'CONNELL, COMMISSIONER



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF AN ORDER TO SHOW CAUSE AS)
TO WHY ROSA JOINT VENTURE, A NEW MEXICO)
PARTNERSHIP, SHOULD NOT BE FOUND IN) Docket No. 18-00214-UT
VIOLATION OF THE PUBLIC UTILITY ACT AND)
COMMISSION RULES)**

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the foregoing *Order Authorizing Chief of Staff's Office to Pursue Lawful Remedies*.

Ralph G. Phelps
Judy Phelps
Michelle Henrie
M. Elizabeth Bartley Johns
Carla R. Najjar
Germaine Chappelle
Carolyn Wood
Bernadette Dickinson
John C. Dustin
Ed Rilkoff
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DATED this 31st day of October, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ LaurieAnn Santillanes, electronically signed
LaurieAnn Santillanes, Paralegal