

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0209W

IN THE MATTER OF THE APPLICATION OF DANIEL HEPNER, CHAPTER 7 TRUSTEE FOR THE PROSPECT MOUNTAIN WATER COMPANY, INC. AND THE TOWN OF ESTES PARK, BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, FOR APPROVAL OF TRANSFER OF ASSETS, TO SURRENDER AND RELINQUISH CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, FOR APPROVAL OF CHARGE PURSUANT TO C.R.S. §40-3.5-102, FOR DECLARATORY ORDER, AND FOR CERTAIN VARIANCES AND WAIVERS.

**INTERIM COMMISSION DECISION
GRANTING FUND DISBURSAL REQUEST**

Mailed Date: September 15, 2023
Adopted Date: August 30, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Colorado Public Utilities Commission (Commission) grants the Capital Improvement Fund (CIF) escrow account disbursement request received from Daniel Hepner, Chapter 7 Trustee (the Trustee) for the Prospect Mountain Water Company, Inc. (Prospect Mountain or Company) and orders Commission Staff to comply with the request.

B. Background

2. Prospect Mountain was a small water utility serving about 130 customers outside of the Town of Estes Park, Colorado (Estes Park or Town). Pursuant to Commission Rule 5112(e)(IV) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* 723-5, and Decision No. C12-1429 in Proceeding No. 12A-1049W issued

December 14, 2012, the Company created a Capital Improvement Fund (CIF) escrow account to be used for the benefit of its customers and managed by an escrow agent.

3. The Commission ordered that, “[a]ll expenditures from the CIF are subject to review for compliance with Commission orders and for prudence.”¹ Since the creation of the CIF, the Commission has granted numerous expenditure requests from the CIF to serve needs related to Prospect Mountain customers.²

4. On April 22, 2015, the Company filed for bankruptcy under Chapter 7 of the Bankruptcy Code. Pursuant to orders of the Bankruptcy Court, the Trustee operated the business of the Company pursuant to 11 U.S.C. §721 to ensure uninterrupted water service to the Company’s ratepayers.

5. On April 24, 2019, the Trustee for Prospect Mountain and the Town of Estes Park Colorado (Estes Park or Town) (together, Joint Applicants), filed an Application for Approval of Transfer of Assets, to Surrender and Relinquish Certificate of Public Convenience and Necessity, for Approval of Charge Pursuant to § 40-3.5-102, for Declaratory Order, and for Certain Variances and Waivers (Application or Joint Application). The Joint Applicants received approval from the Commission of the Voluntary Water System Transfer Agreement by and between Prospect Mountain and Estes Park dated February 26, 2019 (Operating Agreement), as amended with a modified transfer date of June 14, 2019, which was filed with the Commission on April 26, 2019, through Decision No. C19-0440 in Proceeding No. 19A-0209W. After the

¹ Decision No. C12-1429. ¶ 13, Proceeding Nos. 12A-1049W/12A-1050W (Dec. 14, 2012).

² See *e.g.*, Proceeding No. 12A-1050W, in Decision No. C12-1429 (approving disbursement for annual escrow account agent fees); Proceeding No. 16A-0957W, in Decision No. C17-0078 (approving distribution for engineering studies from the CIF); Proceeding No. 14A-069W, in Decision No. C18-0989 (approving disbursement for all allowed claims in bankruptcy case).

Commission approval of the Operating Agreement, the Municipal Utility of the Town of Estes Park, Colorado took over day-to-day operations of the Company.

6. Through Decision No. C19-0440, in ordering paragraph 2, the Commission granted the Joint Application, in relevant part, to authorize expenditures from the CIF and approve the transfer of the following assets:

- a.) all real property and easement rights of Prospect Mountain to Estes Park,
- b.) all tangible and intangible assets of Prospect Mountain to Estes Park, and
- c.) all funds and accounts receivable held by Prospect Mountain to Estes Park upon the approval of the final report of the Trustee by the Bankruptcy Court.

7. While the Trustee understood the Commission's order to authorize the transfer of all remaining and unused funds in the CIF, it may be unclear from the Commission's Decision language that the Commission's authorization to transfer "all funds and accounts receivable held by Prospect Mountain to Estes Park" includes the transfer of all of the remaining and unused funds in the CIF to Estes Park. As such, the Trustee submitted the CIF disbursement request addressed in this Decision.

C. Findings and Conclusions

8. Pursuant to Commission Rule 5112(e)(IV) and Decision No. C12-1429 in Proceeding No. 12A-1049W issued December 14, 2012, the Company created a CIF escrow account to be used for the benefit of its customers and managed by an escrow agent.

9. We grant the requested disbursement from the CIF to Estes Park. We find that this is a reasonable use of the remaining funds in the CIF because it will go towards service of the former customers of Prospect Mountain, and aligns with the expectations of the Joint Applicants, the Commission, and the Bankruptcy Court.

10. We also anticipate that after the disbursement of the CIF funds approved here, all remaining assets have been transferred to Estes Park.

D. Findings and Conclusions

11. Pursuant to Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, a responding party "shall have 14 days after service of the motion ... in which to file a response." However, Rule 1308(c), 4 CCR 723-1, permits the Commission to "shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence.... The Commission can act immediately where response time is waived and after expiration of the shortened response time." We find that it is appropriate to waive response time to this Motion because Public Service states that both parties to this Proceeding are in support of the Motion and because the deadline for Public Service's initial brief is September 1, 2023. The Commission therefore waives response time to the Motion.

12. We also find good cause to grant Public Service's Motion. Pursuant to Rule 1003(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission can, for good cause shown, grant waivers or variances from requirements contained in Commission decisions. Here we find good cause to grant the request to hold this Proceeding in abeyance in order to act efficiently and ensure that there is a controversy or uncertainty before continuing. We therefore order this Proceeding to be held in abeyance and for the procedural deadlines set by Decision No. C23-324-I to be vacated.

II. ORDER**A. The Commission Orders That:**

1. The Motion for Final Approval of Disbursements from Capital Improvement Fund (Motion) filed on April 26, 2018 by Prospect Mountain Water Company (Prospect Mountain) is granted, consistent with the above discussion.

2. Prospect Mountain is authorized to use its Capital Improvement Fund account to pay for the certificate of public convenience and necessity facility costs as updated in the Motion, consistent with the above discussion.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 30, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners