

Procedures for Water and Wastewater Rate Proceedings
Before the Board of Commissioners for the Las Cruces Utilities

(Per Interim Rules adopted in Board Resolution No. 08-09-066, June 11, 2009)

1. On August 21, 2009, LCU filed its water and wastewater rate cases, including testimony, exhibits and proposed rate tariffs.
2. On August 24, 2009, Utilities Board Chair Leeann DeMouche, acting as Procedural Master pursuant to Interim Rule 20, issued Interim Procedural Orders in the water and wastewater cases directing LCU to publish notice of the rate applications in the Las Cruces Sun News and to post those notices on the City's website.
3. The notices will be posted on the City's website at <http://www.las-cruces.org/utilities/notice.shtm> no later than Tuesday, August 25, 2009.
4. The same notices will be published in the Sun News no later than Sunday, August 30, 2009.
5. The Ratepayer Advisory Committee (the "RAC") has automatic intervenor status under the Interim Rules. Any other persons or entities that wish to become formal party participants in either rate proceeding must file a written motion to intervene no later than September 21, 2009. Because the RAC was created to represent residential and small commercial class customers, potential intervenors in those rate classes will have to show that their interests will not be adequately protected by the RAC. Intervenors other than individuals must be represented by their attorneys.
6. Written objections, if any, to the intervention motions must be filed within 13 days of the date of filing of the original motion to intervene.
7. On October 8, 2009, at 1:00 p.m., before its regularly scheduled monthly meeting, the Utilities Board will conduct a formal hearing to consider argument regarding the motions to intervene and to rule on which entities, other than the RAC, will become intervenors with full rights and responsibilities of parties.
8. After the Utilities Board grants intervenor status, the intervenors will have the right to conduct discovery in the form of interrogatories, requests for production of documents, and depositions against LCU. As a designated intervenor, the RAC will have this right from the outset. All parties, including the intervenors, the RAC, and LCU, will have the right to conduct discovery against each other and will be obligated to respond to discovery requests directed toward them.
9. The RAC and any intervenors will file their written direct testimony and exhibits reflecting their positions no later than November 24, 2009.
10. Following discovery on the filed positions of the RAC and the intervenors, LCU, RAC and other intervenors will have the opportunity to file written rebuttal testimony no later than January 15, 2010.
11. The Utilities Board will conduct formal evidentiary hearings on the rate applications. These are scheduled for January 28 and 29, 2010 and February 4 and 5, 2010. The Utilities Board will determine the extent to which it conducts the water and wastewater hearings separately or together.
12. Either during those hearings or prior to them, the Utilities Board also will conduct one or more public comment hearings so that interested utility customers can express their concerns to the Utilities Board without going through the process of intervening and participating in the entire formal proceedings. The Utilities Board may

not, however, rely exclusively on public comments when it reaches its rate decisions following the evidentiary hearings. The Utilities Board must base its decision only on evidence in the record—that is, the written direct and rebuttal testimony and exhibits filed prior to hearing, the witnesses' oral testimony during the hearing, and documents or other exhibits admitted into the record during the hearing.

13. At the end of the hearing, the Utilities Board will set a schedule for written legal briefs and/or findings of fact and conclusions of law to be submitted by LCU, the RAC and the intervenors. It will also allow for responsive briefs. The Utilities Board may request some or all of the parties to submit proposed final orders, also.

14. The Utilities Board is expected to rule within 9 months of its first meeting after the filing, or about the time of its May 2010 regular meeting.

15. Aggrieved parties to the rate proceedings may make a written request for an appeal of the Board's decision to the City Council, based on the evidence in the record of the case. Before considering an appeal, the City Council must determine whether the written appeal meets these thresholds. If the Council validates the appeal, it shall set the appeal for consideration at a public hearing.

16. The City Council may grant the appeal only if the Appellant can show that its substantial rights have been prejudiced because the Utilities Board's findings are: (a) in violation of provisions established by City Charter or Council Ordinance; (b) in excess of the Council Ordinance authority granted to the Board; (c) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (d) arbitrary, capricious or characterized by abuse of Board discretion. If the Council so finds, its may remand the rate case back to the Utilities Board for reconsideration, based again on the evidence in the record.

17. Once the Utilities Board issues its revised decision, the appeal process may be repeated, but the City Council may not issue its own rate order. The appeal process should take no longer than 60 days.