

Commissioner Jason Marks - January 2010 Update

This message is to update you on some of the more significant regulatory activities at the PRC over the last few months. As always, please contact me if you have any thoughts or concerns about issues before the PRC or if we can assist you in resolving a complaint related to utility or telephone services, commercial motor transportation, or insurance.

In this update:

[Propane Regulation](#)

[Qwest Regulatory Orders and Legislation](#)

[Renewable Energy Update](#)

[PNM Electric Rates](#)

Propane Regulation

A new law from 2009 gives the PRC authority to issue rules to protect propane consumers' rights. The PRC held a series of workshops with representatives from consumer groups and the propane delivery industry. The draft rules that have been proposed by the workshop participants would require propane dealers to provide price lists on request, clearly indicate charges on bills and delivery tickets, and offer budget payment plans. The rules also provide that propane consumers will be able use the PRC's Consumer Relations Division to register and resolve complaints. The PRC has begun accepting complaints in advance of the issuance of final rules; anyone with a complaint related to propane can call the PRC at 1-888-4-ASKPRC.

Qwest Regulatory Orders and Legislation

In December, the Commission adopted – over my dissent – our newest three-year regulatory order for Qwest. This order, known as “AFOR III,” has many positive aspects, including a continuation of strict quality of service requirements on the company, enforced by substantial customer credits. However, the Commission majority also authorized Qwest to raise its rates for basic residential and basic business local exchange service by an arbitrary and excessive amount: \$3.00 over the next three years, and also allowed rates for other services to go up by more than the expected rate of inflation. (In the first phase, basic rates will go up by \$1 this month.)

The AFOR III order finds that Qwest should be required to invest in certain parts of its New Mexico telecom infrastructure. I shared the majority's goals in this area, but the AFOR III order is written too vaguely to hold Qwest to any specific level of investment in important areas. From past experience with Qwest, we know that left to their own devices, the company will invest as little as possible in our state. Because of this, defined metrics for investment are a must. In the one investment area where the PRC's final order states a specific target, rural DSL, the Commission is at extreme risk of being stopped in its tracks due to federal preemption. I argued for remanding the investment piece back to our hearing examiner for the development of a workable plan.

My other main objection was to the majority's carrying forward into AFOR III a seriously flawed decision from earlier in the year that opened the door to predatory price squeezes against Qwest's small N.M.-based competitors. But I also would have changed the majority's order in a couple of places to relax some regulatory burdens on Qwest.

Legislation

In the 2009, bills sponsored by Qwest were narrowly defeated by pro-consumer legislators. Qwest will reintroduce these bills again this year, with the support of some interim legislative committees. This year's version of Qwest's **deregulation bill** would require complete deregulation of Qwest throughout the state if the company could demonstrate that it faced effective competition in at least 50% of the state. The biggest risk here is to rural areas, which are likely to stay Qwest monopolies, regardless of how competitive the markets get in Albuquerque and other metro areas like Cruces. If the bill was adopted, Qwest would be required to offer the same prices throughout the state, but there would be nothing to stop the company from drastically reducing its commitment to service quality and investment in the non-competitive areas. Qwest, with the partner Windstream, is also bringing back its **facility relocation cost recovery bill**, which is essentially an unjustified rate increase for the company. Attorney General King joins me in opposing both pieces of Qwest legislation. I pray that the Governor will not allow legislation whose sole purpose it to increase one or two companies profits onto "the call" for the 2010 session, at a time when the Legislature needs to be focused on our state's severe fiscal crisis, not to mention the many New Mexico citizens and businesses are struggling with unemployment and recession.

Renewable Energy

Third Party Ownership Declaratory Order

In December, the PRC issued an order allowing third-party ownership of customer-sited renewable generation in New Mexico. On a 4 – 1 vote, the Commission adopted an order that I drafted finding that third-party owners of renewable generation are not public utilities within the meaning of New Mexico law, since they were only a source of supplemental electricity. This result was supported by the renewable energy industry, environmental groups, the Cities of Santa Fe and Las Cruces, many members of the Legislature, and the Governor's Office. PNM, El Paso Electric, and the PRC Utility Division took the opposite position, that third-party owners of renewable energy were seeking to provide a service that was reserved to regulated public utility companies. (For an explanation of third-party arrangements, see page 4 of this backgrounder <http://jasonmarks.com/energy/pnmrpp09.pdf>.)

My understanding is that PNM and EPE will appeal the PRC's order to the N.M. Supreme Court. I believe that the legal rationale in the PRC's order is consistent with the court's precedent and will be upheld; however, developers and customers are unlikely to move forward with third-party owned projects while the appeal is pending. It is in both sides' interest to come up compromise legislation to amend the Public Utility Act and get the issue resolved in the next 6 weeks.

Renewable Energy Procurement Plans

In December, the PRC approved, with some modifications, the annual procurement plans from PNM, EPE, and SPS. The more controversial aspects of PNM's plan that were related to

distributed solar programs were pulled back and will be re-filed later this month based on a negotiated settlement the company achieved with several of the renewable energy industry interveners. SPS will also be filing a supplemental plan for a large solar contract that was just signed.

The most significant aspect of the PNM plan the PRC approved last month was to grant authorization for PNM to contract with one or more biogas plants at a standard price indexed to the spot price for natural gas.

In approving EPE's plan, the PRC approved the company's request to certify all 92 MW of its planned solar thermal plant in Santa Teresa as eligible for ratepayer cost recovery when the plant comes online in 2011 (last year, the Commission granted EPE approval to include 60 MW in its rates). The Commission also approved a modest reduction to the incentive rate for new residential-scale customer-owned solar PV, partly reflecting reduction in cost for PV panels, while approving a commercial-scale incentive program for the first time in EPE's territory. On my motion, the Commission also ordered EPE to allow customers to transfer their existing incentive contracts – and existing incentive rates –if they sell the property on which the renewable system is situated.

PNM Electric Rates

Error Caught Saving Albuquerque Ratepayers \$81,000

A PNM rate rider to recover excess costs for an underground distribution line was reduced \$81,563 from what the company originally requested after I discovered an error in the company's application. In July, PNM filed with the PRC to recover \$115,744 from its customers within Albuquerque city limits, the amount by which actual construction costs for an underground line exceeded pre-construction estimates already approved by the PRC. The company originally attributed the cost over-run to inflation while the project was waiting to get regulatory approvals from the City of Albuquerque and the PRC. However, as a result of my persistent questioning based on my own analysis of the filings, it was eventually determined that most of the over-run, \$81,563, was the result of PNM using more expensive (and unnecessary) copper cable, instead of the aluminum cable specified in the original engineering.

PNM refilled a corrected rider with the PRC in September to recover only the \$34,180 of excess costs that were properly incurred. The new, corrected rates (\$0.05 for a residential customer) went into effect for November, 2009 and lasted for two months.

(By PRC Order, when a municipality requires distribution lines to be placed underground for reasons other than health or safety; i.e., for aesthetic reasons, the additional costs due to locating the lines underground may be recovered through a rider assessed only on customers within the boundaries of the municipality. This particular distribution project was constructed in the Unser Blvd. area of NW Albuquerque. When actual amounts collected under an undergrounding rider or construction costs vary significantly from estimates, they are to be trued-up.)

PNM Electric Rate Case

In May 2009, the Commission approved a proposed settlement of PNM's application for an 18% rate increase. Under the approved settlement, which the Commission adopted on a 3 – 2

vote on May 28, rates for residential and small commercial customers (general power) went up by 4.6% in July, with another 5.1% coming this April. Although residential and small commercial rates go up by a total of 9.7%, large commercial and industrial customers will see 0% or 1% increases. **I did not believe the allocation of the rate increase to the customer classes was fair, and I voted against the order approving the settlement.** Commissioner Block also voted no.

The largest factor behind the new rate increase, which follows the previous increase by only a year, is load growth and the resulting need to bring on new generation plants. Power from new plants is much more expensive than the average cost of electric supply on the PNM system, which is brought down by the presence of plants built in the 1970s and now mostly paid off. PNM also sought to recover costs incurred to clean up emissions at its San Juan coal plant, and general increases in their costs of equipment and materials. Fuel costs have declined from the projections used to set last year's rates, and this (and an SO2 credit mechanism) served to offset some of the non-fuel cost increases.

As mentioned, the rate case was partly driven by resource additions. These additions were the subject of a concurrent case that also had a stipulated settlement – and also approved over my opposing vote. Resource additions were as follows: Conversion of PNM's lease interest for a 30 MW chunk of the capacity of the Palo Verde nuclear into an ownership interest; approval of power purchase agreement (PPA) PNM entered into for a new gas fired plant in Valencia County; and the conversion of PNM's two remaining unregulated merchant plants, Luna and Lordsburg, to regulated assets whose capital costs are paid by customers.

The big problem with the resource agreement is that it results in expensive, excess capacity for the next few years, while undercutting our state policy of energy efficiency. Evidence I used at the April 8 Hearing demonstrated that PNM's electricity demand through 2016 could be met with pre-existing sources, plus the Valencia PPA, and the Luna plant. The 80 MW Lordsburg peaker plant, which will cost ratepayers almost \$10 million, is not needed.

Energy efficiency and demand-response, which are the lowest cost means of reducing greenhouse gas emissions in the electricity sector, are also – in theory – cost savers to all consumers because they eliminate or defer the need for expensive new generating plants. In practice, our programs worked to defer the need for a Lordsburg type plant until at least 2016, but we bought it anyway.

A more detailed version of my statement on the 2009 electric rate case can be found at www.jasonmarks.com and also on the PRC website, on the "Commissioner Marks" page.