

**MINUTES OF THE OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
February 14, 2019**

TIME: 3:00 p. m.

**PLACE: PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fé, New Mexico 87501**

This emergency meeting was called to order at 3:17 p.m. on the above date.

A quorum was present as follows:

Members Present:

Commissioner Theresa Becenti Aguilar, Chairperson
Commissioner Valerie Espinoza, Vice-Chairperson
Commissioner Jefferson Byrd, District 2
Commissioner Stephen Fischmann, District 5 [telephonically]
Commissioner Cynthia B. Hall, District 1

Members Absent:

None.

General Counsel Present:

Michael Smith, Acting General Counsel

The minutes of this meeting are transcribed verbatim as follow:

Chair Becenti Aguilar - Commissioner Fischmann are you on the line?

Commissioner Fischmann - Yes, I am.

Chair Becenti Aguilar - Okay, this afternoon we wanted to revisit the actions that occurred yesterday during the open meetings, which is the clean energy securitization provisions of Senate Bill 489. And we decided, a few Commissioners, there's three of us, that maybe it's best that we call an emergency meeting.

So, I will derive the instructions to our General Counsel about holding an emergency meeting and then we will proceed from there.

Commissioner Fischmann - Okay.

Mr. Smith - Madam Chair, Commissioners, my understanding was that the Commissioners were concerned about a... instruction to enter into a contract with Saber Partners, and the fact that Saber Partners would be performing services on behalf of the Commission before an actual contract was negotiated and drafted and...

Commissioner Fischmann - This is Steve, I cannot hear Mike, if that's...

Mr. Smith - Sorry, my mic was not on. Sorry. My understand - the Commission has expressed to me the desire to bring this before a meeting because there was an instruction that the Commission passed on at the last open meeting for a contract to be negotiated with Saber Partners on behalf of the Commission. And Saber Partners was actually had indicated would be performing services on behalf of the Commission before the contract was actually negotiated.

It's my understanding the Commission did not want to put Saber Partners in the position of doing services that it would not receive compensation for because the Commission as a whole has not voted on it and they do not intend to vote to approve a contract. I am going to... and that would provide the basis, under the Open Meeting Act for an emergency meeting in... to prevent harm to a person and to prevent financial loss to the Commission.

It is my understanding from the representative of Saber Partners that they do not have an interest at this time in performing any further services under this contract. So, this... a vote may not be necessary to confirm that but...

Commissioner Espinoza - Madam Chair...

Chair Becenti Aguilar - Vice Chair,

Commissioner Espinoza - ... you just said *at this time* they may not have an interest. You just disclosed that... I just learned that for the first time, or the hearing that they are not interested is that right? At this time, or just at all?

Mr. Smith - Madam Chair, Commissioners, my understanding is, as I said, there is no contract in place. The contract had not yet been negotiated.

Commissioner Espinoza - Yet it had been gone over the last year without a contract, but yeah, I just wanted to know if your discussion with the gentleman earlier Mr. Joseph ...

Mr. Smith - Fichera.

Commissioner Espinoza - Fichera, was indeed that he is not interested - you said at this time. Did you mean just, he's just not interested in pursuing it?

Mr. Smith - I - they no longer have an interest in pursuing this.

Commissioner Espinoza - There you go. Okay. Thank you, Madam Chair. Thank you, Mr. Smith.

Commissioner Hall - So, a vote is not necessary.

Mr. Smith - I don't believe so. If they have no interest, then there's, and they've disclaimed any interest in doing this, then I do not believe the Commission has to vote on it.

Commissioner Espinoza - We don't have to, but the intention... They voted on it yesterday, Madam Chair, but if you don't think that we need to vote on it...

Mr. Smith - No, and Madam Chair as I even advised the Commissioners yesterday, there was no contract to vote on. So, it was not necessary to vote.

Chair Becenti Aguilar - Clarification, Mike. Yesterday we came across a contract that was brought before the Commission to which was not noticed on the open meetings agenda. And just to make sure that we are in line and we have a paper trail, I think it's best that we vote on this today just to cover any more confusion down the road.

Commissioner Espinoza - I'll go along with that Madam Chair.

Chair Becenti Aguilar - Because things can turn around within 24 hours and that's what I'm learning as we're going through this process.

Commissioner Espinoza - I'll go ahead and make a motion Madam Chair, that any action that was taken yesterday at our public meeting, any action that was assumed based on three people that were remaining in the room, Commissioner Byrd, Commissioner Hall and Commissioner Fischmann. Anything that was, like I said, assumed any vote that may have been taken was without the Chair or the Vice Chair. It's my understanding that Commissioner Byrd... I listened to the audio and I think only two Commissioners voted and that was Commissioner Fischmann and Commissioner Hall. I didn't hear the third vote go through to be calculated and that was Byrd, and so I only heard two votes.

Commissioner Espinoza - But just to clear the record to undo any concerns that happened yesterday, I would like to make that a motion that we acknowledge

that they're not interested and we acknowledge that we are not either in paying \$50,000 - whatever the amount may have been. So...

Chair Becenti Aguilar - Vice Chair, Vice Chair Espinoza, I want to make it clear that it's Saber Partners that we are referring to, and I will second that motion that we no longer am...this Commission will no longer do business with Saber Partners from this day forward.

Commissioner Espinoza - Thank you, so all we need is...

Chair Becenti Aguilar - That was a second. Any discussion? Questions?

Commissioner Fischmann - Yes, that's right - this is Steve. When we say no longer do business with them from this day forward - I am perfectly happy saying we don't want to do business with them. I am not quite sure when you say this day forward that we would never consider it in the future. Is that what we're saying?

Chair Becenti Aguilar - Well, the next time, if there is any partnership that needs to be established with an outside entity, outside of the agency of the PRC, it should be noticed in the open meetings agenda. It should be shared with the General Counsel beforehand. It should be shared with all the Commissioners beforehand. Not something that is slipped in between the folders and then a vote at the very end. That is not the right thing to do.

Commissioner Fischmann - Okay. Now, I understand what you are saying there. But you know, if at some time, my point would be if at some time we do decide we need some help from some outside expertise, do we want to shut the door to Saber Partners forever? Is that what your motion is? Or is the motion to just say we're not doing it and we don't have any intention to do it at this time, but not permanently shut the door.

Chair Becenti Aguilar - Well, I am going to defer the question to Vice Chair Espinoza.

Commissioner Espinoza - Madam Chair, Commissioner Fischmann, it's apparent you do want to continue to have a dialogue. And at this time, I do believe there is a huge conflict of interest. I didn't want to have to go into detail but there's a huge conflict of interest first of all because this company has a vested interest in this type of business and also has a contract or works for NRRI, and they've also - we also have in our code of conduct - I'm not sure you signed this year. You must have, you must have signed our code of conduct, but there is prohibited bidding that occurs within this organization that states that no state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualification or evaluation

criteria in which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

Commissioner Espinoza - Furthermore, it is evident, based on emails from this gentleman, and for the record I will turn them in for the record, he's been working with Commissioner Jones' assistant, Mr. Hirasuna and Commissioner Hall and Cydney for over a year, as it was mentioned publicly yesterday in the open meeting.

So, I do believe there's a huge conflict here and so it's up to your discretion. I wouldn't require of the Chair to, to force her to say one way or the other if we will or will not do business. It's a personal, individual situation if you want to continue your dialogue that you feel free to go ahead and do that. But as a Commission, I don't think we have to answer that question.

Thank you, Madam Chair.

Commissioner Hall - Madam Chair.

Chair Becenti Aguilar - Commissioner Hall.

Commissioner Hall - Well, I'm going to have to respond to that. There is no conflict of interest. There was not that language that was just quoted by the Commissioner...

Commissioner Fischmann - Commissioner Hall, this is Steve. I... maybe your mic is not on. I cannot hear you.

Commissioner Hall - Oh, alright. I'll start over. I need to respond to what Commissioner Espinoza said. There is no conflict of interest because the language she referred to had to do with creating the criteria for selection. None of that happened. What we were working on with Mr. Fichera for over a year was substantive matters pertaining to how to protect consumer interest and had nothing to do with selection.

As we...as was mentioned by Commissioner Fischmann yesterday after the Vice Chair and the Chair left the room, was that unfortunately, we were in a time crunch because of the speed with which the Senate Bill 489 was moving. And there was never any intention of doing anything sneaky; it wasn't sneaky. Everything has been above board. We've ... It's been common knowledge that we've been working with Mr. Fichera and there ... And besides, Mr. Fichera's understanding was, and I believe it was true, that this committee, this

Commission has been informed that they were a potential candidate. So, a potential entity to hire because there are so few, there's only really one other entity in the country that can provide these services.

Commissioner Hall - So, there was nothing under the counter about this at all. Nothing was done in order to sneak him in. There could be no sneaking in because we are all right here listening to everything that's been said.

So, and the unfortunate thing, which is collateral damage to our actions yesterday, is that this sort of thing can be damaging to the reputation of Mr. Fichera who has provided free services for 15 months as a business development practice. Many companies do that sort of thing, but to be treated this way, as if he has done something wrong, damages his professional reputation in a way that we are not in a position to repair.

So, I think there's been a misunderstanding and there's been, frankly, insufficient communication among the members of the Commission if they had some concerns. It should have been something where, rather than leaving the room, the Commissioners should have remained and so we could talk about it. That's what I believe. I think that was our shortcoming and I think it is a learning experience. We will learn more as we go on. But we are failing as a Commission if we don't even stay and discuss matters that are matters of our concern.

So, I think I would like to follow General Counsel's view and advice that a vote is not necessary. But I don't expect that's the way the votes will fall. We'll see.

Commissioner Espinoza - And once you are done, Madam Chair, I would like...

Chair Becenti Aguilar - Vice Chair Espinoza.

Commissioner Espinoza - So, I counter what you have said about a bid or proposal. It was recommended that we submit a bid by next Wednesday, and that's also on the record. I left. I had to pick up my granddaughter. And the only one doing the talking yesterday, which consumed our entire day, was... You know our time is allotted for ratepayer business and for business of the public. Yesterday we consumed most of our day discussing this bill, this contract, and I beg to differ. It was a contract and it was a proposal, and me, individually did not, I did not know that that was the whole intention of this visit. I had no idea that they were here to ask for a contract or money or anything.

Commissioner Espinoza - So when you say this Commission knew - I am going to turn in everything I have to the public, I mean to Melanie, to Records, to show what I knew and what I did not know. I am telling you that I did not know that was the

intention of yesterday's meeting.

And furthermore, you used the word "sneaky" three times so maybe that's your assumption, maybe that's your thought process or feeling about this whole thing.

Commissioner Espinoza - The process was done unfairly. We have qualified competent staff. You insulted them yesterday. So, don't worry about me insulting you by walking out. You insulted our staff to say they don't have the technical expertise. And I know that this collaboration has been working behind closed doors for over a year now because you just said it, and Commissioner Fischmann...

Commissioner Hall- [speaking simultaneously] (inaudible) ... Commissioner stop directing personal attacks on me...

Commissioner Espinoza - [speaking simultaneously] Commissioner Fischmann ... No, I'm not done. And Commissioner Fischmann...

Commissioner Hall - [speaking simultaneously] (inaudible) ... and stop directing personal attacks to me...that's

Commissioner Espinoza - [speaking simultaneously] and Commissioner Fischmann said the same thing yesterday and is all on record...

Commissioner Hall - [speaking simultaneously] don't insult the reputation of this Commission.

Commissioner Espinoza - The reputation is damaged.

Chair Becenti Aguilar - Let's proceed. I, because of these type of actions that are occurring from time to time, it's best to put on the record that there was a vote taken.

Did you have anything to say Commissioner Fischmann?

Commissioner Fischmann - Madam Chair, yeah. I wanted to just say a couple of things. One is, in retrospect, I completely understand how you feel about this and I want to apologize that this was kind of sprung on you. And you know, you are absolutely correct, this stuff should be noticed.

Commissioner Fischmann - I saw an issue that I wanted to move forward on. There was time pressure, and so I apologize. I think that clearly there's a process. Clearly, you guys felt like it was sprung on you. And I have to own up to... Hey, I just hadn't thought it through and was probably jumping the gun.

So, I just want to acknowledge that I completely understand your concerns and your arguments. I would say that it was not my intention to shove it down anyone's throat or, you know, circumvent the process. So, I just wanted to get it out there and let you know that I completely understand where you're coming from. So, I'll just leave it at that.

Chair Becenti Aguilar - Thank you Commissioner Fischmann.

Commissioner Hall - Madam Chair.

Chair Becenti Aguilar - Commissioner Hall, I think we're going to go ahead and vote because I think the opportunity was given for you to indicate what your feelings are and how you want to move forward on this, unless you have forgotten, if you left something out with your first comment.

Commissioner Hall - Well, I simply wanted to say in connection with taking an action it was not noticed, I do apologize for that, too. That was an error. We should not have acted without a notice.

Chair Becenti Aguilar - your apologies are accepted.

Commissioner Espinoza - we need to vote, Michael.

Mr. Smith - Madam Chair, I just wanted to clarify that with regard to noticing, the presentation was noticed on the open meeting as a presentation. I,,,

Chair Becenti Aguilar - It's presentation only.

Mr. Smith - Correct. Madam Chair, my understanding was that it was clear from the documents that were submitted to you, that this was a firm that was presenting its expertise...

Commissioner Espinoza - [speaking simultaneously] May I speak?

Mr. Smith - ...its expertise for the use of the Commission. The bill that is currently floated, the 489 Bill, does not at this time actually provide for the use of the services that the Saber Partners was offering. The other bill does, I understand have some room in there for those services. My understanding was that was going to be something that the Commission would be considering.

I don't believe that there was... the Commission's decision that it made yesterday, that it would like to retain the services of Saber Partners for purposes

of responding to the legislative activities before the bill was passed in any way. That violates any kind of bidding provisions under the statute, or anything of that nature. I don't think there was anything untoward about it. I would have said something to you if I did think something was untoward about it. I would have said something to you if I did think something was untoward about it, and I did correct, when the Commission moved to vote, to try and do... to move forward on a contract. I did point out that there was no contract at this time. And that the Commission then... we were proceeding under the basis that we would negotiate some sort of contract for services with Saber Partners and it would be brought back to the Commission the following week.

So, there was... I do not believe that there was any unlawful action, improper action, or improper behavior by any of the parties. This is how people get business. They come forward, they put their expertise forward to the Commission and the Commission can consider it and decide whether they want their services.

Chair Becenti Aguilar - The other part, Michael, is that they went beyond 10-minute public comment. For presentations, is there a limit as well?

Mr. Smith - No, there isn't, the public...the three minute for public comment does not apply.

Chair Becenti Aguilar - okay. Okay.

Commissioner Espinoza - But we typically apply the 10-minute rule to all presenters.

Commissioner Hall - Oh, I see many that go on. It depends on the pleasure of the Commission.

Commissioner Espinoza - Madam Chair, but just to reflect on what you've just said, you don't see anything inappropriate? Maybe you don't, but I see the way it was handled and has been handled over the years. Over the last year, and only certain individuals involved in this, and same with the bill - working on a bill. And then maybe a couple of Commissioners working on that to potentially bring them back.

Commissioner Espinoza - So, I just ... I find it a huge conflict, in my opinion. Maybe you do not see anything wrong; I see everything wrong with this. So, it's just unfair, unfortunate that it had to happen that way.

Thank you, Madam Chair.

Chair Becenti Aguilar - Okay, there's a motion on the floor and I second the motion.
All those in favor say aye.

Chair Becenti Aguilar, Commissioner Fischmann, Commissioner Byrd and Commission
Espinoza - Aye

Commissioner Hall - No.

Chair Becenti Aguilar - 4 in favor, one opposed.


And this will end the emergency meeting for today, February 14, 2019.

Thank you.

ADJOURNMENT

The emergency meeting ended at 3:38 p.m.

ATTEST:

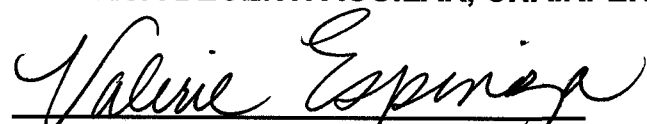


Carl Boaz, Stenographer

APPROVED: September 25, 2019



THERESA BECENTI AGUILAR, CHAIRPERSON



VALERIE ESPINOZA, VICE CHAIRPERSON

TELEPHONICALLY APPROVED

CYNTHIA B. HALL, COMMISSIONER



JEFFERSON BYRD, COMMISSIONER



STEPHEN FISCHMANN, COMMISSIONER