

**MINUTES OF THE
CASE MANAGEMENT OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 10, 2019**

TIME: 10:04 a. m.

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

A quorum was present as follows:

Members Present:

Commissioner Theresa Becenti Aguilar, Chairperson
Commissioner Valerie Espinoza, Vice-Chairperson
Commissioner Jefferson Byrd
Commissioner Stephen Fischmann
Commissioner Cynthia B. Hall

Members Absent:

Staff Present:

Ernest D. Archuleta, Chief of Staff
Michael Smith, Acting General Counsel
Judith Amer, Associate General Counsel
Russell Fisk, Associate General Counsel
David Black, Associate General Counsel
Cydney Beadles, Legal Division Director

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Case Management Open Meeting was scheduled at 10:00 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(c), and the Commission's Open Meeting Policy. Commissioner Cynthia Hall (previously the Vice-Chair) called the Case Management Open Meeting to order at 10:04 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

A copy of the sign-in sheet for the Case Management Open Meeting is incorporated herewith to these minutes as Exhibit 1.

A copy of the Agenda for the Case Management Open meeting is incorporated herewith to these minutes as Exhibit 2.

A copy of the Public Comment sign-in sheet for the Case Management Open Meeting is incorporated herewith to these minutes as Exhibit 3.

1. PLEDGE OF ALLEGIANCE/STATE PLEDGE

The Pledge of Allegiance and State Salute to the Flag were recited.

2. INTRODUCTION OF SPECIAL GUESTS

There were no introductions.

3. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Espinoza asked about the orientation (item #8). She had anticipated orientation for all commissioners, but this agenda ended up being fuller than normal. She asked if Mr. Smith could cover ex parte earlier.

Mr. Smith suggested scheduling a special meeting so it would not take up the public's time now.

Commissioner Hall agreed and thought it wise to put the ex parte toward the end of the agenda.

Commissioners Byrd, Becenti Aguilar, and Fischmann agreed.

Commissioner Espinoza moved, seconded by Commissioner Byrd, to approve the agenda as amended. The motion passed on a unanimous 5-0 voice vote.

4. ELECTION OF NEW CHAIRMAN AND VICE-CHAIRMAN **Pursuant to NMSA 1978, Section 8-8-3(b)**

Commissioner Espinoza nominated Commissioner Becenti Aguilar as Chair.

There were no other nominations.

Commissioner Espinoza moved, seconded by Commissioner Byrd, to elect Commissioner Becenti Aguilar Chair of the Commission for 2019. The motion was approved on a unanimous 5-0 voice vote.

Commissioner Fischmann/ moved, seconded by Chair Becenti Aguilar, to elect Commissioner Espinoza as Vice-Chair. The motion was approved on a unanimous 5-0 voice vote.

Chair Becenti Aguilar chaired the remainder of the meeting.

5. INTRODUCTION OF NEW COMMISSIONERS AND OPENING REMARKS FROM NEW COMMISSIONERS

Chair Becenti Aguilar thanked her colleagues for selecting her as Chair to look at all the cases for people in New Mexico. She looked forward to working together in a professional manner. The PRC is so much needed presently.

Commissioner Fischmann said, "I'm honored to be serving with all of you. We have a revolution for the next ten years in the energy sector and it will change lives. I've got two passions here. One is poverty and our decisions need to reflect that issue. The second is environment. We can make money and still be good stewards of the planet. Good environment policy can be a great economic policy, too. And I hope we can achieve that. Broadband to the underserved communities is also important.

Finally, I hope we can all bring a new era of openness and trust with things out on the table and make an effort to understand where people are coming from. We can assume mistakenly where someone is coming from and need to treat everyone fairly and utilities too.

Commissioner Byrd said, "Thanks for allowing me to go second. I have a fairly extensive knowledge in many areas of regulation as an environmental engineer and understand a lot of what will be brought to the table. I really look forward to the opportunity and my door is open. Some people, we cannot talk with and I will pass that to General Counsel.

Commissioner Espinoza said, "We have a full house today and I would like to see that each time we meet. Things have gotten broken and we need to address them. I've been here six years. I show up and I speak up. I like to take action. I'm also passionate about serving and being fair to both utilities and consumers. I hope we can all work across the districts. We represent the State. We have had issues in the past like AV Water and we all need clean water. I serve the entire State and I am still learning, if I stick my foot in my mouth. I have two degrees and I supported the amendment for a

degree for the law (requirement) but also to have an interest in serving the public. Thank you.

Commissioner Hall said, "I echo those comments. Becoming a Commissioner and understanding the problems is a challenge every day. I share the same passion for the environment, like Commissioner Fischmann. We must make policies and decisions on energy matters to protect our environment and balancing the interests of providers and consumers. I'm delighted with the caliber of the people sitting here and together we can really go forward. I'm honored to be here and looking forward to our work.

Chair Becenti Aguilar thanked the entire Staff starting with General Counsel. They meet deadlines each week without all positions filled and we will concentrate on that. Thanks to Mr. Archuleta and I hope we can all work together for everything that is important and think about every family that will be assisted with the work we do here. There are so many important issues and we can't do them without the help of the Staff.

6. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Case Management Open Meeting for December 5, 2018**

Commissioner Hall shared some minor changes she had requested.

Mr. Smith said his copy incorporated those changes already.

Commissioner Hall moved, seconded by Commissioner Espinoza to approve the minutes of December 5, 2018 as it had been amended. The motion passed on a unanimous (5-0) voice vote.

7. POLICY MATTERS

- **Adoption of Annual Open Meeting Policy and Notice for 2019**

Mr. Smith said the Commission is required by the Open Meetings Act to adopt an annual policy each year. The proposed policy is identical to last year's policy. It provides that the Open Case Management meetings will convene at 9:30 a.m., unless offices are closed or a delay is imposed, and in those cases, the meeting begins at 10 a.m. With cancellation of meetings by Governor, the open meeting for that day will be automatically canceled. Notice is posted at least 72 hours before the meeting. So, PRC Staff post the meeting agenda on Friday afternoon as a buffer to correct errors over the weekend. Items may be placed on the agenda only at the request of any Commissioner, General Counsel or Chief of Staff. Mr. Smith read the other provisions

contained in the policy for the benefit of the new Commissioners and asked for questions.

Commissioner Byrd asked about the situation that occurred yesterday with lack of potential quorum.

Mr. Smith said that will be covered in the orientation. A group of commissioners may be present at another event where you are not meeting to formulate policy or act. The mere fact that three Commissioners may show up at the same time is not an open meeting. If you did get together and discuss business, it would constitute an open meeting. He did publish a possible quorum notice to cover yesterday.

Commissioner Byrd thanked him. He understood that but just wanted to make sure it is clear in the policy.

Mr. Smith clarified that this is the initial adoption of policy and the Commission can revise it during the year.

Commissioner Espinoza moved, seconded by Commissioner Hall, to adopt the Open Meeting Policy as proposed. The motion was approved on a unanimous 5-0 voice vote.

Commissioner Espinoza said each Commissioner needs to fill out a new disclosure form.

Mr. Archuleta agreed to get the disclosure form to all Commissioners.

- **Adoption of Annual Commissioner Code of Conduct Policy for 2019**

Chair Becenti Aguilar pointed out that the- signature page had the previous commissioners listed.

Mr. Smith agreed to correct that.

- **Delegation of Authority Letter for State Records Filings**

Commissioner Espinoza moved, seconded by Commissioner Byrd, to approve the Annual Open Meeting Policy and Notice for 2019, the Annual Commissioner Code of Conduct Policy for 2019, and the Delegation of Authority Letter for State Records Filings as proposed. The motion to approve the policy passed by unanimous (5-0) voice vote.

8. ORIENTATION DISCUSSION REGARDING STATUTES, RULES AND POLICIES COVERING OPERATION OF PUBLIC REGULATION COMMISSION (General Counsel)

This item was postponed to a special meeting under Approval of Agenda.

9. CONSENT ACTION

A. Transportation Matters:

None.

B. Utility Matters:

None.

10. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

None.

B. Utility Matters:

- 1) 18-00243-UT **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF A 345 KV TRANSMISSION LINE AND ASSOCIATED FACILITIES PURSUANT TO THE PUBLIC UTILITY ACT**
(Judith Amer) **POTENTIAL ORDER ON JANUARY 16, 2019 HEARING**

Ms. Amer said this matter comes on the August 10, 2018 application of PNM seeking approval of the BB-2 Project to grant CCN and determination of ratemaking principles that will apply; location of transmission line and ROW greater than 100 feet. In this matter, the Commission must issue a final determination no later than February 10, 2019, per the PUA. It is scheduled for hearing next Wednesday before the Commission with an order no later than the February 10 Open Meeting.

Ms. Amer reviewed the background of the case in which the location is parallel with a portion called the BB-1 line, north of Albuquerque to an eastern point near Portales to permit new wind farms to provide up to 362 MW. including the Facebook facility in Los

Lunas and the western markets. The BB-1 line can deliver about 1,000 MW and is already fully subscribed and cannot support more wind farms.

The BB-2 transmission line has four segments. The first is an expansion of Cline Corners switching station. The second segment is construction of 42 Miles of Single-Circuit 345kV Transmission Line; The third segment is construction of the 345kV Diamond Tail Switching Station to tie the existing BB-1 Line together with the new BB-2 Line, located east of Interstate 25 and west of NM State Highway North 14 with a footprint of approximately 25 acres located within a larger area encompassing approximately 40 acres. The fourth segment is construction of three miles of Double-Circuit 345kV Transmission Line from the proposed Diamond Tail Switching Station west to a point of interconnection on the NB 345kV Line.

The Application stated that the transmission line segments will cross approximately 20,000 feet of state-owned land, approximately 217,000 feet of privately-owned land, approximately 273 feet of New Mexico Department of Transportation land, and approximately 270 feet of County of Santa Fe land. The BB2 Project will not cross federal lands.

This line will provide redundancy by having two circuits instead of one. So, in case of an outage, the other will continue up to 1,000 MW. It will provide flexibility for the eastern wind farms which at times will not be at full transmission value. According to the Application, the estimated cost of the BB2 Project is \$85 million, which includes approximately \$3.5 million of Allowance for Funds Used During Construction.

Procedurally, the Commission issued an initial order in September 2018 for a sixty-day protest period ending on November 5, 2018. There was a request for ROW more than 100' so it requires a hearing. A protest was filed by King Ranch in October and they said they got notice that the proposed transmission would cross King Ranch and PNM had not negotiated an agreement and said that the line would unduly impair environment there. King Ranch asserted the important environmental values included current and future land uses; historic, geologic, visual and impairment of premium vistas and impair wildlife. They also said the 150' ROW might not be sufficient, and attached a federal bulletin saying 225 feet would be required.

Testimony was filed which noted in March 2018, the PRC approved a renewable PPA to serve Facebook. The Commission found that the PPA in the BB-2 project was also needed in that case and PNM pointed out that development of renewable energy and delivery to PNM territory is in the public interest and renewable energy to their territory would require the BB-2 line and that the economic benefit is important.

In testimony, PNM did not anticipate without an increase in charges which would transfer some retail costs to wholesale customers. That was supplemental testimony.

On November 5, King Ranch submitted testimony. Mr. King said he opposed placing the transmission line on King Ranch land. He said PNM inappropriately used the leverage process by eminent domain and avoiding its obligation to negotiate with the land owner in good faith. The application doesn't account for the diversity of wildlife and environmental habitat, Mr. King testified.

It also stated in Mr. King's testimony that PNM proposals should have included damages that would occur to the land. He alluded to a report that said the land owner should be compensated for highest and best use.

A motion was filed by Mr. King to extend the hearing date from December 5, and on November 5, 2018, the PRC extended it to January 14, 2019. More possible dates were given. Bill Herrmann was appointed HE for mediation and he filed a report that they met and did not reach agreement.

PNM opposed portions of Mr. King's testimony, specifically those that referred to a Wisconsin report. They also said Mr. King's testimony at times was conjecture and urged the Commission to strike portions of testimony as irrelevant.

On January 9, Staff filed its response to PNM's motion to strike. The procedure would appoint Carolyn Glick as HE for the January hearing. PNM said the striking of testimony should be decided by the HE and King Ranch would need to submit Findings of Fact by January 22 to have a final order on February 6.

Commissioner Espinoza said she would move the order.

Ms. Amer said the Commission can decide whether to have it before or during the open meeting.

Commissioner Byrd commented that it appeared here that a private property owner was not giving permission for this line on his property.

Ms. Amer agreed.

Commissioner Byrd asked if a monetary value had been offered by either party.

Ms. Amer said they worked to negotiate that.

Commissioner Byrd could see that.

Mr. Smith explained that the issue could be discussed but it would ultimately have to be decided in a district court and not by PRC.

Ms. Amer added that as of July 2018, ten private land owners had granted an easement and six had not.

Commissioner Espinoza moved, seconded by Commissioner Hall to hold the hearing after the open meeting.

Chair Becenti Aguilar concluded they would have a short break between.

The motion was approved on a unanimous 5-0 voice vote. So, Ordered.

**2) 18-00293-UT IN THE MATTER OF EL PASO ELECTRIC COMPANY'S 2018
INTEGRATED RESOURCE PLAN FOR NEW MEXICO
(Russell Fisk) POTENTIAL ORDER REGARDING MOTION
FOR RECONSIDERATION**

Mr. Fisk presented information regarding this matter. He said it was before the Commission, on motion for reconsideration by Mr. Simpson, who is present on the bridge. There usually are no questions for the movant but Mr. Fisk asked him to be available by phone anyway.

Mr. Simpson's motion for reconsideration concerns an order issued on December 4, 2018 at the Open Meeting. Hopefully all Commissioners have the memo from Mr. Fisk. He sent his proposed order yesterday.

He said that at the December meeting, the Commission relied on Staff's evaluation of the extent to which the EPE IRP was sufficient or not sufficient under the rules. The IRP sets up a procedure in which the utility files a report every four years on a 20-year IRP. The procedure set up is that within 20 days of filing, any members of the public can criticize or comment and then the company responds to those comments and then PRC Staff has the last word on whether the IRP is deficient under the rule. In the December 5 order, the Commission adopted the findings of Staff that rejected arguments made by the Advisory Group members and of which Mr. Simpson is a member. The deficiency was on information not provided.

The Commission adopted those Findings and ordered EPE to file a new IRP, which EPE did and addressed the deficiency.

Then Mr. Simpson filed the motion for reconsideration. Essentially Mr. Simpson raised a number of issues that Staff comments responded to EPE's filings instead of addressing in detail the issues raised by the Advisory Group. Both in months and months of meeting prior to filing those arguments, the Advisory Group felt EPE should use the Strategist software app. There were arguments that the RFP favored building more gas plants and was not in favor of more renewable energy being created.

Based on the argument, Mr. Simpson said the arguments got condensed and then condensed more to the point it is possibly too condensed. So, he drafted a proposed order that would direct Staff to respond to the statements in more detail. That should be advanced.

The order Mr. Fisk put together would vacate the current schedule under the December 5th order. Then the IRP process would happen again with the motion for reconsideration. It would not make sense to have new comments. So, he recommended a new schedule and would direct Staff to provide specific evaluations and recommendations on all arguments stated in the motion for reconsideration. His order would give Staff until January 31st to do that. But it is proper for the Commission to ask for a preferred date.

He said EPE filed opposition to Mr. Simpson's motion and the letter regarding two other EPE cases. Mr. Simpson also filed a motion that replies to EPE's filing.

Mr. Fisk discussed the motion to reconsider and responses. EPE claims the motion is untimely. With regard to motions for rehearing, that applies a ten-day deadline. In which case Mr. Simpson's motion would be tardy. Mr. Fisk disagreed with that because the rule references an exception in a specific section in the Public Utility Act (PUA).

This motion is a requirement of the Efficient Use of Energy Act and not the PUA and motions for rehearing do not apply. But it is not clear. Mr. Fisk thought it unfair, given that ambiguity, to hold Mr. Simpson to a ten-day deadline.

EPE also raised another procedural objection. The moving parties must reach out to parties to learn their position on it. But Mr. Simpson did not do that in his motion for reconsideration. But that is ordinarily done in contested cases. It doesn't make much sense with IRP filings. He asked the Commission to consider it on its merits.

The December order was a unanimous order that considered the comments. The purpose of the motion is to reconsider the decision of the Commission. It is appropriate for a member of the Advisory Group to come back so the motion is proper and recommended the Commission reject EPE's response. He recommended opposition to the motion to reconsider, so, this time we really need a detailed response.

Chair Becenti Aguilar note the Commission also had a second order and asked if he could clarify that.

Mr. Fisk agreed. OGC started including on the agenda the possible types of orders the Commission might issue. Based upon the AG interpretation of OMA requirements, we tried to describe the nature of the order. It is our best attempt to anticipate what types of orders would come next week. This potential order would be a motion for reconsideration in this matter. It also could grant Mr. Simpson's motion for rehearing, as

a party. And again, no one has intervened. The motion for reconsideration rule says a party can raise it. All of Commission's actions are part of the motion to reconsider.

Commissioner Hall agreed with what Mr. Fisk wanted to do. Since Mr. Simpson represents himself, our practice is that people can be pro se and agreed with his interpretation that the 30-day deadline is available to be used. She also thought it is more in the spirit intended by our rule change that staff provide a fully detailed response in providing final facts to the Commission.

Commissioner Espinoza moved, seconded by Commissioner Hall, to approve the order Mr. Fisk proposed.

Commissioner Fischmann disclosed he was a member of the Advisory Group before he ran for office. He resigned from it when he decided to run for office in December 2017. He asked if he needed to recuse from this vote.

Mr. Smith said the decision belongs to the Commissioner himself. The statutory provision was read, and he clarified that it is a personal decision.

Commissioner Fischmann thanked him. In this case, he would not recuse because this is largely procedural in nature. He shared Commissioner Hall's opinion, when the public takes the time to negotiate these issues, that we should give them every opportunity to hear them. If anyone feels otherwise, he asked them to let him know.

Commissioner Espinoza appreciated his disclosure.

Commissioner Hall thought it is appropriate for him to vote.

Commissioner Byrd supported his decision. We all want to represent everyone equally and it is also fair to point out when one of us do not.

Chair Becenti Aguilar thanked Commissioner Fischmann for the disclosure to use his professionalism in voting on the issue. She also supported him and had no problem with him voting.

Ms. Beadles came forward and said Mr. Fisk is correct. Mr. Solomon said the January 30 deadline is impossible to meet, given the analysis required by Mr. Fisk. It is also unusual.

Mr. Solomon said, for the level of work required on each item that Mr. Simpson raised, the January 31st deadline is almost impossible to meet and recommended March 15, 2019, as the new deadline.

Commissioner Espinoza amended her motion to extend the deadline to March 15, 2019. Commissioner Hall accepted the amendment as friendly.

Commissioner Byrd asked how long it would take for EPE to respond.

Mr. Fisk said for reconsideration, only 13 days. That would not address all of the substantive argument. The motion includes all of the substantive substance of the Advisory Group, so it is perfectly reasonable to ask for the added time.

Commissioner Byrd said his point of view is that the deadline set was reasonable, and he wanted to be fair to our Staff, but also to the company involved. Having an adequate response is important and is why he asked if there is a legal deadline. That is where I'm coming from.

Mr. Fisk said a utility is given 40 days to respond to a written comment. That is quite a bit of time. Those comments were developed over a year's worth of hearings. The date would be March 15. It is a lot of time because the Commission may rely on staff comments for the order. And the arguments were not addressed because we are understaffed. When staff filed a recommendation in December, they also reported for SPS at the same time.

Commissioner Byrd knew that the Staff works very hard. He just wanted to make sure we are evenly handed and not heavy handed.

Commissioner Fischmann thanked the Staff for taking this on. In the submission, there were a lot of questions on the detail. This is a lot of work. Once Staff submits its recommendations and response, if there are any changes they recommend to the IRP, what is the time frame for EPE to respond to that?

Mr. Fisk said there is no time at this point. The rule applies to the original IRP. For the amended IRP, he recommended using that same schedule and give 30 days for EPE to file an amended IRP. If substantive changes are needed, the Commission could give sixty days for that. Some of them had a lengthy litigation. We did the initial order within the 90-day period.

Commissioner Fischmann said EPE just recently made an exciting announcement to build a 100 MW renewable storage by 2022, which is a lot for the first time out. This current projection would have 15 MW storage. And they did good to make that announcement that they are open to storage but is already outstripped in the IRP. That leads to questions whether the IRP gives us the information we need. We should come up with something better that serves the purpose for that 20-year vision. We have had the process but maybe we should review that whole process and not spend time on something to give us something we do not need.

Commissioner Hall concurred with Commissioner Fischmann's comment that the pace of technology is interesting in this case. Coming forward with a storage proposal

indicated to her how rapidly things are changing and how the IRP process can take place. it is becoming very obvious. She thanked the Staff.

The motion to approve with the extension passed on a unanimous 5-0 voice vote. So Ordered.

**3) 18-00099-UT IN THE MATTER OF EL PASO ELECTRIC COMPANY'S
APPLICATION FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR A TWO-MW SOLAR POWER GENERATION
FACILITY AND APPROVAL OF A VOLUNTARY COMMUNITY
SOLAR PROGRAM
(Russell Fisk) POTENTIAL ORDER ON
RECONSIDERATION OF THE COMMISSION'S
DECEMBER 19, 2018 ORDER; POTENTIAL ORDER
DISMISSING APPLICATION WITHOUT PREJUDICE**

Mr. Fisk presented information regarding this matter to the Commission He said it is for reconsideration on Commissioner Espinoza's December 9, 2018 order to order EPE to issue an RFP further extending the statutory period. This was an order that kept this case going in the same docket and extended time for CCN consideration for a community solar program. They did issue the RFP in December 2017. EPE limited it to utility-owned assets. So, it would be built for EPE to own and operate, and the award was to Affordable Solar in 2017. That RFP is no longer operative because of the procedural path.

EPE acknowledged that a new RFP was needed last July and asked permission to withdraw the application. The question was on the scope of the RFP, which is a sticking point with WRA.

Commissioner Espinoza said, even though already filed in the docket, she did not get a fresh copy from WRA. She knew Commissioner Byrd did, and she asked if only certain Commissioners got it.

Mr. Fisk did not know. WRA did not provide a copy to him or contact him. He found out about it in a document left on Chair Becenti Aguilar's desk. It was a WRA application filed on November 1, 2018 and granted by the Commission.

Chair Becenti Aguilar said it happened yesterday afternoon, when she had stepped away from her office, and it appeared on her assistant's desk.

Commissioner Byrd said when he came in at six a.m., his office was open, and he found it on his desk.

Chair Becenti Aguilar asked Mr. Archuleta to find out why our offices are left open after 5:00 in the evening.

Commissioner Espinoza said she didn't get it and wondered why others got it.

Commissioner Byrd asked if it would be responsible to ask if the person was here now.

Mr. Steve Michel, from WRA, came forward. He said about the document, there were two commissioners who are continuing and three new Commissioners. He knew Commissioner Espinoza and Commissioner Hall had that motion two months ago. He saw this was on the docket and was not dismissed. "We already filed testimony in this case, and it was just an attempt to familiarize the new Commissioners with it. I know Commissioner Espinoza was well aware of it."

Commissioner Fischmann said he did not get a copy of it.

Mr. Michel said he had not had a chance to deliver it to Commissioner Fischmann yet.

Mr. Smith said he has cautioned other parties against this activity, whether it is in the record or not without putting the parties on notice that it is being done. It can be done by mail to all the parties.

Mr. Fisk said there was oral argument by the parties opposed to this. NEE, Mary Lee Soules, City of Las Cruces - the arguments were made well in the transcript. Chuck Noble argued well, and the transcript can be read. That is a place to see all arguments on both sides.

Mr. Michel agreed with that. He noted that other parties have taken a position on whether it should be dismissed or not and urged all Commissioners to consider that.

Commissioner Byrd reinforced to what Mr. Smith said. Some things we are not allowed to see, and a case could end up being compromised and have to recuse ourselves.

Mr. Fisk continued his presentation EPE wanted to go forward in the same docket One RFP includes a PPA which would allow for cheaper energy and one stated goal is to help low income ratepayers. On December 19, there were two orders - one by Commissioner Hall and one by Commissioner Jones that opposed Commissioner Hall's order, which essentially, along the line of what EPE wanted to do. Commissioner Espinoza voted for both orders and asked him to place it on the agenda. The order she proposed would amend Commissioner Hall's order, to reconsider the December 19 order and the proposed order would state that it be reconsidered, dismiss the application without prejudice and ask EPE to expand the RFP.

Mr. Fisk recommended that order. He spoke to the HE who did not think there would be enough time otherwise.

Newspaper notices would have to be filed and a sixty-day protest period and public hearings scheduled. So, he recommend it be dismissed without prejudice. This order requires EPE to refile the application.

Commissioner Espinoza asked if this is the same one that EPE agreed to come back with.

Mr. Fisk said they agreed to a new RFP because the one they had was stale and they could probably get a better price. It was not clear if they agreed to expanded scope in the RFP. It a big policy issue. The Commission had denied the expanded scope and said the Commission doesn't have the authority to do that. This would say EPE needs to expand the scope and bring it back. If they are not amenable, they could appeal to the State Supreme Court that the PRC doesn't have the authority. This order says to do the expanded RFP which they may decide to do or not. It would be a very interesting appeal.

Commissioner Hall asked Mr. Fisk if he had knowledge about the impact on this opportunity.

Mr. Fisk agreed. In the briefing before oral argument last year, NEE cited several cases where it was done. To make sure the process is fair to both for utility-owned asset and not. But it had not been imposed on them.

Ms. Carol Clifford informed the Commission that EPE has not been hard.

Another person objected to her speaking on this.

Mr. Smith agree she should not speak. This is here on a motion for reconsideration by a Commissioner so there is not a due process for a party to respond at this time. It can be responded to but not at this time.

Chair Becenti Aguilar agreed with General Counsel.

Mr. Fisk said EPE, in the letter filed on this case, argues they have not had the chance to be heard.

Commissioner Espinoza pointed out that it is already on the record.

Mr. Fisk said it is not an issue because they have been heard. It is not new evidence. The way he drafted the order said the Commission considered the arguments and relies on the oral arguments and testimony - in other words, a voluminous record on both sides. It makes the established record and he referred to

paragraph B as the RFP process for May 9th. Four months should be enough time. At one point last year, the Commission argued that it be done in 30 days. It is proper to ask EPE if that date would work.

Commissioner Hall found it timely to finish the process and allow the parties to do it, so the case needs to be refiled to allow the time for the issues. She also concurred with the previous order that it is important to expand the scope to include the opportunity that exists to have a lower price. So, it would be our duty to consumers to go through with it. She would support Mr. Fisk's motion.

Commissioner Byrd asked if it was okay to ask them now. EPE would have more work to generate. He asked EPE if 120 days would be sufficient.

Ms. Clifford said it would be better to have the company itself advise the Commission on the date.

Mr. Fisk proposed to put "on or before a date to be determined after the filing by EPE."

Commissioner Byrd asked Ms. Clifford if this would require a board consideration.

Mr. James Schichtl (EPE) said yes, to determine how long we need, especially because of contingencies. "For purposes of giving a date, a month is plenty for a response. But we would want to have a program. Give us a month to get back to you in response.

Commissioner Byrd stated, for the record, it would take a month for EPE to get back to the Commission with a response.

Chair Becenti Aguilar understood the company has asked for 30 days to respond as a deadline.

Mr. Fisk did not think the other parties should have a deadline to file.

Commissioner Byrd said the Commission wants accurate and timely information. We are going to work with EPE, and that would go for anybody. Adequate time to form your thoughts is needed. I've had deadlines that are hard to meet. We want to be fair to everyone."

Commissioner Fischmann was inclined to agree with the motion to start afresh. Mr. Fisk said there was two ways to do it. The proposal would force EPE to do the project. Would EPE still be interested in doing a solar project?

Mr. Schichtl said, "Our preference, as you know from the record, we filed a motion to dismiss and the intent was to work with the other parties to develop a program. We set

up a year to file the previous case and that included not just an RFP, but discussion with customers. So, a revised program means a new program. And it took over a year. We have very good indications for such a program. But I have no idea what would be proposed. Filing a voluntary program without knowing what it would look like or if customers would even want to participate makes it a long time. We have a rate case to file in four months."

Commissioner Fischmann said, "I would love having a solar program out there. But we also have a lot on our plates and if we have an order to order you to do, and frankly, the legislature will be dealing with it. And not turn a voluntary program into mandatory program, to have conflicts arise."

Mr. Schichtl asked, if the decision is to dismiss without prejudice, whether it would be that it ends there. "We brought it voluntarily and continue to have the service available. Absent an order, we will solicit customer interest and address the opportunity going forward. There are a lot of other things going on in this space. We will do procurement through PPAs for solar as well, and might include that, so I prefer dismissal without prejudice."

Commissioner Fischmann was open to that if others are also.

Commissioner Espinoza said EPE already agreed to go out for RFP.

Mr. Schichtl agreed but added it was for a company-owned facility.

Commissioner Fischmann moved, seconded Commissioner Hall, to amend the proposed order to dismiss without prejudice with the revised time frame.

Mr. Fisk pointed out that the December 19th order stands unless the Commission reconsiders it.

Commissioner Byrd noted that EPE said they were moving forward on this order.

Mr. Schichtl agreed – the order on December 5.

Commissioner Byrd asked if EPE is committed under that order.

Mr. Schichtl agreed.

Commissioner Espinoza moved, seconded by Commissioner Hall, to reconsider the earlier order on December 19, 2018. The motion was approved on a unanimous 5-0 voice vote.

Commissioner Fischmann moved, seconded by Commissioner Espinoza, to dismiss this EPE application without prejudice without ordering the company to refile.

Mr. Fisk agreed to change that order to make sure it is clear.

The motion was approved on a unanimous 5-0 voice vote. So Ordered.

- 4) 13-00390-UT **IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL TO ABANDON SAN JUAN GENERATING STATION UNITS 2 AND 3, ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR REPLACEMENT POWER RESOURCES, ISSUANCE OF ACCOUNTING ORDERS AND DETERMINATION OF RELATED RATEMAKING PRINCIPLES AND TREATMENT, PUBLIC SERVICE COMPANY OF NEW MEXICO, Applicant.**
(Michael Smith) **DISCUSSION OF PNM'S DECEMBER 31, 2018 COMPLIANCE FILING AND POSSIBLE ACTION REGARDING PNM'S INTENDED ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 2 AND 3**

Mr. Smith presented information regarding this matter to the Commission, reading from his memo. It concerns a December 31, 2018 filing by PNM which is part of the verified compliance filing on paragraph 19 of the modified stipulation that was made in conformance with the requirements the Commission's December 16, 2015 final order in this case. It was the Hearing Examiners stipulation subject to modification. In that order, the Commission, in addition to other things, approved the abandonment of San Juan Generating Station and PNM's requisition of additional capacity.

If they continue operating San Juan Generation Station, they are required to notify and amend the agreements with Tucson, Los Alamos, Farmington and Utah Municipal and their agreement with Westmoreland Coal Company, which is due to expire June 2022.

The modified stipulation required a filing between July and December 2018 whether they would continue to use SJGS in the future. PNM said it would depend on cost of coal. After they receive current coal prices, they might not continue after date of filing and would not enter into a new agreement until deciding to continue to use the coal facility.

In the PNM December 31 filing, they said all parties except Farmington provided after the coal price information, that they would not continue using SJGS.

No owners sold their interest to any third party and Farmington had no interest. PNM will continue to negotiate with Farmington. The participants are required to proceed with shut down in 2022. In response to their RFP, 345 proposals were received by PNM and they are being reviewed now in order to file a future proposal for replacement resources. PNM intends to file the abandonment request in the second quarter of 2019. And they will initiate technical conferences with the parties in this case to discuss the anticipated filings with technical and modeling information. There are no agreements beyond 2022.

Mr. Smith recommended the Commission open a docket for abandonment. The issue to be addressed is whether to accept the 2022 filing and take no further action or to not delay any longer and set a procedural schedule for filing of testimony. And whether or how to in this or a subsequent pleading. January 18, 2019 is the deadline for filing and that responses be filed by noon on January 22, 2019.

Chair Becenti Aguilar said this is a case located in four corners and a topic the whole state is discussing. With new commissioners on board, we can have a procedure that will help the public and assist the families affected there. She is deeply concerned with her constituents in the closing of these facilities. We can ask PNM to host conferences in the area to inform the residents. If the Commission would like to endorse those ideas the Commission could hold a meeting in Farmington, Window Rock, and Shiprock. She did not believe the Navajo Council has been informed in a public setting.

Whenever there is a closure of one or more units, it will affect the whole community. Every person living there, should be informed. She asked that a new docket be opened for scheduled public meetings to oversee how they dialogue with families in that area. There is usually only one breadwinner but there are children and grandchildren that depend on the breadwinner. That was her comment.

Commissioner Espinoza suggested that process can happen in this order.

Mr. Smith replied that this order does not do that, but it could be addressed with due process considerations and negotiations among the parties. This is an unresolved issue under paragraph 19 and in PNM's filing for abandonment and to what extent they will continue to use coal. The abandonment process is six months old and PNM is asking for the Commission to not do anything for the next six months.

Commissioner Espinoza about what would happen if we approve this order.

Mr. Smith said PNM should file the abandonment, once they know what replacement resources will do. The abandonment process started six months ago and committed by contract for the orderly closure in 2022.

Commissioner Espinoza asked when they filed an order.

Mr. Smith said there is none yet filed but they served notice on their co-owners that they would not continue using San Juan. Farmington was the only entity who did not file such notice and had no interest in buying it. We don't know what is involved or how much it would cost.

So, the order is to consider not only the closure issues but the replacement resources, instead of waiting six more months. We are already in 2019 and that time will go by quickly.

Commissioner Byrd, for clarification, asked if Mr. Smith recommended the docket.

Mr. Smith said the order would open the docket now and close out Case 000390 UT and new responses filed in the new docket. That has not occurred yet.

Commissioner Byrd moved, seconded by Commissioner Espinoza, to open a new docket to address PNM's abandonment and involve the public in hearings.

Mr. Smith said he could add the public hearing part, but the Commission always has public comment.

Commissioner Byrd said he wanted to make sure it is specifically included but on General Counsel's advice, would strike the last part of his motion.

Chair Becenti Aguilar said the Commission can put it in our recommendations and requests going forward for how SJGS would be closed and address the issue by PNM.

Mr. Smith explained that the Commission is not voting on compliance yet but opening a new docket for the compliance filing.

Chair Becenti Aguilar understood we can further clarify the parties' position.

Mr. Smith agreed. We will ask for parties' intent and position. They will have a week to address it.

Commissioner Fischmann said he was confused and asked for clarification on what we are voting on.

Mr. Smith clarified that the impact is that paragraph 19 is a modified stipulation that required PNM to indicate their future intent for use of SJGS and they indicated they are not just intending but are locked into a closing of the plant. Therefore, an abandonment proceeding is inevitable. PNM said we should wait until they disclose replacement resources. But Mr. Smith thought the Commission should not wait six months while they decide what replacement resources to use.

Commissioner Fischmann asked if the motion would initiate the abandonment proceedings.

Mr. Smith said it would open the docket to begin with receiving positions of the parties first.

Commissioner Fischmann was aware of the issue this creates for the Navajo Nation in particular and the folks there. There have been legislative hearings because people want to know what is going on and what can be done for the community. It takes a lot to get those messages out to people and how to move forward with it. He applauded General Counsel's commitment to do it because that is what it takes to get the ball rolling and he was all for it.

Commissioner Espinoza moved the order again. Commissioner Hall seconded the motion and it passed by unanimous 5-0 voice vote. So Ordered.

Recess

Commissioner Fischmann asked for a break and it was granted at 12:51 p.m.

The Commission reconvened at 1:05 without Commissioner Hall or Commissioner Espinoza.

**5) Undocketed EL PASO ELECTRIC COMPANY'S RULE 17.5.440 NMAC
NOTICE OF FILING NO. 70-CONSTRUCTION OF TALAVERA
DISTRIBUTION SUBSTATION AND RELATED FACILITIES
(Michael Smith) CONSIDERATION AND POSSIBLE ACTION
ON REQUESTS FOR INVESTIGATION BY
DONA ANA COUNTY COMMISSION AND
CITIZEN PETITION TO NMPRC**

Mr. Smith presented information to the Commission regarding this matter of the construction of the Talavera Distribution Substation, which he described. He stated the purpose for constructing it and provided data on the estimated costs.

Commissioner Hall and Commissioner Espinoza returned.

Mr. Smith said EPE filed an affidavit that documented the need for this facility. A petition was submitted requesting EPE to explore other options that would be less costly and to provide an analysis for compliance.

The filing indicates it will cost \$9.8 million with construction to begin January 21, 2019. The petition, signed by 300 citizens and filed on December 13, 2018 urged a delay for a full environment study to be concluded and to require EPE to provide an analysis before allowing construction to proceed.

On Jan 9, 018 the Doña Ana County Commission adopted Resolution 2018-08 urging the Commission to docket an investigation requiring EPE to justify and support its planned investment in a new utility distribution and transmission and to demonstrate that its proposed expenditure is the least costly alternative.

The Commission's Rule 440 provides the purpose as informational and does not preclude the Commission from taking action or requiring further information by the utility. In light of Doña Ana County's resolution and to balance interests. He found it is in the public interest to file a response of issues raised in the petition and decide whether to open a formal hearing proceeding.

Mr. Smith informed staff of the immediate turnaround and asked that it be brought to the attention of the Commission for concerns. So they should be prepared to weigh in on it.

Commissioner Fischmann disclosed that a year ago, a hearing was taking place in public meetings. He was involved in pulling together this petition for the Commission. He asked several attorneys and got two different opinions. One was to recuse, and another was that he was not asking for a particular outcome but a study. He was predisposed to the second point of view, but he didn't want the Commission to feel he was inserting himself into it and wanted to make sure the Commission is comfortable for what he should do.

Commissioner Byrd thanked him again for opening it up for our input. If I feel I am a burden to the process, I should step back. If you feel you are a burden to the process, you should also.

Commissioner Espinoza appreciated the disclosure. The people that might have a problem would be EPE. But it is up to you, if you can contribute to the conversation.

Mr. Smith said that isn't the standard but whether it has the appearance of impropriety.

Commissioner Fischmann said, "if you are recused for one purpose, you are recused for all."

Commissioner Byrd asked if he felt his position would not be represented.

Commissioner Fischmann asked if a recusal would still allow him to have input.

Mr. Smith cautioned that if he recuses himself, based on his prior involvement in the issue, he is out of the case. That should not be a consideration for this Commission. It is an individual decision. The issue raised by this is a very technical issue that requires staff. He said he does not have expertise in engineering and while his son is graduating as a mechanical engineer, he often does not understand what he is saying. He doesn't know if the concerns raised in the petition and county resolution have merit on need for this EPE improvement. Which is why the parties who have that expertise get involved.

Commissioner Hall thought Commissioners are asking if this would require further information on the 440 filing. So, for her, it was just a request for information.

Mr. Smith explained the bridge is for Commissioners to attend or for parties who need to communicate with the Commission. We have internet access for the Commission, but it does not allow interaction with the Commission. We have limited number of ports into the bridge.

Chair Becenti Aguilar addressed Commissioner Fischmann, "You did work with the organization prior to your intent to run for public office. That is where I see the difference. I go to City Council meetings and county meetings and sometimes make a comment without knowing it will become a case here. So, I can draw the line if it is a subject, I need to pay more attention to. So, I defer it back to you to make your final decision."

Mr. Smith said, "Ms. Clifford just informed me that EPE did not receive a copy of the petition. Commissioner Espinoza forwarded it to the Records Department because it was not tied to a specific case. I provided a copy to her and is part of my basis for the order to give parties time to respond. This does not open an investigation asking for position of the parties.

Ms. Clifford said EPE will respond by Tuesday and respond in writing so the PRC will have that information. Thanks to Commissioner Fischmann for his openness.

Commissioner Fischmann asked if there is an exposure to the Commission in general if he stayed at this point.

Mr. Smith said yes, to the extent that if this passes 3-2 and you should have recused yourself. At a higher margin, it would have no effect.

Commissioner Fischmann decided to stay involved and if it appears too close, he would gladly pull away. "Right now we are just asking for information so I'm not too worried at this point."

Chair Becenti Aguilar understood when a Commissioner recuses, it is for the whole case. "So you will have to either recuse yourself today or stay involved for the whole case."

Mr. Smith agreed.

Commissioner Fischmann said, "if I cannot recuse at that point, I will abstain from the vote."

Mr. Smith explained that recusal means not participating in an of the discussion. A commissioner who decides not to recuse, might reflect later that he should have recused himself and could still recuse later on.

Commissioner Fischmann noted this is largely procedural at this point and decided not to recuse himself. He thanked everyone for their input.

Commissioner Byrd asked Mr. Smith to restate the order.

Mr. Smith said the order requires utility staff who have the expertise and responsibility for review of the 440 filing and to the issues in the petition, to advise the Commission whether a formal investigation or other proceedings should be taken in this case, including whether EPE should be ordered to halt construction. This is not an investigation but a request for further information to decide if the Commission should open an investigation. EPE also has the ability to respond.

Commissioner Espinoza moved. Seconded by Commissioner Hall, to approve the order.

Commissioner Fischmann asked for discussion. This falls into a much bigger project than this one construction. 440's can apply to projects that involve a lot of money. Over the past several years, with EPE, about \$35 million in projects came through the 440 verifications that were not reviewed by the Commission. Some were very small and did not need to come to the Commission. But the \$34 million is a lot. In general, large utilities might spend \$50 to \$60 million per year on research and projects. Some of them involve distribution systems and making connections.

Without PR review, it is a failure on our part to make sure they are the best possible investments. So, I suggest, before looking at the bigger issue, that it seems a really good idea that when a 440 is submitted, Staff should present it to the Commission on any new 440's that have been filed. We should be looking at it.

Secondly, on this particular submission, looking at the 440, should be based on engineering but there is no data on the need or demand for it or for future growth and that is required in the Code. So, we should make sure they conform to the rule, at least.

Also, the way it is submitted leaves a lot of information out. The cost is \$9.8 million, excluding transformer service. It seems to me that a transformer is a pretty important

component of a substation. So, does this submission give the Commission the complete story? Obviously EPE can do better. So, it is a much bigger project, and this is a chance to review the whole 440 process and put in motion a process to protect all parties in the future. Part of the issue in this 440 proposal is one possible solution. It is overloading adjacent substations. The community had several objections. Their project is right next to the Organ Mountains view shed. EPE was set on a course and not being particularly good listeners. A lot of responsibility comes with such improvements and one is to be responsive to the community. Apart from property values, etc. That should have been looked at. No one ever presented that information to those folks. Could they have upgraded the existing substation?

it would have been wiser for EPE to tell the public they are listening and do the research and they could find that the original proposal did make sense.

So, I'd like to document when those issues come up that we look not only at what is legal but also to what is right. And to consider the potential for those alternatives should be part of that investigation.

Ms. Beadles reminded the Commission of a deadline tomorrow and did not know if an extension was possible.

Mr. Solomon recommended the order be amended. EPE has a start date of construction of January 22nd and asked to move that construction date to give us sixty days from today to address all the issues.

Mr. Smith replied, "That is exactly the kind of response to avoid. The Commission has had this petition for over a year. The 440 was in their possession since the beginning of December and Staff has had the opportunity to review it. I'm not aware of any basis on which a delay could be granted. I don't have the ability that it would be proper to tell EPE to cease construction based on the petition. I cannot advise the Commission order them to cease construction."

Commissioner Byrd surmised there was a breakdown in communication.

Mr. Schichtl informed the Commission that Nancy Burns is calling now to seek that information.

Commissioner Byrd felt tomorrow was a really quick turnaround. He wanted to rebut Commissioner Fischmann's statements a little. "I've never been to EPE's facility. They have a control board that shows in real time the bottle necks in transmission and they have a responsibility to make sure the grid is reliable and in the best interests of rate payers and investors. Everything they look at will have that in mind. This seems to be the easiest way to ensure the grid stay reliable. Their model would show with real time data that this will fix that problem. I see no heads shaking so I suspect it is true. They might be able to pull it up on their phone and show you right how their grid is running

right now. They probably took for granted, because this is such common knowledge within the industry that the information is there, but it wasn't provided. And maybe this is a shame on them for not providing that information to show why an upgrade was not going to fix it. I don't dispute that. But I disagree that they didn't take everything into consideration. They are here before us. Technology is that batteries are still in the development phase. To put one here when we know there could be a potential breakdown in the grid and not knowing that it would solve the issue, could mean a large expenditure with poor results or failure. We do need to be trying new technology. WE need to get it figured out. A breakthrough could happen while we are sitting here today. But I just want to put that on the record. Having been in the industry, and seeing this technology, I have no doubt that the information is there. Having said that, the issue that has been brought before us by Ms. Beadles and Mr. Solomon, we need to deal with the breakdown in communications outside of this chamber. But I believe they need a little more time to review them, if they have not already started it.

Mr. Solomon said it is not a simple task. You are asking us to investigate alternatives and that is not our usual task and to do it by tomorrow is impossible.

Commissioner Fischmann said the alternatives are a bigger deal. He felt it was not our Staff's job to do as we are stretched pretty thin. That is the utility's job to do in bringing proposal to us and justifying those proposals. Sometimes, utilities can make a mistake; sometimes they need to look at our purview and alternatives, they hope the Commission could help by making sure we get all the right things. I understand the difficulty. The submission had nobody step up to respond. None of the parties stepped up, including EPE. The responsibility falls equally on EPE. It made him less inclined to say, well, they bought the assets and they have other substations planned – other projects. And utilities keep certain things around, such as transformers or things they need to fix on the grid. So it is hard to see that a delay would put things at risk.

The final point is that EPE just announced that it is going to install megawatts of batteries. Obviously, between that and what PG&E is doing in Oakland and at Tucson Electric, a lot of people are looking at newer technology. Other utilities are using batteries and that lets us know it is not exotic or experimental.

Ms. Beadles made a point to remind the Commission and the 440 reports are information only and in taking no action by the Commission does not mean that the cost recovery is approved. So I don't know that the Staff did not look at it. But historically, the utility applies for a Certificate and in a review, the PRC looks at whether it is in compliance with the statute and if not adequate, we would not necessarily do anything. But the utility does bear the burden of recovering those costs in the next rate case. Maybe a more detailed review should be done from here on and if there is alternative technology available, it could be proposed.

Mr. Smith said he didn't mean to imply the review was improper.

Commissioner Fischmann agreed. The process was not right or the circumstances. We have the rules and power to do this so we should. He asked Staff if there is any in between time.

Mr. Smith said the Commission could ask EPE to reply next week.

Ms. Clifford said Mr. Schichtl has some information on the schedule.

Mr. Schichtl reported that no construction is underway and EPE could give staff more time to consider this 440 application. And the sixty days could be offered. Under the rule, this is a standardized form and if other information is needed, we could provide that. It took two years to find the site, BLM reviewed it on environment impact and alternatives were also considered. But it is not fair to just say we suddenly decided to construct a substation. We can do 40-60 days.

Commissioner Fischmann appreciated that.

Commissioner Byrd said the Staff said sixty days minimum. He asked if the Commissioners could get EPE's alternatives and let Staff look at that.

Mr. Schichtl replied, "The rule contemplates what information is required. EPE did consider alternatives and it came up in the RFP. We looked at a variety of things and needed a long-term alternative instead of what a battery does. I had not discussed with our staff about presenting those alternatives."

Commissioner Byrd moved, seconded by Commissioner Hall, to table this matter until Staff return with a proposed date that will give them enough time to review it. The motion to table was approved on a unanimous 5-0 voice vote.

Commissioner Espinoza commented on the length of discussion for shortcomings. That is my opinion. We've done it with a big outage but no on something like this.

Commissioner Fischmann I have my shortcomings too and we air them out and go forward, hopefully being constructive.

11. PUBLIC COMMENT

Mr. Tim Curry (who had spoken earlier), said Mr. Smith had asked him if he had a connection with a case and he said no. "I want to join with my neighbors on the petition for Talavera to ask for further investigation. Your constituents in Las Cruces are feeling frustrated at not having representation in Las Cruces with EPE - with our rate basis - to put it into our neighborhood. Thank you for looking into it."

Mary Lee Soules said she has participated in a number of EPE cases as a pro se intervener who is very concerned with her electric utility. "On several occasions, I have been told Staff is a referee among the parties and I am troubled by that. The Commission is to regulate a utility, but not the people. It is not my job to advise you on the date when someone doesn't show up. I'd like you to clarify staff role in regulating utilities.

On another topic, she said, "You misstated what I said but it was wrong. You have said what EPE portrayed what I said, I represented me. They intentionally misrepresented that. And when you don't receive a true representation, it undermines your authority. I would ask you to investigate how that misrepresentation occurs, particularly in this instance. Citizen input can only strengthen the Commission and I hope you can do that."

Mr. Allen Downs said, "I commend you first for some wise decisions today. In the EPE solar case last year it was unfair to EPE and the intervenors and I look forward to your decisions this year."

There were no other public comments.

12. CONSIDERATION AND POSSIBLE ACTION REGARDING ADVICE NOTICES

There were no advice notices.

13. COMMUNICATIONS WITH GENERAL COUNSEL

Orientation.

Mr. Smith said he would reschedule the larger orientation for a working session.

Chair Becenti Aguilar asked him to pick a date and time.

Mr. Smith agreed to send an email to Commissioners asking for a good date. He provided a letter regarding the education requirement for Commissioners. He said it was a draft for review and can be discussed at the next meeting.

14. COMMUNICATIONS AND POSSIBLE ACTION WITH CHIEF OF STAFF, ERNEST D. ARCHULETA, P.E.

Mr. Archuleta said the legislative session starts next Tuesday and the LFC hearing is February 7 at 1:30 in room 307. His office will track all bills for Commissioners and

develop the FIR on a 24-hour notice back to the legislature. The subject matter experts may be required to testify to the committee on their FIR report. When staff go, they are placed in an awkward situation when the Committee will ask staff whether the PRC supports the bill. We don't speak on behalf of the Commission when we go. With the new Commission, he was asking how they want Staff to proceed.

Commissioner Espinoza said she planned to send an email to Ms. Beadles regarding legislation and how it impacts the PRC. She would like an opportunity to review it and was sure her fellow Commissioners do too. She was very aware of some of the important issues like Broadband and appointment of Commissioners. She understood certain staff are working with certain Commissioners and it is offensive that not all Commissioners are included. "There needs to be interaction on all of them with all of us. I know there are others involved outside who have approached me. And some said they were already working with someone here. All of us need to be informed. I'm really interested in knowing what is going on behind the scenes. In the past, we have endorsed bills I was not in favor of. If we continue to endorse them, we need to be specific with votes; 3-2 or whatever. I really would like to be informed. It is a courtesy."

Commissioner Fischmann understood Jennifer is keeping a spreadsheet.

Mr. Archuleta said they are working on that right now. A lot of the bills were dropped in the portal but not officially at this point. We would have to get the bill number on them and make that list available on a daily basis.

Commissioner Fischmann reminded him that there are pre-filed bills. It would be helpful to include the pre-filed bills on that spreadsheet. He said Commissioner Espinoza raised a really good point. It is really important. We should present what the majority supports but also the arguments the minority had. To him, that seems like a fair way to do it. Occasionally, we don't even know a hearing is being held. And sometimes Commissioners get called to appear. He would delegate it to the Chief of Staff.

Mr. Archuleta pointed out that things change at the round house quickly. We do the best we can on it to keep you informed.

Chair Becenti Aguilar thought Mr. Archuleta was asking for direction. Perhaps that could be done by email.

Chair Becenti Aguilar asked when a pre-filed report would be ready.

Mr. Archuleta said it would be ready on Monday.

Mr. Archuleta reported he is advertising for the PIO position and wants to hire a permanent Utilities Division Director. He also intends to name one of the HE's as chief HE. The Utility Division Director and Public Information Officer are classified positions.

He shared the process and asked how the Commission would like to proceed with the hiring for those positions.

Commissioner Espinoza felt the Administrative Services Division Director hiring was critical. She recalled what happened last year. The PIO interviews were done and nothing more. She felt PIO was not as critical as ASD Director. PIO is important but ASD is just as important.

Mr. Archuleta said the ASD position is one he filled as Acting. He has been acting as CFO since he came here. It is an exempt position and is hard to fill because many people don't want a classified position. He believed he has managed it well, but it is the Commission's call.

Commissioner Espinoza said if the other Commissioners want the PIO ahead of ASD, she would go along with it. She didn't know there was an acting ASD Director.

Mr. Archuleta said he would send the vacancies list. He budgeted for a Chief General Counsel and a Utilities Director and it would take \$60,000 more to fill them all. That was taken when the State swept all funds. He proposed a 13% increase and did not expect to get it.

Mr. Archuleta explained that most division director positions in this State are classified. But here they are all exempt. The Chief HE is classified.

Mr. Smith said General Counsel is not in the statute. Bureau Chiefs are classified.

Commissioner Espinoza added that the qualifications don't allow someone without experience to be hired.

Commissioner Byrd said the Commission does need to prioritize the staff positions. We need to post them so we can get these positions filled. Would we be allowed to have Chief of Staff give us all priorities in the list?

Chair Becenti Aguilar thought it was okay to ask him to do that.

The Commissioners briefly discussed the job status and classifications.

Mr. Archuleta said he had to show DFA that our budget can support the positions. The State vacancy rate is about 2%. PRC is close to 15%. We try to fill classified as soon as possible. He requested a 5% maximum vacancy rate and we will see how it shakes out. We will get something.

The Commission gave priority to the ASD Director position.

15. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Hall shared information about a webinar she thought would be of interest to Commissioners and had her assistant send out an email about it.

Commissioner Espinoza asked about the status of the annual report.

Mr. Archuleta said the report is being printed and will be available soon to the Commissioners. A committee of staff members prepared it and it did not come back for our review.

Commissioner Hall understood they met with several Commissioners.

Commissioner Espinoza said next year, the annual report should be reviewed by the Commission before releasing it.

Commissioner Espinoza requested a report on the recent major outage at an open meeting. CenturyLink needs to explain to the Commission what happened.

Mr. Harris said the outage happened because of a faulty network card in Colorado that caused it. We are working on it. He has asked CenturyLink to be on an upcoming agenda to report on it.

Commissioner Espinoza noted we are getting ready to approve the fire code. The fire departments in New Mexico are waiting on it to be approved.

Mr. Archuleta said it through a writing with several fire departments assisting with the re-drafting and that rule is ready to be brought to the Commission for a hearing. We can do that in the next couple of weeks. It has been ready for a while, but he was not sure how long. The Fire Marshal could provide more details.

Commissioner Espinoza recalled the issue brought two years ago regarding fire inspectors not being able to inspect dampers, etc. it needs to be brought to us. We have trained inspectors and it is time to get the code approved.

Commissioner Espinoza said the Commission also needs information from the Transportation Division regarding the Mora Ambulance service. She understood they want some guidance about incidents that occurred where people were injured by the ambulance. They are supposed to report quarterly. She had asked Mr. Gutierrez about it a couple of weeks ago.

She also said the Commission has an open invitation to have meetings in Las Cruces, Farmington and Cloudcroft and there may be others.

Mr. Gutierrez came to the meeting and explained that the Mora quarterly reports were required up to August 2018 only. They are no longer required to make those reports, but they did file all of the required reports.

Commissioner Espinoza thought the PRC should invite them to come and present their concerns to us. She thought they were going to be here on January 23.

Mr. Gutierrez agreed to follow up.

16.ADJOURNMENT

Upon motion by Commissioner Espinoza and second by Commissioner Byrd, the Commission's open meeting was adjourned at 3:35 p.m.

ATTEST:

Carl Boaz
Carl Boaz, Stenographer

APPROVED: 2/6/19

Theresa Becenti-Aguilar
THERESA BECENTI AGUILAR, CHAIRPERSON

Valerie Espinoza
VALERIE ESPINOZA, VICE CHAIRPERSON

Cynthia B. Hall
CYNTHIA B. HALL, COMMISSIONER

Jefferson Byrd
JEFFERSON BYRD, COMMISSIONER

Stephen Fischmann
STEPHEN FISCHMANN, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Date: January 10, 2019



NAME	COMPANY NAME (if any)	PHONE NUMBER
Carol Clifton	Jones Firm	982-0011
Jim Schichtl	EPE	909 993-2593
Dana Hardy	Hinkle Shaver	982-4554
Will DuBois	SPS	512-236-1923
Tom Cunningham	Regulus Assoc. Inc.	575-650-4567
Daryl Amick	IA RC WUA	505 426 3883
KEVEN GROENEWOLD	NM Co-ops	505-982-4674
ALLEN DOWNS	—	575-915-6969
Carey Salaz	PNM	505-818-1115
Brian Kink	Round Lake	505-220-9909
Brian Harris	NMPRL	505-822-8020
Steven Cordova	UMGC	505-697-3559
Nicole Smauser	NMGC	505-697-3809
Randy Bartel	Montgomery Andrews	986-2504
Ruth Saksja	SPS	806 677-512
Stacey Goodin	PNM	505-241-4927
Mario Contreras	SPS	806-378-2115
LAURA SANCHEZ-RIVET	CUDDY & MCCARTHY	505-888-1335
Angela Steevens	Stevens Law LLC / City of Dore	505-795-3505

Thank you for attending this meeting.

Ricardo Gonzalez EPE
 Nora Tachian-Anaya
 Frank Ortega Round Lake

575-202-5333 EXHIBIT 1
 565 99RC-January 10, 2019
 505 831-5117



NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Wednesday, January 9, 2019

9:30 a.m.

**PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501**

AGENDA

- I. PLEDGE OF ALLEGIANCE/STATE PLEDGE**
- II. INTRODUCTION OF SPECIAL GUESTS**
- III. CONSIDERATION AND APPROVAL OF THE AGENDA**
- IV. ELECTION OF NEW CHAIRMAN AND VICE-CHAIRMAN**
Pursuant to NMSA 1978, Section 8-8-3(b)
- V. INTRODUCTION OF NEW COMMISSIONERS AND OPENING REMARKS FROM
NEW COMMISSIONERS**
- VI. CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Case Management Open Meeting for December 5, 2018**
- VII. POLICY MATTERS**
 - **Adoption of Annual Open Meeting Policy and Notice for 2019**
 - **Adoption of Annual Commissioner Code of Conduct Policy for 2019**
 - **Delegation of Authority Letter for State Records Filings**
- VIII. ORIENTATION DISCUSSION REGARDING STATUTES, RULES AND POLICIES
COVERING OPERATION OF PUBLIC REGULATION COMMISSION (General Counsel)**
- IX. CONSENT ACTION**
 - A. Transportation Matters:**

NONE
 - B. Utility Matters:**

NONE

X. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

NONE

B. Utility Matters:

1)	18-00243-UT Judith Amer	IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF A 345 KV TRANSMISSION LINE AND ASSOCIATED FACILITIES PURSUANT TO THE PUBLIC UTILITY ACT <u>POTENTIAL ORDER ON JANUARY 16, 2019 HEARING</u>
2)	18-00293-UT Russell Fisk	IN THE MATTER OF EL PASO ELECTRIC COMPANY'S 2018 INTEGRATED RESOURCE PLAN FOR NEW MEXICO <u>POTENTIAL ORDER REGARDING MOTION FOR RECONSIDERATION</u>
3)	18-00099-UT Russell Fisk	IN THE MATTER OF EL PASO ELECTRIC COMPANY'S APPLICATION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR A TWO-MW SOLAR POWER GENERATION FACILITY AND APPROVAL OF A VOLUNTARY COMMUNITY SOLAR PROGRAM <u>POTENTIAL ORDER ON RECONSIDERATION OF THE COMMISSION'S DECEMBER 19, 2018 ORDER; POTENTIAL ORDER DISMISSING APPLICATION WITHOUT PREJUDICE</u>
4)	13-00390-UT Michael Smith	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL TO ABANDON SAN JUAN GENERATING STATION UNITS 2 AND 3, ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR

		<p>REPLACEMENT POWER RESOURCES, ISSUANCE OF ACCOUNTING ORDERS AND DETERMINATION OF RELATED RATEMAKING PRINCIPLES AND TREATMENT</p> <p>PUBLIC SERVICE COMPANY OF NEW MEXICO,</p> <p>Applicant.</p> <p><u>DISCUSSION OF PNM'S DECEMBER 31, 2018 COMPLIANCE FILING AND POSSIBLE ACTION REGARDING PNM'S INTENDED ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 2 AND 3</u></p>
5)	Undocketed Michael Smith	<p>EL PASO ELECTRIC COMPANY'S RULE 17.5.440 NMAC NOTICE OF FILING NO. 70- CONSTRUCTION OF TALAVERA DISTRIBUTION SUBSTATION AND RELATED FACILITIES</p> <p><u>CONSIDERATION AND POSSIBLE ACTION ON REQUESTS FOR INVESTIGATION BY DONA ANA COUNTY COMMISSION AND CITIZEN PETITION TO NMPRC</u></p>

XI. PUBLIC COMMENT

XII. CONSIDERATION AND POSSIBLE ACTION REGARDING ADVICE NOTICES

XIII. COMMUNICATIONS WITH GENERAL COUNSEL

XIV. COMMUNICATIONS AND POSSIBLE ACTION WITH CHIEF OF STAFF, ERNEST D. ARCHULETA, P.E.

XV. COMMUNICATIONS WITH COMMISSIONERS

XVI. ADJOURNMENT

To obtain a copy of this agenda please log in the Commission's website at www.nmrc.state.nm.us.

The Commission will make reasonable efforts to post the agenda on the Commission's website at least 72 hours before the open meeting, but the inability to do so within the 72 hours prior, will not require the Commission to delay the meeting or to refrain from taking action on any agenda item on which it otherwise could act.

At any time during the Open Meeting the Commission may close the meeting to the public to discuss matters not subject to the New Mexico Open Meetings Act. The Commission may revise the order of the agenda items considered at this open meeting.

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such discussion or argument to become ex-parte communications.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE IN ORDER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION AT (505) 827-4042 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.

PUBLIC COMMENT

All members of the public wishing to provide public comment must sign a sign-up sheet prior to the start of the meeting and identify their name and the name of the organization they represent (if any), and the topic or issue on which they desire to comment. The portion of the agenda allocated for public comment at any one open meeting shall be limited to a maximum of 30 minutes for all persons wishing to provide comment. The order of speakers will be based on the order in which speakers sign up, but public officials may be taken out of order. If a speaker is not present at the time he or she is called to provide comment, that speaker shall forfeit their opportunity to speak. **Public comment by an individual or entity shall be limited to no more than three (3) minutes** unless the Commission acts to extend the period. If the number of individuals on the sign-up sheet desiring to provide comment would exceed the allotted 30-minute period, the Chairman may limit individual remarks to a shorter time period. Individuals represented by or representing a common organization or association may be asked to select one individual to act as spokesperson to speak for the group. Individuals who sign up to comment, but either fail to do so or choose to speak for less than their allotted time, may not cede or yield their time to another speaker. Written comments of individuals who cannot be physically present may not be read aloud at the meeting but may be submitted to the

Commission.

The subject matter of public comments shall be relevant to matters within the Commission's jurisdiction. Public comment will not be permitted on matters that should be addressed appropriately as the subject of an informal or formal complaint before the Commission or on pending rulemaking proceedings before the Commission once the opportunity for public comment in those proceedings has closed. Public comment by parties to a proceeding or adjudication pending before the Commission will not be permitted where the comment concerns matters at issue in such proceeding. The Chairman shall retain the right to stop any speaker who raises an issue that is not under the Commission's jurisdiction or is subject to the restrictions above. Public comment will be received without Commission comment or response. However, individual Commissioners may at their option seek clarification or additional information from speakers through the Chairman. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chairman retains the right to exercise discretion in the implementation of this policy and may override the above rules in case of emergency or other unforeseen circumstances.

Speakers providing comment shall at all times conduct themselves in accordance with proper decorum. Profane or vulgar language or gestures will not be tolerated. Audience members shall not disrupt an open meeting by speaking without being recognized by the Commission and shall not incite others to do so. The Commission retains the right to remove disruptive attendees and individuals who fail to conduct themselves in accordance with these provisions from the Commission meeting.

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Date: January 10, 2019

PUBLIC COMMENT SIGN-IN SHEET

NAME	PHONE NUMBER	TOPIC
Tina Curry Cortez	575-1650-5458	Talavera substation
Marcie Lee Soules	575-635-2225	Public Concern
Allen Downer	575-915-6969	3 EPE CASES
Frank Ortega	505-331-5117	
Nora Tachia Arroyo	505-910-0307	
Ricardo Gonzales	575-202-5569	EPE

Thank you for attending this meeting.