

**MINUTES OF THE OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
March 20, 2019**

**TIME: 9:30 a. m.**

**PLACE: PERA Building  
4<sup>th</sup> 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, District 2  
Commissioner Stephen Fischmann, District 5  
Commissioner Cynthia B. Hall, District 1 (by phone, later)

**Members Absent:**

**Staff Present:**

Jason Montoya, Acting Chief of Staff  
Michael Smith, Acting General Counsel  
Judith Amer, Associate General Counsel  
Russell Fisk, Associate General Counsel  
David Black, Associate General Counsel  
Dhiraj Solomon, Utilities Division  
Michael Ripperger, Telecommunications Bureau Chief  
Ashley Schannauer, Hearing Examiner

**Others Present**

Carl Boaz, Stenographer

**CALL TO ORDER**

The Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(c), and the Commission's Open Meeting Policy. Commissioner Theresa Becenti-Aguilar, Chairperson, called the Open Meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, 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**

Commissioner Espinoza introduced Rick Romero, from Albuquerque who is contemplating a seat on the Commission.

#### **3. CONSIDERATION AND APPROVAL OF THE AGENDA**

Commissioner Espinoza moved, seconded by Commissioner Byrd, to approve the agenda as amended. The motion passed by unanimous 4-0 voice vote.

#### **4. CONSIDERATION AND APPROVAL OF MINUTES**

**Minutes of the Case Management Open Meeting for February 20, 2019**

Commissioner Espinoza moved, seconded by Commissioner Fischmann, to approve the minutes of February 13, 2019 as presented. The motion passed by unanimous 4-0 voice vote.

#### **5. ADOPTION OF RESOLUTION DESIGNATING APRIL 2019 AS SAFE DIGGING MONTH**

Mr. Montoya, after thanking Commissioner Espinoza for supporting the resolution every year, read the resolution.

Commissioner Espinoza thanked Mr. Montoya and Staff for being available at 811 so that people could call before they start to dig.

Chair Becenti Aguilar thanked Mr. Montoya for his work. She noted the importance of educating people about dialing 811 before digging, whether it be a construction site, an owner or a private entity. She applauded the recognition of the resolution.

*Commissioner Hall joined the meeting by telephone at 9:38 a.m.*

Mr. Montoya reported an event to recognize Safe Digging Month would be held on April 12 in Albuquerque.

## **6. DIVISION DIRECTOR'S REPORT - Water/Wastewater Bureau**

Mr. Montoya explained he asked to hear a Water Bureau Report instead of the Division Director Report.

Mr. Dhiraj Solomon, Acting Bureau Chief presented the report.

He explained the Commission had asked the Bureau to look into the number of drinking water systems the Bureau has, how many were regulated and how many were uncertificated. Staff checked the data base of New Mexico Drinking Water Watch of the Environment Department, which has all existing systems.

Chair Becenti Aguilar asked to confirm if the systems are outside of state lands.

Mr. Solomon explained only pueblos and tribal lands are not regulated by the Environmental Department, although some of the tribal lands are included in the database.

He reported there are 33 counties of which 24 water systems are investor-owned, and of those, 7 are certificated sewer systems and 9 water systems are not. Staff plans to contact by phone to confirm the investor-owned systems and if not, they would be asked to apply for a CCN certification.

Chair Becenti Aguilar asked for information on the follow through with the NMED.

Mr. Solomon replied the Environment Department is not specifically contacted and Staff printed the data base at the SOS (Secretary of State) website to determine if PRC had regulatory oversight. PRC authority is only over investor-owned utilities, which would be on the SOS website as a domestic profit corporation, or NLC. Staff identified 9 systems that are not yet certificated.

Commissioner Espinoza asked to receive a copy of the list and wanted more specifics on the 9 investor-owned systems.

Mr. Solomon replied Staff had not yet confirmed the 9 systems still are investor-owned, even though they should come to the PRC for sale/abandonment. The investor-owned systems will be contacted by phone and certified mail.

Commissioner Fischmann suggested it would also be nice to know the number of customers for each with the report of the names of the investor-owned utilities.

Mr. Solomon indicated he did not have that information because it was not in the database. He listed the nine systems identified as: Eagle Rock Village (Questa), Hot Springs Land Development (Sierra County), Marino Water Systems (Las Cruces) Plano Colorado (Milan) Quail Ridge Water and Sewer (El Prado), Three Bar Land Company (unknown), Rio Madona (Lincoln), Pajarito Estate (Edgewood), and Hills Village (Tucumcari).

Commissioner Espinoza asked if the Bureau had personnel deficiencies.

Mr. Solomon confirmed 2 engineers are needed, one for electrical and one for water/wastewater. They

currently do not inspect water systems because they lack the staff and a compliance section and follow-ups are done only if there is a complaint or NMED notification.

Commissioner Espinoza asked if they would have acted if the AV Water case had not been on the news about the residents having to drink contaminated water. She asked how many inspections the Bureau conducts each year.

Mr. Solomon explained they currently do not do inspections and the NMED database is their blueprint and source of information.

Commissioner Espinoza thought they should be more proactive and get more staff so they could go out in the field and inspect the water systems. It would also be helpful to know how many customers are on the systems.

Mr. Solomon indicated that would be on their questionnaire sent by certified letter to those regulated by the PRC. He estimated he could provide within a month a preliminary report, depending on the response to the letters.

Commissioner Espinoza asked if there were consequences if they didn't respond to the letter.

Mr. Solomon explained Staff would have to petition the Commission to show cause and recommend fines. He agreed to work with the Chief of Staff on that.

Commissioner Fischmann asked the steps for the certification process.

Mr. Solomon explained that Rule 740 specifies CCN requirements; Rule 750 has the minimum standards for design, construction and operation schematics, etc.; and Rule 760 has the customer service rules. They would also ask the rates charged and how they determined that rate. There is an A, B, C, D class based on revenues and thought most would be Class D, the smallest, those with less than \$50,000 of revenue.

Commissioner Fischmann asked if companies would have that type of information, especially on engineering and schematics.

Mr. Solomon replied he expected them to have the information although it would be a learning curve and staff would need to assist them, and PRC has CPAs they can recommend as consultants.

Commissioner Fischmann asked if the PRC monitors the water testing if the company has their CCN.

Mr. Solomon indicated that portion of the regulatory authority is with NMED and the Safe Drinking Water Act and they provide an annual consumer confidence report.

Commissioner Fischmann asked if NMED tests the non-certified water companies.

Mr. Solomon replied NMED holds semi-annual water fairs and has a lab on wheels. The residents provide samples of their water from their wells or taps and given the results of the test by the lab.

Commissioner Espinoza added NMED also advertises the testing.

She asked when the Bureau last conducted an inspection.

Mr. Solomon replied there was one yesterday in response to an ongoing case. NMED has about 12 field offices throughout the state and is divided into 3 districts and residents can at any time have a sample of their water tested.

Commissioner Espinoza pointed out that at the last legislative session they tried to disperse the fire marshal function of the PRC. She asked if the legislature had ever tried to send the PRC duties for the water responsibility to the NMED.

Mr. Solomon stated that HB 175 came the closest to encouraging private water systems to consolidate/incorporate into regional water systems.

Commissioner Espinoza thought that could be a good idea because PRC did not appear to be doing much unless someone complained.

Commissioner Fischmann complimented Staff on HB 175 and for following the bill. He thought the bill a good idea, but this year had been half-baked. He hoped a smarter version would come back around. He thanked Staff for following that.

Mr. Solomon indicated for sponsors of the bill Tomas Salazar and Peter Wirth had incorporated the PRC amendments into the amended bill.

Commissioner Byrd asked if Mr. Solomon knew the number of water companies/entities that are not on the record.

Mr. Solomon found it difficult to envision a water company that was not in NMED's database. The exception would be a small entity like a summer camp that operated less than 60 days; they would not be covered by NMED's regulations. The requirement is at least 15 water service connections, or 25 people served for 60 days or more.

## **7. PUBLIC COMMENT**

There were no comments from the public.

Chair Becenti Aguilar acknowledged Staff's work in the legislative session noting the phenomenal number of requests to complete the FIR and for testimony at the numerous hearings. She said she is proud of the PRC Staff and their work and dedication to the Division that runs at a, highly professional profile.

She added the legislature never questions the information that Staff provides. She worked with the legislature through the end of the session and close to the Senate floor. She is continuing to build relationships with legislators on issues that PRC oversees to improve New Mexico.

Chair Becenti Aguilar indicated some bills were introduced to remove certain departments from the PRC, and she voiced her opinion it was not the right time or the right way to do business. She thought it important for the PRC have the opportunity to express that better relationships and professionalism are at the front of any communication they share with the state legislature.

She added that after working with the legislature so closely she admires what they have done and the number of bills they have passed for the State, but her job is to protect the work at the PRC.

She invited other Commissioners to comment.

Commissioner Espinoza thanked Mr. Montoya for making himself available as often and as late as he was at the legislature and for keeping her informed. He excelled and provided the Commissioners with information, and when he did not have information, he called her or Staff. That was important.

She thanked Chair Becenti Aguilar for being vocal on many bills which helped and for the availability of Mr. Fisk, even on weekends and Mr. Ripperger's assistance. She expressed gratitude for Mr. Solomon, Mr. Gutierrez, the Staff members and everyone who made themselves available when needed.

Commissioner Byrd commented he had not spent a lot of time at the legislature but had listened to committees and events occurring on the floor. He saw the PRC Staff there at all hours of the day. He expressed his gratitude and appreciation for Staff going above and beyond normal working hours, and for their timely responses to Commissioners questions.

Commissioner Fischmann said, "Ditto."

Commissioner Espinoza suggested the Commission not look at the technical aspects in trying to promote the effort, or not, to appointment Commissioners. She knew there was a split, but for the effort to pass, the voters want to see that corruption and campaign contributions are kept out of the effort. That would take someone concerned about the public and invested and involved and prepared, not someone with a PhD and utility expertise.

Commissioner Fischmann noted there had been a lot of disagreement within the Commission about some of the legislation and thanked the Commissioners that they could disagree while being professional.

Chair Becenti Aguilar added that the Commissioners took a lot of heat behind the scenes as well. She told about continuing to be pressed by a legislator who approached her, even though she opposed a bill. She would not go down that road and continued to be professional and had asked General Council and Staff to take care of the situation.

She noted that Sabre Partners also came before the Commission in a manner where possibly the public was not aware of what was going on. The Commission took the heat during the legislative session, but Staff was there to provide the laws and the guidelines for the Commissioners.

Chair Becenti Aguilar thanked everyone, PRC Staff and Legal for ensuring they stay on the right track and doing the job correctly.

Commissioner Hall also thanked the Staff for all they did and for going beyond their normal hours.

Commissioner Espinoza said she had been expecting a brief report that her request on the ADA accessibility issue and training of a Staff member by the Governor's Commission on Disability.

Commissioner Hall confirmed it was agreeable to have the presentation at the end of the meeting due to her need to leave the meeting early.

Chair Becenti Aguilar agreed they could move through the action items first.

## **8. CONSENT ACTION**

### **A. Transportation Matters:**

None

### **B. Utility Matters:**

- 1) **19-00055-UT** IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY INC. FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS MARCH 2019 GAS COST FACTOR STATEMENT, NEW MEXICO GAS COMPANY INC., Applicant  
(Judith Amer) POTENTIAL ORDER GRANTING VARIANCE

Commissioner Espinoza moved, seconded by Commissioner Byrd, to approve the Consent Action #19-00055-UT and the motion passed by unanimous 5-0 voice vote.

## **9. REGULAR ACTION AND DISCUSSION**

### **A. Transportation Matters:**

- 2) **18-00216-TR-M** IN THE MATTER OF THE APPLICATION OF BERNALILLO COUNTY HEALTH CARE CORPORATION, DBA, ALBUQUERQUE AMBULANCE SERVICE FOR AN AMENDMENT TO CERTIFICATE NO. 1168.  
(Ashley Schannauer) RECOMMENDED DECISION  
(Judith Amer) POTENTIAL FINAL ORDER ON RECOMMENDED DECISION

Mr. Schannauer and Ms. Amer presented.

Mr. Schannauer offered to describe the background and general issues of the case and his recommendations.

He stated that Albuquerque Ambulance on July 27, 2018, filed an application asking for authority to establish a Santa Fe station point to do limited inter-facility ambulance transports, not including 911 service.

Albuquerque Ambulance has authority state-wide and inter-facility currently that includes 911 service, but the station points are limited to Bernalillo County. Albuquerque Ambulance brought units to Santa Fe when the new Medical Center opened in October to respond to calls for inter-facility service. The purpose of the amendment to the certificate is to address the needs of the new facility as well as the unmet needs in Rio Arriba County and Española Hospital.

Rocky Mountain EMS currently has the authority to provide 911 and interfacility service in the counties of Santa Fe County, Los Alamos and San Miguel, but not Rio Arriba except for 911, and filed a protest in August. The Santa Fe City/County fire departments handle 911 service for Rio Arriba County.

Rocky Mount EMS can protest under the Motor Carrier Act because they currently provide service in the area and the additional station points would interfere with or could drive them out of business.

The Commission heard Albuquerque Ambulance's request on October 3 for temporary authority, pending final approval and denied the request because there was no immediate and urgent need for the service. The Commission stated this was only for the denial of the temporary request.

Mr. Schannauer stated he held hearings in November and December on the case after it was assigned to him, and briefs were filed by Staff and the parties in January and February. Staff supported Albuquerque Ambulance, but Rocky Mountain EMS continues to oppose the authority.

He stated on February 18, he recommended approval of Albuquerque Ambulance's request.

Mr. Schannauer described the two kinds of interfacility ambulance service. One is when a hospital does not have the level of care the patient needs that had been transported to them by a 911 call. An interfacility provider would be called to transport the patient to a higher-level provider and transport could be critical in the case of a heart patient when a fast response is needed. The second type is when a patient has already been admitted but is in need of special services.

Four issues are examined under the Motor Carrier Act: 1) The fitness of the applicant; 2) The need for additional service; 3) The potential of the protesting provider to satisfy the need; 4) The impact of the additional provider on the current provider.

In the first issue regarding the fitness of Albuquerque Ambulance; they have been in business since 1974 providing service primarily in Bernalillo County with no complaints. Rocky Mountain claimed Albuquerque Ambulance violated the MCA by posting their unit to respond to calls and felt they stationed the ambulances in Santa Fe without authority.

Mr. Schannauer agreed with Albuquerque Ambulance that they were not stationing but using a temporary location to respond more efficiently to calls. A stationing point is defined as a fixed physical location in which a motor carrier can respond to service or store vehicles used currently to provide service, which does not include a temporary location of the vehicles.

He explained the vehicles are taken back and forth to Santa Fe each day and only temporarily located in Santa Fe and are serviced in Bernalillo County.



Commissioner Espinoza confirmed the Albuquerque Ambulance vehicles could not be left in Santa Fe overnight and were being moved back-and-forth.

Mr. Schannauer explained the service has 2 vehicles they have been driving back and forth since October and is costly and the reason for the request for a station point in Santa Fe.

Mr. Schannauer recommended the Commission find Albuquerque Ambulance as fit.

He continued, secondly, there is need for additional service, one being the new Santa Fe Medical Center which prompted Albuquerque Ambulance to seek authority for the station point.

Albuquerque Ambulance has estimated 5-6 inter facility transports daily from that facility and the 911 providers mentioned - Santa Fe County and City - focus is on the 911 service. However, they are called upon for inter facility service when there are not enough carriers, which limits the units available to provide their main concern, the 911 service.

The Santa Fe Fire Department Chief testified they did 128 interfacility transports for each of the last two years and do not want to have to decide whether to do interfacility service that could interfere with a 911 call for service. The Santa Fe Fire Department supports another service provider in Santa Fe County.

The Rio Arriba County 911 service is provided by the hospital, but lacks the units needed to handle all of the 911 calls in addition to the inter-facility service needs. A Presbyterian Hospital executive testified that the availability of interfacility service in Rio Arriba County can take between 2-4 hours and sometimes the next day before responding.

Mr. Schannauer concluded there is a need for additional service in Santa Fe County and the stationing points would provide units to serve Santa Fe and Rio Arriba Counties.

He pointed out regarding the third issue of the potential of the current provider to satisfy the need, Rocky Mountain owns 6 units; 4 that are operable, and normally have only 3 units available for service. Staffs inspection of Rocky Mountain's facilities concluded there are only 2 units available that are fully equipped to provide service and in addition, the hearing brought up the financial obstacles in their ability to provide more units.

RMS filed for bankruptcy in 2011 proposing to find a buyer for the service as part of the bankruptcy plan. The case was dismissed without a restructure of debt this month because they failed to find a buyer, as proposed. There is substantial debt; \$1.2 million dollars in back taxes as of last August and records show \$1.2 million in liabilities versus \$262,000 in assets, with the largest asset being a \$225,000 loan from RMS to its owner. RMS testified regarding their ability to pay expenses as due, that their monthly net income is around \$5,200. They have entered into installment agreements with IRS and the State of New Mexico on tax payments of \$5,500 per month and the hearing indicated inadequate financial records that do not meet PRC standards.

Regarding service in Rio Arriba County, Rocky Mountain has no authority and their service is limited to Santa Fe, Los Alamos, and San Miguel Counties.

On the last issue of impact of an additional provider on the current provider; Rocky Mountain EMS claims they would go out of business if Albuquerque Ambulance is allowed to establish a stationing point in Santa Fe.

Mr. Schannauer pointed out Albuquerque Ambulance since starting in October had not made an impact on Rocky Mountain's calls, and in fact they had actually increased since the Medical Center opened. RMS went from about 5 calls a day to 6 on some days and other days to 10 to 12 calls per day. With the new Medical Center, it appeared the additional calls to Albuquerque Ambulance and Rocky Mountain were those that used to be done by the City / County fire departments and adding another provider would not necessarily take away calls from Rocky Mountain. He found there is enough need in Santa Fe to add another provider without a negative effect.

Commissioner Espinoza asked if Mr. Schannauer found the volume of need and the lives of residents more important to consider than the comment by Rocky Mountain that they would be driven out of business.

Mr. Schannauer agreed that was a factor. He indicated the MCA requires the Commission to consider the impact on the current provider but clear by cases previously decided, that public interest is the guiding principal. The Commission is not required to deny an application solely because of impact on a provider.

Commissioner Byrd asked if Ms. Amer planned to provide an alternative perspective.

Ms. Amer replied General Counsel normally provides exceptions with an RD, but in this case, Rocky Mountain EMS did not file exceptions even though they strongly litigated the case.

She offered to address the points stated by RMS in their conclusions of law as related, but the Exceptions Rule provided a specific procedure for those who disagreed with the RD.

Mr. Smith clarified the HE would have addressed the proposed FF/CL in the RD had RMS filed them.

Commissioner Hall had no questions.

**Commissioner Byrd moved, seconded by Commissioner Fischmann to approve the Recommended Decision and the motion passed by unanimous (5-0) voice vote.**

**3) 19-00065-TR-M**

**IN THE MATTER OF THE PETITION FOR VARIANCE FROM MOTOR CARRIER RULE 18.2.4.13 B(2) NMAC, THE RULE GOVERNING IDENTIFICATION OF EQUIPMENT, FILED BY DENNIS BALTHASWER D/B/A ROSWELL UFO TOURS, CERTIFICATE NO. 56470  
(Judith Amer) POTENTIAL ORDER GRANTING VARIANCE**

Ms. Amer presented the matter. She explained this came about because of an audit of UFO Tours in Roswell. Inspector Fidel Archuleta found the owner lacked the required drug and alcohol testing; proof of coverage of increased liability insurance of \$1.5 million; a revision of the company tariff to show the rate charged of \$100 per tour; a criminal background check of the owner from local law enforcement; and

permanent signage not displayed on UFO Tours vehicle with the PRC number.

The owner, Mr. Balthazar, sent an email to the inspector and stated he would comply with the drug/alcohol test, increase the insurance and change the tariff to \$100, but he would need a variance on the company name and PRC number on the vehicle as it is his personal vehicle. His family uses the vehicle as well and a permanent PRC number and name would decrease the vehicle's value.

Mr. Balthazar requested permission to use nonpermanent magnetic signage on his personal vehicle rather than the permanent. Supporting his request, he stated UFO Tours has been operating in Roswell for 5 years averaging approximately 300 tours that generate revenue for the City and for New Mexico, and the Tours have received over 230 "Excellent" reviews on TripAdvisor.com.

On March 11, Mr. Avelino Gutierrez, Division Director of Transportation requested the Commission grant the variance as a reasonable request. The owner promised to use the magnetic signage during tour operations and that use would not provide UFO Tours an undue competitive advantage.

The affidavit indicated the request should be granted upon Mr. Balthazar's compliance with all deficiencies, the most serious being the inadequate insurance. Mr. Balthazar's insurance company filed a Form E indicating UFO Tours' proof of \$1.5 million liability coverage, effective March 14, 2019.

The order found UFO Tours had complied with the proof of coverage and for those reasons, would grant the business the variance of the use of the magnetic signage in lieu of the permanent name and PRC number, subject to 3 conditions: Mr. Balthazar applies for a criminal background check; joins in a random drug testing pool; and changes his tariff to \$100 per tour, instead of \$80 as currently stated and all compliance would be by April 15, 2019.

Mr. Balthazar had explained that he uses a booking agent who charges a \$20 fee and the actual charge is \$100 to the customer.

**Commissioner Espinoza moved, seconded by Commissioner Byrd, to approve the order granting the petition a variance and the motion passed by unanimous 5-0 voice vote.**

#### **B. Utility Matters:**

- 4) **17-00186-UT IN THE MATTER OF THE PETITION OF CENTURYLINK QC TO IMPLEMENT SENATE BILL 53 AND TO ADOPT EMERGENCY RULES**  
**(Russell Fisk) POTENTIAL ORDER ISSUING NOTICE OF PROPOSED RULEMAKING**

Mr. Fisk presented the item to the Commission and Mr. Ripperger came forward for this case.

Under the State Rules Act controls the NOPR must be published in the New Mexico Register and the newspapers and that was done yesterday. The Quality of Service and Consumer Protection Rules were attached as Exhibit A and B to the order; the same as Commissioners received in the Staff filing.

Mr. Fisk reminded Commissioners as a presentation by Staff of drafts of the proposed QOS and Consumer Protection February 6 and February 27 regarding SB 53, that amends the Telecommunications Act and eliminates the mid-size carrier category, among other things.

He and Staff proposed the latest version and this order would notify the public that the docket has been opened and the proceeding and deadlines with statutory requirements would begin once the NOPR is published.

Mr. Fisk provided overview of the three sets of midsize carrier rules applicable to CenturyLink that need to be replaced. The one having to do with pricing would not be tackled at this time, in order to put the QOS and Consumer Protection rules in place quickly. Pricing has specific provisions in the statute with regard to what can be done by CenturyLink.

There is a conflict between CenturyLink and staff on how to move forward that is addressed in the order. CenturyLink filed comments that the discussion drafts provided were a higher high level of regulation and proposed an interim solution of a regulatory transition agreement. They proposed that during the pendency of the NOPR, Staff and parties agree to put the mid-sized carrier rules for QOS and Consumer Protection in place.

Staff agreed that was a good idea to use the midsized carrier rules as interim rules.

CenturyLink claims it is not subject to any QOS or Consumer Protection rules at present. Mr. Fisk pointed out he has indicated that is not the case. Paragraph 14 states the Commission's issue with CenturyLink's claim that no QOS or Consumer Protection Rules have applied to them since the Act was amended in 2017. Commission Rules 17-11.16 NMAC and 17-11.22 NMAC applies by their expressed provisions "to all local exchange carriers other than incumbent rural telecom carriers and carriers subject to AFOR provisions".

There are sets of rules that would still apply in the interim to a company like CenturyLink. However, the mid-sized carrier rules could possibly be a higher level of consumer and QOS protection that the Commission might want to consider before a final rule is adopted.

Commissioner Espinoza indicated that Staff had agreed to go along with CenturyLink.

Mr. Fisk explained Staff had said as an interim measure, if CenturyLink was willing to be bound by the midsize carrier rules, it would be a step up from where they are currently.

Commissioner Espinoza stated CenturyLink brought to their attention that the Commission declined to adopt emergency rules and as a result they have had no pricing, service, quality, or consumer protection rules since.

Mr. Fisk said he disagreed.

Commissioner Espinoza stated she disagreed too, but CenturyLink had given the Commission pages and pages of how they wanted the rulemaking process, and she had a problem with that. She also heard Mr. Fisk say there are no consumer protections.

Mr. Fisk explained the order would reject CenturyLink's comments because CenturyLink wanted more time before a NOPR is issued and wanted to continue to work with Staff and does not like what Staff proposed. The order states that the Commission agrees with Staff. The order in Paragraph L, directs Staff and CenturyLink to meet before April 10 to discuss the proposal because Staff possibly wanted to pursue the transition agreement while the case is proceeding. CenturyLink could file a petition in another docket, but the order provides them the opportunity to talk about the rules in the interim.

Commissioner Espinoza thought CenturyLink had also proposed in the interim, that they are a mid-sized carrier, because they are not.

Mr. Fisk replied he thought CenturyLink felt that was a compromise.

Commissioner Espinoza asked what they were going to do because they were not a mid-size carrier.

Mr. Fisk explained without an interim agreement the two broader rules on QOS and consumer protection would apply but possibly at a lower level than a mid-size carrier.

Commissioner Fischmann was also concerned and worried that what is decided in the interim could be used to color the final rule and create a lot of confusion with the two processes. He asked Staff to explain how the confusion could be avoided.

Mr. Fisk addressed that and explained the NOPR sets a schedule for the initial and response comments and public hearing. That is separate from an interim provision, because any parties could pursue in a separate docket. The initial response and comments from the hearing and any information that is requested in the record is all that would be considered on the two final rules.

He had been miffed by CenturyLink's comment that the Commission had declined to adopt emergency rules, because he had explained to CenturyLink attorneys numerous times that the Commission lacked the powers of emergency or interim rules. The State Rules Act narrows the circumstances under which an agency could issue emergency rules.

Commissioner Fischmann asked what would stop CenturyLink from wanting to enter the interim agreement into the final rule.

Mr. Fisk agreed they could if there was such an agreement, but this is a proceeding where only comments are considered and that would not have weight. He had no problem striking anything from the order about an interim agreement. The Commission could take out and leave this.

Commissioner Fischmann asked Mr. Ripperger his take.

Mr. Ripperger said first, Staff wants to move forward with the rulemaking and second, the assumption was once the mid-sized carrier rules were appealed, there were no rules. Staff's thought was if there is uncertainty having an agreement would take the uncertainty out. Staff advocated for a rule that they believe is appropriate, but not necessarily is a mid-size carrier rule.

Commissioner Fischmann questioned if the interim agreement would have legal force and thought it potentially muddies the water. He asked what could be gained from that process.

Mr. Fisk agreed. Those were valid concerns and he could strike the paragraphs leaving a clean order that includes nothing about the interim.

Commissioner Byrd asked why the proposed rules were not proposed to be used as the interim rules until they are made final.

Mr. Fisk explained this was CenturyLink's proposal and they were willing to be subject to the mid-sized carrier rules. They did not like the discussion drafts and argued their level of regulation had been lowered twice and did not want to be subject to these rules, even in the interim.

Commissioner Byrd agreed with Commissioner Fischmann.

Commissioner Fischmann noted that everyone would have opportunity for input during the hearing and he is frustrated when a rulemaking is dragged out longer than needed. He was just asking that people be expeditious to add clarity to the process so they could get where they need to be faster and have a rule that has legal force.

Commissioner Byrd thought the timeframe had been set for the rulemaking.

Mr. Fisk explained there were restrictions under the State Rules Act, but they do want to act more quickly than 12-18 months from the NOPR.

He reviewed the deadlines he had set for the initial comments by May 17, 2019; the response comments by May 31, 2019; and a public hearing on June 12, 2019 and record closing date July 2, 2019.

He was informed of a conflict on the hearing date and revised the date of the hearing to a week later on June 19, 2019 at 2 p.m. and the revised closing date July 9, 2019.

**Commissioner Fischmann moved, seconded by Commissioner Espinoza to revise the order and strike all matters regarding the interim agreement and the motion passed by unanimous 5-0 voice vote.**

*Commissioner Hall signed off at 11:15 a.m.*

A five-minute break was taken from 11:15 a.m. to 11:20 a.m. Commissioner Espinoza did not return.

## **10. CONSIDERATION AND POSSIBLE ACTION REGARDING ADVICE NOTICES**

- **Southwestern Public Service Company - Advice Notice No. 277**
- **Southwestern Public Service Company - Advice Notice No. 278**

Mr. Reynolds and Dr. Heidi Pitts from the PNM Utility Department came forward.

Mr. Reynolds explained Advice Notice 277 is a proposed SPS form revision in the basic bill for service updating some of the boilerplate language on the back of the bill and specifically removing amounts related to third-party payment fees. The fee is not under the Commission's jurisdiction and may be revised by a third party. In addition, they are adding debit and credit card payment options and a bank "view and pay" option through the person's bank web site.

He recommended Commission allow it to go into effect by operation of law.

There were no questions from the Commissioners.

Chair Becenti Aguilar indicated no action was needed by the Commission. She thanked them for their work.

- **Southwestern Public Service Company - Advice Notice No. 50**

Dr. Pitts explained Advice Notice 50 is Southwestern Co-op's (the far northeastern part of the state) revised rate #18, irrigation service rate. Customers under this rate class are seasonal irrigators and municipal water wells within the service area and this was a change of language more than a change of rate.

*Commissioner Espinoza returned to the meeting at this time.*

Currently rate #18 is written that minimum charges are billed monthly. These are seasonal irrigators with the majority of usage between March and September. Historically it is more appropriate to charge annually and avoids penalizing users for low amounts of electricity in non-irrigation months. The revision does not change the billing period charges for energy, only the rate to an annual minimum bill.

The Advice Notice was filed on February 20 with a proposed effective rate on Friday, March 22, 2019. Staff recommends this be allowed to go into effect by operation of law.

## **11. COMMUNICATIONS WITH CHIEF OF STAFF**

- **Revisions to Absence and Leave Policy No. 3**

Mr. Montoya reported on the revision. He referred to the redline version of the proposal deferring to Santa Fe School District for the Santa Fe Office and the Socorro School District for the Fire Academy. The individuals residing outside the school districts have the option of following any local school district applicable to the residence.

A minor revision was made on page 10 under Inclement Weather. He read: "if school does not announce an inclement weather delay or closure, due to budgetary constraints all employees should follow inclement weather announcements on the PRC's web sites." He explained he thought the Commission should have the authority to allow for delays or closures for areas of potential that school districts may not

close or delay during school session.

Commissioner Espinoza voiced concerns that differ from the Governors and thought they should stay the same and follow the Governor's policy, regardless of the budget. Business people get confused as to whether there would still be a meeting, etc. The Commission should leave the policy as they have been following and changing the policy would create the same confusion, they had on two days last week. The policy should remain the same; if the schools close, the Commission closes.

Mr. Montoya confirmed that the commission did not want the option to shut down the building if, as he read, a school does not close in inclement weather.

Commissioner Espinoza replied there was no snow last week and they had two days off. A lot of people made it in from other areas. She thought it would be better to stay on one schedule and less confusing.

Ms. Amer added that the PRC does not have authority whether the building is open or closed as a tenant. That responsibility is the General Services Department (GSD) does and they follow the Governors policy, but if the GSD closes the facility that leaves the question of whether employees should try to come in.

Commissioner Byrd pointed out if Albuquerque is closed, a lot of Commissioners live in Albuquerque and many of them would not get here. He thought it useful to have the ability to add another day.

Ms. Amer indicated according to the Governors policy, if Albuquerque schools are closed, they would not be required to come in, even if the Santa Fe schools are open.

Chair Becenti Aguilar clarified that employees who live in Albuquerque, even though not required to report to Santa Fe, have to submit a leave slip.

Ms. Amer explained both the Governors policy and the new policy is consistent that the employee is allowed to take administrative leave.

**Commissioner Espinoza moved that the policy remain unchanged and continue to be based on the existing policy.**

Commissioner Espinoza explained that would be consistent with the Governor's policy and avoid confusion.

Ms. Amer noted the changes made prior to the last sentence were consistent with the Governors policy and could be adopted without the recommendation.

Mr. Montoya said he understood what Commissioner Espinoza had asked and he requested approval to proceed in negotiations with the union. A change in policy required it go before the union and this changed the policy prior to what he read and would be a revision.

Commissioner Espinoza agreed, but the revision should not include what was just discussed.

Mr. Montoya agreed. He explained he was trying to address a situation brought to his attention that if



school districts run out of inclement weather money, and there is an inclement weather issue, without the revision the Commission would not have the ability to shut down.

Commissioner Espinoza added on that subject, that the schools have run out of their allotted days off allotted and if it snows 10 feet tomorrow, the schools would either have to take it off of a holiday or days in the summer.

Commissioner Espinoza noted the school's budget had nothing to do with the Commission.

Mr. Montoya explained that was why he added that the Commission should not be restricted to the school district budget.

Commissioner Fischmann said he was not worried that would happen because he was sure the schools value the children's safety over the budget.

Mr. Montoya provided an update on the ADA certification process. He introduced Ms. Martinez-Rael and turned the floor over to Brad Borman, the Acting Director of Legal Division.

Mr. Borman stated was designated as the Commission's ADA Coordinator. The position came about because of a case in the Transportation Division last year in which issues related to the American's with Disabilities Act (ADA) were raised.

Title 2 of the ADA addresses the responsibilities of state/local governments and requires agencies with 50 employees or more to appoint an ADA Administrator. He was appointed a year ago to ensure the Commission met that requirement.

The Governor's Commission on Disability has available training for certification as an ADA coordinator that he has participated in. He has completed more than one half of the necessary 40 credits to receive certification. Sessions have covered a wide range of topics including an overview of the law, disability awareness, reasonable accommodations, recent legal decisions, web site accessibility, service animals, etc.

Commissioner Espinoza asked whether the responsibility is the Commission's or GSD to ensure accommodations are met.

Mr. Borman explained the facility is GSD's responsibility. The reasonable accommodations are broad to ensure people can participate in the processes and the meetings.

Commissioner Espinoza wondered if the Commission met the requirements. She suggested Mr. Borman work with Deborah Bransford whom she learned is familiar with all ADA and very knowledgeable. Between the two they could help the Commission meet the requirements.

Mr. Borman said regarding reasonable accommodations, the Commission has a lot of informal policies, but he had not identified any formal policies and the Commission may want to consider that. On informal policies, he had participated in one process that was resolved to everyone's satisfaction. He indicated he was still going through the training and expected to be certified by summer.

Commissioner Espinoza mentioned the Commission on Disability being next door and that every now and then they get a call from Mr. Allory about things that should be done.

She asked if the Commission had TTY capability for the phones. Mr. Borman indicated he would follow up with that but thought they did not have the ability.

Commissioner Espinoza asked that Mr. Borman keep them updated because she wanted to be sure they continue to accommodate.

Mr. Montoya shared that the Pipeline Bureau has a standing monthly training and an individual needed accommodation of a sign language interpreter. He informed the Commission that accommodations would be provided and paid for by the Commission.

Deborah Bransford was asked by Commissioner Espinoza to provide some of her experience.

Ms. Bransford, the District 5 Executive Assistant, indicated she is a rehabilitation counselor meaning that she is an expert in working with individuals with disabilities and late onset medical conditions. She has done that for several years and was on the GSD about 5 years and the task force for 5 years. She is a certified ADA specialist and knows sign language. She offered to assist Mr. Borman on any issues.

Mr. Borman replied working together would be very helpful.

Mr. Montoya informed the Commissioners SPS would conduct a ratemaking and cost of service model training at the PRC building this afternoon and tomorrow.

Also, he wanted to express his appreciation and gratitude for Staff. Personally, as the Acting Chief of Staff he was exposed to many different bills and subjects that he had not been previously involved with. Staff had been great and shared their contact numbers and promptly responded to his inquiries, even at night. He wanted to take this opportunity to express his appreciation for Staff as well.

Mr. Fisk confirmed that the Commissioners received a copy of the article that had been published in the Albuquerque Journal at their request.

## **12. COMMUNICATIONS WITH GENERAL COUNSEL**

There was none.

## **13. COMMUNICATIONS WITH COMMISSIONERS**

The Commission observed a moment of silence requested by Commissioner Espinoza for Joey, the gentleman in Clovis who died while doing storm restoration repair. She said most people did not realize the effort it takes to get the electricity back up and running in a storm after it goes out.

Commissioner Espinoza asked Staff to show the changes made by redline when sending the revised

policy revisions to them.

She also asked everyone to listen to the local radio stations for cancellations when there are school closings now that they were on the same page with the policies.

Commissioner Byrd expressed condolences to the SPS Energy families and crews.

He noted that a couple of months ago, PRC suspended the project for EPE on the Talavera Station in order to get information on other alternatives, but he has not heard anything.

Mr. Montoya offered to follow up. That was a result of the January 9th open meeting and had been brought to his attention. That is on his action items and to get information back to the Commission more promptly. He has been in contact with RECCO and will also follow-up with Milo and Raj as well.

Commissioner Fischmann added, he has continued to be asked to recuse from the EPE topic and has sent EPE a note indicating he does not plan to do that. He has only commented they need for the Commission to look at the options and make a decision and has never shown any prejudice one way or the other. On that basis, he declines to recuse.

He said regarding an update on the USF: Brian and Mike have been looking for options that the Commission could choose to consider in rulemaking or potential legislation. Brian has found about 20 issues to resolve before they move forward with a decision. He just wanted to let everyone know the work is moving forward and it is never as simple as they would hope.

Commissioner Fischmann stated also this week he was required to send a note on the BB2 Line case service list to disclose an ex parte discussion. A Staff member came to his office and disclosed he disagreed with the HE officer and he had very specific objections.

He said that type of communications on an active docket should not occur and he mentions best because all of the Staff should know that Commissioners take ex parte seriously. That type of discussion should not happen. He does not want to have to, take the time to send notes that disclose ex parte discussions. He asked that everyone follow the process.

Commissioner Espinoza thanked Commissioner Fischmann for doing that and found it helpful to receive a copy of the case. She said she respected him for voicing that in the open meeting.

Chair Becenti Aguilar thought that was a good example to Staff that the Commissioners are being very cautious.

Commissioner Espinoza noted for the record that at one time the Commissioners had talked about the security of the building and the loss of participation of Superintendent of Insurance, John Franchini in the process and funding. She was told by Mr. Franchini that he now has security greeters on three different floors working to keep people who are possible threats out and the security system was only \$23k compared to the price the PRC was given.

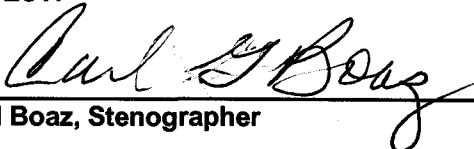
She suggested Staff talk to Mr. Franchini about the process.

Mr. Montoya offered to follow up.

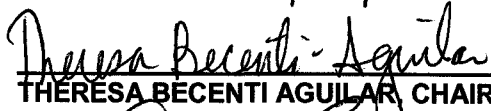
#### 14. ADJOURNMENT

The meeting adjourned at 11:55 a.m.

ATTEST:

  
Carl Boaz, Stenographer

APPROVED: 4/24/19

  
THERESA BECENTI AGUILAR, CHAIRPERSON

  
VALERIE ESPINOZA, VICE CHAIRPERSON

  
CYNTHIA B. HALL, COMMISSIONER

  
JEFFERSON BYRD, COMMISSIONER

  
STEPHEN FISCHMANN, COMMISSIONER

# NEW MEXICO PUBLIC REGULATION COMMISSION

## OPEN MEETING: CASE MANAGEMENT MEETING

Date: March 20, 2019

CONFIDENTIAL

NAME	COMPANY NAME (if any)	PHONE NUMBER
Greg Smith	RMEMS	505 210 4441
Ed Rhue	RMEMS	505-379-0331
Mark Fomby	PNM	505 241 2498
Rory Paulson	Attorney / RMEMS	505-298-5730
Marko Contreras	Xcel Energy / SPS	806-378-2115
Steven Carroon	NMGC	505-697-3559
Michael Salazar	CWA	505-983-1710
Evan Evans	Xcel Energy / SPS	806-378-2930

Thank you for attending this meeting.



**NEW MEXICO PUBLIC REGULATION COMMISSION**

**NOTICE OF OPEN MEETING  
OPEN MEETING: REGULAR WEEKLY MEETING**

**Wednesday, March 20, 2019**

**9:30 a.m.**

**PERA Building, 4<sup>th</sup> 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. CONSIDERATION AND APPROVAL OF THE MINUTES**
  - **Minutes of the Regular Open Meeting for February 20, 2019**
- V. CONSIDERATION AND ADOPTION OF RESOLUTION DESIGNATING APRIL 2019 SAFE DIGGING MONTH**
- VI. DIVISION DIRECTORS' REPORTS**
  - **Presentation by Water/Wastewater Bureau**
- VII. PUBLIC COMMENT**
- VIII. CONSENT ACTION**
  - A. Transportation Matters:**

**NONE**
  - B. Utility Matters:**

1)	19-00055-UT Judith Amer	IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY INC. FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS MARCH 2019 GAS COST FACTOR STATEMENT  NEW MEXICO GAS COMPANY, INC.,
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		Applicant.
		<u>POTENTIAL ORDER GRANTING VARIANCE</u>

**IX. REGULAR ACTION AND DISCUSSION**

**A. Transportation Matters:**

2)	18-00216-TR-M Judith Amer Ashley Schannauer	IN THE MATTER OF THE APPLICATION OF BERNALILLO COUNTY HEALTH CARE CORPORATION DBA ALBUQUERQUE AMBULANCE SERVICE FOR AN AMENDMENT TO CERTIFICATE NO. 1168  <u>POTENTIAL FINAL ORDER ON RECOMMENDED DECISION</u>
3)	19-00065-TR-M Judith Amer	IN THE MATTER OF THE PETITION FOR VARIANCE FROM MOTOR CARRIER RULE 18.2.4.13 B(2) NMAC, THE RULE GOVERNING IDENTIFICATION OF EQUIPMENT, FILED BY DENNIS BALTHASER D/B/A ROSWELL UFO TOURS, CERTIFICATE NO. 56470  <u>POTENTIAL ORDER GRANTING VARIANCE</u>

**B. Utility Matters:**

4)	17-00186-UT Russell Fisk	IN THE MATTER OF THE PETITION OF CENTURYLINK QC TO IMPLEMENT SENATE BILL 53 AND TO ADOPT EMERGENCY RULES  <u>POTENTIAL ORDER ISSUING NOTICE OF PROPOSED RULEMAKING</u>
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**X. CONSIDERATION AND POSSIBLE ACTION REGARDING ADVICE NOTICES**

- **Southwestern Public Service Company - Advice Notice No. 277**

- Southwestern Public Service Company - Advice Notice No. 278
  - Southwestern Electric Cooperative - Advice Notice No. 50
- XI. COMMUNICATIONS WITH CHIEF OF STAFF
- Revisions to Absence and Leave Policy No. 3
- XII. COMMUNICATIONS WITH GENERAL COUNSEL
- XIII. COMMUNICATIONS WITH COMMISSIONERS
- XIV. ADJOURNMENT

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To obtain a copy of this agenda please log in the Commission's website at [www.prc.state.nm.us](http://www.prc.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:** March 20, 2019

**PUBLIC COMMENT SIGN IN SHEET**

NAME	PHONE NUMBER	TOPIC

Thank you for attending this meeting.