

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 6, 2011**

TIME: 9:30 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:

Commission Chairman Patrick H. Lyons [later telephonically]
Commission Vice-Chairman Jerome D. Block
Commissioner Jason A. Marks
Commissioner Theresa Becenti-Aguilar
Commissioner Ben L. Hall

Members Excused:

Staff Present

Michael Rivera, Chief of Staff
Bob Parker, Acting General Counsel
Mary Howells, Associate General Counsel
Carolyn Glick, Hearing Examiner
Roy Stephenson, Utility Division Director
Jack Sidler, Utility Division
Larry Luján, Transportation Division Director
Charmaine Jackson, Native American Liaison
Rocke Johnson, Executive Administrator for Chief of Staff
Charlotte Durán, District 3 Executive Administrator
John Franchini, Superintendent of Insurance
Tian Xiao, Insurance Division
Tim Holloran, Legal Division
Hughanne Maxwell-Loux, Human Resources
Carol Rising, Legal Division Director
Gerald Garner, PIO

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Regular 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. Commission Vice Chairman Jerome Block called the Regular Open meeting to order at 9:35 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 Regular Open Meeting is incorporated herewith to these minutes as Exhibit 1.

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

1. PLEDGE OF ALLEGIANCE

2. INTRODUCTIONS

There were no introductions.

4. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

5. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Hall moved to approve the agenda as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote. Commissioner Lyons was not present for the vote.

6. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Special Open Meeting of December 15, 2010**

- **Minutes of the Regular Open Meeting of December 21, 2010**

Commissioner Becenti-Aguilar moved to approve the December 15, 2010 minutes and the December 21, 2010 minutes as presented. Commissioner Marks seconded the motion and it passed by unanimous (4-0) voice vote. Commissioner Lyons was not present for the vote.

7. PUBLIC COMMENT

There were no comments from the public.

7. REGULAR ACTION ITEMS

A. Transportation Division Cases

**10-00381-TR-R IN THE MATTER OF THE APPLICATION OF CAPITAL CITY CAB/VILLAGE TAXI, INC., D/B/A CAPITAL CITY CAB, FOR A TARIFF INCREASE.
(Bob Parker) Order**

Mr. Parker presented information regarding this matter to the Commission. Capital City Cab was asking for a temporary rate increase. They had a pending case to request a permanent increase but claimed irreparable harm without an immediate increase. They had been losing money for years from lost volume. They lost a contract with the City of Santa Fé in 2006. The last increase was in 2004. Labor costs have increased and they would have to go out of business by April without relief. The record included testimony by the owner with other affidavits. They met the rules for interim relief.

There were several ways the Commission could handle it but he recommended a public hearing in a month. There was a reasonable case for an interim rate increase but they needed to hear from other parties before just granting one. The fastest way of doing it would be a hearing by the full Commission. He prepared an order that would set it for hearing on February 8th.

Commissioner Marks thought his recommendation seemed good but did have questions. He asked why they procrastinated for so long.

When the Commission did a rate case for a utility, it was with understanding that if the cost of service didn't support the increase, there were refunds. But he wondered how a taxi company could provide refunds. The financial side was critical so it should go to a hearing.

Commissioner Marks moved to approve the order. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Hall commented that the taxi rates were published and people were free to choose based on those rates. He agreed with Commissioner Marks about waiting and knew the downturn did affect their ability.

The motion to approve passed by unanimous (4-0) voice vote. Commissioner Lyons was not present for the vote. So Ordered.

8. DISCUSSION ITEMS

A. Utility Division Cases

10-00286-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF

**NEW MEXICO FOR APPROVAL OF THE SANTA FÉ COUNTY
UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICES. 401.
PUBLIC SERVICE COMPANY OF NEW MEXICO, APPLICANT.
(Carolyn R. Glick) Recommended Decision**

Ms. Glick provided information regarding this matter to the Commission. She clarified that PNM sought to recover costs associated with underground distribution lines in unincorporated areas of Santa Fé County. Advice #22 would allow PNM to recover extra costs from underground installation.

In the previous case the Commission allowed recovery for the estimated \$92,000 of extra costs. But actual costs were over the estimate by \$41,000 with Advice Rider #26 and PNM proposed to recover those costs on customers' March bills. The table she provided indicated the amounts.

She said the primary cause of the overrun was that PNM contracted for the work rather than doing it themselves. PNM said it was not feasible for them to do it themselves in Santa Fé.

Her RD recommended approval of the rider. The rates were just and reasonable and based on actual costs.

Commissioner Becenti-Aguilar asked if she carefully reviewed PNM's decision to hire a contractor.

Ms. Glick believed she did. PNM submitted testimony on that and said it was important to get it completed quickly.

Commissioner Marks asked if PNM knew it was not practical to use PNM crews why they did their estimate using PNM crews.,

Ms. Glick replied that PNM testified at the hearing that typically they estimated using a contractor and didn't say why in this particular case they did not do that.

Commissioner Marks concluded that they "blew" the estimate. Ms. Glick agreed.

Commissioner Marks asked how much the surcharge would be to recover base excess costs. They already recovered \$92,000.

Ms. Glick said they actually recovered more. For a residential customer, it was \$0.24/month over 12 months.

Commissioner Marks asked what the pros and cons would be to spread it over 3 months.

Ms. Glick said that was not discussed. The testimony was that PNM believed because it was relatively small it made more sense to collect in one month.

Commissioner Marks countered that customers were not used to seeing this large of a surcharge in their bills.

Ms. Glick agreed. She said there would be a message section in the bill where they would explain the surcharge.

Commissioner Becenti-Aguilar said she already got some emails about it.

Ms. Glick said the Commission previously required a bill stuffer. PNM did not oppose that here but it did cost them \$20-30,000 to do a bill stuffer.

Commissioner Marks asked if they would have this back next week. Mr. Parker agreed

Commissioner Marks wanted a bench request to PNM and staff to tell us how doing it over 3 months would work as an option for the surcharge. He asked if they could do that now for a Tuesday response and then hear it on Thursday.

Commissioner Becenti-Aguilar asked why he suggested 3 months.

Commissioner Marks explained that he was trying to make it close to what had been collected before. Four months would get it closer to the 25 cents he asked that the bench request be for four months instead of three. He thought the customers who watched things closely might be more comfortable with the option of four months.

Commissioner Hall asked how PNM could miss the estimate by one third. Over the years they have been involved with underground and overhead installations. They already recovered \$99,000 and now were asking for \$41,000 more. He asked if PNM hired the contractor on a cost plus basis. And if they had a contract he wondered what happened to it. Someone made a mistake on it. When he made a mistake in business, he had to pay for it. He didn't think labor costs were up with the downturn. It was too easy for PNM to just say they missed the estimate. He didn't agree with that.

He thought a professional engineer who had worked for PNM for a long time should not have missed it by that much. They usually estimated on the basis of a contract. They already knew they were going to have a contract in Santa Fé.

To him, what PNM was asking was for the ratepayers to pay for PNM's mistake. He didn't believe the ratepayers should be out on a limb every time that happened. It was not the \$1.24 that bothered him but the principle of the whole thing. PNM came and told the Commission they screwed up and now wanted ratepayers to pay for it.

Mary Collins clarified that there was a fiber optic line that was not marked and they had to take those cables into account in their work out there.

Mr. Parker asked if the Commission wanted it spread out for all customers. Commissioner Marks agreed.

Vice Chairman Block said they would have it on next week.

9. CLOSED EXECUTIVE SESSION Pursuant to NMSA § 10-15-1.H (3) to discuss the following pending matter:

07-00316-UT IN THE MATTER OF A COMMISSION INQUIRY INTO THE RATES AND CHARGES OF INSTITUTIONAL OPERATOR SERVICE PROVIDERS (Mary Howells)

Commissioner Hall moved to go into closed session pursuant to NMSA § 10-15-1.H (3) to discuss case 07-00316-UT. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Marks said he would oppose as usual because it was public regulatory business.

The motion failed on a 2-2 roll call vote with Commissioners Hall and Becenti-Aguilar voting in favor and Commissioners Block and Marks voting against. Commissioner Lyons was not present for the vote.

Ms. Howells presented information regarding this matter to the Commission. It was an inquiry into rates paid by inmates to IOSP's that had been requested in 2007.

An RD was issued in December and on December 21 staff presented a remand order. Most of the findings were okay but it was remanded on a tight procedural basis for the rate of return issue. Since then, some good points have been raised.

Her recommendation would be to grant the alternate schedule which would give slightly more time than requested. That was reasonable for all parties. It was best to have a complete case and get together the rates that the Commission could find just and reasonable. Looking at the big picture, they should not have adopted any part of the RD at that time.

It was important to go through this process first so she strongly recommended that the Commission vacate those findings and conclusions and corresponding paragraphs that had to do with anything that adopted the RD and to adopt a slightly amended schedule.

Vice Chairman Block asked when the Commission adopted part of it.

Ms. Howells said that was done on December 21st.

Commissioner Marks said he received a proposed order that denied the motion for rehearing. Ms. Howells agreed.

Commissioner Marks said it also reset the procedural schedule but if also recommended that the Commission vacate the adopted portions.

Ms. Howells said it was paragraph #6 and ordering paragraph C where that was located.

Commissioner Lyons joined the meeting by phone at this time.

She explained that paragraph #6 was on page 2 and paragraph C was on page 3.

Commissioner Marks thought it might have been cleaner to vacate the December 21 order and issue a new order.

Ms. Howells said this essentially did that. It does do that, in fact, in a straightforward manner.

Commissioner Marks noted an inconsistency here. They couldn't make a finding that they were rejecting the hearing at the same time they were rejecting all other grounds. They could rewrite it to say they were dismissing without prejudice until such time as the Commission issued a final order.

Ms. Ms. Howells understood. She had not said they had no merit but said the same thing as the exceptions.

Commissioner Marks said it didn't have anything to do with what arguments were repeats. He thought they should put paragraph six before five and five should say because the Commission vacated parts of the order that the order for the hearing was denied at this time. Ms. Howells was okay with that change.

Commissioner Becenti-Aguilar thought they were just trying to make it more straightforward and simplified so when public read it, it would be clear.

Commissioner Marks added that it would make it so that the Commission didn't wind up on appeal of a partial order. They could put it together and have one final order. They should make it clear there was nothing to appeal on this partial order.

Ms. Howells agreed - they didn't have a final order.

Commissioner Marks moved to approve the order with the changes discussed. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

11. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, ROBERT PARKER

There were no communications with General Counsel.

12. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

- **Legislative Matters**

Mr. Rivera said Commissioner Lyons had asked for update on NAIC accreditation so he asked Superintendent Franchini to present.

Superintendent Franchini said he was giving a report on where they stood now with NAIC.

He read his report first explaining what NAIC did regarding adequate solvency to protect customers and reviewed the accreditation standard of compliance.

At the national meeting in August, the NAIC Finance Committee renewed New Mexico's accreditation for 5 years but put them on probation, subject to an on-site review of financial standards. The Insurance Division was to provide a response letter and submit a corrected action plan involving hiring and training of staff and discussing progress in achieving the objectives. The first report was due 12/31/10 and the final report would be due on April 10, 2011.

He quoted their remarks that warned non compliance could suspend or revoke accreditation.

On Nov 15, 2010, the Insurance Division submitted a report on the accreditation corrected plan. It was accepted so the Division met the first goal.

On March 15, they would submit the final action plan. They were moving forward on it.

Sometime in April, the accreditation team would revisit the Division. The corrective action plan included

- 1 - financial examination staff adequately trained;
- 2 - new hires sent to 4-day training;
- 3 - contract with chief financial analyst (NAIC's trainers) to train staff;
- 4 - all required certificates in place.

Secondly, they were working on realigning personnel as a responsive organization. The restructure plan was submitted to the Commission and he set up a schedule for it.

Thirdly, they would hire a well qualified financial analyst. They were now interviewing for that position.

Fourthly, they would retain competent and qualified staff regarding solvency in financial areas.

There were upcoming changes in NAIC standards. They would require new licensing standards. There were time limits for applications also. They would have strict time limits to say yes or no to insurance companies wanting to do business in New Mexico. They also had to do a company analysis review and document them. There were many insurance companies owned by foreign conglomerates. The Division needed to make sure they had the money to ensure solvency. He offered to furnish Commissioners with a copy.

Commissioner Hall asked for one.

Commissioner Hall asked how long it took the Insurance Division to get into this situation and if he had any knowledge of that.

Superintendent Franchini responded that last spring at NAIC when the recommendations were made, there was nothing in writing about what they were going to do. He was not even aware of any of it until the

annual meeting.

Commissioner Hall asked what they would do to keep it from happening again. Evidently the Commissioners had not been informed about it. And now they required to come in and train our staff.

Superintendent Franchini said that since the new Chief of Staff and new Superintendent were hired, their attitude had changed greatly. They should always have a completely open dialog with commissioners.

Mr. Rivera added that initially the PRC was notified that something was happening when they had the former Superintendent and then in the fall NAIC said the PRC owed them some more information.

He had a chance to meet with Mr. Tracy from NAIC who said he was pleased with things becoming more stable now so they were moving forward.

Commissioner Hall said it was still a concern with people across the street. He just want the Commissioners to be kept informed and if they needed to do something, to please ask.

Vice Chairman Block asked that this January 6, 2011 document be reprint with the new commissioners on the letterhead.

Commissioner Becenti-Aguilar understood he said they went through the first hurdle with their report in November. She asked how he knew that was satisfactory.

Superintendent Franchini said that he submitted a letter saying what they did.

Commissioner Becenti-Aguilar said he submitted his report but there was no response.

Mr. Xiao said that at the national meeting when the Superintendent presented the corrected action plan, a full committee reviewed in closed session and after that Joseph Tory, the Chairman from Rhode Island, reported they were happy with the action plan.

Commissioner Becenti-Aguilar thanked him.

Commissioner Hall asked that every time he got a response from the national to furnish a copy to commissioners so they would know first hand what steps he had taken and whether they gave him an A on it.

Vice Chairman Block agreed.

Commissioner Hall explained that it was very important. They got a lot of flak on it from across the street so Commissioners needed to be able to respond to them not with just hearsay.

Superintendent Franchini agreed and said he wanted the Commissioners to be a strong advocate for them.

Vice Chairman Block referred to his statement here about retention of competent staff with modification of pay structure. He asked what type of changes the Superintendent was planning to make.

Superintendent Franchini said before the new governor, no new positions were proposed. They could actually do this without modifying their pay structure so they were not planning on doing that any longer but they needed to work together on it.

Commissioner Marks recalled at one point the Superintendent said there needed to be four financial analysts.

Superintendent Franchini agreed, including Mr. Xiao. He said he would like to have the vacancy that was posted hired within thirty days. They had a good number of applicants and thought they could fill it by then.

Commissioner Becenti-Aguilar noted that whenever they went into the public they were approached by state legislators whose primary concern was the Insurance Division. She wanted to be able to give positive feedback about Insurance. The Superintendent was working hard to improve the situation.

Vice Chairman Block said they had a staff member leave to assist a new commissioner.

Superintendent Franchini said he was led to believe that was temporary. Commissioner Hall agreed.

13. COMMUNICATIONS WITH COMMISSIONERS

Vice Chairman Block invited the Commissioners to his open meeting in Taos on Saturday at 8:00. They posted a possible quorum notice. He would deal with the Kit Carson issue at the meeting.

Commissioner Lyons added that on Monday they would have a hearing in the Hearing Room.

Vice Chairman Block agreed and it would be at 9:30 a.m.

Commissioner Becenti-Aguilar announced she wouldn't be present at Tuesday's Open Meeting in order to attend the inauguration of Navajo Nation President Ben Shelley. She thanked Commissioners for welcoming him to the Commission meeting in December.

Vice Chairman Block asked her to please wish him well on the Commission's behalf.

14. ADJOURNMENT

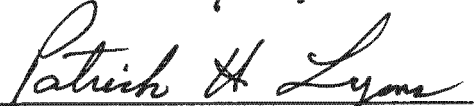
Commissioner Hall moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

The meeting was adjourned at 10:40 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 01/25/2011


PATRICK H. LYONS, CHAIRMAN


JEROME D. BLOCK, VICE CHAIRMAN


THERESA BECENTI-AGUILAR, COMMISSIONER


JASON MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER

DATE: 01/06/2011



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING
Thursday, January 6, 2011
9:30 A.M.**

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

AGENDA

- 1. PLEDGE OF ALLEGIANCE**
- 2. INTRODUCTIONS**
- 3. MISCELLANEOUS ANNOUNCEMENTS**
- 4. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 5. CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Special Open Meeting of December 15, 2010**
 - **Minutes of the Regular Open Meeting of December 21, 2010**
- 6. PUBLIC COMMENT**
- 7. REGULAR ACTION ITEMS**

A. Transportation Division Cases

10-00381-TR-R Bob Parker	IN THE MATTER OF THE APPLICATION OF CAPITAL CITY CAB/VILLAGE TAXI, INC., D/B/A CAPITAL CITY CAB, FOR A TARIFF INCREASE. <u>Order</u>
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8. DISCUSSION ITEMS

A. Utility Division Cases

10-00286-UT Carolyn R. Glick	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE SANTA FE COUNTY UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICE NO. 401. PUBLIC SERVICE COMPANY OF NEW MEXICO, APPLICANT. <u>Recommended Decision</u>
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9. CLOSED EXECUTIVE SESSION

Pursuant to NMSA 1978 §10-15-1.H(3) to discuss the following pending matter:

07-00316-UT IN THE MATTER OF A COMMISSION INQUIRY
Mary Howells INTO THE RATES AND CHARGES OF INSTITUTIONAL
 OPERATOR SERVICE PROVIDERS.

10. BACK TO REGULAR ACTION IN OPEN MEETING

B. Utility Division Cases

07-00316-UT Mary Howells	IN THE MATTER OF A COMMISSION INQUIRY INTO THE RATES AND CHARGES OF INSTITUTIONAL OPERATOR SERVICE PROVIDERS. <u>Order</u>
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11. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, MARGARET CAFFEY-MOQUIN

12. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

a. Legislative matters

13. COMMUNICATIONS WITH COMMISSIONERS

14. ADJOURNMENT

The Commission will make reasonable efforts to post the agenda on the Commission's website 24 hours before the open meeting but the inability to do so within the 24 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.

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 (827-4084) AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.