

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 13, 2011**

TIME: 9:32 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
Commission Vice-Chairman Jerome D. Block
Commissioner Jason A. Marks
Commissioner Theresa Becenti-Aguilar
Commissioner Ben L. Hall

Members Excused:

Staff Present

John Franchini, Acting Chief of Staff
Rick Blumenfeld, Acting General Counsel
Mary Howells, Associate General Counsel
Mark Cessarich, Telecommunications Bureau
Roy Stephenson, Utility Division Director
Reggie Padilla, Utility Division
Jason Montoya, Pipeline Safety Bureau Chief
Steve Schwebke, Water/Gas Bureau Chief
Larry Luján, Transportation Division Director
Rocke Johnson, Executive Administrator for Chief of Staff
Matthew Lovato, CFO
Juan Rios, ASD Director
John Standefer, Fire Marshal
Sheila Shaffer, CRD Division
Mike Ripperger, Telecommunications Bureau Chief
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 9:32 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

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Marks moved to approve the agenda as amended with 10-00352 TR-T on the Regular Action agenda. Chairman Lyons seconded the motion and it passed by unanimous voice vote.

5. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Special Open Meeting of December 23, 2010**

Commissioner Marks moved to approve the minutes of December 23, 2010 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote.

6. PUBLIC COMMENT

There were no comments from the public.

7. CONSENT ACTION ITEMS

A. Transportation Division Cases

10-00083-TR-M **IN THE MATTER OF THE APPLICATION OF MOVING SOLUTIONS, INC., FOR A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS CARRIER SERVICE AND FOR TEMPORARY AUTHORITY.**
(Rick Blumenfeld) Order

11-00002-TR-M **IN THE MATTER OF THE APPLICATION OF GOOD TO GO, LLC., D/B/A GOOD TO GO TAXI SERVICE FOR A CERTIFICATE TO PROVIDE TAXICAB SERVICE AND FOR TEMPORARY AUTHORITY.**
(Rick Blumenfeld) Order

B. Utility Division Cases

09-00389-UT **IN THE MATTER OF THE APPLICATION BY RATON NATURAL GAS COMPANY FOR CONTINUED USE OF ITS PURCHASED GAS ADJUSTMENT CLAUSE. RATON NATURAL GAS COMPANY, APPLICANT**
(Rick Blumenfeld) Order

09-00281-UT **IN THE MATTER OF THE COMPLAINT OF MICHAEL ARCHULETA AND A. STERN AGAINST WINDSTREAM COMMUNICATIONS.**
(Bob Parker) Order

Undocketed **IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR A CERTIFICATE OF REGISTRATION TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATION SERVICES WITHIN THE STATE OF NEW MEXICO.**
(Margaret Caffey-Moquin, Mark Cessarich) Order

Commissioner Marks moved to approve all cases listed on the Consent Agenda. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote. So Ordered.

8. REGULAR ACTION ITEMS

A. Transportation Division Cases

**10-00352-TR-T IN THE MATTER OF THE APPLICATION OF MOONEY MOVERS, INC., D/B/A
MOONEY MOVERS FOR A TRANSFER OF CERTIFICATE NO. 55591 TO
PROVIDE HOUSEHOLD GOODS TRANSPORTATION SERVICES AND FOR
TEMPORARY AUTHORITY.
(Rick Blumenfeld) Order**

Commissioner Marks asked if the Commission could give them a permanent certificate in this case or if they had to do just a temporary authority.

Mr. Luján explained that they requested a temporary certificate. He would get a recommendation for a permanent so a temporary would be unnecessary. He added that OGC put it on the agenda for a temporary certificate.

Commissioner Marks asked if they didn't have the paperwork for a permanent authority today.

Mr. Luján agreed - they would have to bring that back.

Commissioner Marks asked if a transfer request could be protested by anyone.

Mr. Luján said only on fitness. The 20- day notice period was published in the paper. Normally on transfer they don't ask for temporary but staff had to do it the way they requested.

Commissioner Marks moved to approve the order. Commissioner Hall seconded the motion and it passed by unanimous voice vote. So Ordered.

B. Utility Division Cases

**10-00379-UT IN THE MATTER OF KIT CARSON ELECTRIC COOPERATIVE, INC.'S ADVICE
NOTICE NO. 57.
KIT CARSON ELECTRIC COOPERATIVE, INC., APPLICANT.
(Mary Howells) Order**

Ms. Howells provided information regarding this matter to the Commission. She said rates were suspended on December 14th. The advice notice was suspended pending a public hearing which was held on Monday, January 10th. Protestors testified in the complaint of the concise criterion. One of the consumers tried to talk with all of them to work things out. The evidence at the public hearing pointed to just cause for a full hearing. Accordingly she proposed an order to have a full rate case.

On December 14, Commissioner Marks suggested that the suspension be a longer period of six months. The Commission went a different route and she didn't put in six months in this order although some consumers requested that. She left it at the normal time.

The second order differed only in paragraph B which had specific requirements for Kit Carson in their filing.

In her opinion, the general language was satisfactory. She preferred to keep it as simple as possible and get it to HE who could make the requirements more specific as the case proceeded. But that order did have suggestions for Kit Carson.

Vice Chairman Block asked if the public would have the opportunity to participate in a public hearing.

Ms. Howells said the Commission could ask for that.

Vice Chairman Block felt that should be included.

Commissioner Marks said he had set up a public hearing on the PNM case in Albuquerque on a single signature order and Vice Chairman Block could do that for Taos.

Ms. Howells advised to keep the order as simple as possible - when listing things that could or couldn't be done they might leave something out of the list so she proposed adoption of the first order.

Commissioner Marks respectfully disagreed and cited 62-87-G which required that the hearing be limited in scope to the issues in the protest which the Commission might find cause to review and that had to be included in the notice. He thought it should be contained as the legislature stated and stating that a general rate case didn't meet that.

Ms. Howells said the last time a rate case was suspended was in 2008 and it was done as a full rate case. The Commission couldn't do a rate case for just one class. It was best to allow all of the numbers to be looked at and, if there was just cause, to do that.

Commissioner Marks said there were some things that were not fair game. The rate design for commercial couldn't be at issue because there were no commercial protests. So it couldn't be a full rate case.

Ms. Howells disagreed.

Commissioner Marks moved to approve the first order. Vice Chairman Block seconded the motion.

Commissioner Marks clarified that his motion was for the first order.

Commissioner Marks moved to amend the motion to base the hearing on what was protested and the following issues should be addressed in the hearing: whether the cost of service was accurately stated and whether the proposed revenue requirements were reasonable in relation to the cost of service; whether the cost of service reflected any cross-subsidization from the electric utility to other services but not the prudence of Kit Carson's diversification; the rate design for residential class, including the split between monthly fixed charge and kilowatt hour charges; and the desirability of an alternative design using inverted block rates in the design. Vice Chairman Block seconded the amendment.

Commissioner Hall asked Ms. Howells if that was necessary. As legal staff, she recommended certain things and wanted to know if they needed to amend it every time.

Ms. Howells said in her opinion, the original order without the amendments did what it needed to do and did reflect his concerns. It was best to leave it that way and let the HE scope it as it proceeded. She didn't believe that was in violation of the statute.

Chairman Lyons said he needed a copy of the amendment to look at. Secondly, he asked what the "normal amount of time" was.

Ms. Howells said the normal time was 9 months following that first 30 day period that had already occurred by December 15th.

Chairman Lyons commented that Kit Carson was a reverse peak cooperative so they needed to have something in place by summer. He asked if they could have 7-8 months instead.

Ms. Howells didn't have a problem with making it less if the Commission wanted to change ordering paragraph A to change it to six months instead of nine.

Chairman Lyons said he would amend the motion to have a period of 7½ months from December 14th.

Commissioner Marks proposed that they deal with one amendment at a time. He said he would support that amendment but pointed out that the order as drafted didn't specify that the suspension period would start December 14th but started after the HE declared that the application was complete and that had not yet happened.

Ms. Howells agreed that the clock didn't start until there was a full application but based on what was provided at the public hearing; Kit Carson could provide all of that very quickly.

Commissioner Marks said it appeared that they filed those materials on Monday.

Chairman Lyons proposed they make it six months from the time they filed.

Chairman Lyons said after reading his amendment that the other coops had not been addressed this way.

Commissioner Marks asked which coops he was referring to.

Ms. Howells said one of them was Central New Mexico.

Commissioner Marks said that was not general but on specific rates.

Ms. Howells said that might have been a unique one and she wasn't at the OGC at that time. She was recalling past practice. She strongly believed it should be a full rate hearing.

Chairman Lyons suggested that before something else came up that the Commission had not seen and which could delay things for months he agreed with General Counsel.

Commissioner Marks said if they didn't say anything in the protest, it wasn't fair game. These were not too limiting. Whether it was prudent to get into propane was not part of it but whether being in propane was affecting electric rates was part of it. If they didn't like Kit Carson doing propane, they could elect another board. He didn't think commercial or industrial rates should come in because they were not protested. The statute superseded the Commissioners' personal preferences.

Ms. Howells said items that were not appropriate in the rate case would not be allowed aside from delineating them.

Chairman Lyons recalled the Commission talked about the validity of them and something might not have been considered.

Commissioner Marks said the protests were filed in writing and he found them persuasive. There was not a problem with the protests. Over a hundred came and over 200 wrote letters. If Chairman Lyons or Ms. Howells could say there were protests talking about other things that needed to be reviewed he would be happy to be convinced but he thought without that they were not doing what they were supposed to do.

Commissioner Hall asked Ms. Howells if the appointed HE would follow the statute or if the Commission needed to micro manage what the HE was supposed to do. Everyone had to follow the statute. He asked if it would violate the statute just because it was not specific in the order.

Ms. Howells said her order allowed the HE to proceed. They raised the question of whether Kit Carson's rates were just and reasonable in their entirety.

Commissioner Hall didn't see the need to amend the order if the staff were required to read and follow the statute in a hearing case and the Commission was fully aware that staff would read and follow the statute. The statutes were read and understood so he didn't understand the need for the amendment.

Commissioner Marks said the statute said the notice of hearing shall specify the reasons for the hearing.

Chairman Lyons didn't think it was prudent to put an amendment on it since they agreed last Thursday. They should have considered that amendment on Thursday.

Commissioner Marks called the question.

The amendment failed on a 2-3 voice vote with Commissioner Hall, Chairman Lyons, and Vice Chairman Block voting against.

Chairman Lyons moved to amend the time to six months following filing of the rate case. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

Commissioner Marks moved to amend the order that Kit Carson be invited to submit an alternative rate design using inclining block rates for the residential class.

Mr. Paul Garcia, Cuddy/McCarthy, said what they filed was a response to the order the PRC issued in November.

Chairman Lyons asked when they would file the rate case.

Mr. Garcia said it wouldn't take long but they were directed to file a response to the protest which was what they did.

Chairman Lyons seconded the motion to amend.

Ms. Howells thought she understood that amendment and she would "add to ordering paragraph B that Kit Carson may present alternative rate designs including but not limited to inclining block rates for the residential class.

The motion to amend passed by unanimous (5-0) voice vote.

The motion as amended passed by unanimous (5-0) voice vote. So Ordered.

**10-00393-UT IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY
FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS JANUARY 2011 GAS
COST FACTOR STATEMENT.
NEW MEXICO GAS COMPANY, INC., APPLICANT.
(Mary Howells) Order**

Commissioner Marks moved to approve the order in this case. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

9. CLOSED SESSION Pursuant to NMSA 1978, § 10-15-1.H (2) to discuss limited personnel matters.

Chairman Lyons moved to go into closed executive session pursuant to NMSA 1978, § 10-15-1.H (2) to discuss limited personnel matters. Commissioner Hall seconded the motion. The motion passed by a majority (4-1) roll call vote with Commissioners Becenti-Aguilar, Hall, Lyons and Block voting in the affirmative and Commissioner Marks voting against.

The Commission went into closed session at 10:15 a.m.

10. RETURN TO OPEN SESSION FOR REGULAR ACTION

The Commission returned to open session at 10:16 a.m.

A. Human Resources

Undocketed RESOLUTION REGARDING COMMISSION EMPLOYEE SALARIES

Chairman Lyons reported that the LFC wanted to delete 10 positions in the PRC. He went over and discussed it with them and the Governor's Office yesterday. They came to some agreements.

Mr. Rios said the LFC recommendation was that a total of 10 positions be deleted. They recommended two executive assistant positions, the special projects coordinator, two economists, an office clerk (all in P611), in P613 an office clerk and in P675 (Insurance Division) a deputy superintendent, a financial specialist, an executive secretary and an admin position. Three of them were filled at the present time.

His handout showed an overview of programs affected by that recommendation. Seven of them were currently vacant.

Mr. Lovato reviewed the numbers and they determined which were not essential to operations. The bottom portion had other vacancies in PRC and was at the bottom because ASD was looking at what was essential to our operation. He briefly reviewed the calculations involved.

Chairman Lyons said he went twice to David Lucero and the LFC Director and told them the Commission could not take two executive assistants out of the system and keep the three others. They agreed to take away the reception and rotate assistants at the reception desk.

He went over the others with staff.

Mr. Rios clarified that the admin office support in P613 previously was held by Angelina Ruiz.

Commissioner Marks agreed with that move. He asked Chairman Lyons if his proposal was to find three from the bottom to substitute for the assistants and Native American liaison.

Chairman Lyons said they could get the positions and make vacancy savings happen. Commissioner Marks agreed.

Commissioner Marks pointed out that the vacancies in June might be different than today. They didn't want to lay anyone off. But there might be positions becoming vacant that would be better. He asked if the Commission could agree to identify them before June.

Chairman Lyons said he did try to keep the Economist. The LFC used the September vacancy list and those have been filled since then.

Commissioner Hall wondered why the LFC didn't just give the PRC a dollar amount instead of them

sitting across the street identifying specific jobs.

Chairman Lyons said they asked him what those positions did and if they did anything. They just wanted to know those people did some work.

Commissioner Hall thought that was fine but he didn't agree with them choosing what to eliminate. Some of the positions had been vacant for a long time and it looked like they could get by without those. He believed the Commission could best determine which positions to mark off.

Chairman Lyons asked if the Tribal Liaison might do 20 hours on something else. They should keep her busy.

Ms. Maxwell-Loux provided a report on staffing to the Commissioners.

Mr. Rios explained that the positions in red were held because the Commission previously decided to make offers to others at the highest range possible. But DFA required the PRC to hold them open.

Commissioner Hall asked when they would have to reply.

Mr. Lovato felt the sooner the better so they could go through negotiation with them and agree on it. This would go through a legislative process so the sooner the better.

Commissioner Becenti-Aguilar said she would have to think about it until they met again.

Chairman Lyons said the total was about \$652,000 they would have to come up with. And they would try to save as many as possible.

Commissioner Hall recommended allowing the Chair to negotiate with them on the best deal.

Chairman Lyons invited any other commissioner to go with him.

Employees' salaries were addressed by Ms. Maxwell-Loux. She reported they had 4 employees above the salary range - two actuaries, Chief of Staff and Superintendent of Insurance. The Chief of Staff's salary was entirely from the General Fund.

The Commission briefly discussed what the actuary duties entailed.

Commissioner Marks pointed out that the actuaries could make much more in the private sector. Insurance Division had always had difficulty filling those positions. They might not be able to fill those with qualified people

Superintendent Franchini agreed. He did a comparison study and found that the average in the USA for a P/L actuary was \$128,000. The PRC's was \$103,000. In L/H the nation's midpoint was \$135,000 and at the PRC was \$130,000. He mentioned several others.

Commissioner Marks thought they should put some administrative costs in the proposal for recruitment of specialized positions above \$100,000 but not pay more than \$110,000. Without that they wouldn't be able to fill them.

Vice Chairman Block asked if Danny Mayfield was he the first to be over \$100,000. Mr. Lovato agreed.

Commissioner Marks said he was hired around \$90,000 and inched up with COLAs the state gave to all executive positions.

Commissioner Hall commented that in every state there were differences in per capita income so the comparisons with other states didn't do much for him. He agreed with Commissioner Marks that they had to be careful to not lose people they could not replace. Lots of people could make more in business than working for government.

Chairman Lyons wanted the Commission to send a resolution. The Governor was capping all cabinet positions at \$125,000. He could adjust his resolution to \$105,000 and hope these staff members would keep working.

Chairman Lyons moved to send the resolution as amended to \$105,000. Commissioner Hall seconded the motion and it passed by majority (4-1) voice vote with Commissioner Marks voting against.

Commissioner Marks said his only concern was with Mr. Rivera. When the Commission hired him last summer he had moved to offer \$110,000 and was outvoted by the Commission. Now the Commission had an obligation either by allowing him to have a few months at his current salary or by capping his at \$110,000. He asked if the Commission would be willing to do something like that.

Vice Chairman Block added that they did a candidate search committee to find candidates and it was budgeted for the year at this rate.

Mr. Lovato disagreed. It was budgeted at the previous salary and the difference was made up through vacancy savings.

Commissioner Marks asked if they could let him have \$110,000 as a variance to the policy.

Chairman Lyons asked if they should include the actuary.

Vice Chairman Block said he voted for the salary Mr. Rivera was getting. The Commission would get what it paid for. The bar was set by Mr. Mayfield's salary for a couple of years. He agreed with Commissioner Marks.

Commissioner Hall didn't think they could do one without the other. He asked if the actuary was at \$135,000 through the year. Mr. Rios agreed.

Commissioner Marks thought that in the long term the actuary position was the most well suited to contract out.

Vice Chairman Block asked if they were prepared to face the loss of Chief of Staff and actuary and the possible lack of candidates for rehiring.

Commissioner Marks moved to adopt a resolution to supersede the last one that would cap all salaries at \$105,000 except the Chief of Staff at \$110,000 and the Actuary at current salary and that the Commission had to vote in public session on any salaries offered above \$90,000. Vice Chairman Block seconded the motion and it passed by unanimous (5-0) voice vote.

11. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, RICK BLUMENFELD

There were no communications with General Counsel.

12. COMMUNICATIONS WITH ACTING CHIEF OF STAFF, JOHN FRANCHINI

Commissioner Hall asked why he was not shown on the staff list. Ms. Maxwell-Loux promised to take care of it immediately.

a. Legislative Matters

b. Discussion of the Transportation Division's legislative proposal for elimination of economic regulation.

Mr. Luján was not sure how much the Commission wanted him to go over it again.

Chairman Lyons asked that he fill in those who had been absent.

Mr. Luján said the recommendation was to deregulate the economic portions of the Motor Carrier Act. So for certificates and permits it would deregulate the need - applicants wouldn't have to prove the need for service and rates would not be regulated by the Commission and carriers would not have to submit rates to the Commission. They would do them as warrants that were deregulated in 1995. They would only have to prove financial responsibility and safety.

Vice Chairman Block asked if this would limit the PRC's ability to ensure adequate transportation at reasonable rates.

Mr. Luján agreed. He had checked with neighboring states. In Arizona it was done by cities; in Texas it was done by counties. Those entities could pick it up that responsibility.

Vice Chairman Block noted that non-consensual towing was deregulated in 1996. He asked if the PRC would try to get it back afterward.

Mr. Luján said commodities and towing were deregulated by the federal government and later gave states personal property and non-consensual tows which was considered personal property.

Vice Chairman Block said he felt confident in Mr. Luján's work and assumed he did all the homework and looked at it carefully with evidence supporting it.

Mr. Luján said he was the last guy who wanted to sit here and propose deregulation but they didn't have the resources any longer. In 1990 they had 1,500 carriers with 21 employees and now they had only four positions in Transportation and that had been frozen for months. The only reason he was proposing this was that they could not do it without resources.

Vice Chairman Block concluded it was not to punish the industries they regulated. It didn't mean the industries could not put together a lobbying effort at the legislature.

Mr. Luján agreed. He asked for the Commission's support on this proposal and said he didn't know that their chances were very high. There were many from the industry here today who were concerned.

Vice Chairman Block knew Judge Naranjo needed some security and after this one they might too.

Mr. Luján said it was something nobody wanted and he didn't want the carriers to be penalized.

Mr. Luján explained that in the proposal, the affected carriers would be taxis, limousines, ambulances, household goods carriers and non-consensual tows. Effects would be less for any carrier wanting to get into the business. It would be less costly for them to get into the business and faster. Right now a certificate application took 90 days and some even higher but they could turn around a warrant in one day. They would not have to file rates and the market in various areas would control those.

He listed the hours required by Transportation Division, Legal and OGC as well as Docketing. The total was often more than 50 hours so it would free up staff time and reduce costs. He mentioned a case whose application was filed in November 2009 and was not yet finished. They had to do interrogatories and depositions for weeks on that case. Attorneys were involved and he didn't know when it would come. The HE was still reviewing all the data.

In the last six months the PRC spent \$12,100 on court reports for applications. It would save time for investigations and allow them to devote more time to inspections of vehicles as mandated by statute.

Commissioner Marks asked if he believed it was good public policy to allow a wrecker to charge whatever the company pleased for a non-consensual tow.

Mr. Luján said he didn't.

Commissioner Marks said there was no choice when a police officer ordered a car towed. Some outside entity had to set a rate for that. He asked who should set that rate with this proposal.

Mr. Luján said they were not recommending who should. Albuquerque would ask the legislature to allow the City to do it.

Commissioner Marks thought that sounded fair but some local governments had no resources to do that.

Mr. Luján agreed but added that a better way to do it would be needed.

Commissioner Marks thought many of the state statutes were archaic and stifled competition. Someone needed to set a rate for taxis. A lot of other transportation services had people amenable to substitution but it needed an outside entity.

With ambulances it was a matter of need. A small community like Socorro didn't have enough business to support more than one ambulance there. But they needed the service on call when an emergency arose. If they could not be profitable there were some subsidies. The non-emergency service was more profitable because that didn't need people on duty 24 hours a day and they were more likely to have insurance than people in an emergency for gun shots, etc. Albuquerque Ambulance could cover those communities south of Albuquerque. Relaxing too far on ambulances could cause a public health problem and a small business could go out of business.

Commissioner Hall asked if this bill were passed, PRC certificates would they go away for ambulances. Mr. Luján agreed.

Commissioner Hall asked if an ambulance could go into whatever territory they wanted without permission. Mr. Luján agreed.

Mr. Luján said Lincoln County wanted their ambulance to do 911 calls. They either transported to Albuquerque or Lubbock and that meant the ambulance was down 8-10 hours per day so it was not available for 911 at those times. Albuquerque worked on demand. They wouldn't take a patient outside of Albuquerque. Most of them didn't want that down time. There was more money in the 911 service. They would love to have ambulance service in Questa.

Commissioner Marks didn't think Holy Cross wanted an ambulance from Albuquerque coming down to serve their area. So this proposal could result in some communities having no service.

Commissioner Hall said every city and community had the right to license a business and that included ambulances. The Lincoln County ambulance was paid for by the tax payers. They owned the hospital and most of the equipment in it. Even if they didn't put ambulance services in this bill, it was the Commission's job. The legislature would tear at this bill. He thought they ought to propose what should be done and let them dispose it.

Mr. Luján agreed that someone should regulate it but didn't want to tell the legislature who should do it. They would make amendments and come ask the PRC who could do it.

Commissioner Hall said every city and county had the authority to limit who did business there unless

the business agreed to pay the fees and abide by the restrictions.

Mr. Luján noted that the City of Albuquerque charged \$3500 to \$5000 for a tow company to get into the rotation schedule for non-consensual tows. The staff could not meet the obligations. There were 35 complaints on tow companies that had not yet been brought to the Commission.

Commissioner Marks said the Commission staff had special expertise in these matters. If they believed there needed to be somebody regulating it, they needed to change the proposal and not have deregulation. Secondly, it needed a grace period. People had spent thousands of dollars to get their certificates. There needed to be a grace period for a couple of years.

Mr. Luján said when they deregulated in 1995 there was no grace period. The PRC certificates were \$350. The federal government allowed them to use it as a tax write-off.

Chairman Lyons thanked Mr. Luján for bringing it.

Mr. John Smeltzer, American Transportation Systems in Albuquerque said he was not sure as an industry they disagreed with where the PRC was going. But when he transported from Albuquerque to Farmington, he would need to know what the rules in Farmington were and to know if he had to follow both.

He pointed out that if a carrier for household goods had no place to store them he would likely use a storage rental place. And if he didn't pay the storage bill the customer's good could end up getting sold to pay the debt. He wondered how many cities they would have to get on board with to have his business work.

Chairman Lyons said he hadn't made a proposal.

Mr. Smeltzer thought the Transportation Division could do their job. Without enough staff, pirates start doing the service.

Mr. Steve Abraham, from Yellow Cab, said in some other states with deregulation, it was a whole different thing. He felt no enforcement would be done and the industry would be totally out of control. Without enforced rates people would cut rates and have no service quality. There would be no enforcement and a lot of people would be hurt with that mess. There were companies right now doing things right but without regulation there wouldn't be background checks and there would be companies that would be unsafe to the public.

At the airport they have a system with first cab in - first out. But if rates were not set, the customer could choose the one that was cutting rates.

Commissioner Marks asked Mr. Abraham if he knew of any jurisdiction with any regulation.

Mr. Abraham said no. It was proven that deregulation didn't work.

Mr. Steve Garcia, Lucky Boy Limo, agreed with Mr. Abraham on cost. They did drug screens, etc that

PRC required and it cost a lot. They had all the liability insurance required. But without regulation you would have everyone transporting people in their cars and safety would be at risk.

Chairman Lyons asked if he had ever filed a protest. Mr. Garcia said he had.

Mr. Joe Earnest Representing Capital City Cab had four points regarding ambulances. Almost everyone was losing money and a fragile system was in place now. There was a real fear to mess with the ambulance system now. In Valencia County there was a corridor along interstate that was profitable but the rest wasn't. They probably would have to bring a resolution on covering areas. There was a state web of service and it needed to be regulated at state level.

The ambulance companies make less money and in rural areas, no one had insurance. It was an area that had no hospital so they had to transport to Bernalillo County. The whole ambulance system was a fragile web that needed state regulation.

On local transportation, people needed to be aware that competition didn't always bring lower rates. The current local transportation system was legislated by the Reagan administration. They abandoned deregulation based on DOT studies. He added that he had provided materials about it to the staff.

The retail competition model didn't work in transportation. There was a distinct difference between metropolitan and rural. The more density - the more competition you could have. Without population density, competition didn't work.

It might be saving money at the PRC by doing away with regulation but pushing it down to city or county where there was a whole bunch of diverse areas, the overall cost would be more. There were a number of states that regulated at a state level because it was cheaper that way.

Chairman Lyons asked about regulating at the federal level.

Mr. Earnest said the providers would go with whatever regulations were there. His clients knew that was the only way to preserve the system.

He noted that New Mexico was one of the few states that didn't charge the regulated entity. Even if they only paid \$200 per year it would help. It would take a statutory change. It would have to be a dedicated fee, obviously. Capital City Cab paid the City of Santa Fé to do absolutely nothing and they paid the airport 2% of gross for all carries. The airport was under federal law. The City of Albuquerque was the contractor to the feds so he didn't know how much went there. He felt if it was simply lack of resources, that could be addressed.

Chairman Lyons asked how many taxi companies were in Santa Fé.

Mr. Earnest said there was only one and it was marginal.

Commissioner Marks asked Mr. Earnest about the household goods movers. He could see that competition didn't work well with taxis and ambulances but movers were deregulated for interstate moves.

You could call around and get various quotes. Even in a rural area you could find people willing to go out there. He asked if there was any reason to continue tariffs for household goods.

Mr. Earnest said the New Mexico Movers Association had a tariff in place. They had an economic model that they would present in a hearing next week. Basically it was a situation where interstate and intrastate were like apples and oranges - aside from government moves, there was no money for moves in the state.

Competition ought to be allowed but not unlimited competition. There was a lot of competition in Albuquerque now. The type of PRC regulation was not an all or nothing but how much was good for a particular area. It was not that you should not have competition at all.

Commissioner Hall asked if supply and demand could determine the need for more carriers.

Mr. Earnest said the statute specifies that for the Commission. In each area to be served - e.g. Sandia Shuttle - for shuttle from Santa Fé to Albuquerque and back - was regulated by the PRC, Santa Fé and Albuquerque. The feds passed an act in 2002 where a community was at a boundary - to say who could or who could not regulate. State regulation was more beneficial. He urged the PRC to consider fees to build back up the staffing of Transportation Division.

Mr. Shaukeet Hindi, President of Albuquerque Cab said he ran an ad for drivers last weekend and on Monday had 6 but all but one had horrible backgrounds. He was inspected last year twice by the PRC and once by OSHA and they met all requirements. OSHA tested emissions unscheduled and they passed everything. But the point was that the PRC did inspect the vehicles. The third was a spot inspection and it was a valuable resource. They passed it. The only thing he was not totally in compliance was background checks of 50% of the employees which he would do.

Chairman Lyons thanked everyone for their comments.

Mr. Stephenson commented that Utility Enterprise Funding was simple and effective. He gave Mr. Earnest credit for it. In it, fees for utility inspection and for telecommunication carriers were received and went directly to the General Fund. He went to the statutes for Insurance and pasted that into the Telecommunications Act. He thought the carriers would all support this change. If they didn't have the money, the people who would be hurt were the providers. So utilities were feeling like they were paying the money and would like to have the PRC keep staff to do this in a timely manner.

Mr. Stephenson said the pipeline safety fund continued to accrue and didn't revert to General Fund. So it would fluctuate with business but would always be a fund balance for utility division costs. It would be a little bit like the fire fund. If they were going to be self-sustaining, the argument could be made for this.

Chairman Lyons asked who was going to draft it.

Mr. Stephenson offered to help but deferred to the Commission's judgment.

Marshal Standefer addressed Fire Protection Fund Distribution. He said this was in a bill last year and

Bernalillo County agreed to find a sponsor this year. He explained that currently the funding required that the local government only fund stations within the entity boundaries. But there were stations that were not within the boundaries of the entity that managed them. So the bill was to allow them to continue to manage and fund those stations.

Current laws allow service through service contracts but couldn't permit stations to be created outside the jurisdiction area. The bill didn't pass last year but Senator Begaye changed the language to protect the existing Native American departments and the PRC supported it. This year he said he probably wouldn't seek to reintroduce it. The sponsor had been identified and if it was changed they would come back before the PRC.

Superintendent Franchini reviewed several insurance bills. The Cleanup Bill was the first. It would modernize aspects of the Insurance Act to comply with NAIC guidelines. The second was Prohibit Use of Policy Feeds and Not at Fault Accidents (moving a policy to another company). The Adjuster Modernization Act was to regulate public adjusters, eliminating reciprocity for no-resident adjusters and to provide training and licensing for public adjusters.

The Surplus Lines Compact would have a requirement to follow the NRRA - to keep receiving the surplus lines taxes.

Aggregation of Certain False Insurance Claims was a bill to increase the penalties against those who submit fraudulent claims by aggregating their claims.

Chairman Lyons felt they should increase the misdemeanor penalty to \$10,000.

Commissioner Hall felt showing an intent to defraud all the way along as a habitual offender could be a felony.

Health and Life Insurance Guaranty Law Changes was to comply with the new standards. This would group New Mexico with other states in addressing notice of agents who break the law. The Guaranty Fund helped those who had been defrauded.

Chairman Lyons asked if some of these could be just regulatory.

Superintendent Franchini thought so but wanted to propose all of them.

The PPACA Compliance Bill would bring the State into compliance with the Federal Health Care Act.

Mr. Jason Montoya and Mr. Luján presented a request for purchase of vehicles. They were replacing older ones with new vehicles.

Mr. Montoya shared the cover sheet for requisition and justification. It was drafted in November so mileage was now higher. They needed to replace two-wheel drive vehicles with 3 4x4s in order to inspect

pipelines on a daily basis. The request was for 1 Explorer and 2 F-150 vehicles. 5 of their vehicles were older than 5 years with mileage over 100,000. He asked permission from the Commission to proceed.

Chairman Lyons asked how the cost would be covered.

Mr. Montoya explained that no General Fund monies would be used. The purchase would be made from other funds.

Chairman Lyons said that wouldn't be prohibited by DFA.

Commissioner Hall agreed. If they had the funds from other sources then it should be done.

Mr. Montoya said he would prefer to get 3 F-150s and no Explorer.

Chairman Lyons asked if they had the budget for it.

Mr. Lovato said this was on reimbursement from feds based on his reports. They would evaluate what they intend to spend and would apply a percentage and there was no reversion involved.

Commissioner Becenti-Aguilar asked if Mr. Montoya saw any unbudgeted expenses down the road.

Mr. Montoya said he didn't unless the feds passed down further regulation. And the feds worked on a calendar year instead of July year so it was complicated.

13. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons asked Bill Garcia to come forward and shared a letter with Commissioners.

Mr. Garcia was asking the Commission to think outside the box to address regulatory relief for telecommunications. What was happening now was that in this legislative session they would seek regulatory relief. He clarified that he was only speaking for Windstream and seeking an alternative approach to allow companies like theirs to compete in the market without having to obtain legislation. Last year it was bad with the opposition and wouldn't be different this year.

He asked if the Commission would be interested in allowing a rate moratorium and a pilot program where rates would not be subject to regulation for a set period of time and no other elements would be unregulated such as quality of service, etc. It would be a trial pilot to allow Windstream to compete in today's market with oversight of Commission.

Finally, they were trying to put meat on these bones to determine viability. The feds had "forbearance" where you could petition the FCC and get relief from regulation on FCC Act of 1996. There was nothing on the state level.

They had pricing rules that allowed for a waiver for good cause if they could create the model and

moratorium and pilot program to compete in the local market.

Currently they competed on RFPs with local government to provide all their telecommunications services and every other company was unregulated and there were also out-of state companies. So it made it more difficult for Windstream to compete. This proposal would allow Windstream to compete in the market without having to come back for tariff changes, etc.

Chairman Lyons said they could put it on the agenda.

Mr. Garcia explained that he first wanted to explore it with the Commission before spending resources for a specific pleading.

Commissioner Marks thought this didn't seem extremely controversial. He asked if Mr. Garcia had talked with staff about it.

Mr. Garcia said he had not.

Commissioner Marks said there were statutes that allowed the Commission to relax the regulations and that could work better than at the legislature. Chairman Lyons agreed.

Mr. Garcia said that was fine and he could present something. He didn't want it to take the delay and expenses of rule making. He was looking for some kind of shortcut to take on this moratorium. He agreed to come forward with a filing to further articulate that.

Commissioner Marks thought if he could get staff and AG on board to support it, it should go pretty quickly. There might be some things that they would be concerned about. Mr. Garcia agreed.

Chairman Lyons announced that Matt Lovato, Michael Rivera and Juan Rios could sign contracts under \$50,000 now but he would like to require two signatures on contracts.

Commissioner Marks thought that was okay but felt staff needed to present all of those for personal services to the Commission. The others usually went through procurement. He noted that state procurement required legal sign off.

Chairman Lyons said the press was calling him about Rocky Mountain EMS regarding the accident. They had a vehicle repossessed with the client hospitalized. He asked if they had a temporary permit.

Mr. Luján agreed. They had an extension of temporary authority done in the latter part of December.

Commissioner Marks asked if they had permanent authority for Santa Fé County. Mr. Luján agreed.

Chairman Lyons asked if the Commission could get a briefing from staff so they could hear about safety checks. Mr. Luján agreed.

Commissioner Becenti-Aguilar reported they had a very good day at the Navajo President inauguration in Window Rock. She was there from 10:20 to 3 p.m. President Shelley touched on renewable energy and wanted to act on it in his administration. It was cold and there were other events.

14. ADJOURNMENT

Commissioner Hall moved to adjourn the meeting. Commissioner Marks seconded the motion and it passed by unanimous (4-0) voice vote. Commissioner Block was not present for the vote.

The meeting was adjourned at 1:25 p.m.

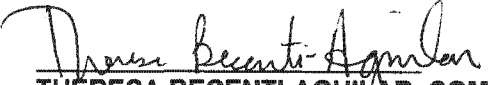
ATTEST:


Carl Boaz, Stenographer

APPROVED: 02/08/2011


PATRICK H. LYONS, CHAIRMAN


JEROME D. BLOCK, VICE CHAIRMAN


THERESA BECENTI-AGUILAR, COMMISSIONER


JASON A. MARKS, COMMISSIONER

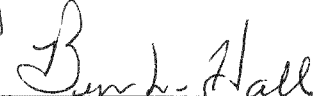

BEN L. HALL, COMMISSIONER

EXHIBIT 1
PRC 01/13/11



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING
Thursday, January 13, 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 December 23, 2010 Regular Open Meeting**
- 6. PUBLIC COMMENT**
- 7. CONSENT ACTION ITEMS**

A. Transportation Division Cases

10-00083-TR-M Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF MOVING SOLUTIONS, INC., FOR A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS CARRIER SERVICE AND FOR TEMPORARY AUTHORITY. <u>Order</u>
11-00002-TR-M Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF GOOD TO GO, LLC., D/B/A GOOD TO GO TAXI SERVICE, FOR A CERTIFICATE TO PROVIDE TAXICAB SERVICE AND FOR TEMPORARY AUTHORITY. <u>Order</u>

10-00352-TR-T Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF MOONEY MOVERS, INC., D/B/A MOONEY MOVERS FOR A TRANSFER OF CERTIFICATE NO. 55591 TO PROVIDE HOUSEHOLD GOODS TRANSPORTATION SERVICES AND FOR TEMPORARY AUTHORITY. <u>Order</u>
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B. Utility Division Cases

09-00389-UT Rick Blumenfeld	IN THE MATTER OF THE APPLICATION BY RATON NATURAL GAS COMPANY FOR CONTINUED USE OF ITS PURCHASED GAS ADJUSTMENT CLAUSE. RATON NATURAL GAS COMPANY, APPLICANT. Order
09-00281-UT Bob Parker	IN THE MATTER OF THE COMPLAINT OF MICHAEL ARCHULETA AND A. STERN AGAINST WINDSTREAM COMMUNICATIONS. <u>Order</u>
Undocketed Case Margaret Caffey-Moquin Mark Cessarich	IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR A CERTIFICATE OF REGISTRATION TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATION SERVICES WITHIN THE STATE OF NEW MEXICO. <u>Order</u>

8. REGULAR ACTION ITEMS

A. Utility Division Cases

10-00379-UT Mary Howells	IN THE MATTER OF KIT CARSON ELECTRIC COOPERATIVE, INC.'S ADVICE NOTICE NO. 57. KIT CARSON ELECTRIC COOPERATIVE, INC., APPLICANT. <u>Order</u>
10-00393-UT Mary Howells	IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS JANUARY 2011 GAS COST FACTOR STATEMENT. NEW MEXICO GAS COMPANY, INC., APPLICANT. <u>Order</u>

9. CLOSED EXECUTIVE SESSION

**Pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited
personnel matters.**

10. BACK TO OPEN SESSION FOR REGULAR ACTION

A. Human Resources

Undocketed matter Robert Hirasuna	RESOLUTION REGARDING COMMISSION EMPLOYEE SALARIES.
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11. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

12. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

a. Legislative matters

**Discussion of the Transportation Division's legislative proposal for
elimination of economic regulation.**

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.