

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 20, 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
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
Robert Parker, Acting General Counsel
Rick Blumenfeld, Associate General Counsel
Margaret Caffey-Moquin, Associate General Counsel
Carolyn Glick, Hearing Examiner
Roy Stephenson, Utility Division Director
Reggie Padilla, Utility Division
Larry Luján, Transportation Division Director
Charmaine Jackson, Native American Liaison
Carol Rising, Legal Division Director
Cydney Beadles, Legal Division
Jack Sidler, Utilities Division
John Franchini, Superintendent of Insurance
Rocke Johnson, Executive Administrator for Chief of Staff
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 Chairman Patrick Lyons called the

Regular 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 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

Commissioner Block welcomed former Speaker of the House, Raymond Sanchez.

3. MISCELLANEOUS ANNOUNCEMENTS

Commissioner Becenti-Aguilar thanked the staff members who worked on the meeting in Gallup on Friday at 10 a.m. on the railroad safety issues. This meeting dealt with safety standards for the crossings from Gallup into Albuquerque. The Native Americans were not on the notice list and she signed a single-signature order to add them. She thanked Mr. Luján, Mr. Gutierrez, Mr. Chris Martínez and her Executive Administrator for their help.

Commissioner Becenti-Aguilar also announced that yesterday she went to the New Mexico Association of Counties (NMAC) meeting and was introduced as a Commissioner along with the Governor and Secretary of State.

Chairman Lyons thanked her for being at the NMAC meeting.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Block moved to approve the agenda as presented. Commissioner Hall seconded the motion and it passed by unanimous voice vote.

5. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the December 28, 2010 Regular Open Meeting**
- **Minutes of the December 30, 2010 Regular Open Meeting**

Commissioner Block moved to approve the minutes of December 28, 2010 and December 30,

2010 as presented. Commissioner Marks seconded the motion and it passed by unanimous voice vote.

6. PUBLIC COMMENT

There were no public comments.

7. CONSENT ACTION ITEMS

A. Transportation Division Cases

10-00252-TR-M **IN THE MATTER OF THE APPLICATION OF HATCH AREA MEDICAL CENTER FOUNDATION, d/b/a BEN ARCHER HEALTH CENTER TRANSPORTATION SERVICE, FOR A PERMIT TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE AND TEMPORARY AUTHORITY.**
(Rick Blumenfeld) Order

10-00339-TR-M **IN THE MATTER OF THE APPLICATION OF SIMPSON MOVING COMPANY FOR A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS CARRIER SERVICE AND FOR TEMPORARY AUTHORITY.**
(Bob Parker) Order

Commissioner Block moved to approve the orders for both Consent Action Items. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote. So Ordered.

8. REGULAR ACTION ITEMS

A. Utility Division Cases

10-00086-UT **IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NOS. 397 AND 32 (FORMER TNMP SERVICES).**
(Robert Hirasuna) Order

Mr. Parker presented information regarding this matter. The Commission received a joint motion from AG, PNM and staff to extend the time to get the stipulation completed. They needed two more weeks.

Since the Commission also needed time for Ms. Glick to consider the stipulation he proposed to extend if a total of four weeks so she could do her review. PNM didn't object. The order extended the statutory deadline two more weeks.

Commissioner Marks moved to approve the order. Commissioner Block seconded the motion.

Commissioner Marks asked if the order was not opposed by anyone.

Mr. Hirasuna said Bernalillo County opposed it unless they got the four weeks. He just got one from the Universal Energy Coalition. They and some other parties were left out.

Commissioner Marks understood but there was no reason not to extend.

Commissioner Hall asked if these people who were asking to be interveners would be able to testify later.

Mr. Hirasuna said they would get a copy of the stipulation and Ms. Glick would have a hearing at which they could testify. Then she would make an RD and they could file exceptions to that.

Commissioner Hall said he knew the AG had a responsibility to the people of New Mexico but the PRC had that same responsibility so he wondered why the AG was involved in this negotiation and not just staff and PNM. He thought the AG was getting ahead of himself by intervening in the negotiations since no harm had come to the people of New Mexico.

Mr. Hirasuna agreed. He just knew the AG had been doing it forever.

Commissioner Marks clarified that the AG's legal charge and the Commission's were different. The PRC as the decision maker, had to balance the interests of the public and the stakeholders. The AG was not required to balance interests with the company so he was more of an advocate and had been a major advocate. There were others. And the PRC had an attorney here representing the commercial class. There was some debate amongst the parties about how open the negotiations had been but no one could argue that they didn't have a legal right.

The motion to approve the order passed by unanimous 5-0 voice vote.

Commissioner Marks noted that there would be a public hearing on Wednesday in Albuquerque. It had been publicized to customers by bill insert. A couple of weeks ago it appeared a stipulation would be filed before the hearing. At this point they didn't have that opportunity. He got hold of Ms. Winters at the Water Authority but not NMIEC. At this point, having staff make a presentation would not be useful. So he was going to ask PNM to state why they felt the proposed rate was justified and interveners why they thought it wasn't. It would be based on motions filed instead of stipulation. They could get the comments on the record. He organized it for Albuquerque folks but all the Commission was invited. They would stick to the case as filed.

One caveat was that he asked the water authority and PNM to refrain from arguing the procedural motions there.

Commissioner Block thought it might be a good opportunity for OGC to announce possible quorum.

Commissioner Marks said one session would be at 2 and one at 6. It was at the African American Center at the Fair Grounds, probably in the big auditorium.

9. DISCUSSION ITEMS

A. Transportation Division Cases

**10-00063-TR-M IN THE MATTER OF THE APPLICATION OF RUNNING BEAR, INC., D/B/A
ROCKY MOUNTAIN EMS, FOR AN ENDORSEMENT TO CERTIFICATE NO.
43374 TO PROVIDE AMBULANCE SERVICE AND FOR TEMPORARY
AUTHORITY.
(Margaret Caffey-Moquin)**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. The case involved the application of Rocky Mountain EMS for an amendment to their existing certificate to provide emergency and non-emergency transportation in Bernalillo, Cibola and McKinley counties. There were a number of filings that would exceed the norm for this type of case.

There were two rounds of briefs. The HE was working on RD and intended to get it out well before the expiration of temporary authority. The authority was extended on December 21 for 90 days. There was a series of filings back and forth with staff motion and response to the extension after the Commission had acted.

Subsequent to that, interveners each filed and the applicant filed a response after that. Staff had a motion to revoke temporary authority and that was pending.

The allegations since December 21 were serious and regarded the financial fitness of the applicant. Fitness overall was an important aspect for ambulance services. There were allegations now.

She recommended that the Commission consider the several avenues available - the RD on the merits would be available in under two months' time. The way the law read, the Commission acts on temporary authority. They could delegate it to the HE but have not in this case.

The actions include:

- to issue a bench request requiring an affidavit to specifically indicate what equipment was in operation daily for non-emergency transport. That could be on a single signature.
- The commission could hold a hearing on the matters that have been alleged. The Commission had already held a half day hearing in July also on challenges to temporary authority. The result of that hearing kept the authority in place largely because the interveners had not met their burden of proof.
- The Commission could also ask the HE to conduct such a hearing.

- Or the Commission could leave the temporary authority in place. Those were options to consider.

Commissioner Block had a huge concern with this company. He would ask for a representative to come here as soon as possible to answer questions especially on actions they recently took and the accident last month.

He thought an option to explore was a bench request to respond with affidavit on the allegation and financial stability. He was concerned whether they had the equipment to do their work in his district.

Commissioner Marks asked what the status of Mr. Huffman's case was. They had the hearing. He asked if they filed post hearing briefs.

Ms. Caffey-Moquin said they had and staff was preparing it. They asked for an extension.

Mr. Gutierrez asked for two weeks and Mr. Huffman granted it. It would be up Friday and she would file it. The briefing had already been done.

Ms. Caffey-Moquin talked with Mr. Huffman this morning and he was aware of all that had been filed and felt he could get it out by the end of February.

Commissioner Marks asked why it would take him six weeks.

Ms. Caffey-Moquin said it was not his only case.

Commissioner Marks had looked at what was filed and there were no allegations about the accident. Staff mentioned it but didn't state anything factual. They said they were investigating.

On the other hand, staff made factual allegations on financial fitness and alleged repossession of vehicles, etc. that had to get looked at one way or another. If, based on the record, they could recommend denial of permanent authority based on the record that already existed whether these late facts proved anything.

He asked what the risk to the public was in waiting for Mr. Huffman. If there was definitely a safety issue there was a risk. If it was just lack of vehicles, there was not a risk. He was not sure what the urgency was when it was a complex and confusing case. It could wind up getting determined without those facts. It had gone on too long with temporary authority already.

Commissioner Block asked Mr. Luján if anything was holding back sending investigators to see what equipment they had on site.

Ms. Caffey-Moquin said the record indicated that staff inspected ambulances in October but the problem were which ones were now running.

Mr. Luján said that was exactly what they were trying to figure out - what vehicles were used by this

company. They were trying to lease another ambulance from down south. Then a bill of sale came in on that vehicles. He had a copy of the leasing check.

Commissioner Block asked if his staff could inspect it.

Mr. Luján said he would do exactly that at the end of this meeting.

Chairman Lyons said she indicated the litigation had been contentious. He guessed that was from the interveners and asked why.

Ms. Caffey-Moquin didn't know what motivated the contention. There were opposite positions on virtually every issue. People had the right to take positions. But there were a number of discovery contentions, motions to strike, motions to dismiss, failure of discovery. More motions to strike. The attorneys were vigorous in prosecuting the case. It was the Commission's purview to decide what was in public interest in this case.

Chairman Lyons wondered how much was spent in legal fees.

Ms. Caffey-Moquin didn't know.

Mr. Hirasuna estimated it at over \$100,000.

Chairman Lyons noted that the temporary authority was up on March 20 and asked if the RD would be out before then. Ms. Caffey-Moquin agreed.

Commissioner Marks said the Commission could kill the temporary and consider the permanent. If there was a threat to health and safety the Commission needed to take action but if it could be just another argument.

Chairman Lyons agreed. He asked that they let Mr. Luján look over what they had and if it was okay, they could leave the temporary alone.

Commissioner Hall agreed. The equipment and financial fitness should be investigated and reported back to the Commission as soon as possible.

Commissioner Marks said they also should build a record if the Commission needed to consider the financial status. They might have to hold a hearing just on that matter. It needed to be on the record. It might not be productive.

He recalled they granted Temporary Authority in April and then the parties (interveners) called facts to the Commission's attention and they held a hearing in July or August and the order had two issues - the need, for which they brought a stack of affidavits saying the service was needed and contending that Superior took too long to get there. The Commission found they had enough of a case to keep it alive. Then on financial fitness, it was stated that they were not following their tariff exactly but the Commission felt it didn't rise to sufficient concern.

You could review the order which was issued on July 29. That was what the Commission found last summer and it would give the Commissioners a good sense of what was in dispute. He sat in on one or two days of the hearing and it was now more of the same.

**10. PRESENTATIONS PNM's presentation on U.S. environmental Protection Agency's December 22, 2010 Announcement of Draft Order Proposing Additional Environmental Upgrades for San Juan Generating Station. Presenters: Maureen Gannon, Director of Environmental Services and Gerard Ortiz, Executive Director NM Retail Regulatory Services.
An action may be taken in connection with this presentation.**

Ms. Mary Collins, Ms. Maureen Gannon and Mr. Gerard Ortiz appeared for PNM.

Ms. Collins said they wanted to focus on how they got to this point at the San Juan Generating Station (SJGS) and introduced Ms. Gannon and Mr. Ortiz.

Ms. Collins handed out a copy of the presentation and a brochure on the upgrade installation at San Juan done a few years ago.

Ms. Gannon shared the work at San Juan and potential impacts. She went through the power point presentation, describing the operation of the coal-fired SJGS. It was 154 miles north of Farmington and 15 miles from Four Corners. It came on line in 1973. PNM owned and operated it employing over 300 employees.

Regarding the Regional Haze Regulation, she briefly explained BART (Best Available Retrofit Technology). She explained that a Class One Area was a wilderness area and in this location it was Mesa Verde.

Chairman Lyons thanked them for a good presentation.

Commissioner Block thanked them for keeping the Commission up to date.

Commissioner Marks asked Ms. E about the Air Quality Bureau requirement to use the SCR.

Ms. E said they conducted some modeling of their own and the modeling was quite complex. They found that employing SCR with sorbent injection yielded significant improvement. Without it you could see degradation at Mesa Verde. The feds proposed a limit on ammonia and a lower conversion rate to improve visibility.

Commissioner Marks asked if with SCR someone living in that area would be able to see further and if the difference could be quantified.

Ms. E said that would be true. Until controls on the modeling were in place they would not know how

much but the modeling indicated good improvement. People could perceive the difference. They could see probably 10-15 miles further. She offered to give a presentation later for the Commission.

Commissioner Marks asked how many desaviews.

Ms. E said the most affected Class 1 area was Mesa Verde. EPA refined its modeling and found more than one desaview.

Commissioner Marks asked if this technology was in use in other plants around the country.

Ms. E said to her knowledge it was used extensively east of Mississippi but not much west of Mississippi. Most of it was done because of ozone problems.

Ms. Gannon didn't dispute her comments. There were five components to consider in Haze. It was a balance. The cost would be \$750,000. That didn't justify the improvement. It reduced nitrous oxide and sulphur dioxide.

Commissioner Marks asked if there were other benefits besides visibility.

Ms. E said EPA was in the process of revising their standards so she didn't know yet.

Commissioner Marks showed a time line on progression of restrictions on various pollutants. There were a number of potential rules that required coal plants to put on various things to meet the rules.

He questioned if it made sense to put in half a billion dollars and then next year have more to do. The plant was almost 40 years old. He wondered if PNM was thinking about it in a global way or just about each domino as it fell.

Ms. Gannon felt they were looking at it in a holistic sense and were aware of pending regulations. In responding to EPA, PNM was adamant that this plant met this rule now and were defending their BART. They had reduced nitrous oxide over 30 % and particulates by over 50%. They were removing over 92% of mercury - one of the top in the nation. So they had done significant work. Today, they were dealing with visibility and costs.

Commissioner Marks noted that to meet EPA at the Four Corners plant, they had taken 3 of those units out of commission. Three in Colorado and one in Oregon too - to meet the requirements.

He didn't know what the answer was in New Mexico but the PRC was entitled to assurance that the experts were doing a proper analysis at San Juan before several hundred more million dollars were put into it. Whether the Commission supported PNM or not the EPA could decide what they would impose on this facility.

His big concern was what would happen after this. If this stage was close to a billion dollars, the Commission needed to know what the likely costs were in the future. It needed to be objective and the Commission needed to know what PNM decided. It could be a waste of dollars if they went down the wrong

path. Other states had made those decisions. It might be better to shift to more gas generation instead of coal generation.

Mr. Ortiz said they were looking at all of the options. The integrative Resource Plan looked forward for the next ten years. There were many regulations that affected coal plants and they were assessing those and determining costs and identifying alternatives. They knew a broader view was necessary.

Ms. E thought the big issue facing PNM was the BART analysis. Many of the other things on this chart wouldn't be an issue at the facility - especially the mercury. She was not aware that anyone else had done what PNM had done for mercury. In her analysis it really came down to this nitrous oxide issue.

Commissioner Becenti-Aguilar thanked PNM for the presentation. This was an issue that was very detrimental to the public in the Four Corners area. She was going to be watching this very closely.

She commented that the new governor had focused on NMED as had the new President of Navajo Nation, Ben Shelley. She thanked Ms. Collins for coming to share what the Commission needed to focus on. There were more presentations to follow.

Commissioner Hall asked how long the plant could go on without replacement and if PNM could justify putting a billion dollars into it.

Ms. Gannon said they hoped it would last a long time. It did take a lot of work on upgrades.

Commissioner Hall added that the cost always came down to the rate payer. This would lay a billion dollar debt on these ratepayers for the rest of their lives in order for SJGP to comply with NMED rules.

Ms. E said this was a program required by EPA from 1977 so Congress decided that visibility in wilderness areas was important a long time ago. Her department was required by EPA to submit a state plan on it and they missed the deadline so the feds stepped in to promulgate a plan. NMED had used a lot of data from PNM and just came to a different conclusion on it.

Commissioner Hall commented that EPA had been around and visibility in LA was no better today.

Chairman Lyons asked if PNM said 40% of electric need in New Mexico was met by this one plant. Mr. Ortiz clarified that PNM's share was 40% of the facility capacity. He said he would provide that information to the Commission. PNM owned 46% of the capacity and that represented 40% of their peak load.

Chairman Lyons asked what they would replace it with if this couldn't work.

Mr. Ortiz said they could try to convert it to gas but he couldn't say for sure how they would replace it.

Chairman Lyons asked if other states were doing SCR.

Mr. Ortiz said PNM did not believe investing in SCR for San Juan was justified based on the visibility

improvements in the area. But if they were required to do that they would comply of course.

Ms. Gannon said this was going on in several other states and the EPA had accepted their plans. There were other approaches other than SCR. There was a wide variety of answers to this issue from status quo all the way to SCR.

Ms. E agreed it really was a case by case determination on each power plant. There were a number of factors including how close the plant was to a wilderness area.

Chairman Lyons thought decommission of all coal plants would cause rates to go up dramatically. Coal was the largest resource.

Regarding Mesa Verde National Park, he thought it was a National Monument and asked if Class One affected national monuments also.

Ms. E said it affected federal areas above a certain acreage.

Chairman Lyons said Mesa Verde was very small. He questioned how it could be affected by San Juan.

Ms. E said Carlsbad Caverns was also a class one area. There was a certain size under which it wouldn't be a class one area. But Mesa Verde was one of them. The San Juan Wilderness Area was not protected under this law.

Chairman Lyons asked if the \$90/year rate was forever.

Mr. Ortiz said no. He said it was based on the investment made and would decline each year over 20 years. What was not included in that figure was when they would have to take units down to install the SCR. They would have to replace that with power purchases in the market and that would cost about \$2.76/mo /customer.

Commissioner Hall asked if PNM would be responsible for 46% of the billion dollar bill.

Mr. Ortiz agreed. The \$90 was based on that assumption.

Commissioner Hall asked Ms. E if her department could challenge the EPA recommendation.

Ms. E said there were several avenues the state could use. The comment period allowed for testimony. After finalized, it was more difficult for the state to oppose and New Mexico would then be somewhat at their mercy.

Commissioner Hall asked if missing the deadline meant NMED had some recourse or if they were "out of the ball park."

Ms. E said they were not out of the ball park. There were problems and short deadlines so it was

difficult for the state to get back on the State Plan and to get one that would be approved.

Commissioner Hall asked about why their estimate was different than the EPA's estimate.

Ms. Gannon said their original BART was based on 2007 and now it was three years later.

Commissioner Marks said to Mr. Ortiz that he thought Palo Verde was cheaper than coal.

Mr. Ortiz said he stood corrected.

Commissioner Marks thought he could propose protocols that would work for transitioning to gas. You could plan on running on gas at night for instance. He also thanked PNM for asking this to be an agenda item.

Mr. David Van Winkle from the Sierra Club was an electrical engineer and representing the New Mexico chapter. He said Commissioner Hall was perceptive in pointing out that only 46% would be sent to PNM ratepayers. So the billion was 46% of the cost. There was controversy about SCR - but EPA said it would cost \$472 million whereas PNM said \$750 million. He thought PNM's number was wrong.

The EPA filing included quantification of visibility improvement. It shows a 40% improvement in visibility.

One other issue not mentioned and given consideration elsewhere was health. In the case of Colorado the WRA testified there was a significant cost to health by nitrous oxide. It should be considered in New Mexico, especially for those living in the northwest area.

Chairman Lyons asked if the Commission needed to take a vote on supporting the EPA process.

Ms. Gannon said PNM was asking the PRC to consider delaying the comment period. Mr. Van Winkle said the visibility improvement was much different than what PNM showed. PNM would ask for another 60 days for comment.

Chairman Lyons felt 60 days was a short amount to get things right. Commissioner Hall agreed.

Commissioner Marks didn't have a problem with it. He didn't know what arguments were against that. He was not prepared to say whether they should have to do the SCR or not. He asked Van Winkle if there was a reason.

Mr. Van Winkle said there was a consent decree deadline of May 10th. Also PNM made major alterations and at one time considered closing three units. The EPA should have more time to consider it too.

Chairman Lyons said the Commission would try to get that letter to them.

11. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, ROBERT PARKER

There were no communications with Acting General Counsel.

12. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

- **Legislative Matters**

House Bill 54

Mr. Rivera said this was a hundred page bill that would transfer the Fire Marshal to DPS.

Marshal Standefer came forward and said it would transfer others including the Fire Marshal. There was some confusion on whether the Fire Fund would remain with the PRC or not.

Regarding the Fire Fund most of it would not change. His recommendation was to oppose the bill. The Fire Council reviewed it and stood in opposition of the move to DPS. He met with NMAC this morning and they unanimously opposed the bill. He had asked them to put it on the floor in a resolution.

Commissioner Block asked if Marshal Standefer was confident the office could continue to do their duties here.

Marshal Standefer said that over the last years the support the Commission had given was tremendous. The Fire Marshal made huge strides over those years. With DPS he couldn't be certain they would be honored there. "Why fix what was not broke?" He just didn't know how it would work in the cop shop.

Commissioner Block asked about an update on the Pit.

Marshal Standefer said the test would be on Monday and hoped to report that it worked as it should.

Commissioner Hall asked what the rationale for the transfer was - cost savings or more efficiency or just that someone wanted it moved.

Marshal Standefer said the reason originally given was cost savings but no documents showed any cost savings. The idea of combining the training academies was not possible. Some might be punitive against the PRC but that was only speculation.

Commissioner Hall felt transferring the Fire Fund somewhere else would not make sense.

Marshal Standefer clarified that nothing in the bill would change the distribution formula but could be the first step to open that fund to other agencies.

Commissioner Block moved that the PRC not support this bill.

Chairman Lyons noted this was a 105 page bill. he didn't want to get into other people's fights. It had only two lines saying transfer the Fire Marshal to DPS.

Commissioner Block amended his motion to not support transferring the Fire Marshal to the Department of Public Safety. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

Senate Bill 4

Mr. Leo Baca (for Qwest) and Bill Garcia (for Windstream) came forward.

Mr. Baca said there were two bills and had been introduced last year also. SB 4, sponsored by Senator Cisneros, was similar to SB 37 from last year with one critical difference - no matter what happened, the determination of "effective competition" had to be made by the PRC. There were no triggers in this bill. It updated the 1985 law that was totally outdated. In 1985 there was no VOiP and wireless phones were very large and very limited. Today it was very different with lots of unregulated competitors, cable companies and wireless companies. CLECS were minimally regulated. So this would allow the PRC to determine when effective competition existed.

The bill didn't excuse their companies from AFOR regulation but it could be modified with effective competition. It didn't affect Quality of Service or investment.

Mr. Garcia said Windstream supported this legislation as well as the Association and the AG. SB 4 would modernize the 1984 statute to comport with today's competitive environment and the Commission would retain jurisdiction as it had before.

Commissioner Block was comfortable with that amendment.

Commissioner Block moved to support SB-4. Commissioner Hall seconded the motion.

Commissioner Marks moved a substitute motion to oppose SB-4 and protect consumers that need to be protected.

He went to page 5 at the top where it said the deregulated company would be required to charge the same rates - that was local exchange rates.

Mr. Baca agreed.

Commissioner Marks said that meant they could charge other rates for other services around the state.

Mr. Baca said Qwest charged the same rate for DSL throughout the state. That was to protect the average residential customer.

Commissioner Marks countered that Qwest could decide to charge more for a package of residential services (like PBX) in one part of state vs another.

Mr. Baca agreed theoretically but not practically.

Commissioner Marks said the PRC imposed a service quality plan that required customer credits if Qwest fell short and that would go away.

Mr. Baca said the Commission would decide that issue.

Commissioner Marks said on page 2, line 22 said they needed to eliminate regulation.

Mr. Baca said there would be a filing and hearing and determination by the Commission.

Commissioner Marks had a fundamental concern that Qwest was very competitive for business services but not in Questa or Gallup. The potential impact in smaller communities would be great where alternatives didn't exist. The AFOR on their current plan had an expiration date.

Mr. Baca agreed but the PRC staff were already working on AFOR 4. He said it was in Qwest's interest as a business to serve its customers in the best way possible.

Commissioner Marks agreed there was nothing stopping Qwest from offering better quality now. This bill would take away quality and price regulation. So it wouldn't stop Qwest from charging more for less quality.

Mr. Baca disagreed. This bill didn't do that.

Commissioner Block said Qwest was here last year to ask for support. He asked how many employees Qwest had to let go since then.

Mr. Horcasitas said it was about one hundred employees. Most of that came through attrition. They lost over 10% in each of the last two years. Since December 2000 Qwest lost 39% of its land lines. Their first AFOR took effect in 2001.

Commissioner Block said a lot of the Commissioners represented rural areas.

Mr. Baca agreed that small rural areas relied on Qwest for their phone service.

Commissioner Block asked Mr. Farrell to speak to it.

Charles Farrell CEO of New Mexico Exchange Carrier Group, said everyone of their companies had a connecting point to Qwest so every call made connects with Qwest. Our concern was the financial difficulties of Qwest who eventually would be affected in their ability to provide those connections.

Commissioner Block asked how they could you reestablish the connections if they were lost.

Mr. Farrell said they probably couldn't afford it. So their concern was the continued ability of Qwest to

do provide the connections.

Commissioner Marks asked Mr. Baca if Qwest was profitable.

Mr. Baca agreed but not on regulated services.

Commissioner Marks asked if the implication that Qwest was hemorrhaging was not true.

Mr. Baca said Qwest needed to be treated fairly.

Commissioner Hall asked what happened to this bill last year.

Mr. Baca said the PRC supported it 4-1 and Commissioner Marks opposed it assertively across the street. This bill had the protection of customers in it. There were a lot of minefields to cross.

Mr. Garcia said Valor in September 2000 had 100,000 access lines and now Windstream had 70,000. That was a third of their business. A vast majority was lost to competition that was unregulated.

Commissioner Hall said technology would do that to them but the level playing field needed to be extended to everyone in the state and regulation needed to be relaxed to do that. If this bill would do that then he was confident they would do that. He supported a level playing field for everyone. Competition on the open market took care of that.

Commissioner Becenti-Aguilar opposed this bill because of what she heard from industry on how it would set the price. Constituents didn't have the opportunity to vote on rates.

Commissioner Marks felt it was not inappropriate for these companies to ask for this relief but in representing his constituents this was not the right time.

Commissioner Block said if this Commission does choose to support it, Commissioner Marks had the right to speak across the street but if so he speaks for himself.

Commissioner Marks said it was a point well taken.

Commissioner Becenti-Aguilar seconded the substitute motion and it lost by a 2-3 minority voice vote.

The original motion to support SB 4 passed by a 3-2 majority voice vote.

Mr. Baca said HB 17 was almost identical to HB 107 last year which made through House and was on the calendar at Senate and died on the last day.

This bill would allow telephone companies to be able to recover costs for relocation of lines whenever State or County required them to do that. They had been eating those costs. Ideally, they didn't like moving their lines and they were working closely with DOT and counties to avoid it. It was only where it was unavoidable. It drove to the definition of actual costs on page 3, line 12. "Not otherwise recoverable" and

when they could, this didn't come into play. The legislature was working on a bill to require that repayment and if it passed there would be no need for this bill.

Commissioner Block said they met at Buffalo Thunder last year and it was evident that Qwest made every effort to work with counties and municipalities to identify where the lines were to avoid need to move them.

Mr. Baca said DOT actually started a process as a result to try to design around their lines.

Commissioner Block moved to support SB 17. Chairman Lyons seconded the motion.

Commissioner Hall asked how often this happened. He asked if they had right of eminent domain on the right of way.

Mr. Baca explained that the counties and cities and DOT when they were in the public ROW could require them to move those lines. Sometimes they got funding to take care of it.

Commissioner Hall asked how many times they had had to recover those costs.

Mr. Baca said there were times DOT didn't have the money for that. The federal funded ones did have that money in them at a cap they never reached.

Commissioner Hall asked if shareholders were not obligated to put money in sometimes.

Mr. Baca said shareholders had been eating that for a long time.

Mr. Garcia guessed they had the issue a dozen times each year. Lately it had been higher with stimulus funds. They were trying to make sure of minimum impact. Sometimes they could not avoid it. Their ratepayers did absorb this cost. These should be built into their rate base but since 200 the legislature did away with rate of return rates.

In Hobbs, in their franchise agreement, anytime the city was doing work on the street, the costs were on Qwest.

Commissioner Hall asked if they didn't assume they might have to move a line when they put in a line in a public right of way. Mr. Garcia agreed.

Commissioner Marks asked Mr. Baca about PRC findings based on evidence.

Mr. Baca didn't remember what the HE did.

Mr. Horcasitas didn't recall the specifics but knew that when the bill didn't pass they included it in their AFOR and the HE took testimony on it and their witness argued with similar arguments and the HE was not convinced that it should be a specific item addressed in the AFOR.

Commissioner Marks agreed and quoted the HE statement. There was no evidence that this was built into Windstream rates but it was in Qwest because it was there before ROR rates went away.

They didn't want the Commission to look at all of their costs - just relocation costs. They had expenses that were declining. They heard about that in hearings about drops in their labor costs. They were not coming in on cost of service rates. They just wanted to pass this part on to the rate payer. It was a violation of cost based rates but they were not on cost based rates. It didn't make sense to just look at one part of their costs.

Mr. Horcasitas said the HE asked them if they incurred facility relocation costs in 1992. They had always incurred some costs with facility relocation. Then the HE asked if they were in their rates. Their witness said they were in 1992 and he agreed. But they were not anymore. Regarding labor costs, they didn't need as many workers having lost 40% of their business.

Commissioner Marks said the question was asked in 2001 and Mr. Horcasitas quoted the witness pretty well.

Commissioner Hall's contention was that he didn't agree with Qwest being able to have a blank check to collect all of this from rate payers. The share holders should carry some of the burden. His objection to the bill wasn't whether their business was down.

Mr. Baca said this did allow the Commission to fully investigate all expenses and it was just pennies anyway.

Commissioner Hall felt that was beside the point. He had actually opposed the PNM bill before. If the shareholders were somewhat responsible he would be more comfortable with it.

Commissioner Becenti-Aguilar felt it was not right for industry to tell them how the commission voted before. This had reflected on the Navajo nation and a history of problems in quality of service. There were lots of unhappy customers left there.

Mr. Baca said he meant no disrespect.

Chairman Lyons asked if the phone company had ever said they wouldn't move it because it was too expensive.

Mr. Garcia could not recall any.

Chairman Lyons asked if the phone companies had ever asked for help in paying for them.

Commissioner Marks said there was once an amendment put on to require municipalities to pay.

Mr. Baca said that was two years ago.

The motion to support SB 17 failed on 2-3 minority voice vote.

Commissioner Marks said he would mention that two commissioners supported the bill.

- **Building Security Presentation**

Mr. Rivera said as a result of events in August or September there were some problems experienced in offices and hallways and he asked GSD to assess security. They did and recommended some changes.

This building had a 4 rating where 5 was the worst. His concern was to improve the security here. There were three estimates of cost which he handed out. The spreadsheet indicated the type of work to be done. Some of it had already been done. Card readers on some floors, camera upgrade, etc. There was an allocation to the agencies that share this building. CYFD didn't support the cost of this fix. So they wouldn't share the costs.

On the second sheet they only did exterior doors, monitors in lobby, cameras and security guard. With a security guard they wouldn't need the card reader. GSD was reluctant to do cameras without constant monitoring. He reviewed the resulting costs. Tricia would have a panic button to summon state security and /or state police. The total costs would be \$1,607 for 2% of the total cost and GSD would pick up 98% of total costs. We've had thefts by people they didn't know. H would like to move forward with it. The State Loss Control had assured us there would be no increase in premiums.

Chairman Lyons thought it was a good first step.

Commissioner Block said GSD went out for bid so they didn't have to worry about that.

Commissioner Block thanked Mr. Rivera for this work.

13. COMMUNICATIONS WITH COMMISSIONERS

- **New Mexico Bail Bonds Company audits and Commission's present plan. Presenters, John C. Franchini, Superintendent of Insurance and Commissioner Jerome D. Block.**

Superintendent Franchini handed out his report.

Commissioner Block said he hoped they could deal with all documents and questions on it.

Superintendent Franchini said he checked what other states did on licensing of bail bondsmen. He felt the PRC could handle it as written.

He briefly explained how they would take the top 20 companies that had complaints and send staff to investigate them. They would do the audits and start February 1 for two months to complete it.

They would send notice to the companies after a consumer alert was sent out and see if they had any issues. They would find the consumers by going through complaint records.

Companies would be notified - provide workspace for investigators and provide a copy of premium tax report and most recent financial statement. He showed the check list. Dave Gonzales and Mr. Baca would do it.

They had some complaints recently to have ankle bracelets on people out on bond but they didn't favor that.

He believed this was a better process than an independent audit. If they found big problem, they would come back.

Commissioner Block asked if they were going to fine those who violated.

Superintendent Franchini agreed. It was in the statute. If it was a mistake and not serious, they would be fair.

Commissioner Hall said they needed to send this list to every bail bondsmen in the state and tell them to be prepared for a visit sometime in the future.

Superintendent Franchini said these people paid fees to the PRC so they needed to be fair but they should follow the statute.

Commissioner Marks said he met with some of them at a continuing education event and heard from them that they felt some were not following the marketing guidelines by advertising reduced fees but that was an illusion. He asked if they would look at market conduct. Superintendent Franchini agreed.


The Commission had no objections to going forward.

Superintendent Franchini announced that today children 19 and under had a market for health care under Presbyterian and now a couple of other companies wanted to offer it too.

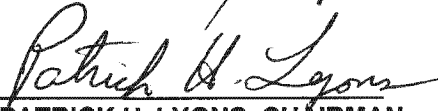
14. ADJOURNMENT

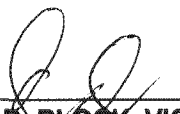
Commissioner Block moved to adjourn the meeting. Commissioner Marks seconded the motion and it passed by unanimous voice vote. The meeting was adjourned at 12:50 p.m.


ATTEST:


Carl Boaz, Stenographer


APPROVED: 02/17/2011


PATRICK H. LYONS, CHAIRMAN


JEROME D. BLOCK, VICE CHAIRMAN


THERESA BECENTI-AGUILAR, COMMISSIONER


JASON MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING

SIGN-IN SHEET

DATE: 01/20/2011

Name	Company Name (if any)	Phone Number
Lewis CAMPBELL	CECC	505-323-8792
David Collin	PNM	211 2214
DAVID VAN WINKLE	SICRAA CLUB	820-1006
CHRIS ARCHULETA	SAS	525-247-8840
Gervacio Ortiz	PNM	505-241-2561
William Gannin	"	505-241-2974
Michael Callegan	Rocky Mountain	505-830-2076
Fuller	Cuddys McArthur	988-4476
Robin Dvirine	Presbyterian	774-7792
Danny Burt	SHP	74581
Michael Hernandez	Quwest	505-245-8485
Charles Ferrill	NMEEG	575-430-6800
Sam Ray	NMEEG	505-264-0953
Curtis Gorman		505-310-0179
KENNETH J. TAGER	CITY OF RIO RANCHO P.D.	105-891-5003
Joe Earnest		505-982-8645
Bill Garcia	Windstream	955-9702
Marty Dallman	PCD	670-7391
Jesse Pickard	DTS	283-0229
Jason Ziglar	DTS	971-3297
Sam	USD	476-2425
Leo Baca	Quwest	245-7272

Thank you for attending this meeting.



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING
Thursday, January 20, 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 28 Regular Open Meeting
 - Minutes of the December 30 Regular Open Meeting
- 6. PUBLIC COMMENT**
- 7. CONSENT ACTION ITEMS**

A. Transportation Division Cases

10-00252-TR-M Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF HATCH AREA MEDICAL CENTER FOUNDATION, d/b/a BEN ARCHER HEALTH CENTER TRANSPORTATION SERVICE, FOR A PERMIT TO PROVIDE NON- EMERGENCY MEDICAL TRANSPORT SERVICE AND TEMPORARY AUTHORITY. <u>Order</u>
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10-00339-TR-M Bob Parker	IN THE MATTER OF THE APPLICATION OF SIMPSON MOVING COMPANY FOR A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS CARRIER SERVICE AND FOR TEMPORARY AUTHORITY. <u>Order</u>
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8. REGULAR ACTION ITEMS

A. Utility Division Cases

10-00086-UT Robert Hirasuna	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NOS. 397 AND 32 (FORMER TNMP SERVICES). <u>Order</u>
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9. DISCUSSION ITEMS

A. Transportation Division Cases

10-00063-TR-M Margaret Caffey- Moquin	IN THE MATTER OF THE APPLICATION OF RUNNING BEAR, INC., D/B/A ROCKY MOUNTAIN EMS, FOR AN ENDORSEMENT TO CERTIFICATE NO. 43374 TO PROVIDE AMBULANCE SERVICE AND FOR TEMPORARY AUTHORITY.
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10. PRESENTATIONS

PNM's presentation on U.S. Environmental Protection Agency's December 22, 2010 Announcement of Draft Order Proposing Additional Environmental Upgrades for San Juan Generating Station. Presenters: Maureen Gannon, Director of Environmental Services and Gerard Ortiz, Executive Director NM Retail Regulatory Services.

An action may be taken in connection with this presentation.

11. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

12. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

- Legislative matters
- Building security presentation

13. COMMUNICATIONS WITH COMMISSIONERS

New Mexico Bail Bonds Company audits and Commission's present plan. Presenters: John C. Franchini, Superintendent of Insurance and Commissioner Jerome D. Block.

12. 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.