

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 25, 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
Commissioner Jason A. Marks
Commissioner Theresa Becenti-Aguilar
Commissioner Ben L. Hall

Members Excused:

Commission Vice-Chairman Jerome D. Block

Staff Present

Michael Rivera, Chief of Staff
Robert Hirasuna, General Counsel
Bob Parker, Associate General Counsel
Rick Blumenfeld, Associate General Counsel
Roy Stephenson, Utility Division Director
Reggie Padilla, Utility Division
Larry Luján, Transportation Division Director
David Barton, Insurance Division
John Franchini, Superintendent of Insurance
Alan Seeley, Insurance Division
Rocke Johnson, Executive Administrator for Chief of Staff
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 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

There were no introductions

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

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

5. CONSIDERATION AND APPROVAL OF MINUTES

- Minutes of the Special Open Meeting of January 4, 2011
- Minutes of the Special Open Meeting of January 6, 2011

Commissioner Marks moved to approve the minutes of January 4, 2011 and January 6, 2011 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

**10-00339-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 Marks moved to approve the order for Case 10-00339-TR-M. Commissioner Hall seconded the motion and it passed by unanimous voice vote. So Ordered.

8. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

Chairman Lyons requested a list of all the cases that were over a year old with copies to all Commissioners.

9. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

• Legislative Matters

Mr. Stephenson presented on SB 409 by Hardeman regarding adjusting utility rates without notice. He sent out the FIR which would add three words to the statute - "acquisition of water resources" that allowed a utility to recover the cost by doing an adjustment clause if they experienced a change in costs. Typically those were and historically were cost factors for taxes or costs of gas or purchased power. By adding water resources, if passed, would require a new rule change.

Mr. Daniel Ballet was here for New Mexico-American Water Company (NMAW) just acquired by an Edmonton Canada firm. The Ogallala aquifer has declined and it might be cheaper for them to purchase water rather than drill for their own water and that would be similar to electric utility purchasing power. Staff did put in the FIR that it was already a requirement for a water utility to secure adequate resources for the community serviced. This legislation would help those in Clovis.

Mr. Ballet provided a handout on the acquisition.

Commissioner Marks pointed out that the term "acquisition of water resources" was not defined. He asked if a water utility could go buy water rights and put it into an adjustment rider. He asked if Mr. Stephenson could propose a definition.

Mr. Stephenson said he might. Staff had the same question. Which costs should be included and how that was determined might be done by the Commission in a timely manner. So the bill shifted that responsibility to the Commission.

Commissioner Marks thought they should define it for the legislature now. Right now it was pretty broad.

Mr. Stephenson said the only thing that came to mind was "commodity" - the commodity of water instead of rights. "Wet water."

Commissioner Marks that was a concern of mine and he thought the rule making provision was important. He understood NMAW had variable prices. It might not start out as substantial.

Mr. Ballet said the big picture here was that they expected to have a new pipeline in place within ten years and Clovis could be buying all their water. It would become significant and vary along the way.

Commissioner Marks asked if he would have a problem if the Commission made it clear it was not buying water rights.

Mr. Ballet agreed and said he had the same comment to the sponsor of the bill - certainly that was not their intent to include water rights.

Chairman Lyons agreed to talk with Gordon Meeks who wrote the bill and get it defined before it was considered by legislature. This was a very important bill for the PRC. Buying water was better than trying to buy water rights.

Commissioner Marks wanted to hear from Mr. Meeks about his thinking. The more specific it could be, the better the legislation would be. The court said the plain language prevailed when the PRC lost the EPE purchasing RECs case and it could say that here too.

Commissioner Hall agreed with Commissioner Marks on the acquisition of water. He suggested the Commission should take no stance on the bill and then go work for a good definition.

Mr. Ballet said the new company, Epcore USA, anticipated coming to the Commission next month with a case to approve the acquisition. Epcore had no US employees so there would be no change in employment in Clovis or Edgewood. There would be much work behind the scenes and he had provided the informational sheets today.

Commissioner Marks asked who would provide the back-office services.

Mr. Ballet said there would be a transition team with employees from both companies. Arizona-American was a lot of the back office support for NMAW. So it would make sense that the two companies were sewn together.

Mr. Hirasuna asked if the FIR was sent.

Mr. Stephenson said it was sent last week.

Chairman Lyons said they had three insurance bills to review.

Mr. Seeley and Superintendent Franchini provided large notebooks to the Commissioners.

Senate Bill 198

Superintendent Franchini said the first sheet showed the expected insurance legislation and the second sheet showed what FIRs they submitted.

SB 198 by Lovell was a cleanup bill but made many changes to the Insurance Code and added fees to the schedule. It would allow online licensing of agents and removed the language of premiums that was impractical. There was no impact. Online licensing would be a cost savings.

There were no questions on SB 198 and by consensus, the Commission supported that bill.

Senate Bill 134 - on Life and Health changes.

Superintendent Franchini said Mike Batt wrote the bill. He like the bill and would be proud to say Mike wrote it. He was trying to complete unfinished work while he was here.

The 73 pages would extend the Life and Health guarantee. It added definitions and incorporated the most recent NAIC provisions. It would allow New Mexico's L/H Fund to be joined with other states' funds. This was part of public disclosure. And it would allow the Superintendent to appoint two advocates for the fund. It would not directly affect current operations.

Right now there was a \$100,000 limit and this would raise the guarantee to \$250,000. It established parameters for LTC and insurance settlements. This was a way to open up the fund to the public. It helped the public but didn't cost anyone any real money.

He briefly explained the insurance associations as a safety net for all those licensed in New Mexico. This was not about associations but a guarantee to the public if a company went insolvent.

Commissioner Marks asked then if there was an assessment on all companies. Superintendent Franchini agreed.

Commissioner Marks asked who was on the board.

Superintendent Franchini didn't know. He said they were having their first meeting in two weeks and he would know more then.

Commissioner Marks asked why this board should promulgate the rules instead of the superintendent.

Superintendent Franchini explained that some companies not domiciled in New Mexico and were not part of this fund. Page 69-70 of the bill showed that the Superintendent approved the rules. He explained further the nature and purpose of the associations which acted as a safety net when companies became

insolvent.

Chairman Lyons asked how it was funded.

Superintendent Franchini said a small portion of the premium taxes went to this fund.

Chairman Lyons asked if the fund had the capability to sustain these levels. Superintendent Franchini said they did.

Commissioner Hall noted on page 29 at the top said records "may be open if the board votes to open them."

Superintendent Franchini didn't know what that meant but thought the only time would be when a company was in danger of insolvency. He would look further.

The Commission supported SB 134.

Senate Bill 250 -

Superintendent Franchini said this bill was just recently docketed and would bring New Mexico into compliance with the Dodd-Frank Bill. It used the model law similar to how oil and gas collected taxes across the country. Lovell was main driver. It would help the PRC collect taxes which were about \$2.5 million annually and this would allow the PRC to continue doing that.

Dodd-Frank allowed them to only pay in the state where domiciled. This would allow multi-state compacts and New Mexico needed to be part of it. He understood that 30 states were ready to sign up. If it goes into effect, no matter what state, the compact would be applicable in that state.

He said Senator Lovell agreed to put Mr. Lovato from the Insurance Division on that committee.

Chairman Lyons asked who made the appointments.

Superintendent Franchini said the Compact would

Chairman Lyons asked how the probation would be affected by these bills.

Superintendent Franchini said it was more positive - more in compliance.

The Commission unanimously supported SB 250.

Senate Bill 201

Fire Marshal Standefer said this bill would do several detrimental things to the fire code. It said a local entity could not require fire sprinklers. That was not in the fire code because the model code for residential

sprinklers was not adopted in New Mexico and this would prevent any local government from adopting a requirement that residential sprinklers be installed.

Also of concern was that the building code people would not have any authority to interpret the fire code.

The toughest thing was that any fire code would not apply to any new construction.

Finally the insurance industry wouldn't have any inspection guarantee so they would have to hire their own inspectors to inspect that building for safety. That could lead to buildings that didn't meet the fire code. He asked the Commission to oppose it.

Chairman Lyons commented that this was a hot time with home builders at CID with regulation requiring sprinklers in all new homes. He agreed with CID, especially with flat roofs - a lot of freezing could take place.

Marshal Standefer understood the cost per square foot would increase for new construction costs but as fire marshal he felt strongly that if a local government wanted to require sprinklers, it should have that right. This would eliminate sprinklers for large warehouses; for buildings over 12,000 sq. ft.

Commissioner Marks agreed with Marshal Standefer and thought this was an attack on what keeps people safe.

Marshal Standefer said he supported CID at the public hearing. The stats showed that sprinklers saved lives and the freezing issue had been addressed. It saved lives of occupants and also of fire fighters who had to rescue occupants.

Chairman Lyons asked if the PRC supported it. Marshal Standefer agreed.

Commissioner Hall said the Uniform Building Code was national. Then they came along and allowed each town to adopt its own. So it got away from Uniform Code. Allowing each town to adopt its own code made it difficult.

Marshal Standefer agreed. - The state code was based on the uniform building code but got sucked into others. The international code group was established to deal with that.

Commissioner Hall said CID didn't even have uniform policy for its own inspectors.

Marshal Standefer explained that currently local government could adopt a fire code but it could not be in conflict or less stringent than the uniform code. A local government could adopt the IBC or something more rigid.

Chairman Lyons disagreed with the extra costs this would put on new home buyers.

The Commission voted 3 - 1 to not support Senate Bill 201. Commissioner Hall supported the

bill.

After further discussion, Chairman Lyons changed to support of Senate Bill 201. The result was a 2-2 tie vote so the Commission took no position on the bill.

Chairman Lyons said SR 6 by Senator Lovejoy to abolish the PRC would take a 2/3 vote for it to be on the ballot in 2012.

Commissioner Becenti-Aguilar - Senator Lovejoy has fought the PRC consistently for two terms. This was beyond any type of analysis she could make at this time.

10. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Hall said the NAIC had required our Insurance Division to answer certain things at certain times and he understood that was not being done and wanted to know why.

Chairman Lyons asked to put it on for Thursday.

Chairman Lyons noted that the PRC had a seat on the Martin Luther King Jr. Commission. He would like to put Commissioner Marks on this Commission and felt he would do a great job.

Commissioner Hall moved to appoint Commissioner Marks to the Martin Luther King Jr. Commission. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote.

Chairman Lyons announced that Mr. Rivera was going to move on and his last day would be one week from Friday. They needed to put an interim in that position. Mr. Montoya did it before so he would like to put him in so he could meet with Mr. Rivera and work on the transition.

Commissioner Hall agreed he handled it before on an interim basis.

Commissioner Marks said they were losing Juan Rios as well. He thought Mr. Montoya was the only one for the job and they could seek a permanent replacement as soon as possible.

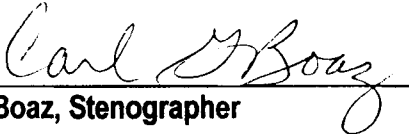
Mr. Lovato agreed to move on it.

11. ADJOURNMENT

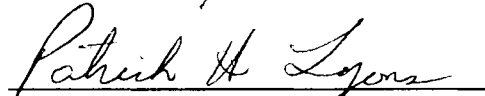
Commissioner Marks moved to adjourn the meeting. Commissioner Hall seconded the motion and it passed by unanimous 4-0 voice vote.

The meeting was adjourned at 10:45 a.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



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING
Tuesday, January 25, 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 January 4, 2011 Regular Open Meeting**
 - Minutes of the January 6, 2011 Regular Open Meeting**
- 6. PUBLIC COMMENT**
- 7. CONSENT ACTION ITEMS**

A. Transportation Division Cases

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. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA**
- 9. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA**

- **Legislative matters**

10. COMMUNICATIONS WITH COMMISSIONERS

11. 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.