

**MINUTES OF THE  
REGULAR OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
February 1, 2011**

**TIME: 10:03 a. m.**

**PLACE:**

**PERA Building  
4<sup>th</sup> Floor Hearing Room  
1120 Paseo de Peralta  
Santa Fé, New Mexico 87501**

A quorum was present as follows:

**Members Present:**

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

**Members Excused:**

**Staff Present**

Michael Rivera, Chief of Staff  
Robert Hirasuna, General Counsel  
Bob Parker, Associate General Counsel  
Mary Howells, Associate General Counsel  
Roy Stephenson, Utility Division Director  
Larry Luján, Transportation Division Director  
Brianna White, Transportation Division  
Avelino Gutierrez, Legal Division  
Mark Cessarich, Telecommunications Bureau  
Michael Ripperger, Telecommunications Bureau Chief  
Jim Brack, Utility Division  
Reggie Padilla, Utility Division  
Rocke Johnson, Executive Administrator for Chief of Staff

**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 10:03 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 asked that the complaint of 08-00109 come off consent for discussion and action.

**Commissioner Marks moved to approve the agenda as amended with Case 08-00109 moved to Regular Action Items. Commissioner Becenti-Aguilar seconded the motion and it passed by 5-0 unanimous voice vote.**

**5. PUBLIC COMMENT**

There were no comments from the public.

**6. HEARING**

The Commission went on the record at 10:06 a.m. and the matter was transcribed by a court reporter and not as part of these minutes.

**CASE NO. 09-00100-TR-EN - IN THE MATTER OF THE REVOCATION OF  
OPERATING AUTHORITY FOR FAILURE TO PROVIDE PROOF OF  
FINANCIAL RESPONSIBILITY.**

**MOTOR CARRIERS AND CERTIFICATES, PERMITS OR WARRANTS NUMBERS:**

**EAGLE TOWING & RECOVERY LLC, # 53728; LUXURY TRANSPORTATION SERVICES, #52841; AUTOEX RECOVERY, LLC, #55278; GAG SANTIAGO TOWING & RECOVERY, INC., #55403; FERNANDO ESPINO-LÓPEZ, D/B/A LÓPEZ TRUCKING, #54682; CHARLES WESLEY MOTES, D/B/A CW'S BACKHOE SERVICE, #55132; PAVILAS FARM LABOR, INC., #55738; EDWIN CHÁVEZ, D/B/A K & L AUTOMOTIVE SERVICE, #54329; BRANDON LEE KOPROWSKI, D/B/A BK TRANSPORT, #55008; FERZA INCORPORATION, #55162; SIX GUN TRUCKING, LLC, #55232; HECTOR M. GUILLEN-CARRERA, D/B/A G TOWING, #55675; JOSE R. FRANCO, D/B/A R.F. TRUCKING, #55256; HECTOR LOZANO, D/B/A JUNIOR'S TRUCKING, #54674; MORNING STAR EXPRESS, LLC, #55411 AND #55423; RENE MADRID, D/B/A MADRID TRUCKING, #55549; RUDY LOYA & EDDIE MARTÍNEZ, D/B/A RELIABLE TOWING SERVICE 24/7, #54558; JULIA E. CHÁVEZ, D/B/A ALEX CO, #54553; DAMACIO & EILEEN ORTIZ, D/B/A ORTÍZ TRUCKING, #53323; ALEX MENDOZA, D/B/A EL 24 TOWING, # 55424; ASAP TOWING, INC. # 53338; HOT SHOT SERVICES, INC. #41778; SOUTHERN NM COLLECTION BUREAU, INC., D/B/A ROADRUNNER COLLATERAL RECOVERY, #864; PATRICK DAVID JONES, #55251; PARK & SHUTTLE, INC., D/B/A AIRPORT SHUTTLE, #53575, #53662 AND #54657.**

The record was closed at 10:15.

**7. CONSENT ACTION ITEMS**

**A. Transportation Division Cases**

**09-00100-TR-EN IN THE MATTER OF THE REVOCATION OF OPERATING AUTHORITY FOR FAILURE TO PROVIDE PROOF OF FINANCIAL RESPONSIBILITY, MOTOR CARRIERS AND CERTIFICATES, PERMITS OR WARRANTS NUMBERS: EAGLE TOWING & RECOVERY LLC, #53728; LUXURY TRANSPORTATION SERVICES, #52841; AUTOEX RECOVERY, LLC, #55278; GAG SANTIAGO TOWING & RECOVERY, INC., #55403; FERNANDO ESPINO-LÓPEZ, D/B/A LÓPEZ TRUCKING, #54682; CHARLES WESLEY MOTES, D/B/A CW'S BACKHOE SERVICE, #55132; PAVILAS FARM LABOR, INC., #55738; EDWIN CHÁVEZ, D/B/A K&L AUTOMOTIVE SERVICE, #54329; BRANDON LEE KOPROWSKI, D/B/A BK TRANSPORT, #55008; FERZA INCORPORATION, #55162; SIX GUN TRUCKING, LLC, #55232; HECTOR M. GUILLEN-CARRERA, D/B/A G TOWING, #55675; JOSE R. FRANCO, D/B/A R.F. TRUCKING, #55256; HECTOR LOZANO, D/B/A JUNIOR'S TRUCKING, #54674; MORNING STAR EXPRESS, LLC, #55411 AND #55423; RENE MADRID, D/B/A MADRID TRUCKING, #55549.**

**(Bob Parker) Order**

Commissioner Marks was assured that these names corresponded to the names in Exhibit 2 presented during the hearing.

**B. Utility Division Cases**

**10-0100-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE CITY OF ALBUQUERQUE 2010 UNDERGROUND PROJECTS RIDER PURSUANT TO ADVICE NOTICE NO. 391.**

**(Mary Howells) Order**

**10-00180-UT IN THE MATTER OF THE APPLICATION OF MORA-SAN MIGUEL ELECTRIC COOPERATIVE, INC, A NEW MEXICO NON-PROFIT ELECTRIC COOPERATIVE, FOR APPROVAL OF CONTINUED USE OF ITS FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSE AND VARIANCE.**

**(Mary Howells) Order**

**Commissioner Marks moved to approve all of the Consent Action Items cases. Commissioner Hall seconded the motion and it passed by 5-0 unanimous voice vote. So Ordered.**

**8. REGULAR ACTION ITEMS**

**A. Utility Division Cases**

**08-00109-UT IN THE MATTER OF THE FORMAL COMPLAINT OF CALVIN LEE, JR., AGAINST ALLTEL COMMUNICATIONS, INC.**

**(Bob Parker) Order**

Mr. Parker presented information regarding this matter to the Commission. He explained it was an old case they were trying to close. In this one, a person complained that he did not owe a bill. Alltel reported him to a credit bureau and he asked for damages and that Alltel remove this from his credit report.

Mr. Parker's order said the PRC did not regulate the Fair Trade Act or have anything to do with the credit bureau and the order would refund his \$25 filing fee.

Commissioner Marks suggested if he was arguing over what he was charged the Commission might have some jurisdiction but agreed they had no authority over credit reports. They might have charged him for a service he did not order.

Mr. Parker agreed he raised an interesting point. PRC regulations only allowed a refund if there is no probable cause but not when the PRC had no jurisdiction so he used that as the reason.

Mr. Hirasuna said the violation of the Unfair Practices Act didn't allow the Commission to award damages.

Commissioner Marks asked if the order could be rewritten that the Commission makes no determination whether Alltel might have violated any statutes within the Commission's jurisdiction but could not award any damages so find there is no probable cause.

Mr. Parker said the PRC had no power to provide relief and asked how they could give him back his \$25 filing fee.

Commissioner Marks thought it didn't happen very often over wireless companies. In the past they had ordered wireless companies to give money back when customers were charged for things they did not order.

Mr. Ripperger agreed that under consumer protection the PRC had the right to make orders in wireless cases.

Commissioner Marks just didn't want to have an order out there that could be contested for jurisdiction.

Mr. Hirasuna suggested tabling it

Mr. Parker clarified that the man asked for relief under the Unfair Practices Act which the AG does. But he asked the Commission to help get Alltel to take this off his credit report.

Mr. Hirasuna agreed. One thing the Commission has done especially for complaints filed by consumers, if the facts alleged indicated a violation that the Commission could assert jurisdiction as a service to the public. So the Commission could do that based on their allegations of complaint. The Commission's rules did incorporate the Unfair Practices Act.

Commissioner Marks acknowledged that he had drafted that refund amendment and should have included jurisdiction as well.

Mr. Parker felt that to get rid of this old case the Commission had to bite the bullet.

**Commissioner Marks moved it as amended to state that the PRC had no jurisdiction. Commissioner Hall seconded the motion and it passed by 5-0 unanimous voice vote. So Ordered.**

## **9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA**

Mr. Hirasuna asked if the Commission wished to delay their meeting whenever the Governor declared

a delay. If so, it might need to be in the open meeting policy or it could be done on a case-by-case basis.

Commissioner Hall didn't see any reason to delay.

Chairman Lyons thought it should be a case-by-case basis.

Commissioner Marks said that wasn't the issue. He thought the public might get the idea that the PRC wouldn't start until 10:00. He thought the union might object.

Chairman Lyons said the Commission should follow the delay when declared by the Governor.

## **10. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA**

- **Legislative Matters**

### **Discussion of Senate Bill 122.**

Mr. Stephenson said SB 122 was being delayed and advocates asked that the Commission not consider it today.

Mr. Ripperger said they had already acted by email to pull it off the agenda today.

Chairman Lyons said they would wait to hear from Mr. Rogers.

### **Discussion of Senate Bill 215.**

Mr. Stephenson said it was introduced by Representative Dodge. There were three coops that were domiciled in other states and served New Mexico. Currently those coops were treated by our laws as if they were an independent investor-owned utility in a rate case, even when they went through it in another state. This bill would consider them as all other domestic coops and would say they may not charge more in New Mexico than they charged in another state.

They had asked the Commission to consider supporting it.

Commissioner Marks asked then if they would be treated almost the same as a domestic coop in that if there was a protest by enough customers, the Commission would have a hearing on the rate case.

Mr. Stephenson agreed and read that portion from the bill.

Commissioner Marks thought the Commission should support this. It was a waste of money and time upon the ratepayers of these coops and took them away from their duties. There was no rational reason to treat them differently.

Mr. Hirasuna cautioned that if a coop had a pending rule making, it could circumvent or streamline the provision. The PRC could not streamline without a statutory change.

Commissioner Hall was glad this was brought up. He appreciated this bill.

**Commissioner Hall moved to support HB 215. Chairman Lyons seconded the motion and it passed by unanimous voice vote.**

#### SB 137

Mr. Stephenson said SB 137 was a co-generation bill that involved a certain way renewable energy was to be paid for. The sponsor agreed to a meeting next week so it was suspended for awhile. They read the FIR staff prepared. It would not be introduced until next week.

Last night in Senate Corps Committee, the Chairman of the committee was concerned about delays on getting the FIRs but his staff didn't get a request for an FIR. They would work on it anyway. He did converse with the sponsor and let him know of unintended consequences that could occur. It might make the Utility Division's life more complicated although their intent was for more transparency.

Commissioner Marks asked if there was anybody who seemed to be opposed.

Mr. Stephenson said there was none overtly although they were not enthusiastic about it.

#### SB 209

Commissioner Marks reported on SB 209, Senator Harden's bill on adding water acquisition to the fuel clauses. It would also, at request of NMAW, give the ability to contract for water with farmers to use their wells and have it treated like a fuel rider. A week ago the Commission discussed it and he had concerns about "acquisition of water resources" and whether it would be interpreted as water rights.

He talked to Gordon Meeks, the drafter, and also Mr. Ballet and his attorney and they agreed to an amendment to exclude purchase of water rights in the bill. So he was going to try to catch Sen. Harding to remove that ambiguity.

He clarified that it did not exclude purchase of water rights in rate base. There were two rate cases for NMAW and the Commission considered all their capital costs and operating costs and set the base rate on that. What they had was more water rights than they had water. They might end up having to lease some and they thought the amount would vary so it didn't make sense to do it through a rate case - it was more like a fuel expense and conceptually that made sense.

Commissioner Hall agreed that this would protect future water rights from being charged back to the customer. He supported Commissioner Marks's support of it. He agreed to talk with Sen. Harden about it and hoped it would pass.

Chairman Lyons agreed there was a need for it.

Commissioner Hall said he and Commissioner Marks visited with Sen. Lovejoy about her bill and she said she was the only one who was not chicken. She just wanted to take the PRC out from under the constitution. She didn't want to make other changes to the Commission. She didn't feel the Commissioners had been tough enough on keeping rates down. It was the committee that came up with the idea over last year.

## **11. COMMUNICATIONS WITH COMMISSIONERS**

Commissioner Becenti-Aguilar asked for a status report on filling the Record Manager position.

Mr. Rivera said they were getting ready for posting and looking at qualifications.

Chairman Lyons said he felt like they would put Johnny Montoya in temporarily and should not post the Chief of Staff position until after the legislative session was over and then have all commissioners involved in it.

Commissioner Becenti-Aguilar said her main concern was continuity to make sure Mr. Montoya was communicating with all Division Directors during the session.

Commissioner Becenti-Aguilar asked about the Director of ASD.

Mr. Rivera said it was up to the Commission. He believed they said to wait on that one as well. He recommended doing it late in the session.

Chairman Lyons said they were thinking about giving that position up and to make Mr. Lovato in charge and his assistant come up and do more but he was open for suggestions.

Commissioner Marks thought they should not fill it right away and let Mr. Lovato be acting and figure out the best thing to do. They might want to give up the CFO position. Either way, they were fine the way it was now.

Commissioner Becenti-Aguilar asked about the IT Manager position. There were a lot of questions about the computers.

Mr. Rivera said that position should be offered this week.

Chairman Lyons agreed it was important to get those positions filled.

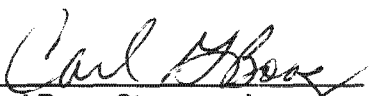
Chairman Lyons thanked the Commissioners for their presence on a bad weather day.

## **11. ADJOURNMENT**



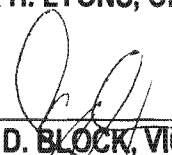
Commissioner Becenti-Aguilar moved to adjourn the meeting. Commissioner Marks seconded the motion and it passed by unanimous voice vote. The meeting was adjourned at 11:00 a.m.


**ATTEST:**

  
Carl Boaz, Stenographer

APPROVED: 2/24/2011

  
PATRICK H. LYONS, CHAIRMAN

  
JEROME D. BLOCK, VICE CHAIRMAN

  
THERESA BECENTI-AGUILAR, COMMISSIONER

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JASON A. MARKS, COMMISSIONER

  
BEN L. HALL, COMMISSIONER

Exhibit 1  
2/1/11



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**REGULAR OPEN MEETING  
Tuesday, February 1, 2011  
9:30 A.M.**

**PERA Building, 4<sup>th</sup> 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. PUBLIC COMMENT**
- 6. HEARING**

**CASE NO. 09-00100-TR-EN - IN THE MATTER OF THE REVOCATION OF  
OPERATING AUTHORITY FOR FAILURE TO PROVIDE PROOF OF FINANCIAL  
RESPONSIBILITY.**

**MOTOR CARRIERS AND CERTIFICATES, PERMITS OR WARRANTS NUMBERS:  
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TOWING & RECOVERY, INC., #55403; FERNANDO ESPINO-LOPEZ, D/B/A  
LOPEZ TRUCKING, #54682; CHARLES WESLEY MOTES, D/B/A CW'S  
BACKHOE SERVICE, #55132; PAVILAS FARM LABOR, INC., #55738; EDWIN  
CHAVEZ, D/B/A K & L AUTOMOTIVE SERVICE, #54329; BRANDON LEE  
KOPROWSKI, D/B/A BK TRANSPORT, #55008; FERZA INCORPORATION,  
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CARRERA, D/B/A G TOWING, #55675; JOSE R. FRANCO, D/B/A R.F.  
TRUCKING, #55256; HECTOR LOZANO, D/B/A JUNIOR'S TRUCKING,  
#54674; MORNING STAR EXPRESS, LLC, #55411 AND #55423; RENE  
MADRID, D/B/A MADRID TRUCKING, #55549; RUDY LOYA & EDDIE  
MARTINEZ, D/B/A RELIABLE TOWING SERVICE 24/7, #54558; JULIA E.  
CHAVEZ, D/B/A ALEX CO, #54553; DAMACIO & EILEEN ORTIZ, D/B/A**

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**7. CONSENT ACTION ITEMS**

**A. Transportation Division Cases**

<b>09-00100-TR-EN</b> <b>Bob Parker</b>	<p>IN THE MATTER OF THE REVOCATION OF OPERATING AUTHORITY FOR FAILURE TO PROVIDE PROOF OF FINANCIAL RESPONSIBILITY. MOTOR CARRIERS AND CERTIFICATES, PERMITS OR WARRANTS NUMBERS:</p> <p>EAGLE TOWING &amp; RECOVERY LLC, #53728; LUXURY TRANSPORTATION SERVICES, #52841; AUTOEX RECOVERY, LLC, #55278; GAG SANTIAGO TOWING &amp; RECOVERY, INC., #55403; FERNANDO ESPINO-LOPEZ, D/B/A LOPEZ TRUCKING, #54682; CHARLES WESLEY MOTES, D/B/A CW'S BACKHOE SERVICE, #55132; PAVILAS FARM LABOR, INC., #55738; EDWIN CHAVEZ, D/B/A K &amp; L AUTOMOTIVE SERVICE, #54329; BRANDON LEE KOPROWSKI, D/B/A BK TRANSPORT, #55008; FERZA INCORPORATION , # 55162; SIX GUN TRUCKING, LLC, #55232; HECTOR M. GUILLEN-CARRERA, D/B/A G TOWING, #55675; JOSE R. FRANCO, D/B/A R.F. TRUCKING, #55256; HECTOR LOZANO, D/B/A JUNIOR'S TRUCKING, #54674; MORNING STAR EXPRESS, LLC, #55411 AND #55423; RENE MADRID, D/B/A MADRID TRUCKING, #55549.</p> <p><u>Order</u></p>
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**B. Utility Division Cases**

<b>08-00109-UT</b> <b>Bob Parker</b>	<p>IN THE MATTER OF THE FORMAL COMPLAINT OF CALVIN LEE, JR., AGAINST ALLTEL COMMUNICATIONS, INC.</p> <p><u>Order</u></p>
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10-00100-UT Mary Howells	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE CITY OF ALBUQUERQUE 2010 UNDERGROUND PROJECTS RIDER PURSUANT TO ADVICE NOTICE NO. 391.  <u>Order</u>
10-00180-UT Mary Howells	IN THE MATTER OF THE APPLICATION OF MORA-SAN MIGUEL ELECTRIC COOPERATIVE, INC., A NEW MEXICO NON-PROFIT ELECTRIC COOPERATIVE, FOR APPROVAL OF CONTINUED USE OF ITS FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSE AND VARIANCE.  <u>Order</u>

**8. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA**

**9. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA**

- **Legislative matters**

**Discussion of Senate Bill 122.**

**Discussion of Senate Bill 215.**

**10. COMMUNICATIONS WITH COMMISSIONERS**

**12. ADJOURNMENT**

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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.**