

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
February 3, 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
Rick Blumenfeld, Associate General Counsel
Roy Stephenson, Utility Division Director
Larry Luján, Transportation Division Director
Johnny Montoya, Insurance Division
Reggie Padilla, Utility Division
Rocke Johnson, Executive Administrator for Chief of Staff
Charmaine Jackson, Tribal Liaison
Ken Smith, Telecommunications Bureau
Matthew Lovato, ASD Acting Director
Michael Ripperger, Telecommunications Bureau Chief
Cydney Beadles, Legal Division
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 Hall introduced his Executive Administrator, Yolanda Dominguez who would be on board by Monday. She was getting acquainted today.

3. MISCELLANEOUS ANNOUNCEMENTS

Chairman Lyons thanked everyone for being present on such a very cold day.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Hall moved to approve the agenda as presented. Commissioner Marks seconded the motion and it passed by unanimous 4-0 voice vote.

5. PUBLIC COMMENT

There were no comments from the public.

6. HUMAN RESOURCES MATTERS

Undocketed APPOINTMENT OF ACTING CHIEF OF STAFF

Commissioner Marks moved to appoint Mr. Johnny Montoya as Acting Chief of Staff until a permanent replacement for Mr. Rivera could be found. Commissioner Becenti-Aguilar seconded the motion.

Chairman Lyons noted that he did it previously and had done a good job. The reception for Mr. Rivera

was this afternoon at 1:00 p.m.

The motion passed by unanimous 4-0 voice vote.

7. CONSENT ACTION ITEMS

A. Transportation Division Cases

10-00338-TR-M **IN THE MATTER OF THE APPLICATION OF ABOUT SENIORS COMPLETE MOVING SERVICES, LLC, FOR A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS CARRIER SERVICE AND FOR TEMPORARY AUTHORITY.**
(Rick Blumenfeld) Order

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 moved to approve both consent action items. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous 4-0 voice vote.

8. REGULAR ACTION ITEMS

A. Utility Division Cases

10-00099-UT **IN THE MATTER OF THE PETITION OF OTERO COUNTY ELECTRIC COOPERATIVE, INC. FOR APPROVAL OF THE CONTINUED USE OF ITS FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSE.**
(Rick Blumenfeld) Order

Mr. Hirasuna announced that Mr. Blumenfeld was stuck on the same train with Mr. Boaz. He agreed to answer any simple questions the Commission might have.

Chairman Lyons asked if he would like to go on to the next case.

Mr. Hirasuna said Ms. Caffey-Moquin was not present either.

Commissioner Marks said it looked like General Counsel lost this case and it went into effect by operation of law last year and it just needed to be cleaned up.

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

06-00026-UT IN THE MATTER OF IMPLEMENTATION OF THE STATE RURAL UNIVERSAL SERVICE FUND.

Commissioner Marks moved to table this case and the next case temporarily. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous 4-0 voice vote.

05-00313-UT IN THE MATTER OF THE INVESTIGATION AND REVISION OF LOW INCOME ASSISTANCE PROGRAMS FOR TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW MEXICO.
(Margaret Caffey-Moquin) Order

B. Open Meeting Policy and Notice

Undocketed REVISIONS TO 2011 COMMISSION OPEN MEETING POLICY AND NOTICE.
(Robert Hirasuna) Policy and Notice

Mr. Hirasuna explained that the Commission approved the Open Meeting Policy and Notice earlier this month but consistent with the discussion on Tuesday, the issue came up that postponing or delaying meetings should be included. This order would do that. At Tuesday's meeting the discussion was only about delaying the meetings but he thought it should also include when state offices closed for the day that the meeting would be canceled so he included that as well. It was up to the Commission.

Commissioner Marks asked what they should do if they had a case that would go into operation of law if the Commission took no action that day and was on that day's agenda.

Mr. Hirasuna said someone in the Office of General Counsel could issue a single signature order.

Commissioner Marks said that couldn't be done if it was a statutory deadline. If it was a rate case at the end of the statutory suspension period or a rule making that got to its last days. He asked if instead of automatically canceling the meeting that people would be obliged to check.

Commissioner Marks moved to approve the draft order as amended on page three that instead of announced cancellation it would say, "The regular open meeting scheduled for that day may be canceled. The Commission will provide notification either by telephone or on its web site if the Commission intends to still hold its meeting."

Commissioner Hall seconded the motion.

Chairman Lyons thought he was right. It should be addressed on a case by case basis.

Mr. Hirasuna agreed and thought they would need to have the Chief of Staff arrange for someone to be present on those days to be able to post to the web site.

Commissioner Marks said if they were going to meet they would post something. It would allow them to hold a meeting if it was necessary.

Chairman Lyons asked if those timelines would hold in cases of an act of God.

Mr. Hirasuna said they would still hold.

Commissioner Hall recalled they had discussed that they might not want to just follow the Governor's order for the day.

Mr. Hirasuna said if the Governor said meetings would be canceled that the policy would direct people to the web site if they were going to hold the meeting on that day anyway.

Commissioner Marks said they could schedule it in the afternoon so it would provide all morning to let people know.

Commissioner Becenti-Aguilar asked Mr. Hirasuna if he had people available in his office if there was a two-hour delay.

Mr. Hirasuna said up until now the PRC policy had been to start at 9:30 regardless of a state delay. So right now the offices were open at 8:00 regardless of the delay.

Commissioner Hall clarified that if there was a 2-hour delay called; employees had up to two hours to get to work. They would have from 8:00 to 10:00 to get to the office. Mr. Hirasuna agreed.

Mr. Hirasuna further clarified that when the State announced a cancellation before 8:00 the Commission had followed that. But when it was announced after 8:00, then the Commission would decide whether to follow that and notify employees. If it was before 8:00, then it was automatic.

Commissioner Becenti-Aguilar asked how they would handle a major snowstorm when police had closed all freeways because of dangerous driving conditions on an open meeting day.

Mr. Hirasuna said that would be a question of safety. One thing that could be done would be for him to always be here. As long as there was one person - one commissioner present - they could hold a meeting with the rest of the Commissioners on the phone.

Commissioner Marks reminded them the Commission could always cancel a meeting but his amendment was just so they didn't automatically cancel a meeting and not be able to reschedule it for that same day if they wanted.

The motion to amend the policy passed by unanimous 4-0 voice vote.

9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

There were no communications with General Counsel.

10. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

- **Legislative Matters**

Mr. Rivera announced a Presentation from the Insurance Division on NAIC accreditation.

Mr. Johnny Montoya said the Superintendent was on the Rail Runner and was delayed.

He said one of the items that was critical to the NAIC as part of the accreditation was training of Examinations Bureau staff more adequately. So they scheduled three examinations staff to go to a training in Oregon with the Oregon Division of Insurance. The only cost to the PRC would be for travel. There were no registration costs. It would take place on February 21 for three days. There was one vacancy that they hoped to fill in the next week and allow the new person to go also.

Commissioner Becenti-Aguilar asked if those three employees had attended training before.

Mr. Montoya said Carol Pava attended a training in San Antonio on the basics of examination so this would be her second round.

The Commission returned to the items unheard under Regular Action Items on the agenda.

8. REGULAR ACTION ITEMS.

06-00026-UT IN THE MATTER OF IMPLEMENTATION OF THE STATE RURAL UNIVERSAL SERVICE FUND.

Mr. Hirasuna said this case should be considered today. He said they could get representatives from Solix on the phone if needed. He explained this case concerned assistance for low income customers from RUSF and the Commission had recently revised the rule on the regulations for such compensation by certain carriers. Solix and staff were currently working out an amendment to the agreement with Solix, the entity that managed the USF fund and disbursed funds to the LITAP carriers. They had not yet completed that change and until they did, Solix wouldn't be able to do anything and the disbursements under the contract would be done retroactively from November 2010. In the meantime, the Commission changed the surcharge to 3% and Solix had to report that to the carriers. So Solix was asking that the Commission issue a new format reflecting the new 3% surcharge rate until the agreement for disbursement to LITAP carriers was in place. The order would permit Solix to issue a new interim form.

Commissioner Marks asked Mr. Ripperger if he did the new form. He asked why it went from Section 2 to Section 4.

Mr. Ripperger said he forwarded it after they drafted the form and didn't review it. Staff just missed that.

Commissioner Marks also asked why the box was so small.

Mr. Ripperger said they were trying to get it on one page and didn't achieve that.

Commissioner Marks asked why they need to know the SAC code (Study Area Code) since that term never appeared in the PRC rule.

Mr. Ken Smith said these all went through the Advisory Board 3-4 times and they had one meeting with the accounting people line by line on each of the reporting items. The SAC number allowed Solix to keep the federal lifeline numbers straight with the state lifeline numbers. The PRC program piggy-backed off the federal program.

Commissioner Marks asked what "Tier 3" was.

Mr. Smith said that was the highest level of federal USF. There was some discussion about that and travel was excluded under the federal rule. Tier 3 was level at which the feds had a 3-cent state match. He explained the amounts for each tier.

Commissioner Marks asked if they got interest.

Mr. Smith was not sure of the rule.

Ms. Jennifer Anderson (for Smith Bagley on the Navajo Nation) said their position was that tribal customers were included for reimbursement under this rule. Tribal documents were included for reimbursement eligibility. Smith Bagley paid that surcharge but didn't pass it along to customers. If it was an issue for anyone, it was an issue for tribal customers.

Ms. Joan Ellis said at the advisory meetings this was a controversial provision and was discussed pro and con. Staff asked approval to make sure all the filings were there when the contract was approved and final determination made in the final order.

Chairman Lyons asked who appointed the advisory board.

Mr. Ripperger said that according to the rule, certain members were appointed from certain types of carriers and representatives from the public. Several had never shown up and the Board wanted to have them replaced. One member was from the New Mexico Rural Exchange Carriers and Charles Ferrell got the nod to replace Mr. Hutsell.

Chairman Lyons asked him to bring that back at the first available time.

Commissioner Marks saw in the rule a part he didn't like - interest accrual. The Commission opposed having the phone companies do that. In the rule it said those on tribal lines and eligible for life line were eligible to receive federal benefits but they were not part of this rule. So it was separated.

In the non-tribal lifeline the carrier had to contribute to match federal discount (money they don't collect). On the tribal lifeline they had to match the federal support.

Mr. Ripperger said they never got that straightened out. Solix was going to do the reimbursement and would be on Tier 3 for non-tribal lifeline only. But Smith Bagley would ask the Commission to interpret it.

Commissioner Marks felt it was not an advisory board issue. It was either declaratory by the PRC or a change in the rule. He asked that it be put in front of the Commission. Chairman Lyons agreed.

Commissioner Marks moved approval of the form with the addition that Solix could make minor typographical changes but not the content or substance. Commissioner Hall seconded the motion.

Mr. Bill Garcia (Windstream) said he sat on the board as secretary and Mr. Ripperger captured the discussion appropriately. The issue raised by Ms. Anderson should be decided by the Commission.

Chairman Lyons asked Mr. Montoya to provide the creation papers for the Commission

The motion passed by unanimous 4-0 voice vote.

10. COMMUNICATIONS WITH CHIEF OF STAFF CONTINUED

Mr. Rivera reminded the Commissioners of the LFC presentation on Monday.

Chairman Lyons clarified that it was not LFC but House Appropriations on Monday at 1:30.

Mr. Lovato handed out copies of the presentation to the Commissioners and went through a review of it with the Commission.

Commissioner Marks asked if the workers' compensation rate was just numerical or risk adjusted.

Mr. Lovato said it was numerical.

Commissioner Marks thought it was unfair that the PRC paid the same rate per FTE as DOT when the risk was so much less.

Mr. Lovato agreed to research it further.

Commissioner Marks added that the PRC had no injuries so he wanted to know why the rates went up. He had the same question regarding unemployment.

Chairman Lyons pointed out that they had the highest vacancies in four years and would work diligently on filling vacancies.

Mr. Lovato agreed to put it on bottom of highlights.

Mr. Rivera interrupted the review, stating they had an emergency situation on power.

Mr. Stephenson announced that Homeland Security wanted someone from the PRC to sit in the emergency management center. Power outages had caused a problem with gas distribution. Many parts were already out of gas. They would be shutting down in Española in 2 hours. They would need help in relighting pilots. Red River, Questa were all out.

The Commissioners briefly discussed the problem.

Mr. Jason Montoya said he had been in touch with Debbie at NMGC and had determined- it was not a pipeline issue but a distribution issue and it was unknown how long it would last.

Chairman Lyons asked that the Commission hear from NMGC as soon as possible. He said Commissioner Block was going to go to the NMGC offices this morning to see what could be done.

The Commission returned to the review of the presentation for House Appropriations.

Chairman Lyons felt it was way too long. Nobody would listen. The less volunteered the better.

Mr. Lovato agreed to condense it.

The Commission asked Mr. Ronnie Luján to address the contract increases in the Insurance Division. Mr. Luján apologized that he was not up to speed on it. He explained the need to defend litigation and agreed to get a break down for the Commission.

Chairman Lyons reminded him that all contracts needed Commission approval.

Superintendent Franchini said they would be bringing them soon. They were now writing up the RFPs.

Commissioner Becenti-Aguilar wondered if they should recess until 1:30 to get the answers.

Chairman Lyons suggested having staff bring that to each Commissioner individually since there was no notice of meeting this afternoon.

11. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Becenti-Aguilar announced that tomorrow was Native American Day at the Legislature.

Ms. Jackson reviewed the scheduled events and that they would distribute all kinds of PRC information

at their booth.

Mr. Hirasuna said they would issue a notice of possible quorum.

Marshal Standefer reported that the temporary seal had not been lifted but all restrictions for the Pit have been lifted. The results of the test were sufficient. They had to work now on the computer model for a fire. Their equipment moved a lot of air but he needed to make sure for a large fire possibility.

He reported that HB 54 had passed out of Health and Government Affairs and was scheduled at Tax and Rev tomorrow. They took the oversight committee out but kept the Fire Marshal in it.

Superintendent Franchini requested PRC support on SB 33 - fraudulent claims which passed Corps with a substitute which he liked better. It was much more careful how charges were made. Section D - was improved by making it simple. He agreed to provide a copy of the substitute bill.

11. ADJOURNMENT

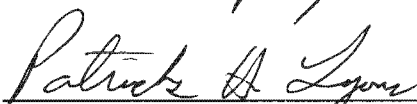
Commissioner Hall moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous 4-0 voice vote.

The meeting was adjourned at 11:00 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 03/03/2011


PATRICK H. LYONS, CHAIRMAN

JEROME D. BLOCK, VICE CHAIRMAN


THERESA BECENTI-AGUILAR, COMMISSIONER


JASON A. MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING
Thursday, February 3, 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. PUBLIC COMMENT**
- 6. HUMAN RESOURCES MATTERS**

Undocketed

APPOINTMENT OF ACTING CHIEF OF STAFF.

- 7. CONSENT ACTION ITEMS**

A. Transportation Division Cases

**10-00338-TR-M
Rick Blumenfeld**

**IN THE MATTER OF THE APPLICATION OF ABOUT
SENIORS COMPLETE MOVING SERVICES, LLC, FOR
A CERTIFICATE TO PROVIDE HOUSEHOLD GOODS
CARRIER SERVICE AND FOR TEMPORARY
AUTHORITY.**

Order

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8. REGULAR ACTION ITEMS

A. Utility Division Cases

10-00099-UT Rick Blumenfeld	IN THE MATTER OF THE PETITION OF OTERO COUNTY ELECTRIC COOPERATIVE, INC. FOR APPROVAL OF THE CONTINUED USE OF ITS FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSE. <u>Order</u>
06-00026-UT Margaret Caffey-Moquin	IN THE MATTER OF IMPLEMENTATION OF THE STATE RURAL UNIVERSAL SERVICE FUND.
05-00313-UT	IN THE MATTER OF THE INVESTIGATION AND REVISION OF LOW INCOME ASSISTANCE PROGRAMS FOR TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW MEXICO. <u>Order</u>

B. Open Meeting Policy and Notice

Undocketed Robert Hirasuna	REVISIONS TO 2011 COMMISSION OPEN MEETING POLICY AND NOTICE. <u>Policy and Notice</u>
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9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

10. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

- Legislative matters

11. COMMUNICATIONS WITH COMMISSIONERS

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.