

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
February 10, 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 [telephonically]
Commissioner Theresa Becenti-Aguilar
Commissioner Ben L. Hall

Members Excused:

Staff Present

Johnny Montoya, Acting Chief of Staff
Robert Hirasuna, General Counsel
Mary Howells, Associate General Counsel
Margaret Caffey-Moquin, Associate General Counsel
Rick Blumenfeld, Associate General Counsel
Ashley Schannauer, Hearing Examiner
Carolyn Glick, Hearing Examiner
Roy Stephenson, Utility Division Director
Georgette Ramie, Utility Division
Leroy Aragon, District 1 Executive Administrator
Larry Luján, Transportation Division Director
Jeff Primm, Utility Division
Michael Ripperger, Telecommunications Bureau Chief
Reggie Padilla, Utility Division
Rocke Johnson, Executive Administrator for Chief of Staff
Charmaine Jackson, Native American Liaison
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

Mr. Jason Montoya recognized some of the individuals from the Fire Marshal's office and Pipeline Safety Division staff who volunteered to help with the gas outage.

Commissioner Becenti-Aguilar announced that this was McKinley County Day at the legislature and if their representatives came to the PRC meeting she would like to introduce them.

Ms. Karen Roberts from Southwest Public Service Company; Mr. Eric Seibert and Mr. Tim Garrett from Solix were also on the bridge.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Becenti-Aguilar moved to approve the agenda as presented. Commissioner Hall seconded the motion and it passed by unanimous 4-0 voice vote. Commissioner Block was not present for the vote.

5. PUBLIC COMMENT

There were no public comments.

6. REGULAR ACTION ITEMS

A. Utility Division Cases

**07-00184-UT IN THE MATTER OF QWEST CORPORATION'S PERFORMANCE OF THE
SECOND AMENDED SETTLEMENT AGREEMENT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information concerning this matter to the Commission. She said her order confirmed that Qwest had performed its obligations under the second amended settlement agreement. With this order the case would be closed. Two conditions suggested by staff were set out in the order that there would be further review if new evidence of fraud came to light and a new docket opened for Qwest compliance at the cyber center would be monitored. If not complied with, monies would be returned.

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

Commissioner Marks thought he was the only one on the Commission when they instituted the SASA and was happy that they were able to have a job well done.

The motion passed by unanimous 5-0 voice vote. So Ordered.

**11-00037-UT IN THE MATTER OF AN INVESTIGATION INTO INDIAN HILLS
WATERWORKS, INC. REGARDING WATER OUTAGES IN FEBRUARY 2011.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission.

Mr. Robert Tingley was on the bridge for this case.

Ms. Caffey-Moquin said this was an investigation and described how the matter came to light by e-mail transmitted to her day before yesterday from the Hearing Examiner for the prior pending case to be heard in March. The e-mails were from Indian Hills customers about outages at multiple locations. That afternoon Chairman Lyons issued a single signature order require expedited compliance and to start an investigation. She explained to Mr. Tingley that the PRC sent a process server to the address on file for Indian Hills and he was discovered that the address on the service documents was not accurate and had apparently not been accurate with the Corporations Bureau for some time. She asked Mr. Tingley to submit an updated address.

Commissioner Block asked if this order initiated an investigation that would come back to the Commission.

Ms. Caffey-Moquin agreed that this would ratify Commissioner Lyon's order yesterday to investigate. Any added instructions the Commission might wish to add could be put in it. Ms. Glick was the HE for the

prior case. That case called for an engineering study and the HE had broadened the hearing to include potential rate relief.

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

Mr. Don Bear, a resident of Indian Hills who was present, said he didn't hear a thing Ms. Caffey-Moquin said.

Chairman Lyons explained that this order would start an investigation on Indian Hills.

Mr. Bear said he had been there for 18 years and had experienced problems all the time. They had water now and their water was only off for a short time but he brought a neighbor whose water was off for 5 days.

Ms. Caffey-Moquin explained that a case well under way would be heard by Ms. Carolyn Glick in March and the hearing addressed recommended improvements and rate relief if needed.

Chairman Lyons explained there were both an investigation today and also a rate hearing.

Ms. Caffey-Moquin corrected her statement. She said Ms. Glick just informed her that the hearing didn't include a rate relief issue because no advice notice had been published. The hearing would occur in March.

Commissioner Marks asked if three days for staff to investigate and report would be enough time.

Mr. Jeff Primm said the lead engineer was out today and tomorrow. It would depend on if it was calendar days. Mr. Primm said he was focused entirely on the Indian Hills case at present.

Commissioner Marks wanted to hear if the water was still out. He proposed making the investigation 7 days in length.

Commissioner Block thought 7 days was acceptable.

Mr. Doug Johnston (Indian Hills resident for 33 years) said their concern with the last incident was no sense of urgency to fix the system. They went from Saturday through Tuesday afternoon with no water. It was urgent to find out what was wrong with it. Mr. Tingley came out on Saturday to fix a booster pump. He found leaks in two places turned them off. His son supposedly came out and found more leaks. He explained that he and his wife were retired but there were many school children and disabled people who live there.

Chairman Lyons asked how long he had problems with it.

Mr. Johnston said the infrastructure was pretty well shot and they had no storage to speak of. The main water line was a 3" line and had been there for 30 years. It was inadequate for the number of people who lived there. He was present today because when they had a problem they didn't get it fixed.

Ms. Joan Ellis said staff had been on investigations for 3-4 years and had recommended an engineer be contracted and that did occur. The proceeding dealt with taking the investigation and putting it in Mr. Tingley's court to have him choose one of the suggested choices. Ms. Sheila Shaffer had talked with residents there for several years.

The engineer, Mr. Dennis, was contracted by Mr. Tingley. It would be best to have Mr. Dennis investigate. Just from emails lately she thought it would be more productive if the engineer would give the Commission a report on what happened and what could be done. This was an emergency and Mr. Dennis should be prepared to address it.

Mr. Johnston was afraid the pump that had been running 24 hours a day would likely go out. It was new 4 months ago. The water was going somewhere but was afraid it would go out again.

Commissioner Marks asked Ms. Ellis if they went with the order now if staff couldn't interview the engineer for a report later.

Ms. Ellis thought so but suggested the engineer speak directly to the Commission. He addressed the issue on where the leak was. They saw running water but didn't know if it was from melting snow or not.

Commissioner Marks said the engineer was not a regulated entity but Mr. Tingley was. That was why staff should do it. He knew there had been issues over the past and didn't want the Commission to get into the situation like Picacho Hills so wanted staff to be responsible.

Ms. Ellis said the engineer was one of the witnesses so he had provided testimony on behalf of Mr. Tingley. She was not an engineer but felt the problem as they all had defined it was the system itself. She asked what other companies did in emergencies and if there were alternatives.

Commissioner Marks acknowledged he was not an engineer either but as an attorney they had more power to compel the operator or staff to get this done than other individuals in the case. It needed to be under the staff. They needed to pose those questions to him.

Ms. Ellis repeated that Mr. Dennis testified on behalf of Mr. Tingley in the current docket. Staff would do what the Commission wanted.

Mr. Bear appreciated being able to speak. He thought the staff should be the ones to go out there. The engineer had a 127 page report on how to solve the problems. It should be an objective staff or group that tried to figure out what went wrong. The engineer had too much contact with Mr. Tingley.

Ms. Caffey-Moquin clarified that this order had staff investigating.

Chairman Lyons asked if the order should add that staff would also interview the engineer.

Commissioner Hall asked what staff had been investigating for 3-4 years and why they would want Mr. Tingley who worked for the owner, to tell them what the problem was.

Ms. Ellis said that was exactly the nature of the current case that the HE had. It had been a painful step-by-step process. Mr. Tingley did the engineering study with several options and the case before the HE now. They had numerous meetings with homeowners; with the NMED; and it was a question of knowing what would be done and how it would be financed. They had been very diligently trying to move it forward. The major issue was who was going to pay for the improvements. The homeowners wanted a band aid. So there were different opinions.

Commissioner Hall asked what would be done to help these folks if Mr. Tingley decided to do nothing. It could be investigated forever but at some point they had to take action.

Ms. Ellis said they make their recommendations in November 2009 and the Commission then appointed the HE to process it further. Mr. Tingley had to have a chance to defend himself. The Commission ordered the study to find out what the problems were. She was not sure how to go about it any differently than the HE. Staff, Mr. Tingley and homeowners filed testimony.

Commissioner Hall understood but these people didn't have any drinking water. He asked if the Commission had the authority to force him to do anything.

Commissioner Marks replied that the Commission had the authority to put it in receivership and had done that in a couple of cases. But that solution was not swift or painless and it was complicated. Mr. Tingley went out there each time to get people reconnected. The water had gone out but unlike the 2-3 companies they forced into receivership, those operators refused to do anything. Here there was a chance they could still work with him and get the engineering update needed. The study did show what permanent changes needed to be done. The short term fixes were not working. In the regulatory world these things took time. Receivership was not likely to fix it any sooner.

Commissioner Hall thanked him for the information. To him, somebody needed to step forward to say what they could do to help these folks out. The HE process took time. But they needed to send someone out there to fix the system. A lot of these little systems collect the fees each month but didn't fix the problems. They took the money and ran and the system would go to hell.

Ms. Ellis understood his frustration.

Chairman Lyons asked the men present if they represented the homeowners' association.

Mr. Bear said they had discussed receivership.

Chairman Lyons asked how many were in the association.

Mr. Bear said there were 235 customers by Mr. Tingley's records. They had talked to 150 of them and had 5 meetings and discussed if they could become a cooperative. Many favored that but he did not know how many would vote for it.

He added that Commissioner Hall had said everything that all the homeowners had ever felt. He was retired military and they lived by the rule. So they needed to make the operator do what needed to be done.

Ms. Kay Bear said she was secretary of the association and had been contacting people and had massive emails and phone calls and she was called the water lady.

She related that when this started Mr. Tingley answered a few calls and then put on his answering machine. There was one family with 5 kids out of water until Tuesday. Mr. Tingley had contacted none of the homeowners or checked to see if any of them had water now. She came up here Monday to file their intervention and was told he was picking up an engineer to check it out but it was his son he was picking up. Nothing happened until his son got back on Monday afternoon.

Customers had told her they had seen no one at their homes.

She said her husband and Doug Johnston were out there for 4 hours to get water for people. There was someone out there on Tuesday and people were invited to come there to get water.

Chairman Lyons summarized that over the past 3-4 years all of them had been unhappy. He asked if now they wanted to form a coop.

Commissioner Hall said his experience was that water associations took care of their system. He didn't know Mr. Tingley but the problem often was that people collected the money and then you couldn't find them. As a coop, you would be more inclined to take care of it.

He asked Ms. Bear what her bill amount was.

She said it was \$35.

Mr. Tingley said they had water for everyone in the system and had for some time now. There were some frozen water lines and they had customers with huge leaks. No pumps had failed. They had been pumping 300,000 gallons per day. They could not keep up with pumping water out on the ground at these houses.

Regarding the money he said they had lost money for the last 7 years. For 20,000 gallons, the cost was \$2.95. The next closest water system charged \$9 for that amount.

In 2½ years they had had one complaint. He was out there all day Friday, Saturday and Sunday.

He said his son was a certified operator. He came back and he had not told anyone that he was picking up an engineer at the airport.

He said he had been in touch with staff the whole time. He put on the answering machine during the hours was at the pump to help. His son recommended the same thing that the four other operators recommended they do. The only person that said they had a giant main leak was Mr. Johnston. The 4 operators recommended tying off meters where people were losing water. That was at 12 vacant houses. Mr. Dennis filed testimony with Ms. Glick without allowing his review. He got a copy from her to review it.

The allegation that no one was doing anything was completely wrong.

Chairman Lyons said this was an unusual storm. He asked Mr. Tingley if he could address the long term repairs and what could be done.

Mr. Tingley said that was the subject of the case. They got a preliminary engineering report and were supposed to file it with a statement of the options. Staff had replied and they were in agreement with the recommendation.

Mr. Hirasuna said his recommendation today was to fix the short term problems.

Chairman Lyons said the order today was to do an investigation within 7 days. Perhaps their association could meet and decide what to do long term.

Mr. Bear said they had a meeting on the 15th and would decide what to do.

Ms. Bear said the hearing was to be on March 2. The staff had been very helpful and cooperative. She appreciated them.

Chairman Lyons reviewed the motion which was to order an investigation and for PRC staff to interview Mr. Tingley's engineer and also to do that within seven days.

The motion passed by unanimous 5-0 voice vote. So Ordered.

**06-00026-UT IN THE MATTER OF THE IMPLEMENTATION OF THE STATE RURAL
UNIVERSAL SERVICE FUND.
(Robert Hirasuna) Order**

Commissioner Block moved to approve the order. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous 4-0 voice vote. Commissioner Marks was not present for the vote. So Ordered.

B. Transportation Division

**10-00008-TR-M IN THE MATTER OF THE APPLICATION OF AAA CAB CO. FOR A
CERTIFICATE TO PROVIDE TAXICAB SERVICE AND FOR TEMPORARY
AUTHORITY.
(Rick Blumenfeld) Order**

Mr. Blumenfeld presented information regarding this matter to the Commission. He explained that the incumbent cab company intervened. The HE recommended that the certificate for the new company should be denied. As Commissioners could see in the memo, there were several insufficiencies in the application. They had no insurance, no location, an incomplete tariff, inadequate drug and alcohol policies and other

problems. The applicant wanted to serve people after the bars closed.

After hearing the evidence, the HE felt it should not be granted.

There was no one present at the Open Meeting from the cab company.

Commissioner Block moved to approve order that would deny the application. Commissioner Hall seconded the motion and it passed by unanimous 4-0 voice vote. Commissioner Marks was not present for the vote. So Ordered.

7. DISCUSSION ITEMS

A. Utility Division Items

**10-00196-UT IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S
ANNUAL RENEWABLE PORTFOLIO REPORT FOR 2009 AND ITS
APPLICATION FOR APPROVAL OF: (1) ITS 2010 ANNUAL RENEWABLE
ENERGY PORTFOLIO PROCUREMENT PLAN; (2) REQUEST FOR A
VARIANCE FROM RULE 572.14; AND (3) APPROVAL OF ASSOCIATED
TARIFFS.
(Rick Blumenfeld)**

Mr. Blumenfeld said he didn't put this item on the agenda but would discuss whatever the Commission wanted.

Mr. Hirasuna said he had put it on the agenda.

Chairman Lyons said this was about the tariffs on solar renewable and they wanted to put a big plant outside of Portales for Eastern New Mexico State University and were unaware of having a big tariff on it.

Mr. Williamson said he understood the tariff was approved in December last year by the Commission. He was not sure how much it was but knew it was a rider tariff for people who wanted to do a renewable project but still had to pull electricity from the grid.

Commissioner Hall said he had been told that this would be on next Tuesday's agenda.

Commissioner Block wanted to move to table this case until Tuesday to allow the order to be ready to present.

Mr. Hirasuna said they needed to discuss what options there might be. He understood there was no formal case on this matter. The question was whether there could be any relief from the stand-by charge which could affect the economics of the project. He explained that the Public Utility Act prohibited discrimination on rates. So the Commission could not give a customer a variance from the rates. The only way would be for Eastern to file a complaint with the Commission that the rate was unjust and

unreasonable. And it would take about a year. In the mean time the tariff would still be in effect.

In general it would require a change in circumstances since it was approved to reconsider. He asked what had changed to now consider it not just and reasonable from last December.

Chairman Lyons asked how long it took to put the tariff in last December and where it came up.

Mr. Blumenfeld said a statute was passed and allowed this stand-by service with a tariff.

Chairman Lyons asked if SPS filed something.

Mr. Blumenfeld agreed and added that the Commission approved it last December. He shared it with the Commission and said the tariff varied, depending on the type of customer. They could file for a change of rate.

Mr. Williamson said Mr. Scott from Eastern was not aware of the tariff.

Chairman Lyons suggested that a copy of it be send to him and tell him that SPS should have informed him.

Mr. Hirasuna explained that under the Commission rules, for a case like this, the utility generally did two things. First they would notify customers about the renewable case and provide copies of their request. The second thing was published notice in the local newspaper. They might have been required to do a bill stuffer also. Most people didn't look at them but threw them away. There was no indication SPS did not comply with the notice requirements.

Chairman Lyons asked Mr. Williamson to include that.

Chairman Lyons asked if the Commission could review these tariffs each year. Mr. Hirasuna agreed. It was done in July.

Ms. Karen Roberts said that was in their June 1 renewable rate request and was noticed in newspapers of general circulation in their service territory. The statute said if approved that tariff would remain in effect until their next rate case which they were planning to file this month.

Mr. Blumenfeld said that allowed current customers to be subject to the stand-by tariff from January 1st onward if they had filed prior to January and it was approved.

Ms. Roberts said it only applied to customers who interconnected who connected after that date. Customers before that date were not subject to that tariff. They had an agreement with a developer of DG who won the bid on the RFP and they were surprised so SPS issued a new RFP.

Chairman Lyons concluded they would put it out for rebid because SPS didn't notify everyone of the standby tariff.

Ms. Roberts thought so. They did publish our July 1 filing in newspapers as required by the

Commission.

Chairman Lyons agreed a rebid would be good.

Mr. Blumenfeld noted the statute said in the first sentence "except a company might seek to apply to interconnect customers..." There was a difference between new customers and old customers. This was a one-time thing for current customers and then would only apply to new customers.

Ms. Roberts said this tariff didn't apply to those who were already customers - only to those who had their system installed after January 1, 2011. However they would apply for a standby tariff.

Mr. Blumenfeld asked if ENMSU was a new customer. Ms. Roberts agreed and said it was stated in the statute.

Chairman Lyons asked Mr. Williamson to notify them it would be a rebid.

**10-00272-UT IN THE MATTER OF THE APPLICATION OF NATURAL GAS PROCESSING
CO., THROUGH ITS OPERATING DIVISION, ZIA NATURAL GAS COMPANY,
FOR APPROVAL TO ACQUIRE TWO NATURAL GAS DISTRIBUTION
SYSTEMS IN DOÑA ANA COUNTY.
(Ashley Schannauer) Recommended Decision**

Mr. Schannauer presented information regarding this matter to the Commission. Zia Natural Gas wanted to purchase two gas systems. There were no objections but a difference on the conditions attached. Most were resolved at the end of the hearing. The RD recommended approval of a CCN and the parties had until today to file exceptions. He didn't expect any exceptions to be filed.

He briefly described the systems to be purchased. One was near Las Cruces and the other was the Village of Hatch.

Chairman Lyons asked if it could be put on Tuesday's agenda for approval. Mr. Schannauer agreed.

**07-00442-UT IN THE MATTER OF AN INVESTIGATION OF NON-TARIFFED CHARGES OF
INSTITUTIONAL OPERATOR SERVICE PROVIDERS.
(Mary Howells)**

Ms. Howells presented information regarding this matter to the Commission. There were never intended to be any documents associated with this item. Last Tuesday, Commissioner Marks's question led to other questions and they discovered a number of things as a result.

Chairman Lyons asked if the Commission would like to discuss this next Tuesday when Commissioner Marks could be present.

Commissioner Block suggested they do it when he was present.

Chairman Lyons agreed.

8. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

There were no communications with General Counsel.

9. COMMUNICATIONS WITH ACTING CHIEF OF STAFF, JOHNNY MONTOKA

- **Legislative Matters**

House Bill 55 and Senate Bill 96 - Presented by the Administrative Office of the District Attorneys

Ms. Kelly Kunstler introduced herself. She reminded them that on September 16th they gave a presentation on these bills. They were identical bills.

She said they had a 35 cent charge into a Victim Participation Fund. She gave the background. A victim was told the offender would be notified but was not. Since then automatic notification was passed in Kentucky and she wrote a grant to implement it in Doña Ana County and it was doing so well that she wrote a federal grant. It now operated in 19 jails. The site could be accessed by victims, their families, lawyers and court personnel. This was a public safety issue and it removed the human error.

Her intent now was to inform the new Commissioners. Secondly, they had a draft amendment that she felt didn't change what they wanted to accomplish but changed the bill enough that they needed a new vote of support by the PRC.

Commissioner Hall said it just marked off a three cent charge to the attorney.

Ms. Kunstler agreed.

Chairman Lyons asked her if the service providers asked her to do this.

Ms. Kunstler agreed. She said they had looked at other states. The DA's Office would enter into the contract with the providers.

Chairman Lyons asked if it was legal.

Mr. Hirasuna said this had not been done before. The Supreme Court determined the PRC had no jurisdiction over franchise fees for utilities. This was somewhat consistent with that.

**Commissioner Block moved that the PRC support the bill and its two amendments.
Commissioner Hall seconded the motion.**

Chairman Lyons asked if this meant the Commission could not review higher rates.

Ms. Kunstler clarified that it called for no more than 35 cents for the fee and on page 3; the legislature had to look at them each year. It was not to create a slush fund but just to pay for the specific program. If they were charging too much they could change that without a new statute.

Mr. Aragon stated that Commissioner Marks asked him to say he was taking no position on it.

The motion passed by a 4-0 voice vote.

Chairman Lyons asked if Solix was on the bridge. They were not.

HB 395

Marshal Standefer said they reviewed all the language and it was not different than the draft. They supported it and asked that the Commission support it. The Fund would make grants to counties or municipalities.

He explained that a municipality could not receive funds for a facility outside their jurisdiction. This bill would allow the two local governments to agree to the construction location. They had a lot of cases where the stations were not in the proper county but were best locations to serve the area. The same was true of airports in Raton and Taos. They felt it was unfair and should be corrected. It didn't change the distribution amount of the fund.

Commissioner Block moved to support HB 395. Commissioner Hall seconded the motion.

Commissioner Hall asked if a JPA would take care of it.

Marshal Standefer said it was a good question. They might not have set it up right but this bill would help that.

The motion passed by a unanimous 4-0 voice vote. Commissioner Marks was not present for the vote.

- **Professional Service Contract with Solix, Inc. Regarding Telecommunications Rural Universal Service Fund.**

Mr. Eric Seibert and Mr. Tim Garrett from Solix rejoined on the bridge.

Ms. Caffey-Moquin reviewed the amendment to the current contract to provide that Solix would be involved with LITAP reporting requirements and disbursing according to the Commission's LITAP rules. The compensation profile would change a little but not the total amount \$510,440. That averaged out to a number certain and for the second year would add a one-time implementation of \$16,600 and \$11,000 per year added for ongoing. She recommended approval as drafted.

Mr. Seibert said Solix agreed with staff's recommendation. The one-time cost was to change their system to accommodate the new services.

Chairman Lyons noted on page 2 a rate of \$113 per hour and asked if they were attorneys.

Mr. Seibert explained it was for IT staff and database and included all benefits. They were the same rates during and through the 3-year period.

Mr. Lovato clarified that these funds were not part of the General Fund.

Commissioner Hall moved to approve the contract amendment. Commissioner Block seconded the motion and it passed by unanimous 4-0 voice vote. Commissioner Marks was not present for the vote.

Mr. Jason Montoya reported update on outage.

Commissioner Block mentioned that Commissioner Marks had asked for Mr. Hirasuna to open a formal investigation and it would be on Tuesday's agenda.

Mr. Montoya said NMGC visited 100% of the outage homes and assured the Commission that they had adequate resources. The volunteers had all been released in the Taos and Española area. He notified NMGC that this would be on Tuesday's or Thursday's agenda.

Chairman Lyons said they just got a call that the Senate Conservation Committee would have a floor session at Senate on Friday and wanted to know who would represent the PRC.

Commissioner Block and Commissioner Becenti-Aguilar agreed to be there and Mr. Stephenson and Mr. Jason Montoya would also attend to answer any questions.

Mr. Hirasuna agreed to issue a possible quorum notice.

Mr. Hirasuna said the draft order would be to have NMGC report what happened and what was being done in the future to fix this problem. Also included would be the effect on generation of electricity and have staff respond to the testimony. There were some technical issues - such as how long the Commission wanted to do this and if they wanted to issue public notices which would delay the matter until June or July. They could discuss it on Tuesday.

Commissioner Hall said the gas company was in trouble. But everyone here in Santa Fé had been jerking them around and they probably had no time to assess anything. The Commission needed to be careful how to do this. In the long run there had to be a thorough investigation.

Chairman Lyons said some people felt having the investigation done by NMGC would not be thorough. He had knowledge of a man in Ruidoso, Mr. Fred Hanson, who could do a fair and complete investigation. He wanted the Commission to approve a \$2,500 contract and give him 10-14 days to investigate it. They

needed someone independent, not associated with NMGC or the PRC.

Commissioner Hall said he knew the man.

Mr. Stephenson thought it was a great idea. Staff had been creating a task force on emergency response and communications needs. It would be difficult for staff to do that investigation.

Commissioner Becenti-Aguilar said the Commissioners had gotten lots of calls and there were a number of issues and it needed to include how they decided to turn off gas in certain communities. They also got a letter from Santa Clara Pueblo. There seemed to be another angle that constituents were asking on why they were shut off. The Commission also needed a point person to respond to media.

Mr. Hirasuna had the order in rough draft and would present it on Tuesday.

Chairman Lyons asked if the Commission could approve this man doing an investigation. They could include the request for how the decision was made.

Mr. Lovato agreed to work with Mr. Stephenson on the scope and would include Commissioner Becenti-Aguilar's request.

Commissioner Hall reported that in the Energy Committee the NMGC tried to explain how they came up with the priorities but the Commission needed to hear it again.

Commissioner Becenti-Aguilar gave a copy of the letter to Mr. Stephenson to respond back to Santa Clara Pueblo. Mr. Stephenson agreed.

Commissioner Block said he spoke to the Santa Clara Governor there yesterday and assured him that staff would get to the bottom of it.

Mr. John Fernauld from NMGC said he called each of the Commissioners yesterday to speak about this. He appreciated the responses. He endorsed the idea of an independent expert to look into it. He also supported Commissioner Hall's request that they be brought in to provide testimony and be given time to let the dust settle. Although they had everyone connected, they hadn't had time to assess what needed to be said with best and most factual information.

Commissioner Block moved to initiate the contract with this expert to perform an investigation of the NMGC outages. Commissioner Becenti-Aguilar seconded the motion.

Mr. Hirasuna said a contract should be presented after being drawn up. It might be safer to list that on the agenda.

Commissioner Block withdrew his motion in favor of a notice on the agenda.

The Commission discussed how to get it done quickly.

Mr. Lovato assured the Commission that it would be done right away. He said it didn't need to have DFA approval.

BUDGET -

Mr. Lovato provided a written breakdown of the recommendation with LFC and said they were working with LFC staff on it. They had not approved it completely. The LFC was recommending cutting 8 positions. On the 4th page was the list of positions they were proposing to LFC.

Commissioner Hall commended Mr. Lovato for the good work.

Mr. Johnny Montoya thanked Commissioner Hall and Chairman Lyons for negotiating in the parking lot. It helped tremendously.

10. COMMUNICATIONS WITH COMMISSIONERS

There were no communications with Commissioners.

11. ADJOURNMENT

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

The meeting was adjourned at 11:45 a.m.

ATTEST:



Carl Boaz, Stenographer

APPROVED: 03/08/2011

TELEPHONICALLY APPROVED

PATRICK H. LYONS, CHAIRMAN



JEROME D. BLOCK, VICE CHAIRMAN



THERESA BECENTI-AGUILAR, COMMISSIONER

TELEPHONICALLY APPROVED

JASON A. MARKS, COMMISSIONER



BEN L. HALL, COMMISSIONER

DATE: 02/10/2011



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday, February 10, 2011

9:30 A.M.

**PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501**

AMENDED AGENDA

- 1. PLEDGE OF ALLEGIANCE**
- 2. INTRODUCTIONS**
- 3. MISCELLANEOUS ANNOUNCEMENTS**
- 4. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 5. PUBLIC COMMENT**
- 6. REGULAR ACTION ITEMS**

A. Utility Division Cases

07-00184-UT Margaret Caffey-Moquin	IN THE MATTER OF QWEST CORPORATION'S PERFORMANCE OF THE SECOND AMENDED SETTLEMENT AGREEMENT. <u>Order</u>
11-00037-UT Margaret Caffey-Moquin	IN THE MATTER OF AN INVESTIGATION INTO INDIAN HILLS WATERWORKS, INC. REGARDING WATER OUTAGES IN FEBRUARY 2011. <u>Order</u>
06-00026-UT Robert Hirasuna	IN THE MATTER OF THE IMPLEMENTATION OF THE STATE RURAL UNIVERSAL SERVICE FUND. <u>Order</u>

B. Transportation Division

10-00008-TR-M Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF AAA CAB CO. FOR A CERTIFICATE TO PROVIDE TAXICAB SERVICE AND FOR TEMPORARY AUTHORITY. <u>Order</u>
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7. DISCUSSION ITEMS

A. Utility Division Cases

10-00196-UT Rick Blumenfeld	IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S ANNUAL RENEWABLE PORTFOLIO REPORT FOR 2009 AND ITS APPLICATION FOR APPROVAL OF: (1) ITS 2010 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN; (2) REQUEST FOR A VARIANCE FROM RULE 572.14; AND (3) APPROVAL OF ASSOCIATED TARIFFS.
10-00272-UT Ashley Schannauer	IN THE MATTER OF THE APPLICATION OF NATURAL GAS PROCESSING CO., THROUGH ITS OPERATING DIVISION, ZIA NATURAL GAS COMPANY, FOR APPROVAL TO ACQUIRE TWO NATURAL GAS DISTRIBUTION SYSTEMS IN DOÑA ANA COUNTY. <u>Recommended Decision</u>
07-00442-UT Mary Howells	IN THE MATTER OF AN INVESTIGATION OF NON-TARIFFED CHARGES OF INSTITUTIONAL OPERATOR SERVICE PROVIDERS.

8. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

9. COMMUNICATIONS WITH ACTING CHIEF OF STAFF, JOHNNY MONTOYA

- **Legislative matters**

House Bill 55 and Senate Bill 96 - Presented by the Administrative Office of the District Attorneys.

- Professional Service Contract with Solix, Inc. regarding Telecommunications Rural Universal Service Fund.

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.