MINUTES OF THE
CASE MANAGEMENT OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
April 15, 2015

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:
Commissioner Karen L. Montoya, Chairperson
Commissioner Lynda Lovejoy, Vice-Chairperson
Commissioner Valerie Espinoza
Commissioner Patrick H. Lyons [telephonically]
Commissioner Sandy Jones

Members Absent:
None

Staff Present:
Vince Martinez, Chief of Staff
Michael C. Smith, General Counsel
Judith Amer, Associate General Counsel
Rick Blumenfeld, Associate General Counsel
Margaret Caffey-Moquin, Associate General Counsel
Russell Fisk, Associate General Counsel
Dwight Lamberson, Utility Division Director
Patrick López, Legal Division Director
Bryan Brock, Transportation Division Director
Jason Montoya, Pipeline Safety Bureau Chief
Carlos Padilla, Public Information Officer

Others Present
Carl Boaz, Stenographer

CALL TO ORDER

The Case Management 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. Commissioner Karen Montoya, Chairperson, called the Case Management Open Meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room.
1. PLEDGE OF ALLEGIANCE/STATE PLEDGE

2. INTRODUCTIONS

There were no introductions.

3. CONSIDERATION AND APPROVAL OF AGENDA

Commissioner Espinoza requested a change to remove the first consent item, 14-00199-TR-EN for discussion.

Commissioner Espinoza moved to approve the agenda as amended. Commissioner Lyons seconded the motion and it passed by unanimous (5-0) voice vote.

4. CONSIDERATION AND APPROVAL OF MINUTES

- Regular Open Meeting/Case Management Meeting Minutes of March 25, 2015

Commissioner Lovejoy moved to approve the minutes of March 25, 2015 as presented. Commissioner Jones seconded the motion and it passed by unanimous (5-0) voice vote.

5. CONSENT ACTION

A. Transportation Division Matters:

2) 14-00151-TR-M IN THE MATTER OF THE APPLICATION OF HINTER-NM, LLC FOR A CERTIFICATE TO PROVIDE SPECIALIZED PASSENGER SERVICE. (Rick Blumenfeld) Order
3) 15-0063-TRR  IN THE MATTER OF REVISIONS TO THE STATEWIDE WRECKER TARIFF
AND THE ADOPTION OF AMENDMENTS TO THE MOTOR CARRIER RULES,
18.3.1 NMAC TO 18.3.15 NMAC, PERTAINING TO TOWING SERVICES.
(Rick Blumenfeld)  

Commissioner Jones moved to approve the orders for these consent items. Commissioner Lyons seconded the motion and it passed by majority (4-1) voice vote with Commissioner Lovejoy dissenting. So Ordered.

6. REGULAR ACTION AND DISCUSSION OF CASES

A. Transportation Matter:

1) 14-00199-TR-EN  IN THE MATTER OF THE PETITION OF THE TRANSPORTATION DIVISION OF
THE NEW MEXICO PUBLIC REGULATION COMMISSION FOR ISSUANCE OF
AN ORDER TO SHOW CAUSE AND CEASE AND DESIST AGAINST HINTER,
LLC.
(Rick Blumenfeld)  

Mr. Blumenfeld presented information to the Commission regarding this matter. At the last meeting, he was directed to prepare an order to close the docket. This is an enforcement docket matter regarding Uber-Hinter. Back in October, the Commission turned down staff's petition for an order to cease and desist against Hinter by a 3-2 vote. Nothing has happened since then. This is a one-page order closing the case.

Commissioner Espinoza said it wasn't her intention to close the case and she realized it was turned down. But they are still operating and she wanted a cease and desist order to be consistent with the order against Lyft. She asked why they are now closing this case.

Mr. Blumenfeld clarified that the Commission voted not to pursue it at the end of October, 2014.

Commissioner Espinoza said the PRC now has a new Commission and the public remains at risk and the liabilities don't go away. She would seek guidance from General Counsel on how the Commission can proceed. Perhaps the Commission has to close this one first and open another docket. Public safety is an issue; insurance is an issue; liability is an issue. She asked who is at fault. They continue to operate.

Mr. Smith said that case was only brought against Hinter, a subsidiary of Uber and a specific case. As was discussed last week, it is a housekeeping matter to close that docket. It would not preclude the Transportation Division Staff or the Commission to institute another investigation on the facts of the matter. But the order was turned down by the Commission.

Commissioner Espinoza pointed out that the Legislature did not act and it is still an issue. She wanted to know what options there were. She asked what option there was to force the Commission to take action. The Commission doesn't appear to be concerned about the safety of these passengers. She asked what
the liability of the Transportation Division existed here and whether they are “aiding and abetting.”

Mr. Smith said those are kind of convoluted questions.

Commissioner Espinoza said they are not convoluted but technically according to the statute the PRC is supposed to be following.

Mr. Smith said regarding the matter presented to the Commission in October, 2014, there was a binding vote of the Commission. His role as General Counsel is to follow the directive of the Commission and he could not advise her on how to take action against the rest of the Commission. They appeared to not see any need for further investigation.

Commissioner Espinoza said she was aiming to protect the passengers.

Mr. Smith said he could not change the action of the Commission but the Commission could order another investigation.

Commissioner Espinoza asked if a citizen could do that.

Mr. Smith was not sure how to advise a citizen to take action against the Commission. That would probably be more for a closed session.

Commissioner Espinoza reasoned that they could order that at a later date. This was tabled and the Commission still has a cease and desist against another company. The passengers are not aware of these issues and the driver might or might not have insurance. Since nothing happened in Legislature, it is back in the Commission’s hands. So she asked that it be on a future agenda to take action and see if this Commission agrees with her.

Chairperson Montoya noted the Commission had an update last week but still has jurisdiction over TNCs and the rule makings are also needed. So the Commission has two opportunities.

Commissioner Jones thought the other Commissioners shared Commissioner Espinoza’s concern. In this case, it is housekeeping and he thought the Commission was not motivated to act on rulemaking but will have to get to the safety issue pretty soon. He supported closing this case and then address the issue at hand.

Commissioner Jones moved to adopt the order closing this case. Commissioner Lovejoy seconded the motion and it passed by majority (4-1) voice vote with Commissioner Espinoza dissenting. So Ordered.

B. Utility Matters
Ms. Amer presented information regarding this matter to the Commission. She said the Certification of Stipulation, which was presented by HE Hurst at the March 11 2015 meeting, now comes before the Commission. She prepared two orders, one adopting the order and the other motion closing this docket and opening a new docket. Both are legal options.

In April 2007 PNM and Southwest Generating Company, owner of the Valencia Power facility, entered into a wholesale agreement that provided that PNM would purchase all of the wholesale power generated at Valencia Power. It is a gas-fired peaking facility. The Valencia facility only operates a few hundred hours per year and when not generating, PNM provides power for the operation of the plant. PNM has failed to bill Valencia Power for energy used since 2008 until November, 2013 (approximately 5.5 years). During the same time, PNM was involved in rate cases and failed to include Valencia revenue in either of them. For that reason, other PNM customers provided the cost for that electric service.

Sometime in 2013, PNM discovered the failure to bill. The exact date wasn’t developed in the record. On November 20, 2013, PNM sent out its first back billing to Valencia and was for a 12 month period, in accordance with PRC rules. They used rate 3-C which was 12¢ per KWH.

Valencia refused to pay these back bills and letters were exchanged back and forth. Valencia argued it owed PNM no money at all because the Power Purchase Agreement (PPA) had netted out the station service. And in the alternative, Valencia argued that even if metering had occurred, it was a special contract and a special contract rate would have been negotiated and approved by the Commission, and that would not be rate 3-C.

Ms. Amer said the parties could not come to an agreement on these issues and on April 19, 2014 PNM filed a declaratory order that requested the Commission find that the PPA was not a special contract and no special contract was made for PNM to charge Valencia.

On September 30, 2014, PNM and Valencia entered into this stipulation and on November 28, 2014, the HE held a hearing. But it was only a hearing on an uncontested stipulation. When the HE presented her certifications, she stated that she did not approve the part of the stipulation where the parties agreed to not assess a penalty against PNM. And her certification added a $10,000 penalty against PNM for its violation of the Public Utility Act and PRC regulations, based on their failure to bill Valencia for 5½ years.

Also, her certification added another modification. She recommended that the back bill revenues that would be received from Valencia Power would be called a windfall and should be shared on a 50/50 basis between PNM and the other customers since the other customers had covered the cost for the Valencia electric service to their detriment.

Her certification concluded that if these two conditions were added - the 50% refund of the windfall...
revenues and the $10,000 penalty, then the Commission should approve the stipulation.

Ms. Amer clarified the important point that her certification didn’t extend the back billing back before November 2012.

Ms. Amer recommended first to accept the HE’s certification of stipulation but with one other modification.

Chairperson Montoya asked which order that is.

Ms. Amer said it is the one entitled “Final Order Partially Adopting the Certification of Stipulation and Denying joint motion requesting oral argument.”

Ms. Amer recommended denial of the HE’s proposal to share on a fifty-fifty basis (the windfall revenue) with the customers. Instead, she recommended that 100% of the windfall back bill revenues received by PNM from Valencia would be refunded to the PNM customers at the stipulation rate as a one-time credit to the fuel clause. The reason is that it would be unjust to allow PNM to do that due to its failure to bill Valencia for five and a half years in violation of PUA. It would not be in the public interest for PNM to retain any portion, even 50% of the windfall revenues.

Another reason she made that recommendation is that it will immediately bring regulatory certainty to this unregulated transaction because, as of the date the stipulation was signed, PNM will be able to back bill Valencia from November 2012 at the stipulation rate (33B) and, going forward, Rate 33B would be effective for future bills. Rate 33B is a fair rate according to the Certification of Stipulation and she agreed.

At the heading, Staff testified that Rate 33B did recover the revenues of this class of customers, i.e., large customers like Valencia who only use station service power. Her recommendation also involves keeping the $10,000 penalty but she recommended denial of the joint motion that asked for a hearing before the Commission. She recommended that because she was concerned that the Commission would extend the hearing beyond the backup period before November 2012 and to back to 2008. Her recommendation does not go back that far.

However, if the Commission wants to hear it, it is best to close this docket and open a new docket for that purpose. If reopened, the Commission could consider fines or go back further. Not all of the issues were covered at the hearing. The disadvantage is that it would continue the unregulated nature of the case if they never agree on a rate and then the uncertainty would continue. The agreement netted out the bill and the customers would get no rebate.

Commissioner Lyons said he thought the Commission could make a few changes without going back to a full hearing. He would like to reduce the fine to $1,000 because it would just go to the General Fund and the commission would never see it. For some reason, the Legislature doesn’t seem to like the PRC. He was not in favor of giving the Legislature any money until they were willing to work with the Commission a little bit.

Commissioner Lovejoy asked if that recommendation was justifiable or if $1,000 was justifiable.
Ms. Amer clarified that the Public Utility Act allows from $10,000 up to $100,000. Her opinion is that the minimum fine would be $10,000.

Commissioner Lovejoy moved to approve the final order, certification of stipulation and deny the joint motion requesting appellate argument. She said there needed to be a second before discussion.

Commissioner Lyons said he would like to keep the $10,000 recommended fine and suspend $9,000 of the fine. He pointed out that the Commission has done that in the past.

There was no second to Commissioner Lovejoy’s motion and the motion failed.

Commissioner Espinoza said there are two orders and no record developed because certain things couldn’t be addressed. She asked what that meant.

Ms. Amer explained that there is a record developed to a certain extent. It was on the stipulation and the stipulation back bill period went back to November, 2012.

Commissioner Espinoza asked how far back it should go.

Ms. Amer said that was not developed at the hearing. Her opinion is that if the Commission wants to go back further than that, it would be best to close this and open a new hearing to determine the backup period.

Commissioner Espinoza said in that case, the Commission would need to know exactly what they were to charge.

Ms. Amer agreed that those are the issues - both the time period and the rate.

Commissioner Espinoza added that according to the Public Utility Act, PNM could be fined from $10,000 up to $100,000 per day. She would like to have the record developed to know what the Commission should do if it was reopened. She thought the cost should have been over the past eight years instead of just five.

Ms. Amer said from May 2008 to the present is seven years. The parties agreed to that in the stipulation and no record was developed for the time period prior to November 2012. And there was none on whether the back bill should extend that far back.

Commissioner Espinoza thought it should be done correctly.

Ms. Amer said there are other facts that would need to be developed. The hearing was on the uncontested stipulation and limited to that scope of what the parties agreed to.

Commissioner Espinoza asked if she knew what they were authorized to charge.

Ms. Amer said that was one of the contested issues in the declaratory order. Ultimately, they agreed to
a new rate. Rate 3-C was $.12 per kilowatt hour. The parties developed a new special rate 33-B and issued an advice notice. That rate is six cents per kilowatt hour. Staff testified that it was a reasonably developed rate and it is included in their current rate case for this one class of customer.

Commissioner Espinoza asked if she was saying there is a risk that the consumers might lose.

Ms. Amer said there is uncertainty. Valencia's original claim may be correct. Their original argument is that they don't owe any money and that is the risk of opening up the parties' agreement.

Commissioner Espinoza understood that Ms. Hurst's RD was to reimburse customers 100%

Ms. Amer clarified that the HE recommended a 50/50 reimbursement between PNM and the customers but she recommended 100% to the customers instead.

Commissioner Jones asked, in either model, if there anything that prevents PNM from sending Valencia a bill going forward.

Ms. Amer said no.

Commissioner Jones asked what the billing rate would be.

Ms. Amer said they would use Rate 33-B for that if the stipulation was approved.

Commissioner Jones asked if it would be fair to say that PNM through their last rate case has recovered 100% of their costs in providing electricity to Valencia.

Ms. Amer said PNM didn't include Valencia's revenues in their two previous rate cases. So she agreed that PNM has been made whole by the other rate payers.

Commissioner Jones asked if it is fair to say that Valencia received power from PNM without paying for it.

Ms. Amer agreed that Valencia has received power from PNM.

Commissioner Jones said that in this stipulation, the parties developed a new rate for the system through a cost analysis.

Ms. Amer said she would have to go back to look but believed that staff did an analysis of the new rate.

Commissioner Jones asked if that interim rate would be considered piecemeal rate making.

Ms. Amer said she had not looked into that particular issue.

Commissioner Jones said his concern is that it looks like PNM has been paid for the electricity and Valencia received the electricity and the customers paid for it. So they didn't bill each other. The billings are in excess of $5 million.
Ms. Amer said $3.2 million is the highest amount that could be considered.

Commissioner Jones said he believed that these professionals knew what was going on so he was not in favor of the stipulation and was in favor of the issue to show cause. All of this has an effect on the upcoming rate case. He would be interested to see how those really sort out.

Chairperson Montoya said she would forego her questions and support Commissioner Jones's thoughts on show cause and have a hearing, if the Commission so chooses.

Commissioner Espinoza asked what the alternative would be.

Ms. Amer said the order would close this docket and open a new one and appoint a HE but the Commission could vote to change that.

Commissioner Jones didn’t know if all Commissioners were comfortable with hearing this. We could split it into two motions. The order to show cause would come next week anyway. So we could just vote to close the case today.

Ms. Amer agreed.

Commissioner Jones asked for two orders - one with a Commission hearing the case and the other to appoint a HE.

Ms. Amer agreed.

Commissioner Jones moved in 14-00102-UT to reject the stipulation and ask General Counsel to bring forward a show cause order next week. Chairperson Montoya seconded the motion.

Commissioner Lovejoy didn’t want to support another hearing. She knew it was within the law that whenever two utility entities have a dispute and go this long, that the matter be brought to the Commission. Secondly, it is very problematic that the Commissioners sit up here and arbitrarily change amounts that are in the PUA. The Commission can’t change amounts that are defined as the penalty. That is outside of the scope of the law. She hoped, as more cases like this come before the Commission, that we either follow the law or just arbitrarily change amounts that are unsubstantiated. The benefit in her motion was that it [refund] would go back to help the customer. So she didn’t support it.

Chairperson Montoya said the Commission could do both of those things and still clarify lots of unanswered questions through a hearing regarding penalty amounts, etc. she had several questions but did not think that could be answered today.

Commissioner Lovejoy said the Commission should have been asking these questions about it long ago.

Commissioner Jones said to Commissioner Lovejoy that it was the thing he was concerned with in the
stipulation and that it was piecemeal ratemaking. The interim rates are subject to questions and answers. Here, the two parties got together and he applauded them for doing so. But the Commission needs to make sure the solution is equitable. He agreed they should move them forward quicker.

He thought the HE brought a number of them forward with the stipulation.

Commissioner Espinoza asked for clarification because there are so many recommendations. PNM should be required to reimburse 100% to customers and also pay the fine.

Ms. Amer clarified that the order she recommended was approving the Certification of Stipulation on the HE’s recommendation.

Chairperson Montoya said even if the Commission does a hearing, they could get to 100%. That was not even approved by the Commission.

Commissioner Espinoza was concerned this was like a roll of the dice. She was in the middle. There is a risk involved to the consumers. Maybe the Commission should grant partially approving this rather than the RD by the HE. There are two cases coming up for rates. In the big picture, people want to see it go forward.

She said, on the other hand, that it was probably best to agree that refunding the consumer is important and gets everybody back on track and Valencia should be not reporting. In order to move on, because of her concern regarding costs and the risks that can occur, the Commission should spend a lot more time on it.

Ms. Amer corrected for Commissioner Lyons and Commissioner Lovejoy that the PUA allows the Commission to impose $100 to $100,000 per occurrence as a fine. She apologized for the incorrect response. She said the Commission could reduce the fine.

Commissioner Jones said he understood all of the sides. The Commission should base the decision on fact and fact that could be cross examined. When two parties are already whole, they have no skin in the game other than between themselves. And then there are 600,000 rate paying customers as rate base and the Commission’s decision is to pay them $1 based just on no factual record. That is a problem. The Commission should establish a rate that gives weight or concurrence for the upcoming rate. The six cents was decided without any cross examination and he wasn’t sure that was the right rate for a big power supplier. That was a rate that somebody came up with. That isn’t the Commission’s role. The Commission needs to base the rate on facts and the costs. PNM is entitled to 100% of their costs in doing business and not one penny more. The rate payers don’t deserve to have to give a no-interest loan to two utilities because someone forgot to install a meter. And that is egregious.

If in a factual hearing, PNM and Valencia can convince him different, so be it. But he thought it merits a stronger look.

Commissioner Lyons asked what the financial risk is to the rate payer by not accepting the stipulation - that dollar amount of risk to ratepayers.
Ms. Amer said if the Commission accepts the stipulated rate of 33-B (six cents per KWH) and PNM back bills Valencia back to November 2012, it is approximately $20,000 per month for 31 months so it is over $600,000. And if 100% of that is returned to the ratepayers, through that one-time credit to the fuel clause, that would be $600,000 back to the rate payers. The risk is that if the step is not approved the ratepayers might get zero if Valencia’s arguments were to prevail. But if it were Rate 3-C that applied, the ratepayers could get $1.2 million. So it is $600,000 or uncertainty.

Commissioner Lyons asked then if it is possible the ratepayers would get nothing.

Ms. Amer agreed.

Commissioner Lyons felt that is a big risk.

Commissioner Jones said that makes assumptions that it can only go back 18 months. He assumed that they could go all the way back. The risk now is only about a dollar per customer. But by doing this without prejudging the case, all they are talking about is a couple of days in a hearing and truly litigate the case. You say it is $20,000 per month but there is no meter reading available. The people who are whole are just guessing what it really is. He questioned what obligation PNM has to the rate payer.

[Note: the streaming recording was down at this point.]

Commissioner Jones said that amount is anybody’s guess. The risk now is just $1 per customer. To him, there is a lot more to this case and the facts need to come out. PNM violated the PUA here. After the hearing, he might agree with PNM that the customers don’t deserve anything back.

Chairperson Montoya clarified that the motion on this case is to close the docket and open a new docket for a show cause and have OGC bring two orders - one for a hearing by the HE and another for the Commission to hear.

The motion passed by majority (4-1) voice vote with Commissioner Espinoza dissenting.

So Ordered.

Mr. Fisk and Ms. Caffey-Moquin came forward.
Mr. Fisk said this matter is coming back to the Commission after it was tabled last week for more information. This concerns SPS’s request to modify its energy efficiency and load management programs and allocate additional funding for 2015. SPS said the increase in revenue funding allowed in the last rate case had increased their budget for energy efficiency and load management programs. There is a statutory requirement to spend 3% of the adjusted revenue on these programs. As SPS’s revenue increased, so did the level of spending for the programs.

On March 11, 2015, SPS filed with the Commission a modification to its Energy Efficiency and Demand Side Management Programs Funding (EE/LM) and Request to Allocate Additional Funding. In the Request, SPS states that the increase in revenue requirement and rates allowed by the Commission in its most recent rate case, Case No. 12-00350-UT, has increased its 2015 estimate for the statutory 3% funding of its Energy Efficiency and Load Management Programs required by the Efficient Use of Energy Act (EUEA). SPS states that the projected 2015 funding level has increased by $2,101,122, to $10,009,769, approximately a 27% increase.

At the April 8th open meeting, Commissioner Lyons asked why the rate increase allowed in the rate case, which was approximately 11%, led to an increase in the projected EE/LM Programs funding of approximately 27%. As responsive information was not available to us at that time, the Commission voted to table the matter so that the information could be obtained and presented to the Commission at the next open meeting.

Subsequent to the April 8th open meeting, Mr. Fisk was contacted by counsel for SPS, who notified him that SPS had already begun working on gathering information responsive to Commissioner Lyons’ question.

According to SPS, the additional $2.1 million they requested to be allocated to existing programs arose due to the approximate 11% rate increase as well as an approximate 10.9% increase in sales forecast for 2015. According to SPS, a significant part of the increase is due to increased oil and gas production. The rate increase and the sales increase together account for about 22% of the approximate 27% increase in the 2015 budget. The remainder is due to the fact that one of the adjustments made to top-line revenue for determination of the 3% budget is the subtraction of the large customer cap. Because that dollar amount did not change significantly from the 2014 projection to the 2015 projection, while the top-line revenue number increased significantly, the adjusted revenue number increased on a percentage basis. The Commission could ask SPS to provide an affidavit for the record on that information if the Commission needs more information before taking any action.

Commissioner Lyons asked if SPS was still forecasting that increase in use of electricity.

Mr. Fisk didn’t have that information. He said the 2015 projection is based on what happened in 2014, according to SPS. He noted that they have SPS representatives in the audience who might be able to answer that.
Commissioner Lyons moved to amend the order to allocate the approximate $2.1 million to a pilot program for smart meters in Hobbs, New Mexico.

**Commissioner Lyons moved to approve the order for 13-00286-UT as amended. Commissioner Jones seconded the motion.**

Mr. Fisk said the motion by Commissioner Lyons probably cannot be done in this order. The $2.1 million is allocated to the existing programs in the same proportion so using the money for something else would require opening the case again. The allocation is included in a stipulation that was adopted by the Commission as a final order.

Commissioner Lyons pointed out that this isn't a stipulation. It is simply an order. They just got together and agreed to it.

Commissioner Espinoza asked if the law changed so companies must spend 3% of their revenue for energy efficiency. Mr. Fisk agreed.

Commissioner Espinoza noted the Commission has a rule in place and if it doesn't get spent in one year, it rolls over. Mr. Fisk agreed.

Commissioner Espinoza said she wouldn't support that motion.

Commissioner Lyons said smart meters do provide energy efficiency.

Commissioner Espinoza said it was only in the Hobbs area.

Commissioner Lyons said SPS doesn't have enough money to do the whole state.

Commissioner Lovejoy asked if Counsel said oil and gas production is increasing.

Mr. Fisk said he was told by SPS that part of the reason for the increase in revenue is from oil and gas production.

Commissioner Lovejoy said the prediction is that it will cost more.

Mr. Fisk said that, in the stipulation that became the final order of the Commission, SPS was allowed an increase in its energy efficiency/load management budgets if revenue increased.

Chairperson Montoya asked if it could not be considered due to fact that smart meters were not discussed in the hearing.

Mr. Fisk didn’t know for sure if smart meters were discussed in the hearing on the stipulation, but there is a detailed listing in the stipulation of how the money would be used.

Commissioner Jones asked for more clarification on the load projection.
Ruth Sakya of SPS said they would probably come back this summer for a rate increase. She had no specifics but they would bring it all in that case.

Commissioner Jones said this is an important factor in energy efficiency. He asked how SPS would go back and make corrections if the prediction was wrong.

Mr. Fisk said that he believed a new case would have to be opened or the old case reopened to re-allocate funds contrary to the final order, and he referred the question to Margaret Caffey-Moquin and Michael Smith with regard to their experience concerning the reopening of cases.

Ms. Caffey-Moquin said the Commission could address that directly in the rate case.

Commissioner Lovejoy felt there has to be a good reason for going to smart meters.

Ms. Caffey-Moquin said there is a request for all utilities to consider smart meters.

Mr. Smith agreed and said they did have a problem with requiring smart meters where they are not included in a final order such as this one.

Chairperson Montoya added that the Commission has talked about how to get smart meters in New Mexico. It is a wonderful concept and providing them free would be great.

Commissioner Lyons said he voted against the rate increase because of his concern to put that money into what was discussed.

Chairperson Montoya explained that because it is in the statute, that prohibits the Commission from doing that but she supported the concept.

Commissioner Jones asked what would happen if it was not approved today.

Ms. Sakya said they are still required to spend the 3% but could wait a week or so. SPS plans to file its next energy efficiency/load management budget application at the beginning of May.

Commissioner Jones asked if the Commission were to kick the decision down the road 25-30 days to get it worked out, if that would be okay.

Commissioner Lyons agreed.

Commissioner Lyons moved to table this matter to May 13, 2015. Commissioner Espinoza seconded the motion and it passed by unanimous (5-0) voice vote.

7. MISCELLANEOUS ACTION

A. Federal Energy Regulatory Commission Matter:
Ms. Caffey-Moquin presented this matter to the Commission. The matter was mentioned during Communications with General Counsel at the open meeting of April 8, 2015, and the Commission instructed OGC to prepare draft comments for potential filing at FERC.

This matter was recently brought to her attention by New Mexico Gas Company, which takes firm transportation service from Transwestern Pipeline, LLC primarily at points in the Permian Basin of southeastern New Mexico. NMGC has opposed the application of Transwestern at FERC to modify its tariff to include both a rate increase and other technical modifications. In relevant part, Transwestern’s new tariff caps the heat value at 1,200 Btu per cubic foot of natural gas; in contrast, the current industry standard is reportedly 1,100 — although this is by virtue of industry convention and practice, not regulation. Transwestern’s new tariff went into effect on April 1st.

NMGC has asked for Commission support for its Motion for Stay, Interim Relief, and Technical Conference and Request for Expedited Treatment, filed at FERC at the end of March. NMGC held a conference call on this matter on Monday, April 6. The PRC participants on the call were General Counsel Michael C. Smith, Utility Division Director Dwight Lamberson, Utility Division Engineer Timothy Martinez, Pipeline Safety Bureau Engineer Isaac Lerma, and her.

After consultation with the Utility Division Staff and with the Pipeline Safety Bureau Staff, OGC perceives that the main problem is that the FERC has not made a record regarding Transwestern’s new tariff insofar as it involves the heat value of the gas in transport.

Certain other organizations with ties to New Mexico have made filings in the FERC case, including PNM and the Navajo Nation Tribal Utility Authority. All are opposed to Transwestern’s tariff; most are opposed to its potential effects on downstream rates. However, the Utility Division Staff pointed out that there was little at present in the new Transwestern tariff that they are able to evaluate in terms of potential effects on rates. In contrast, the Pipeline Safety Bureau (PSB) shared some of OGC’s initial concerns about the increased heat value reflected in Transwestern’s new tariff. However, Pipeline Safety noted to me that at least Transwestern is proposing to place a cap on the heat value where there had been no cap previously — even though the industry standard is 1,100. A max might be a good thing but increased heat value does bring a concern on the radius. There are houses involved and the NMGC motion raises the issue of health.

OGC believes that rather than filing comments in support of the entire extent of NMGC’s motion, the Commission should focus on the request for a technical conference and plan to participate as may be appropriate in the future.

She was informed by Mr. Montoya that coincidentally, the US DOT commenced a 6-week-long segmented review of Transwestern’s pipeline in New Mexico on Monday, April 13th. PSB observed as much of that process as it could.
Commissioner Espinoza asked what she was recommending here.

Ms. Caffey-Moquin said her recommendation was for a filing at FERC.

Commissioner Lovejoy moved to approve her request to send the comments to FERC.

Commissioner Jones asked if she was just showing Commissioners her draft comments.

Ms. Caffey-Moquin agreed. The action is just to support NMGC here.

Commissioner Jones seconded the motion and it passed by unanimous (5-0) voice vote.

8. EXECUTIVE CLOSED SESSION – None.

9. LEGISLATIVE MATTERS – None.

10. MISCELLANEOUS ANNOUNCEMENTS

    Commissioner Jones noted that Ms. Stacey Star’s mother passed away this weekend.

11. PUBLIC COMMENT

    There were no public comments.

12. COMMUNICATIONS WITH GENERAL COUNSEL, MICHAEL C. SMITH

    There were no communications with General Counsel.

13. COMMUNICATIONS WITH CHIEF OF STAFF, VINCE MARTÍNEZ

    Mr. Martinez handed out a packet to the Commissioners regarding budget adjustment requests (BARs) for the remainder of the fiscal year. He explained that in the language the PRC requested to move money within and among programs and included a line item vetoed by the Governor. So going forward, he expected that but, there were three programs that had a cumulative deficit of $106,000 projected, based on the hiring freeze to July 10 and with the 18 vacancies the PRC has now.

    Because of the recent vacancy of Finance Director, Mr. Martinez began to present the line items in the budget for which he was intending those adjustments and began with the contract with Dr. Gable.
At 11:27 a.m. there was a power outage that lasted until 11:39, at which time the Commission had a recess.

Upon resuming the open meeting, Mr. Martinez described the transfers (BARs) that would solve the deficit. There were five BARs to accomplish avoiding ending the year in the red.

Commissioner Espinoza asked in #5, if he was going to limit training and travel?

Mr. Martinez agreed - across the board. He clarified that day trips wouldn't be affected but overnight travel would. For training, they would have to look at it on a case-by-case basis. He also proposed to keep $5,000 ($1,000 in each district). All divisions would be affected except Fire Marshal.

Commissioner Espinoza said the Commissioners pay the price for other people's mismanagement.

Mr. Martinez said he disagreed that it could be characterized as mismanagement. To finish out our budget in the black is good management.

Commissioner Espinoza said the Chief of Staff has spent it on hiring and she made a recommendation not to hire the CRD Director or the ASD Director.

Mr. Martinez said he was depending on getting BAR authority to balance it and get staff. He showed the Commission where moving surpluses to cover deficits would produce the balanced budget.

Commissioner Espinoza said Mr. Martinez already knew we would be short. She noted that last year, the budget was brought to the Commission just the day before it was due and no one had a chance to look at it and now we are in a shortfall. It should be a big priority to conserve.

Mr. Martinez said moving money around is his management responsibility.

Chairperson Montoya asked Commissioner Espinoza to not cut Mr. Martinez off when he is speaking.

Commissioner Espinoza asked how many contracts were issued after he knew about the shortfall.

Mr. Martinez said those contracts might be needed but usually there is money left over at end of year. They include the audit, PSB and Fire Marshal.

Commissioner Jones asked how many FTE's were unfunded by the legislature.

Mr. Martinez said there were probably 8 or 9.

Commissioner Jones asked how much the PRC lost from the prohibition of added fines.

Mr. Martinez said it would be some and with it, the federal funds for PSD would have increased about $35,000 to $40,000.
Commissioner Jones concluded that being denied the ability to move those funds already appropriated to this agency has hurt. He didn't want Mr. Martínez to take all the blame here. Obviously Mr. Martínez has got to do something and he appreciated having him doing what needs to be done. Our immediate issue is now and what you are bringing takes care of it. Mr. Martínez agreed.

Commissioner Jones asked if the Commission would have some time to look at it this week and if there is something the Commission thinks could be done, we can consider it.

Mr. Martínez agreed.

Chairperson Montoya pointed out that there was a deficit and the PRC was never made whole after insurance and corporations left. Understanding that and it being the case for several years, we should assume we are not going to be made whole and start from the beginning knowing we will have that deficit and not be made whole so we would not have that predicament. There is no reason why we should not be made whole. Whatever their thinking, this agency works literally at least a million per year deciding where we can spend on huge and crucial things. For the PRC not to have the funding and resources is a detriment.

Commissioner Espinoza said the appropriations are by statute so the Commissioners need to stop blaming the Superintendent Of Insurance and the Secretary of State for the deficit. That was too many years ago to keep bringing it up.

Mr. Martínez said he had never blamed them. The legislature moved $1.4 million out of our agency and that is the budget he inherited. We have figured out what the true cost is and the Legislature hasn't restored it so we have to move things around at year end. And if we didn't fill those positions, staff would not have been able to complete the PNM process. So we need to keep moving. It wouldn't make any sense to leave $32,000 in the contracts to revert to the General Fund when it can be moved into the place where it is needed.

Mr. Martínez added that Matthew Lovato has done a wonderful job in the past and we have this contingency plan in place and Matthew worked with him on a daily basis. "I take the bad with the good and there is a ton of good stuff happening. One of my primary tasks is to get the resources for this agency."

Commissioner Lovejoy didn't think $136,000 was an unreasonable deficit for an agency this size. She believed the deficit impact does result from those two departments being transferred out of PRC.

She said this information is very helpful and we all need to do our part to help the Chief of Staff and begin working together. She was aware at the Commissioner level, some of the training here and to be trained some times without paying anything at all. Some of it can be paid by the PRC and doesn't impact our budget. The Commissioners need this information and need to hang it up in our offices so we don't blame but do our due diligence in this. That is the way it has to be.

Commissioner Espinoza said to Mr. Martínez, "You supervise Matt. You are responsible and hold the purse strings for this."
14. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Espinoza announced that Kit Carson Electric received an awarded for broadband services.

15. ADJOURNMENT

Commissioner Lovejoy moved to adjourn the meeting. Chairperson Montoya seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 12:15 p.m.

ATTEST:

[Signature]
Carl Boaz, Stenographer

APPROVED: 5-6-15

[Signature]
Karen Montoya, Chairperson

[Signature]
Lynda Lovejoy, Vice Chairperson

NOT PRESENT

[Signature]
Patrick H. Lyons, Commissioner

[Signature]
Valerie Espinoza, Commissioner

[Signature]
Sandy Jones, Commissioner
Thank you for attending this meeting.

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<tr>
<th>NAME</th>
<th>COMPANY NAME (if any)</th>
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<tr>
<td>Mark Fermo</td>
<td>PNM</td>
<td>505 241 2498</td>
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<td>Byth Sakig</td>
<td>SPS</td>
<td>505 657 3672</td>
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<td>Raymond Brothers</td>
<td>Yellow Cab</td>
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<td>Steven Cerdova</td>
<td>NMGC</td>
<td>505 697 3559</td>
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<td>Ed Kacer</td>
<td>NMGC</td>
<td>505 697 3303</td>
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<tr>
<td>Ben Phillips</td>
<td>PNM</td>
<td>505 241 1836</td>
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<td>Gerard Ortiz</td>
<td>PNM</td>
<td>505 241 2561</td>
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<tr>
<td>Steve Abraham</td>
<td>Yellow Cab 6</td>
<td>505 842 5292</td>
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<tr>
<td>Tom Demm</td>
<td>NMGC</td>
<td>250 4141</td>
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Thank you for attending this meeting.
NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING
Wednesday, April 15, 2015
9:30 a.m.
PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87504

AGENDA

1. PLEDGE OF ALLEGIANCE/STATE PLEDGE

2. INTRODUCTION OF SPECIAL GUESTS

3. CONSIDERATION AND APPROVAL OF THE AGENDA

4. CONSIDERATION AND APPROVAL OF MINUTES
   - Minutes of Case Management Open Meeting of March 25, 2015

5. CONSENT:
   A. Transportation Matters:

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<tr>
<td>1)</td>
<td>14-00199-TR-EN</td>
<td>IN THE MATTER OF THE PETITION OF THE TRANSPORTATION DIVISION OF THE NEW MEXICO PUBLIC REGULATION COMMISSION FOR ISSUANCE OF AN ORDER TO SHOW CAUSE AND CEASE AND DESIST AGAINST HINTER, LLC. ORDER</td>
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<td>Rick Blumenfeld</td>
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<td>2)</td>
<td>14-00151-TR-M</td>
<td>IN THE MATTER OF THE APPLICATION OF HINTER-NM, LLC FOR A CERTIFICATE TO PROVIDE SPECIALIZED PASSENGER SERVICE. ORDER</td>
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<td>Rick Blumenfeld</td>
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# 6. **REGULAR ACTION AND DISCUSSION OF CASES**

## A. Utility Matters:

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Petitioner/Agent</th>
<th>Description</th>
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<tbody>
<tr>
<td>15-00063-TRR</td>
<td>Rick Blumenfeld</td>
<td>IN THE MATTER OF REVISIONS TO THE STATEWIDE WRECKER TARIFF AND THE ADOPTION OF AMENDMENTS TO THE MOTOR CARRIER RULES, 18.3.1 NMAC TO 18.3.15 NMAC, PERTAINING TO TOWING SERVICES. ORDER</td>
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<tr>
<td>14-00102-UT</td>
<td>Judith Amer</td>
<td>PUBLIC SERVICE COMPANY OF NEW MEXICO’S PETITION FOR DECLARATORY ORDER REGARDING THE APPLICABILITY OF RATE 3C TO SERVICE PROVIDED TO VALENCIA POWER, LLC. ORDER</td>
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<tr>
<td>13-00286-UT</td>
<td>Russell Fisk &amp; Margaret Caffey-Moquin</td>
<td>IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY’S APPLICATION FOR APPROVAL OF ITS: (A) 2014 ENERGY EFFICIENCY AND LOAD MANAGEMENT PLAN AN ASSOCIATED PROGRAMS; (B) REQUEST FOR FINANCIAL INCENTIVES FOR 2013-2015; (C) COST RECOVERY TARIFF RIDER; AND (D) REQUEST TO ESTABLISH LOWER MINIMUM SAVINGS REQUIREMENTS FOR 2014 UNDER THE EFFICIENT USE OF ENERGY ACT. ORDER</td>
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## 7. **MISCELLANEOUS ACTION**

### A. Federal Energy Regulatory Commission Matter:

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Petitioner/Agent</th>
<th>Description</th>
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<tr>
<td>FERC Docket No. RP15-23-000</td>
<td>Margaret Caffey-Moquin</td>
<td>TRANSWESTERN PIPELINE COMPANY, LLC</td>
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</tbody>
</table>
8. EXECUTIVE CLOSED SESSION: None.

9. LEGISLATIVE MATTERS: S. Vincent Martinez, Chief of Staff: None

10. MISCELLANEOUS ANNOUNCEMENTS

11. PUBLIC COMMENT

12. COMMUNICATIONS WITH GENERAL COUNSEL, MICHAEL C. SMITH

13. COMMUNICATIONS WITH CHIEF OF STAFF, VINE MARTINEZ

14. COMMUNICATIONS WITH COMMISSIONERS

15. ADJOURNMENT

To obtain a copy of this agenda please log in the Commission's website at www.nmprc.state.nm.us.

The Commission will make reasonable efforts to post the agenda on the Commission's website at least 72 hours before the open meeting, but the inability to do so within the 72 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.

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such discussion or argument to become ex-parte communications.

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 AT (505) 827-4042 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.
PUBLIC COMMENT

All members of the public wishing to provide public comment must sign a sign-up sheet prior to the start of the meeting and identify their name and the name of the organization they represent (if any), and the topic or issue on which they desire to comment. The portion of the agenda allocated for public comment at any one open meeting shall be limited to a maximum of 30 minutes for all persons wishing to provide comment. The order of speakers will be based on the order in which speakers sign up, but public officials may be taken out of order. If a speaker is not present at the time he or she is called to provide comment, that speaker shall forfeit their opportunity to speak. Public comment by an individual or entity shall be limited to no more than three (3) minutes unless the Commission acts to extend the period. If the number of individuals on the sign-up sheet desiring to provide comment would exceed the allotted 30-minute period, the Chairman may limit individual remarks to a shorter time period. Individuals represented by or representing a common organization or association may be asked to select one individual to act as spokesperson to speak for the group. Individuals who sign up to comment, but either fail to do so or choose to speak for less than their allotted time, may not cede or yield their time to another speaker. Written comments of individuals who cannot be physically present may not be read aloud at the meeting but may be submitted to the Commission.

The subject matter of public comments shall be relevant to matters within the Commission’s jurisdiction. Public comment will not be permitted on matters that should be addressed appropriately as the subject of an informal or formal complaint before the Commission or on pending rulemaking proceedings before the Commission once the opportunity for public comment in those proceedings has closed. Public comment by parties to a proceeding or adjudication pending before the Commission will not be permitted where the comment concerns matters at issue in such proceeding. The Chairman shall retain the right to stop any speaker who raises an issue that is not under the Commission’s jurisdiction or is subject to the restrictions above. Public comment will be received without Commission comment or response. However, individual Commissioners may at their option seek clarification or additional information from speakers through the Chairman. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chairman retains the right to exercise discretion in the implementation of this policy and may override the above rules in case of emergency or other unforeseen circumstances.

Speakers providing comment shall at all times conduct themselves in accordance with proper decorum. Profane or vulgar language or gestures will not be tolerated. Audience members shall not disrupt an open meeting by speaking without being recognized by the Commission and shall not incite others to do so. The Commission retains the right to remove disruptive attendees and individuals who fail to conduct themselves in accordance with these provisions from the Commission meeting.
NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING
Date: April 15, 2015

Thank you for attending this meeting.

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EXHIBIT 3
PRC - April 15 2015