

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
May 17, 2012**

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 Vice Chair Theresa Becenti-Aguilar
Commissioner Jason A. Marks
Commissioner Ben L. Hall
Commissioner Douglas J. Howe

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Deputy Chief of Staff for Legal Affairs
Margaret Caffey-Moquin, Associate General Counsel
Sandra Skogen, Associate General Counsel
Patrick López, Legal Division Director
Marc Martínez, Legal Division
Ashley Schannauer, Hearing Examiner
Roy Stephenson, Utility Division Director
Steve Schwebke, Utility Division
Miguel Luján, ASD-IT Division
Larry Luján, Transportation Division Director
Arthur Bishop, PIO

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Regular Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(c), and the Commission's Open Meeting Policy. Commission Chairman Patrick Lyons called the Regular Open meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, New Mexico.

A copy of the sign-in sheet for the Regular Open Meeting is incorporated herewith to these minutes as Exhibit 1.

A copy of the Agenda for the Regular Open meeting is incorporated herewith to these minutes as Exhibit 2.

1. PLEDGE OF ALLEGIANCE

2. INTRODUCTIONS

There were no introductions.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Chairman Lyons requested two changes to the agenda: to move 7b from Consent to Regular Action and to move Public Comment after 9a.

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

5. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the May 3, 2012 Regular Open Meeting**

Commissioner Marks moved to approve the minutes of May 3, 2012 as presented. Commissioner Howe seconded the motion and it passed by unanimous (5-0) voice vote.

7. CONSENT ACTION

A. Transportation Division

**12-00022-TR-M IN THE MATTER OF THE APPLICATION OF TAOS SKI VALLEY, INC. FOR A
CERTIFICATE OF AUTHORITY TO PROVIDE SHARED RIDE CARRIER
SERVICE AND FOR TEMPORARY AUTHORITY.**

(Sandra Skogen) Order

Commissioner Becenti-Aguilar moved to approve the order. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

8. DISCUSSION/REGULAR ACTION

A. Utility Division

12-00131-UT **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S
RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN FOR 2013**
(Margaret Caffey-Moquin) Order

Ms. Caffey-Moquin said she had asked for regular action because of the extension of the case for 90 days. Each renewable case was unique and her impression after handling some was that they often take 180 days and she wanted to avoid confusion. The HE cannot lengthen the time period - only the Commission could do that. I also indicated that we would avoid the end of the year crunch we often encounter. Even with extended period it would be finished by end of October.

Commissioner Marks moved to approve with the extension requested by Ms. Caffey-Moquin. Commissioner Howe seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

11-00196-UT **IN THE MATTER OF THE PETITION BY NEW MEXICO-AMERICAN WATER
COMPANY, INC. FOR ADJUSTMENT OF WATER RATES FOR ITS CLOVIS
DISTRICT AS FILED UNDER ADVICE NOTICE NO. 32.**
(Ashley Schannauer, Bob Parker) Recommended Decision/Order

Mr. Schannauer and Mr. Marc Martínez came forward.

Mr. Schannauer said a rate case was filed by New Mexico-American Water Company (NMAW) last year in December and he issued the RD by the end of February. The memo provided an overview of the case. The original proposed revenue increase was \$2.5 million over 2010 which was a 27% increase. The City of Clovis recommended an increase of \$1.8 million and staff recommended an increase of \$1.2 million. His RD initially recommended \$1.6 million (17%). After the hearing was finished, the company with Epcor refinanced their debt at a lower rate with savings of \$250,000. The parties all agreed that the savings would be passed through in this case so \$1.6 million went down to \$1.37 million (14.31%).

This was also the first case where NMAW was breaking out the franchise fee as a separate line item. If approved it would be at 2% and that was only charged to Clovis city residents.

Commissioner Hall asked how long NMAW had paid a franchise fee and charged it to all rate payers.

Mr. Schannauer said that was not in the record.

Commissioner Hall commented that before, all rate payers were paying that franchise fee and the customers outside of Clovis should have gotten money back.

Commissioner Howe asked if that wouldn't be a violation of retroactive rate making.

Mr. Schannauer didn't know how the company dealt with it. It was not addressed in this case.

Chairman Lyons asked if someone from Epcore Water would address that.

Mr. Daniel Bailet said the number of customers outside the city was very small and was never addressed in any rate case he was aware of. He didn't know the exact number but agreed to provide it to the Commission.

Commissioner Howe said it seemed that in the past all rate payers were paying the Clovis franchise fee so it would have to be the City that paid the rebate.

Mr. Schannauer said the Commission did approve the rates to be charged to all customers.

Chairman Lyons asked if all the money was passed on to the City of Clovis. Mr. Bailet agreed.

Mr. Schannauer said the rest of the memo addressed the primary issues on significance and dollar amount. The first was a very significant issue. It didn't have a big impact at present but it potentially could. It was the purchased water and power cost adjustment clause. The Clovis area has had problems with a declining aquifer there and the company was considering purchasing water from the Ute Reservoir pipeline project which was scheduled to be completed in 2019. Mr. Bailet testified to that.

Chairman Lyons asked if he knew there were two other court cases filed this week.

Mr. Bailet said the testimony he gave was from the Ute Pipeline Authority that established the company was projecting it at 2019. Epcore established a period of ten years. So that just reflected what Ute Pipeline told him.

Mr. Schannauer clarified that this clause was intended to encourage the purchase of water before the project came on line. Instead of having to wait for a rate case to come up, they wanted an adjustment clause so that cost could be passed on immediately. In 2011, the legislature amended the Public Utility Act for that purpose.

The initial proposal was a skeleton proposal and in a hearing it was fleshed out with protections for consumers like an electric company's FPPCAC with protections for consumers. So the company would get an immediate pass through but there was a chance for public intervention.

Commissioner Hall asked if they said they wanted to buy x amount of water or just do a pass through.

Mr. Schannauer said they didn't have any deals yet.

Commissioner Hall asked why they would have reluctance to purchase water if it was needed to keep the system going.

Mr. Schannauer said it was because they wouldn't be able to cover the costs. They incurred costs and then had to file a rate case. They expected to get an agreement that would provide for periodic payment - not for payment to deliver water in the future for two years.

Commissioner Hall said they would have to specify the amount beforehand. It was not fair for rate payers to have to pay for it before the company purchased it. That would just subsidize their business.

Mr. Schannauer acknowledged that was one of the issues - whether it should be prior to or have a review later.

Commissioner Hall said that in Lubbock the Ogalala Aquifer was actually rising.

Commissioner Marks said the problem in Clovis was that it was at the edge of the Ogalala Aquifer and it first affects the outer edges. The wells were going to run dry and they would go out for proposals and buy as needed. It would be similar to a gas clause where you get an agreement to buy a certain number of ac/ft and they would have to pay the seller. With gas there was a net 30 deal so about the time they get the money in was when the purchase came due.

Mr. Schannauer added that there were true-ups and an opportunity for people to ask for more investigations.

Commissioner Hall thought the business should provide the capital first.

Commissioner Marks responded that they had to get the capital because they had drilled the wells and bought and put in the pumps and built the system and would get a cost recovery over the next few years. They already deferred the cost but the wells wouldn't provide the needed flow in the future with costs they didn't have in the past. He asked if the Commission wanted to force them to come back for a rate case each year or to have that one item to be an automatic adjustment.

Mr. Schannauer agreed. The first policy call was made by the legislature in authorizing the rider and the second was by the Commission to support it. He tried to make it match under the policy for fuel clauses in order to be consistent but it was up to the Commission.

Chairman Lyons asked if that water was purchased at the well head.

Commissioner Marks said they drilled in the past but now had to purchase it which was different in the future.

Chairman Lyons referred to page five of the RD midway down the page that NMAW continued to oppose the requirement to obtain prior approval for changes in the adjustment clause and Mr. Schannauer's RD was that they get a refund (page 2). He was worried about how much they were going to be paid to get that water. He didn't see any limit on the water bill and NMAW possibly would purchase

water that would not be used.

Mr. Schannauer said the way it would work was that the agreements would be filed immediately and people would be charged but the people could respond if they felt the rates were unreasonable and an investigation would start right away. If they had to get prior approval they might not be able to do the deal. It could be delayed.

Chairman Lyons asked if there had ever been a case where an expensive purchase was made and not used.

Mr. Schannauer wasn't aware of any. This was the first time a water utility had asked for this arrangement.

Commissioner Marks commented that gas utilities didn't get to buy more gas than they used.

Chairman Lyons said it happened last year. With leased water, the pumps wouldn't pump as much.

Commissioner Marks asked if there was a condition on that.

Mr. Schannauer said staff was concerned that purchased water would displace well water. So the report must state how much was being pumped.

Commissioner Hall was concerned that without a limit they could go purchase it all and not pump any.

Commissioner Marks suggested a condition that it could only be purchased for water they need now.

Chairman Lyons commented that the electrical grid was watched by the minute. The water could sit there and not be used or they could shut down the wells. It was different from electricity. There was no monitoring and it had to be purchased beforehand. So the order couldn't just say approval of adjustment clause. That was like a blank check. He asked if the pass through could be limited to water that was needed and was used. If they had to pay for it they could get a backup.

Commissioner Howe agreed. There were balancing authorities but PNM was its own balancing authority. The issue was whether they had enough backup water there and could they get paid timely for what they had to purchase. If those purchases could be contested and reversed then the water company would want to only buy what was needed to cover their costs.

Chairman Lyons clarified that he was not accusing them of pumping up the costs. They almost peaked out last summer. It was very close. They have to purchase the water first though.

Commissioner Howe reminded them it could all be questioned after the fact. He didn't think NMAW was going to risk shutting off customers.

Commissioner Marks agreed. The PRC would sanction them for that. They had two alternatives. The wells were producing less so they could purchase from other people's wells. Or they could drill more wells

but those wells would be less productive and get less ROE. If the Commission denied it they would eat the cost or drill more wells that would have a shorter life.

Mr. Schannauer agreed they had been doing that drilling.

Commissioner Marks said when the Commission authorized a FPPCAC, a big criterion was the expense variable. He asked if staff looked at that.

Mr. Schannauer agreed. The expenses do fluctuate and he asked if they had a plan to keep costs down. The company testified those three conditions were met. To purchase water they expected costs to fluctuate. Purchases represented a large percentage of their costs. Those findings were on pages 15 and 16. No one disputed the variability.

Commissioner Marks asked if their purchased power met the same three criteria.

Mr. Schannauer explained that the electricity was used primarily for pumps. The company testified that purchased power was about 20% of the company's O & M expense and those costs would vary by how much they pumped and how much they bought.

Commissioner Marks thought they would pump about the same amount year to year. The PNM FPPCAC pointed to the volatility of natural gas prices or coal costs. But here the electric rates didn't change much month by month.

Commissioner Howe said page 47 showed that for the last 4 years production went up or down by as much as 10% depending on whether it was a rainy year or dry year.

Commissioner Howe asked if all purchases would go through the adjustment clause rather than base rates. It should not be a way to avoid getting those costs in base rates.

Mr. Schannauer said in this case there were no purchased water rates to be put into base rates so the baseline was zero but pumping electric costs were put into base rates. The expectation was that the other costs would be included in their next rate case.

Commissioner Howe said in other states if the FPPCAC varied by a given percentage from base rates, it triggered their return for investigation of base rates.

Mr. Schannauer said there was no discussion of that in the record.

Commissioner Howe thought over half of their production could end up in adjustments and not in base rates. He asked if the company was required to make regular reports on production statistics. Mr. Schannauer agreed. It was a result of Mr. Schwebke's testimony.

Chairman Lyons was worried about it. This company could not go out and buy water rights and just sit on them. City water companies could do that. He would favor selling the water company to the city for that reason because cities could sit on them. It didn't include pipeline costs so the Ute Pipeline Commission

should be involved. The pipeline from Ute Lake had funding between Curry County and Quay County.

Commissioner Marks commented that the statute didn't address pipelines for water.

Mr. Parker suggested a condition that, "The water adjustment clause is approved as described in the RD subject to the additional condition that the company is authorized to pass through only the cost of the water actually used and needed by customers."

Chairman Lyons liked that.

Commissioner Becenti-Aguilar asked why NMAW opposed the recommendations of City of Clovis on page 5.

Mr. Schannauer said it was because of the time involved to get approval by the Commission. It takes several months to get that processed with hearings and testimony. The company believed for the kind of agreements anticipated they must act more quickly than that.

Commissioner Howe said the same situation existed now on the electric side (no requirement for prior approval) but that was actually a NOPR that was out there right now. It was a long-term prior approval proposed rulemaking and once those issues were resolved it should apply here.

Mr. Schannauer said the statute required the Commission to establish such a rule for these kinds of clauses with water companies and the agreement with the company was that this agreement would be subject to any rule change.

Commissioner Marks favored not putting out an order today. He was curious to see what was projected to happen to the company's rate base over the next three years with scheduled depreciation, etc. The Commission should put out a bench request and they hadn't even talked about the exceptions.

Mr. Parker agreed. He was going to talk about them later.

Chairman Lyons had concerns on the revenue adjustments.

Mr. Schannauer said there were two revenue adjustments proposed by the company. They claimed that they were seeing a declining trend in residential use and reductions in the cheese factory. His recommendation was that the first adjustment not be approved because the data didn't show evidence that residential sales had a clear decline. But he recommended the adjustment for the cheese factory be approved because the testimony was that their changes overall resulted in decreased consumption. The reductions at the cheese factory began in 2010 and were likely to continue.

Commissioner Hall wondered if the water not sold to the cheese factory from reduced sales were being sold to other businesses or residences. With the recommended rebate, they would be paid twice. Every year the residential sales increased, not decreased. Annual production had increased. He asked if the excess water went to agriculture. Mr. Schannauer didn't know.

Commissioner Hall didn't have a problem with collecting for water used but not for water not used.

Chairman Lyons said the HE needed to determine if that water was sold to someone else.

Commissioner Hall wondered if any of the water was sold for new customers.

Mr. Schannauer said the company testified it was because of the drought.

Commissioner Marks asked how much they would have to sell to recover the costs. They knew how many customers they had each year. If it wasn't in the RD the Commission could find out.

Mr. Schannauer said they also had a conservation project.

Commissioner Howe thought there was not much evidence on either side that could bring an answer on it.

Commissioner Marks asked what else drove up consumption by 10 percent.

Mr. Schannauer said depreciation was a factor. They did a new depreciation study. In the meantime, there was an Edgewood rate case with a new depreciation schedule but no significant change in it. In the course of the hearing there were studies but no witness dealing with staff concerns about it. Staff and City of Clovis objected to that.

Mr. Schannauer summarized that the company did not provide enough evidence for the new higher rates so his recommendation was to continue with present rates. It would reduce their request by \$220,000.

Chairman Lyons asked what the \$220,000 would provide.

Mr. Schannauer said nothing was presented for it.

He said the last issue dealt with the profit. He recommended a ten percent profit amount.

Commissioner Hall wondered if that was customary for utility companies.

Commissioner Howe noted their expert witness was a consultant with utility companies. The HE recommendation was a little higher - to address the greater risk. He referenced page 31 and asked how much of that was under their control.

Mr. Schannauer didn't think that was addressed. He wasn't sure.

Commissioner Howe asked if the Commission was giving them a higher ROE because they had a higher debt to asset ratio. He wasn't sure an increase from 9.2% to 10% was justified.

Commissioner Marks asked if there was a DCF that came to 10% or above.

Mr. Schannauer said Clovis asked for 10.1%. The company came up with standard DCF numbers. On page 26, it showed the results were 10% to 11.6%.

Commissioner Marks asked if they had a sample of peer group utilities.

Chairman Lyons saw 11.75%.

Commissioner Marks referred to page 38 and asked if they knew what the capital structure was for these companies.

Mr. Schannauer said it got complicated. The PRC usually did things based on original book value. This tried to come up with market values for cost of equity.

Commissioner Marks said the staff would take a peer group and then take stock price and dividend cost and come up with a dividend rate. There were accepted ways to project dividend rate. You average it and we use it. He asked if that was what was done with the companies on page 38. Mr. Schannauer agreed.

Commissioner Marks said these were not comparable to the leverage of Epcore.

Mr. Schannauer said those numbers were not what they proposed.

Commissioner Marks saw that staff projected 7.66% and asked if their math was wrong.

Mr. Schannauer said they didn't propose 7.66% but 10%.

Commissioner Marks pointed out that they had an evidentiary record but knew that returns from the stock market were going down. Investors were okay taking lower returns now. Most were less than 10% these days. He asked if the Commission couldn't follow that lower rate. He had trouble understanding why they should use a percentage higher than 9.2%. He said he couldn't make 9% on his own money.

Commissioner Howe took exception to the term "guaranteed." There was some risk here. But 9.2% was based on their own evidence.

Commissioner Marks said in the RD there was a discussion of short-term debt and the debate there was what they used for the rate for construction. When the Commission did electric utilities they used their short term capital to do construction and then it rolled into rate base as capitalized interest at the lower rate and everyone was treated fairly. But here they used short-term capital for working capital. So if they did, they used their overall funds long term capital for construction and left out short term capital out of the equation. He thought Dr. Blank was right. They had to put it in short-term capital and the costs put into rates were the costs they actually incurred.

Mr. Schannauer said there wasn't much in the record to deal with that. He was recommending they do it in the next rate case.

Commissioner Marks said if working capital was in rate base then they would apply this to rate base. It had to go somewhere. The company didn't want it in AFDDC so it had to be in cost of capital for rate base. PNM's was in AFDDC. He asked how much short-term debt they had.

Commissioner Howe said on page 32 it was 7.46%.

Commissioner Marks said the difference would be 80 bps lower on overall cost of capital.

Commissioner Howe asked if his recommendation was to handle short-term debt as an AFDDC item.

Mr. Schannauer said it was not.

Commissioner Marks said it was to pretend there was not short-term debt and handle all of it as long term debt.

Mr. Schannauer said he based his recommendation on the evidence from Dr. Blank's testimony. It wasn't addressed in the record why they had this large short-term debt. Without more explanation he felt it appropriate to stick with what the Commission had done in the past. What he tried to do was to balance things here and not go to either extreme but to look at a well-balanced recommendation. To move it into cost of capital would lower it substantially below what he recommended.

Commissioner Marks asked if he could provide a reason why the Commission should ignore the cost of short term debt.

Mr. Schannauer said the company gets to recover their overall cost of debt. It all boiled down to cost of capital. All the rest were components of that. There were various rates recommended. He wanted to balance it with something that was reasonable and was willing to go below the number but there was a limit.

Commissioner Marks asked what the real number was for capital structure.

Commissioner Howe thought it was on page 32 at the bottom of the page.

Mr. Schannauer said staff recommended it go from 55/45 to 52/48 for long term debt to equity.

Commissioner Howe asked if the company disputed Dr. Blank's testimony on page 33.

Mr. Bailet asked if they could be heard on the record in order to respond.

Ms. Beadles wanted to get staff response on the record too.

Chairman Lyons noted it was 11:25 and asked the Commission for their preference.

Commissioner Marks wanted to hold it over and issue a bench request. He asked if staff wanted to do exceptions next week.

Mr. Parker agreed and pointed out that they had until mid-June to get this out.

Commissioner Howe asked what the company and staff were likely to address that was on the record. He asked if that should be for next week.

Mr. Parker suggested that if Commissioner Marks issued a bench request they could respond in writing.

Mr. Bailet thought there were others. Short term debt was volatile and was high at year end. It was down more than a million dollars and the figures Dr. Blank used were from June.

Commissioner Marks agreed to put that in the bench request to ask for current and historic short term debt and what the projected rate base would be in 2014.

Chairman Lyons asked if he wanted to include information on the FPPCAC or anything on leased water. The Commission also wanted to see if water saved from cheese factory was sold. They would also like to see short term debt by month since Mr. Olson said it was up and down a lot.

Commissioner Marks agreed to circulate the bench request today.

9. DISCUSSION

A. Utility Division

**Undocketed IN THE MATTER OF THUNDER MOUNTAIN WATER COMPANY'S BREACH
OF CONTRACT LITIGATION.
(Bob Parker)**

Mr. Parker said week before last Mr. de la Garza came and asked the Commission to get involved in a lawsuit with Estancia Basin and Thunder Mountain and he was asked to supply more information to prove what was needed. The information came in when the Commission was going to Farmington. It appeared to be a private dispute on breach of contract and he didn't see any kind of connection with the Commission and recommended they not get involved in the case.

Commissioner Marks asked if he didn't see any nexus to their ability to serve.

Mr. Parker said that was correct and he wouldn't know what position to take.

Mr. Ed Cardenas (Thunder Mountain Water) said it dealt with the TRO due to be heard here on the 22nd. The restraining order would affect their rate payers because the water supply could be cut off with a restraining order.

Commissioner Marks thought they wanted you to buy more.

Mr. Cardenas agreed but once extinguished at what they contracted for they couldn't buy any from an alternative source. They could run out of water and the restraining order wouldn't allow them to use both sources when an emergency arose.

Commissioner Hall asked if they could do that.

Mr. Parker agreed. If the judge ordered them to buy only from Estancia at some point Thunder Mountain wouldn't have a supply. Then the PRC would get involved but he couldn't imagine the judge would make them run out of water.

Commissioner Marks asked if the Commission's position should be that the judge determine the contractual arrangement between the parties by order to buy only from Estancia basin then...

Mr. Parker felt anything beyond that was purely speculative.

Commissioner Marks asked if Thunder Mountain hadn't bought enough from them this year.

Mr. Cardenas said they were trying to spread it out over the year.

Commissioner Marks asked, if the Judge ordered them to purchase only from Estancia, whether they would be unable to buy from another supplier.

Mr. Cardenas said if there was a problem with the alternate source they couldn't go back to Estancia to get more.

Commissioner Marks asked if Thunder Mountain could guarantee it would purchase the whole contracted amount by year end.

Mr. Cardenas said they were trying to guarantee payment for the whole amount but Estancia was not amenable to that now. The hearing would be on the 22nd.

Mr. Parker said if Mr. Cardenas would send the results of the hearing the Commission could reconsider.

Mr. Cardenas said he could do that. Looking back he wished he had gotten the PRC involved much earlier.

6. PUBLIC COMMENT

Mr. de la Garza came forward and handed out notebooks through Mr. Parker. He had none for General Counsel. He brought a stack of books with him emptying out his bag onto the table.

Mr. de la Garza said he was representing the State of New Mexico, the rate payers and tax payers and

most importantly God and the PRC employees.

"I'm trying to show you when I was at the PRC, this was me. I continue doing the same thing; prepare myself to do whatever I'm wanting to do. I read so I can get educated so when asked a question I can prepare a professional prepared response. I have prepared a binder for you which is a summary. The first is the golden rule (quoted). This is a basic principle that the founders of this country and many other countries have used as a basis for developing law and deciding what to do to become better citizens, to provide better service and be a good nation."

"The problem is when things go sour. And then there is a battle that I mentioned before. On May 8 I said the battle May 15 between good and evil. When somebody decides that I don't care about this gentleman; I don't care about this lady; I'm going to do things my way and no way different than that. We at the PRC ... my experience is that there are a set of rules that we apply to the companies that the PRC regulates. There are a set of rules policies and procedures for the employees of the PRC. There are a set of rules that apply to the Commissioners in house and outside of the PRC. Government conduct is one of them. There is zero tolerance for retaliation against an employee or against a company that the PRC regulates. Zero tolerance - that's because it is based on respect among each other. Simple golden rule. The newspapers and TV stations and any other reporters - I could find some of their articles and, like I said there is something of what I classified as the battle between good and evil. The action of the PRC to restrain my access to the PRC - this makes me worry about what is going through the Commission's mind. Not of any commissioners - that way I don't have to criticize anybody. Anyhow, I think that positive, constructive criticism is ... But I am going to respect the policy that is in place now. Even though I don't comply with that. I mean I don't accept that there is a legal ... and I am going to explain why.

"I am an engineer by education, by experience and I am proud of it. I am a good citizen of the U.S. I'm not Mexican. I am Mexican American and forgot to bring my birth certificate. There was an issue of kind of a labeling somebody - in this case, me as coming from a country that is going through extreme violence now days.

"Every country has gone through revolutions and wars civil or world wars. So every country has ups and downs. Nobody is perfect. We cannot predict the future. There has been labeling of me as Mexican being violent. I contradict that. I am a person that has a passion to side for people's rights and that is what I am exercising this morning and that is what I've been exercising many times when I come to the Commission - exercising a constitutional right that is given to every citizen of the US.

"There are new rules for the PRC to control the public. I say control because that is what it is. These rules are in violation of the US constitution. Therefore, they are not legal. No policy can be created and implemented if it violates the constitution of the US. I don't have to be a lawyer to know that. And I checked with lawyers and they agree. No new policy can be implemented if it violates the constitution of the US. Therefore I consider the new rules for the public illegal.

"I asked for a legal opinion. I asked Commissioner Marks and I copied Commissioner Becenti-Aguilar to get a ruling from the agency that regulates the Open Meeting Act - that has jurisdiction over the Open Meeting Act - the law of the State of New Mexico beside the IPRA Act. As of today I did not get a response to that. I don't know if it is difficult to a legal opinion, Commissioner Marks.

Commissioner Marks said he gave Mr. de la Garza a response in which he looked at the situation and compared it with Sunland Park and told him that based on his assessment that what happened was completely different than what happened in Farmington and that it was not an open meeting violation.

Mr. de la Garza said, "Mr. Chairman, Commissioner Marks, you didn't listen to my statement. I asked for a legal opinion from the agency that has jurisdiction over the Open Meeting Act - not because you are a lawyer that you have the right to bypass the jurisdiction over another agency. The PRC cannot create... This is what I am trying to say. The PRC cannot create a jurisdiction over the Open Meeting Act. Therefore, your legal opinion, which I respect - it is not a priority over the top of the legal opinion from the agency with the jurisdiction over that. I was hoping to see that so we can move on. If I am wrong - if they say we don't care about the constitution - this is New Mexico - no, if you are right, if you are wrong, then we can move on. We go and turn the page to the next item. That's all I was asking for.

"It is a delicate issue because if you were going to violate the rights of the public, I have an issue. I represent the public. I am a member of the public. Even though I am not a commissioner. But I'm dreaming about it now to become a higher level public servant. These experiences I have had gave me that flame inside of me now to fight for people's rights.

"And I've been reading serious books - Abraham Lincoln. I've been reading good books, simple things like Conrad Hilton. He gave legal opinions because he observed the corruption in government when he was running government. He used to live at Marion Hall. He used to sleep there every night when he was working at the capitol. It's in this book. It is a little book that you can carry with you when you go to the residence or you go to the park or when you are sleeping and wake up in the middle of the night, this is a book I recommend to you.

"You want another big book about corruption in New Mexico. This is the Bible about corruption in New Mexico - The Two Elders. The devil - the Machiavelli of New Mexico... The good and the evil. We have not moved forward since then. We are still in the same place we were in the early 1900's. Good versus evil. I recommend it - highly recommend it.

"Ludicrous Laws and Mindless Misdemeanors. This is kind of a funny book but it has pages out of the PRC. Mindless law that doesn't respect the constitution of the US. Injustice - many of you are familiar with David Iglesias. Injustice. That was a big injustice on him - again on the system and the law of the US.

"Another big corruption book, The Creature from Jekyll Island.

"Water - a system of New Mexico. We are made famous, but we have a curse behind us all when we deal with water because of corruption. This is a little book about it I highly recommend - Water and the Land, a history of American Irrigation. Excellent book.

"There was some criticism about me going all over the place in my presentations. Sorry about that. I am not perfect. I look old. I look fat. And all of the above. So for the Commission - I'm not going to mention names anymore. Sorry about that. How to get your point across in 30 seconds or less. I promise I'm going to memorize this for you.

"The Bible - I read it. The more I read it, the better I become. A good friend of mine recommended this book to me, The Purpose Driven Life, by Rick Warren. I recommend it.

He recommended another book after talking about books that helped teach people how to write. The book was Unbroken Curses also about water.

"This is an important story so we don't make another mistake like this. You can see the pain that I went through when I was terminated on my son's birthday and in midst of economic crisis and not be able to feed the family - because of corruption in the system - Unbroken Curses. I am going to try to mirror this book, hold it all together. And the PRC is going to be the main part.

"Let me move on. You can see I have a passion now that you guys have created in me. I really appreciate that. That's the only good thing I have gotten out of this. I think that God put me in this route. I think this was my destiny to become somebody that fights for people's rights. I love it - every single minute of it. Even though I have been attacked and assaulted. I don't care. If I die fighting for people's rights it would be my happiest second before I die.

"I show up at the PRC meeting. Man says he was assaulted at the PRC meeting. You are all familiar with that. Headlines (he read). The Commission needs to read the first amendment because they are violating it by creating new policy to control the public. It is not right. It is not right.

"PRC wants restraining order against citizen. That is a violation of combined judgment of order. You've got a copy of it there. I was hoping that by now you guys would have memorized these three pages. The last page is the signature page. So there are only three pages - easy to memorize. I have done it because I am interested in finding out who was right and who was wrong and how can I protect myself. So far this is in violation.

This Commission has violated a very important document - has violated the law as administered by Judge Ortiz. Life is about making decisions. You guys made a decision. I have made my own.

I am now moving on because now I have the thing behind my head about the fifteen minute limit. If you can give me until I am done which is not going to take that long.

Chairman Lyons said, "Your fifteen minutes is up but I want you to wrap it up. I'm going to give it to you.

Mr. de la Garza said, "Thank you very much. Mr. Chairman, that makes me happy. And we can have a mature, professional communication for the benefit of New Mexico.

Chairman Lyons what happened to memorizing the 30 seconds or less.

Mr. de la Garza said he wanted to memorize it. He continued with his statement. He commented further on the legislature and on Conrad Hilton's life.

On the PRC he filed a motion to intervene and the Commission denied it.

Chairman Lyons asked when that happened.

Mr. de la Garza said it was during the intervention period and before Chairman Lyons became a Commissioner. He thought he could have saved New Mexico millions of dollars by intervening.

Chairman Lyons said he would like to borrow that book from him.

Mr. de la Garza said the oath of office meant a Commissioner was ready to do what he was elected to do. A Commissioner gets in trouble when he doesn't do it. It becomes more expensive to companies and ratepayers when he doesn't do it. It was a simple law of New Mexico. But when we don't follow it we have a problem and cannot provide good public service and it becomes more expensive in dealing with corruption. Why, because it was a share of money.

He said the Commissioners could go through the articles he provided in their spare time. He disagreed with labeling someone by their looks. That was a violation of the constitution - skinny or fat, or their sexual orientation or their religious beliefs - that was sad that we have to go in that direction.

He quoted the Latin of the seal "We grow as we go. That is a violation of their dreams that came out with that phrase because we are not doing what is good for everyone. I have been called unstable. Someone with medical skill. I am a passionate man and not unstable. If I talk loud it is because I am passionate. I have respect for my client Mr. Cardenas and won't say anything about that out of respect for my client. I feel uncomfortable. I am an expert now on PRC operations and I don't feel good about what I heard."

Chairman Lyons said that was 25 minutes.

Mr. de la Garza asked for one more minute. "There are rules on public corruption and I was sent to the FBI. New Mexico has been labeled as one of most corrupt states in the union. It is said to leave that to our children. Prejudice - you know the definition. There is someone else you fired because they were following the rules.

"There are annual reports on the website the PRC has created. I tried to look for patterns in what was going on and why we cannot control the monster.

Chairman Lyons said they were going to do a better annual report this year.

Commissioner Hall said they needed to end this discussion.

Mr. de la Garza asked for one minute - free consulting. He wanted the Commission to look at the annual reports from 2006 to 2008. Very important. Chief of Staff already knows about it. In the organizational charts the citizens of New Mexico were left off.

Chairman Lyons thanked him for trying to get his point across in less time. Secondly, "when an investigation is going on what you filed, I apologized to you. You have a lot of energy and you are pretty

smart and now you have a passion and a dream. Let's channel it to a positive and constructive way. You get upset when I smile. There is so much anger and hatred today and that would eat you up. You keep saying you want to move on and I agree. Let's move on. If you want to be a civil rights attorney - go to school and become that. We are trying hard to make the PRC better."

"We are not doing political hires here anymore. And we do have a better agency. You can always do better. I want you to visit School for the visually handicapped to children who from day one have problems. The kids born permanently damaged don't have a chance. We don't have a problem."

Mr. de la Garza said, "I live it every single second of my life because of my son."

Chairman Lyons asked if he could walk or talk.

Mr. de la Garza said he couldn't.

Chairman Lyons said he had a 25 year old daughter still in diapers.

Mr. de la Garza acknowledged they had something in common.

Mr. de la Garza said, "All I ask for New Mexico people, if you don't like them, leave them alone and let them enjoy."

10. COMMUNICATIONS WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER

There were no communications with Deputy Chief of Staff for Legal Affairs.

11. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA

- **Insurance Depository Bank - Committee Recommendation.**

Mr. Montoya said the Superintendent of Insurance and State Treasurer appointed a committee to make a recommendation on the bank that should be used for deposits from insurance companies. They selected Century Bank from a previous RFP and the Treasurer accepted it.

Commissioner Marks asked if they had the lowest percent fee.

Mr. Montoya agreed. It was 0.11%. The process was very transparent.

The Commission accepted the recommendation.

- **Insurance Examinations Bureau contracts.**

Superintendent Franchini and Mr. Jordan presented their proposed contracts.

Superintendent Franchini said they were in a clumsy spot last week because they couldn't present the numbers last week and Mr. Jordan solved how to do share the information without violating confidences.

Mr. Jordan said the contract for the Lovelace Group was awarded to Risk and Regulatory Consulting and there actually two contracts under that - two different companies. And the other contract was with Regulatory Consulting, Inc. For Molina Healthcare. There were six prequalified vendors and bids went out to all and bids were all received on time. He listed them. On a separate sheet he showed the bids by A-F. A was on the Lovelace Group and E was on the Molina Group.

In order to evaluate the bids, the last two pages were the bid sheet that looked at things beside price - experience, also people with experience doing examinations, next was the number of certifications of people. Next were independent contractors vs. employees. To know whether they did this in house or contracted it out; number of examinations done and how many have been our companies.

The last page was the cost of examinations -first by examiner, staff, on down and then number of hours it would take to do the exams. Next was number of phases to the deliverables. He tracked them and made sure they had done the work before issuing the check.

Next was conduct of the examination which was paid according to milestones. The last section was authorizing travel to make sure none was unnecessary.

Commissioner Marks thanked them for answer the Commission's questions.

Chairman Lyons asked where the firms were from.

Mr. Jordan said the first was from Connecticut and the second was in Albuquerque. He asked if this was the format the Commission would prefer in the future.

Chairman Lyons said he didn't like it but it was better than what they had.

- **Proposed legislative amendments to the Motor Carrier Act.**

Mr. Montoya said Mr. Joe Earnest asked to present proposed changes to the Motor Carrier Act.

Mr. Earnest handed out his proposed changes. He was representing a number of carriers and the Movers and Warehousing Association. There wasn't a passenger carriers association at present but soon hoped to have one. He represented most but not all that were involved in legislative process.

Last session there was a lot of talk about deregulation. He was proposing a revision that would bring about a lot of deregulation without throwing out the baby with the bath and maintaining needed regulation.

New Mexico had three acts (1983, 1991 and 2003) that he briefly reviewed. The 2003 legislation had carried forward a lot of baggage. Public interest had not been well defined.

There had been a lot of talk in the media about what was good and what was not good regulation. He put in information about what would generally be accepted. Most of this derived from the Reagan administration when air and train regulation went away and they also proposed local passenger train deregulation.

They undertook 9 DOT areas that had deregulated including Arizona and Indianapolis which was deregulated and re-regulated again. With regulation, prices go up and crime increases. Standard concepts of financial analysis didn't work because of concepts that didn't apply to regulation.

The Dempsey article addressed taxis were most regulated from the Reformation on and throughout the country's history. This was generally a background that comes from the industry. State regulation was all over the board. In Colorado it was everything but Denver. Many states split the regulation among two agencies. Local regulation didn't work in the same way as state regulation. In large cities it was on rates and drivers and # of taxicabs that could be on the street.

What happened in deregulation was that the owners shifted to different arrangements. In big cities they dealt not with companies but with drivers' unions and that was a different ball game.

He recommended staying pretty much with the system we have. He explained that as long as companies were regulated they would have a right to intervene. But a large amount should be deregulated and do away with territories. It should all be away from back room deals. He hoped to strip down the regulation enough to take care of a lot of administrative issues and ongoing liability of substantial companies.

Commissioner Marks asked if Capitol Cab had to charge everyone the same amount. Mr. Earnest agreed.

Commissioner Marks asked if anyone could come into the territory to compete.

Mr. Earnest said this would reduce size of territory. Capitol Cab had five counties but full service only in city limits of Santa Fé. They couldn't object because they wanted to eliminate competition.

Commissioner Marks said that meant Capitol Cab could maximize the profits and charges might be higher than the regulated rate and the only thing to keep them honest was the other companies competing on price.

Mr. Earnest replied that transportation wasn't isolated. Capitol Cab didn't have the only transportation service. There were private entities from hotels and many public government transits. They had lots of ways to hold down the rates. They couldn't raise rates without losing people. They were not isolated from supply and demand. When they came in for a rate increase it was only 1% because that was all the market would bear.

Commissioner Marks asked if any states didn't regulate.

Mr. Earnest said the State of Washington was an example. They filed their rates and notice in the same way they do here and if no one objected, it went into effect. Staff could object.

Most rates for on demand passenger service would be by giving notice and in effect if no one objected, staff or public, it would go into effect. The exceptions were ambulances, non-consensual tows and house moving, which was more given to abuse. In unregulated situations the van company could demand payment before unloading.

Commissioner Marks asked why tariff posting wouldn't do just as good a job in protecting the public.

Mr. Earnest said Capitol Cab takes all calls in order and makes most of its money during tourist season. But the rates were for the whole community. So no cherry picking. Ambulances have to carry regardless of ability to pay. If an ambulance cherry picked, they would be put out of business. Taxis at the airport make money on core service. A limo didn't carry anyone without a contract. He drew the distinction with opportunistic companies. Proof of need must be proven to the Commission. The concept was that people just coming in didn't know but public interest was in a new company coming in.

The rates have to be the same and the PRC posts all rates and terms of service. So people whose cars break down at 2 am must be picked up at the same rates. But if totally deregulated, taxi drivers wouldn't pick up battered women because there would be no tips. Regulated rates were important to prevent gouging.

He recommended increased vehicle inspections. Annual was not often enough. Criminal background checks would be required. That was a major issue in the moving and storage industry because packers would scope out the house and save that for later invasions.

At Capitol Cab if a parent put a small child in the cab without an adult, the driver could be a child molester. That had not happened here but had in other parts of the country.

He recommended the same procedures throughout the state for all household carriers, including what happens with a dispute and for storage facilities that stored household goods. He raised as a question if the Commission wanted the same kind of storage regulations like power control, fire control and pest control that the national companies were subject to (TSA and DOD).

He said this proposal was for the Commission and the AG. The unfair practices act protects against deception on source or quality of work. It allows people to sue for damages or a thousand dollars plus attorney fees and other provisions. So if a carrier violated the rates, the consumer would have that right or if operating unlawfully, it allowed one carrier to sue another.

Commissioner Howe asked if this was not available to consumers today.

Mr. Earnest said it might or it might not. The company could be holding itself out as regulated but it

wasn't. He wanted to solidify preventing that in the act without having to worry about interpretation.

Mr. Earnest wrapped up by saying he would like to know if the Commission was interested in having him put something together and bring it during the summer he could know that it would work for legislation. He clarified that he was not binding the Commission to anything.

Commissioner Marks said interstate moving was not regulated.

Mr. Earnest said he was representing a number of diverse clients and would sure would like to address that but didn't. They were going to employ Dave Baca to help formulate the proposed legislation and hoped to get it to the Commission by September. This had just the concepts toward which they were heading. The specifics would have yet to be done. They just wanted to know if the Commission was generally interested in this kind of re-write.

Chairman Lyons asked them to put something together and the Commission would review it and say what they liked and what they didn't like.

12. COMMUNICATIONS WITH COMMISSIONERS

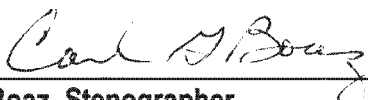
Chairman Lyons mentioned a conference call with commissioners from other states and would have something for the Commission to discuss next Tuesday on the workshop.

13. ADJOURNMENT

Commissioner Marks moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

The meeting was adjourned at 1:10 p.m.

ATTEST:



Carl Boaz, Stenographer

APPROVED: 06/14/2012



PATRICK H. LYONS, CHAIRMAN



THERESA BECENTI-AGUILAR, VICE CHAIR



JASON A. MARKS, COMMISSIONER

Excused

BEN L. HALL, COMMISSIONER



DOUGLAS J. HOWE, COMMISSIONER

DATE: May 17, 2012



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday, May 17, 2012

9:30 A.M.

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

AGENDA

1. **PLEDGE OF ALLEGIANCE**
2. **INTRODUCTIONS**
3. **MISCELLANEOUS ANNOUNCEMENTS**
4. **CONSIDERATION AND APPROVAL OF THE AGENDA**
5. **CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Regular Open Meeting of May 3, 2012**
6. **PUBLIC COMMENT**
7. **CONSENT ACTION**

A. Transportation Division

12-00022-TR-M Sandra Skogen	IN THE MATTER OF THE APPLICATION OF TAOS SKI VALLEY, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE SHARED RIDE CARRIER SERVICE AND FOR TEMPORARY AUTHORITY. Order
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B. Utility Division

12-00131-UT Margaret Caffey-Moquin	IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN FOR 2013. Order
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8. DISCUSSION/REGULAR ACTION

A. Utility Division

11-00196-UT Ashley Schannauer Bob Parker	IN THE MATTER OF THE PETITION BY NEW MEXICO-AMERICAN WATER COMPANY, INC. FOR ADJUSTMENT OF WATER RATES FOR ITS CLOVIS DISTRICT AS FILED UNDER ADVICE NOTICE NO. 32. <u>Recommended Decision</u> Order
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9. DISCUSSION

A. Utility Division

Undocketed Bob Parker	IN THE MATTER OF THUNDER MOUNTAIN WATER COMPANY'S BREACH OF CONTRACT LITIGATION.
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10. COMMUNICATIONS WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER

11. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA

- Insurance Depository Bank – Committee Recommendation.
- Insurance Examinations Bureau contracts.
- Proposed legislative amendments to the Motor Carrier Act.

12. COMMUNICATIONS WITH COMMISSIONERS

13. ADJOURNMENT

The Commission will make reasonable efforts to post the agenda on the Commission's website 36 hours before the open meeting, but the inability to do so within the 36 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 (827-4084) AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.