

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
May 31, 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 [later telephonically]
Commissioner Ben L. Hall
Commissioner Douglas Howe

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Deputy Chief of Staff for Legal Affairs
Stacy Starr-Garcia, Corporations Bureau Chief
Margaret Caffey-Moquin, Associate General Counsel
Sandra Skogen, Associate General Counsel
Bill Herrmann, Chief Hearing Examiner
Carolyn Glick, Hearing Examiner

Others Present

Charmaine Clair, 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 Commissioner 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

Ms. Stacy Starr-Garcia introduced three new interns now working in the Corporation Bureau; Estévan Segura, Erica Diaz and Louis Gallegos. They would work through June on rejected reports.

The Records Bureau introduced Theresa Gonzalez who would scan all Corporation documents from Ms. Starr-Garcia's staff to get them caught up.

The HR Division introduced Alexandra Menetris from Las Cruces who would work with the Corporations Bureau until the end of June.

Mr. Herrmann introduced Fran Sonheim as a new Hearing Examiner. He said she has many years of experience and would be a tremendous addition to the Division

Commissioner Howe said he worked with and knew Ms. Sonheim for many years and was thrilled she agreed to come to work for the PRC.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Hall moved to approve the Agenda as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote.

5. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Regular Open Meeting of May 15, 2012**
- **Minutes of the Regular Open Meeting of May 22, 2012**

Commissioner Howe moved to approve the minutes of May 15, 2012 and May 22, 2012 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote.

6. PUBLIC COMMENT

There were no public comments.

7. DISCUSSION/REGULAR ACTION

A. Transportation Division

09-00420-TR-M IN THE MATTER OF A REQUEST FOR A VARIANCE FROM MINIMUM INSURANCE LIMIT, CUSTOM TOURS BY CLARICE, INC., (Bill Herrmann) Recommended Decision

Mr. Herrmann provided information regarding this case to the Commission. The case was for variance of insurance limits filed by Custom Tours. The Commission issued an Order denying the variance on February 2. A limited rehearing was ordered by the Commission on February 22 on the issue of whether Custom Tours is unique among Santa Fe motor carriers, such that the Commission should grant variance.

Evidence taken at the re-hearing showed that three motor carriers in Santa Fe including Custom Tours provide comparable tour and sightseeing service. All carriers including Custom Tours have insurance and 2 of the carriers carry a minimum of 16 passengers and require \$5 million of liability insurance.

Testimony was presented by the Department of Public Safety and the regulation requires liability insurance coverage for any vehicle with a seating capacity of 16 or more passengers at \$5 million. This Department also enforced the Commission rules.

The Department stated there was no way for process and they could not grant any variance to reduce the minimum levels of insurance for a motor carrier. The Federal Motor Carrier Act had been adopted for the State and the Department was required by statute to enforce the regulations.

If this Commission granted a variance the Department (New Mexico Department of Public Safety) couldn't enforce it. If the Department found that a motor carrier did not have adequate coverage under the federal laws they would have to enforce the federal regulations. The remedy would be to obtain the proper amount of coverage and if not obtained would be out of service.

The re-hearing had been completed and the case should be returned to the Commission for final disposition. He recommended the Commission close the docket and enforce the Final Order.

Ms. Clarice Coffey, owner of Custom Tours said she had been in business for 23 years. The trams were essential to the economic development of the City because the primary revenue was tourism. She questioned why the State would adopt the federal Public Safety rules and regulations without a provision for tour operation. They did not drive across country.

No one would start a business where they knew they couldn't make any money and for a number of years operators met all of the rules and regulations the PRC required. When she started her business there were 16 tour operators and only three were left. The imposition of the federal regulations would ensure the

demise of the rest of the tour companies including hers, ultimately.

She thanked those who supported her. She had tried for 9 years to get a variance and had put in hundreds if not thousands of hours of time and spent thousands of dollars. She followed the PRC rules and regulations to the letter. There was a provision in the PRC for variances that she followed that to the letter and understood there was no provision in the federal regulations.

If Public Safety would allow a variance, she believed the Commission wouldn't be afraid to grant her a variance.

Ms. Coffey said many people came to Santa Fe because of the open air tram tours and ate in the restaurants and stayed in the hotels and bought art. Last weekend most of the hotels were full.

She urged the Commission to speak to Public Safety. She urged them to consider helping the small tour operators who bring hundreds of thousands of dollars to town and were integral to the economic success of Santa Fe.

Commissioner Hall said if the Commission allowed the company to do otherwise, the Commission would be at risk with the State and federal government and had to go along with them.

Ms. Coffey said that was why she fought for 9 years for a variance. In the interim the Commission voted to adopt the federal regulations. She presented to the Commission, the Colorado regulations and said she had full support from the Colorado equivalent to the PRC on the matter. She asked why they chose not to adopt them and the state of New Mexico chooses to adopt them. Colorado was a state like ours that depended significantly on tourism.

She asked if Mr. Herrmann or one of his staff had followed up with the Public Safety people and if they would check the federal government guidelines if there was a provision for an exception. She had heard nothing since she gave her testimony a few months ago.

Commissioner Hall said if the Commission relaxed the \$5 million requirement the Department of Public Safety would come back and make them adhere to it. The Commission was caught in the middle and the federal government didn't grant variances and he thought they had a long road to get the federal government to grant a variance.

Commissioner Howe asked Mr. Herrmann if the federal rules were adopted by statute.

Mr. Herrmann replied they were adopted by statute and the Department of Public Safety was required to enforce those regulations.

Commissioner Howe told Ms. Coffey that if the Commission were to grant her a variance it would have no effect on her. The Department of Public Safety would come back and fine or not allow her to run the bus. The only way through that was for the legislature to act to reduce the requirement. The Commission was sympathetic and he offered to sit down with her and the other tour operators to see how they could talk to local legislators about bringing this up in the next session.

Ms. Coffey said she received two variances in 2003 from the Commission and she paid for attorney's fees. Most of the companies were no longer in business and the other two operators didn't have the money for legal fees.

She appreciated Commissioner Howe's offer and would speak to the other operators. She said the Commission had to understand in order to work for her a person would need a commercial driver's license and they had to learn Santa Fe history. She said she would be in touch with the Commission.

Chairman Lyons asked if Mr. Herrmann contacted anyone in Colorado.

Mr. Herrmann said Colorado had a different take but Arizona and Texas had the same enforcement of federal regulations.

Chairman Lyons asked how Colorado could lower requirements; how they got around it. He agreed to have someone call Colorado to find out what the Commission could do to be more business friendly.

Ms. Coffey offered to provide the number for the Chairman of the Colorado Commission.

Chairman Lyons said the Commission should start being more business friendly and have less regulation to keep businesses in business.

Commissioner Howe said in defense of Mr. Herrmann, the Commission gave him specific instruction to hear the issue of why Custom Tours was unique. The Commission limited him to that and did not ask him to investigate what Colorado was doing. He would follow up and investigate how Colorado got around the requirement to see if something similar could be done in New Mexico.

Ms. Coffey said Commissioner Marks told her he felt frustrated and wanted the Commission to vote in favor of the variance. More research needed to be done before the federal regulations were adopted because she provided the Colorado rules and regulations almost a year ago.

Chairman Lyons moved to accept a variance to \$2 million from \$5 million.

The motion died for lack of a second.

Commissioner Howe moved to accept the Recommended Decision of the Hearing Officer as presented. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Hall said if the Commission could find out how Colorado did this and circumvent what the federal government says; the Commission would be the first to change their regulations.

The motion passed by a majority (3-1) voice vote. Chairman Lyons opposed the motion. So Ordered.

Chairman Lyons reminded the Commission that they should be very detailed in what they tell the

Hearing Officer or staff to do.

Mr. Herrmann said it came to him after the Final Order of the Commission denying a variance. His involvement was after the Commission ordered the re-hearing and he was given instructions that he believed he accomplished. The Commission had voted to deny the variance based on the RD presented to them at that time.

Commissioner Howe said it was very clear that the legislature was the one that stood behind the rule and for the Commission to grant the variance would put them at odds and they would be thumbing their nose at the legislature.

B. Utility Division Cases

12-00108-UT IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO FINANCE SECURITIES RELATING TO POLLUTION CONTROL BONDS, EL PASO ELECTRIC COMPANY, APPLICANT. (Bill Herrmann/Sandra Skogen) Recommended Decision & Order

Mr. Herrmann said this was similar to financing the Commission had recently with PNM. EPE asked approval to deal with two pollution control bonds; one was a Farmington pollution control bond for \$33 million that would terminate in 2032. The bond has previously been approved by Commission and EPE was given the authority to have variables rates or shorter fixed periods and they did that.

EPE would have to remarket and refinance that bond by August 1 and had the Commission's approval but they would like to have the opportunity, rather than to remarket, to refund and reissue a new pollution control bond mostly on the same terms and conditions with some critical differences.

Previously the pollution control bonds had an insurance requirement that became meaningless because the requirement would force them into a higher rate. The Farmington rate was \$79,000 a year and about \$1.4 million for the life of the bond.

A third reason to do this was the ability to extend the maturity on the pollution control bonds and generally they could get better financing than a normal bond.

The second bond was a Maricopa pollution control bond in the amount of \$59 million currently at 4.8 % and the term would end about 2040. The bond was issued at par meaning the bond could be refunded at any time without a penalty. EPE would like to refund that for the same reasons.

The Maricopa bond also had an insurance requirement which was quite a bit more than the Farmington bond of \$124,000 a year and life of \$3.5 million and if refunded EPE could get rid of the insurance requirement and extend the life to the extent possible and at a better interest rate.

Mr. Herrmann said in the supplemental testimony EPE addressed a lot of the issues well. He recognized one issue because of the condition imposed in the PNM case, and that the Commission might

also do the same with these bonds. He wanted it clear that because the Farmington bonds had to be remarketed there should be no conditions placed on that because the Commission had already approved.

He recommended the same conditions on the Maricopa bonds as the Commission put on PNM's.

Commissioner Howe asked on page 5 of the RD about removing the insurance provision where Mr. Herrmann stated that current market conditions are such that investors are requiring higher yields for debt issuances backed by insurance. He asked how that worked.

Mr. Herrmann said EPE testified that the insurance requirement was entered into a number of years ago and partly because of the investment grade and in order to get the bonds accepted they would need an insurance requirement. After 2008 if something were to happen the insurance company could not pay off the bonds so it was worthless. The investors basically said if they remarket the bonds they would actually require a higher yield than if EPE didn't have insurance. The testimony was that after 2008 the company was in trouble with a financial meltdown.

Commissioner Howe confirmed the credit rating of the company was high enough that they could sell the bonds and still get a higher rate at or below what they were now getting. Mr. Herrmann agreed.

Commissioner Hall asked if the insurance company had accepted payments knowing the insurance was worthless and if EPE could get their money back.

Mr. Herrmann said that was why EPE wanted to re-fund the bonds because otherwise they couldn't get rid of the terms. They would have to continue to pay the premium or they would have been in violation of the terms.

Commissioner Becenti-Aguilar asked when EPE learned about the difficulties with the insurance company.

Mr. Herrmann said it was sometime after 2008.

Commissioner Becenti-Aguilar thought EPE needed to inform the Commission that they wanted to get a refund and a new finance process in place.

Mr. Herrmann explained that they couldn't remarket the Farmington bonds until August and other bonds that can't be remarketed or financed at this time because of the terms on those.

Chairman Lyons confirmed they couldn't do anything until August first.

Commissioner Howe asked if EPE was refunding the Maricopa bonds and reissuing.

Mr. Herrmann said there were no set terms on the Maricopa bonds and they could reissue when market conditions were right. They didn't have to refund the bonds but would like to have the opportunity.

Commissioner Howe asked if it was fair testimony that they weren't going to risk the tax exemption of the pollution control bonds by refunding and reissuing. He said this was really an extension of the bonds in place since 1986.

Mr. Herrmann said the terms and conditions would remain the same; as long as they refund they could continue to get the tax benefits as well.

Commissioner Howe asked if there was a possibility when they come back to the Commission that there was reasonable assurance the tax exemption would not be threatened.

Mr. Herrmann said EPE cited the IRS requirements and the bonds had been extended and reissued in a number of proceedings before.

Commissioner Howe said they were basically just refinancing the existing bonds.

Mr. Herrmann said EPE was not changing the principal of the bond and basically doing the same as PNM and refinancing. Commissioner Howe would see in the RD and testimony they had half dozen proceedings requests that had been done in the last few years.

Commissioner Marks joined the meeting telephonically.

Ms. Skogen was at the meeting to present the one exception. As a preliminary matter EPE filed a motion and the order she prepared would grant that motion so they could consider the exception EPE filed. She said the exception dealt with the exception the HE included with regard to Maricopa bonds.

She paraphrased the condition that EPE was authorized to issue those bonds subject to the conditions for rate purposes and cost of debt, including interest and that other expenses shall not exceed the cost of debt of the current bonds.

She said Mr. Herrmann explained why those conditions were just imposed on the Maricopa Bonds and the conditions were similar to those imposed on PNM. EPE took exception and said this was the first time the Commission had opposed that kind of position on their financing.

Ms. Skogen said that argument was persuasive since they recently had a similar case and in 2008 reissued bonds but the case was somewhat different. In this last four years the Commission had established a rate making treatment of the costs. EPE also said they hadn't asked for rate making treatment but in her opinion it was better to let them know what the Commission's was now so they could make an informed decision.

EPE also argued the position created a disincentive against a variable rate option and make them less favorable. The Commission had ruled in the past that it was not appropriate to make ratepayers take on that risk.

Ms. Skogen said as an aside that the fixed rates did present a favorable option and currently were paying under 4.8% which was still less than what EPE was paying now.

She said that EPE also argued staff didn't request the condition and the HE finding specifically in support of the condition. And as Mr. Herrmann indicated, he recognized that the Commission might impose these conditions. She recommended that the Commission continue to impose those conditions since it had been their policy.

If the Commission did, she said EPE would request a modification. EPE could request recovery of such costs in a future rate making proceeding wherein they would have the burden of proof. In her opinion that modification wouldn't add anything except ambiguity and if the Commission put that language in, could imply that the Commission reserved the right to change its mind.

She recommended denial of the exception and to adopt the HE's RD but with an amendment she composed and included in her memo and in the Order and the change was, "... including interest and insurance expense of the current bonds." She said this change recognized one of the main drivers EPE had to get rid of the insurance expense.

She since noted another change would be helpful for the sake of clarity at the end of both of the conditions. The term "*current bonds*" was used and she would change that to "the current Maricopa PCBs."

Ms. Skogen suggested a change to the Order on page 5 of 7 in paragraph E at the bottom to make it clear; if the Commission imposed the conditions, that the language say "the following conditions as modified below are adopted, approved and accepted."

Commissioner Marks asked about the second change to specify the Maricopa bond that it was equivalent to saying the bond was being refinanced.

Ms. Skogen said her concern with the language was the term "current bond" and she wanted to be clear what bonds they were talking about.

Commissioner Marks asked Ms. Skogen if she was saying that the financing was both the Farmington and the Maricopa bonds.

Ms. Skogen said the conditions only applied to the Maricopa bonds. The Farmington bonds were callable on August 1 and there was no option involved and EPE must deal with them.

Commissioner Marks asked if callable by bond holders what the term of the Farmington bonds was.

Ms. Skogen clarified that the term would expire many years from now but the current interest rate term would expire August first.

Mr. Herrmann explained that they were not *callable* on August 1, but were due on August 1 and must be remarketed by then. He said in this proceeding they were asking instead of remarketing the bonds to be able to refund them to get rid of some of the previous terms such as the insurance requirement.

Commissioner Marks moved to adopt the Order as presented by General Counsel with the modifications proposed. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) vote. So Ordered.

Commissioner Marks excused himself from the meeting after this vote.

**11-00089-UT IN THE MATTER OF INDIAN HILLS WATERWORKS' ADVICE NOTICE NO. 5, INDIAN HILLS WATERWORKS, INC., APPLICANT.
(Carolyn Glick/Margaret Caffey-Moquin) Recommended Decision & Order**

Commissioner Becenti-Aguilar said she received an e-mail that Ms. Caffey-Moquin wouldn't get to the case until next week and asked what the procedure would be today.

Ms. Caffey-Moquin said that Ms. Glick would present her RD only and any discussion of the exceptions would be reserved until next week when she would present those with her recommended Final Order

Commissioner Becenti-Aguilar said the Commission had the option to move the case until Ms. Caffey-Moquin was prepared and asked that the Commission consider that.

Mr. Parker said a previous request was made to move the case to next week and they were able to send people but there was someone else who wanted to be present but couldn't be. He thought if the Commission moved the case to next week it would be good for everyone.

Commissioner Becenti-Aguilar said she would have a better understanding of the details of the RD when the HE had the opportunity followed by any exceptions and Counsel recommendations.

Commissioner Becenti-Aguilar moved to table case 11-00089-UT until Thursday of the following week. Commissioner Howe seconded the motion and it passed by unanimous (4-0) voice vote. (Commissioner Marks was not present for the vote).

**11-00385-UT IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO SECTION 12 OF RULE 17.9.560 NMAC, SERVICE STANDARDS FOR ELECTRIC UTILITIES
(Rick Blumenfeld) Order**

Mr. Blumenfeld said a public hearing was scheduled on June 6 and was announced March 22. The New Mexico Gas Company had asked that the hearing be moved because it's Counsel and regulatory personnel were not available until after June 11.

This would require the notice of the hearing to be reissued to about 60 people and notice by regular mail to about 60 more. Angel Perez and the Coop filed comments on the NOPR but their position was not stated in the motion.

Mr. Blumenfeld recommended the Commission not move this. The gas company could provide another attorney and they had filed written comments on the record that would be open until a month after the June 6 hearing.

No legal authority was cited to move the hearing and in addition before the NOPR was issued they filed five e-mails in the document from the City of Carlsbad, private citizens on issues related to back billing. They were not consulted about moving the public hearing and people have known since March 2 about the hearing and the gas company was capable of being represented.

Commissioner Hall agreed.

Chairman Lyons added that if postponed they couldn't be sure others would be available.

John Fernald, New Mexico Gas Company, said one of the regulatory leads was on vacation and the other was the attorney on the case and was well versed in consumer affairs and had taken part in all of the previous rulemaking issues. They would like to have him there with them.

Chairman Lyons asked about Tom Olson.

Mr. Fernald said he was very busy and also had many issues and was handling the February outage. He was certain they could have an attorney present if that was the Commission's choosing; they were only asking for a five day extension.

Commissioner Howe moved to accept the Order as is, and keep the date of June 6, 2012. Chairman Lyons seconded the motion and it passed by unanimous (4-0) voice vote. Commissioner Marks was not present for the vote. So Ordered.

11-00400-UT IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR APPROVAL OF ITS (A) 2012 ENERGY EFFICIENCY AND LOAD MANAGEMENT PLAN AND ASSOCIATED PROGRAMS; (B) COST RECOVERY TARIFF RIDER; AND (C) REQUESTED VARIANCE. (Rick Blumenfeld) Order

Mr. Blumenfeld said they were to hear from the SPS folks.

Chairman Lyons said they did get something. He asked if there was anyone on the phone for Excel.

Mr. Sean White was on the phone. Mr. Jeff Fornacieri, representing Excel, introduced himself and Mr. Michael Booth, who prepared the exhibit the Commission had and was prepared to explain what the exhibit showed and answer questions.

Mr. Fornacieri pointed out a typo in the first line below the table that should read "the baseline for recovery of the 2012 energy efficiency spending was 8.41."

Mr. Booth understood there was question of why they wanted an increase in the charge when they were requesting less recovery than what they were asking for in budget approval of \$9 million. The reason was an abundance of caution. He didn't want to get into forecasting what the over recovery might be.

The proposed rider was \$8.4 million of annual recovery and the resulting rates. The rate was reduced on January 1, 2012 and the net was \$6.9 million as a result of \$8.4 million minus over recovery he estimated that \$1.5 million equaled annual recovery.

The revised version of the table had the over recovery balance through April. He developed rates based on the annual recovery for energy efficiency netted against the current recovery balance and the result was about \$ 5.8 million in annual recovery. They now showed a reduction in the rate and the May report would be available the first part of June.

Mr. Booth wanted to show the program costs in developing rates and didn't want to get into estimating. The second page was similar to the HE stipulation. He updated the current monthly bill to reflect the May 2012 Fuel and Purchase Power Adjustment Clause and the bills were slightly lower than in the original version. There was a change in the monthly efficiency charge and approximately 1/2% reduction in the total bill for various customer classes.

Mr. Blumenfeld said Mr. Booth referred to that on the first page as \$8.4 million in estimated EE spending. He asked what happened to the \$9.9 million and what happens to the \$1.5 million.

Mr. Booth said they would endeavor to spend that amount and would need that to reach their energy efficiency targets. They also recognized there was an over recovery and to avoid significant over recovery by the end of the year they were asking for a baseline recovery amount of \$8.4 million but authorization to spend up to \$9.98 million in the budget in order to reach their energy efficiency goals.

He said to the extent a customer might need to participate through his or her own funds, and that it takes a while to get programs up and moving, there was a startup period so spending was lower in the early part of the year. Another factor was in the early part of the year in the calculation he considered large customers capped annually billing 75,000 hours per year and that accounted for about 20% of the KWH sales per year.

He said at the end of the year the customers were not paying because they were capped at 75,000 hours and the recovery dwindled toward the end of the year and over recovery reversed and diminished over the course of the year.

Mr. Blumenfeld confirmed he was still recommending a budget of \$9.9 million.

Commissioner Howe wasn't clear on the \$8.4 million and how it was relevant.

Mr. Booth said consistent with previous practice he would have developed rates based on \$9.9 million of expenditures. He was recognizing the rates currently in effect and maintaining that through filing of the conclusion of this case. It was approximately a 3% increase over what was actually spent the previous year in energy efficiency.

Commissioner Howe noted that \$8.4 million was what the Commission authorized and Excel reduced that.

Mr. Booth clarified his definition of "authorized" and said that was the basis for recovery.

Commissioner Howe said they indicated they wanted to reduce it because they were not going to meet that budget. He asked if they were saying they were still over recovering at \$8.4 million.

Mr. Booth explained they were trying to avoid over recovery toward the end of the year and this was an effort to make it smaller.

Commissioner Howe asked if they had chronically over recovered whether it called into question the \$9.9 million.

Mr. Booth said they didn't want to box themselves in. They would like to go up to \$9.9 million in an effort to reach their energy efficiency targets. The reason for the \$ 8.4 million as recovery was that they were trying to provide less impact to the customer's bills for spending, but it just hadn't happened.

Commissioner Howe asked if their marketing people were chronically over optimistic.

Mr. White said the budget forecast was based on available information. Also they constantly looked for opportunities to reduce costs and assumed a certain rebate amount would occur for a project size. They renegotiated contracts and in the last couple of years had been able to operate more efficiently than originally estimated. If they weren't expending the funds with customer projects they would not expend the money.

Commissioner Howe asked if interest was accrued on over collection and paid back to the customer and what the interest rate was.

Mr. Booth said it was less than 1%.

Commissioner Howe confirmed the amounts include accrued interest on over collection.

Commissioner Hall said over collection from December 2011 to April 2012 was up to \$2.5 million. He asked if the over recovery would continue at that rate. Over recovering that much meant their budget was too high to start with and they were collecting more than they were spending.

Mr. Booth said typically they were not able to spend in the early part of the year what they did at the end of the year. The rates developed were based on year round rates and an average amount was collected each month and toward the end of the year the spending occurred. In 2011 their peak over recovery in October was \$2.8 million and by December it was down to a million.

Commissioner Hall thought the problem was that they didn't spend the allotted amount but they still collected the amount. He thought the budget was set too high; or the aspirations were set too high.

Mr. Booth said they wouldn't be recovering based on the annual amount of \$8.4 but on the \$5.8 million.

Mr. Fornacieri clarified that there were two different things they were dealing with; the rate essentially resulted in revenue to them and costs to rate payers and secondly the budget for the energy efficiency programs which was a different amount. Basically the \$9.9 million was what they were shooting for to reach the targeted goals in the statute for 2014.

Commissioner Hall thought they were over projecting what they would accomplish in the energy efficiency program.

Mr. Fornacieri said the startup was slower and at the end of the year it was heavier and it would take time to get momentum in the programs to develop and as they matured they would get more success. There were a lot of moving parts.

Commissioner Howe noted the over collection increased by \$1 million in the first four months and it wouldn't continue at that rate because those were heating months.

Mr. Booth couldn't guarantee they would spend the money but based on previous year's spending on energy efficiency, it would pick up toward the end of the year. It would begin to reverse.

Commissioner Hall wasn't sure how the cooling cycle would affect the difference in the over collection or under collection.

Mr. Booth commented that people were thinking of cooling improvements this time of the year more than in January and could be more interested in participating in the cooling efficiency programs.

Mr. White said what picked up over the summer months and to the end of the year were the energy efficiency expenditures. The construction season was key to the customers' implementation of the projects that had been identified. Typically they saw a lift in the second half of the year as customers submitted their rebates and the rebates picked up through the second half of the year.

Commissioner Hall thought over the summer months the over collection should go down.

Mr. Booth pointed out the certification stipulation and asked them to provide quarterly updates to the staff on their status of recovery which they hadn't done that in the past.

Chairman Lyons confirmed the target rate of 5% for 2015. He asked what the actual expenses were in 2010 and 2011.

Mr. Booth clarified that 2014 was the target of 5%. He said the actual spent in 2011 was \$8.1 million.

Chairman Lyons saw a budget for \$8.9 was put in and would be \$800,000 over collected. He asked why that was so high. The actual expenses were \$8.1 million and they were supposed to expend \$8.9 and

there was an over collection. They over collected \$1.4 million. He asked if Mr. Booth shouldn't develop the rates off of the actual over collection.

Mr. Booth said he wanted to estimate in December because he was aware spending would be accounted for in the previous months so there was a million dollars of over recovery at the end of December. In November he estimated approximately \$1.5 million. If he had done rates based on the actual rates from December the rates would have been slightly higher. The \$8.9 million was for the whole year and it was about 10% over recovery. He based the rates on recoverable amounts of \$9.8 million in 2011 and from January through March of \$6.2 million and when merged should be about \$8.5 million.

Chairman Lyons asked why he wouldn't estimate on \$8.1 million if that was what he spent. He didn't understand how Mr. Booth came up with the over recovery.

Mr. Booth said two riders were in effect. One was approved in 2010 with a recovery of \$7.8 million and the 2011 plan was approved to go into effect 2011 and that was \$10.8 million dollars of program expenditures.

Mr. White said the Commission authorized \$10.8 last year.

Chairman Lyons asked if the Commission authorized \$10.8 up from \$7.9 million in one year. That was why he wanted the actual expenditures for 2010 and 2011 and the actual projected expenditures for 2012.

Mr. White said the program expenditures for 2010 were \$6.6 million. For 2011 they had not filed their annual status report and the projected expenditures for the calendar year that ended December 31.

Chairman Lyons asked if he had the actual expenditures for 2011.

Mr. White said they had the actual expenditures for 2011 but had not filed them with the Commission.

Chairman Lyons said they budgeted \$7.9 for 2010 and spent for \$6.6 for the calendar year 2010. He asked about the deadline.

Mr. Blumenfeld said there was no statutory deadline.

Mr. Fornacieri said the longer it took to get this approved the more likely the program situation would be delayed and not able to move toward any statutory target. They projected 2% for 2010. It was 5% of 2005 retail sales in New Mexico and basically the projection was 2% in 2010, 3% in 2011.

Chairman Lyons recalled that Commissioner Howe pointed out months ago that Excel was grabbing all the low hanging fruit to start with for energy efficiency, but after that he wasn't sure how they could possibly reach 10% by 2014.

Mr. Fornacieri said it was 2% for 2011 and they were projecting 3% for 2012.

Chairman Lyons asked if Excel met the 2% requirement for 2011.

Mr. White agreed – they met the savings targets in 2011. They spent just over \$8 million in 2011.

Chairman Lyons asked how much growth they had. They would have to have \$20 million savings by 2014.

Commissioner Howe said the problem was that the Commission didn't know what they were actually approving. He wanted to see the Commission approve something because it would result in an immediate decrease to the consumer. They needed to act relatively quickly, but the Commission didn't even know what the numbers were.

It would help him to understand the difference between the budget and the actual collection if Excel could go back to when they started the energy efficiency programs (2008.) Excel should tell the Commission from 2008 what the budget was and what they received so the Commission could see how the tariff affected what they spent.

Mr. Booth said that was where there was a disconnect in some of the numbers reported between what Mr. White reported and what he reported. Excel didn't have authorization to spend on the programs until the Commission approved them and typically that occurred in March or April of the succeeding year. As a result they were not really measuring the same time period.

Commissioner Howe asked if Excel continued last year's program until the Commission authorized a new one. Mr. White agreed.

Commissioner Howe understood - it really wasn't a calendar year. Excel continued to spend money under the 2011 program and accumulating expense and costs.

Commissioner Hall asked if they had spent all of the 2011 money. He asked if Excel overspent what was authorized or if they still had the money in the bank. The program wouldn't go downhill just because the Commission didn't authorize the budget today. As long as the Commission approved it before they ran out of 2011 money, Excel would be okay.

Commissioner Howe moved to table the discussion and have Excel come back next week and show a table from the start of their rider to current on an annual basis of their budget, what they actually collected, how that was reconciled and how they got to the current rider level that matches with their actual budget. The motion was seconded later.

Mr. Booth said he prorated certain calendar years and i.e. if approved in 2008 in June the 2008 programs were about seven months in 2008 and the budget would be about \$700,000...

Commissioner Howe clarified the program year wasn't really a calendar year; it was from the date approved until the next year and was usually April through March. It might be more helpful to see this on a program year basis rather than a calendar year.

Commissioner Hall said the Commission authorized the spending from that date for one year forward and Excel could tell them how much they expended in that time frame instead of January to January.

Chairman Lyons countered that the estimate for the actual figures Mr. Booth gave were actually for accounting purposes from January first to December 31st.

Commissioner Howe suggested it should be presented in both calendar and program year. He didn't understand how the numbers were flowing and how they got from \$2.5 million to \$6 million of over recovery. He thought it was built up over several years because they hadn't met their budget for several years.

Mr. Booth was hesitant to say they hadn't met their budget because they had met their energy efficiency targets for 2011.

Commissioner Howe asked on the \$2.6 million in over recovery as of the end of April if it was not specifically for the 2011 programming year but the accumulated over recovery to date. It could include 2010, 2009, etc.

Mr. Booth agreed it had gone up and down.

Commissioner Howe thought that was where the Commission was getting tripped up.

Mr. Fornacieri asked if that wasn't reset by virtue of changing the rider.

Mr. Booth recollected they got fairly close and maybe were even in the under recovery situation. Excel never got it to zero and thought that would be impossible (to match the rider with expenditures). It hadn't consistently grown and the \$8.4 million was their attempt to recognize that the spending hadn't always reached budget levels. They didn't want to recover that money until they felt they were in a position to ask for an adjustment in rates.

Commissioner Becenti-Aguilar felt it was important to show the history of the over recovery and Excel needed to explain whether they were using calendar year or program year. The Commission was having a difficult time understanding what they were explaining. It was more confusing that what Mr. White and Mr. Booth provided were different amounts. She agreed there needed to be a better structure explaining where the energy budget stood, where it was in 2008 and where it was today.

Mr. Booth said they could do that. Also when they reported on program years, some years might be 13 or 14 months worth of expenditures and some only 10 months. He hoped that wouldn't introduce more confusion.

Commissioner Becenti-Aguilar said the Commission had to understand the facts and when they voted.

Commissioner Howe said they should present a calendar year table that started when the rider started and showed expenditures of the budget, expenditures and recoveries and the carry over to the next year. They also should indicate when the rider level was reset and the effect that would have going forward.

Commissioner Becenti-Aguilar asked that the information requested be channeled through the General Counsel's office a couple of days prior so the Commissioners could review it.

Mr. Fornacieri asked if the Commission wanted that information to be presented next Thursday.

Commissioner Becenti-Aguilar said it depended on when Excel had the requested information and submitted it to the General Counsel's office and put on the agenda.

Commissioner Hall seconded Commissioner Howe's motion to table the item until next week.

Commissioner Howe asked if Excel could get the information by Tuesday to get on the Thursday agenda.

Chairman Lyons asked how much they would have to spend to get to 3% in 2012.

Mr. Fornacieri said it was \$9.9 million to get the 3%.

Mr. White said the rate was accelerated as they moved toward the 2014 goal and the goal was higher than what was achieved in 2011 and would be higher than 3%.

Chairman Lyons said in 2011 they asked for \$8.9 million and the target and he needed to be 8 million. He asked why they asked for \$8.9 million. Mr. White had said it wasn't 2% and he asked what 3% would be to reach that goal.

Mr. White said they spent \$8 million in 2011 to get 37 GW hours of savings and they were asking for \$9.9 million to get over 40 GW hours. He didn't have the percent of sales.

Mr. Fornacieri said he would provide the answer with their presentation.

Chairman Lyons didn't like over budgeting and wanted to budget 3%.

Commissioner Hall asked if the \$9.9 million would be 3%

Commissioner Howe asked that Excel also show what the targets were in terms of percent and gigawatt hours etc. for 2012, 2013 and 2014.

The motion to table this matter until next week passed by unanimous (4-0) voice vote. Commissioner Marks was not present for the vote.

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

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

9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA

There were no communications with Chief of Staff.

10. COMMUNICATIONS WITH COMMISSIONERS

Mr. Parker said on Tuesday he would make a court appearance in Las Cruces on the Picacho Hills matter and Commissioner Hall and Patrick Lopez would be with him. They would meet with the Receiver and the Receiver's attorney to see if they could move things along. He has had conversations on the phone but everyone would be there for the hearing and it was a good opportunity to try to get things moving.

Commissioner Hall said the hearing was in front of Judge Martin. It would be a good time for everyone to get together in one place and he and Mr. Parker concluded that the Receiver wasn't moving forward fast enough to get rid of the property and thought they could work out a better solution to the problem of selling the property.

He said the problem was over 2250 acre-feet of water rights with the property and only 400 and some were dedicated to Picacho Hills and left 1700 acre feet of water rights dangling. No one knew who could do what with it. He said it makes a lot of difference in the price and if the water rights could be sold the property would be worth \$20 million and if not it could be worth \$1.5 million.

Chairman Lyons said the Indian Hills water rights case on Thursday was going down same path.

Chairman Lyons said his communication was that last year at this time there was a Western Conference for utility regulators in Denver and four of them went. He asked if anyone was going to the Oregon meeting and if Commissioner Marks was going they would need a notice of quorum and if he was they might need to cancel a meeting.

He asked Mr. Montoya to check with Commissioner Marks.

Commissioner Becenti-Aguilar asked Mr. Parker when the Commission canceled meetings if there was a procedure to have another meeting and to set up another time to make that up. She knew they would cancel a meeting for the July 4 holiday.

Mr. Parker said the Commission could cancel meetings without any consequence and the Commission decided to meet twice a week but they didn't have to. If a case was due out with a statutory deadline he would inform them and would make sure there was not one due. There was no legal issue.

Chairman Lyons learned that Commissioner Marks would not be going and said the June 12 meeting date would not be canceled.

11. ADJOURNMENT

Commissioner Hall moved to adjourn the meeting. Commissioner Howe seconded the motion and it passed by unanimous voice vote.

The meeting adjourned at 11:42 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



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday, May 31, 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 ANNOUNCEMENT
4. CONSIDERATION AND APPROVAL OF THE AGENDA
5. CONSIDERATION AND APPROVAL OF MINUTES
 - Minutes of the Regular Open Meeting of May 15, 2012
 - Minutes of the Regular Open Meeting of May 22, 2012
6. PUBLIC COMMENT
7. DISCUSSION/REGULAR ACTION

A. Transportation Division

09-00420-TR-M Bill Herrmann	IN THE MATTER OF A REQUEST FOR A VARIANCE FROM MINIMUM INSURANCE LIMIT, CUSTOM TOURS BY CLARICE, INC., APPLICANT. Recommended Decision
--------------------------------	--

B. Utility Division

12-00108-UT Bill Herrmann Sandra Skogen	IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO FINANCE SECURITIES RELATING TO POLLUTION CONTROL BONDS, EL PASO ELECTRIC COMPANY, APPLICANT. Recommended Decision & Order
11-00089-UT Carolyn Glick Margaret Caffey-Moquin	IN THE MATTER OF INDIAN HILLS WATERWORKS' ADVICE NOTICE NO. 5, INDIAN HILLS WATERWORKS, INC., APPLICANT. Recommended Decision & Order
11-00385-UT Rick Blumenfeld	IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO SECTION 12 OF RULE 17.9.560 NMAC, SERVICE STANDARDS FOR ELECTRIC UTILITIES Order
11-00400-UT Rick Blumenfeld	IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR APPROVAL OF ITS (A) 2012 ENERGY EFFICIENCY AND LOAD MANAGEMENT PLAN AND ASSOCIATED PROGRAMS; (B) COST RECOVERY TARIFF RIDER; AND (C) REQUESTED VARIANCE. Order

8. COMMUNICATIONS WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER
9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA
10. COMMUNICATIONS WITH COMMISSIONERS
11. 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.