

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
June 14, 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 Douglas J. Howe

Members Absent:

Commissioner Ben L. Hall

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Deputy Chief of Staff for Legal Affairs
Margaret Caffey-Moquin, Associate General Counsel
David Barton, Insurance Division Counsel
Roy Stephenson, Utility Division Director
Mark Cessarich, Telecommunications Bureau
Patrick López, Legal Division Director
Marc Martínez, Legal 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

Mr. Parker introduced Mr. Michael Smith as the new OGC attorney coming from John Wheeler and Associates in Alamogordo.

Ms. Sakya introduced a new lobbyist Mr. Varney Brandt for SPS.

Ms. Armenta introduced Mr. Jeff Lindsey as CenturyLink's new Regional Vice President for the western region.

3. MISCELLANEOUS ANNOUNCEMENTS

- **Recognition of Employee of the Month of May**

Ms. Ashley Hernandez was introduced as employee of the month.

Chairman Lyons read her certificate and congratulated her on the recognition.

Mr. Bishop took pictures as the Commission congratulated her.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Howe 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 17, 2012
- Minutes of the Regular Open Meeting of May 29, 2012
- Minutes of the Regular Open Meeting of May 31, 2012

Commissioner Howe moved to approve the minutes of May 17, 2012, May 29, 2012 and May 31, 2012 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote.

6. PUBLIC COMMENT

There were no comments from the public.

7. PRESENTATION: CENTURY LINK/WINDSTREAM FCC USF CONNECT AMERICA FUND

Mr. Bill Garcia from Windstream and Mr. Jeff Lindsey from CenturyLink made the presentation and handed out a printed Power Point.

Mr. Garcia said their positions were in alignment so we decided to present together and stand for questions.

Mr. Lindsey said they wanted to implement the national broadband plan. This sets it in motion and the complex Intercarrier Compensation System. The FCC set up a reasonable transition period. The FCC order made many statements but there were many unanswered questions regarding funding and timing established in the order.

A key component to establish a sufficient funding for broadband implementation was CAF - Connect America Fund. The FCC also established a cap phase where they set aside \$300 million for price cap carriers to jump start broadband development. CenturyLink would get about \$90 million of that \$300 million. Mr. Garcia said the Windstream allocation was \$60 million.

Commissioner Marks asked if that was a one-time grant out of the total US USF.

Mr. Lindsey said it was annual until Cap 2 stood up and probably would take two years. It could change. The total US USF balance was about \$9 billion. This was done out of the existing USF but there were some conditions on the spending of that amount. So CenturyLink was accepting less than \$90 million. They would continue to work closely with FCC on interpretation of the language. If there were waivers they wanted to make use of them if possible.

Mr. Garcia said Windstream was in similar situation. It would be hard to use it all due to their previous success in deployment. \$775 was not enough to close some of the gaps.

Commissioner Marks said they weren't talking about places with competitive status.

Mr. Lindsey agreed. That was the intent of the order and a main reason why CenturyLink was struggling to meet the \$90 million because the further you deploy the costs get higher. Once across the \$775 limit it was harder.

Commissioner Becenti-Aguilar said delivering broadband to northwestern New Mexico was a huge struggle. She had heard about multiple outages in the Jemez area in a day. The infrastructure in place was inadequate and they needed to focus on that.

Mr. Lindsey said the FCC wanted to move money to unserved areas. The map of the US showed where fixed wireless carriers had submitted proposals. CenturyLink could use some of that money and fixed wireless didn't have the capability in those areas. The FCC was trying to find the right balance.

Commissioner Marks thought carriers were reporting more coverage than they had. There were pockets in CenturyLink's area that were not covered.

Mr. Lindsey didn't disagree but it was closer than with fixed wireless carriers. It was a complicated thing to do.

There were two factors on the \$90 million allocation. One was the \$775 per location limit and the other was the fixed wireless issue which was the biggest one.

Chairman Lyons asked how much CenturyLink was spending in New Mexico.

Mr. Lindsey said they were now analyzing that and would spend as much as possible. They would know in less than 60 days.

Mr. Garcia said it was about the same for Windstream. They wanted to determine what locations they could do for that rate.

Mr. Lindsey said unspent money would revert to FCC and they would determine the uses for it.

Commissioner Marks questioned continuing the monopoly model for voice.

Mr. Lindsey said Cap 1 was temporary and transitional and Cap 2 had an option for open bid process. They sacrificed that in order to jump start the effort. The ILECs would have an opportunity to exercise the fees and that would be an open bid. But the FCC didn't say how it would work. It was a big challenge.

Mr. Garcia agreed the big challenge was what was going to happen with Cap 2. He thought they were a year or more away before Cap 2 would be implemented. Their job now was to work through Cap 1.

Mr. Lindsey said the FCC was attempting (and this was fundamentally new) to look at the wire centers. The red on his graph showed the higher competition area and the FCC wouldn't provide funding for those. The white areas were not super high cost. Those would be the areas where funding was directed. So it would be much more targeted. The blue areas had a small rate of return. With \$9 billion there was a limit to what they could fund. So it wasn't know if the FCC would fund those blue areas and difficult in drawing the lines to determine if there was competition or sufficiently high funding. The blue areas were set aside for satellite. It was much different than historically determined.

The key take away for state commissions was to work with the FCC to hold their feet to the fire to make

sure funding was sufficient. CenturyLink was putting all eggs in the CAF basket and if it proved insufficient in certain areas, it was up to the state to figure out how to cover it.

Commissioner Becenti-Aguilar noted that some people had requested telephone service - some as much as ten years ago. She asked how that was measured.

Mr. Lindsey said that was what the policy was working toward. There was very little funding for that situation. They should be in the white and blue areas that receive funding for that area. It should be a much more effective system. Hopefully they could get to a policy that worked better.

Mr. Garcia said it was a good question. The areas she raised were carrier's obligations that were offset by costs to the carrier. There were ROW issues, federal or tribal land access and those costs often exceeded the benefit to the ten or twenty people who would be served. With Cap 2 the opportunity was better to address those remote areas. Costs of deployment had to be recognized. He had worked for years negotiating with BLM and Zia Pueblo to get those ROW issues settled. He couldn't change the laws. There was just a lot of bureaucracy there. There was a limit to the obstacles the company could overcome.

Commissioner Becenti-Aguilar felt Windstream had been very cooperative but there were communication problems with CenturyLink. That was some of what she would focus on while she was on the Commission. She didn't want to hear that ROW was a challenge. She asked how CenturyLink was communicating with BIA. CenturyLink had never come to her office to say how they were working on those issues. She would continue to focus on southwest Gallup where a lot of people were unhappy with CenturyLink. How you turn in the numbers and do the surveys was very important. Graduate UNM students were doing surveys so she didn't know why CenturyLink couldn't do that too. She understood there were some violations and wanted Mr. Lindsey, to know about them. Constituents were taking a more proactive approach.

Mr. Lindsey thanked her for the feedback and promised they would work to improve their relationship with them and would follow up himself.

Mr. Lindsey continued his presentation on page 5. The funding was for both broadband and voice which meant that areas not receiving funding wouldn't have the voice funding either in the future. Over the next several years these questions would be addressed. The state USF was a great opportunity for voice funding.

Commissioner Marks asked if people were in an area and needed phone service they would get it. There were all kinds of reason why phone service wasn't delivered to those who needed it.

Mr. Lindsey understood and appreciated that. They would love to build a system to make the service economically viable for them.

Commissioner Marks believed federal support going down and service revenue were reasons why CenturyLink was laying the groundwork for increasing state USF surcharges.

Mr. Lindsey said the subsidy options of the past interfered with subsidy rates by the FCC. The carrier could not be relied upon to provide all funding for those areas where competition existed.

In competitive areas they should have competitive equality but where no competition existed they could not get the money to deliver the services. That was what the FCC was trying to solve.

Commissioner Marks explained that many people had paid into USF and most of it went into capital improvements. They got subsidized fiber all over the place. But he questioned the need to subsidize the companies just because they were there.

Mr. Lindsey said the FCC was trying to set up funds for an area with a reverse auction process. The interest of CenturyLink and others was to have the FCC do what they promised - to make sure the FCC didn't produce a model that wouldn't work for New Mexico.

He said the CAF was about areas and not about companies. It was a line of funding and obligations for a healthy system. It was transitional and complicated and would create a lot of work for the states. If the FCC failed, the rural customers would be most hit. The money was provided regardless of who served the area. The FCC didn't address USF collections in this area and we need to make sure it was adequate.

The actions New Mexico policy makers needed to make to get their fair share were to work with fellow states and the FCC. CenturyLink believed once through the transition they would judge it by how well it provided subsidy to those areas needing it most.

Mr. Garcia said the transition was like the "no child left behind act." They would have to see how the funding mechanisms would work in Cap 2. And if there were future gaps, how they would be addressed.

Mr. Lindsey agreed and thanked them for the opportunity to address this body. A lot of shifts were occurring but CenturyLink believed the FCC framework could make it better. He also looked forward to continuing dialog with the PRC.

Commissioner Becenti-Aguilar said she was going to work diligently with her staff and wouldn't tolerate her constituents asking for assistance and not getting it. They needed basic phone service. To date she hadn't seen that plan to cover New Mexico and especially southwest Gallup. She wanted to have field visits and invite residents to come and have their frustrations heard. The FCC was a good start and she was very interested to make sure it was fair. She was very frustrated and it was high on her priority list.

Chairman Lyons thanked them for a good presentation.

8. DISCUSSION/REGULAR ACTION

A. Utility Division

**11-0466-UT WESTERN WATER AND POWER PRODUCTION LIMITED, LLC, COMPLAINANT,
v.
PUBLIC SERVICE COMPANY OF NEW MEXICO, RESPONDENT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin said this would be an April ruling by the Federal Energy Commission that Western Water have access to relevant markets for its proposed output. In May 17 FERC issued a ruling rejecting PNM's application without prejudice that they failed to provide a complete list of eligible providers and they would resubmit a list. FERC provided three months to do that. And in the interim the PRC case was stayed.

The Commission provided for responses to be filed as well. The position statement and responses were made on the merits. She had a procedural order that would set the case for further proceeding at the Commission. WRA and CCAE filed a brief statement in support of PNM's desire to reinstate.

The Commission could be affected by the forthcoming FERC order and PNM filed a supplemental motion that Western Power have a petition before the California Utility Commission.

The order would find that the case should proceed despite the parallel proceedings in different venues because it would clarify the issues. She didn't know how the Commission wished to proceed but this was her recommendation. She would reinstate if that was the Commission's decision.

Commissioner Howe asked if this facility was built.

Ms. Caffey-Moquin said it wasn't.

Commissioner Howe thought it seemed to be a Catch 22. If rule 570 applied and federal rule 292 applied they were in conflict. So he asked if the Commission would hear it under the PRC rule or the federal rule.

Ms. Caffey-Moquin didn't have a recommendation for that but agreed it should be sorted out. The federal rule would prevail where it conflicted with the Commission's rule. The Commission could take administrative notice.

There was another related proceeding - PNM's case. They argued that the issues in this case should be put in that case. She didn't recommend that because of the statutory deadline here. They were issues of law that would require a separate and thorough consideration by the Commission.

Commissioner Howe probably agreed with that because he didn't see that the renewable energy case would settle this one. Only FERC could determine if they were exempt.

Commissioner Marks said Western was arguing because they wanted to interconnect. The federal rules controlled because they were making that request before PNM had received FERC determination that there was a market. Others coming later could be handled differently.

Commissioner Howe asked if Western was complaining that PNM would not interconnect or would not buy their power.

Commissioner Marks thought it was not to purchase power.

Commissioner Howe pointed out that Rule 570 said there was clearly an obligation to purchase but

there was no obligation to provide a contract.

Commissioner Marks agreed but the contract was what Western was arguing. That was part of the question before the Commission. It would be easier if this was built and could say to PNM to give them a check for the avoided costs. It was further complicated by demanding a contract. Maybe it was a declaratory order they were seeking.

Ms. Caffey-Moquin agreed.

Commissioner Howe figured they were not seeking to have rule 570 enforced but that they were entitled to a contract.

Ms. Caffey-Moquin said they wanted this to proceed here, saying no matter what state law says they were entitled to a contract. She recommended moving the case forward so those issues could be addressed. Waiting for the federal decision would be a mistake because it was a proposed New Mexico project.

Commissioner Marks noted it was a complaint and was under PRC jurisdiction but was not sure they were entitled to contract under the rule. PNM apparently said they wouldn't take the avoided costs. They were saying, "Build the plant and you won't get a dime from us." Western would like the Commission to tell PNM they couldn't do that. If the plant was built and was a QF, they were under a default contract to buy their power under the law.

Ms. Caffey-Moquin agreed. There were issues of fact that were layered over what the level of avoided costs was. Western was opposed to PNM's measurement of avoided costs. So she proposed to move the case forward. With a stay, the earliest time to consider the case would be September.

Commissioner Marks pointed out there was still a question regardless of which way FERC would rule.

Mr. Parker said he was comparing the argument with how FERC would look at it. It might or might not happen. The plant wasn't built yet. So they were asked to decide on it before the plant was built. It seemed the case was not yet ripe for consideration.

Commissioner Marks said there wouldn't be a plant unless they could have the power purchased.

Commissioner Howe said there was an issue of administrative efficiency. He asked if Rule 570 was in compliance with federal law. It should reflect PURPA after 2005 and that was rulemaking.

Commissioner Marks thought the utility could cluster and say they were not planning to live up to QF obligations so they wouldn't pay Western. Then QF wouldn't get built. So it would stymie the issue of QF and avoided costs.

Mr. Parker thought they might have to buy the energy. But saying they would build the plant to force them to purchase was something else.

Commissioner Marks suggested if everything the complainant said was true, they might be implicitly asking the PRC to say there was an obligation. They might want the Commission to say they were obligated to pay more but the utility said they didn't have an obligation under the law. He thought the Commission would have to make a finding on that issue.

Ms. Caffey-Moquin offered to do what the Commission wanted.

Mr. Parker thought it was a judgment call and if he were a Commissioner he would dismiss it.

Commissioner Howe thought Commissioner Marks made a valid point that there was kind of a set up here where the utility might say we aren't going to fulfill QF requests. Build your plant and come back to ask for avoided costs. PNM said they were going to file again by the end of June. So the Commission could stay it, based on their filing, by the end of June.

Ms. Lucy Bettis (PNM) said she verified this morning that PNM would file with FERC tomorrow and believed it would be complete. They were filing according to the instructions received from them.

Commissioner Howe proposed to let FERC rule on this and admonish other utilities to get their applications in.

Commissioner Marks questioned why the Commission would want them to apply and curtail QF in the state.

Commissioner Howe didn't think it would do that and it left the Commission with a quagmire if they didn't. The Commission needed to keep its rules up to date.

Commissioner Marks felt if it was a competitive market there was no QF obligation.

Commissioner Howe said if it was heard on the basis of Rule 570 he would agree with Mr. Parker to dismiss. Maybe Western would get what they wanted at FERC and they had a right to do that.

Commissioner Marks thought that made sense. New Mexico had a couple of QFs in the state like landfills.

Commissioner Howe favored staying this until PNM's application was accepted by FERC and if not accepted to bring it up then.

Commissioner Howe moved that the case continue to be stayed pending PNM's filing of a complete application no later than the end of June and be accepted by FERC as a complete application. Commissioner Becenti-Aguilar seconded the motion.

Ms. Caffey-Moquin asked if paragraph 13 would be kept. Chairman Lyons agreed.

Commissioner Howe said PNM's ruling wouldn't apply to the whole state but just to PNM. SPS was called out as being in a competitive market place.

Ms. Caffey-Moquin said in paragraph 13, one line up from the bottom, she would strike the language "utilities such as" and just keep PNM there.

The motion passed by majority (3-1) voice vote with Commissioner Marks voting against. So Ordered.

Commissioner Marks explained that he was in favor of dismissing it rather than having it stayed. They could answer without a FERC ruling and had answered the other questions.

**12-00052-UT IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S
APPLICATION FOR:
(1) ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY FOR THE QUAY COUNTY PLANT; (2) AUTHORIZATION TO
ACCRUE AN ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION
FOR THE QUAY COUNTY PLANT; AND (3) AUTHORIZATION TO RECOVER
FUEL COSTS FOR THE QUAY COUNTY PLANT IN ACCORDANCE WITH
RULE 550. SOUTHWESTERN PUBLIC SERVICE COMPANY, APPLICANT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. By New Mexico Statute 62.9.6 the Commission had power at the hearing to issue such CCNs. At the same time, 62-9.1c said it didn't if a protest was received within 60 days. CCAE filed a protest within 60 days. Right now, SPS and CCAE informed her that they would be willing to waive the hearing in favor of a decision to be made on the pleadings. As a matter of law they encouraged the Commission to just address whether the certificate should state that the plant would be used for liability purposes only and not to enable economy sales. They would be able to file something by next Tuesday so the Commission would not have to send it for a full-blown hearing.

Commissioner Marks asked what the basis for that would be.

Ms. Caffey-Moquin replied that what they had filed to date was not thoroughly fleshed out. Commissioner Marks said the issue was air quality.

Ms. Caffey-Moquin said it was air quality and noise.

Commissioner Marks asked if SPS stipulated to CCAE's facts.

Ms. Caffey-Moquin said they haven't made those statements yet.

Commissioner Marks thought if they were going to dispute the environmental impacts then it would have to have a hearing. Ms. Caffey-Moquin agreed.

Chairman Lyons asked if they stipulated to reliability.

Ms. Caffey-Moquin said they hadn't. They might stipulate to the air quality effects of the plant. What remains to be decided was the extent to which the Commission would like to condition the forthcoming certificate that SPS would not use this plant to replace off system sales.

Chairman Lyons said the protest didn't have a very good standing here. They heard there was not going to be a hearing and an invalid protest happened.

Commissioner Marks said that was raising more facts.

Chairman Lyons said they brought it to the Commission on February 27th. And there should be a hearing if the protest was valid. On page 2 it said the facility was near a church and the Commission didn't even know if the church was still operating. It was a bogus protest. There was no backup. He asked how close it was to the church. The interveners intervened just to stop the back-up system.

Commissioner Marks said those were fact issues.

Chairman Lyons said it was not a fact if it just said "near." Communities needed to have a backup system. SPS wanted clean energy but it might not be affordable.

Commissioner Marks said Chairman Lyons had created a standard the Commission didn't have. The Commission needed to determine if the facts were there or not. He didn't know the answer and didn't know how to find out. The protesters said the environmental factors should trump economic impacts. He asked if there were environmental issues and if the PRC had power to consider environmental issues. If not then the Commission didn't have to rule on it and should just dismiss the protest.

Commissioner Marks moved to approve the order using the first alternative in paragraph B and hearing the case en banc. So it would be the order as is but striking "alternative."

It was premature to say there were no fact issues. If the parties came up with a stipulation there would be no pleadings. The pleadings at a hearing were legal arguments.

Chairman Lyons asked if there a hearing on it in Tucumcari.

Ms. Caffey-Moquin said there had not been a public hearing in this case.

Chairman Lyons asked if SPS had a town hall hearing.

Ms. Sakya said SPS had two meetings in Tucumcari - one before City Council and one at Planning and Zoning. There were no protests there.

Commissioner Howe asked what the expedited process meant.

Ms. Caffey-Moquin said it meant that the Commission would hear it en banc instead of with the HE. CCAE, Staff and SPS worked on a procedural schedule for hearing it in late July. There was nothing to

prevent the Commission from holding a hearing in the meeting.

Chairman Lyons suggested the Commission set a hearing date for the Commission.

Ms. Caffey-Moquin mentioned some prehearing testimony dates.

Mr. Parker asked if they could avoid prehearing testimony.

Commissioner Marks said it would then take forever.

Chairman Lyons suggested July 30.

Commissioner Marks asked if July 30 would work for the parties.

Mr. Noble said he was not available on July 30.

Mr. Steve Fogel (SPS) said they couldn't do July 23rd. They did waive the hearing and could file responses to the facts next week. He didn't know that a hearing was needed. Even if SPS assumed all the facts were true, the Commission could rule not to impose limitations.

Commissioner Marks asked if SPS was willing to accept their environmental facts.

Mr. Fogel said they had agreed and had also agreed to waive the hearing.

Commissioner Marks asked if they were going to stipulate to joint facts.

Mr. Fogel said they could work on that.

Mr. Noble agreed they could try. There were environmental issues but we agreed that it should be provided. They also agreed with a lot of things with SWPP. But it was diesel power emissions. If Mr. Fogel would work with him he thought they could work it out.

Commissioner Marks changed his motion to strike "alternative" and at the end of the second sentence add "so long as SPS and CCAE stipulate to a common set of facts." If there were disagreements they would need a hearing.

Chairman Lyons asked if the parties could do the pleadings tomorrow.

Mr. Fogel thought so.

Mr. Noble said they could set a hearing date.

Chairman Lyons asked when.

Mr. Fogel said they could file the brief on Tuesday.

They agreed on a common set of facts for July 29th.

Chairman Lyons favored dismissing the protest today.

Mr. Parker said in the transportation case they had to have facts for the intervention. The Commission could decide it didn't meet the standard for a protest today since the facts were not specific.

Mr. Parker read the 3 options and believed the last 2 would take about the same amount of time.

Commissioner Howe asked if there were rules in CCNs about complaints.

Mr. Parker said there were just intervention general rules.

Commissioner Howe asked if nearness was even a factor in need.

Mr. Parker added that no one in the area protested that. This was a carpetbagger protest. If the Commission wanted to get rid of it right away it would have to dismiss the protest. That was a little chancy. To do it on pleadings it could be finished in July.

Mr. Fogel said SPS got a comment from NMED regarding certain hours of operation. They had all the approvals needed for the site.

Commissioner Howe asked if SPS had received any protests regarding siting or the environmental permit.

Mr. Fogel said they had not received any protests. Everyone there wanted it. The permit was for no more than 925 hours annually. About 360 hours were committed for liability purposes and reserve for Tucumcari. The remaining hours would be for any need they had.

Commissioner Howe asked what the criteria were for granting a CCN.

Ms. Caffey-Moquin apologized that she didn't have that with her. The Commission could impose conditions to meet the public interest. The criteria have been met. Off-system sales was a specific condition in this CCN. There was a prior one in Las Vegas like this where conditions were imposed on their CCN. So there was a prima facie case made here by CCAE that a condition could be imposed.

Chairman Lyons made a substitute motion that the protest be dismissed and the CCN be approved conditioned not to exceed 925 hours per year.

Commissioner Howe said he might be in favor of that but needed to know what the criteria would be.

Mr. Jeff Fornacieri said it was need and non-duplication of in relation to the service. Siting did not apply for a plant of this size. This would be 23 MW. It was diesel but very efficient. Potential emissions had been granted for air quality. They had an environmental permit from NMED.

Commissioner Marks said they were having oral argument here so Mr. Nobel might have something to state about the environmental impact. He asked SPS how long it would take to get it in operation.

Mr. Fogel said it would take a year to finish the plant but they needed the CCN by the end of the month.

Mr. Noble replied that they were not against having the plant there and for it to operate for the purposes they needed. Maybe they could agree to the CCN. But if the people were not told, they could operate it 24/7 for 12 months. So maybe there should be separate proceedings on operating hours.

Commissioner Marks asked if he knew the restrictions on this plant.

Mr. Noble said he had not been told about the restrictions.

Chairman Lyons said he should look at the permit application before filing a protest. A total of 925 hours would be a total of 23 days.

Mr. Noble said PNM had the same type plant in Las Vegas and people complained because PNM was using the plant to sell power in the California market.

Chairman Lyons asked how many days they ran that plant.

Mr. Noble didn't know.

Mr. Jeff Fornacieri clarified that PNM was planning to abandon the plant. The AG opposed that so PNM agreed to not operate it because they didn't want to operate it. That plant had been dismantled and it didn't compare with this case.

Commissioner Marks said it was an oral argument and CCAE was entitled to make their argument. They were not challenging the reliability need. But you were asking the Commission to prejudge arguments that have not been made. It should be properly before us and could be done very quickly.

Chairman Lyons disagreed and said it was like Albuquerque Green Cab. It was not a proper protest.

Chairman Lyons' motion died for lack of second.

Mr. Stephenson said staff reviewed the application and were prepared to file an affidavit regarding the application that the party be allowed to file something on paper by June 29th and have a hearing the first week of July and you would know whether it should go to a hearing.

Commissioner Marks concluded that in two weeks the Commission could hold oral argument July 5th.

Mr. Noble said he already had a hearing on July 5 for the energy efficiency case of ETB. It starts July 5th.

Commissioner Marks thought the Commission would get him excused for an hour.

Commissioner Marks moved to hear Case 12-00054-UT en banc with oral argument before the open meeting on July 3rd at 9:00 with the open meeting at 10:00 a.m. Commissioner Howe seconded the motion and it passed by unanimous (4-0) voice vote. So Ordered.

Commissioner Marks introduced Karen Montoya who won the primary for District 1.

Commissioner Becenti-Aguilar welcomed her.

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

Ms. Caffey-Moquin reported regarding the Indian Hills case that Ms. Glick would set hearing dates. She had it only for procedural purposes so she wondered what the block out dates in September were.

Commissioner Marks asked her to do that with our assistants.

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA

Mr. Montoya announced that the Superintendent of Insurance was going to declare an emergency on the catastrophe at Ruidoso from the fire.

11. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons just got back from the Western States Conference that dealt with renewable energy, weather and broad band. Renewables had lots of discussion and were working toward 80% renewable by 2050. Broadband was what was covered today. Commissioner Hall was elected Chair and the convention would be here in Santa Fé in 2015.

12. CLOSED EXECUTIVE SESSION Pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited personnel matters.

Commissioner Howe moved to go into closed executive session pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited personnel matters. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) roll call vote with Commissioner Howe, Commissioner Lyons, Commissioner Becenti-Aguilar and Commissioner Marks voting in favor and none voting against.

The Commission went into executive session at 12:00 noon.

The Commission returned to open session at 12:15 p.m.

Chairman Lyons announced to the public that during the executive session no actions were taken and the only matters discussed were limited personnel matters under NMSA 1978, Section 10-15-1.H(2).

13. ADJOURNMENT

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

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

ATTEST:


Carl Boaz, Stenographer

APPROVED: 07/03/2012


PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


JASON A. MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER


DOUGLAS J. HOWE, COMMISSIONER



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday June 14, 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**
 - **Recognition of the Employee of the Month of May**
- 4. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 5. CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Regular Open Meeting of May 17, 2012**
 - **Minutes of the Regular Open Meeting of May 29, 2012**
 - **Minutes of the Regular Open Meeting of May 31, 2012**
- 6. PUBLIC COMMENT**
- 7. PRESENTATION: CENTURY LINK/WINDSTREAM FCC USF CONNECT AMERICA FUND**
- 8. DISCUSSION/REGULAR ACTION**
Utility Division

11-00466-UT Margaret Caffey-Moquin	WESTERN WATER AND POWER PRODUCTION LIMITED, LLC, COMPLAINANT, v. PUBLIC SERVICE COMPANY OF NEW MEXICO, RESPONDENT. <u>Order</u>
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Open Mtg Agenda

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EXHIBIT 2
PRC 6/14/12

12-00052-UT Margaret Caffey-Moquin	<p>IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR:</p> <p>(1) ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE QUAY COUNTY PLANT; (2) AUTHORIZATION TO ACCRUE AN ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION FOR THE QUAY COUNTY PLANT; AND (3) AUTHORIZATION TO RECOVER FUEL COSTS FOR THE QUAY COUNTY PLANT IN ACCORDANCE WITH RULE 550.</p> <p>SOUTHWESTERN PUBLIC SERVICE COMPANY,</p> <p>APPLICANT.</p> <p><u>Order</u></p>
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9. **COMMUNICATION WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER**
10. **COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA**
11. **COMMUNICATIONS WITH COMMISSIONERS**
12. **CLOSED EXECUTIVE SESSION**

Pursuant to NMSA1978, Section 10-15-1.H(2) to discuss limited personnel matters.
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.