

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
June 19, 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:

- H Commission Chairman Patrick H. Lyons
- H Commissioner Jason A. Marks
- H Commissioner Ben L. Hall
- H Commissioner Douglas J. Howe

Members Absent:

Commissioner Vice Chair Theresa Becenti-Aguilar

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Deputy Chief of Staff for Legal Affairs
Sandra Skogen, Associate General Counsel
Margaret Caffey-Moquin, Associate General Counsel
Roy Stephenson, Utility Division Director
Patrick López, Legal Division Director
Ryan Jerman, 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

There were no introductions.

3. MISCELLANEOUS ANNOUNCEMENTS

Chairman Lyons announced that Commissioner Becenti-Aguilar was at a funeral of a relative.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Chairman Lyons added a closed session on personnel matters.

Commissioner Marks moved to approve the agenda as amended. Commissioner Howe seconded the motion and it passed by unanimous (4-0) voice vote.

5. PUBLIC COMMENT

There were no public comments.

6. REGULAR ACTION

A. Utility Division

**11-00432-UT IN THE MATTER OF THE APPLICATION OF RANCHLAND UTILITY COMPANY
FOR APPROVAL OF GENERAL DIVERSIFICATION PLAN AND STOCK
TRANSFER. RANCHLAND UTILITY COMPANY, APPLICANT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. She offered to walk through the terms of the stipulation if the Commission wanted. It involved a transfer of stock to 11 people who had equal shares of stock. The transfer was done without prior approval of the Commission so the order would approve a retroactive variance. The problem here was the danger of the company sliding into bankruptcy. An amended diversification plan was filed authorizing the transaction to establish a new

holding company consistent with rule 450 and transferring the stock to the new holding company.

The Commission issued its initial order after application for a staff review and they were agreeing with the utility on the stipulation. Notice was given to ratepayers and was published in the Santa Fé New Mexican. She was not aware of any interveners. In the stipulation there were protections to rate payers including that until Ranchland Utility reached 85% of capacity all losses would be borne by shareholders. At the determination of the Commission Ranchland would have an audit and allocation study done. It wouldn't do certain things without prior PRC approval like transfer of shares, purchase of debt instruments, excessive dividends or financing until after 30 day notice. Books would be continually open to the PRC. The regulated business would be separate from non-regulated business.

Ordinarily there would be a public hearing but her order would waive the hearing requirement. Because the stipulation provided a variance to accommodate the efforts started 2 years ago to avoid bankruptcy it appeared to be in the public interest.

Commissioner Hall asked if this was mainly to keep it out of bankruptcy and ownership wouldn't change to other people.

Ms. Caffey-Moquin said the CEO, Mr. Warren Thompson was here and could answer that.

Chairman Lyons welcomed him.

Ms. Caffey-Moquin clarified that this had nothing to do with change of rates.

Commissioner Hall asked what "excessive dividends" were.

Ms. Caffey-Moquin said it was one of the softer points in the stipulation. There was no black line and she could not provide that. But the filing requirement would allow staff expertise to watch for a red flag and might bring an order to show cause. It was subjective.

Commissioner Marks asked what the structure of it was.

Ms. Caffey-Moquin didn't find it but it was in the stipulation.

Mr. Thompson explained that once it was complete, Ranchland Utility Company would be owned by Ranchland Holding LLC. He owned 100% of the facility and RHC owns the balance of the stock. Ranchland Utility Company was a corporation.

Commissioner Marks understood - the Holding Company would own all shares of Ranchland Utility Company.

Mr. Thompson agreed and added they would have the same balance sheet. Any dividend would be to RHC. It was 100% equity and no debt at all. He said they had \$350,000 in the bank.

Commissioner Marks asked if the bankruptcy was the result of operations. Thompson agreed.

Commissioner Howe noted they served Rancho Viejo and asked if they also served Santa Fé Community College.

Mr. Thompson said they did not.

Commissioner Howe asked at what capacity they presently were.

Mr. Thompson said it was at 32%.

Commissioner Howe asked if they were dependent on further development.

Mr. Thompson agreed. The Santa Maria Catholic Church and school were on the system; IAIA was on it; the new elementary school was on it. There was new commercial coming in as well as 1200 residential customers. It had a large area and could serve several thousand more homes.

Commissioner Howe concluded it was overbuilt and its financial distress was from the housing downturn.

Mr. Thompson said the bankruptcy was because of the housing downturn.

Commissioner Marks moved to adopt the order. Commissioner Hall seconded the motion and it passed by unanimous (4-0) voice vote. So Ordered.

**12-00193-UT IN THE MATTER OF TIMBERON WATER AND SANITATION DISTRICT'S
ADVICE NOTICE NO. 10 FOR NEW RATES. TIMBERON WATER AND
SANITATION DISTRICT, APPLICANT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information to the Commission regarding this matter. It was before PRC primarily on a motion filed by the District through its board in May requesting an extension of time on rates.

She referred back to the 2010 order on interim rates. Advice Notice #10 proposed permanent rates. It wasn't filed in the docket and she hadn't seen anything from staff.

Chairman Lyons asked if PRC staff made no recommendations.

Ms. Caffey-Moquin said the advice notices were pending for 30 days. They didn't go into effect by operation of law so it was likely the filing was still under staff review. She recommended that the Commission suspend the advice notice now with certain qualifications.

Apparently the Timberon board was under the impression that the rates would automatically go into effect. The interim rates were subject to the Timberon filing for permanent rates last September. There were problems. The utility was in receivership and partly because of that, they filed for extensions twice.

Commissioner Marks recalled they asked for 3 months and the Commission gave them 5 months.

Ms. Caffey-Moquin agreed and the due date would have been June 2. They filed the advice notice on June 4th. The advice notice didn't constitute filing of a rate case. They must provide a cost of service study and testing and those were not in the record yet. So the Commission needed to make sure the advice notice did not take effect by reason of law. A lot of utilities come in with an advice notice preliminary to a rate case.

She said Bill Herrmann was the HE and he had pointed out some needed changes. At page 5 of the draft order, paragraphs E and F needed to be tightened up so they read better. She read paragraph E. Paragraph F should say what the deadline was for the cost of service study and other documents. The Commission might want to allow more than 30 days' time for that.

Commissioner Marks wondered if they even understood what a cost of service study was. He asked Mr. Steve Schwebke if Timberon ever contacted him to understand what was required.

Mr. Schwebke said staff had been in contact with Timberon. Advice Notice 10 was filed pursuant to statutory provisions for smaller water utilities to get an expedited review under rule 770. Under that rule they could raise rates up to 50% subject to protest by customers and that was still within the 20 day period for protests.

Commissioner Marks asked if that would be 50% of former rates or of interim rates.

Mr. Schwebke clarified it was from former rates.

Commissioner Marks asked if the customers could see the whole spread.

Mr. Schwebke agreed. The rates proposed were largely less than the interim rates.

Commissioner Marks surmised the Commission shouldn't be doing anything today but waiting for the protest period to expire and then to determine if a hearing was needed and require a cost of service study.

Mr. Schwebke said if an insufficient number of protests were received and the advice notice could then become effective, the utility would file a motion to not have to support the interim rates as included in the 2010 order.

Commissioner Marks asked if the protest period would expire on June 24. Mr. Schwebke agreed.

Mr. Virgil Beagles (Timberon customer) said the only notice he received was in April 7, 2012. He said he was representing himself as a rate payer. The notice referenced a rate granted in 2006 but there was none evident at the PRC website. There was a rate increase proposed in 2005. He didn't have any objection to the rate increase being proposed.

Ms. Caffey-Moquin said that was not the advice notice but a letter about the advice notice.

Commissioner Marks asked if the letter said how to protest with the PRC.

Mr. Beagles said there was no rate approved by the PRC in 2006 and they had no advice notice yet.

Ms. Caffey-Moquin said it appeared that Mr. Beagles was correct. She recommended suspension of rates because there were changes and she could not tell what the background rates were. She pointed out that the Timberon District did not serve its motion on anyone in the existing case. The draft order repeated the material from the December 2010 order which was a warning to all parties in the case to comply with the Commission's order to serve pleadings. This time it admonishes the parties that further violations of PRC orders could result in sanctions.

Chairman Lyons asked if in the Case 10—366-UT Timberon didn't let any of the customers know they were going to increase the rates.

Ms. Caffey-Moquin explained that her reference was just to the motion for extension of time. Mr. Beagles did receive a letter about the advice motion but there was nothing in the record that reflected adversely on Timberon's provision of notice but they did not serve their motion on the parties either and already had been told they must file and serve their papers on all parties. And she believed Mr. Beagles was on the certificate of service for the case and it didn't appear that he got served with that notice.

Commissioner Hall asked if the protest time would run out on June 24th and the parties had not even been notified yet.

Chairman Lyons asked Mr. Beagles if he didn't get notice for any of his ten hookups.

Mr. Beagles said he had 20 hookups and had not received any notice. The letter he had with him was received by his brother, Duane.

Mr. Beagles added that Timberon's attorney didn't receive one either.

Mr. Beagles was here to protest the standby fees. Anytime something happens they imposed standby fees. The water was out 12 hours the other day. He explained the details. The agreement was that if they got approved at the lower rate they would provide a refund. But they raised the standby fees from \$52 to \$53. They had taken 60% of the water fee out to pay for attorneys. They took \$300,000 out of the water fund.

Commissioner Hall asked if the Commission ever receive anything from Judge Reynolds taking Timberon out of receivership.

Ms. Caffey-Moquin didn't think so.

Commissioner Hall noted that the receiver that was appointed had resigned and there was never another receiver appointed and the board went back in and took over. He agreed with Mr. Beagles about the protests on standby fees and someone was looking into it. He didn't know that the board could legally do business for Timberon.

Mr. Beagles said they didn't need to be penalized up front. There were 3,100 rate payers. And if the rates were lower, the rate payers should get a refund.

Commissioner Marks asked if he intended to protest this rate. If Mr. Beagles could get enough people to protest the Commission would have a hearing and he would listen closely. Right now the Commission had a procedural issue. They had the motion from Timberon which the Commission didn't handle correctly. The other one was giving notice. Did Timberon give everyone notice and was the notice sufficient. It looked like the notice follows the rules but was not clear to the customer. It didn't say that by June 24 you must file a protest with the PRC. But staff reviewed it.

Mr. Schwebke was 99.9% sure it followed the rules but he would be happy to check it again.

The number of water users was less than 1,500 so they fell into the small water utility category. But rate payers included the standby customers.

Commissioner Howe said it said there were 3,355 rate payers.

Commissioner Marks said it was 10% or 25, whichever was fewer needed to protest.

Mr. Beagles said he didn't know about it. He got the proposed rates off the website yesterday.

Commissioner Marks said it appeared they would need 330 protests.

Mr. Schwebke agreed.

Chairman Lyons asked if he was saying there were 3355 hookups and 3,100 were standby so there were only 255 permanent hookups. Mr. Beagles said there were 650 year-round hook ups. There were only 3100 properties that had water lines to them. But only 600 who paid their water bill.

Mr. Burt Rabinowitz said there were a number of things here. The court did not appoint another receiver. Judge Reynolds gave the District back to the Timberon board on January 13, 2012. The board requested that the board retain supervision over the utility and Judge Reynolds agreed to do that. Secondly, the statement that the board had not made any progress financially was not accurate. In 2007 and 2008 they had audits done. The 2009 audit was in progress. They reached an agreement with their former auditors to release background information and other documents for the 2009 audit and that was done. The audit for 2009 was on schedule to be completed in June. There was a hearing scheduled for the second with Judge Reynolds. They received a \$635,000 grant to replace water tank #2. Their understanding regarding the 770 proceedings was that there was not any requirement that they do the general rate filings. They were unaware they needed to do that and believed they didn't need to under the 770 procedure. There were 3,089 customers including standby and metered water. There were 652 metered water connections. That was why they came under the 1,500 requirement. All 3,089 customers got the letter about the advice notice at the address they had on record for those customers. Mr. Beagles mentioned that some of the people had not received it but they used their billing software for addresses of all metered and standby water users. He agreed to answer any questions the Commission might have

about how Timberon proceeded.

Commissioner Marks had a question in his mind about whether they were in the 50% but the right thing to do was to wait and see if there were 310 or more protests received and would have to have a hearing. If there were between 65 and 300 the protesters might protest Timberon's interpretation of the law. It was not automatic but an expedited procedure. The Commission needed to figure out whether it should go into effect or not without prejudging what should happen on the protest.

Mr. Rabinowitz said the increase was based on the last advice notice and was less than 50%.

Commissioner Marks explained that the Commission was not here today to decide if it was a good or well thought out rate increase or discriminatory. The Commission needed to see the protests first.

Mr. Rabinowitz added that at this time they were only requesting an extension.

Commissioner Howe asked why the letter said 3,355 when he heard Mr. Rabinowitz say 3,089.

Mr. Rabinowitz didn't know. 3089 was a combination of permanent and standby ratepayers. He got that number from the secretary. He didn't know if it had changed.

Chairman Lyons read from the document that the general customer service total was 444, 438 were residential, 5 were commercial, 1 other and 3089 standby customers. On the next page it said 3355 rate payers.

Mr. Rabinowitz thought the problem was that some might be considered residential.

Mr. Schwebke said what was explained to him was that some standby customers were also meter customers so there was some overlap.

Commissioner Hall noted they only had one week for deadline for protests. He wanted to know if all customers had been advised. He wanted to make sure all 3089 customers or whatever it was had been notified of the proposed rate increase. If they had not been notified today there was not enough time to notify them and get a protest back.

Mr. Rabinowitz said 3089 was the total number billed - either standby or metered.

Commissioner Hall asked Ms. Caffey-Moquin if the Commission knew this as a fact. Ms. Caffey-Moquin believed there was a question of fact whether all were notified.

Commissioner Hall said if everyone had been notified he had no problem but otherwise he did.

Commissioner Howe asked what Mr. Beagles' reason was for saying not everyone was notified.

Mr. Beagles said he had ten accounts and had not been notified. He got the April 2 letter. It said the rates were increased from November 2006 but there were no rates approved by this Commission in

November 2006. The standby rates at that time were \$47. They had 3,000 people harmed by this thing.

Mr. Schwebke said the PRC website reflected the rates currently which were the interim rates and not the permanent rates before the interim rates. Staff didn't show any other rates because they were not under PRC jurisdiction before the interim rates. It didn't show all prior rates. It was available in our records by advice notice. Advice Notice 8 was filed in 2006.

Commissioner Marks said the letter must show the base rates and the proposed rates.

Commissioner Marks asked if the District would object if the Commission added 10 days to the protest period.

Mr. Rabinowitz didn't think the board would object to that.

Commissioner Marks thought it was better not to have a cloud over this and if there were ten percent of the customers who wanted to challenge it, it would be best to have a hearing happen. Giving another ten days would give Mr. Beagles time to notify others.

Commissioner Hall wanted everyone to have due process. If everyone had been legally notified he was satisfied but everyone needed time to protest.

Mr. Rabinowitz was sure they have a record of the number who were notified.

Chairman Lyons pointed out that there was confusion on how to read this letter.

Ms. Caffey-Moquin agreed. The letter said it was an increase over base rates of 2006. She had not compared what was in the table with Advice Notice #10 but offered to do so.

Mr. Beagles said he had 3,000 people to notify and only 350 of them lived in Timberon. The rest lived all over the place. He asked for 30 days instead of ten.

Chairman Lyons asked for clarification of the table that was sent out. He asked if a standby water fee was a water line at the property but no hookup. Mr. Rabinowitz agreed.

Chairman Lyons noticed that the new standby rate was \$53.95 but with a meter it was only \$42.12.

Mr. Rabinowitz said the standby rate was an annual fee and the metered fee was monthly.

Chairman Lyons pointed out that it didn't say that in the table. He asked if they had a couple hundred who unhooked every winter.

Mr. Rabinowitz said the disconnect charge was \$45.

Ms. Caffey-Moquin said according to Advice Notice #10 it was a separate fee each time so that would be \$90 to disconnect and reconnect.

Commissioner Howe was troubled by the inaccuracies in the letter. The number of rate payers was in question and they were not sure the 2006 rate table existed. He was in favor of a new notice for 30 days.

Commissioner Marks said the problem was that the Bureau Chief approved that letter. They should not be required to spend the \$1,500 to send one out again.

Commissioner Howe moved to grant a thirty day extension beginning today for protests to the letter that was already sent out. Commissioner Hall seconded the motion.

Commissioner Marks asked that the order grant an indefinite extension of interim rates until replaced by advice notice rates.

Ms. Caffey-Moquin suggested it say, “**subject to further extension by Commission.**”

Commissioner Howe agreed to the amendment.

Commissioner Marks agreed and the protest time would be 30 days from today so until July 19th.

Mr. Rabinowitz recalled that the original protest period was 20 days so he was concerned that now it would be extended 30 days beyond that.

Commissioner Howe understood but stuck with 30 days.

Chairman Lyons clarified the motion would extend the protest period until July 19 and interim rates would remain in effect until another order by the Commission.

The motion passed by unanimous (4-0) voice vote. So Ordered.

Commissioner Hall said the Commission should have been notified about receivership changes. He asked if the judge should notify the Commission any time there was a hearing on this.

Ms. Caffey-Moquin didn't know if the PRC was a party but she would find out.

**12-00072-UT PUBLIC SERVICE COMPANY OF NEW MEXICO'S REQUEST FOR VARIANCE
FROM NMAC 17.1.210.12(B), PUBLIC SERVICE COMPANY OF NEW MEXICO,
PETITIONER.
(Sandra Skogen) Order**

Ms. Skogen presented information regarding this matter to the Commission. The request was for interim relief by NRG Energy who was asking the Commission to stop the clock regarding completion deadline of four projects until the underlying case was resolved. The underlying case was PNM seeking a variance from their REC purchase agreement to change terms of the agreement. NRG had 33 solar arrays to develop at schools and municipalities in New Mexico. If not done by the deadline the three for one REC

credit would be invalid. NRG claimed they would not be able financially to complete the projects without the credits. A hearing was held and Commissioner Marks presided.

The order she prepared would grant interim relief. Under the standard NRG had to show facts and testimony regarding the portfolio. They said they made a \$35 million investment in New Mexico and provide cost savings to citizens. They also had to show immediate injury and they said every day of this hearing put it nearer the deadline. They had to show irreparable injury and said the arrays couldn't be completed because of lower REC rates. It was unlikely another provider would do these projects.

They request that the deadline clock be stopped the date PNM filed the variance until projects were completed.

Commissioner Hall asked who caused the delay in proceedings and who worried about the deadline.

Ms. Skogen said it started a long time ago and NRG worked long to get financing. NRG couldn't get financing because of a clause in the REC purchase agreement that allowed changes in terms.

Chairman Lyons asked who did the filing.

Ms. Skogen said PNM made the filing basically on NRG's behalf.

Commissioner Hall recalled they were here not too long ago to try to get the Commission to override the rules. They said they couldn't obtain financing but everyone else did. They started their own delays. He asked why they would seek approval of the three arrays when they hadn't secured any financing. They messed it up.

Ms. Skogen agreed. This was actually the fourth time for this to come before the Commission. The first time was to decide on the regulatory clause through a Commission appointed HE and that issue had not yet been decided. Today's was an application for interim relief. NRG argued that the issue with the regulatory clause had complicated the process. There was a question that they would have completed the projects. They provided sufficient proof that the clause caused a financing issue.

NRG would argue these projects were quite unique because they involved public entities who could not get tax credit but provided enough savings for them to enter into them.

Commissioner Hall asked why they would get into something before they knew what would happen. They leaped before they looked.

Commissioner Howe asked how many other projects had gone forward under this public entity - change in law to allow NRG to come in as a third party. The school would get the energy and the third party would get the tax credit.

Ms. Skogen said this was the first set of such projects in schools in New Mexico.

Commissioner Marks said there was at least one going at Albuquerque Academy which was not a public entity. There might be a small number.

Commissioner Howe asked if there was anything in the record that NRG knew this clause would be a problem from the outset.

Ms. Skogen said they made PNM aware of it in January.

Commissioner Marks said they were not aware originally and NRG wasn't the developer at the start but Mr. Cassutt got informed by his finance people that there was a problem with it. They didn't know about it for a few months after they entered the agreement.

Commissioner Howe said in reading through staff's response it said a standard to apply was whether or not the applicant was likely to prevail and they didn't think so but it sounded like Ms. Skogen disagreed with that.

Ms. Skogen said her recommendation was to use the PRC rule - to not interfere with the case. NRG's reply to staff was that it was distinguishable. The Commission denied the interim relief for projects based on the evidence NRG presented. It wouldn't meet the savings guarantee or wouldn't add up to 1 MW. Those were the factors they considered.

Commissioner Howe said if the projects were to be canceled he understood another project couldn't move into its place. Ms. Skogen agreed.

Ms. Skogen said they could go forward but at a greatly reduced benefit - only 2 cents/KWH.

Commissioner Howe asked when it would be resolved.

Ms. Skogen said NRG was making progress with a couple of developments. One suggestion by Commissioner Marks was that the hearing could be consolidated on both issues. The parties agreed to not have another hearing and were now at briefing so it might be over in 2-3 weeks.

Commissioner Howe calculated that the stay might be only for a month or two.

Ms. Skogen said it was from March 4th

Commissioner Marks thought Commissioner Howe and Commissioner Hall raised some good points that also came up in the hearing. They came in March and asked us to resolve the underlying matter on an expedited basis and the Commission didn't think that was fair. But it wasn't fair for the PRC regulatory process to ruin a business. He supported that they didn't get the profit from this. They could get their stay back to March 16th but only for projects finished in twelve months. The prices had been coming down for the last 18 months. Those who came in during the fall expected to get qualified by fall of 2012 because prices were coming down.

His proposal was to leave a penny or two on the RECs for any project that was extended out and the Commission grant the stay or interim relief but make it contingent on any project winding up in 12 months to get interconnected that would go in at the REC rate in effect 12 months before.

If the Commission denied the stay, the money would be spent by PNM somewhere else. He asked that the Commission not bury these people. They acted in good faith but didn't deserve the highest funding possible. It could all be moot if the underlying case didn't turn out right. But the Commission used up 3 months to answer the question.

Commissioner Hall felt NRG jumped into things without considering the consequences. If they didn't finish their projects they were going to lose money. He questioned whether the Commission needed to continue bailing them out. They didn't seem to know what their own business was.

Ms. Skogen said they did acquire some of these projects. There were a number of parties who showed up as commentators who ultimately agreed to be witnesses for NRG. Santa Fé Public Schools was one who did. They wanted their project to be completed.

Commissioner Howe said NRG was a big company and owned a nuclear plant. For them it was just a rounding error but he was concerned about the public schools and would hate to see that wither away. He would like to see something in the findings that made it clear the Commission was doing this because of the public interest.

Commissioner Hall agreed. He had no interest in seeing the public utilities lose out on this.

Chairman Lyons said they were the ones who stopped the clock. Ms. Skogen agreed and didn't think it was the Commission's fault.

Commissioner Marks asked for Chairman Lyons to make a motion on it. He said he didn't think he should since he presided at the hearing.

Commissioner Hall didn't want to deny the stay. The public entities probably had put money in it up front that they couldn't get back.

Commissioner Marks moved to adopt the recommended order granting interim relief with two modifications: noting that it was based on the impact on local public entities and were relying on this, and with a condition that any project that took more than 12 months to the time of interconnections get the rate that was current 365 day prior to its interconnection. Commissioner Howe seconded the motion.

Commissioner Hall had a problem voting either way on this. If it was just a public entity he would vote for it and if it was just NRG he would vote against it.

Chairman Lyons asked if the public entities had signed a contract that they would get x amount of savings from NRG.

Ms. Skogen said they didn't have a copy of the agreements so she couldn't answer that. She did have sworn testimony not only from NRG but also customers including Santa Fé Public Schools regarding the time and money they had invested in it. The only way these public entities had any ability to spend money on it was if they would get the savings. That was how they were structured.

Commissioner Marks agreed that they had agreements. Their customers came here.

Commissioner Hall pointed out that if the Commission didn't vote for it today, the public entities couldn't get the money back they invested in it.

Ms. Skogen didn't have in the record that they put money into it.

Mr. Bruce Throne (for NRG) said there were statements made here that were not accurate. Only two commissioners were at the hearing. There was an extensive record for this case. This regulatory clause - there was not any party in this case who had taken the position that the PRC rules required this clause in the contract. The rules had nothing to do with utility service. PNM just put the clause in there.

Commissioner Howe interrupted to ask if this really went to the issue of whether the Commission should grant the stay.

Mr. Throne said it was to correct the impression that NRG had jumped into this and created its own problems and should have been more sophisticated. That was not caused by NRG or the Commission. PNM put the clause in there and there was extensive testimony by Mr. Cassutt about why this didn't become an issue with the third party financing folks until January 2012. Then it was immediately brought to PNM's attention by Mr. Cassutt.

NRG had five school districts involved here including Santa Fé Public Schools and three municipalities. These were all entities - and the record was clear on this - that because of their public entity status they had to rely on third party funding because they couldn't use the tax credits.

Chairman Lyons asked if they took away the tax credit issue it wouldn't matter anymore and they could get all the extensions they wanted.

Mr. Throne didn't believe the PRC had jurisdiction over tax credits. It wasn't that NRG was going to make money but were doing this for customers that otherwise couldn't participate in this.

Chairman Lyons asked about the three for one REC credits.

Mr. Throne said there were no 3 for 1 REC credits involved in this. It was one-to-one. There was no multiplier of RECs in this case. This was the solar REC incentive the Commission approved in 10-00037-UT in August 2010 and modified shortly thereafter. At that point there were no 3rd party tariffs until in December when PNM filed for it on behalf of governments and schools to be able to participate because they have no tax credits available.

The host customers (pubic) went ahead and applied for these programs and got their reservations. PNM then advised them of the REC price they would come in on. So it wasn't a situation where NRG was cutting back initially. The host customers wanted to participate and once they got the reservation they had to figure out how to get the solar project done.

Commissioner Marks asked if Mr. Throne was alleging that the host customers made the reservations

without any contact with a solar developer.

Mr. Throne said he was not alleging that but for the most part a lot of them were done with developers. NRG came in because these people needed to figure out a way to finance it and the problem was that unlike Albuquerque Academy who didn't have to comply with Section 62-3-1 statute because it was not a public entity.

The statute required that the provider provide a guaranteed savings contract. The problem was that the entities could not guarantee the savings. This was all in the record at the hearing. They came up with a unique package by combining capacities from the different locations and once combined together went through due diligence. Only then could they go to the financing people. And that was when the financing problem arose with that clause about changing the terms. And everything stopped at that point. They went to PNM to ask why it was in the contract and PNM didn't know why the clause was in the agreement.

So NRG asked PNM to pull it out and PNM said they would rather ask for a variance. NRG said they didn't need a variance to a rule that didn't apply. Staff agreed with that and no other party disagreed. But the Commission decided they would assign it to a HE and at that hearing, NRG asked that the Commission pull that out because it didn't apply in the first place. And NRG was concerned that the deadline would come before it could be resolved. He reminded the Commission that the twelve month clock began when they got their technical review. So in some cases, the 12 months had not even started yet.

At the hearing Commissioner Marks asked the staff witness, Mr. Anderson, if there was any public interest for that clause and if the Commission could change the terms of the contract down the line. As long as it was in there, you could understand the bank's reluctance to provide financing because of the risk involved.

When NRG went to PNM, PNM said they could quickly get a variance and NRG agreed - whatever could be done quickly.

This was not a question of taking advantage of the contract and there was no purpose for the provision there.

These were entities who could not take advantage of this energy efficiency without the projects. They would not get built by the public entities and it was just speculation to think anyone else would build them.

Chairman Lyons said Mr. Throne's statement that staff agreed, NRG agreed and PNM agreed was a false statement. He read a statement from the order about staff's conclusion. That "the Commission would never amend the contract..." So you were saying they agreed and that was a false statement.

Mr. Throne said there was no legal REC purchase agreement of any service to be rendered by PNM or a third party owner. No party opposed that.

Chairman Lyons said staff didn't agree.

Mr. Throne said it was in the record.

Chairman Lyons said when NRG realized they couldn't get financing they should have come here right away.

Mr. Throne said these were standard REC purchase agreements. It wasn't realized until they read that clause that the Commission could change the deal whenever they wanted. The advice notice went into effect by operation of law because the Commission took no action to suspend it within thirty days. The reason it never came up before was that this was a third party financing contract. Albuquerque Academy was not a public entity.

Chairman Lyons said Albuquerque Academy shouldn't even be mentioned in this case.

Commissioner Marks said Albuquerque Academy did get third party financing. They didn't pay for it.

Commissioner Hall asked why NRG could not get financing when every other one did with that language in there. He didn't think the PRC had ever revised a contract after the fact.

Mr. Throne said it was the outside banks who said they were not willing to take this risk. His client went to 12 different banks and even got letters that the bank needed to have a firm stream of revenue to provide financing.

Commissioner Hall said the language was not put in after the fact. The technical review started the clock. NRG didn't pay attention to what they were getting themselves into because they didn't read their own contract.

Mr. Throne said they couldn't bring the loan request to the financier until they had the package complete.

Chairman Lyons moved to amend the motion to make the REC credit 1 to 1 and then withdrew his motion.

Commissioner Marks restated the motion to approve the order with finding that approval was because of the impact on public entity customers and secondly to condition it that any project that was completed more than 12 months after getting in the queue would get the REC rate 365 days before.

The motion failed by a tie vote of 2-2 with Commissioner Hall and Chairman Lyons voting against.

Commissioner Hall said Mr. Throne helped him make up his mind.

Commissioner Marks asked Mr. Parker to put it on Thursday's agenda and bring an order with the amendments and an order denying the request.

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

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

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA

There were no communications with Chief of Staff.

11. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Howe recalled the Commission agreed to look into why Colorado had a lower insurance requirement if there was some say to move it forward. Mr. Ryan Jerman did some research and prepared a report.

One concern that came up was if the PRC lowered its requirement below the federal it might put federal highway funds at risk. It appeared after research that there was no imminent threat of such a restriction to lower the insurance requirement for a tour bus.

The other issue was that MTD would be required to uphold the federal standard and would have denied a license for them, even if the PRC granted a variance. The only thing that could relieve them was a legislative change to create a new category. Colorado's was 16-32 seats for a tour bus required \$1.5 million coverage.

Mr. Jerman said the statute did require MTD to enforce the federal laws. "Not inconsistent with federal standards."

Commissioner Howe added that they testified at the hearing that they would enforce the federal requirement.

Mr. Earnest came a couple of weeks ago and said he would be willing to put into a bill a carve out for a tour bus and see if the legislature would be willing to approve it. There was the public interest issue to do it for one company or by lowering it legislatively to keep rates down. That was where it stood now. He asked if the Commission should put something in his draft bill.

Commissioner Hall thought it wouldn't prevent MTD from enforcing the federal law.

Mr. Jerman clarified that the federal statute was for interstate transportation.

Chairman Lyons didn't think they would have to go through legislation but adopt something here.

Mr. Jerman thought MTD would say the statute required them to enforce state statute 65-3-4 that required them to adopt a law consistent with federal law.

Chairman Lyons countered that the federal law was for interstate. Mr. Jerman agreed with that.

Commissioner Howe said the state statute would only apply to intrastate anyway. The problem was that the PRC could trump them with a new rule but had no way to force them to enforce the PRC rule.

Mr. Jerman said DPS did have a specific rule requiring \$5 million insurance.

Commissioner Howe asked Mr. Jerman to find out if rulemaking could override that.

Commissioner Marks recalled there were 3 commissioners who didn't want to give her a variance from our rules.

Commissioner Howe was not sure this was a one person issue. He believed if the Commission threw a bill next door for one entity it wouldn't pass.

Mr. Jerman said a rule by this body trumps that.

Mr. Stephenson said staff spent a lot of time interacting with MTD on other areas.

Mr. Parker heard that MTD couldn't do anything different from a federal regulation that applied and the federal was interstate commerce. He didn't think the Commission could override but didn't think the federal law applied here.

Mr. Jerman said MTD could not pull her permit but could issue a ticket.

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

The Commission did not go into executive session but postponed it to Thursday.

13. ADJOURNMENT

Commissioner Howe moved to adjourn the meeting. Commissioner Hall seconded the motion and it passed by unanimous (3-0) voice vote. Commissioner Marks was not present for the 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

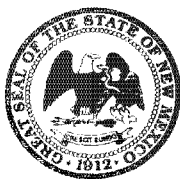

DOUGLAS J. HOWE, COMMISSIONER

SIGN-IN SHEET

DATE:

DATE: June 19, 2012

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Tuesday June 19, 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. PUBLIC COMMENT**
- 6. REGULAR ACTION**
Utility Division

11-00432-UT Margaret Caffey-Moquin	IN THE MATTER OF THE APPLICATION OF RANCHLAND UTILITY COMPANY FOR APPROVAL OF GENERAL DIVERSIFICATION PLAN AND STOCK TRANSFER. RANCHLAND UTILITY COMPANY, APPLICANT <u>Order</u>
12-00193-UT Margaret Caffey-Moquin	IN THE MATTER OF TIMBERON WATER AND SANITATION DISTRICT'S ADVICE NOTICE NO. 10 FOR NEW RATES. TIMBERON WATER AND SANITATION DISTRICT, APPLICANT

Open Mtg Agenda

June 19, 2012

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**EXHIBIT 2
PRC 6/19/12**

	<u>Order</u>
12-00072-UT Sandra Skogen	PUBLIC SERVICE COMPANY OF NEW MEXICO'S REQUEST FOR VARIANCE FROM NMAC 17.1.210.12(B), PUBLIC SERVICE COMPANY OF NEW MEXICO, Petitioner. <u>Order (regarding Interim Relief)</u>

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. 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.