

**MINUTES OF THE  
REGULAR OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
July 26, 2012**

**TIME: 9:30 a. m.**

**PLACE: PERA Building  
4<sup>th</sup> 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 Ben L. Hall  
Commissioner Jason A. Marks  
Commissioner Douglas J. Howe

**Members Absent:**

**Staff Present**

Johnny Montoya, Chief of Staff  
Robert Parker, Deputy Chief of Staff for Legal Affairs  
Margaret Caffey-Moquin, Associate General Counsel  
Sandra Skogen, Associate General Counsel  
Michael C. Smith, Associate General Counsel  
Dwight Lamberson, Utility Division Director  
Michael Ripperger, Telecommunications Bureau Chief  
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. Peter Gould introduced his daughter, Kelly.

**3. MISCELLANEOUS ANNOUNCEMENTS**

There were no miscellaneous announcements.

**4. CONSIDERATION AND APPROVAL OF THE AGENDA**

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

**5. CONSIDERATION AND APPROVAL OF MINUTES**

- Minutes of the Regular Open Meeting of July 3, 2012

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

**6. CONSENT ACTION**

**A. Transportation Division**

**12-00148-TR-M**      **IN THE MATTER OF THE APPLICATION OF TOURS U DESIGN, LLC FOR A  
CERTIFICATE TO PROVIDE A TOUR AND SIGHTSEEING SERVICE AND FOR  
TEMPORARY AUTHORITY.  
(Sandra Skogen)      Order**

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

## 7. REGULAR ACTION

### A. Utility Division

**10-00315-UT      IN THE MATTER OF THE APPLICATION OF SACRED WIND  
COMMUNICATIONS, INC. FOR APPROVAL OF INITIAL RATES, TERMS AND  
CONDITIONS OF SERVICE FOR SUPPORT FROM THE NEW MEXICO RURAL  
UNIVERSAL SERVICE FUND AND PETITION FOR VARIANCE FROM  
COMMISSION RULES.  
(Sandra Skogen)      Order**

Ms. Skogen presented information regarding this matter to the Commission. She explained that today the Commission was not talking about universal service. Sacred Wind was asking the Commission to reconsider a holding that was not essential to the conclusion that was reached in the final order. The Challenge Holding is the one that stated that the Rural Telecom rate case statute Section 63.9.H.7 did not apply to Sacred Wind because it applied to rural incumbent telecommunications carriers and Sacred Wind didn't meet that definition because they were not designated as a rural telecommunications carrier. OGC believed this was a correct holding. But Sacred Wind feared the holding would put them in a regulatory no man's land if it was not made applicable to them. They also were not requesting the Commission to reverse the holding but just to remove the holding because the statute didn't apply and even if it did they would not meet the requirement that they were serving in the most prudent manner. So no matter what path they chose, they wouldn't meet the requirements.

The Sacred Wind motion requested a rehearing for removal of the holding. Because the holding was not essential Ms. Skogen didn't believe further process was justified. Smith Bagley opposed and argued that it had already been decided and didn't need further process. It would be possible to remove the holding without further process.

She prepared an amended and restated order that would remove the holding and it could be adopted today. Since no one brought up the statute applicability during the proceedings and wasn't an essential holding to the final outcome, in her opinion no one would be prejudiced by it. The Commission wouldn't be making a final decision on the issue but would save it for another case.

In this proposed order, the Commission isn't addressing the merits of the arguments regarding the statute or applicability. The remaining question was if the holding should be removed. Sacred Wind made a number of arguments but the key argument was that the holding violates due process. That is the kind of claim the Supreme Court might be interested in addressing and could be a distraction from the solid reasons for rejecting the stipulation.

The Due Process claim was based on: first, Sacred Wind believed the Commission intended to apply the statute; even though Sacred Wind didn't qualify under it when the Commission issued the certification order in 2006. In a pleading in that 2006 docket Sacred Wind argued that the statute should apply. Their other argument was that the order did refer to the Rural Telecom Act in general and the order grants their application. So they make a case that the 2006 order showed an intent to apply the statute.

If Sacred Wind could make a case that the order indicated that the statute should apply and if the Commission could apply an applicable statute then a due process claim would be based on Sacred Wind not getting a hearing on this case. On the other hand, the 2006 order did not express the statement that the Commission would apply the statute. And a statement would be necessary since the statute did not apply to Sacred Wind and contrary to staff opinion, the 2006 order didn't require Sacred Wind to file a rate case. She believed the Commission could apply an unambiguous statute to an admitted fact without having the parties brief the issue.

In summary there were 3 options: 1) deny the motion because the holding was not essential, 2) grant motion and have further process (not recommended ) or 3), as reflected in her proposed orders, to partially grant the motion by removing the contested holding from the final order and not have further process.

Commissioner Becenti-Aguilar noted in the memo that when the motion was filed by Sacred Wind all parties on certificate of service received a copy including the AG. Ms. Skogen agreed and there were no responses.

Commissioner Howe said the proposed order was not trying to resolve issue of whether they were subject to Rural Telecommunications Act or not. Ms. Skogen agreed.

Commissioner Howe surmised by extension that this issue could be argued when it comes forward in another case but this order was not suggesting opening another docket now. Ms. Skogen agreed.

Commissioner Howe asked if MATI was designated as a rural telecom carrier in 2006.

Ms. Skogen agreed. At the time, the rate case did not require them to be an incumbent carrier and Sacred Wind's argument was that MATI did not meet the definition of incumbent and she agreed with that. The law changed at some point but not the definition that allowed a rural carrier to file under the Rural Telecommunications Act. That changed when the legislature inserted "incumbent" in the Rural Telecommunications Act. She didn't know why that was changed.

She had researched to make sure she had correct version. All she found was the legislature redline on what changes were made. The final wasn't available. It was important to honor the statute.

Commissioner Howe asked how the Commission would process a rate request from Sacred Wind.

Ms. Skogen said there was another rule under which they could file a rate case which was more defensible. Under the New Mexico Rural Telecommunications Act, carriers other than mid-sized AFOR can file a rate case. But of concern is that the Rural Telecommunications Act says that was the only statute under which a rural carrier could file. So she believed the other statute should be used.

Commissioner Howe asked if MATI didn't create a precedent for Sacred Wind.

Ms. Skogen replied technically no inasmuch as Sacred Wind didn't request to be an incumbent rural telecom carrier. In 2005 they asked to be one but changed and then requested to just be a rural telecom

carrier and the Commission granted that.

Commissioner Howe asked if Sacred Wind could have required incumbent status.

Ms. Skogen acknowledged they could have, and reading between the lines, took the term incumbent and split out incumbent because of whom they purchased the lines from (an incumbent carrier) and certainly were rural.

Commissioner Marks asked if there was a rate case for MATI.

Ms. Skogen didn't know.

Commissioner Marks said he didn't recall a rate case.

Ms. Skogen noted that the MATI order was in 2000 so there might have been a rate case then.

Commissioner Marks was convinced Sacred Wind was under 63.9A.1 for rate regulation. Ms. Skogen agreed.

Commissioner Marks said if they were not an incumbent rural carrier subject to that specific rate statute, part of the Rural Telecommunications Act might apply to them except the rate provisions in 9.87f. They were not a price cap carrier because not over 50,000 lines. So they were a generic telephone company and would fall under 63-9-A, 8.1 and further, he thought that generic was cost of service rate of return regulation. So from a practical aspect the only difference for Sacred Wind was that they don't get some things in Rural Telecommunications Act that say they can raise rates by filing notice and if no protests, can raise them without a hearing. But if they came here for a rate change, they could get fairly expedited proceedings. Ms. Skogen agreed.

Commissioner Marks thought they were not in regulatory limbo. The Commission could have been clearer in 2006 but they were still entitled to cost of service rates.

Ms. Skogen agreed. They were being cautious to learn what applied to them.

Commissioner Marks said the only things they were not entitled to were expedited procedures. Putting the legal matters aside, they were entitled to their regional rates. If they came in for a case it was because they thought they were entitled to USF. Ms. Skogen agreed.

Commissioner Marks thought if USF support required justification there was no difference and there likely would be a hearing. They just need to make a showing of cost that produces a different result like in this case where their showing of cost shows they were over-earning a rate.

Commissioner Becenti-Aguilar asked Ms. Skogen to explain the staff's position. When the Commission granted the request that Sacred Wind should be heard again on their motion for rehearing. The Telecom staff didn't have a position but today they do.

Ms. Skogen explained that when OGC asked for the extension it was just a few days after Sacred Wind had filed a motion and there was time for responses and staff had not filed one but did subsequently where they supported the petition.

Commissioner Becenti-Aguilar asked if that was a new position for them.

Ms. Skogen said staff legitimately felt the 2006 order indicated some intent of the Commission to apply the statute and as Commissioner Marks said, perhaps the order could have been clearer and said that statute didn't apply. One could draw that conclusion. So she didn't think staff's position had changed.

Commissioner Becenti-Aguilar said Ms. Skogen's recommendation partially grants the order and excludes the funding request.

Ms. Skogen said the reason was to make it clear that the Commission was not granting a rehearing for costs but a further briefing because the issue was not raised by any party and not affecting the outcome. She felt if the Commission were inclined to take that ruling out, it could be done without that process. So it was a compromise to make clear the Commission was not keeping the docket open for Sacred Wind or any other carrier to be further regulated.

Commissioner Becenti-Aguilar wanted to make it clear on the Sacred Wind motion to rehear that it was only step one. They were going to challenge every legal issue and this case wouldn't conclude the matter. The Commission could have the challenge over the next 12-18 months. That was her observation and all the general statements made in two previous appearances here were general and now they were talking about legalities.

Commissioner Howe asked if Commissioner Marks was suggesting an order should be rewritten to direct Sacred Wind to come in under 63-9A.

Commissioner Marks agreed. Ms. Skogen was 110% correct. How they were regulated has no relevance on the approval of stipulation on USF money. But as a collateral issue the Commission would do a disservice to Sacred Wind and every other company by not giving guidance. The Commission should lay out what they need to do if they want to succeed in the USF case. They would have to prove certain things like they needed USF to earn a reasonable rate of return and without that, they didn't. Ms. Clifford laid it out well.

He thought they would do a disservice by not saying what they should do. The law was pretty clear despite arm waving about 2006 and a lot of discussion on rate cases vs. USF. The definition for rate setting uses specific words and says you have to be one of these by 1997 and they were not. It was also black and white that the standard for anybody seeking to receive USF support that wasn't there because of access reduction 17.11.23d applies to them. That's the only rule that matters and it says that USF was cost of service for analysis - maybe not the entire data but revenue from all sources, rate basis and revenue requirements for USF and then look at other factors to determine if they were providing services in a reasonable manner without wasting money. The Commission ought to tell them those things.

Commissioner Howe asked if Commissioner Marks wanted to table this and get the order changed.

Commissioner Marks thought it was mostly written. The Commission might be creating some litigation at the Supreme Court.

Ms. Skogen asked if the Commission would issue an order to clarify for the parties.

Commissioner Marks said it was not a fact question but briefing the legal question.

Ms. Skogen asked if he believed the underlying order would need to be restated in any way.

Commissioner Marks said what he circulated would be his proposed order. It took him a long time (30 pages) to decide that he agreed with it. He had been of this opinion three weeks ago when he was traveling and agreed with the Commission's conclusions at the time and joined the order.

Ms. Skogen was fine with that but trying to figure out how to get a vote.

Mr. Parker agreed they might create a legal issue for the Supreme Court. Guidance was good but if we lose that issue, we lose the whole thing.

Commissioner Marks went back to Ms. Skogen's point, and thought the order might do both. If the Commission voted for the order and a couple of commissioners filed concurrence for guidance it would avoid the litigation.

**Chairman Lyons moved to approve the order as presented. Commissioner Hall seconded the motion and it passed by majority (4-1) voice vote with Commissioner Marks voting against. Commissioner Marks would file concurrence. So Ordered.**

**12-00250-UT      IN THE MATTER OF THE COMMISSION'S ENERGY EFFICIENCY RULES AT 17.7.2 NMAC, INCLUDING PROPOSED RULES ON REVENUE DECOUPLING.**

**12-00144-UT      IN THE MATTER OF A DECOUPLING AMENDMENT TO THE COMMISSION'S ENERGY EFFICIENCY RULES  
(Michael C. Smith)      NOPR**

Mr. Smith presented information regarding this matter to the Commission. This matter came right after the July 19<sup>th</sup> moving. It was a proposed order opposing the NOPR and opening a new docket to provide for a new rulemaking on 17.7.2. This was to avoid the issues raised in the motion to dismiss because they had not been raised by some of the commissioners on the effect of the Supreme Court ruling and AG opinion that struck down the 2010 amendments of the rule. The new rulemaking was attached to the proposed order with redline to show the new language to be added to the 2007 rule as it stood, reinstated following vacation of the 2010 rule.

The red line was there and noted at the end of the rule, purely for convenience of the public in review of

the proposed rule in the context of the 2007 rule.

Mr. Smith also showed the effect of the court ruling on the 2007 rule as a result of vacating the 2010 rule.

One other issue was that on the e-docket there was a proposed attachment A that still showed the metadata. He might have had access to a different edition. It should have that caption but he would make sure the meta data came off.

Commissioner Hall asked if this was a totally new order. Mr. Smith agreed.

Commissioner Hall said it first was in 2007 but this was a totally new rule. Mr. Smith agreed.

Commissioner Hall didn't see anything in the Supreme Court order that resurrected the 2007 rule.

Mr. Smith said the 11-0439 order noted that it had been resurrected.

Commissioner Hall recalled discussing that but that the Commission never did anything about it and someone was to clarify that.

Mr. Smith said that was what he tried to address in his memo. The rule was somewhat comatose. It was not annulled by the Court but because it was not published, it was not currently effective.

Commissioner Hall said he tried to hurriedly read this. There was an issue in 9-k in exhibit A that seemed to be new. Mr. Smith agreed that was new.

Commissioner Hall said it was not quite ready for prime time. General Counsel's presentation appears to say it was overruled and only noticed by Commissioner Marks.

Mr. Smith said they were alternate approaches.

Commissioner Hall thought it would be best to know what they were starting with.

Commissioner Marks said he took to heart what Commissioner Hall said last week. Let's not say we have any rule and get the old rule back into effect with some new things to consider and if at the end we decide not to do decoupling stuff then we publish a new order and do what you were asking for. But we can also take comment on the new things and can decide whether or not to put them into effect or not. This publishes the whole rule.

Commissioner Hall didn't have any problem with publishing the whole rule so everyone knows we have a rule. But in Exhibit A it says decoupling and he thought everyone should participate in decoupling rather than just those utilities with over 500 customers.

Commissioner Marks said the point of the proposed rulemaking was to publish language and get comments from stakeholders about what they thought would work or not and what was good for the state or



not but if we don't put it out there we won't know.

Commissioner Hall agreed to put it out there. He was not trying to vote on the proposal at the present time.

Commissioner Marks noted on page 17 at the top showed why he proposed this language. It was limited to residential and small commercial but might be other classes. But it excludes the largest industrial because decoupling was an averaging concept and if you don't have enough customers it doesn't work. It adjusts fixed cost recoveries and the way it worked was that residential customers would get all the savings and the utility would get some of it back but if there was only one customer, it would break down and averaging wouldn't work. And the smaller categories don't have a need for decoupling. If he rewrote it he might say "those subject to demand charge."

Commissioner Hall asked if decoupling was so beneficial why it should not be used for everyone.

Chairman Lyons went to page 17 and asked how many coops that would apply to.

Mr. Najjar said almost all for residential but some might have less in small commercial.

Commissioner Marks said this rule excluded coops on page 3 of attachment A. It wouldn't work with small coops. He read more of the attachment.

Chairman Lyons asked about Tri-State.

Commissioner Marks clarified that they have no retail customers.

Commissioner Hall said 17-9.7.2.19f showed that utilities must comply with ROW on the kilowatt amount and asked how they could do that since 17-7.1.12c said tariffs would be assessed as a percentage of the bill unless the utility could demonstrate that the customer would not pay more.

Commissioner Marks said section 12 had to do with recovery of program costs, rebates and management. Decoupling was a separate tariff rider so there was no inconsistency. These were separate adjustments and would vary differently. There was no reason to believe they would be identical.

Commissioner Hall asked if this wasn't the same thing proposed by PNM and turned down by the Commission several times.

Commissioner Marks said it was almost the same but with modifications. He thought it was useful to use something that was already around. That went away with the stipulation for rate increase. PNM in 06-210 rejected it for the gas side. There was no reason to distinguish. He had changed his mind on whether this made sense or not. The Commission was not bound to always file what was decided in the past. They were making a prospective change here so it was not a due process violation. He would like to let the stakeholders, consumers and advocates look at it and comment. There would be a public hearing and let the Commission weigh them and decide on the merits. If decoupling was the devil's work clearly a bad thing then the Commission would not do it. He started out opposing decoupling in 2005, 2006 but the more

he looked at it, the more benefits he saw in it. The consumer who saves electricity gets a savings. And it will all help with energy in the long run. It doesn't require a lot of money for energy efficiency. He hoped Commissioner Hall could support this as a rulemaking proceeding and wait to vote on it when it comes back.

Commissioner Hall didn't have a new rule and the Commission did need a new rule here. If decoupling was so good, why do only 17 states have it? The Commission was getting in too big a hurry. Last time they had 22 hearings and it still got shot down.

Chairman Lyons had comments from the AG here saying the method of decoupling was illegal.

Mr. Taylor had not seen the new one but did see the one published a few months ago.

Chairman Lyons asked him to explain the AG's thinking about it.

Mr. Taylor said it had been interesting. The AG hadn't had time to be involved in all energy efficiency matters. Decoupling was a substantial change in rate making. Michigan said decoupling was not contemplated without amendment of the statute. That was true here too. Under traditional ratemaking and the PUA, utilities were not guaranteed a return but decoupling does make it a guarantee. Under this proposal if utility revenue drops, customers make up that difference.

Chairman Lyons understood - so they still pay the bill even though they conserve.

Mr. Taylor agreed. The Commission would never need another rate case because every year it would automatically update.

Commissioner Marks said it wouldn't for new capital needs. Mr. Taylor agreed.

Mr. Taylor read his statement on decoupling and pointed out that it charges the customer regardless of usage. The AG opposes any decoupling. The proposed decoupling rule violates these tenets in several ways. The process would constitute retroactive ratemaking. There was no provision in PUA or Energy Efficiency for decoupling. The Efficient use of Energy Act allows expenses to be collected in a rider so his opinion was that this rule would exceed the Commission's authority. It would conflict with provisions in the PUA.

Chairman Lyons said that statement was attachment 2A. It was identical.

Mr. Taylor said decoupling was to take the risk out utilities' revenues and therefore they should not earn 11-12%. Nationwide, very few Commissions have lowered returns of utilities so it was very difficult. Decoupling discriminates against smaller customers by exempting large customers. If you were not including large customers, the revenues they get could grow over time and still customers would have to pay a rate rider so the company could be over earning and he thought that was piecemeal rate making. It doesn't look at the company's total expense.

It also violates rule 410 which prohibits decoupling. This one would make up any loss. If we had a

recession and small businesses would close the utility company would continue to receive revenue. It also violates use of a future test year. One rationale used then was that it would make up for losses or deficiencies.

Commissioner Hall asked him if in his opinion, decoupling would benefit ratepayers as it stands now.

Mr. Taylor didn't think so.

Commissioner Hall concluded it would benefit utilities but not ratepayers. Mr. Taylor agreed.

Commissioner Howe said Mr. Taylor brought up what would happen in a recession but through this present recession all three utilities have grown.

Mr. Taylor said in discovery, he found that the residential loads were continuing to grow. The loads of the larger companies either because of the recession or because of their own ...

Commissioner Howe countered that they wouldn't benefit from decoupling because they were excluded. And asked what would happen.

Mr. Taylor said they would get a refund.

Commissioner Howe agreed so rates would go down. So it was not in the utilities' best interests to have decoupling in a region experiencing recession.

Mr. Taylor said it was illegal.

Commissioner Howe said that was by looking at Michigan.

Mr. Taylor said New Mexico case law since the 1940s didn't guarantee a return.

Commissioner Howe didn't see that in this rule. Nothing in this rule said return on equity would remain the same.

Mr. Taylor said that would have to be specific on that issue.

Commissioner Howe asked if he had said riders could recover expenses.

Mr. Taylor thought so.

Commissioner Howe asked if riders could be used for any other purpose.

Mr. Taylor didn't know but they should be trued up. Unless there was statutory authority for a true up - that was where rate making comes in. He was less concerned about it if it was an expense rather than revenue - if it was a specific expense I don't think it could be trued up but there were rate riders for everything.

Commissioner Howe commented that we were jumping ahead here to the hearings. It was clear the AG's office was not in favor of decoupling but if we hear from AG, maybe we should hear from all.

Mr. Taylor said it did need workshops to go through all the problems everyone sees in the proposed rules and get them worked out and to give time for research to see what was legal or not.

Chairman Lyons commented that the order said a public hearing - no workshops.

Commissioner Marks disagreed. It provides for workshops in August. He said at one point Mr. Taylor had said this was one-sided toward utilities.

Mr. Taylor agreed the adjustment would go both ways.

Commissioner Marks and Mr. Taylor debated further.

Commissioner Marks said if use goes up the customer would benefit and if use goes down the utility would benefit.

Mr. Taylor guessed that could be true.

Commissioner Marks asked if his idea was that the utility would get a guarantee return regardless of use.

Mr. Taylor guessed so.

They continued to debate what would happen with decoupling.

Chairman Lyons asked what the result would be with 2.5% growth.

Commissioner Marks said in states with decoupling, the adjustments were less than 2% and the customers would benefit and not companies.

Mr. Taylor said his main argument was that it was illegal. It was bad for customers in that it guarantees a return to utilities and that was illegal.

Commissioner Marks said it guarantees revenue but not rate of return so it was not retroactive rate making.

Mr. Taylor said it guaranteed in the fixed costs.

Commissioner Marks disagreed. It was on profit at the end of the day. Utilities testify that they never get their rate of return.

Commissioner Marks said decoupling could not guarantee their return. He asked if all the costs were in

the rates if that was illegal.

Mr. Taylor didn't know. He noted that fixed costs were a large part of costs in gas utilities that were charged to ratepayers and traditionally was illegal because it didn't allow the consumer to control costs by reducing use.

Commissioner Marks said decoupling takes away the incentive of utilities to get people to use more electricity.

Mr. Taylor said the AG believes there were too many legal problems with this. If the Commission would take time to deal with that it would be refreshing. He didn't know how the Commission would overcome retroactive rate making. It would be difficult.

Commissioner Marks said he wasn't sure so he wanted this proceeding to find out.

Mr. Taylor was afraid the comment period would not get anyone to that answer. The consequences were what was important.

Chairman Lyons thought legislative action would be required also. He didn't see the workshops mentioned.

Commissioner Marks said it was on the bottom of 3 and top of page 4. The Commission could also handle workshops through separate order and ask for a legal briefing. He would support all of that. He didn't know the answers to the legal questions but some of the arguments today have shown their position to be wrong. With the hot summers it was costing more and the utilities were over-earning. Taking away that incentive means we don't have to build more generating plants. We were saving all of this electricity but costs continue to go up and use goes up. This was worth looking at.

Chairman Lyons agreed that Efficient Use of Energy Act had not been effective. Decoupling would make rates higher. This was guaranteed revenue recovery.

Commissioner Marks thought his order in 10-0086 was in the public interest and was glad the majority agreed. He was asking for the hearing because it was in everyone's interest.

Chairman Lyons asked why decoupling wasn't in there.

Commissioner Marks said there was no record to do decoupling in that case. And it probably would have been a mistake to push a big change through in a week. This rule has been out there since May and people knew what it meant. There was more than enough time to consider it.

Chairman Lyons said this was a major policy change - taking it away from traditional rate making and now would do it with one hearing and maybe one workshop to get it out by October. He wasn't sure the Commission could do this. Decoupling was only in 14 states and 3-4 were reconsidering it because it hasn't decreased rates. Cost recovery was in 13 states. Performance incentives were in 23 states.

Commissioner Marks asked if he supported the loss recovery mechanism.

Chairman Lyons said he didn't know enough about that but felt the state's incentive program was illegal.

Commissioner Marks noted it was at the Supreme Court. In the absence of decoupling was an asymmetric policy that goes both ways.

Mr. Taylor said in the PNM rate case they not only claimed decoupling but admitted they had no incentives. If you had a rate case every year you wouldn't have disincentives.

Commissioner Marks asked Mr. Gould about it.

Mr. Gould said the reduced adder was meant to be an incentive but not a recovery of disincentives. It was based on the paradigm of that rule.

Commissioner Marks agreed.

Mr. Gould said the PNM appeal was on incentives.

Chairman Lyons asked Mr. Parker if the July 31<sup>st</sup> deadline was still in place.

Mr. Parker agreed and clarified that under the old NOPR parties had until July 31<sup>st</sup> to apply. If this order was approved, then July 31<sup>st</sup> was gone but the Commission would receive new motions at least from the AG, so the Commission would be in the same position.

Chairman Lyons felt the schedule here was a hurry up schedule. The Commission needed to get it right or it would end up again at the Supreme Court. The Commission needed first to figure out if it could even do this or if it needed legislative action which was the road he preferred. He would vote no on the order.

Commissioner Marks moved to adopt the order and show amendments on the procedure orders.

Commissioner Howe said in the interest of consumers, perhaps the Commission should relax the schedule to allow for workshops.

Commissioner Marks withdrew his motion.

Commissioner Howe wanted to table it and come back on Tuesday with a revised procedural schedule.

Commissioner Marks thought if it didn't have 3 votes that would be a waste of time.

**Commissioner Marks moved to adopt the order and add a month to written comments and push everything else proportionally forward and conduct workshops in August and September with initial comments due at end of September. Commissioner Howe seconded the motion.**

Chairman Lyons said there would be one public hearing on September 24<sup>th</sup>. He didn't think one public hearing would be enough.

Commissioner Marks agreed and requested setting a hearing on August 27<sup>th</sup> after the first round of workshops.

Chairman Lyons said they should send something to the AG's office on the legality of this order. And prepare a bill for the legislative session.

Commissioner Marks said the PRC doesn't make legal decisions. Taking legal briefing from all parties was appropriate but not asking for an AG opinion.

Commissioner Howe didn't think the AG was capable of making an objective legal opinion on it.

Commissioner Marks said there would be workshops through August and September and added that the PRC shall set a future hearing to be scheduled later.

Mr. Parker asked if the purpose of the workshops would be to try to come up with a consolidated rule everyone could live with.

Commissioner Marks agreed, if possible. He believed the people with opinions on it have thought about it for years. It worked well on the back billing/deposits case. The Commission could have an on the record hearing during that time and a final hearing on it.

Commissioner Marks said November 19<sup>th</sup> would be the final hearing.

**The motion failed on a voice vote of 2-3 with Commissioner Becenti-Aguilar, Commissioner Hall and Chairman Lyons voting against.**

**Commissioner Hall moved to approve the order with an amendment to strike paragraph D of the order on pages 3 and 4 and change the language on line 8 to say "public hearings or workshops shall be held starting at 1:00 on September 24<sup>th</sup> at the offices of the Commission and continuing until agreement was reached on decoupling by all parties.**

Commissioner Marks asked if the Commission could start them sooner.

**Commissioner Hall changed September 24<sup>th</sup> to August 24<sup>th</sup>. Commissioner Marks seconded the motion.**

Commissioner Marks said it was not what he preferred but it was an opportunity to discuss this.

Mr. Smith asked about written comments.

Commissioner Marks said that was stricken too.

Chairman Lyons moved to table but the motion died for lack of a second.

Commissioner Marks said they were starting a series of workshops and no specified end to the procedural schedule.

**The motion passed by majority (3-2) voice vote with Chairman Lyons and Commissioner Howe voting against. So Ordered.**

Commissioner Becenti-Aguilar explained that she voted in favor on this to make sure the Commission navigated these issues thoroughly and she totally supported Commissioner Hall's motion to get the concerns and response of people in workshops without hurrying through it. It needed time.

**12-00219-UT      IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION REGARDING (1) ITS 2011 ANNUAL RENEWABLE PORTFOLIO REPORT; (2) ITS 2012 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN; (3) ITS REQUEST FOR VARIANCES FROM (A) THE DIVERSITY REQUIREMENTS FOR "OTHER" RENEWABLE ENERGY RESOURCES FOR 2012, AND (B) SPECIFIED PORTIONS OF THE MEDIUM SOLAR DISTRIBUTED GENERATION (DG) TARIFF; (4) ITS REQUEST TO REVISE AND CANCEL CERTAIN DG TARIFFS' (5) ITS REPORT ON PROJECTED 2013 AND 2014 COST ACCRUALS IN THE REGULATORY ASSETS APPROVED IN PRIOR CASES; AND (6) APPROVAL OF REQUESTS RELATED TO WINDSOURCE.  
(Michael C. Smith)      Order**

Mr. Smith presented information regarding this matter to the Commission. This was an application that came from SPS submitting its annual 2011 renewable portfolio for 2011 and plan for 2012. The statute and rules require them to submit them annually every year.

Commissioner Marks asked if this just opened a docket and referred it to a HE.

Mr. Smith agreed and expedited on one request to determine financial viability.

**Commissioner Marks moved to approve the order as presented. Commissioner Howe seconded the motion.**

Mr. Smith clarified that it was asking the HE to get it back to the Commission by September 15.

Chairman Lyons said he had questions on Sunrise.

**The motion passed by unanimous (5-0) voice vote. So Ordered.**

**12-00100-UT      IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF**



**NEW MEXICO FOR APPROVAL OF THE CITY OF SANTA FÉ 22012  
UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICE NO. 447.  
(Margaret Caffey-Moquin)      Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. If adopted it would accept and approve the RD for a variance and the case would still be before the HE on the underground rate variance but allow construction by PNM to begin in the del Norte escarpment district. She recommended adoption of this initial order.

Commissioner Howe recused himself on this matter.

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

## **8. PRESENTATION**

- **Clean Energy Standards by Steve Michel**

Mr. Michel presented this matter to the Commission and Mr. Montoya handed out printed copies of the presentation. The PPT described mechanics of a proposed rule he wanted the PRC to consider. There were 24 petitioners from several New Mexico organizations. Next week they planned to present a proposed rule and ask the Commission to put it out for comment. It was voluntary clean energy standards to provide a cost recovery by reducing CO<sub>2</sub> by 3% in the next few years with very low cost.

This summer, New Mexico had the highest temperatures ever recorded in New Mexico and largest wild fires. Crops were dying and ranchers were selling off cattle so there were good reasons for this rule. He went through other reasons to consider it.

The clean energy standard was simple and technology neutral and had lost cost to utilities and customers. This had utilities earning credits from reduction of emissions. It was a voluntary program so utilities could opt into it. It provided a way to manage those rates and a system for dealing with federal regulations and provide or achieve an acceptable outcome for San Juan Generating Station. These emissions were driven by combustion and correlated with other pollutants. In it a clean plan emitting 0 metric tons of CO<sub>2</sub> per gigawatt hour would get 1000 credits/GWh.

He went through the other mechanics of the plan and agreed that an industry norm could be used as a baseline and would award credits based on how clean it emissions were as a credit per metric ton/GWh. It would also set an emission reduction path.

WRA proposed 3% reduction per year from 2010 levels for 20 years. It would be manageable from a cost standpoint and achievable.

It would also retire credits. The PRC would require utilities to retire enough credits each year to achieve the goals. Credits would never expire and could be traded or sold to get the cheapest reductions.

Commissioner Howe asked if this would count energy efficiency.

Mr. Michel agreed - in a very simple way. He went through several issues they had dealt with. With a 3% /year CO<sub>2</sub> reduction (+2% growth) - the increase in electricity cost was less than 1%/year = \$.60/MWh.

He described an alternative compliance and explained the difference between load vs. source based standards.

His proposal had three things for the Commission to do: establish a baseline, award credits each year and require utilities to retire credits for each year based upon the formula:  $CECs = Mwh_c - (E_b \times (1-R))$

Commissioner Howe asked if it didn't apply to generation in New Mexico bound for out of state. Mr. Michel agreed.

Commissioner Howe asked how PNM would figure it at the San Juan Generating Station.

Mr. Michel said PNM was looking at a lot of things. If they were able to retire units of San Juan - it would only be their share of San Juan Generating Station.

Commissioner Howe though hypothetically if there was no solution for San Juan Generating Station - that PNM couldn't reduce units there without getting Tucson to buy in.

Mr. Michel repeated that it was optional for utilities but was a way of controlling their destiny. There were a lot of federal regulations and the industry tried to accommodate state programs. PNM would do better under this standard than what Senator Bingaman proposed.

Chairman Lyons asked if this would be in place of cap and trade.

Mr. Michel said it would alleviate New Mexico from those federal regulations. It was different than cap in trade but accomplished the same thing.

Commissioner Marks asked if he had filed a petition.

Mr. Michel said they were targeting it for next week and they would like to get comments on it.

## **9. PUBLIC COMMENT**

There were no public comments.

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

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

#### **11. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA**

There were no communications with Chief of Staff.

#### **12. COMMUNICATIONS WITH COMMISSIONERS**

Chairman Lyons said he would call in next week and then have a regular schedule.

#### **13. ADJOURNMENT**

**Commissioner Hall moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote.**

The meeting was adjourned at 12:27 p.m.


ATTEST:

  
Carl Boaz, Stenographer

APPROVED: 08/23/2012

  
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, July 26 , 2012**

**9:30 A.M.**

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

**AGENDA**

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

**A. Transportation Division**

<b>12-00148-TR-M Sandra Skogen</b>	<b>IN THE MATTER OF THE APPLICATION OF TOURS U DESIGN, LLC FOR A CERTIFICATE TO PROVIDE A TOUR AND SIGHTSEEING SERVICE AND FOR TEMPORARY AUTHORITY.</b>  <b>Order</b>
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**7. REGULAR ACTION**

**A. Utility Division**

<b>10-00315-UT</b> <b>Sandra Skogen</b>	<b>IN THE MATTER OF THE APPLICATION OF SACRED WIND COMMUNICATIONS, INC. FOR APPROVAL OF INITIAL RATES, TERMS AND CONDITIONS OF SERVICE FOR SUPPORT FROM THE NEW MEXICO RURAL UNIVERSAL SERVICE FUND AND PETITION FOR VARIANCE FROM COMMISSION RULES.</b>  <b>Order</b>
<b>12-00250-UT</b> <b>Michael C. Smith</b>  <b>12-00144-UT</b>	<b>IN THE MATTER OF THE COMMISSION'S ENERGY EFFICIENCY RULES AT 17.7.2 NMAC, INCLUDING PROPOSED RULES ON REVENUE DECOUPLING.</b>  <b>IN THE MATTER OF A DECOUPLING AMENDMENT TO THE COMMISSION'S ENERGY EFFICIENCY RULES.</b>  <b>NOPR</b>
<b>12-00219-UT</b> <b>Michael C. Smith</b>	<b>IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION REGARDING: (1) ITS 2011 ANNUAL RENEWABLE PORTFOLIO REPORT; (2) ITS 2012 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN; (3) ITS REQUEST FOR VARIANCES FROM (A) THE DIVERSITY REQUIREMENTS FOR "OTHER" RENEWABLE ENERGY RESOURCES FOR 2012, AND (B) SPECIFIED PORTIONS OF THE MEDIUM SOLAR DISTRIBUTED GENERATION ("DG") TARIFF; (4) ITS REQUEST TO REVISE AND CANCEL CERTAIN DG TARIFFS; (5) ITS REPORT ON PROJECTED 2013 AND 2014 COST ACCURALS IN THE REGULATORY ASSETS APPROVED IN PRIOR CASES; AND (6) APPROVAL OF REQUESTS RELATED TO WINDSOURCE.</b>  <b>Order</b>

12-00100-UT Margaret Caffey-Moquin	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE CITY OF SANTA FE 2012 UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICE NO. 447.  Order
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8. **PRESENTATION**
  - Presentation by Steve Michel on Clean Energy Standards.
9. **PUBLIC COMMENT**
10. **COMMUNICATIONS WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS,  
BOB PARKER**
11. **COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA**
12. **COMMUNICATIONS WITH COMMISSIONERS**
13. **ADJOURNMENT**

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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.

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## 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.**