

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
August 7, 2012**

TIME: 9:30 a. m.

**PLACE: PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fé, New Mexico 87501**

A quorum was present as follows:

Members Present:

Commission Chairman Patrick H. Lyons
Commissioner Vice Chair Theresa Becenti-Aguilar
Commissioner Ben L. Hall
Commissioner Jason A. Marks
Commissioner Douglas J. Howe

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Margaret Caffey-Moquin, Acting Deputy Chief of Staff for Legal Affairs
Rick Blumenfeld, Associate General Counsel
Carolyn R. Glick, Hearing Examiner
Dwight Lamberson, Utility Division Director
Patrick López, Legal Division Director
Larry Luján, Transportation Division Director
Paul Montoya, Transportation Division
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

Paul Montoya introduced Ryan Jimenez, the new transportation investigator who started yesterday.

Chairman Lyons introduced former Speaker of the House, Raymond Sanchez.

3. MISCELLANEOUS ANNOUNCEMENTS

Chairman Lyons asked about the status of the Giant Cab case.

Ms. Caffey-Moquin reported it was tabled last Thursday. Mr. Parker agreed to look at the affidavits of support. He is out of town and will be back a week from Thursday. The draft agenda did not show this case and so she would reserve the information on it until it was on the agenda. They could send a report to the Commission for this Thursday if that would be helpful.

Commissioner Marks asked if it would come back a week from Thursday.

Commissioner Hall noted that would be August 16 when the Commission meets in Ruidoso.

Ms. Caffey-Moquin said his plan was to bring it back at his first opportunity.

Commissioner Marks thought the Commission might let them give public comment today. Chairman Lyons agreed.

Commissioner Howe suggested moving that up on the agenda. Chairman Lyons agreed.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Marks moved to approve the agenda as amended with public comment before regular action items. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

8. PUBLIC COMMENT

Mr. Sanchez said he didn't see anyone present from Giant Cab. In looking at these matters procedurally, it is important to know that the Motor Carrier Act had been amended at least seven or eight times. But one thing held inviolate has been the procedure in dealing with transportation carriers. We've allowed some procedures to change but one thing we've not amended for transportation of passengers is that this Commission shall take into consideration all the statutory requirements and regulations and Commission rules when allowing a new company to come in. The main reason was to protect the public to be sure that company was fit, willing and able and that the existing carriers are not doing so in a way they should – that their rates or routes or services were inadequate. They had a right to intervene in the process. So in terms of process he asked that this Commission look very carefully at the affidavits. Procedurally, they felt this Commission has an obligation not only to the public but also to those already providing those services. So we ask you to look at them and how they fit with the statutory authority. They way those affidavits were formed he had never seen that in his practice before the Commission.

Commissioner Marks asked if he didn't have a problem with waiting two weeks on this matter.

Mr. Sanchez said he didn't.

5. REGULAR ACTION

A. Transportation Division

**11-00224-TR-M IN THE MATTER OF COMPLIANCE WITH THE FINAL ORDER
CONDITIONALLY GRANTING LIMITED AMENDED AUTHORITY TO RUNNING
BEAR, INC., D/B/A ROCKY MOUNTAIN EMS, IN CASE NO. 10-00063-TR-M.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission on a motion filed August 2 by Rocky Mountain EMS to change the schedule. The pending appeal at the Supreme Court and this action will not affect that appeal and she recommended action be taken. The compliance schedule currently applied quarterly and thorough inspections by the Transportation Division staff and they had been filing detailed reports regarding their findings.

Because of the recent transfer of authority of the Bernalillo County portion of Rocky Mountain EMS to American Medical Response (AMR) that PRC staff should back off from the quarterly inspections but instead of the requested annual inspection by the applicant, Ms. Caffey-Moquin recommended a semi-annual inspection schedule, subject to more frequent oversight by the Commission. She recommended the next inspection take place on or near November 30, 2012.

Commissioner Marks asked if they had four quarterly inspections now. Ms. Caffey-Moquin agreed.

Commissioner Marks recalled a couple of minor problems in the first two and asked what the results in the next two inspections were.

Ms. Caffey-Moquin said they indicated the vehicles were better stocked with needed equipment. Also in

response to second inspection, an official said it was common for an ambulance to not be 100% stocked. They were more in compliance now.

Commissioner Marks asked what the argument was for not treating them like everyone else now. The reason they were put on quarterly was that they were in very tenuous financial circumstances and the Commission was not sure they would be solvent. He got the impression with AMR that they were not in that circumstance and that Rocky Mountain EMS was back to normal. He asked if they were still in danger financially.

Ms. Caffey-Moquin said the Commission had no direct facts but knew the carrier went into bankruptcy last year and it was addressed in bankruptcy court. We have no evidence they were going to fail. Also, her understanding was that they were down to just 2 ambulances and concentrating on non-emergency services.

Commissioner Hall said this order did not pertain to their finances. Ms. Caffey-Moquin agreed.

Commissioner Howe noted Rocky Mountain EMS said it was no longer a parking ambulance service but the memo said they did continue to field ambulances in its original certificated were in northern New Mexico. He asked if those were contradictory statements.

Ms. Caffey-Moquin said no.

Commissioner Marks said it should have said they were not parking an ambulance in Albuquerque. That's what the order said.

Ms. Caffey-Moquin agreed it no longer parks ambulances in Albuquerque.

Commissioner Becenti-Aguilar asked if there was a time period set when the Commission ordered quarterly for Rocky Mountain EMS.

Ms. Caffey-Moquin said there was not. The purpose was to deal with the new authority in Bernalillo County and now that they were not serving Bernalillo County, it is no longer an issue.

Commissioner Hall asked if transportation staff had any quarrel with this release from quarterly inspections or if they felt Rocky Mountain EMS was not stocking their ambulances as they should.

Ms. Caffey-Moquin explained that staff still had to do these until the Commission relieved that obligation.

Commissioner Hall asked if the release from them was because they had cleaned up their act or that the owner felt they were being mistreated.

Ms. Caffey-Moquin said the report was that they have improved.

Chairman Lyons asked what the normal inspection schedule was.

Ms. Caffey-Moquin said it was annually.

Chairman Lyons asked her to remind him of the court case.

Ms. Caffey-Moquin said it was on 10-00062 granting Bernalillo County authority. Superior opposed and an appeal went to the Supreme Court.

Commissioner Hall moved to approve the order. Chairman Lyons seconded the motion.

Commissioner Marks moved to table the matter to let the 13 day response time run. The Commission was speculating on staff's position. Based on the facts today he would vote for an annual schedule. It was General Counsel advocating for splitting the difference. He'd like to table to hear staff response.

Chairman Lyons pointed out that it said on page 2 that staff didn't file anything.

Commissioner Marks countered that the company had filed.

Commissioner Marks made a substitute motion to direct staff to file a response by August 15 to Rocky Mountain EMS' motion with any facts to support the inspection schedule. Commissioner Howe seconded the motion.

Mr. Gutierrez said staff did not object to a less frequent inspection schedule up to annual inspections.

Commissioner Marks withdrew his motion.

Commissioner Hall amended his motion to delete one word, "semi."

Commissioner Marks said paragraph 5 would be changed to grant the motion. Commissioner Hall accepted that as friendly and the motion passed by unanimous (5-0) voice vote. So Ordered.

B. Utility Division

**12-00200-UT IN THE MATTER OF PROPOSED RULEMAKING REGARDING REPORTING
REQUIREMENTS FOR ELECTRIC UTILITIES UNDER 17.5-440.9 NMAC.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. It came on a petition by staff, SPS and NMIEC filed on June 25 to open a rule making docket. It was as a consequence of the final orders issued in the last two PNM general rate cases. The proposed changes to the threshold reporting requirements on utilities from a quarter million to a half million dollars. In support of that they asserted that projects that were less consequential to the utilities' financial picture were current required to meet the threshold at a quarter million dollars.

They would change the rule to require a report on all generation projects where the projected costs exceeds one million dollars, regardless of the size of the affected plant. The draft order would grant the petition in so far as it would initiate a new docket and call for appointment of HE to handle the NOPR and preside over hearings and submit recommended decision.

Commissioner Marks asked if they filed proposed rule language with their petition. Ms. Caffey-Moquin agreed.

Commissioner Marks asked what the reasoning was why Commission shouldn't look at the language and just make a ruling.

Ms. Caffey-Moquin said it was likely to be fact-intensive and the HE was in a good position to take the time needed to develop a really good record. She didn't believe an evidentiary hearing was required but there were various positions on it.

Commissioner Marks asked if the only change was from \$250,000 to \$500,000.

Ms. Caffey-Moquin said the other one was on projected costs for generation facilities exceeding \$1 million.

Commissioner Marks asked if some utility might object to that. Ms. Caffey-Moquin agreed potentially.

Ms. Caffey-Moquin said PNM had objected to the scope of the rule.

Commissioner Marks asked Mr. Ben Phillips if they had seen the petition.

Mr. Phillips agreed they had seen it and were joint petitioners.

Commissioner Marks asked who was on the petition.

No one seemed to know and Ms. Van Peski had a copy of the petition and provided it to Commissioner Hall who said it was PNM, PRC staff, SPS and NMIEC.

Commissioner Marks asked if EPE was part of the discussions

An unidentified representative said EPE to his knowledge had not been part of it and reserved their rights to file a response.

Commissioner Howe thought it seemed like a straightforward issue and reports were informational only. Nothing else was implied. He wondered if it wasn't just a fairly simple administrative change and if so, he wondered if there was a way to expedite.

Ms. Caffey-Moquin said she would change the order if the Commission asked.

Commissioner Hall noted it talked about additions of 10 MW or more and utilities interpreted that it

would have to add that much to make a report. He asked if the move from \$250,000 to \$500,000 was because things cost a little more than they used to. He thought that inflation was the reason. Ms. Caffey-Moquin agreed.

Commissioner Becenti-Aguilar thought other companies might file comments and she would leave the door open for that.

Chairman Lyons asked in what year the \$250,000 began.

Mr. Potturi said it was in the mid 1980's. It was \$100,000 before that.

Commissioner Marks proposed striking the HE and have it just as a proposed rulemaking.

Ms. Caffey-Moquin asked if he had a date.

Commissioner Marks suggested September 25.

Chairman Lyons wouldn't be present on that date.

Commissioner Marks said it needed a month after it gets published in the NM Register.

Chairman Lyons corrected himself. He would be here on the 25th.

Commissioner Marks suggested maybe a month before that for comments and two weeks for responses.

Commissioner Hall wondered how many times utilities could divide up construction projects so they were under \$1 million.

Mr. Blumenfeld thought the RCT rulemaking was on the 24th and 25th.

Commissioner Marks still thought it could be on the 25th.

Commissioner Marks moved to approve the NOPR on that schedule. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

6. DISCUSSION/ACTION

A. Utility Division

**12-00007-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
NEW MEXICO FOR APPROVAL OF RENEWABLE ENERGY RIDER NO. 36
PURSUANT TO ADVICE NOTICE NO. 439 AND FOR VARIANCES FROM
CERTAIN FILING REQUIREMENTS.**

(Carolyn R. Glick, Rick Blumenfeld) Recommended Decision / Order

Ms. Glick and Mr. Blumenfeld presented information on this matter to the Commission.

Ms. Glick said PNM seeks approval of a renewable energy rider to recover costs incurred after 2010. She first summarized the rider and then the opposition. PNM currently did recovery through base rates and a fuel clause. PNM books them as a regulatory asset for future recovery including carrying charges at 8.64%. They proposed the renewable energy rider be effective in 2012 and 2013 and terminate upon entry of a final order in PNM's next general rate case unless that order authorized continual use of the rider. They would assess rider rates as a percentage of the customer's bill at 2.084% in 2012 and at 2.682% in 2013. For an average residential customer using 600 KWH/month, the charge in 2012 would be \$1.38 per month for PNM North customers and \$1.47 per month for PNM South customers.

Commissioner Hall asked why the South customer had to pay more.

Ms. Glick said in PNM's last rate case they moved north and south customers onto the same rate schedule but up until the last rate case the north and south were paying different rates and this was an attempt to consolidate the rates.

Commissioner Hall knew it was a done deal. The north bought the south and he didn't know why the south had to pay a tax to belong to the north.

Ms. Glick said in 2012 they would recover annualized revenue of \$10.4 million in the rate rider for 22MW of PV capacity at five facilities and PNM's 500 KW PV facility with battery storage. Second, the rate would recover \$5.23 million for RECs through DG programs of applications through December 31, 2011. Third, it would recover \$2.6 million associated with regulatory asset for renewable procurements in 2011 and fourth, it would recover costs estimated at \$840,000 from RECs purchased from the City of Santa Fé in last year's procurement plan and from Lea County Coop and Golden Spread Coop in pending purchases.

The 2013 plan would recover the same components as in 2012 and any new procurements by PNM and it should not have said "any" because some of the procurements in the pending case would not be recovered through the 2013 rate, even if approved. In that case they proposed procurement of some wind and solar RECs for 2013 totaling approximately one million dollars.

NMIEC, CCAE, WRA and Sierra Club participated jointly and sponsored a single witness and staff - participated. NMIEC supports except a minor objection. CCAE, WRA and Sierra objected to the application on other grounds. They said using a rate rider was both unlawful and bad policy. The REA said the utility shall recover reasonable costs of complying with the renewable portfolio standard through rate riders. The objectors relied on a New Mexico Supreme Court case where the Court said the ratemaking process referred to in the REA meant both general rate cases involving a Commission notice a hearing, and approval process as well as automatic adjustment clauses. They argued that a rate rider was neither a general rate case nor an automatic adjustment clause and therefore could not be used to recover costs of complying with REA. Ms. Glick rejected that argument to recover renewable energy costs through a rate rider.

Commissioner Howe asked if she could distinguish between the rate rider proposed here and what the Supreme Court ruled as an automatic adjustment clause.

Ms. Glick thought the Court meant by automatic adjustment clause was the exceptions in 62.8.7 that required a notice before a hearing in a rate case. A rate rider was a form of an adjustment clause that was not automatic because it required notice.

Commissioner Howe asked why she said it didn't exclude rate riders.

Ms. Glick concluded that it would be an unreasonable reading of that case to exclude rate riders from the Commission's authority under 62.8.7. She reasoned that the legality of a general rate rider was not an issue before the Supreme Court in that case so rate riders should not be excluded from the Commission's rate making authority under that statute. And to do so would suggest all rate riders approved by Commission were unlawful.

Commissioner Marks asked if this was not automatic because it didn't change from month to month.

Ms. Glick said it was an annual adjustment based on true up. And those costs would be included in the revenue requirement in 2013.

Commissioner Marks thought that seemed like an automatic adjustment.

Ms. Glick said the objectors stated the Commission could hold a hearing.

Commissioner Marks noted that with undergrounding riders, the Commission authorized the company to recover through a rider and there was a true up involved. This would allow them to add other costs without further approval to be in the rate rider.

Commissioner Marks thought it was only automatic to recover a specified amount. The amount of costs to be recovered would not change.

Commissioner Marks thought it should be clear that true up wouldn't require another hearing notice.

Ms. Glick agreed. As long as there was a hearing in the procurement plan and this case - that was sufficient.

Commissioner Hall said they would recover all this money in 2012 from August to December and asked about recovery in 2013.

Ms. Glick said the same components as in 2012 would be collected. She listed those components. PNM would only collect five months' worth in 2012.

Commissioner Hall thought that was not clear in the order.

Ms. Glick said PNM would only recover about \$7.95 million in 2012; not \$19.1 million. They would

recover about \$23 million in 2013 through the rider. They would recover until it was fully depreciated.

Commissioner Hall couldn't see the ratepayers paying for these solar panels for ever.

Commissioner Howe asked if 7/12 of 2012 was in a regulatory asset. Ms. Glick agreed.

Commissioner Howe added that it didn't go on ad infinitum. Ms. Glick agreed.

Commissioner Hall concluded that once paid for, the ratepayers should be off the hook.

Ms. Glick noted the accusation of piecemeal ratemaking and she rejected that language.

Commissioner Marks thought it did sound like piecemeal rate making but there might be reasons to do it.

Ms. Glick said PNM proposed an earnings test as part of the rider to satisfy concerns about piecemeal rate making. But she already rejected the argument and did not address whether the earnings test would address that concern.

Commissioner Howe thought the issue of an earnings test might be much more important to whether this was an allowable one vs. an unallowable one. In the last rate case, Ms. Glick determined the additional capacity should not be allowed because it was piecemeal ratemaking. He asked if her opinion would have been different if an earnings test was attached to it.

Ms. Glick didn't know but it might have given her more pause. But even if the Commission found it piecemeal and violated the policy that it should still be allowed, relying on PNM's earnings test and the benefits of using a rider.

Commissioner Hall said the REA separated it from any other parts of PNM, the REA said they could do it. It was separated to start with.

Ms. Glick said WRA, CCAE and Sierra Club would disagree with that but that was her conclusion from the statute.

Ms. Glick said their next argument was that it was unreasonable to separate renewable costs >>>

Commissioner Howe noted that some other states used this, e.g. North Carolina. He asked if any evidence (facts) was given by them in the hearing pointing to states where riders have been used and generated consumer backlash.

Ms. Glick said no. Mr. Curl testified from his experience in public utility regulation that this was what would happen. She rejected the argument. Renewable was the only source of power that a public utility obtained pursuant to a statutory mandate and subject to the reasonable cost threshold and had to be a set percentage of the utility's total retail sales to New Mexico customers regardless of need or cost. She concluded it was desirable to communicate the cost of that mandate to customers. It would reduce costs over the long run by eliminating carrying charges and provided more headroom under the RCT to procure

renewable resources. If not approved, PNM projected a total regulatory asset of \$37.3 million as of June 30, 2013 including carrying charges of approximately \$3.3 million.

Commissioner Howe said the \$3.3 million was not actually what would be saved if the rider was approved.

Ms. Glick agreed. If the rider was approved, she calculated the savings to be \$2.7 million.

Ms. Glick said their next argument was that the rider would give an inflated view of the cost of renewable energy because it wouldn't reflect fuel savings from use of renewable energy. In rebuttal testimony, PNM suggested that to address that concern, PNM could add a line to the bill immediately below the renewable energy charge that notes offsetting fuel benefits. Mr. Ortiz provided an example. She recommended adoption of PNM's suggestion although not necessarily the language Mr. Ortiz suggested but an indication of offsetting benefits and that PNM be required to consider suggestions of the parties but could decision what language to adopt.

For the argument that a hearing be required following annual true- up she agreed with PNM that the hearing was not needed for an adjusted rate to take effect.

The next objection was to not base the rider on a percentage basis but on a kilowatt basis. Ms. Glick agreed with that argument for two reasons but didn't know what per kWh rates would be.

Finally there were two alternate recommendations that all costs be collected through the fuel clause and she rejected it because not all of the costs could be recovered that way. PNM did recover wind through the fuel clause. In a Supreme Court case the court said REC costs could not be passed through a fuel clause since it was not delivered energy.

The second alternative recommendation was that the rider name should be changed so it was not associated to renewable energy. She rejected that because it was for recovery of renewable costs.

The rate of return was proposed at 10.5% with any earnings above that to be refunded to customers and WRA proposed 10% ROE. Ms. Glick rejected the argument as she found the absence of the test to mean that no earnings would be subject to refund.

Commissioner Howe said without an earnings test he would have a hard time reconciling this. It would be inconsistent policy decisions. The earnings test might be the turning point for good policy. This was kind of a freebie thrown in and asked if she still felt that way.

Ms. Glick said he had caused her to think about her reasoning further. She might have to rethink her reaction to NMIEC's argument.

In summary, she recommended that they could recover those costs through a rate rider, should add a line to the bill on offsetting fuel benefits and the only thing she rejected was PNM's proposal to use a percentage recovery and recommended instead a per kWh basis.

Commissioner Marks asked if the per kWh basis would assure north and south paid the same amount or at the same rate. Ms. Glick agreed.

Commissioner Marks asked what the estimated impact on the fuel clause was. In the absence of renewables, fuel costs would be higher but wondered how much.

Ms. Glick said the impact would be \$1.8 million in 2012 and \$2 million in 2013.

Commissioner Marks said at the hearing he had questions about the recovery on the 22 MW. On its own, the revenue requirement would have been lower because tax provisions allowed accelerated depreciation.

Ms. Glick explained that since PNM was anticipating an operating loss, it triggered an ADIT.

Commissioner Marks understood they would then not be able to use all their depreciation and this plant was entitled to bonus depreciation. So they couldn't take advantage because they were not paying income tax. Ms. Glick agreed.

Commissioner Marks said the Commission did a bench request and PNM's tax wizard told us if PRC did anything to normalize it would cause serious tax problems that would blow up the whole project. He asked if the Commission knew what the operating loss would be.

Ms. Glick said in looking at direct testimony in Exhibit 1 line 28 indicated ADIT losses of \$26.8 million of the 2012 revenue requirement.

Commissioner Marks said that didn't sound right. It should be less than \$18 million.

Commissioner Howe asked why PNM wanted to do the rate rider.

Ms. Glick replied that Mr. Ortiz gave four reasons including reduction in carrying charges, the reduction would allow more headroom in reduction of the original cost threshold to allow deployment of more renewable energy resources, more timely recovery of costs would provide for better matching of costs and benefits and the customers would realize the savings from the cost of renewable energy.

Commissioner Howe asked if the reduction in carrying charges was at 4%.

Ms. Glick said if the rider was approved, carrying charge would go down from 8.6% to 4%. The carrying charge would only get applied to regulatory assets. She was not aware of any cases where the Commission had allowed recovery of cost of plants through a rider.

Commissioner Howe commented that undergrounding recovered all costs over a set period of time. That was different from what was proposed here. He was trying to consider whether it was appropriate to recover annual revenue requirements in a rider.

Chairman Lyons thanked Ms. Glick for a good job.

Mr. Blumenfeld found the RD to be reasonable in rejecting the percentage basis for calculating the costs and for having a rider at all. Most of the exceptions had already been discussed. He focused on some of the exceptions not already discussed. The first was the staff exception for language that would say the RCT was a customer bill impact protection device. They didn't like the language on page 52 that the RCT was not a cap on the amount the utility could collect from customers in a given year. He thought in the small portion of the RD, it accurately said what the RCT was. - The cost not to be exceeded by the utility in buying renewable energy. It was not a cap on what the utility could collect from an individual customer. He felt staff could present their language at the hearing on October 24th and he didn't think the RD was inaccurate in its wording.

Chairman Lyons asked if he differed from staff on it.

Mr. Blumenfeld agreed with the RD and disagreed with staff.

Commissioner Howe asked if the cap was just a timing issue in that the cost cap could differ from what was collected from customers. Over time it ought to be the same and asked if Mr. Blumenfeld agreed with that.

Mr. Blumenfeld supposed he agreed in the long run.

Commissioner Howe asked if staff was suggesting that whatever the renewal energy rider was that it needed to be limited to the OCT cap.

Mr. Blumenfeld disagreed.

Chairman Lyons what the cap was.

Mr. Blumenfeld said that was what was agreed to in the stipulation in a prior rate case- 10-00086.

The PNM exception was addressed earlier and that left the WCS exceptions. Number 4 was that avoiding carrying costs was not a reason for immediate rate rider recovery. It might depend on the outcome of Commissioner Marks' bench request but it seemed they were talking a few million dollars and he thought it was a reason for immediate rate recovery. It was not so much a legal thing but a matter of policy. For this reason alone it was good enough to approve the rider.

Commissioner Marks disagreed. Avoiding carrying charges was not a sufficient reason for a rider. The Commission allowed carrying charges all the time but in this one it was a pretty big hit people would have to pay in 2014. It would be two years' worth or an extra \$40 million at that point.

Mr. Blumenfeld said with the rider the carrying charges went from 8.64% down to 4%.

Commissioner Marks felt the bigger problem was \$20 million per year in revenue requirements and this would kick the can down the road to become a \$40 million rate case for the future Commission plus the \$20 million for that year.

Mr. Blumenfeld said the other exception, and it was throughout the testimony, was Exception 5 that WCS said a line to detail savings approved through renewable energy was missing information and misleading. Perhaps a bench request would clarify that even further. This was the same things required in the Efficient Use of Energy Act - an explanation to consumers. And the language had not been worked out.

Commissioner Marks understood he would grant the exception but not sure exactly what language would be ordered. The order didn't say anything about that. Mr. Blumenfeld agreed.

Mr. Blumenfeld said in exception #7 the RD characterized WCS as hiding the cost of renewable energy. The environmental groups took exception to that. To him it seemed an accurate characterization. They countered that they were not hiding anything there. He defended Ms. Glick's RD there.

Commissioner Howe thought many aspects of this were plowing new ground. So there were precedents. He wanted to play out the logic of this situation and how they would call out the difference between the two options of having them recover the costs of what PNM would have to do in the Four Corners through a rider that might be called a coal mitigation rider.

Mr. Blumenfeld said the Commission had riders for all sorts of things. It would be policy issue. Renewable energy the legislature required and here was how much people would pay for it - upwards of \$700 million. It could be in a rider but didn't have to be.

Commissioner Howe thought Mr. Blumenfeld saw it as a policy decision. Mr. Blumenfeld agreed.

Commissioner Howe had trouble with the pre-annualized revenue requirements and how it might open the door for that in other parts of generation.

Commissioner Marks didn't think it would since these get to be recovered from day one and the others come in a rate case.

Commissioner Howe said the 22 MW generation was not recovered from day one.

Commissioner Marks disagreed that they were either as a regulatory asset or cost. With a traditional plant it would only be allowed after a rate case. The legislature made it a requirement so they needed to be able to have cost recovery from day one. Hopefully someday renewable wouldn't be considered something unusual. The choice here was to allow the rider or accumulate a regulatory asset.

Chairman Lyons noted that Commissioner Marks wanted to issue a bench request for more information and have it back a week from today. He thought that would work.

Commissioner Marks agreed and he would ask his financial questions and what language of the notice to customers could be to specify the fuel cost savings amounts. He thought the net operating loss was not the renewable costs and he might ask about it in the bench request about that part that was not eligible as a regulatory asset. If out today and response by Friday, then we could bring it on Tuesday. Mr. Blumenfeld agreed.

Chairman Lyons asked if it was okay to take action next week.

Ms. Glick didn't know how much time they would need.

Commissioner Marks felt it was not fair to unnecessarily delay this but one week wasn't much. They had agreed to August 8th earlier. They could get all of those done and have it back next Tuesday.

7. CLOSED EXECUTIVE SESSION

- Pursuant to NMSA 1978, Section 10-15-1.H(7) to discuss threatened/pending litigation.
- Pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited personnel matters.

Commissioner Hall moved to go into closed executive session pursuant to NMSA 1978, Section 10-15-1.H(7) to discuss threatened/pending litigation and pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited personnel matters. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Hall, Commissioner Hall, Commissioner Lyons and Commissioner Marks voting in favor and not voting against.

The Commission went into closed executive session at 11:52 a.m.

At 12:34 the Commission returned to open session.

Chairman Lyons announced to the public that during the closed session, no actions were taken and the only matters discussed were threatened or pending litigation and limited personnel matters.

9. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, MARGARET CAFFEY-MOQUIN

There were no communications with Acting General Counsel.

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA

There were no communications with Chief of Staff.

11. COMMUNICATIONS WITH COMMISSIONERS

There were no communications with Commissioners.

12. ADJOURNMENT

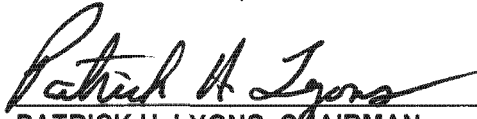
Commissioner Marks moved to adjourn the meeting. Commissioner Howe seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 12:35 p.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 09/06/2012


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

Tuesday, August 7, 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. REGULAR ACTION**

A. Transportation Division

11-00224-TR-M Margaret Caffey-Moquin	IN THE MATTER OF COMPLIANCE WITH THE FINAL ORDER CONDITIONALLY GRANTING LIMITED AMENDED AUTHORITY TO RUNNING BEAR, INC., D/B/A ROCKY MOUNTAIN EMS, IN CASE NO. 10-00063-TR-M. Order
---	--

B. Utility Division

12-00200-UT Margaret Caffey-Moquin	IN THE MATTER OF PROPOSED RULEMAKING REGARDING REPORTING REQUIREMENTS FOR ELECTRIC UTILITIES UNDER 17.5.440.9 NMAC. Order
---	--

6. DISCUSSION/ACTION

A. Utility Division

12-00007-UT Carolyn R. Glick Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF RENEWABLE ENERGY RIDER NO. 36 PURSUANT TO ADVICE NOTICE NO. 439 AND FOR VARIANCES FROM CERTAIN FILING REQUIREMENTS. Recommended Decision Order
--	--

7. CLOSED EXECUTIVE SESSION

- Pursuant to NMSA 1978, Section 10-15.1(H)(7) to discuss threatened/pending litigation.
- Pursuant to NMSA 1978, Section 10-15.1(H)(2) to discuss limited personnel matters.

8. PUBLIC COMMENT

9. COMMUNICATIONS WITH ACTING GENERAL COUNSEL, MARGARET CAFFEY-MOQUIN

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA

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.