

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
August 9, 2012**

TIME: 9:32 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
Dwight Lamberson, Utility Division Director
Matt Lovato, CFO
Mike Ripperger, Telecommunications Bureau Chief
Patrick López, Legal Division Director
Carolyn Glick, Hearing Examiner
Elizabeth Hurst, Hearing Examiner
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

Ms. Germaine Chappelle introduced two guests, Mr. Larry Phillips and Mr. Ben Luján from Ohkay Owingeh Pueblo.

Commissioner Becenti-Aguilar introduced the General Manager from Jemez Mountain Electric Coop and he introduced Brent Moore.

3. MISCELLANEOUS ANNOUNCEMENTS

- **Recognition of the Employee of the Month of July, 2012**

Chairman Lyons recognized Erica Chambers as employee of the month and read her certificate. Pictures were taken and the Commission congratulated her on being chosen for the award.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Hall asked to move the first consent item to regular action.

Commissioner Becenti-Aguilar moved to approve the agenda as amended. 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 19, 2012**

Commissioner Howe moved to approve the minutes of July 19, 2012 as presented. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

6. CONSENT ACTION

There were no consent items remaining.

7. REGULAR ACTION

A. Utility Division

**12-00258-UT IN THE MATTER OF JEMEZ MOUNTAINS ELECTRIC COOPERATIVE, INC.'S
ADVICE NOTICE NO. 61
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented this matter to the Commission and explained it was a procedural order with a mass mailing sent to protestors to set a hearing.

Commissioner Becenti-Aguilar asked how many protestors filed.

Ms. Caffey-Moquin said for Advice Notice #59 there were 461 protests. She hadn't validated all addresses. The hearing would be held on September 10 in this room. People who wished to participate still needed to file to intervene and state that they wanted to receive notice. Those should be filed in advance of the hearing.

Commissioner Becenti-Aguilar asked what time it would start.

Ms. Caffey-Moquin said the order didn't specify a time. She suggested 10:00 a.m. OGC would be providing notice by mail to every person who protested and provided a mailing address to the Commission. The protest deadline already passed but there more than an adequate number to require a hearing. The City of Española filed the initial protest. The protests, in general went to the overall rate increase.

Commissioner Marks asked what the increase was.

Ms. Caffey-Moquin didn't know. Staff would do a memo on it and they had probable cause to suspend it.

Commissioner Marks asked if there would be a memo. Ms. Caffey-Moquin agreed.

Ms. Caffey-Moquin clarified that the advice notice had already been suspended for 9 months when the Coop filed a complete application including testimony for support. Without a completed rate application the applicant could take whatever time was necessary and then true it up so it was fair for them.

Commissioner Marks moved to adopt the procedural order as presented. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

**10-00073-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
NEW MEXICO FOR APPROVAL OF THE CITY OF RIO RANCHO 2010
UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICE NO. 388
(Richard Blumenfeld) Order**

Mr. Blumenfeld presented information regarding this matter to the Commission. PNM installed underground lines in Rio Rancho and requested \$104,000 in January to recover the extra costs that would not have been incurred if installed overhead. They reduced the request to \$57,000 and would charge it only to residents of Rio Rancho. Both parties waived exceptions. He provided the original memo in November and the Commission authorized \$50,000. Rio Rancho changed an ordinance at the last minute. The construction was from January to April and the costs were incurred from November 2010 to November 2011.

They asked for \$104,000 which was a 60% increase over what had been granted. The expiration would have been at the end of February.

They also in the initial filing noted a reason for the increase in costs which was that just before construction began the engineering folks discovered a design flaw that required 600 more feet underground. So they changed it at the end of February. The Commission suspended the advice notice for the HE and without prompting, PNM decided the costs of the extra 600' should not be included in that cost and reduced the amount. Under an appropriate design it would not need the extra 600' so they removed it from the excess costs so \$57,000 wouldn't be included.

They also lowered by \$4,000 what it would cost to do it aboveground. So \$44,000 would be collected over a 5 month period in order to keep the rider at or below what people pay now. It was 32 cents/month for undergrounding but 27 cents for five months was the final calculation.

To make sure it didn't happen again, PNM has put into how they do it to estimate underground costs beforehand.

They provided testimony that they planned to take measures to determine that the design of projects would be reviewed by the engineer before finalizing but staff wanted PNM to file an affidavit that it had been reviewed by the engineer. PNM found that unnecessary because of their new measures and would not necessarily result the same.

Rather than a bill stuffer, PNM would add it to the bills. So the request was lowered and a variance of the 3 month deadline (end of February). They got the request in during January,

Commissioner Hall was concerned. He reasoned that if PNM's engineering department was so incompetent, the Commission shouldn't allow recovery for anything. Normally companies get three bids but he didn't think PNM got any bid at all. The cost increased to \$413,000 because of their incompetence. He also didn't understand why these petitions didn't go to the cities that required the underground project instead of the PRC. It said in there that they would do a bill stuffer but questioned what they were going to explain.

Mr. Blumenfeld clarified that there would not be a bill stuffer.

Commissioner Hall didn't know why the Commission allowed them to have a rate rider when they couldn't get it right the first time. There was not one bit of evidence to say what it would be. There were

construction firms that would give a firm bid on it. It was just a good way for someone to make a lot of money. They just used a contractor for cost plus and it irritated him that the rate payers had to pay the bill.

The Commission should require the three bids be produced instead of just doing it and sending an extended bill to the PRC. They did that in Albuquerque too. In his opinion the staff always okayed it every time and didn't question it. He wanted the public to know this was PNM and Rio Rancho doing this, not the PRC.

Commissioner Marks asked what the final dollar amount was.

Mr. Blumenfeld said it was \$354,000.

Commissioner Hall thought it was \$432,000.

Mr. Blumenfeld referred the Commission to page 13 of the RD and explained the changes that excluded the extra 600'.

Commissioner Marks asked who questioned paying for the extra 600'.

Mr. Blumenfeld said at the time they just went ahead with construction. Staff okayed the \$104,000 and with no discovery except suspension of the rates.

Commissioner Marks thought there was a reconciliation here. Mr. Blumenfeld agreed.

Ms. Hurst explained that when the reconciliation was made in January, staff recommended that it go into effect. The Commission questioned the filing and had it go into suspension. And in supplemental testimony, PNM testified that as part of reorganization of engineering, Mr. Jarrett reviewed the design and found a more efficient design and PNM reduced their request based on his review. Staff did not challenge the recommendation or the change.

Commissioner Marks said the Commission didn't know that PNM had been wasting money but the process was supposed to be a review and wouldn't be the first time staff passed it on and the Commission found problems. It did need a more careful staff review of overruns. Commissioner Hall agreed.

Commissioner Marks said Rio Rancho caused the extra cost originally and the City was willing to have residents and business pay a surcharge for underground lines. The Commission's role was to make sure they were accurate.

Commissioner Hall thought the Commission needed to make sure the underground riders were appropriate and accurate by our staff. He recalled that when he didn't estimate costs accurately his company had to eat the loss. This just needed some accountability and our staff had to provide the accountability and then provide it to the Commission. Staff needed to be careful what they bring to the Commission.

Commissioner Marks concluded that through PNM and the HE , the amount has been reduced.

Ms. Hurst said the record indicated this was an appropriate amount as proposed. The construction change resulted in costs not being included in the original amount. Then the project design issued right before construction. The overages were attributed to time differences. That wasn't a complete answer to the concerns but estimates could change over time.

Mr. Blumenfeld said the original estimate was \$217,000 and on June 9 the city of Rio Rancho changed its ROW ordinance and that brought it up to \$294,000 for the job. Then it went up \$60,000 more not including the 600'.

Ms. Hurst added that the PNM testimony for the difference above what was approved had to do with changes in cost of materials and labor from the time of the original estimate to the time of actual construction in January.

Commissioner Marks asked if they did not have bids.

Ms. Hurst understood there were bids to the projects but she had not seen a bid. They did the local estimates and refreshed that some time during the hearing. Rate 22 was an estimated cost. There were references to bids in some of the exhibits that she asked them about during the hearing. She had questions about timing on them like how long the bid was good for. There was an initial amount that was refreshed at the time of the hearing.

Commissioner Marks said if there were bids, then there were contracts that didn't change. Next time, the Commission should require them to bring binding bids to the hearing. Commissioner Hall agreed.

Commissioner Hall added that the design change was not the rate payers' fault.

Mr. Blumenfeld said extra costs involved the labor question and a field complication with mud in the conduit.

Commissioner Hall said PNM's contractor should have capped it every night. It was their problem. PNM wants the rate payers to pay for PNM's mistakes.

Commissioner Marks asked if PNM hired someone else to do this.

Ms. Hurst understood there were certain things PNM did but others that a contractor did. She believed it was a joint venture or that PNM had certain responsibilities for this project and other parts were contracted out. The project also included building a sub-station.

Commissioner Hall said there was no sub-station in what he got.

Ms. Hurst clarified that none of the overage was for the substation.

Commissioner Howe asked about the timeline on this.

Mr. Blumenfeld said it was filed in January and it would expire in November.

Commissioner Howe asked if the Commission could require the record to be reopened and to take evidence on what bids were received and how cost estimates were developed and direct staff to analyze it and make a recommendation.

Commissioner Howe moved that the record be reopened; that PNM provide evidence of bids and/or other methods that were used to develop cost estimates and actual costs.

Commissioner Marks asked to add whether PNM entered into contracts based on bids that put the risk on the contractor and if not, why not.

Commissioner Howe moved that the Commission reopen the record and take evidence on what bids were received, how cost estimates were developed, what kind of contracts, if any, were signed; what the costs of those contracts were; if they were fixed bids or only estimates; and to direct staff to analyze those costs to determine if they were reasonable. Commissioner Hall seconded the motion.

Chairman Lyons added to provide an expiration date on those bids if they corresponded to original quotes.

Ms. Hurst said they started out with original estimates and they got refreshed at the hearing.

Chairman Lyons noted on the second page that the cost to customers ranged from 32 cents per month to \$242 per month. That was a big range.

Ms. Hurst explained that was based on Intel.

Chairman Lyons said Intel already had the electricity and he thought these were new lines. He thought it was for a new area not already served. It said "manufacturers" with an s on it so it was more than one company. The Commission needed to know how that affected small businesses there.

Ms. Hurst said rate 22 has worked in Rio Rancho and small businesses would pay 44 cents /month. General power was \$9.51/month.

Commissioner Becenti-Aguilar asked Mr. Lamberson anytime PNM was requesting rate riders to have staff pay closer attention and to inform staff that commissioners would check them closely and secondly to ask staff in this particular case why they didn't address or why they supported the \$56,000 and why they didn't call it to the attention of the Commission and finally, the Commission would pay closer attention to any changes to make sure the recommendation was accurate.

Chairman Lyons noted that NMIEC was the only intervener in this case but they filed no pleading in the case. He wondered if the Commission could take them seriously when they didn't explain why they intervened.

Ms. Hurst explained that they intervened in the first case so she continued to consider them an intervener but they didn't actively participate.

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

Ms. Hurst announced another undergrounding case was set for August 21st. Based upon the Commission's direction on this case, she would be considering the issues raised today and invited Commissioners to ask any questions of her.

**12-00020-UT IN THE MATTER OF JEMEZ MOUNTAINS ELECTRIC COOPERATIVE'S
ADVICE NOTICE NO. 59.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin provided information regarding this matter to the Commission. She introduced Ms. Judy Bell.

Ms. Bell, a citizen in Española was protesting the rate hike simply because she felt there should be public hearings in Española. Mr. Sowell had assured her that there would be public hearings in Española and now it was not happening because JMEC sent out notices which she didn't remember seeing. They had said anyone wanting to appeal it could simply contact them but without seeing the document she wasn't sure. She took a petition around to surrounding neighborhoods that said, "Say no to rate hike and say yes to an audit." It turns out there was a Moss-Adams audit. Most of the residents were very angry about the rate hike again.

She asked the Commission to table consideration until after there was a hearing. It would be good for them to allow the working public to come after hours and then present it to the Commission.

Chairman Lyons thanked Ms. Bell for coming today.

Commissioner Marks asked if she was commenting on the new rate increase.

Ms. Bell agreed - the 3.6%.

Commissioner Marks explained that the case on the agenda was about the Ohkay Owingeh ROW agreement which was coming to an end.

Mr. Chávez said she was addressing the general rate hike that had just been suspended.

Ms. Bell was confused. She told Mr. Sowell that she was under the impression this was the general rate hike.

Mr. Sowell said when she came to the hearing about a month ago with Ms. Glick she thought it was about the 2.5% rate hike. He had told her then that today it was about ROW with Ohkay Owingeh. The hearing on the 2.5% increase would be September 10. He invited her to that hearing on Sept 10th at 10

a.m. to see if the Coop's request was reasonable.

Ms. Bell understood and thanked the Commissioners.

Commissioner Marks said it was germane because the Commission would be considering the rates in Española.

Ms. Caffey-Moquin said this case was about to come to conclusion. She prepared a final order based on Ms. Glick's certification of stipulation about recovery of costs for ROW across Native American lands, transmission for electric facilities and the sub-station. The stipulation would allow JMEC to recover costs. Española opposed the stipulation. Overall the stipulation addressed how JMEC needed to recover these costs through a rate rider. The System ROW and the Local ROW were separated. System ROW serves people outside the boundaries and local ROW were for customers within the boundaries. In the Advice Notice 59, JMEC seeks to revert \$11.5 million over 25 years. Local ROW costs were specific easement agreements by BIA.

The stipulating parties agreed that the system ROW made up about 47.6% and local ROW was 52.4% and would be recovered from 26,000 customers. Ohkay Owingeh Pueblo covers 25 square miles. 16% of customers were members of the Pueblo and would have voting rights. 84% were not members and were on private lands. The effect of the system ROW was \$0.004/kWh for first 12 months Rate Rider #3 was \$.737 cents per kWh. This particular stipulation would have a financial effect on other Native American governments' ROW charges. The JMEC was in negotiations with five other pueblos as well as Jicarilla and Navajo nations.

Exceptions were filed by City of Española to challenge this stipulation. By analyzing the ROW costs their claim was that it amounted to taxation without representation. The Commission's jurisdiction was on allocating rate recovery on approved principles. The question that was resolved in the record was that it was assigned to those who were serviced by the utility and should be responsible for paying for those costs. Her order would adopt the RD without modification.

Commissioner Howe said this was precedential. There were some who were subject to both and he wondered if they were being treated fairly or not. He understood that there were benefits going to everyone that were not quantified and asked if that was correct.

Ms. Caffey-Moquin said the stipulation suggested the lines provided service to everyone. Because there was an overlap there with pueblo grant boundaries, the claim was that most of the people on private lands there received most government services from the City of Española rather than Ohkay Owingeh Pueblo. But even without that considered, it appeared that because of the localized nature of delivery of electric service, the ROW was a necessity. The customers were benefitting from the ROW payment. It was a valid consideration but tangential to the core question of fairness. That was a cost of providing the electric service. So she didn't see it coming down to member or non-member. It was about serving that area.

Commissioner Howe asked if the AG was part of the stipulation. Ms. Caffey-Moquin said no.

Commissioner Howe concluded that there was no ratepayer advocacy. Ms. Caffey-Moquin agreed.

Commissioner Howe added that those living on private lands within the grant boundary were not represented.

Ms. Caffey-Moquin countered that they were all members of the coop.

Commissioner Howe assumed they were content then and the right answer was derived. He asked if the Commission was foreclosing a different argument when it would be taken to the next pueblos.

Ms. Caffey-Moquin agreed the case was precedential at least for the JMEC. They were trying to basically have a pattern to follow in future ROW issues. She was sure there were significant differences between federal/tribal nations and local entities. Given its Spanish Land Grant status from centuries ago that had influenced the outcome. The certification of stipulation was sufficiently clear but additional language could be crafted for each geographical section in JMEC's territory. She knew there was a pending case at Acoma as well.

Commissioner Howe preferred that the order not close the door in the future. He would want to see the circumstances.

Commissioner Marks was struggling with this too because he didn't like the result. If you were served by those distribution lines you were getting taxed by the Pueblo and if you were served by any of the red lines here, that should be the principle here.

Commissioner Howe said the operative was that it was the predicate for getting served at all.

Commissioner Marks asked if there were more customers above Alcalde being served. Ms. Glick agreed.

Commissioner Marks asked why they wouldn't pay the distribution charge. Those people were not under jurisdiction of the tribe. If the line went away, these people would have service from JMEC.

Ms. Glick said that issue was not addressed. Her assumption was that the pueblo boundary was used as line of demarcation for convenience.

Commissioner Marks assumed that too but the legal principle was that you were receiving service from these lines and not because you lived in pueblo boundaries.

Ms. Caffey-Moquin said that distribution line was outside the boundaries would not be associated with the district rate rider.

Commissioner Marks countered that without the transmission lines that crossed the Pueblo, that person could not get electric service.

Commissioner Hall asked if the Ohkay Owingeh Council had jurisdiction over all the grant area

including even over private lands. Ms. Caffey-Moquin agreed.

Commissioner Howe understood all customers would pay

Mr. Sowell said the customers outside of the northern boundary would be charged the system charge. Commissioner Howe was asking why if the red line went north out of Alcalde. Those customers would benefit from that line.

Commissioner Hall said if the transmission lines didn't cross the pueblo, they wouldn't have service anyway.

Mr. Sowell explained that this was a critical hub for JMEC and that coming before the Commission with other pueblos was not so critical. It would be way more cost prohibitive to build around the pueblo. The redistribution lines going north provided benefit to communities north of the pueblo so if the Commission wanted JMEC to reevaluate that, they were willing to make it fair.

Mr. Sowell said yesterday he delivered a significant amount of money to Pojoaque and would deliver money to another one soon. But to reopen negotiations would be fine.

Commissioner Howe said if they extended the local ROW portion to those served on red lines outside the pueblo then it was probably not worth going through the pain of reopening negotiations.

Mr. Sowell said JMEC went up into Embudo and Velarde and served several hundred customers. They didn't have a loop system there.

Ms. Chappelle pointed out the sub-station sources.

Commissioner Howe said he didn't have a problem with system allocation - just the local. People in Velarde already paid system ROW charges.

Mr. Sowell said regarding full disclosure that he helped write PNM rate 22 and he took that concept to JMEC because they didn't want people in Cuba to have to subsidize service in Española.

Mr. John Appel, Counsel for the City of Española said on the question of distribution lines, if we look at lines going one way we need to look at lines in the southeast that never crossed tribal lands. It could work both ways. South of Ranchitos within Española along Highway 68 there were private lands on the south edge that were served without crossing tribal lands. There were others in Hernandez.

Commissioner Hall said from the substation in Hernandez the line feeds back in but never crosses tribal land.

Mr. Appel agreed but transmission lines did. Regarding pueblo jurisdiction over private lands within the Grant there was a 1989 federal case that determined the feds had jurisdiction over those private lands only as necessary to protect the sovereign status of the pueblo. It related to hunting and fishing rights on the reservation. At issue was whether the state could regulate private land holdings within pueblo boundaries

and the court said the state could because it didn't go to sovereignty issue. So those private lands were treated just like any other private lands.

Chairman Lyons thanked him.

Commissioner Howe was aware that they had to have a solution here. The JMEC needed to start collecting some money here. He suggested the Commission could do it in two steps. First they could approve the system rider. The local rider seemed to be the issue on allocated costs. The Commission could send that back to Ms. Glick to redo it so that it adopted the principle Commissioner Marks outlined.

Commissioner Howe moved to approve Rate Rider 2 and remand Rate Rider 3 back to the HE for an expeditious rehearing. Commissioner Hall seconded the motion.

Commissioner Becenti-Aguilar clarified that the system rider at 24 cents was for all Jemez Mountain customers. Ms. Caffey-Moquin agreed.

Commissioner Becenti-Aguilar didn't think JMEC consulted with the Navajo Nation and didn't think that was the right process. It was not fair to charge their customers for Ohkay Owingeh ROW. She recalled an agreement with the Navajo Nation.

Mr. Sowell said when this was first noticed, it was 8 pueblos, Jicarilla and Navajo nations. Nobody showed up for the hearing. JMEC pays them the sales tax and he had an MOU. No one from the AG office in the Navajo Nation came.

Commissioner Becenti-Aguilar said that was why she was an elected Commissioner - to protect the rights of all rate payers. The PRC passed a proclamation that every tribe would be consulted and here no consultation or meeting with the President was done. She agreed a notice was sent out. Full consultation would take some process and she was afraid that was not in the record. She asked the lawyers what the federal statute was for ROW issues at the federal level.

Ms. Caffey-Moquin said 25CFR Section 69 as amended had the governing documents for any utility. The 1948 act allowed the Secretary of the Interior to grant ROW but only with tribal consent. 25 Section 322 was related to CFR Section 69.

Commissioner Becenti-Aguilar understood that federal law said the utility shall have tribal consent and JMEC didn't have that from the other tribes but this would impose an increase on rates for them without tribal consent.

Ms. Caffey-Moquin agreed that the ROW required consent but this was rate allocation which was still under PRC jurisdiction.

Commissioner Becenti-Aguilar understood that when Ms. Glick presented, there was one tribe that consented - Ohkay Owingeh. She asked if that was correct. Ms. Glick agreed.

Commissioner Becenti-Aguilar asked if one tribal council member said the Ohkay Owingeh Tribal

Council had approved the agreement. Ms. Glick agreed.

Commissioner Becenti-Aguilar asked if the documentation was in the record such as a resolution or a declaration.

Ms. Chapelle said the resolution was attached to the easement agreement and should have been an exhibit to the stipulation. That was in addition to what the BIA approved already.

Commissioner Becenti-Aguilar thought it was important to have that resolution to know the process was followed. Secondly, there were other tribes and the tribal consultation did not take place with Jemez, Pojoaque, Nambé, San Ildefonso, Jicarilla and Navajo. That principle was approved by the PRC in 2007 and she mentioned it to Mr. Sowell. She would like that to be evident as well so she wouldn't vote in favor of something that was required and didn't take place.

Commissioner Hall said the 24 cents was for ROW in Ohkay Owingeh but was being charged to every customer so he agreed with Commissioner Becenti-Aguilar on this. Maybe the Commission needed for all the negotiations to be done before the rider could be approved. If they were going to put 24 cents on Navajo Nation, the Commission needed some input on it. And he didn't see why the others wouldn't have input into it.

Commissioner Becenti-Aguilar said she traveled through these tribal lands and the customers were struggling and asking, when they needed to contact JMEC, why they couldn't have a Navajo interpreter. She continued to assist them. She asked them to provide a phone number to JMEC. They were talking about over \$200 trying to get caught up and be able to buy groceries. It wasn't fair.

When there was a power outage, her constituents were given the run around. They were struggling as it was and to impose more on top of that with their struggles was not fair. Some of them live 40 miles from the nearest store or gas.

Commissioner Hall withdrew his second on the motion.

Commissioner Marks seconded for discussion.

Commissioner Marks thought Commissioner Becenti-Aguilar raised important concerns about service quality and customer service and maybe the rate case was a good place to vet them. If there was discrimination and just lack of service for outlying areas, the Commission should look at that. The 24 cents a month on the bill - the City of Española didn't dispute that the coop has to pay \$11.5 million over 25 years and the only question was who pays how much. Assuming that the \$11.5 million had to be paid and a portion was assessed system-wide - it was not clear to him that Navajo Nation could have come in to say it was not fair.

He asked Ms. Bell if she lived outside the pueblo boundaries. Ms. Bell agreed.

Commissioner Marks asked why Ms. Bell should pay that but Navajo nation customers should not. He couldn't think of a reason and unless someone could give him a reason why people outside the orange

area should have to pay that, further proceedings would not be productive.

Commissioner Howe agreed with Commissioner Marks on this. In conversation some months ago with the tribal council at San Ildefonso about rights of way, the Governor said he didn't feel they needed to be there. He had no chance to speak with others but the Commission couldn't force people to intervene. And if Commissioners engaged them outside of this meeting it would throw things into limbo. He didn't know what the Commission could do here if they choose not to participate. So he stuck with the motion

Commissioner Becenti-Aguilar understood Commissioner Howe's point that we can't force people to be here but thought it was important that citizens of New Mexico recognize that the Commission would like for every citizen to speak at the opportunity to do so. She didn't think it was enough to just send a letter. She called the key people to tell them the topics that would be covered and ask them to be there.

She added that Governor Martínez has on her agenda that every consultation has to take place. That was on her agenda too.

Commissioner Hall's Ohkay Owingeh problems with ROW were not those of the Navajo Nation so they wouldn't get involved with Ohkay Owingeh's issue. None of them were going to stick their nose in another sovereign nation's business. That was not true for JMEC. They were not a sovereign nation but they had business with all of them and had to figure out how to get its money back from all of them.

Chairman Lyons had questions like why it wouldn't be a 50 year payback and how to deal with new customers or with line extensions.

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

Commissioner Marks asked if the Commission could remand the issue of allocation costs back to the parties for further explanation.

Commissioner Marks moved to remand the case back to the HE to address the questions raised today about allocation of distribution costs based on taking services from lines crossing pueblo property as opposed to pueblo boundaries and other related allocation issues.

Chairman Lyons agreed they should look it over because this sets a new precedent forever.

Mr. Sowell said this was precedential and would send a price signal. JMEC just received another trespass notice. The Coop might be in default of its mortgages. He could not borrow any federal money for payment of non-tangible assets. JMEC would run out of cash in about two months. It falls on his shoulders so he asked for an expeditious process.

Commissioner Hall asked if they shouldn't have negotiated with all of the pueblos already. JMEC would get the same argument every time. JMEC must negotiate a deal with all of them.

Mr. Sowell said the point was well taken. He had been the general manager for ten months. It was very

time consuming to negotiate with all of them. From a business perspective it might take another 24 months...

Commissioner Hall said they had to get those negotiations done or everyone would be without electricity.

Mr. Sowell said they were negotiating with three right now. But it would take 9 months to finish that.

Commissioner Howe asked why, at this point, the Coop wouldn't just take this 11 million and approve the agreement.

Mr. Sowell said according to the existing bylaws to do such a substantial commitment needed a quorum of the board to approve. But when we have this level of non-interest we can't get a quorum.

Commissioner Howe asked if it was getting close to bankruptcy.

Mr. Sowell said he didn't use that term. JMEC was the largest electric cooperative in New Mexico. They had a \$20 million lawsuit from the Branch Law Firm over Las Conchas. He agreed to work with Ms. Glick on this. She was very fair. The Coop would negotiate and try to bring something reasonable back to the Commission.

Commissioner Becenti-Aguilar said the reason why Jemez came here was because they could not work with each individual tribe the way it should have been done. It was once done behind closed doors. The reason why utilities couldn't work with each one was that they found it very difficult to do that. So they ask the Commission to vote on it. She knew that because there was a notice of quorum sent out by one entity here - the JMEC and she went and said they could not discuss it because the tribal leaders were not present and the meeting was called to a halt.

The way tribal governments were set up was a strong background in government foundation with a strong value not to pass the boundaries and not to get involved with neighboring sovereignty. Their elders didn't intervene in another tribe's finances.

She wanted to help by calling in the scheduling that all tribal leaders be here on a certain date set by Ms. Glick if that could be allowed. It would be to have a hearing specifically with tribal leaders and she would make calls to make sure all were represented here. A notice in billing statements was not enough. A lot has fallen through the cracks.

Commissioner Hall said the sovereign nations needed to realize they could also kill the goose that lays the golden egg.

Chairman Lyons considered it a quality of life issue. Multiply this time ten plus advice notice 61 would become a 60% increase or \$50 per month. The people who were sovereign wouldn't have electricity at this rate. It needed a rate increase for everyone. At that rate, JMEC wouldn't have 26,000 customers.

Commissioner Marks thought it would be about \$5 per month. The 24 cents could get multiplied by ten.

He guessed 5-10 dollars for every ratepayer. These were unreasonable hits on the customers. But Mr. Sowell has a responsibility to pay the pueblos or else they were trespassing.

Chairman Lyons said fining the company that provides you with electricity 5k/day wasn't right.

Commissioner Marks restated his motion to remand this case for allocation consideration and allow for compete tribal consultation. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

Commissioner Hall excused himself from the meeting at 12:06 p.m.

Commissioner Marks felt the exceptions of Española raised questions of constitutional law. He might file concurrence and it could go to Supreme Court under the 14th amendment.

Ms. Glick thought they should probably consider a rulemaking to satisfy some of Commissioner Becenti-Aguilar's concerns about Native Americans.

Ms. Caffey-Moquin agreed to bring back a schedule on it.

Commissioner Becenti-Aguilar said once the tribal consultation was done, the Commission needed a resolution from each tribe on this rate increase and if any declined, the Commission would seek a tribal resolution.

**12-00224-UT IN THE MATTER OF THE DEVELOPMENT OF AN ALTERNATIVE FORM OF
REGULATION PLAN FOR QWEST/CENTURYLINK CORPORATION (QWEST-
CENTURYLINK AFOR 4).
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. The AFOR 3 in terms of quality of service plan would conclude at end of 2012.

Commissioner Marks moved to approve the order. Chairman Lyons seconded the motion and it passed by unanimous (3-0) voice vote. Commissioner Hall and Commissioner Howe were not present for the vote. So Ordered.

8. PUBLIC COMMENT

Mr. Jeff Albright on behalf of TransWorld Corporation said they provide VOIP and broadband proceedings. They were to have a separate hearing next week. He was present to request that their CLEC application be put on the agenda. They filed in December 11, 2011. It was remanded to staff to be processed administratively and was processed. He got a message from Mark Cessarich saying TransWorld met the requirements. That was March 6, 2012. He filed a motion to get it back for Commission approval

and close the docket and that was done June 12, 2012. His request was to allow TransWorld to get numbers to provide service. He just wanted to get this back on the agenda since they met all requirements. They had been paying into the USF since 2008. The Commission had an affidavit from staff in that regard.

He had spoken with Commissioner Hall briefly and he had no objection. Usually these were consent items.

Chairman Lyons asked Ms. Caffey-Moquin to see how soon she could get it on the agenda.

Mr. Martin de la Garza reported that he filed a motion today based on the latest discovery (IPRA) request, letting the judge be aware of some discrepancies. In looking at the case summary there was no new lawyer so he brought it here. He gave it to Ms. Caffey-Moquin.

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

There were no communications with Acting General Counsel.

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA

There were no communications with Chief of Staff.

11. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Howe said the Commissioners got a notice from Ms. Caffey-Moquin today about New Mexico Waterworks LLC not getting water to a certain neighborhood.

Chairman Lyons said it was technical issue. A pump went out.

Commissioner Howe said it was reported here that the PRC was putting pressure on them to either fix it or turn control over to someone else. He asked if there was something going on.

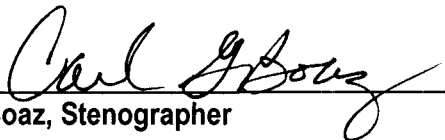
Commissioner Marks said he didn't get the article but the Utility Division had been repeatedly going down there. This was not their first outage. They didn't pay their PNM bill. There were discussions about the county buying it. It has never been a formal case. It was out of CRD Division. There were questions as to whether the sale was proper and staff were working on it.

12. ADJOURNMENT

Commissioner Marks moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote. Commissioner Hall was not present for the vote.

The meeting was adjourned at 12:21 pm

ATTEST:


Carl Boaz, Stenographer

APPROVED: 09/11/2012


PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


JASON A. MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER

TELEPHONICALLY APPROVED

DOUGLAS J. HOWE, COMMISSIONER

OPEN MEETING

DATE: August 9 2012

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday, August 9, 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**
 - **Recognition of the Employee of the Month of July, 2012.**
- 4. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 5. CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Regular Open Meeting of July 19, 2012.**
- 6. CONSENT ACTION**

A. Utility Division

10-00073-UT Richard Blumenfeld	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE CITY OF RIO RANCHO 2010 UNDERGROUND PROJECT RIDER PURSUANT TO ADVICE NOTICE NO. 388. <u>Order</u>
12-00258-UT Margaret Caffey-Moquin	IN THE MATTER OF JEMEZ MOUNTAINS ELECTRIC COOPERATIVE, INC.'S ADVICE NOTICE NO. 61. <u>Order</u>

7. REGULAR ACTION

A. Utility Division

12-00020-UT Margaret Caffey-Moquin	IN THE MATTER OF JEMEZ MOUNTAINS ELECTRIC COOPERATIVE'S ADVICE NOTICE NO. 59. Order
12-00224-UT Margaret Caffey-Moquin	IN THE MATTER OF THE DEVELOPMENT OF AN ALTERNATIVE FORM OF REGULATION PLAN FOR QWEST/CENTURYLINK CORPORATION (QWEST- CENTURYLINK AFOR 4). Order

8. PUBLIC COMMENT

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

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.