

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
September 4, 2012**

TIME: 9:30 a. m.

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

A quorum was present as follows:

Members Present:

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

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Bob Parker, Deputy Chief of Staff for Legal Affairs
Sandra Skogen, Associate General Counsel
Michael C. Smith, Associate General Counsel
Dwight Lamberson, Utility Division Director
Patrick López, Legal Division Director
Avelino Gutierrez, Acting Transportation Director
Tim Holloran, Legal Division
Tim Martínez, Utility Division
Jim Brack, Utility Division
Steve Schwabke, Utility 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

There were no introductions.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Marks thought they should take care of the two action items and then have the hearing because the hearing could take an extended time.

Mr. Holloran said he would probably complete his direct with Mr. Martínez and two staff witnesses in about a half hour. Mr. Gary Risley (opposing counsel) would call in.

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

5. PUBLIC HEARING

**12-00106-UT IN THE MATTER OF STAFF'S PETITION FOR ORDER TO SHOW CAUSE WHY
HARTLEY SPRINGS RANCHOS SUBDIVISION WATER SERVICE, A/K/A
HARTLEY SPRINGS WATER USERS ASSOCIATION, IS NOT IN VIOLATION
OF COMMISSION RULES AND APPLICABLE STATUTES AND FOR OTHER
RELIEF INCLUDING PENALTIES.**

At 9:35 a.m. the Commission was ready to go on the record in the public hearing but the counsel for the HSWUA was not yet on the bridge and the Commission proceeded to the next agenda item.

6. CONSENT ACTION

A. Utility Division

**12-00254-UT IN THE MATTER OF THE FORMAL COMPLAINT OF FRED A. MARTÍNEZ
AGAINST T-MOBILE, INC.
(Michael C. Smith) Order**

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

7. REGULAR ACTION

A. Transportation Division

**11-00354-TR-P IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO MOTOR
TRANSPORTATION RULES FOR FUEL SURCHARGE UNDER 18.3.15 NMAC
(Sandra Skogen) Order**

Ms. Skogen presented information regarding this matter to the Commission. Transportation staff filed a motion to do a rulemaking. The NOPR was issued November 12 and all who responded were in favor. She prepared an order. The current rule only pertained to non-consensual tows. The Commission promulgated some temporary rules and there were some problems in them. The new rule takes care of those problems and allows a fixed rate of up to 15% for fuel and it would provide a one -year waiting period after tariff approval unless there is a 25% increase in fuel costs.

Commissioner Howe asked what comments were made about the 15%. Ms. Skogen said that was not addressed. She made one correction to the rule changing "wrecker service" to "towing service."

Commissioner Howe moved to approve the order with the amendment Ms. Skogen just stated. Commissioner Hall seconded the motion.

Chairman Lyons asked what would happen with increases between 15% and 25%.

Ms. Skogen explained that the 25% referred to fuel costs. That was different from the allowable surcharge and was for a new certificate. If fuel goes up so quickly by the AIA standard, then they don't have to wait a year to add the surcharge to their approved tariff. (Any increase up to 15%).

Commissioner Marks said he wouldn't support this order. In the old rule they had to show that there was some relevance to cost. A fuel surcharge is supposed to be based on actual fuel costs. Under this proposal fuel doesn't even have to go up to get the surcharge.

Ms. Skogen agreed it was not cost based.

Commissioner Marks said the company didn't even have to show it was more expensive than when rates were set. Ms. Skogen agreed.

Commissioner Marks thought the Commission should send it back to staff to do a cost-based rule.

Commissioner Marks moved to table the case for the public hearing. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

5. PUBLIC HEARING

**12-00106-UT IN THE MATTER OF STAFF'S PETITION FOR ORDER TO SHOW CAUSE WHY
HARTLEY SPRINGS RANCHOS SUBDIVISION WATER SERVICE, A/K/A
HARTLEY SPRINGS WATER USERS ASSOCIATION IS NOT IN VIOLATION
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RELIEF INCLUDING PENALTIES.**

The Commission went on the record at 9:46 a.m. The public hearing was transcribed by a court reporter and is not part of these minutes.

At the conclusion of the public hearing, the Commission returned to open session at 10:38.

7. REGULAR ACTION

A. Transportation Division

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(Sandra Skogen) Order**

Commissioner Marks moved to remove this matter from the table. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

Ms. Skogen resumed her presentation. She put the new rule into context. Currently a number of categories of motor carriers do have the 15% surcharge available to them and listed them. (06-00060-TR-C). The vehicle's mileage was involved in the calculation. For movers, 5 miles per gallon was used. A few carriers challenged the rule as informal. The current rule for tow companies was calculated in a way similar to taxis and ambulances.

Commissioner Marks asked if the 2006 order was for interim rate relief.

Ms. Skogen agreed. The movants complained it was an informal rule. The current rule has been amended since then.

Commissioner Marks asked if limiting it to towing services was proposed by staff or carriers.

Ms. Skogen said she could check. There were two carriers who filed that it was not legally noticed.

Commissioner Marks said whether it was that they should give refunds or arguing against interest it was a valid order and if valid, they had no right to collect that money.

Mr. Parker explained that not all carriers were notified.

Commissioner Marks apologized and said he had a problem with the substance of the rule.

Mr. Joe Earnest, Counsel for Living Cross and Capitol City Cab, reviewed the history of this matter and a final order was adopted in 2008 that they thought applied and then an order to amend showed up and it was not properly served on the parties.

He moved immediately for a rule making when that was pointed out to him. The order was never published and it was not on the web site. The last order would harm both of his clients. In his petition he referred to it as the 2008 amended order. He added that this was a joint petition by carriers and staff.

Through inspection, it was impossible to determine if the carrier was charging the correct rate. So what was proposed was something simple. He proposed that the 15% be staggered with 5% the first year and 10% the second and 15% the third year. A problem was that they couldn't use the surcharge because they came in for a rate increase. The tariff was granted in 2009. They wanted to clarify for everyone what the rule was. There was no reason to make taxis different than shuttles. Taxis are under EIB standard and everyone else had a flat rate. So their motion simply put everyone under this flat rate. It is easy to administer and avoids a big jump. Limos, touring, shuttles, terminal shuttles, buses and all shared rides are allowed the 15%.

In response to Commissioner Marks, Mr. Earnest explained that full service applied to taxis and shuttles that had to make unprofitable runs and not just profitable ones.

Commissioner Marks thought limos should just have a price they want to charge. Ambulances and wreckers are a different story because the customers have no choice or alternative.

Mr. Earnest countered that the act requires the Commission to do rate regulation for everybody and taxis can't apply it.

Commissioner Marks asked if the Commission couldn't do a rule that still had some relation to cost and be simpler instead of just giving the a 15% increase regardless. He pointed out that even with the staggered proposal, 5% was arbitrary. The Supreme Court wouldn't let the Commission do that with utilities. They have to be cost based. He was under impression motor carriers had to be cost-based.

Ms. Skogen agreed but didn't know other references besides EIA.

Mr. Earnest noted the cases came at different times but this would take the average over time.

Commissioner Howe said it was his motion to approve this but he conceded that this was relaxing them a lot.

Ms. Skogen acknowledged that it simplified things and was not tied to fuel cost basis but would make it consistent.

Commissioner Howe asked Mr. Gutierrez what would prevent every transportation company in the state from immediately increasing their rates 15%. If it is non-consensual service it is automatic.

Mr. Gutierrez agreed that non-consensual tows were different.

Commissioner Howe asked if competition was enough to prevent raising rates 15%.

Mr. Gutierrez thought possibly in Albuquerque but not elsewhere.

Commissioner Howe asked if the AG participated.

Mr. Gutierrez said the AG was invited but did not participate.

Commissioner Howe asked then if the fuel surcharge had become unmanageable. Avelino agreed.

Chairman Lyons asked how often they came for rates.

Mr. Earnest said it was infrequent. Capitol City had no rate change since 2002.

Commissioner Howe believed the 15% would enrich some companies more than others.

Commissioner Marks went through some calculations and determined that gasoline was a minor part of the ambulance costs. He thought the rule needed to be redone. The percentage they selected was not the right amount. He thought it should be tabled and schedule a workshop to finding a solution everyone could live with.

Commissioner Howe withdrew his motion.

Commissioner Marks moved to table this matter and work out a procedural schedule for a workshop rather than an evidentiary hearing.

The Commission briefly discussed the service list.

Commissioner Hall didn't think one workshop would do it.

Mr. Parker said if the plan was to determine a percentage then a hearing was needed. If it was to change the methodology then a workshop was needed.

Commissioner Howe preferred an evidentiary hearing in order to get consumer perspectives.

Bob said that was possible if the Commission approved that motion today.

Commissioner Marks withdrew his motion to table and moved to remand this matter to the NE. Commissioner Howe seconded the motion.

In response to Commissioner Becenti-Aguilar Ms. Skogen agreed to make sure the AG was on the service list.

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

8. PUBLIC COMMENT

There were no public comments.

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

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

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA

There were no communications with Chief of Staff.

11. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons said he was in Tampa last week.

Commissioner Marks said he would be in Sacramento on Thursday with independent operators' conference. He would call in if he could. On September 13 -14 they were meeting in Tempe for balanced market. Commissioners from every state would be there to see if there is consensus. He agreed to share the agenda.

Commissioner Howe said he would be gone for the next week and a half and would call in when he could.


Chairman Lyons reminded the Commission of the open meeting in Socorro on September 11.

12. ADJOURNMENT

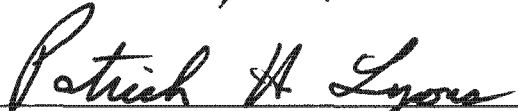
Commissioner Howe moved to adjourn the meeting. Commissioner Marks seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 11:50 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 10/02/2012


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, September 4, 2012**

**9:30 A.M.
PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501**

AGENDA

- 1. PLEDGE OF ALLEGIANCE**
- 2. INTRODUCTIONS**
- 3. MISCELLANEOUS ANNOUNCEMENTS**
- 4. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 5. PUBLIC HEARING**

Case No. 12-00106-UT

IN THE MATTER OF STAFF'S PETITION FOR ORDER TO SHOW CAUSE WHY HARTLEY SPRINGS RANCHOS SUBDIVISION WATER SERVICE, A/K/A HARTLEY SPRINGS WATER USERS ASSOCIATION, IS NOT IN VIOLATION OF COMMISSION RULES AND APPLICABLE STATUTES, AND FOR OTHER RELIEF INCLUDING PENALTIES.

- 6. CONSENT ACTION**

B. Utility Division

12-00254-UT Michael C. Smith	IN THE MATTER OF THE FORMAL COMPLAINT OF FRED A. MARTINEZ AGAINST T-MOBILE, INC. Order
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7. REGULAR ACTION

A. Transportation Division

11-00354-TR-P Sandra Skogen	IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO MOTOR TRANSPORTATION RULES FOR FUEL SURCHARGE UNDER 18.3.15 NMAC. Order
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8. PUBLIC COMMENT

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

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.