

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
September 6, 2012**

TIME: 9:35 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

Members Absent:

Commissioner Jason A. Marks
Commissioner Douglas J. Howe

Staff Present

Johnny Montoya, Chief of Staff
Bob Parker, Chief of Staff for Legal Affairs.
Margaret Caffey-Moquin, Associate General Counsel
Michael C. Smith, Associate General Counsel
Dwight Lamberson, Utility Division Director
Steve Schwebke, Utility Division
Patrick López, Legal Division Director
Arthur Bishop, PIO

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Regular Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(c), and the Commission's Open Meeting Policy. Commission Chairman Patrick Lyons called the Regular Open meeting to order at 9:35 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 Becenti-Aguilar moved to approve the agenda as presented /Commissioner Hall seconded the motion and it passed by unanimous (3-0) voice vote.

5. CONSIDERATION AND APPROVAL OF MINUTES

- Minutes of the Regular Open Meeting of August 7, 2012

Commissioner Hall moved to approve the minutes of August 7, 2012 as presented. Chairman Lyons seconded the motion and it passed by unanimous (3-0) voice vote.

6. REGULAR ACTION

A. Utility Division

**10-00366-UT IN THE MATTER OF THE REQUEST OF TIMBERON WATER AND
SANITATION DISTRICT FOR AN EMERGENCY INTERIM RATE INCREASE.**

**12-00183-UT IN THE MATTER OF TIMBERON WATER AND SANITATION DISTRICT'S
ADVICE NOTICE NO. 10 FOR NEW RATES.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. She was directed to bring back an order by September 11 and found there were insufficient protests for a general rate review. In double-checking yesterday it now appeared that although they would get the same recommendation and

result, she requested a bench request be issued to determine if the protests together with the affidavit and information were accurate. There were additional questions to be answered. Commissioner Hall could issue the bench request and get the final answer this afternoon. So she was changing her recommendation and though they might get the same answer, she needed more information.

Commissioner Hall agreed and would issue the bench request. Mr. Virgil Beagles could own 300 lots but only gets one vote and he wondered how many others were in that situation. Out of the 3,500 lots, the Commission needed to know how many owned more than one lot. That should be done before we count protests.

Mr. Rubinowitz said there were 440 active meters at the time the protest was filed. He asked how many protests they had.

Ms. Caffey-Moquin said there were 70 and she appreciated the input but wanted the bench request to get more precise information.

Chairman Lyons said it was a moving target. The Commission needed to go ahead.

Ms. Caffey-Moquin said the moving target was what was troubling her. The Commission could allow the utility a week to respond. She asked Mr. Rubinowitz if he could get that information by next Tuesday.

Mr. Rubinowitz thought he could but wanted to know what information was needed.

Ms. Caffey-Moquin said she needed the number of rate payers and the number of rate payers that owned multiple lots and the exact number of hook ups.

Mr. Rubinowitz said he would provide it. The requirement under the proceeding was active meter water connections and that was 444. There were 444 on the date of the protest, not 218 and he could verify that. There were more than that active today. He could go back into the record when the advice notice was filed but there was no question in his mind that 444 was accurate.

Commissioner Hall understood that but wanted to know how many people were legal to vote so the Commission needed to know how many multiple lot owners there were to know how many votes were needed for a hearing.

Mr. Rubinowitz said he could determine that by next Tuesday but he wouldn't be in Timbeiron until next Tuesday. He agreed to have them by next Thursday.

Commissioner Hall thought that should satisfy Mr. Beagle's concern too.

Commissioner Becenti-Aguilar asked about the documents that were sent to the Utility Division.

Ms. Caffey-Moquin assumed she meant the documents handed to her in Ruidoso. Those were filed when she returned from Ruidoso and noticed on his certificate of service that she had given him a fax number but it was not the correct fax number.

Commissioner Becenti-Aguilar asked if Ms. Caffey-Moquin was allowed to consult with the Commissioners outside the open meeting. Ms. Caffey-Moquin agreed.

Commissioner Becenti-Aguilar asked why that was not done.

Ms. Caffey-Moquin said she was not made aware of it until last night by Commissioner Marks. She looked at the existing record and could not determine the number of multiple lot owners.

Commissioner Becenti-Aguilar said Timberon had been here twice within last couple of months and would be back after September 13. It was important to keep the case complete as much as possible.

Mr. Rubinowitz stated that under Rule 770 it was very clear that multiple property owners had a single vote so regardless of how many lots Mr. Beagles owned, his protest constituted a single protest there was no ambiguity. But he was willing to comply with the request.

Chairman Lyons didn't understand Ms. Caffey-Moquin's memo. The standby rate was \$53.95 but the Commission hadn't approved the first one for \$35. He asked what the present standby rate was.

Ms. Caffey-Moquin said she put in the standby rate from Advice Notice #9 but Advice Notice #10 said it was \$53.95.

Mr. Rubinowitz said the current rate standby was \$50.50 under the emergency rate approved by the Commission. Before that it was \$36.00.

Chairman Lyons asked how long they have had this.

Ms. Caffey-Moquin said since the fall of 2010.

Chairman Lyons said he was tired of fooling with the case and the attorney keeps billing them. The case today was 10-00366-UT and 12-00183-UT.

Ms. Caffey-Moquin said the Commission was addressing both of them.

Chairman Lyons asked what the meter rate was in 2010 and what it was in the emergency case 12-0093.

Mr. Rubinowitz said the emergency rate was under receivership and would expire when the new rates were filed and all were based on the rates prior to the emergency. The rates prior to the emergency for meter and standby were increased less than 50% under the terms of the emergency. The percentage was 49+% for both rates. The rate increase was from \$17.40 to \$26.40 per month for meters plus the charge for water use. The standby increased from \$50.50 to \$53.95.

Chairman Lyons questioned an increase for standby since the lot owner got nothing for it.

Mr. Parker clarified that the standby rates were going up from the interim rates and the metered rates were going down from the interim rates. Mr. Rubinowitz agreed.

Mr. Parker said Mr. Rubinowitz was asking the Commission to forget the interim rates and calculate the rate changes from the rates in effect before the interim.

Mr. Rubinowitz said the interim rates increased by 83% for meter and 40% for standby rates and the Board felt that was unfair and that they should have them the same. We were only allowed to increase by less than 50% so that was what Timberon requested.

Mr. Parker said the issue before the Commission now was whether there were enough protests. If the rate payers didn't have the required minimum number of protests then the Commission didn't have jurisdiction over the increase.

Ms. Caffey-Moquin was cautious. She said they had 70 protests at the most which meant they needed over 700 meters but it looks like the protests were well over the 10%. No one has mentioned 700 rate payers.

Commissioner Hall asked who was allowed to vote. He asked if Mr. Beagles was a rate payer or not.

Mr. Parker said he was allowed one vote.

Commissioner Hall asked how many legal voters there could be. It appeared nobody knows that.

Mr. Rubinowitz interrupted and said he had been clear about who was a customer. His challenge was that there were fewer than 10% valid protests. There were only 28 filed that were actually customers. There were only 28 who were customers of the district. You could look at the check boxes on the form to see which ones were checked. Of those 28, 10 of them were husbands and wives who were only allowed a single vote. So there were only 18 valid protests. And if you look at his chart at the back, there were others who didn't follow the rules under 770. Commissioner Marks attended a meeting in Timberon. Anyone that had even just fished in their lake was a qualified elector and they restricted the fishing and golfing. All of those protests were invalid. There were 444 active meters.

Commissioner Hall said there were 70 protests filed. He asked how many they were going to throw out.

Ms. Caffey-Moquin believed the bench request would clear it up. It was clear that the 18 did not apply here and that only applied to rates under the water and sanitation district. She agreed the Rule 770 applied. She needed a little bit more information and would make the order more solid.

Commissioner Hall asked how the Commission normally verified if protests were valid or not.

Ms. Caffey-Moquin said the Commission asked staff to examine them. Staff's work didn't include interviewing the protestors. Staff said because there were 70 filed, that would be the absolute maximum. She thought they said 46 could be counted and that was right on the line for 10%. They didn't have enough information to make that certain. She acknowledged she was being very cautious.

Commissioner Becenti-Aguilar started to speak and Mr. Rubinowitz interrupted again, reading from the statute.

Commissioner Becenti-Aguilar thought it would be property to table this since they didn't have other parties on the line and didn't have proper presentations on both sides. Mr. Parker agreed 100%.

**Commissioner Becenti-Aguilar moved to table and have a hearing on September 18th.
Commissioner Hall seconded the motion and it passed by unanimous (3-0) voice vote.**

**12-00270-UT IN THE MATTER OF THE PETITION OF WESTERN RESOURCE ADVOCATES
ON BEHALF OF 33 NEW MEXICO ORGANIZATIONS TO PROPOSE A RULE
IMPLEMENTING AN OPTIONAL CLEAN ENERGY STANDARD FOR NEW
MEXICO ELECTRIC UTILITIES.
(Bob Parker) NOPR**

Mr. Parker presented information regarding this matter to the Commission. The Commission received a petition from WRA for rule making signed by 33 organizations and had attached rule. Mr. Steve Michel gave a summary of what the rule would do. It would establish a clean energy alternative for utilities with tradable credits. The moving parties would like a NOPR but he was recommending something else. He was not sure the PRC had authority to do this. Before a NOPR, he would want to hear from the AG, PNM and other interested parties. So he recommended scheduling a workshop to get opinions from other parties to determine if the Commission could legally proceed. The order would open a docket and set a workshop date.

Commissioner Hall agreed with Mr. Parker that there was no need to rush into it so he supported Mr. Parker's order.

Commissioner Becenti-Aguilar said there were a number of cases at OGC and asked if Mr. Parker could share the case load report with the Commission so they could be aware of the urgency.

Mr. Parker agreed OGC was very busy. They had one empty position they couldn't fill until January and frankly, if you didn't want to start a new case it would be fine with me but some commissioners were interested in this one so he didn't want to let it drop.

Commissioner Hall moved to approve the order. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (3-0) voice vote. So Ordered.

**12-00289-UT IN THE MATTER OF AN INVESTIGATION INTO MATTERS RELATED TO NEW
MEXICO WATERWORKS.
(Michael C. Smith) Order**

Mr. Smith presented information regarding this matter to the Commission.

Commissioner Hall asked if Commissioner Marks met with Mr. Serrano. Mr. Parker agreed.

Mr. Smith said it was urgent, due to the nature of this matter and was taking lots of his time. He had lots of ex parte communication with staff and Mr. & Mrs. Romero but couldn't fill in what Commissioner Marks and Mr. Serrano talked about.

At this water system in the south valley the power was currently restored with PNM's voluntary forbearance for non-payment. The system loses pressure at times. This came to the Commission and OGC was authorized to seek temporary injunctive relief from the district court. He prepared the order and presented it to the court and the court issued a restraining order with a hearing set on September 11th to determine if the relief would be extended past ten days.

For the next step the Commission issued a procedural order on a hearing for whether a receiver should be appointed. The hearing took place and staff filed a petition seeking a receiver. Mr. Schwebke's previous affidavit was admitted and he presented further evidence including contacts with Mr. Serrano and Mr. Serrano's willingness to comply with the restraining order. The Commission could appoint an emergency operator and Mr. Serrano and the Romeros would be responsible for paying the operator. In the receiver statute, the receiver could issue payment for the operator but none pertains to an interim operator so respondents would be responsible for that.

Mr. Serrano was willing to step up and have his operator work on it. Mr. Serrano agreed to make sure the system was physically operating and initiate steps to bill customers and try to collect from customers and try to make a PNM payment next week. Mr. Serrano was invited to appear here to make a recommendation.

The Commission should continue working to get a receiver appointed. He quoted the receiver statute language. In this situation there has been a consistent inability by Mr. Serrano to adequately operate this utility. He was unable to make payments to keep it running. He hasn't even read meters so there was no income. The customers suffer continued outages. There was a public safety issue because two hydrants were connected to that system. NMED gave boil water warnings.

Mr. Smith added that the court would continue the injunctive result if the Commission didn't work to find a more permanent solution.

Commissioner Becenti-Aguilar thanked him for the summary and direction. She was at the hearing on Tuesday with Commissioner Marks and he agreed to recuse himself because he was working locally on this. She heard from parties on Tuesday and felt that our staff had been diligent on this work.

Commissioner Becenti-Aguilar moved to approve the order. Commissioner Hall seconded the motion and the motion passed by unanimous (3-0) voice vote. So Ordered.

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.**

(Michael C. Smith) Order

Mr. Smith presented information regarding this matter to the Commission and the order the Commission requested of him. Basically it would approve the stipulation that staff and water users' association and East Culpepper Users' Association entered into previously and transfer of assets per agreement entered into.

At the hearing representation was made that all board members had concurred. There was an objection by Bonnie Bondau that the claim was incorrect because she objected. East Culpepper unanimously agreed to enter the purchase agreement but it had a condition that Mr. Miller (operator and executor of his father's estate) tried to increase rates and Ms. Bondau and others filed protest with the Commission. The stipulation included that Mr. Miller would retain his responsibility for the debts. Ms. Bondau initially voted in favor of the purchase agreement and stipulation and later changed her mind. The stipulation then included a definition of accounts receivable but not the rate increase that took effect February 1. When documents were submitted to the PRC they did not include that definition of accounts receivable and indicated the definition was an approved rate. This was an issue yesterday. There was a subsequent vote where Ms. Bondau dissented.

Mr. Miller sent a confirmation that he would not seek to recover accounts receivable. The parties agreed that technically there was no misrepresentation because at the time, she had voted in favor.

Commissioner Hall asked if the other 42 lot owners sold their lots they would be invited to join. Mr. Smith agreed.

Mr. Smith said Ms. Bondau had contacted Commissioner Becenti-Aguilar and this was being presented as a negotiated settlement. It apparently was taken care of now.

Commissioner Becenti-Aguilar said the staff did a good job to investigate and get factual information. Mr. Smith was correct that a lot of it got settled. The utility was in her district and she was very gratified.

Chairman Lyons moved to approve the order. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (3-0) voice vote. So Ordered.

7. PUBLIC COMMENT

There were no public comments.

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

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

9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA

Mr. Montoya said the Commission had allowed 4 hours staff administrative leave time to attend Santa Fé Fiesta or the New Mexico State Fair. Santa Fé County and the City of Santa Fé would be closing their offices at noon on Friday. The Governor hasn't spoken yet. He recommended granting four hours to be used for that purpose and to ensure all bureaus have proper coverage.

Chairman Lyons said it sounded good to him as long as the staff didn't use sick leave in conjunction with it.

Mr. Montoya said staff had come a long way with flex schedules and vehicle control. If it hadn't been for their performance, he wouldn't have requested it. The Commissioners agreed.

Mr. Montoya said the Socorro meeting on September 11 would take place at City hall at 9:30. On Monday afternoon, the fire academy starts their school. And at 8:00 a.m. there would be a September 11 memorial ceremony.

10. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Becenti-Aguilar reported making a statement last Friday at a meeting at San Felipe Pueblo regarding the tax exemption issue. At the end, Senator Lovejoy said it belonged in TRD instead of PRC. She agreed with Senator Lovejoy that it needed to be transferred to TRD.

11. ADJOURNMENT

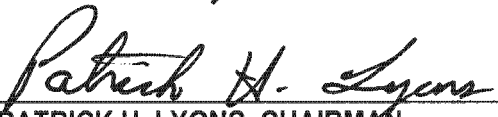
Commissioner Becenti-Aguilar moved to adjourn the meeting. Commissioner Hall seconded the motion and it passed by unanimous (3-0) voice vote.

The meeting was adjourned at 11:03 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
Thursday, September 6, 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. CONSIDERATION AND APPROVAL OF MINUTES
 - Minutes of the Regular Open Meeting of August 7, 2012
6. REGULAR ACTION

A. Utility Division

10-00366-UT	IN THE MATTER OF THE REQUEST OF TIMBERON WATER AND SANITATION DISTRICT FOR AN EMERGENCY INTERIM RATE INCREASE.
12-00193-UT Margaret Caffey-Moquin	IN THE MATTER OF TIMBERON WATER AND SANITATION DISTRICT'S ADVICE NOTICE NO. 10 FOR NEW RATES. Order

12-00270-UT Bob Parker	IN THE MATTER OF THE PETITION OF WESTERN RESOURCE ADVOCATES ON BEHALF OF 33 NEW MEXICO ORGANIZATIONS TO PROPOSE A RULE IMPLEMENTING AN OPTIONAL CLEAN ENERGY STANDARD FOR NEW MEXICO ELECTRIC UTILITIES. NOPR
12-00289-UT Michael C. Smith	IN THE MATTER OF AN INVESTIGATION INTO MATTERS RELATED TO NEW MEXICO WATERWORKS. Order
12-00106-UT Michael C. Smith	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 STATUS AND FOR OTHER RELIEF INCLUDING PENALTIES. Order

7. PUBLIC COMMENT
8. COMMUNICATIONS WITH CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER
9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA
10. COMMUNICATIONS WITH COMMISSIONERS
11. 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.