

**MINUTES OF THE  
REGULAR OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
September 25, 2012**

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

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

A quorum was present as follows:

**Members Present:**

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

**Members Absent:**

**Staff Present**

Johnny Montoya, Chief of Staff  
Robert Parker, Deputy Chief of Staff for Legal Affairs  
Margaret Caffey-Moquin, Associate General Counsel  
Sandra Skogen, Associate General Counsel  
Michael C. Smith, Associate General Counsel  
Dwight Lamberson, Utility Division Director  
Ken Smith, Telecommunications Bureau  
Michael Ripperger, Telecommunications Bureau Chief  
Marc Martínez, Legal 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**

Chairman Lyons introduced Rep Jack Cook from Ruidoso, District 56.

Mr. Mark Silva, Taos County Commissioner, was introduced by Commissioner Howe.

## **3. MISCELLANEOUS ANNOUNCEMENTS**

Commissioner Becenti-Aguilar said she just got off phone with the Governor from Acoma Pueblo. There was no resolution in discussions and Continental Divide was ready to cut services to Acoma and she asked that Mr. Lamberson and Mr. Brack be on stand-by in case that happens. She would meet with staff after the meeting to see what her jurisdiction was on it. She shared copies of the article with other commissioners.

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

Chairman Lyons wanted to move Public Comment right after consideration of the minutes.

**Commissioner Marks moved to approve the agenda as amended. Commissioner Becenti-Aguilar 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 August 23, 2012**
- **Minutes of the Regular Open Meeting of August 28, 2012**

**Commissioner Hall moved to approve the minutes of August 23, 2012 and August 28, 2012 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.**

## **PUBLIC COMMENT**

Mr. Julian Mira said he worked with Silva's Excavation on the broadband project. Like many others they were struggling for work and on behalf of his co-workers, he supported the project to completion because a lot of people were looking forward to it and it helped their economy. He had 17 coworkers and was the supervisor.

Mr. Mike Silva said he was wearing two hats. He was a City Councilor and working on the project. They understood there was some pressure to spin off this project and that would make problems. In addition to his constituents, he was working at Angel Fire and those residents really want the broadband. Taos has an airport that can barely handle small jets and they want to put in a larger runway. Taos didn't have a water way or a railroad so that was needed connectivity with the world, for economic, medical and educational reasons. The project was a blessing in their community. Kit Carson went to Washington DC on behalf of the community. Mr. Reyes cited that we all band together and a joint resolution was passed that he carried to DC and got funding to start this project. It has put many people to work that were not working before. Many people want to work there. He echoed the sentiment of his constituents not only for short term but also for long term. Thanks for allowing us to do this.

Mr. Tony Tafoya worked for Mike Silva. He now had work and was able to catch up on his rent and bills. It was answered prayer. Without it he probably would have to leave Taos. It was a blessing to him and his family.

Mr. Thomas Tafoya, President of the Taos Municipal School District, was here to support Kit Carson on their electric, propane and broadband services. We are trying to train our children for the future and didn't have the bandwidth to take advantage of what the internet could provide. We built state of the art computer labs for the students and put a million dollars into them but they didn't have bandwidth to support it. We asked Qwest for years to provide fiber but they didn't. And then the Kit Carson Coop got a grant to do it so that has helped greatly with economy and education. It is a minority group protesting the coop in everything and getting your attention but they were not speaking on behalf of Taos. He was looking forward to having the bandwidth to communicate to the world. His wife was present and in charge of charter schools in Taos who had the same scenario. They needed the technology to communicate. Lots of people economically benefitted from this infrastructure.

One last point whatever the order was, they didn't know if the Commission would support it or not but once you make your decision, any money for the project was reinvested in the community. We were trying to share the fiber network with all of northern New Mexico. He hoped the Commission would look on it favorably and move quickly to make a decision. Everywhere he had installed this fiber no customer has said they didn't want it. They also would be able to implement a smart grid and when built- outages could be pinpointed immediately to get back on line.

Commissioner Hall asked if he was saying Kit Carson was providing what Qwest refused to provide.

He agreed and shared statistics on the pupil enrollments that would benefit.

Mr. David Bates, with Ecosphere, was one of nine contractors on the Kit Carson broadband project. He got to speak with Commissioner Howe and Commissioner Marks before the meeting to alleviate his

concerns. He was in support for the project too. It was a viable business in Taos where there was not much business. He had 10 employees and it was a full time, well-paying job to support their families and they really needed work. The economic problem was huge in Taos. He watched the project come in and was impressed that Luis Reyes was able to keep the jobs locally. Only one was not a local company. Once the fiber network is built it would be very valuable. But they needed federal money to pull it in. \$64 million was what made it happen. The last two years in northern New Mexico the economy has tanked. Hopefully Mr. Ben Bernanke could figure it out and bring back the housing market. It died in Taos.

He was doing weatherization before this happened with Workforce Solutions. The broadband project was a green project and brings Kit Carson the ability to navigate their facility to save a huge amount of money. It goes on from there with 4G and other things.

The expediency of the Commission would relieve the uncertainty. He appreciated the Commission's efforts. Even those who talked about being against it, when he was going through their yards they invariably said they wanted to be able to use it. It was a great project for Taos.

Ms. Sharon Lovato, a contractor in Mora County, working in the Angel Fire area and said everyone in Angel Fire wants this to happen. Her company had 8 employees plus her and her husband. It was a good thing for all communities around Taos and she was glad Kit Carson allowed them to work with the Coop.

Mr. Silva regarding the economic impact that it would be as much as \$35.8 million and because they had to use only American made products, it would help not only on the local level but on the state level and national for the equipment.

Commissioner Marks said the public hearing was on October 17 but looking at the evidentiary hearing date wouldn't work on November 29. He had asked for it before the end of October. He guessed that Kit Carson was driving the delay in schedule. Kit Carson direct testimony would be on October 8, discovery on October 24<sup>th</sup> staff and interveners for November 7, testimony and rebuttal testimony. He thought they could cut out some of this stuff.

Chairman Lyons suggested moving it up a month.

Mr. Parker agreed to get right on it.

Commissioner Becenti-Aguilar asked everyone who came from Taos and Mora County to please get on the website for the updated hearing dates.

Commissioner Howe thanked all who came down and urged them to attend the hearing in Taos on October 17<sup>th</sup> at the Taos Convention Center starting at 5:30 and make their thoughts and feelings known about the project.

Mr. Silva thanked the Commission and excused themselves to get back to work.

There were no other public comments.

## **6. CONSENT ACTION**

### **A. Utility Division**

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

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

**12-00236-UT**      **IN THE MATTER OF THE PETITION OF DEX MEDIA EAST, INC. FOR VARIANCE FROM 17.11.18.13(E) NMAC, DEX MEDIA EAST, INC. PETITIONER**  
**(Sandra Skogen)**      **Order**

**Commissioner Howe moved to make this a discussion item. Chairman Lyons seconded the motion and it passed by unanimous (5-0) voice vote. .**

Commissioner Marks regretted his vote from last time because he believed they should keep the doors to the courthouse open to anyone affected by the rule. In California and Colorado they stopped allowing a citizen to intervene and he thought that was a mistake. An ordinary customer should have standing to ask for a variance.

Commissioner Howe believed that open doors for people affected was important but didn't think this motion would close the door.

**Commissioner Howe moved to approve the order as presented. Commissioner Hall seconded the motion and it passed by majority (4-1) voice vote with Commissioner Marks opposed.      So Ordered.**

## **7. ACTION**

### **A. Utility Division**

**12-00237-UT**      **IN THE MATTER OF THE PETITION FOR RULEMAKING OF DEX MEDIA**

**EAST, INC., PURSUANT TO NMPRC RULE 120 (17.1.120 NMAC); DEX MEDIA  
EAST, INC., PETITIONER  
(Sandra Skogen)      Order**

Ms. Skogen presented information regarding this matter to the Commission. The Commission issued the NOPR on August 28 and comments received by September 18. CenturyLink requested rescheduling of the October 23 hearing, citing conflict with their effective competition docket, Case 11-00340-UT. That is a very complex case for CenturyLink so there is a hardship.

Dex Media responded basically in opposition saying that CenturyLink waited too long to make request and the conflict would have been apparent on date the NOPR was issued. But the Notice has already been published in New Mexico Register and local newspapers. Dex Media was concerned about the delay that would result from rescheduling. They also had a September 28 deadline for printing but negotiated an October 26 deadline with the printer. Dex said the sooner the hearing was scheduled, the better it would be for them.

Dex suggested a solution to recess the competition case for a couple of hours to accommodate the rule making. She discussed that with the HE who said the hearing was very complex with witnesses from out of town and they scheduled it for the entire week.

That left three other choices: 1 - to deny the motion and keep the original schedule recognizing that the Sacred Wind motion was not as timely as it could have been; 2 - reschedule as soon after October 23 as possible and not republish the NOPR. She consulted some others and believed they would protect due process by doing that. We know who the commenters are and could put new dates on the website and also have her show up at the originally scheduled time for anyone who did not know the new schedule. 3 - The Commission could reschedule at a later date to allow republication but drawback with that delay. The earliest it could be published in the New Mexico Register would be to reschedule the hearing on November 15<sup>th</sup>.

**Commissioner Marks moved to adopt the first option but strike paragraph 13.**

He felt that was best option. Qwest had enough counsel to cover both hearings. CenturyLink did not file a motion opposing the rule. All comments have supported the rule change. He thought they could accommodate with a short recess and deny the reschedule.

**Commissioner Howe seconded the motion with Commissioner Marks's amendment and it passed by unanimous (5-0) voice vote.      So Ordered.**

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

Ms. Caffey-Moquin presented information regarding this matter to the Commission.

Commissioner Marks thought 10-366 was part of last week's order. Chairman Lyons agreed.

Ms. Caffey-Moquin said last week the Commission tabled this case and asked her to do an analysis on interim rates and also to deal with the compliance issues whether Advice Notice 10 was filed within proper context with the December 2010 order.

She did that and submitted a memorandum to the Commissioners. Her draft order was the same as last week except for addition of conclusions on the reply of Mr. Virgil Beagles and also was required to look at paragraph B in her order that Advice Notice #10 had gone into effect by operation of law.

Yesterday, she was alerted of a filing Timberon made yesterday morning. She was able to get a copy this morning by email from Mr. Rubinowitz. It was a motion and Mr. Rubinowitz was present as well as Mr. Beagles. Mr. Cook was also present and advising Timberon on this case. The motion was to close 10-00366-UT and remove it from the docket.

The Commission's procedure rules allow 14 days for responses and staff indicated to her that staff would be filing a response to this motion so she was not sure what the Commission wanted to do. She believed compliance should be done in a separate docket. That was one way to look at it. Or the Commission could table it again until responses were filed. The deadline was Monday, October 8 so the next day she could be prepared to deal with responses.

Pending that, the draft order would find the number of protests filed was insufficient for the Commission to engage in a rate review. Under New Mexico Statute 608.7 1a, there was a clear distinction between service connections and rate payers which was the operative term for how many protests must be filed before rate review was allowed.

We have rate payers and Mr. Beagles was a rate payer and he owns multiple lots with standby service and pays a substantial amount for that.

Commissioner Hall asked if a standby person was defined as a ratepayer in the statute the same as one who has a hookup.

Ms. Caffey-Moquin said the statute did not refer to standby service.

Commissioner Hall asked who would decide that.

Ms. Caffey-Moquin said the statute says a person who receives a single bill is a rate payer and a person who receives multiple bills is a rate payer. So Mr. Beagles is a rate payer receiving multiple bills.

Commissioner Hall said- there is no service to a standby customer.

Ms. Caffey-Moquin said it didn't matter whether there was a meter hook up to Mr. Beagles' properties but that he receives a bill from the company. It constrains the Commission the way it was written.

Commissioner Marks agreed but it was not unfair. The first test was whether it was a small water utility and TWSD is a small utility. In small water utilities, anyone who pays has a chance to protest. And at least 10% were needed to protest in order for it to be heard by the Commission. Here, they didn't have 10%.

Ms. Caffey-Moquin recommended one of two courses of action. The first would be to adopt the draft order as presented. There was one issue this order didn't resolve - the compliance issues in paragraph B on page 12 - which replaces interim rates with rates set out in Advise Notice 10.

In June 2012 and Dec 2010 orders the language said interim rates would stay in place until further Commission order. So to change that required an order.

Commissioner Hall asked if the same rates would stand.

Ms. Caffey-Moquin agreed but now that the motion has been filed, her second suggestion was to allow staff to review what Timberon claimed here. In that motion, Timberon Water and Sanitation District sets forth explanations that they claimed addressed each of the items in the December 2010 order and staff would like to address those. Mr. Beagles should have a chance to address them as well as an intervener.

She wanted to pursue that direction and bring back a recommendation when finished.

Commissioner Marks wanted to support the order with two changes. He would change paragraph b to what they discussed last time. "Rates and advice notice 10 shall go into effect by operation of law replacing the interim rates of Dec 2010" and secondly to strike 10-00366 entirely from this order. Clearly there were not enough protests. 10-00366 didn't need to be part of this case. It was only from desire to close the docket in the computer system. Closing the docket didn't change that order. There was no benefit to closing the docket other than it makes fewer open cases. 12-00193 was really what was before the Commission and Counsel figured out all the arithmetic.

Commissioner Marks moved to adopt the order but the motion died for lack of a second.

Commissioner Howe noted that in Ms. Caffey-Moquin's amendment on page four, section B, she discussed what Timberon Water and Sanitation District would have to file. He asked if all of that was done in 12-0193.

Ms. Caffey-Moquin said Timberon referenced that series right out of 10-366 sections A and J. But the issue of whether Timberon complied was still at issue.

Commissioner Howe said if it didn't comply then their motion for permanent rates was defective.

Ms. Caffey-Moquin agreed and the rest of the order deals with protests.

Commissioner Howe asked how the Commission could approve it if the advice notice was defective.

Commissioner Marks said it was because the state law takes precedence. The Commission didn't



think Timberon knew what they were doing and management didn't have a clue on what the costs were. That was before Mr. Rubinowitz. The Commission felt the former board members had a better understanding than management at the time. They asked for an 80% increase which was not under 50% so it was not compliant with the statute.

Today we have compliance rules out there but paragraph D prerequisites were superseded by 62-8-7.1 that allows them to put rates into effect without the PRC if there were not sufficient protests. Anything we order that isn't out of compliance with the statute was presumably still in effect.

The TWSD could take it to the Supreme Court and get our order overturned. So we have no alternative. Ms. Caffey-Moquin agreed.

Commissioner Howe didn't see whether new rates were generating less revenue.

Ms. Caffey-Moquin said service connections increased over the summer so she didn't have the data for that.

Commissioner Howe thought in any event it was moot and they wouldn't be obligated to refund overcharges.

Ms. Caffey-Moquin didn't disagree with Commissioner Marks's analysis but didn't necessarily agree that compliance in 10-366 eliminated their requirement to comply. The Commission's order retains the force of law.

With that she would generally concur with Commissioner Marks's course of action but might add some language to this order to clarify that issues of compliance remain open in 10-366 and subject to further order.

Commissioner Howe asked what ability the Commission had to enforce the order in 10-366.

Commissioner Marks explained that allowing Advice Notice 10 to go in effect didn't mean the Commission couldn't order a refund of over collection for the interim period. Regarding enforcing orders the Commission was using approval of rates previously but that was not their only tool. They could take it to court and get the court to order Timberon Water and Sanitation District Board to obey.

Commissioner Howe said 10-366 had inappropriate ordering.

Commissioner Marks countered that it wasn't inappropriate but under current circumstances needed to be reinterpreted.

Commissioner Howe said the Commission wouldn't do it again because the statute trumps the order. The Commission just didn't anticipate all the permutations.

**Commissioner Marks moved to accept the proposed order except strike references to closing docket Case 10-00366-UT and change ordering paragraph B on page 12 to state that advice notice**

**10 rates go into effect by action of law replacing interim rates that were put in place under Commission's 2010 order approving emergency rates and order staff to determine whether any refunds were due as a result of paragraph 18-D in Ms. Caffey-Moquin's copying of 10-366 and make that filing to the Commission within 21 days and serve it on the parties and permit the parties 13 days to respond. Commissioner Becenti-Aguilar seconded the motion.**

Commissioner Howe asked how this would handle the compliance items in 10-366.

Commissioner Marks said they didn't have an evidentiary record but just protests that were insufficient - arithmetic on refunds. They had no record to determine if Timberon was in compliance with anything else.

Commissioner Hall agreed they had no jurisdiction over Advise Notice 10 but did over compliance in 10-366 paragraphs A-J. He asked if there was any evidence that they complied with any of that.

Ms. Caffey-Moquin said their filing purports to address all those compliance paragraphs although not laid out in the same fashion.

Commissioner Hall reasoned they needed to have staff check those off. They had a grievance with Timberon to fulfill those agreements.

Ms. Caffey-Moquin said Mr. Schwebke told her that staff intends to respond. When staff filed their response she would do another analysis to find gaps of this record.

Commissioner Hall noted that the compliance affects everyone in Timberon.

Chairman Lyons asked if a customer who was disconnected over a year would be charged a standby fee.

Ms. Caffey-Moquin didn't know but would find out.

Chairman Lyons asked if the Commission approved this order whether they would be ignoring A-J in 10-366.

Commissioner Marks said the Commission still had authority to enforce compliance but could not hang up Advise Notice 10. The Commission had gone to court over compliance issues before.

Ms. Caffey-Moquin could also still direct Timberon to come in and make an improved rate filing to be in compliance with 10-366.

Ms. Caffey-Moquin said staff would deal with 10-366 separately.

**The motion passed by majority (4-1) voice vote with Chairman Lyons voting against.**

Mr. Beagles asked staff to clarify the statute 62-8-7-1 whether service means a meter hook up or water tap. If you use those criteria there were 350 people as protestors. He needed clarification on that because

nowhere did it say anything about standby fees. Also he never heard a response back from the PRC staff on his protest.

Chairman Lyons asked Ms. Caffey-Moquin to take care of that. Ms. Caffey-Moquin agreed to handle it.

## **8. DISCUSSION/ACTION**

- **INMATE PHONE RESOLUTION - Commissioner Marks**

Commissioner Marks said there were at least two open dockets on this issue. Commissioner Jones brought it in 2009 or 2010. What the Commission learned was that the market for prison telephone service was not a competitive market. Each institution had to contract with a service provider who arranged for all phone calls from inmates and to inmates. Unlike our phones, those needed to have the ability for guards to monitor calls when appropriate. So it needed special phone equipment. As a result there was a history of phone companies and institutions taking advantage. It wasn't unusual in New Mexico to have a phone call cost \$15-20. The tariffs had a connect fee of about \$5 but calls would get disconnected multiple times and inmates would end up with three or more connect fees. Ancillary charges were also high also. Families put money into prepaid accounts and charges were added to that process as well.

The good news was that in New Mexico we've made huge progress to make it much fairer. The largest companies entered into a stipulation with staff with reasonable tariffs. The Commission was finishing up a rule making to extend it across the industry and the abusive practices were mostly history now.

Mr. Albright who represents one of the biggest companies was instrumental in this regard.

Having high charges was not just about consumer rights and fairness but also of public safety. Having good connections with the family was an important part of rehabilitation. Inmates were less likely to re-offend if they kept connections with families. It was the case that in the absence of putting limits on these costs, families cannot make calls as often as they would like. At the South Broadway Community Center the Commissioners had heartbreaking conversations.

New Mexico was not the only state to have made this progress but the FCC has received petitions for interstate long distant calls. Particularly when a federal prisoner was likely to be from out of state so there was a big issue with federal institutions. An activist approached him regarding a federal literacy group based in Albuquerque.

The FCC has had the case since 2003 to do a rule making for caps on this. In 2007 it was re-filed with similar provisions to New Mexico. He got a press release in the last few days that the FCC advisory commission told the FCC they had to act on it. The federal courts have told them also.

He couldn't get his proposed resolution through NARUC last summer but a friend in Nebraska was taking it to them again. He wouldn't be around so he was asking for this Commission to send the resolution to FCC. It was a worthwhile resolution and repeated what he just said. It was Docket 96-128.

Mr. Jeff Albright didn't know if the 96 indicated the docket was from 1996. The petition was to provide regulatory certainty and therefore supported by his clients.

Commissioner Howe asked if the tariff was done on a cost of service basis.

Commissioner Marks didn't think so. The company signs a contract with the institution and it has rates in it. The prison gets to decide what the rates would be. It was a reverse competitive market. In the old days the prison got a cash percentage of the revenue. Today it was more like bonuses from the companies on equipment, etc. The feds were coming to the realization that it was not helpful to have high costs. In most circumstances interstate rates were competitive. The New Mexico approach was a cost of service basis for charges.

The Commission's rule looked at cost of service for all penal institutions in New Mexico and did a statistical analysis and based the regulation caps on that. Costs were consistent in larger institutions but in small institutions, costs were higher. The Feds didn't have 100 bed facilities.

Commissioner Hall asked why it has taken so long for the FCC to consider this.

Mr. Albright had not been involved with federal legislation so he couldn't speak to it directly. Some states still allowed considerations to be paid. It was common in Mississippi and Louisiana for companies to buy squad cars for the prison. The size of facility was also significant.

Mr. John Reynolds said he thought it has taken a long time given political issues to get the FCC to act.

Commissioner Howe asked if the petition was lengthy.

Mr. Reynolds said it was not big but the docket was huge.

Commissioner Marks said if the Commission took no action it was treating this population with disrespect. .

Chairman Lyons said prisoners have very little interaction that was good except with their family. Something needs to be done and he was ready to vote right now.

Commissioner Marks noted Commissioner Clyburn has taken a stand in favor of it. He sits on the FCC.

Commissioner Becenti-Aguilar would like to see if we could get support from our congressional delegation to include this in the package.

Commissioner Marks thought that was a great idea.

**Commissioner Marks moved to adopt resolution 12-0925. Commissioner Howe seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.**

Commissioner Marks thanked Chairman Lyons and asked Mr. Montoya to follow up with Commissioner

Becenti-Aguilar's request.

**9. PRESENTATION PROPOSED 2013 RATE ASSESSMENT FOR THE NM RURAL UNIVERSAL SERVICE FUND.**

**Presented by Rich Zarate, Solix State Program Manager.**

Mr. Albright said they recently had meeting of the USB Advisory Board to retain the three current members for the coming year so he would remain chair for State USF Advisory Committee. Charles Farrell was Vice Chair and Laura Engle was Secretary.

Jean Snopkowski and Rich Zarate were here for Solix.

Ms. Snopkowski said as administrator they had several scenarios here for the Commission. Mr. Zarate has the numbers.

Mr. Zarate reviewed the packet and explained the summary of all the data from Solix and the advisory committee. He reviewed the options and said Solix felt keeping the surcharge at the same rate would not provide sufficient revenues for an adequate fund balance by year end.

In response to Commissioner Marks he said Solix had been able to get 12 VOIP providers paying the surcharge and Vonage was not one of them.

Mr. Albright said the Committee had a list of VOIP providers they would work with Mr. Ripperger on those from whom they had received no response. The Advisory Committee recommended 3.6% and not lower than 3.5%.

Commissioner Marks questioned that recommendation and didn't think they should carry a balance of \$2 million.

Mr. Zarate said they were keeping down the number of delinquent accounts but had not anticipated the actual balance they realized which was over a 4% decrease.

Chairman Lyons asked what Solix would do if the Board voted to keep it at 3.3%.

Mr. Zarate said they would come back to tell the Commission that they were in a deficit position and could not support the LITAP payments.

Chairman Lyons favored cutting expenses.

Commissioner Marks clarified that the Commission had to approve a rate based on today's rules and could not intentionally send it into deficit. It needed a positive balance but they could reduce the drain on USF a little. They were getting majority of revenue from calls that terminated in rural phone companies and got legislation passed to reduce access fees to interstate rates. They once were ten cents a minute. It was determined that each company would get an amount equal to their lost access fee revenue. That became

the \$24 million in annual disbursements. And then rebalancing of retail rates which was the only thing the Commission could change. But most of the \$24 million was required by the statute based on loss of revenues in 2005.

Chairman Lyons asked if they kept track of LITAP expenditures.

Mr. Zarate said each month the carriers have to report on it. They have not spent anything for administrative and advertising. It was only a reduction of monthly fees for tribal and non-tribal customers - based on economic need.

Commissioner Howe said it didn't have the analysis he would like to see. Actually the right number would be 3.35% but they put in another buffer so it was double contingency counting. Chairman Lyons felt the same way.

Mr. Albright said there were a couple of other factors the Committee discussed and they discussed everything on this.

Chairman Lyons asked if they could make a recommendation to change the rate.

Mr. Albright said that was beyond the scope of the rule for the advisory board to consider. A 1% change would make a difference of \$810,000. There might be additional LITAP requests to draw from this fund. The last year reflected collecting from more VOIP but that wouldn't likely increase this year. Those potential increases in expenses were not included here.

Commissioner Howe felt there were just too many unanswered questions here.

Mr. Albright agreed it was difficult to forecast exactly what would happen or additional revenues they might get from VOIP. Companies needed about two months of lead time to incorporate new rates and that was why they were here now. That was what the rules dictated.

Commissioner Howe felt his arm was twisted behind his back on this. He would recommend the 3.45% with an added requirement that if the projection comes down to \$415,000, Solix would come back for reconsideration.

Commissioner Marks said he would support that when it comes back. It was irresponsible to go into deficit but this appears to be the right way to do it. He would also support looking at tweaking the expenses too.

Chairman Lyons favored no increase in rates.

Commissioner Hall was opposed to increasing the rates while the economy kept going down and thought they needed to look at how to cut back expenses.

Chairman Lyons agreed. That's why Sacred Wind went to the legislature because they couldn't get it from the Commission.

Mr. Albright said he would take that back to the advisory board. He would also check in the rules on how to advise Solix. A petition to change the rule would be required to look at reducing the expense side. He was not sure it was even in the authority of Solix to bring that petition. However, any carrier could petition the Commission to change the rule. Last time it took 2-3 years because it was very contentious. VOIP had not been paying into the fund until this Commission had taken action against Vonage and others and informing them they were required to contribute to the fund.

Mr. Zarate said Solix based its projection on the experience here in New Mexico and compared that with neighboring states. He agreed to provide that to the Commission in writing.

Commissioner Howe wanted to see what Solix were dealing with on the expense side. What was the projected revenue base at beginning and what you actually had at year end? For each year since 2006.

Mr. Albright said the rule discusses the reduction of access charges and paragraph G goes through how it has to be structured.

Commissioner Marks said the Commission's opportunity was not on access reduction - it was the bench markings on LITAP where they could reduce the USF. The legislature said only after rural carriers raise their rates to benchmark and Qwest was the benchmark. That was \$13.50. If we subsidize, we must ask customers to pay something. The Commission bench marked residential and not commercial. Since 2005 Qwest rates have gone up by \$3 so you could readjust the bench marking. Then we could also revisit the LITAP rule making.

Chairman Lyons thought maybe the Commission should get the state law changed.

Commissioner Becenti-Aguilar agreed. Times have changed since 2005 and we were allowing lots of wireless carriers to come into New Mexico and we need to make sure that was in line with the economy here.

Mr. Armenta said up until a couple of years ago, Qwest did not join USF but supported LITAP for years and was paid totally from Qwest revenues. The majority of CenturyLink pays and it was in Commissioner Marks's district. So it was important to look at that. As CenturyLink continues to lose its lines, it would impact the USF. We often lose it to companies that didn't pay USF like Comcast.

Mr. Zarate said Comcast did pay.

Commissioner Marks said CenturyLink does lose lines to companies for data reasons.

Ms. Armenta said they didn't know how the changes would impact them but Qwest didn't draw anything from USF until two years ago.

Mr. Zarate thanked the Commission and said they had some action items to take back.

Chairman Lyons asked what was the advisory committee meeting schedule was.

Mr. Albright said they usually met about every six weeks. None was planned between now and October.

Commissioner Marks said Mr. Parker needs to bring it back for action.

#### **10. PUBLIC COMMENT**

Public comments were taken earlier in the meeting.

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

Mr. Parker reminded the Commission of the big discussion on HM 63 for Thursday. Commissioner Marks put together some data and this was a draft letter to go to the AG on it.

Chairman Lyons asked him to change the signature page on it to all five Commissioners.

#### **12. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOKA**

There were no communications with Chief of Staff.

#### **13. COMMUNICATIONS WITH COMMISSIONERS**

Commissioner Hall said the Commission postponed the decoupling until Thursday and some people wanted to attend FERC on Thursday so they wanted the Commission to postpone it again so they could attend both.

Mr. Parker said OGC would bring an order to the Commission. It could be a lengthy meeting.

Commissioner Howe said this discussion workshop has been constantly postponed. People could choose between them. Commissioner Marks agreed.

Commissioner Becenti-Aguilar was in favor of postponing it.

Chairman Lyons said the result was 3-2 to postpone it.

Commissioner Marks asked if the Commission wanted to do it Monday.

Commissioner Hall asked about Friday.

The Commission decided to do it October 2 in the afternoon.



Commissioner Howe said no study had been done on HM 63. There was likely to be several workshops. It was not a proposal to move the utility staff to the AG's office but a study to look at alternatives. The study paper would likely have 4-5 alternatives.

Mr. Parker recalled that the Commission was supposed to send a study to the legislature.

Mr. Martínez understood that the Commission had to submit a report by December 1.

Chairman Lyons asked what should be in it.

Commissioner Howe said that would be good to discuss but there was nothing to vote on. They could lay thoughts out and allow people to discuss them and then come back with a report.

Mr. Parker said he could list it as discussion/action. Chairman Lyons agreed.

Mr. Parker's concern was that staff was charged with carrying the wishes of the Commission so they needed direction if the Commission wanted staff to prepare a draft of the report and what it should say.

#### **14. ADJOURNMENT**

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

The meeting was adjourned at 12:46 p.m.


ATTEST:

  
Carl Boaz, Stenographer

APPROVED: 10/16/2012

  
PATRICK H. LYONS, CHAIRMAN

  
THERESA BECENTI-AGUILAR, VICE CHAIR

  
JASON A. MARKS, COMMISSIONER

  
BEN L. HALL, COMMISSIONER

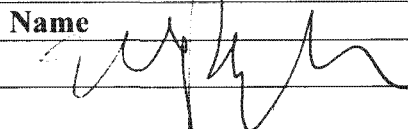
  
DOUGLAS J. HOWE, COMMISSIONER

# NEW MEXICO PUBLIC REGULATION COMMISSION

## OPEN MEETING

### SIGN-IN SHEET

DATE: Sept 25, 2012

Name	Company Name (if any)	Phone Number
		
Burt Rubinstein	Timberon Water Sanitation	720-216-7370
Neve Van Dusen		986-1706
Jeff Albright	Lewis & Roca	505-764-5430
JEAN SUPKOWSKI	Solix	973-581-5247
Rich Zarate	Solix	973-581-6700
Mark Zerkow	DNM	241-2498
Allie Jackson	Xcel/SPS	806-378-2930
Ruth Sakya	SPS	505.896.1012
Sulian Miera	SILVA EVU	575-613-3228
TONY TAFOLA	SILVA EXC	575-613-2382
Thomas Tafola	Chubby Const.	575-770-1393
Amanda Tafola	Chubby Const.	575-770-0830
Shannon Lovato	Michael Lovato landscape	575-643-6336
Travis Lovato	Michael Lovato landscape	575-643-6336
Michael A. Silve	Silvis Excavation	575-779-8002
DANN S. BATES	Ecosphere Inc	575-770-0259
<del>Michelle Asmaria</del>	<del>Cody Link</del>	<del>760-8510</del>
Michael Ripberger	Staff	827-6902
Georgette Ramte	PRC Staff	476-0448
Erin Evans	"	827-4405
Bill Thompson	CORTI Law Firm	982-4611
Juan Ellis	PRC Staff	827-4579

Thank you for attending this meeting.



## NEW MEXICO PUBLIC REGULATION COMMISSION

**REGULAR OPEN MEETING**  
**Tuesday, September 25, 2012**

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

### AGENDA

1. **PLEDGE OF ALLEGIANCE**
2. **INTRODUCTIONS**
3. **MISCELLANEOUS ANNOUNCEMENTS**
4. **CONSIDERATION AND APPROVAL OF THE AGENDA**
5. **CONSIDERATION AND APPROVAL OF MINUTES**
  - **Minutes of the Regular Open Meeting of 8-23-12**
  - **Minutes of the Regular Open Meeting of 8-28-12**
6. **CONSENT ACTION**

#### **A. Utility Division**

**12-00219-UT**  
**Michael Smith**

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

	<b>REQUESTS RELATED TO WIND SOURCE.</b>  <b>SOUTHWESTERN PUBLIC SERVICE COMPANY,</b> <b>APPLICANT.</b>  <b>Order</b>
<b>12-00236-UT</b> <b>Sandra Skogen</b>	<b>IN THE MATTER OF THE PETITION OF DEX MEDIA EAST,</b> <b>INC. FOR VARIANCE FROM 17.11.18.13(E) NMAC,</b>  <b>DEX MEDIA EAST, INC., PETITIONER.</b>  <b>Order</b>

**7. ACTION**

**A. Utility Division**

<b>12-00237-UT</b> <b>Sandra Skogen</b>	<b>IN THE MATTER OF THE PETITION FOR RULEMAKING OF</b> <b>DEX MEDIA EAST, INC., PURSUANT TO NMPRC RULE 120</b> <b>(17.1.120 NMAC; DEX MEDIA EAST, INC., PETITIONER.</b>  <b>Order</b>
<b>10-00366-UT</b>  <b>and</b>  <b>12-00193-UT</b>  <b>Margaret Caffey-Moquin</b>	<b>IN THE MATTER OF THE REQUEST OF TWSD WATER AND</b> <b>SANITATION DISTRICT FOR AN EMERGENCY INTERIM</b> <b>RATE INCREASE.</b>  <b>IN THE MATTER OF TWSD WATER AND SANITATION</b> <b>DISTRICT'S ADVICE NOTICE NO. 10 FOR NEW RATES.</b>  <b>Order</b>

**8. DISCUSSION/ACTION**

- **INMATE PHONE RESOLUTION – Commissioner Marks**

**9. PRESENTATIONS**

- PROPOSED 2013 RATE ASSESSMENT FOR THE NM RURAL UNIVERSAL SERVICE FUND, PRESENTED BY RICH ZARATE, SOLIX STATE PROGRAM MANAGER.**

**10. PUBLIC COMMENT**

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

12. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTTOYA
  13. COMMUNICATIONS WITH COMMISSIONERS
  14. 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.

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#### **PERSONS WITH DISABILITIES**

**ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE IN ORDER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION (827-4084) AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.**