

**MINUTES OF THE  
REGULAR OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
October 4, 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 [telephonically]  
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  
Rick Blumenfeld, Associate General Counsel  
Michael C. Smith, Associate General Counsel  
Dwight Lamberson, Utility Division Director  
Patrick López, Legal Division Director  
Michael Ripperger, Telecommunications Bureau Chief  
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 Howe requested moving item 12 regarding Jemez Electric Coop to the beginning after the consent action.

**Commissioner Howe moved to approve the agenda as amended. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.**

**5. CONSIDERATION AND APPROVAL OF MINUTES**

- **Minutes of the Regular Open Meeting of September 11, 2012**

**Commissioner Howe moved to approve the minutes of September 11, 2012 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.**

**6. CONSENT ACTION**

**A. Transportation Division**

**12-00330-TR-M      IN THE MATTER OF THE APPLICATION OF BUSY BEES TRANSPORTATION, INC. FOR A PERMIT TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE.  
(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. Utility Division

12-00109-UT      **FORMAL COMPLAINT AGAINST JEMEZ MOUNTAINS ELECTRIC  
COOPERATIVE, INC.  
(Rick Blumenfeld)      Order**

Mr. Blumenfeld presented information regarding this matter. A complaint by 96 members of the JMEC was filed alleging mismanagement and corruption and requesting an audit of the Coop. An audit was recently completed by the National Rural Electric Coop Association. A summary of that audit, 26 pages and the rate case was provided. Under the case of ENM Telephone Coop vs. the New Mexico Corporation Commission we cannot order a utility to conduct an audit. These are serious charges and some have been brought and addressed in court cases. The audit that was conducted was very critical of the Coop and the entire report that is over a 100 pages long with redactions of personnel and confidential matters will be provided to the Commission by Coop Counsel. The complaint asked the Commission to do another thing it can't do. The Commission cannot fire employees hired by the Coop. For a criminal charge it might better be placed before the AG. Many of these things appear to be personal vendettas and the solution for that would be to vote out the board members, which the members have the power to do rather than to come to the Commission.

If the coop isn't performing well doesn't mean it is corrupt or rife with fraud. So he thought the coop move to dismiss the members' complaint in its answer and his recommended order was dismissal of the complaint and these matters can be dealt with in the rate case where the audit summary will be filed and where the complainant is an intervener. The complainant can raise these matters in the rate case. The audit went into many of these matters in terms of quality of service, cost calculations and savings.

Secondly, the rules were not followed in the filing of this complaint. There are 96 names attached to the complaint but only one person signed it so there are legally not 96 complaints but one and that person is not an attorney so she can't represent 95 others. Thirdly, apparently no attempt was made to resolve any of the complainant's issues beforehand. That was something he would recommend. It was a long list of serious charges but there was no interaction; no requests for documents. It was not clear where these documents came from. They had not been authenticated. The Coop states they did not provide them.

He thought requesting a second audit, sending this case to a Hearing Examiner would be duplicative of the rate case at this point. The \$25 filing fee should be refunded and this complaint dismissed.

Chairman Lyons thanked him for the presentation and invited public comment.

Ms. Judy Bell said she lived in Española and was a member of JMEC. She had a couple of concerns. She listened to Mr. Blumenfeld's remarks and felt that he was responding that an audit could not be done. A financial audit was what she wanted. She had asked Mr. Sowell in July if the audit by Moss and Adams

was done and what they audited and didn't get a response. She had called Mr. Sowell three times and left messages on his phone and with his secretary and have yet to get a call back from him. She mentioned it in response to Mr. Blumenfeld's statement that they had not had interaction. She had tried.

She became aware when the Ohkay Owingeh easement situation came up in May that Mr. Coriz [Commissioner Coriz] had approached Commissioner Lyons and asked for an ex parte communication. She thought the members needed to have assurances that this ex parte communication would not affect the present ongoing cases between JMEC and its members.

As far as Moss/Adams audit report she had heard rumors of collusion and now understood the Commission could not take rumors. But when she asked Mr. Soul if they did a selective amount of auditing and not a complete financial auditing, she didn't get an answer. That led her to conclude a financial should be done from top to bottom to clarify for the members that everything was on the up and up. She was in no position to state that JMEC is doing things illegally or anything else but wanted clarity and transparency for all the members.

Thirdly, it had been brought to her attention that in the past month, one of the Commissioners contacted the union representative about the validity of the membership input complaints. He then went on to approach an employee of JMEC to discuss whether or not the validity of the complaints from the members was correct.

She had a concern with that and didn't know if it was appropriate or not in this case. She acknowledged she was not an attorney and was not familiar with the law but she was trying to understand this completely. And she was trying to do what was right for the members of JMEC and wanted everything above board for them. If they had to have a rate hike she would be the first to apologize to Mr. Sowell but she was getting different reports from the board of trustee and that really concerned her.

Ms. Loyda Martínez said she was a JMEC member and lived in Chimayó and was the signatory of the complaint. She wanted to put on the record that she made every effort to get signatures from the other 96 members. She was not an attorney but a passion community advocate and didn't understand the process initially. Commitments made at the Coop were concerned. She said she did have the signatures.

Secondly, she tried to work with JMEC and that was part of the complaint. Mr. Sowell never responded appropriately. Finally, she and her husband came to meet with Commissioner Howe and he actually suggested the formal complaint which she put together and started to realize there were more concerns from other people in the community. So they just bundled it up.

At the same time, she wanted to go back to their community. Rio Arriba County is, per capita, Chimayó especially, is first for drug use and drug distribution; the fourth poorest county in the country. They have people coming in that don't have the best interests of our community and she was trying to be a voice for the voiceless in this complaint.

To Mr. Blumenfeld, she said she had no problem making this as part of the rate case. But did want to state several things. In the complaint they alleged that the JMEC engaged in a pattern of misconduct and had violated their fiduciary responsibility to the members. The NRECA report is an assessment of the

operations and not a financial audit as they were requesting. Those are two separate entities. The NRECA report that was submitted to the PRC dated September 17 was a part of what the actual complaint was of 129 pages. She wanted to share some of the behaviors that exist in this Coop. There were 53 items on the report.

One was selling the members' assets, recommending selling the members' assets which was the picnic grounds in the Jemez Coop and other property in the area. And that was approved by our board of trustees.

Another one was building a new facility. Just this last week they had a board member for meeting and the General Manager had already communicated to the people in Cuba in the district of Cuba at a safety meeting that the board of trustees had approved for him to sell this beautiful 15 acres of property in Jemez Springs. He was going to move forward on it.

They also started to put a loan package together and hire a consultant and an architect for this new facility while they had all these financial situations like we heard a few weeks ago on the tribal easement hearings. He indicated he had the coop - only a couple more months of cash and she believed Commissioner Hall indicated the possibility of considering bankruptcy. She didn't think Mr. Sowell acted in good faith when he only provided a summary and not the whole audit. She gave a copy to Mr. Blumenfeld.

The Commission had a responsibility to protect the consumers and to set politics and personal agendas aside. She ask that the Commission do it on the up and up on this financial audit. The JMEC failed the consumers morally and ethically and was illegal.

In the complaint many employees have been retaliated against in assuming that they provided many of these documents. They have been terminated or put on administrative leave over this report that is supposedly independent. When you read it, you will see his strategic plan for 2011 and 2012 implemented in it so it is no longer independent.

She said she talked about transparency every day. In their community, the elders cannot afford high rates. But that might happen just to save the Coop because it was in such financial shambles. She hoped the Commission understood that the elders in the community when their electric bills went up they had to hold the board of trustees that had approved this behavior and the general manager accountable for what was happening to the coop.

In the alleged independent audit which was actually an operational assessment, they had an individual here named Johnny Bond that works with CFP and also NRECA which was a complete conflict of interest. CFP was the bank that was one of their lenders in the coop.

She had no problem with this being part of the rate case and hoped the Commission would do the right thing for consumers.

Mr. David Salazar, member of JMEC, said this was his 44<sup>th</sup> year as a trustee and was only 80 years old. His background was in budget and finance. During a 4 year period ending in 2009, the average increase in controllable costs was \$434,735 - average increase over the four years. The first year Mr.

Sowell was manager, starting in April, 2010, by the end of that year, their controllable costs increased by a million and a half in one year. Over a two year period the average was \$1.1 million.

Prior to his coming as manager, and as confirmed by the Mr. Gonzales, the former manager, they had a total of probably 4-5 contractors mainly with their construction project and the substation on the pueblo.

Their attorney, Mr. Valdez, pretty much took care of all the legal problems during the 35 years he was their attorney. He dealt with the negotiations with the tribes and the only thing he didn't negotiate was the union contracts for which they hired an attorney from Albuquerque.

In 2011, contractors, consultants and attorneys totaled \$2.7 million. The tree trimming contract was \$631,000, the attorneys were \$232,000. So far this year through August for contractors, they have spent \$2 million.

When the average controllable costs were \$434,000 in 2009 jumping to \$2.2 million, to him something that was being done by management wasn't right.

In the audit by Moss/Adams he found some discrepancies and pointed them out to them and the board. But then in the letter of transmittal, it said there were no serious findings. And yet they found seventeen items that were not being properly done by the Coop. There was a conflict and he told management and the auditors about it. They sent it to IUS who sent it back.

Prior to Mr. Sowell they had new board members in 2009. JMEC was a very stable financial cooperative. Their employees were happy and morale was good. Now Mr. Sowell has ordered employees not to talk to board members about anything at any time. He didn't see a problem with employees socializing with board members. In his opinion, our coop is run more like a gestapo. Employees are terrorized and can't talk to anyone.

Commissioner Howe made a few comments since he had been involved. When it was an informal complaint they had discussions about it. When it became formal by the Coop, of course they had no communications at that point.

As Ms. Bell said one commissioner had talks with a union member. He didn't know if it was the same thing but he did get in touch with a former member of the cooperative because as Mr. Blumenfeld was finalizing the disposition he brought to Commissioner Howe's attention a memo from a former Coop safety manager that was highly critical of the safety culture at the Coop. But unfortunately the memo was filed rather late and had not been provided by the person who wrote it but by Ms. Martinez. So he asked Mr. Blumenfeld to confirm it with the author which he did and asked if he stood by it and he did. So that was the communication that Mr. Blumenfeld had at his request. It was simply to try to affirm whether or not the memo was legitimate and represented the manager's feelings.

He certainly didn't think there was anything inappropriate about that because it made very serious allegations about the safety culture at the Coop. He added that the NRECA summary audit was also pretty critical of the safety culture there as well. So it was not an inappropriate communication.

Ms. Bell said Commissioner Howe was not the commissioner to which she was referring.

Commissioner Howe said this case blew up from a complaint of improper financing of line extension for Margaret Green who was a neighbor of Ms. Martínez and then blossomed into a lot of allegations when the complaint became formal. In talking with Mr. Blumenfeld, he came to the same conclusion that there was not a real smoking gun here of fraud. There were lots of allegations and rumors going around but they couldn't find any fraud in the investigation.

Some things need to have closer attention. There are serious deficiencies found in investigating and needs further scrutiny. The Commission doesn't have authority to order an audit. But the Commission could hire an auditor for \$100,000 or more so that would be using taxpayer dollars and he questioned if that was good use of that money.

He liked pulling those issues into the rate case where testimony under oath was put on the record. So He favored closing this case out and move the issues into the rate case.

Commissioner Marks asked Mr. Blumenfeld if he could explain that BMR case that said the Commission couldn't order an audit.

Mr. Blumenfeld said it was with the predecessor, the State Corporation Commission that asked a phone company to conduct an audit and have the phone company pay for that audit. The court said the Commission could not do that but did say they could have ordered the phone company to provide a special report that would have included most of the information that would be provided in a regulatory audit. It said the Corporation Commission had the authority to set minimum quality standards in the report pursuant to its power to act in the public interest in matters of public convenience and necessity. .

Commissioner Marks asked what the specific rationale was that the Commission could not order it. He asked if that was a statutory prohibition to order the audit.

Mr. Blumenfeld had in that case Chief Justice Baca held that the Commission lacked constitutional or statutory authority to order the coop (the telephone coop) to pay for a regulatory audit ordered by the Commission.

Commissioner Marks noted that phone utilities were different from electric utilities and under completely different statutes. He asked if Mr. Blumenfeld found a case for an electric utility.

Mr. Blumenfeld said he had not looked for one.

Commissioner Marks clarified that one of the documents referred to as an audit was not really an audit but a management study and was titled JMEC Organization Analysis.

Mr. Blumenfeld understood the distinction.

Commissioner Marks asked if there was anything in the order to move information from this case to the rate case.

Mr. Blumenfeld answered no. However, Mr. Olson said the summary report would be filed in the rate case and he would also provide the full report to the Commission.

Commissioner Marks asked if there would be any reason for not transferring the record in that case.

Mr. Blumenfeld didn't see any reason why it couldn't since the complainant had no objection.

Commissioner Marks had no further questions but was concerned with how the complaints were being treated. He was comfortable having it examined in the rate case. He pointed out that the Commission had ordered audits for three electric utilities in the past. The Commission procured the auditor and required the utility to pay for it. So he thought they had more authority than Mr. Blumenfeld has stated.

He wanted to see things developed more in the rate case - more than just the regular discovery. He was not a CPA but worked in the field for several years. He was not sure an audit was the best way to get to the bottom of the complaint issues.

**Commissioner Howe moved to approve the draft order with changes - that the NRECA document be referred to as a report instead of an audit, that the ordering paragraphs would transfer record of this case to the Advice Notice 61 rate case. Commissioner Marks seconded the motion.**

Commissioner Hall commented that all coops have an annual meeting and at their annual meeting they usually provided a full financial breakdown. Mr. Blumenfeld thought so too.

Commissioner Hall asked if such a report was available to all members. Mr. Blumenfeld thought so.

Commissioner Hall thought all paperwork generated at JMEC was the property of its members or any member of the coop. Mr. Blumenfeld said he didn't know where these papers came from that somehow got into the hands of members.

Mr. Blumenfeld said there were a number of documents that were not provided by the JMEC.

Commissioner Hall said he had never seen their financial statement but presumed it included what they bought or sold in that report and it belonged to the members.

Commissioner Marks said in several other coops the coop presents a summary financial statement but doesn't provide at a level that would show all financial transactions. By law, there is nothing like IPRA for coops. He could be wrong about that but other coops' members have complained about no access to documents.

Commissioner Hall thought they had the right to look at the paperwork. Whether they could get their hands on it was another question. Commissioner Marks agreed with Commissioner Hall.

Mr. Patrick Montoya, board member at JMEC, said the public record was given to the members. At the annual meeting the board offered it all in the annual report and he presented a copy of the annual report to



Mr. Parker.

Commissioner Hall was concerned with the allegations that employees have been fired because they talked to members. If the board had nothing to hide that shouldn't be an issue but to tell them they couldn't speak makes it appear they have something to hide. That was entirely wrong. Listening to them gives you the information. That upset him. And if it was board policy it bothered him more.

Commissioner Becenti-Aguilar said she was the only Commission that voted against the rate increase. From her observation there were many flaws and that was slowly coming to the surface. The JMEC members came forward and said how members were being treated and had that right to do so. Going forward, all the issues were being put on the record. She wanted to put that into the record as well in the current rate case. She asked that all the minutes on this case to be in the record.

Chairman Lyons said Ms. Bell made allegations. He didn't recall meeting Mr. Ortiz or seeing him since the last legislative session. She said she was informed by someone. But it isn't good to have 129 pages that no one knows where it came from.

He thought JMEC was in a bad way. The Commission allowed \$11 million for one pueblo to charge them and they had 9 more to go. He didn't think the pueblos looked at that and what it would mean for all the poor coop members. He didn't think the pueblos had a right to hijack the coops for more money and thought this could break the coop and the members ought to get together to work on that rather than accuse the Commission of ex parte communication. He believed this case ought to be included in the annual rate case.

**Mr. Blumenfeld said the order should also change "audit" to "report" and put minutes from this meeting in the case record. Chairman Lyons agreed.**

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

Mr. Olson said regarding the rate case filing that the JMEC financial statements were audited by Moss-Adams and would be filed as part of the rate case.

Commissioner Howe noted that Moss-Adams did audits and financial reports. He asked if the Coop got an audit or just a financial statement.

Mr. Wayne Sowell said coops were required to have full audits per AICPA standards. It was a full-blown audit and they were posted on the JMEC web site along with their IRS Form 990.

10-00235-UT           IN THE MATTER OF THE INVESTIGATION OF THE EFFECTS OF THE QWEST  
AND CENTURY- LINK MERGER IN NEW MEXICO.  
(Rick Blumenfeld)     Order

Mr. Blumenfeld presented this matter to the Commission.

**Commissioner Marks moved to table this case until he could be physically present. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.**

**06-00026-UT      IN THE MATTER OF THE IMPLEMENTATION OF THE STATE RURAL  
UNIVERSAL SERVICE FUND.  
(Commissioner Jason Marks)      Order**

Commissioner Marks said the Commission had looked at the various levels suggested by Solix. The order was based on what was done last year and 3.45% would give about an \$800,000 fund balance at end of year and that was his recommendation to keep the fund balance from going up too much and still having a reasonable balance at year end. It was important to put out an order today that would pay the funding requirements by law. Until they change the rules, the fund would have to pay out \$26 million.

**Commissioner Marks moved to set the State Rural Universal Service Fund surcharge at 3.45% for the calendar year 2013. Commissioner Hall seconded the motion.**

Chairman Lyons felt it was time to look at who gets the money and how much.

Commissioner Marks said he was working with Ken Smith to bring a report on it to the Commission. Until the funding formula was changed the Commission couldn't change the amount going out the door.

Chairman Lyons said telephone service was the most highly taxed of all that keeps going up.

Commissioner Marks agreed with him.

Commissioner Becenti-Aguilar said the order here doesn't have all of that information. She asked what they were trying to accomplish.

Commissioner Marks said it was two things. According to the Commission's own rule, they must publish a new rate by October 1 each year so in January they could collect at the new rate. Step 2 - Mr. Smith was working on a spreadsheet that would change the rule to reduce the amount of the payouts prospectively, going forward. They should have that information in a couple of weeks and the Commission could decide whether to have a NCPR or not. Today's order was just to follow our own law and already we are three days late.

Commissioner Hall noted that New Mexico had out-of-state companies coming in to get money out of USF and the Commission hasn't turned them down except for Sacred Wind. Until Mr. Smith brings it, we have to live with the rule. He hoped Commissioner Marks and Mr. Smith could come up with a solution.

Chairman Lyons said the Commission needed to say no new taxes on phone bills. So we need to change the payouts from the fund.

**The motion to establish a rate of 3.45% passed by majority (4-1) voice vote with Chairman**

**Lyons voting against. So Ordered.**

## 8. DISCUSSION/ACTION

### A. Utility Division

**11-00089-UT      IN THE MATTER OF INDIAN HILLS WATERWORKS' ADVICE NOTICE NO. 5.  
                              (Carolyn R. Glick, Margaret Caffey-Moquin)  
Supplemental Recommended Decision on Remand     Order**

Ms. Glick presented information regarding this matter to the Commission, to consider her RD on remand. On April 25 she issued an RD with newly increased rates for the utility. In June, the Commission issued a partial remand order that adopted her findings of fact and conclusions of law except on the issue of rate design. The Commission remanded it to her to take additional information on the limited issue of declining block rates and issuance of a supplemental recommendation.

Currently they had a set rate of \$29.50 per month for use up to 6,000 gallons and \$2.95 per thousand exceeding 6,000 gallons per month. The utility proposed a monthly charge of \$20.25 without any charge for usage and an inclining commodity block rate of \$2.25 per thousand up to 5,999 gallons, \$3.79 per thousand gallons above 6,000 in the month.

An average utility customer used 5,559 gallon per month in 2011. For a customer consuming 6,000 gallons per month, the proposed rate design would result in a 14.41% increase over current rates. For a customer consuming 7,000 gallons per month the percentage increase would be 15.7%. As monthly consumption rises the cost would rise up to 22.91% for a customer consuming 21,000 in the month. For those using up to 4,000 gallons monthly the rates would decrease.

The Indian Hills Neighborhood Association proposed their own rates.

The hearing on remand was held on August 29<sup>th</sup>. The Indian Hills Neighborhood Association didn't participate in the hearing. Mr. Tinley, president of the utility, apparently accepted inclining block rates but opposed the staff's proposed rate design because he believed it would not send a strong enough price signal to reduce consumer water use and would not generate enough revenue from the fixed water use charge. She recommended adopting staff's proposed rate design as reasonable and imposes changes more gradually and less volatility than a rate design with more blocks.

Commissioner Marks asked if the rates she recommended in her original RD would have an average rate increase of 14% at that point.

Ms. Glick and Ms. Caffey-Moquin were looking it up.

Ms. Glick said the information was in the attachment to her memo. It was staff exhibit ELT-4. Under the rates she recommended earlier, for an average customer using about 6,000 gallons it would have been about a 30% increase.

Commissioner Marks asked if the inclining block rate would average a 14% increase. Ms. Glick agreed.

Commissioner Marks asked if she was sure that will meet rev requirements.

Ms. Glick said she asked staff witness that question because there was volatility with block rates and the staff member was pretty confident of it.

Commissioner Marks said the rate now was \$29.50 for 6,000 gallons and the new rate would be about \$32.00. Ms. Glick agreed.

Commissioner Marks asked what she recommended last summer for fixed cost.

Ms. Glick said it was a customer charge of \$20.45.

Commissioner Marks noted that included no water use and asked how much per thousand gallons the charge would be.

Ms. Glick said it would be \$2.95.

Commissioner Marks thought it looked like a good plan.

Commissioner Hall said the \$103,000 revenue requirement was just a guess and if some consumers started using less water they could be in trouble. Ms. Glick agreed.

Mr. Parker said Ms. Caffey-Moquin prepared an order to adopt the RD.

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

Ms. Glick announced the receivership hearing was in late August and briefs have been filed. The Commission didn't ask her to preside over that case.

Chairman Lyons asked when staff expected to put it on the docket.

Ms. Caffey-Moquin said the negotiation toward a voluntary sale had progressed and the Commission could anticipate a joint petition pending finalization of those negotiations in the near future.

Chairman Lyons asked what the effective date of rate increase was.

Ms. Caffey-Moquin said it would take today.

Chairman Lyons asked if staff didn't expect this to affect the sale. He asked if this case couldn't have been brought after that sale was decided. He believed it would raise the price of the sale.

Ms. Caffey-Moquin said they were constructively aware of this docket. There was no evidence for a material effect upon those negotiations.

**11-00305-UT**

**IN THE MATTER OF THE JOINT PETITION FOR DETERMINATION OF MCI COMMUNICATION SERVICES, INC., D/B/A VERIZON BUSINESS SERVICES; MCI METRO ACCESS TRANSMISSION SERVICES, LLC, D/B/A VERIZON ACCESS TRANSMISSION SERVICES; TELECONNECT LONG DISTANCE SERVICES AND SYSTEMS COMPANY; TTI, LLC; VERIZON ENTERPRISE SOLUTIONS, LLC; AND VERIZON SELECT SERVICES, INC. TO ELIMINATE CERTAIN FILING REQUIREMENTS.**

**(Carolyn R. Glick, Margaret Caffey-Moquin) Final Recommended Decision Order**

Ms. Glick presented information regarding this matter to the Commission. In this case, seven Verizon entities that she referred to collectively as "Verizon" seek permission to detariff their services. Six of the Verizon entities are interexchange carriers ("IXCs") that provide long-distance services and the seventh, Verizon Access, operates as a competitive local exchange carrier or CLEC.

Tariffs are documents filed by telecommunications companies with the Commission that detail the services, equipment, pricing, and terms and conditions of services that are available to the general public. The New Mexico Telecommunications Act does not expressly require telecommunications service providers to file tariffs. Rather, tariffing requirements appear in the Commission's rules. For CLECs, IXCs, and IXC resellers, the Commission's rules require the filing of tariffs when a provider first seeks authority to provide service and when a provider seeks to change the tariff. For CLECs and IXCs, a tariff change goes into effect within 10 business days unless Staff files a protest. For IXC resellers, no advance notice is required under the Commission's rule, but Staff is required to review the proposed changes expeditiously.

Verizon filed its Petition under § 63-9A-8 of the Telecommunications Act. Under that statute, the Commission, upon request, shall "hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market area." If the Commission determines that a service is subject to effective competition, the Commission shall, under reduce or eliminate regulations applicable to the provision of the service. Verizon's petition asks the Commission to find that its intrastate long-distance services and local services are subject to effective competition. And upon that finding to allow the Verizon entities to withdraw their tariffs.

In its Order issued on March 29, 2012 in this case, the Commission ruled that it was unnecessary to consider whether intrastate long-distance services provided by the Verizon IXCs are subject to effective competition because the Commission by Final Order issued in Case 3246 on December 5, 2000, already found that there is effective competition in the provision of retail intrastate long distance service in New Mexico. Therefore, no testimony was filed in this case as to whether intrastate long distance services are subject to effective competition.

Testimony was filed in this case as to whether the local exchange services provided by Verizon Access, the CLEC, are subject to effective competition. However, the day before the hearing in this case,

the Commission's Final Order in Case No. 2907, issued on November 7, 2000, was brought to her attention for the first time. In that final order, the Commission found that § 63-9A-8 does not apply to CLECs, only to the incumbent carrier. At the beginning of the hearing therefore, after receiving argument from the parties and staff, she concluded that the Final Order in Case No. 2907 is precedent and its reasoning is persuasive. She ruled that it was not necessary to consider the issue of effective competition in this case at all and that no evidence in that issue would be admitted. She indicated her preference to consider Verizon's Petition as a whole as a request for variances, under the Commission's general rule on variances, from applicable Commission rules requiring tariffing. She stated that if the Commission agreed with her and ultimately ruled that effective competition should be considered in this case, then the prefiled testimonies regarding effective competition would be relied on in any remand proceeding.

While Verizon agreed that it was unnecessary to consider evidence of effective competition, it argued that its detariffing requests should nevertheless be considered under § 63-9A-8 rather than as requests for variances. Nevertheless, Verizon contended that it satisfied the requirements for obtaining variances from the Commission rules that require tariffing and it presented evidence addressing each requirement of the Commission's rule.

In her memo, she stated the requirements of the Commission's general rule on variances.

Her final Recommended Decision before the Commission for consideration considers Verizon's request for detariffing as a request for variances from Commission rules applicable to IXC's, IXC resellers and CLECs that require tariffing.

Verizon seeks to be relieved of any requirement that it continue to file and maintain on file tariffs for its retail intrastate telecommunications services in New Mexico. Instead of filing tariffs, the Verizon entities would post the rates, terms and conditions of service on their public websites. Any changes to the rates, terms and conditions would be communicated to customers in the same manner as is done currently. Currently, changes in terms of service to enterprise customers are communicated pursuant to the terms of each enterprise customer's contract. Residential and small business customers receive 15 days' advance notice of changes.

In support of its request for detariffing, Verizon argues that websites are the primary mechanism by which customers get information about telecommunications services. It asserts that customers rarely, if ever, access tariffs housed at the Commission's offices, and that it would be easier and more efficient to obtain information about services via the companies' websites. The Commission does not post the tariffs on its website because they are too voluminous. Verizon asserts that granting its detariffing request would not alter the Commission's authority over the Verizon entities. However, Verizon states that if its services are detariffed, it would no longer provide advance notice to the Commission of changes to its rates, terms and conditions of service and it would be up to the Commission to check Verizon's websites to be informed of changes.

She listed in her memo the position of each of the parties and staff who participated in the case on Verizon's request for detariffing. The Attorney General does not oppose the request as long as Verizon agrees (1) to keep its rates, terms and conditions of services current on its websites; (2) that it files proposed changes on an informational basis with staff; and (3) that the Commission retains authority over

service disputes.

The Department of Defense and all other affected federal executive agencies do not object to Verizon's request for detariffing subject to three conditions: (1) require Verizon to maintain rates, terms and conditions of its service on its websites; (2) state that the Commission maintains the same authority over Verizon's services as it does currently; and (3) require Verizon to continue to notify customers of any changes to service arrangements in the same manner as it does currently.

TW Telecom, which is a CLEC operating in New Mexico did not oppose Verizon's request for detariffing its business local exchange services if the Commission can do so without granting the same relief to CenturyLink.

Staff took no position on Verizon's request for detariffing. Staff did say it has less concerns about detariffing Verizon's intrastate long distance services than its CLEC services.

While Staff took no position on Verizon's request for detariffing, it did address the possible consequences of detariffing. Staff questioned whether, absent the filing of tariffs, Verizon would still be required to provide service in a fair and non-discriminatory manner. Staff stated that if Verizon's services are detariffed, changes would, practically speaking, take effect without Staff's knowledge and Staff would become reactive rather than proactive, waiting for complaints to come in.

In her Final Recommended Decision, she recommended granting Verizon's request for variances from Commission rules requiring tariffing, subject to the following conditions, to which Verizon did not object:

1. The Verizon petitioners shall post current rates, terms and conditions of service on their websites;
2. The Verizon petitioners shall continue to make their intrastate retail telecommunications services available on a universal, non-discriminatory basis;
3. Each Verizon petitioner shall continue to communicate changes in rates, terms and conditions of service to its customers in the same manner as it currently does;
4. The granting of the requested variances shall not affect the Commission's existing jurisdiction over the Verizon Petitioners; and
5. The Verizon petitioners shall give reasonable notice to their customers of the transition from filing tariffs to web publication.

She found that posting rates, terms and conditions of service on Verizon's websites would be more effective and consumer-friendly than filing tariffs with the Commission. She questioned Verizon's assertion that detariffing would not affect the Commission's jurisdiction over the Verizon entities because, if Verizon no longer notifies the Commission in advance of changes to rates, terms and conditions of service, the Commission would, practically speaking, be deprived of the ability to review changes in advance. However, she stated that it was not evident that advance notice of changes of services provided by CLECs and IXCs was necessary to preserve the public interest. Staff witness Mike Ripperger identified no instance over the past four years in which Staff expressed concern that a Verizon Access tariff filing or a Verizon IXC tariff filing was inaccurate, misleading or deceptive or that any Verizon rate was unjust or unreasonable or in which Staff filed a protest of a Verizon tariff filing. Mr. Ripperger testified that he was unaware of problems in other jurisdictions where either IXC or CLEC services have been detariffed. Also,

Mr. Ripperger testified that it made no sense to him that under Commission orders and rules, CLECs and IXCs must give more advance notice of rate changes than CenturyLink, the incumbent, which was only required to give one day advance notice of price decreases.

She further recommend that, because Verizon's justifications for detariffing were not unique to Verizon, that the Commission promptly docket three proceedings to consider amending its rules applicable to CLECs, IXCs and IXC resellers to make the relief granted to Verizon applicable to all these providers. No exceptions were filed to her final recommendation.

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

#### **9. PUBLIC COMMENT**

There were no public comments.

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

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

#### **11. COMMUNICATIONS WITH CHIEF OF STAFF**

There were no communications with Chief of Staff.

#### **12. COMMUNICATIONS WITH COMMISSIONERS**

There were no communications with Commissioners.

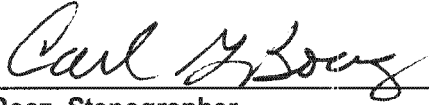
#### **13. ADJOURNMENT**

**Commissioner Hall moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.**

The meeting was adjourned at 11:15 a.m.



ATTEST:



Carl Boaz, Stenographer

APPROVED: 10/30/2012



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, October 4, 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 September 11, 2012.
6. CONSENT ACTION

#### A. Transportation Division

12-00330-TR-M Michael C. Smith	IN THE MATTER OF THE APPLICATION OF BUSY BEES TRANSPORTATION, INC. FOR A PERMIT TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE.  Order
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#### 7. REGULAR ACTION

##### A. Utility Division

10-00235-UT Rick Blumenfeld	IN THE MATTER OF THE INVESTIGATION OF THE EFFECTS OF THE QWEST AND CENTURY- LINK MERGER IN NEW MEXICO.  Order
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12-00109-UT Rick Blumenfeld	FORMAL COMPLAINT AGAINST JEMEZ MOUNTAINS ELECTRIC COOPERTIVE, INC.  Order
06-00026-UT Commissioner Jason A. Marks	IN THE MATTER OF THE IMPLEMENTATION OF THE STATE RURAL UNIVERSAL SERVICE FUND.  Order

8. DISCUSSION/ACTION

A. Utility Division

11-00089-UT Carolyn R. Glick Margaret Caffey-Moquin	IN THE MATTER OF INDIAN HILLS WATERWORKS' ADVICE NOTICE NO. 5.  Supplemental Recommended Decision on Remand  Order
11-00305-UT Carolyn R. Glick Margaret Caffey-Moquin	IN THE MATTER OF THE JOINT PETITION FOR DETERMINATION OF MCI COMMUNICATION SERVICES, INC., D/B/A VERIZON BUSINESS SERVICES; MCI METRO ACCESS TRANSMISSION SERVICES, LLC, D/B/A VERIZON ACCESS TRANSMISSION SERVICES; TELECONNECT LONG DISTANCE SERVICES AND SYSTEMS COMPANY; TTI, LLC; VERIZON ENTERPRISE SOLUTIONS, LLC; AND VERIZON SELECT SERVICES, INC. TO ELIMINATE CERTAIN FILING REQUIREMENTS.  Final Recommended Decision  Order

9. PUBLIC COMMENT

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

11. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA

12. COMMUNICATIONS WITH COMMISSIONERS

### **13. ADJOURNMENT**

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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.