

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

TIME: 9:30 a. m.

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

A quorum was present as follows:

Members Present:

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

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Rick Blumenfeld, Acting Deputy Chief of Staff for Legal Affairs
Dwight Lamberson, Utility Division Director
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 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, New Mexico.

A copy of the sign-in sheet for the Regular Open Meeting is incorporated herewith to these minutes as Exhibit 1.

A copy of the Agenda for the Regular Open meeting is incorporated herewith to these minutes as Exhibit 2.

1. PLEDGE OF ALLEGIANCE

2. INTRODUCTIONS

There were no introductions.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

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

5. CONSENT ACTION

A. Utility Division

**07-00365-UT IN THE MATTER OF AN ORDER FOR SOLICITATION AND APPOINTMENT OF ENERGY EFFICIENCY EVALUATION COMMITTEE MEMBERS, PURSUANT TO 17.7.2.13 (E) (1) NMAC.
(Bob Parker) Order**

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

6. REGULAR ACTION

A. Utility Division

**12-00007-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF RENEWABLE ENERGY RIDER NO. 36 PURSUANT TO ADVISE NOTICE NO. 439 AND FOR VARIANCES FROM CERTAIN FILING REQUIREMENTS
(Rick Blumenfeld) Order**

Mr. Blumenfeld presented information regarding this matter to the Commission. CCAE and WRA moved for a rehearing in the renewable rider case of PNM. They wanted hearings for any upward

adjustments of PNM's rider. The RD and the final order specifically rejected the claims made in the motion for a hearing on the portfolio and a hearing on the rate rider as insufficient to meet the requirements of the statute. CCAE and WRA acknowledged that the statute said the portfolio "shall be reviewed annually to account for new Commission approved procurements and changes in revenue requirements." Because of the time, this motion is denied by operation of law but he felt a written order to deny the motion was in order. Staff and PNM filed responses opposing the motion.

He said that Ms. Glick had read out loud that PNM proposed to conduct an annual true up -in connection with the rider and adjust the rider for any over or under recovery. PNM filed an Advice Notice proposing that. While the Commission could hold a hearing, the Commission can approve it without a hearing.

PNM argued that the hearing in the annual renewable energy plan case in which the Commission determines the amount of compliance costs that are presumed to be reasonable and recoverable and the hearing in the case in which the Commission reviewed the cost allocation and the rate design associated with those costs, taken together satisfy the notice and hearing requirements of the statute. Ms. Glick agreed with PNM so long as the hearing was held in the renewable energy plan case.

Mr. Blumenfeld didn't see anything new here and proposed an order to close it.

Commissioner Howe noted in the staff memo it said he was denying it and asked on what basis.

Mr. Blumenfeld explained that the time expired last Friday. If the Commission had not acted by that time, the motion for rehearing was denied by operation of law but he thought something should be on the record.

Commissioner Marks before getting into the merits, asked Mr. Blumenfeld on what prior date OGC presented this motion for rehearing.

Mr. Blumenfeld said it was not prior to this date.

Commissioner Marks said this was not the first time he had made this complaint. When General Counsel doesn't bring the case to the Commission, General Counsel has made the decision instead of the Commission and that is completely inappropriate.

Mr. Blumenfeld had nothing to say.

Commissioner Marks asked Mr. Montoya to let OGC know this cannot happen because the OGC is not the Commission. He thought in this case the Commission would have sustained it but this was the wrong procedure.

On the merits the movants' contented that merely approving the cost in the procurement plan was not sufficient. Mr. Blumenfeld agreed.

Commissioner Marks asked, as an analogy, if when the PRC got a request for a CCN for a combined

cycle plant, that it could go into rates without a hearing.

Mr. Blumenfeld said he didn't know much about CCN processes but knew rate increases could not go into effect without a notice and hearing.

Commissioner Marks said when the Commission looked at these in the past the question came up what that kind of case meant. In rebuttal, it meant recovery that they can't challenge the procurement if the costs were shown to be reasonable. If the party doesn't show any fraud in a reasonable procurement then the Commission has to pass it. The movants claim the Commission is not considering all the factors in this renewable case.

Mr. Blumenfeld said the movants said it was not enough without a hearing.

Commissioner Marks asked, even if another hearing was not required, whether the Commission needed more procedures in a renewable case.

Mr. Blumenfeld didn't think that was a presumption. In the RD, if they filed something, The Commission could approve it without a hearing after the RPS case so he didn't think there was a presumption but there was a true up. The Commission could certainly look at the advice notice.

Commissioner Marks didn't believe it was about the true up. The Commission did those all the time on undergrounding and other riders. There was no debate on that. After a hearing, the cost recovery with a true up was allowed. He thought they were challenging but not the true up.

Mr. Curl agreed.

Commissioner Marks said in this instance, the environmental group thinks the Commission must have a hearing before changing rates and staff says no. Mr. Blumenfeld agreed.

Commissioner Marks said when the Commission had the decoupling case, staff took the opposite position. His recollection was that the utility could not make changes to rates without having a hearing.

Mr. Blumenfeld was unfamiliar with that.

Chairman Lyons asked on what basis they asked for a rehearing.

Mr. Blumenfeld said it was that they could get an increased rate on the rider without a hearing.

Chairman Lyons noted they had one hearing already and asked why they wanted two hearings.

Mr. Blumenfeld said it was because they disagreed with the RD and the proposed order.

Commissioner Becenti-Aguilar asked if the Commission didn't have enough information on it.

Mr. Blumenfeld said it was just a procedural matter. There was no new evidence.

Commissioner Becenti-Aguilar asked if the Commission shouldn't give him a chance to say why they filed the request.

Mr. Blumenfeld explained that they filed a brief for rehearing and stated their reasons why the Commission should have a rehearing. PNM filed their brief in opposition and gave their reasons. If the rehearing were to be granted it would be like nothing had been done before and could bring new evidence in but they presented no argument for that. They claimed the Commission made a mistake on this and they should take another look at it. Their objection was denied by Ms. Glick.

Commissioner Becenti-Aguilar said WRA was saying the Commission had made a mistake and OGC brought it after it expired so there are two mistakes.

Mr. Blumenfeld said they filed a brief on why they thought the Commission should rehear it.

Commissioner Marks commented that WRA asked the Commission to completely deny this rider. That was their main argument and the Commission denied that. They are now saying if you allow the rider, don't allow an increase on it. This is a new argument and that's why they are asking for a new hearing based on the modified rider.

Mr. Blumenfeld said that was one of the exceptions they made to the RD. But he believed it was the same argument. It was exception 8 in the RD starting at the bottom of page 53.

Commissioner Marks read it and was satisfied with it.

Commissioner Becenti-Aguilar pointed out that there was another one to be filed in January 2013 and if allowed to have a renewable program approved with the rate filing from the initial start, it would set a precedent and the Commission should be well aware of that when the next filing takes place.

Chairman Lyons noted that they had both sides present and could allow oral argument but he didn't want to make that decision.

Commissioner Howe moved to adopt the order. Chairman Lyons seconded the motion.

Commissioner Marks moved to amend the motion to partly grant the rehearing by making it clear in this order that no additional hearing was needed so long as the hearing on the increased rider was conducted as part of a renewal energy procurement case.

He explained that he didn't mean that as a separate hearing but as part of the hearing they would conduct and the HE would have to examine more than cost but also ensure that the Commission met the legal requirements of the statute.

Chairman Lyons thought it did that now.

Commissioner Marks said there was some ambiguity in it. There was so much for residential and so

much for commercial and so much for large industrial. There were factors in rate or rider cases that are not done in a renewable case.

He disagreed with Mr. Curl that the Commission needed a separate hearing. It should be distinguished from a typical CCN case. If the Commission had a capital rider he would still oppose.

Commissioner Becenti-Aguilar pointed out that if the earnings were beyond the target that was estimated by PNM there would have to be refunds. The Commission needed to know if their earnings were beyond the target and how much the refunds were going to be. But if approved today, the Commission wouldn't have any say about it. Also, the second part was OGC bringing this too late to the Commission and that spoke volumes. This was the second time OGC has approved something when time expired.

Commissioner Becenti-Aguilar seconded Commissioner Marks' motion.

Chairman Lyons asked how it was handled in the past.

Commissioner Marks noted this was the first time they had approved a rider for renewable energy. The law allows for a rider but in the past renewable costs were recovered in base rates and in a PPA that could go in the fuel clause. PNM recovered some and so did SPS. This was the first successful rider specifically in renewable energy. His take on it was that PNM had a fairly large amount to recover for costs that were not part of a fuel clause and PNM made the argument here that if they deferred those costs to the next rate case, the costs of that would require a payback in 2014. It was like \$20 million per year and if they waited to 2014 there would be \$40 to \$60 million to recover in 2014. They thought it was better for them to get the money now rather than later.

Chairman Lyons recalled the Commission voted several months ago to break it out.

Commissioner Marks agreed. It was this case. It was not all in this rider and not all offsets were in the rider but this was the right amount. The rider was a done deal but the question was if there should be a few extra procedures in the hearing.

Commissioner Hall asked why it needed a hearing if the rider was already a done deal. He asked what it would accomplish.

Commissioner Marks said at issue was not the approved rider; the question was if they wanted to increase the amount - a new project, new costs, etc.

Commissioner Hall agreed if there was an increase down the road, the PRC needed to hear that.

Commissioner Marks clarified that his motion was limited to increases.

Commissioner Howe's telephone connection was lost.

The substitute motion passed on a 3-1 vote with Chairman Lyons voting against and Commissioner Howe not present for the vote.

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

- **Quality New Mexico Business Excellence Project**

Mr. Montoya shared a handout on Quality New Mexico and announced the Commission would participate for quality assurance. This was an exciting step and the PRC will set goals division by division and strive for awards at different levels of success.

Chairman Lyons was familiar with this when they got awards for the Oil and Gas Division and he agreed this was the right track.

Mr. Montoya said the first step was to work on the criteria setting in an application. He would take the five year strategic plan by division and start to do measurements. Then they would set criteria on the new measurements for how effective the PRC was. In the big picture it will help to build the next strategic plan by setting new standards and criteria. It could be a 4-5 year initiative depending on how they carried it out. He decided to bring it to the Commission before introducing it to the staff. If the Commission was in favor, he and Mr. Bishop would meet with Quality New Mexico representatives in a couple of weeks to consider getting it started.

Commissioner Hall asked how time consuming it would be for the staff.

Mr. Bishop said it was mostly for those writing the responses. This document will guide the process. Maybe not everyone will want to participate. It will take some time for those who write the response. He thought they could handle it okay.

Mr. Montoya added that it was really in line with what he had been doing with division directors.

Chairman Lyons supported it. It was a good program.

Commissioner Becenti-Aguilar said they needed to proceed carefully and make sure to respond appropriately.

10. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons said that DOE sent the booklet he had handed out to the Commissioners.

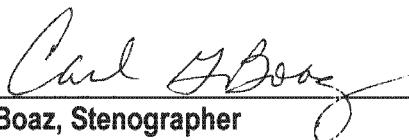
Commissioner Hall noted that \$6.5 billion needed for Tres Amigas. It was a very big amount for Clovis. He said a reporter from DC was here in New Mexico to find out what was going on with renewable wind energy. There seemed to be a hold up in both solar and wind in New Mexico. They have the permits in place. Maybe the money was the problem. On the transmission side New Mexico needed much more.

11. ADJOURNMENT

Commissioner Hall moved to adjourn the meeting. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (4-0) voice vote. Commissioner Howe was not present for the vote.

The meeting was adjourned at 10:25 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 11/01/2012


PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


JASON A. MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER


DOUGLAS J. HOWE, COMMISSIONER



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Tuesday, October 9, 2012

9:30 A.M.

PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501

AGENDA

1. PLEDGE OF ALLEGIANCE
2. INTRODUCTIONS
3. MISCELLANEOUS ANNOUNCEMENTS
4. CONSIDERATION AND APPROVAL OF THE AGENDA
5. CONSENT ACTION

A. Utility Division

07-00365-UT Bob Parker	IN THE MATTER OF AN ORDER FOR SOLICITATION AND APPOINTMENT OF ENERGY EFFICIENCY EVALUATION COMMITTEE MEMBERS, PURSUANT TO 17.7.2.13(E)(1) NMAC. Order
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7. PUBLIC COMMENT
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 9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA
 - Quality New Mexico Business Excellence Project.
 10. COMMUNICATIONS WITH COMMISSIONERS
 11. 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.

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.