

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
October 18, 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

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Chief of Staff for Legal Affairs
Sandra Skogen, Associate General Counsel
Rick Blumenfeld, Associate General Counsel
Margaret Caffey-Moquin, Associate General Counsel
Michael Smith, Associate General Counsel
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 adopt as amended with Case 12-00338-UT on the consent agenda. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

5. CONSENT ACTION

A. Utility Division

12-00317-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
NEW MEXICO FOR APPROVAL OF ELECTRIC ENERGY EFFICIENCY
PROGRAMS AND PROGRAM COST TARIFF RIDER PURSUANT TO THE NEW
MEXICO PUBLIC UTILITY AND EFFICIENT USE OF ENERGY ACTS.
(Sandra Skogen) Order

12-00338-UT IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY
FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS OCTOBER GAS COST
FACTOR STATEMENT.
(Rick Blumenfeld) Order

Commissioner Marks moved to approve both consent items. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Howe had no problem approving these but wanted staff to file a motion to reconsider this matter.

Mr. Blumenfeld agreed that staff said the rule should be addressed in a separate docket. He agreed to work with staff on it.

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

6. REGULAR ACTION

A. Utility Division

**11-00047-UT APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF NEW
AND MODIFIED ENERGY EFFICIENCY PROGRAMS FOR 2011.
(Margaret Caffey-Moquin) Order**

Mr. Parker said this application was simply to allow some filings that came in late. He had told them it would be okay. Ms. Caffey-Moquin has the details. There was a misinterpretation on the dates when we asked them to file.

Ms. Caffey-Moquin explained that ten days were allowed for exceptions but the deadline for exceptions on the RD allowed 13 days. The motion said no party would be prejudiced and it was supported by WRA, CCAE, and EPE. The AG did not file a response which is why it was before the Commission now. The motion opposed this rule. Because it is a procedural matter, she communicated with Mr. Keller and provided a chart showing the pros and cons of granting this motion. The assertion by movants was that no party would be prejudiced by the motion but other than the confusion on rule deadline, they did not advance grounds of support.

Normally motions for extension have to be filed in advance of the deadline but because of the confusion it seems excusable in this extraordinary circumstance. The motion technically should have asked for leave to have relief retroactively to the date it was missed. Regarding prejudice, if AG loses on exceptions he possibly could find he was prejudiced by the late filing. Mr. Parker indicated to the parties and she told them the same thing that technical procedural defects should not override the Commission's ability to consider them.

Commissioner Howe asked if there was a substantive reason for 13 days vs. 10 days.

Ms. Caffey-Moquin didn't know of any rationale.

Mr. Parker said there was no statutory reason. That happened the other day on the motion for rehearing because of a different rule on certifications and caused a party confusion. That shouldn't prevent the Commission from considering a response.

Commissioner Howe thought they should have a quick NOPR to make the rules consistent. This particular case is the second phase of the EPE case and he hadn't heard the efficiency case that went to the heart of incentives and disincentives. That was being heard by the HE and ultimately what the

Commission needs to hear.

Mr. Parker agreed. It would be presented within the next two weeks.

Commissioner How said even though they had been reminded that this was an EPE issue and not more than an EPE issue, he tended to think it was broader than that under the Supreme Court AG's rule so he was inclined to grant the exception.

Commissioner Marks moved to adopt the order with the rationale to be included.

He said that in a strict way the AG read the rules correctly. If it was private litigation, the Commission might come to different conclusion but here they were trying to find the public interest. It was only two days' difference - a minor discrepancy and he saw no reason to believe it was in bad faith or trying to manipulate the system. So the public would be served to consider it.

The parties and the Commission would grant minor exceptions to the procedural rule for reasons that are excusable. He appreciated in his 8 years that attorneys on both sides have almost always been willing to grant extensions to try to accommodate people's other obligations and thought this was just part of that. While there might be prejudice, it was not an unreasonable prejudice and not in bad faith.

Chairman Lyons asked what exactly he wanted as the rationale.

Commissioner Marks added in paragraph 9, **"There is nothing to suggest the joint movants acted in bad faith by delaying their submission of exceptions nor did they gain any procedural advantage. The motion should be granted in order to permit the Commission to consider the substance of the joint movants."**

Commissioner Howe seconded the motion by unanimous (5-0) voice vote. So Ordered.

**12-00250-UT IN THE MATTER OF THE COMMISSION'S ENERGY EFFICIENCY RULES AT
17.7.2 NMAC, INCLUDING PROPOSED RULES ON REVENUE DECOUPLING.
(Michael C. Smith) Order**

Mr. Smith presented information regarding this matter to the Commission. It was now back on proposed adoption of a new rule. It has been here a few times in an effort by the Commission to make this rule comply with 2007 amendments in the Supreme Court ruling that vacated the 2010 changes. The rule published now is the 2010 rule vacated by Supreme Court.

On a previous order on July 26, a rulemaking instituted allowed the Commission to conduct workshops. Two workshops were held with a focus on adopting a rule in which consensus could be reached as non-controversial components of the rule. The controversial provisions concerned decoupling provisions. The rule now has consensus of most issues but a few they were still in disagreement - 17.72.10 concerning efficiency programs for low income people and 17.72.15 concerning modification or termination of energy efficiency programs. The participants agreed to consider those in new rule making procedures.

The order as proposed to adopt that new version of the rule had a provision in the rule for the Commission to consider a variance from its own rules because the statute requires the proposed rulemaking to be published 30 days before the hearing date. In 17.1.9 requires for utilities rulemaking be published 45 days before the Commission takes action on the proposed rule.

The publication date for this one is November 15 so action on the rule would fall outside the determination of the calendar year so the Commission should consider a variance to allow action before year end.

Commissioner Hall said the August 24 order sent it back to achieve consensus on all issues. So he asked if consensus had been reached on all issues.

Mr. Smith said the two he just mentioned did not have full consensus. Parties had serious concerns on the language that should be adopted. There is a footnote inviting further revisions.

Commissioner Hall asked why it was brought back here. The order says it shall continue until consensus is reached.

Mr. Smith said he was asked by a couple of commissioners to bring it back now. He didn't think the Commission was violating its own order.

Commissioner Hall said those two needed to be worked out.

Mr. Smith said he didn't run the workshops but participated in them.

Commissioner Marks noted that those two were just reporting issues but not major issues. He asked if the parties tried to reach consensus on these two issues.

Mr. Smith said he believed so. There was an attempt to reach consensus and it was agreed this was how it would be addressed to the Commission.

Commissioner Marks said he was there. The parties forced themselves to agree on 95% or more and there were just two things they could not agree on. Mr. Smith agreed.

Commissioner Marks said there was no reason to believe more workshops would bring them closer.

Commissioner Hall had no doubt they tried to work everything out but they didn't reach consensus on these two. He didn't believe it should be brought back without that because they didn't finish their work.

Commissioner Howe attended the first workshop and didn't think there was much prospect for reaching consensus on those two. Their philosophical differences were deep and broad. Otherwise we would violate the act. Right now they had no rule in place on efficiency. He thought it was important to have a rule they could live with. On decoupling, he didn't think they would get consensus with any mechanism for incentives or disincentives that would work. It might have no possible solution other than litigation. There was no point

in sending this back until the Commission deals with incentives and disincentives.

Commissioner Marks noted the parties did agree to take decoupling off the table but they agreed on coming back to the Commission if they were 25% off. He agreed with Commissioner Howe that the PRC needs a rule. Without a rule there is no guidance. Commissioner Hall is right on the order. But the parties were all unresolved on the issues that were agreed to in the 2010 rule and minor disagreement on the budget rule. The Commission could change its orders going forward. A strict reading of the order condemns the Commission to no rule.

Commissioner Becenti-Aguilar went to the second workshop and 8 or 9 parties were present including the AG. Her conclusion was that they were rushing this proposed rule and she would take the side of the AG and CRD. The AG left early and was the only one speaking for the consumer and utilities were moving ahead quickly. She got an email from AARP that they felt the Commission was rushing this rule. OGC was just doing their job. She sided with AARP and the Attorney General on this.

Commissioner Howe said what AARP objected to was decoupling and this rule didn't address decoupling. He agreed that everybody should have a chance to comment on the rule. It will be out there for the next 9 months and this doesn't bind any party to what was decided before. Anybody can change their mind. This is just a proposed rule that can be out there for the next nine months. To force it to consensus on everything won't work and will force the Commission to rule on efficiency programs without any rule.

Chairman Lyons noted the variance said 45 days.

Commissioner Howe said a proposed rule can be out there for 9 months.

Chairman Lyons said the variance said the Commission would act before the end of 2012. He had never seen anything like this in 20 years of public service to try to sneak decoupling in here. Attachment A has decoupling but not attachment 1.

Commissioner Marks said he didn't write this. This was Mr. Smith's document.

Commissioner Marks said he didn't write anything but just suggested a variance that would permit the Commission, if there are three votes on the Commission that want to take action before year end, to make that possible. But it does not require the Commission to do anything. So it used "may" as the operative word and gives the Commission flexibility. He was prepared to state why he felt it was reasonable. Two Commissioners are leaving who have worked on this and two are coming on that haven't. This leaves it open. What is in the attachment is what came out of the workshops.

Chairman Lyons noted that the agenda sent out on October 12 didn't have this item.

Mr. Smith said he drafted the order. It should have been on the first draft of the agenda.

Chairman Lyons asked if this was requested by anybody.

Mr. Smith said Commissioner Marks had asked him at the workshop to put it on the agenda.

Chairman Lyons said they rushed through it last time and was why the AG stopped it. The 45 day variance is nothing but a rush job as Commissioner Becenti-Aguilar says. He was dead set against the order. So the Commission could work off the statute and take the time to work out a really good rule.

Commissioner Becenti-Aguilar wanted to clarify Commissioner Howe's point on decoupling. The reason AARP submitted their email in the last 7 working days was that we know the proposal will include some discussion on items like decoupling. That's why she wanted to allow more time on their concerns. This is something the Commission needs to think about and not act too quickly.

Commissioner Becenti-Aguilar moved to not adopt the order presented today. Chairman Lyons seconded the motion.

Commissioner Hall thought the reason the Commission got in trouble with the Supreme Court was that the Commission rushed into it the first time and got it wrong. They needed to take the time to get consensus so it doesn't have to go back to the Supreme Court. The workshop didn't reach consensus and when consensus is achieved the Commission will have a better rule that doesn't need to be defended before the Supreme Court.

The motion passed by majority (3-2) voice vote with Commissioner How and Commissioner Marks voting against. The order was not adopted.

7. PUBLIC COMMENT

Mr. Rob Hirsch worked with EDF Renewable Energy and NMIPP (independent power producers). He asked for a time frame whereby consensus could be found. He pointed out that if someone didn't want consensus, they could just say no forever so he thought a time deadline could be established. In the broad scheme it is important to lead for the future to have mechanisms where we can move toward energy efficiency in a wise and effective manner. It can make a huge difference in the future. It is an important issue for the state.

Chairman Lyons said the Commission would try to get something going.

Mr. Jeff Taylor (AG) said on the part of the rule that staff sent out a couple of weeks ago, we can pose questions on what some of it means. We need to reach consensus. The Supreme Court overturned only the part on disincentives and incentives.

Commissioner Marks said that is not what three Commissioners believe. The Commission debated it early this year and he took the AG's position but the three Commissioners believe there is no rule in place.

Mr. Taylor agreed to look at the decision but didn't think the whole rule was overturned. He said there was no bad faith in this.

Mr. Glen Schiffower, Executive Director of Santa Fé Chamber of the New Mexico Green Chamber of

Commerce and representing over 1,100 businesses in the state. They felt that it would be a mistake not to add decoupling to the rule. Anything that does not incentivize this rule doesn't benefit these businesses.

Mr. Martin de la Garza came forward.

Mr. Parker understood Mr. De la Garza was here today to talk about a personnel matter which is okay for himself but not for any other employees present or past. So he requested Mr. De la Garza to confine his comments to himself and no others.

Mr. de la Garza said he would abide by whatever could be quoted in the policies that limited his comment.

Mr. López said that if Mr. de la Garza talked about a court matter, any pending litigation was not to be discussed in public open meetings. Discussions of personnel actions were also excluded in open meeting.

Commissioner Marks asked if the rules said that was prohibited or allowable in closed session.

Mr. López said sections A, B and G were excluded in the Open Meetings Act.

Mr. Parker respectfully asked that Mr. de la Garza respect privacy of other people. There were certain things The PRC could not fulfill. Mr. de la Garza could talk about himself all he wanted.

Mr. de la Garza said the reason he came this morning was to describe some documents that affected him. They moved the judge to close his appeal case against the Commission. There was no pending litigation so he was free from that.

He said Ms. Dennis filed a document without becoming familiar with it. He showed a confidential chart that showed all who were affected. All were public officials including the Chief of Staff. The document filed on the 24th was offensive to him and his family - as a professional; as an individual. It was only two pages but it did a lot of damage to him and his case.

He had asked the State Police to be here to protect his rights because it happened before. Commissioner Becenti-Aguilar has been concerned about the safety of the public and Commissioners.

H gave Ms. Dennis three options - the deadline for him was to file for another hearing and she didn't want to take it. He was pretty sure she was not acting alone.

This Commission could not conduct the investigation but it says an investigation was done. There was no investigation. Mr. López said there was no investigation. But Ms. Dennis decided to put it on a document that is now a public document and consequently he had to defend himself and his family again.

He pointed out that he had not been here (at an open meeting) for a long time and now the PRC pulled him back in. Tony Schaeffer used to say it, "I am very pissed off." But he was trying to get his respect back. So he would like to find out who approved filing this document in district court.

It asks for a release from the personnel file. "We can do it in closed session if you choose or if you choose to have it in public, I can do it here."

He said he talked to his 15 member family. One is a pastor, some are federal police officers, and some are professionals like him and some housewives. He talked with them to get an idea how he could proceed with this. "These people cannot understand this is too much. One brother said he appreciated that I am fighting against corruption but he advised me to let it go. For a while I was depressed. Even though I found out the Commission was committing fraud. I got more grey hair and might lose it to. I was not able to function for weeks. But no, I got back in place. I want to know if you guys approved filing this document because now I can file for defamation. I was trying to get away from the restraint order but was attacked physically. The Freedom of Speech and due process I was trying to get away from. I filed for impeachment which is an expensive process. The convincing evidence is there. So do I need to refresh the judiciary committee again or the governor's office to push this through or my representative. I was trying to let it go. My police officer brothers said I need to fight it."

"The corruption in New Mexico is overwhelming. I intend to be part of the solution but the Commission decided to file false allegations against me. The AG said there is nothing against me. ... Anastasia Stevens was the person."

He referred to a document and said it was a summary of more than 17 boxes of evidence he had collected over seven years of investigation.

"Why do this behind doors. I am a professional and don't want to treat people they way they have treated me. They say I'm a Mexican. I am allowed by law to buy a gun to protect my family but I want to know how we can resolve these matters. I just need to know who authorized this document be filed. In the most economical way. If you don't want that then there are plenty of lawyers who would take it on. Can we find out today either in public or in private?"

Chairman Lyons said it was a personnel issue.

Mr. de la Garza said it was not personnel and no litigation exists.

Chairman Lyons said he would leave it up to Mr. Parker and Mr. López to handle it.

Mr. López said the SPO hearing ruled against Mr. De la Garza and then filed in district court. Then he pled on additional evidence. Judge Barbra Vigil ruled the appeal be dismissed. This matter was fully adjudicated. He asked Paula Gunn to deal with. It is more properly to be dealt with in district court. The PRC has responded.

Mr. de la Garza wanted to know if the Commission approved to not concur with him on a motion for rehearing.

Chairman Lyons said there was no vote on that.

Mr. de la Garza said the Chairman was responsible. "Or is it not important?"

Chairman Lyons told him his time was up. "The district court will handle it and thank you for coming in"

Mr. de la Garza asked Chairman Lyons if he wanted to hear his proposal.

Chairman Lyons said no.

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

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

9. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA

Mr. Montoya reminded the Commission that next Thursday was the LFC hearing at 10:00 a.m. and asked if the Commission wanted to cancel the open meeting for that day. Chairman Lyons agreed it should be canceled.

Mr. Montoya reported that the Pipeline audit was taking place.

10. COMMUNICATIONS WITH COMMISSIONERS

There were no communications with Commissioners.

11. ADJOURNMENT

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

The meeting was adjourned at 10:51 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 11/15/2012

TELEPHONICALLY APPROVED

PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


JASON A. MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER


DOUGLAS J. HOWE, COMMISSIONER

SIGN-IN SHEET

DATE: October 18, 2012

[illegible]

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Thursday, October 18, 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

12-00317-UT Sandra Skogen	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF ELECTRIC ENERGY EFFICIENCY PROGRAMS AND PROGRAM COST TARIFF RIDER PURSUANT TO THE NEW MEXICO PUBLIC UTILITY AND EFFICIENT USE OF ENERGY ACTS. Order
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6. REGULAR ACTION

A. Utility Division

12-00338-UT Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS OCTOBER GAS COST FACTOR STATEMENT. Order
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11-00047-UT Margaret Caffey-Moquin	APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF NEW AND MODIFIED ENERGY EFFICIENCY PROGRAMS FOR 2011. Order
12-00250-UT Michael C. Smith	IN THE MATTER OF THE COMMISSION'S ENERGY EFFICIENCY RULES AT 17.7.2 NMAC, INCLUDING PROPOSED RULES ON REVENUE DECOUPLING. Order

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

The Commission will make reasonable efforts to post the agenda on the Commission's website 36 hours before the open meeting, but the inability to do so within the 36 hours prior, will not require the Commission to delay the meeting or to refrain from taking action on any agenda item on which it otherwise could act.

At any time during the Open Meeting the Commission may close the meeting to the public to discuss matters not subject to the New Mexico Open Meetings Act. The Commission may revise the order of the agenda items considered at this Open Meeting.

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such discussion or argument to become ex-parte communications.

PERSONS WITH DISABILITIES

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