

**MINUTES OF THE  
REGULAR OPEN MEETING  
NEW MEXICO PUBLIC REGULATION COMMISSION  
October 23, 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  
Commission Vice-Chairman Theresa Becenti-Aguilar  
Commissioner Jason A. Marks  
Commissioner Ben L. Hall  
Commissioner Douglas J. Howe

**Members Excused:**

**Staff Present**

Johnny Montoya, Chief of Staff  
Robert Parker, Chief of Staff for Legal Affairs  
Rick Blumenfeld, Associate General Counsel  
Sandra Skogen, Associate General Counsel  
Michael Smith, Associate General Counsel  
Mark Cessarich, Telecommunications Bureau  
Dwight Lamberson, Utility Division Director  
Ashley Schannauer, Hearing Examiner  
John Reynolds, Utility Division  
Jim Brack, Utility 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**

At the request of Commissioner Howe, these minutes are transcribed in verbatim format.

**2. INTRODUCTIONS**

CHAIRMAN LYONS: All right. Any introductions? Seeing no introductions, miscellaneous announcements?

**3. MISCELLANEOUS ANNOUNCEMENTS**

CHAIRMAN LYONS: No announcements. We'll go to consideration and approval of agenda.

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

COMMISSIONER HOWE: Mr. Chairman, I'd like to have just a brief question on consent action item 6 A so I'd like to move that to the regular agenda.

COMMISSIONER HALL: I agree.

CHAIRMAN LYONS: Okay. Then move 6 A to the top of the regular action items. Any other changes or deletions? Seeing none, all those in favor, say aye.

ALL: Aye.

CHAIRMAN LYONS: Okay. For the record, we have full Commissioners present and Commissioner Marks is on the phone. It is a five to nothing vote for the agenda.

**5. CONSIDERATION AND APPROVAL OF MINUTES**

- **Minutes of the Regular Open Meeting of September 27, 2012**

CHAIRMAN LYONS: Okay, consideration of minutes - approval of minutes for September twenty-second, 2012.

COMMISSIONER HALL: Mr. Chairman, I move we accept the minutes for September twenty-seventh as presented.

COMMISSIONER BECENTI-AGUILAR: I second that Mr. Chairman.

CHAIRMAN LYONS: We have a motion and second to approve the minutes as is. Any deletions or additions? Seeing none, all of those in favor, say aye.

ALL: Aye.

CHAIRMAN LYONS: On a five to nothing vote again, Carl.

**6. CONSENT ACTION**

**A. Transportation Division**

**11-00052-TR-R IN THE MATTER OF THE APPLICATION OF AMERICAN MEDICAL  
RESPONSE AMBULANCE SERVICE, INC., D/B/A AMERICAN MEDICAL  
RESPONSE, FOR A TARIFF INCREASE.  
(Michael C. Smith) Order**

[This item was moved to REGULAR ACTION under Approval of Agenda.]

CHAIRMAN LYONS: Okay, that moves us to consent items B, two utility cases. 12-00329 and 12-00339.

**B. Utility Division**

**12-00329-UT IN THE MATTER OF THE FORMAL COMPLAINT OF HEATHER BURKE  
AGAINST PUBLIC SERVICE COMPANY OF NEW MEXICO.  
(Sandra Skogen) Order**

**12-00339-UT IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY  
FOR APPROVAL OF 2013 ENERGY EFFICIENCY PROGRAMS AND  
PROGRAM COST TARIFF RIDER PURSUANT TO THE NEW MEXICO PUBLIC  
UTILITY AND EFFICIENT USE OF ENERGY ACTS.**

**(Rick Blumenfeld) Order**

COMMISSIONER HALL: Mr. Chairman, I move both consent items.

COMMISSIONER HOWE: I'll second.

CHAIRMAN LYONS: Okay, we've got a motion and a second for both consent action items. One of them is a complaint and one approval of programs to go to assign the hearing officer. Any further discussion? All those in favor say aye.

ALL: Aye.

CHAIRMAN LYONS: Okay. Both consent action items, 12-00329, 12-00339 are approved on a 5-0 vote.

**7. REGULAR ACTION**

**A. Transportation Division**

**11-00052-TR-R IN THE MATTER OF THE APPLICATION OF AMERICAN MEDICAL  
RESPONSE AMBULANCE SERVICE, INC., D/B/A AMERICAN MEDICAL  
RESPONSE, FOR A TARIFF INCREASE.**

**(Michael C. Smith) Order**

CHAIRMAN LYONS: That moves us back to our first regular item which was consent action item 11-00052-TR with Michael Smith and there will be some questions here - with American Medical Response Ambulance Services. And, Commissioner Howe, I'll defer to you since you...

COMMISSIONER HOWE: Okay. Thank you Mr. Chairman. Michael, Ashley, I really just wanted to follow up on the statement on the bottom of your memo that AMR not be allowed to assess a fuel

surcharge until the Commission conducts a further review of AMR's costs and expressly allows that. Can you just review what's behind that and why fuel costs weren't a part of this present hearing?

MR. SCHANNAUER: Well, we... AMR essentially had its fuel costs folded into the base rates that...

COMMISSIONER BECENTI-AGUILAR: Can you get the microphone closer to you, please? Thank you.

MR. SCHANNAUER: The test period, the period of time for which their costs and the revenues were proposed included a period of time where rates were... gas prices were in the three dollar plus range per gallon. And the... so that three dollar plus cost was a part of their filing.

COMMISSIONER HOWE: So, let me just interrupt you for a minute, Ashley. The rates are being... that you are recommending approval of here may include an allocation for fuel?

MR. SCHANNAUER: No. The fuel costs are part of the revenues of the costs that are being recovered in the revenues that...

COMMISSIONER HOWE: Okay. So they are not separated out. They are part. ... They are in the revenue requirement. That answers my question. Thank you.

CHAIRMAN LYONS: Commissioner Hall?

COMMISSIONER HALL: Mr. Chairman, thank you. Michael, I guess I ... for some reason we're done ... quite out of committee, maybe I'm not looking at them in the right direction but page one of your memo says that the average increase there will be eighteen percent and produce an increase of two point two million dollars which is twenty point sixty-five percent. So what is the difference between eighteen point one and the twenty point sixty-five from ten million to twelve million? Why are you saying it will increase the average ambulance bill by eighteen percent when you said it will increase annual revenues by twenty point sixty-five percent?

MR. SCHANNAUER: Well that's ... the company is projecting that this eighteen point eight percent

increases in rates will produce a twenty point six five increase in revenues. I don't really know ... I can't tell you the difference that... I think the reason is that the company's original filing was based upon a, you know, the increase that we are talking about starts from eight... it's just a number - dollar amount of revenues and their original filing had a certain dollar amount but by the time they made a revised filing, the revenues that they were expecting to get in two thousand eleven were less than what they... turned out to be less than what they were projecting when they made the filing. So that made the two thousand eleven number a little bit lower than was in their original filing which then makes the increase larger percentage wise. That's... I think that's the reason for it.

COMMISSIONER HALL: I guess that's a definite maybe, I guess. Okay. Why... suppose they haven't had a rate increase in what, four years? And now, all of a sudden, they need two point two million dollars. To me that sounds like quite a bit of an increase after not needing one in four years and all of a sudden they need two point two million dollars in twenty twelve to stay afloat. That seems like an awful lot to me to increase at one time, especially since they managed for four years and haven't had any and it looks like they have been making money every year since - all those four years. I don't see in here where it says they lost money in a year. So evidently that's ... To me that's an awful lot of money in one increase, in other words, especially not having to have one in the past four years. So evidently that's ... That just seems like a lot of money to me. I don't guess they are here to ... Why? I just wonder why they need two million in one year. Two point two million.

MR. SCHANNAUER: What their filing indicated was that they... the costs are finally getting to the point where they need one. And that was their filing.

COMMISSIONER HALL: Well, myself, I'd rather see them get a small increase each year than one big increase and every four or five years give twenty percent. Over the years it looks like they could

have come in and say let's get five percent each year and each year keep them afloat instead of waiting until they need to get one big increase at one time.

COMMISSIONER HALL: I noticed too, in here, Ashley, that their ... I don't have a problem with their allocating money, you know, switching money back and forth like you've got in here - the emergency, non-emergency. I noticed they... what they say they're paying their people. They say fourteen to sixteen dollars an hour and yet they say, "Well, if you said if they work on a salary." They're not on a salary. They run on an hourly wage. But here he says, if the salary is twenty-four point nine, they could make as much... only be making seven dollars and fifty cents an hour. How do they adjust those rates? I mean if I can't hire them for ten dollars an hour, how am I going to adjust that wage back and forth from seven fifty to there to back and forth and then get away with that?

COMMISSIONER HALL: I've got... do I have it with me? Yes. I've got a payroll stub from somebody who works for AMR and everything that I see on the payroll stub, they say they are paying one wage but by the time the person gets the paycheck, they took at least three dollars and sometimes four dollars an hour off of that all four percent to capital pays that you are paying the person, the person gets three to four dollars less per hour down at the bottom line of the paycheck. So I'm just wondering how they manipulate with the IRS and Taxation and Revenue and all these other people, how they manipulate these wages and benefits to suit themselves.

MR. SCHANNAUER: That's a question I can't answer. All I know is what the parties - what AMR testified to at the hearing. And I agree with you. It's confusing the way the salaries, which is what they testified that get converted into hourly rates. But that is what they testified to at the hearing.

COMMISSIONER HOWE: May I ask a clarifying question on that here Commissioner Hall? From your Recommended Decision on page six, under wage rates, I think that's... yeah, that's it. I interpreted

this as saying that they are paid a salary, not an hourly wage rate. Did I misinterpret that?

MR. SCHANNAUER: It was my understanding that they were paid a salary and that the hourly wage rates result from the number of hours they worked, that they were assigned to do each week.

COMMISSIONER HOWE: Okay. So if they work fifty hours a week, it's going to calculate out to a lower wage rate than if they work forty hours a week. Because they are paid and fixed salary in a year. That's how I interpreted it.

MR. SCHANNAUER: That's how I interpreted the test score.

COMMISSIONER HALL: Mr. Chairman, that's what it says.

MR. SCHANNAUER: Yes.

COMMISSIONER HALL: But I'm telling you they don't do that. My granddaughter works for them. I can tell you that I know. And she is paid on an hourly rate, not a salary. Now maybe they can calculate that out as 40 hours a week and she can [inaudible] from there. But I can tell you that they don't do that and the way they pay people, it depends on how much you ride as to how much money an hour you get. This time he might get eight dollars an hour and this one you might get 12. And depending on what it is... I'm just wondering how the heck they get away with that adjusting the salaries the way they do. And she does not go on a yearly salary annual salary. She goes and works on an hourly wage. Her base pay his \$14.80 an hour but by the time you multiply any hours that she worked in the week and how much they paid her it is usually three or four dollars an hour less. On her pay stub, overtime is the same way. If she works overtime it is time and a half but it comes out three or four dollars an hour less. I know you can only tell us what they testified to but I know how they operate. I mean, from talking to her, I know how they operate and she has worked for them for quite a while. In fact she worked for them in Las Cruces and Ruidoso and on Alamogordo. You get paid a different wage for writing a different ambience or for a different purpose so I don't know how



they do it. But to me, they make a lot of their money off of their employees. And therein what, 38 states? If they are doing this in every state, what are they doing? Plus the fact in all this negotiation there are already members in there, you don't put in there anywhere what the County pays them each year. So they're not... It's not just 12 million that actually 13 million something because the county gives them 1.2 million a year.

MR. SCHANNAUER: Well actually that 12 million does include the 1.2 million.

COMMISSIONER HALL: Well no, I don't think so. If you look at your chart back there in the back, the 12 million is coming out to their 12,000 or some trips a year or whatever it is for emergency... You can multiply that out but you've got it right. But I don't see that 1.14 million dollars. Doña Ana County is in there anywhere.

MR. SCHANNAUER: Well, it's in there. It's in the more detailed filing that they made. You don't have it in your recommended decision but I'm looking out of here. It's part of it.

COMMISSIONER HALL: In the filing on page 10 you've got it all down there. It comes down to \$12,577,000 but I don't see the 1.2 million the County pays in that chart. And in the next chart, I believe on page 13, you don't have it in there either.

MR. SCHANNAUER: The chart on page 10 comes from an exhibit that the company prepared where they...

COMMISSIONER HALL: In the chart on page 10, how do you get by with basic life support coming out zero? And basic life support on this other page is 19.5%. On page 9.

MR. SCHANNAUER: That have the rate for it but the claim that they don't participate in emergency basic life support services in 2012.

COMMISSIONER HALL: So they have a rate for it but they don't do any of it at all, period.

MR. SCHANNAUER: They do a few, apparently this year, but they don't expect to do any this year.

COMMISSIONER HALL: Well, you know, I'm not a tax man or anything like that. I just wonder how they get away with it with tax and revenue and then the IRS the way they pay their employees the way they do. Like I say, all you can present to us is what they present to you unless we go and investigate our self. And evidently we don't do that so I guess the numbers... We have to accept the numbers that they present to us. But just like on page 10, I don't see \$1.2 million accounted for here or anywhere else. And if you multiply out the numbers that you have here, it comes up to the 12 million without any County money. So they've got an extra \$1.2 million a year that the county is paying them that we're not accounting for here. You mentioned it here in some of the testimony, but it is not heading into any of their numbers.

MR. SCHANNAUER: The numbers that they have for each of the services here... They're not on page 10. They are in one of their exhibits. And the way that exhibit was prepared was they estimated what they called it a gross revenue for each service. And that gross revenue included both the rate for service plus all the additional revenues that they were going to there. So it included the rate that's on the previous page, on page 9, included that. And they also factored into that a portion of the money that they get from the County and a portion of the mileage charges that they collect to provide each service. So the rates on page 9 don't translate directly into the revenues that are on page 10. There's dollars added to the rates on page 9 to actually get you to the revenues on page 10. And the dollars that are added include the dollars that they receive from the County.

COMMISSIONER HALL: Well, I multiplied it out what they've got here and it does not include the money they get from the County. If you multiply out how many trips they say they take it is \$750 apiece and the number of trips is 3,390. That includes non-emergency trips; multiply out their non-emergency stuff it doesn't leave any room for the \$1.2 million from the county. Like I said, you have to go with their numbers but evidently we don't go out and verify their numbers are checked their

numbers or whatever. But I'm saying that this looks to me like they are getting like \$13.8 million a year instead of 12.6 million, and they are asking for what used to be 10.4 plus the 1.2 million so they're already getting 11.6 million and now they're getting 14 something and it amounts to \$2.2 million increase. The county refused to give them any more money and what they paid. From what I understand they refuse to give them an increase.

MR. SCHANNAUER: That's right.

COMMISSIONER HALL: That's all I have Mr. Chairman. If you want to see payroll stub I've got them right here.

CHAIRMAN LYONS: Okay. Further questions?

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman?

CHAIRMAN LYONS: Yes.

COMMISSIONER BECENTI-AGUILAR: I'd like to question the staff's recommendation. Mr. Schannauer, did the staff... They say this is a reasonable proposed rate request. Was there any testimony or questions regarding the staff's recommendation?

MR. SCHANNAUER: Yes. Staff presented - Mr. Chavez, Milo Chavez as a witness. And he attempted to review or look at the filing in general and he looked at the minutes from the last meeting in June where Commissioners asked questions about the filing and he tried to come up with... He provided answers to the best of his ability on those issues.

COMMISSIONER BECENTI-AGUILAR: Do you know the history of this ambulance service? As far as their business in Doña Ana County?

MR. SCHANNAUER: I just know that they... I think they have been operating for some number of years, not that long. I think the last... Is it seven years? That sounds about right, yeah.

COMMISSIONER BECENTI-AGUILAR: So this is the first time they have asked for support for a rate

increase?

MR. SCHANNAUER: No. In 2008 they filed a rate increase and received it. And this is the first time since 2008.

COMMISSIONER BECENTI-AGUILAR: So what was the amount that was granted in 2008?

MR. SCHANNAUER: I don't have that with me. What I have a note of here is that in 2008 they received a 25% increase for emergency services and a 40% increase for nonemergency services. I just don't have the final order with me about the total amount that was received in 2008.

COMMISSIONER BECENTI-AGUILAR: Mr. Schannauer, is this the only ambulance service or can you name all of the ambulance services in Doña Ana County in the same territory?

MR. SCHANNAUER: As I understand it, this is the only one in Doña Ana County. The county actually has the certificate from the Commission to provide service there. And the county contracts with AMR to provide that service. And that's the reason why the county helps pay to subsidize the service.

COMMISSIONER BECENTI-AGUILAR: Is there any way that we can get the total numbers for the increase that was granted in 2008? You indicated 25% and also 40%. Is Milo Chavez here? Is there anybody on staff that can help us with this?

MR. SCHANNAUER: Well I could run up to my office and get the order if you'd like.

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman, I'm just interested in the amount that was granted in 2008 and with the new request. You know, I think that we have a projection, whether this was a trend that is going to be followed if the business is gradually increasing, the numbers will show. If the numbers are off, then it's questionable. And Commissioner Hall, if you would like to get more accurate numbers, more accurate amounts, then, you know, we have room to work with our staff and Mr. Schannauer to see if we can get a better presentation before the Commissioners. That's all I have Mr. Chairman.

CHAIRMAN LYONS: Thank you.

COMMISSIONER HALL: Mr. Chairman, I know all the numbers that you can go by. It's what they provide because we don't go out and check and see what each ambulance service does. My questioning here is just like the \$7.50 an hour and their numbers, to me, don't add up all the way through their testimony. And I don't deny Doña Ana County needs an ambulance service. Everybody does. But why... Did you question or did anybody question why Doña Ana County would not give them an increase? And why it's left for us to decide, when the county hires them that the county would not give them an increase from what I understand. And so why is it left to us to give them the increase if Doña Ana County refused to give it to them? Then, I don't know. Because I think the county Commissioners should have done it and they didn't do that. My problem with AMR here is that their numbers don't add up quite and, like I say, we don't check them. You guys just accept the numbers that they give you and then you run them. And I don't have a doubt the staff ran the numbers right with the numbers they were given. Mr. Chairman, I don't know where we need to go with this or what we need to do. I don't know what kind of arrays they got in 2008 dollar wise. And like I say, if I would wait for four years' time to get a rate increase instead of maybe a little each year to keep everybody up to date and coming in with a 20 to 25% increase at one lick... Let me ask you another question. How does their rate compare with everybody else's in the state? Are the rates reset for everybody else? Do we set them or do they set them and we accept them?

MR. SCHANNAUER: Ambulance companies propose them and the Commission approves them; reviews them and approves them.

COMMISSIONER HALL: Then I guess my problem is, I don't like companies that are making a living off the taxpayers... I don't like for them to be able to furnish me the numbers and I have to live with it because I'd like for somebody to verify those numbers. Do they really need that money or do they

not? And if they do, I'm glad to give it to them. If they don't, I don't want them to say, "Hey, I need \$2 million and you don't need to investigate anything." Just give me the \$2.2 million and let's go on." We do that here at the PRC on a regular basis with almost everybody who comes in. We almost never verify the numbers. They just give us a book and say, "Here; here's all the numbers. This is how much we made, how much we need, how much we lost, or whatever." We don't go check it out and see if it is. There is the \$2.2 million plus the \$1.2 million from the county. It seems like an awful lot of money to be giving them every year.

MR. SCHANNAUER: Maybe to put it in little bit better perspective, what you have to realize with this company is that the company has... Is not going to collect \$2.2 million more with this rate increase. Because the company doesn't get most of what the company charges - it doesn't recover because Medicare doesn't pay fully, doesn't reimburse them fully for what they...

COMMISSIONER HALL: well there again, here they say they've got a bill - \$12 million to get six? I don't believe that either. I don't know. Mr. Chairman, I don't know what to suggest we do with it. But whatever we do with them, we have to do with everybody else in the state. So I don't know whether we ought to go that route at the moment or not. But I just had questions as to how they are doing their billing, how they are collecting the money, and how much money they really need. I don't want them to go broke. I don't want them to work for nothing. I want them to make a profit just like anybody else. But I think the PRC staff and the Commissioners or whomever it takes us needs to start verifying some of these numbers before we just have to say okay I recommend it. But based on their numbers we recommend giving them all the money. So I don't know, Mr. Chairman.

COMMISSIONER HOWE: Commissioner Hall, maybe what we ought to do here is just table the item either temporarily or until the next meeting so that staff can be here and answer the questions on how they analyze the costs.

COMMISSIONER HALL: That's what I like to hear.

COMMISSIONER HOWE: they can answer the questions about hourly wages versus salary and they can report on what the last great increase was. At this point it may be premature to remand all of this to Mr. Schannauer and we can just get these answers from staff.

COMMISSIONER HALL: would that be possible to get staff...?

CHAIRMAN LYONS: Let me ask a couple of questions.

COMMISSIONER HALL: okay. Go ahead.

CHAIRMAN LYONS: it might answer one of your questions. On page one of your recommended decision, paragraph 2 says they filed an application on February 18, 2011 in case 000 52. Is that the right date?

MR. SCHANNAUER: Yes sir. That's the right date.

CHAIRMAN LYONS: the case was not assigned to a hearing officer according to the third paragraph, until March 5, 2012.

MR. SCHANNAUER: that's correct.

CHAIRMAN LYONS: why 13 months later?

MR. SCHANNAUER: I don't know the answer to that.

CHAIRMAN LYONS: you clarified that they're not looking for a rate increase every year because it takes our job two years to do one. I mean I feel like since I've been here, Commissioner Hall and I... This case was filed February 18 and then nothing until March 5, 2012 and that's our staff. I don't know. It just doesn't make sense to me. That it takes that long to do nothing. And if we table it today it's going to be longer and longer. That really bothers me on the timetable. Also let me ask a question. Commissioner Howe started the last paragraph of your memo there says we should conduct further review of the costs expressed in the surcharge. What's further review mean?

MR. SCHANNAUER: That the company would have to come back and file an application requesting approval of it.

CHAIRMAN LYONS: Oh, so that would be an application assigned to a number and a hearing then?

MR. SCHANNAUER: Presumably, unless somebody believes that it is not necessary.

CHAIRMAN LYONS: And who would make that decision?

MR. SCHANNAUER: The Commission.

CHAIRMAN LYONS: And it wouldn't be necessary. Further review- shouldn't we clarify further review if that's what you consider? Further review is pretty wide open to me there's

MR. SCHANNAUER: Well I think what I said... Let me see what I said. The language in my recommended decision was pretty clear - page 12, paragraph B - "AMR shall not assess any fuel surcharge otherwise authorized by the Commission until the Commission by further order expressly authorizes AMR to do so." That's referring to a rulemaking the Commission has started to address the issue of fuel surcharges for all carriers of people. So what I'm recommending here is That the Commission... That this company be able to automatically opt into whatever you decide in that rulemaking but that the company has to come back and get explicit Approval from the Commission before it starts to assess a fuel surcharge.

CHAIRMAN LYONS: Okay.

MR. SCHANNAUER: No matter what.

CHAIRMAN LYONS: It clarifies that. And what Commissioner Hall was saying was that 18% increase equal is a 20.6% increase. I guess that's because higher rates is going to produce more business. Seems opposite to me in the business world. If you think you're going to get more business at a higher rate, more business is coming in regardless because of the area that they're in. So that's going to be a result of that. I don't exactly see how that works. It is opposite the business



community because increased rates usually produce less business. In this case I guess very produce more business. It is just surprising to me. I know it's a low income area with a large rural base there that we've got to serve.

MR. SCHANNAUER: Well actually I think you touched on it earlier. I mean when they filed this case in February 2011, they did not know what the revenues were going to be in 2011. They were estimating what the revenues were going to be.

CHAIRMAN LYONS: Well...

MR. SCHANNAUER: And as the case wound its way through, by 2012, they knew what the revenues were in 2011. And the revenues in 2011 turned out to be less than what they estimated when they filed. So at the same dollar amount that they were requesting as an increase, if you divide that by a lower base amount, you get a higher percentage. That's the reason for the difference in the arithmetic.

CHAIRMAN LYONS: Okay. I've got you. What was the Commission like to do?

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman?

CHAIRMAN LYONS: Yes.

COMMISSIONER BECENTI-AGUILAR: You touched on the first item as to the timeline of when this application was filed. And now we're discussing whether to approve it or not. I would like our Chief of Staff, Mr. Lovato, if you can listen in. This is something that fell through the cracks again for this Transportation Division. It took 18 months to bring it before the Commission. And we have, as the Commission... we have looked at Transportation Division closely. And this is another step further with that we would like to have a better structure of management level coming from the Transportation Division. We don't want to see this again where an application is delayed for quite some time. For almost one year and one month. That is something that I cannot accept. That's the

first part. The second part is that whenever we have a question on these cases here at the open meetings, as we only have our meetings twice a week, and when we have questions from the utility division... I've seen it twice. I don't see it as a trend but I've seen it twice. We can't have an answer provided by the staff of the utility division. How do they handle their representation or when they want to be present, whenever there's a question from the Commission? I know that the hearing examiner will recommend his reasons based on the record. And then the General Counsel will look at the legal issues. And what we're looking for today are the numbers, the total numbers. And the rate increased numbers from 2008. Those are not provided. And I would like utility division to have someone available. If the main person that worked on the case is out that day, we should have a backup so that we can be able to work with staff. So that's my comment, Mr. Chairman.

CHAIRMAN LYONS: Thank you Commissioner. But with the Commission like to do? If are going to table this lets table it till Thursday. I don't want to put this off any further.

COMMISSIONER HOWE: We don't have a meeting on Thursday.

CHAIRMAN LYONS: Oh, that's correct. Thank you Commissioner.

COMMISSIONER HOWE: How about we tabled this until after the next item on the agenda, can we get someone from the transportation staff here?

CHAIRMAN LYONS: Actually, get your numbers for 08. Commissioner wants 08 numbers. We want the accounting numbers of what they happen to and somebody mentioned a timeline or something.

MR. BRACK: Milo is not in today. He is the next item on the agenda.

CHAIRMAN LYONS: Where is he?

MR. BRACK: He is in Albuquerque.

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman. He has a mobile phone. **I would like staff to get in contact with him, get the numbers and table this until the end of the meeting today and see**

**if the staff could come back with those answers.**

MR. GRAHAM [AMR representative who did not identify himself but whose name was mentioned later and spoke from the back of the room]: On the numbers of the company we have the same quotes that you have and the numbers that we presented were audited. They are audited numbers. And we can't provide any different numbers than we already have. We simply wanted to be able to speak with the Commission because the finances are operational issues and I'm going to speak to those but I don't know. What is an appropriate forum?

CHAIRMAN LYONS: Okay. Thank you. Okay. We've got a motion to table until the end of the meeting.

COMMISSIONER HALL: **Second.**

CHAIRMAN LYONS: We've got a second. All those in favor say aye.

ALL: Aye.

CHAIRMAN LYONS: **Five to nothing vote to table to the end of the meeting.**

**B. Utility Division**

**10-00379-UT IN THE MATTER OF KIT CARSON ELECTRIC COOPERATIVE, INC.'S ADVICE  
NOTICE 57.**

**(Rick Blumenfeld) Order**

CHAIRMAN LYONS: Okay. That brings us to Kit Carson Electric. You guys have been up to get a job here.

COMMISSIONER HALL: Get a life.

CHAIRMAN LYONS: All right. Regular action item 10-00379 - removing paragraph eleven in the order.

MR. BLUMENFELD: Good morning.

CHAIRMAN LYONS: Good morning.

MR. BLUMENFELD: Before we get to the substance of removing paragraph eleven, both staff in its response and support of Kit Carson's motion for rehearing and Kit Carson, itself, would like the

motion to be addressed this way - using our rules, and I think it is appropriate that under 1.2.2.37(F) (6) - Disposition of Motion for Rehearing, paragraph d says "if the rehearing is limited to modification of the order without introduction of new evidence, all parties and staff will have an opportunity to oppose or support the proposed modification. But the rehearing will be decided without oral argument or a public hearing unless the Commission directs otherwise." What we are doing is, or what is proposed to be done is to, in the motion, is to modify our order. The interveners have filed responses to the motion; staff, as I said, filed its response. So they have ... everybody's had a chance to support or oppose it - the proposed modification. So I believe we can decide this without oral argument or public hearing, unless you decide otherwise. But the written responses are in and I think due process has been given to everyone. So that, before we go on further to substance, there is that procedural item that we need to address.

CHAIRMAN LYONS: Okay.

COMMISSIONER HOWE: Mr. Chairman, can you clarify again the procedural item that we want to address here?

MR. BLUMENFELD: That we grant this motion for rehearing. But then there is, because everybody has, interveners, staff have filed written motions in response. They've had their say. We can decide the issue of paragraph 11 without oral argument or public hearing. In other words, we have their written opinions modifying the order...

COMMISSIONER HOWE: And it will dismiss it or not at the pleasure of the commission?

MR. BLUMENFELD: yes.

CHAIRMAN LYONS: And waive the hearing.

MR. BLUMENFELD: Right.

COMMISSIONER HOWE: Are you planning to rewrite the order to that effect?

MR. BLUMENFELD: No. No. The order as presented can be approved. This is a procedural matter.

COMMISSIONER MARKS: Mr. Chairman?

CHAIRMAN LYONS: Commissioner Marks, go ahead and

COMMISSIONER MARKS: I think Mr. Blumenfeld... can you just present the arguments for and against a rehearing?

MR. BLUMENFELD: Sure. Kit Carson, because of their 30 day time limit given to by the federal RUS, wanted expedited action on this case and we got out that order and they found fault with paragraph 11. So they want to rehearing in order to strike that paragraph. Against that, basically,

COMMISSIONER MARKS: Mr. Blumenfeld, can you give... The argument for striking that paragraph is not by Kit Carson that proposed it they have some rationale in their filing, do they not?

MR. BLUMENFELD: Yes.

COMMISSIONER MARKS: they said there is a reason? That's what I'm asking for. I know that Kit Carson once it. And Mr. Summers don't. Is that something that you could explain - recap their arguments for each side?

MR. BLUMENFELD: Well, Kit Carson thinks that that paragraph leaves the federal lender with the ability to say the Commission is still having an adverse effect and therefore, they are going to withhold funding for the project. The other side mainly, Ms. Bentz proposed that she wants the broadband spun off right now. And she wants the money paid back to the members. And of course, if it is spun off right now, from everything we know that would doom the project immediately. Mr. Summers filed an email just that he's against it - is against the rehearing.

COMMISSIONER MARKS: But doesn't Kit Carson maintain that it is not the Commission's jurisdiction on their RUS whether they've complied with RUS's ... with an obligation to RUS - it's not...

MR. BLUMENFELD: That's one of their arguments. I think it can be decided without reaching that

argument.

COMMISSIONER MARKS: And base on what?

MR. BLUMENFELD: Base on basically on staff's approach was that this case was about compliance with paragraph 51 of the final order. And we don't have that. We vacated paragraph 51 and paragraph 11 really has ... which is a comment about the Coop's fiduciary duties. Paragraph 11 is not necessary to a ruling on that compliance and so it can be struck - it had nothing to do with the whole compliance hearing here. It was a comment on the Coop's shortcomings as far as its lender. So paragraph 51 is gone; paragraph 11 is not necessary... was not necessary for the compliance business. And I think that Kit Carson... we don't need to chastise them. I think they know what RUS's position is. They want timely, candid, forthright reporting to them. So in that sense, they don't need a paragraph 11 from us, particularly when Kit Carson is... everything they file with RUS is going to be filed with us.

CHAIRMAN LYONS: Commissioner Marks?

COMMISSIONER MARKS: Okay. I think I appreciate the explanation of staff's argument for your reasoning now, Mr. Blumenfeld.

CHAIRMAN LYONS: Okay.

COMMISSIONER HOWE: Can I get one further clarification? I just want to understand the process that you are recommending here Rick. You're recommending that we take this procedure on the basis of Rule 1.2.2.37, paragraph F or section F, which allows us to grant a motion for rehearing and then decide it without oral argument. Is that right?

MR. BLUMENFELD: Yes. If we limit the rehearing to the modification of the order and that is what ... without introduction of new evidence. And nobody filed new evidence which has to be accompanied by an affidavit.

COMMISSIONER HOWE: And it's not necessary for us to reference that rule in the order, is what you are saying.

MR. BLUMENFELD: No, I don't think so.

MR. PARKER: All of this is...

COMMISSIONER MARKS: Commissioner Howe?

CHAIRMAN LYONS: Hang on Commissioner Marks.

COMMISSIONER MARKS: Okay.

MR. PARKER: [inaudible]

COMMISSIONER MARKS: I...

MR. PARKER: ...hearing. It really isn't a motion for rehearing. It is a motion for reconsideration and we can do it by simply reconsidering and issuing an order or, if we feel additional evidence is necessary, we can order a hearing. But because it is called a motion for rehearing it is somewhat confusing. So I think what Rick is saying is that we can just go ahead, consider the documents and issue an order right now and that is completely appropriate.

COMMISSIONER HOWE: I guess my comment was going to the issue of whether or not we ought to reference the rule that we're relying on here - just to provide a little more armor for it.

MR. BLUMENFELD: There would be no harm in adding that to the order.

CHAIRMAN LYONS: Let's do that then. Commissioner Marks, did you want to say something?

COMMISSIONER MARKS: Well, Mr. Chair, first of all I apologize for talking over Mr. Parker. I couldn't hear him. And he pulled the microphone in sort of at the end and I apologize to Mr. Parker. But what I was going to say the same thing that Mr. Parker said. And, as a matter of fact it is the exception, not the rule, that we actually do anything other than what Mr. Blumenfeld is proposing today on a rehearing. I think in like eight years on the Commission we've had maybe twice when we've done a

rehearing we actually had a formal hearing. Most of the time, we just ruled on the pleadings and it changed the order or not. Mr. Chair, so, again, thank you Mr. Parker. I think you said it better than I just did. If we're changing the order, my concern is that the order doesn't give any reasons and I think that the reason is that it doesn't even mention who filed. But I'd like it to... or I'd suggest that we reference staff's argument and make that the basis for our order.

CHAIRMAN LYONS: Thank you Commissioner Marks. Commissioner Howe, where would you want to put that in there?

COMMISSIONER HOWE: So Rick, your argument was that paragraph 11 is not relevant to the compliance and the vacating of paragraph 51 which was accomplished in the previous order.

MR. BLUMENFELD: Right. That's correct.

COMMISSIONER HOWE: So if we simply stated that, would that satisfy Commissioner Marks?

COMMISSIONER MARKS: Yeah. If we just say, "As provided by staff" in the response. Paragraph eleven is not relevant and therefore it is removed. That would...

CHAIRMAN LYONS: And you want to cite that statute 1.2.2.37? Cite that in the order.

COMMISSIONER MARKS: **Mr. Chair, I make a motion to adopt the order with the changes just discussed.**

COMMISSIONER HOWE: I'll **second.**

CHAIRMAN LYONS: We've got a motion and a second to adopt the order. Any further discussion? Seeing none, all those in favor say aye.

ALL: Aye.

CHAIRMAN LYONS: **On a five to nothing vote, Carl.** Okay, we'll go to public comment.

## **8. PUBLIC COMMENT**



[There were no public comments.]

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

CHAIRMAN LYONS: We'll go to communications with Bob.

MR. PARKER: There's just one thing...

COMMISSIONER MARKS: Mr. Chair?

CHAIRMAN LYONS: Yes.

COMMISSIONER MARKS: I need to go back to my conference. Is it possible to bring back that AMR case, or is it not ready?

CHAIRMAN LYONS: I've looked for the people but they are not in here yet, Commissioner Marks. Then we are going to go right on down till they show up.

COMMISSIONER MARKS: Mr. Chair, I can't understand why someone couldn't have gone to e-docket and figure out what the last case in 2008, how many millions of dollars there was.

MR. PARKER: Commissioner Marks, they can do that but I think they are huddling to try to answer some of the other Commission questions that came up.

COMMISSIONER MARKS: Okay. Mr. Chair, I withdraw my comments and proceed with communications but I would like to get to that case.

CHAIRMAN LYONS: Okay.

MR. PARKER: I'll go out in a minutes and try to scout and round them up. My communication is that there is a cake for Roy's retirement out and it's going to be on the fourth floor lobby there. So after the meeting, whoever wants to go and have some of Roy's cake is willing to do so and that includes anybody else here - even reporters. That's all I have Mr. Chairman.

**10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTOYA**

MR. LOVATO: I have nothing Mr. Chairman.

CHAIRMAN LYONS: Communications with Chief of Staff - nothing.

**11. COMMUNICATIONS WITH COMMISSIONERS**

CHAIRMAN LYONS: Communications with Commissioners.

COMMISSIONER HOWE: Something.

CHAIRMAN LYONS: Sure.

COMMISSIONER HOWE: Mr. Chairman, given the letter which we all received from Loretto and Maddow recently on security concerns, I think we ought to revisit the issue of whether we need to have permanent security here. I don't think we need to decide that today but I'd like to have that discussion when Mr. Montoya is here and all the five Commissioners can be sitting - as soon as possible.

CHAIRMAN LYONS: Okay. I think it is a good idea. Make note of that Matthew.

MR. LOVATO: I have that note down.

CHAIRMAN LYONS: Tell Johnny to check into that.

MR. LOVATO: I'll let him know.

COMMISSIONER HALL: Mr. Chair, Bob, since you talked ... I think you talked to the guy, is there any way we can identify him and get a letter of reprimand or something to him that he shouldn't come to open meetings and threaten people? Even though they have an adverse opinion of what's going on, you know. Everybody is entitled to their own opinion, whether it's for or against something. We shouldn't have people coming in here threatening. Especially going out in the parking lot and intimidating the people. We don't need that kind of stuff. I'd like to identify the guy and at least give

him a letter of reprimand from somebody. And I agree with what Commissioner Howe says that we need to work on this and see if we can prevent it from happening again.

MR. PARKER: I can look into that, Commissioner, and I will.

CHAIRMAN LYONS: Okay. My only communication is as Commissioner Howe pointed out - there is no meeting Thursday. We did add a quorum possibly at the Legislative Finance Committee hearing at 10:00. I'll go over a little early. That's in ... at the State Capitol, Room 322 or 308, one of the two.

MR. LOVATO: Room 322.

CHAIRMAN LYONS: Room 322. Okay. We'll do our 2014 budget there - presentation to the Legislative Finance Committee. Okay.

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman, I have one comment regarding Jemez Mountain Electric case. We had a public hearing in Española at Northern New Mexico Community College last night which was set up by Commissioner Howe. And we met about 5:30 and we ended the public meeting until like 7:30. The staff members that joined us is our Legal Director, Cydney Beadles, Milo Chavez from Utility, Julie Parks from Legal Division, and James Brack from Utility Division, as well. Commissioner Howe was there and I. We were able to work with the crowd. I would say there were 60 to 75 people.

SOMEONE FROM THE AUDIENCE: At one point there were close to one hundred there.

COMMISSIONER BECENTI-AGUILAR: Close to a hundred people. And I believe there was 30-35 people that submitted their comments. And we also had a reporter from Rio Grande Sun there. And I felt that, you know, these public meetings - residents who want to voice their opinion or their opposition - they come with their emotional feelings and we were able to guide the public meeting to a good conclusion. And I think it was beneficial for the staff members and Commissioner Howe. And there were some surprises. And we are just going to leave it for the Jemez Mountain Electric case and

put it in the record. And that's my comment, Mr. Chairman.

CHAIRMAN LYONS: Thank you for attending the meeting Commissioner Howe. Okay, I want to go to this - the case that was tabled before we go into Closed Executive Session. You guys ready? Okay, we'll take a motion. I need a motion to remove the case 11-00052 off the table.

COMMISSIONER BECENTI-AGUILAR: **I make a motion to remove the case AMR and back to discussion,** Mr. Chairman.

COMMISSIONER HOWE: **Second.**

CHAIRMAN LYONS: Second - a motion and second to take off the table case 11-00052 and make it the next order of business. All those in favor say aye.

ALL: Aye.

CHAIRMAN LYONS: Okay. Commissioner Marks, do we still have you? I think we lost Commissioner Marks. Did you guys hear him hang up?

COMMISSIONER MARKS: I'm sorry, Mr. Chair. I was on mute.

CHAIRMAN LYONS: No problem. Here we are back on the case Commissioner Marks. The AMR case. Okay. Who wants to start out?

MR. SMITH: Mr. Chairman, Commissioners, I think ... At the table seated at the table - this is Mr. Joaquin Graham from AMR. I think he can... if familiar with the figures that the Commission has questions about. He would be willing to field questions from you about this.

TELEPHONE: Joining the meeting.

MR. CHAVEZ: Milo Chavez.

CHAIRMAN LYONS: Milo, we're having AMR discussion and you just joined the meeting. Questions will be referred to you.

MR. CHAVEZ: Okay.

CHAIRMAN LYONS: Who do you want to talk?

MR. SMITH: Well, I think it might be easier if Mr. Graham fields questions for a minute and then we will get to him.

CHAIRMAN LYONS: Okay. So 08 number for Commissioners. Commissioner Aguilar.

COMMISSIONER BECENTI-AGUILAR: I guess, Mr. Smith, it makes our job a little bit easier if Hearing Examiner, General Counsel and Utility Staff can provide the answers for us. It makes our decision a lot smoother.

MR. SCHANNAUER: In terms of the revenue increase in the 08 case, the numbers don't look... I mean the format in which these numbers were presented isn't exactly the same as it is in the case I have here but what I've been able to determine is that in 08 the company requested and received \$2.8 million increase in revenues. Which the Commission described as translating into a \$440,000 increase in net income. \$420,000 increase in net income. And in this case, there's the \$2 million increase which translates into about a \$212,000 increase in net income.

COMMISSIONER BECENTI-AGUILAR: Repeat the last one again, Mr. Schannauer.

MR. SCHANNAUER: The \$2 million revenue increase translates into a \$212,000 increase in net income.

COMMISSIONER BECENTI-AGUILAR: Did you analyze that Mr. Schannauer - the \$2.8 million that was granted in 2008 and \$2.2 million that is being requested today - do you have... Is there any viewpoint now that we have the two amounts?

MR. SCHANNAUER: Those appear to be the numbers for those the two cases. Yeah.

COMMISSIONER BECENTI-AGUILAR: I'm asking for a recommendation.

MR. SCHANNAUER: Well, you have the recommendation that I'm making is that the increase proposed in this case be approved, based upon the testimony of the company and the testimony of staff, Mr. Chavez.

COMMISSIONER BECENTI-AGUILAR: Thank you very much for providing those numbers. It helped me a great deal.

COMMISSIONER HOWE: Ashley, do you know when the final order in the 08 case was made? It's always something new, right?

MR. SCHANNAUER: You're asking something new.

MR. GUTIERREZ: Mr. Chairman, Commissioner Howe, the date of the final order entered was October 1<sup>st</sup> 2008.

COMMISSIONER HOWE: So it's ... If I missed that, it's ... it would be about two and half years between their final order and their filing for this rate case and the next request. Not quite.

MR. GRAHAM: We began working on the tariff increase application in 2010. We weren't able to get it filed until late... early 2011.

COMMISSIONER HOWE: Okay.

CHAIRMAN LYONS: Thank you. Commissioner.

COMMISSIONER HALL: Mr. Chairman, I understand that from the time it was filed or started working on the case until they finally got to here, it was a long time and never should happen. And we were going to do something about that. One question I have, Mr. Schannauer, is, you said they were going to get \$2.2 million in revenue but there was only \$200,000 of it is actually money for them. You are telling me that the increases from ... Are we going back... Are these increases going back to 20... for what year? Are they just for this year or whatever? Cause an increase in the cost of service is here from AMR, \$2 million but they are only going to get \$200,000 of it. The rest of it has to be cost of services or whatever. So is this for 2012? 2011? What is that?

MR. SCHANNAUER: This is based on their estimated costs and the estimated revenues that they generate from providing service in 2012.

COMMISSIONER HALL: Okay. The estimated revenues is ... You are going to get \$2.2 million in revenue.

And you just said a few minutes ago that only \$200,000 of that is, in other words, profit. So you're telling me that the cost of service in 2011, 2012 is \$2 million.

COMMISSIONER MARKS: Commissioner Hall: May I answer that one?

COMMISSIONER HALL: Sure. Go ahead.

COMMISSIONER MARKS: Commissioner Hall, the \$2 million is gross revenue - it's charges and in the medical [inaudible] the majority of the patients don't pay charges. If its Medicare or Medicaid there is a fee schedule and regardless of what the charges they have, Medicare and Medicaid are going to pay the exact payment amount so the gross charges to customers might be \$2 million but for all those Medicare and Medicaid or when there is valid insurance where there is a contract for a rate it's not going to actually increase their net revenue. So I think the \$200,000 that's being alleged or represented is more ... It mostly reflects net revenue. It is not received by the company as opposed to charged out.

COMMISSIONER HALL: So it's a [inaudible]. Well, you can call it what you want but to me, if you are going to increase the revenue by \$2.2 million and they are only going to get \$200,000 of it as profit or whatever you call it - net revenue, whatever, then the other \$2 million had to be put into cost of service that they've been providing all the time anyway. So evidently the cost of service for their ambulance went from \$2 million higher this year than it was last year. And yet they didn't lose money last year. So I don't understand the whole \$2 million is going into cost of service or whatever they are calling it.

MR. GRAHAM: Commissioner Hall, that \$2 million is not money that is coming in. It's money that we are going to bill out. And the additional money that we're going to bill is never going to come to us as \$2 million. We're going to receive of that a net revenue that we can use to recapitalize the

operation \$200,000.

COMMISSIONER HALL: Well, I'm not an accountant. I don't play with numbers too much but ... I'll leave it that way for now.

COMMISSIONER HOWE: You were granted temporary relief to raise the rates up to the state level or the higher of the state level and your rate. Did you actually do that in any of your rate classes?

MR. GRAHAM: Commissioner Howe, no. Unfortunately we were not able to for two primary reasons. A, it is a difficult thing to do accurately and appropriately when you are looking at since the 18<sup>th</sup> the mileage for us was higher than the state rate. The state tariff rate was higher in mileage and in ALS2. There are very few ALS2 calls for us. The majority of it is negative for miles to do that. And it is a heck of a process for something we anticipated was going to take a couple of months.

COMMISSIONER HALL: Who is Mr. Valentine?

MR. GRAHAM: Mr. Valentine is my boss. He is the General Manager for New Mexico.

COMMISSIONER HALL: He called and wanted to meet with me after our last meeting.

MR. GRAHAM: Yes sir.

COMMISSIONER HALL: But he wanted me to come to Arizona and I said I'm not going to do that. If you want to meet me here in New Mexico, in Santa Fe or wherever then I would be glad to meet with him. I even offered to meet with him in Las Cruces, which he would not do. So I don't know what he wanted to talk about but that's all right. Maybe some other day he will make another appointment.

MR. GRAHAM: Commissioner Hall, I know what he wanted to talk to you about. It was your concerns during the first meeting that you raised again during this meeting, specifically the pay. I frankly would love the opportunity to sit down and talk with you. I don't know if there was a miscommunication from Mr. Valentine or on that end but I know specifically in speaking with him, he would have loved to meet with you anywhere in New Mexico.



COMMISSIONER HALL: Well I figured it was over the payment cause that is something I brought up in the last hearing but he never did say and he can't seem to [inaudible].

MR. GRAHAM: Well, Commissioner Hall, I'd love the opportunity to meet with you and discuss that issue.

And again, I... to hopefully to address some of your concerns, it is something that is confusing but our pay scale on it... but it is not unfair or unclear. And essentially the way it works is we say to a new employee, and EMT or a paramedic, when we hire you on, we do a plotting of where we are going to pay you in that range - if it falls in that \$30,000 a year range, we tell you at the end of the year, you're going to make \$30,000 for us. That is going to be paid out on an hourly basis. You are right - they are paid hourly. And that is paid, based on the assignment that we give them for a shift. So if we assign them to a 56 hour a work week shift, they are guaranteed to get 16 hours a week in overtime. So in order to get to that \$30,000 we're going to tell them we will pay you about \$8.50. If we then, in turn, take them and tell them we are no longer going to give you 56 hours every week; we are only going to give you 40 hours every week, we increase their hourly rate in order to get them to that \$30,000 and then they would see and have an hourly salary of about \$15 per hour to get to that same \$30,000 a year. But that's where that comes from and...

COMMISSIONER HOWE: For tax purposes, are they considered hourly employees or salaried employees?

MR. GRAHAM: Hourly employees. And the overtime is based on the Fair Labor Standards Act that says we have to pay overtime, based on all of the earnings that you've made during that previous week or that week. So if you made \$8 an hour on one shift and moved and worked \$15 an hour for another shift, we have to pay overtime based on the average of your earnings for that week per hour.

COMMISSIONER HALL: Well, I know what you are doing, you know. But I don't know how you get away with it. It's not my problem. But if I were in business and tried to do that to my employees, you'd have the Labor Relations Board in the first place down on me. In the second place you'd have Tax

and Revenue down on me. But if you can get away with it, I guess you can get away with it. I don't know. I'm not a tax person. I'm not going to... I don't know.

MR. GRAHAM: Well...

COMMISSIONER HALL: But to me, if you are going to tell a person... If you are going to work a person and you say, why not just be honest about it and say you're going to make \$7.50 an hour of \$8.50 an hour for 56 hours a week? Or... instead of lying to them and tell them, well you're going to make \$15 an hour here and you're going to make 18 here or whatever? Are different ambulances a different price and you know...? Like I say, I don't know how you keep your books straight. But that is certainly up to you.

MR. GRAHAM: When... In 2013 there is a movement of AMR nationwide because it's in their practice that we just do the [??] as a nationwide practice. So in 2013 AMR is rolling out a practice of moving to a one single pay rate sort of thing. So we are kind of moving in that direction. But in the interim, we give all of our employees a listing of all of the different rates with annualized salary. So there is no misleading on our part to say you are going to make this much on this shift and then move you to a different shift.

COMMISSIONER HALL: I was checking this. My granddaughter never made what she was going to make - period. And then she worked for 56 hours or whatever. But she never made what she was to be making. She didn't know. Because you guys change it from one week to the next. This ambulance, that ambulance, whatever. So you know, like I said, I'm not a tax person. I don't know how you get away with it but you do. So... I'll drop it as a...

MR. GRAHAM: I'd appreciate the opportunity to discuss it with you.

MR. SMITH: Commissioner Hall, also, one thing that you raised in the preceding period was the accuracy of the numbers that are provided to the Commission by the company. In talking with the company

outside and also I think in Mr. Schannauer's report, I think there's a notation that the figures are all audited by Ernst and Young so there is some level of assurance as to the quality of the figures that are there provided to the Commission.

MR. GRAHAM: Commissioner Hall, the thing I wanted to kind of address on that note was - I apologize - was that the PRC Transportation Division Inspectors do come out and inspect us, usually at least twice per year. And part of that inspection is to verify that we are charging the appropriate rates and that [coughing]. It doesn't delve into collections but there is some level of oversight there.

COMMISSIONER HALL: They come out and check whether you are charging the appropriate rate which is the rate we let you do, not necessarily state rate or anything...

MR. GRAHAM: Right. What we were able to do.

COMMISSIONER HALL: What we approved you to charge.

CHAIRMAN LYONS: Further questions?

COMMISSIONER BECENTI-AGUILAR: Mr. Chairman, we have delayed this company's application far too long. I think we need to take action today. But I'm a little bit uneasy about the amount. That's just my view. I'll leave it up to the other Commissioners to see what they think.

COMMISSIONER MARKS: My question - Mr. Schannauer, I agree. I mean their financials are audited by Ernst and Young and so on and so forth. And staff has an ability to do discovery on any numbers so if it is not the case, we just take what they say. But in this case, this is my reflection of this case, is based on a projection for 2012. Is that correct?

MR. SCHANNAUER: That is correct.

COMMISSIONER MARKS: And that wasn't audited by Ernst and Young. That was somebody's projection.

MR. SCHANNAUER: That's correct. Right.

COMMISSIONER MARKS: Okay. Thank you.

CHAIRMAN LYONS: Commissioner Howe.

COMMISSIONER HOWE: I agree we've sat on this far too long. I remember, I believe back in February, we sent it back to the Hearing Examiner because there had been no financial analysis as I recall. And correct me if I'm wrong Mr. Brack... Didn't you loan an analyst to dig into the numbers? That's basically what we had to do is come to the Utility Staff to get an analyst to come in and take a hard look because there was no economist on the staff of Transportation at that point. So that certainly delayed things I think. Not that that's the company's fault. That's our ... that's on our ... that's on us. I think there's nothing that's been presented to us that tells us that it's the wrong number. I think everything that's been told to us so far and the record supports that this is the correct number. So with that, **I will move the order.**

CHAIRMAN LYONS: Okay. We have a motion to move the order. **I'll second the motion.** Any further discussion? All those in favor, say aye.

COMMISSIONER HOWE: Aye.

COMMISSIONER BECENTI-AGUILAR: Aye.

CHAIRMAN LYONS: Commissioner Marks?

COMMISSIONER MARKS: I'm opposed.

CHAIRMAN LYONS: Okay. I voted yes. All those opposed?

COMMISSIONER HALL: No.

COMMISSIONER MARKS: No.

CHAIRMAN LYONS: **On a three to two vote, the order passes as is.**

COMMISSIONER MARKS: Mr. Chair, just to explain my vote, my big concern is that ... is with the estimates on that 2012 test year that was estimated and I don't have the ... Mr. Chair, can you hear me?

CHAIRMAN LYONS: Yes. We can hear you.

COMMISSIONER MARKS: Okay. And I don't have the documents in front of me but when I looked at this the last time we had it last week, it seemed to me that they had under projected revenues and that it seemed to me as Commissioner Becenti-Aguilar said was suggesting that they filed for a rate increase but I think it was a little bit much and, again, I don't have a lot of confidence that the 2012 test year was completely accurate when you compare it to 2012 actuals to date or 2011. Thank you.

CHAIRMAN LYONS: Thank you. Okay, that was the vote. Avelino, can you bring me or all the Commissioners, all the cases that are 2011 or prior in the Transportation Division and the status of them? I know there are a couple of them that are in court. But we need to know where they are at. We don't want to fall behind thirteen months on another case. Thank you.

COMMISSIONER MARKS: Mr. Chair, I'm going to disconnect now.

CHAIRMAN LYONS: Okay. Thank you for calling in and staying with us.

MR. GRAHAM: Thank you Commissioners.

## **12. CLOSED EXECUTIVE SESSION**

CHAIRMAN LYONS: Who is going to handle this closed session?

MR. PARKER: I am.

CHAIRMAN LYONS: Okay.

- **Pursuant to NMSA 1978, Section 10-15-1 (H)(7) to discuss pending litigation.**  
**Supreme Court Case No. 33,445 - Seeds Towing v. NMPRC.**

CHAIRMAN LYONS: We need a motion to go into closed executive session pursuant to communications on a Supreme Court case.

COMMISSIONER HOWE: **Move to go into closed session.**

COMMISSIONER HALL: **Second.**

CHAIRMAN LYONS: We've got a motion and a second.

MR. BOAZ: Commissioner Howe?

COMMISSIONER HOWE: Yes.

MR. BOAZ: Commissioner Hall?

COMMISSIONER HALL: Yes.

MR. BOAZ: Commissioner Lyons?

CHAIRMAN LYONS: Yes.

MR. BOAZ: Commissioner Becenti-Aguilar?

COMMISSIONER BECENTI-AGUILAR: Yes.

CHAIRMAN LYONS: Okay, we are closed executive session on litigation.

The Commission went into closed executive session on a 4-0 roll call vote at 10:52 a.m.


At 11:03 a.m. the Commission returned to open session.

Chairman Lyons announced to the public that during the closed session no actions were taken and the only matter discussed was Supreme Court Case No. 33,445 - Seeds Towing v. NMPRC.

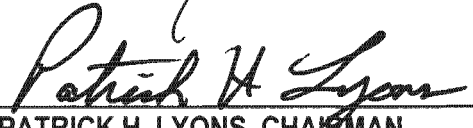
### **13. ADJOURNMENT**

**Commissioner Howe moved to adjourn the meeting. Commissioner Hall seconded the motion and it passed by a 4-0 voice vote. Commissioner Marks was not present for the vote.**

ATTEST:

  
Carl Boaz, Stenographer

APPROVED: November 8, 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 23rd, 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 27, 2012**
- 6. CONSENT ACTION**

**A. Transportation Division**

<b>11-00052-TR-R</b> <b>Michael C. Smith</b>	<b>IN THE MATTER OF THE APPLICATION OF AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC., D/B/A AMERICAN MEDICAL RESPONSE, FOR A TARIFF INCREASE.</b>  <b>Order</b>
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**B. Utility Division**

<b>12-00329-UT</b> <b>Sandra Skogen</b>	<b>IN THE MATTER OF THE FORMAL COMPLAINT OF HEATHER BURKE AGAINST PUBLIC SERVICE COMPANY OF NEW MEXICO.</b>  <b>Order</b>
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12-00339-UT Rick Blumenfeld	IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY FOR APPROVAL OF 2013 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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7. **REGULAR ACTION**

A. **Utility Division**

10-00379-UT Rick Blumenfeld	IN THE MATTER OF KIT CARSON ELECTRIC COOPERATIVE, INC.'S ADVICE NOTICE 57.  Order
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8. **PUBLIC COMMENT**

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

10. **COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTROYA**

11. **COMMUNICATIONS WITH COMMISSIONERS**

12. **CLOSED EXECUTIVE SESSION**

- Pursuant to NMSA 1978, Section 10-15-1(H)(7) to discuss pending litigation. Supreme Court Case No. 33,445 – Seeds Towing v. NMPRC.

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.