



Submitted via NM Office of the Attorney General ECS System

April 26, 2022

Office of the Attorney General
Open Meetings Act

RE: New Mexico PRC violation of the Open Meetings Act

Our office, SaucedoChavez, P.C., represents the New Mexico Business Coalition in connection with its watchdog efforts of the New Mexico Public Regulatory Commission (the “PRC”). Please allow this letter to serve as a formal notice of the PRC’s violation of the New Mexico Open Meetings Act pursuant to NMSA 1978 §10-15-3. As more fully explained below, at the December 15, 2021 meeting, the PRC went into a “closed session” for over three and a half hours. This “closed session” had not been previously disclosed to the public, the PRC failed to properly move the “open session” into a “closed session” as required by the Open Meetings Act, and most concerning, the matters discussed during the closed session—the rejection of, and language regarding the Order on PNM’s request for approval of selling its interest in the Four Corners Power Plant—were not matters that are otherwise excluded from occurring in an open meeting. Each violation will be more fully explained below.

Procedural Violations

At the December 15, 2021 meeting the PRC unexpectedly went into a closed session, apparently upon the advice of their general counsel. As noted in the official minutes for the December 15, 2021 meeting at roughly 10:30 A.M. Commissioner Hall requested that the meeting be move into a closed session. *See* December 15, 2021 meeting minutes attached as **Exhibit A**. Mr. Smith (the general counsel) then simply indicated that the closed session would be pursuant to Section 10-15-1 (H) (3) of the Open Meetings Act for deliberations. A motion was then made to move the session into a “closed session” pursuant to Section 10-15-1(H)(3), however there was no indication what the subject matter of the closed session was to be. The motion was approved 5-0 and the Commission went into a closed session for roughly the next 3 ½ hours. *See* Exhibit A.

a. Violation of NMSA §10-15-1 (D)

Section 10-15-1(D) of the Open Meetings Act states, in the relevant part, that “any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, *and any closed meetings*, shall be held only after reasonable notice to the public.” The closed meeting that was called by the PRC on December 15, 2021 had no “reasonable



notice” to the public. This is evident by the attached Agenda submitted by the PRC for the December 15, 2021 meeting which in no way indicates that any closed meeting was to occur. *See* Agenda attached as **Exhibit B**. As the PRC did not provide any notice, nevertheless “reasonable notice” to the public that a closed meeting would be called during the December 15, 2021, Section 10-15-1 was violated when said closed meeting occurred.

b. Violation of NMSA §10-15-1(I)

When a closed meeting is to be called pursuant to the Open Meetings Act, Section 10-15-1(I) provides what must be done for the “closed meeting” to be properly called to session. Section 10-15-1(I) states “the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure *and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote* on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. *Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting.*”

As per the minutes of December 15, 2021 PRC meeting, the closed session of the meeting was called apparently pursuant to Section 10-15-1(H)(3), but the subject to be discussed was not stated with reasonable specificity in the motion calling for the vote to move the meeting to a closed meeting. *See Exhibit A*. It was only announced *after* the closed meeting that the session was in regards to PNM’s pending request for approval of the sale of its interest in the Four Corners Power Plant. Thus, the Commission further violated the Open Meetings Act, and specifically 10-15-1(I) by failing to properly inform the public as to what would be discussed during the closed session of the December 15, 2021 meeting.

Substantive Violations

Beyond the procedural violations above, the PRC further violated the substantive provisions of the Open Meetings Act as the subject matter discussed during the closed session of the December 15, 2021 meeting is not within an exclusion of the requirement that matters be discussed in an open meeting. As per NMSA 1978 § 10-15-1(B) “all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act.” The exceptions as to when a meeting must otherwise be open to the public at all times are enumerated under §10-15-1 (H).

When moving the December 15, 2021 meeting into a closed session, the PRC noted that it was doing so pursuant to the exception under 10-15-1(H)(3). That exception to the Open Meetings



SaucedoChavez, P.C.

Act states the provisions requiring open meetings do not apply to “deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, ‘administrative adjudicatory proceeding’ means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing.” During the closed session of the December 15, 2021 meeting, the PRC discussed the “Recommended Decision on request for approval of the selling of PNM’s interest in the Four Corners Power Plant and issuance of securitized financing in Case 21-00017-UT.” Though the PRC described the conversations as “deliberations” they were not deliberations in connection with an administrative adjudicatory proceeding. As such, the nearly 3 ½ hour discussion that occurred in the closed session was not the type of discussion that is other exempt from being required to occur in an open session. Thus, the PRC violated the Open Meetings Act by discussing a non-exempt subject outside a meeting open to the public.

We are therefore respectfully submitting this request to have your office investigate the PRC’s procedural and substantive violations of the Open Meeting Act that occurred during the December 15, 2021 meeting.

Respectfully,

SaucedoChavez, P.C.

/s/ Christopher T. Saucedo
Christopher T. Saucedo

Cc: Wayne Propst
Michael Smith
Ashley Schannauer

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
December 15, 2021**

TIME: 9:30 a.m.

PLACE: Zoom Virtual Meeting

I. CALL TO ORDER AND ROLL CALL

The 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. Commissioner Stephen Fischmann, Chairperson, called the Open Meeting to order at 9:30 a.m. through Zoom, with remote access for the public through Youtube. A quorum was present remotely as follows:

Members Present:

Commissioner Joseph M. Maestas, District 3
Commissioner Cynthia B. Hall, District 1
Commissioner Jefferson L. Byrd, District 2
Commissioner Theresa Becenti-Aguilar, District 4
Commissioner Stephen Fischmann, Chair, District 5

Members Excused:

Staff Present:

Wayne Propst, Chief of Staff
Michael Smith, Acting General Counsel
Judith Amer, Associate General Counsel
Russell Fisk, Associate General Counsel
Hans Muller, Associate General Counsel
Robert Lundin, District 3 Executive Assis
Rene Kepler, HR Director
Isaac Sullivan-Leshin, OGC Paralegal
John Reynolds, Utilities Division Director
Elizabeth Hurst, Hearing Examiner
Anthony Medeiros, Hearing Examiner
Brad Borman, Legal Division Director
Danielle Jimenez, Chief of Staff Executive Assistant
Sarah Valencia, PIO

Others Present

Carl Boaz, Stenographer



II. PLEDGE OF ALLEGIANCE/STATE PLEDGE

The Pledge of Allegiance and Salute to the New Mexico Flag were recited, led by Mr. Fisk.

III. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Byrd thanked Elizabeth Hurst for getting her work completed in a timely manner.

Commissioner Hall moved, seconded by Commissioner Byrd, to approve the agenda as presented. The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

A copy of the agenda is incorporated herewith to these minutes as Exhibit 1.

IV. INTRODUCTION OF SPECIAL GUESTS

There were no introductions.

V. PUBLIC COMMENT (30)

Jonathan Nez, Navajo Nation President, said he wanted to reaffirm the Navajo Nation's support for PNM in the abandonment of their ownership in the Four Corners Power Plant and sale of their interest to NTEC (Navajo Transitional Energy Company). The Four Corners Power Plant and Navajo mine have been key contributors to the Navajo economy for over 60 years. The RD (Recommended Decision) accurately captures the terms of the sale to the Navajo Nation of jobs and annual revenue. He said we continue to rely on them for the future. He appreciated that the RD acknowledges the Navajo Nation needs advance notice before Four Corners shuts down. He strongly supports the use of the Energy Transition Act (ETA) that provides \$16.5 million to help the Navajo Nation and other communities that are negatively impacted by the shutdown. The abandonment and sale of PNM's interest will benefit not only the Navajo Nation but public interest in general. He urged the Commission to approve this thanked them for allowing their comments. He indicated others would be testifying.

Athena Christodoulou said she is a retired Navy engineer and now an entrepreneur. Frac and burn, drill, and burn, dig and burn all add to the fossil filled air pollution. She said let's take back environmental rights and change the nasty habits. There are better things to do with rocks than burn them. She just heard about a consortium with New Mexico Tech, the New Mexico Bureau of Geology and the Navajo exploring rare earth elements, critical minerals, and high value carbon in the San Juan region mines and ash pits. She mentioned that because the contract between Arizona Public Service, PNM and NTEC, are possibly locking the mines into a bad habit of dig and burn, with no consideration of the surrounding communities and air quality. She urged Commissioners to examine the contract and make the best decision for PNM to be a climate hero, NTEC to break the dig and burn habit, and to protect the future air quality. She asked for abandonment on behalf of her new grandbaby.

Ron Flax-Davidson, Santa Fe resident, said it is clear under New Mexico law that the Commission has no authority to approve the reimbursement or securitization of investment by a public utility like PNM, unless such investment was previously determined to be prudent. PNM has not undergone the required prudence review nor received Commission approval for the Four Corners \$221 million investment. A prior HE recommended the \$148 million investment be denied as not prudent. He urged the Commission to reject the application for abandonment, sale, and securitization.

Sophina Tyler, said she serves as chapter vice president in the San Juan chapter in lower Fruitland New Mexico. Also, she serves as president of the District 13 Council representing four Navajo Nation communities. She submitted a document from District 13 for the record supports abandonment. She said she is frustrated that others are misrepresenting our communities or falsely claiming to be the voice of our community. The decision made today will impact her community and the Navajo Nation significantly. She doesn't want to hear what the Commission feels is best for the Navajo Nation; the reality is that jobs and revenue are at stake.

Norman C. Begaye said he is president of a chapter of the Navajo Nation that is adjacent to two power plants. He acknowledged Commissioner Teresa Becenti-Aguilar who promised before her election to represent the people in this area. He spoke on behalf of the chapter community members who support abandonment. Abandonment will allow the Navajo Nation to seasonally operate the plant and reduce emissions while providing much needed jobs. This is a well thought out plan put forward by PNM, NTEC, and the corporation with our local Northern Navajo community. He stands by the Navajo leaders and the northern Navajo communities support that abandonment will allow the Navajo Nation time to minimize the economic impact to our communities in the area.

Viridon Yazzie and Vivie Melendez from the same organization were recognized.

Mr. Fisk asked if the speakers represented NTEC. He provided instructions to the Commission that the OMA (Open Meetings Act) policy forbids comment by actual parties to a currently pending case in public comment. His understanding is that Navajo Energy is not actually a party to the matter, but they have substantial interest. They are the Party to which PNM would transfer the interest. Mr. Smith usually leaves it up to the Commission whether they choose to hear from the party.

Chair Fischmann suggested they be allowed to speak with the PRC mindful the party has a direct financial interest. There were no objections from the Commission.

Vivie Melendez, environmental safety manager of the mine, said she was born and raised in the area. Her job is important to her and her family and provides basic needs and to be financially prepared for emergencies, help out family members, and invest in hers and her community's future. She is proud to be a coal miner and employed by NTEC. Transferring PNM's interest is the most viable way to keep good paying jobs while providing time to transition from coal. Shutting down the plant without plans in place would not be the right thing.

Linda Burchfield urged the Commission to deny PNM's abandonment application. She is concerned if approved that the plant will not be able to close early. PNM revoked its promise in its contract with NTEC but signed a separate contract with Arizona Public Service (APS) and NTEC in June inhibiting the plant from closing before 2027. This contract will be invalidated if the abandonment proposal is denied. Also, NTEC stated their reason for buying is to keep burning coal in the plant as long as possible. PNM, NTEC and APS have committed to operate one of the two seasons, seasonally, in the June contract. That would appear to reduce emissions but will increase costs.

Lorenzo Bates said his position on behalf of the Navajo Nation Council is no different than the first time. His comments are related to the recommended amendment to be considered. That speaks to that NTEC will not prevent early closure. That the other owners will deal with it without NTEC's involvement is concerning. Any early closure considered, is a risk to the Navajo Nation in terms of employment and revenue.

Paige Grant stated the most straightforward solution to eliminate emissions from the Four Corners Power Plant, is to close it as soon as possible. The most efficient way to do that is require that PNM retains its ownership, i.e., deny PNM's request to abandon. The Four Corners plant is the mine's only customer. NTEC has stated they want a bigger state to keep the plant operating as long as possible. If PNM retains their share, there are abundant financial reasons for them to close the plant. Operating the plant is a money sink. Commissioner Maestas has pointed out that PNM was required to study early closure but failed to do so. But the majority owner, APS, has found retiring Four Corners early would save customers significant money.

Lucinda Bernalley said she is a retired educator residing in one of the chapters and a past president of that chapter. She said we have always supported the local coal industry, which self-sustained the community for 60+ years. Many of our members were employed there and at PNM and the San Juan mine. We always enjoyed an excellent relationship with our corporate neighbors, the mine, and the power plant. Many of their members are skilled laborers and contractors who are specialized. The community continues to support the Navajo Nation's interest, and many of their members are still working there. She recommends support.

Clayton Bernalley said he is a community member. His job and the jobs of his friends and family working at the mines, PNM, etc., depend on the decision of the PRC. He urged approval of abandonment and securitization. The likelihood of his friends and family who live in the community and support their families depend on approval. He urged approval of the abandonment and the transfer.

Al Bennett indicated he testified on the greenhouse effect in this area. He asked that they deny PNM's abandonment of the power plant. Their history has been racial discrimination in employment from the 60s through the 80s. Much of what is happening now is to dump it on the Navajos and have them clean it up. He does not want a trust fund or any Navajo Nation funding, used to clean the site once abandoned and shut down. They need their financial interests protected and PRC should deny abandonment.

Sandra Wheeler said she lives 20 miles from the power plant. PNM not only wants to sell Four Corners for a dollar, but that one dollar will also buy 75 million of PNM's own dollars. That is evidence of two things, first the sale is prohibited by the EPA. Second, that PNM's investment in the powerplant is highly imprudent. The value of PNM shares did not drop from \$1 billion when it reinvested in 2016, to -75 years later. The market was already dropping before 2016. Selling will also significantly "green" PNM's energy portfolio, despite that the sale of the coal plant would continue the destructive emissions even longer. Fortunately, the EPA requires PRC to disallow sales of fossil fuel plants as a way to improve renewable portfolios.

Seth Damon thanked Commissioner Becenti-Aguilar for representing the full interest of the Navajo people. He trusts that the Commissioners will follow the recommendation of the HE. He supports the filing as in the best interest for the Navajo Nation, the Navajo people living in the northern areas, and for New Mexicans. He understands there are opponents, but a compromise is to work together. That is something they need toward not only in the Four Corners area, but for Navajo/New Mexico constituents. He asked the Commissioners to demonstrate that they care about the Navajo people listening to them.

Mark Freeland, a member of the 24th Navajo Nation Council representing eight chapters, spoke on behalf of the communities. They request the approval of the Four Corners Power Plant as recommended by the HE. Approval would allow the Nation and the State to move toward renewable energy development. He asked Commissioners to consider how vital the plant has been to their local economies in jobs, revenues, and support of their local and chapter governments. The impact of the closure in Arizona resulted in a lot of displacement and loss of jobs. The Commission should recognize these communities are rural. They ask that the Commission approve the filing of this initiative.

Rickie Nez said he is the chair of the Resource and Development Committee and represents six chapters near the power plant. Part of the reason the Navajo Nation leadership supported the EPA is to support a responsible and just transition from coal resources. He asked the Commission not to lose sight of that. His concern is they will put all their eggs in one basket because of a few loud voices. They all need to be responsible and remember the Navajo people. He asked that Commissioner Becenti-Aguilar to lead the support of the Commission in the abandonment filing.

There was no response from Sherrell Mesa and Grace Chavez.

Robyn Jackson, a Navajo Tribal member said she has relatives who live in the Four Corner region and some work at the powerplant. They realize the coal industry is going. She asked with their health and well-being in mind that the Commission deny abandonment. PNM should not be able to transfer their share because NTEC is a troubling company. They have proven many times that they cannot handle decommissioning and reclamation. INTEC has proven it is not a responsible company and would likely continue to operate Four Corners. She asked the Commission to hear the voices about climate. NTEC would not best serve the Navajo people's interest.

Carol Davis spoke as a member of the public and an enrolled member of the Navajo Nation. She has immediate family who reside in the Four Corners region. She asked for the record that the Commission reject the recommendation and deny abandonment. The transfer of PNM of New Mexico's 13% ownership share to NTEC is not in public interest. NTEC is not the Navajo Nation, nor does it represent any arm of the Nation. They have a history of not acting in the best interest of the Navajo people or the Navajo Nation government. In 2019 without the knowledge or approval of the Navajo Nation Council, NTEC acquired three coal mines and assets in Wyoming and Montana. If NTEC takes over Four Corners, they will likely keep it operating. NTEC is a rogue company and is not transparent with the tribal government. That is documented by a YouTube video.

Gilbert Budoni was not present at the time he was called on. Chair Fischmann suggested returning to him later.

Paul Gibson, cofounder of Retake Our Democracy, and a PNM customer said the Four Corners powerplant is one of the oldest, dirtiest burning plants in the country. It is marked by decades of equipment failures, forced outages and multiple attempts for pollution control. Rising costs have led to PNM to wanting out and asking its customers to pay for more than \$300 million in improvements and other costs. To justify that demand, the utilities invoked the ETA. A 2019 law heralded by environmentalist is a roadmap to a transition from fossil fuels. A landmark legislation established financial tools to help New Mexico close its coal plants and transition economies for the surrounding communities. The intent was to ensure the Four Corners plant closed, not to give to another entity. If the RD is approved, not only will the powerplant continue to spew methane for another 10 years, but PNM ratepayers will be paying for imprudent investments for the next 25 years, and PNM shareholders will be rewarded for their investments. He asked the Commission to please reject abandonment.

Ms. Valencia called Gilbert Budoni, Richard Begaye, Shalin Budoni, Reticia Begay, Acacia Begay, Grace Chavez, Remi Nelson, Donald Bennally without a response.

There were no other public comments.

VI. CONSIDERATION AND APPROVAL OF PRIOR MEETING MINUTES

• **Minutes of November 17, 2021 Open Meeting**

Commissioner Hall moved, seconded by Commissioner Becenti-Aguilar, to approve the minutes of November 17, 2021 Open Meeting as presented. The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

VII. CONSENT ACTION ITEMS

A. Transportation Matters:

- 1) **11-00224-TR-M IN THE MATTER OF COMPLIANCE WITH TH FINAL ORDER
CONDITIONALLY GRANTING LIMITED AMENDED AUTHORITY TO
RUNNING BEAR, INC. D/B/A/ ROCKY MOUNTAIN EMS IN CASE NO. 10-
00064-TRM
Hans Muller POTENTIAL ORDER**

- 2) **20-00079-TR-M** IN THE MATTER OF TRANSPORTATION DIVISION'S REQUEST TO GRANT WAIVER FROM NMPRC TRANSPORTATION RULES 18.3.4.12(C)(9) NMAC & 18.3.14.11 (A) NMAC & 18.3.8.11 NMAC
Judith Amer POTENTIAL ORDER
- 3) **20-00133-TR-M** IN THE MATTER OF THE APPLICATION OF VILLAGE OF CLOUDCROFT, MUNICIPALITY DBA CLOUDCROFT FIRE DEPARTMENT FOR REISSUANCE OF CERTIFICATE NO. 13953 TO PROVIDE AMBULANCE SERVICE
Judith Amer POTENTIAL ORDER ON REISSUANCE
- 4) **21-00194-TR-EN** IN THE MATTER OF THE INVESTIGATION OF LOCO MOVERS, INC.
Hans Muller POTENTIAL ORDER

B. Utility Matters:

- 5) **21-00112-UT** IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES PURSUANT TO THE COMMUNITY SOLAR ACT
Russell Fisk POTENTIAL ORDER REGARDING MOTION OF COALITION FOR COMMUNITY SOLAR ACCESS FOR EXTENSION OF RESPONSE AND REPLY COMMENTS
- 6) **21-00235-UT** IN THE MATTER OF THE STATE RURAL UNIVERSAL SERVICE FUND 2022 PER-CONNECTION CHARGE AND FUND SIZE CALCULATION
Russell Fisk POTENTIAL ORDER REGARDING ADOPTION OF REVISED FORMS AND INSTRUCTIONS FOR 2022
- 7) **21-00280-UT** IN THE MATTER OF THE APPLICATION OF EPCOR WATER NEW MEXICO INC. FOR AUTHORITY TO ISSUE AN UNSECURED, LONG-TERM PROMISSORY NOTE IN AGGREGATE PRINCIPAL AMOUNT OF \$5,000,000
Elizabeth Hurst
Russell Fisk POTENTIAL ORDER REGARDING RECOMMENDED DECISION

Commissioner Becenti-Aguilar moved, seconded by Commissioner Maestas, to approve the orders for the Consent Action items.

Mr. Fisk read the captions for the seven Consent Action cases.

The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

DISCUSSION WITH GENERAL COUNSEL ON THE STATUS OF HIS WORK

The Commissioners, in light of the impending Four Corners abandonment case, discussed what Mr. Smith was working on regarding his cases.

Mr. Smith related the status on his work. There are other alternatives the Commission could consider issuing. He advised consideration of a closed session to discuss that. Some direction from the Commission would allow him to propose what he would put in writing in a final order. The Commissioners could be frank and unencumbered to advise him in a closed session to allow that deliberation. All courts do not deliberate in public. Although the PRC strives for transparency, his legal advice can best be given to the Commissioners unencumbered in a closed session. He explained they are drafts and not yet fleshed out in a proposed order. Having the Commission's preferences would help.

Commissioner Fischmann asked if he needed more time to develop the drafts.

Commissioner Hall suggested he could avoid some work in drafting if we had a closed session.

Mr. Smith agreed.

Commissioner Becenti-Aguilar said if Mr. Smith has new information for the Commission, a closed session was okay with her. She didn't need more time to review the documents provided.

VIII. REGULAR ACTION ITEMS

A. Transportation Matters:

- 8) **21-00296-TR-M IN THE MATTER OF STAFF'S PETITION TO GRANT A PANDEMIC-RELATED WAIVER TO AMBULANCES FROM RULE 18.3.14.11(A) NMAC**
Hans Muller **POTENTIAL ORDER ON PETITION**

Mr. Muller presented information regarding this matter, based on Staff's position asking for a waiver from the requirements of Rule 18.3.14.11(A) and the matter was approved on consent in 20-00079-TR-M. The New Mexico Department of Health has asked the PRC to continue this waiver during the pandemic until the end of the public health emergency. That email also requested a waiver on 18.3.14.8 but Transportation Staff felt that waiver was not needed and did not recommend it. This waiver was previously granted in a stay-at-home order. The proposed order here would allow emergency service to be provided when there are staffing shortages. The waiver is in the public

interest to provide critical services during the pandemic. The proposed order would allow ambulances to provide services when only one EMT is available, and the emergency service would not otherwise be provided. This waiver is in the public interest. Reports to the Commission would be required for six months each month and then reports submitted every three months.

Commissioner Becenti-Aguilar moved, seconded by Commissioner Hall to approve the order as proposed. The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

EXECUTIVE SESSION

Commissioner Hall requested to go now into closed session.

Mr. Smith said the closed session would be pursuant to Section 10-15-1 (H) (3) of the Open Meetings Act for deliberations.

Commissioner Hall moved, seconded by Commissioner Becenti-Aguilar, to go into closed session pursuant to Section 10-15-1 (H) (3) NMSA 1978. The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

Ms. Valencia explained the procedures with virtual meetings. She would automatically move the Commissioners to the breakout room.

The Commission went into closed session at 10:40 a.m.

The Commission ended the closed session at 2:23 p.m.

Commissioner Fischmann moved, seconded by Commissioner Hall and Commissioner Byrd, to return to open session. The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

Mr. Smith announced to the public that the only matters considered by the Commissioners while in closed session were deliberations on the Recommended Decision on request for approval of the selling of PNM's interest in the Four Corners

Power Plant and issuance of securitized financing in Case 21-00017-UT and no other matters were considered.

Commissioner Fischmann commented they discussed it in “excruciating detail.”

B. Utility Matters:

- 9) **21-00017-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER**

Anthony Medeiros

Michael Smith POTENTIAL ORDER

Commissioner Fischmann said the best way to understand this matter was for Mr. Smith to read the order.

Mr. Smith agreed and read the order as follows.

The Commission finds and concludes that the Recommended Decision, including the statement of the case, discussion and Findings of Fact and Conclusions of Law, by the Hearing Examiners, should be adopted and approved as the Order of the Commission except to the extent that it is expressly modified by this Order. On November 22, 2021, exceptions to the RD were filed by the Albuquerque Bernalillo County Water Utility Authority, the County of Bernalillo, New Energy Economy, the New Mexico Attorney General, the Board of County Commissioners of San Juan County, the Sierra Club, and PRC Utility Division Staff, the Coalition for Clean Affordable Energy, and Western Resource Advocates, jointly.

1. On November 22, 2021, exceptions to the RD were filed by the Albuquerque Bernalillo County Water Utility Authority and the County of Bernalillo jointly, New Energy Economy, the New Mexico Attorney General, the Board of County Commissioners of San Juan County, Sierra Club, NMPRC Utility Division Staff and the Coalition for Clean Affordable Energy and Western Resource Advocates jointly.
2. On November 30, 2021, a response to exceptions was filed by PNM.
3. Staff’s Exception argues that the RD errs in granting PNM approval to abandon the Four Corners Power Plant “despite the complete lack of evidence identifying

adequate replacement resources.” Staff asserts “nothing in the Energy Transition Act, Section 62-18-1 to -23, changed the legal standard for abandonment.”

4. Staff argues that the Commission analyzes abandonment requests using a test adopted from *Commuters’ Committee v. Pennsylvania Public Utility Commission*, and under that test, the *Commuters’ Committee Factors* consider: 1) The extent of the carrier’s loss on the particular branch or portion of the service, and the relation of that loss to the carrier’s operation as a whole; 2) the use of the service by the public and the prospects as to future use; 3) a balancing of the carrier’s loss with the inconvenience and hardship to the public upon discontinuance of such service; and 4) the availability and the adequacy of service to be substituted.
5. Staff argues PNM failed to identify sufficient generation resources to replace Four Corners Power Plant and that this failure requires the Commission to deny the abandonment application. Staff notes that PNM declined to propose actual replacement resources in this case and instead chooses to defer such a proceeding under Section 62-18-4 (D).
6. Staff asserts that the availability and the adequacy of service to be substituted remains a “critical component” of the *Commuters’ Committee Factors* for the Commission to adequately review an abandonment application. Staff asserts PNM’s failure to identify and propose actual known replacement facilities prevents the Commission from granting approval to abandon Four Corners Power Plant.
7. Staff argues the RD “basically ignores Staff’s concerns” and instead finds PNM has “reasonably demonstrated” that replacement resources can be deployed prior to the abandonment of Four Corners Power Plant based on testimony from PNM witness Phillips stating that PNM has already conducted an RFP for replacement resources and will file a replacement resource case for Four Corners Power Plant in the first quarter of 2022.
8. Staff argues: “This is astonishingly thin evidence upon which to base a finding that will place an enormous risk on New Mexico’s electric customers. PNM has already had to brief the Commission on the construction delays of the replacement resources for the San Juan Generation Station. Given the difficulties in constructing resources approved well over a year ago, it would be irresponsible for the Commission to authorize PNM to abandon its interest in the Four Corners Power Plant without full confidence that adequate service will be able to be maintained. Self-serving assurances by PNM’s witness without any supporting facts cannot justify the Commission accepting this risk.”

9. Staff further argues that because abandonment of Four Corners Power Plant will not include shutting that plant down but will instead involve PNM's transfer of its interest in the Four Corners Power Plant to Navajo Transitional Energy Company, the requested abandonment of the Four Corners Power Plant will not further one of PNM's asserted purposes of the ETA - to accelerate the elimination of coal-fired generation from the State of New Mexico.
10. NEE's Exception joins in Staff's argument that PNM's proposed abandonment failed to satisfy the Commuters' Committee Factors test. NEE also focuses on the fourth factor of the Commuters Committee's Test: the availability and adequacy of substitute service. NEE asserts this is the first abandonment case that has not included a proposed replacement power package for Commission review and PNM has taken the position in a number of cases, including in argument to the New Mexico Supreme Court, "that without specific replacement portfolio options for the Commission's review it could not adequately meet its burden of proof for abandonment" under the Commuters' Committee test. NEE argues that PNM is bound by its position and the Commission should find that "PNM cannot meet its burden of proof without actual replacement power scenarios that can meet reliability, cost, environmental standards, and adequately accommodate the whole of operations."
11. San Juan Country intervenors also argue "[There is no dispute that Four Corners Power Plant is a qualifying generating facility as defined in Section 62-18-2(S)(4); that the Four Corners Power Plant was not operated by PNM prior to the effective date of the ETA and PNM proposes to abandon it prior to January 1, 2032, as provided in the Section 6218-2(S) definition." SJC concludes that PNM is required to identify replacement resources satisfying the requirements of Section 62-18-3(F) in order "to avail itself of the rest of the ETA, otherwise the application should be denied."

PNM RESPONSE

12. PNM's response argues the HE correctly found that PNM has reasonably demonstrated that replacement resources can be deployed prior to its abandonment of Four Corners and the ETA explicitly permits the utility to "defer applications for needed approvals of new resources to a separate proceeding." PNM asserts it has already conducted an RFP for Four Corners Power Plant replacement resources, which it asserts "yielded robust results" and PNM intends to file a replacement resource case in the first quarter of 2022 based on this RFP.
13. PNM further argues that the Commission has taken the position that it is important to resolve the questions of abandonment prior to considering

replacement resources, pointing to the Commission's 5/21/21 Initial Order in Case 21-00083-UT.

14. PNM asserts: "A denial of abandonment at this stage will only delay a proceeding to obtain Commission approval for replacement resources, which will have the cascading effect of delaying replacement resource deployment. The advantage of addressing abandonment now and moving on to a replacement resources case is that a Commission order on a replacement resources case can be expected by the end of 2023 if the case is filed in early 2022, giving developers the better part of two years to bring resources online before the summer peak of 2025. As such, any projects chosen from PNM's RFP for Four Corners Power Plant will have a longer lead time to complete construction as compared to the developers of replacement resources for the San Juan Generating Station."

COMMISSION RESPONSE

15. The RD found that PNM witness Mr. Fenton "asserted that the last three Commuters' Committee factors, properly analyzed, should account for the net public benefit of abandoning Four Corners Power Plant in the form of cost savings for customers."
16. While the RD found that "PNM has established by a preponderance of the evidence that the proposed abandonment satisfies the net public benefit and the Commuters' Committee standard," the RD bases this assessment on testimony by PNM witness Phillips based only on modeling conducted by PNM, rather than on actual replacement resources, PNM asserts that it shows "that the abandonment will cost ratepayers significantly less over the next 20 years than continuing in Four Corners Power Plant until 2031, with cost savings between \$30 million and \$300 million on a 20-year NPV basis and expected median savings of approximately \$143.7 million."
17. Notwithstanding this conclusion, the RD acknowledges: "However, given that a few cases do approach the breakeven point, Phillips conceded that his analysis "results in a non-zero probability that customers could face an increased cost, but such an outcome is highly unlikely."
18. The RD also notes: "While the actual replacement portfolio will not be determined until PNM has completed its RFP evaluation process, Phillips believed that the results of his analysis using what he termed the "generic placeholders" provides reliable insight into what a potential replacement portfolio might look like and cost; under its "Current Trends and Policy" assumptions, i.e., those which reflect PNM's view of the most likely set of conditions in the future."

19. Section 62-18-4 states: “The qualifying utility or the Commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.”
20. Accordingly, in order to justify deferral of an actual application for approval of new resources to a separate proceeding, the express unambiguous language of the statute requires a determination of whether the application satisfies the requirement that it identifies “adequate potential new resources” and that those resources be “sufficient to provide reasonable and proper service to retail customers.”
21. While the RD concludes “The evidence adduced by PNM on the issue of potential resource adequacy, therefore, is sufficient to satisfy the Company’s deferral of an application for Four Corners replacement resources pursuant to ETA Section 62-18-4(D),” the Commission disagrees that modeling alone, based on “PNM’s view of the most likely set of conditions in the future,” is sufficient to meet ETA Section 62-18-4(D)’s requirements that the application both identify “adequate potential new resources” and that the potential new resources are “sufficient to provide reasonable and proper service to retail customers.”
22. Unlike the past applications to the Commission, PNM’s application has not identified any of the actual potential new resources that PNM will propose. Instead, PNM proposes only proxy resources. As NEE notes, in prior cases the Commission and parties have been able to review actual proposed resources to consider while addressing an abandonment application and determining whether the Commuters’ Committee standards have been met.
23. Moreover, the RD further notes: “IRP director, Nicholas Phillips, testified that PNM has already conducted an RFP for replacement resources for Four Corners. Mr. Phillips said that PNM will file its replacement resource case in the first quarter of 2022.”
24. PNM’s proposed reliance on modeling, is not a sufficient substitute for the review of the actual replacement resource portfolio the Commission and intervenors have been able to perform in prior cases such as 19-00018-UT, especially when PNM’s own testimony indicates the actual replacement resources are already being reviewed.
25. Moreover, as the RD notes: “assuming a Commission order in the replacement resources case occurs by the end of 2023, Phillips estimated that developers will have the better part of two years to bring resources online before the summer peak of 2025. He also noted that any projects chosen from this RFP will have a

much longer lead time to complete construction as compared to the developers of replacement resources for the SJGS.”

26. Accordingly, PNM acknowledges, there is ample time for the Commission to review PNM’s actual proposed replacement resources in determining whether the proposed abandonment should be granted especially since PNM indicates it will be ready to file its application in the first quarter of 2022.
27. Furthermore, Mr. Phillips’ testimony above seeks to address concerns about the supply chain issues that have recently affected PNM’s efforts to bring the SJGS replacement resources online in a timely manner in order to meet peak demand following the retirement of SJGS. While the PPA’s for those projects provide some insulation to ratepayers and the utility from the cost increases associated with those supply chain issues, these issues have led to the default of at least one developer under the PPA approved by the Commission. Review of the actual results of PNM’s RFP and the resulting bids will provide the Commission with up-to-date information.
28. While PNM argues that “the Commission has taken the position that it is important to resolve the issue of abandonment prior to considering replacement resources” its reliance on the Commission’s 5/21/21 Initial Order in Case 21-00083-UT is misplaced. In that case, as in the other replacement resource cases, PNM did propose specific replacement resources. The Commission’s order referenced by PNM was focused on the six-month time limitation for the approval of a long-term purchased power agreement under Rule 17.9.551.10(B) NMAC. That order provided that, consistent with prior Commission cases, the time limitation for a PPA application should not act to impose a deadline on the determination of an abandonment request because abandonment applications are not subject to any limitation by a statute or rule.
29. Consistent with that position, in that order the Commission found “PNM’s requests for approval of the replacement resource, PPAs are necessarily dependent on the Commission’s approval of PNM’s request for abandonment of the Leased Interests to supply the basis for the requisite finding of “need” for the replacement resources. Accordingly, the basis for PNM’s separate request for approval of the PPAs and any applicable time period begins only after the Commission acts on the abandonment request.”
30. Moreover, the Commission also expressly found that applying the time limit on a PPA application did not justify deferral of action on such request, stating: “The Commission also recognizes PNM’s request for expediency in order to meet Commercial Operation dates in advance of the 2023 Summer Peak. In order to balance these considerations and provide sufficient opportunity for full

consideration of PNM's total Application, at this time the Commission will not defer consideration of PNM's requests for approval of the proposed PPAs to a separate proceeding, but will address them in this docket together with the abandonment request subject to the finding above that the six-month time limit of 17.9.551.10(B) NMAC has not been triggered."

31. Accordingly, the Commission finds that PNM's Application for Abandonment should be denied based on its failure to identify adequate potential new resources sufficient to provide reasonable and proper service to retail customers as required to defer its application for needed approvals for new resources to a separate proceeding under Section 62-18-4 as well as the impact the lack of such information has on the Commission's ability to analyze the application for abandonment under the Commuter's Committee Factors.
32. The Sierra Club Exception 1.3 argues that the abandonment application should be denied due to PNM's failure to comply with the terms of the stipulation approved by the Commission in Case 16-00276-UT. Sierra Club points out that PNM agreed to present economic modeling of exiting Four Corners in 2024 and 2028 under a scenario in which PNM breaches its contractual obligations, a provision that the Commission approved in its final order. Sierra Club asserts the RD errs in finding that "requiring PNM to conduct a contractual breach obligation analysis would not be a worthwhile or sensible exercise."
33. Sierra Club argues: "The parties in Case No. 16-00276-UT bargained for this provision in the stipulation; Sierra Club would not have agreed to the stipulation in Case No. 16-00276-UT if it knew that PNM would be allowed to breach the Stipulation. Sierra Club asserts: "the very reason that the parties included this provision in the stipulation was to have a quantitative analysis of the economics of exiting Four Corners by breaching PNM's contractual obligations, rather than rely on the very speculation that the Hearing Examiner engages in. If PNM had complied with its obligations, the Commission could have compared PNM's proposed abandonment to alternatives for exiting Four Corners prior to 2031. Instead, PNM deprived the parties and the Commission of a proper baseline against which to compare PNM's proposed abandonment. This renders PNM's modeling unreliable, as well as WRA's modeling, which uses the same baseline PNM used."

PNM RESPONSE:

34. PNM responds that Sierra Club's exception asserting that the PNM did not prepare a modeling scenario for a 2028 exit from Four Corners Power Plant assumed PNM breached its contractual obligations. Sierra Club argues that by not modelling a deliberate breach of its contractual obligations, "PNM has deprived the parties and the Commission of a proper baseline against which to compare PNM's proposed abandonment." The Abandonment RD concludes, however, that such

a baseline would be meaningless because, among other reasons, PNM would be exposed to significant default payments and penalties but would still remain bound to pay certain costs while the coal plant supplies electricity for the benefit of other utilities' customers, in addition to having to secure replacement resources for its own customers. Given these assumptions, the HE reasonably found "that requiring PNM to conduct a contractual breach option analysis would not be a worthwhile or sensible exercise."

COMMISSION RESPONSE:

35. The Commission finds that PNM's failure to comply with an express provision of the stipulation in Case 16-00276-UT and its unilateral decision to substitute instead the proxy modeling it has submitted in this case without advance authorization from the Commission or the signatories to that stipulation clearly constitutes a breach of the terms of the stipulation.
36. This breach denied those signatories to that stipulation of modeling information and impacts the parties' and the Commission's ability to review and analyze PNM's proffered proxy modeling information that PNM now relies on. While the RD concluded that there was no need to compel PNM to provide the modeling it agreed to provide, based on an assessment that such modeling would be "meaningless" because of the default payments and penalties PNM would incur, as well as continuing obligations for certain costs associated with the plant's continued operation, as well as the cost of replacement resources, the fact remains that PNM breached its obligation.
37. Accordingly, PNM's breach is a separate basis on which to deny PNM's current application for abandonment and any subsequent refile of an application for abandonment of Four Corners Power Plant, PNM shall include the modeling it agreed to perform under its agreement under the stipulation in Case 16-00276-UT.
38. The Commission also notes Sierra Club's argument that, based on its witness Dr. Jeremy Fisher's testimony, if PNM's analysis of the alternative to abandonment were corrected to reflect a disallowance of the challenged SCR and other expenditures abandonment, it would be shown to "cost customers more than not abandoning the plant, even if the plant continues to operate through 2031."
39. Sierra Club argues that "Dr. Fisher calculated \$146 million as the amount to be disallowed because of PNM's imprudent decision to remain an owner of Four Corners after 2016, which is comprised of: the undepreciated amount of the Four Corners capital costs spent from July 2016 through 2018, which is \$118 million (out of \$131.3 million in actual capital clearings, and compared to PNM's estimate

of \$148.1 million in expected capital costs); the undepreciated amount of PNM's share of capital costs at Four Corners from January 2019 through June 2020, which is \$20.8 million; and the undepreciated amount of PNM's share of capital costs at Four Corners from July 2020 through December 2020, which is \$7.2 million."

40. Sierra Club concludes: "The potential \$146 million disallowance short-circuited by abandonment exceeds the \$143 median savings Mr. Phillips calculated."
41. While in this order the Commission does not rule on Sierra Club's argument, the issues in that argument do underscore the need to serve the public interest by rendering a final decision on the merits of the prudence issues concerning the expenditures on SCR and other improvements reserved to this case by the Commission's orders in the 16-00276-UT case which the HE was unable to resolve and issue a recommendation on due to the deficiencies outlined in his RD.
42. Accordingly, the prudence issues concerning the expenditures on SCR and other improvements reserved to this case by the Commission's orders in the 16-00276-UT case and which have not been resolved by this proceeding should be addressed in any subsequent proceeding on an application by PNM for abandonment of Four Corners Power Plant and request for approval of replacement resources filed in accordance with this order and Section 62-18-4 D.
43. Because the entry of an order consistent with the Commission's findings of facts and conclusions stated herein are conclusive of PNM's application, the Commission does not address the remaining recommendations of the HE and exceptions pertaining to those recommendations.

IT IS THEREFORE ORDERED:

- A. The Statement of the Case and the Recommended Decision on PNM's Request for Sale and Abandonment of PNM's Interest in the Four Corners Power Plant is adopted and is incorporated herein by reference as part of this Order except to the extent expressly modified by this order.
- B. The Commission rejects the Recommended Decision's Finding of Facts and Conclusions of Law as they relate to the HE's recommendations concerning PNM's failure to satisfy ETA Section 62-18-4(D)'s requirement that PNM's deferral of an application to approve new replacement resources to a proceeding to both identify "adequate potential new resources" and that the potential new resources are "sufficient to provide reasonable and proper service to retail customers" as well as the effect of such failure on the Commission's ability to perform the necessary analysis under the Commuters' Committee Factors.
- C. PNM's Application for Approval of the Sale and Abandonment of the Four Corners

Power Plant is denied based on the findings of fact and conclusions of law stated above.

- D. PNM's corresponding requests for the Issuance of a Securitized Financing Order is denied based on the Commission's denial of the Application for Approval of the Sale and Abandonment of the Four Corners Power Plant.
- E. The Hearing Examiner in any subsequent proceeding on an application by PNM for abandonment of Four Corners Power Plant and request for approval of replacement resources filed in accordance with this order shall address and resolve the outstanding issues concerning the prudence of expenditures on SCR and other improvements reserved to this case by the Commission's orders in the 16-00276UT case which were not resolved by this proceeding.
- F. In any subsequent refiling of an application for abandonment of Four Corners Power Plant, PNM shall include the modeling it agreed to perform under its agreement under the stipulation in case 16-00276-UT.
- G. In the event PNM does not file an updated application for abandonment of Four Corners Power Plant consistent with this order in a timely fashion or other factors delay the Commission's review of the issues concerning the prudence of expenditures on SCR and other improvements, those issues may be addressed in a separate proceeding.
- H. All other pending motions or exceptions not expressly addressed are deemed resolved consistent with this order.
- I. This Order is effective immediately.

Commissioner Maestas moved, seconded by Commissioner Hall, to approve the order as presented.

Commissioner Fischmann noted that basically, this order just asked for more information on the issues of pertinency and all the issues of the replacement portfolio – information the Commission needs to make a good decision. If we approve this order, which he supported, we are open to PNM following up with the requested information and it should be available early in 2022. The request is straightforward.

Commissioner Maestas commented that most people who are knowledgeable about the Energy Transition Act and understand its intent, may see the end of this abandonment and securitization as completely contrary to the intent of the ETA, because it has continued to operate even if this abandonment eventually goes through. We all know the purpose of the ETA is to not just allow PNM to divest itself of the coal-burning

resources, but to allow New Mexico to transition away from any coal-burning resources in the State. He thought this makes prominent the issue of prudence of those questionable capital investments associated with the SCR controls and other life-extending improvements. That prudence needs to happen and be resolved, if not in this proceeding, in a subsequent proceeding. This order is well-balanced and also considers the primary issues at play in this case. It is certainly supported by many of the parties that filed exceptions to the RD. He felt good about this decision and knew the Commission has not yet heard the last on this matter.

Commissioner Becenti-Aguilar said the Order clearly states the problems that are in PNM's application and the Commission had a thorough discussion on how PNM was deficient in being legally bound obligations. It is a complex undertaking to review and analyze the application. She could support the decision to deny the application.

Commissioner Hall also stated her support. She was the only Commissioner present for Case 16-00276-UT when the order was issued on prudence determination on those assets that were provisionally included in rate base and ratepayers have been paying on for the intervening years. It is excellent to have a vehicle that will bring this issue to the fore and finally addressed on whether those assets were imprudently acquired. She was gratified to be taking care of that issue now. With the order, the Commission will have more than just a prediction from a model on which to base the outcome to know what the replacement resources will be.

Commissioner Byrd had no comment to make.

Commissioner Fischmann noted the HE used "grave injustice" if the Commission didn't get the appropriate prudence review done. And as we heard in the Order, that prudence review has not yet been done. This is a chance to make sure it gets done timely.

The motion was approved by a unanimous 5-0 roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and none voting against.

Commissioner Fischmann pointed out this is his last meeting as Chair and wanted to express his gratitude for the opportunity to work with this great group of Commissioners who work productively and effectively with well-reasoned decisions, sometimes in difficult circumstances.

Commissioner Hall thanked him for doing a magnificent job as Chair of the Commission, always inviting comments from other Commissioners, and establishing a very positive tone with which the Commission can work, listen to each other, and support each other in a civil, gracious tone.

Commissioner Byrd also wanted to thank Michael Smith for the many hours he put in to help bridge the gap and get the order put together. It was not easy for him and not easy for the Commissioners to get to this point. Mr. Smith did a great job of navigating those waters for us.

Commissioner Fischmann agreed.

IX. COMMUNICATIONS WITH CHIEF OF STAFF

Mr. Propst said he was continuing to progress with the Technical Advisory positions for the Commission. The notice has been posted for a couple of weeks and he will continue to update the Commission on it and on the upcoming Legislative Session. Prefiling legislation begins on January 4, 2022 and we will have a better idea then on budget for the Commission.

He thanked the Commission for a good six-month start for him. It has been a pleasure working with all Commissioners and he wished happy holidays and safe time off for all Commissioners and their families.

X. COMMUNICATIONS WITH GENERAL COUNSEL

Mr. Smith said he was all talked out and would not say more as an early Christmas present to Commissioner Byrd.

XI. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Maestas also thanked Mr. Smith for his herculean effort to get the order out on the Four Corners Power Plant case. His Assistant, Christopher Hall sent a letter to all Commissioners intended for all IOU's and KCEC requesting their participation in the distribution, posting capacity, and analysis pilot program. Commissioner Hall agreed to co-sign the letter with him. He invited other Commissioners who might want to sign.

Commissioner Fischmann said yes to the invitation to sign.

Commissioner Maestas said it has been a pleasure being a member of this body under Commissioner Fischmann's leadership, who has shown diplomacy, almost always speaking last among Commissioners, and seem to find the common ground to achieve a

consensus. Those attempts are quite noble. He promised Commissioner Fischmann that he would be roasted in January.

He wished everyone happy holidays and Happy New Year – to all Staff and Commissioners. “We are not yet together in the new building and hoped the pandemic would get under control so we can all see each other on a regular basis in the coming year.”

Commissioner Becenti-Aguilar was also very happy to approach the end of the year with working together as a whole organization. In looking at the Annual Report, she mentioned several staff members who have done an outstanding job. Commissioner Fischmann has also done a wonderful job and urged utilities and staff to do their jobs. We are a better organization because of his leadership.

Commissioner Hall said Merry Christmas and Happy New Year to all Staff and Commissioners. She also commended Mike Smith for his tremendous effort to get us through several very difficult cases.

Commissioner Fischmann noted the work of Staff has allowed us to get our work done. Happy Holidays to everybody.

Commissioner Byrd thanked Commissioner Fischmann for his leadership through the year without ever showing up at the office. Everything the other Commissioners have said is spot on. Thanks for your grace that allows people to speak their minds and helped reach agreements. He also looked for Commissioner Maestas and Commissioner Hall to follow his example. We are here to do the work of the people, and by hearing all sides of the story, we come to a better resolution. It is the mindset of the five Commissioners here.

Merry Christmas to our Staff. This is a time about spending it with your families. You have spent the last eleven and a half years with this family, and we are grateful to have you on board and hope everything is well with each of you. And we hope you have a very Merry Christmas and I look forward to seeing more and more of our Staff face-to-face in the coming months and certainly before the end of our term here at the end of next year. I hope we get back on a familiar basis with Staff. I have missed that and knowing how each individual is doing. Merry Christmas and Happy New Year to me fellow Commissioners and all our Staff. And to everybody listening. Thank you, Mr. Chair, for this time.

XII. ADJOURNMENT

The meeting was adjourned at 3:20 p.m.

ATTEST:

/s/ Carl Boaz, electronically signed

Carl Boaz, Stenographer

APPROVED: January 19, 2022

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER





NEW MEXICO PUBLIC REGULATION COMMISSION

NOTICE OF OPEN MEETING

**OPEN MEETING: REGULAR WEEKLY MEETING Wednesday,
December 15th, 2021, 9:30 a.m.**

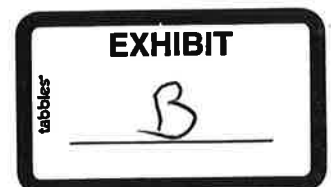
MEETING TAKING PLACE THROUGH ZOOM ONLY

AGENDA

- I. CALL TO ORDER AND ROLL CALL**
- II. PLEDGE OF ALLEGIANCE/STATE PLEDGE**
- III. CONSIDERATION AND APPROVAL OF THE AGENDA**
- IV. INTRODUCTION OF SPECIAL GUESTS**
- V. PUBLIC COMMENT**
- VI. CONSIDERATION AND APPROVAL OF PRIOR MEETING MINUTES**
 - Minutes of November 17, 2021 Open Meeting
- VII. CONSENT ACTION ITEMS**

A. Transportation Matters:

1)	11-00224-TR-M Hans Muller	<p>IN THE MATTER OF COMPLIANCE WITH THE FINAL ORDER CONDITIONALLY GRANTING LIMITED AMENDED AUTHORITY TO RUNNING BEAR, INC. D/B/A ROCKY MOUNTAIN EMS IN CASE NO. 10-00063-TRM</p> <p><u>POTENTIAL ORDER</u></p>
2)	20-00079-TR-M Judith Amer	<p>IN THE MATTER OF TRANSPORTATION DIVISIONS REQUEST TO GRANT WAIVER FROM NMPRC TRANSPORTATION RULES 18.3.4.12(C)(9) NMAC & 18.3.14.11 (A) NMAC & 18.3.8.11 NMAC</p> <p><u>POTENTIAL ORDER</u></p>



3)	20-00133-TR-M Judith Amer	IN THE MATTER OF THE APPLICATION OF VILLAGE OF CLOUDCROFT, MUNICIPALITY DBA CLOUDCROFT FIRE DEPARTMENT FOR REISSUANCE OF CERTIFICATE NO. 13953 TO PROVIDE AMBULANCE SERVICE <u>POTENTIAL ORDER ON REISSUANCE</u>
4)	21-00194-TR-EN Hans Muller	IN THE MATTER OF THE INVESTIGATION OF LOCO MOVERS, INC. <u>POTENTIAL ORDER</u>

B. Utility Matters:

5)	21-00112-UT Russell Fisk	IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES PURSUANT TO THE COMMUNITY SOLAR ACT <u>POTENTIAL ORDER REGARDING MOTION OF COALITION FOR COMMUNITY SOLAR ACCESS FOR EXTENSION OF RESPONSE AND REPLY COMMENTS</u>
6)	21-00235-UT Russell Fisk	IN THE MATTER OF THE STATE RURAL UNIVERSAL SERVICE FUND 2022 PER-CONNECTION CHARGE AND FUND SIZE CALCULATION <u>POTENTIAL ORDER REGARDING ADOPTION OF REVISED FORMS AND INSTRUCTIONS FOR 2022</u>
7)	21-00280-UT Elizabeth Hurst Russell Fisk CLICK HERE OR OPEN ADOBE ATTACHMENTS TAB FOR ACCESS TO RECOMMENDED DECISION	IN THE MATTER OF THE APPLICATION OF EPCOR WATER NEW MEXICO INC. FOR AUTHORITY TO ISSUE AN UNSECURED, LONG-TERM PROMISSORY NOTE IN AGGREGATE PRINCIPAL AMOUNT OF \$5,000,000 <u>POTENTIAL ORDER REGARDING RECOMMENDED DECISION</u>

VIII. REGULAR ACTION ITEMS

A. Transportation Matters:

8)	21-00296-TR-M Hans Muller	IN THE MATTER OF STAFF'S PETITION TO GRANT A PANDEMIC-RELATED WAIVER TO AMBULANCES FROM RULE 18.3.14.11(A) NMAC <u>POTENTIAL ORDER ON PETITION</u>
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B. Utility Matters:

9)	21-00017-UT Michael Smith Anthony Medeiros CLICK HERE OR OPEN ADOBE ATTACHMENTS TAB FOR ACCESS TO RECOMMENDED DECISION (ABANDONMENT) CLICK HERE OR OPEN ADOBE ATTACHMENTS TAB FOR ACCESS TO RECOMMENDED DECISION (FINANCING)	IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER <u>POTENTIAL ORDER</u>
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- IX. COMMUNICATIONS WITH CHIEF OF STAFF
- X. COMMUNICATIONS WITH GENERAL COUNSEL
- XI. COMMUNICATIONS WITH COMMISSIONERS
- XII. ADJOURNMENT

To obtain a copy of this agenda please log in the Commission's website at <https://www.nmprc.org/>.

The Commission will make reasonable efforts to post the agenda on the Commission's website at least 72 hours before the open meeting, but the inability to do so within the 72 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 AT (505) 467-9116 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.

PUBLIC COMMENT

All members of the public wishing to provide public comment may do so using the Zoom application or by calling in via telephone. Individuals wishing to comment must sign up to do so by contacting Isaac Sullivan-Leshin at isaac.sullivan-leshin@state.nm.us or (505) 670-4830 at least 2 hours prior to the start of the meeting. When sending an email to sign up for public comment please identify the name of the commentor(s), the name of the organization they represent (if any), and the topic or issue on which they desire to comment. The portion of the agenda allocated for public comment at any one open meeting shall be limited to a maximum of 30 minutes for all persons wishing to provide comment. The order of speakers will be based on the order in which speakers sign up, but public officials may be taken out of order. If a speaker is not present at the time he or she is called to provide comment, that speaker shall forfeit their opportunity to speak. **Public comment by an individual or entity shall be limited to no more than three (3) minutes** unless the Commission acts to extend the period. If the number of individuals on the sign-up sheet desiring to provide comment would exceed the allotted 30minute period, the Chair may limit individual remarks to a shorter time period. Individuals represented by or representing a common organization or association may be asked to select one individual to act as spokesperson to speak for the group. Individuals who sign up to comment, but either fail to do so or choose to speak for less than their allotted time, may not cede or yield their time to another speaker.

Written comments of individuals who cannot be physically present may not be read aloud at the meeting but may be submitted to the Commission.

The subject matter of public comments shall be relevant to matters within the Commission's jurisdiction. Public comment will not be permitted on pending rulemaking proceedings before the Commission once the opportunity for public comment in those proceedings has closed. Public comment by parties to a proceeding or adjudication pending before the Commission will not be permitted where the comment concerns matters at issue in such proceeding. The Chair shall retain the right to stop any speaker who raises an issue that is not under the Commission's jurisdiction or is subject to the restrictions above. Public comment will be received without Commission comment or response. However, individual Commissioners may at their option seek clarification or additional information from speakers through the Chair. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chair retains the right to exercise discretion in the implementation of this policy and may override the above rules in case of emergency or other unforeseen circumstances.

Speakers providing comment shall at all times conduct themselves in accordance with proper decorum. Profane or vulgar language or gestures will not be tolerated. Audience members shall not disrupt an open meeting by speaking without being recognized by the Commission and shall not incite others to do so. The Commission retains the right to remove disruptive attendees and individuals who fail to conduct themselves in accordance with these provisions from the Commission meeting.