



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 February 16, 2022 meeting, the PRC went into a “closed session” near the onset of the meeting. This “closed session” violated the Open Meeting Act as the issue discussed during said session is not one that is otherwise excluded.

Substantive Violation

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 February 16, 2022 meeting into a closed session, the PRC noted that it was doing so pursuant to the exception under 10-15-1(H)(3). *See* Minutes of PRC February 16, 2022 meeting attached as **Exhibit A**. That exception to the Open Meetings 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.” In the Open Meetings Act Compliance Guide, the AG’s Office has helped to explain what an “administrative adjudicatory proceeding” is by noting “like a trial or other court hearing, these proceedings involve the presentation of facts and evidence in a public hearing and an impartial decision maker that must weigh the evidence presented and apply the applicable law, regulation or rule to the particular situation before being heard.” During the closed session of the February 16, 2022 meeting the PRC moved to a



SaucedoChavez, P.C.

closed session to discuss the “emergency request for a final order that was filed by SPS on docket 20-00238-UT. Though the PRC described the conversations as “deliberations” they were not deliberations in connection with an administrative adjudicatory proceeding. The emergency request by SPS was not one that requires a hearing “like a trial” in which the presentation of facts and evidence was presented to an impartial decision maker that must weigh evidence and apply applicable law. The AG’s Compliance Guide further cautions that “public bodies may not misuse the [administrative adjudicatory proceeding] exception as a means of avoiding the open meeting requirements. In other words, unless the Act mandates that a matter be determined after an administrative adjudicatory proceeding, a public body cannot hold a ‘hearing’ on an issue and then close its meeting to ‘deliberate’ if the issue is one that otherwise would have to be discussed in public and is not one for which the Act mandates a trial-type process.” This is exactly what the PRC has done in claiming a 10-15-1(H)(3) exemption with regards to the SPS emergency request. As such, the roughly fifteen minute 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 February 16, 2022 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
February 16, 2022**

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 Joseph M. Maestas, Chairperson, called the Open Meeting to order on the above date at 9:30 a.m. through Zoom, with remote access for the public through Youtube. A quorum was present remotely as follows:

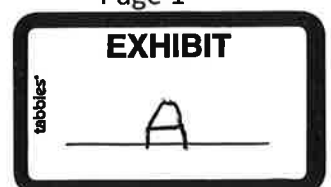
Members Present:

Commissioner Joseph M. Maestas, Chair, District 3
Commissioner Cynthia B. Hall, Vice-Chair, District 1
Commissioner Jefferson L. Byrd, District 2
Commissioner Theresa Becenti-Aguilar, District 4
Commissioner Stephen Fischmann, 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
Christopher Ryan, Hearing Examiner
Rene Kepler, HR Director
Christopher Hall, Executive Assistant
Isaac Sullivan-Leshin, OGC Paralegal
John Reynolds, Utilities Division Director
Bradford Borman, Legal Division Director
Jesse Montoya
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 Vice-Chair Hall.

III. CONSIDERATION AND APPROVAL OF THE AGENDA

Chair Maestas asked that Case 19-00106-UT be deferred to next week.

Commissioner Byrd explained that the NM House convened at 9 am so Representative Townsend is not immediately available for his public comment.

Commissioner Hall moved, seconded by Commissioner Byrd, to approve the agenda as amended with 19-00106-UT deferred to next week. 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

~~• Comment from Representative James Townsend~~

VI. CONSIDERATION AND APPROVAL OF PRIOR MEETING MINUTES

- **Minutes of January 19, 2022 Open Meeting**
- **Minutes of January 26, 2022 Open Meeting**

Commissioner Byrd asked the minutes of January 26, 2021 be corrected by replacing "Commissioner" with "Commissioner" throughout the minutes.

Commissioner Byrd moved, seconded by Commissioner Hall, to approve the Minutes of January 19, 2021 as presented and the Minutes of January 26, 2022 as amended. 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) **22-00004-TR-M IN THE MATTER OF THE APPLICATION OF M MOUNTAIN TRANSPORTATION LLC FOR CERTIFICATE TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE**

Hans Muller POTENTIAL ORDER REGARDING APPLICATION

- 2) **22-00010-TR-M IN THE MATTER OF THE APPLICATION OF BRT ENTERPRISES LLC D/B/A BLUE RAVEN TRANSPORT FOR A CERTIFICATE TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE**

Hans Muller POTENTIAL ORDER REGARDING APPLICATION

B. Utility Matters

- 3) **19-00106-UT IN THE MATTER OF APPLICATIONS FOR 2020 BROADBAND PROGRAM SUPPORT FROM THE STATE RURAL UNIVERSAL SERVICE FUND, AS PER 17.11.10.31 NMAC**

Russell Fisk POTENTIAL ORDER REGARDING APPLICATION

This case was deferred to the next regular meeting.

- 4) **21-00188-UT IN THE MATTER OF THE JOINT APPLICATION OF AV WATER COMPANY, LLC, AND NE MEXICO WATER SERVICE COMPANY FOR THE SEVERAL APPROVALS AND AUTHORIZATIONS REQUIRED IN CONNECTION WITH THE ACQUISITION OF AV WATER COMPANY, LLC'S ASSETS BY NEW MEXICO WATER SERVICE COMPANY; AND THE APPLICATION BY NEW MEXICO WATER SERVICE COMPANY FOR APPROVAL TO OPERATE CERTAIN WATER UTILITY FACILITIES**

Russell Fisk POTENTIAL ORDER REGARDING RECOMMENDED DECISION

Commissioner Fischmann moved, seconded by Commissioner Byrd, to approve the orders for the three remaining Consent Action cases.

Mr. Fisk Read the captions for the three items.

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.

VIII. EXECUTIVE CLOSED SESSION

- **DELIBERATIONS BY A PUBLIC BODY PURSUANT TO 10-15-1 (H) (3) NMSA 1978 Deliberations regarding Docket 20-00238-UT, In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon Its Plant X Unit 3 Generating Station; and (3) Other Associated Relief**

Chair Maestas wanted to first let the public know why this was on the agenda.

Ms. Amer said the matter comes before the Commission on the filing of an emergency request for a final order by SPS on February 10, 2022, in this docket. SPS provided their two proposed options: 1) to adopt the rates in the February 2, 2022 order adopting the certification of stipulation with modification, or 2) a motion that reconsidered that February 2, 2022 order and accept the certification in its entirety.

On February 9, all signatories filed a response that they did not unanimously accept the PRC modifications to the stipulation in decretal paragraph B.

She noted Commissioner Fischmann had proposed two alternative options. The first would deny the motion for reconsideration but provide the parties a week or two to unanimously agree to the modification, and the other option would continue with the February 2 order to proceed with a pre-litigated track which the Commission would need additional time to consider the merits. It would extend suspension another three months. The HE would issue a procedural order with public hearing and date for supplemental testimony and direct the HE to have hearing on rate shock and gradualism and have the AG and Occidental file testimony. SPS and other parties may file load factors for Sagamore and subsequent to filing of agenda. Commissioner Fischmann suggested option 3 and 4 could be combined as Option 5 which would provide parties for added week or two to agree to the modifications on 2/2 and time to negotiate and at the same time, allow the case to continue on the track.

Commissioner Fischmann said he put Exec closed session on the agenda if we need it but was not sure we do.

Chair Maestas asked if Ms. Amer) for her recommendation.

Ms. Amer said if the Commission just votes on an order, an executive session was not needed. But with a more detailed discussion that might involve litigation, she would recommend an executive session.

She added that on Monday, the New Mexico Large Customer Group filed a pleading to the SPS motion, urging the Commission not to adopt SPS Option 1 because it would deny them due process.

Commissioner Hall preferred closed session.

Commissioner Hall moved, seconded by Commissioner Fischmann, to enter executive session, pursuant to OMA Section 10-15-1 (H) (3) to deliberate the matter. The motion was approved by a majority (4-1) roll call vote with Commissioner Byrd, Commissioner Fischmann, Commissioner Hall, and Commissioner Maestas voting in favor and Commissioner Becenti-Aguilar voting against.

The Commission went into executive session at 9:50 until 10:02 a.m.

Commissioner Hall moved, seconded by Chair Maestas, 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.

Chair Maestas stated for the record that during the executive session, the only matters discussed were on the subject matter listed on the agenda and no decisions were made.

Commissioner Becenti-Aguilar moved, seconded by Commissioner Byrd, to reconsider the order in Docket 20-00238-UT and accept the stipulation in its entirety (SPS option #2). The motion was approved by a majority (3-2) roll call vote with Commissioner Becenti-Aguilar, Commissioner Byrd, and Commissioner Maestas voting in favor and Commissioner Fischmann, and Commissioner Hall voting against.

Commissioner Byrd believed Commissioner Fischmann's heart was in right place and aligned with him in looking out for rate payers. Please consider that and use those beliefs as a standard for ratepayers. That is one of our goals and we need a record to

support that. Thank you, Commissioner Fischmann for bringing that to light, making it a discussion item, and hopefully, we will see that through the records.

Commissioner Hall noted this is a black box settlement and the result, as Commissioner Byrd mentioned, is not satisfactory for the residential rate payers in that area. She had strong concerns with black box settlements before the Commission when its charge is to find a balance between ratepayers and utilities. We need transparency in rates, and we should be able to see into those settlements or ban all black box settlements outright as inappropriate in regulation.

Chair Maestas said when he read the RD and Stipulation agreement, he recalled the statement that it is not how we arrived at this stipulation but that the stipulation was achieved. That it avoided protracted and potential litigation and should be a consideration here to avoid full-blown litigation through alternate resolution techniques such as mediation, binding arbitration, or stipulated agreements. He asked if that statement was based on any case law.

Ms. Amer agreed there are cases looked at in stipulated agreements. Those dockets are the result of negotiation for fair, just and reasonable results. The Supreme Court has affirmed the end result principle. It doesn't require a specific methodology. As she stated on February 2, the certification did pass the required tests. It was not perfect but was specified by all parties that it resulted in fair, just and reasonable rates.

Chair Maestas knew of no prohibition on black box settlements in the industry.

Ms. Amer didn't feel comfortable talking about it in this docket. The PRC has approved several black box settlements. This is not entirely black box, but some portions were. Right now, it is something for the Commission to consider. The Commission could change their policy by changing the procedural rules.

Commissioner Hall appreciated how Ms. Amer described it and her concern was how to determine rates were fair just and reasonable compared with all other groups (classes of customers) whether justice was done. This has bearing on many other people's lives and is why the Commission must be able to see into the decisions made. And people (ratepayers) need to have representation by more than one attorney in the room. It is hard to see how the two deals are comparable. She still believed this was not just.

Commissioner Fischmann agreed with Commissioner Hall. Without a clear record of how you got there, there is not touchstone to indicate it was fair, just, and reasonable. The core idea that somehow a black box settlement saves time is untrue. It kicks the issues not settled down the road for the next rate case and the litigants end up settling them

all over again or litigation ensues. They actually eat up more time and resources by not settling it.

IX. REGULAR ACTION ITEMS

a. Transportation Matters:

NONE

b. Utility Matters:

- 5) **20-00238-UT** **IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR: (1) REVISION OF ITS RETAIL RATES UNDER ADVICE NOTICE NO. 292' (2) AUTHORIZATION AND APPROVAL TO ABANDON ITS PLANT X UNIT 3 GENERATING STATION; AND (3) OTHER ASSOCIATED RELIEF**
Judith Amer **POTENTIAL ORDER**

This case was considered above.

- 6) **20-00175-UT** **IN THE MATTER OF POTENTIAL AMENDMENTS TO NMPRC RULE 17.9.570 NMAC, ENTITLED GOVERNING COGENERATION AND SMALL POWER PRODUCTION**
Judith Amer **POTENTIAL ORDER**

Ms. Amer noted the Commission had discussed this before. It related to PURPA and FERC's changed regulation. What comes before the Commission now was a motion by EPE to reopen the record for added comments that would address some of the comments made at the Open Meeting on January 5 2022. The attached their comments as Exhibit 1.

This would reopen and keep it open for ten days, allow the filing of comments so other parties could also file comments. Regarding the Community Solar Rule, EPE said Rule 570 should not be implicated in the Community Solar context. The PURPA rule requirement to be a QF facility would complicate the bill credits. Their second comment regarded whether avoided costs should be variable or fixed. EPE opposes fixed costs. They have been unable to get financing.

She provided some of the highlights of Exhibit One. They made others.

Chair Maestas saw the order grants EPE's motion to reopen the record for additional comments.

Commissioner Hall moved, seconded by Commissioner Byrd, to approve the order. 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.

- 7) **21-00215-UT IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S
REQUEST FOR APPROVAL OF NEW RESOURCES UNDER 17.9.551 NMAC
TO REPLACE 114 MW OF LEASED PALO VERDE NUCLEAR GENERATING
STATION CAPACITY
Michael Smith POTENTIAL ORDER**

Mr. Smith apologized for sending the order out early this morning. It would address the replacement resources in the PNM application. The HE is available to present his RD. The six-month period for approval of the PPA is calculated to end February 25 and is why it is on the agenda today. The other issues in the case are not subject to that rule.

Mr. Ryan first discussed the decision prohibiting a further bifurcation of this matter, shared his screen with a summary of proposed resources and timelines for a required approval for each. Then he went through the standard time periods for each step of the procedures and then through the companion cases. The proposed hearing date was selected because it was the only date available. Ms. Glick worked as hard as possible to meet the deadline, but we were well into January anyway.

He showed a section of testimony - an exchange between Fallgren and Throne on the Valencia case and read through the dialogue and read through a second testimony.

He asked how the Commissioners can approve resources from a defective RFP, which was the basis for denying the resources themselves. He believed the time limits in Rule 551 were outdated and the Commission needed to scrutinize the matter without rushing.

He said the RD was issued as quickly as humanly possible and was circulated 27 days after briefs were filed.

Mr. Ryan stood for questions.

Commissioner Fischmann thanked him for putting together the suggestions on rulemaking and how it was illustrated in this case. It is very helpful when you step back and make these recommendations.

Chair Maestas asked if supply chain delays were a factor in this case.

Mr. Ryan agreed, but he also needed time to prepare it.

Brief Break

At 10:53, the Commission recessed and reconvened at 11:05 a.m.

Mr. Ryan walked through the basics of the RD, filed late on Sunday. The replacement resources were Jicarilla Solar and Storage, Atrisco Solar and Storage, and Sandia Peak Storage. The 740MW additional became 207MW of generation and was what was necessary as replacement to assure reliability. Rule 551 was the standard.

He asked Mr. Fallgren for the cost of battery. He reported \$6/KW. But the replacements were at \$9/KW.

The overarching concern of intervenors was the abandonment of 114MW firm resources. He showed a chart on battery, solar, and wind and how they interact with one another to replace resources. The result was some firm resource to ensure reliability. His question was what they were really after and their principal objection was when the Valencia PPA expired. That case is coming later.

His recommendation in this case was that there was no firm resource proposed in this case, but it was not a waste of time. He felt the best way to address them was in rulemaking.

Commissioner Hall appreciated his explanations. Regardless of the complications, it should not impede going forward today. Her interest was to see it fully developed in the IRP rulemaking.

Mr. Smith clarified that his proposed order related only to replacement resources and not to the IRP process the HE discussed. The parties did not oppose the separate order for replacement but intended to file exceptions to the RFP recommendation. Those have not been filed yet.

Commissioner Hall moved, seconded by Commissioner Fischmann to approve the order.

Commissioner Fischmann asked Mr. Ryan if the RFPs being issued by PNM needed more capacity and under current rule, they are not required to let the PRC know about it. He asked if that was a separate deal.

Mr. Ryan said the RFP issued was referred to as the 2020 RFP. There were varying references to a subsequent RFP upon which Onward made a mistake. This may not be the place to resolve that issue.

Chair Maestas said this really illustrates our tasks in the transition to renewable energy. He reminded the Commission that PNM gave notice on January 20 2021 that they would not renew the leases.

We are bound by the rules, and the complex procedure requires modeling, and we are just coming off the heels of major cases that required review of our procedures. We need to get the applications earlier. We are doing our due diligence by accelerating our procedure. He did not think the resources would be online for this summer but certainly for summer of 2023.

Commissioner Fischmann agreed and added that this is exactly the problem the rulemaking is trying to address that would lead to timely submission of resource requests and the Commission would not find itself scrambling to help find resources at the last minute. That is exactly why we are doing the rulemaking.

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.

X. DISCUSSION ITEMS

8) Cynthia B. Hall DISCUSSION REGARDING OPPORTUNITY TO JOIN WESTERN PUBLIC UTILITY COMMISSIONER'S MOUR ON CLIMATE COOPERATION

Commissioner Hall said she emailed three documents this morning to Commissioners, and they were shared on the screen, one at a time. The first was an MOU with signatures of six Commission Chairs in the West. She said what the NM PRC has in common is the aggressive portfolio requirement of clean energy by 2045. These states also have those requirements and like us, they are interested in seeing development of regional trading organization in the west. Numerous groups have attempted to design such an organization to protect their interests to find a way to meaningfully participate

in RTO or trading org being designed. They operate on a resource-neutral basis. But we don't have resource-neutral objectives. We need to have a way to participate in the effort to ensure protection of our utility participation and be able to acquire resources from those markets. Otherwise, they could be compromised in getting sufficient resources through the market. This is opportunity to get in on the ground floor to ensure there is no compromise for the states who need these aggressive targets.

The document included a Statement of Shared Principles. She read the list and didn't know if every Commissioner endorsed all of them. The document also had a list of eight Action Items, which she read aloud. There were many common interests – best practices, grid modernization, etc. They are benefits that can come with working with these other states.

The second document was – Representing Progressive Western States Interests in Regional Resource Sharing. The paper discussed the states on the continent that should join together in a nonprofit organization to protect their interests for resource support. Progressive refers to the environmental effort for clean energy. She read several paragraphs from the paper, which she summarized was a desire to unite with the small number of states with statutes in place to work together to pursue designs for day-ahead markets in the West which would realize significant savings for consumers.

Commissioner Hall said one of numerous workshops on design of day-ahead market involves GHG with statutory requirements. So far, the states participating in the workshops and reporting on weekly basis to the MOU Commissioners and represent the states' interests and support them in GHG accounting metrics. It would provide ease in complying with the requirements. GHG accounting is the first benefit to New Mexico. It provides an opportunity to have a representative in the process as plans are laid down. She saw those pluses for New Mexico and New Mexico utilities in rules for trading resources that would help all conform to the state law.

She asked Commissioners to agree with her that this would be a great thing to do.

Commissioner Fischmann added that in talking with some of the Commissioners in other states, they all want to partner to get something done with more coordination. But there is fear that their efforts, without this collaboration, would be forced to adopt a lot of things suitable for their particular markets but not as suitable for the various states.

This collaboration is an effort to see that does not happen. It is an opportunity to create a design that meets our needs. We don't have resources to devote to this but at least we can keep track of what is going on. He supported joining it.

Commissioner Hall thanked him for that. She went to the third document that was evident on its face. It described an overview and mentioned a budget that is no longer relevant. RAP is being funded by someone. She said it provides a place at the table and better options. She asked if the Commission could vote to support joining with the six other states.

Chair Maestas- said he supported that recommendation, but it was not on the agenda for a vote. If they are willing to include us, it is a great idea.

He asked Mr. Smith, if it would require a resolution or just a vote, and if the Commission could do so next week.

Mr. Smith said the Commission could do it either way, but a resolution could document the reasons.

Chair Maestas asked to consider a resolution next week.

XI. DISCUSSION AND POTENTIAL ACTION REGARDING LEGISLATIVE MATTERS

LEGISLATION THE COMMISSION IS TRACKING:
HB 6, HB 37, HB 70, HB 120, HRJ 1, HM 20, SB 14, SB 21, SB 42, SB 71, SB 147, SB 194, SB 198, SJR 7, SM 10
<u>THE COMMISSION MAY DISCUSS BUT NOT ACT ON OTHER LEGISLATION NOT INCLUDED IN THIS LIST</u>

Chair Maestas asked Mr. Propst for any insights.

Mr. Propst said there were 24 hours left in the Session. The only bill still having life is SB 198, transferring the Transportation Division. It is being heard now in House Committee and he will join that meeting as soon as the Open Meeting adjourns. HB 2 is not expected to impact the PRC. The only bill not on the list is SB 202 increasing salaries for incoming Commissioners in 2023.

He stood for questions.

XII. COMMUNICATIONS WITH CHIEF OF STAFF

Chair Maestas recalled no consensus on SB 198, so each Commissioner is free, as individuals, to express their opinion. He asked Mr. Propst what he conveyed on it.

Mr. Propst the only comments were during the hearing, and he conveyed the Commission position was neutral. And staff were available for technical questions.

Commissioner Fischmann thanked Mr. Propst for all his work on legislation. With his work on the Budget, the future looks brighter.

Commissioner Hall agreed. It looks a lot brighter. with opportunity to hire more staff.

XIII. COMMUNICATIONS WITH GENERAL COUNSEL

Commissioner Byrd said it was good to hear Mr. Smith with us again.

XIV. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Hall asked if anyone attended NARUC meetings. No one responded.

Chair Maestas expressed pride in this group of professionals in the face of so many challenges. He praised the Hearing Examiners for responding within our own timelines. The threat of blackouts in PNM territory is oversimplification of the facts on pertinent cases that relate to replacement power for the SJGS. We are responsible to respond to some of the related articles and opinion pieces. We have worked the issue of summer readiness and supply chain issues for months now and we have significant information and are working on a more detailed list of questions in the dockets on summer preparedness and soliciting concrete plans to meet the summer challenge. He felt comfortable with the progress. These is only one sand box here and we are all in it together. Utility regulation is very specialized and very important to New Mexicans. Our work has adhered to our rules. This agency will do everything in its power to avoid scheduled interruptions of power. It is up to the utilities to let us know what their plan is and if we need to begin adjudication, we need to know what the action is. The AG did issue a letter and is concerned with our decision. He would like to have face-to-face discussions with the AG to avoid those blackouts or brownouts. We did it with propane. The AG agreed to investigate one particular vendor. We collaborated and it led to real legislation to avoid future interruptions of propane delivery, especially to elderly who rely on propane.

He pointed out that it isn't just a matter of delay of replacements to coal-fired generation. We can work with the AG to address these issues. He wanted to publicly

invite the AG to work with the Commission. We will issue a formal response to the AG letter and make the invitation.

Our HEs are under a lot of pressure to meet deadlines. There is no nefarious intent to delay any proceedings. We address them impartially and to reiterate our intent to work with AG or Homeland Security or whomever. We need to solve the problems at hand.

There is no need for an alternate process in replacement resource issues or supply-chain delays. He was asking Commissioners to work cooperatively with the AG.

Commissioner Hall shared his views. She was glad the AG is taking an interest in things going on here. The blackouts are beyond our jurisdiction. The AG is identified as the office to protect residential consumer interests in our cases. She agreed we should reach out to work with AG for the benefit of New Mexicans.

Commissioner Becenti-Aguilar asked if the Commission is directing OGC to initiate a response letter.

Chair Maestas agreed.

Commissioner Becenti-Aguilar asked that the letter be circulated to Commissioners for review.

Chair Maestas noted an article from Pat Vincent Collawn in the California Utility publication on adequacy of resources to meet summer peak. She said, "I assure you we have the resources to meet the summer peak." So, it was not the 3.45% negative margin reported to the PRC.

Ms. Amer asked if he was suggesting how we should deal with that statement.

Chair Maestas agreed.

Ms. Amer agreed the Commission needs seek to reconcile those different statements. That should be done in the SJGS Abandonment Docket to issue follow up questions. We had some from the NMAG and should do our own follow-up questions.

Chair Maestas observed the Commission has established an internal group to address strategy on the supply chain issues and will be meeting tomorrow morning on it and hoped it would include a question to the PNM CEO. "We are on it and taking decisive action."

Commissioner Hall also wanted a bench request or something on the combined docket on supply chain adequacy.

Ms. Amer said OGC was working on it, and she could decide which is the better place to issue it. We should postpone discussion on either of these dockets, but we are developing follow-up inquiries.

Commissioner Fischmann was not even sure there was a resource adequacy problem with PNM. He asked PNM to get its story straight. Secondly, in looking at the AG's cooperation with our agency, he noted in the letter, a sense of the Commissioners doing something wrong and that needed to go. In cooperating with the AG to solve these problems on resource adequacy and late decisions, the AG staff has been very supportive of our efforts and made good suggestions and conundrums we would face without rule making. They are already collaborating with the Commission to address those issues. They have been very helpful in that process.

Commissioner Becenti-Aguilar referred to page 20 in the California markets newsletter. That entity is a friend of the PRC. We had no support when we were evicted from the PERA. We received no invitation from the AG, but he is invited to come to our meetings.

Ms. Amer recommended two Commissioners but not more than two be involved in creating a letter and bring it back to the Commission.

Chair Maestas thanked her, and we will set a goal of responding and file it in the appropriate docket.

XV. DISCUSSION AND POTENTIAL ACTION ON 2022 WORKPLAN

9) Joseph M. Maestas DISCUSSION AND POTENTIAL ACTION ON 2022 WORKPLAN

Chair Maestas said it has gone through several iterations. His ideal workplan was to have milestone deadlines with people identified in every single action item. The Plan does not have that yet, but he suggested taking action on the Workplan. He noted Mr. Hall had sent the latest version to all Commissioners that identified people to lead those efforts. OGC provided us with a more detailed window into the case load for the remainder of the calendar year.

He asked for any comments on the Workplan.

Commissioner Becenti-Aguilar had conversations with Michael Ripperger and Eugene Evans about the new Office of Broadband. She understood they do not have staffing yet. It is pending. Our Staff will contact her when they begin to get staffing.

Chair Maestas reported several rulemakings were underway. One was Transportation Electrification. Community Solar was in its final stages. Commissioner Hall and Commissioner Fischmann are finishing the rules for IRP interconnections. There is also a list of potential rulemakings which can potentially get done. Resource adequacy has been formalized in the Workplan.

He also mentioned the interagency work that is underway. He wanted to include work on alternative dispute resolution techniques that would save time and money, and which is already a mandate in the statutes.

Commissioner Hall moved, seconded by Commissioner Byrd, to approve the 2022 Workplan 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.

XVI. ADJOURNMENT

The Commission meeting was adjourned at 2:41 p.m.

/s/ Carl Boaz, electronically signed

Carl Boaz, Stenographer

APPROVED: March 2, 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, February 16, 2022
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**
 - Comment from Representative James Townsend
- VI. CONSIDERATION AND APPROVAL OF PRIOR MEETING MINUTES**
 - Minutes of January 19, 2022 Open Meeting
 - Minutes of January 26, 2022 Open Meeting
- VII. CONSENT ACTION ITEMS**

A. Transportation Matters:

1)	22-00004-TR-M Hans Muller	IN THE MATTER OF THE APPLICATION OF M MOUNTAIN TRANSPORTATION LLC FOR A CERTIFICATE TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE <u>POTENTIAL ORDER REGARDING APPLICATION</u>
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2)	22-00010-TR-M Hans Muller	IN THE MATTER OF THE APPLICATION OF BRT ENTERPRISES LLC D/B/A BLUE RAVEN TRANSPORT FOR A CERTIFICATE TO PROVIDE NON- EMERGENCY MEDICAL TRANSPORT SERVICE <u>POTENTIAL ORDER REGARDING APPLICATION</u>
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B. Utility Matters:

3)	19-00106-UT Russell Fisk	IN THE MATTER OF APPLICATIONS FOR 2020 BROADBAND PROGRAM SUPPORT FROM THE STATE RURAL UNIVERSAL SERVICE FUND, AS PER 17.11.10.31 NMAC <u>POTENTIAL ORDER REGARDING APPLICATION</u>
4)	21-00188-UT Russell Fisk CLICK HERE OR OPEN ADOBE ATTACHMENTS TAB TO ACCESS RECOMMENDED DECISION	IN THE MATTER OF THE JOINT APPLICATION OF AV WATER COMPANY, LLC AND NEW MEXICO WATER SERVICE COMPANY FOR THE SEVERAL APPROVALS AND AUTHORIZATIONS REQUIRED IN CONNECTION WITH THE ACQUISITION OF AV WATER COMPANY, LLC'S ASSETS BY NEW MEXICO WATER SERVICE COMPANY; AND THE APPLICATION BY NEW MEXICO WATER SERVICE COMPANY FOR APPROVAL TO OPERATE CERTAIN WATER UTILITY FACILITIES <u>POTENTIAL ORDER REGARDING RECOMMENDED DECISION</u>

VIII. EXECUTIVE CLOSED SESSION

- **DELIBERATIONS BY A PUBLIC BODY PURSUANT TO 10-15-1 (H) (3) NMSA 1978** ○
Deliberations regarding Docket 20-00238-UT, In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon Its Plant X Unit 3 Generating Station; and (3) Other Associated Relief

IX. REGULAR ACTION ITEMS

A. Transportation Matters:

NONE

B. Utility Matters:

5)	20-00238-UT Judith Amer CLICK HERE OR OPEN ADOBE ATTACHMENTS TAB TO ACCESS CERTIFICATION OF STIPULATION	IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR: (1) REVISION OF ITS RETAIL RATES UNDER ADVICE NOTICE NO. 292; (2) AUTHORIZATION AND APPROVAL TO ABANDON ITS PLANT X UNIT 3 GENERATING STATION; AND (3) OTHER ASSOCIATED RELIEF <u>POTENTIAL ORDER</u>
6)	20-00175-UT Judith Amer	IN THE MATTER OF POTENTIAL AMENDMENTS TO NMPRC RULE 17.9.570 NMAC, ENTITLED GOVERNING COGENERATION AND SMALL POWER PRODUCTION <u>POTENTIAL ORDER</u>
7)	21-00215-UT Michael Smith	IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S REQUEST FOR APPROVAL OF NEW RESOURCES UNDER 17.9.551 NMAC TO REPLACE 114 MW OF LEASED PALO VERDE NUCLEAR GENERATING STATION CAPACITY <u>POTENTIAL ORDER</u>

X. DISCUSSION ITEMS

8)	Cynthia B. Hall	DISCUSSION REGARDING OPPORTUNITY TO JOIN WESTERN PUBLIC UTILITY COMMISSIONER' MOU ON CLIMATE COOPERATION
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XI. DISCUSSION AND POTENTIAL ACTION REGARDING LEGISLATIVE MATTERS

LEGISLATION THE COMMISSION IS TRACKING:
HB 6, HB 37, HB 70, HB 120, HRJ 1, HM 20, SB 14, SB 21, SB 42, SB 71, SB 147, SB 194, SB 198, SJR 7, SM 10
<u>THE COMMISSION MAY DISCUSS BUT NOT ACT ON OTHER LEGISLATION NOT INCLUDED IN THIS LIST</u>

- XII. COMMUNICATIONS WITH CHIEF OF STAFF
- XIII. COMMUNICATIONS WITH GENERAL COUNSEL
- XIV. COMMUNICATIONS WITH COMMISSIONERS
- XV. DISCUSSION AND POTENTIAL ACTION ON 2022 WORKPLAN

9)	Joseph M. Maestas	<u>DISCUSSION AND POTENTIAL ACTION ON NMPRC 2022 WORKPLAN</u>
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XVI. 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 via Zoom, by telephone or in person at the Bokum Building. Individuals wishing to comment must sign up to do 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.