

**MINUTES OF THE
REGULAR FORMAL OPEN MEETING
NEW MEXICO REGULATION COMMISSION
DECEMBER 18, 2012**

TIME: 9:30 a.m.

PLACE:

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

A quorum was present as follows:

Members Present:

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

Staff Present

Johnny Montoya, Chief of Staff
Bob Parker, Deputy Chief of Staff for Legal Affairs
Michael C. Smith, Associate General Counsel
Ashley Schannauer, Hearing Examiner
Mark Cessarich, Telecommunications Bureau
Mike Ripperger, Telecommunications Bureau Chief
Dwight Lamberson, Acting Utility Division Director

Others present

Melessia Helberg, Stenographer [for Carl Boaz]

CALL TO ORDER

The Regular Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, §10-15-1(C), and the Commission's Open Meeting Policy. Chairman Patrick Lyons called the Regular Open meeting to order at approximately 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

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

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

Exhibit "2."

1. PLEDGE OF ALLEGIANCE

2. INTRODUCTIONS

There were no introductions.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Hall moved, seconded by Commissioner Becenti-Aguilar, to approve the Agenda, as presented. The motion was approved unanimously on a 5-0 voice vote.

5. DISCUSSION/ACTION

A. UTILITY MATTERS

**12-00219-UT IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION REGARDING (1) ITS 20TH ANNUAL RENEWABLE PORTFOLIO REPORT; (2) ITS 2012 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN; (3) ITS REQUESTS FOR VARIANCES FROM (A) THE DIVERSITY REQUIREMENTS FOR "OTHER" RENEWABLE ENERGY RESOURCES FOR 2014, AND (B) SPECIFIED PORTIONS OF THE MEDIUM SOLAR DISTRIBUTED GENERATION ("DG") TARIFF; (4) ITS REQUEST TO REVISE AND CANCEL CERTAIN DG TARIFFS; (5) ITS REPORT ON PROJECTED 2013 AND 2014 COST ACCRUALS IN THE REGULATORY ASSETS APPROVED IN PRIOR CASES; AND (6) APPROVAL OF REQUESTS RELATED TO WINDSOURCE.
(Ashley Schannauer & Michael C. Smith) Recommended Decision/Order**

Mr. Ashley Schannauer presented information regarding this matter, SPS' renewable procurement plan, to the Commission. In this plan 2014 was at issue and had no new procurements proposed so it was less controversial than most of them. The primary purpose of the hearing was for SPS to get permission not to pursue any procurement. SPS requested a variance on the diversity requirement for the "Other" requirement. They had a dairy waste bio-mass project that was unsolicited but SPS had no headroom under the RCT test to proceed at the high price of 17¢ per KWH. They had just issued an RFP for that category and some were promising. Procurement would depend on their RCT calculations.

Mr. Schannauer said two significant issues were addressed in his memo. One dealt with what the Commission considered in October regarding grandfathered higher rates for DG. Under their tariff those DG projects had to be completed within 9 months after application. But due to delays not their fault, they requested extensions and approvals. The Commission approved them at a lower price and gave 9 more months to complete those projects. Now SPS asked for a revised tariff to allow completion within 9 months after the company approved the application. The request to revise the tariff was consistent with what the Commission approved and he recommended approval.

The other issue was on carrying charges and was significant because it was disputed, but it was not a lot of money. When a utility spent money on renewable energy, there was no rider to recover those costs right away until approval of recovering them in a rate case. So they needed a carry charge to be able to account for financing costs until they were able to recover costs. The amount of the carry charge was disputed. He recommended the Commission follow the precedent established with SPS over past few years for the rate called "allowance for funds used during construction" (AFUDC).

The CCAE recommended using the AFUDC rate and other parties recommended specific numerical amounts.

Chair Lyons asked if there were no exceptions.

Mr. Smith said there was just the single exception by staff to the carrying charge where they proposed 4% rate based on assessment of low risk expense and the rate that should be applied equivalent to a higher rated bond. They picked a 30 year mortgage bond, which in another case, that coupon rate varied from 3.85% to 4.25%, and it appeared 4% was basically a compromise. His recommendation in the Final Order was to adopt the Hearing Examiner proposal because he believed the AFUDC rate was the proper rate to be used and had been used in the past. Staff's rate reflected what they thought SPS should have done with private debt instruments where they could have acquired funding at a lower rate, but that didn't match the findings.

Commissioner Marks asked what Mr. Schannauer meant that the new bids looked promising.

Mr. Schannauer said he asked for a copy of the bids with the names redacted as his basis.

Commissioner Marks said this had been discussed in past in open session with no specific prices. He asked if it was under \$100 per MWH, or if he could tell him.

Mr. Schannauer preferred not to say.

Commissioner Marks asked if the AFUDC issue had equity in it. Mr. Schannauer agreed.

Commissioner Marks said the same issue came up with EPE and he felt capital structure wasn't consistent with precedent and didn't contain equity. It had been litigated and they couldn't have it both ways. There were costs on both sides -- AFUDC and short term financing. He didn't think the proposed solution was correct unless there were reasons to allow AFUDC and return on rate base.

Commissioner Howe said the formula we use here was AFUDC, but this was not the right place to change it. When litigated with PNM the FERC formula was internally consistent. He asked if SPS had filed for no bill energy rider.

Mr. Schannauer said SPS agreed to file for a rider to recover costs 2011-2012 and that was approved two weeks ago.

Commissioner Howe said that would be an issue to be wrapped into the rate case just filed and didn't have to be done here. The 2011 report showed 120 MW from Mesa whose parent company just filed for bankruptcy. He recommended SPS file a brief to inform the Commission the impact from the bankruptcy.

Commissioner Marks said the carrying cost was not a huge issue. All the energy associated with solar/wind was recovered and not carried. There needed to be a way to stay consistent with Texas in this small part of their renewable budget.

Commissioner Lyons moved to adopt the order as proposed without changes. Commissioner Marks seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

**12-00402-UT IN THE MATTER OF THE PETITION TO PROPOSE A RULE ESTABLISHING
REGISTRATION AND CONSUMER PROTECTION REGULATIONS FOR
COMPETITIVE INTERCONNECTED VOIP PROVIDERS. CITYLINK
TELECOMMUNICATIONS NM, LLC, PETITIONER.
(Commissioner Jason Marks) NOPR**

Commissioner Marks said he was presenting this NOPR based on two foundations. The first was filed by CitiLink Communications, and the other case was a request by Verizon Business and affiliates heard by HE Glick this past year for a variance that they not continue filing tariff reports.

His proposed Order dealt with both of the outstanding issues which were related and would have a similar group of interested parties so the service lists would overlap. It was not the same rule, but it would save money on publication notices and hearings to do them together. They were not particularly controversial. They both went to the changing market for telecommunication and dealing with 10 year old rules which didn't reflect today's realities.

There was no federal jurisdiction over VoIP since it was more internet than telephone. This rulemaking had its genesis in Skywi, a large VoIP company offering many business services and were threatened by Qwest to be cut off for inability to pay their bills and would leave customers hanging without service even when their bills were paid.

This tries to address the issue by allowing a carrier to voluntarily come under the PRC jurisdiction for consumer protection, dealing with disputes and providing for fines if rules were violated including not giving 30-day notice for disconnecting service. He read from Exhibit 2 to NOPR and explained this function was like good housekeeping. Consumers could protest to the PRC. He reviewed some of the provisions that

were offered in the proposed rules.

A benefit for VLECs would be nondiscriminatory access to utility poles to hang their wires or cables and the same access to the numbering pool as other regulated telephone companies from Neustar. He felt this would put all providers on a level playing field and consumers could choose between a CLEC and a VLEC based on quality of service, features and value for the money.

He cautioned the Commission that Mr. Cessarich had contacted Neustar and found that issuing numbers might not be subject to PRC authority but the NOPR would invite interested parties to comment on the rules.

Commissioner Marks said the VLEC part was something Mr. Brown had been talking about since the SkyWi debacle. The rule drafting had been going on for about a year with staff, the petitioner and himself. It made sense to pull them together before the end of his term.

The CLEC case the Commission had a couple of months ago where the recommendation was to not only grant the variance to Verizon and affiliates but there seemed to be no reason to regulate others in industry at a higher level. So this would put out for comment, changes to the CLEC and IXC ("intrastate Long Distance") with the primary change on page 11 of Exhibit B which he described. In it, a "legal rate" was a rate the carrier could not deviate from without an approved tariff change. That was a twentieth century regulation. He proposed striking existing language on filing and replacing with advertised prices on the carrier's web site. Staff had the ability to start an investigation if they felt something was being abused. There was no longer any public interest in continuing tariffs. Page 13 did the same thing for long distance. Page 15 had the IXC special provision for an ILEC offering long distance service. Page 13 said the ILECs operated by rural telephone cooperatives would bring them under the PRC.

Commissioner Marks summarized that he was proposing that the Commission issue a NOPR, with a public hearing on March 26th and give five weeks for public comment. He wanted the hearing after the Legislature. This would modernize what the Commission was doing for competitive carriers.

Chairman Lyons asked Commissioner Marks if he just came up with this himself, and asked if he heard from the industry about it.

Commissioner Marks said the first half was done by Mr. Brown and Mr. Mel Schaefer in conjunction with staff. The second half was based on the Commission's order in the Verizon case, and suggestions from Ms. Glick about what to do. Part A was the petitioners' work, and he drafted the second half.

Chair Lyons asked if CityLink couldn't just register as a CLEC rather than having the Commission doing this rule change. He didn't know how that was voluntary

Commissioner Marks said without the rule the problem was that they could register, but then they could unregister at the "drop of hat." They could be a CLEC until it didn't suit them anymore, and change on two days' notice back to being a VLEC or a VoIP and the Commission couldn't stop it.

Mr. Brown said the primary reason CityLink opted not to be a CLEC was the anti-competitive

environment. As a CLEC they were required to file tariffs and those prices were the rule. Also IXC to provide intra and interstate that had another set of oversight regulations. VoIP providers didn't have that onerous regulation and could competitively work with customer on prices. They also had no consumer protection at the state level. As a CLEC, there were two or three different sets of regulation for local, long distance and telephony, but under VLEC one regulation for providing those services.

Chair Lyons had concerns about this and believed he should have had a workshop to get industry input and deregulate rather than impose voluntary regulation.

Commissioner Hall couldn't see letting people volunteer and then opt out. He questioned why any entity not being regulated would volunteer to be regulated. He saw no benefit to them to do that.

Mr. Brown said regarding input, that they sought input and chatted with industry people on this issue and brought input, but nothing formal. Those VoIP carriers that wished to come under the PRC voluntarily could stand up and make sure consumer protection and their behavior protected the consumers. On the other hand, this would allow them to get pole attachments and such.

Commissioner Hall asked why CityLink was the only one present and why the rest of the companies were not. The Commission didn't do rules for just one company.

Mr. Brown said somebody had to be the leader.

Commissioner Hall said if he was the leader, then he should get the other people here and talk about it.

Mr. Brown thought this would be the beginning of the process so it could be applicable to everyone. He added that he had been working with Mr. Ripperger.

Mr. Cessarich said it was a very informal dialogue. They had some good ideas that were being tweaked to get it to this point.

Commissioner Hall felt they were rushing into something they didn't know about. It should have been brought forward earlier for workshops, rather than bringing today in a "surprise move." He appreciated what they were trying to do, but the Commission couldn't make a rule for one company. They needed to get the whole industry involved.

Commissioner Marks thought Mr. Brown had explained why voluntary regulation made sense and the rule that prohibited them from leaving without 30-days' notice was the important part. Without the rule the next SkyWi could not be prevented. Right now there was no regulation. He didn't see CLECs or VoIP here but only ILECs here who also needed regulatory reform. This was not created in an "evil laboratory," but from the Commission's own order that gave Verizon relief. If it was good for Verizon, it should be good for all the other carriers too.

Mr. Brown recalled during the SkyWi debacle, that Chairman Jones held meetings with VOIPs discussing issues around the lack of consumer protection. There was a lot of input, and as Mr. Cessarich and Commissioner Marks said, this NOPR came out of years of experience at the Commission; not the

CityLink pool.

Commissioner Hall said if the Commission approved the NOPR, then CityLink could force PNM to allow them to get on their poles but couldn't do that today and then CityLink would have nothing to provide. He didn't like this at all.

Mr. Brown asked if the Commission required something or other. The FCC should have been involved in SkyWi. He didn't know when they discontinued the rules put in place. It was a hands-off in enforcement.

Mr. Mark Cessarich said he didn't know if the FCC changed rules after SkyWi. Mr. Ripperger dealt with several of them. One was out of business and one on the brink.

Chairman Lyons asked if the FCC helped.

Mr. Ripperger didn't think so. He had not tried to go through the FCC but dealt directly with the company but Mr. Evans did try and the FCC didn't get involved. It was a struggle to get any information on the bottom line unless they opted in.

Commissioner Marks said this was not a final rule but just a proposal. He suggested the Commission send the NOPR out and let everybody comment. Nothing in the NOPR begged a final answer; it just put it out for comment. There was an advantage to the Commission to regulate as well as an advantage to consumers and the industry.

Commissioner Howe asked Commissioner Marks if there was an inseparable nexus between the two issues. He suggested considering the issues separately because it seemed to be creating obscurity on what was happening. He wondered how the VLEC Rule could have prevented the SkyWi debacle. He asked if SkyWi was in bankruptcy at that point.

Commissioner Marks said no. They were insolvent and not paying Qwest and landlords. The main lines were then disconnected by Qwest.

Commissioner Howe asked why anyone would believe SkyWi would volunteer in view of its current situation.

Commissioner Marks said nobody could know who would come in and who wouldn't. Likely consumers would prefer registered carriers to avoid SkyWi issues to have consumer protections.

Commissioner Howe understood the logic, but it was strange to address both in the same rule. If a VoIP could do that through a CLEC process he questioned why the Commission would need voluntary participation.

Commissioner Howe was not ready to vote and thought this needed more time, so he would like Commissioner Marks to come back with something simpler, with a CLEC solution and separating the two rules.

Commissioner Marks asked if there was any interest in doing this, because he didn't want to do the work if there was no interest.

Commissioner Howe said he would first want to see it. He would entertain it, but not commit to it at this point.

Chairman Lyons took time out to introduce special guest Ms. Paula Garcia, County Commission Chair from Mora County. The Commission welcomed her.

Commissioner Becenti-Aguilar asked Mr. Ripperger why this discussion was falling apart.

Mr. Ripperger said it was complicated. The wrinkles were not entirely clear but that would be vetted in comments in a rulemaking. He thought it was worth doing. The Commission did allow Verizon to withdraw tariffs. There were a number of issues that staff needed to look and see how to fashion it.

Commissioner Becenti-Aguilar asked Mr. Lamberson about this and he responded that he was not aware of it.

Mr. Ripperger said he was notified, but there was no extensive discussion. Staff would need to sit with him to get him up to speed on numbering, pole attachments, jurisdiction, etc. They had talked about it 1½ years ago, and then CitiLink came back.

Mr. Lamberson said something or other I couldn't hear, maybe you could hear on the recording.

Commissioner Becenti-Aguilar asked if no action would indicate in response that staff needed more time to investigate complexities and deal with those complexities.

Mr. Ripperger said staff was shaky on jurisdiction and enforcement. In the Qwest Settlement there were issues that agreed to comply and precedence to comply. Not setting aside. The procedural cycle would deal with this. Docket forces us to look at it and deal with it.

Commissioner Becenti-Aguilar said staff should address the entire Commission.

Mr. Ripperger said the NOPR would force staff and other parties to point out issues.

Commissioner Becenti-Aguilar said all of the Commissioners have questions about this, commenting there was no way this was going to advance. She asked why this was not on front burner, and why they were pressing this on December 18th.

Mr. Ripperger said staff was not pushing the rule, commenting he didn't see it as a high priority, and was only giving feedback, although there may be some merits. Citibank was pushing this rule.

Commissioner Becenti-Aguilar said petitioners could file comments and then there could be a discussion by all the Commissioners. She was concerned about the Telecommunications Division, and she would work to structure it in the future so all the Commissioners could have discussion. They needed

better collaboration between the Telecommunications Bureau and the Commission. That was evidenced by Mr. Lamberson's statement that he wasn't aware of this. They needed to improve how cases were handled and clearer lines of communication. If they were working on a draft two months ago, they could have called the Chief of Staff and asked for a business meeting.

Mr. Ripperger understood. He was dealing with Commissioner Marks and he was in loop the whole time.

Commissioner Becenti-Aguilar understood but the other Commissioners weren't in the loop.

Commissioner Marks said the Commissioners did get this by way of a hand-delivered petition in the first week of December. He asked if there was any downside to issuing the proposed rule.

Mr. Ripperger said only for the VLEC part which had some complications in it.

Commissioner Marks moved to adopt the proposed NOPR, strike the VLEC material in Exhibit A which he would bring back as a separate case with other options in it and put out language on ILECs and IXCs which would start the process of moving to parity in the industry. Commissioner Howe seconded the motion.

Commissioner Howe thought the CLEC part seemed right, was supported by staff and recommended by the HE, but not the VLEC and the Commission would see what comes back on Thursday.

Chairman Lyons said it was out of line to include Commissioner Marks and not the rest of the Commissioners. There was no opportunity to comment and he objected to working with a Commissioner and not with the Division Director.

Commissioner Becenti-Aguilar agreed they needed to ensure there was interaction with all Commissioners.

The motion passed by a majority (3-2) voice vote with Chairman Lyons and Commissioner Becenti-Aguilar voting against. So Ordered.

Commissioner Marks asked for help from General Council so the Commissioners would not think he was trying to shove something down their throats.

Mr. Parker said when OGC put something on the agenda it had been through proper process, looked at it and thought it should be adopted by the Commission. When it didn't follow that process, it was very difficult for OGC. He would very much like to have Ms. Skogen look at it before coming to the Commission.

Commissioner Marks said it went to OGC on Friday at noon. Mr. Parker agreed.

Commissioner Marks said the motion was for the paragraphs 1-10 of the order and Exhibit A were deleted. And those parts would be in a new case.

Chair Lyons said he wasn't putting it on the Agenda on Thursday.

Commissioner Marks said they could leave the case number and change the caption.

Chair Lyons said he would visit with Mr. Brown to see if it made sense to bring this back.

**12-00218-UT IN THE MATTER OF THE COMMISSION ESTABLISHING A STANDARD
METHOD FOR CALCULATING THE COST OF PROCURING RENEWABLE
ENERGY, APPLYING THAT METHOD TO THE REASONABLE COST
THRESHOLD, AND CALCULATING THE RATE IMPACT DUE TO
RENEWABLE ENERGY PROCUREMENTS.
(Commissioner Jason Marks) Order**

Commissioner Marks recalled the Commission had two hearings on RCTs and diversity changes, set up briefing schedule that allowed for post-hearing briefs as of December 10th. The issues well understood and he proposed to put the issue to rest by following the Staff Rule that came in during the spring. He had provided Exhibit A, based on what the Commission got from staff. He apologized that the weather on Friday prevented getting it out on Friday. Exhibit A was staff's rule and the differences from staff's rule and the existing rule were shown.

The proposed resolution would adopt Staff's rule on RCTs, reject WRA's alternative with levelization and other complex adjustments not considered. He also proposed to modify staff's rule to address the capacity cost issue based on the testimony that there could be capacity offsets clarified they were not speculative adjustments, that future environmental credits were not counted, that speculation about future credits were not counted but that actual savings to consumers because a renewable resource had eliminated the need for conventional resources be counted and boosting the RCT to 5% would instead stay at 3%.

It would increase the wind target to 30% in the diversity standards and adopt the intent of staff's rule on diversity standards. It would not give three for one on solar. He listed the other components of it.

Commissioner Hall felt the Commission needed to look carefully at what it was doing regarding renewable energy. He referenced a headline from today's paper concerning the need for Xcel Energy to spend \$45 million on transmission lines of which half was just for renewable energy. They should come to us and ask the Commission if they could go over the limit for RCT (2.5% to 7.2%). That would put \$23 more per residential bill and half was renewable energy. He had no problem with renewable as long as it was affordable to the public.

He noted that in regard to RECs, the statutes said one thing but the Commission's Rule said something else. He wanted staff to tell him why. This puts the burden on rate payers. He didn't recall Xcel asking the PRC if they could do this.

Commissioner Marks asked Ms. Sakya if half of their proposed rate increase was for renewable energy.

Ms. Ruth Sakya (SPS) said in their current rate case (last week) they asked for a \$20 million rate rider. The total increase was \$45 million and part of that included a reduction to fuel and base.

Commissioner Marks asked her if the rate increase was \$23 a month for residential, that \$11 per month was for a renewable energy rider.

Ms. Sakya said she had not looked at the rate design but suspected that was about right.

Commissioner Hall said that was what Mr. Reeves said.

Commissioner Marks pointed out that Mr. Reeves also said SPS was the parent of Xcel. He pointed out that the Commission just approved their renewable plan two hours ago. This rule did not approve \$10 per month of renewable energy costs nor a 7% RCT but actually reduces staff's recommendation from a 5% RCT back to a 4% RCT and didn't adopt WRA's language but the Attorney General's which he quoted from.

Commissioner Hall said incremental costs were not the same as actual costs.

Commissioner Marks said the only place incremental costs were used in the rule was very similar to the AG's use of the term. This was staff's rule with a few balanced changes. The Commission could table if they didn't want to consider it now. He felt it was a reasonable resolution to the issues and didn't open it to out-of-control spending. It was standardized methodology for RCTs that staff came up with and something everybody but WRA adopted.

Commissioner Howe recalled that in May or June the Commission responded to a petition from the NMIEC and the AG to hold an evidentiary hearing and the Commission voted 5-0 to do so *en banc* in order to expedite it. The hearing was held in August or September and a lot came out. The Commission learned that the main divisive issue was the diversity requirement. WRA and CCAE were still pulling for their own version and all but WRA and CCAE at the hearing supported staff's version.

On raising the RCT level from 3 to 5% the argument was that it wouldn't hit 20% of the portfolio at just 3% and gave some supporting numbers. But the numbers indicated we would be going after RECs and energy at some point. The record showed that at least right now it was not necessary to step up the 5%. He suggested leaving it at 3% today. They had to be cognizant that rate impacts were building up here.

The second issue was on diversity requirements. He recalled the hearing was about 8 hours long, 6 of which were on diversity. NMIEC and AG made points that in a poor state we have to be cognizant of those rates, and can't pile on. Consensus fell apart on whether or not there was some capacity attribution that should be accredited to certain renewable resources. That couldn't be done unless they could contribute to peak. Unless they could decide the capacity factor for a particular project, it should be left at 3% and the diversity factor at 20.

Commissioner Howe also favored phasing out the "Other" category because they were hard to find, expensive when found and some were environmentally questionable.

Commissioner Becenti-Aguilar said a large portion of her constituency including leaders of the Navajo Nation wanted economic opportunities on the wind/solar sources. The Navajo Nation entered into an energy policy agreement in 2012 with Livermore National Lab and was reaching out to others. She was ready to vote today.

Commissioner Lyons moved to adopt the staff recommendation except for "other" at one half (5%) or eliminated and to keep the 30% on wind to avoid energy costs, and 3% RCT through 2015 so as to not bind commissioners after that.

Commissioner Howe seconded the motion. He preferred "Other" to drop to 5% in 2015 and allow utilities to apply for a variance.

Commissioner Marks said staff's rule had 5% for other and 30% for wind, so his motion would not change staff's recommendation.

Chairman Lyons agreed to keep 10% for diversity. He thought the search for fulfilling the "Other" category was good for New Mexico. The dairy industry in Doña Ana County had a huge problem with manure, noting they could go to Texas which wasn't as stringent. Biogas was a cost-effective way of disposing of it and keeps energy here. A reduction in the diversity requirement would reduce encouragement to push at it. Keeping it at 10% was telling them to put out their best efforts and if something works to let the Commission see it. 5% admits defeat.

Commissioner Marks moved to amend the motion to leave "Other" at 10% and adopt the language at the end of page 10.

Commissioner Hall said intended to put it in avoided fuel and purchase power costs.

Chairman Lyons believes it was included.

Commissioner Howe said PURPA contracts were for waste energy. Putting municipal waste in a waste energy facility was a lose-lose proposition that was grotesquely expensive, environmentally toxic and didn't solve anything. He was not persuaded that burning manure would save the dairy industry. Nothing here would create the same environmental benefits with what the legislature wanted if the Commission pushed for development.

Commissioner Marks explained he wasn't talking about burning waste for energy but using the methane that landfills produced.

Commissioner Howe said if using methane gas was as cheap as solar and wind, there was nothing to stop those utilities from signing it up.

The motion to amend died for lack of a second.

Commissioner Marks moved, in Resource Selection, the attachment on page 4, to propose the

substitution of the underlined language for the stricken language.

Commissioner Howe asked what the difference was in that.

Commissioner Marks said the substantive difference was to address the consideration of factors other than least cost such as reliability, availability, and dispatch flexibility. This would say they preferred least cost but for a good reason to select a higher cost option, they could explain their reasons and ask to get their plan approved.

Commissioner Howe said they could also come in on a variance.

Commissioner Marks said there was a misunderstanding about a variance which was for extraordinary situations. This didn't need variances. If they couldn't meet diversity targets because of costs or lack of contracts they didn't have to comply. This would require them to prove it was best for them to substitute another option they felt was best.

Chairman Lyons said the "rebuttable presumption" muddies the water. It needed to be the most cost effective.

The motion to amend died for lack of a second.

Commissioner Marks moved on same page under C(1) include when doing, purchase power cost, environmental credits and cost for capacity shown to reduce actual costs rather than making it look more expensive than it is.

Chair Lyons said he wanted to keep it as the staff recommended it.

Commissioner Howe thought it should include purchased power.

Commissioner Marks asked Mr. Lamberson what was his recommendation to this proposed language was.

Mr. Lamberson clarified the intent was to include avoided fuel and purchased power.

Commissioner Marks asked why it would not include environmental credits since renewable energy would reduce coal emissions which could be sold. He asked if there would be any opponents to this motion.

Chairman Lyons was not pleased with having all of these amendments to the motion.

Commissioner Howe commented that the problem here was the third rail of this language that those who were advocates of renewable energy industry wanted to create this kind of opening as much as possible, and opponents looked at three or four months of litigation over whether an environmental cost was a real cost or not. The speculative nature would lead to a lot of litigation. Staff said testified at the hearing that they believed all of that could be addressed by variances. It was a matter of getting a good rule through.

Commissioner Marks acknowledge that there were different ways to do it but didn't think anyone had objected to environmental credits. The fundamental problem was not about making it most convenient for staff, about getting it right. He insisted he was not carrying water for the environmental groups.

After further discussion, Commissioner Marks withdrew his motion to amend.

Commissioner Mark moved to amend the order with the inclusion of the language at the bottom of 4 or 10. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Hall said Mr. Lamberson indicated staff intended to include the fuel and purchased power costs in the order but did not.

The amendment passed on a 3-2 vote with Commissioner Hall and Chairman Lyons voting against.

Because of the changes, Chairman Lyons withdrew his motion to approve the order.

Commissioner Howe moved to reinstate the original motion to adopt the staff rule with the following changes: RCT set at 3% and Section 17.9.572.14 C-1 to adopt the underlined language there (as amended by Commissioner Marks) and keep it at 3%. Commissioner Becenti-Aguilar seconded the motion.

Commissioner Howe said it wouldn't just open the door for a utility claiming capacity credit. They would have to have the numbers to prove that.

Commissioner Marks moved to amend on page 3 - 10, section 12(d) to say, "If in any given year, the cost of procurement of renewable energy is greater than the RCT, the utility would not be required to incur the cost of that resource provided that the condition excuse and performance under the RPS will not operate to delay procurement." Commissioner Becenti-Aguilar seconded the amendment and it passed by unanimous (5-0) voice vote.

Commissioner Marks indicated a typo there which the Commission agreed should be corrected.

Commissioner Marks said the underlined language on page 3 of 10, second sentence just made clear that large customer adjustments would use the same calculations.

Mr. Lamberson said they had not thought about that. There were extensive methodologies in the workshop. He agreed that it had not been included. It was the process in which it was calculated but it was discussed by all parties.

Commissioner Marks moved to amend the motion to include "Public utilities shall calculate the large customer adjustment consistent with the methodology for the reasonable cost threshold." Commissioner How seconded the motion.

He clarified it was the second line but not the first and was to make it explicit. There was nothing in the record that would do so. He pointed out that it was in the original NOPR.

The amendment was approved on a 4-1 voice vote with Chairman Lyons voting against.

Commissioner Marks said on page 6 of 10, he proposed to add language in Section I back into the rule about REC reciprocity. In order to count a REC as a resource, it has to be in or it has to be delivered in New Mexico. The Commission has rejected proposals to bring in RECs from out of the State without the energy. This rule said New Mexico wanted to be the energy supplier to the whole West. But if other states opened their doors to New Mexico then New Mexico would open its door to them to trade RECs without transmission costs. These REC only deals were not in our interest but they could be in the long term.

Commissioner Marks moved to put the reciprocal REC rule out there and invite other states to use New Mexico renewable energy.

Commissioner Howe asked if he knew of any states surrounding New Mexico that would be open to such a reciprocal agreement.

Commissioner Marks said Texas would not accept New Mexico RECs and Colorado put a 25% penalty on out-of-state RECs. He thought Arizona was the most open to it and this would encourage them to use more New Mexico wind. And New Mexico had the best wind resource and also the best solar resource going north and east so New Mexico had nothing to lose and something to gain.

Commissioner Hall asked if this wasn't defeating the purpose of having solar energy because they wouldn't have to build any solar plants or wind farms. It would make it easy to buy a REC and bring it home. No job and no energy would be defeating our State's purpose.

Commissioner Marks countered that this encourages; it was not to help Colorado or Arizona but to say, "We'll consider yours, if you consider ours." The Legislature wanted a regional market for RECS. New Mexico had 20 times more wind and solar than we could use.

Commissioner Howe thought this wasn't going to have any impact and ultimately would be declared illegal for a state to prevent sales of out-of-state RECs. The court had yet to rule. Colorado's rule was being challenged. He thought this was a no-harm amendment that could reduce costs and widen the market for purchase of RECs.

Commissioner Howe seconded the amendment and it passed by unanimous (5-0) voice vote.

Commissioner Marks said his last amendment was to go back to one the Commission had already rejected and asked if there was any way the Commission could accept something that would change the rule.

Chairman Lyons told Commissioner Marks that under Robert's Rules of Order he couldn't address the same issue that had already been rejected as stated on page 325, section 38.

Commissioner Marks thanked Chairman Lyons and said he could propose a different solution which was to go back to staff's rule on 4 of 10 at the top to restore the strikeouts. The underlined wasn't accepted. And then he proposed to add one sentence, "A utility may request a variance if it could demonstrate that other operating characteristics such as reliability, availability and dispatch flexibility make a selected resource preferable than the least-cost resource."

Chair Lyons read from Robert's Rules of Order and ruled Marks out of order because it was still addressing the same thing.

Commissioner Marks again objected.

The vote on the motion to amend failed on a 1-4 voice vote, with Commissioner Marks voting in favor of the motion and the other four Commissioners voting against the motion.

Nothing prevents a variance.

Commissioner Marks asked Commissioner Howe to include allowing variances in the final order but Commissioner Howe did not accept that request.

Commissioner Howe summarized the motion: Adopt staff's version, 3% RCT, and make following changes 17.9.572(c)(1) on page 4-10, 17972.12(d) on page 3-10 add excuse and performance to correct a typographical error; typo at top of 14 should have a period; .12 on page 3 of 10, at beginning, last sentence added, "a public utility shall..." in 17(l) on page 6 of 10.

The main motion, as amended, was approved on a 4-1 voice vote, with Chairman Lyons voting against. So Ordered.

8. PUBLIC COMMENT

Ms. Neva Von Peski said this was the last meeting she would attend with Commissioner Marks and Commissioner Howe, noting how much she admired both of them and appreciated their analytical ability and how much that had contributed to the Commission. She said they would be missed.

9. COMMUNICATIONS WITH DEPUTY CHIEF OF STAFF FOR LEGAL AFFAIRS (BOB PARKER)

Mr. Parker noted that following the meeting was a hearing on the Giant Cab temporary authority. Last night Counsel for Giant Cab had filed a motion asking to postpone the hearing which could be done at the hearing.

Commissioner Marks thought they needed to do that when they went on the record whether to grant the motion or not.

Mr. Parker said the Commission could decide.

Chairman Lyons asked what the vote was to have a hearing on the temporary authority.

Mr. Parker thought it was 3 to 2. Commissioner Howe agreed.

10. COMMUNICATIONS WITH CHIEF OF STAFF (JOHNNY MONTOYA)

. Mr. Montoya said at 3:00 p.m., he would be meeting with DFA and LFC on discussions to separate the Commission and the Insurance Division.

11. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons said they were having a going away party on December 20 at the Elks Club after the open meeting.

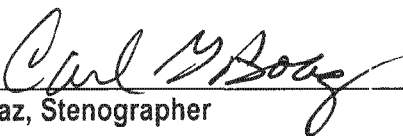
Commissioner Hall introduced the new Transportation Director, Mr. Ryan Jerman

12. ADJOURNMENT

With no further business before the Commission, Commissioner Hall moved, seconded by Chairman Lyons, to adjourn the meeting. The motion was approved on a unanimous (4-0) voice vote. Commissioner Marks was not present for the vote.

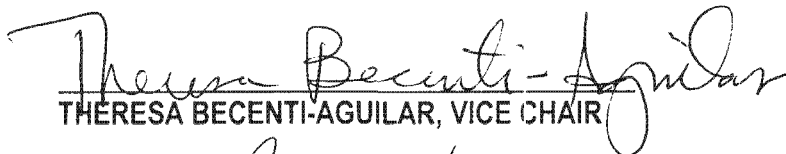
The meeting was adjourned at 12:45 p.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 01/03/2013


PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


BEN L. HALL, COMMISSIONER


VALERIE ESPINOZA, COMMISSIONER


KAREN L. MONTOYA, COMMISSIONER

SIGN-IN SHEET

DATE: December 18, 2012

[illegible]

Thank you for attending this meeting.

EXHIBIT 1
PRC 12/18/12

Exhibit "1"

[illegible]



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Tuesday, December 18, 2012

9:30 A.M.

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

AGENDA

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

A. Utility Matters

12-00219-UT

Ashley Schannauer

Michael C. Smith

IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION REGARDING (1) ITS 2011 ANNUAL RENEWABLE PORTFOLIO REPORT; (2) ITS 2012 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN; (3) ITS REQUESTS FOR VARIANCES FROM (A) THE DIVERSITY REQUIREMENTS FOR "OTHER" RENEWABLE ENERGY RESOURCES FOR 2014, AND (B) SPECIFIED PORTIONS OF THE MEDIUM SOLAR DISTRIBUTED GENERATION ("DG") TARIFF; (4) ITS REQUEST TO REVISE AND CANCEL CERTAIN DG TARIFFS; (5) ITS REPORT ON PROJECTED 2013 AND 2014 COST ACCRUALS IN THE REGULATORY ASSETS APPROVED IN PRIOR CASES; AND (6) APPROVAL OF REQUESTS RELATED TO WINDSOURCE.

Recommended Decision

Order

Exhibit "2"

12-00402-UT Commissioner Jason A. Marks	IN THE MATTER OF THE PETITION TO PROPOSE A RULE ESTABLISHING REGISTRATION AND CONSUMER PROTECTION REGULATION FOR COMPETITIVE INTERCONNECTED VOIP PROVIDERS. CITYLINK TELECOMMUNICATIONS NM, LLC. PETITIONER. <u>NOPR</u>
11-00218-UT Commissioner Jason A. Marks	IN THE MATTER OF THE COMMISSION ESTABLISHING A STANDARD METHOD FOR CALCULATING THE COST OF PROCURING RENEWABLE ENERGY, APPLYING THAT METHOD TO THE REASONABLE COST THRESHOLD, AND CALCULATING THE RATE IMPACT DUE TO RENEWABLE ENERGY PROCUREMENTS. <u>Order</u>

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

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

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

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the

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

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE IN ORDER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION AT (505) 827-4042 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.