

**MINUTES OF THE
CASE MANAGEMENT OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
November 8, 2017**

TIME: 9:35 a. m.

PLACE: PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fé, New Mexico 87501

A quorum was present as follows:

Members Present:

Commissioner Sandy Jones, Chairperson [telephonically]
Commissioner Cynthia B. Hall, Vice-Chairperson
Commissioner Valerie Espinoza
Commissioner Lynda Lovejoy
Commissioner Patrick H. Lyons

Members Absent:

Staff Present:

Ernest D. Archuleta, Chief of Staff
Michael Smith, Acting General Counsel
Judith Amer, Associate General Counsel
Russell Fisk, Associate General Counsel
David Black, Associate General Counsel
Fran Sundheim, Hearing Examiner
Cydney Beadles, Legal Division Director
Avelino Gutierrez, Transportation Division Director
Jack Sidler, Utility Division

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Case Management 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 Cynthia Hall, Vice-Chair, called the Case Management Open Meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, New Mexico.

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

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

A copy of the Public Comment sign-in sheet for the Case Management Open Meeting is incorporated herewith to these minutes as Exhibit 3.

1. PLEDGE OF ALLEGIANCE/STATE PLEDGE

The Pledge of Allegiance and State Salute to the Flag were recited.

2. INTRODUCTION OF SPECIAL GUESTS

Commissioner Espinoza welcomed a group of fire folks and thanked Randy Barela for his 12 years. He is leaving to work at Santa Fe County. He was a volunteer fire fighter for 38 years.

3. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Espinoza asked to move the last item up so people can get back to their duties. She wanted to discuss four cases and allow two orders to be discussed at the same time.

Commissioner Espinoza to approve the agenda as amended with item #7 after Consent Items and that the two orders for separate cases be discussed at the same time.

Vice-Chair Hall said there is a request for public comment to be moved between item 4 and 5 (the presentation) and to hear #7 after Consent Action.

Commissioner Lyons moved to approve the agenda as amended. Commissioner Espinoza seconded the motion and it passed by unanimous (5-0) voice vote.

4. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Open Meeting on October 18, 2017**

Commissioner Espinoza moved to approve the Minutes of October 18, 2017 as presented. Commissioner Lovejoy seconded the motion and it passed by unanimous (5-0) voice vote.

9. PUBLIC COMMENT

Mr. Jessie Ybarra, CYRG Energy, came forward to speak.

Mr. Smith cautioned to not have parties to the case speak as it would be ex parte communication.

Ms. Beadles pointed out that he is wearing a company t-shirt and his company had the opportunity to testify under oath and be subject to cross examination. So she urged the Commission to be cautious taking comment from Affordable Solar under Public Comment. It is part of a case.

Vice-Chair Hall asked him if anything in his public comment was about his case. She asked him not to say anything about the case.

Mr. Ybarra said he just wanted to let people know that he has been a technician for them. There are not many jobs available in that area. He supported an opportunity for the people there to work. The company does support local schools and provides scholarships. He was grateful to be here. He has worked in that community for his whole life and got laid off from his last two jobs which clarifies the economy there. We are grateful for an opportunity to have a job.

Ms. Rhonda Mills introduced herself as the Western States Representative for Geo-Thermal Association and was here to talk about how important renewables are to New Mexico. With the massive expansion in the last few years and attempts to modernize it, New Mexico is doing great things with renewables and bringing dollars to the market.

Nationally, the market is a little shaky right now with the new administration. We've been on a path that has gotten off track with the administration. But we have shown we can bring new energy to the state. We hope the PRC will continue its drive for more renewable energy.

Mr. Scott Richins, Jhus Canyon Construction, LLC, said he owns the company in southern New Mexico and contracts with individuals in a consortium for building and construction. He was here to support the Renewable Energy Act. He makes his living in Hidalgo County which is economically

depressed. He has had his business since 2003 and, since 2010, worked with a company putting in a geo-thermal plant down there. It has been an economic boon to the people there. It is an advantage to hire local people and has been a benefit. His company employs 6-8 staff. They are continuing to expand renewable energy and will help keep our people here and benefit the local school and continue to provide it.

Mr. Nick Goodwin, speaking on renewable energy.

Ms. Beadles said Mr. Goodwin did testify at the hearing.

Vice-Chair Hall turned to Mr. Smith, who confirmed his testimony at the hearing. She apologized to Mr. Goodwin and explained that he could not speak now.

Mr. Goodwin did not provide public comment.

Commissioner Lyons asked Mr. Richins if he drove up from Animas.

Mr. Richins said he did and it was a six-hour drive.

Commissioner Lyons asked how many are employed at the geo-thermal plant.

Mr. Richins said there is just one, but they have residential and commercial construction also.

Commissioner Lyons asked how many are in the labor force.

Mr. Richins said there are 15 to 16.

Commissioner Lyons asked how much that adds to the economy.

Mr. Richins didn't know. There is also temp labor at the plant.

Commissioner Lyons thanked him for coming all the way up from Animas.

Commissioner Jones appreciated the folks coming up from Animas today.

**7) Undocketed NMFTA GENERAL TESTING POLICY/NFPA 1021 FIRE OFFICER
PROFESSIONAL QUALIFICATIONS
(Commissioner Sandy Jones)**

Three fire fighters, representing the New Mexico Professional Firefighters. They presented an

issue for required training and were asking for a change in the certification schedule they must follow. At first, it was thought to require a rule change but after some discussion, determined it was not a rule change but a modification of standard operating procedure, which could be done internally.

Mr. Archuleta asked that the PRC share information with them and consider what training they take so we would not cross those lines and could waive some of them.

Mr. Gutierrez said they want to get to the point on internal policy to reflect that and would ask each department to comply with the education and training they do. It is not a rule change but our internal policy at the academy. He did not think it required approval by the Commission.

Commissioner Lyons understood the Firefighters' Association would provide help for the smallest departments.

Commissioner Jones wanted to make sure it is clear and asked that the SOP interpretation be put on the website, so any fire department could look at it.

Mr. Archuleta agreed and would work out the details and put it on the website and provide it to the Association, as well. He will also notify the fire chiefs of that, so they would be sure to know. He mentioned that we are in the first quarter for receiving funds for 2018. There might be some overlap from June to September. The first distribution was about \$9.5 million, and he expected a larger portion to come in. The latter distribution would be by late November or early December.

5. PRESENTATION

- **PRESENTATION BY RACHEL SHERRARD, VICE PRESIDENT OF COMMUNICATIONS AND EXTERNAL AFFAIRS, PEAK RELIABILITY**

Marie Jordan and Rachel Sherrard were present. Ms. Jordan described the work of Peak Reliability. Her intent was to make sure Commissions are aware of what Peak provides and used a power point to explain their work.

Ms. Jordan went through the PPT (with handout) and said they don't provide the energy but provide service to US, Canada, and Mexico, as a set of second eyes to oversee and make sure the grid is running properly. Peak is one of 16 reliability coordinators. One of their centers is in Vancouver Washington and another is in Loveland Colorado. They function 24/7/365. Managing the flow is a challenge, so having two sets of eyes is important for reliability.

She said SPP has four special protection schemes and Peak monitors all of them daily to understand how they are going to react. Some of the equipment is automated to keep the reliability where it needs to be. Remedial action items are to stop any spread of outages.

Peak received a \$56 million grant to deal with data analysis, to see how the energy is flowing and provides tools for analysis for integration of renewables and to predict how the system will react.

Ms. Sherrard spoke about the outages - blackouts of 1996, 2003 and 2011.

Ms. Jordan said the Western Energy Coordinating Council has a three-year effort to deal with blackout prevention. Response time is the important element. She explained a change made in April that included measuring by temperatures in the area. They went to FERC in January 2016, and now run the system with real time information. They are now able to move and cancel peaking by having the real-time tools for frequency response and transient stability. With more renewables generation, they need to keep that reliability. Unfortunately, they have not seen significant transmission building in the west.

Increasing transfer capacity decreases costs. Less generation means fewer transmission curtailments. Peak is able to look at the system and be the "spare tire" for grid resilience improvements and keep costs lower. They have an unbiased focus on reliability for about 5.5 cents per MWH.

Commissioner Lyons asked if having renewables come in increases or decreases reliability.

Ms. Jordan said they have managed it well. They look at neighboring entities to compare it. Solar is allowing for over generation of renewables and they had to curtail generation during the solar eclipse.

Commissioner Lyons asked how renewables change the cost to the ratepayer.

Ms. Jordan clarified that Peak is outside of the market and don't have any market role in costs. They are 100% focused on reliability.

Commissioner Lyons asked about battery storage.

Ms. Jordan said they are working on determining the best model for batteries. We have engineers who model that in the California area. It is balancing stability and just starting to model that.

Ms. Jordan said transmission building in the west reflects the west's style. The east has a significant amount. SPP has done a tremendous job on transmission building and the shared costs are different. The west is a unique animal. Our challenge on cost to ratepayers is keeping Peak's cost flat and have done so for years.

Vice-Chair Hall thanked them for their presentation.

5. CONSENT ACTION

A. Transportation Matters:

None.

B. Utility Matters:

- 1) 17-00269-UT **IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY, INC. FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS NOVEMBER 2017 GAS COST FACTOR STATEMENT. NEW MEXICO GAS COMPANY, INC., Applicant.**
(Michael Smith) **ORDER**

Commissioner Espinoza moved to approve the order for Case 17-00269-UT.
Commissioner Lovejoy seconded the motion and it passed by unanimous (5-0) voice vote.
So Ordered.

7. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

None.

B. Utility Matters:

- 2) 17-00142-UT **IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR EXPEDITED APPROVAL OF A LONG-TERM PURCHASE POWER AGREEMENT WITH NEWMAN SOLAR, LLC. EL PASO ELECTRIC COMPANY, Applicant.**

**(Frances Sundheim)
(Russell Fisk)**

**Recommended Decision
ORDER**

Mr. Fisk presented information regarding this matter to the Commission. He began with a brief background. EPE is seeking a variance of a long-term PPA with Newman Solar, LLC, which requires approval within 30 days. A variance needed because of the PPA with Newman in 2013. At the time, they didn't not intend to seek rate recovery from its New Mexico retail customers or apply any associated renewable energy credits. EPE has facility in Texas and they sought to include it in solar base rates in Texas.

On October 26, 2017, the Hearing Examiner issued her Recommendation. In the Recommendation, the Hearing Examiner notes that the Application has been protested. The Hearing Examiner quoted EPE as stating that, "because the filing of the Application has been protested and opposed by intervenors, approval, if granted by the Commission, would likely follow a burdensome and costly, contested, administrative proceeding." Therefore, EPE has requested that the Commission allow EPE to withdraw the Application, and the testimony submitted therewith, and close this docket. EPE has stated that Staff and the New Mexico Attorney General did not oppose the request to withdraw, the City of Las Cruces supports the request, and no other parties provided a response within the time provided from when the motion was filed.

The Hearing Examiner stated in the RD, that on October 20, 2017, she issued an order vacating the scheduled prehearing conference and set October 19, 2017 as the deadline for any additional responses to EPE's motion. Doña Ana County responded on October 19, 2017, indicating support for the motion. So it is an unopposed motion. His order would allow the withdrawal.

Commissioner Lyons moved to approve the order as presented. Commissioner Espinoza seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

**3) 17-00255-UT IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S
APPLICATION FOR REVISION OF ITS RETAIL RATES UNDER ADVICE
NOTICE NO. 272, SOUTHWESTERN PUBLIC SERVICE COMPANY,
Applicant.
(Commissioner Valerie Espinoza)
(Judith Amer, Russell Fisk)**

ORDER

This matter was heard with the next case.

Ms. Amer presented information first regarding SPS' revision of its retail rate to the Commission. It was filed on October 27, 2017. SPS filed previously for a protective order. The proposed order suspends retail rates for 9 months and appoints Carolyn Glick as HE to issue an RD on the protective order and send the proposed order to the HE. She handed out the SPS notice, because in the memo, she provided the changes and in some, the percentage change got cut off.

She reviewed the background on this matter. SPS's rate case filing uses a base period of July 1, 2016 through June 30, 2017 and test year that extend from July 1, 2016 to June 30, 2017. The Test Year includes capital additions that have been placed in service, operation and maintenance expenses, and adjustments for known and measurable changes. SPS also requests to include in rate base the new capital investment that SPS placed in service during the Base Period and the capital investment SPS forecasts it will place in service through November 30, 2017. SPS's proposed Test Year revenue requirement is approximately \$261,262,202. This revenue requirement reflects an increase of \$42,500,150 in base rate revenue over current non-fuel base revenue, which is a 19.43% increase in base rate revenues or an increase of 11% in total revenues.

The Application seeks a return on common equity of 10.25 percent, and a weighted average cost of capital of 7.61 percent. The proposed order suspends the rate increase.

Commissioner Espinoza moved to approve the proposed order with Carolyn Glick as HE. Commissioner Lovejoy seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

8. DISCUSSION AND POSSIBLE COMMISSION ACTION

**4) 17-00189-UT IN THE MATTER OF THE FORMAL COMPLAINT OF ENCHANTED WINDS, LLC AGAINST CENTRAL NEW MEXICO ELECTRIC COOPERATIVE CONCERNING ITS RULE 17.0.570 FILING AND ITS FIRST REVISED RATE 31
Commissioner Valerie Espinoza)**

Commissioner Espinoza said, "The issue of the focus of the two orders relates to participation in the cases by former NMPRC personnel and fairness. The participation of Jason Marks in Enchanted Winds complaint against Central New Mexico Electric Cooperative and his participation in the SPS rate case have similar issues raised in the Ramada case, because of Mr. Mark's participation in an earlier NMPRC cases.

Vice chair Hall asked if the Commission is discussing those cases.

Commissioner Espinoza said, "No. Not at the moment. Just let me finish, if you will."

Commissioner Espinoza said, I'd like to begin by noting that Mr. Marks had been a TRC Commissioner and participated in the New Mexico Waterworks case and then left the Commission. Subsequently, as the case progressed, NMPRC Attorney, Tom Banner, notified the Commission that Mr. Marks May have done some ghost writing in the New Mexico Waterworks case on behalf of Mr. Dan Serrano. And, just in case you are going to ask, we are not dealing with the Waterworks case. I do not recall whether disposition of this issue was perhaps Mr. Fisk. He can provide that information after I'm done. In the Enchanted Winds complaint case, Mr. Marks, as attorney for

Enchanted Winds, was challenging a rule that was adopted by the Commission that he voted to establish. Mr. Marks is asserting that NMPRC's rule, which he voted for, is unlawful. The earlier rulemaking case that Mr. Marks voted on was done by Councilor Ventana Rule, which culminated in the adoption of a complete replacement. Similarly, in an earlier PRC case, Mr. Marks participated as a Commissioner. In that case, some specific rate design issues were ruled on by the Commission related to standby charge among other things. Mr. Marks wrote, as his opinion in that earlier case, that Mr. Marks, on behalf of Volt Solar, made the charge from the very rules that he voted on.

Mr. Fisk said, first of all, just following up on what Commissioner Espinoza had said with regard to that New Mexico Waterworks case and its disposition, the way that was before the Commission as Commissioner Espinoza noted, was that Dan Serrano, it was a party to the case, had ... The Commission issued a fine against Mr. Serrano. He hadn't appeared in the case then it was actually a default. Then a motion for reconsideration was received by the Commission - that was for reconsideration of the fine that was signed by Mr. Serrano as if he had prepared himself. However, then Legal Division Attorney Tom Banner, representing Staff, noted in an opposition to a related motion, that it appeared that the motion for reconsideration was actually coming the office of former Commissioner Jason Marks, as opposite of private attorney because it the was coming from an address of Ms. Mona Varela, who worked for Mr. Marks. So, that issue came before the Commission in conjunction with other issues regarding the motion for reconsideration. The Commission ultimately denied the motion for reconsideration on other grounds. But the issue was discussed. For one thing, the Commission considered the issue, I presume, the issue, with regard to whether this violated the Governmental Conduct Act. The way Staff brought it up was as an issue of Dan Serrano not participating in the case. Staff attempted to reach out to Ms. Varela to ask if Mr. Marks was the attorney for Mr. Serrano and got no response. The Staff had an issue with who they were supposed to be talking to actually in this case. So that was how Staff actually raised the issue. And then, when the motion for rehearing the Staff before the Commission, I discussed these issues as a potential legal ethics rule violation by Mr. Marks, a potential Governmental Conduct Act violation."

Vice-Chair Hall didn't hear him well and asked about Mr. Serrano.

Mr. Fisk said, as Commissioner Espinoza said, Mr. Marks had been involved in a prior decision on that same case. That case had been on for a while.

Vice-Chair Hall thought that was off the topic but decided it was related.

Mr. Fisk agreed. It was related to a lot of cases. The case that we are discussing now is 14-00147-UT which is consolidated with the 00209-UT case – the New Mexico Waterworks case, which is number six on the agenda.

Mr. Fisk said, "There wasn't any decision by the Commission. For one thing, there was a question as to whether Mr. Marks was violating either of those three because both of those provisions – the legal ethics rule, the Governmental Conduct Act on representing a party. And it appeared that under the legal ethics rule, ghost writing something for a party without making an appearance might not violate either of those provisions. Plus, the Commission rejected the motion to hear it on other grounds. So, I don't know the other details and whether they had any communication with Mr. Marks about not further participating. That's how the issue ended."

So, there may have been no violation in that case.

Vice-Chair Hall noted that in those two cases on the agenda, it is not clear that the type of violation in the cases 255 and 189 was ever identified. Is that correct?

Mr. Fisk said, "Right. 17-255, the SPS case, presented a different type of issue under the same potential legal authorities. But it is a different issue because Mr. Marks has actually appeared as an attorney for Volt Solar. I can go into that matter right now, if you would like. What Commissioner Espinoza has proposed on 17-255-UT, the SPS matter, is an order to show cause to Volt Solar regarding its representation in this matter by former Commissioner Jason Marks. The proposed order cites the PRC Act itself, the Governmental Conduct Act and to rules, Professional Conduct that are applicable to attorneys practicing in New Mexico.

On October 31, Volt Solar filed a motion to intervene in this matter. And in the motion to intervene, Volt Solar cited, as a particular issue in the application, that is, the SPS's application for a rate increase, that, 'SPS's application in this case is to request that the Commission approve revised riders for interconnected DSG, that is, distributed solar generation, for customers, rates 59 and 67, to collect additional revenue from such customers above and beyond the standard rate for each customer class.' In addition, Volt Solar stated that it is "uniquely focused on a rate design and other regulatory and policy issues regarding DSG and net metering." The motion to intervene is signed by Jason Marks, Esq. and the motion states that Jason Marks of Jason Marks Law Office, LLC, his counsel for Volt Solar in this matter."

Mr. Fisk said the reason he got into specifics of what was stated in the motion to intervene is that both are directed toward for the next issue he is going to talk about, which is about former Commissioner Marks' previous involvement in these issues. Mr. Marks formerly served as a Commissioner on this Commission. While he served on the Commission, the Commission issued final dispositive orders concerning SPS's Distributed Generation rate riders, which is why those cases are specifically discussed in the motion to intervene. Specifically in Case 10-00196-UT, a renewable portfolio case, the Commission adopted the Hearing Examiner's recommendation to approve SPS's Distributed Generation rate rider. Mr. Marks, while a Commissioner, filed a detailed dissent and was against the approval of that rider from the Commission's final order with regard to that issue. Approximately one year later, the Commission issued a final order, adopting a

certification of stipulation in Case 10-00395-UT, a rate case. So one was a renewable case, the rate case and they are on similar issues. In that rate case, proposed revisions and additions to previously approved distributed generation rider, which were part of the stipulation approved by the Hearing Examiner and the Commission. As in the renewable portfolio case, then Commissioner Marks dissented from the Commission's approval of the revised distributed generation rate rider.

The proposed order to show cause would state that the involvement of former Commissioner Marks, as counsel for Volt Solar in this matter, may violate the PRC Act, the Governmental Conduct Act, and to rules of professional conduct. With regard to the PRC Act, Section 8-8-19 E 3, provides that, "A former Commissioner or employee shall not represent a party before the Commission or court in a matter that was pending before the Commission while the Commissioner or employee was associated with the Commission into which he was personally and substantially involved in the matter." This a provision of the New Mexico Attorney General or the District Attorney actually enforced through civil actions.

The proposed order would also say that Mr. Marks' representation of Volt Solar may violate the Governmental Conduct Act, NMSA 1978, Section 10-16-8(B) which provides that "a former public officer or employee shall not represent a person and the persons dealing with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee." Again, the Governmental Conduct Act is something that has been enforced by NMAG, DA or Sec of State. The Commission can take notice of whether Mr. Marks' continued representation in this matter is a violation.

Mr. Fisk also quoted the two rules of professional conduct, cited in the order to show cause. This rule is completely within the control of the Commission. According to this will, an attorney violating this rule should be disqualified, unless written informed consent says that the representation is governed by the government agency.

If the Commission finds a violation of the rule, it would require disqualification of Mr. Marks.

So, the proposed order would state that the Commission has jurisdiction to regulate attorney practice before the Commission, pursuant to the rule of professional conduct and other applicable law, including Commission Rule 1.2.219. The Commission's rule provides that any entity other than an individual must be represented by an attorney licensed to practice law in New Mexico at all point of proceedings. Thus, should the Commission find that Mr. Marks should be disqualified from the representation of Volt Solar, Volt Solar will be required to obtain other counsel to represent them in this matter or Volt Solar will not be allowed to intervene in this case. That is why this order to show cause is directed at Volt Solar. Volt Solar needs to have to have an attorney representing them in this matter according to the rules of the Commission. The order would require Volt Solar to file a response within 15 days from the date the order is issued; a) why Mr. Mark's representation of Volt Solar should not constitute violations of the PRC Act, the Governmental conduct act, and the rules

of professional conduct that was cited, and B), why Mr. Marks should not be disqualified from acting as Volt Solar's counsel in this matter under the authorities cited above. The proposed order states that capital Solar's motion to intervene will be held in abeyance until the issues raised in the proposed order are resolved or until Volt Solar elects to obtain other counsel.

Ms. Amer asked if the Commission would like to hear the summary of the other case which raises the same issues. The proposed order would require in terms of ruling to file a response why Mr. Marks did not violate the acts or one of the rules in his representation of Enchanted Winds.

Ms. Amer said the rule of professional responsibility regarding acting as a judge does not apply in this case because the matter that Mr. Marks was prior a Commissioner that relates to this case of Enchanted Winds was a rule making. As Mr. Fisk said, Mr. Marks was a Commissioner from 2005 until 2009. As such, Mr. Marks participated personally and substantially in the promulgation of the current Rule 570. Part of the concern alleges that Rule 570.13 violates the US Constitution primacy clause and violates the doctrine of federal preemption. But that being said, when Mr. Marks was a Commissioner, he participated personally and substantially in the repeal and replace of Rule 570. In Case No. 06-00241-UT he, Mr. Marks personally and substantially participated as the hearing officer at the public hearing on November 15, 2006 and issued a Bench Request Order on November 15, 2006. Case No. 06-00241-UT resulted in the Commission issuing a Notice of Proposed Rulemaking to amend Rule 570 and on January 11, 2007, the Commission adopted the Order Amending Rule 570 to implement FERC regulations related to its implementation of the PURPA. Finally, Mr. Marks also personally and substantially participated in consolidated Cases Nos. 07-00014-UT and 07-00422-UT in which the Commission issued a Final Order that repealed and replaced all of Rule 570, including Sections 12 and 13 which Enchanted Winds' Complaint alleges are unconstitutional and in violation of FERC Rules.

Due to these actions in the prior rule making regarding Rule 570, the proposed order would request Enchanted Winds to respond with why Mr. Marks's representation does not violate the PRC Act, and the rule of professional conduct.

Commissioner Lyons asked Mr. Smith to stop him if he said too much. His concern is with the service rates along with the 20% rate increase. A lot of the case dealt with standby charges, irrigation, and a small business, distribution charge and stand-by charge. He wanted to talk about the EPE case, which is tied to this case and the SPS case. Regarding the standby charge for Volt Solar, he didn't feel there is any conflict there.

There were so many motions filed by Commissioner Marks that finally, El Paso Electric threw up their hands and agreed to take up the charge for solar. At the same time, the demand charge and the standby charge was less for irrigators and small customers and might move into this case for eliminating the standby charge for solar and, at the same time, there was a 32% rate increase of standby charges for irrigation customers. If so he was concerned about in these rate cases. "I

need to know if that is going to be the case here because I don't want to have SPS saying that there is so much attorney work that they are going to cut and run too on the solar standby charge. Is that a fair question or just a comment?"

Mr. Fisk said it appears that Volt Solar once to intervene to challenge those standby riders.

Commissioner Lyons asked what happened with the EPE case.

Mr. Fisk said he could only vaguely remember. But he did recall that Mr. Marks represented One Hour Heating and Air Conditioning. "I don't know the specific challenges that were made a couple of years ago. I could look back at the case and discuss it. I don't remember all the ins and outs. I do know what you are talking about in general."

Commissioner Jones said, "I'm not understanding it. I remember in the other case, we had a party complaining and this seems to be like it. I'm not sure at this time. I'd like to see if something in the future would cause a conflict for me."

Vice-Chair Hall said, "My concern about this effort to seek the disqualification of Mr. Marks, while it falls within the rank of one of these provisions, doesn't seem to be attached to the purpose for which these provisions were written. This type of prohibition against a former official in representing clients before its former agency, is intended to prevent the unfair or unethical abuse of the position while an elected official in order to gain some benefit on behalf of their client later on. The reason why these provisions are found in the governmental conduct or ethical rules are to prevent unethical behavior. But I don't see anything in these acts asserted in any of these cases that support the notion that whatever Mr. Marks was doing when he was participating in decision-making, that somehow provided him with special knowledge that is not part of the record of the case that he could somehow use in the future in the current case. Mr. Marks seemed to be very clear about what his position was. So I don't understand why there is even an application. Because, I don't see any suspected wrongdoing. So I am not inclined to support an order of this nature now."

She said she would like to read some of the provisions such as in the rules of professional conduct. "Section 15-111 A, subparagraph 2, referred to in the proposed order that says that public officers shall not otherwise represent my client in connection with a matter in which the lawyer participated personally and substantially as a public officer unless the appropriate government agency gives its informed consent. Interpretation of that this made by the committee that generated the rule. The rule is to prevent a lawyer from exploiting public office for the advantage of another client. That's the purpose." She didn't see any fact alleged in this motion that supports the applicability of this rule. She quoted further that it should not be so restrictive ...

A Commissioner who is a lawyer in private practice would not want to be a Commissioner if the consequences would mean they could not participate in a case without any intent of disadvantaging from having held office.

This is important because this agency has an interest in qualification to understand the work. It would have very chilling effect on attorneys working in government that their private practice would be hurt.

Commissioner Espinoza said, "So you are saying there is no fact, but you just heard all of the facts here today. You continue to throw that out – a chilling effect. I'm not an attorney but having him produce information that say there is no wrongdoing. Jason has participated in the rulemaking and wrote the rule that granted the Coop protection. So he is now challenging the rule having to do with interconnection standards and possibly a violation of our own PRC Act." With everything I've heard it being chilling effect, I understand they need to make a living but not at the expense of transparency." "Recently, the Commission questioned participation of the person who was a former employee with the Jornada Water case. The Commission hasn't yet issued a ruling there - not the person but the attorney. I think with that said, the Commission should question the participation of Mr. Marks as it relates to the other case. It is a matter of having everything brought to the surface and determining if it is okay or not. And the options that were given is not to discredit anybody. You heard the options that were given. The Commission can disqualify or not." She felt it is not so much being an attorney but participating in a case. It is just to be transparent.

Vice-Chair Hall said transparency is the essence for an official. What Commissioner Marks acts were, are transparent. If there was any kind of secret or extra knowledge from his past act as a Commissioner which somehow would advantage his client over another client or disadvantage other clients, then that would be important, and it would be a matter of concern that his behavior in representing a client is somehow unethical. But from the motion, any suggestion that Mr. Marks had engaged in any unethical behavior would be a matter of unfair advantage. Any assertion of unethical behavior, I don't find here.

Commissioner Lyons said in the rule 570, it says appearance of conflict. It might be an appearance. And if this has a chilling effect on attorneys in government - I like that.

Commissioner Espinoza didn't think it was appropriate to allow Mr. Marks to speak. It would violate the ex parte rule because the client is not present.

Mr. Smith said if it causes conflict with his client, he cannot represent his client who is not present.

Vice-Chair Hall said General Counsel could not permit him to speak.

Mr. Marks attempted to speak, and Vice-Chair Hall ruled against it and called for order.

Mr. Smith stated that if the allegations are presented to the Commission, he has an obligation to contact his client to inform him of the allegations and get permission from his client.

Ms. Amer said it needs a discussion.

Vice-Chair Hall agreed.

Commissioner Espinoza moved the order in Case 17-00189-UT.

Commissioner Lovejoy said she agreed with the Chair.

Commissioner Lyons seconded the motion and it failed by a 2-3 voice vote with Commissioners Lovejoy, Hall and Jones dissenting.

The Commission went to the other case, 17-00255-UT, the SPS rate case.

Commissioner Lyons said he did not want to see the extra charges for solar in this case.

Commissioner Lyons moved to approve the order. Commissioner Espinoza seconded the motion and it failed on a 2-3 voice vote with Commissioners Hall, Lovejoy and Jones dissenting.

- 5) 14-00322-UT **IN THE MATTER OF STAFF'S MOTION TO SUSPEND AND REVIEW THE JORNADA WATER COMPANY'S PROPOSED ADVICE NOTICE 40, REQUESTING A 2% RATE INCREASE, AND FOR FURTHER RELIEF (Commissioner Valerie Espinoza)**

This item was not considered.

- 6) 12-00289-UT/ **IN THE MATTER OF STAFF'S PETITION FOR AN ORDER TO SHOW CAUSE**
14-00147-UT **WHY JOSE LEON ROMERO D/B/A NEW MEXICO WATERWORKS, INC. (A CANCELLED ENTITY), DAN SERRANO, AND NM-WATERWORKS, LLC, SHOULD NOT BE FOUND TO HAVE VIOLATED VARIOUS PROVISIONS OF STATUTORY AND REGULATORY AUTHORITIES. (Commissioner Valerie Espinoza)**

This item was not considered.

7) **Undocketed** **NMFTA GENERAL TESTING POLICY/NFPA 1021 FIRE OFFICER
PROFESSIONAL QUALIFICATIONS
(Commissioner Sandy Jones)**

This item was considered earlier in the meeting.

9. PUBLIC COMMENT

Public Comment was given earlier in the meeting.

10. COMMUNICATIONS WITH GENERAL COUNSEL

There were no communications with General Counsel.

**11. COMMUNICATIONS AND POSSIBLE ACTION WITH CHIEF OF STAFF, ERNEST D.
ARCHULETA, P.E.**

Mr. Archuleta said on the Economic Development rule from Commissioner Lyons some conversation around renewable energy that came up again was over dominance of service and not considering economic impact. LCS asked him to come up with language for the Legislature in the next session and shared it with the Commission. He was not sure it would go forward.

12. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Lovejoy proposed having the case management meeting on Tuesday, November 21 rather than November 22 and authorize the Chief of Staff to grant early release on November 22 for Staff.

The Commissioners were in consensus about both suggestions.

Ms. Amer communicated on the renewable case that HE Glick issued an RD and responses submitted and the deadline was November 28, but Ms. Glick is out that week, so it will be on the November 15 agenda for Ms. Glick to present the RD. She understood some might be on the bridge. Perhaps an hour should be reserved for that next week. The only other meeting is the 21st

but Ms. Glick could not be present then. She just wanted to notify those who might not be here next week.

Vice-Chair Hall added that three Commissioners would need to be on the bridge.

Commissioner Lovejoy asked if it could be first on the agenda.

Commissioner Espinoza said this is far more important than any knowledge at NARUC.

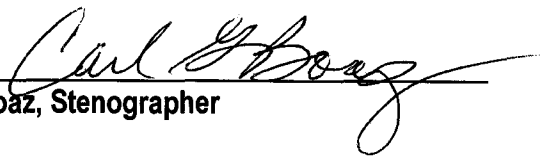
Commissioner Lovejoy said, "I didn't ask for your judgment."

Commissioner Lyons said he would be present next week.

13. ADJOURNMENT


The meeting was adjourned at 11:50 a.m.

ATTEST:


Carl Boaz, Stenographer

APPROVED: 12/7/17


SANDY JONES, CHAIRPERSON


CYNTHIA B. HALL, VICE CHAIRPERSON


PATRICK H. LYONS, COMMISSIONER


VALERIE ESPINOZA, COMMISSIONER


LYNDA LOVEJOY, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Date: November 8, 2017

SIGN-IN SHEET

NAME	COMPANY NAME (if any)	PHONE NUMBER
Gerard Ortiz	PNM	505 241 2561
MARIE JORDAN	Peak Reliability	978 609-4591
Rachel Sherrard	Peak Reliability	360 806 2799
STEVEN CORDOVA	NMRC	505-697-3557
Scott Richins	Thrus Canyon Power LLC	575-590-3692
Jessie Ybarra	Cyrg Energy	575-313-5947
RHONDA MILLS	Geothermal Assoc	323-578 2912
MARIO CONTRERAS	Xcel Energy / SPS	806-378-2115
NICK GOODMAN	Cyrg Energy	801-875-4200
Jason Marks	Enchanted Enchanted + U.S.	385-4435
Gene Gallegos	AFID	505 477 0922
Kathryn Hunt	Callaghan + Kennedy	575-642-3875
Carrie Graha	AARP	720-480-4133

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Wednesday, November 8, 2017

9:30 a.m.

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

AGENDA

I. PLEDGE OF ALLEGIANCE/STATE PLEDGE

II. INTRODUCTION OF SPECIAL GUESTS

III. CONSIDERATION AND APPROVAL OF THE AGENDA

IV. CONSIDERATION AND APPROVAL OF THE MINUTES

- **Minutes of the Case Management Open Meeting on October 18, 2017**

V. PRESENTATION

- **PRESENTATION BY RACHEL SHERRARD, VICE PRESIDENT OF COMMUNICATIONS AND EXTERNAL AFFAIRS, PEAK RELIABILITY**

VI. CONSENT ACTION

A. Transportation Matters:

NONE

B. Utility Matters:

1)	17-00269-UT Michael Smith	IN THE MATTER OF THE APPLICATION OF NEW MEXICO GAS COMPANY, INC. FOR A VARIANCE FROM 17.10.640 NMAC FOR ITS NOVEMBER 2017 GAS COST FACTOR STATEMENT NEW MEXICO GAS COMPANY, INC. Applicant. <u>ORDER</u>
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VII. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

NONE

B. Utility Matters:

2)	17-00142-UT Russell Fisk Frances Sundheim	IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR EXPEDITED APPROVAL OF A LONG-TERM PURCHASE POWER AGREEMENT WITH NEWMAN SOLAR LLC EL PASO ELECTRIC COMPANY, Applicant. <u>ORDER</u>
3)	17-00255-UT Commissioner Valerie Espinoza Judith Amer Russell Fisk	IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR REVISION OF ITS RETAIL RATES UNDER ADVICE NOTICE NO. 272, SOUTHWESTERN PUBLIC SERVICE COMPANY, Applicant. <u>ORDER</u>

VIII. DISCUSSION AND POSSIBLE COMMISSION ACTION

4)	17-00189-UT Commissioner Valerie Espinoza	IN THE MATTER OF THE FORMAL COMPLAINT OF ENCHANTED WINDS, LLC AGAINST CENTRAL NEW MEXICO ELECTRIC COOPERATIVE CONCERNING ITS RULE 17.9.570 FILING AND ITS FIRST REVISED RATE 31
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5)	14-00323-UT Commissioner Valerie Espinoza	IN THE MATTER OF STAFF'S MOTION TO SUSPEND AND REVIEW THE JORNADA WATER COMPANY'S PROPOSED ADVICE NOTICE 40, REQUESTING A 2% RATE INCREASE, AND FOR FURTHER RELIEF
6)	12-00289-UT/14-00147-UT Commissioner Valerie Espinoza	IN THE MATTER OF STAFF'S PETITION FOR AN ORDER TO SHOW CAUSE WHY JOSE LEON ROMERO D/B/A NEW MEXICO WATERWORKS, INC. (A CANCELLED ENTITY), DAN SERRANO AND NM WATERWORKS, LLC, SHOULD NOT BE FOUND TO HAVE VIOLATED VARIOUS PROVISIONS OF STATUTORY AND REGULATORY AUTHORITIES
7)	Undocketed Commissioner Sandy Jones	NMFTA GENERAL TESTING POLICY/NFPA 1021 FIRE OFFICER PROFESSIONAL QUALIFICATIONS

IX. PUBLIC COMMENT

X. COMMUNICATIONS WITH GENERAL COUNSEL

XI. COMMUNICATIONS AND POSSIBLE ACTION WITH CHIEF OF STAFF, ERNEST D. ARCHULETA, P.E.

XII. COMMUNICATIONS WITH COMMISSIONERS

XIII. ADJOURNMENT

To obtain a copy of this agenda please log in the Commission's website at www.prc.nm.gov/committee.

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) 827-4042 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.

PUBLIC COMMENT

All members of the public wishing to provide public comment must sign a sign-up sheet prior to the start of the meeting and identify their name and 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 30-minute period, the Chairman 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 matters that should be addressed appropriately as the subject of an informal or formal complaint before the Commission or 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 Chairman 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 Chairman. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chairman 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.

OPEN MEETING: CASE MANAGEMENT MEETING

PUBLIC COMMENT SIGN-IN SHEET

Thank you for attending this meeting.