

## ***Commissioner Jason Marks - Summer PRC Update***

July 1, 2007

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### **Around the Commission**

This year's **picnic** (June 15<sup>th</sup>) was complimented as one of the best PRC social events ever! Kudos to the Commissioner's assistants, who organized the event and also chipped-in with the Commissioners on the groceries. More thanks to Sider for the music and activities, Paul Montoya and Ron Martinez for chicharones, and Chairman Lujan, for his words inspiring us to play hard.

. . . . Speaking of working hard and playing hard, on Friday, the PRC wrapped up three weeks of consideration of **PNM's Gas Rate Case** with four straight days of Commission meetings (we continued Tuesday's scheduled meeting into Wednesday, and Thursday's into Friday). Rate cases are probably Commissioners' least favorite part of the job – many constituents don't understand the legal requirements for rate setting and believe that when we authorize rate increases, it's because we are "in the pocket" of utility execs. The truth is that state law and federal constitutional law require that we authorize "just and reasonable" rates that allow a utility an opportunity to recover its reasonable costs of providing service and a reasonable profit. My objective for a rate case is to keep consumers from paying even one dollar more than the company can prove-up, while adhering to the factual record and avoiding arbitrary cuts that would violate legal standards. In this instance, after Commissioners carefully considered the facts and briefs in the record of this year-long case, we wound up cutting PNM's request substantially, approving less than half of what they asked for. Utility Division staff and attorneys put a lot of quality work into this case, as did the Attorney General, the company, and all the environmental and consumer participants.

In other good news, please join me in congratulating Monica and Edward and wishing them a lifetime of happiness together.

### **Title Insurance**

For the most part, the Commission does not set insurance rates like we do for utilities and motor carriers. Property and casualty, health and life, and other types of insurance are complex products that can put consumers at special risk in the event of improper sales and pricing practices, but insurance is not a natural monopoly like an electric or water utility. For the most part (but not entirely), we leave it to the competitive market to establish rates for these insurance products, and much of the Insurance Division's work lately has been focused on developing ways to empower consumers to benefit more from competition between insurers.

The regulatory environment for title insurance is different. New Mexico is one of just two or three states in which the selling of title insurance is completely regulated. By state law, the

Superintendent of Insurance sets the rates that must be charged for title insurance policies, and establishes the precise coverage of policies and the words that must be used in title policies. Statutes and Insurance Division rules even specify how title insurance “plants” are to be operated.

In 2005 or 2006, a national magazine did an investigative study that indicated that New Mexico’s title insurance rates were among the highest in the country. However, the way that the costs of title insurance show up on closing documents varies from state to state, and total costs in New Mexico *may* not be as bad as this particular study suggests. It must be noted that, despite public skepticism, our rates have actually been trending downwards in recent years, and may do so again this Fall.

When I was first elected to the Commission, I thought that the way to “fix” title insurance in New Mexico was to de-regulate rates, and let competition drive them down. After all, our current regulated system was put in place at the request of the title insurance industry – not consumer advocates – and amounts to a legalized price-fixing scheme that protects the title companies from competition. I have since learned that the states with supposedly competitive title insurance markets are not particularly happy with their systems and that title insurance market practices have been the subject of Congressional hearings, GAO studies, and investigations by state insurance commissions.

Title insurance is a classic “imperfect market,” because the person choosing the vendor (the real estate agent) is not the person who will be paying for the service (the home buyer). Thus, title companies typically compete for business on things that benefit real estate agents (ease of closing, attractive and convenient offices, etc.) than things that benefit the consumer like low prices and broad coverage. In 2005, one of the largest title companies (five companies completely dominate the U.S.) was caught paying illegal kick-backs to developers and builders. Our neighbors to the north in Colorado hit the company with a substantial fine. There was an informal investigation by our Insurance Division soon afterwards that disclosed one instance of the same practice, the company offered refunds, and the matter was not pursued further until this past winter when Commissioner Lujan requested a formal investigation, with appropriate action to be taken. I have heard that the Title Insurance Bureau, with their formal examination into this area, has identified at least one other kick-back incident and other related issues.

Besides price, another concern with title insurance is coverage. During this past legislative session, the PRC supported a bill that would have struck language from New Mexico law that insulates title companies from being sued for negligence in their title searches. This issue is related to coverage in that it is only likely to arise in a situation where the title insurer is not providing coverage under the policy. Commissioner Lujan and I spoke in favor of this pro-consumer legislation through several legislative committee hearings, and participated in several meetings in an attempt to iron out differences between the bill’s advocates and industry.

An underlying problem affecting our regulation of title insurance is a lack of objective information. The Superintendent and the Commission are working to address the information deficits over the course of this year, so that as we move forward, we do so in a more informed manner. The Insurance Division’s Title Insurance Bureau has a number of related initiatives underway: The formal examination into kick-backs I mentioned earlier; a contract with the

UNM Anderson School of Business to prepare an objective, “apples to apples” study comparing our title insurance costs to that of neighboring states; a contract with a CPA firm to selectively audit financial data submitted by title companies for our rate setting hearings; and a “data call” to provide detailed information on paid and denied title insurance claims. The Superintendent is also reconstituting our title insurance advisory group as a broadly based group with representation from consumer and industry interests. Our initiatives have attracted national attention, including a mention in the N.Y. Times, and the director of a well-known national consumer group has volunteered to serve on our task force.

## **Clean Energy Update**

### *Carbon Dioxide Pricing*

I would like to highlight two recent developments in the PRC’s drive to contribute positively to solutions to the challenges of climate change and energy insecurity. Last month, the PRC unanimously adopted an Order setting standardized prices for carbon dioxide emissions in electric utility resource planning. (Carbon dioxide is a greenhouse gas that, according to scientific consensus, is causing global warming and other climate changes.) The prices that must be used for planning purposes are \$8, \$20, and \$40, per ton of carbon dioxide emitted, beginning in 2010 and increasing by 2.5% per year. These three prices are to represent the impacts of low, medium, and high levels of carbon regulation. At 2.5% per year, even the medium price results in CO2 costs of over \$40/ton during the life cycle of a typical generation resource, and using these prices indicate the cost risk of different utility generation portfolios in a “carbon constrained world.” I believe that this Order will provide the Commission with a powerful tool to direct development away from conventional coal-fired generation, which produces more greenhouse gases per megawatt-hour of electricity than other fuels and technologies. I would especially like to thank Chief Hearing Examiner Bill Herrmann, who brought in national experts for workshops and then managed to pull together utilities, environmentalists, and other affected parties to produce a carbon pricing recommendation that achieved consensus support. I would also like to thank Utility Division staff for their participation and support of the Commission’s energy policy agenda.

### *Clean Energy Should Not Be a Partisan Issue*

This past year, I’ve been speaking with a variety of groups about climate change and energy policy. The reception has generally been positive, but there are some individuals who would like to politicize the issue, vociferously arguing that the whole issue is a hoax perpetrated by Al Gore and the Democratic party. Fortunately, those that would politicize climate change and make it partisan seem to be less and less in the mainstream. In the west, we can see leadership in this area from Richardson (D-NM) and Schwarzenegger (R-Cal) being joined by more and more governors from both parties. And here at the PRC, support for renewable energy and mitigating climate change has always been bipartisan, Commissioner King, who is a Republican, has consistently been a strong voice in support of progressive energy policies that help our state. I hope in the near future our Congressional delegation will take a lesson from the states (and from Europe, where support for greenhouse gas mitigation cuts across ideological lines), and make some real progress in moving us towards a sustainable energy policy for the twenty-first century.

By the way, I acknowledge that is within the realm of possibility that the today's scientific thinking is all wrong and that the climate change skeptics are correct (and I actually hope they are). But the consequences of climate change are so catastrophic that I will not gamble our children's future on this possibility.

### *RPS Rulemaking*

At the end of May, the Commission issued a Notice of Public Rulemaking (NOPR) to update the administrative **rules for New Mexico's Renewable Portfolio Standard (RPS)**. This rule making will conform our rules to the statutory changes from this past legislative session (SB 418). If the Commission ultimately adopts the rules that were published in the NOPR, we would also for the first time be setting diversification targets for renewable portfolios. Under the existing set of rules, diversification was encouraged by weighting Renewable Energy Certificates (RECs) for wind 1 for 1, biomass at 2 for 1, solar at 3 for 1. Weighting was intended to encourage the deployment of higher cost technologies, but it does not appear to have been particularly effective. In part, this is because of an unexpected, positive development - wind energy was able to be deployed so inexpensively that it didn't matter that it suffered from a REC disadvantage.

While wind and biomass have a number of economic advantages for utilities and their ratepayers presently, there are limits on how much wind and biomass we can put to use in New Mexico. The intermittent nature of wind energy limits how much we can take on the grid, and here in the desert southwest, we just can't grow enough biomass to fuel our energy needs. The resource with the greatest long-term potential using known and proven technologies is solar. A study done for the Western Governors' Association found that New Mexico has enough solar energy potential to supply the entire United States' electricity demand. Not only is the supply of solar energy roughly coincident with periods of high electricity demand, solar thermal plants that use mirrors to make steam that is run through a turbine (similar to a fossil fuel plant) can be engineered with thermal storage that will allow for electricity generation into the evening or through several cloudy days. Solar thermal plants, when built to large scale, now cost much less solar photovoltaic panel technology, and could in the future become cost-competitive to fossil-fuel technologies.

Because large scale solar has the potential to become a mainstay of our energy supply over the coming decades, I believe that it is important to take the first steps in this area now. Despite a lot of rhetoric about New Mexico being a solar state, our actual installed solar capacity is probably 200 kw - 300 kw, only enough to fully power about 100 homes. The proposed new RPS rules would set a target of 2% of all electricity sales from solar by 2011 and 3% by 2015. The plants required to achieve these targets would be large enough to generate economies of scale (60 to 100 megawatts), but not so large as to expose ratepayers to excessive cost risks. The Commission is accepting original and response comments from interested parties into the rule making docket over the summer, which will be posted to our website. We will also hold a public hearing.

On a related topic, plans for our September workshop on Renewable Energy continue to come together. Based on feedback I heard at the Western States Commissioners' conference last month in Utah, I expect we will attract a national audience, including commissioners from many

of the western states.

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Best wishes to all at the PRC for a fun and safe Fourth of July holiday with family and friends, celebrating our nation's founding! Thanks again to all of you for continuing to work hard every day for the people of New Mexico.