

NEW MEXICO PRC NOMINATING COMMITTEE

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1. New Mexico has the potential to be a leader in the region, delivering low-cost renewable resources to serve its citizens and the rest of the West, benefiting New Mexico's economy, ratepayers, and supporting grid reliability. What do you see as the role for a New Mexico Commissioner as it relates to regional discussions on power markets and interstate transmission; how are you best suited to engage in these regional forums?

Answer:

New Mexico has great potential for the development of renewable resources; we have the land, the technology and the will. Two important elements that hold NM back from being the leader that it could be is infrastructure and regional tie in. The New Mexico Commission (the Commission) will be at the forefront of overseeing the development of that infrastructure and working with other western states to ensure that the energy we develop here has a market and a way to get to that market. It's important for the Commission to be a driver of those conversations so as to make sure we are protecting New Mexico consumers, utilities and our local grid from the risks that could be associated with such development and interconnections. Commissioners should be as much leaders in these forums as they should be problem solvers, mediators and facilitators. The Commissioners must also be representatives of the great state of New Mexico and be someone that other states and the nation look to as an example of what it means to be New Mexican.

My career has been dedicated to doing the work to make New Mexico a better place to live, do business and raise a family. I am well-suited to engage in these regional forums because of my experience working with a diverse and divisive set of stakeholders, my experience collaborating with other state regulators, my experience leading large groups in the resolution of complex and nuanced issues, and my long history of public service to the State and citizens of New Mexico. One of my strengths is helping diverse interests find common ground and, by being creative and building trust, helping them forge a path forward.

As a line attorney at the Office of the New Mexico Attorney General, I had the privilege and opportunity to represent the State and consumer interests before the Public Regulation Commission. In that roll I successfully worked with all sides to approach challenges collaboratively where possible, while consistently protecting the interests of consumers, supporting our economy, and ensuring a healthy utility. I developed a deep understanding of the technical issues underlying the discussions of power markets and interstate transmission; through my interactions with Southwest Public Service Co. and the Southwest Power Pool as part of my regulatory role, I have experience regarding how a regional power market affects New Mexico and what issues could arise as we look to the west to develop a market for our renewable energy.

I have worked directly with other states on both legal and policy matters since 2016, and have extensive experience building coalitions while ensuring that the welfare of New Mexicans remains protected. As head of the Office of the New Mexico Attorney General's Consumer and Environmental Protection Division, I worked directly with attorneys general offices across the country, both to address common issues and to resolve disputes between our respective states. At any given time, there are dozens of matters that the attorneys general offices work on with each other. Sometimes that collaboration means that we work together to bring a common action or coordinate an action against an actor threatening the welfare of our citizens, like our opioids litigation or highly complex antitrust enforcement actions against sophisticated multinational corporations. Sometimes that means working through tough issues with states with who we don't always see eye to eye, like an original action concerning waters of the Rio Grande River currently pending before the U.S. Supreme Court. Sometimes it means leading large groups in the resolution of extraordinarily complex and technical issues. In TX v NM, for example, I coordinate a trial team consisting of three law firms, dozens of technical experts and three state agencies. I have been coordinating an unprecedented mediation effort in this case, working collaboratively with Texas, Colorado, the United States Bureau of Reclamation, the Department of Justice, farmers, ranchers, municipal governments, and others on finding a potential resolution. These experiences directly add to my ability to represent New Mexico as a Commissioner in complex, high-stakes regional discussions on power markets and interstate transmission.

2. Competition between generators, whether utility- or Independent Power Producer-owned, helps ensure the lowest cost, best suited resource is procured by electric utilities, ultimately resulting in the best deal for customers. What do you see as the role of a Commissioner in ensuring fair and transparent competition in resource procurement?

Answer:

The Commission's role in ensuring fair and transparent competition in resource procurement is to ensure that utilities are meeting their mandate to provide adequate, efficient and reasonable service at just and reasonable rates. See NMSA 1978 §§ 62-8-1, 62-8-2. Without adequate information about, and transparency into, procurement practices the Commission would be unable to make a finding that such rates were just and reasonable. Essentially, the Commission's role in ensuring fair and transparent competition in resource procurement comes from its role as a regulator. The Commission should be setting the minimum standards for a utility as to what process and transparency will be sufficient to support a finding that the requested certificate or rate is in the public interest (in the case of certificates) or just and reasonable (in the case of rates). The Commission must be clear in its requirements as to utilities' procurement practices as well as expectations for the documentation for those practices so as to ensure proper notice to the utilities and other interested parties. The Commission should not substitute its business judgment for that of the utility, but conversely it is incumbent on the utility to meet the requirements set by the Commission. Once the procurement is complete and the process is submitted to the Commission, the Commission must enforce its own rules. Such consistent regulation is necessary to foster a robust and competitive economy, as well as an environment conducive to the development of low cost resource options. When a minimum standard is clear, and everyone is held to that standard, all players benefit from an even playing field.

3. What is the "public interest" in the context of utility regulation?

Answer:

The "public interest" in the context of utility regulation, and for the Commission, is enshrined in statute and informed by the balance between interests of the consumers, the public and the shareholders. The public interest is faithfully administering the law as provided by statute; its ensuring that we are not leaving vulnerable New Mexicans behind as we

transition to a cleaner energy economy. The public interest is the interests of ensuring that all New Mexicans have access to good jobs and a living wage. The public interest is the interests of regulated utilities needing certainty and a regulatory environment that attracts capital investment. For the Commission, the public interest consists of balancing all these interests, and more, to make sure New Mexico's families, businesses and economy work in balance to keep moving forward.

4. What is the role of electric utilities in decarbonizing the economy and what is the Commission's role in overseeing that process?

Answer:

Utilities are integral parts of the communities they serve. That means that when our communities face change, so does the utility that serves that community. As New Mexico's weather continues to change and become less predictable, our communities face new challenges—from forest fires and drought, to flash floods and wind storms. These are challenges that the utilities that serve our communities also face. These natural disasters destroy infrastructure, affect supply chains, and place increasingly unpredictable stresses on the grid. As New Mexicans take steps to reduce their carbon footprint and help combat climate change, utilities must be part of that community effort. According to the US Energy Information Administration, in 2020 fossil fuel combustion accounted for approximately 73% of total US greenhouse gas emission. So regardless of the other steps a family takes to reduce its carbon footprint, if they are receiving energy from a utility that relies on fossil fuels, they are still contributing to the emission of greenhouse gases. It is important that utilities are partners in addressing the challenges we face in the future. However, it is equally important that our utilities aren't responsible for decarbonizing alone. New Mexico already has statutes that help utilities decarbonize without bearing all the financial burden. Such sharing of responsibility is important as we move into the future, though we must ensure that we are not disenfranchising vulnerable New Mexicans to accomplish the goal. New Mexicans are going to continue to need affordable, reliable energy and New Mexico's utilities must continue to provide it. The role of the Commission is to provide clear, consistent, and predictable direction to utilities with regard to implementing the law and working toward decarbonization.

5. To what extent, if any, should rate-setting decisions of the PRC consider social, cultural, and environmental externalities? When, if ever, should social, cultural, and environmental externalities lead the PRC to approve rates higher than could be approved if such externalities were not considered?

Answer:

It doesn't matter how low a rate is if a New Mexican doesn't have a job to earn money to pay his or her electricity bill. In other words, it is imperative that other considerations aside from cost be considered when setting utility rates. It is the declared public policy of the State of New Mexico that "the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper service shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted..." NMSA 1978, § 62-3-1(B). Further, the New Mexico Supreme Court has recognized that the statutes do not "...tie the Commission down to the consideration of a single factor in establishing rates." *Hobbs Gas Co. v. NM Pub. Reg. Comm'n*, 1980-NMSC-005, ¶ 6, 94 N.M. 731, 734. Clearly, therefore, low rates are not the only consideration of the Commission. While it is true that rates should be "fair, just and reasonable", other factors apart from cost must naturally be considered when setting rates. The public interest allows for many factors to be considered in the Commission's regulation of utilities and utility rates. While it is true that utilities and other interested parties must have notice regarding the consideration of other factors and those factors must support "fair, just and reasonable rates", there is no limitation to considering only

lowest cost. Other factors beyond the lowest cost that might be considered in setting rates are community commitments such as extending service to underserved communities, protecting a healthy environment and ensuring a healthy economy.

6. Please discuss your views on governance and the appropriate roles of Commissioners and staff, appropriate levels of delegation and your expected level of involvement in the administration of the agency.

Answer:

The statute provides for a hierarchy of delegation. The Commissioners are the heads of the agency. The Commissioners have a Chief of Staff to whom to delegate the operations of the agency. The Chief of Staff has division directors, who in turn oversee staff attorneys, economists, engineers, and more. First, the Commissioners should set clear goals, directions and expectations for the agency as a whole. Second, the Commissioners must serve as a resource for the operation of the agency. Third, the Commissioners must foster an environment that encourages the free and open flow of communication and information. The clear and unimpeded flow of information within the agency, except in situations where Commissioners should be walled off, is critical to the efficient functioning of an agency. Information must flow both from the top of the agency down and from the bottom of the agency up. When it is time to make determinations and decisions, it is imperative that the Commissioners have all permissible information relevant to that decision. It will be incumbent on not just the Commissioners but also on the Chief of Staff and the division directors to ensure that communication is flowing properly. Commissioners should not be involved in the daily functioning of the agency--that is the purpose of staff and delegation. However, Commissioners should be generally aware of the everyday functions of the agency. If selected as a Commissioner, I would expect my involvement to be limited to agency-wide needs and decisions, including events that rise to the level of needing agency head intervention. However, I would expect to have regular and reliable access to information about the agency, since I would be one of the three agency heads ultimately responsible for the actions of the agency and its staff.

7. As you evaluate issues before the PRC which of the following factors do you view as most important and why?

- Portfolio standards/ energy mix
- Climate change
- Reliability
- Flexibility
- Sustainability
- Affordability
- Grid capability/stability
- Scalability of technology
- Promoting new technologies
- Eliminating certain energy sources from New Mexico's portfolio
- Social justice for frontier communities
- Maintaining New Mexico's ability to produce the energy it needs in New Mexico i.e., keeping New Mexico as energy-self-sufficient

Answer:

It is difficult to prioritize one of these issues over any others because many of them are related to or dependent upon many of the others. For example, addressing climate change relies on addressing other issues on this list such as portfolio standards/energy mix, sustainability, grid capability/stability, eliminating certain energy sources from New Mexico's portfolio, promoting new technologies and social justice for frontier communities. Reliability, flexibility, and scalability of

technology, as well as keeping New Mexico energy-self-sufficient all are inextricably bound up with grid capability/stability. Keeping New Mexico as energy-self-sufficient will be dependent on Grid capability/stability, flexibility, reliability, affordability and scalability of technology. Due to the nature of the issues the Commission faces, the Commission must not put any one issue ahead of the others. Fortunately, because of the interconnected nature of these issues, it is possible for the Commission to address many of these issues simultaneously.

Should I be selected as a Commissioner, my priority would be to make decisions that prioritize more than one of these competing interests. For example, ensuring New Mexico has reliable energy will require prioritizing sustainability, grid capability/stability and flexibility, which will in turn help address climate change, social justice for frontier communities and keeping New Mexico energy-self-sufficient.

8. In what order would you rank each factor? Are there other factors that would influence your decisions?

Answer:

I would rank the factors and each of its related factors in the following order:

1. Reliability: New Mexican families and businesses rely on the consistent, uninterrupted flow of power to their homes and businesses. Without reliable power, we risk the health and safety of New Mexicans and will struggle to attract businesses to grow our economy. I consider the following factors to be related to the issue of reliability:
 - a. Climate Change: The continuing change in climate is going to make reliability more and more uncertain as we face more extreme weather events and natural disasters. Addressing climate change is also important to providing social justice to frontier communities;
 - b. Grid capability/stability: If the grid lacks resiliency, or is an easy target of attack, reliability cannot be maintained. Without a sufficient, modern grid, New Mexicans will struggle to receive energy. Grid capability will also assist in providing social justice for frontier communities.
 - c. Sustainability: Continuous, long term plans to provide power to New Mexico are dependent on utilizing resources which are both abundant and sustainable in New Mexico. Sustainability will also assist in addressing climate change.
 - d. Portfolio standards/energy mix: This priority helps ensure that New Mexico utilities are planning for the future, ensuring the power they supply is reliable, flexible and sustainable.
 - e. Maintaining New Mexico's ability to produce the energy it needs in New Mexico: Keeping New Mexico energy-self-sufficient helps ensure that the reliability of our power will not be subject to the whims of another state's energy policy.
 - f. Flexibility: New Mexico will need flexibility to keep our power reliable through the uncertain future. Our utilities will need to have the ability to respond to changing conditions and the Commission must work with the utilities to ensure the tools to address these situations will be in place prior to needing to utilize them;
2. Affordability: If we price New Mexicans out of the ability to afford their power, it doesn't matter how reliable it is. Energy insecurity is not just caused by a utility's inability to serve a constituent. It is also caused when families must choose to pay for food or for heat. I consider the following factors to be related to the issue of affordability:

- a. Social Justice for Frontier Communities: Currently there are many barriers to providing electrification for all. One of those is price; not just of the energy itself but of the line extensions needed to bring power into their homes.
 - b. Eliminating certain sources from New Mexico's portfolio: Environmental, Social and Governance issues are beginning to have a cost for corporations. Increasingly, corporations are now expected to account for the costs of climate change. By transitioning away from certain resources, in a thoughtful and deliberate manner, we can help keep costs down.
 3. Promoting new technologies: In order to keep New Mexico on track for taking its place as a leader in the renewable energy world, we must continue to invest in modernization and new technologies. This priority may also assist in addressing climate change and creating grid capability/stability.
 4. Scalability of technology: We must explore options to respond to the growing need for technology to be both local and utility-grade.
9. Is there a state whose energy regulatory policies that you believe New Mexico should emulate? If so, which one and why?

Answer:

New Mexico is unique. As Governor Lew Wallace stated, "Every calculation based on experience elsewhere fails in New Mexico." Thus, we should take the best and brightest ideas from other states and countries but consider them carefully before implementing them in New Mexico. There are many aspects of New Mexico that make implementing policies from other states tricky here. Beside the vast open spaces and low population density of New Mexico, we are also unique amongst the states in the number of New Mexicans living without access to power. While it is difficult to calculate exact numbers, there are unquestionably New Mexicans who currently live without utility or power service of any kind. There are homes in New Mexico today that live without electricity, telephone or internet service. These homes rely on wood or coal for heat and cooking fuel, and community or family resources to communicate with the outside world. This disparity in customer base is one reason why we must be careful in implementing policies from other jurisdictions. We must be careful that we are not leaving whole segments of our population behind simply because they are less visible. However, we should be constantly looking to our neighbors and sister states for ideas, we should be watching what is working for them, monitoring what those policies do to their utility rates, customer service and economy, and learning both from their successes and failures.

Further, we should be taking careful note of energy regulatory policies across the nation in how they respond and adjust (or perhaps contributed to) environmental disasters. For example, we should be watching how western states like Washington, Oregon and California are adjusting their energy regulatory policies given the increased prevalence of wildfires, like those caused by California-based PG&E. We should be learning from our sister states on the east coast for how to plan for resiliency and infrastructure.

10. Briefly describe your experience in the development or implementation of regulatory policy.

Answer:

Throughout my time at the Office of the New Mexico Attorney General I have been involved in administrative law. As a young lawyer, I provided administrative prosecution and general counsel work to regulatory bodies throughout state government. As the Office's utility attorney, I worked with a diverse group of stakeholders to help create economic development rates for gas and electric utilities. As the Director of the Consumer and Environmental Protection Division,

I oversaw public impact litigation which sought to enforce, defend or strengthen New Mexico regulatory laws. In that role I have also helped draft and promulgate administrative rules. I have assisted in advising two Attorneys General on regulatory issues involving utilities, energy, consumers and the environment.

11. New Mexico has 23 distinct sovereign Native American tribes within its borders. Please explain your familiarity with the State - Tribal relationship with an emphasis on how this relationship is applicable to utilities including power generation, right of ways and alternative energy?

Answer:

New Mexico is unique in its relationships with the sovereign tribes within its borders. In so many ways, we as New Mexicans recognize and are grateful for the cultural and traditional influences these tribes have had on our way of life. With respect to how this relationship is applicable to utilities, it's important to recognize that investor-owned utilities ("IOUs") provide services to comparatively little geographic territory in New Mexico, and that many sovereign tribes receive power from sources other than IOUs. Tribes also maintain sovereign authority over their lands and people, so the siting of power generation and rights of way must respect and work within that sovereign authority structure. For example, tribal lands cannot be condemned by eminent domain to allow a right of way through the tribal property. It is important for the Commission to acknowledge the State's relationship with the tribes, and continue working with these fellow sovereigns to provide reliable, affordable energy to all New Mexicans, as it is authorized to do in its enabling statute.

12. The Public Regulation Commission is a regulatory body. Often the line between regulation and policy can get blurred. Please explain your view as to where the line between regulation and policy is and actions and or ideas you would bring to the Commission to help maintain the focus on regulation.

Answer:

I have a long history of focusing on regulation. Whether through bringing enforcement actions in the court or prosecuting administrative actions for violations of regulations, I am confident that with my background I would bring a unique focus on regulation to the Commission. While the line between regulation and policy may often get blurred, it is important to remember that policy is the direction in which the State is headed. Regulation, on the other hand, are the actions needed to move in that direction. For example, the Legislature provides policy guidance through enacting legislation, the ETA or EUA as examples. The Commission's duty is to take that policy and implement it through regulation. That regulation takes multiple forms. First, the Commission must provide guidance on how it interprets that policy. Then the Commission must provide processes for enforcing that policy. Lastly the Commission must actually enforce that policy with the entities it regulates. Maintaining focus on regulation must start at the top of the agency, and be communicated to all levels of staff. So the first approach to ensuring a focus on regulation is to make sure that focus and expectation is clearly communicated. Second, the Commission must ensure that all actions and positions taken by the regulatory body comply with the law and its own rules. A constant attention to that compliance will help ensure regulation remains the focus. Lastly, remembering that regulation involves enforcing standards uniformly and consistently is important to the implementation of policy and priorities set by the State.

13. What is the most consequential action or decision of the PRC in the last twenty years? Why?

Answer:

The PRC makes consequential decisions nearly every week that very few people ever realize are consequential. Utilities, telecommunications and transportation matters affect every New Mexican whether they recognize it or not. That is a heavy duty. The “correct” answer to this is clearly equivocal, since even small decisions the PRC makes can lead to important developments in the law of New Mexico. For example, in a 2011 rate case, the PRC approved the recovery of renewable portfolio standard costs above the minimum required by law, thus giving utilities the incentive to expand renewable portfolios at a time when the transition to renewable energy felt less critical than it is today. Another example of an important decision was the Commission’s decision to adopt, with some modifications, the stipulation entered into by the majority of parties to the 13-00390 case, which paved the way for closure of two units of the San Juan Generating Station. This decision was consequential because, while it may not have achieved the goals of the stipulation for many of the interests, it started in motion many of the priorities that we see today. For example, the San Juan decision provided for a phased approach to abandonment, started the process of getting New Mexico out of coal fired generation, and established future obligations for the utility and the parties for the future abandonment of the remaining stacks at the San Juan Generating Station. That decision was the catalyst, for its successes and failures, for energy policy as it currently exists in our State.

14. In the last twenty years, has the PRC exceeded its authority? Please explain when and how.

Answer:

Challenges to Commission decisions get appealed directly to the New Mexico Supreme Court. According to the New Mexico Supreme Court, yes, the Commission has exceeded its authority in the last twenty years.

There are many instances where the Supreme Court has overturned a decision of the Commission based on other reasoning, including application of an arbitrary and capricious standard, violations of due process or decisions being unsupported by substantial evidence. But at least once, in 2007, the Supreme Court determined the Commission had exceeded its authority. In the matter of *N.M Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M 533, the Supreme Court determined that the Commission had exceeded its authority when it determined that the costs associated with the purchase of renewable energy credits were recoverable through the automatic adjustment clause when those certificates were unaccompanied by the purchase of the associated energy.