

October 14, 2022

New Mexico PRC Nominating Committee  
P.O. Box 1269  
Santa Fe, NM 87504-1269

Dear Nominating Committee,

This letter responds to the New Mexico Public Regulation Commission Nominating Committee's request for responses to the Candidate Questionnaire for applicants for the Commissioner of the New Mexico Public Regulation Commission.

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?

The NM Commissioners should view themselves as public servants dedicated to representing the needs of New Mexico here and beyond. As described below, New Mexico is well-positioned to have a greater voice in regional discussions surrounding power markets and interstate transmission. Commissioners also are ambassadors for the state, working to advocate for the state in regional discussions, preventing New Mexico from being marginalized in those discussions, and developing collaborations and partnerships that will enhance opportunities and resources for a sustainable future for New Mexico. Being a law professor for the last 12 years (and a state public servant for the last eight) has well-equipped me to be an ambassador, collaborator, and leader in regional discussions on power markets and interstate transmission. A large part of my work involves engaging with other scholars around the country and world, facilitating interdisciplinary work and projects, and educating students and communities about the importance of the energy sector. I would expect Commissioners to particulate in significant outreach within and outside of the states and I am particularly well-suited to serve in that role.

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?

Commissioners have an important role to ensure fair and transparent competition in resource procurement. The competitive process is critical to drive down prices for the ratepayers of New Mexico, but to encourage applicants, the integrity of the process needs to be ensured. Some utility decisions are obscured until after final decisions have been made. It is important that large scale procurements establish rules and procedures that ensure a level playing field for both incumbents and new entrants responding to such solicitations. Decision criteria should be clear and applied consistently across applicants. The Commissioners can help provide guidelines for utilities based on best practices nationwide and then use their statutory authority to ensure compliance with such guidelines within their statutory authorities.

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

The "public interest" is the foundation of all of utility regulation. When the Supreme Court first held that utilities are "clothed in the public interest" in 1876 (*Munn v. U.S.*), it justified the existence of state regulation over such private enterprises. It is their provision of an essential service that renders the need for the state to ensure that rates are just and reasonable and non-discriminatory access and treatment. The resulting regulatory compact between the state and utilities is critical to ensuring affordability, efficiency,

and reliability for consumers while ensuring financial performance, optimized system utilization, and economic growth opportunities for utilities.

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

Electric utilities are a critical component of decarbonizing the economy. The United Nations Intergovernmental Panel Climate Conference has repeatedly documented the need to decarbonize all sectors of the economy to work to stabilize the global temperature rise to 2 degrees Celsius. The energy sector represents over 50% of GHG emissions in the United States with the electric grid and transportation sharing this burden relatively equally. Historically distinct sectors, they are now intertwined as the generation sources for the grid will affect the GHG impact of the electric vehicles. The changes needed are transformational and respect for the utilities' business needs, motivations, and capabilities are critical to developing pathways for them to embrace the change. The policies, infrastructure, and technology are in place to enable a 40-70% reduction in GHG emissions by 2050 and it will not happen without collaborating with utilities and finding ways to align their business goals with environmental goals.

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?

The PRC is bound by state statute, but there should be discussions that investigate the new programs and rate designs around the country that merge traditional cost of service regulation with public interest principles to assess their applicability in a state like New Mexico. These externalities can be particularly difficult to quantify and the tension between these externalities and rates is particularly pronounced in a state like New Mexico, where a significant constituency of citizens wield little political or economic power, have suffered environmental injustice, and have little capacity for higher rates. At the same time, failing to consider some of these externalities may perpetuate some of these harms. Ratemaking for the future needs to be more sensitive to striking that delicate balance.

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.

Effective governance is critical to the success of any organization. The three PRC Commissioners are ultimately responsible for each and every decision issued. Ideally, they would have productive working relationships with themselves, as well as agency staff. The PRC staff is there to assist and provide expertise to the Commissioners, and developing a seamless process for reporting, fact-finding, evidentiary records, and transparency would be critical. Open and productive lines of communication would be important, as well as a culture of respect, civility, and a focus on our role as public servants. As a current administrator of my Law School, I work closely with the leadership team to ensure fair, appropriate, and efficient governance in a manner that values each individual's particular strengths in a way to promote accountability and effectiveness. I would foster the same culture of respect, inclusiveness, efficiency, accountability, and effectiveness in the agency.

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

Reliability of the grid is the most important factor. Most of the other factors on the list are important, but stakeholders of those various other goals would all pale in comparison to the need to keep the lights on. Where we can maintain reliability and sustainability, even better, but if we are pressed to choose between the two, reliability should always win. Electricity is a basic essential service, and the electric grid is one of the core infrastructure areas for which we rely on the rest of our basic fundamental needs like food and water.

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

I would rank these as follows:

- Reliability
- Affordability
- Grid capability/stability
- Sustainability
- Social justice for frontier communities
- Portfolio standards/ energy mix
- Flexibility
- Climate change
- Scalability of technology
- Promoting new technologies
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I might also add the “Revenue Generation for the State.” New Mexico has vast solar and wind resource potential, for instance, that is far beyond our in-state needs. Transmission lines to connect such excess capacity to neighboring areas may allow for economic development and additional revenues for the state.

9. Is there a state whose energy regulatory policies that you believe New Mexico should emulate? If so, which one and why?

No. Each state has its own unique resource potential, cultural constraints, laws and regulations, and constituents. With a minority of states functioning under comparable 100% renewable energy goals, New Mexico strikes me as quite unique within this small group. It is faced with historical oil and gas dominance, its vast solar and wind resource potential, vast land area, small population, economic constraints, and cultural and tribal priorities. New Mexico may be able borrow from the very best of a variety of states, but in the end, the New Mexico legislature sets the path forward for the state’s regulatory policies.

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

I have been practicing, researching, or teaching about energy law for the better part of the last 22 years. My work has covered a wide array of energy topics that would be relevant to this position, including energy storage, energy efficiency, siting of new wind and solar installations, utility resource management plans, installation of electric vehicle chargers, and grid modernization efforts including advanced metering infrastructure. Before joining academia, I practiced law in Washington, D.C. and Silicon Valley, CA for eight years focused on litigation and regulatory compliance matters. While at my law firm, I represented clients to assist them to commenting on proposed rulemakings from federal and state agencies to help shape the final agency rules. Practicing in Washington, D.C., some of my work involved drafting proposed legislation. In academia, much of my legal scholarship has been focused on proposals to develop policies that facilitate the clean energy transition. I have analyzed federal and state laws related to a variety of energy matters, including solar, wind, energy storage, electric vehicles, and other emerging technologies, as well as submitted comments on proposed EU legislation related to artificial intelligence.

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?

Indian tribes are sovereign governments and principles of federal Indian law should govern the complex jurisdictional questions surrounding the intersection of utilities, public utility commissions, states, and federal sovereigns. Much of my work is infused with the complex governance, equity, and jurisdictional issues surrounding distributed energy resources, energy storage, and competing land uses, all of which would apply to this relationship.

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.

Regulation is more about compliance and policy is more about politics. Regulators are there to interpret the rules and laws that are passed by the legislatures. This often requires some amount of discretion and so this blurring is inevitable, but as a lawyer bound to the rule of law and professional ethics, I am confident in my ability to help keep the Commission focused on regulation.

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

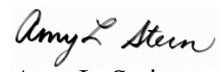
The most consequential actions of the PRC involve their approvals of various compliance documents associated with implementing the Energy Transition Act. This would include actions such as their approval of PNM's Renewable Energy Act Plan and Renewable Energy Rider. The legislative requirements that public utilities generate 20% of total retail sales from renewable energy by 2020, 40% by 2025, 50% by 2030, and 100% by 2045 are ambitious and the PRC's approval of the utility plans

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

Determinations about exceedance of authority are legal matters to be determined by the judiciary of New Mexico and it is difficult to provide an answer without an extensive review of the last twenty years of New Mexico jurisprudence. The three days provided did not allow for this review in the confines of my existing obligations, but please contact me for more information that I would be happy to provide on an extended timeline.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Amy L. Stein". The signature is written in a cursive style with a small loop at the end of the last name.

Amy L. Stein

Associate Dean for Curriculum and Cone Wagner Professor of Law  
University of Florida Levin College of Law