

**NEW MEXICO  
PUBLIC REGULATION COMMISSION**



**2 0 0 1  
A N N U A L R E P O R T**

**and  
Electric Restructuring Report**

# 2001 ANNUAL REPORT

## New Mexico Public Regulation Commission

<b>District 1</b>	Herb H. Hughes	Albuquerque	Vice-Chairman
<b>District 2</b>	Rory McMinn	Roswell	
<b>District 3</b>	Jerome D. Block	Santa Fe	
<b>District 4</b>	Lynda M. Lovejoy	Crownpoint	
<b>District 5</b>	Tony Schaefer	Las Cruces	Chairman

### Expanded Version

### *Table of Contents*

Commissioners and Staff.....	2
Commission .....	2
Chief of Staff, General Counsel, Hearing Examiners .....	3
Consumer Relations Division.....	5
Utility Division .....	7
Electric Utility Industry Restructuring 2001 Report.....	7
Legislative Recommendations.....	9
Telecommunications.....	21
Insurance Division .....	26
Managed Health Care Bureau .....	28
Insurance Fraud Bureau.....	28
Patient's Compensation Fund Report.....	30
State Fire Marshal.....	30
Firefighters Training Academy .....	34
Transportation Division .....	35
Legal Division .....	37
Administrative Services Division.....	39
Corporations Bureau.....	39
Information Systems.....	39
Financial Report .....	40
2002 LEGISLATIVE AGENDA .....	41

N.M. Public Regulation  
Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269

Office:  
PERA Building  
1120 Paseo de Peralta  
Santa Fe NM 87501

PHONE  
505 – 827-4084  
TOLL FREE  
1-800-947-4722  
FAX – 505-827-4068  
[www.nmprc.state.nm.us](http://www.nmprc.state.nm.us)

An electronic version of this Report  
is available at  
[www.nmprc.state.nm.us](http://www.nmprc.state.nm.us)

Comments? Questions?  
Contact Lucille Martinez at 505-827-6942  
Ed Moreno, Editor

# Commissioners and Staff

## *Commission*

The New Mexico Public Regulation Commission (PRC) was created by a voter-approved constitutional amendment in 1996. The constitutional amendment abolished the Public Utility Commission and the State Corporation Commission and consolidated their responsibilities within the new Commission.

The Commission came into existence on January 1, 1999. The Commission comprises five elected commissioners. Its quasi-judicial functions include the adjudication of regulatory cases in the industries over which it has jurisdiction: telecommunication, electricity, natural gas, water, wastewater, insurance, managed health care, fire safety, firefighters training, public transportation, pipeline safety and corporation records.

**Rory McMinn** of Roswell joined the Public Regulation Commission as commissioner from District 2. He was appointed in May by Governor Gary Johnson to succeed Bill Pope, who resigned from the commission in March. McMinn, a native of the Pecos River Valley, is a partner with two others in MBF Operating Co. He has served on the board of directors of the Association of Commerce and Industry, the Roswell Chamber of Commerce, the Foundation for Free Enterprise, the New Mexico Association of Counties, the Gulf-Warren Federal Credit Union and Eastern New Mexico Medical Center.

## *Commissioners*

Herb H. Hughes Albuquerque District 1 505-827-8015	Rory McMinn Roswell District 2 505-827-4531	Jerome Block Santa Fe District 3 505-827-4533	Lynda M. Lovejoy Crownpoint District 4 505-827-8019	Tony Schaefer Las Cruces District 5 505-827-8020
---	--	--	--	---

## *PRC Staff*

**S. Vincent Martinez** was named chief of staff of the Public Regulation Commission in May. Martinez has been with the PRC and its predecessor the State Corporation Commission since 1990. Previously, he was director of the Transportation Division for six years. He's a Santa Fe native and graduate of Santa Fe High School, New Mexico Military Institute and the College of Santa Fe.

**Eric P. Serna** was appointed Superintendent of Insurance in 2001. Serna served as an elected member of the New Mexico State Corporation Commission (SCC) for 17 years, 14 as chairman. He left office in 1998 when the SCC and the Public Utility Commission were merged into the PRC. Before his appointment to the SCC in 1981, he served as cabinet secretary of the state Department of Labor.

**Patrick G. Baca** of Sandia Pueblo was named to head the agency's Transportation Division. Baca has been an elected county official and was New Mexico Secretary of Labor from 1991 to 1994. He has served as gaming commissioner and administrator for Sandia Pueblo and as a consultant in casino regulation since May 2000.

## *PRC Staff*

S. Vincent Martinez  
Chief of Staff  
505 827-6942

James Martin  
General Counsel  
505 827-6947

Bernard Padilla  
Director, Administrative  
Services Division  
505 827-4084

Molly Whitted  
Director, Consumer Relations  
Division  
505 827-4661

Chuck Noble  
Director, Legal Division  
505 827-6969

John Curl  
Director, Utility Division  
505 827-6940

Patrick Baca  
Director, Transportation  
Division  
505 827-4519

Eric Serna  
Superintendent of Insurance  
505 827-4601

---

## *PRC Achieves Billion Dollar Benefits for New Mexico*

Since its inception, the PRC has achieved substantial savings for personal and business consumers while providing fair and professional regulation for industries under its jurisdiction. The PRC is also taking initiatives to make sure that consumers and businesses will experience the best possible solutions in the long term. Direct revenues and indirect economic impact of the industries regulated by the PRC are estimated at more than \$3 billion.

A preliminary estimate indicates that consumers saved approximately \$454 million from commission-set rates that are lower than originally filed company requests, avoided rate increases from delayed electric deregulation, and received assistance with ongoing consumer complaints. The PRC estimates its economic development impact reaches nearly \$2.6 billion, including required investments and earnings by regulated industries. The agency collects approximately \$152 million in licensing fees and other taxes for state government purposes.

## *Legislature Begins Examination of PRC Authority, Performance*

The New Mexico Legislature has begun a two-year examination into the “organization, financing and performance” of the PRC. The review was approved during the 2001 session. An interim committee was assigned to conduct the examination and report back to the 2003 Legislature. The committee members are Representatives Danice Picraux, Ken Martinez and Ted Hobbs, and Senators Michael Sanchez, Tim Jennings and Bill Payne.

## *Chief of Staff*

The Chief of Staff is the PRC’s top administrative officer, managing the directors of the divisions that constitute the PRC’s staff. In regulatory cases that are to be adjudicated by the Commission, the staff acts as an independent party in the cases, representing the public interest and presenting its position to the Commission.

## *Office of the General Counsel*

The Office of General Counsel is the lawyer to the Commission. It advises the Commission on all legal matters arising from the Commission’s regulatory responsibilities. It administers the formal proceedings before the Commission, assists the Commission in its deliberations on those proceedings,

and drafts orders issued by the Commission. The Office of General Counsel defends Commission decisions that have been challenged in State and federal court.

The Office of General Counsel prepares the often complex and lengthy substantive orders issued by the Commission in all Utility Division and Transportation Division cases. The number of orders prepared by the Office of General Counsel and issued by the full Commission through the end of October 2001, is as follows:

Utility Division Orders --	144
Utility Division Final Orders --	241
Utility Division Rulemaking Notices --	2
Utility Division Orders Designating Hearing Examiner	112
Transportation Division Orders --	14
Transportation Division Final Orders --	15
Transportation Division Rulemaking Notices --	0
Transportation Division Orders Designating Hearing Examiner	25

In addition, the Office of General Counsel has prepared numerous procedural orders for both Utility Division and Transportation Division cases.

### *Hearing Examiners*

The Hearing Examiners function as judges in the cases assigned to them by the Commission. They set hearings and conferences, establish procedures and details for the conduct of proceedings, ensure that a full and adequate record is established, make rulings on procedural and evidentiary matters, conduct hearings, admit evidence into the record, analyze evidence, briefs and applicable laws, rules and orders, certify stipulations negotiated by parties to the Commission, and make recommended decisions to the Commission, including findings of fact, conclusions of law and ordering paragraphs.

Hearing Examiners are generally assigned to cases involving: transfers, mergers, complaints, tariffs/rate changes, rate cases, certification/de-certification, inter-utility contracts, rulemakings, financings, stranded costs, and fuel clause continuations. Hearing Examiners are assigned to the cases by the Office of General Counsel. The assignments are based upon each Hearing Examiner's workload and experience and eliminate the potential for political influence. Cases are often large and complex with multiple parties represented by private counsel and expert witnesses (in fields such as accounting, engineering and economics/cost of capital), in which a significant number of people and substantial assets may be affected. The Hearing Examiners are required to apply federal and state legal principles to complex factual and policy questions. In this context, the Hearing Examiners endeavor to conduct proceedings in a manner which promotes public confidence in the Commission's processes and decisions, maintains order, develops the record for a rational decision, and provides due process while leaving final decisions to the Commission.

# **Consumer Relations Division**

The Consumer Relations Division's function is to assist consumers with complaints against any company regulated by the Public Regulation Commission. This process includes investigating each inquiry; conducting interviews with the consumer; notifying the appropriate company and advising them of the complaint, and mediating when appropriate. During Fiscal Year 2001, the division received approximately 16,012 inquiries vs. last year of 10,600.

Insurance Bureau Complaints Filed from January 1, 2001 – December 31, 2001

\* \*Estimated figures for November & December

The division's Insurance Bureau recorded 1,300 insurance complaints, as follows:

Auto	468
Homeowners	182
Casualty	13
Liability	26
Life Insurance	156
Accident and Health	429
Miscellaneous	26
Closed	967
Pending	76

The Utility Bureau is responsible for processing reported issues or disputes with utility companies regulated by the PRC. The issues handled by this staff relate to gas, electric, water, wastewater and telecommunications complaints.

Utilities Bureau Complaints Filed from January 1, 2001 – December 31, 2001

\* \*Estimated figures for November & December

During FY2001 the division's Utility Bureau received 12,848 telephone inquiries and processed 3,018 complaints:

Gas	276
Electric	577
Water	90
Wastewater	9
Telecommunications	2,020
No Jurisdiction	46
Closed	2,896
Pending	122

During the last fiscal year the Consumer Relations Division continued to see a significant increase in the complaints received regarding the telecommunications industry. The Legislature passed new legislation that delayed the Electric Utility Industry Restructuring Act, thus also delaying the mandate that a Consumer Education program be developed and implemented to inform consumers about their choices of electricity producers after restructuring. The Consumer Relations Division published and distributed informational materials to consumers, conducted educational workshops in communities, placed information booths at the State Fair and the Governor's Career Development Conference. The Consumer Relations Division assisted Commissioners at several public hearings throughout the state.

# **Utility Division**

The Utility Division serves as staff to the Commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems. The Utility Division is composed of 5 bureaus: Economics, Accounting, Telecommunications, Electrical Engineering, and Gas, Water, and Wastewater Engineering. The Utility Division acts in regulatory matters as an independent party, representing the general public and presenting expert testimony in the fields of engineering, economics, and accounting.

## *Electric Utility Industry Restructuring Act*

### **2001 Report and Recommendations to the Legislature**

#### **December 1, 2001**

The Electric Utility Industry Restructuring Act of 1999 (“Restructuring Act”) set into motion the restructuring of the electric industry in New Mexico. The Restructuring Act is intended to allow customers to benefit from competition in their source of electric service. This “open access” was expected to provide long-term benefits for the state, including lower electricity prices, creation of business opportunities, improvement of energy efficiency and innovation in services and supply.

The Commission is charged with developing various rules that implement competition while maintaining a degree of oversight over the industry through licensing of competitive power suppliers, educating consumers, maintaining service reliability and quality and providing for the availability of service to all consumers.

The Restructuring Act requires the Commission to report on the restructuring process to the Legislature by December 1 of each of the first three years following adoption of the Restructuring Act. This report will address the current status of restructuring, legislative recommendations, and the nine specific examinations required by the Restructuring Act.

#### **California’s Restructuring Failure**

Progress towards restructuring continues to be determined by events in California. California’s deregulation plan is now widely regarded as a failure, with unforeseen disastrous results for the economy of the state as well as the financial stability of State government. Wholesale electric prices reached stratospheric levels and consumers endured recurring blackouts. Pacific Gas and Electric Company filed for bankruptcy while Southern California Edison had its finances wrecked even as Governor Davis attempted a rescue plan. Major utilities had insufficient funds and lacked the creditworthiness to buy power. The State of California’s Department of Water Resources stepped in to buy power for cash-strapped utilities, committing the state to high-priced long-term power contracts worth \$45 billion. In June, the Federal Energy Regulatory Commission (“FERC”) stepped in to cap wholesale prices throughout the western United States. Now the State government is suffering from the burden of \$12 billion worth of unrecovered power purchases, which must be refinanced. The

California Public Utilities Commission dramatically increased retail rates. Open access and customer choice have been canceled to assure the State that ratepayers will remain captive customers to pay for the higher-priced power contracts the State entered into.

### **New Mexico's Restructuring Efforts**

The California restructuring disaster has had an impact on New Mexico's move towards restructuring and open access. Throughout 2000, the Commission continued the rulemaking process to develop six rules necessary for implementation of customer choice. In September of 2000, the Commission began additional hearings into the status of restructuring and the impact on New Mexico. Investor-owned, cooperative, and municipal utilities as well as competitive power suppliers, academic researchers, environmental advocates and numerous consumer groups participated. While several of the Commission's restructuring rules had been completed, due to the California restructuring problems the Commission re-opened the rulemakings for additional input. All six rulemaking dockets remain open.

Additionally, numerous parties petitioned the Commission to delay its decisions on pending utility Transition Plans until after the 2001 legislative session. Similar to California's restructuring law, New Mexico's Restructuring Act requires utilities to sell or transfer all of their generation assets. Once this asset separation is completed, the state will lose jurisdiction over the generation assets. Utilities will no longer own generation. All power sold to consumers will be priced at market. Asset separation is the most significant act of restructuring and represents a point of no return for states moving towards deregulation. When generation assets are separated from the utility, neither the Commission nor the legislature can reverse this act. Prior to asset separation, only the legislature can delay restructuring or modify the Restructuring Act, and the Commission's approval of utilities' requests to separate generation assets from the regulated utility would foreclose any such legislative opportunities.

### **Senate Bill 266**

Legislators also followed the restructuring drama playing out in California. Legislators attended the Commission's September 26, 2000 working session dedicated to studying the California situation and potential impacts on New Mexico. A legislative committee meeting, attended by Commissioners, was held in Belen in early January 2001 to address this issue. As asset separation was scheduled for completion in August 2001, the 2001 legislative session would be the last opportunity for legislators to review restructuring.

On March 8, 2001, the Governor signed SB 266 delaying the implementation of electric restructuring by 5 years. SB 266 calls for customer choice and open access to begin January 1, 2007 for residential, small business customers, and schools. Open access for all other customers will begin July 1, 2007. Utilities must sell or transfer all their generation assets between September 1, 2005 and January 1, 2006. Transition Plans must be filed by January 1, 2005 for Commission approval no later than June 1, 2006.

SB 266 also required the Commission approve holding company applications by July 1, 2001, subject to terms and conditions that are in the public interest. During the delay period before generation assets are separated from the utility, a utility may acquire or build a generation plant not intended to provide retail electric service to New Mexico customers, so long as the cost of such generation is not included in retail rates. Also, during the delay period the utility is still has an obligation to serve retail customers. If a new, unregulated generation plant is used to serve New Mexico customers, it will be priced at cost rather than market prices.

SB 266 also authorizes public utilities to amortize the unrecovered cost of decommissioning coal mines over a five-year period beginning January 1, 2002. Also, utilities, which will not own generation after 2005, will remain liable for existing generation-related pollution control revenue or revenue refunding bonds due after October 1, 2016.

## **Legislative Recommendations**

### **Expansion of Standard Offer Service**

After open access occurs, the local distribution utility will no longer own generation assets. Customers are expected to purchase their power from competitive power suppliers at market rates. But the Restructuring Act provides some protection for smaller customers through the Standard Offer Service (“SOS”).

SOS will be purchased in the market by the distribution utility and made available only to residential and small business consumers that use less than 200,000 kWh per year or less than 50 kW at any one time. Larger consumers (larger than a busy fast food restaurant, for example) are not eligible for SOS and must buy power from a competitive power supplier. Most public schools could acquire SOS under the current definition of small business customer, but an estimated 400 schools are too large to qualify and will need to buy power in the competitive market. These 400 schools will be the only consumers required to enter the competitive market in the first wave of open access and may have limited purchasing options, especially during the first six months of open access.

#### Recommendation

The Commission recommends Standard Offer Service be expanded to include public schools and post-secondary educational institutions.

The Legislature may also want to consider expanding the availability of SOS to more customers, such as federal, state, municipal, and tribal agencies. Moreover, expanding SOS to all customers would provide even more consumer protection. Expansion of SOS will protect consumers, but may reduce the attractiveness of the New Mexico electric market for competitive power suppliers, thus thwarting efforts to create a robust electric market. While an expanded SOS would offer another option for consumers, the pricing of SOS would be based on market rates, not the current regulated rates.

## **Commission's Authority over Location Control to Include System Reliability**

The Public Utility Act currently requires any company seeking to build more than 300 MW of generation, and associated transmission of 230 kV or above, to obtain approval of the location from the Commission. The standards applied in Section 62-9-3, however, are limited to environmental and quality of life concerns. System reliability impacts of the location of a large generation unit or transmission line are within the Commission's expertise but are not included in the standards for evaluating location applications. The 2001 legislature approved such a change in SB 672, but the Governor vetoed the bill.

### Recommendation

The Commission requests that "system reliability" approval be added to the Public Utility Act as part of the Commission's authority.

## **Required Commission Examinations**

Section 19 of the Restructuring Act requires the Commission to further examine nine specific issues relating to restructuring:

- standard offer;
- consumer education and protection;
- safety, reliability, quality and performance standards for competitive power suppliers and distribution and transmission facilities;
- the presence of market power, its impacts on the restructure of the electric industry and methods available to limit or eliminate its adverse impacts;
- alternative operations and regulations, including an independent system operator;
- regional transmission and governance efforts, both public and private, and the advisability of regional cooperation by the state;
- emergency and back-up service;
- the advisability and desirability of requiring renewable energy portfolio standards in supply service offered to customers in the state; and
- procurement of power from on-site generation facilities, including facilitating net metering.

### **1. Standard Offer**

Standard Offer Service is electric supply service acquired by the regulated public utility at prevailing market prices for residential and small business customers who are eligible for open access, but decide not to obtain electric supply service in the retail competitive marketplace on their own. The Commission has issued Rule 591 covering the provision of SOS to entitled customers.

The rule requires utilities to acquire all necessary power supplies at market prices preferably through a competitive bidding process. The SOS rule also requires public utilities to include up to 5% New Mexico renewable energy in its SOS supply, subject to a price impact limitation of \$.001/kWh, or about 50 cents per month for the typical residential consumer.

The four public utilities that will be offering SOS will seek bids as soon as the Commission approves the sale or separation of generation assets from the utility, in late 2005.

As discussed above, since about 400 public schools are not eligible for SOS, the PRC will recommend to the Legislature that it consider redefinition of SOS eligibility.

## **2. Consumer Education and Protection**

Timing of a state's entry into the competitive electricity markets is an essential element of consumer protection. As Californians discovered, restructuring into a market with relatively scarce generation resources and transmission constraints may result in rapid price increases and power shortages. Only the legislature has the ability to time market entry for restructuring.

The Commission has held hearings on proposed Rule 592, the Customer Protection Rule. As drafted, the purpose of this rule is to protect consumers when they are conducting business with competitive power suppliers.

The proposed rule addresses "slamming" and "cramming" issues that have been associated with the restructuring of the telecommunications industry by requiring customer authorization for a change in competitive power supplier or a charge for electric service. The proposed rule also addresses unfair marketing and sales practices, billing disclosures, disclosure of customer information, and termination of service and creates a process for billing dispute resolution.

The Commission has held hearings on proposed Rule 573, Disclosure of Generation Source, Fuel Mix and Emissions. This rule requires all competitive power suppliers to inform consumers of the type of generation used by the competitive power supplier and the emissions profile of the supply. This rule will aid consumers in selecting a competitive power supplier and assuring that any "green energy" claims of suppliers are valid.

The Restructuring Act also requires the Commission to undertake the direct education of consumers, but funding for this activity comes from the System Benefit Fund. These funds are legislated to be \$500,000 per year but will not begin to be available to the Commission for consumer education until at least five months after open access for residential, small business customers and schools, the groups most in need of consumer education. An effective consumer education program must begin eight to 12 months in advance of open access.

In an effort to mitigate this deficiency, the Commission will request a \$500,000 special appropriation in its FY 2006 budget.

### **3. Safety, Reliability, Quality and Performance Standards for Competitive Power Suppliers and Distribution and Transmission Facilities**

Rule 593, the Competitive Power Supplier Licensing Rule, establishes license application, revocation, abandonment, and reporting requirements for competitive power suppliers.

This rule requires proof of financial integrity and the technical capability to provide quality supply service, including the ability to meet all applicable requirements of the Western Systems Coordinating Council. The proposed rule requires 60 days advance notice to customers and the Commission if a competitive power supplier plans to terminate service. Also, the proposed rule requires competitive power suppliers to address how they plan to meet consumer requests for renewable energy supply.

Restructuring does not affect the Commission's regulatory authority over the operation of the distribution system. Existing rules and regulations will assure the continued safe, reliable operation of the distribution system. New rules affecting self-generation or distributed generation will likewise reflect the importance of the safe, reliable operation of the distribution system.

When open access and rate unbundling occur, the transmission system will be regulated primarily at the federal level, through FERC. Independent operation of the transmission system through a Regional Transmission Organization is a critical element in the restructuring of the electric industry.

In a restructured environment, RTO formation and participation by utilities should be required. But if the Restructuring Act is repealed or delayed further, there may not be sufficient benefits to justify the costs of RTO participation.

### **4. The Presence of Market Power, Its Impacts on the Restructure of the Electric Industry and Methods Available to Limit or Eliminate Its Adverse Impacts**

Market power is the ability of a firm, in this case the incumbent electric utility or its generation affiliate, to maintain prices above market levels for extended periods of time by keeping competitors out of the market. While the act puts protections in place, existing and projected transmission constraints and a current shortage of generation supply in the wholesale market suggest market power will continue to be an unresolved issue in the competitive retail market.

The Restructuring Act attempts to mitigate market power by requiring utilities to sell their generation to a third party or separate the generation assets into an unregulated affiliate within a holding company form of organization. In addition to the existing Rule 450, Affiliate Transactions, the Commission has issued Rule 594, Code of Conduct, covering public utilities and their affiliates for operations under the Restructuring Act, with emphasis on prohibiting the subsidization of affiliates by the regulated utility. This rule prohibits utility affiliates from sharing employees, goods, services, facilities, marketing promotions and information, with the exception of essential, corporate-wide services.

## **5. Alternative Operations and Regulations, Including an Independent System Operator**

Several utilities in Arizona and New Mexico filed, on October 16, 2001, for a Declaratory Order from FERC indicating FERC's approval of the form and market design of a for-profit RTO. The proposed RTO is a Transco called WestConnect. The previous non-profit organization, called Desert STAR, was abandoned. Southwestern Public Service Company, being part of the Midwestern transmission grid, made a similar filing with FERC on September 28, 2001 for approval of a Transco called TRANSLink. The Transco will be a transmission company and will operate in several RTO areas.

## **6. Regional Transmission and Governance Efforts, Both Public and Private, And the Advisability of Regional Cooperation by the State**

The Commission remains committed to keeping abreast of all regional transmission efforts that may impact New Mexico electric consumers.

California's Independent System Operator received FERC approval in March 1998. The California ISO invited other states to join, but initially proposed to charge a prohibitive fee. They have since reduced the fee to make participation more attractive, but pricing and reliability issues have plagued the California power system making the offer less attractive.

FERC recently approved the Western Systems Coordinating Council's application to become Western Electricity Coordinating Council ("WECC") to address both reliability and commercial issues.

The Committee on Regional Electric Power Cooperation ("CREPC") is a western regional body of regulatory commissions and state energy offices that share information on industry developments. Copies of CREPC's resolutions are sent to Congressional committees, FERC and other federal agencies. This western cooperative effort started in the early 1980s and is expected to continue in the future.

## **7. Emergency and Back-Up Service**

Emergency and back-up service will be necessary to deal with situations where the consumer has failed to contract for power, has contracted for insufficient power, or the competitive power supplier has somehow failed to provide adequate supply. It will be impossible for the vast majority of consumers to know, on a real-time basis, when their supplier has failed to deliver power. The lights will not go out because power will continue to flow.

The utility or RTO must make provisions for such emergency or back-up service in order to balance supply and loads on the system. Accounting for the costs of such emergency and back-up service power purchases will be completed and billed after the fact.

## **8. The Advisability and Desirability of Requiring Renewable Energy Portfolio Standards in Supply Service Offered to Customers in the State**

In the Restructuring Act, the Legislature found that promotion of renewable energy technologies is a sensible endeavor. The Commission agrees and, in Rule 591, the Standard Offer Service Rule, utilities are required to purchase New Mexico renewable energy up to 5 percent of the total SOS purchase, provided that the overall SOS rate does not increase more than \$.001 per kWh. The rule also requires utilities to make additional renewable energy available to SOS consumers who desire to use more renewable energy. The SOS Rule will become effective January 1, 2007.

Proposed Rule 593 requires competitive power suppliers to address how they plan to meet consumer requests for renewable energy supply. The Commission has not yet finalized this rule.

## **9. Procurement of Power From On-Site Generation Facilities, Including Facilitating Net Metering**

Existing Rule 570 governs the interconnection of Qualifying Facilities (“QFs”) as required by the federal Public Utilities Regulatory Policies Act of 1978. This Rule also specifies the methodology for pricing of power sold by the QF customer back to the utility.

Net metering is a simplified means of transferring excess energy generated by a consumer’s renewable energy system to the electric power grid. For net metering, the meter basically runs backwards when the customer’s generation exceeds the energy needs of the home or business. The Commission has implemented Rule 571 to facilitate the net metering of small customer-owned renewable generation up to 10 kW.

The Commission has issued proposed Rule 572, the Self-Generation Rule, as required by the Restructuring Act. The Commission has received public comments and will hold public hearings on this proposed rule.

### **Rulemaking Activity Related to Electric Restructuring**

The Restructuring Act mandated a dramatic departure from traditional regulation towards restructuring of the electric industry. Investor-owned utilities are required to sell their generation resources or transfer them to an unregulated affiliate. Consumers will be able to choose their power suppliers.

To implement the Restructuring Act, the Commission is in the process of creating six new rules. On October 17, 2000, the Commission re-opened the already completed rulemaking proceedings, in order to take additional comment in light of the power cost increases and outages in California and other states.

**Rule 591: Standard Offer Service**

Standard Offer Service (“SOS”) is electric service acquired by the regulated public utility for residential and small business customers who are eligible for open access, but decide not to obtain electric service in the retail marketplace. On August 17, 1999, the Commission, in Case 3109, issued proposed Rule 591. Following public hearings and two rehearings, the Commission issued a final order, adopting Rule 591 on September 19, 2000.

The rule requires utilities to buy power at market prices primarily through a competitive bidding process. The SOS Rule also requires public utilities to include up to five percent New Mexico renewable energy in its SOS supply, subject to a price impact limitation of about 50 cents per month for the typical residential consumer. The four public utilities that will be offering SOS will seek bids when the Commission approves the separation of generation assets from the utility, in the Fall of 2005.

**Rule 594: Code of Conduct for Utilities and their Affiliates**

Case 3106 was docketed July 20, 1999, to create a Code of Conduct for public utilities and their affiliates for operations under the Restructuring Act. The purpose of the rule is to prohibit the subsidization of affiliates by the regulated utility. Rule 594 prohibits utility affiliates from sharing employees, goods, services, facilities, marketing promotions and information, with the exception of essential corporate-wide services. The Commission issued a Final Order adopting this rule April 4, 2000.

**Rule 592: Consumer Protection**

Rule 592, the Consumer Protection Rule, was docketed September 3, 1999, as Case 3145. The purpose of this proposed rule is to provide necessary consumer protections in a restructured electric market. The proposed rule addresses unfair billing and marketing practices, billing disclosures, disclosure of customer information, termination of service, and creates a process for billing dispute resolution.

The rule prohibits “slamming” and “cramming” types of abuses by power suppliers eager to switch consumers to their business or to charge for undesired services. Slamming is the unauthorized replacement of a customer’s electricity provider. Cramming is the addition of unexplained charges on a customer’s bill. A specific procedure for gaining consumer approvals for switching is proposed.

**Rule 593: Competitive Power Supplier Licensing**

Case 3167 was docketed October 5, 1999, by the Commission to create licensing requirements for the competitive power suppliers that will be offering electric supply service directly to consumers with the onset of customer choice. This proposed rule requires proof of financial integrity and the technical capability to provide quality supply service, including the ability to meet all applicable requirements of the Western Systems Coordinating Council, one of 10 regional councils in the nation responsible for planning and operating the electric system in the Western U.S. The proposed rule requires 60 days advance notice to customers and the Commission if a competitive power suppliers plans to terminate service.

Also, the proposed rule requires competitive power suppliers to address how they plan to meet consumer requests for renewable energy supply.

**Rule 573: Disclosure of Generation Source, Fuel Mix, And Emissions**

On April 25, 2000, the Commission docketed Case 3349 to develop proposed Rule 573, Disclosure of Generation Source, Fuel Mix and Emissions. This rule, mandated by the Restructuring Act, requires all competitive power suppliers and providers of SOS to inform consumers of the type of generation used by the competitive power supplier and the emissions profile of the supply. This rule will aid consumers in selecting a competitive power supplier and assuring that any “green energy” claims of suppliers are valid. A hearing was held October 17, 2000 and the rule is pending before the Commission.

**Rule 572: Interconnection and On-Site Self-Generation**

Case 3312 was docketed April 4, 2000 to develop an interconnection and on-site self-generation rule. Following a public workshop, the Commission Staff filed a proposed rule on July 31, 2000. The Commission is reviewing Staff’s submission and will issue a proposed rule and conduct hearings.

## **Electric Utility Restructuring Cases**

**Case No. 3220: Southwestern Public Service Company Transition Plan**

On June 1, 2000, SPS filed its Application and its Plan for Transition to Customer Choice Service and Open Access in New Mexico (Transition Plan) with the Commission pursuant to the Restructuring Act. The application requested that the Commission review and approve SPS’s Transition Plan in two phases. Phase I dealt with SPS’s proposed corporate separation of generation assets from transmission and distribution assets and all other matters necessary to accomplish corporate separation. Phase II involved all other matters necessary for SPS to implement customer choice service and open access in New Mexico. Public hearings were held on October 3, 2000 regarding SPS’s proposed Standard Offer Service process and procedure and on October 24, 2000 regarding its proposed corporate separation plan. Phase II issues were scheduled for hearing on April 11, 2001. Due to passage of SB 266, this case is in the process of being terminated. In response to a recent Commission order, SPS has stated that it has no plans to pursue investment in unregulated generating plants.

**Case No. 3137: Public Service Company of New Mexico Transition Plan**

Following the passage of SB 266, PNM updated its application to form a holding company. The filing was made April 3, 2001. The Commission held hearings and on June 28, 2001, issued an Order approving the holding company with numerous conditions. The Order allows PNM to build or invest in a generating plant that is not intended to provide retail electric service to New Mexico customers. The conditions included limitations on dividend payments in excess of earnings from the utility to the holding company to prevent liquidation or under-capitalization of the utility. PNM was also required to waive federal preemption of the Commission’s authority over cost allocations, develop a cost allocation manual, and provide data on corporate affiliates. The Company has appealed the Final Order to the New Mexico Supreme Court.

**Case No. 3170: El Paso Electric Company Transition Plan**

As ordered by the Commission, in response to the passage of SB 266, EPE also updated its application to form a holding company. EPE's filing was made April 11, 2001. The Commission held hearings and on June 28, 2001, issued an Order approving the holding company with numerous conditions. The Order mirrors the PNM holding company order issued the same day. EPE appealed the Order to the New Mexico Supreme Court but has since notified the Commission it would drop the appeal if the Commission allows the Company to withdraw its application to form a holding company.

**Case No. 3378: Texas-New Mexico Power Company Transition Plan**

TNMP filed its transition plan on June 1, 2000. Because of the amendments to the Restructuring Act, no final determinations on TNMP's transition plan have been issued in this case and the case is pending dismissal. The Commission has recently directed TNMP to file a pleading addressing issues related to the statutory provision, § 62-3A-8(C) allowing utility's to have an interest in generating plant. In response, TNMP stated that it does not intend to invest in, construct, acquire or operate a generating plant that is not intended to provide retail electric service to TNMP's New Mexico customers pursuant to Section 62-3A-8(C).

**Case No. 3643: Texas-New Mexico Power Company Changes In Rates**

TNMP on July 3, 2001 filed a petition to change its rates and to continue use of its Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) with a 3-mill cap on fluctuations. TNMP proposes an increase in base rates of \$6.4 million or 8.43 percent compared to Test Year Revenues. TNMP is also seeking recovery of transition costs associated with the Restructuring Act. Four months earlier, TNMP filed to change its "Schedule ES-IPS Economy Service – Industrial Power Service" seeking to amend the rate design for non-firm service from a cost on a kilowatt-hour basis to a cost on a kilovolt basis. The ES-IPS rate design change is applicable solely to Industrial Power Service customers and will be addressed in this current rate proceeding. Phelps Dodge and the AG have both intervened. The Commission appointed a mediator to expedite a settlement in this proceeding. Phelps Dodge has announced its intention to curtail its mining operations in New Mexico, which will have a major impact on TNMP's New Mexico operation and TNMP's ability to recover its revenue requirements.

**Case No. 3606: El Paso Electric Rate Case**

On April 23, 2001, EPE filed for a rate increase of \$51 million per year. Unrecovered fuel costs represent \$45 million of the requested increase. On June 6th, all the parties in the case filed an uncontested stipulation for a \$19.4 million increase with the Commission. As part of the stipulation, a new fixed fuel factor was implemented on June 12th, subject to refund pending the outcome of the case. Public hearings were held in Santa Fe and Las Cruces. A final determination is pending.

**Case No. 3619: Notice of Inquiry into Renewable Energy**

On May 15, 2001, the Commission issued a Notice of Inquiry to investigate the merits of promoting renewable energy. At the direction of the Commission, Staff filed on August 15, 2001, a proposed

Renewable Energy Rule. The Commission has received comments on the proposed rule and responses to the filed comments. On October 22, 2001 a workshop was held to further consider technical and policy issues associated with renewable energy. On December 4, 2001 Staff submitted a petition for rulemaking with a revised proposed rule based upon input received during the workshop.

**Case No. 3668: Inquiry into Electric Energy Policy Principles**

In response to the five-year delay in electric restructuring, the Commission has docketed an inquiry into the development of an energy policy. Comments from interested parties were received on November 15, 2001. The Commission is currently evaluating the comments.

**Case No. 3653: Investigation into the Current Status of Electricity Transmission in New Mexico**

On July 10, 2001, the Attorney General requested the Commission docket an inquiry into the status of regulated utilities' participation in RTOs, the impact such participation would have on Commission jurisdiction, and the impact on transmission pricing. On October 2, the Commission heard presentations by the AG's Office and the transmission-owning utilities. During the week of November 5, the Commission held a 3-day workshop with interested parties regarding this investigation.

**Case No. 3295: Public Service of New Mexico Underground System Special Service Rate**

PNM has petitioned for an underground system special services rate. This proposed rate would serve to identify and recover the added costs associated when a local government requires the installation of underground facilities. Ratepayers located outside of a local government's jurisdiction would be isolated from paying the costs associated with an undergrounding requirements imposed by a local government that exceed the costs of a traditional overhead distribution system. The active intervenors in the case are opposed to PNM's Underground System Special Service Rate on predominantly jurisdictional and legal grounds and have filed a joint motion to dismiss the case.

**Case 3421: Location Permit for Duke Energy Luna**

On July 14, 2000, Duke Energy Luna filed an application for a location permit to build a 600-megawatt combined-cycle natural gas-fired merchant generating plant two miles north of Deming. Once built, this power plant will be used to provide power to the wholesale market and will not be regulated by the Commission. The Commission approved a stipulation between the parties on January 23, 2001. Following the receipt of permits from the Environment Department, the Commission was able to issue a Final Order approving Duke Energy Luna's application on March 27, 2001.

**Case 3702: Location Permit for Duke Energy Curry**

On November 13, 2001, Duke Energy Curry submitted an application to the Commission for approval to build a 1200 MW gas-fired generating station in Curry County. Like the Duke Energy Luna plant, this facility will serve the wholesale market.

### **Federal Energy Regulatory Commission (FERC) Proceedings**

In December 1999, the FERC entered its landmark Order No. 2000, which called for the voluntary formation of Regional Transmission Organization (RTOs) in order to facilitate the development of a robust national wholesale market for electric energy. The order applies to all public utilities over which the FERC has jurisdiction for purposes of wholesale sales, including all four public utilities that provide electric power to New Mexico consumers. Because the Commission, acting in the public interest, also regulates these utilities, it intervened in order to monitor developments in each of the relevant RTO dockets at FERC. In addition, the Commission intervened in the consolidated FERC case involving the collapse of the energy marketplace in California.

After the California energy marketplace had suffered its most dramatic changes, the FERC began to be concerned that the RTO process was not moving fast enough to accommodate rapid changes in the structure and behavior of the wholesale electricity market. On September 27, 2001, the FERC issued orders that evidenced a substantial shift in its approach to RTO formation, with emphasis on a fast track and the possibility of serious sanctions against utilities that failed to meet FERC's implementation deadline of December 15, 2001. Expedited hearings were set, resulting in FERC "RTO Week" (held October 15-19, 2001 in Washington, D.C.).

The Commission was represented on two key panels during RTO Week, voicing concern that the benefits of RTO participation were not sufficiently clear to warrant support, and that New Mexico ratepayers might in fact be harmed. The overall consensus at the end of the week was reflected in FERC's November 7, 2001 order, which calls for the establishment of state-federal regional panels to address state concerns and lifted the December 15th deadline (while retaining a "progressive" timeline). The Commission is committed to continuing its leadership role in the upcoming discussions with FERC in order to ensure that the interests of New Mexico ratepayers are protected as the process moves ahead.

In July 2001, anticipating the importance of these issues, the Commission opened a special docket to investigate transmission issues and their effect on New Mexico consumers. The Commission held a three-day workshop (November 5-7, 2001), to which all transmission owning utilities, as well as key stakeholders, were invited. The workshop series was conducted in an informal manner that maximized the participants' opportunity to speak candidly to the issues and resulted in the presentation of a great deal of valuable information. The Commission intends to keep its docket open in order to facilitate the exchange of additional critical information as the FERC RTO proceedings progress. The Commission intends to be proactive in the FERC process so that it will be able to advise the Legislature regarding any subsequent effects that FERC's efforts will have upon the retail electric marketplace in New Mexico. Additionally, the Commission is monitoring, on a daily basis, the effect that bankruptcy and other negative financial conditions of major energy marketers will have on the energy marketplace as a whole and on New Mexico in particular.

### **OUTSIDE LITIGATION**

#### **Before The New Mexico Supreme Court**

NMPRC Order on Franchise Fees Billings

under the Electric Utility Industry Restructuring Act of 1999

Docket No. 25,893  
(Utility Case No. 3071)

In June 1999, the Commission issued an order requiring investor owned electric utilities to comply with the franchise fees billing requirements of the 1999 Restructuring Act by the end of December 1999, and rural electric cooperatives to comply by the end of March 2000. The County of Bernalillo filed a Motion for Reconsideration of the Final Order that was deemed denied by operation of law. The County thereafter appealed the order to the Supreme Court on the grounds that the Commission did not have jurisdiction to extend the implementation date for franchise fees billing requirements. On November 15, 2000, the Court upheld the Commission's Final Order.

505 Relief Plan Case  
Docket No. 27,056  
(Utility Case No. 3330)

On July 10, 2001, the Commission, after a rehearing, issued a Final Order on Rehearing that approved a relief plan for the prospective exhaustion of numbering resources in the 505 numbering plan area ("NPA"). The plan will divide the State into two area codes. The Albuquerque and Santa Fe local calling areas will be assigned a new area code, 575. The rest of New Mexico will retain the 505 area code. The 505 Coalition, which had requested the rehearing, appealed the order to the Supreme Court on several grounds. The case is pending and awaits the filing of briefs.

Orders approving Formation of Holding Companies  
Docket Nos. 27,138 and 27,139  
(Utility Case Nos. 3137 and 3170)

Senate Bill 266 required that by July 1, 2001, the Commission approve an application for creation of a holding company filed by a public utility prior to January 1, 2001 as part of its transition plan. Further, it requires that the holding company plan approved by the Commission be subject to terms and conditions that are in the public interest and that the creation of the holding company not result in any loss of the Commission's jurisdiction over any of the costs charged to the utility's ratepayers. The Commission approved holding companies for Public Service Company of New Mexico and El Paso Electric Company by the required date. PNM and EPE have appealed the Commission's orders approving their holding companies, challenging the terms and conditions of approval. The cases have not yet been briefed.

US West/Qwest Merger  
Docket No. 26,298  
(Utility Case No. 3152)

On August 13, 2001, the New Mexico Supreme Court heard oral argument on the Attorney General's appeal of the Commission's decision that it did not have jurisdiction to approve or deny the merger of Qwest Communications, Inc. and US West. Briefs were filed in the spring of 2001. The Commission had found that New Mexico law, while clearly defining Commission jurisdiction over merger transactions involving electric, gas, water, and sewer utilities, does not provide the Commission with jurisdiction over mergers involving telecommunications companies. In addition, the consumer concerns raised by the Attorney General had already been amply addressed in the Commission's massive proceeding on Alternative Forms of Regulation (AFOR). Qwest intervened in support of the Commission's position. A decision is expected in late 2001 or in 2002.

# **Telecommunications**

## **House Bill 400—Telecommunications Regulation**

House Bill 400 was passed during the 2000 legislative session, and signed into law. This legislation directed the Commission to undertake several significant proceedings regarding changes in the regulation of telecommunications companies in New Mexico.

House Bill 400 Rules. By the statutory deadline of January 1, 2001, the Commission was to adopt rules that:

- (a) establish consumer protection and quality of service standards;
- (b) ensure adequate investment in telecommunications infrastructure in both urban and rural areas;
- (c) promote availability and deployment of high-speed data services in both urban and rural areas;
- (d) ensure the accessibility of interconnection by competitive local exchange carriers in both urban and rural areas of the state; and
- (e) establish an expedited regulatory process to consider matters that are pending before the commission.

The Commission issued proposed rules covering these areas in Case Nos. 3198, 3227, 3237, 3437, 3438 and 3439. Several comment hearings were held at various locations around the state for those rulemakings. Final Orders adopting the required HB 400 rules were issued on December 12, 2000.

## **Qwest Corporation Alternative Form of Regulation Plan (“AFOR Plan”)**

This AFOR Plan was approved pursuant to a requirement of HB 400, enacted by the Legislature in the 2000 session, as NMSA 1978 63-9A-8. One of the requirements in HB 400 is the elimination of rate of return regulation and establishment of AFORs for telecommunications companies with 50,000 or more access lines. Only Qwest Corporation and VALOR Telecommunications are affected by this provision of the law. The Qwest AFOR Plan became effective March 8, 2001 for a 5-year term. The Qwest AFOR Plan includes investment levels, quality of service standards, price caps, rate reductions and price cap increase for residential customers, price increase limitations for “optional services.” The Qwest AFOR Plan includes a \$788 million investment into digital switching, distribution plant, transport facilities and deployment of enhanced / advanced services. The AFOR Plan expanded the local calling area for customers in Taos, Questa, Angel Fire, Penasco and Red River making calls within these communities a local call. The AFOR Plan also made Hatch part of the Las Cruces local calling area. Additionally, the AFOR Plan made Cimarron, Springer and Raton a local calling area. Quality of service standards are included in the Qwest AFOR Plan for rural and urban exchanges, respectively. The AFOR Plan includes monetary incentives, in the form of credits back to customers, to Qwest to encourage compliance with the AFOR Plan. The rate reductions and price cap increases were estimated to result in revenue decrease between \$52 million to \$58 million dollars.

## **VALOR Telecommunications Alternative Form of Regulation Plan**

The VALOR AFOR Plan became effective April 1, 2001 for a 5-year term. The VALOR AFOR Plan includes investment levels, quality of service standards, price caps, installation and operation of

payment and service centers in Espanola, Hobbs, Carlsbad and Ruidoso. The VALOR AFOR Plan includes \$83 million investment into digital switching, distribution plant, transport facilities and deployment of enhanced / advanced services over the term of the plan. Quality of service standards are included in the VALOR AFOR Plan for rural and urban exchanges, respectively. The AFOR Plan includes monetary incentives, in the form of credits back to customers, to VALOR to encourage compliance with the AFOR Plan. Flat Residential and Business rates will remain capped for the term of the plan. Other telecommunication service rates are capped through January 2005, and then can only be increased by 10% for the duration of the plan.

**Case No. 3330: 505 Area Code Relief Plan**

On May 2, 2000, the Commission issued a Notice of Inquiry in Case No. 3330 concerning the 505 Numbering Relief Plan proposed by NeuStar, Inc, designated by the Federal Communications Commission as the North American Numbering Plan Administrator. Neustar claimed that New Mexico has grown too large for a single area code. According to Neustar, population growth combined with the popularity of cell phones, pagers, second phone lines, and competitive telecommunication carriers entering the state, means a rapidly shrinking amount of available numbers available in the 505 area code. After holding several public meetings throughout the state on this matter the Commission decided that a new 575 area code should be assigned to people with telephone service, including wireless customers in: Albuquerque, Santa Fe, Los Alamos, White Rock, Bernalillo, Pena Blanca, Belen, Los Lunas, Moriarty, Estancia, Mountainair, Tijeras, and Laguna- Acoma. This area is served by Qwest and contains almost half the state’s population. The remainder of the state will keep the 505 area code. Pending the results of a number conservation study implementation of the new area code is currently scheduled as follows:

March 3, 2002	Start permissive dialing
Feb. 9, 2003	Start mandatory dialing with recorded intercept
June 29, 2003	Start mandatory dialing without intercept

The 505 Coalition, an intervenor in that case, appealed the order to the New Mexico Supreme Court. New information submitted to the Commission in November indicates hat the 505 area code could last years longer due to reduced demand for new numbers and number conservation measures recently proposed by the FCC. The Commission will ask the Supreme Court to return the case to the Commission so that it may reconsider whether a new area code should be implemented as scheduled.

**Case No. 3300: Identification of all Subsidies in the Existing Rates for VALOR Telecommunications**

This case stemmed from the requirement of HB 400 that the Commission “review existing rates” for public telecommunications services offered by companies with more than 50,000 access lines. Hearings were concluded in November 2000. The Commission approved a Joint Stipulation between

the Utility Division Staff and VALOR that determined that no subsidies existed in VALOR's existing rates.

**Case No. 3325: Identification of all Subsidies in the Existing Rates for Qwest Corporation**

This case also stemmed from the requirement of HB 400 that the Commission "review existing rates" for public telecommunications services offered by companies with more than 50,000 access lines. Hearings were concluded in October 2000. Based on the evidence in the record, the Commission determined that, at present rates, Residential Call Trace Pay-per-use, Business Call Trace Pay-per-use, and certain private line rate elements, were receiving subsidies. Also, the Commission determined, that at present rates, Residential Non-Published Service and Business Non-Published Service were producing a subsidy. The Commission held a subsequent hearing to schedule the elimination of these subsidies on a revenue neutral basis. These subsidies are scheduled for elimination beginning in January 2002.

**Case No. 3588: Collection of Gross Receipts Taxes for Telecommunications Services Provided to New Mexico Indian Tribes and Their Members**

In March 2001, the Commission issued a Notice of Inquiry on the collection of gross receipts taxes for telecommunications services provided to New Mexico Indian tribes and their members. In response to the Notice of Inquiry, written comments were filed by representatives of the telecommunications industry, numerous tribal respondents, the New Mexico Taxation and Revenue Department, and Commission Staff. The Commission is now seeking to remedy, to the extent possible, any unlawful or unnecessary collection of gross receipts tax from Indian tribes and their members in connection with the provision of telecommunications services. A workshop will be held on December 12, 2001 in order to address the concerns that were raised in the filed comments. The purpose of the workshop is to explore what methods and action would best ensure that such taxes are not charged to Indian tribes or their members.

**Case No. 3317: Investigation into the Rates and Charges of the Institutional Operator Service Providers**

On April 4, 2000, the Commission initiated an investigation into the reasonableness of rates and charges of Institutional Operator Service Providers ("IOSPs") doing business in New Mexico. The Commission noted in its Final Order in Utility Case No. 3113 that inmates in correctional facilities, including jails, do not appear to have a choice of alternative institutional operator service providers and stated that for this reason a closer scrutiny of the rates of IOSPs is necessary and warranted. In order to address its concerns regarding PCS's rates and IOSP rates in general, the Commission initiated this investigation. The Commission expressed concern about the number of complaints received by Consumer Relations Division against IOSPs. The Commission also recognized in its Final Order in Utility Case No. 3113, that pursuant to the New Mexico Telecommunications Act's pro-competitive regulatory scheme, and in order to facilitate an orderly transition from a regulated telecommunications industry to a competitive market environment, the rates contained in tariffs filed by non-dominant carriers for competitive services have not received the level of scrutiny a comprehensive review that

the rates contained in tariffs of incumbent local exchange carriers holding dominant-carrier status and residual monopoly power have received. During this investigation, the New Mexico Legislature passed House Bill 133 entitled, An Act Relating to Corrections; Placing Conditions on Contracts to Provide Inmates with Access to Telecommunications Services in a Correctional Facility or Jail. On April 2, 2001, the Governor signed HB 133 into law. HB 133 became effective on June 15, 2001 as NMSA §33-14-1. Hearings were concluded in September 2001, and this matter is currently pending before the Commission.

**Case No. 3223: State Universal Service Fund**

In 1999, the Legislature enacted the Rural Telecommunications Act, which among other things, created the State Universal Service Fund (“SUSF”). The purpose of the SUSF is to ensure the availability of local exchange service at affordable rates in rural high cost areas of the state. The Commission promulgated rules governing the SUSF in December 1999. In April 2000, the Commission appointed the Advisory Board to the SUSF. The Commission held its final hearings in September 2001 to determine allocation mechanisms, size of the fund, uniform customer surcharges, definition of implicit subsidies, and revenue reporting accuracy. The matter is currently before the Commission for final disposition.

**Case No. 3629: Qwest Long Distance (“Section 271”) Case**

Through the federal Telecommunications Act of 1996, Congress allowed Qwest Corporation and the other former Bell Operating Companies (“BOCs”) to enter the long distance markets within their local service areas upon satisfaction of the pro-competitive elements of section 271 of the 1996 Act. The Federal Communications Commission (“FCC”) is responsible for determining whether an applicant BOC has complied with section 271. In order to receive the FCC’s approval to enter the long distance market, Qwest must demonstrate that it has irreversibly opened its local service network to meaningful competition, through, among other requirements, satisfaction of the 14-point competitive checklist contained in section 271. The 1996 Act requires the FCC to consult with state commissions in order to obtain their evaluations concerning a BOC’s compliance with section 271.

In furtherance of fulfilling its consultative duties, on November 7, 2000 the New Mexico Public Regulation Commission formally joined in the “Multi-State Proceeding” with six other state commissions with which Qwest has initiated section 271 proceedings: Idaho, Iowa, Montana, North Dakota, Utah and Wyoming. Along with the other states, the Commission will be submitting its evaluation to the FCC regarding Qwest’s compliance with the Act’s requirements as they pertain to New Mexico. The FCC will then decide whether to authorize Qwest’s entry into the long distance market in New Mexico as well as the other states in Qwest’s 14-state region.

As of December 1, the Commission has issued four interim orders provisionally concluding that Qwest be found in compliance with the following checklist items: 1 (Interconnection and Collocation), 2 (Access to Unbundled Network Elements), 3 (Access to Poles, Ducts, Conduits and Rights of Way), 5 (Access to Unbundled Local Transport), 6 (Access to Unbundled Local Switching), 7 (911/E911 Access, Directory Assistance and Operator Services), 8 (White Pages Directory Listings), 9 (Numbering Administration), 10 (Databases and Associated Signaling), 11 (Local Number Portability),

12 (Local Dialing Parity), 13 (Reciprocal Compensation), and 14 (Resale), as well as the “Emerging Services” unbundled by the FCC after the passage of the 1996 Act, i.e., Line Sharing, Subloop Unbundling, Packet Switching, and Dark Fiber.

Still pending are proceedings concerning the Commission’s evaluation of the 1996 Act’s following requirements: checklist item 4 (Access to Unbundled Loops); SGAT General Terms and Conditions; section 272 (structural separation of Qwest’s long distance and local service affiliates); post-entry (“anti-backsliding”) enforcement mechanisms; and the public interest requirement. In addition, PRC proceedings are scheduled to begin in 2001 and early 2002 regarding the nature and extent of facilities-based residential competition in New Mexico and Qwest’s provisioning of operational support services pursuant to testing being conducted by Qwest’s Regional Oversight Committee. Once all these proceedings have concluded, the PRC will submit its final evaluation of Qwest’s section 271 application to the FCC.

**Case No. 3567: Trouble Isolation Charge Show Cause**

The trouble isolation charge (“TIC”) is an \$85 fee assessed by Qwest for dispatching a technician to a customer’s premises in response to a trouble report, and finding that the Qwest line tests clear and the trouble is on the customer’s side of the network interface device. In response to customer complaints about the charge and arguments made by Staff in the quality of service and consumer protection rulemakings that the charge should be prohibited, on August 14, 2001, the Commission issued an Order to Show Cause finding that the question of whether the TIC should be prohibited or regulated raises numerous factual and jurisdiction issues that should be developed by Qwest and Staff. A hearing was held September 25, 2001 and post-hearing briefs were submitted on November 15, 2001..

**Federal Universal Service Fund Certification**

In May 2001, the FCC delegated the responsibility to state commissions to certify that carriers receiving Federal Universal Service Funds (“FSUF”) are using the funds for the intended purpose. Except for Qwest, all Incumbent Local Exchange Carriers, of which there are 16, receive FUSF. The Commission is required to certify carriers by October 1 of each year.

**Telecom Interconnection Agreements**

Over sixty (60) interconnection agreements have been approved by the Commission since the beginning of 2001. Having these agreements in place and approved will encourage the development of competition in the telecommunications industry within New Mexico by enabling interconnecting carriers to offer new services to New Mexico consumers.

## **Insurance Division**

The Insurance Division is responsible for regulating the business of insurance in accordance with the New Mexico Insurance Code. The director of the Insurance Division is the Superintendent of Insurance. The Insurance Division includes the following bureaus: agent and company licensing; financial and market conduct examinations (field audits); insurance fraud; life and health insurance; managed health care; property and casualty insurance; title insurance; state fire marshal and firefighter academy. The Insurance Division's insurer solvency surveillance program is accredited by the National Association of Insurance Commissioners (NAIC).

### *Blue Cross-Blue Shield Sale*

Superintendent of Insurance Eric P. Serna on Dec. 5, 2001, approved the creation of a new charitable foundation, the Con Alma Health Foundation, focused solely on the health needs of under-served New Mexicans. The order filed Dec. 5, concluded the proceedings that began in 2001 to fulfill the requirements of the Insurance Code with respect to the assets of New Mexico Blue Cross – Blue Shield, a charitable organization that was sold to Health Care Services Corporation of Illinois. The superintendent of insurance is empowered to preserve and protect the charitable assets of a nonprofit health care plan.

The superintendent approved the sale on May 17, 2001, under the terms of a settlement agreement offered by the two companies, the attorney general, a coalition of 21 consumer, health and community groups, and the Insurance Department staff. The order approved the sale price of \$55 million, and the transfer of any remaining assets to an appropriate foundation for health care, which include an initial \$15 million and \$1 million a year for five years.

On August 13, 2001, the superintendent established an advisory committee, with himself and Attorney General Patricia Madrid as co-chairs, to develop the mission and other guiding principles for a new foundation to be created to administer the funds. The advisory committee submitted its recommendations in October.

The task force's proposed mission: "...to respond to the health rights and needs of the culturally and demographically diverse peoples and communities of New Mexico. The Corporation will seek to improve the health status and access to health care services...and will advocate for a health policy which will address the unmet needs of all New Mexicans."

The task force also made recommendations regarding the governance, community involvement and public accountability that would regulate the operations of the foundation. The superintendent and the committee conducted administrative hearings and is expected to make a final decision before the end of 2001.

NMBCBS served approximately 217,000 New Mexico customers, and serves as the claims administrator for approximately 1.2 million other residents under the Comprehensive Health Insurance Pool and the Indian Health Service.

## *Modernization*

The passage of the federal Financial Services Modernization Act of 1999 (Public Law 106-102; also referred to as the Gramm-Leach-Bliley Act, or GLBA) continues to exert tremendous pressure on state insurance regulators to improve their regulatory systems in order to preserve the state-based system of insurance regulation. GLBA is intended by Congress to strengthen U.S. financial institutions by streamlining regulatory processes and eliminating barriers to efficient operations. The regulation of insurance, which is handled by 50 state regulators rather than a single federal agency, is subject to many criticisms stemming from lack of uniformity among the 50 state regulatory systems and numerous barriers to efficient operation; the threat exists that if the criticisms of the state insurance regulatory system are not addressed, federal legislation may be passed to remove or severely limit the states' regulatory authority. As a result, the 50 state insurance regulators, working through the NAIC, have undertaken several initiatives to achieve uniformity and eliminate barriers to efficiency wherever possible.

In New Mexico, uniformity has been addressed in the licensing arena, for example, by adoption of the NAIC uniform company and agent licensing application forms, and by passage of legislation that eliminates barriers to non-resident agent licensing. As a result of the changes to New Mexico agent licensing laws, Insurance Division staff workloads have increased substantially (38 percent) as non-resident agents submitted license applications for the first time.

With uniformity have come opportunities to streamline licensing practices nationwide through improving computerized information systems, which should also improve the division's ability to handle increased workloads more efficiently. Since 1996, the Insurance Division has been working toward completely revamping its outdated computer information systems. Numerous setbacks and delays have been encountered, many occurring as a result of the 1999 merger of the PUC and SCC into the PRC. However, the first major milestone--migration of outdated systems from the ISD mainframe environment to a new, local, SQL relational database environment is expected to be completed by early December 2001. The new system is designed to interface with the NAIC computer systems, providing the ability to accept licensing transactions electronically through a central facility, thus greatly speeding up the process. Upon reaching this first milestone, New Mexico will join the ranks of 26 other states that have completed all twelve NAIC "Uniform Regulation Through Technology" initiatives.

Computers solve some problems, but create others. Consumer concern over privacy issues has been growing. The Superintendent of Insurance held several hearings in 2001 to consider rules addressing privacy concerns. GLBA requires that certain privacy issues be addressed by state insurance regulators, but the rules proposed by the Insurance Division staff go beyond those minimum requirements, and some testimony has suggested that they should go even further.

Not all modernization issues are technology-related. For the past few years, there has been a growing consensus nationally that rate and form regulation of certain kinds of insurance may be unnecessary. New Mexico's 'prior approval' law and others like it around the country have been criticized for being

an unnecessary burden on the marketplace, delaying introduction of new products and price adjustments, with no real benefit to the consumers of the products. The Superintendent of Insurance is currently considering a rule proposed by Insurance Division staff that would deregulate certain commercial lines of insurance that are effectively regulated by competition in the marketplace. Personal lines such as homeowners and personal automobile would not be affected by the proposed rule.

Other pending rulemaking activities include the following items arising out of 2001 legislation: rules governing formation and operation of multiple employer welfare arrangements, which may provide certain advantages to employers that provide health benefits to their employees; and rules governing the sale of service contracts.

## **Managed Health Care Bureau**

The Managed Health Care Bureau regulates Managed Health Care and assists consumers with inquiries and grievances. The Bureau's regulatory authority includes but is not limited to compliance plans, appeal processes, annual reports, and quality assurance.

Compliance Plans include access to medical services, cultural and Linguistic plans, consumer assistance, member and provider grievance.

The Bureau has developed an outreach presentation that is available to the public upon request. The presentation was developed to educate New Mexico Residents of their rights under the Patient Protection Act, Managed Health Rule and Grievance Rule.

The Bureau continues to work with HMO's in order to bring them into compliance with the New Mexico Insurance Code, the Managed Health Care Rule, the Grievance Rule and the Patient Protection Act.

The Bureau is organized into two units: The investigational unit and the legal unit and has a total of eight employees.

The Bureau has assisted consumers with 453 complaints and inquires. Additionally the bureau received 31 requests for external reviews in 2000.

## **Insurance Fraud Bureau**

### *2001 Annual Report to the Legislature*

The Legislature created the Insurance Fraud Bureau as part of the Insurance Fraud Act, effective in 1998. The Bureau began accepting cases late that year, and the first arrest resulting from an investigation occurred in mid-1999. The following cases brought by the Bureau, in chronological order, were pending in the state judicial and correctional systems at press time:

## *Cases*

**State v. Petra Peters:** Ms. Peters pleaded guilty to four counts of fraud for embezzlement of insurance agency client's funds by overpayment of premiums. She was given a suspended sentence and ordered to pay restitution of \$42,000, including \$25,000 to the Manuel Lujan Agency and \$5,000 to NM Taxation and Revenue Department.

**State v. George Casey, Jr.:** Mr. Casey was charged with 68 felony counts in Chaves County. He agreed to plead guilty to four counts of fraud for embezzlement of client and insurance company funds, and fraud by an insurance professional. In a companion case from Curry County, Mr. Casey was indicted on 49 felony counts of fraud and forgery by an insurance professional. He was sentenced to 10-1/2 years in the Chaves County case and the Curry County case was dismissed. Due to Casey's serious heart condition, the sentence was suspended but he will be required to make restitution.

**State v. Kim Hayes:** Ms. Hayes pleaded guilty to making false claims by an insurance professional by embezzling insurance company funds, in Las Cruces. He has successfully completed the 13<sup>th</sup> District Attorney's Pre Prosecution Program and made complete restitution.

**State v. Estella Florez:** Ms. Florez pleaded guilty to forgery for obtaining disability benefits as a non-insurance professional, in Carlsbad. She was placed on probation.

**State v. William C. Pilley:** Mr. Pilley pleaded guilty to three misdemeanor counts of forged evidence for issuing three false temporary insurance cards in Hobbs.

**State v. John L. Montoya and Nora A. Montoya:** The Montoyas were indicted in Santa Fe on four counts of forgery and one count of conspiracy for allegedly lying to the Division of Insurance about completion of their continuing education requirements. Both pled guilty and were sentenced to a term of probation.

**State v. M. L. Whitson, Jr.** Mr. Whitson pleaded guilty to filing a false claim to homeowner's insurance company in a case arising out of the Cerro Grande Fire. Mr. Whitson has successfully completed the First Judicial District Attorney's Pre Prosecution Probation Program.

**Leroy Lovato:** Convicted of one count of false claim. Sentenced to probation.

**Greg Montoya:** Convicted of one count of false claim. Received probation.

**Melinda Montoya:** Convicted of one count of false claim. Received probation.

**Armando Rivera:** Convicted of one count of tampering with evidence. Received probation.

**Jeffery Vaughn:** Charged with one count of embezzlement, Vaughn has been accepted by the First Judicial District Attorney's Pre Prosecution Probation Program.

There are 10 other indictments; nine are awaiting trial and one defendant passed away awaiting trial.

## **Cases Under Investigation**

The Bureau has more than 200 cases under active investigation, including three that were initiated in 1998, 27 that were initiated in 1999, over 70 that were initiated in 2000 and 75 cases received in the

current year. The Bureau also is actively involved in several important insurance fraud investigations involving the FBI, the U.S. Justice Department and other states. The estimated loss in these cases exceeds \$16 million.

### **Policy Advisory Group**

The Insurance Fraud Policy Advisory Group consisting of representatives of the insurance industry, state legislators, consumers and other appropriate people, to advise the Director with respect to the Insurance Fraud Act.

## **Patient's Compensation Fund Report**

The Patient's Compensation Fund (PCF) is funded from surcharges paid by health care providers. In determining the surcharge, the Superintendent of Insurance bases his determination on the actual fund balance and the estimated losses per actuarial analyses. In 1996 the annual expenditures from the PCF were \$6,098,98.00 and have grown to \$9,576,330.00 for this calendar year. The surcharge assessed to the health care providers was \$8,960,834.00 in 1996 and is currently \$8,346,640.00 for this calendar year. The average expenditure for the PCF for the last six years is \$7,854,000.00 and the average surcharge revenues for the same time frame are \$8,633,000.00.

In October of 2000 the superintendent of insurance had \$22,500,000.00 transferred over to the New Mexico State Investment Council to increase the rate of returns on the funds. With the current difficulties with the stock market the fund has not increased as expected, but the staff at the Investment Council is confident that the market will improve.

## **State Fire Marshal**

### **Reorganization Results**

As a result of the reorganization efforts last year, the State Fire Marshal's Office (SFMO) has provided a number of services related to the life safety of residents of the state. The reorganization essentially divides the State Fire Marshal's Office into four primary categories:

### **Fire Protection Fund Distribution**

- Fire Chief's Handbook
- Fire Department Inspection
- Fire Department Training and assistance with ISO issues
- Fire Fighting Qualification System
- Fire Apparatus specification review

## **Fire Code Enforcement**

- Fire response system plan reviews and assistance
- Inspections for Fire Code compliance for public buildings
- Sale of fireworks permits
- Above Ground Flammable Liquid Storage Tanks

## **Fire prevention code selection**

- Designated agents to assist inspection activities

## **Fire Origin and Cause**

- Determine Fire Origin and Cause
- Assist in prosecutions
- Establish and assist regional Arson Task Forces

## **Other Activities**

- Activation and staffing of Emergency Operations Center
- Representation on the Hazardous Materials Safety Board

## *Fire Protection Fund Distribution*

In FY 2000, the SFMO distributed \$15.7 million to 366 fire departments in the state. In FY 2001, \$16.8 million was distributed to 368 fire departments. The increase in funding distribution is the result of changes in regulation that defines multiple fire stations and the creation a new ISO classification, which improves funding to eligible fire departments in New Mexico. The Insurance Services Office, Inc. (ISO) provides an assessment of fire protection in a given community with a rating from 10 - 1. A "10" rating indicates "not adequate fire protection" while a "1" rating indicates "exemplary fire protection". That rating can impact insurance rates and the amount the local fire department may receive from the Fire Protection Fund. Some success stories include the village of Mosquero who was in danger of losing their ISO rating of "8". Training provided by the SFMO to Mosquero Fire Department assisted with an ISO rating of "6". The San Pedro – La Mesilla fire district, located south of Espanola, lowered their ISO rating from a "9" to a "5" after direction from the SFMO. The city of Hobbs has the lowest rating in the state of New Mexico because of direction provided by the SFMO. Hobbs is rated as an ISO "2" and also has the new "8B" rating for areas covered outside of the city of Hobbs.

An ISO rating is related to two important issues. The example of San Pedro - La Mesilla means that homeowners should benefit from an approximately 45% reduction in fire insurance premiums. If a homeowner is paying \$1400.00 per year in an ISO class "9" fire district and the ISO rating is lowered to a "5", the expected savings to the policyholder should be about \$630.00. The lower ISO rating also increases the funding to the local fire department through the Fire Protection Fund. In Hobbs, the savings will be more dramatic for commercial insurance policies. Commercial policies should see a decrease of up to 60% from an ISO class "9" rating.

Frequently the SFMO is asked by local fire chiefs and elected officials for direction on fire department organization. The Fire Chief's Handbook is a compilation of statutes, both state and federal, regulations and documentation forms that are appropriate to the fire service. A revised version is available on compact disc and soon via the Internet on the PRC website.

The SFMO is the collection point of information for fire department responses. The National Fire Incident Reporting System (NFIRS) collects data on the types of fires and the responses to all calls by local fire departments. There is a 75 percent compliance rate for reporting from fire departments and 19 departments are filing via email.

SFMO personnel work with local governments to assure compliance with expenditure of fire protection funds through audits, inspections and training. Part of that program includes working with 25 fire departments that are an ISO class "10" and moving them to a lower rating. Of those 25 departments, only 9 remain a class "10" and most, if not all of those should move to a lower rating within the next year. Unfortunately, several departments may close due to lack of interest in the local community.

### *Fire Code Enforcement*

The SFMO works with architects and engineers to assure compliance with fire prevention and detection codes by reviewing fire systems plans and inspecting for compliance before the Construction Industries Division provides a certificate of occupancy. One employee is given the primary responsibility to accomplish that job. Approximately 120 plans were reviewed and preplanning and post construction inspections were conducted this year. These buildings are public buildings, such as all state owned facilities (corrections, health care, schools, etc) and frequently require several days to complete each project.

Inspections for fire code compliance for public buildings is probably the single largest task that the SFMO is responsible for. The SFMO has adopted the National Fire Protection Association (NFPA) codes for Life Safety related to fire and several inspectors work on those projects. Last year, approximately 3,593 public buildings were inspected with a total of 6,612 personnel-hours for inspections and 4,115 personnel-hours for training of local occupants was performed. These hours do not reflect travel or office time. The primary effort is to inspect a facility and then educate the occupants as to areas of improvement so that the building is safer and future inspections can be smoother.

Sale of fireworks licenses – The SFMO is responsible for sales of fireworks permits. None of the revenue generated from these sales returns to the PRC. The SFMO sold \$102,400 worth of fireworks licenses during the current license period.

Above Ground Flammable Liquid Storage Tanks – The SFMO is responsible for voluntary inspection of above ground flammable liquid storage tanks. Frequently these are tanks that have been discovered by one of our inspectors during a routine fire safety inspection. There is no reporting requirement for businesses that use above ground storage tanks for flammable liquids.

## *Fire Prevention Code Selection*

The SFMO is in charge with designation and use of a fire prevention and protection code. This is a complicated process and involves other state agencies as well as private companies. Currently the SFMO uses the National Fire Protection Association Life Safety Code. However, there are a number of building and life safety codes that are available. The SFMO is working with local fire departments, the Regulation and Licensing Department and interested people to determine which code is most appropriate to the state.

Designated agents to assist inspection activities – these personnel from local fire departments may be tasked with assisting the SFMO with inspections of public buildings. This issue needs further discussion to adequately address liability issues.

## *Fire Origin and Cause*

The SFMO is mandated to determine fire origin and cause. This past year, the SFMO has responded to requests for 100 investigations with eight convictions for arson and/or fraud during the year. Other cases are pending. To help meet the need, the SFMO is working with local agencies to establish regional Arson Task Forces. These task forces primarily assist law enforcement personnel with arson cases in their respective jurisdictions.

## *Other Activities:*

### **Website Development**

The SFMO has identified a number of activities that can be accomplished or enhanced via the Internet. A web page will be established in the PRC Internet site.

### **WIPP Emergency Preparedness**

The State Fire Marshal's office participates in the WIPP Working Group and is a legislatively designated member of the Hazardous and Radioactive Waste Consultation Task Force. The SFMO WIPP Program has distributed \$133,000 to local governments for the primary purposes of training and equipping local emergency responders to hazardous materials incidents including WIPP transportation incidents.

### **Hazardous Materials Safety Board**

The State Fire Marshal's Office participates in the Hazardous Materials Safety Board, which reviews hazardous materials incidents to determine adequate response and chairs the HMSB Curriculum Development and Review Committee.

### **Emergency Operations Center**

The State Fire Marshal's Office is notified of activations of the state Emergency Operations Center. Most recently those activities included the response to the terrorist attacks on September 11 and

subsequent responses to anthrax threats. The PRC Chief of Staff has designated the SFMO as the lead agency representing the PRC for emergency response and EOC staffing.

## **Firefighters Training Academy**

For the 2001 calendar year, up to October 26th, the Academy delivered a total of 174 courses and training projects consisting of 6,064 delivery hours. 2,418 students were trained with a total of 75,835 student contact hours. Following is the breakdown between staff courses and adjunct courses:

### Staff:

Total Courses and Training Activities:.....	124
Total Courses:.....	64
Total Courses Cancelled (minimum enrollment):.....	16
Total Field Exercises: .....	13
Total Certification Exercises and Exams:.....	31
Total Number of Students Enrolled: .....	1,853
Total Course Hours:.....	1,801
Total Student Contact Hours: .....	31,290

Courses and Projects on schedule through end of calendar year:..... 24

### Adjunct:

Total Courses:.....	50
Total Number of Students Enrolled: .....	565
Total Course Hours:.....	4,263
Total Student Contact Hours: .....	44,545

All seven IFSAC accredited courses remain in good standing and internationally recognized.

### *Special Projects:*

- The Academy conducted the 46th Annual State Fire Marshal's School.
- The Academy co-sponsored and hosted the New Mexico Emergency Medical Technician Association Annual Conference.
- The Academy participated with the National Fire Administration in Terrorist Response Training planning, in association with the North American Fire Director's of Training Association, at the Georgia Public Safety Training Center.
- The Academy sponsored the first Gila Zone Wildland Fire Academy.
- The Academy delivered it's first all Spanish language course to firefighters from New Mexico and Mexico.
- The Academy sponsored and coordinated nine National Fire Academy field courses throughout the state.
- The Academy sponsored and delivered an Arson Detection course for EMS Region II in Ruidoso.

## Transportation Division

The Transportation Division is responsible for issuing administrative authority to operate, verification of insurance and investigations for in-state bus, charter, vanpool, truck, ambulance, taxi, vehicle repossession, escort vehicles, tow truck and other carriers of passenger and merchandise. The division also licenses natural gas and hazardous liquid pipelines and inspects intrastate pipelines to ensure safety. The Division is organized into three Bureaus: the Applications Bureau, the Motor Carrier Compliance Bureau and the Pipeline Safety Bureau. The Division functions with 21 full-time-equivalent employees. Statistics representing Bureau workloads for 2001 are as follows.

### Applications Bureau

The division's Applications Bureau issued 1,739 certificates of authority to operate and processed 5,776 insurance filings for interstate and intrastate motor carriers as follows:

Certificates of Public Convenience and Necessity: intrastate authority for household good movers and passenger services.	26
Warrant Certificates: intrastate authority for general commodities, wrecker, hazardous materials, cadavers, non-profit vanpool and charter bus services.	283
Single State Registration System: interstate authority, general commodities; passenger and charter services.	1,430
Interstate insurance forms: BMC91X liability and BMC35 cancellations	1,399
Intrastate insurance forms: Form E liability, Form H cargo and Form K cancellations.	4,377
TOTAL	7,515

### Compliance Bureau

The bureau conducted the following:

Hearings	26
Railroad Inspections	32
Investigations/complaints	102
Audits of Motor Carriers	340
TOTAL	500

## Pipeline Safety Bureau

The bureau conducted the following:

Liquid Inspections	3
Excavation Damage Investigations	5
Accident Investigations	5
Operator Qualification Training	45
Drug & Alcohol Compliance Audits	11
New Construction Inspections	1
Gas gathering Inspections	3
Transmission Line Inspections	8
LP Gas Inspections	3
Master Meters Inspections	91
Municipal Gas Operator Inspections	6
Gas Distribution Companies Inspected	11
TOTAL	192

The Pipeline Safety Bureau was successful with its proposed changes to the New Mexico Excavation Damage Act with House Bill 587 providing for regulation of excavation near or of pipelines and underground utility lines, which was signed into law.

The Division also supported Senate Bill 577, which repealed the section of the law regulating cotton gins.

## *Pipeline Safety*

The Commission conducted public hearings during 2001 in Carlsbad, Roswell and Farmington to improve gas pipeline safety regulations. The Commission began the inquiry after an explosion last year that killed 12 people near Carlsbad. The PRC is evaluating comments, and may seek federal approval to allow the PRC Pipeline Safety Bureau to conduct inspections of interstate pipelines that exist in New Mexico.

The Bureau is developing procedures for more effective enforcement over violations of the Pipeline Safety Act and for excavation damage.

## **Legal Division**

The Legal Division provides legal advice and representation to the Utility Division, Administrative Services Division, Consumer Relations Division, Insurance Division (including the State Fire Marshal) and the Transportation Division. The Legal Division does not provide advice to or representation of Commissioners in litigated proceedings in order to avoid an improper conflict of interest. The Office of General Counsel performs legal advisory and other services for the Commissioners, and for the Commission as an entity in court proceedings.

The Legal Division has been instrumental in assisting the other divisions in the preparation of proposed rulemakings for the electric industry, telecommunications industry, the insurance industry, the transportation industry, and in advocating positions supporting the public interest in all litigated proceedings before the Commission. Those rulemakings and proceedings are more fully described in each division's section of this report, and cover the entire spectrum of the Commission's jurisdiction.

The larger cases handled by the Legal Division this year include proceedings to identify and eliminate subsidies in telecommunications provider rates, a proceeding to establish a state Universal Service Fund, a proceeding to determine whether Qwest's network is open to competition, an investigation of inmate operator service providers, an investigation of trouble isolation charges, a Texas New Mexico Power Company rate case, an El Paso Electric Company rate case, cases involving the formation of holding companies by PNM and El Paso Electric Company, rulemakings regarding the Transportation industry, the acquisition of the Blue Cross/ Blue Shield by Health Care Services Corp., and proceedings to establish rules for the privacy of consumer financial and health information.

The Legal Division was instrumental in assisting the Pipeline Safety Bureau of the Transportation Division in the preparation of a Notice of Inquiry into whether the Commission should consider adopting new rules including quality of service standards to protect the public health and safety, public and private property, and the environment by ensuring the integrity of pipeline systems. Hearings on these issues were recently held in Farmington, Hobbs and Carlsbad, NM.

The Legal Division was responsible for responding to the Commission's Notice of Inquiry into renewable energy as a source of electricity and assisting with the workshop process involving several interested stakeholders to develop a proposal for rulemaking. It was also instrumental in developing and monitoring compliance procedures to enforce the Alternative Forms of Regulation for Qwest and for VALOR Telecommunication. Also in telecommunications, the Division has assisted with the review of Interconnection Agreements as well as the development of an expedited procedure to be applied to them.

A major activity this year for the Legal Division has been participation in the process of reviewing Qwest's application for Commission approval of its filing pursuant to Section 271 of the federal Telecommunications Act of 1996. Qwest must demonstrate that it has opened its local exchange market to competition and it should therefore be authorized to enter and compete in the in-region long distance market. The Federal Communications Commission ("FCC") will make the ultimate decision in the case, based upon the comprehensive record before the state commission. The standards and requirements for approval are complex and highly technical. Commission and Legal Division Staff have actively participated in several multi-state collaborative processes to receive and develop the facts

and evidence necessary to develop a proper record at the state level establishing that Qwest's proposal is in the public interest. Although this participation with other states in Qwest's 14-state region has resulted in certain efficiencies, this matter continues to be extremely resource intensive.

Also related to Qwest's 271 process is the telecommunications wholesale pricing proceeding. The Commission activated the third and final phase of this proceeding, which should result in setting wholesale rates for each of Qwest's network elements. This phase will also be extensive and involve a great deal of technical testimony, to implement the purpose of the federal Telecommunications Act of 1996 of developing competitive markets for local exchange services. Staff plans to present a comprehensive case in this proceeding aimed towards getting economically efficient and appropriate wholesale rates in place. Whether a competitive market in local exchange services actually develops in New Mexico's near future depends on a variety of factors, including economic and industry conditions outside the Commission's control. The wholesale rates of Valor will be addressed later after it develops sufficient actual operating data on its costs.

The legal services provided by the Legal Division include the filing of all Staff pleadings in litigated cases, help in the preparation and review of discovery, the taking or defending of depositions, help in preparation of testimony, cross-examination of adverse witnesses, assistance in the drafting of proposed rules and comments on proposed rules, drafting of briefs and participation in any settlement negotiations between staff and other parties, assistance in insurance complaint proceedings and assistance in the conduct of investigations.

The Legal Division assists in the drafting of Commission-proposed legislation. When the New Mexico Legislature is in session, the Legal Division, in conjunction with Staff, assists in the drafting of fiscal impact reports. Fiscal impact reports describe the fiscal and administrative impact to the agency of proposed legislation.

# Administrative Services Division

## *Administration*

The Administrative Services Division (ASD) is responsible for agency administrative functions as well as support for the offices of the Commissioners, General Counsel, Chief of Staff, Hearing Examiners and the Corporations Bureau. The Administrative Services Division continually evaluates its systems and programs to improve services to its customers, including PRC employees, the general public and governmental agencies.

## *Corporations Bureau*

The Corporations Bureau is the record-keeping office for all corporate records required to be filed with the state of New Mexico: articles of incorporation, amended articles and rosters of directors and other officers of New Mexico-based companies and nonprofit organizations, as well as out-of-state companies operating in New Mexico.

Articles of Incorporation	2,506
Foreign Qualifications	1,393
Domestic Nonprofit	565
Foreign Nonprofit	43
Domestic Limited Liability	2,394
Foreign Limited Liability	402
Total	7,303

## *Information Systems*

As part of the ongoing evaluation of improvement in services to customers, in May 2000, the Commission created a Technical Review Team (TRT) to review all database applications and develop a project plan to begin standardizing and integrating database applications. Since the PRC's creation on January 1, 1999, the Information Systems (IS) staff has been working on the first phase in database standardization and integration. To date, the staff has identified several databases that may be standardized as part of this project, they are:

- Standardized Case Management and integrated Transportation Database, and
- Phase 2 of the Insurance Division Electronic and Automated Licensing (IDEAL).

The PRC will initiate studies of additional systems as part of the PRC's ongoing consolidation and standardization of databases so that constituent services are improved upon. The Commission will seek a special appropriation for FY 03 to accommodate these studies to permit a comprehensive study of the Corporations Registration System.

The goal of the bureau is to standardize, consolidate and integrate existing database applications and conduct in-depth studies of systems to meet its responsibilities.

### *Financial Report*

The PRC is currently in its third full fiscal year since the merger of the Public Utility Commission and the State Corporation Commission created the PRC.

A summary of the operating budgets for the PRC and for its predecessor agencies indicates that the funding for the combined agency has not increased since fiscal year 1998, to allow the PRC to keep up with the increasing costs of staffing, group health insurance or routine cost of operations. The PRC's FY00 through FY01 operating budgets, compared to the two combined predecessor agency operating budgets for their last two years of existence (FY98 – FY99), indicate a funding level which is less than the combination of the two predecessor agencies. Subsequently, the PRC's FY02 level of operational funding is insufficient to allow the agency to complete its statutory duties.

#### **Comparison of PRC Budget with Predecessor Agencies**

<b>Agency</b>	FY98	FY99 (6 months)	FY00	FY01	FY02	FY98-02 Change
PUC & SCC were replaced by PRC on 1/1/1999						
Public Utility Comm.	\$3,278,600	\$1,643,800				
State Corporation Comm.	\$23,017,900	\$12,530,700				
Public Regulation Comm.		\$12,324,100	\$24,398,900	\$25,453,300	\$27,458,500	4.42%
New Programs						
Managed Health Care			\$500,000	\$500,000	\$500,000	
Telecom Bureau			\$250,000	\$400,000	\$400,000	
<b>COMBINED TOTALS</b>	<b>\$26,296,500</b>	<b>\$26,498,600</b>	<b>\$25,148,900</b>	<b>\$26,353,300</b>	<b>\$28,358,500</b>	<b>7.84%</b>

# 2002 Legislative Agenda

## *FY2003 Budget Request*

The Public Regulation Commission generates over \$120 million per year in revenue. The revenue is generated from filing fees of corporations, licensure and application fees on insurance companies, insurance agents and transportation companies, and for the regulation of utilities subject to the jurisdiction of the PRC. The PRC's FY02 appropriated operating budget equates to approximately 23 percent of its general revenues.

The FY2003 budget request is \$31.909 million, an increase of \$3.6 million, or 12.5 percent over the current FY2002 operating budget. The Commission requested the FY03 operating budget by program, as mandated by Laws of 1999, Chapter 15, the Accountability in Government Act. Based upon this mandate, the Commission has defined three main programmatic areas: Policy and Regulation, Public Safety and the Agency Support functions.

The FY03 request features items in the following areas:

- \$2.0 million increase for personal services and employee benefits. The request is based on full projected staffing levels. In addition, the PRC is requesting a base FTE expansion of 12.00. Five of these FTE are directly related to the Public Safety Program efforts of the Commission. The remaining FTE are spread throughout the Commission in areas of other crucial needs.
- Approximately \$500,000 for contractual services, to review all rules of the former corporation commission and the public utility commission, as mandated by Section 8-8-21 NMSA 1978.
- Approximately \$1.1 million increase for items in the Other category. This includes funding for rent, other operating costs, court reporting, staff professional development and accompanying expenses, routine supplies and computer replacements.

<b>PRC Budget Request Summary</b>	
<b>Fiscal Year 2003</b>	
<b>Sources of Revenue</b>	
General Fund	15,689.5
Self-Generated and Other Sources	\$ 16,219.9
<b>TOTAL</b>	<b>\$ 31,909.4</b>
<b>Expenditures</b>	
Personal Services & Employee Benefits	\$ 15,593.1
Contractual Services	\$1603.5
Other	\$14,479.7
<b>TOTAL</b>	
<b>See Administrative Services Division section for a historical review of PRC appropriations.</b>	