

Public Regulation Commissioner Candidate Questionnaire

1. New Mexico has the potential to be a leader in the region, delivering low-cost renewable resources to serve its citizens and the rest of the West, benefiting New Mexico's economy, ratepayers, and supporting grid reliability.

What do you see as the role for a New Mexico Commissioner as it relates to regional discussions on power markets and interstate transmission; how are you best suited to engage in these regional forums?

As a sitting Commissioner since January 2023, I can confirm that the Commission has been holding workshops on Western power markets, inviting participation from the regional markets as well as from the New Mexico investor-owned electric utilities ("IOUs"). These workshops help the Commission to stay current with Western market developments, and to monitor the status and decision-making process of our two IOUs located in the Western Interconnection regarding their participation in these markets.

I believe that it is important to continue holding these workshops, which I've been an active participant in. In addition, I am New Mexico's representative to the Committee of State Representatives (COSR), which is an advisory body to the Western Regional Adequacy Program (WRAP). For member utilities, this program would effectively offer an insurance policy against inadequate capacity at peak periods. In my view, the potential benefits of this program justify the costs. Without adequate support, however, this program may not be realized.

My familiarity with WRAP, current engagement with regional markets, and understanding of the modeling behind regional transmission studies make me well-suited to continue engaging with market developments in the West.

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

The Commission's Integrated Resource Planning (IRP) Rule specifies how utility generation resource procurement is to be conducted within a competitive

framework. Having rules around competitive procurement provides transparency into the process for the Commission as well as other stakeholders. Prior to adopting the IRP Rule, there was no Commission rule that specified what constituted a competitive procurement – each IOU would make that determination for themselves.

Based on the IRP Rule, Commissioners can comment on draft Request for Proposals (RFPs) to highlight areas where the RFP might be improved. In addition, the Commission can review the results of a competitive process to verify adherence to the requirements set out in the IRP rule.

In my view, a Commissioner should engage at both the draft RFP stage as well as the post-RFP stage to verify competitive process adherence to IRP Rule requirements. I'm attaching comments I recently made to a Southwestern Public Service (SPS) draft RFP for your reference.

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

Regulating in the “public interest” means to set rates that allow the utility a reasonable return on investment, but no more – resulting in rates that are just and reasonable. It means monitoring the quality of service, and holding utilities to reasonable expectations as to what the quality of service should be.

I advocated for and led a recent rulemaking on reliability, which for the first time requires PNM, EPE, and SPS to submit reliability data to the PRC. This data (which will be filed annually) will allow the PRC and other interested parties to understand how these utilities are performing regarding reliability. It should also help in understanding whether investments are going towards improving reliability in the most problematic parts of their distribution grids. This rule was carefully thought-out, is of high quality, and is a prime example of regulating in the public interest.

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

New Mexico's IOUs have Renewable Portfolio Standard (RPS) mandates specified in the Renewable Energy Act. Each year they file plans that demonstrate how they will attain these standards in the following year. They also file a report outlining their actual performance over the previous year. These annual reports

allow the Commission to monitor the IOUs' performance in attaining the RPS mandates.

The IOUs must also consider the RPS mandates during their Integrated Resource Planning (IRP) process, which is a bulk generation resource study looking 20 years into the future. This process takes place every three years. The Commission's IRP Rule requires that the IOUs act on the resource needs identified in an IRP, which means that they then conduct a competitive procurement process for the identified resources. The resulting resource mix should allow for the attainment of the RPS mandates in a least-cost manner.

In addition to overseeing the IRP process, the Commission reviews applications for new system resources, whether they are to be IOU-owned resources or resources contracted for through long-term power purchase agreements (PPAs). The Commission's approval is required for an IOU's long-term PPA to be valid, or for an IOU's contract for the construction of a new plant to go into effect.

When an IOU decides to abandon a coal plant or old gas-fired unit, it must file for abandonment with the Commission. As Commission approval is also necessary for the utility to build or conclude a contract for replacement resources, the utility must file for replacement resources following abandonment.

5. What is the PRC's role in ensuring broadband is universally available?

The PRC administers New Mexico's State Rural Universal Service Fund (SRUSF) broadband grant program. This is the primary way the PRC acts to help expand broadband coverage throughout the State.

The State of New Mexico's Office of Broadband Expansion (OBAE) coordinates statewide initiatives to secure and allocate Federal broadband funding. This Federal funding focuses on the "middle mile" (or "backbone") of the telecommunications network providing internet service, whereas the SRUSF grant program focuses on the "last mile" of connectivity to the customer.

The Commission sets priorities on how the SRUSF grant funds should be awarded, and then in an annual decision, chooses the specific projects that will receive funding. The PRC issues an annual report to the Legislature on the SRUSF program, and recommends changes to the SRUSF fee that each telecoms

customer in New Mexico (whether cell phone or landline) must pay as part of their monthly bill.

6. Should providers of broadband be regulated as a utility? Why or why not?

Regulating broadband providers would be contrary to State law, which has acted to deregulate telecommunications over time. Regulation should be used where competition is ineffective or impossible. In the case of broadband, customers generally have multiple choices and methods to receive connectivity – Xfinity (cable), CenturyLink (DSL over phone line), hot spots or smart phones using cellular communication, satellite, and sometimes fiber. There is competition in the provision of broadband, and the free market should be allowed to function.

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

To the extent that the law considers externalities, the PRC must also consider them. This is the case with the Renewable Energy Act (REA), which mandates the attainment of certain RPS standards. REA compliance could mean, at some point, that bulk power prices will be higher than they would have been otherwise. However, CO₂ emissions will also be less, and air quality will be improved. The New Mexico Legislature weighed the competing factors and decided that the mandates were in the public interest. The Commission administers the law, and must ensure compliance with it.

Some other examples of externalities expressly considered in statute are the Community Solar Act, which requires that 30% of the electricity produced from a community solar facility be reserved for low-income customers and low-income service organizations, and the Grid Modernization Act, which requires the Commission in making a decision on a grid modernization application to consider whether the proposal is “reasonably expected to increase access to and use of clean and renewable energy, with consideration given for increasing access to low-income users and users in underserved communities.” (NMSA 1978, Section 62-8-13(B)(3)).

In addition, statute requires the Commission to review locational applications for generation interconnections and (non-RETA) transmission lines. The Commission must determine whether the proposed location will “unduly impair important environmental values.” (NMSA 1978, Section 62-9-3(G)). This could be the case if the proposed line traverses ecologically-sensitive areas, or archaeological or cultural sites.

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

The primary role of the three Commissioners is to make decisions on cases and to promulgate rules. At the same time, they hire the Chief of Staff, Chief General Counsel, and advisory staff for the Commission side of the agency.

Commissioners must be consulted regarding divisional director personnel changes. The Commissioners retain responsibility for the functioning of PRC as a whole.

I believe that a Commissioner should strike a balance in agency administration. Advocating for specific individuals to be hired or fired on the Staff side would go too far, and would hinder the Chief of Staff’s ability to do her job. At the same time, to not be aware of Staff morale, capabilities and experience, and job performance would mean that the Commissioner is too detached from the agency to judge how well it is functioning.

9. As you evaluate issues before the PRC, which factors do you view as most important and why?

I am particularly interested in ensuring that customers receive good levels of reliability at fair, just, and reasonable prices during the energy transition.

If reliability suffers during the transition, renewable energy will be blamed. Likewise, if utility bills skyrocket, the energy transition will be blamed. Either of these outcomes could result in a setback for the energy transition.

I firmly believe that it is possible to achieve the energy transition at reasonable cost, and that it is the highest calling of the PRC to ensure that this happens.

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

I believe that there are specific lessons learned that we can take from various states. However, New Mexico must find its own path – one that is specific to our unique set of circumstances and laws.

11. Briefly describe your experience with regulatory topics including: utility rate setting, promulgating regulations, and the New Mexico Energy Transition Act.

As a sitting Commissioner since January 2023, I have practical experience with all three of these topics.

I have participated in deciding two rate cases (one for PNM, which was a litigated case, and one for SPS, which was a settlement). In addition, I have participated in deciding numerous Renewable Energy Act cases, Transportation Electrification Plans and rate riders, Energy Efficiency Act Plans and rate riders, as well as Grid Modernization applications and rate riders. In addition, I am currently participating in a community solar ratemaking case.

I advocated for and led a recent rulemaking on reliability, which for the first time requires PNM, EPE, and SPS to submit reliability data to the PRC. This rule was published on September 24, 2024, and is now in force.

I also recently participated in deciding our Energy Transition Act (ETA) Greenhouse Gas Emissions Rule. This rule specifies how the carbon intensity compliance measurement (pounds of CO₂ emitted divided by megawatt hours of power produced) required by the ETA is to be conducted, and how often PNM must file reports. I am also familiar with other aspects of the ETA, such as bond securitization and replacement resource locational constraints.

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

The NMPRC lacks jurisdiction over new generation projects that are within Tribal lands. The PRC's involvement in such an instance would be limited to decisions regarding a New Mexico IOU's participation in the project. FERC has jurisdiction

over new generation (and storage) projects in Tribal lands. For example, FERC recently decided to dismiss a developer's application for a pumped storage hydro project in the Navajo Nation due to lack of community engagement by the developer.

The NMPRC also lacks jurisdiction over utilities that are entirely located within Tribal lands, such as the Navajo Tribal Utility Authority (NTUA). At the same time, I believe that the NMPRC should engage with Tribal leaders to offer our experience to them as they regulate their own utilities, and to be aware of their concerns.

I have met with Navajo Nation officials regarding their broadband expansion plans, and look forward to continuing those conversations. Now that the Tribal Advisory Council has been established, I look forward to interacting with them and working together on issues of importance.

13. The Public Regulation Commission is a regulatory body. Often the line between regulation and policy can get blurred. Please explain your view as to where the line between regulation and policy is.

Broadly speaking, policy is a set of guidelines, preferences, or goals that guide decision-making. Regulation is the application of the law to a specific situation.

The PRC is a quasi-judicial agency which also has legislative authority. Quasi-judicial decisions must be made based on evidence which is on the record. When applying the law to the evidence, at times the law instructs the PRC to consider reasonableness – in these situations, the PRC may exercise some policy discretion. At other times, the law is very specific (such as the dates by which certain renewable portfolio standard levels must be attained) – in these situations, the PRC has no policy discretion.

Unlike a court, which can only rule on cases brought before it, the PRC may on its own initiative decide to adopt a rule. Rules are legislative in nature. The PRC is constrained in its rulemaking by statute – it may not contradict statute, nor go beyond what is specifically required by it. Where the law is not specific or prescriptive, as is the case in the area of electric power reliability, the PRC may promulgate rules based on its general authority over rates and quality of service.

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

Perhaps the most consequential action of the PRC in recent history is when it ordered PNM to file an abandonment application for its San Juan Generating Station (SJGS) just ahead of the Energy Transition Act's (ETA) passage in 2019. The PRC's goal was to have an abandonment application filed prior to the ETA's passage, which would mean that the new law would not apply to the SJGS abandonment. This attempt to circumvent the soon-to-be adopted ETA was improper and a clear example of regulatory overreach, and had significant ramifications for utilities regulation in New Mexico.

15. Per NMSA 1978 Section 62-19-5 please provide the following:

a. Do you hold a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body? (If you hold a professional license or a post-graduate degree, skip to subsection b.)

i. Do you have at least ten years of professional experience in an area regulated by the commission or in the energy sector and involving a scope of work that includes accounting, public or business administration, economics, finance, statistics, policy, engineering or law?

Please detail how your work experience meets this requirement, including noting the specific number of years in each relevant role.

b. Do you hold a professional license or a post-graduate degree from an institution of higher education that has been accredited by a regional or national accrediting body in an area regulated by the commission, including accounting, public or business administration, economics, finance, statistics, policy, engineering or law?

Yes. I have master's degrees in mechanical engineering, Technology and Policy, and Management.

i. Do you have at least ten years of experience within the field in which you hold your license or post-graduate degree? Please detail how your work experience meets this requirement, including noting the specific number of years in each relevant role.

Yes. I worked eight years at the AES Corporation, a global power company, in roles ranging from business development to plant manager. I also worked over ten years at Sandia National Laboratories as a researcher, conducting studies in areas such as evaluating the integration of renewable energy into the grid and valuing grid-scale energy storage.

c. Do you have a financial interest in a public utility in New Mexico or elsewhere?

No, I do not, and will not for as long as I remain a member of the Commission.

d. Have you been employed by a commission-regulated entity at any time during the last two years?

No. I have been employed as an appointed Commissioner since January 18, 2023. Immediately prior to this, I was employed at Sandia National Laboratories.

e. Do you agree that you will give your entire time to the business of the commission and will not pursue any other business or vocation or hold any other office for profit?

Yes. I have done this, and will continue to do so as long as I serve on the Commission.

16. The two sitting PRC Commissioners are registered to vote with the Democratic Party. The New Mexico Constitution requires that no more than two PRC Commissioners can be registered to vote with the same political party. Please state your registered party affiliation.

I continue to be registered as an Independent (no party affiliation) in Bernalillo County.

Please affirm this statement with your signature below:

I affirm that the above information is true and correct, and I have met the statutory and constitutional requirements, as described in questions 15 and 16 above.



Candidate Signature of Affirmation

James Ellison, Jr.