UNAPPROVED MINUTES
of the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

November 23, 2010
Room 321, State Capitol

The fifth meeting of the Radioactive and Hazardous Materials Committee (RHMC) was called to order by Senator Richard C. Martinez, chair, at 9:15 a.m. on Tuesday, November 23, 2010, in Room 321 at the State Capitol.

Present
Sen. Richard C. Martinez, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Sen. Phil A. Griego, appointed
Rep. Jim R. Trujillo
Sen. David Ulibarri
Rep. Jeannette O. Wallace

Absent
Sen. Stephen H. Fischmann
Rep. William J. Gray
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. John Pinto
Rep. Jeff Steinborn

Advisory Members
Rep. Thomas A. Anderson
Rep. Donald E. Bratton
Rep. Nick L. Salazar

Sen. Rod Adair
Rep. Eliseo Lee Alcon
Sen. Dianna J. Duran
Sen. Gay G. Kernan
Sen. Lynda M. Lovejoy
Sen. William H. Payne

Staff
Gordon Meeks
Renée Gregorio

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts and written testimony are in the meeting file and on the web site.

<u>Tuesday, November 23</u>

Members of the committee and staff introduced themselves, and the committee began discussion of potential government restructuring proposals.

Government Restructuring Task Force Proposals

Mr. Meeks, Legislative Council Service (LCS) drafter, explained that the Government Restructuring Task Force (GRTF) has asked interim committees to consider ideas and make recommendations. He said that the task force meets again on December 20.

Committee members, led by Representatives Wallace and Heaton, agreed that restructuring issues concerning the state's Department of Environment (NMED) are the issues that most concern the RHMC. Because the NMED touches many businesses and people across the state, it needs to foster a business-friendly environment so that business agendas are moved forward in ways that create jobs. Concerns raised included whether the Environmental Improvement Board (EIB) has overstepped its authority. The EIB's authority needs to be made more explicit, and the EIB has to be accountable to the legislature for its decisions. In addition, the NMED's hands are tied by the ways in which the federal Environmental Protection Agency (EPA) guidelines are set. For example, at present there are no standards for carbon dioxide and carbon emissions — so it is an overstepping of the NMED's bounds to advocate for a cap and trade bill. There are significant legal issues related to what the NMED's authority really is, and this authority also needs to be made more explicit in law. The committee also expressed concern over the duties of the Water Quality Control Commission, which need to be reviewed to ensure that the state's water is protected.

Members urged that decisions and executive orders made during this last administration be reviewed and brought back in alignment with what exists in law. A question was raised regarding executive orders, and if they remain in place when the administration changes. (*On that note, John Yaeger of the LCS stated that, generally speaking, an executive order would remain until revoked by the governor. It is the position, not the person, that issues and revokes the orders.*)

Representative Trujillo suggested recommending that the legislature review the statute that created the Clean Water Administrative Fund, as he feels the legislature lost control of the money in this fund and does not approve of the ways the NMED is spending this money. No committee action was taken.

Representative Bratton said that it is disconcerting that the administration pushes legislation, and when the legislation does not pass, the administration pushes its agenda through regulation. He added that the legislature is the voice of the people, with a responsibility to protect the state and create a positive environment to do business here. One of the main issues with regulation and business, he added, is one of consistency. Businesses need to be ensured that the rules they started with will not get abruptly changed; business decisions are made based on these regulations. He said that in oil and gas, dairy, mining and landfill businesses, people are constantly coming back to the legislature seeking relief because of changes that occurred through executive order and regulations, not through legislation. The RHMC needs to send a message to the GRTF to review the regulatory process in New Mexico and put checks and balances in place, Representative Bratton said. He also stated that every agency in the state should be required to do an economic analysis of changes in the regulatory environment and

report findings back to the legislature. He said that it is the responsibility of every agency to collect revenues to balance the budget. He ended by saying that the legislature needs to review the process and intent of earmarking money from the budget for specific purposes.

To that point, Senator Ulibarri added that the legislature must review programs in House Bill 2 that receive recurring money, make serious cuts and ensure that the funding that remains is still appropriate.

Several committee members expressed concern over the use of money in funds and whether funds are being used for their intended purposes. All regulations need to be reviewed with the intent of creating safety and a strong business environment. It was asked how New Mexico compares to surrounding states regarding fees and time lines to obtain permits. The state needs to look at who must bear the fees and taxes and create a fiscal impact review of every regulation developed.

In response to committee member questions about the legislative and executive responsibilities related to regulations and legislation, T.J. Trujillo spoke of the research he has done in this area. He stated that the legislature does have the power to intervene in and review the rulemaking process. Because of separation of powers issues, Mr. Trujillo reported that most states have determined that for the legislature to veto a rule, it would take passage of a bill signed by the governor. He added that some states have passed constitutional amendments instead. However, he said that the most common mechanism is a deferment — the legislature can defer the effective date of a rule until the end of the next legislative session to allow the legislature sufficient time to act on a rule change. This avoids the constitutional issue of separation of powers.

Senator Griego, appointed by Senate President Pro Tempore Timothy Z. Jennings as a voting member for purposes of this meeting, informed the committee of a bill in process that proposes not allowing a rule to be in effect until reviewed by a legislative committee. In addition, a bill is being drafted that would disallow the governor to have cabinet secretaries introduce rules and regulations without legislative approval.

The question of RHMC oversight was brought forward by Senator Asbill, in particular toward the EPA. Mr. Meeks stated that Representative Heaton has introduced legislation that attempts to change the authority of this committee.

After much discussion, the committee narrowed its recommendations to the GRTF to the following legislation:

- provide for review and approval of executive branch rules by the legislature during the next regular legislative session following adoption of the rules before the rules can go into effect (HB 310, see below);
- require financial impact analysis by the executive branch of all rules proposed by the executive;

- amend the existing statutory requirements for "renewable energy portfolio standards" to "clean energy portfolio standards", which would include nuclear energy fuel sources; and
- expand the role of the RHMC to an oversight committee of the NMED and the Energy, Minerals and Natural Resources Department (EMNRD) as provided in previous legislation sponsored by Representative Heaton.

Representative Heaton moved to adopt these four items as bills in concept, which was seconded by Senator Ulibarri; the motion carried. Representative Heaton also asked for committee endorsement of a letter to the blue ribbon commission regarding the Waste Isolation Pilot Plant. Senator Asbill moved to approve the sending of this letter, recommending that it be hand-delivered to the commission at its meeting in Carlsbad in January. Senator Ulibarri seconded the motion, and the motion carried.

The minutes for the October RHMC meeting were unanimously approved.

Regarding the first bulleted item above, the committee later endorsed a bill that amends the State Rules Act to require regulatory impact statements and amends the Small Business Regulatory Relief Act to require that a draft regulatory impact statement be provided prior to the adoption of a proposed rule that may have an adverse effect on small businesses. This bill is significantly the same as the one introduced as HB 310 during the 2008 legislative session. Representative Bratton suggested changes to HB 310 that include removing the appropriation section, removing Subsection C of Section 3 so that judiciary committees could determine needed exception language and deleting Subsection B of Section 4 to remove the hardship exception to completing the regulatory impact statement. The bill was unanimously endorsed with these recommended changes.

Compliance with the Federal Surface Mining Control and Reclamation Act of 1977

Bill Brancard, EMNRD, spoke about New Mexico's 30-year abandoned mine land (AML) program, which is funded by federal dollars, and referred to the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), which provided for the regulation of coal mines and the reclamation of abandoned mines. In 1980, the legislature enacted the Abandoned Mine Reclamation Act so that New Mexico could accept federal AML funding, which has now grown to more than $4 million per year.

Mr. Brancard presented proposed legislation that would bring the state's enabling legislation in alignment with federal priorities and amendments made to the SMCRA. Committee members asked questions related to the effect of the changes made to the enabling legislation; in all cases, Mr. Brancard assured the committee that all changes were made to track with the federal law. Details of changes made to the proposed legislation can be found in the handout provided. Committee members asked members of the mining sector as well as lobbyist Della Duran for opinions on the proposed changes, all of whom responded favorably. On motion

by Representative Trujillo to endorse the proposed legislation, seconded by Senator Ulibarri, the committee voted unanimously to endorse the bill.

Renewable Energy Costs

John Curl, Western Resources, addressed issues related to the cost of renewable energy and the impact on utility utilization. He spoke of a change in the regulatory paradigm that shifted the historic method of regulators reviewing utilities after decisions had already been made regarding planning, building resources and expansion. Once investments increased and were more permanent, and the social impact grew larger, so did the risk to utilities. He stated that legislation and the general trend moved regulators more into the decision process, and the Renewable Energy Act (REA) resulted, which is very directive and defines and sets the standard for renewable energy resources. Mr. Curl indicated that with the Public Regulation Commission's (PRC) implementation of the REA, a fully diversified portfolio should be achieved by 2011, with at least 20% in wind and solar and at least 10% in other technologies.

He added that because of disputes over the calculation of costs, the PRC set up workshops to develop a standardized methodology. Mr. Curl said that the pricing of renewable energy as it affects utilities is complicated because it is not just the cost of the renewable resources, but who will end up paying for it, that needs to be considered.

Mr. Curl gave committee members a handout that showed graphs of energy costs over time. In response to questions on what "levelized cost" means, he stated that levelized refers to a present value analysis that looks at the cost of operating a system over time and incorporates all savings and then determines the net impact on the utility based on this. The cost is then levelized across this time frame. Because the cost of owning is high over the first few years, then declines, levelized costs are used.

Committee members had some difficulty with the progressions shown in the U.S. Department of Energy handout, and Mr. Curl said that he also disagreed with some of its methods in producing these charts, especially in the lack of inclusion for various costs.

New Mexico's Role in Generation and Transmission of Electric Power

Jeff Mechenbier and Mike D'Antonio, Public Service Company of New Mexico (PNM), gave an overview and answered questions on PNM's transmission system and development of renewable resources for power generation. Mr. Mechenbier reviewed the locations of primary transmission lines in the state as well as reiterating the function of transmission, which is to deliver power from generating sources to load centers. In addition, lower voltage lines serve as backup to the backbone lines and are a means of distributing power to more remote load areas. He stressed that the majority of the transmission lines were built in the late-1960s through the mid-1970s, and that PNM has not built any backbone transmission lines since 1984. Mr. Mechenbier added that PNM's retail customers represent approximately 60% to 65% of system use, and wholesale transmission customers represent 35% to 40% of system use.

In terms of generation, the primary generation of the system's load is in the Four Corners area at 43.3%. PNM's usage of the transmission system is highest, and 35% to 40% is used by other customers, such as Tri-State Electric Cooperative, Los Alamos County and Kirtland Air Force Base. PNM also provides service for two existing wind farms and will be energizing a third wind farm soon, but these do not serve New Mexico loads. Mr. Mechenbier reported that PNM's load, despite the recession, has been increasing over the past several years. He emphasized that New Mexico is rich in energy resources. Regarding the two existing wind farms, both sell their output to Arizona, and this will also be true for the new wind farm.

Committee members expressed concern over who is benefiting from the power generated by wind farms in New Mexico, as it does not seem that either the state or its residents are benefiting. Mr. Mechenbier stated that there are tax revenues for developer investments. Developers have to buy transmission from PNM to move their product, which is then put back into the transmission rate base, which affects pricing. He urged committee members to think more holistically by considering New Mexico's richness in renewable resources and how much benefit this can be to New Mexico as well as other states, that rural jobs are increased and that the state can be an exporter of clean energy. He also said that although a wind farm may have 50% of its output going outside the state, New Mexico can have the opportunity to buy at a lower rate, and that some projects help with the renewable portfolio benefit.

In response to questions about meeting the state's renewable portfolio standards of 20% by 2020, Mr. Mechenbier said that PNM has to install its renewables to meet these portfolio standards. He added that it is likely this commitment needs to be reduced because of the cost to customers to accomplish this. Currently, PNM has more capacity than customer load, which begs the question of why PNM would add capacity without customer need. PNM also has a diversity requirement through the rulemaking of the PRC, so PNM cannot just add wind generation; it must consider other sources. He said that the renewable portfolio standard is based on the percentage of energy produced, and that of PNM's 9,000 gigawatts of energy produced, 6% of that has been met by renewable sources this year.

Representative Wallace questioned why energy is being sent out of state and agreed with other members that wind farms are not the best alternative because they are noisy and messy, to which Representative Bratton suggested that the state use more creativity in wind farm structures.

In response to a question on tax credits being passed along to consumers once the 20% portfolio is met, Mr. D'Antonio said that the 20% is a target so that developers will build projects, get tax credits and figure these into the capital cost of the project. Then the tax credit is reflected in lower costs to customers.

Mr. Mechenbier spoke of transmission being a small component of the electrical grid, and that less than 10% is associated with distribution. He said that as third-party usage is increased, it costs ratepayers less money in the long run because someone else is using the

transmission system. PNM is still adding to the transmission system, spending about $80 million a year to keep up with infrastructure needs such as new transmission distribution facilities.

Representative Bratton agreed with PNM representatives that no manufacturer would add capacity when there is no market. He said that, ultimately, the objective is to create maximum use to bring down the cost. He added that legislators make political decisions that drive the rate, but that the rate is not being driven in the best interest of the consumer.

In response to a question on whether tax credits are based on building or installing a system, Mr. Mechenbier replied that credit is based on the capital cost of equipment being installed as well as the production credit for kilowatt-hours produced. In terms of producing more than the 20% in renewable energy by 2020, he responded that this is fine as long as a reasonable cost threshold is upheld.

Representative Heaton commented that a big advantage is that the power is distributed, which relieves the pressure to build a complex grid. With the advent of new power-generating systems, Mr. Mechenbier advocated for locating generation in the existing load centers so that new transmission does not have to be built.

Geothermal "Hot Rock" Energy Options

Mark Person, New Mexico Institute of Mining and Technology (New Mexico Tech), gave an overview of geothermal resources in the state, indicating that New Mexico ranks sixth in the nation for deep geothermal potential, yet has no commercial geothermal power plants as yet. He said that the U.S. Department of Energy spent $400 million last year on geothermal energy development, $5 million of which went to drill test wells on the Pueblo of Jemez, which could lead to the first power plant in the state. He explained that New Mexico has a high heat flow and higher temperature gradients due to its volcanic activity, so drilling does not have to be done as deeply to generate electricity. He delineated issues associated with geothermal energy production, which include large up-front capitalization costs; water use required; and land issues that arise, including location, infrastructure and ownership of mineral and water rights. He said that there is an enormous capacity for geothermal energy if one drills deep enough, and that 50% of the cost is in drilling and maintaining the wells.

He reviewed geothermal resources, including differing classification systems based on temperature. He said that New Mexico has a lot of young volcanic rocks where the earth is still hot, such as in the Jemez Mountains. In addition, there is active volcanism along the Rio Grande Valley and Jemez Caldera, as well as many areas where the ground water flows deeply and comes to the earth's surface as hot springs.

Mr. Person said that geothermal greenhouses in the state generate $27 million annually in gross sales, and that there are significant cost savings and both low- and high-level jobs created through geothermal energy production.

He detailed the proposed heating system that New Mexico Tech is putting in place, stating that it decided to drill a well off-campus because this is where the temperature gradients are greatest. He added that if it chooses to drill on campus, it would have to spend $1 million, and there is no way to tell prior to drilling if it would work. As it is, New Mexico Tech had to drill a 21,100-foot well and expected temperatures of 65 to 100 degrees centigrade, but only got 42 degrees centigrade. With this system, the college could heat the campus for $3 million and save the state $500,000 per year.

In response to a question about whether tax credits are available for geothermal energy production, Steve Lucero, EMNRD, stated that a federal tax credit is available.

Adjournment

There being no further business before the committee, it adjourned at 3:40 p.m.