

**Minutes**

**MEETING OF THE PROFESSIONAL ENGINEERING  
COMMITTEE of the Board Licensure for Professional  
Engineers and Professional Surveyors held 1:00 p.m.,  
Thursday, August 8, 2019,  
Office of Souder Miller & Associates,  
5454 Venice Avenue NE, Ste. D, Albuquerque, NM**

**Members Present-** Karl Tonander, PE  
Paul Brasher, PE  
Dr. Walter Gerstle, PE, Via Telephone

**Members Absent-** Julie Samora, PE  
Ron Bohannon, PE, Committee Chair

**Others Present-** Perry Valdez, BLPEPS, Executive Director  
Miranda Baca, BLPEPS, Compliance Officer  
Stephanie Trujillo, BLPEPS, Licensing Administrator  
Gabrielle Schultz, BLPEPS, Executive Assistant  
Miguel Lozano, Legal Counsel

**1. Convene, Roll Call and Introduction of Audience**

Mr. Tonander convened the meeting at 1:07 p.m., roll call was taken and a quorum noted. Audience introductions made at this time.

**2. Meeting Notification**

Mr. Valdez informed the Committee the meeting was noticed in the Albuquerque Journal as well as the Board's website.

**3. Approval of Agenda**

**MOTION** by Mr. Brasher to approve the agenda, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**4. Approval of Minutes**

**1. Minutes of May 30, 2019**

**MOTION** by Mr. Brasher to approve the Minutes of May 30, 2019, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**2. Minutes of July 2, 2019**

**MOTION** by Mr. Brasher to approve the Minutes of July 2, 2019, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

## 5. Public Comment/Correspondence

Mr. Valdez informed the Committee that Mr. Tom Manning was listed on the agenda for public comment. He then introduced Mr. Manning.

Mr. Manning informed the Board that he had sent over documents pertaining to his concerns, and Mr. Valdez informed Mr. Manning that the Board would receive the documents after the hearing because they were received just prior to the start of the meeting.

Mr. Manning stated his main concern was on how the industrial exemptions apply, and suggested that it would be beneficial to the public for the Board to develop some specific criteria on when the exemption applies – criteria that references the Engineering Act.

Mr. Manning informed the Committee that his first concern was, “Is the individual or company performing any engineering services as defined in the Act, for the public or for public officials?”

Mr. Brasher asked for clarification as to what kind of exemptions Mr. Manning was talking about and Mr. Manning clarified it was the exemptions to the Engineering Practice Act.

Mr. Manning continued that his second concern was, “Could this project impact the health, safety, and well-being of the general public?” His final concern was, “Could this project potentially affect the properties, buildings, or structures of the public?”

Mr. Manning stated that he believed these three questions would clearly be consistent with the purpose of the Act, which he believed the purpose was to protect the health, safety, and well-being of the public.

He stated currently that the exemptions clearly state right now that the exemptions only apply as long as there are no engineering services being performed to the public.

Mr. Tonander noted that there is a section of the Act that alludes to the “Industrial Exemption,” and asked Mr. Manning, “Relative to what the Act currently says, are your three questions something you want to be considered added to the Act, or in substitution of it, as the Act is currently clear on exemptions in this case.”

Mr. Manning stated he believes the Act is clear in its intent, and that the section on exemptions is somewhat vague, but not overly so. Essentially, he is looking for further clarification as he says it clearly states the exemptions don’t apply as long as the engineering services are not being provided for the public. He believes the addition of “public officials,” would further clarify and be an extension of “the public” as it relates to the Act.

Mr. Tonander reads a portion of the Act and then asks Mr. Manning, "If we were to consider, perhaps, engineering services that has a nexus with the public at any level... that would be any engineering service. One could argue that a car company, mining company, a utility company would all have a nexus with the public."

Mr. Brasher stated the idea of a utility company doing engineering is that we're talking about the company doing work for its own internal purposes for its company, they are not offering engineering services to the public. The public is not the client they are engineering for.

Manning asked if the utility company's equipment placed on private property would have to meet the standards put forth by the Act.

Brasher stated that if there was an easement for a substation (for example) to be placed on private property, the component is still a part of the work that the utility company is performing for their own business, not as a contract work for the public or for someone else.

Mr. Manning then asked if that indicates that the private property belongs to the utility company or that it belongs to the public.

Mr. Tonander asked who maintains ownership of the engineered product. In this case, the substation or transformers would remain property of the utility company.

Mr. Brasher stated the Utility Company's job is to create and distribute electricity and that they engineer products necessary to produce the electricity. He reiterated that the company is not providing engineering services to the public, they are providing electricity to the public.

Mr. Manning asked if the Utility company asks a customer to buy a specific product so that their equipment would be compatible with the utility company's equipment, is that offering engineering services to the public?

Mr. Brasher stated it was not.

Mr. Manning then asked if someone offers expert testimony, would that count as offering engineering services to the public?

Mr. Tonander then noted that expert testimony was a completely separate subject and that a judge within a court of law may recognize an expert witness regardless of their licensure.

Mr. Manning asked again if the Committee believed whether the exemption applies to expert testimony.

Mr. Tonander stated he was told by an attorney just this week that the exemption does not apply to expert testimony.

Mr. Manning argued that the act states that the exemption does apply to expert testimony.

Mr. Tonander stated it is then up to the discretion and interpretation of the judge to apply the exemption as well.

Mr. Manning inquired if his concerns about the Act needed to be addressed in a legal manner, and clarified that his concern is that the Engineering Act is not being applied to companies that may affect the health and safety of the public.

Mr. Brasher questioned Mr. Manning if he was aware of a specific instance that concerned this and whether an instance had been brought before the Board.

Mr. Manning said his concern had been brought before the Board and he was told that the exemptions did apply in this case and that he was not given further explanation. He stated he's read the law and in legal proceedings believes there is significant plain language to interpret the Act, but in cases of ambiguity he is concerned. He believes there's enough plain language in the Engineering Act for the exemptions to apply to expert testimony if the testimony is presented to the public or relied upon by a public official to make a decision.

Mr. Brasher stated that a judge would decide on the qualifications of the expert witness.

Mr. Manning stated he believes the Board is entrusted with ensuring the safety of the public on engineering matters.

Mr. Tonander specified if he was talking about the nexus of public and private property as it relates to utility companies being around the meter loop. He then stated the company would inspect the meter loop before connecting their services in, and asked if this is where his concern was.

Mr. Manning stated he wasn't sure whether he was getting out of bounds of what he should or shouldn't say and asked if it would matter if they closed complaints he's already made?

Mr. Lozano stated that once a case is closed it's always up to the board to reopen a case. He then advised Mr. Manning to keep his statements vague as they proceed, as he had also advised him to do such before the meeting.

Mr. Manning asked how does a judge determine whether or not something meets applicable standards.

Mr. Lozano stated that the judge would look at the law to determine what applicable standards are and if they were met.

Mr. Manning asked what happens when a judge doesn't have knowledge in engineering, and asked if a Professional Engineer would be required to assist him interpreting the applicable standards.

Mr. Lozano stated that judges often have a lack of knowledge on cases they review and that a judge may rely on any testimonial evidence submitted by either party, including expert testimony.

Mr. Manning asked what would be done in a case where opposing parties offered contradictory evidence.

Mr. Lozano stated that both parties may offer witness testimony that is contradictory, and that it is still the responsibility of the judge to decide which is more credible. He stated that he was not certain whether the act of giving expert testimony was actually the practice of engineering.

Mr. Manning stated that due to the definition of the Act that giving expert testimony and judging expert testimony would qualify as the act of engineering, and that if a judge were to interpret the testimony incorrectly as an unlicensed professional engineer, he would be responsible.

Mr. Lozano noted that there is a clear distinction between the authority of the Board and the authority of the judge. The judge may disregard the authority of the Board and take any expert witness he believes. The Board may use its authority that the act of providing expert testimony to the interpretation of the act.

Mr. Tonander noted that Mr. Manning's concern as to if a judge making a ruling on an engineering case while not being a licensed engineer goes against the Act or not is a legal concern that is not under the Board's purview.

## **6. Old Business**

Mr. Valdez informed the Committee that there are no items for discussion.

## **7. New Business**

Mr. Valdez informed the Committee that there are no items for discussion.

## **8. Application Review**

### **1. Recommended for Approval List (*Exhibit A*)**

PE Exam Application(s)

PE Endorsement Application(s)

PE Reinstatement Application(s)

**MOTION** by Dr. Gerstle to approve Exhibit A, the recommended for approval applications, **SECOND** by Mr. Brasher, **PASSED** unanimously.

**2. PE Retired Status Request(s)**

**MOTION** by Mr. Brasher to approve the requests for retired status, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**9. Executive Session**

**MOTION** by Mr. Brasher that the Committee enter into closed Executive Session to discuss the items listed on the agenda pursuant to NMSA 1978, Section 10-15-1 (H) (1) to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license and to deliberate on pending cases.

**Roll call vote taken, voting 'Yes':** Mr. Brasher, Dr. Gerstle, Mr. Tonander

**10. Action on Items Discussed During Executive Session**

Mr. Tonander brought the Committee back into open session and affirmed that while in closed session it discussed only those matters specified in the motion to close the meeting and listed on the agenda under executive session, in accordance with NMSA 1978 Section 10-15-1 (H) (1).

**11. Action on Items**

**1. Applications for Review**

**1) EI Certification**

**a) Alexander, J.**

**MOTION** by Mr. Brasher to approve for Engineer Intern Certification, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**b) Duran, R.**

**MOTION** by Mr. Brasher to approve for Engineer Intern Certification, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**2) PE Exams**

**a) Baird, A.**

**MOTION** by Mr. Brasher to not approve for the PE Exam, to request for supplemental supporting experience in Mechanical Engineering, and the work dates of that experience, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

b) **Bolanos, A.**  
MOTION by Mr. Brasher to not approve for the PE Exam because of a substantial lack of engineering education, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

c) **Maadandar, M.**  
MOTION by Mr. Brasher to approve for the PE Exam, **SECOND** by Dr. Gerstle, **PASSED** unanimously

d) **Payton, T.**  
MOTION by Mr. Brasher to approve for the PE Exam, **SECOND** by Dr. Gerstle, **PASSED**.

*\*Mr. Tonander abstained from this vote.\**

e) **Shamas, Jr., R.**  
MOTION by Mr. Brasher to not approve for the PE Exam and that the Executive Director ask the applicant to demonstrate how he is not already practicing engineering in New Mexico without a license, and for the applicant to demonstrate further that he worked under a licensed New Mexico PE for his experience, and that the Executive Director notify the Texas Board that it appears that the applicant may be practicing engineering in Texas without a license, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

f) **Sornkhampan, N.**  
MOTION by Mr. Brasher to not approve for the PE Exam because of a lack of engineering experience, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

### 3) PE Licensure

a) **Bates, M.**  
MOTION by Mr. Brasher to approve for PE Licensure, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

b) **Bevacqua, G.**  
MOTION by Mr. Brasher to approve for PE Licensure, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

c) **Ferrenchak, N.**  
MOTION by Mr. Tonander to approve for PE Licensure, **SECOND** by Mr. Brasher, **PASSED**.

*\*Dr. Gerstle abstained from this vote. \**

#### 4) PE Endorsement

**MOTION** by Mr. Brasher to approve for PE Endorsement items a – h, and j, and k, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

- a) **Benson, B.**
- b) **Bhachech, V.**
- c) **Burmesch, T.**
- d) **Campbell, R.**
- e) **Dowse, C.**
- f) **Ghorbani, R.**
- g) **Hill, L.**
- h) **Quin, N.**
- j) **Richardson, R.**
- k) **Tone, K.**
- i) **Razavi, F.**

**MOTION** by Mr. Brasher to not approve for PE Licensure endorsement because of a lack of transcripts. **SECOND** by Dr. Gerstle, **PASSED** unanimously.

#### 5) PE Additional Discipline

- a) **Quintana, R.**  
**MOTION** by Mr. Brasher to approve for additional discipline of Fire Protection, **SECOND** by Dr. Gerstle, **PASSED** unanimously.
- b) **Radue, J.**  
**MOTION** by Mr. Brasher to approve for additional discipline of Electrical, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

## 2. Disciplinary Cases

### 1) Case 4-PE-07-2018 – Complaint Manager’s Report

**MOTION** by Mr. Brasher to close the case and take no action, **SECOND** by Dr. Gerstle **PASSED** unanimously.



**2) Case 3-PE-07-22-2014 – Complaint Manager’s Report**

Mr. Tonander stated that there was no action taken on this item. Only an update was provided at this time.

**3) Case 8-PE-06-26-2015 (B)**

Mr. Tonander stated that there was no action taken on this item. Only an update was provided at this time.

**MOTION** by Mr. Brasher that cases; items 4,5,7,8, and 9, be closed for satisfaction of the settlement agreement, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**4) Case 7-PE-10-14-2016**

**5) Case CJS-08-10-2018**

**7) Case NES-12-21-2018**

**8) Case SML-12-21-2018**

**9) Case TDO-12-11-2018**

**6) Case MFS-12-04-2018**

Mr. Tonander stated this item was requested to be tabled.

**c) Licensee Self-Reporting Issues**

**MOTION** by Mr. Brasher to acknowledge receipt and take no action on items 1 – 4, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

**1) AT-02-25-2019**

**2) CAK-05-09-2019**

**3) ELK-05-09-2019**

**4) EPG-01-02-2019**

**12. Status Review of Complaints and NCA Referrals**

Mr. Tonander informed the Committee that there are no upcoming statute of limitations expiring, and that the new cases are being assigned as they are filed.

13. **Next Scheduled Meeting Date:**

1. September 17-18, 2019 – Working Meeting – Socorro, NM
2. November 7, 2019 – Socorro, NM

14. **Adjourn**

Meeting adjourned at 4:45 p.m.

**Submitted by:**

s/Gabrielle Schultz

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Gabrielle Schultz, Executive Assistant

**Approved by:**

s/ Ron R. Bohannon

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Ron R. Bohannon, Committee Chair

November 6, 2019 **Approved Date**