

Meeting Minutes

**MEETING OF THE NEW MEXICO BOARD OF
LICENSURE FOR PROFESSIONAL ENGINEERS
AND PROFESSIONAL SURVEYORS held at
9:00 a.m., Friday, November 3, 2023,
New Mexico Institute of Mining and Technology Campus,
Room 367 of the Mineral Science & Engineering Complex (MSEC)
801 Leroy Pl., Socorro NM 87801
& Hybrid**

Members Present – Robert Gromatzky, PS, Chair
Emilie Dohleman, PE, Vice Chair
Stephen Ney, PE, Secretary
Karen Nichols, Public Member
Elizabeth McNally, PE
John Wayne, PS
Maxine McReynolds, Esq., Public Member
Benjamin Aragon, PS
Karl Tonander, PE

Members Absent – Dr. Ahmed Elaksher, PEPS

Others Present – Perry Valdez, BLPEPS, Executive Director
Crystal Bustamante, BLPEPS, Budget/Finance Manager, CPO
Miranda Gonzales, BLPEPS, Administrative Manager
Isaac Maes, BLPEPS, Executive Assistant
Ralph Vincent, Project Manager, Vincent and Associates
Todd Baran, AGO, Assistant Attorney General
Victoria Amada, AGO, Assistant Attorney General
Billy Jimenez, AGO, Assistant Attorney General
Randall Pettigrew, State Representative
Raymond Butler, Central NM Electric Co-Op
Alena Brandenberger, Central NM Electric Co-Op
Wade Nelson, Central Valley Electric Co-Op
Chuck Pinson, Central Valley Electric Co-Op
Ted Benson, Central Valley Electric Co-Op
Rachel Marrufo, Columbus Electric Co-Op
Daniel Lopez, Columbus Electric Co-Op
Diana Camacho, El Paso Electric
Frank Esparza, El Paso Electric
Richard Carrillo, El Paso Electric
Nancy Burns, El Paso Electric
Michelle Veloz, El Paso Electric
Ernie Chacon, El Paso Electric

Trish Griego, El Paso Electric
Fernando Vazquez, El Paso Electric
William Pollard, El Paso Electric
Daniel Esparza, El Paso Electric
David Suaret, EPICO
Michael McCord, Farmers Electric Co-Op
Antonio Sanchez Jr., Farmers Electric Co-Op
Bobby Ferris, Lea County Electric Co-Op
Jeremy Chavez, New Mexico Gas Co.
Jenny Degreeff, New Mexico Gas Co.
Dominic Martinez, New Mexico Gas Co.
Cherise Swanson, NM Rural Electric Co-Op
Anthony Mercure, Northern Rio Arriba Electric Co-Op
Debbie Manzanares, Northern Rio Arriba Electric Co-Op
Mario Romero, Otero County Electric Co-Op
Terry Randall, PNM
George Nell, PNM
Tom Duane, PNM
Mitchell McClellan, PNM
Stacey Goodwin, PNM
Cindy Spring, PNM
James Montgomery, PNM
Omni Warner, PNM
Stephen Jenkins, PNM
Jason Jones, PNM
Lori Williams, PNM
Jack Sidler, PRC
Eric Segovia, Roosevelt County Electric Co-Op
Donnie Payne, SGS Engineering
Michael McDonald, SGS Engineering
Denise Barrera, Sierra Electric Co-Op
Cruz Villa, Sierra Electric Co-Op
Joseph Herrera, Socorro Electric Co-Op
David Spradlin, Springer Electric Co-Op
Dan Najjar, State Rural Electric Co.
Vince Martinez, Tri-State Generation and Transmission Assoc.
Michael D'Antonio, Xcel Energy
Leslie Graham, Zia Natural Gas Co.
Joan Drake, Zia Natural Gas Co.
Weston Hacker, Zia Natural Gas Co.
Tony Simmons
William Bruno
Robert Castillo

Shannon Pettigrew

1. Convene, Roll Call and Introduction of Audience

Prior to convening the meeting Mr. Valdez read the meeting script regarding the virtual meeting protocols. Mr. Gromatzky convened the meeting at 9:05 a.m., roll call was taken and a quorum was noted. Audience introductions were made at this time.

2. Meeting Notification

Mr. Valdez informed the Board the meeting was noticed on the Board's website and at the Board Office.

3. Approval of Agenda

MOTION by Ms. Dohleman to approve the agenda as amended, to move item 7.a to New Business, making it item 6.b, **SECONDED** by Ms. Nichols,

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Ms. Dohleman, Mr. Ney, Ms. Nichols, Ms. McNally, Mr. Wayne, Ms. McReynolds, Mr. Aragon, Mr. Tonander

The motion **PASSED** unanimously.

4. Public Comment/Correspondence

a. Correspondence received regarding the Industrial Exemption pursuant to NMSA 61-23-22 and 61-23-27.10 and NMAC 16.39.3.11 G. and 16.39.5.8 G.

Mr. Gromatzky addressed the audience in attendance. He advised that it is the Board's intention to formalize a response to the comments and correspondence received from the public, at a special meeting to be held before the next regularly scheduled meeting. He read the letter from El Paso Electric and an email from Charise Swanson, NM Rural Electric Cooperatives, which were addressed by the Board at the Special Full Board Meeting held on October 13, 2023 (refer to the October 13, 2023, Full Board meeting minutes for full discussion). In addition, he read the letter from PNM dated October 31, 2023.

Ms. Gonzales explained the rule hearing process. She said that the Board is required to have notice of the hearing at least 30 days prior to the hearing through the NM Registrar's Office, Albuquerque Journal, Sunshine Portal, Legislative Council Services, in addition to the Board's office and website. Though it was not required, the notice was emailed to all active licensees through the Board's Constant Contact account. During the time of notice, the Board was open to public comment up to the scheduled rule hearing. When public comments were received, staff placed the comments on the Board's

website. These public comments become exhibits during the scheduled public rule hearing. Public comment was also allowed during the rule hearing process, and those comments were presented to the Board during the hearing.

Mr. Tonander added that the public input received during this rule hearing process led to the Board's decision to delay the implementation of the rule change for twenty months, making the change enforceable effective January 1, 2024.

The Board received the following public comments and questions regarding the industrial exemption:

Omni Warner and Laurie Williams, PNM:

- Regarding Public Spaces, are utility easements or owned property, even if not secured by physical protections, considered to be in public space?
- PNM is interpreting the rule to be limited to transmission line and distribution line design. Does the Licensing Board Rule change also contemplate associated protection design and settings? Does the rule extend beyond those designs of line and facilities in the public space?
- PNM does not employ enough licensed staff currently to comply as of today - how does PNM go about seeking an additional extension to comply? While PNM is working to establish revised job descriptions and hire additional staffing, it may take an extended time to complete those efforts, which are already underway but will not be fully completed by January 1, 2024.
- How does PNM comply if designs are coming from out of state engineering firms or out of country large electrical equipment manufacturers, such as transformer manufacturers for example?
- Does PNM need to seal/stamp both its standards and its individual designs, or are the standards sufficient? Additionally, does PNM need to seal/stamp design reviews or Issued for Construction document packages done by contract engineering firms, including those out of state?
- Does the Licensing Board require PNM stamp/seal in addition to joint use entity stamp/seal for attachments to utility assets by joint use third parties?

Mario Romero, Otero County Electric Co-Op:

- Will the utilities need a PE, if companies are following US guidelines?
- Is the Board aware of any issues that have occurred in the past 80 years that prompted this rule change?

- How far does this go; both as drop calculations, transformer sizing, and service drop sizing?

Antonio Sanchez Jr., Farmers Electric Co-Op:

- We cover 11,000 square miles in NM with hundreds of work orders annually. Does every work order have to be stamped by a PE?
- For the day-to-day right of way easements, are we going to have those surveyed?
- Under emergency situations such as tornadoes, can we rebuild without having it stamped as long as we go back to what was there because that would have been pre-engineered or grandfathered in?
- Will there be audits performed to see for compliance with respect to the rule?

Joseph Herrera, Socorro Electric Co-Op:

- The rule as written is burdensome on a utility such as Socorro Electric because we're mostly residential. We have many requests for 50-amp RV hook-up and 200-amp service hookup which do not require a PE stamp. I would like to ask the Board add clarification of how the rule is applied so the public can better understand it.

Ted Benson, Central Valley Electric Co-Op:

- How far does this new role extend; a service drop going to a house, to a secondary line being built another, to a primary line?
- Another concern of mine is the extra layer that we have to go through in order to release a project for construction. This will slow us down in building out that system and increase costs of our members.

David Spradlin, Springer Electric Co-Op:

- How will this change affect engineering consultant reviews?

Randall Pettigrew, State Representative:

- Believes rules should have legislative review before they are enacted because every rule ultimately comes from a piece of legislation.
- We have co-ops here today giving testimony that we have been doing this for over 80 years and now a new rule was written for it. Why is it necessary for the change in process?
- This rule change has affected many different departments because

they now have to write a new set of rules.

- With respect to the additional impacts on the co-ops, the major companies that are here, the gas companies, how does the fusion apply to wind, solar and broadband?

Frank Esparza, El Paso Electric:

- The rates we charge our customers will increase in order to have multiple PE's sign off on designs. What value does this add?

Stephen Jenkins, PNM:

- The Practice Act includes planning calculations, specifications, and design as covered under the practice of engineering. I work in Transmission Planning. Would this type of work be included under the revised practice act?
- Would specifications and future designs be under the new definition of practice of engineering outside of the industrial exemption and how will this affect the day-to-day?
- Would a document similar to that of a standards document, that can be stamped by a PE, be utilized for planning in the future?
**The Board asked Mr. Jenkins to provide a heavily redacted report as an example of this to the Board.*

Jenny Degreeff, New Mexico Gas Co.:

- Was there any cost benefit analyst that was provided by the Board that companies can use as IOUS to justify the additional costs and rate cases?
- Will the Board provide guidelines for the application of the rule or FAQ page as you work through the questions asked today?

William Bruno:

- I hope that the Board will help to ensure that PNM designates an engineer to be in "responsible charge" of its Grid Modernization project, which is before the PRC. PNM has not yet submitted any testimony that indicates that anyone has performed a coordination study to ensure that the new type of meters that they are planning to install on the public's private property and attached to our houses and businesses are properly protected from over voltage and fault current hazards on PNM's specific system.
- Also, PNM has thus far failed to submit any testimony from any engineer willing to be in responsible charge of the project, that asserts that the meters meet applicable standards and that whatever standards, or other criteria that PNM relies upon, are

sufficient to ensure public safety. I'm troubled by this. Furthermore, it is my hope that the Board will let the NM Public Regulation Commission know that public officials must not inadvertently practice engineering by making engineering decisions, such as whether projects are safe or have had proper engineering analysis without basing those decisions on qualified expertise, *i.e.*, testimony and/or reports by a licensed NM Professional Engineer who is in "responsible charge" of the project.

Ernie Chacon, El Paso Electric:

- When will the response to these questions be submitted (whether it is a FAQ or other guidelines) being that the rule is going into place on January 1, 2024?
 - Mr. Tonander clarified that the rule went into effect March of 2022, and is going to be enforced on January 1, 2024.
- When a communication company submits a permit for an attachment to our poles and are enforced to have a PE stamp, where is the responsibility going to lie as far as how the Board sees it?
- I was looking for the \$100,000 or less exemption regarding utilities in the Public Works Section, but utilities were not included in there. This seems to be intended more for the state and its political subdivisions. Why did this change exclude utilities in the Public Works category.

Daniel Esparza, El Paso Electric:

- Do the proposed rule changes require engineering designs of electrical substations that are within a leased or owned property, to be PE Stamped?

Mr. Gromatzky said the Board will address these matters and will answer the audiences' questions in more detail at the next scheduled regular Full Board meeting.

**** The Board took a brief recess at 11:10 a.m.****

****The Board returned from recess at 11: 30 a.m.****

5. Old Business

a. Scholarship Disbursements – For Fiscal Year 2024

Mr. Valdez informed the Board this item was placed on the agenda to receive a vote to proceed with the scholarship disbursement for this fiscal year.

Ms. Dohleman mentioned that the Navajo Technical Institute has an ABET accredited program for electrical engineering. She asked if the Board is interested in adding this school to list of scholarship recipients.

Mr. Valdez added that when the scholarship program was instituted, the thoughts of the Board were to include additional qualifying universities, reconsider the amounts disbursed to each, and consider increasing the scholarship amount through legislation.

Ms. Gonzales added that the Northern New Mexico College has two ABET accredited engineering technology degrees.

Mr. Gromatzky asked what the procedures and limitations are to include other ABET accredited programs in the scholarship.

Mr. Valdez referred to the scholarship criteria adopted by the Board which includes the list of educational institutions approved to receive scholarship funds (furthermore, the criteria includes a condition that the criteria will be reviewed on an annual basis and modifications will be made, as necessary to allow additional schools that provide surveying and engineering programs).

Ms. Dohleman added that the Navajo Technical Institute is currently undergoing their ABET accreditation recertification and should know by the Summer, 2024, if their recertification is successful.

Ms. Dohleman suggested that the Board issue the scholarship funds for the schools as listed for this fiscal year and research eligible universities to be considered for the scholarship program disbursements, next fiscal year.

MOTION by Mr. Aragon to approve the scholarship in the amounts of \$23,333 to UNM, \$23,333 to New Mexico Tech, \$23,333 to the NMSU Engineering Department, and \$30,000 to the NMSU Surveying/Geomatics Program,
SECONDED by Ms. McReynolds,

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Ms. Dohleman, Mr. Ney, Ms. Nichols, Ms. McNally, Mr. Wayne, Ms. McReynolds, Mr. Aragon, Mr. Tonander

The motion **PASSED** unanimously.

6. New Business

a. **Western Zone Attendance (Bozeman, MT – May 16-18, 2024)**

Mr. Valdez informed the Board that he would like to know which members plan to attend the 2024 Western Zone Meeting in Bozeman, Montana. He added that he needs to know by January 2024, so he may inform NCEES.

Ms. McReynolds and Ms. Nichols said they would try to attend, and Mr. Tonander said he will attend.

b. **Introduction of Litigation Division Director and Administrative Prosecutor**

Ms. Amada, Assistant Attorney General introduced herself as the assigned administrative prosecutor for the Board. She also introduced Mr. Jimenez, Division Director of the Government Litigation Division, Attorney General's Office (AGO).

Ms. Amada informed the Board that the Government Litigation Division is under-resourced and actively recruiting new attorneys. She assured the Board that the Division is committed to processing cases quickly and efficiently with the Boards assistance. She added there are several limitations in taking a case to hearing after three or four years have passed, and waiting years for a case to be resolved is not a reasonable outcome for most respondents. She said that she is willing to explore creative resolutions through the rule making process and other mechanisms to assist the Board in its mission without consuming unnecessary resources.

Mr. Jimenez said that the Division is trying to efficiently process the Boards cases, though some cases might be declined to prosecute based on their nature. He added that their goal is not to extend cases out for more than two years.

Ms. McReynolds thanked Ms. Amada and Mr. Jimenez for their introductions. She added that the Board is also committed to efficiency and expeditious resolution of cases and exploring new ways to improve. The Board's initial approach is to settle cases by entering a pre-Notice of Contemplated Action (NCA), with specific terms, and a large portion of the delays result from the respondents.

Mr. Tonander asked if Mr. Baron, Mr. Amada, and Mr. Jimenez would be available in closed session.

Mr. Baran said that he will be available in closed session and noted that if the Board is deliberating on proposed discipline, the administrative prosecutor should not be involved in those discussions. However, if the discussion will be about the status or action plan about certain cases then the administrative prosecutor could be involved.

Mr. Gromatzky said that there will be no action taken against any cases, this is just a status review. He noted that action on cases is taken by each individual committee.

7. **Closed Session**

MOTION by Mr. Gromatzky that the Board enter into Closed Session to discuss the items listed on the agenda pursuant to NMSA 1978, Section 10-15-1 (H) (1) and (3) to discuss matters pertaining to the issuance, suspension, renewal, or revocation of a license and to deliberate on pending cases, **SECONDED** by Ms. Dohleman,

Roll call vote taken, voting 'Yes': Mr. Gromatzky, Ms. Dohleman, Mr. Ney, Ms. Nichols, Ms. McNally, Mr. Wayne, Ms. McReynolds, Mr. Aragon, Mr. Tonander

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

Mr. Gromatzky brought the Board back into open session at 12:44 p.m. 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) and (3)

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

A report was reviewed on the status of pending cases and referrals for Notice of Contemplated Actions.

8. **Director's Report**

a. **License Status Report**

Mr. Valdez gave the following License Status Report to the Board:

As of October 25, 2023, there were 10,760 active licenses.

- Active Professional Engineers: 10,222
 - In State: 1,989
 - Out of State: 8,233
- Active Professional Surveyors: 528
 - In State: 216
 - Out of State: 312
- Active Professional Engineers/ Professional Surveyors: 10
 - In State: 8
 - Out of State: 2

Of the number of engineers and surveyors listed above, these are individuals licensed as both engineers and surveyors with two separate license numbers (dual licensees).

- Licensees with two numbers = 49*
 - In State: 25

- Out of State: 24

Mr. Gromatzky asked Mr. Valdez if he had data to determine the number of licensees increasing due to the new 10-year engineering rule, the 15-year surveying rule.

Mr. Valdez said he did not have that data available, but he has seen a significant increase in applications who meet the rule, especially in terms of engineering.

Ms. Gonzales said there have been 18 PS endorsements since July 1, 2023; and between July 1, 2019, to August 31, 2023, there were 665 expedited endorsement applications. She noted that this number does not include from August 2023, to current.

9. Committee Reports

a. **PS Committee**

Mr. Wayne gave the following PSC report: The PSC met on November 2, 2023. There were two PS endorsements, and one was tabled. There were eight expedited endorsements, two retirement requests, and one inactive request approved. There were two disciplinary cases; one was tabled for Board Staff to gather more information and the other will enter a negotiation for a fee.

b. **PE Committee**

Ms. Nichols gave the following report: The PEC met on November 2, 2023.

The Committee received public correspondence from Mr. Bruno, and public comment from Mr. Bruno, Mr. Simmons, and Mr. Jenkins. They were encouraged to attend today's meeting regarding the industrial exemption.

The Committee reviewed and confirmed the staff recommended approval of the following: eleven PE exams, two-hundred fifteen PE endorsements, nineteen PE reinstatements, sixteen retired status requests, and thirteen inactive requests. One disciplinary case was closed due to fulfillment of the settlement agreement.

The Committee discussed three cases that the AGO has declined to prosecute, which she suggested the Board should consider hiring outside council due to the lack of AGO staff.

As for self-reporting disciplinary actions, one case was acknowledged and Board staff was directed to issue a letter of caution: A pre-NCA from February 2023, was rescinded and Board Staff was directed to issue a warning letter; four cases were closed due to the fulfillment of the settlement agreement.

Two PE endorsements were approved; one was approved for civil endorsement, and one in mechanical with direction provided to Board staff that additional documentation with experience is required to approve the same applicant for a civil endorsement.

c. Executive Committee

Mr. Gromatzky reported that the Committee met on October 27, 2023, and discussed a case of unlicensed practice of surveying and engineering, including the AGO's plan to prosecute versus the statute of limitations.

d. Joint Practice Committee

Mr. Aragon reported that the Committee met on September 20, 2023. The meeting minutes from April 2021 were approved. The Committee decided to update their 2016 Handbook. He added that Mr. Bolston will be heading a subcommittee to work with the General Services Department regarding RFPs published by the State of New Mexico.

An election of officers took place. Mr. Aragon was elected as Committee Chair, Michael Bodelson for Vice-Chair, and Martin Romero for Treasurer.

He concluded that the next meeting will be held on December 21, 2023, virtually and in Albuquerque, New Mexico, at 9:00 a.m.

e. Public Information, Exam and Licensure Promotion Committee

1) Newsletter

Ms. McNally said the Committee has not met but was hoping to do so in November. She then asked if there were any past minutes or projects efforts. If not, the committee would need to start fresh.

Mr. Aragon asked Ms. Bustamante what type of articles she needs for the Board Newsletter. Ms. Bustamante advised that articles with information that the Board would like to inform our licensees about, and Ms. McNally added that Ms. Bustamante is also collecting bios to introduce new board members in the next newsletter.

Ms. McReynolds said she would write a short article regarding the importance of public participation in board meetings.

Ms. McReynolds asked how long a newsletter takes to put together after all the required information is obtained. Ms. Bustamante answered, it should take a few weeks.

2) Presentation(s)

Mr. Valdez reported that there was a presentation event on November 2, 2023, for NM Tech students regarding licensure.

He added that the Board has been solicited in the past by organizations such as NMPE and NMPS to provide a presentation, but as of late, there has been no such request.

Mr. Tonander and Mr. Gromatzky said they would like to present to the Association of Governments to review the minimum standards and what public works projects require.

Ms. McNally asked if the board has presented to the New Mexico Municipal League. She said she'll reach out to the committee members to schedule a meeting in November.

f. Rules and Regulations Policies, Advisories, and Legal Enforcement Committee

Ms. McReynolds said the Committee has not met but is committed to scheduling soon. She added that she received suggestions from Mr. Tonander for this committee to review the industrial exemption questions, to possibly reconcile the Act; and, to review the second path to addressing CPC compliance requirements. She added that there was discussion at the previous PEC meeting to outline a process for the SPCS update and possible changes to the Act.

She added that there are two other matters that should be addressed. First, is to issue a survey of prior enforcement outcomes for both the PEC and PSC. This information could be beneficial to other committees for consistency. Secondly, is to follow up on the alternate seals question that was raised in the Summer. She felt that there is need to create an internal process to ensure there are no copyright infringement issues.

Mr. Gromatzky said at the June meeting, the board came to an agreement to require those submitting seal designs to also include a transfer of copyright to the board to ensure that there are no liabilities associated with the design.

g. Penalties and Fees Committee

Mr. Wayne reported no updates but noted that Mr. Valdez needed to send him and Mr. Gromatzky documents for review.

h. NCEES Committee Members

Mr. Tonander reported that he is assigned to the Finance Committee as their treasurer as well as several subcommittees, and Dr. Elaksher is assigned to the UPLG. He added that the UPLG should have their first meeting in the Spring as they review the model law and model rules.

i. Project Steering Committee

1) Update on Network and Licensing System

Mr. Gromatzky reported that the Project Steering Committee meets monthly to discuss the implementation of a new licensing system. He said the Committee discussed the contract delays, as the terms and conditions are being negotiated with the Contractor. However, these delays should not have an impact on the 2024 renewal period.

Mr. Vincent added that this is a six-month project and needs to start by November or December to ensure it stays within the current fiscal year.

10. Next Scheduled Meeting Date: –January 12, 2024 – Santa Fe/Virtual

Mr. Gromatzky requested that a doodle poll be sent out to schedule a special working meeting to be held virtually, between Dec 11-15, 2023, to develop and formalize responses in writing to the questions received regarding the industrial exemption.

Ms. Dohleman asked how long it would take to implement a Board Advisory opinion that addresses the questions submitted.

Mr. Gromatzky answered, the distribution date of a Board Advisory opinion will be agreed upon by vote from the Full Board.

11. Adjourn

Meeting adjourned at 1:51 p.m.

Submitted by:

s/Isaac Maes

Isaac Maes, Executive Assistant

Approved by:

s/Robert Gromatzky

Robert Gromatzky, Board Chair

January 12, 2024 Approved Date