

1 BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

2

3 IN THE MATTER OF CONTINENTAL)
4 DIVIDE ELECTRIC COOPERATIVE'S) UTILITY CASE
5 ADVICE NOTICE NO. 61) NO. 12-00019-UT

6

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10

ORIGINAL

11

HEARING

12

BEFORE HEARING EXAMINER CAROLYN GLICK

13

January 7, 2013

14

9:30 a.m.

15

1120 Paseo de Peralta

16

Ground Floor Boardroom

17

Santa Fe, New Mexico

18

19

20 Also Present:

21

COMMISSIONER THERESA BECENTI-AGUILAR

22

COMMISSIONER VALERIE ESPINOZA

23

24

25

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I N D E X

18 EXAMINATION OF ROBERT E. CASTILLO

19 By Mr. Najjar 17
20 By Mr. Gollis 23
21 By Ms. Beadles 38
22 By Mr. Gollis 64
23 By Ms. Beadles 77

24 EXAMINATION OF DENNIS GEE

25 By Mr. Najjar 78
26 By Ms. Beadles 80
27 By Mr. Najjar 96

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| | | |
|----|--|-----|
| 1 | EXAMINATION OF MILO J. CHAVEZ | |
| 2 | By Ms. Beadles | 98 |
| 3 | By Mr. Najjar | 101 |
| 4 | By Mr. Gollis | 103 |
| 5 | By Ms. Beadles | 118 |
| 6 | | |
| 7 | EXAMINATION OF GREGG P. SHUTIVA | |
| 8 | By Mr. Gollis | 120 |
| 9 | By Mr. Najjar | 122 |
| 10 | By Ms. Beadles | 128 |
| 11 | By Mr. Gollis | 134 |
| 12 | By Mr. Najjar | 138 |
| 13 | | |
| 14 | EXAMINATION OF ROBERT F. ROBINSON | |
| 15 | By Mr. Gollis | 142 |
| 16 | By Mr. Najjar | 145 |
| 17 | By Ms. Beadles | 164 |
| 18 | By Mr. Gollis | 179 |
| 19 | By Mr. Najjar | 186 |
| 20 | | |
| 21 | CERTIFICATE OF COMPLETION OF DEPOSITION | 192 |
| 22 | | |
| 23 | EXHIBITS ADMITTED | |
| 24 | CITY OF GRANTS | |
| 25 | 1. Prepared Testimony of the Honorable Joe | 9 |

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| | | |
|----|--|-----|
| 1 | Murietta, Mayor of the City of Grants, New | |
| 2 | Mexico on Behalf of the City of Grants, New Mexico | |
| 3 | CITY OF MILAN | |
| 4 | 1. Prepared Direct Testimony of Theresa Garcia | 8 |
| 5 | | |
| 6 | CONTINENTAL DIVIDE ELECTRIC COOPERATIVE | |
| 7 | 1. Prepared Direct Testimony of Robert E. Castillo | 19 |
| 8 | 2. Direct Testimony of Robert E. Castillo | |
| 9 | in Support of Stipulation | 19 |
| 10 | 3. Prepared Direct Testimony of Dennis Gee | 80 |
| 11 | 4. Direct Testimony of Dennis Gee in Support | |
| 12 | of Stipulation | 80 |
| 13 | | |
| 14 | UTILITY DIVISION STAFF | |
| 15 | 1. Prepared Direct Testimony of Milo J. Chavez | 99 |
| 16 | 2. Case Experience, Milo J. Chavez | 99 |
| 17 | 3. Prepared Direct Testimony in Support of the | |
| 18 | Settlement Stipulation of Milo J. Chavez | 101 |
| 19 | | |
| 20 | PUEBLO OF ACOMA | |
| 21 | 1. Prepared Direct Testimony of Gregg P. Shutiva | 122 |
| 22 | 2. Prepared Direct Testimony of Robert F. | |
| 23 | Robinson | 144 |
| 24 | 3. Prepared Direct Testimony of Robert F. | |
| 25 | Robinson in Opposition to Stipulation | 14 |

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1 SANTA FE, NEW MEXICO, JANUARY 7, 2013, 9:30 A.M.

2
3 HEARING EXAMINER GLICK: We are here today
4 for a public hearing in case number 12-00019-UT. The
5 caption of the case is In the Matter of the Filing of
6 New Rates by Continental Divide Electric Cooperative,
7 Inc. My name is Carolyn Glick. I'm the Hearing
8 Examiner assigned to the case. With me is
9 Commissioner Becenti-Aguilar.

10 COMMISSIONER BECENTI-AGUILAR: I would like
11 to say good morning, Hearing Examiner Glick. I would
12 like to welcome the members, the tribal members of
13 Acoma Pueblo to Santa Fe for this important hearing.
14 And then I would like to also welcome Mr. Castillo,
15 the General Manager for Continental Divide. And as
16 you know, this case has been continued, and it was
17 brought before the commissioners, and I am here to
18 stay the whole day so that I can hear both versions of
19 the parties. Thank you very much.

20 HEARING EXAMINER GLICK: At this time I will
21 take appearances from the parties and Staff, starting
22 with Continental Divide.

23 MR. NAJJAR: Dan Najjar, appearing on behalf
24 of Continental Divide Electric Cooperative.

25 HEARING OFFICER GLICK: The Pueblo of

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1 right-of-way to Continental Divide?

2 A. Well, I don't think so, but that's a legal
3 question, then, as I --

4 Q. Okay.

5 A. -- as you asked. I'm not an attorney.

6 MR. NAJJAR: Thank you very much.

7 HEARING OFFICER GLICK: Let's go off the
8 record and go ahead and take a break right now and
9 resume at 4 o'clock -- no, I'm sorry, 3 o'clock.

10 At that time, Ms. Beadles, you can ask
11 questions.

12 (A recess was taken.)

13 HEARING EXAMINER GLICK: Okay. Let's go
14 back on the record. Ms. Beadles?

15 MS. BEADLES: Thank you.

16 EXAMINATION

17 BY MS. BEADLES:

18 Q. Good afternoon, Mr. Robinson.

19 A. Good afternoon.

20 Q. You are testifying here today as an expert
21 for the Pueblo of Acoma; is that correct?

22 A. Yes.

23 Q. And you state in your direct testimony that
24 the Center for Applied Research, that is, you are the
25 president and senior economist of this organization;

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1 right?

2 A. Yes.

3 Q. You state that it's noted for its work on
4 behalf of American Indian tribes, for which it has
5 developed specialized models that are used to
6 establish some monetary values of public lands, trust
7 lands and Indian reservation lands, particularly lands
8 designated for leases, utilities easements and other
9 lands encumbrances. Is that the scope of your
10 expertise?

11 A. Well, not the entire scope of my personal
12 expertise, but that's the Center's named services for
13 tribes.

14 Q. Have you ever performed a fully allocated
15 cost of service study?

16 A. No.

17 Q. How much are you being paid to testify here
18 today on behalf of the Pueblo?

19 A. You know, I -- I don't know for sure. \$180
20 an hour is probably the answer.

21 Q. How much?

22 A. But we just have a new contract with the
23 Pueblo.

24 Q. How much have you billed the Pueblo to date?

25 A. For the PRC work or for the right-of-way

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1 work or --

2 Q. For the PRC?

3 A. Um -- I think \$12,000 would be the amount
4 billed pertinent to the PRC work.

5 Q. And for the right-of-way work?

6 A. That would be closer to \$110,000.

7 Q. Okay. How much do you estimate your total
8 billings to the Pueblo to be through conclusion of
9 this matter? You know, that might just be too
10 speculative at this point wouldn't you agree?

11 A. Probably so, although we're not expecting to
12 be intensely involved in 2013, so it's more this kind
13 of intermittent, so probably the sum of those two
14 numbers, and then some modest increase over that.

15 Q. When were you first retained by the Pueblo?

16 A. I believe in February of -- or March or
17 April, somewhere in the spring of 2011 --

18 Q. Go ahead.

19 A. -- when we began our discussions, as the
20 Pueblo did with Continental.

21 Q. Did you advise the Pueblo to enact its civil
22 trespass ordinance?

23 MR. GOLLIS: Objection, relevance.

24 MS. BEADLES: It's relevant because it goes
25 to the bias of this witness, and evidence of bias is

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1 relevant as to his credibility and the weight of his
2 opinion evidence.

3 HEARING EXAMINER GLICK: Overruled.

4 THE WITNESS: I was involved with the
5 right-of-way team that did eventually formulate an
6 amendment to the law and order code for a civil
7 trespass provision.

8 Q. (By Ms. Beadles) Thank you for your
9 explanation, but my question was, did you advise the
10 Pueblo to enact the civil trespass ordinance?

11 A. I never testified, counseled or advocated it
12 in front of the tribal council. That passage of that
13 law and order code amendment occurred in my absence,
14 and I don't recall ever formally advocating that. We
15 work together as a team and I brought, of course, a
16 lot of contributions to them.

17 Q. Okay. Thank you for your explanation. My
18 question was not whether you formally advocated that
19 they enact a civil trespass ordinance. Did you advise
20 them even --

21 A. I --

22 Q. Let me ask, did you advise them even
23 informally whether to enact a civil trespass
24 ordinance?

25 A. Them? The team members?

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1 Q. Any member of the Acoma Pueblo government?

2 A. Yes. I would have to say --

3 Q. Thank you.

4 A. -- to that.

5 Q. I'm going to ask you a question and you may
6 have already answered this in response to
7 cross-examination by Mr. Najjar, but in your direct
8 testimony, starting at the bottom of line 1 and
9 continuing on to page 2, you state that your
10 experience includes participation in hearings and
11 regulatory proceedings at various state utility
12 commissions, including New Mexico. Could you please
13 be more specific or be specific about your New Mexico
14 regulatory proceeding experience, and if it is just
15 your involvement in the open access case on behalf of
16 the Attorney General, then clarify that?

17 A. No, it's more than that. I -- I
18 participated in a Qwest telephone issue,
19 telecommunications issue in terms of service territory
20 for San Ildefonso Pueblo, and Santa Clara was involved
21 in that, essentially bifurcated service territory on a
22 reservation, so the Commission had a collaborative on
23 that.

24 Q. Who was your client in that Qwest
25 proceeding?

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1 A. San Ildefonso, the Pueblo of San Ildefonso.

2 Q. And you participated in a collaborative
3 workshop on the issue?

4 A. I prepared testimony, met with two
5 Commissioners, essentially represented the Pueblo's
6 concerns. It was not a conflict or litigation or even
7 a rate case. It was simply trying to correct a very
8 traverse problem of two phone companies serving one
9 governmental jurisdiction, so people called long
10 distance when they could see each other out the
11 window.

12 Q. Yes.

13 A. So it was that kind of --

14 Q. Did you file testimony in that proceeding?

15 A. I prepared testimony for the tribal
16 officials. I did not present personal testimony.

17 Q. Have you filed testimony in any other New
18 Mexico regulatory proceeding?

19 A. I don't believe so. Filed testimony? No, I
20 don't believe so.

21 Q. Yes, on your own behalf as an expert
22 witness?

23 A. No, I have not.

24 Q. But you did help a representative of a tribe
25 in the Qwest proceeding that you just described;

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1 right?

2 A. Yes. The tribal council.

3 Q. Thank you.

4 A. And the company, actually worked with the
5 company, John Vidal, the former president of Qwest.

6 Q. And then you also were retained by the
7 Attorney General's Office in connection with a New
8 Mexico proceeding relating to open access?

9 A. Yes. It was three Attorney Generals, and
10 actually, when I think about it, the Department of
11 Energy may have been the real client of our work, but
12 it went through the Attorney General's Offices in
13 Wyoming, Colorado and New Mexico.

14 Q. Did that involve participation in New Mexico
15 proceedings?

16 A. Well, I was there -- I think on a couple of
17 occasions for open meetings, and nothing formal,
18 though, in the way of testimony.

19 Q. Do you recall the years?

20 A. Gosh --

21 Q. Roughly?

22 A. Well, Tom Udall was the AG. Where would
23 that be?

24 Q. Your guess is as good as mine. Thank you.

25 Okay. I am -- on page 1 of your Testimony

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1 in Opposition to the Stipulation, on line 19, you
2 referred to the principle of cost causation, and I am
3 going to refer you -- I'm going to distribute -- I'm
4 sorry, I'm tired -- copies of direct testimony filed
5 in a Colorado proceeding.

6 Do you recognize this document?

7 A. I do.

8 Q. Uh-huh. And please refer to page 31. And
9 would you read the question in your testimony starting
10 on line 7, and continue with the answer ending on line
11 16?

12 A. Read it out loud?

13 Q. Yes, please.

14 A. "A basic presumption in the finance" --

15 Q. I'm sorry, could you start with the
16 question?

17 A. "Who usually bears the cost for the utility
18 infrastructure?"

19 "A basic presumption in the finance and
20 development of utility infrastructure is that
21 generally the cost of the infrastructure will be borne
22 by the beneficiaries and/or end users of the
23 infrastructure, thus an investment that provides a
24 utility with system-wide benefits would justifiably be
25 apportioned system-wide to all ratepayers or

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1 cooperative members, as the case may be. The costs
2 associated with community-wide benefits, on the other
3 hand, would reasonably be expected to be assigned only
4 to the benefiting community in question, and an
5 investment leading to local benefits would clearly
6 imply a local assumption of costs."

7 Q. So Mr. Robinson, is that an accurate
8 restatement of the principle of cost causation?

9 A. It is. It is, yes.

10 Q. Okay. Let me ask you another question. Do
11 you agree that it would be beneficial to the Pueblo to
12 know in advance of establishing a final right-of-way
13 compensation amount how that amount would be recovered
14 through rates paid by customers living within its
15 boundaries?

16 A. I don't know what you mean by that.

17 Q. Well, prior to the Pueblo demanding or
18 establishing a final right-of-way compensation amount
19 to be paid by the co-op, do you agree that it would be
20 beneficial to the Pueblo, as a party to that
21 right-of-way agreement, to know how that amount would
22 be recovered through rates paid by customers living
23 within Pueblo boundaries?

24 MR. GOLLIS: Madame Hearing Examiner, I want
25 to object to the form of that question. The Pueblo

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1 has made neither any demands regarding payment of
2 right-of-way costs. The Pueblo established
3 internally, as Mr. -- as Governor Shutiva's testimony
4 indicated, a fair market value of its land. They have
5 used that valuation in negotiations with Continental
6 Divide. They have made no demands of Continental
7 Divide. They engaged in the negotiation and there was
8 no valuation of land, a dollar amount, a cost of a
9 proposed right-of-way renewal on the table.

10 HEARING EXAMINER GLICK: Sustained.

11 Q. (By Ms. Beadles) Well, I was asking the
12 question in the theoretical or hypothetical respect,
13 because there has been much testimony with respect to
14 the value as a price signal of this cost recovery
15 methodology.

16 HEARING EXAMINER GLICK: Well, I think you
17 did use the word demand, so if you could rephrase?

18 MS. BEADLES: Okay. I used a different word
19 the first time, but he asked me to rephrase it so let
20 me go back to something close to my original wording.

21 Q. (By Ms. Beadles) Do you agree that it would
22 be beneficial to the Pueblo or to any other
23 governmental entity that is a party to an access
24 agreement with the co-op, do you agree that it would
25 be beneficial to know in advance of establishing a

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1 final right-of-way compensation amount how that amount
2 would be recovered through rates paid by customers
3 living within the boundaries of that governmental
4 entity?

5 A. Yes. Generally, yes. I don't think that's
6 pertinent at all to this case.

7 Q. Okay.

8 A. We know or believe how it should be
9 recovered, so knowing in advance -- we already know
10 it, so --

11 Q. And there was also some question on
12 cross-examination -- cross-examination from Mr. Najjar
13 about ordinary or normal costs of doing business.
14 Could you please describe or define what in your
15 opinion is the difference between an ordinary cost of
16 doing utility business and an extraordinary cost?

17 A. Well, I think an extraordinary cost is most
18 clearly -- a good example is the line extension that a
19 customer calls out for an underground system that a
20 city or a customer calls for, that is clearly not an
21 ordinary cost of doing business. They don't need to
22 do it, as Robert Castillo said, it's something they
23 want, but something they don't need. But if they
24 think they need it and they want to pay for it, which
25 is the essence of my testimony at the PUC, then they

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1 should pay for it.

2 That's one half of the issue we have with
3 Rate 27, because the Pueblo does not have an exclusive
4 benefit from the right-of-way that is alluded to in
5 Rate 27. It is nowhere near like an underground, a
6 line extension. There's nothing exclusive about the
7 benefit to the Pueblo residents of the right-of-way
8 grant. Indeed, quite the contrary. In spite of the
9 fact that the economist has not read our analysis, and
10 I'm not sure you have, or certainly don't know that,
11 we point out that the value of the right-of-way
12 accrues to the entire customer base to the extent in
13 gross terms of 1.6 million dollars per year. Without
14 the business of Acoma -- you don't have the business
15 without the right-of-way, and with the right-of-way
16 you have the business, and Continental enjoys that
17 gross revenue picture.

18 And Mr. Chavez said we left out the cost of
19 power. We did not. We have that in mediation. We
20 know the net benefit is about 5- or \$600,000 --

21 Q. I think you are going way beyond my
22 question.

23 A. That's the other half of your question.

24 HEARING EXAMINER GLICK: Mr. Robinson, if
25 your attorney wants, he can ask you follow-up and

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1 redirect.

2 Q. Wouldn't right-of-way costs be avoidable to
3 the extent that a utility chooses to build around
4 where it can?

5 MR. GOLLIS: I object on relevance grounds.
6 Again, this whole build around concept, you know,
7 which I subscribed to, is just inapplicable here.
8 We're talking about distribution lines to serve
9 customers located on an Indian reservation. The build
10 around concept would only be applicable if we were
11 talking about a transmission facility that didn't want
12 to pay right-of-way fees to an Indian tribe and
13 elected to build around the boundaries of the
14 reservation. It has no bearing on anything, even
15 given the broad contours of our examination of the
16 issues here today, it has no bearing on any of those
17 issues.

18 MS. BEADLES: I'm testing the witness's
19 characterization of the right-of-way cost as normal
20 and unavoidable cost of doing utility business.

21 HEARING EXAMINER GLICK: Overruled. And
22 this case, is not specific to Acoma, so that's another
23 reason.

24 Q. (By Ms. Beadles) I'll rephrase my
25 question.

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1 A. Yes, rephrase.

2 Q. Wouldn't the right-of-way costs be avoidable
3 to the extent that a utility chooses to build around
4 where it can?

5 A. I -- yes and no. It's substituting for the
6 build around cost you're referring to. We always
7 calculate what the cost of that alternative would be.
8 Certainly Continental could realign, any utility can
9 realign around this sovereign jurisdiction and thereby
10 avoid right-of-way costs, thereby incurring costs that
11 are greater than, okay, equal to or less than. We
12 need to know that, and that's what we do know.

13 So, yes, of course, you would avoid your
14 right-of-way costs, but you incur an alternative cost,
15 so it's kind of a wash. And it is, in fact, a
16 compelling reason we should negotiate something less
17 than the right-of-way costs that drives them there and
18 less than that cost that all ratepayers would pay.
19 There's some happy medium there, and that's what we
20 have always strived for.

21 Q. Have you heard of the build around cost
22 being the de facto ceiling on the Indian right-of-way
23 compensation amount?

24 A. It's a colloquial, sure, truism, but not to
25 us. I think we're much more rational and cognizant of

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1 the business reality of the company, so -- so that's
2 one issue for sure, but it's not an absolute litmus
3 test or something where if we don't get that we're not
4 getting the most we can.

5 Q. Would you agree that a normal ordinary cost
6 of doing business becomes extraordinary at some level
7 of magnitude?

8 A. Well, I'm sure there is a boundary there.
9 We seek to find that. Any buyer and seller wants to
10 find that place where it's onerous or extraordinary.

11 Q. Did you agree -- I'm sorry. Did you read
12 the certification of stipulation in the Ohkay Owingeh
13 Jemez Co-op case?

14 A. I did read it, yes. I didn't memorize it.

15 Q. Don't worry, it's not a test.

16 Do you recall the testimony that Jemez paid
17 Ohkay Owingeh a total of \$188,000 over a period of 25
18 years for previous rights of way, and that their
19 current compensation is 11.25 million for the next 25
20 years? Are you aware of those facts?

21 A. Yes, I'm aware of that.

22 Q. And so would you agree that an increase of
23 600 percent or more makes that cost go from ordinary
24 to extraordinary?

25 A. I don't think so, not at all. I think the

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1 more appropriate number to look at is the annuity that
2 associates with that right-of-way cost.

3 Q. And by annuity you mean the annual payment?

4 A. Yes. And it is totally within the realm of
5 tolerance. Indeed, it's less than 20 cents -- it's 15
6 cents per month per customer. Had it been applied to
7 the entire customer base --

8 Q. But that's not what was authorized by the
9 Commission.

10 A. But I mean, that's the calculation that we
11 would relate to as being extraordinary or obscene.

12 Q. So when it's a tiny amount do you consider
13 that no visible harm?

14 A. Yes. I think we do try to find a bound -- a
15 limit that is onerous, and we are usually told that.
16 We were told that in this case, obviously.

17 MS. BEADLES: Okay. I have no further
18 questions. Thank you.

19 HEARING OFFICER GLICK: Commissioner
20 Becenti-Aguilar, do you have any questions for
21 Mr. Robinson?

22 COMMISSIONER BECENTI-AGUILAR: No.

23 HEARING EXAMINER GLICK: Mr. Gollis, any
24 redirect?

25 FURTHER EXAMINATION

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