

# Greg Nibert's Answers to the Public Regulation Commissioner Candidate Questionnaire

The following are my answers to the 16 questions the PRC Nominating Committee presented to the PRC Commissioner candidates.

**1. 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 Commissioner, I will implement public policies established by the legislature and the Governor, ensuring that New Mexico's abundant resources benefit our residents. My six years on the Executive Board of the Energy Council, a consortium of energy-producing states, equipped me with valuable experience in regional energy discussions. I have successfully collaborated with other states on critical issues, such as utility cybersecurity.

Recognizing the national scope of energy issues, I understand the necessity of multi-state cooperation to optimize wind and solar generation across broader regions. Currently, two utilities in New Mexico are evaluating the potential benefits of regional organizations. The utility that serves my Senate district is in the Southwest Power Pool (SPP). Having an active Commissioner in the SPP would be a great benefit to New Mexicans living on the east side of the State and I would welcome that involvement.

I was selected to attend the Legislative Energy Horizons Institute to learn the challenges faced by utility companies in the transition to non-carbon sources of electrical generation and a rapidly increasing demand for electrical energy. One conclusion from that Institute is that the only way we can meet the challenges of increasing demand with intermittent sources of electricity generation is to have regional multi-state cooperation.

**2. What do you see as the role of a Commissioner in ensuring fair and transparent competition in resource procurement?**

Reduce the barriers to competition by ensuring an all source bidding have been conducted that fits within the utilities integrated resource plan and the utility utilizes a fair and competitive request for proposal (RFP) process. The Commissioners must ensure and foster stakeholder involvement, protect the public interest, and maintain an independent and impartial perspective throughout the procurement process.

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

The legislature has set forth the public policy of what constitutes the public interest in the Public Utility Act, §62-3-1 N.M.S.A. 1978. Subsection B provides:

[T]he public interest, the interest of consumers and the interest of

investors require regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.

Boiled down it is the balancing process of arriving at a rate that is fair and reasonable to consumers and still encourage investment and the deployment of capital to ensure the dispatchability and reliability of the system without unnecessary duplication. Benefits must outweigh the costs.

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

Electric utilities are obligated to adhere to New Mexico laws aimed at reducing carbon emissions from electricity generation. The legislature has passed a number of laws the past few years that are designed to reduce and ultimately eliminate carbon fuel in the generation of electricity. These acts include the Grid Modernization Act, §62-8-13 N.M.S.A. 1978, Renewable Energy Act, §62-16-1, *et. seq.*, N.M.S.A. 1978, Community Solar Act, §62-16B-1, *et. seq.*, N.M.S.A. 1978, Efficient Use of Energy Act, §62-17-1, *et. seq.*, N.M.S.A. 1978, and the Energy Transition Act, §62-18-1, *et. seq.*, N.M.S.A. 1978. The Commission's role is to enforce these laws, ensuring utilities and cooperatives comply with the law.

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

The PRC addresses broadband disparities, particularly in rural areas. The Rural Telecommunications Act of New Mexico, §63-9H-1, *et. seq.*, N.M.S.A. 1978, recognizes the rural disparity and calls for the PRC to implement and fund a state rural universal service fund. This includes addressing broadband infrastructure. In this regard the PRC provided 23.74 million dollars in 2022 to nine broadband service providers to address broadband infrastructure in rural New Mexico. While much oversight is conducted by the Department of Information and Technology, the PRC plays a vital role in funding and reporting on the progress of broadband initiatives, aiming to achieve digital equity throughout the state. Next year, the Commission's report must include specific information, including their recommendation of the appropriate size of the fund moving forward.

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

The New Mexico legislature has the authority to determine whether to expand the PRC's authority to regulate broadband providers as utilities. Currently, the Commission's authority over

broadband is limited, reflecting the competitive landscape in urban areas while focusing on rural needs. The legislature opted not to classify broadband providers as traditional utilities, emphasizing regulation geared toward expanding access in underserved regions instead.

**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?**

The Commission should consider social, cultural, and environmental externalities when legislative policy allows for it. In instances where public policy prioritizes these factors, the Commission may justify approving higher rates if they are deemed in the public interest. Decisions must be made on a case by case basis and based on the evidence presented in the record and adhere to statutory definitions.

**8. View on governance, roles of Commissioners and staff, delegation and expected level of involvement in administration of the agency.**

Commissioners are entrusted with significant authority, as outlined in the Public Utility Act. I believe this role is a full-time commitment, demanding active engagement in substantial issues. While routine matters can be delegated to hearing officers, Commissioners must lead with integrity, establishing a culture of transparency and excellence. It's crucial for the Commission to communicate effectively with all stakeholders, thereby enhancing its credibility and reputation.

It appears to me that the appointed Commission is on a good path and is overcoming some of the challenges that were evident with the former elected Commission. I hope to contribute to that progress and to contribute to making the PRC a respected institution whose decisions are credible, logical, defensible, and even to those who may not have received the decision they were hoping for, that they recognize the Commission arrived at a well thought out conclusion based on the evidence and facts, with due process properly afforded to all parties. The Commission must recognize that its decisions are being watched by many in an open forum and that its words, rationale, and conclusions are important beyond the specific issue before it.

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

The statutory framework defining the Commission's authority is paramount. Within this framework, my priorities will include ensuring reliable and affordable electric power, positioning New Mexico to leverage its resources, and advocating for legislative changes that facilitate quicker responses to emerging technologies and market opportunities.

One important responsibility of the Commission is the duty to make an annual report to

the legislature and Governor and to make suggestions and recommended changes in the law to address issues that would help position New Mexico to take advantage of our resources, enhance resiliency of our grid, and to show the policy makers how our grid can be used as an economic development tool to attract business to our State. The State needs to be able to act quickly as new technology presents opportunities. The report should present possible changes in laws to allow the Commission to respond quickly to allow the PRC to allow the incorporation and adoption of new technology by the entities subject to PRC regulation.

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

While observing other states' regulatory practices can be insightful, my primary focus will remain on New Mexico's statutes. It is up to the legislature to craft legislation that may adopt or emulate a law from another state. If the Commission sees something from other states that they believe would be positive in New Mexico, then they could mention that in the annual report and make appropriate recommendations. Fostering collaboration among state regulatory bodies to share experiences and ideas is important.

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

I have extensive experience with regulatory topics on the Federal, State, County, and municipal level. My experience includes the following: drafting regulations; involvement in the pre drafting stage of proposed regulations and administrative rules; working on task forces to discuss the need, or lack thereof, for regulatory oversight or a new rulemaking; drafting and submitting comments to proposed rules; providing oral testimony and expert testimony during rulemaking proceedings; sitting as a member of a rulemaking body taking testimony on a rulemaking; and drafting legislation and ordinances empowering an agency to engage in rulemaking. I understand what regulations do, that they are subservient to the statutes and that they must go through all the proper statutory steps of rulemaking to be enforceable.

My familiarity and experience in utility rate setting stems from my legal background. I supported our utility lawyers in research and drafting for rate cases in New Mexico and Texas.

My experience with the Energy Transition Act was working on the House Energy, Environment, and Natural Resource Committee while that legislation was being considered and then debating it on the House floor. While I voted against the bill, it became law and I recognize that should I become a Commissioner, it will be my duty to enforce the law and to require utilities to follow the law.

**12. 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?**

I have worked on a number of energy projects on Indian lands and Indian allottee lands. These projects include oil and gas projects including leasing, exploration, drilling and production; Indian Mineral Development Agreement projects; solar projects; transmission projects; and pipeline projects. I have met with and negotiated with Tribal administrative agencies, Tribal government, Bureau of Land Management, Bureau of Indian Affairs and corporate officials to develop resources on Indian lands and to construct projects in and on Indian land.

I represented a solar energy developer on a solar project on Indian land in Northern New Mexico. This involved the construction of a solar facility as well and the construction of the transmission line and interconnection facility to get electrical energy from the solar field to and onto the large transmission line running through Indian lands. This project not only involved an understanding of the relationship between the Tribe and the Federal Government, the lines of authority within the Tribal agency overseeing this issue as well as the Tribal Government, it also brought in the utility company operating the transmission line and the State of New Mexico.

I am therefore familiar with the State - Tribal relationship and the limited nature of state jurisdiction over projects on Indian lands. I understand Indian sovereignty and Indian jurisdiction over issues that arise on Indian lands.

**13. Explain your view as to where the line between regulation and policy is.**

Regulation refers to rules established by non-elected bodies, while laws originate from elected officials. Policy represents broader goals that may manifest in both regulations and statutes. Regulations serve as detailed directives to achieve these policy objectives, reflecting the mission set by legislative bodies while remaining within the confines of statutory authority.

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

The early retirement of the San Juan Generating Station stands out as a pivotal decision, significantly impacting local communities, coal mining, and New Mexico's energy landscape. This action accelerated the shift toward renewable energy sources, specifically wind and solar, for the generation of electricity, altered utility capital expenditures, and prompted legislative action to address the resulting challenges.

**15. a. Do you hold a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body?**

Yes. UNM (BA 1980, Majors: Economics and Political Science, Minor in Biology)

- 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. Pepperdine University (J.D., *cum laude*, 1983)(law) I have been in the private practice of law for 41 years, all with the Hinkle Law Firm in its Roswell office. My practice has largely focused on natural resources, minerals, oil & gas, administrative law, and real property. I have worked on projects involving public utilities, wind generation, transmission, and solar.

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

I personally do not but I am the Personal Representative of an estate and Trustee of the decedent's Trust where the decedent owned stock in several public utilities and companies subject to regulation by the PRC. I am in the process of divesting those interests and will have that divestiture completed in the next two months and certainly by the end of 2024.

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

No. I have never been an employee of a commission regulated entity.

- 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 agree I will give my entire time to the business of the Commission and will not pursue any other business or vocation and I will not hold any other office for profit. I will retire from the private practice of law if appointed.

**16. State your registered party affiliation:**

Republican.

I swear and affirm that the above information is true and correct, and I meet or will meet the statutory and constitutional requirements as described in questions 15 and 16 above.

  
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Greg Nibert, Candidate