

7. The Commission’s cellphones track the timing and length of calls. The call lasted less than 1 minute. A screenshot of the Hearing Examiner’s, cellphone’s, data about the call is attached.

8. The rules are clear: “A hearing examiner shall not initiate, permit[,] or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning . . . a pending adjudication.” 1.2.3.8 NMAC.

9. An ex parte communication is “a direct or indirect communication with a party or his representative, outside the presence of the other parties, concerning . . . a pending adjudication, that deals with substantive matters or issues on the merits of the proceeding” 1.2.3.7(B) NMAC.

10. In the event a “hearing examiner . . . receives . . . a communication prohibited by this rule” then he “shall disclose it to all parties and give other parties an opportunity to respond.” 1.2.3.10 NMAC.

11. Additionally, “[t]he person to whom the prohibited communication was made shall:

A. disclose the prohibited communication by filing a copy of a written communication or a summary of an oral communication in the record of the proceeding within five (5) calendar days of the communication; and

B. serve the disclosure on all parties to the proceeding in accordance with Subsection C of 17.1.2.10 NMAC, except in proceedings involving numerous parties where the commission or hearing examiner determines that disclosure by publication would better serve administrative economy.

1.2.3.10 NMAC.

12. The hearing examiner is persuaded that he abruptly terminated an ex parte communication. The context surrounding the call and the brief words spoken by Ms. Wiggins during the call as well as the fact that Mr. Herrera was with her on the call makes this clear. Not

all readers or even the parties to this case may be familiar with the context within which Ms. Wiggins made the call. For that reason, that context is set out below. The writing that follows is also intended to satisfy 1.2.3.10(A) NMAC, which requires a summary of the communication. Any summary of the call necessarily requires some discussion of the context in which the call was made so that the brief words spoken during the call are comprehensible.

13. This hearing examiner was assigned to do two things in this case (which stretches back to 2018 and was initially assigned to a different hearing examiner who has since retired).

14. One, he was directed to determine how much SEC's ratepayers should have paid had SEC adopted the rates the Commission ordered SEC to adopt on September 11, 2019, but which SEC never adopted. Two, he was ordered to determine whether SEC had engaged in conduct constituting "a *continued* violation of a lawful Commission order that has not been stayed" by the Commission or any court.

15. It is crucial to point out that this Hearing Examiner was not tasked with finding whether an initial violation occurred or whether any violation occurred at all. The order assigning him assumes existing violations, hence his assignment to determine the consequences of SEC's actions and the Commission's use of the word "continued" when referring to violations.

16. A prehearing conference was conducted shortly after this hearing examiner's appointment at which there was much discussion of what, exactly, the Commission directed the Hearing Examiner to do.

17. Several parties made mention of the fact that SEC had just very recently indicated its amenability to a proposal circulated by Commission Staff that would result in SEC adopting the rates ordered by the Commission back in 2019.

18. The hearing examiner made clear that the Commission had directed him to take other action beyond the issue of SEC's adoption of the Commission-ordered rates.

19. In the days following the prehearing, the hearing examiner began to work on an order that directed the parties to begin to confer about procedural dates for a hearing on a stipulation—albeit one that would likely be contested and not address all issues. Staff's proposed compromise necessarily requires a stipulation hearing.

20. Before the hearing examiner could issue that order, SEC filed a motion with the New Mexico Supreme Court in which it asked for a writ of mandamus or writ of prohibition in the alternative and seeking an emergency stay. That motion also asserted that specific words uttered by the hearing examiner at the prehearing conference established that he would not be capable of impartial adjudication. SEC attached the affidavit of Mr. Joseph Herrera to the motion in which he makes several allegations about the hearing examiner as proof of the assertion that the hearing examiner will not be impartial.

21. Because SEC indicated it wished to proceed on Staff's proposed compromise but then later asked the Supreme Court to stay the proceedings, the hearing examiner elected to ask SEC to file a simple notice clarifying its intentions. An order issued by the Hearing Examiner on April 28, 2022, explained that if SEC did agree to participate in a stipulation hearing, it could file a simple notice saying so. Alternatively, SEC could file nothing which would indicate it intended to await the Supreme Court's ruling. In either case, SEC was directed to act by 12:00 p.m. (noon) on Friday, April 29, 2022.

22. At 11:49 a.m. on Friday, April 29, 2022, SEC filed a notice informing the hearing examiner and service list that it "does not agree to a 'stipulated' hearing before the Hearing Examiner." SEC added that "[a] hearing does not further negotiations among the parties and a

potential resolution of the matters relating to the stay.” Although no mention is made of the hearing examiner’s alleged inability to be impartial, this response refusing to participate in the hearing is consistent with the claim.

23. An hour and fifteen minutes later, at 1:05 p.m. on April 29, 2022, Ms. Wiggins called this hearing examiner (as was noted above). The Hearing Examiner cannot recall the exact words Ms. Wiggins spoke during the brief call. It was clear, however, that she wished to speak about Staff’s proposed compromise and the possibility of a stipulation hearing. It is unclear why Mr. Joseph Herrera was on the call and the hearing examiner made no inquiry about the subject. As noted, Mr. Herrera said nothing during the brief call. The hearing examiner terminated the call as quickly as was feasible and professionally courteous to do so.

24. At 1:31 p.m., roughly one-half hour after the one-minute call, SEC filed another notice and referred to it as an amendment to the earlier-filed notice.

25. This time, SEC stated that it would participate in a stipulation hearing before this hearing examiner “for the purpose of addressing Staff’s proposal” Again, no mention was made in this amended notice of the hearing examiner’s purported inability to impartially adjudicate.

26. This series of events makes clear that the purpose of the call from Ms. Wiggins and Mr. Herrera was to inform the hearing examiner about SEC’s changed position about SEC’s willingness to participate in a stipulation hearing. There can be no doubt that such a communication goes to a substantive matter: whether SEC would participate in a proceeding that would ensure it adopted rates the Commission ordered it to impose years ago (September of 2019).

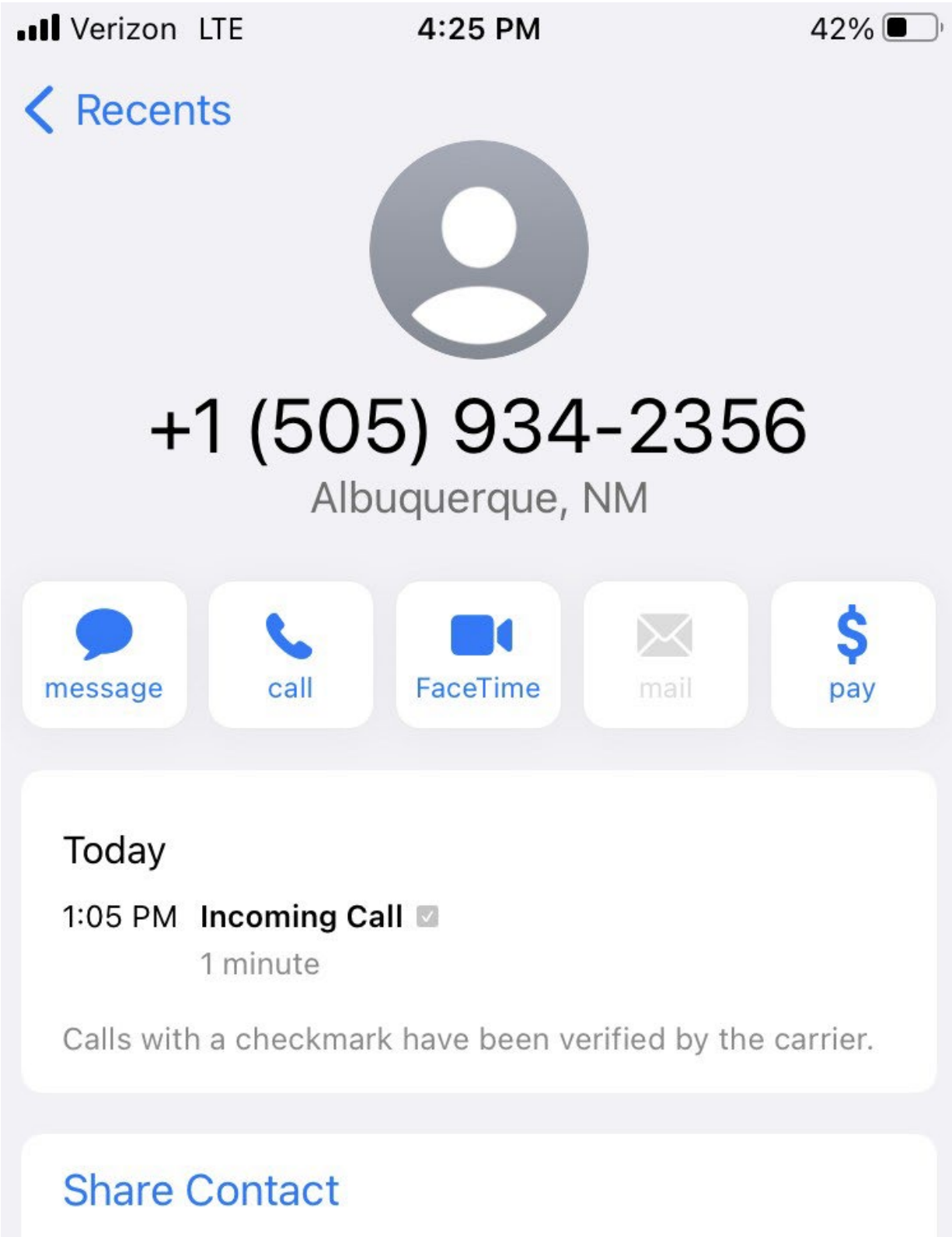
DATED May 2, 2022
NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read 'C. Ryan', is positioned above a horizontal line.

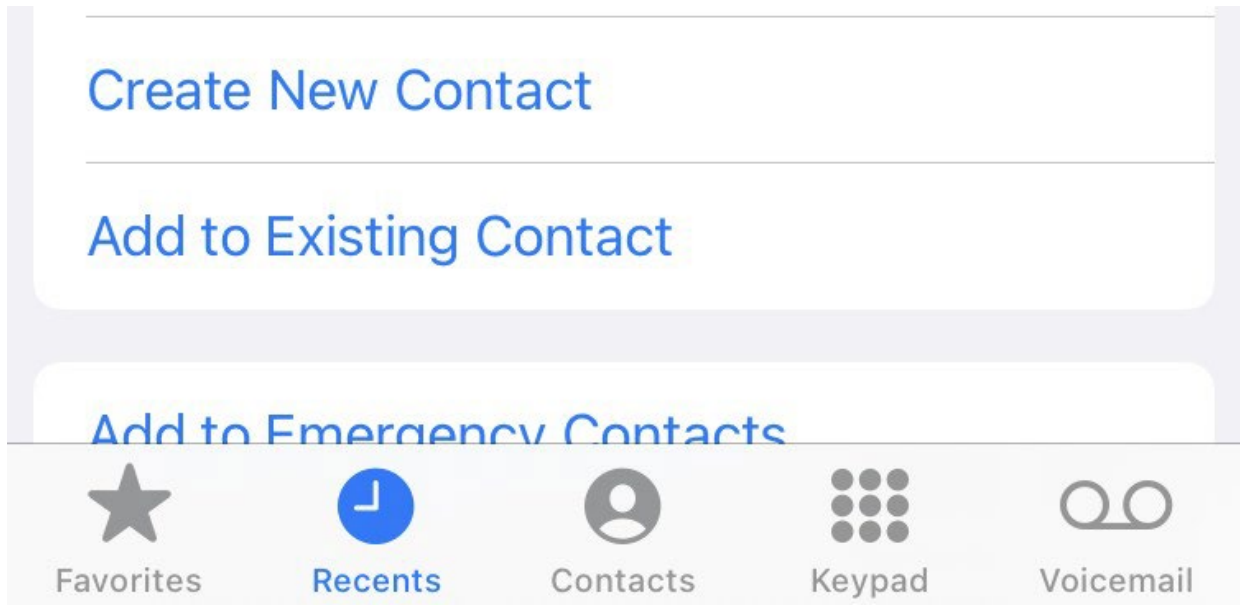
[electronically signed]

Christopher P. Ryan
Hearing Examiner

ATTACHMENT



ATTACHMENT



Sent from my iPhone

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE FILING OF ADVICE NOTICE)
NO. 69 BY SOCORRO ELECTRIC COOPERATIVE, INC.)
SOCORRO ELECTRIC COOPERATIVE, INC.,) Case No. 18-00383-UT
APPLICANT.)**

CERTIFICATE OF SERVICE

I CERTIFY that on the date indicated below I sent via e-mail to the parties listed here a true and correct copy of the notice above.

Nann Winter	nwinter@stelznerlaw.com;
Keith W. Herrmann	kherrmann@stelznerlaw.com;
Ed Reyes	Edwin.reyes.jr@comcast.net;
Polo Pineda	ppineda@socorronm.gov;
Larry Blank	lb@tahoeconomics.com;
Donald J. Steinnerd	reenerd@q.com;
Mark K. Adams	mkadams@rodey.com;
Cindy Loehr	CLoehr@rodey.com;
Donald Monette	Dmonette@socorronm.gov;
Patricia G. Williams	pwilliams@wwwlaw.us;
Lorna Wiggins	lwiggins@wwwlaw.us;
Patricia G. Williams	pwilliams@wwwlaw.us;
Joseph Herrera	jherrera@socorroelectric.com;
Christie Griego	cgriego@wwwlaw.us;
Justin Proctor	Justin.proctor@guernsey.us;
Rauni Montoya	rmontoya@socorroelectric.com;
Jimmy Capps	jcapps@socorroelectric.com;
Donna Wilkins	donna@socorroelectric.com;
Bradford Borman	Bradford.borman@state.nm.us;
Milo Chavez	Milo.chavez@state.nm.us;
Bryce Zedalis	Bryce.Zedalis1@state.nm.us
Judith Amer	Judith.amer@state.nm.us;
David Ault	David.Ault@state.nm.us;
Ana Kippenbrock	Ana.Kippenbrock@state.nm.us;
Gabriella Dasheno	Gabriella.Dasheno@state.nm.us;
Christopher Ryan	christopher.ryan@state.nm.us;

**DATED May 2, 2022
NEW MEXICO PUBLIC REGULATION COMMISSION**



[electronically signed]
Christopher P. Ryan
Hearing Examiner