

VALENCIA COUNTY BOARD OF COMMISSIONERS

Special Meeting

April 29, 2003

Chairman Gary Daves called the Meeting to order at 6:30 P.M.

PRESENT	ABSENT
Gary Daves, Chairman	
Paul Edward Trujillo, Vice-Chairman	
Aurelio H. Padilla, Member	
Alicia Aguilar, Member	
Mary J. Andersen, Member	
James Fernandez, County Manager	
Thomas Garde, County Attorney	
Tina Gallegos, County Clerk	
Press and Public	

Chairman Gary Daves called the Meeting to order at 6:30 P.M.

Chairman Daves asked Gloria Sanchez to lead the Pledge of Allegiance.

Approval of Agenda

Tina Gallegos, County Clerk read the agenda for the April 29, 2003 Special Meeting. Commissioner Aguilar made a motion for approval of the agenda. Seconded by Commissioner Trujillo. Discussion. Commissioner Aguilar voted yes. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0.

Chairman Daves commented on how the meeting should be formatted with the opposition going first and then People's Energy and then any Commissioner that would want to comment. Chairman Daves said Commissioner Trujillo should comment first because he is the one that asked for this Special Meeting to take place and then any Commissioner after that. Chairman Daves said that People's Energy applied for a Power Plant on land that staff told them and our Attorney concurred allowed a permissive use of a Power Plant. Permissive use meaning the County could not say no to that use and that is a very common feature in the zoning law that permissive uses are allowed and that the County had the right to control the uses through a site plan approval. The Commission did approve the site plan and Lawrence Alba did appeal that decision, which one was dismissed, and the other had to deal with whether or not the Power Plant is a permissive use. Chairman Daves said that Judge Sanchez ruled that a Power Plant was not a permissive use and disagreeing with our Attorney and staff on this issue which is now on appeal. Chairman Daves said he would invite very brief comments from Mr. Kelly and Mr. Garde in terms of his posturing the litigation as it is now.

Mr. Kelly said on behalf of People's Energy he would feel the need to expand upon Chairman Dave's description of what has happened in litigation so far but if it turns out during the course of the discussion and we get into nuances, we do have a presentation on it. But in the interest of moving forward Mr. Kelly said he doesn't need to add anything at this time.

Mr. Garde said in order to move this matter forward let's proceed with the testimony.

Chairman Daves said he still wanted Mr. Kelly and Mr. Garde to briefly give history of the status of this appeal.

Mr. Garde said the current status of the litigation on April 21, 2003 People's Energy filed a petition of writ of certiorari before the court of appeals. Under the rules of Court of Appeals with the penalty, Mr. Alba had fifteen days in order to respond to the action taken by People's Energy. Mr. Garde recommended this Commission take the testimony and give direction but not make a final decision in this case based on the existing litigation.

Mr. Kelly said to the Commission they have lost jurisdiction over this case last fall when Mr. Alba appealed to District Court and as a practical matter, this Commission doesn't resume having jurisdiction until this matter is through. So any action directed at People's Energy and certainly any action with respect to the land use application you will lack jurisdiction to address this evening. Mr. Kelly said our view of this meeting is that we are here to provide information to you and to answer questions and be responsible to listen to public comment. To the extent of the new Commissioners, we need to be brief but would like to answer questions about this project. But the question such as can we reconsider what the Commission did last year or can there be any type of a vote taken approving or disapproving this project, that is not something that you have jurisdiction over at this time, we are not here asking you to take any action. Mr. Kelly said in a sense that if you called a business owner in town to tell you about their business, they might come in and tell you about their business because they want to because you are leaders of the community they want you to know what they do. But you really don't have any decision-making authority in respect to them; they are

just there because they want to accommodate the request for information. We see ourselves in the same analogy tonight. Mr. Kelly said we may be before you when this court case is complete depending on how the litigation comes out. But tonight this meeting is for informational purposes only.

Chairman Daves said we have a suggestion from Mr. Kelly that we have no jurisdiction to take any action tonight and that is our recommendation of our attorney as well.

Commissioner Aguilar commented that maybe Mr. Kelly could explain. On the writ that was filed on the release as wherefore the petitioners request this court reverse the order of the district court or reprimand to the district court for entry of an order affirming the Valencia County Board of County Commissioners upholding the Valencia County Planning and Zoning Commission's approval of the site design review for the Valencia Energy's Facility. Commissioner Aguilar said she needs some understanding that we are not questioning the site design review because that has already come before us. The issue is additional testimony on the zoning and in receiving that information if it is not properly zoned the site design review is a moot point. Commissioner Aguilar asked Mr. Kelly to clarify this for her.

Mr. Kelly said the People's Energy's view of the issue that is still pending in court is whether this is heavy industrial and if this power plant facility is a permitted use and so the zoning issue is in the court of appeals. Mr. Kelly said Judge Sanchez said was it or was it not a permitted use and he may be right or he may be wrong but even if it is not a permitted use doesn't mean that the project can't go forward because the zoning law under the heavy industrial zone allows projects to go forward with permitted uses, similar uses or conditional uses.

Chairman Daves asked Mr. Alba to come forward with his comments but Mr. Alba asked for William Dean to go first.

William Dean said he lives in Los Chavez and originally came from California twelve years ago. Mr. Dean said the traffic, smog, congestion he left behind because we don't have that here and a big reason of why he moved here. Mr. Dean said he wants everyone to know what a heavy industrial district I-3 is. Mr. Dean said on November 8, 1999 the Commission approved the Comprehensive Zoning Ordinance 99-07 after a public hearing and final consideration. There was no mention of heavy industry and the map was signed several days later. During the final discussion on November 8, 1999 Mr. Chavez stated that the zoning maps were available and there were minor changes in them. This is a statement from the Commission Minutes. In changing the Rio Grande Industrial Park to a Heavy Industrial District I-3 was considered a minor change then Mr. Dean said what is a major change. It would appear that Planning and Zoning re-identified the Rio Grande Industrial park from medium industrial I-2 to a heavy industrial district I-3 without consideration from anyone. There was little discussion or consent from the County Commission, no evaluation of a long-term effect, no assessment of a need, no request for public opinion, no regard for adjacent property owners, no thought to future water supply. Some of the objectives of the County Commission and the Planning and Zoning are to provide for the safety, health and welfare of its citizens and to ensure the growth and available resources. Mr. Dean said this is the presentation he wanted to give at the April 15, 2003 Regular Meeting when he was told they could not speak because it was only for the site design. Mr. Dean said on September 17, 2002 he had a presentation prepared and he will read it.

Chairman Daves said there is a question as to whether the maps show that this land is I-2 or I-3 and he would like to get to the maps.

Commissioner Trujillo said he would like to know what Mr. Dean was about to provide the Commission because he felt it was relevant to the interpretation of the maps. Commissioner Trujillo said that Mr. Dean was not allowed to speak long enough for him to make that decision so he would like to hear what Mr. Dean was going to present regarding a prior planned presentation that sheds light on the maps.

Mr. Dean said on November 8, 1999 Planning and Zoning said that they had notified the public through legal notices in the county newspapers. Mr. Dean said he went to the newspaper office and found that none of them mentioned heavy industry for the industrial park. Mr. Dean asked if it would be appropriate if the two members that signed the map that were here at the time if their memories would allow them to verify that they did not have any discussion of the industrial park in the preparation of the final zoning ordinance. Mr. Dean said there was never any discussion of the industrial park being heavy industry.

Commissioner Padilla said in not being able to refer back to those minutes he didn't feel like he could answer his question.

Mr. Dean said he had a copy of the November 8, 1999 minutes and proceeded to read them out loud. Mr. Kelly asked for identification of what meeting. Commissioner Trujillo called for point of order and said to Chairman Daves that a few minutes ago he reprimanded another member of the public regarding speaking without going through the chair. But if you are going to put people in their place be fair about it because when Mr. Kelly spoke up he did not receive the same type of treatment.

Chairman Daves said your point is well taken and we can therefore proceed. Chairman Daves mentioned to Mr. Kelly if he had concerns to wait for his presentation.

Mr. Dean said that Steven Chavez presented the County of Valencia the Comprehensive Zoning Ordinance 99-07 in a public hearing for final consideration. Mr. Dean stated that Mr. Chavez said there were few changes in the comments and letters he received from the developers and citizens of Valencia County. He said he had met with the attorneys and the representatives from the utility company. They agreed that all utilities facilities would be conditional use in all zones. It was done because in the past it was required that all utility use providers go through a conditional use permit, you have to have a public hearing and residents would be notified and then they could deal with the design standards.

Mr. Dean read excerpts of the minutes of November 8, 1999. Chairman Daves asked Mr. Dean if he could produce the maps that he discussed and Mr. Dean said he was getting to that.

Commissioner Aguilar said she apologized for interrupting but the questions was to the two Commissioners and we can move this meeting along but to the best of her recollection is that we addressed a zoning ordinance and that is what came before us and the maps came later. Commissioner Aguilar said administration worked on those maps and if there are errors on those maps then the Ordinance provides for correction of those mistakes as we went along. We did not have the maps at the time we adopted the ordinance because administration was still working on them.

Commissioner Padilla said he agreed with Commissioner Aguilar that the maps were not ready yet.

Mr. Dean proceeded to show the maps to the Commissioners and to the public. Discussion ensued with the Commissioners pertaining to the maps. Chairman Daves commented that we have too many people talking particularly for the person taking the minutes so if we could keep it down to one at a time.

Commissioner Trujillo said he sees a conflict with the map that was supplied to the Council of Governments versus the one that was supplied to the Commission that was signed. There is a discrepancy with the two maps, the one that was supplied to the Council of Governments has an I-3 designation but no I-2, the map that was signed by the Commission has an I-2 designation but no I-3. The I-2 designation on the signed map does not match the designation of heavy industry with the ordinance itself, which is I-3.

Mr. Alba discussed the maps that have been filed with the County Clerk with the Commissioners. Mr. Dean asked if he could read a letter by at the time Steven Chavez, County Planner. Mr. Dean said Mr. Chavez recommends that all SP Districts remain I-1 and at that time we had information that the Industrial Park was an SP District but we couldn't prove it.

Mr. Dean said in summary he feels the County Commission had no intent to have an I-3 District in Valencia County except for that one little place but the overall intent was that someone wanted a Heavy Industrial District without asking the County Commission.

Chairman Daves said we now have some basic information on the maps but would like Mr. Chavez or Mr. Garde to set out your understanding of the maps, the history, the progression and so forth. We have a Xerox map that has many arrows on it and one of the arrows has I-3 and that arrow points to the property of People's Energy. There is a legend but the colors aren't clear and I-1, I-2 and I-3 are all listed. The first map which was submitted to the Commission from Council of Governments, the property had an arrow saying I-3 had a color code, which corresponded to the property with a title saying I-2 and saying Heavy Industrial. Chairman Daves said he invites the idea as to this is probably an ambiguity. The subsequent maps lost the I's and the R's but consistently showed that this property was color coded Heavy Industrial and this is what has been presented to us. Chairman Daves said he will allow the proponents to offer comments as well.

Commissioner Trujillo asked Ruben Chavez to give his presentation on the history of the maps.

Chairman Daves said the issue of the maps is what Judge Sanchez told the Commission that we should have looked at more and so we are looking at them.

Mr. Chavez said he is the Planning and Zoning's Supervisor for the County and has been in this position since January of 2000 along with Steven Chavez and Michael McCartney who were there at the time. The mapping was done by MRGCOG (Middle Rio Grande Council of Governments) and Richard Chavez. We had just purchased a GIS system and Carol Earp was helping us as well as Larry Mervine. We were taking classes to get the E911 system going. A year after that Michael McCartney left and Mr. Chavez said he was assigned to the Zoning Department and six months later Steven Chavez left and he ended up with the two departments. In talking with his staff, especially the zoning officers they have been sharing their knowledge of how we got from point A to point B on this issue. Mr. Chavez said he did not attend the workshops pertaining to the zoning issues and the big issue at that time was the RR2 versus RR1. Mr. Chavez said RR1 was the one-acre minimum and everything in the green belt was changed to RR2 and this falls under the MRGCD mapping. We have approximately 127 MRGCOG maps in our office and from 1987 until 1999 those were our zoning maps. Mr. Chavez pointed out the map here that is dated November of 1999 did state I-2 Heavy Industrial. Mr. Chavez said without going through each map dated March of 2002 a subsequent map was submitted to the Commission for adoption which superceded the first map which everyone has seen here tonight. Mr. Chavez said we have started producing our own maps instead of always relying on a conversation with MRGCOG every time we needed a map. There was

discussion as to the abbreviations because we do not have an I-2 Light Industrial zoned property in the County and those maps do state Heavy Industrial and use the abbreviation of I-2.

Chairman Daves asked as to why is the legend on the maps getting smaller? Mr. Chavez answered that when there are changes made to the map has to do with computerized technology. Commissioner Andersen asked Mr. Chavez on the written ordinance it identifies I-1, I-2 and I-3 does it not? Mr. Chavez answered that it does state that.

Commissioner Trujillo said on the map that was filed by Horizon Corporation in 1987 and that was the map that was worked off to arrive at the zoning maps and that map does refer to the Industrial Park as office warehouse industrial park. In referring to the corresponding map that was filed in 1978 what permitted operations and uses it states no portion of this property shall be used in such ways as to create a nuisance to adjacent sites such as but not limited to vibration sound and electromagnetic disturbance, radiation, air or water pollution, and noxious matter. Commissioner Trujillo said what he sees is a progression from that type of use to what is the use today I-3 Heavy Industrial and even referring to the ordinance on Heavy Industrial he sees nothing that specifically permits a power plant. But what he does see is the argument presented by the attorney's for People's Energy is the power plant falls under the permitted category of production and processing of petroleum. How did we go from the original platted map to a permitted use for an electrical facility based on the maps?

Chairman Daves said that what you are reading from are covenants that have been filed by Horizon Corporation relating to that property. Commissioner Trujillo said he was clear about that when he prefaced of what he was introducing.

Mr. Chavez said he couldn't answer Commissioner Trujillo's question because he wasn't here during those conversations that alluded to the first signing of the original zone map. It had to have taken place during the workshops that happened prior to November 8 of 1999.

Commissioner Aguilar asked for clarification that Mr. Chavez was hired January 3, 2000 were you not hired as an Assistant Planner? Mr. Chavez answered that was correct. Were you not hired to support and work with Steven Chavez to finish the ordinance and the maps and complete this project? Mr. Chavez said he was hired to do whatever he was told to do. Commissioner Aguilar said she thought he had said he was hired as an enforcer and we are not involved in this. Mr. Chavez said if that is the way it came a crossed then that is not correct. Commissioner Aguilar said in the ordinance we have I-2 and I-3 and in the initial maps we have I-1 and I-2 and then we seem to combine it all into one category and called it Heavy Industrial. But yet it seems from the testimony tonight that Horizon Corp. when they platted this Industrial Park they attached protective covenants to it that specifically address nuisances but prohibits nuisances and nuisances are only allowed in I-3 but in looking at the protective covenants and matching it with the ordinance the two do not correlate.

Mr. Chavez said when the ordinance was finalized November 8, 1999 he didn't know if the covenants were a consideration and this Commission adopted the ordinance or the original map.

Commissioner Padilla asked if the protective covenants be changed legally? Mr. Chavez said not by Planning and Zoning but by the property owners.

Chairman Daves asked if there were any other questions regarding the maps because we have gone astray from the discussion of the maps. Chairman Daves said he would allow comments from Mr. Kelly and then Mr. Dean.

Suede Kelly representing People's Energy and this is her understanding of the official zoning maps of the County since the adoption of the zoning ordinance, it seems clear that the draft that was sent to COG (Council of Governments) designated the Industrial Park to be I-3. The map that came back from COG did state Heavy Industrial for that area and had a typographical error it said I-2 and not I-3. The typo was not noticed until December of 2000 the official zoning map which corrected it and eliminated a possibility of any future typo's because it took out all of those I-1's, I-2's, I-3's, C-1's, C-2's, R-1's and just left the words Heavy Industrial. Ms. Kelly said when People's Energy went to the County Planner to discuss where to appropriately site the Power Plant the County Planning office mentioned that in the Cobiza decision that County Commission had stated rather than change any zoning in the County or anywhere else to I-3, Heavy Industrial that it wanted any gas fire facilities that were going to generate electricity that were going into vacant heavy industrial lands. The County Planner gave People's a copy of the December 4, 2000 official-zoning map which designated the Industrial Park as Heavy Industrial and the official zoning maps adopted by the County since then have continued to designate that area as Heavy Industrial.

Commissioner Trujillo asked who was the Planning Administrator who advised People's Energy that the appropriately zoned location was in fact this site in Rio Communities. Was that Ruben Chavez or his predecessor? Ms. Kelly said it was Steven Chavez at the time. Commissioner Trujillo asked what was the date? Ms. Kelly said Mr. Kelly dealt with Mr. Chavez on that matter and Mr. Chavez did not direct People's to any particular heavy industrial zoned land but instead to locate in a heavy industrial zoned land and gave People's the December 4, 2000 map showing heavy industrial zoned land.

Chairman Daves said he has looked at the map and there is no other land in the County that the map shows as being zoned as I-3. Another point is that there is no land in the County that is in fact zoned I-2 but there is significant areas that are zoned as I-1.

Commissioner Trujillo said he would like to refer to a letter dated July 19, 2001 that Mr. Kelly presented to the Commission from Steven Chavez the planner at the time for P & Z, addressed to Modrell, Sperling, etc. Commissioner Trujillo said he won't read everything in it but will refer to some key points that he would like to address. It says wherein you inquire whether the present zoning of the Rio Communities Industrial Park would permissively allow for an electric generation plant. Commissioner Trujillo said that is right on target. The entire existing Industrial Park carries a Heavy Industrial I-3 zone district classification and it goes on further to state that moreover an electric generation plant is a permissive use in the I-3 zone district. Commissioner Trujillo said this is an important letter coming from Steven Chavez. In the next paragraph it states the Valencia County Comprehensive Zoning Ordinance presently authorizes three separate classes of zoning districts for industrial use. Commissioner Trujillo said again this is dated July 19, 2001, which is after they collapsed them into two non-designated categories of heavy industrial and the other one was called resource industrial. This letter clarifies that collapsed categories and the removal of the I-1, 2,3 designations. In the letter it states these are Resource Industrial, I-1, Light/General Industrial, I-2, and Heavy Industrial I-3. Each class is essentially based on use performance criteria. Electric power facilities have inherent high performance requirements, and as such are appropriately situated in Heavy industrial Zones. The Comprehensive Zoning Ordinance of 1999 stating the section permits facilities for the processing or production of oil, natural gas, geothermal resources, or other hydrocarbons. A facility, which processes natural gas for the production of electricity, qualifies under this section of the I-3 zone district as a permitted use. Commissioner Trujillo said with this piece of information he can understand the argument that was made before Judge Sanchez's ruling, which he thought, was very grave to say the least and he thanks Mr. Kelly for this letter.

Mr. Dean said he thinks we have forgotten one very important point, the County Commission was never apprised of the need for heavy industrial district in the Rio Grande Industrial Park. Mr. Dean said you can go back to the covenants the SP designation and no time was there ever any discussion of heavy industrial district until the map showed up. The County Commission and the people never got a chance to say do we want this here? Mr. Dean thought this was important.

Chairman Daves called for a five to seven minute break at 8:20 PM All agreed.

Chairman Daves said we can proceed now with the sign-in sheets as to the opposed going first then in support of next and other last.

Mr. Alba said he would like to review again in reference to Steven Chavez that it was his first time to do a County Comprehensive Zoning Plan. Mr. Alba said he had discovered in the public records, which is Book 035 Page 822 and 823. Mr. Alba asked to read the whole document. It is dated August 26, 1999 and the subject is the Adoption of the Zoning Ordinance. **(Please See Exhibit)**

Mr. Alba said this is one of his best pieces of evidence to prove that the SP District, which he inquired about the maps with the Planning and Zoning Department to prove what was the true zoning before this 1999 map and Mr. Chavez said, he doesn't know. Mr. Alba said everyone does believe that it was an SP District in that Park and an SP District did not allow heavy industry. Mr. Alba said he wanted to discuss the protective covenants, which Commissioner Trujillo did touch on. The purpose of these restrictions dated August 1, 1978 and filed by Horizon Corp. and these restrictions are in regard to the development of the Rio Grande Industrial Park. These restrictions are to insure proper use and development of the property to protect the owner of these parcels against improper use and development of the surrounding parcels and will depreciate the value of this parcel or interfere with its beneficial use and adjoin this parcel to secure and maintain proper setback from streets to prevent hap hazard and unsightly improvements and to provide adequately for planned use and development of the property in accordance with the terms hereof. This is in Book 253 Page 4431, which are the protective covenants. Mr. Alba proceeded to read excerpts from the covenants and the zoning laws. Mr. Alba said he had done a check on the number of employees that are with the three major employers in the Industrial Park. There are 568 employees with the three major industrial companies.

Commissioner Aguilar asked Chairman Daves for point of order if we could stick to the topic. Chairman Daves said to his understanding the topic is whatever those who want to argue their case they can bring up and he is willing to stay here as long as the public can't stand it any longer. Mr. Alba said he is talking about zoning and related issues. Chairman Daves said he will ask though there are people that have presentations also and want to speak so if we could keep them at two or three minutes at the most. Chairman Daves said please recall how late it is and we need to keep moving.

Commissioner Trujillo wanted to comment on what Chairman Daves just said it is very important that we hear everyone's comments but he wouldn't want to get into a position to where we are arguing until three or four in the morning. He would like for people to state their opinion.

Mr. Alba wanted to comment on his last hearing that was held on March 21, 2003 there was some confusion going on. Mr. Alba read excerpts from the court recorders transcript that Suede G. Kelly an attorney for People's Energy stated in the court transcript. Mr. Alba said he advised that Ms. Kelly lied to the Judge. Chairman Daves called point of order. Mr. Alba presented a map that was filed by Horizon Corp. of Rio Grande Estates Unit O in the late 1960's. Mr. Alba showed pictures of the property that were related to the map. Mr. Alba said on the map it shows that Pristine Drive, George Faust has three properties on Pristine Drive and each one of them is 100 feet frontage so there is a total of 300 ft. And directly across the street from Mr. Faust is the Mesa Oil facility and to the north of

that is the Chemical Lime Co. and the proposed power plant site. Mr. Alba said on these two maps just touching the industrial park are 100 residential lots.

Chairman Daves said we need to get to the significance of the presentation because Commissioner Aguilar said she was not following Mr. Alba. Chairman Daves said he thought Mr. Alba said that residential lots about the land across the street of 86 ft. George Faust discussed issues with the Commission concerning the fact that he was never notified about the property in question because his land does about the proposed industrial park. Mr. Alba continued with explanations of the pictures he presented to the Commission to where his land is.

Commissioner Aguilar had a question for Mr. Alba in that prior to buying your lot did Solo Cup exist and Mesa Oil. Mr. Alba said yes, that Solo Cup was there but he does not recollect Mesa Oil. Commissioner Aguilar said so you were aware that it was an industrial park and where you were buying your lots. Mr. Alba said he knew that but there are also protective covenants to protect his side of the property with Horizon Corp. for residential as well as the industrial site.

Chairman Daves proceeded with members of the public and hope that we are not too repetitive.

Public Requests

Eppa Lake said he has run a drilling business since he was fourteen years old and all across the property there are 30 wells that they have built. Mr. Lake said what he is afraid of that they may take too much water out of the ground. He is just looking after his clients that he has and the water has to be replenished. Mr. Lake is worried about the water situation.

Amy Welch said she was speaking on behalf of the Coalition for Clean Affordable Energy and she wants to make a few brief comments. Ms. Welch said we do not need more energy for our own uses and this proposed facility will supply energy for other western states. We are seeing states like Arizona halting the development of gas plants because of concerns of water. Ms. Welch said she doesn't see why New Mexico citizens are asked to sacrifice a similar important resource to provide electricity for Phoenix's air conditioners for the summertime. They don't want to use their water and she doesn't think that New Mexico wants to use theirs either. Ms. Welch said economic development is important here locally and across the state. The options that we do have are strong. Ms. Welch said here in Valencia County that same progress can be made without having to compromise our resources.

Gloria Sanchez said in the initial package to the Commissioners there were petitioners of about 700 signatures who are opposed this power plant and we have more names to add to the package. Ms. Sanchez said not everyone can attend these meetings. Ms. Sanchez read a letter from the Sierra Club addressed to the Chairman, Commissioners and attention to Mr. Fernandez. Ms. Sanchez said she would like to welcome the PNM officials who were invited to our citizen's hearing tonight. Ms. Sanchez said that PNM is presently negotiating a contract with People's in order to hook up to their lines. There is an open market for any other power plant to come into New Mexico and PNM is obligated to allow this hook-up. The Cobisa Plant that tried to locate on the West Mesa in Belen also used this ploy to the public. And now People's Energy is doing the same thing. This is a profit making business arrangement between them. Ms. Sanchez said we have to remind ourselves that the application was made by PERC (People's Energy Resource Co.) not PNM. PERC is a merchant plant out of Chicago and since PNM is already selling over 60% of their energy out of state, we don't need them. Valencia County wants to conserve their water and protect our environment. The valley is not conducive to heavy industry with the mountains on the east and the mesas on the west, it creates a box in condition. Any heavy industry emissions could very easily be come stagnant and create problems, especially for our elderly and young children. This power plant will be too close not only for the projected residential development but also to establish communities north, south, east and west of there. Rio Communities will be two miles from the plant. Ms. Sanchez stated there are other communities that are even closer than that not to mention the proposed residential development, which is right on top of it. Ms. Sanchez said this would drastically reduce property values. Ms. Sanchez said the Representative Don Tripp introduced a bill that notice be given to residents who live within ten miles of a proposed power plant. Ms. Sanchez said we are facing a drought as Mr. Tripp stated a mega drought so water is a top issue for both urban and rural areas. Ms. Sanchez said what about the security of the plant?

Ms. Sanchez said she read in a recent article a family has had to move because of a child's constant coughing. There are several power plants presently being sued and Ms. Sanchez said she realized they have been EPA approved but carbon dioxide from these plants have been considered a major cause of global warming. Ms. Sanchez said this power plant is simply located too close to these residential areas.

Joseph Rizzo said he is a retired physicist and lives in Rio Communities. There have been several disagreements whether the elected officials of this County have seriously and thoughtfully considered having an industrial park in Valencia County. There is a disagreement about maps, dates, meetings, and votes and it is unlikely that a clear paper trail be found. Mr. Rizzo said it is time to stop and think about the future and what is likely to be in the public interest. What is decided now will set a pattern of development for many years to come and to define what type of community we will have. Mr. Rizzo read a portion of the zoning ordinance that was signed on November 8, 1999. Mr. Rizzo said this was very important and very short. It says a Heavy Industrial District I-3 is to provide for industrial uses with nuisance characteristics that are incompatible with adjacent urban residential uses or for industrial uses when space or performance characteristics demand a specialized location.

Mr. Rizzo said this would seem to rule out location between Rio Communities and Salomon Estates and one where residential construction is in progress. There is no need for a special location for a power plant. It can be anywhere. It just needs zoning approval and not to disturb the right to peaceful enjoyment of the property of residents. New plants are generally located away from cities and residential districts. Mr. Rizzo says it states it is for incompatible uses. Mr. Rizzo went on to read further with the zoning ordinance on the permitted uses. Mr. Rizzo said the odd part about the permitted uses is that it reflects industries that were important fifty years ago and are largely obsolete and in decline today, reflecting the worst possible impact on a nearby community. It appears that the implications of this have not been seriously updated since then, just passed on. In the 21st century terms it is much worse than just a power station and will lead quickly to a declining city like those in the rust belts of the east.

Rita Padilla-Gutierrez said she stood before this Commission last time and opposed the power plant and will oppose it again tonight. Ms. Gutierrez said there has been a lot of confusion about how this whole planning and zoning issue came about and why we are arguing it tonight. Ms. Gutierrez said this Commission needs to revisit how this whole thing occurred. The opposing counsel tonight very authoritatively said to this Commission that you are powerless, that you have no power to make any changes on this issue. Ms. Gutierrez said she begs to differ because she feels like this Commission has enormous amount of the power to look into what occurred here and revisit the issue of the zoning conflict. Ms. Gutierrez said she wants to address an article in the newspaper by Cameron Epard. In it the usual rhetoric that these power plants have had through the years regarding Valencia County and one particular case Mr. Epard mentioned that the Rio Grande Valley's population has grown by 21%. Ms. Gutierrez said she has a March 2, 2002 newspaper article indicating the increase not as high as expected. The County Manager stated in the article he thought the population percentage would be higher. Ms. Gutierrez said so statistics can be extracted to look good to anyone's pleasure. The basis here to come and say this area is growing so fast and needing energy when the fact is once this power plant is built it is going to send energy elsewhere. In closing Ms. Gutierrez said we already have a lot of power and urge this Commission to do the right thing and revisit this whole issue.

Sonny Sanchez from Belen said he is here tonight to ask this Commission to reconsider your stand to allow People's Energy Resource Corp. to build the proposed electrical park in Rio Communities. Mr. Sanchez said we have maintained that it is zoned for light industry and not heavy industry, which is the category for which this plant would fall under. We are opposed to PERC or any other heavy industrial claim from locating in Valencia County. Once we open the door to the first heavy industrial company then it is open season for other undesirable heavy water user, heavy polluting companies to follow. Mr. Sanchez said then what would this Commission do? You will have set the precedent, which means that your hands are tied and will not be able to keep other heavy industry companies out of Valencia County. Mr. Sanchez said some issues, which have been seriously raised, and PERC officials have reported are the following. One are jobs, PERC claims they will hire locals to build the plant. Mr. Sanchez said he is sure they will hire locals at minimum wage. The second is the water issue; PERC claims they will use no more than 100 acre-feet of water per year which is approximately 32 million gallons of water. They claim this is single amount of water needed to grow 50 acres of alfalfa but they are not saying that an alfalfa field are watered from Rio Grande surface water and if there is water available. But the 100 acre feet of water they will be using for the plant will come from wells pumping water out of an aquifer which is our drinking water. And as everyone knows is at an all time low and is causing trouble all along the Rio Grande basin. Does this take into account the water that is needed to water the bushes that will be used as a buffer zone for the noise pollution? Mr. Sanchez said next is the tax issue. It is stated that revenues will average about \$1 million each year. Whose revenues? They make it sound like the County will receive this every year and to his understanding is that revenues for the County and the schools will be limited to money spent for manpower and materials required to building the plant. Mr. Sanchez said revenues for PERC on the other hand will be what they collect at the consumption end which will be out of state and not at a source end which will be Valencia County. PERC has stated the proposed electrical power plant will encompass the eight acres of the twenty acres they plan to purchase if their request is approved. It is obvious to most of the ones here tonight that the proposed plant of the eight acre site means that the capacity of the plant would be easily increased at a later date. Why purchase twenty acres if all they need is eight acres for the proposed plant? Could it be that they are already planning for future expansion of another plant adjoining the proposed plant? What does this mean as far as future water uses and future air pollution? Who would monitor the plant or plants? The answer is that PERC would be self monitored since the County does not have the resources or expertise to replace to monitor the heavy industrial sites. This could be a big problem because if an infraction occurred we would not know about it.

Charles Falcon is opposed to the power plant saying you can't rule in this area. This is on site planning, we are here on zoning. It is real clear that Planning and Zoning could have to where they want to build this plant is SP. Mr. Falcon said we have searched the questions that show that a hearing ever existed to zone that area I-3. It can't be zoned I-3 as we already have heard because it is adjacent to the residential area. It is unfortunate that this Corp. has been given some disinformation from the claim department that I-3 even existed here because it had never been proposed. Mr. Falcon said the covenants won't allow it.

Brian O'Connor said he has a lot of concerns on water consumption and air emissions that these power plants produce. Mr. O'Connor had some information that he handed out to the Commission on formaldehyde emissions that were not properly addressed by People's Energy or the Environmental Department. Mr. O'Connor said he has issues with toxic air emissions and water

consumption. New Mexico has become an empty economy for California and Arizona. We are selling ourselves way too cheap trading our air and our water to produce energy to be sold out of state to make profits for out of state companies. Mr. O'Connor said we need to come up with some form of alternatives for development and look at something long term and far sighted and not sell ourselves too cheap.

Sharon Smith said she lived in California and one of the reasons she moved here was to get away from the smog, congestion and the pollution. Ms. Smith said we wanted to retire in this area where there was nice people and clean air. We found the nice people but we are afraid we are losing the clean air. Ms. Smith said we worry about water, we all have wells on our property and we can't afford to lose our water or have it polluted. We would invite the People's choice to look elsewhere; there is no reason to circle into Valencia County because we don't have the resources. Ms. Smith said this Commission needs to look at their people and not about its money.

Clara Rehr said her concern is the water use of Valencia County and has had concerns for the last four years. Ms. Rehr said she has attended the water assembly meetings. We are using more water out of the aquifer than what is going in. We have a net deficit of 55,000 acre-feet and we are working on plans to balance it out on how to make up this deficit. Ms. Rehr said we don't have any water to use on the electric plant and she too believes our County does not need electricity. Ms. Rehr discussed the drought of New Mexico and handed out information to the Commission for review.

George L. Dewey said he was the editor for a new magazine for integral and sustainable political values called LibertySteward.com. Mr. Dewey said his concern is about fourteen years ago when he moved to this area he was told specifically light industrial only and there will never be nothing heavy industrial there. Mr. Dewey said otherwise he wouldn't have bought property there. Mr. Dewey said he wants the County to think about the fact that natural gas is an explosive, the Carlsbad explosion has already illustrated to us what can occur. Mr. Dewey advised the Commission on taking this any further with the natural gas project.

Ken Wright said New Mexico has long been a colony for desirable projects and jobs. As a colony we are used for cheap or undesirable projects and supposed to allow for public input. Mr. Wright discussed the water and air quality and its affect on Valencia County. Let's not ignore our local citizens.

Joan Artiaga said she wanted to start by thanking this Commission for allowing public input on this really important subject. Ms. Artiaga said her studies on the ordinance and going over it does not allow for a power plant. Ms. Artiaga said if this Commission wants power plants in Valencia County then you need to amend the zoning ordinance. There are a lot of important issues that everyone has brought up to think about as far as the industry goes. We do need industry; we do need jobs in Valencia County but think about this carefully.

Commissioner Trujillo wanted to respond to Ms. Artiaga's remarks because she made a very good point. We have people come before us who would like to put for example a second mobile home on something that is zoned for two acres in the green belt. We really put them through the mill in order to approve a variance like that or rezoning of that particular piece of property. Commissioner Trujillo recalled an instance back that a gentlemen appeared three times before the Commission before we allowed him to put that second mobile home on a two acre site. What baffles him in this issue is that the only thing that has been presented to this Commission for approval was the site plan. The issue of the zoning never came before the Commission.

Antonio Benavidez from Casa Colorado said that Ms. Artiaga and Commissioner Trujillo almost said word for word on what he was going to discuss with this Commission. What he would like to say though is if this power plant was to chase away from Los Lunas, Los Chavez, Belen, Sabinal but for some reason or another they found a loop hole in mapping and decided to go up on the east side of the County. The covenants need to be looked at as well as the 1978 maps again.

Chairman Daves called for the proponents to come forward or if Mr. Kelly wanted to make his presentation at this time. Mr. Kelly stated given the hour he would like for the supporters to go first and then People's.

Steven Otero thanked the Commission for allowing him to speak tonight on this issue. Mr. Otero said he would like to comment that this has been one of the calmest County Commission Meetings that he has attended in a long time and he said he thinks Chairman Daves is doing an excellent job as Chairman. Mr. Otero said he is not an electrical engineer, he is not a chemist, has no formal education besides high school but he is from Valencia County and from a family of one of eleven children, which ten do live in Valencia County. Mr. Otero said to his interpretation the County is going to benefit approximately \$1 million a year, Belen schools will benefit \$350,000 and he feels Commissioner Trujillo can appreciate that being a retired educator and a former Board member and he expects for him to take that into consideration in the future. Mr. Otero said the County staff here has done an excellent job and was very impressed with Mr. Chavez in his presentation. There was a point made for profit, of course this is for profit because he doesn't know anybody that does anything that is not for profit. People's Energy has been involved with the community; for example, Cameron Epard wanted to be part of the community so he was responsible in giving out four scholarships to our area schools. Mr. Otero said People's will employ four to eight people and it has been mentioned at minimum wage but he feels that it is to their best interest to pay a good wage and will be competitive probably with PNM and everyone knows PNM is a well paying company. Rio Grande Utilities is willing to supply People's Energy with water. Mr. Otero said People's Energy is purchasing

twenty-six acres and to his understanding there are half-acre lots out there with no sewer, no water that generate approximately \$10.00 per year for taxes per lot. These twenty-six acres will generate much faster and this is a plus for the County. There is discussion on the pollution issue but there are organizations that for example EPA will be looking at this plant closely to make sure they are following all rules and regulations. Mr. Otero said if you don't allow this what would Los Lunas be like if they didn't allow Wal-Mart Distribution because they are afraid that the trucks are going to pollute, if they didn't allow Home Depot because it is going to hurt the Mom and Pop outfits, we would never get anywhere. Mr. Otero said so progress is needed and if it costs us something in the future then that is just the way it is going to be.

Eddie Benoit said he supports People's Energy. Mr. Benoit said he is listening to the 60's, 70's and 80's zoning law, that is the problem right there, we are in the year 2003. We haven't come up to the times and if we don't we get left behind.

Linda Erikson said she is a resident of Belen for sixteen years and feels she has a vested interest in this project. Ms. Erikson said she would like to reiterate what Mr. Otero said that People's Energy has been a good community supporter, they have returned back to the community already. Ms. Erikson said People's Energy has already gone through the process with the zoning and so forth so to go back and start all over again would be difficult. Ms. Erikson said if she may suggest to this body that you will consider in good faith offering their continuance and have a right for a moratorium for other heavy industries in that area, you have that right to do that. Ms. Erikson said but in this case People's Energy has proceeded with this and you in good faith should honor that process which they have carefully followed.

Commissioner Trujillo wanted to comment on Ms. Erikson's remarks. He can understand where she is coming from when she states that as a business owner that they had relied upon assurances from a County employee that that was appropriately zoned. He would feel put out if he was called back repeatedly after having a letter definitely states that the zoning is appropriate from the County Attorney or Planning. Commissioner Trujillo said she also mentioned a moratorium may in fact be appropriate to handle any future encumbrances on this issue where he sees nothing that supports that County Planning interpretation of I-3 and doesn't feel that I-3 is appropriate for that location.

William Giron said he is one of the principals of Rio Grande Investor's Park. Mr. Giron said his ownership interest in the industrial part is insignificant, 5%, but what has never been insignificant is his interest in creating jobs and bringing economic prosperity to Valencia County. Mr. Giron said he is a resident of Valencia County and has been for most of his life. During his tenure as President of the Belen Chamber of Commerce and later as Chairman of the Industrial Development Committee, he had the opportunity to work with Horizon Corp. who created the Industrial Park, The Albuquerque Development Services, clear back to the days of Jim Garvin, and the State Economic Development Committees. He believes that he is informed as anybody in this room. The Industrial Park was part of a master plan developed by Horizon Corp. that was to provide orderly development of the lands that Horizon had acquired. The master plan included such things as single-family residential lots, multi family lots, commercial sites, park sites, school sites, shopping center sites, medical facility sites, and on and on. And an Industrial site. The development started in the early 60's and you come across a sign that reads lots for sale \$99.00, \$10.00 down and \$10.00 a month. The Industrial Park came later. Mr. Giron named several industrial facilities that are in Valencia County. The City of Belen got involved and they still own the railroad spur within the park. Rio Grande Industrial Park has always been a heavy industry industrial park and not a Type I, II, or III because that came much later. Mr. Giron said it has never been a light industry park as Mr. Alba professed at the hearings. What Mr. Alba attempted to introduce, as evidence to support his claim that the park was initially a light industry industrial park was nothing more than a map with a misprint. Misprints happen all the time. This was not a smoking gun, it was just a simple mistake, and it was recognized and corrected. Secondly, Mr. Alba was not denied due process. He has lost one and won one. Mr. Giron said he understands that both decisions have been appealed. For the County Commission to take any action at this point would be inappropriate for obvious reasons. During the site review hearing, Mr. Alba again attempted to introduce his map and was denied because the Chairman limited testimony to matters and concerns as they applied to site design. This project got the ok after all of these people reviewed application, exhibits, had hearings, and heard testimony for and against the project.

Craig Oresman said if we are going to use the water we will probably have pollution from hundreds if not thousands of homes that will be built over the next five to ten years. We are going to get people that need services, need roads, need fire protection, need police protection and sewer. Are we going to get it through property development or through economic development? Everyone talks about wind energy and alternatives but anyone who owns property in that industrial park would be happy if there was a lead to a company that was clean and actually pays taxes and not ask for tax breaks.

Mary Lou Chavez said she is here in support of the power plant. She is with the Belen Economic Development Corp and has been working trying to bring economic development into Valencia County. We have had some major companies come in and look at us and it makes her wonder if we had a car manufacturer wanting to put a plant in here, what would the reaction be? Would they be subject to what the power plant is going through even though it could mean three thousand good paying jobs? Is it going to have same problems? It is scary to have economic development and know what goes on in this County and the people that like to live here. But yet you have people who don't want growth, they want us to remain like we are. We have a lot of pluses because the state of New Mexico is desirable place to live. Ms. Chavez said we need to support what People's is trying to do and there is a lot of new information that will come out tonight and listen to it with an open mind.

The power will not leave the state and that it will be jurisdictional which means that it stays within the state. Ms. Chavez said the PRC (Public Regulation Commission) requires that the electrical company have a 15% reserve and in about three or four years with PNM's projection will not have that reserve so they will have to come up with the power plant to build that reserve. Mr. Chavez said the other thing that the PRC is doing is that the future power must come from local sources; it can't come from San Juan County. Ms. Chavez said this project is something we need to consider.

Frank Scott said he lives in Rio Communities and came to New Mexico fifteen years ago because he had a job here. They built a plant in the industrial park, the company's name is Avonite, and had the pleasure of working there until just recently. It was time to retire. The people that have spoke before you tonight have raised some valid issues and have valid concerns. Mr. Scott said he has a different slant than what has been expressed. There are resources available and it is a matter to use them wisely. Mr. Scott said there will come a time when this aquifer is taxed to the maximum possible extent. He looks at a power plant as one of the purest forms of industrial production you can measure. Mr. Scott said he has been in manufacturing his entire career and explained that you have raw materials coming out of pipes; they are not coming to you over the road, or over the rails but out of pipes and lead right into your plant. You run an operation and in the process your finished product goes out on the wire and he thinks this is wonderful. Mr. Scott said what appeals to him is that this operation doesn't employ a lot of people but the fact that you have an engine that is creating economic value but not using a lot of people to do that has a lot of benefits. Mr. Scott said you won't have to build any more schools for the folks that are running that plant or roads. When that plant is built and is in operation you won't see it, you won't hear it, you won't smell it but it is going to be out there processing materials, paying taxes and sending out a very valuable commodity out over the wires and you won't even know it is there. Mr. Scott said whom are they going to hire for their operators? At Avonite, Mr. Scott said we have people that sit in the control room and see everything that is happening and do all their control functions from the computer. Mr. Scott said this is a good project and he supports it.

Commissioner Trujillo has some questions for Mr. Scott and said he asks this question in good faith. But he was told recently that the industrial park has been shut down on more than one occasion because of fires at Avonite and evacuated and wondered if he could comment on that. Mr. Scott said Commissioner Trujillo what does that have to do with what we are discussing right now?

Commissioner Trujillo said he is trying to be polite and he expects the same in return. Mr. Scott said he just asked why the question? Commissioner Trujillo said your tone of voice is inappropriate and that he didn't ask him in an adversarial tone of voice and he prefaced the question in a polite way because he wants to keep it non-emotional. It is a question. Mr. Scott said he would like to respond.

Mr. Scott said we have had a couple of fires out at Avonite, they have been confined and two of them have been defined as to what is known as dust collectors. We have a sanding operation, which is an industrial operation that is used to flatten the sheets through a sanding process and produces a fine powder. In two different occasions there was a source of ignition, which causes a fire to happen in the dust collector and was confined within that particular piece of equipment that is located outside the building. Mr. Scott said he doesn't know what impact this had on Solo Cup or others in the industrial park. The plant was shut down and it was a matter of hours to get it under control, refit the piece of equipment and evacuate the operation. What has been done to prevent that is that we have a sprinkler system throughout the plant as a fire protection and we have extended that to the dust collectors. There was a third fire that occurred but was in a waste area and it involved several five gallon buckets of materials that was processed waste and these buckets overheated and ignited, made a lot of smoke but was in an area isolated from the rest of the operation and confined to the concrete pad. The volunteer fire department went to a foam unit even though water would have done the job; particularly with the materials involved so the fire lasted 30 to 45 minutes and basically burned itself out.

Commissioner Trujillo said now he will answer Mr. Scott's question because the reason he asked is there were some people concerned about the location of the plant brought this to his attention and said you are going to be locating a power plant there that runs on natural gas and we have had several fires at Avonite that required evacuation of the entire industrial park. Commissioner Trujillo said he didn't assume that to be a correct statement but as far as he was concerned it was merely gossip or hearsay so being that he was here it occurred to him to ask someone that was well acquainted with the facts.

Mr. Scott said to Commissioner Trujillo he was unaware that it was an issue related to the power plant.

Ron Gentry said he appreciates the Commission letting him express his views. Mr. Gentry said he is from this area and has been a resident for sixty years, born and raised here. He is a businessman, a former legislator of fourteen years and for some background history started out in 1974 he was Valencia Council and they approved the first industrial park. Mr. Gentry said the park was designated by Horizon Corp. and going back to the planning and what the issue is today, back then we didn't have zoning or planning. We formed that in the middle 70's. If it wasn't for Horizon Corp. coming in and the necessity of their subdivisions and the way they did business in a different manner we might not have planning and zoning yet. But they initiated in starting the basics for planning and zoning. For many years this County has approved the master plan that was put together in the 70's and Horizon designated that master plan. We all lived by it. Mr. Gentry said one of the issues that he will

get at but first on the list to request to speak he marked other because he is not sure whether he speaks for or against the proposed plant. Mr. Gentry said as Governor King used to say he feels this Commission is opening up a box of pandora's. Mr. Gentry said he does own some parcels out there. Mr. Gentry gave history on his working background. He said there is an old adage in Valencia County that nothing stays fixed, we bring companies in here, we talk about industrial development which he is highly interested in and have been through his twenty years of public service and has sat in on many commissions and certainly understand this Commission here. The problem we have here in Valencia County is that we bring people in and this isn't just this Commission or the last Commission or the one before that, it seems to be history that we bring people to task. We tell them this is our rules this is what you want to do and two months later we say we have changed our minds because something else happened, we take them back to task. That is why we don't get people coming in with a lot of these alternative plainer industries, shopping centers, hospitals, medical facilities and emergency facilities. They won't come here because they are afraid to invest as capital investors, which they invest the property because we changed our minds so many times. Mr. Gentry said on this issue he hopes we don't go back to reinventing the wheel, if it does he would like to be the first on the agenda to say if all of this is really wrong (the zoning and planning) and he as a major property owner of which he has a residence, the closest to the industrial park. Mr. Gentry said he knew the industrial park was there when he built his residence and he would like to say that he does smell the noxious smells that come from Avonite every so often and he smells it in his home. When the lime plant that was approved, when it fires up at night, a lot of times in the daytime there is a noise pollution that makes a New Mexico northern home sound mute. It is the big turbine on the top of the plant and he sees it produce, he sees the black smoke from Mesa Oil where they are burning oil and he sees all of this from his home. Mr. Gentry says these things happen, Avonite smells, the other lime company has a bad noise, Mesa Oil has black smoke coming out, those are part of the industrial part. We have to live with the world and it doesn't bother him and if they are zoned wrong and we go back to the covenants he will be the first in line to ask you to terminate all seven of those companies because they are all in violation, noise pollution, smell pollution and discharges. That's progress as bad as it may be. Mr. Gentry said he is not speaking for or against the power plant because he has his own opinions and wants the Commission to look at the zoning and be fair about it.

Gloria Sanchez had a comment that Mr. Gentry said we have to be careful that we don't bring companies in here and suddenly change our minds but what about Cavco that came in here. Cavco changed their mind, power plant in Deming, they changed their mind and that is her point.

Randy Hill said thanks to the Commission for staying all night, he said he is a thirty five year resident and believes this is going to be a clean industry that provides jobs for us locals. These people that come from out of state they can go back there is nothing that states they have to be here. They complain about their land but did they pay 50c an acre for it? What is it worth to them? He believes these people are wasting our time and money complaining.

Carl Condit said he is a lifetime resident of New Mexico and lives in Los Lunas. He is the Director for the Building Trade Council. It is refreshing that we have some people wanting to do some economic development in Valencia County. Mr. Condit said he believes this power plant will bring economic development to this community and a good change for Valencia County.

Rick Johnston thanked the Commission for allowing him to speak because it is so late. Mr. Johnston said he speaks in support of this power plant, from his point of view power plants are being and will be built in the state of New Mexico. The question is who will build them and whether or not they will be friendly to the people of New Mexico, especially Los Lunas. There is one south of Las Cruces, one in Farmington and you go through these parking lots of the plants that are being built you will see a lot of Texas license plates. Mr. Johnston said he doesn't have anything against Texas but he would like to see New Mexico jobs go to New Mexico people. Mr. Johnston said People's Energy will hire local people and they can build this power plant. This plant is a low water usage plant, a low emissions plant and a low noise plant and this Commission has an opportunity to do something for the people of the state of New Mexico.

Eric Eichwald thanked the Commission for listening to him and said this is a rerun because he has been in front of this Commission on the same issue and it seems like we rehash the same thing over and over. Mr. Eichwald said we can't operate in 2003 by going back and changing zoning, when the Commission has made the changes to progress. He owns 28 to 30 lots in that area and he can tell you in his office he gets calls every day and Commissioner Aguilar is a real estate person she knows, people all over the country call on these lots and all you can tell them is if they can get \$100 for them they are doing good. There is no power, no water, they are a quarter acre lots due to the zone change, you need a four-acre lot to build. The County is only making \$10 on taxes and here we have a company that will pay a lot in taxes and is in need of money and we are trying to reject this, this is a no brainer. We do need to produce jobs and industry in this County.

Naim Kassicient said he came to the state thirty-three years ago and lived in Albuquerque and has seen the progress for all these years. There is nobody that is going to be able to stop the progress of this land and he is for the project and hopes the Commissioners vote on it. Mr. Kassicient said what concerns him is the people in this County look at the dark side of any project and he doesn't understand it.

Chairman Daves called for a break at 11:27 PM for five minutes.

Placido Garcia thanked the Commission for listening to him and said he has spoke to this Commission before. Mr. Garcia said he has a newfound respect for his grandmother who used to sit there as a County Commissioner many years ago. Chairman Daves asked who was she? Mr. Garcia said Lucy Jaramillo. Mr. Garcia said his four passions have been, public service, education, mental health issues, and economic development. Mr. Garcia gave some background history of his four passions and his investments. Mr. Garcia said the company that is coming in is a clean industry and it is going to improve the economic tax base of this community.

Mike D'Antonio said he is the director of resource planning and technical analysis for PNM. Mr. D'Antonio thanked the Commission for an efficiently run Commission meeting and being very fair to listening to both sides and there was good points made on both sides of this issue. Mr. D'Antonio introduced the PNM team since he has them out so late tonight. Mr. D'Antonio said he will have a slide presentation at this time and be brief because it is so late. Mr. D'Antonio said he wanted to discuss deregulation issues and retail competition. PNM's involvement with the People's project, which is a question on everyone's mind tonight. Why is the PERC's project important to PNM? Mr. D'Antonio said real briefly he will talk about the new cost plan that PNM is undertaking and have about a month to complete that plan. We ask ourselves why is People's here? Mr. D'Antonio said actually state legislators encouraged outside generator power plants to come into New Mexico under the deregulation bill. PNM's involvement with People's Energy is of interest and People's has considered PNM a likely prospect to buy power from them. Mr. D'Antonio said the message that People's has given PNM has been consistent and have had good report with them. They have gone through with their permitting process and are far ahead with other operations that we have seen. In summary, PNM does support this project; we do support jobs in Valencia County and increase the tax base for the County. The plant will use clean burning natural gas and it will use minimal amount of water. PNM said People's has been respectful to the people here in Valencia County and will welcome a tour of the facility and see firsthand on how it operates.

Commissioner Aguilar had a comment that the Commission had received a court order and it said the Commission should have allowed the additional testimony of Mr. Alba and other citizens and to her she feels that is what they were doing and she has one Commissioner feels we do need to work on our zoning ordinance to make sure that it agrees with maps and the intent of the County. Commissioner Aguilar said she has been a Commissioner for six years and going back to when that industrial site was platted in the 60's it was accepted by the County as part of our zoning ordinance. It has been there for over forty years and in addition to that even though it is still in draft form, we have a comprehensive plan that also recognized that site as an industrial site. And then we have the Council of Governments recognizes that site as possible economic development for this County because without an industrial site you won't get economic development you have to start somewhere. Commissioner Aguilar said she would like to thank Mr. Alba for bringing forth information and she listened and kept an open mind to what he brought before them but she also feels that she has to look at what is best for Valencia County and everyone. With respect to those that totally oppose this power plant, her position would be that we have a company here that did come into this community to be a partner to this community. There is economic development and she appreciates PNM's comments because it does help her and she drives past the plant because her mother lives south of that area. Commissioner Aguilar said we have to keep an open mind because she was on the commission as well as Commissioner Padilla when they came to put up the communication towers due to the cell phone situation and we don't hear anything anymore on that except that we have some dead zones. We are being very open minded with all testimony to come forth.

Cameron Epard said he will try to go through his presentation rapidly because he has presented this before. Mr. Epard gave history on the power plant. As everyone knows their company is based out of Chicago. This is a 280 mega watt gas fired project and will run on natural gas only. Mr. Epard showed a computer overlay of where the plant will sit which will be by Solo Cup. Mr. Epard explained how the combustion turbines will operate. This is a environmentally friendly facility, natural gas and we will be using state of the art combustion turbines, and we also received our environment permits which state basically that says this plan will protect human health and the environment, emissions from this plant will not impact human health or the environment. It will be a \$130 million project and we will hire labor locally. Mr. Epard explained the impact of the plant for Valencia County.

Doug Huxley said he is the People's Environmental Services Engineer and their air quality expert and he would like to comment on what was touched on earlier regarding emissions. Mr. Huxley reviewed with the Commission what People's discussed with the New Mexico Environment Department in processing and approving the air quality permit for this project. New Mexico Environment Dept. Air Quality spent over 240 days reviewing the technical information. There was a public hearing held with over nine hours in testimony. We discussed compliance of the permit with specific emissions standards for this type of equipment; these are new source of performance standards for combustion turbines. They reviewed this and confirmed that this project would comply with those standards. They reviewed manufactured information such as they were confident that the project would meet emission limits that were committed to the air permit application. Also reviewed was the air quality dispersion and confirmed that the types of concentration that would be present in the air would be well within the allowable standards, which would be safe for human health and safety. They confirmed that compliance testing which would be done at the start of the plant and the type of continuous monitors, which would run continuously throughout the life of the plant. On the issue of formaldehyde, New Mexico Environment Department spent over a month analyzing specific evidence about formaldehyde emissions. People's believes that the calculations that he presented are flawed, we believe they vastly overstate the amount of formaldehyde that would be emitted from this project. Some of the technical reasons they referred to back in 1992 emissions from a certain type of turbine

were about five hundred times higher on startup than normal load, which was a different type of turbine. People's believes that the Air Quality Bureau ultimately agreed with our understanding of formaldehyde emissions. After a month of input by the Air Quality's Bureau Engineers that the hearing officer for that public hearing wrote her report. Mr. Huxley read a portion of the report. In the report it read ultimately they could not rely on the estimates of formaldehyde emissions provided by Mr. Powers for several reasons and we have mentioned them above. It was recommended some specific testing on formaldehyde emissions on startup and shutdown of this facility. We agreed to this testing. So there will be state of the art testing when this plant opens.

Mr. Kelly said what he would like to do and this would be for the benefit of the new Commissioners is just make sure that we know how we got here. Mr. Kelly said he will bring us up to date. The story that he is trying to tell here is how did this company come to be located in Valencia County, located in an Industrial Park and try to put a power plant here. Because you have to consider where you are procedurally tonight before you make any decisions. In April of 2001, the County Commission decided not to grant a zone change for the Cobisa Power Plant, the Commission rejected the notion of putting that plant on the west mesa. The Commission told Cobisa they needed to be in the heavy industrial zone and directed them to look at existing heaving industrial zones in Valencia County. In June, People's Energy began investigating the possibility of putting a power plant in New Mexico and began looking at Valencia County. Mr. Kelly said he advised them at that time that if they were going to go to Valencia County they needed to consider only heavy industrial zones. And that they ought not to approach the County with the idea of zone change. On June 19 of that year Steven Chavez wrote a letter that is in your packets and was brought up earlier, he made clear that the heavy industrial zone was the right place and also stated that the site that People's was looking at namely Rio Grande Industrial Park, was heavy industrial and he actually provided interpretation of the ordinance that explained in his opinion was a permitted use. With that information People's moved forward. In August, we began negotiations with Mr. Giron's group. Those negotiations were concluded on October 3, 2001 when People's Energy executed an option purchase agreement for a high six-figure purchase price of this property and made our first down payment on the property. On October 5, 2001 the company submitted its air permits to the Air Quality Bureau. On November 26, 2001 in rapid succession we executed a water supply with the Rio Grande Utility Corp. Water Co. During those months that followed basically the team that you have seen testify tonight and put together by Cameron Epard, we began speaking to the public. In February of 2002, a public hearing notice was issued by NMED for the air quality application this is now a year ago, we had a public hearing and spent four hours. On April 8 a hearing was held on the air quality department and there was representation by People's at that hearing. In early April the company made a second payment for the purchase of the property. On April 24, 2002 Mr. Kelly said he held a meeting with Ruben Chavez of P & Z Dept. and the ordinance requires in a heavy industrial zone you go through a site design review and your ordinance requires a pre-application meeting. We did that and went through the ordinance and P & Z issued a second letter confirming the zoning of the property and provided a copy of the map, which showed in purple heavy industrial. We were moving forward. On June 20, 2002 we submitted our site design review application and on July 18, 2002 the state issued the air quality permit. On August 13, 2002 at about a five hour P & Z meeting the Commission voted 3-1 with the Chairman not having to vote to approve the site design review application. In the course of that presentation that evening questions were asked again about the zoning and again Mr. Chavez went through his evaluation and his office's understanding on the zoning and why the project was within the zone physically but also a permitted use within the zone. Mr. Alba appealed that decision and it went to the County Commission pursuant to Mr. Alba's appeal. On September 17, 2002 this Commission voted 4-1 to affirm the decision of the P & Z Commission and deny the appeal and technically what was before you was the site design plan but implicit in it was the underlined zoning. Shortly after the company made its third payment on the property and then in October Mr. Alba filed the first of two court actions. Mr. Kelly said being a former County Commissioner he is the last one to tell this Commission that they don't have authority but the reality of the matter when your decisions are taken to Court the jurisdiction of the matter goes with it to the Courts until they have resolved the issue and this happened on October 15, 2002. Mr. Alba filed the second lawsuit on November 6, 2001 and after that on the second appeal which was a declaratory judgment action asking the courts to rule that the property was I-2 and not I-3. That case was dismissed on February 5, 2003. On March 21, 2003 Mr. Alba's first appeal was granted the District Court said that power plants were not a permitted use in the heavy industrial zone. The Courts disagreed with the Commission's staff view of the ordinance and that is the issue that is currently on appeal. That is appealed by People's Energy on April 21, 2003 and still in court. Also we did make one more payment in April. Mr. Kelly said so that is what brought us here tonight and this is where we are tonight. In summary, Mr. Kelly said to the Commission that you have already approved this project, you are not being asked tonight to revisit this or reconfirm your decision, it is important to share the information and our request would be to listen to your County Attorney and to allow the court case to reach its culmination and then see if it is even necessary to take this project up. If it is we will be back here respectfully and do what we need to do to get there.

Mr. Alba wanted to comment on the September 17, 2002 on the site design review that that meeting got to be so late around 11:45 PM when the votes were taken he noticed that Commissioner Aguilar and the other lady Commissioner that was here were nodding off and Commissioner Aguilar's vote was put in for her by Tom Garde. Chairman Daves called point of order and said this was a very inappropriate comment. Mr. Alba said Ruben Chavez did not do his job right in 1999 and therefore the County has an obligation to correct the error in the zoning to be either I-1 or amended to I-2 because of the existing and I-3 is not allowed for residential properties, which are across the street. In the comprehensive zoning ordinance the county only changed the zoning classifications, they did not rezone any place in the County and was not zoned for heavy industrial zoning.

Mr. Dean had a question on the power lines that connect to PNM are they crossing one's property?

Chairman Daves said his question will get answered at one point. Mr. Kelly said all of the power lines cross someone's property.

Chairman Daves asked Mr. Chavez to address the land uses on the Rio Grande Industrial Park?

Chairman Daves said we have a consensus from the rest of the Board that we have covered everything on the proposed power plant given the very late hour.

Gloria Sanchez spoke up on the fact that Mr. Kelly and PERC have been given all the time allowed to say what they are going to say so please listen to her, she was interrupted on her first presentation and she did not appreciate that. We are not opening up a candy store here, we are opening up a power plant. Ms. Sanchez said she has talked to people and they are just finding out information and the implications of this plant is going to affect us. Ms. Sanchez said she feels like when she comes before the Commission they make her feel like she is an idiot and she gets interrupted, and they give the opposition all the time to talk and then you throw PNM in there, she thought she was coming to talk to PERC. Who is going to monitor the security of that plant?

Jeff Grieg said he has a slide on security issues that have come up. PERC is committed that we have a safe and reliable facility. There will be security only in controlled access and will be totally enclosed with a security fence. The plant is designed to have its own fire system installed. There is an ongoing type of security coordination going on right now due to the 9-11 incident.

Ms. Sanchez said thanks but her question still is, is there going to be a person there for security? Mr. Grieg said we will have someone there 24 hours a day for security,

Commissioner Aguilar called for point of order because questions need to be directed through the Chairman. Ms. Sanchez said she wants to discuss the buffer that will be around the plant.

Commissioner Aguilar said that is part of the site design and there is a three ring binder that explains this. Ms. Sanchez said she still hasn't asked her question on the buffer and the water situation.

Mr. Grieg explained the landscape water use for the proposed plant.

Commissioner Trujillo said his personal interest in this is his concern on the power lines going over his house, which have been standby lines for 20 to 30 years conducting very little electricity. According to Mr. Epard those are the lines that are transmitting electricity across the river onto the west mesa. Commissioner Trujillo said he has a background as an electrical engineer and said he feels uncomfortable with this because he has a ten-year-old daughter. He has a pamphlet with the National Institute of Health studies which he feels is very conservative and favorably towards transmission industries like the power company indicate which was once a .5 milligals which is a measure of electro magnetic radiation. If this electricity is transmitted along those proposed lines, we are looking at probably nineteen to twenty milligals right in the house. Commissioner Trujillo said he certainly would not want to compromise his daughter's opportunity to have a life because he feels that someone's profit would be damaged by it and he feels it would be immoral and unethical if he were to do that. Commissioner Trujillo said this is his personal issue, which he hopes to address with PNM and take it up with them.

Commissioner Trujillo said he doesn't see anything in the ordinance that supports a power plant as a permitted use and he is not going through and rehash what the courts have considered but it is very specific in listing the uses. When he read the argument that was presented to Judge Sanchez regarding this being actually a permitted use, if this were the case if somebody was manufacturing marijuana could say this is a processing and production plant for fertilizer because we are growing it on a fertilizer heap. Commissioner Trujillo said when Mr. Kelly presented the letter from Planning and Zoning from Steven Chavez, July 19, 2001 it put a loop on his thinking. If he were someone with People's Energy and had gotten this letter he would have negotiated with William Giron or whoever was selling this land and he would have relied on that. Commissioner Trujillo said he doesn't see where Steven Chavez could get from the language of the ordinance and the ambiguity and vagueness of the maps to this letter. It is very clear in the ordinance that any use not specific listed as a permitted use may be allowed as a similar use subject to Type A application procedures set for in the ordinance. What we have here is being built as a permitted use and agrees with Judge Sanchez and doesn't see that that was an intended use or allowing it as a permitted use. The public interest goes on both sides with water, a big and critical issue.

Commissioner Trujillo said considering what has come forth in this meeting it is clear that People's Energy relied on assurances that were given by an officer of the County who perhaps he was acting beyond his authority to interpret that ordinance is such a broad way and it is best to let the legal process iron that out.

Commissioner Trujillo made a motion that we table any further consideration on that specific issue as it affects People's Energy per our Attorney's advice pending resolution on that appeal based on reliance on that letter of July 19, 2001.

Commissioner Trujillo made a motion to propose a moratorium on any further applications for this type of permitted use until we clarify public hearings and with direct involvement of this Commission, clarify and amend this ordinance to clearly state with what we are dealing with.

Commissioner Andersen and Commissioner Aguilar stated if we might do one motion at a time.

Commissioner Trujillo repeated his motion again stating that we table any further consideration on that specific issue as it affects People's Energy per our Attorney's advice pending resolution on that appeal based on reliance on that letter of July 19, 2001.

Seconded by Commissioner Aguilar. Discussion. Commissioner Aguilar voted yes. And for clarification stated she was wide awake. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0.

Commissioner Trujillo repeated his second motion to propose a moratorium on any further applications for this type of permitted use until we clarify public hearings and with direct involvement of this Commission, clarify and amend this ordinance to clearly state what we are dealing with.

Seconded by Commissioner Padilla. Discussion. Commissioner Aguilar voted no. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted no. Chairman Daves voted no. Motion failed. 3-2.

The next Regular Meeting of the Valencia County Board of County Commission will be held on May 6, 2003 at 9:00 AM Executive Session and 10:00 AM Regular Session in the County Commission Room at the Valencia County Courthouse.

Adjournment

Commissioner Padilla made a motion to adjourn. Seconded by Commissioner Andersen. Discussion. Commissioner Aguilar voted yes. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0. Time being 2:15 AM.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the, Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.
--

VALENCIA COUNTY BOARD OF COMMISSIONERS

**ss/
GARY DAVES, CHAIRMAN**

**ss/
PAUL EDWARD TRUJILLO, VICE-CHAIRMAN**

**ss/
AURELIO H. PADILLA, MEMBER**

**ss/
ALICIA AGUILAR, MEMBER**

MARY J. ANDERSEN, MEMBER

ATTEST: ss/

TINA GALLEGOS, COUNTY CLERK

DATE: June 17, 2003